

**FINAL DECISION AND ORDER
OF THE
FINAL HEARING OFFICER**

IN RE: PROPOSED DECISION DATED JANUARY 13, 1988
IN THE MATTER OF ORDERS NUMBERED SW 224 AND SW 224C ISSUED TO
RUSSELL CAPOZZIELLO, CONNECTICUT BUILDING WRECKING CO., INC., AND
GENO CAPOZZIELLO IN CONNECTION WITH A LANDFILL DISPOSAL FACILITY
THAT THE RESPONDENTS OPERATE OR HAVE OPERATED AT CLEARVIEW DRIVE
AND CLEARVIEW CIRCLE IN THE CITY OF BRIDGEPORT

1. On January 13, 1988, Hearing Officer Lewis J. Miller issued a proposed decision on the appeal by Russell Capozziello^{1/} of Order SW 224C and on the appeal by Connecticut Building Wrecking Co., Inc.^{1/} and Geno Capozziello.^{1/} The Orders allege that the Respondents are operating or have operated a land disposal facility located at Clearview Drive and Clearview Circle in Bridgeport, Connecticut, which they do not own and which can reasonably be expected to discharge pollutants to and adversely affect the quality of ground to surface waters of the state and pose fire and gas hazards. Further, the Orders alleged that the facility has or had neither a solid waste nor water discharge permit as is required by state law and regulations. The proposed decision recommended that Orders No. SW 224C and SW 224 be affirmed in their entirety and that Respondents' appeal be dismissed. It further recommended, that due to the hazardous nature of the situation that the DEP proceed expeditiously and that the DEP Solid Waste Management Unit^{2/} give this matter the highest priority.
2. The proposed decision was issued following public hearings in Bridgeport on August 25 and in Hartford on August 26, 27, 31, September 9, 10 and 15, 1987.
3. Notice of the proposed decision was duly served on all parties of record, by certified mail, return receipt requested, on January 13, 1988.
4. On February 2, 1988, Respondents requested oral argument before the Commissioner of DEP on merits of the proposed decision. Exhibit 39.
5. By way of letter dated February 24, 1988, DEP Commissioner Leslie Carothers designated Leonard Bruckman, Director, Air Compliance, DEP as her agent for the purpose of rendering a final decision in this matter. Exhibit 40.

1/ Hereinafter "Respondents"

2/ Hereinafter "Complainant"

6. Oral argument in the matter was scheduled for April 12, 1988 at 10 a.m. in Room 565, 165 Capitol Avenue, Hartford, Connecticut before Hearing Officer Bruckman. Exhibit 41.
7. At approximately 9:50 a.m. April 12, 1988, in a telephone conference call between Respondents' law firm, the Hearing Officer and Complainant's attorney, Respondents waived oral argument in this matter. Exhibits 43, 44.
8. By way of letter dated August 15, 1988, DEP Commissioner Leslie Carothers revoked designation of Leonard Bruckman as her agent for rendering a decision in this matter and simultaneously designated Hugo F. Thomas, employee of the Department of Environmental Protection as her agent for issuing a final decision in this matter. Exhibit 55.

After a thorough review of the record of this proceeding and consideration of the points submitted in the numerous briefs and memoranda of law, I make the following findings and conclusions:

JOINDER OF "NECESSARY PARTIES"

Respondents argue that without the joinder of "necessary parties," no final decision can be entered as to Orders SW 224 and SW 224C. Respondents' Memorandum of Law, page 3 *et seq.* Exhibit 34. These "necessary parties," argue the Respondents, include the City of Bridgeport, other persons and a business responsible for dumping demolition wastes at the site in question, and the homeowners, themselves, on whose property the demolition waste was deposited. Respondents rely on the Memorandum of Decision in Anderson v. New England Demolition, et al, Docket No. 331358 (J.D. of Hartford/New Britain at Hartford) issued by Judge Satter on June 25, 1987 (Exhibit 25) and a general argument of "unfairness."

It should be noted at the outset that this matter is not a proceeding by the Complainant to enforce Orders SW 224 and SW 224C. This is an administrative proceeding pursuant to Respondents' appeal of the issuance of said orders. Conn. Gen. Stat. Section 22a-225. To be determined in this proceeding, is whether the Orders are legally sufficient to establish legal liability as to the Respondents and also, whether the Complainant, in light of the applicable burden of proof, has proved the allegations in the Orders.

As to other persons and business entities responsible for dumping demolition wastes at the site in question, i.e., Thomas Capozziello and Bridgeport Wrecking Company, the Hearing Officer concludes they are not necessary parties. Both of the above have had similar orders issued to them regarding illegal deposition of demolition waste at the site in question. Neither of them

appealed the issuance of their respective orders. Neither of them is a "necessary party" in order to determine whether the factual allegations in Orders No. SW 224 and SW 224C are true and are legally sufficient to establish liability as to the Respondents in this matter.

Respondents apparently believe that Thomas Capozziello and Bridgeport Wrecking Company should be parties in this matter so that each potential participant's share of liability can be apportioned. However, as stated above, this is an administrative proceeding to determine, in the first place, whether the Orders should be affirmed, modified or revoked. First, liability must be established. Thus, any other participants in the illegal activity need not be joined to this proceeding.

As to the City of Bridgeport, the Hearing Officer concludes it is not a "necessary party." Respondents' reliance on the Memorandum of Decision in Anderson v. New England Demolition, Inc., et al, Exhibit 25, is misguided. The court, in the New England Demolition case, determined that the municipality, the City of Bridgeport, was a necessary party to an enforcement action that the Commissioner of Environmental Protection brought in superior court to enforce an administrative consent order. The court's finding that the municipality was a necessary party in that enforcement action is neither dispositive of, nor relevant to, the issue of whether the City of Bridgeport is a necessary party in the appeal of the issuance of Orders No. SW 224 and SW 224C. The City of Bridgeport is not a "necessary party" to determine whether the factual allegations in the Orders are true and are sufficient to establish liability as to the Respondents in this matter.

Moreover, there is a conflict within the Hartford Superior Court as to whether the municipality is a necessary party to a solid waste enforcement proceeding. In the case where the Department of Environmental Protection, plaintiff sought to enforce unappealed administrative order, Judge O'Neill concluded "(t)he relief if granted will simply enforce the state's rights against the Defendant. Carlson v. Libby, 137 Conn. 362, 370-371." Stanley J. Pac, Commissioner of Environmental Protection v. Connecticut Building Wrecking Company, Inc.; Leslie Carothers v. Connecticut Building Wrecking Co., Inc., et al., No. 335493 (J.D. of Hartford/New Britain at Hartford, April 25, 1988). Judge O'Neill thereby concluded the City of Bridgeport needn't be joined. Thus, even if court enforcement actions are deemed relevant, the caselaw is in conflict and this Hearing Officer concludes the City of Bridgeport needn't be joined in order to issue a final order.

Respondents seem to rely on Section 22a-220(a) of the Connecticut General Statutes as the basis for requiring joinder

of the City of Bridgeport here. That section, which establishes that municipalities "shall make provisions for the safe and sanitary disposal of all solid wastes which are generated within its boundaries," does not, as a matter of law, require that a municipality be joined as a party each time the DEP issues a solid waste order. The municipal obligation for provision of disposal of solid waste exists independent of the Commissioner of DEP's authority to enforce and implement requirements of the solid waste management laws.

Thus, there exists no legal basis for the joinder of the City of Bridgeport as a necessary basis in their proceeding.

Finally, Respondents argue that the property-owners where the deposition of demolition waste occurred are necessary parties. For many of the same reasons stated above, this Hearing Officer concludes they are not necessary partners. There is no evidence in the record to suggest any of the property-owners engaged in the operation of a solid waste facility without permits, but even if there were such evidence, there is no requirement in the statutes or from caselaw that the Commissioner must issue one order to all potentially liable participants.

Respondents apparently believe that the Commissioner is selectively enforcing the laws by holding this hearing and not joining other perpetrators, the municipality and the property-owners. The Hearing Officer reiterates that this appeal was instituted by the Respondents and other perpetrators have not appealed their orders. Assuming arguendo, that the evidence establishes the property owners' liability, Respondents still have not proven that the Commissioner's issuance of Orders SW 224 and SW 224C constitute selective enforcement. "Selective enforcement of laws is only improper if it is based on some unjustifiable standard. Oyler v. Boles, 368 U.S. 448, 456." State of Connecticut v. Stephen World of Wheels, 14 CLT 20, 21 (May 16 1988). This unjustifiable standard has been spelled out by the Second Circuit Court of Appeals:

To support a defense of selective or discriminatory prosecution, a defendant bears the heavy burden of establishing, at least prima facie, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights. These two essential elements are sometimes referred to as "intentional and purposeful discrimination." (citations omitted).

Respondents have not alleged any facts to support a finding of invidious prosecution. Thus, to the extent that Respondents are arguing selective enforcement to require joinder of property-owners, such argument fails.

LEGAL AUTHORITY TO ISSUE ORDERS SW 224 AND SW 224C

The Orders allege that Respondents have operated, without required permits, a land disposal facility which can reasonably be expected to discharge pollutants to, and adversely affect, water quality and pose fire and gas hazards. A statutory prohibition of operating a solid waste facility without a permit has been a cornerstone of the state solid waste management laws since their initial passage in 1971. See Public Act No. 845, Section 2(c), 1971.

The evidence points to a period of April through September, 1985 as the relevant time period for the alleged violations. During that time period, authority prohibiting the operation of solid waste facilities without a permit lay in two different statutory sections. Prior to June 16, 1985, the statutory prohibition was codified at Section 22a-208(c) [Public Act 84-535, Section 5].^{3/}

As of June 16, 1985, the statutory prohibition was codified at Section 22a-208a(b) and Section 22a-208a(c).^{4/}

3/ No solid waste facility shall be built, established or altered after July 1, 1971, until the plan and design and method of operation of the same have been filed with the department and approved by the commissioner by the issuance of a permit, provided, nothing in this chapter or in chapter 446e shall be construed to limit the right of any local governing body to regulate, through zoning, land usage for solid waste disposal. No solid waste facility shall be operated on or after October 1, 1984, unless the owner or operator of such facility has filed a closure plan with the commissioner which he has approved as in compliance with regulatory standards adopted pursuant to section 22a-209. The commissioner shall send a written notification of any application for a permit to the chief elected official of each municipality in which the proposed facility is to be located within five business days of the date on which any such application is filed.

4/ (b) No solid waste facility shall be built or established and no solid waste facility for which a permit to construct

(footnote cont'd)

Prior to June 16, 1985, the applicable statute required a permit to operate a solid waste facility. The relevant regulations, effective February 21, 1985, broke the permit requirement down into two components, a permit to construct, Regulations of Connecticut State Agencies (RCSA) Section 22a-209-4(b), and a permit to operate, RCSA Section 22a-209-4(c). As of June 16, 1985, the statute itself incorporated the two-prong permitting schema, originally set out in the regulations.

Thus, during the entire time period in question in this proceeding, the statutory prohibition against operating a solid waste facility was in effect. The Commissioner has authority to enter orders for the enforcement of any statute or regulation. Conn. Gen. Stat. Section 22a-6(a)(3). Therefore, the Commissioner is authorized to issue orders such as SW 224 and SW 224C.

(footnote cont'd from previous page)

is required shall be altered after July 1, 1971, until the plan, design and method of operation of such facility have been filed with the department and approved by the commissioner by the issuance of a permit to construct, provided, nothing in this act or chapters 446d and 446e of the general statutes shall be construed to limit the right of any local governing body to regulate, through zoning, land usage for solid waste disposal. The commissioner shall send a written notification of any application for a permit to construct to the chief elected official of each municipality in which the proposed facility is to be located, within five business days of the date on which any such application is filed.

(c) No solid waste facility for which a permit to construct is required shall be operated on and after the effective date of this act, except for performance testing approved by the commissioner, unless such facility has been issued a permit to operate. The commissioner may issue such permit upon determination that the facility (1) will be operated in accordance with applicable laws or regulations, (2) has been constructed in accordance with a permit issued pursuant to subsection (b) of this section, and (3) has satisfactorily completed any performance tests required by the commissioner. All operating facilities holding a valid permit to construct on or before the effective date of this act shall be issued a permit to operate and shall be allowed to continue operations prior to the issuance of such permit to operate.

BURDEN OF PROOF

Respondents argue in their Supplemental Memorandum in Accordance with June 10th order (Exhibit 51) that the Complainant, DEP Solid Waste Management Unit, must prove the allegations of the Order by "clear and convincing" evidence. Respondents rely on a recent decision in Pac v. Connecticut Building Wrecking Co., Inc., Docket Number 324410, J.D. of Hartford/New Britain at Hartford (June 9, 1988) (Satter, J.) as legal authority for that proposition.

The Hearing Officer has reviewed the Court's decision in that matter and concludes that it is not relevant to this administrative proceeding. In that judicial proceeding, the Commissioner was seeking a temporary injunction to enforce an unappealed administrative order. Judge Satter ruled, "(f)or a temporary injunction to issue in this case, plaintiff must prove a clear violation of the June 1, 1986 order." Appendix to Exhibit 51, p. 3. He pointed to the nature of an injunction as an "extraordinary remedy" citing Jones v. Foote, 165 Conn. 516, 521 (1973).

Judge Satter did not discuss the burden of proof upon the DEP in an appeal before the agency by a Respondent of an order, because no such appeal was taken. Thus, Judge Satter's decision does not provide guidance on the applicable burden of proof for this administrative proceeding.

The Hearing Officer concludes that the burden is on the Complainant, DEP Solid Waste Management Unit, to prove the allegations of the order, by a preponderance of the evidence. To reach that conclusion, the Hearing Officer analogizes to the ordinary civil case in which "the plaintiff must establish every element of a claim by a fair preponderance of the evidence...." Swift & Co. v. Rexton, Inc., 187 Conn. 540, 542 (1982). Such evidence need not be direct as long as it "establishes circumstances 'from which logical and reasonable inference of other material facts can be fairly drawn.'" (citations omitted). Id. at 542-543. The "preponderance of the evidence" standard is, therefore, applied in this matter.

DISCUSSION OF EVIDENCE

To determine whether Orders No. SW 224 and SW 224C should be affirmed, modified or revoked, involves an examination of whether the Respondents were operating at the site in question a "solid waste facility" as defined by Conn. Gen. Stat. Section 22a-207(4): "...[an] area, plant or facility [which] handles more than five tons a year of solid waste." Reviewing the record and the briefs, this Hearing Officer concludes that by more than a preponderance of the evidence the Complainant has proved that

Respondents deposited solid waste at 74, 90, 110, 122, 136, 146, 155 and 156 Clearview Drive and 25 Clearview Circle in Bridgeport and that between April and September, 1985 at those addresses they operated an unpermitted bulky solid waste and solid waste facility by depositing over five tons of solid waste.

Testimony from Thomas Pregman, Principal Environmental Analyst with the Department of Environmental Protection, with almost two decades of experience in solid waste management (Transcript [T.] 2-76 to 2-78), indicates that a single good-sized truckload is five tons. T. at 2-117. Testimony of the residents and other witnesses indicates they observed more than one truckload dumped by Connecticut Building Wrecking Co. T. at 1-2, 27-28, 37-41, 44-46, 51-52, 56-58, Exhibit 4. Testimony of the Complainant's witnesses revealed that the area on which the solid waste material was located measured approximately 500 feet in length, 35 to 40 feet in width and 20 to 30 feet in height. T. at 2-24 to 2-25, 2-80 to 2-81. The logical and reasonable inference of these above circumstances leads this Hearing Officer to conclude that more than five tons of solid and bulky waste was deposited at the site from April through September, 1985.

Supplemental to the evidence presented in the administrative hearing, Complainant seeks to enter in the record the verified complaint that the Respondents filed in federal district court and the Memorandum of Decision in that matter. Connecticut Building Wrecking Co., Inc., Geno Capozziello, Russell Capozziello v. Leslie Carothers, et al., Docket No. B-87-763(WWE). Exhibits 44, 46. In the complaint, Geno Capozziello and Russell Capozziello swear to the truth of the statements in the complaints, that, inter alia, Respondent Connecticut Building Wrecking Co., Inc., deposited demolition waste at residential properties, which constitute the site in question in this hearing. Complaint, ¶ 25. See generally, ¶¶ 22-25.

This Hearing Officer finds these documents material to the proceeding and that since these documents did not exist at the close of the administrative hearing there was good reason not to present it earlier. The Respondents did not object or even comment on Complainant's request to introduce the documents. In accordance with Section 22a-3a-1(e)(9)(G) of the Regulations of Connecticut State Agencies, the documents are hereby entered into evidence. This evidence supports the evidence already in the record that Respondent Connecticut Building Wrecking Co., Inc. dumped waste at the site.

The record is replete with evidence from residents, contractors and DEP employees as to the nature of the solid and bulky waste deposited there. The Complainant's investigation

clearly establishes that the area was used by Respondents for such disposal purposes from April through September, 1985. The hazardous nature and adverse effects of the improper disposal is well-documented in the record.

LIABILITY OF INDIVIDUAL RESPONDENTS

The record amply supports the finding Russell and Geno Capozziello, as well as Connecticut Building Wrecking Co., Inc., operated the solid and bulky waste site at question in this matter. The record reveals that the two named Respondents were active actors in the operation of the unpermitted waste site by:

- making the arrangements for access to the site (Russell Capozziello) (T. at 35-37, 43)
- securing the consent of at least two residents on whose property solid waste was deposited (both named Respondents) (T. at 25-26, 35-37)
- managing operations at the site (both named Respondents) (T. at 56-57, 64)
- being present at the site while materials being dumped (both named Respondents) (T. at 15-17, 27-28, 41)
- supervising Respondent Connecticut Building Wrecking employees at the site (Russell Capozziello) (T. at 43).

In concluding that Russell and Geno Capozziello are individually liable for the operation of the unpermitted waste site, this Hearing Officer looks to Scribner v. O'Brien, Inc., 169 Conn. 389 (1975). In that matter, the corporate defendant, O'Brien, Incorporated, and the named defendant, Harry O'Brien, president of the corporation, were both held liable for the damage caused by negligence in the construction of a house. The Court opined:

It is also true that an officer of a corporation does not incur personal liability for its torts merely because of his official position. Where, however, an agent or officer commits or participates in the commission of a tort, whether or not he acts on behalf of his principal or corporation, he is liable to third persons injured thereby. First National Bank & Trust Co. v. Manning, 116 Conn. 335, 340, 164 A. 881; Semple v. Morganstein, 97 Conn. 402, 404, 116 A. 906; Bennett v. Ives, 30 Conn. 329, 334; See 19 Am.Jur.2d, Corporations, Section 1382.

Scribner v. O'Brien, Inc., 169 Conn. 389, 404 (1975).

The evidence clearly establishes the active direction of and participation in the illegal activities by Geno and Russell Capozziello. This Hearing Officer finds no reason, based either on legal precedent or public policy, to shield Geno and Russell Capozziello from personal liability in this matter.

The outcome might have been very different had the Orders in question been issued to individual truck drivers employed by Respondent Connecticut Building Wrecking Co., Inc. who had been instructed by Respondents Geno or Russell Capozziello. However, Geno Capozziello and Russell Capozziello, as officers of Connecticut Building Wrecking Co., Inc. (T. at 78, 7-93) took no instructions from the corporation, but gave them to employees. Thus, each personally became liable for the illegal unpermitted bulky and solid waste operations at the site in question.

REMEDIAL ACTION REQUIRED

Orders No. SW 224 and SW 224C allow two different courses of remedial action from which the Respondents may choose: one sets forth total removal of waste from the site within 120 days, the other allows site conditions to be corrected with the waste remaining onsite, if certain approvals are received. Exhibits A, B.

The waste pile at the site, if left in place, will generate leachate, i.e., the liquid material which is discharged after rainwater percolates through the waste material picking up materials in the waste. T. at 3-14 to 3-19. Leachate can be produced and discharged long after the site receives no further waste. Id. Even if the waste area is closed, with the wastes left in place, in an attempt to prevent the infiltration of rainwater, leachate cannot be totally eliminated. T. at 3-19.

State law requires that no one "shall initiate, create, originate or maintain any discharge of water, substance or material into the waters of the state without a permit," Conn. Gen. Stat. Section 22a-430(a). Principal Environmental Analyst of the Water Compliance Unit, of the Department of Environmental Protection, Elsie B. Patton, testified that application for permits to discharge landfill leachate are reviewed within her Unit. T. at 3-31. No permit application for the discharge of landfill leachate to groundwater at the site in question has been filed with the DEP Water Compliance Unit. T. at 3-33.

Residents within a few hundred feet of the waste area rely on groundwater wells for drinking water which are downgradient from the waste site. T. at 3-9 to 3-13. Leachate from demolition materials at the site characteristically will contain high levels of iron, manganese, high levels of total dissolved solids, sodium and chloride. T. at 3-15. The leachate will lead

to degradation of the water quality in those downgradient wells to the point that they will no longer be usable. T. at 3-16. The production of leachate may begin one to two years after the waste is at the site. T. at 3-17.

Ms. Elsie Patton concluded that "[t]he best mechanism for dealing with a leachate generated by that site is to eliminate the discharge, to remove the material from the site, to prevent the formation of leachate and to prevent its discharge into the waters of the State." T. 3-34.

To the extent that Orders SW 224 and SW 224C allow Respondents to maintain the bulky and solid wastes onsite prior to receipt of a water discharge permit from the DEP, the Orders contravene state law.

Thus, removal of the solid wastes is the only legally permissible remedy. Moreover, this Hearing Officer affirms Hearing Officer Miller's proposed decision that the Respondents have failed to satisfy the Orders and that the most reasonable, practical and efficient course of action is removal of the wastes from the site.

CONCLUSIONS

In addition to all findings of fact already set out in this Final Decision, the Hearing Officer affirms and incorporates by reference all findings of fact as set out in the Proposed Decision, Exhibit 38, with the following revisions:

3. A similar Order was issued to Thomas Capozziello and Bridgeport Wrecking Company (owned by respondents' brothers). The respondents requested this hearing to appeal the orders. Bridgeport Wrecking Company did not seek any administrative appeal and is not a party to this proceeding.
6. (first sentence affirmed). The sources of most of this waste are undetermined.
7. (first sentence affirmed). Residents of the area testified that they saw the respondents' firm depositing solid waste in the Clearview area.
- 9E. There is no detailed plan for long-term gas monitoring;
- 9F. The limits of the solid waste fill are unknown. (Second sentence affirmed).
10. In accordance with Orders No. SW 224 and SW 224C as originally issued, the respondents can either remove

the solid waste or apply for solid waste or apply for solid waste and water discharge permits.

12F. Methane gas, which is colorless and odorless, generated from organic decomposition has the potential to migrate to adjacent homes and explode and cause fires. (Second sentence affirmed).

14. (Sentences 1-5 affirmed). The respondents failed to submit either a reply brief or findings of fact.

In addition to all conclusions of law already set out in this Final Decision, the Hearing Officer affirms and incorporates by reference all conclusions of law as set out in the Proposed Decision, Exhibit 38, with the following revisions:

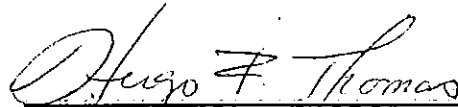
2. The respondents constructed and operated an unlicensed bulky solid waste and solid waste disposal facility between April and September, 1985 at the above addresses on properties they did not own. (Second sentence affirmed).

3. The respondents are maintaining an unpermitted bulky waste and solid waste land disposal facility at the address enumerated in conclusion No. 1 above.

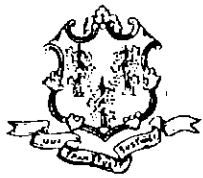
This Hearing Officer affirms the conclusion contained in the proposed decision, Exhibit 38, of the urgency of the need for remedial action at the site and hereby issues this Final Order as appended to this Final Decision.

Date

10/26/88



Hugo F. Thomas
Final Hearing Officer



STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF CONNECTICUT
VS.
RUSSELL CAPOZZIELLO,
GENO CAPOZZIELLO, AND
CONNECTICUT BUILDING WRECKING CO., INC.

IN THE MATTER OF AN ORDER TO STOP THE UNPERMITTED DISPOSAL OF
SOLID WASTE ON PRIVATE PROPERTY LOCATED AT CLEARVIEW DRIVE AND
CLEARVIEW CIRCLE PROPERTY BRIDGEPORT, CONNECTICUT, AND REMOVE ALL
SOLID WASTE FROM SAID PROPERTIES

FINAL ORDER

After issuing a final decision in the appeal by the three
above-named parties (Respondents) of Orders No. SW 224 and SW
224C, the original orders are hereby modified, as follows:

1. Respondents shall remove all solid waste, except clean fill, from 156, 155, 146, 136, 122, 110, 90, and 74 Clearview Drive and 25 Clearview Circle, Bridgeport, Connecticut, and adjoining properties as indicated in Exhibit 14 ("the site"), in accordance with the following conditions.
2. Within 21 days of the issuance of this Final Order, Respondents shall submit to the Department of Environmental Protection ("DEP") a plan for excavation and disposal of the waste and restoration of the site. The plan shall include details on, among other things, erosion and sedimentation controls, street sweeping, continuous-spray dust control, grading, revegetation, and such other matters as DEP deems appropriate. If DEP requires revisions of the plan, the revisions shall be submitted within 7 days of the date Respondents receive written notice of DEP's request for revisions.
3. Respondents shall begin implementation of the plan within 5 days of the date they receive written notice of DEP's approval thereof, and shall complete implementation of the plan within 120 days thereafter.

Phone:

165 Capitol Avenue • Hartford, Connecticut 06106

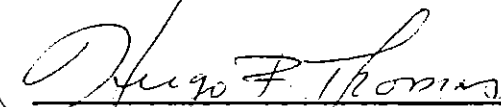
An Equal Opportunity Employer

FINAL ORDER

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4. Respondents shall excavate at least ten test holes, at depths and locations to be determined by DEP, for the purpose of demonstrating that all solid waste has been removed.
5. Before removing any waste from the site, Respondents shall obtain DEP's approval of the location(s) at which they intend to dispose of waste from the site. Respondents shall provide proof, in a form acceptable to DEP, that all waste removed from the site has been disposed of at such approved location(s).
6. Respondents shall restore the site to the conditions that existed before solid waste was disposed there.
7. All documents required to be submitted to DEP shall be sent to Thomas Pregman, Principal Environmental Analyst, Solid Waste Management Unit, Department of Environmental Protection, 122 Washington Street, Hartford, Connecticut 06106.

Issued as a final order of the Final Hearing Officer on this 26th day of October, 1988.



Hugo F. Thomas
Final Hearing Officer

Director
Natural Resources Center
Department of Environmental
Protection

APPENDIX A

In Re: Final Decision in the Matter of Orders Numbered SW 224C and SW 224 Issued to Russell Capozziello, Connecticut Building Wrecking Company and Geno Capozziello

EXHIBIT LIST

- A. Order Number 224 Dated August 18, 1986 Issued to Connecticut Building Wrecking Co., Inc. and Geno Capozziello
- B. Order Number SW 224C Dated January 14, 1987 Issued to Russell Capozziello
- 1. Agreement Dated April 13, 1985 Between Connecticut Building Wrecking Co., Inc. (CBW) and Elbert Barnes Giving Permission to CBW to Deposit on Property Owned by Elbert Barnes
- 2. Statement of Elbert L. Barnes Dated October 20, 1986, In Re: Case No. P86-01144-5
- 3. Agreement Dated April 23, 1985 Between Connecticut Building Wrecking Co., Inc. and Joseph Eppes Giving Permission to CBW to Deposit on Property Owned by Joseph Eppes
- 4. Statement Dated January 14, 1987 by Donald J. Barrett to Department of Public Safety, Division of State Police, Case No. P86-01144-5
- 5. Daily Construction Record, A. Julian Construction Co., Inc. Dated August 28, 1985; Daily Construction Record, A. Julian Construction Co., Inc., Dated August 29, 1985
- 6. Copy of Assessor's Map No. 27-32, City of Bridgeport
- 7. A. Photo of Rocha Property

Appendix A
Russell Capozziello,
Connecticut Building Wrecking
Co., Inc. and Geno Capozziello
Exhibit List
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- B. Photo of Gomes Property
- 8. A. Photo of Clark Property
 - B. Photos of Clark Property
- 9. A.-F. Photos Taken October 4, 1985 by Ms. Alexander
- 10. A.-I. Photos Taken by Ms. Alexander on October 21, 1985 of
Clearview Drive, Bridgeport
- 11. A. and B. Photos by Mr. Pregman Taken on January 5, 1987
- 12. Aerial Photo, Scale 1": 100', Dated April 12, 1985
- 13. Aerial Photo, Scale 1": 100', Dated April 18, 1986
- 14. Land Survey Dated April 20, 1987 by Land Survey Associates
- 15. (Reserved, Not Received)
- 16. Preliminary Contest Order Dated March 3, 1987 In Re: Order
224 and Order 224C
- 17. A. Letter Dated April 24, 1987 from Walter J. Gancarz to
Thomas Pregman
 - B. Permit Application for the Closure of the Clearview
Drive Bulky Waste Landfill Dated April, 1987 by HRP
Associates, Inc.
 - C. Large Plans Entitled "Bulky Waste Closure Plan" Dated
April, 1987 (7 Sheets)
- 18. Letter Dated May 1, 1987 from Anne Rapkin to Alan M. Kosloff

Appendix A
Russell Capozziello,
Connecticut Building Wrecking
Co., Inc. and Geno Capozziello
Exhibit List
Page 3

19. A. Letter Dated June 1, 1987 from Walter J. Gancarz to Anne Rapkin
- B. Remedial Closure Plan for the Clearview Drive Bulky Waste Landfill, Revised May, 1987 by HRP Associates, Inc.
- C. Calculation of Cost Estimate for Removal of Fill
- D. Large Plans Entitled "Bulky Waste Closure Plan," Revised May, 1987 (7 Sheets)
20. Letter Dated June 2, 1987 from Anne Rapkin to Alan M. Kosloff
21. A. Memo-Letter Dated June 19, 1987 from HRP Associates, Inc. to Anne Rapkin with Final Report In Re: Special Investigation, Order No. 343-TS-4698-11
- B. Large Drawing Entitled "Bulky Waste Closure Plan, Existing Contours," Dated April, 1987
22. A. Gas Venting Plan with Letter Dated August 14, 1987 from Walter J. Gancarz to Thomas Pregman
- B. Large Drawing Depicting Gas Venting Plan Dated April, 1987
23. Letter Dated June 10, 1987 from John J. Petrucelli to Alan M. Kosloff

24. New England Demolition, Inc. vs. City of Bridgeport,
Memorandum of Decision dated January 21, 1987
25. John W. Anderson vs. New England Demolition, Inc., Et al,
Memorandum of Decision Dated June 25, 1987
26. A.-Q. Series of Applications and Permits to Demolish
27. Order Dated August 18, 1987 In Re: DEP Orders # 224 and
224C
28. Photoduplicated Copies of Cancelled Checks of Connecticut
Building Co., Inc.
29. Records of D'Addario for Purchase of Tickets for Use of
Milford and Newtown Bulky Waste Landfills
30. Status Report by Anne Rapkin In Re: DEP Order 224 and DEP
Order 224C
31. Updated Status Report by Anne Rapkin In Re: DEP Order 224
and DEP Order 224C
32. Letter Dated June 23, 1987 from Anne Rapkin to Lewis Miller
33. For ID Only. Complainant's Post-Hearing Brief by Anne
Rapkin
34. For ID Only. Brief of Orderees Dated October 26, 1987
35. For ID Only. Complainant's Reply Brief by Anne Rapkin
36. For ID Only. Complainant's Proposed Findings of Fact and
Conclusions of Law, Certified by Laurie Boynton

Appendix A
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37. Letter Dated November 6, 1987 from Gary A. Mastronardi to Louis (sic) Miller (Notice of Appearance and Request for Extension of Time for Filing Reply Brief)
38. Proposed Decision in the Matter of Orders Numbered SW 224 and SW 224C Dated January 13, 1988
39. Letter Dated February 2, 1988 from Attorney Mastronardi to Mr. Rex Altomare, DEP Adjudications Unit
40. Letter Dated February 24, 1988 from Commissioner Carothers to Mr. Bruckman, DEP
41. Letter Dated February 29, 1988 from Mr. Altomare, DEP Adjudications Unit to Attorney Mastronardi
42. Complainant's Pre-Oral Argument Brief Dated April 5, 1988 with attached verified complaint in federal district court case, Connecticut Building Wrecking Co., Inc., et al v. Leslie Carothers, et al., filed in U.S. District Court, Bridgeport November 20, 1987
43. Letter Dated April 12, 1988 from Hearing Officer Bruckman to Attorney Mastronardi
44. Letter Dated April 14, 1988 from Attorney Boynton to Hearing Officer Bruckman with certified copy of verified complaint filed in federal district court, Connecticut Building Wrecking Co., et al v. Leslie Carothers, B-87-763 (WEE) attached

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45. Letter Dated May 16, 1988 from Attorney Rapkin to Hearing Officer Bruckman with attached ruling in Connecticut Building Wrecking, Inc. v. Leslie Carothers, Civil No. B-87-763 (WWE)
46. Letter Dated May 19, 1988 from Attorney Rapkin to Hearing Officer Bruckman with attached certified copy of federal district court ruling in Connecticut Building Wrecking, Inc. v. Leslie Carothers, Civil No. B-87-763 (WWE)
47. Letter Dated June 6, 1988 from Attorney Rapkin to Hearing Officer Bruckman
48. Letter Dated June 10, 1988 from Hearing Officer Bruckman to Attorney Mastronardi
49. Letter Dated June 20, 1988 from Attorney Mastronardi to Hearing Officer Bruckman
50. Complainant's Response to June 10 Order, Dated June 20, 1988
51. Letter Dated June 27, 1988 from Attorney Mastronardi to Hearing Officer Bruckman with attached Respondents' Supplemental Memorandum in Accordance with June 10th Order and Memorandum of Decision in Pac v. Connecticut Building Wrecking Co., Docket No. 324410 (Judge Satter, 6/9/88)
52. Complainant's Reply to Respondents' June 17 Memorandum, Dated July 1, 1988

Appendix A
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53. Letter dated July 7, 1988 from Attorney Mastronardi to
Hearing Officer Bruckman
54. Letter Dated July 13, 1988 from Attorney Rapkin to Hearing
Officer Bruckman
55. Designation of Agent to Render Final Decision Dated
August 15, 1988