

PART I

**HUDSON FALLS, NEW YORK
PROPOSED 400 TPD FOSTER WHEELER INCINERATOR
COUNTY AND STATE IN BATTLE AGAINST ITS CITIZENS**

"Perhaps no other single project in the history of this area stirred the controversy and debate as the Hudson Falls incinerator. It is one of the most litigated trash plants in the country, successfully battling off three lawsuits from plant opponents in the past several years."

Report on the vote by the Board of Supervisors that gave the final approval to the project. Residents were not allowed to speak during this meeting. *Post Star*, Hudson Falls, NY, 10-29-88.

THE PROPOSAL FOR A 400 TPD FOSTER WHEELER INCINERATOR FOR THE VILLAGE OF HUDSON FALLS.

Initially, the proposed incinerator for the Village of Hudson Falls was a three-county project sponsored by Washington, Warren and Essex counties. In April 1988 Essex County withdrew from the project after they had voted not to landfill the ash from the incinerator. This decision changed the dynamics of the project and has been the basis for several lawsuits. The governing boards for Washington and Warren counties is centered in their Board of Supervisors.

FIRST COURT DECISION AGAINST GARBAGE INCINERATION IN NEW YORK STATE. The Village of Hudson Falls, represented by attorney Lewis Oliver, brought a lawsuit against the N.Y. Department of Environmental Conservation (DEC) claiming that because of the withdrawal of Essex County from the project a Supplemental Environmental Impact Statement (SEIS) was needed to assess the impacts from the loss of both garbage and revenue on the project and the loss of the Essex County landfill site. The DEC contended that no environmental significance had resulted from Essex County's withdrawal from the project. The Village of Hudson Falls won that lawsuit on November 14, 1989, in a N.Y. Supreme Court Decision from Justice E. Kahn.

Justice Kahn stated in his decision that there should have been a SEIS prepared and that the grounds for the DEC's objections to a SEIS "is exceedingly suspect and appears to reflect an attitude by DEC that this project is going forward regardless of the substantial concerns raised by the community which will be directly impacted by construction of the project..."

328 RESIDENTS SUE WASHINGTON & WARREN COUNTIES AND THEIR JOINT INDUSTRIAL DEVELOPMENT AGENCY (IDA). WARREN COUNTY AND IDA COUNTERSUE RESIDENTS FOR \$1.5 MILLION. This suit was initiated on February 9, 1989, with the residents contending that there was (1) no public hearing on the incinerator proposal; (2) that the original 3-county project had changed and the changes impacted the project; and (3) that the project would impact the tax base of the mostly agricultural Washington County. The Warren County Board of Supervisors together with the Industrial Development Agency of Washington and Warren Counties countersued alleging that the citizens suit hurt their **Moody's** bond-rating and cost the Counties \$1.5 million. This suit is still pending. A civil rights suit is being prepared by the residents. It is their contention that the countersuit interfered with their due process of law. According to an A.P. report, "Environmentalists say the lawsuit could have national implications for other citizens action groups that turn to the courts to challenge controversial projects. The environmental movement even has a name for this kind of case - **SLAPP** suit, or **Strategic Lawsuit**

Against Public Participation. "It's a strategy to hush people up and stop them from speaking out," said Lois Gibbs... 'This case stands out as the only one of its kind that I know of where government chooses to sue its own people,' said Will Collette, Citizens Clearinghouse's **SLAPP** suit expert. In Washington County, some supervisors told people they might lose their homes or cars as a result of the countersuit, the plaintiffs claim... The citizens, recognizable around the county by the bright orange 'PLAINTIFF' bumper-stickers they've affixed to the back of their cars, say the countersuit was filed to harass them into dropping their lawsuit..." Post-Standard, NY, 11-15-89, page B-11.

CONSTRUCTION OF INCINERATOR HALTED BY ORDER OF THE VILLAGE OF HUDSON FALLS BECAUSE PCBs WERE FOUND IN SOIL SAMPLES AT THE SITE.

Construction of the incinerator began in July 1989. **Foster Wheeler** did soil sampling at the site which resulted in eight soil samples which showed a range of PCB contamination up to 7 ppm. On November 14, 1989, the Board of Health of the Village of Hudson Falls ordered that all work at the construction site be halted because the PCB contamination constituted an "immediate and present health hazard to the workers and occupants" of the property surrounding the incinerator site. The Board of Health ordered the owners/and or operators of the property to conduct an extensive site investigation. At a November 10, 1989, proceeding held by the Board of Health for the Village of Hudson Falls, testimony from DEC 5 regional engineer, Donald Corliss was taken. Mr. Corliss responded that he didn't know the answers to the following questions. (1) Were the samples taken from disturbed or undisturbed parts of the site? (2) What was the depth the 8 samples at the site were taken? Mr. Corliss argued that the 7 ppm of PCBs was insignificant and that although he did not know where the PCBs came from he stated they were not the result of a spill and that the DEC would not require further tests. The evacuated soil from the incinerator construction site is being sent to Fort Edward's landfill (adjacent to Hudson Falls) and used as cover material. Mr. Corliss acknowledged that as far as he knew there had been no chemical tests on the soil that had been taken to the Fort Edward landfill.

LOCATION OF PROPOSED INCINERATOR: Situated within the Village of Hudson Falls on the banks of the Hudson River, the incinerator site is located in a residential area. The site is 1/4 mile from the Village's reservoir and within 2 miles of large dairy farms. Washington County has approx. 365 dairy farms. There is a Senior Citizens housing complex nearby which will be impacted by the pollutants from the incinerator. Lake George, a popular summer resort community, is 10 miles north of Hudson Falls, Vermont is 15 miles away, and Albany is 35 miles south of Hudson Falls.

ASH LANDFILL: In October/November 1988 a contract for landfilling the ash from the Hudson Falls incinerator was secured. According to Darryl Decker, Chair of Washington County's Solid Waste Committee, the contract was made with **Eastern Waste** of western N.Y. [**Eastern Waste** was the ash broker for Newark, NJ's incinerator, see **Waste Not #3**]

According to Mr. Decker the contract allows that if the incinerator is below an expected garbage tonnage municipal waste could be backhauled from communities near Buffalo. The scheme is that ash would be trucked 300 miles to Western NY and waste would be trucked back to the incinerator. Mr. Decker said there was an option in the contract to allow the Board of Supervisors to choose from a list of Buffalo communities as to which Buffalo-area community trash they would accept. According to residents the ash will go to **CID Landfill** in Chaffee, NY, and that the contract stipulates that the counties will pay \$200,000 a year to reserve ashfill space and if the contract is broken within 5 years the county has to pay \$2 million to **Eastern Waste**.

To be continued

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