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May 22, 2002

Mr. Dexter Matthews  
State of North Carolina  
Department of Environment and Natural Resources  
Solid Waste Section  
401 Oberlin Building  
Oberlin Road  
Raleigh, North Carolina 27611-7687

Re: Swift Creek CCB Structural Fill  
Highway 301, Nash County

Dear Mr. Matthews:

I am writing to follow up on our recent meeting in which we discussed how ReUse Technology, Inc. ("ReUse") might obtain physical data which will answer the Division's questions about the method used for installation of the reinforced concrete pipe in the pre-existing drainage ditch at the Swift Creek structural fill project.

We now understand that this is the fact question initially sought to be addressed by Condition C of the April 4 NOV letter. ReUse proposes to answer this question (1) by locating the centerline of the drainage pipe at a spot above where the pipe exits the structural fill, as close as practicable to the eastern edge of the fill; (2) augering a hole immediately adjacent to the pipe and logging the soils and fill materials found there; and (3) providing the Division with a boring log showing the relative locations of the structural fill cover material, the coal ash structural fill material, the pipe itself; any pipe backfill material; the undisturbed ground surface; and the groundwater level at that point.

We have marked the location where we propose to drill the hole on the enclosed drawing. We will be pleased to hear any suggestions the Division may have respecting this data-gathering proposal.

During our meeting, we also discussed the Division's request (contained in conditions C and D of the NOV) to install a groundwater monitoring well and provide groundwater quality monitoring data from this same location for up to 5 years. ReUse continues to believe that no requirement to collect and provide groundwater quality data is warranted in the present circumstances.

Mr. Dexter Matthews  
May 22, 2002  
Page 2

The Division's decision to approve construction of this structural fill project in 1991 without requiring ReUse to obtain a solid waste disposal permit (and thus perform groundwater monitoring and other measures) was a reasonable and justifiable exercise of the Division's discretion. The Division's decision was based on the information provided by ReUse respecting the material to be used in the project, the construction methods, the property boundaries, and the groundwater levels at the site in relation to the proposed placement of ash. The decision also took into account the locations of the project site, of nearby water bodies, and the rural nature of the area.

In sum, the Division reached a conclusion that a coal combustion by-product structural fill project could appropriately be built in this location in accordance with ReUse's proposal without all of the measures to obtain and supply groundwater information that might otherwise be imposed in a solid waste disposal permit. That was a sound and reasonable decision then. The decision remains sound and reasonable today.

It is true that ReUse's actions at this site have raised questions about conditions in the immediate vicinity of the pipe, which ReUse has not conclusively answered. However, ReUse's methodology for piping site drainage was good engineering practice for fill construction if properly executed, and was in compliance with the then-applicable Corps of Engineers Nationwide Permit. ReUse believes that the construction methodology questions can be resolved, and the performance of the fill, as built, will continue to justify the Division's initial approval.

The Division's 1991 decision facilitated the constructive use of a high volume waste stream. It was consistent with EPA's 1988 conclusions in its report to Congress on regulation of coal combustion byproducts. EPA said in 1988 that it had preliminarily determined not to regulate coal combustion byproducts as hazardous wastes under Subtitle C of RCRA. EPA collected additional data, and confirmed that conclusion in its 1993 RCRA Regulatory Determination for Coal Combustion Byproducts. EPA stated it supported the beneficial use of coal ash, including its use in structural fills.

The Division made a policy decision similar to EPA's conclusion when it promulgated its own regulations for coal combustion byproduct structural fills in 1994. Presumably the Division, like EPA, took the available data concerning potential environmental issues raised by utilization of coal combustion byproducts into account. The Division made a policy judgment that solid waste disposal permits (and ground water monitoring) should not be required. Rather, it was deemed proper to promote programs to encourage the utilization of coal combustion byproducts that included reasonable engineering and construction measures to protect the environment. Requiring groundwater monitoring and lined landfills was not part of this policy approach. In short, the soundness of a design and engineering approach to protecting the environment, as

Mr. Dexter Matthews  
May 22, 2002  
Page 3

suggested by ReUse and approved by the Division in 1991, was confirmed by EPA's subsequent data gathering and decision, and by the Division in its 1994 regulations.

ReUse admits and regrets that it did not give the Division an opportunity to approve the change it made in handling site drainage. Had ReUse supplied the Division information in advance concerning the proposed construction method for installation of the reinforced concrete pipe in the drainage channel this whole problem could have been avoided. ReUse sincerely regrets its failure to supply this information in advance. ReUse apologizes to the Division for creating the present difficulties.

However, ReUse believes that collecting groundwater quality data from a point within the fill will not provide any data, which are useful in evaluating the potential for environmental impacts beyond the property boundaries. Similar to the Division's request to file a Notice that the property contains an unpermitted solid waste disposal site, a requirement to collect groundwater quality data would produce a real stigma.

The relevant question for coal combustion byproduct fills, which the Division answered in an appropriate fashion in 1991 at this location, and generally for all fills in its 1994 regulations, is whether construction of a structural fill maintaining appropriate physical separations from surface water, ground water and property boundaries would likely pose an unreasonable threat to human health or the environment. We believe the Swift Creek structural fill did not pose such a threat then, and does not do so now.

We look forward to your response to this proposal to obtain and supply data about the construction of the pipe.

Sincerely,



Robert J. Waldrop  
Vice President

Cc: Mr. James Coffey, NCDENR  
Mr. William White, esq. Moore & Van Allen