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THIRD AMENDMENT TO RESTATED AGREEMENT

This Third Amendment is made and entered into this 31st day of October, 2000, by and between **BERTIE COUNTY, NORTH CAROLINA**, a political subdivision, organized and existing under the laws of the State of North Carolina ("County"), and Republic Services of North Carolina, LLC, a limited liability company organized and existing under the laws of the State of North Carolina ("Republic").

A. On April 19, 1994, East Carolina Environmental, Inc. (East Carolina") and the County entered into an Amended and Restated Agreement for Development, Use and Operation of New Landfill and Recycling Facility (the "Restated Agreement");

B. On September 4, 1998, East Carolina and the County entered into an Amendment to the Restated Agreement (the "First Amendment");

C. East Carolina has been operating a new landfill ("New Landfill") in Bertie County under the terms of the Restated Agreement and First Amendment;

D. Under Paragraph 6.5(e)(ii)(A) of the Restated Agreement, East Carolina may not accept for processing or disposal in any calendar year more than the Average Daily Equivalent of 1,000 tons of Solid Waste and Special Waste per day, subject to an allowable variance of five percent (5%) per year which means that the total amount of Solid Waste and Special Waste which may be accepted by East Carolina in the landfill per year is 383,250 ton or 1,050 tons per day;

E. On December 15, 1999, the County and East Carolina entered into a second amendment (the "Second Amendment"), which among other things, enabled East Carolina to dispose of a maximum of 1,600 tons per day for a maximum increase in the Average Daily Equivalent of 550 tons for the calendar year 2000;

F. The County has determined that the increase in the Average Daily Equivalent authorized in the Second Amendment would be in the best interest of the citizens of Bertie County and would directly benefit the citizens of all the counties utilizing the landfill;

G. The County and East Carolina have negotiated these amendments to the Restated Agreement, First Amendment and Second Amendment and desire to enter into this Third Amendment to embody such amendments; and

H. On October 2, 2000, the County passed a resolution consenting to the change of name on the Restated Agreement from East Carolina to Republic.

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, the County and Republic covenant, contract and agree as follows:

1. Increase in Average Daily Equivalent. Commencing January 1, 2001 and continuing for the duration of the Restated Agreement, Section 6.5(e)(ii)(A) of the Restated Agreement is amended to read as follows:

> (A) not accepting for processing or disposal in any calendar year more than the Average Daily Equivalent of 1,600 tons of Solid Waste and Special Waste per day.

2. Host fees for the duration of the Restated Agreement. A new subsection 9.3 shall be added to the Restated Agreement as follows:

> 9.3 Host Fees relating to increased tonnage. Commencing January 1, 2001, and continuing for the duration of this Agreement, for each ton of Solid Waste and Special Waste which is accepted by Republic at the New Landfill in excess of an Average Daily Equivalent of 1,050 tons as permitted under the terms of the Agreement, Republic shall pay the County the sum of $3.03 per ton.

3. Absolute Limit on Solid Waste and Special Waste. The parties recognize that the Average Daily Equivalent of 1,600 tons of Solid and Special Waste is the absolute limit of Solid and Special Waste that will be processed or disposed in the New Landfill during any calendar year for the duration of this Agreement.

4. Continuing Effect. All other provisions of the Restated Agreement and First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the County and Republic execute this Third Amendment to the Restated Agreement in two original counterparts, one of which is retained by each of them the day and year first above written.

ATTEST:

By: _____
Tim Ivey
Clerk to the Bertie County
Board of Commissioners

BERTIE COUNTY

By: _____
John Jasper Bazemore
Chairman
Bertie County Commissioners

SEAL

ATTEST:

By: _____

REPUBLIC SERVICES OF NORTH CAROLINA, LLC

By: _____

SEAL

AMENDMENT TO
RESTATED AGREEMENT

THIS AMENDMENT is made and entered into this 4th day of September, 1998, by and between **BERTIE COUNTY, NORTH CAROLINA**, a political subdivision, organized and existing under the laws of the state of North Carolina ("County"), and **EAST CAROLINA ENVIRONMENTAL, INC.**, a corporation organized and existing under the laws of the Commonwealth of Kentucky ("East Carolina").

RECITALS

A. On April 19, 1994, East Carolina and the County entered into an Amended and Restated Agreement for Development, Use and Operation of New Landfill and Recycling Facility (the "Restated Agreement").

B. The County and East Carolina have negotiated certain amendments to the Restated Agreement, and desire to enter into this Amendment to embody such amendments.

NOW THEREFORE, in consideration of the mutual promises contained herein, the County and East Carolina, each intending to be legally bound, agree as follows:

1. Conditions Precedent. East Carolina and the County agree that the procurement of all necessary permits or other approvals for the construction or operation of the New Landfill, as redesigned pursuant to a facility plan submitted to the County, is a condition precedent to East Carolina's performance under this Amendment.

2. Free Disposal for Commercial Solid Waste. Section 7 of the Restated Agreement shall be modified to include free disposal

for commercial Solid Waste (excluding Special Waste) generated within Bertie County.

3. Host Fees. Subsections 9.1 and 9.2 shall be replaced with the following subsections:

9.1 Host Fees Relating to Schedule D Counties. Commencing January 1, 1999, for each Ton of Solid Waste and Special Waste which is accepted by East Carolina at the New Landfill and generated outside the County but within the counties identified on Schedule D, East Carolina shall pay the County the sum of $2.41.

9.2 Host Fees Relating to Non-Schedule D Counties. Commencing on January 1, 1999, for each Ton of Solid Waste and Special Waste which is accepted by East Carolina at the New Landfill and generated outside the County and outside the counties identified on Schedule D, East Carolina shall pay the County the greater of $2.41 or fifty percent (50%) of the amount by which the tipping fee for Solid Waste accepted by East Carolina at the New Landfill and generated outside the counties on Schedule D exceeds the posted gate rate at the New Landfill.

3. Term/Termination. Section 11 shall be replaced with the following provision:

Subject to the terms and conditions of this Restated Agreement, the term of this Restated Agreement shall commence on the Effective Date and shall continue for the reasonable duration of at least twenty five (25) years thereafter; provided, however, after twenty five (25) years the County may continue to use the New Landfill on a year-to-year basis under the same terms and

conditions until such time as the new Landfill is, in East Carolina's discretion, completely filled or otherwise rendered unusable or unfeasible for use as a sanitary landfill. The term of this Restated Agreement shall in no case exceed thirty (30) years.

4. This Amendment is intended to amend and supersede only the provisions referenced herein. All other provisions of the Restated Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the County and East Carolina execute this Amendment to the Restated Agreement the day and year first above written.

ATTEST:

By: _____

BERTIE COUNTY, NORTH CAROLINA

By: _____
Title: _____

Seal

By: Rhonda Kenney

EAST CAROLINA ENVIRONMENTAL, INC.

By: Lara M. Park
Title: Vice President

Seal

AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT, USE AND OPERATION OF NEW LANDFILL AND RECYCLING FACILITY

by and between

BERTIE COUNTY, NORTH CAROLINA

and

EAST CAROLINA ENVIRONMENTAL, INC.

April, 1994

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Permit No.	Date	DIN
08-03	June 27, 2016	26328

AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT, USE AND OPERATION OF NEW LANDFILL AND RECYCLING FACILITY

THIS AMENDED AND RESTATED AGREEMENT is made and entered into this the 19 day of April, 1994, by and between Bertie County, North Carolina, a political sub-division, organized and existing under the laws of the State of North Carolina (hereinafter referred to as the "County"), and East Carolina Environmental, Inc., a corporation organized and existing under the laws of the State of Kentucky (hereinafter referred to as "East Carolina").

In consideration of the mutual agreements contained herein, the County and East Carolina, each intending to be legally bound, agree as follows:

1. FINDINGS, RECITALS AND ACKNOWLEDGMENTS. It is hereby ascertained, determined and declared by the parties that:

A. On May 4, 1992, East Carolina's parent, Addington Environmental, Inc. ("Addington") entered into an Agreement for Development, Use and Operation of New Landfill and Recycling Facility (the "May 4th Agreement") with the County.

B. On August 6, 1993, Addington assigned, with the written consent of the County, the May 4th Agreement to East Carolina and provided the County with a Guaranty.

C. Following execution of the May 4th Agreement a number of developments occurred which have made it necessary and desirable to amend the May 4th Agreement, including but not limited to the following: (i) On August 6, 1993, East Carolina received a permit to construct a regional landfill in Bertie County, North Carolina; (ii) East Carolina commenced operations at the new

landfill in Bertie County on October 8, 1993; and (iii) East Carolina and/or Addington entered into numerous contracts with other counties and municipalities in the region.

D. It is in the best interest of the citizens, residents and visitors of Bertie County to provide for efficient, proper and environmentally sensitive methods of managing solid waste, conserve and recycle economic and natural resources, preserve and enhance the beauty and quality of the environment, prevent the spread of disease and the creation of nuisances and protect the public health, safety and welfare.

E. The many and varied issues relative to solid waste management in Bertie County, North Carolina, have placed an enormous burden on State and Local Governments to provide these vital services efficiently and economically.

F. It is in the best interest of the citizens, residents and visitors of Bertie County, North Carolina, to plan for, in the most economically feasible, cost effective and environmentally safe manner, the recycling and disposal of solid waste in order to protect the public safety, health and welfare, enhance the environment and conserve and recover resources which have potential further usefulness.

G. The State of North Carolina has encouraged counties to utilize all means reasonably available to promote efficient and proper methods of managing solid waste and has specifically empowered boards of County Commissioners to establish and operate

solid waste disposal facilities or to contract for their establishment and operation.

H. The County has the responsibility and power to provide solid waste disposal facilities in order to meet the needs of all incorporated and unincorporated areas of the County and the State of North Carolina has authorized the counties, pursuant to N.C.G.S. § 153A-275 and other applicable statutory provisions, to contract with any private person, firm or corporation for the establishment and operation of a public enterprise, including the establishment and operation of privately owned solid waste disposal facilities that accept waste generated within a county's geographic boundaries or that is brought into a county's geographic boundaries. Counties are also expressly authorized by N.C.G.S. § 153A-136 to extend the reasonable duration of such contracts to a maximum term of thirty years.

I. The County owns the Old Landfill (as hereinafter defined) which was used for the disposal of Solid Waste (as hereinafter defined) prior to October 8, 1993.

J. The County desires to allow East Carolina to develop, own and operate the Facilities (as hereinafter defined) on the Adjacent Property (as hereinafter defined), as a regional solid waste management facility in Bertie County, North Carolina, in order to provide an environmentally sound and cost-effective sanitary landfill within Bertie County, North Carolina, for the processing and disposal of Solid Waste generated within the Approved Area (as hereinafter defined).

K. In reliance on the May 4th Agreement and this Restated Agreement, and subject to the terms and conditions thereof, East Carolina desires to permit, construct, own and operate the Facilities (as hereinafter defined) within Bertie County, North Carolina.

2. DEFINITIONS. The following definitions shall apply in this Agreement.

2.1 Adjacent Property: All or any part of certain property adjacent to the Old Landfill which is more particularly described on Schedule A.

2.2 Approved Area: The geographic area consisting of all of the incorporated and unincorporated areas of the State of North Carolina.

2.3 Average Daily Equivalent: The total amount of solid waste accepted by East Carolina for processing or disposal in a calendar year divided by 365.

2.4 Board: The Board of County Commissioners of Bertie County, North Carolina.

2.5 Book Value: The actual cost of the acquisition of the Adjacent Property (including, without limitation, purchase price and closing costs), improvements thereon (including without limitation, all design, engineering, environmental, monitoring and permitting expenses incurred by Addington or East Carolina), and any personal property, net of accumulated depreciation, carried on Addington's or East Carolina's books in conformity with generally accepted accounting principles. The term does not include any

value based upon severance damage, land use, income, potential revenue stream or profits, replacement or comparable sales.

2.6 C&D Waste: Non-putrescible construction or demolition materials.

2.7 Contracting Municipality: Any municipality which is located within the geographic boundaries of the County which has signed the agreement attached on Schedule B or such other agreement which has been approved in writing by East Carolina.

2.8 CPI: The consumer price index for all urban consumers as published by the U. S. Department of Labor, Bureau of Labor Statistics.

2.9 DEHNR: The Department of Environment, Health and Natural Resources of the State of North Carolina, including any successor department or agency performing the same or similar duties.

2.10 Effective Date: October 8, 1993.

2.11 Environmental Law: Any federal, state, county, or local statute, law, regulation, rule, ordinance, code, directive, policy, license or permit, or any agreement, imposing liability or standards of conduct or responsibility concerning or otherwise relating to environmental or health and safety matters, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, any Superfund or superlien law, and any similar state,

county, or local laws, all as amended from time to time and all as now or at any time hereafter may be in effect.

2.12 Excluded Waste: Highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, or any other waste excluded by any applicable Environmental Law or excluded by any of the terms and conditions of any permits, licenses or approvals obtained with respect to East Carolina's operation of the Facilities. This term shall also include such other waste material (excluding Solid Waste) which East Carolina finds, in its discretion, following analysis, the results of which shall be made available to the County, to pose an unreasonable risk or danger to the operation or safety of the Facilities or the environment due to the chemical or physical characteristics of such waste.

2.13 Facilities: The New Landfill and all appurtenances and facilities operated by East Carolina on the Adjacent Property, including, but not limited to, scales, maintenance shops, offices, ponds, and holding and storage tanks.

2.14 Force Majeure: Any act, event or condition reasonably relied upon by East Carolina or the County as justification for delay in or excuse from performing or complying with any obligation, duty or agreement required of East Carolina or the County under this agreement, which act, event or condition is beyond the reasonable control of East Carolina or the County or its agents relying thereon, including, without limitation: (i) an act of God, interference by third parties with any solid waste disposal

operations or any other duties of East Carolina or the County, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot, general arrest 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 (including, without limitation, a temporary restraining order, temporary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body, including, without limitation, such an order or judgment which limits the duration of this Restated Agreement to less than 20 years or which stays, invalidates, or otherwise affects the Restated Agreement with respect to the delivery of Waste; (iv) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval required to operate the Facilities which does not result from any negligent or willful act or omission of East Carolina or the County; (v) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the Effective Date hereof, applicable to the County, the Facilities, East Carolina or East Carolina's affiliates, adversely affecting their obligations hereunder, including, without limitation such changes which have a substantial, material and adverse effect on the cost of constructing, operating or

maintaining the Facilities beyond what is required on the Effective Date; (vi) the institution of a legal or administrative action, or similar proceeding, by any person, firm, corporation, agency or other entity which delays or prevents any aspect of the construction or operation of the Facilities, including, without limitation, comments on or challenges to the consideration or issuance of any permit, license or other approval required to construct or operate the Facilities; or (vii) if East Carolina is for any reason (other than any reason resulting from East Carolina's negligent or willful act or omission) delayed or barred by governmental or judicial action from collecting all or any part of the fees to be paid under this Restated Agreement, as may be from time to time adjusted, and any other payments that may become due and owing under this Restated Agreement.

2.15 Hazardous Waste: All materials or substances defined or characterized as hazardous waste by the United States Environmental Protection Agency, the North Carolina Department of Environment, Health and Natural Resources, or any other agency pursuant to any Environmental Law and all current and future amendments thereto, and all regulations promulgated thereunder.

2.16 Host County: Bertie County.

2.17 Host Fee: The amounts payable to the County pursuant to the terms and provisions of Section 9 hereof.

2.18 New Landfill: The solid waste management facility which consists of a new lined landfill constructed, owned and operated by East Carolina on the Adjacent Property in Bertie County

pursuant to (i) a permit issued by DEHNR on August 6, 1993 and any permit modifications or renewals issued with respect thereto; (ii) the May 4th Agreement; and (iii) this Restated Agreement, as may hereafter be amended.

2.19 Old Landfill: The outermost boundary of the Bertie County Landfill as of the Effective Date of this Agreement, including without limitation all area within the permits held by the County and any area outside the permit boundary on which waste has been stored or disposed. Old Landfill shall also include any nearby property upon which any contamination from the County's landfill may have migrated.

2.20 Person: Any individual, partnership, firm, organization, corporation, association, government entity (other than a county or municipality) or any other legal entity, public or private, whether singular or plural, masculine or feminine, as the context may require.

2.21 Recyclable Materials: Materials removed from Solid Waste in order to be transformed into new products in such a manner that the original products lose their identity. Any products or materials which are incinerated or otherwise used to generate steam or energy shall not be considered Recyclable Materials.

2.22 Recycling Facility: A facility capable of accepting recyclables removed from household Solid Waste.

2.23 Restated Agreement: This Amended and Restated Agreement for Development, Use and Operation of New Landfill and Recycling Center between the County and East Carolina.

2.24 Service Area: The geographic jurisdiction of the County and each Contracting Municipality.

2.25 Solid Waste: Any solid wastes which may be disposed of in sanitary landfills, including, without limitation, garbage, refuse, trash, sludge and other discarded material, whether from residential, commercial, institutional or industrial sources, which are typically found in household, commercial or municipal refuse, but not including any Special Waste, Excluded Waste, Yard Waste, C&D Waste or Recyclable Materials.

2.26 Special Waste: Any waste which requires special or exceptional handling or requires approval from DEHNR, including without limitation any material other than that which is typically found in household, commercial or municipal refuse; and without limitation materials such as industrial waste, institutional waste, ashes, sludge, animal manure, residue from incineration, food processing wastes, dredging wastes, tires and asbestos. This term excludes nuclear waste, Solid Waste Excluded Waste, C & D Waste, Yard Waste and Recyclable Materials.

2.27 Tipping Fees: The tipping fees established by East Carolina for the processing and disposal of Solid Waste at the Facilities in accordance with Section 8 hereof.

2.28 Ton: 2,000 pounds.

2.29 Waste: Solid Waste, Special Waste, Yard Waste and C & D Waste.

2.30 Yard Waste: Stumps, trees and vegetative matter resulting from landscaping maintenance, such as leaves, grass, limbs and trimmings.

3. REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents, warrants and agrees as follows:

3.1 Existence and Good Standing. The County is (and will continue to be throughout the term hereof) validly existing as a political subdivision and is in good standing under the laws of the State of North Carolina.

3.2 Approval and Authorization. The County has full power and authority to enter into this Restated Agreement and to fully perform all of its duties and obligations hereunder pursuant to various and other enabling sections of the North Carolina General Statutes. The Board has duly authorized and the applicable North Carolina statutes so authorize the following: the execution and delivery of this Restated Agreement, the County's performance of all of its duties and obligations contained herein, the County's collection of all necessary fees and charges, the County's making of all necessary expenditures, and the County's taking of all other necessary actions to meet these obligations, including, but not limited to, to the extent allowed by law and the North Carolina and United States Constitutions, adopting flow control ordinances, adopting solid waste management plans, obtaining a designation of the Service Area from DEHNR under the Solid Waste Management Act, and using its best efforts to enter into solid waste management agreements with Contracting Municipalities in the Service Area.

This Restated Agreement constitutes a valid and legally binding obligation of the County during the term of this Restated Agreement, is binding upon all future Boards, and is enforceable in accordance with its terms.

3.3 No Litigation. Except as set forth on Schedule C, there is no action, suit, or proceeding pending or, to the best of County's knowledge and belief, threatened against or affecting the County, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality (i) wherein any decision, ruling or finding would adversely affect the transactions contemplated herein, or (ii) arising directly or indirectly out of the existence or operation of the Old Landfill.

3.4 Zoning. No zoning law or any other land use law or restriction exists under the laws and ordinances of the County or any other governmental entity having jurisdiction within the County which would restrict or prohibit establishment and operation of the Facilities. The County will deem the Adjacent Property and the Facilities to be an existing, current vested use, which shall not be affected by any future zoning or land use regulations or changes in regulations.

3.5 Non-discretionary Functions. This Agreement pertains solely to non-discretionary governmental functions. The County's obligations under this Agreement bind all future County boards or other governing bodies, during the term of this

Agreement, to make all necessary appropriations and take all necessary actions to meet these obligations.

3.6 Covenant for Delivery of Waste. To the extent allowed by law and consistent with the Constitutions of North Carolina and the United States, the County covenants and agrees pursuant to the North Carolina General Statutes that it will deliver or cause to be delivered all Special Waste and Solid Waste (with the exception of tires) generated, entering into or otherwise collected within the County's Service Area to the New Landfill for disposal by East Carolina. To the extent necessary to fulfill this covenant, the County will adopt all necessary solid waste management plans and flow control ordinances, will execute necessary solid waste management agreements with all municipalities within the County, and will seek a designation by DEHNR of the Service Area as a designated geographic area within the meaning of the Solid Waste Management Act, in order to obligate, to the extent allowed by law and consistent with the Constitutions of North Carolina and the United States, all such Waste to be delivered to the New Landfill for disposal by East Carolina. To the extent allowed by law and consistent with the Constitutions of North Carolina and the United States, the County shall: (i) exclusively use the New Landfill for disposal of its Special Waste and Solid Waste; (ii) not contract with any other Person for services which are the same or similar to those provided by East Carolina; and (iii) not establish or operate a solid waste management facility within the Service Area offering the same or similar services as

those provided by East Carolina; provided, however, that nothing herein shall prevent the County and Contracting Municipalities from implementing waste recycling and waste reduction programs.

3.7 The Old Landfill. East Carolina and the County expressly acknowledge and agree that the County is to retain any and all responsibility and liability arising out of or in any way related to the Old Landfill. With respect to the Old Landfill, the County represents and warrants that:

(i) the County has in place the required monitoring well system around the Old Landfill, and samples from that system to date have shown no known releases, leaks or discharges or threats thereof of contaminants to the environment from, at or under the Old Landfill, including, without limitation, any migration onto or under the Adjacent Property and the Facilities which violate the County's operating permit; and

(ii) except as set forth on Schedule C, the County has at all times been and is now in full compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and time tables contained in or required under all Environmental Laws or other permits, licenses, consent decrees, orders or agreements otherwise applicable to the Old Landfill.

3.8 Statements. No statement, information, representation or warranty of the County contained in this Restated Agreement or furnished by or on behalf of the County in connection with the transactions contemplated in this Restated Agreement

contains any untrue statement of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

4. REPRESENTATIONS AND WARRANTIES OF EAST CAROLINA. East Carolina represents and warrants as follows:

4.1 Existence and Good Standing. East Carolina is duly incorporated under the laws of Kentucky and is (and will continue to be throughout the term hereof) validly existing in good standing under the laws of the State of North Carolina.

4.2 Approval and Authorization. East Carolina has all requisite corporate power and authority to enter into and fully perform this Restated Agreement. East Carolina's execution and delivery of this Restated Agreement and East Carolina's performance of all of its duties and obligations contained herein have been duly authorized by all necessary corporate action on the part of East Carolina and this agreement of East Carolina is enforceable against East Carolina in accordance with its terms.

4.3 No Litigation. Except as set forth on Schedule C, there is no action, suit or proceeding pending or, to the best knowledge and belief of East Carolina, threatened against or affecting East Carolina, Addington, or any of their affiliates, at law or in equity or before or by any federal, state, municipal, or other governmental department wherein any decision would materially, adversely affect the transactions contemplated herein.

4.4. Compliance with Laws. East Carolina covenants and agrees that, in the operation of the Facilities, East Carolina will

comply, in all material respects, with any and all federal, state, and local laws applicable to East Carolina concerning the operation of the Facilities subject to East Carolina's right to contest in good faith the interpretation, application and enforcement of any such laws.

4.5 Statements. No statement, information, representation or warranty of East Carolina contained in this Restated Agreement or furnished by or on behalf of East Carolina in connection with the transactions contemplated in this Restated Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

5. CONTRACTS WITH MUNICIPALITIES. Upon the execution of this Restated Agreement by the parties, the County shall immediately commence discussions with each municipality within the geographic boundaries of the County and shall use its best efforts to obtain signatures from each municipality on the agreement attached on Schedule B, as such agreement may be amended with East Carolina's prior approval.

6. CONSTRUCTION AND OPERATION OF THE FACILITIES.

6.1 The New Landfill. The parties acknowledge that waste disposal operations commenced at the New Landfill on October 8, 1993.

6.2 The Recycling Facility. East Carolina shall as soon as practicable after the execution of this Restated Agreement, permit and construct the Recycling Facility which shall consist of

an enclosed building for the acceptance of Recyclable Materials generated within Bertie County.

6.3 C & D Waste. With regard to C & D Waste the County may only dispose of its C & D Waste (i) in its own C & D landfill which it owns and operates; or (ii) at the New Landfill.

6.4 Design, Construction, Inspection and Monitoring.

(a) Design Standards. The design, construction and monitoring of construction of the New Landfill shall be in material conformance with all applicable local, state and federal regulations and the terms of this Restated Agreement. The County agrees not to adopt any ordinance imposing requirements that conflict with or exceed applicable state and federal regulations. Nothing in this Restated Agreement shall be construed as giving the County the right to approve or veto any design, specification, or construction or operation plans developed or implemented by East Carolina.

(b) Liner System and Cell Construction. East Carolina shall observe the following provisions with respect to the liner system and cell construction at the New Landfill:

(i) Except for any cell which exclusively receives vegetative matter or C & D Waste, all cell construction for the disposal of Waste at the New Landfill shall include a 60 mil HDPE liner and two feet of compacted native soil, operational cover and drainage layer (leachate collection system), or such other liner system as may be approved by DEHNR. Additionally, the construction of the New Landfill shall include ground water

monitoring, gas detection systems and storm and surface water controls to the extent required by any governmental agency exercising jurisdiction over the facility.

(ii) East Carolina shall provide third party quality assurance to the County in the form of construction inspection, monitoring and observation for each liner system installed at the New Landfill. Such liner system construction, monitoring and observation shall be constant and at a minimum provide for photographs or video tape recordings of significant aspects of the liner system installation or cell construction procedures.

(c) Recycling Facility. The Recycling Facility shall be designed and constructed to provide for the acceptance of Recyclable Materials which have been separated from household waste. The Recycling Facility shall also be designed and constructed in such a manner that equipment and machinery can be installed and assembled inside the Recycling Facility which is capable of mechanically sorting Recyclable Materials. East Carolina shall purchase, install and assemble such equipment and machinery at such time as the quantity of Recyclable Materials accepted at the Recycling Facility is sufficient to justify such sorting equipment and machinery. The Recycling Facility shall have the capacity to handle the quantity of Recyclable Materials necessary to meet any and all state and federal recycling and waste reduction mandates for household waste in all material respects.

(d) As-Built Drawings. Within ninety (90) days of final completion of construction of the Facilities, East Carolina shall file with the County a duplicate copy of as-built drawings reflecting completion of construction. Such as-built drawings shall be certified by a professional engineer registered to practice in the State of North Carolina.

(e) Security and Buffering. Any working portion of the New Landfill shall be secured from unauthorized entry. The New Landfill shall have vegetative screening whenever the New Landfill is within three hundred (300) feet of a residence or public right-of-way. This buffering system shall be designed and, if need be, replanted with natural vegetation having a minimum height at maturity of ten (10) feet, which, at maturity, will serve to buffer or shield from sight disposal activities occurring within the New Landfill.

6.5 Operation of the Facilities. When East Carolina commences operations at the Facilities, the parties hereto agree that operations at the Facilities shall be conducted in accordance with the following terms and provisions:

(a) Operation. East Carolina will furnish all labor, tools, equipment and power for the operation of the Facilities. East Carolina shall operate the New Landfill for the disposal of Waste according to generally accepted landfill standards for the operation of a sanitary landfill under the supervision of qualified and trained sanitary landfill personnel. The Recycling Facility shall be operated in such a manner that all

of the County's Recyclable Materials may be accepted through the Recycling Facility. The Recycling Facility will be operated and maintained in material compliance with all State and Federal Laws regarding recycling, and East Carolina guarantees that the Recycling Facility will have the capacity to handle the quantity of Recyclable Materials necessary to enable the County to meet or exceed, in all material respects, all recycling and waste reduction mandates set out in state, federal and local laws and regulations. In the event East Carolina delivers to any other recycling facility for further processing Recyclable Materials which are accepted at the Recycling Facility, such facility shall be operated and maintained in material compliance with all state and federal laws regarding recycling. The County agrees not to adopt any ordinance imposing requirements that conflict with or exceed applicable state and federal requirements for operation of the Facilities.

(b) Hours of Operation. The daily hours of operation of the Facilities shall, at a minimum, be from 8:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 a.m. to 3:00 p.m. on Saturday. The following shall be holidays for purposes of this Agreement and any other holiday allowed by the County:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving
Christmas Day

(c) Compliance With Law. East Carolina agrees that, in the operation of the Facilities, East Carolina will

comply, in all material respects, with any and all federal, state, and local laws applicable to East Carolina concerning the operation of the Facilities for the processing and disposal of Solid Waste, subject to East Carolina's right to contest in good faith the interpretation, application and enforcement of any such laws. The County agrees not to take any action or sponsor any law, ordinance, regulation or restriction mandating any requirements for operation of the Facilities that conflict with or are more stringent than those required by federal or state law.

(d) Maintain Permits. East Carolina shall use its best reasonable business efforts to maintain all necessary permits required for East Carolina to operate the Facilities in accordance with the terms and conditions of this Agreement.

(e) Control Over Operations. Except as expressly provided herein, nothing in this Agreement shall be construed as giving to the County or any other person or entity any right to exercise control over the business or operations of East Carolina (including, without limitation, the operation of the Facilities) or to direct in any respect the manner in which East Carolina's business and operations (including, without limitation, the operation of the Facilities) are conducted. East Carolina shall have full, complete and sole control and direction over all aspects of the operation of the Facilities, including, without limitation:

(i) the establishment from time to time of the fees and all other disposal fees, deductions, discounts, credits, or allowances with respect to Solid Waste (generated outside of

Bertie County, North Carolina) and Special Waste (generated inside or outside of Bertie County, North Carolina) and disposed of at the New Landfill, pursuant to this Agreement;

(ii) the acceptance of Waste delivered to the Facilities from any person or entity whatsoever, whether an affiliate of East Carolina or otherwise; provided, however, that East Carolina shall:

(A) not accept for processing or disposal in any calendar year more than the Average Daily Equivalent of 1,000 tons of Solid Waste and Special Waste per day, subject to an allowable variance of five (5%) percent per year, except more may be accepted by consent of the Board, which shall not be unreasonably withheld; and

(B) not accept any Waste generated outside of the Approved Area at the Facilities, unless, after due diligence, an Average Daily Equivalent of 1,000 tons per day of Waste, reviewed on a quarterly basis, cannot be achieved, upon which event East Carolina may go outside of the Approved Area after obtaining the consent of the Board, which shall not be unreasonably withheld; and

(iii) the hiring of employees in connection with any of the operations at the Facilities.

(f) Nonexclusive. The County will have a non-exclusive right to use the Facilities upon the terms and conditions set forth in this Agreement.

(g) Scale. East Carolina will maintain a scale and related equipment at the Facilities to be used in weighing Waste delivered to the Facilities for processing or disposal.

(h) Site Appearance. East Carolina shall police the Facilities as it deems necessary to prevent fire and the blowing of papers and trash, and shall keep the Facilities reasonably neat and sanitary at all times during the term of this Agreement. To the extent that any debris from the tires of motor vehicles leaving the Facilities reach the first State or County right-of-way from the entrance of the Facilities, and the County obtains all necessary approvals to allow East Carolina to do so, East Carolina will, on an as needed basis, weather permitting, remove such debris from such road for a distance of one-quarter mile on either side of such entrance. East Carolina shall regularly, but not less than monthly, maintain the perimeter buffers of the Facilities by removing any debris or litter accumulating along the roadside adjacent to the Facilities, moving and replacing vegetation along the roadside adjacent to the Facilities to keep vegetative buffers intact, and making regular fence and signage repair at the Facilities.

(i) Inspector. The County shall be entitled to maintain, at its expense, an inspector at the Facilities at any time during normal business hours to verify the operations in use by East Carolina. Such inspector, however, shall not unreasonably interfere with any operations of the Facilities.

(j) Audit. The County shall also be entitled, upon reasonable advance written notice to East Carolina, to audit, at the County's expense, East Carolina's records relating to the types and volume of Waste being processed or disposed of at the Facilities. Such audit, however, shall not unreasonably interfere with any operations of the Facilities. If any audit undertaken by the County reveals material errors in East Carolina's records, East Carolina shall reimburse the County for the cost of the audit.

(k) Recyclable Materials. East Carolina shall be entitled to retain all revenues, if any, derived from the sale of any recyclable materials recovered as a result of the operation of the Recycling Facility.

(l) Operating Rules and Regulations. East Carolina shall have the sole and exclusive right to make, amend and enforce reasonable rules and regulations concerning the operation of the Facilities, provided, however, that East Carolina may not materially alter any substantive provision of this Restated Agreement by such rules and regulations, and shall not unreasonably interfere with the ability of the County to observe, inspect or otherwise monitor operation of the Facilities.

(m) Inspection and Refusal of Waste and Excluded Waste. East Carolina's personnel shall visually inspect all Waste at either the New Landfill or at the Recycling Facility before accepting such waste at the Facilities or allowing any vehicle delivering such waste to leave the Facilities. East Carolina shall also maintain sensors to detect the presence of any radioactive

materials which may be delivered to the Recycling Facility. In the event that East Carolina detects any Excluded Waste, the party delivering such waste shall be responsible for its removal and all cost associated with its removal. East Carolina shall have the right to refuse to accept any Waste delivered by parties who have knowingly or have repeatedly violated or attempted to violate operating rules. However, East Carolina shall not refuse Waste delivered by any Person with whom the County has contracted for collection services until after notifying the County and giving the County reasonable opportunity (not to exceed 7 days) to resolve any problem with any such contractor. East Carolina shall also have the right to refer to the proper authorities any Person who appears to be acting in violation of any law, rule or regulation. East Carolina shall request from the driver of each vehicle entering the Facilities a description of the Waste contained by the vehicle in order to ascertain whether any Excluded Waste is contained by the vehicle. Any Excluded Waste which may escape initial screening and is discovered at the Facilities shall be removed immediately by the driver of the vehicle or by East Carolina with the cost of removal charged to the owner of the vehicle involved. Nothing in this Agreement shall be construed as prohibiting East Carolina from taking appropriate action to bar any Person or vehicle owner who has delivered Excluded Waste to the Facilities from use of the Facilities until that Person or vehicle owner has either removed the Excluded Waste or fully compensated East Carolina for all costs of removal.

(n) Complaints. All complaints received by East Carolina shall be noted in its daily log. All complaints received by the County will be referred directly to East Carolina. East Carolina shall give any such complaint prompt and courteous attention. Additionally, East Carolina shall promptly advise the County of the response made to any complaint which has been referred to it by the County.

(o) Access/Traffic. Access to the Facilities shall be limited to a single public access point. This access point will be equipped with a gate which shall be closed and locked during non-operating hours. During business hours, access to the Facilities and screening of Waste shall be in accordance with rules and regulations adopted by East Carolina.

(p) Application of Cover Material. East Carolina shall apply cover material pursuant to its operating rules and regulations and as required by Environmental Laws applicable to the New Landfill. In any event, cover material shall be applied not less frequently than at the end of each working day.

(q) Signage. Signs shall be posted and properly maintained at the entrance to the Facilities advising of operating hours, emergency contact persons, types of material which are acceptable and other such information as is deemed necessary by East Carolina, or is reasonably required by the County or any governmental regulatory agency exercising jurisdiction over the Facilities. A separate and prominently displayed sign shall describe Excluded Waste. Additional signage shall be posted

throughout the operational areas as deemed necessary by East Carolina for the purposes of directing traffic flow, identifying buildings and specifying the type of nature of Solid Waste to be deposited in that particular area in accordance with East Carolina's operating rules and regulations.

(r) Weighing. All trucks carrying Waste which enter the Facilities shall be weighed at the entrance upon entering the Facilities. Trucks do not need to be weighed upon leaving if the vehicle tare weights are known and recorded by East Carolina. Such trucks shall be weighed on a spot check basis at the request of East Carolina or the County, but in no event shall they be weighed less frequently than annually to verify the truck tare weight. All trucks whose tare weights are not known by East Carolina shall be weighed upon leaving the Facilities.

(s) Storage of Fuel. All fuels stored at the Facilities shall be maintained in corrosion resistant above ground storage tanks and any leak immediately repaired and all contaminated soil shall be immediately excavated for disposal or otherwise properly treated within DEHNR guidelines. Tanks shall be inspected monthly or as needed so as to detect potential leaks.

(t) Reporting. East Carolina shall prepare and transmit a quarterly report or summary of the dates, types, weights and sources of Waste processed and disposed of under this Restated Agreement, separately setting out the amount and types of Waste accepted from the County by East Carolina, and from other sources, and specifying the total amounts of the County's Waste which is

actually landfilled. Each quarterly report or summary shall identify the active portions of the New Landfill and note with reasonable specificity any significant changes in operating procedures. This quarterly report shall be provided within thirty (30) days after the end of each quarter.

(u) Records. East Carolina shall create and maintain weight tickets, records, and other documentation of the dates, types, weights and sources of Waste processed and disposed of under this Agreement. This documentation shall include information as to whether any Waste received was generated within or outside of the County and information necessary to assist the County in the County's efforts to determine whether the County is achieving its requisite recycling and waste reduction goals. East Carolina shall devise and use a record keeping procedure that is compatible with this Restated Agreement and which will allow for a reasonable audit by the County, at the County's expense, and maintain such records in accordance with generally accepted accounting principles for a minimum of three years. If any audit undertaken by the County reveals material errors in East Carolina's records, East Carolina shall reimburse the County for the cost of the audit.

(v) Recycling Program. East Carolina shall, as soon as practicable after execution of this Agreement, hire on a full-time basis a Recycling Coordinator who will be based in Bertie County. The Recycling Coordinator shall, among other things, attempt to coordinate recycling efforts and programs throughout the

County and with any Contracting Municipalities. East Carolina shall, through the efforts of the Recycling Coordinator and other personnel and resources which it has available, provide technical assistance to the County and any Contracting Municipalities. East Carolina's role in providing assistance to the County and Contracting Municipalities regarding the establishment and development of recycling programs, shall include, but not be limited to, development of an education program to be communicated to the citizens of Bertie County through various media, such as radio, newspaper and billboard advertising.

6.6 Inspection, Audit and Monitoring of the Facilities.

(a) Inspection. The New Landfill shall be open to inspection, audit and monitoring in accordance with any Environmental Laws applicable to the New Landfill. East Carolina may (but is not obligated to) split any samples taken during any such inspection, with each party bearing its own sampling and analysis costs. If any such inspection is undertaken by the County, the County shall avoid disruption of East Carolina's activities.

(b) Environmental Monitoring. East Carolina shall monitor and inspect the impact of the Facilities as required by any applicable Environmental Law. A log of all inspections undertaken by East Carolina, together with any results, shall be maintained in East Carolina's administrative offices located in the County. East Carolina shall construct and provide monitoring devices around the perimeter of the New Landfill. Access to monitoring devices shall

be by and through East Carolina or East Carolina's agents. The location and frequency of monitoring devices shall at a minimum be that required by applicable rules and regulations of State and Federal agencies. All drilling logs shall be retained by East Carolina and made available to the County at the County's request. Water samples shall be taken as required by applicable rules and regulations of state and federal regulatory agencies and analyzed for parameters required by those agencies. This information and the results of any water samples shall be provided to the County upon the County's request.

(c) Daily Log. East Carolina shall keep on-site a daily log for its operations in accordance with its operating rules and regulations.

(d) Methane Gas. East Carolina shall establish a methane gas monitoring system at the New Landfill. Methane gas measurements will be made no less often than quarterly around the perimeter of the New Landfill or as frequently as provided by state or federal law. East Carolina will address indications of the presence of explosive gas at the New Landfill in the manner required by Environmental Laws applicable to the New Landfill.

6.7 Closure of the New Landfill.

(a) Closure and Post-Closure Care. Closure of the New Landfill shall conform to all applicable federal and state governmental rules and regulations now or hereafter enacted relative to closure. The County agrees not to enact any ordinance that conflicts with or exceeds the applicable state and federal

requirements. Additionally, East Carolina shall undertake post-closure care of the New Landfill for a period of at least twenty years, or for such longer period of time as may then be required by any regulatory agency exercising jurisdiction over the New Landfill, in a manner required by applicable Environmental Laws.

(b) Closure Schedule. At least five (5) years prior to the projected date when Waste will no longer be accepted for disposal at the New Landfill, East Carolina shall provide written notice to the County. This notice shall include a schedule for cessation of Waste acceptance and closure of the New Landfill. If circumstances do not allow for a five (5) year prior notification, notice shall be provided as soon as the need to close the New Landfill becomes apparent.

(c) Closure Plan. East Carolina shall prepare and submit a closure plan for the New Landfill to the appropriate governmental agencies in the manner required by applicable Environmental Laws. East Carolina shall provide a duplicate copy of its closure plan to the County. The closure plan shall, at a minimum, address and provide for all information required by then applicable Environmental Laws to be included in such plans.

(d) Closure Survey. East Carolina shall supply to the County a final survey and an as-built report reflecting the as-built conditions of the New Landfill upon closure. The final survey shall be performed by an engineer or registered surveyor

authorized to practice in the State of North Carolina and certify the final contours and elevations of the New Landfill.

7. FREE DISPOSAL. The parties acknowledge that the May 4, 1992 Agreement set forth a schedule for Tipping Fees to be paid by Bertie County for use of the New Landfill. The parties also acknowledge that the project contemplated by Addington and Bertie County nearly four years ago has proven to be successful and has been broadly supported by the Bertie County Commissioners and the majority of the citizens of Bertie County. In consideration thereof, East Carolina desires to provide Bertie County with an indefinite moratorium on the Tipping Fees provided in Section 8 below, thereby providing the citizens of Bertie County with free disposal of all residential Waste generated within the County. East Carolina may, in its sole discretion, upon thirty (30) days written notice to the County, terminate the moratorium and commence assessing the Tipping Fees set forth in Section 8 if any one of the following occurs:

(a) A proceeding or action is filed against East Carolina, DEHNR or the New Landfill which results in a restriction or limitation of East Carolina's ability to permit, construct and operate the New Landfill as provided in this Restated Agreement;

(b) The County unreasonably refuses to provide its consent as set forth in Sections 6.4(e)(ii)(A) and 6.4(e)(ii)(B) of this Restated Agreement;

(c) The County breaches this Restated Agreement.

8. TIPPING FEES. The Tipping Fees and other provisions set forth in this Section 8 shall not be applicable unless East Carolina has provided the County with written notice of the termination of the moratorium provided in Section 7.

8.1 Tipping Fees for Processing or Disposal of Solid Waste Generated within the Host County. The County shall pay East Carolina Tipping Fees for the processing or disposal of Solid Waste generated within the County based upon a price per Ton which is forty (40%) percent less than the lowest Tipping Fee paid for such waste by any user of the New Landfill.

8.2 Tipping Fees for Special Waste. Tipping Fees for the disposal of the County's Special Waste may be established at the reasonable discretion of East Carolina after taking into consideration the handling and management of a particular Special Waste and any risks associated therewith. It is generally understood by the parties that Tipping Fees for Special Wastes will in some instances be higher and in some instances lower than Tipping Fees for other Solid Waste.

8.3 Tipping Fees for Waste Received from Sources Outside of the Service Area. Tipping Fees for disposal of Waste received from sources outside the County's Service Area may be established at the discretion of East Carolina.

8.4 Renegotiation of Tipping Fee.

(a) The parties recognize that they are both entering into long-term commitments by entering into this Restated Agreement. Although the County desires to obtain East Carolina's

commitment to dispose of the County's Waste for a minimum of twenty (20) years, the County also desires to benefit, by virtue of its long-term commitment to East Carolina, from any significant technological advances which lower the cost of disposal. Similarly, East Carolina desires that the County share in financial benefits which are made possible by new developments in the industry. Therefore, the parties agree as follows:

(b) In the event, after five (5) years has expired from the Effective Date, the County believes that a Technological Development, as hereinafter defined, has substantially and materially decreased East Carolina's costs to perform its duties under this Restated Agreement, the County shall provide written notice to East Carolina of such event, including as much detail as possible as to the nature of the Technological Development and the basis for the County's assertion that such event has resulted in a substantial and material cost decrease for East Carolina. Within sixty (60) days of receipt of such notice, East Carolina shall respond to the County in writing, stating whether it agrees or disagrees with the County's contention. If East Carolina agrees that an applicable Technological Development has occurred, the parties shall promptly meet and negotiate in good faith to adjust the Tipping Fees so that the County, as well as East Carolina, benefits financially from the Technological Development. If East Carolina disagrees with the County's assertion, it shall advise the County, providing as much detail as possible, as to its basis for concluding that no Technological Development has substantially and

materially decreased East Carolina's costs to perform its duties. If, after the parties' exchange of written information with regard to the Technological Development, a disagreement exists between the parties on the issue, each party shall appoint an individual, and those two individuals shall appoint a third person, and the three persons shall together constitute a committee (the "Committee") whose purpose it will be to review the facts assembled by each party and such other facts which the Committee in its discretion deems relevant and applicable. If the Committee concludes that a significant Technological Development has in fact occurred, but is unable to determine whether it has substantially and materially decreased East Carolina's cost of performance under this Restated Agreement, then, upon a request from the Committee and execution of an appropriate confidentiality agreement, East Carolina shall provide the Committee with selected information with regard to that portion of its costs which are relevant to the particular Technological Development at issue. Upon review of all relevant facts and information, the Committee shall prepare and submit to the parties a written report containing a recommendation regarding whether, and to what extent, the Tipping Fees provided in Section 8 should be adjusted. Following receipt of this report the parties shall promptly meet and attempt to agree on this issue. If a disagreement continues to exist, either party may proceed pursuant to the Arbitration provisions set forth in Section 23. The parties shall divide equally the costs of the Committee.

(c) "Technological Development" as used in this paragraph shall mean any invention, new product, new process or new equipment not being utilized by the solid waste industry as of the date of this Restated Agreement or any significant change in the method of operation made possible as a result of the adoption or change (including a change in interpretation or enforcement) of any federal, state, county or local law, rule, permit, regulation or ordinance after the date of this Restated Agreement.

9. HOST FEES. No Host Fee shall be payable with respect to any Waste generated inside the County and processed or disposed of at the Facilities. Any Host Fee not paid when due shall bear interest from the due date until paid at the maximum rate allowed by applicable law. The following Host Fees shall be applicable for Waste processed or disposed of at the Facilities.

9.1 Host Fees Relating to Schedule D Counties. For each Ton of Solid Waste and Special Waste which is accepted by East Carolina at the New Landfill and generated outside the County but within the counties identified on Schedule D, East Carolina shall pay the County the sum of $2.00.

9.2 Host Fees Relating to non-Schedule D Counties. For each Ton of Solid Waste and Special Waste which is accepted by East Carolina at the New Landfill and generated outside the County and outside the counties identified on Schedule D, East Carolina shall pay the County the greater of $2.00 or fifty percent (50%) of the amount by which the tipping fee for Solid Waste accepted by East

Carolina at the New Landfill and generated outside the counties on Schedule D exceeds the posted gate rate at the New Landfill.

10. PAYMENT; QUARTERLY AND ANNUAL RECONCILIATION.

10.1 Payment: No later than the tenth (10th) day of each month, East Carolina shall (i) pay the County all Host Fees received by East Carolina in the previous month; (ii) provide the County with a report showing the Tons of Waste accepted by East Carolina in the previous month from the County and, separately, from outside the County, including amounts paid for Waste accepted from Counties not listed on Schedule D; and (iii) send an invoice to County for any Waste accepted by East Carolina from the County during the previous month, which the County shall pay no later than the twenty-fifth (25th) day of the month in which the invoice was received.

10.2 Fee Adjustment. The Tipping Fees and Host Fees specified in Sections 8 and 9 above shall be adjusted to increase or decrease in accordance with the CPI as specified on Schedule E attached hereto and made part hereof. Under no circumstances shall the Host Fees be less than $2.00 per Ton.

11. TERM/TERMINATION.

11.1 Term. Subject to the terms and conditions of this Restated Agreement, the term of this Restated Agreement shall commence on the Effective Date and shall continue for the reasonable duration of at least twenty (20) years thereafter; provided, however, after twenty (20) years the County may continue to use the New Landfill on a year-to-year basis under the same

terms and conditions until such time as the New Landfill is, in East Carolina's discretion, completely filled or otherwise rendered unusable or unfeasible for use as a sanitary landfill. The term of this Restated Agreement shall in no case exceed thirty (30) years.

11.2 Termination. It is mutually understood and agreed that the obligation of East Carolina to dispose of all Waste generated within the County's Service Area for a period of not less than twenty (20) years is fixed and non-terminable, provided, however, that East Carolina may (but is not obligated to) terminate this Restated Agreement upon (i) a breach by the County of this Restated Agreement by the failure to make payments required under Section 10; (ii) an event of Force Majeure which continues unabated for a period of thirty days and which, in East Carolina's sole discretion, renders the construction, operation or maintenance of the Facilities infeasible for any reason; or (iii) any breach or default of this Restated Agreement by the County, pursuant to Section 15.1 hereof. East Carolina agrees that it will provide 120 days notice of termination to the County if termination is based on a breach of this Restated Agreement by the County or on an event of Force Majeure. If such breach is cured or event terminates within the 120 day period, or if the County provides financial or other assurances satisfactory to East Carolina within the 120 day period that, in East Carolina's sole discretion, renders the operation of the Facilities feasible, the notice of termination will be of no effect and this Restated Agreement will remain in full force and effect. Notwithstanding the above or any other provision of this

Restated Agreement, if the County breaches this Restated Agreement by failure to make payments required under Section 10, East Carolina may (but is not obligated to) terminate this Restated Agreement on 120 days notice without regard to any cure by the County.

11.3 Materiality of Obligation. The obligation of East Carolina to process or dispose of the County's Solid Waste is an integral and material part of this contract. East Carolina's obligation to provide Solid Waste processing or disposal in accordance with this Restated Agreement shall be a continuing obligation, and an uncured breach thereof shall subject East Carolina to remedies for default as provided in Section 15.4 hereof. Without limitation, the obligations of the County to (i) deliver all Waste generated or otherwise collected within the Service Area to the New Landfill for disposal; and (ii) pay any fee when due under this Restated Agreement are integral and material parts of this Restated Agreement. The County's obligations, without limitations, shall be continuing, and an uncured breach thereof shall subject the County to remedies for default as provided in Section 15.4 hereof. The specific enumeration of the above obligations as material under this Restated Agreement does not exclude other obligations from also being considered as material.

12. NONDISCRIMINATION. East Carolina shall not discriminate in its operation of the Facilities against any person because of race, sex, age, creed, color, religion or national origin.

13. INDEMNIFICATION.

13.1 Indemnification by East Carolina. East Carolina agrees to indemnify and save harmless the County, its officers and employees from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fees) ("Indemnified Costs"), caused by or resulting from any negligent or willful act or omission of East Carolina, its agents or employees in connection with East Carolina's operation of the Facilities, or resulting from the breach by East Carolina of any of the agreements, representations, or warranties of East Carolina contained in this Restated Agreement; provided, however, that East Carolina shall not indemnify the County or any of its officers or employees from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of the County or any of its officers, employees, agents or contractors, any breach by the County of any agreement, representation or warranty of the County contained in this Restated Agreement, or any act or omission of any user of or third party at the Facilities. The indemnity obligation of East Carolina under this Section 13.1 shall survive the expiration or termination of this Restated Agreement subject to any applicable statute of limitation.

13.2 Indemnification by the County. The County agrees to (i) indemnify, defend and save harmless East Carolina, its officers and employees, from any Indemnified Costs caused by or resulting

from any negligent or willful act or omission of the County, its officers, employees, agents or contractors, or resulting from the breach by the County of any of the agreements, representations, or warranties of the County contained in this Restated Agreement; provided, however, that the County shall not indemnify East Carolina from Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of East Carolina, its officers, employees, agents or contractors including, without limitation, any such act or omission in connection with East Carolina's operation of the Facilities, or any breach by East Carolina of any agreement, representation or warranty of East Carolina contained in this Restated Agreement; and (ii) to indemnify, defend and hold harmless East Carolina, its agents, directors, officers, employees, successors and assigns against any Indemnified Costs resulting from, arising out of or in any way connected with the Old Landfill. The indemnity obligations of the County under this Section 13.2 shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation. The indemnity obligations of the County under this Section 13.2 shall survive the expiration or termination of this Restated Agreement subject to any applicable statute of limitation.

14. INSURANCE. On each anniversary of the Effective Date, East Carolina agrees to furnish certificates attesting to the existence of Workmen's Compensation insurance providing statutory benefits through an assigned risk pool and automobile liability insurance with combined single limits of $1,000,000.00 each

occurrence, and general liability insurance with combined single limits of $2,000,000.00 each occurrence with $2,000,000.00 aggregate. Each such certificate shall contain a statement of the insurer's obligation to notify the party to whom the certificate is addressed at least thirty (30) days prior to cancellation or material change of any policy covered thereunder. The certificate shall also designate the County as an additional insured with respect to any covered negligent or willful acts or omissions of East Carolina in the operation of the Facilities. To the extent permitted by law, all or any part of any required insurance coverages may be provided under a plan or plans of self-insurance or by related or affiliated corporations of East Carolina.

15. DEFAULT; REMEDIES.

15.1 Breaches. A breach of this Restated Agreement shall mean a material failure to comply with any of the material provisions of this Restated Agreement.

15.2 Events of Default.

(a) An event of default shall include, but not be limited to, the following:

(i) East Carolina (a) voluntarily commencing any proceeding or filing any petition seeking relief under the United States Bankruptcy Code or any federal, state or foreign bankruptcy, insolvency or similar law, (b) consenting to the institution of, or failing to controvert in a timely and appropriate manner, any such proceeding or filing of any such petition, (c) applying for or consenting to the appointment of a

receiver, trustee, custodian, sequestrator or similar official for a substantial part of its property, (d) filing an answer admitting the material allegations of a petition filed against it in any such proceeding, or (e) making a general assignment for the benefit of creditors;

(ii) the commencement of an involuntary proceeding or the filing of an involuntary petition in a court of competent jurisdiction seeking (a) relief in respect of East Carolina, or of a substantial part of East Carolina's property, under the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law, which petition shall remain undismissed for 120 days; (b) the appointment of a receiver, trustee, custodian, sequestrator or similar official for East Carolina or for a substantial part of East Carolina's property and such petition shall continue undismissed for 120 days; or (c) an order or decree approving or ordering any of the foregoing shall continue and stay in effect for 60 days; or

(iii) a breach of this Restated Agreement by East Carolina or the County, which breach is not cured pursuant to Section 15.3 hereof.

15.3 Obligation to Cure Breaches. Each party shall in the case of any breach of its obligations under this Restated Agreement either (i) cure the breach within 90 days of receipt of written notice from the non-breaching party, or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be

expected to lead to a curing of the breach (the 90-day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that:

(A) in the event of the failure of any party to this Restated Agreement to pay the other party or parties any sum or dollar amount required to be paid when due hereunder, cure shall consist of payment which shall be made within 15 days of written demand from the non-breaching party, together with interest accruing at the legal rate from the date the payment was due;

(B) in the event that East Carolina materially fails to limit the processing or disposal of Solid Waste to that which is allowed to be processed or disposed under this Restated Agreement, unreasonably rejects the County's Solid Waste from processing or disposal at the Facilities, or materially fails to operate the Recycling Facility, then cure shall consist of immediate action by East Carolina to remedy these practices within thirty (30) days or such additional time as may be reasonably necessary to cure, provided that East Carolina is actively and continuously pursuing a course of action which will reasonably lead to a curing of the breach.

15.4 Remedies for Default.

(a) In the event of a default under this Restated Agreement, the non-defaulting party shall, upon 5 days prior written notice to the defaulting party, have the right, but not the obligation or duty, to cure such default, including the right to offset the costs of curing the default against any sums due or

which become due to the defaulting party under this Restated Agreement. In any event, such costs shall be considered Indemnified Costs. The non-defaulting party shall use its best efforts to employ an economically reasonable method of curing any such default.

(b) If an event of default occurs and is not cured in the manner allowed hereunder, then the non-defaulting party shall have the right to (i) take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Restated Agreement or to enforce performance of any covenant or obligation of the breaching party under this Restated Agreement; and (ii) terminate this Restated Agreement.

(c) Notwithstanding any other provision in this Section and in recognition of the gravity and scope of the subject matter of this Restated Agreement, the parties agree that, notwithstanding the provisions for breach, cure and default hereunder, no party to this Restated Agreement may elect to terminate this Restated Agreement upon a default by the other party until the party seeking termination has first sent 120 days prior written notice of termination to the defaulting party, provided, however, that only 60 days notice of termination is required if a default is based on a failure to pay fees when due under this Restated Agreement. Such notice of termination shall be subsequent to earlier notice of breach and failure to cure (or take steps to cure) the subject breach. If the event of default is cured within

90 days of such notice of termination, the notice of termination shall then be of no effect and this Restated Agreement shall remain in full force and effect.

(d) Subject to the terms and conditions of Section 15.4 hereof, all rights and remedies under this Section are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of any other available remedies, including any remedies not specified herein.

16. OPTION GRANTED TO THE COUNTY.

16.1 Option. For the additional consideration of $10.00 and other good and valuable consideration received from the County, and subject to the terms and conditions hereof, East Carolina agrees to grant, bargain and sell an option to purchase the Facilities to the County. In the event that the County terminates this Restated Agreement after notice of termination as a result of a material breach and resulting default arising from East Carolina's failure to perform its material duties or obligations hereunder and cure or proceed to cure such default in the manner allowed hereunder, then the County shall have the option, but not the obligation, to purchase and acquire title to all of the Facilities together with all of the personal property used by East Carolina in conjunction with the day to day operation of the Facilities at the time of termination. In the event the County terminates this Restated Agreement after notice of termination as a result of such material breach or default by East Carolina and elects to exercise this option, then such election shall constitute

the County's sole remedy and East Carolina shall have no further obligation or liability to the County, except for the indemnity obligations specified in Section 13.1 hereof. The County must notify East Carolina of the County's election to exercise this option within 90 days after the termination of this Restated Agreement after notice of termination. This option shall include any alienable contract, permit, right, title or interest held by East Carolina which is legally assignable to the County and which is reasonably necessary for the operation of the Facilities. The purchase price for the Facilities shall be the Book Value of the Facilities and such personal property. Conveyance shall be by statutory warranty deed (subject to all restrictions, covenants, easements and encumbrances, if any, contained in the deed of conveyance to East Carolina) and personal property by bill of sale and there shall be no restriction limiting the use of the land or facilities acquired. Closing shall occur within 120 days after the County notifies East Carolina of its election to exercise this option, or as close thereto as reasonably practicable. In the event the County elects to exercise this option then the County shall be solely responsible for all future operations and activities and any liabilities arising therefrom with respect to the Facilities including, without limitation, all monitoring, closure and post-closure monitoring and maintenance with respect to the Solid Waste disposal cells filled or being filled at the time of termination of this Restated Agreement and all Solid Waste

disposal cells to be filled at the New Landfill after the date of such termination.

16.2 Termination of Option. In the event East Carolina terminates this Restated Agreement as provided herein, the option granted pursuant to Section 16 shall terminate and the County shall have no contractual right or option hereunder to acquire any part or portion of the Facilities or any personal property thereon owned by East Carolina.

17. NOTICES. All notices or other communications to be given hereunder shall be in writing and may be by registered or certified United States mail, return receipt requested, properly addressed as follows:

To the County:

Attention: Mr. John E. Whitehurst
County Manager
Bertie County
P.O. Box 530
Windsor, NC 27983

To East Carolina:

Attention: Mr. Jack T. Baker
Executive Vice President
and General Counsel
East Carolina Environmental, Inc.
771 Corporate Drive, Suite 1000
Lexington, Kentucky 40503

Change of address by either party shall be by notice given to the other in the same manner as above specified. Any notice or other communication under this Restated Agreement shall be deemed given upon actual delivery as shown by the return receipt.

18. ASSIGNMENT. Neither party shall assign, transfer or delegate, or permit the assignment, transfer or delegation of, this Restated Agreement or any right or duty hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld.

19. FORCE MAJEURE. In the event East Carolina or the County is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Restated Agreement, then, in addition to the other remedies provided in this Restated Agreement, the obligations of East Carolina or the County may be suspended during the continuation of any inability so caused by the event of Force Majeure, but for no longer period. Any time that East Carolina or the County intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section, East Carolina or the County shall notify the other party to this Restated Agreement as soon as reasonably practicable, describing in reasonable detail the circumstances of the event of Force Majeure. The party relying upon an event of Force Majeure shall have the duty and obligation to use its best reasonable efforts to cure or eliminate such event of Force Majeure and shall, during the period of such Force Majeure, periodically advise the other party of the status of the event of Force Majeure and the projected duration of such event. Notice shall again be given when the effect of the event of Force Majeure has ceased. If an event of Force Majeure materially and adversely increases East Carolina's cost of construction, operation, or maintenance of the Facilities, East

Carolina may, in addition to its other remedies, request the consent of the Board to increase the Tipping Fees specified in Section 8 hereof to the extent necessary to offset the increase in such costs of construction, operation or maintenance, which consent shall not be unreasonably withheld.

20. INDEPENDENT CONTRACTOR; NO AGENCY. East Carolina will act hereunder as an independent contractor and not as an agent of the County. Similarly, the County is neither an agent of East Carolina nor empowered or authorized to obligate East Carolina in any way.

21. SEVERABILITY. In the event any one or more of the provisions contained in this Restated Agreement shall, for any reason, be held to be invalid, illegal, unconstitutional, or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Restated Agreement and this Restated Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein; provided, however, that it is the intention of the parties hereto that in lieu of each term, clause, or provision that is held to be invalid, illegal or unenforceable, there shall be added by mutual agreement as a part of this Restated Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable term, clause or provision as may be possible and valid, legal or enforceable. Notwithstanding the above, if the term of this Restated Agreement is held to be invalid, illegal, or unenforceable

in any respect, then the term of this Restated Agreement shall automatically be the maximum valid and legal term allowed by applicable common or statutory law.

22. GOVERNING LAW. This Restated Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

23. ARBITRATION. All claims or disputes arising between the parties to this Restated Agreement which relate to this Restated Agreement or breach thereof shall be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining. Notice of the demand for arbitration shall be given in writing to the other party and to the American Arbitration Association in Charlotte, North Carolina, and shall be made within a reasonable time after the dispute has arisen. All proceedings or evidentiary hearings held as part of the arbitration process shall take place in the County at a mutually acceptable location. This provision to arbitrate shall be specifically enforceable by the party seeking arbitration. The award rendered by the arbitrator(s) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction.

24. BINDING EFFECT. This Restated Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

25. CONSTRUCTION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms, corporations, or other entities. The

terms "herein", "hereunder", "hereto", "hereof" and any similar terms, shall refer to this Restated Agreement; the term "heretofore" shall mean before the date of adoption of this Restated Agreement; and the term "hereafter" shall mean after the date of this Restated Agreement. This Restated Agreement is the result of joint negotiations and authorship and no part of this Restated Agreement shall be construed as the product of any one of the parties hereto.

26. FINANCIAL ASSURANCE. East Carolina shall furnish to the County financial assurance in favor of the County insuring against loss resulting from any failure of performance in the operation of the Facilities by East Carolina in accordance with the terms and provisions of this Restated Agreement. The said financial assurance may take the form of a guarantee of performance provided by East Carolina's parent corporation, bond, letter of credit, or other similar security to be in the amount of One Million Dollars ($1,000,000.00).

27. ENTIRE AGREEMENT. With the exception of the Guaranty Agreement dated August 6, 1993, this Restated Agreement constitutes the entire understanding between the County and East Carolina, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Restated Agreement will be effective unless in writing and signed by the parties hereto.

28. COUNTERPARTS. This Restated Agreement may be executed in two counterparts, each of which will be considered an original.

IN WITNESS WHEREOF, the County and East Carolina have caused their respective duly authorized officers to execute this Restated Agreement as of the day and year first above written.

ATTEST:

By: _____

[Seal]

BERTIE COUNTY, NORTH CAROLINA

By: _____

APPROVED AS TO FORM:

By: _____
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
County Finance Officer

ATTEST:

By: _____

Vice President

[Corporate Seal]

EAST CAROLINA ENVIRONMENTAL, INC.

By: _____
Jack T. Baker
Executive Vice President
and General Counsel

JTB:jpc\Bertie-1
03-31-94

SCHEDULE A

PREPARED BY LARS P. SIMONSEN, POST OFFICE DRAWER 100, WINDSOR, N.C. 27983

MAIL AFTER RECORDING TO: Lars P. Simonsen, Post Office Drawer 100, Windsor, North Carolina 27983

STATE OF NORTH CAROLINA

COUNTY OF BERTIE

THIS DEED, made this the 5th day of August, 1993, by and between Spruill Farms, Inc., a corporation organized under the laws of the State of North Carolina, with one of its offices at Windsor, North Carolina 27983, party of the first part, and Addington Environmental, Inc., a Kentucky corporation, with its principal place of business at 771 Corporate Drive, Suite 900, Lexington, Kentucky 40503, party of the second part:

WITNESSETH: That for and in consideration of the sum of Ten Dollars and other considerations in hand paid by the party of the second part to the party of the first part, receipt of which is hereby acknowledged, the said party of the first part has bargained, sold and conveyed and by these presents does bargain, sell and convey unto the said party of the second part and its successors and assigns, the following described land, to-wit:

That certain tract or parcel of land located in Snakebite Township, Bertie County, North Carolina, and containing plus or minus 491.27 acres, and being bounded on the West by N.C.S.R. 1225, on the Southwest by the lands now or formerly owned by Mildred P. Bazemore, on the South by S.R. 1221 and the lands now or formerly owned by C. Winslow Powell, on the East by the lands now or formerly owned by Weyerhaeuser Company, the lands now or formerly owned by the Essie Cherry Heirs, and the lands now or formerly owned by T. A. and E. E. Cherry, and bounded on the Northeast by the lands now or formerly owned by Willie W. Tripp, and being more particularly described on a map prepared by Albemarle Land Services, Inc. dated May 14, 1993 and entitled "A Map of a Boundary Survey of a Tract of Spruill Farms, Inc.. Property of Addington Environmental, Inc., 771 Corporate Drive, Suite 900, Lexington, Kentucky 40503, Bertie County Landfill." Said map is recorded in Plat Cabinet A, ~~Slide~~ Page 1094 and ~~Slide~~ Page 1095 of the Bertie County Public Registry, and reference is made to said map for further description.

See Re. 110. Page 256.

Stamp attached and cancelled

TO HAVE AND TO HOLD the aforesaid lands with all rights and privileges thereunto belonging or in anywise appertaining unto the said party of the second part and its successors and assigns, in fee simple forever, provided however that party of the first part retains all crop and poundage allotments and other acreage agricultural allotments as determined by the United States government through the ASCS Office from any portion of the above described property.

And the said party of the first part for itself, its successors and assigns covenants to and with the said party of the second part and its successors and assigns, that it is seized of said lands in fee simple and has a good right to convey the same in fee simple; that the said lands are free and clear of all encumbrances, SAVE AND EXCEPTING rights of ways for highways and public utilities and ad valorem taxes for the year 1993 and subsequent years, and that it will forever warrant and defend the title to the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed in its name by its President, attested by its Secretary and its corporate seal hereto affixed, all by due authority of its Board of Directors heretofore duly given, this the day and year first above written.

ATTEST:

Corporate Secretary

CORPORATE SEAL

SPRUILL FARMS, INC.

BY: President

STATE OF NORTH CAROLINA REAL ESTATE EXCISE TAX $500.00

STATE OF NORTH CAROLINA REAL ESTATE EXCISE TAX $500.00

STATE OF NORTH CAROLINA REAL ESTATE EXCISE TAX $100.00

STATE OF NORTH CAROLINA REAL ESTATE EXCISE TAX $500.00

STATE OF NORTH CAROLINA REAL ESTATE EXCISE TAX $100.00

BOOK 104 PAGE 201

STATE OF NORTH CAROLINA

COUNTY OF Bertie

I, Julia A. Hughes, a Notary Public, for the County and State aforesaid, certify that C. T. Spruill personally appeared before me this day and acknowledged that (s)he is the Secretary of Spruill Farms, Inc., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by [illegible] as its Secretary.

Witness my hand and notarial seal or stamp, this 5th day of August, 1993.

Julia A. Hughes
Notary Public

My commission expires:
8-19-96

(NOTARIAL SEAL/STAMP)

/u/usr/lps/deeds/SpruEast.D/jah/92-MS-296

NORTH CAROLINA, BERTIE COUNTY

The foregoing certificate (s) of Julia A. Hughes N.P. is (are) certified to be correct.

This instrument was presented for registration and recorded in the office in Book 70 Page 255

This 6 day of August, 1993 at 11:46 o'clock A. M

By Vivian L. White
Register of Deeds

By: Barbara H. Mizell
Assistant / Deputy

SCHEDULE B

SCHEDULE B

MUNICIPAL WASTE MANAGEMENT AGREEMENT

This Agreement (the "Municipal Agreement") made and entered into this _____ day of _____ 1994, by and between _____, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina ("Municipality"), and Bertie County, a political sub-division organized and existing pursuant to the laws of the State of North Carolina ("Bertie County").

RECITALS

It is hereby ascertained, determined and declared by the parties that:

A. Bertie County has entered into a Waste Supply and Disposal Agreement dated May 4, 1992, amended April 12, 1994 and effective October 8, 1993 (the "East Carolina Agreement") with East Carolina Environmental, Inc. ("East Carolina") which requires, among other things, that East Carolina dispose of Bertie County's Waste, and any Waste generated by municipalities with whom Bertie County has contracted, for a minimum of 20 years in a new regional landfill in Bertie County, North Carolina (the "Bertie Landfill").

B. The East Carolina Agreement requires that Bertie County use its best efforts to enter into waste management agreements with municipalities within their geographic boundaries.

C. Municipality desires to contractually commit its Waste to Bertie County, thereby assuring access to and the availability of 20 years disposal space for Municipality's Waste in the Bertie Landfill pursuant to the terms of the East Carolina Agreement.

D. Bertie County desires to contract with Municipality for the purpose of including Municipality's Waste in the aggregate amount delivered by Bertie County to the Bertie Landfill for disposal under the terms of the East Carolina Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants expressed herein, the parties agree as follows:

1. DEFINITIONS. The capitalized terms in this Municipal Agreement shall have the same definition as specified in the East Carolina Agreement.

2. PURPOSES. The purposes of this Municipal Agreement are those set forth in the Recitals above and made a part hereof.

3. DUTIES AND RESPONSIBILITIES.

3.1 Waste Commitment. Municipality agrees to commit all Waste generated or collected within its geographic boundary to Bertie County, for delivery to the Bertie Landfill in accordance with the terms and conditions of the East Carolina Agreement.

3.2 Waste Disposal. Bertie County agrees to include Municipality's Waste with Bertie County's Waste which, in accordance with the terms and conditions of the East Carolina Agreement, Bertie County has agreed to supply and East Carolina has agreed to dispose of for a minimum of 20 years.

3.3 Cooperation with Bertie County. Municipality hereby agrees to cooperate with Bertie County and to take all steps necessary to fulfill the parties' obligations hereunder concerning delivery and disposal of Municipality's Waste, including, but not limited to, adopting and implementing a solid waste management plan

and flow control ordinance and requesting that DEHNR include Municipality with Bertie County as a designated geographic area.

4. MANNER OF APPOINTING NECESSARY PERSONNEL. Municipality and Bertie County shall each appoint the necessary personnel for performing their respective obligations under this Municipal Agreement.

5. METHOD OF FINANCING. The undertaking which is the subject of this Municipal Agreement shall be financed from taxes, Tipping Fees and any other available sources. There are no costs or revenues to apportion.

6. OWNERSHIP OF REAL PROPERTY. All real property involved in the undertaking which is the subject of this Municipal Agreement shall be owned, leased or under contract by East Carolina. There will be no joint ownership of real property pursuant to this Municipal Agreement.

7. DURATION AND TERMINATION. This Municipal Agreement shall be effective on the Effective Date and shall continue in full force and effect for the term of the East Carolina Agreement. This Municipal Agreement shall terminate on the expiration of the term of the East Carolina Agreement.

8. AMENDMENT. This Municipal Agreement may not be modified or amended except by subsequent written amendment approved and authorized by each of the parties.

9. SEVERABILITY. If any of the provisions of this Municipal Agreement are held, for any reason, to be unconstitutional, unenforceable, invalid, or illegal in any respect, such decision shall not affect or impair any of the remaining provisions of this

Municipal Agreement, and the parties shall, to the extent they deem to be necessary and appropriate, take such actions as are necessary to correct any such unconstitutional, unenforceable, invalid, or illegal provision. It is hereby declared to be the intent of the parties that this Municipal Agreement would have been approved and executed had such unconstitutional, unenforceable, invalid or illegal provision been excluded therefrom.

10. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties, and cancels and supersedes all prior negotiations, representations, understandings, or agreements, either written or oral, between the parties with respect to the subject matter hereof, except for the East Carolina Agreement. Any statement, oral or written, made by any party or agent of any party that is not contained in this Municipal Agreement shall not be valid or binding, except for the East Carolina Agreement.

11. THIRD PARTY BENEFICIARY. The parties hereto acknowledge and agree that East Carolina is a third party beneficiary of the terms and provisions contained in this Municipal Agreement.

12. COVENANT OF FURTHER ASSURANCES. The Municipality agrees that from and after the date of execution hereof, it will, upon the request of Bertie County, execute and deliver such other documents and instruments and take such other actions as may reasonably be required to carry out the purpose and intent of this Municipal Agreement.

13. ASSIGNMENT. No assignment, delegation, transfer, or novation of this Municipal Agreement or any part thereof shall be

made or permitted by the Municipality unless approved in writing by Bertie County.

14. GOVERNING LAW. This Municipal Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Municipal Agreement on the date first above written, the same having been approved by the respective governing bodies of both the Municipality and Bertie County.

ATTEST:

_____
CLERK

(SEAL)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
Municipality Finance Officer

MUNICIPALITY:

By: _____
Mayor

ATTEST:

_____
CLERK

(SEAL)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act

By: _____
County Finance Officer

BERTIE COUNTY:

By: _____
Chairman
County Commissioners

SCHEDULE C

FILED OFFICE OF
ADMIN. HEARINGS
SEP 30 2 56 PM '93

STATE OF NORTH CAROLINA
COUNTY OF BERTIE

IN THE OFFICE OF
ADMINISTRATIVE HEARIN

BERTIE CITIZENS ACTION COALITION, INC.; WILLARD J. OLIVER, REGINALD EARLY, HERBERT JENKINS, JR., LINDWOOD EARL TRIPP, WILLIE WARREN TRIPP, MARY ALICE CHERRY, and KATHY BURDEN,

Petitioners,

v.

NORTH CAROLINA DEPT. OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, SOLID WASTE MANAGEMENT DIVISION,

Respondent.

PETITION
FOR REVIEW
OF AGENCY ACTION

Petitioners hereby request the Office of Administrative Hearings (OAH) to review the issuance by the Solid Waste Management Division, Department of Environment, Health, and Natural Resources ("the Division") of Permit No. 08-03 to construct a sanitary landfill ("the Permit") to East Carolina Environmental, Inc. ("ECE"). The Permit was issued by the Division on August 6, 1993. Petitioners contest the issuance of the Permit to ECE and request a hearing before the OAH in accordance with the provisions of North Carolina General Statutes § 150B-23. In support of this Petition, Petitioners state as follows:

1. Petitioner Bertie Citizens Action Coalition, Inc. ("the Coalition"), is a North Carolina nonprofit corporation, many of whose members reside in the residential neighborhoods adjacent to and in the immediate area of the proposed landfill for which the Permit was issued.

2. Petitioners, Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, an Kathy Burden are individual members of the Association, reside in the neighborhoods adjacen to the proposed landfill, and are citizens, residents and taxpayers of Bertie County.

3. Upon information and belief, tax monies were spent by Bertie County on plannin for the proposed landfill.

4. Upon information and belief, the Permit allows construction of Phase I of ar approximately four hundred and ninety (490) acre solid waste landfill. Phase I will be constructed in four segments (Cells 3, 4, 5, and 6). Petitioners will be affected by construction of the landfill as it is currently permitted as follows: leachate from the landfill will result in groundwater pollution in Bertie County; individual Petitioners will be subjected to increased traffic associated with the landfill and to increased noise, dust, and odors in their homes; individual Petitioners will be exposed to toxic gases and fumes; the property values of individual Petitioners will be adversely affected; and the landfill as permitted will otherwise endanger the health, lives, and property of Petitioners. Said landfill is designed to accept 1,000 tons per day of solid waste from Bertie County and other North Carolina counties, including Beaufort, Hyde, Martin, Tyrrell and Washington Counties.

5. Said landfill will receive solid waste after October 9, 1993, and therefore must be in compliance with 15A N.C. Admin. Code 13B.1600, Requirements for Municipal Solid Waste Landfill Facilities (MSWLF). If said landfill does not meet the MSWLF requirements, then it constitutes an open dump which is prohibited under Section 4005 of the Federal Resource Conservation and Recovery Act (RCRA).

6. The Division acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously or failed to act as required by law or rule when it issued the Permit because the

requirements of Rules 15A N.C. Admin. Code 13B .1624(b)(7) and .1622(3)(a)(iii)(F) were not met.

a. Rule 15A N.C. Admin. Code 13B.1624(b)(7) requires that the minimum post-settlement slope for the subgrade shall be two percent. Upon information and belief, the July 1993 approved drawings show a proposed slope of the six inch HDPE perforated pipe to range from approximately 0.5 percent (midsection) to 1 percent (down gradient). Since the settlement is generally proportional to the landfill height at a given location, maximum settlement will occur near the center of the cell and less settlement near the discharge point at the leachate penetration pipe. Upon information and belief, the integrity of the drainage system is, therefore, jeopardized by the fact that settlement may exceed 4 feet in areas with only 0.5 percent pre-settlement slopes. This magnitude of differential settlement will not allow drainage to the leachate penetration assembly and will ultimately create a ponding or backflow condition. This condition could affect the integrity of the liner and could possibly cause groundwater contamination.

b. Rule 15A N.C. Admin. Code 13B.1622(3)(a)(iii)(F) requires a demonstration that ecological resources in the wetlands are sufficiently protected. This rule is in addition to the requirements of Section 404 of the Clean Water Act concerning the discharge of dredge and fill material into wetlands. Upon information and belief, the applicant failed to demonstrate that wetlands are protected. Based on the proposed construction plan, excavations of the various borrow areas (labeled as Borrow Areas 1, 2, 3, 4 and 5) are required below the surficial aquifer. Therefore, upon completion of excavating the soils for construction and operation of the proposed facilities, large

depressions will be created. The depressions will likely create lakes in some areas which may impact the wetlands in the area around or adjacent to the lakes.

7. Upon information and belief, the Division failed to adequately investigate and consider the past conduct of the applicant as required by N.C. Gen. Stat. § 130A-295.

8. The Division failed to ensure, through the site approval and permitting process, that said landfill will provide reasonable protection to the environment and the public health and environmental standards, as it is required to do by statute and rule.

9. The Division acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously or failed to act as required by law or rule when it issued the Permit, and the rights and privileges of the Petitioners have been substantially prejudiced by the issuance of the Permit allowing improper construction of the landfill.

Respectfully submitted this 27th day of September, 1993.

Yvonne C. Bailey
WOMBLE CARLYLE SANDRIDGE & RICE
Attorneys for Petitioner
Post Office Box 831
Raleigh, North Carolina 27602
Telephone: (919) 755-2100

VERIFICATION

Willard J. Oliver, being first duly sworn, deposes and says that he is President of Bertie Citizens Action Coalition, Inc., Petitioner in the above entitled action, that he has read the foregoing Petition and that the same is true to his own knowledge and belief except as to those matters stated on information and belief, and as to those matters, he believes them to be true

Willard J. Oliver, President
Bertie Citizens Action Coalition
209 Jack Branch Road
Windsor, North Carolina 27983
Telephone: (919) 348-2643

Sworn to and subscribed
before me this the 28th day
of September, 1993.

Jill K. Horn
Notary Public

My Commission Expires: 2-3-98

JILL K. HORN NOTARY PUBLIC WAKE COUNTY, N.C.

R394976

CERTIFICATE OF SERVICE

I, Yvonne C. Bailey, hereby certify that copies of the Petition for Review of Agen Action were served upon the following by depositing a copy thereof in the United States ma first class, postage prepaid, and addressed as follows:

Richard Whisnant, Esq.
General Counsel
Division of Solid Waste Management
Department of Environment, Health &
Natural Resources
Post Office Box 27687
Raleigh, North Carolina 27611-7687

William Meyer
Division of Solid Waste Management
Department of Environment, Health &
Natural Resources
Post Office Box 27687
512 North Salisbury Street
Raleigh, North Carolina. 27611-7687

James J. Butler, Esq.
Parker Poe Adams & Bernstein
Post Office Box 389
Raleigh, North Carolina 27602

This the 30th day of September, 1993.

Yvonne C. Bailey
WOMBLE CARLYLE SANDRIDGE & RICE
Attorneys for Petitioner
Post Office Box 831
Raleigh, North Carolina 27602
Telephone: (919) 755-2100

R#94976.

PLEASE PRINT CLEARLY OR TYPE

STATE OF NORTH CAROLINA
COUNTY OF (1) BERTIE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

(2) BERTIE CITIZENS ACTION COALITION, Inc.; WILLARD J. OLIVER, REGINALD EARLY, HERBERT JENKINS, JR.; LINWOOD EARL TRIPP, HILLIE WARREN TRIPP, MARY ALICE CHERRY and KATHY BURDEN
Petitioner
(Your Name)

v.

(3) N.C. DEPARTMENT OF ENVIRONMENT, HEALTH & NATURAL RESOURCES, DIVISION OF SOLID WASTE MANAGEMENT,
Respondent
(The State Agency or Board about which you are complaining)

PETITION
FOR A
CONTESTED CASE HEARING

FILED OFFICE OF ADMIN. HEARINGS
SEP 30 2 5 PM '93

I hereby ask for a contested case hearing as provided for by G.S. 150B-23 because the:

(4) N.C. Department of Environment, Health & Natural Resources, Division of Solid Waste Management has
(name of agency)

(Briefly state facts showing how you believe you have been harmed by the state agency or board.)
issued Permit to Construct No. 08-03 to East Carolina Environmental, Inc., for a solid waste management facility in Bertie County as more particularly described in the attached Petition for Review of Agency Action.

(If more space is needed, use additional sheets and attach)

(5) (Check all that apply) Because of these facts, the agency has

- X deprived me of property;
- ___ ordered me to pay a fine or civil penalty;
- X otherwise substantially prejudiced my rights; and based on these facts the agency has exceeded its authority or jurisdiction;
- X acted erroneously;
- X failed to use proper procedure;
- X acted arbitrarily or capriciously; or
- X failed to act as required by law or rule.

****

(6) Date: September 28, 1993 (7) Your telephone number: (919) 348-2543

(8) Print your address: 209 Jack Branch Road, Windsor, North Carolina

(9) Print your name: Willard J. Oliver, President, Bertie Citizens Action Coalition, Inc.

(10) Your signature: Willard J. Oliver

****

You must mail or deliver a COPY to the State Agency named on line (3) of this form. Please indicate below.

CERTIFICATE OF SERVICE

I certify that this Petition has been served on the State Agency named below by depositing a copy of it with the United States Postal Service with sufficient postage OR by delivering it to the named agency.

Served on:

(11) Richard Whisnant, Esq.
(name)

(12) N.C. Department of Environment, Health & Natural R
(agency)

(13) Post Office Box 27687, Raleigh, North Carolina 27611-7687
(address)

(14) This the 30th day of September, 1993.

(15) Willard J. Oliver
(your signature)

When you have completed this form you MUST mail or deliver the ORIGINAL and one COPY to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447.

M-06 (11/91)

RECEIVED 7-9-93

State of North Carolina
Department of Environment, Health, and Natural Resources
512 North Salisbury Street • Raleigh, North Carolina 27604
DIVISION OF SOLID WASTE MANAGEMENT
TELEPHONE: (919) 733-0692
James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary

July 7, 1993

Mr. John E. Whitehurst
County Manager, Bertie County
P.O. Box 530
Windsor, N.C. 27983

Re: Implementation Of Subtitle 'D' Ground-water Monitoring Program

Dear Mr. Whitehurst,

The purpose of this correspondence is to provide information and clarification on the changes in ground-water monitoring requirements for MSWLF facilities that remain in operation after October 9, 1993. The proposed North Carolina Solid Waste Management Rules reflect significant changes for ground-water monitoring based on requirements of the E.P.A. Subtitle D Rules.

Attachment A to this letter provides a summary of important dates and significant activities that must be accomplished in order to be in compliance with the new rules. Attachment B contrasts existing and proposed ground-water monitoring and assessment requirements based on changes in the rules. Because of significant increases in costs that will be incurred in order to operate a MSWLF under the new Subtitle D Rules, including financial assurance and increased costs for ground-water monitoring and assessment, you may wish to seriously consider closing your sanitary landfill prior to October 9,1993, when the new rules become effective.

Based on past ground-water monitoring data for the Bertie County landfill, there are already documented violations of North Carolina Groundwater Quality Standards at some of the detection monitoring wells. A copy of your most recent sampling analytical data is attached on which highlighting has been done for the Appendix I constituents that exceed the Groundwater Quality Standards. Therefore, when the new rules take effect, Bertie County will quickly be required to implement assessment monitoring for all Appendix II constituents. Since the Groundwater Quality Standards are also used in establishing the ground-water protection standards, you may also rapidly move into assessment of corrective action

P.O. Box 27687, Raleigh, North Carolina 27611-7687 Telephone 919-733-4984 Fax # 919-733-0513

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alternatives based on a full-scale ground-water investigation to determine the nature and extent of contamination at the site.

If Bertie County chooses to continue to operate their MSWLF facility after October 9, 1993, then you need to begin planning and budgeting immediately for the activities outlined in Attachment A. A revised Water Quality Monitoring Plan must be submitted as part of the Transition Plan on or before April 9, 1994. All background sampling and related activities for the upgraded monitoring system must be completed and reported to the Division in order to demonstrate compliance with the new water quality monitoring requirements on or before October 9, 1994.

Please note that the goals and objectives for ground-water assessment monitoring and ground-water contamination investigations are the same under both the current and the proposed rules and shall be accomplished in a way that is protective of human health and the environment. However, current rules allow for greater flexibility in the assessment and investigation activities and the sample analytical costs could be substantially less using the constituent list required under current rules and policy as compared to analytical costs required by the new rules based on Subtitle D, which require sampling for the Appendix II list of constituents.

I hope this letter has been helpful in providing you more insight into the actions that will be required by Bertie County to maintain compliance with the water quality monitoring requirements of the Solid Waste Management Rules as we make the transition to the new rules growing out of the E.P.A. Subtitle D Regulations. If you have any questions or comments regarding this letter, please contact the Solid Waste Section at (919) 733-0692.

Sincerely,

Bobby Lutfy

Bobby Lutfy, Hydrogeologist

Solid Waste Section

cc: Chuck Boyette

Attachments

ATTACHMENT A

Important dates and significant activities that must be accomplished in order to be in compliance with the new rules on ground-water monitoring at MSWLF facilities:

April 9, 1994: A Water Quality Monitoring Plan that fulfills the requirements of the new Solid Waste Management Rules must be submitted to the Division as part of the Transition Plan on or before April 9, 1994.

October 9, 1994: Compliance with the new ground-water monitoring requirements must be demonstrated to the Division on or before October 9, 1994. In order to demonstrate compliance, the MSWLF owner or operator must perform the following activities and provide documentation to the Division.

1. Upgrade the ground-water monitoring system so that it meets the criteria of the new rules for monitoring systems. Rule .1631

   (a) Monitoring wells shall be installed at the relevant point of compliance based upon the waste boundaries established on October 9, 1993. - Rule .1631(a)(2)

   (b) Monitoring wells shall be designed and constructed in accordance with the applicable North Carolina Well Construction Standards as codified in 15A NCAC 2C. - Rule .1631(b)

2. In order to accurately determine ground-water elevations for each monitoring well, the wells shall have been accurately surveyed by a North Carolina Registered Land Surveyor. - Rule .1632(d)(1)

3. In order to determine the rate of ground-water flow, the owner or operator shall provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations. - Rule .1632(d)(2)

4. A minimum of four independent samples from each well (background and downgradient) shall be collected and analyzed for the Appendix I constituents during the first semiannual sampling event. - Rule .1633(b)

5. The owner or operator shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the MSWLF unit. - .1632(i)

ATTACHMENT B

Contrasts between the existing and proposed ground-water monitoring and assessment requirements based on changes in the Solid Waste Management Rules. All MSWLF units that are in operation on or after October 9, 1993, will be subject to the new rules.

EXISTING RULES	NEW RULES
Detection monitoring:	
Monitoring frequency: Semiannual monitoring	Monitoring frequency: Semiannual monitoring
Monitoring parameters: 23 landfill constituents	Monitoring parameters: Appendix I constituents
Data evaluation based on: N.C. Groundwater Quality Standards	Data evaluation based on: N.C. Groundwater Quality Standards and statistical increase over background levels
Post Closure Monitoring:	
Length of time: 5 years and reevaluate need for further monitoring	Length of time: 30 years and reevaluate need for further monitoring
Monitoring parameters: 23 landfill constituents & occasional VOCs	Monitoring parameters: Appendix I constituents
Data evaluation based on: N.C. Groundwater Quality Standards	Data evaluation based on: N.C. Groundwater Quality Standards and statistical increase over background levels
Assessment monitoring and ground-water investigations:	
Monitoring parameters: 23 landfill constituents, VOCs, semi-VOCs	Monitoring parameters: Appendix II constituents (213 constituents)
Data evaluation based on: N.C. Groundwater Quality Standards	Data evaluation based on: N.C. Groundwater Quality Standards and statistical increase over background levels
Greater flexibility	Flexibility more limited

Environment 1, Incorporated

P.O. BOX 7085, 114 OAKMONT DRIVE
GREENVILLE, N.C. 27835-7085

PHONE (919) 756-6208
FAX (919) 756-0633

JUN 0 9 1993

6024

BERTIE COUNTY LANDFILL
MR. LESTER OUTLAW
BERTIE CO. SOLID WASTE
RT-1, BOX 518
AULANDER, NC 27805

348-2191

BERTIE CO. LANDFILL

DATE: 05/13/93

REVIEWED BY:

PARAMETERS	DOWNSTREAM	WELL #1	WELL #2	WELL #3	WELL #4
PH (FM), Units	7.1	5.4	5.9	5.2	6.0
BOD, mg/l	2.6	<1.0	1.6	<1.0	<1.0
COD, mg/l	69	77	12	<5	<5
NITRATE NITROGEN, mg/l	<.02	.08	<.02	.02	<.02
T. ORGANIC CARBON, mg/l	21.39	2.94	3.76	3.94	3.6
CHLORIDE, mg/l	6	12	21	13	
FLUORIDE, mg/l	.17	.22	.80	.21	.3
T. DISSOLVED RESIDUE, mg/l	66	245	189	328	15
ARSENIC, mg/l	<.005	<.005	<.005	<.005	<.00
BARIUM, mg/l	<.050	.520	.107	.152	.10
CADMIUM, mg/l	<.001	.002	<.001	<.001	<.00
COPPER, mg/l	.011	.102	.058	.015	.02
T. CHROMIUM, mg/l	<.005	.102	.010	.020	.00
IRON, mg/l	5.187	195.6	9.500	22.64	8.83
LEAD, mg/l	<.005	.067	.008	.029	<.00
MANGANESE, mg/l	1.474	.199	.148	.093	.4
MERCURY, mg/l	<.0002	<.0002	<.0002	<.0002	<.00
SELENIUM, mg/l	<.010	<.010	<.010	<.010	<.0
SILVER, mg/l	<.005	<.005	<.005	<.005	<.0
ZINC, mg/l	.028	.335	.035	.067	.0
T. ORGANIC HALIDES, mg/l	.045	.012	.020	.015	.0
SULFATE, mg/l	1	20	3	12	
CONDUCTIVITY (FM), uMhos	100	61	280	88	2
TEMPERATURE (FM), oC	22	16	16	17	
STATIC WATER LEVEL, feet		10.95	4.61	3.12	0.
WELL DEPTH, feet		22.27	16.28	15.27	18.

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Solid Waste Management
James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
William L. Meyer, Director

RECEIVED 8-2-93

Faxed to McDavid

DEHNR

Received Aug. 2

July 29, 1993

AUG 0 4 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John E. Whitehurst, Manager
County of Bertie
P.O. Box 530
Windsor, NC 27983

RE: Compliance Order with Administrative Penalty

Dear Mr. Whitehurst:

Enclosed is a Compliance Order with Administrative Penalty issued to the County of Bertie for certain violations of the North Carolina Solid Waste Management Act, N.C.G.S. 130A, Article 9 (ACT) and North Carolina Solid Waste Management Rules, 15A N.C. Admin. Code 13B (Rules). The Compliance Order with Administrative Penalty describes both the violations and the actions required for compliance at your facility with the Act and Rules.

Pursuant to N.C.G.S. 130A-22(a), an administrative penalty of $5,000 is imposed on the Compliance Order with Administrative Penalty. Bertie County may appeal this Compliance Order with Administrative Penalty by submitting a written petition for an administrative hearing to the office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, and by sending a copy of the petition to Mr. Richard Whisnant, General Counsel, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687, within thirty (30) days of the receipt of the Compliance Order with Administrative Penalty. The petition must be in accordance with N.C.G.S. 150B-23(A) and 15A N.C. Admin. Code 13B .0704.

If no administrative hearing is requested, the administrative penalty must be paid within sixty (60) days by check or money order, payable to the Division of Solid Waste Management, and mailed to Mr. William L. Meyer, Director, Division of Solid Waste Management, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

We encourage Bertie County to schedule an informal conference to discuss the Compliance Order with Administrative Penalty; please contact Mr. Chuck Boyette, Waste Management Specialist, at (919) 946-6481.

Sincerely,

William L. Meyer, Director
Division of Solid Waste Management

WLM:TD:cft

Enclosure: Compliance Order with Administrative Penalty

cc: Dexter Matthews
Nancy Smith
Terry Dover
Nancy Scott
Chuck Boyette
Central Files, Bertie County 08-01 C&I

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
DIVISION OF SOLID WASTE MANAGEMENT
SOLID WASTE SECTION

IN RE: Bertie County,

COMPLIANCE ORDER WITH ADMINISTRATIVE PENALTY

Attention: *Mr. John E. Whitehurst, Manager*
County of Bertie
P.O. Box 530
Windsor, North Carolina 27983

PRELIMINARY STATEMENT

This Compliance Order with Administrative Penalty is issued under N.C.G.S. 130A-22, and the Solid Waste Management Act and Rules, N.C.G.S. 130A, Article 9, and 15A N.C. Administrative Code 13B. The complainant, Mr. William L. Meyer, Director, Division of Solid Waste Management, Department of Environment, Health and Natural Resources, has been delegated the authority to implement the Act and Rules. Based upon information available, complainant has determined that Bertie County is in violation of certain requirements of the Act and Rules, as set forth in this Compliance Order with Administrative Penalty.

STATEMENTS OF FACT AND LAW

1. *The County of Bertie is operating a sanitary landfill (Permit No. 08-01) located on SR 1221 near Republican, North Carolina, and is a person as defined in N.C.G.S. 130A-290 and 15A N.C. Admin. Code 13B .0101.*

2. *On March 1, 1971, the State of North Carolina, Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, implemented a Solid Waste Management Program under the Solid Waste Management Act, N.C.G.S. 130A, Article 9 and rules codified at 15A N.C. Admin. Code 13B.*

3. *Chapter 727 of the 1989 legislative session consolidated state public health and environmental agencies within the new Department of Environment, Health, and Natural Resources. Responsibility for implementing Article 9 of N.C.G.S. Chapter 130A was thereby transferred from the Department of Human Resources to the Department of Environment, Health, and Natural Resources, and the Solid Waste Management Section become a Division of the new Department.*

4. *15A N.C. Admin. Code 13B contains standards and requirements applicable to the proper management of solid waste management facilities.*

5. *On July 22, 1992, Mr. Bill Sessoms and Mr. Chuck Boyette of the Solid Waste Section met with Mr. John Whitehurst, Bertie County Manager, Mr. Lester Outlaw, Landfill Superintendent, and Mr. Mike Burnette of McDavid Associates at the Bertie County Landfill, (Permit No. 08-01). It was decided that the landfill had limited disposal space left and that the county should submit a Closure Plan that would give them 1 to 2 years of additional capacity. During this visit, the stump fill area was also discussed and it was pointed out to the County that this area contained waste other than that allowed under the existing permit.*

6. *On May 27, 1993 and June 17, 1993, Mr. Jim Barber and Mr. Chuck Boyette of the Solid Waste Section conducted inspections of the Bertie County landfill (Permit No. 08-01) located near Republican, North Carolina. The following violation of the North Carolina Solid Waste Management Rules codified at 15A N.C. Admin. Code 13B was noted at the these inspections.*

   A. *15A N.C. Admin. Code 13B .0505 (1)(a) requires that construction plans be approved and followed. The Bertie County Landfill is operating in violation of 15A N.C. Admin. Code 13B .0505 (1)(a) in that final fill elevations have exceeded those of the approved plan. Additionally, construction and demolition wastes and household garbage had been disposed of in the designated stump fill disposal area.*

CIVIL PENALTY

N.C.G.S. 130A-22(a) and GS 130A-18 authorizes an administrative penalty of up to $5,000.00 per day for each violation of the solid waste provisions of the Act and Rules. The N.C. Solid Waste Management Penalty Computation Procedure (March 19, 1985) was used to determine the penalty. The factors considered in determining the administrative penalty include, but are not limited to: The nature of the violations, the potential effect on the public health and environment, the degree and extent of harm caused by the violations, the costs of rectifying any damage, the types and amounts of wastes, the ease and costs of compliance and the history of noncompliance. For the violation specified above, a penalty of $5,000.00 is assessed.

CONDITIONS FOR COMPLIANCE

Based on the foregoing, the County of Bertie is hereby ordered to take the following actions:

1. *Within sixty (60) days of receipt of this Compliance Order with Administrative Penalty submit the amount of the administrative penalty, by check or money order, payable to the Division of Solid Waste Management, and mail to Mr. William L. Meyer, Director, Division of Solid Waste Management, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.*

2. *By August 20, 1993, submit a Closure Plan that will address additional disposal capacity for the Bertie County Landfill.*

3. *Immediately remove all construction and demolition waste and household garbage from the stump fill disposal area.*

POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY

The County of Bertie is hereby advised that, pursuant to N.C.G.S. 130A-22, each day of continued violation of any requirement of the Act or the Rules constitutes a separate violation for which a penalty of up to $5,000.00 per day may be imposed. If the violation(s) continues, you may also be subject to further enforcement actions, including injunction from any further operation of a solid waste management facility, and such further relief as may be necessary to achieve compliance with the North Carolina Solid Waste Management Act and Rules.

OPPORTUNITY TO REQUEST A HEARING

The County of Bertie has the right to request an administrative hearing to contest any matter of law, material fact, requirement or penalty set forth in this Compliance Order with Administrative Penalty. To avoid being in default and having the penalty collected without further administrative proceedings, a written petition must be filed within thirty (30) days of receipt of this Compliance Order with Administrative Penalty in accordance with N.C.G.S. 150B-23(a) and 15A N.C. Admin. Code 13B .0704.

The petition shall state facts tending to establish that the agency has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced petitioners' rights and that the Division:

1. *Exceeded its authority or jurisdiction;*
2. *Acted erroneously;*
3. *Failed to use proper procedure;*
4. *Acted arbitrarily or capriciously; or*
5. *Failed to act as required by law or rule.*

The petition shall be filed with the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with N.C.G.S. 150G-23(a). A copy of the petition must be submitted to Mr. Richard Whisnant, General Counsel, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Requested administrative hearings will be conducted in accordance with applicable rules contained in the North Carolina Administrative Code, a copy of which will be furnished to you upon request. If no hearing is requested, payment of the administrative penalty is due within sixty (60) days after receipt of this notice. If a hearing is requested, payment of the administrative penalty is due within sixty (60) days after service of a written copy of the decision affirming the penalty. If payment is not received as required, the Secretary of the Department of Environment, Health, and Natural Resources shall request the Attorney General to commence an action to recover the amount of the administrative penalty and may also request that an injunctive action be commenced to achieve compliance pursuant to N.C.G.S. 130A-22(g).

INFORMAL CONFERENCE

Whether or not the County of Bertie requests an administrative hearing, the Division encourages an informal conference to discuss this matter and to give the County of Bertie an opportunity to provide additional information, including any actions the County of Bertie has taken to correct the violations(s). If an information conference is desired, please contact:

Chuck Boyette
Waste Management Specialist
NC Solid Waste Section
1424 Carolina Avenue
Washington, NC 27889
(919) 946-6481

The Scheduling of an informal conference will not relieve the County of Bertie of the need to file a written petition for an administrative hearing within thirty (30) days of receipt of this Compliance Order with Administrative Penalty.

By: William L. Meyer

William L. Meyer, Director
Division of Solid Waste Management
Department of Environment, Health,
and Natural Resources

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Compliance Order with Administrative Penalty to be served upon the County designated below, at the last known address, causing said copy to be deposited in the U.S. Mail, First Class (certified mail, and return receipt requested, postage prepaid) in an envelope addressed to:

Mr. John E. Whitehurst, Manager
County of Bertie
P.O. Box 530
Windsor, NC 27983

Date this 29th *day of July, 1993.*

William L. Meyer

William L. Meyer, Director
Division of Solid Waste Management
Department of Environment, Health and Natural Resources

7-15-93

RECEIVED 7-9-93

State of North Carolina
Department of Environment, Health, and Natural Resources
512 North Salisbury Street • Raleigh, North Carolina 27604
DIVISION OF SOLID WASTE MANAGEMENT
James B. Hunt, Jr., Governor TELEPHONE: (919) 733-0692 Jonathan B. Howes, Secretary

July 7, 1993

Mr. John E. Whitehurst
County Manager, Bertie County
P.O. Box 530
Windsor, N.C. 27983

Re: Implementation Of Subtitle 'D' Ground-water Monitoring Program

Dear Mr. Whitehurst,

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Attachment A to this letter provides a summary of important dates and significant activities that must be accomplished in order to be in compliance with the new rules. Attachment B contrasts existing and proposed ground-water monitoring and assessment requirements based on changes in the rules. Because of significant increases in costs that will be incurred in order to operate a MSWLF under the new Subtitle D Rules, including financial assurance and increased costs for ground-water monitoring and assessment, you may wish to seriously consider closing your sanitary landfill prior to October 9,1993, when the new rules become effective.

Based on past ground-water monitoring data for the Bertie County landfill, there are already documented violations of North Carolina Groundwater Quality Standards at some of the detection monitoring wells. A copy of your most recent sampling analytical data is attached on which highlighting has been done for the Appendix I constituents that exceed the Groundwater Quality Standards. Therefore, when the new rules take effect, Bertie County will quickly be required to implement assessment monitoring for all Appendix II constituents. Since the Groundwater Quality Standards are also used in establishing the ground-water protection standards, you may also rapidly move into assessment of corrective action

alternatives based on a full-scale ground-water investigation to determine the nature and extent of contamination at the site.

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Please note that the goals and objectives for ground-water assessment monitoring and ground-water contamination investigations are the same under both the current and the proposed rules and shall be accomplished in a way that is protective of human health and the environment. However, current rules allow for greater flexibility in the assessment and investigation activities and the sample analytical costs could be substantially less using the constituent list required under current rules and policy as compared to analytical costs required by the new rules based on Subtitle D, which require sampling for the Appendix II list of constituents.

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Sincerely,

Bobby Lutfy

Bobby Lutfy, Hydrogeologist

Solid Waste Section

cc: Chuck Boyette

Attachments

ATTACHMENT A

Important dates and significant activities that must be accomplished in order to be in compliance with the new rules on ground-water monitoring at MSWLF facilities:

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Greater flexibility	Flexibility more limited

Environment 1, Incorporated

P. O. BOX 7085, 114 OAKMONT DRIVE
GREENVILLE, N.C. 27835-7085

PHONE (919) 756-6208
FAX (919) 756-0633

JUN 0 9 1993

6024

BERTIE COUNTY LANDFILL
MR. LESTER OUTLAW
BERTIE CO. SOLID WASTE
RT-1, BOX 518
AULANDER, NC 27805

348-2191

BERTIE CO. LANDFILL

DATE: 05/13/93

REVIEWED BY:

PARAMETERS	DOWNSTREAM	WELL #1	WELL #2	WELL #3	WELL #4
PH (FM), Units	7.1	5.4	5.9	5.2	6.0
BOD, mg/l	2.6	<1.0	1.6	<1.0	<1.0
COD, mg/l	69	77	12	<5	<5
NITRATE NITROGEN, mg/l	<.02	.08	<.02	.02	<.02
T. ORGANIC CARBON, mg/l	21.39	2.94	3.76	3.94	3.67
CHLORIDE, mg/l	6	12	21	13	[illegible]
FLUORIDE, mg/l	.17	.22	.80	.21	.37
T. DISSOLVED RESIDUE, mg/l	66	245	189	328	15[illegible]
ARSENIC, mg/l	<.005	<.005	<.005	<.005	<.00[illegible]
BARIUM, mg/l	<.050	.520	.107	.152	.10[illegible]
CADMIUM, mg/l	<.001	.002	<.001	<.001	<.00[illegible]
COPPER, mg/l	.011	.102	.058	.015	.02[illegible]
T. CHROMIUM, mg/l	<.005	.102	.010	.020	.00[illegible]
IRON, mg/l	5.187	195.6	9.500	22.64	8.83
LEAD, mg/l	<.005	.067	.008	.029	<.00[illegible]
MANGANESE, mg/l	1.474	.199	.148	.093	.46
MERCURY, mg/l	<.0002	<.0002	<.0002	<.0002	<.000[illegible]
SELENIUM, mg/l	<.010	<.010	<.010	<.010	<.00[illegible]
SILVER, mg/l	<.005	<.005	<.005	<.005	<.00[illegible]
ZINC, mg/l	.028	.335	.035	.067	.01
T. ORGANIC HALIDES, mg/l	.045	.012	.020	.015	.00[illegible]
SULFATE, mg/l	1	20	3	12	<[illegible]
CONDUCTIVITY (FM), uMhos	100	61	280	88	25[illegible]
TEMPERATURE (FM), oC	22	16	16	17	[illegible]
STATIC WATER LEVEL, feet		10.95	4.61	3.12	0.[illegible]
WELL DEPTH, feet		22.27	16.28	15.27	18.[illegible]

SCHEDULE D

SCHEDULE D

Martin
Beaufort
Washington
Hyde
Tyrrell
Perquimans
Gates
Chowan
Northampton
Pasquotank
Camden
Currituck
Dare

SCHEDULE E

SCHEDULE E

The tipping fees provided for in Section 8 and the host fees provided for in Section 9 of the Agreement shall be adjusted in accordance with the following computation:

Step 1: CPI: February, 1994 - CPI: Date Use Commences = Index Point Difference

Step 2: $\frac{\text{Index Point Difference}}{\text{CPI: Date Use Commences}}$ x 100 = Percentage Change

Step 3: Percentage Change x Tipping Fees = Tipping Fee Change

Step 4: Tipping Fees ± Tipping Fees Change = Adjusted Tipping Fees

Thereafter, the tipping fees provided for in Section 8 and the host fees provided for in Section 9 of the Agreement shall be adjusted on July 1 of each year in accordance with the following computation:

Step 1: CPI: Each February - CPI: Previous February = Index Point Difference

Step 2: $\frac{\text{Index Point Difference}}{\text{CPI: Previous February}}$ x 100 = Percentage Change

Step 3: Percentage Change x Tipping Fees = Tipping Fee Change

Step 4: Tipping Fees ± Tipping Fees Change = Adjusted Tipping Fees

East Carolina shall by April 1 of each year perform this calculation and advise the County of any adjustment in the tipping fees. The adjustment shall not exceed four and one-half (4.5%) percent of the tipping fees in any year.

In the event that (i) the percentage increase in the CPI exceeds seven (7%) percent in any year; or (ii) the price of fuel, as reviewed on each October 1 and April 1 and compared to the price

as reviewed on each October 1 and April 1 and compared to the price of fuel as of the date of this Agreement or the date of the last adjustment pursuant to this paragraph, increases by more than six and one-half (6.5%) percent, East Carolina shall have the right to renegotiate fees set forth in the Agreement. The parties shall negotiate in good faith in an attempt to determine a fair adjustment to the fees set forth in the Agreement.