



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
www.dep.wv.gov

**CONSENT ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12
AND THE
SOLID WASTE MANAGEMENT ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 15**

TO: Ryan Environmental Transport, LLC
Clayton W. Rice, Member/Organizer
5793 West Veterans Hwy
Bridgeport, WV 26330

DATE: September 24, 2014

ORDER NO.: MM-15-01

INTRODUCTION

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 11, Section 1 et seq., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. to Ryan Environmental Transport, LLC (hereinafter "RET, LLC").

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. RET, LLC conducts environmental remediation and consultation and is located on WV Rte. 76 near US Rte. 50 near Bridgeport in Harrison County, West Virginia.
2. On January 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel initiated an investigation in response to a complaint regarding the alleged dumping of petroleum-contaminated soils (a special solid waste) at property owned by Clayton W. Rice, a Member/Organizer of RET, LLC, near Grafton in Taylor County, West Virginia.

Promoting a healthy environment.

3. On January 13, 2014, WVDEP personnel collected photos and soil samples at the aforementioned location. WVDEP personnel notified RET, LLC that a dumping event had occurred on the aforementioned property, and a representative of the company was advised that the material had the odor of a petroleum product. During the investigation, violations of the following sections of WV State Code and WV Legislative Rules were observed and documented:
 - a. 47CSR11 Section 2.2.a - RET, LLC failed to give immediate notification to the Office of Water Resources' Emergency Notification Number (Spill Hotline) that a spill or accidental discharge of pollutants into the waters of the State had occurred.
 - b. 47CSR11 Section 2.5.a - RET, LLC failed to take any and all measures necessary to clean up, remove, and otherwise render a spill or discharge harmless to the waters of the State.
 - c. 47CSR58 Section 7.1 - RET, LLC allowed crude oil or any petroleum product derived from crude oil or any chemical mixture which may impact groundwater quality to escape from any well, pipeline, impoundment, storage tank, treatment unit, storage container, or deliberately allowed same to flow onto or under the land surface in such a manner that could impact groundwater quality.
 - d. 22-15-10(a) - RET, LLC created, contributed to, or operated an open dump or as a landowner allowed an open dump to exist on its property.

As a result of the aforementioned violations, Notice of Violation (NOV) Nos. GW-NW-CJJ-010814-002, GW-NW-CJJ-010814-003, GW-NW-CJJ-010814-001 and OD-NW-CJJ-010814-001 were issued to RET, LLC.

4. On January 22, 2014, WVDEP personnel met with Al Anderson, Technical Manager at RET, LLC, and Jeremy Monday, Operations Director at RET, LLC. Al Anderson and Jeremy Monday represented to WVDEP personnel that RET, LLC dumped the aforementioned material, which partially originated from a ditch cleaning at the business owner's property, a self-serve storage facility located nearby on US Rte. 50.
5. On January 24, 2014, Mike Westfall, a RET, LLC employee, represented to WVDEP personnel that he had used a vacuum truck with a tank to clean ditches on January 5, 2014, and the resulting material was dumped from the truck onto the aforementioned property later in the same week.
6. On January 30, 2014, Jeremy Monday represented to WVDEP personnel that Rocko's Car Wash was also cleaned and the resulting material added to the truck tank prior to the aforementioned dumping.
7. On February 6, 2014, WVDEP personnel provided a copy of the January 13, 2014 sample results to RET, LLC. These results indicated that elevated levels of Diesel Range Organics (DRO) (457 mg/kg) and Oil Range Organics (ORO) (384 mg/kg) were present in the soils directly impacted by the dumping at the aforementioned site. The sample was a composite of the debris pile and two other locations where liquids flowed from the debris pile. Slightly elevated levels were also detected in a background sample (DRO= 48.9 mg/kg and ORO= 119 mg/kg) taken at a location up slope and to the side of the

dumping area. In response to the sample results, Al Anderson asserted to WVDEP personnel that the whole site may be contaminated, and the material tested may have been tainted by site contamination. As a result of this discussion, WVDEP personnel returned to the site and took a sample from the pile of dumped material. Results indicated that the sample from the debris pile contained 686mg/kg of DRO and 686 mg/kg of ORO. Three additional background samples yielded the following results: 35.5mg/kg DRO and 121mg/kg ORO; 32.2mg/kg DRO and 116mg/kg ORO; and 186mg/kg DRO and 374mg/kg of ORO. The sample results reflect that the debris pile of dumped material contains considerably greater levels of DRO and ORO than the surrounding background area.

8. On February 10, 2014, in correspondence to WVDEP personnel, Clayton W. Rice represented that the aforementioned property would be sampled and cleaned.
9. On March 24, 2014, Clayton W. Rice represented to WVDEP personnel that RET, LLC conducted a cleanup of the aforementioned property and a training program had been implemented to ensure proper handling of wastes at RET, LLC.
10. On September 4, 2014, WVDEP personnel and representatives of RET, LLC met to discuss the terms and conditions of this Order.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq., Chapter 22, Article 12, Section 1 et seq., and Chapter 22, Article 15, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. RET, LLC shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, RET, LLC shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when RET, LLC will achieve compliance with all pertinent laws and rules. The plan shall include, but not be limited to, the following:
 - a. Documentation that the aforementioned site has been properly remediated to WVDEP approved levels of DRO and ORO.
 - b. Maps indicating the footprint of the storm water drainage, flow direction, and all sample point locations at the aforementioned site.
 - c. A comprehensive compilation of sampling data.
 - d. A written program regarding the proper handling of wastes, including quarterly training of all employees and immediate training of any new employee. The plan of corrective action shall include provisions for the written training log to be submitted annually for a period of three (3) years.

The plan of corrective action and all associated documents shall be submitted to:

**WVDEP Environmental Inspector Supervisor
NW Regional Environmental Enforcement Office
2031 Pleasant Valley Road
Fairmont, WV 26554**

A copy of this plan and all associated documents shall be submitted to:

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WVDEP
601 57th Street SE
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

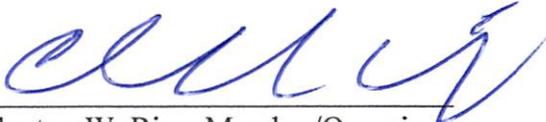
3. Because of RET, LLC's West Virginia Code and Legislative Rule violations, RET, LLC shall be assessed a civil administrative penalty of six thousand eight hundred fifty dollars (\$6,850) to be paid to the West Virginia Department of Environmental Protection for deposit in the Water Quality Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall be mailed to:**

**Chief Inspector
Environmental Enforcement - Mail Code #031328
WV-DEP
601 57th Street SE
Charleston, WV 25304**

OTHER PROVISIONS

1. RET, LLC hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21, and/or Chapter 22, Article 12, Section 11, and/or Chapter 22, Article 15, Section 16 of the Code of West Virginia. Under this Order, RET, LLC agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, RET, LLC does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding RET, LLC other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, RET, LLC shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after RET, LLC becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which RET, LLC intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of RET, LLC (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving RET, LLC of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject RET, LLC to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on RET, LLC, its successors and assigns.

7. This Order shall terminate upon RET, LLC's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.



Clayton W. Rice, Member/Organizer
Ryan Environmental Transport, LLC

9-29-14

Date

Public Notice begin:

Date

Public Notice end:

Date

Scott G. Mandirola, Director
Division of Water and Waste Management

Date

RECEIVED

OCT 3 2014

ENVIRONMENTAL
ENFORCEMENT

Base Penalty Calculation

(pursuant to 47CSR1-6.1)

Responsible Party: Ryan Environmental Transport, LLC **Receiving Stream:** Three Fork Creek

Treatment System Design Maximum Flow: N/A **MGD**

Treatment System Actual Average Flow: N/A **MGD** (if known)

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			3a	3b										
a)	Amount of Pollutant Released	1 to 3	1	1										
b)	Toxicity of Pollutant	0 to 3	1	2										
c)	Sensitivity of the Environment	0 to 3	1	1										
d)	Length of Time	1 to 3	1	1										
e)	Actual Exposure and Effects thereon	0 to 3	1	1										
Average Potential for Harm Factor			1	1.2	No									
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	3	3										

Potential for Harm Factors:

- 1)c - Sensitivity of the Environment Potentially Affected (0 for "dead" stream)
- 1)d - Length of Time of Violation
- 1)e - Actual Human/Environmental Exposure and Resulting Effects thereon

Examples/Guidance:

Note: Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.

Minor = exceedance of permit limit by <=40% for Avg. Monthly or <=100% for Daily Max., exceed numeric WQ standard by <= 100%, or report doesn't contain some minor information.

Moderate = exceedance of permit limit by >= 41% and <= 300% for Avg. Monthly, >= 101% and <= 600% for Daily Max., exceed numeric WQ standard by >= 101% and <= of 600% or report doesn't fully address intended subject matter.

Major = exceedance of permit limit by >= 301% for Avg. Monthly, >= 601% for Daily Max., exceed numeric WQ standard by >= 601%, failure to submit a report, failure to obtain a permit, failure to report a spill, etc. Note that a facility in SNC should be rated as major for length of time and degree of non-compliance.

Narrative WQ standard violations - case-by-case.

Penalty Adjustment Factors

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor

6.2.b.1 - Degree of or absence of willfulness and/or negligence - 0% to 30% increase

6.2.b.4 - Previous compliance/noncompliance history - 0% to 100% increase - based upon review of last three (3) years - Warning = maximum of 5% each, N.O.V. = maximum of 10% each, previous Order = maximum of 25% each - Consistent DMR violations for <1 year = 10% maximum, for >1 year but <2 years = 20% maximum, for >2 years but <3 years = 30% maximum, for >3 years = 40 % maximum

6.2.b.6 - Economic benefits derived by the responsible party (increase to be determined)

6.2.b.7 - Public Interest (increase to be determined)

6.2.b.8 - Loss of enjoyment of the environment (increase to be determined)

6.2.b.9 - Staff investigative costs (increase to be determined)

6.2.b.10 - Other factors

Size of Violator: 0 - 50% decrease

NOTE: This factor is not available to discharges that are causing a water quality violation. This factor does not apply to a commercial or industrial facility that employees or is part of a corporation that employees more than 100 individuals.

Avg. Daily WW Discharge Flow (gpd)	% Reduction Factor
< 5,000	50
5,000 to 9,999	40
10,000 to 19,999	30
20,000 to 29,999	20
30,000 to 39,999	10
40,000 to 99,999	5
> 100,000	0

Additional Other factors to be determined for increases or decreases on a case-by-case basis.

Public Notice Costs (cost for newspaper advertisement)

6.2.b.2 - Good Faith - 10% decrease to 10% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.5 - Ability to pay a civil penalty - 0% to 100% decrease

Base Penalty Adjustments

(pursuant to 47CSR1-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Willfulness and/or negligence -	20		\$1,240
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.6 - Economic benefits - (flat monetary increase)			\$0
6.2.b.7 - Public Interest - (flat monetary increase)			\$0
6.2.b.8 - Loss of enjoyment - (flat monetary increase)			\$0
6.2.b.9 - Investigative costs - (flat monetary increase)			\$0
6.2.b.10 - Other factors (size of violator)			\$0
6.2.b.10 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.10 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Costs (flat monetary increase)	\$30		\$30
6.2.b.2 - Good Faith - Increase			\$0
6.2.b.2 - Good Faith - Decrease			\$0
6.2.b.3 - Cooperation with the Secretary		10	(\$620)
6.2.b.5 - Ability to Pay			\$0
Penalty Adjustments			\$650
Penalty =			\$6,850

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
Estimated Economic Benefit	\$0
Comments:	

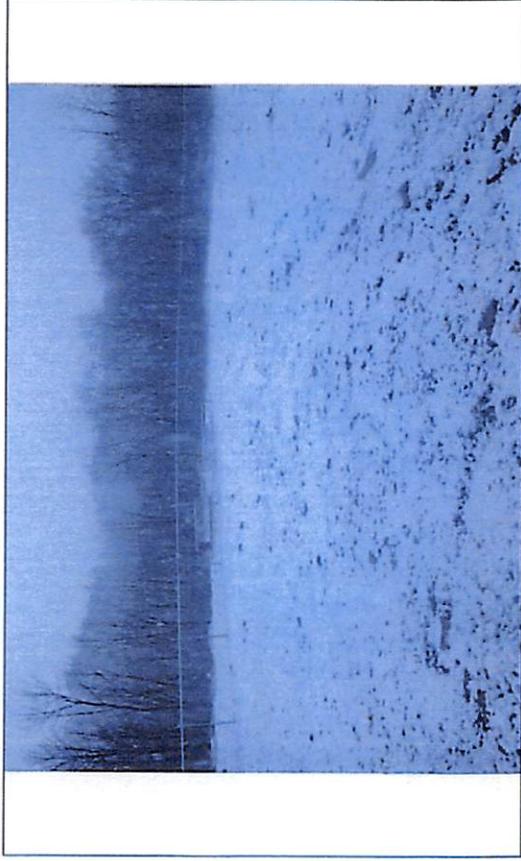


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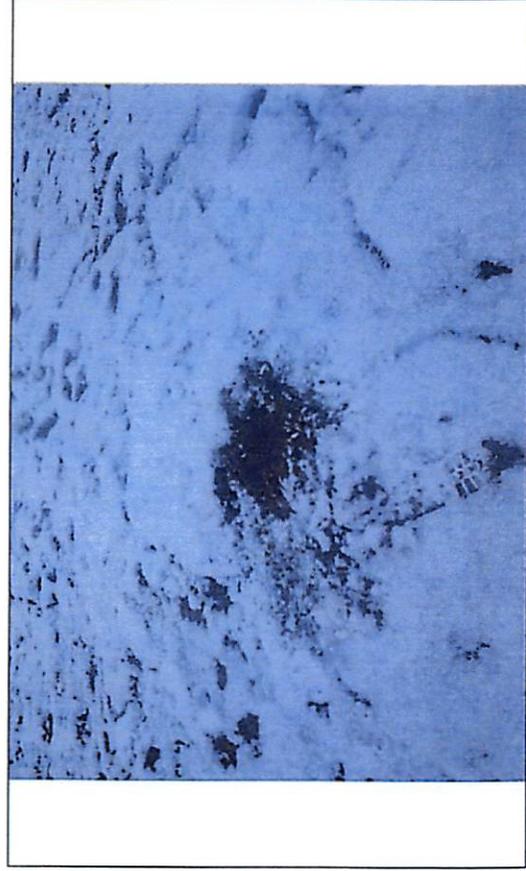


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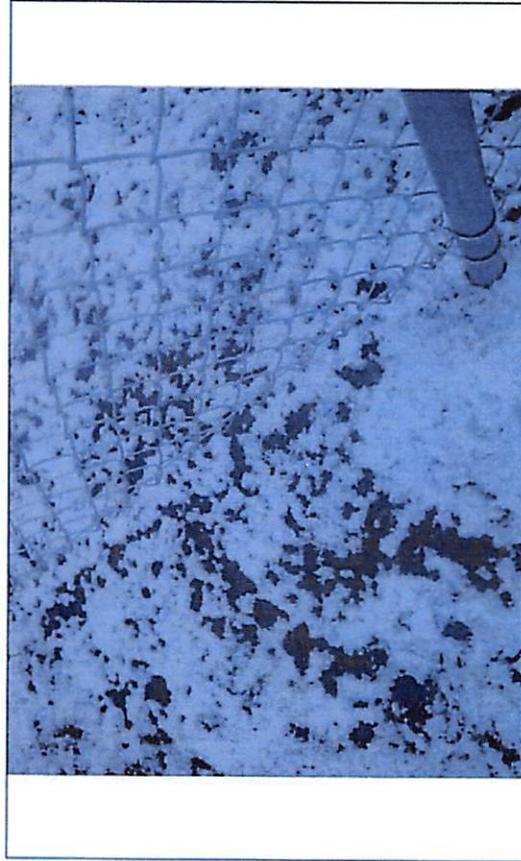


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Photo # imgp4541

Photos By Chuck Joseph

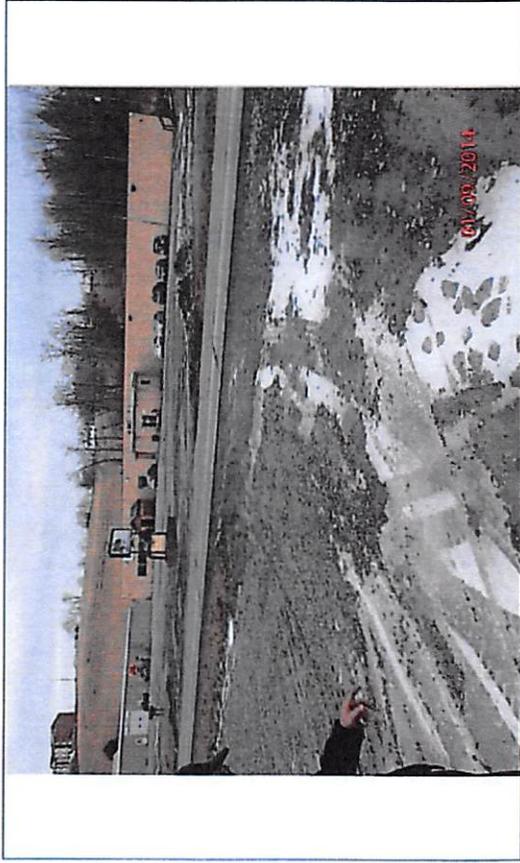


Photo # p1090671



Photo # p1090672



Photo # p1090673

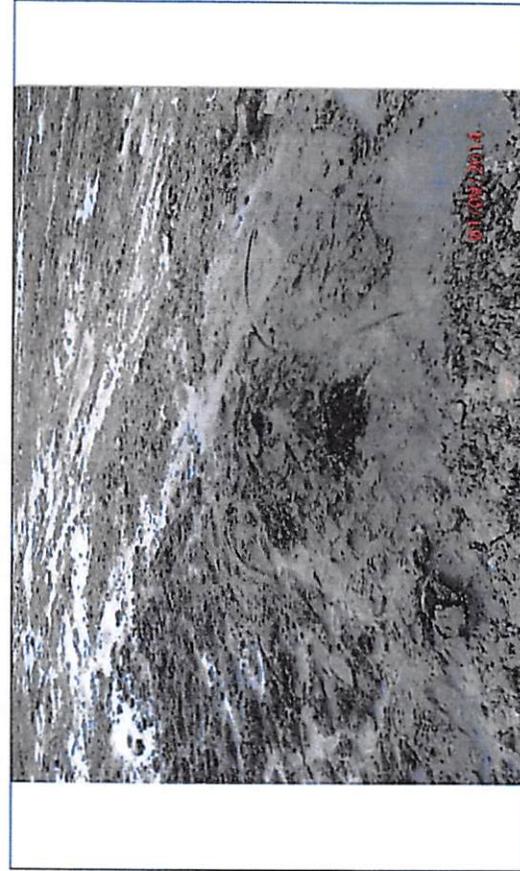


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Photos By Tim Keller

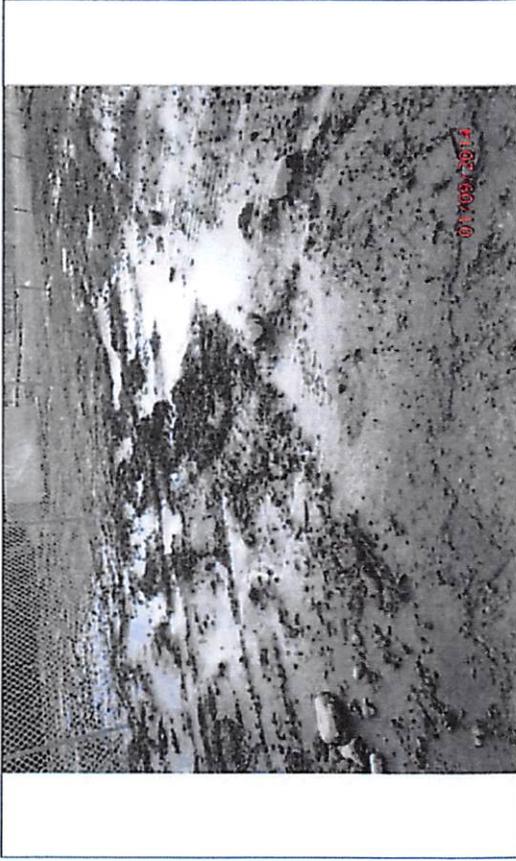


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Photo # p1090676



Photo # p1090677

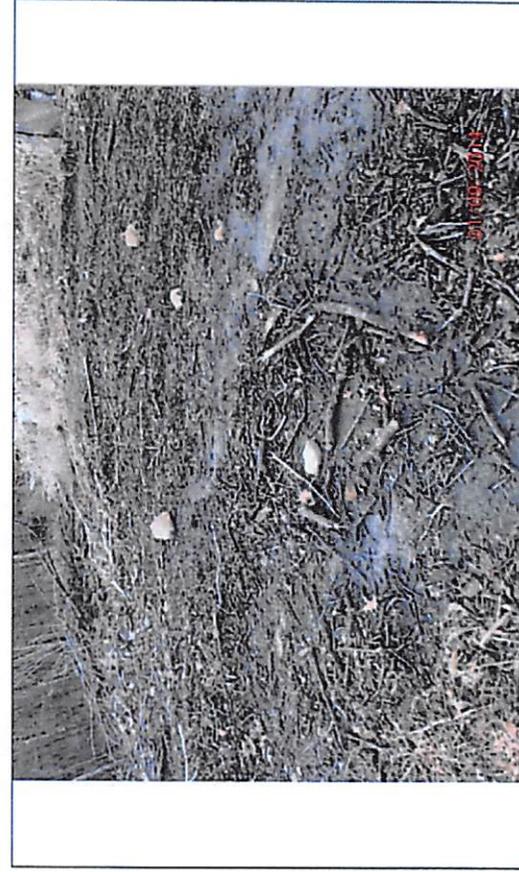


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Photos By Tim Keller



Photo # p1090679



Photo # p1090680



Photo # p1090681

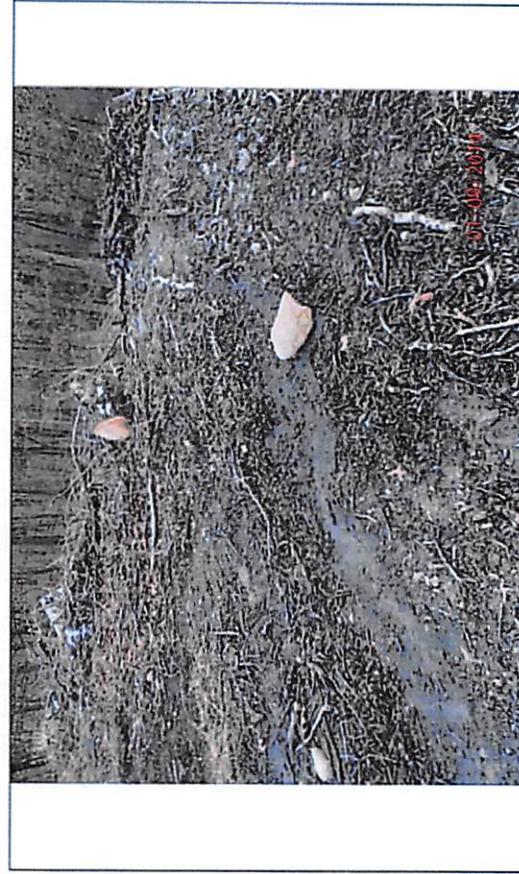


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Photos By Tim Keller

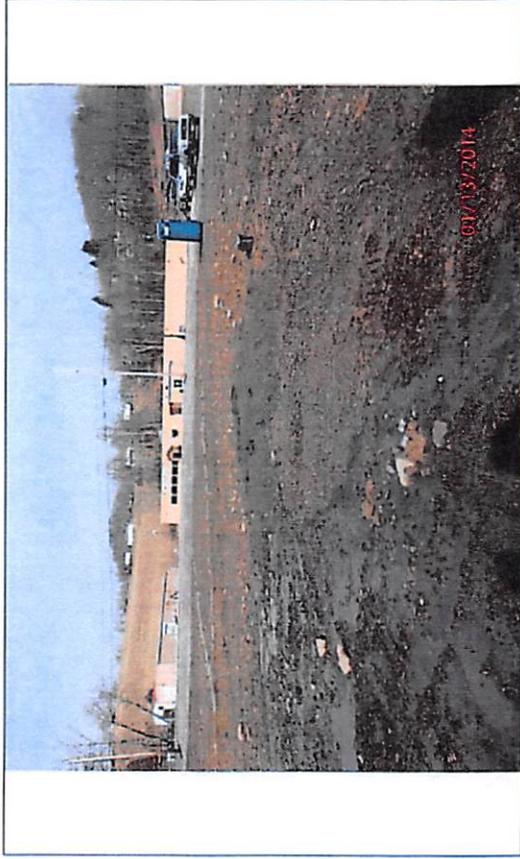


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Photo # p1130718



Photo # p1130719



Photo # p1130720

Photos By Tim Keller



Photo # p1130721



Photo # p1130722



Photo # p1130723

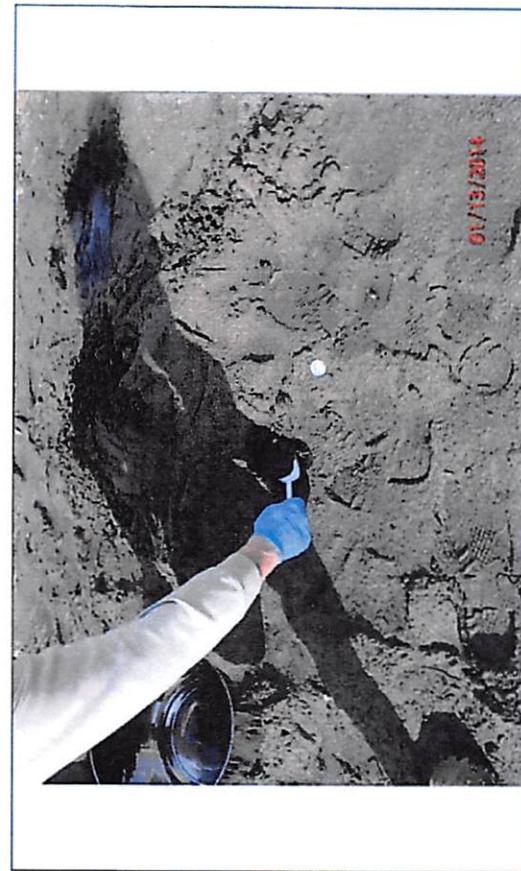


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Photos By Tim Keller



Photo # p1130725



Photo # p1130726

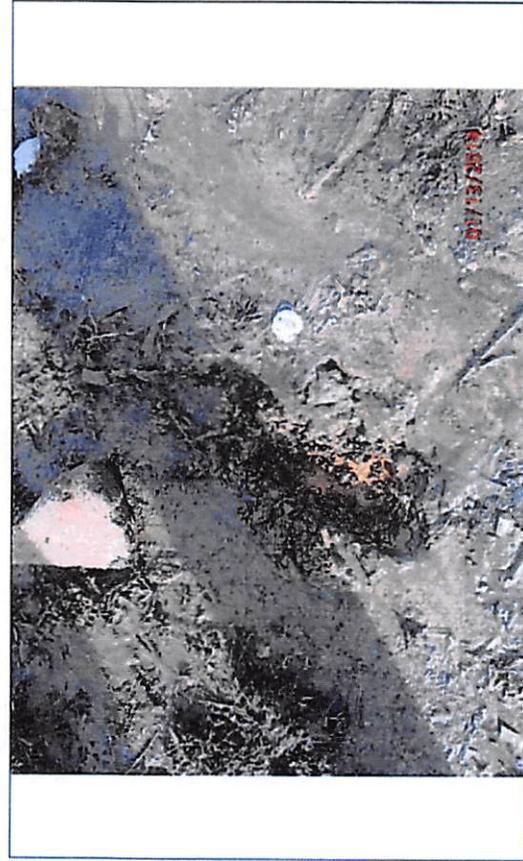


Photo # p1130727



Photo # p1130728

Photos By Tim Keller



Photo # p1130729



Photo # p1130730



Photo # p1130731

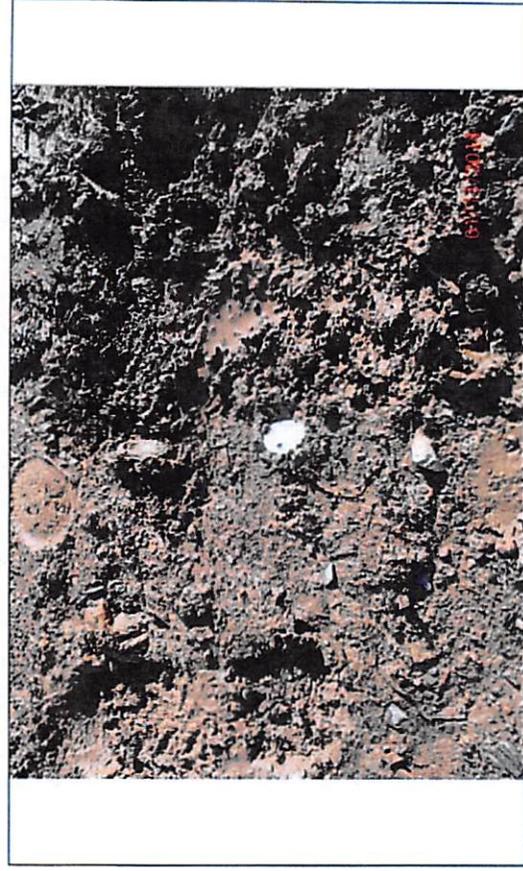


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Photos By Tim Keller



Photo # p1130733



Photo # p1130734

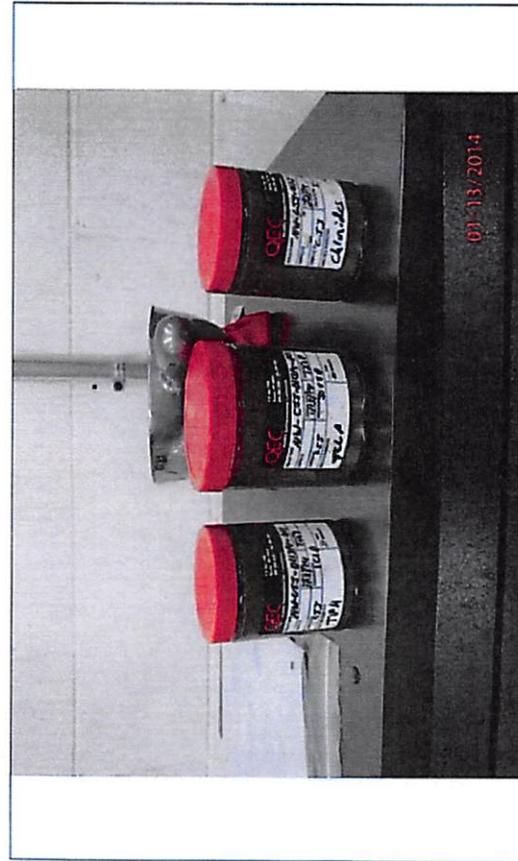


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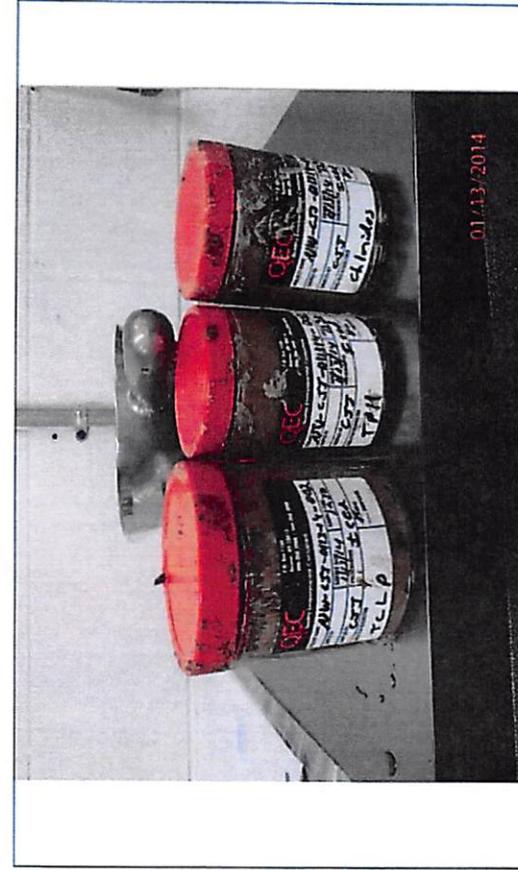


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Photos By Tim Keller

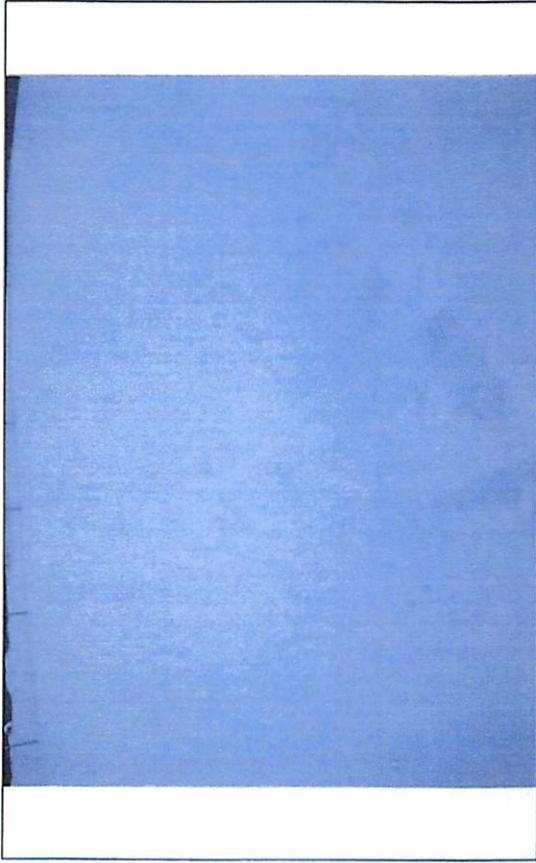


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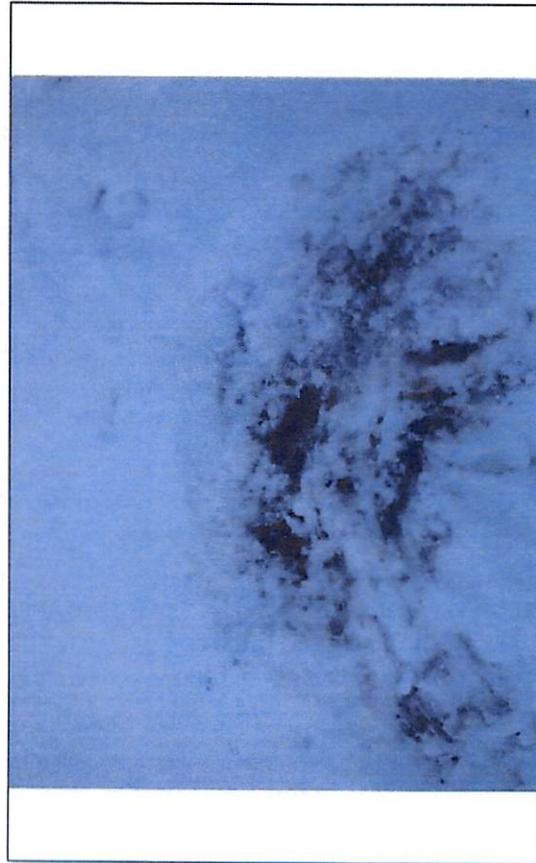


Photo # imgp4547

Photos By Chuck Joseph



Photo # imgp4542



Photo # imgp4543



Photo # imgp4544

PHOTO LOG

**Sampling Event, Clayton W. Rice Property, near Grafton, US Rte. 50, Taylor County, 2-06-14
Photos by: Chuck Joseph**

Photo #	Comments
IMGP4626	Photo taken for sample point verification
IMGP4627	Photo taken for sample point verification
IMGP4628	Photo taken for sample point verification
IMGP4629	Photo taken for sample point verification
IMGP4630	Photo taken for sample point verification
IMGP4631	Photo taken for sample point verification
IMGP4632	Photo taken for sample point verification
IMGP4633	Photo taken for sample point verification
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IMGP4636	Photo taken for sample number verification
IMGP4637	Photo taken for sample number verification

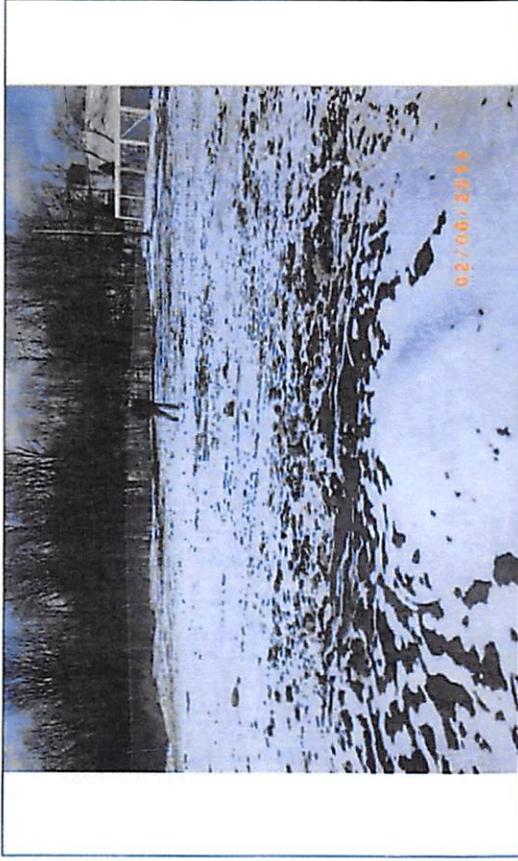


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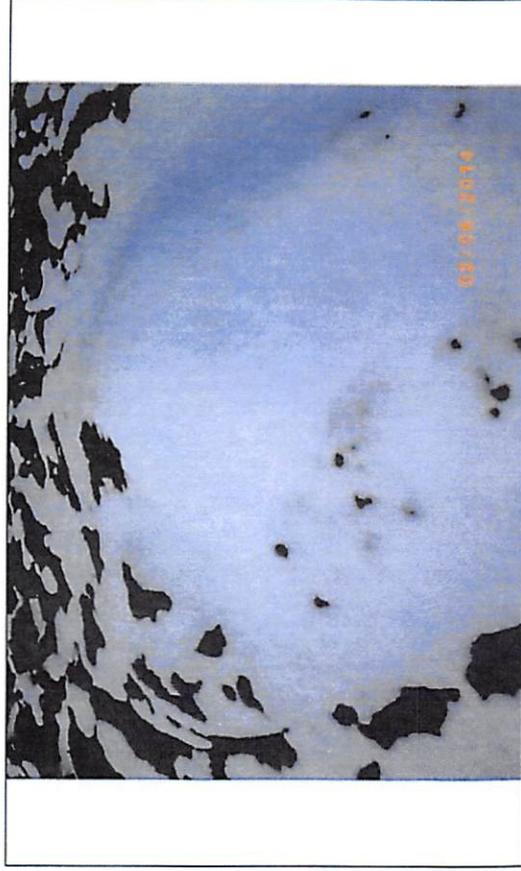


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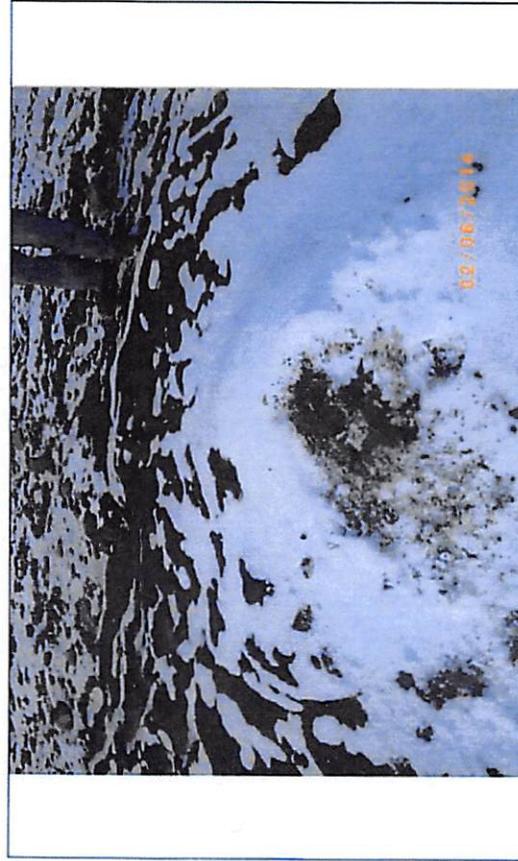


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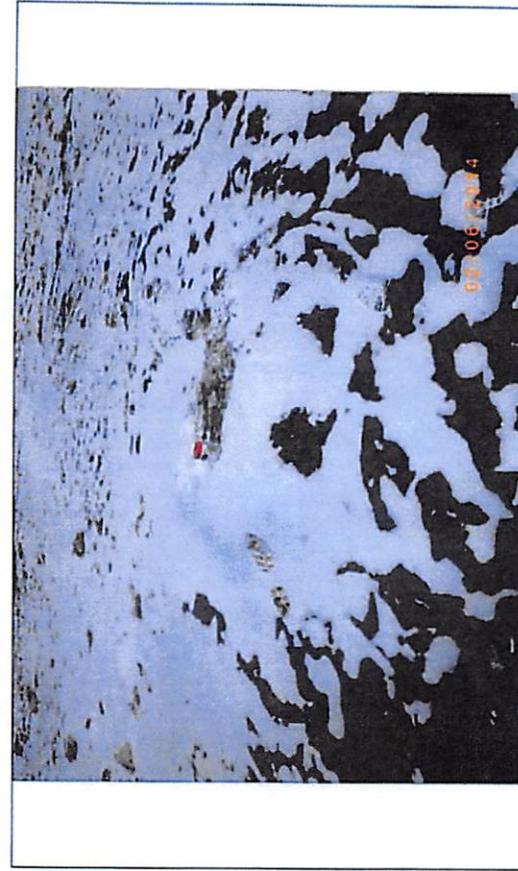


Photo # imgp4629

Photos By Chuck Joseph



Photo # imgp4630



Photo # imgp4631



Photo # imgp4632

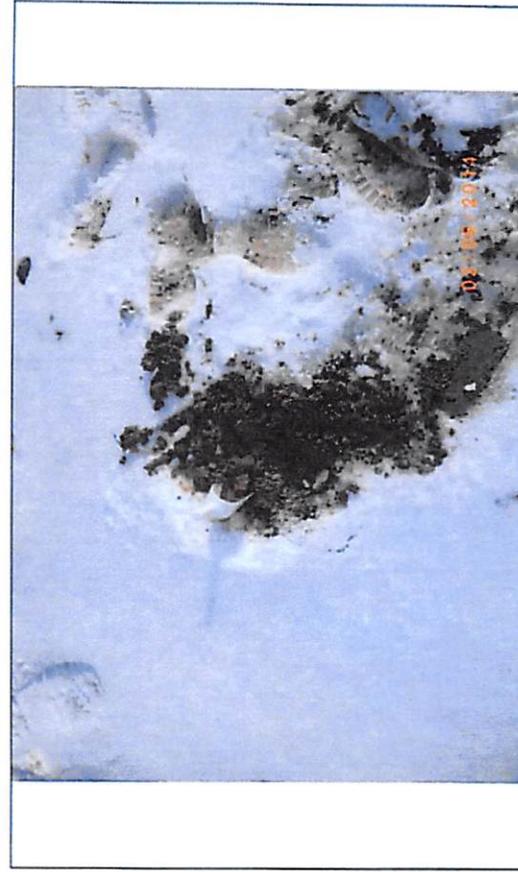


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Photos By Chuck Joseph

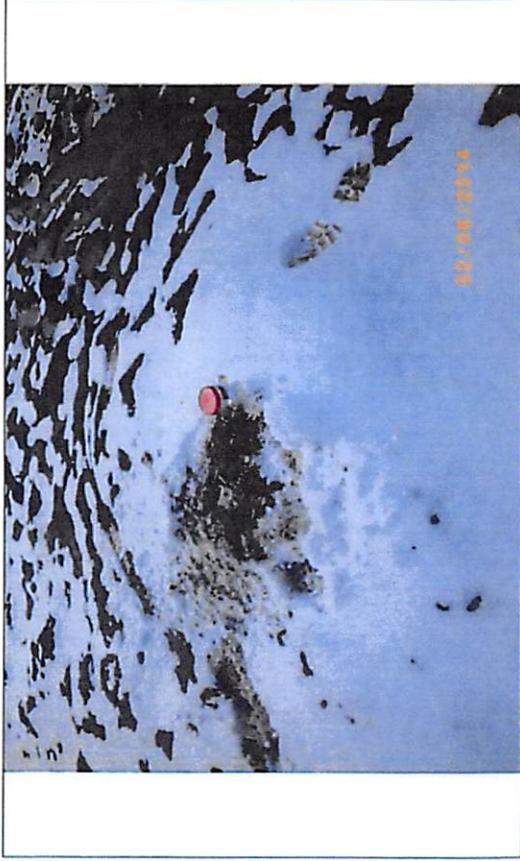


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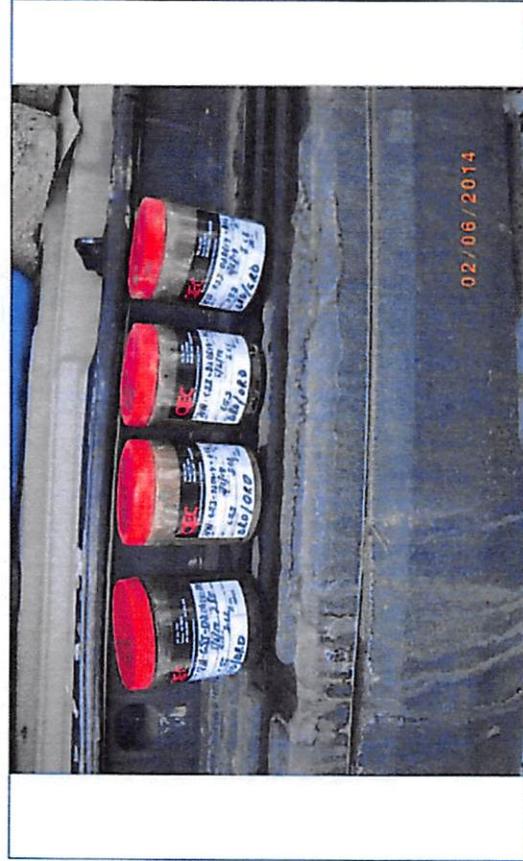


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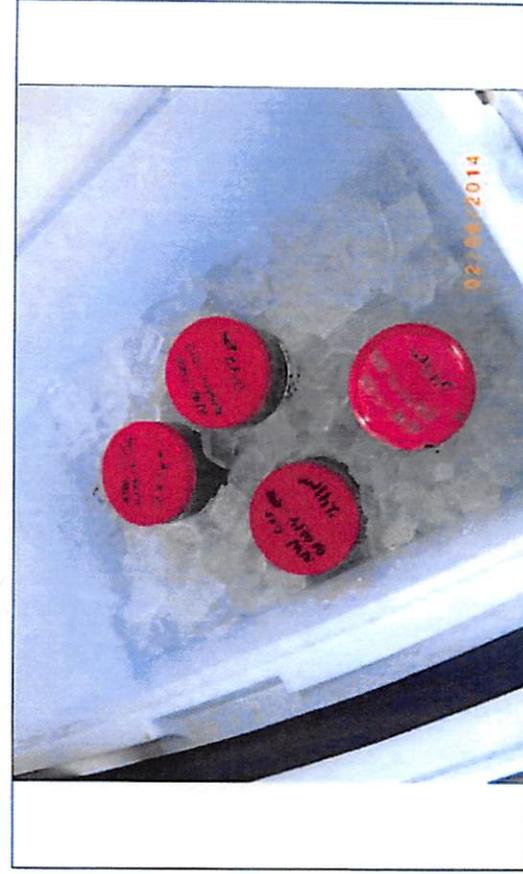


Photo # imgp4637



Photo # ryan property 16x9 clips 1



Photo # ryan property 16x9 clips 2
Photos By: unmanned security camera