Executive Summary – Enforcement Matter – Case No. 55248
German Pellets Texas, LLC
RN106530108
Docket No. 2017-1529-AIR-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
AIR
Small Business:
No
Location(s) Where Violation(s) Occurred:
Port Arthur Facility, 498A West Lakeshore Drive, Port Arthur, Jefferson County
Type of Operation:
Wood pellet storage facility
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: Respondent filed a petition for bankruptcy relief under United States Code ch. 11 on or about April 30, 2016. So long as the automatic stay is in effect in the Respondent's bankruptcy proceedings, the TCEQ will not seek to execute upon any monetary judgment obtained.
Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.
Texas Register Publication Date: November 16, 2018
Comments Received: Yes, one comment was received from Amy Catherine Dinn on behalf of Port Arthur Community Action Network

Penalty Information

Total Penalty Assessed: $15,000
Amount Deferred for Expedited Settlement: $3,000
Total Paid to General Revenue: $0
Total Due to General Revenue: $0
Payment Plan: N/A
Compliance History Classifications:
Person/CN - Satisfactory
Site/RN - High
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: April 2014

Executive Summary – Enforcement Matter – Case No. 55248
German Pellets Texas, LLC
RN106530108
Docket No. 2017-1529-AIR-E

Investigation Information

Complaint Date(s): April 17, 2017, April 20, 2017, April 27, 2017, and May 15, 2017
Complaint Information: Alleged the residents in the area were experiencing coughing, headaches, dizziness, and breathing problems from a nearby facility.
Date(s) of Investigation: April 17, 2017 through June 21, 2017
Date(s) of NOE(s): August 18, 2017

Violation Information

Failed to prevent nuisance odor conditions. Specifically, during odor surveys conducted off-site, TCEQ staff detected moderate, unpleasant burning wood and smoke odors coming from Silos 2 and 3 at the Site on April 17, 18, 19, 20, 21, 22, 24, 25, 26, and 28; May 1, 2, 3, 12, 16, 17, 18, 22, 25, and 31; and June 1 and 4, 2017, resulting in nuisance conditions on April 28, 2017, May 12, 2017, May 25, 2017, and June 4, 2017 [30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

a. On April 15, 2017, suspended all operations; and

b. By January 13, 2018, completed the removal of all wood pellets.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Carol McGrath, Enforcement Division, Enforcement Team 4, MC R-13, (210) 409-4063; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548
Respondent: Chip Cummins, Chief Revenue Officer, German Pellets Texas, LLC, 498A West Lakeshore Drive, Port Arthur, Texas 77640
John Warren, Director, German Pellets Texas, LLC, 498A West Lakeshore Drive, Port Arthur, Texas 77640
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014) *PCW Revision March 26, 2014*

TCEQ

DATES **Assigned** 25-Sep-2017 **PCW** 1-Mar-2018 **Screening** 3-Oct-2017 **EPA Due**

RESPONDENT/FACILITY INFORMATION

Respondent German Pellets Texas, LLC
Reg. Ent. Ref. No. RN106530108
Facility/Site Region 10-Beaumont **Major/Minor Source** Minor

CASE INFORMATION

Enf./Case ID No. 55248
Docket No. 2017-1529-AIR-E
Media Program(s) Air
Multi-Media

No. of Violations 1
Order Type 1660
Government/Non-Profit No
Enf. Coordinator Shelby Orme
EC's Team Enforcement Team 5

Admin. Penalty $ Limit Minimum $0 **Maximum** $25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) ***Subtotal 1*** **$15,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **0.0%** Adjustment ***Subtotals 2, 3, & 7*** **$0**

Notes: No adjustment for compliance history.

Culpability No **0.0%** Enhancement ***Subtotal 4*** **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments ***Subtotal 5*** **$0**

Economic Benefit ***Subtotal 6*** **$0**

Total EB Amounts $1,781
Estimated Cost of Compliance $50,000

0.0% Enhancement*
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 ***Final Subtotal*** **$15,000**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** ***Adjustment*** **$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **$15,000**

STATUTORY LIMIT ADJUSTMENT ***Final Assessed Penalty*** **$15,000**

DEFERRAL **20.0%** Reduction ***Adjustment*** **-$3,000**

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$12,000**

Screening Date 3-Oct-2017 **Docket No.** 2017-1529-AIR-E **PCW**

Respondent German Pellets Texas, LLC

Case ID No. 55248

Reg. Ent. Reference No. RN106530108

Media [Statute] Air

Enf. Coordinator Shelby Orme

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Compliance History Worksheet

>> Compliance History *Site* Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgments or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage **capped at 100%* 0%

Screening Date 3-Oct-2017 **Docket No.** 2017-1529-AIR-E **PCW**

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

Respondent German Pellets Texas, LLC

Case ID No. 55248

Reg. Ent. Reference No. RN106530108

Media [Statute] Air

Enf. Coordinator Shelby Orme

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 101.4 and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description Failed to prevent nuisance odor conditions. Specifically, during odor surveys conducted off-site, TCEQ staff detected moderate, unpleasant burning wood and smoke odors coming from Silos 2 and 3 at the Site on April 17, 18, 19, 20, 21, 22, 24, 25, 26, and 28; May 1, 2, 3, 12, 16, 17, 18, 22, 25, and 31; and June 1 and 4, 2017, resulting in nuisance conditions on April 28, 2017, May 12, 2017, May 25, 2017, and June 4, 2017.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual		x	
	Potential			

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes: Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment $21,250

$3,750

Violation Events

Number of Violation Events: 4 — 4 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $15,000

Four single events are recommended for each day a nuisance was documented.

Good Faith Efforts to Comply 0.0% — Reduction $0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes: The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal $15,000

Economic Benefit (EB) for this violation — **Statutory Limit Test**

Estimated EB Amount $1,781

Violation Final Penalty Total $15,000

This violation Final Assessed Penalty (adjusted for limits) $15,000

Economic Benefit Worksheet

Respondent German Pellets Texas, LLC
Case ID No. 55248
Reg. Ent. Reference No. RN106530108
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/Construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$50,000	28-Apr-2017	13-Jan-2018	0.71	$1,781	n/a	$1,781
Notes for DELAYED costs	Estimated cost to complete the removal of all wood pellets. The Date Required is the date nuisance conditions were first documented. The Final Date is the date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/Equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $50,000

TOTAL $1,781

Compliance History Report

Compliance History Report for CN603945254, RN106530108, Rating Year 2017 which includes Compliance History (CH) components from September 1, 2012, through August 31, 2017.

Customer, Respondent, or Owner/Operator: CN603945254, German Pellets Texas, LLC **Classification:** SATISFACTORY **Rating:** 12.86

Regulated Entity: RN106530108, PORT ARTHUR FACILITY **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 498A W LAKESHORE DR JEFFERSON, TX, JEFFERSON COUNTY

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):
AIR NEW SOURCE PERMITS REGISTRATION 106458

Compliance History Period: September 01, 2012 to August 31, 2017 **Rating Year:** 2017 **Rating Date:** 09/01/2017

Date Compliance History Report Prepared: December 06, 2017

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 06, 2012 to December 06, 2017

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Shelby Orme **Phone:** (512) 239-1001

Site and Owner/Operator History:

1) Has the site been in existence and/or operation for the full five year compliance period? NO
2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	January 13, 2014	(1139008)
Item 2	March 20, 2017	(1396168)
Item 3	April 26, 2017	(1400248)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:
N/A

G. Type of environmental management systems (EMSs):
N/A

H. Voluntary on-site compliance assessment dates:
N/A

I. Participation in a voluntary pollution reduction program:
N/A

J. Early compliance:
N/A

Sites Outside of Texas:
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING GERMAN PELLETS TEXAS, LLC RN106530108	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2017-1529-AIR-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding German Pellets Texas, LLC (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wood pellet storage facility located at 498A West Lakeshore Drive in Port Arthur, Jefferson County, Texas (the "Site"). The Site consists or consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 382 and the rules of the TCEQ.

3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

4. An administrative penalty in the amount of $15,000 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). On or about April 30, 2016, the Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code ("USC"). The automatic stay imposed by the Bankruptcy Code [specifically, 11 USC § 362(a)] does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ [a governmental unit as defined under 11 USC § 101(27)] is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. However, so long as the automatic stay is in effect in the Respondent's bankruptcy proceedings, the TCEQ will not seek to execute upon any monetary judgment obtained and $3,000 is

deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. Any deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements contained in this Order, the Executive Director may assess all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.

7. This Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.

8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

9. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Site:

   a. On April 15, 2017, suspended all operations; and

   b. By January 13, 2018, completed the removal of all wood pellets.

II. ALLEGATIONS

During an investigation conducted from April 17, 2017 through June 21, 2017, an investigator documented that the Respondent failed to prevent nuisance odor conditions, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b). Specifically, during odor surveys conducted off-site, TCEQ staff detected moderate, unpleasant burning wood and smoke odors coming from Silos 2 and 3 at the Site on April 17, 18, 19, 20, 21, 22, 24, 25, 26, and 28; May 1, 2, 3, 12, 16, 17, 18, 22, 25, and 31; and June 1 and 4, 2017, resulting in nuisance conditions on April 28, 2017, May 12, 2017, May 25, 2017, and June 4, 2017.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph 4. The assessment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here.

2. All relief not expressly granted in this Order is denied.

3. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent.

4. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission — Date

For the Executive Director — 10/31/18 — Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature — 10/17/2018 — Date

Chip Cummins — CRO

Name (Printed or typed) — Title

Authorized Representative of
German Pellets Texas, LLC

☐ *If mailing address has changed, please check this box and provide the new address below:*

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.

TCEQ Interoffice Memorandum

To: Commissioners

Thru: Bryan Sinclair, Director, Enforcement Division

From: Michael De La Cruz, Manager, Enforcement Division

Date: December 16, 2019

Subject: Response to Comment(s) Received Concerning Proposed Agreed Enforcement Order
German Pellets Texas, LLC, Port Arthur, Jefferson County
RN106530108; Docket No. 2017-1529-AIR-E; Enforcement Case No. 55248

In response to a publication in the Texas Register on November 16, 2018, one comment has been received regarding a proposed agreed enforcement order against German Pellets Texas, LLC. The comments were received within the thirty-day public comment period.

The proposed order includes one violation documented during an investigation conducted from April 17, 2017 through June 21, 2017. The violation addressed in the proposed order is for the failure to prevent nuisance odor conditions, in violation of 30 TEX. ADMIN. CODE § 101.4 and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b).

The proposed order assesses a penalty in the amount of $15,000, of which $3,000 has been deferred in accordance with our expedited order process, and German Pellets Texas, LLC filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. The comments are not limited to provisions of the proposed order addressing the violations. No changes to the proposed order were made in response to the comments. A summary of the comments and staff response to the comments can be found below:

- Comment A – The assessed administrative penalty should be in excess of $15,000.

  Response A – The administrative penalty was based on the nuisance conditions that were documented during the investigation conducted from April 17, 2017 through June 21, 2017 and was calculated in accordance with the Commission's Penalty Policy.

- Comment B – German Pellets Texas, LLC did not comply with the City of Port Arthur's codes.

  Response B – The TCEQ does not enforce any local municipality's ordinances, but it appears that the City of Port Arthur has addressed the code violations.

- Comment C – A concern for continuing threats to the community.

  Response C - German Pellets Texas, LLS suspended all operations on April 15, 2017 and removed all wood pellets by January 13, 2018.

- Comment D – A concern for the unsafe work environment.

  Response D - The TCEQ has not been delegated enforcement authority from the United States Occupational Safety and Health Administration, but it appears that the United States Occupational Safety and Health Administration has investigated the unsafe work conditions.

A copy of the comments, and the staff response to the comments, are attached for your consideration. In summary, the commentor's questions are expressing concerns with the amount of the administrative penalty that was assessed. Staff's position, as reflected in the response, is that German Pellets Texas, LLC was assessed an appropriate administrative penalty in accordance with the Penalty Policy. Accordingly, the Enforcement Division recommends that you adopt this proposed order.

Attachments

cc: General Counsel, MC 101, Building F
Special Counsel, MC 109, Building F
Manager, Air Section, Beaumont Regional Office
Carol McGrath, Coordinator, Enforcement Division, MC R13
Central Records, MC 213, Building E, 1st Floor
AIR CP_110098357_CP _01152020_Enforcement
Enforcement Division Electronic Reader File

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 1, 2019

Ms. Amy Catherine Dinn, Attorney
Lone Star Legal Aid
P.O. Box 398
Houston, Texas 77001-0398

Re: Comment Received, Proposed Agreed Enforcement Order
German Pellets Texas, LLC; RN106530108
Docket No. 2017-1529-AIR-E; Enforcement Case No. 55248

Dear Ms. Dinn:

On December 27, 2018, we received your letter concerning the proposed agreed enforcement order for the German Pellets Texas, LLC's wood pellet storage facility in Port Arthur, Jefferson County, Texas. I have forwarded your letter to our Beaumont Regional Office and to our General Counsel's Office so that the Commissioners can consider your comments regarding the proposed order.

Texas Commission on Environmental Quality ("TCEQ") staff and German Pellets Texas, LLC agreed on the terms of the proposed order on October 17, 2018. Accordingly, German Pellets Texas, LLC was assessed an administrative penalty of $15,000, of which $3,000 has been deferred in accordance with our expedited order process, and on or about April 30, 2016, German Pellets Texas, LLC filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. In addition, the order recognizes that on April 15, 2017, German Pellets Texas, LLC suspended all operations and by January 13, 2018, German Pellets Texas, LLC completed the removal of all wood pellets.

You indicated in your letter that the assessed administrative penalty should be in excess of $15,000. The administrative penalty was based on the nuisance conditions that were documented during the investigation conducted from April 17, 2017 through June 21, 2017 and in accordance with the TCEQ Penalty Policy. There are no technical requirements in the proposed agreed order. You indicated in your letter that German Pellets Texas, LLC did not comply with the City of Port Arthur's codes. The TCEQ does not enforce any local municipality's ordinances, but it appears that the City of Port Arthur has addressed the code violations. You indicated in your letter a concern for continuing threats to the community. German Pellets Texas, LLC suspended all operations on April 15, 2017 and removed all wood pellets by January 13, 2018. You also indicated in your letter a concern for the unsafe work environment. The TCEQ has not been delegated enforcement authority from the United States Occupational Safety and Health Administration, but it appears that the United States Occupational Safety and Health Administration has investigated the work conditions.

We appreciate your input into the enforcement action currently pending against German Pellets Texas, LLC. The proposed agreed order will be considered at an upcoming Commissioners' Agenda. Ms. Carol McGrath is the Enforcement Coordinator assigned to this case. If you have further concerns or comments related to the order, please do not hesitate to call Ms. Carol McGrath at (210) 403-4063. For complaints related to German Pellets Texas, LLC's current operating conditions or procedures, you should continue to contact our Beaumont Regional Office at (409) 898-3838.

Sincerely,

Melissa Cordell

for B.

Bryan Sinclair, Director
Enforcement Division
Texas Commission on Environmental Quality

BHS/cm

bcc: Manager, Air Section, Beaumont Regional Office
Ms. Carol McGrath, Coordinator, Enforcement Division, MC R13
Central Records, MC 213, Building E, 1st Floor
AIR CP_106530108_CP_20190801_Enforcement
Enforcement Division Electronic Reader File

DOCKET NO. 2017-1529-AIR-E

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING GERMAN PELLETS TEXAS LLC	§ § § § §	BEFORE THE TEXAS COMMISSION ON
RN106530108	§	ENVIRONMENTAL QUALITY

COMMENTS OF PORT ARTHUR COMMUNITY ACTION NETWORK ON THE PROPOSED ADMINISTRATIVE ORDER

TO THE HONORABLE COMMISSIONERS:

Port Arthur Community Action Network ("PA-CAN") offers these comments on the proposed administrative order in this enforcement docket.

SUMMARY

PA-CAN appreciates that the agency has discretion in making decisions, guided by its *Penalty Policy*;[1] however, German Pellets Texas, LLC ("German Pellets" or Respondent") deserves to be assessed a penalty in excess of $15,000 for the following violations of Texas law in connection with the operation of its wood pellet storage facility in Port Arthur, Texas (the "Regulated Facility"): (1) violation of 30 TEX. ADMIN. CODE § 101.4 and (2) violation of TEX. HEALTH AND SAFETY CODE § 382.085(a) and (b) by failing to prevent nuisance odor conditions at the Regulated Facility from April 15, 2017 to July 25, 2017. The TCEQ only penalizes Respondent for four days of nuisance operations, when these conditions persisted in the community for over two months. The TCEQ's enforcement response is woefully inadequate and fails to recognize the severe health impacts the community suffered during the silo fires at the Regulated Facility.

[1] RG-253, Penalty Policy, Texas Commission on Environmental Quality (April 2014).

For the following reasons, German Pellets is deserving of penalties under the Penalty Policy far in excess of the $15,000 currently proposed in the administrative order:

(1) German Pellets has not operated with transparency in the City of Port Arthur;

(2) German Pellets' Regulated Facility poses ongoing threats to the community, air quality, and water quality; and

(3) In addition to air pollution, German Pellets' Regulated Facility has been an unsafe work environment.

FACTUAL BACKGROUND

A. GERMAN PELLETS' LACK OF TRANSPARENCY

German Pellets has not been a good neighbor to the citizens of Port Arthur, Texas. On June 30, 2017, the City of Port Arthur ("City") had to sue German Pellets to make sure the Regulated Facility complied with health and safety regulations related to the Regulated Facility's "emitting odor and causing foul, noxious, unhealthful or disagreeable odor nor effluvia in the neighborhood where they exist" and "engaging in acts that cause injury, annoyance or cause inconvenience of the public."[2] Importantly, these conditions persisted more than just the four days being assessed by the TCEQ. As PA-CAN's President, John Beard, Jr., describes this disaster: "It was like a community BBQ that went on for two months; there was simply no respite from the impacts of the smoke on the community." In its petition filed on June 30, 2017, the City stated that the Regulated Facility was "not suitable for operation and had been barricaded due to the deteriorating structural integrity and safety concerns for neighboring

[2] Plaintiff's Original Petition, Request for Temporary Restraining Order, Temporary and Permanent Injunction and Request for Disclosure against German Pellets Texas, LLC and Texas Pellets, Inc. filed by City of Port Arthur Texas in Jefferson County District Court on June 30, 2017 (Case No. E-200319)(hereinafter "City Petition") at 2, ¶ 9.

citizens and businesses within the vicinity."[3] Further, the City alleged that the adjoining neighborhoods faced potential danger because of concerns of the structural integrity of one or more silos at the Regulated Facility.[4] The Petition cited the Regulated Facility with a number of violations of the Port Arthur City Code including: (1) failure to prevent a fire, (2) failure to remediate smoldering wood pellets, and (3) multiple failures to maintain structural integrity of the affected silos and other structures.[5] The City specifically characterized these conditions caused by German Pellets to "pose a public nuisance and provide a threat to the safety of City of Port Arthur residents."[6] The City further recognized that persons other than German Pellets and property other than German Pellets' will continue to suffer health impacts and/or substantial danger of injury unless German Pellets is brought into compliance.[7] The allegations in the City's lawsuit emphasize the severity of the nuisance situation to the community after the fires had been burning since April 15, 2017 without relief for the citizens of Port Arthur.

German Pellets eventually agreed to an injunction that was entered to "guarantee the health and safety of the citizens of Port Arthur."[8] In mid-July, Court entered the injunction enjoining German Pellets from operating the Regulated Facility except as authorized under the hazard analysis plan approved by the City of Port Arthur's Fire Department (the "PAFD").[9] However, when PA-CAN and others have requested a copy of the hazard analysis plan referenced in the Agreed Injunction through a Texas Public Information Act request, German

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[3] City Petition at 3, ¶ 12.
[4] City Petition at 3, ¶ 16.
[5] City Petition at 4, ¶ 17.
[6] City Petition at 4, ¶ 18.
[7] City Petition at 4. ¶ 19.
[8] Agreed Order for Issuance of Temporary Injunction dated July 14, 2017 (Case No. E-200319)(hereinafter "Agreed Injunction) at 1, ¶ 3.
[9] Agreed Injunction at 2.

Pellets strenuously opposed the disclosure of its Hazard Analysis Plan that the City required to safeguard the public from the further operations of the Regulated Facility, lodging at least four separate objections to the release of the Hazard Analysis Plan to a community group like PA-CAN, who was only interested in the protection of the citizens of Port Arthur and their safety. The lack of transparency shown by German Pellets in response to the public's request for basic information regarding the proposed plans for safety of the Regulated Facility after enduring over two months of smoke and other particulates throughout the community is why the Regulated Facility should be penalized for its response to this two-month unauthorized release.

Members of PA-CAN were on hand for German Pellets' attempts to outreach to the community while the silo fires were still burning in the spring and early summer of 2017. After being a no-show at a city council meeting on April 25, 2017,[10] Respondent agreed to come to a community meeting organized by John Beard, Jr., the founder of PA-CAN, with representatives from the City and the PAFD present to also address questions. At the May 4, 2017 meeting, German Pellets showed a lack of organization and ability to respond to public questions regarding the operation of the Regulated Facility.[11] Its representatives could not even produce a working 1-800 number to answer the public's questions or take complaints regarding the daily injuries that they were inflicting on the neighborhood.[12] Overall, Respondent appeared callous to concerns of the community and simply focused on its ability to save and preserve its product stored in the silos at the Regulated Facility. Despite the ongoing health and safety threats to the community, German Pellets hired Cotton Commercial USA to put out the fire in April, but its

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[10] https://kfdm.com/news/local/pa-council-citizens-want-answers-from-german-pellets-company-a-no-show-at-city-meeting; https://www.12newsnow.com/video/news/local/german-pellets-did-not-show-up-to-port-arthur-meeting/502-2581041

[11] https://www.panews.com/2017/05/05/pa-meeting-raises-more-questions-than-answers/

[12] https://www.panews.com/2017/05/05/pa-meeting-raises-more-questions-than-answers/

consultant prioritized protecting German Pellets' property over preventing harm to adjacent neighborhoods. As a result, the fire burned much longer than it should have. It took legal action by the City to bring the Regulated Facility into some sort of compliance with health and safety regulations, costing the taxpayers even more money.

According to the Agreed Order entered on July 14, 2017, German Pellets was to bring the Regulated Facility into compliance by October 12, 2017, but the company had still not made the necessary improvements to the Regulated Facility, requiring the Court to extend the Agreed Injunction. German Pellets did not completely remove all of the pellets until January 13, 2018. The company remains under the stop work order imposed by the injunction until all the safety measures in the required hazard analysis plan are implemented. The injunction order has been repeatedly extended into late 2018. Again, there is no transparency whether German Pellets has actually complied with the Agreed Injunction, and there is still no understanding by the public when the Regulated Facility plans to reopen.

B. CONTINUING THREATS TO THE COMMUNITY, AIR QUALITY, AND WATER QUALITY.

1. Fire/ Explosion Risks.

The production of wood pellets for biofuels presents well-known hazards. It is well-known that when dry, wood will readily burn.[13] Additionally, due to microbial/bacteriological action and oxidation in certain storage conditions, wood can heat up to the point where it will self-combust.[14] The causes of biomass fires are numerous, and even with the best-designed,

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[13] G.F. Paul Janzé, Advanced Biomass Handling, *Wood Pellet and Biomass Dust Fire and Explosion Control*, April 24, 2013, http://www.advancedbiomass.com/2013/04/biomass-dust-fire-and-explosion-control/ (hereinafter, "Janzé") at 2.
[14] Janzé, at 2.

constructed operated and maintained system, fugitive dusting will occur.[15] A case can be made that a combustible dust explosion can be compared to a natural gas explosion because both have similar potentially devastating and catastrophic effects.[16] Moreover, the 2006 U.S. Chemical Safety and Hazard Investigation Board (CSB) Combustible Dust Hazard Study found that "industry and safety professionals often lacked awareness of combustible dust hazards, as MSDS's ineffectively communicate to employees and workers the hazards of combustible dust explosions and ways to prevent them."[17]

Between 1980 and 2005, there were 281 combustible dust-related events that contributed to 119 worker fatalities and 718 injuries, according to data from the CSB.[18] The CSB and other agencies investigating serious dust explosions found a number of causal factors for dust incidents. Mainly, the facilities failed to follow the widely recognized standards of good engineering practice in the National Fire Prevention Agency's voluntary consensus standards.[19] As a result facilities did not implement appropriate engineering controls, adequate maintenance and housekeeping, and other measures that could have prevented the explosions.

How do these fires and explosions occur? The wood pellets give off a fine dust. And without proper handling and disposal of this dust, serious dust explosions may occur. Very fine, airborne dust can escape and float in the air for a very long time before settling out, and whether it takes a day, a week, or a month, dust will build up.[20] Accumulations of fine dust are easily

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[15] Janzé, at 2.
[16] Jeffrey C. Nichols, Industrial Fire Prevention, *The Wood Pellet Process Explained*, February 7, 2014 (hereinafter, "Nichols"), http://industrialfireprevention.blogspot.com/2014/02/the-wood-pellet-process-explained.html, at 1.
[17] 2006 U.S. Chemical Safety and Hazard Investigation Board Combustible Dust Hazard Study, https://www.csb.gov/combustible-dust-hazard-investigation/ (hereinafter, "CSB Report") at p. 78.
[18] CSB Report at 11.
[19] CSB Report at 78.
[20] Janzé at 3.

disturbed and become airborne, creating an explosive atmosphere. Fire and explosions resulting from handling dry wood are a real risk; consequently, it is necessary to assess the risks and take appropriate preventative measures.[21] Complicating this issue is the fact that the processes involved in a dust explosion are extremely complex and hard to predict.[22] In shorthand, the greater the concentration of dust, the higher the risk posed by the operations.[23] Thus, the most dangerous part of the process containing combustible dust in minimum explosible concentrations are found in the pellet cooler, dust collection, and the storage bins and silos.[24] Given these risks, it's not entirely surprising that the silos at the Regulated Facility suffered fires on February 27, 2017 and April 17 through July 25, 2017. These events followed on the heels of an explosion in German Pellets' Woodville plant in 2014.

The Regulated Facility can store up to 75,000 tons of wood pellets at any given time and loads approximately 100 trucks with wooden pellets every 24 hours. From Port Arthur, German Pellets sends more than 578,000 tons of wood pellets to European customers each year. Before the two fires in 2017, the Regulated Facility had five 17,000 metric ton metal panel silos that are 115 feet high and 105 feet in diameter. All five silos have concrete foundations that are approximately 4,500 cubic yards and more than six feet thick. Inside the silos, the pellets are moved around on a 4,000 linear foot enclosed pneumatic conveyor system, and an air filtration was installed to remove extra wood dust commonly produced by wood pellets. German Pellets' failure to be transparent with the community prevents any independent analysis by the

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[21] Janzé at 3.
[22] Janzé at 4.
[23] Resolution MSC. 193(79), Code of Safe Practice for Solid Bulk Cargoes (2004), Annex 40, Page 319 (concerning Wooden Pellets); *See also* International Maritime Solid Bulk Cargoes (IMSBC) Code, Appendix 1, at Page 333 (concerning Wood Pellets).
[24] Nichols at 2.

surrounding community to determine if the Company is doing all it can to prevent further fires and minimize the health and safety threats posed by its operations. Serious investigation and review should be done to determine if the hazard analysis plan required by the City's Agreed Injunction is even sufficient to mitigate the risk of explosion and fire when the facility reopens. The Community has its doubts.

2. *Other safety considerations.*

Moreover, according their Material Safety Data Sheet, when wood pellets are stored in a containment, like a silo, that is not ventilated, the concentration of emitted gases, or the oxygen depletion, may pose a health threat for humans present in the containment and the containment should be ventilated with appropriate precautions taken.[25] The gases emitted at a normal indoor temperature include carbon-monoxide (CO), carbon-dioxide (CO_2), methane (CH_4), and hydrocarbons with various permissible exposure levels and symptoms that can be life threatening or cause an individual to seek medical attention depending on the level of exposure.[26] If penetrated by water, wood pellets may swell to 3-4 times in volume.[27] Such properties complicate the storage of this material in addition to putting out resulting dust fires.

3. *Air Quality.*

The TCEQ has investigated compliance issues at the Regulated Facility many times since the Regulated Facility opened in 2013. The TCEQ's central registry lists at least nine investigations taking place from 2013 to 2017. One air quality complaint in September 2015 reported seeing "dust on vehicle from the pellet silos." On February 27, 2017, a fire started at a

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[25] Material Safety Data Sheet for Wood Pellets in Bulk, Issued May 5, 2009, Wood Pellet Association of Canada (hereinafter, "MSDS") at 2.
[26] MSDS at 2-3.
[27] MSDS at 9.

conveyor belt that was loading wooden pellets onto the ship.[28] The event produced fugitive emissions of carbon monoxide, nitrogen oxides, PM10, PM2.5, particulate matter, sulfur dioxide and volatile organic compounds that far exceeded authorized limits.

On April 15, 2017, the TCEQ recorded an emissions event at the Regulated Facility and reported smoke with opacity of 60% was released, far exceeding the opacity limit of 5%. TCEQ's report noted that "the Fire Department is administering water on the top of the Silo to keep the structure cool in an attempt to extinguish." On April 16, 2017, the TCEQ recorded an emissions event at the Regulated Facility and reported smoke with opacity of 60% of PM10 wood dust (non-allergenic) was released, far exceeding the opacity limit of 5%. TCEQ's report noted that the "Fire Department is administering water on to the Silo in a[n] attempt to extinguish. Fire is still burning." While the fire burned, smoke and dust blew from the plant to the West Side neighborhood just to the north. Following the fire, smoke and dust continued to be emitted from the silo. Photographs from this continuing event from April 2017 onward are attached as Exhibit 1 to these Comments.[29]

The smoldering at the silos lasted almost two months. During this time, the residents of Port Arthur could see, smell and breathe in the smoldering air from the fire at German Pellets' Facility. The smoke filled homes on the Westside of Port Arthur. The smoke saturated not only the homes, but also cars, clothing and other personal belongings. Many residents could not sleep due to smoke and its smell entering their bedrooms. Over 30 individuals filed suit against German Pellets last October claiming they were been exposed to harmful smoke as a result of

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[28] https://www.12newsnow.com/video/news/local/texas-news/port-arthur-fire-department-investigates-cause-of-conveyer-belt-fire/502-2524569

[29] *See* Photographs of Regulated Facility taken April 15, 2017-July 25, 2017 (Exh. 1).

fires and explosions at the Regulated Facility.[30] Specifically, the smoke caused breathing problems for his neighborhood's residents – including asthma, sinus infections, pneumonia and chronic obstructive pulmonary disease – and some were hospitalized. As the fire smoldered, the TCEQ advised children, the elderly and people with heart and lung problems to stay inside with the windows and doors shut as much as possible. Many residents were forced to leave the City because the conditions were so horrible. Grown children with elderly parents in the community came from different cities to retrieve their parents and take them someplace safe until the fires were extinguished.

Dr. Wilma Subra, a nationally renowned environmental scientist, spoke to the PA News regarding the smoke from Respondent's Regulated Facility, commenting that:

- "The chemicals released and associated with smoke consist of particles, aldehydes, carbon monoxide, carbon dioxide, sulfur dioxide, polycyclic aromatic hydrocarbons, dioxins, furans, benzene and toluene."
- "The chemicals cause respiratory irritability, asthma, irritation to the eyes, nose, and throat, negative impacts to the lungs, headaches and many other health impacts."; and
- "Air monitoring for particulates misses all of the other chemicals that may be causing health impacts."

Moreover, German Pellets' wood pellet manufacturing facility located at 164 County Road 1040, Woodville, Texas 75979 has operated for years in nearby Tyler County with VOC emissions that violate its permit limits. Volatile organic compounds (VOCs) are a large group of organic chemicals that include any compound of carbon (excluding carbon monoxide, carbon

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[30] Case No. B-200859, *Kelley, et al. v. German Pellets Texas LLC, Texas Pellets, Inc. and Cotton Commercial USA, Inc.*, in a District Court of Jefferson County, Texas. https://www courthousenews com/wp-content/uploads/2017/10/PelletsTX.pdf

dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate).[31] These violations are due primarily to substantial VOC emissions from the Woodville facility's hammermills and pellet coolers that both far exceed the PSD significance threshold. The Woodville plant has a facility-wide VOC emissions limit of 580 tons per year, and these two units alone emit 516 tons per year of VOCs. When the company first opened, it promised to limit its VOC emissions to 64 tons a year. However, German Pellets has not kept its promise to the community, and has several permits for its Woodville facility currently that have just been modified by the TCEQ to reduce the amount of VOCs emitted. In comparison, other wood pellet operations across the country emit 75% less VOC pollution than German Pellets does in Woodville, Texas. Further, Respondent maintains that its emissions data is a confidential trade secret that should not be released to the public. Such a position keeps the public from knowing the true emissions rates of its pellet manufacturing plant. Again, the lack of transparency of this operator suggests that it does not have the public's collective interest in clean air in mind, only its own pocketbook.

4. *Water Quality.*

On March 30, 2017, German Pellets pleaded guilty to one count of an unauthorized discharge in violation of Section 7.147 of the Texas Water Code. As a penalty, the TCEQ ordered German Pellets to pay a $30,000 fine. The investigation conducted by the TCEQ Environmental Crimes Unit and the Texas Parks and Wildlife Department Criminal Investigation Division determined that the plant manager of German Pellets authorized the discharge of liquid

[31] VOCs are of interest in part because they participate in atmospheric photochemical reactions that contribute to ozone formation. Ozone is formed from chemical reactions involving airborne VOCs, airborne nitrogen oxides, and sunlight. VOCs are also of interest because they play a role in formation of secondary organic aerosols, which are found in airborne particulate matter. Finally, VOCs are of interest because many individual VOCs are known to be harmful to human health.

waste which resulted in an unauthorized discharge of pollutants into water in the state. The Travis County Attorney's Office prosecuted the case against the company.

In addition, a worker at the Regulated Facility filed Complaint 994782 with the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, reporting that the company was cleaning up "unknown chemicals" without proper personal protective equipment and then dumping the chemicals near storm drains leading directly to Sabine/Neches Waterway.[32] Such activities, if true, constitute clear violations of the Clean Water Act of 1972 and the local storm water regulations, like Section 93 of the Code of City Ordinances of Port Arthur, Texas.

The $15,000 penalty assessed in this administrative order should be even stricter than the unauthorized release from the Regulated Facility just a month before the fire.

C. UNSAFE WORK ENVIRONMENT.

German Pellets is responsible for two workplace deaths – one in Port Arthur, one in Louisiana. Specifically, Jesus Cuevas died on October 20, 2017 while in the employ of German Pellets at its Regulated Facility.[33] Cuevas was operating a skid-steer loader when a large amount of wood chips fell off the tractor he was using to move them onto him. OSHA has opened an investigation into Mr. Cuevas' death,[34] and his surviving family filed a wrongful death lawsuit on his behalf due to Respondent's negligence, claiming that he was trapped and suffocated when pellets from the silos fell on him.[35] The Cuevas Petition alleges that Respondent forced Mr.

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[32] OSHA Complaint No. 994782 at 1.
[33] https://kfdm.com/news/local/breaking-accident-at-german-pellets
[34] https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1272065.015
[35] Case No. A-200862; *Cuevas, et al. v. German Pellets Texas LLC, Texas Pellets, Inc. and German Pellets Holding USA, Inc.;* in a District Court of Jefferson County, Texas, https://www.scribd.com/document/362797569/1027-German-Pellets-Lawsuit ("Cuevas Petition").

Cuevas to work in an environment that they knew was unsafe without proper equipment, supervision and/or help.[36]

Despite being open for only a short time period, Respondent's Port Arthur and Louisiana facilities have been slapped with several "serious" and "repeat" and "willful" citations from OSHA in the past four years.[37] At least one worker at the Regulated Facility has filed a complaint with the U.S. Department of Labor regarding conditions at the Regulated Facility, citing:[38]

(1) guards missing from rotating machinery,

(2) guards missing from access ladders,

(3) electrical wiring not properly routed/guarded/connected,

(4) electrically operated gates under silo not completely installed, requiring improvised manual operation,

(5) unknown chemicals seeping through floors and walls of conveyor tunnels beneath silos 1-5 and in pit at east end of said tunnel,

(6) said chemicals being cleaned up without proper PPE, then being pumped to surface and dumped near storm drains leading directly to Sabine/Neches Waterway, and

(7) the dust collection system not functioning properly, causing dust accumulation on top of silos when being loaded.

Complaint No. 994782 further reported that the number of personnel that Respondent was exposing to these hazards varied depending on the ship loading schedule and shift, but could be anywhere from 6-20 individuals.[39]

[3636] Cuevas Petition at 5.
[37] https://www.osha.gov/pls/imis/establishment.html (violations noted by searching for German Pellets as establishment from 2013-2018).
[38] OSHA Complaint No. 994782 at 1.
[39] OSHA Complaint No. 994782 at 1.

In August 2017, OSHA initially levied $267,699 in fines against Respondent for providing inadequate dust filtration masks for its Port Arthur plant workers and other safety issues at the Regulated Facility.[40] This table shows the numerous violations and the resulting fines currently assessed against Respondent at the Regulated Facility:[41]

Citation ID	Instances	Number Exposed	Total Exposures	Description of Violation	Type of Violation	Current Penalty
0100A	1	10	10	Failure to Provide Respiratory Protection	Serious	$3,834.60
01002B	1	10	10	Carbon monoxide exposure	Serious	$3,834.60
01003	2	8	16	Guarding of edges	Serious	$5,368.00
01004	2	10	20	Machine guarding	Serious	$5,368.00
02001	1	10	10	General duty to furnish place of employment free from hazards	Willful	$53,678.35
02002	2	10	20	Machine guarding	Willful	$53,678.35
03001	2	10	20	Hazardous locations	Repeat	$10,736.00
03002	8	10	80	Hazardous atmospheres and substances	Repeat	$7,668.65
03003	1	10	10	Respiratory protection	Repeat	$1,533.95
03004	1	10	10	Respiratory protection	Repeat	$1,533.95
					Total	$147,234.45

In one citation, OSHA stated that the company did not provide employees with a workplace that was "free from recognized hazards that were causing or likely to cause death or serious physical harm." Further, in February 2017, OSHA acknowledged that employees "were exposed to dust explosion, deflagration and other fire hazards when using equipment with internal combustion

[40] https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1228867.015
[41] https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1228867.015

engines while working in an environment normally expected to contain airborne combustible dust." OSHA characterized the violation as "willful" because Respondent "knowingly failed to comply with a legal requirement" or "acted with plain indifference to employee safety."

Moreover, the PAFD was on at the site around the clock spraying down the Regulated Facility and monitoring the temperatures in the silos for 102 days. As a result, several fire fighters suffered respiratory exposure from the industrial fire that the PAFD announced on July 25, 2017 was one of the longest emergencies in the department's history.[42]

D. VIOLATION OF ITS GROUND LEASE WITH THE PORT OF PORT ARTHUR.

On February 28, 2012, the Port of Port Arthur Navigation District of Jefferson County, Texas entered a ground lease with German Pellets, Inc. covering Respondent's operations of its Facility at the Port of Port Arthur, Texas as "a wood pellet warehouse, storage and loading facility."[43] The Ground Lease prohibits Respondent from doing "any act or thing at the property that violates any requirement of any government body with jurisdiction over the Property (including the Port of Port Arthur) or which constitutes a public or private health nuisance."[44] Because Respondent breached its Section 6(a) obligations for unsafe operating practices and the public nuisance created by the fires last year, the Port of Port Arthur has recently filed a notice of additional claims for property damage with the bankruptcy court, seeking over $510,000 in damages from Respondent.[45] The notice further describes the continuing repairs to German

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[42] http://kfdm.com/news/local/port-arthur-fire-department-burning-silo-was-one-of-longest-in-citys-history

[43] February 28, 2012 Ground Lease signed between Port of Port Arthur Navigation District of Jefferson County, Texas and Texas Pellets, Inc. ("Ground Lease") at Section 6(a), page 7.

[44] Ground Lease at Section 6(a), page 7.

[45] Case No. 16-90126; *In re: Texas Pellets, Inc.*; in the United States Bankruptcy Court for the Eastern District of Texas, Lufkin Division (Chapter 11) at Dkt. No. 990 (filed December 14, 2018) at 4, ¶ 14.

Pellet's Regulated Facility at the Port of Port Arthur that are still needed over 18 months after the fires were extinguished.[46]

DETAILED COMMENTS

1. The Base Penalty imposed for the Violations in the Penalty Calculation Worksheet ("PCW") does not recognize the damage caused to the Impacted Residents by the Actual Release.

A. The Violations have been clustered together to avoid higher penalties. In the administrative order, the TCEQ has cited Respondent's violation of two separate statutes. First, Section 101.4 of Title 30 of the Texas Administrative Code provides:

> No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

30 TEX. ADMIN. CODE § 101.4. In addition, Respondent is charged with unauthorized emissions under the Texas Clean Air Act, Section 382.085 of the Texas Health & Safety Code:

> (a) Except as authorized by a commission rule or order, a person may not cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.
>
> (b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

5 TEX. HEALTH & SAFETY CODE § 382.085. These statutes are meant to protect communities, like Port Arthur, from unauthorized releases, particularly those that impact air quality to the extent

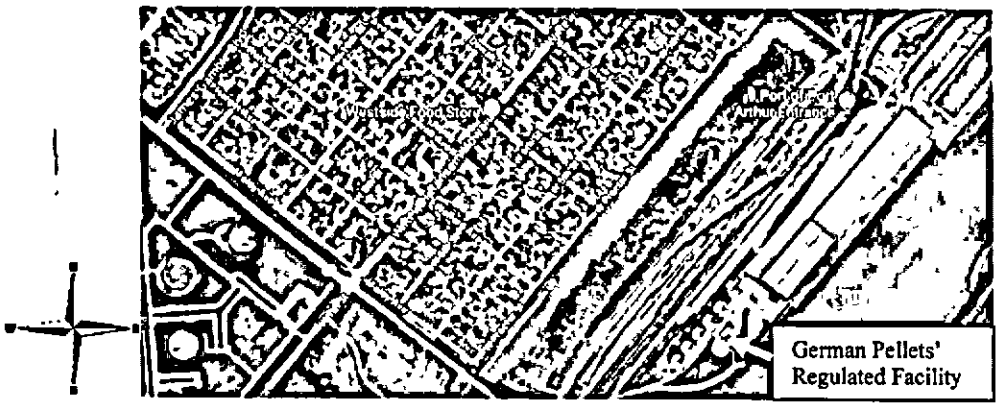
[46] *Id.* at 3, ¶ 10 (German Pellets "ha[s] begun, but not completed repairs to the Storage Facility, including reconstruction of Silo #2"); *see also id.* at 4, ¶ 13 ("the repairs to the Property and Storage Facility have not been 100% complete and there appears to be an issue with the concrete that may require additional repairs").

that it interferes with human health or the environment. The TCEQ's assessment of a mere $15,000 for Respondent's continuing unauthorized release in Port Arthur, Texas lasting from April 15, 2017 to July 25, 2017 merits further review.

B. The Release Amount was Significant. Under the *Penalty Policy*, the released pollutant constitutes a "significant amount" given the description provided in Table 2. *Penalty Policy*, Table 2, at 9. As explained above, the fire at the Regulated Facility was such an event for Port Arthur that the City had to sue Respondent and obtained an injunction because of the level of the nuisance being generated by the Regulated Facility while the silo fires were smoldering for months. Respondent released dark clouds of smoke that billowed into the West Port Arthur community, forcing residents to shelter in place with windows and doors shut. Those actions still did not stop the smoke from entering their homes, cars, and personal belongings as described above. The releases were not just nuisance odors, but thick black smoke that made it difficult for people to breathe.

It was one of the longest raging fires in Port Arthur's history, and the PAFD on scene for an emergency response up to 24-hours a day for 102 days to address the ongoing silo inferno.[47] The problem became so bad, Respondent set up a website to provide reports on the conditions in the area during the fire, including the air quality, as special monitors were installed by the TCEQ to measure the releases that were occurring daily while the fires continued to smolder. The map below shows that the German Pellets' Regulated Facility at the Port is southeast of the West Port Arthur Community:

[47] https://kfdm.com/news/local/port-arthur-fire-department-burning-silo-was-one-of-longest-in-citys-history



Prevailing winds tracked by TCEQ during this time period from April to May 2017 demonstrate that the smoke blew consistently into the West Port Arthur community from the Port of Port Arthur where the Regulated facility is located. *See* Figure 1 (April winds) and Figure 2 (May winds).

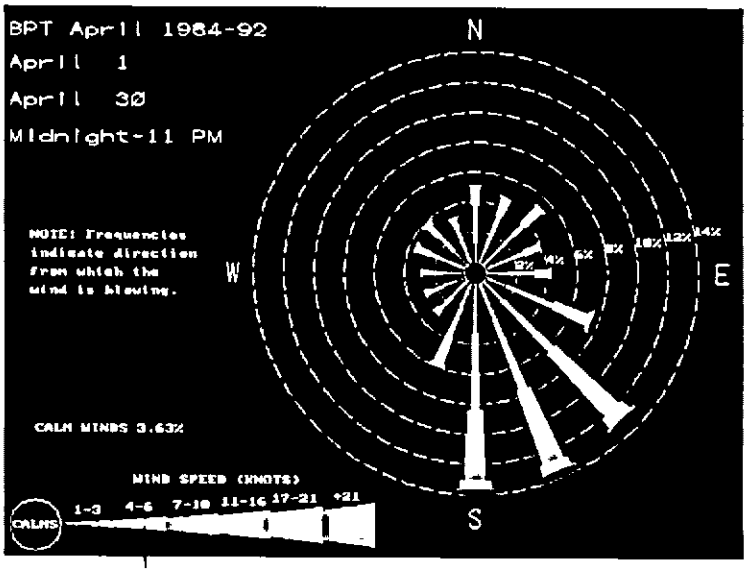


Figure 1: Prevailing Winds in April 2017

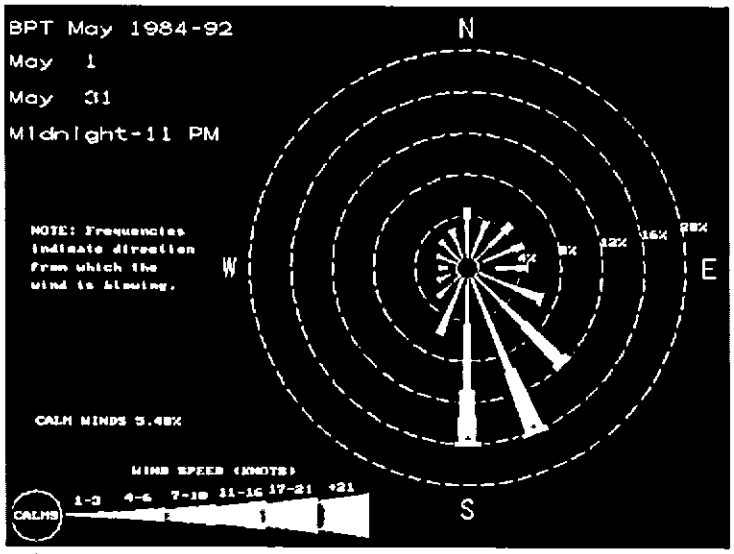


Figure 2: Prevailing Winds in May 2017

C. The Release affected the Impacted Residents' Resources. Under the *Penalty Policy*, the release was of a quantity sufficient to cause adverse effects to the Impacted Residents' property and constituted a significant amount. *Penalty Policy,* Table 3, at 10. As the silo fires blazed and smoldered, smoke filled and impacted the West Side of Port Arthur for almost two months. Human health was severely harmed as residents had to shelter in place, were hospitalized, or had to be treated for respiratory problems. During this time, the residents of Port Arthur could see, smell and breathe in the smoldering air from the fire at Respondent's Regulated Facility. The smoke saturated not only the homes, but also cars, clothing and other personal belongings. Many residents could not sleep due to smoke and its smell entering their bedrooms.

Over 30 individuals filed suit against Respondent last October claiming they had been exposed to harmful smoke as a result of fires and explosions at the Regulated Facility.[48] Specifically, the smoke caused breathing problems for the neighborhood's residents – including asthma, sinus infections, pneumonia and chronic obstructive pulmonary disease – and some were hospitalized. As the fire smoldered, the TCEQ advised children, the elderly and people with heart and lung problems to stay inside with the windows and doors shut as much as possible. Many residents were forced to leave the City because the conditions were so horrible. Adult children with elderly parents in the community came from different cities to retrieve their parents and take them someplace safe until the fires were extinguished. One tragic story is that of Ms. Geraldine Carter of 833 W. 6th Street in Port Arthur, who had complained to neighbors and friends of severe respiratory problems during this period. Her daughter, who lived out of town, was planning to come in to take her elderly mother to the doctor, but before she could arrive, her mother passed away. Mrs. Carter was discovered by a neighbor dead in her home on or about Wednesday, June 7, 2017, just 3 days after Respondent's silo collapsed at the Regulated Facility.

D. The Release Caused Major Harm. The Agency has misjudged the level of harm resulting from this unauthorized release by the Regulated Facility. During this event, human health or the environment was exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation. *Penalty Policy*, Table 4, at 10. Specifically, the actual release from the Regulated Facility caused severe health issues to hundreds of residents that live in West Port Arthur to such a degree to trigger a lawsuit of over 30 impacted residents. *Penalty Policy*, Table 4, at 10; PCW at 3. The TCEQ's assessment that

[48] Case No. B-200859, *Kelley, et al. v. German Pellets Texas LLC, Texas Pellets, Inc. and Cotton Commercial USA, Inc.*, in a District Court of Jefferson County, Texas. https://www.courthousenews.com/wp-content/uploads/2017/10/PelletsTX.pdf

this fire only caused "moderate harm" is inappropriate. The levels of smoke filling the West Port Arthur community clearly exceeded levels that were protective of human health as a result of this violation or the TCEQ would not have issued the shelter-in-place warnings that it did. This fire caused major harm and was a huge health risk for the City, turning out over 200 residents at a May 4, 2017 community meeting with the Respondent's representatives and local authorities in trying to come up with solutions to this problem.[49] West Port Arthur residents' normal use and enjoyment of their property was clearly impacted during this two-month ordeal. Despite the community's suffering during this extended nuisance event, Respondent never helped the community by offering medical services or assistance at the local clinic in West Port Arthur, leaving this low income, majority minority neighborhood to fend for itself. The City finally had to sue Respondent for nuisance to force corrective action at the Regulated Facility.

These conditions suggest that the appropriate category of harm for the violation is Major Harm. *Penalty Policy*, Table 5, at 12. However, because the TCEQ fails to assess the penalty as Major Harm, the 30% assessment of the penalty for a minor source, which the *Penalty Policy* required, was reduced to a mere 15% for the Moderate Harm assessed by the agency. *Penalty Policy,* Table 6, at 12. Thus, the agency's assessments for Respondent's violation calculated in the PCW are insufficient and noncompliant with the *Penalty Policy. Penalty Policy*, Table 6, at 12; PCW at 3. Thus, the Base Penalty assessed for the violation should be increased to $7,500 as opposed to the $3,750 stated in the PCW.

[49] https://www.panews.com/2017/05/05/pa-meeting-raises-more-questions-than-answers/

2. The Violation Events calculation in the PCW does not comply with the Penalty Policy.

A. The Respondent Engaged in Continuing Violations. The Penalty Policy identifies some violations to be continuous in nature. *Penalty Policy* at 13. As explained in the Penalty Policy, continuous violations should be assessed with a beginning date of noncompliance or the date that the respondent should have known as the beginning point. *Penalty Policy* at 13. "Determining the number violation events depends on the number of times the violation is observed, the specific requirement violated, the duration of the violation and other information about the case." *Penalty Policy* at 13.

The violation at issue in this administrative order is not a discrete event, but one that persisted for almost two months due to Respondent's inability quickly to extinguish the fires in the silo because it was trying to preserve its product. *Penalty Policy* at 13. For example, the statement of violation by the agency acknowledges at least 22 dates that the "TCEQ staff detected moderate, unpleasant burning wood and smoke odors coming from Silos 2 and 3 at the site by using odor surveys conducted off sites." For continuing violations, the number of events will be linked to the level of impact of the violation by considering the violation as if it recurred with the frequency shown in the chart below. *Penalty Policy* at 13. Thus, the TCEQ's attempt to characterize these nuisance issues as four separate events is not a correct application of its *Penalty Policy* for an ongoing event. Here, the fire had a clear start date of April 15, 2017, and it is undisputed that the PAFD engaged at an emergency response level for 102 days, through July 25, 2017.[50] Moreover, the fact that nuisance conditions were measured by the TCEQ on at least 22 days as stated in the violation would suggest that the nuisance conditions were much more

[50] https://kfdm.com/news/local/port-arthur-fire-department-burning-silo-was-one-of-longest-in-citys-history

ever present than on just the four dates claimed as the violation events. Surely, if it was only a mere four days that the community was troubled by this facility, the City would not have gone to the trouble to file a lawsuit and allege serious health conditions in the impacted community. The TCEQ needs to respect the citizens of Port Arthur who suffered and lived through this unauthorized release for almost two months and acknowledge these effects by assessing an appropriate penalty as required by the *Penalty Policy*.

B. Table 8 requires up to Daily Penalty for Major Harm, The Agency has tried to cast this event as four single event violations on April 28, May 12, May 25, and June 4, 2017 as opposed to looking at least the 22 days noted in its the allegations as to the dates that there were reported nuisance issues at the Regulated Facility (April 17, 18, 19, 20, 21, 22, 24, 25, 26, and 28; May 1, 2, 3, 12, 16, 17, 18, 22, 25, and 31; and June 1 and 4, 2017). For purposes of determining the base penalty, the agency assessed it as Moderate Harm for an Actual Release. Such would require a penalty of up to monthly. *Penalty Policy*, Table 8, at 14. However, the agency has downgraded the penalty to four single events, which is not allowed under the *Penalty Policy* for continuing violations ($3,750[51] x 4 days or $15,000), instead of daily at a higher base penalty of $7,500 for the duration of the continuing event for 102 days from April 15 to July 25, 2017 ($7,500 x 102 days = $765,000). PCW at 3; *Penalty Policy*, Table 8, at 14. Even taking the 22 days of measured nuisance conditions by TCEQ staff already acknowledged in the stated violation, the penalty should at least be recalculated with the higher base penalty ($7,500 x 22 days = $165,000). *Penalty Policy*, Table 8, at 14. Thus, the agency's determined violation subtotal of $15,000 for a four-day event significantly understates the required penalty for this

[51] PA-CAN takes issue with base penalty assessed by the TCEQ as described in Section 1 above.

continuing violation event for either Moderate Harm (as the agency already determined) or the Major Harm (which is what happened). Either way, the agency should revise its calculation for the Violation on the PCW upwards substantially to coincide with the stated penalties required by Table 8 for the reasons explained above. To comply with the Penalty Policy, a penalty between $165,000 and $765,000 should be assessed for this violation.

Given Respondent's bad faith conduct described above in addressing this fire, prompting a lawsuit from the City for the related nuisance conditions, its failure to assist residents with their health care expenses, and its lack of transparency in adopting its hazard mitigation plan, PA-CAN does not understand the agency's basis for deviating from the Penalty Policy in assessing that the harm caused by Respondent was only Moderate Harm when the event clearly compromised human health in the City and interfered with the use and enjoyment of people's homes and other property. Moreover, assessing the violation as four separate events denies the continuing nature of this fire event, which was not fully extinguished and no longer an emergency response according to the PAFD until July 25, 2017.[52]

EXHIBITS

In further support of these comments, PA-CAN attaches as Exhibit 1 photographs of the silo fires at the Regulated Facility gathered from public sources dated between April 15, 2017 and July 25, 2017. Moreover, PA-CAN identifies the following news stories that ran during this time frame profiling the impacts of the fire on the community:

- http://fox4beaumont.com/news/local/silo-continues-to-burn-at-the-port-of-port-arthur

[52] https://kfdm.com/news/local/port-arthur-fire-department-burning-silo-was-one-of-longest-in-citys-history

- http://www.12newsnow.com/news/local/port-arthur-residents-want-smoke-from-german-pellets-stop/432379252
- http://kfdm.com/news/local/silo-catches-fire-at-port-of-port-arthur
- http://kfdm.com/news/local/pellets-silo-still-smoldering-at-port-of-port-arthur
- http://kfdm.com/news/silo-continues-to-burn-at-the-port-of-port-arthur
- http://fox4beaumont.com/news/local/former-german-pellets-employee-speaks-about-silo-fire-it-was-bound-to-happen
- https://www.panews.com/2017/05/05/pa-meeting-raises-more-questions-than-answers/
- https://www.facebook.com/KFDMNews/
- https://www.facebook.com/12NewsNow/posts/10154438969056604
- http://www.12newsnow.com/mb/news/local/smoldering-silo-collapses-in-port-arthur-1/445828852
- http://m.beaumontenterprise.com/news/article/Smouldering-Port-Arthur-silo-ruptures-collapses-11194873.php
- http://m.panews.com/2017/06/05/pafd-and-tceq-continue-monitoring-gp-silo-collapse/

CONCLUSION

Port Arthur Community Action Network and the residents of Port Arthur, Texas thank the Commissioners of the TCEQ for your consideration of the community's opposition to administrative order proposed for the Regulated Facility. PA-CAN urges the TCEQ to re-think the logic and calculations underlying this proposed administrative order. As explained in these comments, the Regulated Facility severely impacted the quality of life of residents of Port Arthur, Texas for almost two months to such an extreme that the City had to initiate a public nuisance lawsuit and the PAFD was engaged in an emergency response to put out the fire for 102 days.

The chart below summarizes the proposed changes to the penalty calculation in the PCW that the agency should consider for this nuisance violation under 30 TEX. ADMIN. CODE § 101.4, and (2) violation of TEX. HEALTH AND SAFETY CODE § 382.085(a) and (b) by Respondent's failure to prevent nuisance odor conditions from April 15, 2017 to July 25, 2017 at the Regulated Facility:

Revised PCW Calculations	**Failed to prevent nuisance odor conditions. Specifically during odor surveys conducted off-shite, TCEQ staff detected moderate, unpleasant burning wood and smoke odors coming from Silos 2 and 3 at the Site on April 17-22, 24-26, 28; May 1-3, 12, 16-18, 22, 25, and 31, June 1-4, 2017, resulting in nuisance conditions on April 28, 2017, May 12, 2017, May 25, 2017, and June 4, 2017**	
Base Penalty	$7,500 for Major Harm	
Violation Event	22 days (specific dates listed above where TCEQ staff detected nuisance conditions offsite)	102 days (duration of continuing silo fire event from April 15, 2017 – July 25, 2017)
Violation Subtotal	$165,000	$765,000

The people of the State and the Impacted Residents who live near the Regulated Facility (who are not individually wealthy or politically powerful) depend on this agency to enforce the environmental laws that protect the common natural resources of this State. Please rework the administrative order, if an agreement with the Respondent for such an order is still to be had, and make it one an enforcement agency can show the larger world with a measure of pride.

For these reasons, PA-CAN respectfully requests that the agency consider these comments and revised calculations before entering the administrative order.

Dated: December 19, 2018

Respectfully submitted,

/s/ Amy Catherine Dinn
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ATTORNEY FOR PORT ARTHUR COMMUNITY ACTION NETWORK

DOCKET NO. 2017-1529-AIR-E

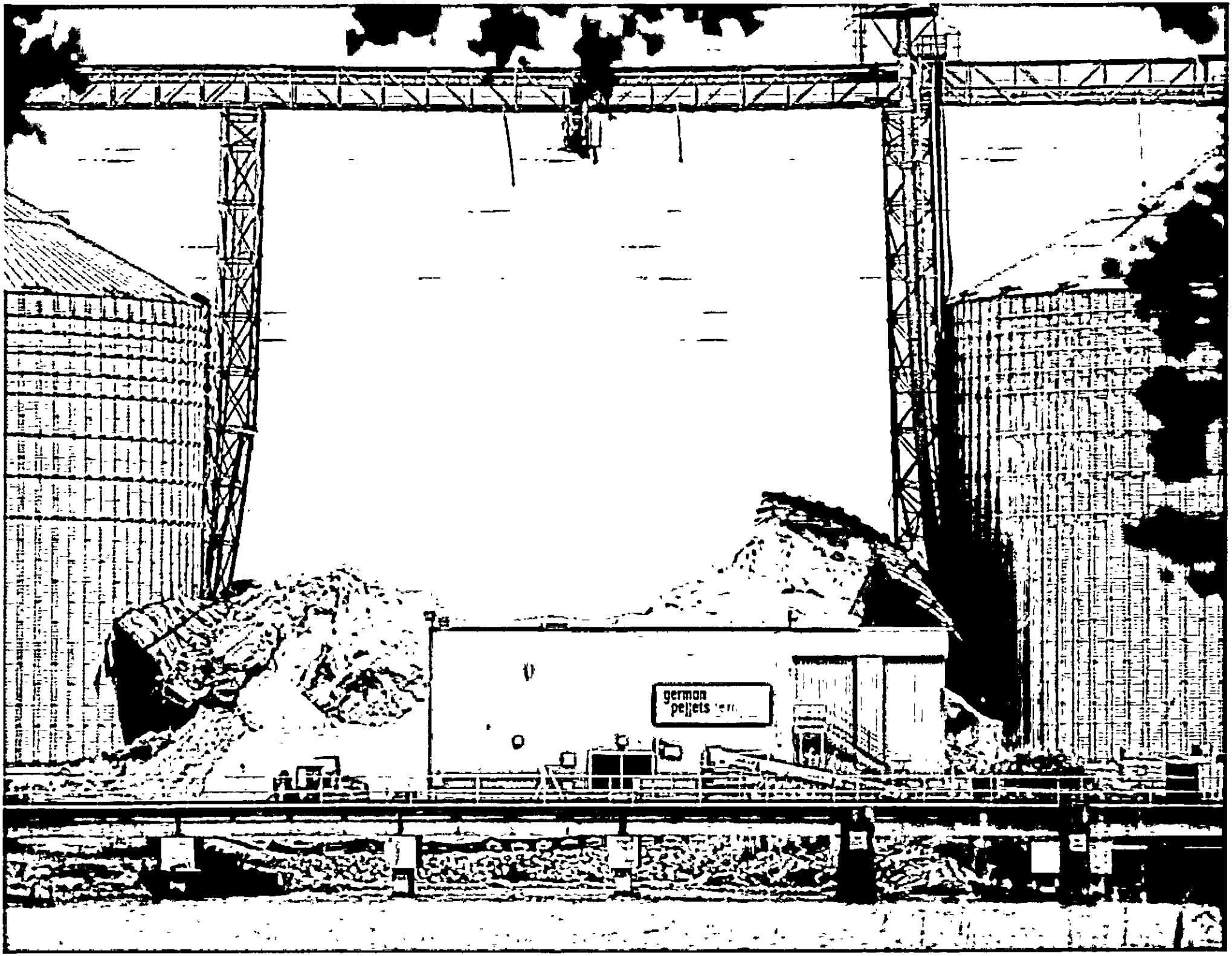
IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING GERMAN PELLETS TEXAS LLC	§ § § § §	BEFORE THE TEXAS COMMISSION ON
RN106530108	§	ENVIRONMENTAL QUALITY

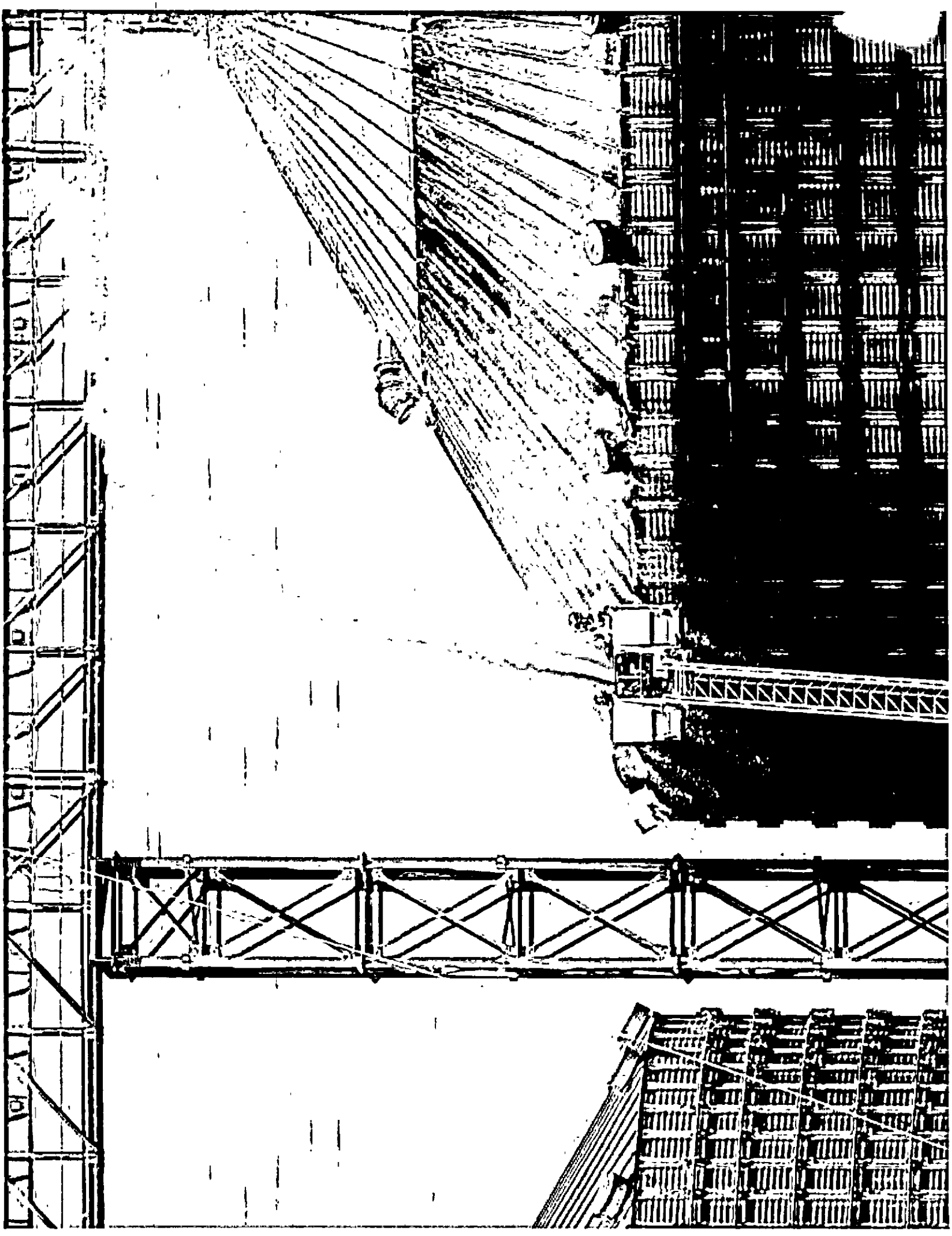
COMMENTS OF PORT ARTHUR COMMUNITY ACTION NETWORK ON THE PROPOSED ADMINISTRATIVE ORDER

EXHIBIT 1

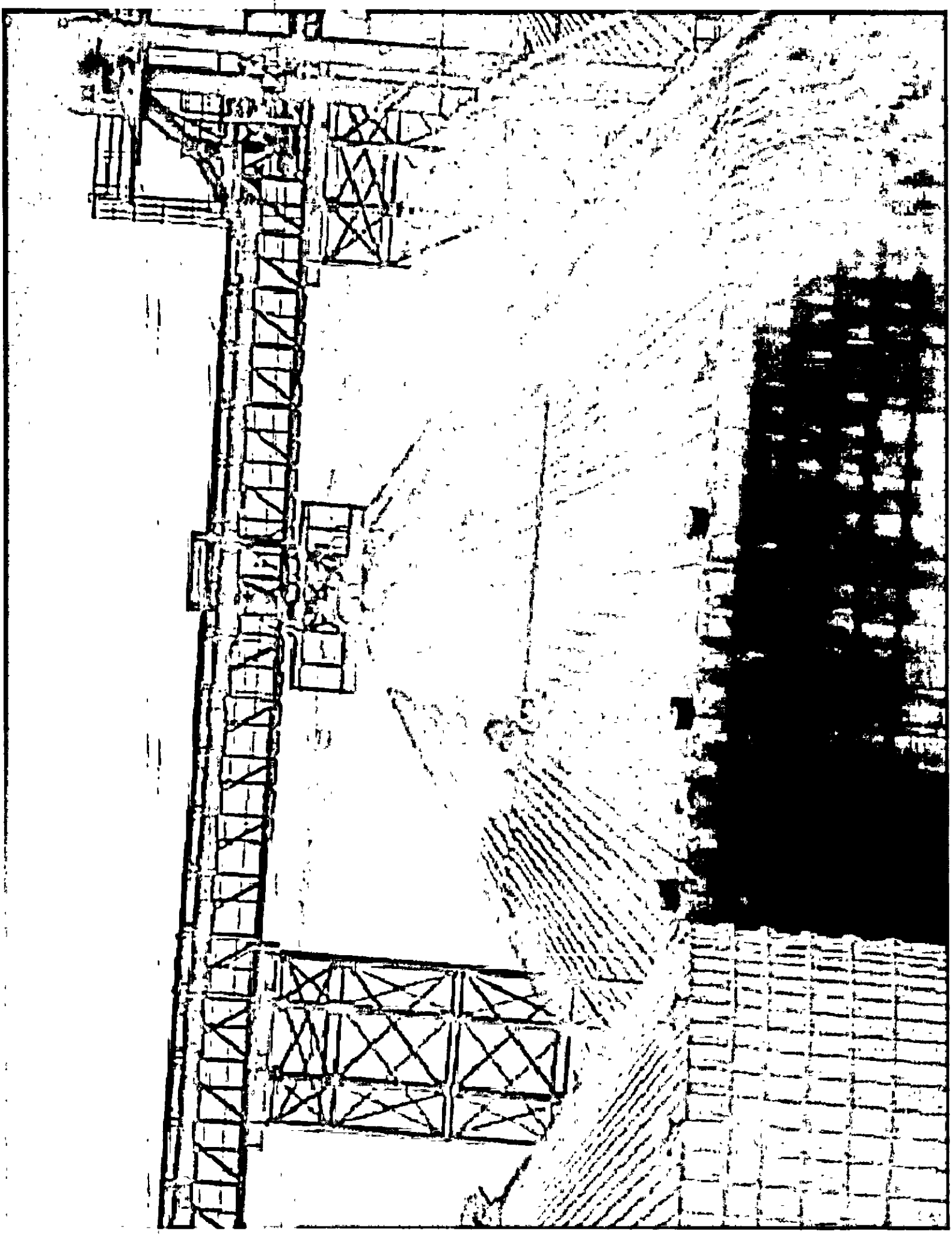
PICTURES OF REGULATED FACILITY

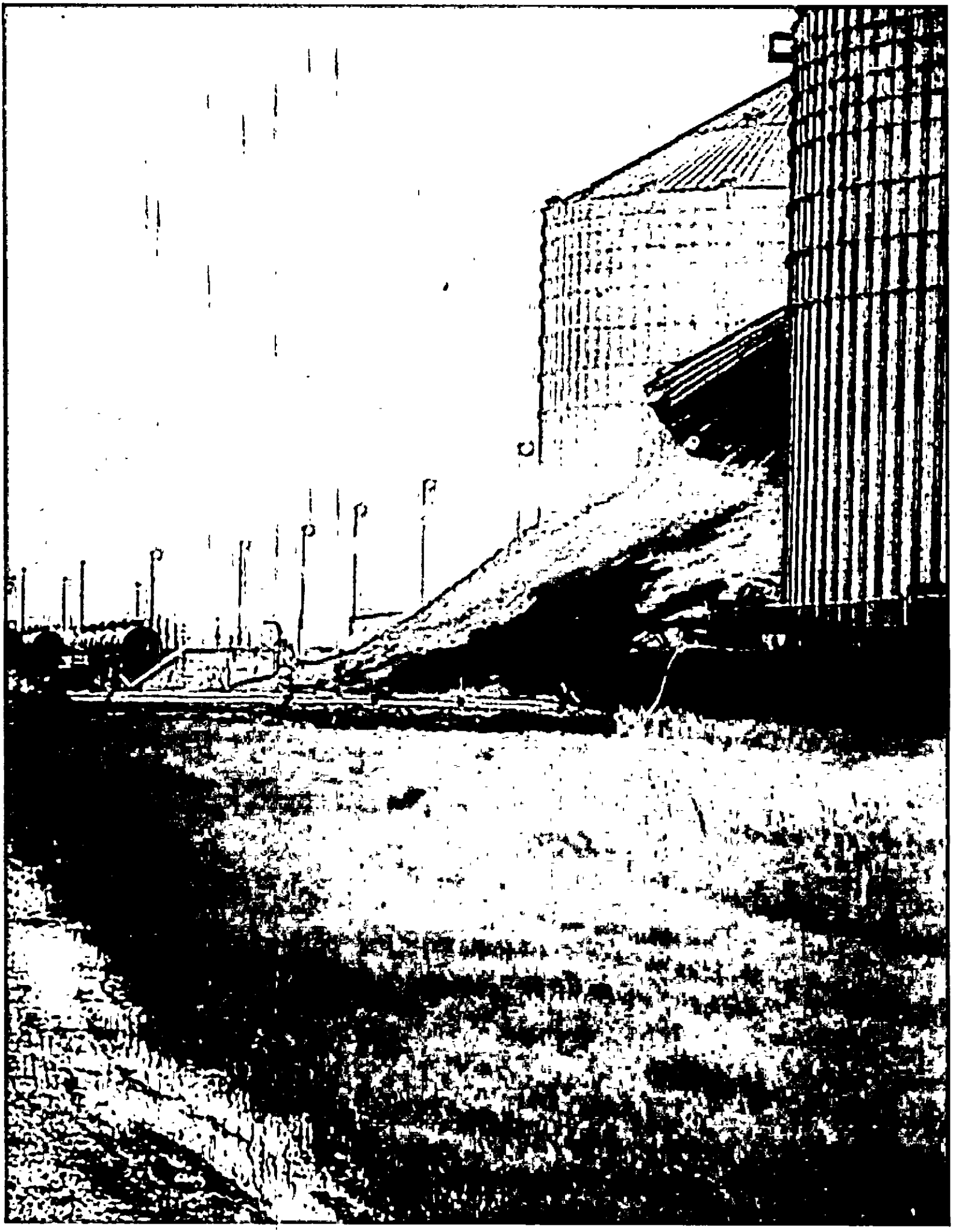
FROM APRIL 15, 2017 TO JULY 25, 2017

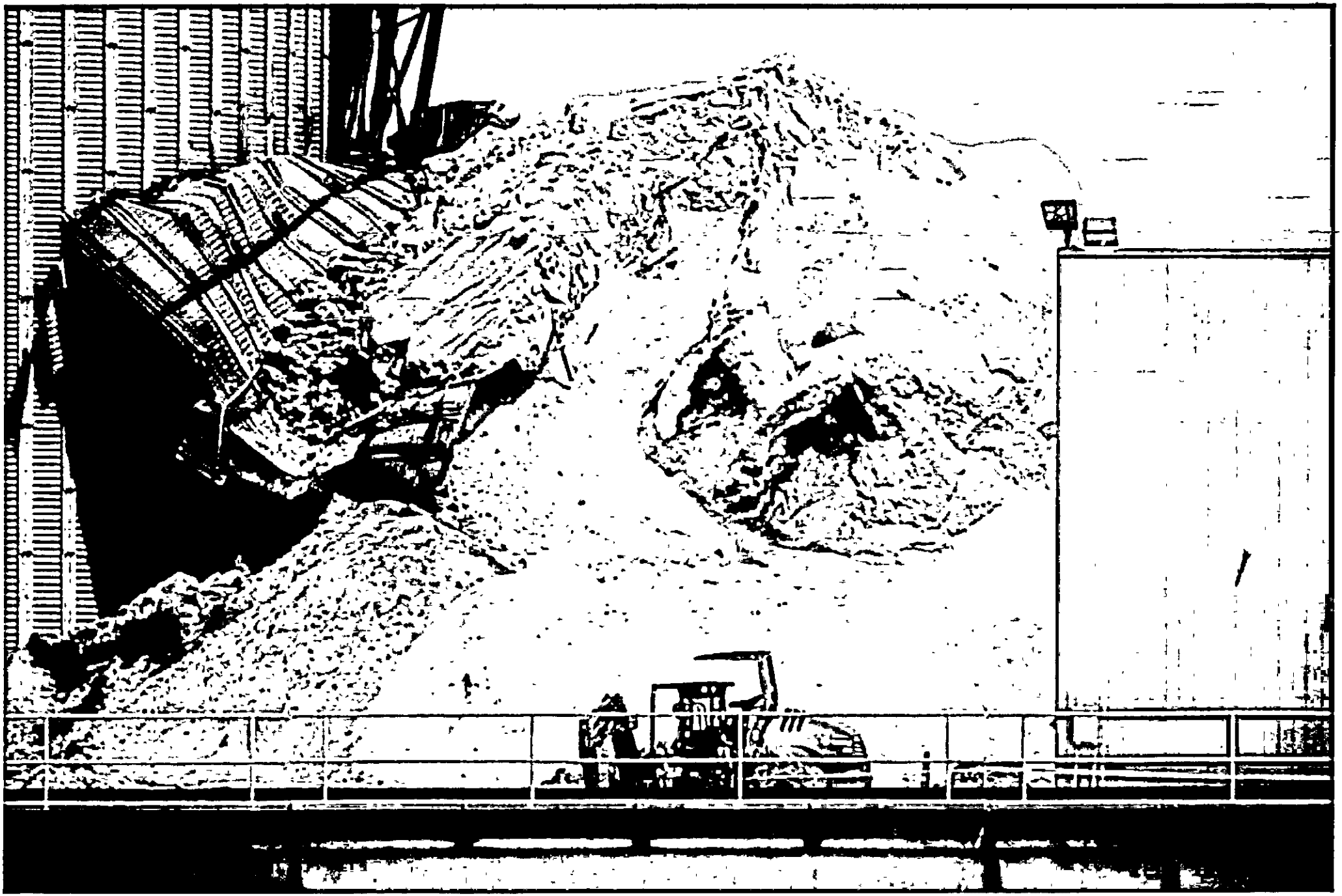

german
pellets

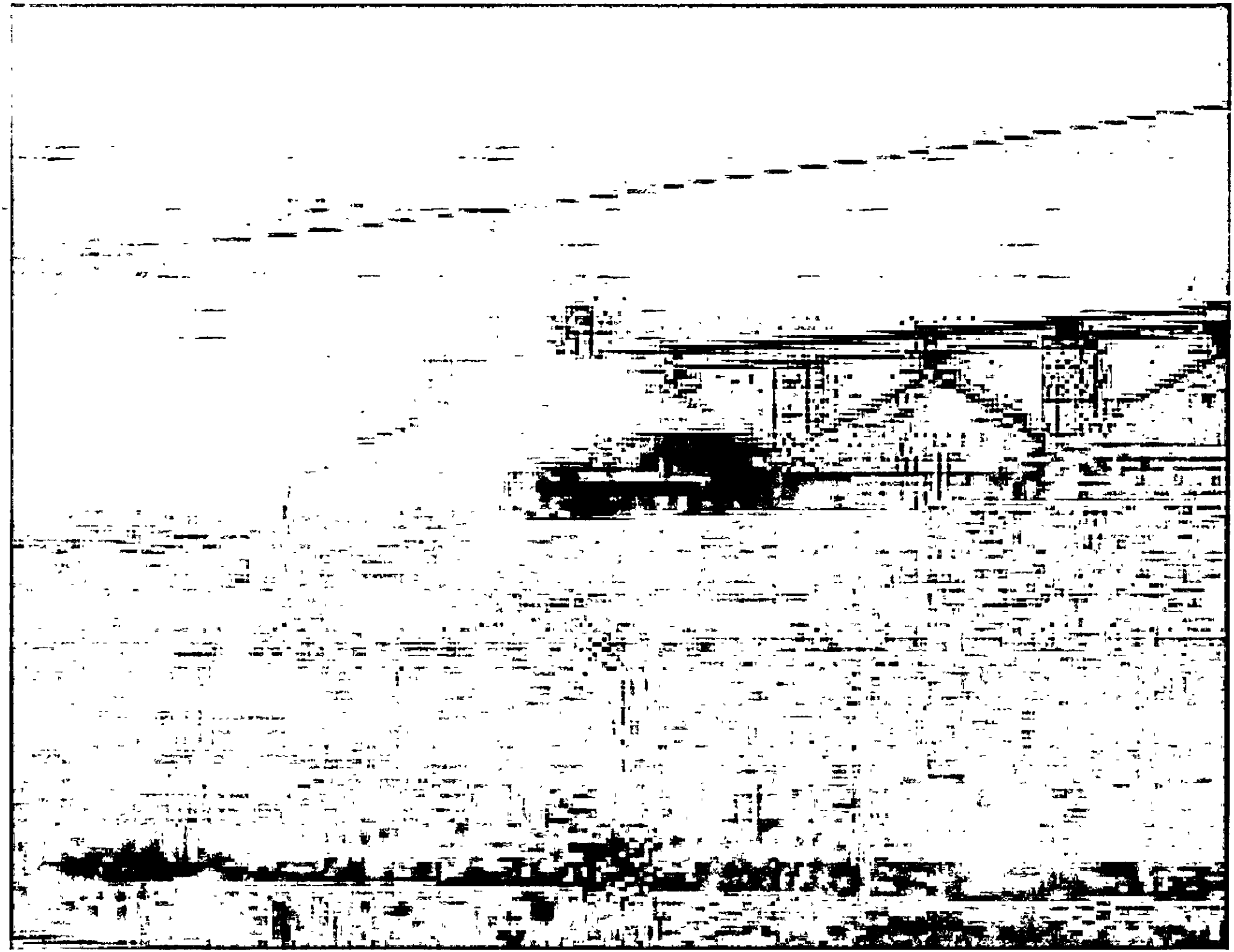


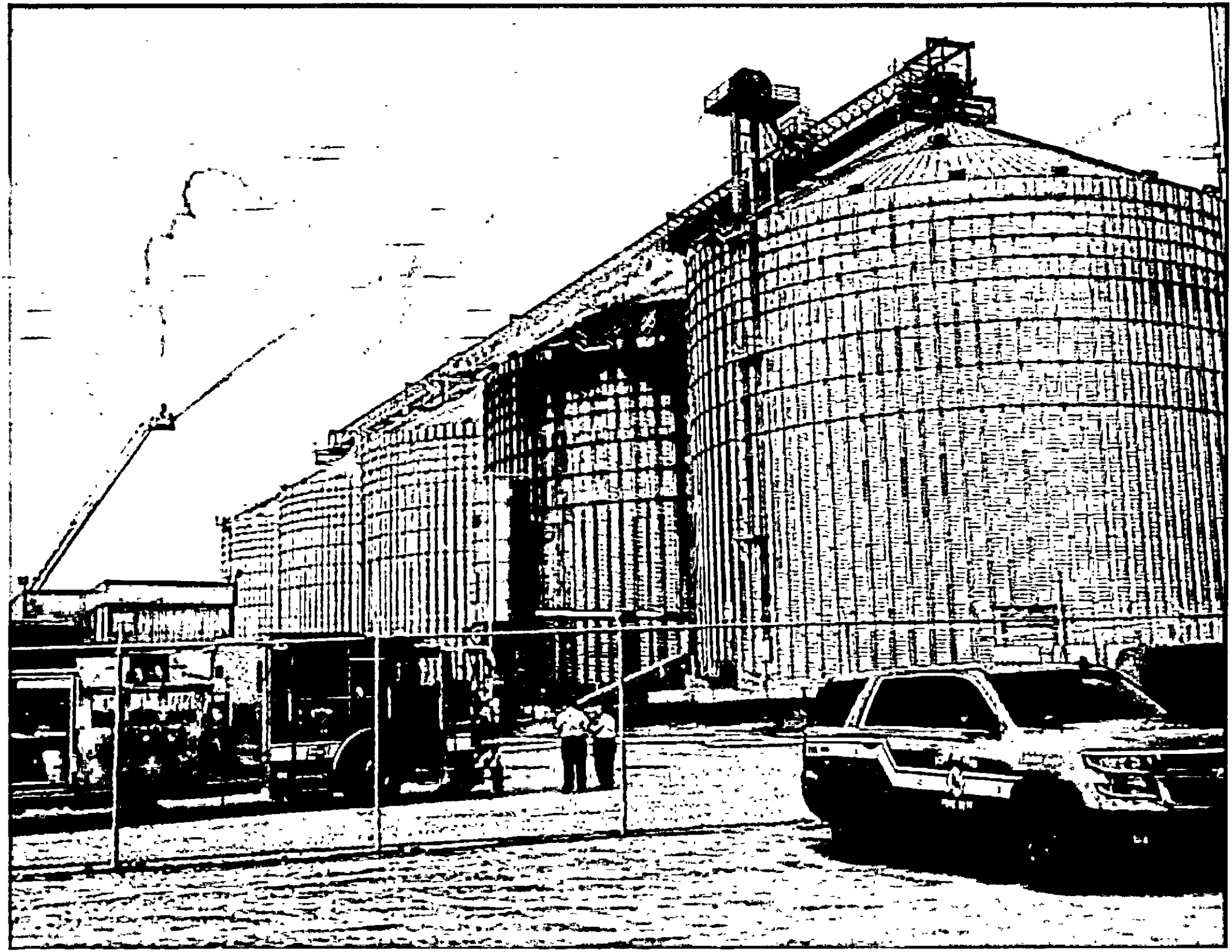
AT THE PORT OF PORT ARTHUR

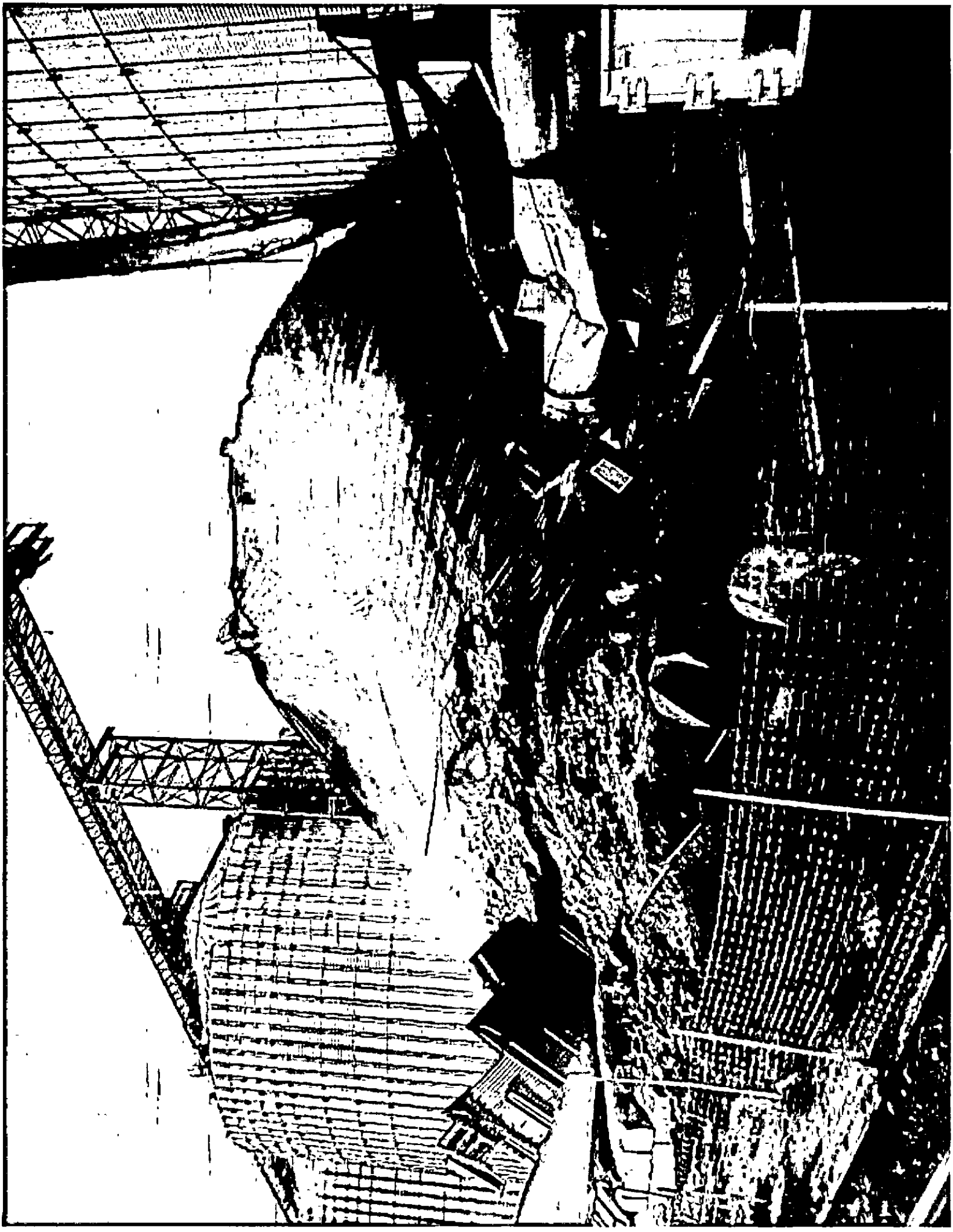


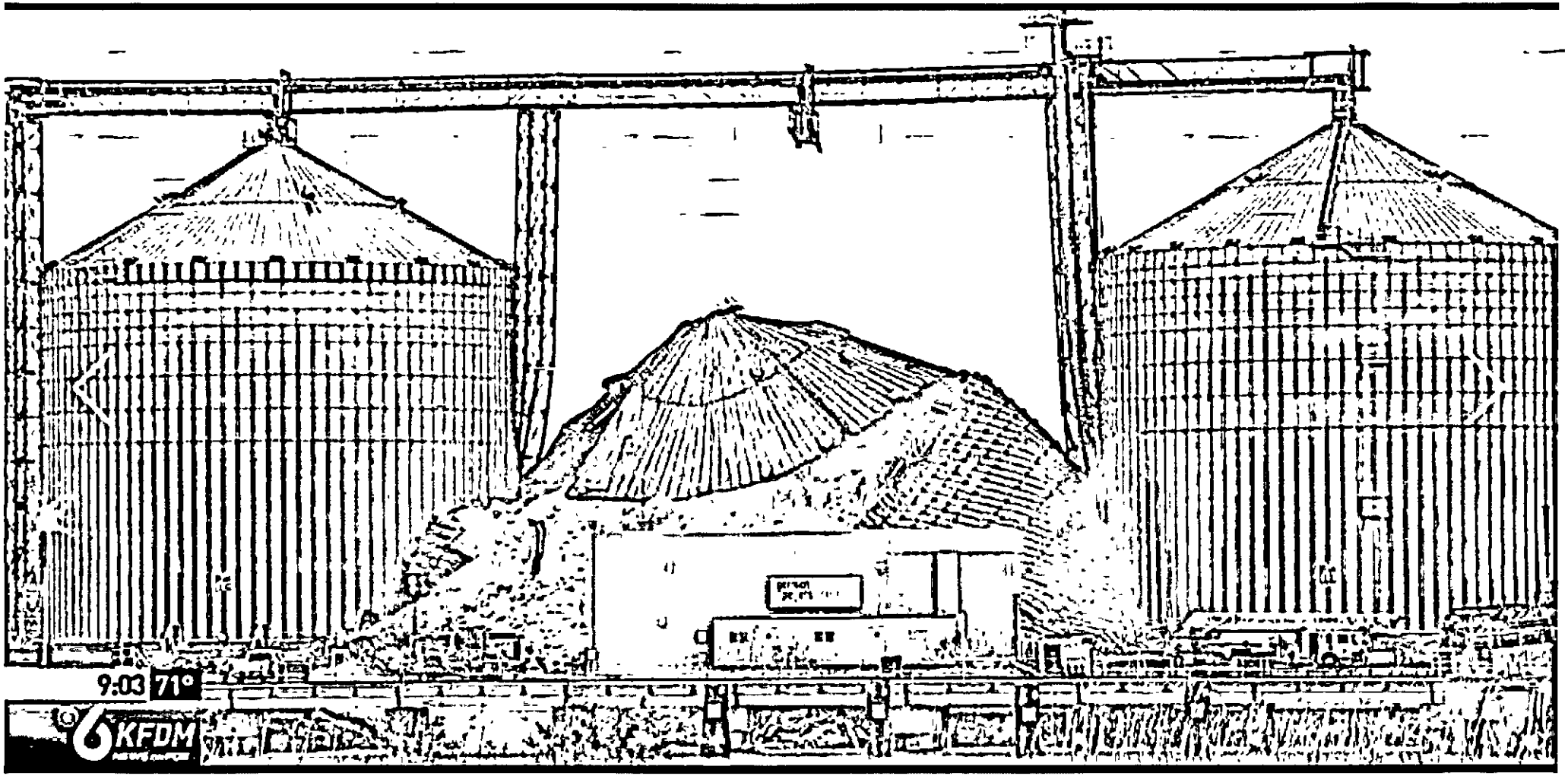








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