

ERNEST KAUFMANN - September 24, 2015

SOAH DOCKET NO. 582-15-2082

TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION OF) BEFORE THE STATE OFFICE
130 ENVIRONMENTAL PARK,) OF
LLC FOR PROPOSED PERMIT) ADMINISTRATIVE HEARINGS
NO. 2383)
_____)

ORAL AND VIDEOTAPED DEPOSITION OF

ERNEST KAUFMANN

September 24, 2015

ORAL AND VIDEOTAPED DEPOSITION OF ERNEST KAUFMANN,
produced as a witness at the instance of TJFA, LP and
Environmental Protection in the Interest of
Caldwell County and duly sworn, was taken in the
above-styled and numbered cause on September 24, 2015,
from 9:06 a.m. to 3:16 p.m., before Candice Andino,
Certified Shorthand Reporter in and for the State of
Texas, Registered Merit Reporter, reported by
computerized stenotype machine at the Law Offices of
Frederick, Perales, Allmon & Rockwell, P.C.,
707 Rio Grande, Suite 200, Austin, Texas, pursuant to
the Texas Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

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Protestants' Exhibit 11, p. 1

ERNEST KAUFMANN - September 24, 2015

1 THE VIDEOGRAPHER: It is September 24th,
2 2015, 9:06 a.m., and we are on the record.

09:06

3 ERNEST KAUFMANN,
4 having been first duly sworn, was examined and testified
5 as follows:

6 EXAMINATION

7 BY MR. ROCKWELL:

8 Q Mr. Kaufmann, can you give your full name for
9 the record.

10 A Ernest Carl Kaufmann, Jr.

09:06

11 Q And are you -- okay.

12 And are you represented by counsel here
13 today?

14 A I am.

15 Q And who's your counsel?

09:06

16 A Brent Ryan.

17 Q And you're familiar with the deposition
18 process?

19 A Yes.

20 Q And I'm going to ask you questions that you're
21 required to answer under oath, unless your lawyer
22 instructs you not to answer.

09:06

23 Do you understand that?

24 A Uh-huh. Yes.

25 Q And I would also ask that as part of our

09:06

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1 Exhibit 1. And those last two pages are labeled
2 "Exhibit A."

3 A Okay.

4 Q And it's labeled "Documents Requested."

5 Did you bring any documents here with you
6 today?

09:11

7 A No. These documents were requested with a
8 30-day time frame. They'll be delivered at that time.

9 Q So they'll be delivered 30 days from the time
10 they were requested?

09:11

11 A Whatever the due date is. I don't know --

12 MR. RYAN: Excuse me. I'll -- I'll answer
13 that question.

14 MR. ROCKWELL: Okay.

15 MR. RYAN: We've got 30 days to respond to
16 your request for production of documents in there, and
17 we'll do that.

09:11

18 MR. ROCKWELL: Okay.

19 THE WITNESS: Thank you.

20 Q. (BY MR. ROCKWELL) Where is your home?

09:12

21 A — Atlanta, Georgia.

22 Q And do you have more than one home?

23 A — I have one home, and I have a lake house that I
24 bought that we're repairing.

25 Q And where is that?

09:12

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1 A — Centre, Alabama.

2 Q Is that near Huntsville?

3 A What's your definition of "near"?

4 Q Within 15 minutes?

5 A No.

09:12

6 Q Okay. And do you still own any kind of
7 farmland or land in or around Huntsville?

8 A No.

9 Q Are any of your homes within a mile of a
10 municipal solid waste landfill?

09:12

11 A — No.

12 Q The application that's been submitted to TCEQ
13 for the Caldwell County landfill has been submitted by
14 Environmental Park -- I'm sorry -- 130 Environmental
15 Park, LLC; is that correct?

09:13

16 A Yes.

17 Q Is there any other corporate entity that you're
18 affiliated with that uses the name 130 Environmental
19 Park?

20 A No.

09:13

21 Q So the LLC is the one entity?

22 A As far as -- yes.

23 Q Okay. And has 130 Environmental Park, LLC, had
24 any expenses?

25 A Sure.

09:13

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Protestants' Exhibit 11, p. 4

ERNEST KAUFMANN - September 24, 2015

1 Q And what are those expenses?

2 A Expenses associated with permitting a major MSW
3 landfill.

4 Q And -- and what kind of revenue or income does
5 130 Environmental Park, LLC, have to cover those costs? 09:14

6 A -- We derive our income from GGH, Green Group
7 Holdings Corp, Inc. Or LLC. I can't remember which one
8 it is.

9 Q And is this -- is this treated as an investment
10 or a loan or... 09:14

11 A Well, part of the revenue is derived from other
12 operating facilities we have. And the other would be
13 derived from capital calls we make with our investors.

14 Q Does 130 Environmental Park, LLC, have any
15 assets? 09:14

16 A Unless you consider the draft permit an asset
17 or the option that we hold on the property an asset.

18 Q And who are the officers and directors of
19 130 Environmental Park, LLC?

20 A I am the president, CEO of that LLC. 09:15

21 Q And are there any other officers?

22 A No.

23 Q Are there any directors?

24 A No.

25 Q Is 130 Environmental Park, LLC, wholly owned by 09:15

ERNEST KAUFMANN - September 24, 2015

1 Green Group Holdings, LLC?

2 A Yes, it is.

3 Q And do you hold a position in Green Group
4 Holdings?

5 A Yes.

09:15

6 Q And what's your position?

7 A President and CEO.

8 Q Are there any other officers?

9 A Patrick McMullen would be the treasurer, and
10 Art Van Meter would be the secretary.

09:16

11 Q And can you spell Art Van Meter's name -- his
12 last name?

13 A V-a-n M-e-t-e-r.

14 Q And does -- you mentioned before that there is
15 a Green Group Holdings corporation and then there is an
16 LLC; is that right?

09:16

17 A No, I didn't say that.

18 Q Okay.

19 A I said it was one or the other. I couldn't
20 remember which.

09:16

21 Q Okay. Does Green Group Holdings -- well -- so
22 you don't know whether Green Group Holdings is an LLC or
23 a corporation?

24 A I believe it's an LLC, but I'm not sure.

25 Q Okay. Does Green Group Holdings, LLC, have a

09:16

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1 Q And do you -- are you familiar with the Pintail
2 landfill in Waller County?

3 A Yes, I am.

4 Q And who is the applicant in that situation?

5 A I believe it's Pintail Landfill, LLC. I -- I'd
6 have to go back and look, but I think that's what it is.

09:19

7 Q And do you have a position in that company?

8 A I'm president of it, CEO.

9 Q Are there other similar companies that you
10 have -- that you're an officer of?

09:19

11 A Yes.

12 Q What other companies?

13 A Big Sky, LLC, Grasslands, LLC, Badlands, LLC.
14 I think it's Guam Environmental, LLC. Arrowhead
15 Landfill, LLC. Wichita, and I can't remember the exact
16 name of it, LLC. And then I'm trying to remember the
17 other facility in North Dakota. Black Mallard, LLC.

09:19

18 Q Okay.

19 A I think that's all of them at this point.

20 Q And --

09:20

21 A No, that's not. We've got Mesa.

22 Q Okay.

23 A Mesa Landfill, LLC, and then Wagon Mound
24 Landfill, LLC.

25 Q You gave testimony about the investors for

09:20

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1 in our company that's assigned to operate that project,
2 oversee the -- the people that we have that are -- are
3 outside professionals.

4 Q And the outside professionals would be the
5 engineers and attorneys?

09:23

6 A The engineers, attorneys, and others.

7 Q And who else would that be?

8 A Any -- any other consultants or lobbyists or
9 advisors we may have.

10 Q Does Green Group Holdings have employees?

09:23

11 A Does Green Group Holdings have employees?

12 Q Right.

13 A Yes.

14 Q And do any of those employees have any
15 responsibilities in relationship to 130 Environmental
16 Park?

09:24

17 A Yes.

18 Q And who are those employees?

19 A Specifically, that would be David Green,
20 Mack Reynolds, and Alfonso Sifuentes.

09:24

21 Q And when you say Mack Reynolds, you mean
22 Mack Reynolds, Jr.?

23 A Yes.

24 Q And does Mack -- does Mack Reynolds, Jr., have
25 any responsibilities for anything unrelated to

09:24

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1 that?

2 A Well, BFI. Obviously, we were -- every year we
3 were eligible for a bonus. Same thing with Allied.
4 Same thing with GreenFirst, when we started that
5 company.

09:26

6 Q And what did you receive a bonus for with
7 respect to GreenFirst?

8 A Performance, meeting deadlines that we had
9 established, and then permitting.

10 Q And which project was that?

09:26

11 A Turkey Run landfill, Meriwether County,
12 Georgia.

13 Q Did you receive any bonus relating to the
14 Arrowhead project?

15 A No -- yes, I did. Sorry about that.

09:26

16 Q And was that -- was that for permitting or for
17 some other task?

18 A No, it was not for permitting.

19 Q It was for what?

20 A It's an acquisition bonus.

09:27

21 Q For acquiring it?

22 A Yes.

23 Q So does 130 Environmental Park, LLC, have any
24 employees?

25 A No.

09:27

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1 found from an abnormal event that occurred three years
2 after the initial permitting was done, yes.

3 Q So your answer is yes?

4 A No. My answer is yes to what I just said.

5 Q No. You don't get to ask your own question. 09:59

6 A I've just answered it the only way I'm going to
7 answer it. Do you understand that?

8 Q Are you going to answer "yes" or "no"?

9 A I'm not answering -- I gave you an answer.

10 Q You refuse to answer "yes" or "no"? 09:59

11 A Yeah, because I gave you a detailed answer.

12 Q Well, I'm asking for a yes-or-no answer.

13 A I'm not. I gave you a detailed answer.

14 (Exhibit 3 marked.)

15 Q. (BY MR. ROCKWELL) I'm going to hand you a 10:00
16 document that's been marked as Exhibit 3. It's two
17 pieces of paper with printing on two sides. So it's a
18 four-page document. Exhibit 3.

19 Have you ever seen that before?

20 A It appears to be one of the documents that's 10:00
21 filed as part of the SOAH hearing.

22 Q And was that filed by someone who works for
23 you?

24 A It appears to be an affidavit of John Michael
25 Snyder, who is one of our -- our subcontractors. 10:00

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1 Q — But you've never seen that before?

2 A I haven't seen this, no.

3 Q — I refer you to the back page of this document.

4 A Uh-huh.

5 Q And it says, "Pintail's permit application no
6 longer satisfies the requirements of TCEQ's permitting
7 rules."

10:00

8 Do you see that?

9 A Well, you've got it in your hand. I can't see
10 it.

10:01

11 MR. RYAN: You can read the whole document,
12 if you'd like, to answer the question.

13 A I believe when you read the whole document, it
14 says (as read): In order to satisfy TCEQ's municipal
15 solid waste permitting rules, these higher groundwater
16 levels require adjustment -- adjustment to the plan as
17 set out in Pintail's permit application and, based on
18 it, revisions to various other portions of the permit
19 application.

10:02

20 What -- what all this is about is we -- we
21 said ourselves that we wanted to ask the State to give
22 us the opportunity, given this high groundwater, instead
23 of just ramming it through a SOAH process or any other
24 process, to go back and spend a year of our time almost
25 and another million dollars to evaluate and -- where

10:02

10:03

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Protestants' Exhibit 11, p. 11

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1 (The record was read as follows:
2 "Q And it says, 'Pintail's permit
3 application no longer satisfies the
4 requirements of TCEQ's permitting rules.'
5 Do you see that?") 10:04
6 A — It says here -- you're referring -- and I
7 quote, the exact language is (as read): Because of the
8 newly-discovered water level information, Pintail's
9 permit application, which was based on the SHWL
10 established using the previously collected data from the 10:05
11 site, no longer satisfies the requirements of TCEQ's
12 permitting rules. TCEQ's rule at 30 Tex -- contemplates
13 revisions to the SHWL based on later acquired data.
14 Okay. That's what it says. I would agree
15 with that. 10:05
16 Q. (BY MR. ROCKWELL) And it says the application
17 no longer satisfies the requirements of TCEQ's
18 permitting rules; correct?
19 A I read the whole part of it. You're taking one
20 sentence out of it. 10:05
21 Q — And is that sentence correct?
22 MR. RYAN: That's a part of a sentence,
23 Brad.
24 Q. (BY MR. ROCKWELL) And is that part of a
25 sentence correct? 10:05

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1 A If you want to take and look at something
2 piecemeal, which is --

3 Q Yeah.

4 A -- what you're doing.

5 MR. RYAN: Brad, I think you can ask him if 10:05
6 the sentence is correct. I don't think you can ask him
7 if a few words are correct. I don't think that's a fair
8 question. I'm going to object to the question if that's
9 what you're asking him.

10 MR. ROCKWELL: Well, I can ask him whether 10:06
11 the permit satisfies the require- -- as submitted,
12 satis- -- currently satisfies TCEQ's permitting rules.

13 A That paragraph is correct.

14 Q. (BY MR. ROCKWELL) But you're -- you're
15 unwilling to admit that the Pintail permit does not 10:06
16 satisfy TCEQ permitting rules?

17 A I'm willing to agree with the language that's
18 in that paragraph.

19 Q But you're unwilling to admit --

20 A I just -- you don't need to say it again. I 10:06
21 agree with the language in that paragraph.

22 Q I didn't ask you that question. You're
23 refusing to answer my question?

24 A I've answered your question.

25 Q No, you didn't. It's a yes-or-no question. 10:06

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Protestants' Exhibit 11, p. 13

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1 a -- over a lengthy period of time.

2 You know, we design based on the regs, on
3 what was required, went over -- beyond that monitoring
4 period, and that's where we are.

5 Q Isn't the design for a landfill supposed to be
6 based on predictions that are accurate as to what will
7 happen later?

10:08

8 A That's correct, and that's what we did.

9 Q But your predictions, after only a three-year
10 period, proved to be wrong; is that correct?

10:08

11 A We didn't anticipate that kind of a rainfall,
12 and I don't believe more -- anyone would have, you know,
13 accounted for that big of a -- a change in the amount of
14 precipitation or what would happen with the groundwater.

15 Q So you don't think you had any obligation to
16 anticipate the rain events that occurred in the initial
17 three-year period?

10:08

18 A I believe we did that.

19 Q You correctly anticipated those?

20 A I think that we did. We did what any other
21 company would have anticipated happening.

10:09

22 Q But they were inaccurate; correct?

23 A We proved that we had an abnormal amount of
24 rainfall over an extended period of time, and so,
25 therefore, that -- assumptions we made were not correct.

10:09

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1 Q And what do you mean by "abnormal"?

2 A Above average. Way above average.

3 Q So you're taking the position that in
4 submitting a permit to TCEQ you're not supposed to be
5 able to predict above average rainfall or other --

10:09

6 A I'm taking the position that when we submitted
7 our permit with TCEQ, we abided by all the TCEQ
8 regulations at the given -- and information we had at
9 that time, given the fact that we actually monitored, I
10 think, for 18 months as opposed to 12.

10:10

11 Q And you think that permit, as was submitted,
12 should have been approved?

13 A Should have been approved?

14 Q Yes.

15 A Absolutely.

10:10

16 Q Even though it would have been deficient for
17 the first three years?

18 A No, it wouldn't have been deficient for the
19 first three years.

20 Q So you -- it's your position that initial
21 application was just fine?

10:10

22 A Yes. Absolutely.

23 Q The Green Group Holding website states that one
24 of your areas of expertise is environmental permitting
25 and infrastructure development; is that correct?

10:10

ERNEST KAUFMANN - September 24, 2015

1 A That's correct.

2 Q And have you done -- has Green Group Holdings
3 done environmental permitting and infrastructure
4 development for other companies that it doesn't own?

5 A Would you clarify that statement?

10:11

6 Q Is environmental permitting and infrastructure
7 development a service you has -- Green Group Holdings
8 has provided to other companies that are not affiliated
9 with Green Group Holding?

10 A Yes, we have.

10:11

11 Q And what are those companies?

12 A We helped -- we are responsible for working for
13 the expansion of the landfill for Wichita, Kansas. We
14 are responsible for the permit reauthorization and
15 expansion of the -- the permits in Wagon Mound,
16 New Mexico. We're responsible for the adjustments and
17 preplanning for the -- the sale, the expansion in
18 Grand Junction, Colorado, Mesa landfill.

10:11

19 Those are ones that come to my mind right
20 now.

10:12

21 Q And each of those facilities is a facility that
22 either Green Group Holdings or one of -- a company that
23 it owns takes care of the operations for?

24 A Correct.

25 Q In a deposition taken in the Waller County

10:12

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1 litigation, I'm going to ask you whether you testified
2 under oath to the following: Quote, Most of the
3 projects I've done, we always end up putting someone in
4 prison, and that probably won't be the exception here,
5 end of quote.

10:13

6 Is that something that you said?

7 A Yeah. I wouldn't say we put someone -- I
8 should have probably said they put themselves in prison
9 because of what they did.

10 Q And who has put themselves in prison?

10:13

11 A Well, when I was at BFI, we had a case where
12 two of our commissioners came up before a vote and
13 wanted to know if they were going to get the rest of the
14 money from the landowner before the vote occurred, and
15 we went to the Attorney General and turned them in. And
16 one went to prison. The other went to South America.

10:13

17 The Meriwether County incident, the guy
18 that was leading the parade about integrity and
19 everything else, he ended up having to confess that he
20 was -- had people that were -- had passed away his
21 checkbooks and credit cards and were using them to fund
22 his business and personal expenses and...

10:13

23 Q Anything else?

24 A Not that comes right off the top of my head.

25 Q And you said, "And that probably won't be the

10:14

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1 exception here."

2 Is there someone that either should be or
3 is going to go to prison with respect to your
4 Waller County landfill?

5 A Well, we had someone that was stealing mail out 10:14
6 of the mailbox, stealing mail out of the PO box. We had
7 property that was destroyed on the property. All kind
8 of interesting things there.

9 Q And who was stealing mail out of -- strike that
10 question. 10:14

11 So when you said "PO box," this is a PO box
12 belonging to --

13 A Green Group Holdings.

14 Q -- Green Group Holdings? And who -- who was
15 stealing mail out of this? 10:15

16 A We're not saying that right now.

17 Q You're refusing to answer?

18 A I am.

19 Q And who has destroyed property?

20 A I'm not going to answer that. 10:15

21 Q You're refusing to answer?

22 A Uh-huh.

23 Q In the Caldwell County deposition, you
24 testified that you hired former FBI agent
25 Harold Copus -- 10:15

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1 A Uh-huh. Yes.

2 Q -- to, quote, Investigate a whole litany of
3 things that have gone on here that are just absolutely
4 wrong, and we'll see what comes out of it.

5 Do you see that?

10:15

6 A Yeah. Yes.

7 Q And what you've just testified as to stolen
8 mail and destroyed property, is that what you're
9 referring to in this testimony, too, with --

10 A Yes.

10:16

11 Q And Mr. Copus is investigating that?

12 A At different times, yes.

13 Q I'm just asking about the Waller County.

14 Is he investigating the incidents there?

15 A At different times, yes.

10:16

16 Q And what's come out of his investigation?

17 A That's something we're not discussing right at
18 this second.

19 Q You're refusing to answer?

20 A I am. Yes, I am.

10:16

21 Q What kind of investigation did he do in
22 Waller County?

23 A I don't -- I'm not familiar with all the extent
24 that he went through and what he's -- what all he's
25 done.

10:16

ERNEST KAUFMANN - September 24, 2015

1 Q — Has Mr. Copus conducted any investigation
2 relating to the Caldwell County 130 Environmental Park
3 landfill?

4 A No, not yet.

5 Q Are you expecting him to?

10:17

6 A Don't know.

7 Q With respect to the Waller County project, what
8 have you asked Mr. Copus to do?

9 A To investigate where these -- what these
10 activities were that we described earlier, plus other
11 things, yes.

10:17

12 Q What other things?

13 A I don't recall. That's been a couple years
14 ago, three years ago.

15 Q Have you had any communication with Mr. Copus
16 since the last three years?

10:17

17 A Not in the last year.

18 Q Have you had a long-term relationship with
19 Mr. Copus?

20 A I've known Mr. Copus probably for about ten
21 years.

10:18

22 Q And how did you meet him?

23 A Introduced from a third party to him.

24 Q And who introduced you to him?

25 A I don't recall that.

10:18

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Protestants' Exhibit 11, p. 20

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(Exhibit 4 marked.)

Q. (BY MR. ROCKWELL) I'm going to hand you a document marked Exhibit 4 and ask you whether you can identify Exhibit 4.

A It appears to be something off his Web page -- Web page.

Q Have you been to -- ever been to his Web page?

A No.

Q Do you see he has expertise in missing adults and children?

A I do.

Q And workplace violence crisis?

A That's what it says.

Q Would that be occupations involving dangerous occupations, workplace violence? Is that what that refers to?

A I don't know.

Q Do you have workplace violence relating to the landfill operation?

A No.

Q Have you or Mr. Copus talked to any law enforcement people in Texas about the opposition to your landfills here in Texas?

A I don't know if he has or not, but I probably would assume he has.

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Protestants' Exhibit 11, p. 21

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1 Q Have you?

2 A No.

3 Q Has Mr. Copus told you he's communicated to
4 government employees or officials?

5 A The only communication I know is that he went 10:20
6 to the post office and talked to the postmaster over
7 there.

8 Q Are you expecting to put someone in prison over
9 your Caldwell County project?

10 A I'm not -- there is no comment on that. 10:20

11 Q You're refusing to answer that question?

12 A I don't know if we are or not.

13 Q Okay. Are you -- are you aware that Mr. Copus
14 was involved with the Abscam FBI operation?

15 A I have no clue what you're talking about. 10:21

16 Q Okay. He never mentioned that part of his
17 background?

18 A I've never asked him.

19 Q Are you aware that an FBI informant,
20 James Davenport, submitted an affidavit to a federal 10:21
21 court testifying under oath that Mr. Copus put him in
22 touch with a man who helped Davenport plan, quote, to
23 infiltrate the defense teams of the Abscam defendants?
24 Have you heard of that?

25 A I don't have a clue what you're talking about. 10:21

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1 Q Okay.

2 (Exhibit 5 marked.)

3 Q. (BY MR. ROCKWELL) I'm handing you a copy of a
4 document that's been marked Exhibit 5.

5 MR. ROCKWELL: For the record, it's a copy
6 of United States vs. Kelly, 790 Federal Reporter, 2nd,
7 130.

10:22

8 Q. (BY MR. ROCKWELL) Did you -- has anyone ever
9 told you or did -- were you aware that Mr. Davenport,
10 who is an FBI informant, testified that he infiltrated a
11 defense team of somebody the FBI was targeting and
12 participated in confidential attorney-client meetings
13 and stole some documents relating to their trial
14 strategy?

10:22

15 A No.

10:22

16 Q Did you do any kind of investigation of
17 Mr. Copus before you hired him?

18 A He came highly recommended from people.

19 Q From who?

20 A I told you before, I can't remember that.

10:23

21 Q Have you asked Mr. Copus to arrange for the
22 infiltration of any groups or companies opposing a
23 landfill?

24 A No.

25 Q Did Mr. Copus indicate to you that he might

10:23

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Protestants' Exhibit 11, p. 23

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1 arrange for the infiltration of any groups or companies
2 opposing a landfill?

3 A No.

4 Q Have you asked Mr. Copus to spy on any
5 opponents to the Pintail or 130 Environmental Park
6 landfills?

10:23

7 A Not the 130.

8 Q Have you asked Mr. Copus to gather information
9 on any lawyers or law firm representing opponents to the
10 Pintail or the 130 Environmental Park landfills?

10:23

11 A No.

12 Q What are your job responsibilities with respect
13 to Green Group Holding project acquisitions?

14 A Green Group Holding acquisitions?

15 Q Right.

10:24

16 A To oversee the -- and formulate the team that's
17 going to go and try and target acquisitions and to
18 review and take that information back to the board if we
19 decide to move forward.

20 Q In your September 27th, 2013, deposition, I'm
21 going to represent that your testimony -- you said that,
22 quote, with all of our projects, I'm heavily involved in
23 the initial selection and negotiations on the
24 acquisition of property.

10:24

25 A That's correct.

10:25

ERNEST KAUFMANN - September 24, 2015

1 Q Is that correct?

2 So were you heavily involved in the initial
3 site selection for the proposed 130 Environmental Park
4 landfill?

5 A I was.

10:25

6 Q Were you heavily involved with the negotiations
7 on the acquisition of the option from the Hunters?

8 A Yes.

9 Q Do you consider environmental conditions when
10 choosing a site?

10:25

11 A Yes.

12 Q What -- identify each environmental condition
13 you consider.

14 A Well, I mean, the first thing we do when we
15 decide to go in to look into an area is that we ask our
16 engineers and our professionals to go from a 10,000-foot
17 level, start eliminating those areas that do not qualify
18 or that we would have what we call a fatal flaw, which
19 would be the wetlands, national historic sites,
20 airports, floodways, floodplains, a whole variety of --
21 of different issues. And then from that, we narrow it
22 down to a group of sites.

10:25

10:26

23 THE VIDEOGRAPHER: Mr. Rockwell, can we
24 take a very short break? Can we take a very short
25 break?

10:26

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1 MR. ROCKWELL: Sure. The videographer has
2 asked that we take a break and probably this is just as
3 good a time as any to take one.

4 THE WITNESS: Good.

5 THE VIDEOGRAPHER: It is 10:26, and we are 10:26
6 off the record.

7 (Recess taken from 10:26 a.m. to
8 10:44 a.m.)

9 THE VIDEOGRAPHER: This is the start of
10 disc 2. It is 10:44, and we are back on the record. 10:44

11 Q. (BY MR. ROCKWELL) So I'm going to go back and
12 revisit a little bit of the questions I asked about the
13 Waller permit and Mr. Hodges' work on that.

14 Do you know who Mr. Hodges is?

15 A I do. 10:44

16 Q Have you worked with him before?

17 A I have.

18 Q And what company is Mr. Hodges with?

19 A He's one of the principals in Hodges, Harbin,
20 Newberry & Tribble. 10:45

21 Q And who -- who retained Mr. Hodges for this
22 project?

23 A I did.

24 Q And how did you choose him?

25 A He represents us in every project that I -- I 10:45

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1 do in this company. He oversees each project from an
2 engineering standpoint.

3 Q And are you happy with his work?

4 A Most certainly happy with his work. Again, in
5 his role today, he oversees our local -- what we
6 consider to be our local engineers and their design work
7 and everything else that they do.

10:45

8 Q And what criteria do you use to evaluate
9 whether Mr. Hodges is doing a good job for Green Group
10 Holding?

10:45

11 A Well, his success talking with different past
12 and present directors of environmental agencies in
13 different states, his reputation within the communities.

14 Q And have you ever talked to TCEQ about
15 Mr. Hodges or anybody affiliated with TCEQ?

10:46

16 A Huh-uh.

17 Q And -- and that's a no; correct?

18 A Right. That's no.

19 Q And have you ever talked to anybody in -- you
20 know, from Texas about Mr. Hodges' reputation?

10:46

21 A No.

22 Q And when you say his success, that means his
23 success in helping secure permits?

24 A In helping secure permits or helping to get
25 permit modifications done.

10:46

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1 last site visit, to my knowledge, there wasn't any
2 opposition whatsoever on the last visit that had --
3 other than, you know, to make sure that everybody was
4 accounted for.

5 Q Was there an earlier site visit?

10:56

6 A I think they may have been on the site twice
7 before that. I'm not sure.

8 Q Are you aware that the deficiency in the data
9 that was in the application was discovered on the site
10 visit?

10:56

11 MR. RYAN: Objection to the form of the
12 question.

13 A There were no deficiencies in the application.
14 And when the application was filed, there were no
15 deficiencies within the application.

10:57

16 Q. (BY MR. ROCKWELL) Would you agree to me that
17 the application did not reflect the water table or water
18 level situation that existed at the time of the site
19 visit?

20 MR. RYAN: Objection to the form of the
21 question. Which site visit are you talking about?

10:57

22 Q. (BY MR. ROCKWELL) The July 17th, 2015.

23 A Now how could you file an application three
24 years before that and reflect something that shows up
25 three years later? That's -- no. Our application, at

10:57

ERNEST KAUFMANN - September 24, 2015

1 that point, didn't predict that we were going to have
2 a -- that event, if that's what you're asking me.

3 Q And -- and it's your position the application
4 was not required to predict that?

5 A Our application was required to follow the
6 rules set out by TCEQ in how you prepare your
7 application, what kind of readings you have, for how
8 long you take them, and the assumptions that you make
9 within that, which we fully complied with.

10:57

10 Q So it's your position that the original
11 application is fully compliant with TCEQ rules?

10:58

12 A Yes.

13 Q But Green Group Holdings or its subsidiary is
14 going to be submitting a modification of that
15 application; is that correct?

10:58

16 A That's what we're studying right now.

17 Q And what is going to have to be changed?

18 A We don't know that yet because we don't have
19 complete data.

20 Q What kind of data are you collecting?

10:58

21 A Continued water measurements, other
22 observations on the site.

23 Q Was there any defect in the predictive model
24 that was used in the original Pintail application for a
25 water table?

10:59

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Protestants' Exhibit 11, p. 29

ERNEST KAUFMANN - September 24, 2015

1 (Exhibit 6 marked.)

2 Q. (BY MR. ROCKWELL) I'm going to hand you a

3 document that's been marked as Exhibit 6.

4 A Okay.

5 Q And it's also Exhibit 6 to the David Green 11:06

6 deposition.

7 A Okay.

8 Q Can you identify what that document is?

9 MR. RYAN: Can I have a copy?

10 A It appears to be a map of the 130 Environmental 11:06

11 Park site.

12 Q. (BY MR. ROCKWELL) And do you see there is --

13 over a -- a portion of that site, there is -- part of it

14 is sort of colored in with blue.

15 Do you see that? 11:06

16 A Uh-huh. Yes, I do.

17 Q And do you understand what that is?

18 A Yes, I do.

19 Q And what is that?

20 A According to the notes here, this is FEMA 2012 11:06

21 floodplain data.

22 Q So there is a significant part of this site

23 that's covered with floodplain; is that correct?

24 A On this particular map, yes.

25 Q And do you disagree with this map? 11:07

ERNEST KAUFMANN - September 24, 2015

1 A We haven't done the studies to see what
2 actually -- on the ground if you went out and did a
3 survey if it would be more -- some of this in here may
4 have been dry or over- -- or overdone, but we -- you
5 know, we always elect to not go and interfere with
6 floodplains and floodways and design our facilities
7 with the cells and all their appropriate -- and not go
8 asking the Corps for us to be able to develop in
9 floodplains, which you could do. We don't -- we don't
10 do that in our developments.

11:07

11:07

11 Q But that was one of the primary factors you
12 said you looked at in terms of choosing sites was
13 whether there is floodplains on the site; correct?

14 A That's correct.

15 Q And in order to access where you purported to
16 site the footprint of the landfill, your road has to go
17 over the floodplain at several points; correct?

11:07

18 A I believe, if I remember right, we crossed a
19 stream and -- or a floodplain in -- in a couple of
20 points.

11:08

21 Q Why would you pick a site that has so much of
22 it covered with floodplain?

23 A Well, it keeps other development away from us.
24 We like to take and use parts of our sites, as we have
25 in the past, for stream mitigation projects or wetland

11:08

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1 projects. We like to take in enhanced features like
2 this to make them better for the wildlife habitat.
3 There is all kinds of things that we -- we like to do
4 with these kinds of properties.

5 Q So a site that has a significant portion 11:09
6 covered with a floodplain is actually a plus. It's a
7 positive that you look for?

8 A It's not necessarily a positive. It's not a --
9 it's not a killer.

10 Q In your submission to TCEQ for the 11:09
11 130 Environmental Park --

12 A Uh-huh.

13 Q -- landfill, is part of your proposal something
14 that's going to enhance the floodplain?

15 A Enhance the floodplain. I'm not familiar with 11:09
16 that, if that is a part of our proposal or not. I know
17 when we originally started this project we wanted to
18 make some improvements to the lake down here to make it
19 more suitable for ducks and habitat use. We're working
20 with the -- different water groups down in 11:09
21 Caldwell County to get their thoughts on that. So it's
22 one of the things that we are considering, not something
23 that we are moving forward with.

24 Q And in your testimony, you reference
25 Caldwell County? 11:10

ERNEST KAUFMANN - September 24, 2015

SOAH DOCKET NO. 582-15-2082

TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION OF) BEFORE THE STATE OFFICE
 130 ENVIRONMENTAL PARK,) OF
 LLC FOR PROPOSED PERMIT) ADMINISTRATIVE HEARINGS
 NO. 2383)
 _____)

REPORTER'S CERTIFICATION

ORAL AND VIDEOTAPED DEPOSITION OF ERNEST KAUFMANN

September 24, 2015

I, Candice Andino, Certified Shorthand
 Reporter in and for the State of Texas, Registered Merit
 Reporter, hereby certify to the following:

That the witness, ERNEST KAUFMANN, was duly
 sworn and that the transcript of the deposition is a
 true record of the testimony given by the witness;

That the deposition transcript was duly
 submitted on OCTOBER 6, 2015 to the witness or to the
 attorney for the witness for examination, signature, and
 returned to me by OCTOBER 27, 2015;

That pursuant to information given to the
 deposition officer at the time said testimony was taken,
 the following includes all parties of record and the
 amount of time used by each party at the time of the
 deposition:

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Protestants' Exhibit 11, p. 33

ERNEST KAUFMANN - September 24, 2015

1 Mr. Brad Rockwell (4h13m)
2 Attorney for LP and Environmental
3 Protection in the Interest of
4 Caldwell County
5 Mr. Brent W. Ryan (0h0m)
6 Attorney for 130 Environmental Park, LLC
7 Mr. Aaron Tucker (0h0m)
8 Attorney for TCEQ Public Interest Counsel
9 Mr. Anthony Tatu (0h0m)
10 Attorney for TCEQ Executive Director
11 Mr. Eric Magee (0h0m)
12 Attorney for Caldwell County
13 Mr. Robert Wilson (0h1m)
14 Attorney for Plum Creek Conservation
15 District

16 I further certify that I am neither counsel
17 for, related to, nor employed by any of the parties in
18 the action in which this proceeding was taken, and
19 further that I am not financially or otherwise
20 interested in the outcome of this action.

21 Certified to by me on this 6th day of October,
22 2015.



23 CANDICE ANDINO, RMR
24 Certified Shorthand Reporter
25 CSR No. 9332 - Expires 12/31/16

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Protestants' Exhibit 11, p. 34

SOAH DOCKET NO. 582-14-3597
TCEQ DOCKET NO. 2012-0302-MSW

APPLICATION BY § BEFORE THE STATE OFFICE
PINTAIL LANDFILL LLC §
FOR NEW MUNICIPAL SOLID § OF
WASTE PERMIT NO. 2377 §
§ ADMINISTRATIVE HEARINGS

AFFIDAVIT OF JOHN MICHAEL SNYDER, P.G.

STATE OF TEXAS §
§
COUNTY OF TARRANT §

Before me, the undersigned authority, on this day personally appeared John Michael Snyder, who being by me duly sworn, deposed and said:

"I am over the age of eighteen and competent to make this affidavit.

I am a geologist and a licensed Professional Geoscientist in Texas. I am employed by Biggs & Mathews Environmental in Mansfield, Texas. Since 1990 I have spent the majority of my career working on matters related to municipal solid waste landfills in Texas, first as a permit review geologist at the Texas Department of Health and the Texas Water Commission (predecessor agencies to the Texas Commission on Environmental Quality [TCEQ] in regulating municipal solid waste facilities in Texas), then as a consulting geologist and geoscientist working for public and private entities engaged in solid waste activities.

I am in charge of the geologic and hydrogeologic investigation for, and I assisted in the preparation of the TCEQ municipal solid waste landfill facility permit application (Application No. 2377) for, the proposed Pintail Landfill in Waller County, Texas.

The rules of the TCEQ require that an application for a municipal solid waste landfill permit include information on the "seasonal high water level" (SHWL), which is the highest measured groundwater level at a site. In addition, the SHWL affects significant aspects of a landfill's design, including the configuration and depth of excavations for the landfill disposal cells, the design of the groundwater monitoring system that will be used during and after the operating life of the landfill to monitor the quality of groundwater near the landfill, and many other design and operating parameters.

As part of the geologic and hydrogeologic investigation of the site proposed for the Pintail Landfill, a total of 42 deep soil borings were drilled to investigate site geology and 15 piezometers were installed to measure groundwater levels. These piezometers are wells drilled and cased to depths of up to 81.5 feet; they were installed to allow the measurement of groundwater levels at 15 locations across the Pintail site over time.



**ATTACHMENT 3
AFFIDAVIT OF
JOHN MICHAEL SNYDER, P.G.**

The SHWL is typically determined from groundwater level measurements taken over a 12-month period, with the SHWL at a site established by using the highest water level reading in each piezometer during the measurement period. For the Pintail site, groundwater levels in the 15 piezometers were measured for 17 months, from July of 2011 until December 2012, when the permit application for the landfill facility was declared technically complete by the TCEQ Executive Director. This included two 3-month periods during which rainfall in the area of the Pintail site significantly exceeded normal rainfall for those periods: January- March 2012 (when rainfall was 166% of normal) and July-September 2012 (when rainfall was 158% of normal). See Attachment 1, Rainfall Data.¹ The SHWL for the Pintail site was established using the highest measured water level at each piezometer during this 17-month period, and that data was used to establish and confirm various aspects of the design of the proposed landfill. For example, in order to satisfy the requirement in TCEQ's rule at 30 Tex. Admin. Code § 330.337(b) to "demonstrate that the landfill liner system will not undergo uplift from hydrostatic forces during its construction", Pintail followed subsection (4) of the rule and provided "evidence that the seasonal high water table is below the deepest planned excavation".

In order to have water level measurements to verify those taken by representatives of Citizens Against the Landfill in Hempstead (CALH) during their visit to the Pintail site last Friday, July 17, 2015, the field geologist who participated in and supervised the field work on the soil borings and piezometer installation and previous water level readings (Stefan Stamoulis, P.G.) and I also took water level measurements in the piezometers on that same day. Attachment 2 is a summary of water level elevations (in feet above mean sea level) in each of the piezometers based on water level readings beginning in July 2011 and including the results of our measurements on July 17, 2015.

The water level measurements we recorded on July 17, 2015 show groundwater levels that are significantly higher than those previously measured at the Pintail site, as much as nearly 7 feet higher. I am currently evaluating this new groundwater level data, and it seems likely that the higher water levels are related to the unusually large amounts of recent rainfall in the area, amounts that far exceeded the rainfall during even the above-normal rainfall periods in 2012. Records from the nearest NOAA weather station show that during the three calendar month period preceding last week's site visit, rainfall was 29.27 inches. That is approximately 240% of normal rainfall for that period, and is more than 70% of the normal total yearly rainfall amount for the area (41.75 inches). In addition, the total rainfall for the area of the Pintail site in the first six months of 2015 was 41.79 inches--more than the normal rainfall during an entire year (41.75 inches). See Attachment 1, Rainfall Data.

In order to satisfy TCEQ's municipal solid waste permitting rules, these higher groundwater levels require adjustment of the SHWL as set out in Pintail's permit application and, based on it, revisions to various other portions of the permit application that address design of the landfill facility, including changes to the design of the groundwater monitoring system for the facility and changes to the design and configuration of the landfill itself and/or the addition of

¹ Rainfall data referenced herein is from the National Oceanic and Atmospheric Administration (NOAA) weather station nearest to the Pintail site: the BELLVILLE 6 NNE, TX US station (Network:ID GHCND:USC00410655; Latitude/Longitude 30.0316°, -96.2166°), located approximately 11 miles southwest of the site (data available at <http://www.ncdc.noaa.gov/cdo-web/search>).

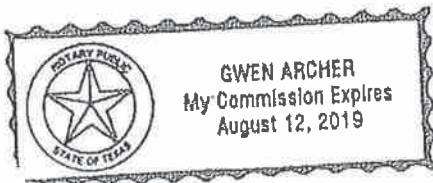
engineering and operating provisions to address the higher water levels. I am evaluating the new water level information so decisions can be made about additional data that may be needed and the nature and scope of necessary revisions to the permit application. In my opinion, that this process will take approximately 45 days to complete.

Because of this newly-discovered water level information, Pintail's permit application, which was based on the SHWL established using the previously collected data from the site, no longer satisfies the requirements of TCEQ's permitting rules. TCEQ's rule at 30 Tex. Admin Code § 330.337(i) contemplates revisions to the SHWL based on later-acquired data: 'The seasonal high water table shall be adjusted upward, if necessary, as additional data become available after a permit is issued.' Once the SHWL is adjusted based on the new groundwater level data, the excavation for the waste disposal cells that the Pintail Landfill as currently designed will extend below the adjusted SHWL. Revisions to the permit application to adjust the SHWL and other aspects of the application based on it must also be made based on the new information obtained prior to permit issuance."

Further Affiant Sayeth Not.


John Michael Snyder

Subscribed and sworn to before me by John Michael Snyder on the 22nd day of July, 2015, to certify which witness my hand and official seal.




Notary Public in and for the State of Texas

Gwen Archer
Printed or Typed Name of Notary Public

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Services

Copus Security Consultants (CSC) provides unparalleled investigative and risk management support in many areas including:

Complex Financial Investigations

Security Assessments

Litigation Support

Due Diligence

Risk and Threat Analysis

Over the past 15 years, Harold Copus has been asked to provide assistance in the location of missing adults and children. He has been recognized for his work and was invited to a National Conference for Missing and Exploited Children. The White House conference was hosted by President George Bush and key members of his cabinet.

Harold has assisted many companies that have faced a workplace violence crisis. He has spoken on this subject to many organizations. Harold is generally recognized as an expert in these matters.

Exhibit 4

Ernest Kaufmann

9/24/15

Reported by:

Candice Andino, CSR 9832

the burden of establishing the existence of this coverage.⁴⁸

[5] On the record before us, there remains an unresolved dispute of fact concerning Maryland's coverage of Abex. The evidence supporting this coverage is arguably persuasive, but the standard for summary judgment requires that the District Court find no dispute of material fact—mere persuasiveness is not enough.⁴⁹ Although Abex presented two alleged policies found in the records of its London insurance broker, these policies are stamped "SAMPLE" and "CANCELLED." Of course, as Abex suggests, this could merely denote the fact that only a copy of the policy was sent to London, and that the policy was cancelled at the end of the policy period. On a motion for summary judgment, however, we are not permitted to draw any inferences against Maryland.⁵⁰ As Maryland argues, "SAMPLE" could mean that these policies were prepared as only an example of the coverage Maryland could provide. Similarly, the fact that neither Maryland nor Abex's domestic insurance broker had a copy of the purported policies, and the fact that key provisions of the policies are missing, cast some doubt on the authenticity of these policies.

On remand, the District Court must conduct further proceedings before imposing liability on Maryland. If a factual dispute persists after further discovery, the District Court must hold a trial on this issue.

III. CONCLUSION

We are fortunate that the Second Circuit has already resolved the principal issues of New York law dispositive of this appeal. Because the Second Circuit is the "home" circuit, we adopt its interpretation of New York law; the duty of each insurer to indemnify Abex is therefore triggered by injury-in-fact. We remand the case to the District Court for a trial on each insurer's

duty to indemnify under this trigger. We further conclude that the insurers are obligated under New York law to defend Abex until the insurers establish that, as a matter of law, there is no possibility of coverage. This duty, of course, includes a duty to reimburse Abex for defense costs already incurred, as well as a duty to assume Abex's defense in all pending and future asbestos cases. Finally, we hold that the District Court must determine whether Maryland insured Abex before imposing either a duty to defend or a duty to indemnify upon Maryland.

So ordered.



*Domus
Haeckel*

UNITED STATES of America

v.

Richard KELLY, Appellant.

No. 85-5974.

United States Court of Appeals,
District of Columbia Circuit.

Argued Feb. 18, 1986.

Decided May 9, 1986.

Defendant appealed from a denial by the United States District Court for the District of Columbia, Bryant, J., of his motion for new trial based on newly discovered evidence. The Court of Appeals, Wald, Circuit Judge, held that: (1) District Court's failure to develop any evidentiary record or to make any findings constituted abuse of discretion, and (2) defendant was not entitled to bail pending appeal.

Reversed and remanded.

48. See *Emons Indus., Inc. v. Liberty Mut. Fire Ins. Co.*, 545 F.Supp. 185, 188 (S.D.N.Y.1982).

49. See *National Ass'n of Gov't Employees v. Campbell*, 593 F.2d 1023, 1027 (D.C.Cir.1978).

50. *Id.*

Exhibit 5

Ernest Kaufmann

9/24/15

Reported by:

Candice Andino, CSR 9932

1. Criminal Law $\S$ 938(1), 1156(3)

Grant or denial of motion for new trial based on newly discovered evidence is committed to sound discretion of trial judge and appellate court will reverse only if district court misapplied law or abused its discretion. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.

2. Criminal Law $\S$ 938(1)

Generally, new trial based on newly discovered evidence will be granted only when five conditions are met: evidence must have been discovered since trial; party seeking new trial must show diligence in attempt to procure newly discovered evidence; evidence relied on must not be merely cumulative or impeaching; evidence must be material to issues involved; and evidence must be such that in new trial it would probably produce acquittal. Fed. Rules Cr.Proc.Rule 33, 18 U.S.C.A.

3. Criminal Law $\S$ 959, 1156(1)

Motion for new trial can ordinarily be decided on basis of affidavits without evidentiary hearing, and district court's decision not to hold such hearing may be reversed only for abuse of discretion. Fed. Rules Cr.Proc.Rule 33, 18 U.S.C.A.

4. Criminal Law $\S$ 961

District court's failure to develop any evidentiary record to make any findings in support of denial of motion for new trial based on newly discovered evidence of *Brady* violations was an abuse of discretion. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.

5. Criminal Law $\S$ 959

Defendant's allegation that FBI informant posed as disgruntled former FBI agent, visited defendant's office, discussed defense strategy with defendant and his lawyer, and stole some documents relating to their trial strategy were sufficiently meritorious to warrant evidentiary proceedings on his new trial motion based on *Brady* violation.

6. Criminal Law $\S$ 940

Motion for new trial based on newly discovered evidence of *Brady* violations required determination of whether undis-

closed evidence was "material" to defendant's conviction. Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.

7. Criminal Law $\S$ 700(2)

Undisclosed information is material for purposes of *Brady* claim, if there is reasonable probability that, had evidence been disclosed to defense, result of proceeding would have been different; "reasonable probability" is probability sufficient to undermine confidence in outcome.

See publication Words and Phrases for other judicial constructions and definitions.

8. Criminal Law $\S$ 641.12(1)

Some showing of prejudice is necessary element of Sixth Amendment claim of invasion of attorney-client relationship. U.S.C.A. Const.Amend. 6.

9. Criminal Law $\S$ 641.12(1)

While some prejudice must be shown as element of Sixth Amendment violation through invasion of attorney-client relationship by Government informant, the showing need not rise to level of proving that new trial would more likely than not produce acquittal. U.S.C.A. Const.Amend. 6.

10. Criminal Law $\S$ 1162

To show that constitutional violation was harmless error, Government must prove beyond a reasonable doubt that error complained of did not contribute to verdict obtained.

11. Bail $\S$ 44(2)

Bail Reform Act did not provide for bail pending appeal of denial of new trial motion. 18 U.S.C.A. $\S$ 3143(b); Fed.Rules Cr.Proc.Rule 33, 18 U.S.C.A.

12. Bail $\S$ 44(2)

In proceeding by defendant seeking release while litigating new trial motion based on newly discovered evidence, court's jurisdiction to order release as final disposition of action includes inherent power to grant relief pendente lite, to grant bail or release, pending determination of merits. 28 U.S.C.A. $\S$ 2255.

13. Bail $\S$ 44(2)

In proceeding by defendant seeking release while litigating new trial motion based on newly discovered evidence, request for relief pendente lite would ordinarily be measured against heightened standard requiring showing of exceptional circumstances. 28 U.S.C.A. $\S$ 2255.

14. Criminal Law $\S$ 1181.5(1)

When facially adequate allegations have been made and critical information is more easily available to Government, appellate court may order further factual inquiry when prosecution without any apparent reason has declined to produce corroborating evidence which record shows might have been offered.

Appeal from the United States District Court for the District of Columbia (Criminal No. 80-00340-01).

Stephen J. Wein with whom Anthony S. Battaglia was on brief, for appellant.

Daniel S. Seikaly, Asst. U.S. Atty., with whom Joseph E. diGenova, U.S. Atty., Michael W. Farrell and Roger M. Adelman, Asst. U.S. Attys., were on brief, for appellant.

Before WALD, SCALIA and STARR, Circuit Judges.

Opinion for the Court filed by Circuit Judge WALD.

WALD, Circuit Judge:

Abscam defendant and former Congressman Richard Kelly appeals from the District Court's denial of his motion for a new trial based on newly-discovered evidence in the form of several affidavits by an FBI informant, James Davenport. Davenport's affidavits state that, in late July or August of 1980, he posed as a disgruntled former FBI agent, visited Congressman Kelly's office, discussed defense strategy with Kelly and his lawyer, and stole some documents relating to their trial strategy. We find that the District Court's failure to develop an evidentiary record before denying Kel-

ly's motion warrants a remand. Kelly's motion for bail pending appeal is denied.

I. BACKGROUND

This is Congressman Kelly's third trip to this tribunal. Following conviction after a jury trial on bribery and other charges stemming from the FBI's Abscam investigation, the District Court dismissed the indictment against Kelly on due process grounds. This court subsequently reversed the dismissal and reinstated the jury verdict. *United States v. Kelly*, 707 F.2d 1460 (D.C.Cir.), cert. denied, 464 U.S. 908, 104 S.Ct. 264, 78 L.Ed.2d 249 (1983) [hereinafter cited as *Kelly I*]. On remand, the District Court denied Kelly's alternative motions for judgment of acquittal or a new trial and sentenced him, consecutively, to imprisonment for six to eighteen months on the bribery count and three years of probation on the other counts. This court affirmed the conviction on direct appeal. *United States v. Kelly*, 748 F.2d 691 (D.C. Cir.1984) [hereinafter cited as *Kelly II*]. Several months later, Kelly filed a motion for a new trial based on the newly-discovered evidence involved in this appeal. That motion was denied from the bench without opinion on September 19, 1985. Kelly began serving his sentence on November 1, 1985.

Kelly's motion for a new trial was filed pursuant to Fed.R.Crim.P. 33 and included several affidavits from former FBI informant James Davenport. In October of 1984, while in prison, Davenport had sworn out an affidavit for a different proceeding which cited his involvement with the Kelly case as one among many events in an eighteen year life of crime. Oct. 3, 1984, Davenport Affidavit ("Aff."). After learning of the affidavit through a letter from a reporter, Kelly Aff. $\S$ 14, Kelly contacted Davenport, who subsequently swore out several affidavits for use in Kelly's new trial motion which described a 1980 visit to Kelly's office, conversations with Kelly and his counsel about the forthcoming trial, and Davenport's theft of defense documents during the course of the visit. Davenport's

allegations are described in more detail below; the incident described in the affidavits may be briefly summarized as follows.

Davenport first became an FBI informant in a Florida drug investigation in the late 1970's. After being placed in the federal witness protection program, Davenport remained in touch with FBI agents Harold Copus and Russ Duger who, in the early part of 1980, introduced him to another FBI informant, Mel Weinberg. Oct. 3, 1984, Davenport Aff. at 3-15; Nov. 1984 Davenport Aff. ¶¶ 3-5; Feb. 20, 1985, Davenport Aff. at ¶¶ 4-9. Weinberg, a convicted con man, worked with the FBI to set up the Abscam operation and posed as the financial adviser for the fictitious Abdul Enterprises. *Kelly I*, 707 F.2d at 1462 & n. 4; *Kelly II*, 748 F.2d at 693.

During the spring of 1980, Davenport and Weinberg agreed on a scheme to infiltrate the defense camps of the Abscam defendants, in which Davenport would contact the Abscam defendants and, after identifying himself as a disgruntled ex-FBI informant, offer to testify on their behalf about how Abscam worked. Davenport would also steal information about defense strategies and turn it over to Weinberg, who would sell it to the FBI. The two men would split Weinberg's bonuses and Davenport's witness fees. Feb. 20, 1985, Davenport Aff. ¶ 21.

In accordance with this plan, Davenport travelled to Washington, D.C. in July-August 1980 and, using the name of James Driggers, offered his services to Congressman Kelly. Davenport succeeded in meeting with both Kelly and his attorney, Anthony Battaglia, spending most of the afternoon in Kelly's office discussing Kelly's trial defense strategy, and stealing copies of some legal papers including a witness list. These stolen documents were passed on to Weinberg. Feb. 20, 1985, Davenport Aff. ¶¶ 22-28; Dec. 5, 1984, Davenport Aff. ¶ 3; Kelly Aff. ¶¶ 7-13; Battaglia Aff. ¶¶ 6-11. Kelly and Battaglia subsequently decided not to use Davenport's services and forgot the incident until four years later

when they were informed of Davenport's affidavit.

II. MOTION FOR A NEW TRIAL

A. *Standards Governing New Trial Motion*

[1, 2] The Federal Rules of Criminal Procedure allow a motion for a new trial based on newly-discovered evidence to be filed within two years after final judgment. Fed.R.Crim.P. 33. The grant or denial of such a motion is committed to the sound discretion of the trial judge and an appellate court will reverse only if the district court misapplied the law or abused its discretion. *United States v. Mangieri*, 694 F.2d 1270, 1285 (D.C.Cir.1982). In general, motions for a new trial based on newly-discovered evidence are governed by the five-part test of *Thompson v. United States*, 188 F.2d 652, 653 (D.C.Cir.1951). Under *Thompson*, a new trial will be granted only when five conditions are met:

- (1) [T]he evidence must have been discovered since the trial;
- (2) the party seeking the new trial must show diligence in the attempt to procure the newly discovered evidence;
- (3) the evidence relied on must not be merely cumulative or impeaching;
- (4) it must be material to the issues involved;
- and (5) of such nature that in a new trial it would probably produce an acquittal.

Mangieri, 694 F.2d at 1285 (quoting *Thompson*, 188 F.2d at 653). The government contends that Kelly has failed to meet the last three elements of the *Thompson* test.

The *Thompson* test does not, however, govern motions for a new trial when the newly-discovered evidence indicates that the original trial was marred by a sixth amendment or *Brady* violation. In the *Brady* context, the Supreme Court has substituted a test focusing primarily on the materiality of the undisclosed evidence, with a "reasonable probability" of acquittal as an essential element of materiality. See *infra* at 135. In the sixth amendment context, the Court has refused to apply traditional standards governing new trial

motions because "[t]he high standard for newly discovered evidence claims presupposes that all the essential elements of a presumptively accurate and fair proceeding were present in the proceeding whose result is challenged." *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). In assessing whether a new trial motion adequately alleges a sixth amendment violation, this court has looked not to the *Thompson* standards but to whether the motion has "set forth evidence upon which the elements of a constitutional[] [violation] might properly be found." *United States v. Pinkney*, 543 F.2d 908, 916 (D.C.Cir.1976).¹ One such element, in the sixth amendment context, is prejudice. See *infra* at 136-137.

[3,4] Thus, we must evaluate Kelly's factual allegations to assess whether he has made enough of a showing to warrant a new trial or a hearing on his new trial motion. A motion for a new trial can ordinarily be decided on the basis of affidavits without an evidentiary hearing, *United States v. Kearney*, 682 F.2d 214, 219 (D.C. Cir.1982), and a district court's decision not to hold such a hearing may be reversed only for abuse of discretion, *United States v. Chagra*, 735 F.2d 870, 873 (5th Cir.1984). In the circumstances of this case, however, we find that the District Court's failure to develop any evidentiary record or to make any findings constituted such an abuse.

Kelly's motion for a new trial was based on newly-discovered evidence that, he alleged, demonstrated violations of his sixth amendment rights and his fifth amendment rights under *Brady v. Maryland*. His motions were supported by affidavits from himself, his attorney, and Davenport. He originally requested a hearing on the motion but withdrew the request after the

government failed to contest the relevant factual issues by submitting counteraffidavits. The government did file an opposition to Kelly's motion denying that Davenport was acting as a federal agent and that prosecutors had seen the stolen documents, but without any accompanying affidavits to back up their denials. The District Court denied Kelly's motion from the bench without explanation.

The District Court abused its discretion by failing to hold an evidentiary hearing or to otherwise resolve the critical factual disputes raised by Davenport's affidavits and the government's negative responses to them. Kelly's affidavits portray his claims "materially and resolutely, and evinc[e], a capability of mounting a serious challenge." *United States v. Pinkney*, 543 F.2d 908, 916 (D.C.Cir.1976). In the absence of countervailing sworn evidence from the government, Kelly's allegations are—as explained below—sufficient to warrant further factual inquiry.

Although the District Court's failure to adequately develop a factual record is a sufficient ground for our remand, we are also concerned that the trial court may have erred by applying improper legal standards, at least regarding Kelly's sixth amendment claim. A district court's denial of a new trial motion may, of course, be overturned for "'misapplication of the law.'" *Mangieri*, 694 F.2d at 1285 (citation omitted). The District Court gave no explanation for its denial of the motion, so we cannot be altogether certain of its legal grounds. But since neither party correctly argues the legal standards applicable to the sixth amendment claim in the briefs in our court, we are concerned that the trial court may have been misled on this complicated

1. Although *Strickland* and *Pinkney* involved ineffective assistance of counsel claims, their reasoning applies equally to sixth amendment cases involving government intrusions into the defense camp, since the effect of such intrusions is to deny the criminal defendant effective assistance of counsel. *Weatherford v. Bursey*, 429 U.S. 545, 554 n. 4, 97 S.Ct. 837, 843 n. 4, 51 L.Ed.2d 30 (1977). Because of the sixth amendment violations, one of the "essential elements

of a presumptively accurate and fair proceeding," 104 S.Ct. at 2068, was missing from the first trial in both cases. Thus the Third Circuit has decided a new trial motion charging governmental intrusion into attorney-client confidences on the basis of whether a constitutional violation had been proven, rather than the ordinary test for a new trial. *United States v. Costanzo*, 740 F.2d 251 (3d Cir.1984), *cert. denied*, — U.S. —, 105 S.Ct. 3477, 87 L.Ed.2d 613 (1985).

point. We have accordingly attempted to provide the court with some legal direction for the proceedings on remand.

B. *The Brady Claim*

Kelly charges that the government violated his due process rights by failing to provide him with potentially exculpatory or impeaching information as required by *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Specifically, Kelly claims that the prosecution knew about Davenport's intrusion because Davenport had written a letter to the United States Attorney for the District of Columbia mentioning his visit to Congressman Kelly and the FBI had followed up on that letter by questioning Davenport about that incident. Kelly learned about the letter and the FBI agents' report of their interview with Davenport only as a result of his discovery request during the proceedings on his new trial motion.

In opposition to Kelly's *Brady* claim, government counsel made a series of unsworn representations in its briefs and in open court as to the "true state of affairs" regarding Davenport's letter and the subsequent FBI interview. Government counsel argued that they were not required to reveal information which was fabricated in the first place and which, in any event, they were not aware of at the time of Kelly's trial.² The government cannot, however, establish this or any other "true state of affairs" by mere assertions without affidavits. Whether the suppressed information was fabricated and whether the prosecution knew about it during the first trial are issues of fact for the District Court to decide.

[5] These factual disputes warrant a remand; Kelly's allegations are sufficiently meritorious to warrant evidentiary proceedings on his *Brady* claim. The affidavits and documentary evidence indicate that

Davenport wrote directly to the U.S. Attorney for the District of Columbia on October 10, 1980, stating that he had been in the witness protection program, had met with Congressman Kelly and his lawyer, and had important information about Kelly's Abscam case. At a subsequent FBI interview on November 5, the FBI learned that Davenport had been an FBI informant and questioned him about the substance of the meeting with Kelly. Yet neither the letter nor the FBI report was disclosed to Kelly despite the fact that each document existed during discovery prior to trial and each mentioned Kelly's name over a dozen times. Kelly argued in the new trial proceeding below that the letter and the FBI report would have led him to Davenport and also would have served as evidence of violations of his fourth and sixth amendment rights. New Trial Tr. 19, 28.

[6, 7] Because the only argument presented to the District Court in response to these allegations was an unsworn denial of their truth, we find that the District Court's refusal to entertain the new trial motion amounted to an abuse of discretion and the motion must be remanded to the trial court for further proceedings. On remand, the usual standards for a new trial are not controlling because "the fact that such evidence was available to the prosecutor and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial." *United States v. Agurs*, 427 U.S. 97, 111, 96 S.Ct. 2392, 2401, 49 L.Ed.2d 342 (1976). Instead, the District Court must determine whether the undisclosed evidence was "material" to Kelly's conviction. *Id.* at 108-13. The Supreme Court has recently held that undisclosed information is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the

2. Whether the government was correct as a matter of law in arguing that the prosecution must always know about *Brady* material in order to give rise to a governmental duty to disclose has not been settled in this circuit. Cf. *United States ex rel. Smith v. Fairman*, 769 F.2d 386, 391 (7th

Cir.1985) (prosecutor's ignorance of the existence of the undisclosed evidence does not always justify a failure to produce, "especially . . . when the withheld evidence is under the control of a state instrumentality closely aligned with the prosecution, such as the police").

result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, — U.S. —, 105 S.Ct. 3375, 3384, 87 L.Ed.2d 481 (1985).³ This determination of materiality is inevitably fact-bound and so is committed to the trial judge in the first instance.

C. The Sixth Amendment Claim

Kelly contends that his sixth amendment rights were violated when Davenport, a government agent, invaded his defense strategy sessions and stole relevant and important documents.⁴ He argues that the fact of the intrusion and theft alone prove a constitutional violation and entitle him to a new trial without any further showing that his first trial was prejudiced in any way by the incident. The government, on the other hand, argues that Kelly must establish the high degree of prejudice embodied in the *Thompson* new trial standard, which requires a defendant to establish that a new trial will probably produce an acquittal.

[8] Both parties seem to have missed the legal mark as to the applicable legal standards. Kelly has overlooked the Supreme Court's decision in *Weatherford v. Bursey*, 429 U.S. 545, 97 S.Ct. 837, 51 L.Ed.2d 30 (1977), and its circuit court progeny which clearly establish that some showing of prejudice is a necessary element of such a sixth amendment claim. Conversely, these cases instruct that Kelly's burden of showing prejudice to the

first trial may not be as great as the government makes it out.

Kelly argues that he need show *no prejudice* resulting from Davenport's trickery because the cases establish a *per se* rule that any invasion of the attorney-client relationship by a government informant constitutes a violation of the sixth amendment. He relies primarily on *Caldwell v. United States*, 205 F.2d 879 (D.C.Cir.1953), which found a sixth amendment violation where a federal agent, while posing as an assistant for the defense counsel, reported frequently to the prosecution on intimate matters of defense trial preparation and strategy. Kelly also cites *Coplon v. United States*, 191 F.2d 749 (D.C.Cir.1951), *cert. denied*, 324 U.S. 926, 72 S.Ct. 363, 96 L.Ed. 690 (1952), in which government agents listened in on telephone conversations between the defendant and her attorney. Neither case required prejudice to be shown in order to establish the sixth amendment violations. 205 F.2d at 881; 191 F.2d at 759. Kelly claims that these cases were cited approvingly in *Hoffa v. United States*, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966) as establishing a *per se* rule obviating the need to show prejudice in cases involving invasion of defense deliberations. Finally, Kelly cites *Black v. United States*, 385 U.S. 26, 87 S.Ct. 190, 17 L.Ed.2d 26 (1966), in which the Court summarily ordered a new trial because a federal agent had listened to a defendant's communications with his lawyer.

[9] In *Weatherford v. Bursey*, however, the Court rejected Kelly's reading of

3. Prior to *Bagley*, the standard of materiality had varied with the specificity of the defendant's request for the material. Although the portion of the opinion in *Bagley* establishing the uniform "reasonable probability standard" was joined only by Justices Blackmun and O'Connor, Justice White's concurring opinion joined by Chief Justice Burger and Justice Rehnquist also cited the "reasonable probability" standard with approval. 105 S.Ct. at 3385. Appellate courts interpreting *Bagley* have accordingly held that, because a majority of the justices adopted it, the "reasonable probability" standard applies to all *Brady* requests. *United States v. Ben M. Hogan Co.*, 769 F.2d 1293, 1299 (8th Cir.1985); *Lindsey v. King*, 769 F.2d 1034, 1041 (5th Cir.

1985); *United States ex rel. Smith v. Fairman*, 769 F.2d 386, 393 (7th Cir.1985).

4. Kelly also asserts that his fourth amendment rights were violated by Davenport's theft of these documents. The usual remedy for illegal searches and seizures, however, is exclusion at trial, *United States v. Morrison*, 449 U.S. 361, 366, 101 S.Ct. 665, 668, 66 L.Ed.2d 564 (1981), and Kelly has not alleged that any of the stolen evidence was directly or indirectly used at trial. We therefore review the allegedly stolen documents solely in the context of Kelly's sixth amendment allegation.

Black and *Hoffa* as creating a *per se* rule of presumed prejudice from any governmental intrusion. Bypassing the question of whether *Caldwell* and *Coplon* were good law, the Court specifically noted that *Hoffa* had only *assumed* their correctness for purposes of making a point in dicta. 429 U.S. at 550-54, 97 S.Ct. at 841-43. Critically, *Weatherford* went on to make it clear that some prejudice must be shown as an element of a sixth amendment violation. Contrary to the government's position, however, this showing need not rise to the level of proving that a new trial would more likely than not produce an acquittal. See *supra* at 134 n. 1. Instead, *Weatherford* and the appellate cases interpreting it have assessed several factors in determining whether a criminal defendant whose attorney-client deliberations have been ruptured by a covert government agent has shown the prejudice necessary to make out a sixth amendment violation. From the Supreme Court's discussion of what the defendant in *Weatherford* had *not* shown, the lower courts have elicited four so-called *Weatherford* factors to consider in determining whether a sixth amendment violation has been established: (1) was evidence used at trial produced directly or indirectly by the intrusion; (2) was the intrusion by the government intentional; (3) did the prosecution receive otherwise confidential information about trial preparations or defense strategy as a result of the intrusion; and (4) were the overheard conversations and other information used in any other way to the substantial detriment of the defendant? *Weatherford*, 429 U.S. at 554,

557, 97 S.Ct. at 843, 844; *United States v. Steele*, 727 F.2d 580, 585 (6th Cir.), cert. denied, 467 U.S. 1209, 104 S.Ct. 2396, 81 L.Ed.2d 353 (1984); *United States v. Brugman*, 655 F.2d 540, 546 (4th Cir.1981).

While the lower courts are in agreement that these are the factors to be evaluated to establish the requisite prejudice, they are far from unanimous on the crucial question of what combination of these factors is necessary to make out a sixth amendment violation.⁵ This court has yet to enter the fray. See *United States v. Kember*, 648 F.2d 1354 (D.C.Cir.1980). In the absence of a concrete factual setting, we decline to do so today.

While we cannot specify with certainty the quantum of prejudice Kelly must establish under *Weatherford*, however, we are confident that he has made enough of a factual showing to merit further evidentiary development. Kelly has made no allegations under the first *Weatherford* factor as to use of tainted evidence, in part because he does not know what documents were taken by Davenport. Davenport's affidavits do, however, make sufficient allegations to warrant additional evidentiary development under the second and third *Weatherford* factors—intentional intrusion and disclosure of confidential information about defense strategy to the prosecution.

Davenport alleged that he was working as an FBI informant when he was introduced to FBI informant Weinberg through FBI agent Harold Copus in order for Weinberg to teach him "the ends and outs of

5. The Third Circuit is the only court to clearly hold that a sixth amendment violation is established by a showing under any one of the factors. *United States v. Costanzo*, 740 F.2d 251, 254-55 (3d Cir.1984). Two other circuits have evaluated the *Weatherford* factors *seriatim*, implying but not holding that each factor alone can establish a constitutional violation. *Clutche v. Rushen*, 770 F.2d 1469, 1471-72 (9th Cir.1985); *United States v. Brugman*, 655 F.2d 540, 546 (4th Cir.1981). Other courts have relied on various combinations of the factors. Two circuits have indicated that an intentional intrusion alone does not establish a violation, unless there is communication of confidential information or some other form of prejudice.

United States v. Singer, 785 F.2d 228, 234 (8th Cir.1986); *United States v. Steele*, 727 F.2d 580, 586 (6th Cir.1984). One circuit has held that when the intrusion is unintentional or intentional but justified a defendant must show both communication of confidential information and resulting prejudice. *United States v. Ginsberg*, 758 F.2d 823, 833 (2d Cir.1985). Finally, one circuit has held that a defendant must show prejudice when the intrusion is unjustified, but that once the defendant has shown communication of confidential information to the prosecution the burden shifts to the government to show a lack of prejudice. *United States v. Mastrianni*, 749 F.2d 900, 907-08 (1st Cir.1984).

sting operations." Feb. 20, 1985, Davenport Aff. ¶¶ 6-9. Weinberg and he developed a plan "to infiltrate the defense teams of the ABSCAM defendants." *Id.* at ¶ 21. Davenport implemented this plan by visiting Congressman Kelly's office. *Id.* at ¶¶ 22-28. Thus, Davenport's affidavits make adequate allegations under the second *Weatherford* factor—he and Weinberg were government informants who assumed for themselves the task of "learn[ing] what [they] could about the defendant's defense plans . . . and acted accordingly." *Weatherford*, 429 U.S. at 557, 97 S.Ct. at 844. While the government has represented that Davenport was not, in fact, an FBI informant at this time, it has produced no affidavits from FBI agent Copus or informant Weinberg on which the District Court could have relied to make the necessary finding.

Davenport also alleged that he stole copies of legal papers from Kelly's attorney, including a witness list. Feb. 20, 1985, Davenport Aff. ¶ 28. Kelly had filed the witness list with the District Court for *in camera* inspection with a motion for a change of venue. The list named all of the witnesses Kelly planned to call along with brief summaries of their proposed testimony. Battaglia Aff. ¶ 11; Motion for Change of Venue, attached to Motion for a New Trial. Davenport passed the stolen documents along to Weinberg, but never found out what Weinberg did with them. Feb. 20, 1985, Davenport Aff. ¶ 28. Later in 1980, while Davenport was in jail, he noticed that Kelly's trial was going on and wrote to the United States Attorney for the District of Columbia, informing him that he had met with Congressman Kelly and his lawyer to discuss Kelly's Abscam case. Oct. 3, 1984, Davenport Aff. at 33; Letter, Appendix B to Opposition to Defendant Kelly's Motion for a New Trial. In re-

sponse to that letter, FBI agents interviewed Davenport on November 5, 1980, about his visit to Kelly's office and his allegation that one of Kelly's aides had access to confidential prosecution documents. Oct. 3, 1984, Davenport Aff. at 33; FBI Report, Appendix C to Opposition to Defendant Kelly's Motion for a New Trial. While this evidence does not establish conclusively that the third *Weatherford* factor has been met—that the prosecution had seen the documents—such a showing would have been nearly impossible for Kelly to make. Davenport's letter to the U.S. Attorney about the incident and his efforts to trace the stolen, confidential documents as far as he could are enough to warrant a sworn response by the government, which is in a far better position to establish that no member of the prosecution team had ever seen the stolen documents.

[10] Given Davenport's allegations, some kind of hearing or other evidentiary process was needed to resolve disputed facts. We therefore see no recourse but to remand Kelly's motion for a new trial to the District Court for further factual development and resolution. Whether the requisite evidence can be developed through affidavits or requires an in-court hearing remains in the sound discretion of the District Court. If Kelly demonstrates sufficient prejudice to establish a sixth amendment violation, the government may, of course, defeat the new trial motion by showing that the constitutional violation was harmless error. To do that, the government must "prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967).⁶

6. Thus, the issue of prejudice arises in two distinct contexts in sixth amendment cases, as illustrated by the Supreme Court's recent opinion in *Delaware v. Van Arsdall*, — U.S. —, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). First, some type of prejudice is an element of the constitutional claim itself. Such prejudice need not, however, be "outcome determinative" or affect the result of the entire trial. The degree of

prejudice needed to establish a constitutional claim will vary with the type of sixth amendment violation. *Id.* at 1436.

In some cases, the court's inquiry will end once the constitutional violation is established. When constitutional errors "are so fundamental and pervasive that they require reversal without regard to the facts or circumstances of the particular case," the error is deemed prejudicial in

III. MOTION FOR BAIL PENDING APPEAL

Kelly sought a legal furlough from prison to appear on his own behalf at oral argument and also moved for release on bail pending appeal pursuant to 18 U.S.C. § 3143(b) (Supp.II 1984). By order dated January 30, 1986, this panel denied the motion for a furlough and deferred consideration of the motion for bail pending appeal. Following oral argument, Kelly renewed his request for bail pending appeal and requested expedited consideration of his motion.

[11] Apart from the fact that Kelly's appeal has now been heard and decided, Kelly's bail motion fails because the Bail Reform Act of 1984 does not provide for bail pending appeal of the denial of a new trial motion made pursuant to Fed.R. Crim.P. 33. The Act applies only to "a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari." 18 U.S.C. § 3143(b) (Supp. II 1984). Kelly's motion is not part of a direct appeal but a new trial motion based on newly-discovered evidence and § 3143(b) does not apply to an appeal from the denial of such a motion. See *United States v. Dansker*, 561 F.2d 485, 486-87 (3d Cir.1977) (en banc) (previous bail act does not govern bail pending appeal of denial of new trial motion); *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985) (Bail Reform Act does not apply to convicted defendants seeking postconviction relief).

[12, 13] Criminal defendants who have exhausted their direct appeals and are serving sentences may seek release while litigating new trial motions based on newly-discovered evidence via a motion under 28 U.S.C. § 2255 (1982). *Dansker*, 561 F.2d at 486-87. In a § 2255 proceeding, "the court's jurisdiction to order release as a final disposition of the action includes an inherent power to grant relief pendente

every case. *Id.* at 1437. In most cases, however, sixth amendment violations will still be subject to *Chapman* harmless-error analysis. *Id.* at 1438. Thus, the prejudice factor will enter

lite, to grant bail or release, pending determination of the merits." *Baker v. Sard*, 420 F.2d 1342, 1343 (D.C.Cir.1969); see also *Guerra v. Meese*, 786 F.2d 414, 417 (D.C.Cir. 1986). A release request in such proceedings will, however, "ordinarily . . . be measured against a heightened standard requiring a showing of exceptional circumstances." *Baker v. Sard*, 420 F.2d at 1343; see *Cherek*, 767 F.2d at 337 (the power to grant bail pending resolution of a § 2255 proceeding is to be exercised very sparingly).

Because Kelly has not filed a § 2255 motion and because § 3143(b) of the Bail Reform Act is inapplicable to an appeal from the denial of Kelly's new trial motion, neither this court nor the District Court presently has the authority to release Kelly on bail. His motion for bail pending appeal is accordingly denied.

IV. CONCLUSION

[14] The District Court's failure to develop an evidentiary record and resolve crucial factual disputes renders its denial of Kelly's new trial motion an abuse of discretion. Factual findings are particularly important where, as here, the governmental misconduct charged is extraneous to the trial and so is not documented in the trial record. See *United States v. Chagra*, 735 F.2d 870, 874 (5th Cir.1984); *United States v. Pinkney*, 543 F.2d 908, 915 (D.C.Cir. 1976). Thus the court in *United States v. Disston*, 582 F.2d 1108, 1110 (7th Cir.1978), held that a hearing was required on a new trial motion which, like Kelly's, alleged that an intrusion by a government informant into attorney-client meetings violated the sixth amendment. When facially adequate allegations have been made and critical information is more easily available to the government, an appellate court may order further factual inquiry when "the prosecution without any apparent reason has declined to produce corroborating evidence

the analysis a second time, but this time with the burden on the government to prove, beyond a reasonable doubt, that the constitutional violation was *not* outcome determinative.

which the record shows might have been offered." *Hamilton v. United States*, 140 F.2d 679, 681 (D.C.Cir.1944).

The District Court's denial of Kelly's motion for a new trial is accordingly reversed and remanded for further proceedings in accordance with this opinion. Kelly's motion for bail pending appeal is denied.

So ordered.



Esmail HAFTLANG, Petitioner,

v.

**IMMIGRATION AND NATURALIZA-
TION SERVICE, Respondent.**

No. 85-1306.

United States Court of Appeals,
District of Columbia Circuit.

Argued Feb. 12, 1986.

Decided May 9, 1986.

Alien moved to reopen deportation proceedings to assert claim for asylum. The Board of Immigration Appeals denied the motion, and alien appealed, alleging prior deportation order violated his due process right to counsel and that he had established prima facie case for asylum. The Court of Appeals, J. Skelly Wright, Circuit Judge, held that: (1) alien who failed to appeal initial deportation order waived any due process challenge to such order; (2) whether absence of counsel at deportation hearing denied alien's due process rights was not issue for consideration upon appeal from order denying motion to reopen deportation proceedings; and (3) conclusory allegations that alien's family had long been associated with the Shah's regime in Iran, that parents had suffered harassment and that alien would be subject to even worse persecution upon return to Iran were

insufficient to establish prima facie case for asylum.

Affirmed.

1. Constitutional Law ¶43(1)

Alien who failed to file appeal from initial deportation order waived any due process challenge to such order. U.S.C.A. Const.Amends. 5, 14.

2. Aliens ¶54.3(2)

Upon appeal following Board of Immigration Appeals' denial of alien's motion to reopen deportation proceedings, Court of Appeals properly declined to consider whether absence of counsel at deportation hearing denied alien's due process rights, where basis for Board's refusal to reopen deportation proceedings was that alien failed to establish prima facie case of eligibility for asylum. U.S.C.A. Const.Amends. 5, 14; Immigration and Nationality Act, §§ 101(a)(42), 208(a), as amended, 8 U.S.C.A. §§ 1101(a)(42), 1158(a).

3. Aliens ¶54(5)

Alien seeking to reopen deportation proceedings to assert claim for asylum has burden of establishing prima facie case of eligibility and of persuading Immigration and Naturalization Service not to deny motion on discretionary grounds. Immigration and Nationality Act, §§ 101(a)(42), 208(a), as amended, 8 U.S.C.A. §§ 1101(a)(42), 1158(a).

4. Aliens ¶54(5)

In reviewing alien's motion to reopen deportation proceedings to assert claim for asylum, Immigration and Naturalization Service acts much like trial court acts in reviewing motion for summary judgment, isolating cases worthy of further consideration without assessing credibility of evidence. Immigration and Nationality Act, §§ 101(a)(42), 208(a), as amended, 8 U.S.C.A. §§ 1101(a)(42), 1158(a).

5. Aliens ¶54(5)

In reviewing alien's motion to reopen deportation proceedings to assert claim for asylum, Immigration and Naturalization

Exhibit 6

Ernest Kaufmann

9/24/15

Reported by:

Candice Andino, CSR 932

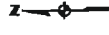
Exhibit 6

David Green

9/10/15

Reported by:

Candice Andino, CSR 932



0 1,000 2,000 4,000
Feet

Legend

 Study Area

 1-Percent Annual Flood Risk Zone

 River or Stream

Notes:

1. Source/Year of Effective Floodplain Data: FEMA/2012
2. Source/Year of Streams: National Hydrography Dataset/2011
- 3.
- 4.
- 5.

Project Title: 130 ENVIRONMENTAL PARK

Project Number:

Date: 06/2013 AVO: 29520

Sheet Title: FLOODPLAIN MAP

Sheet Number: FIGURE 6



II-E-62

Technically Complete October 28, 2014

SOAH DOCKET NO. 582-15-2082

TCEQ DOCKET NO. 2015-0069-MSW

APPLICATION OF 130	§	BEFORE THE STATE OFFICE
ENVIRONMENTAL PARK, LLC,	§	OF
FOR PROPOSED PERMIT	§	ADMINISTRATIVE HEARINGS
NO. 2383	§	

ORAL AND VIDEOTAPED DEPOSITION OF
ERNEST KAUFMANN

VOLUME 2

March 1, 2016

ORAL AND VIDEOTAPED DEPOSITION of ERNEST KAUFMANN, produced as a witness at the instance of the Protestants and previously duly sworn, was taken in the above-styled and numbered cause on March 1, 2016, from 9:17 a.m. to 11:26 a.m., before Dalia F. Inman, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Frederick, Perales, Allmon & Rockwell, P.C., 707 Rio Grande, Suite 200, Austin, Texas 78701, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

P R O C E E D I N G S

VIDEOGRAPHER: It is March 1st, 2016. It is 9:17 a.m., and we are on the record.

ERNEST KAUFMANN,
having been previously duly sworn, testified as follows:

EXAMINATION

BY MR. ROCKWELL:

Q Good morning, Mr. Kaufmann.

A Good morning.

Q We've -- you've been here for an earlier deposition, and this one is a continuation of that. Do you -- do you understand the same procedures and rules are in effect this time as in last time?

A Yes.

MR. ROCKWELL: Off the record for a second.

(Brief discussion off the record)

VIDEOGRAPHER: It's 9:18. We're back on the record.

Q (BY MR. ROCKWELL) Mr. Kaufmann, I'm handing you a document marked as Exhibit 19 and ask if you can identify what Exhibit 19 is.

(Kaufmann Exhibit No. 19 marked)

A It appears to be a franchise tax report with the State of Texas.

1 Q (BY MR. ROCKWELL) And it looks like the first
2 four pages are dated 2012. Subsequently, there's three
3 pages dated 2013, a couple of pages 2014, and a couple
4 of pages from the year 2015. Is that right?

5 A It looks to be that way.

6 Q Did you approve or have anything to do with the
7 submission of this information?

8 A My -- our comptroller would've probably been
9 the one to take care of this for us.

10 Q Is this information accurate in here?

11 A You'd have to ask him on that. I would assume
12 it is, since it's turned in by us.

13 Q And in 2012, you were the president of Green
14 Group Holdings?

15 A Yes.

16 Q And the same is true in 2013, you were
17 president?

18 A Yes.

19 Q And the same is true as 2014 and 2015?

20 A Yes.

21 Q What are the responsibilities of the president?

22 A Generally overseeing the operations of the
23 company.

24 Q And feel free to consult with this document if
25 it would help refresh your memory. But who are the

1 other officers of Green Group Holdings?

2 A As I told you in the prior definition, I'm not
3 sure about that -- deposition, rather -- I'm not sure
4 about that. I believe it to be either Art Van Meter or
5 Patrick McMullen. I'd have to go look. I'd be glad to
6 send you something back and clear that up. I guess
7 whatever this says.

8 Q Whatever it says here is -- you would assume to
9 be accurate?

10 A Yeah.

11 Q And the questionnaire here says: "Name, title,
12 and mailing address of each officer, director, or
13 member."

14 A I'm sorry. What did you say?

15 Q On Page 1 of Exhibit 19 --

16 A Uh-huh.

17 Q -- Section A, the instructions are: "Name,
18 title, and mailing address of each officer, director, or
19 member." Do you see that?

20 A Yes.

21 Q Is -- are there any directors of Green Group
22 Holdings other than yourself, Mr. Van Meter, or Patrick
23 McMullen?

24 A I'm not sure of that.

25 Q You don't know who the directors are?

1 A I'm not sure of the titles of the -- who's --
2 of who's what.

3 Q Who would know the answer to that question?
4 Do you know who would know the answer to
5 that question?

6 A I'm looking at this document.
7 I'm pretty -- I'm pretty -- probably
8 Bruce, Bruce Roy.

9 Q Bruce Roy? And who's he?

10 A He's our comptroller.

11 Q And on the -- the form "Franchise Tax Public
12 Information Report" for the year 2015, Section B, it
13 says -- asked you to identify the name of owned
14 (subsidiary) corporation or limited liability company.
15 Do you see that? That's on Bates No. 070334?

16 A Section what?

17 Q Section B. What's identified there is CCB
18 Resources, LLC. Do you see that on Bates No. 0 -- Page
19 No. 070334?

20 A Yes, I see that.

21 MR. RYAN: Do you see this number that's
22 down here?

23 THE WITNESS: Uh-huh.

24 Q (BY MR. ROCKWELL) Do you see CCB Resources
25 listed?

1 A Yes.

2 Q And they're a subsidiary of Green Group
3 Holdings?

4 A Yes.

5 Q Does Green Group Holdings, in the year 2015,
6 have any other subsidiaries?

7 A Define "subsidiaries."

8 Q I don't know. I'm just using the language
9 that's in this form.

10 A Without knowing, you know, what the definition
11 of subsidiaries are and the instructions on filling out
12 this form, I -- I wouldn't know.

13 Q Have you ever used the term "subsidiary"?

14 A It's used in different ways, just like you just
15 said. It has different meanings. It depends on what
16 the instructions are on different forms and what they're
17 looking for.

18 Q When you use the term "subsidiary," do you
19 attribute it a certain meaning?

20 A It can have several meanings that I might
21 contribute [sic] it to.

22 Q And among the several meanings that you
23 attribute to the word "subsidiary," does Green Group
24 Holdings have subsidiaries other than the one identified
25 in this form for the year 2015?

1 A Well, the only one that matters is what
2 definition that somebody's alluding to what's supposed
3 to be here. And so that question does not -- it doesn't
4 matter what I think. What matters are what the
5 instructions on this form and why it has what it has
6 here.

7 Q I'll object to the nonresponsiveness of your
8 answer.

9 A That's fine.

10 Q I'm asking you what your opinion is of whether
11 your company has subsidiaries, under the definition that
12 you would use for "subsidiary."

13 A I'm -- I'm not -- I'm not certain of the
14 definition of "subsidiaries" that you're getting to.

15 Q I'm asking for your definition.

16 A But you're asking in relation to this --

17 Q No. I'm asking for your definition of
18 "subsidiaries." Under your definition, does Green Group
19 Holdings have subsidiaries?

20 A Give me the -- the definition of "subsidiaries"
21 you're referring.

22 Q No. I'm referring to your definition. Tell me
23 what your definition of "subsidiaries" is.

24 A Are you talking about wholly-owned, partially
25 owned? Are you talking about an associate? You know,

1 what --

2 Q Have you ever used the word "subsidiary"
3 before?

4 A Occasionally.

5 Q And what did you mean by that?

6 A I don't --

7 Q Fully-owned? Partially owned? What?

8 A Pardon me?

9 Q What did you mean by that word when you used
10 it?

11 A It can have a lot of different meanings.

12 Q Well, what was your meaning?

13 A It depends on the context of the conversation I
14 was --

15 Q In any context, what have the meanings of a
16 subsidiary you've attributed to that word when you used
17 it?

18 A It ...

19 Q Is that a hard question?

20 A No. I guess you could -- is -- would TJFA be a
21 subsidiary of TDS?

22 Q I'll object to the nonresponsiveness of that
23 answer. I'm asking for your opinion.

24 A Well, that would be a good example.

25 Q I'm not asking for an example. I'm asking --

1 A You did ask me for an example.

2 Q I'm asking you for your -- when you use the
3 word "subsidiary," what do you mean by that? What do
4 you mean? Not what I mean, not what anybody else means.

5 A Again, you know, this has -- "subsidiary" can
6 have several different -- in my -- in my thoughts
7 several different --

8 Q Well, tell me all the meanings, then. If
9 there's multiple meanings, tell me them all. Or is this
10 a hard question, if you're the president of a business,
11 to tell me whether you have a subsidiary, and what --
12 when you use that term, what do you mean?

13 A We have -- I don't know if you call them
14 subsidiaries or what the definition is that they're
15 looking for here. I mean, obviously --

16 Q I'm not asking about this. I'm asking you the
17 question, not the State of Alabama or anybody else.
18 Your definition of "subsidiary." And you can't give it
19 to me. You have no idea what a subsidiary is,
20 apparently. Is that right?

21 A Are you giving the answer to the question or am
22 I?

23 Q No. I'm asking you.

24 A No, you weren't. You were making a statement.

25 Q No. It's -- it's called a question.

1 A In -- in ...

2 Q Do you have any idea what a subsidiary is?

3 A A subsidiary is generally thought of as a
4 company that may be, or in some forms, owned -- could be
5 owned by another company.

6 Q Does Green Group holding have subsidiaries?

7 A We own -- there are multiple LLCs that report
8 up to Green Group Holdings.

9 Q That are owned by Green Group Holdings?

10 A They are wholly owned by Green Group Holdings.
11 I believe that's correct.

12 Q And how many are there?

13 (Kaufmann Exhibit No. 20 marked)

14 A I'd have to go back and look, but -- let's see.
15 We've got -- are you talking about active operating
16 companies, or are you talking about LLCs that we may
17 have that aren't active?

18 Q (BY MR. ROCKWELL) Any kind of subsidiary of
19 any kind, whether inactive or active.

20 A There's a minimum of nine companies that report
21 up -- LLCs that report up to Green Group Holdings.

22 Q Is 130 Environmental Park, LLC, a subsidiary?

23 A 130 Environmental Park, LLC, is one of the LLCs
24 that reports up to Green Group Holdings.

25 Q I'm going to hand you a document marked as

1 Exhibit 20 and ask you whether can identify Exhibit 20.

2 A It appears to be the operating agreement for
3 130 Environmental Park.

4 Q And this is an agreement between Green Group
5 Holdings and 130 Environmental Park?

6 A This is an operating agreement of
7 130 Environmental Park, LLC.

8 Q And who are the parties to this agreement?

9 Let me strike that question.

10 A The officers -- the officers listed within this
11 agreement are myself, David Green as secretary, and
12 Bruce Roy as treasurer.

13 Q Okay. Let me ask you a new question. Is it --
14 is it a hard question -- for Exhibit 20 here, is it a
15 hard question for me to ask you who the parties are to
16 this agreement?

17 A It's a hard question, the fact that we have a
18 lot of -- multiple companies that I'm responsible for
19 and deal with every day. And, you know, I can't just
20 walk in this room and you ask me a question and be able
21 to give you an answer, apparently, that you want, yes.

22 Q So -- so is it hard to keep all this
23 straight --

24 A That's why I have a multiple -- a staff of
25 people that are responsible for this.

1 Q Uh-huh. Do you see on Page 12 of Exhibit 20?

2 A Yep.

3 Q Who's signatures appear on Page 12?

4 A Mine.

5 Q And is -- and one -- one of your signatures
6 signed on behalf of Green Group Holdings?

7 A It is, as president of Green Group Holdings.

8 Q And is one of your signatures on behalf of
9 130 Environmental Park?

10 A That's correct. As manager.

11 Q Are there any other agreements between Green
12 Group Holdings and 130 Environmental Park, other than
13 Exhibit 20?

14 A I don't know the answer to that question.

15 Q Who would know that?

16 A Be -- it would be Bruce Roy.

17 Q Do you know who drafted this agreement?

18 A I don't recall.

19 Q Do you know -- did -- do you know who
20 represented Green Group Holdings in the negotiation or
21 drafting of this agreement?

22 A No, I don't recall.

23 Q Did you have anything to do with this
24 agreement?

25 A I'm sure that I looked over it, read it.

1 Q Is -- is that an important thing to know, as
2 the president of Green Group Holdings?

3 A Is what an important thing to know?

4 Q How much is being paid to Biggs & Mathews.

5 A Sure, it's an important thing to know. I just
6 don't recall what that number is right now.

7 (Kaufmann Exhibit No. 24 marked)

8 Q (BY MR. ROCKWELL) I'm going to hand you a
9 document marked as Exhibit 24. Do you recall Green
10 Group Holdings entering into an agreement with
11 Biggs & Mathews for additional site exploration phase
12 scope of services?

13 A I do.

14 Q Why -- how was the decision made -- strike that
15 question.

16 How was the decision made to conduct
17 additional site exploration?

18 A I don't -- I don't recall how that decision was
19 made. You know, our engineers came to us and presented
20 a proposal, and that's it.

21 Q Did they make the proposal -- present the
22 proposal to you?

23 A They presented it to Green Group Holdings.

24 Q Who within Green Group Holdings did they
25 present it to?

1 A I don't -- don't recall that.

2 Q But you were one of the people it was presented
3 to?

4 A I'm -- yes.

5 Q And you were the one that ultimately would have
6 to make a decision on this. Correct?

7 A That's correct.

8 Q So the decision to do additional site
9 exploration, that idea came initially from
10 Biggs & Mathews?

11 A I don't know that.

12 Q Well, who would know that?

13 A I have -- I have no clue who would know that.

14 Q So you have no clue -- you're president of
15 Green Group Holdings, but you have no clue as to who
16 came up with the idea to do additional site exploration?

17 A No.

18 Q When was the first you heard about this idea?

19 A I'm uncertain, but probably within the last two
20 months, three months.

21 Q And how did you find out about this idea?

22 A I don't recall that.

23 Q And for this -- for this additional site
24 exploration, Biggs & Mathews is -- has a budget of
25 109,000. Is that right?

1 referenced in the agreement with Biggs & Mathews, has
2 Bill Hodges been involved in any of this additional
3 exploration work?

4 A I'm -- I'm uncertain of that, but I would
5 assume -- I would assume so. That's a question you need
6 to be asking him.

7 Q And -- and do you know what his position is?

8 A His position is he's a partner of HHNT.

9 Q Do you have a separate agreement with HHNT --

10 A I don't recall.

11 Q -- regarding additional site exploration?

12 A I don't recall.

13 Q Who would know the answer to that question?

14 A HHNT obviously would know.

15 Q Do you recall when the idea for
16 130 Environmental Park to engage in additional boring
17 first occurred?

18 A No, I don't recall.

19 (Kaufmann Exhibit No. 26 marked)

20 Q (BY MR. ROCKWELL) I'm going to hand you a
21 document marked as Exhibit 26.

22 MR. ROCKWELL: I don't have an extra one.
23 Sorry.

24 MR. RYAN: Okay.

25 Q (BY MR. ROCKWELL) Who is Mike Snyder?

1 Q But you have no idea what his specific role
2 was?

3 A No. I don't recall that.

4 Q Have you ever -- on Page 3 of Exhibit 26,
5 there's a -- what appears to be some sort of map of the
6 130 Environmental Park landfill site.

7 A Uh-huh.

8 Q Do you see that?

9 A I do.

10 Q Have you ever seen that -- this particular map
11 before?

12 A Yes, I believe I have.

13 Q And -- and when did you see this?

14 A I don't recall.

15 Q On Page 1 of Exhibit 26, the date is indicated
16 January 7, 2016.

17 A Page what?

18 Q Page 1.

19 A That's what it says here, yes.

20 Q Do you have any recollection as to whether you
21 saw Page 3 of this document around January 7 of 2016?

22 A I don't recall that.

23 Q Do you have any idea what this map even means
24 or what it refers to?

25 A It appears to be -- it appears to be a boring

1 and piezometer location plan.

2 Q And -- and the -- the empty circles on the
3 legend, it says "Proposed Boring Location." Do you see
4 that?

5 A Yes.

6 Q Is that the locations proposed for new borings
7 that would occur in the year 2016?

8 A That's -- it says that they -- they represent
9 proposed boring locations. I don't know that it gives
10 a -- a date. But yes, I would think so.

11 Q Why in the world would 130 Environmental Park
12 go ahead and do several more borings when it already
13 conducted so many when it submitted the permit
14 application?

15 A You want to restate that?

16 Q Okay. Why -- why could -- why -- what possible
17 reason could there be that 130 Environmental Park would
18 want to embark on a whole new series of borings when it
19 had already done a large number of borings in the
20 context of submitting the application to TCEQ?

21 A I would assume probably because if you were
22 going to be out there boring, we're certainly going to
23 take the opportunity to go out there and bore, basically
24 on the same time frame you are, so that we can verify
25 once again what we have and once again what you're going

1 to see.

2 Q And -- and when you say "you," you're talking
3 about the protestants?

4 A Yeah. Yes.

5 Q Why would you need to verify what's out there?
6 Isn't that already in your boring data that was
7 submitted to TCEQ?

8 A Two years ago. Two and a half years ago, yeah.

9 Q So why would you need to verify that?

10 A Because if you're going to be there drilling,
11 then my opinion -- not my opinion, but if you're going
12 to be there drilling, I'm going to be there at the same
13 time, drilling.

14 Q Why?

15 A Just makes common sense.

16 Q Can you explain what the common sense is?

17 A The common sense --

18 Q How --

19 A -- is you're going to get up there -- you're
20 going to get up there and -- and spin-doctor something
21 that says that, you know, in two years things have
22 changed, and yap, yap, yap, and bore. And so we're
23 going to be out there right at the same time, drilling
24 right in the same areas and getting the same kind of
25 results.

1 Q So it's your opinion that Protestants are
2 drilling to see if the subsurface characteristics of the
3 ground have changed over the --

4 A That was your statement of your clients
5 earlier.

6 Q So -- but your goal was to monitor and collect
7 your own data, based on the work that the protestants
8 were doing in their drilling. Is that right?

9 A So we can verify our work that -- what you were
10 doing at the same time.

11 Q Well, in fact, you didn't do drilling at the
12 same time we did, did you?

13 A Within two weeks.

14 Q You did drilling before?

15 A Sure. Within two weeks.

16 Q Why did 130 Environmental Park do drilling
17 before Protestants even drilled or disclosed to you
18 exactly where the drilling would occur?

19 A We -- we don't have the staff to have both of
20 you out there on the site at the same time, us and
21 them -- and you.

22 Q Why did you not wait until you could see where
23 we were drilling, if the purpose was to verify the work
24 we were doing?

25 A Why did you not -- after observing what we were

1 doing and the drilling cores that were coming up from
2 our property, why did you need to go out -- and the
3 follow-up question to you is: Why did you need to go
4 out there and drill too?

5 MR. ROCKWELL: Objection to the
6 nonresponsiveness of this answer.

7 A Okay.

8 MR. ROCKWELL: Do you want to read the
9 question back again.

10 (Requested portion was read)

11 A I don't recall why we picked the time that we
12 did.

13 Q (BY MR. ROCKWELL) Who made that decision?

14 A I don't recall.

15 Q So do you exercise any kind of monitoring or
16 supervision over your engineers at all?

17 A Sure. Do I tell them what to do, like some
18 people at this table do to their engineers? No. I hire
19 top-notch, first-class engineers and let them do their
20 job.

21 Q So this is an engineer-run project?

22 A This is a team-run project.

23 Q And what's your role on the team?

24 A My role is running Green Group Holdings and
25 generally overseeing and supervising of the overall

1 company.

2 Q But what was your role with respect to the team
3 assembled to do whatever boring was necessary at the
4 site?

5 A I didn't have a role in assembling the team put
6 together --

7 Q No. Role on the team. You said it was a team
8 effort. What were -- if you were -- were you a member
9 of the team?

10 A That did what?

11 Q That made decisions about whether there should
12 be additional boring; and if so, when and how should
13 they be done, how much should be spent?

14 A That would've been -- I can't recall who all
15 was on that team.

16 Q Were you on the team?

17 A I was a part of the final decision.

18 Q And what did you make your final -- what did
19 you base your final decision on? "You," as an
20 individual member of the team?

21 A As I said before, if somebody was going to be
22 out there drilling, then I'm -- I wanted our people out
23 there drilling so that we had the same kind of test
24 results and drilled at basically the same time so that
25 when the spin-doctoring started, nobody could say that

1 things had changed in two years or two and a half years.

2 Q And that's your concern, is that things
3 might've changed?

4 A No, that's not my concern.

5 Q Isn't one of your concerns that when you
6 initially did that drilling you destroyed the soil
7 samples and the original field logs?

8 MR. RYAN: Objection, form.

9 A I didn't destroy anything, and I didn't destroy
10 the original field logs. Our people operated under
11 their normal process and did nothing different than what
12 they've done down through the years. And you need to
13 direct that question to the appropriate people.

14 Q (BY MR. ROCKWELL) Did it concern you that
15 Biggs & Mathews, at 130 Environmental Park, had
16 destroyed their soil samples and their field logs?

17 A No.

18 Q Did it concern you that when Protestants were
19 boring on the site, that they would save and have
20 available for use in the contested case hearing
21 preserved soil samples?

22 A No.

23 Q So you don't -- you didn't really need any --

24 A It didn't concern me, because I was going to
25 have my own.

1 Q But that's why you did it; so you could have
2 your own soil samples?

3 A No.

4 Q So you don't need your soil samples?

5 A Sure, I need them.

6 Q What do you need them for?

7 A Because I don't know what kind of
8 spin-doctoring your people are going to come up with.

9 Q And it's important to have soil samples to show
10 what's in there, isn't it?

11 A Pardon me?

12 Q Isn't it important in a contested case
13 proceeding to have the actual soil samples as evidence
14 when the subsurface conditions may be contested?

15 A When our -- when our engineers do what they've
16 done down through the years, and that's acceptable with
17 the regulatory agencies, then -- then that's good.

18 Q Have your engineers ever had someone take -- a
19 protestant take their own soil samples in a contested
20 case hearing?

21 A You'll have to ask the engineers that.

22 Q In any of the cases you're involved with?

23 A I don't recall that.

24 Q If Protestants had not decided to go onto site
25 to take their own borings, 130 Environmental Park

1 would've had no soil samples in the contested case
2 hearing. Correct?

3 A I don't know that for a fact, but I think
4 that's correct.

5 Q So you testified a few minutes ago that you
6 hire "top-notch ... engineers"?

7 A The best we can find, yes.

8 Q The best you can find.

9 How did you go about determining who was
10 the best engineer you could find?

11 A Through Bill Hodges.

12 Q Bill Hodges conducted the search for Green
13 Group Holdings of who would be the best possible
14 engineers for landfill sites?

15 A (Nods head.)

16 Q And when did he conduct this --

17 A I don't recall that.

18 Q -- search?

19 When did he first begin to be involved
20 with Green Group Holdings?

21 A The day I formed the company.

22 Q Is Bill Hodges someone you've known for a long
23 time?

24 A Yes.

25 Q How did you first meet him?

1 Q (BY MR. ROCKWELL) Do you recall getting a
2 letter from Marisa Perales addressed to you about that
3 issue?

4 A No, I don't recall that.

5 Q In the future, when -- when you engage in
6 future landfill applications, are your engineers going
7 to destroy field logs and soil samples?

8 A I would assume that my engineers are going to
9 do what they've always done within the state within
10 they're working and that has been acceptable, and by the
11 regulations within the state which in they're working.

12 Q And so, then your answer is yes?

13 A No, my answer is not yes. My answer is just
14 exactly what I told you.

15 Q So you don't know whether they will or not?

16 A Again, it depends on what the state
17 requirements are and what they've done in the past.

18 Q Are you, independently of what the state
19 requirements are, going to ask them to preserve their
20 soil samples and field notes?

21 A I don't generally ask our engineers to do
22 anything other than what the regulations. On things
23 like that, I don't tell their engineers how to do their
24 work. I expect them to be the -- the top of class. I
25 expect them to obviously meet all the regulations. And

1 I expect at the end of the day that I get a permit.

2 Q Can you tell me what Tayloe Creek is?

3 A Tayloe Creek?

4 Q Correct.

5 A That's a small tributary.

6 Tayloe Creek where?

7 Q Anywhere. Have you ever heard of the word
8 "Tayloe Creek"?

9 A It's a small creek. The only one I'm familiar
10 with is a small creek in south central Alabama.

11 Q And is it near the Arrowhead landfill?

12 A It's -- yes.

13 Q And that's a landfill that Green Group Holdings
14 or a subsidiary operates?

15 A We -- Green Group -- one of our LLCs operates
16 it.

17 Q And what's the name of the LLC?

18 A I think it's Howling Coyote, LLC. I believe.

19 (Kaufmann Exhibit No. 28 marked)

20 Q (BY MR. ROCKWELL) Let me hand you a document
21 marked as Exhibit 28. Have you ever seen Exhibit 28
22 before?

23 A No.

24 Q The Bates stamp at the bottom of each page
25 shows it was provided to us in request to production of

1 Pintail Landfill?

2 A Yes.

3 Q Was Pintail in violation of TCEQ regulations?

4 A No.

5 (Kaufmann Exhibit No. 32 marked)

6 Q (BY MR. ROCKWELL) I'm going to hand you a
7 document --

8 THE WITNESS: This isn't a complete
9 document, is it?

10 MR. ROCKWELL: Is there something missing
11 from that document?

12 THE WITNESS: I'm asking you.

13 MR. ROCKWELL: It's your letter, so I
14 don't know.

15 Q (BY MR. ROCKWELL) I'm going to hand you a
16 document marked as Exhibit 32. Have you ever seen
17 Exhibit 32 before?

18 A Yes. This was the other part of the document.

19 Q And this is a proposed settlement provision for
20 your -- Pintail's violation of TCEQ regulations.
21 Correct?

22 A That's correct.

23 Q Has any settlement been reached?

24 A They're in -- we're in the process. It's my
25 understanding that we're in the process of this being

1 A You can go back and listen to my statement and
2 get the exact wording.

3 Q Well, no. I'm asking for you to explain who
4 exactly do you believe is violating or coming close to
5 violating antitrust law?

6 A I said that in my statement, and you can go
7 back and read it.

8 Q Well, I want you to tell me --

9 A I'm not answering twice.

10 Q Do you think Texas Disposal Systems?

11 A You can go back and listen to my statement and
12 get the exact wording.

13 Q So you're refusing to answer?

14 A I am. I've already done it once.

15 Q What -- what specific provisions of antitrust
16 law do you believe are being violated?

17 A I'm not going to comment on possible future
18 legal action.

19 Q Well, I think you already have.

20 So are you refusing to answer that
21 question?

22 A (No response.)

23 (Kaufmann Exhibit No. 33 marked)

24 Q (BY MR. ROCKWELL) I'm going to hand you a
25 document marked as Exhibit 33 and ask whether that's

1 your signature on the second page.

2 A Yeah.

3 Q Okay. I think --

4 A And what do you want to know about this?

5 Q I -- I think we'll not use our extra deposition
6 time on that today.

7 MR. ROCKWELL: Can we -- I guess, pass the
8 witness for today.

9 MR. RYAN: No questions.

10 MR. TUCKER: I have no questions.

11 MR. ROCKWELL: Off the record.

12 VIDEOGRAPHER: It's 11:26, and we're off
13 the record.

14 (Proceedings concluded)


 Computer 05-102
 Accounts (9-09/29)
 FORM

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

Report year

2 0 1 2

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name GREEN GROUP HOLDINGS, LLC			
Mailing address 132 RIVERSTONE TERRACE STE 103			Secretary of State file number or Comptroller file number 0801457333
City CANTON	State GA	ZIP Code 30114	Plus 4

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



SECTION A Name, title and mailing address of each officer, director or member.

Name ERNEST KAUFMANN	Title PRESIDENT	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 132 RIVERSTONE TERRACE STE 103	City CANTON	State GA	ZIP code 30114
Name ART VAN METER	Title SECRETARY	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 700 S RIVERSIDE RD	City ST JOSEPH	State MO	ZIP code 64507
Name PATRICK MCMULLEN	Title TREASURER	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address BOX 1253 16 HICKORY PLACE	City NORRIS	State TN	ZIP code 37828

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company CCB RESOURCES LLC	State of formation GA	Texas SOS file number, if any	Percentage of Ownership 10.000
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company PHILLIPS MANAGEMENT AND SERVICES LLC	State of formation TN	Texas SOS file number, if any	Percentage of Ownership 50.000
--	---------------------------------	-------------------------------	--

Registered agent and registered office currently on file. (See instructions if you need to make changes)
 Agent: **NATIONAL REGISTERED AGENTS, INC.** ☐ Blacken circle if you need forms to change the registered agent or registered office information.

Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
--	------------------------	--------------------	--------------------------

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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 08/20/2012	Area code and phone number (770) 235 - 8640
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EXHIBIT **19**
 WIT: **Kaufmann**
 DATE: **3-1-16**
 D. INMAN, CSR



Comptroller of Public Accounts
FORM 05-102
(9-09/29)

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

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■ Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

■ Report year

2 0 1 2

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Taxpayer name GREEN GROUP HOLDINGS, LLC			
Mailing address 132 RIVERSTONE TERRACE STE 103			Secretary of State file number or Comptroller file number 0801457333
City CANTON	State GA	ZIP Code 30114	Plus 4

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3204471256312

SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company HERZOG CONTRACTING CORP	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 30.000
---	---------------------------------	-------------------------------	--

Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.**

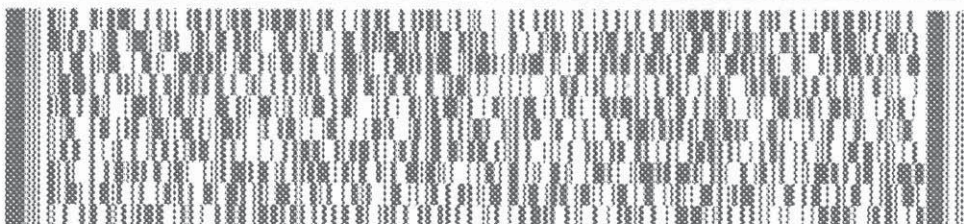
Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 08/20/2012	Area code and phone number (770) 235 - 8640
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Comptroller of Public Accounts
FORM 05-102
(9-09/29)

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report **MUST** be signed and filed to satisfy franchise tax requirements

■ Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

■ Report year

2 0 1 2

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Taxpayer name GREEN GROUP HOLDINGS, LLC			
Mailing address 132 RIVERSTONE TERRACE STE 103			Secretary of State file number or Comptroller file number 0801457333
City CANTON	State GA	ZIP Code 30114	Plus 4

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3204471256312

SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company ALAN LANDES LLC	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 10.000
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Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.**

○ Blacken circle if you need forms to change the registered agent or registered office information.

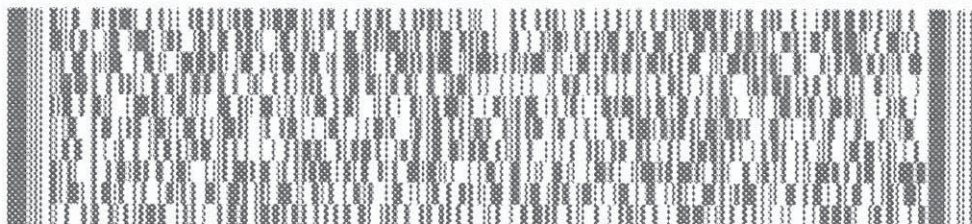
Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 08/20/2012	Area code and phone number (770) 235 - 8640
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of Public (9-09/29)
Accounts FORM
Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions
This report **MUST** be signed and filed to satisfy franchise tax requirements

■ Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

■ Report year

2 0 1 2

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333			
Mailing address 132 RIVERSTONE TERRACE STE 103							
City CANTON	State GA	ZIP Code 30114	Plus 4				

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3204471256312

SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company STANLEY HERZOG LLC	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 10.000
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Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.** ○ Blacken circle if you need forms to change the registered agent or registered office information.

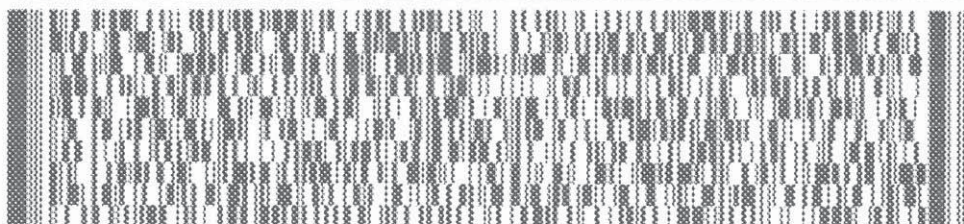
Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 08/20/2012	Area code and phone number (770) 235 - 8640
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 Computer 05-102
 of Public Accounts FORM
 (Rev. 9-11/30)

Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Taxcode 13196 Franchise

Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

Report year

2 0 1 3

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at (800) 252-1381 or (512) 463-4600.

Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State (SOS) file number or Comptroller file number 0801457333	
Mailing address 132 RIVERSTONE TER STE 103					
City CANTON	State GA	ZIP Code 30114	Plus 4		

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office Canton, GA
Principal place of business Canton, GA

please sign below!

Officer, director and manager information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or managers change throughout the year.



SECTION A Name, title and mailing address of each officer, director or manager.

Name ERNEST KAUFMANN	Title PRESIDENT	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 132 RIVERSTONE TERRACE STE 103	City CANTON	State GA	ZIP Code 30114
Name PATRICK MCMULLEN	Title TREASURER	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address BOX 1253 16 HICKORY PLACE	City NORRIS	State TN	ZIP Code 37828
Name ART VAN METER	Title SECRETARY	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 700 S RIVERSIDE RD	City SAINT JOSEPH	State MO	ZIP Code 64507

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of 10 percent or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of ownership
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Registered agent and registered office currently on file. (see instructions if you need to make changes)

Agent: **NATIONAL REGISTERED AGENTS, INC.** ☐ Blacken circle if you need forms to change the registered agent or registered office information.

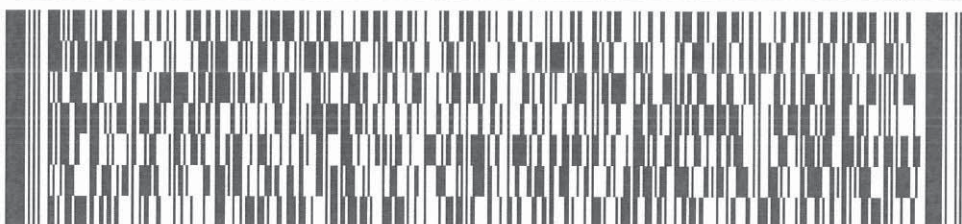
Office: 1021 MAIN STREET, SUITE 1150	City HOUSTON	State TX	ZIP Code 77002
---	------------------------	--------------------	--------------------------

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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or manager and who is not currently employed by this, or a related, corporation or limited liability company.

Sign here Joy Hammonds	Title Electronic	Date 03-22-2013	Area code and phone number (770) 720 - 2717
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Texas Comptroller Official Use Only



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 Computer 05-102
 of Public (9-09/29)
 Accounts FORM

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

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Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

Report year

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Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333	
Mailing address 132 RIVERSTONE TERRACE STE 103					
City CANTON	State GA	ZIP Code 30114	Plus 4		

☐ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

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3204471256313

SECTION A Name, title and mailing address of each officer, director or member.

Name ERNEST KAUFMANN	Title PRESIDENT	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 132 RIVERSTONE TERRACE STE 103	City CANTON	State GA	ZIP code 30114
Name ART VAN METER	Title SECRETARY	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address 600 S RIVERSIDE RD	City ST JOSEPH	State MO	ZIP code 64507
Name	Title	Director ☐ YES	Term expiration m m d d y y [][][][][][]
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company CCB RESOURCES LLC	State of formation GA	Texas SOS file number, if any	Percentage of Ownership 10.000
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company PHILLIPS MANAGEMENT AND SERVICES LLC	State of formation TN	Texas SOS file number, if any	Percentage of Ownership 50.000
--	---------------------------------	-------------------------------	--

Registered agent and registered office currently on file. (See instructions if you need to make changes)

 Agent: **NATIONAL REGISTERED AGENTS, INC.**
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Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 03/29/2013	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only

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05-102
(9-09/29)
Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

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This report MUST be signed and filed to satisfy franchise tax requirements

■ Taxpayer number

■ Report year

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3 2 0 4 4 7 1 2 5 6 3

2 0 1 3

Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333			
Mailing address 132 RIVERSTONE TERRACE STE 103							
City CANTON		State GA		ZIP Code 30114		Plus 4	

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

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SECTION A Name, title and mailing address of each officer, director or member.

3204471256313

Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

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Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

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Name of owned (parent) corporation or limited liability company HERZOG CONTRACTING CORP	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 50.000
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Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.** ○ Blacken circle if you need forms to change the registered agent or registered office information.

Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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sign here ERNEST KAUFMANN	Title PRESIDENT/CE	Date 03/29/2013	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only



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Computer 05-102
of Public
Accounts
FORM (9-09/29)

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Tcode 13196

■ Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

■ Report year

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Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333	
Mailing address 132 RIVERSTONE TERRACE STE 103					
City CANTON	State GA	ZIP Code 30114	Plus 4		

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3204471256314

SECTION A Name, title and mailing address of each officer, director or member.

Name NOTX	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address 132 RIVERSTONE TERRACE STE 103	City CANTON	State GA	ZIP code 30114
Name NOTX	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address 600 S RIVERSIDE RD	City ST JOSEPH	State MO	ZIP code 64507
Name ERNEST KAUFMANN	Title PRESIDENT	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company CCB RESOURCES LLC	State of formation GA	Texas SOS file number, if any	Percentage of Ownership 10.000
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company PHILLIPS MANAGEMENT AND SERVICES LLC	State of formation TN	Texas SOS file number, if any	Percentage of Ownership 50.000
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Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.**

○ Blacken circle if you need forms to change the registered agent or registered office information.

Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here ERNEST KAUFMANN	Title PRESIDENT/CEO	Date 04/01/2014	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only

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05-102
(9-09/29)
Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

■ Taxpayer number

■ Report year

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

3 2 0 4 4 7 1 2 5 6 3

2 0 1 4

Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333	
Mailing address 132 RIVERSTONE TERRACE STE 103					
City CANTON	State GA	ZIP Code 30114	Plus 4		

○ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114
Principal place of business 132 RIVERSTONE TERRACE STE 103, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



SECTION A Name, title and mailing address of each officer, director or member.

3204471256314

Name ART VAN METER	Title SECRETARY	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

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Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company HERZOG CONTRACTING CORP	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 50.000
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Registered agent and registered office currently on file. (See instructions if you need to make changes)
Agent: **NATIONAL REGISTERED AGENTS, INC.**

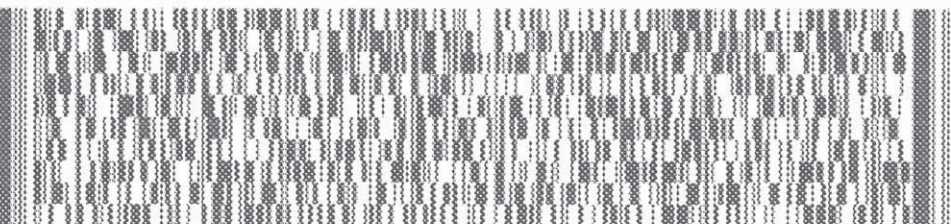
Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here ERNEST KAUFMANN	Title PRESIDENT/CEO	Date 04/01/2014	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only



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 Computer 05-102
 Accounts (9-09/29)

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

 This report **MUST** be signed and filed to satisfy franchise tax requirements

☒ Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

☒ Report year

2 0 1 5

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name GREEN GROUP HOLDINGS, LLC			
Mailing address 134 RIVERSTONE TERRACE STE 203			Secretary of State file number or Comptroller file number 0801457333
City CANTON	State GA	ZIP Code 30114	Plus 4

☐ Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 134 RIVERSTONE TERRACE STE 203, CANTON, GA, 30114
Principal place of business 134 RIVERSTONE TERRACE STE 203, CANTON, GA, 30114

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.


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Name NOTX	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address 132 RIVERSTONE TERRACE STE 103	City CANTON	State GA	ZIP code 30114
Name NOTX	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address 600 S RIVERSIDE RD	City ST JOSEPH	State MO	ZIP code 64507
Name ART VAN METER	Title SECRETARY	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company CCB RESOURCES, LLC	State of formation GA	Texas SOS file number, if any	Percentage of Ownership 10.000
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 ☐ Blacken circle if you need forms to change the registered agent or registered office information.

Agent: NATIONAL REGISTERED AGENTS, INC.	Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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sign here ERNEST KAUFMANN	Title PRESIDENT/CEO	Date 04/01/2015	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only

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Comptroller of Public Accounts
FORM 05-102
(9-09/29)

Tcode 13196

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

Taxpayer number

3 2 0 4 4 7 1 2 5 6 3

Report year

2 0 1 5

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name GREEN GROUP HOLDINGS, LLC				Secretary of State file number or Comptroller file number 0801457333			
Mailing address 134 RIVERSTONE TERRACE STE 203							
City CANTON	State GA	ZIP Code 30114	Plus 4				

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Principal place of business 134 RIVERSTONE TERRACE STE 203, CANTON, GA, 30114

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SECTION A Name, title and mailing address of each officer, director or member.

Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director ☐ YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

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Name of owned (parent) corporation or limited liability company HERZOG CONTRACTING CORP	State of formation MO	Texas SOS file number, if any	Percentage of Ownership 50.000
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Office: 16055 SPACE CENTER BLVD STE 235	City HOUSTON	State TX	ZIP Code 77062
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Sign here ERNEST KAUFMANN	Title PRESIDENT/CEO	Date 04/01/2015	Area code and phone number (770) 235 - 8640
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Texas Comptroller Official Use Only

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OPERATING AGREEMENT

OF

130 ENVIRONMENTAL PARK, LLC

A Single Member Limited Liability Company

THIS OPERATING AGREEMENT (this "Agreement") is made and entered into effective as of July 22nd, 2013, by and between 130 Environmental Park, LLC, a Georgia limited liability company (the "Company") and Green Group Holdings, LLC, a Delaware limited liability company, as the sole member of the Company (the "Member").

ARTICLE I DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein);

"Affiliate" shall mean, with respect to any Person, (i) in the case of an individual, any relative of such Person, (ii) any Person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such Person, (iii) any officer, director, member, manager, trustee or partner of, or any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of, such Person, (iv) if such Person is an officer, director, member, manager, trustee or partner of any Person, any Person for which such Person acts in any such capacity, and (v) any officer, director, member, manager, trustee or partner of, or any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of, any Person directly or indirectly through one or more intermediaries controlling, controlled by or under common control with such Person. For purposes of this definition, the term "controlling," "controlled by," or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise or the power to elect at least 50% of the directors, managers, members or other Persons exercising similar authority with respect to such Person.

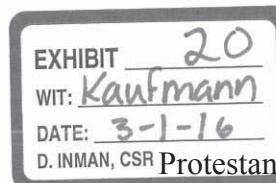
"Articles of Organization" shall mean the Articles of Organization of the Company as filed with the Secretary of State of Georgia, as the same may be amended from time to time.

"Code" shall mean the Internal Revenue Code of 1986, as it may be amended from time to time, or any provision of succeeding law.

"Company" shall mean 130 Environmental Park, LLC.

"Georgia Act" shall mean the Georgia Limited Liability Company Act, as amended from time to time.

"Managers" shall mean one or more Persons designated as managers pursuant to this Agreement. A Manager need not be the Member.



"Member" shall mean the Person executing this Agreement, other than the Company.

"Officers" shall mean one or more Persons appointed from time to time by the Managers to such offices as are created from time to time by the Managers pursuant to Section 4.1 and Article VII hereof.

"Person" shall mean any individual, corporation, partnership, joint venture, estate, trust, association, joint-stock company, limited liability company, unincorporated organization, government or other agency or political subdivision thereof, or any other legal or commercial entity.

ARTICLE II

FORMATION OF COMPANY

2.1 **Formation.** Effective upon the filing of the Articles of Organization with the Secretary of State of Georgia (or at such later date and/or time indicated therein), the Company shall constitute a limited liability company under the Georgia Act and other applicable laws of the State of Georgia.

2.2 **Principal Place of Business.** The initial principal place of business of the Company is the address indicated on the signature page to this Agreement.

2.3 **Registered Agent and Registered Agent Office.** The initial registered agent of the Company shall be national Registered Agents, Inc., and the street address of the registered agent's office shall be 1201 Peachtree Street, NE, Atlanta, Georgia, 30361. The Company may change the registered office of the Company to any other place chosen from time to time by the Managers and/or the registered agent of the Company to any other Person chosen from time to time by the Managers by making the filing required by applicable law.

2.4 **Term.** The Company shall continue until dissolved as set forth in Article XII.

ARTICLE III

PURPOSES OF COMPANY

The purposes of the Company are:

(i) to seek pecuniary gain and profit; to engage in waste management activities and infrastructure development of all types and descriptions, all in accordance with applicable laws; to make and carry out contracts of every kind that may be necessary or conducive to the accomplishment of the purposes of the Company; to engage in any form or type of business for any lawful purpose or purposes not specifically prohibited to limited liability companies under the laws of the State of Georgia;

(ii) to exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Georgia Act; and

(iii) to engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

ARTICLE IV

BUSINESS AND DUTIES OF MANAGERS

4.1 **Management.** The business and affairs of the Company shall be managed by the Manager(s). Subject to Articles V and XII hereof, the Manager(s) shall have full and complete authority, power and discretion (i) to manage and control the business, affairs and properties of the Company, (ii) to make all decisions regarding those matters, and (iii) to perform any and all other acts or activities customary or incident to the management of the Company's business, including, without limitation, executing (on behalf of and in the name of, the Company) agreements, instruments, and other items of any nature whatsoever relating to or in connection with the Company's business. Without limiting the generality of the foregoing, subject to the provisions of Articles V and XII hereof, the Manager(s) shall have power and authority (but are not required) to create such offices as the Manager(s) deem appropriate, to assign duties to such offices as the Manager(s) deem appropriate and to designate one or more Officers to serve in such offices at the pleasure of the Manager(s), which Officers may be removed from office with or without cause by the Manager(s) at any time.

4.2 **Number, Tenure and Qualifications.** The number of Managers of the Company shall be fixed from time to time by the Member, but in no instance shall there be less than one Manager. The Company shall initially have one Manager, who shall be the Person designated as such on the signature page of this Agreement. Each Manager shall hold office until such Manager's successor shall have been elected and qualified or until such Manager's earlier death, resignation or removal by the Member. Each Manager shall be elected by the Member.

4.3 **Indemnity of the Managers, Officers and the Member.** To the fullest extent permitted by the Georgia Act, the Company shall release, indemnify and hold harmless each Manager, Officer and the Member from or for (and make advances for expenses to each Manager, Officer and the Member arising from or relating to) any loss, cost, expense, damage, claim or demand, including, without limitation, attorneys' fees, in connection with (i) such Manager's, Officer's or the Member's status as a Manager, Officer or the Member of the Company, (ii) such Manager's, Officer's or the Member's participation in the management, business and affairs of the Company or (iii) such Manager's, Officer's or the Member's activities on behalf of the Company; provided, however that any such indemnification hereunder shall be conditioned on a finding by the Company that in connection with the act or omission that gave rise to the requested indemnification, the proposed indemnitee acted in good faith and reasonably believed that his or her conduct was unlawful or opposed to the best interests of the Company.

4.4 **Resignation.** Any Manager may resign at any time by giving written notice to the Member. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The resignation of any Manager as a Manager shall not affect such Manager's rights as a Member and shall not constitute a withdrawal of such Manager as a Member.

4.5 **Removal.** Any Manager may be removed at any time, with or without cause, by the Member. The removal of any Manager as a Manager shall not affect such Manager's rights as a Member and shall not constitute a withdrawal by such Manager as a Member.

4.6 **Vacancies.** Any vacancy occurring for any reason in the office of any Manager shall be filled by the Member.

4.7 **Salary.** Each Manager shall receive such salary, reimbursements, and other compensation as designated or approved from time to time by the Member.

4.8 **Conflicting Interest Transactions.** The fact that a Manager or the Member is directly or indirectly interested in, or connected with, any Person employed or retained by the Company to render or perform services or entering into any other transaction with the Company shall not prohibit the Company from doing business with such Person as long as such business is approved in accordance the Georgia Act.

4.9 **No Duty or Liability.** No Manager nor the Member shall have any duty (fiduciary or otherwise, including, without Limitation, duty of loyalty or duty of care) or liability to the Company, any Manager or the Member except for those which may not be eliminated under the Georgia Act.

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE MEMBER

The following actions shall require prior approval by the Member:

- (i) the sale, exchange, lease, license, or other disposition of all or any substantial part of the Company's assets (other than in the ordinary course of business);
- (ii) the merger, consolidation, or other business combination of the Company with another Person (other than an individual);
- (iii) the borrowing of any money for the Company that would cause the Company's indebtedness outstanding at any given time to exceed \$5,000.00;
- (iv) the entering into any contract with, consummating any transaction with, or paying any compensation to, any Manager or any Officer, or any Affiliate of any Manager or any Officer;
- (v) the confession of any judgment against the Company or the voluntary declaration of bankruptcy by the Company;
- (vi) the admission of any additional member to the Company pursuant to Article XI hereof;

- (vii) the acquisition of any real property or an ownership interest in any other Person (other than an individual);
- (viii) any request for additional capital from the Member; or
- (ix) the dissolution of the Company pursuant to Article XII hereof.

ARTICLE VI

ACTION BY THE MEMBER

Any action required or permitted to be taken by the Member may be taken with or without a meeting, and with or without any written consents or other writings describing the action taken, except as otherwise expressly provided herein.

ARTICLE VII

OFFICERS

7.1 **General Provisions.** The Officers may consist of a President, a Secretary and a Treasurer who, if elected, shall be elected by the Managers and such other Officers as may be elected or appointed from time to time by the Managers. Each Officer shall serve for the term of office for which such Officer is elected or appointed and until such Officer's successor has been elected or appointed and has qualified or such Officer's earlier death, resignation or removal from office by the Managers, with or without cause, at any time. Any two or more offices may be held by the same individual.

7.2 **President.** If elected, the President shall be the chief executive officer of the Company and shall have general and active management of the operation of the Company, subject to the authority of the Managers. If elected, the President shall be responsible for the administration of the Company, including general supervision of the policies of the Company and general and active management of the financial affairs of the Company, and shall be authorized to execute bonds, mortgages, or other contracts in the name and on behalf of the Company, all subject to the authority of the Managers. If the President is elected but no Secretary or no Treasurer is elected, the President shall fulfill the functions of Secretary and/or Treasurer, as applicable as described in this Agreement.

7.3 **Secretary.** If elected, the Secretary shall keep records of any actions taken by the Member and the Managers and have charge of any minute books and shall perform such other duties and have such other powers as may from time to time be delegated or assigned to the Secretary by the President or the Managers.

7.4 **Treasurer.** If elected, the Treasurer shall be charged with the management of the financial affairs of the Company, shall have the power to recommend action concerning the Company's financial affairs to the President, and shall perform such other duties and have such other powers as may from time to time be delegated or assigned to the Treasurer by the President or the Managers.

7.5 **Officers.** The following persons shall serve in the respective office beside his name as follows until his successor is duly elected and qualified:

President – Ernest C. Kaufmann, Jr.
Secretary – David Green
Treasurer – Bruce Roy

ARTICLE VIII **CONTRIBUTIONS**

The Member shall contribute that certain amount of money or such other property set forth or generally described below under the Member's name on the signature page hereto as the Member's initial capital contribution.

ARTICLE IX **DISTRIBUTIONS**

To the extent not prohibited by the Georgia Act, the timing and amount of all distributions to the Member by the Company shall be made at the sole discretion of the Managers.

ARTICLE X **BOOKS AND RECORDS**

10.1 **Accounting Period.** The Company's accounting period shall be the calendar year, unless and until the Managers designate another accounting period.

10.2 **Records and Reports.** At the expense of the Company, the Managers shall maintain records and accounts of all operations and expenditures of the Company. The Company shall keep at its principal place of business the following records:

- (i) A current list of the full name and last known address of the Member and each Manager;
- (ii) A copy of the Articles of Organization and all amendments thereto;
- (iii) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (iv) Copies of this Agreement and all amendments thereto; and
- (v) Copies of any financial statements of the Company for the three most recent years.

The books and records shall be at all times maintained at the principal office of the Company and shall be open to the reasonable inspection and examination of the Member or the Member's duly authorized representative, at the Member's expense, during reasonable business hours. Except as stated in this Section, the provisions of the Georgia Act shall not apply.

10.3 **Federal Income Tax Elections; Tax Status.** All elections required or permitted to be made by the Company under the Code shall be made by the Managers. Unless and until otherwise determined by the Managers, the Company shall be taxed as a division of the Member if the Member is a Person other than an individual trust, or estate) and, if the Member is an individual, estate, or trust, then as a sole proprietorship or as directly owned assets of the Member.

10.4 **Tax Returns.** At the expense of the Company, the Managers shall cause the preparation and timely filing of all tax returns and other items required to be filed by the Company (if any) pursuant to the Code and all other tax returns and other items deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Member within a reasonable time after the end of the Company's fiscal year.

ARTICLE XI

CESSATION OF MEMBERSHIP; TRANSFERABILITY; ADDITIONAL MEMBERS

11.1 **Cessation of Membership.** Except as otherwise provided in Section 11.2(c) below, a Member shall not cease to be a Member upon the occurrence of any cessation event (each a "Cessation Event") described in the Georgia Act.

11.2 **Transferability.**

(a) Prior to the Member's death or dissolution, as applicable, the Member, in the Member's sole discretion, may voluntarily transfer (whether by sale, gift, or otherwise) all or any part of the Member's membership interest in the Company, including economic and non-economic (i.e. voting rights), to any Person by execution of a written instrument of transfer between the Member and such transferee in form and substance satisfactory to the Managers, provided the Member may make any such transfer under any terms and conditions the Member deems appropriate.

(b) Prior to the Member's death or dissolution, as applicable, if all or any part of the Member's membership interest in the Company's transferred involuntarily (i.e. not voluntarily by the Member), whether in connection with a Cessation Event or otherwise, the transferee shall only receive the economic interest of the Member in the Company (limited to right to allocation of profits and losses of the Company and right to receive distributions, if and when made in accordance with this Agreement, from the Company) and shall not have any other interest in the Company, including, without limitation, the right to participate in the management and affairs of the Company or the right to become or exercise any rights of the Member, unless and until admitted as a substitute member of the Company upon the written approval of the Member, in the Member's sole discretion. Unless and until such transferee is so admitted as a substitute member of the Company, the Member shall continue to be the sole member of the Company and exercise all applicable member rights with respect to the Company, including, without limitation, voting and other approval rights as a member of the Company, provided such transferee shall have the economic interest in the Company described above.

(c) Upon the Member's death or dissolution, as applicable, all of the Member's membership interest in the Company, including economic and non-economic (i.e. voting rights), shall be transferred as provided by (i) if the Member is an individual, the Member's will or other testamentary documents (or if there are no such documents, by the laws of descent and distribution) and other applicable state laws, including, without limitation, any applicable community property laws, or (ii) if the Member is a Person other than an individual, the Member's formation, organization and/or other governance documents, as applicable.

11.3 **Additional Members.** Any Person approved in writing by the Member may become an additional member of the Company (whether by purchase or assignment of a portion of the Member's membership interest in the Company or by issuance by the Company of an additional membership interest in the Company) on such terms approved in writing by the Member; provided however, that, prior to such admission of an additional member of the Company, the Managers and the Member shall cause the Company to amend and restate this Agreement to include provisions appropriate for a Georgia limited liability company with more than one member.

ARTICLE XII

DISSOLUTION AND TERMINATION

12.1 **Dissolution.** The Company shall be dissolved and its affairs wound up only upon the earlier of the following to occur:

- (i) the written consent of the Member to dissolve the Company; or
- (ii) a decree of judicial dissolution under the Georgia Act.

Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Georgia Act.

A Cessation Event, without the accompanying occurrence of one of the events described in item (i) or (ii) above of this Section, shall not by itself cause the dissolution of the Company. Notwithstanding the provisions of anything to the contrary in the Georgia Act, the Company shall not dissolve upon a Cessation Event with respect to the Member. If such Cessation Event results in a transfer of the Member's membership interest, the transferee or legal successor thereof shall receive such interest in the Company as is described in Section 11 hereof based upon the nature of the transfer, whether voluntary or involuntary or upon the Member's death or dissolution.

12.2 Winding Up; Liquidation; and Distribution of Assets.

(i) Upon dissolution of the Company, the Managers, or if none, the Person or Persons selected by the Member (the "Liquidator") shall immediately proceed to wind up the affairs of the Company as provided by the Georgia Act.

(ii) If the Company is dissolved and its affairs are to be wound up, the Liquidator shall:

- (A) Sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Liquidator may determine to distribute any assets in kind);
- (B) Discharge all liabilities of the Company, including liabilities to the Member if the Member is a creditor, to the extent permitted by law, other than liabilities to the Member for distributions and establish such reserves as may be reasonably necessary to provide for contingencies or liabilities of the Company; and
- (C) Distribute the remaining assets to the Member, either in cash or in kind.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 **Creditors.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any Person not a party hereto.

13.2 **Amendments.** Any amendment to this Agreement shall be made in writing by the Member.

13.3 **Successors and Assigns.** No party hereto shall assign (by voluntary action, operation of law, change of control or ownership or otherwise) or delegate this Agreement, nor any right, interest or obligation of such party hereunder, to any other Person without the express, prior written consent of the other party hereto, provided such assignment or delegation shall be subject to the terms of this Agreement, including, without limitation, Section 11 hereof. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective heirs, beneficiaries, legal representatives, successors and permitted assigns.

13.4 **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof in such jurisdiction or any provision hereof in any other jurisdiction, and this Agreement shall be construed in such jurisdiction as if such invalid, illegal or unenforceable provision were limited or modified, consistent with its general intent, to the extent necessary so that it shall be valid, legal and enforceable in such jurisdiction, or if it shall not be possible to so limit or modify such invalid, illegal or unenforceable provision, this Agreement shall be construed in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein, and all other provisions hereof shall be and remain unimpaired and in full force and effect in such jurisdiction and all provisions hereof shall be and remain unimpaired and in full force and effect in any other jurisdictions.

13.5. **Notices.** All notices, requests, demands and other communications required or permitted to be given hereunder to the parties hereto shall be in writing and shall be (i) delivered by hand, (ii) mailed by United States registered or certified mail, return receipt requested, first class postage prepaid and properly addressed, or (iii) sent by national overnight courier service,

priority delivery, properly addressed, to the parties hereto at the address set forth beneath the signature of the applicable party hereto or at such other address as any party hereto may hereafter designate to the other party hereto in accordance herewith, which other address shall not be effective for purposes hereof until the receipt of same by such other party hereto as designated below. All such notices, requests, demands or other communications given to a party hereto in accordance herewith shall be deemed to have been given and received (i) on the date of receipt if delivered by hand, (ii) on the earlier of the date of receipt or the date that is three (3) business days after depositing with the United States Postal Service if mailed by United States registered or certified mail, return receipt requested, first class postage prepaid and properly addressed, or (iii) on the next business day after depositing with a national overnight courier service if sent by national overnight courier service, priority delivery, properly addressed.

13.6 **Captions.** The captions and other headings contained herein as to the contents of particular articles, section, paragraphs or other subdivisions contained herein have been inserted solely for convenience or reference and in no way define, limit or describe the scope or substance of any provision hereof or affect the interpretation or meaning hereof. Unless otherwise indicated herein, all references herein to particular articles, sections, paragraphs or other subdivisions shall mean and refer to the referenced articles, sections, paragraphs or other subdivisions hereof.

13.7 **Gender and Number.** All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all of the genders. Where appropriate, the singular shall include the plural and vice-versa. The terms "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph or other subdivision contained herein. The word "any" shall mean one or more or all, and the conjunctive "or" shall include both the conjunctive and disjunctive.

13.8 **Further Assurances.** From time to time after the date hereof, at the request of any party hereto and without further consideration, the other party hereto shall promptly furnish such further information, execute and deliver such other documents and take such actions as such party hereto may reasonably request to effectuate the respective covenants and agreements of the parties hereto described herein and contemplated hereby and for the purpose of carrying out the intent hereof.

13.9 **Choice of Law.** The parties hereto intend this Agreement to constitute a contract under the laws of the State of Georgia. This Agreement, including, without limitation, the respective obligations, rights and remedies of the parties hereto, and any and all claims arising out of the relationship between the parties hereto, shall be governed by and construed, interpreted and enforced in accordance with, and only to the extent permitted by, the laws of the State of Georgia, without giving effect to any conflicts or choice of laws principles, which otherwise might be applicable.

13.10 **Time of the Essence.** All times and dates in this Agreement shall be of the essence.

13.11 **Entire Agreement.** All attachments, if any, hereto, and all documents, if any, referred to herein, are intended to be, and hereby are, specifically incorporated into and made an

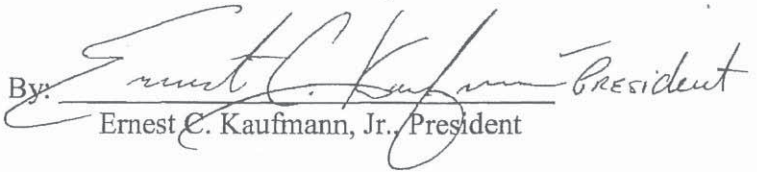
integral part hereof. This Agreement (including the aforesaid attachments and documents) embodies the entire agreement among, and the understanding of, the parties hereto in respect of the subject matter contained herein, and supersedes all prior or contemporaneous negotiations understandings and agreements, whether written or oral, among the parties hereto with respect to the subject matter contained herein. The parties hereto have not relied upon any promise, representation, warranty, agreement, covenant or undertaking, other than those expressly set forth or referred to herein.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the date first set forth above.

MEMBER:

GREEN GROUP HOLDINGS, LLC

By:  President
Ernest C. Kaufmann, Jr., President

Address of Member:

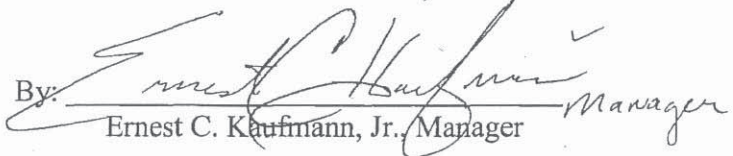
Suite 103
132 Riverstone Terrace
Canton, Georgia 30114-1703

Capital Contribution: \$100.00

Ownership Percentage: 100%

COMPANY:

130 ENVIRONMENTAL PARK, LLC

By:  Manager
Ernest C. Kaufmann, Jr., Manager

Address of Company's principal place of business:

Suite 103
132 Riverstone Terrace
Canton, Georgia 30114-1703

**GREEN GROUP HOLDINGS, LLC
130 ENVIRONMENTAL PARK, LLC
PERMIT NO. MSW 2383
MAJOR PERMIT APPLICATION
ADDITIONAL SITE EXPLORATION PHASE
SCOPE OF SERVICES**

PROJECT UNDERSTANDING

This scope of services addresses the continued project requirements for the additional site exploration phase of the 130 Environmental Park permit application.

The scope of services and project budget provided address the professional services and expenses required, as summarized below.

- HET, Inc., a Sub-Consultant is part of the BME budget.
- BME will continue to coordinate directly with Green Group, HHNT and Legal Counsel during this phase of the application

PROJECT SCOPE

Additional Site Exploration

The additional site exploration phase scope will include Task 1- the drilling of additional borings including drilling, sampling, logging, and plugging up to 15 additional borings. In addition, Task 2 will include site observations while the opposition group is conducting their proposed site exploration. Finally, Task 3 will include updating or preparation of additional cross-sections, maps or other figures to document the information acquired during these site exploration tasks.

Task 1 – Drilling, sampling, logging, and plugging borings.

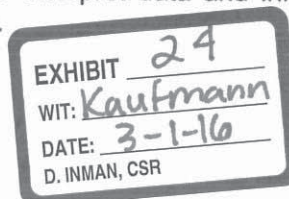
Under the direction of BME, HET will drill sample, log, and plug up to 15 borings drilled to depths of up to approximately 80 feet at locations to be determined. This task also includes BME coordination and site visit time.

Task 2 – Site Observations during opposition group site exploration

BME and HET will have representatives at the site to witness site exploration activities conducted by representatives of the opposition group. We anticipate these activities to take place during a 2-week period from January 19 through February 1, 2016. A brief daily report will be prepared summarizing activities for each day and transmitted to GGH and HHNT.

Task 3 – Preparation of Figures

BME will prepare new figures, maps, cross-sections, or update existing figures, maps and cross-sections as needed to document or interpret data and information acquired during these additional site exploration phases.



PROJECT BUDGET

The project budget required for each task is represented below. Project costs will be tracked against the initial budget.

TASK	BUDGET
1 – Drill, sample, log, plug borings	\$68,000.
2 – Site Observations of Opposition Site Exploration	\$31,000.
3 – Preparation of Figures	\$10,000.
TOTAL	\$109,000.

The Project Budget Authorized is **\$109,000.**

ADDITIONAL SERVICES

The scope of services and project budget for the Additional Site Exploration Phase is estimated based on our understanding of numbers of borings to be drilled, the depths to which they will be drilled, the estimated days that the opposition group intends to be in the field, and an estimate of time it will take to create or modify figures and illustrations or other documentation of the data and information acquired during these site exploration efforts. Additional borings or depths if requested, additional days in the field during the opposition's field work, and actual time to prepare figures that will be required or requested by GGH or HHNT will be considered additional services and will be charged at the hourly rates in our attached schedule of charges.

AUTHORIZATION

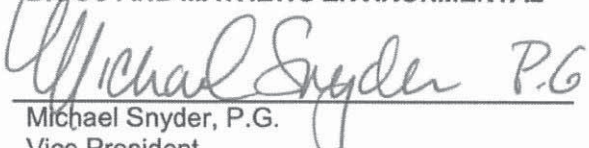
The Scope of Services for the 130 Environmental Park – Additional Site Exploration Phase will be provided in accordance with the Master Agreement for Professional Services between Green Group Holdings and Biggs and Mathews Environmental, dated _____, 2015.

GREEN GROUP HOLDINGS

Ernest Kaufmann
President

Date

BIGGS AND MATHEWS ENVIRONMENTAL


Michael Snyder, P.G.
Vice President

Date

1-8-2016

Attachments: Schedule of Charges 2016



BIGGS & MATHEWS ENVIRONMENTAL

Consulting Engineers • Hydrogeologists

Mansfield • Wichita Falls

SCHEDULE OF CHARGES

2015

PERSONNEL CHARGES

Category	Billing Rate Range \$ Per Hour
Administrative/Project Assistant	60 – 80
Sr. Administrative/Project Assistant	65 – 100
Designer/Technician/Field Services Technician	60 – 100
Sr. Designer/Sr. Technician/ Sr. Field Services Technician	75 – 120
Engineer/Scientist	80 – 120
Project Engineer/Scientist	95 – 135
Senior Project Engineer/Scientist	120 – 170
Principal Engineer/Scientist	140 – 200

A multiplier of 1.15 will be applied to all direct expenses.

Depositions and expert witness testimony, including preparation time, will be billed at 1.5 times the above hourly rates.



BIGGS & MATHEWS ENVIRONMENTAL

Consulting Engineers • Hydrogeologists

Mansfield • Wichita Falls

OUTSIDE SERVICES

Charges for special outside services, equipment, and facilities not furnished by Biggs and Mathews will be billed at cost plus 15%. Such charges may include, but shall not be limited to the following services:

Printing and photographic reproduction	Rental and operation of drilling equipment
Rented vehicles	Rented field equipment
Transportation on public carriers	Shipping charges
Subconsultants	Meals and lodging
Special fees, permits, insurance, etc.	Consumable materials

COMMUNICATIONS

The cost of communications including telephone charges, facsimile, express mail, postage and routine copying costs will be charged at a flat rate of 3% of total gross labor charges.

DIRECT CHARGES

Reproduction – black and white, per 8.5x11" sheet (non-routine)	\$ 0.14
Reproduction – color, per 8.5x11" sheet	\$ 1.25
Blueprints, per square foot	\$ 0.25
Mylar, per square foot	\$ 2.00
Auto/Truck per mile	\$ 0.85
Storage of samples per month per container*	\$ 5.00
Disposal per container*	\$ 50.00
CADD Laser Plots: Vellum, per square foot	\$ 1.00
CADD Laser Plots: Mylar, per square foot	\$ 2.00

*A container is defined as a standard core box, a capped Shelby tube, or a sealed five-gallon bucket.

SUPPLEMENTAL SCHEDULES OF CHARGES (Schedules available upon request)

- Soils Laboratory
- Chemical Laboratory
- Chargeable Equipment Schedule

Rate Changes

Schedule of Charges and Standard Equipment Rates are subject to change without notice.

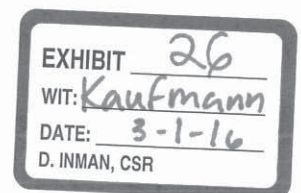
Payment

Monthly invoices are to be paid within 30 days from invoice date. Interest on late payments will be charged at a rate of 18% per annum.

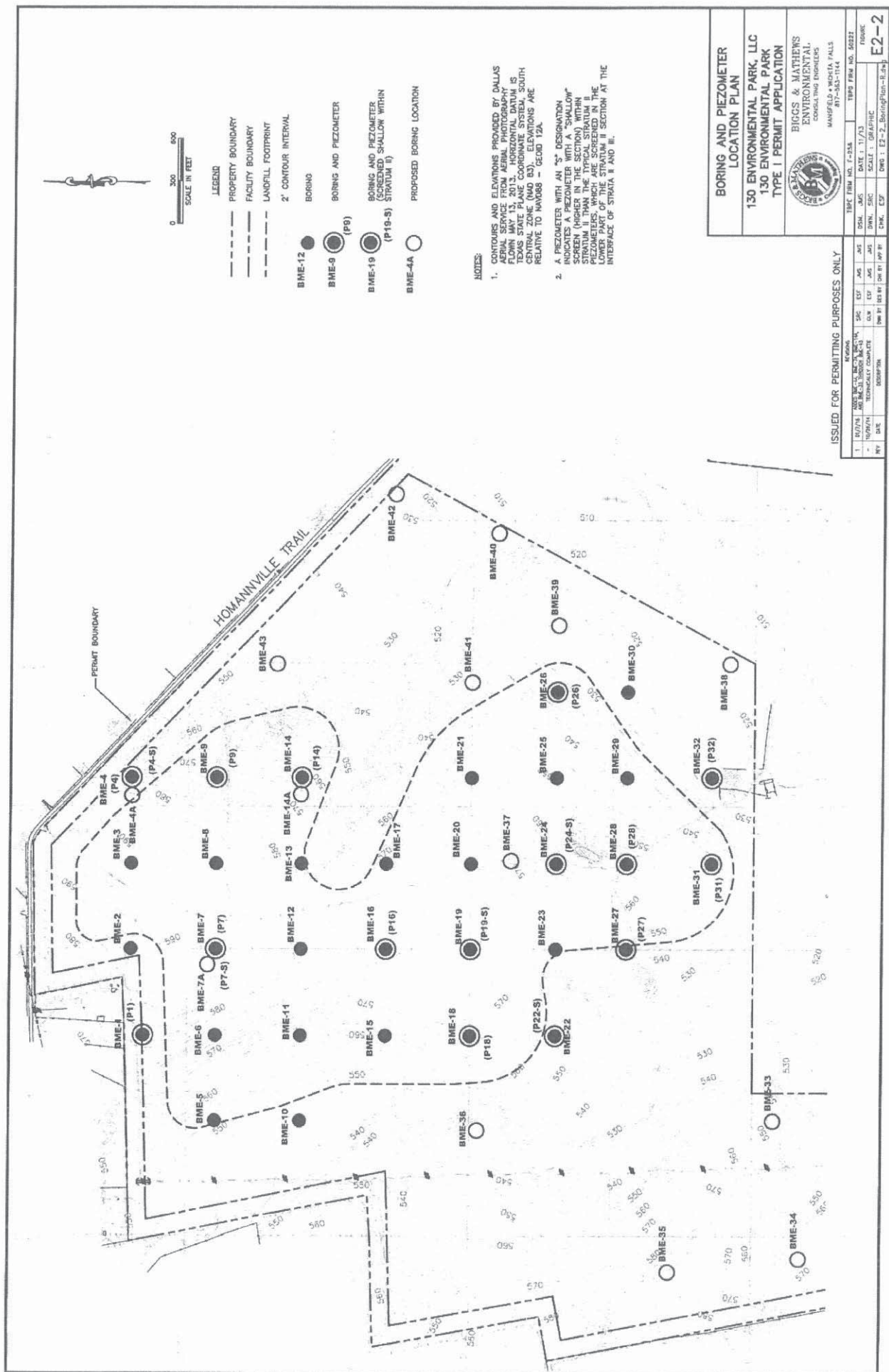
From: Mike Snyder <msnyder@BiggsAndMathews.com>
Sent: Thursday, January 07, 2016 2:50 PM
To: Mack Reynolds
Cc: Clint Courson
Subject: FW: 130 Environmental Park Boring & Piezometer Location Plan
Attachments: 130 Env Park - Boring-Location Plan & Coordinate Table.pdf

Mack, attached is a pdf that contains the map showing our new proposed borings....Clint thought you might need it to talk to the Hunters. Let me know if you need anything else.

Mike



130 Environmental Park - Proposed Boring Locations			
Boring No.	Northing	Easting	Approx. Elev.
BME-4A	13905397	2394074	582
BME-7A	13904857	2392890	587
BME-14A	13904207	2394084	567
BME-33	13900854	2391803	544
BME-34	13900665	2390844	565
BME-35	13901590	2390750	582
BME-36	13902945	2391735	536
BME-37	13902718	2393621	570
BME-38	13901176	2394995	518
BME-39	13902393	2395267	527
BME-40	13902819	2395910	512
BME-41	13903000	2394868	534
BME-42	13903552	2396183	528
BME-43	13904382	2394996	541



Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 19, 2016

Mr. Ernest Kaufmann, President
Pintail Landfill LLC
134 Riverstone Terrace, Suite 203
Canton, Georgia 30114

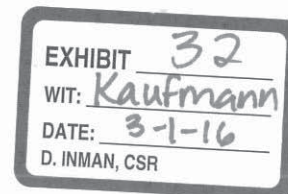
Re: Proposed Agreed Order
Pintail Landfill LLC; RN106192735; Air Account No. WBA013M
Docket No. 2015-1798-AIR-E; Enforcement Case No. 51641
FOR SETTLEMENT PURPOSES ONLY

Dear Mr. Kaufmann:

The Executive Director of the Texas Commission on Environmental Quality ("Commission" or "TCEQ") is pursuing an enforcement action against Pintail Landfill LLC for violations of the Texas Health & Safety Code and Commission Rules. These violations were discovered during a record review conducted on September 25, 2015, and documented in a letter dated November 23, 2015, from the TCEQ Houston Regional Office.

Please find enclosed a proposed agreed order which we have prepared in an attempt to expedite this enforcement action. The order assesses an administrative penalty of Two Thousand Eight Hundred Thirteen Dollars (\$2,813). We are proposing a one-time offer to defer Five Hundred Sixty-Two Dollars (\$562) of the administrative penalty if you satisfactorily comply with all the ordering provisions within the time frames listed. Therefore, the administrative penalty to be paid is Two Thousand Two Hundred Fifty-One Dollars (\$2,251). The order also identifies the violations that we are addressing.

If you have any questions regarding this matter, we are available to discuss them in a conference in Austin or over the telephone. If we reach agreement in a timely manner, the TCEQ will then proceed with the remaining procedural steps to settle this matter. These steps include publishing notice of the proposed order in the *Texas Register*, and scheduling the matter for approval by the Commission. We believe that handling this matter expeditiously could save Pintail Landfill LLC and the TCEQ a significant amount of time, as well as the expense associated with litigation.



Mr. Ernest Kaufmann
Page 2

Enclosed for your convenience is a return envelope. If you agree with the order as proposed, please sign and return the original order **and** the penalty payment (check payable to "TCEQ" and referencing Pintail Landfill LLC, Docket No. 2015-1798-AIR-E) to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

Should you believe you are unable to pay the proposed administrative penalty, you may claim financial inability to pay part or all of the penalty amount. In order to qualify for financial inability to pay, the penalty must exceed \$3,600 and be greater than 1% of annual gross revenues. If this is the case, please contact us immediately to obtain a list of financial disclosure documents that must be submitted within 30 days of the receipt of this letter. These documents, once properly completed and submitted, will be thoroughly reviewed to determine if we agree with the claim of financial inability. Please be aware that if financial inability is proven to the satisfaction of staff, discussions pertaining to the penalty amount adjustment will focus only on deferral and not on waiver of the penalty amount.

You may be able to perform or contribute to a Supplemental Environmental Project ("SEP"), which is a project that benefits the environment, to offset a portion of your penalty. **If you are interested in performing a SEP, you must agree to the penalty amount and submit a SEP proposal within 30 days of receipt of this proposed order.**

For additional information about the types of SEPs available and eligibility criteria, please go to the TCEQ's web site link at <http://www.tceq.texas.gov/legal/sep/> or contact the Enforcement Coordinator listed below.

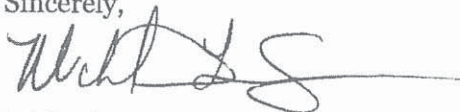
Please note that any agreements we reach are subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).

If we cannot reach a settlement of this enforcement action or you do not wish to participate in this expedited process, we will proceed with enforcement under the Commission's Enforcement Rules, 30 TEX. ADMIN. CODE ch. 70. Specifically, if the signed order and penalty are not mailed and postmarked within 60 days from the date of this letter, your case will be forwarded to the Litigation Division and this settlement offer, including the penalty deferral, will no longer be available. The enforcement process described in 30 TEX. ADMIN. CODE ch. 70 requires the staff to prepare and issue an Executive Director's Preliminary Report and Petition to the Commission. If you would like to obtain a copy of 30 TEX. ADMIN. CODE ch. 70, or any other TCEQ rules, the rules themselves and the agency brochure entitled *Obtaining TCEQ Rules* (GI-032) are located on our agency website at <http://www.tceq.texas.gov> for your reference. If you would like a hard copy of this brochure mailed to you, you may call and request one from the Central Office Publications Ordering Team at (512) 239-0028.

Mr. Ernest Kaufmann
Page 3

For any questions or comments about this matter or to arrange a meeting, please contact Mr. Kingsley Coppinger of my staff at (512)239-6581.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael De La Cruz", with a long horizontal flourish extending to the right.

Michael De La Cruz, Manager
Enforcement Division
Texas Commission on Environmental Quality

MD/kc

Enclosures: Proposed Agreed Order, Return Envelope, Penalty Calculation Worksheet, Site Compliance History

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
PINTAIL LANDFILL LLC
RN106192735

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2015-1798-AIR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Pintail Landfill LLC ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a landfill at 24644 Highway 6 near Hempstead, Waller County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 28, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Eight Hundred Thirteen Dollars (\$2,813) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Two Hundred Fifty-One Dollars (\$2,251) of the administrative penalty and Five Hundred Sixty-Two Dollars

(\$562) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on September 21, 2015, the Respondent submitted the Permit Compliance Certification ("PCC") for the June 25, 2014 through June 24, 2015 certification period.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to submit a PCC within 30 days of the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit No. 3705/Municipal Solid Waste Landfill General Operating Permit No. 517 Site-wide Requirements (b)(2), as documented during a record review conducted on September 25, 2015. Specifically, the PCC for the June 25, 2014 through June 24, 2015 certification period was submitted on September 21, 2015, 59 days past the due date of July 24, 2015.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Pintail Landfill LLC, Docket No. 2015-1798-AIR-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

For the Executive Director

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

Date

Name (Printed or typed)
Authorized Representative of
Pintail Landfill LLC

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	30-Nov-2015	Screening	7-Dec-2015	EPA Due	
	PCW	7-Dec-2015				

RESPONDENT/FACILITY INFORMATION	
Respondent	Pintail Landfill LLC
Reg. Ent. Ref. No.	RN106192735
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	51641	Order Type	1660
Docket No.	2015-1798-AIR-E	Government/Non-Profit	No
Media Program(s)	Air	Enf. Coordinator	Kingsley Coppinger
Multi-Media		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0.0%** Adjustment **Subtotals 2, 3, & 7** **\$0**

Notes No adjustment for compliance history.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **-\$937**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$2
Estimated Cost of Compliance \$250
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,813**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$2,813**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$2,813**

DEFERRAL **20.0%** Reduction Adjustment **-\$562**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$2,251**

Screening Date 7-Dec-2015

Docket No. 2015-1798-AIR-E

PCW

Respondent Pintail Landfill LLC

Policy Revision 4 (April 2014)

Case ID No. 51641

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106192735

Media [Statute] Air

Enf. Coordinator Kingsley Coppinger

Compliance History Worksheet>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%>> **Compliance History Person Classification (Subtotal 7)**

Unclassified

Adjustment Percentage (Subtotal 7) 0%>> **Compliance History Summary**Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%>> **Final Compliance History Adjustment****Final Adjustment Percentage *capped at 100%** 0%

Screening Date 7-Dec-2015
Respondent Pintall Landfill LLC
Case ID No. 51641
Reg. Ent. Reference No. RN106192735
Media [Statute] Air
Enf. Coordinator Kingsley Coppinger
Violation Number 1

Docket No. 2015-1798-AIR-E

PCW

Policy Revision 4 (April 2014)
PCW Revision March 26, 2014

Rule Cite(s)

30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit No. 3705/Municipal Solid Waste Landfill General Operating Permit No. 517 Site-wide Requirements (b)(2)

Violation Description

Failed to submit a Permit Compliance Certification ("PCC") within 30 days of the end of the certification period. Specifically, the PCC for the June 25, 2014 through June 24, 2015 certification period was submitted on September 21, 2015, 59 days past the due date of July 24, 2015.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

59

Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,750

One single event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$937

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent came into compliance on September 21, 2015, prior to the Notice of Enforcement dated November 23, 2015.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$2,813

This violation Final Assessed Penalty (adjusted for limits) \$2,813

Economic Benefit Worksheet

Respondent Pintail Landfill LLC
Case ID No. 51641
Reg. Ent. Reference No. RN106192735
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	24-Jul-2015	21-Sep-2015	0.16	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to submit the PCC. The date required is the date the PCC was due. The final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$2

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603939349, RN106192735, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN603939349, Pintail Landfill LLC

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN106192735, PINTAIL LANDFILL

Classification: UNCLASSIFIED

Rating: -----

Complexity Points: 9

Repeat Violator: NO

CH Group: 11 - Waste Management (Excluding Landfills)

Location: 24644 HIGHWAY 6 HEMPSTEAD, TX 77445-7234, WALLER COUNTY

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

AIR NEW SOURCE PERMITS REGISTRATION 119639

AIR NEW SOURCE PERMITS AFS NUM 4847300059

MUNICIPAL SOLID WASTE PROCESSING REGISTRATION 40259

MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2377

AIR EMISSIONS INVENTORY ACCOUNT NUMBER WBA013M

AIR EMISSIONS INVENTORY ACCOUNT NUMBER WBA013M

AIR OPERATING PERMITS ACCOUNT NUMBER WBA013M

AIR OPERATING PERMITS PERMIT 3705

Compliance History Period: September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

Date Compliance History Report Prepared: December 07, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 07, 2010 to December 07, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Kingsley Coppinger

Phone: (512) 239-6581

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

RESOLUTION NO. 85-587

WHEREAS, at the invitation of our Government, there came to this community after World War II a group of eminent German scientists who worked long, hard and faithfully in the service of our country; and

WHEREAS, these scientists became citizens of the United States and of this community and distinguished themselves as leaders in the forefront of, first our defense missile developments, and later in our moon landing program; and

WHEREAS, informed people everywhere recognize the eminence of these German-American scientists and understand that the technological leadership we enjoy in our country springs in great measure from the stimulation and inspiration they brought to their adopted country and that the City of Huntsville is what it is today largely because of their work and influence; and

WHEREAS, Arthur Rudolph was a member of this group of German scientists and became an American citizen and a citizen of this community, and made notable patriotic contributions, especially as the leader who developed the Saturn V Rocket, without which the United States of America could not have taken our giant leap for mankind; and

WHEREAS, Arthur Rudolph has heretofore relinquished his citizenship in this great republic, the United States of America, under circumstances which indicate that his constitutional rights as a citizen were not respected, and which indicate that in fact such rights were in essence violated by representatives of the United States of America in that he was confronted with accusations concerning matters which allegedly happened more than thirty (30) years ago of an outrageous and stigmatizing nature, without formal charges, and without said charges ever having been reviewed by a detached and impartial Magistrate, or by a Grand Jury; and

WHEREAS, Arthur Rudolph and all citizens of these United States, whether natural born, or naturalized, are entitled to all the rights, privileges and immunities secured to them under the constitution and laws of the country; and

WHEREAS, the procedure followed with respect to the accusations against Dr. Rudolph, in substance, has the effect of establishing in the eyes of uninformed citizens, his guilt by association, and not by legal evidence establishing his guilt beyond a shadow of a doubt and to a moral certainty, a standard of proof to which he was, as a citizen, constitutionally entitled; and

WHEREAS, the Mayor and the City Council of the City of Huntsville believes that the United States of America should take all appropriate steps to promptly rectify the grievous wrong done to Arthur Rudolph, and thereafter reconsiders any allegations against him in a manner which actually secures to him all of his rights as a citizen, and which secures these rights to him both in form and in substance.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, as follows:

First, The United States of America is hereby respectfully urged to restore Arthur Rudolph to full citizenship as a recognition of the substantial wrong inflicted upon him.

Second, The United States of America, and specifically the President of the United States, Honorable Ronald Reagan, and the Attorney General of the United States, Honorable Edwin Meese, are hereby respectfully urged to take all appropriate steps to see that allegations against Arthur Rudolph are considered by all elements of our government in a manner calculated to secure to him, in both form and substance, all of the rights of any native born or naturalized citizen.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the President of the United States, and to the Attorney General of the United States, with a sincere request that the position of the governing body of the City of Huntsville be considered by them with respect to Arthur Rudolph.

ADOPTED this the 19th day of September, 1985.

Ernest C. Kaufmann
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 19th day of September, 1985.

Joe Starnes
Mayor of the City of Huntsville,
Alabama

EXHIBIT	<u>33</u>
WIT:	<u>Kaufmann</u>
DATE:	<u>3-1-16</u>
D. INMAN, CSR	

Proceedings of The City Council of the City of Huntsville, Alabama

at its Special Meeting held Thursday (7:00 p.m.) September 19, 1985

The Honorable Council of the City of Huntsville, Alabama, met in a special session at 7:00 p.m. on September 19, 1985, in the Planning Commission Hearing Room of the Municipal Building for the purpose of considering several applications for tax exemption, a transition agreement for the change of command for the Huntsville Police Department, a Resolution urging the United States of America to restore Arthur Rudolph to full citizenship, and such other business as called by Council President Kaufmann and Councilman Jimmy Wall, there being present:

Councilmen: Kaufmann, Glenn, Wall, Mabry and Battle.

Absent: None

President Kaufmann called the meeting to order.

Councilwoman Jane Mabry read and introduced the following Resolution concerning Arthur Rudolph:

RESOLUTION NO. 85-587

WHEREAS, at the invitation of our Government, there came to this community after World War II a group of eminent German scientists who worked long, hard and faithfully in the service of our country; and

WHEREAS, these scientists became citizens of the United States and of this community and distinguished themselves as leaders in the forefront of, first our defense missile developments, and later in our moon landing program; and

WHEREAS, informed people everywhere recognize the eminence of these German-American scientists and understand that the technological leadership we enjoy in our country springs in great measure from the stimulation and inspiration they brought to their adopted country and that the City of Huntsville is what it is today largely because of their work and influence; and

WHEREAS, Arthur Rudolph was a member of this group of German scientists and became an American citizen and a citizen of this community, and made notable contributions, especially as the leader who developed the Saturn V Rocket, without which the United States of America could not have taken our giant leap for mankind; and

WHEREAS, Arthur Rudolph has heretofore relinquished his citizenship in this great republic, the United States of America, under circumstances which indicates that his constitutional rights as a citizen were not respected, and which indicate that in fact such rights were in essence violated by representatives of the United States of America in that he was confronted with accusations concerning matters which allegedly happened more than thirty (30) years ago of an outrageous and stigmatizing nature, without formal charges, and without said charges ever having been reviewed by a detached and impartial Magistrate, or by a Grand Jury; and

WHEREAS, Arthur Rudolph and all citizens of these United States, whether natural born, or naturalized, are entitled to all the rights, privileges and immunities secured to them under the constitution and laws of the county; and

WHEREAS, the procedure followed with respect to the accusations against Dr. Rudolph, in substance, has the effect of establishing in the eyes of uninformed citizens, his guilt by association, and not by legal evidence establishing his guilt beyond a shadow of a doubt and to a moral certainty, a standard of proof to which he was, as a citizen, constitutionally entitled; and

WHEREAS, the Mayor and the City Council of the City of Huntsville believes that the United States of America should take all appropriate steps to promptly rectify the previous wrong done to Arthur Rudolph, and thereafter reconsiders any allegations against him in a manner which actually secures to him all of his rights as a citizen, and which secures these rights to him both in form and in substance.

Proceedings of The City Council of the City of Huntsville, Alabama

00157

at its Special Meeting held Thursday 7:00 p.m., September 19, 1985

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, as follows:

First, the United States of America is hereby respectfully urged to restore Arthur Rudolph to full citizenship as a recognition of the substantial wrong inflicted upon him.

Second, The United States of America, and specifically the President of the United States, Honorable Ronald Reagan, and the Attorney General of the United States, Honorable Edwin Meese, are hereby respectfully urged to take all appropriate steps to see that allegations against Arthur Rudolph are considered by all elements of our government in a manner calculated to secure to him, in both form and substance, all of the rights of any native born or naturalized citizen.

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to the President of the United States, and to the Attorney General of the United States, with a sincere request that the position of the governing body of the City of Huntsville be considered by them with respect to Arthur Rudolph.

ADOPTED this the 19th day of September, 1985.

/s/ Ernest C. Kaufmann, II
President of the City Council
of the City of Huntsville,
Alabama

APPROVED this the 19th day of September, 1985.

/s/ Joe W. Davis
Mayor of the City of
Huntsville, Alabama

Whereupon, Councilwoman Mabry moved for the adoption of the foregoing Resolution, which motion was duly seconded by Councilman Wall and unanimously adopted.

City Attorney Younger reported that six applications for exemption from the ad valorem tax had been submitted by various local industries, together with appropriate Resolutions, and that they were in order. He stipulated that none were for the purchase of replacement equipment.

City Attorney Younger submitted the following application:

APPLICATION FOR AD VALOREM TAX EXEMPTION

To: The City Council
City of Huntsville, Alabama

Comes your petitioner, Engineering and Manufacturing Services, Inc., a corporation, and respectfully petitions the City Council of the City of Huntsville, Alabama, and would show unto the Council as follows:

That Engineering and Manufacturing Services, Inc., is an Alabama Corporation incorporated in Madison County, Alabama, on October 22, 1970; that the location and principal place of business is 216 Blake Street, Huntsville, Alabama, 35805, that said corporation now employs approximately fifty-five (55) people and is in the business of sheet metal fabrication in its own machine shop.

That petitioner has purchased machinery and equipment at a cost amounting to \$590,506.45 during the period October 1, 1984, through August 30, 1985, as shown and described and identified in Exhibit A which is attached hereto and made a part of this application.

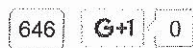


The Chicago

(http://www.chicagotribune.com)

Deported Nazi Scientist Still Has Many Supporters

September 24, 1985 | By Michael Hirsley, Chicago Tribune.



HUNTSVILLE, ALA. — At a special reunion here for former German rocket scientists whose brainpower put Americans on the Moon, two of the team's leaders were conspicuously absent.

One was Wernher von Braun, who died in the U.S. eight years ago as a popular hero. The other was Arthur L.H. Rudolph, who is alive but banished forever from this country.

While fellow German-born scientists basked here last spring, commemorating the 40th anniversary of their arrival in the U.S. to assume a crucial role in America's space program, Rudolph was in Hamburg, West Germany.

He agreed last year to leave this country and surrender his citizenship of 30 years. He left quietly rather than stand trial on U.S. Justice Department charges linking him to persecution of slave laborers at a Nazi rocket factory during World War II. Thousands of the workers died.

The circumstances of Rudolph's departure have left confusion, anger and, in many corners, calls for his vindication in this city of 160,000.

Once a rural cotton town, Huntsville owes its evolution to rocket technology, and therefore to Von Braun's "Old German Team," 50 of whom still live here.

The city's gratitude is unmistakable: Its sprawling civic center is named for Von Braun.

For Rudolph, often honored as chief architect of the mammoth Saturn V rocket that carried Americans to the Moon, public support seems strong.

"I think this man is innocent," said Hugh McInnish, a civilian engineer here in the National Aeronautics and Space Administration's missile program.

"Whatever you can say about him now, you could have said about him 40 years ago."

He referred to the U.S. Army interrogating, then approving security clearances for, 118 German scientists brought here as spoils of World War II. Their backgrounds, such as Nazi affiliations, were ignored.

"We picked Rudolph's brain of everything we could, used him for his talents, rewarded him with high honors and then we turned around and kicked him out," McInnish said. "That is wrong."

Ed Buckbee, director of the Alabama Space and Rocket Center, a Von Braun legacy that has become the state's largest tourist attraction, said:

"If Wernher von Braun were alive today, we wouldn't have a Rudolph case. Von Braun would have called for a congressional investigation, testified to them and told them what happened.

"For the Justice Department to put a technical person like Arthur Rudolph in the same category as (accused Gestapo mass murderer) Klaus Barbie is so distasteful. . . . It's a second-rate cloak-and-dagger effort, in my opinion."

Rudolph's fellow expatriates here fear that the Justice Department's Office of Special Investigations, which probed Rudolph, might come after them next.

``I turned my case over to a lawyer. I cannot make any statements,`` said Dieter Grau, who was assigned briefly at the underground Nazi factory called Mittelwerk.

Rudolph's supporters here have been joined in a letter-writing campaign to Congress and the White House by sympathetic retired Army generals, politicians and officials of NASA, which once awarded Rudolph its highest award, the Distinguished Service Medal. They want Rudolph's name cleared and the Office of Special Investigations put out of business.

Attorney Eli Rosenbaum, now in private practice in New York City, led the office's investigation of Rudolph.

In a phone interview, Rosenbaum said he would welcome a congressional inquiry into Rudolph's case. ``It would take me all of 90 seconds to prove that he did commit crimes against humanity under the Nurnberg principles,``

Rosenbaum said.

Rudolph joined the Nazi Party in 1931. From 1943 to 1945, he was production director of V-2 rockets at Mittelwerk. It was part of the Dora-Nordhausen concentration camp, where an estimated 20,000 prisoners died.

Rudolph's attorney, George Main of Palo Alto, Calif., said he and his client ``will not make statements to the press.`` However, Rudolph has selectively released transcripts of his interviews with the special investigations office, saying that they show he had no power to affect prisoners' health or working conditions at the Nazi factory.

Rosenbaum then released the same transcripts, citing portions that he would use in his 90-second presentation. Among them are questions, with Rudolph's responses, in an Office of Special Investigations interview on Oct. 13, 1982:

``... It seems to me that you must have known that people were dying of disease and starvation and overwork. You must have known that.``

``Yes. I know that people were dying.``

``And one of the reasons, it would seem to me you would know it, was that since you had overall production responsibility, you had to know your manpower strength?``

``Yes.``

``And so you would get reports that would say X number of prisoners died because of starvation or whatever, you knew that? Isn't that, isn't that true? You knew it at the time that people were dying?``

``Well, sure.``

``Because of maltreatment, you knew that?``

(Shrugs shoulders) ``Yup.``

When threatened with a deportation and denaturalization trial because of the investigation, Rudolph, 78, and his wife, Martha, left the U.S. voluntarily. They departed last year from San Jose, Calif., where they had moved from Huntsville in 1974.

``He was isolated from the Huntsville community when he gave up his citizenship. I don't think he realized the strength of support he would have had here in Huntsville,`` said Walt Wiesman, a fellow member of the Old German Team.

Wiesman, 65, a consultant to the Chamber of Commerce and member and former president of the Rotary Club here, said, ``I don't think Huntsville would have let this happen to Arthur Rudolph.``

The Office of Special Investigations has been close-lipped about further Nazi investigations. Director Neil Sher did not return several calls to his Washington office.

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From the Web

([http://www.smarterweblife.com/2073/?](http://www.smarterweblife.com/2073/?hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune)

[hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune](http://www.smarterweblife.com/2073/?hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune))

1 Reason To Do This Every Time You Use Your Computer

SmarterWebLife by SaferWeb

([http://www.smarterweblife.com/2073/?](http://www.smarterweblife.com/2073/?hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune)

[hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune](http://www.smarterweblife.com/2073/?hash=56c5f84faef26&&sid1=tribunedigital-chicagotribune))

(http://www.yourdailydish.com/galleries/celebs-with-surprisingly-high-iqs/?utm_source=Taboola&utm_medium=tribunedigital-chicagotribune&utm_term=ys&utm_content=http%3A%2F%2Fwww.smarterweblife.com%2F2073%2F1-reason-to-do-this-every-time-you-use-your-computer

**The Office of Special Investigations:
Striving for Accountability in the Aftermath of the Holocaust**

DRAFT

by Judy Feigin

Edited by Mark M Richard
Former Deputy Assistant Attorney General
Department of Justice
Criminal Division

December 2008

Chapter Five: Alleged U.S. Support for Entry of Former Nazis into the Country

Introduction

Whether the United States helped persecutors enter the country has implications for our nation in terms of the values it may reflect. Did we knowingly permit major or even minor Nazi persecutors to enter, and if so, what justification was given? At what level within the government was there legal and moral authority to advance such a policy? And were efforts made to conceal such activities from the public in order to advance some perceived higher national good?

OSI did not originally conceive its mission as including the need to answer these questions. But it was inexorably drawn to the issues when subjects argued that they were in the country at the behest, or with the knowledge, of the United States – allegedly in return for information or services supplied to the government during or after the war.

OSI learned that some persecutors were indeed knowingly granted entry. America, which prided itself on being a safe haven for the persecuted, became – in some small measure – a safe haven for persecutors as well. Some may view the government's collaboration with persecutors as a Faustian bargain. Others will see it as a reasonable moral compromise borne of necessity.

1 **Arthur Rudolph – An Honored Rocket Scientist**

2
3 As early as July 1945, the U.S. War Department brought selected German and Austrian
4 scientists to the United States under military custody for “short-term exploitation.” The
5 immediate goal was to have them pursue military research in an effort to shorten the war with
6 Japan. The longer term goal was to keep the Soviet Union and other countries from gaining
7 access to the information and skills of many elite members of the scientific community.

8 With the direct approval of the president of the United States, the program was extended
9 after the close of hostilities:

10 in order to permit the Armed Services of the United States to take advantage of
11 German scientific and technical progress in such fields as guided missiles and
12 aerodynamics, pending formulation of governmental policy to permit legal entry
13 of these and other specialists. . . to pursue research and development projects for
14 both military and civilian agencies.

15
16 Ultimately codenamed “Operation Paperclip,” the program was designed to exclude anyone who
17 was more than a “nominal participant” in Nazi party activities or had been an “active supporter of
18 Nazism or militarism.” Those scientists who wished to settle permanently in the United States
19 could, “at a later date . . . be granted regular status under the immigration laws.”¹

20 Eventually, hundreds of scientists came to the United States under the program. Those
21 seeking permanent residence had to apply for a visa. Once it was issued, they had to leave the
22 country and then “formally” reenter. They generally did so through a Mexican border city.

23 During the war, Arthur Rudolph had served as Operations Director at the massive
24 Mittelwerk underground V-2 rocket manufacturing facility. The factory was part of the Dora-
25 Nordhausen concentration camp complex and used prisoners of war and slave laborers. The
26 latter group included thousands of Czech, Polish, Russian, and French political prisoners, as well

1 as Jewish and Jehovah's Witness inmates.² The laborers, wearing striped concentration camp
2 uniforms, came from Nazi camps including Auschwitz and Buchenwald. They were guarded by
3 armed SS men as well as kapos, and worked 12-hour shifts in cold, damp, and dusty tunnels.
4 Thousands perished, generally from malnutrition, exhaustion and overwork; some were
5 murdered. Until Dora got its own crematorium, the dead were burned at Buchenwald.

6 Rudolph was one of the first Germans to come to the United States under Operation
7 Paperclip; he arrived in December 1945. Although INS knew that he had been a member of the
8 Nazi party and that he had worked at Mittelwerk, there is no indication that they had any
9 information about his use of slave labor.³ On the contrary, there was much to recommend
10 Rudolph. The number two official at the Department of Justice urged INS (an agency then under
11 the jurisdiction of the Justice Department) to admit him. Based on information from the Joint
12 Chiefs of Staff and the Department of the Army, the official opined that failure to do so "would
13 be to the detriment of the national interest."⁴

14 In 1949, Rudolph went to Ciudad Juarez, Mexico, where he received a visa and then
15 formally reentered the United States under the INA. Although the "assistance in persecution"
16 provisions of the DPA and RRA were inapplicable, State Department visa regulations prohibited
17 the entry of an alien "who has been guilty of, or has advocated or acquiesced in, activities or
18 conduct contrary to civilization and human decency on behalf of the Axis countries."

19 Rudolph became a naturalized U.S. citizen in 1954 and worked in the U.S. rocket
20 program until his retirement from NASA in 1969. He was considered the father of the Saturn V
21 rocket which enabled the United States to make its first manned moon landing. At his
22 retirement, NASA awarded him the Distinguished Service Award, its highest honor.

1 OSI learned about Rudolph by chance. Two recently published books attracted Eli
2 Rosenbaum's attention in 1979, shortly after he completed a summer internship at OSI. One was
3 about the Dora camp itself; the other discussed German scientists in the United States rocket
4 program.⁵ The latter had a reminiscence from Rudolph about his dismay at being called from a
5 New Year's Eve party in 1943/1944 to have rocket parts moved. An accompanying picture
6 showed prisoners of war moving the parts.⁶ Rosenbaum knew that the Geneva convention
7 forbids having prisoners of war work on munitions,⁷ and he was particularly offended by
8 Rudolph's taking umbrage at missing a gala party while slave laborers toiled. When he began
9 work at OSI a year later, he persuaded the office to open an investigation of Rudolph.

10 Nineteen people from the Dora-Nordhausen complex had been tried in 1947 before a U.S.
11 military court in Dachau, Germany.⁸ The transcript of that trial, as well as much of the pre-trial
12 investigative material, was on microfilm at the National Archives. The investigative material
13 included a 1947 interview of Arthur Rudolph, who was a potential witness in the case. He
14 discussed attending a hanging of 6 to 12 Dora inmates accused of sabotage, and ordering the
15 laborers under his supervision to bear witness.⁹ The file also contained a diagram, prepared by
16 the 1947 prosecution team, of the underground rocket factory. A dotted line labeled "Path of
17 Overhead Crane Trolley [sic] On Which Men Were Hung" came very close to Rudolph's office.
18 Testimony at the German trial indicated that Rudolph received daily prisoner strength reports
19 which showed the number of prisoners available for work, the number of "new arrivals," and the
20 number of people lost through sickness or death.

21 Armed with this information, OSI twice interviewed Rudolph. He acknowledged
22 knowing that prisoners were dying of disease, overwork, mistreatment and malnutrition. Faced

1 with a diminishing work force, he had requested labor replenishments from the SS, and knew
2 that these replacements came “probably from Buchenwald or somewhere else.” He also allocated
3 the laborers within Mittelwerk.

4 Given Rudolph’s statements, both in 1947 and to OSI, the office recommended filing a
5 denaturalization action alleging that Rudolph should not have been allowed to formally enter and
6 obtain citizenship. OSI argued that as a supervisor, Rudolph was directly responsible for
7 exploiting slave laborers and that this was persecution which violated the State Department
8 regulation barring entry to persons who participated, advocated, or acquiesced in activities or
9 conduct contrary to civilization and human decency. Forcing slave laborers to watch hangings
10 was, according to the prosecution memo, a form of “terror” which further added to the
11 persecution.¹⁰ OSI also recommended that this persecutory activity be the basis for a charge that
12 Rudolph lacked the good moral character essential for citizenship.¹¹

13 Although the U.S. knew when he entered the country that Rudolph had been at
14 Mittelwerk, OSI contended that its own research – including its two interviews of Rudolph –
15 gave a much clearer picture of his true accountability than had been previously known. The
16 office acknowledged that some might argue against prosecuting Rudolph because of his
17 contributions to the space program. OSI countered, in part, that *failure* to bring charges would
18 present more serious concerns. Among other things, it would give credence to the criticism that
19 the office discriminated against non-Germans (*i.e.*, Lithuanian, Ukrainian and Latvian camp
20 guards) who occupied low-level collaborationist positions during the war, never belonged to the
21 Nazi party, and lived quiet lives in the U.S.¹²

22 The Department of Justice authorized filing the case and OSI notified Rudolph. Faced

1 with the prospect of an imminent prosecution, he entered into a written agreement with the
2 government: he would leave the United States and renounce his citizenship. The United States
3 agreed to withhold any announcement of the matter until Rudolph had departed. Rudolph in turn
4 agreed not to contest allegations that, while at Mittelwerk, he participated in the persecution of
5 unarmed civilians because of their race, religion, national origin or political opinion.

6 OSI hoped the agreement would have an impact far beyond the individual case.

7 When other OSI subjects and defendants see that the department is prepared to go
8 after someone of Rudolph's stature and importance (and presumed official
9 "connections"), the depth of the Government's commitment to the Nazi
10 prosecution program will become ever more apparent to them. The fact that a
11 man of Rudolph's obvious sophistication and intelligence was willing to surrender
12 without a fight cannot fail to make a powerful impression upon them and to
13 increase significantly the likelihood of our securing similar settlements in other
14 cases.

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18 The government's willingness (without any "outside" prodding, moreover) to
19 publicly acknowledge – and punish – the complicity in Nazi persecution of such
20 an individual will, I am convinced, significantly bolster the public's confidence in
21 the integrity of the Justice Department's Nazi prosecution program.¹³
22

23 Rudolph went to Germany in October 1984 and forfeited his U.S. citizenship. When
24 questioned by the press, however, he denied any wrongdoing. He maintained that he "tried to
25 help the poor forced laborers to have their conditions improved" and that he renounced his
26 citizenship only to avoid the sensationalism and cost of litigation in light of his health and age.¹⁴
27 Former Congresswoman Holtzman, convinced of the accuracy of OSI's conclusions, asked
28 NASA to rescind the medal earlier awarded Rudolph. The agency refused to do so.¹⁵

29 As recounted elsewhere in this report,¹⁶ the West Germans did not initially welcome
30 Rudolph's return; they were angered that they had not been forewarned by OSI. Nonetheless,

1 they began an investigation of their own (aided by material provided by OSI) to determine
2 whether Rudolph was subject to criminal prosecution for murder, the only relevant crime not
3 barred by their statute of limitations. In the end, no charges were filed, and Germany restored the
4 citizenship Rudolph had renounced when he became a naturalized United States citizen.¹⁷

5 In 1989, Rudolph went to the U.S. Consulate in Hamburg, Germany and applied for a
6 visa to reenter the United States. His request was denied. The following year, the Department of
7 Justice learned that Rudolph was planning to fly to Canada.¹⁸ OSI alerted the Canadians, who
8 briefly detained Rudolph when he arrived, then released him on bond pending deportation
9 proceedings. The case received extensive publicity in the United States, as Rudolph's cause was
10 championed by Ohio Congressman James Traficant.¹⁹

11 Rudolph testified at the Canadian hearing, claiming he had been shocked to learn that
12 concentration camp inmates would be used as a source of labor at Mittelwerk. One day after this
13 testimony, a historian at the Smithsonian Institution's National Air and Space Museum notified
14 OSI of two documents he had found in Germany. They showed that Rudolph was not simply
15 aware of the use of slave laborers at Dora; he had in fact worked to institute that program.

16 The first document was an April 1943 report, signed by Rudolph, stating that he had
17 recently visited a factory which utilized concentration camp inmates as forced laborers under SS
18 guard; Rudolph recommended that the same system be used in the rocket program. The second
19 was minutes of a June 1943 meeting attended by Rudolph in which he was told to work with the
20 camp commandant to implement such a program.²⁰ OSI obtained copies of both documents and
21 forwarded them to the Canadian authorities. The Canadian court concluded that Rudolph "called
22 for, made use of and directed" slave laborers who suffered "indescribably brutal" conditions.²¹

1 Rudolph was sent back to Germany in 1992.

2 Shortly thereafter, he filed suit against the Department of Justice, the Attorney General,
3 the Secretary of State and four OSI attorneys who had been involved in his case.²² He sought to
4 have his settlement agreement rescinded and to be granted readmission into the United States.
5 He claimed that the government had misled him into believing that it had sufficient evidence to
6 file a denaturalization suit when in fact a key witness had actually exculpated him in a
7 declaration under oath. His suit was dismissed on the ground that it was barred by the doctrine of
8 sovereign immunity.²³ He filed another suit, this time claiming that he was wrongly denied a
9 visa to enter the United States in 1989 and the right to enter Canada in 1990. He asserted also
10 that his civil rights had been violated during his OSI interviews because some of the questions
11 had been "incriminatory, impermissibly suggestive and argumentative" and he had not been
12 advised of his right to, or need for, an attorney prior to the second interview. These claims too
13 were rejected by the court, some because there was no basis for them under the law and others
14 because they were barred by sovereign immunity.²⁴

15 Rudolph died in Germany in 1996. He was the only Paperclip scientist prosecuted by
16 OSI.²⁵ His case raises the question of whether persons involved in persecution on behalf of the
17 Nazis can ever expiate their past. Patrick Buchanan, often an OSI critic,²⁶ believed that the
18 contributions Rudolph made to the United States space program earned him the right to remain in
19 the country.²⁷ Ray Cline, a former Deputy Director of the CIA, expressed a similar view.

20 I am inclined to think he should have been recognized as having paid
21 whatever debt to society his World War II activities deserved because of his very
22 deliberate effort to contribute his science and technology, which was of great
23 genius to the United States and to the strategic defenses of this country in the
24 troubled period after World War II.²⁸

1 OSI saw it differently.

2 [D]eciding to refrain from seeking Rudolph's denaturalization simply because of
3 the work he performed for our government would, it can be argued, amount to a
4 desecration of the memories of Albert Einstein, Enrico Fermi, Niels Bohr, and
5 other leading scientists who made at least equally substantial contributions to our
6 nation – but who did so either after being forced by the Nazis to leave Germany or
7 after voluntarily risking their lives to flee the introduction of Hitler's racial
8 policies in Europe.²⁹

9
10 However one views Rudolph's life work, there is no doubt that camp inmates were
11 victimized by a brutal system of which he was a part. In 1990, the Air and Space Museum of the
12 Smithsonian Institution opened a permanent exhibit on V-2 rockets. One of the exhibit panels
13 reads:

14 Concentration camp prisoners built V-2s under unbearably harsh working
15 conditions. Thousands perished in the process.
16

1. Aug. 30, 1946 Memorandum for the President from Acting Secretary of State Dean Acheson, re "Interim Exploitation of German and American Specialists in the United States," along with Enclosure, App. A, Annex to App. A and App. B. Operation Paperclip was approved by President Truman on Sept. 3, 1946.
2. The percentage of Jews at Mittelwerk was relatively low.
3. His "Statement of Personal History" (date unknown) explained why he had joined the Nazi party. As he saw it, the vast unemployment in Germany caused a proliferation of socialist and communist parties which could take control of the government. He joined the Nazi party "to help, I believed, in the preservation of the western culture."
4. Feb. 28, 1949 memorandum from Peyton Ford, The Assistant to the Attorney General to Commissioner, Immigration and Naturalization re "German Scientists Program Immigration of Arthur Louis Hugo Rudolph." (The position of Deputy Attorney General, the current number two position, was not officially established until 1950. Prior to then, The Assistant to the Attorney General was second in command.)
5. Jean Michel, *Dora: The Nazi Concentration Camp Where Modern Space Technology Was Born and 30,000 Prisoners Died* (Holt, Rinehart & Winston); Frederick I. Ordway, *The Rocket Team from the V-2 to the Saturn Moon Rocket - The Inside Story of How a Small Group of Engineers Changed World History* (Thomas Y. Crowell).
6. The picture was listed as coming from the personal collection of Werner von Braun who came to the United States as part of Operation Paperclip in 1945. Von Braun went on to become the first Director of the Marshall Space Flight Center, serving from 1960 to 1970. He died in 1977, before OSI's founding.
7. Geneva Convention, ch. 3, Art. 31.
8. One of the defendants, George Rickhey, had come to the U.S. under Operation Paperclip. He was arrested in Ohio and sent back to Germany to face trial. Fifteen of the defendants were convicted of various crimes; Rickhey was one of the four acquitted.
9. June 2, 1947 interview of Rudolph by Maj. Eugene Smith of the U.S. Army Air Force, p. 22.
10. Apr. 21, 1983 Prosecution Memorandum to DAAG Richard from Director Sher.
11. OSI did not recommend charging Rudolph with either misrepresentation or concealment, although most OSI cases at that time had one or both as part of the filing. The office did not want to give Rudolph a "triable issue" as to whether the government was aware, prior to his entry, of his wartime activities. Prosecution memorandum, pp. 7-8.
12. See p. 533.

13. Dec. 2, 1983 memo to DAAG Richard from Director Sher re "Agreement in Rudolph Case."

14. "Ex-Nazi Denies Role in Deaths of Slave Laborers," by James Markham, *The New York Times*, Oct. 21, 1984. See also, "'Coerced' to Leave U.S., Moon Rocket Designer Says," by Uli Schmetzer, *The Chicago Tribune*, Oct. 22, 1984. Director Sher responded to the *Chicago Tribune* article in a letter to the editor, printed on Nov. 15, 1984.

15. "NASA Refuses to Rescind Award," *The Washington Post*, Feb. 12, 1985.

16. See pp. 432-433.

17. In order to prove murder, Germany would have to establish "base motive" - a mental state (such as racial hatred) at the time of the offense. Germany lacked proof that Rudolph had knowledge of the executions beforehand. July 30, 1990 memorandum to Rosenbaum from Peter Black, Chief Historian, OSI re "West German Investigation of Arthur L.H. Rudolph."

18. The Department's Office of Public Affairs received an inquiry from a reporter about a plan by Rudolph to travel to Canada to meet with Congressman James Traficant. June 29, 1990 memo from Director Sher to DAAG Richard re "Possible Attempt by Arthur Rudolph to Enter USA."

OSI believed the motivation for Rudolph's trip was to gain entry into the United States. June 1990 letter from Deputy Director Rosenbaum to Supt. Donald Maas, and Inspector Robert Goguen, RCMP War Crimes Investigation Section. Others saw it as Rudolph seeking a platform to make his case before the Canadians, with the hope of affecting American politicians and public opinion. "War-Crime Charges Haunt Scientist," by John F. Burns, *The New York Times*, Aug. 6, 1990.

19. See e.g., "War-Crime Charges Haunt Scientist," *supra*, n. 18; "Congressman Takes Up Case of Scientist Accused of Nazi Brutality," *The Associated Press*, May 2, 1990; "Representative James Traficant," a profile on the CBS news magazine *60 Minutes*, Nov. 11, 1990; "Ohio Congressman Says U.S. Pressured German Scientist to Leave Country," *AP*, May 1, 1990; "Congressman Defends Bid by Scientist for Citizenship," by Paul Moloney, *The Toronto Star*, July 5, 1990; "Scientist Accused of War Crimes Deserves Hearing," by John Bonfatti, *AP*, July 5, 1990; "Traficant Implores Rudolph to Return," *The Huntsville News*, May 14, 1990.

At a dinner honoring Rudolph, Traficant opined that "a powerful Jewish lobby" had pressured the Justice Department to deport Rudolph. "Polyester Cowboy' Defends Old Nazi," *American Political Network, Inc.*, May 16, 1990. Traficant believed that Rudolph left the U.S. only because OSI played on his ill health and his fear of losing his NASA retirement benefits. "Traficant Supports Rudolph," by Mike Paludan, *The Huntsville Times*, May 13, 1990.

Traficant's opposition to OSI is discussed further on pp. 160, 543, 553, notes 56-58.

20. Aug. 3, 1990 memorandum from Rosenbaum to the Rudolph file re "Documents on Rudolph Found at Freiburg by Dr. Michael Neufeld." The documents, as catalogued in Freiburg, are RH8/v.1210, pp. 105-06, 136-37.

21. *Rudolph v. Minister of Employment and Immigration*, Federal Court of Appeal, Ottawa, Canada, No. A-403-91 (May 1, 1992), p. 2.

22. The attorneys were Allan Ryan, Neal Sher, Eli Rosenbaum and Bruce Einhorn. The first three conducted the initial OSI interview of Rudolph; Sher and Rosenbaum did the second.

23. *Rudolph v. U.S. Dep't of Justice, et al.*, No. C 92-20116 JW (N.D. CA. Feb. 10, 1993).

24. *Rudolph v. U.S. Dep't of Justice, et al.*, No. C 94-20411 JW (N.D.CA., Apr. 12, 1995).

25. Others were investigated but not prosecuted, either because the government lacked sufficient evidence, the men were too ill, or they died before OSI's investigation was complete. After the Rudolph case, and likely as a consequence of it, none of the rocket scientists would submit to an interview with OSI.

In 1993, the WJC brought public pressure to bear on Ohio State University and Brooks Air Force Base in San Antonio, each of which had honored Hubertus Strughold, a Paperclip scientist who had been a leader in the field of aerospace medicine. (Strughold died in 1987.) As a result of the WJC pressure, Ohio State removed reference to Strughold from a stained glass mural commemorating leaders in the history of medicine. "Alleged Nazi's Name on Library Stirs Protest," by Mark Smith, *The Houston Chronicle*, Oct. 29, 1993. In 1995, after Air Force personnel reviewed material at OSI, the Strughold Aeromedical Library at Brooks Air Force Base was renamed. "Name of Scientist Nixed from Library Due to Nazi Past," by Alissa Kaplan, *JTA*, Oct. 6, 1995. Eleven years later, pressure from the ADL led the New Mexico Museum of Space History to remove Strughold's name from its Hall of Fame. "Former Nazi Removed from Space Hall of Fame," *The San Jose Mercury News*, May 18, 2006.

In 2003, the Space Medicine Branch of the Aerospace Medical Association contacted OSI about Strughold. The association awarded a prize in his name and had recently been asked to rename the award. In order to evaluate the request, they wanted accurate information about Strughold's past. OSI advised that Strughold had been the subject of "a promising investigation in the early 1980s that had to be terminated after it was learned that he was no longer mentally and physically competent." The basis of the investigation was Strughold's apparent support of the infamous Dachau experiments, involving immersion of live subjects into freezing water for prolonged periods. Many of the subjects died. Mar. 23, 2004 letter to Dr. Denise Baisden from OSI Chief Historian Elizabeth White. As of this writing, the prize is still awarded in Strughold's name.

26. *See e.g.*, pp. 95, n.1, 174, n. 46, 277, 279-281, 378, 552, notes 47 and 53.

27. "Of Nazis and NASA: The Case of Arthur Rudolph," *CrossFire*, July 11, 1990.

28. ABC News *Nightline*, Oct. 18, 1984.

29. Prosecution Memorandum, p. 45.

COURT DISMISSES SUIT BY AN EX-NAZI TO INVALIDATE ACCORD TO LEAVE U.S.

WASHINGTON, Feb. 21 (JTA) -- A federal court has dismissed a suit filed by ex-Nazi scientist Arthur Rudolph seeking to invalidate a 9-year-old agreement in which Rudolph agreed to permanently leave the United States in exchange for avoiding criminal prosecution for war crimes.

A federal judge in San Jose, Calif., dismissed the suit filed by Rudolph, a manager of a German V-2 missile production facility during World War II, the Department of Justice announced last week.

Rudolph, who sought to clear his name by filing the suit, argued that the 1983 agreement should be rescinded because it was made under duress and contained elements of fraud.

Rudolph, who had been employed by the U.S. Army and later by NASA as manager of the Saturn V rocket program, was also required to renounce his U.S. citizenship as part of the deal. Rudolph had become a naturalized citizen after the war.

At the time of the 1983 agreement, the Department of Justice's Office of Special Investigations, a special unit of the Criminal Division set up to deal with Nazi war crimes, was preparing charges against him.

U.S. District Judge James Ware dismissed on Feb. 9 Rudolph's suit for lack of jurisdiction, and cited at length a Canadian court finding that Rudolph "as production director, admittedly called for, made use of, and directed forced labor by foreign prisoners in the production of the V-2 rocket at Mittelwerk in the years 1943-1945. The conditions under which the prisoners worked were indescribably brutal."



CHRISTOPHER TO ARRIVE IN ISRAEL WITH NEW DEMANDS ON DEPORTEES

By Gil Sedan

JERUSALEM, Feb. 21 (JTA) -- Israel is expecting to come under pressure to make further concessions on the deportation crisis, following U.S. Secretary of State Warren Christopher's visit to Arab capitals, where leaders told him Palestinians would boycott the peace talks unless the issue is resolved.

Israeli officials originally believed that a compromise deal worked out with Washington regarding the 415 Palestinians deported by Israel to Lebanon in December had taken the issue off the international agenda and paved the way for a resumption of the peace talks.

However, according to reports received from the Christopher shuttle, both Egyptian President Hosni Mubarak and Syrian President Hafez Assad indicated the Palestinians would not return to the talks unless Israel made further concessions.

Israel has offered to take back immediately 101 deportees and the rest by the end of the year, but the Palestinians have rejected the deal.

Mubarak reportedly demanded three concessions: that Israel announce officially it would not resort again to deportations as a punitive measure; that it would accelerate the appeal process by which deportees have an opportunity to get their deportation orders canceled; and that the deportees be allowed to stay in the Israeli-controlled security zone of southern Lebanon until they return home.

Egypt reportedly suggested a third of the deportees be returned immediately, another third be returned in April and the rest by June.

No Official Change In Policy

Christopher, who was to arrive in Jerusalem on Monday, was not expected to exert direct pressure on Israel for further concessions, so as not to retreat from his agreement with Prime Minister Yitzhak Rabin.

However, it was expected here that he would convey to Israel the feeling in the Arab world that without further concessions, progress in the peace talks would be slow and the Palestinians would not show up at the negotiating table.

At the end of his visit to Jordan over the weekend, Christopher said Israel should find "soon" a way of allowing the return of most of the deportees.

Officially, there has been no further change in the Israeli position on the deportees since Rabin made his compromise offer. However, Israel is reportedly weighing several gestures of good will toward the Palestinians in the territories.

Such moves might include cutting terminal fees at the Allenby Bridge, used by Palestinian families crossing between Israel and Jordan, as well as new economic policies to facilitate Palestinian enterprises.

Israeli leaders said they did not expect any progress in the peace process before Rabin visits the United States next month and meets with President Clinton.

Mubarak has also been invited to meet with Clinton, but according to reports from Jordan, an invitation was not extended to King Hussein.

NEWS ANALYSIS: PALESTINIAN LEADERS TAKING CUES FROM THE STREET ABOUT PEACE TALKS

By Gil Sedan

JERUSALEM, Feb. 21 (JTA) -- Palestinians in the administered territories are awaiting the arrival of U.S. Secretary of State Warren Christopher here Monday in their all-too-familiar position: sitting on the fence.

If it were up to the Palestine Liberation Organization and its representatives in the territories, the negotiators would catch the earliest plane to Washington and return to the Middle East peace talks.

But Palestinians "in the street" are no longer solidly behind PLO-directed leaders such as Faisal Husseini and Hanan Ashrawi.

The last time Palestinian politics was firmly within the control of these secular nationalists was in November 1991, after the peace conference in Madrid.

Since then, ordinary Palestinians have drifted away from their traditional leadership, toward the extremes. The shift has meant a rise in popularity and strength for the Islamic fundamentalist movement, led by the Hamas organization.

There is no love lost between the secular and the fundamentalist Palestinian leaders in the territories. But when Israel deported 415 Hamas activists and supporters to Lebanon in December, the PLO and its affiliated leadership in the territories were forced to show complete solidarity with them. The "street" demanded it.

As long as the deportees had complete support in the international arena and the United Nations was threatening sanctions, there was no Palestinian dilemma.

Pressure From Egypt, Syria

But now that the United Nations has, in effect, endorsed Israel's compromise offer to accept back 101 deportees, Palestinian leaders face a difficult question: whether or not to resume the peace process without having achieved full reversal of the deportations.

Their Arab brethren, Egypt in particular but also Syria, are pressing the Palestinians to join the peace bandwagon.

In a series of intensive diplomatic consultations among Arab leaders since the beginning of the month, the Palestinians received a clear message: Now that Israel owed the new American administration for helping it in the deportees crisis, it might be easier to squeeze concessions out of Israel.

The Palestinians have again been warned not to miss an opportunity.

But the "street" seems to want nothing less than all of the deportees returned before the Palestinian delegation can rejoin the peace talks. And the leaders have been forced to follow the will of their people.

"We are finished if we do it," said Radi Jarai, a member of the advisory board to the Palestinian delegation.

Ironically, even the leader of the deportees in Lebanon, Dr. Abdul Aziz Gbantissi, made a moderate statement recently.

Welcoming a statement by Protestants Exhibit 15, p. 2

Shimon Peres that the deportations were not "a policy, but rather an exception to a policy," Ghanitissi went on record as saying that if Israel "denounced" the expulsions, the deportees would "re-evaluate" their stand.

Settling For 20 Percent

Israel, of course, did not denounce a move backed by nearly the entire Cabinet. But Ghanitissi's statement was seen as an indication that the deportees themselves are ready for a settlement that would not necessarily return all of them home immediately.

But the "street" apparently speaks even stronger than the deportees themselves.

"The peace process will reach the end of the road now" if a U.N. Security Council resolution insisting on the deportees' return "is not implemented immediately," Ghassan al-Khatib, a member of the Palestinian peace delegation, wrote in the East Jerusalem daily Al-Kuds.

"If we accept the return of 101 deportees, which amounts to 20 percent of the total number of deportees," delegation member Saeb Erekat said at a rally in eastern Jerusalem, "they will ask us in the future to settle for 20 percent of Resolution 242," the U.N. document outlining the land-for-peace principle.

Following the Security Council's Feb. 12 decision to strike the deportation issue from its agenda, Nasser al-Kidwa, the PLO representative to the United Nations, ruled out continued peace talks unless the deportees were all returned home.

Time is running out for the Palestinians. As Christopher headed for the Middle East last week, Prime Minister Yitzhak Rabin reiterated that Israel is ready for a territorial compromise on the Golan Heights, a clear signal to the Palestinians that there are other partners to the peace talks.

For the time being, the Palestinian leaders are refusing to read that signal. They want to join the peace process but are afraid of being ambushed by the growing support for the Moslem fundamentalists.

And so they sit on the fence, fearing disaster on either side. It will be Christopher's job to coax them down -- on the right side.

U.S. SAID TO HAVE PRESSED SYRIA ON HALT IN TRAVEL FOR JEWS THERE By Larry Yudelson

NEW YORK, Feb. 21 (JTA) -- Syria's halt in granting travel visas to its Jewish community was expected to have been discussed in the high-level U.S.-Syrian meetings held in Damascus over the weekend, advocates for Syrian Jewry say.

The activists say that both U.S. Secretary of State Warren Christopher and Edward Djerejian, a former ambassador to Syria who is now the assistant secretary of state responsible for the Middle East, had been approached on the matter.

Since Oct. 20, Syria has almost entirely stopped allowing Jews to leave the country, reversing a 6-month-old policy of permitting free travel abroad for Jews.

"About three a week come out, sporadically, but they're up to the old trick of keeping family members behind," said Seymour Reich, president of the American Zionist Movement and head of the Task Force on Syrian Jewry of the Conference of Presidents of Major American Jewish Organizations.

Reich and others say that behind Syrian President Hafez Assad's election-eve reversal of

the free travel policy was a desire to renegotiate the terms of the deal he had achieved with then-President Bush. The free travel policy was first announced through the White House last April.

On the campaign trail, Bill Clinton took a tougher line against Syria than did the Bush administration. Christopher's Middle East visit is the first chance for the new administration and Assad to size each other up. It is a pivotal moment, therefore, for the 1,450 Jews remaining in Syria, of whom 1,000 seek travel visas.

Activists are deliberately keeping a low profile on the issue, "to give Christopher an opportunity," said Reich.

They also want to avoid being seen as "bashing" Syria.

In addition to the expected representations from the State Department, the campaign is being fought through Congress, where lawmakers are being asked to make one-minute statements from the floor of the House of Representatives on behalf of Syrian Jews and convey their concerns to the Syrian ambassador.

"We want to be clear to Assad that we will not forget what he promised," said Abraham Bayer, a member of the task force and director of international concerns for the National Jewish Community Relations Advisory Council.

BUSH MAY HAVE HAD POLITICAL MOTIVE IN REJECTING CLEMENCY FOR POLLARD By Larry Yudelson

NEW YORK, Feb. 21 (JTA) -- An advocate for Jonathan Pollard is accusing former President George Bush of "vindictiveness and meanness of spirit" for denying the convicted spy's appeal for clemency just one day before leaving office.

"I was shocked to see the request was rejected," said Seymour Reich, "because we had been led to believe that if the president could not approve it, he would not act on the papers but let his successor act on it."

According to Reich, who is president of the American Zionist Movement, the commutation application has been filed again with the Clinton administration.

The Jan. 19 denial of commutation followed the requests of several prominent Republican Jews for Bush to consider commutation. Given "the requests by people he knows and respects, for him to have denied the application is incomprehensible," said Reich.

But Reich thinks he may have evidence for a motivation in a letter Neil Bush, the president's son, sent in response to an appeal on Pollard's behalf.

The president's son explained that "I have had a policy of not lobbying Dad, a policy I have managed to uphold (for) three years, 11 1/2 months."

Neil Bush went on to write: "Keep up your effective advocacy. Maybe the next guy in the White House will reward the many Jewish organizations that supported him with the commutation you request of Dad."

This, said Reich, appeared disturbingly in keeping with a remark allegedly made by former Secretary of State James Baker, who was reported to have said, though he denies it, "Fuck the Jews, they don't vote for us anyway."

In November, at least 80 percent of the Jewish voters chose Bill Clinton, while George Bush received the lowest Jewish support of any Republican candidate in more than a decade.

LAU, BAKSHI-DORON ELECTED CHIEF RABBIS AFTER BRUISING CAMPAIGN FOR RABBINATE

By David Landau

JERUSALEM, Feb. 21 (JTA) -- After a campaign marred by mudslinging and allegations of romantic misconduct, the nation's two new chief rabbis were elected Sunday for 10-year terms.

A 150-member council, made up of both rabbis and secular political leaders, elected Rabbi Yisrael Meir Lau of Tel Aviv as Ashkenazic chief rabbi and Rabbi Eliahu Bakshi-Doron of Haifa as Sephardic chief rabbi.

Lau's victory to succeed Rabbi Avraham Shapira as Ashkenazic chief rabbi came following newspaper stories claiming Lau had engaged in improper relationships with women other than his wife.

Lau, a father of eight and a child Holocaust survivor, adamantly denied the womanizing allegations. He even filed a libel suit against one woman who claimed he had once tried to kiss her more than 10 years ago, when he was chief rabbi of Netanya, a position he held for nine years.

Lau was elected Tel Aviv Ashkenazic rabbi in August 1988, by a panel that for the first time included four women members.

The unprecedented dirty campaign that culminated Sunday prompted some Israelis to renew their calls to altogether abolish the state-sponsored institution of the Chief Rabbinate.

In the elections, Lau won 71 of the 142 valid votes cast in the battle for the Ashkenazic post and Bakshi-Doron 82 for the Sephardic one.

Rabbi Simcha Kook of Rehovot took second place with 46 votes and Rabbi Shear Yashuv Cohen of Haifa garnered 25 votes.

In the contest for the Sephardic post, Bakshi-Doron won 82 votes, with Rabbi Haim David Halevi of Tel Aviv coming second with 37 ballots and Rabbi Reuven Abergil of Beersheba collecting 24 votes.

The full 150-member electoral college comprises 80 rabbis and rabbinical court judges, and 70 political and public figures, including mayors, chairmen of religious councils and Knesset members.

Vote Seen As Triumph For Shas

Leaders of Shas, the Orthodox Sephardic party, greeted Bakshi-Doron's triumph as a major achievement for their party.

After the results were announced, Bakshi-Doron paid his respects to his aged mother and then led a jubilant crowd to the Jerusalem home of Rabbi Ovadia Yosef, spiritual mentor of the Shas party.

Bakshi-Doron regards himself as one of the most prominent and loyal disciples of Yosef, who himself served as Sephardic chief rabbi from 1973 to 1983.

Within Shas, Bakshi-Doron's victory is seen as a sort of victory by Yosef against the present incumbent, Rabbi Mordechai Eliahu, and against the politicians who pushed for the law, passed in the early 1980s, that limited the tenure of the chief rabbis to a single term of 10 years.

The law brought to an end Yosef's own term of office. Until then, chief rabbis could be re-elected, and generally were.

Among the Labor Party, key party figures said they now expected Shas Knesset members to line up solidly behind the Labor Party candidate for president of the state, Ezer Weizman, in exchange for the support Labor members of the

electoral college had given Bakshi-Doron in the chief rabbinate elections.

Prime Minister Yitzhak Rabin met with the Labor members of the electoral college last week and instructed them to vote for Bakshi-Doron.

"I don't know much about rabbis. But I do know about keeping agreements with partners," Rabin said.

As for Lau, the new Ashkenazic chief rabbi said in his victory address that he "forgave and absolved everyone" involved in the mudslinging against him during the election campaign.

ISRAELI ENVIRONMENTALISTS HAIL U.S. MOVE TO SCRAP VOA PROJECT

By Cynthia Mann

JERUSALEM, Feb. 21 (JTA) -- Environmentalists here are rejoicing over the Clinton administration's decision to scrap plans to build a Voice of America relay station in the environmentally sensitive Arava region of the Negev desert.

The Society for the Protection of Nature in Israel, which called a news conference Sunday to savor the news, termed its campaign against the station "the most difficult and drawn-out battle" in its history. It said the campaign's successful end is "a just reward for our extensive efforts."

But Yoav Sagi, chairman of the society, acknowledged there were several factors at play culminating in the decision, which was leaked from Washington but not formally announced.

The \$400 million projected cost of the relay station simply made no sense at a time of U.S. budgetary constraint, said Sagi, especially in light of changing geopolitics.

The station was intended to enhance U.S. broadcasts to the Soviet bloc as an integral part of Cold War strategy. The end of the Cold War has eliminated the project's justification, opponents had argued.

The agreement to build the station was signed between the U.S. and Israeli governments in 1987 and had been heavily promoted by the Board for International Broadcasting, headed by Malcolm Forbes Jr. Advocates said it would have created 600 jobs.

From the start, it was feared the transmitters would endanger what is part of a major bird migration route between Europe and Africa. Environmentalists were also upset that the plans called for the elimination of a nature reserve so that an air force training base could be relocated.

Arava residents and the nature society appealed to the High Court of Justice, which set a precedent by ruling in July 1991 that environmental impact studies of the project had to be considered before any decision could be made. Subsequent studies reinforced their concerns.

The society had spearheaded an international campaign against the project, lobbying the Knesset and the U.S. Congress and in the process enlisting the help of ornithologists and other conservationists worldwide.

It had stepped up its efforts in recent weeks, calling on President Clinton to re-evaluate the project and its "unwarranted damage to the environment."

The current Labor government was also decidedly less enthusiastic about the project than its Likud predecessor.

Israel's Environment Ministry had no comment on the U.S. move and referred inquiries to Sagi's organization, with whom it has worked closely on the controversial plan. Protestants' Exhibit 15, p. 4

**ADL CATEGORICALLY REJECTS CHARGES
IT'S BEEN SPYING ON ARAB AMERICANS**

By Deborah Kalb
States News Service

WASHINGTON, Feb. 21 (JTA) -- The Anti-Defamation League has dismissed as "rubbish" charges leveled by the Arab American Institute that, in conjunction with U.S. law enforcement agencies, it has been involved for years in conducting surveillance of Arab Americans.

The Arab American Institute released a report titled "The ADL and Arab Americans: A Disturbing Relationship," at a news conference here last week, and ADL was quick to respond.

"This so-called 'study' plays fast and loose with facts in an attempt to tar ADL with a series of alleged civil rights violations against Arab Americans over the past 20 years," ADL National Chairman Melvin Salberg and ADL National Director Abraham Foxman said in a statement.

At the news conference, James Zogby, president of the Arab American Institute, and Khalil Jahshan, executive director of the National Association of Arab Americans, discussed their view that ADL has been involved in a series of incidents targeting the Arab American community over the years.

The charges and denials were played out against a backdrop of reports that the U.S. government has stepped up investigations of American supporters of the Islamic fundamentalist Hamas movement.

Hamas, which is to receive its own listing for the first time in this year's State Department report on global terrorism, has received worldwide attention recently following Israel's deportation of 415 Palestinians, many of whom have ties to the group, and Israel's arrest of two Palestinian Americans accused of funneling money to Hamas activists.

Israeli officials have suggested that the Hamas movement is now being directed by leaders in the United States and Britain.

Complaints About 'Hamas Hysteria'

The Arab American leaders cited the complicated case of a former San Francisco police officer who allegedly spied on Arab Americans and gave information to ADL.

The San Francisco Examiner reported recently that information on one of the men detained in Israel had turned up in the case. The Examiner also reported that ADL denied the man's name was in its files.

"ADL has played a leadership role in promoting civil rights and improved human relations among all Americans over the past 80 years," Salberg and Foxman said in their statement.

"We categorically reject any implication that ADL has acted improperly in pursuing its mission of combatting anti-Semitism, bigotry, extremism, terrorism and anti-Israel propaganda in America," they said.

The ADL statement concluded by saying, "This is not the first time that subjects of ADL information reports have attempted to undermine the credibility of the league through the use of smear and innuendo. We will not be deterred from exercising our legitimate and constitutional rights."

George Shadroui, director of communications for the Arab American Institute, said that at the news conference, Arab American leaders asked why it is seen as illegitimate for Arab Americans

to raise money for Arab causes, when it is acceptable for Jewish Americans to raise money for Jewish causes.

Shadroui said he is concerned that with the current "Hamas hysteria," a pattern will be repeated in which Arab Americans are all "tainted" with the terrorist label. "It's not fair," he said.

The Arab American Institute's report called on ADL and other Jewish groups to "work with Arab Americans, rather than defame and demonize our people and institutions."

**COURT DISMISSES SUIT BY AN EX-NAZI
TO INVALIDATE ACCORD TO LEAVE U.S.**

WASHINGTON, Feb. 21 (JTA) -- A federal court has dismissed a suit filed by ex-Nazi scientist Arthur Rudolph seeking to invalidate a 9-year-old agreement in which Rudolph agreed to permanently leave the United States in exchange for avoiding criminal prosecution for war crimes.

A federal judge in San Jose, Calif., dismissed the suit filed by Rudolph, a manager of a German V-2 missile production facility during World War II, the Department of Justice announced last week.

Rudolph, who sought to clear his name by filing the suit, argued that the 1983 agreement should be rescinded because it was made under duress and contained elements of fraud.

Rudolph, who had been employed by the U.S. Army and later by NASA as manager of the Saturn V rocket program, was also required to renounce his U.S. citizenship as part of the deal. Rudolph had become a naturalized citizen after the war.

At the time of the 1983 agreement, the Department of Justice's Office of Special Investigations, a special unit of the Criminal Division set up to deal with Nazi war crimes, was preparing charges against him.

U.S. District Judge James Ware dismissed on Feb. 9 Rudolph's suit for lack of jurisdiction, and cited at length a Canadian court finding that Rudolph "as production director, admittedly called for, made use of, and directed forced labor by foreign prisoners in the production of the V-2 rocket at Mittelwerk in the years 1943-1945. The conditions under which the prisoners worked were indescribably brutal."

CHRISTIANS AND JEWS MEET IN SLOVAKIA

By Josef Klansky

BRATISLAVA, Slovakia (JTA) -- Opening a new chapter of coexistence and understanding between Slovakia's Christians and Jews was the primary goal of an international conference held here in the capital of the 7-week-old Slovak republic.

Organized by B'nai B'rith and a Christian group, the Hanna Seidel Foundation of Germany, the conference was attended by high-ranking government representatives, clergy and scholars.

Deputy Prime Minister Roman Kovac, Foreign Minister Milan Kuzcko and the chairman of the Slovak parliament, Ivan Gasparovic, called for a new ethics in interreligious relations.

Most of the country's Catholic bishops did not show up, and some blamed Cardinal Jan Chrysostom Korce for allegedly dissuading them from attending. Nevertheless, the conference was said by its Christian and Jewish organizers to have been a success.