

The (Toxic) Well From Hell **Engler-Era Project Still Threatens Community**

By Ted Sylvester

After more than a decade of struggle, opponents of the first commercial hazardous waste well in Michigan are facing at least one more very important – and perhaps decisive – battle. The facility appears to be one permit away from becoming fully operational, making it a matter of months before it could begin processing millions of gallons of hazardous waste containing toxic chemicals and heavy metals before injecting it deep into the ground under the city of Romulus near Detroit Metro airport.

Having received permission from the U.S. Environmental Protection Agency in March, the owners of the hazardous waste wells, Birmingham-based Environmental Disposal Systems (EDS), now await a final operating permit from the Michigan Department of Environmental Quality.

Community residents and activists, environmental groups, and elected officials who have kept the wells from opening for more than 12 years would view a DEQ go-ahead as a tragic blow – but not the end of the fight. Other scenarios, they contend, could ultimately play out in their favor. For example, the well's main financial backers – the Detroit Police and Firemen Retirement System – could have a change of heart and pull out of the project. Or, EDS could lose in the courts, where it is involved in pending lawsuits. Or finally, EDS could fail to meet any number of EPA and DEQ “special conditions” placed on their construction and operating permits.

Decade of Struggle

Debbie Romak describes herself as “just a mom with kids” when she first learned of the plan to locate a hazardous-waste deep injection well within walking distance of her home. “The momentum started,” she says, “when people of the community actually saw the drill rig and thought, what in the hell is going on?” What they learned back in the early ‘90s led a small group of Romulus residents to form RECAP (Romulus Environmentalists Care About People) and nominate Romak as their spokesperson. Romak and RECAP have been in the thick of an on-again off-again battle ever since.

Romak and RECAP have been through it all: numerous city council meetings, countless public hearings and informational meetings, lawsuits and counter lawsuits, endless research and investigation, numerous letter writing campaigns, and lots of strategy sessions and networking with environmental groups and elected representatives.

Romak, who has now been elected to the Romulus City Council three times on an anti-well platform, says that RECAP started out as a group with virtually no experience, no money, and a great amount of expenses. They eventually grew into a powerhouse of an organization, drawing upwards of 600 people to events and garnering the attention and help of environmentalists around the state as well as elected officials from affected communities. “We grew so much with the assistance of MCATS [Michigan Citizens Against Toxic Substances], and the Ecology Center, and the Michigan Environmental Council,”

says Romak. “They were really instrumental in helping us to turn into an effective grassroots movement group.”

Elected officials at all levels – from city councils to U.S. Congress – have all played important roles in keeping the wells from opening thus far. Romak singles out State Senator Ray Basham (D-Taylor) as being extremely helpful. “Senator Basham was instrumental in helping us set up town meetings and to spread the word,” she says. “He really helped us to make this a state issue, not just a local issue.”

“This is not just a Romulus problem,” says Basham, who has served three terms in the state House and is in his first term as a state senator. “It’s a southeast Michigan problem and the people need to be aware of it. It’s not a matter of *if* they have an accident trucking this stuff to Romulus but *when*. And let’s not forget that we’re talking about 240 of the most hazardous chemicals known to man.”

The EDS Wells

If approved, the EDS hazardous-waste deep injection wells would be the first commercial facility of its kind in the state of Michigan and the first well of its type to be permitted in EPA Region 5 (Great Lakes area) since 1984. According to the EPA, there are 163 Class 1 hazardous-waste injection wells located at 51 facilities nationwide, with 24 of these wells located in Region 5. None of the seven Class 1 wells located in Michigan are currently licensed to accept waste generated off-site. Most are located near factories for their own waste disposal.

EDS originally began construction of a pair of wells in 1990 on Wahrman

Road in Romulus but was forced to abandon the site in 1993 after RECAP won an injunction against the facility for violating zoning laws. In the court proceedings for the injunction the city of Romulus was forced to identify sites that were zoned properly for this use. (A municipality cannot through zoning completely prohibit a legal use of property within their community.) EDS then proceeded to move their project to another Romulus site, on Citrin Drive, near the border of Taylor, which was identified as being zoned properly for this activity.

By early 1999 EDS had already obtained permits from the EPA, the DEQ, Wayne County, and the City of Romulus regulating air emissions and soil erosion, and to drill the wells, discharge storm water, and store combustible liquids. On May 19, 1999 EDS applied for a DEQ construction permit for a hazardous treatment and storage facility for the Citrin Drive location. Despite fierce opposition demonstrated at public hearings and meetings at every stage possible for every permit, and against the final recommendation of the Site Review Board, DEQ Director Russell Harding in Dec. 2000 gave EDS the go-ahead.

The DEQ permit authorizes the storage of up to 11,000 gallons of hazardous waste in containers in the drum storage area, up to 92,000 gallons of hazardous waste in rail tanker cars in the railcar storage and unloading area, and up to 267,900 gallons of hazardous waste in tanks. It also authorizes the treatment of up to 400,000 gallons per day of hazardous wastes in tanks and the ultimate disposal of treated wastewaters in two underground injection wells at the facility.

The DEQ permit meant EDS had only to clear two more hurdles in the process: an EPA exemption from federal restrictions on land disposal

of hazardous waste (which they got on March 17, 2004) and the pending DEQ hazardous waste management operating license.

Engler's DEQ

The reasons for the state to now deny EDS their last permit are numer-

ing the risk of dangerous accidents. They called the impact on community resources and the risk of pollution of surface waters "unacceptable." They worried over "the nature of the wastes" and cited "concerns regarding the integrity of EDS and its ability to properly operate the facility."

"In many ways the battle over the wells is a symbol of a larger battle between environmentalists and the state of Michigan's environmental policies under then-Gov. John Engler." –*Detroit Free Press*, March 17, 2004

ous, say well opponents. Chief among them is the feeling that the project was allowed to reach this stage because Engler-era politics took precedence over public safety. Their point is best illustrated, they say, by the DEQ decision in Dec. 2000 to overrule the findings of its own Site Review Board, which had voted in March to deny EDS a construction permit. The move, critics say, was politically motivated and indicative of blatantly pro-business environmental policies during Engler's three terms, but especially transparent in his final term when the DEQ sought sweetheart deals for some of the state's biggest polluters.

The SRB was created in Sept. 1999, with eight out of ten members appointed by the governor. By their final informal hearing on March 21, 2000 they had held more than a half dozen public meetings and hearings in Romulus. They listened to countless arguments and testimonies from experts and average citizens alike. In the end, the motion to recommend denial was passed by a 5 to 3 vote (the Chair was a non-voting position and one member dropped out).

The SRB listed nine reasons why the application should be denied. They called the location "unsuitable ... with insufficient access and congested transportation routes," increas-

The SRB also noted that Romulus was already "overburdened with undesirable land uses" (according to a Dec. 1999 article in *From the Ground Up*, as of 1997 Romulus had 172 facilities registered with the EPA for hazardous waste handling, which means with a population of 24,000, there is about one facility handling toxic waste for every 140 people in the city).

The SRB also pointed to "the lack of a demonstrated need for the additional hazardous waste disposal capacity," considering the amount of liquid hazardous waste generated by industry has been decreasing, and a similar well in Ohio operates far below capacity.

The SRB objected to the destruction of a wetlands for the site, and feared "the adverse effect that the facility would have on property values, future quality development, and community image" in Romulus.

The SRB "recommendation" to deny the permit would have been the final word on the matter before Engler changed the rules by executive order in 1991, when he abolished a number of environmental boards and commissions, sparking public outcry and litigation. While Engler did not abolish the SRB, created by the Legislature to take public testimony and make decisions on proposed hazardous waste facilities, he did neutralize it by chang-

ing its powers from decision-making to advisory only. EDS became the first company to test the new hazardous waste decision-making process.

Dog & Pony Show

The Site Review Board, RECAP spokesperson Romak points out, was the place in the whole process specifically created for citizen input. “When Engler took away the Site Review Board’s power and authority and made them a recommending body to the DEQ Director,” she says, “he took away public participation. Period.”

Romak also asserts that DEQ Director Russ Harding had already made up his mind to grant the permit to EDS before the SRB was created. At an invitation-only meeting in Lansing, Romak says Harding told a crowded room: “I don’t care what the SRB recommendation comes back as. The permit’s getting issued.” Harding denies he ever made the statement.

“Why the hell are we going through the motions,” Romak remembers feeling. “This is a dog and pony show.”

It came as little surprise to Romak when Harding announced in Dec. 2000 (after the elections): “The DEQ does not agree with the SRB recommendation to deny the construction permit because the SRB did not provide any legitimate reason for denial that cannot be mitigated by a special condition in the construction permit.”

“Everyone knew we were just going through the motions,” says Romak. “We knew but we never gave up. We just kept moving forward.”

A New Era?

“I’m holding out for a new governor who cares about the people,” Romak told the *Metro Times* in Aug. 2002.

Now that she has one, Romak is clear about her sentiments: “I would



EDS Marketing Director Kevin McNamara giving a presentation before the Zoning Board of Appeals in Romulus in Oct. 1994.

like to see Governor Granholm use her authority and power to deny EDS their operating permit. However, I’m sure that the state is looking at all the legal angles as if they’re going to get sued. But shame on the state for rendering decisions on the threat of being sued or not being sued. The governor should render decisions in the public’s best interest.”

“Our argument all along,” says Romak, “has been there’s not enough manpower or funds to properly regulate this facility. The state has a huge deficit; they are offering buyouts; they are downsizing. Why would the state feel comfortable enough to issue a commercial hazardous waste license when it knows it doesn’t have the resources to properly monitor the facility? Where’s my protection? Where’s my guarantee of safety?”

“I have had numerous conversations with Governor Granholm,” says Sen. Basham. “She is very supportive of our issues. I think she does feel our pain.”

The Race to Mount Simon

If Governor Granholm is lucky, the decision will be taken out of her hands. One of the ways that could happen involves an expansive layer of sandstone thousands of feet below the ground known as Mt. Simon. Mostly sandstone over 550 million years old,

the Mt Simon formation varies in depth and width and covers an area from Wisconsin to Georgia to New York.

As it now stands, EDS intends to inject millions and millions of gallons of hazardous waste over 4,000 feet below the surface into the porous sandstone for at least the next 20 years. That is unless another prospector gets there first. Sun Pipeline, operating one-half mile away from EDS in Inkster for over 50 years, also lays claim to the Mt. Simon formation, for injection and extraction of brine, which the company uses to develop underground propane storage caverns.

The EPA appeared to recognize Sun’s claims to Mt. Simon when they granted EDS their exemption from federal restrictions on land disposal of hazardous waste in March with a provision attached. Since the injection of hazardous wastes by EDS would render Mt. Simon unusable for Sun’s extraction of brine, “EPA has made the exemption conditional; it will automatically terminate if SPMT [Sun] begins extracting from the injection zone.”

Sun currently holds a permit from the DEQ to extract brine from several geologic layers, including Mt. Simon (the permit was originally denied by Engler’s DEQ). Though EDS filed suit for injunctive relief after Sun

was awarded the DEQ permit, it lost because EDS could show “no irreparable harm.” That has not stopped EDS from going to court every time Sun moves forward with their plans, losing each time but delaying Sun in the process. For its part, Sun has filed a Petition for Reconsideration of the EDS Exemption with the EPA.

“At this point in time,” says Basham, “between Sun and EDS, it’s who gets there first. Who’s operating first? That’s what it comes down to.”

Good Money After Bad

If Sun’s designs on Mt. Simon do not put an end to the EDS project, Basham believes there is another way. He is convinced that the wells will never make a profit and that the main financial backers should pull out before they lose even more money. Now if he can just persuade the Detroit Police and Fire Pension Board, who according to Basham has spent well over \$35 million to date.

“When I first got involved with this,” says Basham, “I went to the Pension Fund Board and told them that I thought they were throwing good money after bad.”

“We’ve run the numbers,” he says, “and they show that they can’t make a profit on this project, but it continues to go forward.” Basham argues that there is no need for the EDS wells because industry is producing less, not more, liquid hazardous wastes. As evidence, Basham points to a similar facility located in Vickery, Ohio, about a two-hour drive away, which has four wells and operates at only 20% capacity.

Though he can’t prove it, Basham suggests that EDS and the Pension Fund Board may have engaged in some shady, if not criminal financial dealings. “If you follow the money trail it’s more than troubling,” he says. Basham says certain individuals have profited handsomely whether the

project ultimately goes forward or not, and even though not a drop of liquid waste has ever been processed. Further, Basham points to conflicts of interest between contractors with ties to EDS providing so-called “objective” market data to the Pension Fund Board.

Basham’s attempt to obtain Pension Fund Board documents relating to EDS through FOIA requests is currently pending in the Court of Appeals. The Pension Fund Board denied his initial request, and continued to deny it even after then-Attorney General Jennifer Granholm officially stepped in. Basham won in Circuit Court but the defendants were given the right of appeal.

Basham says he remains optimistic that the Detroit Policeman and Firemen System will ultimately disinvest from the EDS project.

Perseverance & Optimism

“Hopefully at some point, somebody will be able to stop this madness,” declares Basham. If it is up to the cities of Romulus and Taylor it will be the Michigan Supreme Court. Together the communities, characterized by Basham as blue collar and working class, have spent over \$2 million in legal fees trying to stop the EDS wells. Their case against the DEQ is in limbo between Appeals Court (DEQ prevailed) and the possibility that the Supreme Court will even hear it. In short, they argue that the DEQ construction permit should never have been allowed because building a hazardous waste facility on wetlands is illegal. Further, the DEQ was “required to establish rules that take into consideration the location, capacity, and need for the waste wells.”

“We won,” Romak insists. “Even if we lose we won because we have put on one of the best environmental fights that the state of Michigan has seen. Every day that we stop them from injecting and every day that liquid haz[ardous waste] isn’t transporting



Romulus resident and City Council Member Debbie Romak has fought against the EDS toxic-waste wells for over a decade.

through my community or somebody else’s is a victory. And I believe that we have had a 12-year victory.”

“People who really know about RECAP know that we will not be defeated,” she says, “no matter what it takes. We’ve tried the other avenues, we’ve tried the EPA, the DEQ, the legal avenues, now it’s back to us once more and when all is said and done we won’t be defeated.”

Romak encourages concerned people to write a letter to Governor Granholm. “It’s time for her to take on a leadership role,” she says, “and do what’s in the best interest of the people.”

“This is far from a local issue,” Romak says. “Don’t turn your back on a community. This isn’t about Romulus, Michigan. This is about the state of Michigan and where we are going.”

“Every day they are not pumping that stuff in the ground is a victory for us,” says Basham. “I would rather err on the side of safety than on the side of the almighty dollar.”

Ted Sylvester is editor of *From the Ground Up*.