

INTRODUCTION

We, the members of the Forty-Sixth Statewide Investigating Grand Jury, having received and reviewed evidence regarding allegations of violations of the Solid Waste Management Act, the Clean Streams Law and related laws, occurring in Greene and Clearfield Counties, Pennsylvania pursuant to Notice of Submission of Investigation Number 63, do hereby make the following findings of fact and recommendation of charges.

FINDINGS OF FACT

The Grand Jury conducted an investigation into environmental crimes that occurred during the removal and reclamation of a wastewater pit on the Hoge Noce well pad in Greene County that was operated by Energy Corporation of America (“ECA”). The investigation revealed that ECA foreman John David Sollon, Jr. failed to abide by environmental regulations and directed the unlawful burial of waste at this location. This activity allowed contaminants to enter into the soil and groundwater in the area. This conduct adversely affected the environment and the lives of the neighbors living near the site.

I. John David Sollon, Jr.

John Sollon, Jr. (“Sollon”) or “JD” as he was known to his colleagues, appeared before the Grand Jury and testified that he began his employment with ECA in January 2012 when he was hired as a utility foreman. His job responsibilities were diverse and generally required him to lend a hand wherever and whenever he was needed. He participated in the construction of well pads and assisted with the drilling and fracking of the wells. He testified that he reported to Donald Supcoe, III (“Supcoe”) and Hugh Caperton (“Caperton”). He explained that he would take orders from both individuals and that Caperton was the manager in the office while Supcoe was the manager in the field. His recollection was that Supcoe was a foreman similar to Sollon, but that

Supcoe assumed a position whereby he basically oversaw the other foremen. He surmised that Caperton was Supcoe's boss and that Supcoe reported to Caperton to consult with him when major decisions needed to be made. Sollon testified that when Caperton left ECA sometime around 2016, Supcoe took over as manager. Over time, Sollon's job responsibilities slowly changed and he ultimately became a pad construction foreman where he focused on the construction and reclamation of all of the well pads. He testified that he took over most of the construction in 2015.

II. A Brief Description of the Reclamation Process

The Grand Jury learned that at the end of the life of a well pad, or nine months after the wells onsite have been drilled, any pits on the pad must be reclaimed. During his testimony before the Grand Jury, Sollon explained how this process took place on the Hoge Noce pad. He stated that prior to his presence on the well pad to oversee the reclamation process, sub-contractors would be onsite to remove the liquid portion from the pits. He would arrive to find that while the water had been removed, there was still sludge in the bottom of the pits. He testified that ECA hired a consultant to sample the sludge in order to fill out the required "Form U" for disposal at a landfill. The consultant came and collected a sample of the sludge while it was still in the bottom of the pit. Once samples were collected, the process of removing the sludge began. Sollon testified that he worked with a sub-contractor who typically set up a pump to re-circulate the water so that they could blast the sludge with firehoses to break it up and push it into the pump. The water and sludge then went through a centrifuge which would spin any of the water out of the solids. The solids then moved into a bin where the water was re-circulated so that the process could continue. If the solids were dry enough, they were placed into tri-axles to be hauled off-site for disposal. If the solids still had too much liquid in them, however, they were placed into roll off boxes so that they could be mixed with various materials in order to remove more of the water content. Prior to being

removed from the site, someone scanned the boxes to determine the radiation levels as part of the Form U process. The sludge was then disposed of at either a Waste Management landfill, the Westmoreland Landfill, Belmont Solids, Apex or Austin Master. Sollon explained that Apex and Austin Master are processing facilities that take in waste and perform further processing of it prior to sending it on for ultimate disposal. Sollon explained that the time period for removing sludge from the pits ranged from three to six weeks, to three 3 months in order to complete the process. Once the sludge was removed, the liner was pressure-washed to remove any lingering sludge. If an environmental consultant was involved with the site, he or she would come out at and inspect the liner for any holes or other integrity issues. After that, the liner was removed, along with the felt underneath the liner. Sollon testified that there would never be a time when the liner or the felt would remain inside a pit that was being reclaimed. The environmental consultant would then inspect the soils underneath the former pit and collect samples. Once the samples came back, if there was pollution in the soil, the environmental consultant marked the area that would need to be dug out and then a contractor would come and remove the marked soils. After removal of the soils, the environmental consultant collected new samples to ensure that all contaminated soils had been removed. That process continued until all contaminated soil had been removed or the contractor hit bedrock. The contaminated soils would be disposed of at the same landfills that took the sludge and accompanied by a Form U. Once all of the contaminated soils were removed, the hole would be filled in with clean fill, topsoil would be added, grass seed would be planted and the site would be monitored to ensure that grass was growing.

III. Reclamation of the Hoge Noce Well Pad Begins



The Hoge Noce well pad was built by ECA in late 2009. The wells were drilled and completed by August 2012. The site was then reclaimed beginning in the fall of 2012. Sollon testified that he was involved in the reclamation at Hoge Noce and that the sludge removal process took about four months to complete. The Grand Jury reviewed the Form U paperwork for waste from this pad and many of the applications were signed by Sollon. The applications required a certification by the generator of the waste. Sollon signed many of these certifications, acknowledging that the information contained in the applications was true and accurate.

The Grand Jury heard testimony from witnesses who were employed by RZI, the environmental consulting company that completed and submitted the Form U paperwork to DEP on behalf of ECA. One RZI employee explained the Form U application process. He stated that the Form U is a method of gaining approval for waste disposal. It involves an application process that requires collection of certain data through sampling and analysis of the waste that is intended to be disposed of in Pennsylvania. That application is submitted to DEP for approval. He testified

that Sollon would contact him or another RZI employee and would direct them to the site they needed to visit in order to collect samples and submit a Form U.

Another RZI employee testified about the process for the waste removal at Hoge Noce. She stated that she was present on the Hoge Noce well pad in the fall of 2012 at the direction of ECA. At that time, one of the pits on the well pad had already been reclaimed. The remaining pit still had water in it. She testified that she informed ECA that she would not be able to collect a sample from the impoundment until it was de-watered. She did not return to the site until June 2013. She recalled that when she returned in June, some of the sludge from the bottom of the pit was being stored in vacuum boxes onsite. She testified that she had to climb to the top of the boxes to collect a sample of the sludge for submission to the laboratory. She indicated that she had to return to the site "a lot" because the radiation levels were too high for disposal in Pennsylvania. She testified that RZI negotiated a process with DEP for disposal of this waste since it was highly radioactive. She indicated that DEP agreed that ECA could mix the sludge with clean fill in an effort to cut the radiation to levels suitable for disposal. While this process was successful in cutting the radioactivity of the waste, it also generated much larger volumes of waste and ECA had to pay for its disposal. She testified that her involvement at the site was limited to the sampling and analysis of the waste. She did not know whether the waste actually left the site or whether it went to the chosen Pennsylvania landfill for disposal after she completed her responsibilities.

A former employee of Mohr Excavation & Trucking, a sub-contractor that ECA utilized for various construction projects at their well sites, also appeared and testified before the Grand Jury about his involvement in the reclamation of the Hoge Noce pad. He recalled being involved in cleaning the sludge out of the bottom of the upper pit after the water had been removed. He explained that the sludge would have the water removed from it and then it was put into large

containers where additional material was added to it to cut down the radioactivity of the sludge. He testified that a father-daughter team would then arrive with a Geiger counter and measure the radioactivity of the boxes once he had finished blending the sludge with the other material. He indicated that this time-intensive process went on for about three months but it ceased once ECA was over budget. At that time, ECA buried the remaining sludge onsite. He indicated that the sludge that remained in the pit at the point when they stopped removing it covered about 25 feet of the width and the entire length of the pit and was about four feet deep. This former employee informed the Grand Jury that Sollon and Supcoe were the individuals who directed the activity on the Hoge Noce site and that it was Sollon who ordered him to leave the remaining sludge in place and bury it. He testified that once he received the order from Sollon, he and others cut the liner on the lower end of the pit, "pushed it all back down in there, and corralled everything up against the wall, then covered it in with dirt." He indicated that once they cut the liner and peeled it down, he could see black soil underneath the liner. None of the impacted soil was removed. It simply remained in place and clean soil was brought in to fill in the hole. He testified that the process of filling in the hole with soil took one day. He agreed that the cost of paying a sub-contractor for a day's work to fill in the former pit with soil was far cheaper than continuing to pay to pull out the sludge, have it sampled for radioactivity, and then sent for disposal.

IV. Illegal Activity is Uncovered

Moody and Associates, Inc. ("Moody"), an environmental consultant hired by ECA, investigated the Hoge Noce pad after DEP became suspicious that many of ECA's well pads had leaking pits on them. This was a location that had been closed and reclaimed prior to DEP's suspicions and prior to Moody's involvement. During Moody's investigation at the Hoge Noce pad, various soil samples were collected utilizing direct push technology from the previously

remediated pits and several monitoring wells were installed. The Grand Jury reviewed the report that Moody submitted to DEP regarding their investigation at this location. The report stated “[b]ased on the results of this investigation, it appears that a portion of impacted soils associated with releases from two former wastewater impoundments...remains on-site.” A former DEP employee who had been employed in the Environmental Cleanups Program informed the Grand Jury that she had been tasked with reviewing the data submitted by Moody related to this location. She testified that there was little known about the history of the site including how the pits were built, what they held and their size. She testified that when she reviewed historical aerial photographs, she found one pit that disappeared from the location prior to the other pits being built that was never mentioned in any of the reports. She went on to testify that Moody had initially installed a temporary monitoring well downgradient of one of the pits that showed contamination. When Moody went back to install the permanent monitoring wells, they failed to install one at this location. She indicated that many of the permanent monitoring wells that were installed at this location seemed to be strangely placed where one would not expect to find evidence of contamination, if such evidence were to exist at the site. She also explained that Moody did install one monitoring well right in the middle of one of the former pits. That particular monitoring well has “extremely high concentrations of contaminants of concern at increasing levels.” She explained that this was concerning because this particular pit had been closed for years, and yet the pollution into the groundwater continued to worsen instead of lessening over time. She went on to state that the data “suggests that whatever remediation was performed was insufficient and there is some source there that is being activated or reactivated perhaps with storm water or something.”

A Grand Jury search warrant was executed at the former Hoge Noce well pad on July 20, 2021 at the pit that was alleged to have been buried in place. Agents from the Office of Attorney General Environmental Crimes Section arrived on location with a geoprobe to take core samples of soil from underground. In addition to collecting samples from suspect locations, the agents collected a background sample from outside the area that was suspected to be contaminated for the purpose of comparison. During the sampling event, approximately 19 to 20 feet underground, the agents encountered pieces of what appeared to be liner, as well as the geotextile material that is placed underneath the liner in a pit. Agents also observed black sludge at that same depth and location, as well as at additional locations. Photographs of what appeared to be liner and geotextile that were found buried at Hoge Noce were shown to Sollon. He acknowledged that the photographs appeared to be of geotextile and liner. When asked if there was any reason that these materials should be encountered at 18 ½ feet below the ground surface, he responded, “[n]o. None.” Photographs of a sludge-like material that was discovered at Hoge Noce were also shown to Sollon. He confirmed that the photograph could be depicting sludge. The materials that were encountered during the search warrant were bottled, labeled and sent to the Pennsylvania Department of Environmental Protection Bureau of Laboratories for analysis. The results detected the presence of 1,2,4 Trimethylbenzene, 1,3,5 Trimethylbenzene, and n-Butylbenzene in the soil sample. Another sample detected the presence of Bis(2-Ethylhexyl)phthalate. A comment from the lab indicated the presence of a petroleum product in that same sample. Several of these compounds are consistent with petroleum-based substances that do not occur naturally in western Pennsylvania. None of these compounds were present in the background sample that was collected outside of the former impoundment.

The Grand Jury reviewed a Certification of Records from DEP to confirm that no person ever applied for, nor was granted a permit or an exemption to a permit pursuant to the Solid Waste Management Act or the Clean Streams Law, to dump or deposit any waste from any source at or near the Hoge Noce site in Greene County.

IV. Applicable Environmental Statutes

The Grand Jury learned much over the course of this investigation about the applicable statutes that govern this conduct. The relevant portions of the Solid Waste Management Act define “disposal” to include spilling or leaking. “Residual waste” is any waste, solid or liquid, from industrial or mining operations. “Solid waste” also includes both solid and liquid materials.

The Grand Jury reviewed various statutory provisions within the Solid Waste Management Act that delineate criminal conduct that is relevant to the investigation. Section 6018.301 makes it a crime to store, transport, process or dispose of residual waste unless it is consistent with or authorized by the rules and regulations of the department. It further criminalizes the ownership or operation of a residual waste processing or disposal facility unless a permit has been obtained from the department. Section 6018.302(b) makes it a crime to fail to control runoff and discharges of residual waste, or to operate facilities in a manner that adversely affects or endangers public health, safety and welfare or the environment. Section 6018.610(1) makes it a crime to dump or deposit solid waste onto the ground or into the waters of the Commonwealth without a proper permit. Section 6018.610(2) makes it a crime to construct, alter, operate or utilize a solid waste storage, treatment, processing or disposal facility without a permit from the department or in violation of the rules or regulations adopted under this act, or orders of the department or in violation or any term or condition of any permit issued by the department. Section 6018.610(4) makes it a crime

to dispose of solid waste in any manner that adversely affects public health, safety and welfare. And Section 6018.610(7) criminalizes refusing, hindering, obstructing, delaying or threatening any agent or employee of the department in the course of performance of any duty under this act, including, but not limited to, entry and inspection under any circumstances.

CONSTITUTIONAL PROVISIONS

The state has a duty to protect the health, safety and welfare of its citizens. This duty is not limited to the physical health of its citizens, but extends to their mental and emotional well-being. The state has a duty to protect its citizens from the harmful effects of environmental pollution and to ensure that its citizens have access to clean air and water. The state has a duty to protect its citizens from the harmful effects of hazardous waste and to ensure that its citizens have access to safe and sound waste disposal facilities.

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