

# United States District Court

SOUTHERN

DISTRICT OF FLORIDA

c) xv.

In the Matter of the Search of

Place, address or brief description of person or property to be searched  
U.S. Sugar Corporation, Bryant Village,  
located off of State Road 98, southeast of  
Canal Point, Palm Beach County, Florida as  
more particularly described in Attachments  
A and A1.

## APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

CASE NUMBER:

I TIMOTHY W. McCANTS

being duly sworn depose and say:

I am a(n) Special Agent with the Federal Bureau of Investigation and have reason to believe

Official Title

that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

U.S. Sugar Corporation, Bryant Village, located off of State Road 98,  
southeast of Canal Point, Palm Beach County, Florida as more particularly  
described in Attachments A and A1.

In the SOUTHERN

District of FLORIDA

there is now concealed a certain person or property, namely pollutants found in 55 gallon drums, soils and waters, as described  
in Paragraph 13 of the attached Affidavit.

Evidence of Violations of The Clean Water Act  
which is (give alleged grounds for search and seizure under Rule 67(b) of the Federal Rules of Criminal Procedure) property that constitutes  
evidence of the commission of a criminal offense and property which is  
and has been used as the means of committing a criminal offense.

In violation of Title 33 United States Code, Section(s) 1319(c)

The facts to support the issuance of a Search Warrant are as follows:

See attached Affidavit and Attachments incorporated therein.

Continued on the attached sheet and made a part hereof.

☒ Yes ☐ No

Sworn to before me, and subscribed in my presence

Signature of Affiant  
Special Agent Timothy W. McCants  
Federal Bureau of Investigation

Date

at

City and State

Name and Title of Judicial Officer

OCT 16 '89 16:50 PODJURST ORSECK ET AL 3053582382

AFFIDAVIT

Timothy W. McCants, being duly sworn deposes and says:

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI") in Miami, Florida, and have been so employed for approximately two years. The FBI is authorized by 28 USC §533 and 28 USC §0.85(a) to investigate crimes against the United States. In my present assignment I am responsible for investigations of alleged criminal violations of federal environmental statutes. I am also authorized to obtain and execute search warrants.

2. The Federal Water Pollution Control Act, 33 USC §1251 et. seq., popularly known as the Clean Water Act ("CWA"), prohibits the discharge of any pollutant into a water of the United States from a "point source", except in compliance (inter alia) with a previously obtained permit under the National Pollutant Discharge Elimination System ("NPDES"). 33 USC §1311(a) and 1342. "Pollutant" is broadly defined to include (inter alia) "solid waste, ... sewage, garbage, chemical wastes, biological materials, ... wrecked or discarded equipment, rock, sand, ... and industrial, municipal, and agricultural waste discharged into water." 33 USC 1362(6).

"Discharge of a pollutant" is defined to include, (inter alia) "any addition of any pollutant to navigable waters from any point source ...." 33 USC §1362(12). "Navigable waters" is, in turn, defined as "the waters of the United States, including the

territorial seas." 33 USC §1362(7). <sup>1/</sup> A "point source" is broadly defined as any "discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, ... container, ... or vessel or other floating craft from which pollutants are or may be discharged." 33 U.S.C. §1362(14).

The primary regulatory mechanism of the Clean Water Act is the NPDES permit mentioned above. Dischargers of pollutants must apply for the permit, which incorporates effluent limitations and other pollution standards established under the Act. 33 U.S.C. §§1311-1314 and 1342. As stated earlier, it is unlawful to discharge pollutants into navigable waters without such a permit.

The negligent discharge of a pollutant without an NPDES permit, or in violation of the terms of such a permit, is a misdemeanor punishable by up to one year imprisonment and a fine of not less than \$2,500 nor more than \$25,000 per day of violation. 33 U.S.C. §1319(c)(1). The knowing discharge of a pollutant without, or in violation of, a NPDES permit is a felony punishable by no more than three years incarceration and a fine

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<sup>1/</sup> The phrase "waters of the United States" has been broadly defined to include all waters in the geographical sense and is not limited to waters which are navigable in fact. See, e.g., United States v. Holland, 373 F.Supp. 665 (M.D. Fla. 1974) (man-made mosquito ditches and intertidal wetlands are waters of the United States); United States v. Phelps Dodge Corp., 391 F.Supp. 1181, 1187 (D. Ariz. 1975) (waters of the United States extends to any waterway even including normally dry arroyos where water might flow); United States v. Ashland Oil, 504 F.2d 1317 (6th Cir. 1974) (small tributary of a stream is a water of the United States); 40 CFR 232.2(q).

of not less than \$5,000 nor more than \$50,000 per day of violation. 33 U.S.C. § 1319(c)(2).

3. A check of corporate records on file with the Florida Secretary of State and other public information reveals that the U.S. Sugar Corporation ("U.S. Sugar") is incorporated in the State of Florida and is in the business of growing and milling raw sugar cane. U.S. Sugar owns over 100,000 acres of land in the vicinity of Lake Okeechobee on which sugar cane is grown. It also owns and operates two millsites where sugar cane is processed. One, the Clewiston millsite, is located near Clewiston, Florida, southwest of lake Okeechobee in Hendry County. The second millsite, at U.S. Sugar's Bryant Village, is located southeast of Canal Point, on the south side of State Road 98 in Palm Beach County, at Range 37, Township 42, Sections 2 and 3 (Palm Beach County Property Appraisers's Office). Bryant Village is situated approximately one mile from the southeast shore of Lake Okeechobee. In addition to the millsite U.S. Sugar also operates a labor camp at Bryant Village. Bryant Village is surrounded by farmland upon which sugar cane is grown. This affidavit and proposed search warrant concerns only Bryant Village, as described in Attachments A, and A1, not the Clewiston millsite.

4. In May, 1989, an individual who has access to U.S. Sugar's millsite at Bryant Village informed me that a large number of 55-gallon metal drums were located on that property at three different sites which are adjacent to canals. This confidential informant ("CI") reported that, while some of the

drums are empty, at least fifty percent of the drums appear to be full. The CI reported that many of the drums are expanded and bulging; many others are rusted or corroded and are leaking liquid substances onto and into the ground. The CI further stated that some drums are labeled as containing chemical products. Some of these leaking substances both smell and appear as if they contain petroleum products. Much of the ground upon which these corroding drums stand is covered with pools of chemical wastes and in places the earth appears blackened. Moreover, the CI described plant life in the areas adjacent to the corroding drums as browned and dying. At each site, the 55-gallon drums are located on land which slopes down to adjacent canals. The CI observed leaking chemical liquids which had washed onto the banks and into the waters of these adjacent canals.

5. The CI is a concerned citizen whose regard for the environment caused the CI to bring the above-described facts to my attention. The CI is not under investigation by the FBI nor has this individual ever been arrested or convicted of a crime. Moreover, as set forth below, the CI's information has been corroborated by photographs the CI took at the Bryant Village millsite and by my aerial surveillance of the millsite.

6. The CI showed me photographs which he took at the Bryant Village millsite on or about December 1988. (Examples of those photographs are included in Attachments B, C and D.) Those photographs depict two large "drumfields" (designated as "drumfields two and three," paragraph 7, infra) each consisting

of what appears to be several hundred metal 55-gallon drums. A third, much smaller, collection of drums is also shown next to a canal (designated as "drumfield one"). The photographs show many of the drums to be weathered, rusted and leaking. The drums are located outdoors without any protection from the sun and rain. Many of the corroding drums are standing in pools of what appear to be chemical wastes. Some drums are bulging, as if their contents are highly pressurized. These photographs show drums placed on earth which slopes down to adjacent canals. The banks of the canals appear to be stained and discolored and much of the vegetation near the drums appears browned and dying. Moreover, an oil-like sheen is visible on the water surface. The photographs further demonstrate that some drums bear labels with the names of chemicals. Additionally, some drums bear warning labels stating that the contents are corrosive and flammable.

*Don't care*  
7. On May 25th, June 29th, August 22 and September 20, 1989, I flew over the mill at Bryant Village and surrounding areas in a fixed-wing aircraft. On each occasion I observed and photographed from the air the three aforementioned "drumfields" at the Bryant Village millsite. The drums are located at the millsite as previously described by the CI.

The first and smallest drumfield is identified on Attachment A and A1 as "drumfield number one." On May 25th I observed approximately one dozen drums at this first site within twenty feet of the adjacent canal. The earth between these drums and the canal appeared discolored, consistent with the discharge of chemical substances from the drums into the canal. On June 29

and August 22, 1989, I did not see any 55-gallon drums at this first site. However, I again observed over one dozen drums back at this site on September 20, 1989. The canal banks next to the drums appeared stained and discolored. Photographs of drumfield number 1 are appended hereto as Attachments B1, B2, B3 and B4.

The second drumfield is identified on Attachment A and A1 as "drumfield number two." This drumfield consists of several hundred drums, some of which appeared to be no farther than ten feet from the adjacent canal. Photographs of the second drumfield are appended hereto as Attachments C1, C2, C3 and C4.

The third drumfield is identified on Attachment A and A1 as "drumfield number three." It is located on both sides of a narrow canal and at the intersection of a second canal. This site also consists of several hundred drums. Some of these drums are located immediately adjacent to the canal banks. Photographs of drumfield number three are appended hereto as Attachments D1, D2, and D3.

I have observed drumfields numbers two and three on each occasion that I have flown over U.S. Sugar's millsite at Bryant Village. At all three drumfields, areas of vegetation between the drums and their adjacent canals have appeared either brown or dead. Moreover, soil on the downward gradient between the drums and the canals has appeared blackened, as if it had been soaked with an oily substance.

8. In September 1989, the CI was at the Bryant Village millsite. The CI reported that the location and condition of the drums and adjacent canals continued as described in paragraphs 4,

KIAP  
under study  
Circulate  
Failure to  
Report

6, and 7. The CI particularly noted that more than one dozen 55-gallon drums were located at drumfield number one. The bank of the canal at that location continued to appear blackened, surrounding plant life appeared burned and an oil-like sheen was visible on the surface of the canal waters.

9. I have shown the aerial photographs I took and the ground photographs taken by the CI to William R. Davis who is employed by the EPA, Region IV, Environmental Services Division. Mr. Davis is employed as an environmental scientist and has worked in this capacity for the EPA and its predecessor agency for 29 years. In the course of this employment Mr. Davis has performed over one hundred field investigations of contaminated materials. In these investigations Mr. Davis has evaluated the extent of contamination and taken samples of potential contaminants. Moreover, he has training and extensive experience interpreting aerial photographs of potentially contaminated areas. Based on his training and experience Mr. Davis estimates that the three drumfields comprise as many as one thousand 55-gallon metal drums. Moreover, William R. Davis confirms that the photographs of drumfield number one taken in or about December, 1988 and on May 25, 1989 show 55-gallon drums located within approximately ten to fifteen feet of the adjacent canal. At drumfield number two, drums appear to be located within ten to fifteen feet of a canal. The drums at the third site appear to be placed within twenty-five feet of the intercepting canal. Mr. Davis identified the phenomenon of browning, burned or non-existent plant life near the leaking drums as "vegetation



stress." Vegetation stress is relied upon by environmental scientists as indicative of a chemical discharge to the earth. Mr. Davis also stated that heavily discolored or stained soils are an indication of a chemical discharge to those soils. Moreover, chemicals may leach or be washed from contaminated soils to adjacent areas, including waterways.

Mr. Davis further stated that in light of the proximity of the drums to canals, the downward slope from the drums to canals, the presence of vegetation stress and stained soil between drums and canals, and a visible oil-like sheen on canal waters, it appears that liquid substances released from drums in the three drumfields and leached or washed from contaminated soils, have and will continue to discharge into the nearby canals. Moreover, such released substances are likely to adhere to the earth near the drums, canal banks, shores, and sediments and to disperse into canal waters.

I informed Mr. Davis that I saw 55-gallon drums on the banks of the canal at drumfield number one in May and September, but not in June and August of 1989. I also told Mr. Davis of the CI's observations reported in paragraphs 4 and 8 of the soils, plant life and waters at this drumfield. Mr. Davis stated that 55-gallon drums are often filled, emptied and reused for the transportation and storage of chemicals and wastes. In light of the information I relayed to Mr. Davis, it is his opinion that the intermittent placement of drums at drumfield number one is consistent with the periodic collection and disposal of wastes at that location.

10. A search of EPA records reveals that U.S. Sugar Corporation has not been issued a NPDES permit for the discharge of pollutants into the waterways at the Bryant millsite nor does it have pending an application for such a permit. EPA records reflect all permits issued under section 1342 of the Clean Water Act.

11. On September 5, 1989, I met with Ron Silver, who is the Chief of the Field Operations Branch of the Army Corps of Engineers and has been employed by the Army Corps for fifteen years. Mr. Silver reviewed the photographs described supra. He also provided me with high resolution aerial photographs taken in 1984 by the Army Corps of Engineers of Bryant Village and the surrounding area. Mr. Silver has received training in the interpretation of aerial photogrpahs, in particular the identification and delineation of wetlands and waters of the United States. Moreover, the Army Corps of Engineers routinely relies upon his expertise in identifying and delineating wetlands and waters of the United States from aerial photographs. Based upon this training and expertise, and his review of the photographs mentioned above, Mr. Silver stated that the canals adjacent to the three drumfields are part of an extensive canal system running through property owned by U.S. Sugar. Moreover, these canals are adjacent, contiguous and ultimately connected to Lake Okeechobee and to the West Palm Beach Canal, which is the primary conduit of water between Lake Okeechobee and West Palm Beach and the Loxahatchee National Wildlife Refuge. The West Palm Beach Canal was constructed by the Army Corps of Engineers

and is ~~operated and maintained by the South Florida Water Management District~~. Based upon these observations, Mr. Silver is of the opinion that the canals at Bryant Village as described in Attachments A and A1 are waters of the United States.

Mr. Silver stated that pollutants discharged into canals from leaking drums and leaching soils would disperse into canal waters and may travel to waters of any connecting canals or other waterways.

12. To properly collect evidence of possible violations of the Clean Water Act it is essential that I be assisted by agents of the FBI and EPA, a representative from the Army Corps of Engineers and environmental scientists and other support personnel of the EPA Environmental Services Division who are trained in the collection of soil, water and drum samples. The collection of evidence pursuant to the proposed search warrant is expected to require at a minimum, several days of work on the property of U.S. Sugar Corporation. A small boat will be necessary to search the canals and for the collection of water samples. The heavy protective clothing worn by the environmental scientists during their sampling efforts often makes their work difficult or impossible to accomplish during hot daylight hours. Therefore, authority for a nighttime search is necessary to permit sampling under appropriate lighting after dark.

13. Based upon the foregoing there is probable cause to believe that the U.S. Sugar Corporation is violating the Clean Water Act and that evidence of such violations may be found at Bryant Village as identified in Attachments A and A1. In order

to search for evidence of violations of the Act it is respectfully requested that a search warrant be issued permitting the personnel identified in paragraph 12, supra, and others whose assistance may be required, to have access to the property of U.S. Sugar at Bryant Village, as identified in Attachment A and A1 during day and nighttime hours. Such access will be for the following purposes:

- a) to test and take samples of any materials in or on drums located at the three drumfields identified infra and at Attachments A and A1;
- b) to take labels from the drums identified in "a)" above;
- c) to test and take samples of soils near and adjacent to the three drumfields described in "a)" above, and from the banks of adjacent canals;
- d) to test and take soil samples from soils which do not appear to be contaminated which may serve as "background" or comparison soil samples;
- e) to test and take water samples from any canals or waterways and sediments from canal bottoms;
- f) to test and take samples from drainage pipes, conveyances, culverts and ditches;
- g) to photograph and videotape any such areas or items.

FURTHER AFFIANT SAYETH NAUGHT.

SPECIAL AGENT TIMOTHY W. McCANTS  
FEDERAL BUREAU OF INVESTIGATION

Sworn to and subscribed before  
me this \_\_\_\_ day of October,  
1989

UNITED STATES MAGISTRATE

ATTACHMENT A

I. The premises encompassed by this search warrant are identified by the following description which is to be read in conjunction with Attachment A1. Attachment A1 is two overlapping aerial photographs provided by the mapping office of the Palm Beach County Property Appraiser of Range 37, Township 42, Sections 2 and 3.

a) The outer boundaries of the premises are identified on the attached aerial photographs with a yellow line and are described as follows.

b) The main entrance to the premises is located south west of State Road 98 and is marked by a sign which reads "BRYANT VILLAGE, a housing community for agricultural employees of UNITED STATES SUGAR CORPORATION." (As shown on Attachment A1, State Road 98 runs parallel to the West Palm Beach Canal.)

c) The northern most boundary of the premises to be searched is at the intersection of a canal (which borders the labor camp) and State Road 98, located approximately 700 yards northwest of the entrance to Bryant Village. This location is marked as Point A on the attached aerial photographs.

d) From Point A proceed southeast along State Road 98 approximately 2,375 yards (approximately 1.35 miles) to its intersection with an unnamed canal. This intersection is indicated on Attachment A1 as Point B and is the most eastern boundary of the premises to be searched.

e) The southern most boundary is described as follows: from Point B proceed west along the southern bank of an unnamed canal for approximately 3,425 yards (approximately 1.95 miles) to its intersection with another canal which runs north to south. This location is indicated on the attached aerial photographs as Point C.

f) The most western boundary is described as follows: proceed north from Point C along the western bank of an unnamed canal for approximately 523 yards (approximately .35 miles) to its intersection with a paved road and railroad tracks. This location is marked on the attached aerial photographs as Point D.

g) Proceed east from Point D along the northern edge of the paved road approximately 970 yards (approximately .55 miles) to the western bank of an intersecting canal. This location is marked as Point E.

h) From Point E proceed north along the western bank of an unnamed canal for approximately 471 yards (approximately .27 miles) to its intersection with an unimproved road. This intersection is marked as Point F.

i) From Point F proceed east along the northern edge of the unimproved road for approximately 317 yards (approximately .18 miles) to its intersection with the west side of the canal bordering the labor camp. This is marked as Point G.

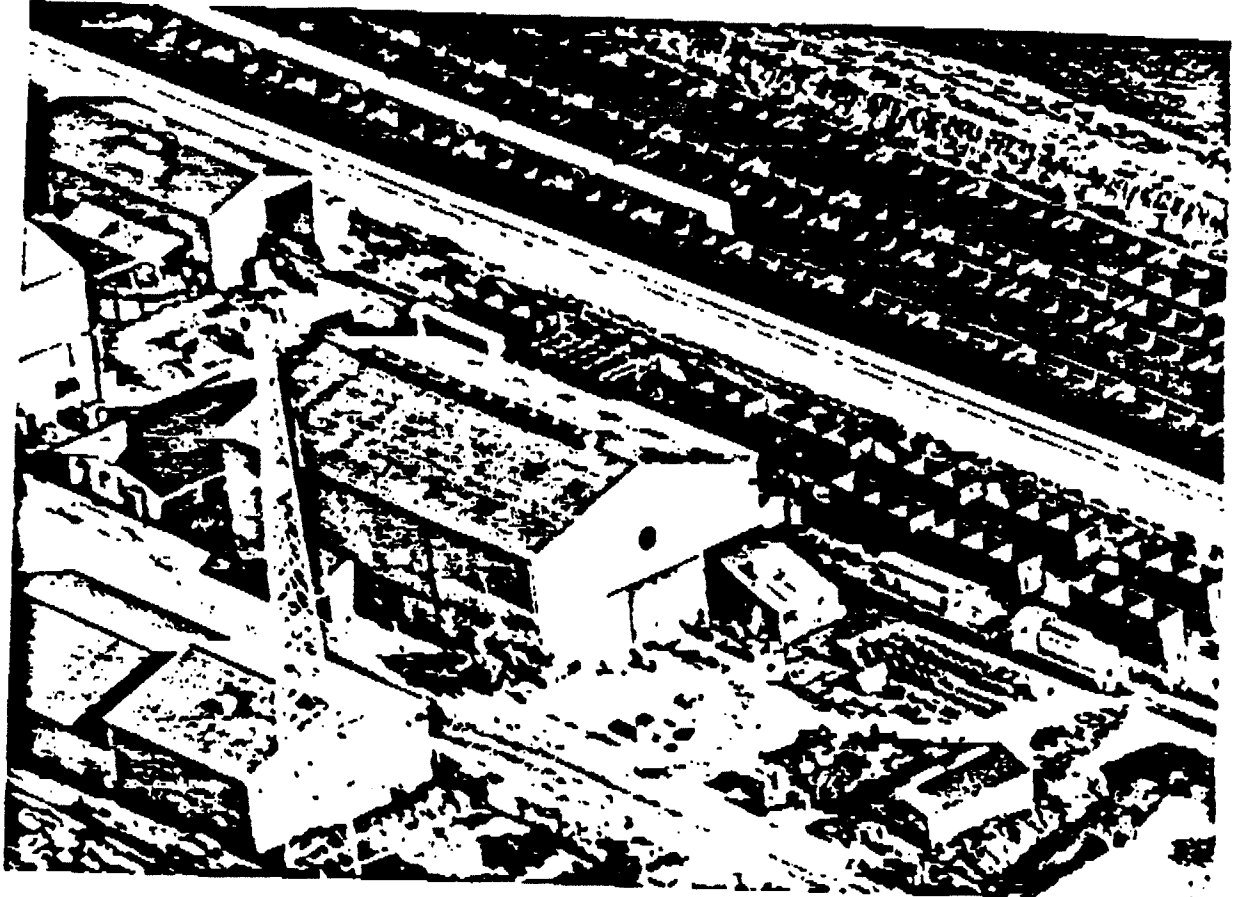
j) From Point G proceed north for approximately 175 yards (or approximately .10 miles) and then northeast for approximately 314 yards (approximately .18 miles) along the canal which borders the west and northwest side of the labor camp to Point A. This boundary is inclusive of said canal.

II. The three drumfields referred to in the Affidavit and in Attachment E to the search warrant are identified as follows:

a) Drumfield number 1 is identified as such on the aerial photographs marked Attachment A1 and its location is shown in the aerial photograph marked as attachment B1.

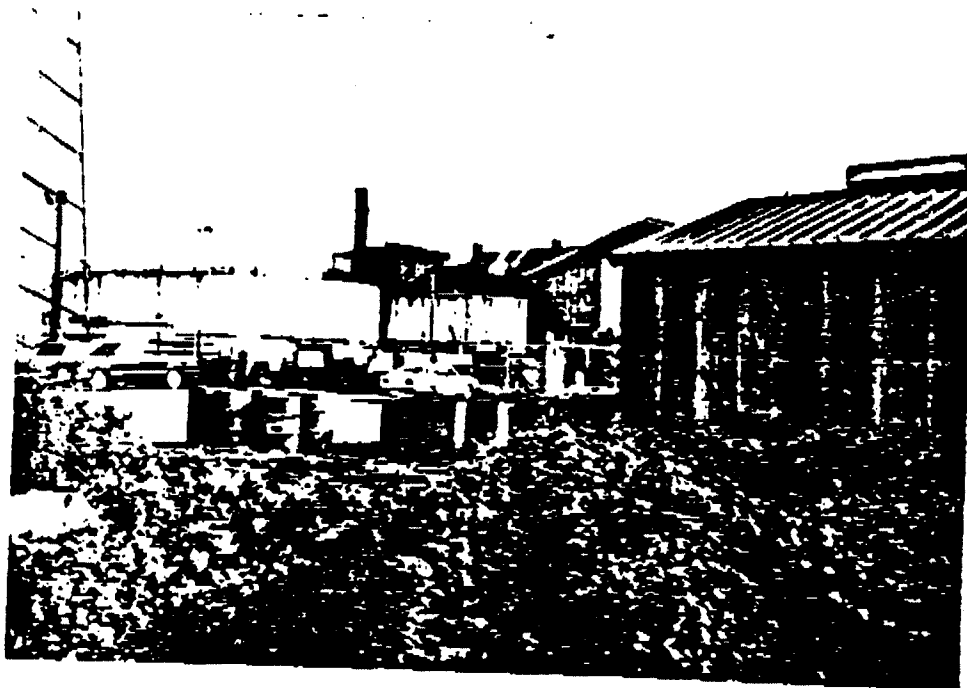
b) Drumfield number 2 is identified as such on the aerial photographs marked Attachment A1 and its location is shown in the aerial photographs marked as Attachments C1, C2, and C3.

c) Drumfield number 3 is located on both sides of an intersecting canal and is identified as such on the aerial photographs marked as Attachment A1 and is partially depicted in the photograph marked as Attachment D1.



Aerial photograph of drumfield number 1 taken on May 25, 1989. Several blue 55-gallon drums are seen at the northeast corner of the canal.

ATTACHMENT B1



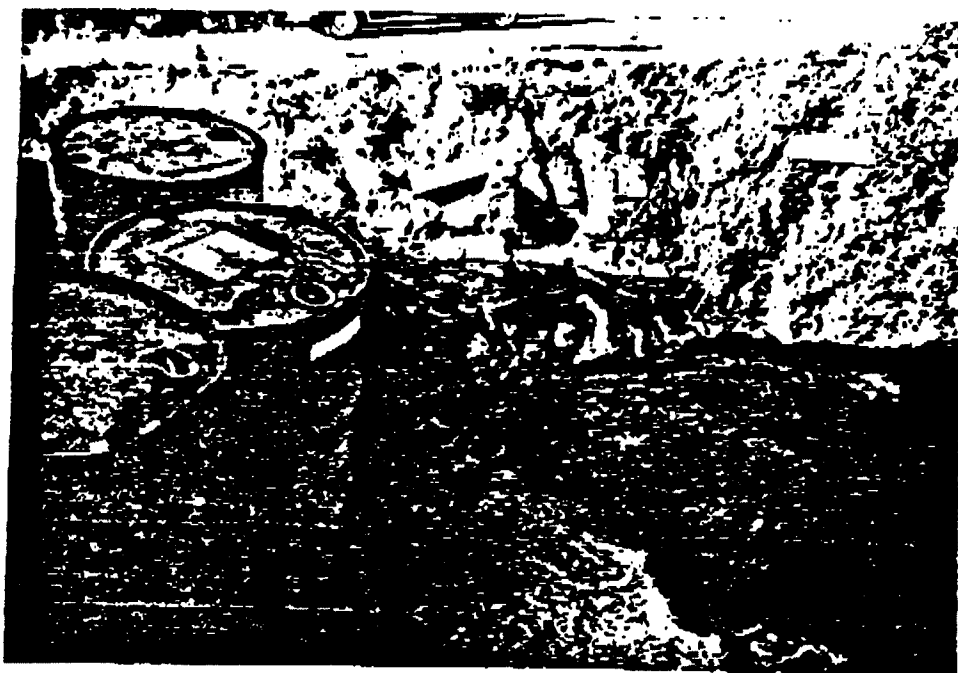
Photograph of drumfield number 1 taken in or about December, 1988.  
Over one dozen 55-gallon drums are located at the edge of a canal.

ATTACHMENT B2

P.17/26

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Photograph taken at drumfield number 1 in or about December, 1988.  
A heavy stain or discoloration of the canal bank is evident.

ATTACHMENT B3

P.18/26

OCT 16 '89 16:57 PODHURST ORSECK ET AL 3053582382

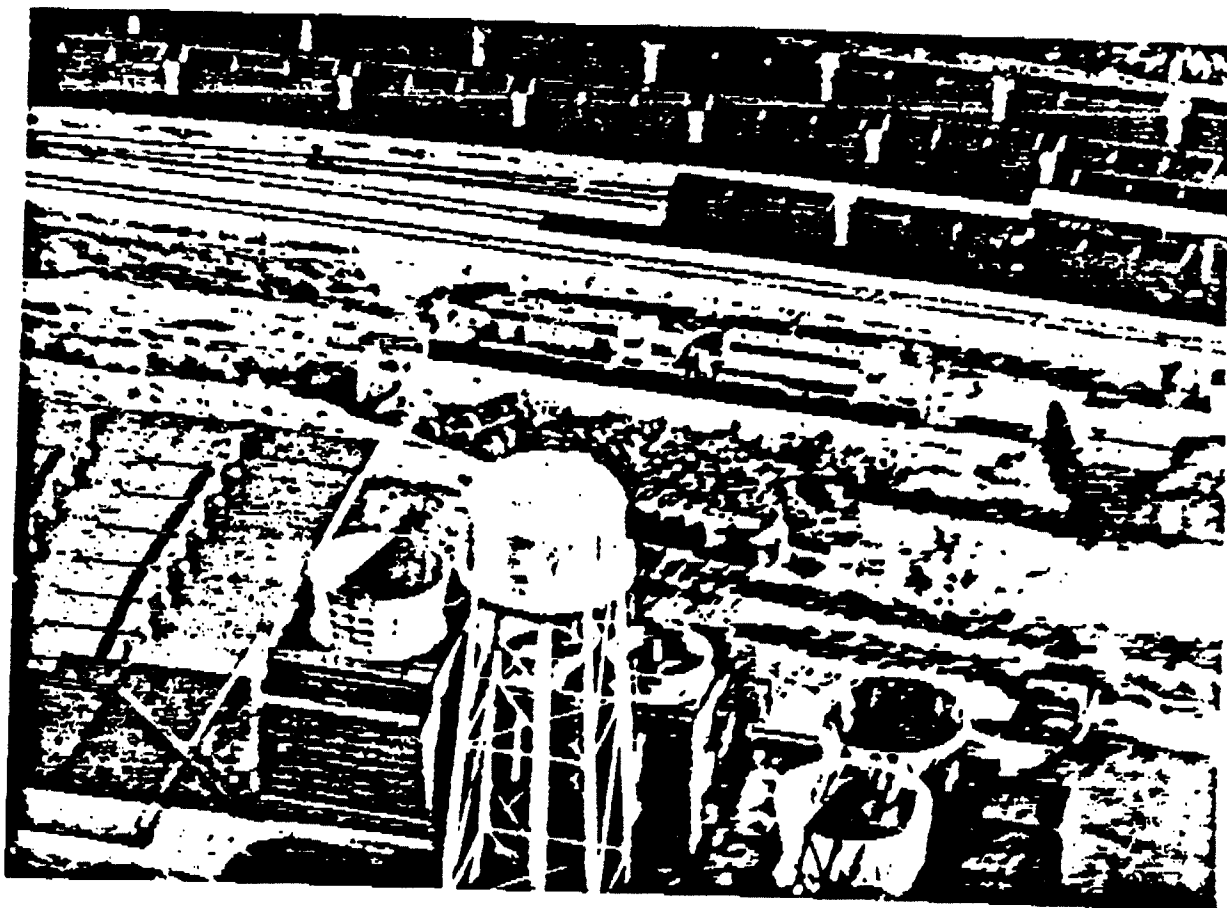


Photograph of canal adjacent to drumfield number 1 taken on or about December, 1988. An oil-like sheen is visible on the water surface.

ATTACHMENT B4

P.19/26

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Aerial photograph of drumfield number 2 and adjacent canal taken on May 25, 1989.

ATTACHMENT C1

P.20/26

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Photographs of drumfield  
number 2 taken in or  
about December 1988.



ATTACHMENT 4

OCT 16 '89 17:00 PODHURST ORSECK ET AL 3053582382

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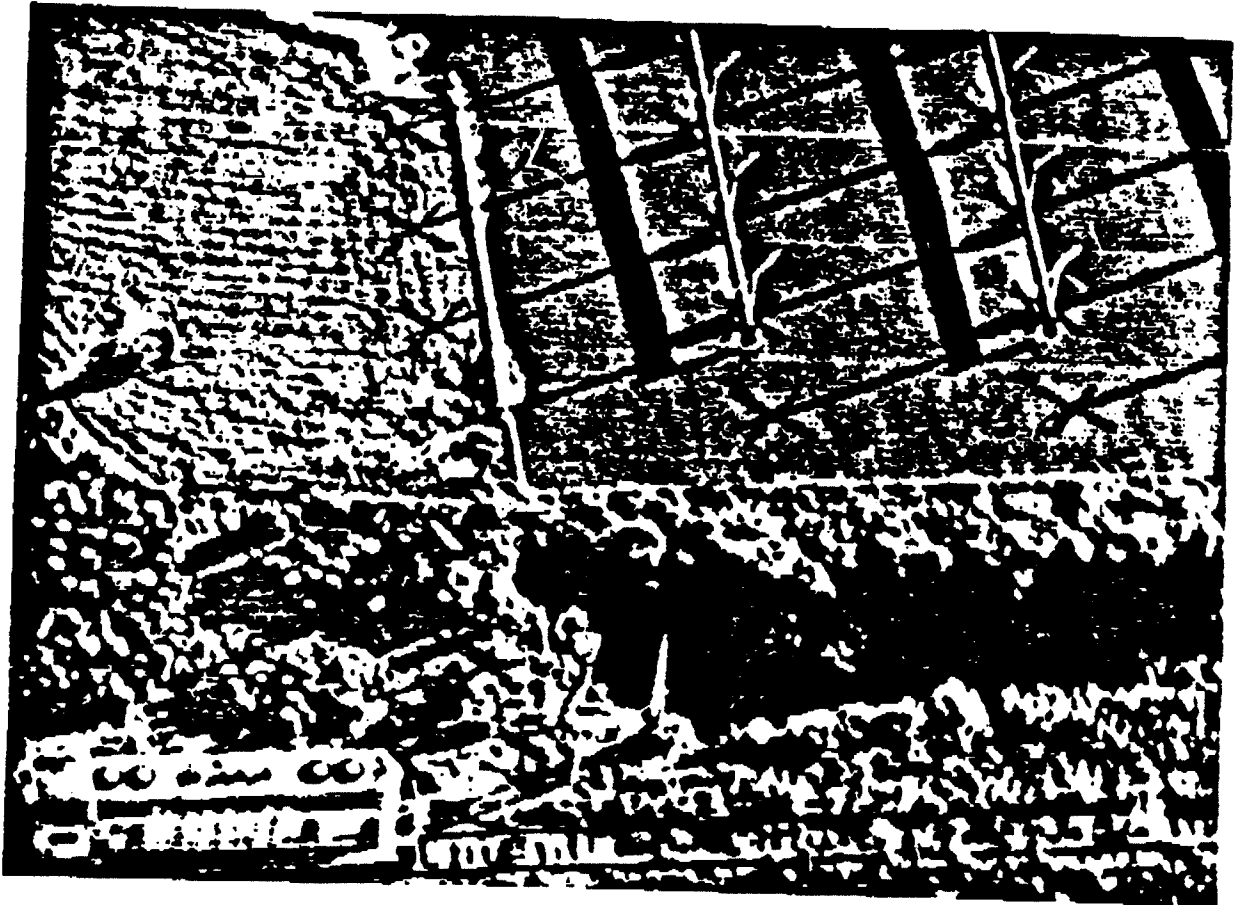


Aerial photograph of drumfield number 2 and adjacent canal taken on May 25, 1989.

ATTACHMENT C2

P.21/26

OCT 16 '89 16:59 PODHURST ORSECK ET AL 3053582382



Aerial photograph of part of drumfield number 2, and adjacent canal, taken on August 22, 1989.

ATTACHMENT C3

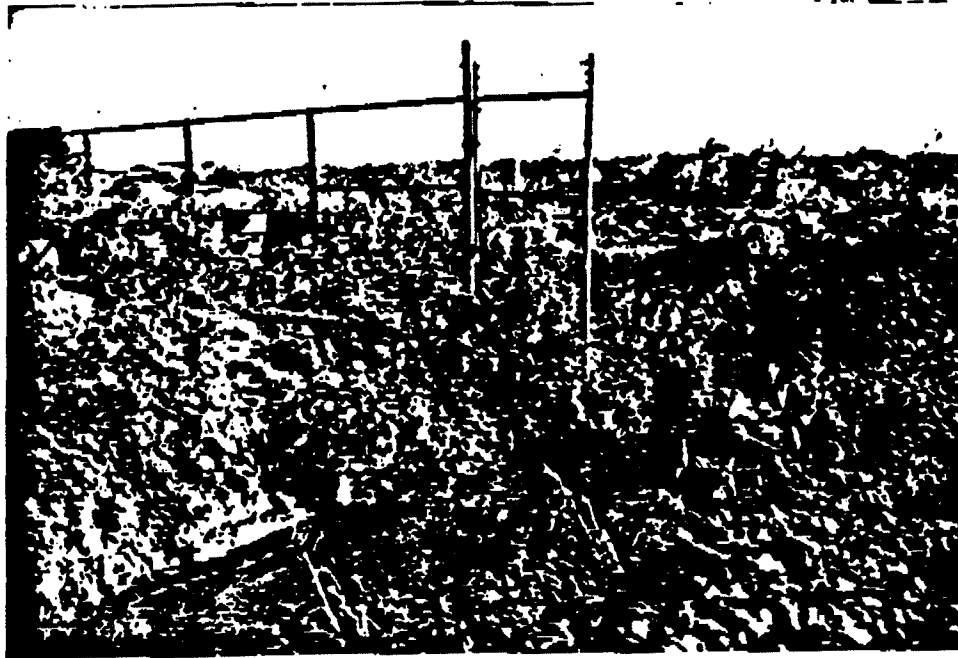


Aerial photograph of part of drumfield number 3 and intersecting canal, taken on May 23, 1989.

ATTACHMENT D1

16 789 17:00 PODHURST ORSECK ET AL 3053582382

P.24/26



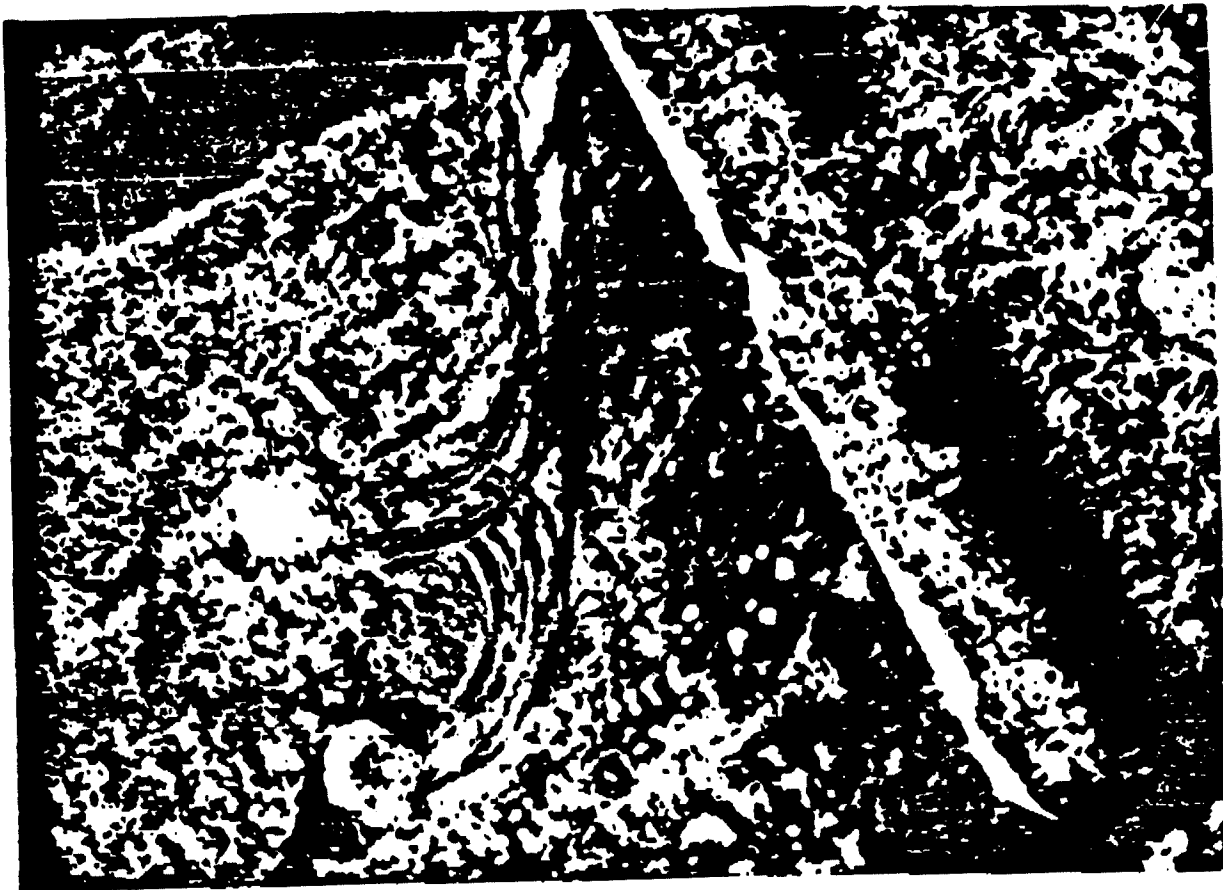
Photograph of drums at drumfield number 3 and intersecting canal, taken in or about December, 1988.

ATTACHMENT D2

OCT 16 '89 17:01 PODHURST ORSECK ET AL 30535822382

P.25/26





Aerial photograph of part of drumfield number 3 and intersecting canal, taken on August 22, 1989.

ATTACHMENT E TO SEARCH WARRANT

This warrant authorizes the search for and testing and seizure of the following materials from Bryant Village as it is described in Attachments A and A1:

a) Samples of any materials in or on drums located at the three drumfields identified in Attachments A and A1;

b) labels from the drums identified in "a)" above;

c) samples of soils nearby and adjacent to the three drumfields described in "a)" above, and from the banks of adjacent canals;

d) samples of soils which do not appear to be contaminated which may serve as "background" or comparison soil samples;

e) samples of water from any canals or waterways and sediments from canal bottoms;

f) samples from drainage pipes, conveyances, culverts or ditches;

g) photographs and videotapes of any such areas or items.