115416

of no likelihood of injury unless there is a demonstration of compliance with all applicable rules and regulations. Lawrence Coal Company v. DER, 1981 EHB 548, 550. Here, Novak's numerous violations of law, regulation and permit constitute irreparable harm to the public as a matter of law. PUC v. Israel, 356 Pa. 400, 52 A.2d 317 (1947). Novak has thus failed to carry the burden on the final prong of the supersedeas test established by the Board's rules.

5. The Board's Rules Prohibit Issuance of a Supersedeas

25 Pa. Code § 21.78(b) provides that a supersedeas shall not issue in cases where nuisance or significant pollution exists or is threatened during the period when the supersedeas would be in effect. Novak has failed to carry the burden of showing that nuisance and significant pollution do not exist.

a) Significant Pollution Exists and Is Threatened

As demonstrated in Section (C)(1) above, toxic substances have been detected in Novak groundwater in concentrations exceeding drinking water standards, and Novak has not demonstrated that that contamination will in fact be cleaned up. Thus, significant pollution both exists and is threatened for the foreseeable future.

ORIGINAL (Red)

200805

b) Site Conditions Constitute a Nuisance

The above-mentioned discharge of industrial waste to groundwater without a permit is a nuisance pursuant to 35 P.S. § 691.307(c). The various failures to comply with the Novak permit and the Chapter 75 regulations outlined in Section (D)(3) above constitute nuisances pursuant to 35 P.S. § 6018.601(a). Furthermore, at common law, this uncovered, unvegetated, overfull, misgraded site is a public nuisance today.

All the evidence before the Board shows pollution and nuisance, and under its own rules the Board has a mandatory duty not to supersede the DER Order.

III. CONCLUSION

Novak Landfill is full beyond the limits of its permit. Site conditions violate numerous regulatory and permit requirements. DER has served the public by closing the site and ordering various remedial measures; the public confidence gained by DER's prompt action (less than a month after submission of A-11, the aerial topographic survey) would be eroded by reversing that action. "A landfill operator not fulfilling DER's requirements is not entitled to bargain with the agency, demanding that the landfill be kept open--regardless of past and potential future violations--in return for performing mandated remedial measures. DER and the Commonwealth for which it acts are entitled to enforcement of the whole law." O'Leary v. Moyer's Landfill, Inc., 523 F. Supp. 65 9, (E.D. Pa. 1981).

200806

For all the above reasons, Novak's supersedeas request should be denied.

Respectfully submitted,

KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources
1314 Chestnut Street
Philadelphia, Pennsylvania 19107
Telephone: (215) 875-7486

Dated: January 7, 1984

ORIGINAL

200807

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS NOVAK, et al	:	
	:	
v.	:	DOCKET NO. 84-425-M
	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	:	

CERTIFICATE OF SERVICE

The foregoing Brief in Opposition to Supersede is being served either by express mail or hand delivery upon the below listed counsel:

Martin J. Karess, Esquire
Karess & Reich
215 North Ninth Street
Allentown, PA 18102

Michael J. Sheridan, Esquire
Fox, Differ, Callahan, Ulrich & O'Hara
317 Swede Street
Norristown, PA 19401

KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
1314 Chestnut Street
Philadelphia, Pennsylvania 19107
Telephone: (215) 875-7486

ORIGINAL (Red)

DATED: January 7, 1984

cam 84

200808

(1)

Weather: Clear 10°
Date: January 21, 1984

Lehigh C

NOVAK
SANITARY LANDFILL REPORT

PUBLIC ROADS: L.R. 39042 and Township Road T-593 has no mud, trash or litter being transferred from the landfill to the public roads.

ACCESS ROADS: In fair condition due to bad weather stone should be applied over access roads to trench area.

DISPOSAL AREAS: No activity.

200809

TRENCH: Refuse is being placed in Trench #3. Compaction processes observed and adequate daily soil cover applied over refuse is recommendable. Demolition is being placed in Trench #2. Earth is being removed from Trench #4 for future use.

FENCES: Fences are in good condition. Plastic materials should be removed.

VEGETATED AREAS: Plastic material should be removed.

VECTOR & INCINERATION: No smouldering or burning refuse or evidence thereof observed. No rodents observed on-site.

Original Page

NOVAK
SANITARY LANDFILL REPORT

COMMENTS: Installation of gas vents were installed east of landfill site. Demolition area located at the Northeast corner of landfill is also being used.

INSPECTED BY: C. A. Costello DATE: JAN 21, 1984

C. A. COSTELLO ENGINEERING COMPANY
Allentown, PA 18102

ATTEST: _____

cc: Novak Sanitary Landfill
Department of Environmental Resources
South Whitehall Township

200811

ER-SWM-1:5/79

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	2/4/84	167-48-5242

NAME OF DISPOSAL FACILITY: Novak Sanitary Landfill Inc RD#1 Allentown PA 18104

FACILITY ADDRESS:

MUNICIPALITY: South Whitehall Twp

COUNTY: Lehigh

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER): Louis J. Novak RD#1 Allentown PA 18104 3956251, 4580

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
200 Tons	yes (unconfirmed)	5 1/2

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
29	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly	X		
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift		X	
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

200812

FOR A REGIONAL OFFICE

ER-SWM-1A:5/79

100534
2/9/84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable 4 - Not Determined

	CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management		X	
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met		X	
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required	X		
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day			
57	75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval			X
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts		X	
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face	X		
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction		X	
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans	X		
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63	75.26(j), (k)	Blowing litter controlled	X		
64	75.26(c)	Provision for standby equipment available when needed	X		
	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X	
66	Chapter 101(9)(e)(2)	Is bonding status correct			X

200813

ER -SWM-1B,2B,3B.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

weather: Sunny, Frozen, but warming

DISPOSAL FACILITY Novak Sanitary Landfill 100534

DATE 2/4/84

The work face is currently at the east side of trench #3. A bedrock outcrop along the north side of this trench and approximately 50-80 yards from the east edge has reportedly been covered w/ 4-5 feet of soil and then filled with refuse. No further filling should occur where the bedrock outcrop has occurred.

Demolition waste filling of trench #2 [illegible] This trench should be graded into trenches 1 and 3.

Violations:

35) Two feet of final cover should be placed over the completed west side of trench #3.

36) Inadequate grading of the old site has allowed standing water to pool. This area should be filled with soil and regraded to allow drainage to occur.

42) One vertical gas vent stand pipe has not been installed on the west side of trench #[illegible] This pipe should be installed before final cover is applied.

43) Ground water monitoring (ie sampling + analysis) has not been done for the 4th quarter of 1983.

58) An intermediate one foot layer of cover material has not been placed on the completed lift.

60) The working face covers the entire east side of trench #3 (ie about 35 yds X50 yds. This is excessively large for the amount of material being disposed.

65) Much of the landfill lacks vegetation. Preparation of disposal areas for seeding and mulching this spring should begin now!

Michael G Minda
Department of Environmental Resources Representative

[illegible] (Medj)
Operator

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

200814

WEATHER: Cloudy 46°
DATE: FEB. 17, 1984

Lehigh

NOVAK SANITARY LANDFILL REPORT

PUBLIC ROADS: L.R. 39042 and Township Road T-593 has some mud due to wet conditions. No trash or litter being transfered from the landfill to the public roads.

ACCESS ROADS: In poor condition because of rain for several days. Stone is being applied over access roads to trench area.

DISPOSAL AREAS: No activity.

TRENCH: Refuse is being placed in Trench #3. Compaction processes observed and adequate daily soil cover applied over refuse is recommendable. Demolition is being placed in Trench #2. Earth is being removed from Trench #4 for future use.

FENCES: Fences are in good condition. Plastic materials should be removed.

VEGETATED AREAS: Plastic material should be removed.

VECTOR & INCINERATION: No smouldering or burning refuse or evidence thereof observed. No rodents observed on-site.

NOVAK
SANITARY LANDFILL REPORT

COMMENTS: Installation of gas vent caps should be installed in trench # 1 to comply with plans.

INSPECTED BY: C.A. Costello DATE: 2-17-84

C. A. COSTELLO ENGINEERING COMPANY
Allentown, PA 18102

ATTEST: _____

ORIGINAL (Red)

cc: Novak Sanitary Landfill
Department of Environmental Resources
South Whitehall Township

200817

RECEIVED
APR 26 1984

(1)

WEATHER: Cloudy 43°
DATE: March 24, 1984

Lel. gl C.

NOVAK

SANITARY LANDFILL REPORT

PUBLIC ROADS: L.R. 39042 and Township Road T-593 has some mud due to wet conditions. No trash or litter being transfered from the landfill to the public roads.

ACCESS ROADS: In poor condition because of rain for several days. Stone is being applied over access road to trench area.

DISPOSAL AREAS: There are several low spots along the west side of access road which should be filled in and grass planted.

TRENCH: Refuse is being placed in Trench #3. Compaction processes observed and adequate daily soil cover applied over refuse is recommendable. Demolition is being placed in Trench #2. Earth is being removed from Trench #4 for future use.

FENCES: Fences are in good condition. Plastic materials sould be removed.

VEGETATED AREAS: Plastic material should be removed. Also, low spots should be filled in and grass planted.

VECTOR & INCINERATION: No smouldering or burning refuse or evidence thereof observed. No rodents observed on-site.

NOVAK
SANITARY LANDFILL REPORT

COMMENTS: Installation of gas vent caps should be installed in Trenches #1 and #2 to comply with plans. Also, gas vents should be installed along the northeast and eastside of existing landfill areas.

INSPECTED BY: C.A. Costello DATE: 3-24-84

C. A. COSTELLO ENGINEERING COMPANY
Allentown, PA 18102

ATTEST: _____

cc: Novak Sanitary Landfill
Department of Environmental Resources
South Whitehall Township

200820

ER-SWM-1:5/79

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

RECEIVED APR 10 1984

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	4/3/84	167-48-5242

NAME OF DISPOSAL FACILITY	FACILITY ADDRESS
Novak Sanitary Landfill, Inc	RD#1 Allentown PA 18104

MUNICIPALITY	COUNTY
South Whitehall Twp	Lehigh

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER)

Louis J. Novak RD#1 Allentown PA 18104 395-6251, 4580

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
	Yes	5½

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly		X	
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift		X	
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

200821

PAGE 2 REGIONAL OFFICE

ER-SWM-1A:5/79

100534
4/3/84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management	X		
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(l)	Ground water monitoring requirements being met	X		
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required	X		
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii).	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day		X	
57	75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval	X		
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts		X	
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face	X		
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction	X		
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans		X	
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63	75.26(j), (k)	Blowing litter controlled	X		
64	75.26(c)	Provision for standby equipment available when needed	X		
65	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X	
66	Chapter 101(9)(e)(2)	Is bonding status correct			X

200822

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

Weather: Sunny & mild w/ light breeze

Time: 10:00-12:30

DISPOSAL FACILITY Novak Sanitary Landfill, Inc

DATE 4/3/84

The current working face is in the middle of trench #3. The majority of this trench appears to have been overfilled. For this reason, trench #4 should be prepared as soon as possible for future use.

Numerous leachate seeps were observed on this date. Photographs of many of these were tak

Seeps along the west side of the trenches were mixing with surface water and flowing into a pool on the west side of trench #4. Also several seeps were seen flowing into the demolition disposal area.

Violations

30) A large bird population was seen in trenches 1 & 2. This is due to the lack of sufficient cover in this area

35) Final cover is lacking on completed areas of trench #3 as well as several areas in the old fill area where refuse is exposed.

36) Surface water management is not occurring. This includes the lack of proper & adequate cover as well as poor drainage over filled areas. Numerous pools of water are present at thes

56) Six inches of daily cover was lacking over over large areas of trench #3.

58) An intermediate one foot layer of cover material is lacking on areas of the completed lift.

61) The operation is not in accordance with approved plans. Filling with residual waste has occurred north of trench #1 in a completed section of the old fill area.

65) No additional work has been done to prepare completed areas for spring planting. Grading, covering, and seeding should be done on All completed areas where soil is exposed

Michael G. Fiaiola
Department of Environmental Resources Representative

Louis J. Novak
Operator

200823

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

RECEIVED
MAY 8 1984

(1) Weather: Rainy 51°
Date: April 19, 1984

Lehigh Co

NOVAK
SANITARY LANDFILL REPORT

- S. Whitehall Twp. Lehigh Co.

PUBLIC ROADS: Parkland Terrace and Orefield Roads have some mud due to wet conditions. On this inspection I observered workers from the landfill removing trash and litter from the above roadways. Mr. Novak informed me at our meeting that he will continue this type of cleanup in the future.

ACCESS ROADS: In very poor condition because of heavy rains for several days. As soon as weather permits stone will be applied over asscess road to trench area,

DISPOSAL AREAS: There are several low spots along the west side of access road, also within the landfill area which should be filled in and grass planted.

TRENCH: Refuse is being placed in trench #3. Compaction progresses observed and adequate daily soil cover applied over refuse is recommendable. Demolition is being placed in trench #2. Earth is not being removed from trench #4, because of bad weather conditions.

FENCES: Fences are in good condition. Plastic materials should be removed.

VEGETATED AREAS: Plastic material should be removed. Also, low spots should be filled in and grass planted.

VECTOR & INCINERATION: No smouldering or burning refuse or evidence thereof observed. No rodents observed on-site.

ORIGINAL (Red)

NOVAK SANITARY LANDFILL REPORT

COMMENTS: Installation of gas vents are being installed along the northwest and east side of existing landfill areas.

INSPECTED BY: [illegible] **DATE:** April 20, 1984

C. A. COSTELLO ENGINEERING COMPANY
Allentown, PA 18102

ATTEST: _____

cc: Novak Sanitary Landfill
Department of Environmental Resources
South Whitehall Township

200826

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

April 30, 1984

CERTIFIED MAIL NO. P09 0353437

Novak Sanitary Landfill, Inc.
R. D. # 1
Allentown, Pennsylvania 18104

Attention: Mr. Louis J. Novak

Re: Novak Landfill ID No. [illegible]
Inspection of April 27, 1984

Gentlemen:

NOTICE OF VIOLATION

This letter is to confirm the findings of the Department's referenced inspection of your solid waste disposal activities. Requirements for solid waste facilities are contained in Chapter 75, the Solid Waste Management Rules and Regulations of the Department. Violations of applicable sections of these Regulations found during our inspection are as follows:

35: 75.24(c)(2)(xxi)(xxii). A final layer of cover material having a minimum depth of two feet should be placed over completed portions of trenches number 2 and 3 within two weeks. Other portions of the old fill area still requiring final cover should be completed within one month.

36: 75.24(cc)(2)(i)(xviii). Surface water management is lacking at this site. This includes provisions to prevent or minimize surface water percolation into the solid waste material deposited (i.e. proper grading and covering of completed areas) as well as design provisions to handle a once in ten year - one hour rainfall. Covering and grading should be completed as noted in item number 35. An erosion and sedimentation plan encompassing surface water has been received by this office and is currently under review. Comments will be forthcoming.

42: 75.24(c)(2)(xxiv). The installation of the approved gas management system is behind schedule. This system should be completed around the old landfill area by the end of August, 1984.

51: 75.26(o)(p). Erosion of unvegetated areas of the landfill is continuing to be a problem. Grading and planting should be accomplished as required by items numbered 35 and 65.

200827

56: 75.26(1). A uniform minimum six-inch layer of compacted cover material should be placed over all exposed refuse at the end of each day.

61: 75.26(q). Solid waste is being disposed of in "completed" areas of this site. Waste material should only be placed in a current trench disposal area and in the demolition disposal area.

65: 75.26(o)(p). Major completed portions of this site remain unvegetated. All portions of the old landfill area which lack vegetation should be prepared and planted within one month. Seedbed preparation and planting should occur immediately upon the completion of final covering in trenches 1, 2, and 3.

You are hereby notified of both the existence of these violations as well as the need to provide for their prompt correction. Toward this end, you are to submit to the Department within fourteen (14) days a proposed program and schedule for abatement of these violations. The Department's inspection report has been previously supplied to you. If your proposed abatement program indicates certain corrections cannot be completed within the time period stated in this letter, you are requested to supply justification for any extensions.

This letter does not waive, either expressly or by implication, the power or authority of the Commonwealth of Pennsylvania to prosecute for any and all violations of law arising prior to or after the issuance of this letter or the conditions upon which the letter is based. This letter shall not be construed so as to waive or impair any rights of the Department of Environmental Resources, heretofore or hereafter existing. This letter shall also not be construed as a final action of the Department of Environmental Resources.

If you have any questions concerning this matter, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAICLIE
Solid Waste Specialist

cc: Joseph Pomponi,
Field Operations Supervisor

ORIGINAL (Red)

200828

ER-SW3A-1:5/79

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	4/27/84	167-48-5242

NAME OF DISPOSAL FACILITY: Novak Sanitary Landfill, Inc. FACILITY ADDRESS: RD #1 Allentown 18104

MUNICIPALITY: South Whitehall Twp COUNTY: Lehigh Co

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER): Louis J. Novak RD #1 Allentown PA 18104 345-6251 or 4580

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
	Yes	5 1/2

1 – Compliance. 2 – Non-Compliance. 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required. bird, mosquito, rodent, fly	X		
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift		X	
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

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PAGE 2 REGIONAL OFFICE

ER-SWM-1A:5/79

100534
4/27/84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management		X	
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met	X		
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required		X	
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day		X	
57	75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval	X		
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts	X		
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face	X		
60	75.26(l)	Working face area confined to size suitable for daily cover/compaction	X		
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans		X	
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63	75.26(j), (k)	Blowing litter controlled	X		
64	75.26(c)	Provision for standby equipment available when needed	X		
65	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas			
66	Chapter 101(9)(e)(2)	Is bonding status correct			X

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ER-SWM-1B,2B,3B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

Weather: Sunny & warm.

DISPOSAL FACILITY Novak Sanitary Landfill 100534

DATE 4/27/84

At this time, the central portion of trench #3 is being used. The eastern 2/3 of this trench appear to be completed along with the western-most side of the trench. No additional filling should occur in these areas. A small sinkhole is developing on the western edge of trench #4. At this time, the should not be covered and the area should be seperated from the landfilling operation. Litter present in the eastern treeline should be picked up.

Violations:

31) Final cover is required on completed areas of ~~#~~ trench #3 and wherever refuse is exposed in the old landfill area.

36) The lack of proper and adequate cover, as well as poor drainage in the old fill area, are contributing to surface water problems.

42) The installation of the approved gas venting system is behind schedule.

51) Erosion is not controlled where unvegetated slopes exist.

56) Some daily cover had been applied; however, large areas of trench #3 still had refuse exposed.

61) Operation is not in accordance with approved plans. Landfilling should only occur in the current trenches and in the demolition area. Some dumping was seen on the old fill area.

65) Covering, grading, and seeding of completed areas should be taking place now. The writer recommends that soil tests be run by Penn State ~~to~~ on cover soil to determ nutrient requirements.

Michael G. Mirola
Department of Environmental Resources Representative

T. L. Novak
Operator

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

200831

Attendance 5/3/94

Sara Glassman - legislative aide Rep. Snyder
Mrs Debra Pidotawski RD1 Box 242B River Road A'town
Nick Pidotawski RD1 River Road Box 242B Allentown, 18106
Margaret Bunce - Front Unlimited - RD#1 Box 66, Kutztown, Pa.
Mike Marobi 625 Cherry St Rdg Pa 19602 DER
Joseph Pomponi D.E.R 520 East Broad St. Bethlehem
Tim Hartman PA DER 1875 New Hope St Norristown 19401 270 191
Ronald De Lorenzo Community Development Director South Whitehall Twp.
Don MacConnell Chief of Police South Whitehall
Chester W. Gilkey Twsp Mgr, South Whitehall Twsp
Robin Crawford - Cong. Don Ritter's office
Vincent Rosi - Legislative Aide Senator Heinz
Scott Bieber - Call Chronicle
Pat Ryder Globe Times
Nicholas Pidotawski RD#1 Allentown, Pa Land owner
Willis Stanker RD#1, Box 241B, Allentown, Pa
Helen Pidotawski
Mary Stanker R1 241-B River Rd Allentown
Rep Don Snyder

ORIGINAL (Red)

200832

DER vows to act on S. Whitehall landfill problem

File: Novak Landfill Lehigh Co

By SCOTT BIEBER
Of The Morning Call

The State Department of Environmental Resources promised action yesterday to bring the Novak landfill in South Whitehall Township into compliance with dumping regulations and then possibly order it to be closed permanently.

Joe Pomponi, a field supervisor in the Bethlehem office of DER, said at a meeting called by State Rep. Don Snyder that "we are all in agreement here that the site has reached its capacity.... It is the consensus of everyone at DER that it has to be phased out. We knew that a while ago."

Louis J. Novak, the owner of the only state-licensed landfill in Lehigh County and who was not invited to the meeting, told The Morning Call he "will try to abide by the regulations." He said he thinks the landfill will reach its limit in two or three years and then will have to be closed.

Novak said that if he thinks he is right and DER and the township are expecting to much, "whether I will take them to court I don't know." He said he is "not the kind of guy to do that." He said he is 70 years old and that now may be the time to quit the landfill business.

Novak said his 60-acre landfill is used by the boroughs of Northampton, Coplay, Whitehall and numerous private haulers.

Among those attending the meeting called by Snyder, in whose district the landfill is located, were township officials, representatives from State Sen. Guy Kratzer's office and U.S. Rep. Don Ritter's office and irate neighbors who live next to the landfill.

Snyder said he called the meeting primarily on behalf of Debra and Nick Pidstawski, who built their house next to the landfill and who are complaining that the dump is a nuisance and is contaminating their well water, making their child ill.

Also at the meeting were Willis and Mary Hankee and Nicholas and Helen Pidstawski, other complaining neighbors of the landfill. Helen Pidstawski and Nick Pidstawski are Novak's sister and nephew.

Snyder and the younger Pidstawskis berated DER officials for not enforcing permit requirements at the landfill, which Pomponi admitted Novak may be violating. The violations could include uncontrolled runoff that the younger Pidstawskis claim is flowing into sinkholes on the property and polluting the groundwater.

Township officials said they tested the runoff and found it to be safe, but Pomponi said more exact testing could discover contaminants that may exist in the runoff.

Pomponi said that if Novak obeys the

Please See LANDFILL Page B4 ▶

Morning Call 5/4/89

ORIGINAL (Red)

LANDFILL

▶Continued From Page B1

DER order that would be forthcoming, a large hill of garbage at the landfill may have to be pushed into two existing trenches designed to be filled with trash. If the trenches are filled and there is no more room at the landfill, it would have to be closed, Pomponi said.

The neighbors claim the pile of garbage where Novak is now dumping is much higher than permitted. Pomponi said DER surveyors will check to see if it is too high and how much would have to be shaved off.

Township officials refused to provide Pomponi the services of the township engineer to make a quick decision on the height of the pile. Pomponi said the township engineer could determine the height more quickly than waiting for a DER surveyor from Harrisburg to do it.

Pomponi said he will make a recommendation to the regional DER office in Norristown that a plan be made to order the landfill into compliance. Snyder and Kratzer's representative promised to work with the Norristown office to expedite the process.

Novak told The Morning Call, "Never in my 25 years of operating have I [not] tried to conform with the rules and regulations. . . . I make an extra effort to keep the neighbors happy. It's easy not to see the problems that a landfill operator has. We are doing the public a service that they don't appreciate."

Novak said he is piling the garbage and not putting it in the trenches because the trenches are not as big as he would like them to be. He said wet weather has prevented his heavy equipment from making the trenches bigger. He also said he is continuously compacting the garbage pile.

Novak said he hesitates to move the garbage pile because it would stink.

Tim Hartman of the Norristown DER office acknowledged the neighbors' fears that Novak could appeal DER orders to comply and keep operating for years.

At the beginning of the meeting, Pomponi implored Snyder and his Harrisburg colleagues to provide the money for DER to hire more inspectors and staff personnel. Pomponi said he has two persons to police landfills in three counties and said two-thirds of all the landfills are in the Norristown region.

Snyder said he would try to get more funding, but said he is hesitant when he sees the inept job DER is doing.

ORIGINAL (Red)

200834

JUN 6 1984

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

11 N. FIVE POINTS ROAD
WEST CHESTER, PA 19380
(215) 692-5770

Walter B. Satterthwaite, P.G.
President
David F. Lakatos, P.E.
Principal

June 5, 1984

File: Novak Landfill
Lehigh Co.

Mr. Michael Maiolie
Pennsylvania Department of
Environmental Resources
Reading District Office
625 Cherry Street
Reading, PA 19602

Project No. 266-84A

Dear Mr. Maiolie:

In response to your correspondence of April 30,1984, we have developed a planned approach to address the Pennsylvania Department of Environmental Resources' (PA DER) concerns for the Novak Sanitary Landfill, Inc. As a part of our initial evaluations, we have conducted site investigations to define environmental conditions on-site and have also reviewed the PA DER files in Norristown to examine relevant correspondence and develop and understanding of the Landfill's history. The site investigation and file reviews have allowed us to identify the environmental priorities for the Landfill and a systematic approach to resolving areas of concern. In addition, we have also developed a time table for siting and construction of the two additional monitor wells on site.

ENVIRONMENTAL CONCERNS AND PROPOSED IMPROVEMENTS

Our environmental work and definition of landfill improvements are prioritized herein, along with recommended measures which can improve the effectiveness of environmental safeguards for the site. Due to the interrelationship of environmental factors involved, we feel that site improvements can best be accomplished by implementing solutions which will permanently remedy conditions on site as opposed to a patch-work maintenance program addressing problems as they arise in the future. As appropriate, we have addressed the items raised in your April 30, 1984 correspondence to Novak Sanitary Landfill, Inc. and supplied a proposed schedule for implementing these measures. The time frame for completing this work will depend, to a large degree, on PA DER's response period to our recommendations. Consequently, we have structured the proposed work schedule to accommodate your review and comments.

Surface Water Control/Leachate Production

The most important environmental condition will be restoration of sufficient slopes to allow adequate drainage of surface water off of the old landfilled areas. In the present condition, water tends to collect in

200835

undrained depressions after precipitation events. The ponding of water in these depressions allows for infiltration of water into landfilled materials which substantially increase the quantity of leachate.

At this time, there are at least 15 undrained depressions which have developed on the old landfill (area fill). Such features are caused by settlement and compaction of the refuse over time. The requested procedure for correction of these natural compaction effects by "spot filling" will, at best, be only a temporary improvement of this area as evidenced by spot filling efforts in the past. In its present configuration, the nearly level surface of the old landfill area provides an optimum condition for the development of closed depressions and increased leachate production. We recommend a filling and regrading plan for the old landfill area (i.e., the areas south of the garage, and the area north and south of the access road to the demolition disposal area). This proposed improvement will involve construction of at least a 4 percent slope on top of the old landfill area. The construction of these slopes which will be accomplished by controlled placement of refuse which will then be provided with final and vegetative cover. To provide adequate vegetative cover, the existing topsoil and vegetation over the majority of the old landfill area will be removed and stockpiled utilizing a technique of stripping and filling so that only a limited area of refuse is exposed at any one time. This grading plan will allow adequate drainage of water off of the site and will insure that positive drainage is provided in the event that a depression were to occur on the fill slope.

Methane Venting System

The gas venting system, as approved by the Department, controls methane generated by the material near the perimeter of the landfilled materials. However, the location of the vents at the ends (lowest portion) of the landfill can have little effect on the control of methane generated by the majority of the area and trench landfill area. To remedy this situation, we recommend an improved gas management system be designed and installed which will allow for venting of methane from the entire old landfill area. This system will be incorporated into the design of the proposed regrading plan. As for the gas venting system in the trenched section of the landfill, the same concerns exist for the gas control system here since the vents are not located on the highest portion of the fill. Our proposed improvements to this system which are being considered would involve use of shallow stone-filled trenches under the capping material. Details of the methane collection system would be initially presented in a conceptual-level design and finalized with design plans.

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

With respect to the comment in your April 30, 1984 letter that the construction of the existing gas collection system is behind schedule, our review of PA DER files did not disclose a previously-determined completion date for this work. Although the design drawings do indicate a date when the system will be installed, it is Novak Sanitary Landfill, Inc.'s position that this date (September 1983) refers to a start-up date. With respect to this item, the installation of the gas venting system on the west side of the site did commence in the fall of 1983.

Stormwater Control

The existing stormwater management system consists of a sloping surface over the trench area and a series of swales to convey storm flows from the trench and old landfill areas to a single bermed retention basin. In order to improve upon the existing stormwater management at the facility, the swales will be cleared and vegetated and a retention basin southeast of Trench No. 5 will be designed to temporarily retain the 10-year, 1-hour storm flows. This basin will incorporate a stone filter berm which will remove suspended sediment and allow for the infiltration of water on the far side of the berm. The existing basin will be reconstructed to avoid the small closed sink feature.

Cover Material

The primary problem involved in placment of final cover and vegetated cover over the completed trench areas (i.e., Trench Nos. 2 and 3) has been the unusual weather conditions caused by winter weather and excessive precipitation during the spring. These conditions have adversely affected all normal construction activities in the area, as well as landfilling operations. During the last six weeks, final cover was placed on Trench No. 2 and that portion of Trench No. 3 not affected by truck and equipment traffic associated with landfilling operations in Trench No. 4. As for the cover in the demolition area, the practice of depositing refuse at the top of the slope and pushing it down with the compactor during the wet weather has caused the cover in this area to be obscured. In order to augment the cover here, intermediate cover will be placed over selected portions of the area so that the debris which needs to be covered with daily cover can be limited to an approximate 200-foot wide working face.

Vegetative Cover

Since a regrading plan for the old landfill area is proposed, the only areas which require vegetative cover are the completed trenches (i.e., Trench Nos. 1, 2 and 3). In addition to the final cover which has been placed on Trench Nos. 1, 2 and portions of No. 3, topsoil and grass seed have been placed on Trench Nos. 1 and 2. At the present time, approximately

25 percent of these two trenches is covered with germinated seed. Once this stand of grass is allowed to develop further, the area will be seeded again to enhance the vegetative cover. Vegetative cover will be established on Trench No. 3 once the final cover is placed on this area. In addition, the swales for stormwater management can be seeded when the Department's review of the Sediment and Erosion Plan is received.

SCHEDULE FOR IMPLEMENTING PROPOSED IMPROVEMENTS

The majority of the site improvements discussed above will require timely review by PA DER if they are to be completed within the necessary time frame. Therefore, the exact schedule for implementing these measures can only be identified in terms of working days after PA DER approval. However, if PA DER can commit itself to a specified time for each review process, a fixed calendar schedule can be determined. The portions of the work schedule which will be our responsibility to uphold during the implementation of improvements for the Novak Sanitary Landfill are provided below.

Surface Water Management and Methane Collection

As discussed above, the most feasible option for controlling surface water and methane generation involves the regrading of the old landfill area. A "conceptual-level" design of this plan, identifying the proposed area to be regraded, slope configurations, methane collection system and anticipated volume of refuse and cover material required, will be submitted to PA DER within 20 working days after receipt of a response to this correspondence. After the PA DER review of the "conceptual-level" design is received, the final design plans will be submitted to PA DER within 20 working days.

Stormwater Control

The review of the Sediment and Erosion Plan submitted to PA DER by Mr. Howard Campbell on January 18, 1984 has not yet been received. Many of the design considerations as well as the procedure for determining the anticipated flows will become part of the stormwater management plan for the site. In order to complete an effective stormwater management plan, we must have PA DER's comments on this issue. Once we have received this review, we will submit a stormwater management plan to the Department within 20 working days.

Cover Material

The final cover on Trench No. 3 will be placed within two weeks after the area is no longer affected by truck and equipment traffic associated with landfilling operations in Trench No. 4. The intermediate cover material in the demolition area can be augmented within 30 working days so that the size of the active working face requiring daily cover can be limited to a 200-foot wide area.

ORIGINAL (Red)

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

Vegetative Cover

The enhancement of vegetative cover for Trench Nos. 1 and 2 will be completed once a healthy stand of grass is established so that additional seed can be retained and germinated on the surface of these areas. Trench No. 3 will be seeded once the final cover and topsoil are placed in this trench.

MONITOR WELL SITING AND CONSTRUCTION

During the course of our investigations, several verbal inquiries have been made by PA DER personnel regarding the siting and construction of two additional monitor wells on the site. As a result, we have developed a program which will allow for the effective siting of these wells. The past constraints on monitor well siting have been confirmation of the piezometric data for the area presented by Dr. P. B. Myers and the lack of sufficient groundwater quality information. To resolve the situation of the piezometric data, the four monitor wells on-site are now accessible and water level measurements can be obtained. With respect to groundwater quality information, we have recently been informed that EPA representatives will be sampling the monitor wells on site and residential wells in the area for the 129 priority pollutants; consequently our firm will be splitting samples with EPA. Once we have received the analytical results from this round of sampling, we will locate the new monitor wells and review the locations with PA DER. Once an agreement is reached, the wells will be drilled within 20 working days.

We believe this correspondence provides the necessary input to improve the environmental conditions at the Novak Sanitary Landfill. Should you have any questions or would like to further discuss any item presented herein, please contact us at your earliest convenience.

Sincerely,

Walter B Satterthwaite

Walter B. Satterthwaite, P.G.
President

Michael L. McCarthy/rlw

Michael L. McCarthy
Project Geologist

ORIGINAL (Red)

MLMc/RLW
cc: Mr. Louis R. Novak
Mr. Louis C. Novak
Mr. Joseph Pomponi
Mr. Larry Lunsk

200839

Weather: Sunny 78°
Date: June 20, 1984

JUL-13 1984.

Inspection for May, 1984

Lehigh C

NOVAK
SANITARY LANDFILL REPORT

PUBLIC ROADS: Parkland Terrace and Orefield Roads have some mud due to wet conditions. There is very little litter on both of these roads.

ACCESS ROADS: Some areas in poor condition due to heavy rain. These areas will be filled in as soon as posible.

DISPOSAL AREAS: The low spots along the West side have been filled in with earth and top soil. Grass seed will be planted. Also areas along the South side of the ccess road leading to demolition area located along station 11 + 0 W and 10 + 0 S have been filled in with earth and top soil.

RECEIVED
JUN 22 1984
BETHLEHEM DIST. OFFICE
DEPT. OF ENV. RES.

TRENCH: Refuse is being placed in Trench #4. Earth is also being removed from Trench #4. Compaction processes observed and adequate daily soil cover applied over refuse is recommendable as required by the state permit.
Top soil is being removed from Trench #5 and being placed over the old disposal area.

FENCES: Fences are in good condition. Plastic materials should be removed.

VEGETATED AREAS: Plastic material should be removed. Also low spots should be filled in and grass planted.

VECTOR & INCINERATION: No smouldering or burning refuse or evidence thereof observed. No rodents observed on-site.

ORIGINAL (Red)

200841

NOVAK SANITARY LANDFILL REPORT

COMMENTS: The gas vents in Trench #1, #2 and #3 should be completed as permit requires. Also gas vents along the Northeast and east side of existing landfill area.

INSPECTED BY: C. A. Costello DATE: JUNE 20 1984

C. A. COSTELLO ENGINEERING COMPANY
Allentown, PA 18102

ATTEST: _____

cc: Novak Sanitary Landfill
Department of Environmental Resources
South Whitehall Township

200842

Environmental Resources
June 28, 1984
8-354-1923

Novak file

Novak Sanitary Landfill
South Whitehall Township, Lehigh County

Nicholas DeBenedictis
Secretary

Thru: R. Harry Bittle
Deputy Secretary
for Environmental Protection

LEON T. GONSHOR
Regional Director
Norristown Regional Office

This briefing memo is being supplied as requested by the Deputy Secretary.

The landfill is approximately 60 acres in size and has been operating with a Department solid waste disposal permit since 1972. The permit provides for a portion of the site to be area-filled and a portion to be trench-filled using five parallel trenches. At the present time the area-fill portion and three trenches are completed. Remaining fill capacity consists of a portion of the active fourth trench and the proposed fifth trench, with a remaining estimated life of less than one year at 220 T/D.

Recent inspections and an April 30, 1984 Notice of Violation have documented several operational violations at the site which include:

1. Inadequate cover
2. Inadequate surface water management
3. Inadequate gas management
4. Inadequate vegetation

As a result of the aforementioned violations 14 summary citations have been filed and a hearing before the District Magistrate is scheduled in approximately three weeks.

The Department has conducted sampling of both monitoring wells and private water supply wells in the vicinity of the landfill during the past year. Such sampling is continuing at the present time. To date, low level organic contamination has been found in one off-site well.

On June 22, 1984, the Department, along with EPA, conducted a joint Site Inspection of the landfill which involved extensive groundwater sampling both at and in the vicinity of the facility.

In response to the aforementioned April 30, 1984 Notice of Violation, the site operator retained a new engineer who has submitted an abatement plan to the Department. The Department anticipates meeting with the site operator and his engineer after the results of the June 22, 1984 sampling are available to discuss closure requirements and schedules for the facility. An Administrative Order or Consent Order and Agreement are anticipated setting forth the closure requirements.

ORIGINAL (Red)

cc: L. Gonshor
J. Lynn
AI 130.1

Cpd'd 11:20 AM 6/28/84

200843

ER-SWM-1:5/79

JUL 18 1984

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	7/3/84	167-48-5242

NAME OF DISPOSAL FACILITY	FACILITY ADDRESS
Novak Sanitary Landfill, Inc	RD#1 Allentown, PA 18104

MUNICIPALITY	COUNTY
South Whitehall Twp	Lehigh

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER)

Louis J. Novak RD#1 Allentown PA 18104 395-6251 or 4580

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
200-300 Tons	Yes	5 1/2

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
29	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required. bird, mosquito, rodent, fly	X		
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift		X	
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

200844

ER-SWM-1A:5/79

100534
7/3/84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable 4-Not Determined

	CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management		X	
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met	X		
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required		X	
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day			
57	75.26(s)	Hazardous wastes & sludges stored and/or disposed with written Departmental approval	X		
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts	X		
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face		X	
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction	X		
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans	X		
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63	75.26(j), (k)	Blowing litter controlled			
64	75.26(c)	Provision for standby equipment available when needed			
	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X	
	Chapter 101(9)(e)(2)	Is bonding status correct			X

200845

ER -SWM-1B,2B,3B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

Weather: Partly Cloudy, Breezy + Warm

Time 10:00 - 12:00

DISPOSAL FACILITY Novak Sanitary Landfill 100534

DATE 7/3/84

Currently, filling is occurring in the central portion of trench #4. Trucks unload at the south edge of trench #3 and the refuse is pushed into trench #4. The western edge of trench #4 has been kept back approximately 200 from the property line. The east side of trench #4 has only been partially excavated.

Trenches #1+2 have been graded and covered. Seeding has been complete on portions of it but is not completed over the entire area.

Violations:

35) Final cover is lacking over the central area of trench #3. Access to trench should not continue over trench #3

36) Poor drainage over the area fill portion of the landfill and lack of proper cover in some spots is contributing to surface water problems

42) The installation of the approved gas venting system is behind schedule.

51) Erosion gullies were observed on several completed side slopes largely due to the lack of proper vegetation.

59) The unloading area should be restricted to the proximity of the working face. Unloading should not occur over trench #3.

65) Vegetation has been planted and is beginning to be established in some areas. There are several fairly large areas still lacking vegetation where seeding is required.

Michael J. Miccolis
Department of Environmental Resources Representative

Ernest Novak
Operator

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

200846

DER-RECEIVED
NORRISTOWN
JUL 9 1984

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT
PROCESSING/DISPOSAL FACILITY
DAILY LOG

YEAR 1984

MONTH JUNE

(For Dept Use)
SITE ID CODE

PERMIT #

REGION

FACILITY NAME NOVAK'S LANDFILL INC.

ADDRESS RD #1
Street or Box Number

PHONE 215-395-6251

COUNTY LEHIGH

Town or City ALLENTOWN

Zip Code 18104

METHOD 2

DATE	DAILY TOTALS MUNICIPAL	DAILY TOTALS RESIDUAL	DAILY TOTALS OTHER	CUMULATIVE TOTALS MUNICIPAL	CUMULATIVE TOTALS RESIDUAL	CUMULATIVE TOTALS OTHER
1	530	1230		530	1230	
	160	410		690	1640	
	510	1090		1200	2730	
	430	1115		1630	3845	
	360	950		1990	4795	
	458	870		2448	5665	
	505	1210		2953	6875	
	156	600		3109	7475	
	526	1400		3635	8875	
	475	1050		4110	9925	
	360	1210		4470	11135	
	425	850		4895	11985	
	390	1300		5285	13285	
	435	480		5720	13765	
	458	1016		6178	14781	
	510	1100		6688	15881	
20	285	855		6973	16736	
21	380	1000		7353	17736	
22	500	967		7853	18703	
23	125	800		7978	19503	
24						
25	510	1105		8488	20608	
26	370	1269		8858	21877	
27	340	1250		9198	23127	
28	500	1000		9698	24127	
29	525	1110		10223	25237	
30	270	985		10493	26222	
YEARLY CUMULATIVE				52210	166444	

(SEE INSTRUCTIONS ON BACK)

200847

RECEIVED
NORRISTOWN
JUL 9 198

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT
PROCESSING/DISPOSAL FACILITY
DAILY LOG

(For Dept Use
SITE ID CODE
PERMIT #
REGION

YEAR 1984
MONTH MAY

FACILITY NAME: MOYAKS LANDFILL INC.

ADDRESS: Street or Box Number: RD#1 — COUNTY: LEHIGH

PHONE: 215-395-6251 — Town or City: ALLENTOWN — Zip Code: 18104

METHOD 2

DATE	DAILY TOTALS MUNICIPAL	DAILY TOTALS RESIDUAL	DAILY TOTALS OTHER	CUMULATIVE TOTALS MUNICIPAL	CUMULATIVE TOTALS RESIDUAL	CUMULATIVE TOTALS OTHER
	480	830		480	830	
	370	1160		850	1990	
	420	1230		1270	3220	
	305	780		1575	4000	
	260	1000		1835	5000	
		1165			6165	
		910			7075	
		870			7945	
		1350			9295	
		1050			10345	
		600			10945	
		1400			12345	
	410	850		2245	13195	
	563	1160		2808	14355	
	210	730		3018	15085	
	480	1200		3498	16285	
	310	650		3808	16935	
	430	930		4238	17865	
	400	1300		4638	19165	
	305	1050		4943	20215	
	330	1130		5273	21345	
	450	840		5723	22185	
	170	560		5893	22745	
	730	1005		6623	23750	
	430	1260		7053	25010	
	400	1300		7453	26310	
YEARLY CUMULATIVE				41717	140222	

(SEE INSTRUCTIONS ON BACK)

200848

ER-SWM-30:11/80

DER-RECEIVE
NORRISTOWN

JUL 9 1984

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT
PROCESSING/DISPOSAL FACILITY
DAILY LOG

(For Dept Use)
SITE ID CODE

PERMIT #

REGION

YEAR 1984

MONTH APRIL

FACILITY NAME WOWAESLAMDFILLINC

Street or Box Number

ADDRESS RD#1

COUNTY LEHIGH

PHONE 215-395-6251

Town or City ALLENTOWN

Zip Code 18104

METHOD 2

DATE	DAILY TOTALS MUNICIPAL	DAILY TOTALS RESIDUAL	DAILY TOTALS OTHER	CUMULATIVE TOTALS MUNICIPAL	CUMULATIVE TOTALS RESIDUAL	CUMULATIVE TOTALS OTHER
1						
2	408	1093		408	1093	
3	502	915		910	2008	
4	365	1210		1275	3218	
5	300	915		1575	4133	
6	312	1243		1887	5376	
7	290	780		2177	6156	
8						
9	481	1150		2658	7306	
10	562	1093		3220	8399	
11	372	1375		3592	9674	
12	451	968		4043	10642	
13	362	1065		4405	11707	
14	221	518		4626	12225	
15						
16	353	1210		4979	13435	
17	379	1213		5358	14648	
18	450	1120		5808	15768	
19	351	1213		6159	16981	
20	490	650		6649	17631	
21	305	440		6954	18071	
22						
23						
24	343	860		7297	18931	
25	397	1050		7694	19981	
26	441	835		8135	20816	
27	343	1271		8478	22087	
28	185	1150		8663	23237	
29						
30	461	630		9124	23867	
YEARLY CUMULATIVE				34264	111912	

(SEE INSTRUCTIONS ON BACK)

200349

ER-SWM-30:11/80

(For Dept Use)
SITE ID CODE

PERMIT #

REGION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT
PROCESSING/DISPOSAL FACILITY
DAILY LOG

YEAR 1984

MONTH FEBRUARY

FACILITY NAME MOUNTAIN LANDFILL INC

ADDRESS RD#1 (Street or Box Number) COUNTY LEHIGH

PHONE 215-395-6251 Town or City ALLENTOWN Zip Code 18104

METHOD 2

DATE	DAILY TOTALS MUNICIPAL	DAILY TOTALS RESIDUAL	DAILY TOTALS OTHER	CUMULATIVE TOTALS MUNICIPAL	CUMULATIVE TOTALS RESIDUAL	CUMULATIVE TOTALS OTHER
1	299	1255		299	1255	
2	290	1068		589	2323	
3	275	1825		864	4148	
4	200	597		1064	4745	
5						
6	366	1405		1430	6150	
7	357	1471		1787	7621	
8	347	1586		2134	9207	
9	373	1436		2507	10643	
10	373	1546		2880	12189	
11	243	492		3123	12681	
12				3372		
13	249	1661		3372	14342	
14	378	1388		3750	15730	
15	393	1216		4143	16946	
16	318	1383		4461	18329	
17	229	1233		4690	19562	
18	279	323		4969	19885	
19						
20	351	1354		5320	21239	
21	355	1369		5675	22608	
22	422	1285		6097	23893	
23	440	1134		6537	25027	
24	361	1381		6898	26408	
25	261	493		7094	26901	
26						
27	446	1423		7545	28324	
28	411	1527		7956	29851	
29	292	1480		8248	31331	
30						
31						
YEARLY CUMULATIVE				16579	62560	

(SEE INSTRUCTIONS ON BACK)

200850

ER-SWM-30:11/80

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT
PROCESSING/DISPOSAL FACILITY
DAILY LOG

(For Dept Use
SITE ID CODE

PERMIT #

REGION

YEAR 1984

MONTH JANUARY

FACILITY NAME MOUNTAINSIDE INC.

ADDRESS Street or Box Number RD #1 COUNTY LEHIGH

PHONE 215-398-2511 Town or City PEN ARGYL Zip Code 18064

METHOD 2

DATE	DAILY TOTALS MUNICIPAL	DAILY TOTALS RESIDUAL	DAILY TOTALS OTHER	CUMULATIVE TOTALS MUNICIPAL	CUMULATIVE TOTALS RESIDUAL	CUMULATIVE TOTALS OTHER
1						
2						
3	461	1352		461	1352	
4	372	1561		833	2913	
5	455	1460		1288	4373	
6	413	1706		1701	6079	
7	243	395		1944	6474	
8						
9	245	1346		2339	7820	
10	351	1391		2590	9211	
11	368	1405		2958	10616	
12	404	1463		3362	12079	
13	363	1491		3725	13570	
14	163	465		3888	14035	
15					15504	
16	377	1409		4265	15504	
17	301	1308		4566	16812	
18	430	1567		4996	18379	
19	287	1232		5293	19611	
20	265	1423		5558	21034	
21	117	380		5665	21414	
22						
23	292	1051		5957	22465	
24	376	1460		6333	23925	
25	439	1507		6772	25432	
26	236	1260		7008	26692	
27	472	1487		7480	28179	
28	125	300		7605	28479	
29						
30	383	1550		7988	30329	
31	345	900		8331	31229	
YEARLY CUMULATIVE				8331	31229	

(SEE INSTRUCTIONS ON BACK)

000851

ER-SWM-1:5/79

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	7/19/84	167-485242

NAME OF DISPOSAL FACILITY	FACILITY ADDRESS
Novak Sanitary Landfill, Inc	RD #1 Allentown PA 18104

MUNICIPALITY	COUNTY
South Whitehall Twp	Lehigh

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER)

Louis J Novak RD #1 Allentown PA 18104 395-6251, 4540

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
200-300	Yes	5 1/2

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
29	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly	X		
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift		X	
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles Observed (Red)	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

200852

ER-SWM-1A:5/79

100534
7/19/84

JMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable 4 - Not Determined

	CHAPTER CITATION		1	2	
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(6)	Gas management		X	
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met	X		
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required		X	
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day			
57	75.26(s)	~~Hazardous wastes~~ & sludges stored and/or disposed with written Departmental approval	X		
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts	X		
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face		X	
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction		X	
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans	X		
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site	X		
63	75.26(j), (k)	Blowing litter controlled	X		
64	75.26(c)	Provision for standby equipment available when needed	X		
	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X	
66	Chapter 101(9)(e)(2)	Is bonding status correct			X

200853

ER -SWM-1B,2B,3B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

Weather: Partly Cloudy
Warm (~77 °F)

Time: 10.00 - 12 15

DISPOSAL FACILITY Novak Landfill

100534

DATE 7/19/84

Present during this inspection were Walter B. Satterthwaite; Richard Wroblewski (WBS); Jerry Longenecker (WBS); Joe Mandukr (DER); Dinesh Rajkoi (DER); Jim Zoolakis (DER), and myself.

During the inspection the western side of trench # 4 was in use. The eastern side of the trench had still not been excavated to completion. Prior to landfilling in any newly excavated portion of this trench, DER should be notified so that an inspection can be made. Also, it appears that Trench # 4 extends significantly into the proposed area of Trench # 5. The exact boundaries of trenches 4 & should be determined and markers placed on the site

Violations:

35) A Two foot layer of final cover is lacking over the central and western portions of trench # 3; as well as the central section of the old area fill landfill.

36) Surface water management problems exist in two forms: ① Lack of proper grading as observed by a large # of pools of water in the area fill portion, and ② Lack of proper cover in trench # 3 and in portions of the area fill landfill.

42) The installation of the approved gas venting system is behind schedule.

51) Erosion over all unvegetated portions of the landfill is occurring

59) Unloading should be restricted to the proximity of the working face. Trash is being unloaded on trench # 3 and pushed approximately 100 yards to the south side of trench 3 ORIGINAL AREA.

60) The working face is excessively large due to improper unloading.

65) Some vegetation is growing in portions of the old fill area as well as in trenches 1 & 2. This vegetation is not sufficient to control erosion. Some areas (eastern side) of Trench 2 lack vegetation all together.

Michael L Maule

Department of Environmental Resources Representative

Operator

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

200854

STD-501 12-67
(FORMERLY OA-501)

COMMONWEALTH OF PENNSYLVANIA

August 29, 1984

SUBJECT: NOVAK LANDFILL
South Whitehall Township
Lehigh County

TO: Bruce Beitler
Regional Operations Supervisor

FROM: Joseph P. Pomponi
Operations Supervisor

Solid Waste Specialist, Michael Maiolie, and myself visited the above site today and report the following:

1. Using a tape measure and beginning at the base where Trench I begins and measuring directly south at the approximate points marked in blue on attached trench plan, it was found that the end of Trench 4 measures 485 feet from where Trench I began. Using the 1 inch in 60 feet scale on permitted plan, a total of 540 feet of trench area is permitted. The top soil for Trench 5 has been removed indicating that the end of proposed Trench 5 will be 615 feet from Trench I. Therefore, only 50 feet of trench remains to be developed, whereas developing of Trench 5 exceeds by 70 feet, the permitted area.

2. Efforts to vegetate the old area fill completed in the fall of 1982 still shows little vegetation. Discussions with the owner indicate that at best only one third of the old area fill will be graded, and vegetated this growing season.

3. Filling on the southwest portion of completed Trench 3 continues using that area as a road to Trench 4.

4. A processing operation has increased and large volumes of paper, cardboard, plastic paper and rubbish is in operation at the entrance to the landfill. Most of this material is piled on uncovered concrete slab, but large amounts of this material was seen on the ground and is very unsightly.

200855

5. Trench 4 is completed and only approximately 250 of trench remains to be filled (approximately 3 months at present rate).

6. Little or no effort has been made to remove large solid waste containers and equipment stored on the old area fill restricting proper grading and vegetation.

Therefore, I recommend that the Department order the facility to:

1. Provide a complete topographic map of the facility and place appropriate monuments on the property indicating the extent of the trench operation as permitted. Include order not to continue to develop Trench 5 until this work is complete.

2. To submit a closure plan. Little area remains to be developed.

3. To develop monitoring wells 5 and 6.

4. To grade and seed the old landfill area and Trenches I, 2, and 3. An upgraded E & S plan for entire facility is needed.

JPP/bal

File. Lehigh Co.
Novak

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Bethlehem Office
520 East Broad Street
Bethlehem, PA 18018
861-2070

August 29, 1984

Re: Novak Sanitary Landfill
I.D. #100534
South Whitehall Township
Lehigh County

Novak Sanitary Landfill, Inc.
R.D. #1
Allentown, PA 18104

Attention: Louis J. Novak

Gentlemen:

NOTICE OF VIOLATION

During our visit to your facility on August 28, 1984, it was found that you are utilizing linoleum wastes as road material in the area southwest of Trench 3. All wastes including linoleum wastes must be buried in the trenches and cannot be used as road material. Since this area lies outside of Trench 3, all linoleum wastes must be removed and placed in Trench 4 with the other municipal wastes and properly compacted and covered.

Therefore, you are hereby required to immediately remove all linoleum wastes in the area of Trench 3 used for road construction. Only road construction materials can be used for road construction.

Should you desire any clarification on this matter, please feel free to contact this office.

Very truly yours,

Joseph P. Pomponi
Field Operations Supervisor

JPP/bal

CC: Walter B. Satterthwaite Associates, Inc.

200857

ER-SWM-1:5/79

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

DER-RECEIVED NORRISTOWN
SEP 25 1984

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES,
DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

IDENTIFICATION NUMBER (1-7)	INSPECTION DATE (9-14)	INSPECTORS SOC. SEC. NO. (16-24)
100534	9/20/84	167-48-5242

NAME OF DISPOSAL FACILITY	FACILITY ADDRESS
Novak Sanitary Landfill Inc	RD#1 Allentown PA 18104

MUNICIPALITY	COUNTY
South Whitehall Twp	Lehigh

FACILITY PROPRIETOR (NAME, ADDRESS, AND TELEPHONE NUMBER)
Louis J. Novak RD#1 Allentown PA 18104 395-6251, 4580

DAILY VOLUME RECEIVED	ANNUAL REPORT RECEIVED	DAYS PER WEEK OPERATED
150-200	Yes	5 1/2

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable

	CHAPTER CITATION		1	2	3
26	75.21(m)(3)	Suitable barrier blocks access to site when attendant is not present.	X		
27	75.21(s)	25' setback line buffer zone present	X		
28	75.21(l)(1), (2), (3)	Adequate fire equipment or procedure for minimizing fire hazard	X		
	75.21(q)	Approved operational safety program being utilized	X		
30	75.21(p)	Effective vector control program utilized at site where needed. Circle vector program required: bird, mosquito, rodent, fly	X		
31	75.21(m)(2)	Hours of operation prominently posted	X		
32	75.21(k)	Telephone or other communications available	X		
33	75.21(o)(1)	Salvaging occurs in accordance with regulations	X		
34	75.21(r)(1), (2), (3), (4), 75.24(e)(2)(vii)(viii)	Operational records maintained and method of measurement provided	X		
35	75.24(c)(2)(xxi), 75.37(j) & 75.38 II(8)(viii)	Final minimum uniform two foot layer of compacted cover material placed on surface of final lift	X		
36	75.24(c)(2)(i), 75.37(e) & 75.38 II(8)(viii)	Surface water management administered at the site		X	
37	75.24(c)(2)(ii), (iii), & 75.37(d)(1), (2)	Final slopes within 1 to 15 percent or as approved by Department	X		
38	75.24(c)(2)(xi) & 75.38 II(8)(viii)	Adequate source and type of cover material being utilized	X		
39	75.24(c)(2)(v) & 75.38 II(8)(ii)(iv)(vi)	Site access roads are negotiable by loaded collection vehicles	X		
40	75.24(c)(2)(ii)(iii), 75.37(d)(1)(2) & 75.38 II(8)(viii)	Slopes, benching and terracing in accord with regulations	X		
41	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(ii)	Fire breaks	X		

Original (Red)

200858

ER-SWM-1A:5/79

100534
9/20/84

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES, DEMOLITION SITES, FLYASH SITES, SLAG SITES
FORM NO. 10

1 – Compliance, 2 – Non-Compliance, 3 – Not applicable 4 – Not Applicable

	CHAPTER CITATION		1	2	3
42	75.24(c)(2)(xxiv), 75.37(k) & 75.38 II(8)	Gas management	X		
43	75.24(b)(4)(i), 75.37(k)(6), & 75.38 II(8)(i)	Ground water monitoring requirements being met	X		
44	75.24(c)(2)(xi), 75.37(k) & 75.38 II(8)(ii)	Approved cover material being utilized	X		
45	75.24(c)(2)(x)	Approved subbase being utilized	X		
46	75.24(c)(2)(xvi), 75.37(k) & 75.38 II(8)(iv)	Proper barriers being maintained			X
47	75.25(h)	Lined site, under drains operable			X
48	75.25(i)	Are liners in place and covered with protective earth			X
49	75.25(o)(3)	Lined site, daily record of leachate flow maintained			X
50	75.26(a) & 75.37(g)	Leachate treatment facilities being operated properly			X
51	75.26(o), 75.37(g), 75.38 II(8)(viii)	Erosion controlled on site, diversion ditches as required		X	
52	75.26(b), 75.37(k)(2), (3), 75.38 II(8)(ii)	Solid waste spread and compacted in layers not exceeding two feet deep	X		
53	75.26(q)	At lined sites, is all waste deposited on lined areas			X
54	75.26(f)	Regulation ban on open burning adhered to	X		
55	75.26(d) & 75.38 II(8)(vi)	Bulky waste properly controlled	X		
56	75.26(l) & 75.38 II(8)(vii)	Uniform minimum six inch layer of compacted material placed on all exposed solid waste at the end of each working day			
57	75.26(s)	~~Hazardous waste~~ & sludges stored and/or disposed with written Departmental approval	X		
58	75.26(n)	Intermediate uniform minimum one-foot layer of compacted cover material placed on completed lifts	X		
59	75.26(d) & 75.38 II(8)(iv)	Unloading area restricted to proximity of the working face	X		
60	75.26(i)	Working face area confined to size suitable for daily cover/compaction	X		
61	75.26(q), 75.37(k), (s) & 75.38 II(8)(x)	Operation in accordance with approved plans		X	
62	75.26(g), (h) & 75.38 II(8)(vi)	Dust controlled at site		X	
63	75.26(j), (k)	Blowing litter controlled	X		
64	75.26(c)	Provision for standby equipment available when needed	X		
65	75.26(o), (p), 75.37(j), 75.38 II(8)(ix)	Has vegetative growth been established to prevent soil erosion on disturbed areas		X	
66	Chapter 101(9)(e)(2)	Is bonding status correct			X

200859

ER -SWM-1B,2B,3B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

INSPECTION REPORT
SANITARY LANDFILL, INDUSTRIAL SITES
DEMOLITION SITES, FLYASH SITES, SLAG SITES

COMMENTS:
FORM NO. 10, 11, & 12

Weather: Sunny, Breezy & Cool
Time: 9:30 - 12:00

DISPOSAL FACILITY Novak Sanitary Landfill, Inc

DATE 9/20/84

During this inspection, the working face was approximately 100' west of the east edge of trench #4. The entire width of this trench was receiving waste. Trench #5 is being excavated and ranged from 5' to 12' below the original grade. An excavation was observed in the demolition area approximately 25' deep (below the original grade as noted by the topsoil/root line.) This exceeds the permitted excavation depth and should be backfilled prior to any additional excavating in the area.

Violations:

56) Surface water management, including provisions to minimize the amt. of water infil into the refuse is lacking. Low spots continue to exist around the old fill area.

61) Erosion is occurring where vegetation is lacking. Portions of the old fill area as well as trenches 1, 2, and 3.

61) Operation is not in accordance with approved plans. The demolition area has been excavated beyond the permitted depth. In addition, the west side of trench #4 has been built up at least 15 feet above the original grade. This side of trench #4 should be tapered to meet the original grade.

62) Excessive dust is present at the site. Roads should be watered to keep the dust down.

65) Adequate vegetation is lacking over the majority of trenches #2 + 3 as well as portions of trench #1 and the old fill area.

Michael G. Maule
Department of Environmental Resources Representative

Louis J. Novak
Operator

200860

CENTRAL OFFICE, APPLICANT, INSPECTOR, REGIONAL OFFICE

Novak Landfill
Lehigh Co.

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

September 27, 1984

Mr. Nicholas Pidstowski, Sr.
R. D. # 1, Box 242
River Road
Allentown, Pennsylvania 18104

Dear Mr. Pidstowski:

I am enclosing the actual sample sheets for the samples which were collected from your residence on May 21, 1984. Copies of the preliminary results for these sample samples were sent to you on July 30, 1984.

If you have any questions regarding these sample results, please do not hesitate to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL (Red)

200861

Novak Landfill

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

September 27, 1984

Mr. & Mrs. Quentin Kramer
R. D. # 1
River Road
Allentown, Pennsylvania 18104

Dear Mr. & Mrs. Kramer

I am enclosing the actual sample sheets for the samples which were collected from your residence on May 21, 1984. Copies of the preliminary results for these sample samples were sent to you on July 30, 1984.

If you have any questions regarding these sample results, please do not hesitate to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL (Red)

200862

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

Bethlehem District Office
520 East Broad Street
Bethlehem, PA 18018
861-2070

RECEIVED
NORRISTOWN
OCT 2 1984

October 1, 1984

RE: Novak Landfill
~~South Whitehall~~ Township
Lehigh County

Walter B. Satterthwaite Associates, Inc.
11 North Five Points Road
West Chester, Pennsylvania 19380

Gentlemen:

Pursuant to our telephone conversation of October 1, 1984, this is to confirm that a meeting date has been scheduled in our Norristown Office, 1875 New Hope Street, at 10:00 AM on October 11, 1984, to discuss the orderly clsoing of the above facility.

Sincerely,

JOSEPH P. POMPONI
Field Operations Supervisor

JPP:mln

cc: Bruce Beitler ←
: Regional Director
: Joseph Manduke
: Gary Bonner
: File

ORIGINAL (Red)

200863

Novak Landfill Meeting - 10/11/84 - Norristown Office

DER's position as to requirements of a CoEA to insure proper closure of the Landfill:

1. Development of a closure plan & schedule based on aerial survey. We feel only remaining space may be in the active Trench "4" and a reduced Trench "5". We feel available space is a matter of months - not years. The Closure Plan is to address items including:
   a. A Final Date for cessation of dumping.
   b. A final topography plan
   c. Covering, grading & seeding plans
   d. A comprehensive EES Plan for the entire site
   e. A schedule for the completion of the gas venting system
2. Development & performance of a Groundwater Study. The work plan for the study should be developed after the next round of sampling which will include the new wells "5" & "6". The study must consider the need for additional wells and/or the use of existing off-site private wells.
3. Posting of a closure bond
4. Payment of penalties to resolve past violations - esp. any overfilling found by the aerial survey.

Also discussed were the following items in need of immediate correction or implementation:

1. Final covering, grading and seeding of completed portions of the trench fill area, including slopes ~~and adjacent~~ disturbed areas, ~~this~~ month.

AR200864

2. Installation of wells "5" & "6" this month
3. Cover, grade & seed the area - fill position of the site to the max. extent possible this year - complete in Spring 1985.
4. Provide temporary E&S controls until permanent facilities are approved this month. Such controls would include the two basins for the trench-fill area and possibly straw bales along toes of slopes.
5. Provide adequate daily cover immediately
6. Provide necessary dust control immediately
7. Submit 6/85 monitoring well reports immediately.

It was agreed that DER will be notified by 10/19/84 of the completion of the aerial survey. A meeting will then be held with technical staff to discuss survey & details of closure plan. A date for submission of the closure plan (appro. 30 days) will be set at this meeting. At the same time the closure plan is being developed the Dept will develope a CO&A.

ORIGINAL (Red)

200865

Novak Landfill Meeting - 10/11/84 - Norristown Office

Bruce D. Beitler	Solid Waste Operations Sup.	270-1920
GARY BONNER	COMPLIANCE SPECIALIST	270-1915
Joseph P Pompori	D.E.R Bethlehem	8612070
JAMES DOLAN	SOLID WASTE DER	"
Louis J. Novak	Landfill operator	395-6251
Richard Wlobkowski	Satterthwaite Assoc., Inc.	692-5770
Michael D Maule	Solid Waste DER	378-4175
Dineel P. Rajkotia	" " "	270-1920

200836

Novak landfill rates likely will rise again to pay for shutdown

By RANDY KRAFT
Of The Morning Call

The owner of the Novak landfill in South Whitehall Township, where dumping fees recently increased, confirmed his rates "definitely" will go up again as the controversial facility approaches the end of its useful life.

Louis J. Novak said he needs more money to pay the impending high costs of closing the landfill and to maintain the property after it is closed.

As of Oct. 1, Novak raised his rates to $8 a cubic yard for all customers. He won't say how much his next increase will be, or how soon, but predicted fees "will go up — that's definite."

After the landfill closes, Novak said, "I'm stuck with 105 acres of land that ain't worth anything. What are you going to do with it? You can't build on it. I'm responsible for it for the rest of my life."

And that, said Novak, is going to cost him money when he's no longer getting revenue from haulers paying to dump there.

Because Novak is raising his rates, people who get their garbage collected by Whitehall Township probably are going to see "a substantial increase in their fees next year" according to Michael P. Harakal, township executive. Whitehall is Novak's largest municipal customer.

Harakal estimated in 1985 garbage collection may increase to $100 or $110 a year. It's now $70 a year. Harakal said three years ago Whitehall residents were paying only $20 a year.

He said the increases will come because of the landfill's hike in fees, and because of the potential for increased transportation costs to haul garbage to other landfills farther from the township if Novak closes.

"We're looking at the possibility of not having Novak available for the entire year next year," said Harakal.

Yesterday Novak had a pre-closure conference with officials of the State Department of Environmental Resources in Norristown.

After the meeting, which was closed to the public and press, Novak said he thought his landfill could continue operating about two more years.

Please See NOVAK Page B4 ▶

OCTOBER 12, 1984

200867

Novak says landfill rate to rise again

▶Continued From Page B1

But a DER official who was at the meeting said it appears the landfill has months, not years, before it must close.

DER hopes to get a timetable from Novak on closure in the near future. DER is waiting for Novak to submit an aerial survey which will give it a better indication of how much space remains. DER had hoped to get that survey yesterday. It now expects to get it within a week.

Novak said DER will determine what kind of improvements he has to make, and "that will regulate the price I am going to have to charge."

While he agrees Novak needs money to make the expensive improvements required by the state, Harakal also commented: "There's a certain amount of supply and demand involved here." He declined to elaborate.

Novak himself noted other landfills are 30, 30 or 40 miles away, and that those complaining about his rates should take hauling costs into consideration.

While the state does not regulate landfill fees, Beitler of DER confirmed that the going rate for dumping at landfills in this part of Pennsylvania is $6-$8 per cubic yard.

"Most sites have raised their rates," said the DER official.

Before the latest increase, Whitehall was paying Novak $4.50 a cubic yard. Novak said other customers were paying $5.

Novak acknowledged that Whitehall and other municipalities (he said the landfill also serves Coplay and Northampton) would like to have contracts so they have a guaranteed price in making budget appropriations. But he said because of increasing demand and shrinking space, it's impossible for him to give anyone a contract anymore — or a price a year in advance.

Whitehall had a three-year contract with Novak which ended last year. Under that contract, the township was paying only $2.50 per cubic yard for waste.

"Without a contract," said Harakal, "we're on the hook every day."

Harakal said three months ago Novak called him and said, "If you have any trucks on the way, tell them to turn around." Harakal said Novak did that because he was under pressure from DER, with a number of violations pending against him. Most of those violations were later thrown out by a district magistrate.

"He could call me again tomorrow," said Harakal.

He said Whitehall collects garbage from nearly 5,000 homes and small businesses in the township.

Harakal noted people have been predicting the coming landfill crisis for several years but no action was taken. He added that at best, it will be three more years before any new landfills are established in this area.

Novak claimed some customers — he would not say who, but denied Whitehall was one of them — water their garbage down, add soap and pack it harder so they can get more on each truck.

Bruce Beitler, a DER solid waste official in Norristown, said the state wants Novak to do a groundwater study, which includes installing more monitoring wells to check for possible water pollution.

"We feel an expanded study of groundwater conditions is warranted," said Beitler. He would not say whether DER suspects there is water pollution at or near the landfill, but residents near the landfill have said at public meetings that they believe runoff from the landfill is polluting groundwater in the area.

Beitler said Novak agreed to do the additional groundwater work yesterday. Novak did not want to talk about what went on at the meeting in Norristown.

He said to properly close the site, Novak will also have to do other engineering work, surface water management work, grading, covering and seeding.

After closure, Novak will have to maintain the facility — such as taking measures to prevent erosion and reseeding. Beitler said Novak also will have to continue monitoring groundwater "for a period of time."

All that is going to cost Novak more money for labor, equipment and engineering fees. He said he has no idea how much. But he admits he doesn't know how he's going to be able to afford to do it.

"I'm not trying to make enemies by raising the price," said Novak, "and I'm not going to get rich by raising the price."

"Whatever money I make from here on I have to spend on the landfill. Really, I'm just trying to get enough money to exist."

According to Harakal, an increased dumping fee initiated by Novak Oct. 1 is going to cost Whitehall as much as $12,600 more for the last three months of this year.

Though he did not sound optimistic, Harakal said the only way for residents to escape an increase in collection fees next year would be if the township commissioners decide to underwrite the costs out of general revenues.

The township executive said Whitehall cannot go somewhere else with its trash because "the alternatives are not any more attractive."

As Harakal explained, other landfills in the area are closing, have much higher prices, or are so far away that transportation costs skyrocket.

ORIGINAL (Red)

200888

DER-RECEIVED
NORRISTOWN
OCT 29 1984

DONALD W. SNYDER, MEMBER
P.O. BOX 163
MAIN CAPITOL BUILDING
HARRISBURG, PA 17120

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 23, 1984

Wayne L. Lynn
Regional Solid Waste Manager
Norristown Regional Office
1875 New Hope Street
Norristown, PA 19401

Dear Mr. Lynn,

This is to confirm our meeting on October 31, 1984 at 7:30 PM at the South Whitehall Township Building at 4444 Walbert Avenue, Allentown. This building is located just off Route 309 where you would make a right turn traveling north at Walbert Avenue.

We have sent out letters to fourteen families who have been in contact with our office concerning the Novak Landfill, and have also contacted South Whitehall Township officials.

I look forward to seeing you at that time and receiving a status report on the operation of the landfill and closure plans.

Sincerely,

Don Snyder

Don Snyder
State Representative
134th Legislative District

Unofficial (Red)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
1875 New Hope Street
Norristown, PA 19401
215 270-1920

Novak Landfill
Lehigh Co.

October 30, 1984

Mr. Louis J. Novak
R.D. #1
Allentown, PA

Re: Processing and Disposal of Asbestos Containing Waste

Dear Mr. Novak:

This is to inform you of current Department policy regarding processing and disposal of asbestos containing waste. Unless acceptance of such waste is specifically addresssed in your Solid Waste Management permit, a permit amendment for this generic category is required should you wish to accept it. This permit amendment can be obtained via the Module 1 process. The Module 1 submission should specify the special handling procedures for the waste and quantities to be accepted.

Questions concerning the Module 1 process should be directed to Lawrence Lunsk, Regional Solid Waste Facilities Supervisor.

Very truly yours,

Wayne L. Lynn

WAYNE L. LYNN
Regional Solid Waste Manager

Re 30 1F(3)26/.1

200870

OA-501 12-67

COMMONWEALTH OF PENNSYLVANIA

November 1, 1984

SUBJECT: Novak Landfill
#100534
South Whitehall Township
Lehigh County

TO: Bruce Beitler
Regional Operations Supervisor

FROM: Joseph P. Pomponi
Field Operations Supervisor

DER-RECEIVED NORRISTOWN NOV 5 1984

Visit to Novak Landfill on October 31, 1984 with Wayne Lynn reveals following:

1. Some grading and seeding has occurred over trench area. Vegetation lacking to prevent erosion.

2. Some silt has been removed from western sedimentation pond, but little has been done to decrease acceleration of run off from area leading to pond.

3. Monitoring wells 5 and 6 have not been drilled.

4. Trench 4 is approximately 99% filled and highest area is approximately 15 feet from where trench 4 began.

4. Demolition area has expanded beyond telephone poles indicating right of way.

Recommendation:

Recommend Department issue order to close within 60 days. Any waste dumped at this site will only increase elevation of site. There remains little doubt that this site has exceeded its capacity to continue to accept refuse.

JPP/bal

ORIGINAL (Red)

200871

WED 11/14/84

Coplay poses no tax hike, but garbage fees going up

DER-RECEIVED
NORRISTOWN
NOV 28 1984

By JODI DUCKETT
Of The Morning Call

Coplay residents won't see an increase in the 10-mill property tax rate next year but will be hit with a hefty garbage fee increase if a proposed 1985 budget is passed by borough council.

The budget, revealed last night, calls for pickup rates of $110 for most residents, up $40. The senior citizen rate will be $82.50, up $30.

A 25-percent discount is given for payment before April 15.

Commercial customers will see their rates hiked about 10 percent. The increase is proportionately lower than for residents because commercial rates were hiked last year, said Council President Roland Yudt.

The pickup fee increase is necessary to offset a substantial increase in dumping charges by Louis Novak, owner of the South Whitehall Township landfill where Coplay dumps its garbage, Yudt said.

The rate hike from $4.50 to $6 per cubic yard, which was effective Oct. 1, will cost the borough an extra $20,000 in 1985, according to budget figures.

Yudt said last night the hike in pickup rates still does not cover anticipated expenses, although a $2,500 carryover from this year should balance the budget.

The total garbage collection budget is $101,658, up $11,832 from this year. Dumping fees are expected to be $46,000.

However, borough hall expenses will go down beginning next year when council makes its last payment on the building. The final payment is $22,580 in principal and interest, down $6,220 from this year.

Recreation costs are up $6,000 to $24,200 because of a $2,400 increase in expenditures for the Coplay Parkway and $3,000 for a new sewer line.

The police budget is $93,486, an increase of $4,462 over this year. The increase is primarily because of a six percent wage hike negotiated in a new three-year contract approved last month. The contract also includes a $500 bonus for each officer.

Budgeted expenditures for streets are $86,002, a $6,076 increase due primarily to wage increases and a $2,000 hike in street lighting costs.

Other notable changes include a $300 increase to $9,300 for the library and a $500 allocation for a pigeon control program.

Anticipated expenditures for workman's compensation insurance and liability insurance is down $1,500 to $16,000.

The borough expects to receive $31,885 in state liquid fuels taxes, up about $500 from this year. Anticipated expenditures include: $2,000 for snow removal, $16,755 for road construction and materials, $8,000 for repairs to Hokendauqua Street and $5,600 for Bridge Street.

Real estate tax receipts are expected to total $110,000, a $6,400 increase.

The owner of a home assessed at

Pennsylvania which advised her s had a right to attend the meeting.

Schrampf responded that he di not want "political influence at th meeting" and noted that the borou solicitor had advised the committe that it was not required to invite t mayor.

The borough code states the ma or may attend all regular and special council meetings, but there is provision giving her permission to attend special committee meeting said Solicitor Frank Yandrisevits.

Referring to the letter from the mayor's association, Yandrisevits said, "It was an opinion by a president of an association who has a bi ased standpoint."

Thought you would be interested in this - obviously a different man than last year - last year was just lighting for another year - was told that the [illegible] We have been trying to lower 5. [illegible] + putting in a park + trying to start letting people participate + to start letting people participate? Trench 5? Does he have participation? Trench 4 is as high as trench 3 - [illegible] Trench 4? He still the worst trench 4? [illegible] Bitch for any variations! 200872

OA-501 12-67

11 pulson - File

COMMONWEALTH OF PENNSYLVANIA

NOV 26 1984

November 21, 1984

SUBJECT: NOVAK LANDFILL #100534
Site Inspection and
Monitoring Well Sampling

TO: Joseph P. Pomponi
Field Operations Supervisor
Bethlehem District Office

FROM: James A. Dolan
Solid Waste Specialist
Bethlehem District Office

The following observations were made during the subject inspection and sampling:

1. Monitoring wells #5 and #6 are in place and properly constructed. Casings are 6-inch C. I. pipe with locking metal caps. Casings are 83 feet deep. The wells are numbered the opposite of how they appear on our plan.

2. Well depths are 150 feet for well #6 and 275 feet for well #5. Well #6 is located 285 feet west of Power Pole SW-A-8-11. Well #5 is located 330 feet west of #6 in an approximate lateral direction.

3. Sampling of wells #5 and #6 was conducted on November 20, 1 984 with W. B. Satterthwaite Associates. Samples of each well were taken for standard parameters, metals, phenols and TCE scan.

4. The entire site is strewn with blowing litter much the same as it has been in the past.

5. Some new vegetation is in evidence in scattered patches, but most of the area fill portion and the trench portion remains unvegetated.

6. Southern boundry of waste deposition is somewhere between P.P. & L. power poles SW-A-8-10 and SW-A-8-11. They are calling this trench #4; however, it appears that filling has taken up most of what the plans designate as trench #5.

7. Grading is taking place to the west of trench 4 and north of the temporary sedimentation pond. The extent and value of this grading cannot be determined at this time.

8. Some attempt has been made to eliminate low spots on the top of the area fill and previously filled trench portions. The worth of these actions could not be determined since the entire site was dry and frozen.

ORIGINAL (Red)

200873

9. The vertical height of the waste in trench 4 is nearly up to that of trench 3.

10. Soil is still being shifted around in the excavation to the south of the active trench.

11. A close inspection of the demolition area was not done, but appears, from a distance, to be full.

JAD:mln

Norristown File

[illegible] District Office
[illegible]

NOVEMBER 30, 1984

[illegible] Sanitary Landfill
[illegible]
South Whitehall Twp., Lehigh County
Trench Elevation & Boundary Survey

JOSEPH POMPONI
Field Operations Supervisor

MICHAEL G. MAIOLIS
Solid Waste Specialist

[illegible] 1984 representatives of the [illegible] Department of Environmental Resources, Joseph Pomponi, Gary Bonner, Dinesh [illegible] and myself surveyed [illegible] at the above-mentioned landfill. [illegible] was requested with [illegible] location for trench [illegible]. [illegible] measured [illegible] the [illegible] hole MWA #-13 and [illegible] at intervals to [illegible] the well located just [illegible] as a trench [illegible] (Fig. 1).

[illegible] that trench has been [illegible] in elevation [illegible] final grades for this area [illegible] on the [illegible] January 8, 1983. [illegible] from [illegible] 100 feet west [illegible] certified [illegible] 100 foot intervals to [illegible].

cc: B. Reitler
G. Bonner
D. Rajkotia

Filed

200875

Ovak Landfill Meeting - Norristown Office - 12/3/84

Bruce D. Beitler	Operations Supervisor	270-1920
Mike Marchi	Solid Waste Specialist	378-4175
GARY BONNER	COMPLIANCE SPECIALIST	270-1920
Vinod P. Rajkotia	DER Engineer	270-1920
Joyl Morgan	Bethlehem D.E.R	861 2070
James A. Dolan	Bethlehem DER	861-2070
John F. Fanelinski	Civil Scientist	270-1931
JOE MANDUKE	REGIONAL HYDROGEOLOGIST	2701930
Walter B Satterthwaite	WBSA	692 5770
Louis J. Mock	Montgomery	
Richard T. Wroblewski	WBSA	692-5770

Lehigh Co

Department of Environmental Resources

[illegible] Cone Street
[illegible], PA 19401
[illegible]-1020

December 6, 1984

Department of State Corporation [illegible]
308 North Office Building
Harrisburg, PA 17120

Gentlemen:

I am requesting corporate [illegible] and certified copy of corporate records for Novak Sanitary Landfill, Inc. These are to be used for [illegible].

If you have any questions, [illegible] at [illegible].

Very truly yours,

GARY BONNER
Compliance Specialist

Re: 30 2W341.13

200877

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

11 N. FIVE POINTS ROAD
WEST CHESTER, PA 19380
(215) 692-5770

Walter B. Satterthwaite, P.G.
President
David F. Lakatos, P.E.
Principal

DER-RECEIVED
NORRISTOWN

DEC 12 1984

December 7, 1984

Mr. Bruce Beitler
Chief, Solid Waste Operations
Pennsylvania Department of Environmental Resources
1875 New Hope Street
Norristown, PA 19401

Lehigh Co.

Re: Novak Landfill near Allentown, Pennsylvania

Dear Bruce:

In returning from our meeting on December 3, in light of your staff's estimate that landfilled materials in Trench 4 are as much as 20 feet too high and that the permitted area had been already exceeded, we felt it necessary to determine the accuracy of such conditions and to review alternatives with Mr. Novak and his attorney, in regard to the request for voluntary closure of the facility.

In order to evaluate site conditions, we have made surveying traverses at three points across the entire trench fill area. I am given to understand that all grades, including the western end of Trench 4, are in conformance with the Costello plans that are the basis of the permit. On the very western end of Trench 4, additional fill material amounting to approximately 6000 cubic yards represents a maximum of 5 to 7 feet above the design.

We are presently comparing the actual location of Trench 4 and the proposed Trench 5 with the Costello drawings. At this time, it appears that due to normal separation between trenches and somewhat irregular dimensions, a considerable portion of the proposed Trench 5 occurs within the permitted area. We are at present also determining the extent of earthen material already removed from the proposed Trench 5 and will be shortly completing estimates of the available stockpiled earthen materials.

In view of these site conditions, I cannot in good faith recommend to my client that he accept voluntary closure. I would alternatively like to recommend that we schedule a meeting in the field between your engineering staff and our people who have completed this survey work to define where things are actually and the best approach to achieve completion and closure of this landfill in an environmentally sound manner.

200878

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

I will be contacting you by telephone to hopefully determine the earliest convenient date next week that this may be accomplished.

Very truly yours,

Walter B. Satterthwaite/eks

Walter B. Satterthwaite, P.G.
President

WBS/eks
cc: Mr. Louis Novak, Sr.
Martin J. Karess, Esquire

200879

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
1875 New Hope Street
Norristown, PA 19401
215 270-1948

December 13, 1984

IN THE MATTER OF:

Louis J. Novak, Sr.	:	Solid Waste Disposal Facility
Hilda Novak	:	Permit No. 100534
Novak Sanitary Landfill, Inc.	:	
South Whitehall Township	:	
Lehigh County	:	

ORDER AND CIVIL PENALTY ASSESSMENT

Now this thirteenth day of December, 1984, the Commonwealth of Pennsylvania, Department of Environmental Resources ("Department") has made the following determinations:

A. Louis J. Novak, Sr. ("Louis") and Hilda Novak ("Hilda") own a solid waste disposal site ("Novak Landfill") on Orefield Road in South Whitehall Township, Lehigh County.

B. Louis and Hilda are corporate officers of Novak Sanitary Landfill, Incorporated ("NSL"), a Pennsylvania corporation doing business at the Novak Landfill.

C. Louis and NSL operate Novak Landfill.

D. Louis, Hilda and NSL are herein collectively referred to as "Novak".

E. On March 24, 1972, the Department issued to Louis, Solid Waste Management Permit Number 100534 for the operation of a natural renovation type of sanitary landfill for the disposal of municipal waste.

F. On September 15, 1982, the Department amended permit number 100534 to allow for installation and operation of a methane gas venting system at the Novak Landfill.

G. Since at least July 14, 1982, and observed by the Department during seven (7) inspections, the Novak Landfill exceeded the final vertical elevations and lateral boundaries allowed by Solid Waste Management Permit Number 100534 in violation of Sections 201, 610(1), 610(2) and 610(4) of the Solid Waste Act, 35 P.S. §§ 6018.201, 6018.610(1), 6018.610(2) and 6018.610(4).

H. The original design concept of the Novak Landfill, in accordance with 25 Pa. Code Chapter 75, was based on maintaining a 1:1 ratio of depth of renovating soil beneath the landfill to depth of solid waste in the landfill, to reno-

vate any leachate generated by the landfill before it enters groundwater. The approved final elevations were designed to maintain this ratio. By exceeding the approved final elevations, the Novak Landfill threatens to produce leachate whose quantity and quality would exceed the renovating capacity of the soil beneath the landfill and contaminate groundwater.

I. The existing groundwater monitoring system at the Novak Landfill is inadequate under the requirements of the Solid Waste Act and the Clean Streams Law. Specifically, wells Nos. 5 and 6 were required by the approved plans to have been installed prior to any disposal on the trench area of the Novak Landfill, and were to have been sampled quarterly with the analysis results submitted to the Department. Disposal operations on the trench area commenced on August 30, 1982 and these wells were not installed until November 7, 1984. The results of sampling these wells have not been submitted to the Department. Said sample results represent a portion of the data needed for the Department to assess whether additional groundwater monitoring is necessary at the Novak Landfill in order to provide an acceptable groundwater monitoring system.

J. As a result of, inter alia, excessive deposits of waste, Novak Landfill is causing or threatening to cause pollution of groundwater, a water of the Commonwealth, with leachate, an industrial waste as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1, and a solid waste as defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.

K. From at least March 12, 1982, until the date of this Order, and observed by the Department during 38 inspections, the most recent of which was on October 9, 1984, completed portions of the Novak Landfill have not received adequate final earth cover and have not been properly graded and vegetated in violation of 25 Pa. Code 75.24(c)(2)(xxi) and (xxii), 75.26(o), and 75.26(p) and, therefore, in violation of Section 610(2), 610(4) and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9).

L. From at least March 12, 1982, until the date of this Order, surface water at the Novak Landfill has not been managed to minimize its percolation into the solid waste deposits. Specifically, the Novak Landfill is graded such that surface water cannot drain off many areas, and Department inspections on 22 occasions, the most recent of which were on July 19, 1984 and October 9, 1984, found depressions or surface water ponded on the landfill. This improper management of surface water is in violation of 25 Pa. Code 75.24(c)(2)(xviii) and therefore in violation of Sections 610(2), and 610(4) and 610(9) of the Solid Waste Act 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9).

ORIGINAL (Red)

M. Novak has engaged in earth moving activities at the Novak Landfill. The erosion and sedimentation controls at the Novak Landfill are not adequate to meet the requirements of 25 Pa. Code Chapters 75 and 102 of the Rules and Regulations of the Department. Novak does not have an erosion and sedimen-

tation control plan in violation of 25 Pa. Code Chapter 102.4 and, therefore, in violation of Sections 402(a) and 611 of the Clean Streams Law, 35 P.S. §§691.402(a) and 691.611.

N. Novak has not completed installation of the gas venting system required by Solid Waste Management Permit Number 100534.

O. Novak has not operated the Novak Landfill in accordance with 25 Pa. Code Chapter 75 of the Rules and Regulations of the Department. Specifically, Department inspections of the Novak Landfill on March 12, 1982, April 12, 1982, July 14, 1982, October 13, 1982, October 27, 1982, December 8, 1982, January 6, 1983, February 28, 1983, March 15, 1983, April 14, 1983, April 29, 1983, June 3, 1983, June 23, 1983, August 2, 1983, April 3, 1984, April 27, 1984, November 30, 1984 and December 7, 1984, have found that adequate daily cover material has not been provided at the Novak Landfill in violation of 25 Pa. Code 75.26(1) and therefore in violation of Sections 610(2), 610(4), and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9).

P. The Department has determined that Novak has not filed a collateral bond for the land occupied by the Novak Landfill as required by Section 505(a) of the Solid Waste Act, 35 P.S. §6018.505(a).

Q. The aforementioned violations and conditions at the Novak Landfill constitute a statutory public nuisance pursuant to Section 601 of the Solid Waste Act, 35 P.S. § 6018.601 and Sections 307 and/or 401 of the Clean Streams Law, 35 P.S. §§ 691.307 and 691.401.

R. The aforementioned violations and conditions at the Novak Landfill constitute a common law public nuisance and constitute a danger to public health and safety and to the environment, and are unlawful pursuant to Sections 610 of the Solid Waste Act, 35 P.S. §6018.610, and Section 611 of the Clean Streams Law, 35 P.S. § 691.611.

NOW, THEREFORE, on this thirteenth day of December, 1984 pursuant to Sections 104(7), 104(13), 201, 505, 601, 602, 610(1), 610(2), 610(4), and 610(9) of the Pennsylvania Solid Waste Management Act, the Act of July 7, 1980, No. 97, P.L. 380, 35 P.S. §§ 6018.104(7), 6018.104(13) 6018.201, 6018.505, 6018.601, 6018.602, 6018.610(1), 6018.610(2), 6018.610(4), and 6018.610(9); Sections 301, 307, 316, 401, 610 and 611 of the Pennsylvania Clean Streams Law, the Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§ 691.301, 691.307, 691.316, 691.401, 691.610, and 691.611; and § 1917-A of the Administrative Code of 1929, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 it is hereby ordered that Louis J. Novak, Sr., Hilda Novak, Louis and Hilda Novak as husband and wife, and Novak Sanitary Landfill, Inc. (collectively, Novak) are ~~and~~ (Red) shall be jointly and severally liable to do the following:

1. Novak shall cease all solid waste disposal operations at the Novak Landfill by 12:01 A.M., Monday, December 17, 1984.

2. Novak shall close the Novak Landfill in accordance with 25 Pa. Code Chapter 75 and the following schedule:

   A. Novak shall complete covering the Novak Landfill with two feet of final cover soil by December 29, 1984.

   B. Novak shall grade the Novak Landfill in accordance with permit No. 100534, or as approved by the Department by January 31, 1985.

   C. Novak shall complete installation of the approved gas venting system by January 31, 1985.

   D. Novak shall seed and stabilize all disturbed areas of the Novak Landfill by March 31, 1985.

   E. By January 15, 1985 Novak shall submit for Department modification or approval, an erosion and sedimentation control plan developed in accordance with 25 Pa. Code Chapters 75 and 102 and approved by the Soil Conservation Service. Said plan shall include an implementation schedule providing for completion of construction of necessary erosion and sedimentation control facilities by no later than March 15, 1985.

   F. By March 1, 1985 Novak shall develop and submit for Department modification or approval, a post closure maintenance plan.

   G. Upon Department approval or approval with modification, Novak shall implement the approved or modified plans in paragraphs 4E and 4F. Said approved or modified plans are hereby incorporated and enforceable as part of this order.

3. Novak shall submit to the Department, within five (5) days of receiving them, the results of the recent sampling of wells Nos. 5 and 6. Novak shall continue to sample all of the Novak Landfill monitoring wells quarterly and submit the results to the Department in accordance with 25 Pa. Code Chapter 75 and the approved plans.

4. Novak shall immediately implement temporary erosion and sedimentation controls until the erosion and sedimentation plan specified in paragraph 2E herein, is approved and implemented. Such controls may include, but shall not be limited to construction of ditches to divert runoff to sedimentation basins and use of straw bales.

5. By no later than December 31, 1984 Novak shall retain a qualified hydrogeologist and submit to the Department for modification or approval, a work plan describing the scope and methods of the hydrogeologic study to determine the extent and impact of groundwater contamination at and in the vicinity of the Novak Landfill. The work plan shall consider the need for additional wells and/or the use of existing off-site private wells. The work plan shall: include target dates for completion of the various tasks

ORIGINAL (Red)

comprising the study; and a final report with recommendations. The scope of the study shall include, as a minimum:

A. Listings of groundwater flows and directions.

B. Fracture trace and sinkhole analysis of site and surroundings.

C. Effect of the nearby abandoned mine on groundwater flow.

D. Analysis of potential for groundwater mounding.

E. Analysis of groundwater quality.

F. Definition of the present nature and extent of groundwater pollution.

G. Evaluation of the potential for further spread of groundwater pollution.

H. Rate of discharge and extent of any contamination.

I. Definition of all sources of the pollution and a description of the means and methods proposed or used for the elimination of said sources.

J. Evaluation of alternatives available to return the soil and groundwater to their natural qualities.

K. The groundwater quality monitoring program which will allow for evaluation of long term groundwater quality conditions and which will insure the protection of the public health.

L. The conclusions and proposed actions to return soil and groundwater to their natural quality and a schedule for accomplishing such actions.

Novak shall conduct the hydrogeologic study upon the Department's approval or approval with modification of the work plan.

6. Upon the Department's approval or approval with modification of the study's final report Novak shall immediately take such action to determine necessary by the report or the Department's modification thereof, to eliminate soil and groundwater pollution. Said approved or modified final report is hereby incorporated and enforceable as part of this Order.

7. By no later than December 31, 1984, Novak shall submit to the Department an acceptable bond on forms provided by the Department for the closure of Novak Landfill. The bond shall comply with the requirements of Section 505 of the Solid Waste Act, shall be in the amount of $300,000.00 and shall name the Commonwealth of Pennsylvania as obligee.

ORIGINAL (Red)

200884

CIVIL PENALTY ASSESSMENT

The Department has the power and authority to assess civil penalties for each and every violation of the Solid Waste Act and the Rules and Regulation promulgated thereunder, and an amount no greater than $25,000.00 per violation per day: 35 P.S. § 6018.605. In assessing a civil penalty for the violations specified herein, the Department has considered the following relevant factors: willfulness of the violations, damage to air, water, land or other natural resources of the Commonwealth or their uses, and cost of the Commonwealth of investigating the violations.

NOW, THEREFORE, pursuant to Sections 605 of the Solid Waste Act, 35 P.S. § 6018.605, the Department hereby assesses upon Louis J. Novak, Sr., Hilda Novak, Louis and Hilda Novak as husband and wife, and Novak Sanitary Landfill (collectively Novak)the following Civil Penalty.

1. For exceeding the final vertical elevations and lateral boundaries allowed by Solid Waste Management Permit Number 100534 in violation of Sections 201, 610(1), 610(2) and 610(4) of the Solid Waste Act, 35 P.S. §§ 6018.201, 6018.610(1), 6018.610(2) and 6018.610(4), Novak is assessed a civil penalty of $15,000.00.

2. For maintaining a groundwater monitoring system not meeting the requirements of the Solid Waste Act and the Clean Streams Law, and not in accordance with the approved permit plans, in violation of Sections 610(4) and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(4) and 6018.610(9), on October 31, 1984, Novak is assessed a Civil Penalty of $10,000.00.

3. For maintaining inadequate final cover, improper slopes and inadequate vegetation on completed portions of the Novak Landfill on October 9, 1984, in violation of 25 Pa. Code 75.24(c)(2)(xxi) and (xxii), 75.26(o), and 75.26(p) and, therefore, in violation of Section 610(2), 610(4) and 610(9) of the Solid Waste Act, 25 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9), Novak is assessed a Civil Penalty of $6,000.00.

4. For the improper management of surface water at the Novak Landfill on July 19, 1984 and October 9, 1984, in violation of 25 Pa. Code 75.24(c)(2)(xviii) and therefore in violation of Sections 610(2), and 610(4) and 610(9) of the Solid Waste Act 35 P.S. §§ 6018.610(2), and 6018.610(4), and 6018.610(9), Novak is assessed a Civil Penalty of $6,000.00.

5. For not providing adequate daily cover on March 12, 1982, April 12, 1982, July 14, 1982, October 13, 1982, October 27, 1982, December 8, 1982, January 6, 1983, February 28, 1983, March 15, 1983, April 14, 1983, April 29, 1983, June 3, 1983, June 23, 1983, August 2, 1983, April 3, 1984, April 27, 1984, November 30, 1984 and December 7, 1984,

in violation of 25 Pa. Code 75.26(1) and therefore in violation of Sections 610(2), 610(4), and 610(9) of the Solid Waste Act, 35 P.S. §§ 6018.610(2), 6018.610(4), and 6018.610(9). Novak is assessed a civil penalty of $9,000.00.

Total Civil Penalty of $46,000.00.

This penalty shall be paid to the Commonwealth of Pennsylvania - Solid Waste Abatement Fund and shall be forwarded within 30 days of receipt of this order and civil penalty assessment to the Pennsylvania Department of Environmental Resources, Bureau of Solid Waste Management, 1875 New Hope Street, Norristown, Pennsylvania 19401, Attention: Wayne L. Lynn, Regional Solid Waste Manager. The assessment of the foresaid civil penalty shall not waive the rights of the Department to proceed with any other remedy at law or in equity for the offense as specified herein.

This action of the Department may be appealable to the Environmental Hearing Board, Third Floor, 221 N. Second Street, Harrisburg, PA 17101, (717-787-3483) by any aggrieved person pursuant to Section 1921 A of the Administrative Code of 1929, 71 P.S. Section 510-21; and the Administrative Agency Law, 2 Pa. C.S., Chapter 5A. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the regulations governing practice and procedure before the Board may be obtained from the Board. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

12/13/84
DATE

BY: Wayne L. Lynn
WAYNE L. LYNN
REGIONAL SOLID WASTE MANAGER

SWMCOA/16.2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
NORRISTOWN REGIONAL OFFICE
1875 New Hope Street
Norristown, PA 19401

December 14, 1984

Regional Press Release No. 84-58
Contact: Ronn Thomas
Telephone: (215) 270-1913

FOR IMMEDIATE RELEASE:

NORRISTOWN, PA (December 13) - Southeast Regional Director, Leon T. Gonshor, today announced that DER had ordered the Novak Sanitary Landfill in South Whitehall Township, Lehigh County, closed as of December 17. DER's order included civil penalties totaling $46,000 against Louis J. Novak and Hilda Novak, owners and operators of the landfill and requires them to submit a $300,000 closure bond by December 31.

The 60 acre landfill exceeded final height elevations and lateral boundaries as detailed by their solid waste management permit, issued March 24, 1972. DER inspections have also found the existing groundwater monitoring system at the landfill is inadequate under the requirements of the Solid Waste Act and Clean Streams Law.

Civil penalties resulted from inspections by DER staff in the last several months that revealed five continuing problems, including exceeding permitted landfill boundaries; inadequate surface water management; inadequate groundwater monitoring; improper slopes and vegetation and inadequate daily cover of the waste.

ORIGINAL (Red)

Along with the penalties and bond, the Novak's were ordered to cease all solid waste disposal operations by Monday, December 17, complete covering all waste

- more -

200887

with two feet of soil by December 29; submit an erosion and sedimentation control plan by January 15, 1985; and install an approved gas venting system by January 31, 1985.

Additionally, the order requires the operators to obtain a qualified hydrogeologist and submit a plan to DER describing a study to determine the extent of groundwater contamination in the area.

The order and penalties do not restrict further action by DER. Any appeal of the order or assessment would be heard by the Environmental Hearing Board.

# # #

OA-501 12-67

COMMONWEALTH OF PENNSYLVANIA

December 14, 1984

File: Novak Landfill
Lehigh Co.

SUBJECT: ORDER AND CIVIL PENALTY ASSESSMENT DELIVERY

TO: File

FROM: James A. Dolan
Solid Waste Specialist
Bethlehem District Office

At 07:35 on this date, three copies of the subject order for the Novak Landfill were personally delivered to Mr. Louis J. Novak, Sr. at the Novak Landfill in South Whitehall Township, Pennsylvania.

JAD:mln

200889

OA-501 12-67

COMMONWEALTH OF PENNSYLVANIA

December 17, 1984

SUBJECT: 100534
NOVAK LANDFILL
~~South Whitehall~~ Township, Lehigh County
12/17/84 Arrived: 8:40 AM, ~~Departed:~~ 9:45 AM; Weather: light drizzle

TO: Bruce Beitler
Regional Operations Supervisor
Norristown Office

FROM: Joseph P. Pomponi
Field Operations Supervisor
Bethlehem District Office

Visit to the above site pursuant to Departmental Order reveals the following:

No dumping of solid waste (gates closed). Activity on site consists of recycling facility sorting and bailing cardboard and paper. Bulldozer compacting solid waste on Trench 4.

Trench 4 elevation of solid waste approximately one (1) foot above berm and approximately 10-15 feet above undisturbed earth south of Trench 5. Scattered areas of Trench 4 have been covered with 6 inches of soil but remaining area (approximately 80%) is not covered and exposed solid waste is evident. Small amount of litter south of Trench 4 berm.

Trench 5 has been excavated to a depth of approximately 8 feet, approximately 80 feet wide and to the entire length of Trench 4, except an area approximately 50 feet south and west of Trench 4.

Access road very muddy. Sedimentation pond further developed on western end of trench area. Very little water in pond.

JPP:mln

ORIGINAL

200890

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

11 N. FIVE POINTS ROAD
WEST CHESTER, PA 19380
(215) 692-5770

Walter B. Satterthwaite, P.G.
President
David F. Lakatos, P.E.
Principal

NOVAK Landfill
Lehigh Co.

December 17, 1984

Mr. Bruce Beitler
Regional Operations Cheif
Bureau Solid Waste Management
Pennsylvania Department of
Environmental Resources
1875 New Hope Street
Norristown, PA

Dear Bruce:

Enclosed, find the laboratory results from groundwater sampling at the Novak Sanitary Landfill on November 20, 1984. This sampling entailed the new PA DER annual solid waste list of parameters for the two new Monitoring Wells, MW 5 and MW 6, and the quarterly parameters for the other four monitoring wells. The chain of custody documentation is also enclosed. Note that Monitor Well #7 is the field blank. Although field filtering was not possible, filtering was done by the laboratory prior to fixing, so that dissolved metal values were reported.

The quality of water sampled from MW 1 and MW 2 differs somewhat from the other wells. MW 1 shows the presence of several organics along with the highest conductivity and chloride contents. It is our feeling that the appearance of these constituents in MW 1 and MW 2 is an artifact of their construction. In that these wells have only 10' or less of solid steel casing with bedrock, we feel they do not adequately represent groundwater quality on the site, but are influenced by shallow flow through the unconsolidated zone. It should be noted that the other four wells, all cased to bedrock, show significantly lower chlorides, COD, conductivity and solids contents than MW 1 and MW 2. The new monitoring wells, MW 5 and MW 6, show no species of purgeable organic compounds. This confirms the results of testing MW 3 and MW 4 for purgeable organic compounds (VOA) in June 1984, where the only species found was a common laboratory contaminent (Methylene Chloride), at low levels (16-17 ppb). Metals levels in the two new wells are also quite low. In fact, of the four latter wells (MW 3, MW 4, MW 5, and MW 6), the only cases exceeding drinking water standards (USEPA and US Public Health Service) were Total Residue (MW 3 700 vs. lim 500 ppm USPHS) and Manganese (MW 6 1.96 ppm vs. 0.050 ppm USPHS).

Based on these results, it seems clear that the direction and construction characteristics of MW 1 and MW 2 reflect water quality that is not representative of groundwater quality in the other wells. The high quality of the groundwater in the other four wells indicates that the

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200891

WALTER B. SATTERTHWAITE ASSOCIATES, INC.

natural renovative processes are adequately protecting the quality of groundwater at this site.

If you have any questions about this data or if we may be of any further assistance, please call.

Best Regards,

Walter B. Satterthwaite Associates, Inc.
David P. Steele

DPS/dah

Enclosures

cc: Mr. Joseph Manduke
Mr. Joseph Pomponi

ORIGINAL (Red)

200892

Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35743-4 SAMPLED RECEIVED: 11/21/84 REPORTED 12/14/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION Project Name: Novak
Project #266-84A
Purchase Order #606

SAMPLED BY

- - - - - - - - -

COMPLETED REPORT

Lab. No.	Sample Description	µg/L TOX
35743	Monitoring Well #5	*
35744	Monitoring Well #6	<20
35745	Monitoring Well #7	<20

* Sample broken in transit to subcontracted laboratory

Note: TOX Analyses subcontracted to outside laboratory

Respectfully submitted,

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH

cc: John Roberts (2)

ORIGINAL (Red)

200893

REPLY TO: HOME OFFICE • 345 N. Wyomissing Blvd., P.O. Box 6307, Reading, PA 19610-0307 • (215) 376-6581
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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35745 SAMPLED: 11/20/84 RECEIVED: 11/21/84 REPORTED: 12/6/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project #266-84A
Monitoring Well #7
Sat #1850-1855
PO 606

SAMPLED BY

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	3
Arsenic	mg/L As	<0.002
Barium	mg/L Ba	<0.030
BOD-5 Day	mg/L	<0.50
Cadmium	mg/L Cd	<0.003
Chemical Oxygen Demand	mg/L	0.44
Chloride	mg/L Cl^-	1
Chromium, Hexavalent	mg/L Cr^{+6}	<0.010
Chromium, Total	mg/L Cr	<0.010
Conductance, Spec.	µmho/cm	2.77
Copper	mg/L Cu	0.031
Fluoride	mg/L F^-	<0.020
Iron, Total	mg/L Fe	0.043
Lead	mg/L Pb	<0.040
Manganese	mg/L Mn	<0.006
Mercury	mg/L Hg	<0.0005
Nickel	mg/L Ni	0.023
Nitrate	mg/L NO_3.N	<1.0
Nitrogen, Kjeldahl	mg/L N	0.22
pH		5.8
Phenols	µg/L C_6H_5OH	<1.0
Residue, Total @ 105°C	mg/L	<1.0
Residue, Diss. @ 180°C	mg/L	<1.0
Selenium	mg/L Se	<0.002
Silver	mg/L Ag	<0.006
Sodium	mg/L Na	0.290
Sulfate	mg/L SO_4^{--}	<1.0
Total Organic Carbon	mg/L	1.0
Zinc	mg/L Zn	0.027

Note: Metals analysis performed on filtered portion

Respectfully submitted ORIGINAL (Red)

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200894

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O BALTIMORE OFFICE • 5509 York Road, Baltimore, Maryland 21212-3897 • (301) 435-3400

Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35744 SAMPLED: 11/20/84 10:15 AM RECEIVED: 11/21/84 REPORTED: 12/3/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project #266-84A
Monitoring Well #6
Set #1844-1849
PO 606

SAMPLED BY

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	215
Arsenic	mg/L As	<0.002
Barium	mg/L Ba	0.136
BOD-5 Day	mg/L	<0.50
Cadmium	mg/L Cd	<0.003
Chemical Oxygen Demand	mg/L	5.65
Chloride	mg/L Cl^-	10
Chromium, Hexavalent	mg/L Cr^{+6}	<0.010
Chromium, Total	mg/L Cr	<0.010
Conductance, Spec.	µmho/cm	490
Copper	mg/L Cu	0.034
Fluoride	mg/L F^-	0.060
Iron, Total	mg/L Fe	0.054
Lead	mg/L Pb	<0.040
Manganese	mg/L Mn	1.96
Mercury	mg/L Hg	<0.0005
Nickel	mg/L Ni	0.036
Nitrate	mg/L NO_3-N	<1.0
Nitrogen, Kjeldahl	mg/L N	1.12
pH		7.3
Phenols	µg/L C_6H_5OH	2.0
Residue, Total @ 105°C	mg/L	374
Residue, Diss. @ 180°C	mg/L	289
Selenium	mg/L Se	<0.002
Silver	mg/L Ag	<0.006
Sodium	mg/L Na	7.40
Sulfate	mg/L SO_4^{--}	46.3
Total Organic Carbon	mg/L	27.8
Zinc	mg/L Zn	0.047

Note: Metals analysis performed on filtered portion

Respectfully submitted,

R. K. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200895

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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO. 35744 SAMPLED RECEIVED 11/21/84 REPORTED 12/6/84

CLIENT: Walter B. Satterthwaite Associates, Inc
11 North Five Point Road, West Chester, PA 19380

SAMPLE DESCRIPTION Analysis of Water - PO No. 606 SAMPLED BY
Monitoring Well No. 6 - Satterthwaite Sample Nos 1844 to 1849
Analyzed by N. Goldberg 11/28/84

PURGEABLES	Concentration ug/L
Acrolein	<80
Acrylonitrile	< 5
Benzene	< 5
Bromomethane	< 5
Bromodichloromethane	< 5
Bromoform	< 5
Carbon tetrachloride	< 5
Chlorobenzene	< 5
Chloroethane	< 5
2-Chloroethylvinyl ether	< 5
Chloroform	< 5
Chloromethane	< 5
Dibromochloromethane	< 5
1,1-Dichloroethane	< 5
1,2-Dichloroethane	< 5
1,1-Dichloroethene	< 5
trans-1,2-Dichloroethene	< 5
1,2-Dichloropropane	< 5
cis-1,3-Dichloropropene	< 5
trans-1,3-Dichloropropene	< 5
Ethylbenzene	< 5
Methylene chloride	< 5
1,1,2,2-Tetrachloroethane	< 5
1,1,2,2-Tetrachloroethene	< 5
1,1,1-Trichloroethane	< 5
1,1,2-Trichloroethane	< 5
Trichloroethene	< 5
Toluene	< 5
Vinyl chloride	< 5

ORIGINAL (Red)

ONB
cc: John Roberts (2) ~

Respectfully submitted,

Nancy H. Goldberg

Nancy H. Goldberg - Chemist
Chemistry Laboratory

200896

PLY TO: ☐ HOME OFFICE • 345 N. Wyomissing Blvd., P.O. Box 6307, Reading, PA 19610-0307 • (215) 376-6581
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☐ BALTIMORE OFFICE • [illegible]

Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35743 SAMPLED: 11/20/84 11:20 AM RECEIVED: 11/21/84 REPORTED: 12/6/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project #266-84A
Monitoring Well #5
Sat #1836-1843
PO 606

SAMPLED BY

- - - - - - - - - - -

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	182
Arsenic	mg/L As	<0.002
Barium	mg/L Ba	<0.030
BOD-5 Day	mg/L	2.3
Cadmium	mg/L Cd	<0.003
Chemical Oxygen Demand	mg/L	3.48
Chloride	mg/L Cl^-	3
Chromium, Hexavalent	mg/L Cr^{+6}	<0.010
Chromium, Total	mg/L Cr	<0.010
Conductance, Spec.	µmho/cm	395
Copper	mg/L Cu	0.027
Fluoride	mg/L F	0.160
Iron, Total	mg/L Fe	0.062
Lead	mg/L Pb	<0.040
Manganese	mg/L Mn	0.019
Mercury	mg/L Hg	<0.0005
Nickel	mg/L Ni	0.028
Nitrate	mg/L NO_3-N	<1.0
Nitrogen, Kjeldahl	mg/L N	0.56
pH		7.5
Phenols	µg/L C_6H_5OH	1.8
Residue, Total @ 105°C	mg/L	425
Residue, Diss. @ 180°C	mg/L	230
Selenium	mg/L Se	<0.002
Silver	mg/L Ag	<0.008
Sodium	mg/L Na	2.40
Sulfate	mg/L SO_4^{--}	35.9
Total Organic Carbon	mg/L	24.3
Zinc	mg/L Zn	0.027

AR 20097

AR200897

ORIGINAL

Note: Metals analysis performed on filtered portion

Respectfully submitted,

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO 35743 SAMPLED RECEIVED 11/21/84 REPORTED 12/6/84

CLIENT: Walter B. Satterthwaite Associates, Inc.
11 North Five Point Road, West Chester, PA 19380

SAMPLE DESCRIPTION: Analysis of Water, PO No. 606
Project Name: Novak - Project No. 266-84A - SAMPLED BY Monitoring Well No. 5
Satterthwaite Sample Nos.1838 to 1843 - Analyzed by N. Goldberg 11/27/84

PURGEABLES	Concentration µg/L
Acrolein	<80
Acrylonitrile	< 5
Benzene	< 5
Bromomethane	< 5
Bromodichloromethane	< 5
Bromoform	< 5
Carbon tetrachloride	< 5
Chlorobenzene	< 5
Chloroethane	< 5
2-Chloroethylvinyl ether	< 5
Chloroform	< 5
Chloromethane	< 5
Dibromochloromethane	< 5
1,1-Dichloroethane	< 5
1,2-Dichloroethane	< 5
1,1-Dichloroethene	< 5
trans-1,2-Dichloroethene	< 5
1,2-Dichloropropane	< 5
cis-1,3-Dichloropropene	< 5
trans-1,3-Dichloropropene	< 5
Ethylbenzene	< 5
Methylene chloride	< 5
1,1,2,2-Tetrachloroethane	< 5
1,1,2,2-Tetrachloroethene	< 5
1,1,1-Trichloroethane	< 5
1,1,2-Trichloroethane	< 5
Trichloroethene	< 5
Toluene	< 5
Vinyl chloride	< 5

ORIGINAL (Red)

OMD
cc: John Roberts (2)

Respectfully submitted,
N. H. Goldberg
N. H. Goldberg - Chemist
Chemistry Laboratory

200898

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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35742 SAMPLED 11/20/84 2 PM RECEIVED 11/21/84 REPORTED 12/6/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project #266-84A
Monitoring Well #4
Sat #1835-1837
PO 606

SAMPLED BY:

- - - - - - - -

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	276
BOD - 5 Day	mg/L	0.50
Chemical Oxygen Demand	mg/L	0.44
Chloride	mg/L Cl^-	36
Conductance, Spec.	µmho/cm	584
Iron, Total	mg/L Fe	0.025
pH		7.3
Residue, Total @ 105°C	mg/L	379
Sulfate	mg/L SO_4^{--}	5.75

Note: Metals analysis performed on filtered portion

Respectfully submitted,

ORIGINAL (Red)

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200899

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O BALTIMORE OFFICE

Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35741 SAMPLED: 11/20/84 1:45 PM RECEIVED: 11/21/84 REPORTED: 12/6/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novac
Project #266-84A
Monitoring Well #3
Sat #1832-1834
PO 606

SAMPLED BY

- - - - - - - - - - -

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	384
BOD - 5 Day	mg/L	0.30
Chemical Oxygen Demand	mg/L	1.30
Chloride	mg/L Cl^-	114
Conductance, Spec.	µmho/cm	1000
Iron, Total	mg/L Fe	0.051
pH		7.2
Residue, Total @ 105°C	mg/L	700
Sulfate	mg/L $SO_4^=$	39.0

Note: Metals analysis performed on filtered portion

Respectfully submitted,

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200900

REPLY TO: O HOME OFFICE • 345 N. Wyomissing Blvd., P.O. Box 6307, Reading, PA 19610-0307 • (215) 376-6581
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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35740 SAMPLED: 11/20/84 RECEIVED: 11/21/84 REPORTED:

CLIENT: Walter B. Satterthwaite Associates, Inc.
11 North Five Point Road, West Chester, PA 19380

SAMPLE DESCRIPTION Analysis of Water - Monitoring Well No. 2 SAMPLED BY WBS, Inc.
Analyzed 11/26/84 by N. H. Goldberg of Spotts, Stevens & McCoy
P. O. No: 606

PURGEABLES	Concentration µg/L
Acrolein	<80
Acrylonitrile	< 5
Benzene	< 5
Bromomethane	< 5
Bromodichloromethane	< 5
Bromoform	< 5
Carbon tetrachloride	< 5
Chlorobenzene	< 5
Chloroethane	< 5
2-Chloroethylvinyl ether	< 5
Chloroform	< 5
Chloromethane	< 5
Dibromochloromethane	< 5
1,1-Dichloroethane	25
1,2-Dichloroethane	< 5
1,1-Dichloroethene	< 5
trans-1,2-Dichloroethene	43
1,2-Dichloropropane	< 5
cis-1,3-Dichloropropene	< 5
trans-1,3-Dichloropropene	< 5
Ethylbenzene	< 5
Methylene chloride	< 5
1,1,2,2-Tetrachloroethane	< 5
1,1,2,2-Tetrachloroethene	< 5
1,1,1-Trichloroethane	< 5
1,1,2-Trichloroethane	< 5
Trichloroethene	< 5
Toluene	< 5
Vinyl chloride	< 5

ORIGINAL (Red)

OMD
cc: Charles Miller (2)

Respectfully submitted,
Nancy H. Goldberg
Nancy H. Goldberg - Chemist
Chemistry Laboratory

200901

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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35740 SAMPLED: 11/20/84 2:45 PM RECEIVED: 11/21/84 REPORTED: 12/6/84

CLIENT: Water B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project # 266-84A
Monitoring Well #2
Set #1828-1831
PO 606

SAMPLED BY

- - - - - - - -

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	504
BOD - 5 Day	mg/L	<0.50
Chemical Oxygen Demand	mg/L	24.8
Chloride	mg/L Cl^-	18
Conductance, Spec.	µmho/cm	908
Iron, Total	mg/L Fe	3.55
pH		6.3
Residue, Total @ 105°C	mg/L	813
Sulfate	mg/L SO_4^{--}	43.0

Note: Metals analysis performed on filtered portion

Respectfully submitted,

ORIGINAL (Red)

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200902

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O BALTIMORE OFFICE • [illegible] York Road, [illegible]

Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35739 SAMPLED: 11/20/84 RECEIVED: 11/21/84 REPORTED:

CLIENT: Walter B. Satterthwaite Associates, Inc.
11 North Five Point Road, West Chester, PA 19380

SAMPLE DESCRIPTION: Analysis of Water - P. O. No: 606 SAMPLED BY: WBS, Inc.
Monitoring Well No. 1
Analyzed 11/26/84 by N. H. Goldberg of Spotts, Stevens & McCoy

PURGEABLES	Concentration ug/L
Acrolein	<80
Acrylonitrile	< 5
Benzene	8.8
Bromomethane	< 5
Bromodichloromethane	< 5
Bromoform	< 5
Carbon tetrachloride	< 5
Chlorobenzene	12
Chloroethane	< 5
2-Chloroethylvinyl ether	< 5
Chloroform	< 5
Chloromethane	< 5
Dibromochloromethane	< 5
1,1-Dichloroethane	14
1,2-Dichloroethane	< 5
1,1-Dichloroethene	< 5
trans-1,2-Dichloroethene	52
1,2-Dichloropropane	< 5
cis-1,3-Dichloropropene	< 5
trans-1,3-Dichloropropene	< 5
Ethylbenzene	48
Methylene chloride	< 5
1,1,2,2-Tetrachloroethane	< 5
1,1,2,2-Tetrachloroethene	< 5
1,1,1-Trichloroethane	< 5
1,1,2-Trichloroethane	< 5
Trichloroethene	< 5
Toluene	11
Vinyl chloride	19

ORIGINAL Hedy

Respectfully submitted,

Nancy H. Goldberg

Nancy H. Goldberg - Chemist
Chemistry Laboratory

OMD
cc: Charles Miller (2)

200903

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Spotts, Stevens and McCoy, Inc.

CONSULTING ENGINEERS

CERTIFICATE OF ANALYSIS

LABORATORY NO: 35739 SAMPLED 11/20/84 2:10 PM RECEIVED 11/21/84 REPORTED 12/6/84

CLIENT: Walter B. Satterthwaite Assoc. Inc, 11 North Five Points Rd.
W. Chester, PA 19380

SAMPLE DESCRIPTION: Project Name: Novak
Project # - 266-84A
Monitoring Well #1
Sat. #1824-1827
PO 606

SAMPLED BY

- - - - - - - - - - -

Alkalinity to pH 4.5/M.O.	mg/L $CaCO_3$	862
BOD - 5 Day	mg/L	19.1
Chemical Oxygen Demand	mg/L	161
Chloride	mg/L Cl^-	414
Conductance, Spec.	µmho/cm	2500
Iron, Total	mg/L Fe	7.15
pH		6.3
Residue, Total @ 105°C	mg/L	1820
Sulfate	mg/L SO_4^{--}	<1.0

Note: Metals analysis performed on filtered portion

Respectfully submitted,

R. M. Large, Program Supervisor
Chemistry Laboratory

MAH
cc: John Roberts (2)

200904

REPLY TO: ○ HOME OFFICE • 345 N. Wyomissing Blvd., P.O. Box 6307, Reading, PA 19610-0307 • (215) 376-6581
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EHB-1: Rev. 9/80

COMMONWEALTH OF PENNSYLVANIA

ENVIRONMENTAL HEARING BOARD

DEC 19 1984

221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101
(717) 787-3483

NOTICE OF APPEAL

Any party desiring to appeal any action of the Department of Environmental Resources must file its Appeal *with this Board at the above address* within 30 days from date of receipt of notification of the Action.

1. Complete Name, Address and Telephone Number of Appellant:
Louis J. Novak, Sr., Hilda Novak, and Novak Sanitary Landfill, Incorporated.
R. D. 1, Box 268, Allentown, PA 18104
Telephone No.: (215) 395-6251

2. (a) Specify the action for which review is sought, the Department officials who took said actions, and the location of the proposed project including the municipality and county. Also, attach a copy of the letter, order or notification from which you are appealing. (b) Specify the date when the order or notice of the action appealed was received.

Review is sought of the Order and Civil Penalty Assessment dated December 13, 1984 issued by Wayne L. Lynn, Regional Solid Waster Manager, a copy of which is attached hereto. The project is located in South Whitehall Township. Lehigh County. The Order and Civil Penalty Assessment were received on December 14, 1984.

3. We appeal for the following reasons: (Specify objections to the action of the Department. Objections not raised herein may be deemed waived pursuant to Rule 21.51(e). If the objections are not sufficiently specific, the appellee may move for a more specific pleading pursuant to Rule 21.64 or Appellant may be required to file the first pre-hearing memorandum. (Attach additional sheets as may be required.)

The specific objections to the action of the Department are set forth in the additional sheets attached hereto and incorporated herein.

4. We hereby certify that we have served or mailed a copy of this appeal to
(X) (a) the Bureau of Litigation, P.O. Box 2357, 508 Executive House, 101 South Second Street, Harrisburg, PA 17120.
(x) (b) the Officer of the Department of Environmental Resources responsible for the action appealed, and
( ) (c) if the appeal is from the grant of a permit, license, approval or certification, a copy to the recipient thereof.

The information submitted is true and correct to the best of my information and belief:

Louis J. Novak
Individually and as Agent for Hilda Novak

NOVAK SANITARY LANDFILL, INCORPORATED
By: Louis J. Novak, Pres.
SIGNATURE

*Signature of Appellant or Agent or Officer of Appellant if Appellant is not an individual. If you have authorized an attorney to represent you in this proceeding before the Board, please supply the following information:

MICHAEL J. SHERIDAN, ESQUIRE
PAUL W. CALLAHAN, ESQUIRE
FOX, DIFFER, CALLAHAN, ULRICH & O'HARA
317 Swede Street
Norristown, PA 19401
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MARTIN J. KARESS, ESQUIRE
(NAME) (Type or Print)
KARESS & REICH
215 North Ninth Street
Allentown, PA 18102
(AREA CODE) PHONE NO.

200905

NOTICE: FAILURE TO SUPPLY ANY OF THE ABOVE INFORMATION MAY RESULT IN THE DISMISSAL OF YOUR APPEAL.

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR., HILDA NOVAK, NOVAK SANITARY LANDFILL, INC.	:	DOCKET NO.
VS.	:	
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL RESOURCES, APPELLEE	:	

OBJECTIONS TO ORDER IN SUPPORT OF APPEAL
AND ANSWER TO COMPLANT FOR CIVIL PENALTY ASSESSMENT

AND NOW, comes Louis J. Novak, Sr., Hilda Novak and Novak Sanitary Landfill, Inc., (hereinafter "Appellants") and file the following Objections in support of their Appeal from the Order dated December 13, 1984, and file the following Answer to the Complaint for Civil Penalty Assessment:

1. The allegations of Paragraph G of the Order are denied. The landfill is in basic compliance with any vertical elevations or lateral boundaries that are applicable under the aforesaid permit. Any deviation therefrom would be de minimis in nature and would not impair the proper functioning of the landfill. Since inception of the work under the permit, the opening and filling of the trenches, including but not limited to, the elevations, width, slopes, and final cover have received continuing inspections and approvals from the Department.

2. The allegations of Paragraph H of the Order are denied. There has been basic compliance with a 1:1 ratio of depth of renovating soil beneath the landfill to depth of solid waste in the landfill. Any deviation therefrom is de minimis in nature and too small to impair the proper functioning of the landfill. The landfill has been operated in substantial compliance and in a good faith manner which maintains the proper relationship between depth of renovating soil beneath the landfill and depth of solid waste in the landfill.

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The landfill does not threaten and has not been operated in a manner that threatens to contaminate the ground water or to produce leachate in excess of the renovating capacity of the soil.

3. The allegations of Paragraph I of the Order are denied as stated. Well nos. 5 and 6 were drilled within ten (10) days after the location of such wells were agreed to by the Department. The results of sampling of those wells have been or are being forwarded to the Department. Those sampling results do not support an allegation of actual or threatened ground water contamination. Appellants believe and therefore aver that the existing ground water monitoring system is sufficient and that the sampling results being submitted to the Department support the adequacy of the existing ground water monitoring system.

4. The allegations of Paragraph J of the Order are denied. In response thereto, the Appellants incorporate herein by reference the allegations of Paragraphs 1 through 3 hereof. It is specifically denied that the landfill is causing or threatening to cause pollution of the ground water.

5. The allegations of Paragraph K of the Order are denied as stated. To date, trenches 1 through 3 have been completed and an adequate, properly graded, earth cover has been installed thereon. Final cover is being applied to most of trench 4, representing the completed portion of trench 4. Vegetation has been planted on the final earth cover and continuing efforts will be made to grow and maintain such vegetation on the final earth cover. It is denied that there has been any violation of the sections cited in Paragraph K. Appellants believe that the allegations in Paragraph K, in part, refer to a former mine area that was filled and covered before work started under the Permit in question and prior to the passage

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of the regulations and Act cited. It is believed and therefore averred that the said regulations and the Act cited do not apply to he former mine location. The foregoing notwithstanding, a good faith effort has been made, which effort is continuing, to reach an agreement with the Department concerning the filling and recovering of a portion of the former mine area.

6. The allegations of Paragraph L of the Order are denied as stated. As set forth in the preceding paragraph, the completed trenches have received adequate final cover which is graded so that surface water can properly drain off of it and the allegations to the contrary are denied. It is believed that Paragraph L of the Order may be making reference to the former mine area referred to in the preceding paragraph. It is denied that the Act and regulation are applicable thereto for the reasons set forth in the peceding paragraph, all of which are incorporated herein by reference. An effort has been made, and is continuing, to reach an agreement with the Department to provide for the refilling of a portion of the former mine area and the recovering of it. By reason of the foregoing, the alleged violations of the regulations and of the sections are denied.

7. The allegations of Paragraph M of the Order that adequate erosion and sedimentation controls are not maintained are denied. To the contrary, adequate erosion and sedimentation controls are in fact maintained at the landfill. The allegation that there is no erosion and sedimentation control plan is denied as stated. To the contrary, a plan was previously submitted to the Department and the Department has never acted on the plan. In addition, a new plan is being prepared in an effort to satisfy the concerns of the Department.

8. The allegation of Paragraph N of the Order is denied. The gas venting system has been installed with respect to trenches 1 through 4. The system is

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not yet required to be installed at trench 5. The system has been installed around most of the former mine area. As the work commences on trench 5, the gas venting system will be properly completed in a timely manner at the proper stage of development of trench 5 and in conjunction with the grading work.

9. The allegations of Paragraph O of the Order are denied as stated. In operation of the landfill, there has been basic compliance with the requirements of the Code concerning daily cover and the allegations to the contrary are denied. Therefore, it is denied that there has been a violation of the regulations and sections cited.

10. Paragraph P is denied as stated. It is believed and therefore averred tht the bonding requirements of 35 P.S. §6018.505(a) are not applicable in this case since the Permit in question was issued in 1972. Under the express provisions of 25 Pa. Code §101.9(b), the bonding requirements are not applicable in this matte If the bonding requirements were in fact applicable, the amount of the bond requested by the Department is far in excess of the amount that would be authorized under the existing regulations. The amount of the bond requested is objected to for the further reason that there has been no factual determination by the Departme to support or substantiate the amount of the bond requested. By way of further answer, it is believed and therefore averred that the amount of the bond requested by the Department is far in excess of the reasonable costs of closure and final closure of the permitted site and there is not a sufficient basis to support the posting of a bond in the amount requested by the Department.

11. The allegations of Paragraph Q of the Order are denied. The answers to the foregoing paragraphs are incorporated herein by reference as if set forth at length. Paragraph Q sets forth conclusions of law to which no answer is required. By way of further response, the violations as alleged are denied. It is specifically denied that the operation and conditions at the landfill constitute a public nuisance. To the contrary, it is averred that the landfill

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has been operated in a good faith and proper manner, in compliance with the Act, the applicable regs and that there is no basis to support the allegations of Paragraph Q.

12. The allegations of Paragraph R of the Order constitute conclusions of law to which no answer is required. By way of further response, the allegations concerning violations are denied. It is further denied that there are conditions at the landfill that constitute a nuisance as alleged and it is denied that there are conditions at the landfill that constitute a danger to public health, safety or to the environment. By way of further response, the allegations of violations of the sections cited are denied. By way of further response, the matters contained in all of the foregoing paragraphs of this pleading are incorporated herein by reference. The landfill has been operated in a good faith manner in compliance with the regulations and the Act and there is no basis to the allegation of public nuisance or to the allegation of danger to the health, safety or the environment.

13. There is no basis in fact or law to support Paragraph 1 of the Order. The filling of the permitted site has not been completed. The filling of the fifth trench is about to commence and should be allowed to proceed. There are at least three municipalities that have contracts to deposit at the site, which were made in reliance on the right to complete filling of trench no. 5. In addition, there are other municipalities which utilize and rely upon the facility. The premature closure of the facility will lead to the financial ruin of the Appellants' business operation at that facility, will impose a major adverse impact upon the municipalities served by the facility, will critically impair the ability of the operators to properly implement final closure of the facility. The premature closure of the facility will not result in any environmental benefit

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As set forth above, it is denied that there is any existing nuisance or any significant pollution or hazard to health or safety and it is specifically denied that the premature closure is necessary to address any conditions that exist at the site.

14. The matters contained in the preceding paragraph of this pleading are incorporated herein by reference with respect to the requirement of the premature closure of the landfill, and in addition, the following objections are made to paragraph 2 of the Order:

A. Final cover has previously been ~~applied to trenches 1 through 3. Filli~~ Trench 4 is close to completion, but not yet completed. Final cover is being applied to most of trench 4. Even if trench 4 were fully completed, the time period specified is unreasonable and cannot be accomplished under the circumstances.

B. The grading work cannot be performed and should not be performed within the time schedule specified for the following reasons. Much of the earch utilized to perform the grading work would have to come from the excavation of trench 5 and would be done as trench 5 is opened. Furthermore, the winter weather conditions will effectively prevent completion of grading work by January 31, 1985. Finally, Appellants believe and therefore aver that the Department is seeking to improperly impose the provisions of the regulations and the Act to the former mine referred to in paragraph 5 hereof. The foregoing notwithstanding, efforts have been made and are continuing to reach an agreement with the Department for the filling of a portion of the mine area and the subsequent application of final cover on the area filled.

C. The gas venting system has been installed with the exception of the portion of the system which must be installed in conjunction with or upon completion of trench 5 and the grading work.

D. In view of natural weather conditions, the work requested should properly be done in the Spring of 1985 and cannot be completed by March 31, 1985. As the Department is aware, continuing efforts have been made to seed and stabilize such areas.

E. The plan referred to was previously submitted and no action thereon has been taken by the Department. As previously indicated, a revised plan is being prepared for submission to the Department in an effort to meet the concerns of the Department. In view of natural weather conditions, the work indicated in such plan should be performed in the Spring of 1985 and cannot properly be completed by March 15, 1985. In addition, the period which the Soil Conservation Service takes to approve the plan is beyond the control of the Appellants.

G. As set forth above, the work required under sub-paragraph E should be done in the Spring of 1985 and cannot be completed by March 15, 1985.

15. The results of the recent sampling of wells nos. 5 and 6 referred to in Paragraph 3 of the Order are being submitted to the Department.

16. Erosion and sedimentation controls have been in operation at the site and will be maintained and continued in operation.

17. With respect to the provisions of Paragraph 5 of the Order, the Appellants allege that ground water contamination does not exist and is not threatened at the site. Many of the items referred to in paragraph 5 of the Order assume that the datea collected will support a finding of ground water pollution. It is believed that no such condition exists and that the data will not support such a finding. The report referred to in paragraph 5 will be addressed by the qualified hydro-geologist. It is believed, however, that since a number of the items assume ground water pollution, that substantial revisions of those

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items will be required as the matter progresses.

18. As set forth above, the Appellants believe and therefore aver that ground water pollusion does not exist and therefore, that the work referred to in paragraph 6 of the Order will not be necessary. By way of further response, paragraph 6 makes reference to the elimination of soil pollution. The meaning of that reference is unclear, but it appears on its face to be inconsistent with a natural renovation type landfill and is objected to on the basis that the site in question was permitted for the operation of a natural renovation type landfill.

19. The provisions of paragraph 7 of the Order are objected to for the reasons set forth in the prior objections to paragraph P of the Order which objections are incorporated herein by reference.

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ANSWER TO CIVIL PENALTY ASSESSMENT

20. It is denied that the penalty assessed has any rational relationship to the factors which the Department is required to consider under §6018.605 of the Act. It is denied that the civil penalty assessed is proper for the reasons set forth below and in the above paragraphs which are incorporated herein.

21. As set forth in the foregoing paragraphs of this pleading, all of which are incorporated herein by reference, the landfill is in basic compliance with the requirements of the permit. Any deviation therefrom is unintentional, de minimis in nature, and will have no adverse impact on the environment. Therefore, the penalty assessed is without basis and law or in fact and represents an arbitrary and capricious applicatin of the provision of §6018.605. By way of further response, it is denied that there has been a violation of the sections or regulations cited for the reasons previously set forth.

22. Wells nos. 5 and 6 were drilled within ten (10) days after the Department approved their location and the samples from those wells do not show any ground water contamination from the permitted landfill. Therefore, the violations alleged are denied. The penalty assessed is not supported by the facts or by law and represents an arbitrary and capricious application of the provisions of §6018.605 of the Act.

23. Contrary to the allegations of the paragraph 3 of the Order, adequate and proper final cover and proper slopes have been maintained on the completed portions of the landfill. Vegetation has been planted and a continuing effort has been made to cause vegetation to grow to the extent required by the regulations or by the Act and the allegations of violations are denied. The assessment levied by the Deparment is not supported by the law or by the facts and represents an

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arbitrary and capricious application of the provisions of §6018.605 of the Act.

24. The allegations of paragraph 4 of improper management of surface water at the landfill are denied. There has been and continues to be maintained at the site a proper surface water management program. The allegations concerning violations of the regulations and of the Act are denied for the reasons set forth in all of the foregoing paragraphs of this pleading which are incorporated herein by reference. The civil assessment by the Department is not supported by the facts or by law, and represents an arbitrary and capricious application of the provisions of §6018.605 of the Act.

25. There has always been a conscientious and good faith effort to operate the site in a method that properly manages surface water at the site.

26. As set forth in the preceding paragraphs of this pleading, all of which are incorporated herein by reference, there has been basic compliance with the daily cover requirements of the Act and the regulations. The allegations of paragraph 5 are denied. The assessment by the Department is not supported by the law or the facts and represents an arbitrary and capricious application of the provisions of §6018.605 of the Act.

27. Previously the Department filed Summary Criminal proceedings against the Appellants before District Justice Theodore Russiano, which encompassed many of the alleged violations recited in the Order of December 13, 1984. A hearing was held before the said District Justice on or about August 20, 1984, and a decision was rendered on or about August 31, 1984. No appeal was filed from the decision of the District Justice, which decision is binding on the Department. The District Justice found a violation with regard to the failure to install a gas venting system. Since that time, the operator has proceeded and is proceeding with installation of the gas vening system. All other charges filed by the Department were dismissed. The Department is barred from again asserting the

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same matters against the Appellants under applicable principles of law, including, but not limited to, the principles of res judicata, collateral estoppel, and double jeopardy.

28. The Order entered by the Department is not authorized by the acts cited in the Order and is not authorized by the regulations. It is arbitrary and capricious and is not supported by the facts or by law.

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ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR.,	:	DOCKET NO.
HILDA NOVAK,		
NOVAK SANITARY LANDFILL, INC.	:	
VS.	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL RESOURCES,		
APPELLEE	:	

ORIGINAL (Red)

PETITION FOR SUPERSEDEAS

AND NOW comes the Appellants through their attorneys and respectfully petition for a supersedeas staying enforcement of the below described Order as follows:

A. Appellants are Louis J. Novak, Sr., Hilda Novak and Novak Sanitary Landfill, Inc. The address is R.D. 1, Box 268, Allentown, PA 18104.

B. On December 13, 1984, Wayne L. Lynn, Regional Solid Waste Manager of the Department of Environmental Resources issued an Order directed against Appellants. The Order was served on Appellants on December 14, 1984. A copy of the Order is attached hereto.

C. The Order, among other things, requires that:

1. Operation of the landfill ceased effective 12:01 a.m., Monday, December 17, 1984.

2. That final closure of the entire landfill be immediately implemented, a schedule for such implementation being set forth in the Order.

3. Paragraph 5 of the Order requires the submission of an extensive

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and expensive hydro-geologic study. Much of the study requested assumes the existence of ground water contamination from the landfill, a condition which Appellants believe does not exist.

4. Paragraph 7 of the Order requires the submission no later than December 31, 1984 of a bond in the amount of $300,000.00 for the closure of the landfill.

D. Pursuant to §1921-A of the Administrative Code of 1929, 71 P.S. §510-21, Appellants may petition for and receive, upon a proper showing, a supersedeas from this Board.

E. Appellants believe and therefore aver that the Board should issue an Order staying enforcement as againt the Appellants of the Order for the reasons set forth below in the following paragraphs:

1. The allegations of Paragraph G of the Order are denied. The landfill is in basic compliance with any vertical elevations or lateral boundaries that are applicable under the aforesaid permit. Any deviation therefrom would be de minimis in nature and would not impair the proper functioning of the landfill. Since inception of the work under the permit, the opening and filling of the trenches, including but not limited to, the elevations, width, slopes, and final cover have received continuing inspections and approvals from the Department.

2. The allegations of Paragraph H of the Order are denied. There has been basic compliance with a 1:1 ratio of depth of renovating soil beneath the landfill to depth of solid waste in the landfill. Any deviation therefrom is de minimis in nature and too small to impair the proper function of the landfill. The landfill has been operated in substantial compliance and in a good faith manner which maintains the proper relationship between depth of renovating soil beneath the landfill and depth of solid waste in the landfill.

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The landfill does not threaten and has not been operated in a manner that threatens to contaminate the ground water or to produce leachate in excess of the renovating capacity of the soil.

3. The allegations of Paragraph I of the Order are denied as stated. Well nos. 5 and 6 were drilled within ten (10) days after the location of such wells were agreed to by the Department. The results of sampling of those wells have been or are being forwarded to the Department. Those sampling results do not support an allegation of actual or threatened ground water contamination. Appellants believe and therefore aver that the existing ground water monitoring system is sufficient and that the sampling results being submitted to the Department support the adequacy of the existing ground water monitoring system.

4. The allegations of Paragraph J of the Order are denied. In response thereto, the Appellants incorporate herein by reference the allegations of Paragraphs 1 through 3 hereof. It is specifically denied that the landfill is causing or threatening to cause pollution of the ground water.

5. The allegations of Paragraph K of the Order are denied as stated. To date, trenches 1 through 3 have been completed and an adequate, properly graded, earth cover has been installed thereon. Final cover is being applied to most of trench 4, representing the completed portion of trench 4. Vegetation has been planted on the final earth cover and continuing efforts will be made to grow and maintain such vegetation on the final earth cover. It is denied that there has been any violation of the sections cited in Paragraph K. Appellants believe that the allegations in Paragraph K, in part, refer to a former mine area that was filled and covered before work started under the Permit in question and prior to the passage

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of the regulations and Act cited. It is believed and therefore averred that the said regulations and the Act cited do not apply to he former mine location. The foregoing notwithstanding, a good faith effort has been made, which effort is continuing, to reach an agreement with the Department concerning the filling and recovering of a portion of the former mine area.

6. The allegations of Paragraph L of the Order are denied as stated. As set forth in the preceding paragraph, the completed trenches have received adequate final cover which is graded so that surface water can properly drain off of it and the allegations to the contrary are denied. It is believed that Paragraph L of the Order may be making reference to the former mine area referred to in the preceding paragraph. It is denied that the Act and regulation are applicable thereto for the reasons set forth in the peceding paragraph, all of which are incorporated herein by reference. An effort has been made, and is continuing, to reach an agreement with the Department to provide for the refilling of a portion of the former mine area and the recovering of it. By reason of the foregoing, the alleged violations of the regulations and of the sections are denied.

7. The allegations of Paragraph M of the Order that adequate erosion and sedimentation controls are not maintained are denied. To the contrary, adequate erosion and sedimentation controls are in fact maintained at the landfill. The allegation that there is no erosion and sedimentation control plan is denied as stated. To the contrary, a plan was previously submitted to the Department and the Department has never acted on the plan. In addition, a new plan is being prepared in an effort to satisfy the concerns of the Department.

8. The allegation of Paragraph N of the Order is denied. The gas venting system has been installed with respect to trenches 1 through 4. The system is

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not yet required to be installed at trench 5. The system has been installed around most of the former mine area. As the work commences on trench 5, the gas vening system will be properly completed in a timely manner at the proper stage of development of trench 5 and in conjunction with the grading work.

9. The allegations of Paragraph O of the Order are denied as stated. In operation of the landfill, there has been basic compliance with the requirements of the Code concerning daily cover and the allegations to the contrary are denied. Therefore, it is denied that there has been a violation of the regulations and sections cited.

10. Paragraph P is denied as stated. It is believed and therefore averred tht the bonding requirements of 35 P.S. §6018.505(a) are not applicable in this case since the Permit in question was issued in 1972. Under the express provisions of 25 Pa. Code §101.9(b), the bonding requirements are not applicable in this matter. If the bonding requirements were in fact applicable, the amount of the bond requested by the Department is far in excess of the amount that would be authorized under the existing regulations. The amount of the bond requested is objected to for the further reason that there has been no factual determination by the Department to support or substantiate the amount of the bond requested. By way of further answer, it is believed and therefore averred that the amount of the bond requested by the Department is far in excess of the reasonable costs of closure and final closure of the permitted site and there is not a sufficient basis to support the posting of a bond in the amount requested by the Department.

11. The allegations of Paragraph Q of the Order are denied. The answers to the foregoing paragraphs are incorporated herein by reference as if set forth at length. Paragraph Q sets forth conclusions of law to which no answer is required. By way of further response, the violations as alleged are denied. It is specifically denied that the operation and conditions at the landfill constitute a public nuisance. To the contrary, it is averred that the landfill

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has been operated in a good faith and proper manner, in compliance with the Act, the applicable regs and that there is no basis to support the allegations of Paragraph Q.

12. The allegations of Paragraph R of the Order constitute conclusions of law to which no answer is required. By way of further response, the allegations concerning violations are denied. It is further denied that there are conditions at the landfill that constitute a nuisance as alleged and it is denied that there are conditions at the landfill that constitute a danger to public health, safety or to the environment. By way of further response, the allegations of violations of the sections cited are denied. By way of further response, the matters contained in all of the foregoing paragraphs of this pleading are incorporated herein by reference. The landfill has been operated in a good faith manner in compliance with the regulations and the Act and there is no basis to the allegation of public nuisance or to the allegation of danger to the health, safety or the environment.

13. There is no basis in fact or law to support Paragraph 1 of the Order. The filling of the permitted site has not been completed. The filling of the fifth trench is about to commence and should be allowed to proceed. There are at least three municipalities that have contracts to deposit at the site, which were made in reliance on the right to complete filling of trench no. 5. In addition, there are other municipalities which utilize and rely upon the facility. The premature closure of the facility will lead to the financial ruin of the Appellants' business operation at that facility, will impose a major adverse impact upon the municipalities served by the facility, will critically impair the ability of the operators to properly implement final closure of the facility. The premature closure of the facility will not result in any environmental benefit.

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As set forth above, it is denied that there is any existing nuisance or any significant pollution or hazard to health or safety and it is specifically denied that the premature closure is necessary to address any conditions that exist at the site.

14. The matters contained in the preceding paragraph of this pleading are incorporated herein by reference with respect to the requirement of the premature closure of the landfill, and in addition, the following objections are made to paragraph 2 of the Order:

A. Final cover has previously been applied to trenches 1 through 3. Filling Trench 4 is close to completion, but not yet completed. Final cover is being applied to most of trench 4. Even if trench 4 were fully completed, the time period specified is unreasonable and cannot be accomplished under the circumstances.

B. The grading work cannot be performed and should not be performed within the time schedule specified for the following reasons. Much of the earch utilized to perform the grading work would have to come from the excavation of trench 5 and would be done as trench 5 is opened. Furthermore, the winter weather conditions will effectively prevent completion of grading work by January 31, 1985. Finally, Appellants believe and therefore aver that the Department is seeking to improperly impose the provisions of the regulations and the Act to the former mine referred to in paragraph 5 hereof. The foregoing notwithstanding, efforts have been made and are continuing to reach an agreement with the Department for the filling of a portion of the mine area and the subsequent application of final cover on the area filled.

C. The gas venting system has been installed with the exception of the portion of the system which must be installed in conjunction with or upon completion of trench 5 and the grading work.

ORIGINAL (Red)

D. In view of natural weather conditions, the work requested should properly be done in the Spring of 1985 and cannot be completed by March 31, 1985. As the Department is aware, continuing efforts have been made to seed and stabilize such areas.

E. The plan referred to was previously submitted and no action thereon has been taken by the Department. As previously indicated, a revised plan is being prepared for submission to the Department in an effort to meet the concerns of the Department. In view of natural weather conditions, the work indicated in such plan should be performed in the Spring of 1985 and cannot properly be completed by March 15, 1985. In addition, the period which the Soil Conservation Service takes to approve the plan is beyond the control of the Appellants.

G. As set forth above, the work required under sub-paragraph E should be done in the Spring of 1985 and cannot be completed by March 15, 1985.

15. The results of the recent sampling of wells nos. 5 and 6 referred to in Paragraph 3 of the Order are being submitted to the Department.

16. Erosion and sedimentation controls have been in operation at the site and will be maintained and continued in operation.

17. With respect to the provisions of Paragraph 5 of the Order, the Appellants allege that ground water contamination does not exist and is not threatened at the site. Many of the items referred to in paragraph 5 of the Order assume that the datea collected will support a finding of ground water pollution. It is believed that no such condition exists and that the data will not support such a finding. The report referred to in paragraph 5 will be addressed by the qualified hydro-geologist. It is believed, however, that since a number of the items assume ground water pollution, that substantial revisions of those

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items will be required as the matter progresses.

18. As set forth above, the Appellants believe and therefore aver that ground water pollusion does not exist and therefore, that the work referred to in paragraph 6 of the Order will not be necessary. By way of further response, paragraph 6 makes reference to the elimination of soil pollution. The meaning of that reference is unclear, but it appears on its face to be inconsistent with a natural renovation type landfill and is objected to on the basis that the site in question was permitted for the operation of a natural renovation type landfill.

19. The provisions of paragraph 7 of the Order are objected to for the reasons set forth in the prior objections to paragraph P of the Order which objections are incorporated herein by reference.

20. Previously the Department filed Summary Criminal proceedings against the Appellants before District Justice Theodore Russiano, which encompassed many of the alleged violations recited in the Order of December 13, 1984. A hearing was held before the said District Justice on or about August 20, 1984, and a decision was rendered on or about August 31, 1984. No appeal was filed from the decision of the District Justice, which decision is binding on the Department. The District Justice found a violation with regard to the failure to install a gas venting system. Since that time, the operator has proceeded and is proceeding with installation of the gas venting system. All other charges filed by the Department were dismissed. The Department is barred from again asserting the same matters against the Appellants under applicable principles of law, including, but not limited to, the principles of res judicata, collateral estoppel, and double jeopardy.

21. The Order entered by the Department is not authorized by the acts cited in the Order and is not authorized by the regulations. It is arbitrary and capricious and is not supported by the facts or by law.

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22. Appellants believe and therefore aver that if the Supersedeas is not granted, substantial injury will occur to the public as a result of the premature closure of the landfill. As set forth above, three municipalities having municipal trash collection systems deposit at the landfill. In addition, other municipalities with private collection systems also deposit at the landfill. All of the foregoing rely on the operation of the landfill for the deposit of their trash, as well as numerous other private collectors. Therefore, the premature closure of the site will cause serious and continuing harm to the public.

23. Appellants believe and therefore aver that at the time of final hearing, they will prevail on the merits. It is believed that there is no basis for the bulk of the order, including, but not limited to, the provisions of the Order which require the landfill to close prior to completion of filling in the areas covered by the permit, including, but not limited trench no. 5; the imposition of various timetables for implementation of work which are unreasonable and impossible of performance; the imposition of a collateral bond in an amount which is not supported by the Act or regulations and which is not necessary to attain the proper closure of the landfill after it has been completed.

24. If the Order is not superseded as requested, Appellants will sustain irreparable harm. The Order violates the rights under the existing permit. The premature closing of the site will lead to the financial ruination of the business enterprise operated under the permit. It will prevent the proper implementation of a closure plan for the site.

25. During the period when the requested supersedeas would be in effect, there would be no nuisance or significant pollution or hazard to health or safety

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WHEREFORE, Appellants pray for a prompt hearing on the Petition for Supersedeas, and for entry of a Supersedeas staying the enforcement of the Order, pending resolution of the Appeal of Appellants to the Board.

MICHAEL J. SHERIDAN, ESQUIRE
PAUL W. CALLAHAN, ESQUIRE
FOX, DIFFER, CALLAHAN, ULRICH & O'HARA
317 Swede Street
Norristown, PA 19401
(215) 279-9600

MARTIN J. KARESS
KARESS & REICH
215 North Ninth Street
Allentown, PA 18102
(215) 435-3830

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STATE OF PENNSYLVANIA:
SS.
COUNTY OF MONTGOMERY :

LOUIS J. NOVAK, SR., being duly sworn according to law, deposes and says that he is one of the Appellants named in the foregoing Petition for Supersedeas, that he is an officer ofthe Appellant Corporation and that he is authorized to take this affidavint on behalf of the Appellants and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge or information and belief.

Sworn to and Subscribed
before me this 13th day
of December, 1984.

Louis J. Novak
LOUIS J. NOVAK, SR.

Susan Tomczuk
NOTARY PUBLIC

SUSAN TOMCZUK, Notary Public
Norristown Boro, Montgomery Co.
My Commission Expires April 2, 1988

(Red)

200923

ENVIRONMENTAL HEARING BOARD
Third Floor
221 North Second Street
Harrisburg, Pennsylvania 17101

LOUIS J. NOVAK, SR.,	:	DOCKET NO.
HILDA NOVAK,		
NOVAK SANITARY LANDFILL, INC.	:	
VS.	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
DEPARTMENT OF ENVIRONMENTAL RESOURCES,		
APPELLEE	:	

CERTIFICATION OF SERVICE

I, MICHAEL J. SHERIDAN, counsel for Appellants, hereby certify that a true and correct copy of the foregoing Petition for Supersedeas was served on the following in the following manner on December 18, 1984:

Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, Pennsylvania 17101
Three Copies by Express Mail

Bureau of Litigation
P.O. Box 2357
508 Executive House
101 South Second Street
Harrisburg, Pennsylvania 17120
One Copy by Express Mail

ORIGINAL (Red)

Mr. Wayne L. Lynn
Regional Solid Waste Manager
Department of Environmental Resources
Norristown, Pennsylvania 19401
Hand Delivered

Michael J. Sheridan, Esquire

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OA-501 12-67

COMMONWEALTH OF PENNSYLVANIA

December 26, 1984

SUBJECT: NOVAK LANDFILL
100534
South Whitehall Twp., Lehigh County 12/26/84

TO: Bruce Beitler
Regional Operations Supervisor
Norristown Regional Office

FROM: Joseph P. Pomponi
Field Operations Supervisor
Bethlehem District Office

Visit to the above site reveals the following:

1. The recycling operation has drastically increased to include total solid waste processing. Garbage bags were opened and found to contain household garbage items, such as food scraps, non-returnable plastics such as plastic knives, forks, ~~spoons, bottles and~~ other non-recyclable materials. The entire contents of the garbage trucks are dumped and the recyclable materials such as paper and cardboard are removed. A small front end loader places the non-recyclables into the garbage truck. Three large garbage trucks were waiting to be unloaded.

2. Stones have been placed the entire length of the access road to the end of trench 2.

3. Western sedimentation ponds contain approximately six inches of water ponded in an area approximately 50 feet wide.

4. The solid waste in trench 4 has been covered with three to six inches of dirt with the exception of an area 30 feet wide, 100 feet long at the southeast portion of trench 4. The elevation of the solid waste in trench 4 is approximately 18 inches above the berm of trench 4 and approximately 10 - 15 feet above the non-disturbed area south of trench 5. Some of the voids noted in my previous inspection have been filled.

5. No further activity has occurred in trench 5. Water has ponded at the eastern portion of the trench approximately six inches deep and approximately 100 feet long for the entire width of trench 5.

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No other activity was noted at the landfill.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486

DER-RECEIVED
JAN 3 1985

File: Novak Landfill
Lehigh Co.

January 7, 1984

EXPRESS MAIL

Mr. Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER,
Docket No. 84-425-M

Dear Mr. Mazullo:

Enclosed please find the Commonwealth's Brief in Opposition to Supersedeas in the above matter. This Brief does not touch on the separate issue of bonding, which will be discussed first by counsel for appellants. As of this date, no boundary survey results have been received, and that issue is not addressed herein either.

Thank you for your attention to this matter.

Sincerely yours,

Kenneth Gelburd

KENNETH A. GELBURD
Assistant Counsel

Enclosure

cc: (w/ Enclosure)
Martin J. Karess, Esquire
Michael Sheridan, Esquire
Mr. Bruce Beitler

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COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS NOVAK, et al	:	
	:	
v.	:	DOCKET NO. 84-425-M
	:	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	:	

BRIEF FOR THE COMMONWEALTH
DEPARTMENT OF ENVIRONMENTAL RESOURCES
IN OPPOSITION TO REQUEST FOR SUPERSEDEAS

I. HISTORY OF THE CASE

It is agreed by all the parties that Novak Landfill (the landfill) operated in South Whitehall Township on land owned by Louis and Hilda Novak, husband and wife, that the landfill operations were conducted by Louis Novak and his company, Novak Sanitary Lanfill, Inc., and that it had no permit from the Commonwealth of Pennsylvania for such operation until 1972, [1] when Solid Waste Management Permit No. 100534 (Louis and Hilda Novak and their corporation are hereinafter collectively "Novak") was issued by the Department of Environmental Resources ("DER") to Mr. Novak.

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* *

[1] See Section 7(a) of the Solid Waste Management Act of 1968, 35 P.S. § 6007(a), effective July 1968, making it unlawful to use land as a solid waste disposal area without a DER permit.

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That permit called for municipal waste landfilling to be conducted in two different manners: the northeast section was to be worked by the "area fill" method, and the southerly section by the "trench fill" method, in which trenches are excavated and then filled with trash, after the "area fill" section reached capacity. The plans submitted by Novak's engineering consultant and approved in 1972 by DER showed a defined area for each method of filling, related to benchmarks, utility poles belonging to Pennsylvania Power and Light Company (PP&L poles). Solid Waste regulations then in effect, 25 Pa. Code § 75.32(a)(3)(vi) (enacted August 2, 1971) required location of utilities on landfill application topographic maps but did not require grids for geographic locations as do the revised regulations, i.e., see 25 Pa. Code § 75.24(c)(1)(xii) (effective June 27, 1977) and no grid was shown on the 1972 permit. From 1972 to February 1982, the landfill was regulated by DER's Wernersville Regional Office; after that date regulation was carried out under the supervision of the Norristown Regional Office of DER. The landfill was to be run on the "natural renovation principle": no liner was placed under the landfill to collect leachate, but a ratio of at least one foot of waste was to be maintained so that the underlying soil could "renovate" or remove contaminants from leachate so that by the time it percolated down to groundwater it would be essentially clean. Groundwater monitoring was to be conducted to ensure that the process was working.

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In early 1982 DER advised Novak that it believed the "area fill" section of the landfill to have reached capacity, and

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requested that Novak's engineer conduct measurements and submit calculations as to fill mass. In mid-1982 Mr. Costello, Novak's engineer, submitted calculations showing that that "area fill" section was above grade in many portions, and had been overfilled by more than 625,000 cubic yards of waste.

Novak and DER then worked through until the end of 1982 toward two goals: setting final grades of the "area fill" section in light of the overfilling beyond grades shown in Mr. Novak's permit, and specifications of what could be done in the "trench fill" section. Test pits were dug to ensure adequate depth of renovating soil, and Novak engineer Costello submitted to DER two plans for the "trench fill" section. One plan (A-24) showed proposed final grades and gas venting for that section, laid out on a gridded topographic map of the section. The other plan (A-4) showed proposed cross sections of trenches to be dug, the proposed volume of trash to be placed in them, and the location of the trenches within the section vis-a-vis the grid on the plan. Both these plans were approved by DER and amended the 1972 permit in 1982.

For three years, 1982, 1983 and 1984, DER struggled to get Novak to comply with vegetation, grading and cover requirements respecting the "area fill" section, and cover and grading requirements in the "trench fill" section. Novak's original plans showed a minimum of eight feet between trenches in the latter section; Novak chose to increase that space, separating

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the trenches more widely. Until 1984, since the spacing on the permit was shown as a minimum distance, and Novak observed that minimum, DER had no adverse comment on Novak's trench spacing. However, before Novak excavated the fifth trench and DER representatives examined it, they realized that most of Novak's proposed trench exceeded the southern boundary of the permitted "trench fill" section; in short, it was off permit. In early September 1984, DER requested of Novak a topographic map obtained by aerial photography. At the end of November 1984 such a map was submitted (A-11). Based on the configuration of trenches shown on that map, and information on hand, DER issued to Novak on December 13, 1984, an Order for inter alia cessation of solid waste disposal and closure of the landfill.

Novak filed a request with the Board that the portion of the Order halting waste disposal be superseded. The Board held hearings on this request from December 24, 1984 through January 3, 1985.

II. DISCUSSION

A. The Burden Is On Novak to Demonstrate Entitlement To A Supersedeas.

In this proceeding to have DER's Order superseded, the burden is on appellants Novak to demonstrate entitlement to relief. Pennsylvania Mines Corporation v. DER and Einsig, 1982 EHB 407.

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B. Novak Has Not Carried The Burden of Showing that Permit Boundaries Were Not Exceeded.

Paragraph G of DER's December 13 Order reads in part: "Since at least July 14, 1982 . . . Novak Landfill exceeded the final vertical elevations and lateral boundaries allowed by Solid Waste Management Permit No. 100534.. . ." Both the original DER permit (A-2, showing the original permit plan as revised to accommodate monitoring wells) and the revision for grading and gas venting of 1982 (A-24, A-4) showing the same southernmost boundary for filling of waste -- a line about 75 feet south of PP&L pole No. 10, shown on A-2, A-24 and A-11. The topographic map submitted by Novak, A-11, unquestionably demonstrates that Novak has now excavated and proposes to deposit waste outside of the por.'-n of the site approved for such activity. Thu Novak has failed to demonstrate that the permit's lateral boundary was not exceeded. Furthermore, both of Novak's own consultants, and Mr. Novak himself, have admitted that vertical boundaries have been and are being exceeded.[2] Novak engineer Costello advised the Department in writing that the vertical bounds of the "area fill" section were exceeded to the extent of over sixteen million cubic feet of trash (C-2). Mr. Walter Satterthwaite conceded that as of December 1, 1984, the southernmost existing trench was overfull by two to three thousand cubic yards and that for two

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* *

[2]Since transcripts of the hearing have not yet been prepared, references to testimony must be based on memory and notes.

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more weeks, trash disposal continued only on that trench. Mr. Novak testified that in December 1984, trash came into the landfill (at least through December 16) at the rate of 750 cubic yards per day, five-and-three-quarter days a week. Over the two week period in early December, therefore, at least eight thousand six hundred twenty-five additional cubic yards of overfill occurred on the southernmost existing trench, for a total of approximately eleven thousand excess yards of trash on the southernmost existing trench. This figure is consistent with the testimony of Messers. Rajkotia (DER engineer) and Maiolie (DER solid waste specialist) that that trench was above permitted elevation by between three and eight feet ~~all along the trench,~~ or an average of four to five feet.

All evidence on the point demonstrates that whether by design, negligent failure to consult with an engineer or simple misapprehension of permit boundaries, Novak overfilled both laterally and vertically until DER stopped the landfilling, by persuasion or Order. Novak has failed to carry the burden of proving compliance with permit boundaries.

C. Novak Has Not Carried Its Burden of Showing That No Environmental Harm Would Accrue From Reopening the Landfill.

1. <u>Groundwater Contamination</u>

Paragraph J of DER's December 13, 1984 Order reads, "As a result of, <u>inter alia</u>, excessive deposits of waste, Novak Landfill is causing or threatening to cause pollution of

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groundwater, a water of the Commonwealth, with leachate, an industrial waste . . . and a solid waste . . ." Novak introduced sampling reports (A-6 and A-7) from June and November 1984 which, respecting monitoring wells 1 and 2, demonstrate that groundwater at the site has been contaminated with substances essentially all of which are common constituants of landfill leachate, including toluene, chlorobenzene, 1,1-dichloroethane, trans-1,2 dichloroethene and ethyl benzene. Novak's hydrogeologist Mr. Satterthwaite admitted that these toxic substances in many cases exceeded drinking water water standards.

Mr. Satterthwaite and DER's hydrogeologist Mr. Manduke agreed that somehow, Novak Landfill is causing groundwater to become contaminated with toxic volatile organic chemicals, among others. They further agreed that installation of two new monitoring wells and sampling wells, and sampling of all available wells, would be required before it could be established what the mechanism of that groundwater contamination is. Thus, significant pollution of groundwater has been demonstrated at hearing, and Novak has failed to carry its burden of showing that that pollution will certainly be abated during the period of supersession, should such an order be granted. To allow additional landfilling to occur in this already overfull site until at least a stop to groundwater pollution has been demonstrated would in effect to sanction contribution to that contamination. DER will not lend such sanction.

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2. Exceeding the Southern Permit Boundary

It is undisputed that no test pits or borings were taken in what Novak proposes as a southernmost trench, in the area below the 1972 southern permit boundary -- below the line established by Station 18 of the 1982 "Costello plan" (A-24). The record shows extreme variability of depth to bedrock at the Novak site; Dr. Myers, who submitted the original permit groundwater module, refers in Section II(G)(5) to "outcrops" (A-5-a) at the site. Because of the need for a one-to-one soil-to-waste ratio in this natural renovation site, Mr. Satterthwaite's assertion that the excavated trench showed no bedrock proves nothing, because as he admitted on cross-examination, failure to observe bedrock to a given depth does not mean that it cannot be one or two feet below th :xcavation, without adequate soil protection. Absent borings at least equal in depth to that of proposed fill, Novak has failed to carry its burden of demonstrating that moving a trench outside the permit boundary (even if lawful) will not cause harm.

3. The Novak Operational Record

Pushing aside for the moment the millions of cubic feet of waste unlawfully overfilled at the Novak site, Novak's "track record" of operation forebodes environmental harm. As DER solid waste specialist Maiolie testified, for at least three consecutive years daily and final cover, vegetation and grading in the "area fill" section have been out of compliance with

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the requirements of 25 Pa. Code Chapter 75 (C-4, C-5). Grading and cover on the "trench fill" section have also been out of compliance. Novak has not been able to control cover and stabilize the waste already present. Adding more will increase the damage.

D. Novak Has Not Met the Legal Criteria for a Supersedeas.

1. The Only Way to Preserve the Status Quo is to Leave DER's Order Untouched.

Any supersedeas order in this case will have the effect of a final order. Even assuming argendo that the Board finds (which DER most vigorously disputes) that Novak applied for and may install a 6th trench even if such installation violates a term or condition of the permit, that trench at most could contain approximately 43,500 cubic yards of trash (see inset labeled "Fill Volume for Trenches" on Cross-section on plan A-4). At Mr. Novak's stated fill rate of 750 cubic yards per day, that would be completed in 58 working days; at his five-and-three-quarter day work week, the trench would be full in ten weeks. Bearing in mind the Board's workload, it would be most unusual for full disposition on the merits to be reached within that time. Superseding DER's Order would vitiate the Order entirely with respect to waste volume. Declining to supersede the Order would preserve the volume issue pending full disposition of this matter.

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2. Novak Has Not Carried the Burden of Demonstrating Irreparable Harm.

Pursuant to 25 Pa. Code § 21.78(a)(1), Novak bears the burden of demonstrating that failure to obtain a supersedeas will result in irreparable harm to Novak. Novak failed to introduce any evidence as to the financial condition of either the individual appellants or the corporation.[3] Mr. Novak made some self-serving statements about the difficulty of maintaining equipment, but a moment's reflection reveals the fallacy behind these statements. First, as long as he and his son engage in the trash hauling business, they will have to maintain the fleet of trucks. Grant of a supersedeas can only postpone briefly the need for that fleet to begin travelling to other landfills; if that need to travel constitutes harm (which DER disputes, since it is an expectable and ordinary part of the waste collection business) it is an inevitable harm.

Second, with respect to landfill equipment not used in the hauling business, such equipment is needed on-site and in well-maintained condition for closure and post-closure care in any event. No additional maintenance burden is being placed on appellants; having gained their income from filling on the site all these years, they owe the public a well-maintained site.

* *

[3] Of course, monetary loss per se does not constitute irreparable harm. Nor is financial incapacity a defense to a DER Order. Ramey Borough v. DER, 20 Pa. Commwlth. 186, 351 A.2d 613 (1976).

3. Novak Will Not Prevail on the Merits.

Novak has failed to demonstrate compliance with statutes, regulations and the permit. Between March and November 1984, Novak failed to submit to DER two quarterly groundwater monitoring reports, and was late in submission of annual groundwater sampling data. This information, required to be submitted by 25 Pa. Code § 75.24(b)(4)(i), is especially critical for a natural renovation site such as Novak's, and it is worth noting that the period when no reports were submitted is just that in which monitoring wells one and two began to show contamination. That contamination resulted from non-permitted discharge of solid waste and industrial waste to groundwater in violation of Sections 301 and 307 of the Clean Streams Law, 35 P.S. §§ 691.301 and 691.307 and Section 610 of the Solid Waste Management Act, 35 P.S. § 6018.610, and is unlawful.

Novak failed to comply with the volumetric, elevation and grading requirements of the permit in the "area fill" section. When DER stopped it, the overfilling had resulted in improper grading which to this day causes poor surface water management. For three consecutive years, final cover and vegetation have been inadequate, in violation of 25 Pa. Code §§ 75.24(c)(2)(xxi) and 75.26(p) respectively.

As admitted by Novak witnesses, the "trench fill" section of the site is over elevation at least with respect to the southernmost existing trench.

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DER has thus shown numerous violations of law, regulation and permit, and Novak has not carried the burden of demonstrating a likelihood to prevail on the merits, as required by 25 Pa. Code § 21.78(a)(2).

The Board should further bear in mind the spacious nature of Novak's proposal for additional illegal filling in the "area fill" section. Testimony at the hearings established without contradiction that failures to achieve permitted grades resulted from overfilling above allowable elevations. The problem is not "depressions" from settlement; rather, it is valleys between unlawfully created hills. To allow more waste disposal at this site rather than to require the excess trash to be graded smooth will send a clear message to landfill operators: overfill until you are caught. not worry if DER stops you and tries to make you comply with grade or elevation requirements, because the Environmental Hearing Board will simply reopen your site and let you profit from additional filling to "even out" the grading problems that your unlawful conduct created in the first place.

The public is entitled to assurance that the business of landfilling, with its great potential for environmental harm, will be carefully regulated by DER. Here, Novak's unlawful conduct continued until stopped by DER. It was the absolute responsibility of Novak and the consulting engineer to ensure that all regulations and permit conditions--including fill

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boundaries--were met, and to warn Novak that expansion of trench spacing was using up permitted fill space at an increased rate. If at that point Novak wished to fill below Station 18 as shown on A-24, an expansion application would have had to be filed with DER. Novak is now attempting to circumvent the permit amendment application process, with its numerous technical and public review requirements, by asking the Board to act as a "super-permitting" entity outsided the context of an appeal from a DER final action on an application. Such action, not in accordance with the Board's authority under 71 P.S. § 510-21 at any time, is especialliy ill-advised in the context of a rushed, limited supersedeas hearing.[4]

Thus, Novak has not carried the burden of showing a likelihood of prevailing on the merits of this appeal, as required by 25 Pa. Code § 21.78(a)(2).

4. Novak Has Not Met the Burden of Showing Lack of Irreparable Injury to the Public

25 Pa. Code § 21.78(a)(3) establishes as the third criterion for supersedeas rulings the likelihood of injury to the public. A petitioner for a supersedeas cannot make a showing

* *

[4]At that point, pursuant to 35 P.S. § 6018.603(d), DER would have had to deny the application, or at least hold up approval, because of the various violations involving final cover, grading, elevation, vegetation and groundwater pollution. Novak now attempts to evade this statutory safeguard of compliance through use of the Board.

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of no likelihood of injury unless there is a demonstration of compliance with all applicable rules and regulations. Lawrence Coal Company v. DER, 1981 EHB 548, 550. Here, Novak's numerous violations of law, regulation and permit constitute irreparable harm to the public as a matter of law. PUC v. Israel, 356 Pa. 400, 52 A.2d 317 (1947). Novak has thus failed to carry the burden on the final prong of the supersedeas test established by the Board's rules.

5. The Board's Rules Prohibit Issuance of a Supersedeas

25 Pa. Code § 21.78(b) provides that a supersedeas shall not issue in cases where nuisance or significant pollution exists or is threatened during the period when the supersedeas would be in effect. Novak has failed to carry the burden of showing that nuisance and significant pollution do not exist.

a) Significant Pollution Exists and Is Threatened

As demonstrated in Section (C)(1) above, toxic substances have been detected in Novak groundwater in concentrations exceeding drinking water standards, and Novak has not demonstrated that that contamination will in fact be cleaned up. Thus, significant pollution both exists and is threatened for the foreseeable future.

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b) Site Conditions Constitute a Nuisance

The above-mentioned discharge of industrial waste to groundwater without a permit is a nuisance pursuant to 35 P.S. § 691.307(c). The various failures to comply with the Novak permit and the Chapter 75 regulations outlined in Section (D)(3) above constitute nuisances pursuant to 35 P.S. § 6018.601(a). Furthermore, at common law, this uncovered, unvegetated, overfull, misgraded site is a public nuisance today.

All the evidence before the Board shows pollution and nuisance, and under its own rules the Board has a mandatory duty not to supersede the DER Order.

III. CONCLUSION

Novak Landfill is ill beyond the limits of its permit. Site conditions violate numerous regulatory and permit requirements. DER has served the public by closing the site and ordering various remedial measures; the public confidence gained by DER's prompt action (less than a month after submission of A-11, the aerial topographic survey) would be eroded by reversing that action. "A landfill operator not fulfilling DER's requirements is not entitled to bargain with the agency, demanding that the landfill be kept open--regardless of past and potential future violations--in return for performing mandated remedial measures. DER and the Commonwealth for which it acts are entitled to enforcement of the whole law." O'Leary v. Moyer's Landfill, Inc., 523 F. Supp. 65 9, (E.D. Pa. 1981).

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For all the above reasons, Novak's supersedeas request should be denied.

Respectfully submitted,

KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Resources
1314 Chestnut Street
Philadelphia, Pennsylvania 19107
Telephone: (215) 875-7486

Dated: January 7, 1984

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200947

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

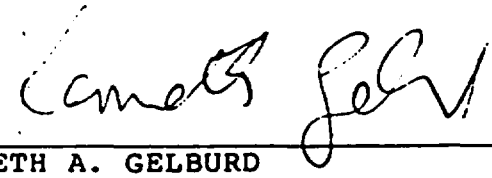
LOUIS NOVAK, et al	:	
v.	:	DOCKET NO. 84-425-M
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	:	

CERTIFICATE OF SERVICE

The foregoing Brief in Opposition to Supersedeas is being served either by express mail or hand delivery upon the below listed counsel:

Martin J. Karess, Esquire
Karess & Reich
215 North Ninth Street
Allentown, PA 18102

Michael J. Sheridan, Esquire
Fox, Differ, Callahan, Ulrich & O'Hara
317 Swede Street
Norristown, PA 19401



KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
1314 Chestnut Street
Philadelphia, Pennsylvania 19107
Telephone: (215) 875-7486

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DATED: January 7, 1984

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(FORMERLY OA-501)

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COMMONWEALTH OF PENNSYLVANIA

January 9, 1985

Lehigh Co.

SUBJECT: NOVAK LANDFILL
Permit #100534
Field Inspection

TO: Joseph P. Pomponi
Field Operations Supervisor
Bethlehem Office

FROM: James A. Dolan
Solid Waste Specialist

An insepction of the subject facility was conducted on January 4, 1985. The following were observed:

1. Conditions were substantially the same as those which existed on December 26, 1984, when you inspected the site.

2. Very little garbage was in evidence at the recycling facility. According to Mr. Novak, any non-recyclable material is removed prior to shipment. This appears to bear out.

3. Approximately one foot of water is ponded in proposed trench five. Mr. Novak insured me that this would be pumped to the western sedimentation pond.

4. Cover is scant at eastern and western edges of trench four.

5. Much of the heavy equipment and other large items have been removed. Overall site is looking much better.

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re: Novak Landfill
Lehigh Co.

JAN 14 1985

DER-RECEIVED
NORRISTOWN

JAN 16 1985

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:	)	
LOUIS J. NOVAK and HILDA NOVAK	)	DOCKET NO. 84-425-M
v.	)	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	)	

BRIEF IN OPPOSITION
TO DER's REQUIREMENT FOR CLOSURE BOND

HISTORY AND FACTS

The Novak Sanitary Landfill received a permit to conduct its landfill operation in 1972. At that time, the statute which governed the landfill was found at 35 P.S. § 6001 et. seq. an act known as the "Pennsylvania Solid Waste Management Act". Prior to receiving the permit, the Novak landfill had been in operation and the refuse was collected in an area of the property which is known as the "mine". By 1972, the mine was completed, and Novak began to utilize the land around the mine in a different manner. From 1972 until 1982, the operation was primarily one which collected refuse in an "area fill". Before the Novak landfill obtained its permit in 1972, plans prepared by a qualified engineer were submitted to DER and were approved. From 1972 until the present, DER has continuously monitored the operation to ensure its compliance with the statutes and regulations. From time to time throughout that ten (10) year period, DER made requests of the Novak family. Some of these requests were informal, and others were more formally structured. In each case, the landfill recognized the

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authority and purpose of the regulatory agency and made good faith efforts to comply. At various times, compliance with the requests was difficult or impossible due to weather conditions, or the need for advisory professional services, or due to various circumstances which were detailed during the hearings in this matter.

In 1982, the Novak landfill submitted additional plans for the purpose of laying the groundwork for the opening of a five-trench system in the same property as the mine and area fills. The plans were approved, and the operation began to utilize the trenches. The 1972 permit was still in effect, and it was never amended o revised in any way by DER officials.

A change occurred in the legislation affecting the solid waste disposa facility in 1980, when the new "Solid Waste Management Act" came into effect. That act, found at 35 P.S. § 6018.101 et. seq. has some of the same characteristics of the prior law, but there are additional provisions which were not in effect when Novak's 1972 permit was issued. One of those provisions, 35 P.S. § 6018.505 BONDS, is the subject matter of this brief.

The new Solid Waste Management Act now allows DER to require a bond to insure compliance with the Act, particularly to effectuate final closure of the facility. The act sets a minimum bond amount of $10,000.00. Where an operation is expected to continue for at least 10 years, an operator is permitted to deposit the greater of $10,000.00 or 25% of the bond required, with annual payments to be made thereafter until the bond is paid. 35 P.S. § 6018.505 (c) goes on to require operators who plan to proceed onto additional lands which were not covered by the initial permit, to file an amended application and additional bond. DER is then directed by the legislature to:

> "... promptly issue an amended permit covering the additional acreage ... and shall determine the additional bond requirement therefore." 35 P.S. § 6018.505 (c).

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Significantly, there is no provision whatsoever in the new act which applies the bond requirements retroactively to permits issued before the effective date of the Act, which date is September 5, 1980.

Despite the lack of retroactivity, DER has issued an order dated December 13, 1984, to the Novak landfill to post a $300,000.00 bond, a requirement whic is not authorized by statute as will be outlined in this brief.

ISSUES

I. MAY DER RETROACTIVELY REQUIRE THE LANDFILL TO POST A BOND FOR CLOSURE WHEN THE LANDFILL'S PERMIT WAS ISSUED PRIOR TO THE ENACTMENT OF THE STATUTE AUTHORIZING THE BOND, 35 P.S. § 6018.505?

SUGGESTED ANSWER -- NO.

II. ASSUMING DER CAN REQUIRE A CLOSURE BOND, CAN IT CALCULATE THE AMOUNT OF THE BOND BY INCLUDING AREAS OF THE LANDFILL THAT WERE COMPLETED BY 1982?

SUGGESTED ANSWER -- NO.

III. ASSUMING DER CAN REQUIRE A CLOSURE BOND, CAN DER REQUIRE THE ENTIRE AMOUNT OF THE BOND IN A LUMP SUM AT THIS POINT IN THE OPERATION OF THE LANDFILL?

SUGGESTED ANSWER -- NO.

IV. SHOULD DER BE ESTOPPED FROM REQUIRING A BOND AT THIS POINT IN TIME, DUE TO THE CONFISCATORY EFFECT A BOND WILL HAVE ON THE OPERATOR'S ABILITY TO MAINTAIN HIS BUSINESS?

SUGGESTED ANSWER -- YES.

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7. DER has attempted to require the imposition of a bond to ensure the final closure of the landfill. The request for the bond is in violation of the intent of the legislature, in that to impose the bond requirement would be a retroactive application of the law in derogation of the savings clause found in the beginning of the new Solid Waste Management Act found at 35 P.S. § 6001 et seq. That clause reads:

SAVINGS CLAUSE

> Section 101 of Act 1980, July 7, P.L. 380, No. 97 provides: The act of July 31, 1968, (P.L. 788 No. 241) known as the "Pennsylvania Solid Waste Management Act," is repealed: Provided however, that all permits and orders issued, mu ipal solid waste management plans approved, and regulations promulgated under such act shall remain in full force and effect unless and until modified, amended, suspended or revoked."

The Novak permit, issued in 1972, remained in full force and effect since it was never modified or amended under the requirement of the new act.

The savings clause was clearly enacted to ensure that the more stringent requirements of the new Solid Waste Management Act would not unduly deprive operators already licensed of their ability to carry on their business, and unless DER amended or modified the permit, any request for a bond should be denied.

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DER's order that the landfill post a $300,000.00 bond to ensure closure is, in effect, an attempt to apply the bond requirements of the new Solid Waste Management Act to a permit issued before the act was in effect. No statutory provision exists which authorizes a retroactive bond requirement, and the legislature clearly could have provided for such application if it so intended. On the contrary, the legislature has enacted a statute which prohibits such retroactive effect. 1 P.S. § 1926 provides:

> "No statute shall (sic) construed to be retroactive unless clearly and manifestly so intended by the General Assembly."

Case law throughout the years has consistently resisted any attempt by the Commonwealth or its agents or subdivisions to apply a statute retroactively. In addition to the requirement that the General Assembly exhibit a clear and manifest intent to apply a statute retoractively, cases have repeatedly held that not only must the legislative intent be clear and manifest, but it must also appear that a retroactive construction will not destroy vested rights or impair the obligations of a contract. Creighan v. City of Pittsburgh, 389 Pa. 569, 132 A.2d 867 (1957); Commonwealth ex rel. Pugh v. Callahan, ____ Pa. Super. ____, 458 A.2d 609 (1983); Williams v. Wolfe, 297 Pa. Super. 270, 443 A.2d 831 (1982); Hargreaves v. Mid-Valley School District, 40 Pa. Commonwealth 110, 396 A.2d 894 (1979).

The facts of this case demonstrate the attempt by DER to require a $300,000.00 bond is contrary to both statutory and case law, and the bond order must be vacated by this Court. As previously stated, there is no clear, manifest intention to apply the law retroactively. Conversely, the law contemplates the application of the bonding requirements to new permits: 35 P.S. § 6018.505 (a) states:

> "With the exception of municipalities ..., prior to the commencement of operations, the operator ... shall file with the department a bond for the land affected by such facility on a form prescribed and furnished by the department." (Emphasis provided by this writer.)

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In addition, Novak Landfill has both vested rights and contractual obligations which arise from the 1972 permit issued by DER. There is no claim by DER that the existence and extent of Novak's operation was not known to DER, nor can one b substantiated. DER issued the permit, reviewed interim plans, sent inspectors to the site, and met numerous times throughout the years with landfill personnel. At no time prior to December 13, 1984, was there any indication that the landfill would be shut down suddenly. All indications were that the landfill had about another year to go before the final trench was completed. In the meantime, the Novak family relied upon the availability of the fifth trench and agreed to retain numerous employees, and in addition, entered into contracts with municipalities and private businesses to accept refuse. Fees were set and obligations were created in reliance upon the 1972 permit, and the Commonwealth must acknowledge that at the very least DER's failure to request a bond has affected the prices charged for dumping. Cases cited above establish strong policy reasons for the law against retroactivity where the legislature has not specifically provided for it. Novak has vested rights to continue his landfill operation until it is established that trench five is full, and to continue that operation without complying with newly imposed requirements which do apply to the operation of landfills licensed under the prior law.

II. Assuming this Court determines that the bond requirement can be imposed on the Novak landfill, the amount of $300,000.00 cannot be required of the landfill at this time. It must be emphasized that the bond requirements were not legislated until 1980, but by that date, both the mine area and the area fill of the property were largely completed. The area fill was actually completed in 1982; it was in 1982 that Novak's new plans for the trench system were approved. Since the mine and area fills

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were not even being worked by 1982, those areas are not subject to bonding even if the court accepts DER's position that a bond can be applied at this late date.

Although DER argues that Novak's 1982 permit was amended in 1982, no evidence of any such amendment was introduced. Even if DER is asking this Board to consider approval o f the 1982 plans as an implicit or informal amendment of the permit, that argument cannot be persuasive in light of the language of 35 P.S. § 6018. 505 (c). That section reads as follows:

> The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional application and bond. Upon receipt of such additional application and related documents and information as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the secretary shall promptly issue an amended permit covering the additional acreage covered by such application, and shall determine the additional bond requirement therefor.(Emphasis provided)

Clearly the act contemplates an actual, amended permit be issued and not merely an amendment which the officials could later claim retrospectively.

Additionally, assuming the Board concludes that a bond can be required and that the permit was amended in 1982 by DER's tacit act in approving new plans, the bond requirement can only apply to that section of the property which was worked after 1982. To interpret the Act in any other manner would clearly violate the spirit and intent of the legislature as evidenced by the section cited above, referring only to a bond for additional acreage covered by an amended plan.

In conclusion, DER did not amend Novak's permit and therefore, cannot require a closure bond which is only authorized for permits issued after September, 1980. If the Board finds that the permit was impliedly amended (contrary to the evidence and testimony) the bond can only be required for closure of the trench area worked from 1982 to the present.

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III. The legislature clearly enacted a specific method and schedule for the posting of any bond required under the act. While the position of Novak Landfill remains that no bond is permitted due to the prohibition against retroactivity, if a bond is required, then Novak is entitled to the benefit of the payment schedule outlined in the statute. It is clear that the legislature has recognized the ruinous effect a large bond could have, if required in a lump sum. The legislature has also recognized the improbability of an operator being able to purchase a bond from a commercial company, as evidenced by the lengthy procedure outlined in 35 P.S. § 6018.505 (a). Obviously, bonds in excess of $10,000 or 25% of the total amount estimated are permitt to be paid in a piecemeal fashion, with annual payments which can be drawn from operating revenues. Unquestionally, the cost of such bonds is passed on to customers of a landfill operation where the operator has annual payments to be made.

In the present case, DER's demand for a lump sum in excess of a quarter of a million dollars is outrageous and results in an unconstitutional confiscation of the Novak family's ability to use their property, as they have been, to earn a livelihood. The lump sum cannot be met, and if required, will have a continuous effec on the ability of the landfill operation to continue business, maintain equipment, and close the facility in accordance with a reasonable timetable.

IV. No bond should be required as the savings clause clearly contemplates that Novak's permit under the old act be effective unless modified or amended. However, if bond is required, the bond imposed should not exceed the $10,000 minimum which is delineated in 35 P.S. § 6018.505 (a). DER should be estopped from requesting a bond d

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to the years of its failure to request a bond during a time frame when the Novak's could have budgeted for such request. DER has been involved with this landfill throughout the years, and never ordered the payment of a bond when it could feasibly be obtained through a fee schedule or budget.

Novak's acquisition of vested rights in his business are largely due to DER's approval of his plans throughout the years, including as late as 1982 when approval for five trenches was given. If DER now bases its request upon a claim that the landfill is in violation of certain regulations, it is taking action which is punitive in nature and which has a confiscatory effect.

Testimony at the hearings from Novak's expert, W. Satterthwaite indicates that if the landfill continues its operation, part of the tasks involved in final closure of the landfill will be performed in an ongoing manner. If required to post an enormous bond, Novak's ability to carry on his business is highly questionable. A $10,000 bond is the maximum which should be required for the reasons outlined above, but repeated here for clarity. First, the statute specifically is not retroactive. Secondly, the permit was never amended to bring it under the new act. Thirdly, even if the permit is deemed to be amended, the bond can only be required for the additional acreage not under the original permit. 35 P.S. § 6018. 505 (c). Fourthly, a lump sum payment is not authorized in the statute or contemplated by the legislature. Finally, such a bond in excess of $10,000 is confiscatory in that it will deprive the Appellant of the ability to conduct his business.

The only conclusion which can be reached is that the imposition of a bond is inappropriate and unathorized by the Solid Waste Management Act, as applied to Novak's 1982 permit.

RESPECTFULLY SUBMITTED

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200958

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

IN THE MATTER OF:	DOCKET NO. 84-425-M
LOUIS J. NOVAK and HILDA NOVAK,	
v.	
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	

CERTIFICATE OF SERVICE

The foregoing Brief In Opposition to .'s Requirement for Closure Bond is being served by hand delivery upon the below listed counsel by Federal Express Mail.

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DATED: January 10, 1985

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DER-RECEIVED
NORRISTOWN

JAN 23 1985

File: Novak
Landfill
Lehigh Co.

January 22, 1985

Mr. Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street, Third Floor
Harrisburg, PA 17101

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

Enclosed please find the Commonwealth's Reply Brief on Bonding and Supersedeas in the above appeal.

Sincerely yours,

KENNETH A. GELBURD
Assistant Counsel

cc: Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
KAG 6.4

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COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS J. NOVAK and HILDA NOVAK	:	
v.	:	DOCKET NO. 84-425-M
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	:	

REPLY BRIEF ON BONDING AND SUPERSEDEAS OF
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL RESOURCES

The Commonwealth of Pennsylvania, Department of Environmental Resources (hereinafter "DER") responds as follows to the brief for Louis and Hilda Novak (hereinafter, collectively with Novak Sanitary Landfill, Inc., "Novak") in support of supersedeas and to their brief in opposition to DER requirement for a closure bond:

I. HISTORY OF THE MATTER

DER herein incorporates as if fully set forth its factual narrative in Section I of its "Brief in Opposition to Supersedeas" of January 7, 1985.

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II. DISCUSSION ON BONDING

In addition to imposing various environmental compliance requirements, DER's December 13, 1984 Order invoked authority under Section 505 of the Solid Waste Management Act, 35 P.S. § 6018.505, noted that Novak Landfill had no solid waste bonding for the land it occupied (Paragraph P) and required that Novak post a closure bond of three hundred thousand dollars ($300,000) in a manner complying with the requirements of Section 505 (Paragraph 7). During (it is hoped) the final day of supersedeas hearing in this matter, Novak represented to the Board that the amount of the bond, assuming that one were lawfully required, was exorbitant and unrelated to the actual costs of closure and maintenance. Novak then called forth Mr. Satterthwaite, the landfills' consultant who, on the stand, performed calculations demonstrating the propriety of DER's monetary requirement. As the Examiner observed on that occasion, there can be no disputing the reasonableness of the amount DER required to guarantee closure and post-closure care at the landfill. Novak has now fallen back on the position that no bond may be required.

It is undisputed on the record that before any permit was issued, and since DER issued the Novak Landfill permit in 1972, Novak has been operating a solid waste disposal facility. That operation, with respect to the "area fill" portion of the site, continued after the effective date of Section 505 of the Solid Waste Act, 35 P.S. § 6018.505, which was early

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September 1980. Waste disposal on the "trench fill" section took place after the end of August 1982 [Exhibit C-4, at top]. Novak operated the entire landfill subsequent to the effective date of Section 505. That Section requires the posting of a bond "for the land affected" by solid waste disposal facilities; it further vests DER with the authority to "require additional bond amount for the permitted areas should such an increase be determined by [DER] to be necessary to meet the requirements of [the Solid Waste Management Act]." 35 P.S. § 6018.505(a).

DER thus has the power and duty to require of those who operate landfills subsequent to September 1980 the posting of bonds under the Solid Waste Management Act (the Act). The Board should indeed, as Novak suggests, apply Section 505 of the Act as DER has applied it, prospectively. DER has not assessed against Novak any penalty for failing to post a bond prior to September 1980; rather, DER has required bonding based, first, upon solid waste disposal activities Novak conducted from 1980 through 1984 and second, upon current conditions at the site which conditions were created in part prior to September 1980 and in part subsequent to that date. Application of Section 505 to Novak, therefore, is not only prospective concerning Novak's waste disposal activities after September 1980, but also prospective concerning conditions on the site today irrespective of whether those conditions were caused by activity occuring before the Section's effective date, after it or, as in this case, by both. Novak's proffered precedent, Creighan v. City of

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Pittsburgh, 389 Pa. 569, 132 A. 2d 867 (1957), is unequivocal on this point. The Court upheld a tubercular former fireman's right to collect benefits for his disability caused by job activity occuring before the effective date of the disability act in question. The Court noted:

> "The appellee is not claiming any benefits prior to the effective date of the Act but only thereafter. A recognition of appellee's claim does not require that we place a retroactive construction on the Act, but simply that we apply the Act to a condition which existed on the date when the Act became effective even though such condition arose from events which occurred prior to its effective date." 132 A. 2d at 870 [emphasis in original].

The statutory requirement to interpret statutes prospectively (1 Pa. C.S. § 1926) is therefore irrelevant; the Act has been applied prospectively only. Gehris v. PennDot, 471 Pa. 210, 369 A. 2d 1271 (1977).

In the lucrative business of landfilling, income is generated by activity over a comparatively short period, but the environmental harm that can accrue from that activity persists over a period of years after waste disposal itself ceases. The clsoure and the maintenance activities comprising post-closure care unavoidably occur after acceptance of income-producing waste has stopped. In order to provide the Commonwealth and its citizens with the financial leverage to ensure that landfillers do not declare bankruptcy when waste disposal stops, or simply disappear altogether. (see Strasburg Associates v. DER, EHB

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Docket No. 83-097-M Slip Op. October 30, 1984), Section 505 of the Act provides for the posting of a penal bond in an amount not only equivalent to what it would cost the operator to perform closure and post-closure duties, but also equivalent to any additional moneys it would cost the Commonwealth to cause those duties to be performed. This removes the operator's financial incentive to disappear; pursuant to Section 505(d), abandonment or noncompliance leads to forfeiture of the bond. Upon complete compliance with closure and post-closure requirements, of course, the bond is released.

Novak Landfill is full. There is no conceivable means by which operation of the landfill can continue for ten more years. Novak must now begin closure and post-closure activity. The Commonwealth is entitled to the posting of a bond that will cover closure and post-closure care for conditions at Novak Landfill <u>as they exist today</u>, due in large measure to Novak's activity after September 1980. That amount has been properly calculated by DER, as Mr. Satterthwaite confirmed during his testimony. The purpose of the Act's bonding requirement would be subverted by attempting to exempt from it any portion of the site under permit and operating after the effective date of the Act, or by delaying posting of any portion of the bond just at the time when it is most needed, at closure and post-closure.

Novak asserts that no evidence was introduced of the amendment of the 1972 permit after the effective date of

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Section 505. Assuming arguendo that that argument has any legal relevance (which in fact it does not, since the bond relates to current site conditions and Novak's post-1980 activity), it entirely overlooks the testimony by Messers Rajkotia and Beitler concerning the 1982 amendment to accommodate the gas venting plan and final trench elevations. [A-4; A-24]. [1]

By making the "no amendment" argument, Novak paints itself into a corner. The 1972 permit shows, in the "trench fill" area, only existing elevations [A-2]; proposed elevations and cross sections are shown only after the permit is amended [A-4, A-24]. Thus, either the permit was amended to show the limits of trench filling concerning depth and elevation or no change in depth or elevation was permitted at all, and the entire "trench fill" section has been operated illegally since its inception.

Novak finally claims that DER should have required a bond sooner than it did. Novak has failed to introduce any evidence in furtherance of carrying its burden of proof respecting this claim; i.e., there is nothing on the record that tends to show that Novak Sanitary Landfill, Inc , Louis J. Novak, Hilda Novak, or any combination thereof, do not have the resources now to cause the required bond to be posted. Assuming arguendo that appellants have operated Novak Landfill for over

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[1] A copy of the 1982 permit amendment is attached to this Brief as Exhibit "A".

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seventeen years without accumulating very substantial resouces (which DER disputes in the absence of evidence), such business ineptitude on the operators' part only substantiates the need to have assurance of proper closure.

Furthermore, as a matter of law the fact that a bond was not required up to now has no bearing on the authority or proprity of the current requirement. In carrying out its governmental functions, especially respecting solid waste management, DER has the right and duty to enforce the law at any time and irrespective of alleged prior inaction on its employees' part. Lackawanna Refuse Removal, Inc. v. DER, 65 Pa. Comwlth. 372, 442 A. 2d 423 (1982). Where state police power exists, it is not lost through alleged non-exercise. Com. v. Barnes and Tucker Co., 455 Pa. 392, 319 A. 2d 871, 884, n. 13 (1974). Barnes and Tucker, in fact, upheld DER's right to enforce environmental statutory (and regulatory) requirements upon a landowner and site operator respecting conditions caused by a prior landowner and operator as well as the current one, laying to rest arguments based on estoppel, retroactivity or alleged confiscation of property.

In any event, DER has the statutory power to increase bond amounts when it finds that a site is not bonded in a manner necessary to meet the requirement of the act. Novak's expert, Mr. Satterthwaite has confirmed that DER's judgment of the amount of money needed to meet those requirements was correct.

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Pursuant to Section 901 of the Act, 35 P.S. § 6018.901, and 1 Pa. C.S. § 1922(5), the Board should construe the Act liberally, favor the public interest over any private interest, and not undo DER's requirement that Novak ensure proper closure and post-closure care of the landfill by posting bond adequate to correct and monitor and maintain conditions on all the land that Novak has filled with waste.

III. DISCUSSION ON OTHER MATTERS

A. Trench Fill Volume Is At Issue.

The Examiner will recall DER's cross-examination of Mr. Satterthwaite respecting Novak's incredible expanding trenches. Mr. Satterthwaite measured them on the original permit plan [A-2], again on the gas vent plan ("Costello plan") [A-24] and finally as shown on the aerial topographic map A-11]. The figures differed each time. Finally, DER's inspector Mr. Maiolie, based on his personal familiarity with the site, taping and measuring the trenches, and walking the trench contours himself, demonstrated by dashed lines on a copy of that aerial plan [C-3] that the actual size of the trenches considerably exceeds that shown by Novak's consultants on A-11. Thus, the length figures shown in the right-hand column of the trench size chart [A-12], already understated because they depend on gas vent locations inside the trenches' side boundaries, are shown to be doubly inaccurate because the delineated outer boundaries have themselves been exceeded. Of course, Mr. Satterthwaite himself did

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not prepare the trench size chart, since that gets outside his field of expertise (he was hard pressed, it may be recalled, even to locate PP&L pole 10 on A-2) and the person who did prepare it was not available for cross examination as to its preparation; however, the misleading nature of A-12 is demonstrated by its characterization of fill in square feet (not cubic feet, as Novak claims on pages 4 and 8 of the brief in support of supersedeas), relating to area, rather than cubic feet, which involves fill volume and includes the factor of depth and height of fill. Without inclusion of that final factor, demonstrated in the cross-sections on A-4, A-12 would be meaningless even if the length figures for existing trenches were not grossly understated. The Board's attention is respectfully called to the inset, "Fill volume for trenches by average end area" on A-4; total proposed and permit . volume of fill for the trench fill section is and was just over two hundred seventy thousand (270,000) cubic yards. More than that amount has already been deposited in the four existing trenches, due to their greater length, width and in at least the case of trench 4, height. That is why Novak dared only make claims as to area rather than volume of fill; permitted volume has been used up.

B. Novak's Operational Record Is Poor.

As evidenced by DER's inspection reports [C-4, C-5], Novak has violated the requirements of permit, regulation and statute dozens of times over the past three years. As

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Messers. Maiolie and Beitler testified, Novak's alleged "cooperation" has all been verbal; when it came time to perform remedial and abatement actions required, huge delays ensued.

Novak has taken illegal chances with public safety. First, the gas venting system required by the amended permit [A-24] was not installed in a timely manner; in fact, as Mr. Satterthwaite testified, Novak Sanitary Landfill, Inc. was convicted in summer 1983 on a summary charge of failing to adhere to the required schedule. Gas venting is necessary to minimize the danger of explosions of methane gas on-site and migrating off-site. Novak did not act to deal with that danger until DER actually instituted prosecutions.

Not satisfied with failing to abate the danger of explosion, Novak went on to create a h st or two of its own. As shown on C-4 and as Mr. Maiolie testified, on August 2, 1983 Novak attempted to accelerate bedrock removal by means of explosives, without regard to the potential effects on methane emanating from the site. Novak introduced no evidence of any permit to perform such blasting, nor did Novak demonstrate at hearing compliance with the licensing requirement of 25 Pa. Code § 210.5(a) or the safety requirements of 25 Pa. Code Chapter 211.

Given Novak's indifference to many regulatory and permit requirements, DER has had to impose strict deadlines for remedial activity on the site. Superseding those deadlines and opening the site up to filling beyond the area allowed in the permit will reward that indifference.

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C. Allowable Fill Bounds Are Before the Board.

DER has demonstrated that Novak exceeded allowable volume [C-2], elevation [A-4 and testimony of Messers. Beitler, Maiolie and Satterthwaite] and grading [A-11 and testimony of Mr. Rajkotia] of fill, and is now proposing to exceed its southernmost boundary. The issue before the Board is not whether it would have been a good idea for Novak, a few years ago, to have applied for an expansion permit to encompass the out-of-bounds area now sought to be filled. The Board is not now hearing a permit application. DER has shown that it never approved any filling to the south of grid-line 18-S as shown on A-24 and A-4. The only issue before the Board is, does Novak propose to exceed the bounds of allowable fill, again?

IV. CONCLUS .J

Novak started out in the late 1960's (at least) by operating the landfill without a legally required permit. The "area fill" section was operated in volation of volume, vegetation, cover and grading requirements, as well as the numerous other requirements shown through testimony and exhibits. The "trench fill" section too has shown operational deficiencies. What is at best a sloppy operation has come to the end of its days; Novak is reluctant to comply with the law and close up the

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site. DER has acted to enforce the law, the regulations and the permit. The Board should sustain that action.

Respectfully submitted,

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ER-SWM-38: 5/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

FORM NO. 13-A

MODIFICATION TO SOLID WASTE DISPOSAL AND/OR PROCESSING PERMIT

Under the provisions of Act 97, the Solid Waste Management Act of July 7, 1980, Solid Waste Permit Number 100534 issued on (date original permit was issued) 3/24/72 to (permittee.) Louis J. Novak (Novak Sanitary Landfill Inc.)
(address) R.D. No. 1
Allentown, PA
is hereby modified as follows:

1. This amended solid waste permit is based upon application No. 100534 which was received on March 16, 1982 for a gas management plan at the Novak Sanitary Landfill located in South Whitehall Township, Lehigh County.

2. Form No. 6, Certification of Facility Design and Construction, must be submitted to the Norristown Regional Office of the Department of Environmental Resources after this methane gas venting plan has been implemented.

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This modification shall be attached to the existing Solid Waste Permit described above and shall become a part thereof effective on (date) SEP 1982.

Wayne L. Lynn
FOR THE DEPARTMENT OF ENVIRONMENTAL RESOURCES

EXHIBIT "A"

Y510

COMMONWEALTH OF PENNSYLVANIA
Before The
ENVIRONMENTAL HEARING BOARD

In the Matter of:

LOUIS J. NOVAK and HILDA NOVAK	:	
v.	:	DOCKET NO. 84-425-M
COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES	:	

CERTIFICATE OF SERVICE

The foregoing Reply Brief is being served by first class mail upon the below listed counsel:

Martin J. Karess, Esquire
Karess & Reich
215 North Ninth Street
Allentown, PA 18102

Michael J. Sheridan, Esquire
Fox, Differ, Callahan, Ulrich and O'Hara
317 Swede Street
Norristown, PA 19401

KENNETH A. GELBURD
Assistant Counsel
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
1314 Chestnut Street
Philadelphia, Pennsylvania 19107
Telephone: (215) 875-7486

Dated: January 22, 1985

KAG 6.3

200974

STD-501 12-87
(FORMERLY OA-501)

JAN 28 1985

COMMONWEALTH OF PENNSYLVANIA

January 24, 1985

SUBJECT: NOVAK LANDFILL CLOSURE INSPECTION

TO: Joseph P. Pomponi
Field Operations Supervisor

FROM: James A. Dolan
Solid Waste Specialist

1. The subject inspection, done this date, confirmed that the site remains closed. Particular emphasis was placed on the transfer station/recycling operation. The area designated for this activity is not undercover and this creates quite a bit of blowing litter. Wastes consist mostly of paper and cardboard, but many plastic bags were in evidence which contained a wide variety of trash besides paper and cardboard. This trash is separated from the paper and cardboard and reloaded onto a transfer truck and hauled off site. The owner states that about six loads per day come and go.

2. The major problem with this operation besides the fact that it is unpermitted and contributes to a good deal of blowing litter, is that it is simply overloaded and cannot be confined to the walled area designated for ~~was~~ deposition.

JAD/bal

CC: Wayne Lynn
Bruce Beitler
Ken Gelburd

200975

NO.	DATE	REVISION	APPR.

SUBMITTED

APPROVED

APPROVED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF RESOURCES MANAGEMENT

NOVAK LANDFILL

SOUTH WHITEHALL TOWNSHIP

LEHIGH COUNTY, PENNSYLVANIA

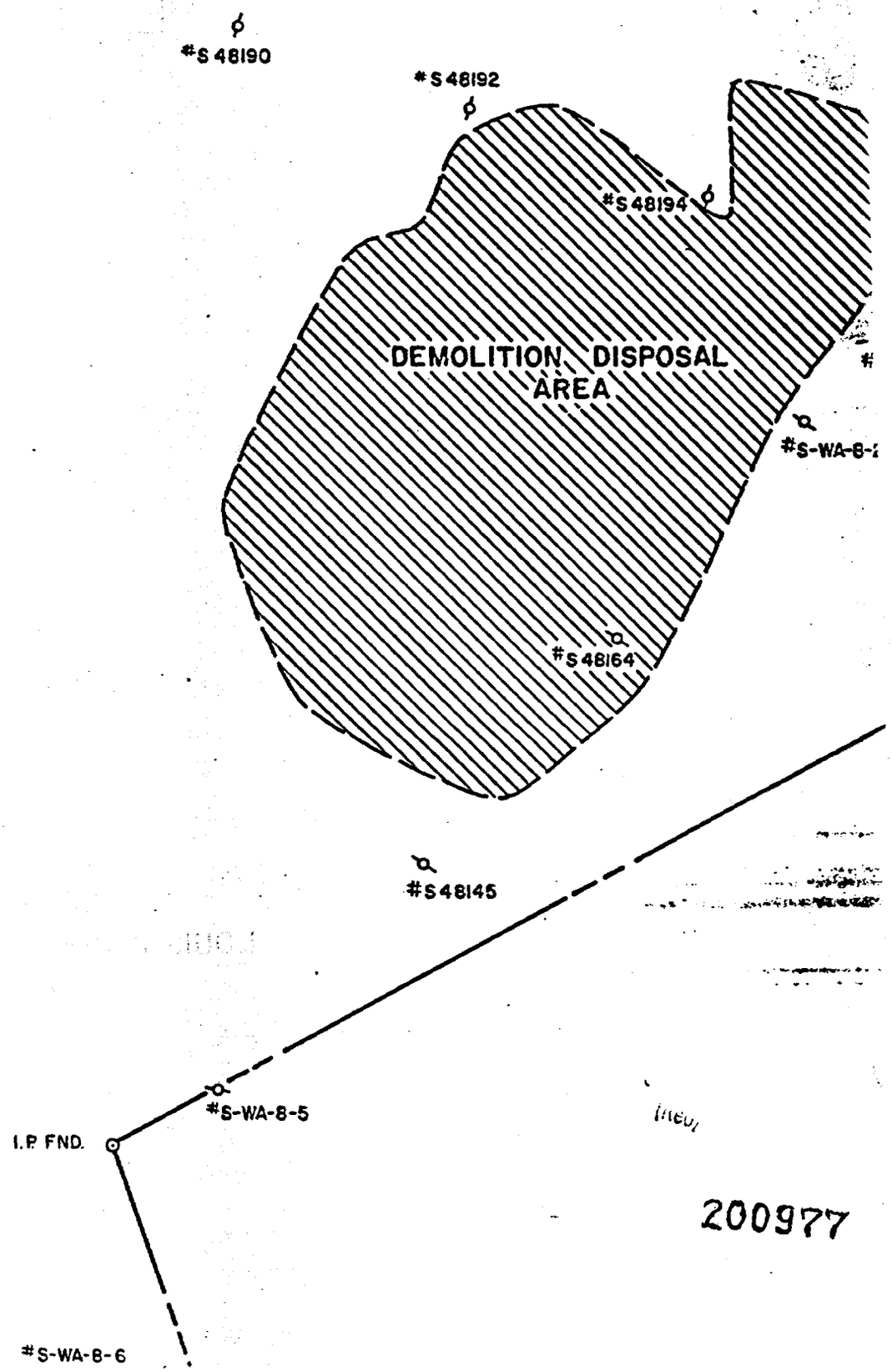
RECEIVED
SPRINGTOWN

FEB 13 1985

. DIMENSIONS AND EXISTING
DITIONS SHALL BE CHECKED
) VERIFIED BY CONTRACTOR
THE SITE.

DRAWN BY	DATE	DRAWING NO.
G.P.F	JAN. 8, 1985 FEB. 1, 1985	1 of 1
CHECKED BY	SCALE	
	1 in. = 100 ft.	

AR200976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DEMOLITION DISPOSAL AREA
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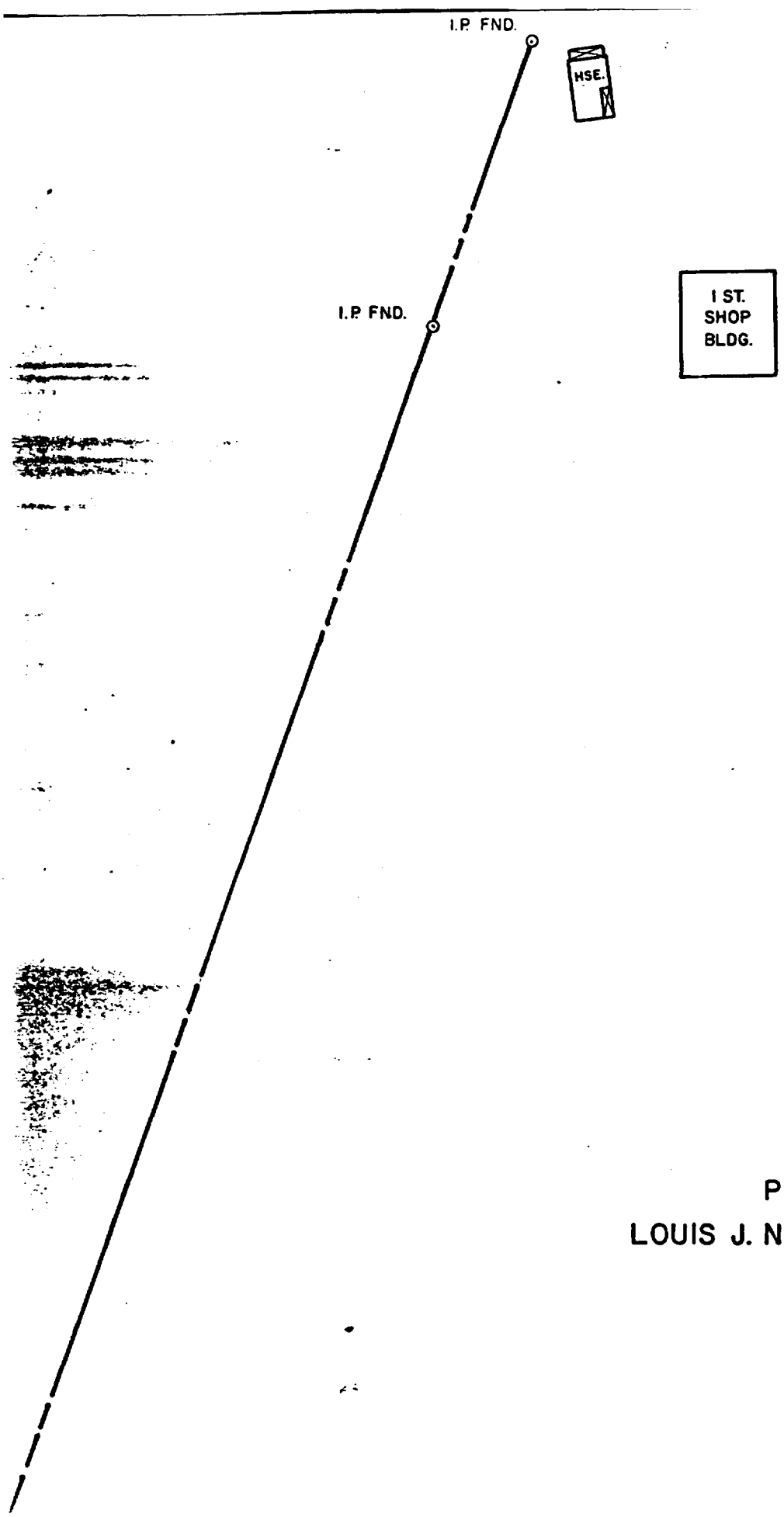
I.P. FND.
#S-WA-8-6

200977



PROPERTY OF
LOUIS J. NOVAK & HILDA NOVAK

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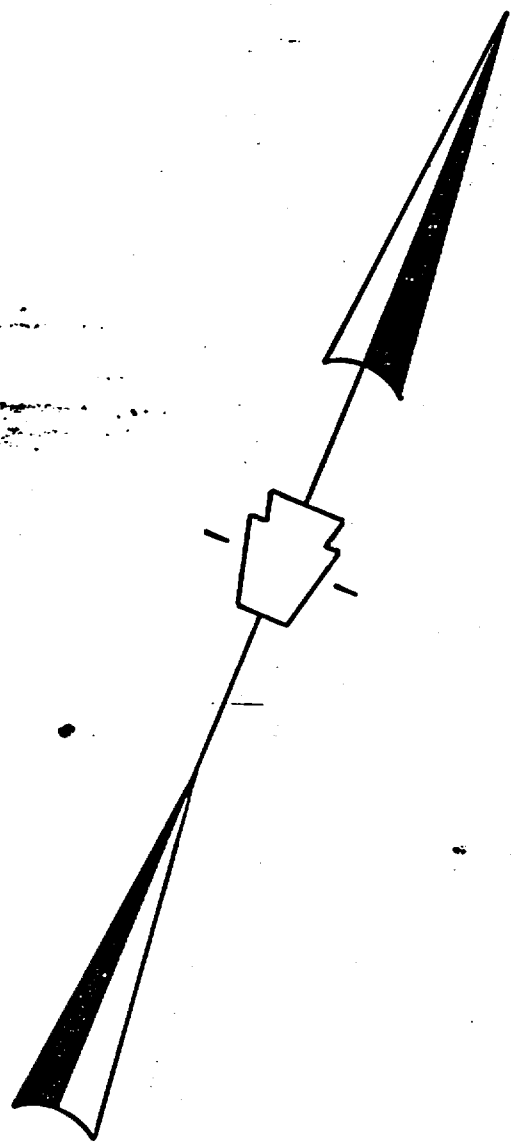

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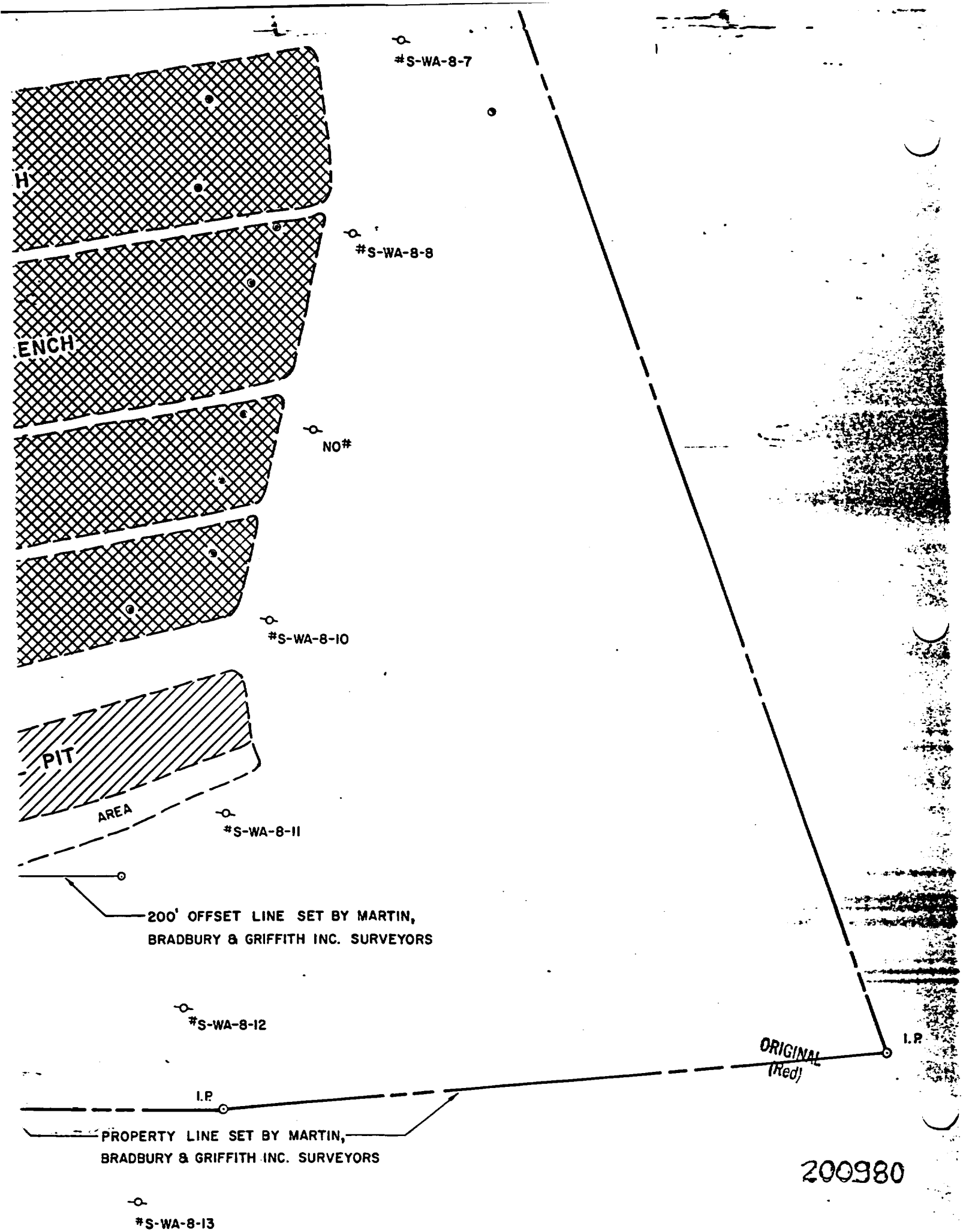
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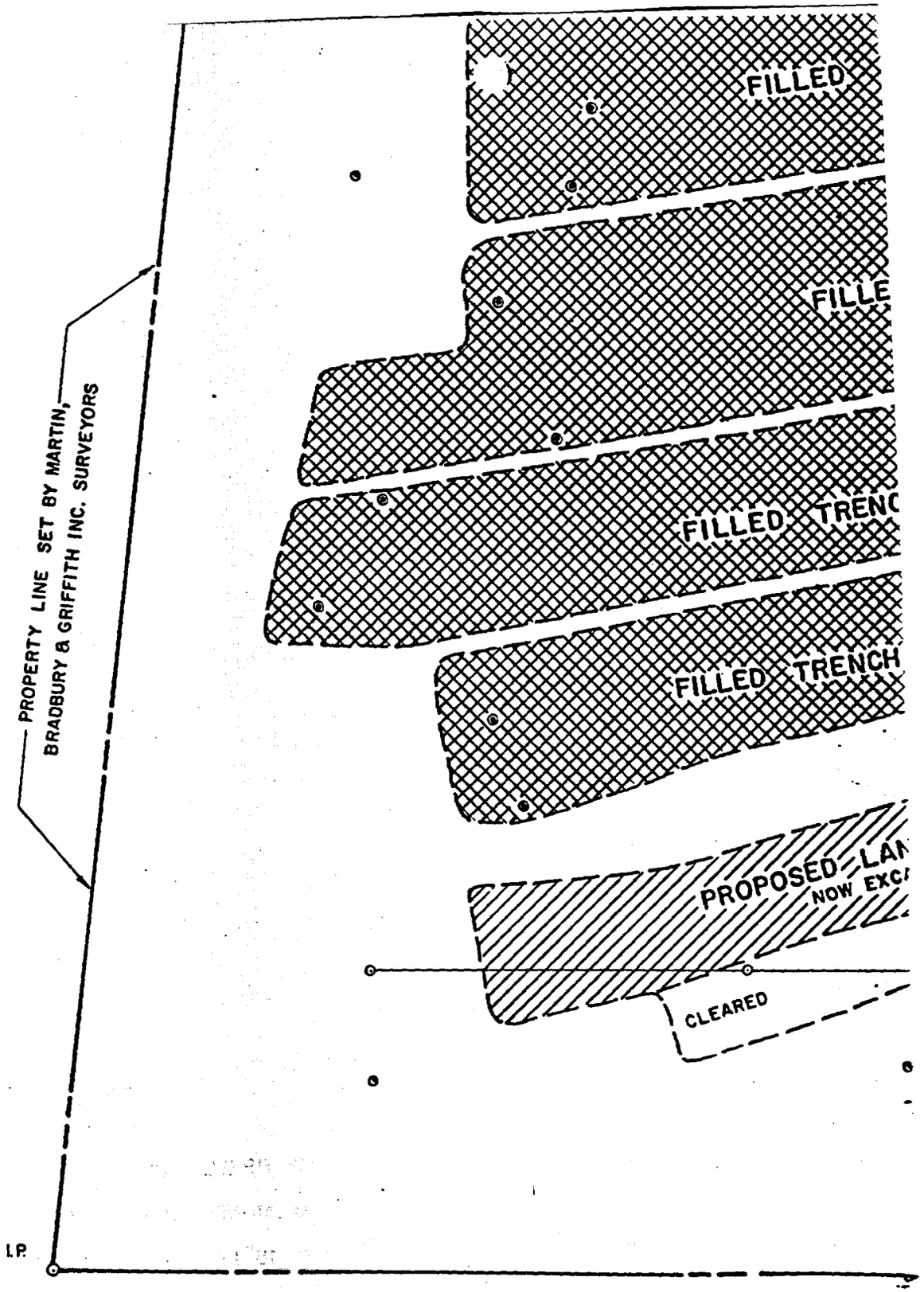
NO#
#S-WA-8-10
PIT
AREA
#S-WA-8-11
200' OFFSET LINE SET BY MARTIN,
BRADBURY & GRIFFITH INC. SURVEYORS
#S-WA-8-12
ORIGINAL
(Red)
I.P.
I.P.
PROPERTY LINE SET BY MARTIN,
BRADBURY & GRIFFITH INC. SURVEYORS
200980
#S-WA-8-13



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(Red)

200981

LEGEND

-O- PP&L POLE

◑ MONITORING WELL

◉ 18" I.D. ASPHALT COAT METAL VENT PIPE

200982

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486

DER

MAR 28 1985

Novak Landfill
Lehigh Co.

March 26, 1985

Mr. Anthony J. Mazullo, Jr.
Member
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER,
Docket No. 84-425-M

Dear Mr. Mazullo:

This is in response to the proposed Order submitted by counsel to Louis Novak, et al. (Novak) in the above matter under cover of letter dated March 15, 1985. The Department's response is as follows:

1. BONDING

The applicability of the Section 505(a), Solid Waste Management Act bonding requirement has been briefed and the arguments will not be reiterated here. The record demonstrates (Notes of Testimony January 2, 1985, pp. 477-479) that in September 1982, Novak Landfill's permit was amended to reflect previously unsubmitted final elevations for the "trench fill" section of the site and a gas venting system which, as Exhibit A-24 demonstrates, affected the entire landfill. Since the amendment to the permit making A-24, a part of it was not introduced into evidence at the hearings by either party, and since it would be inefficient to convene a new hearing just to introduce it, I am herewith submitting a copy of the document itelf with the appropriate affidavit from Wayne Lynn, the Department's Norristown Regional Solid Waste Manager, and offering it.

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Throughout these proceedings, Novak has argued that at least as far as grading of the site and surface water management are concerned, the site should be treated as a whole. Since the closure and post-closure activities on which bonding is statutorily based are site-wide, and any necessary polution abatement activity would be the same, a bond covering the whole site is required.

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200983

In any event, the 1982 amendment included a plan for a gas venting system which encompasses the entire landfill. Appropriate bonding is therefore required for the whole site, all "the land affected", as the statute says. Certainly proper venting of dangerous methane gas "affects" the land on which disposal activity has been occurring.

2. PROPOSED CLOSURE ORDER

The Department's general observation is that the Novak proposals are unacceptably vague. There are no end dates for achievement of the various goals that the Board has already found necessary, no definitions of what is meant by terms designating the various portions of the fill (whatever the "demolition fill" section is, it is not fifteen acres in extent, as represented in the cover letter). The Department's draft, as did the Examiner's suggestion, calls for a timetable for closure of specific portions of the site. Particular comments follow.

a) Groundwater

The method of closure of wells 1 and 2 (grouting with concrete) should be specified. Initial sampling of new wells and wells 3 through 6 should be for annual (large-scale) analysis, as agreed. Quarterly analyses may follow at appropriate three-month intervals. Raw data from samplings must be submitted to the Department within five days of receipt from the consulting labs. If Novak wishes to interpret the raw data and make a subsequent submission, that is acceptable as an addition to, not a substitute for, the sample results as reported to Novak. The Department makes no statement at this time about the possible need in the future to enter private property for sampling purposes.

b) Site Closure

The terms of the Order (as the Department understands the Examiner's most recent statements at our conference) would obviate the need for additional plans to be filed respecting either the trench or area fill sections of the site. The Examiner has stated his belief that the site is ready to be closed with a three percent (not degree) grade overall, and side slopes not greater than fifteen percent (not degrees). An updated erosion and sedimentation control plan, in light of continuing discussion among the parties, should be submitted within thirty days of the Order, and implementation should begin immediately upon Department approval. The cutback to the southernmost filled trench to permitted elevation can be achieved in a week at most.

Rec'd 200984

In light of the need for a firm and prompt closure of the site, the Order should not contemplate additional waste deposition outside that portion of the demolition fill section not yet up to permit elevation. Phrases such as Novak's "should additional refuse be required to meet final grades" (their paragraph D(5)) augur ceaseless litigation before this Board about what is "required"; Novak has permitted elevations and should be held to them, instead of being allowed to turn this Board into a forum for challenging requirements of record from which no appeal was taken. Adopting Novak's proposed form of Order will turn the above-captioned appeal into a permanent source of controversy over its terms.

Thank you for your attention to this matter.

Sincerely yours,

Kenneth Gelburd

KENNETH A. GELBURD
Assistant Counsel

cc: Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
Mr. Bruce Beitler

cam 178/.1

COMMONWEALTH OF PENNSYLVANIA : SS
COUNTY OF MONTGOMERY :

AFFIDAVIT

WAYNE L. LYNN, being duly sworn according to law, hereby avers that:

1. He is the Regional Solid Waste Manager for the Commonwealth of Pennsylvania, Department of Environmental Resources (DER), Norristown Regional Office, with jurisdiction over Solid Waste Management permits for Lehigh County; and

2. He is authorized to make this affidavit on behalf of DER; and

3. On September 18, 1982, DER amended Solid Waste Permit No. 100534 for Novak Sanitary Landfill to include a gas management plan, and final elevations for the "trench fill" section of Novak Landfill. A copy of that Permit Amendment is appended to this Affidavit as Exhibit "A"; and

4. The "trench fill" section of Novak Landfill is an area comprised of 8 acres.

Wayne L. Lynn
WAYNE L. LYNN
Regional Solid Waste Manager
Department of Environmental Resources
Norristown Regional Office

SWORN TO AND SUBSCRIBED :
BEFORE ME THIS 21st DAY :
OF March, 1985 :

Teresa L. Riegel
Notary Public

HE 114

TERESA L. RIEGEL, Notary Public
Norristown Boro, Montgomery Co.
My Commission Expires Oct. 3, 1988

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200986

: 5/82

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
BUREAU OF SOLID WASTE MANAGEMENT

FORM NO. 13-A

MODIFICATION TO SOLID WASTE DISPOSAL AND/OR PROCESSING PERMIT

Under the provisions of Act 97, the Solid Waste Management Act of July 7, 1980, Solid Waste Permit Number 100534 issued on (date original permit was issued) 3/24/72 to (permittee.) Louis J. Novak (Novak Sanitary Landfill Inc.)
(address) R.D. No. 1
Allentown, PA
is hereby modified as follows:

1. This amended solid waste permit is based upon application No. 100534 which was received on March 16, 1982 for a gas management plan at the Novak Sanitary Landfill located in South Whitehall Township, Lehigh County.

2. Form No. 6, Certification of Facility Design and Construction, must be submitted to the Norristown Regional Office of the Department of Environmental Resources after this methane gas venting plan has been implemented.

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This modification shall be attached to the existing Solid Waste Permit described above and shall become a part thereof effective on (date) SEP 1982

Wayne H. Lynn

FOR THE DEPARTMENT OF ENVIRONMENTAL RESOURCES

Page 1 of 1

EXHIBIT "A"

Y510

2/18/85

Subject: Novak Landfill - Evaluation of Surveys
South Whitehall Township; Lehigh Co.

To: Kenneth Gelburd Esq.
Bureau of Litigation

From: Bruce Beitler
Solid waste operations Supervisor

Attached is a copy of the DER survey at Novak. Dinesh has reviewed the [redacted] survey and found it is not consistant with the most recent Satterthwaite plan (10/4/84 plan revised 2/8/85). Inconsistancies include:

1. According to our survey the excavated proposed trench presently extends to 165 feet from the property line in the Eastern end. The Satterthwaite plan shows a 220 foot set-back.

2. According to our survey, vegetation has already been cleared from an area extending to 140 feet from the property line. The Satterthwaite plan calls the toe of the slope to end 200 feet from the property line and no land clearing to occur beyond that point.

3. The demolition waste disposal areas are also inconsistant. The Satterthwaite plan shows a larger area than the DER survey. The demolition area should be defined by

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grid coordinates so that any area where additional filling is allowed could be clearly identified.

ORIGINAL (Red)

200989

[illegible] Office
[illegible] Street
[illegible], Pennsylvania [illegible]
[illegible]

February 20, 1995

Mr. Nicholas Pidstawski, Jr.
R. D. # 1, Box 242-3
River Road
Allentown, [illegible]

Dear Mr. [illegible]

Enclosed are the laboratory results of sample which we [illegible] your residence on January [illegible], 1995. Department personnel have reviewed these results. No apparent problems are indicated, as the results lie within the drinking water standards.

Some of the results [illegible] be micrograms per liter (ug/l). [illegible] convert this figure to [illegible] (ug/m), multiply [illegible].

If you have any questions [illegible] sample results, [illegible] to contact me at the above [illegible].

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

Original (Red)

200990

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

DER-RECEIVED
NORRISTOWN

FEB 21 1985

February 20, 1985

Mr. Ronald Cole
R. D. # 1
Allentown, Pennsylvania 18104

Dear Mr. Cole:

Enclosed are the laboratory results for the sample which was taken from your residence on January 7, 1985. Department personnel have reviewed these results. No apparent problems are indicated, as the results lie within the drinking water standards.

Some of the results may be expressed in micrograms per liter (ug/l). To convert this figure to milligrams per liter (mg/l), [illegible]

If you have any questions regarding the sample results, [illegible] free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL
(Red)

200991

DER-RECEIVED
NORRISTOWN

FEB 21 1985

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

February 20, 1985

Mr. Leroy Neffelfinger
R. D. # 1
Allentown, Pennsylvania [illegible]

Dear Mr. Neffelfinger:

Enclosed are the laboratory results for the sample which was taken from your residence on January 7, 1985. [illegible] personnel have reviewed these results. No apparent problems are indicated, as the results lie within the drinking water standards.

Some of the results may be expressed in micrograms per liter (ug/l). To convert this figure to milligrams per liter (mg/l), [illegible].

If you have any questions regarding the sample [illegible] hesitate to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL
(Red)

200992

DER-RECEIVED
NORRISTOWN

FEB 21 1985

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
(215-378-4175

February 20, 1985

Mr. Thomas [illegible]
R. D. # 1
Allentown, Pennsylvania [illegible]

Dear Mr. Lapp:

Enclosed are the laboratory results [illegible] which was taken from your residence on January [illegible]. [illegible] personnel have reviewed these results. No apparent problems are [illegible] within the drinking water standards.

Some of the results are [illegible] (mg/l). We convert this figure to milligrams [illegible].

If you have any questions regarding the [illegible] contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL
(Red)

200993

FEB 21 1985

District Office
Street
Pennsylvania 19602
-4175

February 20, 1985

Mr. Donald Lapp
R. D. # 1
Allentown, Pennsylvania 1[illegible]

Dear Mr. Lapp:

Enclosed are the laboratory results for the sample that was taken from your residence on January 7, [illegible] Department personnel have reviewed these results. No apparent problems are indicated, as the results are within the drinking water standards.

Some of the [illegible] may be expressed in micrograms per liter (ug/l). To convert this [illegible] milligrams per liter (mg/l), multiply by [illegible].

If you have any [illegible] about the sample results, do not hesitate to contact me at the above [illegible].

Sincerely,

MICHAEL C. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL
(Red)

200994

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

February 25, 1985

Mr. Louis J. Novak
Novak Sanitary Landfill, Inc.
R. D. #1
Allentown, Pennsylvania 18104

Re: Residential Well Sample Results

Dear Mr. Novak:

I am enclosing copies of the residential well sample results for the sampling conducted on January 7, 1985. These samples were taken using the collector no. 2126 and consist of the following sample numbers: 390 through 407.

If you have any questions regarding these sample results, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosures

ORIGINAL (Red)

002602

200995

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

February 25, 1985

Mr. Luther Lapp
R. D. #1
Allentown, Pennsylvania 18104

Dear Mr. Lapp:

I am enclosing the laboratory results for the water sample which was collected from your resicence on January 7, 1985. The inorganic portion of this sample indicates that your drinking water does meet the drinking water standards. A volatile organic sample was also collected on that date and has shown that very low levels of trichlorofluoromethane, 1,1,1 trichloroethane and tetrachloroethylene also have been detected in your water. The EPA has also suggested no adverse response levels (SNARL) for 111-trichloroethane and tetrochloroethylene. These are 1,000 mg/l and 20 mg/l respectively for chronic long-term exposure to these compounds in drinking water. At this time, no SNARL limit has been identified for trichlorofluoromethane.

If you have any questions regarding these results, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL (red)

M. Maiolie will call to clarify units

3/6/85

200996

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

February 25, 1985

Mr. & Mrs. Nicholas Pidstawski, Sr.
R. D. #1, Box 242
River Road
Allentown, Pennsylvania 18104

Dear Mr. & Mrs. Pidstawski:

I am enclosing the laboratory results for the water sample which was collected from your residence on January 7, 1985. A review of these results has shown that the inorganic portion of the sample meets the drinking water standards. An organic sample was also collected on that date and the results indicate that an estimated 1 ~~mg/l~~ (ug/l) of trichlorofluoromethane has been detected in your water. At this time, I have not been able to determine what the safe drinking water limit is for this parameter.

If you have any questions regarding these results, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL
(Red)

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-378-4175

February 25, 1985

Mr. & Mrs. Quentin Kramer
R. D. #1
River Road
Allentown, Pennsylvania 18104

Re: Water Sample Result

Dear Mr. & Mrs. Kramer:

I am enclosing a copy of the laboratory analysis for the water sample which was taken from your residential well on January 7, 1985. These results continue to exceed the drinking water standards and should not be used for drinking water. It is my understanding that you have, since the sample was taken, tied into the public water supply supplied by the South Whitehall Township.

If you have any questions regarding these results, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL (Red)

200998

File: Novak Landfill
Lehigh Co.

MAR 5 1985

Reading District Office
625 Cherry Street
Reading, Pennsylvania 19602
215-373-4175

February 25, 1985

South Whitehall Township
Attention: Mr. Ralph Kocher
444 Walbert Avenue
Allentown, Pennsylvania 18104

Re: Bridgeview East Well

Dear Mr. Kocher:

I am enclosing a copy of the laboratory results for the sample which was collected from the Bridgeview East Well on January 7, 1985. The inorganic portion of this analysis indicates that the parameters tested for lie within the drinking water standard with the exception of iron which slightly exceeds the drinking water standard of 300 mg/l. This sample revealed a level of iron at 340 mg/l. In addition, nitrates (NO_3-N) are elevated although they do not exceed the drinking water standard of 10 mg/l. The organic portion of this analysis revealed less than 1 mg/l of 1,1,1-trichloroethane. The EPA suggested no adverse response level (NOAEL) for 1,1,1-trichloroethane is 1,000 mg/l for chronic long-term exposure.

If you have any other questions regarding these sample results, please feel free to contact me at the above number.

Sincerely,

MICHAEL G. MAIOLIE
Solid Waste Specialist

Enclosure

ORIGINAL (Red)

M. Maiolie will call to clarify units. 3/5/85

200999

MAR 7 1985

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486

File: Novak Landfill
Lehigh Co.

March 5, 1985

The Honorable Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

You had requested, with respect to the above captioned supersedeas matter, that the Department advise you if its property survey of Novak Landfill differed from that of Novak's consultant. Last week the Department received its surveyors' final mapping of the site, dated January 8, 1985 and February 1, 1985. Copies of this map are being provided by Mr. Dinesh Rajkotia, Solid Waste Management Engineer, to you and to Mr. Satterthwaite, who consults to both Novak counsel. A photocopied excerpt of the area at issue is enclosed.

As soon as the final map came in, I arranged a meeting among Department representatives, Department surveyors and Novak's surveyor. On Thursday, February 28, 1985, the meeting took place at the office of Mr. Bradbury, Novak's surveyor. Mappings were compared on a light table and then the parties went to the site for field confirmation. It is my understanding that the technical staffs are now in agreement.

The southwest corner of the southernmost excavated trench is less than two hundred (200) feet from the southern property boundary, let alone the two hundred twenty (220) foot setback under discussion for waste disposal as opposed to earth fill. A significant portion of Novak's proposed expansion of the trench also falls within the two hundred (200) foot setback area. These facts merely confirm what the Department's position has been all along - that Novak Landfill exceeds its permit boundaries in many areas, and would have exceeded them further if the December 1984 Order had not been issued.

The Department has also received results from its January 7, 1985 sampling of nearby residential wells. The Quentin Kramer well showed significantly elevated quantities of solids, ammonia-nitrogen, and chlorides, as well as chlorobenzene in 16.4 micrograms per liter, six volatile organics between 1 and 4 micrograms per liter, and tentative identifications of eight or more other volatile organic compounds.

We look forward to meeting with you and counsel at the Department's Norristown office the afternoon of Monday, March 11, 1985.

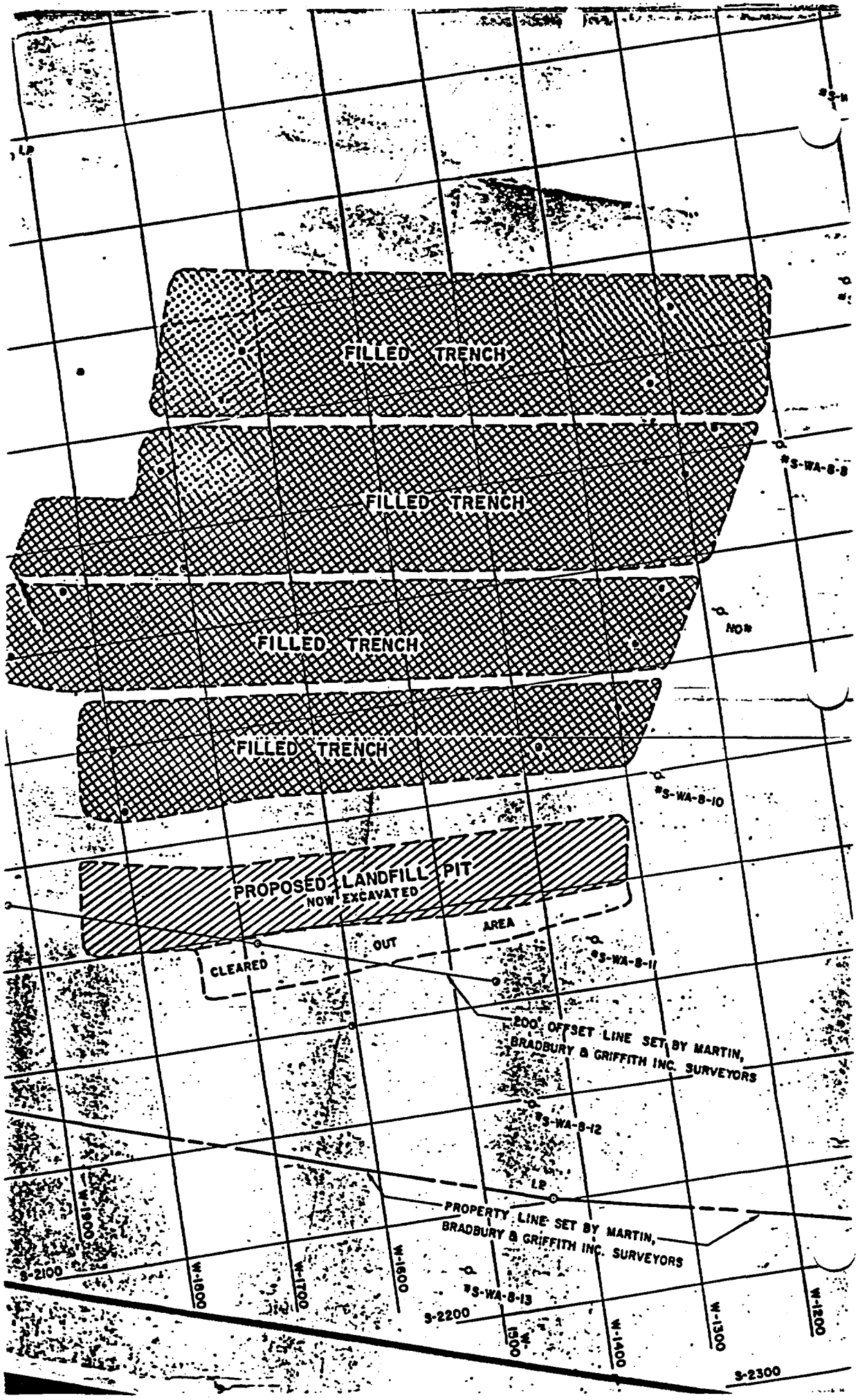
Very truly yours,

Kenneth Gelburd

KENNETH A. GELBURD
Assistant Counsel

Enclosure

cc: (w/ Enclosure)
Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
Bruce Beitler
James Dolan
HE 105


FILLED TRENCH
FILLED TRENCH
FILLED TRENCH
FILLED TRENCH
PROPOSED LANDFILL PIT
NOW EXCAVATED
CLEARED OUT AREA
#S-WA-8-8
NO#
#S-WA-8-10
#S-WA-8-11
200' OFFSET LINE SET BY MARTIN, BRADBURY & GRIFFITH INC. SURVEYORS
#S-WA-8-12
LP
PROPERTY LINE SET BY MARTIN, BRADBURY & GRIFFITH INC. SURVEYORS
#S-WA-8-13
S-2100
S-2200
S-2300
W-1900
W-1800
W-1700
W-1600
W-1500
W-1400
W-1300
W-1200

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
OFFICE OF CHIEF COUNSEL - EASTERN REGION
1314 CHESTNUT STREET - 12th FLOOR
PHILADELPHIA, PA 19107-4786

Telephone: (215) 875-7486

Novak Landfill
Lehigh Co.

March 12, 1985

The Honorable Anthony J. Mazullo, Jr.
Environmental Hearing Board
221 North Second Street
Third Floor
Harrisburg, PA 17101

RE: Novak v. DER
Docket No. 84-425-M

Dear Mr. Mazullo:

It is my understanding, based on our conference of March 11, 1985 at the Department's Norristown Regional Office, that you intend to issue a ruling on Novak's petition for supersedeas by next week. There are some factors you should be aware of in making the ruling.

First, based on representations by Mr. Satterthwaite, Novak's hydrogeologic consultant, the parties have agreed that Monitoring Wells One and Two should be taken out of service. It is my understanding that Mr. Satterthwaite will meet in the field with the Department's hydrogeologist, Mr. Manduke, at the end of this month to agree upon siting for alternate wells.

Second, the Department requests that the Board bear in mind that the Solid Waste Act renders unlawful violations of permit conditions and permits, and that it is the Department's governmental function to enforce those permits and conditions. In the exercise of that function, DER cannot be prevented from enforcement on the ground of alleged tardiness. Lackawanna Refuse Removal, Inc. v. DER, 65 Pa. Comwlth. 372, 42 A. 2d 423 (1982). This Board -- indeed, this Examiner -- reasserted the principle established by the Commonwealth Court in the Board's July 27, 1984 opinion in Sussex, Inc. v. DER, Docket No. 82-238-M (slip op. at 14-15).

Finally, the Department respectfully wishes to emphasize that Novak Landfill is reaching the end of its days. There is need for a firm schedule that will represent complete closure of the site, and any Order respecting the matter should be sufficiently stringent that there will not be constant assertions of necessity to bring in yet more waste "to fill in depressions and bring areas up to grade". A date must be set at which the only activity at the site will be post-closure maintenance and monitoring. The planting season is fast upon us.

Thank you for your consideration of these points in this complex matter.

Sincerely yours,

KENNETH A. GELBURD
Assistant Counsel

cc: Martin J. Karess, Esquire
Michael J. Sheridan, Esquire
Bruce Beitler
Joseph Manduke
Joseph Pomponi
HE 110

Novak Landfill
Lehigh Co

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

MAR 18 1985 MAR 14 1985

Mr. Wayne Lynn
Dept. of Environmental Resources
1875 New Hope St.
Norristown, PA 19401

RE: Novak Landfill (PA-248)

Dear Mr. Lynn:

Enclosed is a copy of the sample data summary for sampling performed by EPA on June 26, 1984. Results indicate contamination of the Kramer well. I have already spoken to Jim Dolan of the Bethlehem office and he assured me that the Kramer residence is now connected to a public water supply.

Two monitoring well samples (MW 1 and MW2) indicated groundwater contamination by organic and inorganic substances. Leachate seep and ponded water samples also contained contaminants at elevated levels.

The draft site inspection report for this site is scheduled for completion during the next four to six weeks. I apologize for the poor quality of the data summary copy. If you have difficulty reading any of the data, please feel free to contact me.

Sincerely,

Douglass Hill
Site Investigation & Support

cc: Jim Dolan, PADER Bethlehem

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