A Pennsylvania environmental group has taken action to revoke the corporate charters of two major American corporations -- WMX Technologies (formerly Waste Management, Inc.), the giant waste hauler, and CSX, a large railroad and ocean shipping company. [1]

The Community Environmental Defense League (CELDF) of Harrisburg, Pennsylvania [Thomas Linzey, president; phone: 717-545-0124], in June petitioned the attorneys general of Delaware and West Virginia, asking them to revoke the corporate charters of WMX and CSX.

A corporate charter is a piece of paper issued by the authority of state legislatures to groups of people, giving them the privilege of doing business as a “corporation.” The benefits of the corporate form are many:

** If a corporation causes harm, the liability of individual investors is limited by law;
** Because investors are numerous and scattered, whereas managers are few and focused, managers and boards of directors control a great deal of money, and therefore a great deal of power, often answerable to no one;
** Corporations can own other corporations, which can, in turn, own other corporations, thus making it very difficult, or impossible, to trace ownership and responsibility for particular corporate actions;
** Because corporations can grow large (often much larger than any state government), in a dispute with government, they can field an army of attorneys and other specialists who can overwhelm the opposition, leading to an accommodation (often called a “consent decree,” in which a fine is levied with no admission of guilt) rather than an aggressive prosecution by government;
** Corporations, particularly those with overseas subsidiaries, can often evade taxes by fancy footwork in the bookkeeping department (which may be perfectly legal);
** In court proceedings, corporations enjoy a dozen or more advantages that individuals cannot (for example, fines to corporations are deductible as business expenses, whereas fines to individuals are not);
** Under most modern corporate charters, corporations have unlimited lifetimes, giving them a staying power and an ability to accumulate wealth and strength far beyond anything an individual could ever achieve. Beyond a certain size, corporations become so large that no fine --or even the occasional jail sentence for an errant manager--can deter them from their course. They are simply beyond social control.
** As time has passed, court decisions have given corporations the legal status of “persons,” giving them the same protections that the first 10 amendments to the Constitution give to natural persons (individual humans). The first 10 amendments were originally written to protect individual citizens against a tyrannical government--giving individuals rights such as “due process” and “free speech.” Corporations have appropriated those rights, which they now use to influence elections, influence law-making by legislatures, influence public education, influence the media, influence and “educate” judges, and influence public policy debates.

Despite these and other advantages of incorporation, the power to give, or revoke, corporate charters still resides with state legislatures, so ultimately the American people hold power over American corporations--though during this century the people have made remarkably little use of such power. Now CELDF has taken a first step to change this picture. Here are a few details about the two cases:

WMX Technologies

WMX Technologies (still better known by its former name, Waste Management, Inc.) is the nation’s largest waste hauling firm, headquartered in Oak Brook, Illinois, but chartered in Delaware. In recent years, WMX has been charged with numerous violations of law and regulations and has paid tens of millions of dollars in fines. (See REHW #299, #288, #282, and #281.) Based on this record, CELDF on June 14, 1995, petitioned the Attorney General of Delaware to revoke WMX’s charter of incorporation. Delaware law gives the Attorney General QUO WARRANTO power to revoke the charter of any corporation for “abuse, misuse or misuse of its corporate powers, privileges or franchises.” QUO WARRANTO (a Latin phrase meaning "by what authority?") describes a proceeding in which the state demands to know by what authority an individual or corporation is exercising a franchise or liberty. Such a proceeding can end in revocation of a corporate charter. Thomas Linzey, the president of CELDF, says Delaware courts have defined “abuse” of corporate privilege as “continued criminal violations.” Linzey says he does not expect the Delaware Attorney General to take action against WMX, but eventually he may sue the Attorney General. Delaware law says the attorney general “shall” take action, Linzey says; it is not discretionary.

CSX

In recent years, CSX spills and leaks have caused pollution in several U.S. locations (for example, see REHW #230 and NEW YORK TIMES 11/21/91, pg. A20); including West Virginia. Based on a recent CELDF petition, CELDF on June 9, 1995, wrote West Virginia Attorney General Darrell McGraw, Jr., seeking the revocation of CSX’s corporate charter.

It is clear that there is a new movement afoot in this country to reassert control over corporations. The action in June by CELDF against WMX and CSX could be viewed as the opening gambit in a high-stakes chess game between corporations and the American people. It is a particularly dangerous game for corporations because, if they use their raw power to secure their present privileges against democratic control, they may light the fire under a major public debate, which would alert the public to the extraordinary nature and extent of corporate power. In the ensuing conflagration, corporate privileges could go up in smoke. At present, public attention in the U.S. is focused almost exclusively on “government” as the source of the nation’s problems; corporations are nearly invisible, and certainly are nowhere near the center of public debate. Even the mainstream environmental movement for the past 25 years has sought to influence corporate behavior only indirectly, by establishing government regulations—a strategy the mainstream groups continue to pursue even though it has proven to be enormously costly and largely ineffective.

For the past 4 years, the leading proponent of democratic control of corporations has been Richard Grossman. Now, with Ward Morehouse, Grossman has started a new project called the Program on Corporations, Law and Democracy (P.O. Box 806, Cambridge, Mass., 02140; phone: (508) 487-3151; E-mail: poclad@aol.com). The new project goes beyond mere charter revocation as a strategy for making corporations more accountable. Recently Grossman and Morehouse issued a list of “Suggestions for an Agenda for Action in Arenas WE Define”—tactics for changing the behavior of corporations, going beyond corporate charter revocation. Here they are:

** Rechartering corporations to limit their powers and make them entities subordinate to the sovereign people, by, for example, granting charters for limited time periods, requiring approval by communities and workers to continue in existence, making corporate managers and directors liable for corporate harms, etc.
** Reducing the size of corporations by breaking them up into smaller units with less power to undermine elections, lawmaking, judicial proceedings and education; restricting size and capitalization of corporations; prohibiting one corporation from
owning another corporation (some of which was accomplished by the Public Utility Holding Company Act of 1935).

** Establishing worker and/or community control over production units of corporations to protect the "reliance interest" and other rights of workers and communities. This can be done by writing rules directly into corporate charters, such as prohibiting the hiring of replacement workers during strikes, requiring independent health and safety audits by experts chosen by workers and affected communities, and banning use of deadly chemicals, such as chlorine.

** Initiating referendum campaigns, or taking action through state legislatures --and in the courts --to end constitutional protections for corporate "persons" and to require state attorneys general to undertake charter revocation or rechartering actions when petitioned by citizen groups.

** Prohibiting corporations from making campaign contributions to candidates in ANY elections, and from lobbying ANY local, state and federal government bodies.

** Stopping extortion and "subsidy abuse" by which large corporations rake off billions of dollars from human taxpayers through direct pay-offs and tax breaks.

** Launching campaigns to cap salaries of corporate officials and tie them to a ratio of average compensation levels of production workers (say, 5:1 or 10:1), to gain greater transparency in corporate decision-making, and to end corporate tax deductions for legal fees, advertising and fines.

** Encouraging worker and community-owned and -controlled cooperatives and other alternatives to conventional limited liability profit-making corporations by using law and the public treasury.

** Preparing a model state corporation code based on the principle of citizen sovereignty and campaigning for its adoption, state-by-state.

** Invigorating from the grassroots up a national debate on the relationship between public property, private property (including future value), and the rights of natural persons, communities and other [non-human] species when they are in conflict, and on the role of the law in resolving such conflicts in a democracy.

Richard Grossman said recently, "In about 10 states, people are looking into corporate law and histories --including how their state constitutions and state corporation codes once defined corporate rights and activity with great precision. People are learning to demystify the law, looking for organizing handles they can use to take rights and powers away from corporations.

"The large corporation is truly the dominant institution of our era. It creates dependence and feelings of helplessness, while provoking great anger. Where people have been resisting corporate harms, where corporations are overtly tyrannical, people ARE reflecting on the nature of corporations. They ARE discussing citizen sovereignty and corporate abolition. Surely we can turn people's anger away from the symbols of government and towards our real governing bodies--giant corporations. Surely we can build a powerful political movement to disempower corporations and to govern ourselves," Grossman said.

--Peter Montague


Descriptor terms: corporations; democracy; accountability; wmx; csx; thomas linzey; de; wv; charter revocation; corporate charters; richard grossman; ward morehouse; program on corporations, law and democracy; strategies; tactics; cooperatives;