

004-355-CD  
EDWARD C. MILLER -vs- J.V. INC. d/b/a BEARD OIL, et al

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

C O M P L A I N T

To The Within Defendants:

YOU ARE HEREBY NOTIFIED TO  
PLEAD TO THE WITHIN COMPLAINT  
WITHIN TWENTY (20) DAYS FROM THE  
DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By *John C. Cherry*  
Attorneys for Plaintiff

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
DU BOIS, PENNSYLVANIA 15801-0505  
ONE NORTH FRANKLIN STREET

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03/22/00  
William A. Shad  
Prothonotary  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

③ EDWARD C. MILLER,  
Plaintiff  
vs.  
④ J. V., INC., d/b/a BEARD OIL, and  
③ SHANER ENERGY, INC.,  
Defendants

: No. 2000 - 355 C.D.  
: Type of Case: ASSUMPSIT  
: Type of Pleading: COMPLAINT  
: Filed on Behalf of: EDWARD C. MILLER,  
Plaintiff  
: Counsel of Record for this Party:  
TONI M. CHERRY, ESQ.  
Supreme Court No.: 30205  
GLEASON, CHERRY AND  
CHERRY, L.L.P.  
Attorneys at Law  
P.O. Box 505  
One North Franklin Street  
DuBois, PA 15801  
(814) 371-5800

FILED

MAR 22 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

No. 2000 - \_\_\_\_\_ C.D.

**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

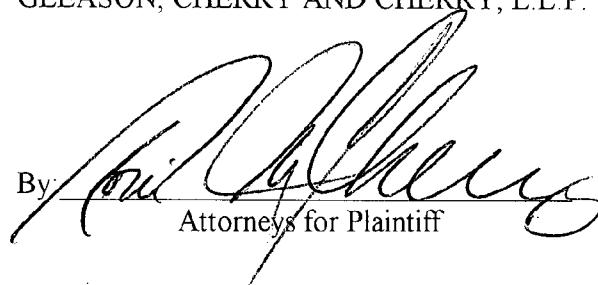
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 2000 - \_\_\_\_\_ C.D.  
J. V., INC., d/b/a BEARD OIL, and :  
SHANER ENERGY, INC., :  
Defendants :

**C O M P L A I N T**

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this Complaint upon a cause of action whereof the following is a statement:

1. Plaintiff, EDWARD C. MILLER, is an adult individual who resides at R. D. #3, Box 274, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, J. V., INC., d/b/a BEARD OIL, is a corporation licensed to do business in the Commonwealth of Pennsylvania and having a place of business at R. D. #4, Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830.
3. That Defendant, SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at 40 Pennsylvania Avenue, Huntingdon, Pennsylvania 16652.
4. On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, J. V., INC., d/b/a BEARD OIL,

under a Commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

5. The Lease provides for an initial term of ten years commencing on December 31, 1992, through December 30, 2002, at a minimum base rental of \$700.00 per month, payable on the 31<sup>st</sup> day of every month for the next succeeding month.

6. Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of said property and delivered to Plaintiff the keys therefor.

7. That the last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997 and no further rental payments were made on the Lease thereafter despite the fact that Defendants remained in possession of the property and there exists an outstanding Lease obligating Defendants to make monthly payments for a period of ten (10) years.

8. That Plaintiff has been able to rent the subject premises as of January 1, 2000, for the same amount of rental per month due under his Lease with Defendants, to wit, \$700.00 per month.

9. Accordingly, there is due and owing to Plaintiff under the Lease entered into with Defendants the following back rent:

Rent Due for 1997	\$ 2,100.00
Rent Due for 1998	\$ 8,400.00
Rent Due for 1999	<u>\$ 8,400.00</u>
Total	\$18,900.00

10. Defendants, despite repeated demands by Plaintiff, have failed and refused and still refuse to pay Plaintiff the sum of \$18,900.00 or any part thereof although the Lease obligates them to make such payments.

11. That Paragraph 6 of the Lease requires that the premises be surrendered to Lessor in as good a condition as it was at the time of the commencement of the Lease, reasonable wear and tear excepted.

12. That contrary to the specific obligations of the Lease, Defendants did leave the premises in a damaged and destroyed condition as follows:

- (a) In the office, the heater coil from the baseboard heater was broken at the heater coil;
- (b) The pipes at the South wall were cut with a hacksaw at the end of the heater coil underneath the L-shaped window;
- (c) The heater line in the women's restroom was broken at the point of its entry into the concrete wall;
- (d) The water meter in the furnace room was broken;
- (e) The pressure flow valve on the West wall above the boiler unit was leaking and had to be repaired;
- (f) The drain at the bottom of the sink in the women's restroom was broken;
- (g) The faucets in the women's restroom were leaking around the knobs;
- (h) The line going to the commode in the women's restroom had been soldered and had blown apart at the solder point and was leaking;

13. That as a result of the damages done by Defendants, the Plaintiff had to incur repair costs in the amount of SEVEN HUNDRED DOLLARS (\$700.00).

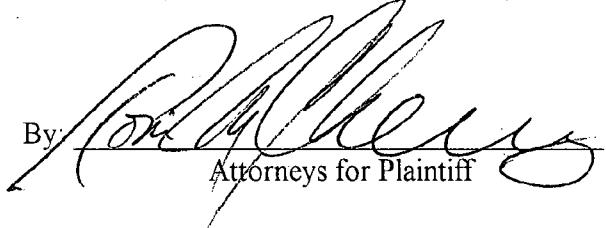
14. That in addition to the damages caused by Defendants, they left the premises in a dirty and unkept condition in violation of the requirements of the Lease, requiring the Plaintiff to expend the sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) to clean the premises.

15. Despite repeated demands by Plaintiff to Defendants for payment of the monies due to him in accordance with the terms of the Lease, Defendants have wholly refused.

WHEREFORE, Plaintiff demands judgment against Defendants in the amount of NINETEEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$19,750.00), together with interest and costs of suit.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By:   
Ron Gleason  
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

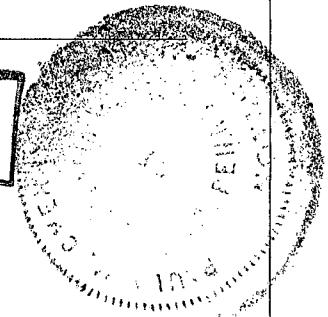
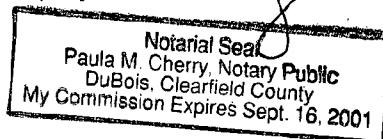
: SS.  
:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, EDWARD C. MILLER, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

*Edward C. Miller*

Edward C. Miller

Sworn to and subscribed before me this 22nd day of March, 2000.



Original

## AGREEMENT

P.01  
EXIT 16, Du No. 5

Miller to Beard Oil

12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

4

N

D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel galionage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bona fide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bona fide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business thereat, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and the driveway on and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost thereto and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause or reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller  
Edward C. Miller

BEARD OIL COMPANY

By Dale H. Hopper  
Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

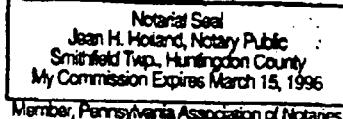
## COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 2-th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

## COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Parke, who acknowledged himself to be the Vice President of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

TONI M. CHERRY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MILLER, EDWARD C.

00-355-CD

VS

J.V., INC. D/B/A BEARD OIL

COMPLAINT IN ASSUMPSIT

SHERIFF RETURNS

NOW MARCH 23, 2000 AT 1:01 PM EST SERVED THE WITHIN COMPLAINT ON J.V., INC. D/B/A BEARD OIL, DEFENDANT AT EMPLOYMENT, RD#4 WASHINGTON AVE., PO BOX 628, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO EDWARD YEAGER, BRANCH MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: NEVLING.

NOW MARCH 24, 2000, DAVID L. HARKER, SHERIFF OF HUNTINGDON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON SHANER ENERGY, INC., DEFENDANT.

NOW MARCH 28, 2000 SERVED THE WITHIN COMPLAINT ON SHANER ENERGY, INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF HUNTINGDON COUNTY. THE RETURN OF SHERIFF HARKER IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED SHERRI FOLK CUSTOMER SERVICE REPRESENTATIVE.

35.10 SHFF. HAWKINS PAID BY: ATTY.  
24.00 SHFF. HARKER PAID BY: ATTY.  
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

7th DAY OF April 2000  
William A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.

SO ANSWERS,

*Chester A. Hawkins*  
*by Marilyn Henry*  
CHESTER A. HAWKINS  
SHERIFF

FILED

APR 07 2000  
0340 pm  
William A. Shaw  
Prothonotary  
*REB*



# SHERIFF'S OFFICE

## HUNTINGDON COUNTY, PENNSYLVANIA

241 Mifflin Street

Huntingdon, PA 16652

Telephone: 814-643-0880

David L. Harker, Sheriff

EDWARD C. MILLER

NO. 355

TERM 00

VS:

J.V. INC., D/B/A BEARD OIL AND SHANER

ENERGY, INC.

NOW, MARCH 28, 2000, AT 1040 A.M./P.M. I SERVED THE WITHIN

NOTICE AND COMPLAINT

UPON

J.V. INC., D/B/A BEARD OIL AND SHANER ENERGY INC.

SHANER ENERGY, 40 PENNSYLVANIA AVE, HUNTINGDON, PA 16652

BY HANDING TO SHERRI FOLK, CUSTOMER SERVICE REPRESENTATIVE FOR SHANER ENERGY

ONE TRUE AND CORRECT COPY/COPIES OF THE WITHIN NOTICE AND COMPLAINT

AND MADE KNOWN TO SHERRI

THE CONTENTS THEREOF.

SWORN AND SUBSCRIBED TO

BEFORE ME THIS 30<sup>th</sup>

DAY OF March

2000, A.D.

Kay Coons

PROTHONOTARY/NOTARY PUBLIC

SO ANSWERS,

*David L. Harker*  
David L. Harker, Sheriff

DEPUTY ANDREW SENTMAN  
CHIEF DEPUTY/DEPUTY

**COSTS:**

REC & DOC . . . .	9.00
SERVICE . . . .	9.00
MILEAGE/POSTAGE .	6.00
SURCHARGE . . . .	---
AFFIDAVIT . . . .	N/C
MISCELLANEOUS . . .	---

**TOTAL COSTS**

\$24.00 PAID

KAY COONS  
PROTHONOTARY

HUNTINGDON COUNTY, PENNSYLVANIA  
MY COMMISSION EXPIRES JANUARY 7, 2002



# Sheriff's Office Clearfield County

OFFICE (814) 765-2641  
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX  
(814) 765-6089

CHESTER A. HAWKINS  
SHERIFF

SUITE 116  
1 NORTH SECOND STREET - COURTHOUSE  
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

MARGARET PUTT  
OFFICE MANAGER

PETER F. SMITH  
SOLICITOR

## DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EDWARD C. MILLER

NO. 00-355-CD

VS

J.V. INC. d/b/a BEARD OIL

ACTION: COMPLAINT

SERVE BY: 4/21/00

or

HEARING DATE:

\*\*\*\*\*

SERVE: SHANER ENERGY INC.

ADDRESS: 40 Pennsylvania Ave., Huntingdon, Pa. 16652

\*\*\*\*\*

Know all men by these presents, that I, CHESTER A. HAWKINS,  
HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby  
deputize the SHERIFF of HUNTINGDON County to execute this writ.

This deputation being made at the request and risk of the plaintiff  
this 24th day of MARCH 2000.

Respectfully,

  
CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO: GLEASON, CHERRY & CHERRY, Attorneys

LAW OFFICES OF  
MITINGER & De BOEF  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
:  
vs. : No. 2000-355  
:  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

ANSWER AND NEW MATTER

NOW comes the Defendants, J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., by and through their attorneys, Mitinger & De Boef, and Anthony G. De Boef, Esquire, to answer Plaintiff's Complaint filed in the above-captioned matter. Defendants will respond to each one of the Plaintiff's allegations as follows:

1. Admitted. Defendants admit to the statement to the best of their knowledge.
2. Admitted. Defendants admit this information.
3. Admitted in part and Denied in part. Shaner Energy, Inc. would admit that it is a business authorized to conduct business within the Commonwealth of Pennsylvania. However, Shaner Energy, Inc. has numerous places of business including the Huntingdon address. Shaner Energy, Inc. denies that it is a Defendant in this matter.
4. Admitted. Defendant Beard Oil would admit the information in this paragraph.

**FILED**

**(APR 14 2000)**

William A. Shaw  
Prothonotary

5. Denied. Defendant Beard Oil denies the Plaintiff's allegations in this information and submits that the Lease document speaks for itself.

6. Admitted. Defendant Beard Oil admits that the lease was terminated, however the termination date would be offered as September 12, 1997.

7. Admitted in part and Denied in part. The last rental check that Defendant made to Plaintiff was for October of 1997 and no further payments have been made.

8. Defendant Beard Oil has no knowledge of this information beyond what the Plaintiff has stated and would specifically ask for the Plaintiff to prove this at the time of trial.

9. Denied. Defendant Beard Oil denies the allegations in this paragraph.

10. Denied. Defendant Beard Oil denies the allegations in this paragraph.

11. Denied. Defendant Beard Oil denies the contents of this paragraph and submits that the Lease document speaks for itself.

12. Denied. Defendant Beard Oil denies the contents of this paragraph and specifically requests that Plaintiff prove this at the time of trial.

13. Defendant Beard Oil has no information to Admit or Deny the basis of this paragraph.

14. Denied. Defendant Beard Oil denies the allegations contained in this paragraph and further has no information to substantiate the cleaning bill.

15. Denied. Defendant Beard Oil denies the allegations in this paragraph.

**NEW MATTER**

The Defendant, Beard Oil would state the following:

1. Beard Oil would reaffirm the allegations set forth in paragraph 1 and 2 of Plaintiff's Complaint.

2. Paragraph 17 of the Lease attached to the Complaint reads as follows: "Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind and prosecutions of every kind and characters arising in law or in equity or elsewhere as a consequence of this Lease."

3. Defendant Beard Oil would respectfully ask the Court based on this paragraph to dismiss the suit with prejudice against them.

**NEW MATTER**

The Defendant Shaner Energy, Inc. would state the following:

1. Shaner Energy, Inc. would incorporate paragraph 1 and 2 of Plaintiff's Complaint.

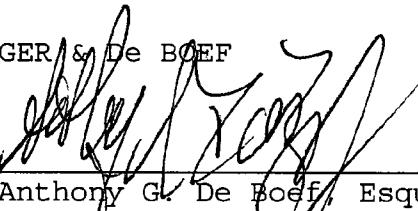
2. Shaner Energy, Inc. has no nexus in the Complaint filed by the Plaintiff to Beard Oil.

3. Based on the information of Plaintiff's Complaint, the Lease is with Beard Oil. Therefore, Shaner Energy, Inc. would ask the Court to dismiss them as a Defendant with prejudice.

Wherefore, with regards to the Answer and two New Matters as plead by Defendants, the Defendants would respectfully request for the Court to dismiss this case as answered upon in this document.

Respectfully submitted,

MITINGER & De BOEF

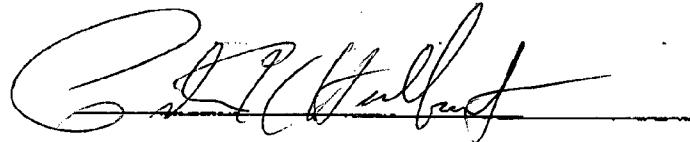
BY: 

Anthony G. De Boef, Esquire  
Attorney for Defendants  
2147 E. College Avenue  
State College, PA 16801  
(814) 231-4050  
Attorney I.D. No. 71532

DATED: 4/13/04

**VERIFICATION**

The undersigned verifies that the facts contained herein are true and correct. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904 relating to sworn falsification to authorities.

A handwritten signature in black ink, appearing to read "C. L. Hall", is written over a horizontal line.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: vs. : No. 2000-355  
: :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

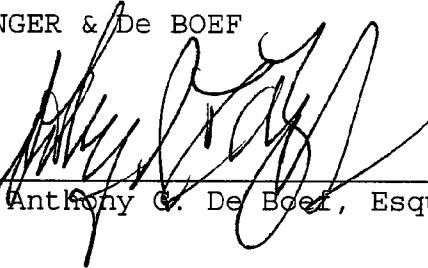
I hereby certify that I served a copy of Plaintiffs' Answer to Defendant's New Matter and Counterclaim upon all parties of interest or counsel of record by depositing the same within the custody of the United States Postal Service, First Class Mail, postage prepaid, addressed as follows:

Toni M. Cherry, Esquire  
PO Box 505  
Dubois, PA 15801

Peter K. Hulburt, Esquire  
303 North Science Park Road  
State College, PA 16803

MITINGER & De BOEF

By:

  
Anthony G. De Boef, Esquire

Dated: 7/13/00

FILED

APR 17 4 2000  
m 1142 NO CC  
William A. Stratton  
Prothonotary

LAW OFFICES  
BLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
DuBois, PENNSYLVANIA 15801-0505  
ON NORTH FRANKLIN STREET

*John Bleason*  
ATTORNEY FOR Plaintiff • EDWARD G. MCFARLAND

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

: No. 00 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: REPLY TO NEW MATTER  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P.O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

**FILED**

NOV 15 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:
Plaintiff	:
	: No. 00 - 355 C.D.
vs.	:
	:
J. V., INC., d/b/a BEARD OIL, and	:
SHANER ENERGY, INC.,	:
Defendants	:

**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and replies to the New Matter of the Defendants as follows:

**NEW MATTER OF DEFENDANT, BEARD OIL**

1. Insofar as Defendant, BEARD OIL, has reaffirmed the allegations set forth in Paragraphs 1 and 2 of Plaintiff's Complaint, no reply is required.
2. ADMITTED in part and DENIED in part. While it is ADMITTED that Paragraph 17 is correctly set forth in Paragraph 2, it is DENIED that the language of Paragraph 17 frees Defendant, BEARD OIL, from its obligations contracted for under the Lease Agreement. It is further DENIED that the language of Paragraph 17 absolves the Lessee from having to pay the rent it agreed to pay under the provisions of the Lease Agreement.
3. Paragraph 3 is a prayer for relief based on a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, BEARD OIL, has a

right to be relieved from its obligations to pay rent in accordance with the terms of the Lease Agreement.

**NEW MATTER OF DEFENDANT, SHANER ENERGY, INC.**

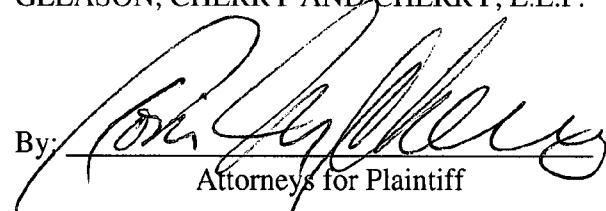
1. Insofar as Paragraph 1 affirms the assertions of Paragraphs 1 and 2 of Plaintiff's Complaint, no reply is necessary.
2. DENIED. On the contrary, Plaintiff believes and therefore avers that SHANER ENERGY, INC., is the parent company of BEARD OIL and that Defendant, BEARD OIL, has always held itself out as a SHANER ENERGY company.
3. DENIED as a conclusion of law. On the contrary, BEARD OIL company is a subsidiary of SHANER ENERGY company and its actions in entering into the Lease Agreement with Plaintiff were duly authorized by SHANER ENERGY, INC., which company actively participated in the actions and management of BEARD OIL.

WHEREFORE, Plaintiff respectfully requests that Defendants' New Matter be dismissed with prejudice and that judgment be entered in favor of Plaintiff and against Defendants.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By:

  
Attorneys for Plaintiff

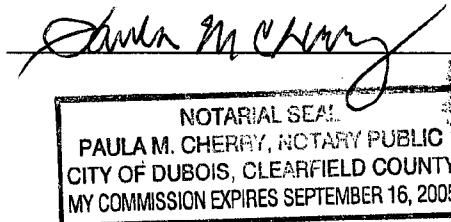
COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :  
:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, EDWARD C. MILLER, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of his knowledge, information and belief.

Edward C. Miller

Edward C. Miller

Sworn to and subscribed before me this 29<sup>th</sup> day of March, 2002.



FILED

ICC

10/16/02  
Ang T. Cheng  
NOV 15 2002  
FBI

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

EDWARD C. MILLER,	:	
	Plaintiff	:
		:
vs.	:	No. 00 - 355 C.D.
	:	
J. V., INC., d/b/a BEARD OIL, and	:	
SHANER ENERGY, INC.,	:	
	Defendants	:

**PRAECIPE FOR CASE TO BE LISTED FOR  
NON-JURY TRIAL**

TO WILLIAM A. SHAW, PROTHONOTARY

Sir:

Kindly place the above-captioned case on the non-jury trial list. Certificate of Readiness has been filed.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

*Attorney for Plaintiff*

NOV 15 2002

NOV 15 2002

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL, and :  
SHANER ENERGY, INC., :  
Defendants :  
:

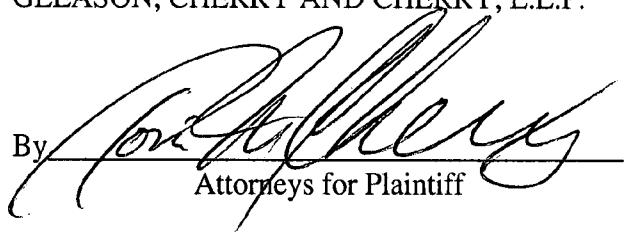
**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>TH</sup> day of November, 2002, a true and correct copy of the Certificate of Readiness and Praeclipe For Case to be Listed for Non-Jury Trial was served upon counsel for Defendants, ANTHONY G. DeBOEF, ESQ., by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
John P. Miller  
Attorneys for Plaintiff

Dated: November 14, 2002

FILED

200

cc

M10:56 AM  
Nov 15 2002

Atty. T. Cherry  
G. Red

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

\*

\*

\*

vs.

\*

NO. 2000-355-C.D.

\*

\*

\*

J.V., INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
Defendants

O R D E R

NOW, this 17<sup>th</sup> day of January, 2003, upon the request of counsel for both parties, it is the ORDER of this Court that the matter be and is hereby continued. The Court Administrator is directed to place the matter on the Civil Call List for the Spring, 2003 Term of Court.

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED

JAN 20 2003

William A. Shaw  
Prothonotary/Clerk of Courts

# FILED

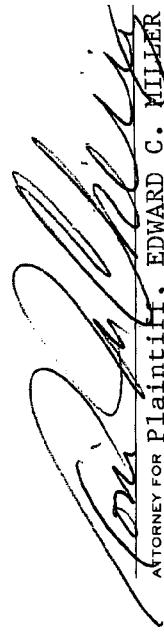
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0111:451 was  
William A. Shaw  
Prothonotary/Clerk of Courts

✓ 2 certified copies to Toni M. Cherry, Esquire  
2 certified copies to Anthony G. DeBoef, Esquire  
1 copy to Judge Ammerman  
1 copy to Court Administrator

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
Du Bois, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET

ATTORNEY FOR Plaintiff. EDWARD C. MILLER



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

: No. 2000 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: AMENDED COMPLAINT  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P.O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

**FILED**

APR 09 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:
Plaintiff	:
	: No. 2000 - 355 C.D.
vs.	:
	:
J. V., INC., d/b/a BEARD OIL, and	:
SHANER ENERGY, INC.,	:
Defendants	:

**NOTICE**

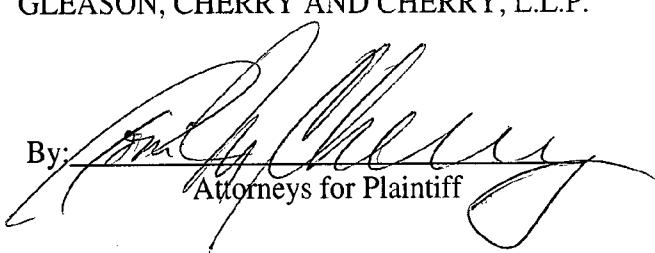
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Amended Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Amended Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By:

  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:
Plaintiff	:
	: No. 2000 - 355 C.D.
vs.	:
	:
J. V., INC., d/b/a BEARD OIL, and	:
SHANER ENERGY, INC.,	:
Defendants	:

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this Amended Complaint upon a cause of action whereof the following is a statement:

1. Plaintiff, EDWARD C. MILLER, is an adult individual who resides at R. D. #3, Box 274, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, J. V., INC., d/b/a BEARD OIL, is a corporation licensed to do business in the Commonwealth of Pennsylvania and having a place of business at R. D. #4, Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830.
3. That Defendant, SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at 40 Pennsylvania Avenue, Huntingdon, Pennsylvania 16652.
4. That Defendant, SHANER ENERGY, INC., is the parent company of Defendant, J. V., INC., d/b/a BEARD OIL, and Defendant, J. V., INC., d/b/a BEARD OIL, has always held itself out as a SHANER ENERGY, INC., company.

5. On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, J. V., INC., d/b/a BEARD OIL, under a Commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

6. The Lease provides for an initial term of ten years commencing on December 31, 1992, through December 30, 2002, at a minimum base rental of \$700.00 per month, payable on the 31<sup>st</sup> day of every month for the next succeeding month.

7. Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of said property and delivered to Plaintiff the keys therefor.

8. That the last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997 and no further rental payments were made on the Lease thereafter despite the fact that Defendants remained in possession of the property and there exists an outstanding Lease obligating Defendants to make monthly payments for a period of ten (10) years.

9. That Plaintiff has been able to rent the subject premises as of June 1, 2001, for the same amount of rental per month due under his Lease with Defendants, to wit, \$700.00 per month.

10. Accordingly, there is due and owing to Plaintiff under the Lease entered into with the Defendants the following back rent:

Rent Due for 1997	\$ 2,100.00
Rent Due for 1998	\$ 8,400.00

Rent Due for 1999	\$ 8,400.00
Rent Due for 2000	\$ 8,400.00
Rent Due for 2001	<u>\$ 3,500.00</u>
Total	\$30,800.00

11. Defendants, despite repeated demands by Plaintiff, have failed and refused and still refuse to pay Plaintiff the sum of \$30,800.00 or any part thereof although the Lease obligates them to make such payments.

12. By reason of Defendants' default on the rent due, Plaintiff is entitled to a judgment in the amount of \$30,800.00, together with interest from October 30, 1997, and, in accordance with the terms of Paragraph 14 of said Lease, 5% attorney's commission together with costs for the collection of said rent.

13. Judgment has not been entered on the attached Lease in any jurisdiction.

14. That Paragraph 6 of the Lease requires that the premises be surrendered to Lessor in as good a condition as it was at the time of the commencement of the Lease, reasonable wear and tear excepted.

15. That contrary to the specific obligations of the Lease, Defendants did leave the premises in a damaged and destroyed condition as follows:

- (a) In the office, the heater coil from the baseboard heater was broken at the heater coil;
- (b) The pipes at the South wall were cut with a hacksaw at the end of the heater coil underneath the L-shaped window;
- (c) The heater line in the women's restroom was broken at the point of its entry into the concrete wall;

(d) The water meter in the furnace room was broken;  
(e) The pressure flow valve on the West wall above the boiler unit was leaking and had to be repaired;

(f) The drain at the bottom of the sink in the women's restroom was broken;

(g) The faucets in the women's restroom were leaking around the knobs;

(h) The line going to the commode in the women's restroom had been soldered and

had blown apart at the solder point and was leaking;

16. That as a result of the damages done by Defendants, the Plaintiff had to incur repair costs in the amount of SEVEN HUNDRED DOLLARS (\$700.00).

17. That in addition to the damages caused by Defendants, they left the premises in a dirty and unkept condition in violation of the requirements of the Lease, requiring the Plaintiff to expend the sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) to clean the premises.

18. That contrary to the specific obligations of the Lease and the laws of the Commonwealth of Pennsylvania and the United States of America, Defendants installed a steel diesel tank which Plaintiff believes and therefore avers was never approved by the Pennsylvania Department of Environmental Protection.

19. That as a result of the improper actions of the Defendants, Plaintiff was caused to remove the tanks and dispose of the same and to perform other actions required by the Pennsylvania Department of Environmental Protection that were the responsibility of Defendants as follows:

B.K. Asphalt Paving Co., Inc.	\$ 3,600.00
Brockway Analytical & Environmental	
Services, LTD	1,985.00
Superior Green Tree Land Fill, LLC	2,665.26

Tank Disposal Co., Inc.	1,325.00
Alan Groves, backhoe & trucking	980.00
S.M.S. Tank Disposal Co., Inc.	350.00
Groves Excavating	4,750.00
Brockway Analytical & Environmental Services, LTD, lab analysis	<u>150.00</u>
<b>TOTAL</b>	<b>\$15,805.26</b>

True and correct copies of the payments made are attached hereto and made a part hereof as Plaintiff's Exhibit B-1 through 8 inclusive.

20. That Paragraph 6 of the Lease obligates Defendants to pay "That portion of the real estate taxes which apply to the land or premises hereby leased."

21. That Defendants failed to pay their portion of the school real estate taxes for 1997 and their total portion of real estate taxes for the years of 1998, 1999 and 2000 in violation of the terms of said Lease.

22. Despite repeated demands by Plaintiff to Defendants for payment of the monies due to him in accordance with the terms of the Lease, Defendants have wholly refused.

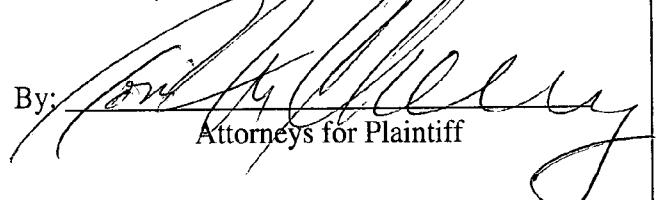
WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) In the sum of \$30,800.00, plus interest from October 30, 1997, at the legal rate of 6%, together with attorney's commission of 5% on said amount together with costs of collection; and

(b) Judgment in the amount of \$16,655.26, together with interest and costs of suit.

Respectfully submitted,  
GLEASON, CHERRY AND CHERRY, L.L.P.

By:

  
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

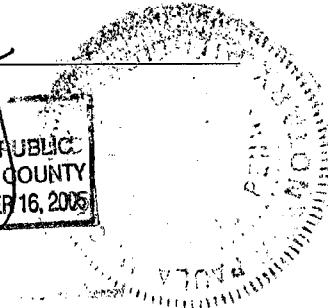
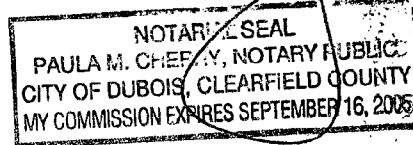
SS.

COUNTY OF CLEARFIELD

Personally appeared before me, a Notary Public in and for the County and State  
aforesaid, EDWARD C. MILLER, who, being duly sworn according to law, deposes and says  
that the facts set forth in the foregoing/Complaint are true and correct to the best of his  
knowledge, information and belief.

Edward C. Miller  
Edward C. Miller

Sworn to and subscribed before me this 8<sup>th</sup> day of April, 2003.



*Original*

## AGREEMENT

EXIT 16, UH W. P. 01  
Miller to Beard Oil  
12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

C  
N  
D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel gallonage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bonafide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bonafide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business thereon, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway on and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therfor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause or reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller  
Edward C. Miller

BEARD OIL COMPANY  
By Dale D. Laffie  
Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD : ;

On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

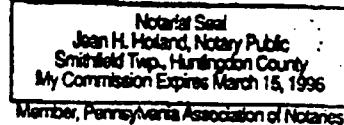
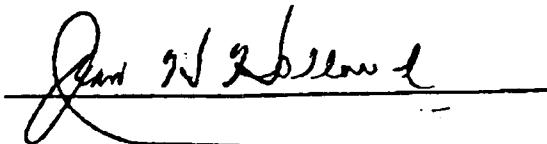
COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD : ;

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Parke, who acknowledged himself to be the Vice President of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Member, Pennsylvania Association of Notaries

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2076

60-1013/433

REMITTER  
W/D Edward Miller

May 13, 2002

PAYABLE TO

B.K. ASPHALT PAVING, INC.

3,600.00

\$ 600.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#00 2076# 0043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1893

60-1013/433

REMITTER: Miller

Dec. 8, 2001

PAYABLE TO

BROCKWAY ANALYTICAL &amp; ENVIRONMENTAL SERVICES, LTD.

1,985.00

\$ 1985.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#00 1893# 0043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

60-1013/433

REMITTER  
Miller

12-18-01

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

2,665.26

\$ 2665.26

MEMORANDUM

## CASHIER'S CHECK

FOR

#00 1903# 0043310139# 11210003#

EXHIBIT "B" 1 through 8

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

1754

REMITTER Miller



60-1013/433

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

1,325.00

1325.00

MEMORANDUM

**CASHIER'S CHECK**

FOR

*Edward Miller*

10001754 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

2014

REMITTER Edward Miller/backhoe & trucking



60-1013/433

March 20, 2002

PAYABLE TO

ALAN GROVES

980.00

980.00

MEMORANDUM

**CASHIER'S CHECK**

FOR

*Edward Miller*

1002014 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

1892

REMITTER Edward Miller



60-1013/433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO., INC.

350.00

350.00

MEMORANDUM

**CASHIER'S CHECK**

FOR

*Edward Miller*

1001892 10433101391 11210003

## **BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**

110 McCracken Run Road  
DuBois, PA 15801

814-371-6030 Fax: 814-375-0823

*Inyoice*  
Invoice Number:  
L4146

Invoice Date:

Page:  
1

**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

Customer ID

Customer PO

## Payment Terms

Sales Rep ID

**Project Number**

Discount Date

Due Date

### Description

## SOIL

LAB ORDER: 0112049

COLLECTION DATE: 12/7/01

Quantity	Item	Description	Unit Price	Extension
1.00	LAB ANALYSIS		150.00	150.00

Overdue invoices are subject to finance charges.

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

Miller's Motel  
R.D.#3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	<b>TOTAL</b>	<b>\$4,750.00</b>
	<i>Paid in full</i>	
	<u>9/10/01</u>	

Thank You Service Charge: 1½% per month after 30 days PAID BY CHECK NO.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2003, a true and correct copy of Plaintiff's Amended Complaint was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by Express Mail, Overnight Delivery, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

Dated: April 8, 2003

William A. Shaw  
Prothonotary

FILED  
APR 9 2003  
6:10 AM  
U.S. DISTRICT COURT  
CLERK'S OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

\*

\*

\*

vs.

\*

\*

\*

J.V., INC., d/b/a BEARD OIL  
and SHANER ENERGY, INC.,  
Defendants

NO. 2000-355-C.D.

\*

\*

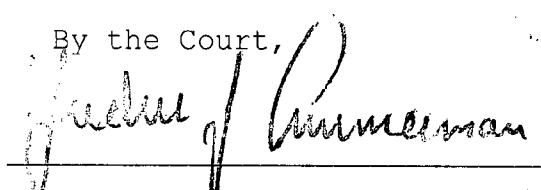
\*

O R D E R

NOW, this 14<sup>th</sup> day of April, 2003, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Non-Jury Trial is scheduled for Monday, August 12, 2003 at 9 o'clock a.m., Courtroom No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania.

2. Any further amended complaint shall be filed by no later than May 1, 2003.

By the Court,  
  
JUDGE FREDERIC J. AMMERMAN

FILED

APR 17 2003

William A. Shaw  
Prothonotary

**FILED**

041716 BA 2cc atty t. chevy  
2cc act DeBoef

APR 17 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

: No. 2000 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: SECOND AMENDED  
: COMPLAINT  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P.O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

MAY 01 2003

Attest.

*William L. Cherry*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 2000 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL, and :  
SHANER ENERGY, INC., :  
Defendants :

**N O T I C E**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Second Amended Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Second Amended Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By:

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:
Plaintiff	:
	: No. 2000 - 355 C.D.
vs.	:
J. V., INC., d/b/a BEARD OIL, and	:
SHANER ENERGY, INC.,	:
Defendants	:

**SECOND AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this Second Amended Complaint upon a cause of action whereof the following is a statement:

1. Plaintiff, EDWARD C. MILLER, is an adult individual who resides at R. D. #3, Box 274, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, J. V., INC., d/b/a BEARD OIL, is a corporation licensed to do business in the Commonwealth of Pennsylvania and having a place of business at R. D. #4, Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830.
3. That Defendant, SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at 40 Pennsylvania Avenue, Huntingdon, Pennsylvania 16652.
4. That Defendant, SHANER ENERGY, INC., is the parent company of Defendant, J. V., INC., d/b/a BEARD OIL, and Defendant, J. V., INC., d/b/a BEARD OIL, has always held itself out as a SHANER ENERGY, INC., company.

5. On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, J. V., INC., d/b/a BEARD OIL, under a Commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

6. The Lease provides for an initial term of ten years commencing on December 31, 1992, through December 30, 2002, at a minimum base rental of \$700.00 per month, payable on the 31<sup>st</sup> day of every month for the next succeeding month.

7. Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of said property and delivered to Plaintiff the keys therefor.

8. That the last monthly rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997 and no further rental payments were made on the Lease thereafter despite the fact that Defendants remained in possession of the property and there exists an outstanding Lease obligating Defendants to make monthly payments for a period of ten (10) years.

9. That Plaintiff has been able to rent the subject premises as of June 1, 2001, for the same amount of rental per month due under his Lease with Defendants, to wit, \$700.00 per month.

10. Accordingly, there is due and owing to Plaintiff under the Lease entered into with the Defendants the following back monthly rent:

Monthly Rent Due for 1997	\$ 2,100.00
Monthly Rent Due for 1998	\$ 8,400.00

Monthly Rent Due for 1999	\$ 8,400.00
Monthly Rent Due for 2000	\$ 8,400.00
Monthly Rent Due for 2001	<u>\$ 3,500.00</u>
Total	\$30,800.00

11. Defendants, despite repeated demands by Plaintiff, have failed and refused and still refuse to pay Plaintiff the sum of \$30,800.00 or any part thereof although the Lease obligates them to make such payments.

12. By reason of Defendants' default on the rent due, Plaintiff is entitled to a judgment in the amount of \$30,800.00, together with interest from October 30, 1997, and, in accordance with the terms of Paragraph 14 of said Lease, 5% attorney's commission together with costs for the collection of said rent.

13. That in addition to monthly rental payments, Paragraph 6 of the Lease obligates Defendants to pay "[T]hat portion of the real estate taxes which apply to the land or premises hereby leased."

14. That the real estate taxes on the land or premises leased by Defendants from Plaintiff for the years of 1996 through 2001 are as follows:

<u>YEAR</u>	<u>CO/TWP FACE</u>	<u>SCHOOL FACE</u>
1996	\$403.20	\$1,532.16
1997	\$403.20	\$1,550.98
1998	\$480.00	\$1,550.98
1999	\$489.60	\$1,550.98
2000	\$489.60	\$1,550.98
2001	\$489.60	\$1,641.79

15. That the Defendants failed to pay the real estate taxes owed on the premises for the years of 1996 through 2001 in the total amount of \$12,133.07.

16. By reason of Defendants' default on payment of the real estate taxes due, Plaintiff is entitled to a judgment in the amount of \$12,133.07, together with interest and, in accordance with the terms of Paragraph 14 of said Lease, 5% attorney's commission, together with costs for the collection of said tax payments.

17. Judgment has not been entered on the attached Lease in any jurisdiction.

18. That Paragraph 6 of the Lease requires that the premises be surrendered to Lessor in as good a condition as it was at the time of the commencement of the Lease, reasonable wear and tear excepted.

19. That contrary to the specific obligations of the Lease, Defendants did leave the premises in a damaged and destroyed condition as follows:

(a) In the office, the heater coil from the baseboard heater was broken at the heater coil;

(b) The pipes at the South wall were cut with a hacksaw at the end of the heater coil underneath the L-shaped window;

(c) The heater line in the women's restroom was broken at the point of its entry into the concrete wall;

(d) The water meter in the furnace room was broken;

(e) The pressure flow valve on the West wall above the boiler unit was leaking and had to be repaired;

(f) The drain at the bottom of the sink in the women's restroom was broken;

(g) The faucets in the women's restroom were leaking around the knobs;

(h) The line going to the commode in the women's restroom had been soldered and had blown apart at the solder point and was leaking;

20. That as a result of the damages done by Defendants, the Plaintiff had to incur repair costs in the amount of SEVEN HUNDRED DOLLARS (\$700.00).

21. That in addition to the damages caused by Defendants, they left the premises in a dirty and unkept condition in violation of the requirements of the Lease, requiring the Plaintiff to expend the sum of ONE HUNDRED FIFTY DOLLARS (\$150.00) to clean the premises.

22. That contrary to the specific obligations of the Lease and the laws of the Commonwealth of Pennsylvania and the United States of America, Defendants installed a steel diesel tank which Plaintiff believes and therefore avers was never approved by the Pennsylvania Department of Environmental Protection.

23. That as a result of the improper actions of the Defendants, Plaintiff was caused to remove the tanks and dispose of the same and to perform other actions required by the Pennsylvania Department of Environmental Protection that were the responsibility of Defendants as follows:

B.K. Asphalt Paving Co., Inc.	\$ 3,600.00
Brockway Analytical & Environmental Services, LTD	1,985.00
Superior Green Tree Land Fill, LLC	2,665.26
Tank Disposal Co., Inc.	1,325.00
Alan Groves, backhoe & trucking	980.00
S.M.S. Tank Disposal Co., Inc.	350.00
Groves Excavating	4,750.00
Brockway Analytical & Environmental Services, LTD, lab analysis	<u>150.00</u>
<b>TOTAL</b>	<b>\$15,805.26</b>

True and correct copies of the payments made are attached hereto and made a part hereof as Plaintiff's Exhibit B-1 through 8 inclusive.

24. Despite repeated demands by Plaintiff to Defendants for payment of the monies due to him in accordance with the terms of the Lease, Defendants have wholly refused.

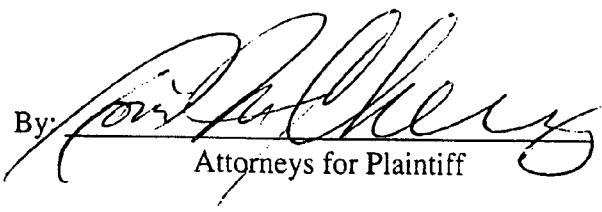
WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) In the sum of \$30,800.00, plus interest from October 30, 1997, at the legal rate of 6%, together with attorney's commission of 5% on said amount together with costs of collection;
- (b) In the sum of \$12,133.07, plus interest at the legal rate of 6%, together with attorney's commission of 5% on said amount together with costs of collection; and
- (c) Judgment in the amount of \$16,655.26, together with interest and costs of suit.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By:

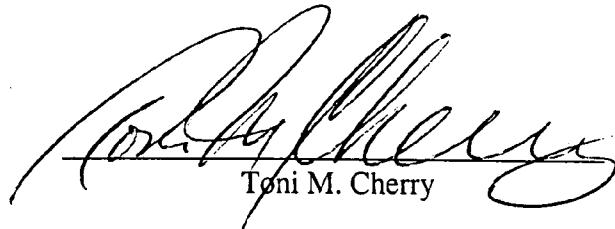
  
Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

: SS.

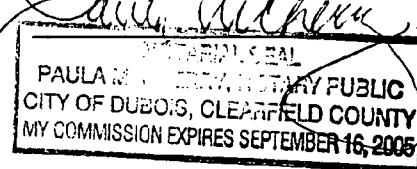
COUNTY OF CLEARFIELD

Personally appeared before me, a Notary Public in and for the County and State aforesaid, TONI M. CHERRY, who, being duly sworn according to law, deposes and says that she is the attorney for Plaintiff in the foregoing Second Amended Complaint and that she is authorized to make this Affidavit on behalf of the Plaintiff and makes this Affidavit on behalf of Plaintiff because Plaintiff is out of the jurisdiction of the Court and can supply an Affidavit at a later date if required and does depose and say that the facts set forth in the foregoing Second Amended Complaint are true and correct to the best of her knowledge, information and belief.



Toni M. Cherry

Sworn to and subscribed before me this 1<sup>st</sup> day of May, 2003.



Original

AGREEMENT

EXIT 16, UH W. S. 01

Miller to Beard Oil

12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

C  
N  
D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel galionage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

EXHIBIT "A"

#02

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1970, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bona fide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bona fide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land on premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for conduct of its business thereof. May cut curbs, remove trees, premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therefor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause of reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller  
Edward C. Miller

BEARD OIL COMPANY  
By Dale H. Lippie  
Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 2-th day of December, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA:

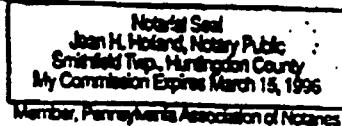
: SS

COUNTY OF CLEARFIELD :

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Pease, who acknowledged himself to be the Vice-Chairman of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Jean H. Holland



REMITTER  
W/B Edward Miller



2076

60-1013/433

PAYABLE TO

B.K. ASPHALT PAVING, Inc.

May 13, 2002

3,600.00

3600.00\$

## CASHIER'S CHECK

MEMORANDUM

FOR

"00 2076" 0433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER  
W/B Edward Miller



1893

60-1013/433

PAYABLE TO

BROCKWAY ANALYTICAL & ENVIRONMENTAL SERVICES, INC.

Dec. 8, 2001

1,935.00

1935.00\$

## CASHIER'S CHECK

MEMORANDUM

FOR

"00 1893" 0433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

REMITTER

60-1013/433

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

12-18-01

2,665.26

2665.26\$

## CASHIER'S CHECK

MEMORANDUM

FOR

"00 1903" 0433101391 11210003

EXHIBIT "B" 1 through 8



1754

REMOVED Miller

60-1013-433

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

June 22, 2001

1,325.00

NOT NEGOTIABLE

1,325.00

MEMORANDUM

FOR

CASHIER'S CHECK

001754 0433101390 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2014

REMOVED Edward Miller/backhoe &amp; trucking

60-1013-433

March 20, 2002

PAYABLE TO

ALAN GROVES

NOT NEGOTIABLE

980.00

980.00

MEMORANDUM

FOR

CASHIER'S CHECK

002014 0433101390 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1892

REMOVED Miller

60-1013-433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO., INC.

NOT NEGOTIABLE

350.00

350.00

MEMORANDUM

FOR

CASHIER'S CHECK

001892 0433101390 11210003

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.****110 McCracken Run Road  
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823****Invoice****Invoice Number:****L4146****Invoice Date:****Jan 4, 2002****Page:****1****Bill To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID**

M6610

**Customer PO****Payment Terms**

Net 30 Days

**Sales Rep ID****Project Number****Discount Date****Due Date**

1/4/02

2/3/02

**Description**

SOIL  
LAB ORDER: 0112049  
COLLECTION DATE: 12/7/01

<b>Quantity</b>	<b>Item</b>	<b>Description</b>	<b>Unit Price</b>	<b>Extension</b>
1.00		LAB ANALYSIS	150.00	150.00

**BAES APPROVAL** \_\_\_\_\_**Check No:**

*Paid 1/25/02  
By check  
Get mail  
1/25/02*

Subtotal	150.00
Sales Tax	
Total Invoice Amount	150.00
Payment Received	0.00
<b>TOTAL</b>	<b>150.00</b>

**Overdue invoices are subject to finance charges.**

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

Miller's Motel  
R.D.#3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	<b>TOTAL</b>	<b>\$4,750.00</b>
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1 1/2% per month after 30 days PAID BY CHECK NO.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,

Plaintiff

vs.

No. 00 - 355 C.D.

J. V., INC., d/b/a BEARD OIL and  
SHANER ENERGY, INC.,

Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of May, 2003, a true and correct copy of Plaintiff's Second Amended Complaint was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by Express Mail, Overnight Delivery, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitterer & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

John R. Mitterer  
Attorneys for Plaintiff

Dated: May 1, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER,  
Plaintiff

No. 2000-355 C.D.

v.  
J.V. INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,

NOTICE

You are hereby notified to plead to the enclosed Answer and  
New Matter within twenty (20) days of the date of service or a  
Default Judgment may be entered against you.

MITINGER & DE BOEF

By:

Anthony G. De Boef, Esquire

Dated: 7/7/03

FILED

JUL 8 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: No. 2000-355 C.D.  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
: :  
:

**DEFENDANT'S ANSWER TO SECONDED AMENDED COMPLAINT**

AND NOW, comes Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., by and through their attorney, Anthony G. De Boef, of Mitinger & De Boef, and file the following Answer to Plaintiff's Second Amended Complaint:

1. Denied. To the extent that the allegations of paragraph 1 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
2. Admitted.

3. Admitted in part and denied in part. Shaner Energy, Inc., admits it is a business authorized to conduct business within the Commonwealth of Pennsylvania.

Paragraph 3 is denied to the extent that Shaner Energy, Inc., has numerous places of business including the Huntingdon address.

4. Admitted in part and denied in part. It is admitted that Shaner Energy, Inc., is the parent company of J.V. Inc. It is denied that Defendant J.V. Inc., d/b/a Beard Oil has always held itself out as a Shaner Energy, Inc. Shaner Energy, Inc. denies that it is a Defendant in this matter. Strict proof is demanded at the time of trial if the same be material.

5. Admitted.

6. Denied. Paragraph 6 is denied to the extent that the Lease Document speaks for itself.

7. Admitted in part and denied in part. It is admitted that Defendant J.V., Inc. took possession of the leased premises on December 31, 1992. It is denied possession continued until August 21, 1998. To the extent that the remaining allegations of paragraph 7 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations

are denied. Strict proof will be demanded at the time of trial if the same be material.

8. Denied. The last rental check that Defendants made to Plaintiff occurred in October of 1997. To the extent that the remaining allegations of paragraph 8 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material. To the extent that the allegations of paragraph 8 contain conclusions of law, no response is required.

9. Denied. To the extent that the allegations of paragraph 9 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.

10. Denied. To the extent that the allegations of Paragraph 10 constitute conclusions of law, no response is required.

11. Denied. To the extent that the allegations of Paragraph 11 constitute conclusions of law, no response is required.
12. Denied. To the extent that the allegations of Paragraph 12 constitute conclusions of law, no response is required.
13. Denied. The Lease Document speaks for itself. To the extent that the remaining allegations of Paragraph 13 constitute conclusions of law, no response is required.
14. Denied. To the extent that the allegations of paragraph 14 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
15. Denied. To the extent that the allegations of Paragraph 15 constitute conclusions of law, no response is required.
16. Denied. To the extent that the allegations of Paragraph 16 constitute conclusions of law, no response is required.

17. Admitted in part. Paragraph 17 is admitted to the extent that Defendant is not aware of any Judgment been entered on the Lease in question.
18. Denied. To the extent that the allegations of paragraph 18 constitute a conclusion of law, no response is required.
19. Denied. To the extent that the allegations of paragraph 19 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
20. Denied. To the extent that the allegations of paragraph 20 constitute allegations of fact, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.
21. Denied. To the extent that the allegations of paragraph 21 constitute allegations of fact, after reasonable investigation, Defendants are without

knowledge or information sufficient to form a belief as to the truth or accuracy of these allegations, and therefore said allegations are denied. Strict proof will be demanded at the time of trial if the same be material.

22. Denied. Defendants deny the allegations of Paragraph 22. Strict proof is demanded at the time of trial.
23. Denied. Defendants deny the allegations of Paragraph 23. Strict proof is demanded at the time of trial. To the contrary, pursuant to a Limited Site Characterization Report dated August 14, 1997, a copy of which is attached hereto and made a part hereof as Exhibit "A", there was "[n]o evidence of widespread soil or groundwater contamination . . . ." To the extent that the remaining allegations of Paragraph 23 contain conclusions of law, no response is required.
24. Admitted in part and denied in part. Defendants admit Defendants have refused payment of any monies, however, Defendants deny owing Plaintiff any monies. To the extent that the remaining allegations of Paragraph 24 constitute conclusions of law, no response is required.

**New Matter**

25. Defendants incorporate herein by reference the averments contained in paragraph 1 through 24 inclusive

of this Answer with New Matter as fully as though the same were herein set forth at length.

26. The four underground tanks located on the leased premises were required to be upgraded pursuant to the December 22, 1998 upgrade requirements of the Pennsylvania Department of Environmental Protection - Division of Storage Tanks.
27. As a result of the December 12, 1998 upgrade requirements, Defendants were unable to obtain a license or permit as required by law.
28. Pursuant to paragraph 11 of the Lease, as Defendants were unable to obtain a license or permit as required by law, Defendants had the right to terminate the Lease on 30 days notice to Plaintiff.
29. Pursuant to Paragraph 17 of the Lease, "[l]essor shall and will save, indemnify and keep harmless the lessee of any kind and prosecutions of every kind and characters arising in law or in equity or elsewhere as a consequence of this Lease."
30. As set forth in paragraph 17, Defendants are excused from any and all suits arising in law or equity as a result of the lease.
31. Defendant Beard Oil terminated the Lease on or about September 12, 1997.

32. As a result of the September 12, 1997 lease termination, Defendants were not permitted egress or ingress on the leased premises.
33. Pursuant to paragraph 3 of the Lease, upon termination of the Lessee, all of the right and interest in the improvements permanently attached to the ground or buried underground revert to and are owned by Lessor.
34. Pursuant to paragraph 10 of the Lease, any and all of the property located on the premises, upon termination of the Lease, becomes a part of the real estate.
35. Inasmuch, as Plaintiff is the owner of the underground tanks and the underground tanks became a part of the real estate, Defendants bear no responsibility for any and all costs and liabilities arising thereafter.
36. Defendant Shaner Energy, Inc., as evidenced by the Lease attached to Plaintiff's Complaint as Exhibit "A", is not a party to the Lease.
37. Defendant Shaner Energy, Inc., is not a proper party to the instant action and should be dismissed.

WHEREFORE, Defendants respectfully request this Honorable Court enter Judgment in their favor on Plaintiff's Complaint, together with costs and attorney's fees incurred in the defense of this action, and such other relief as this Honorable Court deems appropriate, and against Plaintiff Edward C. Miller.

Respectfully submitted,  
MITINGER & DE BOEF

By:

Anthony G. De Boef, Esq.  
Attorney for Defendants  
Attorney I.D. No.: 71532  
2147 E College Ave.  
State College, PA 16801  
(814) -231-4052

Dated: 7/7/03

VERIFICATION

I Anthony G. De Boef, counsel for J.V. INC., d/b/a BEARD OIL, and SHANER ENERGY, INC., in this action, state that I am authorized to make this verification on behalf of Defendants. I hereby verify that the facts set forth in the foregoing Defendants' Answer To Seconded Amended Complaint are true and correct based upon information provided to me by others within Defendants' employ who can verify the facts set forth in the foregoing Answer to Seconded Amended Complaint are outside the jurisdiction and their verifications cannot be obtained within the time allowed. I understand the statements made in the foregoing Answer are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification of authorities.

\_\_\_\_\_  
Anthony G. De Boef, Esquire

Dated: 7/7/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: No. 2000-355 C.D.  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that a copy of Defendant's Answer to  
Seconded Amended Complaint was served upon counsel of record by  
United States Mail, First Class, postage prepaid, addressed as  
follows:

TONI M. CHERRY ESQ.  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

MITINGER & DE BOEF

By: \_\_\_\_\_  
Anthony G. De Boef, Esquire  
Attorney for Defendants

Dated: 7/7/05

**LIMITED SITE  
CHARACTERIZATION  
REPORT**

**Beard Oil Property  
Exit 16, U.S. Interstate 80  
Dubois, PA**



**DEFENDANT'S  
EXHIBIT**

**A**

**ENVIRONMENTAL SERVICES  
BOLGER BROTHERS INC.**



BOLGER BROTHERS INC.

R.D. #2, BOX 438  
ALTOONA, PA 16601-9322  
(800) 944-4059 PHONE  
(814) 944-8766 FAX

SC:\ENVIRO\BEARD\DUBOIS\CHAR.RPT

**LIMITED SITE  
CHARACTERIZATION  
REPORT**

**Beard Oil Property  
Exit 16, U.S. Interstate 80  
Dubois, PA**

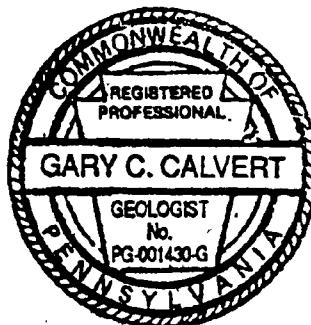
*Prepared for:*

**Mr. David Griffith  
Beard Oil Company**

**August 14, 1997**

**Prepared By:**

**Reviewed By:**



*Environmental Services*

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**LIMITED SITE CHARACTERIZATION  
BEARD OIL PROPERTY, EXIT 16, U.S. INTERSTATE 80  
DUBOIS, PA**

**I. Introduction**

The purpose of this report is to provide Beard Oil Company (Beard) with documentation relative to an investigation conducted by Bolger Brothers, Inc. (BBI) at a property currently leased by Beard which is located approximately one quarter mile from Exit 16, U.S. Interstate 80 near Dubois, PA. This investigation was designed by BBI to establish whether or not significant levels of soil and/or ground water contamination were present at the time of the investigation due to leakage of petroleum compounds from the known underground storage tank (UST) systems now present at the site. Other potential areas of contamination such as floor drains, abandoned UST systems, asbestos containing building material, lead based paint, etc. which would be investigated during a complete Site Characterization were not investigated. Laboratory analysis of samples collected during this investigation was limited to specific parameters currently used by PADEP to define environmental impacts from the petroleum products stored in the known UST systems. The placement of soil borings was influenced by the fact that the UST systems were active during the investigation.

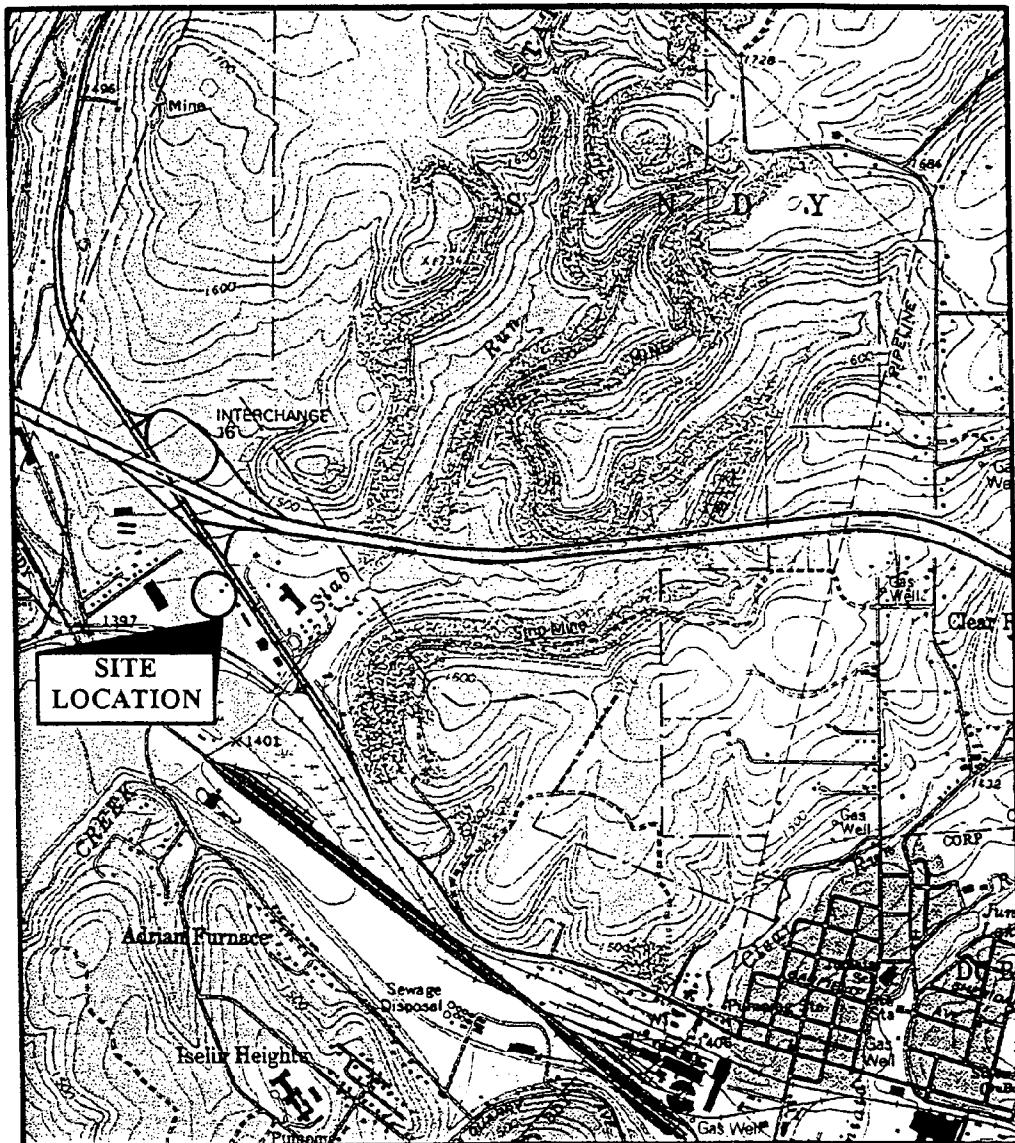
**II. Site Information**

This site is located to the northwest of Dubois, PA in the far western portion of Clearfield County adjacent to U.S. Route 219. Please refer to Figure 1 for a Site Location Map and Appendix A for Site Photographs. This site is approximately one half acre in size, and the existing improvements are limited to a single story service station, the components of the UST systems, and a canopy. The site is currently leased by Beard, which operates a retail service station at the site distributing Citgo branded petroleum products. According to Beard representatives, five UST systems are known to be present on the property, three used for gasoline storage, one used for diesel storage, and one used for heating oil which is reported to be inactive. Please refer to Figure 2 for a Site Map which illustrates the various site improvements.

Soil encountered at this site was predominately clay and weathered shale bedrock. The upper portion of soil is believed to be fill material added during the initial site development. According to information published by the Pennsylvania Geological Survey, underlying bedrock at this site is classified as Pennsylvanian aged Allegheny Group. This rock group consists of cyclic sequences of sandstone, shale, limestone, clay and coal. Bedding, jointing, permeability, and porosity all vary with lithology. Based on topography, it is estimated that uppermost ground water flow is to the southwest toward a tributary of Sandy Lick Creek (Figure 2).

**III. Limited Site Characterization**

The Limited Site Characterization was conducted on July 18, 1997 by BBI and its representatives. A total of eight two-inch diameter soil borings were installed to depths which ranged from twelve feet to sixteen feet. Three of the soil borings were

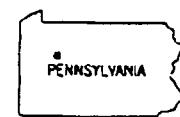


Falls Creek, PA 7.5 Minute Quadrangle (1966, Photorevised 1994)

SCALE 1:24000

0 1 1 Mile

CONTOUR INTERVAL 20 Feet



**QUADRANGLE LOCATION**

Figure 1

## SITE LOCATION MAP

Beard Oil Property  
Exit 16, U.S. Route 80  
Dubois, PA

ENVIRONMETRICS

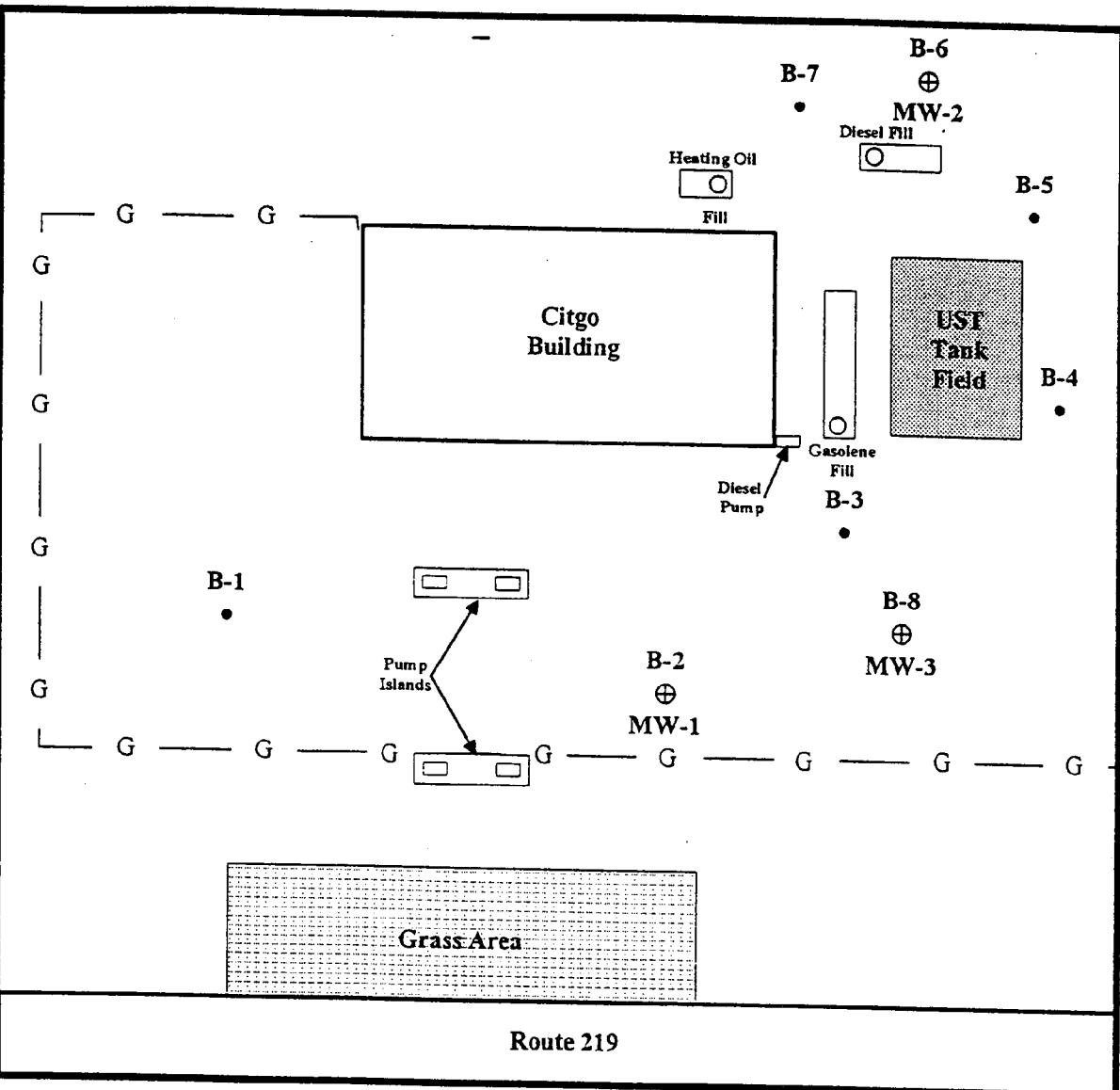


97.0707

## Bolger Brothers, Inc.

Environmental Department  
R.D. #2 Box 438  
Sugar Run Road & Burns Ave  
Altoona, PA 16601-9322  
Phone: (814) 944-4059  
FAX: (814) 944-8766

SLM



Scale 1 Inch = 25 Feet

0.00 25.00 50.00

Legend:

- = Approximate Tank Location
- = Soil Boring Location
- ⊕ = Soil Boring Converted to Monitoring Well
- G — = Natural Gas Line

Figure 2  
SOIL BORING/MONITORING WELL  
LOCATION MAP

Beard Oil Property  
Exit 16, U.S. Route 80  
Dubois, PA

Sc/TEN/TRE/SEARCH/UD/US/03/14/1992



97.0707

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SLM

subsequently converted into ground water monitoring wells. Both soil and ground water samples were collected from these data points.

### **Soil Boring Installation and Sampling**

All drilling was supervised by Mr. Shawn McMullen, BBI Staff Geologist. Boring locations were placed so to detect potential leakage from the known UST systems. However, safety considerations required that drilling not be conducted in areas believed to be occupied by piping and/or conduit associated with the known UST systems or by other above or below ground utilities. A Beard representative approved each boring location.

Continuous soil samples were collected from each boring. All recovered material was logged at the job site by Mr. McMullen. Please refer to Appendix B for Driller's Logs. All recovered material was then field scanned with a photoionization detector (PID) at four-foot intervals for the presence of volatile organic compounds. PID readings of scanned material ranged from 0 ppm to 257 ppm. No obvious stained soil or free product was noted. One soil sample was collected from six of the eight soil borings from the four foot interval which exhibited the highest PID reading; a total of six soil samples were collected. All soil samples were collected utilizing BBI's standard protocol for the collection of material potentially impacted by petroleum compounds. This protocol is designed to comply with USEPA SW-846 sampling protocol. A Chain of Custody was maintained for all samples collected during this investigation. Each soil sample was analyzed in a PADEP approved laboratory for the following compounds:

MTBE	Benzene
Toluene	Ethylbenzene
M,p-Xylene	o-Xylene
Isopropylbenzene	Naphthalene
Fluorene	Phenanthrene
Benzo(a)anthracene	Benzo(a)pyrene

Obviously contaminated material was encountered only in the four-foot to eight-foot interval of the boring designated B-2. This material was characterized by a slight hydrocarbon odor and elevated PID readings (257.7 ppm).

### **Monitoring Well Installation and Sampling**

Three of the eight soil borings were converted to one-inch diameter monitoring wells. Uppermost ground water at the site was encountered at depths ranging from twelve to fifteen feet below grade. Each well was constructed so that the entire saturated zone was cased with well screen with a slot size of 0.010, which was then followed with a solid section of PVC riser and a drive over, bolt down lid. The annuli between the borehole and the well casing was packed with clean silica based sand followed by a bentonite surface seal. Please refer to Appendix B well construction specifications for each of the three monitoring wells.

Following well development, ground water samples were collected from each of the three monitoring wells. All ground water samples were collected utilizing BBI's standard protocol used for the collection of aqueous samples which may be impacted by petroleum compounds. The ground water samples were analyzed in a PADEP approved laboratory for MTBE, Benzene, Toluene, Ethylbenzene, M,p-Xylene, o-Xylene, and Naphthalene.

### **Ground Water Contour Mapping**

Following the completion of the monitoring well installation, each monitoring well was surveyed to an on site survey benchmark which was assigned an elevation of 100.00 feet. Subsequently, static water levels were collected from each of the three monitoring wells, and this information was then utilized to construct a computer generated ground water contour map (Figure 3). The direction of uppermost ground water flow indicated by Figure 3 is toward the south. This would correspond with the predicted direction of uppermost ground water.

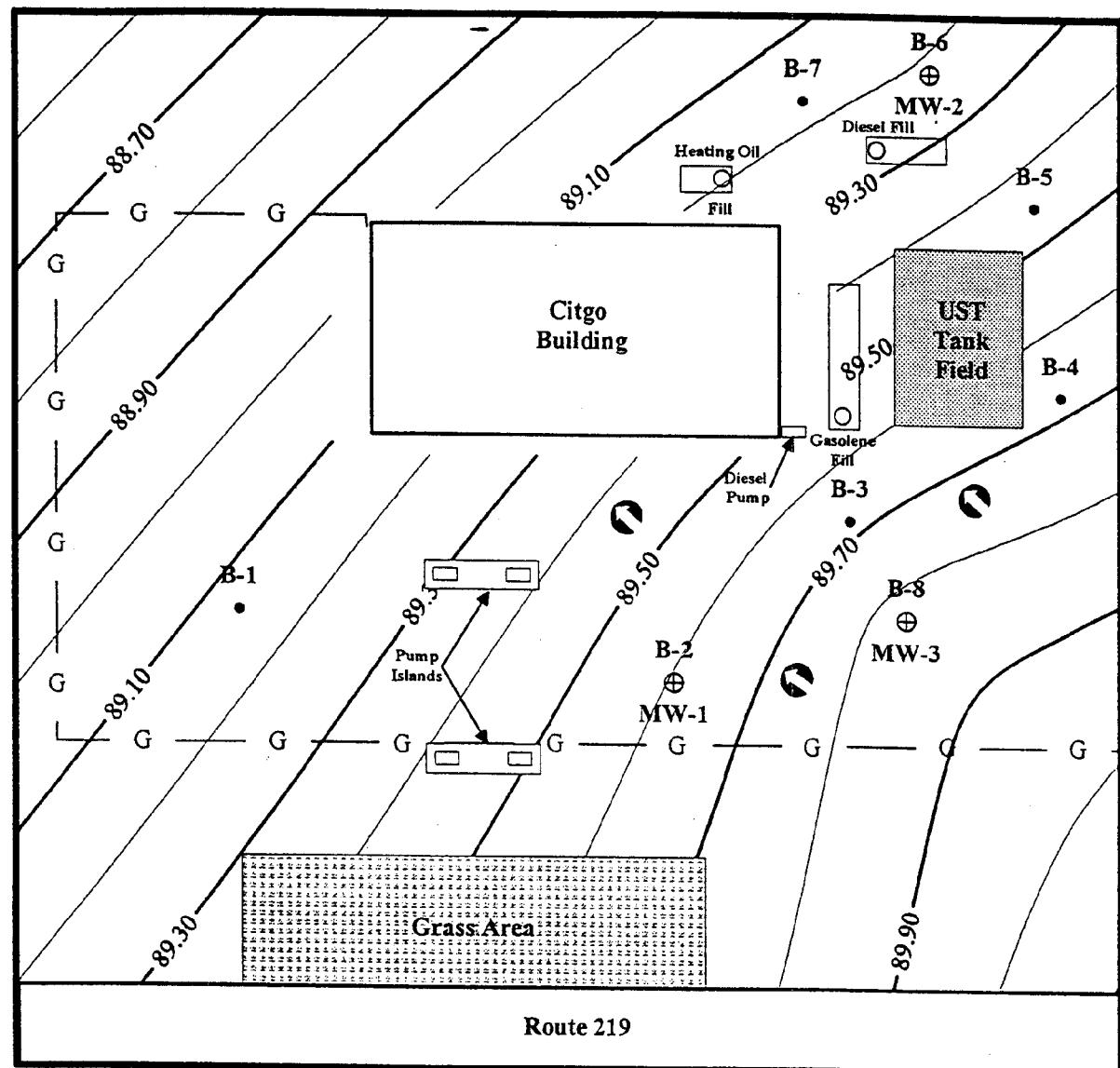
### **IV. Results of Sample Analysis**

All soil and ground water samples collected during this investigation were analyzed by ChemSpec Analytical Laboratories, Inc., PADEP Laboratory # 22-478. The results of the analysis are summarized in the tables which follow. Please refer to Appendix C for complete copies of the laboratory data sheets.

**Table 1**  
**Soil Sample Analytical Results**  
**Limited Site Characterization**  
**Beard Oil Lease Property**  
**Dubois, PA**

<b>Parameter</b>	<b>PADEP Action</b>						
	<b>Limits(Soil)pp b</b>	<b>B-1</b>	<b>B-2</b>	<b>B-3</b>	<b>B-4</b>	<b>B-6</b>	<b>B-8</b>
MTBE	2,000	<2.5	130	64	<2.5	<2.5	<2.5
Benzene	800	<2.5	41.6	<2.5	<2.5	<2.5	<2.5
Toluene	100,000	<2.5	277	<2.5	<2.5	<2.5	<2.5
Ethylbenzene	70,000	<2.5	92.9	<2.5	<2.5	<2.5	<2.5
Xylenes(Total)	1,000,000	<2.5	393	<2.5	<2.5	<2.5	<5.0
Isopropylbenzene	10,000	<2.5	144	<2.5	<2.5	<2.5	<2.5
Naphthalene	8,000	<2.5	4.42	<2.5	<2.5	<2.5	<2.5
Fluorene	40,000	<20.0	<200	<20.0	<20.0	<20.0	<200
Phenanthrene	80,000	<20.0	<200	31.5	59.1	340	<200
Benzo(a)anthracene	6,000/8,000*	<20.0	<200	<20.0	<20.0	<20.0	<200
Benzo(a)pyrene	600/800*	<20.0	<200	<20.0	<20.0	48.7	<200

\*The first value is the PADEP Action Limit for areas classified as residential; the second value is the PADEP Action Limit for areas classified as non-residential.



Legend:

- = Approximate Tank Location
- = Soil Boring Location
- ⊕ = Soil Boring Converted to Monitoring Well
- G = Natural Gas Line
- ◐ = Apparent Direction of Ground Water Flow

Figure 3  
**SOIL BORING/MONITORING WELL  
 LOCATION MAP**

Beard Oil Property  
 Exit 16, U.S. Route 80  
 Dubois, PA



97.0707

**Bolger Brothers, Inc.**  
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SLM

**Table 2**  
**Ground Water Sample Analytical Results**  
**Limited Site Characterization**  
**Beard Oil Lease Property**  
**Dubois, PA**

<b>Parameter</b>	<b>PADEP Action</b>			
	<b>Limits(Water)ppb</b>	<b>MW-1</b>	<b>MW-2</b>	<b>MW-3</b>
MTBE	20	3.12	67.8	<0.5
Benzene	5	<0.5	<0.5	<0.5
Toluene	1,000	0.72	<0.5	<0.5
Ethylbenzene	700	<0.5	<0.5	<0.5
Xylenes(Total)	10,000	<1.5	<1.5	<1.5
Naphthalene	20	1.04	<0.5	<0.5

All soil samples contained levels of target petroleum compounds that are below current PADEP Action Levels (Table 1). Elevated petroleum levels were observed only in the sample collected from soil boring B-2, which was subsequently converted to monitoring well MW-1. The concentrations of target petroleum compounds in this soil sample are approximately 5% of the maximum allowable concentration as currently defined by PADEP.

One ground water sample contained levels of target petroleum compounds that exceeded the current PADEP Action levels (Table 2). The ground water sample collected from MW-2 contained 67.8 ppb of MTBE, which exceeds the current PADEP Action Limit of 20 ppb for this specific compound. MW-2 was converted from soil boring B-6; the soil sample collected from this location contained concentrations of petroleum compounds that were all below the method detection limit.

#### **V. Conclusions and Recommendations**

No evidence of widespread soil or ground water contamination was detected during this investigation. A slight impact to soil was detected to the north of the existing product distribution piping (B-2). This location is upgradient of the existing UST system relative to ground water flow. This slight contamination, which does not exceed current PADEP Action Limits, may be attributed to following possible causes:

1. Limited contamination associated with the existing product distribution lines.
2. Limited contamination associated with the existing product dispensers and/or spillage during product distribution.

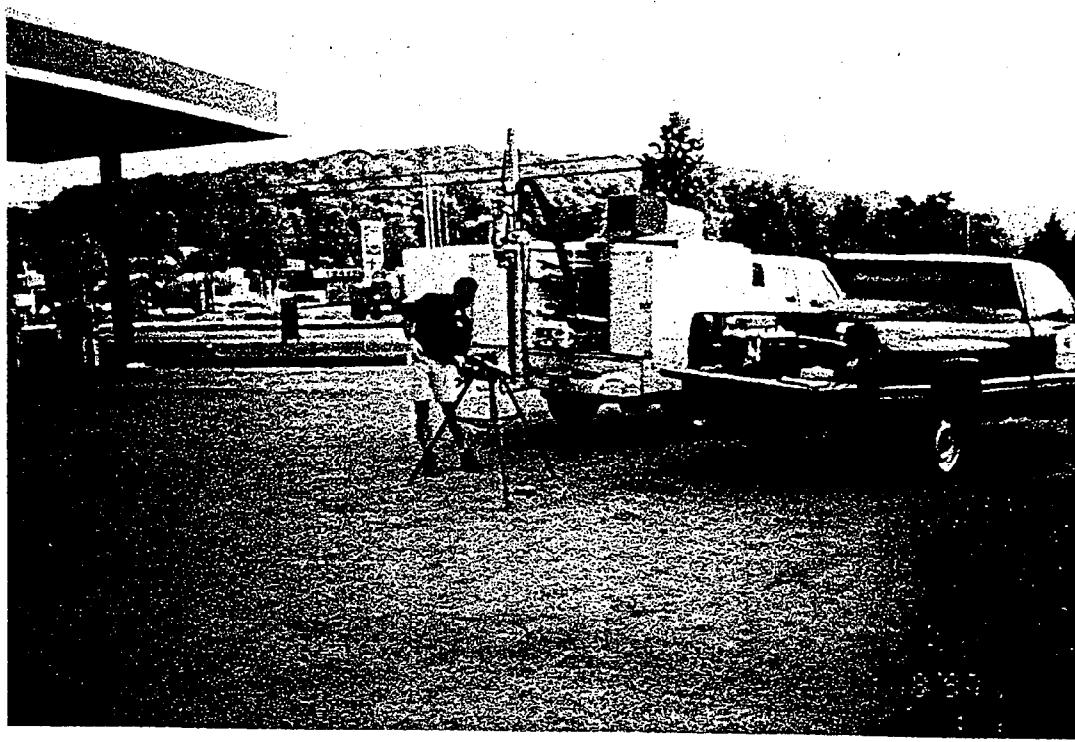
3. Contamination associated with other unknown, abandon UST systems on site which are no longer in use.

Minor ground water contamination was detected in MW-2, which is directly downgradient from the existing gasoline UST. MTBE was detected in this well at a concentration of 67.8 ppb. No other target petroleum compounds were detected in MW-2 or in the other two monitoring wells installed and sampled during this investigation.

BBI would conclude that widespread soil and ground water contamination was not present at this site proximal to the known UST systems at the time of this investigation. Localized soil and ground water contamination was detected in two locations. The localized soil contamination detected in one of these locations does not exceed current PADEP standards. The localized ground water contamination detected in the other location does exceed current PADEP standards, but it is unlikely that PADEP would require active remedial efforts due to concentrations at this level.

Localized soil and ground water contamination may be present adjacent to the known UST systems. Since this investigation has established that no wide spread contamination is currently present, any localized contamination encountered during tank handling activities at this location should be removed from the subsurface immediately in order to prevent contaminant migration.

**Appendix A**  
**Site Photographs**



Installation of soil boring B-1 to the south of the pump islands.



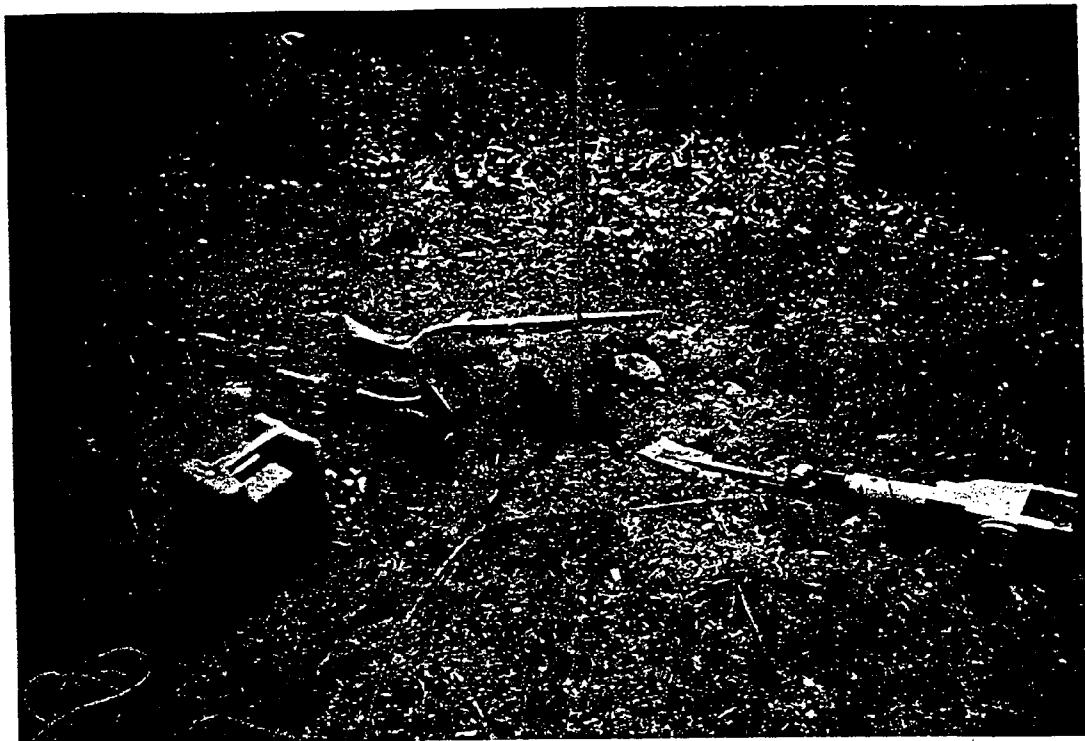
Installation of soil boring B-2 to the north of the pump island.



Boring B-3 was installed adjacent to the tank field.



Soil boring B-5 was installed adjacent to the west side of the tank field.



A one (1) inch monitoring well was installed in soil boring B-6. The well was fitted with a flush mount cover.



All wells were developed after the installation of the wells.

**Appendix B  
Geologist's Logs/  
Well Construction Specifications**

Bolger Brother, Inc.  
Environmental Department

# FIELD BOREHOLE LOG

BOREHOLE NUMBER

B-1

PROJECT NUMBER: 97.0707

WEATHER: Clear, sunny 85°

PROJECT NAME: Site Characterization

TOTAL DEPTH: 16 Feet

LOCATION: Dubois, PA

ELEVATION: N/A

CLIENT: Beard Oil

## STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	13.00 Feet
------------	------------

DRILLING METHOD: Geoprobe

Time	09:45
------	-------

DRILLER: Steve Kessler

Date	07/18/97
------	----------

GEOLOGIST: Shawn McMullen

DATE BEGUN: 7/18/97 DATE COMPLETED: 7/18/97

DEPTH	PID (PPM)	SAMPLES	DESCRIPTION	LITHOLOGY
0.0			ASPHALT	
1.0			GRAVEL	
2.0				
3.0				
4.0	3.40		SILTY CLAY: brown, stiff, dry, with rock fragments.	
5.0				
6.0				
7.0				
8.0	14.2		SILTY CLAY: dark brown to gray, moist.	
9.0				
10.0				
11.0				
12.0	0.5		SILTY CLAY: dark brown to brown, moist, with some rock fragments. Organic Layer at 14.0 feet.	
13.0				
14.0				
15.0				
16.0	1.5			

Bolger Brother, Inc.  
Environmental Department

FIELD BOREHOLE LOG

BOREHOLE NUMBER

B-2/MW-1

PROJECT NUMBER: 97.0707

WEATHER: Clear, Sunny 85°

PROJECT NAME: Site Characterization

TOTAL DEPTH: 16.0 Feet

LOCATION: Dubois, PA

ELEVATION: 99.52 Feet

CLIENT: Beard Oil Company

STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	12.0 Feet	9.91 Feet
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DRILLING METHOD: Geoprobe

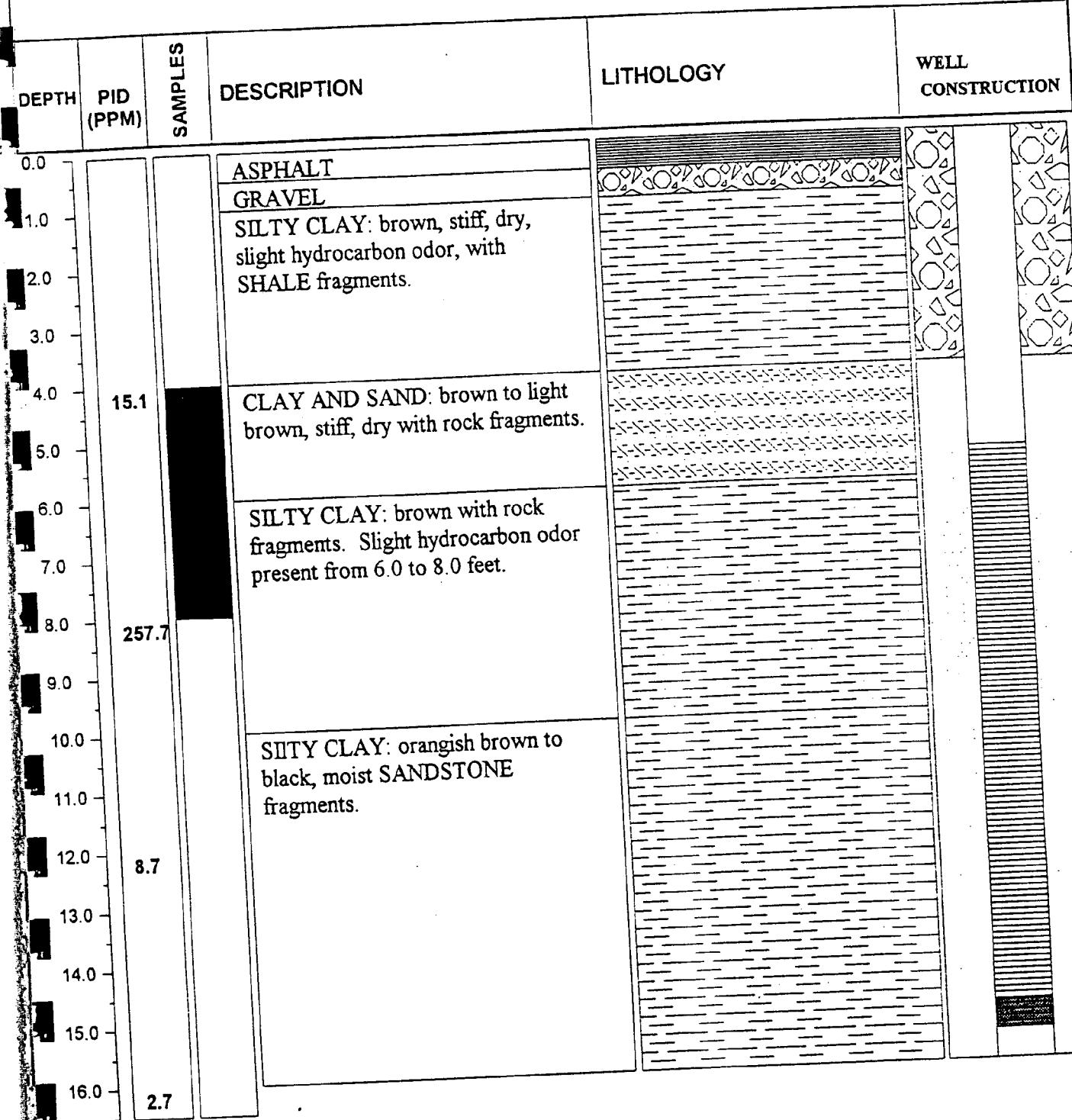
Time	10:15	14:00
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DRILLER: Steve Kessler

Date	07/18/97	08/08/97
------	----------	----------

GEOLOGIST: Shawn McMullen

DATE BEGUN: 07/18/97 DATE COMPLETED: 07/18/97



Bolger Brother, Inc.  
Environmental Department  
PROJECT NUMBER: 97.0707  
NAME: Site Charac

## FIELD BOREHOLE LOG

PROJECT NUMBER: 97.0707

PROJECT NAME: Site Change

PROJECT NAME: Dubois, PA

LOCATION: **Basin**  
**Beard Oil**

CLIENT: Beard On  
Chambers Environmental

DRILLING CO:

DRILLING METHOD: Geoprobe

DRILLER: Steve Kessler

**SEALOGIST:** Shawn McMullen

DATE BEGIN: 7/18/97

DATE BEGUN: 11/18/97

WEATHER: Clear, sunny 85°

TOTAL DEPT III. 101-  
N/A

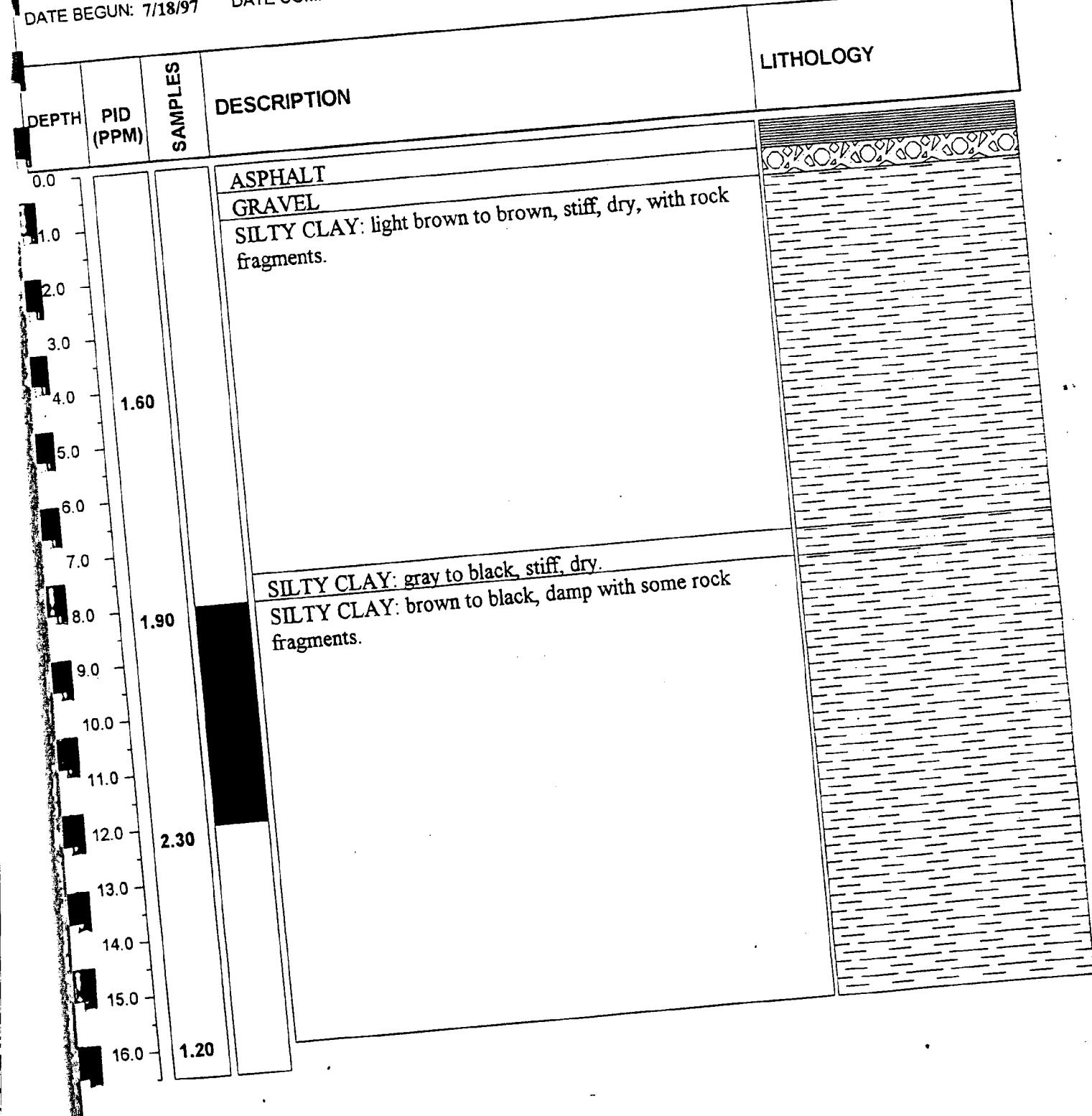
ELEVATION: N/A

BUREAU NUMBER

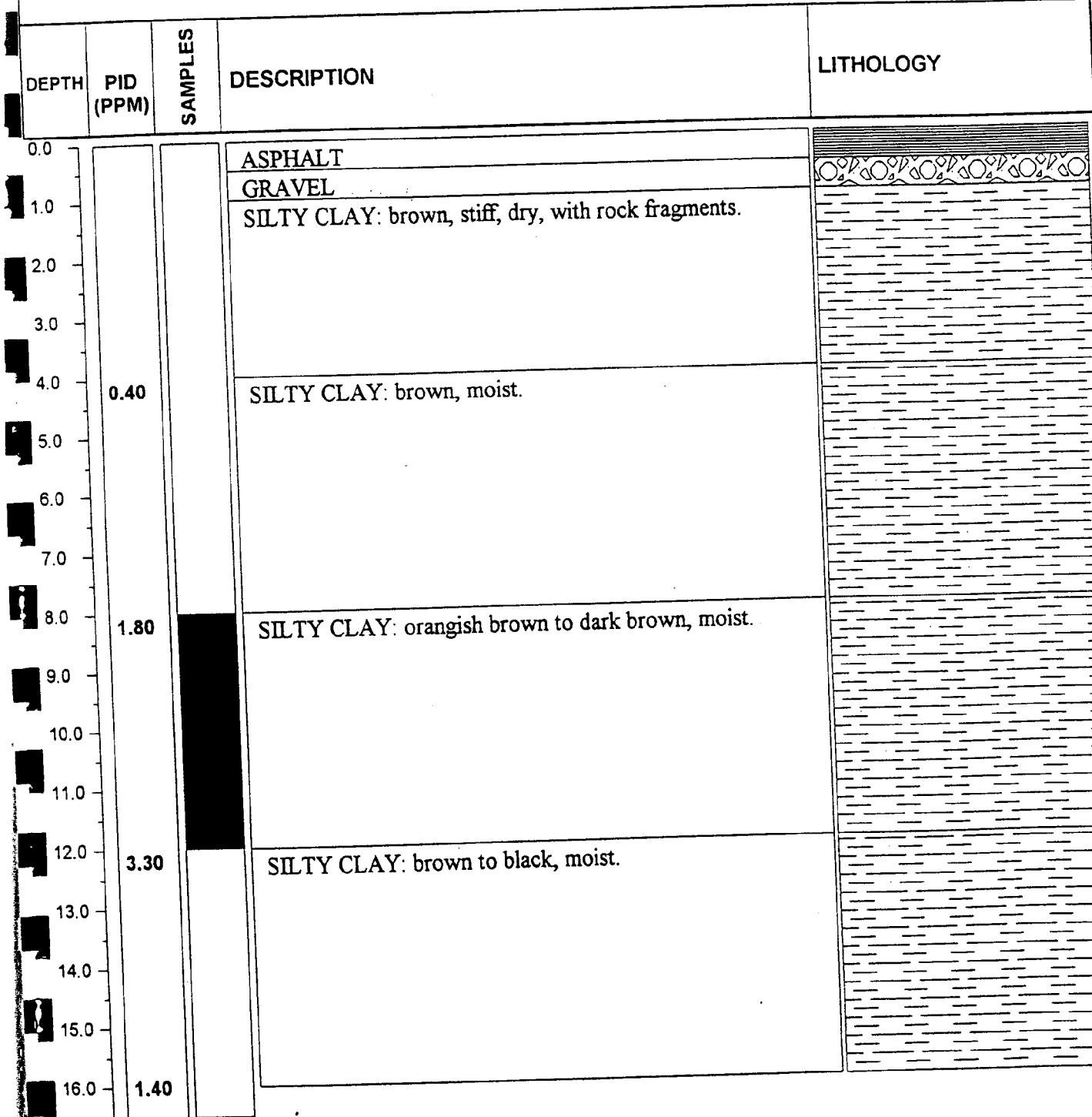
B-3

### STATIC WATER LEVEL

Depth (ft)	DRY	
Time	11:00	
Date	07/18/97	



Bolger Brother, Inc. Environmental Department		FIELD BOREHOLE LOG		BOREHOLE NUMBER B-4
PROJECT NUMBER:	97.0707	WEATHER:	Clear, sunny 85°	
PROJECT NAME:	Site Characterization	TOTAL DEPTH:	16 Feet	
LOCATION:	Dubois, PA	ELEVATION:	N/A	
CLIENT:	Beard Oil	STATIC WATER LEVEL		
DRILLING CO:	Chambers Environmental			
DRILLING METHOD:	Geoprobe	Depth (ft)	DRY	
DRILLER:	Steve Kessler	Time	11:45	
GEOLOGIST:	Shawn McMullen	Date	07/18/97	
DATE BEGUN: 7/18/97      DATE COMPLETED: 7/18/97				



PROJECT NUMBER: 97.0707

WEATHER: Clear, sunny 85°

PROJECT NAME: Site Characterization

TOTAL DEPTH: 12 Feet

LOCATION: Dubois, PA

ELEVATION: N/A

CLIENT: Beard Oil

STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	12.0 Feet
------------	-----------

DRILLING METHOD: Geoprobe

Time	12:15
------	-------

DRILLER: Steve Kessler

Date	07/18/97
------	----------

GEOLOGIST: Shawn McMullen

DATE BEGUN: 7/18/97 DATE COMPLETED: 7/18/97

DEPTH	PID (PPM)	SAMPLES	DESCRIPTION	LITHOLOGY
0.0			ASPHALT	
1.0			GRAVEL	
1.20			SILTY CLAY: light brown to brown, stiff, dry, with rock fragments.	
4.0				
5.0				
6.0				
7.0				
8.0				
8.00			SILTY CLAY: orangish brown to black, moist.	
9.0				
10.0				
11.0				
12.0	1.00			

PROJECT NUMBER: 97.0707

WEATHER: Clear, Sunny 85 °

PROJECT NAME: Site Characterization

TOTAL DEPTH: 16.0 Feet

LOCATION: Dubois, PA

ELEVATION: 99.12 Feet

CLIENT: Beard Oil Company

STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	15.0 Feet	9.97 Feet
Time	12:45	14:05
Date	07/18/97	08/08/97

DRILLING METHOD: Geoprobe

DRILLER: Steve Kessler

GEOLOGIST: Shawn McMullen

DATE BEGUN: 07/18/97 DATE COMPLETED: 07/18/97

DEPTH	PID (PPM)	SAMPLES	DESCRIPTION	LITHOLOGY	WELL CONSTRUCTION
0.0					
1.0					
2.0					
3.0					
4.0	1.50		SILTY CLAY: brown to dark brown, stiff, dry, ORGANICS with some SAND.		
5.0					
6.0					
7.0					
8.0	1.80		SILTY CLAY: brown, soft, moist.		
9.0					
10.0					
11.0					
12.0	1.70		SILTY CLAY: dark brown to gray, moist.		
13.0			SILTY CLAY: orangish brown to dark brown, moist.		
14.0					
15.0					
16.0	0.10		SILTY CLAY: brown to black, moist, with ORGANICS.		

Bolger Brother, Inc.  
Environmental Department

# FIELD BOREHOLE LOG

BOREHOLE NUMBER

B-7

PROJECT NUMBER: 97.0707

WEATHER: Clear, sunny 85°

PROJECT NAME: Site Characterization

TOTAL DEPTH: 12 Feet

LOCATION: Dubois, PA

ELEVATION: N/A

CLIENT: Beard Oil

## STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	12.0 Feet
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DRILLING METHOD: Geoprobe

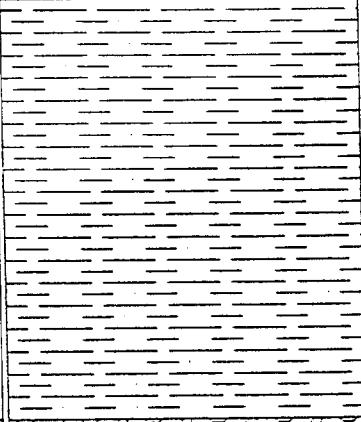
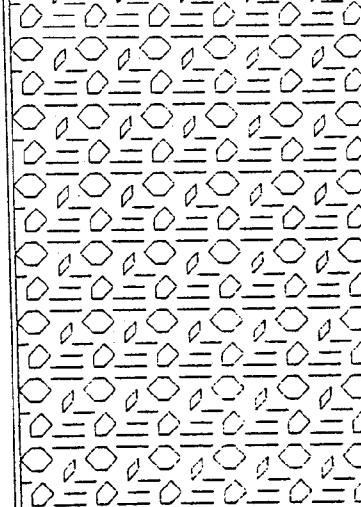
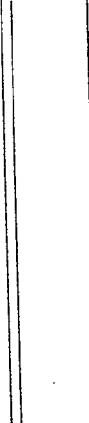
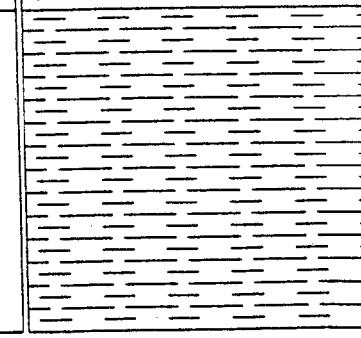
Time	13:15
------	-------

DRILLER: Steve Kessler

Date	07/18/97
------	----------

GEOLOGIST: Shawn McMullen

DATE BEGUN: 7/18/97 DATE COMPLETED: 7/18/97

DEPTH	PID (PPM)	SAMPLES	DESCRIPTION	LITHOLOGY
0.0			SILTY CLAY: brown, stiff, dry, with rock fragments.	
1.0				
2.0				
3.0				
4.0	2.80		SILT AND GRAVEL: brown to light brown, loose, moist.	
5.0				
6.0				
7.0				
8.0	6.40			
9.0			Silty Clay: orangish brown to brown, stiff, wet.	
10.0				
11.0				
12.0	2.20			

Bolger Brother, Inc.  
Environmental Department

## FIELD BOREHOLE LOG

BOREHOLE NUMBER

B-8/MW-3

PROJECT NUMBER: 97.0707

WEATHER: Clear, Sunny 85 °

PROJECT NAME: Site Characterization

TOTAL DEPTH: 16.0 Feet

LOCATION: Dubois, PA

ELEVATION: 99.65 Feet

CLIENT: Beard Oil Company

### STATIC WATER LEVEL

DRILLING CO: Chambers Environmental

Depth (ft)	10.0 Feet	9.80 Feet
Time	14:00	14:10
Date	07/18/97	08/08/97

DRILLING METHOD: Geoprobe

DRILLER: Steve Kessler

GEOLOGIST: Shawn McMullen

DATE BEGUN: 07/18/97 DATE COMPLETED: 07/18/97

DEPTH	PID (PPM)	SAMPLES	DESCRIPTION	LITHOLOGY	WELL CONSTRUCTION
0.0					
1.0			ASPHALT		
2.0			GRAVEL		
3.0					
4.0	0.20		SILTY CLAY: brown to light brown, stiff, dry with some rock fragments.		
5.0					
6.0					
7.0					
8.0	0.0		SILTY CLAY: brown to gray, moist.		
9.0					
10.0					
11.0					
12.0	0.20				
13.0					
14.0					
15.0					
16.0	0.0				

**Appendix C**  
**Laboratory Data Sheets**

# Laboratory Results Summary

Page 1 of 4  
C2857

Mr. Gary Calvert  
Bolger Brothers  
RD #2, Box 438  
Sugar Run Rd & Burns Ave.  
Altoona, PA 16601

Project Manager: Gary Calvert  
Project Name: Beard-Dubois  
Project Number: 97-0707  
Sampler: Shawn McMullen  
Date Sampled: July 18, 1997  
Date Received: July 22, 1997  
Time Received: 10:40 AM

## Analytical Testing Parameters

### Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel

Sample ID: C2857-01 • B-1 - 8'

#### Test / Parameter

	<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
MTBE	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Benzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Toluene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	<5.00	ppb	5.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Isopropylbenzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
Fluorene	<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
Phenanthrene	<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
Benzo(a)anthracene	<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
Benzo(a)pyrene	<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
% Moisture	14.20	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Kg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

### Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel

Sample ID: C2857-02 • B-2 - 8'

#### Test / Parameter

	<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
MTBE	130	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Benzene	41.6	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Toluene	277	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	92.9	ppb	2.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	393	ppb	5.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	144	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Isopropylbenzene	7.73	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	4.42	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Fluorene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Phenanthrene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Benzo(a)anthracene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Benzo(a)pyrene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
% Moisture	12.75	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Kg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Reviewed and reported by:

*Terry Osenbach*

Terry Osenbach, Laboratory Director  
PADEP Lab No. 22-478

**Analytical Testing Parameters**

**Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel**

Sample ID: C2857-03 • B-3 - 12'

Test / Parameter

MTBE  
Benzene  
Toluene  
Ethylbenzene  
m,p-Xylene  
o-Xylene  
Isopropylbenzene  
Naphthalene  
Fluorene  
Phenanthrene  
Benzo(a)anthracene  
Benzo(a)pyrene  
% Moisture

<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
64.0	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<5.00	ppb	5.00	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
31.5	ppb	20.0	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
11.03	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Kg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

**Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel**

Sample ID: C2857-04 • B-4 - 12'

Test / Parameter

MTBE  
Benzene  
Toluene  
Ethylbenzene  
m,p-Xylene  
o-Xylene  
Isopropylbenzene  
Naphthalene  
Fluorene  
Phenanthrene  
Benzo(a)anthracene  
Benzo(a)pyrene  
% Moisture

<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<5.00	ppb	5.00	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
59.1	ppb	20.0	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
11.61	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Kg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

**Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel**

Sample ID: C2857-05 • B-5 - 8'

Test / Parameter

MTBE  
Benzene  
Toluene  
Ethylbenzene  
m,p-Xylene  
o-Xylene  
Isopropylbenzene  
Naphthalene  
Fluorene  
Phenanthrene  
Benzo(a)anthracene  
Benzo(a)pyrene  
% Moisture

<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<5.00	ppb	5.00	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
<2.50	ppb	2.50	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
340	ppb	20.0	SW846 8270B	July 24, 1997	RMS
<20.0	ppb	20.0	SW846 8270B	July 24, 1997	RMS
48.7	ppb	20.0	SW846 8270B	July 24, 1997	RMS
14.17	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Kg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

# Laboratory Results Summary

Beard-Dubois • Page 3 of 4  
C2857

## Analytical Testing Parameters

### Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel

Sample ID: C2857-06 • B-8 - 12'

<u>Test / Parameter</u>	<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
MTBE	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Benzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Toluene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	<5.00	ppb	5.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Isopropylbenzene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	<2.50	ppb	2.50	SW846 8021A	July 23, 1997	RMS
Fluorene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Phenanthrene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Benzo(a)anthracene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
Benzo(a)pyrene	<200	ppb	200	SW846 8270B	July 24, 1997	RMS
% Moisture	12.44	%	0.01	EPA 160.3	July 22, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{Mg}$  (Soil - Dry)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

### Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel

Sample ID: C2857-07 • MW-1

<u>Test / Parameter</u>	<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
MTBE	3.12	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Benzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Toluene	0.72	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	<1.00	ppb	1.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	1.04	ppb	0.50	SW846 8021A	July 23, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{L}$  (Water)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

### Selected PA DEP UST Parameters: Unleaded Gasoline & Diesel Fuel

Sample ID: C2857-08 • MW-2

<u>Test / Parameter</u>	<u>Result</u>	<u>Units</u>	<u>MDL</u>	<u>Method</u>	<u>Test Date</u>	<u>Analyst</u>
MTBE	67.8	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Benzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Toluene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	<1.00	ppb	1.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g}/\text{L}$  (Water)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Reviewed and reported by:



Terry Osenbach, Laboratory Director  
PADEP Lab No. 22-478

## Laboratory Results Summary

Beard-Dubois • Page 4 of 4  
C2857

## Analytical Testing Parameters

## Selected PA DEP UST Parameters: Unleaded Gasoline &amp; Diesel Fuel

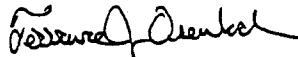
Sample ID: C2857-09 • MW-3

Test / Parameter	Result	Units	MDL	Method	Test Date	Analyst
MTBE	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Benzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Toluene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Ethylbenzene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
m,p-Xylene	<1.00	ppb	1.00	SW846 8021A	July 23, 1997	RMS
o-Xylene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS
Naphthalene	<0.50	ppb	0.50	SW846 8021A	July 23, 1997	RMS

ppb = Parts per Billion =  $\mu\text{g/L}$  (Water)

The MDL is the Method Detection Limit, defined as the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Reviewed and reported by:

Terry Osenbach, Laboratory Director  
PADEP Lab No. 22-478

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER,  
Plaintiff

: No. 2000-355 C.D.

v.  
J.V. INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
Defendants

FILED

AUG 12 2003

MOTION FOR CONTINUANCE

William A. Shaw  
Prothonotary/Clerk of Courts

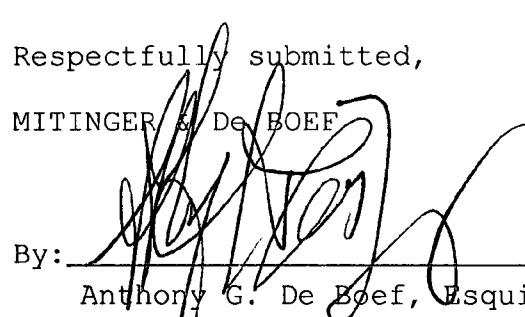
AND NOW comes Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., by and through their attorney, Anthony G. DeBoef, of Mitinger and DeBoef, and respectfully asks the Court to continue the Non-Jury Trial for the following reasons:

1. Defendants' key witness is Mr. Dale Paffie. Mr. Paffie is no longer an employee of Defendants and will be out of the State on the date of the trial.
2. The Seconded Amended Complaint contains new allegations involving an improper gasoline tank installation. Inasmuch, new and additional discovery is required prior to the commencement of the proceedings. Furthermore, upon completion of the additional discovery, tentatively including a deposition, Defendants anticipate the filing of Pre-trial Motions.
3. Additionally, Defendants' counsel, Anthony G. De Boef is on vacation the week of August 11, 2003.

WHEREFORE, Defendants respectfully requests this Honorable Court continue the Non-Jury Trial scheduled for Tuesday, August 12, 2003.

Respectfully submitted,

MITINGER & De BOEF

By: 

Anthony G. De Boef, Esquire  
Attorney for Defendants  
I.D. # 71532  
2147 East College Avenue  
State College, PA 16801  
(814) 231-4050

Dated: 8/5/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: No. 2000-355 C.D.  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of a Motion  
For Continuance was served upon Toni M. Cherry, Esq.,  
counsel for Plaintiff by mailing the same via United States  
First Class Mail, postage prepaid, by depositing the same in the  
United States Mail, addressed as follows:

TONI M. CHERRY ESQ.  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

By:

MITINGER & DEBOEF

Anthony G. DeBoef, Esq.  
2147 E. College Avenue  
State College, PA 16801  
(814)-231-4052

Dated: 8/5/03

FILED 2CC  
01 10:47 6/1 AUG 12 2003 Atty DeBoef  
K2A

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

\*

\*

\*

vs.

\*

NO. 2000-355-C.D.

\*

\*

\*

J.V. INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
Defendants

\*

\*

\*

**FILED**

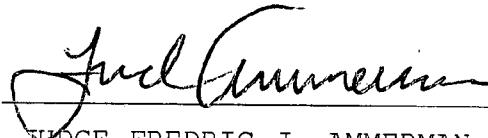
AUG 12 2003

**O R D E R**

William A. Shaw  
Prothonotary/Clerk of Courts

NOW, this 8<sup>th</sup> day of August, 2003, this Court is in receipt of Defendants' Motion for Continuance filed on their behalf by attorney Anthony G. DeBoef; counsel for the Plaintiff, attorney Toni M. Cherry being advised of said Motion and having no objection to the continuance, it is the ORDER of this Court that the matter be and is hereby continued. The Court Administrator is directed to place the matter on the Civil Call List for the next Term of Court.

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED 2CC Atty T. Cherry  
01/04/88  
AUG 12 2003 2CC Atty DeBoef

William A. Shaw  
Prothonotary/Clerk of Courts

W.A.S.  
KAT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

\*

\*

\*

vs.

NO. 2000-355-C.D.

\*

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\*

J.V., INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
Defendants

\*

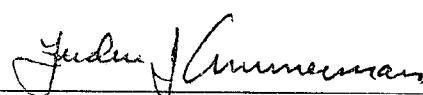
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\*

O R D E R

NOW, this 22<sup>nd</sup> day of January, 2004, following Pre-Trial Conference with counsel for the parties as set forth above and the Court, it is the ORDER of this Court that Non-Jury Trial be scheduled for two days, Wednesday, March 31, 2004 and Friday, April 2, 2004 at 9:00 a.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



FREDRIC J. AMMERMAN  
President Judge

FILED

JAN 26 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

2cc 447. Cherry

1/9/3871

2cc 447. deBart

*area*

William A. Shaw  
Prothonotary/Clerk of Courts

7-15

cc: HAL

DA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: :  
: No. 2000-355 C.D.  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
: :  
: :  
: :

**RULE**

AND NOW, this 23rd day of February, 2004, upon consideration of Defendants' Motion for Depositions of Plaintiff, EDWARD C. MILLER, and on Motion of Anthony G. De Boef, Attorney for Defendants named above, a Rule is hereby entered upon Plaintiff, EDWARD C. MILLER, to show cause, if any there be, why the relief requested should not be granted.

Rule returnable on the 3 day of March, 2004, at 3:00  
AM/PM, in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

Judie J. Kummerman  
J.

**FILED**

FEB 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED BCC *Boeuf*  
01/9/2004 *Boeuf*  
FEB 24 2004 *Boeuf*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: :  
: :  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
: :  
: :

No. 2000-355 C.D.

FILED

FEB 20 2004

**MOTION FOR DEPOSITIONS**

William A. Shaw  
Prothonotary

AND NOW, this 19th day of February, 2004, pursuant to the provisions of Pa.

R.C.P. No. 4010, MITINGER & De BOEF, Attorneys for Defendants, J.V., INC., d/b/a BEARD OIL, and SHANER ENERGY, INC., respectfully move that your Honorable Court direct Plaintiff, EDWARD C. MILLER, to submit himself for the purpose of oral deposition.

Defendants in support of this Motion states the following:

1. Defendants would respectfully request that this Honorable Court refer to Exhibit "1", "2", "3", and "4" attached to this Motion.
2. On September 16, 2003, October 23, 2003, November 13, 2003, and November 19, 2003, Defendants attempted to schedule a deposition of Plaintiff through sending letters as attached hereto as Exhibit "1", "2", "3", and "4" to opposing counsel by direct mail and by fax.
3. No response was ever received by Plaintiff's counsel until November 20, 2003.
4. On that date, a woman identifying herself as Attorney Cherry's secretary called defense counsel's office to let defense counsel know that Plaintiff would be contacted and some dates would be made available to us for a deposition.

5. No dates were ever made available to Defendants' counsel for a deposition.
6. Although interrogatories would be helpful in this case, as the Court witnessed on January 22, 2004, Plaintiff's counsel handed defense counsel over 200 pages of discovery with respect to the second issue in this case; that being the need for gasoline or petroleum tank removal.
7. Until the receipt of that discovery, which counsel for Defendants had been asking for since the Amended Complaint was filed by Plaintiff's counsel (April, 2003) alleging the new damages; the use of interrogatories was limited.
8. Plaintiff verified the first Complaint on March 22, 2000 with the rent being calculated from September 11, 1997 to December 31, 1999. Then with no explanation in the first Amended Complaint, the dates changed to include time up to June, 2001.
9. Numerous conversations were held between Plaintiff and witnesses for the Defendants with respect to who owned the tanks and when he had someone renting the property.
10. A deposition of Plaintiff is vital to the preparation by Defendants in defending the multiple Complaints that have been filed in this case.
11. Finally, at the January 22, 2004 Pre-Trial Conference, the Court and defense counsel were notified by Plaintiff's counsel that Plaintiff had gone to Florida for the Winter and would not return until the day before this Non-Jury Trial.
12. Without the deposition, Defendants will be unduly prejudiced. Therefore, Defendants respectfully files this Motion before this Honorable Court.

WHEREFORE, Defendants respectfully request that this Honorable Court Order Edward C. Miller to submit himself to depositions that are vital and proper under the Rules of Civil Procedure.

Respectfully submitted,

MITINGER & DE BOEF

By: \_\_\_\_\_

Anthony G. De Boef, Esquire  
Attorney For Defendants  
ID. # 71532  
2147 East College Avenue  
State College, PA 16801

Dated: 3/19/04

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: : No. 2000-355 C.D.  
v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
: :

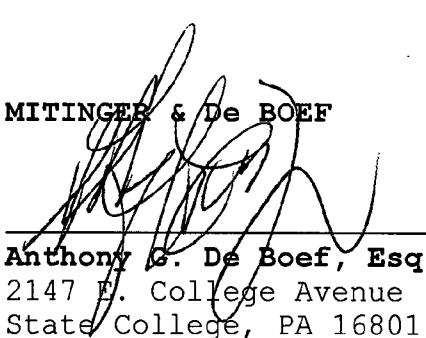
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of a Motion was served upon Toni M. Cherry, Esq., counsel for Plaintiff by mailing the same via United States First Class Mail, postage prepaid, by depositing the same in the United States Mail, addressed as follows:

TONI M. CHERRY ESQ.  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

MITINGER & De BOEF

By: \_\_\_\_\_

  
Anthony G. De Boef, Esq.  
2147 E. College Avenue  
State College, PA 16801  
(814)-231-4052

Dated: 7/19/04

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2002)

September 16, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry & Cherry  
PO box 505  
DuBois, PA 15801-0505

RE: Miller vs. Beard Oil/Shaner Energy, Inc.  
No. 2000-355-C.D.

Dear Ms. Cherry:

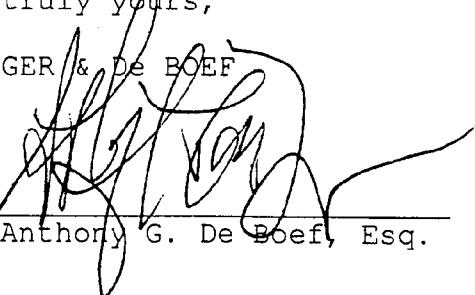
With respect to the above referenced case, I would like to schedule depositions with your client. At your earliest convenience, could you give me some dates that you are available to schedule the same.

Feel free to contact me if you have any questions.

Very truly yours,

MITINGER & De BOEF

By:

  
Anthony G. De Boef, Esq.

AGD/mal

cc: Peter K. Hulbert, Esquire  
Greg Wysanski

**EXHIBIT** 1

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

October 23, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry & Cherry  
PO Box 505  
DuBois, PA 15801-0505

RE: Miller vs. Beard Oil/Shaner Energy, Inc.  
No. 2000-355-C.D.

Dear Ms. Cherry:

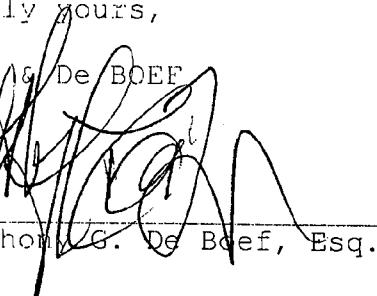
Pursuant to my letter to you of September 16, 2003, I would like to schedule depositions next week with respect to the above-captioned case.

At your earliest convenience, please call me to discuss.

Very truly yours,

MITINGER & De BOEF

By: \_\_\_\_\_

  
Anthony G. De Boef, Esq.

AGD/mal

**EXHIBIT** 2

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

November 13, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

RE: Miller vs. J.V., Inc., et al  
No. 2000-355 C.D.

Dear Ms. Cherry:

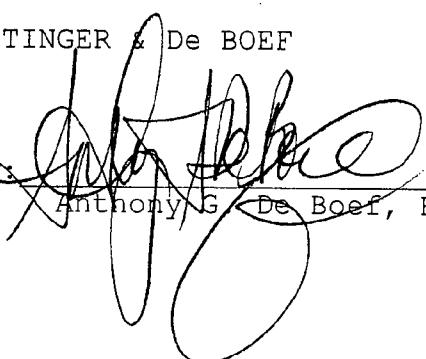
Pursuant to my previous letter dated October 23, 2003, I would like to schedule a deposition of your client for November 24, 2003, at 10:00 A.M. in your Office. At your earliest convenience, please check with your client and get back to me as soon as possible.

Thank you and feel free to contact me if you have any questions.

Very truly yours,

MITINGER & De BOEF

BY:

  
Anthony G. De Boef, Esq.

AGD/mal

**EXHIBIT** 3

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

November 19, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

RE: Miller vs. J.V., Inc., et al  
No. 2000-355 C.D.

Dear Ms. Cherry:

Pursuant to my previous letter dated November 13, 2003, my secretary called your Office this morning and left a message for your secretary regarding the depositions of your client that I would like to hold in your Office Monday, November 24, 2003, at 10:00 A.M. I would appreciate a response so I know whether I am coming to DuBois on Monday.

Thank you and feel free to contact me if you have any questions.

Very truly yours,

MITINGER & De BOEF

BY

Anthony G. De Boef, Esq.

AGD/mal

**EXHIBIT** 4

**FILED**

*M. 11.42 am 3/28/04*

FEB 20 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J.V., INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
Defendants

\*  
\*  
\*  
\*  
\*

NO. 2000-355-C.D.

O R D E R

NOW, this 3<sup>rd</sup> day of March, 2004, this being the date set for hearing on Defendant's Motion for Depositions of Plaintiff; Anthony G. De Boef, Esquire, Attorney for the Defendants being present; the Court noting that counsel for the Plaintiff not being present; the Court being advised that Attorney De Boef having failed to make service upon Plaintiff's counsel, Toni M. Cherry, Esquire, it is the ORDER of this Court that hearing on Defendant's Motion be and is hereby rescheduled for the 15 day of March, 2004 at 9:30 A .m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania. The Prothonotary is hereby directed to make service of this Court's Order on Attorney Cherry and Attorney De Boef.

**FILED**

By the Court,



FREDRIC J. AMMERMAN  
President Judge

MAR 08 2004

William A. Shaw  
Prothonotary

**FILED**

3/8/04 BTR  
2004 City of Cheyenne  
011.3780 DeBono  
2nd and College Ave  
2347 East College Ave, #16801  
Cheyenne, WY 82001  
MAR 08 2004

William A. Shaw  
Prothonotary

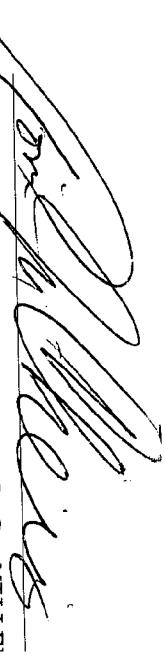
LAW OFFICES

GRIGEASON, CHERRY & CHERRY, LLP.

P. O. Box 505

DU BOIS, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET

  
ATTONEY FOR Defendant, EDWARD C. MILLER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,

Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,

Defendants

: No. 00 - 355 C.D.

: Type of Case: ASSUMPSIT

: Type of Pleading: RESPONSE TO  
: MOTION FOR DEPOSITIONS

: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205

: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
: (814) 371-5800

FILED

MAR 11 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

## **RESPONSE TO MOTION FOR DEPOSITIONS**

AND NOW, comes the undersigned, counsel for Plaintiff, EDWARD C. MILLER, and does hereby respond to the Motion for Depositions filed by Defendants although they have wrongfully recited that the same is filed pursuant to the provisions of Pa. R.C.P. No. 4010 when that Rule pertains only to the procedure for obtaining either a physical or a mental examination of a person which is clearly not what Defendants are attempting to do by their Motion. Regardless, because Plaintiff's counsel presumes that a Rule was issued by Your Honorable Court for answer to the Motion although Plaintiff has never been served with a true and correct copy of any Rule issued by Your Honorable Court and only yesterday received a faxed copy of the Motion purportedly filed in this case, do hereby provide the following in response:

1. ADMITTED in part and DENIED in part. While it is ADMITTED that Defendants' counsel did send Exhibits 1, 2, 3 and 4 to Plaintiff's counsel, it is DENIED that Defendants attempted to engage in discovery in good faith by those letters or that it was ever agreed that

Plaintiff's deposition would be taken. On the contrary, well before the last pre-trial conference in this case, Defendants, through counsel, conceded that they did not intend to take the deposition of Plaintiff but, instead, intended to propound Interrogatories to secure the discovery needed. A true and correct copy of the letter sent by Defendants' counsel on December 19, 2003, advising Plaintiff's counsel of that fact is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

2. DENIED as stated. On the dates set forth in Defendants' Motion, Defendants, through counsel, attempted to delay the trial of this case by forwarding letters demanding to take the deposition of Plaintiff. However, at no time did Plaintiff's counsel ever consent to the taking of Plaintiff's deposition in this case because the Complaint was filed four years ago and Plaintiff attempted to negotiate a settlement with Defendants for over two years prior to that time. This case has been pre-tried twice and was actually scheduled to be heard by the Court in August of 2003 but Defendants were granted a continuance by the Court at that time.

3. DENIED as stated. No response was necessary from Plaintiff's counsel as there was no discovery in which to be engaged and this case has been ready for trial for years. This case has been repeatedly continued and delayed by Defendants who have evidenced no desire to try this case.

4. DENIED as stated. Defendants' counsel was advised that Plaintiff would be contacted to determine if he was willing to participate in a deposition.

5. ADMITTED.

6. DENIED as stated. At the pre-trial conference in this matter, Defendants' counsel was handed the expert report, not discovery, and the deposition of the Plaintiff would have

nothing to do with the information contained in the expert's report. By way of further answer, it is averred that in the presence of the Court, after the expert's report was given to Defendants' counsel, Defendants' counsel announced that he would not need any further discovery as he now had everything he needed and the case was ready for trial. It was Plaintiff's counsel who did not have Defendants' expert report and Defendants' counsel assured the Court that this report would be forwarded to Plaintiff's counsel immediately. Instead, a "Limited Site Characterization Report", in the hands of Defendants since August 14, 1997, and intended to be used at trial, was not forwarded to Plaintiff's counsel until February 12, 2004, weeks after the pre-trial conference.

Plaintiff's counsel has previously supplied to Defendants' counsel all of the exhibits that will be produced at trial and Defendants' counsel acknowledged to Your Honorable Court on January 22, 2004, that all of the information required from Plaintiff's counsel had been received. At no time during that pre-trial conference did Defendants' counsel indicate he needed any more discovery in this case. The request for a deposition of the Plaintiff is just another attempt by Defendants to avoid the trial scheduled for the end of this month.

7. DENIED. On the contrary, Defendants have had four years to file Interrogatories and four years to request the deposition of the Plaintiff but at no time did they make any formal attempt to do so. The "discovery" to which Defendants refer was an expert's report detailing the condition of the tanks. Defendants were in full possession of the property from which the tanks were removed and Defendants have a better knowledge of the condition of the tanks than Plaintiff who was not in possession of the property at the time that the damages were done by Defendants.

Defendants cannot rely on any surprise because of an Amended Complaint filed in April of 2003 because Defendants were aware of the Plaintiff's intention to file such Amended Complaint from a previous pre-trial conference before the Court when this matter was discussed at length and the Court granted leave to Plaintiff to file such Amended Complaint no later than May 1, 2003, by Its Order of April 14, 2003.

In that Order, Your Honorable Court scheduled a non-jury trial for Monday, August 12, 2003, after Defendants assured Your Honorable Court that there would be no difficulty in Defendants meeting that trial date. A true and correct copy of the Court's Order is attached hereto and made a part hereof as Plaintiff's Exhibit "B".

8. DENIED as stated. Defendants requested and received an explanation with regard to the difference in the rents set forth and that explanation was that it was an attorney error. This explanation was reiterated before Your Honorable Court at the time of the pre-trial conference and Defendants' counsel acknowledged that there was no further issue with regard to the rent. The Amended Complaint had already corrected the error contained in the first Complaint and there was no reason for any question on Defendants' part except to use the question of the amount of the rent as an excuse to delay trial. To now raise that issue again, evidences that Defendants' have no real interest in bringing this matter to trial but only seek to delay the proceedings because of Plaintiff's age in the hopes that he will not be available for trial.

9. DENIED. Defendants have not specifically listed any witnesses in the Memorandum that they presented to the Court at the time of the pre-trial conference other than to elide to the fact that Defendants have an expert who will testify to tank removal. Since Defendants have not listed anyone as a witness, it is specifically DENIED that they have any

witnesses other than the expert whose report was subsequently delivered to Plaintiff's counsel or a duly authorized representative of Defendants.

If there were indeed any conversations with Plaintiff that are against Plaintiff's interests, then those witnesses would have been listed on the Pre-Trial presented by Defendants and could easily have testified against Plaintiff at trial and there would be no need for a deposition of the Plaintiff.

By way of further answer, it is averred that who Defendants contend owns the tanks is not relevant to a determination by Your Honorable Court of whether Defendants are liable to Plaintiff for damages they might have caused while renting Plaintiff's property from him. Furthermore, a review of Defendants' expert's report reveals that Defendants knew there was contamination prior to the time that they vacated the premises and did not disclose this fact to Plaintiff, possibly entitling Plaintiff to punitive damages.

10. DENIED. On the contrary, Defendants themselves have admitted in the Pre-Trial Memorandum that the law with regard to the Lease and their defense thereto has not changed and that the Court must look to the language of the Lease.

With regard to the matter of whether or not Defendants are obligated because of wrongful conduct with regard to the tanks, Plaintiff is not the witness whose testimony would be relevant but, instead, Plaintiff's expert would be the individual upon whom the Court would rely for the opinion as to whether or not Defendants are liable. Since Defendants already have the report of Plaintiff's expert and cannot, under the Rules of Civil Procedure, depose that expert, there is no reason for a deposition of Plaintiff.

By way of further answer, it is averred that Plaintiff's position has been clearly detailed in the pleadings filed by Plaintiff and has been specifically set forth in every single Pre-Trial Memorandum that Plaintiff has filed in this case. Moreover, Plaintiff's counsel has participated in two pre-trial conferences before the Court and Plaintiff's position was fully discussed before the Court with Defendants' counsel present at both times.

The undersigned counsel believes and therefore avers that Plaintiff's deposition is no more vital now than it was when this case began four years ago. On the contrary, the undersigned believes and therefore avers that this new demand for a deposition, after Defendants' counsel assured the Court that there was no further discovery necessary, is being made solely for the purposes of delaying yet another scheduled trial in this case because the information from Defendants' expert indicates that Defendants had knowledge that there was site contamination as far back as 1997.

11. ADMITTED. By way of further answer, it is averred that this Court specifically scheduled the hearing dates with the knowledge that Plaintiff would not be returning to this area until the end of March. Defendants' counsel knew that Plaintiff would not be returning and did not advise the Court at that time that he felt there was any need for a deposition of the Plaintiff.

On the contrary, Defendants' counsel assured the Court that since he had in hand Plaintiff's expert report, he needed nothing else from Plaintiff and further assured the Court that the only thing left to do was for Defendants' counsel to forward to Plaintiff's counsel a copy of his expert's report. While Defendants' counsel promised the Court and

Plaintiff's counsel that the report from his expert would be sent out forthwith, he did not forward the same until over three weeks thereafter.

12. DENIED. On the contrary, Defendants do not need Plaintiff's deposition.

Plaintiff's position has been repeatedly outlined for the Court and for Defendants. The issues in this case are clear. Defendants received a copy of Plaintiff's expert's report and previously advised the Court that they needed nothing further.

Defendants have previously continued this case and have made absolutely no efforts to settle the same. There is nothing in Defendants' Motion to indicate how they would be prejudiced and; therefore, the undersigned submits that there is no reason to depose Plaintiff other than to cause a delay in the trial of this case because Defendants know that Plaintiff is not in the area and will not be returning to the area until the day before trial.

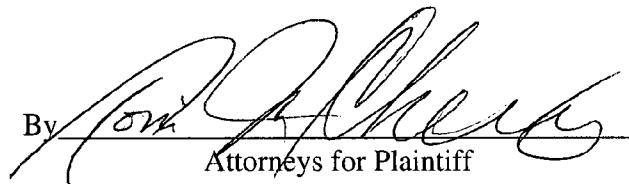
Defendants knew this information at the pre-trial conference and never indicated to the Court that Plaintiff's deposition was necessary. In fact, it had long been decided by Defendants that no depositions were necessary but that any information required could be obtained through Interrogatories. Despite that assertion, Defendants have never presented Plaintiff with Interrogatories in the entire four years since this case was filed.

Defendants cannot now request a deposition when they know that it will be impossible to depose Plaintiff and still have this case heard by the Court on the dates scheduled. Their reasons for making such a request have nothing to do with a need for information for trial but are for the sole purpose of harassing and annoying Plaintiff and needlessly delaying this case. Such behavior amounts to conduct entitling Plaintiff to sanctions and an award of counsel fees.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to dismiss Defendants' Motion for Depositions and to award Plaintiff counsel fees in the amount of \$1,000.00, representing the additional time required of Plaintiff's counsel to response to Defendants' Motion and to appear before the Court.

Respectfully submitted,

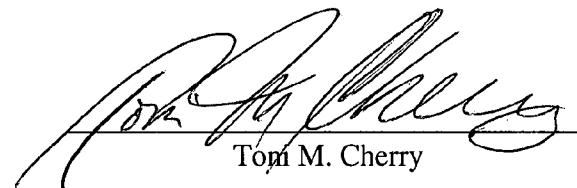
GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Plaintiff

Date: March 10, 2004

## **VERIFICATION**

I, TONI M. CHERRY, ESQ., attorney for Plaintiff, EDWARD C. MILLER, verify that the information provided in the foregoing Response is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Tom M. Cherry

DATED: March 10, 2004

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

December 19, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

RE: Miller vs. J.V., Inc., et al  
No. 2000-355 C.D.

Dear Ms. Cherry:

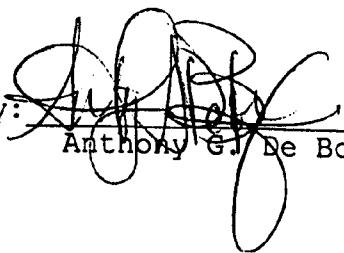
Pursuant to the above-captioned matter, I received a non-jury trial call list for January, 2004 and Miller vs. J.V., Inc. is listed for call on January 6, 2003, at 11:00 AM. I have sent you four (4) letters previously wanting to schedule depositions of your client and I never received a response until the week of December 8, 2003. At this point, we will do interrogatories to get the discovery needed.

At your earliest convenience, please contact the Court and ask for the case to be removed from the call list with discovery pending.

Thank you and feel free to contact me if you have any questions.

Very truly yours,

MITINGER & De BOEF

By: 

Anthony G. De Boef, Esq.

AGD/mal

**EXHIBIT "A"**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

\* NO. 2000-355-C.D.

J.V., INC., d/b/a BEARD OIL  
and SHANER ENERGY, INC.,  
Defendants

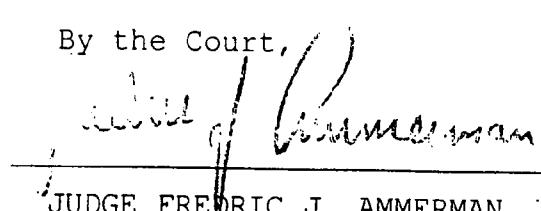
O R D E R

NOW, this 14<sup>th</sup> day of April, 2003, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Non-Jury Trial is scheduled for Monday, August 12, 2003 at 9 o'clock a.m., Courtroom No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Any further amended complaint shall be filed by no later than May 1, 2003.

By the Court,

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

  
JUDGE FREDERIC J. AMMERMAN.

APR 17 2003

Attest.

  
William C. Schaeffer  
Prothonotary/  
Clerk of Courts

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
:  
vs. : No. 00 - 355 C.D.  
:  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

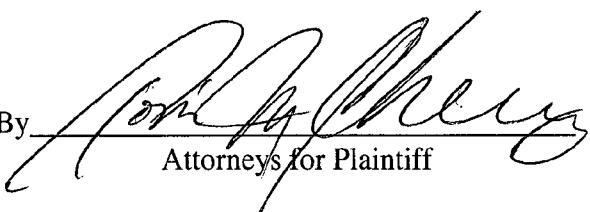
**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of March, 2004, a true and correct copy of Plaintiff's Response to Motion for Depositions was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Plaintiff

Dated: March 10, 2004

FILED NO  
105182 CC  
MAR 11 2004  
G. Kest

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER

:

VS.

: NO. 00-355-CD

J.V. INC., d/b/a

:

BEARD OIL, et al

:

O R D E R

NOW, this 15th day of March, 2004, following argument on the Defendant's Motion for Deposition; with the Court noting the rescheduled trial being in two (2) weeks, it is the ORDER of this Court that said motion be and is hereby denied.

BY THE COURT,



President Judge

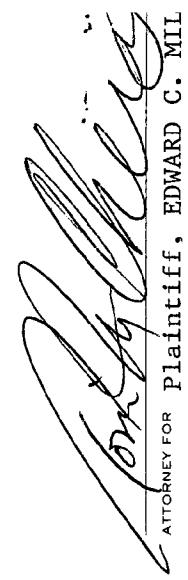
FILED

MAR 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
019-2384  
MAR 16 2004  
cc: ays Tchery, DeBose

William A. Shaw  
Prothonotary/Clerk of Courts



ATTORNEY FOR Plaintiff, EDWARD C. MILLER

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
DuBois, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,  
Defendants

: No. 00 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: REPLY TO NEW  
: MATTER  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

FILED

MAR 29 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

EDWARD C. MILLER,	:	
	Plaintiff	:
		:
vs.	:	No. 00 - 355 C.D.
	:	
J. V., INC., d/b/a BEARD OIL and	:	
SHANER ENERGY, INC.,	:	
	Defendants	:

## REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and presents the following in response to the Defendants' New Matter:

25. Insofar as Defendants have incorporated in Paragraph 25 their answers to Paragraphs 1 through 24 inclusive of Plaintiff's Second Amended Complaint, Defendants' averments set forth in Paragraphs 1 through 13 inclusive of Defendants' Answer are DENIED. In further answer thereto, Plaintiff reasserts and realleges Paragraphs 1 through 13 inclusive of his Second Amended Complaint as if the same were set forth at length herein.

The averments contained in Paragraph 14 of Defendants' Answer as the same have been incorporated into New Matter are DENIED. Plaintiff paid the following amounts of real estate taxes for the premises leased by Defendants from Plaintiff for the years of 1992 through 2002:

<u>YEAR</u>	<u>CO/TWP FACE</u>	<u>SCHOOL FACE</u>
1993	\$336.00	\$ 1,075.20
1994	\$384.00	\$ 1,157.76
1995	\$403.20	\$ 1,493.76
1996	\$403.20	\$ 1,532.16
1997	\$403.20	\$ 1,550.98
1998	\$480.00	\$ 1,550.98
1999	\$489.60	\$ 1,550.98
2000	\$489.60	\$ 1,550.98
2001	\$489.60	\$ 1,641.79
2002	\$489.60	\$ 1,641.79
	Total	\$19,114.38

In answer to Defendants' incorporation of the averments set forth in Paragraph 15 of Defendants' Answer, Plaintiff avers that Defendants do not deny that they have not paid the real estate taxes owed on the premises for the years of 1996 through 2001 in the total amount of \$12,133.07. Plaintiff further asserts that Defendants have never paid any of the real estate taxes that they owed as additional rental payments and actually owe Plaintiff reimbursement for all real estate taxes paid by Plaintiff for the years of 1993 through 2001 in the total amount of \$16,982.99.

Since the lease agreement is a document under seal, it is subject to a 20-year statute of limitations under 42 Pa. C.S.A. §5529(b)(1) and Plaintiff is not precluded from demanding that Defendants reimburse Plaintiff for all of the real estate taxes paid by Plaintiff during the ten-year term of the lease agreement.

Moreover, because Plaintiff has not been able to secure a tenant who would reimburse him for the real estate taxes paid for the year of 2002, Plaintiff demands reimbursement of the full amount of real estate taxes he paid for the premises for 2002 in the

sum of \$2,131.39. Consequently, the total balance of real estate taxes owed by Defendants to Plaintiff is \$19,114.38.

In response to Defendants' averments to Paragraph 16 of Plaintiffs' Second Amended Complaint, Plaintiff avers that by reason of Defendants' default on payment of the real estate taxes due, Plaintiff is entitled to a judgment in the total amount of \$19,114.38, together with interest and, in accordance with the terms of Paragraph 14 of said lease, 5% attorney's commission, together with costs for the collection of said tax payments.

In answer to the averments contained in Paragraphs 17 through 24 inclusive of Defendants' Answer that have been incorporated by reference into Paragraph 25 of Defendants' New Matter, Plaintiff reasserts and realleges the averments contained in Paragraphs 17 through 24 inclusive of Plaintiffs' Second Amended Complaint as if the same were set forth at length herein.

26. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, the allegations contained in Paragraph 26 are DENIED as after reasonable investigation, Plaintiff is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 26. By way of further answer, it is averred that the four underground tanks located on the leased premises were at all times material hereto the sole property of Defendants and Defendants knew and acknowledged that Defendants were the owners of said tanks as evidenced by the written acknowledgment made by Dale Paffie, CEO and President of Beard Oil, as its agent and employee to Peter Hulbert, agent and employee of Shaner Energy, Inc., dated December 30, 1994. A true and correct copy of that correspondence is attached hereto and made a part hereof as Exhibit "A".

27. DENIED. It is believed and therefore averred that Defendants did not attempt to obtain a license or permit or that they attempted to perform any of the alleged up-grade requirements. On the contrary, as early as December of 1994, Defendants, through their agents and employees, determined that the Beard Oil Station located at Exit 16 on I-80 had become unprofitable and Defendants determined that they did not want to continue to lease the premises from Plaintiff. Defendants knew that the lease could not be terminated or canceled prior to the expiration of the initial term on December 31, 2002. Any failure on the part of Defendants to obtain a license or permit was the result of Defendants wholly failing and/or refusing to seek a license or permit as part of Defendants' plan to manufacture a reason why they could not continue to lease the premises from Plaintiff in violation of the terms of the lease agreement.

28. DENIED. On the contrary, Paragraph 11 of the lease only gave Defendants the right to terminate the lease because of their inability to obtain a license or permit only "**after the original ten (10) year term of [the] lease**". Defendants had no right to terminate the lease for any reason during the original ten year term from December 31, 1992, to December 31, 2002. Defendants knew that the lease could not be terminated for any reason within that initial ten year period as evidenced by the correspondence attached to this Reply as Exhibit "B" wherein it is specifically noted that: "**This lease "cannot be canceled"**".

29. DENIED as a conclusion of law to which no response is required, Insofar as a response is required, it is averred that the language of Paragraph 18 of the lease binds Defendants to all of the covenants and agreements contained in the lease and contradicts any effect that the ambiguity of Paragraph 17 might have to relieve Defendants of their clearly

enunciated obligations as contained in the lease that Defendants drafted. By way of further answer, it is averred that a reading of Paragraph 17 in light of the remaining provisions of the lease evidences that Paragraph 17 contains a typographical error and that Paragraph 17 should read as follows:

The Lessee shall and will save, indemnify and keep harmless the Lessor of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

30. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendants can avoid their obligations under the agreement dated December 31, 1992, because of the language of Paragraph 17. On the contrary, Defendants knew that the lease could not be canceled prior to December 31, 2002, and Defendants knew that they remained obligated under the terms of the lease through December 31, 2002.

31. DENIED. On the contrary, Defendants could not terminate the lease on or about December 12, 1997, because by its very terms, the lease existed for a term of ten calendar years from December 31, 1992, and could not be terminated for any reason during that period of time. It was only after the end of the original ten year term that Defendants had a right to terminate the lease upon proper notice to Plaintiff.

32. DENIED. The lease was not terminated on September 12, 1997. On the contrary, Defendants abandoned the premises and advised Plaintiff that Defendants would not comply with the terms of their lease despite their clear obligation to do so until such time as the initial lease term had ended. At no time did Defendants ever indicate to Plaintiff that they desired to

come back onto the premises and at no time were Defendants denied any right to come upon the premises by Plaintiff. On the contrary, Defendants repeatedly advised Plaintiff that they would not come onto the premises and would not assume responsibility for their obligations under the lease dated December 31, 1992.

33. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the lease was terminated because the lease could not be terminated during the initial term of ten years which did not expire until December 31, 2002. Paragraph 3 of the lease is not applicable to the facts of the case at hand because the lease could not be terminated until after the expiration of ten calendar years from the date of the lease which was dated December 31, 1992.

34. DENIED as a conclusion of law to which no reasons is required. Insofar as a response is required, it is DENIED that all property located on the premises became a part of the real estate as of September 12, 1997. Defendants could not terminate the lease until after the expiration of the initial ten year term which did not expire until December 31, 2002. Consequently, Paragraph 10 did not apply to the facts of this case as the initial lease term had not expired.

35. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiff was the owner of the underground tanks or that the underground tanks became a part of the real estate at any time material to this action. On the contrary, the underground tanks were the property of Defendants and Defendants remain liable to Plaintiff for any and all damages suffered by Plaintiff arising out of the removal of said tanks.

36. DENIED. Defendant, SHANER ENERGY, INC., admitted in Paragraph 4 of their Answer that SHANER ENERGY, INC., is the parent company of J.V. INC. Defendants admitted in Paragraph 7 of their Answer that Defendant, J.V., INC., took possession of the leased premises on December 31, 1992. Defendants admitted in Paragraph 5 of their Answer that "On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R.D. #3, DuBois, Pennsylvania, to Defendant, J.V., INC., d/b/a BEARD OIL."

That by letter to the Pennsylvania Department of Environmental Protection dated December 21, 1998, the agent and employee of Shaner Hotel Group did advise such governmental agency that Shaner Energy, Inc., was the successor to Beard Oil Company. A true and correct copy of the letter of December 21, 1998, sent to the Pennsylvania Department of Environmental Protection wherein said acknowledgment was made is attached hereto and made a part hereof as Exhibit "C".

By further answer, it is averred that SHANER ENERGY, INC., by and through its agent and employee, Dale D. Paffie, President, did confirm to the Pennsylvania Department of Environmental Protection that SHANER ENERGY, INC., was successor to BEARD OIL COMPANY and that as such successor, it had leased the subject property from Plaintiff. A true and correct copy of the letter of January 26, 1999, acknowledging that SHANER ENERGY, INC., was successor to BEARD OIL COMPANY and that SHANER ENERGY, INC., had leased the subject premises from Plaintiff is attached hereto and made a part hereof as Exhibit "C".

In further answer thereto, it is averred that Defendants' continued denial that SHANER ENERGY, INC. is the successor to BEARD OIL in light of SHANER ENERGY,

INC.'s own admissions and the conduct of Defendants during the pendency of this matter is so obdurate and vexatious as to warrant an imposition of counsel fees as a sanction in accordance with 42 Pa. C.S.A. §2503 and Plaintiff does demand to be awarded all of the counsel fees he has agreed to pay his lawyer.

37. DENIED. Plaintiff reasserts and realleges all of the averments set forth in the foregoing Paragraph 36 in answer to Paragraph 37 as if the same were set forth at length herein.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) In the sum of \$30,800.00, representing the monthly rental due from October 1, 1997, through May 30, 2001, together with interest thereon at the legal rate of 6% from October 30, 1997, together with attorney's commission of 5% on said amount, together with costs of collection;

(b) Real estate taxes for the years of 1992 through 2002, being collectable as additional rent in the sum of \$19,114.38, plus interest thereon from 1992 to present, at the legal rate of 6%, together with attorney's commission of 5% on said amount, together with costs of collection;

(c) Damages in the amount of \$16,655.26, together with interest and costs of suit; and

(d) An award of attorney's fees and costs in accordance with 42 Pa. C.S.A. §2503.

Respectfully submitted,  
GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

## **VERIFICATION**

I, EDWARD C. MILLER, Plaintiff, verify that the information provided in the foregoing Reply to New Matter is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Edward C. Miller

DATED: March 25, 2004

6/1/96

~~6/20/95~~

DATE

~~12/30/94~~

DATE

REPLY

TO Peter Hulbert

MESSAGE

The attached lease applies to a Beard Oil station located at Exit 16 on I-80 that has become extremely marginally profitable (if not in fact losing money).

On page 2, #3 - does this mean we can terminate this lease and the lessor (Mr. Miller) will then be the owner of the underground tanks? (Beard Oil now owns the tanks).

Pls advise

SIGNED

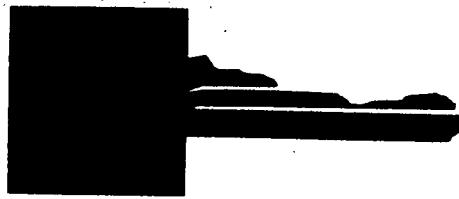
Date

INSTRUCTIONS TO RECEIVER:  
1. WRITE REPLY 2. DETACH STUB. KEEP WHITE COPY. RETURN PINK COPY TO SENDER.

~~Pete - attached is  
lease for Beard Oil station  
that is losing money. We want  
to shut it down, please  
advise our course of action  
to be taken with lessor~~

Pete - attached is  
lease for Beard Oil station  
that is losing money. We want  
to shut it down, please  
advise our course of action  
to be taken with lessor

Shaner Hotel Group  
Limited Partnership  
Corporate Headquarters



303 North Science Park Road  
State College, PA 16803  
(814) 234-4460  
(814) 234-3919 (Fax)

December 21, 1998

PaDEP - Division of Storage Tanks  
P.O. Box 8762  
Harrisburg, PA 17105-8762

UPS Overnight Delivery

RE: Facility Name: Exit 16 - Exxon, Route 219 and 180, City of DuBois, State of Pennsylvania, Clearfield County, Tanks 001 through 004, Facility I.D. #17-25261

Dear Gentlemen:

Dale Paffie of Shaner Energy, Inc., the successor to Beard Oil Company, has conferred with Bill Zeckman of your Williamsport office concerning the status of the above referred to four underground tanks.

We write this letter in our attempt to comply with the December 22, 1998 upgrade requirements.

The land upon which the underground storage tanks are placed was leased to Beard Oil pursuant to the attached Lease. As you can see, the landlord and owner of the property is Edward C. Miller, R.D. 3, Box 274, DuBois, Pennsylvania 15801 and who was represented at one time by Toni M. Cherry, Esquire, Gleason, Cherry and Cherry, P.O. Box 505, DuBois, Pennsylvania 15801-0505, telephone number (814) 371-5800.

Beard Oil terminated the aforementioned lease September 12, 1997.

The lease indicates in Paragraph 3, that upon the termination of the Lease, that all right and title and interest in improvements permanently attached to the ground or buried underground revert to and are owned by the Lessor. Furthermore, Paragraph 17 of the Lease indicates that the Lessor will save harmless and indemnify the Lessee from any and all claims, rentals, penalties, liabilities of any kind as a consequence of this Lease.

Representatives of Beard Oil have met with Mr. Miller to try to resolve this matter but we have not received any resolution nor have we received any permission to go onto the property to do any temporary closure or permanent closure of the tanks. In fact, Mr. Miller has indicated to us he might desire to continue the operation of the station utilizing the tanks which he now owns.

Neither Mr. Miller nor his attorneys have provided us with any documentation or made any

PaDEP - Division of Storage Tanks

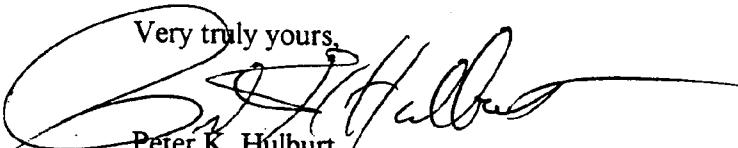
December 21, 1998

Page 2

proposals to us as to how to resolve the underground tanks which are now owned by Mr. Miller. We understand that we registered these underground tanks, but we are in the position where they are now owned by Mr. Miller and we have no right of access to deal with these tanks.

We solicit your cooperation in trying to resolve this matter to the satisfaction of all concerned.

Very truly yours,

  
Peter K. Hulbert  
Corporate Counsel

PKH/gmr

cc: Phillip Zeckman  
Williamsport DEP  
208 West 3rd Street  
Suite 101  
Williamsport, PA 17701

UPS Overnight Delivery

Edward C. Miller  
R.D 3, Box 274  
DuBois, PA 15801

Certified Mail  
Return Receipt Requested

Toni M. Cherry, Esquire  
Dale Paffie  
Lance T. Shaner

Fax: (814) 371-0936



---

# SHANER ENERGY

## QUALITY PETROLEUM PRODUCTS

---

January 26, 1999

PaDEP - Division of Storage Tanks  
P.O. Box 8762  
Harrisburg, PA 17105

RE: Facility Name: Exit 16 - Exxon, Route 219 and I-80, City of DuBois, State of Pennsylvania, Clearfield County, Tanks 001 through 004, Facility I.D. #17-25261

Dear Gentlemen:

We write this letter to further our attempt to comply with underground tank regulations.

Attached is a copy of the letter we wrote on December 2, 1998 which explained that Shaner Energy, Inc., successor to Beard Oil Company, had previously leased the subject property from Mr. Miller, RD 3, Box 274, DuBois, PA 15801 and subsequently the lease terminated.

Upon termination of the lease, all rights and interests in improvements above the ground and below the ground reverted to Mr. Miller.

Neither Mr. Miller nor his attorney, Toni M. Cherry, Esquire, Gleason, Cherry and Cherry, P.O. Box 505, Dubois, PA 15801-0505, telephone number (814) 371-5800 have provided us with any information or made any proposals to us to resolve closing of the tanks, temporary closing, USTIF continuance, product levels of less than 1", or any other regulations.

As far as we know, we were the last to register these tanks which are now owned by Mr. Miller. We have no right to access this property to deal with these tanks.

If you would like to discuss this with me, please phone (814) 653-2205 or my address is Shaner Energy, Inc., 40 Pennsylvania Avenue, Huntingdon, PA 16652.

We sincerely solicit your assistance in resolving this environmental matter to the satisfaction of all concerned.

Very Truly Yours,

Dale D. Paffie  
President

cc: Phillip Zeckman  
Williamsport DEP  
208 West 3rd Street  
Suite 101  
Williamsport, PA 17701

Peter Hulbert  
Corporate Counsel  
Shaner Energy, Inc.  
303 Science Park  
State College, PA 16803

Edward C. Miller  
R.D. 3, Box 274  
DuBois, PA 15801

Toni M. Cherry, Esquire

**GRIFFITH OIL**  
40 Pennsylvania Avenue  
P. O. Box 573  
Huntingdon, PA 16652  
(814) 643-2205  
Fax (814) 643-3380

**BEARD OIL**  
R. D. 4 - Washington Avenue  
P. O. Box 628  
Clearfield, PA 16830  
(814) 765-7511  
Fax (814) 765-6839

**HORNING OIL**  
R. R. 2 - Route 333  
P. O. Box 420  
Port Royal, PA 17082  
(717) 527-4124  
Fax (717) 527-2456

Shaner Hotel Group  
Limited Partnership  
Corporate Headquarters

303 North Science Park Road  
State College, PA 16803  
(814) 234-1160  
(814) 234-3919 (Fax)

December 2, 1998

PaDEP - Division of Storage Tanks  
P.O. Box 8762  
Harrisburg, PA 17105-8762

UPS Overnight Delivery

RE. Facility Name: Exit 16 Exxon, Route 219 and 180, City of DuBois, State of Pennsylvania, Clearfield County, Tanks 001 through 004, Facility I.D. #17-25261

Dear Gentlemen:

Dale Paffie of Shaner Energy, Inc., the successor to Beard Oil Company, has conferred with Bill Zeckman of your Williamsport office concerning the status of the above referred to four underground tanks.

We write this letter in our attempt to comply with the December 22, 1998 upgrade requirements.

The land upon which the underground storage tanks are placed was leased to Beard Oil pursuant to the attached Lease. As you can see, the landlord and owner of the property is Edward C. Miller, R.D. 3, Box 274, DuBois, Pennsylvania 15801 and who was represented at one time by Toni M. Cherry, Esquire, Gleason, Cherry and Cherry, P.O. Box 505, DuBois, Pennsylvania 15801-0505, telephone number (814) 371-5800.

Beard Oil terminated the aforementioned lease September 12, 1997.

The lease indicates in Paragraph 3, that upon the termination of the Lease, that all right and title and interest in improvements permanently attached to the ground or buried underground revert to and are owned by the Lessor. Furthermore, Paragraph 17 of the Lease indicates that the Lessor will save harmless and indemnify the Lessee from any and all claims, rentals, penalties, liabilities of any kind as a consequence of this Lease.

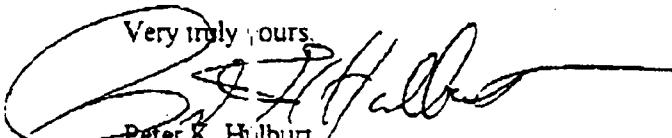
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Neither Mr. Miller nor his attorneys have provided us with any documentation or made any

PaDEP - Division of Storage Tanks  
December 21, 1998  
Page 2

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We solicit your cooperation in trying to resolve this matter to the satisfaction of all concerned.

Very truly yours,  
  
Peter K. Hulbert  
Corporate Counsel

PKH/gmr

cc. Phillip Zeckman  
Williamsport DEP  
208 West 3rd Street  
Suite 101  
Williamsport, PA 17701

UPS Overnight Delivery

Edward C. Miller  
R D 3, Box 274  
DuBois, PA 15801

Certified Mail  
Return Receipt Requested

Toni M. Cherry, Esquire  
Dale Paffie  
Lance T. Shaner

Fax (814) 371-0936

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

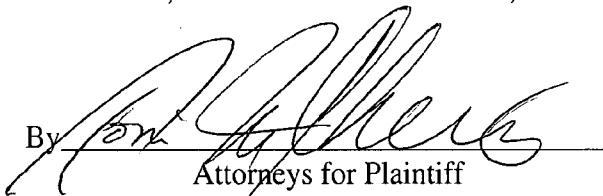
EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of March, 2004, a true and correct copy of Plaintiff's Reply to New Matter was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Plaintiff

Dated: March 26, 2004

FILED  
APR 1 2004  
MAR 29 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
S. A. T. Cherry  
FRE

*John A. Gable, Jr.*

ATTORNEY FOR Plaintiff

LAW OFFICES  
CHERRY & CHERRY, L.L.P.  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. BOX 505  
DU BOIS, PENNSYLVANIA 15801-0505  
ONE NORTH FRANKLIN STREET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,  
Defendants

: No. 00 - 355 C.D.  
: Type of Case: ASSUMPSIT  
: Type of Pleading: MOTION IN  
: LIMINE  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
: Counsel of Record for this Party:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
: (814) 371-5800

FILED

MAR 30 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 court to 1st

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,	:	
		Plaintiff
	:	
vs.	:	No. 00 - 355 C.D.
	:	
J. V., INC., d/b/a BEARD OIL and	:	
SHANER ENERGY, INC.,	:	
		Defendants
	:	

# **MOTION IN LIMINE**

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE OF SAID COURT:

AND NOW, comes the undersigned, counsel for Plaintiff, EDWARD C. MILLER, and brings a Motion in Limine before Your Honorable Court to preclude Defendants from attempting to call the undersigned attorney as a witness and, in support of which, avers the following:

1. That a non-jury trial in the above-captioned case is scheduled before Your Honorable Court for Wednesday, March 31 and Friday, April 2, 2004.
2. That the very last action before Your Honorable Court was an argument held on March 15, 2004, in response to Defendants' Motion for Depositions, which Motion was opposed by Plaintiff and denied by Your Honorable Court.
3. That in her Answer to the Motion, Plaintiff's undersigned counsel averred that she believed that the Motion for Depositions was a delay tactic on the part of Defendants and so expressed that position at argument held before Your Honorable Court on March 15, 2004.

4. That on March 15, 2004, counsel for Defendants advised that he had additional witnesses that he would be presenting at trial.

5. That said assertion met with objection by the undersigned counsel in that there had been two pre-trial conferences in this case and two Pre-Trial Memorandums filed by Defendants and the only witnesses set forth in either of those Pre-Trial Statements was a reference to an expert who was not even mentioned by name.

6. That Defendants' counsel then advised that he would submit an Amended Pre-Trial Statement to provide counsel with the names of witnesses he intended to call and the reasons for calling those witnesses.

7. That Defendants' counsel forwarded a copy of a Pre-Trial Memorandum sent to the Court on March 19, 2004, wherein Plaintiff's own counsel was listed as a witness and it was noted therein that the purpose for calling Plaintiff's attorney was because she contacted Dale Paffie on at least two occasions during the Fall/Winter of 1997 and that those discussions concerned the lease property.

8. That while it is true that Plaintiff's counsel contacted Mr. Paffie for the purposes of attempting to secure a copy of the lease on the subject premises, no discussions were ever held with Mr. Paffie as evidenced by the letter written to Mr. Paffie on December 2, 1997, a copy of which is attached hereto as Exhibit "A" and the response to that letter from the attorney for Mr. Paffie dated December 5, 1997, directing that all correspondence or contact be addressed to him as counsel for Beard Oil. A true and correct copy of the letter sent back in response from Corporate Counsel for Defendants is attached hereto and made a part hereof as Exhibit "B".

9. That any contact Plaintiff's counsel had with any agent, employee or representative of Defendants was for the sole purpose of settlement discussions and evidence of such discussions is expressly prohibited under Pa. R.E. 408 which provides as follows:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. ....

10. That Defendants know that any statement made by Plaintiff or his counsel in the course of compromise negotiations is inadmissible under the Rules of Evidence and their attempt to compel such testimony from Plaintiffs' own counsel is further proof that Defendants are guilty of dilatory, obdurate and vexatious conduct in this case and that they have continually acted in bad faith, entitling Plaintiff to an award of counsel fees under 42 Pa. C.S.A. §2503.

11. That Defendants' counsel knows that Rule 3.7 of the Rules of Professional Conduct preclude a lawyer who is likely to be called as a witness from acting as an advocate at trial. The undersigned believes and therefore avers that Defendants' purpose for listing the undersigned as a witness is to deprive Plaintiff of his choice of attorney and to put Plaintiff in a position where he would have to ask for a continuance of the trial scheduled before Your Honorable Court so that he could seek other counsel.

12. That the undersigned believes and therefore avers that Defendants do not want to try this case and that the naming of Plaintiff's lawyer as a witness for Defendants is nothing more than a last ditch effort to secure the continuance that Your Honorable Court would not grant to

Defendants and evidences the bad faith with which Defendants have acted throughout the conduct of this case.

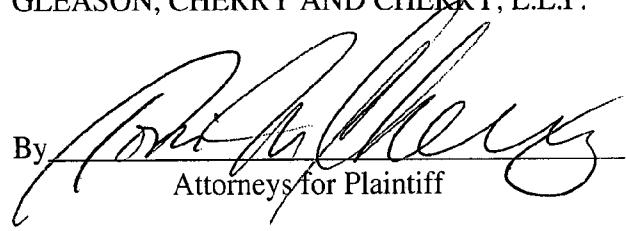
WHEREFORE, the undersigned respectfully requests Your Honorable Court to issue an Order on this Motion in Limine precluding Defendants from attempting to call Plaintiff's attorney as a witness; precluding Defendants from presenting any evidence of settlement discussions and issuing an Order awarding counsel fees to Plaintiff in the amount of ONE THOUSAND DOLLARS (\$1,000.00) as a sanction because of Defendants' dilatory, obdurate and vexatious conduct in attempting to call a witness to present evidence they knew to be excluded by Pa. R.E. 408.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

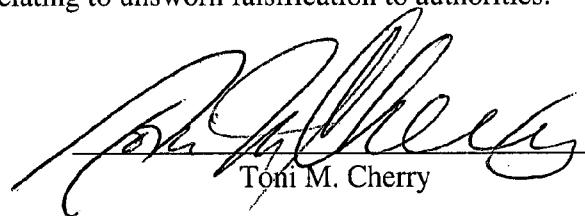
By,

Attorneys for Plaintiff

A handwritten signature in black ink, appearing to read "Robert B. Cherry".

## **VERIFICATION**

I, TONI M. CHERRY, ESQ., attorney for Plaintiff, EDWARD C. MILLER, verify that the information provided in the foregoing Motion in Limine is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Toni M. Cherry".

Toni M. Cherry

DATED: March 29, 2004

LAW OFFICES  
**GLEASON, CHERRY AND CHERRY, L.L.P.**  
P. O. Box 505  
**DuBois, Pennsylvania 15801-0505**

TONI M. CHERRY  
PAULA M. CHERRY  
EDWARD V. CHERRY  
1950-1990  
JAMES A. GLEASON  
1946-1975

ONE NORTH FRANKLIN STREET

AREA CODE 814  
371-5800  
FAX NUMBER  
(814) 371-0936

December 2, 1997

Mr. Dale Paffie  
Vice President  
Beard Oil Company  
P.O. Box 628  
Clearfield, PA 16830

Dear Mr. Paffie:

Please be advised that this office represents Mr. Edward C. Miller who requested that we review your letter of September 12, 1997 for him. Mr. Miller also asked that we contact you to secure a fully executed copy of his Lease with you.

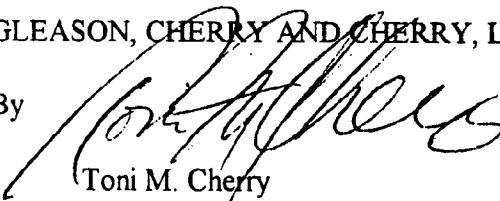
We contacted your office and spoke with your staff who advised that they would make our request known to you. However, to date, we have not received a copy of the Lease and ask that you send the same to us at your earliest convenience.

Thanking you for your kind attention to this request, we remain

Very truly yours,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Toni M. Cherry

TMC:dmd

cc: Mr. Edward C. Miller

**EXHIBIT "A"**

Shaner Hotel Group  
Limited Partnership  
Corporate Headquarters



303 North Science Park Road  
State College, PA 16803  
(814) 234-4460  
(814) 234-3919 (Fax)

December 5, 1997

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
DuBois, PA 15801-0505

Fax: (814) 371-0936

RE: Your letter to Dale Paffie of Beard Oil Company in reference to Edward C. Miller

Dear Ms. Cherry:

Dale Paffie has referred to me your December 2, 1997 letter in reference to the above referred to matter. Please note that I will be representing Beard Oil in reference to this matter and would appreciate all further correspondence or contact concerning this matter to be addressed to me as counsel for Beard Oil.

Pursuant to your request, we enclose copy of the lease with Edward C. Miller that you have requested. We would like to hear from you as soon as possible concerning whatever suggestions you may have for resolving this matter at your earliest convenience.

Very truly yours,

*Peter K. Hulbert/gmr*  
Peter K. Hulbert  
Corporate Counsel

PKH/gmr

cc: Dale Paffie

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

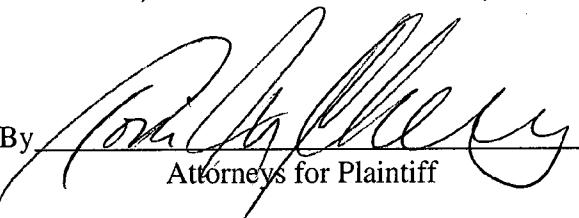
EDWARD C. MILLER, Plaintiff  
vs. No. 00 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL and  
SHANER ENERGY, INC., Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of March, 2004, a true and correct copy of Plaintiff's Motion in Limine was served upon ANTHONY G. De BOEF, ESQ., counsel for Defendants, by both facsimile transmission and by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. De BOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801  
Fax No.: (814) 231-0417

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Ronald J. Gleason  
Attorneys for Plaintiff

Dated: March 29, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :  
: :  
OK

**O R D E R**

AND NOW, this \_\_\_\_ day of March, 2004, in consideration of the Motion in Limine filed by Plaintiff, the relief requested therein is hereby granted and Defendants are precluded from calling Plaintiff's attorney as a witness and are ordered to pay ONE THOUSAND DOLLARS (\$1,000.00) to Plaintiff's counsel as attorney's fees in accordance with 42 Pa. C.S.A. §2503.

BY THE COURT:

---

President Judge

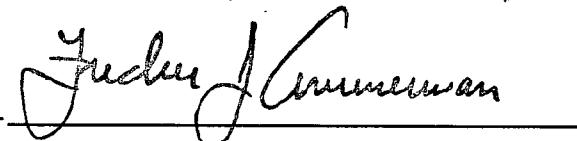
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER :  
-vs- : No. 00-355-CD  
J.V. INC., d/b/a BEARD OIL,:  
and SHANER ENERGY, INC. :

O R D E R

NOW, this 31st day of March, 2004, upon the Plaintiff's request for the Court to enter a voluntary nonsuit, it is the ORDER of this Court that the voluntary nonsuit be and is hereby granted and the above-captioned case is hereby dismissed.

BY THE COURT,



President Judge

FILED

APR 01 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

2cc Aug 5. 2004  
019-2287-2cc Aug 5. 2004  
APR 01 2004

William A. Shaw  
Prothonotary/Clerk of Courts

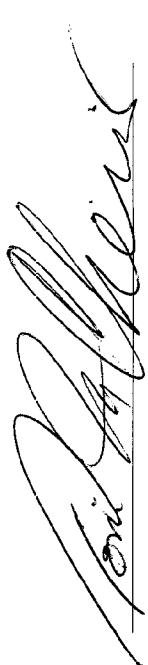
Copy to CJA

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
DuBois, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET

ATTORNEY FOR DEFENDANT

FRANKLIN C. MITTER



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,  
Defendants

: No. 00 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: RESPONSE TO  
: MOTION FOR DEPOSITIONS  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
:  
vs. : No. 00 - 355 C.D.  
:  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**RESPONSE TO MOTION FOR DEPOSITIONS**

AND NOW, comes the undersigned, counsel for Plaintiff, EDWARD C. MILLER, and does hereby respond to the Motion for Depositions filed by Defendants although they have wrongfully recited that the same is filed pursuant to the provisions of Pa. R.C.P. No. 4010 when that Rule pertains only to the procedure for obtaining either a physical or a mental examination of a person which is clearly not what Defendants are attempting to do by their Motion. Regardless, because Plaintiff's counsel presumes that a Rule was issued by Your Honorable Court for answer to the Motion although Plaintiff has never been served with a true and correct copy of any Rule issued by Your Honorable Court and only yesterday received a faxed copy of the Motion purportedly filed in this case, do hereby provide the following in response:

1. ADMITTED in part and DENIED in part. While it is ADMITTED that Defendants' counsel did send Exhibits 1, 2, 3 and 4 to Plaintiff's counsel, it is DENIED that Defendants attempted to engage in discovery in good faith by those letters or that it was ever agreed that

Plaintiff's deposition would be taken. On the contrary, well before the last pre-trial conference in this case, Defendants, through counsel, conceded that they did not intend to take the deposition of Plaintiff but, instead, intended to propound Interrogatories to secure the discovery needed. A true and correct copy of the letter sent by Defendants' counsel on December 19, 2003, advising Plaintiff's counsel of that fact is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

2. DENIED as stated. On the dates set forth in Defendants' Motion, Defendants, through counsel, attempted to delay the trial of this case by forwarding letters demanding to take the deposition of Plaintiff. However, at no time did Plaintiff's counsel ever consent to the taking of Plaintiff's deposition in this case because the Complaint was filed four years ago and Plaintiff attempted to negotiate a settlement with Defendants for over two years prior to that time. This case has been pre-tried twice and was actually scheduled to be heard by the Court in August of 2003 but Defendants were granted a continuance by the Court at that time.

3. DENIED as stated. No response was necessary from Plaintiff's counsel as there was no discovery in which to be engaged and this case has been ready for trial for years. This case has been repeatedly continued and delayed by Defendants who have evidenced no desire to try this case.

4. DENIED as stated. Defendants' counsel was advised that Plaintiff would be contacted to determine if he was willing to participate in a deposition.

5. ADMITTED.

6. DENIED as stated. At the pre-trial conference in this matter, Defendants' counsel was handed the expert report, not discovery, and the deposition of the Plaintiff would have

nothing to do with the information contained in the expert's report. By way of further answer, it is averred that in the presence of the Court, after the expert's report was given to Defendants' counsel, Defendants' counsel announced that he would not need any further discovery as he now had everything he needed and the case was ready for trial. It was Plaintiff's counsel who did not have Defendants' expert report and Defendants' counsel assured the Court that this report would be forwarded to Plaintiff's counsel immediately. Instead, a "Limited Site Characterization Report", in the hands of Defendants since August 14, 1997, and intended to be used at trial, was not forwarded to Plaintiff's counsel until February 12, 2004, weeks after the pre-trial conference.

Plaintiff's counsel has previously supplied to Defendants' counsel all of the exhibits that will be produced at trial and Defendants' counsel acknowledged to Your Honorable Court on January 22, 2004, that all of the information required from Plaintiff's counsel had been received. At no time during that pre-trial conference did Defendants' counsel indicate he needed any more discovery in this case. The request for a deposition of the Plaintiff is just another attempt by Defendants to avoid the trial scheduled for the end of this month.

7. DENIED. On the contrary, Defendants have had four years to file Interrogatories and four years to request the deposition of the Plaintiff but at no time did they make any formal attempt to do so. The "discovery" to which Defendants refer was an expert's report detailing the condition of the tanks. Defendants were in full possession of the property from which the tanks were removed and Defendants have a better knowledge of the condition of the tanks than Plaintiff who was not in possession of the property at the time that the damages were done by Defendants.

Defendants cannot rely on any surprise because of an Amended Complaint filed in April of 2003 because Defendants were aware of the Plaintiff's intention to file such Amended Complaint from a previous pre-trial conference before the Court when this matter was discussed at length and the Court granted leave to Plaintiff to file such Amended Complaint no later than May 1, 2003, by Its Order of April 14, 2003.

In that Order, Your Honorable Court scheduled a non-jury trial for Monday, August 12, 2003, after Defendants assured Your Honorable Court that there would be no difficulty in Defendants meeting that trial date. A true and correct copy of the Court's Order is attached hereto and made a part hereof as Plaintiff's Exhibit "B".

8. DENIED as stated. Defendants requested and received an explanation with regard to the difference in the rents set forth and that explanation was that it was an attorney error. This explanation was reiterated before Your Honorable Court at the time of the pre-trial conference and Defendants' counsel acknowledged that there was no further issue with regard to the rent. The Amended Complaint had already corrected the error contained in the first Complaint and there was no reason for any question on Defendants' part except to use the question of the amount of the rent as an excuse to delay trial. To now raise that issue again, evidences that Defendants' have no real interest in bringing this matter to trial but only seek to delay the proceedings because of Plaintiff's age in the hopes that he will not be available for trial.

9. DENIED. Defendants have not specifically listed any witnesses in the Memorandum that they presented to the Court at the time of the pre-trial conference other than to elude to the fact that Defendants have an expert who will testify to tank removal. Since Defendants have not listed anyone as a witness, it is specifically DENIED that they have any

witnesses other than the expert whose report was subsequently delivered to Plaintiff's counsel or a duly authorized representative of Defendants.

If there were indeed any conversations with Plaintiff that are against Plaintiff's interests, then those witnesses would have been listed on the Pre-Trial presented by Defendants and could easily have testified against Plaintiff at trial and there would be no need for a deposition of the Plaintiff.

By way of further answer, it is averred that who Defendants contend owns the tanks is not relevant to a determination by Your Honorable Court of whether Defendants are liable to Plaintiff for damages they might have caused while renting Plaintiff's property from him. Furthermore, a review of Defendants' expert's report reveals that Defendants knew there was contamination prior to the time that they vacated the premises and did not disclose this fact to Plaintiff, possibly entitling Plaintiff to punitive damages.

10. DENIED. On the contrary, Defendants themselves have admitted in the Pre-Trial Memorandum that the law with regard to the Lease and their defense thereto has not changed and that the Court must look to the language of the Lease.

With regard to the matter of whether or not Defendants are obligated because of wrongful conduct with regard to the tanks, Plaintiff is not the witness whose testimony would be relevant but, instead, Plaintiff's expert would be the individual upon whom the Court would rely for the opinion as to whether or not Defendants are liable. Since Defendants already have the report of Plaintiff's expert and cannot, under the Rules of Civil Procedure, depose that expert, there is no reason for a deposition of Plaintiff.

By way of further answer, it is averred that Plaintiff's position has been clearly detailed in the pleadings filed by Plaintiff and has been specifically set forth in every single Pre-Trial Memorandum that Plaintiff has filed in this case. Moreover, Plaintiff's counsel has participated in two pre-trial conferences before the Court and Plaintiff's position was fully discussed before the Court with Defendants' counsel present at both times.

The undersigned counsel believes and therefore avers that Plaintiff's deposition is no more vital now than it was when this case began four years ago. On the contrary, the undersigned believes and therefore avers that this new demand for a deposition, after Defendants' counsel assured the Court that there was no further discovery necessary, is being made solely for the purposes of delaying yet another scheduled trial in this case because the information from Defendants' expert indicates that Defendants had knowledge that there was site contamination as far back as 1997.

11. ADMITTED. By way of further answer, it is averred that this Court specifically scheduled the hearing dates with the knowledge that Plaintiff would not be returning to this area until the end of March. Defendants' counsel knew that Plaintiff would not be returning and did not advise the Court at that time that he felt there was any need for a deposition of the Plaintiff.

On the contrary, Defendants' counsel assured the Court that since he had in hand Plaintiff's expert report, he needed nothing else from Plaintiff and further assured the Court that the only thing left to do was for Defendants' counsel to forward to Plaintiff's counsel a copy of his expert's report. While Defendants' counsel promised the Court and

Plaintiff's counsel that the report from his expert would be sent out forthwith, he did not forward the same until over three weeks thereafter.

12. DENIED. On the contrary, Defendants do not need Plaintiff's deposition.

Plaintiff's position has been repeatedly outlined for the Court and for Defendants. The issues in this case are clear. Defendants received a copy of Plaintiff's expert's report and previously advised the Court that they needed nothing further.

Defendants have previously continued this case and have made absolutely no efforts to settle the same. There is nothing in Defendants' Motion to indicate how they would be prejudiced and; therefore, the undersigned submits that there is no reason to depose Plaintiff other than to cause a delay in the trial of this case because Defendants know that Plaintiff is not in the area and will not be returning to the area until the day before trial.

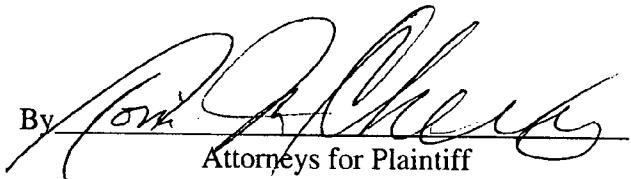
Defendants knew this information at the pre-trial conference and never indicated to the Court that Plaintiff's deposition was necessary. In fact, it had long been decided by Defendants that no depositions were necessary but that any information required could be obtained through Interrogatories. Despite that assertion, Defendants have never presented Plaintiff with Interrogatories in the entire four years since this case was filed.

Defendants cannot now request a deposition when they know that it will be impossible to depose Plaintiff and still have this case heard by the Court on the dates scheduled. Their reasons for making such a request have nothing to do with a need for information for trial but are for the sole purpose of harassing and annoying Plaintiff and needlessly delaying this case. Such behavior amounts to conduct entitling Plaintiff to sanctions and an award of counsel fees.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to dismiss Defendants' Motion for Depositions and to award Plaintiff counsel fees in the amount of \$1,000.00, representing the additional time required of Plaintiff's counsel to response to Defendants' Motion and to appear before the Court.

Respectfully submitted,

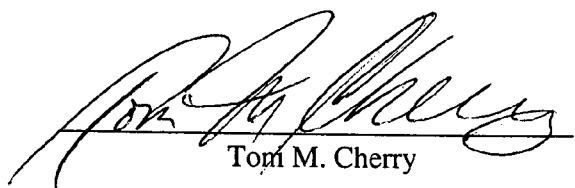
GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Tom P. Gleason  
Attorneys for Plaintiff

Date: March 10, 2004

## VERIFICATION

I, TONI M. CHERRY, ESQ., attorney for Plaintiff, EDWARD C. MILLER, verify that the information provided in the foregoing Response is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Tom M. Cherry

DATED: March 10, 2004

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4050  
FAX (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

December 19, 2003

Toni M. Cherry, Esquire  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

RE: Miller vs. J.V., Inc., et al  
No. 2000-355 C.D.

Dear Ms. Cherry:

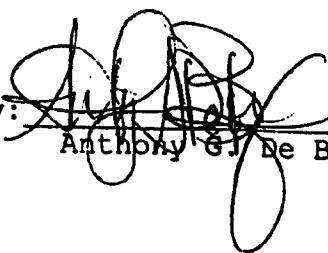
Pursuant to the above-captioned matter, I received a non-jury trial call list for January, 2004 and Miller vs. J.V., Inc. is listed for call on January 6, 2003, at 11:00 AM. I have sent you four (4) letters previously wanting to schedule depositions of your client and I never received a response until the week of December 8, 2003. At this point, we will do interrogatories to get the discovery needed.

At your earliest convenience, please contact the Court and ask for the case to be removed from the call list with discovery pending.

Thank you and feel free to contact me if you have any questions.

Very truly yours,

MITINGER & De BOEF

By: 

Anthony G. De Boef, Esq.

AGD/mal

**EXHIBIT "A"**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J.V., INC., d/b/a BEARD OIL  
and SHANER ENERGY, INC.,  
Defendants

\*  
\*  
\*  
\*  
\*

NO. 2000-355-C.D.

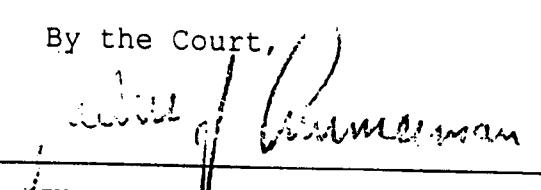
O R D E R

NOW, this 14<sup>th</sup> day of April, 2003, following Pre-Trial Conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Non-Jury Trial is scheduled for Monday, August 12, 2003 at 9 o'clock a.m., Courtroom No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Any further amended complaint shall be filed by no later than May 1, 2003.

By the Court,

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

  
JUDGE FREDERIC J. AMMERMAN.

APR 17 2003

Attest.

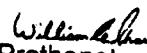
  
Prothonotary/  
Clerk of Courts

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
:  
vs. : No. 00 - 355 C.D.  
:  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

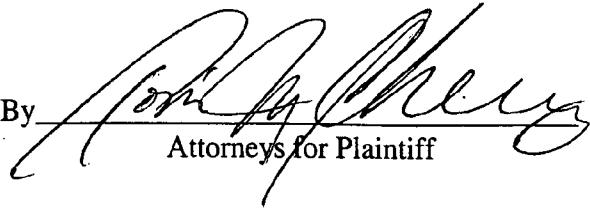
**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of March, 2004, a true and correct copy of Plaintiff's Response to Motion for Depositions was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitterer & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Plaintiff

Dated: March 10, 2004

LAW OFFICES  
**GLEASON, CHERRY & CHERRY, L.L.P.**  
P. O. Box 505  
**DUBOIS, PENNSYLVANIA 15801-0505**

ONE NORTH FRANKLIN STREET

ATTORNEY FOR Plaintiff, EDWARD C. MILLER



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,

Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,

Defendants

: No. 00 - 355 C.D.

:

: Type of Case: ASSUMPSIT

:

: Type of Pleading: PLAINTIFF'S AMENDED  
: PRE-TRIAL MEMORANDUM

:

: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff

:

: Counsel of Record for this Party:

:

: TONI M. CHERRY, ESQ.

: Supreme Court No.: 30205

:

: GLEASON, CHERRY AND  
: CHERRY, L.L.P.

: Attorneys at Law

: P. O. Box 505

: One North Franklin Street

: DuBois, PA 15801

:

: (814) 371-5800

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
: vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**PLAINTIFF'S AMENDED PRE-TRIAL MEMORANDUM**

**1. Statement of Facts:**

This is a suit by a commercial landlord against a tenant to recover rent owing under the balance of a service station facility lease after the tenant vacated the premises without cause.

Plaintiff, EDWARD C. MILLER, is the owner of a service station facility erected upon land located adjacent to Route 219 South, north of the City of DuBois in the Township of Sandy, Clearfield County, Pennsylvania. Plaintiff entered into a Lease with Defendant, J. V., INC., d/b/a BEARD OIL, of R. D. #4, Clearfield, Pennsylvania, on December 31, 1992, whereby J. V., INC., d/b/a BEARD OIL, agreed to lease the premises for an initial term of ten years from December 31, 1992, with a minimum rental of \$700.00 per month and a maximum rental of \$1,000.00 per month, based on a calculation of 1¢ per gallon on all gasoline and diesel gallonage delivered to the premises. The Lease was drawn by the Defendant.

Defendant, SHANER ENERGY, INC., is the parent company and the successor in interest to BEARD OIL COMPANY, having acquired the same and assumed all of its responsibilities.

Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of the property and delivered to Plaintiff the keys. However, Defendants did not take down their signs until the Summer of 2000.

The last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997, and no further rental payments were made on the Lease despite the fact that Defendants remained in possession of the property until August 21, 1998, and despite the fact that the Lease terms obligated Defendants to rent the premises until December 31, 2002. Accordingly, Plaintiff seeks damages in the form of back rent owed on the Lease Agreement for the remainder of 1997 and for all of 1998, 1999, 2000 and up to June 1, 2001. Plaintiff was finally able to secure another commercial tenant commencing June 1, 2001.

The terms of the Lease permit Plaintiff to confess judgment for the unpaid rent, together with interest and attorney's commission of 5% together with costs of collection.

In addition, Plaintiff seeks damages in the form of reimbursement for repairs made to the premises for damage caused by the tenant as well as for the costs of having to remove tanks that Defendants installed in violation of law.

## **2. List of Exhibits:**

- (a) Lease Agreement;
- (b) Copies of bills and invoices for repairs made;

- (c) Report of site assessment from S.M.S. Tank Disposal Co., Inc.;
- (d) Any and all other exhibits determined to be necessary at trial by the Plaintiff with adequate notice thereof to Defendants.

**3. Witnesses to be Called on Behalf of the Plaintiff:**

- (a) Plaintiff, EDWARD C. MILLER, R. D. #3, Box 274, DuBois, PA 15801;
- (b) WILLIAM E. KUNTZ, S.M.S. Tank Disposal Co., Inc., R. R. #3, Box 291, Punxsutawney, PA 15767-8703;
- (c) ALAN GROVES, Contractor, R. D. #1, Falls Creek, PA 15840;
- (d) DREXEL L. PENTZ, R. D. #1, Box 86, Grampian, PA 16838;
- (e) All other individuals who performed the work to repair premises and to remove tanks;
- (f) Any witnesses listed on Defendants' Pre-Trial Narrative;
- (g) Plaintiff reserves the right to supplement the list of witnesses and to call additional witnesses with due notice in advance of trial to Defendants if any should become known to Plaintiff.

**4. Statement of Legal Theory upon which Claim is Predicated:**

When a lease agreement is drafted by the tenant, the language thereof is properly construed against the tenant as draftor. Darrt Development Company v. Tri-State Asphalt Corporation, 609 A.2d 171 (1992). The language of the Lease provides for an initial ten-year term. There has been no allegation that Plaintiff has breached the terms of the Lease

Agreement. It is the law that a non-breaching landlord whose tenant has abandoned the property in violation of the lease has no duty to mitigate damages. Stonehedge Square Limited Partnership v. Movie Merchants, Inc., d/b/a Movie Merchants, \_\_\_ Pa. \_\_\_, 715 A.2d 1082 (1998). Since Plaintiff, as the commercial landlord, has been unable to find a suitable tenant for this premises until January of 2002, he is entitled to receive rental payments from Defendants through that period of time in accordance with the terms of the Lease Agreement.

The terms of the Lease provide that Plaintiff is entitled to confess judgment against Defendants for unpaid rent, together with interest and attorney's commission of 5%.

In addition, Plaintiff is entitled to be made whole and to be reimbursed for any damages he sustained as the result of the damages Defendants caused to the subject premises. In particular, he is entitled to receive reimbursement for the monies expended in order to repair the premises and for the cost of removal of tanks that leaked as a result of the damage caused by Defendants.

##### **5. Brief Description of Damages:**

Plaintiff claims damages for unpaid rent in the amount of \$30,800.00, together with interest and attorney's commission as well as damages for expenses incurred in the removal of the tanks in the amount of \$15,805.26 and reimbursement for repairs and cleaning to the subject premises necessitated because of the condition in which Defendants left the premises in the amount of \$850.00, together with interest and costs of suit.

**6. Extraordinary Evidentiary Problems:**

None.

**7. Stipulations:**

None to date.

**8. Special Points for Charge:**

Because this is a non-jury trial, no points for charge are required. It is anticipated that Plaintiff will provide the Court with a Memorandum of Law prior to trial and Proposed Findings of Fact and Conclusions of Law prior to trial if requested by the Court or, otherwise, after the taking of testimony.

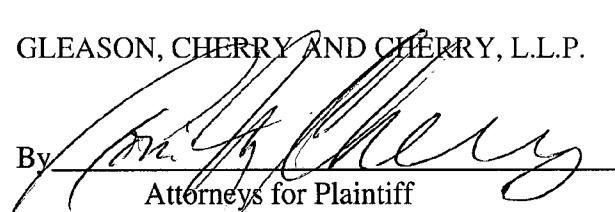
**9. Estimated Time for Trial:**

Two (2) days.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
John G. Cherry  
Attorneys for Plaintiff  
One North Franklin Street  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

Dated: April 8, 2003

*Original*

## AGREEMENT

P.01  
EXIT 16, PA 400  
Miller to Beard Oil  
12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

A  
N  
D

C.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby convey and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessor which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel gallonage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bonafide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bonafide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business therefrom, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and the driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therfor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause or reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C Miller  
Edward C. Miller

BEARD OIL COMPANY

By Dale Haffie  
Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

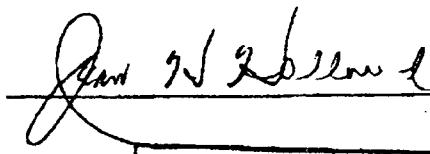
COMMONWEALTH OF PENNSYLVANIA:

: SS

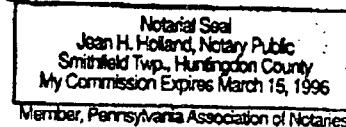
COUNTY OF CLEARFIELD :

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Parke, who acknowledged himself to be the Vice Pres of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



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Member, Pennsylvania Association of Notaries

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller  
Edward C. Miller

BEARD OIL COMPANY

By Dale H. Hopper  
Title Vice-President

ATTEST:

J. H. Marion  
Secretary

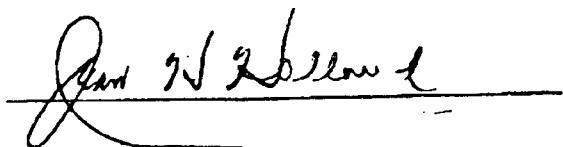
COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Poff, who acknowledged himself to be the Officer of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.  
\_\_\_\_\_  

Notarial Seal Jean H. Holland, Notary Public Smithfield Twp., Huntingdon County My Commission Expires March 15, 1996
---

Member, Pennsylvania Association of Notaries

Grave - 4,750.00  
Graves - 0.00  
SMS. - 0.00  
Landfill - 0.00  
Broadway - 0.00  
Broadway <sup>DEP</sup> - 200.00  
SMS - 1,325.00  
Parking - 3,600.00  
Broadway - 1,445.00  
17,450.26 \*  
Broadway 540.00  
17,990.26

• Brooksville, FL  
352-796-7241

• Kosmosdale, KY  
502-933-0122

• Knoxville, TN  
423-541-5500

• Pittsburgh, PA  
412-771-5513

## South wall

#1- Heater By L Shaped window  
Frost Broken At Heater coil

#2- Pipes cut with Hacksaw At End  
of Heater coil At L Shaped window

#3- Heater line in womens Rest Room  
Broken where it goes through.  
Concrete wall

#4- water meter Broken on bottom

#5- Pressure Flow Valve on west wall  
Above Boiler Leaking may be Broken

#6- Drain in Bottom of SINK in womens  
Room Broken.

#7- Faucets in womens Room Leaking  
Around knobs.

#8- Line going to womens Commode.  
Pushed Apart and leaking

• Victorville, CA  
714-985-4000

• Fairborn, OH  
513-878-8651

• Lyons, CO  
303-758-1334

• Odessa, TX  
915-385-2800

• Special Products Group  
800-762-0040

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2076

60-1013/433

REMITTER: Edward Miller

May 13, 2002

PAYABLE TO

B.K. ASPHALT PAVING, INC.

3,600.00

AMOUNT: 3600.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#002076# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1893

REMITTER: Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

BROCKWAY ANALYTICAL &amp; ENVIRONMENTAL SERVICES, LTD.

1,985.00

AMOUNT: 1985.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#001893# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

REMITTER: Miller

60-1013/433

12-18-01

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

2,665.26

AMOUNT: 2665.26

MEMORANDUM

## CASHIER'S CHECK

FOR

#001903# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1754

REMITTER: Edward Miller

60-1013/433

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

1,325.00

NOT NEGOTIABLE

\$1325.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#001754 00433101390 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2014

REMITTER: Edward Miller/backhoe &amp; trucking

60-1013/433

March 20, 2002

PAYABLE TO

ALAN GROVES

980.00

NOT NEGOTIABLE

\$980.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#002014 00433101390 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1892

REMITTER: Edward Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO., INC.

350.00

NOT NEGOTIABLE

\$350.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#001892 00433101390 11210003



Superior Greentree Landfill, LLC  
635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

INVOICE

ED MILLER  
RR#3 BOX 276  
DU BOIS, PA 15801

DATE: 12/17/01

TICKET #	DATE	TONNAGE	RATE	CHARGE
117654	12/17/01	18.32	\$18.00	\$329.76
117655	12/18/01	20.48	\$18.00	\$368.64
117692	12/19/01	15.62	\$18.00	\$281.16
117705	12/20/01	17.48	\$18.00	\$314.64
117746	12/21/01	17.52	\$18.00	\$315.36
117754	12/22/01	17.61	\$18.00	\$316.98
117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

Paid 12/18/01  
by check

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
---------	--------------	--------------	--------------

We reserve the right to suspend service without notice on any past due account.

Account  
Balance Due

2665.26

INVOICE NO.

PAGE

DATE

CUSTOMER NO.

SITE NO.

REFERENCE NO.

REMARKS



Please remit to: Superior Greentree Landfill, LLC  
635 Toby Road Kersey, PA 15846

Tel: (814) 265-1744  
(800) 257-5705  
Fax: (814) 265-8745

AMOUNT OF  
REMITTANCE

CHECK NO.

PLEASE RETURN THIS PORTION WITH REMITTANCE



Superior Greentree Landfill, LLC  
635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

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117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
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We reserve the right to suspend service without notice on any past due account.

Account  
Balance Due

2665.26

Please remit to: Superior Greentree Landfill, LLC

635 Toby Road Kersey, PA 15846

Tel: (814) 265-1744

(800) 257-5705

Fax: (814) 265-8745



AMOUNT OF  
REMITTANCE

CHECK NO.

PLEASE RETURN THIS PORTION WITH REMITTANCE

INVOICE NO.

PAGE

DATE

CUSTOMER NO.

SITE NO.

REFERENCE NO.

REMARKS



NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST

65540

NO. 149886

BKPI

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

## GENERATOR

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

## Section II

## TRANSPORTER

## TRANSPORTER I

Name: Rodger S. Walk - B&K - Riving  
 Address: 225 Jackson St. Reynoldsville Pa.  
 Driver Name: Rodger S. Walk  
 Phone No. 657-3306 371-5747  
 Truck No. 1 Trailer No. \_\_\_\_\_  
 Vehicle License No./State YDV-0103  
Rodger S. Walk 12-17-01  
 Driver Signature (Acknowledge Receipt of Materials) Date

## TRANSPORTER II

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name: \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_

## Section III

## DESTINATION

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

20-48

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_

% Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST

6100

NO. 149887

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

## GENERATOR

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois PA 15801

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois PA 15801

Phone No.: 814-371-9520

Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:

Rolloff \_\_\_\_\_

Drums \_\_\_\_\_

Truck 

Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

## Section II

## TRANSPORTER

## TRANSPORTER I

Name: GROVES EXC.  
Address: R.D. 1 FALLS CREEK, PA.  
Driver Name: Bernie Fife  
Phone No.: 814-371-3037  
Truck No. 5 Trailer No.  
Vehicle License No./State: Pa. YBY-3979  
Bernard Fife 12-17-01

Driver Signature (Acknowledge Receipt of Materials)

Date

## TRANSPORTER II

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State: \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

## Section III

## DESTINATION

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

18.32

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies: \_\_\_\_\_

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149888

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I** **GENERATOR**

Generator Name: Exit 16 Exxon Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274 RR #3 Box 274  
DuBois, PA 15801 DuBois, PA 15801  
 Phone No.: 814-371-9520 Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

**GENERATOR'S CERTIFICATION:** I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

**TRANSPORTER**

**TRANSPORTER I**

**TRANSPORTER II**

Name: B-K Asphalt  
 Address: 64 1ST FALL Creek  
 Driver Name Rodger L. Walk  
 Phone No. 771-3747  
 Truck No. 1 Trailer No.

Vehicle License No./State: YDV-0103  
Rodger L. Walk 12-77-01  
 Driver Signature (Acknowledge Receipt of Materials) Date

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Driver Name: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Truck No.: \_\_\_\_\_ Trailer No.: \_\_\_\_\_

Vehicle License No./State: \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**DESTINATION**

Phone: (814) 265-1744

Fax: (814) 256-8745

Total Truck  
Net Weight  
In Tons

15.62

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

Signature

12-77-01

Date

Indicate and Discrepancies: \_\_\_\_\_

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

**REMOVAL CONTRACTOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable % Non-Friable

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain





**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149890

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law; has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

 Signature

 Shipment Date

**Section II**

**TRANSPORTER**

TRANSPORTER I

Name: B-K ASPHALT  
Address: 64 1ST FALLS CREEK  
Driver Name Rodger L. Walk  
Phone No. 371-3747  
Truck No. 1 Trailer No.   
Vehicle License No./State YDV-0103

Driver Signature (Acknowledge Receipt of Materials)

Date

TRANSPORTER II

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

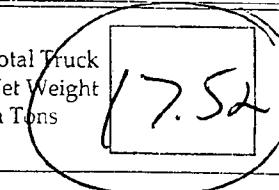
I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

Signature

 Date

Total Truck  
Net Weight  
In Tons

 17.52

Indicate and Discrepancies:

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149891

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520

Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

GENERATOR'S CERTIFICATION: I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Ship Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

Name: GROVES EXC.  
Address: R.D.#1 FALLS CREEK, PA.  
Driver Name: Bernie Fye  
Phone No. 814-371-3087  
Truck No. 5 Trailer No.   
Vehicle License No./State BYB 2979

Driver Signature (Acknowledge Receipt of Materials)

Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name: \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

17.61

Name of Authorized Agent

Date

Indicate and Discrepancies: \_\_\_\_\_

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_





filed 11/19/2

**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO118796

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

Generator Name: Exit 16 Exxon  
Address: Rt. 219 Exit 16 I-80  
R.D.#3 DuBois Pa. 15801  
Box 274  
Phone No.: 814-371-9520

**GENERATOR**

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
R.D.#3 Box 274  
DuBois Pa. 15801  
Phone No.: 814-371-9520 County CLEARFIELD

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

**GENERATOR'S CERTIFICATION:** I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

**Section II**

**TRANSPORTER I**

Name: GROVES Exc.  
Address: R.D.#1 Falls Creek Pa.  
Driver Name: Bernie Fye  
Phone No. 814-371-3037  
Truck No. 5 Trailer No. 1  
Vehicle License No./State: PA YBY 2979  
Bernie Fye

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name: \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State: \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, INC.  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

20.61

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

Section IV

**ASBESTOS**

Removal Contractor's Name:

Removal Contractor's Phone Number:

Removal Contractor's # Address:

Special Handling Instructions and additional information:

**REMOVAL CONTRACTOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable transportation regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Removal Contractor's Address (Print/Type)

Removal Contractor's Address (Print/Type)

March 13, 2002

Edward C. Miller  
R.D.#3, Box 274  
DuBois, PA 15801

Backhoe & Trucking \$980.00

please make check payable to: Alan Groves  
R.D.#1, Box 252  
Falls Creek, PA 15840

*Paid  
3/20/02  
Cashier check*

*Groves*

## **BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**

**110 McCracken Run Road  
DuBois, PA 15801**

814-371-6030 Fax: 814-375-0823

old To:

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

### Shin To:

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

Customer ID	Customer PO	Payment Terms	
M6613		Net 30 Days	
Sales Rep ID	Project Number	Discount Date	Due Date
	6613.01.01	7/11/01	8/10/01

Soil  
Lab Order: 0106136  
Collection Date: 6/19/01

Overdue invoices are subject to finance charges.

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**

110 McCracken Run Road  
DuBois, PA 15801

814-371-6030 Fax: 814-375-0823

*Px. 26**12/12/2001***Invoice****Invoice Number:**

L3094

**Invoice Date:**

Jul 27, 2001

**Page:**

1

**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID**

M6613

**Customer PO****Payment Terms**

Net 30 Days

**Sales Rep ID****Project Number****Discount Date****Due Date**

6613.01.01

7/27/01

8/26/01

**Description**

Soil Analysis  
Lab Order: 0107126  
Collection Date: 7/19/01

Quantity	Item	Description	Unit Price	Extension
1.00		Lab Analysis	540.00	540.00

BAES APPROVAL

*DMF***Check No:**

Subtotal	540.00
Sales Tax	
Total Invoice Amount	540.00
Payment Received	0.00
<b>TOTAL</b>	<b>540.00</b>

Overdue invoices are subject to finance charges.

# S.M.S.

## TANK DISPOSAL COMPANY, INC.

RR #3 BOX 291, PUNXSUTAWNEY PA 15767-8703 ♦ 814/583-7605 ♦ FAX 814/583-7606

04 June 2001

**PROPOSAL  
STORAGE TANK SUPERVISION  
REAL ESTATE DOCUMENTATION**

*Prepared for:*  
Edward C. Miller  
DuBois, PA 15801

♦ ♦ ♦ ♦ ♦

WE HEREBY PROPOSE, to furnish material and labor-complete in accordance with the specifications below, for the sum of:

Two Thousand Two Hundred Fifty and XX/100 Dollars.....\$2,250.00

♦ ♦ ♦ ♦ ♦

THIS PROPOSAL, made by S.M.S. TANK DISPOSAL CO., INC., hereinafter referred to as "CONTRACTOR", to EDWARD C. MILLER, hereinafter referred to as "OWNER", under the terms as stated herein, CONTRACTOR will do and complete the following work:

**LOCATION:** EXIT 16 EXXON  
PADEP #:17-25261

**STORAGE TANKS INVOLVED WITH PROJECT:**

18032	17-25260	001	19870601	8000	GASOLINE	CIU
18033	17-25260	002	19870601	8000	GASOLINE	CIU
18034	17-25260	003	19860501	4000	GASOLINE	CIU

**SPECIFICATIONS OF QUOTED PROJECT:**

1. Excavation and preparation of site area for tank removal to be completed by SUBCONTRACTOR chosen by OWNER including backfill and reseeding. PA One Call to be completed by SUBCONTRACTOR as required by state laws. CONTRACTOR shall provide certified PADEP inspector during the removal process and instruct SUBCONTRACTOR hired by OWNER on the necessary procedures and operations for tank removal process / remediation as necessary.
2. OWNER to blind all lines & Lockout/Tagout per requirements as set forth by the Department of Labor, Occupational Safety & Health Administration, 29 CFR Part 1910.147.
3. CONTRACTOR take twenty-four (24) samples underneath storage vessels, lines, dispensers, and stockpiles to confirm any environmental impact. Samples analyzed for

18032 55 EA 17-25261 195 EA

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

Miller's Motel  
R.D. #3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	<b>TOTAL</b>	<b>\$4,750.00</b>
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1½% per month after 30 days PAID BY CHECK NO.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
:  
vs. : No. 00 - 355 C.D.  
:  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2003, a true and correct copy of Plaintiff's Amended Pre-Trial Memorandum was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by Express Mail, Overnight Delivery, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

Dated: April 8, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAWEDWARD C. MILLER,  
Plaintiff

: No. 2000-355

v.  
J.V. INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
DefendantsAttorney for Plaintiff: Toni M. Cherry, Esq.  
Attorney for Defendants: Anthony G. DeBoef, Esq.PRE-TRIAL MEMORANDUM OF DEFENDANTS J.V. INC.,  
D/b/a BEARD OIL and SHANER ENERGY, INC.

AND NOW comes Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., by and through their attorney, Anthony G. DeBoef, of Mitinger and DeBoef, and submits the following Pre-Trial Memorandum:

Factual Statement of the Case

The instant matter was commenced in or about March 2000 by the filing of a Complaint. Defendants, on or about April 14, 2000, filed an Answer and New Matter. Approximately two years later, Plaintiff filed a Reply to New Matter and, in a letter dated November 14, 2002, requested the Prothonotary of Clearfield County to place the instant matter on the non-jury trial list.

This matter arises from a lease dispute between the above-

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Page 1 of 6

JAN 10 2003

COURT ADMINISTRATOR'S  
OFFICE

referenced parties. Plaintiff, in his Complaint, requests judgment in his favor in the amount of Nineteen Thousand Seven Hundred and Fifty Dollars (\$19,750.00) plus costs and interest. Plaintiff asserts that, under the terms of the alleged lease, he is owed back rent, damages and cleaning costs. Specifically, Plaintiff alleges rent is outstanding for the last three (3) months of 1997 and twelve (12) months in both 1998 and 1999.

In contrast, Defendants assert that the lease was terminated on or about September 12, 1997. Specifically, Defendants contend their legal obligation under the terms of the lease was terminated due to the inability to acquire the necessary permits for operation of the premises. Additionally, Defendants assert that the clear and unambiguous terms of paragraph seventeen (17) of the lease precludes Plaintiff from seeking the instantly requested relief. Finally, Defendant Shaner Energy, Inc., asserts it has no nexus in the Complaint filed by Plaintiff to Beard Oil.

In sum, the instant matter involves the interpretation of lease agreement.

List of Exhibits

As stated at the Call of the List and set forth herein, Defendants believe there is still outstanding discovery, potentially including interrogatories and a deposition.

Defendants were hindered in their ability to proceed with discovery due to Plaintiff's lapse in moving forward with this case. Pending the completion of the aforementioned discovery, Defendants anticipate the filing of Pre-Trial Motions, most likely including a Motion for Judgment on the Pleadings and/or a Motion for Summary Judgment following the completion of discovery.

At trial, Defendants anticipate their exhibit list to include the lease as well as any other documents which may come to light through discovery. Due to the fact there is pending discovery, Defendants respectfully request this Honorable Court grant Defendants the right to submit and amend their exhibit list at the close of discovery and after the filing of Pre-Trial Motions.

At this time, Defendants do not anticipate the calling of an expert witness at trial in the matter but reserve the right to do so pending the completion of discovery.

Witness List

As set forth above, due to the incomplete discovery, Defendants respectfully request the right to submit and/or amend their witness list pending the completion of discovery and the filing of Pre-Trial Motions in this matter.

Legal Theory of Case

At this time, Defendants believe the instant matter involves the interpretation of the alleged lease between the parties. Pending the completion of discovery, Defendants do not anticipate any extraordinary evidentiary problems and/or special points for charge.

Time of Trial

While discovery has not yet been completed and Defendants anticipate the filing of Pre-Trial Motions, Defendants anticipate that trial in the instant matter would last, at the most, four (4) to five (5) hours.

Settlement

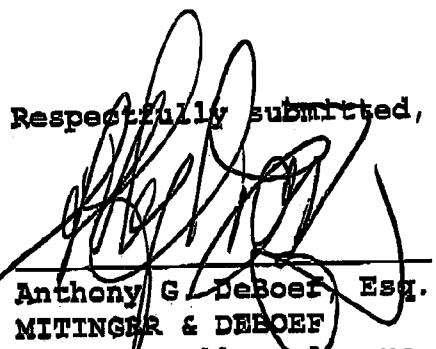
Although settlement discussions have occurred at the time of the filing of the Complaint, said discussions have not been productive.

Right to Amend

Defendants respectfully reserve the right to amend the instant Pre-Trial Memorandum at any time up to and including the time of trial.

Respectfully submitted,

BY:

  
Anthony G. DeBoer, Esq.  
MITINGER & DEBOEF  
2147 E. College Avenue  
State College, PA 16801  
(814) -231-4052

Dated:

1/18/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAWEDWARD C. MILLER,  
Plaintiff

No. 2000-355

v.

J.V. INC., d/b/a BEARD OIL,  
and SHANER ENERGY, INC.,  
DefendantsCERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Pre-Trial Memorandum of Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., was served upon Toni M. Cherry, Esq., counsel for Plaintiff and upon the Clearfield County Court Administrator's Office, by mailing the same via United States First Class Mail, postage prepaid, by depositing the same in the United States Mail, addressed as follows

TONI M. CHERRY ESQ.  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505COURT ADMINISTRATOR'S OFFICE  
230 East Market Street  
Suite 228  
Clearfield, PA 16830

By:

MITINGER &amp; DEBOEF

Anthony G. DeBoef, Esq.  
2147 E. College Avenue  
State College, PA 16801  
(814)-231-4052Dated: 1/10/03

(A)

LAW OFFICES OF  
**MITINGER & De BOEF**  
2147 EAST COLLEGE AVENUE  
STATE COLLEGE, PENNSYLVANIA 16801  
(814) 231-4656  
FAX: (814) 231-0417

Robert B. Mitinger  
Anthony G. De Boef  
Fred B. Miller

Joseph B. Mitinger  
of Counsel  
(1930-2001)

January 8, 2003

Court Administrator  
Clearfield County Courthouse  
230 East Market Street, Ste. 228  
Clearfield, PA 16830

RE: Miller v. Beard Oil and Shaner Energy  
Clearfield County No. 00-355 CD

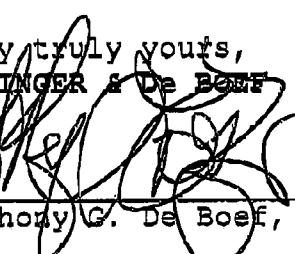
Dear Sir/Madam:

Enclosed is a copy of Defendant's Pre-Trial Memorandum with regard to the above referenced matter. The Pre-Trial Conference in this matter is scheduled before the Honorable Fredric J. Ammerman.

If you have any questions, please feel free to contact me.

Very truly yours,  
**MITINGER & De BOEF**

By:

  
Anthony G. De Boef, Esquire

AGD/mal  
xc: Peter Hulbert, Esquire

**RECEIVED**

**JAN 10 2003**

**COURT ADMINISTRATOR'S  
OFFICE**

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.  
P. O. Box 505  
DU BOIS, PENNSYLVANIA 15801-0505  
ONE NORTH FRANKLIN STREET

*Edward C. Miller*  
ATTORNEY FOR Plaintiff, EDWARD C. MILLER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER ENERGY, INC.,  
Defendants

: No. 2000 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: AMENDED COMPLAINT  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P.O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

APR 09 2003

Attest.

*William A. Cherry*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 2000 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL, and :  
SHANER ENERGY, INC., :  
Defendants :  
:

**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Amended Complaint are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Amended Complaint or for any claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88 - 89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By:

Attnorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 2000 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL, and :  
SHANER ENERGY, INC., :  
Defendants :  
:

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, EDWARD C. MILLER, by and through his Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this Amended Complaint upon a cause of action whereof the following is a statement:

1. Plaintiff, EDWARD C. MILLER, is an adult individual who resides at R. D. #3, Box 274, DuBois, Clearfield County, Pennsylvania 15801.
2. The Defendant, J. V., INC., d/b/a BEARD OIL, is a corporation licensed to do business in the Commonwealth of Pennsylvania and having a place of business at R. D. #4, Washington Avenue, P. O. Box 628, Clearfield, Pennsylvania 16830.
3. That Defendant, SHANER ENERGY, INC., is a corporation authorized to conduct business within the Commonwealth of Pennsylvania, having a place of business at 40 Pennsylvania Avenue, Huntingdon, Pennsylvania 16652.
4. That Defendant, SHANER ENERGY, INC., is the parent company of Defendant, J. V., INC., d/b/a BEARD OIL, and Defendant, J. V., INC., d/b/a BEARD OIL, has always held itself out as a SHANER ENERGY, INC., company.

5. On December 31, 1992, Plaintiff leased the premises along Route 219 South in Sandy Township, R. D. #3, DuBois, Pennsylvania, to Defendant, J. V., INC., d/b/a BEARD OIL, under a Commercial Lease Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "A".

6. The Lease provides for an initial term of ten years commencing on December 31, 1992, through December 30, 2002, at a minimum base rental of \$700.00 per month, payable on the 31<sup>st</sup> day of every month for the next succeeding month.

7. Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of said property and delivered to Plaintiff the keys therefor.

8. That the last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997 and no further rental payments were made on the Lease thereafter despite the fact that Defendants remained in possession of the property and there exists an outstanding Lease obligating Defendants to make monthly payments for a period of ten (10) years.

9. That Plaintiff has been able to rent the subject premises as of June 1, 2001, for the same amount of rental per month due under his Lease with Defendants, to wit, \$700.00 per month.

10. Accordingly, there is due and owing to Plaintiff under the Lease entered into with the Defendants the following back rent:

Rent Due for 1997	\$ 2,100.00
Rent Due for 1998	\$ 8,400.00

Rent Due for 1999	\$ 8,400.00
Rent Due for 2000	\$ 8,400.00
Rent Due for 2001	<u>\$ 3,500.00</u>
Total	\$30,800.00

11. Defendants, despite repeated demands by Plaintiff, have failed and refused and still refuse to pay Plaintiff the sum of \$30,800.00 or any part thereof although the Lease obligates them to make such payments.

12. By reason of Defendants' default on the rent due, Plaintiff is entitled to a judgment in the amount of \$30,800.00, together with interest from October 30, 1997, and, in accordance with the terms of Paragraph 14 of said Lease, 5% attorney's commission together with costs for the collection of said rent.

13. Judgment has not been entered on the attached Lease in any jurisdiction.

14. That Paragraph 6 of the Lease requires that the premises be surrendered to Lessor in as good a condition as it was at the time of the commencement of the Lease, reasonable wear and tear excepted.

15. That contrary to the specific obligations of the Lease, Defendants did leave the premises in a damaged and destroyed condition as follows:

- (a) In the office, the heater coil from the baseboard heater was broken at the heater coil;
- (b) The pipes at the South wall were cut with a hacksaw at the end of the heater coil underneath the L-shaped window;
- (c) The heater line in the women's restroom was broken at the point of its entry into the concrete wall;

- (d) The water meter in the furnace room was broken;
- (e) The pressure flow valve on the West wall above the boiler unit was leaking and had to be repaired;
- (f) The drain at the bottom of the sink in the women's restroom was broken;
- (g) The faucets in the women's restroom were leaking around the knobs;
- (h) The line going to the commode in the women's restroom had been soldered and had blown apart at the solder point and was leaking;

16. That as a result of the damages done by Defendants, the Plaintiff had to incur repair costs in the amount of **SEVEN HUNDRED DOLLARS (\$700.00)**.

17. That in addition to the damages caused by Defendants, they left the premises in a dirty and unkept condition in violation of the requirements of the Lease, requiring the Plaintiff to expend the sum of **ONE HUNDRED FIFTY DOLLARS (\$150.00)** to clean the premises.

18. That contrary to the specific obligations of the Lease and the laws of the Commonwealth of Pennsylvania and the United States of America, Defendants installed a steel diesel tank which Plaintiff believes and therefore avers was never approved by the Pennsylvania Department of Environmental Protection.

19. That as a result of the improper actions of the Defendants, Plaintiff was caused to remove the tanks and dispose of the same and to perform other actions required by the Pennsylvania Department of Environmental Protection that were the responsibility of Defendants as follows:

B.K. Asphalt Paving Co., Inc.	\$ 3,600.00
Brockway Analytical & Environmental Services, LTD	1,985.00
Superior Green Tree Land Fill, LLC	2,665.26

Tank Disposal Co., Inc.	1,325.00
Alan Groves, backhoe & trucking	980.00
S.M.S. Tank Disposal Co., Inc.	350.00
Groves Excavating	4,750.00
Brockway Analytical & Environmental Services, LTD, lab analysis	<u>150.00</u>
TOTAL	\$15,805.26

True and correct copies of the payments made are attached hereto and made a part hereof as Plaintiff's Exhibit B-1 through 8 inclusive.

20. That Paragraph 6 of the Lease obligates Defendants to pay "That portion of the real estate taxes which apply to the land or premises hereby leased."

21. That Defendants failed to pay their portion of the school real estate taxes for 1997 and their total portion of real estate taxes for the years of 1998, 1999 and 2000 in violation of the terms of said Lease.

22. Despite repeated demands by Plaintiff to Defendants for payment of the monies due to him in accordance with the terms of the Lease, Defendants have wholly refused.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

(a) In the sum of \$30,800.00, plus interest from October 30, 1997, at the legal rate of 6%, together with attorney's commission of 5% on said amount together with costs of collection; and

(b) Judgment in the amount of \$16,655.26, together with interest and costs of suit.

Respectfully submitted,  
GLEASON, CHERRY AND CHERRY, L.L.P.

By:

Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA

: SS.

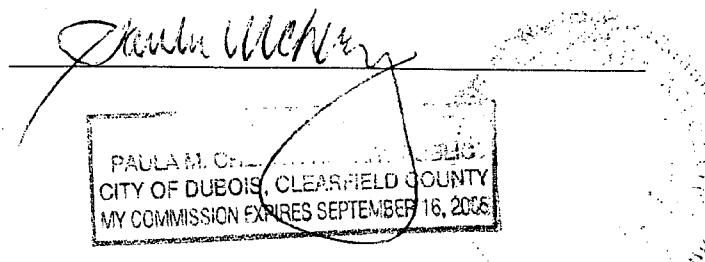
COUNTY OF CLEARFIELD

Personally appeared before me, a Notary Public in and for the County and State aforesaid, EDWARD C. MILLER, who, being duly sworn according to law, deposes and says  
*Amended*  
that the facts set forth in the foregoing/Complaint are true and correct to the best of his knowledge, information and belief.

Edward C Miller

Edward C. Miller

Sworn to and subscribed before me this 8<sup>th</sup> day of April, 2003.



*Original*

## AGREEMENT

EXIT 16, URGENT P.01

Miller to Beard Oil

12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

A  
N  
D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel gallonage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bona fide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bona fide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business therefrom, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therfor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause or reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C Miller  
Edward C. Miller

BEARD OIL COMPANY  
By Dale Haffie  
Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 2-th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

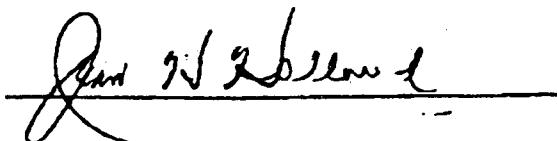
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Peacock, who acknowledged himself to be the Vice-Chairman of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
\_\_\_\_\_  

Notarial Seal
Jean H. Holland, Notary Public
Smithfield Twp., Huntington County
My Commission Expires March 15, 1996
Member, Pennsylvania Association of Notaries

REMITTER  
W/D Edward Miller

2076

60-1013/433

May 13, 2002

PAYABLE TO

B.K. ASPHALT PAVING, NO.

3,600.00

FEDERAL  
RESERVE  
NUMBER  
160000000

## CASHIER'S CHECK

MEMORANDUM

FOR

#00 2076# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

#1 + #2

1893

REMITTER  
W/D Edward Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

BROCKWAY ANALYTICAL &amp; ENVIRONMENTAL SERVICES, LTD.

1,985.00

FEDERAL  
RESERVE  
NUMBER  
19050000

## CASHIER'S CHECK

MEMORANDUM

FOR

#00 1893# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

REMITTER  
Miller

60-1013/433

12-18-01

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

2,665.26

FEDERAL  
RESERVE  
NUMBER  
2665326#

## CASHIER'S CHECK

MEMORANDUM

FOR

#00 1903# 1043310139# 11210003#

EXHIBIT "B" 1 through 8



1754

REMITTER Miller

60-1013/433

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

1,325.00

NOT NEGOTIABLE

1325.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#001754 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2014

REMITTER Edward Miller/backhoe &amp; trucking

60-1013/433

March 20, 2002

PAYABLE TO

ALAN GROVES

980.00

NOT NEGOTIABLE

980.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#002014 10433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1892

REMITTER Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO. INC.

350.00

NOT NEGOTIABLE

350.00

## CASHIER'S CHECK

MEMORANDUM

FOR

#001892 10433101391 11210003

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.****110 McCracken Run Road  
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823***Invoice***Invoice Number:**

L4146

**Invoice Date:**

Jan 4, 2002

**Page:**

1

**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID**

M6010

**Customer PO****Payment Terms**

Net 30 Days

**Sales Rep ID****Project Number****Discount Date****Due Date**

1/4/02

2/3/02

**Description**

SOIL  
LAB ORDER: C112049  
COLLECTION DATE: 12/7/01

Quantity	Item	Description	Unit Price	Extension
1.00	LAB ANALYSIS		150.00	150.00
BAES APPROVAL				
Check No:				
		<i>Paid 1/25/02</i>		
		<i>By check</i>		
		<i>get mail</i>	Subtotal	150.00
		<i>1/25/02</i>	Sales Tax	
			Total Invoice Amount	150.00
			Payment Received	0.00
			<b>TOTAL</b>	<b>150.00</b>

Overdue invoices are subject to finance charges.

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

Miller's Motel  
R.D. #3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	<b>TOTAL</b>	<b>\$4,750.00</b>
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1 1/2% per month after 30 days PAID BY CHECK NO.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of April, 2003, a true and correct copy of Plaintiff's Amended Complaint was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by Express Mail, Overnight Delivery, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

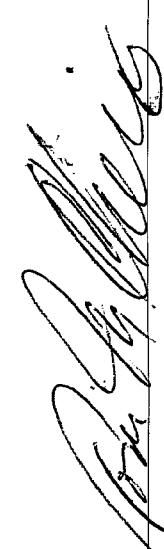
Attorneys for Plaintiff

Dated: April 8, 2003

LAW OFFICES  
GLEASON, CHERRY & CHERRY, L.L.P.

P. O. Box 505  
DuBois, PENNSYLVANIA 15801-0505

ONE NORTH FRANKLIN STREET

  
ATTORNEY FOR Plaintiff, EDWARD C. MILLER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,

Defendants

: No. 00 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: PLAINTIFF'S PRE-TRIAL  
: MEMORANDUM  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

**RECEIVED**

**JAN 15 2004**

**COURT ADMINISTRATOR'S  
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
: :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :  
:

**PLAINTIFF'S PRE-TRIAL MEMORANDUM**

**1. Statement of Facts:**

This is a suit by a commercial landlord against a tenant to recover rent owing under the balance of a service station facility lease after the tenant vacated the premises without cause.

Plaintiff, EDWARD C. MILLER, is the owner of a service station facility erected upon land located adjacent to Route 219 South, north of the City of DuBois in the Township of Sandy, Clearfield County, Pennsylvania. Plaintiff entered into a Lease with Defendant, J. V., INC., d/b/a BEARD OIL, of R. D. #4, Clearfield, Pennsylvania, on December 31, 1992, whereby J. V., INC., d/b/a BEARD OIL, agreed to lease the premises for an initial term of ten years from December 31, 1992, with a minimum rental of \$700.00 per month and a maximum rental of \$1,000.00 per month, based on a calculation of 1¢ per gallon on all gasoline and diesel gallonage delivered to the premises. The Lease was drawn by the Defendant.

Defendant, SHANER ENERGY, INC., is the parent company and the successor in interest to BEARD OIL COMPANY, having acquired the same and assumed all of its responsibilities.

Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of the property and delivered to Plaintiff the keys. However, Defendants did not take down their signs until the Summer of 2000.

The last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997, and no further rental payments were made on the Lease despite the fact that Defendants remained in possession of the property until August 21, 1998, and despite the fact that the Lease terms obligated Defendants to rent the premises until December 31, 2002. Accordingly, Plaintiff seeks damages in the form of back rent owed on the Lease Agreement for the remainder of 1997 and for all of 1998, 1999, 2000 and up to June 1, 2001. Plaintiff was finally able to secure another commercial tenant commencing June 1, 2001.

That in addition to monthly rental payments, Paragraph 6 of the Lease obligates Defendants to pay “[T]hat portion of the real estate taxes which apply to the land or premises hereby leased.” The real estate taxes on the land or premises leased by Defendants from Plaintiff for the years of 1996 through 2001 are as follows:

<u>YEAR</u>	<u>CO/TWP FACE</u>	<u>SCHOOL FACE</u>
1996	\$403.20	\$1,532.16
1997	\$403.20	\$1,550.98
1998	\$480.00	\$1,550.98
1999	\$489.60	\$1,550.98
2000	\$489.60	\$1,550.98
2001	\$489.60	\$1,641.79

The Defendants failed to pay the real estate taxes owed on the premises for the years of 1996 through 2001 in the total amount of \$12,133.07.

The terms of the Lease permit Plaintiff to confess judgment for the unpaid rent which would also include unpaid real estate taxes as additional rent, together with interest and attorney's commission of 5% together with costs of collection.

In addition, Plaintiff seeks damages in the form of reimbursement for repairs made to the premises for damage caused by the tenant as well as for the costs of having to remove tanks that Defendants installed in violation of law.

**2. List of Exhibits:**

- (a) Lease Agreement;
- (b) Copies of bills and invoices for repairs made;
- (c) Report of site assessment from S.M.S. Tank Disposal Co., Inc.;
- (d) Copies of real estate tax statements for years 1996 through 2001 inclusive;
- (e) Any and all other exhibits determined to be necessary at trial by the Plaintiff with adequate notice thereof to Defendants.

**3. Witnesses to be Called on Behalf of the Plaintiff:**

- (a) Plaintiff, EDWARD C. MILLER, R. D. #3, Box 274, DuBois, PA 15801;
- (b) WILLIAM E. KUNTZ, S.M.S. Tank Disposal Co., Inc., R. R. #3, Box 291, Punxsutawney, PA 15767-8703;
- (c) ALAN GROVES, Contractor, R. D. #1, Falls Creek, PA 15840;

- (d) DREXEL L. PENTZ, R. D. #1, Box 86, Grampian, PA 16838;
- (e) All other individuals who performed the work to repair premises and to remove tanks;
- (f) Any witnesses listed on Defendants' Pre-Trial Narrative;
- (g) Plaintiff reserves the right to supplement the list of witnesses and to call additional witnesses with due notice in advance of trial to Defendants if any should become known to Plaintiff.

#### **4. Statement of Legal Theory upon which Claim is Predicated:**

When a lease agreement is drafted by the tenant, the language thereof is properly construed against the tenant as draftor. Darrt Development Company v. Tri-State Asphalt Corporation, 609 A.2d 171 (1992). The language of the Lease provides for an initial ten-year term. There has been no allegation that Plaintiff has breached the terms of the Lease Agreement. It is the law that a non-breaching landlord whose tenant has abandoned the property in violation of the lease has no duty to mitigate damages. Stonehedge Square Limited Partnership v. Movie Merchants, Inc., d/b/a Movie Merchants, \_\_\_ Pa. \_\_\_, 715 A.2d 1082 (1998). Since Plaintiff, as the commercial landlord, has been unable to find a suitable tenant for this premises until June of 2001, he is entitled to receive rental payments from Defendants through that period of time in accordance with the terms of the Lease Agreement.

Paragraph 14 of the Lease provides that Plaintiff is entitled to confess judgment against Defendants for unpaid rent, together with interest and attorney's commission of 5%.

In addition, Plaintiff is entitled to be made whole and to be reimbursed for any damages he sustained as the result of the damages Defendants caused to the subject premises. In particular, he is entitled to receive reimbursement for the monies expended in order to repair the premises and for the cost of removal of tanks that leaked as a result of the damage caused by Defendants.

**5. Brief Description of Damages:**

Plaintiff claims damages for unpaid rent in the amount of \$30,800.00, plus unpaid real estate taxes in the amount of \$12,133.07, together with interest and attorney's commission on that total amount. In addition, Plaintiff claims damages for expenses incurred in the removal of the tanks in the amount of \$15,805.26 and reimbursement for repairs and cleaning to the subject premises necessitated because of the condition in which Defendants left the premises in the amount of \$850.00, together with interest on those two amounts plus costs of suit.

**6. Extraordinary Evidentiary Problems:**

None.

**7. Stipulations:**

None to date.

**8. Special Points for Charge:**

Because this is a non-jury trial, no points for charge are required. It is anticipated that Plaintiff will provide the Court with a Memorandum of Law prior to trial and Proposed Findings of Fact and Conclusions of Law prior to trial if requested by the Court or, otherwise, after the taking of testimony.

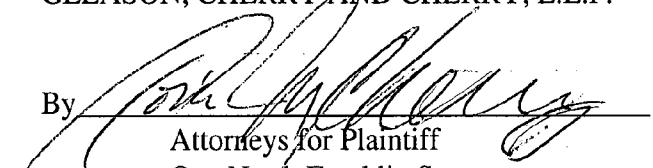
**9. Estimated Time for Trial:**

Two (2) days.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
John P. Gleason  
Attorneys for Plaintiff  
One North Franklin Street  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

Dated: January 15, 2004

*Original*

## AGREEMENT

EXIT 16, UN NO. 5 P-01  
 Miller to Beard Oil  
 12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

C

A

B

I.V., Inc. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situated in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel gallonage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bona fide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bona fide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business therefrom, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and the driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall now become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost thereto and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the said premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause or reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C Miller

Edward C. Miller

BEARD OIL COMPANY

By Dale Haffie

Title Vice-President

ATTEST:

J. L. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

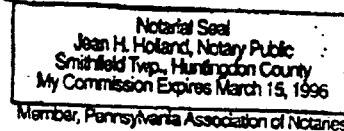
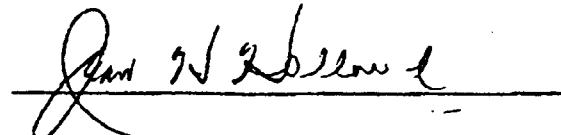
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Parke, who acknowledged himself to be the Officer of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C Miller  
Edward C. Miller

BEARD OIL COMPANY

By Dale Haffie  
Title Vice-President

ATTEST:

Jel Adams  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD : ;

On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

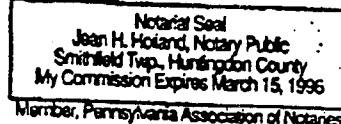
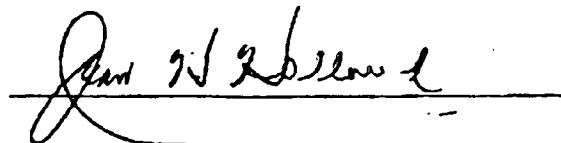
COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD : ;

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared David Paffie, who acknowledged himself to be the Officer of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Graves	—	4,750	0	0	0
Graves	—	4,750	0	0	0
S.M.S.	—	0	8,500	0	0
Land fill	—	2,350	0	0	0
Broadway	—	1,550	0	0	0
Brockway	DEP	200	0	0	0
Brockway	—	1,500	0	0	0
S.M.S.	—	1,325	0	0	0
Parmer	—	3,600	0	0	0
Brockway	—	1,445	0	0	0
		17,450	26	0	*
Brockway	540	0	0		
		17,990	26		

• Brooksville, FL  
352-796-7241

• Kosmosdale, KY  
502-933-0122

• Knoxville, TN  
423-541-5500

• Pittsburgh, PA  
412-771-5513

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## South wall

- #1- Heater By L Shaped window  
Frost Broken At Heater coil
- #2- Pipes cut with Hacksaw At End  
of Heater coil At L Shaped window
- #3- Heater line in womens Rest Room  
Broken where it goes through  
Concrete wall
- #4- water meter Broken on bottom
- #5- Pressure Flow valve on west wall  
Above Boiler Leaking may be broken
- #6- Drain in Bottom of SINK in Womens  
Room Broken.
- #7- Faucets in womens Room Leaking  
Around knobs.
- #8- Line going to womens Commode.  
Pushed Apart and leaking.

---

• Victorville, CA  
714-985-4000

• Fairborn, OH  
513-878-8651

• Lyons, CO  
303-758-1334

• Odessa, TX  
915-385-2800

• Special Products Group  
800-762-0040

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER  
W/D Edward Miller

2076

60-1013/433

May 13, 2002

PAYABLE TO

B.K. ASPHALT PAVING, INC.

3,600.00

NOT NEGOTIABLE

FIFTEEN THOUSAND SIX HUNDRED DOLLARS 00 CENTS

## CASHIER'S CHECK

## MEMORANDUM

FOR

#002076 0433101391 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER  
W/D Miller

1893

60-1013/433

Dec. 8, 2001

PAYABLE TO

BROCKWAY ANALYTICAL &amp; ENVIRONMENTAL SERVICES, LTD.

1,985.00

NOT NEGOTIABLE

TEN NINETEEN DOLLARS 00 CENTS

## CASHIER'S CHECK

## MEMORANDUM

FOR

#001893 0433101391 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER  
Miller

1903

60-1013/433

12-18-01

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

2,665.26

NOT NEGOTIABLE

TWO THOUSAND SIX HUNDRED SIXTY-FIVE DOLLARS 26 CENTS

## CASHIER'S CHECK

## MEMORANDUM

FOR

#001903 0433101391 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER Miller



1754

60-1013/433

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

NOT NEGOTIABLE

1,325.00

1325.00

**CASHIER'S CHECK**

MEMORANDUM

FOR

*James M. Gist*

001754 0433101390 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER ~~Miller~~ Miller/backhoe & trucking



2014

60-1013/433

March 20, 2002

PAYABLE TO

ALAN GROVES

NOT NEGOTIABLE

980.00

980.00

**CASHIER'S CHECK**

MEMORANDUM

FOR

*James M. Gist*

002014 0433101390 11210003

PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS

REMITTER ~~Miller~~ Miller



1892

60-1013/433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO. INC.

NOT NEGOTIABLE

350.00

350.00

**CASHIER'S CHECK**

MEMORANDUM

FOR

*James M. Gist*

001892 0433101390 11210003



Superior Greentree Landfill, LLC  
635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

INVOICE

ED MILLER  
RR#3 BOX 276  
DU BOIS, PA 15801

DATE: 12/17/01

TICKET #	DATE	TONNAGE	RATE	CHARGE
117654	12/17/01	18.32	\$18.00	\$329.76
117655	12/18/01	20.48	\$18.00	\$368.64
117692	12/19/01	15.62	\$18.00	\$281.16
117705	12/20/01	17.48	\$18.00	\$314.64
117746	12/21/01	17.52	\$18.00	\$315.36
117754	12/22/01	17.61	\$18.00	\$316.98
117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

Paid 12/18/01  
by check

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
---------	--------------	--------------	--------------

We reserve the right to suspend service without notice on any past due account.

Account  
Balance Due

2665.26

INVOICE NO.

PAGE

DATE

CUSTOMER NO.

SITE NO.

REFERENCE NO.

REMARKS



Please remit to: Superior Greentree Landfill, LLC

635 Toby Road Kersey, PA 15846

Tel: (814) 265-1744

(800) 257-5705

Fax: (814) 265-8745

AMOUNT OF  
REMITTANCE

CHECK NO.

PLEASE RETURN THIS PORTION WITH REMITTANCE



**Superior Greentree Landfill, LLC**  
635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

**INVOICE**

**ED MILLER**  
**RR#3 BOX 276**  
**DU BOIS, PA 15801**

**DATE: 12/17/01**

TICKET #	DATE	TONNAGE	RATE	CHARGE
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117655	12/18/01	20.48	\$18.00	\$368.64
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117746	12/21/01	17.52	\$18.00	\$315.36
117754	12/22/01	17.61	\$18.00	\$316.98
117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
---------	--------------	--------------	--------------

We reserve the right to suspend service without notice on any past due account.

**Account  
Balance Due**

*3665.26*

INVOICE NO.

PAGE

DATE

CUSTOMER NO.

SITE NO.

REFERENCE NO.

REMARKS



Please remit to: **Superior Greentree Landfill, LLC**

635 Toby Road Kersey, PA 15846

Tel: (814) 265-1744

(800) 257-5705

Fax: (814) 265-8745

**AMOUNT OF  
REMITTANCE**

**CHECK NO.**

**PLEASE RETURN THIS PORTION WITH REMITTANCE**



NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST

65540

NO. 149886

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

## GENERATOR

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	
2.		100%
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

## TRANSPORTER

## TRANSPORTER I

Name: Rodger S. Walker - B.K. Recycling  
 Address: 223 Jackson St. Reynoldsville Pa.  
 Driver Name Rodger S. Walker  
 Phone No. 657-3306 371-5747  
 Truck No. 1 Trailer No.   
 Vehicle License No./State YDV-0103 12-17-01

Driver Signature (Acknowledge Receipt of Materials)

Date

## TRANSPORTER II

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

## Section III

## DESTINATION

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain

6100

NO. 149887

## NON-HAZARDOUS

## SPECIAL WASTE &amp; ASBESTOS MANIFEST

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

## GENERATOR

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
 RR #3 Box 274  
 DuBois PA 15801  
 Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
 RR #3 Box 274  
 DuBois PA 15801

Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

## Section II

## TRANSPORTER

## TRANSPORTER I

Name: GROVES EXC.  
 Address: B.P. 1 FALLS CREEK, PA.  
 Driver Name: Bernie Fyle  
 Phone No.: 814-371-3037  
 Truck No. 5 Trailer No.

Vehicle License No./State: Pa. YBY-2979  
 Driver Signature (Acknowledge Receipt of Materials) *Bernard Z. Fyle* Date *12-17-01*

## TRANSPORTER II

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State: \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

## Section III

## DESTINATION

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

*18.32*

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149888

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520

**GENERATOR**

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:

Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

**GENERATOR'S CERTIFICATION:** I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law. has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

 Signature

 Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

Name: B-K Asphalt  
Address: 64 1ST FALL Creek  
Driver Name Rodger L. Walk  
Phone No. 721-3747  
Truck No. 1 Trailer No.   
Vehicle License No./State YDV-0103  
Rodger L. Walk 12-77-01  
Driver Signature (Acknowledge Receipt of Materials) Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials) Date

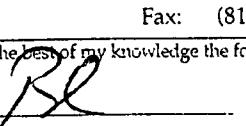
**Section III**

**DESTINATION**

Site Information: **SUPERIOR GREENTREE LANDFILL, LLC**  
635 TOBY ROAD, KERSEY, PA 15846

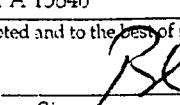
Phone: (814) 265-1744  
Fax: (814) 236-8745

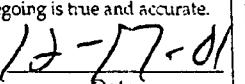
Total Truck  
Net Weight  
In Tons

 15.62

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

 Signature

 Date

Indicate and Discrepancies:

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

**REMOVAL CONTRACTOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



## NON-HAZARDOUS

## SPECIAL WASTE &amp; ASBESTOS MANIFEST

NO. 149889

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed

Section I		GENERATOR
Generator Name:	Exit 16 Exxon	
Address:	Rt 219 Exit 16 I-80 RR #3 Box 274 DuBois, PA 15801	
Phone No.:	814-371-9520	
Generating Location:		Exit 16 Exxon
Address:		Rt 219 Exit 16 I-80 RR #3 Box 274 DuBois, PA 15801
Phone No.:		814-371-9520
County		Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

## Section II

## TRANSPORTER

## TRANSPORTER II

## TRANSPORTER I

Name: GROVES EXC  
 Address: R.D. #1 FALLS CREEK, PA.  
 Driver Name: Bernie Fye  
 Phone No. 814-371-3037  
 Truck No. 5 Trailer No. Y0Y-2979  
 Vehicle License No./State PA Y0Y-2979  
Bernie Fye 12-17-01

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Driver Name: \_\_\_\_\_

Phone No. \_\_\_\_\_

Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_

Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

## DESTINATION

Phone: (814) 265-1744

Fax: (814) 256-8745

Total Truck  
Net Weight  
In Tons

17.48

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149890

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
          RR #3 Box 274  
          DuBois, PA 15801  
Phone No.: 814-371-9520

**GENERATOR**

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
          RR #3 Box 274  
          DuBois, PA 15801

Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

**GENERATOR'S CERTIFICATION:** I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

 Signature

 Shipment Date

**Section II**

**TRANSPORTER I**

**TRANSPORTER**

**TRANSPORTER II**

Name: B-K ASPHALT  
Address: 64 1ST FALLS CREEK  
Driver Name Rodger L. Walk  
Phone No. 371-5747  
Truck No. 1 Trailer No.   
Vehicle License No./State YDV-0103

Rodger L. Walk Driver Signature (Acknowledge Receipt of Materials)

12-17-01 Date

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

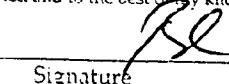
Site Information: **SUPERIOR GREENTREE LANDFILL, LLC**  
                  635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

 Signature

12-17-01 Date

Total Truck  
Net Weight  
In Tons

17.52

Indicate and Discrepancies:

**Section IV**

**ASBESTOS**

Removal Contractor's Name:

Removal Contractor's Phone Number:

Removal Contractor's\* Address:

Special Handling Instructions and additional information:

**REMOVAL CONTRACTOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency:

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_



NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST

NO. 149891

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need be completed.

Section I

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520

GENERATOR

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

 Signature

 Shipment Date

Section II

TRANSPORTER

TRANSPORTER I

Name: GROVES EXC.  
Address: R.D.#1 FALLS CREEK, PA  
Driver Name Bernie Fye  
Phone No. 814-371-3037  
Truck No. 5 Trailer No.   
Vehicle License No./State BYB 2979  
Bernie Fye 12-17-01

Driver Signature (Acknowledge Receipt of Materials)

Date

TRANSPORTER II

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

Section III

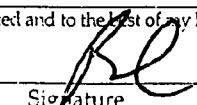
DESTINATION

Site Information: **SUPERIOR GREENTREE LANDFILL, LLC**  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744  
Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

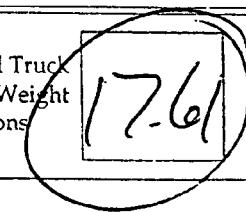
Name of Authorized Agent

 Signature

12-17-01

Date

Total Truck  
Net Weight  
In Tons

 17.61

Indicate and Discrepancies: \_\_\_\_\_

Section IV

ASBESTOS

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original FLUKE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO.118794

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

Generator Name: Exit 10 Exxon  
 Address: RT 219 Exit 10 1-80  
RR #3 Box 274  
Dubois PA 15801  
 Phone No.: 814-371-9530

**GENERATOR**

Generating Location: Exit 10 Exxon  
 Address: RT 219 Exit 10 1-80  
RR #3 Box 274  
Dubois PA 15801  
 Phone No.: 814-371-9530

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100.90
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

Name: B-K Asphalt  
 Address: 64 1st St Falls Creek PA  
 Driver Name Rodger L. Walk  
 Phone No. 321-5247  
 Truck No. 1 Trailer No.   
 Vehicle License No./State PA 10-0103  
Rodger L. Walk 12-12-01  
 Driver Signature (Acknowledge Receipt of Materials) Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_

**Section III**

**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, INC.  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

20.43

Date

Name of Authorized Agent

Signature

Indicate any Discrepancies: \_\_\_\_\_

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this document are fully and accurately described above by proper shipping name, are classified, packed, marked, and labeled, and are in compliance in every respect for transport by highway according to applicable international and domestic regulations.

Removal Contractor's Name and Title (Print, Type): \_\_\_\_\_

Removal Contractor's Signature

Date

State and Address of Responsible Party: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_



filed 11/19/2001

**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

NO118796

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: RT. 219 Exit 16 I-80  
R.D. #3 DuBois Pa. 15801  
Box 314  
Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
Address: RT 219 Exit 16 I-80  
R.D. #3 Box 274  
DuBois Pa. 15801  
Phone No.: 814-371-9520

County CLEARFIELD

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

**GENERATOR'S CERTIFICATION:** I hereby certify that the above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

**Section II**

**TRANSPORTER I**

Name: GROVES Exc.  
Address: R.D. #1 FALLS CREEK Pa.  
Driver Name: Bernie Fye  
Phone No. 814-371-3037  
Truck No. 5 Trailer No.   
Vehicle License No./State BYB YBY 2979

Driver Signature (Acknowledge Receipt of Materials)

12-17-01

Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name: \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

Site Information: **SUPERIOR GREENTREE LANDFILL, INC.**  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

70.61

RL

12-17-01

Date

Name of Authorized Agent

Signature

In Case of Discrepancies:

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

**Section V CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are described, packed, marked, and labeled in such a manner as to be in proper condition for transport by highway according to applicable International and Federal regulations.

Removal Contractor's Name and Title (Print/Type): \_\_\_\_\_

Removal Contractor's Signature

Date

Printed Address of Consignee/Shipper: \_\_\_\_\_

Printed Address of Consignee/Shipper: \_\_\_\_\_

**BROCKWAY ANALYTICAL AND  
ENVIRONMENTAL SERVICES, LTD.**

110 McCracken Run Road  
DuBois, PA 15801

814-371-6030 Fax: 814-375-0823

### *n voice*

Invoice Number:

L4145

Invoice Date:

Jan 4, 2002

Page:

1

**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID**

N 6551-2

### Customer PO

### Payment Terms

### Notes and References

Sales Rep ID

**Project Number**

**Discount Date**

**Due Date**

2/3/02

### Description

5071

LAB ORDER: 0112018

COLLECTION DATE: 12/7/01

Quantity	Item	Description	Unit Price	Extension
1.00	LAB ANALYSIS		150.00	150.00

Overdue invoices are subject to finance charges.

March 13, 2002

Edward C. Miller  
R.D.#3, Box 274  
DuBois, PA 15801

Backhoe & Trucking \$930.00

please make check payable to: Alan Groves  
R.D.#1, Box 252  
Falls Creek, PA 15840

paid  
3/20/02  
cash/check

Groves

**BRICKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**

110 McCracken Run Road  
DuBois, PA 15801

814-371-6030 Fax: 814-375-0823

*Invoice*

Invoice Number:

L2963

Invoice Date:

Jul 11, 2001

Page:

1

*Part**12/11***Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID****Customer PO****Payment Terms**

M6613

Net 30 Days

**Sales Rep ID****Project Number****Discount Date****Due Date**

6613.01.01

7/11/01

8/10/01

**Description**

Soil  
Lab Order: 0106136  
Collection Date: 6/19/01

Quantity	Item	Description	Unit Price	Extension
1.00		Lab Analysis	1,445.00	1,445.00

BAES APPROVAL

*DM*

Subtotal	1,445.00
Sales Tax	
Total Invoice Amount	1,445.00
Payment Received	0.00
<b>TOTAL</b>	<b>1,445.00</b>

**Check No:**

Overdue invoices are subject to finance charges.

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.****110 McCracken Run Road  
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823***P2/26**12/12/2001***Invoice****Invoice Number:**

L3094

**Invoice Date:**

Jul 27, 2001

**Page:****Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Customer ID**

M6613

**Customer PO****Payment Terms**

Net 30 Days

**Sales Rep ID****Project Number****Discount Date****Due Date**

7/27/01

8/26/01

**Description**

Soil Analysis  
Lab Order: 0107126  
Collection Date: 7/19/01

<b>Quantity</b>	<b>Item</b>	<b>Description</b>	<b>Unit Price</b>	<b>Extension</b>
1.00		Lab Analysis	540.00	540.00

BAES APPROVAL

*DMY***Check No:**

<b>Subtotal</b>	540.00
<b>Sales Tax</b>	
<b>Total Invoice Amount</b>	540.00
<b>Payment Received</b>	0.00
<b>TOTAL</b>	540.00

Overdue invoices are subject to finance charges.

# S.M.S.

## TANK DISPOSAL COMPANY, INC.

RR #3 BOX 291, PUNXSUTAWNEY PA 15767-8703 ♦ 814/583-7605 ♦ FAX 814/583-7606

04 June 2001

PROPOSAL  
STORAGE TANK SUPERVISION  
REAL ESTATE DOCUMENTATION

*Prepared for:*  
Edward C. Miller  
DuBois, PA 15801

♦ ♦ ♦ ♦ ♦

WE HEREBY PROPOSE, to furnish material and labor-complete in accordance with the specifications below, for the sum of:

Two Thousand Two Hundred Fifty and XX/100 Dollars.....\$2,250.00

♦ ♦ ♦ ♦ ♦

THIS PROPOSAL, made by S.M.S. TANK DISPOSAL CO., INC., hereinafter referred to as "CONTRACTOR", to EDWARD C. MILLER, hereinafter referred to as "OWNER", under the terms as stated herein, CONTRACTOR will do and complete the following work:

LOCATION: EXIT 16 EXXON  
PADEP #:17-25261

**STORAGE TANKS INVOLVED WITH PROJECT:**

18032	17-25260	001	19870601	8000	GASOLINE	CIU
18033	17-25260	002	19870601	8000	GASOLINE	CIU
18034	17-25260	003	19860501	4000	GASOLINE	CIU

**SPECIFICATIONS OF QUOTED PROJECT:**

1. Excavation and preparation of site area for tank removal to be completed by SUBCONTRACTOR chosen by OWNER including backfill and reseeding. PA One Call to be completed by SUBCONTRACTOR as required by state laws. CONTRACTOR shall provide certified PADEP inspector during the removal process and instruct SUBCONTRACTOR hired by OWNER on the necessary procedures and operations for tank removal process / remediation as necessary.
2. OWNER to blind all lines & Lockout/Tagout per requirements as set forth by the Department of Labor, Occupational Safety & Health Administration, 29 CFR Part 1910.147.
3. CONTRACTOR take twenty-four (24) samples underneath storage vessels, lines, dispensers, and stockpiles to confirm any environmental impact. Samples analyzed for

*144/24/01 \$55.00 17-25261 145.64*

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

Miller's Motel  
R.D.#3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	TOTAL	\$4,750.00
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1½% per month after 30 days PAID BY CHECK NO.

S.M.S. TANK DISPOSAL CO., INC.

RD #3 BOX 291  
PUNXSUTAWNEY, PA 15767-8703  
(814) 583-7605

DEPOSIT BANK  
BROCKWAY OFFICE 04  
BROCKWAY, PA 15824  
60-418513

004891

Two Hundred \$ 200.00 Dollars

PAY  
TO THE PENNSYLVANIA  
ORDER  
OF  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

FACILITY # 17-25261

DATE	AMOUNT
06/07/01	\$ 200.00

MP

RECEIVED  
SIXTY EIGHT MILLION  
DOLLARS AND FIFTY  
CENTS

004891 10313041601 041750839611

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

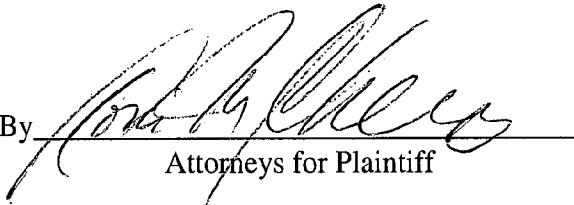
EDWARD C. MILLER, :  
Plaintiff :  
: :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of January, 2004, a true and correct copy of Plaintiff's Pre-Trial Memorandum was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitinger & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Plaintiff

Dated: January 15, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: No. 2000-355

v. :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

Attorney for Plaintiff: Toni M. Cherry, Esq.  
Attorney for Defendants: Anthony G. DeBoef, Esq.

PRE-TRIAL MEMORANDUM OF DEFENDANTS J.V. INC.,  
D/b/a BEARD OIL and SHANER ENERGY, INC.

AND NOW comes Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., by and through their attorney, Anthony G. DeBoef, of Mitinger and DeBoef, and submits the following Pre-Trial Memorandum:

Factual Statement of the Case

The instant matter was commenced in or about March 2000 by the filing of a Complaint. Defendants, on or about April 14, 2000, filed an Answer and New Matter. Approximately two years later, Plaintiff filed a Reply to New Matter and, in a letter dated November 14, 2002, requested the Prothonotary of Clearfield County to place the instant matter on the non-jury trial list.

This matter arises from a lease dispute between the above-

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Page 1 of 6

JAN 13 2003

COURT ADMINISTRATOR'S  
OFFICE

referenced parties. Plaintiff, in his Complaint, requests judgment in his favor in the amount of Nineteen Thousand Seven Hundred and Fifty Dollars (\$19,750.00) plus costs and interest. Plaintiff asserts that, under the terms of the alleged lease, he is owed back rent, damages and cleaning costs. Specifically, Plaintiff alleges rent is outstanding for the last three (3) months of 1997 and twelve (12) months in both 1998 and 1999.

In contrast, Defendants assert that the lease was terminated on or about September 12, 1997. Specifically, Defendants contend their legal obligation under the terms of the lease was terminated due to the inability to acquire the necessary permits for operation of the premises. Additionally, Defendants assert that the clear and unambiguous terms of paragraph seventeen (17) of the lease precludes Plaintiff from seeking the instantly requested relief. Finally, Defendant Shaner Energy, Inc., asserts it has no nexus in the Complaint filed by Plaintiff to Beard Oil.

In sum, the instant matter involves the interpretation of lease agreement.

#### List of Exhibits

As stated at the Call of the List and set forth herein, Defendants believe there is still outstanding discovery, potentially including interrogatories and a deposition.

Defendants were hindered in their ability to proceed with discovery due to Plaintiff's lapse in moving forward with this case. Pending the completion of the aforementioned discovery, Defendants anticipate the filing of Pre-Trial Motions, most likely including a Motion for Judgment on the Pleadings and/or a Motion for Summary Judgment following the completion of discovery.

At trial, Defendants anticipate their exhibit list to include the lease as well as any other documents which may come to light through discovery. Due to the fact there is pending discovery, Defendants respectfully request this Honorable Court grant Defendants the right to submit and amend their exhibit list at the close of discovery and after the filing of Pre-Trial Motions.

At this time, Defendants do not anticipate the calling of an expert witness at trial in the matter but reserve the right to do so pending the completion of discovery.

**Witness List**

As set forth above, due to the incomplete discovery, Defendants respectfully request the right to submit and/or amend their witness list pending the completion of discovery and the filing of Pre-Trial Motions in this matter.

Legal Theory of Case

At this time, Defendants believe the instant matter involves the interpretation of the alleged lease between the parties.

Pending the completion of discovery, Defendants do not anticipate any extraordinary evidentiary problems and/or special points for charge.

Time of Trial

While discovery has not yet been completed and Defendants anticipate the filing of Pre-Trial Motions, Defendants anticipate that trial in the instant matter would last, at the most, four (4) to five (5) hours.

Settlement

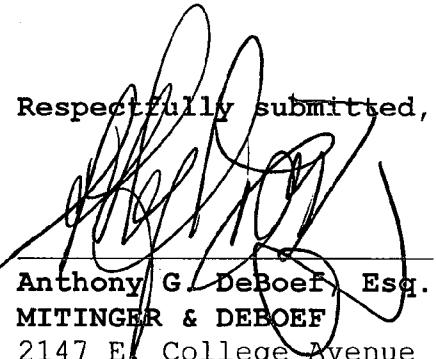
Although settlement discussions have occurred at the time of the filing of the Complaint, said discussions have not been productive.

Right to Amend

Defendants respectfully reserve the right to amend the instant Pre-Trial Memorandum at any time up to and including the time of trial.

Respectfully submitted,

BY:

  
Anthony G. DeBoef, Esq.  
MITTINGER & DEBOEF  
2147 E. College Avenue  
State College, PA 16801  
(814)-231-4052

Dated:

1/18/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

EDWARD C. MILLER, :  
Plaintiff :  
: :  
: No. 2000-355  
v. :  
: :  
J.V. INC., d/b/a BEARD OIL, :  
and SHANER ENERGY, INC., :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Pre-Trial Memorandum of Defendants J.V. Inc., d/b/a Beard Oil and Shaner Energy, Inc., was served upon Toni M. Cherry, Esq., counsel for Plaintiff and upon the Clearfield County Court Administrator's Office, by mailing the same via United States First Class Mail, postage prepaid, by depositing the same in the United States Mail, addressed as follows

TONI M. CHERRY ESQ.  
Gleason, Cherry and Cherry  
P.O. Box 505  
DuBois, PA 15801-0505

COURT ADMINISTRATOR'S OFFICE  
230 East Market Street  
Suite 228  
Clearfield, PA 16830

By:

MITINGER & DEBOEF

Anthony G. DeBoef, Esq.  
2147 E. College Avenue  
State College, PA 16801  
(814)-231-4052

Dated: 1/10/02



*Ruth M. Mays*

LAW OFFICES  
**GILLASON, CHERRY & CHERRY, L.L.P.**

P. O. Box 505  
DuBois, Pennsylvania 15801-0505

ONE NORTH FRANKLIN STREET

ATTORNEY FOR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,  
Plaintiff

vs.

J. V., INC., d/b/a BEARD OIL, and  
SHANER, ENERGY, INC.,  
Defendants

: No. 00 - 355 C.D.  
:  
: Type of Case: ASSUMPSIT  
:  
: Type of Pleading: PLAINTIFF'S PRE-  
: TRIAL MEMORANDUM  
:  
: Filed on Behalf of: EDWARD C. MILLER,  
: Plaintiff  
:  
: Counsel of Record for this Party:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

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Jan 10 2003

COURT ADMINISTRATOR'S  
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

EDWARD C. MILLER, :  
Plaintiff :  
vs. : No. 00 - 355 C.D.  
: :  
J. V., INC., d/b/a BEARD OIL and :  
SHANER ENERGY, INC., :  
Defendants :  
:

**PLAINTIFF'S PRE-TRIAL MEMORANDUM**

**1. Statement of Facts:**

This is a suit by a commercial landlord against a tenant to recover rent owing under the balance of a service station facility lease after the tenant vacated the premises without cause.

Plaintiff, EDWARD C. MILLER, is the owner of a service station facility erected upon land located adjacent to Route 219 South, north of the City of DuBois in the Township of Sandy, Clearfield County, Pennsylvania. Plaintiff entered into a Lease with Defendant, J. V., INC., d/b/a BEARD OIL, of R. D. #4, Clearfield, Pennsylvania, on December 31, 1992, whereby J. V., INC., d/b/a BEARD OIL, agreed to lease the premises for an initial term of ten years from December 31, 1992, with a minimum rental of \$700.00 per month and a maximum rental of \$1,000.00 per month, based on a calculation of 1¢ per gallon on all gasoline and diesel gallonage delivered to the premises. The Lease was drawn by the Defendant.

Defendant, SHANER ENERGY, INC., is the successor in interest to BEARD OIL COMPANY, having acquired the same and assumed all of its responsibilities.

Defendant, J. V., INC., d/b/a BEARD OIL, took possession of the leased premises on December 31, 1992, and continued in possession until August 21, 1998, when it notified Plaintiff by letter that it no longer desired to remain in possession of the property and delivered to Plaintiff the keys.

The last rental check paid by Defendants to Plaintiff was issued on September 11, 1997, for the month of September of 1997, and no further rental payments were made on the Lease despite the fact that Defendants remained in possession of the property until August 21, 1998, and despite the fact that the Lease terms obligated Defendants to rent the premises until December 31, 2002. Accordingly, Plaintiff seeks damages in the form of back rent owed on the Lease Agreement for the remainder of 1997 and for all of 1998, 1999, 2000 and 2001. Plaintiff was finally able to secure another commercial tenant commencing January 1, 2002.

In addition, Plaintiff seeks damages in the form of reimbursement for repairs made to the premises for damage caused by the tenant as well as for the costs of having to remove tanks that Defendants installed and had permitted to leak in violation of law.

**2. List of Exhibits:**

- (a) Lease Agreement;
- (b) Copies of bills and invoices for repairs made;
- (c) Report of site assessment from S.M.S. Tank Disposal Co., Inc.;
- (d) Any and all other exhibits determined to be necessary at trial by the Plaintiff with adequate notice thereof to Defendants.

**3. Witnesses to be Called on Behalf of the Plaintiff:**

- (a) Plaintiff, EDWARD C. MILLER, R. D. #3, Box 274, DuBois, PA 15801;
- (b) WILLIAM E. KUNTZ, S.M.S. Tank Disposal Co., Inc., R. R. #3, Box 291, Punxsutawney, PA 15767-8703;
- (c) Individuals who performed the work to repair premises and to remove tanks;
- (d) Any witnesses listed on Defendants' Pre-Trial Narrative;
- (e) Plaintiff reserves the right to supplement the list of witnesses and to call additional witnesses with due notice in advance of trial to Defendants if any should become known to Plaintiff.

**4. Statement of Legal Theory upon which Claim is Predicated:**

When a lease agreement is drafted by the tenant, the language thereof is properly construed against the tenant as draftor. Darrt Development Company v. Tri-State Asphalt Corporation, 609 A.2d 171 (1992). The language of the Lease provides for an initial ten-year term. There has been no allegation that Plaintiff has breached the terms of the Lease Agreement. It is the law that a non-breaching landlord whose tenant has abandoned the property in violation of the lease has no duty to mitigate damages. Stonehedge Square Limited Partnership v. Movie Merchants, Inc., d/b/a Movie Merchants, \_\_\_ Pa. \_\_\_, 715 A.2d 1082 (1998). Since Plaintiff, as the commercial landlord, has been unable to find a suitable tenant for this premises until January of 2002, he is entitled to receive rental payments from Defendants through that period of time in accordance with the terms of the Lease Agreement.

In addition, Plaintiff is entitled to be made whole and to be reimbursed for any damages he sustained as the result of the damages Defendants caused to the subject premises. In particular, he is entitled to receive reimbursement for the monies expended in order to repair the premises and for the cost of removal of tanks that leaked as a result of the damage caused by Defendants.

**5. Brief Description of Damages:**

Plaintiff claims damages for unpaid rent in the amount of \$35,700.00; damages for expenses incurred in the removal of the tanks in the amount of \$17,990.26 and reimbursement for repairs and cleaning to the subject premises necessitated because of the condition in which Defendants left the premises in the amount of \$850.00, together with interest and costs of suit.

**6. Extraordinary Evidentiary Problems:**

None.

**7. Stipulations:**

None to date.

**8. Special Points for Charge:**

Because this is a non-jury trial, no points for charge are required. It is anticipated that Plaintiff will provide the Court with a Memorandum of Law prior to trial and Proposed

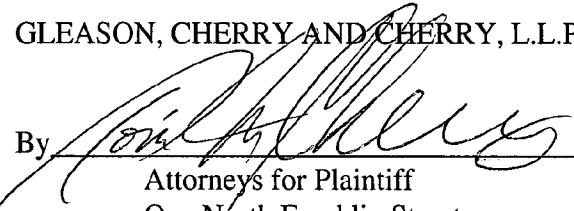
Findings of Fact and Conclusions of Law prior to trial if requested by the Court or, otherwise, after the taking of testimony.

**9. Estimated Time for Trial:**

One (1) day.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By, 

John P. Gleason  
Attorneys for Plaintiff  
One North Franklin Street  
P. O. Box 505  
DuBois, PA 15801  
(814) 371-5800

Dated: January 10, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

EDWARD C. MILLER,	:
Plaintiff	:
vs.	:
	: No. 00 - 355 C.D.
J. V., INC., d/b/a BEARD OIL and	:
SHANER ENERGY, INC.,	:
Defendants	:

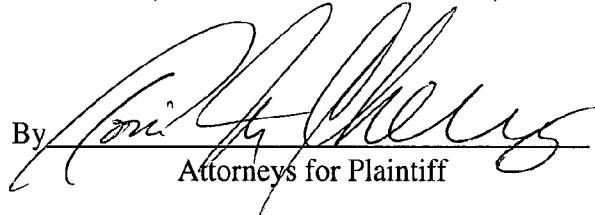
**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of January, 2003, a true and correct copy of Plaintiff's Pre-Trial Memorandum was served upon ANTHONY G. DeBOEF, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

ANTHONY G. DeBOEF, ESQ.  
Mitterer & DeBoef  
Attorneys at Law  
2147 East College Avenue  
State College, PA 16801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Plaintiff

Dated: January 10, 2003

*Original*

## AGREEMENT

P.01  
EXIT 16, Du No. 3  
Miller to Beard Oil  
12/31/92 - 12/31/02

THIS AGREEMENT, made and entered into this 31<sup>st</sup> day of December, 1992, by and between EDWARD C. MILLER, of Sandy Township, Clearfield County, Pennsylvania, hereinafter called the "Lessor",

A  
N  
D

J.V., INC. d/b/a BEARD OIL, of RD #4, Clearfield, Pennsylvania, hereinafter called the "Lessee".

## WITNESSETH:

That the Lessor does hereby demise and let unto the Lessee all of that certain piece of parcel of ground situate in the Township of Sandy, Clearfield County, Pennsylvania, being bounded and described as follows:

BEGINNING at a point 250 feet North, adjacent Route 219 right of way, of South East corner of Martha Francis Miller property; thence in a straight line, at a 90 degree angle to Route 219, 125 feet West to a second point; thence in a straight line at a 90 degree angle to South boundary and parallel to Route 219, 157 feet North to a third point; thence in a straight line, at a 90 degree angle to West boundary and parallel to South boundary, East 125 feet to a fourth point; thence in a straight line, adjacent Route 219 right of way, 157 feet South to point of beginning.

The above described parcel of land having erected thereon a service station facility, it being the intention to lease that portion of the property of the Lessors which is now used as a service station facility. Together with the right of ingress and egress upon said property.

TO HAVE AND TO HOLD said premises for a term of ten (10) calendar years from the date hereof. Upon the expiration of said ten year period, it is agreed that this agreement shall be automatically renewable for a five (5) year period, then for a one year period and so on from year to year unless either the Lessor or the Lessee herein shall desire to renegotiate the terms of the within agreement. The desire to renegotiate the terms of the agreement shall be given by either the Lessor or the Lessee in writing at least thirty (30) days in advance. Renegotiating of the terms of this agreement shall not be permitted until the expiration of the initial ten (10) year period. The rental for the said premises shall be payable in advance and payable at the rate of One Cent (\$.01) per gallon on all Gasoline and Diesel galionage delivered to the premises with a minimum rental of Seven Hundred and no/100 (\$700.00) Dollars per month and a maximum rental of One Thousand and no/100 (\$1,000.00) Dollars per month. Should there be a restriction or embargo on the number of gallons available to the Lessee, then the rental of One Cent (\$.01) per gallon shall be proportionately reduced. The Lessee, however, shall be liable to pay the minimum base rental of Seven Hundred and no/100 (\$700.00) Dollars per month to the Lessor.

The Lessor and Lessee further expressly covenant and agree as follows:

1. That the Lessee has the right to construct or alter building or buildings on said premises and pave the service area at its own obligation and expense, after first obtaining consent of the Lessor.

2. That both parties to this instrument shall have the right and option at the exact expiration of ten (10) calendar years from date, or any renewal thereof, and upon giving at least ninety (90) days written notice of their intention to do so, to terminate this agreement. In the event of any cancellation or termination of this Lease by the Lessor, the Lessor agrees to pay the Lessee the value of the driveways, pump islands and fill and curbing. In addition, the Lessor shall have an option to purchase all other machinery, apparatus and equipment furnished by the Lessee and located on said premises at the price of installed operating equipment as used by major oil companies in effect on the date of purchase provided sixty (60) days written notice is given to the Lessee. It is expressly understood that the value to be paid by the Lessor for any of the items mentioned herein shall be the cost of the same as paid by the Lessee, less depreciation on equipment of driveways, pump islands, etc. from the date of installation of the same of July, 1976, or any later date on replacement or new equipment. In any event, the purchase price shall not exceed the book value of the item as carried on the books and records of Lessee.

3. Should this lease be terminated by the Lessee, it shall have the right to remove all movable above the ground equipment, and in such case, the said Lessee surrenders unto the Lessor all its right, title and interest in the improvements permanently attached to the ground or buried underground.

4. In the event the said Lessor should desire to make a bonafide sale of the premises to any one other than the said Lessee, the said Lessee shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale, to purchase said premises upon the same terms and conditions of sale which have been offered to the said Lessor.

5. In the event the said Lessee should desire to make a bonafide sale or assignment of its interest in this agreement to anyone other than the said Lessor, the said Lessor shall have the exclusive right and option, within thirty (30) days after written notification of such proposed sale or assignment, to purchase Lessee's interest in this agreement upon the same terms and conditions of sale or assignment which have been offered to the said Lessee.

6. The Lessee shall pay the rent as aforesaid and all charges for water, gas and electricity supplied to said Lessee and at the termination of this lease, or any renewal or extension thereof, quit and surrender the said premises to the Lessor in as good a condition as the same now are, reasonable wear and tear and damage by the elements or conditions beyond Lessee's control excepted. The Lessee herein shall be liable to pay that portion of the real estate taxes which apply to the land or premises hereby leased.

7. Should the Sandy Township Sewer Authority assess the land hereby leased with a sewer assessment or tap-in fee, the Lessee will assume the responsibility thereof, provided, however, if the lease is terminated, the Lessor or his assignee or new Lessee shall reimburse the Lessee herein, for that portion of the cost remaining based on twenty (20) year amortization.

8. The Lessee shall comply with all applicable laws and ordinances relating to the health, nuisance and fire, and save the Lessor harmless from non-compliance with same by the said Lessee.

9. The Lessee may erect and install on said premises such buildings, improvements and equipment as it may require for the conduct of its business therefrom, may cut curbs, remove trees, construct, maintain and use driveways over, upon and across said premises for ingress and egress of vehicles and persons and generally exercise all easements and rights incident to the conduct of a general service station business, all of which operations by the Lessee shall be subject to and in compliance with municipal, state and federal regulations affecting the same. The Lessee shall maintain and keep in repair all sidewalks, curbs and its driveway or and along the said premises.

10. All buildings and permanent improvements placed upon and in the premises shall become a part of the real estate immediately and shall not be removed, provided, however, that all detachable equipment and fixtures installed or owned by the Lessee that can be removed without damage to the buildings shall not become a part of the real estate but shall be and remain the property of the Lessee and it may detach or remove the same from the premises during the term of this lease or any renewal thereof. In the event the said Lessee should fail or neglect to remove any or all of the said equipment or fixtures before the termination of this lease or any subsequent renewal of the same, the said property not so removed shall thereupon become a part of the real estate and shall not thereafter be removed by the Lessee.

11. If at any time after the original ten (10) year term of this lease or any renewal or extension thereof, the Lessee or any of its subtenants are unable to obtain any license or permit as required by law or municipal ordinance for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, on said premises, or for the erection and operation thereon of a gasoline service station of the type and capacity applied for and with driveways by Lessee to and from all streets and highways abutting on said premises, or is unable to obtain the renewal of any such licenses or permit which may have been granted for any purpose, or if any existing license or permit shall be revoked or cancelled or if the Lessee is prevented by operation of law, or by damage or destruction to the improvements on the premises, or otherwise enjoined, from using the said premises or any part of the same for the storage and sale of gasoline or other petroleum products or by-products or other motor fuel, the Lessee shall have the right, at its option, to terminate this lease on thirty (30) days notice to the Lessor.

12. If any part of the premises shall be taken for public or quasi-public use by condemnation proceedings, and which taking adversely affect the business, the Lessee, in addition to other rights granted by law, shall have the right, at its option, to terminate this lease upon ten (10) days notice to the Lessor or any time within thirty (30) days after the Lessee shall be required to surrender possession of the part so taken.

13. If the Lessor shall fail to pay when due any rent, tax assessments, interest on or principal of any mortgage or other obligation, expense or charge, or perform any act for which the Lessor is responsible, or which is necessary to be paid or performed by the Lessor, in order that the Lessee may have, hold and enjoy the premises, the Lessee may pay or perform the same and charge the Lessor with the cost therefor and deduct such cost from any rental or other sum that might be due or become due from the Lessee to the said Lessor, and in addition thereto, the Lessee shall be entitled to all right of subrogation granted by the law, and in the event of any foreclosure of any mortgage or lien, the Lessee may purchase the premises for its own account.

14. In the event the Lessee shall be in default of any payment of rent herein provided, the Lessor may thereupon give to the said Lessee ten (10) days written notice of such default and at the expiration of said time the Lessee, if the amount of rental still remains unpaid, does authorize any attorney of record in the State of Pennsylvania to appear for it and to confess judgment against it for said amount of rental unpaid and interest, with five (5%) percent attorney's commission and with costs for the collection of same, waiving all exemption laws in force or hereafter to be passed and/or upon the said default and notice in writing as aforesaid does further authorize any such attorney to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which said judgment a writ of possession may be issued forthwith.

15. Upon the failure of the Lessee to keep and perform any other of the covenants and provisions herein contained, the Lessor may thereupon give to the said Lessee twenty (20) days written notice by registered mail specifying such failure and, at the expiration of the said time if the said default or failure has not then been corrected, the Lessee does further authorize any attorney of any Court of Record to appear for it and to confess judgment in ejectment against it in any Court of Record in the State of Pennsylvania for the recovery of possession of said premises upon which judgment a writ of possession may issue forthwith.

16. Lessee agrees to be responsible for and to relieve and hereby relieves the Lessor from all liability by reason of any injury or damage to any person or property in or on the demised premises and on the sidewalks, driveways and approaches to the said premises resulting from any accident or from any cause of reason whatsoever, except damages resulting from acts of God or from circumstances beyond the control of the Lessee.

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller  
Edward C. Miller

BEARD OIL COMPANY

By Dale Haffie  
Title Vice-President

ATTEST:

J. A. Alanson  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of \_\_\_\_\_, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

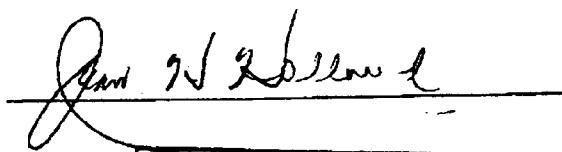
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :  
  
On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Daniel Parise, who acknowledged himself to be the Vice President of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notarial Seal  
Jean H. Holland, Notary Public  
Smithfield Twp., Huntingdon County  
My Commission Expires March 15, 1996  
Member, Pennsylvania Association of Notaries

17. The Lessor shall and will save, indemnify and keep harmless the Lessee of and from any and all claims for rentals, penalties, liabilities of any kind, and prosecutions of every kind and character, arising in law or in equity, or elsewhere as a consequence of this lease.

18. The covenants and agreements contained in the lease executed herewith are binding upon the Lessor and Lessee and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have affixed their hands and seals and/or caused its or their corporate name and seal to be affixed the day and year aforesaid.

Edward C. Miller

Edward C. Miller

BEARD OIL COMPANY

By Dale H. Loffie

Title Vice-President

ATTEST:

J. L. Alamon  
Secretary

COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared EDWARD C. MILLER, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

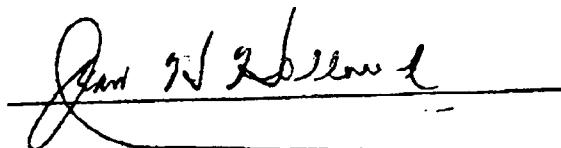
COMMONWEALTH OF PENNSYLVANIA:

: SS

COUNTY OF CLEARFIELD :

On this 24th day of December, 1992, before me, the undersigned officer, personally appeared Dale D. Parise, who acknowledged himself to be the Vice President of BEARD OIL COMPANY, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notarial Seal
Jean H. Holland, Notary Public
Smithfield Twp., Huntingdon County
My Commission Expires March 15, 1996

Member, Pennsylvania Association of Notaries

Grave		*
Grave	—	4,7 5 0.0 0
	—	0 8 0 0 0
S.M.S.	—	0 3 0 0 0
Landfill	—	2,6 0 0 0 0
Brockway	—	1,9 5 0 0 0
Brockway	0512	2 0 0 0 0
	—	1 5 0 0 0
S.M.S.	—	1,3 2 5 0 0
Paving	—	3,6 0 0 0 0
Brockway	—	1,4 4 5 0 0
	1	7,4 5 0.2 6 *
		17,45026
Brockway		540 0 0
		<u>17,99026</u>

• Brooksville, FL  
352-796-7241

• Kosmosdale, KY  
502-933-0122

• Knoxville, TN  
423-541-5500

• Pittsburgh, PA  
412-771-5513

## South wall

- #1 - Heater By L Shaped window  
Frost Broken At Heater coil
- #2 - Pipes cut with Hacksaw At End  
of Heater coil At L Shaped window
- #3 - Heater line in womens Rest Room  
Broken where it goes through  
Concrete wall
- #4 - water meter Broken on Bottom
- #5 - Pressure Flow Valve on west wall  
Above Boiler Leaking may be Broken
- #6 - Drain in Bottom of Sink in womens  
Room Broken.
- #7 - Faucets in womens Room leaking  
Around knobs.
- #8 - Line going to womens Commode.  
Pushed Apart and leaking

• Victorville, CA  
714-985-4000

• Fairborn, OH  
513-878-8651

• Lyons, CO  
303-758-1334

• Odessa, TX  
915-385-2800

• Special Products Group  
800-762-0040

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2076

REMITTER  
W. Edward Miller

60-1013/433

May 13, 2002

PAYABLE TO

B.K. ASPHALT PAVING, INC.

3,600.00

NOT NEGOTIABLE  
\$3,600.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#002076# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1893

REMITTER  
W. Edward Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

BROCKWAY ANALYTICAL &amp; ENVIRONMENTAL SERVICES, LTD.

1,985.00

NOT NEGOTIABLE  
\$1,985.00

MEMORANDUM

## CASHIER'S CHECK

FOR

#001893# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1903

REMITTER

60-1013/433

12-18-01

PAYABLE TO

SUPERIOR GREENTREE LANDFILL, LLC

2,665.26

NOT NEGOTIABLE  
\$2,665.26

MEMORANDUM

## CASHIER'S CHECK

FOR

#001903# 1043310139# 11210003#

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1754

REMITTER Miller

60-1013/433

June 22, 2001

PAYABLE TO

TANK DISPOSAL COMPANY, INC.

1,325.00

NOT NEGOTIABLE

110001113254924

MEMORANDUM

CASHIER'S CHECK

FOR

11001754 10433101390 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



2014

REMITTER Edward Miller/backhoe &amp; trucking

60-1013/433

March 20, 2002

PAYABLE TO

ALAN GROVES

980.00

NOT NEGOTIABLE

110001119800004

MEMORANDUM

CASHIER'S CHECK

FOR

11002014 10433101390 11210003

## PURCHASER'S RECEIPT - RETAIN FOR YOUR RECORDS



1892

REMITTER Edward Miller

60-1013/433

Dec. 8, 2001

PAYABLE TO

S.M.S. TANK DISPOSAL CO., INC.

350.00

NOT NEGOTIABLE

11001892 10433101390 11210003

MEMORANDUM

CASHIER'S CHECK

FOR

11001892 10433101390 11210003



Superior Greentree Landfill, LLC  
635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

INVOICE

ED MILLER  
RR#3 BOX 276  
DU BOIS, PA 15801

DATE: 12/17/01

TICKET #	DATE	TONNAGE	RATE	CHARGE
117654	12/17/01	18.32	\$18.00	\$329.76
117655	12/18/01	20.48	\$18.00	\$368.64
117692	12/19/01	15.62	\$18.00	\$281.16
117705	12/20/01	17.48	\$18.00	\$314.64
117746	12/21/01	17.52	\$18.00	\$315.36
117754	12/22/01	17.61	\$18.00	\$316.98
117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

Paid 12/18/01  
by check

CURRENT	31 - 60 DAYS	61 - 90 DAYS	OVER 90 DAYS
---------	--------------	--------------	--------------

We reserve the right to suspend service without notice on any past due account.

Account  
Balance Due *2665.26*

INVOICE NO.  
PAGE  
DATE  
CUSTOMER NO.  
SITE NO.  
REFERENCE NO.  
REMARKS



Please remit to: Superior Greentree Landfill, LLC  
635 Toby Road Kersey, PA 15846  
Tel: (814) 265-1744  
(800) 257-5705  
Fax: (814) 265-8745

AMOUNT OF  
REMITTANCE

CHECK NO.

PLEASE RETURN THIS PORTION WITH REMITTANCE

**Superior Greentree Landfill, LLC**

635 Toby Road Kersey PA, 15846  
Tel: (814) 265-1744 Fax: (814) 265-8745  
(800) 257-5705

**INVOICE**

**ED MILLER**  
**RR#3 BOX 276**  
**DU BOIS, PA 15801**

**DATE: 12/17/01**

TICKET #	DATE	TONNAGE	RATE	CHARGE
117654	12/17/01	18.32	\$18.00	\$329.76
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117705	12/20/01	17.48	\$18.00	\$314.64
117746	12/21/01	17.52	\$18.00	\$315.36
117754	12/22/01	17.61	\$18.00	\$316.98
117778	12/23/01	20.43	\$18.00	\$367.74
117792	12/24/01	20.61	\$18.00	\$370.98
<b>TOTALS</b>		<b>148.07</b>		<b>\$2,665.26</b>

CURRENT

31 - 60 DAYS

61 - 90 DAYS

OVER 90 DAYS

Account  
Balance Due

*2665.26*

We reserve the right to suspend service without notice on any past due account.

Please remit to: **Superior Greentree Landfill, LLC**

635 Toby Road Kersey, PA 15846

Tel: (814) 265-1744  
(800) 257-5705  
Fax: (814) 265-8745

AMOUNT OF  
REMITTANCE

CHECK NO.

INVOICE NO.

PAGE

DATE

CUSTOMER NO.

SITE NO.

REFERENCE NO.

REMARKS



PLEASE RETURN THIS PORTION WITH REMITTANCE



65540  
SKP/ NO. 149886

**NON-HAZARDOUS**  
**SPECIAL WASTE & ASBESTOS MANIFEST**

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

(X)  
Signature

(X)  
Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

**TRANSPORTER II**

Name: Rodger L. Walk - B-K- Roving  
 Address: 225 Jackson St. Reynoldsville Pa.  
 Driver Name Rodger L. Walk  
 Phone No. 657-5300 371-5747  
 Truck No. 1 Trailer No.   
 Vehicle License No./State YDV-0103  
Rodger L Walk 12-17-01  
 Driver Signature (Acknowledge Receipt of Materials) Date

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_  
 Driver Signature (Acknowledge Receipt of Materials) Date

Total Truck  
Net Weight  
In Tons  
20.48

**Section III**

**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744  
 Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

RL

12-17-01

Date

Name of Authorized Agent

Signature

Indicate and Discrepancies: \_\_\_\_\_

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST

6100

NO. 149887

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

## GENERATOR

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois PA 15801  
 Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois PA 15801  
 Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

## Section II

## TRANSPORTER

## TRANSPORTER I

Name: GROVES EXC.  
 Address: R.D. 1 FALLS CREEK, PA.  
 Driver Name Bennie Fife  
 Phone No. 814-371-3037  
 Truck No. 5 Trailer No. PA YBY-2979  
 Vehicle License No./State PA YBY-2979 Date 12-17-01  
 Driver Signature (Acknowledge Receipt of Materials)

## TRANSPORTER II

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_  
 Driver Signature (Acknowledge Receipt of Materials) Date

## Section III

## DESTINATION

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744  
 Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

Signature

Date

Total Truck  
Net Weight  
In Tons

18-32

Indicate and Discrepancies: \_\_\_\_\_

## Section IV

## ASBESTOS

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149888

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

 Signature

 Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER II**

**TRANSPORTER I**

Name: B-K Asphalt  
Address: 64 1st Falls Creek  
Driver Name: Rodger L. Walk  
Phone No.: 371-3747  
Truck No. 1 Trailer No. \_\_\_\_\_  
Vehicle License No./State: YDV-0103  
Driver Signature (Acknowledge Receipt of Materials) Rodger L. Walk Date 12-17-01

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name: \_\_\_\_\_  
Phone No.: \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State: \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials) \_\_\_\_\_ Date \_\_\_\_\_

Total Truck  
Net Weight  
In Tons

15.62

**Section III**

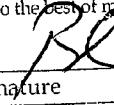
**DESTINATION**

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744  
Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Name of Authorized Agent

 Signature

Date 12-17-01

Indicate and Discrepancies: \_\_\_\_\_

**ASBESTOS**

Removal Contractor's Phone Number: \_\_\_\_\_

**Section IV**

Removal Contractor's Name: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_

% Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



## NON-HAZARDOUS

## SPECIAL WASTE &amp; ASBESTOS MANIFEST

NO. 149889

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

## Section I

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
 Phone No.: 814-371-9520

## GENERATOR

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
 Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  X  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

## Section II

## TRANSPORTER

## TRANSPORTER II

## TRANSPORTER I

Name: GROVES EXC  
 Address: R.D. #1 Falls Creek, Pa.  
 Driver Name Bernie Fye  
 Phone No. 814-371-3037  
 Truck No. 5 Trailer No. Y8Y-2979

Vehicle License No./State PA Date 12-17-01  
 Driver Signature (Acknowledge Receipt of Materials) Bernie Fye

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Driver Name \_\_\_\_\_  
 Phone No. \_\_\_\_\_  
 Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
 Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

## Section III

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies: \_\_\_\_\_

## ASBESTOS

Removal Contractor's Phone Number

Section IV

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Removal Contractor's \* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149890

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801  
Phone No.: 814-371-9520  
County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	
2.		
3.		
4.		
5.		
6.		
7.		
8.		

**Shipped in:**  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck X  
Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

 Signature

 Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

Name: B-K Asphalt  
Address: 64 1st Falls Creek  
Driver Name Rodger L. Walk  
Phone No. 371-5747  
Truck No. 1 Trailer No.   
Vehicle License No./State YDV-0103  
Rodger L. Walk 12-17-01

Driver Signature (Acknowledge Receipt of Materials)

Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

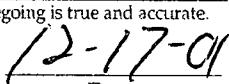
Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

 12-17-01

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies: \_\_\_\_\_

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's \* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_



**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO. 149891

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Generating Location: Exit 16 Exxon  
Address: Rt 219 Exit 16 I-80  
RR #3 Box 274  
DuBois, PA 15801

Phone No.: 814-371-9520

Phone No.: 814-371-9520 County Clearfield

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	256658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Shipped in:  
Rolloff \_\_\_\_\_  
Drums \_\_\_\_\_  
Truck  X  
Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER I**

Name: GROVES EXC.  
Address: R.D. #1 Falls Creek, PA  
Driver Name Bernie Fye  
Phone No. 814-371-3037  
Truck No. 5 Trailer No. \_\_\_\_\_  
Vehicle License No./State BYB 2979

Driver Signature (Acknowledge Receipt of Materials)

12-17-01

Date

**TRANSPORTER II**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Driver Name \_\_\_\_\_  
Phone No. \_\_\_\_\_  
Truck No. \_\_\_\_\_ Trailer No. \_\_\_\_\_  
Vehicle License No./State \_\_\_\_\_

Driver Signature (Acknowledge Receipt of Materials)

Date

Total Truck  
Net Weight  
In Tons

**Section III**

Site Information: SUPERIOR GREENTREE LANDFILL, LLC  
635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

12-17-01

Date

Name of Authorized Agent

Signature

Indicate and Discrepancies: \_\_\_\_\_

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's\* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type)

Removal Contractor's Signature

Date

Name and Address of Responsible Agency: \_\_\_\_\_

Friable  Non-Friable  Both: % Friable \_\_\_\_\_ % Non-Friable \_\_\_\_\_

WHITE - Original BLUE - Disposal Office Copy GREEN - Return to Operator CANARY - Generator Retain PINK - Return to Generator GOLD - Transporter Retain





filed  
11/17/92.

**NON-HAZARDOUS  
SPECIAL WASTE & ASBESTOS MANIFEST**

NO118795

If waste is asbestos waste, all sections must be completed, otherwise only Sections I, II, III need completed.

**Section I**

**GENERATOR**

Generator Name: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
R.D. #3 DuBois Pa. 15801  
Box 274  
 Phone No.: 814-371-9520

Generating Location: Exit 16 Exxon  
 Address: Rt 219 Exit 16 I-80  
R.D. #3 Box 274  
DuBois Pa. 15801  
 Phone No.: 814-371-9520 County CLEARFIELD

Description of Waste	Waste Code	Quantity (lbs, tons, or % of load)
1. Petroleum Contaminated Soil	Q56658	100%
2.		
3.		
4.		
5.		
6.		
7.		
8.		

**Shipped in:**

Rolloff \_\_\_\_\_  
 Drums \_\_\_\_\_  
 Truck  \_\_\_\_\_  
 Other \_\_\_\_\_

GENERATOR'S CERTIFICATION: I hereby certify that that above named material is not a hazardous waste as defined by 40 CFR Part 261 or any applicable state law, has been properly described, classified and packaged, and is in proper condition for transportation according to applicable regulations; AND, if the waste is a treatment residue of a previously restricted hazardous waste subject to the Land Disposal Restriction, I certify and warrant that the waste has been treated in accordance with the requirements of 40 CFR Part 268 and is no longer a hazardous waste as defined by 40 CFR Part 261.

Edward C. Miller

Generator Authorized Agent Name

Signature

Shipment Date

**Section II**

**TRANSPORTER**

**TRANSPORTER II**

**TRANSPORTER I**

Name: GROVES Exc.  
 Address: R.D. #1 Falls Creek Pa.  
 Driver Name Bernie Fye  
 Phone No. 814-371-3037  
 Truck No. 5 Trailer No.   
 Vehicle License No./State BBY 2979  
12-17-01  
 Bernie Fye

Driver Signature (Acknowledge Receipt of Materials)

Date

Driver Signature (Acknowledge Receipt of Materials)

Date

**Section III**

**DESTINATION**

Site Information: **SUPERIOR GREENTREE LANDFILL, INC.**  
 635 TOBY ROAD, KERSEY, PA 15846

Phone: (814) 265-1744

Fax: (814) 256-8745

I hereby certify that the above named material has been accepted and to the best of my knowledge the foregoing is true and accurate.

Total Truck  
Net Weight  
In Tons

20.61

Name of Authorized Agent

Signature

Date

Indicate and Discrepancies:

**Section IV**

**ASBESTOS**

Removal Contractor's Name: \_\_\_\_\_ Removal Contractor's Phone Number: \_\_\_\_\_

Removal Contractor's \* Address: \_\_\_\_\_

Special Handling Instructions and additional information: \_\_\_\_\_

REMOVAL CONTRACTOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

Removal Contractor's Name and Title (Print/Type) \_\_\_\_\_ Removal Contractor's Signature \_\_\_\_\_ Date \_\_\_\_\_

Name and Address of Responsible Agency: \_\_\_\_\_

Recyclable  Reusable  Spill Free  Non-Hazardous  Non-Asbestos

1. This manifest is to be used for the transport of hazardous wastes and asbestos wastes. It is not to be used for the transport of non-hazardous wastes.

## **BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.**

**110 McCracken Run Road  
DuBois, PA 15801**

814-371-6030 Fax: 814-375-0823

**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

### *Invoice*

Invoice Number:

L4146

Invoice Date:

Page:  
1

**Customer ID**

M6613

### Customer PO

### Payment Terms

Net 30 Days

Sales Rep ID

**Project Number**

**Discount Date**

**Due Date**

### Description

SOTI

LAB ORDER: 0112049

COLLECTION DATE: 12/7/01

Quantity	Item	Description	Unit Price	Extension
1.00	LAB ANALYSIS		150.00	150.00

Overdue invoices are subject to finance charges.

March 13, 2002

Edward C. Miller  
R.D.#3, Box 274  
DuBois, PA 15801

Backhoe & Trucking \$980.00

please make check payable to: Alan Groves  
R.D.#1, Box 252  
Falls Creek, PA 15840

*Paid  
3/20/02  
Cashier check*

Groves

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.****110 McCracken Run Road  
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823***Invoice***Invoice Number:**

L2963

**Invoice Date:**

Jul 11, 2001

**Page:**

1

*Part**12/11/2001***Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

Customer ID	Customer PO	Payment Terms	
M6613		Net 30 Days	
Sales Rep ID	Project Number	Discount Date	Due Date
	6613.01.01	7/11/01	8/10/01

**Description**

Soil

Lab Order: 0106136

Collection Date: 6/19/01

Quantity	Item	Description	Unit Price	Extension
1.00		Lab Analysis	1,445.00	1,445.00

BAES APPROVAL

*DM7***Check No:**

Subtotal	1,445.00
Sales Tax	
Total Invoice Amount	1,445.00
Payment Received	0.00
<b>TOTAL</b>	<b>1,445.00</b>

Overdue invoices are subject to finance charges.

**BROCKWAY ANALYTICAL AND ENVIRONMENTAL SERVICES, LTD.****110 McCracken Run Road  
DuBois, PA 15801****814-371-6030 Fax: 814-375-0823***Paid**12/10/2001**Invoice*Invoice Number:  
L3094Invoice Date:  
Jul 27, 2001Page:  
1**Sold To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

**Ship To:**

Ed Miller  
RR #3, Box 274  
DuBois, PA 15801

Customer ID	Customer PO	Payment Terms	
M6613		Net 30 Days	
Sales Rep ID	Project Number	Discount Date	Due Date
	6613.01.01	7/27/01	8/26/01

**Description**

Soil Analysis  
Lab Order: 0107126  
Collection Date: 7/19/01

Quantity	Item	Description	Unit Price	Extension
1.00		Lab Analysis	540.00	540.00

BAES APPROVAL

*Wm4***Check No:**

Subtotal	540.00
Sales Tax	
Total Invoice Amount	540.00
Payment Received	0.00
<b>TOTAL</b>	<b>540.00</b>

Overdue invoices are subject to finance charges.

# S.M.S.

## TANK DISPOSAL COMPANY, INC.

RR #3 BOX 291, PUNXSUTAWNEY PA 15767-8703 ♦ 814/583-7605 ♦ FAX 814/583-7606

04 June 2001

**PROPOSAL**  
**STORAGE TANK SUPERVISION**  
**REAL ESTATE DOCUMENTATION**

*Prepared for:*  
**Edward C. Miller**  
**DuBois, PA 15801**

❖ ❖ ❖ ❖ ❖

**WE HEREBY PROPOSE**, to furnish material and labor-complete in accordance with the specifications below, for the sum of:

Two Thousand Two Hundred Fifty and XX/100 Dollars.....\$2,250.00

❖ ❖ ❖ ❖ ❖

**THIS PROPOSAL**, made by **S.M.S. TANK DISPOSAL CO., INC.**, hereinafter referred to as "**CONTRACTOR**", to **EDWARD C. MILLER**, hereinafter referred to as "**OWNER**", under the terms as stated herein, **CONTRACTOR** will do and complete the following work:

**LOCATION:** EXIT 16 EXXON  
PADEP #17-25261

**STORAGE TANKS INVOLVED WITH PROJECT:**

18032	17-25260	001	19870601	8000	GASOLINE	CIU
18033	17-25260	002	19870601	8000	GASOLINE	CIU
18034	17-25260	003	19860501	4000	GASOLINE	CIU

**SPECIFICATIONS OF QUOTED PROJECT:**

1. Excavation and preparation of site area for tank removal to be completed by SUBCONTRACTOR chosen by OWNER including backfill and reseeding. PA One Call to be completed by SUBCONTRACTOR as required by state laws. **CONTRACTOR** shall provide certified PADEP inspector during the removal process and instruct SUBCONTRACTOR hired by OWNER on the necessary procedures and operations for tank removal process / remediation as necessary.
2. OWNER to blind all lines & Lockout/Tagout per requirements as set forth by the Department of Labor, Occupational Safety & Health Administration, 29 CFR Part 1910.147.
3. **CONTRACTOR** take twenty-four (24) samples underneath storage vessels, lines, dispensers, and stockpiles to confirm any environmental impact. Samples analyzed for

*Unleaded \$55.00 Diesel 145.00*

STATEMENT

**GROVES EXCAVATING**

R.D. 1, Box 252  
FALLS CREEK, PA 15840  
(814) 371-3037

DATE 9/4/01

• Miller's Motel  
R.D.#3  
DuBois, PA 15801

DATE	DESCRIPTION	CHARGES
5/24	Repair Waterline	\$ 250.00
6/15- 6/22	Tank Removal - Bill to Date	4,500.00
	<b>TOTAL</b>	<b>\$4,750.00</b>
	<i>Paid in full</i>	
	<i>9/10/01</i>	

Thank You Service Charge: 1 1/2% per month after 30 days PAID BY CHECK NO.

**S.M.S. TANK DISPOSAL CO., INC.**

**DEPOSIT BANK**

RD #3 BOX 291  
BROCKWAY OFFICE 04  
BROCKWAY, PA. 15824

(814) 583-7605  
60-4186313

**004891**

PAY  
TO THE **PENNSYLVANIA**  
ORDER  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

Two HUNDRED \$ 200.00 DOLLARS

06/07/01

DATE **AMOUNT**   
\$ 200.00

MP

*John S. K. S.*

004891 0313041601 041750839611