

HISTORICAL INFORMATION

AERO DRIVE LANDFILL
Cheektowaga, New York

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I. OWNERSHIP OF PROPERTY

Members of the Pfohl family, either individually or in some combination, own several parcels of real property located along Aero Drive in Cheektowaga, Erie County, New York. These parcels are identified below by their Section, Block and Lot ("SBL") numbers. A tax map identifying the parcels is attached as Schedule A.

Parcel A. SBL 081.040-01-027
Parcel B. SBL 081.040-01-028.100
Parcel C. SBL 081.040-02-009.100
Parcel D. SBL 081.040-02-010.100
Parcel E. SBL 081.040-02-011
Parcel F. SBL 082.030-04-006
Parcel G. SBL 082.030-04-005
Parcel H. SBL 082.030-04-007
Parcel I. SBL 082.030-04-008
Parcel J. SBL 081.040-01-026
Parcel K. SBL 081.040-02-008
Parcel L. SBL 084.010-02-009.211

More specific information concerning the ownership of each parcel is set out below.

Parcel A. SBL 081.040-01-027

The parcel is presently owned by Paul, Richard, Bernice, and Dolores Pfohl, as tenants-in-common. Paul, Richard, Joseph, Sr. and Fidelis Pfohl, brothers, owned the parcel from 1943 to 1956. It was acquired from Harry and Albert Schulenberg. In 1956, the Pfohl brothers conveyed the parcel to themselves as tenants-in-common. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice,

succeeded to his interest. Fidelis Pfohl died in 1979; his interest then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel B. SBL 081.040-01-028.100

The parcel is presently owned by Paul, Richard, Bernice and Dolores Pfohl, as tenants-in-common. Available records indicate part of the parcel was purchased by Paul Pfohl and Dolorous Bittlinger from Frank M. Gipple in 1940. Another part of the parcel was acquired from Harry and Albert Schulenberg in 1943 by Paul, Richard, Fidelis and Joseph, Sr. Pfohl. In 1953, some part, or possibly all of the parcel, was conveyed to Bero Construction Corporation. The Pfohl family was not affiliated with Bero Construction Corporation. In 1955, Bero Construction Corporation re-conveyed the parcel to Paul, Richard, Joseph Sr. and Fidelis Pfohl. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, succeeded to his interest. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel C. SBL 081.040-02-009.100

The parcel is presently owned by Paul, Richard, Bernice and Dolores Pfohl, as tenants-in-common. The parcel was acquired from Harry and Albert Schulenberg in 1943 by Paul, Richard,

Fidelis and Joseph, Sr. Pfohl. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, succeeded to his interest. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel D. SBL 081.040-02-010.100

The parcel is presently owned by Paul, Richard, Bernice and Dolores Pfohl, as tenants-in-common. This parcel was the original Pfohl homestead; it was owned by Matthew J. Pfohl. Paul, Richard, Fidelis and Joseph, Sr. Pfohl acquired the property upon Matthew Pfohl's death in 1945. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, succeeded to his interest. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel E. SBL 081.040-02-011

The parcel is presently owned by Paul, Richard, Bernice and Dolores Pfohl, as tenants-in-common. The parcel was acquired as part of a larger tract by Paul Pfohl and Dolorous Bittlinger in 1940 from Frank M. Gipple. In 1956, Paul Pfohl and Dolorous Bittlinger conveyed this parcel to Paul, Fidelis, Joseph, Sr., and Richard Pfohl, as tenants-in-common. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate.

His wife, Bernice, succeeded to his interest. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel F. SBL 082.030-04-006

The parcel is presently owned by Paul, Richard, Bernice and Dolores Pfohl, as tenants-in-common. The parcel was acquired by Paul, Richard, Joseph Sr. and Fidelis Pfohl, in 1961, from C.A. Hirsch. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, succeeded to his interest. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, succeeded to his interest.

Parcel G. SBL 082.030-04-005

The parcel is presently owned by Paul, Bernice and Dolores Pfohl as tenants-in-common. The parcel was acquired by Joseph Sr., Fidelis and Paul Pfohl, in 1954, from the Atlantic Refining Company. In 1977, Joseph Sr., Fidelis and Paul Pfohl conveyed the parcel to themselves as tenants-in-common. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, acquired his interest in the parcel from the estate in 1979. Fidelis Pfohl died in 1979; his interest then resided in his estate. His wife, Dolores, acquired his interest in the parcel from the estate in 1982.

Parcel H. SBL 082.030000-04-007

The parcel is presently owned by Paul, Bernice and Dolores Pfohl, as tenants-in-common. The parcel was acquired by Joseph Sr., Fidelis, and Paul Pfohl in 1954, from the Atlantic Refining Company. In 1977, Paul, Joseph and Fidelis Pfohl conveyed the parcel to themselves as tenants-in-common. Joseph Pfohl, Sr. died in 1977; his interest in the property then resided in his estate. His wife, Bernice, acquired his interest in the parcel from the estate in 1979. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, acquired his interest in the parcel from the estate in 1982.

Parcel I. SBL 082.030-04-008

The parcel is presently owned by Paul, Bernice and Dolores Pfohl, as tenants-in-common. The parcel was acquired by Joseph Sr., Fidelis and Paul Pfohl in 1954, from the Atlantic Refining Company. In 1977, Paul, Joseph and Fidelis Pfohl conveyed the parcel to themselves as tenants-in-common. Joseph Pfohl, Sr. died in 1977; his interest then resided in his estate. His wife, Bernice, acquired his interest in the parcel from the estate in 1979. Fidelis Pfohl died in 1979; his interest in the property then resided in his estate. His wife, Dolores, acquired his interest in the parcel from the estate in 1982.

Parcel J. SBL 081.040-01-026

The parcel is owned by William Pfohl. William Pfohl was never a principal in any business associated with the landfill. However, this parcel was used for waste disposal with William Pfohl's consent.

Parcel K. SBL 081.040-02-008

The parcel is owned by William Pfohl. William Pfohl was never a principal in any business associated with the landfill. This parcel was not used for waste disposal.

Parcel L. SBL 084.010-02-009.211

The parcel is owned by Robert Pfohl. Robert Pfohl was never a principal in any business associated with the landfill. This parcel was not used for disposal.

II. ENTITIES WHICH OPERATED THE LANDFILL

A. The Period: 1932-1945

Waste was disposed on at least some of the Parcels A-J during the period 1932-1945 when the landfill was operated by Matthew J. Pfohl as an individual. Matthew J. Pfohl died in April 1945. Therefore, neither Paul, Richard, Dolores nor Bernice Pfohl have any specific information about landfill operation or use during that period.

B. The Period: 1945-1955

The landfill was operated on a part-time basis prior to 1950. Paul Pfohl conducted the day-to-day operations from 1945 to 1950.

In 1950, the landfill began to be operated full-time. From January, 1950 to January, 1951, Albert Lavocat conducted day-to-day operations. In January 1951, Mr. Lavocat enlisted in the Air Force. From January 1951 to March 1955, William Marfort, who is deceased, conducted day-to-day operations.

The overall operation of the landfill was directed by Paul Pfohl from 1945 to 1955 (i.e., about the time of the formation of Pfohl Enterprises).

C. Pfohl Enterprises (Post 1955)

Pfohl Enterprises was a partnership formed in 1955. The business certificate for Pfohl Enterprises was filed in Erie County, New York, on January 6, 1959. The original partners were Paul, Joseph Sr., Fidelis and Richard Pfohl. In 1977, Joseph Pfohl, Sr. died and his wife, Bernice, succeeded to his interest in the partnership. In 1979, Fidelis Pfohl died and his wife, Dolores, succeeded to his interest in the partnership. No other person, partnership or corporation was ever a partner in Pfohl Enterprises.

The business of Pfohl Enterprises was operating the landfill. Expenses and income regarding the landfill were accounted for by Pfohl Enterprises. Pfohl Enterprises was dissolved in 1989.

The operation of the landfill was directed solely by Joseph Pfohl, Sr. from 1955 to the landfill's closure in September, 1969. Mr. Lavocat conducted the principal day-to-day activities during that period.

III. PFOHL BROTHERS/PFOHL JOINT VENTURE

Pfohl Brothers was a partnership which was formed in 1949 and dissolved in 1980. The original partners were Paul, Fidelis and Joseph Pfohl, Sr. The business of Pfohl Brothers was owning heavy equipment for lease. For example, Pfohl Brothers owned a bulldozer which was leased to Pfohl Enterprises for use on the landfill.

In 1978, Pfohl Joint Venture was formed as an administrative vehicle managing the expense and income associated with Parcels G, H and I. During the latter part of 1978, Joseph Pfohl, Sr.'s estate was a partner in Pfohl Joint Venture. In 1979, his wife, Bernice, succeeded to his interest in the joint venture. During 1979, Fidelis Pfohl's estate was a partner in Pfohl Joint Venture. In 1980, his wife, Dolores succeeded to his interest in the joint venture. Pfohl Joint Venture was dissolved later in 1980.

IV. OPERATION OF THE LANDFILL

A. Workers

1. Matthew J. Pfohl (deceased)

He conducted daily operations from 1932 to 1945. Neither Paul, Richard, Bernice, nor Dolores Pfohl know anything specific about the operation of the landfill from 1932 to 1945.

2. Joseph Pfohl, Sr. (deceased)

He directed the waste disposal operation from 1955 to the landfill's closure in 1969.

His wife, Bernice, never worked at the landfill or participated in the operation of the landfill in any way. She succeeded to his interest in the parcels ten years after the landfill closed. Bernice Pfohl knows nothing about the operation of the waste disposal business conducted at the landfill from 1932 to 1969.

Joseph Pfohl, Sr.'s sons, Bryan and Joseph, Jr., never participated in the operation of the landfill; they know nothing specific about its operation.

3. Fidelis Pfohl (deceased)

He was never responsible for the daily operation of the landfill, he never worked at the landfill, and he never participated in directing the overall waste disposal operation.

His wife, Dolores, never worked at the landfill or participated in the operation of the waste disposal business in any way. She succeeded to his interest in the parcels more than ten years after the landfill closed. Dolores Pfohl knows nothing about the operation of the waste disposal business conducted at the landfill from 1932 to 1969.

4. Paul Pfohl

He conducted daily operations from 1945 to 1950 when the landfill was operated on a part-time basis. Paul directed the waste disposal operation from 1945 to 1955. After 1955, he had no further responsibility for the operation of landfill.

5. Richard Pfohl

He was never responsible for the daily operation of the landfill, he never worked at the landfill, and he never participated in directing the overall waste disposal operation.

6. Albert Lavocat

He conducted the daily operation of the landfill from June 1950 to January 1951. Mr. Lavocat enlisted in the Air Force in 1951. He returned to the landfill in 1955 and conducted its daily operation until it closed in 1969. Mr. Lavocat's last known address and telephone number is 210 Smith Road, RFD #1, North Tonawanda, NY 14228; (716) 688-6412.

7. William Marfort (deceased)

He conducted the daily operation of the landfill during most of the period from 1951 to 1955 (i.e., during Albert Lavocat's period of military service).

8. Arnold Heim

He conducted the daily operation of the landfill some of the time between 1951 and 1955 (i.e., during Mr. Lavocat's period of military service not covered by Mr. Marford). His address and telephone number are unknown.

9. James Kidder

He operated heavy equipment to prepare areas for waste disposal in 1957 and 1958. He also replaced Mr. Lavocat from time to time during Mr. Lavocat's vacations. His address and telephone number are unknown.

10. Donald and James Maxim

The Maxims helped prepare waste deposition areas during the summers between 1955 and 1969. Their addresses and telephone numbers are unknown.

11. Richard Weiss

He helped prepare waste deposition areas at some time in the 1960's. His address and telephone number are unknown.

12. Albertine Moran

She was a bookkeeper for the landfill beginning in 1950. Her last known address and telephone number is in care of Lancaster Stone Products Corporation, 5833 Main Street, Williamsville, NY; (716) 632-1020.

13. Joan Covey

She was bookkeeper for the landfill at an undetermined time. Her last known address is 4540 Davidsberg Road, Dvoover, PA 17315. Her telephone number is unknown.

14. Antoinette Fritz

She was a bookkeeper for the landfill at an undetermined time. Her last known address is 5988 Louis Drive, North Olmstead, OH 44070. Her telephone number is unknown.

15. Charlene Eberl

She was a bookkeeper for the landfill at an undetermined time. Her last known address is 5664 Sterling Road, Hamburg, NY 14075. Her telephone number is unknown.

16. Rose Phillips

She was a bookkeeper for the landfill at an undetermined time. Her last known address is 1 Royalcrest Drive, Orchard Park, NY 14127. Her telephone number is unknown.

B. Description of Operation

From 1946 to 1969, there typically was only one person at the landfill conducting daily operations ("Daily Operator"). The Daily Operator's activities included:

- (a) checking the loads brought by regular dumpers for compliance with the terms of their disposal contracts;
- (b) charging a fee for the use of the landfill to persons who did not have a contract for regular dumping and checking their loads;
- (c) directing dumpers to the appropriate place at the landfill to deposit their waste;

- (d) compacting the waste with a bulldozer; and
- (e) covering the waste.

During the early years of the landfill's operation, the regular customers, i.e., those who had contracts for dumping, were billed directly. Later that procedure was changed so that regular dumpers were sold a book of tickets. Each ticket permitted the dumper to deposit a single load. Those tickets bore the name Pfohl Enterprises. The Daily Operator was responsible for collecting the tickets from the regular dumpers, as well as obtaining payment from and issuing receipt to non-regular dumpers. At the end of each work day, or at the beginning of the following work day, the Daily Operator took the payments collected from the non-regular dumpers, copies of the receipts he had issued to those dumpers and the tickets collected from regular dumpers to the general office located on Pfohl Road.

The Daily Operator refused to accept the disposal of certain materials at the landfill, including explosives, flammable liquids and volatile chemicals generally. The Daily Operator also refused to take septic or bulk liquid waste. The Daily Operator routinely asked drivers to identify the nature of the loads they were bringing to the landfill. The Daily Operator did not, however, routinely question those drivers who brought loads on a regular basis under contract.

The Daily Operator worked principally from a pickup truck and bulldozer. The pickup truck served as bodily transportation around the landfill. It was not used to transport waste. None of the entities owning and operating the landfill from 1946 to 1969 owned or operated any other trucks to pick up wastes or for any other purpose. None of the entities owning and operating the landfill from 1946 to 1969 ever collected waste and disposed it at the landfill.

The waste was not separated by type in the landfill. Deposition areas were prepared by pushing the soil to the sides, creating a depression with clay berms and a clay floor. During several summers, other individuals assisted the Daily Operator by preparing waste deposition areas with an earthmover. The earthmover was rented and used only during the summer. Waste brought to the landfill was placed in the depression until it was filled. The Daily Operator would compact the waste with a bulldozer which stayed on site at all times. Then, topsoil was placed over the former depression as cover. Fly ash was also occasionally used as cover.

An independently owned and operated salvage crew headed by William Glenn had permission to reclaim barrels and other salvagable material from the landfill daily. That crew salvaged virtually every barrel whose contents could be poured out. Both the salvage crew and all the regular dumpers had strict

instructions not to place any material in the lake or in the stream bordering the lake.

Mr. Lavocat also remembered that the landfill was inspected from time to time by County and State personnel. However, he was not involved in those inspections; either Paul or Joseph Pfohl would accompany the inspectors. He was never told as a result of any inspection that particular materials could not be taken at the landfill or that certain materials deposited there must be removed.

The landfill was open six days a week, except for the last two years of operation, when it was only open five and one-half days per week.

The landfill was closed in September, 1969. For approximately 18 months before it was closed, the amount of waste taken diminished because of a lack of final cover. The decision to close the landfill was made by Joseph Pfohl, Sr. Mr. Lavocat, the Daily Operator at the time, was informed of the decision in July or August of 1969. Mr. Lavocat notified customers that the facility would be closed shortly. Mr. Lavocat directed them to the newly opened Lancaster Sanitary Landfill.

The landfill was the site of garbage fires once or twice a year almost every year from 1945 to its closing. The fires were typically smothered with soil.

There was a spill of used oil at the landfill from a stationary tanker in 1978. The quantity of oil spilled is unknown. The spill was cleaned up by the Pfohls with oversight by County and State representatives.

C. Third Party Involvement at Landfill

1. Users of Landfill

In August of 1988, Technical and Environmental Consultants, Inc. of Livonia, Michigan (TEC) was retained by industries which have been implicated in this matter to review all available information with the primary goal of identifying and categorizing potentially responsible parties (PRPs). TEC reviewed all available information and prioritized approximately 150 identified entities into groups. TEC concluded from their preliminary investigation that those entities in Group A and Group B appear to have: (1) generated industrial waste which was disposed of at the landfill and/or (2) transported industrial waste to the landfill. No attempt was made to quantify waste from any PRP.

Information was primarily derived from Pfohl Enterprise business files. In addition, TEC reviewed New York State Department of Environmental Conservation files, Draft Inter-Agency Task Force Report on Hazardous Wastes in Erie and Niagara Counties, New York, Albert F. Lavocat's deposition, and final site operations plan for the remedial investigation of the landfill.

The categories, or groupings, and their corresponding definitions are as follows:

- GROUP A - Those PRPs other than commercial transportors and municipalities, for which current information indicates or reasonably suggests that they used the landfill and their waste was industrial in origin.
- GROUP B - Those commercial transporters and municipalities for which current information indicates or reasonably suggests that they used the landfill and the waste they hauled was, at least in part, industrial in origin.
- GROUP C - Those PRPs, including commercial transporters and municipalities, for which current information indicates or reasonably suggests that they used the landfill and their waste was solely residential trash, sewer sludge or construction debris.
- GROUP D - Those PRPs for which current information indicates they did not use the landfill and/or due to the type and quantity of waste, collectibility, etc. proved to be of low priority.

GROUP A

Potentially Responsible Party

Amadori Construction
Amax Specialty Metals Corp.
American Standard
Buffalo Forge
Burt, F.N.
Chapin & Fagin (GCF, Inc.)
Curtiss-Wright Corp.
Dresser Industries
E.I. DuPont DeNemours & Co.
Firestone Tire & Rubber Co.
Ford Motor Company
Hanna Furnace Corp.
Harrison Radiator
Hewitt-Robins (General Motors Corp.)
Mobil Oil Corp. (Litton Industries)
New York State Electric & Gas
Niagara Mohawk Power Corp.
Occidental Chemical Corp.
Pfohl Brothers (Owner/Operator)
Ramco/Fitzsimmons Steel Co.
Sears Roebuck Co.
Trico Corp.
U.S. Rubber Reclaiming Co.
Warner-Lambert (American Optical)
Westinghouse Electric Corp.

GROUP B

Potentially Responsible Party

Alden, Town of (Village of Alden)
Aurora, Town of
Browning & Ferris Industries (BFI) (Joe Ball Sanitation)
(Niagara Sanitation)
Buffalo Sanitation
Cheektowaga, Town of
Clarence, Town of
Clinton Disposal Service, Inc.
Downing Container Service (Waste Management)
Ernst Steel Corp. (Ernst Iron & Metal)
Frontier Delivery, Inc.
Lancaster, Town of (Highway Department)
Lancaster, Village of
Pine Hill Concrete Mix Corp.
Rapid Disposal (Max Brock)
Rural Sanitation Service, Inc.
Schreck's Iron & Metal Corp.
Sloan, Village of
Whisk, Inc.

GROUP C

Potentially Responsible Party

Anastasi Trucking Co.
Buffalo Municipal Housing Auth.
Buffalo Paper Stock Co. (Consolidated Fibers, Inc.)
Cowper Company
Ferguson (Ferguson Co.)
New York State Thruway Authority
North Tonawanda, City of
Windnagle, Roy (Windnagle Waste Disposal)

GROUP D

Potentially Responsible Parties

Cardarelli, Gus A.
Darling & Company
Davey Tree Expert Co.
Dump Truck Service
Ferry Concrete Construction
Gaal, Emil
George Wilson & Co.
Goodrich, Harry
Land O'Trees
Loblaw, Inc.
Lorber, Leonard (Roll-a-Way Serv.)
Maryvale School System
Miller Brothera (Suburban Sanitation)
Pearce & Pearce Company, Inc.
Penfold, Curtis (C.I.D. Landfill, Inc.)
Procknal & Katra Trucking
Prouty, O.L. (Amherst Ash)
Robinson & Long, Inc.
Safarian & Sons, Jos. A.
Schafer Brothers Trucking
Shine & Sons
Smith, Norman
Stimm, Inc., H.F.
Thomann Asphalt Paving Co.
Tubin Construction Co., Inc.
United German & French Cemetary
Walt's Tree Service
Wilson Moving & Storage

In addition, the following PRPs have been identified by TEC. However, little or no information was available regarding their dumping activity at the landfill at the time TEC compiled its report:

Potentially Responsible Party

A & P
ACF Industries
All Star Trucking
American Radiator
Ammerman, Louis (Earl Naomi)
Anber Trucking
Anderson Trucking
B.C.H. Construction Co.
Bauer, Max
Bero
Brown Construction
Brunner Equipment
Buffalo Asphalt & Concrete
Buffalo Tree Removal
C & R Sanitation
Campobelle
Casey
Cox
Cuyahoga Wrecking
D & H Development
Depew Paving Co.
Dersam, Beals & Miller
Deth, Clarence
Deth, Norman (Modern Way San.)
Eaton
Easton Contracting
Erie County Wrecking Co.
Erie Paving Co.
Fox
Fracasso, G.
Frontier Trucking
Grand Island Disposal Service
HRG
Immaculate House Wrecking
Jerge, Joseph
Killian Trucking
Kisner, H.
Knaus
Lily Brook Farms

Marine Salvage
Mender, Wendelin J.
Miller, Nelson
Moore, George
Morris & Reimman
Niagara Slag Ash Co.
Niagara Wrecking & Lumber Co.
Prouty, Edward
Quality Paving
Richter, Joe
Roetzer Contracting
Rust, Naomi
Sani-Quik Disposal
Shep-Par Trucking
Shoots, Bill
Skillen Excavating
Stangl, Alfred P., Inc.
Stein Brewery
Straco, Inc.
Swalbert, Frank T.
Urban Contracting
Wildroot Co., Inc.

SUMMARY OF GROUPS

GROUP A

25 PRPs

GROUP B

18 PRPs

GROUP C

8 PRPs

GROUP D

9 PRPs

OTHER

61 PRPs

TOTAL

141 PRPs

2. Salvage Operators

William Glenn of Buffalo was the head of a salvaging operation which reclaimed barrels and other materials from the landfill. The names of salvage crew members are not known.

