



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

Donald R. van der Vaart  
Secretary

March 20, 2015

Mr. Charles Price, President & CEO  
Charah, Inc.  
12601 Plantside Drive  
Louisville, Kentucky 40299

**Re: Financial Assurance for GREEN MEADOW, LLC, Proposed Structural Fill Sites – Brickhaven and Colon – Insurance Policy Number PEC0044848 provided by X.L. America, Inc.**

Dear Mr. Price,

The statute governing financial assurance requirements for large projects using coal combustion products for structural fills in North Carolina may be cited under the Coal Ash Management Act of 2014 (CAMA), North Carolina General Statute (hereinafter "NCGS") 130A-309.221.

The Solid Waste Section reviewed the "claims-made and reported" Pollution and Remediation Legal Liability Policy that Charah, Inc. submitted as a possible financial assurance mechanism to use for sudden and nonsudden accidental occurrences, potential assessment and corrective action, and any subsequent costs incurred by the Department in response to an incident at a structural fill project for the proposed structural fill sites on behalf of Green Meadow, LLC. This policy insures Green Meadow, LLC and listed additional insurers against Pollution Conditions which would result in remediation expenses and restoration costs. However, the policy does not provide insurance for closure or post-closure costs, any potential or current assessment and corrective action costs or coverages required by CAMA. The insurance policy fails to address the requirements of the Act for the stated reasons below as well as a plethora of other reasons.

As described in Endorsement #23, the policy does not apply to remediation expenses based upon or arising from constituents (including any breakdown daughter or derivative products of such constituents) found in or related to spent coal ash/coal combustion product (CCP) / coal combustion residual (CCR) and constituents related to any operation affecting all media on, at, or under the structural fill facility. The policy does not apply to bodily injury, property damage, remediation expenses, all other coverage based upon or arising from constituents related to engineered fills affecting soil and groundwater on, at, or under, or migrating from the structural fill facilities. The policy does not apply coverage for remediation expenses based upon or arising from constituents related to building demolition debris, waste and debris at the site affecting demolition and accumulated waste and debris on, at, or under the structural fill facilities.

The policy does not meet third party coverage requirements as required in the Act. The policy would have to be amended specifically to include language that addresses coverage to third parties for sudden and non-sudden accidental occurrences. The third party coverage that should be demonstrated is for bodily injury and/or property damage. A certificate of liability insurance or endorsement can be used to amend the original policy. An example of an endorsement and a certificate that could be used to amend the existing policy which would incorporate the language needed to secure third party coverage is available upon request.

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Readily accessible financial assurance is a cornerstone of the Coal Ash Management Act of 2014 which is mandated by State law in order to protect public health and safety and the environment from harmful releases from structural fills, to mitigate and remediate the effects of releases, and to prevent the general public from sustaining the burdens of these costs.

The liability insurance policy that you have submitted does not meet the requirements of a viable financial assurance mechanism under the Act. Therefore, a viable alternative financial assurance mechanism will need to be submitted to the Section prior to the issuance of the permit for sudden and nonsudden accidental occurrence, potential assessment and corrective action, as well as any subsequent costs incurred by the Department in response to an incident at a structural fill project.

If you should have any questions or concerns regarding this matter please contact Sarah Rice at 919.707.8287, or by email at [sarah.rice@ncdenr.gov](mailto:sarah.rice@ncdenr.gov).

Sincerely,

Edward F. Mussler, Permitting Branch Supervisor  
Division of Waste Management, NCDENR

cc: Norman Divers, Charah, Inc.  
Ellen Lorscheider, SWS  
Sarah Rice, SWS  
Larry Frost, SWS  
Jason Watkins, SWS