*Environmental Justice*

**From:** [redacted]

**To:** **Mr. Napoli - U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W, Washington, D.C. 20460**

Environmental Justice Complaint against IDEM's Issuance of the Permit to Midwest Medical Solutions LLC

I [redacted] who reside in a residence, just out side a mile of the private for-profit Infectious Waste Facility, am aggrieved and adversely affected by the permit issuance to Midwest Medical Solutions. As a residence living in the effected area and district, not receiving a notice of decision, believes this would have impeded my legal right, duty, and privilege to pursue financial, legal and public health interests with this matter. According to Indiana Code **IC 4-21.5-3-1, IC 4-21.5-3-5 and IC 4-21.5-3-6**. Every one whom I spoke with in our 4th district Claimed not to have received a Notice of *Decision sent by IDEM even as they lived with in 100 yards of the proposed facility. The Notice contained information on how to contest the decision. We believe that IDEM's permitting and it evaluations prior to permitting this LLC (Limited Liability Company) was carried out in a discriminatory manner.*

The Lake County Solid Waste District who represents us to the state has an State approved plan and authority for the management, reduction and disposal of solid waste as well as the authority to determine the need for such a facility as it relates to the public health, needs to be met and environmental concerns. They where over looked by IDEM as well. We in the City of Gary and East Chicago Indiana are already over burdened with air pollutions, water pollutions, and soil contaminations. According to the Post Tribune local newspaper, the EPA has determined that our district failed every test in 2005. As the EPA has reduced its standards lieu of the Clean Sky's Act, our EPA classified district failing all test, sends a very serious message to the people of our community and others like it. I believe that it would be

in order to have a reassessment under the Equal Protection Clause as we are seriously overburdened with pollutants. As was done in the following case:

> Kenneth Owen, *Environmental Justice Enforcement Requires Reassessment Under the Equal Protection Clause, Title VI of the Civil Rights Act, and Environmental Statutes*, 30 GOLDEN GATE U. L. REV. 379, 391 (2000)

We need the same.

The demographics our community here in Gary's 4th district is made up of more than 90% minority and low income poor residence with a significant number of children and seniors within 100 yards of the proposed facility. As you follow the EPA's Interim Guidance procedures to conducting a comparative analysis, more will be reviled on the existing health conditions that are environmentally related. *Our water sediments have never been cleaned as once promised by our former state governor Kernan, meanwhile these company posses a potential mercury hazard (among others) and would affect drinking water in more areas out side our fourth district, as they use steaming processes with for disinfection. Moreover, they plan to use a landfill to dispose of this solid waste with in the city limits I believe.*

*The IDEM office understood clearly, what impact millions of tons a day of infectious waste could have on a community, a municipality, and the State. I believe it may even be possible that intentional discrimination was part of permitting process.* Lori Kaplan IDEM commissioner has stated before a commission in Washington D.C. That "H.R. 1213, introduced by Congressman Jim Greenwood, represents a measured approach to providing states and localities with tools to limit but not eliminate out-of-state waste shipments. There are five separate provisions within H.R. 1213 that Indiana could utilize today. The first is the presumptive ban that does not allow landfills to accept out-of-state waste unless authorized through a local host agreement, state permit, or an existing contract. The second is the authorization of a state to limit out-of-state waste amounts based on receipts in 1993. The third and most important of the provisions for Indiana is the recognition of the "Needs Law" that Indiana has used with some limited success, but which is subject to challenge. The fourth provision provides that out-of-state waste can comprise, at a minimum, 20% of a state's total MSW. And the last provision is the ability for state's to impose a cost recovery surcharge on out-of-state waste to recoup the expenditure of tax dollars incurred as a result of the receipt of out-of-state waste." *(Hearing by the Subcommittee on Environment and Hazardous Materials)*

Unfortunately, HR 1213 HR. 411, and HR 1730 are three bills that still has not been ratified by the U.S. Congress, meanwhile IDEM has chosen to allow Midwest Medical Solutions haul more that 5 million tons a day, of Municipal and Interstate infectious medical waste into our small already over burdened city. Who is regulating these shipments? Are these transportation vehicles monitored with Geographical Tracking Devices? Especially during a time when there is Bio Terrorism concerns being discussed in Washington D.C. *IDEM could have at least assured that there would be CDC funding designed to prepare our state with Biological Emergency Preparedness was in full effect before giving this "LLC" (Limited Liability Company) a permit to operate. That was not done. The State of Indiana has not received its CDC funding to prepare us for a bio-emergency,* and many politicians, local health professionals and every day citizens are concerned about that, whereas committees and subcommittees have in congress and the senate accepted the fact that "Bio Terrorism and Infectious Waste should be one in the same during their discussions". (C-span)

Moreover, IDEM bypassing our Lake County Solid Waste District entails an *abuse of discretion as they Violate IC – 13-20- 1 IC 13-21, and IAC 11-9.* According to the *Environmental Law Group, Bingham McHale LLP:*

"The governing law at issue, Indiana Code ("IC") 13-20-1-26, sets forth the requirement that a person who applies for a permit pursuant to IC 13-15-1-3 for a solid waste management facility must demonstrate that there is a local or regional need in Indiana for the facility. 329 Indiana Administrative Code ("IAC") 11-9-5, which implements the statute, states that in addition to other permit application requirements, the following is also required: A description of the need that would be fulfilled by constructing the proposed facility as follows:

> (A) For facilities proposed in areas with approved district solid waste management plans, a description of the need identified in the district solid waste management plan required under IC 13-21-5…(emphasis added)
>
> 329 IAC 11-9-5 goes on to state:
>
> (c) The commissioner shall review the submitted application and accompanying materials in accordance with this rule [329 IAC 11-9]. If it is determined that there is not a local need in Indiana for the solid waste management facility, the commissioner shall deny the permit application. (Emphasis added)

**(Whitney Johnson, 2006)**

What is really clear is that this LL company could have a much better profit margin in long term growth if located anywhere other than in the heart of our City. *This company would impose a less discriminator presence and reduce its health risks to human life if it where located in a more remote area. My district is hit by emissions from several companies with in approximately 1-5 miles around us. We already have a disproportionate amount of health risks. Moreover, our property taxes have doubled for Lake County and Cook County here in North West Indiana, beginning last year.* Why in Gary? I would hope that the EPA would allow their Science Advisory Board, to determining the disproportionate environmental burdens, as was done in the following case;

> University of Michigan, "Environmental Justice Case Study: Shintech PVC Plant in Convent, Louisiana," Background section, <http://www.umich.edu/~snre492/shin.html> (last accessed June 24, 2003) (hereafter cited as University of Michigan, "Environmental Justice Case Study") (during this time, EPA analyzed a disproportionate burden by using data from the 1990 census and estimates of industry-reported emissions.)

IDEM is not in compliance with Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice, pursuant to Public Law 103-419 by no stretch of the imagination. *In addition, the violating of Indiana State Codes insures shortcomings to remain in IDEM's Practices and present a dangerous case to our nation as it relates to infectious waste and bio-terrorism. Meanwhile our low income, minority poverty-stricken districts that are already overburdened, are held hostage during these times and would prove to be the first casualties.*

Bio Terrorism and Infectious waste is one in the same. The poor seems to have no protections as our governments over look us, even as we are proactive in sounding the alarm. Just look at the Louisiana aftermath as the poor face unprecedented challenges of our time, trying to get the help they need because of what has been called a natural disaster. I beg to differ. Poverty coupled with many other factors yet to be seen caused that catastrophe. Yet poverty is the primary culprit.

In our conclusion, there are no legitimate reason why the benefits of the proposed facility outweigh the severity of the disparate impact and disparate risks. Midwest Medical Solutions LLC is now appealing the last court decision that ruled in the favor of the Lake

County Solid Waste District, which had been overlooked by IDEM. Midwest Medical Solutions permit is determined in a court of law to be illegitimate, yet they are resolute and still pursue us in our district.

I do believe they Are targeting us because we are poor and minority and believe they feel they can do, as they will, because we are powerless and have no protections under the Clean Sky's Act. It disappoints us to the highest degree to know IDEM did every thing possible to make that happen. What is their motive, Why our area, for what reason? What is their agenda?

A voice for our community

# Appendix

**Three Bills Pertaining to the Transport of Solid Waste: H.R. 382, H.R. 411 and H.R. 1730**

Hearing by the Subcommittee on Environment and Hazardous Materials
Wednesday, July 23, 2003
3:00 PM
2123 Rayburn House Office Building

**Indiana Court Holds Solid Waste Management District Has Authority to Determine Need for Waste Facility**

*By Whitney Johnson, Environmental Law Group, Bingham McHale LLP*

1 *See* Cause No. 45D05-0411-MI-00140.

2 *See* Cause No. 04-S-J-3355.

3 *See* Order of June 23, 2005, page 17, *Lake County Solid Waste Management District v Indiana Department of Environmental Management*, Lake County Superior Court, Civil Division, Room 5, Hammond, Indiana.

4 *See* Cause No. 03-S-J-3198.

5 Order of June 23, 2005, page 10.

6 Effective July 1, 2005 IC 13-20-1-2 was amended to eliminate the reference to a permit specifically described in "IC 13-15-1-3 for a solid waste management facility" and now applies to a "permit for a solid waste disposal facility or a solid waste processing facility, except for a transfer station." (*See* Senate Enrolled Act No. 279)

Kenneth Owen, *Environmental Justice Enforcement Requires Reassessment Under the Equal Protection Clause, Title VI of the Civil Rights Act, and Environmental Statutes*, 30 GOLDEN GATE U. L. REV. 379, 391 (2000)

University of Michigan, "Environmental Justice Case Study: Shintech PVC Plant in Convent, Louisiana," Background section, <http://www.umich.edu/~snre492/shin.html> (last accessed June 24, 2003) (hereafter cited as University of Michigan, "Environmental Justice Case Study") (during this time, EPA analyzed a disproportionate burden by using data from the 1990 census and estimates of industry-reported emissions).