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**Before the
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings
July 18, 2024
Part of
Public Record**

STB Docket No. FD 36575

**TOWNLIN RAIL TERMINAL, LLC
– CONSTRUCTION AND OPERATION OF A LINE OF RAILROAD –
IN SUFFOLK COUNTY, NY**

**TOWNLIN ASSOCIATION PETITION TO ISSUE A SUPPLEMENTAL
ENVIRONMENTAL ASSESSMENT OR AN ENVIRONMENTAL IMPACT STATEMENT**

The Townline Association ("TA" or "Petitioner"),' pursuant to 49 C.F.R. § 1105.10(b), hereby files its Petition Seeking Supplementation of the Final Environmental Assessment ("FEA") issued in this proceeding or an Environmental Impact Statement ("EIS"). As further set forth below, this petition is warranted in order to address significant new and relevant circumstances and information.

I. INTRODUCTION

This petition is prompted by the FEA served in this proceeding on June 7, 2024, by the Surface Transportation Board ("STB" or "Board") Office of Environmental Analysis ("OEA"). TA respectfully asks the OEA to take a second hard look at the environmental assessment. Since this FEA has been issued, TA has discovered certain concerning new information which warrants the issuance of a supplemental FEA or an EIS. In the FEA, OEA addressed several concerns of commenters which warrant further review.

First, Comment Summary A commenter in the FEA disagreed with the Draft EA's conclusions about vibration and expressed concern that the Draft EA did not mention the site's

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history as a location for illegal sand mining and unverifiable fill between the late 1980s and 1990s with respect to construction feasibility. The commenter stated that while the property was subjected to legal action and reclamation, there are still concerns over the nature of the fill used and whether proper compaction occurred over the 28-year period. The commenter was concerned that vibration from the Proposed Action would cause soil compaction and the potential collapse of the rail line. The commenter also expressed concern about whether the site, known to be located on Long Island's major Hydrogeologic Zone I Deep Flow Recharge Area, can safely support the planned rail freight operations given the substantial weights involved. FEA at G-21.

In response, OEA noted that the Federal Railroad Administration (FRA) regulates track design under 49 C.F.R § 213.103, which requires that "all track shall be supported by material which will transmit and distribute the load of the track and railroad rolling equipment to the subgrade" and "restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stresses imposed by the rails." The final engineering for rail lines and any other transportation facilities and structures will address soil stability. A professional track design engineer cannot stamp (i.e., certify) design drawings without having assessed soil stability. In addition, track design engineers follow the guidelines of the American Railway Engineering and Maintenance-of-Way Association (AREMA) when designing track and roadbed. Therefore, OEA concluded that because the concerns raised by the commenter will be addressed later, OEA properly used a conceptual design in its analysis, which is typical for NEPA reviews. *Id.*

Second, Comment Summary Commenters noted while there were several hazardous materials sites identified within the study area, there were no hazardous waste release sites

identified within the Proposed Action footprint. Commenters shared that Toxics Targeting, Inc. database included at least eight spills on Carlson's property and that there was a report of potential uncontrolled emissions involving carbon monoxide, nitrogen dioxide, and sulfur dioxide. Commenters assert that the issue of illegal sand mining should also have been considered in any study involving hazardous materials released onto the site. Commenters also identified a history of Carlson Corp violating state environmental laws and local ordinances. Commenters state that a site visit should have been done to assess these issues. FEA at G-30.

In response, OEA claimed the commenters referred to spills outside the footprint of the Proposed Action, so the construction of the Proposed Action would be limited to that footprint and therefore would not disturb contaminated areas that might exist elsewhere on the Carlson property. Regarding the allegations of illegal mining and violations of environmental laws, while OEA conducted a site visit, OEA relied on a database search to determine contamination from past releases. As detailed in Chapter 3, Section 3.10 of the Draft EA, OEA's research into the records of contamination did not find any evidence of violations within the footprint of the Proposed Action. OEA concluded that there would be minimal impacts to existing hazardous waste material sites from construction of the Proposed Action. *Id.*

Comment Summary Commenters expressed concern about the Proposed Action contaminating drinking water sources and noted that industrial activity has contaminated some drinking water sources in the past. A commenter stated that since Smithtown is not serviced by a municipal sanitary sewer system, sanitary systems for the study area discharge untreated wastewater and sewage directly to the local groundwater table. The commenter stated that stormwater drywells also discharge directly to the groundwater table and expressed concern that environmental contaminants related to the Proposed Action could enter groundwater.

Commenters stated that spills have been a major source of water contamination on Long Island and that there is a sole source aquifer present below the project area, which the Draft EA failed to analyze. Commenters also asserted that the water resources analysis should have included the locations of the nearest wells used for drinking water, as well as specifics about the Magothy Aquifer. Also, commenters asserted that the Draft EA does not acknowledge that the Carlson property falls within a resultant plume from the Huntington landfill, which discharges into Sunken Meadow Creek and the Long Island Sound. FEA at G-23.

OEA responded that no drinking water intakes or wellheads are located within the study area of the Proposed Action. Moreover, OEA stated there are no sanitary systems located within the Proposed Action footprint. The Proposed Action would not include the installation of sanitary systems and is not expected to generate sanitary waste. Chapter 3, Section 3.8 of the Draft EA discusses the importance of Long Island being a sole source aquifer region and associated concerns regarding groundwater. Impacts to groundwater typically occur from water withdrawals, changes in aquifer recharge areas (such as changes in access, availability, or quality of drinking water), or excavation of the landscape (i.e., digging and removing earth rather than surface soil disturbance common with grading activities to level or reshape the ground surface), which may draw down the surficial water table. OEA expects that construction activities related to the Proposed Action would include removing only vegetation on the surface and adding ballast and track on the ground surface. The ballasts and roadbed are permeable (i.e., rainwater can move through it). These activities would not involve water withdrawals, changes in aquifer recharge areas (the place where water is able to seep into the ground and refill an aquifer because no confining layer is present), or excavation. As a result, OEA concluded that because there are no impacts expected to groundwater from the present Proposed Action, the locations of existing

plumes and wells have no bearing on the analysis in the Draft EA. Therefore, OEA claimed that it properly concluded that the Proposed Action would have no impacts on groundwater. *Id.* at G-23-24.

Comment Summary A commenter noted that there are potential non-community and private supply wells downgradient of the project area, which is also in the 25–50-year groundwater contributing area to Smithtown Bay. The commenter asserted that the Draft EA should have evaluated any potential impacts to groundwater and downgradient non-community and private supply wells. *Id.* at G-24.

OEA responded that the Proposed Action is not expected to impact groundwater, as there are no drinking water intakes or wellheads, including private supply wells, within the project area or activities expected to draw down the surficial water table. OEA claims because the Draft EA discusses the importance of Long Island being a sole source aquifer region and associated concerns regarding groundwater, the analysis in the Draft EA was adequate. *Id.*

TA has specific concerns about these responses to these issues in the FEA in light of the unique situation on Long Island regarding its water supply and in this project area that has been subject to illegal sand mining and unverifiable fill in the past. These previous acts by Carlson Associates involving sand mining make this project area especially susceptible to contamination of the aquifers directly below this Proposed Action. These past acts involving illegal sandmining in the project area deserve a harder look than given by the FEA as the consequences could be grave as this area has already suffered from a major groundwater contamination in the past from the Huntington landfill.

II. LONG ISLAND BACKGROUND INFORMATION¹

A. Sand Mining on Long Island

Long Island sand is an incredibly valuable commodity. Certain crystals found within Long Island sand, resulting from the creation of Long Island by glaciers thousands of years ago, have resulted in Long Island sand being shipped as far as Egypt to be used to make cement. Long Island sand is used to make cement to build local and remote infrastructure and is harvested from Suffolk County by way of mining.

Sand mining is the extraction of sand from beneath the ground's surface. On Long Island, the topography of sites differ, as does the size of the mines. Sand can be excavated from the bottom of bodies of water using industrial dredging equipment. However, often times, land has to be cleared of trees and other vegetative matter prior to mining. After land clearing, layers of earth need to be extracted in order to reach the sand. This type of mining is often referred to as open-pit mining, where in order to remove the sand, topsoil, clay, loam, and other layers of earth are first removed using heavy machinery like bulldozers and excavators. Large screening machines, tractor trailers, and dump trucks are also used in the mining operation.

The mining industry in Long Island is responsible for millions of tons of sand being removed and sold. The acreage and depths for permitted mines vary by site. Some mines excavate to the aquifer, dredge sand, and create recharge basins. Others mine to sizeable depths below sea level and operate waste management facilities on location. **Either form of permitted mining, albeit legal, poses certain risks to the environment, especially in designated Special**

¹ The information in this section was obtained from the Suffolk County Grand Jury Report (Aug. 2, 2019) attached hereto as Exhibit A.

Groundwater Protection Areas, as there is great potential for contamination of the aquifer and Long Island's groundwater.

The New York State Legislature delegated to the Department of Environmental Conservation (DEC) the responsibility to oversee the regulation of the sand mining industry. Currently, the DEC is the only regulatory body that oversees sand mining, i.e., those sites that are designated as sand mines via the issuance of permits/registrations from the DEC. According to the DEC's website, as of 2016, there were 25 permitted sand mines in Suffolk County spanning 1,176.9 acres. Historically, sand mining has been supported by the DEC throughout the State, and the goal of the State mining law is both to mine and to reclaim mines.

Reclamation in this context refers to the return of mined land to productive use. One such potential productive use may be as a waste transfer or sorting facility, as land clearing throughout Suffolk County results in vegetative waste that could be processed in spaces created by sand mines as part of a mine reclamation plan. **In addition, continued mining to significant depths brings increasing concerns about the potential effect on the aquifer and the quality of Long Island's groundwater.**

B. The Aquifer.

The issues of illegal dumping and sand mining are of particular concern on Long Island. Long Island's aquifer is designated as a sole source aquifer by the United States Environmental Protection Agency – one of the few such designated sites across the United States. An aquifer refers to water that is below the ground (“groundwater”) in sand or other material that is totally saturated and that can be accessed as a drinking water supply. A sole source aquifer means that groundwater is the only source of drinking water for a particular location. In contrast to Suffolk

County, other areas in New York State, including New York City, have access to alternate sources of drinking water such as rivers, lakes, streams, and reservoirs.

In Suffolk County, there are three separate groundwater aquifers. The three aquifers are the Upper Glacial Aquifer, the Magothy Aquifer, and the Lloyd Aquifer. Each aquifer consists of sand that is saturated by water. The aquifers are generally recharged, or refilled, by precipitation. The aquifers are divided by layers of clay. Clay can act as a barrier to the 3 aquifers, though it is not an absolute barrier because water and contaminants can travel into the aquifer through the clay. The Gardiners Clay separates the Upper Glacial and the Magothy aquifers and the Raritan Clay separates the Magothy and the Lloyd Aquifers. There are certain areas on Long Island, such as the south shore, where no layer of clay protects the aquifer. In addition, the Gardiners Clay does not extend all the way up to the north shore of Long Island, and in many locations, there is no clay separating the Upper Glacial Aquifer from the Magothy Aquifer.

The distance between the surface of the ground and the beginning of the water table is referred to as the “depth-to-water.” This “depth to water” can vary depending on location. In certain areas where there is shallow depth-to-water, the water table may only be a few feet below the top of the ground. There are many shallow depth-to-water areas along the shorelines of Long Island, including the land around the Peconic River, the Carmans River, the Connetquot River, and the Nissequogue River, as well as other areas near surface water and rivers.

The aquifers are accessed through private and public wells, which are used as the sole source of drinking water in Suffolk County. Approximately 40,000 homes throughout Suffolk County obtain their drinking water through a private well. Most of the private wells are located on the eastern end of Suffolk County. The private wells acquire groundwater from the Upper Glacial Aquifer, the aquifer that is generally closest to the surface, and thereby is most

susceptible to contaminants from the surface. However, the majority of Suffolk County residents receive their drinking water through the public water supply. The largest provider of public well service is the Suffolk County Water Authority. Public wells often reach into the Magothy Aquifer, going deeper into the earth than the private wells, because public well providers have more resources to dig deeper wells. There are exceptions, however, as certain public wells near Suffolk's shoreline are shallower.

The New York State Department of Health establishes drinking water standards that must be met by all public wells. The Bureau of Drinking Water for the Suffolk County Department of Health Services regulates public water suppliers to ensure that they comply with relevant drinking water standards. Though the standards are equally applicable to private wells, there is no regulation or mechanism to enforce the standards upon the individuals who use private wells. Thus, the Suffolk County Department of Health Services ("SCDHS"), Bureau of Drinking Water can only test private well water with the homeowner's consent and may do no more than recommend that the homeowner not consume the water. The County has no authority to compel homeowners to avoid consuming water from their private wells even if the water does not meet the State standard.

The various layers of the aquifer are permeable and susceptible to contamination in various ways. As stated above, the aquifer is recharged through precipitation. When it rains or snows, the precipitation seeps through the ground until it reaches the aquifer. New precipitation will reach the aquifer at different rates based on the depth of the water table, i.e., the distance between the surface of the earth and the Upper Glacial Aquifer, the aquifer's top layer. The precipitation also travels at a different rate based on whether or not the location is a shallow or deep recharge area. Eventually, water within the Upper Glacial Aquifer seeps down to the

Magothy Aquifer, and below it to the Lloyd Aquifer, increasing in purity as it gets filtered through the layers of sand and clay contained within various portions of the aquifer. As referenced above, individuals who use a private well receive water that is more susceptible to contamination, primarily because private wells tend to be shallower than public wells. Thus, contaminants on the surface of the land are more likely to reach the Upper Glacial Aquifer, and private wells that tap into it, if they begin to leach into the ground and enter the area between the surface and the aquifer – an area known as the vadose zone.

C. The Effect of Illegal Dumping on the Aquifer.

Illegal dumping of solid waste and construction and demolition debris (“C&D”) material in Suffolk County has the potential to negatively affect Long Island’s aquifer. Due to the sandy nature of the ground and the aquifer on Long Island, both the ground and the aquifer are permeable – meaning, water can pass through the ground and the aquifer quickly. **This makes the aquifer susceptible to contamination. If material containing contaminants, e.g., hazardous or acutely hazardous substances, are deposited on the ground, whether on a pile or graded land, the contaminants may reach the aquifer in the same way that water reaches the aquifer.** If precipitation falls through a pile of material containing contaminants, the precipitation will leach through the contaminated material and cause any water-soluble contaminants to move through the material, the ground, and eventually into the groundwater.

As indicated, the layers of clay contained within various sections of the aquifer act as an additional natural barrier to the transfer of materials through the ground and the aquifer, however, some contaminants eventually travel through the clay and into the aquifer. Moreover, as indicated above, there is not always a layer of clay protecting the aquifer, nor is there always a clay barrier between the Upper Glacial and the Magothy Aquifers. Even if the pile of material

containing contaminants is spread out, graded or covered by clean soil, the precipitation may still infiltrate through the pile and move the contaminants into the ground towards the aquifer. This scenario is not unique to solid material disposed directly on property. For example, if a drum or tank holding contaminants spills on the ground, the liquid will seep through the sand and can create a groundwater plume in the aquifer. A plume is a body of polluted water within an aquifer. These plumes can travel approximately one foot per day. With a contaminated liquid, the need for rain or water to move the contaminated material is eliminated because the contaminated liquid may find its own way to the aquifer. **If a well, private or public, is located in a down-gradient direction from the contaminated liquid, the well water may collect the contaminants.** Notably, the differences in the depth of the water table throughout Long Island will affect how potential contaminants travel from the surface to the aquifers.

A 2018 Suffolk County Department of Health Services report highlighted analytical findings of contamination and concluded that at certain sites, wells that historically had been used to access drinking water were polluted. At one site, there were concentrations of heavy metals as high as 200 times the drinking water standard, as well as other contaminants.

Contamination of the aquifer remains a predominant concern in Suffolk County, as the aquifer will remain the only means through which the County's residents may obtain drinking water for the foreseeable future.

D. The Effect of Sand Mining on the Aquifer.

Despite valid uses of sand mining, mining can negatively impact the environment, especially on Long Island due to its reliance on a sole source aquifer for drinking water. Sand mines can be dug to considerable depths, thereby removing the naturally protective layering of soil covering the aquifer and making the groundwater more susceptible to contaminants. Even

legally permitted sand mining operations may present a danger to the environment by increasing the risk of groundwater contamination. In accordance with permits issued by the DEC, many of these mining sites have reclamation plans that include use of vegetative organic waste or other types of material that the DEC has approved for such use. These types of materials are concerning to ecologists and hydrologists when they are deposited layers below ground level at or near the level of the aquifer. When layers of filtration are removed, the ground, topsoil, and loam (soil composed mostly of sand, silt, and a smaller amount of clay) no longer exist to provide natural filtration to reduce levels of contamination before entering the aquifer. **A collateral concern is that large holes in the ground become opportunities for illegal dumping, as these excavated areas provide attractive disposal sites for other types of problematic materials, such as solid waste, liquid waste and C&D material. The crime of illegal dumping has proven prevalent in Suffolk County, and this systemic conduct has contributed to the contamination of the groundwater.**

Recent findings of groundwater contamination reinforce the need to do more to protect against illegal dumping, particularly in sites such as sand mines where the groundwater is more exposed. In addition, the unregulated mining of sand occurs throughout Suffolk County through a variety of means, from the extraction of excess sand at construction sites, to mass removal of sand from industrial sites and farmlands. Since sand is a valuable commodity and the removal and sale of sand is lucrative, the excavation of sand is often done in Suffolk County without a permit or registration, e.g., under the guise of construction, farming or other unrelated projects. **In these unauthorized mining operations, there are insufficient controls in place to ensure compliance with the ECL's mining requirements, i.e., no oversight on boundaries or limits on depth and no requirement of reclamation. Mining without any oversight, boundaries,**

limits on depth or requirement for reclamation can be dangerous and cause hazardous sloping, land instability, and other conditions that are dangerous to public health.

The mining of sand in unregulated mines that approaches or pierces the aquifer, striking groundwater, is problematic for a variety of reasons. One, there is no monitoring of the material being used to backfill and cover the exposed groundwater. Two, the use of bulldozers, excavators, and other heavy machinery in the aquifer can directly contaminate ground water. Three, there is no testing of groundwater to determine whether there has been contamination. In these cases, the mined area does not have a proper reclamation plan, nor is there DEC oversight to safeguard against the use of bad material. In certain instances, the perpetrator engages in a scheme in which contaminated C&D material and solid waste is diluted and used to fill areas that have been excavated, which may include areas where mining has occurred, and the aquifer has been exposed. When this material is dumped at ground level, it is an environmental hazard, as that material can leach into the groundwater by means of natural filtration. Even while some contaminants may reach the aquifer if they are dumped at ground level, this filtration process aids in the breaking down of contaminants before they penetrate the aquifer. When this type of material is placed directly onto mined or excavated areas, however, it poses a greater threat to the drinking water because that material is placed layers below the ground's surface, sometimes directly onto the exposed ground water, thereby allowing contaminants to access the groundwater without the benefit of filtration.

III. NEW AND RELEVANT INFORMATION

TA was one of the commenters that provided the comments mentioned above. TA represents many of the residents in the residential communities surrounding the project. Some of these individuals live closer than 150 feet from the proposed rail site. Understandably, they have

serious concerns about this project involving previously sand-mined land and the transportation of hazardous materials thereon right next to their homes. Consequently, TA sought confirmation of these responses by OEA to assuage their grave concerns about the safety of their community and their families.

A. Aquifer

In doing so, TA retained CA RICH Geology Services, D.P.C. dba CA RICH Consultants (“CA RICH”) of Plainview, New York, hydrogeologists, to review these OEA responses to its serious concerns, especially in light of the numerous documented state law violations committed by Carlson Associates as the owner of this property. See DEC Order (Sept. 1, 1993) attached hereto as Exhibit B. CA RICH reviewed these OEA responses and issued a report on these issues. CA RICH Report attached hereto as Exhibit C.

First, CA RICH confirms that the location of the Townline Rail Terminal, LLC Plan Proposal in Kings Park is situated directly within Long Island’s sensitive Hydrogeologic Zone I Deep Flow Recharge Area (Zone I). Further, CA RICH disagrees with OEA’s position in the FEA that the above-referenced Proposed Action “would have no impacts on groundwater.” (Chapter 3, Section 3.8 of their Draft EA). In short, CA RICH asserts that the connection between the importance of the deep flow recharge area (Zone I) beneath the site, and the prospect that anticipated railyard site preparation activities and future yearly operations could impact both underlying deep flow recharge and groundwater quality is disregarded in the FEA. Specifically, the proposed railyard will facilitate the transport of potentially hazardous incinerator ash and C&D off Long Island and possibly anhydrous ammonia and a sodium hydroxide solution to neighboring Covanta into the proposed railyard.

Consequently, CA RICH explains that the potential cumulative risks to human health attributable to accidental or incidental spills and/or discharges of hazardous materials that may occur, as well as the relative exposure of the proposed site, needs to be better understood. Sources of groundwater pollution may include incinerator ash (bottom ash leachate containing metals such as soluble cadmium, mercury, arsenic, etc.), petroleum storage, miscellaneous residues from C&D materials, spills, additional dry wells, and even the storage, discharge, or recycling of rinsewater accumulated from the on-site washing or steam-cleaning of the freight cars should the freight car cleaning be conducted on-site. In addition, it is not known whether, and/or to what degree, the increased volume of infiltrating rainfall recharge on-site will change recharge patterns, if discernible, caused by the Proposed Action's stated removal of vegetation from the land surface. Rainfall evapotranspiration rates are reduced in the absence of vegetation facilitating greater volumes of recharge and ponding from the frequency and intensity of storm events. Because this Proposed Action is situated within the Deep Flow Recharge Area Zone I, an understanding of the current on-site subsurface hydrogeologic conditions is strongly recommended.

Such a study should prioritize mapping the local water table configuration, defining shallow groundwater quality, and determining the depth to the underlying Magothy Aquifer (Zone I). Even identifying the presence or absence of any part of the groundwater-confining 'Smithtown Clay' that may occur beneath the Site, including its thickness and horizontal extent, should be of obvious importance. **A site-specific groundwater investigation would be in the best interests of all concerned parties.** At a minimum, meaningful current information would be developed that would locate the proximity of the Proposed Site to any downgradient, active wells; indicate pumpage from the closest SCWA municipal supply wells; and update the current

status, depth, migration and direction of flow of the capped Huntington Landfill plume. It could also evaluate any localized hydrologic “budget” across the 82-acre site to support quantifying rainfall recharge from the historical illegal sand mining activities (1980s-1990s). The importance of recognizing the growing need to eliminate, or at least reduce or mitigate, further degradation of groundwater quality within the all-important key “deep flow recharge area” across Long Island is the rationale for the designation of the Magothy Aquifer as a “sole source” drinking water aquifer.

This Proposed Action is an excellent example of the need and recognition of this protective drinking water designation. OEA’s Water Resources Response to the EA Comments dismisses this issue. Finally, OEA claim that the “environmental impacts identified are minor and can be appropriately addressed with OEAs final recommended mitigation” (p.136 Final EA Appendices, June 2, 2024) seems premature. If impacts are to be mitigated, how will OEA discern: 1) which impacts 2) when and to what degree, and 3) over what period will such mitigative measures be deemed sufficiently appropriate without confirming that measure’s prudence, feasibility, and overall effectiveness.

In short, in connection with water resources, no site-specific groundwater data required to support OEAs conclusion of ‘no impacts’ has yet been provided. A routine scoping session for a proper EA would typically investigate site-specific groundwater conditions given the hydrogeologic sensitivity of this unique property to the drinking water Magothy aquifer directly beneath it, and the fact that it is an Article 7 protected site.

B. Mining.

As noted, Carlson Associates engaged in illegal sand mining in the footprint. No permit was issued by the DEC to Carlson Associates, nor to anyone, for mining at the site. The mine

was a sand and gravel mine which had been operating without interruption since before January 24, 1990, to at least 2015. As of February 1, 1991, the volume of the excavation at the site was approximately 644,611 cubic yards. The conversion from volume to weight for these minerals is 750 cubic yards which equals 1,000 tons of minerals. See DEC Order attached hereto as Exhibit B.

Carlson Associates was 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 in 1990; fined \$125,500; and ordered to reclaim the site within sixty (60) days of the DEC's receipt of an approved reclamation plan. *Id.*

This was not completed until October 2018 – 28 years later. See Mine Inspection Record attached hereto as Exhibit F. The years between 1990 and 2018 were filled with appeals, investigations into continued illegal sand mining, and rejected, revised and modified plans. The fact that this property was illegally sand mined for years and was neither mentioned nor considered in the draft EA is extremely problematic.

During the reclamation process, the DEC's sole focus was on slope construction, not whether the mines were refilled with clean fill or compacted properly during the 28 years it took to finally comply with the DEC's order. The questions raised by this failure to disclose by the Townline Rail Terminal leads to a host of possible disqualifying findings, such as can the proposed project be safely sited on this property without knowing more about this illegal sand mining and reclamation, especially due to the weight of the freight cars on the line. Empty freight cars weigh 30 tons. According to the Townline Rail Terminal, freight cars can carry 100 tons once filled, totaling 130 tons. The plan shows a 161 freight-car capacity.

The issue of illegal sand mining should also have been considered in any review of this project involving hazardous materials released onto the site in light of the fact that it is located directly within Long Island's major Hydrogeologic Zone I Deep Flow Recharge Area. The property is squarely in a Suffolk County Article 7 restricted area as noted.

TA has various maps that clearly demonstrate that this illegal sand mining with unverifiable fill took place in the Proposed Project's footprint. The 1999 map shows extensive illegal sand mining at the northwest corner of the proposed rail project footprint where the spur will come into this area. The 2015 map shows the expansion of illegal mining towards the east. (TA has included various maps from 1968 to 2015.) These maps show the progression of illegal mining. For the 2015 map, the Suffolk County GIS VIEWER is the source.

<https://gisapps.suffolkcountyny.gov/gisviewer/>² It also shows the sand-mined property exists along the footprint, including where the spur will enter and runs along the footprint.³ The 1994 & 2000 reclamation maps show the areas at those times in the footprint that need to be reclaimed.⁴ Maps are attached hereto as Exhibit D.

A serious concern regarding illegal sand mining on Long Island, as noted, is that large holes in the ground become opportunities for illegal dumping, as these excavated areas provide attractive disposal sites for other types of problematic materials, such as solid waste, liquid waste, and C&D material. According to the Grand Jury Report, noted above, the crime of illegal

² Please note it is difficult to see the entire 2015 map, so TA printed each area and put it together so it could be viewed in its entirety and laid the proposed footprint over it to scale.

³ Please note there is an area not mined, but that did not belong to Carlson Associates at the time of the illegal mining. It belonged to another individual until Carlson bought that property in the last couple of years.

⁴ Source for 1994 & 2000 reclamation maps from NYS DEC and 1999 map from the Town of Smithtown.

dumping has proven prevalent in Suffolk County, especially as a way to fill and hide these illegal sand mining operations.

In this instance, the property was illegally sand mined. Through the years, the land was undeniably filled without any supervision by the proper regulatory authorities. This unregulated filling of a completely illegal mining operation raises serious questions about what was used to fill the mine. It is not a stretch to surmise that illegal and toxic materials were used in this cover-up endeavor based on the illegal mining that the same party had engaged in even for a lengthy time after being cited and fined by the DEC. It is hard to fathom why this situation was not given a harder look in light of these facts and the aquifer.

C. Spills on the property

Toxic Targeting has identified at least 8 spills on Townline Rail Terminal's property, including petroleum. See Toxic Targeting Map attached hereto as Exhibit E. There has also been a report of potential uncontrolled emissions involving carbon monoxide, nitrogen dioxide, and sulfur dioxide. Toxic Targeting does not give specific locations on Carlson's property. It seems to be necessary to ensure these spills did not occur in the footprint as the property rests on top of these vital aquifers that are easily subject to contamination by these types of pollutants due to their porous and liquid nature. Moreover, the illegal mining on this site makes the affected area especially susceptible to groundwater contamination.

IV. DISCUSSION

A. OEA Is Required to Take a "Hard Look" at the Illegal Sandmining on the Site Which Has Not Occurred in the FEA.

The National Environmental Policy Act (NEPA) generally requires federal agencies to consider "to the fullest extent possible" environmental consequences "in every recommendation

or report on... major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). Specifically, NEPA requires a federal agency such as the Board to prepare a detailed Environmental Impact Statement for all "major Federal actions significantly affecting the quality of the human environment."⁵ NEPA thus "ensures that the agency will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience."⁶ As the Supreme Court has stated, "[b]y focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."⁷

Here, the Board has chosen to rely on an Environmental Assessment instead of an EIS. Townline Association disagreed with this decision and urged OEA to give the Proposed Action the requisite "hard look" it deserves. In any event, the Proposed Action will significantly impact the quality of the human environment for the community surrounding this action, as discussed herein. The FEA did not adequately examine the very serious concerns about the illegal sand mining on the site or the unverifiable fill put into the resulting hole. This lack of examination is compounded by the fact that the site is located on top of a sole source aquifer that has already been contaminated in the recent past.

⁵ *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

⁶ *Id.* (citing *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)).

⁷ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

NEPA's "sweeping policy goals" are realized through a set of "action-forcing" procedures that require agencies to take a "hard look" at environmental consequences.⁸ Congress did not intend the agency to "contemplate the environmental impact of an action as an abstract exercise" but rather that the "hard look" be "incorporated as part of the agency's process of deciding whether to pursue a federal action."⁹ Indeed, the Board has often acknowledged the extensive scope of its NEPA obligations. In particular, the NEPA's process ensures that the Board takes a "hard look" at environmental consequences required by NEPA for this project.

However, simply deciding to create an EA or an EIS does not, by itself, fulfill the Board's requirements under NEPA. In order to comply with the "hard look" requirement, the EIS or EA must permit a court to "determine whether the agency has made a good faith effort to consider the values NEPA seeks to protect."¹⁰ Reviewing courts have repeatedly faulted agencies for errors and omissions, including failures to consider cumulative impacts, omission of scientific evidence and sources, or failure to discuss mitigation measures.¹¹

B. This New and Relevant Information Requires a Supplementation of the EA or an EIS.

⁸ *Id.* at 350.

⁹ *Baltimore Gas and Elec. Co v Natural Resources Defense Council, Inc.*, 462 U S 87, 100 (1983).

¹⁰ *Mid States Coalition for Progress v S T.B.*, 345 F.3d 520,533 (8th Cir 2003), *see also Gulf Restoration Network v US Dept. of Transp.*, 452 F.3d 362, 367 (5th Cir 2006) (in assessing adequacy of EIS, the court has three considerations (1) whether the agency in good faith objectively has taken a hard look at the environmental consequences of a proposed action and alternatives; (2) whether the EIS provides detail sufficient to allow those who did not participate in its preparation to understand and consider the pertinent environmental influences involved, and (3) whether the EIS explanation of alternatives is sufficient to permit a reasoned choice among different courses of action).

¹¹ *See, e.g., Sierra Club v Bosworth*, 199 F. Supp 2d 971, 980, 983 (N.D. Ca 2002) (EIS failed to disclose or analyze scientific evidence supporting or contradicting agency's position, and failed to adequately disclose or analyze cumulative impacts as required by NEPA); *Mid States Coalition for Progress v STB*, 345 F 3d 520,533 (8th Cir 2003) (SEA failed to take hard look at the "substantial issue" of mitigation).

In light of this new, relevant evidence about illegal mining and the unverifiable fill on the proposed site, supplementation of the EA is warranted. The Board's regulations provide that a "supplemental Environmental Assessment may be issued where appropriate."¹² 49 C.F.R. § 1105.10(b). The Council on Environmental Quality ("CEQ") further provides that agencies "[s]hall prepare supplements to ... final environmental impact statements" if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1)(ii). The Board has noted that these CEQ rules implementing NEPA advise Federal agencies to prepare supplements to an EIS "where new information that is relevant to environmental concerns is presented after a Final EIS has been prepared." See *Tongue River Railroad Company, Inc. - Construction and Operation - Western Alignment Tongue River III - Rosebud and Bighorn Counties. Montana*, STB Finance Docket No. 30186 (Sub-No. 3), 2004 WL 2619770 (Board served October 15, 2004), at* 19. This new information regarding illegal sand mining, unverifiable fill, hazardous spills, and aquifers raises significant new circumstances and information that are extremely relevant to environmental concerns, and which bear on the actions contemplated in the EA.

The Proposed Action would result in adverse environmental impacts to the communities located very near the project. The potential benefits from the reduction in truck operations near the communities include decreased vehicle traffic delay, reduced noise, reduced air emissions, and fewer shipments by truck. See FEA. Given the dearth of specific information on Carlson Associates' mining, unverifiable fill, and hazardous spills in an area located on a vital aquifer, the full scope and impact of this Proposed Action cannot be known without a Supplemental EA or

¹² An EIS may be supplemented where "necessary and appropriate to address substantial changes in the proposed action or significant new and relevant circumstances or information." 49 C.F.R. § 1105.10(a)(5).

EIS. The FEA moreover did not make anything but a cursory examination of the aquifer which is clearly not the “hard look” that is required. *See, e.g., New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 715 (10th Cir. 2009) (“We accordingly hold that BLM acted arbitrarily by concluding without apparent evidentiary support that impacts on the Aquifer would be minimal.”); *Gifford Pinchot Task Force v. Perez*, No. 03:13-CV-00810-HZ, 2014 WL 3019165, *32 (D. Or. July 3, 2014) (“In summary, while the 2012 EA contains a substantial discussion about the Project's impacts on groundwater, it fails to comply with NEPA's ‘hard look’ requirement absent baseline groundwater information upon which the conclusion of negligible impact can be made. The mitigation measures incorporated into Alternative 3, like the same measures in ICL, likely go a long way to controlling possible contamination of groundwater, but, without baseline data, the impact to groundwater remains uncertain because there is no information as to the current conditions of the actual Project area. As a result, there is no way to determine what effect the action will have on the environment and thus, ‘no way to comply with NEPA.’”) (cites omitted). More than sufficient information exists to support an investigation and preparation of a supplement to the FEA.

IV. CONCLUSION

For the foregoing reasons, a supplement to the FEA should be prepared.

Respectfully submitted,

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Dated: July 18, 2024

Certificate of Service

I certify that I have, on this 18th day of July 2024, served by the most efficient means copies of the foregoing document on all parties of record.

/s/ Daniel R Elliott

Daniel R. Elliott

EXHIBIT A

**SUPREME COURT, STATE OF NEW YORK
SUFFOLK COUNTY
TENTH JUDICIAL DISTRICT**

**JULY 18, 2018 – AUGUST 2, 2019
TERM 8-F**

**GRAND JURY REPORT
CPL § 190.85(1)(c)**

**Dated:
August 2, 2019**

**SUPREME COURT, SUFFOLK COUNTY
TENTH JUDICIAL DISTRICT
AUGUST 2, 2019
TERM 8-F
GRAND JURY REPORT, CPL § 190.85 (1)(c)**

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SUPREME COURT, SUFFOLK COUNTY

TENTH JUDICIAL DISTRICT

August 2, 2019

TERM 8-F

GRAND JURY REPORT, CPL § 190.85 (1)(c)

PRELIMINARY STATEMENT

Pursuant to the authority vested in the Appellate Division, Second Department, and in the Deputy Chief Administrative Judge for the Courts outside the City of New York, the Supreme Court, Suffolk County, Tenth Judicial District, Special Grand Jury, Term 8-F, was empaneled on July 18, 2018, to sit through and including January 18, 2019. Said Special Grand Jury was thereafter extended through and including August 2, 2019.

From July 18, 2018 through March 26, 2019, the Special Grand Jury heard testimony from 48 witnesses and considered 420 exhibits, including audio, photographic and documentary evidence related to an investigation of an illegal dumping scheme known as “Operation Pay Dirt.” As a result of the witnesses and evidence presented in connection with Operation Pay Dirt, the Special Grand Jury issued two separate criminal indictments: a 130-count indictment charging 39 defendants (30 individuals and 9 corporations); and a 5-count indictment charging one additional corporation. The indictments that were generated were docketed under indictment numbers I-2052A through I-2052NN-2018 and are publicly filed with the Clerk of the Court of Suffolk County, New York.

Thereafter, from on or about March 26, 2019 through August 2, 2019, the Special Grand Jury participated in a second phase of the grand jury proceeding during which it considered legislative, executive, and administrative action in the public interest. These considerations were based upon findings made after receiving not only the evidence presented in connection with Operation Pay Dirt, but also evidence presented by 8 additional witnesses, through whom 35 additional exhibits were admitted. This evidence pertained to illegal dumping and sand mining on Long Island more generally, as well as the environmental harm caused by those activities. Specifically, the Special Grand Jury heard evidence regarding the unique geography of Suffolk County; the aquifer that is found below Long Island and that supplies Suffolk County's drinking water; and the substantial risks to the aquifer posed by improper disposal of construction waste and sand mining. The Special Grand Jury also heard evidence regarding financial and other harms caused by environmental crimes; the limited availability of state and local funds to compensate victims for the costs of remediation of property damaged by environmental crime; the limited funds available to train detectives and investigators to identify pollutants and contaminants and to track them to those responsible for their release into the environment; the current laws available to prosecute individuals for environmental crimes; and loopholes through which polluters evade punishment. The witnesses who testified in the second phase of the grand jury presentation included experts and practitioners in the following areas: hydrogeology, land management, environmental science, environmental crime investigations, asset forfeiture, environmental advocacy, and crime victim advocacy.

The Special Grand Jury found each of the witnesses to be credible and qualified to speak about the matters of which they testified. The Special Grand Jury accepted their testimony as true and agreed with the opinions offered by these experts as consistent with the evidence and

findings made in connection with the criminal investigation of Operation Pay Dirt. The testimony of these 7 witnesses and the exhibits introduced during their testimony, in conjunction with the testimony and evidence received throughout the Operation Pay Dirt grand jury investigation, provide support for the findings of the Special Grand Jury and the legislative and policy recommendations that follow.

The following report has been adopted pursuant to New York State Criminal Procedure Law Section §190.85(1)(c) and is respectfully submitted to the Court.

ILLEGAL DUMPING AND THE “OPERATION PAY DIRT” SCHEME

Solid waste is an inevitable byproduct of an industrial and ever-developing society. Solid waste is defined in Article 6 of the New York Codes, Rules and Regulations (“NYCRR”), 6 NYCRR Part 360. Subject to certain exceptions not relevant to this report, solid waste consists of “discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, municipal, commercial, institutional, mining or agricultural operations or from residential activities including materials that are recycled or that may have value.” 6 NYCRR 360.2(a)(1). Solid waste can include material containing hazardous and acutely hazardous substances, as defined by Part 597 of Article 6, NYCRR. Hazardous substances are those on designated lists or that can cause physical injury or illness to humans, to the environment or to biological lifecycles, while acutely hazardous substances are those that are extremely toxic, such that the substance “causes or is capable of causing death, serious illness or serious physical injury to any person or persons as a consequence of release into the environment.” 6 NYCRR 597.2.

Another inevitable byproduct of commercial activity is a type of waste known as “construction and demolition debris,” also known as “C&D material” or just “C&D.”

Construction and demolition material is defined in the NYCRR as “waste resulting from construction, remodeling, repair and demolition of structures, buildings and roads.” C&D material includes “fill material, demolition wastes, and construction wastes.” 6 NYCRR Part 360.2(b)(61).¹ C&D material is generated as a byproduct of construction, or whenever buildings are partly or completely demolished in order to build new or renovated structures in the place of existing buildings. Materials that are used in construction of buildings, and that are discarded when those buildings are demolished, or waste generated by new construction projects often contain substances that are hazardous or acutely hazardous to the environment. However, even C&D material lacking hazardous or acutely hazardous substances often contain common items that may be dangerous to the public such as nails, screws, bolts, brick, broken wood, tile, batteries, tools, glass, and other miscellaneous household debris.

Because C&D material is generated by all residential and commercial construction and renovation projects, provision must be made for the safe disposal of this material. The need for safe disposal of solid waste material, including C&D material, has led to development of commercial entities that assume responsibility for transporting, processing, and disposing of this material. These commercial entities involved in this process include, but are not limited to: (1) construction and demolition companies, or renovation companies and contractors, which generate the material and thus need to find businesses to accept their waste material and dispose of it; (2) haulers, the trucking companies that transport the material once it is generated; and (3) solid waste management facilities, recycling facilities, and transfer facilities that are required to store and process the material for proper disposal by haulers at an authorized location.

¹ This section also sets forth materials that are not considered C&D debris (even if generated from construction, remodeling, repair and demolition activities), including municipal solid waste, friable asbestos-containing waste, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, furniture, appliances, tires, drums, fuel tanks, containers greater than 10 gallons in size and any containers having more than one inch of residue remaining on the bottom.

Several regulations found in Article 6 of the NYCRR are designed to govern the conduct of each of the entities described above. Part 360 establishes regulations related to solid waste and construction and demolition material. Part 364 establishes regulations governing the transportation of the materials. Part 597, as noted above, lists substances characterized as hazardous and acutely hazardous.

There is significant revenue to be made in the removal, transportation, and disposal of C&D material and solid waste more generally. The proper disposal of this material can be expensive. The more hazardous and regulated the material, the more costly it is to properly dispose of it. Facilities authorized to receive the material charge a fee to dispose of the material. The fee is based on the type of material and the volume or weight of the material that needs to be disposed. This fee often reaches amounts over \$1,000 per 30-40 cubic yard truck load, amounting to tens or even hundreds of thousands of dollars for a large demolition and construction project. For example, as evidence related to Operation Pay Dirt demonstrated, multiple trucks made multiple trips to a particular demolition site and removed numerous loads of C&D over the course of several days from that site. For just this one particular site over the course of two to three days, the fees related to the disposal of that material would minimally reach into the tens of thousands of dollars.

Another type of material important to the construction industry is what is referred to as “fill material.” Generally, fill material is dirt that is used in various projects to fill in holes, such as the filling in of a pool on a residential property, or the leveling or grading of a parcel. It also includes material that is used for road or embankment construction, among other purposes. The use of fill material is regulated under Article 6 of the NYCRR, Part 360.13(f), which categorizes fill material into three types: General-Use; Restricted-Use; and Limited-Use.

General-Use Fill is defined as fill that contains soil, sand, gravel, or rock and does not contain any non-soil constituents. It can be used in any setting where the fill material meets the engineering criteria for use, except undeveloped land and agricultural crop land.

Restricted-Use Fill may consist of up to 40 percent by volume inert, non-putrescible, non-soil constituents (acceptable inert, non-putrescible material excludes plastic, gypsum, wallboard, paper, or other material that may readily degrade or produce odors). Restricted-Use Fill may be used for embankments or subgrade in transportation corridors, or on sites where the material that is already present exceeds the criteria for Restricted-Use Fill or Limited-Use Fill. It must be placed above the seasonal high water table.²

Limited-Use Fill consists of fill that has more than 40 percent by volume inert, non-putrescible, non-soil constituents. Limited-Use Fill may be used under foundations and pavements above the seasonal high water table. Pursuant to the regulations, Limited-Use Fill may not be placed in Nassau or Suffolk counties.

Use of Restricted-Use or Limited-Use fill material may only occur at a project in accordance with an approved local building permit or other municipal authorization that includes the need for the certain fill material. Additionally, the fill material must be used within 30 days of arriving at the project site.

Each day, haulers from demolition projects throughout the New York metropolitan area transport thousands of cubic yards of C&D and other solid waste materials to facilities that are designated to accept certain materials.³ These facilities are located across New York, including in Queens County. These corporations charge to accept tons of debris from construction sites and then resell whatever material is salvageable and allowed to be used in accordance with the

² The water table will be described in more detail *infra*.

³ These facilities include C&D debris handling and recovery facilities, solid waste management facilities, and transfer facilities, which are defined by 6 NYCRR 360.2(b), (62), (251), and (276), respectively.

regulations promulgated by the New York State Department of Environmental Conservation ("DEC"). The unsalvageable materials are generally to be treated as solid waste and are therefore required by the New York Environment Conservation Law ("ECL") to be properly disposed of at select DEC approved or regulated landfills, which is a costly process. Facilities that are authorized to accept these types of materials charge a disposal fee which increases when the material contains hazardous and acutely hazardous substances, such as lead, pesticides, polychlorinated biphenyls ("PCBs") and asbestos.

In addition to disposal fees, lawful disposal of solid waste requires payment of truck-hauling fees. Authorized facilities are limited in number and may be located far from the construction site. The further the distance, the higher the hauling fees, and therefore, the lower the profits to a developer seeking to minimize the expense of a demolition and construction project. Certain materials that are generated in New York City are required to be disposed of at specialized facilities that may not be located in the State of New York, which further increases costs associated with the disposal. Certain materials that are generated in New York City and Long Island are also prohibited from being disposed of on Long Island. All of this adds to the costs for the companies involved.

Over the course of the Special Grand Jury's investigation, which included hearing from dozens of witnesses and reviewing hundreds of exhibits, including business records, public filings and several hours of court-authorized wiretaps, the Special Grand Jury learned about the ways in which various participants in the solid waste disposal industry can violate the law in order to reduce costs, jeopardizing public health and safety and damaging property in the process.

Among other things, the Special Grand Jury heard about the role of intermediaries, known colloquially as “dirt brokers,” who in exchange for payments will steer C&D material, including material containing hazardous and acutely hazardous substances or other material that is dangerous to health or safety (*e.g.*, nails, broken glass, wood beams, metal fragments, and other construction debris) (collectively, the “Restricted Substances”) to transfer stations and recycling facilities that are willing to evade the requirements of existing law in order to increase their profits. Instead of testing and disposing of these potentially dangerous substances according to the rules established by law and DEC regulations, these facilities will dilute the Restricted Substances with dirt, and then work with the dirt broker to represent fraudulently that the mixture of Restricted Substances and dirt constituted “clean fill,” available for pickup or placement in any location that General-Use Fill can be used. Haulers who are participants in the scheme may produce travel manifests or dump tickets (records concerning the material being hauled) that contain false entries concerning the type of material that is being transported, as well as the intended location at which the material is being disposed, to evade detection of the scheme.

As a result of these fraudulent representations and activities, many home and business owners, as well as at least one school, agreed to accept material containing Restricted Substances, which they believed to be clean fill, in locations where only clean or General-Use Fill would be appropriate.

Such a scheme is extremely profitable to its participants. Construction and demolition companies can obtain reduced costs for disposing of C&D material, including material containing hazardous and acutely hazardous substances, by using the services of a dirt broker who is willing to avoid the costly requirements imposed by the law governing disposal of C&D

material, and who has the network necessary to accomplish that objective. Waste transfer and recycling facilities that dilute C&D material with dirt rather than dispose of it pursuant to legal requirements are central to the scheme. This is because they enable the dangerous and hazardous substances that may be contained within the C&D material to be offered as clean or General-Use Fill rather than disposed of properly or offered only as Restricted-Use or Limited-Use Fill. They also enable participants in the scheme to avoid the substantial costs of testing and disposing of the material pursuant to legal requirements – as noted, sometimes in faraway locations and with special precautions in the event that the material contains hazardous or acutely hazardous substances.

Haulers also can profit where they are willing to haul diluted C&D material and other solid waste to unwitting customers at nearby sites rather than having to drive it far greater distances for proper disposal.

Finally, dirt brokers can obtain substantial profits by obtaining a supply of C&D material from contractors, connecting them with facilities that are willing to dilute the material rather than properly dispose of it, and identifying and defrauding customers into receiving and using the diluted material as clean fill.

While participants in the scheme profit through violating laws and regulations governing disposal of C&D material and other types of solid waste, the scheme victimizes individuals whose health and safety are jeopardized by their receipt of fill containing Restricted Substances and their placement of that fill in locations where only clean, or General-Use, fill would be safe to use – backyards, schoolyards, and the like. The disposal of these materials on unwitting victims' properties not only placed health and safety at risk; it caused substantial financial

damage, with many such properties requiring remediation costing in excess of \$20,000 in order to remove the diluted C&D material once it was discovered.

After learning about the existence of this scheme, the Special Grand Jury reviewed the criminal penalties applicable to illegal dumping of solid waste, C&D material, and hazardous and acutely hazardous substances. After a review of those applicable laws, the Special Grand Jury finds that there is a need for additional criminal laws, and enhanced penalties, to address aspects of illegal dumping activities that currently avoid criminal sanction or punishment sufficient to deter participation in such a profitable and dangerous scheme.

The Special Grand Jury also finds it necessary to modify existing laws to better protect the environment by closing loopholes in the law and by enhancing punishment and sentencing so that bad actors' illegal profits are disgorged and they are deterred from committing future environmental crimes.

Specifically, the new proposals seek to target misconduct by haulers, recycling and transfer facilities, and those who act as dirt brokers connecting various participants in illegal dumping activities. The legislative and policy proposals of the Special Grand Jury are outlined below.

SAND MINING ON LONG ISLAND

Long Island sand is an incredibly valuable commodity. Certain crystals found within Long Island sand, resulting from the creation of Long Island by glaciers thousands of years ago, have resulted in Long Island sand being shipped as far as Egypt to be used to make cement. Long Island sand is used to make cement to build local and remote infrastructure, and is harvested from Suffolk County by way of mining.

Sand mining is the extraction of sand from beneath the ground's surface. On Long Island, the topography of sites differ, as does the size of the mines. Sand can be excavated from the bottom of bodies of water using industrial dredging equipment. However, often times, land has to be cleared of trees and other vegetative matter prior to mining. After land clearing, layers of earth need to be extracted in order to reach the sand. This type of mining is often referred to as open-pit mining, where in order to remove the sand, topsoil, clay, loam and other layers of earth are first removed using heavy machinery like bulldozers and excavators. Large screening machines, tractor trailers, and dump trucks are also used in the mining operation.

The mining industry in Long Island is responsible for millions of tons of sand being removed and sold. The acreage and depths for permitted mines vary by site. Some mines excavate to the aquifer, dredge sand, and create recharge basins. Others mine to sizeable depths below sea level and operate waste management facilities on location. Either form of permitted mining, albeit legal, poses certain risks to the environment, especially in designated Special Groundwater Protection Areas, as there is great potential for contamination of the aquifer and Long Island's groundwater.

The New York State Legislature delegated to the DEC the responsibility to oversee the regulation of the sand mining industry. Currently, the DEC is the only regulatory body that oversees sand mining, *i.e.*, those sites that are designated as sand mines via the issuance of permits/registrations from the DEC. According to the DEC's website, as of 2016, there were 25 permitted sand mines in Suffolk County spanning 1,176.9 acres.

Historically, sand mining has been supported by the DEC throughout the State, and the goal of the State mining law is both to mine and to reclaim mines. Reclamation in this context refers to the return of mined land to productive use. One such potential productive use may be as

a waste transfer or sorting facility, as land clearing throughout Suffolk County results in vegetative waste that could be processed in spaces created by sand mines as part of a mine reclamation plan.

The Special Grand Jury heard evidence showing that as sand mining operations exhaust the available sand in an approved mining site, the DEC often renews permits and extends mining areas. In some instances, this has been done over the objections of local municipalities. In addition, continued mining to significant depths brings increasing concerns about the potential effect on the aquifer and the quality of Long Island's groundwater.

THE AQUIFER

The issue of environmental crimes in general, and illegal dumping and sand mining specifically, is of particular concern on Long Island. Long Island's aquifer is designated as a sole source aquifer by the United States Environmental Protection Agency – one of the few such designated sites across the United States. An aquifer refers to water that is below the ground ("groundwater") in sand or other material that is totally saturated and that can be accessed as a drinking water supply. A sole source aquifer means that groundwater is the only source of drinking water for a particular location. In contrast to Suffolk County, other areas in New York State, including New York City, have access to alternate sources of drinking water such as rivers, lakes, streams and reservoirs.

In Suffolk County, there are three separate groundwater aquifers. The three aquifers are the Upper Glacial Aquifer, the Magothy Aquifer, and the Lloyd Aquifer. Each aquifer consists of sand that is saturated by water. The aquifers are generally recharged, or refilled, by precipitation. The aquifers are divided by layers of clay. Clay can act as a barrier to the

aquifers, though it is not an absolute barrier because water and contaminants can travel into the aquifer through the clay. The Gardiners Clay separates the Upper Glacial and the Magothy aquifers and the Raritan Clay separates the Magothy and the Lloyd Aquifers. There are certain areas on Long Island, such as the south shore, where no layer of clay protects the aquifer. In addition, the Gardiners Clay does not extend all the way up to the north shore of Long Island, and in many locations there is no clay separating the Upper Glacial Aquifer from the Magothy Aquifer. An illustration of the various components of Long Island's aquifer, introduced into evidence as Exhibit R-1, is attached below.

The distance between the surface of the ground and the beginning of the water table is referred to as the "depth-to-water." This "depth to water" can vary depending on location. In certain areas where there is shallow depth-to-water, the water table may only be a few feet below the top of the ground. There are many shallow depth-to-water areas along the shorelines of Long Island, including the land around the Peconic River, the Carmans River, the Connetquot River and the Nissequogue River, as well as other areas near surface water and rivers. The deepest depth-to-water area in Suffolk County is near the Town of Huntington, where depths to water can reach greater than 200 feet.

The aquifers are accessed through private and public wells, which are used as the sole source of drinking water in Suffolk County. Approximately 40,000 homes throughout Suffolk County obtain their drinking water through a private well. Most of the private wells are located on the eastern end of Suffolk County. The private wells acquire groundwater from the Upper Glacial Aquifer, the aquifer that is generally closest to the surface, and thereby is most susceptible to contaminants from the surface. However, the majority of Suffolk County residents receive their drinking water through the public water supply. The largest provider of public well

service is the Suffolk County Water Authority. Public wells often reach into the Magothy Aquifer, going deeper into the earth than the private wells, because public well providers have more resources to dig deeper wells. There are exceptions, however, as certain public wells near Suffolk's shoreline are shallower. Removal of water from the Lloyd Aquifer, the deepest water source, is not authorized for either public or private wells.

The New York State Department of Health establishes drinking water standards that must be met by all public wells. The Bureau of Drinking Water for the Suffolk County Department of Health Services regulates public water suppliers to ensure that they comply with relevant drinking water standards. Though the standards are equally applicable to private wells, there is no regulation or mechanism to enforce the standards upon the individuals who use private wells. Thus, the Suffolk County Department of Health Services ("SCDHS"), Bureau of Drinking Water can only test private well water with the homeowner's consent, and may do no more than recommend that the homeowner not consume the water. The County has no authority to compel homeowners to avoid consuming water from their private wells even if the water does not meet the State standard.

The various layers of the aquifer are permeable and susceptible to contamination in various ways. As stated above, the aquifer is recharged through precipitation. When it rains or snows, the precipitation seeps through the ground until it reaches the aquifer. New precipitation will reach the aquifer at different rates based on the depth of the water table, *i.e.*, the distance between the surface of the earth and the Upper Glacial Aquifer, the aquifer's top layer. The precipitation also travels at a different rate based on whether or not the location is a shallow or deep recharge area. Eventually, water within the Upper Glacial Aquifer seeps down to the

Magothy Aquifer, and below it to the Lloyd Aquifer, increasing in purity as it gets filtered through the layers of sand and clay contained within various portions of the aquifer.

As referenced above, individuals who use a private well receive water that is more susceptible to contamination, primarily because private wells tend to be shallower than public wells. These private wells tend to tap into the Upper Glacial Aquifer, the aquifer closest to the surface. Thus, contaminants on the surface of the land are more likely to reach the Upper Glacial Aquifer, and private wells that tap into it, if they begin to leach into the ground and enter the area between the surface and the aquifer – an area known as the vadose zone.

THE EFFECT OF ILLEGAL DUMPING ON THE AQUIFER

Illegal dumping of solid waste and C&D material in Suffolk County has the potential to negatively affect Long Island's aquifer. Due to the sandy nature of the ground and the aquifer on Long Island, both the ground and the aquifer are permeable – meaning, water can pass through the ground and the aquifer quickly. This makes the aquifer susceptible to contamination. If material containing contaminants, *e.g.*, hazardous or acutely hazardous substances, are deposited on the ground, whether on a pile or graded land, the contaminants may reach the aquifer in the same way that water reaches the aquifer. If precipitation falls through a pile of material containing contaminants, the precipitation will leach through the contaminated material and cause any water-soluble contaminants to move through the material, the ground and eventually into the groundwater. As indicated, the layers of clay contained within various sections of the aquifer act as an additional natural barrier to the transfer of materials through the ground and the aquifer, however, some contaminants eventually travel through the clay and into the aquifer. Moreover, as indicated above, there is not always a layer of clay protecting the aquifer, nor is

there always a clay barrier between the Upper Glacial and the Magothy Aquifers. Even if the pile of material containing contaminants is spread out, graded or covered by clean soil, the precipitation may still infiltrate through the pile and move the contaminants into the ground towards the aquifer.

This scenario is not unique to solid material disposed directly on property. For example, if a drum or tank holding contaminants spills on the ground, the liquid will seep through the sand and can create a groundwater plume in the aquifer. A plume is a body of polluted water within an aquifer. These plumes can travel approximately one foot per day. With a contaminated liquid, the need for rain or water to move the contaminated material is eliminated because the contaminated liquid may find its own way to the aquifer. If a well, private or public, is located in a down-gradient direction from the contaminated liquid, the well water may collect the contaminants.

Notably, the differences in the depth of the water table throughout Long Island will affect how potential contaminants travel from the surface to the aquifers. Furthermore, as illustrated by Exhibit R-1, the positioning of the aquifers and the layers of clay separating the aquifers vary throughout Long Island. For example, around the northern and southern shorelines of Long Island, there exists what is referred to as a shallow flow zone. A shallow flow zone is the area where the water enters the ground and only travels into the Upper Glacier aquifer. Here, contaminants may reach the aquifer more quickly because it is closer to the surface. Deep recharge areas exist near the center of Long Island where there is more distance between the surface and the water table. At these deep recharge areas, the water reaches to the Magothy and Lloyd Aquifers. Though water and contaminants may take longer to reach these deeper aquifers, the threat of contamination still exists.

A 2018 Suffolk County Department of Health Services report highlighted analytical findings of contamination and concluded that at certain sites, wells that historically had been used to access drinking water were polluted. At one site, there were concentrations of heavy metals as high as 200 times the drinking water standard, as well as other contaminants. Contamination of the aquifer remains a predominant concern in Suffolk County, as the aquifer will remain the only means through which the County's residents may obtain drinking water for the foreseeable future.

THE EFFECT OF SAND MINING ON THE AQUIFER

Despite valid uses of sand mining, mining can negatively impact the environment, especially on Long Island due to its reliance on a sole source aquifer for drinking water. Sand mines can be dug to considerable depths, thereby removing the naturally protective layering of soil covering the aquifer and making the groundwater more susceptible to contaminants. The Special Grand Jury learned of one instance as recent as April of 2018 where observations were made of the removal of sand so deep that it exposed the groundwater, which could be seen with the naked eye.

Even legally permitted sand mining operations may present a danger to the environment by increasing the risk of groundwater contamination. In accordance with permits issued by the DEC, many of these mining sites have reclamation plans that include use of vegetative organic waste or other types of material that the DEC has approved for such use. These types of materials are concerning to ecologists and hydrologists when they are deposited layers below ground level at or near the level of the aquifer. When layers of filtration are removed, the ground, top soil and loam (soil composed mostly of sand, silt, and a smaller amount of clay) no

longer exist to provide natural filtration to reduce levels of contamination before entering the aquifer.

A collateral concern is that large holes in the ground become opportunities for illegal dumping, as these excavated areas provide attractive disposal sites for other types of problematic materials, such as solid waste, liquid waste and C&D material. The crime of illegal dumping has proven prevalent in Suffolk County, and this systemic conduct has contributed to the contamination of the groundwater. The recent findings of groundwater contamination referenced above reinforce the need to do more to protect against illegal dumping, particularly in sites such as sand mines where the groundwater is more exposed.

In addition, the unregulated mining of sand occurs throughout Suffolk County through a variety of means, from the extraction of excess sand at construction sites, to mass removal of sand from industrial sites and farmlands. Since sand is a valuable commodity and the removal and sale of sand is lucrative, the excavation of sand is often done in Suffolk County without a permit or registration, *e.g.*, under the guise of construction, farming or other unrelated projects. In these unauthorized mining operations, there are insufficient controls in place to ensure compliance with the ECL's mining requirements, *i.e.*, no oversight on boundaries or limits on depth and no requirement of reclamation. Mining without any oversight, boundaries, limits on depth or requirement for reclamation can be dangerous and cause hazardous sloping, land instability and other conditions that are dangerous to public health.

The mining of sand in unregulated mines that approaches or pierces the aquifer, striking groundwater, is problematic for a variety of reasons. One, there is no monitoring of the material being used to backfill and cover the exposed groundwater. Two, the use of bulldozers, excavators, and other heavy machinery in the aquifer can directly contaminate ground water.

Three, there is no testing of groundwater to determine whether there has been contamination. In these cases, the mined area does not have a proper reclamation plan, nor is there DEC oversight to safeguard against the use of bad material.

As discussed in the earlier portion of this report, the Special Grand Jury has been made aware of a scheme in which contaminated C&D material and solid waste is diluted and used to fill areas that have been excavated, which may include areas where mining has occurred and the aquifer has been exposed. When this material is dumped at ground level, it is an environmental hazard, as that material can leach into the groundwater by means of natural filtration. Even while some contaminants may reach the aquifer if they are dumped at ground level, this filtration process aids in the breaking down of contaminants before they penetrate the aquifer. When this type of material is placed directly onto mined or excavated areas, however, it poses a greater threat to the drinking water because that material is placed layers below the ground's surface, sometimes directly onto the exposed ground water, thereby allowing contaminants to access the groundwater without the benefit of filtration.

While the potential perils are discussed here in the context of sand mining, the same risks exist with respect to any large hole in the ground. For example, if someone has a pool in his or her backyard that is being filled in, and that hole is filled in with contaminated material, the risk of contamination to the aquifer is greater than if the fill were placed at ground level.

Local towns and municipalities can enact stricter laws to prevent unlawful sand mining. The Town of Brookhaven, for example, recently enacted significant amendments to its Town Code to prevent the excessive removal of material from a site, thereby effectively prohibiting sand mining within the Town. Prior to the change in Chapter 85 of the Code of the Town of Brookhaven, Section 85-925, entitled the Farmland Bill of Rights, material could be excavated

and removed from any agricultural property as “grading activities.” In 2015, the Town of Brookhaven amended its law to clarify that grading activities do not include removal of onsite materials, specifically excluding the excavation, stripping or removal of sand, gravel, stone, topsoil or other materials or other excavation purposes. Another important change in the law was the 2015 amendment to Chapter 53 of the Code of the Town of Brookhaven, entitled Sand and Gravel Pits; Excavation; Removal of Topsoil. This amendment specifically prohibited removal of excess material unless required by roads, recharge basins, drainage structures, sanitary systems, drywells, foundations, or pools. This eliminated language that allowed for mining incidental to development of the site for residential, commercial or industrial purposes and set forth the requirement that sand mining is only permitted on certain industrially zoned premises with a DEC mining permit or legal pre-existing mines with DEC permits.

In addition, in 2017, the Town Board adopted a code amendment to make it explicitly clear that material which is not clean sand and/or dirt shall not be imported to sites within the Town of Brookhaven. This code amendment, in conjunction with the sand mining code amendments detailed above, aided the Town’s ability to prevent the illegal export of sand and import of contaminated materials, and helped reduce instances where land is mined without regulatory oversight or used as a dumping ground for contaminated C&D material or other solid waste.

OTHER DETRIMENTAL EFFECTS OF ILLEGAL DUMPING AND SAND MINING

Risk of Exposure to Contaminants

The dangers caused by the deposit of contaminated material on residential and commercial properties go beyond damage to the aquifer. Illegal dumping exposes residents of

Suffolk County to contaminants while they remain on the surface. Exposure can occur through touch, ingestion, or inhalation. For example, if there is a pile of contaminated material on a property, someone can be exposed to contaminants dermally, *i.e.*, by touching the contaminated material. Depending on nature of the contaminant, it can be absorbed through the skin and enter the body. People can also risk ingesting contaminants. For example, if someone is handling contaminated material and touches his or her mouth, the material can enter the body through the digestive system. This is especially true for children who come into contact with the material, and then – as children often do – put the material in their mouths.

Contaminants can also be ingested through drinking contaminated groundwater or surface water, either by unknowingly drinking contaminated water or through exposure such as unknowingly swimming in a contaminated body of water. Exposure can also occur by breathing in contaminants. Wind can blow particles of material in the air, or if a substance is a vegetative organic compound or semi-vegetative organic compound, it can volatilize, *i.e.*, vaporize, in the air and cause an individual to breathe in the contaminants.

Lack of knowledge perpetuates the detrimental effects of illegal dumping and sand mining. In other words, if County employees and law enforcement agents are not aware of environmental crimes and the resulting damage they may cause to the water and to County residents, then environmental crimes will obviously go undetected and their ill effects will remain unreported. There are, however, various ways in which the County can be made aware of potential contamination, including, but not limited to: (1) a complaint by an individual or organization filed with the Suffolk County Department of Health Services; (2) the County's routine tests on public wells or testing pursuant to the private well testing program⁴; or (3) a

⁴ Suffolk County offers a private well testing program whereby, for a fee, residents in the County who receive their water from a private well may request to have their well tested by the County.

referral to the Department of Health Services from another agency, such as the DEC, the State Department of Health, the District Attorney's Office or the Police Department.

As for testing, water service companies and the Suffolk County Department of Health Services are able to test for approximately 300 different contaminants, including bacteria, metals, volatile or semi-volatile organic compounds, perchlorate and other emergent contaminants defined as hazardous and/or acutely hazardous substances. Although public water suppliers such as the Suffolk County Water Authority typically test the water routinely for contaminants, such testing is not mandated for private well water. If a resident or the County does not have reason to suspect contamination, the private well may never be tested. Further, even if contamination is discovered in public water, the contamination often cannot be traced back to the individuals responsible for the contamination.

Experts are required to identify the contaminant and the source of the contamination. For example, the Department of Health Services tests for an array of over 300 analytes, which includes volatile (VOC) and semi-volatile organic (SVOC) compounds, as well as PCBs. When contamination is suspected, an investigation begins. A critical part of the investigation is to ensure that there is no exposure to contaminated groundwater. Several wells are drilled at strategic locations relative to the known contaminated well. By sampling and testing at different depths at these locations, the Department of Health attempts to identify the location of the contamination in order to contain it.

Testing costs money, leaving the County's taxpayers footing the bill for contamination. Testing and isolation of contamination also requires training and expertise in environmental science, criminal investigations, and prosecution. Without funding for training and the development of expertise, the individuals responsible for environmental crimes will go

unidentified and un-apprehended, contamination to the environment will continue, and Suffolk residents will suffer. Thus, the Special Grand Jury finds that local and State governments must provide financial resources and training to educate those responsible for detecting environmental issues, identifying the perpetrators of environmental crimes, and prosecuting those offenders.

Effect on Legitimate Businesses

Along with the potential health risks involved, the Special Grand Jury also finds that illegal dumping has a detrimental effect on legitimate businesses in Suffolk County and throughout the State. The Special Grand Jury finds that legitimate participants in the C&D disposal industry are a vital and necessary part of an ever-advancing society as residential and commercial development occur and additions and improvements to infrastructure are made. To that end, there will always be business opportunities for legitimate financial gain for companies involved in demolition and construction and the removal, storage, processing and the ultimate disposal of the resulting debris. However, due to the costs associated with the proper disposal of this material, there is great potential for profit by illegally disposing of the material.

During the criminal investigation phase of the grand jury presentation, the Special Grand Jury received evidence that it typically costs \$58 per ton of C&D material to properly dispose of the material. Though it varies, each cubic yard of debris typically consists of approximately 1.35 tons of construction debris. In Operation Pay Dirt, for example, it was typical for individual trucks to transport approximately 30 to 40 cubic yards of debris, which would amount to an approximate cost of \$1,740 to \$2,320 per container. However, the Special Grand Jury investigation revealed that certain recycling facilities were paying trucking companies \$300 to \$700 per truck load of material when it was illegally disposed of at various locations, far lower than the cost per truckload of proper disposal. This cost does not factor in the transportation and

hauling fees that would be associated with proper removal. Based on these numbers, companies can save at least \$1,000 per truck load, or more than half of waste disposal expenses – an obvious financial motive to participate in illegal dumping activities.

Legitimate operations are negatively affected by those who illegally cut corners for profit. As the criminal behavior sets an industry standard for charging less, those operating legitimately will have to charge less and less to compete with these corporations. That leaves less profit for legitimate companies. As criminal actors get richer, legitimate businesses suffer and experience pressure to also cut corners and deviate from the law in order to maintain profitability.

CURRENT LAWS RELATING TO ILLEGAL DUMPING

A review of the current laws applicable to the evidence heard by the Special Grand Jury demonstrates that, as currently configured, the Penal Law is ill-equipped to sufficiently deal with a criminal scheme such as Operation Pay Dirt. For reasons discussed further in this report, the Special Grand Jury recommends the enactment of new Penal Law provisions that are better suited to protect the public from the harms of illegal dumping.

After hearing testimony and reviewing the exhibits accepted into evidence during the criminal investigation of Operation Pay Dirt, the Special Grand Jury returned two indictments, a 130-count indictment charging 30 individuals and 9 corporations and an additional 5-count indictment charging an additional corporation. Those charges included violations and offenses found in articles 145, 175, 115 and 105 of the Penal Law of the State of New York, as well as certain crimes provided for in Article 71 of the ECL of the State of New York.

The charges in the indictments included the following sections of the law, in relevant parts and in order from the highest level crime to the lowest level violation:

Penal Law Articles 145, 175, 115 and 105

- Criminal Mischief in the Second Degree, §145.10 – D Felony
- Attempted Criminal Mischief in the Second Degree, §110/145.10 – E Felony
- Falsifying Business Records in the First Degree, §175.10 – E Felony
- Criminal Mischief in the Fourth Degree, §145.00 – A Misdemeanor
- Conspiracy in the Fifth Degree, §105.05(1) – A Misdemeanor
- Facilitation in the Fourth Degree, §115.00(1) – A Misdemeanor
- Unlawful Posting of Advertisements, §145.30(1) – Violation

Environmental Conservation Law

- Endangering Public Health, Safety, or the Environment in the Third Degree, Article 71-2712(1) – E Felony
- Endangering Public Health, Safety, or the Environment in the Fourth Degree, Article 71-2711(3) – A Misdemeanor
- Operating a Solid Waste Management Facility, Article 71-2703(2)(c)(i) – B Misdemeanor
- Operating a Solid Waste Management Facility, Article 71-2703(2)(b)(i) – B Misdemeanor
- Transporting Solid Waste Without Authorization, Article 71-2703(2)(b)(i) – B Misdemeanor.

The conduct that the current criminal mischief statutes target relates to the damage to the property of another person. The degree of the offense is based on the mindset of the criminal actor, whether intentional or reckless. The different statutes are also distinguished by the value of the damage caused to the property. Criminal Mischief in the Fourth Degree, an A misdemeanor, holds a person accountable for intentionally damaging the property of another (with no monetary value required), or recklessly damaging the property of another in an amount exceeding \$250. Criminal Mischief in the Third Degree, an E felony, criminalizes the intentional damage of another's property in an amount exceeding \$250. Criminal Mischief in the Second Degree, a D felony, criminalizes the intentional damaging of another's property in an amount exceeding \$1,500. The highest level of the criminal mischief statute, the First Degree offense, a B felony, is not applicable to the Operation Pay Dirt scheme, as it deals with

intentional damage to another's property by means of an explosive. As currently configured, there is no C-level felony offense as it pertains to the damage of another person's property.

Other conduct in the Operation Pay Dirt scheme is addressed by various other provisions of the Penal Law. That additional conduct included: the falsification of records related to the hauling and disposing of solid waste, C&D, and hazardous and acutely hazardous substances; the organized conduct by different actors in the scheme; and conduct by those who facilitated the illegal activity.

In addition to the Penal Law, certain conduct is classified as criminal in the ECL. These statutes, under Article 71-2712(1), an E felony, and Article 71-2711(3), an A misdemeanor, make it a crime to endanger the public health, safety, or the environment. These crimes focus on reckless behavior, which causes the release of acutely hazardous or hazardous substances, respectively, into the environment.⁵

Other crimes from the ECL relevant to the Special Grand Jury's investigation included Operating a Solid Waste Management Facility, Article 71-2703(2)(c)(i), an A Misdemeanor; Operating a Solid Waste Management Facility, Article 71-2703(2)(b)(i), a B Misdemeanor; and Transporting Solid Waste Without Authorization, Article 71-2703(2)(b)(i), a B Misdemeanor. These crimes target conduct that results in the release of more than ten (10) cubic yards (a class B misdemeanor) and a release in excess of seventy (70) cubic yards (an A misdemeanor) of solid waste into the environment.

⁵ The ECL also contains a D felony (71-2713: Endangering the Public Health, Safety, or the Environment 2nd Degree) and a C felony (71-2714: Endangering the Public Health, Safety, or the Environment 1st Degree). The D felony criminalizes, among other conduct, the knowing release of a hazardous substance or reckless release of an acutely hazardous substance, which causes physical injury to another person; or the knowing release of acutely hazardous substances while knowing that those substances meet certain criteria. The D felony also makes it a crime to knowingly or recklessly cause a release of a hazardous substance that enters a primary water supply. The C felony criminalizes the intentional release of an acutely hazardous substance, which knowingly meets certain characteristics and which the actor is aware can create a risk of serious physical injury. The C felony also makes it a crime to knowingly release an acutely hazardous substance, which the actor knowingly meets certain criteria and which causes a physical injury.

Pursuant to Title 3 of Article 27 of the ECL, except for exemptions that do not apply to the Operation Pay Dirt scheme, no person shall engage in the transportation of regulated waste originating or terminating at a location in this state without a permit pursuant to this section. Further, pursuant to Title 7 of Article 27 of the ECL, except for exemptions that do not apply to the Operation Pay Dirt scheme, no person shall commence operation, including site preparation and construction, of a new solid waste management facility until such person has obtained a permit pursuant to this title. Under these provisions, certain defendants involved in Operation Pay Dirt were charged for conduct such as transporting solid waste without the appropriate permit or registrations. Also, based on the disposal of the solid waste at a property, certain defendants were charged with operating a solid waste management facility without a permit.

While these ECL charges are viable to address environmental crimes, and were used in the publicly-filed indictments issued by the Special Grand Jury, the laws present certain hurdles that make them imperfect tools to hold all participants in environmental crimes accountable and deter future criminal conduct. For example, with respect to the release of substances hazardous or acutely hazardous to the environment, there are often significant issues of proof related to knowledge of the actors, such as a hauler involved in the transportation of the material. Moreover, the focus of the statutes on the release of the material often allows those individuals in the scheme other than the truck driver who actually is dumping and releasing the material (generally at the direction of others) to claim ignorance as to the circumstances of the release, thereby shielding themselves from liability.

With respect to operating a solid waste management facility or transporting solid waste without a permit, those crimes are dependent on proof that a certain volume of material was unlawfully released. Moreover, the highest level of crime under these circumstances is an A

Misdemeanor for the release of more than 70 cubic yards of solid waste. That amount, 70 cubic yards, is the rough equivalent of two truckloads where each truck has a 35 cubic yard container of material. Many of the properties that were the subject of the Special Grand Jury's investigation saw multiple truckloads of material being disposed of and released on their property, totaling amounts far greater than 70 cubic yards.

Current Sentencing Provisions for the Charged Crimes in Operation Pay Dirt

The sentencing provisions for the crimes charged in the indictments are found in Penal Law Article 70. Specifically the following sections apply:

- §70.00, Sentence of imprisonment for felony
- §70.06, Sentence of imprisonment for second felony offender
- §70.15, Sentences of imprisonment for misdemeanors and violation.⁶

The highest level of crime charged in the indictments previously issued by the Special Grand Jury was a D Felony, Criminal Mischief in the Second Degree. Under this law, a first-time felony offender convicted of a D Felony faces a minimum indeterminate term of imprisonment of 1 to 3 years and a maximum term of imprisonment of 2 1/3 to 7 years, or a definite sentence of up to 1 year in local jail. However, jail is not mandated and is discretionary, and a first-time offender can receive a term of 3 to 5 years of probation, or in some instances a conditional discharge. A second felony offender faces a minimum indeterminate term of imprisonment of 2 to 4 years and a maximum term of imprisonment of 3 1/2 to 7 years. The second felony offender is not eligible for a definite sentence or a sentence of probation. Restitution is generally capped at \$15,000 for a felony. Penal Law § 60.27.

⁶ There are additional provisions in the Penal Law that allow penalties other than incarceration such as probation, conditional discharge, and fines. There are also provisions in the ECL for separate fines related to the crimes of Endangering the Public Health, Safety, and Environment, as well as Operating a Solid Waste Management Facility without a Permit and Transporting Solid Waste without a Permit.

For those crimes classified as misdemeanors, there is no mandatory imprisonment or jail. Individuals convicted of crimes classified as an A misdemeanor are eligible for a definite sentence of up to 1 year in local jail. Those individuals are also eligible for probationary sentences and conditional discharges, which require no jail. The same is true for those convicted of a class B misdemeanor, except that the possible jail time is limited to three months. Jail for violations is limited to up to 15 days. Restitution is generally capped at \$10,000 for those convicted of a misdemeanor. Penal Law § 60.27.

To summarize, based on the crimes that were the subject of the Special Grand Jury's investigation, the most severe penalty available for a first-time offender was a possible indeterminate term of 2 1/3 to 7 years of incarceration. However, that same first-time offender is also eligible for a non-incarceratory sentence.

THE CURRENT LAWS RELATING TO SAND MINING

The Special Grand Jury heard evidence relating to sand mining in the second phase of the grand jury presentation. Based upon that evidence, the Special Grand Jury finds that the Penal Law crimes defined above are most closely applicable to the unlawful mining of sand. Unfortunately, as with the illegal disposal of solid waste and other materials, there are no Penal Law statutes specifically addressing the unique perils of sand mining. Moreover, the criminal mischief statutes currently in existence will not deter illegal sand mining because that statute requires damage to the property of another person without permission or authority to cause that damage, and often the individual(s) or entity(ies) doing the mining is the actual owner of the property. In such cases, while the excavating and related work may damage the property and expose it to environmental contamination, that damage is done to the actor's own property and with the owner's permission in pursuit of profits; thus, it is not actionable as a criminal mischief.

As stated above, the DEC is the only regulator of legal sand mines and has been entrusted by the State Legislature as the sole regulatory agency for the sand mining industry. However, local municipalities may govern their land use, and the Suffolk County Department of Health Services is entrusted with maintaining the County's water resources to safeguard the health of residents. This permits localities and the County to inspect areas that are impacting water quality, which includes sand mines and other sites engaged in the extraction and removal of sand. For example, Article 7 of the Suffolk County Sanitation Code provides enforcement power to Department of Health Services employees, thereby allowing Department of Health Inspectors to gain access to legal sand mines and perform site inspections, as well as issue summonses or commence criminal charges when appropriate. The purpose of this law is to protect all the County's water resources, especially in deep recharge areas and water supply sensitive areas, by preventing and controlling discharges of sewage, industrial and other wastes, toxic or hazardous materials and storm water runoff, and also preventing further pollution. This law also codifies the powers of the Department's Commissioner, allowing for broad discretion in investigating any property, including ordering an independent groundwater investigation where evidence suggests that a discharge of toxic or hazardous materials may have occurred.

Under this provision, if the Commissioner finds a condition that has the potential for contaminating County waters with toxic or hazardous materials, or which otherwise constitutes an immediate danger to public health, and determines that it could appear prejudicial to the public interest to delay action, the Commissioner may serve an order upon the permit holder, or if there is no permit, upon the person in charge of the facility or site, citing such conditions and specifying the corrective action to be taken and a time period of less than 15 days. The order may also immediately suspend a permit or direct that operations at the facility/site be

discontinued. In this event, a hearing will be scheduled within 15 days of service of the Order, providing the accused an opportunity to be heard.

Along this same vein, New York State Assemblyman Fred Thiele, Jr., representing Assembly District 1, located on the South Fork of Suffolk County and a portion of the Town of Brookhaven, and New York State Senator Kenneth LaValle, representing Senate District 1, located in the five eastern Towns of Suffolk County and the eastern portion of the Town of Brookhaven, introduced legislation that specifically addressed concerns that legal sand mines present to the geographic area. Legislation they sponsored was enacted into law as Chapter 298 of the Laws of 2018, amending Environmental Conservation Law § 23-2703,⁷ authorizing local governments to enact or enforce local laws or ordinances requiring the monitoring of groundwater impacts resulting from mining, or the reclamation of mines, within a county with a population of one million or more that draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer – a description that includes Suffolk County. Specifically, this legislation allows for Suffolk County and its municipalities to enact new laws, and enforce existing laws, to ensure that sand mining and/or mining reclamation is not polluting the County's drinking water.

As discussed below, the Special Grand Jury is proposing a further amendment to Environmental Conservation Law §23-2703, adding language that would affirm the rights of the Suffolk County Department of Health Services, and its Commissioner of Health, to conduct investigations and pursue enforcement of laws intended to secure the safety of the County's drinking water. The Special Grand Jury also recommends expansion of Article 7 of the Suffolk County Sanitary Code to assist the Department of Health Services in combatting environmental crimes. By extending regulatory oversight in this manner, the Suffolk County Department of

⁷ This section of the ECL is the "Declaration of Policy" section of the law as it relates to the mining industry.

Health Services will be able to ensure that all mining activity, regardless of the existence of permits, does not endanger the safety of the County's drinking water.

**RECOMMENDATIONS FOR LEGISLATIVE AND ADMINISTRATIVE ACTION TO
COMBAT ENVIRONMENTAL CRIMES**

The Special Grand Jury recommends several legislative and administrative actions to more effectively deter and prevent environmental crime. The first recommendation of the Special Grand Jury relates to the Suffolk County District Attorney's Office and its commitment to investigating and prosecuting environmental crimes occurring in Suffolk County. Specifically, it finds that the formation and expansion of the District Attorney's Environmental Crime Team ("ECT") is a critical part of the effort to prevent, detect, and prosecute environmental crimes. The ECT currently consists of seven prosecutors, numerous Suffolk County Police detectives, including two detectives with highly specialized training, and agents from the DEC. The Special Grand Jury recommends that the District Attorney expand the number of detectives with specialized training, as well as include a member of the Suffolk County Department of Health Services to participate on the ECT.

Second, the Special Grand Jury finds that there is a lack of sufficient protocols documenting the collection, transportation, and disposal of solid waste, construction and demolition material, limited use fill, restricted use fill, and material containing hazardous or acutely hazardous substances. The grand jury investigation revealed that criminal actors either did not maintain proper documentation or created false documents. These false documents included business records, particularly dump tickets detailing the classification of material that was to be dumped and the location at which it was to be dumped. Often times, both of those entries were false or intentionally incomplete.

As such, the Special Grand Jury recommends requiring business entities to document the handling of solid waste and other material from the point of pickup to the point of final destination, often referred to as cradle to grave. Entities should be required, at a minimum, to certify the nature and volume of material, and where that material was received, transported and disposed of. It is further recommended that such requirement be in electronic form, including the use of geolocation technology to assure the accuracy of the certification relating to the movement of said material. Currently, paper records have not been effective in curbing solid waste related crimes, as it is all too common that a perpetrator makes the claim that he received the problematic material from a DEC permitted facility, and then the facility claims ignorance as to the material's final destination. An electronic record signed by an identifiable person, detailing the date and time of collection and the type and volume of material, coupled with the geolocation information regarding the movement of that material, will assist in combatting fraud in the industry. It is further recommended that it should be a crime to fail to maintain the proper electronic documentation related to the cradle to grave handling of solid waste and other material.

The Special Grand Jury has also heard evidence of mass dumping. When dealing with solid waste, volume presents a greater risk of contamination to the environment. Therefore, in line with the above described electronic filing requirements, an alert system should be created that notifies DEC of any site that receives greater than a threshold number of truckloads of material within a 30-day period. This would limit illegal disposal by allowing DEC to conduct responsive site inspections to ensure material is lawfully on site and that contaminants do not go undetected.

Third, while there are criminal provisions and penalties provided for in the ECL, some of which were included in the Operation Pay Dirt indictments, the Special Grand Jury concludes, consistent with the evidence that it has heard, that the greatest deterrent effect against environmental crimes will come only with enhanced enforcement and punishment available under the Penal Law. This conclusion is based on several factors. To begin, the ECL was developed primarily to support a regulatory scheme rather than criminal prosecutions, although there are sections that do criminalize conduct such as those that were charged in connection with the grand jury investigation. Moreover, certain provisions of the ECL may be dependent on DEC regulations that are ambiguously defined, posing challenges to law enforcement and courts that are considering criminal sanctions for violations of those laws. By clarifying legal standards and enabling more effective enforcement through the Penal Law, law enforcement agencies, district attorney's offices, and the judiciary will be able to protect the public more effectively, and prevent those who seek to circumvent the law or take advantage of loopholes.

The Special Grand Jury therefore finds that amendments to the Penal Law are necessary to adequately address the issues and conduct that were revealed during the grand jury investigation. Specifically, the Penal Law lacks laws criminalizing conduct that damages the public or the environment in general, rather than the specific property of another, as there are no laws specifically addressing damage to the aquifer, a public resource, nor are there laws targeting the illegal acceptance or disposal of and possession of solid waste, construction and demolition material, hazardous substances, and acutely hazardous substances, or the transportation of any of those substances. Likewise, there are no provisions of the Penal Law specifically targeting illegal sand mining.

The deficiencies in the law exist in terms of both the substance of the available crimes, as well as the level of severity of the applicable crimes. The recommendations that follow seek to address the gaps in the current Penal Law statutes as they relate to the enforcement of crimes against the environment, particularly crimes related to the illegal dumping of solid waste and sand mining. The recommendations seek to provide more severe consequences to deter bad actors in order to protect individual victims, the environment, and the County's most precious resource – our drinking water.

These changes are particularly important in light of the potential danger to the aquifer and groundwater. The Special Grand Jury finds the protection of the aquifer of ultimate importance and that action should be taken to specifically deter contamination of the aquifer and to enhance penalties for intentional or reckless damage to the aquifer

The first area for proposed legislation targets the illegal disposal of solid waste, construction and demolition material, hazardous substances, and acutely hazardous substances; the possession, transportation, and acceptance of said materials; the criminal scheme used to carry out the illegal disposal, possession, transportation, and acceptance of said materials; and the maintenance and falsification of records related to the disposal, possession, transportation, and acceptance of said materials. The recommendations further seek to provide enhanced protection to and punishment for exposing the aquifer to contaminants or for damage to the aquifer. A summary of the proposals is outlined below.

The Special Grand Jury recommends increasing the severity of crimes pertaining to illegal dumping based on the volume or weight of the material disposed of. The more material that is disposed of on a property, the greater the potential risk to public health and safety, the greater the damage to the property, and the greater the cost to remove the material. As it currently stands,

the top charge available to combat illegal dumping is a class D Felony, Criminal Mischief in the Second Degree. This only represents damage to the property of another in a value of greater than \$1,500. For example, where a property has damages in excess of \$1,000,000 due to the illegal disposal of material, the top criminal charge is still the class D Felony.

The Special Grand Jury also recommends enhancement to the penalties for illegal disposal based on the composition of the material. For example, materials containing substances defined as acutely hazardous substances would be penalized most severely, compared to material containing hazardous substances, and further as compared to solid waste or C&D material in which there were no hazardous or acutely hazardous substances. Currently, the Penal Law does not address the types of material encountered in Operation Pay Dirt; thus, the penalties are the same if the dumping consists of acutely hazardous substances or solid waste or C&D material without any additional indications of contamination. Enhancements based on the composition of the material will provide for levels of punishment consistent with its dangerousness to the environment. In essence, to deter the type of behavior revealed in Operation Pay Dirt, there should be increased penalties based on the potential harm to the environment. To leave the sentencing structure as is will only perpetuate this conduct, as ECL fines and corporate dispositions are built in to the price of doing business for many bad actors.

The Special Grand Jury also recommends that specific knowledge of the composition of the material not necessarily be required under certain circumstances for criminal liability to attach. In other words, the individuals or entities possessing, transporting, or disposing of the material should not be able to evade liability through deliberate ignorance. The Special Grand Jury recommends statutory modifications to allow a permissive inference that certain individuals or entities possessing a heightened duty of care are responsible for knowing the contents of the

material in their possession and control. The Special Grand jury further recommends that where such individuals or entities unlawfully release acutely hazardous or hazardous substances into the environment, they are charged with knowledge, thus obviating the need for prosecutors to prove actual knowledge. The Special Grand Jury also recommends that the law allow an inference of knowledge when an individual is in possession of an aggregate weight of 10 or more cubic yards or 20,000 pounds of material containing an acutely hazardous or hazardous substance without the proper, legally-mandated tracking e-documents discussed above. Under such conditions, the possession of that material without the proper tracking e-documents would be presumptive evidence that said substance is knowingly possessed by the individual in whose possession the material is found.

The Special Grand Jury further recommends legislative enhancements that focus on deterring and punishing deceit and fraudulent conduct of dirt brokers, and those working with brokers, related to the disposal of solid waste, construction and demolition material, hazardous substances, and acutely hazardous substances. Such enhancements should target the organized activity of criminal actors who seek to take advantage of unwitting victims and seek to dispose of contaminated material or solid waste and construction and demolition materials on the properties of these victims, under the guise that the material is purported to be safe and clean. Based on the serious threat posed to the environment, the Special Grand Jury recommends that criminal schemes relating to illegal dumping implemented through fraud and deceitful tactics should be more seriously punished. Currently, in the Penal Law, and as charged in the indictments, the conspiracy to commit the crime of Criminal Mischief in the Second Degree is only classified as a class A misdemeanor, under Conspiracy in the Fifth Degree, P.L. 105.05(1). The organized

criminal conduct uncovered in Operation Pay Dirt should be penalized at a higher level, minimally as a felony.

Finally, the Special Grand Jury recommends that the Penal Law provide for enhanced penalties when the illegal dumping scheme caused harm to the aquifer. As stated above, the Special Grand Jury finds that it is imperative to take steps to protect the County's most precious resource – our drinking water.

Illegal Sand Mining and Related Offenses

The second group of proposed legislative and administrative actions targets the illegal mining of sand, as well as the incidental disposal into mined areas of solid waste, liquid waste, vegetative waste, construction and demolition material, hazardous substances and acutely hazardous substances. These recommendations, like those outlined above, seek to provide enhanced protection of the environment and, in particular, the aquifer.

First, the Special Grand Jury finds that, similar to illegal dumping, the law falls short in deterring illegal sand mining and related offenses. ECL § 23-2711 defines the level of mining activity requiring a permit as the removal or attempted removal of “1,000 tons or 750 cubic yards of minerals from the earth within 12 successive calendar months.” The proposed recommendations here target the situations in which sand is illegally extracted and removed from residential, commercial, industrial, or farm land. The following proposed legislation can be limited to Region 1 (Nassau and Suffolk Counties) per DEC's Declaration of Policy § 23-2703, which acknowledges the sole source aquifer of the region.

Important to the issue of sand mining is the prevention of the extraction and removal of sand under the guise of some other authorized activity, such as construction or farming. Sand mining in any form should only be authorized upon issuance of a valid permit by DEC with the

consent of the locality. When it is done without permits or the permission of the municipalities, there should be criminal consequences. The Special Grand Jury recommends the creation of a presumption that an individual is engaging in the illegal mining of sand when that individual is operating without a DEC permit or registration and that individual or corporate entity removes any material from residential, commercial, industrial, or farm land for the purposes of extracting sand. The severity of the crime, like in the case of illegal dumping, should depend on the amount of damage to the property, as well as the harm to the aquifer.

Second, as indicated previously, a particular concern regarding the regulation of unpermitted sand mining is that often the conduct occurs under the pretext of other legitimate business, rather than as a permitted mining use. Permits are obtained for certain conduct other than mining, but for the actual purpose to conduct a sand mining operation. The Legislature should criminalize conduct whereby an individual presents a written instrument to a governmental agency for a permit for agricultural or building purposes, but where the intent is to use the property for another purpose not authorized by the permit.

Third, the Special Grand Jury recommends laws specifically targeting the illegal disposal of certain materials into land that has been mined. As described, there are particular perils associated with the mining of sand, namely – as it relates to illegal disposal – mining can decrease the depth to water, or even worse can directly expose the aquifer. When material is disposed of in a location that is mined, the potential threat of contamination to the ground water increases. The severity of these crimes should also depend on the volume and composition of the material that is actually disposed of in the mined area, and whether the material contaminated the ground water.

Fourth, in light of the fact that sand is an extremely valuable commodity, the Special Grand Jury recommends adoption of legislation providing for increased penalties concerning the theft of sand, *i.e.*, the illegal mining of sand from the property of another. This may occur when a mining operation extends onto an adjacent property without the consent of that property owner.

Fifth, as it relates to all of the aforementioned legislative amendments, the Special Grand Jury recommends, as an additional aggravating factor, enhanced penalties for any individual who has a prior conviction under any of these crimes to deter repeat offenders.

Sixth, the Special Grand Jury recommends the passage of A.7558/S.5652 recently proposed by Assemblyman Thiele and Senator LaValle, which would prohibit the issuance of sand mining permits by the DEC where contamination to groundwater or drinking water on site or attributable to the site exceeds state or federal drinking water or groundwater standards. This law, if passed, would apply only in counties with a population of one million or more which draw the primary source of drinking water from a designated sole source aquifer. This legislation was reported to the Assembly Rules Committee on June 11, 2019. The Special Grand Jury finds that the proposed legislation is essential to the benefit of Suffolk County, as mining would no longer be permitted in areas where groundwater contamination already exists or is attributable to the mining site.

Seventh, the Special Grand Jury recognizes the unique harm caused by illegal or irresponsible sand mining to Suffolk County and finds that increased local regulatory enforcement, in conjunction with the DEC, may be necessary. Under current law, the SCDHS has authority to conduct investigations and pursue enforcement, thereby permitting the SCDHS to pursue bad actors where necessary. Moreover, as noted above, to further ensure collaboration with law enforcement, the Special Grand Jury recommends the expansion of the Suffolk County

District Attorney's Environmental Crime Team to include a representative from the SCDHS to concentrate on, among other public safety threats, harm caused by illegal dumping and sand mining and, in particular, to the aquifer. The Special Grand Jury also recommends that the local legislature designate the SCDHS as a mandated reporter, requiring it to report environmental crimes to law enforcement, which will enable law enforcement to conduct timely and thorough investigations. Specifically, the SCDHS should be required to report any and all potential criminal violations, as well as analytical results that bear on public health and safety, to the Office of the Suffolk County District Attorney, Suffolk County Police Department and the DEC.

Eighth, the Special Grand Jury recommends further amending the ECL to specifically require that the DEC shall not issue a permit for sand mining in areas that could affect public health without the approval of the public health authority of the locality where the site is located – in the case of Suffolk County, the SCDHS.⁸ This could be accomplished through a consistency review process. In order for DEC to issue a permit or renew or modify a pre-existing permit, the DEC would be required to first obtain approval from the SCDHS. SCDHS would review a referral from the DEC and render a determination as to whether the requested permit is consistent with the best interests of water quality protection and public health. SCDHS would then issue a consistency review certificate prior to the approval of any new mine, mine modification, or mine expansion. The SCDHS would conduct its review under provisions set forth in the Suffolk County Sanitary Code and the latest duly adopted Comprehensive Water Resources Plan.⁹

⁸ This provision would be limited to counties with a population of one million or more which draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer.

⁹ This oversight should be in addition to any necessary local approvals from the town or village governments where the site is located.

Finally, Suffolk County should consider enacting code amendments prohibiting individuals from removing excessive material from any site absent a permit to do so. This new law could apply to sites used for residential, commercial, industrial, or agricultural purposes. By doing so, the County can limit zoning abuses wherein individuals purchase plots of land under the guise of construction or development, when the true intent is to mine sand without a DEC permit. Site inspections coupled with summonses and criminal charges will act as a major deterrent and limit opportunities for offenders to commit fraud against local municipalities.

REMEDICATION AND VICTIM COMPENSATION

Much of this report has focused on the harm caused by illegal dumping and sand mining to the environment and the general public. The Special Grand Jury, however, also heard evidence about dumping that occurred at several properties located across Suffolk County and Nassau County. The Special Grand Jury heard directly from some of the property owners whose properties were used as illegal dumping grounds after being deceived by dirt brokers into accepting diluted C&D material. Some of these victims were left with multiple piles of contaminated material on their properties, while others had already begun to grade and incorporate contaminated material into their properties.

They requested this material, which was promised to be “clean fill” by the dirt broker, to assist in completion of home improvement projects. The victims of the scheme sought to add value to their properties. Instead, they were left with incomplete work, contaminated material, and the prospect of exorbitant costs to remediate their properties of this material.

There are several costs related to the remediation of a property. These costs include, but are not limited to: heavy machinery to excavate a property; carting bins to place material in for

removal; labor costs; and tipping and hauling fees for the trucks to transport and dispose of the material at an appropriate facility. Based on the evidence, the Special Grand Jury finds that these remediation costs can reach tens of thousands of dollars. One property owner had an estimate for remediation of between \$20,000 to \$25,000. Other property owners shared estimates that they received, including: over \$6,000; up to \$10,000; and up to \$4,000 just for the dumpsters themselves.

Victims such as the ones who testified in the grand jury are often left without anywhere to turn to for assistance in both the work to remove and remediate the property, as well as financial assistance to assist in offsetting out of pocket costs for the removal and remediation of the property.

Victim Compensation

The Special Grand Jury received into evidence Article 22, § 631 of the Executive Law. This law relates to the Office of Victim Services and provides for certain monetary awards for victims of certain crimes. The law sets forth certain requirements to qualify for this monetary award, including a finding that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities (no more than one week after the occurrence of such crime unless the office, for good cause shown, finds the delay to have been justified). This provision does not readily apply to the victims of environmental or property crimes such as the ones described herein.

One of the witnesses who testified before the Special Grand Jury described potential aid to victims. This witness is a Victims' Advocate employed by the Suffolk County District

Attorney's Office. The Victims' Advocate works with victims of crimes to assist them in addressing the harm caused by their offenders, whether financial, physical or psychological in nature, and relies upon the Executive Law to assist victims with financial compensation when available. Assistance to victims of environmental crime is limited under Article 22, § 631 of the Executive Law. The Victims' Advocate explained that in conjunction with the Office of Victim Services (OVS), a state-wide agency established to help victims of crimes, which also relies upon the Executive Law, OVS resources can provide compensation to victims for personal injury, property loss, or death. For example, OVS provides financial compensation for medical bills, funeral costs, therapy, counseling, cost for transportation to and from court, moving costs, "essential personal property" and "crime scene clean-up."

"Essential personal property" consists of items that a person needs for their health, safety or welfare, such as eye glasses and any medical devices. Not all property is covered as "essential personal property," and the property must be associated with a physical injury case. There are exceptions, but which are not applicable to cases such as Operation Pay Dirt. The Victims' Advocate explained that "crime scene clean-up" is generally limited to homicide or personal injury cases.

Where there has been damage to property consisting of real estate, as was the case in Operation Pay Dirt, OVS is viewed under the law as a payer of last resort. The victim advocate must first refer the victim to call his or her homeowner's insurance to determine whether the damage is covered by the policy. A victim can also seek compensation through the criminal justice system, which is often in the form of a judge's order for restitution to remediate the damage to the property. Those amounts, however, are severely limited by statute.

The Special Grand Jury also heard evidence relating to the Asset Forfeiture laws, and how the District Attorney's Office was able to utilize those laws, in their current state, to assist the victims of environmental crimes. A witness who has served as the Chief of the Asset Forfeiture Unit for the Manhattan District Attorney's Office testified that she has handled civil litigation pursuant to the asset forfeiture laws for the past 20 years. The laws of which she spoke are found within the New York State Civil Practice Law and Rules (CPLR), Article 13.

This witness testified about restitution and reparations, as defined in the Penal Law. Penal Law § 60.27 authorizes "restitution of the fruits of [defendant's] offense or reparation for the actual out-of-pocket loss caused thereby." Restitution orders are generally limited to \$15,000 for felony convictions, or \$10,000 for a misdemeanor conviction, with certain exceptions. The statutes of New York generally provide that the collection and distribution of restitution or reparations are made by other state agencies, not a district attorney's office, because generally the district attorney's office carries out the prosecution of criminal actors – not the collection of restitution for victims. Restitution can be ordered by the Court, but in cases where the defendant claims lack of assets, the victim may or may not be able to enforce the judgment. That is why the current civil asset forfeiture laws are so critical – they enable a district attorney's office to trace and forfeit the criminal actors' illicit financial gains and to then use those monies to compensate crime victims.

The witness testified that asset forfeiture laws, codified in CPLR Article 13-A and effective August 1, 1984, authorize prosecutors to seize and forfeit proceeds, substituted proceeds and instrumentalities of crime; or in the alternative obtain a judgment in the amount equivalent in value to those assets (a "money judgment"). The law seeks to return the defendant to the place he was before committing his criminal activity, and also seeks to return victims to

the place they were prior to being victimized. An example of “proceeds” can be money received for illegally transporting hazardous substances. An example of “substituted proceeds” may be a truck that was paid for with the illegally obtained money. An example of an “instrumentality” of a crime may be a truck used to commit an offense such as illegal dumping. Money seized by a prosecutor’s office and forfeited by a defendant as a result of a civil asset forfeiture action may be used by a prosecutor’s office to restore stolen funds to victims of crime. Additionally, a portion of asset forfeiture monies are provided to fund the State’s substance abuse treatment (*i.e.*, “OASAS”) and other critical public safety services and initiatives.

The Special Grand Jury heard evidence concerning certain provisions found within that law, all of which may be used by prosecutors’ offices to compensate victims of environmental crimes. For example, CPLR 1311(1) and CPLR 1312(1) and (2), collectively, allow a prosecutor to obtain a restraining/seizure order (“Order of Attachment”) and maintain the status quo of property owned by a criminal defendant up to the amount of the proven criminal gain, regardless of whether the property was used in, or obtained from, the crime. This aspect of the law is essential to its utility. The witness explained that by the time a prosecutor is ready to file an indictment and related civil forfeiture action, the targets have usually spent or hidden most of their ill-gotten gains. Moreover, in some crimes, by definition there are no proceeds to seize – those proceeds consist of the money saved through law-breaking. This may be particularly true in environmental crime cases such as the ones investigated by the Special Grand Jury, where environmental laws impose compliance costs that can be avoided through law-breaking.

The Special Grand Jury also heard about CPLR 1312(4), the provision allowing a defendant to ask the judge who ordered the assets frozen to be released for attorney expenses or to pay living expenses. Currently the judge has the discretion to consider the source of the funds

in deciding motions under this section of the law. This helps to ensure that defendants do not profit from their criminal activities by using their ill-gotten gains to fund their legal defense or lifestyle.

Finally, the Special Grand Jury heard testimony concerning CPLR 1311(1)(a), a provision in the law that is particularly germane to this case, a case involving multiple victims and multiple criminal acts committed by the same actor in a common scheme or plan. CPLR 1311(a) permits the prosecutor's office to sue the defendant for an amount of money that represents the defendant's "criminal activity arising from a common scheme or plan of which [the felony] conviction is a part." Thus the prosecutor can forfeit proceeds of a felony and of all additional crimes – even misdemeanors – that are part of the same common plan and scheme. This provision in the forfeiture law gives the prosecutor the opportunity to prove in the civil forfeiture case that the defendant obtained proceeds through an ongoing scheme, thereby allowing the District Attorney's Office to recover all of the ill-gotten gains for additional victims and harms.

The Special Grand Jury heard testimony regarding how this provision of the law has been used by the Suffolk County District Attorney's Office to seize and place in escrow funds obtained pursuant to a large-scale environmental crime scheme, and that those funds then can be repurposed to provide resources for remediation of the damages caused by environmental crimes. Once the money from the escrow fund is used to compensate all the victims represented within the indictment, any remaining money will seek to be used to cover the cost of remediation for financial harm to other properties definitely linked to the defendants' actions, but that were not specifically charged in an individual count of the indictment.

The Special Grand Jury further learned that all of the CPLR provisions explained to the Grand Jury, and used by the Suffolk County District Attorney's Office, have been changed by the New York State Legislature, signed into law effective October 1, 2019. First, CPLR 1311(1) and CPLR 1312(1) and (2) delete the "money judgment" provisions. Under the new law, a prosecutor may only sue to recover, and only obtain a pre-trial restraining/seizure order, for property directly obtained from or used to commit crimes. Therefore, each and every dollar sought to be forfeited by a criminal must be specifically traced from the source to the defendants' possession. Untraceable property can only be seized *after* a judgment has been obtained and only *after* a prosecutor proves that he/she is unable to locate property traceable to the crime. Thus, if the prosecutor cannot prove that the asset is directly derived from the criminal activity (*i.e.*, the money was the actual payment made to dump a truckload of hazardous substances, or that the truck was the specific truck used to transport the hazardous substance), the prosecutor may not seize and forfeit the asset. By the time this extensive "tracing" is accomplished, the defendant will have ample time to deplete or sell his assets. By the time of trial, when the prosecutor can prove the assets are proceeds, substituted proceeds, or instrumentalities of the crime, the defendant will have sold, spent, transferred, laundered, or depleted his assets. The victim will be left with nothing but a piece of paper for the money judgment, and any ultimate money judgment will be unenforceable.

The State's restitution compliance track record is a stark example of how this proposal would hurt victims. Restitution orders filed as civil judgments are rarely collected and the tools available to prosecutors to assist them are weak. The victims remain victimized. If a prosecutor is not able to restrain such property until after a criminal conviction and civil judgment are obtained, in most cases no property will be available to satisfy that judgment.

The Special Grand Jury also learned about the change to CPLR 1312(4), which deals with applications to the court for a release of funds. The new legislation adds the following language: "That funds sought to be released are alleged to be proceeds, substituted proceeds or instrumentalities shall not be a factor for the court in considering and determining a motion under this provision." Under this proposal, when considering a defendant's motion to release frozen funds to pay attorneys' fees and living expenses, a court is precluded from considering whether the funds are stolen or illegally obtained. Thus, a defendant may steal money and use it to pay his legal bills and living expenses. This amendment eliminates a court's discretion in determining an application by the criminal defendant for living expenses and/or attorney fees. Beginning October 1, 2019, the court will be required to turn a blind eye to the source of restrained funds or property when considering a motion by a defendant for release of restrained funds for attorney's fees or living expenses. The Special Grand Jury finds that this amendment will increase the likelihood that defendants will request the court to release funds since the court lacks discretion to consider the illegal source of those monies.

Finally, an amendment made to CPLR 1311(1)(a) deletes the "Common Scheme or Plan Provision" from the current law. This amendment deletes the provision that permitted a civil suit and forfeiture of all property linked to criminal activity arising from the same common scheme or plan for which the defendant is convicted. The proposal removes the prosecutor's authority to forfeit property from "criminal activity arising from a common scheme or plan of which [the felony] conviction is a part."

Starting October 1, 2019, a prosecutor will *no longer* be able to sue for proceeds of a crime obtained outside the time period alleged in an indictment, or on behalf of victims whose losses are not covered by the indictment – even if they were part of the defendant's same

criminal acts and scheme. Defendants involved in criminal enterprises harming multiple victims will only be responsible for forfeiture on the charges indicted and tried, and only if the criminal assets can be specifically traced. The Special Grand Jury finds that this revision would affect forfeiture in the instant case, since many of the defendants' actions occurred outside Suffolk County, and affected unidentified victims. Forfeiture is currently available since these harms resulted from the defendants' common scheme or plan. The new laws, however, will eliminate prosecutors' ability to recover forfeiture of the full amount of a defendant's ill-gotten gains from similar schemes in the future.

RECOMMENDATIONS TO ENHANCE REMEDIATION AND VICTIM COMPENSATION

Based on the credible evidence, the Special Grand Jury recommends the following changes to the laws to permit for remediation for environmental crimes and compensation to the victims of environmental crimes:

First, the Special Grand Jury recommends that Article 22, § 631 of the Executive Law be amended to clearly and unambiguously apply to victims of environmental crimes if it can be established that the crime directly caused damage to the personal property of another as the result of an environmental crime.

Second, the Special Grand Jury recommends that the recent amendments to the asset forfeiture laws, as described above and found in CPLR 1311(1), 1312(2), 1312(4) and 1311(1)(1a) be repealed, and that the amendments not go into effect on October 1, 2019, so as to permit victims of environmental crimes, such as those described herein, an opportunity to be made whole.

RECOMMENDATIONS FOR DEDICATION OF RESOURCES

The Special Grand Jury recognizes the volume of resources that were involved in the investigation, including resources of the Suffolk County District Attorney's Office, the Suffolk County Police Department, and the DEC. These resources included hundreds of human hours dedicated to this investigation, including time spent on, but not limited to the following: physical surveillance, execution of eavesdropping warrants, review of records, execution of search warrants, meeting with victims, drafting legal documents, and various other investigation specific tasks.

The Special Grand Jury commends the inter-agency cooperation in their efforts to combat this activity that creates harm to both innocent victims and the environment. Recognizing the importance of the protection of the environment, the specialization required by law enforcement, and the resources needed to investigate and prosecute these crimes, the Special Grand Jury makes the following recommendations:

The Special Grand Jury recommends that local police departments incorporate training on environmental crimes to all police officers. This training should include instruction on how to recognize signs of a potential environmental hazard or crime. It should also include training on how to properly respond to the discovery of an environmental crime.

The Special Grand Jury recommends that local police departments have dedicated officers and detectives assigned to receive environmental complaints and investigate environmental crimes. They will work with assistant district attorneys who are specially trained in prosecuting environmental crimes. Together they will conduct environmental investigations, and manage the collection of evidence from crime scenes, which includes the necessary sampling and preservation of environmental evidence.

The Special Grand Jury also recommends more dedicated resources at all levels of government, local and state, to combat environmental crimes.

GRAND JURY CONCLUSIONS

The Special Grand Jury heard testimony and reviewed evidence over the course of the past year. That evidence highlighted the importance of protecting the environment of Suffolk County from illegal dumping and sand mining, particularly in light of the fact that Suffolk County sits atop an aquifer, which is the sole source of drinking water for residents of Suffolk County. Through the evidence that was presented during the course of the Special Grand Jury's investigation of illegal dumping of solid waste, construction and demolition material, and hazardous and acutely hazardous substances, it is clear that the current criminal consequences provided for in the ECL and the Penal Law are insufficient to deter the conduct investigated here.

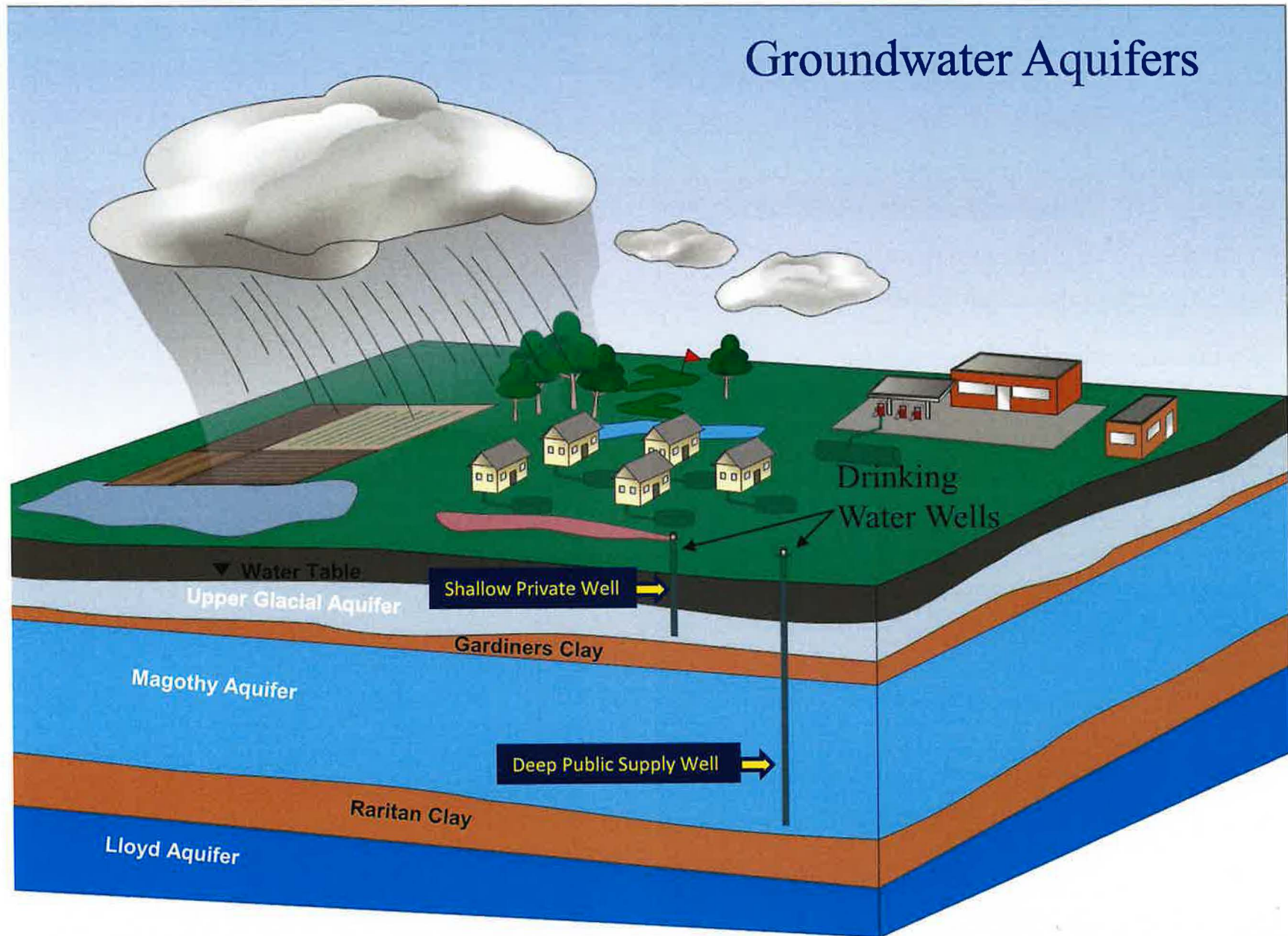
As a result, the Special Grand Jury finds that the recommendations made through this report will address the gaps in the current Penal Law – providing clarity to law enforcement as well as clarity to the industries involved, thereby acting as a deterrent to individuals that might be motivated by greed to try to take advantage of innocent victims, damaging their properties and causing harm to the environment. The recommendations also include additional regulations to deter environmental crimes in the future, such as electronic tracking of the handling of solid waste and hazardous and acutely hazardous materials. Finally, the recommendations will allow victims of environmental crimes to have options available to assist in offsetting the costs of remediation, so that they are not re-victimized as they try to return their property back to normal.

The Special Grand Jury urges the New York State and the Suffolk County Legislatures to review and approve these recommendations to help further protect the people of the State of New York, including the residents of Suffolk County, from the dangers of unlawful dumping and sand mining.

Appendix A

Exhibit R-1

Suffolk County's Water Supply

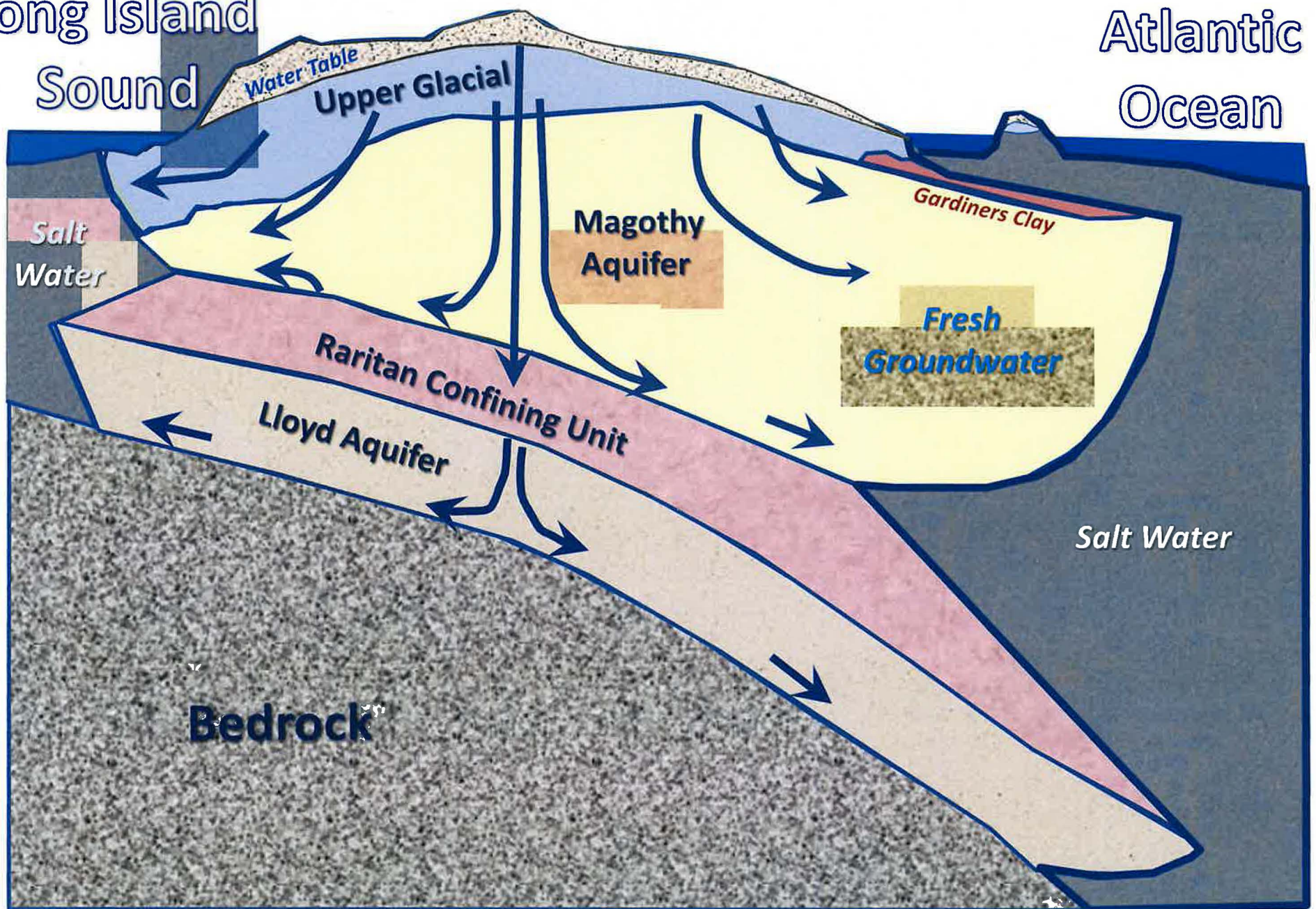


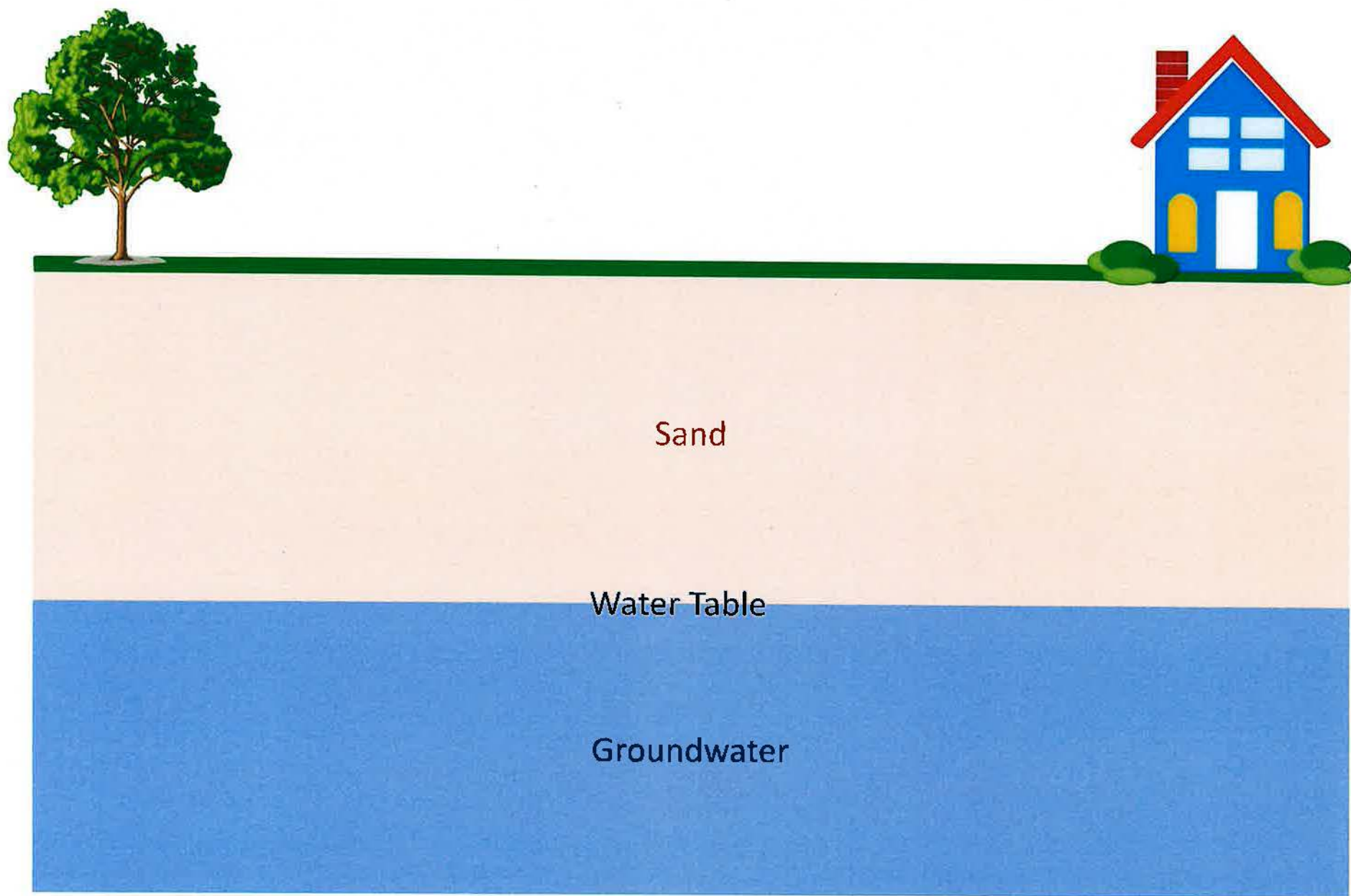


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, AeroGRID, IGN, and the GIS User Community

Long Island
Sound

Atlantic
Ocean







Depth to Water

Sand

Water Table

Groundwater

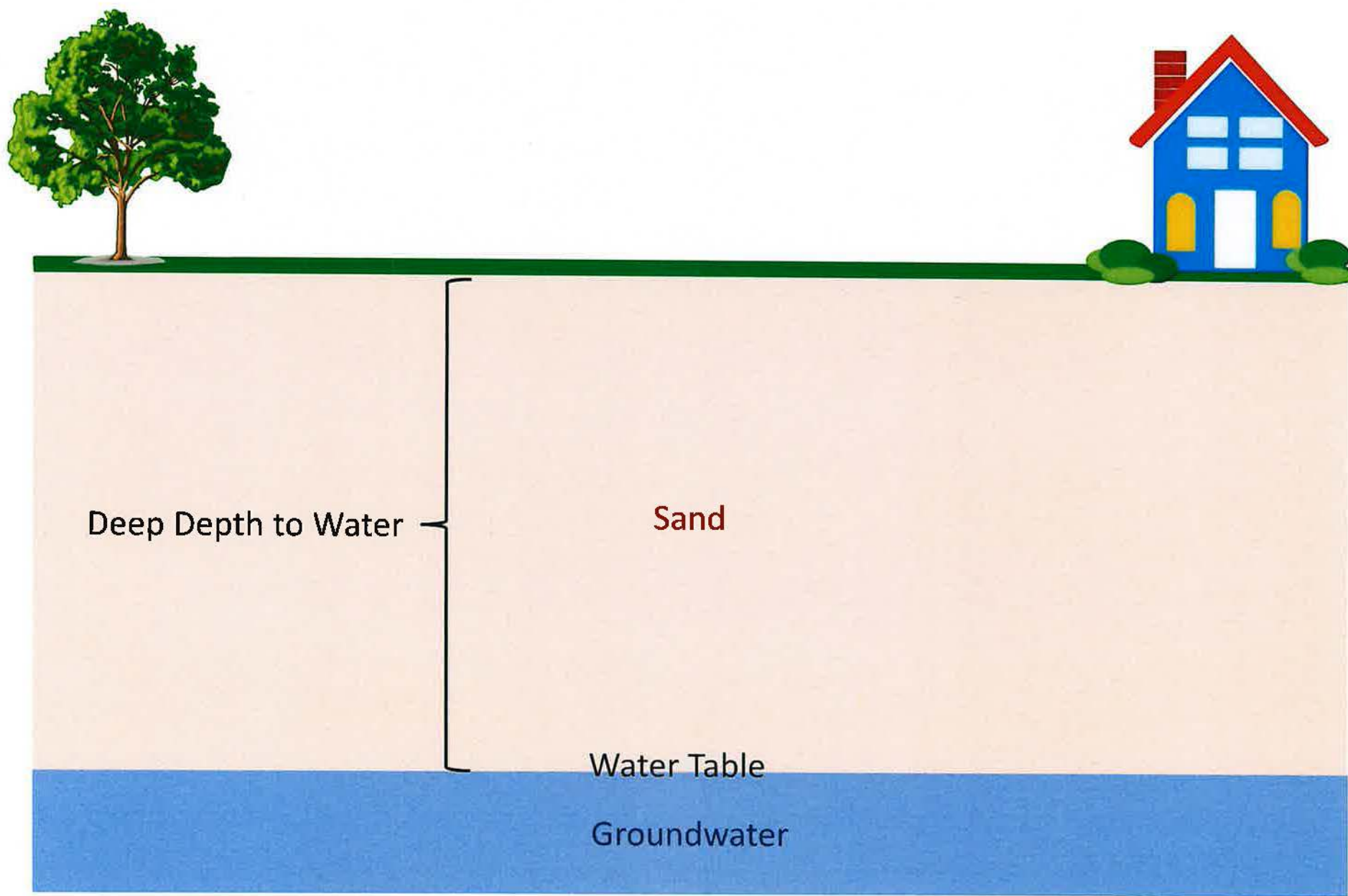


Shallow Depth to Water —

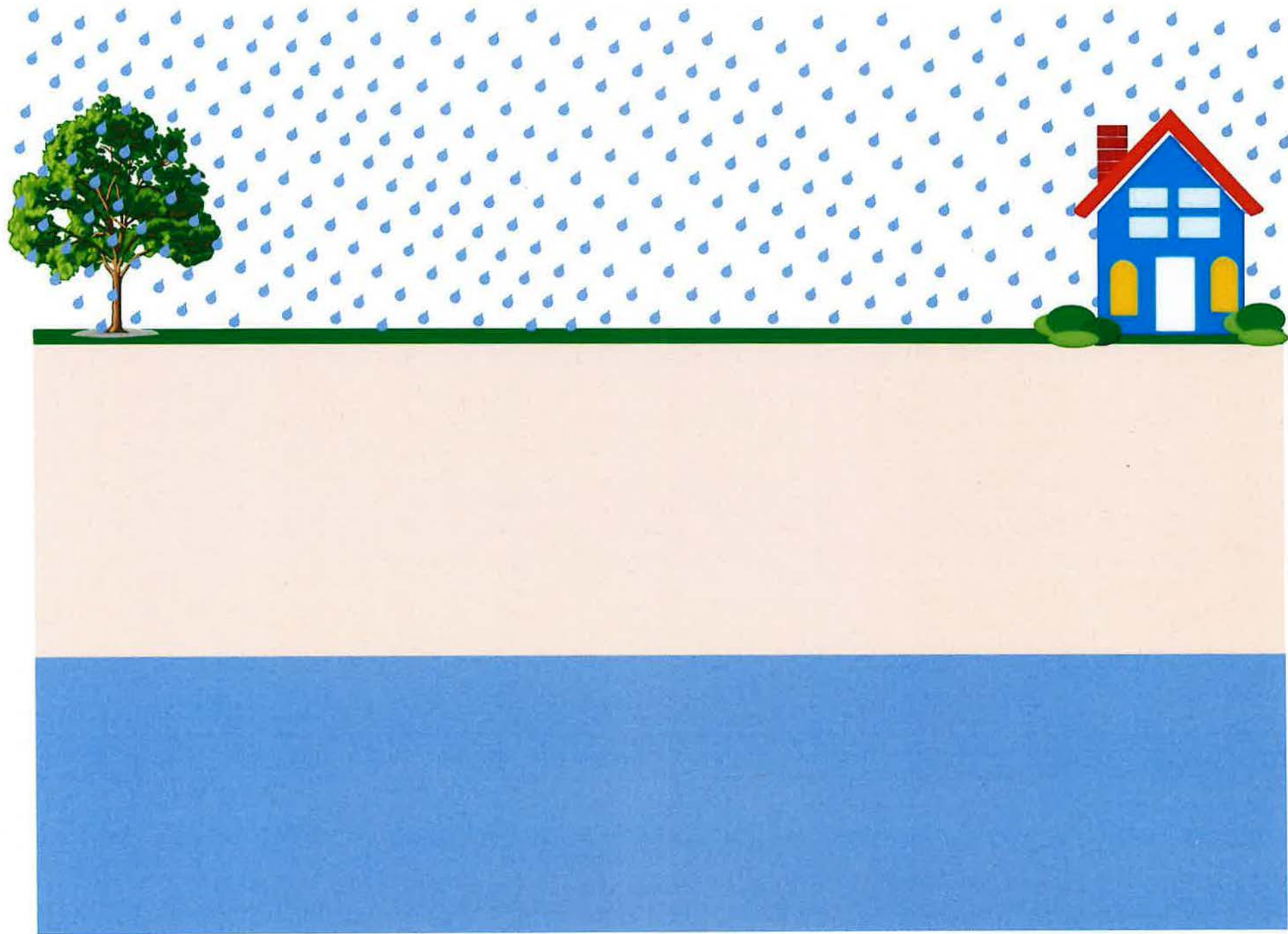
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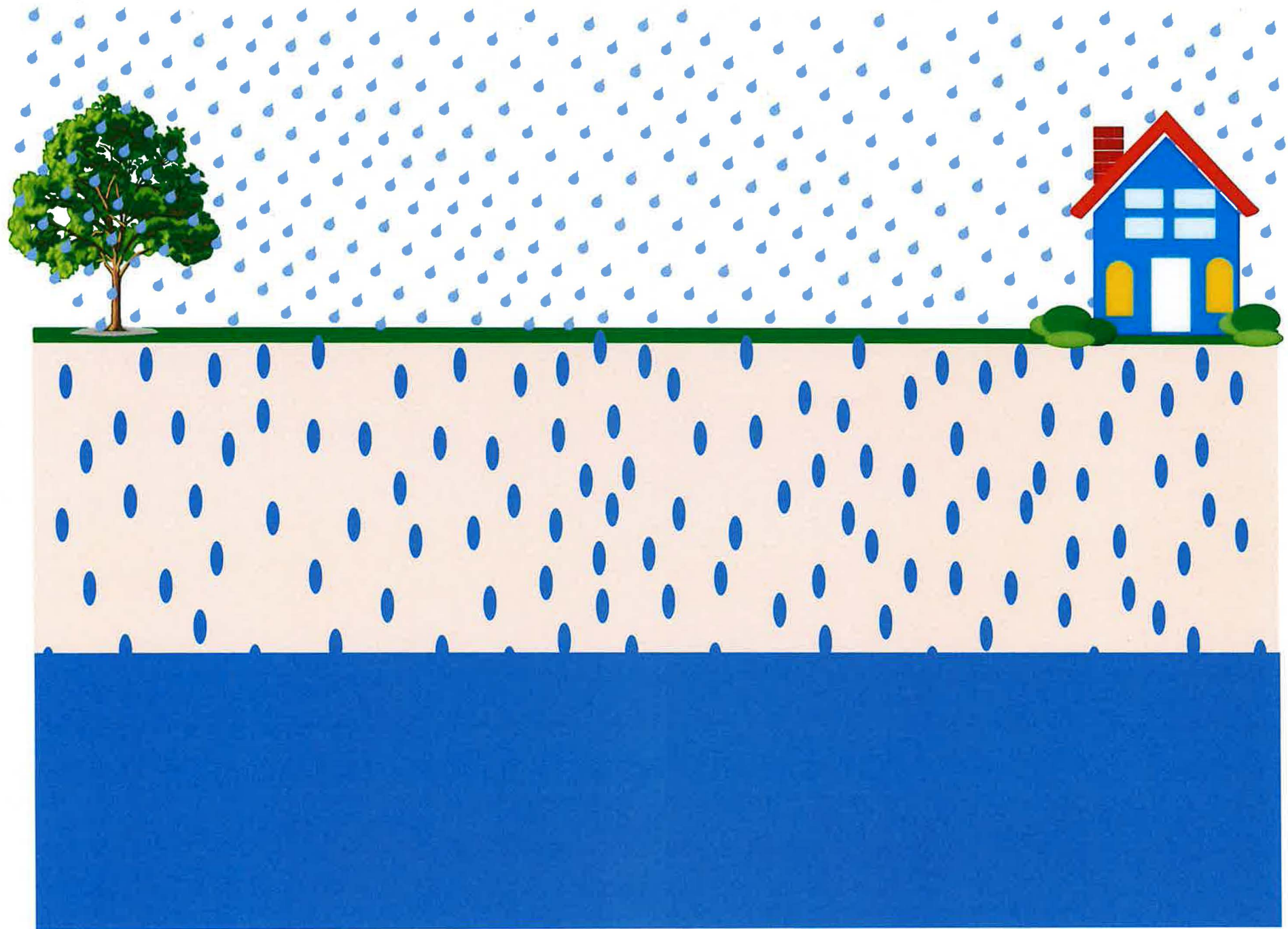
Sand

Groundwater

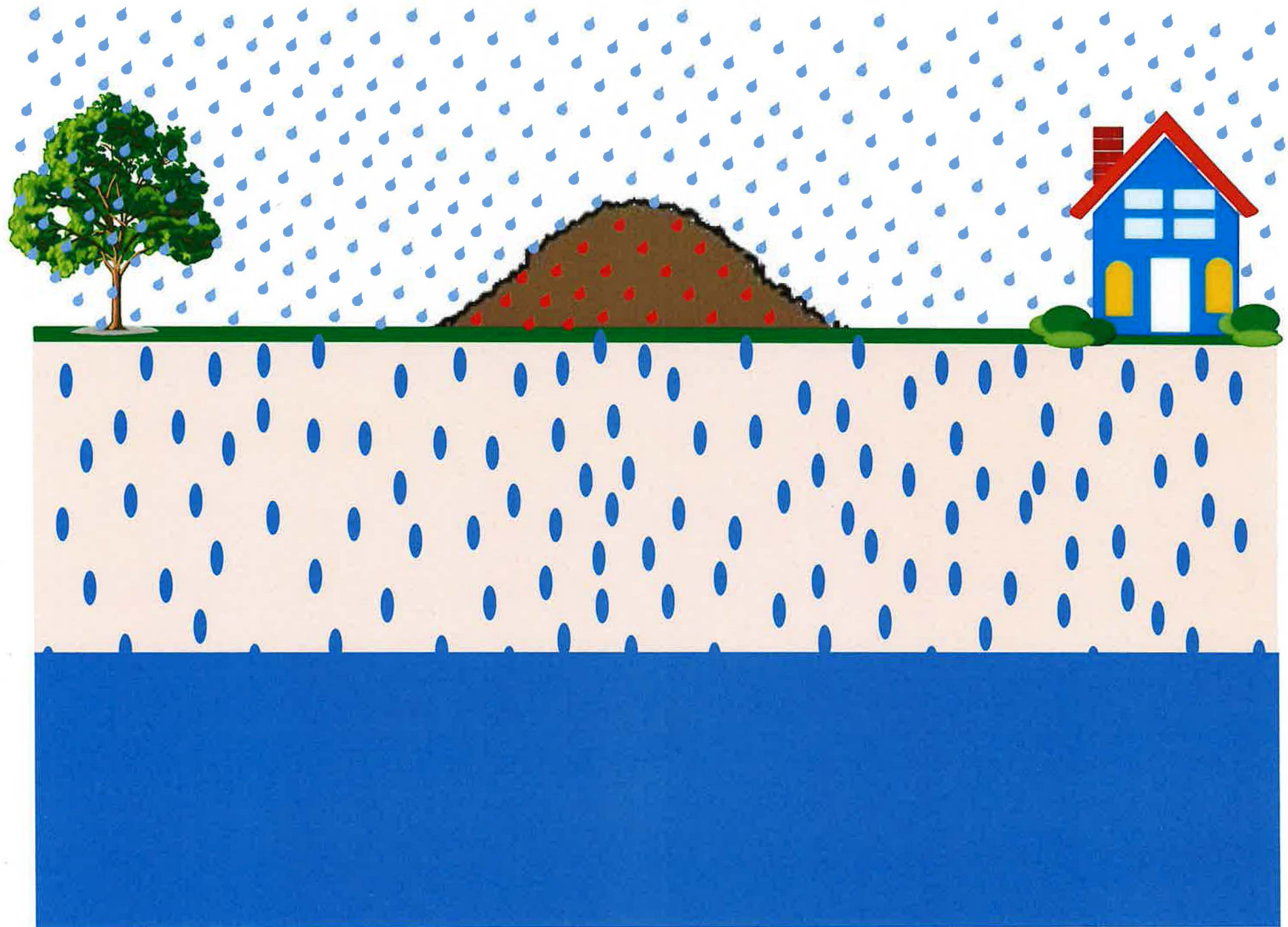


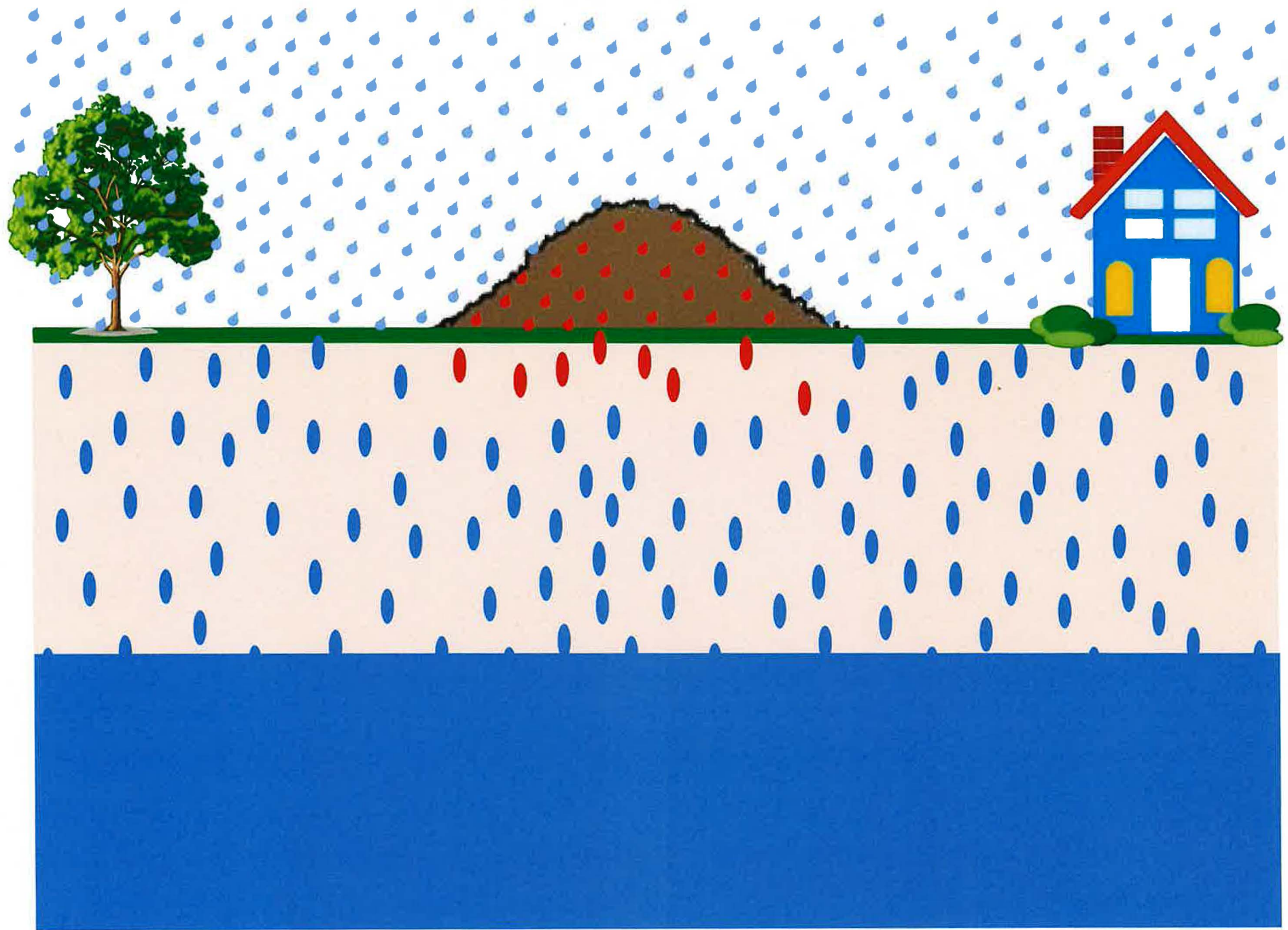


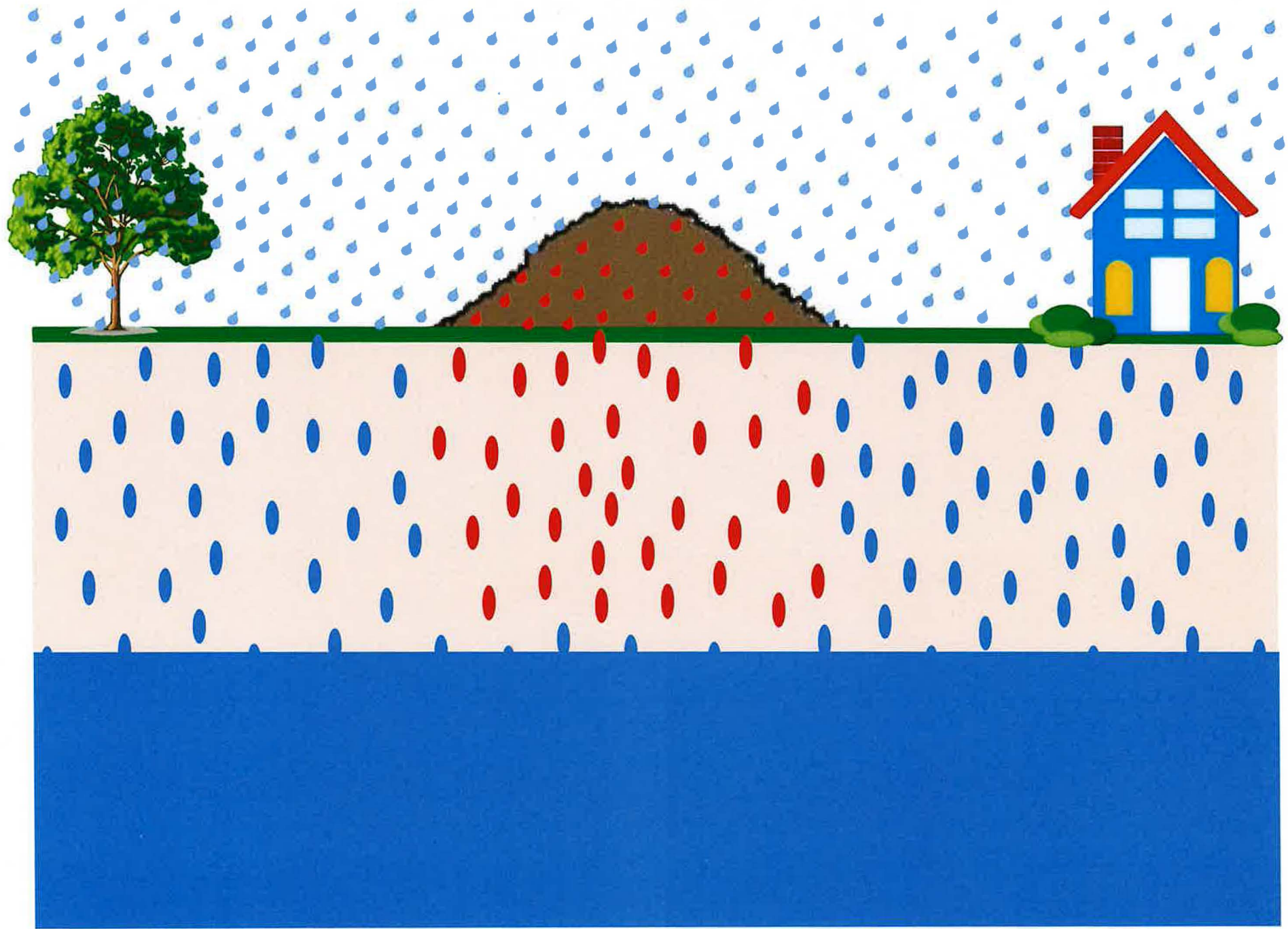






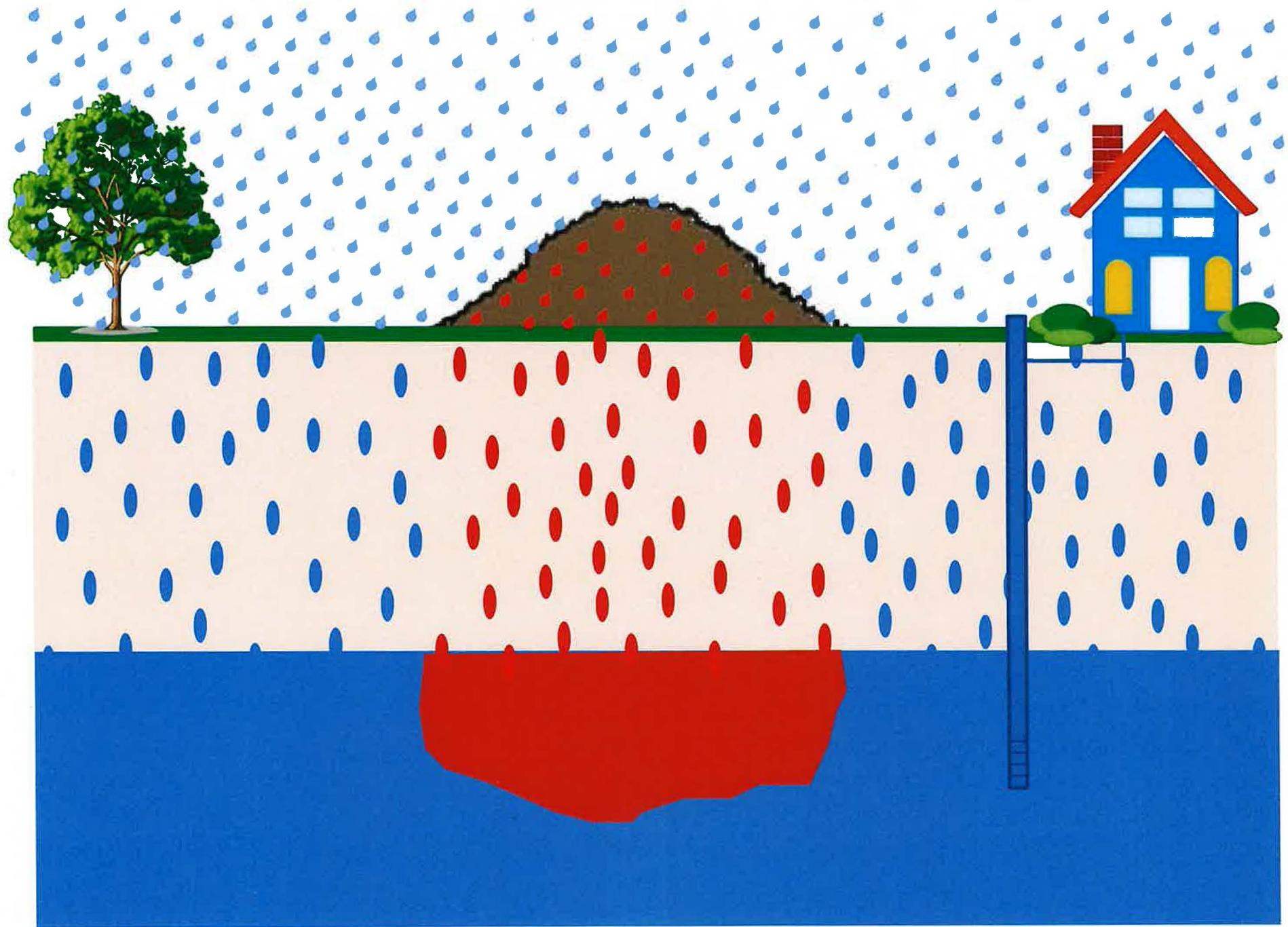








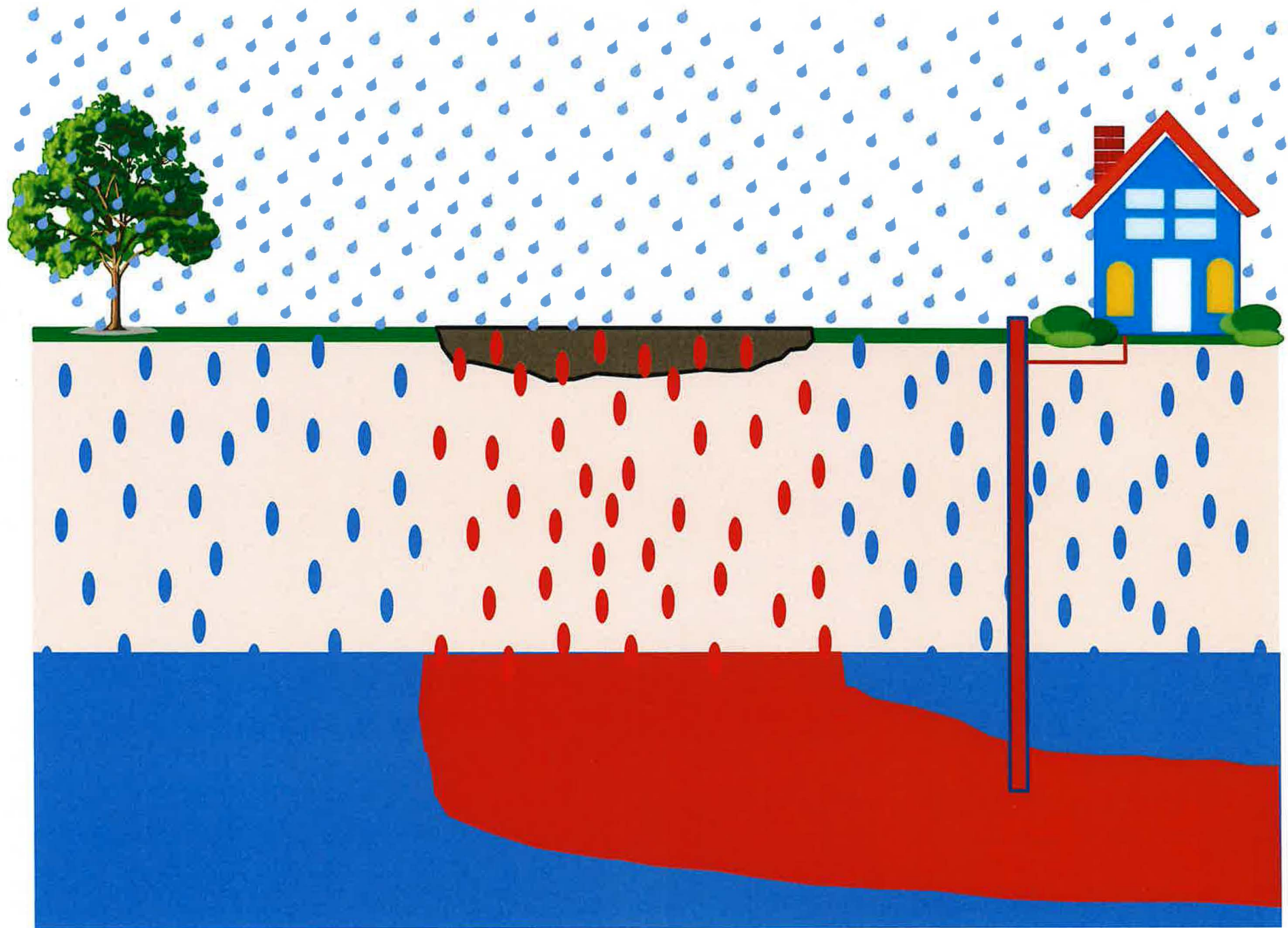


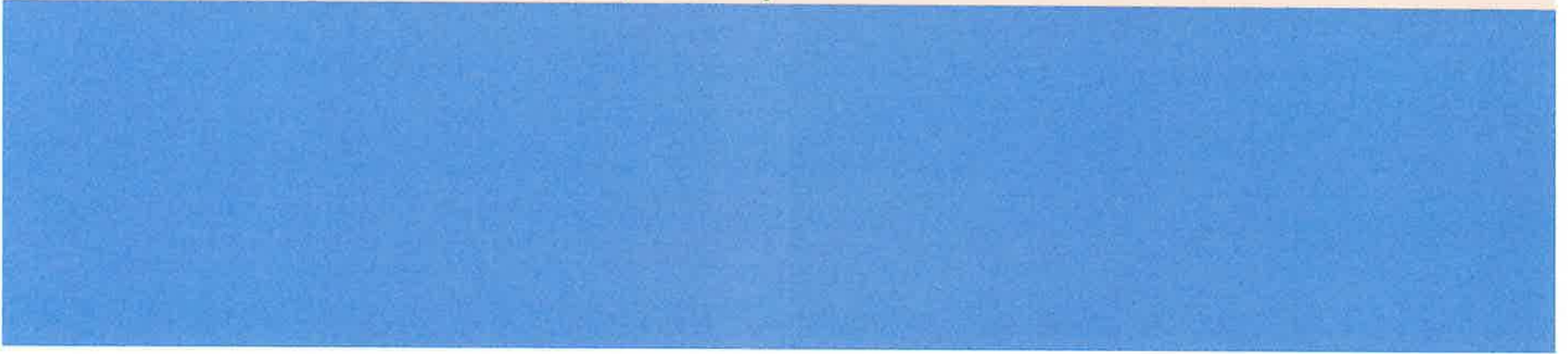
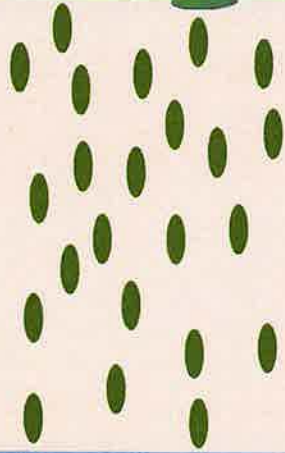


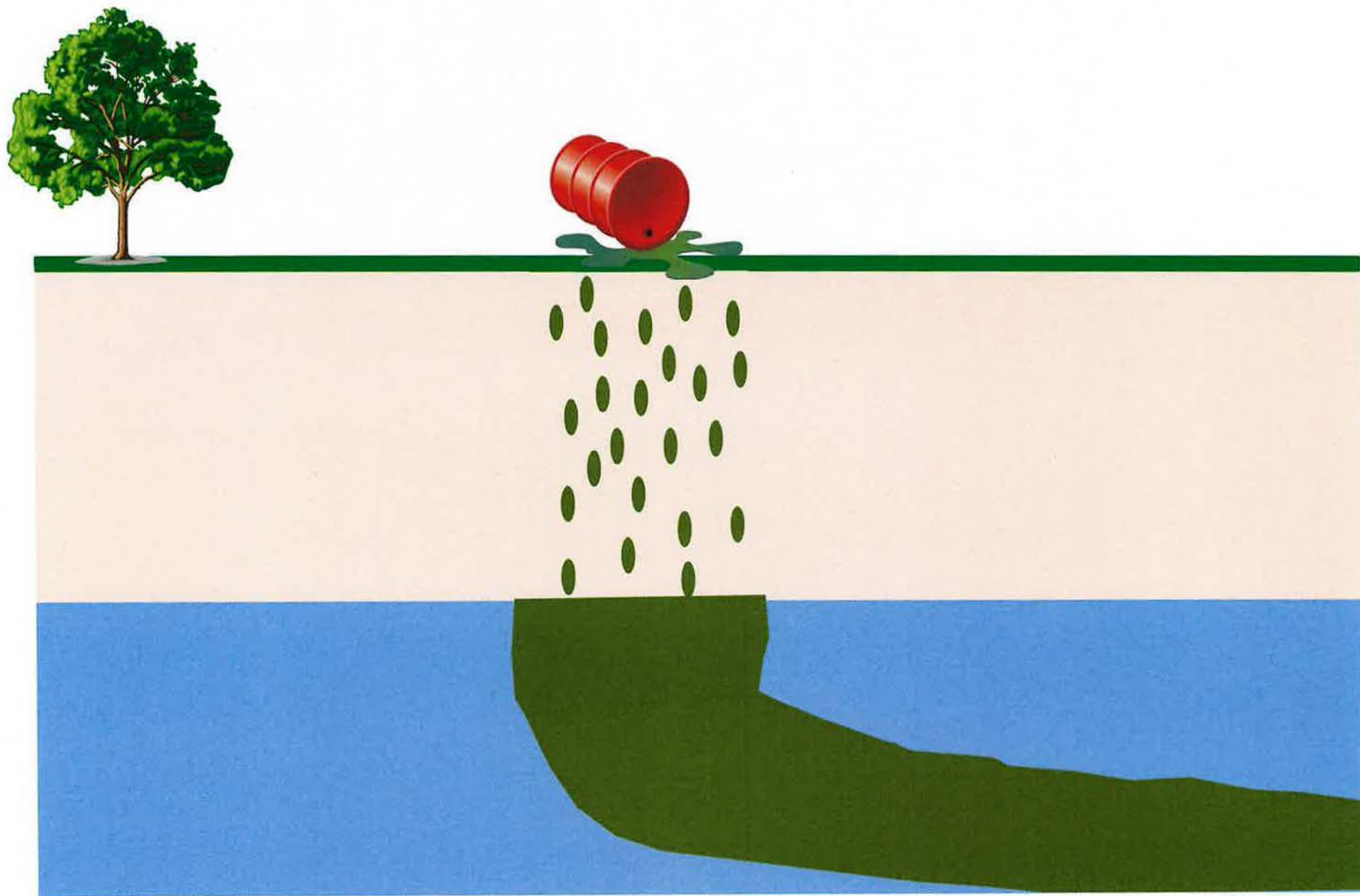


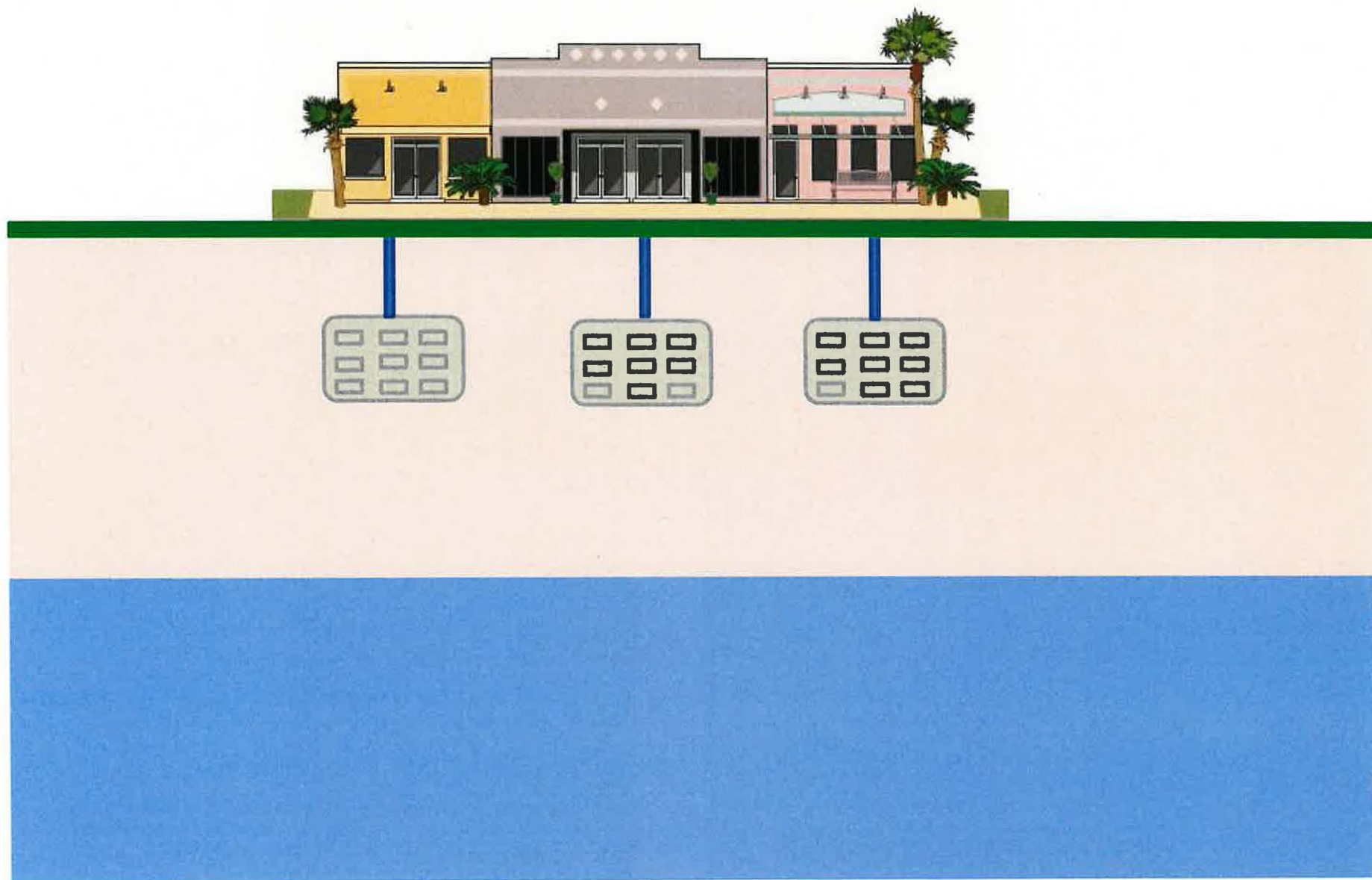




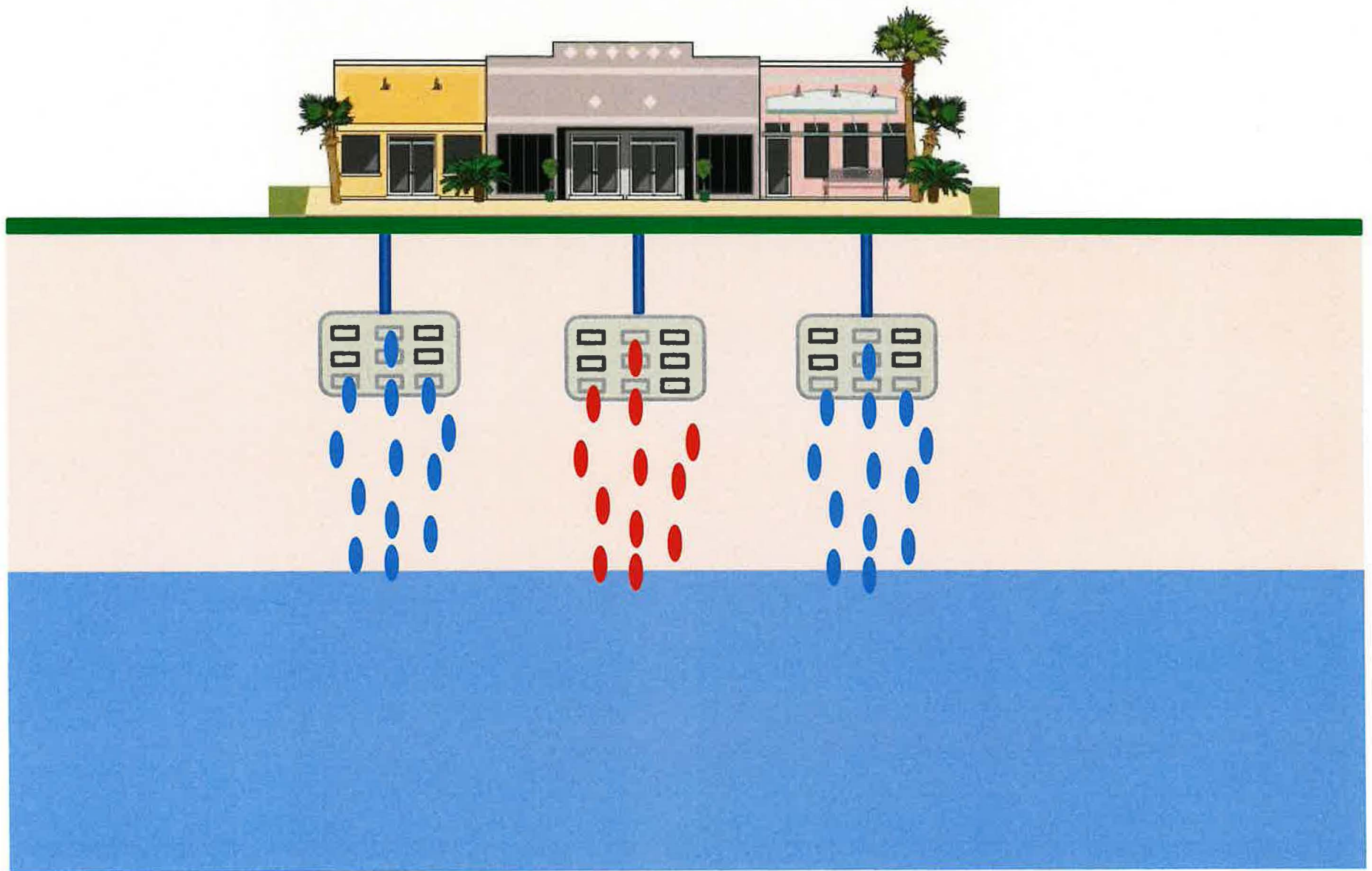


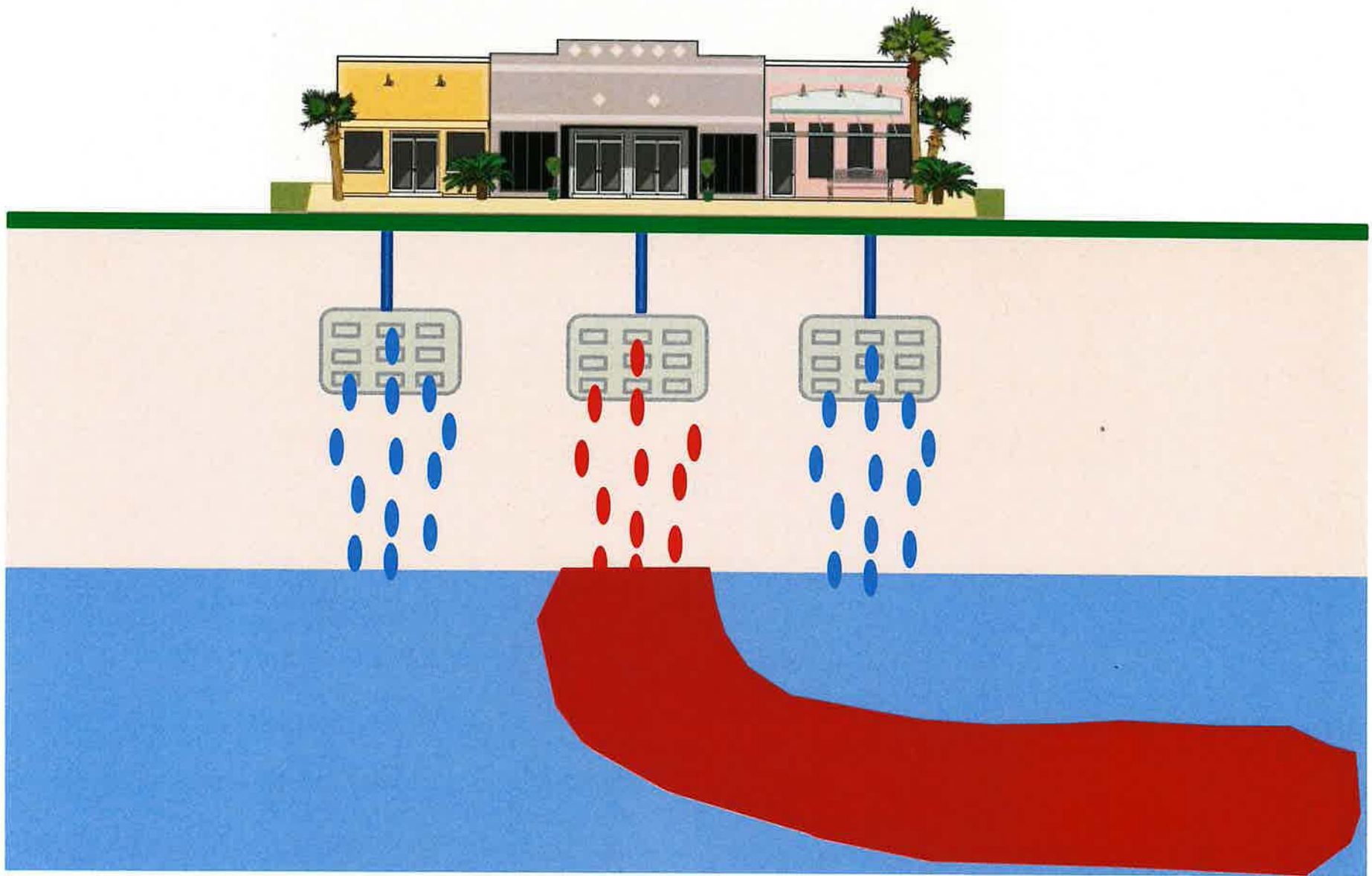




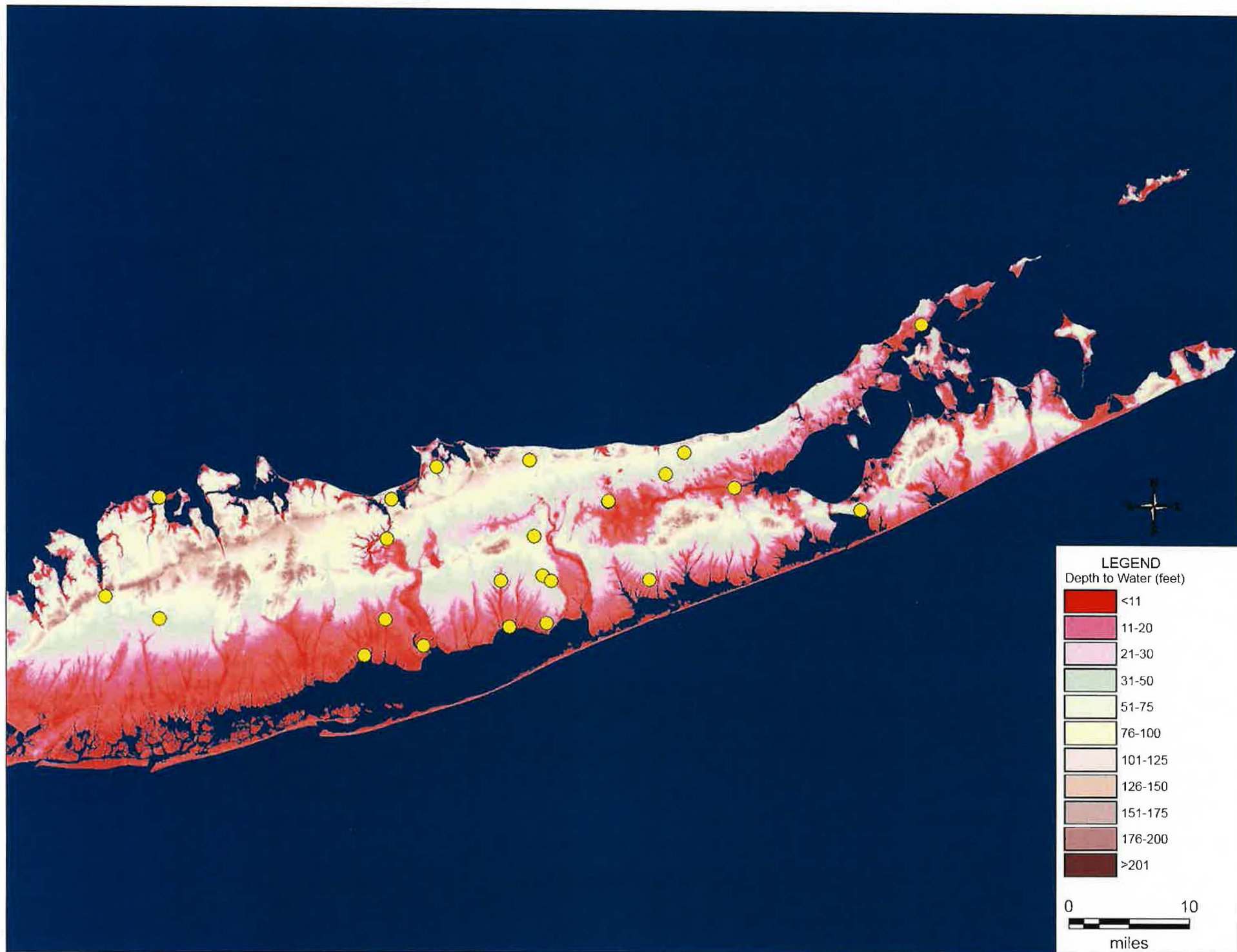


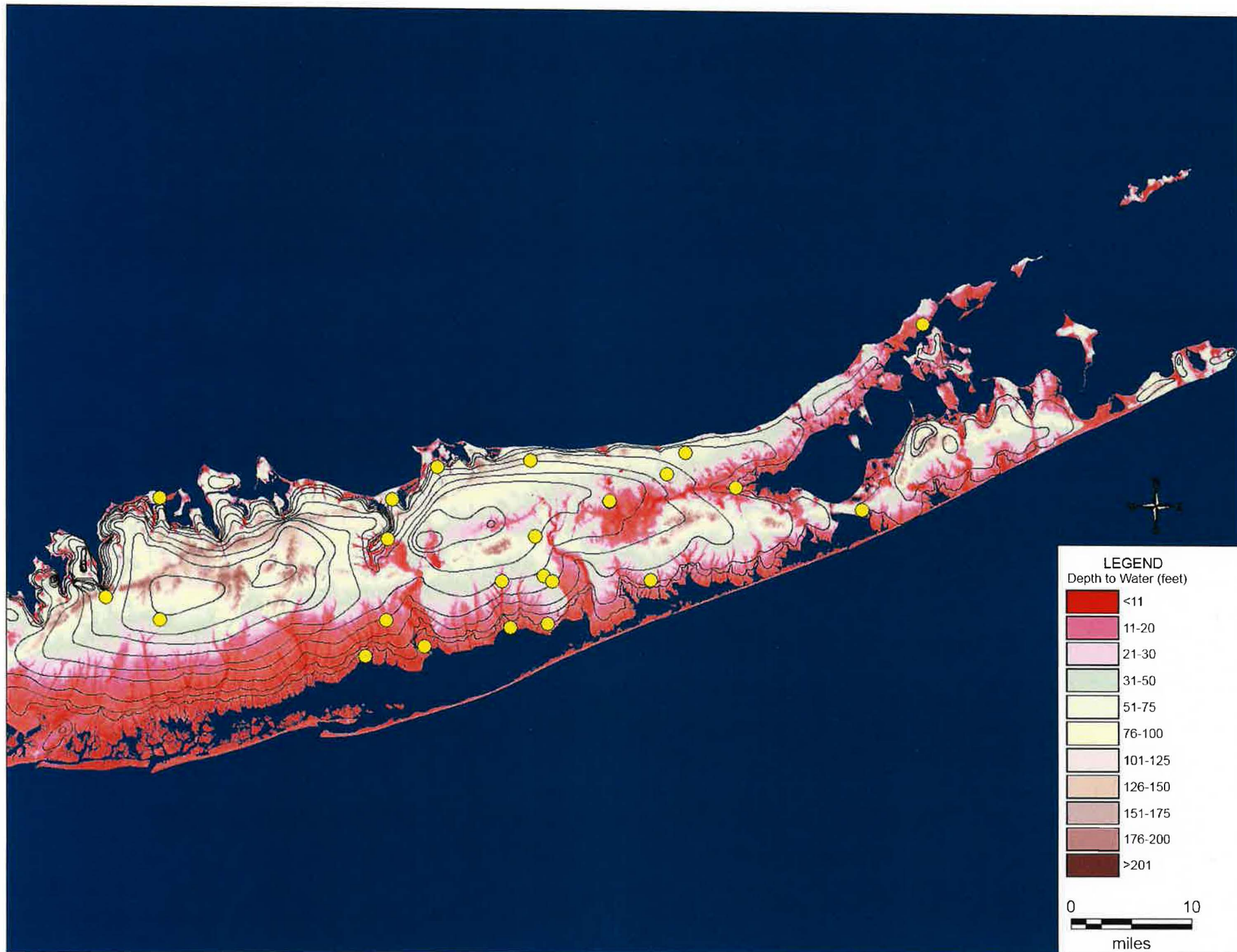


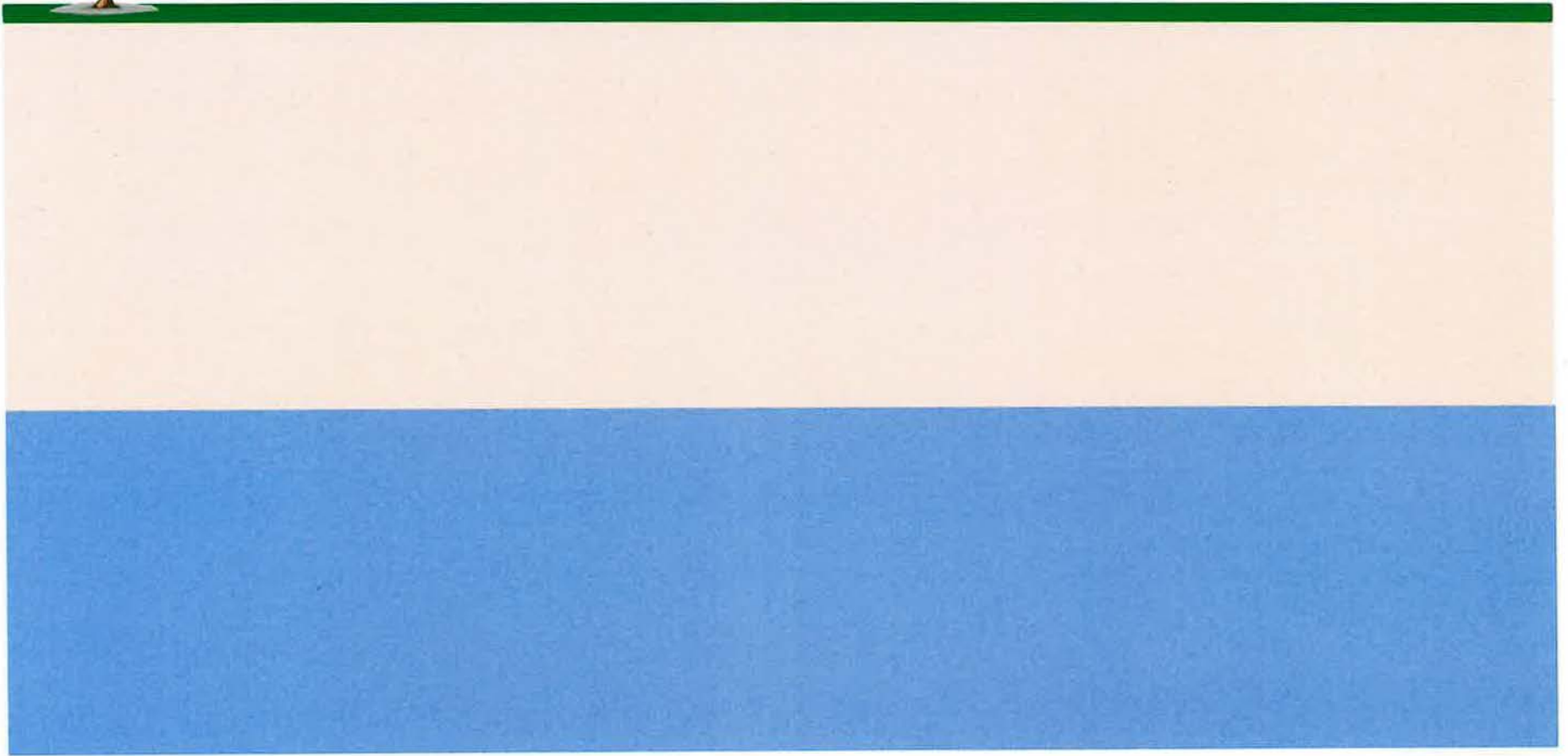


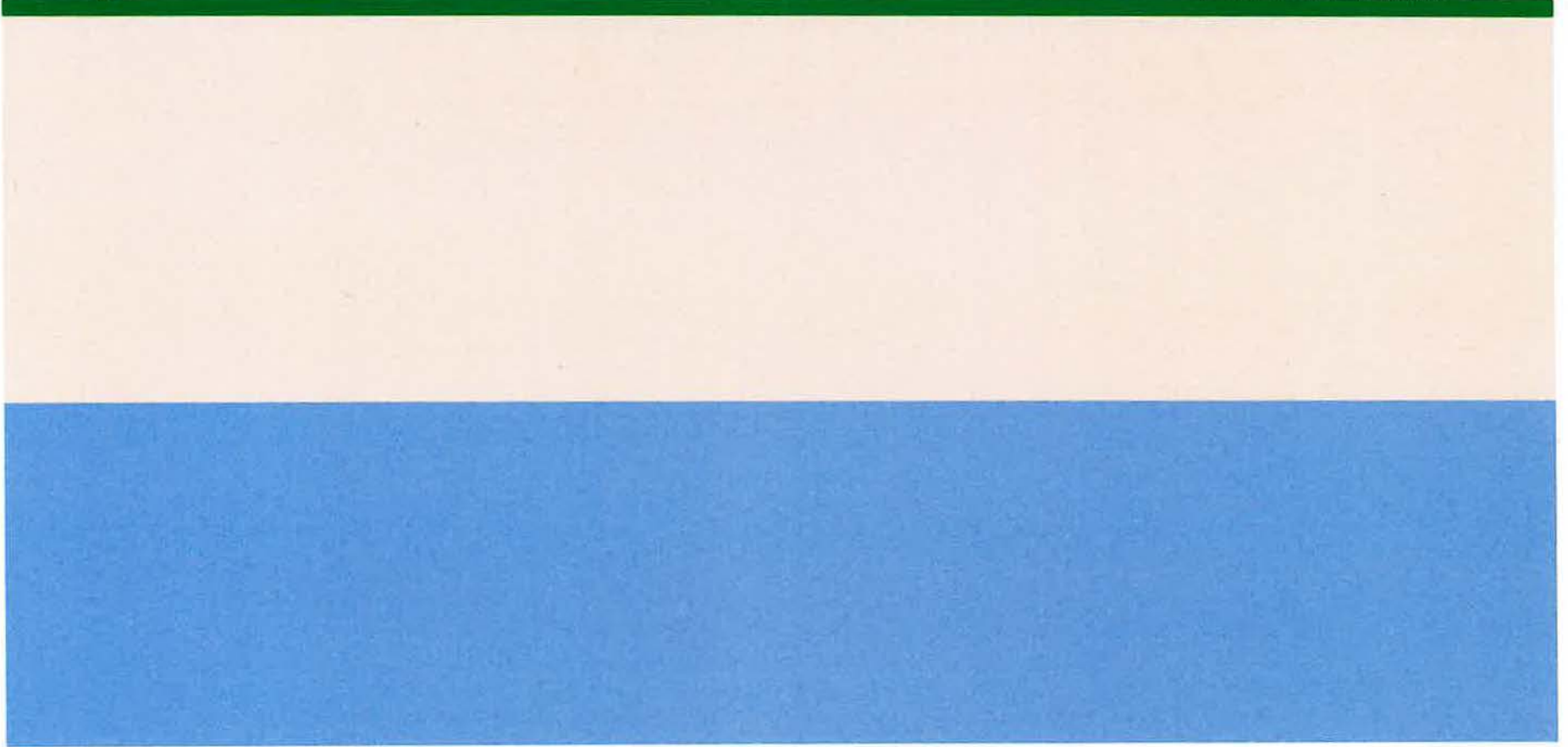


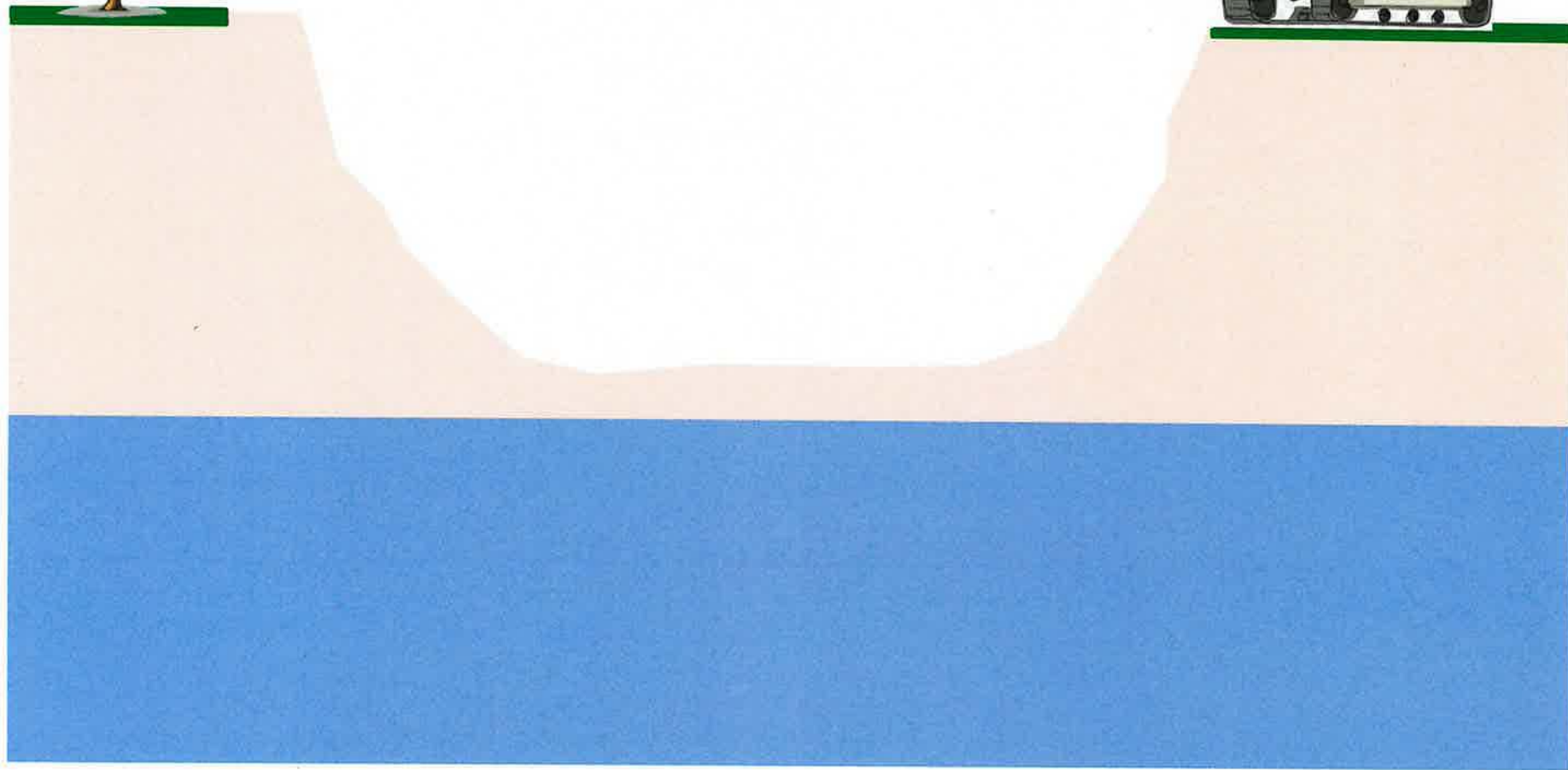












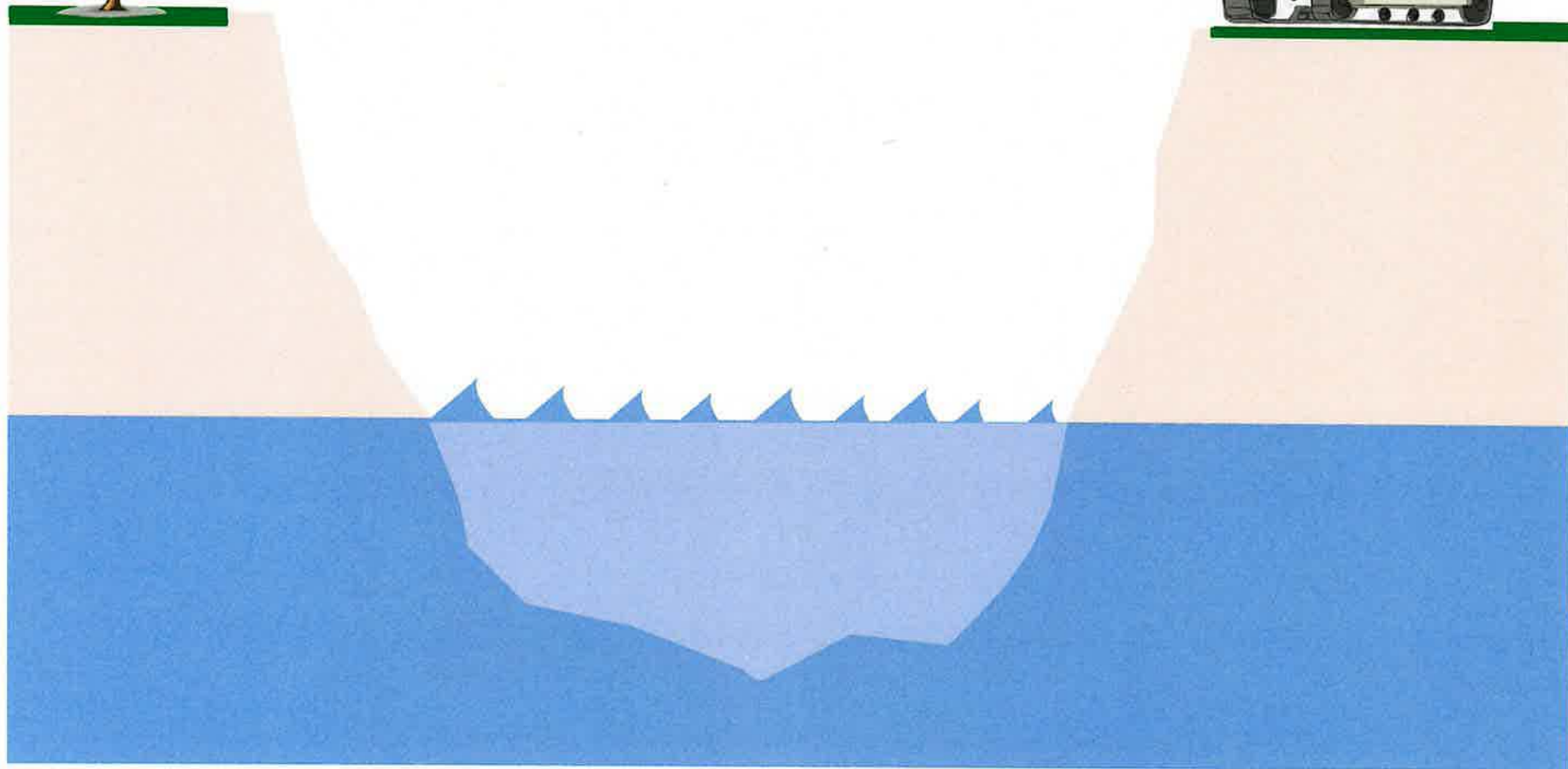


EXHIBIT B



**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.
- VIII. 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

Post Office Box 345

Kings Park, New York 11754

Henry B. Carlson

140 Old Northport Road

Kings Park, New York 11754

Eugene L. Wishod, Esq.

Cahn, Wishod, Wishod & Lamb

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Building 40, SUNY Campus

Stony Brook, New York 11790-2356

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

HEARIN

G

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.

NEW YORK STATE SUPREME COURT
COUNTY OF SUFFOLK

CARLSON ASSOCIATES and HENRY B. CARLSON, :

Petitioners, :

Index No. 93-24251
(Dunn, J.)

-against- :

THOMAS C. JORLING, in his capacity as
Commissioner of the New York State
Department of Environmental Conservation, :

**STIPULATED COMPLIANCE
SCHEDULE AND
SETTLEMENT AGREEMENT**

Respondent. :

WHEREAS, by order dated August 5, 1994 (the "August 5th Order") this Court denied
the petition of Carlson Associates and Henry B. Carlson ("Carlson") and ordered that:

(a) the September 1, 1993 order and determination [by the Commissioner of the New York State Department of Environmental Conservation] that petitioners violated 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, in accordance with decretal paragraph I of the September 1, 1993 order, is CONFIRMED;

(b) petitioners are jointly and severally assessed a civil penalty of \$125,500 (ONE HUNDRED TWENTY-FIVE THOUSAND AND FIVE HUNDRED DOLLARS), in accordance with decretal paragraph II of the September 1, 1993 order, plus legal interest thereon, due and payable within sixty (60) days after service upon petitioners of a conformed copy of this signed Amended Order and Judgment;

(c) petitioners are to cease and desist all mining at their mine located at 140 Old Northport Road, Kings Park, New York, in accordance with decretal paragraph III of the September 1, 1993 order;

(d) petitioners are to submit to the Department of Environmental Conservation an approvable reclamation plan for the site, in accordance with decretal paragraph IV of the September 1, 1993 order, which plan is to be submitted within thirty (30) days after service upon petitioners of a conformed copy of this signed Amended Order and Judgment;

(e) petitioners are to reclaim the site, in accordance with decretal paragraph V of the September 1, 1993 order, within sixty (60) days of the Department of Environmental Conservation's approval of the reclamation plans;

(f) petitioners are to submit a reclamation bond in the amount of ONE HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (175,000) to the Department of Environmental Conservation, in accordance with decretal paragraph VI of the September 1, 1993 order, within sixty (60) days after service upon petitioners of a conformed copy of this signed Amended Order and Judgment...

WHEREAS, since the August 5th Order was issued Carlson has only paid a total of \$26,500 of the penalty amount, has not submitted an approvable reclamation plan, has not posted the required reclamation bond, and has not performed any reclamation on the site that is the subject of the above-referenced DEC Commissioner's Order and this litigation (the "Carlson Property");

WHEREAS, on November 20, 1998, respondent Commissioner of the New York State Department of Environmental Conservation filed a judgment in the amount of \$105,900 with the clerk of the County of Suffolk, the outstanding amount of which judgment now stands, factoring in subsequent payments by Carlson and interest accrued at the statutory rate of nine percent, at one hundred seventeen thousand three hundred and forty-seven dollars and thirty-seven cents (\$117,347.37).

WHEREAS, subsequent to the events leading to the August 5th Order Carlson engaged, in or around June, 1998, in additional illegal mining at the Carlson Property (the "subsequent illegal mining"), which resulted in the DEC issuing a notice of violation to Carlson;

WHEREAS, Carlson and Toby Carlson, the son of petitioner, Toby Carlson, acting both in his individual capacity and as guarantor, now wish to commit to a schedule to resolve

Carlson's outstanding liability and obligations to the DEC under the August 5th Order, and to resolve Carlson's liability for the subsequent illegal mining by payment of a penalty in the amount of \$10,000;

WHEREAS, Toby Carlson wishes to receive a validated registration from DEC entitling him to operate a recycling business on the Carlson Property, and in exchange for his commitment to this Agreement, both individually and as guarantor, DEC is willing to consider an application by him for such a registration and will favorably factor his commitment to this Agreement into its Record of Compliance review for the registration sought by Toby Carlson, pursuant to DEC Enforcement Guidance Memorandum II.24, issued August 8, 1991 and revised February, 1993;

WHEREAS, in exchange for the commitment of Toby Carlson, in his individual capacity and as guarantor, to this compliance schedule and settlement agreement, and for the payment of \$10,000 to resolve Carlson's liability for the subsequent illegal mining, DEC is willing to forebear on executing on the Judgment against Carlson or moving for contempt of the August 5th Order for so long as Carlson and/or Toby Carlson remain in compliance with all of the terms hereof, and DEC is willing to execute a release of judgment lien on two lots owned by Henry Carlson, Suffolk County tax map 0800, section 023.000, block 0002, lot 009.001, and Suffolk County tax map 0800, section 023.000, block 0003, lot 021.000, solely to enable Carlson to finance the \$175,000 reclamation bond required under the August 5th Order or to make payment to DEC of the full amount due under the Judgment and otherwise finance Carlson's outstanding obligations under the August 5th Order;

IT IS HEREBY AGREED, by the attorney for DEC and the individuals signing below, as follows:

Payment Terms

1. Carlson and Toby Carlson will pay the State of New York a total of one hundred twenty-seven thousand three hundred forty-seven dollars and thirty-seven cents (\$127,347.37), representing the Judgment amount due as of the date this stipulated compliance schedule and settlement agreement ("Agreement") becomes effective plus \$10,000 to resolve the subsequent illegal mining. Payment shall be made to the State of New York, as follows:

- a. \$10,000 upon the signing of this Agreement.
- b. Thereafter \$5,000 per month, to be mailed to the New York State Department of Law, Environmental Protection Bureau, 120 Broadway, New York, NY 10271, Attention: Assistant Attorney General Andrew J. Gershon, on the monthly anniversary of the signing of this Agreement, until the State has received \$127,347.37 plus any additional interest amount due under paragraph 1.c. of this Agreement.
- c. No additional interest shall accrue on the Judgment and be added to the total amount due hereunder for so long as the monthly payments are timely made in accordance with paragraph 1.b. and Carlson and/or Toby Carlson are otherwise in compliance with the terms hereof. In the event any monthly payment is not mailed on time or Carlson and/or Toby Carlson otherwise fails to comply with the terms of this Agreement, this provision shall be rendered inoperative and the total amount due shall be retroactively recalculated to add nine percent (9%) statutory interest, and Carlson and/or Toby Carlson shall be obligated to continue making the monthly \$5,000 payments until the recalculated amount, which includes interest, has been fully paid to the State of New York.

d. After the full amount due on the Judgment in accordance with the terms of this Agreement has been fully paid in accordance with the schedule of this Agreement, or earlier, DEC shall provide Carlson with a written satisfaction of judgment suitable for filing with Suffolk County.

Reclamation Bond

2. Carlson and/or Toby Carlson shall post a reclamation bond in the amount of \$175,000 with respect to the Carlson Property concurrently with the signing of this Agreement.

Reclamation Plan

3. Carlson and/or Toby Carlson will file an approvable reclamation plan within sixty (60) calendar days of the date of this Agreement with DEC. Should DEC determine, solely in its reasonable discretion, that the submitted reclamation plan (or any subsequently filed amended plan) is in any way deficient, DEC shall provide Carlson and/or Toby Carlson with a written description of all deficiencies identified, and Carlson and/or Toby Carlson shall submit an amended reclamation plan remedying those deficiencies within fifteen (15) working days after receipt of DEC's comments.

Implementation Of Reclamation

4. Carlson and/or Toby Carlson shall implement the reclamation plan in accordance with the schedule set forth therein after it is approved by DEC. The determination as to whether reclamation is being implemented in accordance with the schedule in the reclamation plan shall be made by DEC in its reasonable discretion. In the event DEC informs Carlson and/or Toby Carlson, whichever is implementing the reclamation (the "Reclaiming Party"), that reclamation is not being implemented in accordance with the reclamation plan, and the Reclaiming Party

asserts that financial hardship or inability are in whole or in part responsible for his or its failure to adhere to the reclamation plan, the Reclaiming Party shall provide DEC and the Attorney General with reasonable access to the Reclaiming Party's personal financial books and records and the financial books and records of any business entity owned or controlled by the Reclaiming Party.

Consideration Of Toby Carlson's Application For A Registration

5. DEC will consider an application by Toby Carlson for a Validated Registration to conduct a recycling business on the Carlson Property, and in deciding whether to grant the applied for registration will favorably factor his commitment to this Agreement into its Record of Compliance review for the Registration. Continued compliance with this Agreement shall be a condition of any Validated Registration that DEC may issue to Toby Carlson.

General Provisions

6. Payments shall be made payable to the State of New York and submitted to the New York State Department of Law, Environmental Protection Bureau, 120 Broadway, New York, New York, 10271-0332, Attention Andrew J. Gershon, Assistant Attorney General. All other reports and submissions required hereunder to be submitted shall be made to Region One, New York State Department of Environmental Conservation, Building 40, S.U.N.Y. Campus, Stony Brook, N.Y. 11790-2356, Attention: Robert Yager, Mined Land Reclamation Specialist.

7. In addition to the access to financial books and records described in paragraph 4 above, for the purpose of ensuring compliance with this Order, Carlson and Toby Carlson shall allow duly-authorized representatives of the DEC access to the Carlson Property and Toby

Carlson's recycling operation without prior notice at such times as may be necessary in order for DEC to inspect and determine the status of compliance with this Agreement.

8. Carlson and/or Toby Carlson shall provide written notice to DEC of any field activities relating to reclamation to be conducted pursuant to the terms of this Agreement, including any reclamation plan submitted hereunder, at least one week in advance of such activities.

9. Nothing in this Agreement shall relieve Carlson and /or Toby Carlson of the obligation of paying fees (for registrations, permits or otherwise) which may be due the DEC or any other government agency or of complying with all of the regulations applicable to holders of registrations issued by DEC pursuant to 6 NYCRR Part 360 or other DEC regulations.

10. Carlson and Toby Carlson shall comply with all applicable Federal, State and local laws, rules and regulations.

11. Carlson and/or Toby Carlson or any other entity Carlson and/or Toby Carlson permits to operate on the Carlson Property must apply for all other necessary Federal, State and local approvals.

12. Carlson and/or Toby Carlson shall indemnify and hold harmless New York State, DEC and any of their employees or contractors for all claims, actions, damages and costs resulting from acts at the Carlson Property by DEC, Carlson and/or Toby Carlson in fulfillment or attempted fulfillment of the provisions of this Agreement, unless said acts were caused by the intentional, reckless or grossly negligent acts of the DEC, or any of its employees or contractors.

13. DEC reserves the right to require Carlson and/or Toby Carlson to take any additional measures authorized by statute and rules and regulations administered by DEC including, but not limited to summary abatement powers, required to protect human health and the environment.

14. Nothing contained in this Agreement shall be construed as barring, affecting or diminishing any rights of the State of New York, DEC or the DEC Commissioner to take any enforcement action against Carlson, Toby Carlson and/or any other party or to take any action whatsoever with respect to the Carlson Property, including moving the Court for a contempt order, except that the State, DEC and DEC Commissioner will not take any enforcement action as to the matters specifically set forth herein concerning compliance with the August 5th Order and resolution of the subsequent illegal mining for so long as long as Carlson and/or Toby Carlson remain(s) in compliance with the terms and conditions of this Agreement.

15. No terms, conditions, understanding or agreements purporting to modify the terms of this Agreement shall be binding unless approved in writing by the DEC. No informal advice, guidance, suggestions or comments by the DEC regarding reports, proposals, plans, specifications, schedules, or any other writing submitted by Respondents, shall be construed as relieving Carlson and/or Toby Carlson of any obligation to obtain such formal approvals as may be required by this Agreement.

16. The effective date of this Agreement shall be the date upon which all parties have signed the Agreement.

17. The provisions of this Agreement can only be modified in writing on consent of all parties hereto.

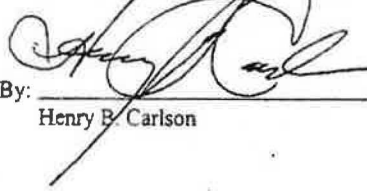
18. Except to the extent that DEC agrees not to seek to hold Carlson in contempt of court while either Carlson or Toby Carlson or both are in strict compliance herewith, this Agreement is without prejudice to and does not affect any Court order in this litigation, including the August 5th Order, that is in effect at the time the parties sign this Agreement.

19. Should any provision of this Agreement be determined by a court to be unenforceable, then the remaining provisions shall remain in full force and effect.

20. Subsequent to the signing of this Agreement and provision of \$10,000 and the mined land reclamation bond in the amount of \$175,000 to DEC, DEC shall issue Carlson a release of judgment lien for the following two lots: Suffolk County tax map 0800, section 023.000, block 0002, lot 009.001; and Suffolk County tax map 0800, section 023.000, block 0003, lot 021.000, to be used primarily for purposes of financing the payment of Carlson's obligations under the August 5th Order and hereunder. If Carlson desires to utilize these properties pursuant to this provision, Carlson shall present written proof to DEC as to how the properties will be used to finance the payment of its obligations under the August 5th Order and hereunder. DEC shall issue the release of judgment lien upon a reasonable showing that the properties will be used for that purpose.

Dated: Stony Brook, New York
~~September 12, 2000~~
October 6

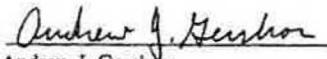
CARLSON ASSOCIATES and HENRY B. CARLSON

By:  ~~September 12, 2000~~ Dated: ~~September 12, 2000~~ October 6
Henry B. Carlson

TOBY CARLSON, Individually and as Guarantor

By:  Dated: ^{October 6}~~September 12~~, 2000
Toby Carlson

ELIOT SPITZER, ATTORNEY GENERAL
OF THE STATE OF NEW YORK
Attorney for DEC

By:  Dated: September 12, 2000
Andrew J. Gershon
Assistant Attorney General

New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, New York 10271
(212) 416-8474



TOWN OF SMITHTOWN

516 360-7553
Fax (516) 360-7677

TOWN SUPERVISOR
PATRICK R. VECCHIO

TOWN COUNCIL
MICHAEL J. FITZPATRICK
JANE E. CONWAY
MICHAEL V. HOLLANDER
THOMAS J. MCCARTHY

DEPARTMENT OF PUBLIC SAFETY
CHIEF JOHN VALENTINE
DEPARTMENT DIRECTOR

May 15, 1998

Mr. Robert Yaeger
N.Y.S. Department of Environmental Conservation
Region One Headquarters
North Loop Road
S.U.N.Y. Campus
Stony Brook, New York 11790

Dear Mr. Yaeger:

This office currently has an ongoing investigation into the use of the Henry Carlson site located on Old Northport Road in Kings Park.

An aspect of this investigation involves a complaint of renewed sand mining at this site. In order to aid this investigation, I am requesting that the next time your office inspects this site an investigator from this office be permitted to accompany your representative.

Please contact Investigations Division Supervisor Joseph Nowotny at 360-7553 if this is acceptable so that a date and time can be arranged that is mutually convenient.

In closing, if I can be of any assistance to you regarding this matter, please feel free to contact me accordingly.

Sincerely,

John Valentine
Department Director

JV:bs

cc: John Zollo, Town Attorney
case file

V98-0240





[Home](#) » [Mining and Reclamation Home](#) » [Mined Land Reclamation Searchable Database](#) » [Mines Data Search](#)

Mine Inspection Record(s)

[\[Go Back\]](#)

Information presented on this page is from inspections conducted by Mined Land staff and stored in our database. Note that there may be a drop-down list of multiple inspection dates available. Due to changes in data management practices over time, older inspection records are not as complete as new ones. Regarding inspections conducted specifically at the reclamation stage, some older reclamation information may be found here. However, newer more detailed reclamation inspection records can be found under the "Reclamation Inspections" link off the main Mines Data Search.

[Help for General Inspections](#)

[General Search Tips](#)

Company Name	Carlson Sand & Gravel Corp
Mine Name	Carlson Sand And Gravel
Mine ID	10048
Inspection Type	Old Gen. Inspection Code
Inspector	Robert Yager
Inspection Date	10/17/2018 View
Weather	
Persons Interviewed	Les- site foreman
Comments	After many years of working to fulfill a consent order, the slopes have finally been restored and hydroseeding completed on this site. Will inspect again in early December to determine growth and see if any more work needs to be done in the spring.

EXHIBIT C



June 21, 2024

TOWNLINE ASSOCIATION, INC.
Huntington/Smithtown
P.O. Box 119
Commack, NY 11725

Attention: Ms. Linda Henninger, President
Lh.townline@gmail.com

Re: Townline Rail Terminal, LLC Plan Proposal, Kings Park, NY
within the Hydrogeologic Zone 1 Deep Flow Recharge Area

BACKGROUND

CA RICH Geology Services, D.P.C. *dba* CA RICH Consultants (CA RICH) of Plainview, New York, hydrogeologists, provides this updating comment affirming the location of the Townline Rail Terminal, LLC Plan Proposal in Kings Park situated directly within Long Island's sensitive Hydrogeologic Zone I Deep Flow Recharge Area (**Zone I**). This finding was revealed last year in CA RICH's earlier comment to Townline Association, Inc. (May 5, 2023).

Further, comment/criticism is offered in direct response to OEA's continued and recalcitrant position in its final EA that the above-referenced Proposed Action concludes, without findings of fact from any on-site investigation, that it: "*..would have no impacts on groundwater*" (Chapter 3, Section 3.8 of their Draft EA). In short, any connection between the importance of the deep flow recharge area (Zone I) beneath the site, and the prospect that anticipated railyard site preparation activities and future yearly operations could impact both underlying deep flow recharge and groundwater quality is disregarded.

DISCUSSION

The proposed railyard will facilitate the transport of potentially hazardous incinerator ash and construction & demolition debris (C&D) off Long Island. Consequently, the potential cumulative risks to human health attributable to accidental or incidental spills and/or discharges of hazardous materials that may occur, as well as the relative exposure of the site as yet another possible source(s), or conduit of contamination down into the Island's potable drinking water needs to be better understood.

Sources of groundwater pollution may include incinerator ash (bottom ash leachate containing metals such as soluble cadmium, mercury, arsenic, etc.), petroleum storage, miscellaneous residues from C&D materials, spills, additional dry wells, and even the storage, discharge, or recycling of rinsewater accumulated from the on-site washing or steam-cleaning of the freight cars should the freight car cleaning be conducted on-site.

In addition, it is not known whether, and/or to what degree, the increased volume of infiltrating rainfall recharge on-site will change recharge patterns, if discernible, caused by the Proposed Action's stated removal of vegetation from the land surface. Rainfall evapotranspiration rates are reduced in the absence of vegetation facilitating greater volumes of recharge and ponding from the frequency and intensity of storm events.

Because this Proposed Action is situated within the Deep Flow Recharge Area **Zone I**, and because it is reported that there are private water wells downgradient of the railyard site, an understanding of the current on-site subsurface hydrogeologic conditions is strongly recommended. Such a study should prioritize mapping the local water table configuration, defining shallow groundwater quality, and determining the depth to the underlying Magothy Aquifer (Zone I). Even identifying the presence or absence of any part of the groundwater-confining 'Smithtown Clay' that may occur beneath the Site, including its thickness and horizontal extent, should be of obvious importance.

A site-specific groundwater investigation would be in the best interests of all concerned parties. At a minimum, meaningful current information would be developed that would locate the proximity of the Site to any downgradient, active private water wells; indicate pumpage from the closest SCWA municipal supply wells; and update the current status, depth, migration and direction of flow of the capped Huntington Landfill plume. It could also evaluate any localized hydrologic 'budget' across the 82-acre site to support quantifying rainfall recharge from the historical sand mining activities (1980s-1990s).

The importance of recognizing the growing need to eliminate, or at least reduce or mitigate, further degradation of groundwater quality within the all-important key 'deep flow recharge area' across Long Island is the rationale for the designation of the Magothy Aquifer as a 'sole source' drinking water aquifer. This Proposed Action is an excellent example of the need and recognition of this protective drinking water designation. OEA's Water Resources Response to the EA Comments dismisses this issue entirely.

Finally, OEA opining that the *"..environmental impacts identified are minor, and can be appropriately addressed with OEAs final recommended mitigation"* (p.136 Final EA Appendices, June 2, 2024) seems premature. If impacts are to be mitigated, how will OEA discern: 1) which impacts? 2) when and to what degree implementation?, and 3) over what period will such mitigative measures be deemed sufficiently appropriate without confirming that measure's prudence, feasibility, and overall effectiveness?

In short, in connection with water resources, no site-specific groundwater data required to support OEAs conclusion of 'no impacts' has yet been provided. A routine scoping session for a suggested, relatively more thorough, full EIS would typically investigate site-specific groundwater conditions given the hydrogeologic sensitivity of this unique property to the drinking water Magothy aquifer directly beneath it, and the fact that, as commented elsewhere, it is an Article 7 protected site.

If there is need for further comment, please do not hesitate to contact us.

Respectfully,


Charles Rich, PG, CPG, CSBA, EP
President





CURRICULA VITAE



CHARLES A. RICH, PG, CPG, CSBA, EP **Environmental Consultant**

TITLE

Founder & President

EDUCATION

Bachelor of Science, Geology, Syracuse University, 1973

Master of Arts, Geology, Queens College, 1975

Post-Graduate, NY Institute of Technology, 1982 courses

CERTIFICATIONS AND REGISTRATIONS

NY State Licensed Professional Geologist (P.G. 077)

AIPEG Certified Professional Geologist (C.P.G. .4433)

Certified Professional Geologist State of Pennsylvania No. PG-1350

Certified Sustainable Building Advisor, NaSBAP, USGBC

Vice-President, NYS Council of Professional Geologists

SELECTED PROFESSIONAL AFFILIATIONS (past & present)

American Water Works Assoc., American Water Resources Assoc., American Society Testing & Materials, American Institute Prof. Geologists, Association Groundwater Scientists & Engineers, National Forensic Center of Distinguished Experts, Water Pollution Control Federation, Geo. Soc. of America Environmental Business Association, NYS Council of Prof. Geologists, LIAPG, USGBC Long Island, NYC Building Congress, CORENET, Real Estate Practitioners Institute, SUNY College of Business Engineers Without Borders (Professional Mentor)

PROFESSIONAL EXPERIENCE

President

CA RICH Geology Services, D.P.C. d/b/a CA RICH Consultants

1982 - Present

Founded **CA Rich Consultants, Inc.** (NY) in continuous operations since 1982.

(Corporate Name Change to: **CA RICH Geology Services, D.P.C.** in 2018)

Professional staff expertise focused upon turnkey Soil & Groundwater Remediation, system operations & maintenance, post-remediation monitoring, Environmental Site Assessment, Remedial Investigation & Feasibility Studies, Phase I/II/III ESA's, UST Management, Database Management, Computer Modeling (fate/transport), Hazardous Waste Management (ISRA/RCRA/CERCLA/CWA), Industrial/Commercial Environmental Compliance Audits, Tenant Audits/Inspections, Indoor Air Quality (IAQ) studies and Sick Building Syndrome, Asbestos/Lead Paint Inspections/Monitoring, Pre-purchase/PRP Voluntary Cleanups & Agreements, Compliance Negotiations, Discharge Permits, Hydrocarbon Cleanups & Spill Closure (alternative technologies); environmental engineering (concept through design), Remediation Management (Concept, Permits and Installation, Operation thru Site Closure -including in-situ treatment technologies (e.g. air sparging, soil vapor extraction/treatment, pump & treat, enhanced bioremediation and bioventing/re-injection systems). Brownfield Redevelopment, Vapor Intrusion (VI) & Preventative Mitigation, real property advisories, remediation valuations & Tax Certiorari-related claims review and representation.

- Groundwater Exploration, Development & Water Resource Management; Aquifer mapping, Pumping Tests, Safe Yield analyses; Well Design & Rehabilitation; Well Head Protection; Groundwater Availability Feasibility and Soil & Hydrogeologic Studies.
- Expert Witness/Litigation Support (includes Federal Court/Jury Trial experience).
- Supervisor – Haz. Waste Operations & Emergency Response (OSHA 1910.120).

Mr. Rich actively contributed to developing ASTM's National Standard for "Phase I & II" Due Diligence Environmental Site Assessments (ESA's) for property transfers (now published). He routinely directs ongoing automated environmental management auditing programs for the Firm's Clientele in both industrial and commercial sectors. He received his formal national Certification as a Sustainable Building Advisor (CSBA) from NaSBAP/USGBC in 2010.

Mr. Rich has participated in managing remedial activities at 'listed' Federal (NPL) and/or State Superfund Sites. For example, within NY and NJ region:

<i>GE Moreau</i>	<i>BROS PCB Oil Lagoon, NJ</i>
<i>Purex Mitchel Field</i>	<i>Liberty Industrial Aircraft, LI</i>
<i>Brookhaven National Laboratory</i>	<i>Haviland, NY</i>
<i>Applied Environ. Shorewood Realty</i>	<i>NYU Westbury, NY</i>
<i>Tronics Plating, LI</i>	<i>SJ&J Kenmar Textile, LI</i>
<i>Fairchild Republic, LI</i>	<i>SMS Instruments, LI</i>

<i>Old Bethpage Landfill</i>	<i>Claremont Polychem, NY</i>
<i>Mattiace Petrochem.-MEK Spill, LI</i>	<i>Port Washington Landfill</i>
<i>Grumman Aerospace-Bethpage</i>	<i>New Cassel Ind. Area, LI</i>
<i>Tres Bon Dry Cleaners, LI</i>	<i>Astro- Electroplating, LI</i>
<i>Glaro, Inc., LI</i>	<i>Sag Harbor Bridge Street</i>
<i>East Hampton Landfill</i>	<i>Love Canal, NY</i>

His experience also includes remedial support for design and construction of a hazardous waste storage site at a chemical complex in San Marcos, CA; emergency spill response and remedial planning for a highly publicized methyl ethyl ketone (MEK) spill in Hicksville, Long Island under auspices of the USEPA; and numerous high-profile Case advisories as Groundwater Consultant to the New York State Attorney General (including on-site at Love Canal, et.al.). He has audited over 300 hazardous waste permits for the Picatinny Army Arsenal in NJ. In 1993, Mr. Rich took over, managed, and fully-Permitted a *state-of-the-art* 'turnkey' design/construct and operate multi-million dollar combinative groundwater/soil vapor pump, treat and re-inject (350 gpm) closed-loop remedial system for serious oil and solvent bedrock aquifer contamination beneath the oldest ECRA/ISRA Case in NJ for a Fortune 50 Client. He's presently directing other remedial programs for the Firm's Clients throughout the tri-state region. Mr. Rich managed a characterization of illegally dumped fill materials at a high-profile dump site in Islip, NY in cooperation with NYSDEC and Suffolk County District Attorney in 2016 including evaluation of applicable cleanup costs.

As early as 1980, Mr. Rich was invited by the NJ State Attorney General's Office to be their Court-appointed *Expert* to assist Hon. Superior Court Judge Andrew Furman (Middlesex County) in apportionment of significant monetary damages so ordered to properly and fairly pay for remediation of a multiple-PRP contaminant case jointly brought against two companies (Madison Industries and CPS Chemical Co., Defendants) by the City of Perth Amboy and the State of New Jersey (Plaintiffs). In 2000, Mr. Rich was retained to serve as Expert Witness for the United States Department of Justice in a Federal Case brought against a major international oil company for alleged groundwater contamination-related RCRA violations in New York.

Mr. Rich was the first to accurately define the plume of groundwater contamination emanating from the Yarmouth Municipal Landfill on Cape Cod for the joint benefit of the Town of Yarmouth, MA, Yarmouth Water Co., and State of Massachusetts. As a result of this expertise, he was then subsequently asked to craft and author a regional public 'Aquifer Protection Guide' as an integral part of the design and construction of the first Sewage Treatment Plant built on Cape Cod (located in the Town of Orleans). Mr. Rich has successfully managed the water well redesign and redevelopment of a deep cooling well water supply to augment power production in Puerto Rico (involving his concept of split-screening pre-existing single-screened wells and subsequent successful 2,000 gpm well tests, and he has participated in groundwater availability and exploration programs for the Arab Republic of Egypt.

Mr. Rich was the initial Principal Investigator for the largest (>17 million gal) subsurface oil spill in the United States into Newtown Creek, Brooklyn, NYC with reports and oil recovery recommendations to both the US Coast Guard and Mayor Ed Koch for action; Requested Author of the groundwater portion of a large-scale Cumulative Environmental Impact Statement (>30,000 acres) for Breslin Realty Development Co., Brookhaven, NY (contributing to subsequent development of the 'LI Pine Barrens Protection Plan'); One of three principal Ground Water Investigators that prepared the Ground Water Section of the nationally renowned LI 208 Areawide Waste Management Study as prepared for the Nassau/Suffolk Regional Planning Board. In 1976, Mr. Rich also successfully ran a prototype Stream Augmentation Project in Carl's River, NY that he designed to evaluate the feasibility of recharging renovated treatment plant effluent into groundwater through installed 'in-situ' streambed permeameters.

Mr. Rich directed the groundwater portion of the Basic Data Collection Program for the U.S. Dept. of Interiors' USGS Subdistrict Office on Long Island (Mineola). In that capacity, he served as liaison with concerned State and County Agencies, tested and maintained a long-term network of numerous Long Island observation and monitoring wells, and supervised the drilling and geologic logging of new wells Island-wide. He helped prepare the first computer-driven storage/retrieval programs characterizing ground water and surface water basic data for all three Long Island aquifers, and he authored and coauthored widely-circulated USGS Island-wide hydrologic publications. His responsibilities elsewhere have included evaluating groundwater availability for low-level radwaste disposal siting (NYSERDA), investigating the feasibility of using excess groundwater to store heat for winter heating and chilled water for summer cooling beneath Louisville, KY (USDOE); and appraising, exploring for, and developing potable community well water supplies for new residential and commercial development projects.

PUBLICATIONS

Rich, C. (1999) *"Environmental Due Diligence & Tenant Compliance Audits"* Seminar: Environmental Compliance for Commercial & Industrial Properties, SUNY College of Engineering & Applied Sciences, In Proceedings

Rich, C. (1999, 1998, 1997) Invited speaker at NY Law & Environmental Management Course, Government Institute, MD.

Rich, C. (1992). *"Emerging Remedial Technologies: Simultaneous Investigative Corrective Action"* In Seminar Proceedings publication: HAZMAT 92' Atlantic City NJ

Rich, C. (1990). *"Experimental Screen Design Toward Sediment-Free Sampling"* Groundwater & Vadose Zone Monitoring, Nielsen & Johnson ASTM STP 1053

Rich, C. (1984). *"Necessary Involvement & Responsibility of Separate Entities in Planning/Performance of Aquifer Restoration."* Invited "Keynote Address" National Symposium on Aquifer Restoration USEPA/NWWA, Natl. Center for Groundwater Research: Lewis.

Rich, C. (1982). *"Hydrogeologic Considerations for Compliance & Groundwater Protection"* Risk & Decision Analysis for Hazardous Waste Disposal, HMCRI Library of Congress, Washington D.C.

Rich, C. (1981). *"Cluster Wells to Monitor Organic/Inorganic Groundwater Contamination."* Quality of Groundwater, Duijvenbooden, Glasbergen, Lelyveld Studies Env. Sci., V 17; Netherlands Natl. Institute Water Supply; Elsevier.

Rich, C. (1975) *"The Potentiometric Surface of the Lloyd Aquifer on Long Island, NY"* US Geological Survey, Water Resources Division; Open File Report 1975.

SELECTED RECOGNITION

Marquis *Who's Who* in the World 1987--; Marquis *Who's Who* in Science & Engineering 1992--; Invited Participant Long Island Water Summit; Invited Member Technical Committee ASTM D-18 Ground Water & E-50 ESA; *President's Associates* Polytechnic University, NY; Past-President NEAIPG; Invited Member AIPG International Committee; NREP's *Who's Who* of Environmental Professionals; Strathmore's *Who's Who* 1998-2000; Past Chairman of Real Estate Practitioner's Institute, SUNY Stony Brook College of Business; Vice President NYS Council of Professional Geologists; Invited adjunct Professor of new NYS-accredited course entitled: *"Environmental Issues in Real Estate Transactions"* presently taught at SUNY Stony Brook (2000-2018); Certified as a Sustainable Building Advisor by NaSBAP (sanctioned by USGBC).

EXHIBIT D

1968



1980



1988



1992



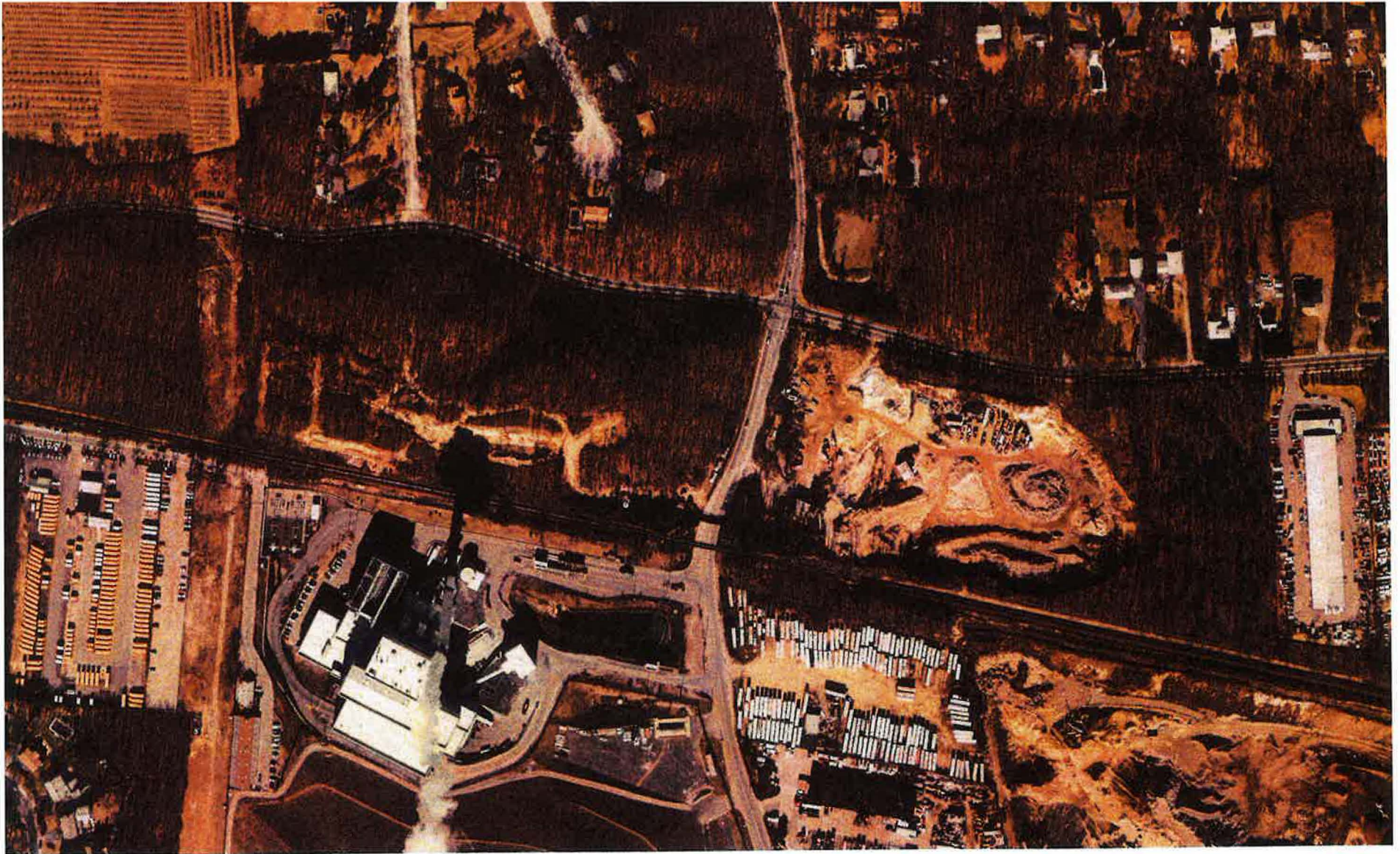
1999



1999 East



1999 Northwest



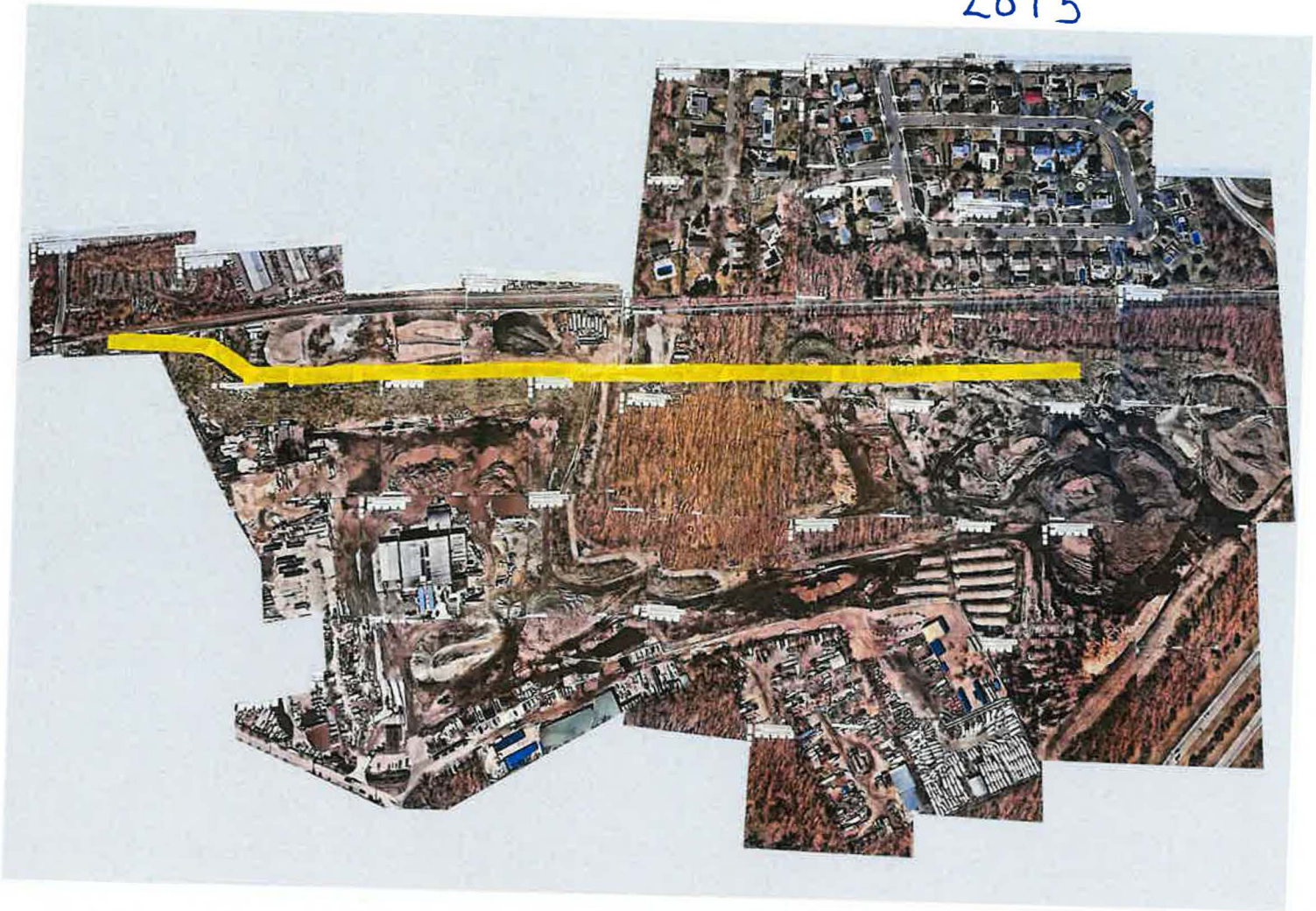
2001

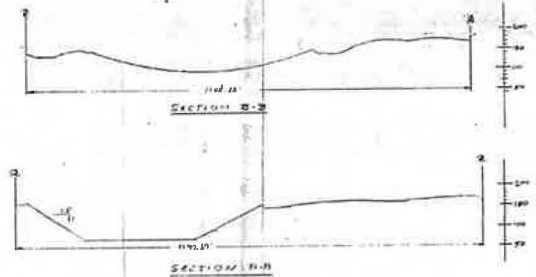
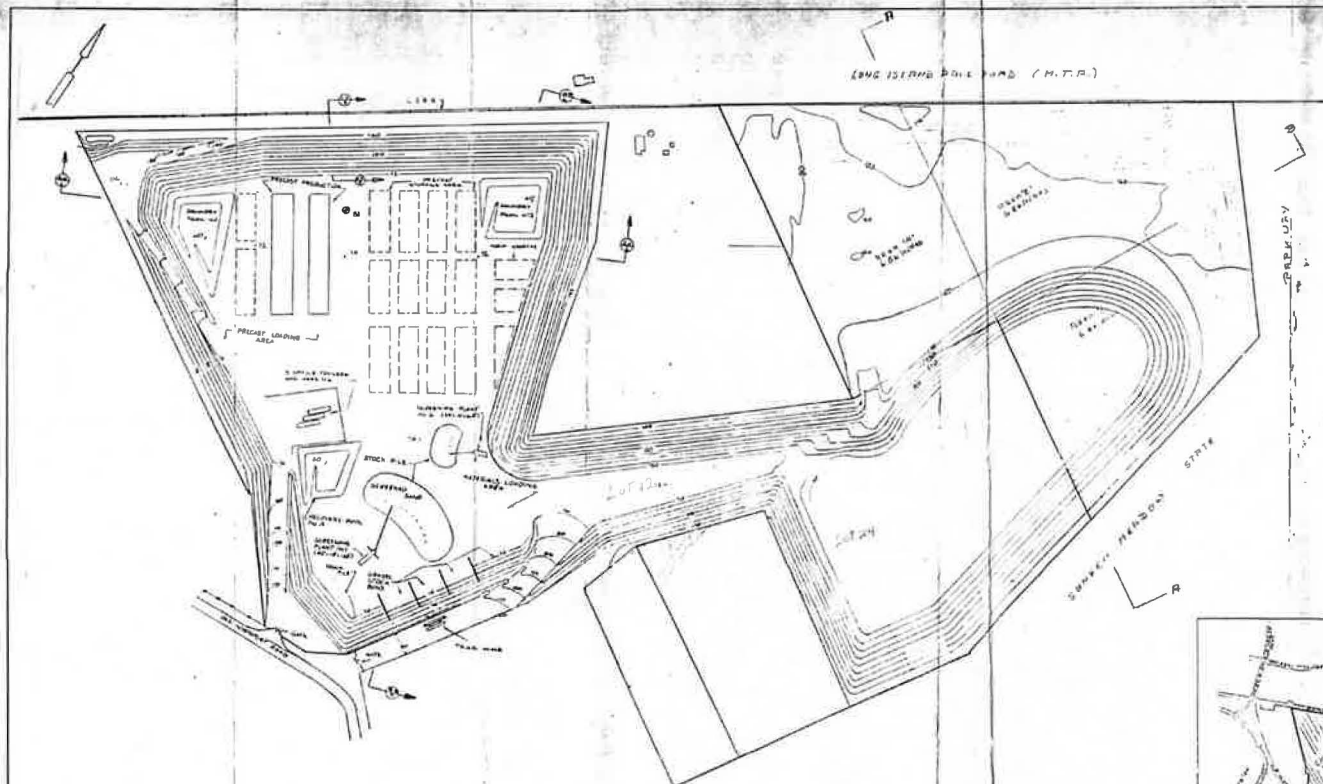


2007

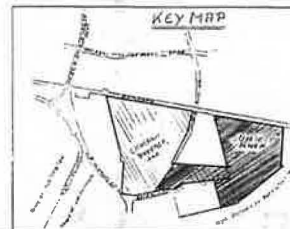


2015





- NOTES:**
1. Slopes to be 1:1 & 1:2 or 3:1 depending on the material involved with no engineered system of vegetation.
 2. Slopes higher than 30 feet shall be stepped in 10 foot increments except for a 5 foot wide top level. Slopes shall be a minimum of 5 feet wide and 5 feet high.
 3. Embankment shall be lined with a layer of 12 inch concrete or equivalent and 6 inch.
 4. Trees and shrubs shall be planted along slopes shall be stabilized with vegetation. Slopes shall be planted with other well graded trees and shrubs.
 5. The entire property shall be planted with vegetation 1 foot from the line of the property line of parcel 12 & 13.
 6. Ground water depth shall be measured once a year to ensure 1 foot of water cover at any time and location. Adjustments to vegetation shall be made if necessary.
- DRAINAGE CALCULATION**
- Storm water quantities are calculated with 1 inch rainfall and a 24 hour duration. The entire area, slope and paving is shown and the stabilized area is shown.
- 24 acres x 24 inch x 1' x 1' = 12,000 cu ft
- 12,000 cu ft ÷ 12 in = 1,000 cu yd
1. Embankment shall be constructed with a minimum capacity of 12,000 cu yd, be established before the completion of the project at proper location.



HERRY B. CARLSON
P.O. BOX 345, KINGS PARK, NY 11754

RECLAMATION PLAN
SECTION 12, Block 1 Lot 12 and 13, Block 3, Lot 24

Scale: 1" = 100' 1/4" = 100'

2000 Reclamation Map

[illegible]

LEADER	EXTENSION	PREPOSITION
DATA LINE	—	—
CLUSTER	— (1) — (2) — (3) — (4) —	— (5) —
WFO OFFICE	5 TLA	1. 2004
DETAILS OF AVAILABLE TOWNS IN COUNTRY		○
DETAILS OF AVAILABLE TOWNS IN COUNTRY GROUP		○
COUNTRY LIST	country	~~~~~
STANDARD 2004		A
DATA REPORT		

GRAPHIC SCALE

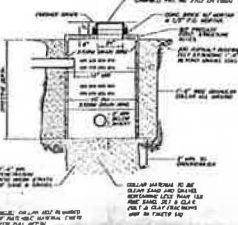
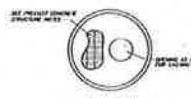


REVENUES
 PROJECT COMPLETED 3-28-01
 PROJECT COMPLETED 3-28-01

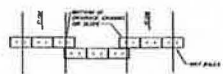
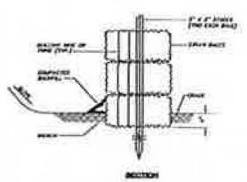
	CARLSON ASSOCIATES 10000 PARK NORTH AVENUE SUITE 100 DENVER, CO 80202	
	RECLAMATION PLAN	
	PROJECT NO. 10000	
PROJECT NO. 10000	PROJECT NO. 10000	PROJECT NO. 10000

PRECAST CONCRETE STRUCTURAL NOTES

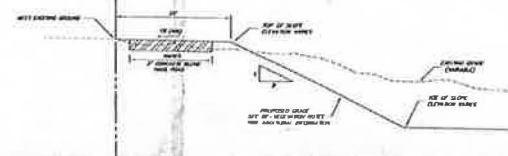
1. ALL PRECAST STRUCTURES SHALL INCLUDE SUFFICIENT STEEL REINFORCING BARS FOR TENSILE AND SHEARING, TRANSFERRAL AND TO ALLOW THE STRUCTURE TO WITHSTAND LOADS IN ACCORDANCE WITH THE DESIGN CONDITIONS SPECIFIC TO THE PLANS
2. ALL JOINT CONNECTIONS AND DETAILS SHOWN FOR PRECAST CONCRETE STRUCTURES SHALL BE IN ACCORDANCE WITH THE DESIGN CONDITIONS SHOWN IN THE STRUCTURES AND DESIGNED TO WITHSTAND THE LOADS NOTED ABOVE.
3. ALL PRECAST STRUCTURES SHALL BE MANUFACTURED IN ACCORDANCE WITH THE FOLLOWING:



DRYWELL DETAIL



STRAW BALE BARRIER DETAIL



TYPICAL SLOPE SECTION

INTEL DATA

JOHN J . . .	11. LIGHT POWER
REY	12. HEAVY INFLUENT
EARL	2-45 INFLUENT
WILL	
WEST	23.42 ACRES
EAST	24.68 ACRES
WILL	25.10 ACRES
WILLIAM J. JR.	
WILLIAM J. JR.	26.10 ACRES
WILLIAM J. JR.	27.10 ACRES
WILLIAM J. JR.	28.10 ACRES
WILLIAM J. JR.	29.10 ACRES
WILLIAM J. JR.	30.10 ACRES
WILLIAM J. JR.	31.10 ACRES
WILLIAM J. JR.	32.10 ACRES
WILLIAM J. JR.	33.10 ACRES
WILLIAM J. JR.	34.10 ACRES
WILLIAM J. JR.	35.10 ACRES
WILLIAM J. JR.	36.10 ACRES
WILLIAM J. JR.	37.10 ACRES
WILLIAM J. JR.	38.10 ACRES
WILLIAM J. JR.	39.10 ACRES
WILLIAM J. JR.	40.10 ACRES
WILLIAM J. JR.	41.10 ACRES
WILLIAM J. JR.	42.10 ACRES
WILLIAM J. JR.	43.10 ACRES
WILLIAM J. JR.	44.10 ACRES
WILLIAM J. JR.	45.10 ACRES
WILLIAM J. JR.	46.10 ACRES
WILLIAM J. JR.	47.10 ACRES
WILLIAM J. JR.	48.10 ACRES
WILLIAM J. JR.	49.10 ACRES
WILLIAM J. JR.	50.10 ACRES
WILLIAM J. JR.	51.10 ACRES
WILLIAM J. JR.	52.10 ACRES
WILLIAM J. JR.	53.10 ACRES
WILLIAM J. JR.	54.10 ACRES
WILLIAM J. JR.	55.10 ACRES
WILLIAM J. JR.	56.10 ACRES
WILLIAM J. JR.	57.10 ACRES
WILLIAM J. JR.	58.10 ACRES
WILLIAM J. JR.	59.10 ACRES
WILLIAM J. JR.	60.10 ACRES
WILLIAM J. JR.	61.10 ACRES
WILLIAM J. JR.	62.10 ACRES
WILLIAM J. JR.	63.10 ACRES
WILLIAM J. JR.	64.10 ACRES
WILLIAM J. JR.	65.10 ACRES
WILLIAM J. JR.	66.10 ACRES
WILLIAM J. JR.	67.10 ACRES
WILLIAM J. JR.	68.10 ACRES
WILLIAM J. JR.	69.10 ACRES
WILLIAM J. JR.	70.10 ACRES
WILLIAM J. JR.	71.10 ACRES
WILLIAM J. JR.	72.10 ACRES
WILLIAM J. JR.	73.10 ACRES
WILLIAM J. JR.	74.10 ACRES
WILLIAM J. JR.	75.10 ACRES
WILLIAM J. JR.	76.10 ACRES
WILLIAM J. JR.	77.10 ACRES
WILLIAM J. JR.	78.10 ACRES
WILLIAM J. JR.	79.10 ACRES
WILLIAM J. JR.	80.10 ACRES
WILLIAM J. JR.	81.10 ACRES
WILLIAM J. JR.	82.10 ACRES
WILLIAM J. JR.	83.10 ACRES
WILLIAM J. JR.	84.10 ACRES
WILLIAM J. JR.	85.10 ACRES
WILLIAM J. JR.	86.10 ACRES
WILLIAM J. JR.	87.10 ACRES
WILLIAM J. JR.	88.10 ACRES
WILLIAM J. JR.	89.10 ACRES
WILLIAM J. JR.	90.10 ACRES
WILLIAM J. JR.	91.10 ACRES
WILLIAM J. JR.	92.10 ACRES
WILLIAM J. JR.	93.10 ACRES
WILLIAM J. JR.	94.10 ACRES
WILLIAM J. JR.	95.10 ACRES
WILLIAM J. JR.	96.10 ACRES
WILLIAM J. JR.	97.10 ACRES
WILLIAM J. JR.	98.10 ACRES
WILLIAM J. JR.	99.10 ACRES
WILLIAM J. JR.	100.10 ACRES

RE-VEGETATION NOTES

- [illegible]

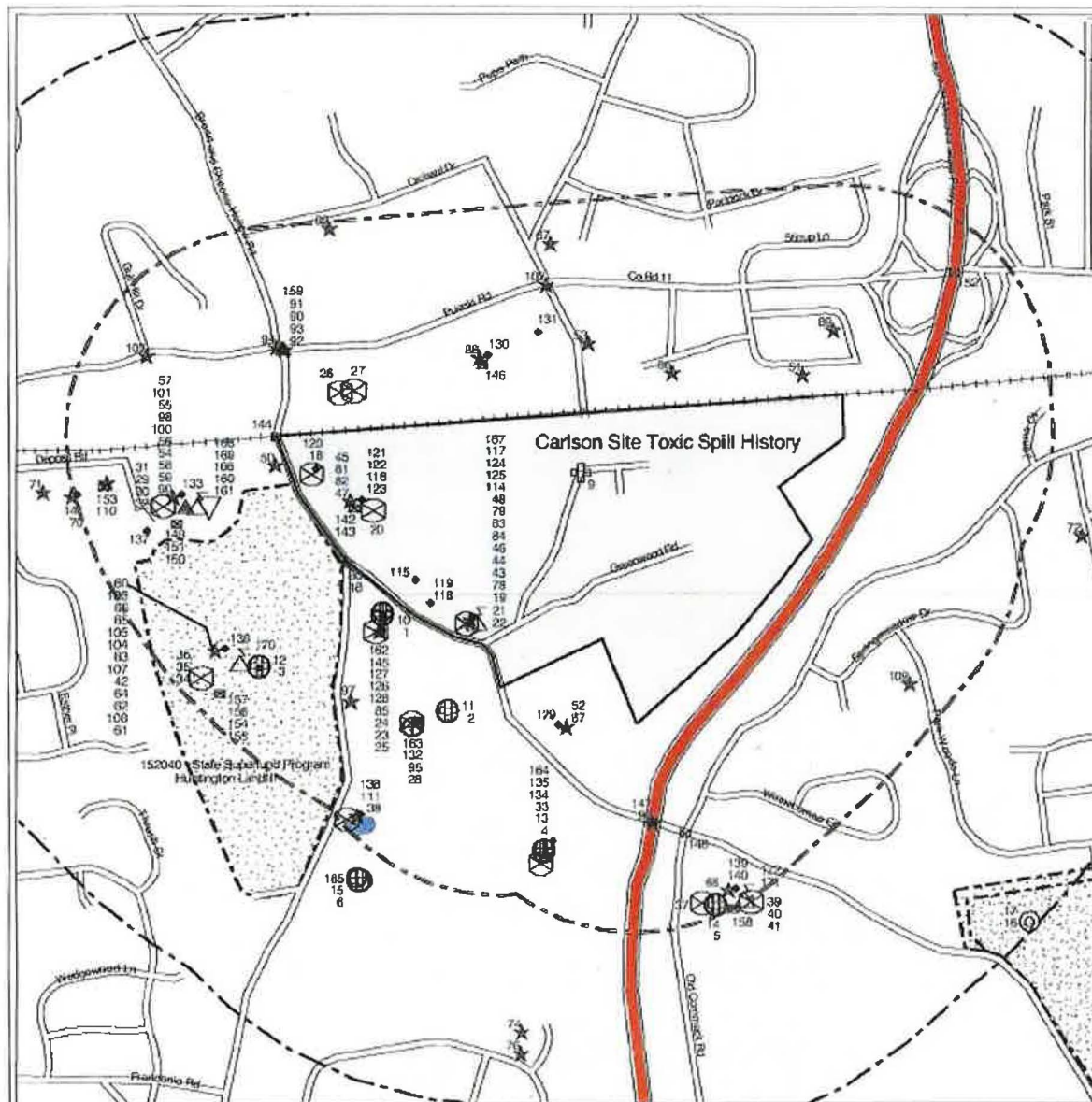
NET OF SUPPLY AREA

- [illegible]

8.000

STREET AND HE WAS STANDING IN THE BACK COURTYARD AS BEFORE WHEN, WITH A WELL APPEARING IN A PAIR OF BLUE SLIMED JEANS, AFTER SEVERAL "WAVE GRATE" HEEL PUNCH BECAME TO AN UNCONSCIOUS STATE. HE REMAINED THERE FOR SOME TIME AND WAS OBSERVED BY THE NEIGHBORS. HE REMAINED THERE AS HE REMAINED UNCONSCIOUS FOR A FEW MINUTES UNTIL HE WAS TAKEN AWAY BY TWO INDIVIDUALS WHO TOOK HIM TO THE STREET WITH A "STREET" AND AN OTHER ONE IN THE BACK OF HIS HEAD.

EXHIBIT E



Scale: 1 inch = 925 feet

Toxics Targeting 1/4 Mile Buffer Closeup Map Carlson Site Toxic Spill History Smithtown, NY 11754



Suffolk County

- | | |
|---|--|
| National Priority List (NPL) * | Delisted NPL Site ** |
| CERCLIS Superfund Non-NFRAP Site ** | CERCLIS Superfund NFRAP Site ** |
| Inactive Hazardous Waste Disposal Registry Site * | Inact. Haz Waste Disp. Registry Qualifying * |
| Hazardous Waste Treater, Storer, Disposer ** | RCRA Corrective Action Facility * |
| Hazardous Substance Waste Disposal Site ** | Solid Waste Facility ** |
| Major Oil Storage Facility *** | Brownfields Site ** |
| Chemical Storage Facility *** | Hazardous Material Spill ** |
| Toxic Release *** | Petroleum Bulk Storage Facility *** |
| Wastewater Discharge *** | Hazardous Waste Generator, Transp. *** |
| Enforcement Docket Facility *** | Air Release *** |
| Subject Area | Remediation Site Borders |
| County Border | Waterbody |
| 1/4 Mile Radius | Railroad Tracks |
| | 1/8 Mile Radius |

* 1 Mile Search Radius
*** 1/4 Mile Search Radius

** 1/2 Mile Search Radius

**CLOSED STATUS UNKNOWN CAUSE SPILLS AND OTHER CAUSE SPILLS IDENTIFIED WITHIN 1/2 MILE SEARCH RADIUS**

PLEASE NOTE: * Compass directions can vary substantially for sites located very close to the subject property address.

Map Identification Number 43

CARLSON PRECAST
140 OLD NORTHPORT ROAD

KINGS PARK, NY

Spill Number: 9401352

Close Date: 05/31/2005

TT-Id: 520A-0165-372

MAP LOCATION INFORMATION

Site location mapped by: MANUAL MAPPING - LARGE SITE
Approximate distance from property: 0 feet

ADDRESS CHANGE INFORMATION

Revised street: NO CHANGE
Revised zip code: NO CHANGESource of Spill: UNKNOWN
DEC Investigator: BPAUSTINSpiller: CARLSON PRECAST
Contact for more spill info:Spiller Phone:
Contact Person Phone:

The following caller and notifier data has been withheld by the NYSDEC since 2008.

Caller Name: ZIMMERMAN
Notifier Name:Caller Agency: CITIZEN
Notifier Type: CitizenCaller Phone: (516) 269-2890
Notifier Phone:Category: Known petroleum or hazardous material release with minimal potential for fire/explosion (Indoors or outdoors), drinking water contamination, or releases to surface waters.
Class: Willing RP - DEC Field Response - Corrective Action Initiated, Taken Over, or Completed by RP or Other Agency

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards	Penalty Recommended
04/08/1994		UNKNOWN	NO	NO

Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
UNKNOWN PETROLEUM	PETROLEUM	0	GALLONS	0	GALLONS	SOIL

Caller Remarks:

MRE ZIMMERMAN NOTICED A DARK RING IN THE SOIL OF AN EXCAVATED AREA WHICH HE SUSPECTS IS RUNOFF FROM THE CARLSON OPERATION

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead_DEC Field was AUSTIN

ADMINISTRATIVELY CLOSED

Map Identification Number 44
CARLSON PRECAST
140 OLD NORTHPORT ROAD

KINGS PARK, NY

Spill Number: 8907860

Close Date: 11/09/1989
TT-Id: 520A-0165-370

MAP LOCATION INFORMATION

Site location mapped by: MANUAL MAPPING - LARGE SITE
Approximate distance from property: 0 feet

ADDRESS CHANGE INFORMATION

Revised street: NO CHANGE
Revised zip code: NO CHANGESource of Spill: INSTITUTIONAL, EDUC, GOV, OTHER
DEC Investigator: KDGOERTZSpiller: CARLSON PRECAST
Contact for more spill info:Spiller Phone:
Contact Person Phone:

The following caller and notifier data has been withheld by the NYSDEC since 2006.

Caller Name: JEFFREY WESTON
Notifier Name:Caller Agency: CARLETON PRECAST
Notifier Type: Responsible PartyCaller Phone: (516) 368-4000
Notifier Phone:

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended	
11/06/1989	11/09/1989	UNKNOWN	UNKNOWN		NO	
Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
DIESEL	PETROLEUM	0	GALLONS	0	GALLONS	GROUNDWATER

Caller Remarks:

3-4K CONTAMINATION ENCOUNTERED DURING ROUTINE REMOVAL. SCHD ON SITE.

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead_DEC Field was GOERTZ

FD

FILE HAS BEEN DESTROYED ACCORDING TO STATE ARCHIVE AND RECORD ADMINISTRATOR RETENTION/DISPOSAL PROCEDURES

Map Identification Number 46
⑤

CARLSON PRECAST
140 OLD NORTHPORT ROAD

KINGS PARK, NY

Spill Number: 8904222

Close Date: 10/20/1989
TT-Id: 520A-0165-371

MAP LOCATION INFORMATION

Site location mapped by: MANUAL MAPPING - LARGE SITE
Approximate distance from property: 0 feet

ADDRESS CHANGE INFORMATION

Revised street: NO CHANGE
Revised zip code: NO CHANGE

Source of Spill: COMMERCIAL/INDUSTRIAL
DEC Investigator: WALEK

Spiller: CARLSON PRECAST
Contact for more spill info:

Spiller Phone: (516) 328-4000
Contact Person Phone:

The following caller and notifier data has been withheld by the NYSDEC since 2006.

Caller Name: JEFFREY WESTON
Notifier Name:

Caller Agency: CARLSON PRECAST
Notifier Type: Responsible Party

Caller Phone: (516) 328-4000
Notifier Phone:

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended		
07/28/1989	10/20/1989	OTHER	UNKNOWN		NO		
Material Spilled	Material Class		Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
WASTE OIL/USED OIL	PETROLEUM		15.00	GALLONS	0.00	GALLONS	SOIL

Caller Remarks:

RAIN DISPLACED WASTE OIL OUT OF UNCOVERED DRUMS. SCDH TOOK SAMPLES, IN PROCESS OF ANALYSIS. TOLD WESTON TO COVER GROUND WITH PLASTIC AND PLAN ON REMOVAL

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead_DEC Field was WALEK

FD 10/19/89: DEC CHECKED AREA, NOW CLEAN. SCDH SUPERVISED CLEANUP 6'X 20' X 10' AREA CLEANED UP. 15 YDS CONT SOIL DISPOSED OF AT THE SMITHTOWN LANDFILL. NO FURTHER ACTION NEEDED.

FILE HAS BEEN DESTROYED ACCORDING TO STATE ARCHIVE AND RECORD ADMINISTRATOR RETENTION/DISPOSAL PROCEDURES

SIDE OF THE ROAD. SPILL APPEAR TO HAVE BEEN ANTIFREEZE FROM AN UNKNOWN SOURCE, SPILL WAS CONTAINED AND ABSORBED WITH SPEEDI DRI, ON 11/19/07 IN AM, TOWN SANDED AND SWEEPER CAME TO REMOVE THE CONTAMINATED MATERIAL AND DISPOSE OF AS ROAD CUTTINGS. REQUEST CLOSURE, NO FURTHER ACTION NEEDED

Map Identification Number 49 **CARLSON PRECAST CORP**
 ① OLD NORTHPORT ROAD KINGS PARK, NY **Spill Number: 0004414** **Close Date: 07/13/2000**
 TT-Id: 520A-0167-053

MAP LOCATION INFORMATION **ADDRESS CHANGE INFORMATION**
 Site location mapped by: MANUAL MAPPING - LARGE SITE
 Approximate distance from property: 0 feet
 Revised street: NO CHANGE
 Revised zip code: NO CHANGE

Source of Spill: COMMERCIAL/INDUSTRIAL Spiller: MARTIN BURKE - CARLSON PRECAST CORP Spiller Phone: (631) 360-7553
 DEC Investigator: UNASSIGNED Contact for more spill info: MARTIN BURKE Contact Person Phone: (631) 360-7553

The following caller and notifier data has been withheld by the NYSDEC since 2006.
 Caller Name: MARTIN BURKE Caller Agency: SMITH TOWN PUBLIC SAFETY Caller Phone: (631) 360-7553
 Notifier Name: CHIEF RICHARD MCKAY Notifier Type: Fire Department Notifier Phone: (631) 360-7553

Category: Investigation indicates there was no spill.
 Class: Any Type of RP Including No RP - No DEC Field Response - Corrective Action by Spill Response Not Required

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended	
07/13/2000		OTHER	YES		NO	
Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
WASTEWATER	OTHER	0	GALLONS	0	GALLONS	SOIL

Caller Remarks:

FIRE AT A WOOD CHIP FACILITY A LOT OF RUN OFF FIRE HAS BEEN GOING FOR ABOUT 3 HOURS REQ DEC TO CALL THEM

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead DEC Field was NONE TELECON RICHARD MCKAY: 70'X50'X50' PILE OF WOOD CHIPS IS BURNING. RUNOFF IS CONTAINED ON PROPERTY. FIRE IS CENTRALLY LOCATED ON PROPERTY, RUNOFF HAS NO OBVIOUS NOXIOUS CHARACTERISTICS. TOWN OF SMITHTOWN CONACT WILL BE ANDREW BROMAN (FM) AT 360-7553



CLOSED STATUS HAZARDOUS SPILLS – MISC. SPILL CAUSES – EQUIPMENT FAILURE, HUMAN ERROR, TANK OVERFILL, DELIBERATE SPILL, TRAFFIC ACCIDENT, HOUSEKEEPING, ABANDONED DRUM, VANDALISM AND STORMS – WITHIN 1/2 MILE SEARCH RADIUS.
All spills mapped and profiled within 1/4 mile. Between 1/4 mile and 1/2 mile search radius, spills reported to be greater than 100 units and spills reported in the NYSDEC Fall 1998 MTBE Survey are mapped and profiled. Spills reported to be less than 100 units are listed in a table at the end of this section.

PLEASE NOTE: * Compass directions can vary substantially for sites located very close to the subject property address.

Map Identification Number 78


CARLSON PRECAST
140 OLD NORTHPORT ROAD

KINGS PARK, NY

Spill Number: 9825158

Close Date: 02/24/2009

TT-Id: 520A-0165-373

MAP LOCATION INFORMATION

Site location mapped by: MANUAL MAPPING – LARGE SITE
Approximate distance from property: 0 feet

ADDRESS CHANGE INFORMATION

Revised street: NO CHANGE
Revised zip code: NO CHANGE

Source of Spill: COMMERCIAL/INDUSTRIAL
DEC Investigator: Unassigned

Spiller: HANK CARLSON – CARLSON PRECAST
Contact for more spill info: HANK CARLSON

Spiller Phone: (516) 368-4000
Contact Person Phone: (516) 368-4000

The following caller and notifier data has been withheld by the NYSDEC since 2006.

Caller Name: ROB MCDERMOTT
Notifier Name: ROB YAGER/ROB GALLI

Caller Agency: DEC BECI
Notifier Type: DEC

Caller Phone:
Notifier Phone:

Category: Known petroleum or hazardous material release with minimal potential for fire/explosion (indoors or outdoors), drinking water contamination, or releases to surface waters.

Class: Unknown RP – DEC Field Response – DEC Corrective Action Required

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended	
06/11/1998		HOUSEKEEPING	NO		NO	
Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
OTHER –	OTHER	0	GALLONS	0	GALLONS	SOIL
The following material(s) was dropped or revised by the NYS DEC. Call Toxics Targeting for more information						
OTHER PETROLEUM		0	GALLONS	0	GALLONS	

Caller Remarks:

RECEIVED REFERRAL 14DEC98 FROM BECI, WHO RECEIVED IT FROM MINED LANDS 14JUL98. MINED LANDS INSPECTED 11JUN98 BASED ON CITIZEN'S (MR ZIMMERMAN) COMPLAINT OF OIL/WATER WASTE BEING DISCHARGED ONTO GROUND. ***PRIOR REPORTS HERE***

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead DEC Field was AUSTIN

98-159 AS PER DEPOSITIONS OF GALLI & YAGER: NOTICED PUDDLE OF BLACK PETROLEUM-TYPE PRODUCT IN AN EXCAVATED PORTION OF THE PROPERTY AT THE WEST END OF THE SITE. DIRECTLY SOUTH OF THIS, AT THE TOP OF THE EXCAVATED AREA, THERE WAS A CONCRETE PAD WHERE CONCRETE PRODUCTS WERE BEING MADE. THIS APPEARED TO BE THE SOURCE OF THE PRODUCT. THE PRODUCT MAY HAVE ACTUALLY BEEN DISCHARGING FROM A PIPE? (NOTES NOT CLEAR ON THIS).

12/18/98 FILE REASSIGNED PER HC

7/11/05 UNASSIGNED/AUSTIN

ADMINISTRATIVELY CLOSED

Map Identification Number 79



CARLSON PRECAST INC
140 OLD NORTHPORT ROAD

KINGS PARK, NY

Spill Number: 9702717

Close Date: 04/01/1998
TT-Id: 520A-0165-374

MAP LOCATION INFORMATION

Site location mapped by: MANUAL MAPPING - LARGE SITE
Approximate distance from property: 0 feet

ADDRESS CHANGE INFORMATION

Revised street: NO CHANGE
Revised zip code: NO CHANGE

Source of Spill: COMMERCIAL/INDUSTRIAL
DEC Investigator: BPAUSTIN

Spiller: HANK CARLSON - CARLSON PRECAST INC
Contact for more spill info: HANK CARLSON

Spiller Phone: (516) 368-4000
Contact Person Phone: (516) 368-4000

The following caller and notifier data has been withheld by the NYSDEC since 2006.

Caller Name: RICHARD SILVA
Notifier Name: RICHARD SILVA

Caller Agency: COASTAL ENVIRONMENTAL
Notifier Type: Other

Caller Phone: (516) 420-3800
Notifier Phone: (516) 420-3800

Category: Known or probable release, where, without action, there is a potential for a fire/explosion hazard (indoors or outdoors), contamination of drinking water supplies, or significant release to surface waters.
Class: Willing RP - DEC Field Response - Corrective Action Initiated, Taken Over, or Completed by RP or Other Agency

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended	
06/03/1997		HOUSEKEEPING	YES		NO	
Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
#2 FUEL OIL	PETROLEUM	0	GALLONS	0	GALLONS	SOIL

Map Identification Number 83**CARLSON PRECAST CONCRETE
OLD NORTHPORT/TOWNLINE**

KINGS PARK, NY

Spill Number: 0025276**Close Date: 01/08/2002**
TT-Id: 520A-0168-056**MAP LOCATION INFORMATION**Site location mapped by: MANUAL MAPPING - LARGE SITE
Approximate distance from property: 0 feet**ADDRESS CHANGE INFORMATION**Revised street: NO CHANGE
Revised zip code: NO CHANGESource of Spill: COMMERCIAL/INDUSTRIAL
DEC Investigator: UNASSIGNEDSpiller: CARLSON PRECAST CONCRETE
Contact for more spill info:Spiller Phone:
Contact Person Phone:**The following caller and notifier data has been withheld by the NYSDEC since 2006.**Caller Name: ANONYMOUS
Notifier Name:Caller Agency: CITIZEN
Notifier Type: CitizenCaller Phone:
Notifier Phone:

Category: Possible petroleum release with minimal potential for fire/explosion (indoors or outdoors), drinking water contamination, or releases to surface waters, known releases with no potential for damage, or non-petroleum/non-hazardous spills.
Class: Willing RP - No DEC Field Response - Corrective Action Initiated or Completed by RP or Other Agency

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards	Penalty Recommended
10/20/2000		HOUSEKEEPING	YES	NO

NO MATERIAL INFORMATION GIVEN FOR THIS SPILL

Caller Remarks:

CITIZEN WAS LOOKING FOR HIS DOG AND NOTICED OPEN 30GAL AND 5GAL CONTAINERS OF OIL BEHIND CONVEYOR MACHINES BY RAILROAD. NOTED SPILLAGE ON GROUND. ALSO CLAIMED TO HAVE SEEN SEVERAL 10,000GAL TANKS BROUGHT INTO SITE; THINKS THEY WERE ILLEGALLY BURIED. REFUSED TO GIVE NAME BUT WILL SEND PHOTOS.

DEC NOTE: BELIEVE THERE IS A PENDING VOLUNTARY CLEANUP APPLICATION FOR THIS SITE. ***SAME AS 0008505

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead_DEC Field was UNASSIGNED 00-126 ***SAME AS 0008505***

Map Identification Number 84**CARLSON PRECAST CONCRETE
OLD NORTHPORT ROAD**

KINGS PARK, NY

Spill Number: 0008505**Close Date: 10/20/2000
TT-Id: 520A-0168-055****MAP LOCATION INFORMATION**Site location mapped by: **MANUAL MAPPING – LARGE SITE**
Approximate distance from property: **0 feet****ADDRESS CHANGE INFORMATION**Revised street: **NO CHANGE**
Revised zip code: **NO CHANGE**Source of Spill: **COMMERCIAL/INDUSTRIAL**
DEC Investigator: **UNASSIGNED**Spiller: **N/A – CARLSON PRECAST CONCRETE**
Contact for more spill info: **N/A**Spiller Phone:
Contact Person Phone:**The following caller and notifier data has been withheld by the NYSDEC since 2006.**Caller Name: **MARGARET CHONG**
Notifier Name: **ANONYMOUS**Caller Agency: **US EPA**
Notifier Type: **Federal Government**Caller Phone: **(732) 321-4370**
Notifier Phone:Category: **Possible petroleum release with minimal potential for fire/explosion (indoors or outdoors), drinking water contamination, or releases to surface waters, known releases with no potential for damage, or non-petroleum/non-hazardous spills.**
Class: **Willing RP – No DEC Field Response – Corrective Action Initiated or Completed by RP or Other Agency**

Spill Date	Date Cleanup Ceased	Cause of Spill	Meets Cleanup Standards		Penalty Recommended	
10/20/2000		DELIBERATE	YES		NO	
Material Spilled	Material Class	Quantity Spilled	Units	Quantity Recovered	Units	Resource(s) Affected
COOKING GREASE	OTHER	0	GALLONS	0	GALLONS	SOIL
OTHER –	OTHER	0	GALLONS	0	GALLONS	SOIL
The following material(s) was dropped or revised by the NYS DEC. Call Toxics Targeting for more information						
OTHER PETROLEUM	PETROLEUM	0	GALLONS	0	GALLONS	

Caller Remarks:

caller stated the owner of the property is dumping grease and oil on the premise there they received and anonymous tip

DEC Investigator Remarks:

Prior to Sept, 2004 data translation this spill Lead_DEC Field was NONE SAME AS 0025276

**AIR DISCHARGE FACILITIES IDENTIFIED WITHIN THE 1/4 MILE SEARCH RADIUS**

PLEASE NOTE: * Compass directions can vary substantially for sites located very close to the subject property address.

Map Identification Number 167 **ANDREW CARLSON&SONS**
KINGS PK GREENWD RD
EPA (FINDS) Name: **ANDREW CARLSON&SONS**
EPA (FINDS) Address: **KINGS PK GREENWD RD**

Facility Id: 3610300123 **State-county CDS Id: 3610300123**
SMITHTOWN, NY 11787 **State-county NED Id:**
SMITHTOWN 11787 **TT-ID: 990A-0007-980**

MAP LOCATION INFORMATION
Site location mapped by: **MANUAL MAPPING - LARGE SITE**
Approximate distance from property: **0 feet**

ADDRESS CHANGE INFORMATION
Revised street: **KINGS PARK RD / GREENWOOD RD**
Revised zip code: **UNKNOWN**

CDS-ID: **00123** NED-ID: **None Given**
Plant Phone #1: **None Given** Plant Phone #2: **None Given**
Operating Status: **OPERATING**
EPA Classification: **POTENTIAL UNCONTROLLED EMISSIONS < 100 TONS/YEAR**
EPA Plant Compliance Status:
State Plant Compliance Status: **UNKNOWN COMPLIANCE STATUS**

EPA-ID: **NYD988880011** **FINDS-ID: NYD988880011**

AIR PROGRAM INFORMATION
Regulatory Air Program: **SIP SOURCE**

Program Status: **OPERATING**

POLLUTANT INFORMATION
Pollutant: **CARBON MONOXIDE**
State Pollutant Compliance for this pollutant: **UNKNOWN COMPLIANCE STATUS**
Pollutant: **NITROGEN DIOXIDE**
State Pollutant Compliance for this pollutant: **UNKNOWN COMPLIANCE STATUS**
Pollutant: **SULFUR DIOXIDE**
State Pollutant Compliance for this pollutant: **UNKNOWN COMPLIANCE STATUS**

EXHIBIT F



[Home](#) » [Mining and Reclamation Home](#) » [Mined Land Reclamation Searchable Database](#) » [Mines Data Search](#)

Mine Inspection Record(s)

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Information presented on this page is from inspections conducted by Mined Land staff and stored in our database. Note that there may be a drop-down list of multiple inspection dates available. Due to changes in data management practices over time, older inspection records are not as complete as new ones. Regarding inspections conducted specifically at the reclamation stage, some older reclamation information may be found here. However, newer more detailed reclamation inspection records can be found under the "Reclamation Inspections" link off the main Mines Data Search.

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Company Name	Carlson Sand & Gravel Corp
Mine Name	Carlson Sand And Gravel
Mine ID	10048
Inspection Type	Old Gen. Inspection Code
Inspector	Robert Yager
Inspection Date	10/17/2018 View
Weather	
Persons Interviewed	Les- site foreman
Comments	After many years of working to fulfill a consent order, the slopes have finally been restored and hydroseeding completed on this site. Will inspect again in early December to determine growth and see if any more work needs to be done in the spring.