

ATTACHMENT 4

Unsolicited Information Provided to Project Team by Stakeholders

Lessons from Conecuh County

Overview

In 1976 our nation passed the Resource Conservation and Recovery Act (RCRA). This law urged us as individuals and as a nation to *reduce* our waste, *reuse* our resources, *recycle* everything possible, *burn* for energy all we could, and, as a last resort, *bury* what is left in a lined landfill (Fig. 1).

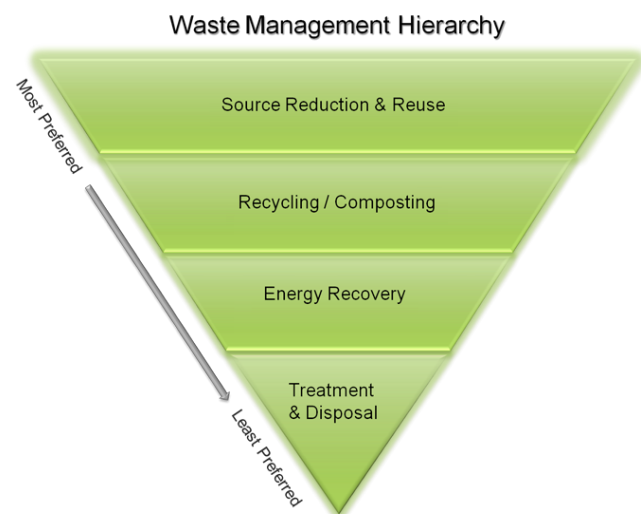
To comply with this legislation, Alabama passed a law requiring the state and counties to develop comprehensive solid waste management plans to achieve each of these goals. ¹

Over the next 20+ years, Alabama waste production has increased dramatically but waste reduction, recycling, waste to energy have been dramatically lacking. For example, Alabama recycles 8 % of its municipal solid waste (MSW) while the national average is 34%. ² There is only 1(one) waste to energy facility in our state. But we do have an abundance of subtitle D landfills. In fact, we have 6 times more waste capacity than waste production. ³

This inequality of capacity versus need has been caused, in part, from large privately owned mega landfills that are recruiting waste from distant regions. Because of this, and because many of the original goals for regulating Alabama's waste management remain unmet, the Governor and legislature have passed Moratoriums which delay permitting landfills with a

- proposed capacity more than 1,500 tons a day
- a site of more than 500 acres

Figure 1



¹ Alabama Law 89-824

² Economic Impact of Recycling in Alabama and Opportunities for Growth. ADEM, June 2012

³ Alabama's landfills are permitted for about 66,000 tons a day, but we produce about 10,000 tons a day. Data from ADEM permits for Alabama, found on ADEM's website

The Moratoriums will provide time to formulate recommendations to improve Alabama's overall waste management system.

To illustrate the magnitude of the excess supply and its impact on our state, two mega landfills - one already built and one proposed - deserve particular attention.

In 2006 the Alabama Department of Environmental Management (ADEM) permitted Arrowhead landfill in Perry County. This commercial private landfill, the largest in the state, is a 900 acre (425 active acres) MSW landfill permitted to accept 15,000 tons MSW per day from 33 states.⁴ This one landfill could dispose of the MSW from the entire state of Alabama for generations. Also, it recently became the receptacle for millions of tons of toxic coal ash from Tennessee and is actively recruiting more waste by rail from the eastern U.S.

Landfill developers have recently targeted Alabama for another mega landfill. Three out of five Conecuh County Commissioners recently approved (through step 4 on Fig. 2) an Application for a 5,100 acre landfill with approximately 2,000 active acres accepting 10,000 tons MSW per day from Louisiana and all states east of the Mississippi. This massive landfill could dispose of the MSW from the entire state of Alabama for even more generations to come. It would increase the already excessive landfill capacity of the state by 50% - from the 4,000 existing acres to 6,000 acres.

What is it that makes areas of Alabama a target for mega landfill development? Let us consider 6 answers

1. Abundance of cheap, rural land with low population.
2. A simple, linear permitting process with no effective checks or balances
3. Tempting Host fees for impoverished counties
4. Low tipping fees compared with other states
5. Lack of State regulations to limit or discourage out of state waste
6. Vague and imprecise ADEM Regulations

Neither ADEM nor the legislature can do anything to alter the abundance of cheap rural land or low population densities. They could, however, change the permitting process to include more checks and balances to insure that the letter and spirit of the Alabama Solid Wastes and Recyclable Materials

⁴ Arrowhead permit #53-03 September 27, 2011

Management Act (SWRMMA) are carried out. Neither ADEM or the legislature can change the poverty rate in targeted counties. However the legislature can prohibit local governments from accepting Host Government fees, since these encourage local government officials to approve landfill Applications regardless of need or the risks they pose. Tipping fees could be increased by state surcharges on waste going into landfills, or by stopping further increase in the state's excess landfill capacity. The legislature could impose regulations discouraging disposal from other states. ADEM can certainly make regulations more precise. We will fully explore each of these possibilities in the following discussion.

Problems with Current Landfill Permitting Process (The Conecuh County Story)

No matter how much we as a state might strive to reduce our waste and disposal needs, our efforts will be futile if we can't control the proliferation of private, commercial landfill capacity. If Alabama continues to permit and build private commercial landfill capacity, the waste will come. It will come from Alabama and it will come from other states, because there is presently no method to restrict out of state waste from a private commercial landfill.⁵ This unrestrained permitting will encourage Alabama residents as well as residents of many other states to continue ignoring the RCRA mandate.

Let us now look carefully at our Landfill Permitting Process (LPP) and see how it encourages unneeded landfill development and fosters disposal over the preferred RCRA methods of waste management. Although many of the problems discussed below were seen in Conecuh County, they are identical or similar to those seen in other Alabama locations.

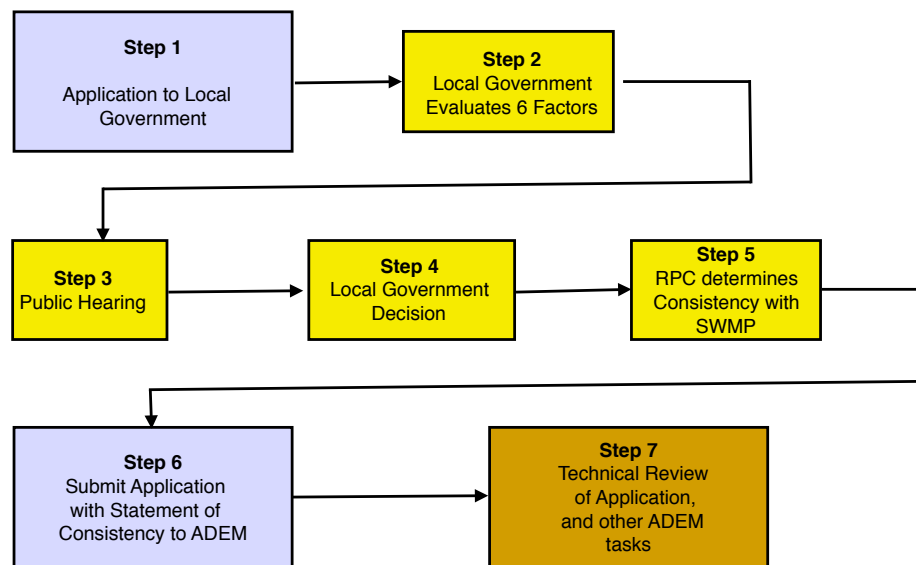
Step 1 (See figure 2 on next page). Local governments are approached by developers who offer them Host fees in return for approving the developer's landfill Application which, when approved by ADEM, can be immediately sold for millions of dollars.

Both the profit motive of the developer and the desire for revenue of the local government trump the needs of the community and state. This encourages unscrupulous development by investors hoping to profit from weak regulations and poor counties.

⁵ US Supreme Court Decisions & Interstate Commerce Clause

Figure 2

Alabama Landfill Permitting Process



For example, developers use tactics such as siting landfills near county lines - far from most voters in the host county. In Conecuh County, this was done in spite of siting guidelines from the county's Solid Waste Management Plan (SWMP) which recommend landfills be located in the central part of the county.⁶ The proposed landfill is sited in the southwest corner of the Conecuh County less than 2 miles from Monroe County and 6 miles from Escambia

County. Under current LPP, none of the voters or officials in the Escambia or Monroe counties have any say in this landfill's Application process.

To make the process easier for unscrupulous developers, there is no requirement that a developer provide financial, environmental, or legal history. The developer in Conecuh County has been President of a company which caused contamination of property in New York resulting in a Superfund site. The developer's company owes the Environmental Protection Agency, the New York Department of Environmental Conservation, and Albany County New York millions of dollars including fines, clean-up and remediation costs, and unpaid taxes.⁷ The company has abandoned the property and - due to its LLC status- is very unlikely to pay what it owes. Yet Alabama's LPP allowed this individual - as the initial member of Conecuh Woods, LLC - to submit a landfill Application.

In addition, Conecuh Woods, LLC has two additional LLCs linked with it, but has refused to furnish the names of the members of these LLCs.⁸ That a Host Government must make an important decision 'in-the-dark' without

⁶ SWMP III.11-5

⁷ United States of America V Timmons Corp, Civ.No.1;03-CV-00951

⁸ Deposition of Jimmy Stone, June, 2012

knowing the investor's names and backgrounds is frightening. It should also be noted that Conecuh Woods, LLC has spent roughly two million dollars (\$2,000,000) on their project ⁹, yet has given no details about the source of their funds or how they have been spent.

Federalist Paper #51 says "...if men were angels, no government would be necessary". The present LPP which allows large financial gains for the Developer (from the value of the Permit) and for the local government (from Host Fees) encourages quite non-angelic behavior. For example, in Conecuh County, the Commissioners met in secret with the Developer's representatives. In fact, all five Commissioners were in favor of the landfill prior to the public's knowledge that a landfill was even being considered. ¹⁰

The existing LPP gives excessive authority to a few local officials to approve landfill Applications. It should not surprise us that this authority has produced numerous examples of bribes, graft, and corruption. For example, see Lanny Young and Waste Management ¹¹, or Lawrence County Commissioners and North American Landfill, Inc. ¹² These and other corruption stories are the ones that we know. The number of unknown examples is likely much larger. As long as we have an LPP with massive financial incentives and no checks and balances, we should expect continued corruption in the Application process.

Step 2 Local governments are very confused about the 6 issues they are required to evaluate. For example, our county's SWMP clearly states that the landfill's location, its environmental impact, and its social siting issues are to be evaluated by the local government. ¹³ Nevertheless, the local officials ignored their own SWMP, stating that environmental factors are ADEM's responsibility, not theirs. ¹⁴ With this disclaimer, they proceeded to approve approximately 2,000 disposal acres adjacent to and interspersed with wetlands and flood plains (i.e., in a swamp). ¹⁵

⁹ Deposition of Jimmy Stone, June, 2012

¹⁰ Depositions of County Commissioners, June, 2012

¹¹ Mobile Press Register, May 8, 2007

¹² Tuscaloosa News, September 12, 1996

¹³ SWMP, in Article III

¹⁴ Depositions of County Commissioners, June, 2012

¹⁵ Conecuh Woods Application, January, 2011, Figure 1-4

As stated by Phil Davis in the Video for the Alabama Solid Waste Study, ADEM sees its role as a technical reviewer of locally approved Applications. If local governments approve a landfill Application, this includes approval of siting. ADEM states that it will then only ensure the proposed landfill is built to meet our state's standards for the landfill's chosen location.

Environmental siting of a landfill is an expensive and complex issue. It should be evaluated early and professionally in the permitting process by a designated neutral agency or professional consultant.

Defining local need is another area of confusion. Conecuh county has no need for a 2,000 acre landfill permitted for 10,000 tons of waste a day. Our county produces about 8 tons of household and 6 tons of commercial waste per day, which is easily contained in the already existing 134 acre regional landfill (Timberlands, in Escambia County) only 6 miles away from the proposed landfill. This existing landfill has capacity for many more years and room to expand in the future. Need should be clearly defined as the *waste disposal need* for the county or region, not *revenue desired* by the county.

Step 3 Public Hearings have no impact on the approval process. The local office holders are required to have a hearing and to be present, but they are not required to listen or respond. The local government is in no way bound to public opinion expressed at the Hearing. Ballot box accountability is after the fact, so one wonders what the purpose of step 3 might be. Perhaps this seems harsh, but we have seen how our local government set up a Public Hearing. It was scheduled on a work day, in a location without parking, in a building with limited seating, and with restricted time for those desiring to speak. In contrast, the Developer was given reserved parking and the Developer provided lunch for and ate with the Commissioners. Over 100 people spoke against the proposal; 7 people, including the Developer and his attorney, spoke in favor of it. An additional 260 signed up to speak against the landfill, but could not stay for the eight hour waiting time. Because of lack of space, another 300 to 400 objectors could not even enter the building. The Commissioners never addressed the concerns or questions of the people, despite an expressed SWMP requirement.¹⁶ After a month of continued silence, the County Commissioners voted in favor of the proposed landfill. At the very least, the County Commission should be required to produce written

¹⁶ Conecuh County Solid Waste Management Plan Update, section 13.1.3

responses to questions asked during the Public Hearing, and to present justification for their decision if they vote for approval.

Step 4 Local Government's Decision - Local government approval is the legally favored, default position. If the local government doesn't vote in 90 days, the landfill Application is automatically approved. That such a biased law could be passed by our state legislature is frankly embarrassing, and probably unconstitutional.

These local government decisions are not minor or trivial; they have major and long-lasting consequences for the state. For example, in our county, 3 Commissioners voted to approve an Application for the largest landfill in the nation, to be sited in a swamp, and to accept MSW from Louisiana and all states east of the Mississippi for generations to come. This one decision would increase the landfill capacity of Alabama from 4,000 to 6,000 disposal acres, and cause one small, wet region to bear the environmental impact for one third of the state's landfill capacity. After this step, there is no mechanism to prevent permit approval except for rare instances when ADEM finds unsurmountable *technical* problems with an Application.

Step 5 The Regional Planning Commission has no authority to stop the permitting process. It has no authority or mechanism to influence the permitting process. It has no funding to participate in this process. In the Conecuh county example, the Alabama Tombigbee Regional Commission (ATRC) stated that "Due to reasons beyond ATRC's control, the regional solid waste needs assessment has not been updated since 2003", and "... there currently appears to be adequate solid waste disposal capacity available to Conecuh County throughout the planning period of its Solid Waste Management Plan...". Yet, the ATRC decided "...it appears there are consistencies with the proposal, the Regional Solid Waste needs Assessment and the County's Solid Waste Management Plan". So, ATRC wrote a Letter of Consistency and sent the Application to ADEM with their blessing.

In summary, a totally unneeded and unwanted mega-landfill in an environmentally sensitive but un-evaluated site has now passed the two very low hurdles needed to get to ADEM and Step 7.

Step 7 Technical Review by ADEM: ADEM's only role is to provide a technical review of the Application. i.e., assure that the landfill design meets state and federal standards. ADEM says it is not allowed by law to consider other local issues or decisions. As discussed in Step 2 above, since the

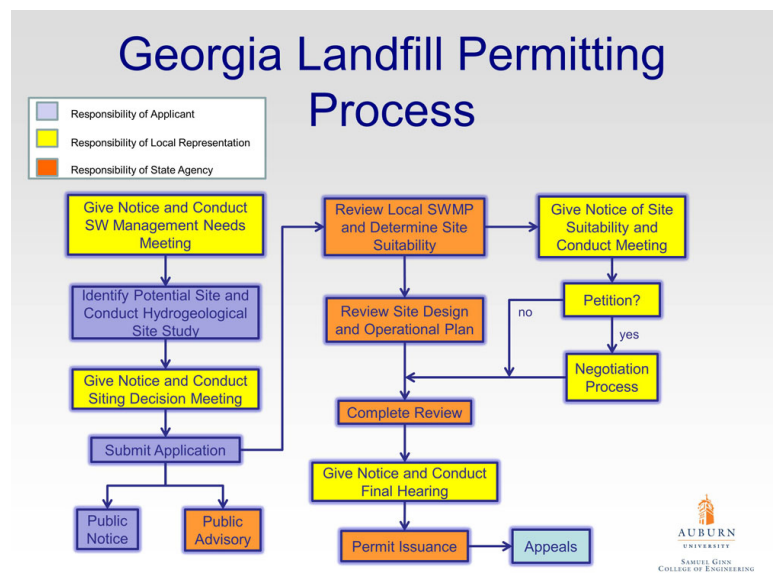
responsibility for determining site location, need, and environmental issues has been disputed by the Conecuh County Commission, these issues would not be decided by either the local County Commission or by ADEM. It took an Executive Order and a legislative moratorium to stop this project which would have received ADEM’s approval without consideration of its location, need, or environment issues.

Recommendations to Improve LPP

It is clear from the previous discussion that the existing LPP has no mechanism for denying an Application once a majority (3 of 5) local government officials approve it. Some checks and balances should be provided to help assure that local governments make decisions consistent with RCRA, and that these decisions are consistent with Alabama’s laws.

1. Let local governments approach developers *only after an identifiable local waste management need arises*. The present Alabama LPP allows the developer to initiate and control the process. A plan similar to Georgia’s (Fig. 3) would prioritize the MSW needs of the local community and the state by requiring the local government to initiate the process. Such rules would allow for local governments to consider *needed* landfills, but would prevent consideration of landfills which are not needed. To assist local governments in determining a local need, objective rules should be established defining need (Appendix A).

Figure 3



During the ASWS Public Meetings, audience members sometime stated that “the present LPP system should not be changed so that it becomes less free market oriented”. As discussed above, in Conecuh County the Application was negotiated largely in secret between a single company (Conecuh Woods) and the County Commissioners. This is hardly a free-market or capitalist

approach. Capitalism is, or should be, an open and transparent system which allows and encourages competition. The revised methods above would allow multiple developers to make proposals subsequent to the establishment of local needs. This method would produce more transparency as well as better, competing proposals for the region's MSW needs.¹⁷

2. Developers and their co-investors should be individually named and subject to background checks. A "Bad Boy" law¹⁸ would exclude developers and investors with a poor history from submitting an Application.

3. Regulations should be enacted to prevent the easy "flipping" (quick sale for profit) of the landfill Permit.

4. Currently, a local government can approve an Application without any obligation to consider the needs of its nearby county neighbors. A slightly different method, while still allowing a local decision, would foster much-needed local cooperation: Landfill permitting decisions should be made jointly by all local governments within, say, a 15 mile radius of the proposed landfill site. For example, if a proposed site's radius covers two or three counties, then the Commissioners from these counties will jointly consider the Application(s) and jointly vote. If the Application is approved, the local government group will also jointly share any revenue and expenses in some proportional manner.

This method provides many benefits. First, it would require the cooperation between local governments which is now sadly lacking. This cooperation would go a long way toward aligning the local decisions with the local and state needs for MSW landfill capacity. Second, decisions this complex might be wiser if made by a larger group of local officials. Third, local cooperation may foster collaboration and teamwork toward developing *local, publicly-owned* landfills for our state, rather than *national, privately-owned* landfills for other states. And finally, citizens would be more motivated to reduce, reuse, recycle waste if they were trying to preserve space in their local landfill that accepted only their local waste.

¹⁷ As an aside, the authors have read *Wealth of Nations* (Adam Smith), but not *Das Kapital* (Marx). Other authors on our bookshelves include Hayek, Mises, Rothbard, etc.

¹⁸ e.g., Tennessee 1990 statute T.C.A. 68-211-106

5. Early in the LPP there should be a regional needs evaluation. To make this review more objective, there should be clear criteria for the spacing, size, and tonnage per day of landfills throughout the state. Alabama could adopt a formula that allows a certain number of disposal acres per square mile based on population density and waste stream for that area (Appendix A). The Regional needs assessment team (Appendix B) would apply this formula to any proposed landfill.
6. This regional needs evaluation would be followed by a state site evaluation conducted by a neutral state agency or professional consultant with no financial or political bias. It would carefully consider the environmental impact on the state and region. Since Alabama has far more waterways and wetlands than most states, negative impact on wetlands, flood plains, and ground water should be prohibited. A thorough hydrogeological study early in the LPP would be a necessary first step for this evaluation.
7. Because so many complex factors are to be considered and carefully evaluated, we recommend that a special landfill Commission be appointed to make a final review, similar to the Georgia plan.
8. If the Application passes each of these reviews, ADEM would then evaluate the technical aspects of the Application and approve or disapprove as appropriate.

Suggestions Regarding Host Fees

Host Fees are the bait used by landfill developers to hook local governments. They have also been described as kick backs, legalized bribes, or more politely as incentives. For example, Perry County officials approved the Arrowhead Landfill and entered into a 20 year Agreement for \$1.05 per ton and \$40,000 to each of two cities and the County. Conecuh County officials approved the Conecuh Woods Landfill Application and entered into what could be a 99 year Agreement for \$1.25 per ton for the first nine years, and a 10% increase every ten years afterwards. In addition, Conecuh County is to receive \$1.25 million over 5 years contingent upon permit approval and the landfill opening.

Current litigation over the proposed Conecuh County landfill Application questions the legality of Host fees, since RCRA and state regulations define

the purpose of a landfill is to provide waste control, not to provide funds for the local government.

Without the financial incentives of Host Government Fees, local governments are more likely to be responsive to the desires of their constituents. Without Host Government fees, we are unlikely to have unneeded mega landfills.

Suggestions Regarding Low Tipping Fees

Low tipping fees result from a supply of landfill capacity far above that needed by the state. Supply and demand set the price (the tipping fee) if there are no regulations changing either supply or demand. A recent survey (Waste & Recycling News ¹⁹) shows the following data (rounded for clarity):

State	Tipping fee per ton
Alabama	\$36
Georgia	\$34
South Carolina	\$36
Mississippi	\$32
All Other States East of Mississippi	\$40 to \$105

Given our current situation, perhaps it is time for some regulation. Reducing the landfill capacity to match the needs of our state, or increasing our surcharge fees would increase tipping fees.

Methods for Stronger State Regulations on Disposal of Out of State Waste

In 1990 Alabama tried to limit out of state waste coming into Emelle landfill by imposing higher fees on it. ²⁰ This effort failed when the Supreme Court of the US ruled that this was in violation of the Interstate Commerce Clause of the Constitution. ²¹ To comply with the Interstate Commerce Clause, surcharge

¹⁹ Tipping fees vary across the U.S.; Waste & Recycling News, July 9, 2012

²⁰ Tuscaloosa News, Oct 17, 1990

²¹ Chemical Waste Management, Inc v. Hunt, No. 91-471 US Supreme Court, June, 1992

fees on waste generated out-of-state must be equal to that for waste generated within the state.

Helpfully, in this ruling, the Supreme Court suggested other “less discriminatory alternatives” to discourage excessive disposal of out-of-state waste. These included (a) imposing a higher tonnage fee for *all* wastes, regardless of origin, (b) imposing a per-mile tax on all vehicles transporting waste, (c) imposing a cap on tonnage at each particular landfill, (d) “...providing subsidies or other tax breaks to domestic industries...” or, presumably, to a state’s citizens, municipalities, or counties, and finally (e) using landfills owned by the state or by local governments which because of the “market participant doctrine” could restrict the landfill to state or local customers only.

Let’s consider each of the above possibilities: (a) An increase in fees for all waste would discourage disposal in all landfills. Perhaps this increased fee could be used for much needed development of alternative waste management strategies. (b) A per-mile tax would impose a higher fee on remote waste, and thereby produce an incentive to dispose of wastes locally. This may produce some decrease in the transport of out-of-state waste, and would only marginally increase costs for nearby in-state waste. (c) Imposing a cap on tonnage could help if this cap were linked to that area’s waste disposal need as defined in the previous discussion (see #5 on page 9). (d) providing in-state subsidies or tax breaks would produce higher tonnage cost for out-of-state waste versus in-state. One particular method would be the imposition of a surcharge fee on privately-owned landfill tonnage only. Or, alternatively, a subsidy for publicly-owned landfill tonnage. (e) Publicly-owned landfills can prohibit out-of-state waste; therefore, state laws and rules which encourage or assist the formation of county or other publicly-owned landfills would lower the future amount of out-of-state waste which Alabama accepts. Used with other tools, these changes could all help move Alabama closer towards the intent of RCRA.

We expect that there are other possibilities which our legislators or the ADEM attorneys could suggest. It would be suitable for the ASWS group to contact groups or individuals having a legal background that can assess what other options exist.

Suggestions Regarding Vague Imprecise ADEM Regulations

Many ADEM regulations are so vague that their intent and purpose is a mystery. Without objective and exact standards, large technical and legal problems will follow.

Examples:

A facility located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, **so as to pose a hazard to human health and the environment.** (How do we define this?)

Landfill Units shall not be located within 200 feet of a fault that has had displacement within the Holocene epoch **unless the owner or operator demonstrates to the Department that an alternative setback distance of less than 200 feet will not result in damage to the structural integrity of the facility and will be protective of human health and the environment.** (How? What does 'damage' mean?)

Landfill units shall not be located in seismic impact zones, **unless the owner or operator demonstrates to the Department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.** (How? How can the maximum acceleration be known?)

Landfill units shall not be located in an unstable area **unless engineering measures have been incorporated in the design of the facility to ensure that the integrity of the structural components of the facility will not be disrupted.** (How?)

We recommend that all indefinite qualifiers be deleted or revised to provide definitive criteria for determining what is required.

In closing, you may have noted that we have not discussed all of the ASWS objectives, choosing instead to focus mainly on our experience in Conecuh County. This choice was made in part because we were more confident

speaking within our 'circle of competence'. More importantly, this choice was made since the landfill permitting process is the elephant in the room: If the permitting process cannot be significantly improved, then achieving other ASWS objectives will remain elusive.

We also want to say how much we enjoyed the Public Meetings. We truly appreciate ADEM and Auburn's time and effort on this important project. If we can help further in any way, please let us know.

Don Smith, Ph.D.
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Conecuh County, Alabama

Appendix A & B attached below:

Appendix A

Description of State and Local Need

Alabama Law 89-824 provides the present structure for solid waste management for the state, and for local governments. The law's Legislative Purpose requires "...the orderly management of solid wastes generated in the jurisdiction..." and "...that decisions about the management of sold wastes shall be based on comprehensive *local, regional* and *state* planning." The law's Legislative Intents include "...to facilitate the siting of solid waste management facilities as required to meet present and projected *state* and *local* needs." The law, while certainly not light and easy beach reading, has worthy goals including "...reduction of the amount of source waste generated....separation and recycling.... the reduction of solid waste volumes within the state..."

Unfortunately, many goals of 89-824 have not been met. The Moratorium should be used to change the statues as needed to comply with the intent of 89-824 and with RCRA. As part of these changes, it is imperative to include requirements for determining the local and state need for additional landfill capacity. Such a procedure should be objective, measurable, and consistent throughout the state. Without an exact and precise definition for determining state and local need for landfill capacity, our state cannot effectively manage its solid wastes.

A procedure for defining state and local need for additional landfill capacity should include at least the following data:

- 1 Define a radius around the site. Since Alabama should be concerned only with state and local need, this could be a radius consistent with smaller transportation costs, no more than, say, 50 or 75 miles.
- 2 Estimated waste production for this area over the next 10 years.
- 3 Existing waste capacity in this area for the next 10 years.
- 4 If 2 (production) is greater than 3 (capacity), then the area may request additional landfill capacity.

- 5 If 2 (production) is less than 3 (capacity), then additional landfill space is not needed and cannot be requested.
- 6 The tons per day requested by the new landfills should be closely linked to the estimated regional waste production rate over 10 years.
- 7 The active disposal acres requested should be closely linked to the space required for the estimated waste production over 10 years.

Appendix B Review of Regional Needs

As discussed, the present Regional review of local approval is not functioning. An amended Regional review process would insure that additional landfill approvals from local governments was in fact needed for local, regional, and state waste management plans. A Regional review should also provide sorely needed checks and balances to the local approval process.

In planing its contract for the Alabama Solid Waste Study, ADEM (correctly, we believe) took the position that a study by an independent agency would be preferable to one done by ADEM itself. For the same reason, the Regional review should also be done by an agency other than ADEM. A separate agency can provide separate 'eyes' to review each approval. It can also perform checks and balances which ADEM is not now required to perform. And, finally, like Caesar's wife, an agency separate from ADEM would provide transparency and would shield ADEM from suspicion, real or imagined.

It would be simplest if this task can be placed in an existing agency. Providing periodic Regional reviews should not require significant time or effort. Outside of ADEM, one agency which comes to mind is the Alabama Department of Public Health. Because its present duties already include oversight of some parts of Alabama's waste management, the Department of Public Health is more knowledgeable than others. Assuming this additional role should be straightforward, although some appropriate funding would be required.

Moratorium Purpose

Ala. Code § 22-27-5.2 imposes a moratorium on larger landfills pending a review of ADEM's duties and responsibilities under the Alabama Solid Wastes and Recyclable Materials Management Act. The Legislature was particularly concerned about larger landfills

1. > 1,500 tons per day
2. ≥ 2,000 cu. yds./day
3. ≥ 500 acres
4. facilities that, when combined with others within 20 miles, exceed any of the foregoing limits
5. public facilities > need of county or need within 20 miles

Mega Landfills

There is one existing and one proposed mega landfill in Alabama. And there could easily be more coming.

Arrowhead Landfill - Perry County

425 acre disposal area

15,000 tons per day

33 states

Conecuh Woods Landfill - Conecuh County

1,550 acres disposal area

10,000 tons per day

All states east of the Mississippi plus LA.

What is it that makes areas in Alabama a target for mega landfill developers?

1. **Abundance of cheap, rural land with low population densities.**

Perry County is classified by the Census Bureau as 100% “rural,” and has a population density of only 14.7 persons per square mile.

Conecuh County is classified as 99.75% “rural,” and has a population density of only 12.6 persons per square mile in those rural areas.

Similar statistics apply to other Alabama counties. For example:

County	Rural Area	Population Density in Rural Area
Bullock	99.21%	9.1
Greene	100%	14
Marengo	99.48%	15
Wilcox	100%	13.1
Sumter	100%	15.2

2. **Proximity to railroads**

Necessary to access large volumes of waste from other states.

The Arrowhead Landfill and Conecuh Woods Landfill both have access to and intend to rely on railroads to import waste from other states.

Greene County, Marengo County, Wilcox County and Sumter County each have access to railroads.

3. **Low tipping fees.**

In 2012, Waste & Recycling News conducted survey of tipping fees at the five largest landfills in each state. Among the states east of the Mississippi River, only SC, MS, and GA have lower tipping fees than Alabama.

State	Tipping Fee/Ton
AL	\$36.19
GA	\$34.11
SC	\$36.00
MS	\$32.49
OTHERS	\$40-110

4. **Low income and Host Government Fees.**

Median Household Income in Perry County is \$25,950. 28.8% of the population live below the poverty level.

Median Household Income in Conecuh County is \$26,944. 30.6% of the population live below the poverty level.

County	Median Household Income	Percent Below Poverty Level
Bullock	\$31,602	25.3%
Greene	\$22,222	30.8%
Marengo	\$32,940	22.7%
Wilcox	\$23,491	38.5%
Sumter	\$25,338	34.8%

Local officials in poor counties are desperate for money to provide for basic services. Landfill developers can secure local approval by paying local governments so-called “host government fees.”

Perry County officials approved the Arrowhead Landfill and entered into a 20-year Agreement for what I will call a “kick-back” of \$1.05 per ton and \$40,000 to each of two municipalities and the County.

Conecuh County officials approved the Conecuh Woods Landfill and entered into what could be a 99-year Agreement for what I will call a “kick-back” of \$1.25/ton for the first nine years, \$1.38/ton for the next ten years, and a 10% increase every ten years thereafter. In addition, Conecuh County is to receive \$1.25 million to be paid over five years.

5. **Conclusion**

Neither ADEM not the legislature can do anything to alter the **Abundance of cheap, rural land with low population densities.**

Neither ADEM not the legislature can do anything to alter the **location of railroads.**

The Legislature may be able to alter **tipping fees**, however, to comply with the Interstate Commerce Clause of the U.S. Constitution, tipping fees for out-of-state waste cannot be higher than tipping fees for in-state waste. Chemical Waste Management v. Hunt, 504 U.S. 334 (1992). Subsidies or tax breaks for in-state waste producers or disposers could offset the higher tipping fees. The Legislature may also be able to restrict waste flow rates entering landfills provided the rates apply without regard to the origin of the waste. Other possibilities may be suggested by U.S. Supreme Court cases.

Neither ADEM not the legislature can do anything to alter the **median household income or poverty rate** in counties. However, the Legislature (and the Courts) can prohibit local jurisdictions from accepting **host government fees**. Without the financial incentives of host government fees, local governments are more likely to be responsive to the desires of their constituents.

Environmental Justice

Several landfills have been located in areas where the population is predominantly African-American.

Chastang Sanitary Landfill in Mobile County ≈84.6%

City of Dothan Sanitary Landfill in Houston County ≈85.9%

Morris Farm Sanitary Landfill in Lawrence County ≈100%

Tallassee Waste Disposal Center in Tallapoosa County ≈72.1%

Arrowhead Landfill in Perry County ≈87-100%

ADEM lacks authority to refuse permits that will adversely impact minority communities. The Legislature will have to provide a remedy. ADEM could lose federal funding if it fails to prevent disparate impacts on minority communities.

ADEM Regulations

Many ADEM regulations are so indefinite that they allow ADEM to determine requirements on an ad hoc basis. Examples:

A facility located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, *so as to pose a hazard to human health and the environment.*

Landfill Units shall not be located within 200 feet of a fault that has had displacement within the Holocene epoch *unless the owner or operator demonstrates to the Department that an alternative setback distance of less than 200 feet will not result in damage to the structural integrity of the facility and will be protective of human health and the environment.*

Landfill units shall not be located in seismic impact zones, *unless the owner or operator demonstrates to the Department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.*

Landfill units shall not be located in an unstable area *unless engineering measures have been incorporated in the design of the facility to ensure that the integrity of the structural components of the facility will not be disrupted.*

I recommend that all indefinite qualifiers be deleted or revised to provide definitive criteria for determining what is required.

Exhibit A

STATEMENT OF CONSISTENCY

The Alabama-Tombigbee Regional Commission (ATRC) is in receipt of a request for a "Statement of Consistency" regarding a Solid Waste Permit for a landfill in Conecuh County, Alabama. This request is being made by Conecuh Woods, LLC.

ATRC is also in receipt of Conecuh County's Solid Waste Management Plan (SWMP) which was approved by the Alabama Department of Environmental Management (ADEM) in March, 2005. The SWMP was prepared by Engineering Service Associates, Inc. ATRC was not involved in the preparation of this plan and does not certify to the accuracy or validity of the information contained therein.

ATRC, in issuing a "Statement of Consistency" is to evaluate the proposal using provisions of the current regional solid waste management needs assessment. Due to reasons beyond ATRC's control, the regional solid waste needs assessment has not been updated since 2003.

Based on information provided in the 2003 Regional Solid Waste Needs Assessment, as well as information and recommendations in the ADEM approved Conecuh County Solid Waste Management Plan, ATRC finds that: (i) even though there currently appears to be adequate solid waste disposal capacity available to Conecuh County throughout the planning period of its Solid Waste Management Plan, a jurisdiction within the County may decide that it would be advantageous to site a landfill in Conecuh County due to collection, transportation, and/or disposal costs; (ii) because the municipal solid waste landfill proposed by Conecuh Woods LLC has a projected lifetime in excess of sixty years and a proposed service area far greater than that of other landfills in the region, any proposed disposal capacity in excess of expected regional needs during the initial years of the proposed facility's operation will be reduced over the passage of time as other municipal solid waste landfills in the region reach their total disposal capacity and close; (iii) regional disposal capacity can be substantially adversely affected by disasters such as hurricanes, tornadoes, and floods which overwhelm the existing capacity of construction and demolition landfills making resort to disposal of such debris in municipal solid waste landfills necessary. Based upon these findings, it appears there are consistencies with the proposal, the Regional Solid Waste Needs Assessment and the County's Solid Waste Management Plan.

July 22, 2011

Date



Euelyn J. Maeston

Notary Public, State-at-Large

My Commission expires: 5-3-2015



Executive Director
ATRC

**RYALS, PLUMMER, DONALDSON,
AGRICOLA & SMITH, P.C.**

60 Commerce Street, Suite 1400
Montgomery, Alabama 36104
P: 334.834.5290 / F: 334.834.5297

J. Lenn Ryals
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M. Andrew Donaldson
Algert S. Agricola, Jr.
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Website: www.rpdas.com

Firm Administrator
Stephanie L. Turner

May 11, 2011

John Clyde Riggs
Executive Director
Alabama-Tombigbee Regional Commission
107 Broad Street
Camden, AL 36726

Re: Request for Statement of Consistency for Conecuh Woods Landfill,
Conecuh County, Alabama

Dear Mr. Riggs:

Conecuh Woods LLC ("Conecuh Woods") is preparing to request the Alabama Department of Environmental Management ("ADEM") to issue a Solid Waste Management Permit for the proposed Conecuh Woods Landfill in Conecuh County, Alabama. Should that permit request be granted, this landfill would be permitted to accept municipal solid waste, as defined and authorized by ADEM Admin. Chapter Section 335-13-1-.03, at a maximum daily volume of 10,000 tons per day from a service area encompassing all states east of the Mississippi River and the state of Louisiana. Conecuh Woods submitted a detailed Application for Local Approval to the Conecuh County Commission on January 21, 2011. The Conecuh Woods Application for Local Approval remains available for review.

As evidenced by the enclosed minutes, the Conecuh County Commission considered the aforementioned Application for Local Approval and granted its host government local approval, pursuant to Alabama Code Section 22-27-48(a), on April 18, 2011. Conecuh Woods now, therefore, respectfully requests that the Alabama-Tombigbee Regional Commission, pursuant to Alabama Code Section 22-27-48(b), issue a Statement of Consistency with respect to this proposed landfill. A draft Statement of Consistency, consistent with previous determinations of your office regarding other landfills within your region, is enclosed for your potential use and execution.

PLAINTIFF'S
EXHIBIT

57

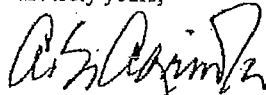
Conecuh Woods 011828

John Clyde Riggs
May 11, 2011
Page 2

Conecuh Woods appreciates your attention to this matter and looks forward to a response at your earliest convenience. A signed Statement of Consistency can be mailed directly to me. Should you have any questions, please do not hesitate to contact me.

With best regards, I am

Sincerely yours,



Algert S. Agricola, Jr.
Attorney for Conecuh Woods LLC

ASA/acf
Enclosure

M:\Gms.Litigation\Conecuh Woods LLC\andSJ (05-38-01)\ConecuhRiggs 05-11-11-2.wpd

STATEMENT OF CONSISTENCY

The Alabama-Tombigbee Regional Commission (ATRC) is in receipt of a request for a "Statement of Consistency" regarding a Solid Waste Management Permit application for a municipal solid waste landfill in Conecuh County, Alabama. This request is made by Conecuh Woods LLC, the applicant for the permit.

In issuing a "Statement of Consistency," ATRC evaluates the proposal using the provisions of the current regional solid waste management needs assessment. In particular, ATRC evaluates the proposal as it relates to available existing capacity within the region and the projected lifetime of such capacity. ATRC's evaluation must also identify any proposed capacity which is in excess of expected regional needs. Due to litigation, the regional solid waste management needs assessment has not been updated since 2003. Therefore, this statement of consistency will also take into consideration the Conecuh County Solid Waste Management Plan approved by the Alabama Department of Environmental Management (ADEM) on March 17, 2005.

Based on information provided in the 2003 Regional Solid Waste Needs Assessment, as well as information and recommendations in the ADEM approved Conecuh County Solid Waste Management Plan, ATRC finds that: (i) even though there currently appears to be adequate solid waste disposal capacity available to Conecuh County throughout the planning period of its Solid Waste Management Plan, a jurisdiction within the County may decide that it would be advantageous to site a landfill in Conecuh County due to collection, transportation, and/or disposal costs; (ii) because the municipal solid waste landfill proposed by Conecuh Woods LLC has a projected lifetime in excess of sixty years and a proposed service area far greater than that of other landfills in the region, any proposed disposal capacity in excess of expected regional needs during the initial years of the proposed facility's operation will be reduced over the passage of time as other municipal solid waste landfills in the region reach their total disposal capacity and close; (iii) regional disposal capacity can be substantially adversely affected by disasters such as hurricanes, tornadoes, and floods which overwhelm the existing capacity of construction and demolition landfills making resort to disposal of such debris in municipal solid waste landfills necessary. Based upon these findings, ATRC concludes that the municipal solid waste landfill proposed by Conecuh Woods LLC is consistent with the current regional solid waste management needs assessment.

Date

John Clyde Riggs
Executive Director
Alabama-Tombigbee Regional Commission

(Official Seal)



AlaFile E-Notice

21-CV-2011-900039.00

Judge: HON. BURT SMITHART

To: LUDDER DAVID ALAN
davidaludder@enviro-lawyer.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF CONECUH COUNTY, ALABAMA

CITIZENS FOR A CLEAN SOUTHWEST ALABAMA ET AL V. CONECUH COUNTY COMMISS
21-CV-2011-900039.00

The following matter was FILED on 2/5/2013 3:21:08 PM

Notice Date: 2/5/2013 3:21:08 PM

DAVID JACKSON
CIRCUIT COURT CLERK
CONECUH COUNTY, ALABAMA
COURTHOUSE SQUARE
EVERGREEN, AL 36401

251-578-2066
david.jackson@alacourt.gov



IN THE CIRCUIT COURT OF CONECUH COUNTY, ALABAMA

CITIZENS FOR A CLEAN SOUTHWEST)
ALABAMA,)
BATTLE PAUL,)
HOWINGTON JAMES A. "BUDDY",)
HOWINGTON CONNIE ET AL,)
Plaintiffs,)

V.)

Case No.: CV-2011-900039.00

CONECUH COUNTY COMMISSION C/O)
WENDELL BYRD, CHAIRMAN,)
WENDELL BYRD, CONECUH COUNTY)
COMMISSIONER,)
BYRD WENDELL,)
HUGH BARROW, CONECUH COUNTY)
COMMISSIONER ET AL,)
Defendants.)

ORDER

All pending motions set for hearing on February 11, 2013 are hereby continued and reset for hearings on **April 16, 2013 at 10:00 am.**

DONE this 5th day of February, 2013.

/s/ HON. BURT SMITHART
CIRCUIT JUDGE

No. _____

In the Supreme Court of Alabama

***Ex Parte* CONECUH WOODS LLC,**

Petitioners,

(In re: *Town of Repton, et al.*,

Plaintiffs,

v.

Conecuh County Commission, et al.,

Defendants.)

On Petition for Writ of Mandamus from the
Circuit Court of Conecuh County, Alabama
Case No. CV-2011-900033

**PETITION FOR WRIT OF MANDAMUS
BY CONECUH WOODS LLC**

s/ Albert L. Jordan
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s/ Algert S. Agricola, Jr.
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Attorneys for Petitioner
Conecuh Woods LLC

STATEMENT REGARDING ORAL ARGUMENT

Petitioner requests oral argument. The main issue in this landfill approval petition is whether discovery identifying the applicant's members may be ordered by the circuit court before resolving Plaintiffs' summary-judgment motions, where standing is questioned and unproved.

The case arises from an attempt to receive judicial review of local and regional approval for the landfill outside the limited judicial remedies provided in Ala. Code § 22-22A-7, which are available only after administrative processes set out in the Solid Wastes Act, Ala. Code § 22-27-1, *et seq.*, are complete. Thus, the petition raises the exhaustion of administrative remedies doctrine.

The case also involves a question of first impression regarding a party's right to review of an oral discovery ruling, in light of Rules 37 and 58, Ala. R. Civ. P. Immediate review of the ruling is proper because serious questions exist regarding the circuit court's authority to act and disclosure of the information will harm Conecuh Woods's members. Review may be premature because there has been no rendition or entry of an order into the SJIS electronic record, but Petitioner is threatened with contempt sanctions if it does not observe the circuit court's orally announced intentions.

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Alabama Department of Environmental Management.	ADEM
Alabama Environmental Management Commission..	AEMC
Alabama-Tombigbee Regional Commission..	ATRC
Solid Wastes and Recyclable Materials Management Act.	Solid Wastes Act
Conecuh County Solid Wastes Management Plan.	County Plan
Application for Approval of Proposed Conecuh Woods Solid Waste Management Facility Conecuh County, Alabama.	Application

Conecuh Woods LLC ("Conecuh Woods") petitions this Court for a writ of mandamus directing the Conecuh Circuit Court to vacate its decision to compel Conecuh Woods to disclose irrelevant information identifying its membership. The case is pending on offensive summary judgment where standing is unproved and the discovery sought has no bearing on jurisdiction. The circuit court lacks authority to coerce discovery. Conecuh Woods has a clear legal right to relief because the circuit court lacks subject-matter jurisdiction and Plaintiffs have failed to exhaust administrative remedies.

STATEMENT OF FACTS

1. Conecuh Woods proposes to operate a solid waste landfill in Conecuh County. (App. 29, Ex. 4). The proposed landfill is not yet permitted and has not yet been constructed. (*Id.*, Ex. 1 at 109-11). No member of Conecuh Woods is a party to this petition, or the underlying action.

2. Plaintiffs are the Town of Repton and its mayor, Terri Carter. (App. 1). The Town is in Conecuh County one mile north of the proposed facility. (App. 29, Ex. 4 at 1-2). Neither Plaintiff owns property in or adjacent to the proposed site for the facility.

3. Defendant Conecuh County Commission ("Commission") is the local governing body of Conecuh County. Defendant

Alabama-Tombigbee Regional Commission ("ATRC") is a voluntary association of ten county governments: Choctaw, Clarke, Conecuh, Dallas, Marengo, Monroe, Perry, Sumter, Washington, and Wilcox Counties, and 46 municipalities. (App. 29, Ex. 17 at 14-15); see Ala. Code § 11-85-52.

4. Conecuh Woods cannot build or operate the proposed landfill unless the Alabama Department of Environmental Management ("ADEM") issues a permit. The issuance of a permit by ADEM is an administrative action governed by the Solid Wastes and Recyclable Materials Management Act, as amended in 1989, Ala. Code § 22-27-1, *et seq.*, ("the Act"). The Act requires State, regional, and local governing bodies to implement comprehensive plans for an integrated administrative system for managing solid waste and permitting disposal facilities. §§ 22-27-40(10), 22-27-42(1), 22-27-45 to 22-27-48; Admin Code (ADEM) § 335-13-5-.02. For permitting, that system requires local host government approval, a statement of consistency from the regional planning commission, and issuance of a permit by ADEM. Here, the Commission has approved the Conecuh Woods application and ATRC has issued a statement of consistency. (App. 29, Exs. 13, 16). But, ADEM has not issued a permit and Conecuh Woods has not submitted any application to ADEM. (*Id.*, Ex. 1 at 111).

5. The Act provides aggrieved persons a specific means of review. After ADEM holds an administrative hearing and decides whether to issue a permit, Admin Code (ADEM) § 335-13-5-.02 to -.04, the Act provides administrative review-- notice and a hearing-- by the Alabama Environmental Management Commission ("AEMC"). § 22-22A-7(c)(6)-(7). Judicial review is available only after the AEMC decision. *Id.*

6. Conecuh Woods applied for host government approval in January 2011. (App. 29, Ex. 4). The Commission held a hearing and received oral and written comments from the public, including Plaintiffs. (*Id.*, Ex. 12); § 22-27-48(a). The Commission also held a "work session" and received comments on the application from two engineering firms. (App. 29, Ex. 8). On April 18, the Commission approved the application. (*Id.*, Ex. 13). The Commission based its decision, in part, on ADEM's administrative review that would ensure compliance with State and federal regulations. (*Id.*, Ex. 8 at 33-34; Ex. 9 at 28-29, 31; Ex. 10 at 79; Ex. 11 at 80). On April 18, the Commission chairman executed a contract ("Host Agreement"), between the Commission and Conecuh Woods that provided for certain payments to Conecuh County upon operation of the proposed landfill. (*Id.*, Ex. 14).

7. On April 20, Plaintiffs bypassed the Act's administrative remedies and filed this action in the Conecuh Circuit Court. (App. 1). They alleged general defects in the application and approval process under § 22-27-48(a), and challenged the sufficiency of the evidence underlying the Commission's decision. (*Id.* at ¶¶ 36-43, 44-64). They did not claim that the alleged procedural flaws caused them actual or imminent personal harm.

8. This Court assigned the action to Judge Burt Smithart of the Third Judicial Circuit. (App. 2). Conecuh Woods moved to dismiss under Rule 12(b)(1), Ala. R. Civ. P., because Plaintiffs lacked standing. Plaintiffs did not allege any concrete, personal injury or statutory right to sue. Also, Plaintiffs had failed to exhaust administrative remedies available under the Act. (App. 3). Plaintiffs amended their complaint to add general allegations about possible negative effects of the proposed landfill. (App. 4 at ¶¶ 1-2). Conecuh Woods moved to strike the amendment as lacking jurisdiction. (App. 4, 5 (*see Kelley v. English*, 439 So. 2d 26, 28 (Ala. 1983) (no power to consider amendments where no subject matter jurisdiction over original complaint))).

9. Conecuh Woods requested a statement of consistency from ATRC. See § 22-27-48(b). At Plaintiff Carter's request,

ATRC received comments from Plaintiffs and Conecuh Woods. (App. 29, Ex. 17 at 129). Otherwise, ATRC reviewed the Conecuh Woods application as it had other applications. (*Id.*, Ex.17 at 129). On July 22, ATRC, issued a statement of consistency under the signature of its Executive Director. (*Id.*, Ex. 16).

10. Plaintiffs amended their complaint to challenge the statement of consistency, again bypassing the Act's administrative remedies. (App. 22). Plaintiffs challenged the sufficiency of the evidence underlying the statement, but did not identify any injury that they suffered or will suffer from it. Plaintiffs identified Plaintiff Carter as a taxpayer for the first time. (*Id.* at ¶ 2). Conecuh Woods moved to strike the second amendment as without jurisdiction. (App. 13-14).

11. On October 25, the circuit court denied the motion to dismiss. (App. 17). Conecuh Woods petitioned this Court for a writ of mandamus. This Court stayed the action, but denied the petition without opinion on December 15. (App. 22, No. 1110181).

12. The parties then engaged in extensive discovery. In March 2012, Plaintiffs requested that Conecuh Woods:

“Identify each person and entity that has, or has had, any kind of interest, including but not limited to, ownership, membership, share, partnership, optionee, or security interest, in

Conecuh Woods, LLC from its inception to present, and produce any documents evidencing such interest.”

(App. 27, Att. A at 6). Conecuh Woods objected because the request seeks “disclosure of proprietary business information, trade secrets, or other confidential information,” and “information that is irrelevant and is unlikely to lead to the discovery of admissible evidence.” (*Id.*, Att. B at 4-5). Conecuh Woods moved for a protective order in June 2012. (App. 25). Plaintiffs objected, (App. 26), but made no other efforts in 2012 to obtain the information. The circuit court never ruled on Conecuh Woods’s request for protective order.

13. On January 31, 2013, Plaintiffs moved for a summary judgment. (App. 23). They did not seek a stay or indicate that the identity of Conecuh Woods's members is needed to support their claims. Plaintiffs’ motion did not address standing or exhaustion of administrative remedies at all. (*Id.*). Plaintiffs submitted the Town’s interrogatory responses which speak only in general and speculative language. (App. 23, Ex. 1 at, e.g., No. 2 (“could” affect property values; Plaintiffs “may retain” expert to testify to such; “potentially higher taxes”); No. 4 (effects “if ... constructed”); No.6 (generalized “stress and worries for the citizens”).

14. On April 5, over two months later, Plaintiffs moved to compel disclosure of the identities of Conecuh Woods's members. (App. 27). Plaintiffs did not seek a stay. They did not show that the information was necessary to resolve their claims or the jurisdiction question.

15. Conecuh Woods responded to the summary-judgment motion and motion to compel on April 13. (App. 29, 30). Conecuh Woods argued that the circuit court lacked subject-matter jurisdiction and Plaintiffs had failed to exhaust administrative remedies. (*Id.* at 12-28). Conecuh Woods also argued that Plaintiffs lacked standing to obtain the identities of its members, and the information was irrelevant and was sought solely to harass the members. (App. 30 at 2-6).

16. On April 15, Plaintiffs filed Plaintiff Carter's interrogatory responses and her affidavit. (App. 32). The interrogatory responses merely cross-reference the Town's responses. (*Id.*, Ex. B). Carter's affidavit speaks in general, speculative terms. (*Id.*, Ex. A (effect on citizens and community; concern about possible future harm)).

17. At a hearing on April 16, Conecuh Woods again argued that the circuit court lacked subject-matter jurisdiction. (App. 36, Ex. A at 15). The court orally granted Plaintiffs and Conecuh Woods time to submit additional materials as to

standing. (*Id.* at 19-20). But, it heard argument on Plaintiffs' summary-judgment motion and motion to compel. (*Id.* at 28, *et seq.*). Conecuh Woods urged the court to refrain from acting until the jurisdiction question was resolved. (*Id.* at 48-63). The court, however, orally advised of its intention to grant Plaintiffs' motion to compel. It said:

"Motion to compel will be granted, ten days to respond fully, with a list of the members, plus a percentage of their interest in Conecuh Woods, and a protective order with regards to financial disclosures past that point. ... If there's a member of the Conecuh Woods Group that's an LLC, then those members have to be disclosed."

(*Id.* at 99-100). The circuit court never rendered or entered that ruling, see Rule 58, Ala. R. Civ. P., and Plaintiffs never asked the court to do so.

18. One week later, Plaintiffs filed another affidavit by Carter. (App. 35). This affidavit also speaks of generalized, possible future harm. (App. 35, Att. (concern about possible future traffic and litter and impaired enjoyment of creek by "citizens"))).

19. Conecuh Woods asked the circuit court to delay resolving the motion to compel until the questions about jurisdiction were resolved. (App. 36 at 3-9). Conecuh Woods included an affidavit from its manager and member, Donald W. Stone, Jr., and urged the court to enter a protective order

that the discovery not be had. (*Id.* at 13-15); Rule 26(c), Ala. R. Civ. P.. Stone attested that, based on threatening comments and hostile actions of Plaintiffs and some members of the public, there is a significant risk that members of Conecuh Woods will suffer physical harm, economic reprisal, loss of employment, or other manifestations of public hostility if their identities are released. (App. 36, Ex. B at ¶¶ 5-13, 14-16; App. 29, Ex. 1 at 149-50). Conecuh Woods also asked for a stay. (App. 36 at 15-16).

20. The circuit court denied Conecuh Woods's motion in its entirety without comment on April 30. (App. 37). Because the parties were discussing settlement, Conecuh Woods delayed action on Plaintiffs' agreement not to seek sanctions. On the day this petition is filed, however, settlement discussions have failed. Conecuh Woods responded to Plaintiffs' supplemental brief on standing on May 8. (App. 38).

STATEMENT OF ISSUES AND RELIEF SOUGHT

Conecuh Woods has a clear legal right to a writ of mandamus directing the circuit court to vacate its discovery ruling because Plaintiffs lack standing and failed to exhaust administrative remedies. This petition presents the following issues:

I. Whether the circuit court's discovery ruling is rendered in a form that makes it enforceable by sanctions under Rule 37, and reviewable, under the terms of Rule 58?

II. Whether the circuit court had authority to coerce discovery unrelated to jurisdiction where Plaintiffs have moved for summary judgment, but presented only speculative, generalized evidence of possible future harm?

III. Whether local landfill approval under the Solid Waste Act is so integrated with an uncompleted administrative process which provides State agency review before operations, that the circuit court's authority to order discovery was barred by the doctrine of exhaustion of remedies?

IV. Whether the circuit court exceeded its discretion by coercing irrelevant, harmful disclosures.

STATEMENT WHY THE WRIT SHOULD ISSUE

The relief provided in the writ should direct Judge Smithart to vacate his April 16 ruling on the motion to compel and dismiss the action because the court lacks subject-matter jurisdiction. The questions listed are reviewable by a mandamus petition. *See Ex parte Cincinnati Ins. Co.*, 51 So. 3d 298, 302 (Ala. 2010).

Conecuh Woods has a clear legal right to a writ of mandamus directing the circuit court to vacate its ruling on

the motion to compel because the circuit court lacks subject-matter jurisdiction. The Court should resolve questions about the rendition and entry of the ruling to allow review, and should grant the petition and issue the writ because Plaintiffs have not proved facts necessary for jurisdiction.

I. This Court Should Resolve Questions Under Rules 37 and 58, Ala. R. Civ. P., to Allow Review of an Oral Discovery Ruling.

This petition presents a question of first impression regarding a party's duties and remedies as to a ruling compelling discovery that has been orally stated, but not rendered or entered under Rule 58(a) or (c), Ala. R. Civ. P. There has been no rendition or entry of an order. However, the circuit court has specifically instructed Conecuh Woods to act. Compliance will harm Conecuh Woods and its members, Part IV, *infra*, but open defiance could lead to sanctions under Rule 37. This Court should clarify Conecuh Woods's duties with respect to the oral ruling and its rights to review given the circuit court's lack of authority. Parts II and III, *infra*.

Rule 58(a) provides five means by which a court may render an order; all involve a writing. The circuit court orally granted Plaintiffs' motion to compel and instructed Conecuh Woods to disclose the identities of its members. (App.

36, Ex. A at 99). But that ruling was never written or entered in the SJIS docketing system. See Rule 58(c).

In other contexts, this Court has insisted on a written order on the specific motion subject to review. For instance, as to postjudgment rulings under Rule 59.1, that "Rule 58(a) does not allow for an oral rendition of a judgment or order." *Ex parte Chamblee*, 899 So. 2d 244, 248 (Ala. 2004) (oral statement to counsel not rendition under Rule 59.1; automatic denial operated); see also *Ex parte DuBose Constr. Co.*, 92 So. 3d 49, 54 (Ala. 2012) (no merit in argument that oral comments reinstated dismissed case). Similarly, as to an oral denial of on a motion to amend pleadings, this Court denied mandamus "on the ground that the trial court's oral ruling was not an 'order,' under Rule 58(a)." *Ex parte DuPaola*, 46 So. 3d 884, 885 (Ala. 2010); see also *Cash v. Sumner*, 99 So. 3d 1241, 1243 (Ala. Civ. App. 2012) (dismissing appeal from oral order in divorce case). Thus, if this Court likens the discovery ruling here to post-judgment orders or orders managing pleadings, this petition may be premature.

But discovery of private information may be different, especially when compliance will create irreparable harm. The circuit court has instructed Conecuh Woods to act, to disclose information which will likely harm its members. Its manager

testified that Plaintiff Carter had publicly made threatening comments, that plaintiffs in a companion case had physically harmed him, and that other members of the public had threatened harm to him and others. (App. 36, Ex. B at ¶¶ 5-13, 14-16; App. 29, Ex. 1 at 149-50). These threats create a substantial risk of harm to Conecuh Woods's members if their identities are disclosed. (*Id.*). Nonetheless, Conecuh Woods must comply or risk sanctions. (See App. 40).

Rule 37 speaks of "orders,"¹ but makes no specific mention of entry as a condition to compliance. If Rule 37 is to be read consistently with Rule 58, then such an "order" would not be in effect until entered by a writing. Thus, Rule 58(a)'s mandate that orders be written creates serious questions whether oral discovery rulings are enforceable or may form the basis for sanctions under Rule 37. However, no Alabama appellate court opinion has spoken to the issue. And, indeed, oral rulings are not wholly without import. See *Ex parte Orkin, Inc.*, 960 So. 2d 635, 639-41 (Ala. 2006) (time for mandamus from order on motion to compel counted from date of oral ruling on motion for protective order).

¹Rule 37(b)(1) speaks of "directions" by the circuit judge, but only for deponents and non-parties.

Alabama's Rule 58 is "entirely different" from Federal Rule 58 (speaking only of "judgments"). See C. Lyons, Jr. and A. Howell, *Alabama Rules of Civil Procedure Annotated* § 58.5 (4th ed. 2004). Compare *Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 n.7 (11th Cir. 1993) (oral orders must be obeyed, may form basis of sanctions). In that respect, federal court rulings are not likely instructive, as they may otherwise be. See, e.g., *Assured Investors Life Ins. Co. v. National Union Assoc.*, 362 So. 2d 228 (Ala. 1978), overruled on other grounds by *Ex parte Norfolk So. Ry, Co.*, 897 So. 2d 290 (Ala. 2004).

Plaintiffs have not asked the circuit court to enter the ruling. Were Conecuh Woods to request entry, it may be subject to dismissal for having invited the very error it seeks to challenge. Compare, *Mobile Infirmary Med. Ctr. v. Hodgen*, 882 So. 2d 801, 806-08 (Ala. 2003) (assent to entry of judgment on jury verdict precluded argument that verdict was improper), with, Rule 54(b), Ala. R. Civ. P. (allowing review without providing for party to request entry of judgment). And, a late entry would create uncertainty about the time for compliance. See *Exigence, LLC v. Baylark*, 367 S.W.3d 550, 556-57 (Ark. 2010) (oral orders ineffective until entry; compliance required before entry impossible).

This Court could dismiss the petition consistent with its holdings in *Chamblee*, 899 So. 2d at 248, and *DuPaola*, 46 So. 3d at 885. If the Court does, it should give Conecuh Woods clear instruction whether it must comply with the oral ruling and disclose the identities of its members. If so, dismissal would effectively deny appellate jurisdiction and any means of review because of the circuit court's failure to render. However, the Court may consider mandamus to aid its own jurisdiction and prevent defeat of that jurisdiction by actions of the circuit court. See *McClellan v. Carland*, 217 U.S. 268, 280-81 (1910) (citing *Knickerbocker Ins. Co. v. Comstock*, 83 U.S. 258, 270 (1872)).

Conceivably, this Court could construe later-filed documents as sufficient to satisfy Rule 58. The oral ruling on the motion to compel was reflected in a transcript that Conecuh Woods attached to its motion to reconsider. (App. 36, Ex. A at 99). The circuit court's denial of that motion was entered into the SJIS system on April 30. (App. 37). Combined, these documents could be read as a sufficient writing. But such a construction could create confusion about the time for compliance. The circuit court said, "Motion to compel will be granted, ten days to respond fully, with a list of members" (App. 36, Ex. A at 99). Because the court said the

motion "will be" granted, but did not name a date certain, it is unclear whether the ten days for compliance should run from the date of the oral ruling or of a subsequent writing.

This Court could remand for entry of the order. *Cf. Ingram v. Allred*, (No. 2110636, Oct. 19, 2012), 2012 WL 5077145 *6 (Ala. Civ. App. 2012) (remand for entry of oral contempt order); Rules 4(a)(4) and 10(f), Ala. R. App. P. But Conecuh Woods comes to the Court on a petition for a writ of mandamus, not an appeal. The rules contain no similar clear means for supplementation and remand on mandamus.

Finally, this Court could consider the merits of the petition despite the lack of compliance with Rule 58. The court could base authority to do so on its power to oversee the circuit court to assure that it does not frustrate the exercise of this Court's jurisdiction, especially where the circuit court itself lacks jurisdiction to act at all. See *McClellan*, 217 U.S. at 280-81; Ala. Const., art. VI, § 140(b)(2); *State Farm Mut. Auto. Ins. Co. v. Robbins*, 541 So. 2d 477, 479 (Ala. 1989) (construing appeal as timely under § 140(b), then amend. 328, because procedural anomaly "skirts close to the question of jurisdiction"). The court could also base authority for review on the fact that Conecuh Woods is bound to comply with the oral ruling or risk sanctions.

II. The Circuit Court Has No Authority to Act Because Plaintiffs Have Not Proved Standing.

Standing requires:

"the existence of (1) an actual, concrete and particularized 'injury in fact'--'an invasion of a legally protected interest'; (2) a 'causal connection between the injury and the conduct complained of'; and (3) a likelihood that the injury will be 'redressed by a favorable decision.' *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). A party must also demonstrate that 'he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.'"

Ex parte Attorney General King, 50 So. 3d 1056, 1059-60 (Ala. 2010); *Town of Cedar Bluff v. Citizens Caring for Children*, 904 So. 2d 1253, 1256-57 (Ala. 2004).

Standing must be proved "in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. Here, Plaintiffs have moved for a summary judgment, so they must "conclusively prove" each element of their claims. *Ex parte Ramsay*, 829 So. 2d 146, 153 (Ala. 2002). As to standing, Plaintiffs have presented their responses to interrogatories and two affidavits of Plaintiff Carter. These documents speak only of possible harm that may occur in the future and of harm that is general to all citizens. (See App. 24, Ex. 1; App. 32,

Exs. A, B; App. 35, Att.). Plaintiffs have not conclusively proved any concrete or particularized injury or that they have any statutory right to sue.

A. Plaintiffs Have Proved No Actual, Concrete, and Particularized Injury, But Point Only to Procedural Irregularities.

To be “particularized” for standing purposes, the injury “must affect the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 560 n.1. The injury must be “actual or imminent, not “conjectural” or “hypothetical.”” *Id.* at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). See also *Cedar Bluff*, 904 So. 2d at 1256-57; *Ex parte Bridges*, 925 So. 2d 189, 192-93 (Ala. 2005) (general desire to scuba dive for artifacts not standing to challenge statutes regulating cultural resources in waterways).

In Plaintiffs’ interrogatory responses and affidavits, they speculate about possibilities of harm that may develop if ADEM issues a permit for the landfill, if the statutory moratorium is lifted, and if Conecuh Woods actually constructs the landfill. They speak of possibilities of increased traffic and litter, of impaired citizen enjoyment of a local creek, of increased odors and noise, and of environmental harms that may result if the proposed landfill is constructed. (App. 32, Ex. A ¶ 6; App. 35, ¶¶ 4-6). (See also App. 24, Ex. 1, No. 2 (“it

could negatively impact property values;" Plaintiffs "threatened with potentially higher taxes," etc.); No. 4 ("if ... constructed, it will deter economic development") (emphasis added). Plaintiffs' evidence is wholly conjectural and hypothetical, not actual and imminent as required for standing. *Lujan*, 504 U.S. at 560.

Plaintiffs also speak of possible harm to citizens generally. (App. 24, Ex. 1, No. 6 (unspecified "stress and worries for the citizens" generally); App. 32, Ex. A ¶¶ 3-4, 6 (negative community and social perceptions, concerns, and worries by local citizens)). Such harm common to the public at large is no proof of injury particularized to Plaintiffs as is required for standing. *E.g. Cedar Bluff*, 904 So. 2d at 1256-57; *Lujan*, 504 U.S. at 560-61 n.1, 572-74. Indeed, there is no basis to argue the existence of an injury to Plaintiffs for which the "courts shall be open," or that they "shall have a remedy by due process of law." Ala. Const., art. I, § 13. Thus, no jurisdiction is conferred on the circuit court. See also, *id.*, art. VI, § 142.

Plaintiffs also cite a "cloud of uncertainty" that they say has affected the real estate market. (App. 32, Ex. A ¶¶ 2, 5). The "cloud," however, is not concrete. Nor is it particularized to Plaintiffs. Moreover, Plaintiffs have not

shown that the "cloud" has been caused by the proposed landfill and not other economic conditions. See *Allen v. Wright*, 468 U.S. 737, 757-58 (1984) (injury to desegregated education not fairly traceable to government tax exemption); *Warth v. Seldin*, 422 U.S. 490, 503-07, 508-09 (1975) (taxpayers of nearby town failed to show injury by ordinance limiting housing; no causal relationship shown between zoning practice of neighboring town and inability to find housing).

Plaintiff Carter identifies herself as a taxpayer. But general status as a taxpayer is no basis for standing. See *Warth, supra; Cedar Bluff*, 904 So. 2d at 1253, 1258.

Plaintiffs have not shown that the proposed landfill is about to be constructed or begin operation. They cannot because Commission and ATRC approval do not authorize construction or operation of the facility. Lawful operations begin only after the issuance of a permit by ADEM, which has not occurred. (App. 29, Ex. 1 at 111). Moreover, a statutory moratorium prohibits ADEM from issuing a permit until May 2014. Ala. Act 2012-434 (codified at Ala. Code § 22-27-5.2). The moratorium requires ADEM to revise its regulations. *Id.* Until the moratorium is lifted, Plaintiffs cannot suffer any injury. The regulations may alter the requirements for a permit and thus the substance of Plaintiffs' claims. ADEM has

not yet-- and may never-- issue a permit to Conecuh Woods. If it does not, Plaintiffs will never suffer any injury. There is no standing where the injury alleged is a mere possibility that may never occur. *Bridges*, 925 So. 2d at 192-93.

Plaintiffs complain about alleged procedural flaws in the Commission and ATRC administrative decisions under the Act. Such errors do not confer standing. Procedural irregularities, absent injury particular to the individual or entity bringing the claim, cannot form the basis for standing.² The errors must directly affect a real and tangible interest particularized to Plaintiffs; *i.e.*, the kinds of interests which could be impaired by the procedural error itself. *Cedar Bluff*, 904 So. 2d at 1256-57.

Plaintiffs have claimed that they need not show an imminent or concrete injury for the claimed procedural errors. (App. 36, Ex. A at 69-70). They mistake the Supreme Court's statements in *Lujan*. That Court distinguished the case from a

²See *Summers v. Earth Island Inst.*, 555 U.S. 488, 129 S. Ct. 1142, 1151 (2009) (deprivation of procedural right without some concrete interest affected insufficient to create standing); *Lujan*, 504 U.S. at 572-75; *Ouachita Watch League v. Jacobs*, 463 F.3d 1163, 1170 (11th Cir. 2006) (procedural injury does not alter constitutional standing requirements); *Sierra Club v. Johnson*, 436 F.3d 1269, 1277 (11th Cir. 2006) (plaintiff must suffer concrete injury as a result of procedural error).

suit challenging a government action or inaction where "the plaintiff himself is an object of the action." 504 U.S. at 561. Instead, as here, where "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of someone else," the Court explained that "much more is needed" to prove standing. *Id.* at 562.

Thus, Plaintiffs' burden is not lighter as they have asserted. Footnote 7 of the *Lujan* opinion which they reference does not excuse proof of a concrete interest. It says: "The person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy." 504 U.S. at 573, n.7. It speculated that "one living adjacent to the site for proposed construction" would have standing to challenge procedural irregularities related to it. But the Court explained: "We do not hold that an individual cannot enforce procedural rights; he assuredly can, so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing." *Id.* at 573, n.8. Plaintiffs here have not conclusively shown that they live or own property adjacent to the proposed landfill or that the alleged procedural irregularities are designed to protect any concrete interest

particularized to them. This is precisely the situation the Court in *Lujan* found was insufficient to confer jurisdiction. See also *Cedar Bluff*, 904 So. 2d at 1258-59.

B. Plaintiffs Lack Standing Because Ala. Code § 22-27-48 Provides Them No Private Right to Sue.

Plaintiffs have identified no part of § 22-27-48, or any statute, which confers a private right to sue. Under the principles stated in *State v. Property at 2018 Rainbow Drive*, 740 So. 2d 1025 (Ala. 1999), the Act confers no right on Plaintiffs to initiate proceedings.

Plaintiff Carter has not identified any injury recognized at common law. She has not proved any injury to her lands, goods, person, or reputation. See Ala. Const., art. I, § 13.

A municipality lacks the kind of legally protected interest required for standing, absent a statute which confers a right upon which suit may be based. *Rainbow Drive*, 740 So. 2d at 1027-28. There must be “clear and convincing evidence of legislative intent to impose civil liability for a violation of the statute.” *Liberty National Life Ins. Co. v. UAB Health Services Foundation*, 881 So. 2d 1013, 1025 (Ala. 2003) (citations omitted). For a municipal corporation, the right must be expressly conferred by statute, or necessarily

or fairly implied, for carrying out an indispensable power. *New Orleans, M. & C.R. Co. v. Dunn*, 51 Ala. 128 (1874).

Nothing in § 22-27-48 says that a municipality or any other person has a private right to sue because of local host government approval or a regional statement of consistency. Nothing in § 22-27-48 implies that anyone except an applicant would have a private right to sue upon such administrative decisions adverse to it. Given the integration of the administrative process set up in § 22-27-48 and the absence of any landfill operations until the process culminates in an ADEM-issued permit, there is no conceivable right to sue conferred on the Town.

III. The Circuit Court Lacks Authority Because Plaintiffs Have Failed to Exhaust Exclusive Administrative Remedies.

The administrative process required by the Solid Wastes Act has not been completed. Conecuh Woods has not submitted an application to ADEM. ADEM has not issued a permit. (App. 29, Ex. 1 at 111). And, the administrative supervisors of ADEM at the AEMC have conducted no review.

The doctrine of exhaustion of administrative remedies "requires that where a controversy is to be initially determined by an administrative body, the courts will decline relief until those remedies have been explored and, in most

instances, exhausted." *City of Graysville v. Glenn*, 46 So. 3d 925, 929 (Ala. 2010) (citations omitted) (ADEM issued landfill permit without statement of consistency by regional commission, but no administrative appeal to AEMC taken). This controversy arising from the administrative permitting process under the Act is to be initially determined by ADEM and AEMC. The circuit court should have declined all relief to Plaintiffs.

Before 1989, the Act provided local governments general authority to approve solid waste disposal sites. § 22-27-5(b); *Ex parte Lauderdale County*, 565 So. 2d 623 (Ala. 1990). But, in 1989, the legislature amended the Act to require comprehensive plans for the permitting of new facilities and "an integrated system of planning for solid waste management in the state by local governments, regional planning commissions and [ADEM]." §§ 22-27-40(10), 22-27-42(1).

Local governments have no general authority to approve disposal sites. Now, the Act requires that, to implement the integrated plans, local governments and regional planning commissions approve disposal sites as a preliminary step to ADEM's final approval and issuance of a permit. § 22-27-48. The "issuance of a [landfill] permit by ADEM is an administrative action." *Graysville*, 46 So. 3d at 931 (citing

§ 22-22A-3(8)). The primary question at each level is whether the proposed facility complies with that level's ADEM-approved plan. § 22-27-48; Admin. Code (ADEM) § 335-13-5 -.02(c). Permitting is an integrated administrative process and neither local governments, regional planning commissions, nor ADEM can issue a permit independent of the others.

Administrative review of the permitting process is to the AEMC. Section 22-22A-7(c) provides notice and a hearing before the AEMC to "any person aggrieved" by ADEM's decision. Judicial appeal is available only after a final administrative decision of the AEMC. § 22-22A-7(c)(6)-(7).

Plaintiffs' original claims are based wholly on alleged violations of § 22-27-48 and the county plan adopted by the Commission and approved by ADEM under § 22-27-47. The county's plan and the procedural requirements of § 22-27-48(a) are integral parts of the administrative system established in 1989. Plaintiffs thus claim that the Commission failed to follow an early part of the administrative process. The Act requires completion of that process and administrative review before the circuit court can exercise jurisdiction.

Likewise, Plaintiffs' claims based on ATRC's decision are based on alleged violations of § 22-27-48(b) and the regional plan approved by ADEM under § 22-27-46. The ATRC plan and

decision are central, intermediate parts of the administrative permitting process. The Act requires completion of that process and administrative review before the circuit court can exercise jurisdiction to review the ATRC decision. Plaintiffs' attempt to enjoin Conecuh Woods from filing an application with ADEM is a gross interference with the administrative process established by the Act. (App. 12 at 32).

The Act provides administrative review of the local and regional administrative decisions. Plaintiffs can raise their challenges at the ADEM hearing and seek denial of the permit to Conecuh Woods. *E.g.*, Admin. Code (ADEM) § 335-13-5-.04. After ADEM makes a decision, § 22-27A-7(c) provides aggrieved parties a further right of administrative review before AEMC, including a full hearing. AEMC's decision is "a final action of [ADEM]" and only upon it is any dispute appealable to the judicial branch. § 22-22A-7(c)(6). Indeed, it is questionable whether any judgment by the circuit court could redress any harm to Plaintiffs because ADEM and AEMC are not parties. See *Lujan*, 504 U.S. at 568-71 (plurality opinion as to part III-B); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 108-09 (1998).

Plaintiffs challenge the sufficiency of the evidence supporting the Commission and ATRC decisions. Any problems

with the sufficiency of the evidence will be resolved within the administrative system established by the Act. If the evidence truly is not sufficient, ADEM will not issue a permit and the AEMC will override one. Admin. Code (ADEM) § 335-13-5-.04; § 22-22A-7(c)(6).

Moreover, Plaintiffs do not challenge the statutory authority of the Commission or ATRC. They challenge the outcome of the administrative process, not the interpretation of the Act. They attempt to use this action for a declaratory judgment as “an appellate review of ... an official action, ... ‘in an effort to get the official action reversed or rescinded.’” *Graysville*, 46 So. 3d at 931 (quoting *Mitchell v. Hammond*, 90 So. 2d 582, 583 (Ala. 1949)). Administrative review is required for such a challenge and a declaratory judgment action is no substitute. *Id.*, also at 931-32. Plaintiffs have failed to exhaust that review.

The administrative review provided by the Act is the “exclusive method” of review. *Graysville*, 46 So. 3d at 931. Under the Act, this dispute regarding the Conecuh Woods application must first be determined by ADEM and AEMC. The doctrine of exhaustion of administrative remedies requires it.

IV. The Circuit Court Exceeded Its Discretion by Coercing Irrelevant Disclosures that Will Harm Conecuh Woods's Members.

The circuit court exceeded its discretion in ordering Conecuh Woods to disclose the identities of its members without any protective order. Plaintiffs have no need for the information. It is irrelevant to their claims and any question of jurisdiction, as reflected in their filing an offensive motion for a summary judgment without the information. See Rule 26(b)(1), Ala. R. Civ. P.; *Ex parte Vulcan Materials Co.*, 992 So. 2d 1252, 1263 (Ala. 2008) (postjudgment discovery seeking corporate business history not closely tailored to plaintiffs' claims).

As non-members, Plaintiffs have no standing to compel disclosure of Conecuh Woods's records. See *Ex parte Board of Trustees*, 983 So. 2d 1079, 1087-88 (Ala. 2007); *Lott v. Eastern Shore Christian Center*, 908 So. 2d 922, 927 (Ala. 2005). And, Conecuh Woods's members are not parties to this litigation. The organization is a distinct entity separate from its individual members, Ala. Code § 10A-5-2.07, and their mere association with the entity cannot lead to liability, Ala. Code § 10A-5-3.02.³ Conecuh Woods's members should not be

³See *Clement Contracting Group, Inc. v. Coating Systems, L.L.C.*, 881 So. 2d 971, 974-75 (Ala. 2003); *Moore & Handley Hardware Co. v. Towers Hardware Co.*, 6 So. 41, 43 (Ala. 1889).

restrained from that association. See *National Ass'n for Advancement of Colored People v. State of Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (reversing compelled disclosure of member affiliations with advocacy corporation as infringement of freedom of association).

Conecuh Woods's manager testified regarding threatening comments, physical violence, and a significant risk that members of Conecuh Woods will suffer economic reprisal, loss of employment, or other manifestations of public hostility if their identities are disclosed. (App. 36, Ex. B at ¶¶ 5-13, 14-16; App. 29, Ex. 1 at 149-50). Based on this evidence, disclosure of the identities of Conecuh Woods's members is likely to adversely affect them and Conecuh Woods. See *NAACP*, 357 U.S. at 462 (possibility of similar harms sufficient to show that disclosure of membership is likely to adversely affect organization and members). Conecuh Woods was clearly entitled to a protective order under Rule 26(c), that the discovery not be had.

CONCLUSION

This Court should immediately review the circuit court's April 16 oral discovery ruling to find that Plaintiffs have failed to prove standing to exhaust exclusive administrative remedies. On these findings, the Court should issue a writ of

mandamus directing the circuit court to vacate its April 16
discovery ruling and dismiss the action.

Respectfully submitted this 20th day of May 2013.

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CERTIFICATE OF SERVICE

I hereby certify that I have on the May 20, 2013, served a copy of the foregoing Petition for Writ of Mandamus on the following by electronic mail and/or facsimile transmission and/or U.S. mail to the following:

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Conecuh County Circuit Court
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Evergreen, Alabama 36401-0107

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/s Albert L. Jordan

Of Counsel

January 3, 2012

Priority Mail

Ms. Helena Wooden-Aguilar, Assistant Director
External Complaints and Compliance Program
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: **Title VI Complaint - Alabama Department of Environmental Management Permitting of Arrowhead Landfill in Perry County, Alabama**

Dear Ms. Wooden-Aguilar:

This complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and 40 C.F.R. Part 7. 40 C.F.R. § 7.35(b) provides:

A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

Complainants allege that the Alabama Department of Environmental Management (ADEM) violated Title VI and EPA's implementing regulations by reissuing Permit No. 53-03 to Perry County Associates, LLC for construction and operation of the Arrowhead Landfill, a municipal solid waste landfill in Perry County, Alabama which has the effect of adversely and disparately impacting African-American residents in the community.

I. Title VI Background

“Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA’s Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (EPA, Feb. 5, 1998) at 2 (footnote omitted) (available at http://www.enviro-lawyer.com/Interim_Guidance.pdf).

A complete or properly pleaded complaint must (1) be in writing, signed, and provide an avenue for contacting the signatory (*e.g.*, phone number, address); (2) describe the alleged discriminatory act(s) that violates EPA's Title VI regulations (*i.e.*, an act that has the effect of discriminating on the basis of race, color, or national origin); (3) be filed within 180 calendar days of the alleged discriminatory act(s); and (4) identify the EPA financial assistance recipient that took the alleged discriminatory act(s). Id. at 6 (citing 40 C.F.R. § 7.120(b)(1),(2)). In order to establish a *prima facie* case of adverse disparate impact, EPA must determine that (1) a causal connection exists between the recipient's facially neutral action or practice and the allegedly adverse disparate impact; (2) the alleged impact is "adverse;" and (3) the alleged adversity imposes a disparate impact on an individual or group protected under Title VI. Yerkwood Landfill Complaint Decision Document, EPA OCR File No. 28R-99-R4 (July 1, 2003) at 3 (citing 40 C.F.R. § 7.120(g); New York City Env'tl. Justice Alliance v. Giuliani, 214 F.3d 65, 69 (2nd Cir. 2000)).

"If a preliminary finding of noncompliance has not been successfully rebutted and the disparate impact cannot successfully be mitigated, the recipient will have the opportunity to 'justify' the decision to issue the permit notwithstanding the disparate impact, based on the substantial, legitimate interests of the recipient." Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits at 11. "Merely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification. Rather, there must be some articulable value to the recipient in the permitted activity." Id. "[A] justification offered will not be considered acceptable if it is shown that a less discriminatory alternative exists. If a less discriminatory alternative is practicable, then the recipient must implement it to avoid a finding of noncompliance with the regulations." Id.

"In the event that EPA finds discrimination in a recipient's permitting program, and the recipient is not able to come into compliance voluntarily, EPA is required by its Title VI regulations to initiate procedures to deny, annul, suspend, or terminate EPA funding." Id. at 3 (footnotes omitted) (citing 40 C.F.R. §§ 7.115(e), 7.130(b), 7.110(c)). "EPA also may use any other means authorized by law to obtain compliance, including referring the matter to the Department of Justice (DOJ) for litigation. In appropriate cases, DOJ may file suit seeking injunctive relief." Id.

II. Complainants

The names, addresses and telephone numbers of the persons making this complaint are as follows:

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The Complainants are represented by the undersigned. All contacts with the Complainants should be made through the undersigned or with the express permission of the undersigned.

III. Recipient

ADEM was a recipient of financial assistance from EPA at the time of the alleged discriminatory act. For example, EPA recently awarded grants to ADEM as shown in Exhibit A (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>).

IV. Discriminatory Act

The alleged discriminatory act is the reissuance of Solid Waste Disposal Facility Permit No. 53-03 by ADEM to Perry County Associates, LLC for construction and operation of the Arrowhead Landfill, a municipal solid waste landfill. Exhibit B (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>). “Generally, permit renewals should be treated and analyzed as if they were new facility permits, since permit renewal is, by definition, an occasion to review the overall operations of a permitted facility and make any necessary changes.” Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits at 7.

Permit No. 53-03 authorizes the disposal of “[n]onhazardous solid wastes, noninfectious putrescible wastes including but not limited to household garbage, commercial waste, industrial waste, construction and demolition debris, and other similar type materials” from thirty-three states. *Id.* The permit authorizes the disposal of 15,000 tons of waste per day – the largest authorized waste disposal volume in Alabama. Figure 1. The authorized disposal area is presently 256.151 acres, however Perry County Associates, LLC has recently applied for a 169.179 acre expansion. Exhibit C. The facility is located in Perry County, Alabama at approximately Latitude 32.4115° North, Longitude 87.4675° West. Figure 2.

V. Timeliness

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving EPA financial assistance must be filed within 180 days after the alleged discriminatory act. The reissuance of Solid Waste Disposal Facility Permit No. 53-03 to Perry County Associates, LLC occurred on September 27, 2011. This complaint is filed within 180 days after the permit was reissued.

Figure 1
AUTHORIZED WASTE DISPOSAL VOLUMES AT ALABAMA LANDFILLS

Source: Permitted Solid Waste Landfills in the State of Alabama (ADEM, June 29, 2011)
 (available at <http://www.adem.alabama.gov/programs/land/landforms/MSWLFMasterList08-11.pdf>)

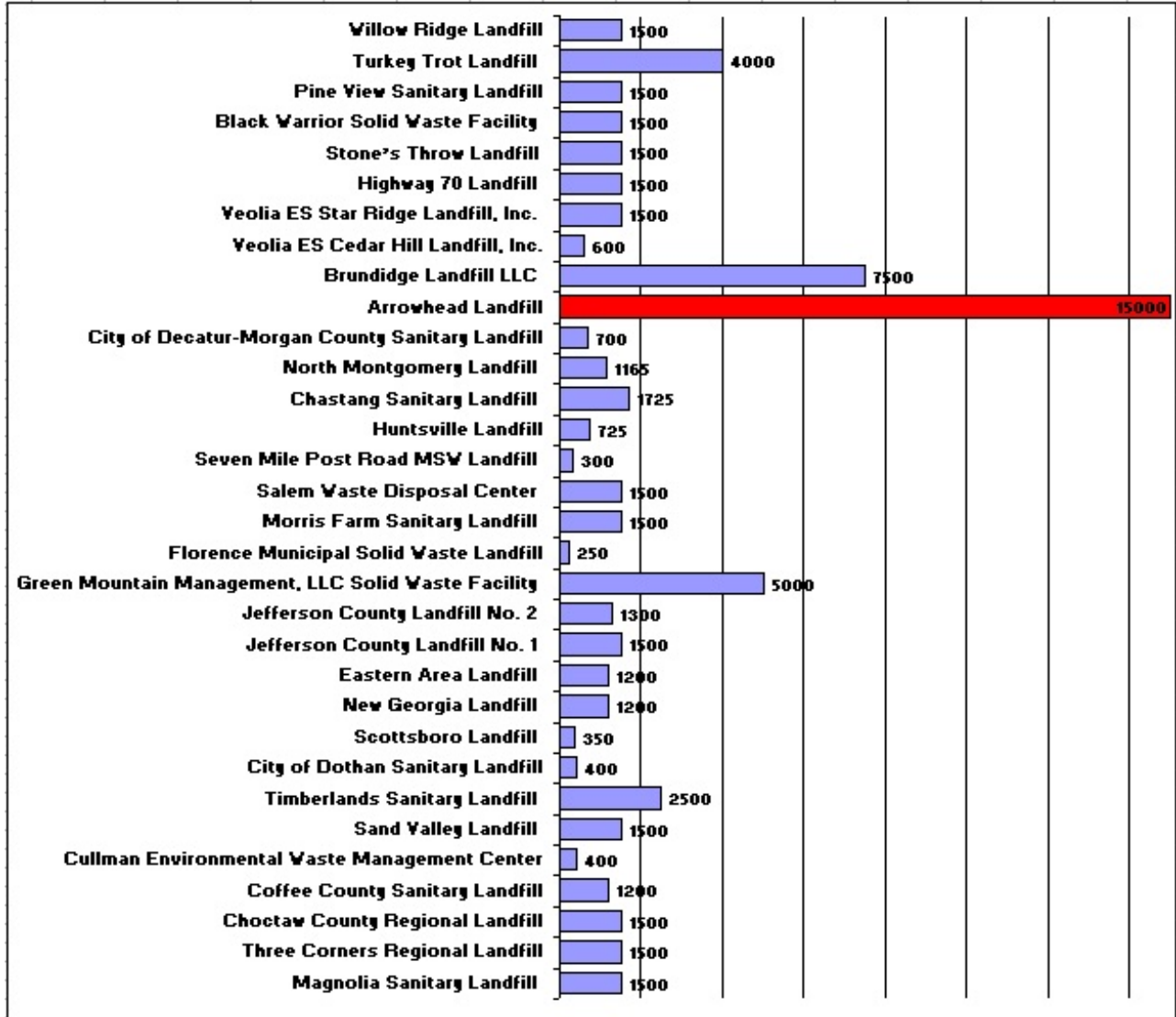
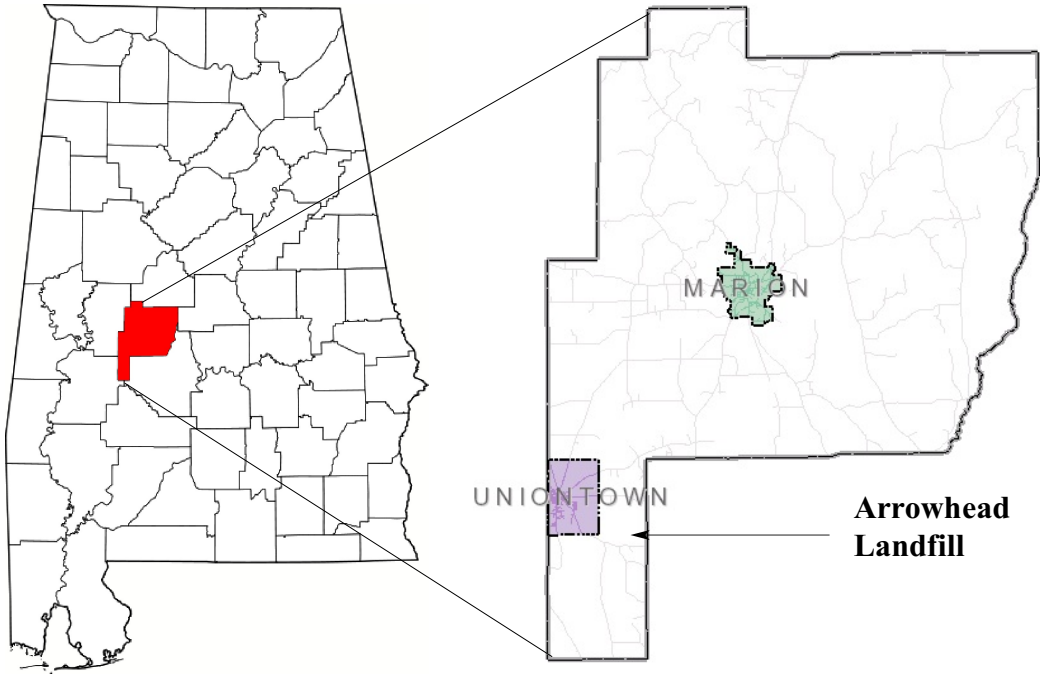


Figure 2
LOCATION OF THE ARROWHEAD LANDFILL
PERRY COUNTY, ALABAMA



VI. Impacts

The impacts resulting from the activities authorized by Permit No. 53-03 include the following:

1. The frequent emission of offensive odors from the landfill that cause lessened human food and water intake, interference with sleep, upset appetite, irritation of the upper respiratory tract (nose and throat) and eyes, headaches, dizziness, nausea, and vomiting among many of the Complainants. *See e.g.*, Exhibits D (ADEM Complaint List), E1 (Audio Complaints Jul-Dec 2010), E2 (Audio Complaints Jan-Jun 2011), and E3 (Audio Complaints Jul-Nov 2011) (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>).

2. The frequent emission of fugitive dust from the landfill that causes particulate deposition on personal and real property of many of the Complainants, including homes, porches, vehicles, laundry, and plantings. *See e.g.*, Exhibit F (Dust Video) (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>).

3. The frequent tracking of dirt and other solids from the landfill onto County Road 1 where through traffic causes the dirt and other solids to become airborne particulates resulting in particulate deposition on personal and real property of many of the Complainants, including homes, porches, vehicles, laundry, and plantings. *See* Exhibit G (Mud in Road Sign) (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>).

4. Increased noise from operation of heavy machinery (*e.g.*, bulldozers, trucks, railcars) 24-hours per day, 7-days per week causing interference with sleep and other activities within the homes of many of the Complainants.

5. Increased populations of flies that are bothersome in and around the homes of many of the Complainants.

6. Increased populations of birds that cause droppings around the homes of many of the Complainants.

7. Decreased property values of many of the Complainants.

See also Exhibit H1 (EPA Listening Session Invitation), Exhibit H2 (EPA Listening Session Video (June 15, 2011)), and Exhibit H3 (ADEM Public Hearing on Permit Renewal (July 14, 2011)) (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>).

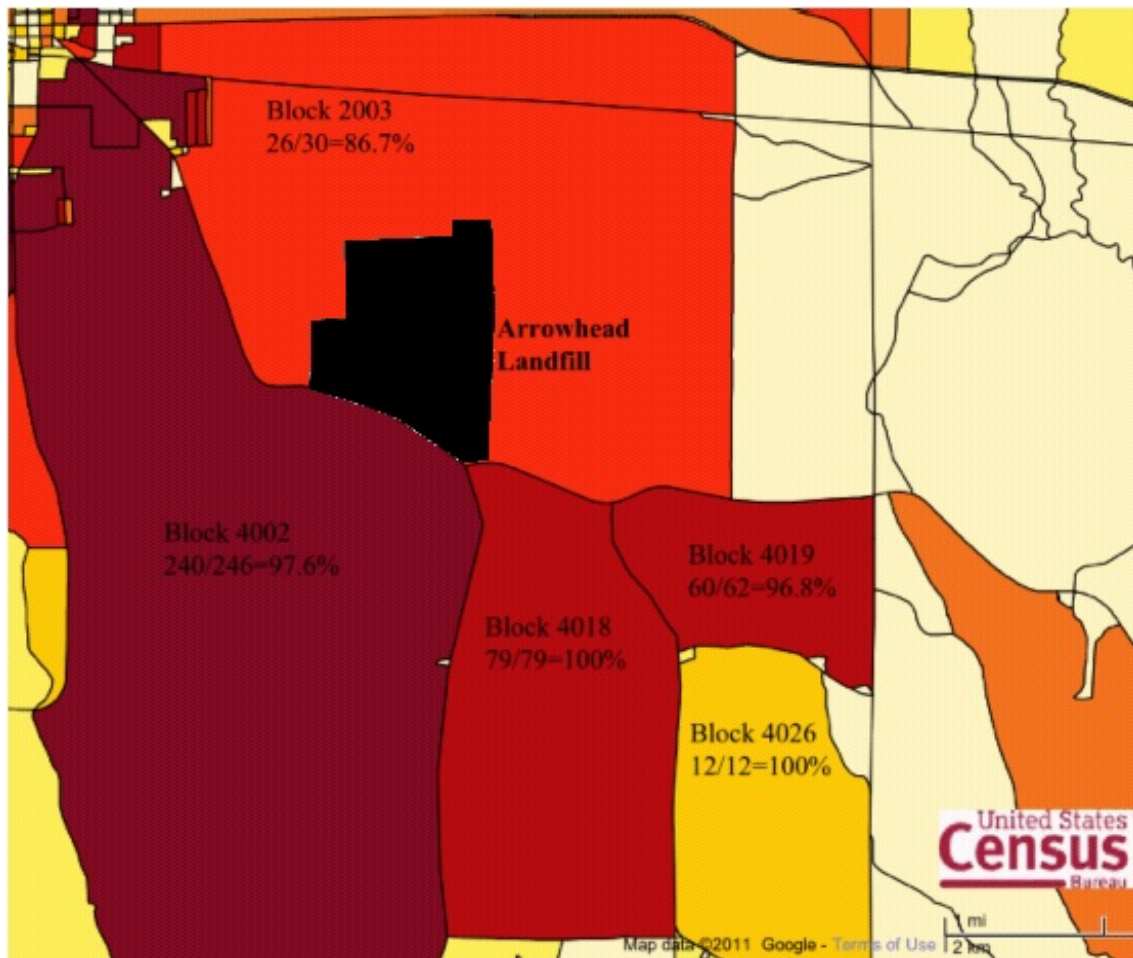
VII. Disparate Impacts

“EPA [compares] the percentage of African Americans in [the] affected population with the percentage of African Americans in the service area of [the] landfill and in the State to determine whether African Americans near the landfill[] [are] disproportionately affected by potential impacts.” Yerkwood Landfill Complaint Decision Document at 5. See Investigative Report for Title VI Administrative Complaint File No. 28R-99-R4 (Yerkwood Landfill Complaint) (June 2003) at 10.

The adverse impacts described above have fallen and continue to fall disparately upon members of the African-American race. This is illustrated by the 2010 census block data included in Figures 3. The impacted census blocks are 87 to 100 percent African-American.

Figure 3
AFRICAN-AMERICAN POPULATION IN 2010 CENSUS
BLOCKS SURROUNDING THE ARROWHEAD LANDFILL

Source: <http://2010.census.gov/2010census/popmap/>



The designated service area for the Arrowhead Landfill is thirty-three states where the predominant race is White. Figures 4 and 5.

Figure 4
LARGEST RACIAL AND ETHNIC GROUPS IN SERVICE AREA STATES

Source: <http://projects.nytimes.com/census/2010/map>

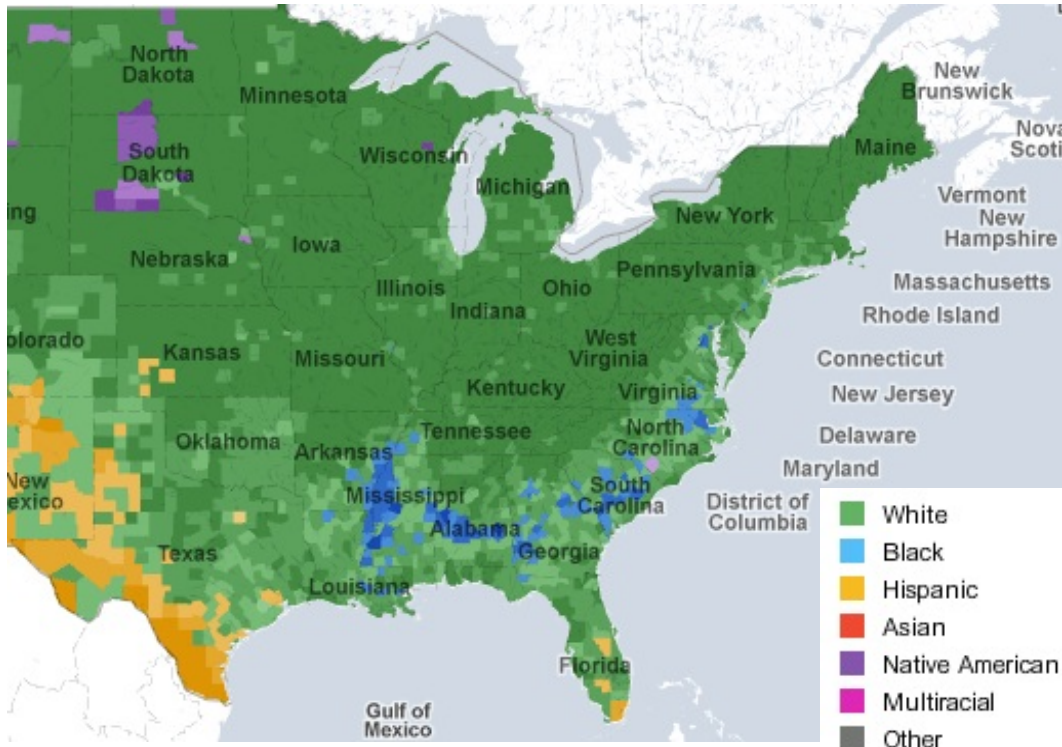
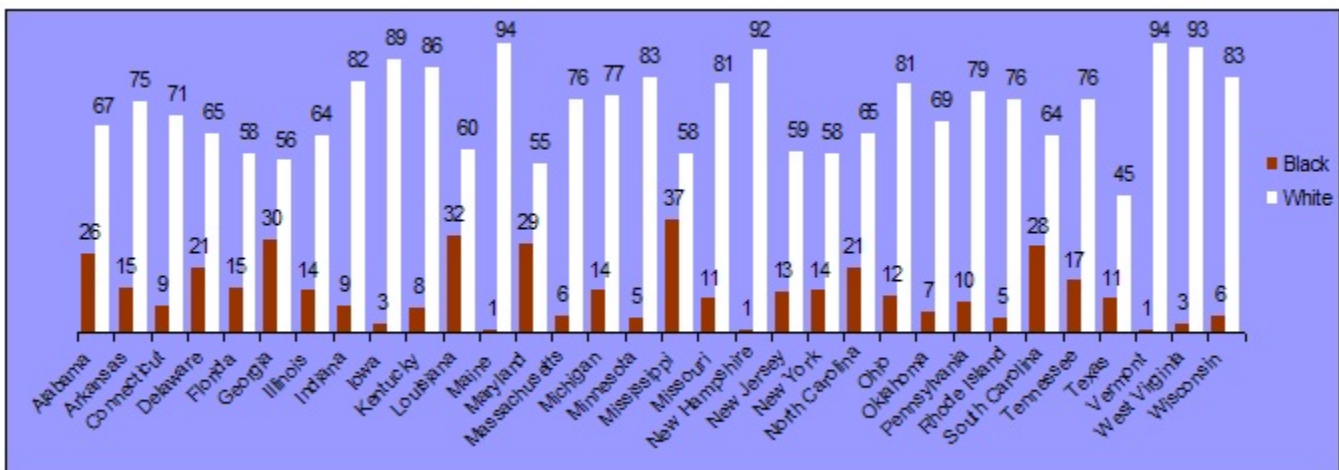


Figure 5
PERCENT AFRICAN-AMERICAN AND WHITE POPULATIONS IN SERVICE AREA STATES

Source: <http://projects.nytimes.com/census/2010/map> and Exhibit B



The percentage of African-Americans among the total population in the designated thirty-three state service area is only 15.1%. The percentage of African-Americans among the total population in Alabama is 26%. Inasmuch as the percentage of African-Americans impacted by the Arrowhead Landfill far exceeds the percentage of African-Americans in the service area and State of Alabama, the alleged impacts are “disparate” impacts. See Yerkwood Landfill Complaint Decision Document at 5.

VIII. Justification and Less Discriminatory Alternatives

“If the recipient can neither rebut the initial finding of disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the permit notwithstanding the disparate impact.” Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits at 4. “[T]here must be some articulable value to the recipient [ADEM] in the permitted activity.” Id. at 11. “The justification must be necessary to meet ‘a legitimate, important goal integral to [the recipient’s] mission.’” Investigative Report for Title VI Administrative Complaint File No. 28R-99-R4 at 60. “Even where a substantial, legitimate justification is proffered, OCR will need to consider whether it can be shown that there is an alternative that would satisfy the stated interest while eliminating or mitigating the disparate impact.” Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits at 4. “Facially-neutral policies or practices that result in discriminatory effects violate EPA’s Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” Id. at 2 (footnote omitted). “[M]erely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification.” Id. at 11. And, “[i]f a less discriminatory alternative is practicable, then the recipient must implement it to avoid a finding of noncompliance with the regulations.” Id.

ADEM has not articulated a value to ADEM or the State of Alabama in the permitting of the Arrowhead Landfill. It is not likely that ADEM or the State of Alabama has a substantial, legitimate interest in the permitting of the Arrowhead Landfill.

The BFI-Selma Transfer Station is located at 1478 Ala. Hwy. 41 in Selma, Alabama (Latitude 32.34773° North, Longitude 87.00067° West), approximately 31 miles east-southeast of Uniontown. “Marion and unincorporated Perry County’s use of BFI-Selma assures them access to a facility that will be able to accommodate the changing MSW needs of its residents throughout the life of this plan. * * * BFI-Selma is expected to remain an active disposal option to the City of Marion and unincorporated Perry County through 2014.” 10-Year Solid Waste Management Plan [for] Perry County, Alabama (Nov. 2004) at 22, Exhibit I (available at <http://www.enviro-lawyer.com/News-LawOfficeNews.html>). “[G]iven their market share and financial resources, BFI is not likely to run out of space to dispose of waste collected at BFI-Selma during the life of this plan.” Id. at 38. There appear to be no more than a few residences within one mile of the BFI-Selma Transfer Station.

The Pine Ridge Landfill is located at 520 Murphy Road in Meridian, Mississippi (Latitude 32.37677° North, Longitude 88.61435° West), approximately 70 miles west of Uniontown. “The City of Uniontown send[s] waste generated within its jurisdiction and the Town of Faunsdale to the Pine Ridge Landfill. Pine Ridge is a Subtitle D facility located approximately 75 miles west of Uniontown in Meridian [Mississippi] . . .” *Id.* “Pine Ridge’s Landfill Operations Manager estimated that the facility has enough remaining capacity to dispose of waste for at least the next 30 years.” *Id.* at 23. There appear to be a number of residences within one mile of the Pine Ridge Landfill along Murphy Road and Sweet Gum Bottom Road. 2010 census data for Census Blocks 106.4000 and 106.5000 indicate that the African-American population surrounding the Pine Ridge Landfill is significantly less than that surrounding the Arrowhead Landfill.

The Choctaw County Regional Landfill is located at 1106 Fire Tower Road in Butler, Alabama (Latitude 32.04541° North, Longitude 88.27016° West), approximately 52 miles southwest of Uniontown. The Choctaw County Regional Landfill is authorized to accept solid waste from all of Alabama. The Choctaw County Regional Landfill is located in an unpopulated area.

The BFI-Selma Transfer Station, Pine Ridge Landfill, and Choctaw County Regional Landfill offer less discriminatory and practicable alternatives to the Arrowhead Landfill for the disposal of municipal solid waste generated in Perry County.

IX. ADEM’s Assurances and Defenses

With each application for EPA financial assistance, ADEM is required to provide assurances that it “will comply with the requirements of” 40 C.F.R. Part 7 implementing Title VI. 40 C.F.R. § 7.80(a)(1). *See* Standard Form 424B (“As the duly authorized representative of the applicant, I certify that the applicant: * * * Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; . . .”). As mentioned above, 40 C.F.R. § 7.35(b) prohibits ADEM from using criteria or methods of administering its program(s) in a manner which has the effect of subjecting individuals to discrimination on the basis of race. However, ADEM has no authority to consider disparate racial impact issues in making permit decisions. *E.g.*, East Central Alabama Alliance for Quality Living and The Town of Loachapoka v. Alabama Dep’t of Env’tl. Mgmt., EMC Docket Nos. 03-01 and 03-02, 2003 AL ENV LEXIS 6, *28 (Mar. 13, 2003) (“ADEM has not been granted the statutory authority to consider disparate racial impact issues where there’s an appeal of the granting of a permit.”); Holmes v. Alabama Dep’t of Env’tl. Mgmt., EMC Docket No. 98-04, 1998 AL ENV LEXIS 1, *30-31 (Feb. 17, 1998) (“The governing statutes and regulations do not confer on the Department any power to consider [the racial makeup of the neighborhood] in deciding whether or not to issue a permit.”). Without such authority, ADEM’s assurances of compliance with Title VI and 40 C.F.R. Part 7 are empty promises.

In this case, as in others, ADEM alleges that it grants permits in accordance with applicable laws and regulations without regard to the racial composition of any impacted communities. This allegation is, in essence, a claim that ADEM's permitting actions do not *intentionally* have adverse impacts on racial minorities. While this may be so, it fails to recognize ADEM's obligation under Title VI to avoid unintentional discriminatory effects. "Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA's Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative." Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits at 2 (footnote omitted).

Often, ADEM asserts that it grants permits in accordance with applicable laws and regulations ("criteria") that are designed to protect human health and the environment. Compliance with these "criteria," ADEM suggests, ensures that racial minorities are impacted no differently than other races. This allegation ignores the fact that (1) members of the African-American race are disparately affected by the Arrowhead Landfill, notwithstanding compliance with the applicable criteria, and (2) the applicable criteria do not address many of the adverse effects suffered by members of the African-American race near the landfill. "[M]erely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification." Id. at 11.

In this case, as in others, ADEM alleges that it does not make landfill siting decisions and that its permitting of a landfill cannot cause adverse impacts on Complainants. See Summation of Comments Received and Response-to-Comments, Proposed Arrowhead Landfill Renewal, Permit 53-03 (Sept. 27, 2011) ("[A]ny alleged discriminatory impact would come as a result of the actual siting of the landfill near an area whose residents are protected by Title VI. ADEM, however, does not site landfills; that responsibility lies with the local host government."); Thistlewaite v. Alabama Dep't of Env'tl. Mgmt., EMC Docket No. 06-08, 2008 AL ENV LEXIS 4, *9 (Aug. 22, 2008) ("The Department's position is that it does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs or activities, in accordance with applicable laws and regulations. ADEM does not site landfills. This responsibility lies with the local host government."); Letter from James W. Warr, Director, ADEM, to Ann E. Goode, Director, EPA Office of Civil Rights, EPA OCR File No. 28R-99-R4 (February 4, 2000) (same). This position ignores several facts. First, the permit granted by ADEM to Perry County Associates, LLC is to construct and operate a landfill at a specific site – Sections 21, 22, 27, and 28, Township 17 North, Range 6 East in Perry County. Exhibit B. But for the ADEM permit authorizing construction and operation of the landfill at this specific site, adverse impacts to Complainants would not result. Second, ADEM determined that the landfill site is compliant with ADEM's "Landfill Unit Siting Standards" at Ala. Admin. Code R. 335-13-4-.01. But for ADEM's determination that the landfill site is compliant with the siting standards, the landfill could not be constructed at the site and could not result in adverse impacts to Complainants. Third, the permit allows operation of the landfill, including the disposal of 15,000 tons per day of solid waste, and authorizes certain operational practices (*e.g.*, recirculation of leachate, alternative daily cover, 24-hours per day, 7-days per week operation, etc.). Exhibit

B. Operation of the landfill is as much a cause of the adverse impacts to the Complainants as the siting of the landfill.

X. Request

Based upon the foregoing, Complainants request that the U.S. Environmental Protection Agency - Office of Civil Rights accept this complaint and conduct an investigation to determine whether ADEM violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 in the issuance of Solid Waste Disposal Facility Permit No. 53-03 to Perry County Associates, LLC for construction and operation of the Arrowhead Landfill on September 27, 2011. If a violation is found and ADEM is unable to demonstrate a substantial, legitimate justification for its action and to voluntarily implement a less discriminatory alternative that is practicable, Complainants further request that EPA initiate proceedings to deny, annul, suspend, or terminate EPA funding to ADEM.

Sincerely,



David A. Ludder
Attorney for Complainants

cc (without enclosures):

Hon. Lisa P. Jackson, Administrator
U.S. Environmental Protection Agency
(via electronic mail: jackson.lisa@epa.gov)

Hon. Rafael DeLeon, Director
U.S. Environmental Protection Agency, Office of Civil Rights
(via electronic mail: deleon.rafael@epa.gov)

Hon. Gwendolyn Keyes-Fleming, Regional Administrator
U.S. Environmental Protection Agency, Region 4
(via electronic mail: keyesfleming.gwendolyn@epa.gov)

Hon. Lance LeFleur, Director
Alabama Department of Environmental Management
(via electronic mail: director@adem.state.al.us)

Hon. Robert J. Bentley, Governor
State of Alabama
(via electronic mail: info@governor.alabama.gov)

Hon. Terri A. Sewell, Congresswoman
U.S. House of Representatives, 7th District
(via fax: (334) 683-2201)

Hon. Bobby Singleton, Chair
Alabama Legislative Black Caucus
(via electronic mail: bsingle164@yahoo.com)

Hon. Linda Coleman, Chair
Alabama Senate Black Caucus
(via electronic mail: lindacoleman60@bellsouth.net)

Hon. Ralph Howard, Representative
Alabama House of Representatives, 72nd District
(via electronic mail: ralph.howard@alhouse.org)

Hon. Thomas E. Perez, Assistant Attorney General
U.S. Department of Justice, Civil Rights Division
(via electronic mail: thomas.perez@usdoj.gov)

Hon. Kenyon R. Brown, U.S. Attorney
Southern District of Alabama
(via electronic mail: kenyen.brown@usdoj.gov)



SOLID WASTE DISPOSAL FACILITY PERMIT

PERMITTEE: Perry County Associates, LLC

FACILITY NAME: Arrowhead Landfill

FACILITY LOCATION: Sections 21, 22, 27 and 28, Township 17 North, Range 6 East in Perry County. The facility consists of 976.97 acres with a disposal area of 425.33 acres.

PERMIT NUMBER: 53-03

PERMIT TYPE: Municipal Solid Waste Landfill

WASTE APPROVED FOR DISPOSAL: Nonhazardous solid wastes, noninfectious putrescible and nonputrescible wastes including but not limited to household garbage, commercial waste, industrial waste, construction and demolition debris, tires, and other similar type materials. Special waste approved by ADEM may also be accepted.

APPROVED WASTE VOLUME: 15,000 tons per day

APPROVED SERVICE AREA: States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin

In accordance with and subject to the provisions of the Alabama Solid Wastes and Recyclable Materials Management Act, as amended, Code of Alabama 1975, SS 22-27-1 to 22-27-27 ("SWRMMA"), the Alabama Environmental Management Act, as amended, Code of Alabama 1975, SS 22-22A-1 to 22-22A-15, and rules and regulations adopted thereunder, and subject further to the conditions set forth in this permit, the Permittee is hereby authorized to dispose of the above-described solid wastes at the above-described facility location.

ISSUANCE DATE: September 27, 2011

EFFECTIVE DATE: September 27, 2011

MODIFICATION DATE: November 4, 2011 and February 3, 2012

EXPIRATION DATE: September 26, 2016

Alabama Department of Environmental Management

**MUNICIPAL SOLID WASTE
LANDFILL DEVELOPMENT AND HOST FEE AGREEMENT**

THIS AGREEMENT made this 18th day of April, 2011, by and between the Conecuh County Commission, the local governing authority of, and acting for and on behalf of, Conecuh County, Alabama (hereinafter referred to as the "Commission" or the "County" unless the context otherwise requires), and Conecuh Woods LLC, an Alabama limited liability company (hereinafter referred to as the "Company"), and in each case including by reference thereto its successors or assigns, and individually a "Party" and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, ADEM has mandated that the County facilitate its long-range solid waste disposal needs; and

WHEREAS, a new solid waste sanitary RCRA Subtitle D landfill (hereinafter "Landfill") is needed to ensure the continued availability of solid waste disposal services for the citizens and businesses of the County and to otherwise promote the health, safety and welfare of its citizens; and

WHEREAS, a new Landfill would enhance the economic competitive position of the County, offering reliable solid waste disposal services to new and existing industry for years to come; and

WHEREAS, the Company has applied to the Commission for local approval of its proposal to develop a Subtitle D Municipal Solid Waste Sanitary Landfill within the bounds of the County, said application dated January 19, 2011 and filed with the Commission on January 21, 2011, which application is, subject to Sections 18.01(a) hereof, incorporated herein by reference and made a part hereof as if more fully set forth at length (hereinafter, the "Application"); and

WHEREAS, the Contract has been executed by the Company and, if the Application and the Contract are approved at the special meeting of the Commission on April 18, 2011, the Contract will be executed by the County immediately thereafter; and

WHEREAS, it is to the County's advantage for the Company to develop the Landfill for the following reasons:

- (A) The Company, and not the taxpayers of the County, will bear the cost of developing and operating the Landfill; and
- (B) The Company will provide a potential new source of revenue to the County in the form of Host Fees as described in Section 12.01 hereinbelow; and
- (C) The Landfill will enhance the economy of the County, will bring additional jobs

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and tax revenue to the County, and will assist in efficient disposal of waste for public health; and

(D) The Company will bear the liability for Landfill development and operations; and

WHEREAS, the Company paid the Commission an application fee when the Application was filed in the amount of Nine Thousand Two Hundred Twenty-Six and No/100 Dollars (\$9,226.00), calculated in accordance with the formula set out in the Act; and

WHEREAS, by resolution dated January 24, 2011, the County scheduled a public hearing for March 10, 2011 regarding the Application and published the requisite public notice for the hearing; and

WHEREAS, the Commission has to date not yet voted or decided whether to approve or deny the Application, and it is expressly stated by the Commission and acknowledged by the Company that this Contract is not an approval or denial of the Application, and the approval or denial of the Application is expressly reserved by the Commission; and

WHEREAS, the Company has proposed that certain fees be paid to the Commission if the Company is granted approval of its Application and if further approved by the Alabama Tombigbee Regional Planning Commission and further granted a permit by the Alabama Department of Environmental Management and the Landfill developed, said fees to be the Host Fees as herein set forth; and

WHEREAS, through the Application, the Company makes assertions that it will develop the Landfill, if approved, according to certain specifications; it will create certain buffer areas; and many other certain and definite assertions; and

WHEREAS, the Company also makes assertions in the Application that are not certain by their own terms, and are necessarily based upon estimates, projections or approximations, and also assertions that some design specifications cannot be determined before ADEM involvement; and

WHEREAS, pursuant to the Constitution and laws of this State and County, the Commission is authorized to enter into valid, binding contracts with private persons, corporations, and other entities; and

WHEREAS, the Commission, being the governing authority of the County with the responsibility and the power to enter into contracts, has determined that the Facility is needed and, when permitted and operational, shall be appropriate for the disposal of solid waste material subject to the requisite permitting requirements of ADEM under the Act; and

WHEREAS, the Commission has determined that it is in the best interest of the citizens of the County that the Company be contractually bound by certain of the assertions that it has made in the Application, and also that the Company should be contractually bound to provide

adequate Host Fees to the County, should the Application be approved, permitted, and the Facility developed; and

WHEREAS, the Commission has determined that the Facility is a needed facility within the County to meet its solid waste management needs.

NOW, THEREFORE, for and in consideration of the premises herein set forth, the Parties hereby covenant and agree as follows:

ARTICLE I Definitions

For the purpose of the Contract, unless otherwise defined in this Contract, the following words or phrases shall have the meanings ascribed thereto in this section unless the context indicates differently. To the extent not defined herein, all words, terms, phrases, etc., used in this Contract that relate to solid waste management or sanitary landfills that are defined in the Solid Waste Disposal Act, Ala. Code §§ 22-27-1 through 49, as amended (herein "Act"), shall have the respective meanings as defined in such Act.

"Acceptable Waste" means Solid Waste that, under the terms and conditions hereof, may be accepted, handled and disposed of at a RCRA Subtitle D facility and does not include Excluded Waste.

"ADEM" means the Alabama Department of Environmental Management, an agency of the State, and any successor agency, including EPA, if it assumes compliance, monitoring and enforcement functions now delegated to ADEM, for the purpose of regulating solid waste disposal or the permitting, construction, operation or closure of a sanitary landfill.

"CERCLA" means The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, *et seq.*

"Commencement of Operations" means the first day that the Facility proposed by the Company is open to accept Acceptable Waste.

"Contract" means this Agreement, as the same may be hereafter amended, supplemented or renewed.

"County Solid Waste" means all Acceptable Waste generated within the County.

"Engineer" means any Person qualified and licensed to practice as an engineer under the laws of the State of Alabama, who shall be engaged by the County for, *inter alia*, engineering services, including an employee of the County.

"Environmental Laws" means all laws, regulations, rules, rulings, orders, decrees, ordinances, injunctions, or other legal authority of the United States of America (including, without

limitation, CERCLA and RCRA) or the State of Alabama with respect to solid waste management facilities.

“EPA” means The United States Environmental Protection Agency, or any successor agency.

“Excluded Waste” means, except as may be specifically and expressly provided for herein, any infectious waste such as biomedical waste, hospital waste, or other wastes which do not pass federal and state regulations for treatment of infectious waste prior to disposal, hazardous waste (as defined in RCRA and its State counterpart) and waste not permitted to be disposed of in a RCRA Subtitle D facility.

“Facility” means the Landfill to be situated on the Property.

“Force Majeure” means any act, event or condition reasonably relied upon by the Company as justification for the delay in or excuse from performing any obligation or complying with any condition required of the Company under this Contract, such as (i) an act of nature, epidemic, landslide, extraordinary lightning, earthquake, extraordinary fire, extraordinary explosion, flood or similar occurrence, an act of a public enemy, war, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (ii) a strike, work slowdown, or similar industrial or labor action; (iii) the order or judgment or other act of any federal, state, county or local court, administrative agency or governmental office or body extraordinarily affecting the operation of the Facility; (iv) the denial, loss, suspension, expiration, termination or failure of renewal of any suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval applied for by the Company and required to operate (including, without limitation, those required to operate the Landfill); (v) the adoption or change (including a change in interpretation) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date hereof applicable to the Facility or the Company, which would render the construction or operation of the Facility infeasible; (vi) if the Company is for any reason (not a result of any act or omission on the part of the Company) barred by governmental or judicial action from operations hereunder, or (vii) any other extraordinary act beyond the reasonable control of the Company.

“Fixed Host Fee” means the fee payable by the Company to the County pursuant to Section 12.01.

“Hazardous Waste” means all waste defined or characterized as hazardous waste or hazardous substances by the United States Environmental Protection Agency under RCRA Subtitle C, as such are amended from time to time; and all waste defined or characterized as a hazardous waste by any agency of the State of Alabama having jurisdiction over hazardous waste generated by facilities within such state.

“Host Fees” mean the Fixed Host Fee and the Variable Host Fee.

“Laws” means all valid and applicable federal, state and local statutes, ordinances, rules, regulations, orders and decrees.

“Life of the Facility” means the period during which capacity to dispose of Acceptable Waste exists at the Facility.

“Person” means every natural person, firm, partnership, limited liability company, association or corporation.

“RCRA” means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Sections 6901 *et seq.*

“Service Area” means Louisiana and all states east of the Mississippi River.

“Site” or “Property” means the site of the Facility, as the location thereof is identified by the boundary map and description attached as Exhibit C to the Application.

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“Solid Waste” means any waste material (excluding any Excluded Waste) permitted to be disposed of in the Landfill pursuant to any applicable federal, state and local laws or regulations and any of the terms and conditions of any permits, licenses and approvals obtained by the Company with respect to the operation of the Landfill.

“Special Waste” means any waste which requires special or exceptional handling and thus contains an added element of expense or risk to dispose of (as determined by the Company in its reasonable discretion) or requires approval from ADEM, including, without limitation, furniture, large appliances, automobiles, any metal (other than that which is typically found in household or municipal refuse), ashes, sludges, animal manure, residue from incineration, food processing wastes, dredging wastes, bulk quantity of tires or asbestos; provided, however, that waste of a type and quantity normally found in household waste shall not be considered Special Waste.

“State” means State of Alabama.

“Tons” means 2,000 pounds.

“Variable Host Fee” means the fee payable by the Company to the County pursuant to Section 12.02.

ARTICLE II
Representations

Section 2.01 Representations of the County

The County represents that the County has authority and power to enter into and perform this Contract and by proper action has duly authorized the execution, delivery and performance of this Contract.

Section 2.02 Representations of the Company

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The Company represents that the Company is a limited liability company that is duly created and formed under the laws of the State of Alabama; is not in violation of any substantial, applicable provisions of its articles of organization, operating agreement, or the laws of the State of Alabama; has the power and authority to enter into and perform this Contract; and by proper action (including without limitation all necessary member action) has duly authorized the execution, delivery, and performance of this Contract.

ARTICLE III

Development and Operation of the Facility

Section 3.01 Siting

The County and the Company recognize the importance of siting the Facility in a rural area buffered from the general public, yet not too far from major transportation arteries and primary state roads so haul and collector trucks can have adequate access, with the safety of the motoring public being a major consideration, and of considering the other social, economic, cultural, physical and environmental siting considerations contained in the Conecuh County Solid Waste Management Plan dated September 2004 as addressed in the Application.

Section 3.02 Location

The Company has decided to site the Facility on the Property.

Section 3.03 Permits

It shall be the responsibility of the Company to secure all required permits, licenses and approvals necessary to construct and operate the Facility at its sole expense. In response to any reasonable request made by either the Company or any permitting authority with jurisdiction over the Facility, the County shall commit its full support and cooperation to assist the Company in obtaining all such approvals, including, but not limited to, written and verbal communications and such other official documentary support or approvals necessary to obtain such approvals.

ARTICLE IV

Closure

Upon the closure (as defined in the applicable Environmental Laws) of all or any part of the Facility, the Company shall, at its sole expense; (i) comply in all material respects with all applicable laws, permit conditions, and orders or decrees of ADEM or EPA; (ii) provide, at its sole expense, all post-closure care and monitoring required by applicable Laws or permit conditions; (iii) and perform all required investigation and remediation required under applicable Environmental Laws.

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ARTICLE V
Indemnifications of County by Company

Section 5.01 Special Environmental Indemnity

The Company shall defend, indemnify, agree to pay and save harmless the County (including, without limitation, all officers, agents, and representatives of the County and members of the governing body of the County), against any and all liabilities, claims, damages, causes of action, judgments, fines, penalties, response costs, and other losses, costs and expenses (including all reasonable attorneys' fees and expenses and litigation costs and expenses of investigation) actually incurred by the County that are related to or arise out of: (i) any violation of, or noncompliance of the Site or the Facility under any applicable ADEM regulation that occurs during the ownership of the Site by the Company; or (ii) result from the presence of Hazardous Waste on the Site during the period of the ownership of the Site by the Company, and any investigation, clean up or removal of, or other remedial action or response costs with respect to, any Hazardous Waste during such period of ownership by the Company that may be required by ADEM or other costs pursuant to CERCLA, and including, without limitation, damages based on noncompliance with Environmental Laws which seek relief under or are based on state or common law theories such as trespass or nuisance.

Section 5.02 General Indemnity

With respect to all matters not within the Special Environmental Indemnity of Section 5.01, the Company shall defend, indemnify, agree to pay, and save harmless the County (including, without limitation, all officers, agents, and representatives of the County and members of the governing body of the County) against, any and all liabilities, claims, damages, causes of action, judgments, fines, penalties, and other losses, costs and expenses of any nature whatsoever (including all reasonable attorneys' fees, expenses and litigation costs) actually incurred by the County that are directly caused by any negligent or willful act of the Company (and/or its agents or employees), unless such liability is due to the negligent, reckless or wanton, willful, or intentional misconduct of the County, that are related to or arise out of or in connection with the permitting, acquisition, construction, maintenance, operation, use, non-use, closure and post-closure of the Facility. Notwithstanding anything contained herein to the contrary, in no event shall the Company be required to incur any liability or obligation whatsoever under this Section 5.02, including indemnification and payment of costs or expenses, relating to any litigation associated with the action of the County in considering, approving or denying the Application.

Section 5.03 Survival

(a) Except as stated to the contrary, the covenants of indemnity by the Company contained in this Article V with respect to any event or occurrence arising on or before expiration or termination (for any reason) of this Contract shall survive the termination or expiration of this Contract and shall remain in full force and effect until commencement of an action based on such event or occurrence shall be prohibited by law.

(b) If either (i) the Company elects not to renew the Term of this Contract at any time prior to the expiration of the Life of the Facility, or (ii) the County elects to terminate the Contract on account of an Event of Default as provided in Section 14.02(b), then through the remaining Life of the Facility that the Company operates the Facility, the Company shall pay the County a facilitation fee equal to an amount that would have been paid as the Variable Host Fee under the non-renewed or terminated Contract and each Party shall provide to the other similar assurances and facilitations as in the non-renewed or terminated Contract during the survival period. The provisions of this Section 5.03(3b) shall expressly survive the non-renewal or termination of this Contract as provided in this Section 5.03(b) for its specified survival period.

ARTICLE VI

Term

The Contract shall be binding on the Parties upon the full execution of this Contract. The initial term of this Contract shall commence on the date of the full execution hereof and continue for a period of twenty (20) years. This Contract and its term shall automatically renew and be extended for successive ten (10) year periods beginning on the twentieth (20th) anniversary of the date of the full execution hereof and each subsequent tenth (10th) anniversary of such date unless the Company gives the County prior written notice of non-renewal at least nine (9) months before the expiration of the initial term or the then-current renewal period, as the case may be; provided, however, that this Contract shall automatically expire on the date which is the earlier of ninety-nine (99) years after the date of the full execution hereof or the expiration of the Life of the Facility, unless each of the Company and the County agree in writing within nine (9) months prior to such ninety-nine (99) year or Life of the Facility expiration date that this Contract shall not so expire. For all purposes of this Contract, references to this Contract's "Term" or "term" shall mean the initial twenty (20) year term of this Contract and any and all successive ten (10) year renewal periods, as the same may be extended hereunder. Notwithstanding the foregoing, except as expressly stated to the contrary herein, neither Party shall have any obligations under this Contract unless and until the Application is approved or deemed to be approved by the County, and all required permits, licenses and approvals from any and all authorities having jurisdiction over the Facility for the development, construction and operation of the Facility have been received by the Company, beyond any applicable appeal period, and are acceptable to Company in its sole discretion.

ARTICLE VII

Scope of Work

Subject to the terms and conditions of, and except as otherwise set forth in, this Contract, the Company shall permit, develop, construct and operate the Facility at its sole cost and expense and shall provide all labor, material, equipment and services necessary for the development, construction and operation of the Facility in all material respects in accordance with all applicable Environmental Laws.

ARTICLE VIII

Expenditures

The Company covenants and agrees that, except as set forth below, no term, provision or condition of this Contract, and no other written or oral agreement or understanding of any nature whatsoever, shall operate or be construed to obligate the expenditure of any funds or the incurrence of any pecuniary liability, with respect to the provision of the Facility and the disposal of Solid Waste in accordance with the terms hereof, or the lending or obligation of any credit, of whatsoever nature, by the County, directly or indirectly, in connection with the Facility or otherwise pursuant to any agreement or understanding, and the Company hereby covenants and agrees to waive and release any of the foregoing. For purposes of compliance with Section 22 of the Constitution of Alabama of 1901, as amended, and Article 3 of Chapter 16 of Title 41 of the Code of Alabama 1975, each term, condition and provision of this Contract shall be construed and enforced to give effect to the covenants and agreements of the Company in this Article VIII, provided, however, this Article VIII shall not be construed as a defense to the payment by the County of lawful claims against the County for damages caused under or otherwise in connection with this Contract.

ARTICLE IX

Operational Standards

Section 9.01 Operational Standards

To ensure the environmental integrity of the Facility and to minimize the potential for any impacts on public health and safety, the Facility shall be developed, constructed and operated by Company as set forth in the Application and in conformance in all material respects with all applicable Environmental Laws and permits issued thereunder for the Facility.

(a) Service Area. The Company may accept only Acceptable Waste from the Service Area. The Company shall not willingly accept or dispose of any Acceptable Waste at the Facility that the Company knows was generated outside the Service Area or brought from outside the Service Area to a transfer station or place of collection within the Service Area prior to delivery to the Facility.

(b) Daily Capacity. Unless otherwise approved or amended by ADEM, the Facility shall be subject to a maximum permitted capacity of ten thousand (10,000) tons per day of Acceptable Waste from the Service Area. The daily capacity shall be calculated on a monthly average by taking the total tonnage received each month divided by the number of actual operating days during that month.

For purposes of calculation of the Variable Host Fee, the Facility will weigh incoming Acceptable Waste and make available to the County the same quarterly volume reports as are prepared for ADEM.

(c) Special Waste. The Company shall not willingly accept at the Facility any waste that the Company knows constitutes Special Waste, except in accordance with regulations

promulgated by ADEM.

(d) Litter, Dust, Windblown Waste Control.

(1) The Company shall regularly patrol for litter along that portion of the right-of-way of Alabama Highway 41 that lies between the intersection of Alabama Highway 41 and Interstate 65 and the intersection of Alabama Highway 41 and the southern boundary of the Town of Repton. The Company shall use commercially reasonable efforts to maintain the Facility and the aforementioned portion of Alabama Highway 41 in a clean, vector-free, and sanitary condition, in accordance with best management practices in the industry with respect to Subtitle D landfills and in compliance in all material respects with ADEM regulations. The Company shall inspect the aforementioned portion of Alabama Highway 41 on a weekly basis and collect and dispose of all litter thereon.

(2) The Company shall furnish, maintain and use such dust control equipment as may be commercially reasonable and necessary to protect employees, the public and adjacent properties and to minimize the creation of dust at the Facility.

(3) The Company shall use commercially reasonable measures to contain windblown waste at the Facility, such as paper and other light debris, and shall collect and properly dispose of all such windblown waste.

(i) *to be removed*
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(e) Complaints. Complaints to the County by citizens or other interested parties regarding the Facility will be promptly forwarded by the County to the Company, and the County shall provide information to the Company reasonably necessary to allow the Company to respond to any complaints. The Company shall promptly respond to material complaints and promptly report the circumstances and action taken to the County.

(f) Access. The Company shall not encourage or facilitate alternative access to the Facility from Interstate 65 other than Alabama Highway 41. ~~_____~~

ARTICLE X

Assured Disposal Capacity for County

The Company will provide, subject to the negotiation and execution of contracts with either the County or any municipality located within the County, throughout the Term of this Contract, assured disposal capacity for Acceptable Waste generated within the County (and not generated outside the County and transferred into the County) that is from private residences and that is collected and brought to the Facility as part of mandatory garbage service (as in effect at the time of this Contract for the three municipalities of Evergreen, Castleberry and Repton). Such assured disposal shall be at a rate equal to the current, lowest rate charged by the Company to any like customer (such as individual versus municipal, etc., and similar customers as to

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quantity) for disposal of like waste generated outside the County. For any violation of this provision, the Company shall be authorized to levy a reasonable corresponding surcharge to applicable surcharges.

ARTICLE XI Personnel

Section 11.01 Personnel

(a) The Company shall employ, maintain and assign qualified supervisory and managerial personnel at the Site who have suitable technical, engineering and environmental training, education and experience which is appropriate and as may be required for the commercially reasonable safe, proper and efficient maintenance and operation of the Facility.

(b) An authorized representative of the Company shall be present at the Facility at all times that the Facility is in operation.

(c) The Company shall file with the County the names, addresses and telephone numbers of authorized representatives who can be contacted at any time. These authorized representatives must maintain offices within the County and be fully authorized and equipped to respond to reasonable requests of the County relating to the performance by the Company under this Contract.

ARTICLE XII Host Fees

Section 12.01 Payment to the County for Development Fee upon Commencement of Operations

In consideration of (i) future costs or expenses, including litigation over approval of the Application, permitting oversight, and environmental monitoring; (ii) preparing for and delivering future County services, including law enforcement, fire protection and the personnel and equipment needs related thereto; (iii) recycling, conservation and alternative energy programs, staffing, facilities, program implementation and corresponding educational programs and communications plans; (iv) mitigation of off-site impacts including litter, traffic, dust, noise and odor; and (v) current and evolving capital costs of the foregoing, all collectively in amounts not yet fully determinable, the Company agrees to pay, and shall pay, a Fixed Host Fee in the total amount of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) to the County, which shall be payable in five (5) equal, annual installments of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) each, with the first installment due within thirty (30) days after the Commencement of Operations. Nothing in this Section shall

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~~be construed to impose any duty upon the County to expend funds to furtherance upon the enumerated items herein. Nor shall this Section relieve the Company from its duties stated elsewhere in this Contract.~~

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For any month when the average TPD exceeds ~~2500~~ 2500 tpd, an additional 20 cents per ton shall be paid. For every ton exceeding 2500 tpd.

Section 12.02 Variable Host Fee

The Company agrees to pay, and shall pay on a quarterly basis, to begin at the expiration of the quarter containing the date of the Commencement of Operations, a Variable Host Fee of One and 25/100 Dollars (\$1.25) per ton of Acceptable Waste received for disposal at the Facility during the applicable quarter, with such payment to be remitted no later than thirty (30) days after the end of such applicable quarter. Upon the tenth (10th) year anniversary of the first quarterly payment, the fee per ton shall increase by ten percent (10%), rounded to the nearest penny, resulting in a fee of One and 38/100 Dollars (\$1.38) per ton. Thereafter, the fee per ton shall increase by ten percent (10%) in like manner every ten (10) years until the expiration, termination or non-renewal of the Contract. The Host Fee to be paid is inclusive of all local, state or federally mandated fees, assessments and charges.

every ton exceeding 2500 tpd
DWS JR
WB

except that payments shall continue as set out in Section 5.03(b).

ARTICLE XIII
Covenants of the Company

Section 13.01 Compliance with Environmental Laws.

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(a) The Company shall comply in all material respects with all Environmental Laws applicable to the construction and operation of the Facility.

(b) The Company shall not knowingly bring on, or knowingly allow others to bring on, any Hazardous Wastes onto the Site in violation of any applicable Environmental Laws.

(c) If the County at any time reasonably believes that the Company, and/or its agents or employees, is not complying in all material respects with all applicable Environmental Laws or the requirements hereof regarding the same, or that a release of Hazardous Waste has occurred on or under the Site, the County, upon ten (10) days' advance written notice to the Company, may, at its cost and expense, cause an environmental audit or site assessment to be made with respect to the matters of concern to the County.

Section 13.02 Performance Security

Prior to the Commencement of Operations, the Company shall provide the County with performance security or a performance bond on customary terms to assure the performance of all conditions of this Contract in the amount of One Million and No/100 Dollars (\$1,000,000.00).

Section 13.03 Provisions of Annual Financial Records and Operating Data with Respect to the Facility

(a) The Company shall furnish to the County, within ninety (90) days after the end of each fiscal year, tonnage information for the preceding twelve (12) months with respect to the Facility.

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(b) The Company shall, if reasonably requested, furnish to the County copies of all non-confidential and non-proprietary test and monitoring results, regulatory inspection reports, volume reports, waste certifications, regulatory correspondence, as-built drawings, and other documents pertinent to monitoring the operation of the Facility provided to ADEM pursuant to its regulations.

Section 13.04 Inspection

(a) The Company shall permit the County and its agents, employees and representatives at all reasonable times upon presentation of credentials and during regular business hours and upon at least forty-eight (48) hours' advance written notice by the County to the Company to enter upon, examine and inspect the Facility and all non-confidential and non-proprietary tonnage information. The Company agrees that, with the exception of ground water monitor wells, the County may use existing monitoring stations for the purpose of obtaining independent reports and during ground water monitoring the County may have a representative present to inspect procedures and receive split samples for independent testing. The Company shall maintain and make available upon written request by the County non-confidential and non-proprietary documentation concerning any inspections by ADEM. The County shall not, in the exercise of its rights hereunder, interfere with the construction or operation of the Facility. If requested by the Company, the County shall promptly provide the Company a copy of the results of such samplings and audits.

(b) Upon the occurrence of an Event of Default (which shall not have been theretofore cured as provided herein), the Company will permit a certified public accountant or other person designated by the County to have access to, inspect, examine and make copies of the non-confidential and non-proprietary tonnage information with respect to the Facility for the previous four (4) years.

Section 13.05 No Discrimination

The Company shall not violate any applicable laws relating to discrimination against any person because of race, sex, age, creed, color, religion or natural origin.

Section 13.06 County Powers

The Company covenants and agrees that nothing contained herein shall operate or be construed to deny, abrogate, limit or restrict the lawful exercise by the County of any power or authority under the constitution and laws of the State of Alabama as at any time in effect.

ARTICLE XIV
Events of Default and Remedies

Section 14.01 Events of Default

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(a) Material Default. Subject to Force Majeure, any one or more of the following shall constitute an event of default (an “Event of Default”), if the same has not been fully cured and corrected within thirty (30) days (subject to extension as provided below) after written notification from the other Party specifying such Event of Default and requesting that it be cured and corrected:

(1) Covenant Default or Misrepresentation. Failure by a Party to observe and perform any substantial covenant or agreement of such Party under this Contract, or any substantial warranty or representation made by such Party in this Contract is untrue or misleading in any material respect at the time made.

(2) Events of Bankruptcy. The dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or failure by the Company promptly to lift any execution, garnishment or attachment of such consequence as will materially impair operations of the Company, the seeking of or consenting to or acquiescing by the Company in the appointment of a receiver of all or substantially all property thereof or of the Facility, or the adjudication of the Company as bankrupt, or any assignment by the Company for the benefit of creditors thereof, or the liquidation of the Company in bankruptcy, or if a petition or answer is filed by the Company proposing the adjudication of the Company as a bankrupt under any present or future federal bankruptcy code or any similar federal or state law in any court, or if any such petition or answer is filed by any other person and such petition or answer shall not be stayed or dismissed within ninety (90) days.

(3) Failure of Operation of Facility. For any reason within its control, the Company, its successors or assigns either (i) permanently ceases its acquisition and construction activities with respect to the Facility, after its receipt of all final approvals and permits for the Facility, including, without limitation, final approval or deemed approval of the Application by the Commission or applicable authority, or (ii) after construction of the Facility, fails to operate or abandons and vacates the Facility for a period sixty (60) consecutive days, or fails to accept County Solid Waste in accordance with this Contract for a period of sixty (60) consecutive days.

(b) Extension of Cure Period. If, due to the nature of the Event of Default, more than thirty (30) days are required for the breaching Party to cure an Event of Default and the breaching Party acts in good faith to cure the Event of Default in a timely manner, then the thirty (30) day time period allowed for curing the Event of Default shall be automatically extended for such period of time as is necessary for the breaching Party, through its good faith efforts, to cure the Event of Default.

Section 14.02 Remedies

In addition to the remedies set forth in other sections including Section 13.02:

(a) Upon the occurrence of any Event of Default, which is not cured within any applicable notice and cure periods (subject to extension as provided above), the non-breaching

Party may take any one or more of the following actions and remedies, which shall be cumulative and not exclusive:

(1) Cure the breach or default at the expense of the breaching Party provided that the non-breaching Party uses its commercially reasonable efforts to minimize the expense;

(2) Have recourse to any other right or remedy to which the non-breaching Party may be entitled by law; and

(3) In case of an Event of Default by the Company, the County may exercise any rights necessary to realize upon any performance security under Section 13.02.

(b) In the event of an Event of Default which constitutes a "Failure of Operation of Facility" under Section 14.01(a)(3), which is not cured within any applicable notice and cure periods (subject to extension as provided above), the County's sole and exclusive remedy is to terminate the Contract and receive, as liquidated damages, the sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) payable within ninety (90) days after all applicable notice and cure periods and any extension thereof have expired.

Section 14.03 Agreement to Pay Attorneys' Fees and Expenses

If a Party institutes an action in a court of competent jurisdiction under this Contract to enforce performance or observance by the other Party of any obligation or agreement by the other Party under this Contract, including without limitation an action by the County to realize on the performance security set forth in Section 13.02, the prevailing Party in such action may recover from the non-prevailing Party reasonable attorneys' fees and other costs and expenses incurred by the prevailing Party with respect to such action.

Section 14.04 Waiver

The waiver of any breach of this Contract by a Party shall not constitute a continuing waiver or a waiver of any subsequent breach, either of the same or another provision of this Contract. Any Event of Default which is not cured within any applicable notice and cure period (subject to extension as provided above) shall be construed as continuous, and the non-breaching Party may exercise every right and power under the Contract at any time during the continuance of such Event of Default (after any applicable notice and cure period, subject to extension as provided above, has expired), or upon the occurrence of any subsequent Event of Default (after any applicable notice and cure period, subject to extension as provided above, has expired). The delay or omission by a Party to exercise any right or power provided by this Contract shall not constitute a waiver of such right or power, or acquiescence in any default on the part of a Party, unless waived in writing by the other Party.

Why have \$1,000,000 security bond provided for in Section 13.02.

and to the extent the County may make a claim against the performance

DWS or WB

ARTICLE XV
Taxes, Licenses and Fees

DWS or WB

Based on the County's research, and because of the nature of the non-hazardous solid waste disposal industry generally, and specifically as it applies to the Facility, its attributes including location, and its localized impacts, the County shall not assess or levy any further Company-specific or Facility-specific or targeted taxes, licenses, fees, or other special charges or assessments on the Company, the Facility or the non-hazardous solid waste disposal industry in the County, except for the Host Fees as provided for in this Contract.

ARTICLE XVI
Severance Tax

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The County agrees to oppose the assessment or levy of any taxes, fees, riders, etc., to the Company to recover fees for severance or like use of the Company's capacity at the Facility. The County also agrees to oppose the assessment or imposition of any surcharges to the revenue of the Facility. The County also agrees to oppose placing on the Company any governmental revenue collection function or authority.

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go over
annually
w/
Commission

ARTICLE XVII
Local Legislation

The County agrees to oppose the enactment or adoption of any statute, ordinance, resolution, rule or regulation governing the operation of the Facility which is more stringent than those imposed by ADEM or the EPA or which prevents the Company from disposing of Acceptable Waste at the Facility. The County shall not request, solicit, facilitate or encourage the passage by any other government entity of laws or regulations more stringent than those in effect on the date this Contract is executed.

ARTICLE XVIII
General Provisions

Section 18.01 Prior Agreements and Representations

(a) The promises and assertions that are definite in nature by their plain meaning made by the Company in its Application shall be incorporated and made a part of this Contract as if set out fully herein, and shall obligate and in every respect be binding upon the Company, such that a breach thereof shall be a breach of this Contract, except to the extent that the terms of this Contract conflict with the terms of the Application, or further require of the Company a stricter performance or additional pecuniary obligation than under the Application. Notwithstanding the foregoing, no obligation is imposed, by the Application or this Contract, upon the Company, unless the Application is hereafter approved. The agreement set forth does not in any manner modify, amend, or supplement the Application before the approval of same by the Commission.

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(b) Except as particularly described in Section 18.01(a) hereinabove, this Contract fully supercedes any prior agreement, communication, or understanding, whether written or oral, among the Parties.

Section 18.02 Assignments

Nothing contained herein shall prevent the Company from transferring or assigning any or all of its rights, duties or obligations hereunder in any manner whatsoever or shall restrict its right to contract with, joint venture with, or otherwise arrange for the provision of the services and payment of the sums herein provided. In the event of any such contract, assignment, transfer or otherwise by the Company, then the terms, provisions and conditions of this Contract applicable thereto shall be deemed to have been legally transferred and assigned in accordance with the terms and provisions of any such action taken by or on behalf of the Company, and the County thereafter shall look only to the transferees, designees or assignees for the full and complete performance of the provisions contained hereunder.

Section 18.03 Notice

All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by registered or certified, return receipt requested, postage prepaid, United States mail, addressed as follows:

If to the Commission or to the County, at:

Conecuh County Commission
111 Court Square
Evergreen, AL 36401

If to the Company, at:

Conecuh Woods LLC
c/o Algert S. Agricola, Jr.
Ryals, Plummer, Donaldson, Agricola & Smith P.C.
60 Commerce Street Suite 1400
Montgomery, AL 36104

Change of address by either Party shall be by notice given to the other in the same manner as above specified.

Section 18.04 Successors and Assigns

Whenever in this Contract any Party hereto is referenced, such reference shall be deemed to include the successors and assigns of such Party, and all covenants, promises and agreements by or on behalf of the Company which are contained in this Contract or in the Application shall bind and inure to the benefit of the respective successors and assigns of the Company and the County.

DWS Jr
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Section 18.05 Governing Law

This Contract and any other documents executed in connection herewith or related hereto shall be construed in accordance with and governed by the laws of the State of Alabama, excluding principles of conflicts of laws.

Section 18.06 Modification, Amendments, Notice

No modification or amendment of any provision of this Contract shall be valid unless in writing and signed by both Parties. Subject to Sections 18.02 and 18.04, no consent to any departure by either Party therefrom shall be effective unless the same shall be in writing and signed by the other Party and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

Section 18.07 Severability

If any term, clause or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be illegal, invalid or unenforceable under present or future laws effective during the Term hereof, then it is the intention of the Parties hereto that the remainder of this Contract, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid or unenforceable, shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each term, clause or provision that is illegal, invalid or unenforceable, there be added as part of this Contract a term, clause or provision as similar in terms to such illegal, invalid or unenforceable term, clause or provision as may be possible and be legal, valid and enforceable.

Section 18.08 Counterparts

This Contract may be executed in two or more counterparts, each of which shall constitute an original but when taken together shall constitute but one agreement.

Section 18.09 Jurisdiction, Venue

The Company hereby consents to the exclusive jurisdiction of any state court or federal court located within the State of Alabama. Nothing herein shall limit the rights of the Parties to have access to the federal courts of the Southern District of Alabama if jurisdiction of such court is otherwise proper. The Company expressly preserves the right to request an appropriate change of venue of any action instituted hereunder.

Section 18.10 Article and Section Titles

The article and section titles contained in this Contract are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the Parties hereto.

DWS JR
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Section 18.11 Time of Essence

The Parties agree that time is of the essence in the observance and performance of all agreements and covenants hereunder, but this shall not affect any applicable notice and cure periods provided herein.

Section 18.12 Confidentiality

To the extent allowed by law, the County shall keep confidential all information it obtains from the Company, except as otherwise required by ADEM.

Section 18.13 Force Majeure

The Company's performance hereunder may be suspended and its obligations hereunder excused in the event and during the period that such performance is prevented by Force Majeure.

Section 18.14 Property of Company

Under no circumstances or conditions shall the operation of the Facility by the Company in accordance with this Contract be deemed a public function, nor has the County acquired an interest, ownership or otherwise in the real or personal property or improvements or fixtures at the Facility by virtue of this Contract.

IN WITNESS WHEREOF, the County and the Company have each caused this Contract to be duly executed by their respective authorized representatives on their behalf on the day and year first above written.

CONECUH WOODS LLC
an Alabama limited liability company:

By: Donald W Stone, Jr.
Donald W. Stone, Jr., its Managing Member

STATE OF ALABAMA
CONECUH COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Donald W. Stone, Jr., whose name as managing member of Conecuh Woods LLC, an Alabama limited liability company, is signed to the foregoing Municipal Solid Waste Landfill


Development and Host Fee Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Municipal Solid Waste Landfill Development and Host Fee Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Conecuh Woods LLC.

Given under my hand and seal this the 18 day of April, 2011.



Notary Public **Cathy Garner**
My Commission Expires: **Notary Public: AL. State at Large**
My commission expires: 3-19-2013

CONECUH COUNTY, ALABAMA
by and through the Conecuh County Commission
as governing body thereof:

By: 
Wendell Byrd, its Chairman

STATE OF ALABAMA
CONECUH COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Wendell Byrd, whose name as Chairman of the Conecuh County Commission, is signed to the foregoing Municipal Solid Waste Landfill Development and Host Fee Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Municipal Solid Waste Landfill Development and Host Fee Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Conecuh County Commission.

Given under my hand and seal this the 18th day of April, 2011.


Notary Public

My Commission Expires: My Commission Expires 01-05-2014

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504 U.S. 334 (1992)

112 S.Ct. 2009, 119 L.Ed.2d 121, 60 USLW 4433

Chemical Waste Management, Inc.

v.

Hunt

No. 91-471

United States Supreme Court

June 1, 1992

Argued April 21, 1992

CERTIORARI TO THE SUPREME COURT OF ALABAMA

Syllabus

Petitioner Chemical Waste Management, Inc., operates a commercial hazardous waste land disposal facility in Emelle, Alabama, that receives both in-state and out-of-state wastes. An Alabama Act imposes, *inter alia*, a fee on hazardous wastes disposed of at in-state commercial facilities, and an additional fee on hazardous wastes generated outside, but disposed of inside, the State. Petitioner filed suit in state court, requesting declaratory relief against respondent state officials and seeking to enjoin the Act's enforcement. The Trial Court declared, among other things, that the additional fee violated the Commerce Clause, finding that the only basis for the fee is the waste's origin. The State Supreme Court reversed, holding that the fee advanced legitimate local purposes that could not be adequately served by reasonable nondiscriminatory alternatives.

Held:

1. Alabama's differential treatment of out-of-state waste violates the Commerce Clause. Pp. 339-349.

(a) No State may attempt to isolate itself from a problem common to the several States by raising barriers to the free flow of interstate commerce. *Philadelphia v. New Jersey*, 437 U.S. 617; *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, *post*, p. 353. The State Act's additional fee facially discriminates against hazardous waste generated outside Alabama, and the Act has plainly discouraged the full operation of petitioner's facility. Such a burdensome tax imposed on interstate commerce alone is generally forbidden and is typically struck down without further inquiry. However,

here the State argues that the additional fee serves legitimate local purposes. Pp. 339-343.

(b) Alabama has not met its burden of showing the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake. *See Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 353. Alabama's concern about the volume of waste entering the Emelle facility could be alleviated by less discriminatory means -- such as applying an additional fee on all hazardous waste disposed of within Alabama, a per-mile tax on all vehicles transporting such waste across state roads, or an evenhanded cap on the total tonnage

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landfilled at Emelle -- which would curtail volume from all sources. Additionally, any concern touching on environmental conservation and Alabama citizens' health and safety does not vary with the waste's point of origin, and the State has the power to monitor and regulate more closely the transportation and disposal of all hazardous waste within its borders. Even possible future financial and environmental risks to be borne by Alabama do not vary with the waste's State of origin in a way allowing foreign, but not local, waste to be burdened. Pp. 343-346.

(c) This Court's decisions regarding quarantine laws do not counsel a different conclusion. The additional fee may not legitimately be deemed a quarantine law, because Alabama permits both the generation and landfilling of hazardous waste within its borders and the importation of additional hazardous waste. Moreover, the quarantine laws upheld by this Court "did not discriminate against interstate commerce as such, but simply prevented traffic in noxious articles, whatever their origin." *Philadelphia v. New Jersey*, *supra*, 437 U.S. at 629. This Court's decision in *Maine v. Taylor*, 477 U.S. 131 -- upholding a state ban on the importation of baitfish after Maine showed that such fish were subject to parasites foreign to in-state baitfish and that there were no less discriminatory means of protecting its natural resources -- likewise offers no respite to Alabama, since here the hazardous waste is the same regardless of its point of origin and adequate means other than overt discrimination

[112 S.Ct. 2011] meet Alabama's concerns. Pp. 346-348.

2. On remand, the Alabama Supreme Court must consider the appropriate relief to petitioner. *See, e.g., McKesson Corp. v. Florida Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 31. Pp. 348-349.

584 So.2d 1367 (Ala.1991), reversed and remanded.

WHITE, J., delivered the opinion of the Court, in

which BLACKMUN, STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, *post*, p. 349.

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WHITE, J., lead opinion

JUSTICE WHITE delivered the opinion of the Court.

Alabama imposes a hazardous waste disposal fee on hazardous wastes generated outside the State and disposed of at a commercial facility in Alabama. The fee does not apply to such waste having a source in Alabama. The Alabama

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Supreme Court held that this differential treatment does not violate the Commerce Clause. We reverse.

I

Petitioner, Chemical Waste Management, Inc., a Delaware corporation with its principal place of business in Oak Brook, Illinois, owns and operates one of the Nation's oldest commercial hazardous waste land disposal facilities, located in Emelle, Alabama. Opened in 1977 and acquired by petitioner in 1978, the Emelle facility is a hazardous waste treatment, storage, and disposal facility operating pursuant to permits issued by the Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act of 1976 (RCRA), 90 Stat. 2795, as amended, 42 U.S.C. § 6901 *et seq.*, and the Toxic Substances Control Act, 90 Stat. 2003, as amended, 15 U.S.C. § 2601 *et seq.* (1988 ed. and Supp. II), and by the State of Alabama under Ala.Code § 22-3012(i) (1990). Alabama is 1 of only 16 States that have commercial hazardous waste landfills, and the Emelle facility is the largest of the 21 landfills of this kind located in these 16 States. Brief for Nat. Governors' Assn. *et al.* as *Amici Curiae* 3, citing E. Smith, *EI Digest* 26-27 (Mar.1992).

The parties do not dispute that the wastes and substances being landfilled at the Emelle facility

include substances that are inherently dangerous to human health and safety and to the environment. Such waste consists of ignitable, corrosive, toxic and reactive wastes which contain poisonous and cancer-causing chemicals and which can cause birth defects, genetic damage, blindness, crippling and death.[1]

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So.2d 1367, 1373 (1991). Increasing amounts of out-of-state hazardous wastes are shipped to the Emelle

facility for permanent storage each year. From 1985 through 1989, the tonnage of hazardous waste received per year has more than doubled, increasing from 341,000 tons in 1985 to 788,000 tons by 1989. Of this, up to 90% of

[112 S.Ct. 2012] the tonnage permanently buried each year is shipped in from other States. Against this backdrop, Alabama enacted Act No. 90-326 (the Act). Ala.Code §§ 2230B-1 to 22-30B-18 (1990 and Supp.1991). Among other provisions, the Act includes a "cap" that generally limits the amount of hazardous wastes or substances[2] that may be disposed of in any 1-year period, and the amount of hazardous waste disposed of during the first year under the Act's new fees becomes the permanent ceiling in subsequent years. Ala.Code § 22-30B-2.3 (1990). The cap applies to commercial facilities that dispose of over 100,000 tons of hazardous wastes or substances per year, but only the Emelle facility, as the only commercial facility operating within Alabama, meets this description. The Act also imposes a "base fee" of \$25.60 per ton on all hazardous wastes and substances disposed of at commercial facilities, to be paid by the operator of the facility. Ala.Code § 22-30B-2(a) (Supp.1991). Finally, the Act imposes the "additional fee" at issue here, which states in full:

For waste and substances which are generated outside of Alabama and disposed of at a commercial site for

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the disposal of hazardous waste or hazardous substances in Alabama, an additional fee shall be levied at the rate of \$72.00 per ton.

§ 22-30B-2(b).

Petitioner filed suit in state court requesting declaratory relief against the respondents and seeking to enjoin enforcement of the Act. In addition to state law claims, petitioner contended that the Act violated the Commerce, Due Process, and Equal Protection Clauses of the United States Constitution, and was preempted by various federal statutes. The Trial Court declared the base fee and the cap provisions of the Act to be valid and constitutional; but, finding the only basis for the additional fee to be the origin of the waste, the Trial Court declared it to be in violation of the Commerce Clause. App. to Pet. for Cert. 83a-88a. Both sides appealed. The Alabama Supreme Court affirmed the rulings concerning the base fee and cap provisions, but reversed the decision regarding the additional fee. The court held that the fee at issue advanced legitimate local purposes that could not be adequately served by reasonable nondiscriminatory alternatives, and was therefore valid under the Commerce Clause. 584 So.2d at 1390.

Chemical Waste Management, Inc., petitioned for

writ of certiorari, challenging all aspects of the Act. Because of the importance of the federal question and the likelihood that it had been decided in a way conflicting with applicable decisions of this Court, Supreme Court Rule 10.1(c), we granted certiorari limited to petitioner's Commerce Clause challenge to the additional fee. 502 U.S. 1070 (1992). We now reverse.

II

No State may attempt to isolate itself from a problem common to the several States by raising barriers to the free flow

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of interstate trade.[3] Today, in *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, *post*, p. 353 (1992),

[112 S.Ct. 2013] we have also considered a Commerce Clause challenge to a Michigan law prohibiting private landfill operators from accepting solid waste originating outside the county in which their facilities operate. In striking down that law, we adhered to our decision in *Philadelphia v. New Jersey*, 437 U.S. 617 (1978), where we found New Jersey's prohibition of solid waste from outside that State to amount to economic protectionism barred by the Commerce Clause:

"[T]he evil of protectionism can reside in legislative means, as well as legislative ends. Thus, it does not matter whether the ultimate aim of ch. 363 is to reduce the waste disposal costs of New Jersey residents or to save remaining open lands from pollution, for we assume New Jersey has every right to protect its residents'

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pocketbooks as well as their environment. And it may be assumed as well that New Jersey may pursue those ends by slowing the flow of all waste into the State's remaining landfills, even though interstate commerce may incidentally be affected. But whatever New Jersey's ultimate purpose, it may not be accompanied by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently. Both on its face and in its plain effect, ch. 363 violates this principle of nondiscrimination.

"The Court has consistently found parochial legislation of this kind to be constitutionally invalid, whether the ultimate aim of the legislation was to assure a steady supply of milk by erecting barriers to allegedly ruinous outside competition, *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. [511,] 522-524 [(1935)]; or to create jobs by keeping industry within the State, *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 10 [(1928)]; *Johnson v. Haydel*, 278 U.S. 16 [(1928)]; *Toomer v. Witsell*, 334 U.S. [385,] 403-404 [(1948)]; or to preserve the State's

financial resources from depletion by fencing out indigent immigrants, *Edwards v. California*, 314 U.S. 160, 173-174 [(1941)]."

Fort Gratiot Sanitary Landfill, *post* at 360 (quoting *Philadelphia v. New Jersey*, *supra*, 437 U.S. at 626-627).

To this list may be added cases striking down a tax discriminating against interstate commerce, even where such tax was designed to encourage the use of ethanol, and thereby reduce harmful exhaust emissions, *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 279 (1988), or to support inspection of foreign cement to ensure structural integrity, *Hale v. Bimco Trading Inc.*, 306 U.S. 375, 379-380 (1939). For in all of these cases, "a presumably legitimate goal was sought to be achieved by the illegitimate means of isolating the

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State from the national economy." *Philadelphia v. New Jersey*, *supra*, 437 U.S. at 627.

The Act's additional fee facially discriminates against hazardous waste generated in States other than Alabama, and the Act overall has plainly discouraged the full operation

[112 S.Ct. 2014] of petitioner's Emelle facility.[4] Such burdensome taxes imposed on interstate commerce alone are generally forbidden: "[A] State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984); *see also Walling v. Michigan*, 116 U.S. 446, 455 (1886); *Guy v. Baltimore*, 100 U.S. 434, 439 (1880). Once a state tax is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry. *See, e.g., Westinghouse Electric Corp. v. Tully*, 466 U.S. 388, 406-407 (1984); *Maryland v. Louisiana*, 451 U.S. 725, 759-760 (1981); *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 336-337 (1977).

The State, however, argues that the additional fee imposed on out-of-state hazardous waste serves legitimate local purposes related to its citizens' health and safety. Because the additional fee discriminates both on its face and in practical effect, the burden falls on the State

to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory

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alternatives adequate to preserve the local interests at stake.

Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 353 (1977); *see also Fort Gratiot Sanitary*

Landfill, post, at 359; *New Energy Co., supra*, 486 U.S., at 278-279.

At a minimum such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives.

Hughes v. Oklahoma, 441 U.S. 322, 337 (1979).[5]

The State's argument here does not significantly differ from the Alabama Supreme Court's conclusions on the legitimate local purposes of the additional fee imposed, which were:

The Additional Fee serves these legitimate local purposes that cannot be adequately served by reasonable nondiscriminatory alternatives: (1) protection of the health and safety of the citizens of Alabama from toxic substances; (2) conservation of the environment and the state's natural resources; (3) provision for compensatory revenue for the costs and burdens that out-of-state waste generators impose by dumping their hazardous waste in Alabama; (4) reduction of the overall flow of wastes traveling on the state's highways, which flow creates a great risk to the health and safety of the state's citizens.

584 So.2d at 1389. These may all be legitimate local interests, and petitioner has not attacked them. But only rhetoric, and not explanation, emerges as to why Alabama targets only interstate hazardous waste to meet these goals. As found by the Trial Court,

[a]lthough the Legislature imposed an additional fee of \$72.00 per ton on waste generated outside Alabama, there

[112 S.Ct. 2015]

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is absolutely no evidence before this Court that waste generated outside Alabama is more dangerous than waste generated in Alabama. The Court finds under the facts of this case that the only basis for the additional fee is the origin of the waste.

App. to Pet. for Cert. 83a-84a. In the face of such findings, invalidity under the Commerce Clause necessarily follows, for

whatever [Alabama's] ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently.

Philadelphia v. New Jersey, 437 U.S. at 626-627; see *New Energy Co., supra*, 486 U.S. at 279-280. The burden is on the State to show that "the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism,"[6] *Wyoming v. Oklahoma*, 502

U.S. 437, 454 (1992) (emphasis added), and it has not carried this burden. Cf. *Fort Gratiot Sanitary Landfill, post* at 361.

Ultimately, the State's concern focuses on the volume of the waste entering the Emelle facility.[7] Less discriminatory

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alternatives, however, are available to alleviate this concern, not the least of which are a generally applicable per-ton additional fee on all hazardous waste disposed of within Alabama, cf. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 619 (1981), or a per-mile tax on all vehicles transporting hazardous waste across Alabama roads, cf. *American Trucking Assns., Inc. v. Scheiner*, 483 U.S. 266, 286 (1987), or an evenhanded cap on the total tonnage landfilled at Emelle, see *Philadelphia v. New Jersey*, 437 U.S. at 626, which would curtail volume from all sources.[8] To the extent Alabama's concern touches environmental conservation and the

[112 S.Ct. 2016] health and safety of its citizens, such concern does not vary with the point of origin of the waste, and it remains within the State's power to monitor and regulate more closely the transportation

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and disposal of *all* hazardous waste within its borders. Even with the possible future financial and environmental risks to be borne by Alabama, such risks likewise do not vary with the waste's State of origin in a way allowing foreign, but not local, waste to be burdened.[9] In sum, we find the additional fee to be "an obvious effort to saddle those outside the State" with most of the burden of slowing the flow of waste into the Emelle facility. *Philadelphia v. New Jersey*, 437 U.S. at 629. "That legislative effort is clearly impermissible under the Commerce Clause of the Constitution." *Ibid*.

Our decisions regarding quarantine laws do not counsel a different conclusion.[10] The Act's additional fee may not legitimately be deemed a quarantine law, because Alabama permits both the generation and landfilling of hazardous

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waste within its borders and the importation of still more hazardous waste subject to payment of the additional fee. In any event, while it is true that certain quarantine laws have not been considered forbidden protectionist measures, even though directed against out-of-state commerce, those laws "did not discriminate against interstate commerce as such, but simply prevented traffic in noxious articles, whatever their origin." *Philadelphia v. New Jersey, supra*, at 629.[11] As the Court has stated in *Guy v. Baltimore*, 100 U.S. at 443:

[112 S.Ct. 2017]

In the exercise of its police powers, a State may exclude from its territory, or prohibit the sale therein of any articles which, in its judgment, fairly exercised, are prejudicial to the health or which would endanger the lives or property of its people. But if the State, under the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles, of that kind, that may be produced or manufactured in other States, the courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States.

See also *Reid v. Colorado*, 187 U.S. 137, 151 (1902); *Railroad Co. v. Husen*, 95 U.S. 465, 472 (1878).

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The law struck down in *Philadelphia v. New Jersey* left local waste untouched, although no basis existed by which to distinguish interstate waste. But "[i]f one is inherently harmful, so is the other. Yet New Jersey has banned the former, while leaving its landfill sites open to the latter." 437 U.S. at 629. Here, the additional fee applies only to interstate hazardous waste, but at all points from its entrance into Alabama until it is landfilled at the Emelle facility, every concern related to quarantine applies perforce to local hazardous waste, which pays no additional fee. For this reason, the additional fee does not survive the appropriate scrutiny applicable to discriminations against interstate commerce.

Maine v. Taylor, 477 U.S. 131 (1986), provides no additional justification. Maine there demonstrated that the out-of-state baitfish were subject to parasites foreign to in-state baitfish. This difference posed a threat to the State's natural resources, and absent a less discriminatory means of protecting the environment -- and none was available -- the importation of baitfish could properly be banned. *Id.* at 140. To the contrary, the record establishes that the hazardous waste at issue in this case is the same regardless of its point of origin. As noted in *Fort Gratiot Sanitary Landfill*, "our conclusion would be different if the imported waste raised health or other concerns not presented by [Alabama] waste." *Post* at 367. Because no unique threat is posed, and because adequate means other than overt discrimination meet Alabama's concerns, *Maine v. Taylor* provides the State no respite.

III

The decision of the Alabama Supreme Court is reversed, and the cause remanded for proceedings not inconsistent with this opinion, including consideration of the appropriate relief to petitioner. See *McKesson Corp. v. Florida Division of Alcoholic Beverages and Tobacco*, Fla. Dept. of Business Regulations,

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496 U.S. 18, 31 (1990); *Tyler Pipe Industries, Inc. v. Washington State Dept. of Rev.*, 483 U.S. 232, 251-253 (1987).

So ordered.

REHNQUIST, J., dissenting

CHIEF JUSTICE REHNQUIST, dissenting.

I have already had occasion to set out my view that States need not ban all waste disposal as a precondition to protecting themselves from hazardous or noxious materials brought across the State's borders. See *Philadelphia v. New Jersey*, 437 U.S. 617, 629 (1978) (REHNQUIST J., dissenting). In a case also decided today, I express my further view that States may take actions legitimately directed at the preservation of the State's natural resources, even if those actions incidentally work to disadvantage some out-of-state waste generators. See *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, *post* at 372 (1992) (REHNQUIST C.J., dissenting). I dissent today, largely for the reasons I have set out

[112 S.Ct. 2018] in those two cases. Several additional comments that pertain specifically to this case, though, are in order.

Taxes are a recognized and effective means for discouraging the consumption of scarce commodities -- in this case, the safe environment that attends appropriate disposal of hazardous wastes. *Cf.* 26 U.S.C.A. §§ 4681, 4682 (Supp.1992) (tax on ozone-depleting chemicals); 26 U.S.C. § 4064 (gas guzzler excise tax). I therefore see nothing unconstitutional in Alabama's use of a tax to discourage the export of this commodity to other States, when the commodity is a public good that Alabama has helped to produce. *Cf. Fort Gratiot, post* at 372 (REHNQUIST, C.J., dissenting). Nor do I see any significance in the fact that Alabama has chosen to adopt a differential tax, rather than an outright ban. Nothing in the Commerce Clause requires Alabama to adopt an "all or nothing" regulatory approach to noxious materials coming

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from without the State. See *Mintz v. Baldwin*, 289 U.S. 346 (1933) (upholding State's partial ban on cattle importation).

In short, the Court continues to err by its failure to recognize that waste -- in this case admittedly *hazardous* waste -- presents risks to the public health and environment that a State may legitimately wish to avoid, and that the State may pursue such an objective by means less Draconian than an outright ban. Under force of this Court's precedent, though, it increasingly appears that the only avenue by which a State may avoid the importation of hazardous wastes is to ban such waste disposal

altogether, regardless of the waste's source of origin. I see little logic in creating, and nothing in the Commerce Clause that requires us to create, such perverse regulatory incentives. The Court errs in substantial measure because it refuses to acknowledge that a safe and attractive environment is the commodity really at issue in cases such as this, *see Fort Gratiot, post* at 369 (REHNQUIST, C.J., dissenting). The result is that the Court today gets it exactly backward when it suggests that Alabama is attempting to "isolate itself from a problem common to the several States," *ante* at 339. To the contrary, it is the 34 States that have no hazardous waste facility whatsoever, not to mention the remaining 15 States with facilities all smaller than Emelle, that have isolated themselves.

There is some solace to be taken in the Court's conclusion, *ante* at 344-345, that Alabama may impose a substantial fee on the disposal of all hazardous waste, or a per-mile fee on all vehicles transporting such waste, or a cap on total disposals at the Emelle facility. None of these approaches provide Alabama the ability to tailor its regulations in a way that the State will be solving only that portion of the problem that it has created, *see Fort Gratiot, post* at 370-371 (REHNQUIST, C.J., dissenting). But they do at least give Alabama some mechanisms for requiring waste-generating States to compensate Alabama for the risks the Court declares Alabama must run.

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Of course, the costs of any of the proposals that the Court today approves will be less than fairly apportioned. For example, should Alabama adopt a flat transportation or disposal tax, Alabama citizens will be forced to pay a disposal tax equal to that faced by dumpers from outside the State. As the Court acknowledges, such taxes are a permissible effort to recoup compensation for the risks imposed on the State. Yet Alabama's general tax revenues presumably already support the State's various inspection and regulatory efforts designed to ensure the Emelle facility's safe operation. Thus, Alabamans will be made to pay twice, once through general taxation and a second time through a specific disposal fee. Permitting differential taxation would, in part, do no more than recognize that, having been made to bear all the risks from such hazardous waste sites, Alabama should not in addition be made to pay *more* than others in supporting

[112 S.Ct. 2019] activities that will help to minimize the risk.

Other mechanisms also appear open to Alabama to achieve results similar to those that are seemingly foreclosed today. There seems to be nothing, for example, that would prevent Alabama from providing subsidies or other tax breaks to domestic industries that generate hazardous wastes. Or Alabama may, under the market participant doctrine, open its own facility catering

only to Alabama customers. *See, e.g., White v. Massachusetts Council of Construction Employers, Inc.*, 460 U.S. 204, 206-208 (1983); *Reeves, Inc. v. Stake*, 447 U.S. 429, 436-437 (1980); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 810 (1976). But certainly we have lost our way when we require States to perform such gymnastics when such performances will in turn produce little difference in ultimate effects. In sum, the only sure byproduct of today's decision is additional litigation. Assuming that those States that are currently the targets for large volumes of hazardous waste do not simply ban hazardous waste sites altogether, they will undoubtedly continue to search for a way to limit their risk from sites in operation. And each new arrangement

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will generate a new legal challenge, one that will work to the principal advantage only of those States that refuse to contribute to a solution.

For the foregoing reasons, I respectfully dissent.

Notes:

[1] As used in RCRA, 42 U.S.C. § 6903(5), the term "hazardous waste" means:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may --

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

RCRA directs the EPA to establish a comprehensive "cradle to grave" system regulating the generation, transport, storage, treatment and disposal of hazardous wastes, §§ 6921-6939b, which includes identification and listing of hazardous wastes. § 6921. At present, there are more than 500 such listed wastes. *See* 40 CFR pt. 261, subpt. D (1991).

[2] "Hazardous substance(s)" and "hazardous waste(s)" are defined terms in the Act, §§ 22301(3) and 22-301(4), but these definitions largely parallel the meanings given under federal law.

[3] The Alabama Supreme Court assumed that the disposal of hazardous waste constituted an article of commerce, and the State does not explicitly argue here to the contrary. In *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources, post* at 359, we

have reaffirmed the idea that "[s]olid waste, even if it has no value, is an article of commerce." As stated in *Philadelphia v. New Jersey*, 437 U.S. 617, 622-623 (1978):

All objects of interstate trade merit Commerce Clause protection; none is excluded by definition at the outset. . . . Just as Congress has power to regulate the interstate movement of these wastes, States are not free from constitutional scrutiny when they restrict that movement.

The definition of "hazardous waste" makes clear that it is simply a grade of solid waste, albeit one of particularly noxious and dangerous propensities, *see* n. 1, *supra*, but whether the business arrangements between out-of-state generators of hazardous waste and the Alabama operator of a hazardous waste landfill are viewed as "sales" of hazardous waste or "purchases" of transportation and disposal services,

the commercial transactions unquestionably have an interstate character. The Commerce Clause thus imposes some constraints on [Alabama's] ability to regulate these transactions.

Fort Gratiot Sanitary Landfill, *post* at 359. *See National Solid Wastes Management Assn. v. Alabama Dept. of Environmental Mgmt.*, 910 F.2d 713, 718-719 (CA11 1990), *modified*, 924 F.2d 1001, *cert. denied*, 501 U.S. 1206 (1991).

[4] The Act went into effect July 15, 1990. The volume of hazardous waste buried at the Emelle facility fell dramatically from 791,000 tons in 1989 to 290,000 tons in 1991.

[5] To some extent, the State attempts to avail itself of the more flexible approach outlined in, *e.g.*, *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573, 579 (1986), and *Pike v. Bruce Church Inc.*, 397 U.S. 137, 142 (1970), but this lesser scrutiny is only available "where other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade." *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978) (emphasis added). We find no room here to say that the Act presents "effects upon interstate commerce that are only incidental" *ibid.* for the Act's additional fee, on its face, targets only out-of-state hazardous waste. While no "clear line" separates close cases on which scrutiny should apply, "this is not a close case." *Wyoming v. Oklahoma*, 502 U.S. 437, 455, n. 12 (1992).

[6] The Alabama Supreme Court found no "economic protectionism" here, and thus purported to distinguish *Philadelphia v. New Jersey*, based on its conclusions that the legislature was motivated by public health and environmental concerns. 584 So.2d 1367, 1388-1389 (1991). This narrow focus on the intended consequence of the additional fee does not conform to our precedents, for

[a] finding that state legislation constitutes "economic protectionism" may be made on the basis of either discriminatory purpose, *see Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 352-353 (1977), or discriminatory effect, *see Philadelphia v. New Jersey*, *supra*.

Bacchus Imports, Ltd v. Dias, 468 U.S. 263, 270 (1984). The "virtually *per se* rule of invalidity," *Philadelphia v. New Jersey*, *supra*, 437 U.S. at 624, applies

not only to laws motivated solely by a desire to protect local industries from out-of-state competition, but also to laws that respond to legitimate local concerns by discriminating arbitrarily against interstate trade.

Maine v. Taylor, 477 U.S. 131, 148, n.19 (1986).

[7]

The risk created by hazardous waste and other similarly dangerous waste materials is proportional to the *volume* of such waste materials present, and may be controlled by controlling that volume.

Brief for Respondents 38 (citation omitted; emphasis in original).

[8] The State asserts:

An equal fee, at any level, would necessarily fail to serve the State's purpose. An equal fee high enough to provide any significant deterrent to the importation of hazardous waste for landfilling in the State would amount to an attempt by the State to avoid its responsibility to deal with its own problems, by tending to cause in-state waste to be exported for disposal. An equal fee not so high as to amount to an attempt to force Alabama's own problems to be borne by citizens of other states would fail to provide any significant reduction in the enormous volumes of imported hazardous waste being dumped in the State. At the point where an equal fee would become effective to serve the State's purpose in protecting public health and the environment from uncontrolled volumes of imported waste, that equal fee would also become an avoidance of the State's responsibility to deal with its own waste problems.

Brief for Respondents 46. These assertions are without record support and, in any event, do not suffice to validate plain discrimination against interstate commerce. *See New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 280 (1988); *Hale v. Bimco Trading Inc.*, 306 U.S. 375, 380 (1939):

That no Florida cement needs any inspection, while all foreign cement requires inspection at a cost of fifteen cents per hundredweight, is too violent an assumption to justify the discrimination here disclosed.

The additional fee is certainly not a "'last ditch' attempt"

to meet Alabama's expressed purposes

importation dangerous.

after nondiscriminatory alternatives have proved unfeasible. It is rather a choice of the most discriminatory [tax] even though nondiscriminatory alternatives would seem likely to fulfill the State's purported legitimate local purpose more effectively.

Hughes v. Oklahoma, 441 U.S. 322, 338 (1979).

[9] The State presents no argument here, as it did below, that the additional fee makes out-of-state generators pay their "fair share" of the costs of Alabama waste disposal facilities, or that the additional fee is justified as a "compensatory tax." The Trial Court rejected these arguments, App. to Pet. for Cert. 88a, n. 6., finding the former foreclosed by *American Trucking Assns., Inc. v. Scheiner*, 483 U.S. 266, 287-289 (1987), and the latter to be factually unsupported by a requisite "substantially equivalent" tax imposed solely on in-state waste, as required by, e.g., *Tyler Pipe Industries, Inc. v. Washington State Dept. of Revenue*, 483 U.S. 232, 242-244 (1987). Various *amici* assert that the discrimination patent in the Act's additional fee is consistent with congressional authorization. We pretermitted this issue, for it was not the basis for the decision below and has not been briefed or argued by the parties here.

[10] The State collects and refers to the following decisions, *inter alia*, as "quarantine cases:" *Clason v. Indiana*, 306 U.S. 439 (1939); *Mintz v. Baldwin*, 289 U.S. 346 (1933); *Oregon-Washington R. & Navigation Co. v. Washington*, 270 U.S. 87 (1926); *Sligh v. Kirkwood*, 237 U.S. 52 (1915); *Asbell v. Kansas*, 209 U.S. 251 (1908); *Reid v. Colorado*, 187 U.S. 137 (1902); *Compagnie Francaise v. Louisiana Board of Health*, 186 U.S. 380 (1902); *Smith v. St. Louis & Southwestern R. Co.*, 181 U.S. 248 (1901); *Rasmussen v. Idaho*, 181 U.S. 198 (1901); *Missouri, K. & T.R. Co. v. Haber*, 169 U.S. 613 (1898); *Bowman v. Chicago & Northwestern R. Co.*, 125 U.S. 465 (1888); *Railroad Co. v. Husen*, 95 U.S. 465 (1878).

[11]

The hostility is to the thing itself, not to merely interstate shipments of the thing; and an undiscriminating hostility is at least nondiscriminatory. But that is not the case here. The State of Illinois is quite willing to allow the storage and even the shipment for storage of spent nuclear fuel in Illinois, provided only that its origin is intrastate.

Illinois v. General Elec. Co., 683 F.2d 206, 214 (CA7 1982), *cert. denied*, 461 U.S. 913 (1983); *cf. Oregon-Washington Co. v. Washington*, *supra*, 270 U.S. at 96: inspection followed by quarantine of hay from fields infested with weevils is

a real quarantine law, and not a mere inhibition against importation of alfalfa from a large part of the country without regard to the condition which might make its

For Immediate Release

Aug. 16, 2012

Contact: Abbey Patterson, 678-640-2500

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UNIONTOWN, AL—Arrowhead offers a uniquely designed, high capacity disposal facility for customers, communities and a wide range of industries across 33 states. Located above the Selma Chalk Formation, Arrowhead is one of the most environmentally sound disposal facilities in the nation.

“With large capacity, unmatched logistical capabilities, railway access, and regulatory permitting for a wide range of wastes, Arrowhead is uniquely positioned to meet the expanding needs of a wide range of customers,” said Ernest Kaufmann, President of Green Group Holdings, LLC (which recently acquired Arrowhead). “Arrowhead’s leadership has set the standard for environmental stewardship and our adherence to strict environmental and safety standards mitigate our customers’ risks and liability.”

Arrowhead, located in south central Alabama, is a 1,345-acre greenfield development with a 425-acre Subtitle D footprint. The facility has 75 million cubic yards of permitted airspace and can receive up to 15,000 tons of waste per day. Proximity to major rail lines allows Arrowhead to handle waste disposal from communities and companies as far away as the East Coast and Texas.

As one of the largest rail-served disposal facilities east of the Mississippi River, Arrowhead and its experienced team can help design and deliver disposal plans for a wide range of industries and customers. “From utilities and municipalities to industrial waste generators, Arrowhead provides waste disposal service in a safe, cost-effective and efficient manner,” Kaufmann added.

Arrowhead’s geographic position, logistical capabilities and safety standards set the facility apart in the marketplace in a number of ways, including:

- A superior location above the naturally occurring geological Selma Chalk Formation, providing a safer, environmentally responsible disposal option;
- Direct rail access, reducing transportation costs while reaching a wider customer base;
- Geographic reach, serving 33 states including all states east of the Mississippi River, all states along the western edge of the Mississippi River, Oklahoma and Texas**;
- Capacity to safely accept and manage coal combustion residue (CCR), mitigating its customers’ risks and liability; and
- Proven and unparalleled rail transfer capabilities including the efficient, responsible management of more than 4 million tons of CCR and a production schedule of up to 120 railcars per day.

Permitted for Subtitle D disposal, Arrowhead Landfill can serve a broad range of industries, including

utilities and energy, health care, pharmaceutical, exploration and production, recycling and reuse, steel production and more. The facility can accept municipal solid waste, construction and demolition debris, and other non-hazardous special and industrial waste streams.

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For more information on Arrowhead’s service offerings and capabilities, please visit www.arrowheadlandfill.com or Trey Smith at 843-834-3990.

**Arrowhead serves the following 33 states: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

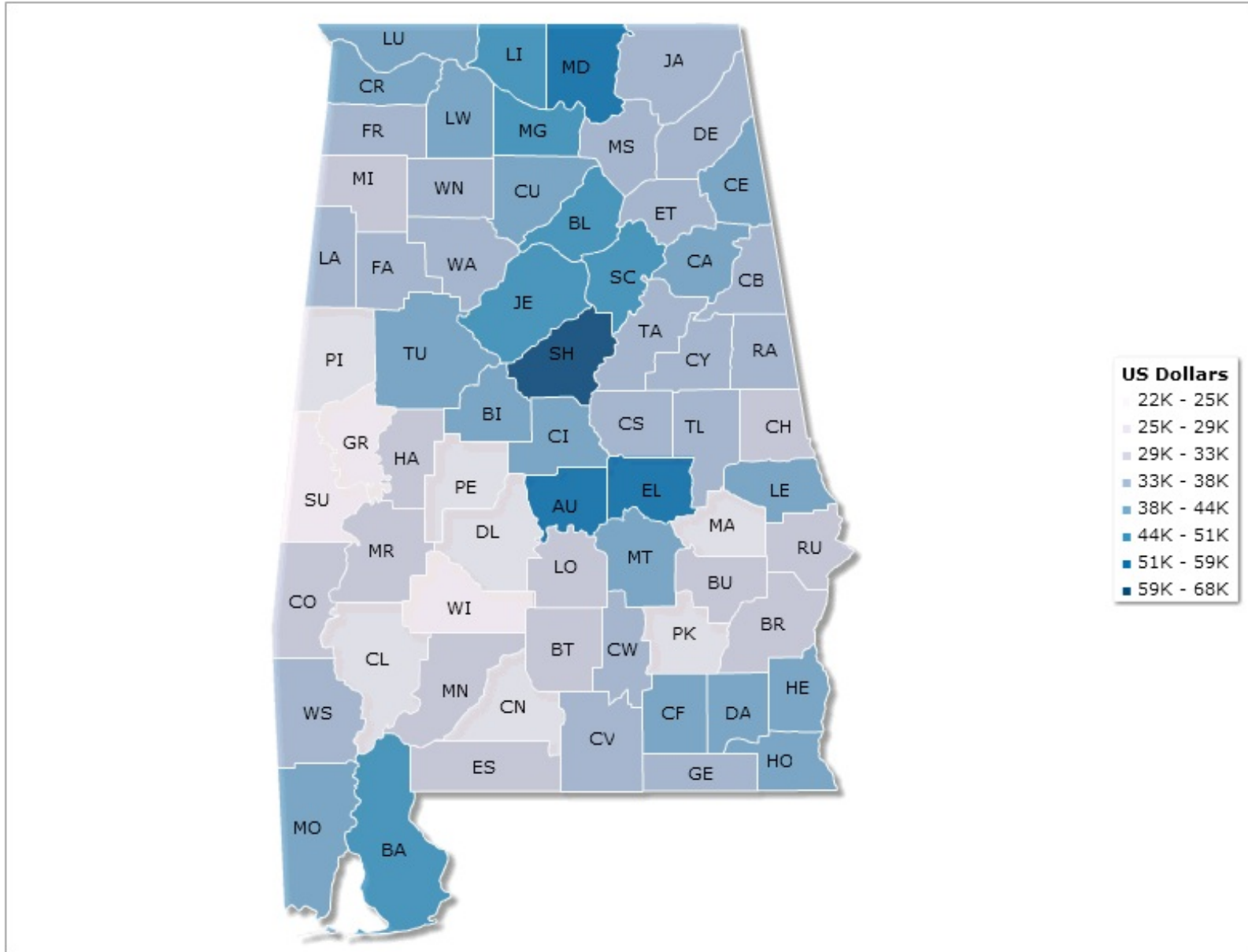
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Green Group Holdings, LLC

Green Group Holdings, LLC, parent company of Arrowhead Landfill, specializes in large-scale infrastructure development, environmental permitting and operations for projects like industrial parks, transfer stations, recycling facilities, and solid waste landfills. Green Group Holdings is proud to have raised the bar for infrastructure development by linking arms with residents and local officials in the communities it serves. It’s this commitment to innovation and transparency that has solidified Green Group Holdings’ reputation as a proven partner and good neighbor in communities across the country.

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MEDIAN HOUSEHOLD INCOME BY COUNTY (2006-2010)



1 Florence MSWLF
 Permit No. 39-05
 N 34.80876 W 87.7139
 250 TPD

2 Morris Farm SLF
 Permit No. 48-08
 N 34.70158 W 87.21642
 1500 TPD

3 Seven Mile Post Road MSWLF
 Permit No. 42-03
 N 34.79287 W 87.08419
 300 TPD

**4 City of Decatur-Morgan
 County Sanitary LF**
 Permit No. 52-03
 N 34.62609 W 87.10326
 700 TPD

5 Huntsville LF
 Permit No. 45-01
 N 34.67765 W 86.59381
 725 TPD

6 Scottsboro LF
 Permit No. 36-02
 N 34.75637 W 85.91924
 350 TPD

7 Willow Ridge LF
 Permit No. 67-03
 N 34.17852 W 87.61296
 1500 TPD

**8 Cullman Envtl Waste
 Mgmt Ctr**
 Permit No. 22-03
 N 34.02327 W 86.90011
 400 TPD

9 Sand Valley LF
 Permit No. 25-04
 N 34.34188 W 85.8621
 1500 TPD

**10 Three Corners
 Regional LF**
 Permit No. 10-02
 N 33.99432 W 85.73137
 1500 TPD

11 Pine View SLF
 Permit No. 64-11
 N 33.71156 W 87.05727
 1500 TPD

**12 Green Mtn Mgmt
 LLC SWF**
 Permit No. 37-48
 N 33.63777 W 87.00945
 5000 TPD

**13 Jefferson County LF
 No. 1**
 Permit No. 37-43
 N 33.71949 W 86.85771
 1500 TPD

14 New Georgia LF
 Permit No. 37-11
 N 33.58994 W 86.81364
 1200 TPD

**15 Jefferson County LF
 No. 2**
 Permit No. 37-44
 N 33.70961 W 86.70282
 1300 TPD

16 Eastern Area LF
 Permit No. 37-12
 N 33.59743 W 86.62905
 1200 TPD

**17 Veolia ES Cedar Hill
 LF**
 Permit No. 58-01
 N 33.68447 W 86.25291
 600 TPD

**18 Veolia ES Star Ridge
 LF**
 Permit No. 58-05
 N 33.60517 W 86.5219
 1500 TPD

20 Black Warrior SWF
 Permit No. 63-01
 N 33.24396 W 87.65189
 1500 TPD

21 Highway 70 LF
 Permit No. 59-15
 N 33.17959 W 86.69526
 1500 TPD

22 Arrowhead LF
 Permit No. 53-03
 N 32.41352 W 87.46915
 15000 TPD

23 North Montgomery LF
 Permit No. 51-01
 N 32.41525 W 86.32527
 2000 TPD

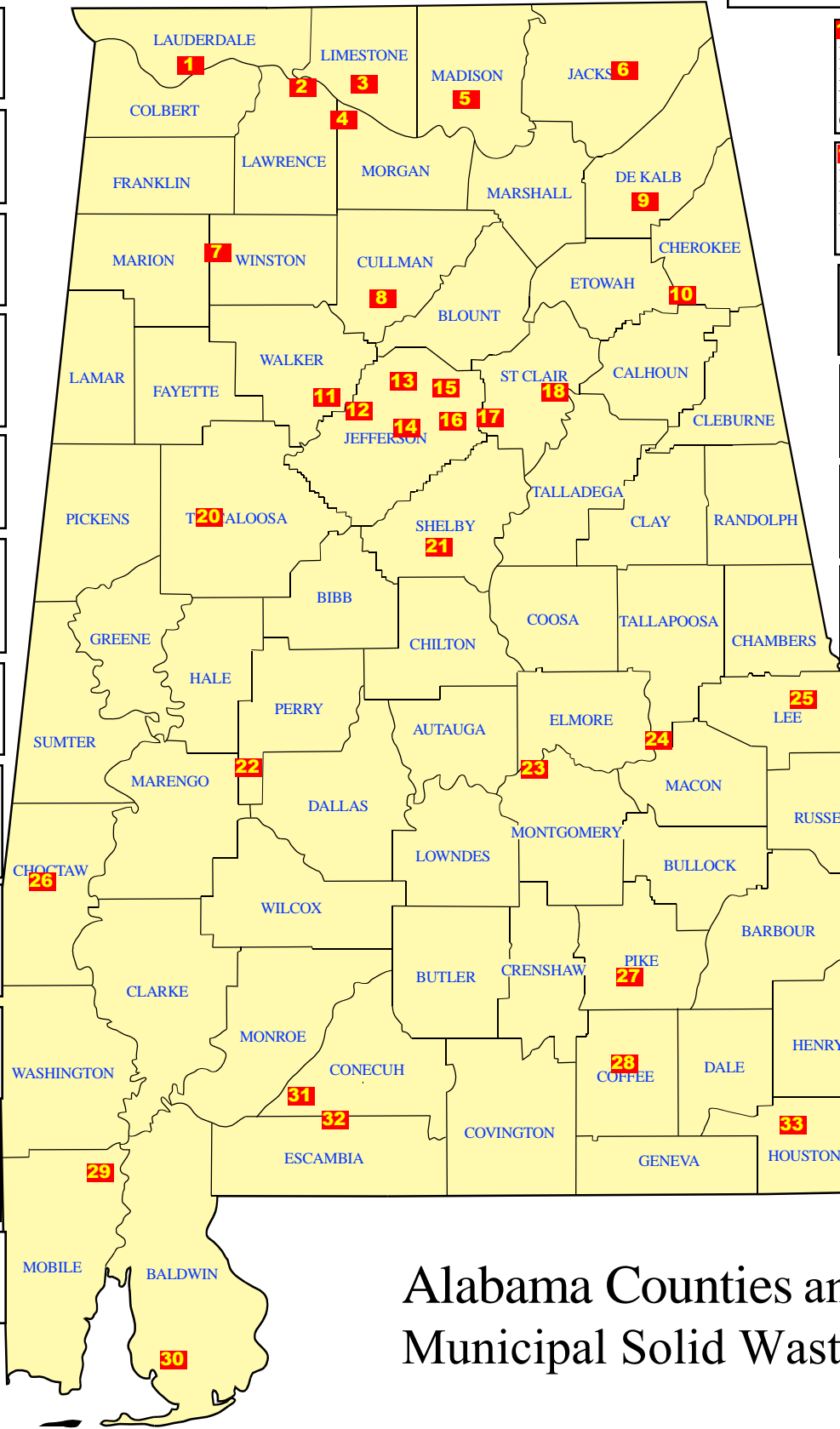
**24 Tallassee Waste
 Disposal Ctr**
 Permit No. 62-11
 N 32.51439 W 85.82732
 1500 TPD

**25 Salem Waste Disposal
 Ctr**
 Permit No. 41-03
 N 32.65025 W 85.25573
 1500 TPD

26 Choctaw Regional LF
 Permit No. 12-01
 N 32.04522 W 88.27008
 1500 TPD

27 Brundidge LF
 Permit No. 55-07
 N 31.6999 W 85.84346
 7500 TPD

28 Coffee County SLF
 Permit No. 16-10
 N31.51062 W 85.99598
 1200 TPD



Alabama Counties and Municipal Solid Waste Landfills

29 Chastang SLF
 Permit No. 49-05
 N 31.0444 W 88.03673
 1725 TPD

30 Magnolia SLF
 Permit No. 02-03
 N 30.44621 W 87.76858
 1500 TPD

**31 Conecuh Woods LF
 (proposed)**
 N 31.37115 W 87.25986
 10000 TPD

32 Timberlands SLF
 Permit No. 27-08
 N 31.25689 W 87.1875
 2500 TPD

33 City of Dothan SLF
 Permit No. 35-06
 N 31.23884 W 85.35278
 400 TPD

Moratorium Purpose

Ala. Code § 22-27-5.2 imposes a moratorium on larger landfills pending a review of ADEM's duties and responsibilities under the Alabama Solid Wastes and Recyclable Materials Management Act. The Legislature was particularly concerned about larger landfills

1. > 1,500 tons per day
2. ≥ 2,000 cu. yds./day
3. ≥ 500 acres
4. facilities that, when combined with others within 20 miles, exceed any of the foregoing limits
5. public facilities > need of county or need within 20 miles

Mega Landfills

There is one existing and one proposed mega landfill in Alabama. And there could easily be more coming.

Arrowhead Landfill - Perry County

425 acre disposal area

15,000 tons per day

33 states

Conecuh Woods Landfill - Conecuh County

1,550 acres disposal area

10,000 tons per day

All states east of the Mississippi plus LA.

What is it that makes areas in Alabama a target for mega landfill developers?

1. **Abundance of cheap, rural land with low population densities.**

Perry County is classified by the Census Bureau as 100% “rural,” and has a population density of only 14.7 persons per square mile.

Conecuh County is classified as 99.75% “rural,” and has a population density of only 12.6 persons per square mile in those rural areas.

Similar statistics apply to other Alabama counties. For example:

County	Rural Area	Population Density in Rural Area
Bullock	99.21%	9.1
Greene	100%	14
Marengo	99.48%	15
Wilcox	100%	13.1
Sumter	100%	15.2

2. **Proximity to railroads**

Necessary to access large volumes of waste from other states.

The Arrowhead Landfill and Conecuh Woods Landfill both have access to and intend to rely on railroads to import waste from other states.

Greene County, Marengo County, Wilcox County and Sumter County each have access to railroads.

3. **Low tipping fees.**

In 2012, Waste & Recycling News conducted survey of tipping fees at the five largest landfills in each state. Among the states east of the Mississippi River, only SC, MS, and GA have lower tipping fees than Alabama.

State	Tipping Fee/Ton
AL	\$36.19
GA	\$34.11
SC	\$36.00
MS	\$32.49
OTHERS	\$40-110

4. **Low income and Host Government Fees.**

Median Household Income in Perry County is \$25,950. 28.8% of the population live below the poverty level.

Median Household Income in Conecuh County is \$26,944. 30.6% of the population live below the poverty level.

County	Median Household Income	Percent Below Poverty Level
Bullock	\$31,602	25.3%
Greene	\$22,222	30.8%
Marengo	\$32,940	22.7%
Wilcox	\$23,491	38.5%
Sumter	\$25,338	34.8%

Local officials in poor counties are desperate for money to provide for basic services. Landfill developers can secure local approval by paying local governments so-called “host government fees.”

Perry County officials approved the Arrowhead Landfill and entered into a 20-year Agreement for what I will call a “kick-back” of \$1.05 per ton and \$40,000 to each of two municipalities and the County.

Conecuh County officials approved the Conecuh Woods Landfill and entered into what could be a 99-year Agreement for what I will call a “kick-back” of \$1.25/ton for the first nine years, \$1.38/ton for the next ten years, and a 10% increase every ten years thereafter. In addition, Conecuh County is to receive \$1.25 million to be paid over five years.

5. **Conclusion**

Neither ADEM not the legislature can do anything to alter the **Abundance of cheap, rural land with low population densities.**

Neither ADEM not the legislature can do anything to alter the **location of railroads.**

The Legislature may be able to alter **tipping fees**, however, to comply with the Interstate Commerce Clause of the U.S. Constitution, tipping fees for out-of-state waste cannot be higher than tipping fees for in-state waste. Chemical Waste Management v. Hunt, 504 U.S. 334 (1992). Subsidies or tax breaks for in-state waste producers or disposers could offset the higher tipping fees. The Legislature may also be able to restrict waste flow rates entering landfills provided the rates apply without regard to the origin of the waste. Other possibilities may be suggested by U.S. Supreme Court cases.

Neither ADEM not the legislature can do anything to alter the **median household income or poverty rate** in counties. However, the Legislature (and the Courts) can prohibit local jurisdictions from accepting **host government fees**. Without the financial incentives of host government fees, local governments are more likely to be responsive to the desires of their constituents.

Environmental Justice

Several landfills have been located in areas where the population is predominantly African-American.

Chastang Sanitary Landfill in Mobile County ≈84.6%

City of Dothan Sanitary Landfill in Houston County ≈85.9%

Morris Farm Sanitary Landfill in Lawrence County ≈100%

Tallassee Waste Disposal Center in Tallapoosa County ≈72.1%

Arrowhead Landfill in Perry County ≈87-100%

ADEM lacks authority to refuse permits that will adversely impact minority communities. The Legislature will have to provide a remedy. ADEM could lose federal funding if it fails to prevent disparate impacts on minority communities.

ADEM Regulations

Many ADEM regulations are so indefinite that they allow ADEM to determine requirements on an ad hoc basis. Examples:

A facility located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, *so as to pose a hazard to human health and the environment.*

Landfill Units shall not be located within 200 feet of a fault that has had displacement within the Holocene epoch *unless the owner or operator demonstrates to the Department that an alternative setback distance of less than 200 feet will not result in damage to the structural integrity of the facility and will be protective of human health and the environment.*

Landfill units shall not be located in seismic impact zones, *unless the owner or operator demonstrates to the Department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.*

Landfill units shall not be located in an unstable area *unless engineering measures have been incorporated in the design of the facility to ensure that the integrity of the structural components of the facility will not be disrupted.*

I recommend that all indefinite qualifiers be deleted or revised to provide definitive criteria for determining what is required.

STATE OF ALABAMA)

PERRY COUNTY)

RESOLUTION

WHEREAS, Perry County (the "County") has recently adopted its Local Solid Waste Management Plan (the "Plan"); and,

WHEREAS, Perry County Associates, LLC ("PCA") has applied to the County for approval of a Subtitle D solid waste disposal site (the "Site") and a related contract (the "Contract"); and

WHEREAS, after the requisite public notice was provided, a public hearing was held on the 8th day of August, 2005 regarding the Site and the Contract; and

WHEREAS, PCA and its principals, designees, transferees and/or assignees have experience in the construction, management and operation of municipal waste disposal facilities; and

WHEREAS, among other things, the Contract provides that for a period of (3) three years, PCA agrees not to charge the County for in-county generated waste including in Marion and Uniontown, Alabama, brought to the proposed landfill by the County, its employees, and contractual privies operating for the County immediately following the effective date of the operation of said Site; and

WHEREAS, PCA has agreed that the service area will include Alabama, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia; and

WHEREAS, PCA has agreed that the maximum daily deposit shall not exceed 7500 tons; and

WHEREAS, PCA has freely and voluntarily agreed to pay the County inclusive of all required payments, fees or charges for deposits placed in the Landfill the sum of One Dollar (\$1.00) per ton on all deposits per day; and

WHEREAS, PCA has agreed to establish a dedicated escrow account in which PCA will pay five cents (\$0.05) per ton deposited at the Site for the road maintenance; and

WHEREAS, PCA has agreed that within six months of operations it will pay to the County, the City of Marion and the town of Uniontown a total of \$120,000.00 (\$40,000.00 to each entity) as set out in the Contract; and

WHEREAS, PCA shall provide to the County a landscape plan which will provide buffer areas and an entrance to the Site that are aesthetically pleasing and complementary to the

surroundings, and PCA shall implement said landscape plan after making all reasonable changes thereto requested by the County; and

WHEREAS, PCA has committed that the Site will not cause any degradation of water quality through the discharge of pollutants, dredge or fill material into the waters of the State of Alabama in violation of the Clean Water Act or the Alabama Water Pollution Control Act; and

WHEREAS, the terms of the Contract will be binding upon any purchaser of the Site; and

WHEREAS, the County, in its best judgment, has considered the regional planning and development commission's statement of consistency; and

WHEREAS, the County has evaluated PCA's proposal using the current regional solid waste management needs assessment and in particular has evaluated the proposal as it relates to available existing capacity within the region and the projected lifetime of such capacity; and.

WHEREAS, the County has not considered or made any determination regarding whether the Site meets appropriate geological, environmental, design or other scientific or engineering standards established by federal or state agencies charged with approving, permitting, or monitoring solid waste disposal sites; and'

WHEREAS, the County has also given due consideration to the following:

- a) The consistency of the Site with the solid waste management needs identified in the County's Plan;
- b) The relationship of the Site to local planned or existing development or the absence thereof, to major transportation arteries and to existing state primary and secondary roads;
- c) The location of the Site in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste;
- d) The costs and availability of public services, facilities, and improvements required to support the Site and to protect health, safety and the environment;
- e) The impact of the Site on public safety and provisions made to minimize the impact on public health and safety;
- f) The social and economic impacts of the Site on the affected community including changes in property values, and social or community perception; and
- g) The comments made at the public hearing on the 8th day of August, 2005 and at regular County Commission meetings, and the responses thereto by PCA.

THEREFORE, after due consideration of the above referenced facts and matters, a motion was made by Commissioner Turner to approve the Site and the Contract, the motion was seconded by Commissioner Sanders, and the motion was duly approved by fair favorable votes, one abstention by Commissioner Miller and no opposing votes of the County Commission.

ACCORDINGLY, BE IT RESOLVED:

That the approval required by Alabama Code Section 22-27-48(a), together with any other necessary or required approval, for the Site and the Contract is hereby granted by the County Commission; and

The Chairman of the County Commission is hereby given authority to execute the Contract, together with any necessary related agreements or documents.

DATED this the 11th day of October 2005.

PERRY COUNTY COMMISSION

BY: *Johnny L. Flowers*
JOHNNY FLOWERS, CHAIRMAN

ATTEST:

Walta Mae Kenzie
WALTA MAE KENNIE, CLERK



STATE OF ALABAMA)

PERRY COUNTY)

RESOLUTION

WHEREAS, the Perry County Commission (the "County") adopted its Local Solid Waste management Plan (the "Plan") on February 22, 2005; and,

WHEREAS, an application was submitted to the County by Perry County Associates, LLC ("PCA"), and the County approved, a solid waste management site to include a proposed Subtitle D regional landfill near Uniontown, Alabama in Perry County together with a proposal to provide certain services to the County pursuant to the terms of a Landfill Agreement executed on October 11, 2005; and

WHEREAS, PCA subsequently obtained a Permit No. 53-03 ("the Permit") for a municipal solid waste landfill issued by the Alabama Department of Environmental Management ("ADEM") on a one thousand one hundred thirteen (1,113) acre, more or less, tract of land lying and being in Perry County, Alabama (later amended so that the permitted site area decreased in size to 976.5 acres) owned by Perry Uniontown Ventures I, LLC (hereinafter referred to as "PUV"), the sole owner of PCA (hereinafter referred to collectively as "Permitted Facility"); and

WHEREAS, on September 30, 2008, an application for approval of an amended solid waste management permit (ADEM Permit No. 53-03) for the Permitted Facility was submitted to the County by PCA together with a proposal to provide certain services to the County pursuant to the terms of a First Amended Landfill Agreement; and

WHEREAS, pursuant to the Constitution and laws of this State, the County is authorized to enter into valid, binding contracts with private persons, corporations and other entities to provide for garbage and waste collection and disposal services and facilities; and

WHEREAS, the parties hereto, intending to be legally bound thereby, have heretofore entered into such a contract and desire to amend same by the First Amended Landfill Agreement; and

WHEREAS, by resolution dated October 14, 2008, the County scheduled a public hearing on the application for approval of an amendment to the Permit and the First Amended Landfill Agreement for **November 25, 2008**, at 3:00 p.m. and caused to be published the requisite public notice for the hearing; and

WHEREAS, by that same resolution, the County scheduled a second informational public hearing on the application for approval of an amendment to the Permit and the First Amended Landfill Agreement for **November 20, 2008, at 6:00 p.m.** in Uniontown, Alabama, and caused to be published a public notice for that hearing; and

RESOLUTION

Application of Perry County Associates, LLC

December 25, 2008

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WHEREAS, among other things, the First Amended Landfill Agreement provides that for the full term of the First Amended Agreement, PCA will not charge the County, the City of Uniontown or the City of Marion for household municipal solid waste (MSW) generated by its residents within and collected from their respective jurisdictions and brought to the Permitted Facility by them, or their respective employees or contractual privies operating for them; provided, however, that the amount of waste for which no charge shall be made shall not exceed 20 tons per day for each of the County, the City of Uniontown or the City of Marion; and that the fee for household municipal solid waste (MSW) generated by the residents of the County, the City of Uniontown or the City of Marion brought to the Permitted Facility by them that is in excess of the allowed 20 tons per day (representing approximately five times the average current volume generated by them on the date of this Agreement) shall be equal to one half (1/2) of the then current "gate rate" for municipal solid waste (MSW) charged by PCA; and

WHEREAS, PCA has agreed that under the amended Permit and First Amended Landfill Agreement the service area will include Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin.

WHEREAS, PCA has agreed that under the amended Permit and First Amended Landfill Agreement the maximum daily deposit shall not exceed 15,000 tons; and

WHEREAS, PCA has freely and voluntarily agreed under the First Amended Landfill Agreement to pay the County inclusive of all required payments, fees or charges for deposits placed in the Landfill the sum of One Dollar (\$1.00) per ton on all deposits per day; and

WHEREAS, PCA has agreed under the First Amended Landfill Agreement to establish a dedicated escrow account in which PCA will pay five cents (\$0.05) per ton deposited at the Permitted Facility for the road maintenance; and

WHEREAS, PCA has committed that the Permitted Facility will not cause any degradation of water quality through the discharge of pollutants, dredge or fill material into the waters of the State of Alabama in violation of the Clean Water Act or the Alabama Water Pollution Control Act; and

WHEREAS, the terms of the First Amended Landfill Agreement will be binding upon any purchaser of the Permitted Facility and

WHEREAS, the County, in its best judgment, has considered the regional planning and development commission's statement of consistency; and

RESOLUTION

Application of Perry County Associates, LLC

December 25, 2008

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WHEREAS, the County has evaluated PCA's proposal using the current regional solid waste management needs assessment and in particular has evaluated the proposal as it relates to available existing capacity within the regional and the projected lifetime of such capacity; and

WHEREAS, the County has not considered or made any determination regarding whether the Permitted Facility meets appropriate geological, environmental, design or other scientific or engineering standards established by federal or state agencies charged with approving, permitting, or monitoring solid waste disposal sites; and

WHEREAS, the County has also given due considerations to the following;

- a) The consistency of the Permitted Facility with the solid waste management needs identified in the County's Plan;
- b) The relationship of the Permitted Facility to local planned or existing development or the absence thereof to major transportation arteries and to existing state primary and secondary roads;
- c) The location of the Permitted Facility in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste;
- d) The cost and availability of public services, facilities, and improvements required to support the Permitted Facility and to protect health, safety and the environment;
- e) The impact of the Permitted Facility on public safety and provisions made to minimize the impact on public health and safety;
- f) The social and economic impacts of the Permitted Facility on the affected community including changes in property values, and social or community perception; and
- g) The comments made at the public hearing on the 25th day of November, 2008, an informational hearing on the 20th day of November, 2008, and at regular County Commission meetings, and the responses thereto by PCA.

THEREFORE, after due consideration of the above referenced facts and matters, a motion was made by Commissioner Turner to approve the Permitted Facility and the First Amended Landfill Agreement, the motion was seconded by Commissioner Sanderson, and the motion was duly approved by 4 favorable votes and 0 opposing votes of the County Commission, with one abstention.

RESOLUTION

Application of Perry County Associates, LLC

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ACCORDINGLY, BE IT RESOLVED;

That the approval required by Alabama Code Section 22-27-48(a), together with any other necessary or required approval, for the amendment to solid waste management permit (ADEM Permit No. 53-03) and the First Amended Landfill Agreement is hereby granted by the County Commission; and

The Chairman of the County Commission is hereby given authority to execute the First Amended Landfill Agreement, in form attached hereto as Exhibit A and incorporated herein by this reference, together with any necessary related agreements or documents.

DATED this the 9th day of December, 2008.

PERRY COUNTY COMMISSION

By: 

FAIREST CURETON, CHAIRMAN

Attest:



WALTA MAE KENNIE, CLERK

STATE OF ALABAMA)

PERRY COUNTY)

RESOLUTION

WHEREAS, Perry County (the "County") has recently adopted its Local Solid Waste Management Plan (the "Plan"); and,

WHEREAS, Perry County Associates, LLC ("PCA") has applied to the County for approval of a Subtitle D solid waste disposal site (the "Site") and a related contract (the "Contract"); and

WHEREAS, after the requisite public notice was provided, a public hearing was held on the 8th day of August, 2005 regarding the Site and the Contract; and

WHEREAS, PCA and its principals, designers, transferees and/or assignees have experience in the construction, management and operation of municipal waste disposal facilities; and

WHEREAS, among other things, the Contract provides that for a period of (3) three years, PCA agrees not to charge the County for in-county generated waste including in Marion and Uniontown, Alabama, brought to the proposed landfill by the County, its employees, and contractual privies operating for the County immediately following the effective date of the operation of said Site; and

WHEREAS, PCA has agreed that the service area will include Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia; and

WHEREAS, PCA has agreed that the maximum daily deposit shall not exceed 7500 tons; and

WHEREAS, PCA has freely and voluntarily agreed to pay the County inclusive of all required payments, fees or charges for deposits placed in the Landfill the sum of One Dollar (\$1.00) per ton on all deposits per day; and

WHEREAS, PCA has agreed to establish a dedicated escrow account in which PCA will pay five cents (\$0.05) per ton deposited at the Site for the road maintenance; and

WHEREAS, PCA has agreed that within six months of operations it will pay to the County, the City of Marion and the town of Uniontown a total of \$120,000.00 (\$40,000.00 to each entity) as set out in the Contract; and

WHEREAS, PCA shall provide to the County a landscape plan which will provide buffer areas and an entrance to the Site that are aesthetically pleasing and complementary to the

surroundings, and PCA shall implement said landscape plan after making all reasonable changes thereto requested by the County; and

WHEREAS, PCA has committed that the Site will not cause any degradation of water quality through the discharge of pollutants, dredge or fill material into the waters of the State of Alabama in violation of the Clean Water Act or the Alabama Water Pollution Control Act; and

WHEREAS, the terms of the Contract will be binding upon any purchaser of the Site; and

WHEREAS, the County, in its best judgment, has considered the regional planning and development commission's statement of consistency; and

WHEREAS, the County has evaluated PCA's proposal using the current regional solid waste management needs assessment and in particular has evaluated the proposal as it relates to available existing capacity within the region and the projected lifetime of such capacity; and.

WHEREAS, the County has not considered or made any determination regarding whether the Site meets appropriate geological, environmental, design or other scientific or engineering standards established by federal or state agencies charged with approving, permitting, or monitoring solid waste disposal sites; and'

WHEREAS, the County has also given due consideration to the following:

- a) The consistency of the Site with the solid waste management needs identified in the County's Plan;
- b) The relationship of the Site to local planned or existing development or the absence thereof, to major transportation arteries and to existing state primary and secondary roads;
- c) The location of the Site in relationship to existing industries in the state that generate large volumes of solid waste, or the relationship to the areas projected for development of industries that will generate solid waste;
- d) The costs and availability of public services, facilities, and improvements required to support the Site and to protect health, safety and the environment;
- e) The impact of the Site on public safety and provisions made to minimize the impact on public health and safety;
- f) The social and economic impacts of the Site on the affected community including changes in property values, and social or community perception; and
- g) The comments made at the public hearing on the 8th day of August, 2005 and at regular County Commission meetings, and the responses thereto by PCA.

THEREFORE, after due consideration of the above referenced facts and matters, a motion was made by Commissioner Turner to approve the Site and the Contract, the motion was seconded by Commissioner Sanders, and the motion was duly approved by fair favorable votes, one abstention by Commissioner Miller and no opposing votes of the County Commission.

ACCORDINGLY, BE IT RESOLVED:

That the approval required by Alabama Code Section 22-27-48(a), together with any other necessary or required approval, for the Site and the Contract is hereby granted by the County Commission; and

The Chairman of the County Commission is hereby given authority to execute the Contract, together with any necessary related agreements or documents.

DATED this the 13th day of September 2005.

FERRY COUNTY COMMISSION

BY: 
JOHNNY FLOWERS, CHAIRMAN

ATTEST:


WALTA MAE KENNIE, CLERK

COUNTY OF PERRY)
)
STATE OF ALABAMA)

FIRST AMENDED LANDFILL AGREEMENT

This Agreement made and entered into on this the 12th day of December, 2008, by and between Perry County, Alabama (hereinafter referred to as the "County"), a body corporate and politic as defined in the Constitution of the State of Alabama, and Perry County Associates, LLC, an Alabama limited liability company, its designees, successors, transferees or assigns (hereinafter referred to collectively as "PCA"):

WITNESSETH:

WHEREAS, on May 24, 2005 an application for approval of a solid waste management site to include a proposed Subtitle D regional landfill near Uniontown, Alabama in Perry County was submitted to the County by PCA together with a proposal to provide certain services to the County pursuant to the terms of a Landfill Agreement executed on October 11, 2005; and

WHEREAS, PCA subsequently obtained a permit ("the Permit") for a municipal waste landfill issued by the Alabama Department of Environmental Management ("ADEM") on a one thousand one hundred thirteen (1,113) acre, more or less, tract of land lying and being in Perry County, Alabama (later amended so that the permitted site area decreased in size to 976.5 acres) owned by Perry Uniontown Ventures I, LLC (hereinafter referred to as "PUV"), the sole owner of PCA (hereinafter referred to collectively as "Permitted Facility"); and

WHEREAS, PCA and its principals, designees, transferees and/or assignees had prior experience in the construction, management and operation of municipal waste disposal facilities and have constructed, managed and operated the Permitted Facility; and

WHEREAS, on September 30, 2008, an application for approval of an amended solid waste management permit for the aforesaid Subtitle D regional landfill near Uniontown, Alabama, in Perry County was submitted to the County by PCA together with a proposal to provide certain services to the County pursuant to the terms of this First Amended Landfill Agreement; and

WHEREAS, pursuant to the Constitution and laws of this State, the County is authorized to enter into valid, binding contracts with private persons, corporations and other entities to provide for garbage and waste collection and disposal services and facilities; and

WHEREAS, the parties hereto, intending to be legally bound thereby, have heretofore entered into such a contract and desire to amend same by this First Amended Landfill Agreement and do wish to freely and voluntarily enter into the following covenants, agreements and promises regarding the matters set forth herein; and

WHEREAS, by resolution dated October 14, 2008, the County scheduled a public hearing on the application for approval of an amended solid waste management permit and this First Amended Landfill Agreement for November 25, 2008, at 3:00 p.m. and caused to be published the requisite public notice for the hearing; and

WHEREAS, by that same resolution, the County scheduled a second informational public hearing on the application for approval of an amended solid waste management permit and this First Amended Landfill Agreement for November 20, 2008, at 6:00 p.m. in Uniontown, Alabama, and caused to be published a public notice for that hearing.

NOW, THEREFORE, for and in consideration of the covenants, agreements and promises herein set forth and having considered the comment received at the above referenced public hearings, the parties hereto, do covenant and agree as follows:

First Amended Landfill Agreement

Perry County Alabama and Perry County Associates, LLC

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1. TERM OF AGREEMENT. This Agreement shall be calculated from October 15, 2007 (hereinafter referred to as the "Effective Date). The obligations of PCA hereunder for the disposal of solid waste shall be in effect for a period of not less than twenty (20) years but not greater than the life of the Permit, or any renewals, expansions or extensions of same.

2. MANAGEMENT AND OPERATION.

(a) The County hereby acknowledges and agrees that the management and operation of the Permitted Facility shall be solely within the province of PCA or its successors, transferees, designees or assigns. PCA agrees to comply with the laws applicable to such landfills and to operate the Permitted Facility in accordance with the requirements of law.

(b) The County covenants and agrees that the construction, regulation and operation of the Permitted Facility shall be governed by the applicable State of Alabama and/or federal laws and regulations.

(c) PCA agrees to construct all cells permitted under ADEM Permit No. 53-03, as amended, and to manage and operate the Permitted Facility, in accordance with the plans and specifications and environmental laws and other applicable laws.

(d) PCA shall pay all costs associated with the acquisition, construction, equipping and obtaining of permits and approvals with respect to the Permitted Facility.

(e) PCA agrees that the maximum daily deposit into the Permitted Facility shall not exceed 15,000 tons and that the service area will include Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin.

3. WASTE DISPOSAL AND FEES.

(a) PCA shall have the absolute right to accept or reject any items or amounts of waste to be disposed of in the Permitted Facility, subject only to the requirement, restrictions and limitations set forth in the Permit, except PCA shall not accept any excluded waste such as whole automobiles, infectious waste, biomedical and hospital waste or other waste which does not pass federal and state regulations for treatment of infectious waste prior to disposal, volatile, highly flammable, explosive waste material or any other waste excluded by any applicable state law or regulations, including any solid waste which contains hazardous waste as defined by ADEM regulations.

(b) PCA will not charge the County, the City of Uniontown or the City of Marion for household municipal solid waste (MSW) or household construction and demolition waste (C&D) generated by its residents within and collected from their respective jurisdictions and brought to the Permitted Facility by them, or their respective employees or contractual privies operating for them; provided, however, that the amount of waste for which no charge shall be made shall not exceed 20 tons per day for each of the County, the City of Uniontown or the City of Marion. The fee for household municipal solid waste (MSW) or household construction and demolition waste (C&D) generated by the residents of the County, the City of Uniontown or the City of Marion brought to the Permitted Facility by them that is in excess of the allowed 20 tons per day (representing approximately five times the average current volume generated by them on the date of this Agreement) shall be equal to one half (1/2) of the then current "gate rate" for municipal solid waste (MSW) or household construction and demolition waste (C&D) charged by PCA. The foregoing notwithstanding, the County and Cities will collect from their customers and remit to PCA the tax or fee imposed by the enactment of HB 395, which became effective October 1, 2008, and any successor or similar laws.

(c) Except as expressly herein provided to the contrary, or as otherwise limited by law, PCA shall have the express and unlimited authority to determine, in its sole discretion, the fees,

charges or expenses applicable to all other garbage, refuse and waste deposited in the Permitted Facility from any source whatsoever.

(d) As additional consideration for this Agreement, the parties mutually, freely and voluntarily acknowledge and agree that PCA will pay to the County a fee, inclusive of all local, state and federally required payments, fees or charges for deposits placed in the Permitted Facility as follows: the sum of One Dollar (\$1.00) per ton on all deposits of waste (other than County or City waste for the duration of the exemption provided in subparagraph “(b)”, above) per day. Payment of this fee shall be made quarterly, in arrears, to the Perry County Commission and shall be based upon PCA’s collected revenues from the deposit of such waste. Payment of this fee shall be in lieu of all license, privilege and excise taxes that may be imposed on the Permitted Facility, and no other license, privilege or excise tax may be imposed on the Permitted Facility by the state or any county, municipality or other political subdivision thereof. Nothing contained herein, however, shall be construed to confer any exemption with respect to any uniform taxes levied generally on property, income or business activity, including, without limitation, (1) income taxes levied by the state, (2) ad valorem taxes levied on the Permitted Facility at the same rates as are applicable to other commercial property having comparable market value, and (3) state and local sales taxes on merchandise sold to or by PCA.

(e) As additional consideration for this Agreement, the parties hereto mutually acknowledge and agree that PCA shall have the right, during the term of this Agreement, (i) to transport waste to the Permitted Facility from sources inside or outside the boundaries of the County (including, without limitation, from sources outside the boundaries of the State of Alabama), (ii) to operate the Permitted Facility in the County in accordance with the terms and provisions of this Agreement and (iii) to receive waste for deposit from sources outside the

boundaries of the County (including, without limitation, from sources outside the boundaries of the State of Alabama).

4. HOURS OF OPERATION. The Permitted Facility's operating hours shall be restricted as follows:

(a) Deposits may be received by truck on Monday through Saturday and by train on Monday through Sunday. PCA shall be permitted to utilize the facility for making disposal of waste received in accordance with this schedule at any time on any day;

(b) Emergency repairs and/or maintenance shall be permitted at any time on any day; and

(c) No general public access to the Permitted Facility shall be allowed at any time.

5. REGULATORY PROVISIONS.

(a) In addition to the above referenced fee, PCA further voluntarily and freely agrees to establish a dedicated escrow account (hereinafter referred to as the "Escrow Account") into which PCA will pay five cents (\$0.05) per ton on all deposits of waste (other than County waste for the duration of the exemption provided in subparagraph "3(b)", above). Payment of this fee shall be made quarterly, in arrears, and shall be based upon PCA's collected revenues from the deposit of such waste. Payment of this fee shall be based on deposits made beginning on the Effective Date and are payable thereafter as long as the Permitted Facility is: (i) in possession of and actively operating under a valid, unsuspended state permit; and (ii) receiving deposits of permitted waste on which the fees and charges set out in paragraph 3 are imposed. The funds deposited into the Escrow Account shall be used to pay for the resurfacing, construction and maintenance of the County's roads accessing the Permitted Facility and, provided that so long as such roads are properly and safely maintained, constructed and surfaced, then surplus deposits may be used for maintenance, construction and surfacing or resurfacing of other public roads in

the County. The County agrees that no assessment, tax, levy or other charges shall be asserted against either PCA, its property or the Permitted Facility for construction, resurfacing, maintenance or otherwise in connection with roads accessing the Permitted Facility so long as funds are being paid into the Escrow Account pursuant to this Agreement and provided escrow funds are sufficient to cover the costs associated with maintenance and construction of roads accessing the Permitted Facility.

(b) The County agrees that PCA's Permitted Facility and property will be uniformly assessed in accordance with other area property for purposes of state, county and local ad valorem taxation and that all unimproved property will be assessed at its "current use" value.

(c) The County or its designated auditors shall have the right on a yearly basis and upon reasonable written notice to PCA to audit the volume or tonnage reports prepared by PCA in connection with the use and operation of the Permitted Facility.

(d) At the request of PCA, the County agrees to certify from time to time that PCA's tract of land on which and in which the Permitted Facility is located, is suitable for that use in accordance with the County's Solid Waste Plan, land use and zoning regulations, plans and rules, if any.

(e) The County agrees that any future amendments to its Solid Waste Management Plan will not have any detrimental effect on the Permitted Facility and to the extent that such amendments negatively impact the Permitted Facility, as determined by PCA in its sole and absolute discretion, those changes shall not apply to the Permitted Facility.

(f) The County will not oppose, obstruct, appeal, legislate against, litigate or otherwise take any action to interfere with or preclude PCA's operation and utilization of the Permitted

Facility in accordance with the agreements, representations and covenants contained in this Agreement and specifically will not seek to have imposed additional fees or taxes through local legislation.

6. COUNTY COVENANTS AND REPRESENTATIONS.

(a) The execution, delivery and performance of this Agreement by the County has been duly authorized, and no further action is necessary on the County's part to make this Agreement valid, binding and enforceable against the County in accordance with its terms or to carry out the matters contemplated herein.

(b) There are no County ordinances, rules, regulations or restrictions which govern, restrict or prohibit the matters herein agreed to or the County's right to enter into this Agreement.

(c) There are currently no County development or disturbance permits required for continued construction and development of the Permitted Facility. Should the County become authorized to issue such permits, it will expedite the review of, and will issue to PCA all necessary development or disturbance permits for construction and development of the Permitted Facility upon PCA's substantial compliance with the usual, customary and reasonable requirements for the issuance of such permits..

7. ENFORCEMENT. The parties hereto shall have all rights, at law or in equity, provided under the laws of the State of Alabama or the United States to insure the enforcement of the terms, provisions and conditions contained in this Agreement and/or for compensation or damages resulting from a breach of this Agreement. The parties hereto further agree that damages at law may be an inadequate remedy for a breach of any provision of this Agreement and that, in the event of any such breach, the respective rights and obligations hereunder shall include the right of any aggrieved party to seek appropriate injunctive relief.

8. NO EXPENDITURE OF FUNDS BY COUNTY. PCA covenants and agrees that no term, provision or condition of this Agreement, and no other written or oral agreement or understanding of any nature whatsoever, shall operate or be construed to obligate the expenditure of any funds or the incurrence of any pecuniary liability, with respect to the Permitted Facility and the disposal of Solid Waste in accordance with the terms hereof, or the lending or obligation of any credit, of whatsoever nature, by the County, directly or indirectly, in connection with the Permitted Facility or otherwise pursuant to any agreement or understanding.

9. NO EXCLUSIVE RIGHTS OR PRIVILEGES. PCA covenants and agrees that this Agreement and each term, condition and provision hereof will not operate or be construed to grant or authorize the granting to PCA or any person of any exclusive franchise, privilege or right to acquire, engineer, permit, construct, operate and provide closure and post-closure services for a sanitary landfill or solid waste disposal facilities or solid waste management site in, or to provide solid waste disposal facilities or solid waste disposal services in or about, the County, and (1) will not in any way (i) prohibit the County or any person from developing or approving a solid waste management site or landfill or the provision of solid waste disposal services in the County or (ii) prohibit the County from entering into agreements with any other persons regarding the development, use or operation of a landfill or other solid waste management site or the provision of solid waste disposal services and (2) will not (i) obligate the County to assist any person to obtain any required approvals, licenses or permits to operate a landfill or other solid waste management site or to provide solid waste disposal services or (ii) obligate or require the County or any person to use the Permitted Facility or receive solid waste disposal services.

10. INDEMNITY OF COUNTY BY PCA (a) Special Environmental Indemnity.

PCA shall defend, indemnify, agree to pay, and save harmless the County (including, without limitation, all officers, agents, and representatives of the County and members of the governing body of the County) against any and all liabilities, claims, damages, causes of action, judgments, fines, penalties, response costs, and other losses, costs and expenses of any nature whatsoever (including all reasonable attorney's fees and expenses and, litigation costs and expenses of investigation) asserted against or suffered or incurred by the County that are a direct result of (1) any material violation of, or material noncompliance with applicable state and federal environmental laws, or (2) result from the presence of hazardous substances now or hereafter on or under or included in the Permitted Facility resulting from solely from PCA's negligence in its operations at the Permitted Facility (and not related to activities by any prior owner or adjacent owner of adjacent or nearby activities, including without limitation the County's closed landfill), and any investigation, clean up or removal of, or other remedial action or response costs with respect to, any hazardous substances now or hereafter located on or under or included in the Permitted Facility, or any part thereof, that may be required by any environmental law or by regulatory authorities with respect to any environmental law (specifically including, without limitation, any and all liabilities, damages, fines, penalties, response costs, investigatory or other costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Sections 9601 et seq.), and including without limitation claims (including claims alleging negligence by the County) alleging noncompliance with environmental laws which seek relief under or are based on state or common law theories such as trespass or nuisance. (The foregoing indemnity is subject to PCA's right of contribution, if any,

under environmental laws against other parties, and is also conditioned (as to the County) on the County's compliance with the terms hereof).

(b) General Indemnity. With respect to all matters not within the Special Environmental Indemnity, PCA shall defend, indemnify, agree to pay, and save harmless the County (including, without limitation, all officers, agents, and representatives of the County and members of the governing body of the County) against, any and all liabilities, claims, damages, causes of action, judgments, fines penalties, and other losses, costs and expenses of any nature whatsoever (including all reasonable attorneys' fees and expenses and litigation costs) suffered or incurred by the County, and caused by or resulting solely from any the gross negligence or willful act or omission of PCA (and/or its agents and employees), unless a court of competent jurisdiction makes the ultimate determination that such liability is due in part to the wanton, willful, or intentional misconduct of the County, related to or arising from or in connection with, or occur from any cause whatsoever with respect to the permitting, acquisition, construction, maintenance operation, use, non-use, closure and post-closure of the Permitted Facility.

(c) Claims made or brought against the County under subparagraphs (a) and (b), above, are referred to herein as "Indemnified Claims". The County shall provide PCA with timely written notice of Indemnified Claims and PCA shall thereafter defend the County in any action or proceeding brought on an Indemnified Claim. PCA may provide such defense under a reservation of rights. PCA shall retain the exclusive right to select counsel, to direct the defense, and to settle any Indemnified Claim without the consent of or advance notice to the County. However, the County shall be entitled to receive copies of pleadings, settlement documents, and other matters timely requested, subject to such confidentiality obligations as may be ordered by the court or agreed to or requested by PCA. Notwithstanding anything in this Agreement to the

contrary, PCA shall not be obligated to indemnify, hold harmless, or release the County from claims, demands, liabilities, or costs for any non-indemnified claim or with respect to a non-indemnified act committed by the County; nor shall PCA be responsible for any costs, expenses, attorneys fees or damages incurred or paid outside the terms of this Paragraph 10.

11. COMPLIANCE WITH ENVIRONMENTAL LAWS.

(a) PCA shall fully comply with all environmental laws and all other applicable laws, rules and regulations applicable to the Permitted Facility of any governmental authority presently having recognized and established jurisdiction with respect thereto and shall maintain in full force and effect all required approvals, authorizations, franchises, licenses and permits necessary for the Permitted Facility and pay all costs and expenses in connection with the foregoing.

(b) PCA shall not knowingly or willfully, and shall not knowingly or willfully permit any other person to, bring any hazardous wastes onto the Permitted Facility and shall (l) if any release of hazardous substances or disposal of hazardous waste occurs on the Permitted Facility, take the following actions to the extent deemed necessary or advisable in PCA's reasonable discretion or so ordered by a court of competent jurisdiction: (i) immediately remove or dispose of the same in accordance with applicable environmental laws; (ii) cause the Permitted Facility and the operations conducted thereon (including all operations conducted thereon by other persons) to comply with all environmental laws; (iii) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by an applicable environmental law or (B) necessary to prevent or minimize any property damage (including damage to any of the Permitted Facility), personal injury, or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to hazardous substances in connection with the

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Permitted Facility or the operations on the Permitted Facility; and (2) promptly give notice to the County in writing if PCA should become aware of (A) any material spill, release or disposal of any hazardous substances or imminent threat thereof, at the Permitted Facility, in connection with the operations on the Permitted Facility, or at any adjacent property that could migrate to, through or under the Permitted Facility, (B) any violation of environmental laws regarding the Permitted Facility or operations on the Permitted Facility, (C) any disposal of hazardous waste at the Permitted Facility, and (D) any investigation, claim or threatened claim under any environmental law, or any notice of violation under any environmental law, involving PCA or the Permitted Facility.

12. CLOSURE AND POST-CLOSURE OF THE PERMITTED FACILITY. PCA shall be obligated to provide for, at PCA's sole cost and expense, the closure and the post-closure maintenance of the Permitted Facility in compliance with applicable state and federal laws and regulations as then in effect for the maximum period then required by applicable state and federal laws and regulations after PCA shall have ceased accepting Solid Waste at the Permitted Facility. Upon cessation of operation of the Permitted Facility and commencement of post-closure, PCA shall give written notice of intent to commence post-closure of the Permitted Facility and, if and when requested by the County, submit any plans required by law for the closure and post-closure, maintenance program to the County, and shall include therewith the provision of all costs of closure, post-closure maintenance, and any remedial action required with respect thereto. PCA shall provide copies of all certifications of closure or post-closure as received. In the event of cessation by PCA of operation of the Permitted Facility for any reason, PCA shall be responsible for closure of any cells constructed to that point by PCA but not for

closure of cells thereafter constructed by any other person. An assignment shall operate to transfer all closure and post-closure responsibilities to the assignee(s).

13. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

(a) If the County institutes or defends an action in a court of competent jurisdiction to enforce performance or observance by PCA of any obligation or agreement by PCA under this Agreement, upon adjudication by the court in favor of the County on all claims or defenses, the court shall award the reasonable attorneys fees or other expenses incurred by County with respect to such action.

(b) If PCA institutes or defends an action in a court of competent jurisdiction to enforce performance or observance by the County of any obligation or agreement by the County under this Agreement, upon adjudication by the court in favor of PCA on all claims or defenses, the court shall award the reasonable attorneys fees or other expenses incurred by PCA with respect to such action.

14. SUCCESSORS AND ASSIGNS. This Agreement and the obligations, benefits, payments, covenants and conditions set forth herein shall be binding upon, and inure to the benefit of the respective parties, their successors, transferees and assigns. Nothing contained herein shall prevent PCA from transferring or assigning any or all of its rights, duties or obligations hereunder in any manner whatsoever or shall restrict its right to contract with, joint venture with, or otherwise arrange for the provision of the services and payment of the sums herein provided. In the event of any such contract, assignment, transfer or otherwise by PCA, then the terms, provisions and conditions of this Agreement applicable thereto shall be deemed to have been legally transferred and assigned in accordance with the terms and provisions of any such action taken by or on behalf of PCA, and the County thereafter shall look to the transferee,

designee or assignee for the full and complete performance of the provisions contained herein or hereunder.

15. ADDITIONAL ACTIONS. From time to time at either party's request, the other party hereby agrees to execute and deliver such additional or further instruments, documents, certifications or otherwise, and to take such actions as may be reasonably necessary in order to carry out the terms, conditions and provisions contemplated by this Agreement.

16. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement and understanding between the parties hereto and supersedes any prior representations, statements, agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by each of the parties hereto or their respective successors, transferees, designees or assigns.

17. GOVERNING LAW. This Agreement and the determination of all matters arising hereunder shall be construed under and in accordance with the laws of the State of Alabama.

18. NOTICES. All notices, requests, demands or other communications expressly provided for hereunder or contemplated hereunder shall be in writing and shall be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and by registered or certified mail with return receipt requested.

(a) If to the County, addressed to it at:

Perry County Commission
Post Office Box 478
Marion, Alabama 36756-0478

With a copy that does not constitute notice to:

Collins Pettaway, Jr., Esq.

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CHESTNUT, SANDERS, SANDERS & PETTAWAY, LLC
P. O. Box 1290
Selma, AL 36702-1290

(b) If to PCA, addressed to it at:

Perry County Associates, LLC
Post Office Box 126
2870 Peachtree Road, NW
Atlanta, Georgia 30305

With a copy that does not constitute notice to:

Michael D. Smith, Esq.
MICHAEL D. SMITH, LLC
701 22nd Avenue, Suite 1
Tuscaloosa, AL 35401

The parties may change the address to which the notices are to be sent hereunder by giving written notice of such change of address to the other party hereto as provided in this section.

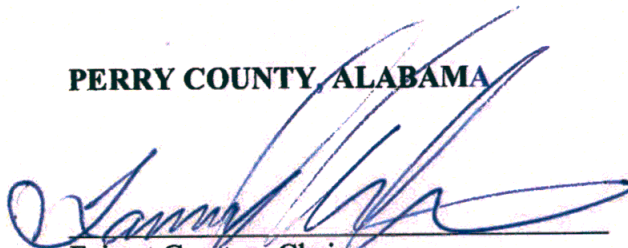
19. TIME. Time is of the essence of this Agreement.

20. VALIDITY AND ENFORCEABILITY. In the event that any section, paragraph or provision of this Agreement shall be declared invalid, illegal or unenforceable, then the remaining terms and provisions of this Agreement, to the extent possible, shall be modified in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties. If such modification is not possible, then the provision, term or paragraph declared invalid, illegal or enforceable shall be severed from this Agreement, and in either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

21. MULTIPLE COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF the County and PCA have each caused this Agreement to be executed in its name and on its behalf by officers thereof duly authorized thereunto on the day and year first above written.

PERRY COUNTY, ALABAMA



Fairst Cureton, Chairman
Perry County Commission

STATE OF ALABAMA)
)
COUNTY OF PERRY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Fairst Cureton, whose name as Chairman of the Perry County Commission is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority on behalf of the said Commission on the day the same bears date.

Given under my hand and official seal, this 9th day of December, 2008.

(Seal)

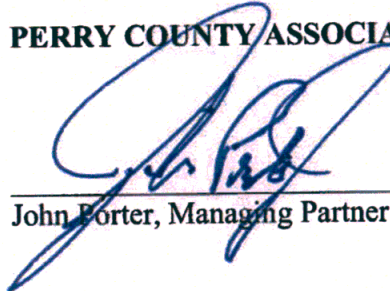


NOTARY PUBLIC

My Commission Expires: 1/20/2009

IN WITNESS WHEREOF the County and PCA have each caused this Agreement to be executed in its name and on its behalf by officers thereof duly authorized thereunto on the day and year first above written.

PERRY COUNTY ASSOCIATES, LLC



John Porter, Managing Partner

STATE OF GEORGIA)
)
COUNTY OF Cobb)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that John Porter, whose name as Managing Partner of Perry County Associates, LLC, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily and with full authority on behalf of the said company on the day the same bears date.

Given under my hand and official seal, this 12th day of December, 2008.

(Seal)



NOTARY PUBLIC

My Commission Expires: 11/13/2012

COPY

COUNTY OF PERRY *
* LANDFILL AGREEMENT
STATE OF ALABAMA *

This Agreement made and entered into on this the 27th day of July, 1999, by and between Perry County, Alabama (hereinafter referred to as the "County"), a body corporate and politic as defined in the Constitution of the State of Alabama, and Perry County Associates, LLC, an Alabama limited liability company, its designees, successors, transferees or assigns (hereinafter referred to collectively as "PCA");

WITNESSETH:

WHEREAS, On May 25, 1999, an application for approval of a solid waste management site to include a proposed subtitle D regional landfill near Uniontown, Alabama in Perry County was submitted to the County by PCA together with proposal to provide certain services to the County pursuant to the terms of this proposed agreement.

WHEREAS, PCA, and its principals, designees, transferees and /or assignees have experience in the construction, management and operation of municipal waste disposal facilities; and

WHEREAS, PCA is or will be the owner of an One Thousand ninety-two (1,092) acre, more or less, tract of land lying and being in Perry County, Alabama for which PCA shall seek a permit ("the Permit") for a municipal waste landfill (the "Landfill") by the Alabama Department of Environmental Management ("ADEM"); and

WHEREAS, pursuant to the Constitution and laws of this state and the County, the County is authorized to enter into valid, binding contracts with private persons, corporations and other entities to provide for garbage and waste collection and disposal services and facilities; and

WHEREAS, the parties hereto, intending to be legally bound thereby, do wish to document their agreements and understandings regarding the matters set forth herein; and

WHEREAS, by resolution dated May 25, 1999, the County scheduled a public hearing on the site and contract for July 26, 1999 at 6:00 p.m. and directed PCA to public the requisite publish notice for the hearing.

NOW, THEREFORE, for and in consideration of the covenants, agreements and promises herein set forth the parties hereto, do covenant and agree as follows:

CSH

1. **TERM OF AGREEMENT.**

This Agreement shall be calculated from the date on which PCA is open for business and on which it receives its first deposit of permitted waste on which the fees and charges hereinafter set forth in Section 3(d) are imposed (hereinafter referred to as the "Effective Date"). The obligations of PCA for the disposal of solid waste shall be in effect for a period of not less than 20 years but not greater than the life of the Landfill.

2. **MANAGEMENT AND OPERATION.**

- (a) The County hereby acknowledges and agrees that the management and operation of the Landfill shall be solely within the province of PCA or its successors, transferees, designees or assigns. PCA agrees to comply with the laws applicable to such landfills and to operate the Landfill in accordance with the requirements of law.
- (b) The County covenants and agrees that the construction, regulation and operation of the Landfill shall be governed by the applicable State of Alabama and/or federal laws and regulations.
- (c) Subject to its acquiring the property for the Landfill and the Permit, PCA agrees to timely acquire, construct and equip the Landfill in accordance with the plans and specifications and Environments Laws and other applicable law.
- (d) PCA agrees to use its best efforts to proceed under schedule to cause the Landfill to be constructed, permitted and open for operation within one year after issuance of its final permits from ADEM.
- (e) PCA shall pay all costs associated with acquisition, construction equipping and obtaining permits and approvals with respect to the Landfill site and facilities.

3. **WASTE DISPOSAL AND TIPPING FEES.**

- (a) PCA shall have the absolute right to accept or reject any items or amount of waste to be disposed of in the Landfill subject only to the requirement,

restrictions and limitations set forth in the Permit. Except **PCA** shall not accept any excluded waste such as automobiles, infectious waste, biomedical and hospital waste, or other waste which does not pass federal and state regulations for treatments of infectious waste prior to disposal, volatile, highly flammable, explosive waste material or any other waste excluded by any applicable state law or regulations, including any solid waste which contains hazardous waste as defined by ADEM regulations.

- ✓ (b) **PCA** will not charge the County for in-county generated waste brought to the Landfill by the County, its employees, and contractual privies operating for the County for a period of three (3) years immediately following the Effective Date; provided, however, that the amount of waste for which no charge shall be made shall not exceed 1,000 tons per year.
- (c) Except as expressly herein provided to the contrary, or as otherwise limited by law, **PCA** shall have the express and unlimited authority to determine, in its sole discretion, the fees, charges or expenses applicable to all other garbage, refuse and waste deposited in the Landfill from any source whatsoever.
- (d) **PCA** will pay to the County a host fee, inclusive of all state and federally required payments, fees or charges for deposit placed in the Landfill as follows:
- (1) The sum of One Dollar (\$1.00) shall be paid per ton on all deposits per day. The sums being paid by **PCA** pursuant to the provisions hereof are inclusive of all local, state or federally mandated payments, fees, assessments or charges;
- ✓ (e) The parties hereto acknowledge and the County hereby acknowledges that **PCA** shall have the right, during the term of this Agreement, (i) to transport waste to the Landfill from sources inside or outside the boundaries of Perry County (including, without limitation, from sources outside the boundaries of the State of Alabama), (ii) to operate the Landfill in Perry in accordance with the terms and provisions of this Agreement and (iii) to receive waste for depositing from sources outside

the political boundaries of Perry County (including, without limitation, from sources outside the boundaries of the State of Alabama).

4. HOURS OF OPERATION.

The Landfill's operating hours shall be restricted as follows:

- (i) Deposits may be received Monday through Saturday. Provided, however, that transfer trucks bringing deposits shall be permitted to utilize the facility for making deposits at any time on any day;
- (ii) Except as provided in subparagraph (i) above, the Landfill shall not be open for business on Sunday, but emergency repairs and/or maintenance shall be permitted;
- (iii) No general public access to the Landfill shall be permitted at any time.

5. MISCELLANEOUS PROVISIONS.

- (a) PCA agrees to establish a dedicated escrow account (hereinafter referred to as the "Escrow Account") into which the operator of the Landfill will pay five cents (\$0.5) per ton on Assessable Deposits beginning on the Effective Date and being payable thereafter as long as the Landfill is: (i) in possession of and actively operating under a valid, unsuspended, stayed or revoked state permit; and (ii) receiving deposits of permitted waste on which the fees and charges set out in paragraph 3 are imposed. The funds deposited into the Escrow Account shall be used to pay for the resurfacing, construction and maintenance of County roads accessing the Landfill and, provided that so long as such roads are properly and safely maintained, constructed and surfaced, then surplus deposits may be used for maintenance, construction and surfacing or resurfacing of other public roads. The County agrees that no assessment, tax, levy or other charges shall be asserted against either PCA, its property or the Landfill for construction, resurfacing, maintenance or otherwise in connection with roads accessing the Landfill so long as funds are being paid into the Escrow Account pursuant to this Agreement and provided escrow funds are sufficient to cover the costs associated with maintenance and

construction of roads accessing the Landfill. Further, the County agrees that **PCA's** landfill and property will be uniformly assessed in accordance with other area property for purposes of state, county and local taxation, if any.

- (b) **PCA** agrees that a fence will be constructed around active working landfill deposit pits and leachate ponds for safety purposes, unless otherwise limited or excluded by law or regulation.
- (c) The County or its designated auditors shall have the right on a yearly basis and upon reasonable written notice to **PCA** to audit the volume or tonnage reports prepared by **PCA** in connection with the use and operation of the Landfill.
- (d) Within six (6) months after operations commence, **PCA** will pay to the County, the city of Marion and the town of Uniontown a total of \$120,000.00 (\$40,000.00 to each entity).
- (e) At the request of **PCA** the County agrees to certify from time to time that **PCA's** tract of land on which and in which the Landfill is located, is suitable for that use in accordance with the County's land use and zoning regulations, plans and rules.
- (f) The County recognizes that the use of the site will not change until the Landfill operations commence. Accordingly, for ad valorem tax purposes, the County agrees that the use shall remain the same as its prior use.
- (g) The County will not oppose, obstruct, appeal, legislate against, litigate or otherwise take any action to interfere with or preclude **PCA's** operation and utilization of the Landfill in accordance with the agreements, representations and covenants contained in this Agreement.

6. COUNTY COVENANTS AND REPRESENTATIONS.

- (a) The execution, delivery and performance of this Agreement by the County have been duly authorized, and no further action is necessary on the County's part to make this Agreement valid, binding and enforceable against the County in accordance with its terms or to carry out the matters contemplated herein.

(b) There are no County ordinances, rules, regulations or restrictions which govern, restrict or prohibit the matters herein agreed to or the County's right to enter into this Agreement.

(c) The County will expedite the review of and will issue to PCA all necessary development or disturbance permits for construction and development of the Landfill upon compliance with the usual and customary requirements for the issuance for such permits.

(7) SUCCESSORS AND ASSIGNS.

This Agreement and the obligations, benefits, payments, covenants and conditions set forth herein shall be binding upon and inure to the benefit of the respective parties, their successors, transferees and assigns. Nothing contained herein shall prevent PCA from transferring or assigning any or all of its rights, duties or obligations hereunder in any manner whatsoever or shall restrict its right to contract with, joint venture with, or otherwise arrange for the provision of the services and payment of the sums herein provided. In the event of any such contract, assignment, transfer or otherwise by PCA then the terms, provisions and conditions of this Agreement applicable thereto shall be deemed to have been legally transferred and assigned in accordance with the terms and provisions of any such action taken by or on behalf of PCA and the County thereafter shall look to the transferee, designee or assignee for the full and complete performance of the provisions contained herein or hereunder.

8. ADDITIONAL ACTIONS.

From time to time at either party's request, the other party hereby agrees to execute and deliver such additional or further instruments, documents, certifications or otherwise, and to take such actions as may be reasonably necessary in order to carry out the terms, conditions and provisions contemplated by this Agreement.

9. ENTIRE AGREEMENT.

This Agreement constitutes the entire Agreement and understanding between the parties hereto and supersedes any prior representations,

statements, agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. This Agreement may be modified or amended only by a written instruments executed by each of the parties hereto or their respective successors, transferees, designees or assigns.

10. GOVERNING LAW.

This Agreement and the determination of all matters rising hereunder shall be constructed under and in accordance with the laws of the State of Alabama.

11. NOTICES.

All notices, requests, demands or other communications expressly provided for hereunder or contemplated hereunder shall be in writing and shall be given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and by registered or certified mail with return receipt requested.

- (a) If to the County, addressed to it at: **Perry County Commission
Post Office Box 478
Marion, Alabama 36756**
- (b) If to PCA, addressed to it at: **85 Hillcrest Drive,
Roswell, Georgia 30075**

with a copy to: **Charles T. Zink
303 Peachtree Street, N.E.
Suite 5300
Atlanta, Georgia 30308**

The parties may change the address to which the notices are to be sent hereunder by giving written notice of such change of address to the other party hereto as provided in this section.

12. TIME.

The time is of the essence of this Agreement.

13. VALIDITY AND ENFORCEABILITY.

In the event that any section, paragraph or provision of this Agreement shall be declared invalid, illegal or enforceable, then the remaining terms and provisions of this Agreement, to the extent possible, shall be modified in such manner as to be valid, legal and enforceable so as to most nearly retain the intent

of the parties. If such modification is not possible, then the provision, term or paragraph declared invalid, illegal or enforceable shall be severed from this Agreement, and in either case, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

14. MULTIPLE COUNTERPARTS.

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

15. ENFORCEMENT.

The parties hereto shall have all rights, at law or in equity, provided under the laws of this State or the United States to insure the enforcement of the terms, provisions and conditions contained in this Agreement and/or for compensation or damages resulting from a breach of this Agreement. The parties hereto further agree that damages at law may be an inadequate remedy for a breach of any provision of this Agreement and that, in the event of any such breach or threatened breach, the respective rights and obligations hereunder.

16. No Expenditure of Funds By County

PCA covenants and agrees that no term, provision or condition of this Agreement, and no other written or oral agreement or understanding of any nature whatsoever, shall operate or be construed to obligate the expenditure of any funds or the incurrence of any pecuniary liability, with respect to the provision of the Landfill and the disposal of Solid Waste in accordance with the terms hereof, or the lending or obligation of any credit, of whatsoever nature, by the County, directly or indirectly, in connection with the Landfill or otherwise pursuant to any agreement or understanding.

17. No Exclusive Rights or Privileges.

(a) PCA covenants and agrees that this Agreement and each term, condition and provision hereof will not operate or be construed to grant or authorize the granting to PCA or any Person of any exclusive franchise, privilege or right to acquire, engineer, permit, construct, operate and provide closure and post-closure services for a sanitary landfill or solid waste disposal facilities or solid waste management site in, or to provide

solid waste disposal facilities or solid waste disposal services in or about, the County, and (1) will not in any way (i) prohibit the County or any Person from developing or approving a solid waste management site or landfill or the provision of solid waste disposal services in the County or (ii) prohibit the county from entering into agreements with any other Persons regarding the development, use or operation of a landfill or other solid waste management site or the provision of solid waste disposal services and (2) will not (i) obligate the County to assist any Person to obtain any required approvals, licenses or permits to operate a landfill or other solid waste management site or to provide solid waste disposal services or (ii) obligate or require the County or any Person to use the Landfill or receive solid waste disposal services.

18. Indemnity of County by PCA,

(a) Special Environmental Indemnity. **PCA shall** defend, indemnify, agree to pay, and save harmless the County (including without limitation all officers, agents, and representatives of the County and members of the governing body of the County) against any and all liabilities, claims, damages, causes of action, judgments, fines, penalties, response costs, and other losses, costs and expenses of any nature whatsoever (including all reasonable attorney's fees and expenses and litigation costs and expenses of investigation) asserted against or suffered or incurred by the County that are related to or arise out of (1) any violation of, or noncompliance or alleged noncompliance of the Site, or the Landfill with, Environmental Laws, or (2) result from the presence of Hazardous Substances now or hereafter on or under or included in the Site resulting from **PCA'** operations at the Site (and not related to activities by any prior owner of adjacent owner or adjacent or nearby activities, including without limitation the Closed County Landfill), and any investigation, clean up or removal of, or other remedial action or response costs with respect to, any Hazardous Substances now or hereafter located on or under or included in the Site, or any part thereof, that may be required by any Environmental Law or by regulatory authorities with respect to any Environmental Law (specifically including without limitation any and all liabilities, damages, fines, penalties, response costs, investigatory or other costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S. C. Sections 9601 et seq.), and including without limitation claims (including claims alleging negligence by the County) alleging noncompliance with Environmental Laws which seek relief under or are based on state or common law theories such as trespass or nuisance. (The foregoing indemnity is subject to **PCA'** right of contribution, if any, under Environmental Law against other parties, and is also conditioned (as to the County) on the County's compliance with the terms hereof).

(b) General Indemnity. With respect to all matters not within the Special Environmental Indemnity, **PCA shall** defend, indemnify, agree to pay, and save harmless the County (including without limitation all officers, agents, and representatives of the County and members of the governing body of the County) against, any and all liabilities, claims, damages, causes of action, judgments, fines penalties, and other losses, costs and expenses of any nature whatsoever (including all reasonable attorneys' fee and expenses and litigation costs) asserted against or suffered or incurred by the County, and caused by

or resulting from any negligent or willful act or omission of **PCA** (and/or its agents and employees), unless a court of competent jurisdiction makes the ultimate determination that such liability is due solely to the wanton, willful, intentional misconduct of the County, that are related to or arise out of or in connection with, or occur from any cause whatsoever with respect to the permitting, acquisition, construction, maintenance, operation, use, non-use, closure and post-closure of the Landfill.

19. **Compliance with Environmental Laws.**

- (a) **PCA** shall fully comply with all Environmental Laws and all other applicable laws, rules and regulations applicable to the Landfill of any Governmental Authority presently having recognized and established jurisdiction with respect thereto and shall maintain in full force and effect all required approvals, authorizations, franchise, licenses and permits necessary for the Landfill and pay all costs and expenses in connection with the foregoing.
- (b) **PCA** shall not knowingly or willfully, and shall not knowingly or willfully permit any other person to, bring any Hazardous Wastes onto the Site and shall (1) if any release of Hazardous Substances or disposal of Hazardous Waste occurs on the Site, take the following actions to the extent deemed necessary or advisable in **PCA's** reasonable discretion or so ordered by a court of competent jurisdiction: (i) immediately remove or dispose of the same in accordance with applicable Environmental Laws; (ii) cause the Site and the operations conducted thereon (including all operations conducted thereon by other persons) to comply with all Environmental Laws; (iii) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by an applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Site), personal injury, or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Site or the operations on the Site; and (2) promptly give notice to the County in writing if **PCA** should become aware of (A) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Site, in connection with the operations on the Site, or at any adjacent property that could migrate to, through or under the Site, (B) any violation of Environmental Laws regarding the Site or operations on the Site, (C) any disposal of Hazardous Waste at the Site, and (D) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving **PCA** or the Site.

20. **Closure and Post-Closure of the Landfill.**

PCA shall be obligated to provide for, at **PCA's** sole cost and expense, the closure and the post-closure maintenance of the Landfill in compliance with applicable state and federal laws and regulations as then in effect for the maximum period then required by applicable state and federal laws and regulations after **PCA** shall have ceased accepting Solid Waste at the Landfill. Upon cessation of operation of the Landfill and

commencement of post-closure, PCA shall give in written notice of intent to commence post-closure of the Landfill and, if and when requested by the County, submit any plans required by law for the closure and post-closure maintenance program to the County and shall include therewith the provision for payment of all costs of closure, post-closure maintenance, and any remedial action required with respect thereto. PCA shall provide copies of all certifications of closure or post-closure as received. In the event of cessation by PCA of operation of the Landfill for any reason, PCA shall be responsible for closure of any cells constructed to that point by PCA but not for closure of cells thereafter constructed by any other Person. An assignment shall operate to transfer all closure and post-closure responsibilities to the assignee(s).


20. **Agreement to Pay Attorneys' Fees and Expenses.**

If the County institutes an action in a court of competent jurisdiction to enforce performance or observance by PCA of any obligation or agreement by PCA under this Contract, upon adjudication by the court that PCA was in default with respect to such performance or observance; the court shall award the reasonable attorneys fees or other expenses incurred by the County with respect to such action.

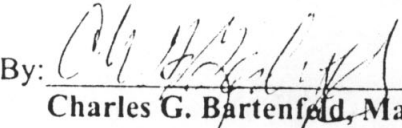
If PCA institutes an action in a court of competent jurisdiction to enforce performance or observance by the County of any obligation or agreement by the County under this Contract, upon adjudication by the court that the County was in default with respect to such performance or observance; the court shall award the reasonable attorneys fees or other expenses incurred by PCA with respect to such action.

IN WITNESS WHEREOF, the County and PCA have each caused this Contract to be executed in its name and on its behalf by officers thereof duly authorized thereunto on the day and year first above written.

PERRY COUNTY, ALABAMA
Perry County Commission as Governing Body

By: 
Chairman of Perry County Commission

PERRY COUNTY ASSOCIATES, LLC

By: 
Charles G. Bartenfeld, Managing Member

STATE OF ALABAMA }
 }
PERRY COUNTY }

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Johnny Flowers**, whose name as Chairman of the Perry County Commission, is signed to the foregoing Landfill Agreement and who is known to me, acknowledged before me on this day that, being informed to the contents of said Landfill Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said County Commission.

Given under my hand and seal this the 5th day of August, 1999.

Walter Mae Koenig
NOTARY PUBLIC

My Commission Expires: 11/20/2001

(SEAL)

GEORGIA
STATE OF ~~ALABAMA~~ }
FULTON }
~~XXXXX~~
PERRY COUNTY }

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Charles G. Bartenfeld**, whose name as President of **Perry County Associates, LLC**, is signed to the foregoing Landfill Agreement and who is known to me, acknowledged before me on this day that, being informed to the contents of said Landfill Agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and seal this the 12th day of August, 1999.

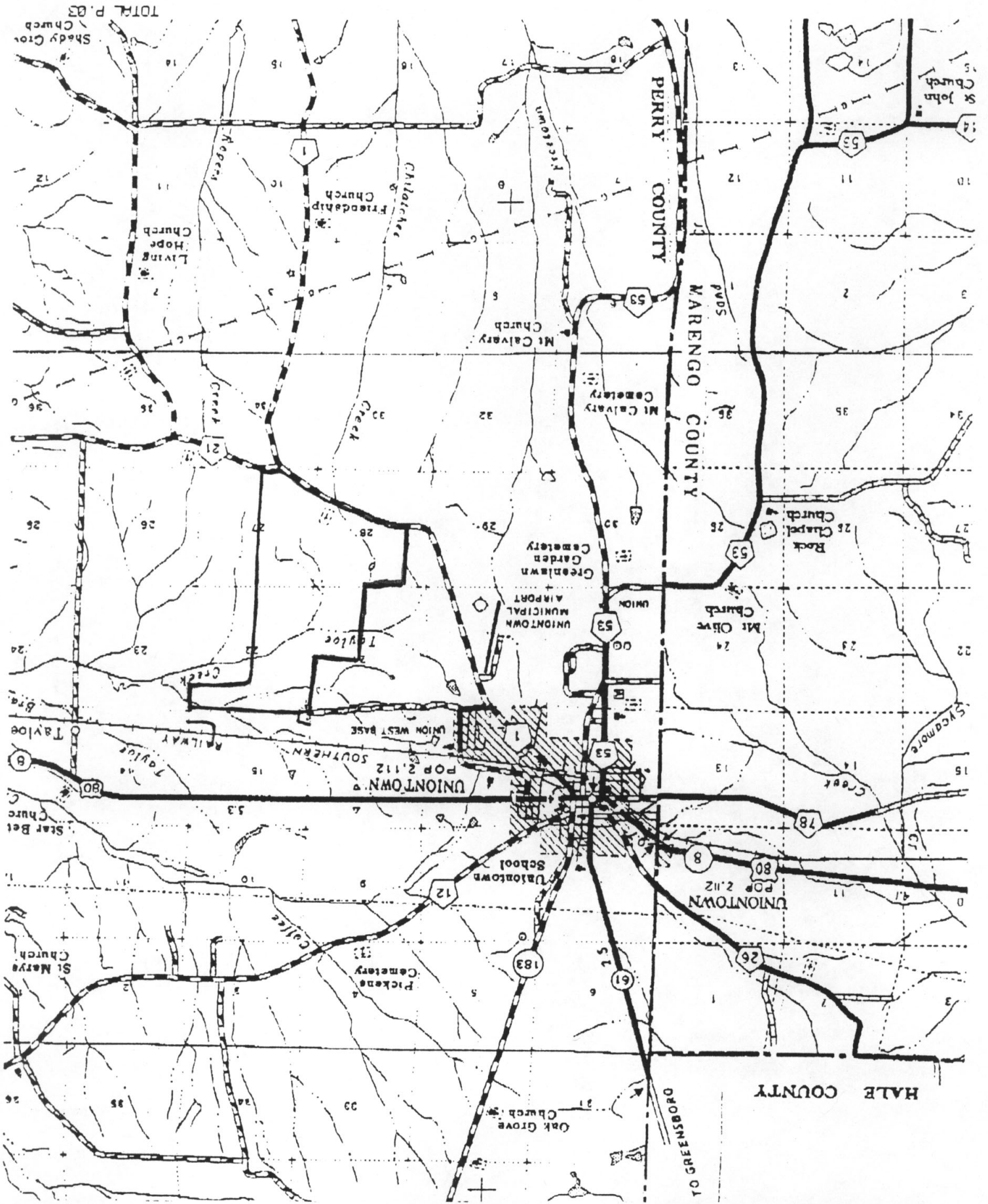
Betty Sue Gether
NOTARY PUBLIC

Notary Public, Gwinnett County, Georgia
My Commission Expires April 4, 2002

My Commission Expires: _____

(SEAL)

cat



TOTAL P. 03
Shady Gro Church

St John Church

Living Hope Church

Freedoms Church

Mt Calvary Church

Mt Calvary Cemetery

Greenham Cemetery

Mt Olive Church

Rock Chapel

Taylor Creek

UNION WEST BASE

SOUTHERN RAILWAY

UNIONTOWN POP 2,112

Uniontown School

UNIONTOWN POP 2,112

Pickens Cemetery

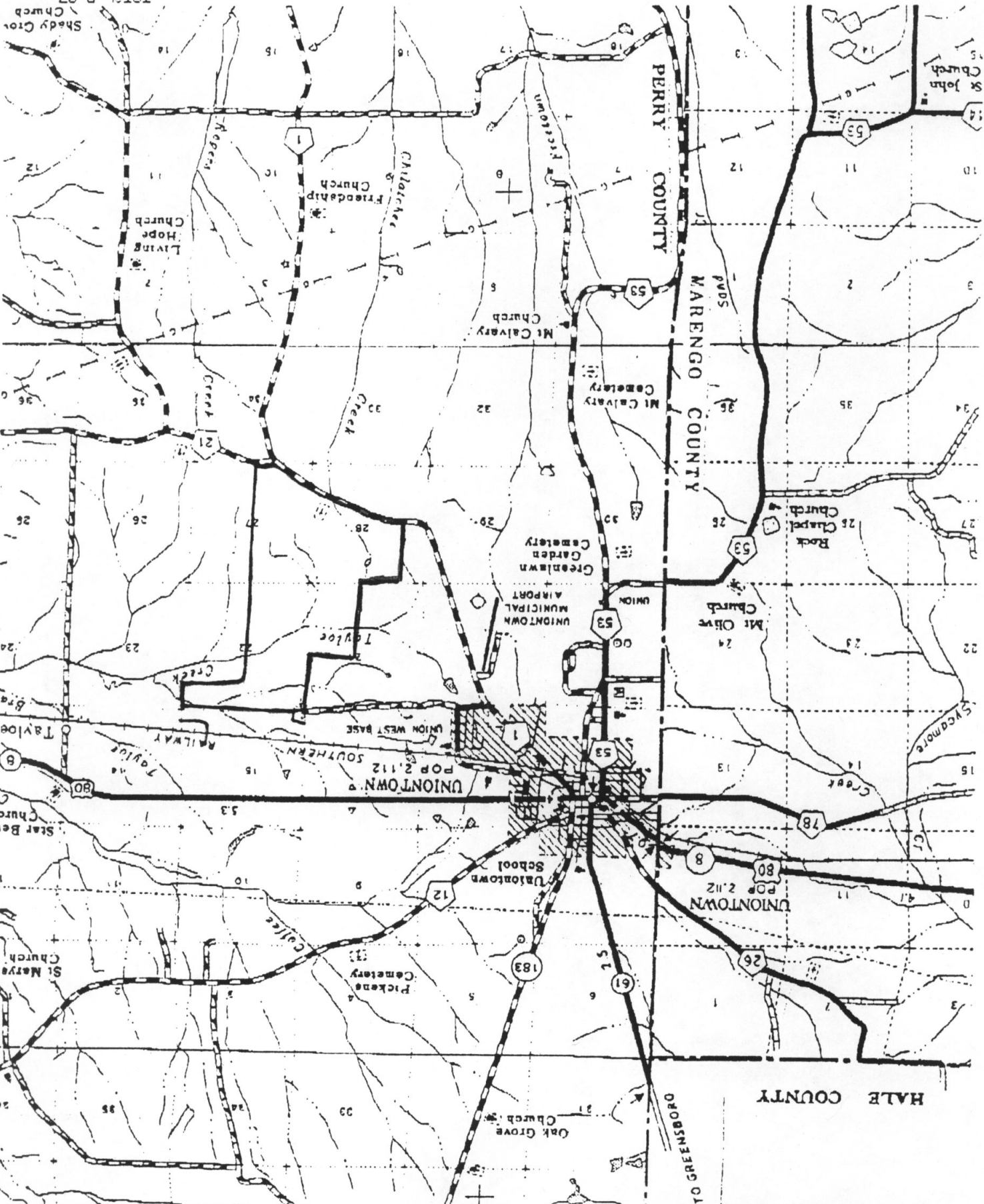
Oak Grove Church

HALE COUNTY

PERRY COUNTY

MARENCO COUNTY

TO GREENSBORO

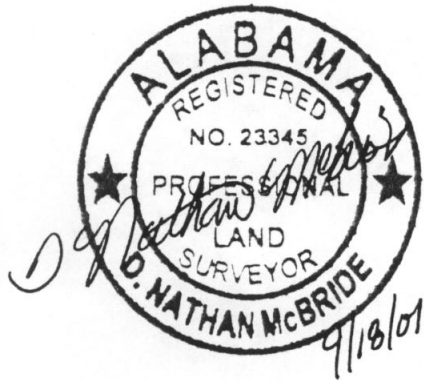


Perry County Associates - Landfill Boundary Legal

All that tract or parcel of land lying within Sections 21, 22, 27, & 28, Township 17 North, Range 6 East, Perry County, Alabama, and being more particularly described as follows:

Beginning at a drive shaft found at the Northeast section corner of Section 22 and being the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING thus established; THENCE South 00 degrees 01 minutes 00 seconds West for a distance of 1323.74 feet to a ½" rebar and cap set; THENCE South 89 degrees 52 minutes 33 seconds West for a distance of 1831.69 feet to a calculated point along a fence; THENCE South 80 degrees 44 minutes 42 seconds West for a distance of 138.69 feet to a calculated point along a fence; THENCE South 85 degrees 22 minutes 54 seconds West for a distance of 339.64 feet to a calculated point along a fence; THENCE South 50 degrees 50 minutes 57 seconds West for a distance of 210.66 feet to a calculated point along a fence; THENCE South 35 degrees 41 minutes 03 seconds West for a distance of 106.07 feet to a calculated point along a fence; THENCE South 25 degrees 42 minutes 41 seconds West for a distance of 70.78 feet to a calculated point along a fence; THENCE South 02 degrees 08 minutes 47 seconds East for a distance of 3658.48 feet to a ½" rebar and cap set; THENCE South 02 degrees 38 minutes 46 seconds West for a distance of 5581.55 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 2265.00 feet and an arc length of 588.57 feet, being subtended by a chord bearing of South 85 degrees 25 minutes 35 seconds West for a distance of 586.91 feet to a ½" rebar and cap set; THENCE South 77 degrees 58 minutes 56 seconds West for a distance of 275.30 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 745.00 feet and an arc length of 258.62 feet, being subtended by a chord bearing of North 44 degrees 16 minutes 00 seconds West for a distance of 257.33 feet to a ½" rebar and cap set; THENCE North 54 degrees 12 minutes 42 seconds West for a distance of 609.21 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 13040.00 feet and an arc length of 945.79 feet, being subtended by a chord bearing of North 56 degrees 17 minutes 22 seconds West for a distance of 945.58 feet to a ½" rebar and cap set; THENCE North 58 degrees 22 minutes 02 seconds West for a distance of 1007.19 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 4358.00 feet and an arc length of 111.48 feet, being subtended by a chord bearing of North 59 degrees 06 minutes 00 seconds West for a distance of 111.48 feet to a ½" rebar and cap set; THENCE North 26 degrees 17 minutes 48 seconds East for a distance of 227.16 feet to a ½" rebar and cap set; THENCE North 85 degrees 11 minutes 24 seconds West for a distance of 152.24 feet to a ½" rebar and cap set; THENCE South 15 degrees 49 minutes 38 seconds West for a distance of 168.10 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 4358.00 feet and an arc length of 770.58 feet, being subtended by a chord bearing of North 66 degrees 21 minutes 41 seconds West for a distance of 769.57 feet to a ½" rebar and cap set; THENCE North 71 degrees 25 minutes 37 seconds West for a distance of 1236.54 feet to a ½" rebar and cap set; THENCE North 01 degrees 38 minutes 48 seconds West for a distance of 225.19 feet to a flat iron found; THENCE North 87 degrees 41 minutes 17 seconds West for a distance of 637.54 feet to a concrete right of way monument found; THENCE South 05 degrees 04 minutes 35 seconds East for a distance of 45.35 feet to a ½" rebar and cap set; THENCE along a curve to the left having a radius of 1960.00 feet and an arc length of 445.19 feet, being subtended by a chord bearing of North 83 degrees 21 minutes 01 seconds West for a distance of 444.23 feet to a ½" rebar and cap set; THENCE North 89 degrees 51 minutes 26 seconds West for a distance of 195.21 feet to a ½" rebar and cap set; THENCE North 02 degrees 00 minutes 11 seconds East for a distance of 939.53 feet to a ½" rebar and cap set; THENCE North 03 degrees 42 minutes 04 seconds East for a distance of 555.03 feet to a ½" rebar and cap set; THENCE North 01 degrees

03 minutes 06 seconds West for a distance of 1116.92 feet to a ½" rebar and cap set; THENCE North 87 degrees 39 minutes 54 seconds East for a distance of 1367.80 feet to a ½" rebar and cap set; THENCE North 02 degrees 41 minutes 46 seconds West for a distance of 2834.53 feet to a ½" rebar and cap set; THENCE North 87 degrees 42 minutes 00 seconds East for a distance of 3950.24 feet to a ½" rebar and cap set; THENCE North 00 degrees 30 minutes 37 seconds West for a distance of 2615.62 feet to a drive shaft found; THENCE North 89 degrees 08 minutes 40 seconds East for a distance of 3997.16 feet to a drive shaft found, said drive shaft found being the TRUE POINT OF BEGINNING. Said property contains 1113.6 acres more or less as shown on, and described according to a plat of survey prepared by Jordan, Jones and Goulding, Inc., for Perry County Associates, dated August 9, 2001, and bearing the seal and certification of D. Nathan McBride, Alabama Registered Land Surveyor No. 23345.

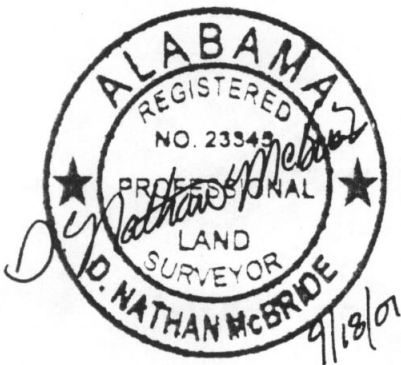


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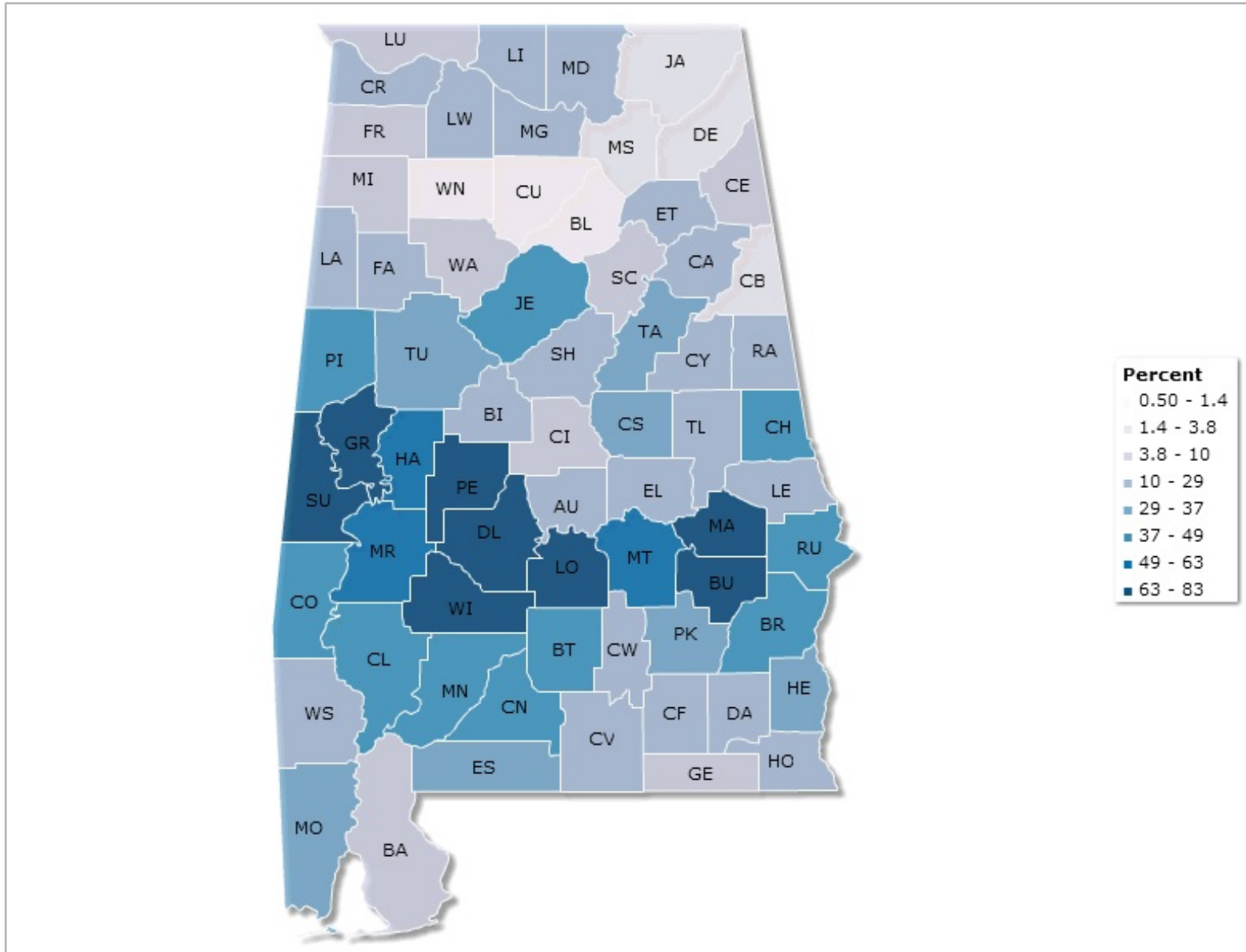
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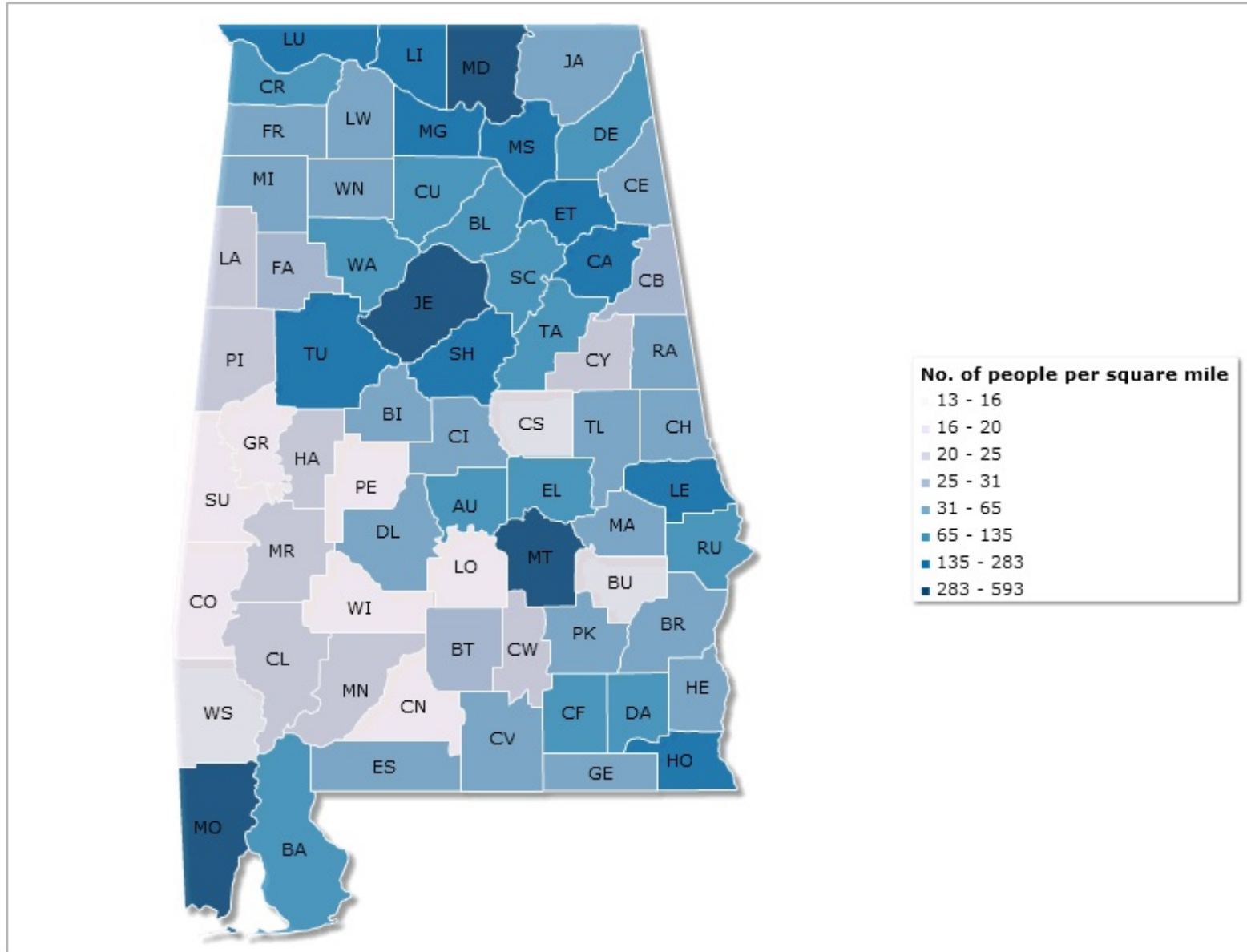
COUNTY\AREAPCT_RURAL	POPDEN_RURAL	
Autauga	96.7	39.9
Baldwin	93.32	51.9
Barbour	99.24	21.2
Bibb	98.83	25.5
Blount	99.35	80.5
Bullock	99.21	9.1
Butler	99.48	19.3
Calhoun	86.61	76.1
Chambers	96.45	29.2
Cherokee	98.16	41
Chilton	99.04	55.2
Choctaw	100	15.2
Clarke	99.43	15.9
Clay	100	23.1
Cleburne	100	26.7
Coffee	96.83	35.9
Colbert	95.53	42.2
Conecuh	99.75	12.6
Coosa	100	17.7
Covington	99.03	25.8
Crenshaw	100	22.8
Cullman	96.63	82.9
Dale	94.67	48.1
Dallas	98.28	20.8
DeKalb	99.44	82.9
Elmore	94.58	73.5
Escambia	98.81	26.1
Etowah	86.17	84.9
Fayette	99.55	22.1
Franklin	98.9	35.6
Geneva	99.58	42
Greene	100	14
Hale	99.66	21.9
Henry	99.71	27.1
Houston	90.75	65.2
Jackson	98.79	38.5
Jefferson	63.87	91.2
Lamar	100	24.1
Lauderdale	94.56	72.4
Lawrence	99.51	45.6
Lee	87.2	72.6
Limestone	93.04	91.5
Lowndes	100	15.8
Macon	98.4	19.9
Madison	74.85	91.7
Marengo	99.48	15

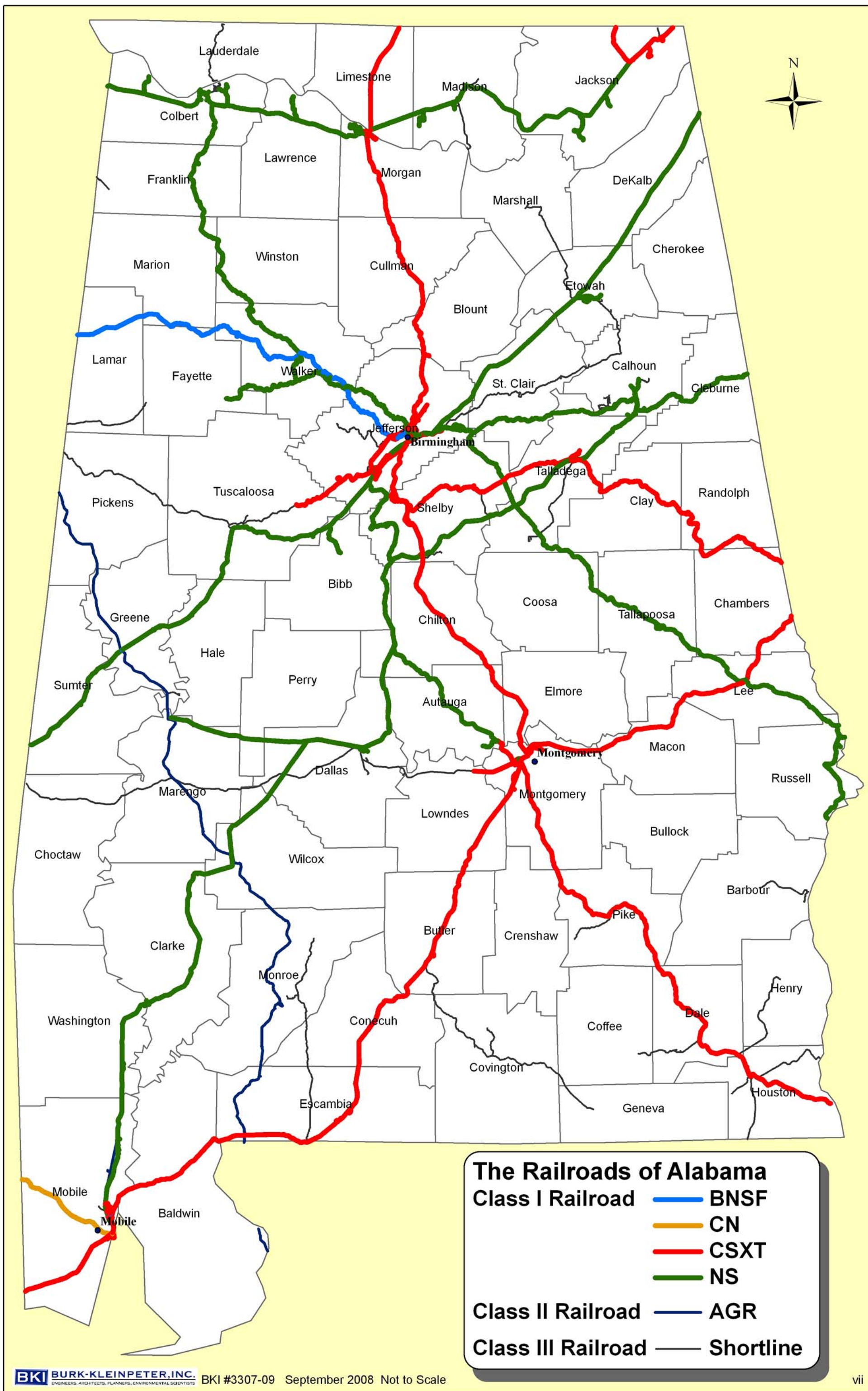
Marion	99.36	37.1
Marshall	92.58	94.6
Mobile	81.45	82.6
Monroe	99.5	17.9
Montgome	86.2	35.6
Morgan	89.32	89.1
Perry	100	14.7
Pickens	100	22.4
Pike	98.18	25.8
Randolph	99.27	32.3
Russell	96.3	30.4
St. Clair	96.17	100.1
Shelby	83.94	67.9
Sumter	100	15.2
Talladega	94.56	65.9
Tallapoosa	98.53	43.8
Tuscaloosa	92.69	40.5
Walker	96.86	64.8
Washingto	100	16.3
Wilcox	100	13.1
Winston	99.42	34.1

PERCENT BLACK BY COUNTY (2010)



POPULATION DENSITY BY COUNTY (2010)





NSWMA's 2005 Tip Fee Survey

By Edward W. Repa, Ph.D.



Introduction

The National Solid Wastes Management Association (NSWMA) has collected tip (disposal) fee data for landfills and incinerators since 1982 when less than 65 facilities were surveyed. The NSWMA data were collected by directly contacting individual facilities. This data collection continued until 1995.

In 1992, Chartwell Information, publishers of *Solid Waste Digest*, began collecting tip fee data in a similar manner. Therefore, NSWMA discontinued its data collection effort and now relies on the Chartwell data.

The tip fee data contained in NSWMA's reports represent the "spot market" price for municipal solid waste (MSW) disposal. Other tip fees exist at MSW facilities (e.g., waste accepted under a long-term contract, volume discounts, and special wastes) and these fees may be higher or lower than the spot market price.

The 2004 tip fee data are from some 800 privately owned or operated municipal solid waste landfills (as identified by Chartwell Information) and 120 incinerators. Because the number of facilities represented in past surveys has changed dramatically since 1982, comparisons and conclusions drawn between older and newer data may not accurately represent actual conditions. In order to draw any conclusions, the historical national average tip fees were recalculated based on weighted averages for the number of facilities represented in each region in the 1995 survey. Additionally, tip fees prior to 1985 were not included in the regional data because the data set was too small and deemed unrepresentative of the region.

Landfill Tip Fees

Table 1 (below) provides data on national and regional tip fees since 1985, while Figure 1 (page 2) shows the change in national tip fees over time. The average national tip fee in 2004 was \$34.29 per ton, an increase of almost 2 percent from the 2002 survey when tip fees were \$33.70 per ton. This continues the overall trend of year-to-year increases in tip fees, except for the 1 percent decrease in the national tip fees observed in 1998 when the fees declined for the first time since NSWMA began tracking tip fees in 1982. The average national tip fees have remained relatively constant over the past 10 years (i.e., since 1995) changing less than 7 percent.

Prior to 1998, tip fees increased at about 7 percent a year. The change in the national tip fee from 1985 to 1998 was \$23.61 per ton, up almost 300 percent. The largest annual increase occurred between 1986 and 1987, when the tip fee increased by \$5.19 per ton. The smallest year-to-year increases occurred between 1998 and 2000, when the tip fee increased only \$0.19 per ton per year.

Table 1. Landfill Tip Fees (\$/ton)

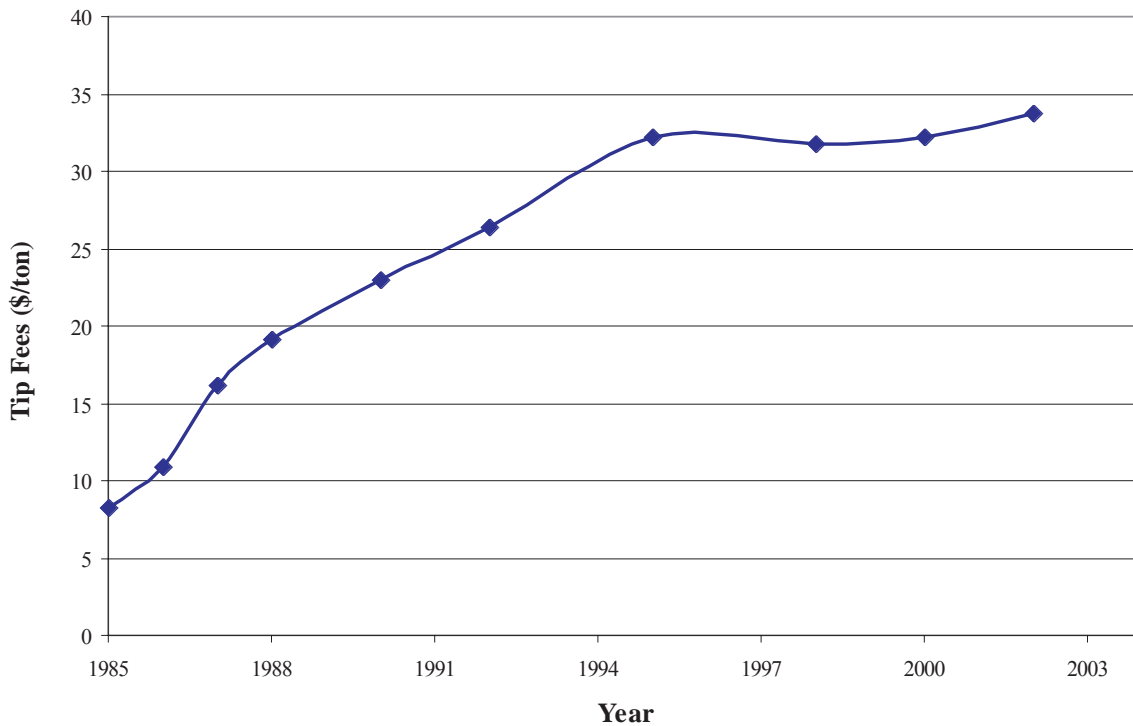
Region	2004	2002	2000	1998	1995	1992	1990	1988	1987	1986	1985
Northeast	70.53	69.07	69.84	66.68	73.17	65.83	64.76	61.11	52.41	17.11	12.66
Mid-Atlantic	46.29	45.26	45.84	44.11	45.68	47.94	40.75	33.84	26.32	22.08	16.99
South	30.97	30.43	30.53	30.89	28.50	22.48	16.92	16.46	13.13	5.76	3.24
Midwest	34.96	34.14	32.85	30.64	31.15	27.10	23.15	17.70	16.42	11.75	7.23
South Central	24.06	23.28	21.90	21.02	20.30	12.53	12.05	11.28	10.17	7.61	7.24
West Central	24.13	23.40	22.29	22.51	23.29	12.62	11.06	8.50	7.23	6.21	5.36
West	37.74	38.90	34.54	36.08	37.69	27.92	25.63	19.45	13.92	11.10	10.96
National	34.29	33.70	32.19	31.81	32.19	26.32	23.01	19.12	16.11	10.92	8.20

Regions

Northeast: CT, ME, MA, NH, NY, RI, VT
Mid-Atlantic: DE, MD, NJ, PA, VA, WV
South: AL, FL, GA, KY, MS, NC, SC, TN

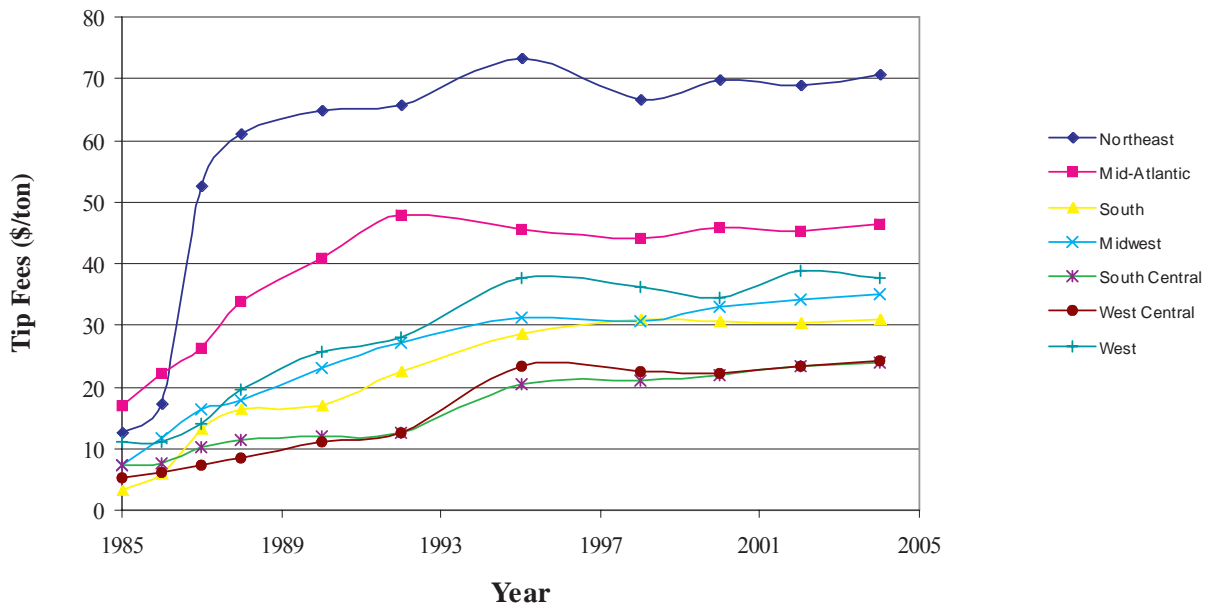
Midwest: IL, IN, IA, MI, MN, MO, OH, WI
South Central: AZ, AR, LA, NM, OK, TX
West Central: CO, KS, MT, NE, ND, SD, UT, WY
West: AK, CA, HI, ID, NV, OR, WA

Figure 1. National Tip Fees



As with the national tip fees, 6 of the 7 regional tip fees showed an increase in 2004 (Figure 2 below) when compared to 2002. The largest increase was in the Northeast region where the tip fee increased \$1.46 per ton (2%) followed by the Mid-Atlantic with an increase of \$1.03 (2%). The remaining four regions had tip fee increases of less than \$1.00 per ton, where the Mid-West increased \$0.82 (2%), South Central increased \$0.78 (3%), West Central increased \$0.73 (3%), and South increased \$0.54 (2%). Only the West showed a decline in tip fees during this period with a decline of \$1.16 per ton (-3%). As with national tip fees, tip fees in the regions have varied little since 1995. Regional tip fees appear to follow population densities where the highest regional tip fees (Northeast and Mid-Atlantic) are also where there is the highest population densities. The lowest regional tip fees are in the West Central and South Central where there is the lowest population densities.

Figure 2. Regional Tip Fees

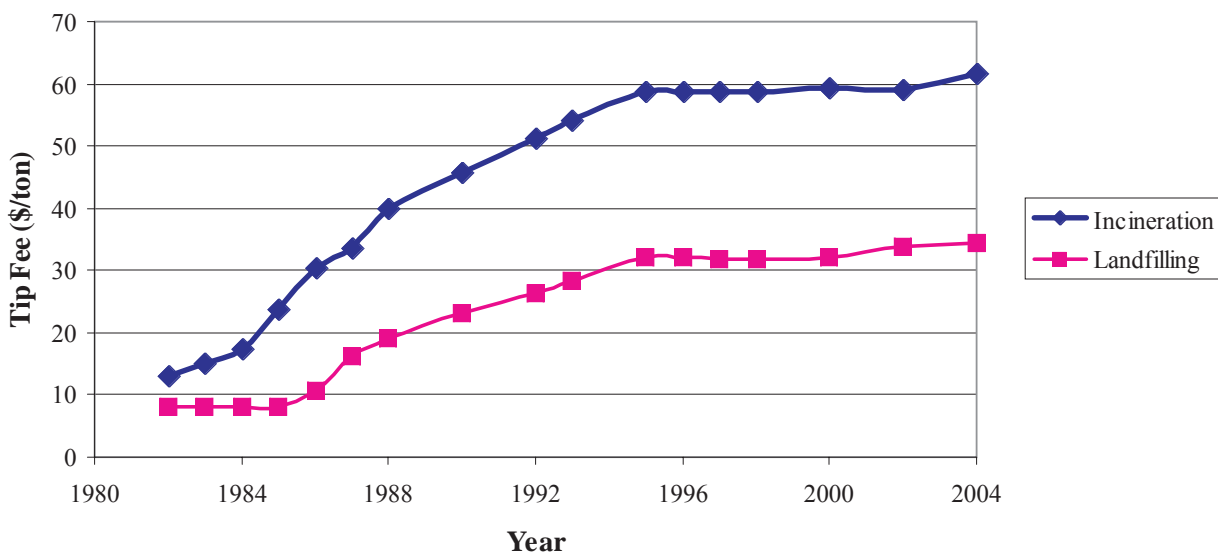


The Northeast region had the highest average tip fees at \$70.53 per ton, followed by the Mid-Atlantic (\$46.29/ton), West (\$37.74/ton), Mid-West (\$34.96/ton), and South (\$30.97). Both South Central and West Central had tip fees of about \$24.00 per ton with the South Central region having lowest average tip fees at \$24.06 per ton.

Landfill v. Incineration Tip Fees

Figure 3 (below) shows the average national tip fees for landfills and incinerators for the time period 1982 to 2004. The average national tip fee at landfills has always been less than at incinerators. In 1982, the average landfill tip fee was \$8.07 per ton and the incinerator tip fee was \$12.91 per ton, a difference of \$4.84. In 2004, the average landfill tip fee was \$34.29 per ton and the incinerator average tip fee was \$61.64 per ton, a difference of \$27.35 (i.e., almost 80% higher than landfills).

Figure 3. Landfill and Incinerator Tip Fees



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Tipping fees vary across the U.S. -Solid Waste

JULY 20, 2012



File: Shawn Wright, Waste & Recycling News The gamut for disposal costs in the United States is wide and varied, ranging from an average of about \$18 per ton of municipal solid waste to nearly \$106 per ton of MSW.



Maria Kirch, Waste & Recycling News Waste & Recycling News surveyed up to five largest landfills in each state, asking for the one-time, per-ton tipping fee for municipal solid waste.

If you're looking for an inexpensive place to dump your trash, go to Idaho.

This is not to disparage Idahoans. But with an average landfill tipping fee rate of \$18.43 per ton for municipal solid waste, the state has the cheapest disposal costs in the U.S., especially compared to Massachusetts' average of \$105.40 per ton, according to a [Waste & Recycling News](http://wasterecyclingnews.com) survey.

WRN asked some of the largest landfills in each state – public and private – how much it costs to dump one ton of municipal solid waste (MSW).

The gamut for disposal costs is wide and varied.

"If a public entity owns a landfill, they are required by law to establish that price, based on cost," said Jeremy O'Brien, director of applied research for the [Solid Waste Association of North America](#) (SWANA). "Whereas, in the private sector, the company will set their price based on competition or lack thereof."

In 2010, the most recent data available, there were 1,908 landfills in the U.S. compared to 7,924 in 1988, according to the U.S. EPA. The western U.S. had the largest number of landfills with 718; the South had 668; the Midwest had 394; and the Northeast had 128.

"As we've gone to regional landfills, a smaller number of landfills mean less competition," O'Brien said. "We've built these larger facilities, but they're more regional in nature so they have less local competition, if you will. The price is definitely driven by local, competing disposal facilities."

Want to see the full 2012 Average Landfill Tipping Fees?

Click [here](#) to purchase the list, which includes a PDF of the map graphic and an Excel sheet that includes sortable document.

The findings

Not surprisingly, based on the number of landfills, the top 10 states with the least expensive tipping fees are in the West and South: Idaho, Oregon, Colorado, Utah, Nevada, Nebraska, Montana, Louisiana, Arizona and Mississippi.

The most expensive states for landfills are primarily on the East Coast: Delaware, Tennessee, Hawaii, Washington, New Hampshire, Rhode Island, Pennsylvania, Vermont, Maine and Massachusetts.

"[Tipping fees are] always higher near larger population centers," said Ed Repa, director of environmental programs for the [National Solid Wastes Management Association](#) (NSWMA). "What you'll find is that as you go from the East Coast, across the middle of the country and then back out to the West Coast, the tipping fees kind of go high, low, high. It's really based on where you're located at."

Another factor in the disparity of costs, Repa said, is whether there are resource recovery facilities in a particular area.

"What we've noticed in past surveys that we have done is that if there are resource recovery facilities, for instance, like in the Northeast and in Minnesota or places like that, the tipping fees tend to bump up just because they can," Repa said. "If you're the only guy in town and you charge \$10 less than the \$100 [it costs] at the [waste-to-energy] facility, then the waste is probably going to come to you and you'll get the higher fee."

Washington, at 66,455 square miles, or more than seven times the size of New Hampshire, is the only state on the West Coast that has comparable tipping fees (\$72.97) to landfills on the East Coast – New Hampshire's average fee being \$74.63.

"There are a lot of legacy [post-closure] landfills that tipping fees are paying for on the west side [of Washington state]," said Peter Christiansen, section manager for the [Washington Department of Ecology](#). "That's a lot that's incorporated into that cost. ... It's the old, closed landfills that have never gone away, and they still have to have the groundwater monitoring. Some are still under cleanup, and some still have gas issues. Post-closure fees and cleanup fees are a big part of it."

In addition to the legacy landfills, tipping fees are used to help fund recycling programs, household hazardous waste collections and more aggressive waste reduction programs, Christiansen said.

Washington also exports about 2 million tons of its waste per year to neighboring Oregon, said Ellen Caywood, solid waste senior planner for the Washington Department of Ecology. Oregon has an average tipping fee of \$25.41, according to WRN's survey.

Tennessee also sticks out on the map (see pages 12-13) for having higher tipping fees than its neighbors.

Tennessee's tipping fees averaged \$71.79, about \$35 more expensive than the states around it, according to WRN's survey. Larry Christley, a program manager for Tennessee's [Department of Environment and Conservation](#), said the state's tipping fees are closer to an average of \$37 per ton when adding in all of the state's 34 public and private landfills – not just analyzing the state's largest landfills.

"I think some of the smaller [landfills] probably will pull that average down a little bit," Christley said. "[But] I know that one of the larger ones, Middle Point, recently went up significantly when [its volume increased because] another local landfill closed for a period of time."

Drilling down

From 1985 to 2008, tipping fees increased an average of \$1.25 per year, according to NSWMA's most

recent data for private landfills. The national private landfill tipping fee average in 2008 was about \$42.50. WRN's 2012 national average for the largest public and private landfills is \$49.27.

"If past history is an indication, tipping fees at landfills should continue to rise in the future at about \$1.25 per year," Repa said. "This is based on the regression analysis of existing data."

Between 1987 and 1995, NSWMA found that private landfill tipping fees increased by \$2.36 per year. Shortly after the 1991 enactment of Subtitle D of the Resource Conservation and Recovery Act, which set requirements for location, groundwater protection and monitoring of MSW landfills, tipping fees remained relatively constant.

Then from 2004 to 2008, tipping fees began to rise at a rate of \$1.95 per year, which NSWMA attributed in part to fuel prices, insurance and other operating costs.

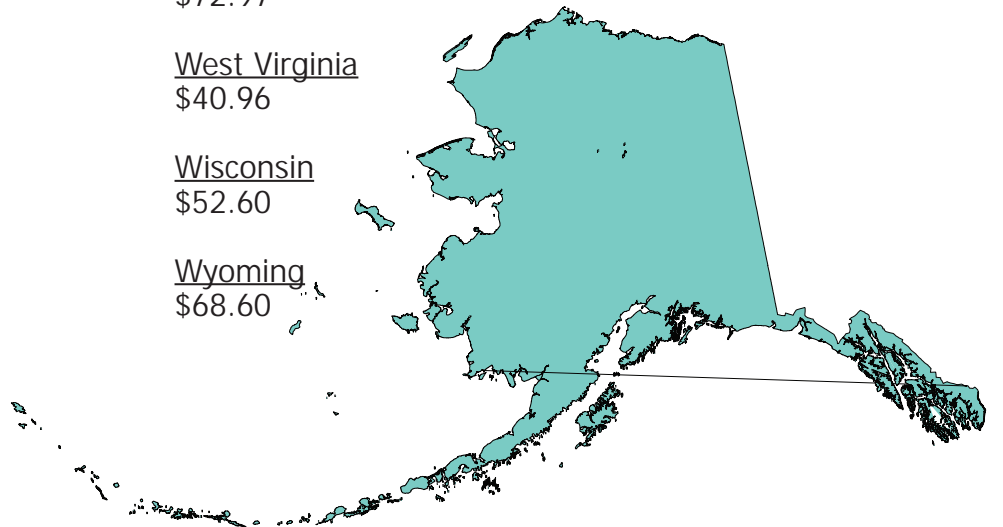
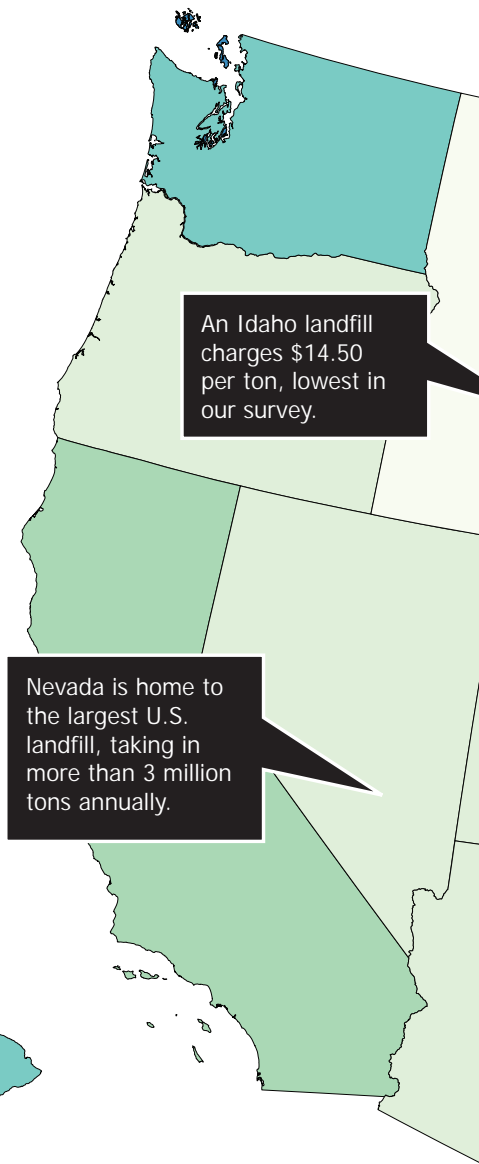
"My own feeling is that they they're likely to continue to rise if there's lack of regional competition in the marketplace," O'Brien said. "If there's no competing alternative, then what's to prevent them from rising?"

Original URL:

<http://www.wasterecyclingnews.com/article/20120720/NEWS01/120729997/tipping-fees-vary-across-the-u-s>

Tipping fees at largest landfills

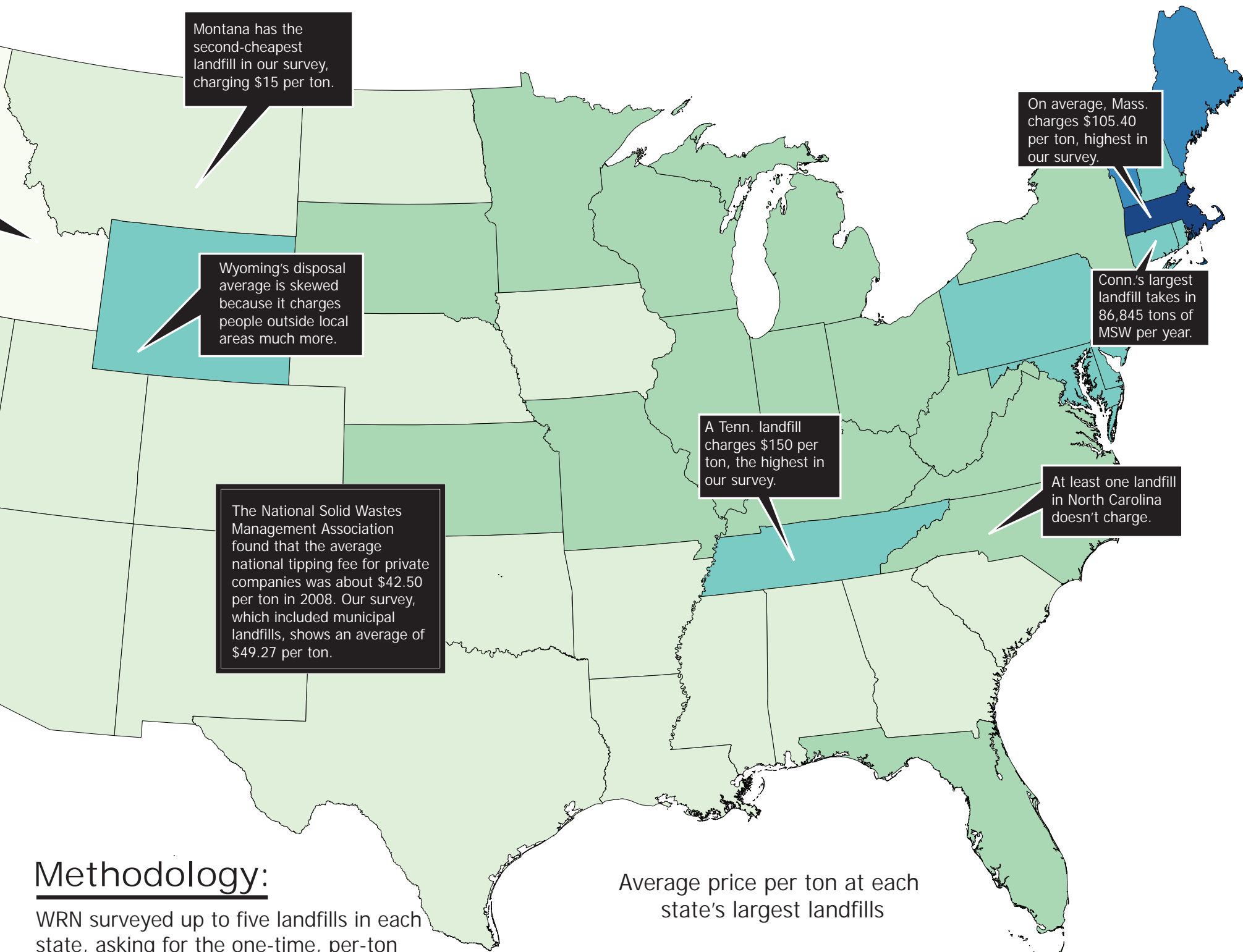
<u>Alabama</u> \$36.19	<u>Indiana</u> \$44.62	<u>Nebraska</u> \$27.81	<u>South Carolina</u> \$36
<u>Alaska</u> \$60.76	<u>Iowa</u> \$34.15	<u>Nevada</u> \$26.44	<u>South Dakota</u> \$41.70
<u>Arizona</u> \$32.40	<u>Kansas</u> \$46.65	<u>New Hampshire</u> \$74.63	<u>Tennessee</u> \$71.79
<u>Arkansas</u> \$36.85	<u>Kentucky</u> \$41.35	<u>New Jersey</u> \$69.79	<u>Texas</u> \$32.61
<u>California</u> \$51.28	<u>Louisiana</u> \$32.24	<u>New Mexico</u> \$34.37	<u>Utah</u> \$25.85
<u>Colorado</u> \$25.45	<u>Maine</u> \$83.50	<u>New York</u> \$48.75	<u>Vermont</u> \$81.75
<u>Connecticut</u> \$69.75	<u>Maryland</u> \$64.34	<u>North Carolina</u> \$47.13	<u>Virginia</u> \$46.18
<u>Delaware</u> \$69.88	<u>Massachusetts</u> \$105.40	<u>North Dakota</u> \$38.06	<u>Washington</u> \$72.97
<u>Florida</u> \$52.27	<u>Michigan</u> \$40.77	<u>Ohio</u> \$41.73	<u>West Virginia</u> \$40.96
<u>Georgia</u> \$34.11	<u>Minnesota</u> \$56.04	<u>Oklahoma</u> \$34.04	<u>Wisconsin</u> \$52.60
<u>Hawaii</u> \$72.81	<u>Mississippi</u> \$32.49	<u>Oregon</u> \$25.41	<u>Wyoming</u> \$68.60
<u>Idaho</u> \$18.43	<u>Missouri</u> \$47.77	<u>Pennsylvania</u> \$75.31	
<u>Illinois</u> \$54.95	<u>Montana</u> \$29.78	<u>Rhode Island</u> \$75	



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Methodology:

WRN surveyed up to five landfills in each state, asking for the one-time, per-ton tipping fee for municipal solid waste. We used these numbers to find each state's average. At landfills that charge in cubic yards, we multiplied by the industry standard of 3.3.

Average price per ton at each state's largest landfills

\$0 to \$19.99	\$60 to \$79.99
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WATER DIVISION

**OUTLINE OF POTENTIAL SOLID WASTE MANAGEMENT
RULES TO CONSIDER WITH THE EXECUTIVE ORDER 8
ISSUED BY GOV. ROBERT BENTLEY**

4 1) Requirement that new C&Ds have groundwater monitoring system.

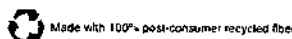
ADEM does not currently require construction and demolition landfills to have a ground water monitoring system to detect degradation of ground water quality. Other states require C&D landfills to have liners, leachate collection systems and groundwater monitoring systems. The type of material disposed of in C&D landfill could be contaminating the groundwater. Since there is no requirement to monitor the groundwater the impact to groundwater is unknown and the need for a groundwater protection system cannot be determined.

2) Two or three strikes and you are out on getting local approval for a LF.

Currently an applicant can request the host government for approval of a proposed landfill as many times as it likes, even if the host government has voted to deny approval. Multiple

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requests by the applicants serves to “wear down” the host government. Two or three requests should be sufficient for both the host government and the applicant for the same parcel.

3) Requirement that Inert landfills would require a permit or some form of regulation.

Inert landfills are not regulated by ADEM. These sites operate under their regulatory radar. An inert landfill is suppose to accept only inert material such as soil, rock, brick and concrete; however, there is a history of these sites morphing into C&D landfills. Without inspection by ADEM this sites may become uncontrolled dumps.

4) All landfills would be required to submit to ADEM annually their remaining capacity.

Most if not all MSW and some C&D landfills have volumetric calculation performed annually to access the landfills remaining useful life and to determine the compaction density of the waste material placed into the disposal cells. When an applicant requests local approval from a host government, the host government should have information available to it on disposal capacity available within the region.

5) Prohibition on any new MSW or C&D landfill that does not have a liner system, leachate collection system and groundwater monitoring system within 1 mile of navigable waterways or waterways used for drinking water or tourism in the state of Alabama.

To allow a new landfill without a groundwater protection and monitoring system within 1 mile of a river that serves as a drinking water supply, fosters tourism or serve as a navigable water course could potentially have statewide implications on the state's economy.

7) 90 day rule-The host government must vote on a LF approval issue or it is denied.

22-27-48 states that the host government has 90 days to approve or deny the application for a new landfill. If the host government does not take action to approve or deny the application the application is deemed approved in 90 days. It is felt that some host governments may attempt to take the easy way out by taking no action and letting the application become approved by default. This proposed change will require the host government to make an affirmative vote for the application or by taken no action the application would be denied.

8) All MSWs and C&Ds must submit an annual report to ADEM on their recycling rates.

As recycling becomes an integral part of solid waste management it becomes important to know which landfills are taken a proactive approach to recover materials from the waste stream and extending the life of their disposal facilities. This could also become a criteria in evaluating new disposal facilities or modification to existing facilities.

9) Any new application for a MSW or C&D must identify all minority and low income areas area within X mile radius of the proposed site.

In the past a disproportionate number of disposal sites have been sited in minority or low income areas. The provision of this information becomes important in evaluating a request for a new disposal facility.

10) Host governments can require a host government agreement with the developers to include certain items on all new MSWs and C&Ds landfills.

Currently applicants for a new disposal site are only required to provide the location, anticipated volume to be received and the geographic area from where the waste will be generated to the host government in its application. When the required public hearing is held the applicant only speaks about their plans for the site once it is permitted. It would be appropriate for the applicant to address some of the more important issues so that the host government and citizens could have a better understanding of the applicant's future plans and reach a mutually acceptable agreement between the host government and the applicant. Some of the areas to be addressed by the applicant and reflected in a host government agreement would be, but not limited to the following;

1. Amount of acreage to be used for the disposal of waste
2. Depth of excavation
3. Height of the fill area
4. Endangered species on site and management plans
5. Wetlands on site and management plans
6. Royalty payments to host government
7. Transportation impacts and mitigation plans
8. Community involvement activities
9. Buffers
10. Operating hours
11. Fire prevention and suppression plans
12. Emergency management plans

13. Landscaping plans
14. Dust control management
15. Odor management
16. Other issues of local concern

These issues would need to be addressed by the time the host government holds the public hearing and made available to the public. This does not supersede the ADEM evaluation or their public hearing. These issues are, to some extent, outside the regulatory frame work of ADEM, but are important to the host government and its citizens.

11) Exemption for construction & demolition landfills and industrial landfills that accepts solid waste generated by on-site manufacturing or industrial processes that is not a hazardous.

The abovementioned proposed legislation would specifically exempt compliance of construction & demolition landfills and industrial landfills that only accepts waste generated from their on-site manufacturing or industrial processes or from off-site manufacturing or industrial processes generate by entities under common corporate control of the permittee.
