

# **LAW OFFICE OF WILLIAM J. CLUCK**

587 Showers Street  
Harrisburg PA 17104  
717-238-3027  
fax 717-238-8033  
billcluck@billcluck.com

October 20, 2008

Keith A. Orris  
Vice President for Administrative Services & External Affairs  
Franklin & Marshall College  
P.O. Box 3003  
Lancaster PA 17604-3003

**Re: Former Lancaster Brickyard Dump  
Your October 9, 2008 Letter to TRRAAC**

Dear Mr. Orris:

I am compelled to respond to your letter to Dan Gillis dated October 9, 2008, as well as the comments by yourself and Mr. Fry published in the Lancaster New Era and Lancaster Intelligencer on October 10, 2008. It appears that you were not present at TRRAAC's October 7, 2008 public meeting to actually hear my presentation and unfortunately, you may have relied upon the local news coverage. Let me state categorically that I did not misrepresent the contents of the documents I obtained from EPA and I did not claim that F&M dumped waste on the north side of the rail tracks (I will refer to the LCSWMA site as the north side and the F&M property as the south side).

Due to the absence of public information about the condition of the former Lancaster Brickyard Dump, TRRAAC sent a letter dated May 9, 2008 to EPA Region III in Philadelphia requesting an investigation of the former Lancaster Brickyard Dump. However, EPA did not respond until August 14, 2008. In its August 14 response, EPA stated that the following:

The former Lancaster Brickyard Dump was previously investigated by EPA Region III's CERCLA (Superfund) Site Assessment Program initially in 1987 and again in 1989-1990. A Preliminary Assessment (PA) was completed in July 1987 and was followed by a Site Inspection (SI) in January 1990.

EPA further explained in the August 14 letter that "[b]ased on information supplied by the Pennsylvania Department of Environmental Protection (PADEP), it is understood that the site is formally entered into the Act 2 Land Recycling (Voluntary Cleanup) Program ensuring that the investigation and remediation of the landfill will be

conducted. As part of the Rail Yard relocation project the landfill will be entirely removed with waste material being disposed of in a permitted solid waste landfill."

Based upon EPA's assertion that the property subject to voluntary cleanup was previously investigated, we submitted a Freedom of Information Request to EPA and obtained copies of the 1987 PA and 1990 SI. The 1987 PA clearly states that F&M College was observed dumping demolition waste and the site did not have any permits. We understand the 1987 PA included a map identifying the area where dumping was observed as the south side of the rail tracks, which was purchased by F&M College in 1981.

We do not have an explanation why EPA believes the property identified in the 1987 PA and 1990 SI is subject to the Act 2 cleanup program. We do know that both sites, the north and south sides, at one point were part of the Lancaster Brickyard operation.

According to the 1987 PA:

The site started as the Lancaster Brickyard where clay for bricks was excavated from clay pits on site. From 1955 to 1960, the Lancaster Area Refuse Authority (LARA) dumped/landfilled solid waste into the clay pits. These pits were 10 to 15 feet deep; approximately 30 acres of these pits were filled in with waste by LARA. The waste landfilled consists mostly of household refuse, although, LARA records (see section 8) indicate that residual waste and liquids were dumped at this site.

According to the 1990 SI:

The site was owned from the early 1920s by Mr. Posey. In approximately 1981, Mr. Posey's entire property, nearly 80 acres, was divided and sold to Franklin and Marshall College and Lancaster Malleable Casting. Lancaster Malleable owns the property north of the subject site.

The 1990 SI summarized the history of the site as follows:

From approximately 1920 until the mid-1960s, Mr. Posey operated a brick-manufacturing facility under the name Lancaster Brickyard Company. In conjunction with this facility, Mr. Posey operated a series of clay strip pits to produce the brick. These pits were located in two areas: one area was on the northwestern side of Little Conestoga Creek. According to John Hershey, of Franklin and Marshall College, the pits northwest of Little Conestoga Creek were never used for disposal. The pits south of the railroad tracks are considered the subject site.

It seems fairly clear that the 1987 PA and 1990 SI were investigating the south side of the rail tracks. However, the property on the north side, as documented by ARM Group, appears to have a very similar history.

According to the Remedial Investigation Report and Clean-Up Plan (RI) prepared by ARM Group Inc. dated July 23, 2008, under section 2.1 Site Location and Historic Property Uses, the location of the site is described as follows:

The property is bordered to the south by the Norfolk Southern (NS) rail line, to the west by [Little Conestoga Creek] and lands in East Hempfield Township owned by LCSWMA and formerly operated as solid waste (LCSWMA) and residual waste (Lancaster Malleable Castings Company, now owned by LCSWMA) disposal areas, to the north by farmland (Deisley Family Limited Partnership property) and an unnamed tributary to the LCC (UNT), and to the east by a commercial parcel occupied and owned by the U.S. Postal Service.

The RI Report provided the following historic property uses:

The Lancaster Brick Company formerly owned and used the subject property for clay mining and for brick-making prior to 1955. Beginning in 1955 and continuing until 1962, the property was used by the Lancaster Incinerator Authority (LIA) and later by its successor, the Lancaster Area Refuse Authority (LARA), as a solid waste disposal site.

If the north side was also used as a solid waste disposal site from 1955 until 1962, why did EPA limit its investigation to the south side?

The RI Report references the ARM Group Inc.'s Preliminary Environmental Investigation Step One Results, July 31, 2006. We obtained a copy of the Step One document during a recent file review at DEP's Southcentral Regional Office. The Step One document identifies the site location as being "bordered to the south by the Norfolk Southern rail line, to the west by Little Conestoga Creek, and to the north and east by mostly commercial properties." This description differs from the one in the 2008 RI Report. In section 2.0 on background information, the Step One report provides the following site history:

The Lancaster Brick Company formerly owned and used this property for clay mining for brick-making prior to landfilling. The property was then used by the Lancaster Incinerator Authority (LIA) and later by its successor, the Lancaster Area Refuse Authority (LARA), as a sanitary landfill from 1955 until 1962. Waste disposed on the subject property consisted of municipal solid waste and some industrial wastes, of generally unknown composition. Reportedly, a 1990 inspection found seepage of landfill leachate at limited locations along Little Conestoga Creek, at least seasonally.

That last sentence contains a footnote citing a document titled ARM Group, Inc., Environmental Due Diligence Evaluation, Sept. 2002. We have requested copies of that document from you and DEP. Apparently neither F&M nor DEP have this document, yet it appears critical information about the site history relied upon by the Step One document and the RI Report originated in the September 2002 Environmental Due Diligence Evaluation, which we note was prepared by F&M's environmental consultant, ARM Group, Inc.

I recite this historical documented information to show there are issues which F&M and DEP must address. For example:

1. The RI Report states dumping on the north side property ceased in 1962. How do you explain the presence of asbestos containing material from Armstrong, some of which is on the surface of the property? Did ARM Group interview anyone from Armstrong?
2. What is the basis for ARM Group's assertion that the north side was used as a municipal waste dump from 1955 until 1962? Did LARA use both sides of the rail tracks as landfill between 1955 and 1962?
3. Are the pits described in the 1990 SI as being to the northwest of the Little Conestoga Creek and reportedly never subject to waste disposal, according to F&M's representative, the same property that is described in the 2008 RI Report as formerly used to dispose of residual waste by Lancaster Malleable Company?
4. Is the property that is subject to the proposed clean up the same property that was owned by Lancaster Malleable Company? Lancaster Malleable did not own the north side until 1981, according to EPA documents. If dumping ended in 1962, according to the RI Report, how do you explain the presence of foundry sand in the material found in the waste on the north side, as documented by ARM Group?

These are important issues as ARM Group and F&M have represented repeatedly to DEP that the north side was not subject to waste disposal since 1962. As you know, if waste was disposed after 1980, the liability relief provisions of Act 2 do not apply and the cleanup is subject to the Solid Waste Management Act.

With respect to F&M's use of the south side to dispose of demolition waste in the 1980's, does F&M have documentation that such disposal was in accordance with the Solid Waste Management Act and its regulations? Can F&M verify all of its demolition waste was disposed on the south side and that its drivers did not dump on the north side? Did any of the demolition waste contain asbestos?

These issues are important as F&M would not be eligible for certain state funding if it caused or contributed to any of the contamination of the property you intend to remediate.

These questions could not have been raised at the June 19, 2008 public meeting as the RI report was not available and F&M had not provided the public with the Step One document nor the 2002 Environmental Due Diligence Investigation.

In the interest of full disclosure and transparency, we request F&M seek approval from the LCSWMA to release the ARM Group's 2002 Environmental Due Diligence Investigation. We assume the document may have been prepared for LCSWMA in anticipation of the purchase of the Lancaster Malleable Company property. While the recommendations and conclusions may be subject to a legally recognized privilege, the facts contained in the document are not privileged.

Finally, we are extremely disappointed by the defamatory comments attributed to you and Mr. Fry in the Lancaster New Era and your demand in the October 9 letter for a "public retraction and public apology from TRRAAC regarding these material misrepresentations." There is nothing to retract and the only apology should come from yourself and Mr. Fry. We note that F&M's web site continues to publish false statements regarding TRRAAC. TRRAAC has previously written to you and requested the false allegations about TRRAAC be removed from your site. To date, you continue to misrepresent TRRAAC's positions to the public.

Clearly, there is a need for a real public hearing where the Project Partners and the relevant governmental agencies should respond to all of the issues raised in this letter and provide the public with reasonable notice and full and complete opportunity to comment on the studies prepared for the NEPA Categorical Exclusion.

We trust this letter is responsive to your October 9, 2008 letter to Dan Gillis and we await your timely response.

Sincerely,



William J. Cluck, Esquire  
Counsel for TRRAAC

CC:	Don Welsh, EPA Region 3 Administrator
-----	--

Kathleen Anderson, Chief, EPA Region 3 Site Assessment & Non-NPL  
Federal Facilities Branch

Board of Trustees, Franklin & Marshall College

John Hanger, Acting Secretary, PADEP

Kathleen Horvath, PADEP

Eric G. Madden, PennDOT

Greg Vaughn, PennDOT

Deborah Suci-Smith, FHWA

James Warner, Executive Director, LCSWMA

Tom Beeman, Lancaster General

Jan Bergen, Lancaster General  
Rick Crawford, Norfolk Southern  
Rudy Husband, Norfolk Southern  
Joel Bolstein, Esquire  
Manheim Township Board of Commissioners  
Lancaster Township Board of Supervisors  
East Hempfield Township Board of Supervisors  
Mayor Gray, City of Lancaster  
President Lousie B. Williams, Lancaster City Council  
Senator Arlen Specter  
Senator Robert P. Casey  
Congressman Joseph Pitts  
Governor Edward G. Rendell  
Senator Gibson E. Armstrong  
Senator Michael W. Brubaker  
Representative P. Michael Sturla  
Representative John C. Baer  
Representative Katie True  
Bob Desmarais, Old School Lane Hills Neighborhood Association  
Michael W. Davis, Esquire  
Ned Wehler, ARM Group  
Richard Cross, Gannett Fleming  
Gary R. Brown, RT Environmental Services  
Jack Buckwalter, Lancaster Newspapers  
Ray Shaw, Editor, Intelligencer Journal  
Ernest J. Schreiber, editor, Lancaster New Era  
Jack Brubaker, Lancaster New Era  
Michael Yoder, Intelligencer Journal  
Gil Smart, Sunday News  
Marv Adams, Editor, Sunday News  
Ron Harper, Jr., Lancaster Post  
Robert Field, Newslanc