December 19, 2022

The Honorable Ali Tarquino-Morris,
Division Chief, Municipal and Residual Waste
PA Department of Environmental Protection
14th Floor Rachel Carson State Office Building
PO Box 8472
Harrisburg PA 17105-8472

On December 15, 2022, the Department of Environmental Protection fined John A. Joseph $600,000 for illegally dumping drill cuttings in five locations in Fayette County over a four-year period from 2012 through 2015.

Today, the Better Path Coalition submitted a Right-to-Know request of the Department after reviewing the consent agreement executed on December 15. We are submitting this letter to request responses to questions that might not be addressed in the Right-to-Know response. Our questions are in italics.

Last Monday, three days before the consent agreement, we released an update of our Moratorium report that looked at documents we received via a Right-to-Know request. The documents were related to the Coproduct Determination reports requested from eight drillers who used the program to justify road spreading of waste in 2021.

The consent agreement with Mr. Joseph states that some of the waste his company trucked to Fayette County from West Virginia was used as fill. It other words, it was handled as a product, not a waste.

Please provide any documentation indicating how much Joseph was paid for his waste to be used as fill.

Please provide Joseph’s coproduct determination report he produced before selling or giving away his waste as a product, rather than disposing of it as waste.

The Right-to-Know response regarding road spreading contained letters from the Bureau of Waste Management dated April 28 to Pennfield Energy and August 8 to the other seven drillers in the request. The letters states, “This letter is neither an order nor any other final action of the DEP on your coproduct determination. It neither imposes nor waives any action available to the Department under any of its statutes.”

Please explain why drillers who have illegally spread more than 3.2 million gallons of waste on unpaved roads in Pennsylvania since the moratorium on road spreading in 2018 have not been held to account for the illegal activity when not one produced an adequate Coproduct Determination before spreading their waste, nor has produced one to date, long after any damage from the road spreading was done.

We found gaps in data in the consent agreement. Important details of the case were omitted from the agreement. Our questions are grouped with the relevant passages from the document.
“A. On various dates between October 1, 2012 and August 27, 2014, Joseph caused or allowed solid waste from the oil and gas industry, including wooden mats, silt fences and other debris, to be transported to and burned for disposal at the Perry Pit Site.

B. Between June 1, 2013 and June 30, 2015, the Department estimated that Joseph caused or allowed approximately one thousand eight hundred and thirty-one (1831) truckloads of solid waste from oil and gas industry sites in West Virginia to be disposed at various locations in Pennsylvania without authorization or a permit from the Department.”

**How many truckloads of solid waste were disposed of at the Perry Pit Site between October 1, 2012 and May 31, 2013?**

**Does the total of 1831 truckloads include waste dumped at the Perry Pit Site from June 1, 2013 through August 27, 2014? If not, how much additional waste was dumped during that period?**

**Please provide a list of the amount of waste dumped at each of the sites and the dates the waste was dumped. Please express the amounts in both truckloads and tons.**

**Please provide a list of the amount of waste that was burned at each of the sites and the dates when it was burned.**

**Please provide a map of each of the locations showing their proximity to residential and commercial properties.**

**Please provide copies of letters sent to residences and commercial properties alerting them to their possible exposure to contaminants because of the dumping.**

“T. The Department collected samples of solid waste and soil from each of the five sites at which Joseph disposed of solid waste. None of the laboratory analyses of the samples indicated that contaminants were present at concentrations that would require remedial action under the Department's residual waste regulations, 25 Pa. Code Chapter 287.”

**How many samples were taken from locations within the affected sites?**

**When were the samples taken from each of the locations within the affected sites?**

**Please provide dated laboratory results for the tests performed for each of the samples.**

**Please provide the context of the decision that no remediation is required in 2023 for waste dumped more than a decade earlier. Can the test results prove that no remediation should have occurred at the time?**

**It’s not clear if testing was done on the Perry Pit Site in 2014. If no testing was done, why wasn’t it done.**

**Please provide any documents the Department produced assessing the health impacts of exposure to the dumping and burning of the waste.**
“After full and complete negotiations of all matters set forth in:...”

Where does this case rank among the cases the DEP is aware of based on the amount of waste dumped?

How did the Department arrive at the sum of $600,000 for such a large amount of illegal dumping over the course of four years when much of the dumping occurred after the company was told by the DEP to stop dumping at the Perry Pit Site? Please provide documentation to explain and support that decision.

Why wasn’t Joseph held to account in 2014 when the DEP was obviously aware of his illegal activity?

Why was Joseph allowed to negotiate with the Department to arrive at the current consent agreement?

We would be happy to meet with you to clarify our request if you have any questions.

Respectfully,

Karen Feridun, Co-founder
Better Path Coalition