

FILE COPY

Moore & Van Allen

March 5, 2002

Via Facsimile and Regular Mail

Mr. Ben Barnes
Waste Management Specialist
Solid Waste Section
Division of Waste Management
Department of Environment and Natural Resources
Raleigh Regional Office
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Re: ReUse Technology, Inc. "Swift Creek" Coal Combustion By-Product Structural Fill

Dear Mr. Barnes:

I am writing to confirm the meeting we have scheduled for 1:30 p.m. on March 13, 2002 at Oberlin Road in Raleigh to discuss the above Structural Fill site. Robert Waldrop and I will attend for ReUse Technology, Inc. ("ReUse"), but Mr. Waldrop will be out of the country until March 11, 2002. We appreciate the Division's courtesy in scheduling our meeting for a time after Mr. Waldrop's return.

I am also writing in advance of our meeting to provide information ReUse has obtained which is responsive to the questions the Division has recently asked ReUse concerning the source of water in the reinforced concrete pipe which ReUse placed on the property. ReUse hopes that this information will assist a resolution of the Division's remaining questions, and allow ReUse and the Division to move on to settle any disputes arising from differences between the 1991 submittal approved by the Division and the as-built drawings provided in 2001.

Enclosed is a copy of an aerial photograph of the Swift Creek Site area taken prior to the time ReUse purchased it. The curved road shown on the photograph is U.S. Route 301, running generally north and south. There is a motel-restaurant complex inside the curve on the east side of Route 301. The tract initially purchased by ReUse from the owner of this complex ran from the boundary adjoining the road back into the area with trees to the east. It included the six northern most structures on the tract fronting the road, but not the southernmost three.

The drainage area which ReUse showed as remaining unfilled on the 1991 drawing it submitted to the Division appears on the photograph as a straight greenish line running east to west, and beginning at a gravel road which connected the northernmost building (a restaurant) to the motel. ReUse employees recall that this drainage ditch carried water from the end of a 24-inch concrete pipe to the wetlands in the trees at the East



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end of the property. As you know, ReUse extended this 24-inch pipe to the trees in 1992 before constructing the coal ash fill.

The drainage carried by the ditch then and the pipe now comes from (1) a drainage area in the farm field on the west side of Route 301 directly across the road, and (2) from a drainage ditch on the east (i.e., ReUse) side of Route 301. Drainage from the farm field runs through a pipe under Route 301 and empties into the West side of a square masonry box with a grate on top which is built into the ground. Roadside drainage from the east side of Route 301 also empties into the South side of the masonry box from a different pipe which is fed by a collector with a grate.

The pipe which fed the drainage ditch running across the property (and which now feeds the extended pipe below the fill) exits the masonry box on the East side, runs below the gravel road shown on the photograph, also now under the fill, and extends to the woods. ReUse employees recall that ReUse's contractors installed the pipe extension in a sand bed and covered it with sand and earth before ReUse constructed the fill on top of it with ash.

These drainage boxes, entrance and exit pipes, ditches and other drainage collection structures are in the farm field across the road and on the ReUse property today, next to Route 301 to the west of the ash fill. Photographs of them will be supplied at our meeting. The place at the "end of pipe" to which ReUse added its extension was marked with a vertical steel pipe, and is visible through the top of the fill today.

The drawing submitted to DENR by ReUse on November 11, 1991 indicated that the drainage ditch running from the end of the pipe to the swamp would not be covered by ash. Rather, the drawing showed a "channel" in the structural fill, approximately 400 feet long, with 3:1 ash slopes running down to a 10-foot wide buffer, through which the ditch would run.

Looking back on this initial plan, we now question whether this 10-foot wide proposed space actually was consistent with the commitment for a 50-foot buffer on each side of a surface water body to which ReUse agreed to in Condition 19. In any event, ReUse notes that the placement of the pipe in this ditch was allowed to be conducted without prior notice by the Army Corps of Engineers Nationwide Permit 26 in 1992 when the work was done. Piping a drainage feature below a structural fill also conformed with good engineering practice for the construction of such structures.

ReUse employees examined and inspected drainage flowing in the vicinity of the Swift Creek site in late February 2002. Based on that examination, ReUse believes that the flow in the pipe at the point it exits the structural fill is a combination of off-site flow coming from the farm field, and water entering the pipe from adjacent wetlands. ReUse does not believe any of the water in the pipe originates within the area covered by its structural fill. Accordingly, ReUse does not intend to sample or analyze the water in the pipe, or to obtain an NPDES permit.

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ReUse is in the process of arranging to deed the property to itself so as to remove the property line between the two tracts. We hope that our meeting will permit us to resolve the Division's remaining concerns, and look forward to seeing you and your colleagues.

Very truly yours,

MOORE & VAN ALLEN PLLC



William A. White

WAW/tlf

cc: Robert J. Waldrop



