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HARMON H. LOOKHOFF

AREA CODE 201-376-3710

November 24, 1980

CERTIFIED MAIL

Department of Environmental Protection
P.O. Box 1390
Trenton, New Jersey 08625

Re: Combe Fill Corporation
Combe South Land Fill
Parker Road
Chester, New Jersey
Dr. & Mrs. Arthur Tingué

Attention: Mr. Lee Pereira
Solid Waste Administration

Dear Mr. Pereira:

This letter is to advise you that I represent Dr. and Mrs. Arthur Tingué, who own approximately 38 acres of property fronting on Parker Road, in Chester, New Jersey. Combe Fill Corporation operates a sanitary land fill a short distance from their property. In fact, my clients' property is contiguous with the property owned by Combe Fill at that site, but not yet utilized as a land fill.

This is further to advise you that as a result of the operation of this land fill both ground waters and surface waters in and on my clients' property has become wrongfully and unlawfully polluted with consequent damage to my clients and their property.

Initially, I draw to your attention N.J.A.C. 7:26-2.5(d)(5) and (6), which provides, in part, as follows:

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"(d) No new sanitary landfill shall be conducted where solid waste is or would be in contact with the surface or ground waters of this State. This provision shall not apply to nonwater soluble, nondecomposable inert solids such as:

1. Earth, rock, gravel and concrete.
2. Asphalt paving fragments.
3. Glass.
4. Clay and clay or ceramic products.

5. No existing sanitary landfill may continue to deposit solid waste, except those noted in paragraphs 1 through 4 of this subsection where solid waste is or would be in contact with the surface or ground waters of this State.

6. No new sanitary landfill shall be conducted, nor shall an existing landfill continue to be conducted where the solid waste, in whole or in part, or the leachate produced as a result of the sanitary landfill, impairs the quality of the surface or ground waters of this State to a degree that would degrade the quality of either the surface or ground waters of this State beyond the classification established by the Department for the surface water in question or the portable water standard established by the Department in the case of ground water.'

My client advises me that he saw one of the pits or cells of the landfill partially filled with water when it was excavated. No impermeable liners are used by this operation. It would therefore appear that solid waste being buried in this landfill is indeed coming in contact with water. I understand the landfill operator claims it need not use liners or is non subject to the proscriptions above because its initial approval predates the regulations.

I disagree. Subsection (d)5 pertains to landfills existing at the time of the regulations, and specifically prohibits them from continuing to deposit solid waste when it would be in contact with ground or surface water. Subsection (d)(6) prohibits an existing land fill from continuing to be conducted where the solid waste or its leachate would impair the quality of water beyond certain limits, which I am led to believe has happened.

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Further, under N.J.A.C. 7:26-1.4 :

"Existing solid waste facility" means that portion of an active solid waste facility which, as of the effective date of these regulations, possesses a valid approved registration from the Department. (emphasis added)

A sanitary land fill is a form of solid waste facility. Therefore, even if a part of the Combe South landfill in Chester was in operation prior to the effective date of the regulations I interpret the regulations as requiring those portions of a sanitary landfill that become active after the date of the regulations to be subject to them. There should be no claim of "vested rights" to continue operations which pre-date regulatory exercises of the police power for public health or safety. Dock Watch Hollow Quarry Pit vs. Township of Warren, 142 N.J.S. 103 (A.D. 1976).

As a result, leachate from the landfill has intruded into the ground water underlying my clients' property, and apparently from that into surface water on the property known as Trout Brook. The surface water has become visually and olfactorily severely polluted with the result that my clients have lost opportunities to sell their property and their well water has become unsafe to drink.

I understand another landfill owned by Combe Fill Corporation in Mount Olive is to be closed in a couple of months and the solid waste being dumped there would be diverted to the Chester Township landfill. Mr. Gary Molchan, the manager of the landfill and secretary of Combe Fill Corporation, has stated there are seventy to one hundred trucks dumping per day at Chester, and this will double when Mount Olive closes. I understand the Chester site is preparing to expand its active operation into a swampy area adjacent to my clients' property. Therefore, this situation is going to become much worse in the very near future.

It is my opinion that the foregoing pollution constitutes a violation of N.J.S.A. 23:5-28, because the operation is not in conformity with the rules and regulations of the Department of Environmental Protection.

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It is my opinion that this pollution is also a discharge of a pollutant within the meaning of N.J.S.A. 58:10A-1, et seq. Please advise me whether Combe Fill Corporation has a permit issued by the D.E.P. under this Statute or if it is the Department's position that one is not needed.

In addition to the water pollution, the landfill is in violation of the Solid Waste Management regulation in that, quite bluntly and literally, the landfill stinks, and this can too easily be detected on my clients' property, where they reside. See N.J.A.C. 7:26-2.5(h):

"(h) The operation of a solid waste facility shall not result in odors associated with solid waste being detected off site by sense of smell in any area of human use or occupancy."

Finally, aside from violations of applicable State Statutes and regulations, the landfill operation is a common law nuisance with special damage to my clients.

Therefore, this letter is sent as a formal demand that the Department immediately undertake such measures as may be necessary to halt and prevent any violations of State law under the Department's jurisdiction and require Combe Fill Corporation to take such action as may be necessary to eliminate the water and olfactory pollution of my clients' property. This must be undertaken immediately due to the severe and worsening polluting condition of the ground and surface water of my clients' property, and the imminent threat of a greatly expanded operation. If any further action is required of me to invoke and exhaust my clients' administrative remedies in your department, please advise at once so that I may comply. I also request that a representative of the Department of Environmental Protection contact me at once and make arrangements for me to inspect

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any documents filed by Combe Fill Corporation with the Department and copy those that may be necessary in protecting my clients' interests.

Very truly yours,
SHELDON SCHIFFMAN

BY: HARMON H. LOOKHOFF

HHL:ba

cc: Connell, Foley & Geiser, Esquires
Attorneys for Combe Fill Corp. .
Dr. & Mrs. Arthur Tinguet
Board of Public Utility Commissioners
Mr. Reynour Rudolph

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CERTIFIED MAIL

November 24, 1980

Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

Re: Combe Fill Corporation
Combe South Land Fill
Parker Road
Chester, New Jersey
Dr. & Mrs. Arthur Tingue

Attention: George H. Barbour,
President

Gentlemen:

This letter is to advise you that I represent Dr. and Mrs. Arthur Tingue, who own approximately .38 acres of property fronting on Parker Road, in Chester, New Jersey. Combe Fill Corporation operates a sanitary land fill a short distance from their property. In fact, my clients' property is contiguous with the property owned by Combe Fill at that site, but not yet utilized as a land fill.

This is further to advise you that as a result of the operation of this land fill both ground waters and surfact waters in and on my clients' property has become wrongfully and unlawfully polluted with consequent damage to my clients and their property.

This letter is to serve as a formal demand that you require Combe Fill Corporation to furnish and perform service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the water, land and air of the State, and to maintain its property and equipment in such condition as to enable it to do so, pursuant to N.J.S.A. 48:2-23.

Additionally, I would request to be advised at your earliest opportunity as follows:

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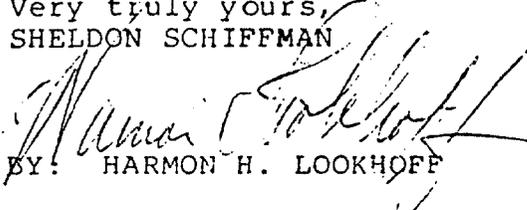
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102
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1. Whether Combe Fill Corporation has filed a performance bond with the Board of Public Utilities Commissioners pursuant to N.J.S.A. 48:13A-8, what the terms thereof are, and whether a performance bond may be used to satisfy damages to private parties caused by the operation of the land fill.
2. What proof of financial responsibility was provided to the Board of Public Utility Commissioners by Combe Fill Corporation pursuant to N.J.S.A. 48:13A-6.

For your convenience and to further advise you as to the particulars of the pollution of my clients' property by the Coake South Land Fill, I am attaching hereto a copy of a letter I am sending to the Department of Environmental Protection.

Kindly respond at your very earliest convenience, as the situation with my clients is emergent, and they must have some immediate relief by administrative remedy or recourse to the Courts.

Very truly yours,
SHELDON SCHIFFMAN


BY: HARMON H. LOOKHOFF

HHL:ba

Enc.

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