



Pennsylvania Department of Environmental Protection

Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745
November 20, 2007

412-442-4262
Fax: 412-442-4267

Southwest Regional Counsel

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E. Street, S W.
Washington, DC 20023

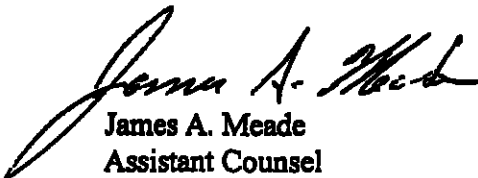
Re: J.P Rail, Inc. - Lease and Operation Exemption - NAT Industries, Inc.
STB Finance Docket Number 35090

Dear Mr Williams:

Enclosed please find an original and 10 copies of the Commonwealth of Pennsylvania, Department of Environmental Protection's Petition to Void Notice of Exemption, and for a Cease and Desist Order, Order Extending Period of Stay, Order Requiring Submission of Environmental Assessment, Order Extending Period for Submission of Comments/Petitions.

If you have any questions, please contact me at the above number. Thank you for your consideration of this matter.

Sincerely,


James A. Meade
Assistant Counsel

Enclosure

c: John D. Heffner (w/enc.)
James H M Savage (w/enc.)
U S. Army Corps of Engineers (w/enc.)
U.S. Environmental Protection Agency, Region III (w/enc)
U.S. Fish and Wildlife Service (w/enc.)
Natural Resources Conservation Service (w/enc)
Pennsylvania State Clearinghouse (w/enc.)
Washington County Board of Commissioners (w/enc)
Westmoreland County Board of Commissioners (w/enc)
Town of Donora (w/enc)
Town of Monesson (w/enc.)



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO 35090

**J.P. RAIL, INC
LEASE AND OPERATION EXEMPTION**

NAT INDUSTRIES, INC.

PETITION FOR.

**VOID NOTICE OF EXEMPTION,
CEASE AND DESIST ORDER,
ORDER EXTENDING PERIOD OF STAY,
ORDER REQUIRING SUBMISSION OF ENVIRONMENTAL ASSESSMENT,
ORDER EXTENDING PERIOD FOR SUBMISSION OF COMMENTS/PETITIONS**

**FILED BY THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Approximately twenty-one days ago, the Commonwealth of Pennsylvania, Department of Environmental Protection ("PaDEP") received notice that J.P. Rail, Inc. ("J.P. Rail"), a Class III rail carrier, had filed its application to operate and exemption request for a one mile rail line located in Washington County, Pennsylvania, known as the Donora Line ("Donora Line" or "Line"), and to operate a waste transfer facility at its terminus. Approximately twelve days ago, PaDEP learned that J.P. Rail had already commenced unauthorized operations at the Donora Line, despite its representations to the Surface Transportation Board ("STB" or "Board") that operations would not commence before November 17, and despite imposition of a stay until

December 6, 2007 issued by the STB. PaDEP has conducted a preliminary investigation of J P Rail's operations and has found (1) evidence of misrepresentations by J P Rail to the STB; (2) serious violations of environmental performance standards for waste operations within Pennsylvania; and (3) the bases for potentially greater environmental harm.

PaDEP hereby requests that the STB void J.P. Rail's Notice of Exemption and order J.P. Rail to immediately cease and desist from conducting any operations on the Donora Line, to remove waste containing rail cars from this site and to refrain from bringing additional rail cars to the Line. PaDEP further requests the STB to extend its stay currently in effect until the STB rules upon the need for J.P. Rail to prepare and file an Environmental Assessment, to order J.P. Rail to submit such Environmental Assessment, and for an order extending the time period for interested parties to file comments and/or petitions.

STATEMENT OF INTEREST

PaDEP is the executive agency of the Commonwealth of Pennsylvania, with the duty and authority to protect the public health, safety and environment pursuant to statutory mandate, including but not limited to the Solid Waste Management Act, 35 P.S. §§ 6018.101 *et seq.*, the Clean Streams Law, 35 P.S. §§ 691.1 *et seq.*, the Air Pollution Control Act, 35 P.S. §§ 4001 *et seq.*, and the rules and regulations promulgated pursuant to those statutes. Among the environmental protection responsibilities charged to PaDEP are the requirements to regulate the storage, transportation, processing and disposal of solid wastes, ensure protection of the surface waters and groundwater, and the air quality in the Commonwealth of Pennsylvania.

J.P. RAIL'S APPLICATION AND REPRESENTATIONS TO THE STB

On or about October 17, 2007, J.P. Rail filed with the STB a Verified Notice of Exemption Pursuant to 49 U.S.C 10902 and 49 CFR 1150.41 (hereinafter, "Exemption Notice,") including a Verification of the facts contained therein signed by David M. DeClement ("DeClement"), an officer of J.P. Rail. No claim was made by J.P. Rail that it was authorized to commence operations on the Donora Line prior to a ruling by the STB on its application.

On October 25, 2007, the STB issued a stay of J.P. Rail's proposed exemption until December 6, 2007, and directed J.P. Rail to supplement its filing with additional information. The stay order allowed interested parties until November 29, 2007 to file objections and petitions for relief. This Board also ordered that "If the verified notice contains false or misleading information, the exemption is void *ab initio*." On or about October 31, 2007, J.P. Rail filed a Supplemental Verified Statement by DeClement.

In its Exemption Notice, DeClement on behalf of J.P. Rail represented to the Board that:

- a. J.P. Rail planned to commence operations on or after November 17, 2007, at least thirty days after the filing of its Exemption Notice (Exemption Notice, page 3).
- b. J.P. Rail anticipates providing its services to existing customers of NAT Industries. (Supplemental Verified Statement, Page 2, par. 11.)
- c. The waste material shipped to the proposed Donora unloading facility would be limited to construction and demolition waste (Exemption Notice, page 6). In its Supplemental Verified Statement, J.P. Rail emphasized that the material "would exclude municipal solid waste ("MSW") materials, energy resources, recyclable commodities, or ozone depleting materials." (Supplemental Verified Statement, Page 2, par 7, emphasis in original).

d. No waste would be allowed to be deposited onto the ground at the proposed Donora unloading facility (Exemption Notice, page 7), and

e. The criteria for exemption from Environmental Assessment and Environmental Impact Statement requirements were satisfied (Exemption Notice, Page 8).

PaDEP'S PRELIMINARY INVESTIGATION

On October 25 and November 8, 9, 10, 12, 13 and 16, 2007, PaDEP representatives inspected the 1 mile stretch of track known as the Donora Line, the connection with the Line at milepost ML40 in Carroll Township, and the specific site proposed by J.P. Rail for use as a solid waste transfer facility. During PaDEP's inspections, its representatives documented numerous conditions of environmental concern, violations of Pennsylvania law, and apparent misrepresentations to this Board by J.P. Rail. (See "Attachment A," Verified Statement of Stanley Whitsel, Solid Waste Operations Supervisor, and accompanying inspection reports and photographs, all incorporated herein by reference and identified as follows: Attachment A-1, Inspection Report and Interviews dated November 5, 2007; Attachment A-2, Inspection Report, Interviews and Photographs dated November 9, 2007; Attachment A-3, Inspection Report, Interviews and Photographs dated November 10, 2007; Attachment A-4, Inspection Report and Photographs dated November 12, 2007.)

Specifically:

a. J.P. Rail has already delivered a dozen rail cars of unconsolidated solid waste to the Donora Line and the proposed solid waste transfer facility, despite DeClement's representations to this Board that the line would not be put into operation until at least November 17, 2007, despite this Board's issuance of a stay until December 6, 2007, and despite the clear

statutory language that a Class III rail carrier may operate "only if the Board issues a certificate authorizing said operation." 49 U.S.C. 10902(a). Despite have no such authorization, J.P. Rail has advised PaDEP that another six rail cars are en route. (See Verified Statement of Stanley Whitsel, also Attachments A-2 through A-4.

b. Based upon its ongoing investigation, PaDEP has found that NAT Industries, Inc. stopped operating over 10 years ago and does not have any "existing customers." J.P. Rail misrepresented to this Board that its rail operator will service "existing customers of NAT." (See Verified Statement of Stanley Whitsel.)

c. J.P. Rail's use of the Donora Line and solid waste transfer facility was not confined to construction and demolition waste, as represented to the Board by DeClement. While construction and demolition waste includes "wood, plaster, metals, asphaltic substances, bricks, block and unsegregated concrete" from building demolition (25 Pa. Code § 271.101), the rail cars brought to this site also contained a significant amount of common garbage (MSW) and recyclable materials, including paper, carpeting, various plastic wastes, commercial wood pallets and poles (See Verified Statement of Stanley Whitsel and photographs attached.)

d. On November 8-10, J.P. Rail proceeded to transfer waste from two of the rail cars into trucks. During this transfer process, a substantial amount of waste was deposited onto the ground, and allowed to remain there for several days, contrary to J. P. Rail's statements contained in its Exemption Notice that no waste would be deposited onto the ground. Large amounts of dust were released from the transfer operations, with no dust or fire suppressant systems in operation. No measures to protect the ground water or surface waters (including the very proximate Monongahela River) from contamination were in use. Waste constituents were

not monitored for radioactive contaminants. All of these actions and omissions, and many more, took place in violation of Pennsylvania regulatory performance requirements¹. (See Verified Statement of Stanley Whitsel and attached photographs.)

e. J.P. Rail's use of the Line and waste transfer facility is dependent upon a structurally unsound and potentially dangerous concrete transfer ramp. The ramp in question has structural cracks, and is currently being held together by steel banding girders of questionable structural integrity. The potential for environmental damage and personal injury resulting from the failure of this ramp are significant (See Inspection Report, Attachment A-1.)

f. J.P. Rail has conducted earth-moving activities at the proposed waste transfer site in order to prepare the site for use. Upon information and belief, PaDEP is concerned that this site was used decades ago for the unauthorized deposit of stainless steel slag waste, potentially high in chromium, nickel and other toxic metals. In light of J.P. Rail's disturbance of soils and slag at this site, and the close proximity of the Monongehela River to this site, PaDEP believes that soil sampling and an assessment of environmental conditions are necessary to protect human health and the environment.

g. J.P. Rail's application is not exempt from environmental review under 49 CFR 1105.6(c)(2)(i), based upon information provided to PaDEP by J.P. Rail in a telephone conference on November 15, 2007 (average of 1-3 rail cars of waste per day) and currently available to PaDEP, because the actions proposed will cause operating changes that exceed the thresholds established in 49 CFR 1105.7(e)(4) and (5). Specifically

¹ PaDEP intends to address these violations via state administrative proceedings, pursuant to *New York Susquehanna and Western Railway Corp v Jackson*, ___ F 3d ___, 2007, 2007 U S App Lexis 21083, but believes they are relevant here to show an imminent threat to the public health and safety from J P Rail's unauthorized operations, and a careless or reckless disregard by J P Rail of environmental standards

i. The proposed action will affect a "non-attainment area" designated under the Clean Air Act for Ozone and P.M. 2.5, particulate matter of microscopic dimensions. (See Attachment B, showing that virtually all of Southwestern Pennsylvania, including Washington County, is designated as non-attainment for these pollutants.)

ii. The proposed action will result in an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) on the Donora Line, a line which sees extremely little use today (See 49 CFR 1105.7(e)(5)(ii)(A)).

iii. The proposed action will result in an average increase in truck traffic of 20 to 30 vehicle trips per day, which is more than 10 percent of the average daily traffic on the road segment which must be used for solid waste transfer from the proposed transfer facility, a portion of Nitrous Lane which sees a low amount of traffic today (See 49 CFR 1105.7(e)(5)(ii)(c)).

PETITION TO VOID NOTICE OF EXEMPTION

Based on the foregoing, PaDEP petitions the STB for an order voiding J.P. Rail's Notice of Exemption.

In a November 2, 2007 Notice of J.P. Rail's filing, the STB stated that "[I]f the verified notice [of exemption] contains false or misleading information, the exemption is void *ab initio*."

J.P. Rail's Notice contains at best misleading information and at worst, outright misrepresentations. J.P. Rail's proposed exemption should be voided.

As discussed in this Petition, J.P. Rail filed its Notice of Exemption on October 17, 2007. In its Notice, J.P. Rail stated to the STB that it would not commence operations at the Donora

Line until on or after November 17, 2007, 30 days after filing its Notice.² That statement, verified by DeClement, was knowingly false as J.P. Rail commenced operation on the Donora Line on or before November 8, 2007. J.P. Rail commenced operation despite an October 25, 2007 order from the STB delaying the effective date of the exemption until December 6, 2007, in an intentional and knowing violation of the Board's authority. For this reason, PaDEP respectfully requests that this Board void, *ab initio*, J.P. Rail's Notice of Exemption

PETITION FOR CEASE AND DESIST ORDER

Based upon the foregoing, PaDEP petitions the STB for an order enforcing the STB's own stay, and prohibiting J.R. Rail from operating the Donora Line and related solid waste transfer facility at the site prior to the STB's determination as to whether an Environmental Assessment must be filed, interested parties' review of and comment on such report, and the STB's ruling on the application. As PaDEP's filing has demonstrated, the unauthorized operation is creating both current and potential environmental harm to the Commonwealth of Pennsylvania. J.P. Rail should immediately cease and desist from conducting any operations on the Donora Line, remove waste containing rail cars from this site, and refrain from bringing additional rail cars to the Line, until the STB lifts its stay and rules upon the pending application. J.P. Rail's application presents no claim or basis for its authority to operate the Donora Line absent such a ruling by the STB

PETITION FOR ORDER EXTENDING PERIOD OF STAY

Based upon the foregoing, PaDEP requests the STB to extend the stay that is currently in effect until the STB rules upon the need for J.P. Rail to prepare and file an Environmental Assessment, until J.P. Rail submits a complete and thorough Environmental Assessment if

² Pursuant to 49 U.S.C. § 10902(a), J.P. Rail has no authority to operate the Donora Line until after the exemption is granted by the STB

ordered to do so by the STB, until interested parties have the opportunity to review and comment upon the Environmental Assessment, and until the STB rules on J P. Rail's application

PETITION FOR ORDER REQUIRING SUBMISSION OF ENVIRONMENTAL ASSESSMENT

Based upon the foregoing, PaDEP requests the STB to require J.P. Rail to prepare a complete and thorough Environmental Assessment for its application. The application has not been shown to be exempt from this requirement pursuant to 49 CFR 1105.6(c)(2)(i), because the actions proposed will cause operational changes that exceed the thresholds established in 49 CFR 1105.7(e)(4) and (5).

Moreover, regardless of whether the proposed action would generally be exempt pursuant to 49 CFR 1105.6(c)(2), this Board has the authority under 49 CFR 1105.6(d) to modify such requirements based upon specific circumstances where the Board decides that a particular action has the potential for significant environmental impacts. 49 CFR 1105.6(d). In light of the actual and potential environmental consequences described above and documented in the attached Verification, PaDEP requests this Board to require J.P. Rail to file a complete Environmental Assessment.

PETITION FOR ORDER EXTENDING PERIOD FOR SUBMISSIONS BY INTERESTED PARTIES

Due to J.P. Rail's unauthorized operations on the Donora Line, PaDEP believes it is necessary to file this Petition sooner rather than later. As such, PaDEP's opportunity to conduct its own investigation into the assertions made by J.P. Rail has been limited and, as a result, those investigations have been hurried and remain incomplete at this time. As demonstrated above, however, even this preliminary investigation has documented apparent misrepresentations in J.P.

Rail's application, numerous environmental violations in the company's initial operations, and reason to believe that toxic materials may be disturbed by site earth moving activities

PaDEP's request for an extension of time to submit comments and/or petitions for relief is reinforced by the source of J P Rail's representations to the STB: Mr. David M DeClement, an officer of J.P. Rail. Two years ago, U.S. District Court Judge Jerome Simandle specifically questioned the accuracy of information that DeClement had provided to the Court on behalf of J.P. Rail in furtherance of a similar waste facility *J.P. Rail, Inc v New Jersey Pinelands Commission*, 404 F. Supp. 2d 636, 640, footnotes 6³ and 8⁴ (Dist of N.J., 2005) In light of the apparent inconsistencies between statements by J.P. Rail to this Board regarding when and how the line will be used, and the activities observed by PaDEP at the site, the Board should hold J P Rail's application to the highest possible level of scrutiny, and allow interested parties additional time to evaluate and provide comments to the STB.

CONCLUSION

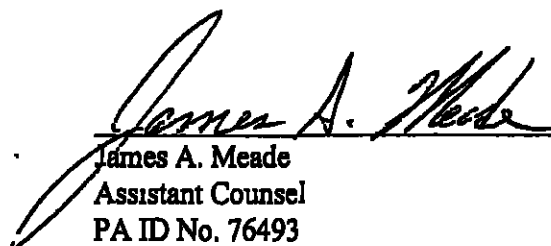
PaDEP hereby respectfully requests that the STB order that J.P. Rail's Notice of Exemption is void *ab initio*, and that J.P. Rail immediately cease and desist from conducting any operations on the Donora Line, remove waste containing rail cars from this site, and refrain from bringing additional rail cars to the Line. PaDEP further respectfully requests the STB to extend its stay currently in effect until the STB rules upon the need for J.P Rail to prepare and file an

3 "Not only did Mr DeClement represent to the Court at the hearing that he did not sign the Consent Order, he denied that his client Magic Disposal, Inc was named as a defendant therein Both representations were shown to be false "

4 "At the hearing Mr DeClement was adamant in representing to the Court that the Consent Order had never been recorded That representation was false "

Environmental Assessment; to order J.P. Rail to submit such Environmental Assessment; and to issue an order extending the time period for interested parties to file comments and/or petitions.

Respectfully submitted,



James A. Meade
Assistant Counsel
PA ID No. 76493

John H. Herman
Assistant Regional Counsel
PA ID No. 64981

Office of Chief Counsel
400 Waterfront Drive
Pittsburgh, PA 15222-4745
(412) 442-4262

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Date: November 20, 2007

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Petition to Void Notice of Exemption, Cease and Desist Order, Order Extending Period of Stay, Order Requiring Submission of Environmental Assessment, Order Extending Period for Submission of Comments/Petitions, upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Service by first class mail addressed as follows:

John D. Heffner
1750 K Street, N.W , Suite 350
Washington, DC 20006

James H. M. Savage
1750 K Street, N.W. Suite 350
Washington, DC 20006

U.S. Army Corps of Engineers
Scott Hans
Acting Chief, Regulatory Branch
Department of the Army
Pittsburgh District Corps of Engineers
1000 Liberty Avenue
Pittsburgh, PA 15222

U.S. Environmental Protection Agency
Region 3
1650 Arch Street (3PM52)
Philadelphia, PA 19103-2029

U.S. Fish and Wildlife Service
Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, PA 16801-4850

Natural Resources Conservation Service
Greensburg Service Center
214 Donohoe Road
Greensburg, PA 15601-9217

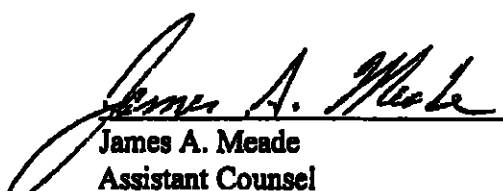
Pennsylvania State Clearinghouse
Health & Welfare Building
7th and Forster Streets
Harrisburg, PA 17120

Washington County
Board of Commissioners
Courthouse Square, Suite 702
Washington, PA 15301

Westmoreland County
Board of Commissioners
Main Office
2 North Main Street, Suite 101
Greensburg, PA 15601

Town of Donora
Donora Administrative Office
603 Meldon Avenue
Donora, PA 15033

Town of Monessen
Monessen Mayor's Office
100 3rd Street
Monessen, PA 15062

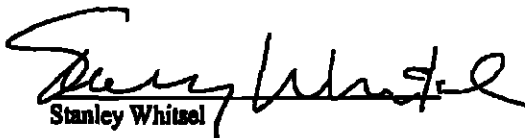

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Date: 11/20/07

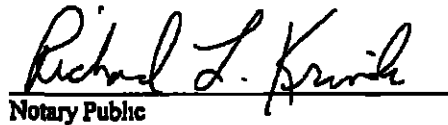
Attachment A

Verified Statement of Stanley Whitsel

Stanley Whitsel, having been duly sworn according to law, hereby deposes and states that he is authorized to make this Verification, has read the foregoing Petition Filed By The Commonwealth Of Pennsylvania, Department Of Environmental Protection, and the inspection reports attached hereto, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief Further, the attached photographs are true and accurate depictions of the J P Rail solid waste unloading operations on November 8-10, 2007


Stanley Whitsel

Subscribed and sworn to before me, a Notary Public, in and for the County of Westmoreland, Commonwealth of Pennsylvania, this 19th day of November, 2007


Notary Public

My commission expires

NOTARIAL SEAL
RICHARD L. KRIVDA, NOTARY PUBLIC
HEMPFIELD TWP, WESTMO' COUNTY, PA
MY COMMISSION EXPIRES DEC. 8, 2007

Attachment A-1

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Greensburg District Office
November 5, 2007
724-925-5432

SUBJECT: Report of Interview – Lue Ann Pawlick
Rail Transfer Facility
Donora Borough and Carroll Township
Washington County

TO: File

FROM: Stanley P. Whitse
Operations Supervisor
Waste Management

On October 25, 2007, SWS George Sabocheck and I interviewed Lue Ann Pawlick, Executive Director of the Middle Monongahela Industrial Development Association ("MIDA") at the MIDA office in the MIDA Industrial Park in Donora. Pawlick's mailing address at MIDA is PO Box 91, Donora, PA 15033 and her telephone number is 724-379-5600.

Pawlick was unaware of any type of proposed rail transfer facility in the area, but during the interview she called a contact of hers named Wally Ray. According to Pawlick, Ray informed her that there are indeed plans to deliver waste to the area via rail and that Ron Amati is involved as is an individual named Jeff Umble who is a partner of Amati's. Apparently, the entity or entities plan to deliver the waste via rail car over track owned by MIDA. Reportedly 75 cars of waste left Atlantic City a week before are en route and expected to arrive at the site shortly. Pawlick said that she is aware that Umble owns some riverfront property in Speers.

According to Pawlick, MIDA ceded control and operation of the rail line to Donora Borough through a legal agreement one to two years ago. She agreed to provide a copy of that agreement to me.

Attachment

cc: M. Forbeck
F. DeNorscia
S. Whitse
G. Sabocheck
J. Fierman, OCC



(724) 379-5600
Fax 379-9308
lpawlick@mnaida.com

MIDDLE MONONGAHELA INDUSTRIAL
DEVELOPMENT ASSOCIATION, INC

PO Box 491
DONORA, PA 15033

LUE ANN PAWLICK
EXECUTIVE DIRECTOR

P.O. Box 491, Donora PA 15033
724 379 9300

MIDA, Inc.

Fax

To: Stanley From: Keely
Fax: 724-925-5432 Pages: 3
Phone: _____ Date: 10/29/07
Re: _____ CC: _____

~~Update~~

For Review

Please Comment

Please Reply

Please Recycle

COMMONWEALTH OF PENNSYLVANIA

SS

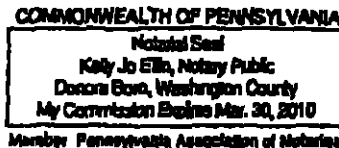
COUNTY OF WASHINGTON

On this, the 1st day of June 2006, before me the undersigned authority, personally appeared CHARLES F. MUIA, President of Middle Monongahela Industrial Development Association, known personally to me (or satisfactorily proven by the oaths of credible witnesses) to be the person whose name is affixed to the within Limited Power of Attorney and acknowledged that he executed the same on behalf of the Middle Monongahela Industrial Development Association for the purposes therein contained

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal

Kelly Jo Ellins
Notary Public

My Commission Expires



LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that MIDDLE MONONGAHELA INDUSTRIAL DEVELOPMENT ASSOCIATION (hereinafter called MIDA) by and through and on behalf of its administrators, heirs, successors, agents, servants, employees and assigns, as owner of the railroad tracks located within the Borough of Donora Industrial Park and operated by Consolidated Rail Corporation, and pursuant to Memorandum of Agreement dated May 17, 2004, and filed at Pennsylvania Public Utility Commission Docket No. A-001 14730, does hereby make, constitute, appoint and designate the BOROUGH OF DONORA, its administrators, heirs, successors, agents, servants, employees and assigns, as its true and lawful Agent to act in, manage and conduct all affairs related to maintenance and repairs of the railroad tracks located within the Borough of Donora Industrial Park and to make applications for and receive grant monies and to designate and authorize distribution of these grant monies for the completion of any and all needed maintenance and repairs to the railroad tracks located within the Borough of Donora Industrial Park, giving and granting the said BOROUGH OF DONORA the authority to act on behalf of MIDA as fully and effectually to all intents and purposes MIDA might or could do, and hereby ratifying all that the said BOROUGH OF DONORA shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF, MIDDLE MONONGAHELA INDUSTRIAL DEVELOPMENT ASSOCIATION has hereto set its hand and seal this 1st day

[Signature], 2006

MIDDLE MONONGAHELA INDUSTRIAL
DEVELOPMENT CORPORATION

ATTEST.

[Signature]
Secretary

[Signature]
President

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Greensburg District Office
November 5, 2007
724-925-5432

SUBJECT: Rail Transfer Facility
Donora Borough and Carroll Township
Washington County

TO: File

FROM: Stanley P. Whitsel
Operations Supervisor
Waste Management

On October 25, 2007, SWS George Sabocheck and I traveled to Donora Borough to locate and inspect a parcel of property referenced in the attached correspondence as NAT Industries.

Upon arrival at the coal yard located on the river side of Route 837, two employees told us that they had seen construction work in the last few weeks on an adjacent parcel of property on what is the property located to the east of the coal yard property owned by Matt Canestrale.

We traveled to that property via the coal yard and observed that some evidence of fresh construction was visible. An existing rail spur off the spur nearest the river had been extended approximately 132 feet recently and Jersey barriers placed at the terminus of the spur for use as bumpers. There was fresh earthwork in the vicinity of the track and the rails were slightly different in color and usage than the eastern portion of the spur.

The spur runs directly past a concrete ramp on the south side of the rail spur. The ramp is approximately 40 feet wide and a smaller ramp measuring approximately 18 to 20 feet wide had been very recently constructed on the west side of the concrete ramp. The smaller ramp appeared to have been constructed of earthen materials including coal refuse and stone. Precast concrete stackable blocks were used on the north edge of the stone and earth ramp nearest the track to prevent the earthen berm from collapsing onto the spur. Severe and very deep cracks were observed on the three sides of the concrete ramp. These had been reinforced with bolted steel beams to jacket the cracks on the three sides of the ramp and to apparently prevent at least some collapse of the ramp particularly on the side facing the river. Those beams are now significantly deteriorated and the integrity of the ramp and the portion facing the tracks is questionable without further study.

Soils at the site are predominantly coal refuse and slag waste as is the access road leading east from the ramp structure. The unpaved access road is in poor condition and runs approximately 400 yards to a short section that runs immediately adjacent to the Norfolk Southern main line. It then joins with a paved road at the entrance to the Air Liquide plant where it becomes Nitrous Lane and travels through the parking area at the Dyno Nobel plant and continues into and ultimately through the Middle Monongahela Industrial Development Association ("MIDA")

industrial park. The nearest homes are located approximately 450 yards from the concrete ramp structure.

Aside from the recent construction activity, the NAT Industries property appears to have been abandoned for a number of years. There is no rail crossing over the Norfolk Southern main line to Route 837 at the site and the only vehicular access appears to be from the Canestrone coal yard and via the Norfolk Southern right of way.

Attachment 1 – Whitsel Sketch Map

Attachment 2 – JP Rail, Inc application to the Surface Transportation Board (10/17/2007)

cc: M. Forbeck
F. DeNorscia
S. Whitsel
G. Sabocheck
J. Herman, OCC

SCRAP
CARS

MON RIVER

HIGHWALL TO RIVER

UNPAVED
ACCESS

COAL
YARD

132'

220'

195'

STONE/DIRT RAMP

CONCRETE
RAMP

DONORA LINE

ABANDONED
TRUCK

NORFOLK SOUTHERN
MAIN LINE

UNPAVED ACCESS

ROUTE 637

PALMER
PARK

TO DONORA

AIR LIQUIDE
PLANT

DYNO
NOBEL
PLANT
PROPERTY

NITROUS LN (PAVED)

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Greensburg District Office
November 5, 2007
724-925-5432

SUBJECT: Report of Interview – James A. Kohlburn
Rail Transfer Facility
Donora Borough and Carroll Township
Washington County

TO: File

FROM: Stanley P. Whitsel
Operations Supervisor
Waste Management

On October 25, 2007, SWS George Sabocheck and I interviewed James A. Kohlburn, Plant Manager of the Dyno Nobel North America plant located along Nitrous Lane in Carroll Township, Washington County. Kohlburn's mailing address at the plant is 1320 Galiffa Drive, Donora, PA 15033. His telephone number is 724-379-4770.

Kohlburn said that he had heard some discussions recently of a waste rail transfer facility on a parcel of property located between Dyno Nobel and the coal yard. He believes that Donora Borough officials brought it to the attention of the company. Kohlburn was uncertain of the exact ownership of the property in question, but believed it was owned by a man with the nickname of "Freckles" who may be deceased. He believes that the property is now owned by Freckles' daughters.

Kohlburn said that Dyno Nobel owns the property at which the Air Liquide plant is located and that Air Liquide owns no property. He further stated that Norfolk Southern built the portion of the road known as Nitrous Lane between the Dyno Nobel Plant and Air Liquide. He believes that Nitrous Lane is maintained by Donora Borough.

According to Kohlburn, Dyno Nobel has some concerns regarding the operation of a potential transfer facility at the NAT Industries site. Presently, their main concerns relate to increased vehicular traffic along Nitrous Lane as the route may run near their plant gate and parking area. Additionally, Dyno Nobel uses a portion of the rail spur owned by the Middle Monongahela Industrial Development Association for storage of rail cars and that use may be impacted by a rail transfer operation.

cc: M. Forbeck
F DeNorscia
S. Whitsel
G Sabocheck
J Herman, OCC

James A. Kohlburn
Plant Manager

DYNO NOBEL
North America
1320 Galiffa Drive
Donora, Pennsylvania 15033
USA

Direct: 724 379 6100 Ext. 236
Cell: 724 747 6144
Fax: 724 379 4770
Messages: 800 473 2676-1-1 83386
E-mail: jkohl@am.us.dynonobel.com

Attachment A-2

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Greensburg District Office
November 13, 2007
724-925-5432

SUBJECT: Rail Transfer Facility – November 9, 2007 Inspection
Interview of Joseph Hammel
Interview of Ron Amati
Donora Borough and Carroll Township
Washington County

TO: File

FROM: Stanley P. Whitsel
Operations Supervisor
Waste Management

On Friday November 9, 2007, SWS Bruce Gearhart and I traveled to Donora Borough and Carroll Township to inspect the rail transfer facility operating at the property previously identified as owned by NAT Industries. We arrived at the site at approximately 9:00 am.

Interview of Joseph Hammel:

Upon arrival at the site, we were met by an individual who identified himself as Joe Hammel, a consultant for JP Rail. Hammel provided a business card with an email address and telephone number of 724-333-3486. He said that he lived in the Dominican Republic and was here to assist in starting the rail transfer facility. Hammel said that he was unaware of specific operational plans for the future of the facility and that those questions should be referred to David Declement of JP Rail at 609-703-9460.

According to Hammel, JP Rail has leased the property from NAT Industries of Donora. Hammel had a copy of a lease that we viewed confirming that information. The lease covers one year beginning October 1, 2007 with three renewable one year options at the end of the first year. The lease describes the site as being located along Route 837 between Dyno Nobel and Matt Canestrone's property. The compensation was not clear. The lease was signed by David Declement, Director of Freight for JP Rail.

Hammel said that they had begun offloading the first of six rail cars loaded with waste that were staged at the site yesterday and that one truck load had been transported to Westmoreland Waste's Sanitary Landfill yesterday and a second load had gone out earlier this morning. In addition to Hammel, two employees were present at the site during the inspection. One appears to be an equipment operator and the second a laborer. Hammel said that both of the men were JP Rail employees.

I questioned Hammel regarding any additional cars of waste that were destined to the site and he said that he had heard that 18 more were en route. He said that he had no idea of when they were

November 13, 2007

scheduled to arrive and that they were loaded near Pleasantville, NJ which is located near Atlantic City at another facility owned and operated by JP Rail.

Site Observations:

Six open-topped gondola rail cars had been delivered to the site since my last inspection. The car capacity information and car numbers are listed below:

	Number	Max Wt.	Tare Wt.	Location
Car 1	SRNJ500028	194100	68900	Offloading near ramp
Car 2	SRNJ500021	194100	68900	Staged on Donora Line
Car 3	SRNJ500038	195800	67200	Staged on Donora Line
Car 4	SRNJ500042	195400	67600	Staged on Donora Line
Car 5	SRNJ500020	194000	69000	Staged on Donora Line
Car 6	SRNJ500012	193600	69400	Staged on Donora Line

The cars, all green in color, appear to have been modified at some point to add additional capacity. They are approximately 61 feet long. The car bodies are rusted in areas and show signs of significant wear and tear. In several locations, there were holes exposing the waste contents, several of which appeared to have been covered with patches, or in a few cases, duct tape.

Car 1 was staged at the concrete ramp and a Volvo track hoe with a grappler attachment was parked nearby. Some waste, including plasterboard, plaster, broken boards, miscellaneous plaster dust, paper and other wastes were scattered on the surface of the ground in the vicinity of the rail siding and the truck loading ramp where offloading was in process. Observation of the contents of Car 1 from the top of the ramp shows it to be approximately one third offloaded. The waste contained in the car appears to be a mixture of construction demolition waste and other municipal waste. No putrescible wastes were visible.

Cars 2 through 6 were also observed and appeared to contain similar wastes. Paper plans found in Car 4 showed construction drawings for Harrahs Tower in Atlantic City, New Jersey.

At approximately 10:00 am, a combination waste transportation vehicle arrived at the site, traveling through the Canestrone coal yard. The vehicle consisted of a white over blue Peterbilt tractor pulling a dump trailer. The vehicle was operated by Brian Keith Whitlatch of 1074 Springer Road, Scottsdale, PA 15683 (DOB: 1/13/1958, PA OLN: 18-398-719). The writer and SWS Gearhart obtained the vehicle ownership information as follows:

Tractor owner: Bruno A. Fronzaglio, Jr.
Address: 110 Homewood Avenue
Belle Vernon, PA 15012
Tractor VIN: 1XP5DB9X24D821944
PA registration: AE58091 (PA)

November 13, 2007

The tractor door bore a sign indicating the vehicle was owned by Bruno Fronzaglio Trucking and a USDOT number of 896392. Both units had new Act 90 stickers and the driver had copies of the written authorizations by VIN in the cab of the vehicle as well as a municipal waste transportation log. He provided a copy of a landfill ticket transported earlier this date to Sanitary Landfill indicating that the gross weight of the vehicle was 51,540 pounds and a net weight of 17,600 pounds. The landfill ticket time was listed as 9:38 am on November 9, 2007. There was also a new municipal waste sign temporarily attached to the trailer frame.

At approximately 10:07 am, the employee operating the Volvo track hoe began to take scoops of the waste from Car 1 and placed it in the trailer. Heavy dusting was immediately evident and continued throughout the loading process. The operator also appeared to drop municipal waste onto the ground with nearly every scoop of waste removed from the rail car.

SWS Gearhart took photographs of the site. These will be attached to a separate report.

At the conclusion of the inspection, I notified Hammell that the activity at the site represented numerous violations of the Solid Waste Management Act and municipal waste regulations regardless of the preemption issue including, but not necessarily limited to illegal disposal of solid waste, no operational records, failure to transfer waste on a paved area, failure to transfer waste indoors in an enclosed building, failure to control access to the site, a lack of operational records, failure to control or prevent public nuisances and causing fugitive emissions during the offloading process.

Interview of Ron Amati:

Upon conclusion of our inspection of the waste transportation vehicle, an individual known to me as Ron Amati arrived at the site. Amati asked why I was present and I asked him the same question. He repeatedly stated that he had no part in this operation and that JP Rail made all of the arrangements with the waste trucking company. He claimed that all of the waste transportation paperwork (including specifically the landfill receipts) was in the name of JP Rail and that he is not involved at all in the billing or brokering of this waste. Amati said that I would need to speak to David Declement of JP Rail because he knew nothing further and was not involved at all in this operation other than his part ownership of Sanitary Landfill/Westmoreland Waste.

Attachment - Whitsel Sketch Map

cc: M. Forbeck
F. DeNorscia
S. Whitsel
G. Sabocheck
Herman, QCC

SCRAP
CARS

MON RIVER

HIGHWAY TO RIVER

UNPAVED
ACCESS

STONE/DIRT RAMP

CONCRETE
RAMP

DONCKA LINE

↑ GATES 2-G 1149107

ABANDONED
TRUCK

NORTHERN SOUTHERN MAIN LINE

UNPAVED ACCESS

ROUTE 537

TO DONCKA

PALMER
PARK

AIR
PLANT

DYNO
NOSEL
PLANT
PROPERTY

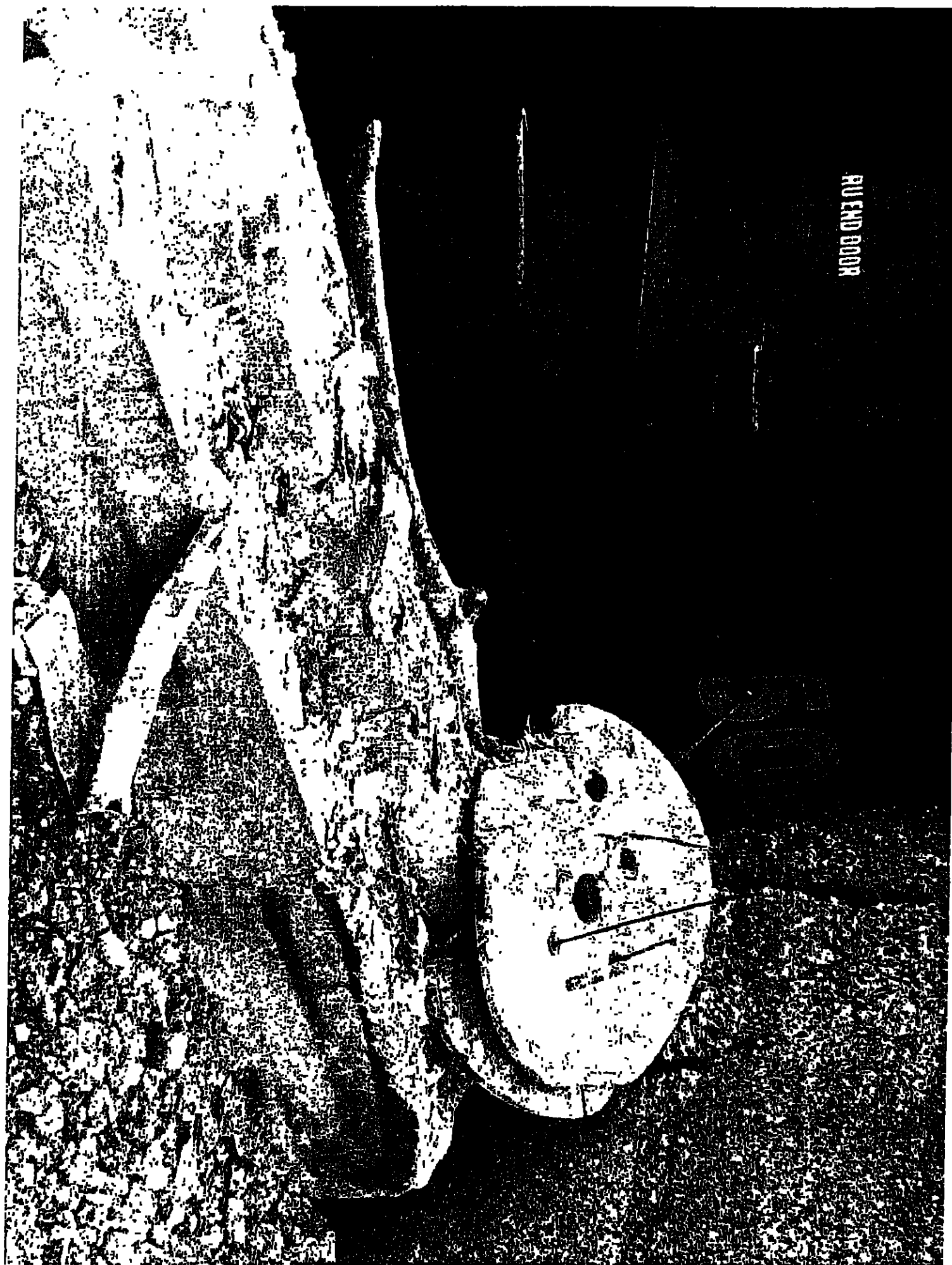
NITROUS LN (PABO)





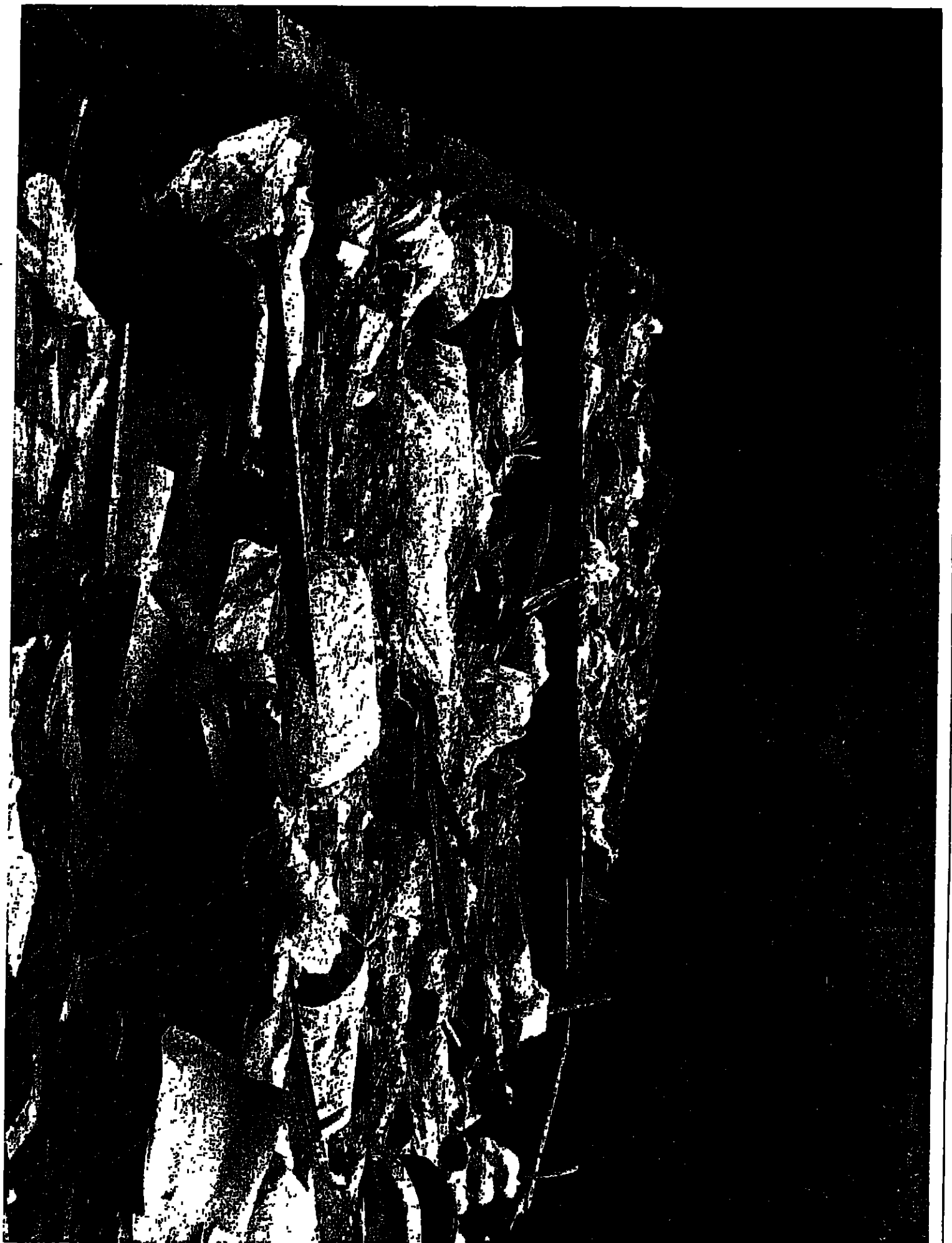


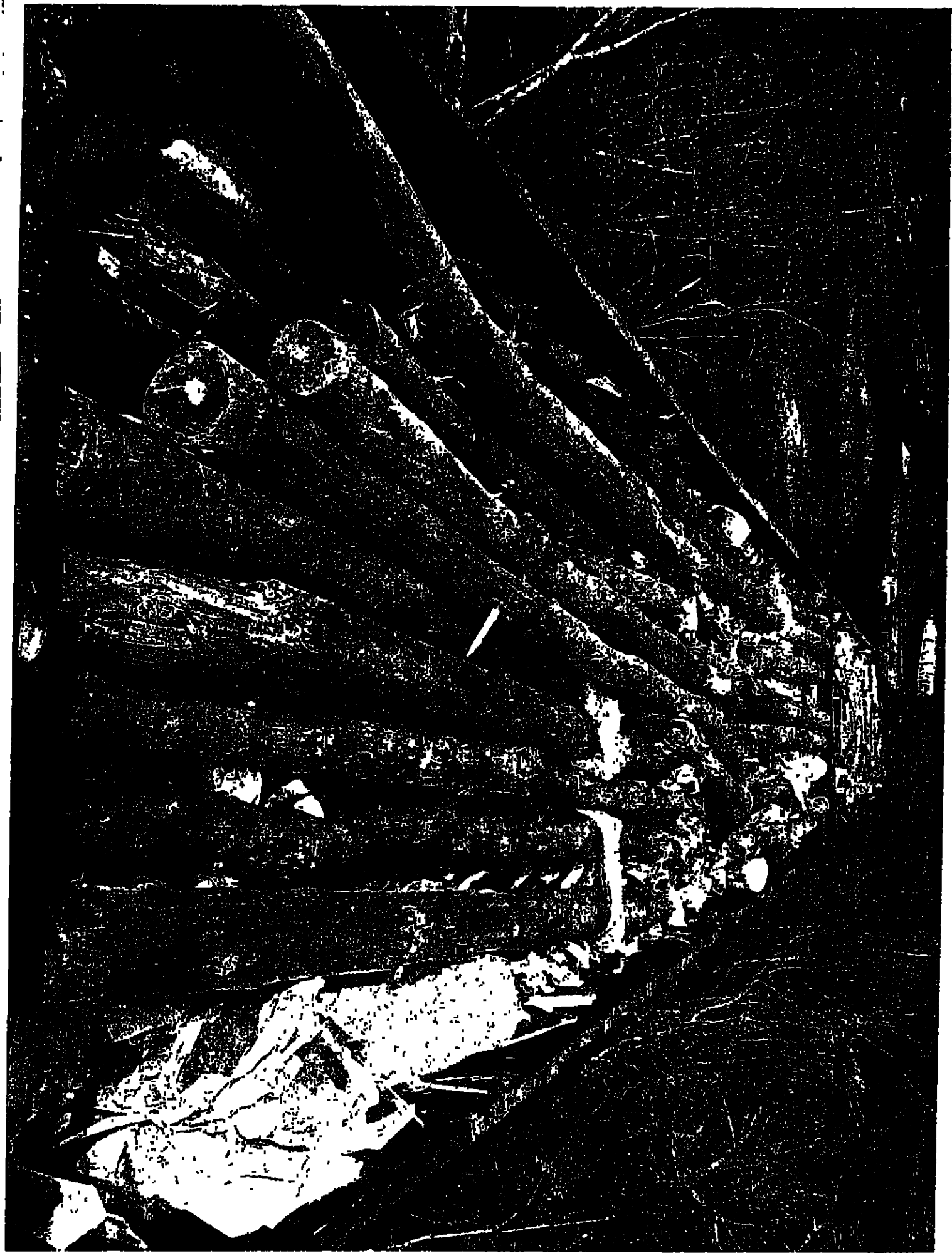
RU END BOOK

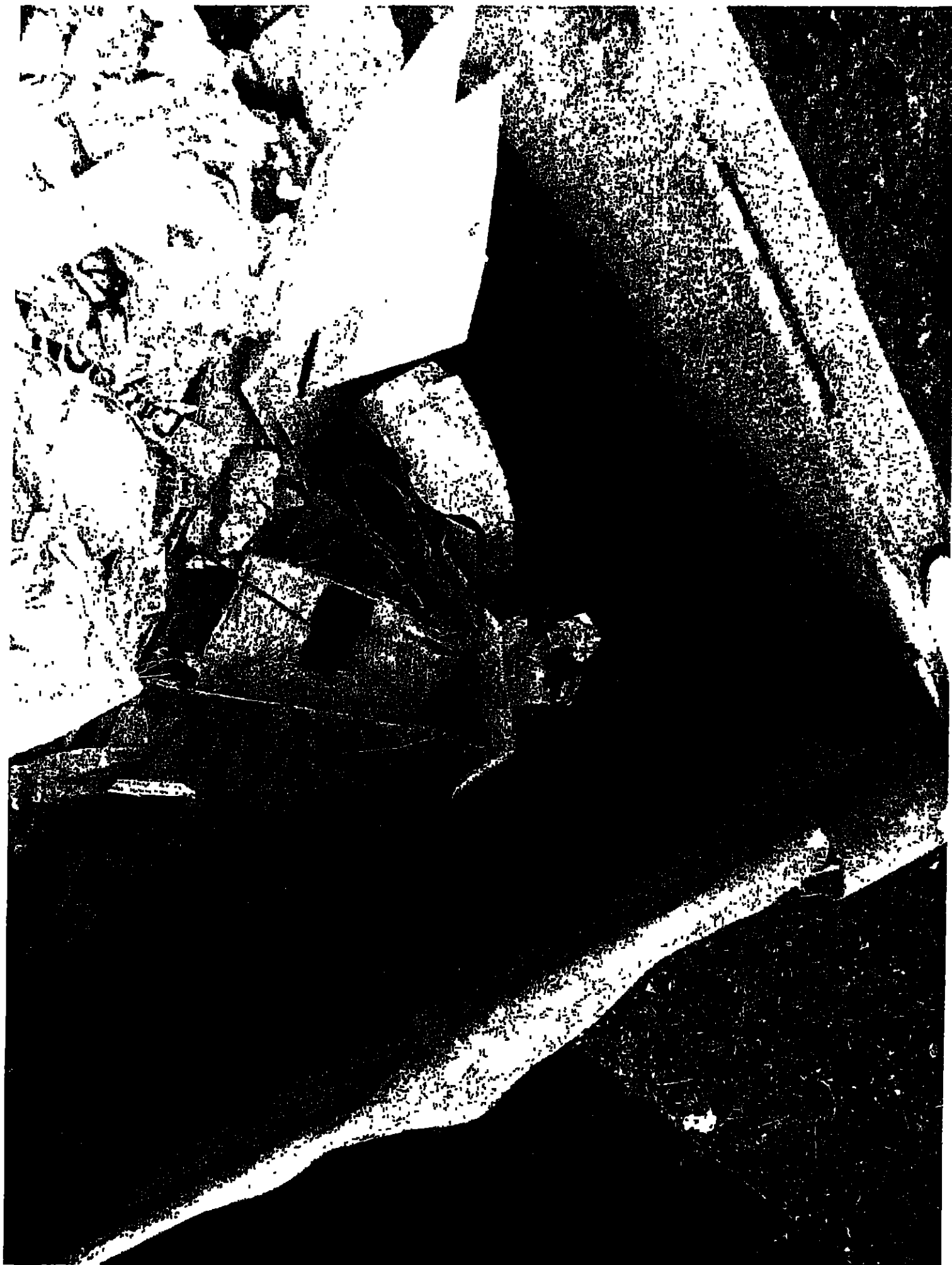






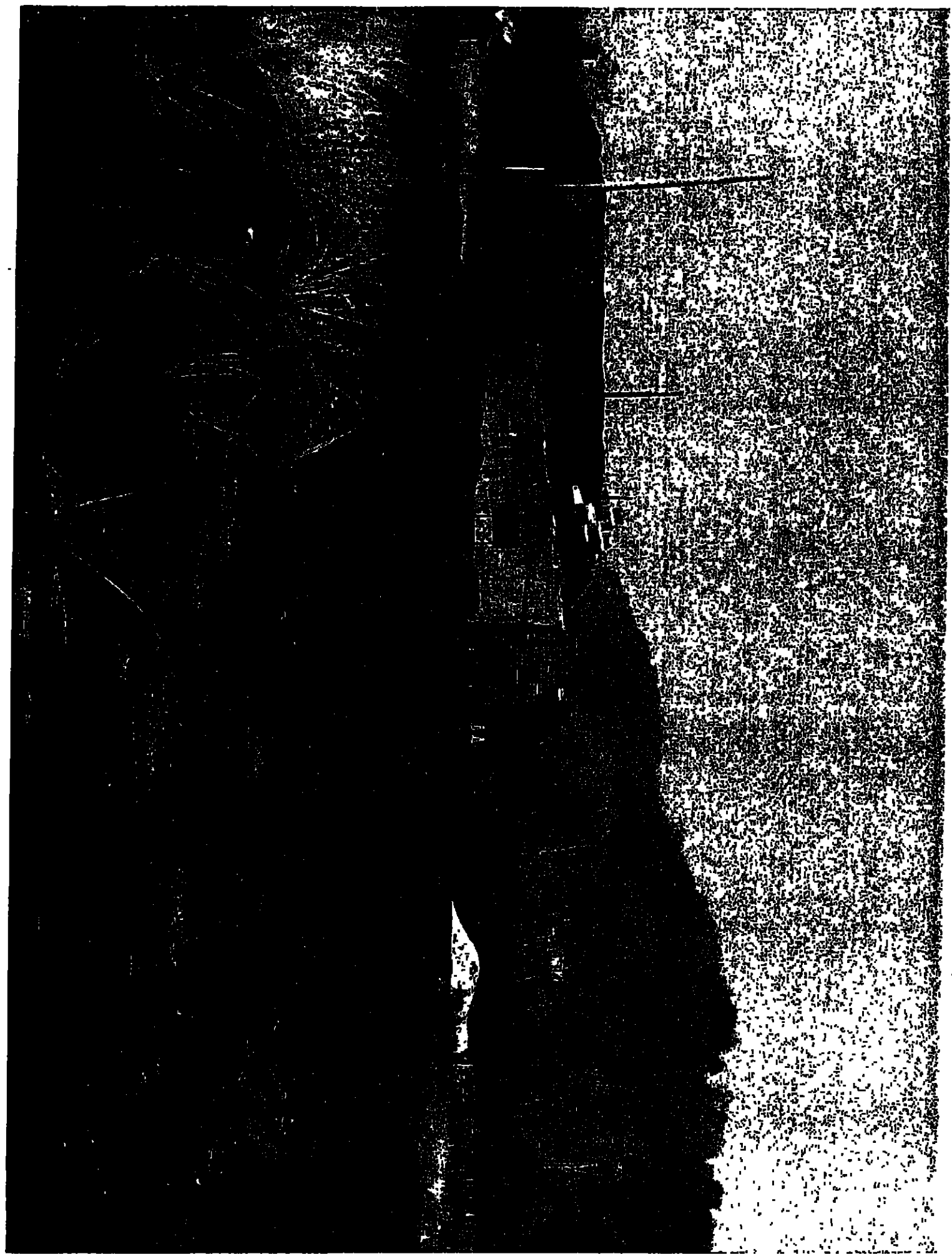


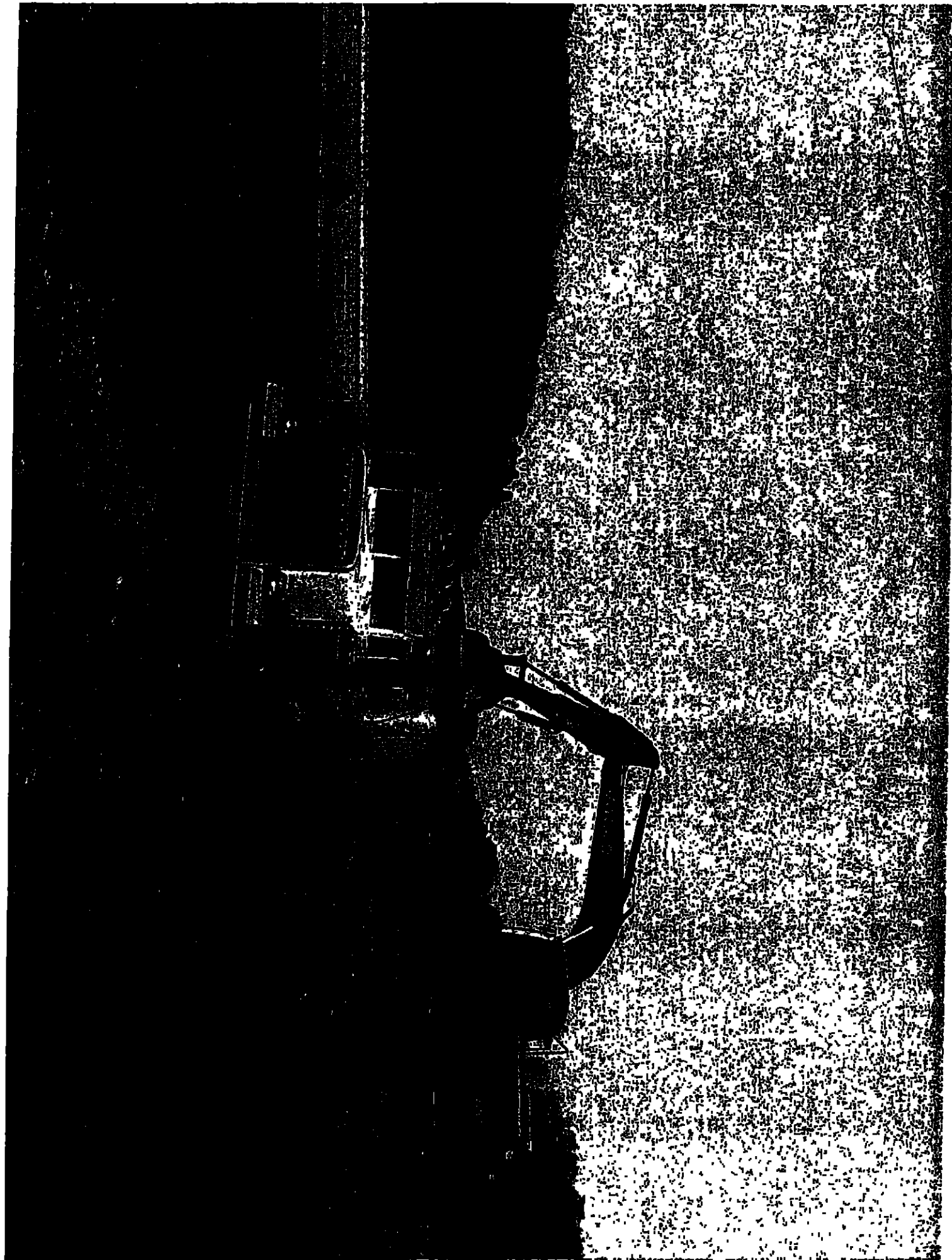


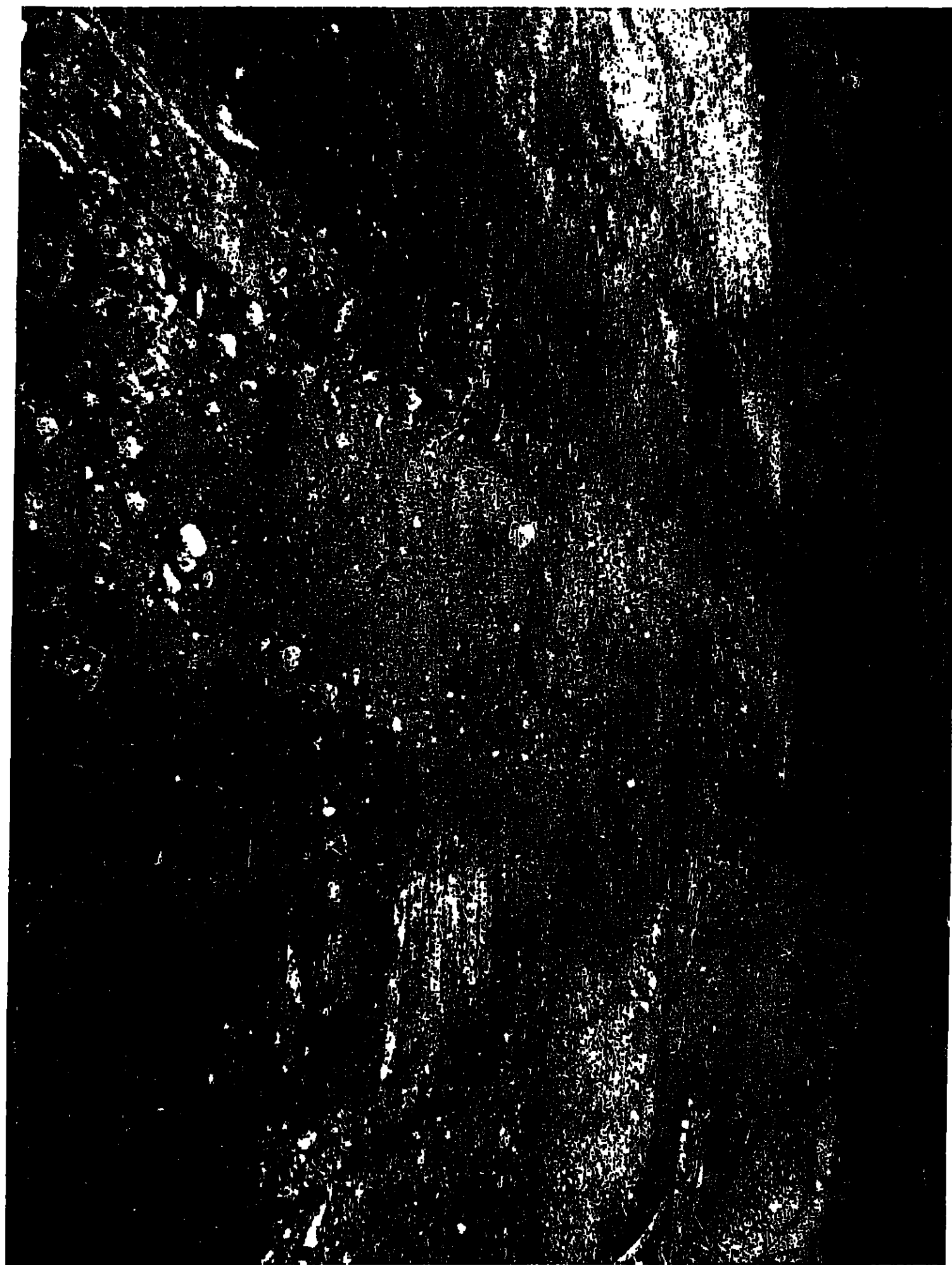














Attachment A-3

COMMONWEALTH OF PENNSYLVANIA
Department of Environmental Protection
Greensburg District Office
November 14, 2007
724-925-5432

SUBJECT: JP Rail Transfer Facility – November 10, 2007 Inspection
Donora Borough and Carroll Township
Washington County

TO: File

FROM: Stanley P. Whitsel
Operations Supervisor
Waste Management

On Saturday November 10, 2007, SWS Michael Planinsek and I traveled to Donora Borough and Carroll Township to inspect the rail transfer facility operating at the property previously identified as owned by NAT Industries. We arrived at the site at approximately 9:00 am.

Between the inspection conducted on November 9 and the morning of this date, an additional six similar open-topped gondola rail cars filled to capacity with solid waste had been delivered to the site and were staged with the others listed in the previous report. The table below lists all of the cars presently stored at the site and their respective locations. Cars 7 through 12 arrived at the site most recently.

	Number	Max Wt.	Tare Wt.	Location
Car 1	SRNJ500028	194100	68900	Partially emptied at end of spur
Car 2	SRNJ500021	194100	68900	Offloading near ramp
Car 3	SRNJ500038	195800	67200	Staged on Donora Line
Car 4	SRNJ500042	195400	67600	Staged on Donora Line
Car 5	SRNJ500020	194000	69000	Staged on Donora Line
Car 6	SRNJ500012	193600	69400	Staged on Donora Line
Car 7	SRNJ500041	195500	67500	Staged on Donora Line
Car 8	SRNJ500053	190400	72600	Staged on Donora Line
Car 9	SRNJ500047	190600	72400	Staged on Donora Line
Car 10	SRNJ500046	190900	72100	Staged on Donora Line
Car 11	SRNJ500058	190700	72300	Staged on Donora Line
Car 12	SRNJ500050	190800	72200	Staged on Donora Line

At some point after the November 9 inspection, Car 1, which was then being offloaded, was moved to its present location near the end of the spur at the site. Car 2 was moved from where it had been staged on the Donora Line to its present location at the offloading ramp on the spur.

Observations of the interior of Car 1 indicate that it had been far from completely emptied prior to moving it away from the offloading ramp. This is likely due to the limitations of the grapppler attachment on the Volvo track hoe being utilized at the site.

Site personnel were in the process of offloading Car 2 during this inspection. Severe dusting was observed throughout the truck loading process. With each scoop of waste taken from Car 2 observed during this inspection, dust was generated which blew with the prevailing winds toward the Monongahela River.

Since the inspection of November 9, it was apparent that the amount of municipal waste that had been spread onto the surface of the ground in the vicinity of the loading ramp had become much larger. Waste, including cardboard, lumber, carpet scraps, plaster and wallboard, paper, plastic bags and masonry were spread along the ramp structure on both sides of the tracks, on the ramp and the truck loading ramp. The surface of the ground in the vicinity of the tracks and rear of the truck loading ramp also appear to have a plaster dust coating. SWS Planinsek photographed these conditions.

A second Bruno Fronzaglia Trucking combination waste transportation vehicle is in use to shuttle loads from the JP Rail site to Westmoreland Waste's Sanitary Landfill. These waste transportation vehicles are no longer using the coal yard for access to and from the site, but are traveling along Nitrous Lane to the Norfolk Southern right-of-way and then enter the site from the right-of-way.

The access road from the site through the Norfolk Southern right-of-way is unpaved to its intersection with Nitrous Lane at the entrance to the Air Liquide plant. Onsite, the road is in poor condition and appears to be composed mostly of coal refuse materials with an unknown subbase. The Norfolk Southern right-of-way to Nitrous Lane is of better construction with a gravel and slag base. Problems with this approach route include the possibility of tracking mud from the site onto the right-of-way as well as Nitrous Lane. Some tracking is already evident on Nitrous Lane and was photographed during the inspection. The width of Nitrous Lane near its terminus may become problematic if two tractor trailers pass, but this situation could be very dangerous on the right-of-way with active rail traffic. The right-of-way is not of sufficient width to allow two vehicles to pass one another.

SWS Planinsek and I also viewed the contents of Cars 7 through 12 and photographed them. As was the case with Cars 1 through 6, at least some portion of the waste is not construction-demolition waste and appears to consist of other types of municipal waste. No obvious evidence of putrescible waste was located. There is a large amount of plaster, wallboard and other dry materials that will generate large quantities of dust when offloaded. It appears as if during loading of the rail cars, personnel apply materials such as pallets, telephone poles and chicken wire to the exposed waste to prevent it from blowing from the cars during transport.

Interview of Mark Ward:

Upon arrival for the inspection, SWS Planinsek and I were met by Joe Hammel, previously identified, and a man who identified himself as Mark Ward. Ward said that he was a principal of JP Rail and later indicated that his background was in engineering and that he had experience in tire fuel processes

Ward said that JP Rail made all of the arrangements for use of the site including entering into a lease with NAT Industries and retaining the waste transporters. I asked Ward if that were the case, why Amati Environmental appears as the customer billing name on weight tickets for the loads delivered to the landfill from the site. Ward responded that they have a "billing arrangement" with Amati.

Ward said that a load of waste had already been delivered to the landfill this morning and that they were presently working on the second load which was completed during the inspection.

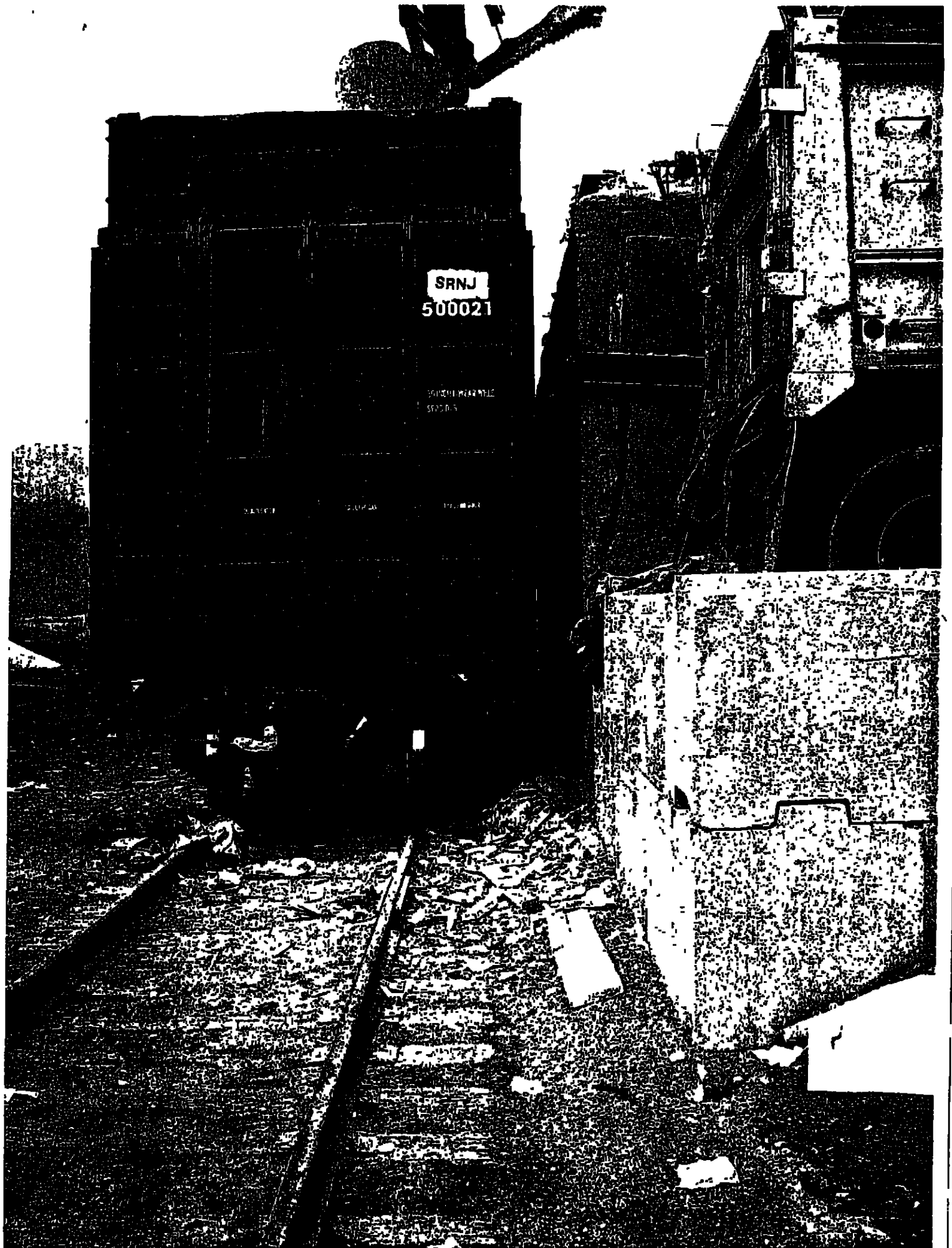
I advised Ward that irrespective of any potential preemption of permitting requirements, there were specific operational standards and statutory requirements for this site which were being violated on a continuing basis. I advised him that disposal of waste was occurring in the vicinity of the offloading ramp and that the dust situation was also a violation of the transfer operational regulations. I further advised Ward that this type of operation is required to be conducted indoors on an impervious surface and not outside in the open air.

Ward agreed that something needed to be done regarding the dust and that the company uses fire hoses at other locations, but there is no ready source of water at this location. He said they were looking into a water truck with the coal yard.

I also advised Ward that there were numerous other operational violations including lack of access control, lack of a sign and daily operational records violations, waste monitoring violations and that Hammel had been advised of the same violations yesterday.

Ward said that the company would favor a meeting to discuss the situation and I provided him with my business card to make contact in the following week.

cc: M. Forbeck
F. DeNorscia
S. Whitsel
G. Sabocheck
J. Herman, OCC



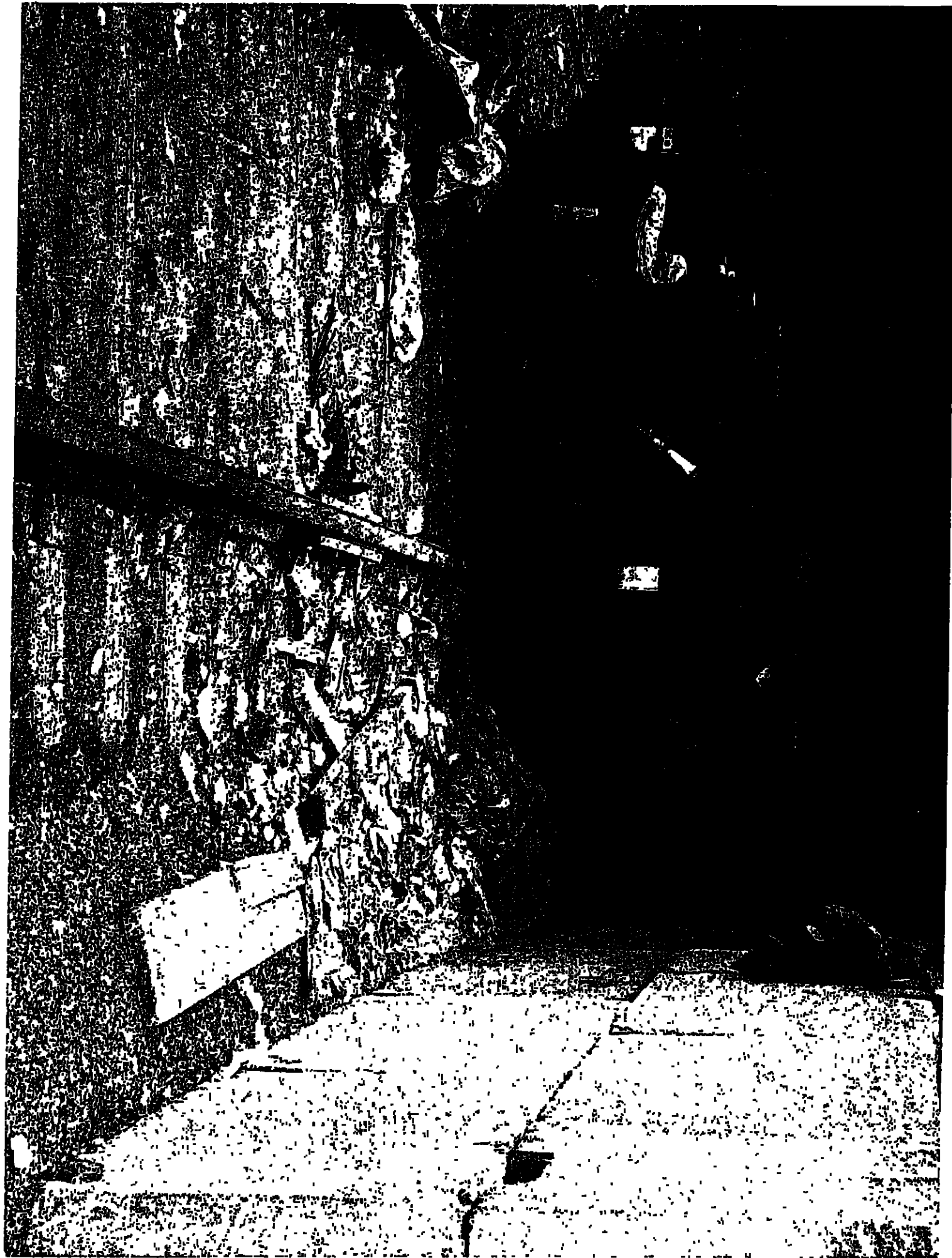
SRNJ
500021

SRNJ WEARABLE
SERIES

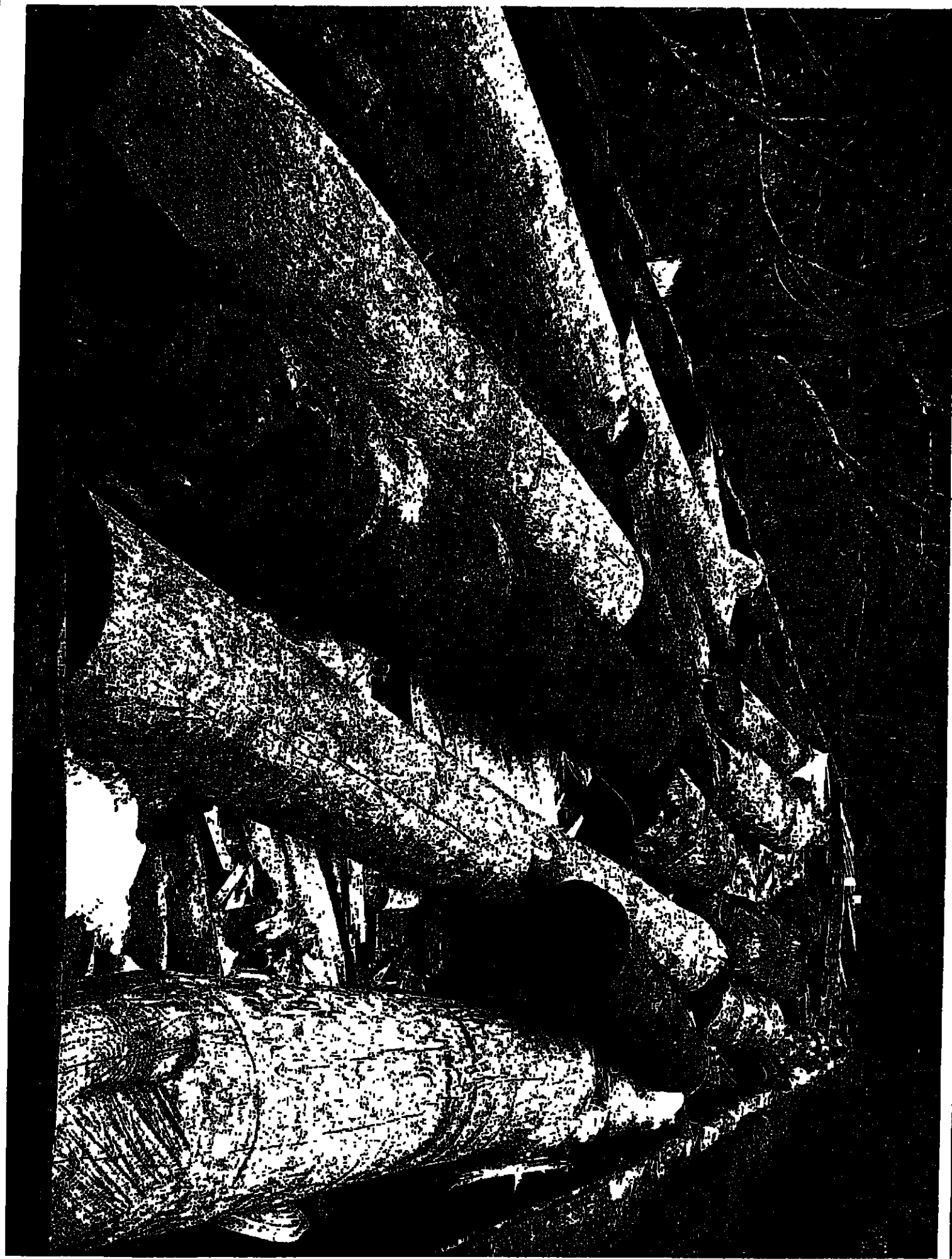
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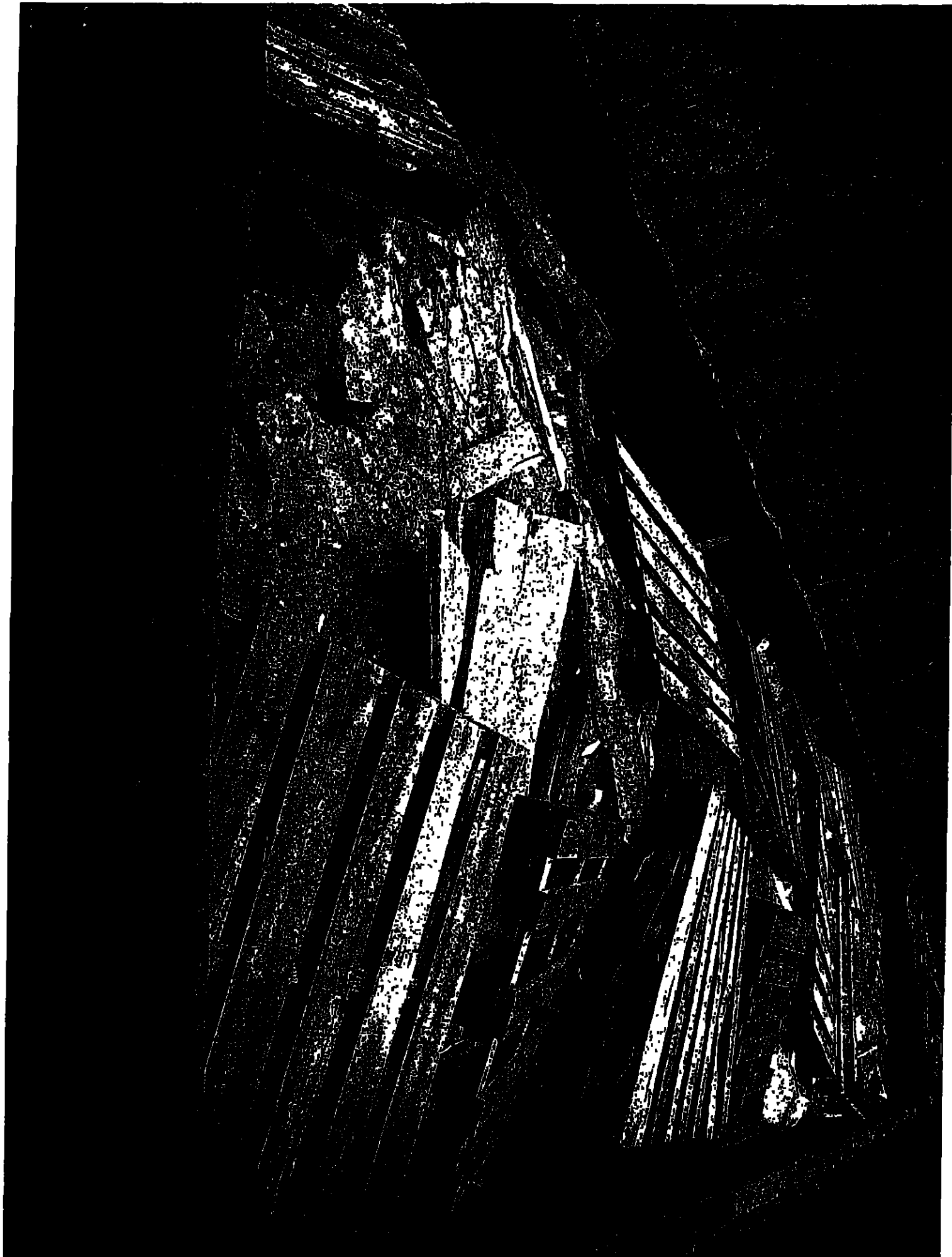
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SRNJ









Attachment A-4



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

GENERAL INSPECTION REPORT

Type of Inspection	WM Identification Number	Entry Time/Date 11/12/07 08:30	Exit Time/Date 11/12/07 10:00
Facility/Incident Name and Location J. P. Rail - Rail Transfer Facility Donora, PA			Municipality Canvass Twp. County Washington
Name, Address of Responsible Official Mark Ward		Title	
		Telephone 724-333-3984	Interviewed Yes ☒ No ☐
REMARKS:			

On Nov. 12, 2007 the Department conducted an inspection at the above referenced facility. The inspector was the only on present for the inspection. The facility was idle as no one was on site during the inspection. Rail car #500021 remained parked at the unloading ramp and was approx 1/2 full. Rail car #500028 was also parked in the same location as the 11/10/07 inspection and was approx 1/4 full. The 10 rail cars full of waste located on the rail siding just south of the unloading ramp remained as they were observed in the 11/10/07 inspection. The Volvo excavator used to unload the rail cars was parked at the bottom of the unloading ramp. After leaving the facility I met Joseph Hammel (consultant) who was on his way to the facility. Mr. Hammel stated they did not intend to operate on this day. I also met Mark Ward (J.P. Rail) who also stated that they did not intend to operate today and would like to set up a meeting w/ DEP. I phoned Stan Whiteal and conveyed this to him.

Inspector Name Michael Plonitski	Inspector Signature Michael D. Plonitski	Headquarters Inky. D.O.	Date 11/13/07
			Telephone 724-925-5431
Person Interviewed Name	Signature of Person Interviewed	Title	Telephone

This inspection report is notice of the findings of an inspection conducted by a representative of the Department. This report is formal notification of any violations observed during the inspection. Additional notification of violations may be issued concerning either violations noted herein, or other violations identified as a result of review of laboratory analyses or Department records.

This report does not constitute an order or other appealable action of the Department. Nothing contained herein shall be deemed to grant or imply immunity from legal action for any violation noted herein.

Signature by the person interviewed does not necessarily imply concurrence with the findings on this report, but does acknowledge that the person was shown the report or that a copy was left with the person.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WASTE MANAGEMENT

GENERAL INSPECTION REPORT

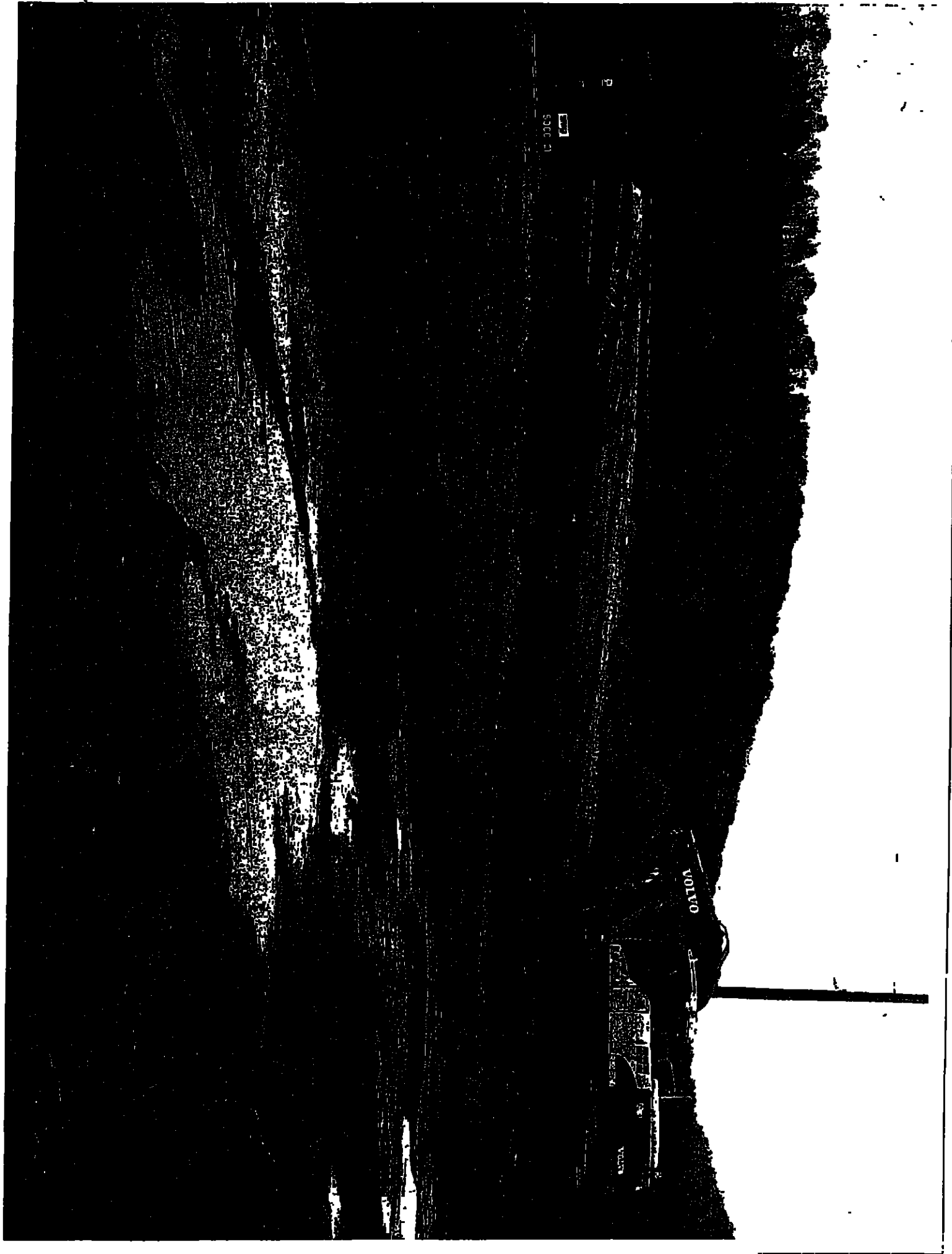
Facility/Incident Name and Location <i>J. P. Rail - Rail Transfer Facility</i> <i>Donora, PA</i>	Municipality <i>Connell Twp</i> County <i>Washington</i>
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ADDITIONAL REMARKS

Solid Waste remained on the ground in the vicinity of the unloading ramp, near rail car #500021 and where the tractor trailers were loaded.

cc: *HERMAN*
DEMBOSKI
WHITEEL

Inspector Name <i>Michael Planinsak</i>	Inspector Signature <i>Michael J. Planinsak</i>	Date <i>11/13/07</i>
--	--	-------------------------







Attachment B

Areas Designated Nonattainment for Ozone and PM

2.5 NAAQS in 2004

