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ENTERED
Office of Proceedings
February 27, 2023
Part of
Public Record

February 17, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024

Re: STB Docket # FD36575, Townline Rail Terminal, LLC
Construction and Operation Exemption

Dear Ms. Brown:

I am an Attorney who is representing the interests of the community most affected by the instant application for an exemption, consisting of Lumber Drive, Glen Road, Glen Lane, Kings Park, N.Y. 11754.

Enclosed for filing is the original **Letter in Opposition** containing a detailed analysis mandating that the Petition for a Construction and Operation Exemption be **DENIED IN ITS ENTIRETY!** It has been served upon all parties of record, pursuant to the attached copy of the Certificate of Service. The original Certificate of Service is attached to the **Attached Letter in Opposition at page 2.**

Also annexed hereto is a copy of the **Letter in Support** submitted by the Town of Smithtown of which Kings Park is a Hamlet. I have examined the filings pertaining to the above Docket and Smithtown's Letter in Support has been duly filed herein as a "Letter in Support".

As the enclosed **Letter in Opposition** is steadfastly opposed to the position of the Town of Smithtown, I wish to have the views of the Hamlet viewed on the same "footing" as the view of this controversy by the Town of Smithtown.

Consequently, I request that the annexed **Letter in Opposition** be duly classified as a "Letter in Opposition" in the record of

Re: Letter in Opposition
Docket: FD36575

-2-

February 17, 2023

filings pertaining to the above Docket. As such, I would ask that the Board please do not file this detailed legal analysis as a "Comment". I also ask that the undersigned be deemed a Party of Record. Finally, enclosed is a copy of the first page of The Letter in Opposition. Please return a stamped copy of same via email "Philrusso@optonline.net". The undersigned hereby approves of service via email from this point forward. Many thanks!

Very truly yours,


Philip A. Russo

cc:

Justin J. Marks
1001 Pennsylvania Avenue N.W.
Ste. 1300 South
Washington, D.C. 20004

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TOWN OF SMITHTOWN

SUPERVISOR
EDWARD R. WEHRHEIM

TOWN COUNCIL
THOMAS J. MCCARTHY
LYNNE C. NOWICK
LISA M. INZERILLO
THOMAS W. LOHMANN



Office of the Supervisor
99 West Main Street
P.O. Box 9090
Smithtown, NY, 11787
305616

October 28, 2022

ENTERED
Office of Proceedings
November 8, 2022
Part of
Public Record

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C. 20024



Re: STB Docket No. FD 36575, Townline Rail Terminal, LLC
Construction and Operation Exemption

Dear Ms. Brown,

As the Supervisor of the Town of Smithtown, I am writing on behalf of the Town Board to express our support for Townline Rail Terminal, LLC's petition for exemption filed with the Surface Transportation Board concerning Townline's desire to build a railroad line in Smithtown to service its current transfer facility.

The Town is supportive of Townline's petition because there is mounting pressure on towns and villages due to the anticipated 2024 closing of the Town of Brookhaven's Yaphank landfill facility. Smithtown's residential and commercial solid waste and residential construction debris ("C&D") is currently disposed of at the Brookhaven landfill. Smithtown's solid waste is converted to ash at the Covanta waste-to-energy facility which then delivers the ash to the Brookhaven landfill.

Alternative means of disposal and carting of C&D and ash off of Long Island will be mandatory soon for municipal and non-municipal waste facilities. Shipping waste off of Long

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February 17, 2023

Martin J. Oberman
Chairman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: Letter in Opposition to Townline Rail Terminal, LLC
Hamlet of Kings Park, Town of Smithtown, Suffolk County, NY
DOCKET # FD36575

Dear Mr. Oberman:

Good day! I appreciate the attention by anyone who has taken the time to read **THIS LETTER IN OPPOSITION TO THE PETITION OF THE TOWNLINE RAIL TERMINAL'S APPLICATION FOR A CONSTRUCTION AND OPERATION EXEMPTION.**

PLEASE BE ADVISED THAT I WISH TO MAKE THIS DOCUMENT A FORMAL FILING THAT WILL BE INCLUDED AS PART OF THE OFFICIAL RECORD. I WISH THAT IT BE DESIGNATED AS A FILING TYPE OTHER THAN "COMMENT", IF SUCH A FILING TYPE EXISTS. I WISH THAT THIS DOCUMENT BE DESIGNATED IN A MANNER THAT DEMONSTRATES THAT THIS DOCUMENT IS A "LETTER IN OPOSITION" IN COMPLETE CONTRAVENTION TO THE TOWN OF SMITHTOWN'S "LETTER IN SUPPORT"

ANNEXED IMMEDIATELY FOLLOWING THIS COVER PAGE IS A CERTIFICATE OF SERVICE DEMONSTRATING SERVICE TO ALL THE PARTIES OF RECORD.

I hope that 30 years of professional practice as an attorney, 54 years residing in the affected community, 21 years at my present address, 3 Lumber Drive, Kings Park, N.Y. 11754, which sits less than 100 yards from this proposed railroad hub, and my survival following **the death of my son from leukemia at the age of seven**, should classify the undersigned as an individual whose analysis should be considered in reaching the correct decision regarding this controversy. Namely, the outright rejection of Townline Rail Terminal's application to the STB for a construction and operation exemption. And specifically, that any entity owned and/or operated by Toby Carlson, or anyone else for that matter, be denied any right to construct a rail terminal in the Hamlet of Kings Park, Town of Smithtown, County of Suffolk, State of New York.

Additionally, I would like to add, that if I was sitting in your well-earned position of respect and power, I would hope that someone like myself would provide the following information to me so that I could make the correct and informed decision to deny Townline Rail Terminal's Petition.

I. NATURAL GAS, THE SOLUTION TO THE PRESENT CONTROVERSY, SITS A FOOT AWAY FROM SMITHTOWN'S MUNICIPAL SERVICES FACILITY, AND LESS THAN A MILE AWAY FROM THE OFFENDING FACILITY, COVANTA

As per the annexed article (**Exhibit A**), every garbage removal carrier contracting with Smithtown **IS REQUIRED** to operate their vehicles with **CLEAN NATURAL GAS!** Yes, that is correct. Garbage Trucks in the Town of Smithtown operate using natural gas only !! **If your garbage truck is not operating using natural gas then you are not working for the Town of Smithtown.** The Natural Gas fueling station, (**Exhibit A**), is located directly in front of Smithtown's own Municipal Services Facility and a mile from Covanta. **Exhibit A.** From the Natural Gas Fueling Station, simply take Old Northport Road west until it ends, and then turn right onto Townline Road, where Covanta sits. During that trip, there is no contact with, and no disturbance of, Kings Park Residents.

Given Smithtown's leadership role in the advancement of **CLEAN ENERGY**, why would Edward Wehrheim, the Town Supervisor of Smithtown, support past Town-Code Violator, Toby Carlson's (Townline Rail Terminal, LLC, "CEO") Toxic Garbage Ash disposal proposition. That proposition requires **FILTHY DIESEL FUEL** that powers noisy, inefficient locomotives that are virtually **NEVER** shut down; all to the detriment of four surrounding Townships: Kings Park, Commack, East Northport and Northport. Quite frankly, Carlson's plan would adversely affect **EVERY RESIDENT** of Long Island who has ever stopped at a railroad crossing. Imagine the horror of waiting for 161 cars doing 10 miles per hour to pass through a railroad crossing!

Why would Edward Wehrheim and Legislator Robert Trotta support past Town-Code Violator, Toby Carlson's, Toxic Garbage Ash disposal proposition that destroys the quality of life, and the health and homes, of thousands of the constituents who foolishly elected them? Is it just stupidity or money? Clearly, on the basis of the obvious and devastating impact this proposed rail hub would have to so many, and given the simple solution of natural gas, I'm concluding that stupidity is the answer. Then again, many will argue that money is at the root of all evil. Is Mr. Carlson's own selfish need for profit the motivating factor here? Is Mr. Wehrheim's never-ending quest for commercial tax dollars and AAA Bond Ratings the source of support for this maniacal proposition?, How about a federal or state subsidy being at the root of this insanity? Is Mr. Trotta's inexplicable need to support the opposite end of common sense, because he can, that "drives this train"? Finally, given the outrageous and devastating nature of this proposal, and the lack of public support for same, one almost has to conclude that something of an unscrupulous nature, somewhere, could be the motivation for this insanity; especially where the simple solution of natural gas exists.

Rather than destroy thousands of homes and lives for the benefit of one person, Toby Carlson, let's put a plan in place that reduces the profitability of one prosperous individual, Toby Carlson,

and **BENEFITS EVERYONE IN THE COMMUNITY!!!** The plan begins with Mr. Wehrheim advocating for a program that mandates that any contractor who wishes to transport and dispose of toxic garbage ash, in and from the Town of Smithtown, **must use vehicles powered by clean, natural gas.** Wow! Smithtown actually has a natural gas facility already in place. **Exhibit A**. These trucks could fill up their tanks there. Rather than eviscerating Kings Park with the rail hub plan, maybe a small tax per gallon could be imposed when these trucks fill up. Maybe that tax could go to reviving Main Street in the Hamlet of Kings Park that, unlike Mr. Wehrheim's Main Street jewel in Smithtown, currently looks one tumbleweed short of being Main Street on the set of "Gunsmoke" circa 1965.

If the \$3.99 Cost Per Gallon equivalent, on the pump at the Smithtown facility is accurate, natural gas is significantly less expensive than this week's \$4.44 per gallon cost of filthy diesel fuel. **Exhibit A** Obviously, natural gas is also environmentally sound in comparison to the greasy slop called diesel fuel.

Following Smithtown's mandate that only natural gas powered vehicles would be permitted to transport garbage ash out of the community, the Town Contract for the removal of the toxic ash would be put up for bid by various carters. As for Mr. Carlson, he could take the monies he was going to invest in the rail hub (assuming any was required) and invest same in a fleet of natural gas vehicles. Assuming he was awarded the contract (and I hope he is not) his trucks, as they do now, would transport the garbage ash right down Townline Road heading South, where the vehicles would not disturb residents, and onto the Long Island Expressway. From there, Natural Gas Vehicles would transport the garbage ash, where it goes now, to Yaphank. Winter Brothers, a reputable waste disposal company is building a waste transport rail hub in Yaphank, **A LESS DENSELY POPULATED AREA OF YAPHANK.**

The bottom line is that only one entity, Toby Carlson's Townline Rail Terminal, Inc. would be affected by this non-invasive, environmentally sound, common-sense plan. Other than Toby Carlson and Townline Rail Terminal, Inc., life would remain unchanged for everyone else. Obviously, it's a no brainer; Destroy lives and community or employ a clean, efficient energy source, Natural Gas, to vastly improve the process that is in place now in an environmentally responsible way.

II. THE PROPOSED LOCATION SITS IN A DOCUMENTED LEUKEMIA HOT BED

The above header is not an overly dramatic statement. Not according to the facts. Not when innocent children have lost their lives. Not when we sit on the precipice of a potential massive Toxic Tort case.

I moved into my present home in 2002. The Covanta garbage recycling facility and its huge smoke spewing stack has been burning garbage at the Corner of Townline Road and Pulaski Road, at the Smithtown-Huntington border, since 1991. The Toxic Stack sits about a mile away from my home. For the past 20 years, I've been wiping black muck from my window sills. I originally associated the muck with the fact that my front yard is heavily wooded. Following my ten years of unimaginable grief related to my son's passing in 2013, however, I started to put the toxic puzzle pieces together and realized that the soot on my window sills was ash from that the Covanta smoke stack down the road. My family had been sucking that TOXIC SOOT since 2002!!

Not surprisingly, my second child and my wife's third, was born in 2005 with Downs Syndrome and a hole in his heart. My Matthew recovered, only to be stricken with leukemia at the age of 2 ½. After three relapses, accompanied by temporary recoveries following excruciating rounds of chemotherapy, and following an experimental trial at the Children's Hospital of Philadelphia, Matthew died on January 13, 2013. That's 1/3/13 to you, but "13" "13" to me and my family. When your son dies on a number as bizarre as "13" "13", it first makes you think that you're the unluckiest Son of a B on the planet. After about a decade of grieving, however, you realize that other than your son's death, your life has been absolutely glorious in every way possible. Given that rationalization, you begin to wonder if Matthew's life and death was for a special reason. Maybe this is it? I wrote a book ("Matt Taught Me, Lessons Learned from an Angel") to preserve and honor Matthew's memory (**Exhibit B**), and to assist those similarly situated and to awaken the public at large to the horrors of childhood cancer. In connection therewith, I find it strange that the "Powers that Be" can find a vaccine for COVID in a year, but childhood cancer continues raging unchecked and leaving destroyed families in its wake.

Please take a step back from your well-earned position and your possibly picture-perfect life. Now picture your beautiful, loving, sweet, energetic, little son or daughter as a balding skeleton, lying motionless on a pillow covered with their shedding clumps of hair, vomiting from chemo

into a bag that your holding to the side of their face as they sob. Try to ignore the constant, high-pitched hellacious screams on the locked, air-tight cancer ward by the children who are in even worse agony than your own child. Consider the body bags of children. **YOU CAN'T DO IT! YOU WON'T DO IT!** And having been there for five(5) years, while hanging onto this house, my family and my practice, I don't blame you.

Well, if you approve this abomination of a rail terminal , you just did the same thing to an untold number of children and their families. Maybe your comeuppance will be that some unscrupulous neighbor of yours will be experimenting in his basement with toxic chemicals and the same heinous result will happen to your family . Unfathomable, you say? So is constructing a **FIVE RAIL, 161 STENCH-LADEN, EAR PIERCING, DIESEL-SPEWING, RAIL-CAR HUB, CONTINUALLY DISEMINATING TOXIC GARBAGE ASH FROM 10:00 P.M. – 5:00 A.M. ,UNDER STADIUM LIGHTS, AND ONTO A PRESERVED GROUNDWATER RECHARGE BASIN, AND INTO 1000 OR SO HOMES, AND INTO TWO ELEMENTARY SCHOOLS, A MILE AWAY!** That's equally unfathomable to my toxic neighbor possibility, wouldn't you say??

“Well, it's got to go somewhere”, say the uneducated and our dopey politicians . Incredibly, in their one lucid moment of their day, they got something almost right. Yes, the ash has to go somewhere.

Here's a novel concept, however, **IT HAS TO GO TO A FAR LESS DENSELY POPULATED AREA!!!!!! IT HAS TO GO TO A FAR LESS DENSELY POPULATED AREA!!!!!! IT HAS TO GO TO A FAR LESS DENSELY POPULATED AREA!!!!!! IT HAS TO GO TO A FAR LESS DENSELY POPULATED AREA!!!!!!**
Wake up!! Wake Up!! Wake Up Everybody!!!!

My goodness, it's just common sense. If the project goes to a less densely populated area, less children get cancer, less spouses get cancer, less families get sick and fewer homes are destroyed. It's just common sense.

To that, our clueless “leaders” will invariably say: I'm sorry Phil, you unlucky poor slob with your dead son and your beautiful house that is about to be destroyed by this ludicrous project, this is the only location available. **To that I say HOGWASH!!!** Winter Brothers, an extremely reputable waste disposal company on Long Island has announced that a similar project will soon be completed in the **LESS DENSELY POPULATED AREA OF YAPHANK.** Bring the ash there using Natural Gas Powered vehicles for goodness sakes!! There is also talk of a similar project being completed in less densely populated areas of Babylon.

Martin J. Oberman
STB Chairman

-6-

February 17, 2023

Mr. Carlson has literally been quoted as stating something to the effect of, if someone has a better alternative than this proposed project, then have at it". I just gave you the better Alternative: Clean, Natural Gas vehicles traveling to the less-populated town of Yaphank and then off Long Island via the soon to be completed Yaphank/Brookhaven rail spur!

The reality is that there are viable alternatives to this proposal that must be taken advantage of. The Kings Park, Northport, East Northport, Commack area is an area already overburdened with toxins from the Covanta Garbage Recycling Plant, the methane-spewing landfill next door to Covanta, the massive asbestos-laden, long-shuttered, un-rehabilitated Kings Park Psychiatric Center and the old Lilco Power Plant in Northport where toxins emanated from its four stacks for decades.

The tragic situation here is that Kings Park is a magnificent jewel by the sea, a mere one mile from one of the most beautiful State beaches in the country, Sunken Meadow. It's shore line Vistas are second to none. In the eighties, talk show host, Merv Griffin, sought to develop the abandoned Psychiatric Center Grounds, that sits on the Kings Park Shoreline, but the cost of asbestos removal was simply too much. **THE STATE OF NEW YORK HAS DONE VIRTUALLY NOTHING TO CLEAN UP OR RECLAIM THE PROPERTY!** To his credit, a local millionaire has done more to reclaim a tiny piece of this property.

The massive development of the four towns mentioned above occurred prior to education on the ills of projects like the one proposed. Despite all the negativity of this letter, Kings Park and the surrounding areas are spectacular places to live with great school districts and homes ranging from well kempt little cottages to a vast amount of homes valued north of 1 million dollars. It is unimaginable that the toxic projects within this area have been permitted to continue. It is literally inconceivable that the local town and federal government now seek to add to the toxic overload choking this area with this abhorrent rail hub request.

The proposed location sits to the South of Pulaski Road in Kings Park, to the North of the "Candy" Section of Commack, and to the East of Townline Road. The location is a mile away from North Ridge Elementary School and is very near to the Fort Salonga Elementary School which sits in Northport. East Northport sits on the other side of Townline Road. All will be incredibly adversely affected.

The East Northport-Northport area, that the proposed site sits across from, suffers from a statistically significant increase in cases of childhood leukemia. **Exhibit C.** I'm a personal injury attorney, *inter alia*, and I can honestly tell the Board Members that you are standing on the precipice of a toxic tort disaster relating to leukemia and other cancers here in the Kings park

"Three mile LONG Island" is a moniker that fits. I'm not Erin Brockovich, but there are firms with "shinier white shoes" than Mr. Carlson's present attorneys that would soak up this toxic tort disaster to be, in the proverbial New York minute. Please don't associate your names with this disaster. Please take it from me. As a resident, an attorney and a parent who has lived the horror of a child dying from cancer caused by these surroundings, don't associate the STB with this disaster. It would be akin to the FAA sanctioning a hydrogen-filled replica of the Hindenburg. Don't take my word for it. Go ahead and research the cancer statistics. If you do, you will not sign off on this project. Not if you are self-preservationist and a sane humanitarian.

III. THE PROPOSED LOCATION SITS 10 YARDS!!!! FROM A RECHARGE BASIN!!

-Long Island's Entire Water Supply Stands to be rendered unusable!

-NO ENVIRONMENTAL IMPACT STATEMENT HAS BEEN DIRECTED!

During the course of my law practice, I was fortunate enough to meet and to be educated by the Long Island Science Teacher who almost single-handedly saved Long Island's Pine Barrens. Unfortunately, the profit-seeking individuals and clueless, short-sited politicians responsible for this life-threatening proposal failed to educate your office. Additionally, your own OEA investigator must have failed to perform a proper investigation as to the groundwater exposed to, and affected by, this ill-conceived, filthy project. Remarkably, he or she may have missed or ignored the signs surrounding the recharge basin!! **Exhibit D**.

I'm guessing that what might have happened to your OEA investigator is that landowner Toby Carlson, Town Supervisor Ed Wehrheim, and County Legislator and former detective, Robert Trotta, may have only showed your investigator the side of the recharge basin that faces the proposed, presently mulch (manure) covered, Carlson project site. It's no shock to the residents of Kings Park, the "red-headed step-child(Hamlet)" of Smithtown, but the ancient signage that used to be on that side of the Recharge basin, has fallen down and was never replaced. **Exhibit E**.

While I am not a scientist, the following represents my understanding as to Long Island's water supply and the danger of exposing same to the present proposal. Long Island's water supply

Martin J. Oberman
STB Chairman

-8-

February 17, 2023

comes from an underground aquifer in Suffolk County. The aquifer holds water that was meant to filter through sandy soil covered by massive amounts of pine trees. Short-sited politicians and money hungry developers, eradicated the pine barrens, and allowed toxins to flow directly into the soil causing the polluted, unusable state of the Nassau County Aquifer to the west. Through the efforts of the above-mentioned science-teacher and his volunteers, and the presence of recharge basins **LIKE THE ONE THAT SITS 10 YARDS AWAY FROM THE CARLSON 30 FOOT HIGH, MANURE MOUNTAINS, (Exhibit F)** Suffolk County's Water supply has been preserved, for now. Permitting toxic garbage ash to infiltrate the water supply through this rail hub will not permit preservation, but will lead to devastation of the water supply.

The fact that **NO ENVIRONMENTAL STUDY (EIS)** was ordered by your governmental ("We the People, For the People") agency, under these circumstances, is shameful. This is especially so when the impetus for eliminating the EIS seemingly came solely from a one page pitch by what appears to be an associate at the Washington-based, law firm that currently represents Carlson's Corporation.

It is shocking to me that the file relating to this docket shows no evidence of investigation of the landowner seeking to benefit herein and is completely devoid of communication with those that border Mr. Carlson's property.

From my research , Toby Carlson, the man that the Town of Smithtown and Your Organization is relying upon to do right by the citizens of Kings Park, Northport, East Northport and Commack, has a questionable record, at best, with the community and with the Town. A simple google search reveals decades of controversy at the hands of both he and his father. **Exhibit G.** Did the STB do one stitch of investigation regarding Mr. Carlson?

I'm 100 yards down the block from Carlson's proposed property site. Did your investigator ask me for my experience and insight with respect to Mr. Carlson. There is someone home at my home 24 hours a day. No one from the OEA approached us. I have a mailbox. There was no questionnaire. Such a questionnaire could have posed the following simple question:

Do you, as a resident, a mere 100 yards away from the site at issue, have an opinion regarding a proposed 161 car **DIESEL** rail hub loading toxic garbage ash at ear deafening decibel levels between the hours of 10:00 P.M. and 5:00 A.M. under 200 foot , high-density stadium lighting stations?

I didn't see that question.

How about this one? Have you ever had any experience, positive or negative, regarding the Carlson property that sits 100 yards to the South of your property?? My expected response:

Are you referring to the existence of 50 or so 30 foot decaying mountains of FECES, BROWN AND BLACK DYED YARD AND ROAD WASTE that has been referred to as mulch? You mean the “stuff” I hear grinding through excavators and being slammed around by trucks and payloaders???

My likely final response: “Yeah, I’ve got to say the stench of manure from Carlson’s place wafting over my pool, friends and family during the Summer has been a negative experience”

Needless to say, I do not have any confidence that Mr. Carlson will run a operation that is conducive to existing in a residential community. How can I be so sure? Please read on.

IV. CARLSON IS TRYING TO BRING ME BACK TO THE BRONX

I can be certain that Carlson’s “Pie in the Sky” renderings of what his hub will look like are complete fiction because between 1965 and 1984, I spent an inordinate amount of time at Grandma Russo’s house in the Bronx. It just happened to back up to a rail yard!! Given all of the above, as well the present revelation, is there anyone more qualified to draw the conclusion that this project has to be REJECTED!!!!

In the STB file, there is a laughable, fraudulent artist’s rendering of what Carlson submits that his rail hub will look like. The artist’s depiction looks more like the “It’s a Small World” attraction at Disney Land than the filthy rail yard that it will be. The artist’s rendering is a complete fabrication. It is a bold-faced lie directed at misleading the Board. To the right of the “pristine” (yeah, right!) white buildings that will supposedly house this abomination, two layers of dense woods are depicted. THOSE ARE NOT PRISTINE WOODS SITTING THERE, MY COMMUNITY IS THERE, SITTING 10 YARDS AWAY FROM THIS PUTRID, DISASTER TO BE!!!!!! Exhibit H. Further to the right of the fictional rendering that was submitted to the STB, ARE NOT DENSE WOODS, THAT IS FORT SALONGA IN NORTHPORT, WHERE HUNDREDS OF MILLION DOLLAR HOMES THAT PAY \$25,000 IN PROPERTY TAXES SIT!!!!!!

Oh my goodness! The People who own these homes worked like dogs for their entire lives to build one of the most beautiful communities on Long Island are being TOLD by three “men”, Carlson, Wehrheim and Trotta, that their families must suck toxic soot for the remainder of their lives;. lives that invariably will be shortened by cancer and birth defects and respiratory ailments.

THE "BRAIN" CHILD OF THREE men, Trotta, Carlson and Wehrheim. **TWO OF THESE MEN ARE ELECTED OFFICIALS!!** How is this possible??? All of their constituents are against the plan! No one is supporting breast cancer, birth defects and respiratory ailments. Yet they support the plan. Why? Again, I'm conjecturing that stupidity or money must be the motivating factor.

Furthermore Mr. Carlson, or his father before him, have given **NO ONE** cause to believe that anything on his property, or around his property, will ever be anything but a Town-Code-Breaking, Nuisance-raising, reprehensible dump. Other than Robert Trotta, a legislator, who within the last week, has admitted to recently tape recording the Police Commissioner of Suffolk County without his knowledge, I have never heard anyone say anything positive about Mr. Carlson or his present plan. There is also absolutely no indication that the Town of Smithtown has any ability to control or monitor anything that Mr. Carlson does.

Just this past week, my neighbor approached me and asked if I had noticed that "the house behind her at 365 Meadow Glen South, Kings Park was gone". That house, mind you, also backed up to the same recharge basin also backed up the same recharge basin that I discussed earlier. My neighbor went on to state that the house was a single family home surrounded by trees, but that "Carlson recently purchased the property, cut down all the trees and crushed and buried the house, asbestos shingles, oil tanks, and all". She suggested that we call the DEC because he did this next to the recharge basin.. She also mentioned that "Carlson's trucks, trailers and containers now sit on the land where the houses and trees recently sat".

I FOUND IT ABSOLUTELY UNFATHOMABLE , IF TRUE, THAT A MAN SUPPOSEDLY UNDER FEDERAL SCRUTINY BY YOUR OFFICE AND THE FEDERAL GOVERNMENT WOULD EVEN CONSIDER OPERATING IN SUCH A MANNER!!!!

What, pray tell, would Mr. Carlson's organizations do once the STB was gone??. I will tell you what he would likely do. He would almost certainly, in the opinion of the undersigned and based upon his prior record with the Town, operate his rail yard like every other filthy, disgusting rail yard in New York!!

I realize that the Board, being out of state, may not have any familiarity with Rail Hubs here in New York. As I indicated above, I am intimately familiar with said locations. So much so, that on my last Court date in the Bronx, New York, I stopped by my grandparent's old house and took a look. The following photos of what **THE REAL NEW YORK RAIL HUB THAT BACKS UP TO THEIR PROPERTY** looks like! **Exhibit I.** Please observe the filth, the garbage, the rust, the gigantic light stanchions and imagine the clanking, the thuds and the banging all night. However, I will say that for a kid who was scared of the dark, it was great, **BECAUSE IT WAS**

NEVER, EVER DARK!!!!!!! Now, however, it's a problem because anyone within two miles of this wreck won't be able to sleep! And just think, there's one other item that my family didn't have to deal with way back in the Bronx, **THE STENCH OF DIESEL FUEL!!!** Yes, thank goodness for my dad, his sisters and my grandparents, as their train yard housed only nearly-silent electric trains!!! Ours, of course, would include the added horror of diesel trains that will run and stink **ALL NIGHT!!** Despite what has been stated in the application to the STB.

I can hear the conversation now with my four-year-old daughter whose window faces the proposed rail hub abomination. "Daddy, it's too bright, I can't sleep, please shut off the porch lights! Sorry, sweat heart, that's Carlson's Stadium lights blaring into our house. But Daddy, "I can't sleep" followed, of course, by tears and sobbing.

WHAT DO I TELL THE KID? WHAT DO I TELL THE KID?? WHAT DO I TELL THE KID????!!!!!!!!!!!!!!

Should I say that the entities studying the situation failed to complete an Environmental Impact Statement failed to consider health issues, failed to consider the density of the population and the destruction of the quality of life of thousands in the immediate area. No, my daughter won't understand that. At the age of four she is just an innocent victim.

Also, I would ask the board not to buy into the fiction that this is only going to affect 14 houses. I walked the streets and counted 100 homes between 10 and 500 yards away from this proposed horror. Thousands more will be adversely affected, and hundreds more will invariably die or suffer from cancer, other disease, if Carlson is permitted to pile onto the multitude of toxic sources in the area.

Man! I feel an uphill battle here, if your office does not step up to the politicians and do the right thing here. As you can tell, unlike my elected "officials" I try to investigate issues. I've spoken to hard-working contractors in the immediate vicinity of Carlson's prospective nuisance; individuals who break their backs daily, who drive big, loud trucks with crew cabs, who come home with dirt under their fingernails and who are usually privy to the heartbeat of the community. They are telling me "it's a done deal", "the politicians have all been paid off", the "Feds are on board", "the railroad crossings are already being rebuilt". I hope this is not true. I hope Honor and Right will prevail. If it does not, I can say, "we will never give up". We are right! Our families and community have been wrongfully placed at risk.

Most will probably not care, but maybe those who are opposing this disaster will take up the fight and consider the following. I've got a saying that I utter to myself before I walk into a criminal, personal injury or other pending legal or personal disaster: "I may not win, but everyone will know that I beat you!" In other words, the verdict might not be possible given the overwhelming facts and odds against me and my client, but everyone in that courtroom will

Martin J. Oberman
STB Chairman

-12-

February 17, 2023

that I won the day. I did lose the fight for my son's life, but everyone knows what I did and I'm going to do everything that I can to avoid another toxic mess causing others to become similarly situated.

When my son died, my father, who came from Italy at the age of 13, not knowing a word of English, who got his ass kicked every other day for a decade for being different, who almost drowned trying to get his degree from New York City College (U Had to swim to graduate then !!!) who became a banking executive and who retired at 57, told me "No one would have done what you did!" That meant everything to me. Hopefully, that vignette will tell you who has built and lives in this spectacular community.

By the way, my dad and mom still live at the age of 82, totally self-reliant, in the home they have occupied for 53 years in East Northport. They will be also be directly affected, as will my sister, who resides in Commack, if this disaster goes through.

This is a no-brainer. This proposed cancer trap does not belong here. As was the case with my son's struggle, no one will do what my neighbors and I will do to demonstrate that this project does not belong here. Name it! If you don't have the proof you need now, then name it and it will be on your desk like this correspondence was; the correspondence that I sacrificed my Super Bowl weekend for in order to write it. If you want to talk personally, I am there. **I would appreciate being notified of any hearings.** Ultimately, my neighbors and I will show you why you do not want your hard-fought-for reputation that you have earned associated with this epic disaster to be.

I Sincerely Thank You for your kind consideration of my request and the request of my community.

Very truly yours,



Philip A. Russo

**U.S. Department of Energy - Energy Efficiency and Renewable Energy
Alternative Fuels Data Center**

July 23, 2018

Smithtown Selects CNG to Cut Refuse Collection Costs

Smithtown expects to displace more than 1.5 million DGE of petroleum-based fuel.

Faced with rising refuse collection costs and fuel price uncertainty, the Town of Smithtown, New York, decided to require its refuse collection contractors to use compressed natural gas (CNG) trucks. It was the first New York municipality to institute such a requirement, with several others in the area following suit in the years since. On January 1, 2007, the 30 contractor-owned diesel refuse trucks collecting solid waste and recyclables from the town's 118,000 residents were replaced by 22 CNG models.

Smithtown's experience with the vehicles was so positive that, at the conclusion of the initial seven-year service contracts in 2013, the town again solicited bids for CNG fueled refuse collection services and entered into four new seven-year contracts through 2020.

To establish CNG fueling infrastructure in 2007, Smithtown partnered with natural gas supplier Clean Energy. With no leasing agreements, access fees, or capital outlay for Smithtown, the contract required Clean Energy to provide the fueling infrastructure and commission local service providers.

Because of Smithtown's new contract with the refuse collectors, Clean Energy had to complete the fueling station in six months - two to four months faster than it usually takes to locate a station, obtain permits, and secure a compressor. To accomplish this, Clean Energy received permission from the New York Department of Transportation (NYDOT) and Office of General Services to allow expansion of a nearby station, which Clean Energy already operated for New York State. Clean Energy expanded the station's volumetric gas flow rate from 15 scfm to 2,000 scfm and opened the station within four months.

In 2010, Smithtown partnered with Clean Energy and the Town of Huntington, New York, to open a new CNG fueling station at Smithtown's Kings Park recycling facility. Smithtown continues its long-term agreement on fuel pricing with Clean Energy. The pricing is based on the New York Mercantile Exchange commodity price of natural gas, plus a pipeline charge and a compression fee. The total CNG fuel cost for the refuse trucks started at \$2.33 per diesel gallon equivalent (DGE) in 2007 and is only \$2.36 per DGE in 2018.

"Even when petroleum prices drop, we are committed to CNG," explained Russell Barnett, Smithtown's environmental protection director. "We regard fuel price certainty as being just as important as the overall savings because petroleum

**Project at a Glance****Fleet Type:** Refuse collection**Fuel:** Compressed natural gas (CNG)**Number of CNG Vehicles:** 22**Motivation:** Cost savings and fuel price certainty**Related Links**

- [Smithtown, NY, Video Case Study \(/case/223\)](#)
- [Natural Gas Fuel Basics \(/fuels/natural_gas_basics.html\)](#)
- [Natural Gas Vehicles \(/vehicles/natural_gas.html\)](#)
- [Natural Gas Fueling Station Locations \(/fuels/natural_gas_locations.html\)](#)



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prices can swing wildly in response to hurricanes and international events, wrecking municipal budgets."

The CNG refuse trucks were projected over the life of the initial contract to reduce emissions of nitrogen oxides by 265 tons and particulate matter by 15 tons. Smithtown also displaced more than 1.5 million DGE of petroleum-based fuel during the initial seven-year contract.

The town continues its commitment to CNG. Based on success with its residential refuse truck program, Smithtown added a CNG roll-off truck, CNG dump trucks, and CNG shuttle buses to its fleet.



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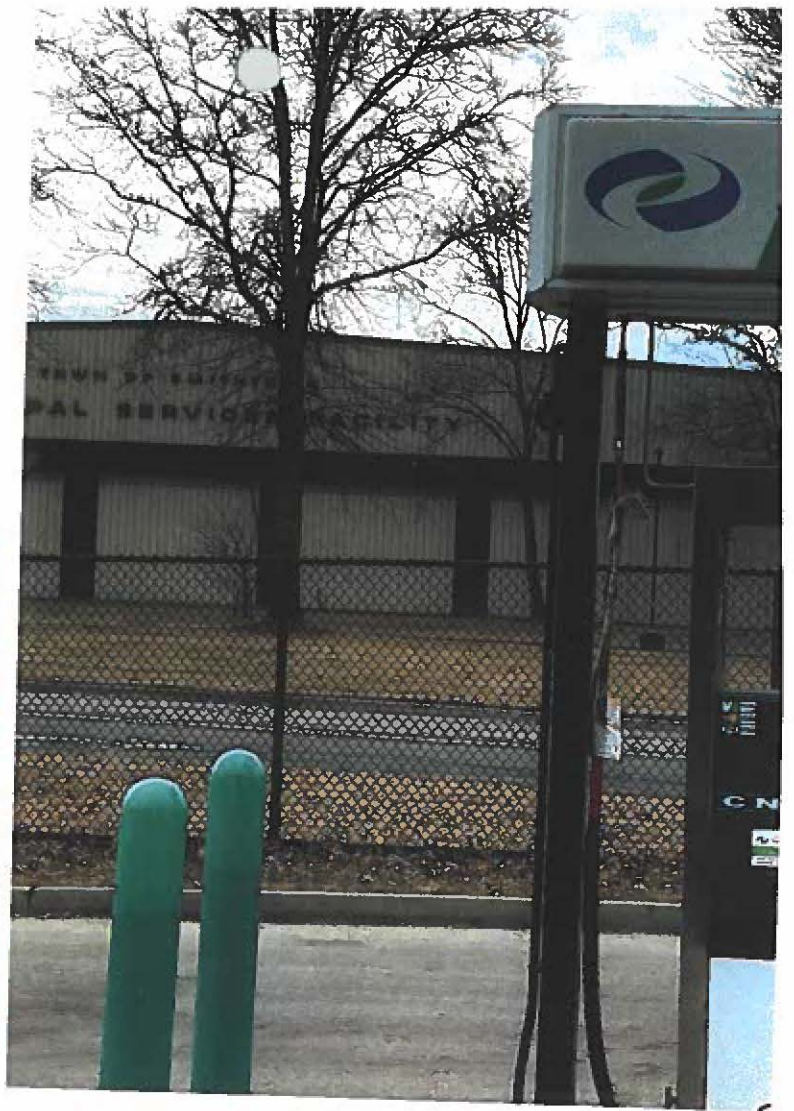
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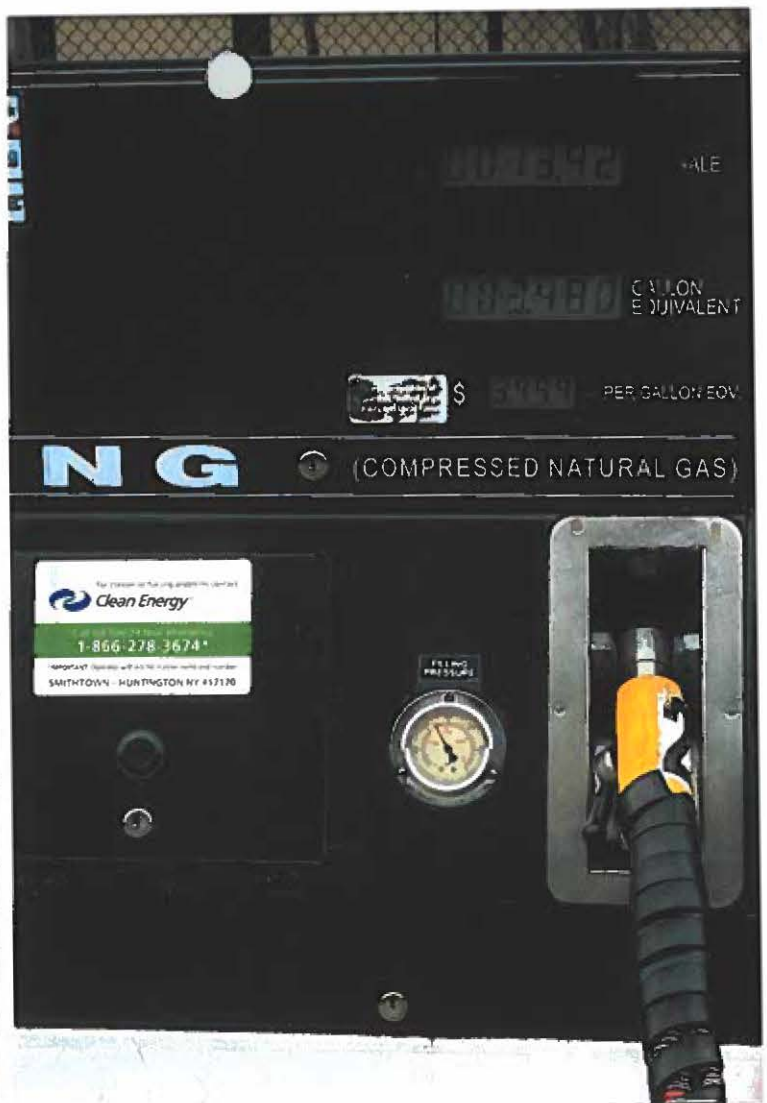
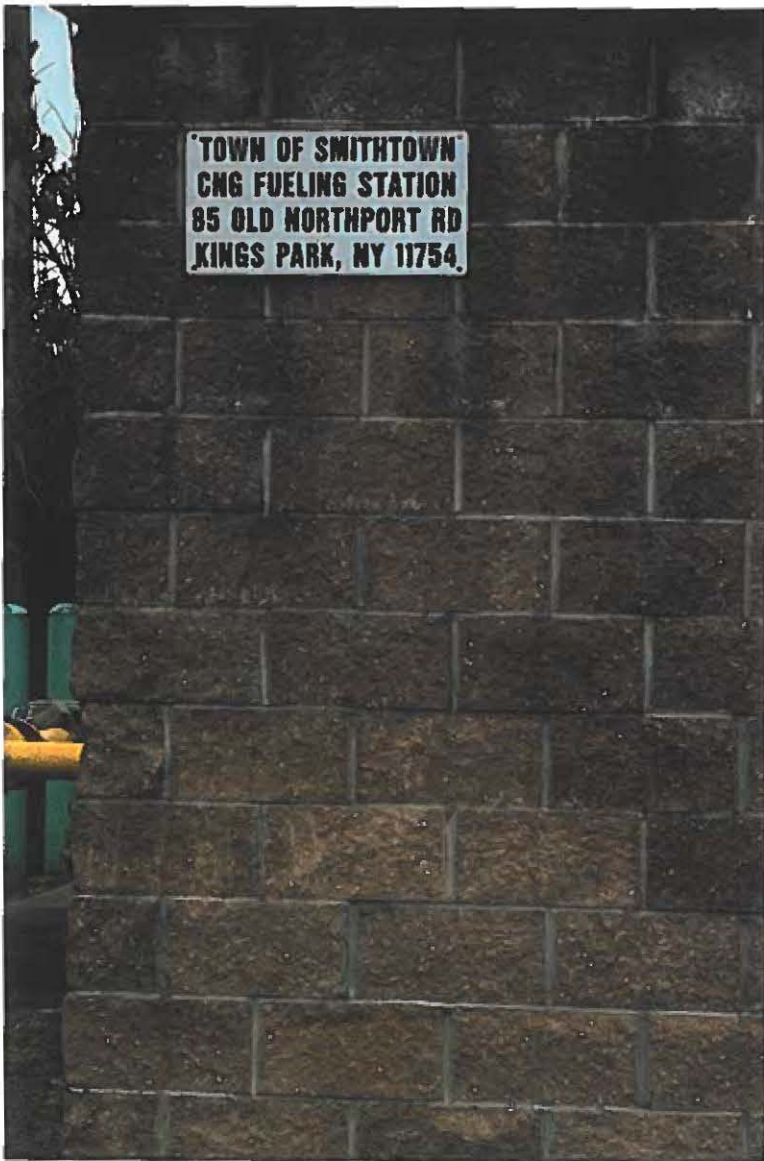
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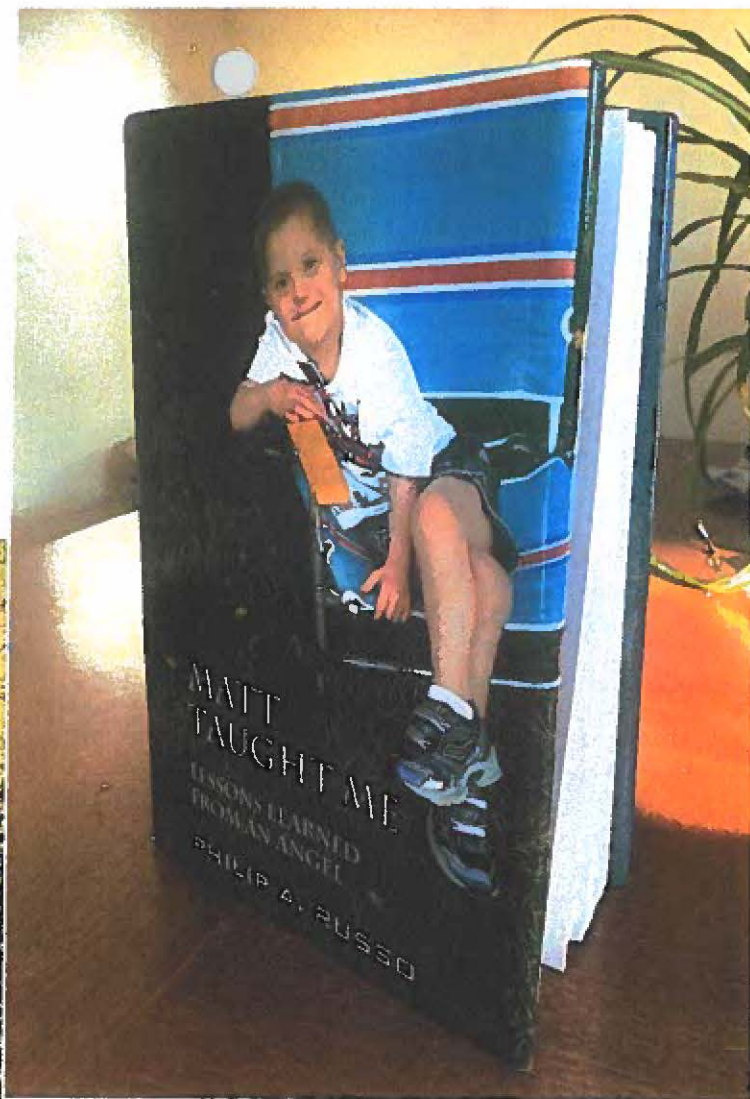
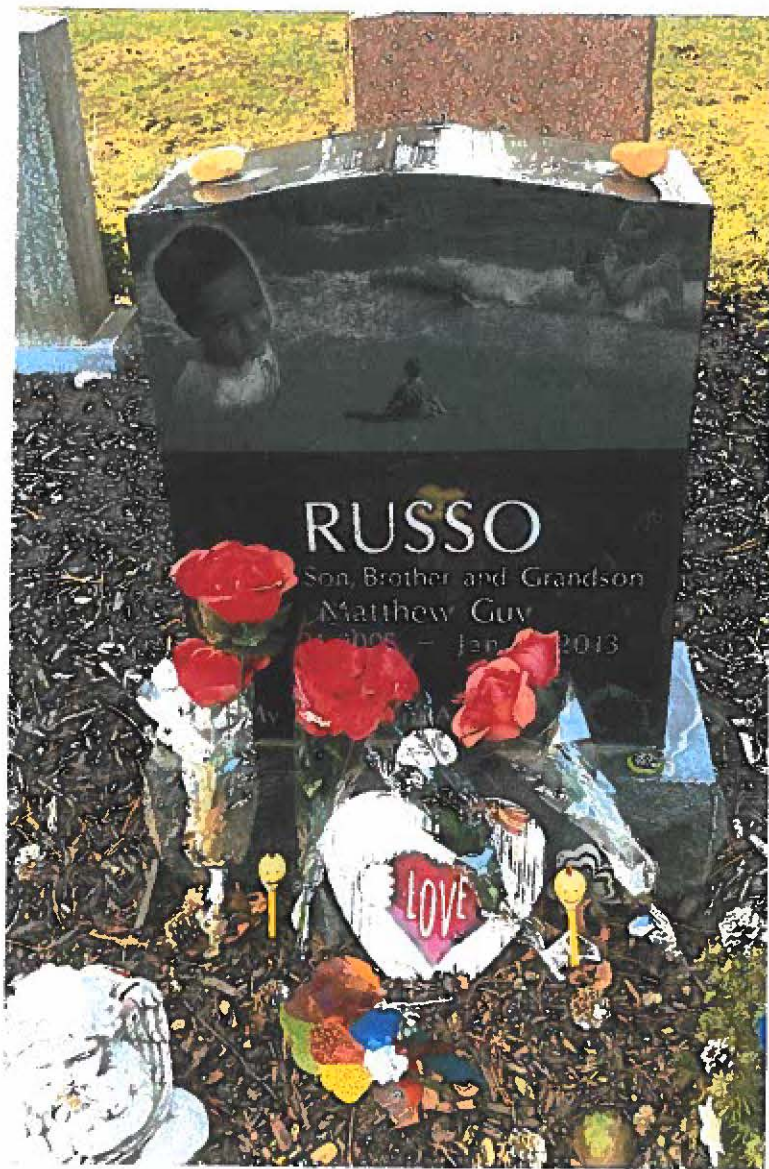
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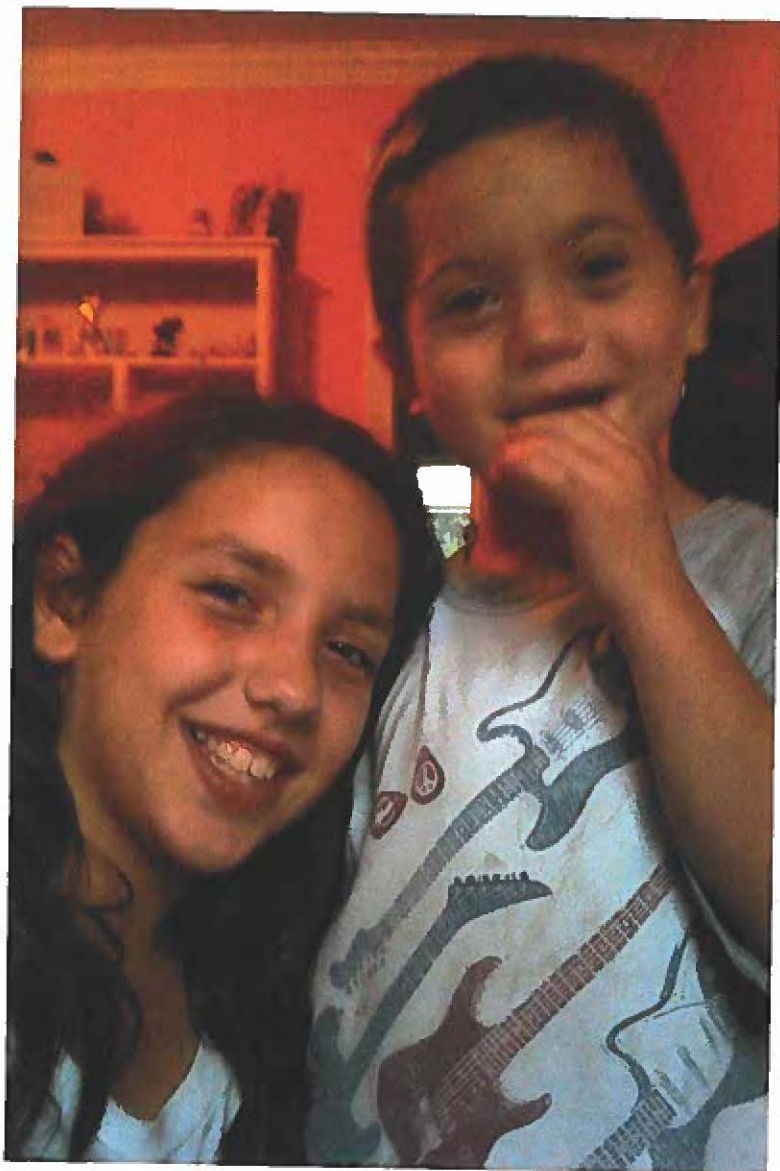
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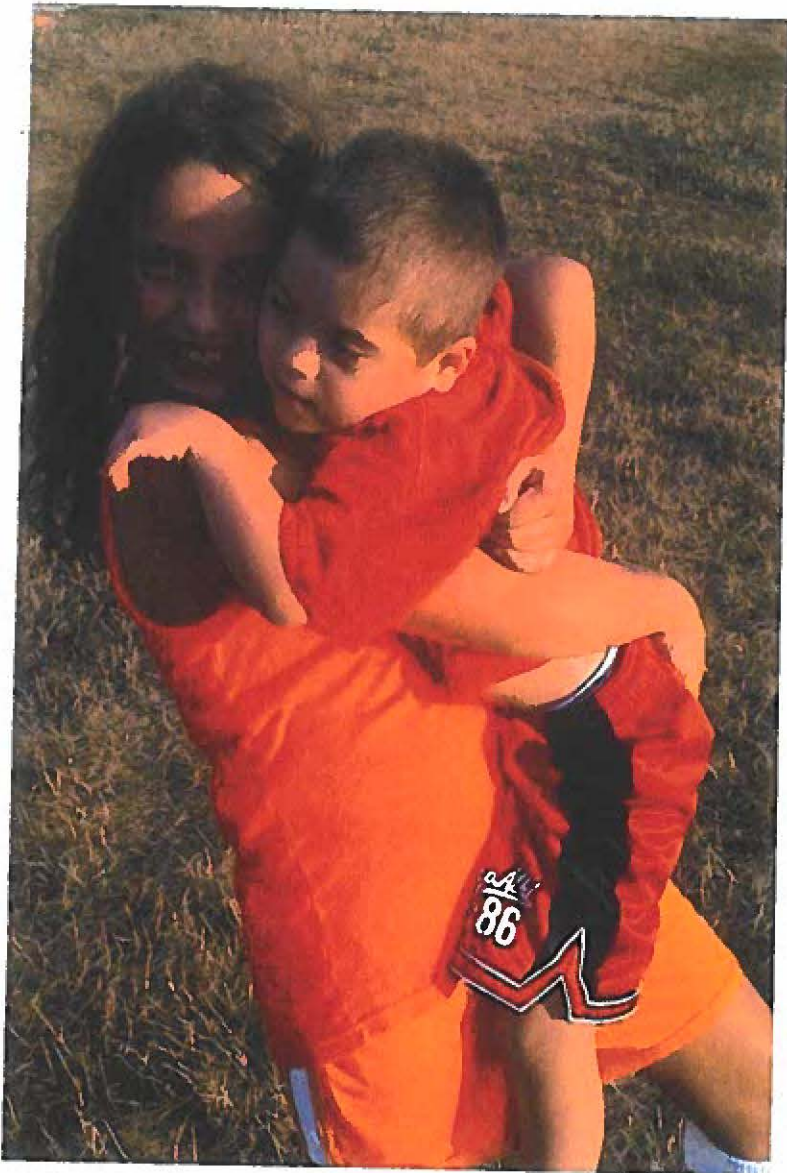












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'Statistically Significant' Cancer Rate In LI School District: Study

The higher cancer rate applies to all people living within the school district's boundaries, according to the 20-year NYS study.



Michael DeSantis, Patch Staff

Posted Mon, Jul 11, 2022 at 6:01 pm ET

Replies (4)



A "statistically significant" rate of cancer was found in residents living within the boundaries of the Northport-East Northport School District, a 20-year study by the New York State Department of Health found.

NORTHPORT, NY — People — regardless of age — have a "statistically significant" higher rate of cancer living in the boundaries of the Northport-East Northport School District, a 20-year study by the New York State Department of Health found.

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The study looked at 23 different types of cancer and all types of cancer combined among people living in the entire Northport-East Northport School District between 1999 and 2018, taking total cases versus the cases that would be "expected" by the state.

The study found 4,593 cases of cancer among district residents compared with the 4,454 that would be expected.

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"This 3% excess was statistically significant, meaning it was unlikely to occur by chance," the study wrote.

Pancreatic cancer, malignant melanoma of the skin, uterine (corpus) cancer, and prostate cancer made up the highest statistical abnormalities. There were significantly fewer than expected numbers of cases of stomach cancer and

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The numbers of cases of leukemia, other blood cancers (Hodgkin and non-Hodgkin lymphomas and multiple myeloma), and 13 other types of cancer were not significantly different from expected, according to the state study.

The state's health department was asked in 2019 to investigate whether there was an unusually high number of students in the class of 2016 at Northport High School who had leukemia and other cancers.

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The state confirmed there were more cases of leukemia, a type of blood cancer, in the 2016 graduating year.

The department was also aware of concerns over environmental conditions at Northport Middle School — one of two middle schools in the district, along with East Northport Middle School. Cancer was investigated in the whole school district area as a result, and state discovered:

- "We did not find higher rates of leukemia in the Northport community as a whole.
- We did not identify anything that might account for the leukemias in the class of 2016 on an individual basis, such as a strong risk factor, and the class members did not all go to the same middle school.
- We found that for some other cancers, there were higher than expected numbers of cases, but for other cancers, there were fewer than expected cases."

The study found 138 cases of leukemia in the 20-year Northport-East Northport study compared to the 140 researchers expected.

Robert Banzer, superintendent of the Northport-East Northport School District, said the district "fully cooperated" with the state health department during the cancer study.

"We appreciate the hard work of the NYSDOH in this endeavor and look forward to continuing to provide our students and staff with a safe learning environment," Banzer wrote in a letter to the community.

Northport Middle School closed in January 2020 for the remainder of the 2019-20 academic year because of an investigation into elevated levels of mercury found in a cesspool by the building. Elevated levels of benzene were also found in soil samples from two different septic systems, according to environmental firm PW Grosser Consulting (PWGC).

The firm eventually found the school was OK to occupy but issued several recommendations in a nearly-7,000-page report.

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"PWGC has not identified an environmental concern that renders the school unsafe to occupy," the firm wrote. "While several items of concern were

identified during the investigation, each is addressable and does not require the school to be closed to implement."

PWGC's recommendations were:

- Relocating the bus depot off-site
- Ensuring contaminated air does not exist in the plumbing and sanitary systems
- Preparing a Soil and Materials Management Plan for the track field
- Reviewing safety instructions for art supplies and disposing of them if need be
- Performing proper maintenance and repairs to maintain indoor air quality
- Increasing humidity in the building
- Clearing organic materials from roof drains and having them inspected
- Redirecting surface runoff away from the L-wing hallway
- Performing routine maintenance on the HVAC systems, including duct cleaning

Remediation at Northport Middle School began in March 2020. Contaminated sludge or liquid was slated to be pumped out from the septic tanks and leaching pools, Banzer said.

Brad Hutton, the deputy commissioner of the Office of Public Health at the New York Department of Health, wrote in February 2020 that mercury was detected in a cesspool that was connected to drains from old science rooms and also benzene in two septic tanks. Hutton said the levels were not high enough to present health effects and also not in locations that would result in exposure to students and teachers.

Mercury has not been detected deeper than 18 feet below ground, Banzer wrote in a March 2020 letter to the community.

"This means that it **DID NOT MIGRATE TO THE GROUNDWATER**, which is approximately 110 feet below ground," he wrote.

Parents made their voices heard in January 2020 after the mercury was found. At high levels, mercury can damage the brain, kidneys and developing fetuses, according to the Centers for Disease Control and Prevention's Agency for Toxic Substances & Disease Registry.

Tara Mackey, a former Northport resident, filed a lawsuit in September 2020 claiming the Northport Middle School building and grounds have been contaminated with "toxic and/or hazardous substances" for many years.

Mackey's daughter attended the middle school from 2015 through 2018. In 2017, there was a chemical spill in the warehouse beneath the K-Wing classrooms, according to the lawsuit.

Mackey's daughter was exposed and injured during her time at the middle school, the lawsuit says. The daughter, referred to as "A.I.M." in the suit, had migraines that "became much more frequent" while she attended the middle school, according to documents.

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The district said it "conducted extensive environmental testing and remediation" in its response in September 2020.

Mackey and her family have since moved to North Carolina more than three years ago because of health concerns in the Northport-East Northport School District, ABC 7 reported. Three other families also moved from Northport.

Mackey told ABC 7 she was "disappointed" in the state's cancer study, as it did not include cancer numbers from the community in 2019 nor did it include a chart of cancer in people ages 15-24, despite it including a chart for ages 0-14.

The 2019 numbers were not available at the time of the study and would not have significantly changed the data, a spokesperson for the New York State Department of Health told ABC 7. The spokesperson told the outlet the levels of cancer in people ages 15-24 were so low that patient privacy could have been jeopardized by revealing them.

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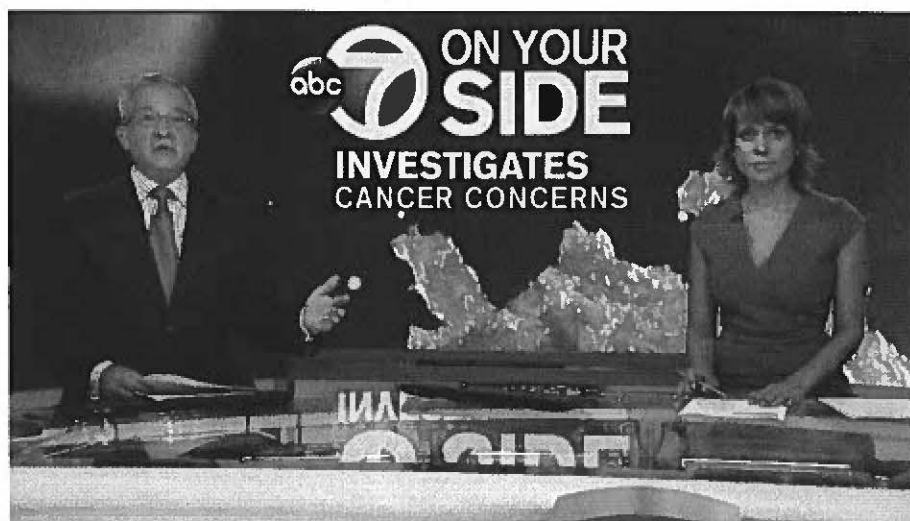
7 ON YOUR SIDE INVESTIGATION

'Statistically significant' cancer levels found in Suffolk County School District: study



By Kristin Thorne

Friday, July 8, 2022



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The number of people of all ages living within the Northport-East Northport School District with cancer is "statistically significant," a study found. Kristin Thorne has the story.

NORTHPORT, Long Island (WABC) -- The number of people of all ages living within the Northport-East Northport School District with cancer is "statistically significant," according to a New York State Department of Health 20-year cancer study recently obtained by Eyewitness News 7 On Your Side Investigates.

The study found "significant excesses in numbers of cases of pancreatic cancer, malignant melanoma of the skin, uterine (corpus) cancer and prostate cancer," but found "significantly fewer than expected numbers of cases of stomach cancer and lung cancer."

The department found that people living within the area of Northport Middle School

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had particularly elevated levels of cancer, while those living within the East Northport Middle School area did not.

The department initiated the study in 2020 after the community discovered that a concerning number of graduates of the Northport High School Class of 2016 were diagnosed with leukemia.

The department found that seven graduates were diagnosed with leukemia, while they said the number should only be two.

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"It is possible that the elevated occurrence of leukemia among 2016 graduates could be related to factors not possible to uncover, including environmental exposures," the study said.

The study noted that the students attended different middle schools within the district.

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Former Northport resident Tara Mackey said she is disappointed in the cancer study. Mackey said she is one of four families who moved from Northport to North Carolina



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three years ago over health concerns within the school district.

Mackey said the nine-page study didn't include available cancer numbers from the community from 2019 and didn't include a chart of cancer cases in people ages 15-24, while it does include a chart for ages 0-14.

A spokesperson for the New York State Department of Health said the 2019 numbers weren't available when investigators were working on the study and, even if they had them, the numbers would not cause any significant changes to the data.

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The spokesperson said the levels of cancer in people ages 15-24 could not be included in a chart because they were so low that revealing them would jeopardize patient privacy.

Since 2017, Eyewitness News has been reporting on illness concerns at Northport Middle School. In 2020, an investigation found benzene in soil samples from two septic systems located just outside the school building.

Benzene is a potentially dangerous chemical, which according to the Centers for Disease Control can cause headaches, confusion and even cancer if someone is exposed to high levels of the chemical for an extended period of time.

In a letter to parents at the time, Superintendent Robert Banzer said preliminary air testing did not detect benzene or any other harmful airborne chemical inside the building or from the soil samples or at the source of the septic tanks.

However, the school district was forced to close the school temporarily. An environmental consulting firm recommended the school district conduct a variety of cleanup procedures.

Northport resident Denise Schwartz said she found the recent study alarming.

"That indicates that there is a problem and some of the things that I and other concerned community members have been saying are in fact true," she said.

Eyewitness News 7 On Your Side Investigates Reporter Kristin Thorne asked Banzer if he thought any further testing within the district is warranted.

Banzer said the school district did not request the initial study and, thus, would not make any further requests.

"I care deeply about the health and safety of our students and community," he said in a statement. "I am acutely aware of the devastating impact that cancer has on an individual and their family and loved ones and take the results of the study very seriously. At this time, the Department of Health has not directed us (the district) or the community to do anything differently or make any changes based on their findings."

The health department said it does not believe the community should be alarmed by the results of the study.

"Based on our findings, we are not recommending that Northport residents take any

special measures when it comes to preventing cancer," the Department wrote.

Mackey and others are still pursuing a class action lawsuit against the district for negligence.

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A Long Island middle school that's battled concerns about toxic chemicals on its campus for decades is now facing a class action lawsuit.

Attorney Lilia Factor, who is representing the families, spoke out the study.

"If your own study tells you that there are statistically significant higher results, you can't say that it's meaningless," she said.

You can read the entire report online.

The Department of Health held a virtual public meeting Thursday night for the Northport community to discuss the study results.

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MORE VIDEOS

The number of people of all ages living within the Northport-East Northport School District with cancer is "statistically significant," a study found. CeFaan Kim has an update.

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Q&As for the July 7, 2022, Public Meeting regarding the Northport Cancer Incidence Report

Please note:

- Answers to the questions addressed during the July 7, 2022, virtual public meeting are transcribed below based on the recording. Minor editing has been done to improve clarity. To further explain issues/points discussed during the live Question and Answer (Q&A) session, additional answers are provided with text in blue.
- Due to a technical issue, some of the questions we received were not read and thus were not addressed during the live event. Answers to these questions are provided in this document with text in blue.
- Questions are re-ordered, so that similar or related questions are placed closer to each other.
- Q, A, and R refer to questions from the audience, answers provided by NYSDOH staff, and responses (or follow-up questions) from the audience, respectively.

Q: Why wasn't this meeting held in person?

A: During COVID many of the Health Department's processes and procedures changed. Almost all meetings moved from in-person to virtual via WebEx or Zoom. We found that virtual meetings are an efficient and cost-effective means of assembling a large number of people who otherwise might not be able to attend in person.

Q: If you respond to individuals who are asking follow-up questions, will you also provide those answers to the community?

A: It depends on the question. If the question is on a very personal level, we might not. But we are recording this webinar and it will be posted on the website along with the report that is posted. People who won't be able to make tonight's meeting can hear the recording and hear the Q&As. We will look at the submitted questions. If it is a significant number, we will summarize by themes and post those Q&As on the same website. We don't want people to feel like they are not going to get the information or benefit from some of the further dialogue that might occur after this meeting.

Q: This study was requested in February 2020. The study used data from 1999-2018. Last week, I spoke with a representative at the New York State Cancer Registry. I was told that the data for 2019 is completed, as is the majority of 2020 data. Why did the data for this study stop at 2018?

A: First of all, to clarify, this study was requested in November of 2019.

At the time we did the analysis, data were official only through 2018. Data for 2019 are complete and official now. When the data were made official this past April, the analysis had already been completed. But we did look at data from later years – 2019, 2020, and afterward in the cancer registry – and we didn't see anything unusual among the children or young adults. No further cases among older teenagers and people under 24 were reported to us at the time of analysis. There were a few cancers in children under 15.

In the investigation, we started with a 20-year time frame, which we think is sufficient for assessing the pattern of leukemia occurrence in the school district.

Q: How many cases attended the Northport middle school?

A: First of all, there was a very small number of people from the class of 2016 who were in the study. To protect the identity of people, we don't give out exact numbers when they are small. With that small number as well, any generalization, any conclusions, wouldn't be very informative.

Q: Do the East Northport/ Northport Middle School numbers reflect the students that switched out of Northport Middle School to East Northport Middle School during the school year? Where would their cancer numbers fall? Were the numbers based on actual attendance to middle schools or proximity as to where you live? Some students who live in a Northport Middle School area will go to East Northport Middle School.

A: We are aware that not all students who attend or attended Northport Middle School live in the Northport Middle School attendance district; and not all students who attend or attended East Northport Middle School live in the East Northport Middle School attendance district. The two middle school sub-areas in the study were only intended as approximations of these areas, capturing the majority of students who attend or attended these schools. It would not have been feasible to identify and track every person who actually attended each school, at least not within the time it took to conduct the study.

Q: Are children attending private schools located within this district (LuDay, for example) considered with regard to these statistics? Some may not live in this district, but they attend school there daily.

A: All children who resided in the study area during the 1999-2018 period were included in the analysis. But if they didn't reside in the study area, they were not considered in this cancer incidence investigation.

Q: Were the Veterans Administration residents included? The facilities are in close proximity to Northport Middle School.

A: The Northport VA Medical Center is located in the East Northport Middle School attendance district. This VA facility does submit information on their cancer patients to the NYS Cancer Registry. People residing on the medical center campus would be included in the study if their residence address was listed as the medical center.

Q: Did DOH interview the 2016 graduates who were diagnosed with leukemia or other cancers? If not, why?

A: We did not conduct any interviews with the 2016 graduates or the next-of-kin. We got information on possible individual risk factors that they may have had from information reported to the Cancer Registry and from their medical records. We thought that with the small number of cases that we had and the different leukemia types that they had, it would be unlikely that interviewing would have produced any useful information that would guide us to the source of the unusual pattern of leukemias.

Q: Did the study include community outreach such as door knocking, mailers/e-mails to residents? Why or why not?

A: We did not use any of these techniques. We relied principally on the New York State Cancer Registry. We found it to be an excellent source of information on cancer cases in neighborhoods. We have done some community surveys from time to time in the past, asking people to report their cancers or cancers in their neighbors. When we've done that, we only got a fraction of the cases that we could identify in the Cancer Registry. The Cancer Registry is required reporting and is done by physicians, hospitals, and laboratories. It is very complete. And it is done confidentially, of course. It is a very reliable source of information.

Q: On page 2, it states that "this study includes some, not all of the students of 2016 were reported to us". What does this mean? Why were they not included?

A: When we did the quantitative analysis of observed vs. expected, at that time, the most recent data that we had available was 2018. We knew some of the 2016 graduates had been diagnosed with cancer in 2019. However, the 2019 data were not official at that time. We couldn't extend the analysis to that year.

Q: On page 9, in tables 3 & 4, children 0-14 cancer cases are shown. Why is there no table for those ages 18-25? Young adults diagnosed with cancer, specifically 2016 graduates ages 18-24, were the impetus of this study.

A: We didn't show the numbers because they were mostly less than 6 individuals. In concordance with our confidentiality policy, we don't show numbers when they are small. I did note in the body of the text that there were seven older teenagers and young adults who were diagnosed with leukemias in this period and less than 2 cases was expected. I didn't want to put up a table that was not really informative, where we couldn't provide a lot of data.

Q: There were 7 young adults with leukemia and lymphoma but less than 2 cases was expected. Observed cases were more than three times higher than expected. You've recognized that this is statistically significant, but you also say there's no cause for alarm and no follow-up is needed. Is there some threshold beyond statistical significance that would trigger greater alarm? If so, what is that threshold and what is the rationale behind using some higher threshold than simple statistical significance? In other words, what is the scientific basis for discounting your own findings?

A: We did look at statistical significance; it's important. But we looked a little bit further than statistical significance. We looked at the characteristics of the young people diagnosed with leukemia. We looked at the type of leukemia they had. We looked at where they went to middle school. We looked at some things among their medical history. We looked at other types of blood cancers. They lived in different areas of the school district. It was statistically significant, but still it was a very small number and we didn't think that any further investigation would be useful.

Q: This study defines a 2.5% difference between expected and actual cancers to be "statistically significant". If there was a 7% difference between expected and actual cases in the Northport Middle School Area, but no difference in the East Northport Middle School Area, how is that NOT considered STATISTICALLY SIGNIFICANT?

A: The statistical significance depends on the number of cases that were expected. For the entire school district, there were approximately 4,400 expected, so small differences would come out statistically significant. The number was small in the individual middle school districts. In the Northport area, the 7% was statistically significant. There was a smaller difference in the East Northport school area. It depends on the number of cases that were expected.

There is an analogy I made about tossing a coin. If you toss a coin ten times, and four times it comes out heads and six times it comes out tails, you wouldn't think there is anything wrong with the coin. It just happens. If you toss a coin a hundred times or a thousand times, and you have 400 heads and 600 tails, then you might think there is something unusual going on. It is the size of the population that you are working with. It is a condition of a statistical test.

Just want to make a point, when we talk about all types of cancers combined, since different cancers are different diseases, it is not really useful from a public health point of view. If you want to talk about how to prevent cancers and treat cancers, you need to look at individual cancers. And that's what we did.

The 0.025 (2.5%) mentioned on p.1 in this report is not a percentage difference. Instead, it is the probability or risk of committing a Type I error (false positive). For this report, that is the probability of concluding that the difference between the observed and expected numbers of cases are statistically significantly higher (or lower) when in reality they are similar. For a large sample, a small percentage difference might be statistically significant, while for a small sample, a similar or even bigger percentage difference might not be statistically significant.

The statistical test applied here is to test the null hypothesis that the observed number of cancer cases and the expected count are the same. We are not assessing the probability and thus the significance if there is an excess in the Northport Middle School Area, while there is no difference in the East Northport Middle School Area.

Q: What would a large, elevated amount of cancers be?

A: We have done studies in the past and we see 10% excess. If you have a really small area, you are likely to get an even greater excess just because of the small number and they fluctuate randomly. But it would be more likely to be due to chance. I don't think it is useful to focus on percentages. It is more useful to look at what's making up the

excess. Something like a 3% in excess, it might be useful to look at different ways of reporting or recording of cancers, or somebody doing a lot of screening, or different doctors diagnosing things in different ways. That's the kind of things that come up when you got a 1%, 2% or 3% excess.

*
Q: Is it accurate to say that our community has "an elevated cancer rate" above other Long Island communities?

A: It was our finding that the total numbers of cancers in the whole school district were above expected; that is the conclusion, that there is a higher cancer rate. But it's by 3%, which is not a large amount. I'd characterize it as slightly elevated.

We did compare the cancer rate with all of New York State, outside of New York City. I'm not really sure where Long Island falls compared to other counties or regions in New York State regarding cancer. Usually there may be higher rates of one type of cancer and lower rates of another type of cancer.

Q: Is it common for increase in cancer population like Northport in other areas on Long Island?

A: We spent a lot of time looking at cancers in different areas and different populations. When you look at an entire area like a school district or a county, it is not uncommon to find elevations in certain kinds of cancers and deficits of certain types of cancers. We've done this for a long time and we were taking an average over the comparison areas, an average over all of New York State, outside of New York City. So generally, with an average, we expect to see some places where cancer is high and somewhere cancer is low.

Q: What other towns/districts on Long Island with a similar population have cancer rates similar?

A: We haven't looked at that for this study. We do have data on the Department's website from the Cancer Registry, looking at the six most frequently diagnosed types of cancer on census tract level. You'll get an idea of what may be high or what may be low from that. It is a partial picture. When you look at communities, some types of cancer will be high, some cancers will be low. That is on the Cancer Registry's section of the New York State Department of Health's website... If you go to <https://www.health.ny.gov/statistics/cancer/registry/> and scroll down to the "Cancer incidence by census tract" section. The link will bring you to a page on which you can find some of these data statistics by census tract. In addition, we do have cancer rates by subdivisions of the counties, including the large townships that we have in Nassau and Suffolk. If people are interested, they can take a look at the data. If you go to <https://www.health.ny.gov/statistics/cancer/registry/>, click on the link "Selected areas in Nassau, Rockland, Suffolk, and Westchester counties", you will find the average incidence for most recent five years in six areas in Suffolk County.

Q: We keep talking about the class of 2016, was there any elevated cancer levels in classes after that?

A: We looked at cancers in all the older teenagers and young adults and didn't see anything statistically significant. There is a range of ages and different types of cancer. We looked at that and we didn't see any that would be unusual.

Q: Can it be explained why the cancer cases in Northport Middle School are significantly higher than expected? Why would East Northport Middle not be affected equally?

A: I think what we are talking about is the Northport Middle School District. We didn't specifically look at cancer cases among people attending Northport Middle School or people who might have taught there or been employed there. As I said earlier, in the whole district we saw a 7% higher rate than what would be expected. It can be attributed to a number of different types of cancer. In the Northport Middle School area, there were high numbers of cases of melanoma of the skin and prostate cancer – that probably accounted for a good portion of the excess and then you look at what are the risk factors for those cancers. For prostate cancer, I did look a little more closely

at cases of prostate cancers in the Northport Middle School area and looked at what we call the stage distribution, that is the percentage of the cancers that were diagnosed at different stages, whether they were early or late stage. We did see a higher percentage of prostate cancers that were diagnosed at an early stage in the Northport Middle School area compared to the comparison population and also compared to the East Northport Middle School area. So that's telling me there may be a higher level of prostate screening among men in the Northport Middle School area. The risk factors of melanoma of the skin are related to skin tone and sun exposure. I think it's more useful to look at the individual types of cancers and these things do vary from place to place, depending on how much screening is going on or how many people are at higher risk.

Q: Northport Middle School clearly shows cases above expected, while East Northport Middle School roughly shows observed as expected. How do we explain that?

A: It is more useful to look at the individual cancer types. I talked a little bit about risk factors for them.

Q: Did NYSDOH itself evaluate the health risk from the known conditions at the Northport Middle School?

A: We did not conduct sampling or do analyses in the school. The school decided to engage a consultant to do a very comprehensive look at the school and environmental conditions in the school. We reviewed what they did and we reviewed the results of that effort. We weighed in, saying that we didn't see anything out of the ordinary from those results. But we didn't ourselves conduct that investigation.

Q: Exposure to benzene and petrochemicals are known caused of blood cancers. These chemicals were found at Northport Middle School. What are the chances that three years of exposure to students at Northport Middle School could have caused or contributed to the 2016 graduates' illnesses?

A: I just want to point out that not all 2016 graduates attended Northport Middle School.

The exposures to benzene and petrochemicals when the K wing was investigated in 2017 initially. The levels of volatile organic chemicals that were measured were generally at levels that are like what is often found in background, but there were some that were higher than we'd like to see. Our goal is always to minimize exposures, so actions were taken. We often say when we release reports like this that we can't rule out environmental exposures having contributed to the cancers that were observed and so I would say that again here. However, we didn't see an overall increase in leukemia in higher ages. Our analysis showed a marked excess among the 2016 graduates as a group, but we didn't see it as an overall pattern. And again, not all young people in the graduating class had gone to the Northport Middle School, but of course, that doesn't mean exposures couldn't have affected some of the people who ended up getting leukemia. So, I can't say a definite "no" to exposures being important, but the exposures we saw were not at a level where we'd expect to see a measurable increase in cancer. That's one way to put it. They are near background level.

The other issue which was raised earlier is latency and one of the frustrations with these cancer studies is that we don't know what people were exposed to many years prior from birth onwards. And in this case, we don't know how long those chemicals may have been an issue in that storage room. We don't have a way to answer the question as it's asked. The question is "what are the chances"? I can't say what are the chances. But of course, we can't completely rule out that those exposures could have affected some of the children.

R: You are sharing inaccurate information. The chemicals stored in the K wing were immediately removed without proper remediation and without testing. Testing was done 3 days later after the chemicals were removed, and the area where they were stored was cleaned, hoses out and repainted.

A: The only products removed prior to the 4/27/2017 testing from the K-wing storage area were flammable products and containers that had been opened. The removal was directed by the Health and Safety official. It was after the testing that additional materials were removed and stored in another location. Further information about events in the K-wing and the sequence of product removal and testing should be directed to the Northport School District and/or their website:

http://northport.k12.ny.us/Assets/Buildings and Grounds Documents/081017_NMS Environmental Presentation.pdf?t=636379767595830000 .

Q: What was the pollution they found in the ground at the Northport middle school? How did they go about remediating it and could that be a source of the elevated cancer levels?

A: The pollution the School District and its contractors found was through the course of routine testing of the cesspools and sewage areas that were connected to some of the wings of the school. They did find some compounds, some VOCs (volatile organic compounds). Metals were detected in the ground. However, there was no direct connection of those cesspools or sewage connections to the classrooms. To the best of our knowledge, there was no direct exposure to what was dumped there historically throughout the years of use of that school through those drains. I am not sure that we can speak to the elevated cancer level related to that, simply because we have nothing to suggest that they had any direct exposure to the pollutants detected.

Q: "NYSDOH was asked to comment on the report and its recommendations. After review, NYSDOH responded in January 2021 that the report addressed past and more recent environmental concerns at the school, and that the Soil and Materials Management Plan, if implemented, would be expected to mitigate against potential future exposures." Where do residents find this plan and how do we know if it is implemented?

A: The Soils and Materials Management Plan is available on the Northport School District website:
<http://northport.k12.ny.us/Assets/Buildings and Grounds Documents/Soil and Materials Management Plan - 2020-12-031.pdf?t=637940081392570000> .

Q: How much remediation is left to be completed at Northport middle school? And when will it be completed?

A: The Suffolk County Department of Health Services (SCDHS) required the remediation/clean-up of cesspools/sanitary sewers that were found to contain levels of volatile organic compounds and metals above standards. That remediation was completed and the SCDHS has indicated that no further action was warranted. Relevant discussion and documentation can be found on the Northport School District website:
http://northport.k12.ny.us/Assets/District Links/031220_NMS Community Letter31220.pdf?t=637196346689770000 .

Q: Should continued environmental testing be conducted at the school to confirm volatiles don't exist? Thank you.

A: Based on review of the testing performed at the school, the NYSDOH does not believe that any additional testing is necessary. The NYSDOH is not aware of any plans by the School District to conduct any further testing. All recommendations put forth by PW Grosser in their Comprehensive Report were satisfied and are summarized in the following link: <http://northport.k12.ny.us/Assets/NMS Closure/Satisfaction of Recommendations - 2020-12-11.pdf?t=637433039865600000> .

Q: The report did have significant findings with CO2. Why do you think there were none?

A: I think they are referring to the various investigations that were done at the school to evaluate ventilation. CO2 (carbon dioxide) is one by-product of respiration that is often looked at to evaluate if adequate ventilation is occurring. While I don't have those numbers in front of me, I don't recall there had been any significant levels that warranted any specific actions other than efforts to increase ventilation where possible. CO2 is highly variable, depending on when students and staff move from room to room. So again, if there is something more specific, a follow-up question will be helpful.

R: Referring to the testing, the report did have significant findings with CO, carbon monoxide, from the buses. Why do you think there were none?

A: The School District did do periodic testing of carbon monoxide inside the school because there were concerns over the buses that would be idling. To the best of my recollection, I don't believe carbon monoxide was ever detected at a level that was considered high or elevated relative to idling buses or transportations or any other sorts of vehicles that might be in the school area during school hours. So again, if there is something specific, I'd be glad to follow up. I just don't have the data in front of me at the moment.

R: That is not true. It is in the report. That is why they moved the busses.

A: We will follow up and try to address that.

To address concerns in the school community and the potential exposure to exhaust and vapors from petroleum storage, the Northport School District felt it would be prudent to relocate the bus depot and remove the bulk petroleum storage. The results of the carbon monoxide testing were not relevant in that decision. As previously stated, the carbon monoxide measurements during the several rounds of testing were largely non-detect. There were some positive results that were short term and very low. Exposure at the levels detected would not be expected to cause adverse health effects. For information about the relocation of the bus depot should be directed to the Northport School District or their website:

[http://northport.k12.ny.us/Assets/Buildings and Grounds Documents/NMS Update 112519.pdf?t=637103152831200000](http://northport.k12.ny.us/Assets/Buildings%20and%20Grounds/Documents/NMS%20Update%20112519.pdf?t=637103152831200000) .

R: Northport Middle school housed a bus depot. Three fuel tanks fueled the fleet of buses and they idled daily. Can exposure to bus exhaust as well as to the fuel tanks with their many citations cause cancer in students?

A: The testing that we are aware of doesn't show exposures within the school to the exhaust that is outside. There is always going to be incidental exposures when children are around buses, waiting in line, getting on or off. Those are pretty much present everywhere for any child that's involved in a bus ride to school. We are not aware of anything particularly unusual. We were aware that there were concerns about the amount of bus traffic in the garage at Northport Middle School. But I feel that the testing indoors did try to address that and showed that at least there was no impact indoors from all those activities.

As far as the fuel tanks, there was no significant, or measurable, quantifiable values of BTEX (benzene, toluene, ethylbenzene, and xylenes) and also the chemicals commonly associated with petroleum in the fuel storage. Levels that were found in the school were either well below background or were not detected. As to this specific question, I'd like to defer back to the report and be able to better answer this person's question and concern.

We don't like to see a lot of buses idling and spewing exhaust for periods of time anywhere, particularly outside of schools. But I think this was investigated to some degree at least. Someone in the Bureau of Toxic Substances Assessment can speak with the person who is asking the questions to actually go into the report and have more of a discussion about these issues, if that's desirable.

Q: The train runs through our district. Do we know what the railroad uses to control plant/weed growth? Was Roundup used or other carcinogens?

A: Assuming we are talking about the LIRR (Long Island Railroad), we don't know what they used to store or use to control plant or weed growth, or currently. That's something we can look into and see if there is any answer that is informative.

Q: Has there been studies on the effects of Covanta?

A: I am not sure what the question is asking. I see Google says it is an energy plant or waste-to-energy plant. That's something that we can look at; and the person who's asking can stay in touch with us by using the email address canmap@health.ny.gov. And we can see if we can find any answer that specifically addresses the question. That's not a concern that has come to our group.

Q: Could the overall increase in cancer be from the proximity to the power plant?

A: I just wanted to make a point before people talk about the power plant. The overall increase is made up of increase in different specific types of cancer. It is more informative to look at specific types of cancers that are elevated.

The power plant has come up; we've known that for many years that there are concerns about various issues associated with the power plant. I will start by making the point that staff in the Cancer Surveillance Program did not see a clustering of cases in a particular area within the area that was studied. That's one important type of additional investigation that they did to look at the locations where people live within the area. And they didn't cluster. The power plant, Northport Power Station, has been a concern that we have addressed in various ways over the years. But it is permitted by the State Department of Environmental Conservation (DEC) that has on-going programs to monitor. We can answer more specific questions with the help of DEC about concerns if people have them, for example, odors. There are ways to report them. But we didn't see the power plant as an issue as this report found.

X Q: How can you claim that this is a cancer study while failing to mention contamination from the VA Superfund site, Huntington Landfill/Covanta and the fallout area from the Northport Power Station? The DOH exists to protect the community it serves.

A: With respect to environmental concerns at the Northport Middle School, the NYSDOH, in cooperation with the United States Environmental Protection Agency and the SCDHS, reviewed historical information related to petroleum releases and the Superfund classification at the adjacent VA Center. This review showed that past spills and the former VA Center disposal area were remediated. The school and adjacent community are not at risk for exposures associated with the site.

The Northport Power Station and the Huntington Landfill (Covanta) operations are regulated under various programs of the New York State Department of Environmental Conservation (NYSDEC). Records associated with these facilities have not shown that their operations would be expected to harm the public's health. The Northport School District's Comprehensive report provides a summary of historical activities and current operations of these facilities: https://drive.google.com/file/d/1nxMi-PBEbfDvr5glXJZ9u9_VJzrK6kC/view?usp=sharing.

Q: Are you saying this is simply an anomaly? Or has the source of the cancer not been found?

A: So far, most childhood cancers have not been shown to have environmental causes. Many are likely to occur by chance. In this particular investigation, we did not identify any strong risk factors among the 2016 graduates that might account for their leukemia or other cancers individually. Therefore, it is possible that the elevation could be a statistical anomaly or it could result from factors that we just don't know.

Q: When will this end? The DOH has known far before 2019 that there is a high incidence of blood cancers and aplastic anemia in our community. There are decades of documentation, indicating that the DOH has been aware of this as well as the problems at Northport Middle School.

A: This investigation examined childhood cancer incidence in the area approximating the Northport/East Northport School District from 1999 through 2018 as well as more recent data. As stated in the report, we didn't observe a higher incidence of childhood blood cancers in this area.

The focus of this team was to conduct a cancer incidence investigation. We are unable to comment on the incidence of aplastic anemia (a rare blood condition when your body stops producing enough new blood cells) in your community.

The NYSDOH began assisting the Northport School District in May 2017. In particular, the Northport School District asked NYSDOH to evaluate the results of indoor air testing in the K-wing of the Northport Middle School. The NYSDOH and the Suffolk County Department of Health Services also provided technical advice on ways to improve overall indoor air quality in the K-wing and in other areas of the school. Prior to that date the Northport School District utilized a private consultant in conjunction with expertise from the Suffolk County Department of Health Services to respond to indoor air complaints and other environmental issues. The Northport Middle School

Comprehensive Report by PW Grosser includes copies of testing and follow-up activities that were taken by the private consultant and SCDHS. Relevant information can be found on the Northport School District website: http://web.northport.k12.ny.us/district/bg_northport_ms_information.

Q: Is there anything that people should be doing?

A: We don't recommend anything different than our typical advice to people in the community. Just the normal things to keep yourself healthy, visiting your doctor, avoiding tobacco, and getting your recommended screenings. We don't have any indications that there is something that people in the community should be doing.

Q: Based on the fact that there's an elevated cancer rate in the entire area do they plan on checking things like the water, air etc.?

A: What we found doesn't point to any one contaminant or material that might be related, so at this point we really don't have any place to start or any hypothesis to pursue in that way. It's more what we know about the cancers that we've already confirmed and what causes them. And unfortunately, a lot of the causes of cancers are still unknown. We know some risk factors for leukemia, but we don't understand the exact causes of leukemia. Most people with known risk factors don't develop leukemia. And many people with leukemia have none of these risk factors. It is beyond the scope of this cancer incidence investigation to discover an unknown cause of leukemia.

Q: Is there going to be any follow-up?

A: We do not plan to conduct any follow-up at this time. We don't have a basis for any hypothesis that we would need to pursue if we were going to do a follow-up. There wasn't enough information to show ways to do a follow-up that would provide useful information.

Q: Do they plan on following up on the class of 2016 to see if there is an increase of cancers in the future?

A: I think that's something that we can consider if there is interest. One problem, however, is that we need some significant additional information. We need a complete list of all students in the 2016 graduating class, including names, sex, date of birth, social security number, and the latest residential information. People graduate from high school, then they go off to all corners of the world. It'd be very difficult to identify them if they left the area. For something like that, we would need information on where they might be living. For a small number of people that might be possible, but for an entire graduating class, that would be very difficult. That's something that we could consider.

Q: Do you plan on monitoring the situation going forward to see if an increase in cancer occurs going forward?

A: We did take a look at the data that were not yet official at the time of analysis. We did not see unusual occurrence of leukemias in graduates of the 2016 class. That was going forward after the ones that we knew about in 2019 and in 2020. That's something that we could take a look at if there is sufficient interest.

Q: Rather than further tracking the class of 2016 since as you mentioned they may live in all corners of the world, are there any plans to check the classes of 2019, 2020, 2021, 2022, etc. to see if there is any pattern in this community in particular?

A: This investigation did not identify any unusual patterns of leukemia or other blood cancers in the community as a whole, aside from the 2016 graduates of Northport High School. The investigation was not able to suggest any avenues for further investigation that may be useful and no further investigation is planned.

Q: How do we request a follow-up study for the Northport area?

A: The best way to do that is to send an email to canmap@health.ny.gov, the same mailbox you used to submit questions. And a NYSDOH staff person will get back to you.

There is a bit of lag time between data becoming official and the current time. If you want to get a sufficient period, there probably will be a wait.

Q: What about the area in Northport that goes to Kings Park schools? Were those elevated?

A: We did not look at the area that was served by the Kings Park schools. We only looked at the area approximating the Northport-East Northport School District.

Q: Do you plan on looking at the area in Northport that goes to Kings Park school district based on a higher number of cancer cases?

A: We did not look at the area that was served by the Kings Park schools. We only looked at the area approximating the Northport-East Northport School District.

We don't have any plans at the moment to look at other school districts. We are willing to talk to somebody if they have any additional information, any reason, that should be attempted.

Q: Do you have any plans to investigate the Kings Park school section of Northport? Part of the Northport town goes to Kings Park school, do you plan on monitoring the area of the see if there's an increase?

A: Is Kings Park a separate school district or is it an elementary school there? We looked at areas within Northport School District. We looked at two large areas that go to the two different middle schools. We do not plan on looking at the Kings Park School District.

We saw higher number of cancer cases in Northport-East Northport for a very small defined population. We didn't have any indication that was a need to look in Kings Park.

We don't have any plans at the moment to look at other school districts. We are willing to talk to somebody if they have any additional information, any reason, that should be attempted.

Q: This is a follow up from the recent investigation of cancer in Northport School District. I am a resident living on the border of Northport & Kings Park school district. I would like to request a thorough investigation of the Kings Park school district, in particular the area that goes to Fort Salonga Elementary School, as this area is close to Northport School District, the Covanta plant, and energy plants. I would also like to request information about cancer rates and other health concerns related to the energy plants. Finally, I would like to request a report/investigation into the Covanta plant.

A: We have posted some basic information on NYSDOH's website if the public are concerned about cancers in their community:

https://www.health.ny.gov/statistics/cancer/environmental_facilities/mapping/about/concerned_about_cancer_in_your_community.htm . In addition, much information about cancer in small areas of the state is available on the Department's web site at NYS Cancer Registry: <https://www.health.ny.gov/statistics/cancer/registry/> .

We can do investigations of cancer occurrence in different parts of the state because we have a readily available source of cancer data with the New York State Cancer Registry. However these investigations do not allow us to link cancers to any specific facility.

In 2009, in response to a petition from a local resident which NYSDOH worked with the Agency for Toxic Substances and Disease Registry (ATSDR) and the Suffolk County Department of Health Services (SCDHS) conducted a thorough

investigation of the Northport Power Station. The report was posted on the ATSDR website:
<https://www.atsdr.cdc.gov/hac/pha/NorthportPowerStation/NorthportPSLHC08-31-2009.pdf> .

The Huntington Landfill/Covanta waste-to-energy facility is regulated by the New York State Department of Environmental Conservation (NYSDEC) Air Program. Records associated with this facility have not shown their operations would be expected to harm the public's health. For information about the facility, including any investigations of its operations, you should contact the NYSDEC Region 1 Air Pollution Engineer at 631-444-0205. In addition, the Northport School District's Comprehensive report provides a summary of historical activities and current operations of this facility: https://drive.google.com/file/d/1nxMi-PBEbfDvr5glXJZ9u9_VJzrK6kC/view?usp=sharing .

Q: What about the cancers of teachers who taught at Northport Middle School?

A: We did not look into cancers among teachers at Northport Middle School. That was not the subject of the request. But if anybody has additional information that they'd like us to look into, they are welcome to get in touch with us. The mailbox canmap@health.ny.gov is a good way to get in touch with us. We will get back to you.

R: It would be prudent to follow up with the teachers who worked at Northport Middle. There are many instances of cancers and miscarriages of teachers who worked/still work in that building. Thank you.

A: Anyone with specific information about cases of cancer or miscarriages of teachers or other staff that work or worked at Northport Middle School is welcome to contact us via email canmap@health.ny.gov. A NYSDOH staff member will get back to them to discuss their concerns in greater detail and together decide whether any further investigation may be needed.

Q: There seems to be a cancer cluster around my area that I'm just now finding out about. It's definitely strange and concerning. Four houses that I know of. What can be done to see if there's something causing it around here?

A: That's a question that we actually get a lot. NYSDOH staff will explore concerns with people. We like to talk to people about first is that cancer is a common disease, especially among middle-aged and older people. Different cancers have different causes. I would be very important to look at not only how many people or how many houses have people with cancers, but what types of cancer. If it is all one type of cancer, that is a different level of concern than if it is different types of cancer. Do people have common cancers or are they particularly unusual? It is a whole conversation that we need to have. And if you are interested in following up on those concerns, I'd encourage you to send an email to canmap@health.ny.gov and we will get back to you to discuss your concerns.

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Trash incineration FACT CHECK:

Covanta's "Energy-from-Waste & Health Risk" flyer

By Mike Ewall, Energy Justice Network, 215-436-9511, mike@energyjustice.net; www.energyjustice.net/incineration

Do trash incinerators trash public health?

Several health studies say yes. Trash incinerators – often rebranded with public relations terms such as “waste-to-energy,” “energy from waste,” or “resource recovery” – are the most polluting way to manage waste or to make energy.¹ There are health studies that find connections to cancers, heart disease, birth defects, respiratory problems, and other health impacts.

A 2019 study published in the *International Journal of Environmental Research and Public Health* sums up the research this way (each number references a study):

“Although various uncertainties limit the overall interpretation of the findings, there is evidence that people living in proximity to an incinerator have an increased risk of all types of cancer [12,13], including stomach, colorectal, liver, renal, pleural and lung cancer, gallbladder and bladder for men, non-Hodgkin lymphoma and leukemia, and childhood-cancer/leukemia [13,14]. Studies on incinerators in France and in Italy have suggested an increased risk of non-Hodgkin lymphoma (NHL) [15], soft-tissue sarcoma [16,17], lung cancer [18], and neoplasia of the nervous system and liver [12]. Although the studies conducted by Shy et al. [19] and Lee and Shy [20] did not show respiratory effects. Other studies have reported increases in respiratory diseases or symptoms in populations residing near incinerators [21–24] and in children [25,26]. Other epidemiological studies on incinerators have shown an excess risk of cardiovascular diseases [21,23,24,27,28] and urinary diseases [21].”²

The study found that that men with higher exposures to incinerator pollution had statistically significant increases in death from **lymphohematopoietic cancers** (leukemia, non-Hodgkin lymphoma, multiple myeloma, etc.),

cardiovascular diseases, and “natural causes;” and in women, increased death from **acute respiratory disease**.

A 2013 study of incinerators in Spain is very clear when discussing their findings. The conclusion states: **“Our results support the hypothesis of a statistically significant increase in the risk of dying from cancer in towns near incinerators and installations for the recovery or disposal of hazardous waste.”³**

An extensive literature review published in 2013 found the research inconclusive for many diseases, with some studies finding significant health impacts, but more studies unable to do so. However, some of the stronger trends that emerged were for **larynx cancer** (“three ecological studies and one cohort study found convincing associations”), **birth defects and reproductive disorders** (including cleft palate, urinary tract defects, spina bifida, and cardiac defects), a **decrease in respiratory function** and an **increase in respiratory wheezing in children**.⁴

A 2013 study of eight incinerators in Italy found that “maternal exposure to incinerator emissions, even at very low levels, was associated with **preterm delivery**.”⁵

A 2011 study, also from Italy, found that women with the highest levels of exposure to heavy metals from incinerator pollution suffered **increased death in general, and specifically from heart disease**. In men, they found increased hospitalization for **chronic heart failure and heart attacks**.⁶

After noting the challenging nature of different health study methods, a 2004 review of incinerator health studies found that, “analysis by specific cause, notwithstanding the poor evidence for each disease, has **found nevertheless significant results for lung cancer, non-Hodgkin lymphoma, soft tissue sarcomas and childhood cancers**.”⁷

¹ Energy Justice Network, Incineration, www.energyjustice.net/incineration

² Romanelli, et al. (2019). Mortality and Morbidity in a Population Exposed to Emission from a Municipal Waste Incinerator. A Retrospective Cohort Study. *International Journal of Environmental Research and Public Health*. 16. 2863. www.ncbi.nlm.nih.gov/pubmed/31405116

³ Garcia-Perez, et al. (2012). Cancer mortality in towns in the vicinity of incinerators and installations for the recovery or disposal of hazardous waste. *Environment International*. www.ncbi.nlm.nih.gov/pubmed/23160082

⁴ Mattiello, et al. (2013). Health effects associated with the disposal of solid waste in landfills and incinerators in populations living in surrounding areas: A systematic review. *International Journal of Public Health*. www.ncbi.nlm.nih.gov/pubmed/23887611

⁵ Candela, et al. (2013). Air Pollution from Incinerators and Reproductive Outcomes A Multisite Study. *Epidemiology* (Cambridge, Mass.). 24. 863-70. www.ncbi.nlm.nih.gov/pubmed/24076993

⁶ Ranzi, et al. (2011). Mortality and morbidity among people living close to incinerators: A cohort study based on dispersion modeling for exposure assessment. *Environmental Health*. 10. 22. www.ncbi.nlm.nih.gov/pubmed/21435200

⁷ Franchini, et al. (2004). Health effects of exposure to waste incinerator emissions: A review of epidemiological studies. *Annali Dell'Istituto Superiore di Sanità*. 40. 101-15. www.ncbi.nlm.nih.gov/pubmed/15269458

The ABCs of knowledge about health effects from industrial air pollution:

A → B Incinerators (A) release chemicals (B)

B → C Those chemicals (B) cause health effects (C)

A → C Incinerators (A) cause health effects (C)

Don't let polluters take your common sense away. We know that trash incinerators are among the largest air polluters (A → B), and that the pollutants they release cause a wide range of health problems (B → C). Some health studies can show the connection (A → C), but many cannot due to a range of reasons discussed below.

There are gaps in knowledge in all of the above.

A → B: There is continuous emissions monitoring data on just 3-4 pollutants from incinerators and other industrial facilities. Other pollutants are tested once per year, if at all. We have a basic idea of which pollutants are released and in what quantities. However, this data is underestimated since industry refuses to use modern continuous monitoring technology for most pollutants, and federal and state environmental agencies don't require it. (Some local governments, like Baltimore, now do.⁸) Also, incinerator operators have been caught manipulating their tests to make emissions seem lower.

B → C: We have a good idea of what these pollutants do to human and environmental health. There are thousands of studies on health effects from chemical exposures, but it can never be complete. With hundreds of thousands of chemicals in industrial use and many more created each year, not all chemicals are studied for every possible health impact. Certain chemicals are studied in depth, but most are barely understood.

Historically, many studies are of healthy, adult, white male workers, and don't address racial health disparities, or reflect the impacts of chemicals on more sensitive populations: women, children, the elderly, or people with compromised immune systems or other existing health problems. Combinations of chemical exposures are rarely studied, and sometimes 2+2=5 when people are exposed to combinations of chemicals. So-called "safe" and allowable exposure levels are based on one chemical at a time, without looking at sensitive populations or the existing body burden of chemical exposures accumulated over a lifetime.

A → C: It's nearly impossible to design a perfect health study connecting a specific pollution source to specific health problems in a specific population of people.

Why is it hard for a health study to find a connection?

Other sources of pollution: Incinerators are often located next to other industrial source of air pollution, so it's nearly impossible to determine what health effects came from one vs. another, or the combination.

Pollution moves: It depends a lot on wind direction and distance. Some pollutants fall very locally, while others (like dioxins) reach as far as the Arctic. Some of the most toxic pollutants, like dioxins and mercury, climb up the food chain in animal fat. Animal products are shipped all over, so this further dilutes the health impacts as dietary exposure routes are spread far beyond any study area.

People move: Diseases (especially cancer) can take decades to manifest. People move in and out of the community over time. Many also move daily for work, which can change their exposure levels significantly. All of this dilutes the affected population studied.

Can't quantify the dose: We usually don't know how much exposure to pollution each person receives. Studies often use distance, which isn't as good as modeling exposure or taking biological samples for pollutants known to be released.

Given the uncertainties, it's impressive when a study manages to find health impacts, and many have.

A → B → C studies: Some studies use modeling to calculate expected damage to health. They'll take the emissions data, use air modeling to calculate how much of a given chemical will reach people, and then factor in health consequences.

A 2017 study of just one pollutant (particulate matter) from the Wheelabrator Baltimore trash incinerator found that this pollution causes an estimated \$55 million in annual damage to health in people across several states, primarily from premature death.⁹

A 2011 study looked at six major pollutants from 17 U.S. industries and found that, more than any other industry, the economic health damage from trash incinerators outweighed the industry's economic benefits.¹⁰ Even oil refineries and fossil fuel power plants were less harmful.

⁸ Baltimore Clean Air Act. www.cleanairbaltimore.org/cleanairact

⁹ Written Report of Dr. George D. Thurston Regarding the Public Health Impacts of Air Emissions from the Wheelabrator Facility, Nov. 20, 2017. www.cleanairbaltimore.org/uploads/wheelabrator-health-impacts.pdf

¹⁰ Muller, Nicholas Z., Robert Mendelsohn, and William Nordhaus. 2011. "Environmental Accounting for Pollution in the United States Economy." *American Economic Review*, 101 (5): 1649-75. www.aeaweb.org/articles?id=10.1257/aer.101.5.1649

How Covanta Misleads

Covanta: “Study after study have shown that living near an Energy from Waste (EfW) facility EfW facility [sic] with modern air pollution control equipment does not have adverse impacts on health.”

Fact: Covanta ignores the fact that there are other “studies after studies” that DO show health impacts in communities around trash incinerators. (See page 1.)

It’s hard to say, without researching every facility examined in each study, whether each facility has “modern air pollution control equipment,” however Covanta defines that. Only one trash incinerator out of 72 in the U.S. uses “modern air pollution control equipment,” though, and it’s located right next to an old trash incinerator in Florida that does not, so no health study in the U.S. could meet Covanta’s criteria.¹¹

How does Covanta get away with arguing that the health studies are on their side?

He who pays the piper calls the tune. The first two of their eight health study citations are to literature reviews. One was conducted by HDR, a large consulting company that does engineering work to build trash incinerators.¹² The other was hired by Metro Vancouver, which runs a trash incinerator and has proposed building several more, amid much controversy. They hired Intrinsik, a consulting company that describes themselves as having “over 30 years of helping our clients achieve their goals.”¹³ Covanta also cites Columbia University scientists who are with a “tobacco science” outfit that is funded by the incinerator industry to promote incineration.¹⁴ The remaining studies are cherry-picked from a large body of available research.

In the literature reviews they cite, they leave out some of the studies that found health effects, and of the ones that did find health impacts, they either gloss over them while admitting their findings, or they find reason to exclude the results.

The “recent review” cited first by Covanta is a report by HDR claiming to be a literature review of “air quality health risk assessments and health surveillance programs surrounding WTE facilities” which “determined that there was not a predictive or actual increase in health issues....” However, the report itself admits that it “was not a formal systematic review of the literature,”¹⁵ though Covanta describes it as “comprehensive.”

Covanta then summarizes Intrinsik’s report as saying that incinerators “do not pose unacceptable health risks to local residents.” However, the report talked about real risks, including increased birth defects, higher dioxin levels in people’s blood, and “non-cancer” risks that were “unacceptable.” Other studies in the report found health problems, but at levels deemed “acceptable” by government regulations. Intrinsik outright dismisses a study from Spain which found statistically significant increased cancer deaths in towns around trash incinerators. The study was dismissed because Spain’s incinerators were “old” (10-20 years) and the study had no mention of what air pollution controls the incinerators used. Except for a handful of expanded or rebuilt facilities, Covanta’s U.S. fleet is now 25-40 years old as of 2020. At the time of the Intrinsik review, they would have been 19-34 years old, making Spain’s incinerators seem young by comparison. Also, Intrinsik didn’t bother to look up info on the air pollution controls. We did, and found that they all have scrubbers and baghouses, similar to Covanta’s fleet.

Covanta’s pollution triggers asthma attacks. Covanta’s incinerator pollution is a major source of the nitrogen oxides (NOx) that trigger asthma attacks. Covanta is correct that the exact *cause* of asthma is unknown. They use this fact to distract from the fact that they trigger asthma attacks in those who already have asthma. The American Lung Association has written to Washington, DC City Council objecting to a contract to burn waste at the highly polluting Covanta plant in Lorton, VA due to concern over asthma and other respiratory problems.¹⁶

¹¹ “Modern air pollution control equipment” includes Selective Catalytic Reduction (SCR) for reducing emissions of nitrogen oxides (NOx) that trigger asthma attacks, keeping NOx below the modern limit of 45 parts per million (ppm). The only incinerator with this equipment in the U.S. is West Palm Beach #2, in Florida. This new plant started in 2015 and Covanta has taken over operation of this county-owned facility. No other facility in Covanta’s fleet uses these modern controls. The best of their other incinerators get their NOx levels down to around 85-90 ppm – twice the modern limit. They do this with Selective Non-Catalytic Reduction (SNCR), which lacks the catalyst needed to reduce NOx much further. Some of their incinerators lack these and other basic controls, including the biggest incinerator in the nation, in Chester, PA, which lacks 2 of the 4 common controls (SCR/SNCR controls for NOx and carbon injection for toxic chemicals like dioxins and mercury). See

www.ejnet.org/chester/pollutioncontrol.html for a list of pollution controls at Covanta incinerators. Chester’s environmental health has been studied and is very poor. Their childhood asthma hospitalization rate is 3 times the state average, in part due to Covanta’s excessive NOx emissions. See www.ejnet.org/chester/asthma.html Covanta is the largest industrial air polluter in Chester and the worst in the 7-county Philadelphia region. See www.energyjustice.net/files/pa/philly/top10.pdf

¹² www.cleanairbmre.org/uploads/NMWDAConsultants.pdf (see p.2)

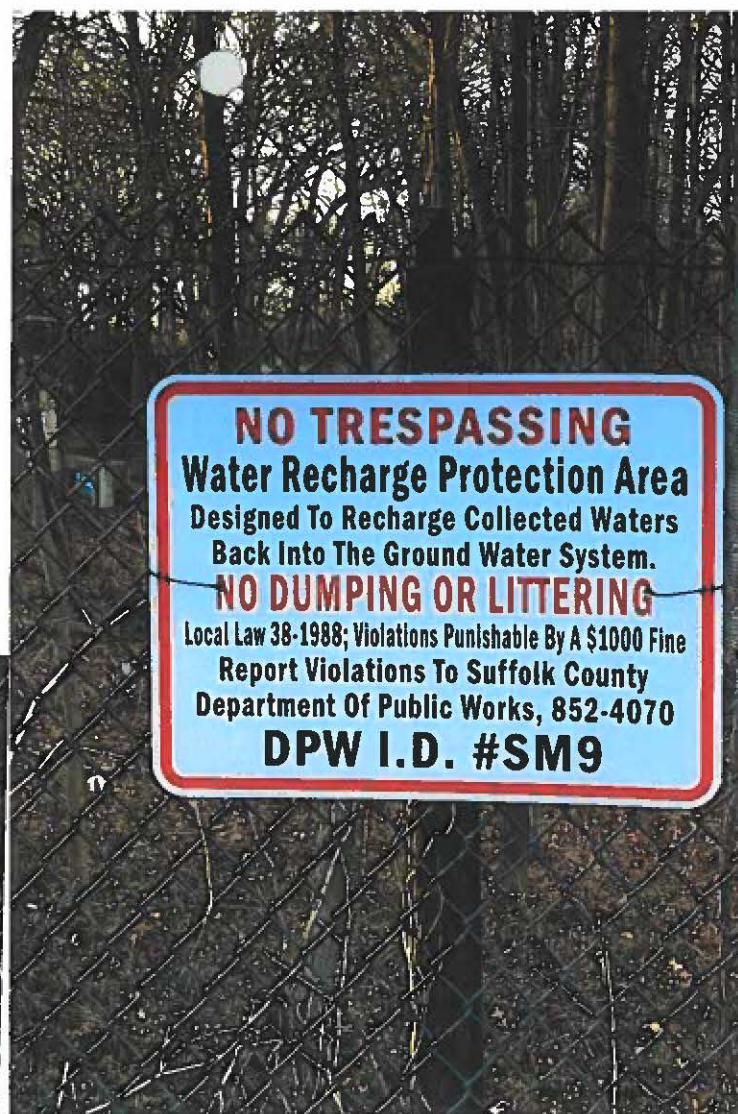
¹³ www.intrinsik.com/about/

¹⁴ www.seas.columbia.edu/earth/wtert/newwtert/sponsors/

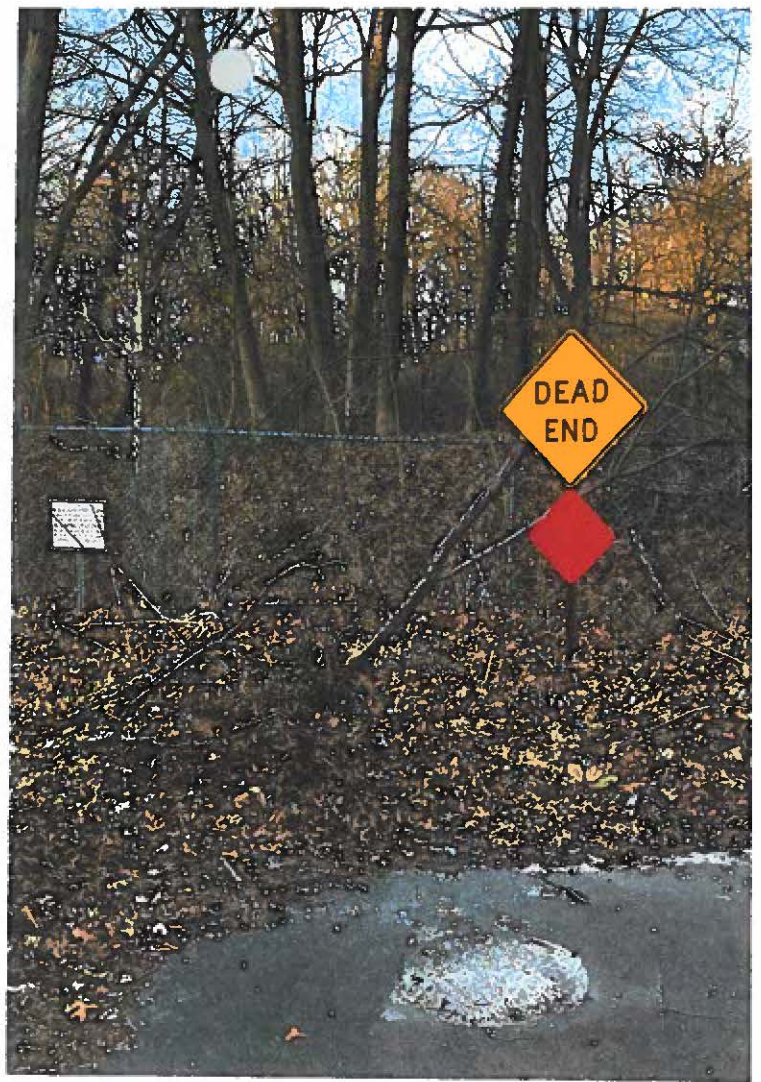
¹⁵ www.oregonmetro.gov/sites/default/files/2017/07/06/Metro_WTE_Landfill_HIA_Final_with_appendices_20170706.pdf (see p.184)

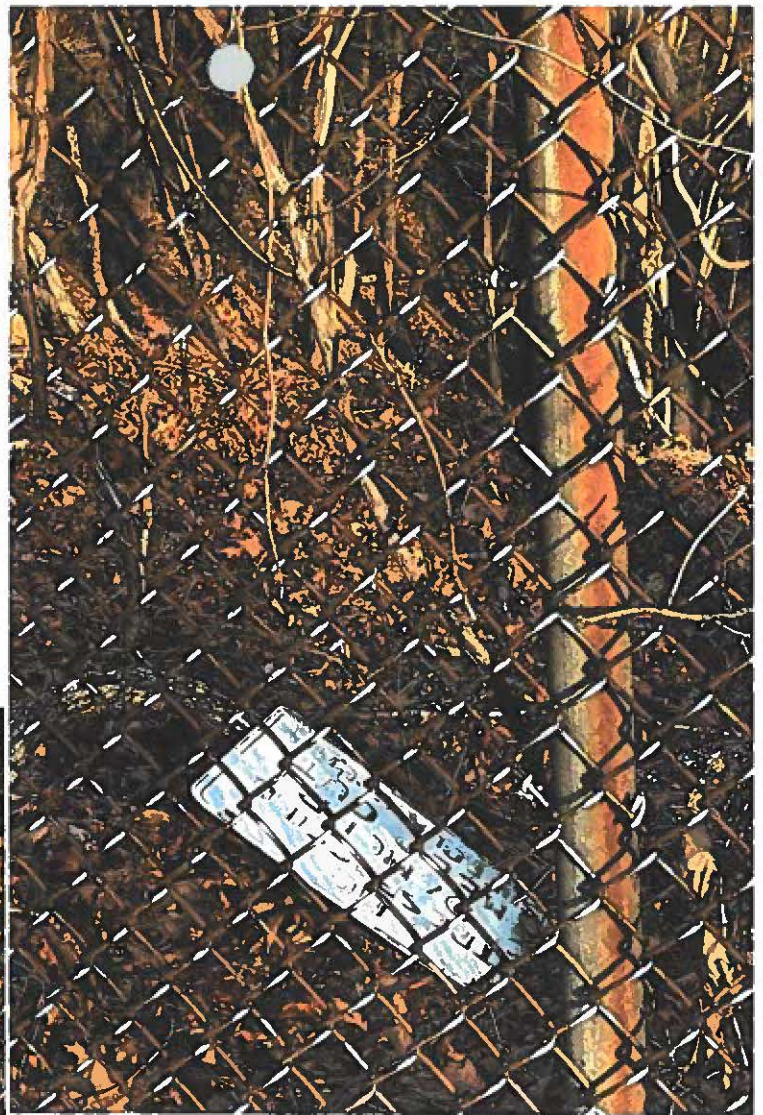
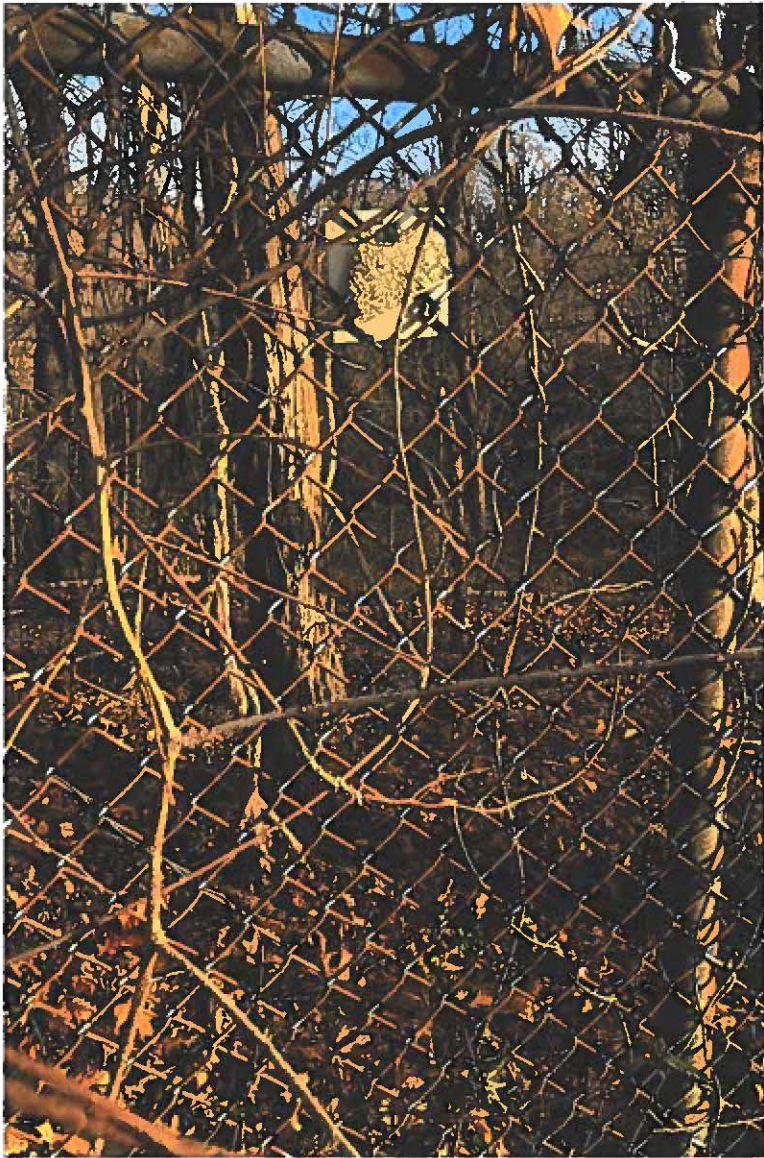
¹⁶ See: www.energyjustice.net/files/dc/AmericanLungLetter.pdf













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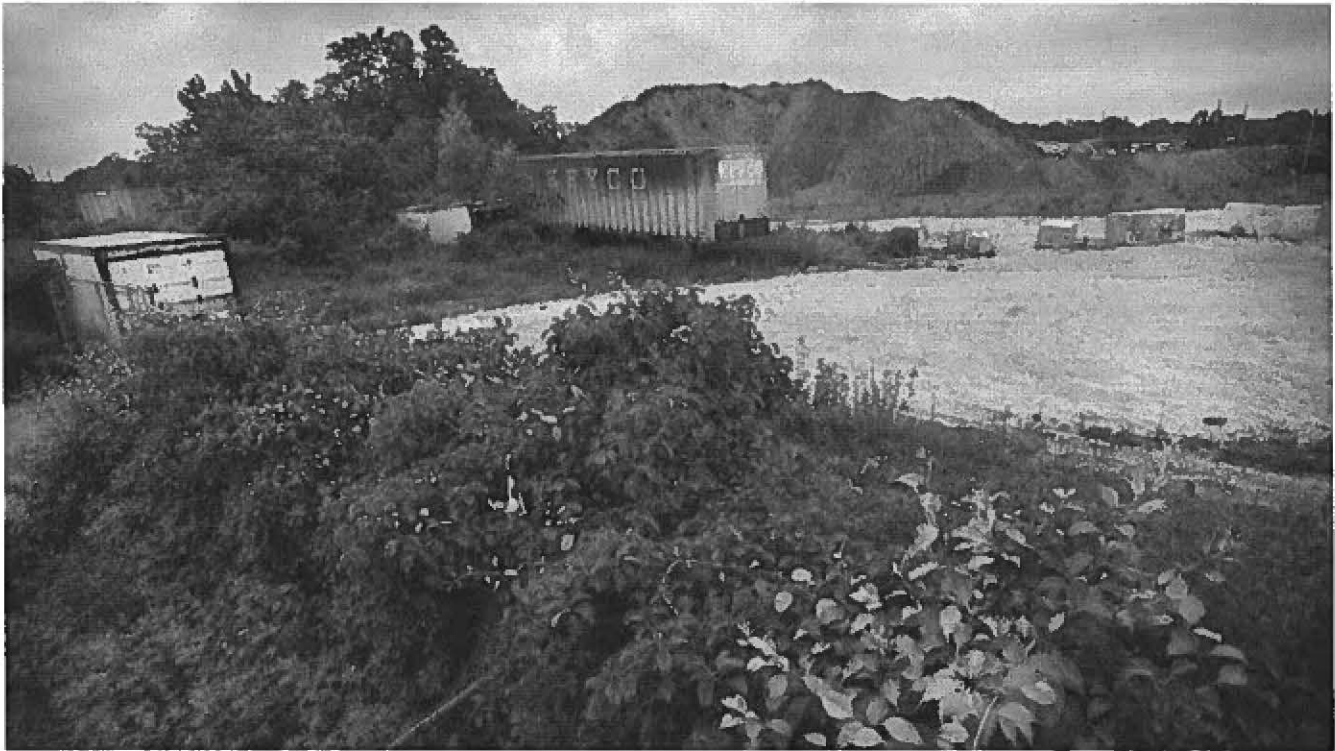
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Kings Park landfill has town, civic leaders at odds with developer



A decision by Suffolk County to transfer an abandoned Kings Park landfill, seen here on Monday, June 5, 2017, to businessman Toby Carlson is drawing skepticism from civic leaders and the Smithtown planning director. Credit: Newsday / John Paraskevas

By Nicholas Spangler

nicholas.spangler@newsday.com

June 6, 2017

A Suffolk County plan to transfer a notorious Kings Park landfill to a businessman with a history of land-use violations in Smithtown has drawn skepticism from civic leaders and the Smithtown planning director.

The businessman, Toby Carlson, said he and his partners are only trying to rehabilitate the Steck Philbin site on Old Northport Road, which has been abandoned for decades. Most developers were scared off by a \$1.5 million delinquent tax bill and \$10 million in estimated cleanup costs connected to the site's use as an illegal construction dump.

Under a county Landbank program to clean blighted property and return it to the tax rolls, Carlson, owner of the Kings Park recycling company Powercrush, won the right to redevelop the site for a solar farm, paying millions to cap the landfill but just \$500,000 to settle the tax bill.

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After that plan failed because PSEG wouldn't commit to buying the electricity, the county legislature this spring amended the resolution, permitting sale of the tax liens to allow Carlson and his partners "other potential uses" for the site, which the resolution didn't define.

Between 1998 and 2012, town officials issued dozens of summonses connected to solid-waste management violations to another Carlson company, Carlson Associates, which shared the same address as Powercrush. Carlson Associates pleaded guilty to six violations and paid at least \$6,000 in fines.

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Landbank officials said they were not aware of those offenses.

Carlson said that most of those issues were resolved with the town. "I am bringing my operations indoors and updating to the best available technologies," he said.

He and his partners will seek another deal for solar or for recreational uses at the Steck Philbin site and will not develop it for industrial purposes, Carlson said. "That is an absolute definitive commitment," he said.

Kings Park Civic Association leaders said they did not object to a solar farm but transferring the site without restrictions on use could end badly for residents of the neighborhoods that abut the industrial area, especially those who live on nearby Marvin Drive. The site is zoned for heavy and light industry.

"We have to live with whatever gets built there forever," said civic association vice president Linda Henninger.

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She opposed a plan for a community meeting where residents could discuss acceptable uses for the site, arguing that she and her neighbors lacked the technical expertise to evaluate issues like possible contamination at the site, whose former owners were fined and ordered to close in 1993.

"The county is trying to shirk its responsibility," Henninger said. "Is it up to us to figure out the cost of cleanup, then decide what use will give the proposed owners a profit?"

She wants the Landbank to ask for new proposals for the site.

Landbank officials said that will not happen and said the initial request for proposals was best understood as an attempt not to find "best use" for the site, but the "best developer, and that's what we found."

The community meeting is scheduled for 7 p.m. June 29 at the Kings Park VFW.

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Department of Environmental Conservation

Carlson Associates/Henry Carlson - Order, September 1, 1993

Order, September 1, 1993

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of

Alleged Violations of Part 421 of Title 6 of
the Official Compilation of Codes, Rules and Regulations of
the State of New York and Environmental Conservation Law Article 23, Title 27

- by -

CARLSON ASSOCIATES and HENRY B. CARLSON,

Respondents

ORDER

DEC File Nos.

1-3639 and 1-4025

WHEREAS:

1. Pursuant to a Notice of Motion for Summary Order issued on August 28, 1991, an administrative enforcement hearing was held before Susan J. DuBois, Administrative Law Judge ("ALJ") on February 18, 1992 at the Department's Region 1 Office located in Stony Brook, New York. The Department Staff appeared by John Byrne, Esq., Assistant Regional Attorney, Region 1. The Respondent appeared by Eugene L. Wishod, Esq., Joel M. Markowitz, Esq. and Frederick Eisenbud, Esq., of Cahn, Wishod, Wishod and Lamb, Melville, New York.
2. Upon review of ALJ DuBois' Hearing Report, a copy of which is attached, I concur with its Findings of Fact, Conclusions and Recommendations, except as noted below.
3. The Respondents' December 20, 1991 appeal of ALJ DuBois' ruling concerning the scope of the hearing is denied. Any delay in processing the Respondents' permit application for the site is irrelevant to this action and was properly excluded from the hearing record since Respondents had not even submitted an application until the period of the alleged violations was almost over. ALJ DuBois also properly excluded evidence concerning the content of settlement discussions. The public policy concerns which favor excluding such evidence in order to encourage frank discussions outweigh any relevance it might have (see *In the Matter of Lopa et. al.*, Interim Decision of the Commissioner, July 10, 1991).

4. As concluded in the ALJ's report, the evidence demonstrates that the Respondents operated the mine essentially continuously during the period of the alleged violations. The ALJ erred, however, in concluding that no violations occurred in the time period from January 24, 1990 to March 3, 1990. She so concluded because the date on which the jurisdictional threshold for requiring a permit (1000 tons in twelve consecutive months) was not established to be within this time period. I find that so long as the jurisdictional amount is mined, any day of operation without a permit within the twelve month period, whether or not it occurred before the jurisdictional amount was reached, would constitute a violation of ECL Article 23. The record establishes that mining in the twelve months following January 24, 1990 exceeded the threshold and therefore any day in which the Respondents operated between January 24, 1990 and March 3, 1990 also constitute violations.
5. In determining the appropriate relief in this case, I have considered the factors discussed in the Hearing Report.

NOW, THEREFORE, have considered this matter, it is **ORDERED** that:

- I. Respondents are found to be in violation of Environmental Conservation Law Section 23-2711(1) and Section 421.1 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York on all 250 days charged in the complaint.
- II. Respondents are jointly and severally assessed a civil penalty of \$125,500 (ONE HUNDRED AND TWENTY-FIVE THOUSAND AND FIVE HUNDRED DOLLARS). This penalty shall be due and payable sixty (60) days after the service of a conformed copy of this Order on Respondents.
- III. Respondents are to cease and desist all mining at their mine located at 140 Old Northport Road, Kings Park, New York.
- IV. Respondents are to submit to the Department an approvable reclamation plan for the Site, which plan is to be submitted within thirty (30) days after Respondents' receipt of this Order.
- V. Respondents are to reclaim the Site within sixty (60) days of their receipt of the Department's approval of the reclamation plans.
- VI. Respondents are to submit a reclamation bond in the amount of ONE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$175,000) to the Department within sixty (60) days after Respondents' receipt of this Order.
- VII. All communications between the Respondent and the Department concerning this Order shall be made to the Department's Region 1 Director, NYS Department of Environmental Conservation Region 1, Building 40, SUNY Campus, Stony Brook, New York 11790-2356.
- /III. The provisions, terms and conditions of this Order shall bind the Respondents, their officers, directors, agents, servants, employees, successors and assigns and all persons, firms and corporations acting for or on behalf of the Respondents.

For the New York State Department
of Environmental Conservation

_____/s/
By: THOMAS C. JORLING, COMMISSIONER

Dated: Albany New York
September 1, 1993

To: Carlson Associates
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STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 Wolf Road
Albany, New York 12233-1550

In the Matter

- of -

Alleged Violations of Part 421 of Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New York and of
Environmental Conservation Law Article 23 Title 27 (Mined Land Reclamation)

- by -

CARLSON ASSOCIATES

and

HENRY B. CARLSON

RESPONDENTS

Case Nos. 1-3639 and 1-4025

HEARING REPORT

by

/s/

Susan J. DuBois

Administrative Law Judge

Proceedings

On August 28, 1991, the New York State Department of Environmental Conservation (the "Department") moved for a Summary Order against Carlson Associates and Henry B. Carlson (the "Respondents"), of P.O. Box 345, Kings Park, New York 11754 and 140 Old Northport Road, Kings Park, New York 11754, respectively. This Motion was made pursuant to Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") Section 622.10. The Motion alleged that the Respondents had violated Environmental Conservation Law ("ECL") Section 23-2711 and 6 NYCRR Section 421.1 by mining more than 1,000 tons of minerals within twelve successive calendar months without first having obtained a permit from the Department for such mining. The mining allegedly took place at a Site located on Old Northport Road, Kings Park, in the Town of Smithtown, Suffolk County.

On September 25, 1991, the Department moved to amend the August 28, 1991 Motion for Summary Order to include an affidavit of a Town of Smithtown building inspector. On October 9, 1991, I denied the motion to amend the Motion for Summary Order. The Respondents submitted two affidavits in opposition to the Motion for Summary Order, dated October 25 and October 28, 1991.

In a ruling dated November 29, 1991, I denied the Motion for Summary Order since questions of fact existed regarding the amount of material mined within the time period of the alleged violation and the number of days on which mining had occurred. Pursuant to 6 NYCRR Part 622, the Motion for Summary Order and the Respondents' answering papers were deemed to be the Complaint and the Answer and a hearing was scheduled. The hearing was limited to two issues: (1) the amount of minerals mined by the Respondents at the Site during the time from January 24, 1990 to February 1, 1991 or any shorter time within that time period; and (2) the number of days on which any violation may have continued. The November 29, 1991 ruling also stated a number of facts which were not in dispute and which did not need to be proved at the hearing (see below).

The Respondents appealed the portion of the November 29, 1991 ruling which identified the issues for the hearing and requested that the Commissioner direct that the hearing also include evidence regarding allegations of the Respondents' need to continue mining in order to preserve their non-conforming use under Town zoning and allegations of delays in issuance of a mining permit to the Respondents. On January 10, 1992, Robert H. Feller, Assistant Commissioner for Hearings, notified the parties that Commissioner Thomas C. Jorling had declined to consider the appeal on an interlocutory basis and that the ruling could be appealed in the final briefs. The appeal is discussed further below.

The hearing took place on February 18, 1992 before Susan J. DuBois, Administrative Law Judge, at the Department's Region 1 Office, Stony Brook, New York. The Department was represented by John F. Byrne, Esq., Assistant Regional Attorney, Region 1. The Respondents were represented by Eugene L. Wishod, Esq., Joel M. Markowitz, Esq. and Frederick Eisenbud, Esq., of the firm of Cahn, Wishod, Wishod and Lamb, Melville, New York.

The Department called as its witness Robert Galli, Mined Land Reclamation Specialist, Region 1. The Respondents called as their witness Sylvester A. Celebrini, Vice President of Lockwood, Kessler and Bartlett Engineers.

Following extensions of the deadline for submission of briefs, which extensions were requested by both the Department Staff and the Respondents, the briefs were submitted on June 15, 1992. Reply briefs were submitted on August 14 by the Department and August 18 by the Respondents and the hearing record closed on August 18, 1992.

The Charges

The Department alleged that the Respondents had mined sand and gravel in violation of ECL Section 23-2711 and 6 NYCRR Section 421.1. The Department alleged that the Respondents had mined over 1,000 tons of minerals within a twelve calendar month period without having first obtained a permit from the Department. The mining allegedly occurred between January 24, 1990 and February 1, 1991.

Relief Sought

The Department sought an order requiring the Respondents to cease all mining activity at the facility, to submit an approvable reclamation plan for the facility within 30 days of an order by the Commissioner, to reclaim the facility within 60 days of receipt of the Department's approval of the reclamation plan, to submit a reclamation bond in the amount of \$175,000, and to pay an administrative penalty of \$250,000. In its closing statement at the end of the hearing, the Department proposed a penalty of \$164,000, based on a second calculation of the penalty.

The Answer

The Respondents' two affidavits (deemed to be the Answer) did not deny that the Respondents had mined over 1,000 tons of minerals within a twelve calendar month period as alleged by the Department, but instead stated that the Department had failed to prove how much of the excavation had been done after January 24, 1990. The Respondents also alleged that they needed to continue mining in order to preserve the mine's status under Town zoning, that the Department and the Town had delayed the Respondents' receipt of a mining permit, and that the Order on Consent which had been proposed by the Department Staff was unreasonable.

Respondents' Appeal

On December 20, 1991, the Respondents appealed the portion of the November 29, 1991 ruling which identified the issues for adjudication. The Respondents sought to include within the scope of the hearing the facts and circumstances surrounding delays on the part of the Department or "its designated lead agent" (the Town of Smithtown) in processing the Respondents application for approvals for the mine, the Respondents' alleged need to continue mining to preserve a legal non-conforming use, and the Department's willingness to permit a continuation of mining by Respondents during the period of consideration of the mining permit application.

Undisputed Facts

As stated in the November 29, 1992 ruling, the following facts were not in dispute:

1. Respondents Henry B. Carlson and Carlson Associates are the operators of the mine located at the

- Site in question (140 Old Northport Road, Kings Park, New York).
2. Respondent Henry B. Carlson is the general partner of Carlson Associates.
 3. Carlson Associates, whose mailing address is P.O. Box 345, Kings Park, New York, 11754, is a partnership and owns the Site.
 4. No permit has been issued by the Department of Environmental Conservation to the Respondents, nor to anyone, for mining at the site.
 5. The mine is a sand and gravel mine which has been operating without interruption since before January 24, 1990 to at least the date of Mr. Carlson's affidavit (October 25, 1991).
 6. As of February 1, 1991, the volume of the excavation at the Site was approximately 644,611 cubic yards.
 7. The conversion from volume to weight for these minerals is 750 cubic yards equals 1,000 tons of minerals.

Findings of Fact

1. Mining was taking place on the site on January 24 and 25, 1991 when Robert Galli, a mined land specialist with the Department's Region 1 office, observed the site. This mining was taking place in the northeastern part of the site, in what was referred to as "site 1". On both days, a loader was excavating sand and gravel and loading it into trucks.
2. The area which was the focus of the testimony regarding the amount of mining was a "dogleg" extending east and south of the areas which were being used for mining and processing as of March 1989. This "dogleg" was also referred to as "site 2". An aerial photograph taken on March 27, 1989 shows this area as being partially cleared, with a small amount of mining having started.
3. An additional aerial photograph which was taken on March 4, 1990 shows a larger excavated area within site 2 and shows more area to the southeast as having been cleared.
4. Mr. Galli first saw the mining in site 2 when he visited the mine again on August 16, 1990. He again observed sand and gravel trucks being loaded and leaving the site. He observed sand and gravel being excavated from the ground and loaded into trucks in site 2. The excavation at site 2 was approximately 30 feet deep in comparison to the surrounding ground.
5. An aerial photograph which was taken on February 1, 1991 shows additional excavation in the southeast portion of site 2.
6. Respondent Henry B. Carlson provided a topographic map of the site to the Department. This map shows the topography as of March 4, 1990 for the western portion of site 2 and the topography as of October 26, 1990 for the eastern portion of site 2. On this map, a portion of site 2 which was cleared but not yet mined as of the March 27, 1989 aerial photograph is shown as being at an elevation over fifty feet deeper than the surrounding area. The March 4, 1990 aerial photograph shows that the eastern portion of the dogleg was partially excavated, partially cleared and partially undisturbed as of March 4, 1990 but the topographic map shows that by October 26, 1990 the eastern portion of the dogleg had a larger excavated area, the floor of which was at an elevation more than 80 feet below the surrounding land. This deepest portion of the east end of the dogleg included an area more than 100 feet long by 100 feet wide. The soil layer above the sand and gravel would be expected to be two feet deep at most and the soil itself would have a commercial value.
7. A cubic yard equals 27 cubic feet. A object measuring 10 feet by 100 feet by 20.25 feet has a volume of

750 cubic yards.

8. The Respondents mined significantly more than 750 cubic yards of minerals from site 2 between March 27, 1989 and March 4, 1990. Even if the surface two feet of the minerals had a lower weight per cubic yard than that of sand and gravel, the Respondents had mined significantly more than 1,000 tons of minerals from site 2 between March 27, 1989 and March 4, 1990.
9. The number of days on which mining took place within the period of the alleged violation cannot be precisely determined from the evidence regarding the dimensions of the mine. This information does, however, provide a basis for estimating a minimum number of days on which mining took place within this time period. The Respondents mined at least 30,000 cubic yards of minerals from site 2 after March 4, 1990. Mining at a rate of 2880 cubic yards per day would be a fast rate of activity for a mine such as this, and using this number to calculate the number of days it would take to mine 30,000 cubic yards would produce a conservative (low) number of days. The Respondents were mining in site 2 on at least ten days after March 4, 1990.
10. The 30,000 cubic yard volume is based on the presence of an excavation somewhat more than 100 feet by 100 feet in its horizontal dimensions and 80 feet deep, which existed in a portion of site 2 that had only limited disturbance as of March 4, 1990. In addition to this volume, however, the Respondents mined additional minerals in areas that were not mined as of March 4, 1990 but where the topography at later dates is in question. The volume mined was significantly larger than 30,000 cubic yards.
11. It is likelier than not that the mine operated on all business days excluding holidays, during the time of the alleged violation. There would be approximately 230 business days (Mondays through Fridays minus major holidays observed by most businesses) during the period from March 4, 1990 to February 1, 1991. There would be approximately 260 business days during the period from January 24, 1990 to February 1, 1991.

Discussion

The hearing involved two issues: whether or not the Respondents mined more than 1,000 tons of minerals in 12 calendar months, and if so, the number of additional days of mining which took place after this threshold had been exceeded.

The record clearly indicates that the Respondents mined more than 1,000 tons of minerals during the 12 calendar month period leading up to March 4, 1990.

The second question, regarding the number of days on which the violation occurred, relates to days on which mining occurred at all, regardless of the quantity which was mined on those days. The number of days could be determined through two distinct methods. The first would rely upon a calculation of the total amount which had been mined and an estimate of the rate at which minerals had been mined. The second would examine the evidence to determine whether the operation was essentially continuous. The Motion for Summary Order requested a penalty based on mine operations having occurred on 250 business days. At the hearing, the Department Staff's evidence focussed primarily on the amount and rate of mining, although they also presented evidence which is relevant to whether the mining was a continuous business.

With regard to the calculation based on the amount mined, the ten days of mining discussed in Finding No. 9 above represent a minimum number of days on which the violation occurred. This figure, however, is based on conservative assumptions and upon information which is clear in the record. The exhibits demonstrate that the excavation done after March 4, 1990 was much larger than the deep part of the

eastern end of site 2 which was considered in finding that at least 30,000 cubic yards of minerals had been mined. The exhibits and the testimony are not, however, precise enough to support a finding about the actual amount which was mined during a defined period of time by working backwards from the volume of the mine.

The Respondents did not present any evidence regarding the amount of minerals mined during the time of the alleged violations. The Respondents' answering papers did not deny that they had mined more than 1,000 tons of minerals during the time in question but argued that the Department Staff had failed to prove this.

The testimony which the Respondents presented at the hearing focussed on whether topographic mapping could be done from a single aerial photograph and on the modification of the topographic map. While exact topography would not be determined from a single aerial photograph, such photographs can be used to determine whether an area has been excavated and in interpreting the general extent of mining activity. The aerial photographs, the map which was submitted by Mr. Carlson to the Department, and Mr. Galli's observations on August 16, 1990 when considered together demonstrate that the Respondents violated the Mined Land Reclamation Law and that the violation continued on more than ten days.

The hearing record indicates that the mine is a large and long-established mine, which, according to Mr. Carlson's own affidavit, operated "without interruption" during the time of the alleged violation (see Undisputed Facts paragraph 5 above). Absent information to the contrary, it is reasonable to infer that the mine operated on all ordinary business days during that time. The large size of the area which was mined during the time of the alleged violations also supports this inference. The Respondents were on notice that the Department Staff was seeking penalties for a continuing violation during an identified time period and that number of days on which mining took place was an issue to be adjudicated. The Respondents did not attempt to show that the mine operated intermittently or on only a few days of the week. The Respondents were mining on all of the three days on which inspections did take place.

The Notice of Motion for Summary Order (later deemed to be the Complaint) sought a penalty based on 250 business days of operation. In the post-hearing brief, the Department Staff proposed a penalty based on 163 days of operation: the 124 days which were derived from the volume of the mine and from an estimate of the amount mined per day, plus 39 calendar days of operation prior to the date for which the volume calculation began.

A preponderance of the evidence establishes that mining took place on the 230 business days on and after March 4, 1990. The record is not sufficient to support a finding about days of violation of the Mined Land Reclamation Law prior to March 4, 1990 since the first date on which the Respondents were in violation during the January 24 to March 3, 1990 time period is not clear. In addition, the Complaint sought penalties based on 250 days of operation and the relief imposed should not be based on more than 250 days.

The most reasonable inference is that Respondents were in violation of ECL Article 23 as of March 4, 1990 and that the violation continued on an additional 229 days.

The Respondents' December 20, 1991 appeal argued that additional issues should be included in the hearing. As noted above, this appeal is pending and is before the Commissioner. At the hearing, the Respondents also argued that these additional issues should be included in the hearing as mitigating factors with regard to the penalty.

The Respondents sought to include evidence regarding its position that the Department and the Town of Smithtown had delayed the review of Carlson Associates' mining permit application. The length of time involved in processing the application would not be relevant to the present allegations since, according to the Respondents, the application was only submitted on January 14, 1991 (see affidavit of Eugene L. Wishod, Esq., page 8). This is near the very end of the time period of the alleged violations (January 24, 1990 to February 1, 1991). Any delays in processing this application would have no bearing on the Respondents' lack of a permit during the time of the alleged violations.

The Respondents also sought to include in the hearing their position that they had decided to continue operating the mine in order not to jeopardize their argument that the mine is a valid non-conforming use under the Town of Smithtown code. This would not be a mitigating factor.

The negotiations between the Respondents and the Department Staff regarding an order on consent would not be admissible in the present enforcement hearing, for the reasons stated in the Commissioner's Interim Decision *In the Matter of Albert A. Lopa, Rosanne Lopa and Rochester Dismantling and Roll-off, Inc.* (July 10, 1991).

With regard to the reclamation of the Site, the Respondents sought to bring in evidence of its negotiations and its permit application process in order to support its argument that the mine was eligible for a permit and thus that the Respondents should not be required to reclaim it prior to getting a permit. Although the Department sometimes allows an unpermitted activity to continue while a respondent applies for a permit, or allows remediation to be postponed until the remedial work is included as part of a permit, caution should be exercised in making such allowances. In the present case, the Respondents and the Department Staff were unable to arrive at an agreement for the Respondents to bring the mine into compliance with the Mined Land Reclamation Law while still operating. The Respondents' operation of a major mine without a permit, and without even applying for a permit until almost a year after receiving the Department's initial Notice of Violation, as well as the Respondents' position regarding reclamation as stated at page 6 of Mr. Wishod's affidavit, indicate that it is very unlikely that such allowances should be made in the present case.

If the Commissioner determines that the record needs to be developed regarding the need for reclamation or the nature of the reclamation work, the hearing could be reopened for that purpose.

The Department Staff sought imposition of penalties based on violation of both Environmental Conservation Law Section 23-2711(1) and 6 NYCRR Section 421.1. These two provisions both require that a mining permit must be obtained from the Department for every mine from which more than 1,000 tons of minerals are removed within 12 successive calendar months. 6 NYCRR Section 421.1 is the regulation which implements ECL Section 23-2711(1). The Respondents' actions which violated ECL Section 23-2711 were the same actions which violated 6 NYCRR Section 421.1 and are not separate violations for which separate penalties could be assessed.

Conclusions

1. The Respondents were in violation of ECL Section 23-2711(1) and 6 NYCRR Section 421.1 on March 4, 1990, having mined more than 1,000 tons of minerals in the preceding 12 calendar months without a permit from the Department for such mining. Both Carlson Associates and Henry B. Carlson, as the general partner of Carlson Associates, are responsible for the violations.
2. This violation continued on 229 days during the period from March 5, 1990 to February 1, 1991.

3. ECL Section 71-1307(1) identifies the administrative sanctions which may be imposed for violations of ECL Article 23. At the time of the violations, ECL Section 71-1307(1) provided that any person who violates ECL Article 23 shall be liable to the people of the state for a civil penalty not to exceed one thousand dollars and an additional penalty of five hundred dollars for each day during which such violation continues.
4. ECL Section 71-1307(1) also authorizes the Commissioner to direct the violator to cease the violation and reclaim and repair the affected site to a condition acceptable to the Commissioner, to the extent possible within a reasonable time and under the direction and supervision of the Commissioner.

Recommendations

I recommend that an Order be issued which: (a) finds the Respondents in violation of ECL Section 23-2711 and 6 NYCRR Section 421.1; (b) imposes a civil penalty in the amount of at least \$6,000 (Six thousand dollars) and up to \$115,500 (One hundred and fifteen thousand and five hundred dollars) upon the Respondents; (c) orders the Respondents to cease and desist all mining at the site; (d) orders the Respondents to submit an approvable reclamation plan for the site within 30 (Thirty) days of receiving the Order; (e) orders the Respondents to reclaim the site within 60 (Sixty) days of receipt of the Department's approval of the reclamation plans; and (f) orders the Respondents to submit a reclamation bond in the amount of \$175,000 (One hundred and seventy five thousand dollars) to the Department within 60 (Sixty) days of receiving the Order.

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NEWS

Town reaches pact with Kings Park industrial site

By LAUREN R. HARRISON

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April 11, 2013

The Town of [Smithtown](#) has reached a temporary agreement with Carlson Associates over the operation of the Kings Park company's industrial site.

Carlson Associates, which continues to do business in solid waste management and other tasks, paid a \$1,000 fine and pleaded guilty to four property maintenance violations, per a discharge agreement last month. It agreed to file a site plan application by June 19 and obtain approvals from the town by Nov. 19.

Frank Tantone, an attorney who represented Carlson in the agreement, said his client received a notice of violation for failing to obtain a site plan and have the plan approved.

After a string of court appearances, "You reach a point where you agree to take a plea of guilty for something in exchange for the conditions that were imposed," he said.

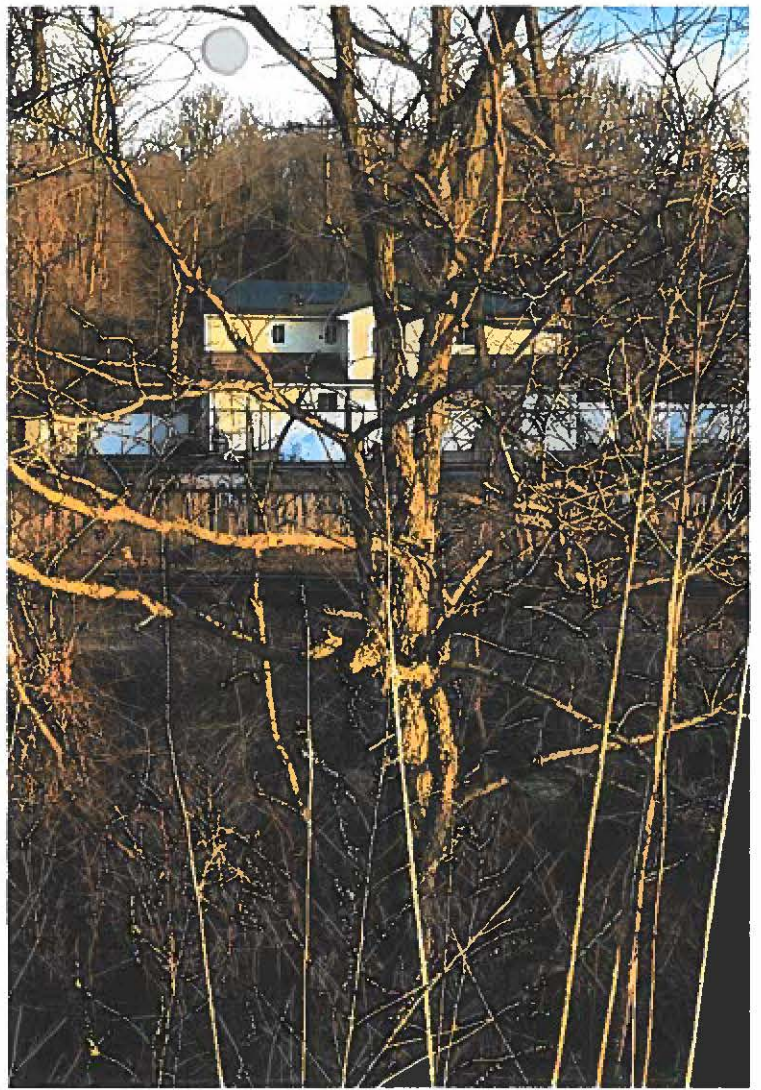
But at a town board work session on Tuesday, Supervisor Patrick [Vecchio](#) said the larger issue is that people have complained of odors emanating from the property due to composting, which is illegal in any zone, according to town code.

"People were saying that they were getting sick ... and the odors still exist," Vecchio said. "He can't file a site plan application, because the activity is not a permitted use."

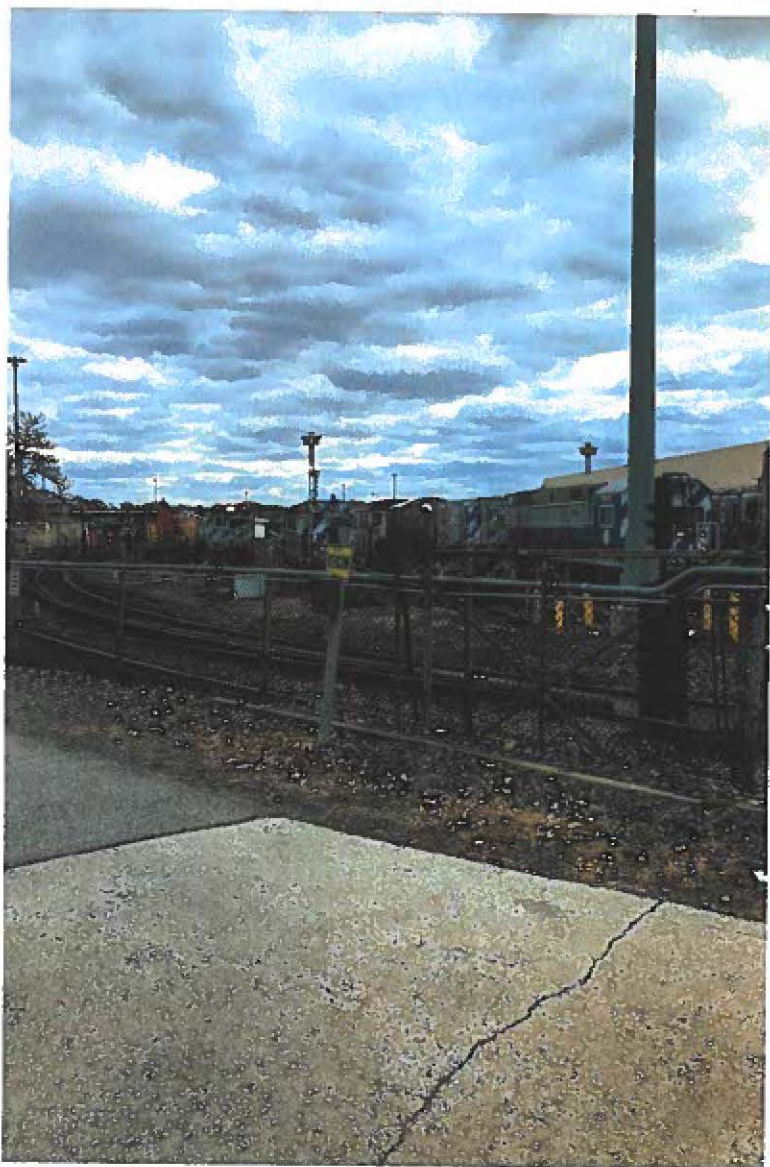
Vincent Trimarco Sr., an attorney who represents Carlson Associates on zoning issues, denied that his client, Toby Carlson, is composting.

"He has wood chips that are laid out in windrows, but that's not composting," he said, adding that Carlson has a permit from the state [Department of Environmental Conservation](#) to chip wood.

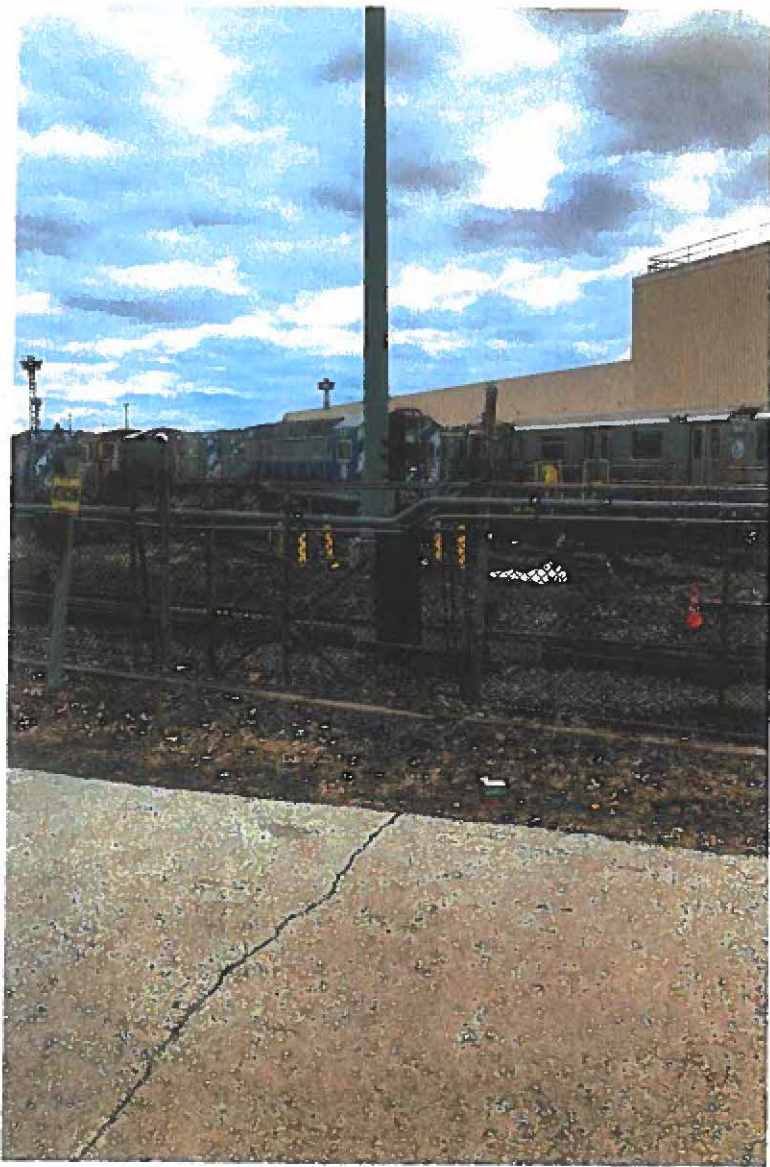
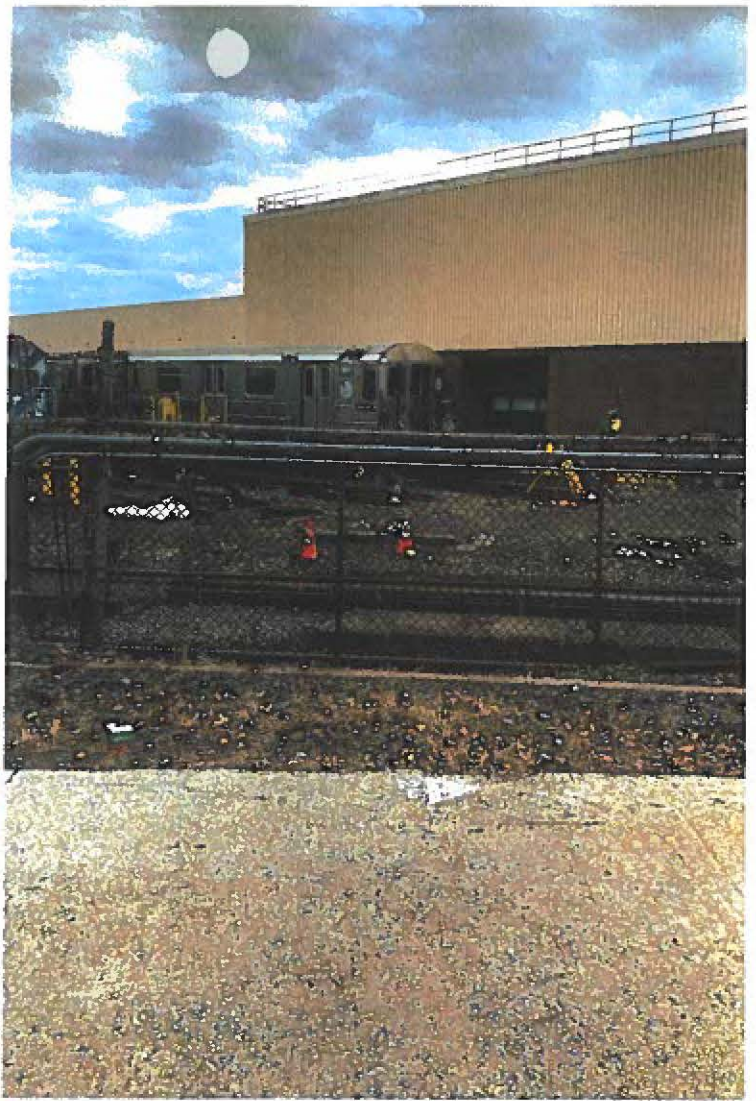
A DEC official monitors Carlson's property two to three times a week, Trimarco said. "If there were an odor or a smell, I'm sure he would smell it."











CERTIFICATION OF SERVICE

I, Philip A. Russo, Esq., hereby certify that I have this day served copies of this document upon all parties of record in this proceeding by method of service consistent with 49 C.F.R. Sec. 1104.12(a)

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