



JOHN R. EMBICK, PLLC
Environmental Law, P.A.C.

JOHN R. EMBICK, PLLC
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John R. Embick, Esq.

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September 11, 2018

VIA Facsimile (717) 783-4738

Christine A. Walker
Secretary to the Board
Environmental Hearing Board
Rachel Carson State Office Building - 2d Floor
400 Market Street - P.O. Box 8457
Harrisburg, PA 17105-8457

RE: Notice of Appeal

2018-092-

Dear Ms. Walker:

Attached for filing, please find the Notice of Appeal of Plainfield Township. Please contact me if you have any questions.

Sincerely,

John R. Embick

For: **JOHN R. EMBICK, PLLC**

Encl.



COMMONWEALTH OF PENNSYLVANIA ENVIRONMENTAL HEARING BOARD

NOTICE OF APPEAL FORM APPEAL INFORMATION

1. Name, address, telephone number, and email address (if available) of Appellant:

**Plainfield Township, 6292 Sullivan Trail, Nazareth, PA 18064
c/o Thomas Petrucci, Township Manager, (610) 759-6944 x102,
manager@plainfieldtownship.org**

2018-092-

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)

The Township appeals the determination of the Department dated August 10, 2018 (see, copy of letter dated August 10, 2018, attached).

(b) Which Department official took the action?

Mr. Roger Bellas, Program Manager, Waste Management Program, Northeast Regional Office.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

Plainfield Township, Northampton County, PA

(d) How, and on what date, did you receive notice of the Department's action?

The notice was received by first class mail on August 13, 2018.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)

Please see attached sheet.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

No related appeals are pending, to the knowledge of Plainfield Township.



**NOTICE OF APPEAL FORM
PROOF OF SERVICE**

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers (2) and (3) below, and where applicable, upon other interested parties indicated by numbers (4) and (5). Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- (1) Environmental Hearing Board
2nd Floor Rachel Carson State Office Bldg.
400 Market St., P.O. Box 8457
Harrisburg, PA 17105-8457

via

 - first class mail, postage paid
 - overnight delivery
 - personal delivery
 - electronic filing

- (2) Department of Environmental Protection
Office of Chief Counsel
Attn: Administrative Officer
16th Floor Rachel Carson State Office Bldg
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

via

 - first class mail, postage paid
 - overnight delivery
 - personal delivery
 - electronic filing

- (3) The officer of the Department
who took the action being appealed

via

 - first class mail, postage paid
 - overnight delivery
 - personal delivery
 - electronic filing

Note to Attorneys who **electronically** file a Notice of Appeal: A copy is automatically served on the Department's Office of Chief Counsel. There is no need for you to independently serve the Department.

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- (4) The entity to whom the permit, license approval, or certification was issued.

via

 - first class mail, postage paid
 - overnight delivery
 - personal delivery

- (5) Where applicable, any of the following:

 - Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
 - The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
 - The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 3218 of the Oil and Gas Act, 58 Pa.C.S. § 3218;
 - The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.



**NOTICE OF APPEAL FORM
SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: 9/11/2018

John R. Embick
Signature of Appellant or Appellant's Counsel

Date: 9/11/2018

If you have authorized counsel to represent you, please supply the following information
(Corporations must be represented by counsel):

John R. Embick, PLLC, by John R. Embick, Esq.
Attorney Name (Type or Print)

Address P.O. Box 5234, West Chester, PA 19380

Telephone No.: (215) 850-4131

Email: jembick@aol.com

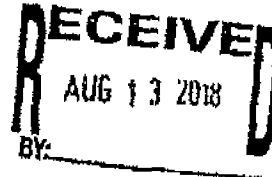
TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.



NORTHEAST REGIONAL OFFICE

August 10, 2018



Mr. Glenn Kempa, District Manager
Grand Central Sanitary Landfill, Inc.
910 W. Pennsylvania Avenue
Pen Argyl, PA 18072

Re: Sedimentation Basin No. 2 Modifications
Minor Permit Modification – Slate Belt Heat Recovery Center
Grand Central Sanitary Landfill
Application No. 100265-A181
APS ID# 964052, AUTH ID# 1221430
Plainfield Township, Northampton County

Dear Mr. Kempa:

The Department of Environmental Protection (DEP) has reviewed information provided by EarthRes Group, Inc (ERG) regarding proposed modifications to sedimentation basin number 2. ERG provided DEP with background information regarding the history of this basin in an email correspondence dated June 26, 2018. (copy enclosed) The purpose of this correspondence was to seek clarification regarding the regulatory classification of this body of water.

Upon review of the information provided and DEP's historic knowledge regarding basin number 2, DEP has determined that the basin was engineered and presently being maintained as a sediment basin and stormwater control facility. It is a regulated body of water under Pa Code Chapter 105. However, modifications, including filling a portion of the facility is waived from state water obstruction and encroachment permitting requirements under 105.12(a)6. This waiver is for water obstructions and encroachments located in, along, across or projecting into a stormwater management facility or an erosion and sedimentation pollution control facility which meets the requirements in Chapter 102.

I trust that you find this information helpful. If you have additional questions about your application, please contact me.



Grand Central Sanitary Landfill, Inc.

-2-

August 10, 2018

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Bellas". The signature is fluid and cursive, written over a few lines.

Roger Bellas
Program Manager
Waste Management Program

Enclosure

cc: EarthRes Group, Inc.
Plainfield Township



Objections of Plainfield Township to August 10, 2018 Determination of PaDEP

1. Based on knowledge or belief, Plainfield Township asserts that Sedimentation Basin No. 2 is not eligible for a permit waiver pursuant to 25 Pa. Code Chapter 105.
2. Based on knowledge or belief, Plainfield Township asserts that the construction, maintenance, modification and/or use of Sedimentation Basin No. 2 has a significant effect upon safety or the protection of life, health, property or the environment.
3. Based on knowledge or belief, Plainfield Township asserts that the failure of the Department to require a permit for Sedimentation Basin No. 2 constitutes an abuse of discretion.
4. Based on knowledge or belief, Plainfield Township asserts that continued use of Sedimentation Basin No. 2 will cause contamination of the Waters of the Commonwealth through the release of pollutants, or contamination by harmful substances, or other polluting materials.
5. Based on knowledge or belief, Plainfield Township asserts that discharge of fill, sediment, pollutants or stormwater into Sedimentation Basin No. 2 constitutes an unpermitted or unlawful discharge into the Waters of the Commonwealth.
6. Based on knowledge or belief, Plainfield Township asserts that Sedimentation Basin No. 2 contains or encompasses Waters of the United States.
7. Based on knowledge or belief, Plainfield Township asserts that the placement of fill material into Sedimentation Basin No. 2, constitutes the placement of fill into Waters of the United States and is illegal under the Clean Water Act, 33 U.S.C. §§ 1251, et seq., without review and approval from the United States.
8. Based on knowledge or belief, Plainfield Township asserts that the applicant has failed to conduct a jurisdictional determination analysis regarding Sedimentation Basin No. 2 and its watershed.
9. Based on knowledge or belief, Plainfield Township asserts that Sedimentation Basin No. 2 is an abandoned quarry pit, and that Sedimentation Basin No. 2 was never properly engineered or designed pursuant to the rules and regulations of the Department to function as a sedimentation pollution control facility or a stormwater control facility under the provisions of the Clean Streams Law, 35 P.S. §§ 691.101, et seq., other relevant statutes, or the rules and regulations of the Department at 25 Pa. Code Chapter 102.1, et seq., and 25 Pa. Code Chapter 105.1 et seq., or the relevant design standards and management practices applicable to the use, operation and maintenance of sedimentation pollution control facilities or stormwater management facilities.
10. Based on knowledge or belief, Plainfield Township asserts that the method of function or operation of Sedimentation Basin No. 2 has not been fully analyzed or documented, and that discharge of stormwater into Sedimentation Basin No. 2, causes pollution or contamination of the Waters of the Commonwealth by industrial wastes, stormwater discharge from industrial sites, or both.
11. Based on knowledge or belief, Plainfield Township asserts that Sedimentation Basin No. 2 is hydrologically or otherwise connected to the Little Bushkill Creek and its watershed, portions of which are classified as High Quality Waters under 25 Pa. Code Chapter 93. As such, the failure of the Department to require a permit for the placement of additional fill into Sedimentation Basin No. 2 fails to protect, preserve and maintain water quality in the Little Bushkill Creek.



12. Based on knowledge or belief, Plainfield Township asserts that the applicant has never performed an adequate comprehensive analysis of the function of Sedimentation Basin No. 2, and its hydraulic and hydrologic connection to the Waters of the Commonwealth.
13. Based on knowledge or belief, Plainfield Township asserts that Sedimentation Basin No. 2 is designed so that it will discharge directly into Little Bushkill Creek and/or its associated wetlands and watershed areas under certain circumstances, and will result in the direct discharge of pollutants into the Little Bushkill Creek in violation of the Pa Clean Streams Law.
14. Based on knowledge or belief, Plainfield Township asserts that the Department unlawfully has neither reviewed, nor required the applicant to review, or to analyze the type and effect of fill materials placed and to be placed into Sedimentation Basin No. 2.
15. Based on knowledge or belief, Plainfield Township asserts that the placement of fill in Sediment Basin No. 2, is part of a much larger industrial development project which proposes the construction of a sewage sludge drying operation adjacent to Sedimentation Basin No. 2, and that associated land development proceedings are underway in Plainfield Township, and that various local and state permits and approvals are needed for the project. The review of Departmental permits and approvals associated with the proposed project should be reviewed concurrently, and not in a piecemeal fashion. Accordingly, the determination of the Department contained in the August 10, 2018 letter is unreasonable, egregiously wrong, abusive, premature, arbitrary, capricious, and/or the like.
16. Based on knowledge or belief, Plainfield Township asserts that failure to require a permit for additional filling of Sedimentation Basin No. 2, violates Art. 1, Section 27 of the Pa Constitution, in that it does not reasonably provide adequate protection to the Waters of the Commonwealth and thus, among other things, does not protect the right of citizens to pure water, clean air, or preservation of the natural, scenic, historic and esthetic values of the environment.
17. Based on knowledge or belief, Plainfield Township appeals for other reasons that may be disclosed or become apparent pursuant to discovery.



**IN THE
ENVIRONMENTAL HEARING BOARD
OF PENNSYLVANIA**

EHB Docket No.

PLAINFIELD TOWNSHIP, NORTHAMPTON COUNTY, Appellant

CERTIFICATE OF SERVICE

I, **John R. Embick, Esq.**, of John R. Embick, PLLC, attorney for Township of Plainfield, Board of Supervisors, do hereby certify that I caused true and correct copies of the Township's Appeal of the August 10, 2018 determination of the Department to be served on the following individuals by sending the document by first class mail, postage prepaid:

Mr. Roger Bellas
Program Manager
Waste Management Program
2 Public Square
Wilkes -Barre, PA 18701-1915

Mr. Glenn Kempa
District Manager
Grand Central Sanitary Landfill
910 W. Pennsylvania Avenue
Pen Argyl, PA 18072

Dated: 9/11/2018


JOHN R. EMBICK PLLC