

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

John A. Joseph	:	
Individually, and doing business as	:	Solid Waste Management Act
Joseph Contracting,	:	
John Joseph Contracting, and	:	
Perry Stone Supply LLC	:	
	:	
Jefferson Township	:	
Fayette County	:	

CONSENT ASSESSMENT OF CIVIL PENALTY

This Consent Assessment of Civil Penalty (“CACP”) is entered into this 12th day of December 2022, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”) and John A. Joseph (“Joseph”).

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 (“SWMA”), Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder.

B. John A. Joseph (“Joseph”) is a “person” as that term is defined by Section 103 of the Solid Waste Management Act, 35 P.S. § 6018.103. Joseph does or did business under a variety of names and companies that he controls, including Joseph Contracting, John Joseph Contracting, and Perry Stone Supply LLC.

C. At all relevant times between January 1, 2014 and June 30, 2015, Joseph operated a trucking company that employed drivers to haul solid waste generated by the oil and gas industry from sites in West Virginia to Pennsylvania, including, among other things, drill cuttings from sites operated by Precision Pipeline, LLC and TransEnergy, Inc.

D. At all relevant times, Joseph owned property located near the intersection of Perry and Zias Roads in Jefferson Township, Fayette County, identified by Fayette County Tax Records as Parcel No. 17-08-0089 (hereinafter referred to as the “Perry Pit Site”).

E. At all relevant times, Joseph owned property located between Nellie Road and Nellie School Road in Dunbar Township, Fayette County, identified by Fayette County Tax Records as Parcel No. 09-10-0018 (hereinafter referred to as the “Nellie Road Site”).

F. At all relevant times, Joseph owned property located near the intersection of Ridge Boulevard and Duck Pond Road in Dunbar Township, Fayette County, identified by Fayette County Tax Records as Parcel No. 09-11-0255. This property is adjacent to property owned by Mickey F. Joseph, identified by Fayette County Tax Records as Parcel No. 09-11-0265 (hereinafter Parcels 09-11-0255 and 09-11-0265 are jointly referred to as the “Ridge Road Site”).

G. At all relevant times, Cheryl and Bernard Liptak owned property located at 3177 Pittsburgh Road, Perry Township, Fayette County, identified by Fayette County Tax Records as Parcel No. 27-10-0061 (hereinafter referred to as the “Liptak Site”).

H. At all relevant times, Judith Lynn-Craig and Barry Craig owned property located at 575 West Main Street, South Union Township, Fayette County, identified by Fayette County Tax Records as Parcel No. 34-04-0009 (hereinafter referred to as the “Craig Site”).

I. 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.

J. On various dates between June 1, 2014 and June 30, 2015, Joseph caused or allowed solid waste from the oil and gas industry, including drill cuttings from drill sites and pipeline projects in West Virginia operated by Precision Pipeline, LLC and TransEnergy, Inc., to be transported to and deposited on the ground for disposal at the Perry Pit Site.

K. On August 27, 2014, the Department instructed Joseph to cease all unpermitted solid waste disposal activities at the Perry Pit Site.

L. On various dates between September 1, 2014 and May 31, 2015, Joseph caused or allowed drill cuttings from oil and gas operations to be dumped or deposited on the surface of the ground at several other properties he owned or controlled, or with which Joseph had contracts to provide fill material, including the Ridge Road Site, Liptak Site, Craig Site, and Nellie Road Site.

M. At the Ridge Road Site, Joseph caused drivers to dump drill cuttings at two different locations: one location was a pond that Joseph filled in, and the second location was an excavated area in a field.

N. At the Liptak Site, Joseph caused drivers to dump drill cuttings that were spread across the property as fill, upon which a magistrate's office was built.

O. At the Craig Site, Joseph caused drivers to dump drill cuttings to be used as fill between Route 40 and the Uniontown Mall parking lot.

P. At the Nellie Road Site, Joseph caused drivers to dispose of drill cuttings to be used as fill in the rear corner of the property.

Q. At all relevant times, neither Joseph nor any other person possessed a permit or authorization allowing the disposal or reuse of solid waste at the Perry Pit Site, Ridge Road Site, Liptak Site, Craig Site or Nellie Road Site.

R. 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.

S. Between June 1, 2013 and June 30, 2015, in the course of transporting solid waste from West Virginia to Pennsylvania, Joseph failed to maintain, as required by 25 Pa. Code § 299.219, daily operational records that documented:

- (1) The types or classifications of residual waste transported.
- (2) The weight or volume of the types of wastes transported.
- (3) The name, mailing address, telephone number, county and state of each generator of transported waste.
- (4) The name and location of a transfer facility that has received, or will receive, the waste.
- (5) The name and location of the solid waste processing or disposal facility where the waste will be ultimately disposed or processed.
- (6) A description of handling problems or emergency disposal activities.
- (7) The name and address of the person or municipality collecting or transporting the waste.
- (8) The license plate number of the trailer transporting the waste.

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.

U. Joseph's conduct, as described above, constitutes unlawful conduct and violations of Sections 301, 302, 303, and 610(1), (2), (3), (4) and (6) of the Solid Waste Management Act, 35 P.S. §§ 6018.301, 6018.302, 6018.303 and 6018.610(1), (2), (3), (4) and (6), a public nuisance

pursuant to Section 601 of the Solid Waste Management Act, 35 P.S. § 6018.601, and subjects Joseph to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

After full and complete negotiations of all matters set forth in: (i) this CACP; and (ii) the orders and penalty assessments that are the subject of the appeals pending at John Joseph Contracting v. Commonwealth of Pennsylvania, Department of Environmental Protection, EHB Docket No. 2015-046-R (Consolidated with 2015-107-R, 2015-114-R, 2015-142-R, 2015-155-R and 2021-110-R) (collectively, the “Appeals”), upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ASSESSED by the Department and AGREED to by Joseph as follows:

1. Assessment. In resolution of the Department’s claim for civil penalties, which the Department is authorized to pursue under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605, the Department hereby assesses a civil penalty of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00), which Joseph hereby agrees to pay.

2. Civil Penalty Settlement. On or before January 31, 2023, Joseph shall pay to the Department the full amount of the civil penalty assessed in Paragraph 1, that being SIX HUNDRED THOUSAND DOLLARS (\$600,000.00). This payment is made in settlement of all claims by the Department arising from: (i) the conduct described in Paragraph A through U above, for the dates set forth therein; and (ii) the conduct described in the orders and penalty assessments that are the subject of the Appeals. The payment shall be made by corporate check or the like, payable to the “Commonwealth of Pennsylvania, Solid Waste Abatement Fund” and sent to the Bureau of Waste Management, 400 Waterfront Drive, Pittsburgh, PA 15222.

3. Findings.

a. Joseph does not agree with the findings in Paragraphs A through U; Nonetheless, Joseph agrees not to challenge the accuracy or validity of those findings in any matter or proceeding involving Joseph and the Department.

b. The parties do not authorize any other persons to use the findings in this Consent Assessment of Civil Penalty in any matter or proceeding.

4. Settlement of Appeals. Upon execution of this Consent Assessment of Civil Penalty, and Joseph's payment to the Department the full amount of the civil penalty assessed in Paragraph 1, the Department and Joseph shall file a motion with the Board requesting that the Appeals be marked closed and discontinued because of Settlement.

5. Reservation of Rights. The Department reserves all other rights with respect to any matter addressed by this CACP, including the right to require abatement of any conditions resulting from the events described in the Findings should information become available that the Department does not currently possess requiring action to protect public health or the environment. Joseph reserves the right to challenge any action that the Department may take, but Joseph waives the right to challenge the content or validity of this CACP.

6. Confession of Judgment and Default. Joseph hereby authorizes and empowers the attorney representing the Department in any court of record in Pennsylvania or elsewhere, to, on or after February 1, 2023, appear and confess judgment against said person or entities, their successors or assigns, in favor of the Commonwealth for any sum that may be due hereunder, with or without defalcation or fraud, with interest and costs, with release of errors, without stay of execution, and for the exercise of the power, this instrument or a copy thereof, any rule of court to the contrary notwithstanding, shall be full warrant and authority. Should less than the

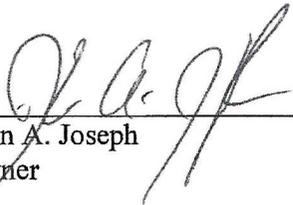
entire amount be confessed, this power shall be inexhaustible until the entire sum in this instrument is exhausted. Joseph further agrees that execution may issue upon judgment so confessed for the full amount of money and accrued interest that is owing to the Commonwealth, with costs and collection fees, upon filing information in writing in the court where such judgment shall be entered.

7. Execution of Agreement. This CACP may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument and may be transmitted electronically via portable document format (.pdf).

IN WITNESS WHEREOF, the parties have caused this CACP to be executed by their duly authorized representatives. The undersigned representatives of Joseph certify, under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this CACP on behalf of Joseph, that Joseph consents to the entry of this CACP as an ASSESSMENT of the Department; that Joseph hereby knowingly waives any right to a hearing under the statutes referenced in this CACP; and that Joseph knowingly waives its right to appeal this CACP, which rights may be available under Section 4 of the Environmental Hearing Board Act, Act of July 13, 1988, P.L. 530, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by Joseph's attorney certifies only that the agreement has been signed after consulting with counsel.

[SIGNATURES FOLLOW ON NEXT PAGE]

FOR JOHN A. JOSEPH:



John A. Joseph
Owner



Christopher R. Nestor
Overstreet & Nestor, LLC
Attorneys for John A. Joseph

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Name Sharon Svitek
Title Program Manager
Waste Management
Southwest Region



George Jugovic, Jr.
Assistant Counsel