

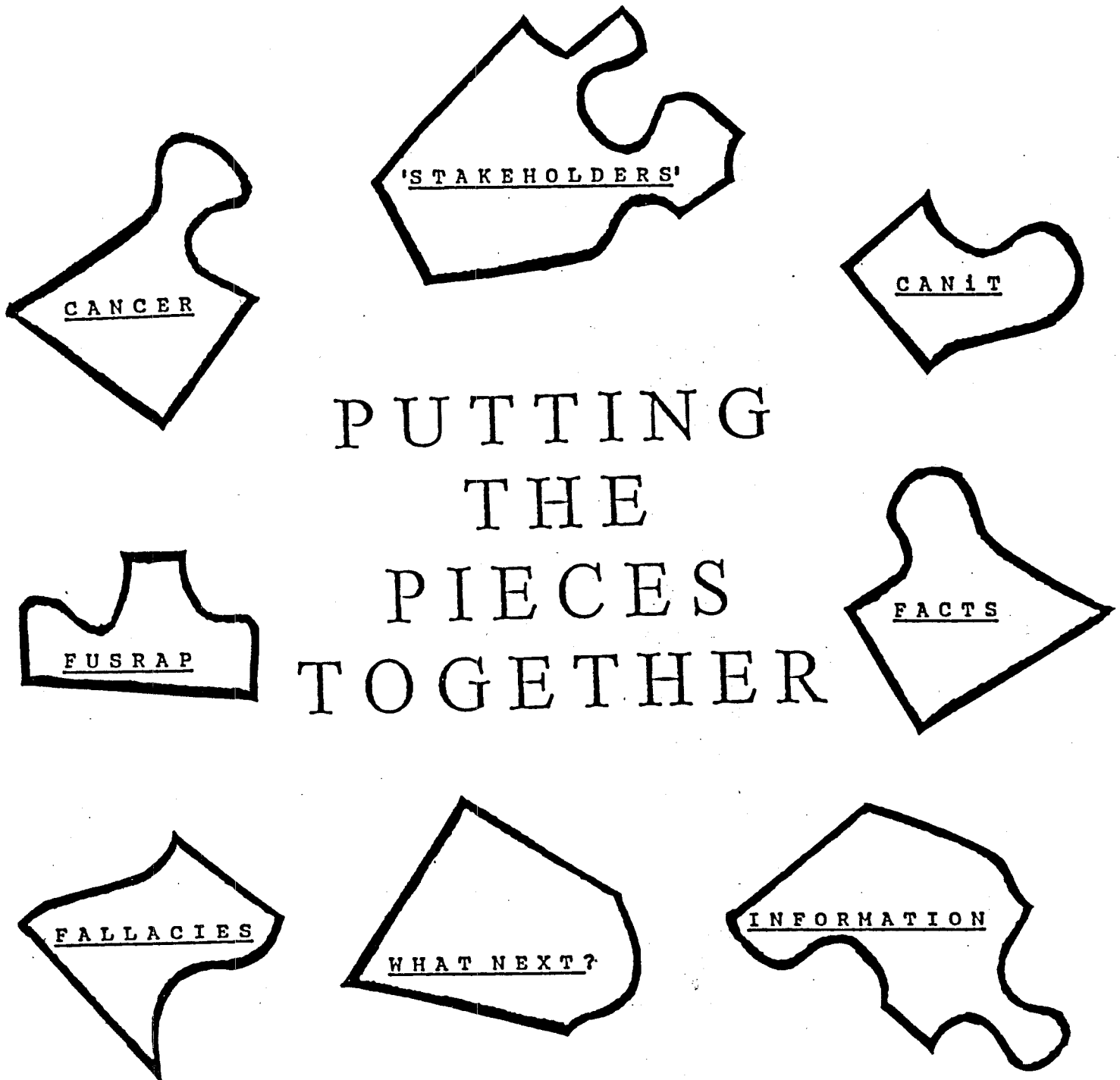
F. A. C. T. S.

(FOR A CLEAN TONAWANDA SITE)

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F.A.C.T.S.

(For A Clean Tonawanda Site)

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Purpose: To disseminate, in a timely manner, factual information relating to the cleanup of the Tonawanda nuclear waste site. Also, to serve as a resource to help interested citizens obtain relevant site-related materials. FACTS supports the complete removal of Tonawanda's radioactive waste to a dry, secure site, much more suitable for the long-term management of these wastes.

A MESSAGE FROM YOUR EDITOR:

WE'RE STILL HERE!

- After discussing whether or not we should run a monthly newsletter, we decided to run the newsletter whenever developments warrant it.
 - I would like to thank all of you who have complimented us on the FACTS newsletter. Also, those who gave us input for the newsletter. It makes us feel good to receive the appreciation of concerned citizens.
 - Please remember, don't hesitate to continue sending in questions and suggestions. Also, feel free to send in material to be printed. This is your newsletter.
 - Jim, Ralph and I would like to thank those folks who attended our first FACTS meeting. It's good to know that we're not alone concerning this radioactive waste problem.
 - 'A tip of the FACTS hat' to Supervisor **Carl Calabrese** for directly approaching Envirocare of Utah, Inc. with his questions concerning costs related to the disposal of the radioactive waste.
 - Since the cost of producing the newsletter is being borne by the shallow pockets of the newsletter staff, any donation to help offset this cost would be welcome.
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WHAT'S HAPPENING ELSEWHERE

While CANiT members heap praise on John LaFalce for arranging partial cleanup of the Linde property - about 14,000 cubic yards of the 80,000 cubic yards estimated at the Linde property, or less than 4 percent of the 371,000 cubic yard Tonawanda Site total - we note that on July 12, 1995 a \$67 million contract was signed with Envirocare of Utah for a **complete "turnkey" cleanup** (including site characterization; waste excavation, loading, transportation, and disposal at Envirocare; and site restoration) of the Wayne, N.J. FUSRAP site, extending through the year 2000 (six fiscal years). The Wayne site has an estimated 110,000 cubic yards of contamination.

ANNOUNCEMENT OF PARTIAL RADIOACTIVE CLEANUP AT TONAWANDA NUCLEAR SITE LEAVES IMPORTANT QUESTIONS UNANSWERED

On August 4th, Congressman LaFalce announced that DOE would "begin interim remediation efforts this fall" at Union Carbide's former Linde facility (now Praxair, Inc.)

The decision, by Energy Department Assistant Secretary Thomas Grumbly, is certainly good news for the Tonawanda community and all residents of the Niagara Frontier region. It is especially good news for workers who over the years have faced increased exposure risks in some areas of the formerly utilized Manhattan Project facility.

However, the announcement calls for only a partial cleanup at the Linde site. The Linde facility is just one of the five properties comprising the entire Tonawanda Site. The other properties are the Town of Tonawanda Landfill, Seaway Landfill, Ashland #1 and Ashland#2. *The "interim" action would remove less than 20 percent of the contamination present at the Linde/Praxair property or less than 4 percent of the over 371,000 cubic yards of contaminated soils, creek sediments, and structures at the total site.* The 5th property, the Town of Tonawanda Landfill, reportedly has at least 15,000 cubic yards of FUSRAP contamination.

In addition, the announcement does not address important issues which were left unresolved when the required environmental review (EIS) process was suspended by DOE 17 months ago. Most important, what cleanup guidelines will be used to decontaminate the property? New York State guidelines are ten times more strict than DOE's cleanup criteria. The level of radioactive contamination remaining after cleanup under DOE guidelines would be ten times greater than under New York State guidelines. *This is a very important issue because if DOE's cleanup criteria are used instead of New York's, the "cleaned" area will still pose a ten-fold greater risk of health effects such as cancers.* By conducting an "interim remediation" outside the specified requirements of the normal EIS process, is DOE trying to avoid the application of New York State's more stringent cleanup guidelines?

The announcement calls for Buildings 14, 30, and 31 to be decontaminated and only Building 38 to be demolished and removed. In contrast, the community's preferred complete cleanup and removal (EIS Alternative #2) provides for the demolition and removal of all four buildings along with approximately 5,000 cubic yards of contaminated soils under the buildings. It seems unlikely that the DOE would perform an expensive, labor intensive decontamination of buildings if they had any thought of removing them at a later date. *In comparison with any EIS alternative, the announced "interim" cleanup of the Linde property will remove only a fraction of the total contamination present at this property.*

This action does set an important precedent in that it provides for the much safer long-term management of the wastes at a much more suitable out-of-state location, as demanded by the Tonawanda community. But, since it only deals with part of the total contamination present at the Linde property, we cannot assume that the rest of the contamination at the total site will be similarly removed. DOE remains adamant in claiming the cost of complete removal, \$235 million, is too high when compared to their preferred plan, an onsite pile at \$77 million. In fact, this is very shortsighted and is not cost-effective in the long-term and is when one considers the 500,000 year hazard period of these wastes as well as the fact that a clay-capped landfill will erode away in our climate in as short a time as 200 years or less.

At its March 14, 1995 meeting, Coalition Against Nuclear Materials in Tonawanda (CANiT) adopted the position that a gradual, staged cleanup of the five properties comprising the total Tonawanda Site would be accepted only if DOE made a commitment to eventual out-of-state disposal for all of Tonawanda's contaminated material. This political group has now apparently changed their position.

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With the cleanup criteria and other environmental review questions unanswered and lacking completion of the required EIS decision process for the total site, the legality of such an "interim" action is questionable.

WHAT HAS HAPPENED TO THE 'SUSPENDED' ENVIRONMENTAL REVIEW PROCESS?

On October 31, 1994, FACTS wrote to Energy Secretary Hazel O'Leary and expressed our concern that DOE's suspension of the environmental review process in April followed by a Secretarial Policy change on the National Environmental Policy Act (NEPA) in June meant, in effect, that environmental review under the provisions of NEPA had been terminated. We pointed out that seven years ago DOE had determined that a NEPA Environmental Impact Statement (EIS) was required and that we consider such environmental review to be essential, both from a simple legal standpoint and in terms of assuring protection of the community's interest in the selection of an effective, long-term management plan for Tonawanda's radioactive waste. (see November, 1994 FACTS, page 6).

Principal Deputy Assistant Secretary for Environmental Management Richard Guimond responded to our letter saying:

"In the case of the Tonawanda Site, the program office plans to continue to integrate the National Environmental Policy Act and Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA or 'Superfund'] processes and emphasizes that the National Environmental Policy Act process has not been terminated."

On numerous occasions since the suspension of NEPA review (including the following DOE public meetings: a July 1994 public meeting with Guimond, the 9-9-94 Treatability session, the 10-18-94, 1-31-95 and 2-28-95 Work Plan meetings, and most recently at the 6-5-95 informational meeting) FACTS has repeatedly asked that the EIS review be logically continued by DOE addressing the issues raised by the public in their comments on the draft EIS. At the 1-31-95 meeting, Site Manager Ron Kirk said in public conversation that the required Responsiveness Summary (to the public comments) had been prepared, and further, that if DOE wanted to they could immediately proceed to issuing a Record of Decision (ROD) for their preferred alternative #5 - partial excavation and onsite disposal. FACTS subsequently requested the Responsiveness Summary under the Freedom of Information Act (FOIA).

After almost 3 months delay beyond the required response time, DOE responded that the Responsiveness Summary:

"... was never completed nor issued; therefore it does not exist.

Although a statement that no documents exist which are responsive to a request is not a denial of access to records, the adequacy of the search performed may be appealed by writing to ..."

We are left wondering if Ron Kirk knowingly perjured himself, or if DOE would be more recognizable to the public as the 'Department of Evasion'. And yet, Secretary O'Leary says she wants to build public trust.

Most recently FACTS sent a press release to Assistant Secretary Thomas Grumbly commenting on his announcement of a partial "interim" cleanup at the Linde/Praxair property and pointing out that the issues raised through public comment on the draft EIS had not been addressed. An August 25th response from James Wagoner II, Director Off-Site/Savannah River Program Division, Office of Eastern Area Programs, Office of Environmental Restoration, seems to contradict Guimond's previous assurance that NEPA review requirements

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would be met.

Wagoner states that "When the Department and the Tonawanda stakeholders reach a mutually acceptable long-term solution for addressing the Tonawanda Site, the Department will document the remedy selected in accordance with CERCLA."

Without specifically saying so, it appears that NEPA review requirements have been eliminated.

When viewed in the context of DOE's unilateral cancellation of further Work Plan Meetings with the local community and the subsequent setting up of a national FUSRAP committee, composed solely of DOE-selected members, without the knowledge of or input from the Tonawanda community, this termination of NEPA review requirements is particularly disturbing. **In fact, we believe that DOE is not acting in good faith on this central issue, and further, that failure to meet the requirements of the NEPA EIS process is illegal.**

FACTS BRIEFS:

- Workmans Compensation Case: Filed on behalf of a widow of a Linde/Praxair worker; attorneys wanted to obtain documents, FOIA material, etc. concerning FACTS Newsletter, Union records. Judge ruled these items out; saying that the only material from FACTS they are entitled to is what the public had received (past issues of the Newsletter). The Union has turned over all material it has researched on its own time.

Ed. note: Union Carbide Corporation and Linde/Praxair had all these years to research for this material. Why did they wait until just recently to demand that the Union turn over what it had researched on its own time (which amounts to a tremendous amount of hours)?

- In another matter, Linde/Praxair officials now also want want material: "For purposes of collective bargaining, the Company is requesting under the National Labor Relations Act that the Union produce to it any and all documents - - -" (letter dated August 18, 1995); "re: Request to Furnish Information for the Purpose of Collective Bargaining - - - -" (letter dated September 4, 1995). Ralph Krieger said that the Union will allow the Company to look over all documents, etc. and the Company is free to copy any material they desire.
- FACTS has applied for a DOE Technical Assistance Program (TAP) grant. This would be used to secure the services of an independent technical consultant to assist the community in interpreting DOE and DOE contractor documents related to the selection of a long-term waste management plan for Tonawanda's waste. Specific services identified in the request include evaluation of data generated in the ongoing treatability study, evaluation of documents pertaining to the Town of Tonawanda Landfill (the fifth Tonawanda property designated into the FUSRAP program but not dealt with in the draft EIS), and a comparative evaluation of the suitability for long-term storage, both in terms of site physical characteristics and institutional control issues, of the Nevada Test Site versus the Envirocare site. FACTS would not receive any of the grant funds, but, with the community's input would determine the consultant to be retained and the services to be performed.

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- 90 per cent of the toxicity? Reacting to the announced partial cleanup of the Linde/Praxair property Tonawanda Supervisor Carl Calabrese was reported to say that it made sense to deal with the Linde site first because, while it has 10 per cent of the total waste volume, it has 90 per cent of the toxicity making it the dirtiest property in the total Tonawanda Site. These figures are incorrect; according to the Feasibility Study, (page 5-63) the Linde property has 80,130 cubic yards of waste or about 22 per cent of the total volume at the total Site. And the Linde property certainly does not have anywhere near 90 per cent of the radioactivity or toxicity. In fact, most reports show the Linde property to be the least contaminated of the five properties in terms of the amounts (in curies) of each of the three principal radioactive elements present: radium, thorium and uranium; the sole exception being the uranium content at Ashland 2. Even the most recently designated property, the Town of Tonawanda Landfill has more contamination:

Radioactive Content of Tonawanda Properties
(in curies)

	<u>Radium</u>	<u>Thorium</u>	<u>Uranium</u>
Ashland 1	1.2	20	5.5
Seaway	0.8	13	1.5
Ashland 2	0.3	4	0.8
Town of Tonawanda Landfill	1.3	1	2.3
Linde	0.2	0.7	1.0

(derived from information presented in "EMAB Briefing on New York FUSRAP Sites, August 22-23, 1995, Tonawanda, New York")

Why then has DOE chosen the Linde/Praxair property for a partial "interim" cleanup? DOE officials have repeatedly said there is no health threat posed to workers by contamination at this site. Of course, if that were true then a cleanup would not be necessary. Obviously, it's not true. In addition, could it be that Praxair is better connected politically than the other property owners?

SOMETHING ELSE TO THINK ABOUT

by Don Finch

At the March 29 workshop held by DOE, Kevin Ironsides was explaining to me the dose-response curves (linear, supralinear, etc.) used to predict cancer hazards due to long-term exposure to low-level radioactive waste. Mr. Ironsides works for Science Applications International Corporation, a contractor to DOE at the Tonawanda Site. He identified himself as a toxicologist. After listening attentively to his explanations, I asked him if he was familiar with the works of Drs. Mancuso, Gofman, Stewart and Quigley? He said he was not familiar with their research. ***Yet, it was these independent specialists, in the fields of medicine, radiobiology and epidemiology, who years ago documented greater hazards of long-term exposure to low-level radioactive waste than were then officially recognized.***

DEFICIENCIES IN THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

by Jim Rauch

The draft environmental review document (RI-BRA/FS/EIS) for the Tonawanda, N.Y. Site contains several significant deficiencies (see "Comments on RI/FS-EIS for the Tonawanda, New York FUSRAP Site" by James Rauch, 2-6-94):

1.) For example, over 50% of Manhattan Project-related environmental contamination (27.3 curies of uranium and radium) at the five properties which make up the Site consists of radioactive liquid effluents which were discharged to surface water, via storm and sanitary sewers, and to groundwater by 'deep' (130 ft. to 150 ft.) well injection, by the Linde Air Products Division of Union Carbide.

The company decided to inject 55 million gallons of radioactive liquid effluent containing 5.5 curies of radium-226 into the bedrock aquifer below their refinery facility because their legal department thought "that it is considered impossible to determine the course of subterranean streams and, therefore, the responsibility for any contamination could not be fixed."

Linde's legal department preferred the injection well disposal route to the surface routes because surface disposal "is objectionable because of probable future complications in the event of claims of contamination against us." Despite this, Linde later used the surface disposal routes as well. Although the Army expressed reservations at the injection well plan, saying, "We would also like some assurance that the government will not under the terms of the contract be required at some later date to remove any effluent which may remain in the well or be required to restore the well to its original condition," it apparently acquiesced to Linde's use of both disposal routes. Linde still occupies the site, however they have changed their name to Praxair, Inc.

Moreover, The EIS package for the Tonawanda, N.Y. Site does not define the extent of groundwater contamination resulting from the 'deep well' injection nor does it contain any remediation proposal for the injected effluent as required by the National Environmental Policy Act (NEPA). [see J. Rauch's "Comments on RI/FS-EIS for the Tonawanda, New York FUSRAP Site" comments 29 and 50].

2) The same is true for the surface discharge effluents, including dredgings and sewer plant sludge taken to Tonawanda's municipal landfill (see J. Rauch's comments 33, 34, 39, and 42).

3) In these cases, it seems the DOE does not intend to fulfill the requirements of NEPA. Based on the above, it appears likely that Linde Division/Union Carbide Corporation may share legal responsibility with the federal government for the contamination associated with these discharge routes. If so, shouldn't the federal government pursue Union Carbide Corporation (Linde's parent firm at the time) for a portion of the remediation costs?

The previous quotations are from correspondence contained in "The Federal Connection: A History of U.S. Military Involvement in the Toxic Contamination of Love Canal and the Niagara Frontier Region, 1-29-81, a report by the New York State Assembly Task Force on Toxic Substances" (see verbatim excerpt directly below). This report made several recommendations including a request that the state attorney general determine if New York State should bring legal action against the federal government.

Ed. note: The following excerpt is an exact copy of text found in the Federal Connection - A History of U.S. Military Involvement in the Toxic Contamination of Love Canal and the Niagara Frontier Region Volume 1, Page 128:

The Advantage of Dumping Wastes into Underground Wells

The rationale behind the initial decision to use the underground wells, revealed in a remarkable and discerning series of correspondence between Linde and MED, merits particularly close review. In a March 29, 1944 letter to Captain Emery Van Horn, MED's Tonawanda Area Engineer (its chief regional officer), [see appendix] Linde stated that dumping the wastes into the storm sewer system which drained into a nearby creek ("Plan 1") was "objectionable because of probable future complications in the event of claims of contamination against us." ²⁴

Linde's fear was that the discharge of Step I wastes in this obvious and crude manner might cause injury and give rise to clear-cut liability, particularly since the hot, caustic liquors would be flowing through a public park in which children frequently played. ²⁵ Moreover, Linde's Law Department had ruled that dumping the wastes in this manner would be in violation of existing New York State regulations. ^{25a}

Linde strongly favored the pumping of the effluent into underground wells ("Plan 2") for one simple, but convincing reason - - it believed that the resultant underground toxic contamination could not be readily traced to the Linde Plant. In requesting MED's permission to use the underground wells, Linde explained the principal advantage of Plan 2:

"our Law Department advises that it is considered impossible to determine the course of subterranean streams and, therefore, the responsibility for any contamination could not be fixed. Our Law Department recommends that this method of disposal be followed." ²⁶

Linde further asserted that the content of the liquors themselves were not harmful, a fact which Linde claimed had been attested to by local, state and federal officials:

"We understand that local representatives of the New York State Board of Health and of the Town of Tonawanda Filtration Plant have given the opinion that the effluent liquors are not detrimental to the public health. We also are told that Captain Ferry has expressed the opinion that there is nothing in the effluent liquors detrimental to public health." ²⁷

The self-contradiction inherent in Linde's analysis of the disposal alternatives is evident. If the Step 1 effluents truly were, as Linde represented, not 'detrimental to public health', the fear of liability arising from their discharge into the wells would be groundless.

Clearly, Linde recognized that contamination from discharge of the effluent would have a detrimental impact, since the choice of the well disposal method was made in order to evade liability. It is most disheartening that the use of underground wells was advised by Linde not because this method was safer or scientifically more sound but so that the source of contamination, the MED-owned, Linde-operated Ceramics Plant, could not be readily identified.

Clean-up criteria?

Citizens group in town raises questions about how, and to what standards, nuclear cleanup will be done

By Joseph C. Genco
Staff writer

The decision to begin work on clean-up of radioactive waste in the Town of Tonawanda has been met with reserved optimism from the

group, "For a Clean Tonawanda Site," which calls itself FACTS.

The plan announced by the Department of Energy (DOE) last week, involves work to clean three buildings, demolish a fourth, and dispose

of the resulting waste out-of-state.

FACTS is concerned, however, that the announcement does not address what criteria will be used for the clean-up, DOE's or New York State's. The State's criteria is 10 times as stringent as that of the DOE.

The buildings represent one of four sites contaminated by waste remaining from the Manhattan Project of WWII.

FACTS and another group, Citizens Against Nuclear Material in Tonawanda, (CANIT), have advocated the removal of all wastes as the preferred remedy.

The current action, while greeted enthusiastically, actually represents a departure from the plan preferred by community members and rejected by the DOE, the removal of all wastes.

That plan, rejected as too costly, would require the demolition of all four buildings.

CANIT in March adopted a resolution stating it would accept a gradual, staged clean-up of the properties only if the DOE made a commitment to dispose of all waste out-of-state.

Even with the current move by the DOE, it is still unclear exactly what federal commitment has been made.

FACTS concluded in its release that, "with these and other questions unanswered and lacking completion of the require Environmental Impact Statement decision process for the total site, the propriety of such an interim action is questionable."

TONAWANDA NEWS 8/4/95

Cleanup of TT radioactive sites to begin this fall

By Joseph C. Genco
Staff writer

A portion of the talking, negotiating and red tape is done.

The Department of Energy has announced it will proceed with plans this fall for interim remediation of some radioactive wastes in the Town of Tonawanda.

The announcement comes in response to a request from Congressman John J. LaFalce.

Three buildings in the Linde-Praxair complex on Sheridan Drive will be decontaminated. A fourth will be demolished, and a 12,000 cubic-yard pile of contaminated materials will be removed to an out-of-state site.

Work on the \$14 million project could begin in the fall and may be completed by fall, 1996.

"In 1993, DOE had recommended keeping and maintaining wastes in Tonawanda," LaFalce said in a press release. "I objected, demanding that the recommendation be reconsidered, and in April of 1994, DOE agreed to totally reopen the question of what to do with Tonawanda wastes."

The action is potentially the first taken to remove wastes left over from the Manhattan Project of World War II from the community.

The wastes are present at three locations, Ashland one and two and Seaway Industrial park, which are both along River Road near the Grand Island bridges, and the Praxair property.

The community has been steadfast in its opposition to any wastes remaining in the town, much to the chagrin of the DOE which two years ago proposed a plan to partially excavate wastes and consolidate them on one site within a stone's throw of the Niagara River.

Town Supervisor Carl Calabrese, Richard Tobe an Erie County official who heads up "Citizens Against Nuclear Materials in Tonawanda," and County Legislator Charles Swanick all expressed optimism over the new work.

Another group, For a Clean Tonawanda Site (FACTS) is run by Don Finch and Jim Rauch independent of CANIT and other interests.

Mr. Rauch said that while the announcement can be viewed as good news, and the Praxair site is as good a starting point as anywhere, the Ashland I site remains the most heavily contaminated.

"It's really spectacular news from my viewpoint," Swanick said. "This settles the logjam concerning the DOE's desire to locate the material in the Tonawandas."

Swanick praised LaFalce, noting that local officials had pleaded for congressional intervention.

It was the intervention of a New Jersey congressman which led to the DOE agreeing to remove waste from that state rather than store it on site in two communities there.

Concerning Town's nuclear waste:

Federal advisory unit has no reps from state, region

By Joseph C. Genco
Staff writer

The Department of Energy has formed its own Environmental Management Advisory Board (EMAB) to give input acceptable to the DOE on radioactive waste in the Town of Tonawanda.

There is no representation on the board from New York State or the Northeast.

The EMAB will be meeting over the next two days to discuss the future of the waste.

A public comment period is slated for 7 p.m. tonight at the Grand Island Holiday Inn, Coalition Against Nuclear Materials in Tonawanda (CANIT) officials said Monday.

CANIT had limited notice of the meeting and was scrambling on Monday to send County Legislator Charles Swanick and Town Supervisor Carl Calabrese to speak during the public comment portion of the meeting.

The DOE has not communicated with the media on the purpose of its new board and has not told CANIT much about why EMAB exists or what it hopes to accomplish.

Swanick will speak on the importance to the citizens and community of decisions concerning the waste, while Calabrese will address the economic

impact of removal and the town's long-range waterfront plans.

The four sites in questions are repositories of waste remaining from the Manhattan Project of World War II.

DOE last month announced a plan to spend \$14 million to remove waste and decontaminate buildings at the Linde-Praxair facility, but has not announced whether that work will be done to the criteria of the federal government or that of New York State.

New York State's criteria is about 10 times more stringent.

CANIT officials are a bit miffed about the actions of EMAB.

"They let us know they are coming here, but they do not ask or offer any chance to comment," said Mike Raab, deputy commissioner of the Erie County Department of Environment and Planning. Raab was running the meeting.

DOE formed an EMAB with some of the same members — including Chairman John Applegate of the University of Cincinnati School of Law, and decided to consolidate and store waste in Ohio at a different location within the Formerly Utilized Sites Remedial Action Program according to citizen activist Jim Rauch.

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