

ARKANSAS: ONE YEAR AFTER THE RESIDENTS OF FAYETTEVILLE VOTED DOWN AN INCINERATOR THE WASTE AUTHORITY IS STILL UNDECIDED HOW TO REPAY \$7 MILLION OF THE BOND MONEY IT SPENT. THE AUTHORITY DID NOT DISCLOSE PUBLIC OPPOSITION TO THE PROJECT AT THE TIME OF BONDING AND AUTHORITY MEMBERS COULD BE HELD LIABLE TO FEDERAL SECURITIES VIOLATIONS.

The Mayor of Fayetteville honored a non-binding referendum held on 3-8-88 when a proposed incinerator was voted down by 5,299 to 3,966. (See **Waste Not #1**). The **Northwest Arkansas Resource Recovery Authority** had received \$22.4 million in bonds to build the incinerator. The Authority spent \$ 7 million of the bond money . To date the bond money for the unbuilt/unwanted incinerator has not been repaid. The city hired **Nixon, Hargrave, Devans & Doyle (NHDD)** to advise them on the legal issues involved in paying off the bonds. **NHDD** presented the directors of the Authority a report on the situation on May 2, 1989. Authority members did not say when they would take final action. Authority Director Fred Vorsanger "said he wanted to look at the responsibility of others. 'Those who put us in it ought to try to take us out of it.' Vorsanger said some of the outstanding law firms in the state - the **Rose** firm and the **Wright** firm from Little Rock - were involved. He also mentioned insurers for the \$22.4 million in bonds issued to finance the project and bond underwriters...(Mayor Bill Martin) said 'the bottom line is that the citizens of Fayetteville borrowed money with a commitment to repay'...Tom Brown of **MORROW** said Fayetteville citizens are not responsible for the debt. **'Every effort to involve the public was quashed. The public expressed itself as often as it could.'** Brown said individual members of the Authority, who approved the bond issue, bear the responsibility...Joe Robson of Fayetteville, who also opposed the incinerator and now serves on the county quorum court, said, 'There are moral obligations, but not for the ratepayers. They should be held harmless. They have done no wrong.' Robson contended that Jim McCord, who resigned as Fayetteville city attorney Monday, had a conflict of interest when he represented both the city and the Authority. Robson said McCord also had an interest in the contract he advised the Authority to enter into ...The (**NHDD**) report makes no recommendations, but information in it indicates the city will probably have to repay the bonds because of a waste supply agreement signed in late 1986 which unconditionally guarantees Fayetteville will pay the Authority an amount sufficient to cover debt service on the bonds. The report calls this a 'hell or high water provision,' which, even if proved illegal under state law, could still be the basis for a federal securities lawsuit by bondholders or their agents..." - Northwest Arkansas Times, 5-3-89. "Nothing in the bond documents themselves obligates the city to pay. The obligation is in a waste supply agreement between the city and the Northwest Arkansas Resource Recovery Authority which issued the bonds...In the waste supply agreement, signed Dec. 22, 1986, Fayetteville agreed unconditionally to pay tipping fees to the Authority sufficient to cover debt service on the bonds... **Rule 10B-5** of federal securities legislation makes parties involved in issuing securities such as bonds liable to bondholders for any losses, if the parties made any misrepresentations or failed to disclose material facts related to the bonds. If the waste supply agreement proves unenforceable, the city's statements about the waste supply agreement **and its failure to disclose public opposition to the project in December 1986 could be read as violations of federal law.** The city would then be liable to bondholders for any losses. Tom Ingoldsby (formerly of **NHDD**, who has headed the consulting team) said a similar situation occurred in Washington state in connection with development of nuclear power plants. Several cities joined with other parties in an agreement to pay fees to cover principal and interest on bonds issued to finance the plants. The Washington Supreme Court, however, held the agreement unconstitutional. But the cities still wound up paying most of the costs after federal lawsuits were brought...Asked about individual liability of Authority members, Ingoldsby said Arkansas tort immunity applies to elected

officials and city and state employees. He admitted, however, **that immunity does not extend to federal securities violations.** Ingoldsby said Fayetteville directors have insurance, but noted that there is a \$1 million cap per transaction on the coverage... Asked how the city's decisions on the incinerator bonds affect its future bond ratings, Ingoldsby said the issue is central... 'Even if the city pays every dollar on time,' he said, the bond rating firms 'are going to be concerned about how this problem arose.' He said city officials 'have to make them understand this was an aberration...'
Northwest Arkansas Times, 5-2-89.

ARKANSAS: A BOILER AT ENSCO'S HAZARDOUS WASTE INCINERATOR IN EL DORADO BLOWS. "A heat recovery boiler explosion at the **ENSCO INC.** hazardous waste incinerator plant early (3:10 am) Thursday (4-20-89) startled many area residents as it rattled homes in the area...A number of people reported hearing a loud, screeching and hissing noise much like the sound of a jet engine after the explosion. Some said the noise lasted for about 20 minutes as it slowly died out...(An **ENSCO V-P** said) 'a (heat recovery) boiler had exploded and **launched itself some distance**'...The **ENSCO** spokesman said three boiler units are still operational and incineration is expected to resume within a few days. There was no damage estimate (photo in paper showed extensive damage to outdoor pipes). Two electrical transformers at the plant received minor damage, knocking out power to parts of the plant...A 3/4-inch line on a small ammonia tank was also damaged..." El Dorado News-Times, 4-21-89, front page. According to **ENSCO** watchdog Mardell Smith, residents in the area heard on their scanners **ENSCO's** calls for emergency health services, though no health injuries were reported. According to Mardell, "**ENSCO** is very good about covering up its accidents." According to **ENSCO** officials, the El Dorado facility handles one-third of America's toxic wastes. There have been a disturbing number of rare diseases/cancers occurring in El Dorado. Mardell noted that within the last two months two rare brain tumors have been reported in El Dorado. For more information contact Mardell Smith at 1201 N. Newton, El Dorado, AR 71730. Tel: 501-862-5293.

CANADA: ONTARIO TOWN COUNCIL SUCCESSFULLY BLOCKED ENSCO'S PLANS TO BUILD A HAZARDOUS WASTE INCINERATOR. (See **Waste Not # 31**). On November 15, 1988, residents of Maitland, Augusta Township, voted into office councilmen committed to stopping a proposed **ENSCO** hazardous waste incinerator. The proposal was secretly negotiated by the former town council, all of whom were voted out of office on Nov. 15th. The new town council have successfully completed their mandate. In April 1989 **ENSCO** agreed to accept \$60,000 from the Maitland town council, to cover their expenses in trying to site the proposed hazardous waste incinerator. The proposed incinerator is now dead. For more information contact: Gunter Haase, PO Box 298, Maitland, Ontario K0E 1P0, Canada. Tel: 613-348-3439.

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