

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-39-100
Appellate Case No. 2016-000762

MRR Pickens, LLC, ...Appellant,

v.

County of Pickens and William Cato,
Weldon Clark, Robert Ballentine, Jo
Johnston, Dennis Reinert, and Bob Young,
Individually and in their capacity as
Appointed members of the Pickens County
Planning Commission, ...Respondents,

**RECORD ON APPEAL
VOLUME III**

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INDEX

VOLUME I

ORDERS

Order on Plaintiff's Motion for Injunctive Relief filed on February 24, 2016.....	1
Order Denying Plaintiff's Motion to Reconsider filed on March 11, 2016.....	3
Order Denying Plaintiff's Rule 60 Motion for Relief filed on March 28, 2016.....	5

PLEADINGS

Verified Complaint and Petition for Appeal filed on February 1, 2016	6
Plaintiff MRR Pickens, LLC's Motion for an Emergency Preliminary Injunction and exhibits thereto filed on February 1, 2016	117
Plaintiff MRR Pickens, LLC's Memorandum in Support of Motion for an Emergency Preliminary Injunction and exhibits thereto filed on February 24, 2016.....	131
Response of Pickens County to Plaintiff MRR Pickens, LLC's Motion for an Emergency Preliminary Injunction and exhibits thereto signed February 17, 2016.....	252
Reply to Response of Pickens County to Plaintiff MRR Pickens, LLC's Motion for an Emergency Preliminary Injunction and exhibits thereto filed on February 24, 2016.....	391
Answer and Counterclaim of Pickens County filed March 2, 2016	413
Plaintiff MRR Pickens, LLC's Motion to Reconsider Order on Preliminary Injunction filed on March 3, 2016	439

VOLUME II

Answer and Counterclaim of Pickens County Planning Commission filed March 10, 2016.....	446
Pickens County Third-Party Complaint filed March 15, 2016	469
Plaintiff MRR Pickens, LLC's Motion Pursuant to Rule 60 for Relief Based on Deposition Testimony of SCDHEC Representative, Kent Coleman and exhibits thereto filed on March 28, 2016.....	531

Response by Pickens County to Plaintiff MRR Pickens, LLC’s Motion Pursuant to Rule 60 for Relief Based on Deposition Testimony of SCDHEC Representative, Kent Coleman and Request for Attorney Fees and Costs by Pickens County.....	607
--	-----

TRANSCRIPTS

January 2015 Planning Commission Meeting Transcript.....	331
February 18, 2016 Transcript of Hearing	1066

TESTIMONY

Kent Coleman Deposition.....	624
------------------------------	-----

VOLUME III

Kent Coleman Deposition Exhibits	860
--	-----

EXHIBITS

Kent Coleman letter dated August 10, 2015	1060
Poliakoff letter dated February 29, 2016	1061



South Carolina Department of Health
and Environmental Control

Regulation 61-107.11

SWM: Construction, Demolition, and Land-Clearing Debris Landfills

Effective Date: April 24, 1998

**Bureau of Land & Waste Management
Division of Mining & Solid Waste Management
2600 Bull Street
Columbia, SC 29201**

Disclaimer

This copy of the regulation is provided by DHEC for the convenience of the public. Every effort has been made to ensure its accuracy; however, it is not the official text. DHEC reserves the right to withdraw or correct this text if deviations from the official text, as published in the *State Register*, are found.



ROA 860

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code

Sections 44-96-80, 44-96-290, 44-96-300, 44-96-320,
44-96-380, 44-96-400, 44-96-450, and 44-96-460 (1991)

R. 61-107.11. Solid Waste Management: Construction, Demolition and Land-Clearing Debris Landfills.

TABLE OF CONTENTS	PAGE
A. Applicability.....	2
B. Definitions.....	2
C. Severability.....	4
PART I. Small Short-term C&D & LCD Landfills.....	5
A. General Provisions.....	5
B. Permit Application Requirements for Short-Term Landfill Permit.....	6
C. Design Criteria for Short-Term Landfills.....	7
D. Operation Criteria.....	8
E. Reporting Requirements.....	9
F. Closure.....	9
G. Violations & Penalties.....	9
PART II. General Permitting for Disposal of LCD & Yard Trash.....	11
A. General Provisions.....	11
B. Notice of Intent.....	12
C. Record Keeping & Reporting Requirements.....	12
D. Violations & Penalties.....	12
PART III. Landfills for C&D & LCD at Utility Facilities & Manufacturing Firms.....	14
A. General Provisions.....	14
B. Permit-by-Rule.....	14
C. Violations & Penalties.....	18
PART IV. Long-Term C&D & LCD Landfills.....	19
A. General Provisions.....	19
B. Permit Application Requirements.....	19
C. Design Criteria.....	22
D. Acceptability of Waste.....	23
E. Operation Criteria.....	23
F. Monitoring & Reporting Requirements.....	24
G. Closure.....	25
H. Violations & Penalties.....	26
I. Permit Review.....	26
APPENDIX I. Acceptable Waste.....	27
APPENDIX II. Unacceptable Waste.....	29

A. Applicability.

April 24, 1998

R.61-107.11, Page 1

ROA 861

002 405

1. This regulation establishes minimum standards for the site selection, design, operation, and closure of construction, demolition and land-clearing debris landfills as follows:

a. Part I outlines the requirements for small, short-term construction, demolition and land-clearing debris landfills to be used for structural fill, with a limited waste stream, and with a specified facility life;

b. Part II outlines General Permitting requirements for the disposal of trees, stumps, wood chips, i.e., land-clearing debris, and yard trash to be used for structural fill;

c. Part III outlines the permit-by-rule requirements for the disposal of construction, demolition, and land-clearing debris when the landfill has controlled access and serves a permanently located utility facility or manufacturing firm, such as those listed in the South Carolina Industrial Directory; and,

d. Part IV outlines the requirements for long-term sites, i.e., all other construction, demolition and land-clearing debris landfills not addressed in Parts I, II or III.

2. Landfills for the disposal only of trees, stumps, wood chips, and yard trash when generation and disposal of such waste occurs on properties under the same ownership or control are exempt from the requirements of this regulation.

3. Landfills used solely for disposal of industrial process solid waste generated in the course of normal operations on property under the same ownership or control as the landfill are exempt from the requirements of this regulation.

4. Land-clearing debris generated from agricultural or silvicultural operations generated and disposed on site are not subject to the requirements of this regulation.

5. When only hardened concrete, brick, and block, that have not been in direct contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or painted with lead-based paint, are used for structural fill in the construction of a foundation for a building project in progress, the activity is exempt from the requirements of this regulation.

B. Definitions.

1. "Closure" means the discontinuance of operation by ceasing to accept, treat, store, or dispose of solid waste in a manner which minimizes the need for further maintenance and protects human health and the environment.

2. "Construction" means any physical modification to the site at which a potential or proposed solid waste management facility is to be located including, but not limited to, site preparation, clearing, grading, excavation, construction of buildings, installation of liners, etc.

3. "Construction and demolition debris" means discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building, and land-clearing. The wastes include, but are not limited to, bricks, concrete, and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations.

4. "Contingency plan" means a document acceptable to the Department setting out an organized, planned, and coordinated course of action to be followed at or by the facility in case of a fire, explosion, or other incident that could threaten human health and safety or the environment.

April 24, 1998

R.61-107.11, Page 2

5. "Cover" means soil or other suitable material, or both, acceptable to the Department that is used to cover compacted solid waste in a land disposal site.
6. "Department" means the South Carolina Department of Health and Environmental Control.
7. "Disclosure statement" means a sworn statement or affirmation, the form and content of which shall be determined by the Department in accordance with Section 44-96-300.
8. "Disposal" means the discharge, deposition, injection, dumping, spilling, or placing of any solid waste into or on any land or water, so that the substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
9. "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, including, but not limited to, one or more landfills, surface impoundments, or combination thereof.
10. "Financial responsibility mechanism" means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste management facilities. Available financial responsibility mechanisms include, but are not limited to insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, financial test, and corporate guarantees as determined by the Department by regulation.
11. "Groundwater" means water beneath the land surface in the saturated zone.
12. "Hazardous waste" has the meaning provided in Section 44-56-20 of the South Carolina Hazardous Waste Management Act.
13. "Landfill" means a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.
14. "Land-clearing debris" means solid waste which is generated solely from land-clearing activities, but does not include solid waste from agricultural or silvicultural operations.
15. "Local government" means a county, any municipality located wholly or partly within the county, and any other political subdivision located wholly or partly within the county when such political subdivision provides solid waste management services.
16. "Open dumping" means any unpermitted solid waste disposal activity.
17. "Permit" means the process by which the Department can ensure cognizance of, as well as control over, the management of solid wastes.
18. "Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.
19. "Region" means a group of counties in South Carolina which is planning to or has prepared, approved, and submitted a regional Solid Waste Management Plan to the Department pursuant to Code Section 44-96-80.

20. "Special wastes" has the same meaning as that term is defined in Code Section 44-96-390(A).

21. "Structural fill" means land filling for a projected beneficial end use utilizing acceptable construction and demolition debris and/or land-clearing debris.

22. "Surface water bodies" mean lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within territorial limits, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private, excluding drainage ditches, sedimentation ponds and other operational features on the site.

23. "Vector" means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to flies and other insects, rodents, birds, and vermin.

24. "Yard trash", i.e., yard waste, means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

C. Severability. Should any regulation, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

Part I. Small, Short-term Construction, Demolition and Land-Clearing Debris Landfills.

A. General Provisions.

1. A Short-Term Construction, Demolition, and Land-Clearing Debris Landfill Permit, herein after known as a "Short-Term Landfill Permit", may be issued per tract of land and no less than five hundred (500) feet from a present or former short-term construction, demolition, and land-clearing debris landfill if the site will:

a. Provide structural fill of areas. For the purpose of this subsection, "structural fill" means landfilling for future beneficial use utilizing land-clearing debris, hardened concrete, hardened/cured asphalt, bricks, and blocks, compacted and landfilled in a manner acceptable to the Department, i.e., filling an existing low area to grade, consistent with applicable engineering and construction standards and carried out as a part of normal activities associated with construction, demolition, and land-clearing operations; however, the materials utilized must not have been in direct contact with hazardous constituents, petroleum products, or painted with lead-based paint;

b. Have a proposed life of twelve (12) months or less;

c. Occupy one (1) acre in size or less;

d. Receive only those items listed below that have not been in direct contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or painted with lead-based paint:

- (1) land-clearing debris;
- (2) hardened concrete;
- (3) hardened/cured asphalt;
- (4) bricks; and,
- (5) blocks;

e. Be consistent with the South Carolina Coastal Zone Management Plan if the landfill is located in the coastal zone as defined by Ocean and Coastal Resources Management; and,

f. Adhere to all Federal and State rules and regulations, and all local zoning, land use, and other applicable ordinances and laws.

2. Landfills for the disposal only of trees, stumps, wood chips, and yard trash when generation and disposal of such waste occurs on properties under the same ownership or control are exempt from the requirements of this regulation.

3. Upon notification by the Department that a landfill poses an actual or potential threat to human health or the environment, the owner/operator shall implement a corrective action program approved by the Department.

4. Open dumping of construction, demolition and/or land-clearing debris, is prohibited.

B. Permit Application Requirements for Short-Term Landfill Permit.

April 24, 1998

R.61-107.11, Page 5

1. Prior to the construction, operation, expansion or modification of a short-term landfill, a permit shall be obtained from the Department.

2. The siting, design, construction, operation, and closure activities of short-term landfills shall conform to the standards set forth in this Part.

3. Any person wishing to obtain a short-term permit for a landfill shall submit to the Department two (2) copies of the following documents:

a. A completed permit application on a form provided by the Department and all information requested on that form;

b. A current tax map showing the location of the proposed landfill.

c. Data to indicate the location of the seasonal high water table in relation to the bottom elevation of the disposal area;

d. A current county map with the location of the proposed landfill marked;

e. A letter of proof of proper zoning from the county or city;

f. A letter from Ocean and Coastal Resources Management (OCRM) stating that the project is consistent with the South Carolina Coastal Zone Management Plan if the proposed landfill is located in the coastal zone as defined in accordance with the Coastal Zone Management Act;

g. A site plan on a scale of not greater than two hundred (200) feet per inch. This plan shall at a minimum identify the following:

(1) Property boundaries, footprint of the landfill, location of any buildings, fences, gates, entrances, exits, and access roads;

(2) Land use within one-fourth (3) mile of the proposed site's boundaries to include the location of all homes, schools, hospitals, publicly owned recreational park areas, drinking water wells, and roads;

(3) Location of surface water bodies, dry runs, wetlands, the location of the 100-year flood plain boundaries, and other applicable details regarding the general topography of the landfill site and adjacent properties within one-fourth (3) mile of the disposal area; and,

(4) Depth of the disposal area and proposed final elevations, in a cross-sectional view;

h. General operating information on the proposed facility including the following:

(1) The expected life of the facility;

(2) The maximum volume of solid waste the facility will be capable of receiving over the operational life of the facility;

(3) The frequency at which the facility will receive that waste during the designed life of the facility;

- (4) The source and description of cover material to be used;
- (5) The frequency of covering (at least monthly); and,
- (6) An explanation of how the cover will be applied; and,

C. Design Criteria for Short-Term Landfills.

1. The site for the facility shall meet the following standards, unless otherwise approved by the Department:

a. A landfill located in a 100-year floodplain shall demonstrate that the landfill will not restrict the flow of the 100-year flood;

b. A landfill shall be in compliance with the U. S. Army Corps of Engineers and the U. S. Environmental Protection Agency requirements concerning wetlands;

c. Access to the landfill shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent promiscuous dumping and unauthorized access;

d. The waste disposal boundary of the landfill shall not be located within one hundred (100) feet of any property line. Variances may be requested and granted on a case-by-case basis upon submittal of written consent from the adjacent landowner(s);

e. The waste disposal boundary of the landfill shall not be located within two hundred (200) feet of any residence, school, day-care center, hospital or publicly owned recreational park area;

f. The waste disposal boundary of the landfill shall not be located within two hundred (200) feet of any surface water body which holds visible water for greater than six (6) consecutive months, excluding ditches, sedimentation ponds, and other operational features on the site;

g. The waste disposal boundary of the landfill shall not be located within one hundred (100) feet of any drinking water well;

h. Waste material shall not be placed on or within fifty (50) feet of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, etc., without the written approval of the impacted utility.

i. The bottom elevation of the landfill shall be a minimum of two (2) feet above seasonal high water table as it exists prior to construction of the disposal area. The seasonal high water table shall be determined based on interpretation of the data from three (3) hand auger borings at least three (3) inches in diameter to a depth of five (5) feet. These holes shall be bored at the lowest point in the disposal area, and at two (2) other points in the disposal area. The borings shall be covered and allowed to stand for twenty-four (24) hours. The water level in the borings shall be verified by Department personnel;

j. Landfills shall be adjacent to or have direct access to roads which are of all weather construction and capable of withstanding anticipated load limits; and,

2. Drainage control requirements. The disposal area shall be graded with a minimum of 1% slope so as to divert and minimize run-off into the disposal area of the landfill, to prevent erosion and ponding within the disposal area, and to drain water from the surface of the landfill.

3. Procedures shall be established for maintaining conditions that are unfavorable for the habitation and production of insects and rodents.

D. Operation Criteria. The following operational requirements shall apply to all short-term landfills unless otherwise approved by the Department:

1. The landfill shall accept only those waste items listed below that have not been painted with lead-based paint, and have not been in direct contact with hazardous constituents (e.g., pesticides, etc.), or petroleum products:

- a. Land-clearing debris;
- b. Hardened concrete;
- c. Hardened/cured asphalt;
- d. Bricks; and,
- e. Blocks.

2. The landfill shall have an attendant on duty any time the facility is open to accept waste.

3. Unauthorized wastes shall be removed from the landfill site to an approved facility within forty-eight (48) hours of receipt.

4. The disposal area shall be staked prior to receipt of wastes, and the stakes shall remain for the life of the facility.

5. The unloading of solid waste intended for structural fill shall be restricted to the working face of the landfill.

6. The working face of the landfill shall be confined to as small an area as the equipment can safely and efficiently operate. The slope shall not exceed thirty three percent (33%).

7. The waste shall be compacted and a cover consisting of a uniform layer of soil or other suitable material, or both, acceptable to the Department, no less than six (6) inches in depth shall be used to cover all exposed waste material at least monthly.

8. Open burning at landfills shall be prohibited.

9. The facility shall be maintained and operated in a manner which will protect the established water quality standards of the surface waters and ground waters.

10. Dust, odors, fire hazards, litter and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

E. Reporting Requirements. Short-term landfills shall submit in a format approved by the Department an annual report for each fiscal year during which the landfill receives wastes. The fiscal year begins on July 1 and ends on June 30. This report shall be submitted to the Department on or before October 15th and shall identify the actual weight or volume in cubic yards of wastes received per month at the short-term landfill.

F. Closure.

1. Within twelve (12) months of issuance of the permit, the owner/operator of the landfill shall:
 - a. Post signs at the landfill that state the facility is no longer in operation;
 - b. Apply a two (2) foot thick final earth cover with at least a 1% but not greater than 4% surface slope, graded to promote positive drainage. The side slope cover shall not exceed three (3) horizontal feet to one (1) vertical foot, i.e., a 3:1 slope;
 - c. Seed the finished surface of the disposal area with native grasses or other suitable ground cover to establish a minimum of seventy-five percent (75%) permanent vegetative cover with no substantial bare spots; and,
 - d. Submit to the Department written notification that the landfill has been properly closed in accordance with the requirements outlined in this regulation. Upon the Department's verification of proper closure, the Department's permit for this facility shall be terminated;
2. Within thirty (30) days of the Department's verification of proper closure, the owner/operator shall:
 - a. Submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department a plat showing the final boundaries of the disposal area of the closed landfill including the latitude and longitude, and a record of the type, location, and quantity of solid wastes disposed at the facility;
 - b. Record a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that the land or a portion thereof, has been used for the disposal of solid waste; and,
 - c. Submit to the Department a copy of the document in which the notation required by Item 2.b. above has been placed.
3. If environmental problems associated with the landfill are detected and confirmed by the Department, the owner/operator shall submit for Department review and approval, a corrective action plan and a schedule of compliance for implementing the plan.

G. Violations and Penalties.

1. Should the Department detect environmental and/or health problems associated with any short-term landfill, monitoring (including groundwater, surface water, and air quality monitoring) may be required by the Department, as appropriate, and based on a case by case evaluation to ensure protection of the environment.
2. A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or to civil or criminal enforcement action in accordance with Code Section 44-96-450. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard. A person to whom an order is issued may appeal it as a contested case pursuant to R.61-72 and the Administrative Procedures Act.

Part II. General Permitting for the Disposal of Land-Clearing Debris and Yard Trash.

A. General Provisions.

1. The Department may issue a general permit for solid waste landfills used solely for the disposal of trees, stumps, wood chips, and yard trash which is generated from land-clearing activities, excluding agricultural and silvicultural operations when generation and disposal are on site. These landfills shall be limited to structural fill with a projected beneficial end use.

2. The general permit shall, pursuant to Part IV of this regulation, outline the following:

- a. Submittal requirements;
- b. Design criteria;
- c. Operational criteria;
- d. Monitoring, if applicable; and,
- e. Closure and corrective action requirements, if applicable.

3. Counties and/or regions comprised of counties may, through the Region/County Solid Waste Management Plans, prohibit or limit the size of land-clearing debris landfills operating under the general permit.

4. A facility shall be covered under the State's general permit if it provides proper notification of intent to the Department as outlined in the general permit, and if constructed and operated in compliance with the requirements established by the permit and this regulation.

5. Owners/operators seeking coverage under the general permit shall submit to the Department a written Notice of Intent to be covered by the general permit on a form approved by the Department. The landfill shall not be placed into operation under the general permit until receipt of Department approval for operation under the general permit.

6. Upon notification by the Department that a landfill operating under the State's general permit poses an actual or potential threat to human health or the environment the owner/operator shall implement a corrective action program approved by the Department.

7. Open dumping of land-clearing debris is prohibited.

8. A facility's approval to operate under the general permit may be revoked for any of the following reasons:

- a. The facility fails to comply with the conditions of the general permit or the regulation;
- b. Circumstances have changed since the time of the request to be covered so that the owner/operator is no longer appropriately controlled under the general permit, or a temporary or permanent closure of the landfill is necessary;
- c. Standards for land-clearing debris landfills covered under the general permit have been promulgated; or,

d. Environmental and/or health problems associated with the landfill are detected by the Department.

9. When an individual solid waste landfill permit is issued to an owner/operator otherwise subject to the general permit, the applicability of the general permit to that landfill is automatically terminated on the effective date of the individual permit.

10. A landfill excluded from the general permit solely because it already has an individual landfill permit may request that the individual permit be revoked, and that the landfill be covered by the general permit. Upon revocation of the individual permit and approval of the Notice of Intent to operate under the general permit, the general permit shall apply to the landfill.

11. The general permit may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Part IV of this regulation.

12. Any general permit for disposal of solid waste issued by the Department shall be publicly noticed.

13. Any general permit shall be subject to the terms and conditions in this regulation.

14. Landfills operating under the general permit shall adhere to all Federal and State rules and regulations, and all local zoning, land use, and other applicable ordinances and laws.

B. Notice of Intent.

1. Prior to landfilling land-clearing debris under the State's general permit, the owner/operator shall submit to the Department a Notice of Intent on a form approved by the Department. This Notice shall be accompanied by all information required by the general permit. All required information shall be complete and accurate.

2. The Notice of Intent shall be signed by the landfill operator. The landowner shall also sign the Notice of Intent, thereby giving authorization for the proposed landfilling activity on said property. Any changes in the written authorization submitted to the Department which occur after the issuance of the Department's approval to operate under the general permit shall be reported to the Department by submitting a copy of the new written authorization.

3. Any person signing a Notice of Intent to landfill under the general information shall also sign the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

C. Record Keeping and Reporting Requirements. Landfills operating under the General Permit shall submit in a format approved by the Department an annual report for the fiscal year beginning on July 1 and ending on June 30. This report shall be submitted to the Department on or before October 15th and shall identify the actual weight or volume in cubic yards of wastes received per month at the land-clearing debris and yard trash landfill.

D. Violation and Penalties. A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or to civil or criminal enforcement action in

accordance with Code Section 44-96-450. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard. Any person to whom an order is issued may appeal it as a contested case pursuant to R.61-72 and the Administrative Procedures Act.

Part III. Landfills for disposal of construction, demolition, and land-clearing debris that have controlled access and serve permanently located utility facilities and manufacturing firms, such as those listed in the South Carolina Industrial Directory, shall be considered Part III landfills.

A. General Provisions.

1. Structural fill. Permanently located utility facilities and manufacturing firms, such as those listed in the South Carolina Industrial Directory, i.e., Part III facilities, may use certain solid waste that is generated on-site for structural fill. Such activities are exempt from the requirements of this regulation if the site will:

- a. Provide structural fill of areas with a beneficial end use;
- b. Have controlled access through the use of fences, gates or natural barriers, or other means to prevent promiscuous dumping and unauthorized access; and,
- c. Receive only those items listed below that are generated as a result of construction, remodeling, repair and demolition of structures, road building, and land clearing in the course of operations on property under the same ownership or control as the structural fill activity and that have not been in direct contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or painted with lead-based paint:
 - (1) hardened concrete;
 - (2) brick;
 - (3) block;
 - (4) untreated lumber; and,
 - (5) other items specifically approved in writing by the Department.

2. Permit-by-Rule. Part III landfills shall be deemed to have a permit for disposal of construction, demolition, and land-clearing debris generated in the course of operations on property under the same ownership or control as the landfill as outlined in Section B. below.

B. Permit-by-Rule. The siting, design, construction, operation, and closure activities of landfills that receive construction, demolition and/or land-clearing debris and that serve Part III facilities shall conform to the standards set forth in this Part.

1. A Part III facility shall be deemed to have a permit for the purposes of this Part if it is registered with the Department, and constructed and operated in compliance with the requirements outlined below:

a. Only construction, demolition and land-clearing debris as outlined in Appendix I of this regulation that does not contain and is not in direct contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or lead-based paint, and that is generated as a result of construction, remodeling, repair and demolition of structures, road building, and land clearing in the course of operations on property under the same ownership or control as the landfill shall be accepted for disposal at a Part III approved landfill.

b. Thirty (30) days after submittal of a complete notification submittal to the Department, the landfill may begin operating unless otherwise notified by the Department.

c. Approvals to operate under this Permit-by-rule shall be effective for the design and operational life

of the landfill. However, the Department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original approval was based have been changed by statute or amended by regulation.

d. The owner of a landfill shall notify the Department not later than 30 days following transfer of ownership of the landfill during the active life of the landfill, e.g., until issuance of Department final closure approval.

e. If at any time the Department obtains quantitative data indicating that the landfill poses an actual or potential threat to human health or the environment, upon notification by the Department, the owner/operator shall implement a corrective action program approved by the Department.

f. Open dumping of construction, demolition, and land-clearing debris is prohibited.

g. All landfills shall adhere to all Federal and State rules and regulations, and all local zoning, land use and other applicable local ordinances.

h. Access to the landfill shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent promiscuous dumping and unauthorized access.

2. Registration Requirements:

a. Prior to landfilling at a Part III landfill under the State's permit-by-rule, the entity responsible for the landfill shall register with the Department. A registration form approved by the Department and all information required by this Part shall be submitted to the Department no less than thirty (30) days prior to operation of the proposed landfill. All required information shall be complete and accurate. If the Department fails to notify the applicant for either a request for additional information, or with a denial of approval to operate under the permit-by-rule within thirty (30) days of receipt of a complete registration submittal, the landfill may begin operating.

b. A company official, e.g., plant manager, etc., shall sign the registration form and the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

c. Any person wishing to operate a landfill under this permit-by-rule shall submit to the Department three (3) copies of the following documents prior to accepting waste:

(1) A registration form approved by the Department. This form shall include at a minimum the following information:

(a) Business entity responsible for the landfill;

(b) Title of individual responsible for operation of the landfill;

(c) The estimated expected life of the landfill;

(d) The maximum volume of solid waste the landfill will be capable of receiving over the operational life of the landfill;

April 24, 1998

R.61-107.11, Page 14

ROA 874

- (e) The source and description of cover material to be used; and,
 - (f) An explanation of how the cover will be applied;
- (2) A site plan on a scale of not greater than two hundred (200) feet per inch. This plan shall be prepared by a South Carolina licensed professional engineer and shall at a minimum identify the following:
- (a) Property boundaries, footprint of the landfill, location of any buildings, fences, gates, entrances, exits, and access roads;
 - (b) Land use of the property immediately adjacent to the proposed disposal area boundaries to include the location of all homes, schools, hospitals, publicly owned recreational park areas, drinking water wells, and roads;
 - (c) Location of surface water bodies, dry runs, wetlands, the location of the 100-year flood plain boundaries, and other applicable details regarding the general topography of the landfill site and adjacent properties within one-fourth (3) mile of the disposal area; and,
 - (d) Depth of the disposal area and proposed final elevations, in a cross-sectional view;
- (3) A current county map showing the location of the landfill; and,
- (4) A current 7.5 minute quadrant map (U.S. Geological Survey topographic map, including the legend and name of the quadrant) with the proposed disposal area marked.

3. Siting Criteria. New and expanding landfills shall meet the siting criteria outlined below. Variances may be requested for landfills and may be granted on a case-by-case basis upon demonstration by the applicant that the variance will not adversely impact human health or the environment, and based on the landfill's past compliance history.

- a. A landfill located in a 100-year floodplain shall demonstrate that the landfill will not restrict the flow of the 100-year flood;
- b. A landfill shall be in compliance with the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency requirements concerning wetlands;
- c. The waste disposal boundary of the landfill shall not be located within one hundred (100) feet of any property line without written consent from the adjacent landowner(s);
- d. The waste disposal boundary of the landfill shall not be located within two hundred (200) feet of any residence, school, day-care center, hospital or publicly owned recreational park area;
- e. The waste disposal boundary of the landfill shall not be located within two hundred (200) feet of any surface water body which holds visible water for greater than six (6) consecutive months, excluding drainage ditches, sedimentation ponds and other operational features on the site;
- f. The waste disposal boundary of the landfill shall not be located within the wellhead protection area of a public well, and shall comply with the buffer for private drinking water wells as established by the Department's State Primary Drinking Water Regulations;

g. The bottom elevation of the landfill shall be a minimum of two (2) feet above seasonal high water table as it exists prior to construction of the disposal area; and,

h. Waste material shall not be placed on or within fifty (50) feet of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, etc., without the written approval of the impacted utility.

4. Operation Criteria. Any landfill operating under this Permit-by-Rule shall adhere to the following operational criteria:

a. The landfill shall accept only waste as outlined in Section B.1.a. of this Part;

b. Unauthorized wastes shall be removed from the landfill within seventy-two (72) hours of receipt to a facility permitted to accept the waste;

c. The unloading of solid waste intended for disposal in the landfill shall be restricted to the working face of the landfill;

d. A uniform layer of earth cover no less than six (6) inches in depth or a uniform layer of non-flammable waste, e.g., bricks, blocks, hardened/cured asphalt, hardened cement, etc., shall be placed over all exposed flammable waste material, e.g., paper products, wood products, etc., at the end of each project, but no less frequently than monthly;

e. Open burning at landfills shall be prohibited;

f. The site shall be maintained and operated in a manner which will protect the established water quality standards of the surface waters and ground waters;

g. Dust, odors, fire hazards, litter and vectors shall be effectively controlled so they do not constitute nuisances or hazards; and,

h. Storm water shall be diverted to minimize run-off into the disposal area of the landfill. An appropriate permit from the Department may be required prior to the discharge of any storm waters to surface waters.

5. Closure Requirements.

a. Within six (6) months following the last receipt of solid waste at a site, the application of final cover shall be completed. A two (2) foot thick final earth cover is required with at least a 1% but not greater than 4% surface slope, graded to promote positive drainage. The side slope cover shall not exceed three (3) horizontal feet to one (1) vertical foot, i.e., a 3:1 slope. The integrity of the final cover shall be maintained.

b. Within seven (7) months following the last receipt of solid waste at the site, the finished surface of the disposal area shall be seeded with native grasses or other suitable ground cover.

c. Within ten (10) days of grading and seeding, pursuant to item #5.b. above, a company official shall submit to the Department verification that the landfill has been properly closed in accordance with requirements outlined in this Part. Upon receipt of verification of closure, the Department will schedule an inspection of the landfill. Upon issuance of the Department's final closure approval, the Department's approval to operate under this permit-by-rule for this site shall be terminated.

C. Violations and Penalties. A violation of this Part constitutes a violation of this regulation and of the South Carolina Solid Waste Policy and Management Act of 1991, S.C. Code Ann. Section 44-96-10, et seq., and subjects the violator to civil or criminal enforcement action in accordance with Code Section 44-96-450. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this Part, including violation of any order or standard. A person to whom an order is issued may appeal such action as a contested case pursuant to R.61-72 and the Administrative Procedures Act.

Part IV. Long-Term Construction, Demolition, and Land-Clearing Debris Landfills, i.e., All Other Construction, Demolition and Land-Clearing Debris Landfills Not Addressed in Parts I, II or III.

A. General Provisions.

1. The siting, design, construction, operation, and closure activities of landfills which receive construction, demolition and/or land-clearing debris shall conform to the standards set forth in this Part.

2. Landfills for the disposal only of trees, stumps, wood chips, and yard trash, when generation and disposal of such waste occurs on properties under the same ownership or control, are exempt from the requirements of this regulation.

3. Upon obtaining data the landfill poses a threat to human health or the environment, the Department, upon notification to the owner/operator, may require the owner/operator to implement a corrective action program approved by the Department.

4. Landfills shall be consistent with the host Region/County Solid Waste Management Plan.

5. Prior to the issuance of a permit for a new or expanded facility, the Department shall approve an allowable rate of disposal based on the Region/County Solid Waste Management Plans, the Letters of Consistency, the facility's design capacity, the expected operational life, and the area to be served by the facility as outlined in the permit application.

6. Only those items listed in Appendix I of this regulation and any items specifically listed on the facility's permit issued by the Department which have not come into contact with hazardous constituents (e.g., pesticides, etc.), petroleum products, or lead-based paint shall be accepted for disposal at the landfill unless specifically authorized by the Department as stated in Sections D.3. and E.1. of this Part.

7. A separate permit shall be required for each landfill even though there may be one or more different types of landfills located on the same site.

8. Open dumping of construction, demolition, and land-clearing debris is prohibited.

9. The permittee of a landfill shall notify the Department prior to transfer of ownership or operation of the landfill during the active life of the landfill, e.g., until issuance of Department final closure approval.

B. Permit Application Requirements.

1. Prior to the construction, operation, expansion or modification of a landfill, a permit shall be obtained from the Department.

2. Any person wishing to obtain a permit for a landfill shall submit to the Department three (3) copies of the following documents:

a. A completed permit application on a form provided by the Department;

b. Complete construction plans and specifications prepared by a South Carolina licensed professional engineer which include, but are not limited to, the following:

(1) A site plan on a scale of not greater than two hundred (200) feet per inch. This plan shall at a minimum identify the following:

(a) Property boundaries, footprint of the landfill, existing and proposed structures and systems, and access roads;

(b) Land use and zoning within one-fourth (3) mile of the proposed site's boundaries to include the location of all homes, schools, hospitals, publicly owned recreational park areas, drinking water wells, and roads;

(c) Location of surface water bodies, dry runs, wetlands, the location of the 100-year flood plain boundaries, and other applicable details regarding the general topography of the landfill site and adjacent properties within one-fourth (3) mile of the disposal area; and,

(d) Site conditions and projected use including all site structures, buildings, fences, gates, entrances and exits, parking areas, on-site roadways, and signs;

(2) An engineering report which shall include, but is not limited to, the following:

(a) A current 7.5 minute quadrant map (U.S. Geological Survey topographic map, including the legend and name of the quadrant) which shows contour intervals not exceeding ten (10) feet, any proposed fill area, any borrow area, grades for proper drainage of each lift required and typical cross sections of lifts, special drainage devices if necessary, fencing, equipment shelters, existing and proposed utilities, employee facilities, and all other pertinent information to clearly indicate the orderly development, operations, and completion of the site;

(b) Source and description of cover material to be used;

(c) Frequency of covering (at least monthly);

(d) Depth of disposal area;

(e) Final contours of the finished landfill areas;

(f) A general operating plan for the proposed facility including the expected life of the facility, the maximum volume of solid waste the facility will be capable of receiving over the operational life of the facility, and the maximum rate at which the facility will receive that waste during the designed life of the facility;

(g) Method for inspecting and measuring incoming waste;

(h) Procedures for control of storm water drainage;

(i) Procedures for prevention of fires;

(j) Procedures for control of vectors;

(k) Procedures for odor control;

(l) Procedures for dust control;

(m) Hours of operation;

(n) List of equipment to be used for excavating, earth moving, spreading, compacting and

covering operations;

(o) A contingency plan describing landfill operation in the event of equipment failure. Reserve equipment shall be available within twenty four (24) hours of equipment breakdown;

(p) A list of items that are not listed in Appendix I of this regulation that the owner/operator wishes to place in the landfill, the anticipated quantity and source of the waste. Upon Department review, items other than those listed in Appendix I, that are approved for landfilling, shall be listed on the permit for that facility. After issuance of the permit, other items may be approved for disposal at the landfill by modification of the permit by the Department. Only items that will cause no environmental harm as determined by the Department will be approved for disposal;

(q) Data to indicate the location of the seasonal high water table in relation to the bottom elevation of the proposed landfill; and,

(r) A detailed closure plan in accordance with Section G of this Part, to include a description of the final cover and the methods and procedures to be used to install the cover. This plan shall also include the following: an estimate of the largest area of the landfill that will ever require a final cover at any time during the active life of the facility; an estimate of the maximum inventory of wastes ever on site over the active life of the facility; a schedule for completing all activities; and, a site plan of the landfill showing the proposed final elevations. The plan may be amended at any time during the active life of the facility with Department approval. The plan shall be amended whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure;

c. A letter from Ocean and Coastal Resources Management (OCRM) stating that the project is consistent with the South Carolina Coastal Zone Management Plan if the proposed landfill is located in the coastal zone as defined in accordance with the Coastal Zone Management Act;

d. An outline of a financial assurance mechanism. The owner/ operator of each facility shall establish sufficient financial assurance to ensure satisfactory maintenance and closure, and to carry out any corrective action which may be required as a condition of a permit. Consideration shall be given to mechanisms which would provide flexibility to the owner/operator in meeting its financial obligations. The owner/operator shall be allowed to use combined financial responsibility mechanisms for a single facility and shall be allowed to combine financial responsibility mechanisms for multiple facilities, utilizing actuarially sound risk-spreading techniques. Financial assurance requirements do not apply to local governments or regions comprised of local governments unless and until such time as federal regulations require such local governments and regions to demonstrate financial responsibility for such facilities; and,

e. A disclosure statement on a form provided by the Department pursuant to Code Section 44-96-300. The Department may accept one disclosure statement for multiple facility permit applicants. Local governments and regions comprised of local governments are exempt from this requirement.

3. Failure to begin construction of the landfill within twelve (12) months of the issuance of the Department permit shall render that permit invalid.

C. Design Criteria for Construction, Demolition and Land-Clearing Debris Landfills.

1. The site for a new landfill or expansion of an existing landfill shall meet the following standards, unless otherwise approved by the Department:

a. A landfill located in a 100-year floodplain shall demonstrate that the landfill will not restrict the

flow of the 100-year flood;

b. A landfill shall be in compliance with the U. S. Army Corps of Engineers and the U. S. Environmental Protection Agency requirements concerning wetlands;

c. Access to the landfill shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent promiscuous dumping and unauthorized access;

d. The waste disposal boundary of the landfill shall not be located within one hundred (100) feet of any property line;

e. The waste disposal boundary of the landfill shall not be located within one thousand (1000) feet of any residence, school, day-care center, hospital or publicly owned recreational park area;

f. The waste disposal boundary of the landfill shall not be located within two hundred (200) feet of any surface water body which holds visible water for greater than six (6) consecutive months, excluding drainage ditches, sedimentation ponds and other operational features on the site;

g. The waste disposal boundary of the landfill shall not be located within one hundred (100) feet of any drinking water well;

h. The bottom elevation of the landfill trench shall be a minimum of two (2) feet above the seasonal high water table elevation as it exists prior to construction of the disposal area. The seasonal high water table elevation shall be determined based on interpretation of the data obtained from a representative number of monitoring wells approved by the Department. The Department may consider alternative information for determining the seasonal high water table elevation on a case by case basis. In cases where there is insufficient information to support the seasonal high water table elevation determination, additional separation may be required by the Department.

i. The landfill shall be adjacent to or have direct access to roads which are of all-weather construction and capable of withstanding anticipated load limits; and,

j. All landfills shall adhere to all Federal and State rules and regulations, and all local zoning, land use, and other applicable ordinances and laws.

k. Waste material shall not be placed on or within fifty (50) feet of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, etc., without the written approval of the impacted utility.

2. Drainage control requirements.

a. The disposal area shall be graded with a minimum of a 1% slope so as to divert and minimize run-off into the disposal area of the landfill, to prevent erosion and ponding within the disposal area, and to drain water from the surface of the landfill;

b. Prior to accepting waste, the owners/operators shall design, construct, and subsequently maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during peak discharge from a 24-hour, 25-year storm; and,

(2) A run-off control system from the active portion of the landfill to collect and control at least

the water volume resulting from a 24-hour, 25-year storm; and,

c. An appropriate permit from the Department may be required prior to the discharge of any storm waters to surface waters.

3. Access to fire equipment and fire-fighting services shall be provided.

4. Procedures shall be established for maintaining conditions that are unfavorable for the habitation and production of insects, rodents and other pests.

D. Acceptability of Waste at Construction, Demolition, & Land-Clearing Debris Landfills.

1. Wastes that have been determined by the Department to be acceptable are listed in Appendix I.

2. Items listed in Appendix II and wastes, e.g., items listed in Appendix I, etc., which have been in direct contact with or may contain petroleum products, lead-based paint, or any hazardous constituents listed in the S.C. Hazardous Waste Management Regulations R.61-79.261, are prohibited.

3. Any requests for the acceptance of a particular waste not listed in either Appendix I or II, shall be directed to the Department for a determination of acceptability and modification of the permit.

E. Operation Criteria for Construction, Demolition and Land-Clearing Debris Landfills.

1. The landfill shall accept only waste as outlined in Appendix I of this regulation and in the Department's permit for that facility unless specifically approved by the Department.

2. Unauthorized wastes shall be removed from the landfill site to an approved facility within forty-eight (48) hours of receipt, unless otherwise approved by the Department.

3. The unloading of solid waste intended for disposal in the landfill shall be restricted to the working face of the landfill.

4. The working face of the landfill shall be confined to as small an area as the equipment can safely and efficiently operate. The slope shall not exceed thirty three percent (33%).

5. Solid waste shall be spread in uniform layers to the extent practical and compacted to its smallest practical volume.

6. Unless otherwise approved by the Department, a uniform compacted layer of earth cover or other suitable cover material acceptable to the Department, no less than six (6) inches in depth shall be placed over all exposed waste material at least monthly. Depending on the nature of the disposed materials, more frequent cover may be required in the Department's permit for that facility.

7. Open burning at landfills shall be prohibited.

8. The site shall be maintained and operated in a manner which will protect the established water quality standards of the surface waters and ground waters.

9. [Reserved]

10. Dust, odors, fire hazards, litter and vectors shall be effectively controlled so they do not constitute

nuisances or hazards.

11. The landfill shall have an attendant on duty at all times the facility is open.

12. Sign Requirements. Signs shall be posted and maintained in conspicuous places which:

a. Identify the owner, operator, or a contact person and telephone number in case of emergencies and the hours during which the landfill is open for use;

b. State the types of waste that the landfill is permitted to receive; and,

c. Identify the valid SCDHEC Permit Number for the facility.

13. Prior to accepting any materials containing nonfriable asbestos for disposal at the landfill, the operator shall include in its landfill records a copy of a "permission for disposal" letter from the Department. The landfill shall retain these letters for a period of not less than five (5) years and shall make them available to the Department upon request.

F. Monitoring and Reporting Requirements.

1. If at any time the Department determines that a landfill poses an actual or potential threat to human health or the environment, upon notification by the Department, the owner/operator shall implement a corrective action program approved by the Department.

2. Upon implementation of a contingency plan, the Department shall be notified immediately by telephone with written confirmation to follow.

3. Landfills shall maintain daily records of:

a. The actual weight or total volume in cubic yards of waste received;

b. The particular grid location of the area currently being used for disposal of solid waste; and,

c. [Reserved].

4. Landfills shall submit in a format approved by the Department an annual report for the fiscal year beginning on July 1 and ending on June 30. This report shall be submitted to the Department on or before October 15th and shall include the information outlined below. This information shall be maintained by the owner/operator for a period not less than five (5) years.

a. The actual weight or volume in cubic yards of wastes received per month; and,

b. A description of the capacity of the landfill used in the previous fiscal year and the remaining permitted capacity.

5. Six (6) months prior to Department review of the facility's permit in accordance with Section I. of this Part, the landfill shall submit to the Department a topographic survey map of the site that shows the contours at the beginning and the end of the period since the last permit review.

G. Closure. The termination of disposal operations at a construction, demolition and land-clearing debris landfill, whether the entire landfill site or a portion thereof, shall be in compliance with the following

requirements.

1. Within one (1) month following the last receipt of solid waste at a site or a part of the site, the application of final cover shall begin. A two (2) foot thick final earth cover is required with at least a 1% but not greater than 4% surface slope, graded to promote positive drainage. The side slope cover shall not exceed three (3) horizontal feet to one (1) vertical foot, i.e., a 3:1 slope. Alternate final cover designs may be submitted for Department review and approval. Unless otherwise approved by the Department, the application of final cover shall be completed within six (6) months of the last receipt of solid waste at the facility. The integrity of the final cover shall be maintained.

2. The finished surface of the disposal area shall be seeded with native grasses or other suitable ground cover within five (5) days of the completion of that portion of the landfill. A minimum of seventy-five percent (75%) vegetative ground cover with no substantial bare spots shall be established and maintained into the second growing season.

3. Within five (5) days of closure of the entire landfill, the owner/operator shall post signs at the landfill that state the facility is no longer in operation.

4. Upon closure of the entire landfill and within ten (10) days of grading and seeding, pursuant to item #2 above, a professional engineer licensed in the State of South Carolina shall submit to the Department verification that the landfill has been properly closed in accordance with requirements outlined in this Part and the facility's permit. Upon receipt of verification of closure, the Department will schedule an inspection of the facility. Upon issuance of the Department's final closure approval, the Department's permit for this facility shall be terminated.

5. If environmental problems associated with the landfill are detected and confirmed by the Department, the owner/operator shall submit for Department review and approval, a corrective action plan and a schedule of compliance for implementing the plan.

6. Within thirty (30) days of the Department's issuance of final closure approval, the owner shall:

a. Submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Department a plat showing the final boundaries of the waste disposal area of the closed landfill including the latitude and longitude, and a record of the type, location, and quantity of solid wastes disposed at the facility;

b. Record a notation on the deed to the facility property - or on some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that the land or a portion thereof, has been used for the disposal of solid waste; and,

c. Submit to the Department a copy of the document in which the notation required by Item 6.b. above has been placed.

H. Violations and Penalties. A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or to civil or criminal enforcement action in accordance with Code Section 44-96-450. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this Part, including violation of any order, permit or standard. A person to whom an order is issued may appeal it as a contested case pursuant to R.61-72 and the Administrative Procedures Act.

I. Permit Review. Permits shall be effective for the design and operational life of the facility. The Department shall review the permit at least once every five (5) years.

April 24, 1998

R.61-107.11, Page 24

ROA 884

1. If, upon review, the Department finds that material or substantial violations of the permit demonstrate the permittee's disregard for, or inability to comply with applicable laws, regulations, or requirements and would make continuation of the permit not in the best interest of human health and safety or the environment, the Department may, after a hearing, amend or revoke the permit, as appropriate and necessary. When a permit is reviewed, the Department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation.

2. The Department may amend or attach conditions to a permit when:

a. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect human health and safety and the environment;

b. The investigation has shown the need for additional equipment, construction, procedures, and testing to ensure the protection of human health and safety and the environment; and,

c. The amendment is necessary to meet changes in applicable regulatory requirements.

Appendix I
ACCEPTABLE WASTE
FOR
CONSTRUCTION, DEMOLITION, AND LAND-CLEARING DEBRIS LANDFILLS

The following types of waste have been determined by the Department to be environmentally safe and may be accepted at construction, demolition & land-clearing debris landfills unless specifically prohibited by the Department. However, any of the materials listed in this appendix that have been painted with lead-based paint and/or have been in direct contact with hazardous constituents (e.g., pesticides, etc.), or petroleum products, are prohibited from disposal at a construction, demolition, and land-clearing debris landfill.

Acceptable Land-Clearing Debris Such As:

- | | |
|----------------------------------|-----------------|
| . earthen material, e.g., clays, | . top soil |
| . sands, gravels, & silts | . vegetation |
| . logs | . rock |
| . tree stumps | . brush & limbs |
| . root mats | |

Acceptable Construction & Demolition Debris Such As:

- | | |
|-------------------------------------|--|
| . structural steel | . hardened concrete |
| . bricks & blocks | . lumber |
| . plaster & plasterboard | . insulation material |
| . shingles & roofing materials | . floor, wall & |
| . hardened/cured asphalt (2) | . ceiling tile |
| . pipes | . hardened cement |
| . floor coverings | . glass wire (optical |
| . other structural fabrics | . fiber) |
| . poly fiberglass (highly polished, | . wall coverings |
| . cured material used for shower | . tires (1) |
| . stalls, roofing, etc.) | . other items physically attached to |
| . glass | . the structure, e.g., signs, mailboxes, |
| . nonfriable asbestos-containing | . awnings, etc. |
| . material (3) | . mirrors |

(1) Tires shall be reduced in size by a minimum of one-eighth the size of the original tire prior to landfill disposal.

(2) Tar sealant material is not acceptable.

(3) Nonfriable asbestos-containing material which is in good condition and has not been handled in such a way as to render it a regulated material and thus subject to Bureau of Air Quality Control (BAQC) Regulation 61-86.1 (Standards of Performance for Asbestos Abatement Operations) and the National Emissions Standards for Hazardous Air Pollutants [40 CFR 61 Subpart M]) is acceptable. Record keeping of all asbestos-containing material shall be in accordance with Bureau of Air Quality Control Regulation 61-86.1 (Standards of Performance for Asbestos Abatement Operations) and the National Emissions Standards for

Hazardous Air Pollutants [40 CFR 61, and Subpart M]). Prior to disposal of any nonfriable asbestos-containing material, the generator of the asbestos waste shall have a "permission for disposal" letter from the Department.

Appendix II

UNACCEPTABLE WASTE

The following types of waste have been determined to pose a potential threat to the environment and may not be accepted at construction, demolition & land-clearing debris landfills.

Any Waste That Has Been In Contact With Lead-Based Paint Such As:

- . plaster & plasterboard
- . concrete
- . wall paper
- . containers (cans, buckets, etc.)
- . metal poles
- . painting equipment
- . mechanical parts
- . lumber (siding, cabinets, shingles, etc.)

Any Waste That Has Been In Contact With Petroleum Products Such As:

- . storage tanks
- . pipes
- . mechanical/machine parts
- . absorbent (vermiculite)
- . paper towels & rags
- . containers
- . filters (oil, etc.)
- . soil
- . concrete

Any Waste That Has Been In Contact With Friable Asbestos Material Such As:

- . pipe insulation
- . asbestos-cement products that have been crumbled/pulverized
- . roofing material that has been cut with a saw
- . broken/chipped floor tiles
- . friable asbestos containing material

Any Waste That Has Been In Contact With Polychlorinated Biphenols (PCBs) Such As:

- . transformers
- . electrical components
- . any waste that has come in contact with any liquid-containing PCBs
- . capacitors
- . lighting ballasts

Any Waste That Has Been In Contact With Solvents (industrial plants, chemical plants, laboratories, construction sites, etc.) Such As:

April 24, 1998

R.61-107.11, Page 28

ROA 888

- . caulking compounds
- . containers (packaging)
- . filters
- . pumps
- . mechanical/machine parts (valves)
- . flooring (wood, carpet)
- . soil
- . storage tanks
- . paint thinner
- . pipes
- . vats
- . adhesives
- . cement
- . cabinets (shelves)
- . tar
- . glazing compound
- . absorbent

Any Waste That Has Been In Contact With Preservatives
(pentachlorophenol & creosote) Such As:

- . railroad ties
- . soil
- . any mechanical part used in manufacturing processes
- . utility poles
- . containers

Any Waste That Has Been In Contact With
Pesticides/Herbicides Such As:

- . containers (packaging)
- . soil
- . mechanical/machine parts
- . any equipment used for application
- . vats
- . concrete
- . wood (storage area)

Miscellaneous Waste Such As:

- . lamps (mercury) (1)
- . liquid waste (paint, paint thinner, etc.) & containers (paint cans, etc.)
- . caulking tubes
- . unpolished fiberglass (Bondo)
- . solid waste which may contain a waste or substance determined by the Department to be unacceptable

(1) Fluorescent lamps and high intensity discharge (HID) lamps such as metal halide and mercury vapor lamps.



South Carolina Department of Health
and Environmental Control

Regulation 61-107.19

SWM: Solid Waste Landfills and Structural Fill

Effective Date: May 23, 2008

**Bureau of Land & Waste Management
Division of Mining & Solid Waste Management
2600 Bull Street
Columbia, SC 29201**

Disclaimer

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May 23, 2008

R.61-107.19



DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code

Sections 44-96-10 *et seq.*

R.61-107.19 Solid Waste Management: Solid Waste Landfills and Structural Fill

TABLE OF CONTENTS

<i>Part I. General Requirements.</i>	3
A. Applicability	3
B. Definitions for the Purposes of this Regulation	4
C. Waste Characterization	12
D. Permit Application Process	15
E. Financial Assurance Criteria	19
F. Permit Applicant Requirements	34
G. Severability	36
H. Violations and Penalties	36
I. Appeals	36
J. Variances	37
<i>Part II. Permit-by-rule: Short Term Structural Fill</i>	38
A. General Provisions	38
B. Permit-by-rule Registration Requirements	38
C. Location Restrictions	39
D. Design Requirements for Structural Fill	40
E. Operating Criteria	40
F. Closure	41
<i>Part III. Class One Landfills - General Permit for Disposal of Land-Clearing Debris and Yard Trash</i>	43
A. General Permit	43
B. General Provisions	43
C. Notice of Intent	45
D. Record Keeping and Reporting Requirements	45
<i>Part IV. Class Two Landfills</i>	46
A. General Provisions	46
B. Location Restrictions	46
C. Operation Criteria for Class Two Landfills	47
D. Design Criteria for Class Two Landfills	50
E. Grounwater Monitoring and Corrective Action	49
F. Closure and Post-Closure Care	58
G. Financial Assurance Criteria	60
H. Permit Application Requirements	60
I. Permit Conditions and Review	64
J. Transfer of Ownership	65
<i>Part V. Class Three Landfills</i>	65
Subpart A. General Provisions	65
Subpart B. Location Restrictions	67
Subpart C. Operating Criteria	71
Subpart D. Design Criteria for Class Three Landfills	76

Subpart E. Groundwater Monitoring and Corrective Action	79
Subpart F. Closure and Post-closure Care.	93
Subpart G. Financial Assurance Criteria.....	97
Subpart H. Permit Application Requirements.....	97
Subpart I. Leachate Recirculation.	104
Subpart J. Permit Conditions and Permit Review.....	107
Subpart K. Transfer of Ownership.	108
 Appendix I.....	 109
Appendix II.....	111
Appendix III.....	113
Appendix IV.....	114
Appendix V.....	116
Appendix VI.....	121

Part I. General Requirements.

A. Applicability.

1. This regulation establishes minimum standards for the site selection, design, operation, and closure of all solid waste landfills and structural fill areas. Disposal of waste under the purview of this regulation is based on the waste's chemical/physical properties and is not dependent upon the source of generation with the exception of municipal solid waste that shall be disposed in Class Three landfills. This regulation is divided into the following parts:

- a. Part I outlines the general criteria that applies to one or more Parts of the regulation, e.g., the applicability for the regulation, waste characterization requirements for determining the type of landfill needed, definitions for the purposes of this regulation;
- b. Part II outlines the Permit-by-rule requirements for structural fill activity using a limited waste stream;
- c. Part III outlines the General Permitting requirements for Class One Landfills - using land-clearing debris, and yard trash to fill low areas, including permitted mining sites, for an aesthetic benefit or property enhancement;
- d. Part IV outlines the requirements for Class Two Landfills - all landfills for the disposal of waste as outlined in Appendix I of this regulation, and similar waste, and wastes that test, pursuant to Section C of this Part, less than ten (<10) times the maximum contaminant level (MCL) as published in R.61-58, State Primary Drinking Water Regulation current at the time of the permit application. When a waste not listed in Appendix I is approved by the Department for disposal, the landfill's permit will be modified to include the acceptability of the approved waste; and,
- e. Part V outlines the requirements for Class Three Landfills that accept municipal solid waste, industrial solid waste, sewage sludge, nonhazardous municipal solid waste incinerator ash and other nonhazardous wastes.

2. This regulation replaces and simultaneously repeals Regulations: 61-107.11 Solid Waste Management: Construction, Demolition, and Land-clearing Debris Landfills; 61-107.13 Solid Waste Management: Municipal Solid Waste Incinerator Ash Landfills; 61-107.16 Solid Waste Management: Industrial Solid Waste Landfills; and 61-107.258 Solid Waste Management: Municipal Solid Waste Landfills.

The Department will automatically convert as an administrative modification all existing landfill permits to the appropriate Part as outlined in this regulation.

3. A separate permit shall be required for each landfill even though there may be one or more different types of landfills located in different areas on the same site.

4. This regulation applies to all new and existing solid waste landfills and to all structural fill activities. All new solid waste landfills shall be in compliance with all requirements of this regulation prior to receipt of waste.

5. This regulation becomes effective upon publication as final in the State Register.

6. Existing permitted solid waste landfills shall comply with the following:

a. Existing permitted landfills operating on the effective date of this regulation are not subject to the location criteria outlined herein, but shall be subject to all other provisions of this regulation;

b. Within 180 days of the effective date of this regulation, existing permitted landfills that are not in compliance with required standards, shall submit to the Department a plan to bring the landfill into compliance with requirements of this regulation; and,

c. All landfills operating on the effective date of this regulation shall be in compliance with the requirements of this regulation within 18 months of the effective date of this regulation, unless additional time is allowed pursuant to requirements of this regulation.

7. Landfills for the disposal only of trees, stumps, wood chips, and yard trash when generation and disposal of such waste occurs on properties under the same ownership or control are exempt from the requirements of this regulation. Also, land-clearing debris generated from agricultural or silvicultural operations generated and disposed on site are not subject to the requirements of this regulation.

8. Open dumping is prohibited.

9. Use of Design Document, Plans, and Specifications.

a. The owner/operator of a solid waste landfill shall maintain copies of all Department approved plans and specifications for the landfill at a location readily accessible by landfill personnel and representatives of the Department during regular business hours; and,

b. All landfill operations shall be in accordance with this regulation and with all Department approved plans and specifications for the facility. Failure to operate in accordance with this regulation and/or the approved plans and permit may result in enforcement action by the Department.

10. All activities conducted under the purview of this regulation shall adhere to all Federal and State rules and regulations, and all local zoning, land use, and other applicable ordinances and laws;

B. Definitions for the Purposes of this Regulation.

1. "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with this regulation.

2. "Active portion" means that part of a facility that has received or is receiving wastes and that has not

been closed in accordance with this regulation.

3. "Administratively complete" means a determination by the Department that all elements of an application, as specified herein, have been received to include all required signatures and tender of the application fee, where required.

4. "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

5. "Applicant" means an individual, corporation, partnership, business association, or government entity that applies for the issuance, transfer, or modification of a permit under this regulation.

6. "Aquifer" means a geological formation, group of formations, or portion of a formation, capable of yielding significant quantities of groundwater to wells or springs.

7. "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

8. "Ash" means the solid residue from the incineration of solid wastes.

9. "Beneficial fill" means filling to surrounding grade, low areas or depressions in the surface of the earth to include permitted mining sites for an aesthetic benefit.

10. "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

11. "Bulk PCB Waste" means waste derived from manufactured products containing PCBs in a non-liquid state, at any concentration where the concentration at the time of designation for disposal was >50 ppm PCBs. PCB bulk product waste does not include PCBs or PCB Items regulated for disposal under 40CFR761, the Toxic Substances Control Act (TSCA), Sections 761.60(a) through (c), Sec. 761.61, Sec. 761.63, or Sec. 761.64. PCB bulk product waste includes, but is not limited to:

(a) Non-liquid bulk wastes or debris from the demolition of buildings and other man-made structures manufactured, coated, or serviced with PCBs. PCB bulk product waste does not include debris from the demolition of buildings or other man-made structures that is contaminated by spills from regulated PCBs which have not been disposed of, decontaminated, or otherwise cleaned up in accordance with TSCA requirements, Sec. 761.61.

(b) PCB-containing wastes from the shredding of automobiles, household appliances, or industrial appliances.

(c) Plastics (such as plastic insulation from wire or cable; radio, television and computer casings; vehicle parts; or furniture laminates); preformed or molded rubber parts and components; applied dried paints, varnishes, waxes or other similar coatings or sealants; caulking; adhesives; paper; Galbestos; sound deadening or other types of insulation; and felt or fabric products such as gaskets.

(d) Fluorescent light ballasts containing PCBs in the potting material.

12. "Closure" means the discontinuance of operation by ceasing to accept, treat, store, or dispose of solid waste in a manner which minimizes the need for further maintenance and protects human health and the environment.

13. "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

14. "Construction" means any physical modification to the site at which a potential or proposed solid waste management facility is to be located including, but not limited to, site preparation.

15. "Contingency plan" means a document acceptable to the Department setting out an organized, planned, and coordinated course of action to be followed at or by the facility in case of a fire, explosion, or other incident that could threaten human health and safety or the environment.

16. "Cover" means soil or other suitable material, or both, acceptable to the Department that is used to cover compacted solid waste in a land disposal site.

17. "Department" means the South Carolina Department of Health and Environmental Control.

18. "Disclosure statement" means a sworn statement or affirmation, the form and content of which shall be determined by the department and as required by SC Code Section 44-96-300.

19. "Displacement" means the relative movement of any two (2) sides of a fault measured in any direction.

20. "Disposal" means the discharge, deposition, injection, dumping, spilling, or placing of any solid waste into or on any land or water, so that the substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

21. "Existing landfill" means any landfill that is permitted to receive solid waste as of the effective date of this regulation.

22. "Expand" or "Expansion" means, for the purposes of this regulation, any increase in the permitted capacity of a solid waste disposal facility, or any increase in the total volume at a solid waste disposal facility.

23. "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, including, but not limited to, one or more landfills, surface impoundments, or combination thereof.

24. "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

25. "Financial assurance mechanism" means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste management facilities. Available financial responsibility mechanisms include, but are not limited to insurance, trust funds, surety bonds, letters of credit, certificates of deposit, and financial tests as determined by the Department by regulation.

26. "Flood plain" means the lowland and relatively flat areas adjoining inland and coastal areas of the mainland and off-shore islands including, at a minimum, areas subject to a one percent or greater chance of

flooding in any given year.

27. "100-year flood" means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.
28. "Footprint" means the outer most edges of the waste disposal area.
29. "Gas condensate" means the liquid generated as a result of gas recovery process(es) at the landfill.
30. "Generator" means any person, by site, whose action or process produces solid waste, or whose action first causes a solid waste to become subject to regulation.
31. "Groundwater" means water beneath the land surface in the saturated zone.
32. "Hazardous waste" has the meaning provided in Section 44-56-20 of the South Carolina Hazardous Waste Management Act.
33. "High water table" means the highest water elevations measured at the uppermost aquifer.
34. "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.
35. "Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas).
36. "Industrial waste" means solid waste that results from industrial processes including, but not limited to, factories and treatment plants.
37. "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.
38. "Landfill" means a disposal facility or part of a facility where solid waste is placed in or on land, and which is not a land treatment facility, a surface impoundment, or an injection well.
39. "Land-clearing debris" means solid waste which is generated solely from land-clearing activities, but does not include solid waste from agricultural or silvicultural operations.
40. "Lateral expansion" means a horizontal expansion of the footprint of an existing landfill.
41. "Leachate" means the liquid that has percolated through or drained from solid waste or other man-emplaced materials and that contains soluble, partially soluble, or miscible components removed from such waste.
42. "Lead-based paint" means paint containing greater than 600 parts per million (ppm) total lead by weight, calculated as lead metal in the total nonvolatile content, i.e., >0.06%; or, when measured in situ with an X-ray Fluorescence Spectrum Analyzer (XRF), paint containing >0.7 mg/cm².

43. "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), and as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846, as amended by EPA final updates).

44. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

45. "Local government" means a county, any municipality located wholly or partly within the county, and any other political subdivision located wholly or partly within the county when such political subdivision provides solid waste management services.

46. "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25° C and atmospheric pressure.

47. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

48. "Modification" means changes to a solid waste landfill as follows:

a. "Minor modification" means a change that keeps the permit current with routine changes to the facility or its operations, or an administrative change; and,

b. "Major modification" means a change that substantially alters the facility or its operations, e.g., tonnage increase above 25%, any volumetric capacity increase, alternate designs that vary from the design prescribed in this regulation.

49. "Municipal solid waste" includes, but is not limited to, wastes that are durable goods, nondurable goods, containers and packaging, food scraps, and miscellaneous inorganic wastes from residential, commercial, institutional, and industrial sources including, but not limited to, appliances, automobile tires, newspapers, clothing, disposable tableware, office and classroom paper, wood pallets, and cafeteria wastes.

50. "Municipal solid waste incinerator" means any solid waste incinerator, publicly or privately owned, that receives household waste. Such incinerator may receive other types of solid waste such as commercial or industrial solid waste.

51. "On-site landfill" means landfills that accept only solid waste generated in the course of normal operations on property under the same ownership or control as the waste management facility.

52. "Open burning" means any fire or smoke-producing process which is not conducted in any boiler plant, furnace, high temperature processing unit, incinerator or flare, or in any other such equipment primarily designed for the combustion of fuel or waste material.

53. "Open dumping" means any unpermitted or unregistered solid waste disposal or land filling activity.

54. "Pay-in period" means the time frame allotted for making annual payments into a trust fund.

55. "Perennial stream" means a stream or reach of a stream that flows continuously throughout the year

and whose upper surface generally stands lower than the water table in the region adjoining the stream.

56. "Permit" means the process by which the department can ensure cognizance of, as well as control over, the management of solid wastes.

57. "Permittee" means the person to whom the Department issued either a permit, an approval to operate under a General Permit, or a Permit-by-rule, pursuant to this regulation.

58. "Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

59. "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

60. "Practical Quantitation Limit (PQL)" means the lowest concentration of an analyte that can be measured within specified limits of precision and accuracy during routine laboratory operating conditions.

61. "Putrescible wastes" means solid waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of creating foul smelling odors and attracting or providing food for animals.

62. "Qualified professional" means a qualified South Carolina registered professional geologist or qualified South Carolina registered professional engineer. Under Part IV Section E and Part V Subpart E the qualified professional shall have sufficient training and experience in groundwater hydrology and related fields, including groundwater monitoring, contaminant fate and transport, and corrective-action.

63. "Recharge area" for a particular aquifer is defined as areas where water enters the aquifer through downward migration. Principal examples include: outcrop areas of a particular aquifer where the potentiometric head within the unit decreases with depth; and, in the subsurface, where the potentiometric head relationship and leakage factors across any confining unit allow for downward flow into other aquifer systems.

64. "Region" means a group of counties in South Carolina that is planning to or has prepared, approved, and submitted a regional Solid Waste Management Plan to the Department pursuant to S.C. Code Section 44-96-80.

65. "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in R.61-79.261.3, Hazardous Waste Management Regulations, that is not excluded from regulation as a hazardous waste under R.61-79.261.4(b), or was not generated by a conditionally exempt small quantity generator as defined in R.61-79.261.5.

66. "Regulatory threshold" means promulgated levels that can not be equaled or exceeded.

67. "Representative sample" means a sample that statistically represents the population.

68. "Responsible party" means:

a. Any officer, corporation director, or senior management official of a corporation, partnership, or business association that is an applicant;

b. A management employee of a corporation, partnership, or business association that is an

applicant who has overall responsibility for operations and financial management of the facility under consideration:

c. An individual, officer, corporation director, senior management official of a corporation, partnership, or business association under contract to the applicant to operate the facility under consideration; or,

d. An individual, corporation, partnership, or business association that holds, directly or indirectly, at least five percent (5%) equity or debt interest in the applicant. If any holder of five percent or more of the equity or debt of the applicant is not a natural person, the term means any officer, corporation director, or senior management official of the equity or debt holder who is empowered to make discretionary decisions with respect to the operation and financial management of the facility under consideration.

69. "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

70. "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

71. "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

72. "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

73. "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

74. "Small business" means a commercial retail service, industry entity, or nonprofit corporation, including its affiliates, that:

a. Is, if a commercial retail service or industry service, independently owned and operated; and,

b. Employs fewer than one hundred (100) full-time employees or has gross annual sales or program service revenues of less than five million dollars.

75. "Sole source aquifer" is defined as specified in the Federal Safe Drinking Water Act.

76. "Solid waste" means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

77. "Special Wastes" means nonresidential or commercial solid wastes, other than regulated hazardous wastes, that are either difficult or dangerous to handle and require unusual management at Class Three landfills, including, but not limited to, those wastes contained in S.C. Code Section 44-96-390.(A).

78. "Special Wastes Analysis and Implementation Plan" means the procedures used to identify and manage special wastes at Class Three landfills, pursuant to SC Code Section 44-96-390.

79. "State" means the State of South Carolina.

80. "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the landfill that is necessary for protection of human health and the environment.

81. "Structural fill" means landfilling for future beneficial use utilizing land-clearing debris, hardened concrete, hardened/cured asphalt, bricks, blocks, and other materials specified by the department by regulation, compacted and landfilled in a manner acceptable to the department, consistent with applicable engineering and construction standards and carried out as a part of normal activities associated with construction, demolition, and land-clearing operations; however, the materials utilized must not have been contaminated by hazardous constituents, petroleum products, or painted with lead-based paint. Structural fill may not provide a sound structural base for building purposes.

82. "Structural integrity" means the ability of a landfill to withstand physical forces exerted upon designed components, appurtenances, and containment structures (e.g., liners, dikes) of the landfill.

83. "Surface water" means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within territorial limits, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private. (This does not include drainage ditches, sedimentation ponds and other operational features on the site.)

84. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

85. "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

86. "Vector" means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds, and vermin.

87. "Vertical expansion" means an expansion of an existing solid waste landfill above previously permitted elevations for the purposes of gaining additional capacity.

88. "Washout" means the carrying away of solid waste by waters of the one-hundred year base flood.

89. "Wetlands" means those areas that are defined in 40 Code of Federal Regulations (CFR) Section 232.2(r) or State law.

90. "Yard trash" means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

C. Waste Characterization.**1. Waste Characterization Report.**

a. Determination of the proper landfill class for disposal of a waste stream is based on the chemical and physical properties of the waste and not on the source of generation of the waste. To determine the class of landfill required for proper disposal of a waste stream, the permittee shall submit to the Department a waste characterization report. The waste characterization report shall consist of a comprehensive analytical evaluation of the chemical and physical nature of each waste stream. Hazardous wastes as defined in R.61-79, Hazardous Waste Management Regulations shall not be disposed of in the landfills under the purview of this regulation. The wastes acceptable for disposal in a Class One landfill, and waste items listed in Appendix I are exempt from the waste characterization process outlined in this regulation. Class Three landfills shall adhere to their approved Special Waste Analysis and Implementation Plan (SWAIP), pursuant to S.C. Code Section 44-96-390 which shall be deemed to be in compliance with this Section.

b. The toxicity characteristic leaching procedure (TCLP) (USEPA method 1311) shall be used to obtain all extracts for the purpose of characterizing a waste stream proposed for disposal in a solid waste landfill.

c. The analytical results of the TCLP shall be compared to the MCLs in South Carolina R.61-58 State Primary Drinking Water Regulation to determine the appropriate class landfill in which the waste stream may be disposed. If no MCL exists for a parameter, then those drinking water risk-based concentrations recognized by EPA Region IV shall be used to determine the appropriate class landfill for the waste. For those parameters where no MCL or Region IV number exists, the Department, using input from the permittee, will develop an appropriate number for determining the landfill class for disposal of that waste stream.

d. Unless otherwise exempted in this regulation, all wastes shall be characterized in accordance with the following schedule:

(1) A minimum of every three years using certified knowledge of the process by which the waste stream was generated;

(2) At a minimum of every six years using analytical test data from the TCLP;

(3) According to a Department approved alternate schedule based on the variability or non-variability noted in previous sampling events or other factors that affect the predictability of waste characteristics;

(4) When the process or raw materials used in the process that generates the waste changes significantly enough to alter the chemical makeup or chemical ratios of the waste stream; and,

(5) When a new waste stream is proposed for disposal.

e. Waste streams not listed in Appendix I, that demonstrate properties similar to the waste listed on Appendix I, may be exempted from testing as determined by the Department on a case-by-case basis. Requests for an exemption from testing, along with technical rationale for the exemption, shall be submitted to the Department in writing.

f. The Department will provide current forms and guidance documents needed for the successful

completion of the waste characterization process. All analytical results from the characterization process shall be submitted to the Department on these forms or in a format approved by the Department.

2. Waste Testing and Waste Stream Determination.

a. The permittee shall submit to the Department a comprehensive determination of the chemical and physical nature of each waste stream to be landfilled in accordance with the following sampling and analytical requirements:

(1) To ensure that representative samples are obtained, the sampler shall develop a sampling plan and employ all reasonable measures, such as sampling different sources of solid waste at different times, or conducting random sampling of a representative pile of the waste generated from different sources at different times. All samples of waste shall be collected using procedures as described in EPA Publication SW-846.

(2) All analytical testing required by this regulation shall be performed by a laboratory certified by the Department for the appropriate methodologies, to both properly prepare and analyze for the required parameters. The current guidelines for applicable regulatory thresholds, practical quantitation limits, and required quality assurance data shall be obtained from the Department prior to the start of the characterization project. Analytical results shall be submitted to the Department within 60 days of the sample collection date.

(3) Mixing of individual wastes to be disposed of prior to testing is acceptable only if:

(a) The individual wastes are mixed prior to discharge in the normal production process of the generator or the individual wastes are generated by identical processes and identical raw materials; or,

(b) The mixing of individual non-hazardous wastes results in a waste in which leaching characteristics are no greater than the leaching characteristics of one or more of the individual wastes; and,

i. A demonstration is submitted to the Department for review and approval that details how a reduction in leaching occurs due to some factor other than dilution. The demonstration shall include, at a minimum:

aa. The concentration, determined in accordance with the requirements of this Section, for each parameter which undergoes a reduction in concentration. Concentrations of parameters shall be determined for each individual waste in the mixture and for each parameter as a result of the mixture;

bb. A listing and the ratio, by weight and volume, of the individual wastes which comprise the mixture;

cc. Calculations using the concentration and weight data required in paragraphs aa. and bb. above, which demonstrate quantitatively that the reduction in leaching characteristics is not solely due to dilution; and,

dd. An identification and explanation of the chemical reactions, including chemical equations, which cause the reduction.

ii. The individual non-hazardous wastes are mixed in the same ratios and in the same manner in which they will be mixed prior to disposal.

(4) For the purpose of obtaining an extract, which will be analyzed for any volatile organic compounds, a zero head space extraction apparatus, as specified in the TCLP, shall be used.

(5) Practical Quantitation Limits (PQLs) for the analytical methods shall be one order of magnitude below the required regulatory threshold for the particular landfill class desired for disposal. Slight deviations in minimum PQL may be granted, on a case-by-case basis, with proper application and technical justification to the Department.

b. For the initial characterization of solid waste to be disposed of in a solid waste landfill, a minimum of two (2) representative samples of the waste shall be collected and tested in accordance with the TCLP. TCLP testing of additional samples of the solid waste may be required by the Department, based on a high degree of variability in the concentration of a parameter at or near the maximum allowable concentration for a particular landfill class. The Department may allow, with prior approval, the testing for selected constituents based on the generators knowledge of the process.

c. The permittee shall notify and obtain approval from the Department prior to making any physical or chemical changes to the waste stream being disposed of in a solid waste landfill.

(1) Significant changes in the chemical or physical nature of the waste stream may require disposal of the waste stream in a different class of landfill.

(2) Significant changes to the chemical or physical nature of the waste stream may require modification of the environmental monitoring program.

d. Any person seeking to utilize a testing or analytical method other than the TCLP method described in Section C.1.b. above may request authorization to do so. To be successful, the applicant shall demonstrate to the satisfaction of the Department that the proposed method is equal to or superior to the TCLP in terms of its sensitivity, accuracy, and precision (i.e., reproducibility). The request shall include, at a minimum:

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;

(2) Description of the types of wastes or waste matrices for which the proposed method may be used;

(3) Comparative results obtained from using the proposed method with those obtained from using the TCLP;

(4) An assessment of any factors, which may interfere with, or limit the use of, the proposed method;

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method; and,

(6) Any other information on the proposed method, which the Department may reasonably request to evaluate the proposed method.

e. The outcome of an alternate testing procedure as outlined in Section C.2.d. above may result in revision of the landfill class limits as defined in Part I, Section A.1. of this regulation to ensure equivalent protection of human health and the environment.

f. Solid waste streams that contain chemicals or chemical properties potentially harmful to human health and the environment, for which TCLP or other approved testing procedures as outlined in Section C.2.d. above is not sufficient, shall be classified on a case-by-case basis by the Department. The permit applicant may be required to perform alternate testing procedures as necessary to determine the potential adverse effects to human health and the environment.

g. A sampling and analysis plan for performing the activities outlined in Section C.2.a.-f. above shall be submitted to the Department for review and approval prior to sampling for waste characterization purposes.

h. If the waste characterization test results indicate that a landfill reclassification is necessary based on exceedance of the landfill classification level outlined in Part IV A.1., the Department may require additional sampling and testing to confirm or reject such indication. If exceedance of the landfill classification level outlined in Part IV A.1 is confirmed and the facility intends to continue to accept the waste stream in question, the Department will require the permittee to submit a permit application for appropriate modifications to the landfill. The required modifications shall insure that the facility meets the requirements of the new landfill classification.

3. Waste Characterization Report for Class Two Landfills.

a. Class Two landfills shall, prior to permit issuance, submit a waste characterization report that contains at a minimum, the following:

- (1) A listing of each solid waste proposed for disposal in the facility;
- (2) The solid waste sampling plan used to ensure that accurate and representative samples are collected in accordance with Section C.2.a. above;
- (3) A detailed description of any mixing to be proposed as described in Section C.2.a. above, and any available information that is required by that section;
- (4) All laboratory results and quality assurance/quality control documentation that fully characterizes each waste; and,
- (5) The name, location, and contact person of each generator of solid waste to be disposed of at the facility.

b. Class Two landfills that accept ONLY those wastes specifically listed in Appendix I are exempt from the waste characterization report requirements.

c. Class Three landfills shall adhere to their approved Special Waste Analysis and Implementation Plan (SWAIP), pursuant to S.C. Code Section 44-96-390.

4. Compliance with the Department approved SWAIP will satisfy requirements of this section for Class Three landfills.

D. Permit Application Process.

1. Determination of Need and Consistency.

a. Prior to submittal of a permit application to the Department for a new or expanded Class Two or Class Three Landfill, the applicant shall provide documentation of property ownership (e.g., tax map or deed) or proof of property control (e.g., contract) and request the following determinations by the Department:

(1) That there is a need for the proposed landfill or landfill expansion pursuant to Regulation 61-107.17 and that the Department has determined the maximum yearly disposal rate pursuant to Regulation 61-107.17;

(2) That the proposed landfill or landfill expansion is consistent with the State and county/region solid waste management plans pursuant to S.C. Section 44-96-290(F);

(3) That the proposed landfill or landfill expansion is consistent with local zoning, land use, and any other applicable ordinances pursuant to S.C. Code Section 44-96-290(F);

(4) That the proposed landfill or landfill expansion meets the buffer requirements set forth in Part IV, B.1.a. of this Regulation for Class Two landfills and Part V, Subpart B.258.18.a. of this Regulation for class Three landfills;

b. Where, prior to the effective date of this regulation, the Department has made determinations required under Part I.D.1.a. of this regulation, such determinations shall remain applicable and become the agency's final determination under Part I.D.1, subject to the appeal provision in Part I.D.1.c and the subsequent public notice and application process.

c. A Department decision involving a determination listed herein, may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

2. Public Notification and Participation.

a. Notice of Intent to File a Permit Application.

(1) Within 15 days of notification from the Department that all requests for need and consistency determinations as outlined in Section D.1.a. above have been submitted to the Department for a new or expanding Class Two or Class Three Landfill, the applicant shall publish Notice of Intent to File a Permit Application in a newspaper of general circulation in the area of the proposed landfill project. The notice shall be published in the legal section of the paper for three consecutive days. This section does not apply to major permit modifications that are not expansions of an existing landfill.

(2) The notice shall contain at least the following:

(a) Name and address of the applicant;

(b) The location of the proposed landfill or landfill expansion to include the county, roads and crossroads;

(c) The town or community nearest to the proposed landfill or landfill expansion;

(d) The proposed size of the landfill or landfill expansion, i.e., footprint acreage;

(e) An explanation of the type(s) of waste that will be accepted;

(f) A statement that a request has been submitted to the Department for a determination that there is a need for the proposed landfill or landfill expansion pursuant to Regulation 61-107.17 and for a determination of the maximum yearly disposal rate pursuant to Regulation 61-107.17;

(g) A statement that a request has been submitted to the Department for a determination that the proposed landfill or landfill expansion is consistent with the State and county/region solid waste management plans pursuant to S.C. Section 44-96-290(F);

(h) A statement that a request has been submitted to the Department for a determination that the proposed landfill or landfill expansion is consistent with local zoning, land use, and any other applicable ordinances pursuant to S.C. Code Section 44-96-290(F);

(i) A statement that a request has been submitted to the Department for a determination that the proposed landfill or landfill expansion meets the buffer requirements set forth in Part IV, B.1.a. of this Regulation for Class Two landfills and Part V, Subpart B.258.18.a. of this Regulation for Class Three landfills;

(j) Department locations (Central Office and appropriate Regional Office) where a copy of these documents can be viewed during normal working hours; and,

(k) The Department's address and contact name for submittal of inquiries and placement of name on the Department's mailing list for future decisions.

(3) No permit application may be accepted by the Department for filing unless accompanied by documentation from the newspaper that publication has been made.

(4) No later than the first date of publication in the newspaper, the applicant shall mail a copy of the Notice of Intent to File a Permit Application by certified mail, return receipt requested, to all adjoining landowners of the proposed landfill or landfill expansion.

b. Notice of Draft Determinations of Need and Consistency Under Section D.1.a. Above.

(1) For Class Two and Class Three landfills, the Department will publish a notice when the draft determinations are ready for review for all new or expanded landfills. This notice will be published in a newspaper of general circulation in the area of the proposed landfill and sent to affected persons who have asked to be notified. The notice will list locations where a copy of the draft determinations can be reviewed. The public will have a 30-day period to review the draft determinations and submit comments to the Department, pursuant to the Administrative Procedures Act, SC Code Section 1-23-10 et seq.

(2) Public Hearings for Draft Determinations.

(a) The Department will conduct a public hearing upon receipt of requests in writing by ten (10) persons or by a governmental subdivision or agency or by an association having not less than ten members.

(b) A request for a public hearing must be mailed (postmarked) to the Department during the 30 day comment period and shall be based on technical reasons relating to siting, design, or operation of the landfill. The Department will send a notice acknowledging receipt of a request for a public hearing to the applicant and to the person(s) requesting a hearing within 15 days following receipt of the request. The Department will publish a notice of the time, date, and location of the hearing.

(3) Notice of Department Determinations. After close of the public comment period on the draft determination and the public hearing, if held, the Department will issue a Department Decision. Notice of the Department Decision will be sent by certified mail, return receipt requested, to the applicant. Notice of the Department's decision will be sent by regular mail, unless certified mail is requested, to affected persons who have asked to be notified, to all persons who commented in writing to the Department, and to all persons who attended the public hearing, if held. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department may only notify all group leaders and petition organizers by certified mail, return receipt requested. The Department will ask these leaders and organizers to notify members of their groups or any concerned citizens who signed the petitions. The Department will also publish notice of the Department Decision in a newspaper of general circulation in the area of the proposed activity. The Department's notice will include instructions on how to request a final review conference and the time frame for filing such a request.

c. Notice of Filing Permit Application.

(1) Notice of all applications submitted to the Department for the initial construction and major modifications of Class Two and Class Three landfills shall be published by the applicant once in a newspaper of general circulation in the area of the proposed landfill project. Notice for Class Two landfill application shall be published as provided in Part IV, Section H.3. Notice for new Class Three landfills that accept municipal solid waste shall be published as provided in S. C. Code Section 44-96-470 and Part V, Subpart H.3.a. of this regulation within 15 days of filing the permit application. Notice for all other new Class Three landfills shall be published as provided in Part V, Subpart H.3.b.

(2) All notices shall contain the following:

- (a) Name and address of the applicant;
- (b) The location of the proposed activity to include the county, roads and crossroads. (Class Three landfills shall provide a location map of the proposed site);
- (c) The nature of the proposed activity;
- (d) A description of the proposed site or a description of the proposed major modification;
- (e) An explanation of the type(s) of waste that will be accepted;
- (f) Department locations (Central Office and appropriate Regional Office) where a copy of the permit application or draft permit, as appropriate, can be viewed during normal working hours;
- (g) The Department's address and contact name for submittal of comments and inquiries;
- (h) The approximate tonnage/year expected for disposal at the landfill; and,
- (i) The proposed life of the landfill.

(3) The Department will send a notice of receipt of the permit application by regular mail to all adjoining landowners of the proposed landfill.

d. Public notification requirements for Class One landfills are defined in Part III, Section B.4.

c. Notice of Draft Permit. For Class Two and Class Three landfills, the Department will publish a notice when the draft permit is ready for review for all new landfills and for major modifications as determined by the Department. This notice will be published in a newspaper of general circulation in the area of the proposed landfill and will be sent to affected persons who have asked to be notified. The notice will list locations where a copy of the draft permit can be reviewed. The public will have a 30-day period to review the draft permit and submit comments to the Department, pursuant to the Administrative Procedures Act, SC Code Section 1-23-10 et seq.

f. Public Hearings for Draft Permits.

(1) The Department will conduct a public hearing upon receipt of requests in writing by ten (10) persons or by a governmental subdivision or agency or by an association having not less than ten members.

(2) A request for a public hearing must be mailed (postmarked) to the Department during the 30 day comment period and shall be based on technical reasons relating to siting, design, or operation of the landfill. The Department will send a notice acknowledging receipt of a request for a public hearing to the applicant and to the person(s) requesting a hearing within 15 days following receipt of the request. The Department will publish a notice of the time, date, and location of the hearing.

g. Notice of Department Decision on the Permit. After close of the public comment period on the draft permit and the public hearing, if held, the Department will issue a Department Decision. Notice of the Department Decision will be sent by certified mail, return receipt requested, to the applicant. Notice of the Department's decision will be sent by regular mail, unless certified mail is requested, to affected persons who have asked to be notified, to all persons who commented in writing to the Department, and to all persons who attended the public hearing, if held. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department may only notify all group leaders and petition organizers by certified mail, return receipt requested. The Department will ask these leaders and organizers to notify members of their groups or any concerned citizens who signed the petitions. The Department will also publish notice of the Department Decision in a newspaper of general circulation in the area of the proposed activity. The Department's notice will include instructions on how to request a final review conference and the time frame for filing such a request.

E. Financial Assurance Criteria.

The requirements of this Section apply to all: Class One landfills, except landfills owned and operated by local government or a region comprised of local governments, State or Federal government; Class Two landfills, except landfills owned and operated by local government or a region comprised of local governments, State or Federal government; and, Class Three landfills, except landfills owned and operated by State or Federal government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

1. Financial Assurance for Closure.

a. The permittee shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the landfill ever requiring a final cover at any time during the active life in accordance with the closure plan. The permittee shall submit a copy of the estimate to the Department for review and approval.

(1) The cost estimate shall equal the cost of closing the largest area of the landfill ever requiring a final cover at any time during the active life when the extent and manner of its operation would

make closure the most expensive, as indicated by its closure plan.

(2) During the active life of the landfill, the permittee shall annually adjust the closure cost estimate for inflation.

(3) The permittee shall increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or landfill conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The permittee may reduce the closure cost estimate and the amount of financial assurance provided for proper closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the landfill. The permittee shall submit justification for the reduction of the closure cost estimate and the amount of financial assurance to the Department for review and approval.

b. The permittee of each landfill shall establish financial assurance for closure of the landfill as required by this regulation using an allowable mechanism. The permittee shall provide continuous coverage for closure until released from financial assurance requirements, pursuant to this regulation.

2. Financial Assurance for Post-closure Care.

a. The permittee shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the landfill in compliance with the applicable post-closure plan. The post-closure cost estimate used to demonstrate financial assurance shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The permittee shall submit a copy of the estimate to the Department for review and approval.

(1) The cost estimate for post-closure care shall be based on the most expensive costs of post-closure care during the post-closure care period.

(2) During the post-closure care period, the permittee shall annually adjust the post-closure cost estimate for inflation.

(3) The permittee shall increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or landfill conditions increase the maximum costs of post-closure care.

(4) The permittee may reduce the post-closure cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The permittee shall submit justification for the reduction of the post-closure cost estimate and the amount of financial assurance to the Department for review and approval.

b. The permittee of each landfill shall establish financial assurance for the costs of post-closure care as required by this regulation using an allowable mechanism. The permittee shall provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care.

3. Financial Assurance for Corrective Action.

a. A permittee of a landfill required to undertake a corrective action, pursuant to this regulation, shall have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the corrective action plan. The corrective action cost estimate shall

account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The permittee shall submit a copy of the estimate to the Department for review and approval.

(1) The permittee shall annually adjust the estimate for inflation until the corrective action program is completed, pursuant to this regulation.

(2) The permittee shall increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or landfill conditions increase the maximum costs of corrective action.

(3) The permittee may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided in Section E.3.b. below, if the cost estimate exceeds the maximum remaining costs of corrective action. The permittee shall submit justification for the reduction of the corrective action cost estimate and the amount of financial assurance to the Department for review and approval.

b. The permittee of each landfill required to undertake a corrective action program, pursuant to this regulation, shall establish financial assurance for the most recent corrective action program using an allowable mechanism. The permittee shall provide continuous coverage for corrective action until released from financial assurance requirements for corrective action in accordance with this regulation.

4. Allowable Mechanisms. The mechanisms used to demonstrate financial assurance under this section shall ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners/operators shall choose from the options outlined herein. Payments made into the standby trust fund by the provider of the financial assurance pursuant to the Department instruction shall be transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee. An originally signed duplicate of the standby trust agreement shall be submitted to the Department with documentation of the selected mechanism(s).

a. Trust Fund.

(1) A permittee may satisfy the requirements of this section by establishing a trust fund that conforms to the requirements of this regulation.

(a) The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(b) The text of the trust agreement shall be provided by the Department.

(c) The original trust agreement signed by the permittee and the trustee shall be submitted to the Department for review and approval. The trust agreement shall be accompanied by:

i. Schedule A. This information shall be in a format approved by the Department, updated within 60 days of each change in cost estimate, and include, at a minimum, the following about the facility:

(aa) Permit number, if available;

(bb) Name of the permittee;

- (cc) Address of the facility;
- (dd) Current closure cost estimate; and,
- (ee) Current post-closure cost estimate, if appropriate.

ii. Schedule B. This information shall be in a format approved by the Department and include, at a minimum:

(aa) The amount of funds or property used to initially establish the trust fund; and,

(bb) The account number in which the funds are being held.

iii. A Certificate of Acknowledgment for Solid Waste Management Facility Trust Fund Agreement in a format approved by the Department to include, at a minimum, the:

(aa) Name of the trustee; and,

(bb) Name of the permittee.

(d) The trust fund shall be irrevocable and can not be changed or recalled without written agreements from the Department.

(2) Payments into the trust fund for closure and post-closure care shall be made annually by the permittee for five years or over the remaining life of the landfill, whichever is shorter. This period is referred to as the pay-in period. In the case of a trust fund for corrective action of known releases, the pay-in period shall consist of one-half ($\frac{1}{2}$) of the estimated length of the corrective action program.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund shall be at least equal to the current cost estimate for closure or post-closure care divided by the number of years in the pay-in period as defined in Section E.4.a.(2) above. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least equal to one-half of the current cost estimate for corrective action, except as provided in Section E.4.h., divided by the number of years in the corrective action pay-in period as defined in Section E.4.a.(2) above. The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(5) The initial payment into the trust fund shall be made before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected.

(6) If the permittee establishes a trust fund after having used one or more alternate mechanisms, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the applicable specifications.

(7) The permittee, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement shall be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the most recent Department-approved cost estimate for closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The permittee shall notify the Department that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(8) The trust fund account shall contain, at a minimum, the amount of funds needed to complete final closure of the facility at any given time during the life of the facility. An annual statement shall be provided to the Department at least 30 days prior to the anniversary date of establishment of the fund that confirms the value of the trust fund account to include all payments made into the account and all reimbursements paid from the account during the previous year.

(9) The trust fund may be terminated by the permittee only if the permittee substitutes alternate acceptable financial assurance or if he is no longer required to demonstrate financial responsibility in accordance with this regulation.

b. Surety Bond Guaranteeing Payment or Performance.

(1) A permittee may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this regulation. A permittee may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this regulation. The bond shall be effective before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with this regulation. The permittee shall submit a copy of the bond to the Department. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury. The text of the surety bond shall be provided by the Department.

(2) In addition to the surety bond, the permittee shall establish a standby trust fund, to receive payments using a trustee that has the authority to act as a trustee and that is regulated and examined by a Federal or State agency. The text of the standby trust shall be provided by the Department.

(3) The following documents shall be submitted to the Department:

- (a) The original surety bond signed by the Surety and the permittee; and,
- (b) The original standby trust agreement signed by the permittee and the trustee.

(4) The penal sum of the bond shall be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in Section E.4.j.

(5) Under the terms of the bond, the surety shall become liable on the bond obligation when the permittee fails to perform as guaranteed by the bond.

(6) The permittee shall establish a standby trust fund. The standby trust fund shall meet the requirements for a trust fund as defined in Section E.4.a. except the requirements for initial payment and subsequent annual payments specified in Section E.4.a.(2) through (5) above.

(7) Payments made under the terms of the bond shall be deposited by the surety directly into the standby trust fund. Payments from the trust fund shall be approved by the trustee.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the permittee and to the Department 120 days in advance of cancellation. If the surety cancels the bond, the permittee shall obtain alternate financial assurance as specified in this section.

(9) The permittee may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the permittee is no longer required to demonstrate financial responsibility in accordance with this regulation.

c. Letter of Credit.

(1) A permittee may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this regulation. The letter of credit shall be effective before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with this regulation. The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency. The text of the letter of credit shall be provided by the Department.

(2) The original letter of credit shall be submitted to the Department.

(3) The letter of credit shall be irrevocable and issued for a period of at least one (1) year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in Section E.4.a.. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the permittee and to the Department 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the permittee shall obtain alternate financial assurance.

(4) The permittee may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the permittee is no longer required to demonstrate financial responsibility in accordance with this regulation.

d. Insurance.

(1) A permittee may demonstrate financial assurance for closure and post-closure care by obtaining insurance that conforms to the requirements of this regulation. The insurance shall be effective before the initial receipt of waste in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of this regulation. At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The permittee shall submit a copy of the insurance policy to the Department for review and approval. Once approved, the permittee shall submit a

copy of the effective insurance policy including all endorsements and attachments to the Department.

(2) The closure or post-closure care insurance policy shall guarantee that funds will be available to close the landfill whenever final closure occurs or to provide post-closure care for the landfill whenever the post-closure care period begins, whichever is applicable. The policy shall also guarantee that once closure or post-closure care begins, the insurer shall be responsible for the paying out of funds to the permittee or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy shall be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in the section that addresses the use of multiple financial mechanisms. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) A permittee, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement shall be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is submitted to and approved by the Department.

(5) Each policy shall contain a provision allowing assignment of the policy to a successor permittee. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the permittee and to the Department 120 days in advance of cancellation. If the insurer cancels the policy, the permittee shall obtain alternate financial assurance.

(7) For insurance policies providing coverage for post-closure care, the insurer shall annually increase the face amount of the policy beginning on the date that liability to make payments is initiated. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85% of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The permittee may cancel the insurance policy only if alternate acceptable financial assurance is substituted, or if the permittee is no longer required to demonstrate financial responsibility in accordance with this regulation.

c. Corporate Financial Test. A permittee that satisfies the requirements of this section may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

(a) The permittee shall satisfy one of the following three conditions:

i. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; or,

- ii. A ratio of less than 1.5 comparing total liabilities to net worth; or,
- iii. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(b) The tangible net worth of the permittee shall be greater than:

i. The sum of the current closure, post-closure care, corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million, except as provided in paragraph E.4.e.(1)(b)ii. below.

ii. \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, post-closure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the Department.

(c) The Permittee shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, corrective action cost estimates and any other environmental obligations covered by a financial test as described herein.

(2) Record keeping and reporting requirements.

(a) The permittee shall place the following items into the facility's operating record and submit a copy to the Department:

i. A letter signed by the permittee's chief financial officer that:

(aa) Lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities under 40 CFR Part 258, cost estimates required for UIC facilities under 40 CFR part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, if applicable; and,

(bb) Provides evidence demonstrating that the firm meets the conditions outlined above for either the current rating for its senior unsubordinated debt, or compliance with the ratio comparing total liabilities to net worth, or the ratio comparing net income to total liabilities as outlined in Section E.4.e.(1)(a) above, and the tangible net worth requirements in Section E.4.e.(1)(b) above and assets as outlined in Section E.4.e.(1)(c) above.

ii. A copy of the independent certified public accountant's unqualified opinion of the permittee's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements shall receive an unqualified opinion from the independent certified public accountant. An adverse opinion, disclaimer of opinion, or other qualified opinion will be cause for disallowance, with the potential exception for qualified opinions provided in the next sentence. The Department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Department deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test. If the Department does not allow use of the test, the permittee shall provide alternate financial assurance that meets the requirements of this section.

iii. If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the permittee satisfies either the ratio comparing total liabilities to net worth in Section E.4.e.(1)(a)ii. above, or the ratio comparing net income to total liabilities in Section E.4.e.(1)(a)iii. above that is different from data in the audited financial statements in the independent certified public accountant's financial statements for the latest complete fiscal year, referred to in Section E.4.e.(2)(a)ii. above, or any other audited financial statement or data filed with the SEC, then a special report from the permittee's independent certified public accountant to the permittee is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

iv. If the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in paragraph E.4.e.(1)(b)ii. above, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(b) A permittee shall place all records and reports required by this section in the operating record and notify the Department that these items have been placed in the operating record before the initial receipt of waste for closure and post-closure care, and within 120 days after a corrective action remedy has been selected in accordance with this regulation.

(c) After all required records and reports have been placed in the operating record, the permittee shall annually update the information and place updated information in the operating record within 90 days following the close of the permittee's fiscal year. The Department may allow an additional 45 days for a permittee who can demonstrate that 90 days is insufficient time to acquire audited financial statements. The updated information shall encompass all required reports and records.

(d) The record keeping and reporting requirements are no longer applicable when the permittee:

i. Substitutes alternate financial assurance that is not subject to the Record keeping and reporting requirements; or,

ii. Is released from the requirements of providing financial assurance for closure, post-closure, and corrective action pursuant to this regulation.

(e) If the requirements of the financial component in Section E.4.e.(1) above are no longer met, within 120 days following the end of the facility's fiscal year, the permittee shall:

i. Obtain alternative financial assurance that meets the requirements of this section;

ii. Place the required submissions for that assurance in the operating record; and,

iii. Notify the Department that the permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(f) Based on a reasonable belief that the requirements of the financial component are no longer met, at any time the Department may require the submittal of reports of its financial condition in addition to or including current financial test documentation pursuant to this regulation. If the Department finds that the permittee no longer meets the requirements of the financial component, the permittee shall provide alternate financial assurance that meets the requirements of this regulation.

(3) Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test pursuant to this regulation, the permittee shall include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if it assures them through a financial test: obligations associated with UIC facilities under 40 CFR part 144, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265.

f. Local Government Financial Test. A permittee that satisfies the requirements of Sections E.4.f.(1) through (3) may demonstrate financial assurance up to the amount specified in Section E.4.f.(4) below:

(1) Financial Component.

(a) The permittee shall satisfy one of the following two conditions:

i. If the permittee has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it shall have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all such general obligation bonds; or,

ii. The permittee shall satisfy each of the following financial ratios based on the permittee's most recent audited annual financial statement:

(aa) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and,

(bb) A ratio of annual debt service to total expenditures less than or equal to 0.20.

(b) The permittee shall prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments and have its financial statements audited by an independent certified public accountant (or appropriate State agency).

(c) A local government is not eligible to assure its obligations under the local government financial test if it:

- i. Is currently in default on any outstanding general obligation bonds; or,
- ii. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or,
- iii. Operated at a deficit equal to 5% or more of total annual revenue in each of the past two fiscal years; or,

iv. Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required in Section E.4.f.(1)(b) above. However, the Department may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Department deems the qualification insufficient to warrant disallowance of use of the test.

(d) The following terms used in this Paragraph are defined as follows:

- i. "Deficit" equals total annual revenues minus total annual expenditures;
- ii. "Total revenues" include revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;
- iii. "Total expenditures" include all expenditures excluding capital outlays and debt repayment;
- iv. "Cash plus marketable securities" is all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and,
- v. "Debt service" is the amount of principal and interest due on a loan in a given time period, typically the current year.

(2) Public Notice Component. The local government permittee shall place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure shall include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs shall be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with this regulation. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with Government Accounting Standards Board Statement 18 assures compliance with this public notice component.

(3) Record Keeping and Reporting Requirements.

(a) The local government permittee shall place the following items in the facility's operating record and submit a copy to the Department:

- i. A letter signed by the local government's chief financial officer that:
 - (aa) Lists all the current cost estimates covered by a financial test as required;
 - (bb) Provides evidence and certifies that the local government meets the conditions of either the required rating for general obligation bonds or satisfies the required financial ratios pursuant to Section E.4.f.(1)(a) above, and financial statements and audits as required in Section E.4.f.(1)(b) above, and meets the criteria outlined in Section E.4.f.(1)(c) above regarding eligibility to assure its

obligations; and,

(cc) Certifies that the local government meets the requirements established for public notification pursuant to Section E.4.f.(2) above, and the calculation of costs to be assured pursuant to Section E.4.f.(4) below;

ii. The local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who shall be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits;

iii. A report to the local government from the local government's independent certified public accountant (CPA) or the appropriate State agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Section E.4. f.(1)(a)ii. of this section, if applicable, and the requirements for financial statements pursuant to Section E.4.f.(1)(b), and assuring obligations outlined in Sections E.4.f.(1)(c)iii. and iv. The CPA or State agency's report should state the procedures performed and the CPA or State agency's findings; and,

iv. A copy of the comprehensive annual financial report (CAFR) used to comply with the public notice requirements in Section E.4.f.(2) above or certification that the requirements of General Accounting Standards Board Statement 18 have been met.

(b) The record keeping and reporting requirements outlined in Section E.4.f.(3)(a) above shall be placed in the facility operating record and a copy submitted to the Department:

i. In the case of closure and post-closure care, prior to the initial receipt of waste at the facility; or,

ii. In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of this regulation.

(c) After the initial placement of the items in the facility's operating record, the local government permittee shall update the information and place the updated information in the operating record and submit a copy to the Department within 180 days following the close of the permittee's fiscal year.

(d) The local government permittee is no longer required to meet the record keeping and reporting requirements outlined in Section E.4.f.(3) above when:

i. The permittee substitutes alternate financial assurance as specified in this section; or,

ii. The permittee is released from the requirements of this section in accordance with this regulation.

(e) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government permittee no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the permittee's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the Department that the permittee no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(f) The Department, based on a reasonable belief that the local government permittee may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance in accordance with this section.

(4) Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which a permittee can assure under this Section is determined as follows:

(a) If the local government permittee does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43% of the local government's total annual revenue.

(b) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40CFR144.62, petroleum underground storage tank facilities under 40CFR280, PCB storage facilities under 40CFR761, and hazardous waste treatment, storage, and disposal facilities under 40CFR264 and 265, it shall add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this Item.

g. Local Government Guarantee. A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required in this regulation, by obtaining a written guarantee provided by a local government. The guarantor shall meet the requirements of the Local Government Financial Test in Section E.4.f. above, and shall comply with the terms of a written guarantee.

(1) Terms of the Written Guarantee. The guarantee shall be effective before the initial receipt of waste, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with this regulation. The guarantee shall provide the following:

(a) If the permittee fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor shall:

i. Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or,

ii. Establish a fully funded trust fund as specified in Section E.4.a. above in the name of the permittee.

(b) The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the permittee and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the permittee and the Department, as evidenced by the return receipts.

(c) If a guarantee is canceled, the permittee shall, within 90 days following receipt of the cancellation notice by the permittee and the Department, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the Department. If the permittee fails to provide alternate financial assurance within the 90 day period, the guarantor shall provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the Department.

(2) Record Keeping and Reporting.

(a) The permittee shall place a certified copy of the guarantee along with the items required in Section E.4.f.(3) above, into the facility's operating record and submit a copy to the Department before the initial receipt of waste in the case of closure, and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with this regulation.

(b) The permittee is no longer required to maintain the records specified in Section E.4.g.(2) above for the guarantee when:

i. The permittee substitutes alternate financial assurance as specified in this section; or,

ii. The permittee is released from the requirements of this section pursuant to the requirements for proper closure, completion of the post-closure care period, or completion of the corrective action remedy.

(c) If a local government guarantor no longer meets the requirements of the Local Government Financial Test in Section E.4.f. above, the permittee shall, within 90 days, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the Department. If the permittee fails to obtain alternate financial assurance within that ninety (90) day period, the guarantor shall provide that alternate assurance within the next 30 days.

h. State Approved Mechanism. A permittee may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria for the language of the mechanism as specified in Section E.4.k. below, and that is approved by the Department.

i. Certificates of Deposit.

(1) A permittee may demonstrate financial assurance, wholly or in part, by assigning all rights, title and interest of a Certificate of Deposit (Certificate) to the Department, conditioned so that the permittee shall comply with the closure, post-closure care, or corrective action plan filed for the site. The amount of the Certificate shall be in an amount at least equal to the current closure, post-closure care, or corrective action cost estimate, whichever is applicable, for the site for which the permit application has been filed or any part thereof not covered by other financial assurance mechanisms. The permittee shall maintain the Certificate until proper final closure, post-closure care, or corrective action is completed. The original assignment of the Certificate of deposit shall be submitted to the Department to prove that the Certificate has been obtained and meets the requirements of this section. The Certificate shall be in the sole name of the South Carolina Department of Health and Environmental Control and shall be issued by a financial institution that is insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation. The Certificate may not have a maturity date of less than six (6) months. Those Certificates with a maturity date of less than one year shall provide for automatic renewal. In those instances where renewal is not automatic, the permittee shall renew or replace the instrument no less than 60 days before the maturity date.

(2) In addition to the certificate of deposit, the owners/operators shall establish a standby trust fund to receive payments using a trustee that has the authority to act as a trustee and that is regulated and examined by a Federal or State agency. The text of the standby trust fund shall be provided by the Department.

(3) The permittee shall be entitled to demand, receive, and recover the interest and income from the Certificate as it becomes due and payable as long as the market value of the Certificate plus any

other mechanisms used continue to at least equal the amount of the estimated current closure, post-closure care, or corrective action cost.

(4) Whenever the approved closure or post-closure maintenance care cost estimates or corrective action cost estimate increases to an amount greater than the amount of the certificate of deposit, the permittee shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain other financial assurance pursuant to this regulation to cover the increase. Anytime the cost estimate decreases, the permittee may reduce the amount of the certificate of deposit to the new estimate following written approval by the Department. The permittee shall submit a certificate of deposit and assignment reflecting the new cost estimate within 60 days of the change in the cost estimate.

(5) The Department will return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when the permittee substitutes acceptable alternate financial assurance or if the permittee is no longer required to maintain financial assurance in accordance with this regulation.

j. **Use of Multiple Financial Mechanisms.** A permittee may demonstrate financial assurance for closure, post-closure, and corrective action, as required in this regulation by establishing more than one financial mechanism per facility except that mechanisms guaranteeing performance rather than payment, may not be combined with other instruments. The mechanisms shall be as specified in Sections E.4.a., b., c., d., e., f., g., h. and i., except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms rather than a single mechanism.

k. The language of the mechanisms listed in Sections E.4. a., b., c., d., e., f., g., h. and i. of this section shall ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms shall be obtained by the permittee by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of this regulation until the permittee is released from the financial assurance requirements pursuant to this regulation;

(4) The financial assurance mechanisms shall be legally valid, binding, and enforceable under State and Federal law.

5. **Discounting.** The Department may allow discounting of closure cost estimates, post-closure cost estimates, and/or corrective action costs up to the rate of return for essentially risk free investments, net of inflation, under the following conditions:

a. The Department determines that the cost estimates are complete and accurate and the permittee has submitted a statement from a S.C. Registered Professional Engineer so stating;

b. The Department finds the facility in compliance with applicable and appropriate permit conditions;

c. The Department determines that the closure date is certain and the permittee certifies that there are no foreseeable factors that will change the estimate of site life; and,

d. Discounted cost estimates shall be adjusted annually to reflect inflation and years of remaining life.

6. Incapacity of Permittee or Financial Institution.

a. A permittee shall notify the Department by certified mail within 10 days of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permittee as debtor.

b. In the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee or institution, that issues a surety bond, letter of credit, certificate of deposit, or insurance policy pursuant to this regulation, the permittee shall be deemed in violation of the financial assurance requirements. The permittee shall establish with Department approval other financial assurance within 60 days of such event.

7. Default by Permittee.

a. The Department may take possession of a financial assurance fund if the permittee fails to:

(1) Complete closure or post-closure maintenance care in accordance with the Department approved facility plan;

(2) Complete corrective action; or,

(3) Renew or provide alternate acceptable financial assurance as required.

b. Prior to taking possession of a financial assurance funds, the Department shall:

(1) Issue a notice of violation or order alleging that the permittee has failed to perform closure or post-closure care in accordance with the closure or post-closure care plan or permit requirements; and,

(2) Provide the permittee seven days notice and an opportunity for a hearing.

F. Permit Applicant Requirements.

1. Disclosure. Prior to issuance of a Department permit for Classes One, Two, and Three landfills, a disclosure statement, pursuant to S.C. Code Section 44-96-300 and in a format approved by the Department, shall be submitted to the Department. The Department may accept one disclosure statement for multiple facility permit applicants. This requirement shall not apply if the applicant is a local government or a region comprised of local governments. The disclosure statement shall contain the following information with regard to the applicant and his responsible parties:

a. The full name, business address, and social security number of all responsible parties;

b. A description of the experience and credentials, including any past or present permits or licenses for the collection, transportation, treatment, storage, or disposal of solid waste issued to or held by the applicant within the past five years;

c. A listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a crime of moral turpitude punishable by a fine of five thousand dollars (\$5,000.00) or more or imprisonment for one year or more, or both, within five years immediately preceding the date of the submission of the permit application;

d. A listing and explanation of all convictions by final judgment of a responsible party in a state or federal court, whether under appeal or not, of a criminal or civil offense involving a violation of an environmental law punishable by a fine of five thousand dollars (\$5,000.00) or more or imprisonment for one year or more, or both, in a state or federal court within five years of the date of submission of the permit application;

e. A listing and explanation of the instances in which a disposal facility permit held by the applicant was revoked by final judgment in a state or federal court, whether under appeal or not, within five years of the date of submission of the permit application;

f. A listing and explanation of all adjudications of the applicant for having been in contempt of any valid court order enforcing any federal environmental law or any state environmental law relative to the activity for which the permit is being sought, within five years of the date of submission of the permit application; and,

g. If a responsible party of an applicant is a chartered lending institution or a publicly held corporation reporting under the Federal Securities and Exchange Act of 1934 or a wholly-owned subsidiary of a publicly held corporation reporting under the Federal Securities and Exchange Act of 1934, the information required under S.C. Code Section 44-96-300(A)(6), such responsible party shall submit to the Dept. reports covering its structure and operations as required by the chartering body or the Federal Securities and Exchange Commission. The Department is authorized to require a responsible party to provide such additional information to the Department as is reasonably necessary to make the determinations provided for in S.C. Code Section 44-96-300.

2. Permittee Requirements.

a. The permittee is required to notify the Department by certified mail within 10 days of any of the following conditions:

(1) Commencing a voluntary or involuntary proceeding in bankruptcy, naming the permittee as debtor;

(2) The sale of the holder of the permit or approval;

(3) The sale of the permitted or approved facility; or,

(4) The dissolution of the holder of the permit or approval.

b. Transfer of Ownership.

(1) The Department may, upon written request, transfer a permit to a new permittee where no other change in the permit is necessary. The proposed new owner of a permitted landfill shall, prior to the

scheduled change in ownership, submit to the Department:

- (a) Documentation of the new owner's name and address.
 - (b) Documentation of the name and address of the party responsible for the operation and maintenance of the landfill, if different from the owner.
 - (c) A written agreement signed by both parties indicating the intent to change ownership or operating responsibility of the facility. The agreement shall contain:
 - i. A specific date for the transfer of permit responsibility; and,
 - ii. A statement that the new permittee will operate the landfill in accordance with the existing permit in effect at the time of transfer.
 - (d) Documentation of financial assurance as required in Part I, Section E. of this regulation. The previous owner shall maintain financial assurance responsibilities until the new owner can demonstrate satisfactory compliance with Part I, Section E. of this regulation.
 - (e) A Disclosure Statement for the new owner pursuant to Subsection F.1. above.
- (2) Upon approval of all items required by Subsection F.2.b.(1) above, the Department shall transfer the permit from the original owner of the landfill to the new owner.
- (3) A request for a permit modification shall be submitted with the transfer of ownership request, if the landfill will not be operated in accordance with the approved plans. The permit modification shall be in accordance with all provisions of this regulation.
- (4) The new owner shall submit legal documentation of the transfer of ownership of the landfill within 15 days of the actual transfer.

G. Severability.

Should any regulation, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

H. Violations and Penalties.

A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or a civil or criminal enforcement action in accordance with S.C. Code Section 44-96-450. In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars (\$10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard.

I. Appeals.

1. A Department decision involving the issuance, denial, renewal, suspension, revocation or request for a variance of a permit may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23. Any person to whom an order is issued may appeal it pursuant to applicable law.
2. Determinations of Need and Consistency pursuant to Part I, Section D.1. may be appealed at the time such determinations are issued and may not be raised as part of an appeal of a decision on the permit.

J. Variances.

Any request for variances to these rules and regulations shall be directed in writing to, and will be considered by, the Department on an individual basis.

Part II. Permit-by-rule: Short Term Structural Fill.**A. General Provisions.** Structural fill activities shall comply with the requirements in this Part.

1. Structural fill activity shall be deemed to have a permit for disposal of the items listed below when the site is registered with the Department, and designed, constructed and operated in compliance with the requirements in this Part. Written approval from the Department to operate under the Permit-by-rule shall be obtained prior to filling. Approval for structural fill areas may be issued per tract of land and no less than 500 feet from a present or former fill area on the same tract of land under the same ownership, unless otherwise approved by the Department.

2. Structural fill may not provide a sound structural base for building purposes.

3. Structural fill activity in rights-of-way directly related to road construction under contract with the S.C. Department of Transportation shall be exempt from this Part.

4. Department approved structural fill activity shall:

- a. Have a proposed life of twelve (12) months or less;
- b. Occupy one (1) acre in size or less;
- c. Use only those items listed below that have not been contaminated by hazardous constituents listed in the S.C. Hazardous Waste Management Regulations 61-79.261 (e.g., pesticides), petroleum products, or painted with lead-based paint:

(1) Hardened concrete (may include rebar);

(2) Hardened asphaltic concrete;

(3) Bricks;

(4) Masonry blocks; and,

(5) Land-clearing debris; and,

d. Be consistent with the South Carolina Coastal Zone Management Plan if the fill area is located in the coastal zone as defined in SC Code Section 48-39-10.B.

5. Should the Department have sufficient reason to believe that environmental and/or health problems are associated with an area that contains structural fill material, monitoring (including groundwater, surface water, and air quality monitoring) may be required by the Department to ensure protection of the environment.

B. Permit-by-rule Registration Requirements.

1. Prior to engaging in structural fill activity, the landowner or landowner's agent shall receive written approval from the Department to operate under the Permit-by-rule for a specific site. "Agent" means one that acts for or as a representative of another. To request approval and register a site, a completed registration form provided by the Department and all information required by this Part shall be submitted to the Department. The Department will process the administratively complete registration and notify the

owner/agent in writing if the site is approved for structural fill activity under the Permit-by-rule.

2. All required information submitted to the Department shall be complete and accurate. The landowner and agent shall sign the registration form and the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. To request approval to operate under the Permit-by-rule, three copies of the following documents shall be submitted to the Department:

- a. A registration form provided by the Department;
- b. A current county map showing the location of the proposed fill area;
- c. Proof of ownership or control of the property;
- d. Site information to include:
 - (1) A written description of the location of the area that will accept the fill material including road names/numbers;
 - (2) The source(s) supplying the fill material;
 - (3) The anticipated time frame for filling the area;
 - (4) The size of the area to be filled;
 - (5) The maximum volume the fill area will be capable of receiving; and,
 - (6) The latitude and longitude coordinates of the proposed fill area;
- e. An explanation of how the waste will be compacted and the cover applied; and,
- f. Other pertinent information as deemed appropriate by the Department.

C. Location Restrictions.

1. Buffers. The boundary of the fill area shall not be located within:
 - a. 100 feet of any property line. Variances may be requested and granted on a case-by-case basis upon submittal of written consent from the adjacent landowner(s);
 - b. 200 feet of any residence, school, day-care center, church, hospital and publicly owned recreational park area;
 - c. 200 feet of any surface water that holds visible water for greater than six consecutive months, excluding ditches, sedimentation ponds, and other operational features on the site;
 - d. 100 feet of any drinking water well. A greater buffer may be required for compliance with the Department's Bureau of Water requirements;

e. The right-of-way of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, etc., without the written approval of the impacted utility; and,

f. 50 feet of any wetlands, unless the permittee has obtained the permits and/or authorizations required by all other state and federal laws and regulations for the impact of such wetlands.

2. Fill areas shall be adjacent to or have direct access to roads which are of all weather construction and capable of withstanding anticipated load limits.

D. Design Requirements for Structural Fill.

1. The fill area shall meet the following standards, unless otherwise approved in writing by the Department:

a. Fill areas located in the 100-year floodplain shall not restrict the flow of the 100-year flood;

b. The fill area shall be consistent with the South Carolina Coastal Zone Management Plan if the site is located in the coastal zone as defined in SC Code Section 48-39-10.B.;

c. Access to the structural fill area shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent promiscuous dumping and unauthorized access; and,

d. Fill material shall not be placed in water. If the fill area becomes inundated with water, all water shall be removed before adding additional fill material.

2. Procedures shall be established for maintaining conditions that are unfavorable for the habitation and production of vectors.

E. Operating Criteria.

The following operational requirements shall apply to all structural fill activity, unless otherwise approved in writing by the Department:

1. The fill area shall accept only those waste items listed below that have not been painted with lead-based paint, and have not been contaminated by hazardous constituents listed in the S.C. Hazardous Waste Management Regulations 61-79.261 (e.g., pesticides), or petroleum products, and that have been reduced in size to less than or equal to one (≤ 1) cubic yard pieces with no side exceeding three feet in length:

a. Hardened concrete (may include rebar);

b. Hardened asphaltic concrete;

c. Bricks;

d. Masonry blocks; and,

e. Land-clearing debris.

2. The fill area shall have an attendant on duty any time fill material is being received.

3. Unauthorized wastes shall be removed from the fill area to an approved facility within 48 hours of receipt.
4. The fill area shall be staked prior to receipt of fill material, and the stakes shall remain until the fill area is properly closed.
5. The unloading of fill material shall be restricted to the working face of the fill area.
6. The working face of the fill area shall be confined to as small an area as the equipment can safely and efficiently operate. The slope shall not exceed 33%.
7. The fill material shall be compacted and a cover consisting of a uniform layer of soil or other suitable material, or both, acceptable to the Department, no less than six 6 inches in depth shall be used to cover all exposed waste material at least every 30 days.
8. Open burning at fill areas shall be prohibited.
9. The fill area shall be maintained and operated in a manner that protects the established water quality standards of the surface waters and ground waters.
10. Dust, odors, fire hazards, litter and vectors shall be effectively controlled so they do not constitute nuisances or hazards.

F. Closure.

1. Within 12 months of the Department's issuance of approval to operate under the Permit-by-rule, the owner/agent of the filled area shall:
 - a. Apply a minimum two-foot thick final earth cover with at least a 1%, but not greater than 4% surface slope, graded to promote positive drainage. The side slope cover shall not exceed three horizontal feet to one vertical foot, i.e., a 3:1 slope;
 - b. Either:
 - (1) Begin construction of the foundation of a building project; or,
 - (2) Seed the finished surface of the filled area with native grasses or other suitable ground cover to establish and maintain into the second growing season a 75% or greater permanent vegetative cover with no substantial bare spots;
 - c. Using a form approved by the Department, record with the appropriate Register of Deeds a notation in the record of ownership of the property - or some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that the land or a portion thereof has been structurally filled and list the specific items used for filling, e.g., clean brick; and,
 - d. Submit to the Department a copy of the document in which the notation required by Section F.1.c. above was placed.
2. Upon the Department's receipt of the document defined in Section F.1.c. above, the owner/agent's approval to fill under the Permit-by-rule for this site shall be terminated.

3. If the Department has sufficient reason to believe that there are environmental problems associated with the fill area, the owner/agent shall submit for Department review and approval, a corrective action plan and a schedule of compliance for implementing the plan.

Part III. Class One Landfills - General Permit for Disposal of Land-Clearing Debris and Yard Trash**A. General Permit.**

1. The Department may issue a general permit for solid waste landfills used solely for the disposal of trees, stumps, wood chips, and yard trash that is generated from land-clearing activities, excluding agricultural and silvicultural operations when generation and disposal are on site. These landfills shall be limited to filling to grade, of low areas or depressions in the surface of the earth to include permitted mining sites for an aesthetic benefit or property enhancement. Beneficial fill does not provide a sound structural base for building purposes, but does provide an aesthetic benefit.
2. The general permit shall outline the following:
 - a. Submittal requirements;
 - b. Design criteria;
 - c. Operational criteria;
 - d. Monitoring, if applicable; and,
 - e. Closure and corrective action requirements, if applicable.
3. The general permit, pursuant to this Part, may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this regulation and subject to the terms and conditions in this regulation.
4. The Department shall publish a notice of any general permit issued, modified, revoked, or reissued.

B. General Provisions.

1. Landfills approved to operate under the General Permit shall be known as Class One landfills.
2. Class One landfills shall be consistent with the State and Region/County Solid Waste Management Plans, local zoning, land use and other applicable ordinances.
3. A Class One Landfill shall be covered under the State's general permit if it provides proper notification of intent to the Department as outlined in the general permit, and if constructed and operated in compliance with the requirements established by the permit and this regulation.
4. Prior to submittal to the Department of a written Notice of Intent, pursuant to Section C. below, the owners/operator seeking coverage under the general permit shall:
 - a. Publish a notice informing the public of the intent to operate under the General Permit. All notices shall be published once in a newspaper of general circulation in the area of the proposed landfill project and contain the following:
 - (1) Name and address of the applicant;
 - (2) The location of the proposed activity to include the county, roads and crossroads;

- (3) The nature of the proposed activity;
- (4) A description of the proposed site or a description of the proposed major modification;
- (5) An explanation of the type(s) of waste that will be accepted;
- (6) The Department's address and contact name for submittal of comments and inquiries;
- (7) The approximate tonnage/year expected for disposal at the landfill; and,
- (8) The proposed life of the landfill.

b. Submit to the Department:

- (1) A written Notice of Intent, pursuant to Section C. below, to be covered by the general permit on a form approved by the Department;
- (2) An affidavit of publication in a newspaper for the public notice required in Section B.4.a. above;
- (3) The names and addresses of the owners of real property as they appear on the county tax maps as contiguous landowners of the proposed permit area; and,
- (4) A disclosure statement pursuant to Part I, Section F.1.

5. The Department will notify by certified mail, return receipt requested, all adjoining landowners of receipt of the Intent to Operate under the General Permit.

6. Written Department approval to operate under the General Permit shall be received prior to operation of a Class One landfill.

7. Upon a determination by the Department and written notification that the landfill poses an actual or potential threat to human health or the environment, the Department may require the permittee to implement corrective measures as appropriate.

8. A Class One Landfill's approval to operate under the general permit may be revoked for any of the following reasons:

- a. The facility fails to comply with the conditions of the general permit or this regulation;
- b. Circumstances have changed since the time of the requested approval to operate so that the permittee is no longer appropriately regulated under the general permit, or a temporary or permanent closure of the landfill is necessary; and,
- c. Environmental and/or health problems associated with the landfill are detected by the Department.

9. When an individual solid waste landfill permit is issued to a permittee otherwise subject to the general permit, the applicability of the general permit to that landfill is automatically terminated on the effective date of the individual permit.

10. A landfill excluded from the general permit solely because it already has an individual landfill permit may request that the individual permit be revoked, and that the landfill be covered by the general permit. Upon revocation of the individual permit and approval of the Notice of Intent to operate under the general permit, the general permit shall apply to the landfill.

C. Notice of Intent.

1. Prior to landfilling land-clearing debris under the State's general permit, the permittee shall submit to the Department a Notice of Intent on a form approved by the Department. This Notice shall be accompanied by all information required by the general permit. All required information shall be complete and accurate.

2. The Notice of Intent shall be signed by the landfill applicant. The landowner shall also sign the Notice of Intent, thereby giving authorization for the proposed landfilling activity on said property. Any changes in the written authorization submitted to the Department which occur after the issuance of the Department's approval to operate under the general permit shall be reported to the Department by submitting a copy of the new written authorization.

3. Any person signing a Notice of Intent to landfill under the general information shall also sign the following certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

D. Record Keeping and Reporting Requirements.

Landfills operating under the General Permit shall submit in a format approved by the Department an annual report for the fiscal year beginning on July 1, and ending on June 30. This report shall be submitted to the Department on or before September 1, and shall identify the actual weight in tons or volume in cubic yards of wastes received per month at the land-clearing debris and yard trash landfill. Any records required by this regulation shall be retained near the facility in an operating record, or in an alternative location approved by the Department for a period of no less than three years.

Part IV. Class Two Landfills.**A. General Provisions.**

1. Applicability. Part IV. establishes minimum criteria for all landfills used for the disposal of: waste as outlined in Appendix I of this regulation; other wastes not listed in Appendix I that demonstrate similar properties to the wastes listed and are approved by the Department on a case-by-case basis; or, wastes that test less than ten (<10) times the maximum contaminant level (MCL) as published in R.61-58, State Primary Drinking Water Regulation current at the time of submittal of the permit application. The testing criteria outlined in Part I., Section C. Waste Characterization shall be used when testing is required. Hereinafter, these landfills will be referred to as Class Two landfills.

2. The siting, design, construction, operation, and closure activities of Class Two landfills shall conform to the standards set forth in this Part as well as applicable requirements in Part I of this regulation.

3. Prior to the construction, operation, expansion or modification of a Class Two landfill, a permit shall be obtained from the Department.

4. Only those items listed in Appendix I of this regulation, approved Appendix I-type waste, and any items specifically listed on the facility's permit issued by the Department may be accepted for disposal at a Class Two landfill. These wastes shall not be contaminated with hazardous constituents listed in the S.C. Hazardous Waste Management Regulations 61-79.261 (e.g., pesticides), or petroleum products. When a waste not listed in Appendix I is approved by the Department for disposal, the landfill's permit will be modified to add the approved waste. A list of Appendix I-type waste will be available from the Department.

5. Class Two landfills shall be consistent with the State and the Region/County Solid Waste Management Plans, local zoning, land use and other applicable ordinances. On-site landfills are not required to demonstrate consistency with the State and Region/County Solid Waste Management Plans.

B. Location Restrictions.

1. Buffers. Unless otherwise approved by the Department, the site for a new landfill or expansion of an existing landfill shall meet the following standards:

a. The boundary of the fill area shall not be located within 1,000 feet of any residence, school, day-care center, church, hospital, or publicly owned recreational park area. The Department will determine whether the new landfill or expansion of an existing landfill meets this requirement prior to the publication of the Notice of Intent to File a Permit Application pursuant to Part I, Section D.1 of this Regulation;

b. A landfill located in a 100-year floodplain shall demonstrate that engineering measures have been incorporated into the landfill design to ensure the landfill will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the flood plain, minimize potential for floodwaters coming into contact with waste, or result in the washout of solid waste so as to pose a hazard to human health or the environment;

c. The landfill shall be in compliance with applicable requirements concerning wetlands imposed by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Department;

d. Access to the landfill shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent promiscuous dumping and unauthorized access;

c. The boundary of the fill area shall not be located within 100 feet of any property line. An exemption may be issued by the Department upon receipt of written approval from adjacent property owners;

f. The boundary of the fill area shall not be located within 200 feet of any surface water that holds visible water for greater than six consecutive months, excluding drainage ditches, sedimentation ponds and other operational features on the site;

g. The boundary of the fill area shall not be located within 100 feet of any drinking water well. A greater buffer may be required for compliance with the Department's Bureau of Water requirements;

h. Waste material shall not be placed on or within any property rights-of-way or 50 feet of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, natural gas lines, etc., without the written approval of the impacted utility.

2. Airport Safety. These requirements apply to all Class Two landfills permitted/approved for disposal of animal carcasses.

a. Owners/operators of all Class Two landfills located within 10,000 feet of any runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the Class Two landfill does not pose a bird hazard to aircraft.

b. Owners/operators proposing to site new Class Two landfills and lateral expansions located within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA).

C. Operation Criteria for Class Two Landfills.

1. Owners/operators of all Class Two landfills shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in R.61-79 Hazardous Waste Management Regulations, Part 261, polychlorinated biphenyls (PCB) wastes as defined in Resource Conservation and Recovery Act (RCRA), Part 761, and wastes not specifically allowed by the permit. This program shall include, at a minimum:

a. Inspections of all incoming loads when deposited and prior to compaction unless the permittee takes other steps to ensure that incoming loads do not contain regulated hazardous wastes, PCB wastes, or wastes not specifically allowed by the permit;

b. Records of unacceptable waste to include waste quantity and description and generator information;

c. Training of facility personnel to recognize wastes not specifically allowed by the permit, regulated hazardous waste and PCB wastes; and,

d. Notification of the Department within 72 hours if the operator suspects that a regulated hazardous waste or PCB waste has been discovered at the facility.

2. The Class Two landfill shall, prior to receipt of any waste materials that are not specifically listed in the permit application, submit for Department approval a characterization of the waste materials to determine the suitability for disposal in the landfill unless the Department grants an exemption for like materials.

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3. Unless otherwise approved by the Department:
 - a. Unauthorized wastes shall be removed from the working face prior to cover or at the end of the working day, whichever occurs first, and placed into an appropriate container; and,
 - b. Unauthorized waste shall be removed from the site for proper disposal no less than every 30 days unless otherwise approved by the Department. Putrescible waste shall be removed from the working face, placed in a container, and removed from the site within 72-hours of receipt. The Department may require more frequent removal based on the nature or quantity of other unacceptable waste.
 4. The unloading of solid waste intended for disposal in the landfill shall be restricted to the working face of the landfill. Unloading of the waste adjacent to the working face within the permitted boundaries of the landfill may be allowed for the purpose of screening the waste stream.
 5. The working face of the landfill shall be confined to as small an area as the equipment can safely and efficiently operate. The slope shall not exceed 33%.
 6. Solid waste shall be spread in uniform layers to the extent practical and compacted to its smallest practical volume.
 7. A uniform compacted layer of clean earth cover or other suitable cover material acceptable to the Department, no less than six (6) inches in depth shall be placed over all exposed waste material at least every 30 days, unless otherwise approved by the Department. The frequency of cover may be increased or decreased as determined by the Department. More frequent cover may be required by the Department based on the nature of the disposed materials and daily disposal rate in order to address landfill gas generation, odor, leachate formation or any environmental safety and health problems.
 8. Open burning at landfills is prohibited.
 9. The site shall be maintained and operated in a manner that protects the established water quality standards of the surface waters and ground waters.
 10. Dust, odors, fire hazards, litter and vectors shall be effectively controlled so they do not constitute nuisances or hazards.
 11. The landfill shall have an attendant on duty at all times the facility is open.
 12. Sign Requirements. Signs shall be posted and maintained at the main entrance that:
 - a. Identify the owner, operator, or a contact person and telephone number in case of emergencies and the normal hours during which the landfill is open to receive waste;
 - b. State the types of waste that the landfill is permitted to receive; and,
 - c. Identify the valid SCDHEC Facility Identification Number.
 13. Class Two landfills shall install and maintain scales capable of accurately determining the weight of incoming waste streams. Landfills that receive less than 10,000 tons/year are exempt from this requirements.
 14. On-site landfills are exempt from Sections 11, 12, and 13, above.

15. Prior to accepting any materials containing asbestos for disposal at the landfill, the operator shall include in its landfill records a copy of the Permission for Disposal letter from the Department. The landfill shall retain these letters for a period of not less than three years and shall make them available to the Department upon request, if applicable.

16. Reporting Requirements.

a. Contingency Plan. Upon implementation of a contingency plan, the Department shall be notified immediately by telephone of actions taken. Written confirmation shall be sent to the Department within 72 hours.

b. Groundwater Monitoring. Reporting requirements as outlined in Subpart E. below.

c. Landfill Operation.

(1) Landfills, with the exception of on-site landfills, shall maintain daily records of:

(a) The actual weight in tons of waste received; and,

(b) The particular grid location of the area currently being used for disposal of solid waste.

(2) Landfills shall submit in a format approved by the Department an annual report for the fiscal year beginning on July 1 and ending on June 30. This report shall be submitted to the Department on or before September 1, and shall include the information outlined below:

(a) The actual weight in tons of wastes received per month;

(b) The county of origin of the waste; and,

(c) A description of the capacity of the landfill used in the previous fiscal year and the remaining permitted capacity. A yearly survey conducted by a S.C. certified land surveyor or engineer may be required by the Department on a case-by-case basis.

d. Any records required by this regulation for Class Two landfills shall be retained near the facility in an operating record; or in an alternative location approved by the Department, for a period of no less than three years.

17. Access to fire equipment and firefighting services shall be provided.

18. Procedures shall be established for maintaining conditions that are unfavorable for the habitation and production of insects, rodents and other pests.

19. A groundwater monitoring system shall be installed in accordance with Section E. below.

20. The landfill shall be adjacent to or have direct access to roads that are of all-weather construction and capable of withstanding anticipated load limits.

21. A gas monitoring system shall be designed and installed as required on a case-by-case basis to ensure that gas generated at the landfill will not create a hazard to health, safety, or property.

D. Design Criteria for Class Two Landfills.

1. The estimated deflected (or settled) bottom elevation of the landfill base grade shall be a minimum of two feet above the seasonal high water table elevation as it exists prior to the construction of the disposal area. The seasonal high water table shall be determined by interpretation of a minimum of 12 months data obtained from a representative number of monitoring wells approved by the Department. In cases where there is insufficient information to support the seasonal high water table elevation determination, additional separation may be required by the Department. The Department will inspect the landfill prior to the initial placement of waste in the landfill.

2. Drainage control requirements.

a. The disposal area shall be graded with a minimum of a 1% slope so as to divert and minimize run-off into the disposal area of the landfill, to prevent erosion and ponding within the disposal area, and to drain water from the surface of the landfill.

b. Prior to accepting waste, the owners/operators shall design, construct, and subsequently maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during peak discharge from a 24-hour, 25-year storm; and,

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

c. An appropriate permit from the Department may be required prior to the discharge of any storm waters to surface waters.

E. Groundwater Monitoring and Corrective Action.

1. General Groundwater Monitoring Requirements.

a. All submittals made to the Department in compliance with this Section shall be signed and stamped by a qualified professional.

b. All Class Two landfills shall implement a groundwater monitoring program as follows:

(1) New Class Two landfills, or lateral expansions of existing Class Two landfills shall submit a groundwater monitoring plan to monitor the entire landfill that meets the requirements of this Section as part of the permit application; and,

(2) Existing Class Two landfills shall, within 180 days of the effective date of this regulation, submit to the Department either a groundwater detection monitoring plan that meets the requirements of this Section, or written notification that the landfill plans to cease accepting waste within one year or less from the effective date of this regulation. Within 180 days of the Department's approval of the groundwater detection monitoring plan, the monitoring system shall be installed at the landfill. Facilities that cease accepting waste within one year of the effective date of this regulation are exempt from the groundwater monitoring requirements outlined herein. Landfills meeting this exemption shall submit a closure plan to the Department within 180 days of the effective date of this regulation. Additional time may be allowed for the installation of the groundwater monitoring system with prior approval from the Department;

(3) Existing Class Two landfills which have been performing groundwater monitoring prior to the requirements of this regulation shall within 90 days of the effective date submit to the Department certification by a qualified professional that the existing groundwater monitoring program meets the intent of this regulation. Any changes necessary to the existing groundwater monitoring system to ensure compliance with this regulation should be discussed in the certification letter.

c. A groundwater monitoring system shall consist of a sufficient number of wells installed at appropriate locations and depths to yield representative groundwater samples from the uppermost aquifer that can determine if contamination has occurred due to a release from the landfill. There shall be a minimum of one well up-gradient and three wells down-gradient of the disposal unit. These wells shall:

(1) Represent the quality of background groundwater that has not been affected by the landfill; and,

(2) Represent the quality of groundwater passing from beneath the waste disposal area footprint. The downgradient monitoring system shall be installed as close as practical to the actual disposal area but no further than 150 feet from the actual disposal area unless previously installed with Department approval, and shall ensure detection of any groundwater contamination in the uppermost aquifer.

d. The number, spacing, and depths of the wells in the monitoring network shall be determined based upon site-specific technical information that shall include thorough characterization of:

(1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and,

(2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

e. Monitoring wells shall be approved by the Department prior to installation and shall be constructed, at a minimum, to the standards established in the South Carolina Well Standards, R.61-71.H.

(1) The permittee shall maintain an operating record that contains documentation of the design, installation, development, and abandonment of any monitoring wells, piezometers and other measurement, sampling, and analytical devices; and,

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be maintained and operated so that they perform to design specifications throughout the life of the monitoring program.

(3) All monitoring wells, piezometers or other environmental sampling locations shall be located by a South Carolina Certified Land Surveyor. For wells, the elevation of the ground surface and the elevation of the top of the well casing shall also be determined to the nearest 0.01 ft above mean sea level.

f. Routine groundwater monitoring shall continue while the facility is performing detection monitoring, assessment or remediation activities.

g. The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality. A laboratory certified by South Carolina under R.61-81 State Environmental

Laboratory Certification Program for the sample preparations and analysis methods employed shall conduct all groundwater analysis required by this regulation.

(1) The permittee shall submit to the Department for review and approval, a sampling and analysis plan outlining procedures and protocols to be used at the facility. The plan shall include procedures and techniques for:

- (a) Sample collection;
- (b) Sample preservation and shipment;
- (c) Analytical procedures;
- (d) Chain of custody control; and,
- (e) Quality assurance and quality control.

(2) The groundwater monitoring program shall include approved sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure the constituents in groundwater samples. Analytical methods chosen shall have a practical quantitation limit (PQL) that is less than the Maximum Concentration Level (MCL) for those constituents that have a MCL as established by the State Primary Drinking Water Regulation R.61-58. Groundwater samples required by this regulation shall not be field-filtered prior to laboratory analysis.

(3) Groundwater potentiometric elevations shall be measured and recorded for each well prior to initiating sampling procedures each time groundwater is sampled. Groundwater elevations in wells must be measured on the same day to avoid temporal variations in groundwater elevations that could preclude an accurate determination of groundwater flow rate and direction. The permittee must determine the potentiometric surface of each aquifer unit comprising the uppermost aquifer and report the rate and direction of groundwater flow each time groundwater is sampled.

(4) The results and supporting documentation, e.g., field data sheets, laboratory quality assurance/quality control testing, for all groundwater sample analysis taken during detection monitoring shall be submitted to the Department in accordance with the reporting requirements in this Subpart.

h. The permittee shall submit to the Department on or before the anniversary date of issuance of the permit, an annual report for the previous year containing the results of the requirements of this Section. The annual report shall contain the following:

(1) A summary of all analytical testing performed at the site during the previous year, and any applicable data concerning sampling and analysis of monitoring wells at the site;

(2) A determination of the technical sufficiency of the monitoring well network in detecting a release from the facility;

(3) A determination of groundwater elevations, groundwater flow directions and groundwater flow rates as specified in Section E.1.g.(3) above. Groundwater flow directions shall be based upon interpretation of a potentiometric map prepared utilizing the groundwater elevations measured at the site; and,

(4) Recommendations for any changes to the groundwater monitoring system, or any necessary actions to be performed at the site to ensure compliance with the groundwater monitoring

requirements.

2. Groundwater Detection Monitoring Requirements.

a. Groundwater detection monitoring is required at Class Two solid waste landfills. The detection monitoring program shall include at a minimum, monitoring for the constituents listed in Appendix III.

(1) The Department may require additional groundwater monitoring parameters for routine monitoring based on the chemical and physical nature of the waste stream received by the landfill.

(2) The Department may delete specific monitoring parameters for a Class Two solid waste landfill if it can be shown that the constituent(s) are not reasonably expected to be contained in or derived from the waste contained in the unit. The deletion of specific constituents will be based on the permittee's knowledge of each waste stream disposed of in the facility and the operational controls of the facility.

b. For Class Two solid waste landfills, the detection monitoring frequency for all constituents required by this subpart shall be at least semiannual during the active life of the facility (including closure) and annual during the post-closure period. At least one sample from each well (background and downgradient) shall be collected and analyzed during each sampling event.

c. For Class Two solid waste landfills, the Department may approve an appropriate alternate frequency for repeated sampling and analysis for the constituents listed in Appendix III during the active life (including closure) and the post-closure care period to ensure protection of human health and the environment. The alternative frequency during the active life (including closure) shall be no less than the frequency specified in Section E.2.b. above. The alternative frequency shall be based on consideration of the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the Class Two solid waste landfill footprint and downgradient monitoring well screen (minimum distance of travel); and
- (5) Resource value of the aquifer.

d. During semiannual groundwater sampling, the two sampling events shall be scheduled approximately six (6) months apart. The submittal of data for one of the sampling events shall meet annual report requirements outlined in E.1.h.. For the other semiannual sampling event, the analytical data only shall be submitted to the Department. In all cases, the groundwater analytical results shall be submitted to the Department within 60 days of sample collection. In cases where the Department has approved an alternate sampling frequency, the Department will approve an appropriate schedule for submittal of groundwater data.

e. If the permittee determines that groundwater concentrations are above the PQL but below the MCL for any constituent listed in Appendix III, at any monitoring well (unless the constituent is being addressed by Section E.3. below) the permittee shall:

- (1) Place a notice in the operating record showing which constituents have shown an

exceedance above the PQL; and,

(2) Provide a notification of the results to the Department in the next regularly scheduled report and provide a discussion on the cause of this result.

f. If the permittee determines that groundwater concentrations are above the MCL, for any constituent listed in Appendix III at any monitoring well, the permittee shall:

(1) Notify the Department within 14 days of receiving the analytical results;

(2) Resample the monitoring well(s) in question for the constituent(s) in question to determine the validity of the data within 30 days of receiving the analytical results, unless the Department approves an alternate frequency. If the permittee chooses not to resample, then the initial exceedance(s) of the MCL shall be considered valid;

(3) Within 14 days of receiving the results of validation sampling required by Section E.2.f.(2) above, place a notice in the operating record and notify the Department of the results of the resampling;

(4) If resampling does not validate that the results are above applicable levels, return to routine detection monitoring; or,

(5) If resampling does validate the initial exceedance of the MCL, then establish an assessment monitoring program meeting the requirements of Section E.3. within 90 days of receiving the results of validation sampling required by Section E.2.f.(2), except as provided for in Section E.2.g. below.

g. The permittee may demonstrate that a source other than the Class Two landfill caused the contamination or that the concentration resulted from an error in sampling, analysis, or natural variation in groundwater quality. A report documenting this demonstration shall be placed in the operating record after being signed and stamped by a qualified professional and approved by the Department. If a successful demonstration is made and documented, the permittee may continue detection monitoring as specified in this Section. If, after 90 days of completing Section E.2.f.(2) above, a successful demonstration is not made, the permittee shall initiate an assessment monitoring program as required in Section E.3.

3. Assessment of Groundwater Impact.

a. Assessment monitoring is required whenever a release has been detected and validated, in accordance with Section E.2.f. above for any constituent listed in Appendix III, unless a successful demonstration has been made in accordance with Section E.2.g. above.

b. Within 90 days of validating an exceedance as outlined in E.2.f.(2), the permittee shall sample all groundwater monitoring wells identified as impacted for all constituents listed in Appendix V. Any additional constituents detected during this sampling shall be added to the assessment program.

c. The permittee shall establish a groundwater protection standard for each constituent detected in the groundwater. The groundwater protection standard shall be:

(a) For constituents for which a MCL has been promulgated under South Carolina R.61-58, State Primary Drinking Water Regulations, the MCL for that constituent;

(b) For constituents for which MCLs have not been promulgated, the drinking water risk-

based number recognized by EPA Region IV; or,

(c) For constituents for which the background level is higher than the MCL identified under Section E.3.b.(3)(a) above or risk-based concentration identified under Section E.3.b.(3)(b) above, as applicable, the background concentration.

(d) For any parameter for which a groundwater protection standard cannot be established per E.3.c.(a), (b), or (c) above, the Department, using input from the permittee, will develop an appropriate groundwater protection standard. In establishing this groundwater protection standard, the Department may consider the following provided these criteria meet the intent of the South Carolina Water Classifications and Standards R.61-68:

- (1) Multiple contaminants in the groundwater;
- (2) Exposure threats to sensitive environmental receptors; and,
- (3) Other site-specific exposure or potential exposure to groundwater.

d. The permittee shall submit to the Department for review and approval a groundwater quality assessment plan for characterizing the nature and extent of the release within 90 days of receiving the results of the sampling outlined in Section E.3.b. above. The groundwater quality assessment plan shall:

(a) Ensure that the nature and extent of the release is fully characterized by installing additional monitoring wells, as necessary;

(b) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with this section;

(c) In cases where contamination is present at the property boundary, take reasonable measures to gain access for offsite sampling;

(d) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with this section; and,

(e) Contain a detailed schedule for the implementation and completion of the provisions of the plan.

e. Upon completion of assessment activities outlined in this section, the permittee shall initiate an assessment of corrective measures as required by Section E.4.a. below within 90 days.

f. Based upon the outcome of the assessment outlined in this section, the Department may add additional monitoring wells, additional constituents, or additional sampling frequency to the routine detection monitoring program, required by Section E.2.above.

4. Groundwater Remediation.

a. Upon completion of the groundwater quality assessment, the permittee shall evaluate potential corrective actions to address groundwater quality. Based on the outcome of this evaluation, the permittee shall select a remedial action strategy and submit a remedial action plan to be approved by the Department. The remedial action plan shall contain a schedule for the initiation and completion of remedial activities.

b. The remedial action plan shall:

- (1) Be protective of human health and the environment;
- (2) Attain the groundwater protection standard as specified pursuant to Section E.3.b.(3) above;
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of constituents into the environment that may pose a threat to human health or the environment;
- (4) Consider the long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
 - (a) Magnitude of reduction of existing risks;
 - (b) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
 - (c) The type and degree of long-term management required, including monitoring, operation, and maintenance;
 - (d) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
 - (e) Time until full protection is achieved;
 - (f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
 - (g) Long-term reliability of the engineering and institutional controls; and,
 - (h) Potential need for replacement of the remedy.
- (5) Consider the effectiveness of the remedy in controlling the source to reduce further releases based on the extent to which containment practices will reduce further releases; and,
- (6) Contain monitoring considerations to prove the effectiveness of the selected remedial action, which may be in addition to those constituents contained in the detection monitoring program.

c. The Department may determine that remediation of a release of a constituent from a Class Two landfill is not necessary if the permittee satisfactorily demonstrates to the Department that:

- (1) The groundwater is additionally contaminated by substances that have originated from a source other than the Class Two solid waste landfill and those substances are present in concentrations such that cleanup of the release from the Class Two solid waste landfill would provide no significant reduction in risk to actual or potential receptors; or,

(2) The constituent(s) is present in groundwater that:

(a) Does not currently meet the definition of an underground source of drinking water per South Carolina Water Classifications and Standards R.61-68; and,

(b) Is not hydraulically connected with waters to which the constituents are migrating or are likely to migrate in a concentration(s) that would exceed the groundwater protection standards established under Section E.3.c. above; or,

(3) Remediation of the release(s) is technically impracticable; or,

(4) Remediation results in unacceptable cross-media impacts.

d. A determination by the Department pursuant to Section E.4.c. above shall not affect the authority of the Department to require the permittee to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

e. During the course of implementing the corrective action, the permittee may be required to take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to this section. A permittee in determining whether interim measures are necessary shall consider the following factors:

(1) Time required to develop and implement a final remedy;

(2) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(3) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(4) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

(5) Weather conditions that may cause hazardous constituents to migrate or be released;

(6) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and,

(7) Other situations that may pose threats to human health and the environment.

f. If the permittee determines that compliance with requirements of this section cannot be practically achieved with any currently available methods, the permittee shall:

(1) Obtain certification of a qualified professional and approval by the Department, that compliance with requirements under Section E.4. cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to

residual contamination, as necessary to protect human health and the environment; and,

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

- (a) Technically practicable; and,
- (b) Consistent with the overall objective of the remedy.

g. Upon completion of the remedy, the permittee shall submit to the Department a certification signed by a qualified professional stating that the remedy has been completed in compliance with the requirements of Section E.4.

h. Upon the Department's approval of the certification required in Section E.4.g. above, the Class Two landfill shall return to detection monitoring as outlined in Section E.2. of this Part.

F. Closure and Post-Closure Care.

1. Closure. The termination of disposal operations at a Class Two landfill, whether the entire landfill site or a portion thereof, shall be in compliance with the following requirements.

a. Within one month following the last receipt of solid waste at a site or a part of the site, the application of final cover shall begin. A two foot thick final earth cover is required with at least a 3% but not greater than 5% surface slope, graded to promote positive drainage. The side slope cover shall not exceed three horizontal feet to one vertical foot, i.e., a 3:1 slope. Alternate final cover designs may be submitted for Department review and approval. Unless otherwise approved by the Department, the application of final cover shall be completed within six months of the last receipt of solid waste at the facility. The integrity of the final cover shall be maintained.

b. Testing for certification of cap closure by a South Carolina certified professional engineer shall be done at a rate of four thickness tests per acre as defined by best engineering and construction practices.

c. The storm water conveyance system for the landfill shall be designed to ensure that the system is capable of handling a 24-hour, 25-year storm event during the active life and post-closure period of the landfill.

d. The finished surface of the disposal area shall be seeded with native grasses or other suitable ground cover within 15 days of the completion of that portion of the landfill.

e. Within 15 days of closure of the entire landfill, the permittee shall post signs at the landfill that state the facility is no longer in operation. On-site landfills are exempt from this requirement.

f. Upon closure of the entire or a portion of the landfill and within 30 days of grading and seeding, pursuant to Section F.1.d. above, a professional engineer licensed in the State of South Carolina shall submit to the Department certification that the landfill has been properly closed in accordance with requirements outlined in this Part and the facility's permit. Upon receipt of certification of closure, the Department will schedule an inspection of the facility. Upon issuance of the Department's final closure approval, the Department's permit for this facility shall be modified to incorporate post-closure activities.

g. Within 30 days of the Department's issuance of final closure approval, the owner shall:

(1) Using a form approved by the Department, record with the appropriate Register of Deeds a notation in the record of ownership of the property - or some other instrument that is normally examined during title search - that will in perpetuity notify any potential purchaser of the property, that the land or a portion thereof, was used for the disposal of solid waste. This notation shall define the final boundaries of the waste disposal area including the latitude and longitude, and identify the type, location, and quantity of solid waste disposed of on the property; and,

(2) Submit to the Department:

(a) A plat showing the final boundaries of the waste disposal area of the closed landfill; and,

(b) A copy of the document in which the notation required by Section F.1.g.(1) above has been placed.

2. Post-closure Care Requirements.

a. Following closure of each Class Two landfill, the permittee shall conduct post-closure care. Post-closure care shall be conducted for a minimum of 20 years, except as provided under Subsection b.2.below, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover. A 75% or greater vegetative ground cover with no substantial bare spots shall be established and maintained throughout the post-closure period; and,

(2) Monitoring the groundwater in accordance with the requirements of Section E of this Part and maintaining the groundwater monitoring system. Groundwater monitoring data shall be submitted to the Department during the post-closure care period within 60 days of sample collection.

b. The length of the post-closure care period may be:

(1) Increased by the Department if the Department determines that the lengthened period is necessary to protect human health and the environment or the facility has groundwater impacts remaining at the end of the post-closure period;

(2) Decreased by the Department if the permittee can provide technical rationale that the decreased post-closure care period is sufficient to protect human health and the environment.

c. The permittee of all Class Two landfills shall prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in Item 2.a.. above for each Class Two landfill;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and,

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, or any other components of the

containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this regulation. The Department may approve any other disturbance of the containment system if the permittee demonstrates that disturbance of the final cover, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

d. Prior to permit issuance, the permittee shall submit to the Department a post-closure plan for review and approval. The post-closure plan shall be updated if any changes occur at the facility which require a deviation from the approved post-closure plan.

e. Following completion of the post-closure care period for each Class Two landfill, the permittee shall submit to the Department certification, signed by a South Carolina registered professional engineer other than the design engineer, verifying that post-closure care has been completed in accordance with the post-closure plan.

G. Financial Assurance Criteria. (See Part I, Section E. of this regulation.)

H. Permit Application Requirements.

Prior to the construction, operation, expansion or modification of a Class Two landfill, a permit shall be obtained from the Department.

1. Prior to submitting a permit application to the Department, the applicant shall satisfactorily complete the following:

a. **Determination of Need.** The applicant shall submit to the Department a request pursuant to Regulation 61-107.17 for determining need of a proposed landfill or landfill expansion, if applicable.

b. **Consistency Determination.** The applicant shall submit to the Department a request for a determination of consistency with items listed below.

(1) **State and County/Region Solid Waste Management Plans.** The permit applicant shall demonstrate consistency with the State Solid Waste Management Plan in effect at the time of the request for a determination of consistency. The permit applicant shall demonstrate consistency with the county/region plan in effect at the time of the request for a determination of consistency. Class Two landfills managing solid waste generated solely in the course of normal operation on property under the same ownership or control as the Class Two landfill are not required to demonstrate consistency with the State and host County/Region Solid Waste Management Plans;

(2) **Local zoning and land-use ordinances.** Documentation demonstrating consistency with local zoning and land-use plans, e.g., zoning map, land-use map, and applicable part of the zoning ordinance shall be submitted to the Department; and,

(3) **All other applicable local ordinances.** Supporting documentation to include a copy of the ordinance shall be submitted to the Department.

(4) **Buffer Requirement.** The applicant shall demonstrate that it meets the buffer requirement set forth in Part IV, Section B.1.a. of this Regulation at the time of submittal of the demonstration.

c. If the Department's final determination of need is terminated, pursuant to R.61-107.17, all other determinations under Section H.1.a. and b. above will also be void.

2. **Administrative Review.** Upon satisfactory completion of Section H.1. above, the applicant shall submit to the Department a complete permit application. The applicant shall submit to the Department three copies of the following documents:

- a. A completed permit application on a form provided by the Department;
- b. A cost estimate for hiring a third party to close the sum of all active areas of the landfill requiring a final cover at any time during the operating life when the extent and manner of its operation would make closure the most expensive, as indicated in the closure plan. This estimate shall be sufficient to ensure satisfactory closure and post-closure maintenance of the landfill and requires Department approval prior to the permittee establishing a financial assurance mechanism pursuant to Part I, Section E. of this regulation;
- c. A Disclosure Statement pursuant to Part I, Section F.1;
- d. Complete engineering plans, drawings and reports in accordance with Section H.4 below, that are stamped by a Professional Engineer duly licensed to practice in the State of South Carolina; and,
- e. The names and addresses of the owners of real property as they appear on the county tax maps as contiguous landowners of the proposed permit area.
- f. **Tonnage Limit.** The applicant shall submit to the Department a request for a determination of a maximum annual tonnage limit.

(1) Prior to the issuance of a permit for a new or expanded commercial Class Two landfill, the Department will approve a maximum annual tonnage limit based on the facility's design capacity, operational capacity, the expected operational life, and the planning area as determined by R.61-107.17, SWM: Demonstration-of-Need; provided, however, that the maximum annual tonnage limit must not exceed the maximum yearly disposal rate pursuant to R. 61-107.17.

(2) Prior to issuance of a permit for a new or expanded noncommercial Class Two landfill, the Department will approve a maximum annual tonnage limit based on the facility's design capacity, operational capacity, and the expected operational life.

3. **Public Notice.** When the submittal is administratively complete, the Department will notify the applicant in writing. Within 15 days of receipt of notification from the Department, the applicant shall publish notice of the permit application pursuant to Part I, Section D.2. of this regulation, and submit an affidavit of publication of the public notice in the newspaper to the Department.

4. **Technical Review.** After determining that the permit application is administratively complete, the Department will conduct a Technical Review of the proposed project. The Department's technical review of the permit application will involve the following:

a. **Engineering Drawings and Plans.** All applications for new Class Two landfills and landfill expansions shall contain engineering drawings that set forth the proposed landfill location, property boundaries, adjacent land uses and construction details. All construction drawings shall be bound and rolled and shall contain the following:

(1) A vicinity plan or map that shows the area within one mile of the property boundaries of the landfill in terms of: the existing and proposed zoning and land uses within that area at the time of permit application; and, residences, public and private water supply wells, known aquifers, surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and

proposed man-made or natural features relating to the facility. The plan shall be on a scale of not greater than 500 feet per inch, unless otherwise approved by the Department;

(2) A site plan on a scale of not greater than 200 feet per inch unless otherwise approved by the Department. This plan shall at a minimum identify the following:

(a) The landfill's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), right-of-ways and easements; the names and addresses of abutting property owners; the location of soil borings, excavations, test pits, gas venting structures (if applicable), wells, piezometers, environmental and facility monitoring points and devices; benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total landfill area including planned staged development of the landfill's construction and operation, and the lateral limits of any previously filled areas; the location and identification of the sources of cover materials; and site topography with five feet minimum contour intervals; and, any other relevant information as necessary for proper operation. The site plan drawings shall show wetlands, property lines, existing wells, water bodies, residences, schools, day-care centers, churches, hospitals, publicly owned recreational park areas and any building on adjoining property;

(b) Location of surface water, dry runs, wetlands, the location of the 100-year floodplain boundaries, and other applicable details regarding the general topography of the landfill site and adjacent properties within one-fourth (1/4) mile of the disposal area;

(c) The area where unauthorized waste will be temporarily stored while it awaits removal for proper disposal; and,

(d) The area where recovered materials will be temporarily stored;

(3) Detailed plans of the landfill that clearly show in plan and cross-sectional views the following: the original, undeveloped site topography before excavation or placement of solid waste; the existing site topography, if different, including the location and approximate thickness and nature of any existing solid waste; plan view of the location of the seasonal high water table in relation to the bottom elevation of the proposed landfill; a cross sectional view of existing and final elevations, bottom elevation and deflected bottom elevation, and seasonal high water table; geologic units; known and interpolated bedrock elevations; the proposed limits of excavation and waste placement; other devices as needed to divert or collect surface water run-on or run-off; a plan and cross section view of fill progression for the life of the landfill; the final elevations and grades of the landfill; groundwater monitoring system; and, the building locations and appurtenances;

(4) Detailed plans of the sedimentation ponds. These plans shall clearly show in plan and cross sectional views the following: the existing site topography, the seasonal high water table, pond bottom elevation, permanent pool elevation, first flush elevation, maximum elevation for sedimentation clean-out, emergency spillway 100-yr storm elevation, riser pipe, antiseep collars, outlet protection, emergency spillway, dewatering riser, trash/antivortex rack, and sedimentation pond gauge legend.

b. Engineering Report. The engineering report shall contain a comprehensive description of the existing site conditions and an analysis of the proposed landfill. All engineering reports shall be bound. This report shall include, but is not limited to, the following:

(1) A current 7.5 minute quadrant map (U.S. Geological Survey topographic map, including the legend and name of the quadrant) which shows contour intervals not exceeding five feet with the location,

i.e. footprint, of the proposed landfill indicated;

(2) Source and description of cover material to be used. If soil excavated during landfill construction is to be used as cover material, indicate the location of stockpiles during landfill operation;

(3) Frequency of covering;

(4) Depth of disposal area;

(5) Final contours of the finished landfill areas;

(6) Stabilization Plan. This plan shall:

(a) Identify and locate existing vegetation to be retained and proposed vegetation to be used for cover, soil stockpiles, and other purposes; and,

(b) Include a schedule for seeding or implementing other appropriate erosion control measures. Appropriate measures shall be taken to stabilize stockpiled soils within 30 days;

(7) Operating Plan. A general operating plan for the proposed landfill shall include the expected life of the landfill, the maximum volume of solid waste the landfill will be capable of receiving over the operational life of the landfill, and the maximum rate at which the landfill will receive that waste during the designed life of the landfill. This plan shall at a minimum address the following:

(a) Screening procedures defining the methods for inspecting and measuring incoming waste;

(b) Procedures for control of storm water drainage;

(c) Procedures for prevention of fires;

(d) Procedures for control of vectors;

(e) Procedures for odor control;

(f) Procedures for dust control;

(g) Procedures for ensuring that waste does not escape the landfill boundaries during flooding;

(h) Hours of operation;

(i) Procedures for excavating, earth moving, spreading, compacting and covering operations, including a list of equipment to be at the landfill for daily operation. This submittal shall also include:

i. A description of the site's preparation and fill progression for the life of the site in terms of method, depth, location and sequence;

ii. A method of elevation control for the operator including the location and description of the permanent surveying benchmark at the site; and,

iii. A fill progression discussion describing the placement and compacted thickness of cover;

(j) Description of stormwater diversion in areas of constructed cells that have not had waste placement;

(k) A contingency plan describing landfill operation in the event of fire, explosion, or other event that would threaten human health and safety of the environment, and equipment failure. Reserve equipment shall be available within 24 hours of equipment breakdown. The contingency plan shall also contain procedures for the proper removal and disposal of unauthorized waste; and,

(l) A list of items that are not listed in Appendix I but are similar in nature to Appendix I of this regulation that the permittee wishes to place in the landfill, the anticipated quantity and source of the waste. Upon Department review, items other than those listed in Appendix I, that are approved for landfilling, shall be listed on the permit for that facility. After issuance of the permit, other items may be approved for disposal at the landfill by modification of the permit by the Department. Only items that will cause no environmental harm as determined by the Department shall be approved for disposal;

(8) A groundwater monitoring and corrective action plan pursuant to Sections D. and E. of this Part;

(9) Detailed closure plan in accordance with Section I. of this Part, to include a description of the final cover and the methods and procedures to be used to install the cover. This plan shall also include the following: an estimate of the sum of all active areas of the landfill requiring a final cover at any time during the operating life of the facility; an estimate of the maximum inventory of wastes ever on site over the active life of the facility; a schedule for completing all activities; and, a site plan of the landfill showing the proposed final elevations. The plan may be amended at any time during the active life of the facility with Department approval. The plan shall be amended whenever changes in operating plans or facility design affect the closure plan, or whenever there is a change in the expected year of closure;

(10) Detailed post-closure plan in accordance with Section J. of this Part. This plan may address, but not be limited to, groundwater monitoring, landfill gas monitoring and maintenance of the integrity and effectiveness of the final cover including future use of the site.

c. South Carolina Coastal Zone Management Plan. The proposed landfill project shall be consistent with the South Carolina Coastal Zone Management Plan, if the landfill is located in the coastal zone as defined in accordance with the Coastal Zone Management Act.

I. Permit Conditions and Review.

1. Application forms for permits shall be provided by the Department and shall be submitted with sufficient detail to support a judgment that operation of the disposal system will not violate the laws and regulations of the State of South Carolina. The application shall be signed by the permittee of the landfill. The approved application and associated plans and drawings shall be an enforceable part of the permit. Permits shall be effective for the design and operational life of the facility.

2. Prior to issuance of permits for major modifications, as determined by the Department, and for new construction, the Department will make the draft permit available for public review and comment pursuant to Part I, Section D of this regulation.

3. The Department shall review the permit at least once every five years. Upon notification from the

Department, the landfill shall submit to the Department a topographic survey map of the site that shows the contours at the beginning and the end of the period since the last permit review.

4. If, upon review, the Department finds that material or substantial violations of the permit demonstrate the permittee's disregard for, or inability to comply with, applicable laws, regulations, or requirements, and would make continuation of the permit not in the best interest of human health and safety or the environment, the Department may, after a hearing, amend or revoke the permit as appropriate and necessary. When a permit is reviewed, the Department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation.

5. The Department may amend or attach conditions to a permit when:

a. There is a significant change, as determined by the Department, in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect human health and safety and the environment;

b. The investigation has shown the need for additional equipment, construction, procedures, and testing to ensure the protection of human health and safety and the environment; and,

c. The amendment is necessary to meet changes in applicable regulatory requirements.

6. Failure to begin construction within twelve (12) months of the issuance of the Department permit shall render that permit invalid unless granted a variance in writing by the Department

J. Transfer of Ownership.

The Department may, upon written request, transfer a permit to a new permittee where no other change in the permit is necessary pursuant to Part I, F.2.b. of this regulation.

Part V. Class Three Landfills. (Subsections A through F of this Part are codified to coincide with those Subparts in 40CFR258.)

Subpart A. General Provisions.

258.1. Purpose, Scope, and Applicability.

a. Part V. establishes minimum criteria for landfills that accept municipal solid waste, industrial solid waste, sewage sludge, nonhazardous municipal solid waste incinerator ash and other nonhazardous waste. Hereinafter, these landfills will be referred to as Class Three landfills. Class Three landfills shall adhere to their approved Special Waste Analysis and Implementation Plan (SWAIP), pursuant to S.C. Code Section 44-96-390.

b. This Part applies to owners and operators of new and existing Class Three landfills, except as otherwise specifically provided in this regulation.

c. No Class Three landfill shall be operated in the State of South Carolina without first obtaining a written permit from the South Carolina Department of Health and Environmental Control.

d. Class Three landfills failing to satisfy the criteria in this Part are considered open dumps for purposes of State solid waste management planning under RCRA.

c. Class Three landfills failing to satisfy the criteria in this Part constitute open dumps, which are prohibited under section 4005 of RCRA.

f. Class Three landfills containing sewage sludge and failing to satisfy the criteria in this Part violate sections 309 and 405(e) of the Clean Water Act.

g. Class Three landfills permitted prior to the effective date of this regulation to accept only industrial waste that test less than 30 times the MCL shall be exempted from the design criteria as outlined in Subpart D of this Part.

258.2. Definitions. See Part I., Section B. for definitions that apply to this regulation.

258.3. Considerations of other Federal Laws. The permittee of a Class Three landfill shall comply with any other applicable Federal rules, laws, regulations, or other requirements.

258.4. Research, Development, and Demonstration Permits.

a. When the leachate collection system is designed and constructed to maintain less than a 1 ft. depth of leachate on the liner, the Department may issue a research, development, and demonstration (RD and D) permit pursuant to R.61-107.10 for a Class Three Landfill for the use of innovative and new methods that vary from either or both of the following criteria:

(1) The run-on control systems in Section 258.26.a.(1); and,

(2) The liquids restrictions in Section 258.28.a., and Subpart H. Section 7.c. for specific permit requirements for leachate recirculation.

b. The Department may issue a research, development, and demonstration permit pursuant to R.61-107.10 for a Class Three Landfill to utilize innovative and new methods that vary from the final cover criteria of Section 258.60.a.(1), a.(2), and b.(1) when it can be demonstrated that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 1 foot.

c. Any permit issued under this section shall include such terms and conditions at least as protective as the criteria for Class Three landfills to assure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than two years, unless renewed in writing by the Department;

(2) Provide that the landfill receive only those types and quantities of municipal solid waste and nonhazardous wastes that the Department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the Department with respect to the operation of the facility;

(4) Require the permittee of a Class Three landfill permitted under this section to submit an annual report to the Department showing whether and to what extent the site is progressing in attaining

project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the Department in the permit; and,

(5) Require compliance with all criteria in this part, except as permitted under this section.

d. The Department may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the Department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

e. Any permit issued under this section shall not exceed two years and each renewal of a permit shall not exceed two years.

(1) The total term for a permit for a project including renewals may not exceed six years; and,

(2) When a permit renewal is requested, the applicant shall provide the Department with a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Department determines necessary for permit renewal.

f. Upon expiration of the RD and D permit, if the innovative/new method is proved to be a viable method, the facility's existing landfill permit issued under the authority of this regulation may be amended to include the innovative/new method.

Subpart B. Location Restrictions.

258.10. Airport Safety.

a. Owners/operators of Class Three landfills that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the Class Three landfill does not pose a bird hazard to aircraft.

b. Owners/operators proposing to site new Class Three Landfills and lateral expansions located within a five mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA).

c. The permittee shall place the demonstration required in a. above in the operating record and submit a copy to the Department.

d. See Part I, Section B. for definitions.

e. A new Class Three landfill that receives putrescible waste shall not be constructed or established after the effective date of this regulation within six (6) miles of a public airport that has received federal grant funds under 49 U.S.C. 47101 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for sixty (60) passengers or more. The Federal Aviation Administration has issued guidance which includes criteria for determining when an airport is covered and has identified those airports meeting the criteria. Anyone considering construction or establishment of a new Class Three landfill within six (6) miles of a public airport should contact the Federal Aviation Administration. This requirement does not apply to:

(1) A new Class Three landfill if the S.C. Division of Aeronautics requests that the

Administrator of the Federal Aviation Administration exempt the landfill from the application of this Item, and the Federal Aviation Administration Administrator determines that such exemption would have no adverse impact on aviation safety; or,

(2) Expansions, either vertical or lateral, of existing Class Three landfills constructed before the effective date of this regulation.

258.11. Floodplains.

a. Owners/operators of Class Three Landfills located in 100-year floodplains shall demonstrate that engineering measures have been incorporated into the landfill design to ensure the landfill will: not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, minimize potential for floodwaters coming into contact with waste, or result in the washout of solid waste so as to pose a hazard to human health or the environment. The permittee shall place the demonstration in the operating record and submit a copy to the Department.

b. See Part I., Section B. for definitions that apply to this regulation.

258.12. Wetlands. All landfills shall be in compliance with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Department's requirements concerning wetlands.

258.13. Fault Areas.

a. Class Three landfills shall not be located within 200 feet of a fault that has had displacement in Holocene time unless the permittee demonstrates to the Department that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the Class Three landfill and will be protective of human health and the environment.

b. See Part I., Section B. for definitions that apply to this regulation.

258.14. Seismic Impact Zones.

a. Class Three landfills shall not be located in seismic impact zones, unless the permittee demonstrates to the Department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

b. Definitions. See Part I., Section B. for definitions that apply to this regulation.

258.15. Unstable Areas.

a. Owners/operators of Class Three landfills located in an unstable area shall demonstrate that engineering measures have been incorporated into the landfill's design to ensure that the integrity of the structural components of the Class Three landfill will not be disrupted. The permittee shall place the demonstration in the operating record and notify the Department that it has been placed in the operating record. The permittee shall consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and,

(3) On-site or man-made features or events (both surface and subsurface).

b. See Part I., Section B. for definitions that apply to this regulation.

258.16. Reserved.

258.17. Hydrogeologic Considerations.

a. Class Three landfills shall be located in areas that can be demonstrated to have the characteristics listed below (258.17.a.(1), a.(2), a.(3), and a.(4)). The inability of a site to meet full compliance with these criteria may not necessarily make the site unsuitable, but the applicant has the burden to demonstrate to the satisfaction of the Department why variance from the criteria will not compromise protection to human health and the environment. If Department review finds the demonstration to be inadequate, the application may be denied. Upon notification from the Department that the site meets the requirements of this section, the applicant may submit a complete application to the Department. This approval shall not be valid after a period of twelve (12) months of the date of issuance if the complete application has not been submitted, unless granted a variance by the Department.

(1) The site shall not be located in an area where the hydrogeologic conditions allow the groundwater to migrate from shallow geologic units that have little potential as an underground source of drinking water, into deeper units. At the disposal area, any release to the uppermost aquifer would remain in the uppermost aquifer until discharge into the perennial stream nearest to the disposal area. The potentiometric head in the shallow portion of the uppermost aquifer shall be equal to or lower than the potentiometric head in the deeper portion of the uppermost aquifer (i.e., a lateral or an upward hydraulic gradient shall exist).

(2) The estimated deflected (or settled) bottom elevation of the landfill base grade shall be a minimum of three feet above the seasonal high water table elevation as it exists prior to the construction of the disposal area. The seasonal high water table shall be determined by interpretation of a minimum of 12 months data obtained from a representative number of monitoring wells approved by the Department. In cases where there is insufficient information to support the seasonal high water table elevation determination, additional separation may be required by the Department.

(3) A minimum 10 foot vertical separation of naturally occurring or engineered material shall be maintained between the base of the constructed liner and bedrock; provided, however, the nature of the material and sufficient separation exists to provide for installation and operation of an effective groundwater monitoring system. The nature of the material comprising this interval is subject to Department approval.

(4) The landfill shall not be located over an area where a stratum of limestone exhibiting secondary permeability with an average thickness of greater than five feet lies within 50 feet of the base of the landfill.

b. Class Three landfills are prohibited in areas where the permittee cannot demonstrate to the satisfaction of the Department that:

(1) The Class Three landfill is not located in a manner that would result in the destruction of a perennial stream, within 200 feet of a perennial stream, within that portion of a drainage basin included in a 2500 foot radius on the upstream side of a public drinking water supply intake, and within that portion of a drainage basin which is within 1000 feet of a lake, pond, or reservoir used as a source of public drinking water supply; and,

(2) The hydrogeologic properties of the site can be adequately characterized. The characterization shall include, but not be limited to, a detailed description of the geologic units below the site (including mineralogy, sedimentary structures, thickness, continuity, and structure), the hydraulic properties of each geologic unit (including secondary porosity and a discussion of variations noted across the site), hydraulic gradient, hydraulic conductivity, and direction and rate of groundwater flow within the uppermost aquifer system and all interconnected aquifers and confining units using a groundwater flow net. In addition, the relationship between the units below the site to locally and regionally recognized geologic and hydrogeologic units shall be described.

c. Class Three landfills shall not be located over Class GA groundwater or over the recharge area for Class GA groundwater as designated by the Department, over a sole source aquifer, or over the recharge area for a sole source aquifer as designated by the Department.

d. All Class Three landfills shall demonstrate compliance with the groundwater monitoring requirements pursuant to Subpart E.

258.18. Buffer Zones. Class Three landfills shall meet the buffer zone requirements outlined below:

a. The boundary of the fill area shall not be located within 1,000 feet of any residence, day-care center, church, school, hospital or publicly owned recreational park area unless such features are included in the site design for a planned end use or otherwise approved by the Department. The Department will determine whether the proposed landfill or landfill expansion meets this requirement prior to publication of the Notice of Intent to File a Permit Application pursuant to Part I, Section D.1 of this Regulation;

b. The boundary of the fill area shall not be located within 200 feet of any property line not under control of the permittee. An exemption may be issued by the Department upon receipt of written approval from adjacent property owners;

c. The boundary of the fill area shall not be located within 200 feet of any surface water that holds visible water for greater than six consecutive months, excluding ditches, sediment ponds, and other operational features on the site;

d. The boundary of the fill area shall not be located within the distances designated below from any well used as a source of water for human consumption, that is in a hydrologic unit potentially affected by the landfill. Exemptions may be granted if the applicant can demonstrate to the satisfaction of the Department that the hydrologic conditions below the landfill provide protection to the aquifer in use.

(1) The boundary of the fill area shall not be located any closer than 500 feet from a well hydraulically upgradient of the landfill.

(2) The boundary of the fill area shall not be located any closer than 750 feet from a well hydraulically sidegradient of the landfill.

(3) The boundary of the fill area shall not be located any closer than 1000 feet from a well hydraulically downgradient of the landfill.

e. Waste material shall not be placed on or within any property rights-of-way or 50 feet of underground or above ground utility equipment or structures, i.e., water lines, sewer lines, storm drains, telephone lines, electric lines, natural gas lines, etc., without the written approval of the impacted utility.

Subpart C. Operating Criteria.**258.20. Procedures for Excluding the Receipt of Hazardous Waste and Special Waste.**

a. Owners/operators of all Class Three landfills shall implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in the South Carolina Hazardous Waste Management Regulations R.61-79.261 and polychlorinated biphenyls (PCB) wastes as defined in Toxic Substances Control Act (TSCA), Part 761. This program shall be a part of the Special Waste Analysis and Implementation Plan (SWAIP) and shall include, at a minimum:

(1) Random daily inspections of no less than 10% of incoming loads unless the permittee takes other steps as outlined in the SWAIP to ensure that incoming loads do not contain regulated hazardous wastes, PCB wastes, or wastes not specifically allowed by the permit. Bulk PCB wastes may be allowed for disposal in a Class Three landfill based on a case-by-case determination by the Department;

(2) Records of unacceptable waste to include quantities and descriptions of waste, generator information, and how/where waste was properly disposed;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and,

(4) Notification of the Department within 72 hours of facility personnel becoming aware that a regulated hazardous waste or PCB waste may have been disposed of at the facility.

b. Definitions. See Part I., Section B. for definitions that apply to this regulation.

c. The owners/operators of all Class Three landfills shall implement a program at the facility for regulating the receipt of special wastes as described in SC Code Section 44-96-390.

258.21. Cover Material Requirements.

a. Except as provided in paragraph b. below, the owners/operators of all Class Three landfills shall cover solid waste with six (6) inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging. Special waste may require more frequent or additional cover.

b. Alternative materials of an alternative thickness (other than at least six (6) inches of earthen material) may be approved by the Department on a case-by-case basis if the permittee demonstrates that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

c. The Class Three landfill shall have an adequate quantity of acceptable earth (or approved alternate) cover for routine operations. If the material does not originate on-site, the permit application shall indicate the calculated volume of material needed for cover, provide assurances that off-site quantities of cover material are available, the location of any earth stockpiles, and any provisions for saving topsoil for use as final cover. The earth cover material shall be easily workable and compactable, shall be free of large objects that would hinder compaction, and shall not contain organic matter conducive to the harborage and/or breeding of vectors or nuisance animals.

d. The Department may grant, with prior notice from the permittee, a temporary waiver not to exceed seven days from the requirements of paragraphs a, and b. above for emergency situations.

258.22. Discase Vector Control.

- a. Owners/operators of all Class Three landfills shall prevent or control on-site populations of vectors using techniques appropriate for the protection of human health and the environment.
- b. Definitions. See Part I., Section B. for definitions that apply to this regulation.

258.23. Explosive Gases Control.

- a. Owners/operators of all Class Three landfills shall ensure that:
 - (1) The concentration of methane gas generated by the facility does not exceed 25% of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and,
 - (2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.
- b. Owners/operators of all Class Three landfills shall implement a routine methane monitoring program to ensure that the standards in paragraph a. above are met.
 - (1) The type and frequency of monitoring shall be determined based on the following factors:
 - (a) Soil conditions;
 - (b) The hydrogeologic conditions surrounding the facility;
 - (c) The hydraulic conditions surrounding the facility; and,
 - (d) The location of facility structures and property boundaries.
 - (2) The minimum frequency of monitoring shall be quarterly.
- c. If methane gas levels exceeding the limits specified in Section 258.23.a. above are detected, the permittee shall:
 - (1) Immediately take all necessary steps to ensure protection of human health and notify the Department;
 - (2) Within seven days of detection, place in the operating record and submit to the Department a copy of the methane gas levels detected and a description of the steps taken to protect human health; and,
 - (3) Within 30 days of detection, submit a methane remediation plan and construction details, signed and stamped by a South Carolina Licensed Professional Engineer, to the Department for approval; and,
 - (4) Within 30 days of plan approval, implement the Department approved remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Department that the plan has been implemented. The plan shall describe the nature and extent of the problem, the proposed remedy, and contain a schedule for compliance.

- d. Definitions. See Part 1., Section B. for definitions that apply to this regulation.

258.24. Air Criteria.

a. Owners/operators of all Class Three landfills shall ensure that the landfills do not violate any applicable requirements developed in a State Implementation Plan (SIP) approved or promulgated by the Department pursuant to Section 110 or Section 111 of the Clean Air Act, as amended.

b. Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency clean-up operations, all of which require prior Department approval, is prohibited at all Class Three landfills.

258.25. Access Requirements.

a. Owners/operators of all Class Three landfills shall control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

b. The landfill shall be adjacent to or have direct access to roads that are of all-weather construction and capable of withstanding anticipated load limits.

c. Salvaging and scavenging shall not be allowed at the working face of a Class Three landfill at any time.

258.26. Run-on/run-off Control Systems.

a. Owners/operators of all Class Three landfills shall design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm; and,

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

b. Run-off from the active portion of the landfill shall be handled in accordance with 258.27.a. below.

258.27. Surface Water Requirements.

a. Class Three landfills shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, Section 402 of the National Pollutant Discharge Elimination System (NPDES); and,

(2) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved in Section 208 or 319 of the Clean Water Act, as amended.

b. The permittee shall obtain an appropriate permit from the Department prior to the discharge of

any storm waters to surface waters.

258.28. Liquids Restrictions.

- a. Bulk or noncontainerized liquid waste may not be placed in Class Three landfills unless:
 - (1) The waste is household waste; or,
 - (2) The landfill has a Department Research, Development, and Demonstration Permit as outlined in Section 258.4 of this regulation.
- b. Containers holding liquid waste may not be placed in a Class Three landfill unless:
 - (1) The container is a small container similar in size to that normally found in household waste;
 - (2) The container is designed to hold liquids for use other than storage; or,
 - (3) The waste is household waste.
- c. For definitions, see Part I, Section B.

258.29. Record Keeping Requirements.

a. The permittee of a Class Three landfill shall record and retain near the facility in an operating record or in an alternative location approved by the Department for a period of no less than three years the following information as it becomes available:

- (1) Any location restriction demonstration required in Subpart B of this Part;
- (2) Inspection records, training procedures, and notification procedures required in Section 258.20. of Subpart C;
- (3) Gas monitoring results and any remediation plans required by Section 258.23. of Subpart C;
- (4) Any Class Three landfill design documentation for placement of leachate or gas condensate in the landfill as required in Section 258.28.a.(2) above;
- (5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by Subpart E;
- (6) Closure and post-closure care plans, updates to the closure and post-closure care plans, and any monitoring, testing, or analytical data as required by Sections 258.60. and 258.61. of this Part;
- (7) Any cost estimates and financial assurance documentation required by Part I., Section E. of this regulation; and,
- (8) The results of any environmental monitoring or testing performed in accordance with this regulation or the operating permit for the facility.

b. All information contained in the operating record shall be furnished upon request to the Department or be made available at all reasonable times for inspection by the Department.

c. The permittee of a Class Three landfill shall record in an operating record, information concerning the source or type (e.g. residential route, commercial, industrial, transfer station identity, special); weight (tons); county and State of origin of each load of waste delivered to the facility. A summary of this information shall be submitted to the Department no later than September 1, of each year, for the previous fiscal year, on a form approved by the Department.

d. The Department can set alternative schedules for record keeping and notification requirements as specified in Sections 258.29.a. and b. above, except for the notification requirements in Sections 258.10.b. and 258.55.i.(1)(d).

258.30. Scale Installation. Each permittee of a Class Three landfill shall install and/or maintain scales capable of accurately determining the weight of incoming waste streams.

258.31. Equipment. The following equipment shall be required to ensure adequate operation of the Class Three landfill:

a. Equipment or adequate contractual arrangements for equipment sufficient for excavating, earth moving, spreading, dust suppression, compacting and covering operations;

b. Sufficient reserve equipment, or arrangements to provide alternate equipment within 24 hours following equipment breakdown; and,

c. Equipment to extinguish fires or arrangements to provide for fire protection.

258.32. Supervision and Inspection.

a. Supervision of the operation of the Class Three landfill shall be the responsibility of a qualified individual who has experience in the operation of a Class Three Landfill, and has completed operator training courses and is certified pursuant to R.61-107.14.

b. Routine inspection and evaluation of landfill operations will be made by a representative of the Department. A notice of any deficiencies, together with any recommendations for their correction, will be provided to the owner or local government responsible for the operation of the landfill.

258.33. Leachate Handling Agreement. Either a legal document (contract, local permit, etc.) certifying acceptance of leachate by the operator of a wastewater treatment facility for the discharge of leachate to that facility, or a state pollutant discharge elimination system permit shall be obtained prior to initial receipt of waste at the facility.

258.34. Leachate Control. The permittee of the Class Three landfill shall ensure that the leachate head above the liner system does not exceed one (1) foot, except for brief periods not to exceed one (1) week, due to circumstances beyond the immediate control of the permittee.

258.35. Testing of Municipal Solid Waste Incinerator Ash.

a. Ash residue disposed at a Class Three landfill shall be sampled and analyzed according to the current Environmental Protection Agency (EPA) acceptable methodology for determining the hazardous nature of the ash.

b. The required analysis of all ash shall be performed in accordance with the conditions of the solid waste incinerator permit where the ash is generated, and the Class Three landfill where the ash is disposed.

c. Prior to disposal, ash from each facility generating ash shall be tested, at a minimum semi-annually and when any changes occur to the waste streams being incinerated, to determine the hazardous or non-hazardous nature of the ash stream.

d. No ash determined to be hazardous waste shall be disposed at a Class Three landfill.

e. Records of all ash testing shall be maintained in the operating record of the Class Three landfill.

258.36. Sign Requirements. Signs shall be posted and maintained at the main entrance that:

a. Identify the owner, operator, or a contact person and telephone number in case of emergencies and the normal hours during which the landfill is open to receive waste;

b. State the types of waste that the landfill is permitted to receive; and,

c. Identify the valid SCDHEC Facility I.D. Number for the facility.

258.37. Litter Control. Wind borne waste shall be controlled at the Class Three landfill. The entire facility shall be policed as necessary to remove any accumulations of blown litter.

Subpart D. Design Criteria for Class Three Landfills.

258.40. Design Criteria.

a. Class Three landfills shall be constructed:

(1) In accordance with a design approved by the Department. The design shall ensure that the maximum contaminant level (MCL) as specified in the South Carolina State Primary Drinking Water Standards, R.61-68 will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the Department in Section 258.40.i. below; or,

(2) With a composite liner, as defined in Item b. below of this section and a leachate collection system that is designed and constructed to maintain less than a one (1) foot depth of leachate over the liner, except in sumps.

(3) Monofills that accept coal combustion byproducts that test greater than ten (>10) times the maximum contaminant level (MCL), may be constructed with a clay liner system consisting of a minimum of a two (2) foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec, and an appropriate leachate collection system. These facilities shall comply with all other requirements for a Class III landfill.

b. Liner. A composite liner system shall consist of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML); and, the lower component shall consist of at least a two foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of High Density Polyethylene (HDPE) shall be at least 60-mil thick. The FML

component shall be installed in direct and uniform contact with the compacted soil component.

c. The leachate collection and removal system shall be designed and built to operate without clogging during the operational life of the site and post-closure maintenance period. The system shall be designed to allow for routine maintenance and cleaning of the system.

d. Filter layers shall be designed to prevent the migration of fine soil particles into a coarser grained material, and allow water or gases to freely enter a drainage medium (pipe or drainage blanket) without clogging.

e. The total thickness of the drainage and protective layers above the liner material shall be a minimum of two feet thick, and shall be composed of material with a minimum hydraulic conductivity of 1×10^{-4} cm/sec.

f. All material used in the leachate collection and removal system of the landfill shall be designed to ensure that the hydraulic leachate head on the liner system does not exceed one foot as a result of a 24-hour, 25-year storm event during the active life and post-closure care period of the landfill.

g. A foundation analysis shall be performed to determine the structural integrity of the subgrade to support the horizontal and vertical stresses and overlying facility components.

(1) The constructed landfill subgrade material shall consist of on-site soils or select fill with minimal organic material, as approved by the Department.

(2) The landfill subgrade shall be graded in accordance with the requirements of the approved engineering plans, reports and specifications. The material shall be sufficiently dry and structurally sound to ensure that the first lift and all succeeding lifts of soil placed over the landfill subgrade can adequately be compacted to the design requirements.

h. When approving a design that complies with the requirements of this Part, the Department shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The climatic factors of the area; and,
- (3) The volume and physical and chemical characteristics of the leachate.

i. The relevant point of compliance specified by the Department shall be no more than 150 feet from the waste management unit boundary and shall be located on land owned by the owner of the Class Three landfill. In determining the relevant point of compliance, the Department shall consider at least the following factors:

- (1) The hydrogeologic characteristics of the facility and surrounding land;
- (2) The volume and physical and chemical characteristics of the leachate;
- (3) The quantity, quality, and direction of flow of groundwater;
- (4) The proximity and withdrawal rate of the groundwater users;

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- (5) The availability of alternative drinking water supplies;
- (6) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;
- (7) Public health, safety, and welfare effects; and,
- (8) Practicable capability of the permittee.
- j. One permanent survey benchmark of known elevation measured from a U.S. Geological Survey benchmark shall be established and maintained at the site. This benchmark shall be the reference point for establishing horizontal and vertical elevation control.
- k. A minimum separation of three feet shall be maintained between the base of the constructed liner system and the high water table. Settlement of the landfill base grade shall be factored into the minimum separation requirement.
- l. The soil component of the liner system shall conform with the following:
- (1) The soil component of the liner system shall be placed on a slope of no less than 2% to promote positive drainage across the liner surface and at a maximum slope not greater than 33% to facilitate construction; and,
- (2) Compaction shall be performed by properly controlling the moisture content, lift thickness and other necessary details to obtain satisfactory results.
- m. The flexible membrane liner material shall demonstrate a chemical and physical resistance to waste placement or leachate generated by the landfill. Documentation shall be submitted to ensure chemical compatibility of the geomembrane liner material chosen, or in absence of the appropriate documentation, chemical compatibility testing shall be performed using a test method acceptable to the Department. Flexible membrane liners shall be installed in accordance with the requirements of the approved engineering plans, report, specifications and manufacturer's recommendations.
- n. All storm water ditches should have a minimum slope of 0.5% or a minimum permissible non-silting velocity of two feet per second. When it is not possible to achieve minimum slopes and/or velocities, alternative system design and maintenance, which ensures proper run-on and run-off control, may be approved by the Department.
- o. For landfill expansions adjacent to existing Class Three landfills, the Department may approve encroachment upon the existing landfill's side slopes only if a leachate barrier system is designed and constructed to eliminate leachate migration into the existing landfill. The expansion area shall be constructed in compliance with all applicable sections of this regulation. The subsurface conditions of the underlying area shall be capable of supporting the expansion.
- p. A construction certification report shall be submitted to the Department for approval after the completion of landfill construction by a S.C. licensed engineer other than the design engineer. This report shall include at a minimum, the information prepared in accordance with the application requirements. In addition, the construction certification report shall contain as-built drawings prepared and sealed by a land surveyor registered in South Carolina noting any deviations from the approved engineering plans. The construction certification report shall include a comprehensive narrative by the engineer. Upon approval of

the construction certification report and a satisfactory Department inspection, the Department will grant approval for disposal of waste.

q. The Department may, on a case-by-case basis, approve other landfill designs, provided there is adequate information to demonstrate that the proposed design meets or exceeds the environmental and public health protection standards outlined in this regulation.

r. Class Three landfills shall have a minimum 1.7 factor safety against failure, where the soil conditions are complex and when available strength data does not provide a consistent, complete, or logical picture of the strength characteristics. Where the soil conditions are uniform and high quality strength data provides a consistent, complete, and logical picture of the strength characteristics, a minimum 1.2 factor safety against failure may be used. The determination of the maximum horizontal acceleration of the lithified earth material for the site shall be based on the seismic 250-year interval maps in U.S. Geological Survey Open-File Report 82-1033¹. The permittee shall place the demonstration in the operating record and submit a copy to the Department.

Subpart E. Groundwater Monitoring and Corrective Action

258.50. Applicability.

a. The requirements in this part apply to all Class Three landfills, except as provided in paragraph b. below.

b. Groundwater monitoring requirements in Sections 258.51. through 258.55. of this Part may be modified by the Department for a Class Three landfill if the permittee can demonstrate that there is no potential for migration of hazardous constituents from the Class Three landfill to the uppermost aquifer during the active life of the landfill and the post-closure care period. This demonstration shall be certified by a qualified professional and approved by the Department, and shall be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and,

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

c. Class Three landfills shall be in compliance with the groundwater monitoring requirements specified in Sections 258.51. - 258.55. before waste can be placed in the landfill.

d. Once established at a Class Three landfill, groundwater monitoring shall be conducted throughout the active life and post-closure care period of the landfill as specified in Section 258.61.

e. For the purposes of this Subpart, a qualified professional shall certify all submittals.

¹ Entitled "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States," (Algermissen and Perkins, 1982).

f. The Department may establish alternative schedules for demonstrating compliance with the various sections of this Subpart on a case-by-case basis, provided sufficient technical rationale is provided to the Department to justify the alternate compliance schedule.

258.51 Groundwater Monitoring Systems

a. A groundwater monitoring system shall be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield representative groundwater samples from the uppermost aquifer that:

(1) Represent the quality of background groundwater that has not been affected by leakage from a landfill. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(a) Hydrogeologic conditions do not allow the permittee to determine what wells are hydraulically upgradient; or,

(b) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and,

(2) Represent the quality of groundwater passing the relevant point of compliance approved by the Department in Section 258.40.i. The downgradient monitoring system shall be installed between the relevant point of compliance and the actual disposal area, and shall ensure detection of any groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing landfills, the downgradient monitoring system shall be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance to ensure detection of groundwater contamination in the uppermost aquifer.

b. Reserved.

c. Monitoring wells shall be approved by the Department and constructed, at a minimum, to the standards established in the R.61-71.H., South Carolina Well Standards.

(1) The permittee shall submit to the Department and place in the operating record, documentation of the design, installation, development, and abandonment of any monitoring wells, piezometers and other measurement, sampling, and analytical devices; and,

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

d. The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that shall include thorough characterization of:

(a) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow, and the information required by Section 258.17.; and,

(b) Saturated and unsaturated geologic units and fill materials overlying the uppermost

aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities; and,

(2) Certified by a qualified professional and approved by the Department. Within 14 days of this certification, the permittee shall place the certification in the operating record and submit a copy to the Department.

258.52. Reserved.

258.53. Groundwater Sampling and Analysis Requirements.

a. The groundwater monitoring program shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with Section 258.51.a. of this Part. The permittee shall submit to the Department for review and approval, the sampling and analysis procedures and protocols to be used at the facility. After approval by the Department, documentation shall be placed in the operating record. The program shall include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody; and,
- (5) Quality assurance and quality control.

b. The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Detection limits for those parameters that have a Maximum Contaminant Level (MCL) that has been promulgated under South Carolina R.61-58, State Primary Drinking Water Regulations, shall be, at a minimum, below the established MCL. Detection levels shall be as low as practically possible, and at the practical quantitation level (PQL) for those constituents with no MCL. Groundwater samples shall not be field-filtered prior to laboratory analysis.

c. The sampling procedures and frequency shall be protective of human health and the environment.

d. Groundwater elevations shall be measured and recorded for each well prior to initiating sampling procedures each time groundwater is sampled. The permittee shall determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells that monitor the same waste management area shall be measured on the same day to avoid temporal variations in groundwater flow which could preclude an accurate determination of groundwater flow rate and direction.

e. The permittee shall establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the metals or constituents required in the particular groundwater monitoring program that applies to the Class Three landfill, as determined in Section 258.54.a., or Section 258.55.a. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the Class Three landfill if it meets the requirements of Section 258.51.a.(1). In order to establish

background groundwater quality in a reasonable period of time, pursuant to Sections 258.53.i.(1) and 258.53.i.(2), the permittee shall collect and analyze a minimum of four (4) independent groundwater samples from each compliance well and each background well prior to the end of the first year of operation. The Department may, on a case-by-case basis, approve an alternate subset of wells to be sampled for the establishment of background groundwater quality. The alternate subset of wells shall consist of a minimum of four (4) wells, or the total number of wells monitoring the landfill, whichever is least, and shall include all background well(s). This sampling and analysis shall be accomplished in a manner consistent with the requirements of Section 258.53.f. Pursuant to Section 258.51.a.(1), the above samples shall represent the quality of background groundwater that has not been affected by leakage from a landfill.

f. The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to paragraph g. below. The sampling procedures shall be those specified in Section 258.54.b. for detection monitoring, Sections 258.55.b. and d. for assessment monitoring, and Section 258.56.b. for corrective action.

g. The permittee shall specify in the operating record a statistical method to be used in evaluating groundwater monitoring data for each metal or other hazardous constituent requiring statistical analysis. The statistical test chosen shall be conducted for each parameter in each well, every time samples are collected. The following methods may be used:

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method shall include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(4) A control chart approach that gives control limits for each constituent; or,

(5) Another statistical test method that meets the performance standards of Section 258.53.h. The permittee shall place a justification for this alternative in the operating record and obtain approval from the Department prior to the use of this alternative test. The justification shall demonstrate that the alternative method meets the performance standards of Section 258.53.h.

h. Any statistical method chosen according to paragraph g. above shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents are shown by the permittee to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test used. If the distributions for the constituents differ, more than one statistical method may be needed;

(2) If an individual well comparison procedure is used to compare an individual compliance

well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons shall be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts;

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern;

(4) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence, and for tolerance intervals, the percentage of the population that the interval contains, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern;

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility; and,

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

i. The permittee shall determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the Class Three landfill, as determined in Section 258.54.a. or Section 258.55.a.

(1) In determining whether a statistically significant increase has occurred, the permittee shall compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to Section 258.51.a.(2) to the background value of that constituent, according to the statistical procedures and performance standards specified in paragraphs g. and h. above.

(2) Within a reasonable period of time after completing sampling and analysis, the permittee shall determine whether there has been a statistically significant increase over background for each metal or other hazardous constituent requiring statistical analysis at each monitoring well.

258.54. Detection Monitoring Program.

a. Detection monitoring is required at all Class Three landfill groundwater monitoring wells defined in Sections 258.51.a.(1) and a.(2). At a minimum, a detection monitoring program shall include the monitoring for the constituents listed in Appendix IV of this part.

(1) The Department may delete any of the Appendix IV monitoring parameters for a Class Three landfill if it can be shown that the deleted constituent(s) are not reasonably expected to be contained in or derived from the waste contained in the landfill.

(2) The Department may require additional groundwater monitoring parameters for routine monitoring based on the chemical and physical nature of the waste stream received by the landfill and any

analytical data for the waste streams provided by the permittee.

b. The monitoring frequency for all constituents listed in Appendix IV to this part shall be at least semiannual during the active life of the facility and the post-closure care period. At least one sample from each well (background and downgradient) shall be collected and analyzed during each sampling event.

c. The Department may specify an appropriate alternative frequency for repeated sampling and analysis for Appendix IV constituents during the active life and the post-closure care period. The alternative frequency during the active life shall be no less than semiannual. The alternative frequency shall be based on consideration of the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the Class Three landfill and downgradient monitoring well screen (minimum distance of travel); and,
- (5) Resource value of the aquifer.

d. If the permittee determines, pursuant to Section 258.53.g., that there is a statistically significant increase over background for one or more of the metals listed in Appendix IV, or above the MCL or PQL, as applicable, for any volatile organic compound (VOC) listed in Appendix IV at any monitoring well at the boundary specified in Section 258.51.a.(2), the permittee shall:

- (1) Within 14 days of this finding, notify the Department;
- (2) Within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels;
- (3) Within 30 days of this finding, resample the monitoring well(s) in question for Appendix IV to determine the validity of the data; and,
- (4) If the data are validated by resampling, establish an assessment monitoring program meeting the requirements of Section 258.55. within 90 days except as provided for in paragraph d.5 of this section.
- (5) The permittee may demonstrate that a source other than a Class Three landfill caused the contamination or that the statistically significant increase (SSI) resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be certified by a qualified professional, submitted to the Department for approval, and placed in the operating record. If a successful demonstration is made and documented, the permittee may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the permittee shall initiate an assessment monitoring program as required in Section 258.55.

e. The permittee shall submit to the Department on or before the anniversary date of issuance of the permit, an annual report certified by a qualified professional containing all of the analytical and statistical analysis performed at the site for the previous year as a result of the requirements of this Part. The annual report shall contain the following:

(1) The results of all analytical testing performed at the site during the previous year, and any applicable data concerning sampling and analysis of monitoring wells at the site;

(2) A determination of the technical sufficiency of the monitoring well network in detecting a release from the facility as required by Section 258.51.;

(3) The determination of groundwater elevations, groundwater flow directions and groundwater flow rates as specified in Section 258.53.d. Groundwater flow directions shall be based upon interpretation of a potentiometric map prepared utilizing the groundwater elevations measured at the site;

(4) A summary of the results of the statistical analysis performed in accordance with Sections 258.53.g. and 258.53.h.; and,

(5) Recommendations for any necessary actions regarding the groundwater monitoring system.

f. The results of all chemical analysis of groundwater samples taken during routine monitoring shall be submitted to the Department within 60 days of sample collection. On sampling events where an annual report is to be submitted to the Department, the annual report shall satisfy this requirement.

258.55. Assessment Monitoring Program.

a. Assessment monitoring is required whenever a statistically significant increase over background has been detected and validated, in accordance with Section 258.54.d., for one or more of the metals listed in Appendix IV, or above the MCL or PQL, as applicable, for any volatile organic compound (VOC) listed in Appendix IV, unless a successful demonstration has been made in accordance with Section 258.54.d.(5).

b. Within 90 days of triggering an assessment monitoring program, and annually thereafter, the permittee shall sample and analyze the groundwater for all constituents identified in Appendix V. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete Appendix V analysis, a minimum of four (4) independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the new constituents.

c. The Department may approve an appropriate subset of wells to be sampled and analyzed for Appendix V constituents during assessment monitoring, provided the permittee provides sufficient technical rationale for the subset of wells. The Department may delete any of the Appendix V monitoring parameters for a Class Three landfill if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the landfill.

d. The Department may allow an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix V constituents required by Section 258.55.b., during the active life and post-closure care of the landfill considering the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;

(4) Minimum distance between upgradient edge of the Class Three landfill and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and,

(6) Nature (fate and transport) of any constituents detected in response to this section.

e. After obtaining the results from the initial or subsequent sampling events required in paragraph b. above, the permittee shall:

(1) Within 14 days, submit to the Department analytical results identifying the Appendix V constituents that have been detected and place a copy in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by Section 258.51.a., conduct analyses for all constituents in Appendix IV and for those constituents in Appendix V that are detected in response to paragraph (b) above, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) shall be collected and analyzed during these sampling events;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs b., c., d. or e.(2) above; and,

(4) Establish groundwater protection standards for all constituents detected pursuant to paragraph b. or e. above. The groundwater protection standards shall be established in accordance with paragraph j. or k. below.

f. The Department may specify an alternative monitoring frequency during the active life and the post closure care period for the constituents referred to in this paragraph. The alternative frequency for Appendix V constituents during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (d) above.

g. If the concentrations of all Appendix V constituents are shown to be at or below background values, using the statistical procedures in Section 258.53.g., for two consecutive sampling events, the permittee may request approval from the Department to return to detection monitoring.

h. If the concentrations of any Appendix V constituents are above background values, but all concentrations are less than the groundwater protection standard established in paragraph j. or k. below, using the statistical procedures in Section 258.53.g., the permittee shall continue assessment monitoring in accordance with this section.

i. If one or more Appendix V constituents are detected at or above the groundwater protection standard established in paragraph j. or k. below in any sampling event, the permittee shall, within 14 days of this finding, submit to the Department analytical results identifying the Appendix V constituents that have exceeded the groundwater protection standard and notify the Department and all appropriate local government officials that the notice has been placed in the operating record. The permittee shall do one of the following:

(1) Either:

(a) Submit to the Department within 60 days of this finding, a groundwater quality assessment plan for characterizing the nature and extent of the release.

(b) Upon approval of the groundwater quality assessment plan, shall characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(c) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with Section 258.55.d.(2);

(d) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with Section 258.55.i.(1); and,

(e) Initiate an assessment of corrective measures as required by Section 255.56. within 90 days; or,

(2) Demonstrate that a source other than a Class Three landfill caused the contamination, or that the statistically significant increase (SSI) resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration shall be certified by a qualified professional, submitted to the Department for approval, and placed in the operating record. If a successful demonstration is made, the permittee shall continue monitoring in accordance with the assessment monitoring program pursuant to Section 258.55., and may return to detection monitoring if the Appendix V constituents are at or below background as specified in Section 258.55.g. Until a successful demonstration is made, the permittee shall comply with Section 258.55.i. including initiating an assessment of corrective measures.

j. The permittee shall establish a groundwater protection standard for each Appendix V constituent detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under South Carolina R.61-58, State Primary Drinking Water Regulations, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with 258.51.a.(1); or,

(3) For constituents for which the background level is higher than the MCL identified in paragraph j.(1) above or health based levels identified in Section 258.55.k.(1), the background concentration.

k. The Department may establish an alternative groundwater protection standard for constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Federal Environmental Protection Agency (EPA) guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) of 1×10^{-6} ; and,

(4) For systemic toxicants, the level represents a concentration to which the human population

(including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

l. In establishing groundwater protection standards in paragraph j. or k. above, the Department may consider the following:

- (1) Multiple contaminants in the groundwater;
- (2) Exposure threats to sensitive environmental receptors; and,
- (3) Other site-specific exposure or potential exposure to groundwater.

258.56. Assessment of Corrective Measures

a. Within 90 days of finding that any of the constituents listed in Appendix V have been detected at a level exceeding the groundwater protection standards defined in Section 258.55.j. or k., the permittee shall initiate an assessment of corrective measures. Such an assessment shall be completed within a reasonable period of time, not to exceed 180 days.

b. The permittee shall continue to monitor in accordance with the assessment monitoring program as specified in Section 258.55.

c. The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described in Section 258.57., addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and,

(4) The institutional requirements such as Department or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

d. The permittee shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

258.57. Selection of Remedy.

a. Based on the results of the corrective measures assessment conducted according to Section 258.56, the permittee shall select a remedy that, at a minimum, meets the standards listed in paragraph b. below. The permittee shall notify the Department within 14 days of selecting a remedy and submit a report to the Department for review and approval that describes the selected remedy and how it meets the standards in paragraph b. below.

b. Remedies shall:

-
- (1) Be protective of human health and the environment;
 - (2) Attain the groundwater protection standard as specified pursuant to Section 258.55.j. or k.;
 - (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix V constituents into the environment that may pose a threat to human health or the environment; and,
 - (4) Comply with standards for management of wastes as specified in Section 258.58.d.

c. In selecting a remedy that meets the standards in paragraph b. above, the permittee shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

- (a) Magnitude of reduction of existing risks;
- (b) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
- (c) The type and degree of long-term management required, including monitoring, operation, and maintenance;
- (d) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;
- (e) Time until full protection is achieved;
- (f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
- (g) Long-term reliability of the engineering and institutional controls; and,
- (h) Potential need for replacement of the remedy;

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

- (a) The extent to which containment practices will reduce further releases; and,
- (b) The extent to which treatment technologies may be used;

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

- (a) Degree of difficulty associated with constructing the technology;

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- (b) Expected operational reliability of the technologies;
 - (c) Need to coordinate with and obtain necessary approvals and permits from other agencies;
 - (d) Availability of necessary equipment and specialists; and,
 - (e) Available capacity and location of needed treatment, storage, and disposal services; and,
- (4) The degree to which community concerns are addressed by a potential remedy(s).

d. The permittee shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs d.(1-8). The permittee shall consider the following factors in determining the schedule of remedial activities:

- (1) Extent and nature of contamination;
- (2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established in Section 258.55.j. or k. and other objectives of the remedy;
- (3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) Desirability of utilizing technologies that are not readily available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (6) Resource value of the aquifer including:
 - (a) Current and future uses;
 - (b) Proximity and withdrawal rate of users;
 - (c) Groundwater quantity and quality;
 - (d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;
 - (e) The hydrogeologic characteristic of the facility and surrounding land;
 - (f) Groundwater removal and treatment costs; and,
 - (g) The cost and availability of alternative water supplies;
- (7) Practicable capability of the permittee; and,

(8) Other relevant factors.

e. The Department may determine that remediation of a release of an Appendix V constituent from a Class Three landfill is not necessary if the permittee demonstrates to the Department that:

(1) The groundwater is additionally contaminated by substances that have originated from a source other than a Class Three landfill and those substances are present in concentrations such that cleanup of the release from the Class Three landfill would provide no significant reduction in risk to actual or potential receptors; or,

(2) The constituent(s) is present in groundwater that:

(a) Does not currently meet the definition of an underground source of drinking water per South Carolina Water Classifications and Standards R.61-68; and,

(b) Is not hydraulically connected with waters to which the hazardous constituents are migrating, or are likely to migrate in a concentration(s) that would exceed the groundwater protection standards established in Section 258.55.j. or k. or,

(3) Remediation of the release(s) is technically impracticable; or,

(4) Remediation results in unacceptable cross-media impacts.

f. A determination by the Department pursuant to paragraph e. above of this section shall not affect the authority of the Department to require the permittee to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

258.58. Implementation of the Corrective Action Program.

a. Based on the schedule established in Section 258.57.d. for initiation and completion of remedial activities, the permittee shall:

(1) Establish and implement a corrective action groundwater monitoring program that:

(a) At a minimum, meets the requirements of an assessment monitoring program in Section 258.55.;

(b) Indicates the effectiveness of the corrective action remedy; and,

(c) Demonstrates compliance with groundwater protection standards pursuant to Section 258.58.e.

(2) Implement the corrective action remedy selected in Section 258.57.; and,

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Section 258.57. The following factors shall be considered by a permittee in determining whether interim measures are necessary:

(a) Time required to develop and implement a final remedy;

- (b) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
- (c) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- (d) Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
- (e) Weather conditions that may cause hazardous constituents to migrate or be released;
- (f) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and,
- (g) Other situations that may pose threats to human health and the environment.

b. A permittee may determine, based on information developed after implementation of the remedy or other information, that compliance with requirements of Section 258.57.b. are not being achieved through the remedy selected. In such cases, the permittee shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the permittee makes the determination under 258.c.

c. If the permittee determines that compliance with requirements in Section 258.57.b. cannot be practically achieved with currently available methods, the permittee shall:

(1) Obtain certification of a qualified professional and approval by the Department that compliance with requirements in Section 258.57.b. cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(a) Technically practicable; and,

(b) Consistent with the overall objective of the remedy; and,

(4) Notify the Department within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

d. All solid wastes that are managed pursuant to a remedy required in Section 258.57., or an interim measure required in Section 258.58.a.(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and,

(2) That complies with applicable Resource Conservation and Recovery Act (RCRA) requirements.

e. Remedies selected pursuant to Section 258.57. shall be considered complete when:

(1) The permittee complies with the groundwater protection standards established in Section 258.55.j. or k. at all points within the plume of contamination that lie beyond the groundwater monitoring well system established in Section 258.51.a.

(2) Compliance with the groundwater protection standards established in Section 258.55.j. or k. has been achieved by demonstrating that concentrations of Appendix V constituents have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in Section 258.53.g. and h. The Department may specify an alternative length of time during which the permittee shall demonstrate that concentrations of Appendix V constituents have not exceeded the groundwater protection standard(s) taking into consideration:

- (a) Extent and concentration of the release(s);
- (b) Behavior characteristics of the hazardous constituents in the groundwater;
- (c) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and,
- (d) Characteristics of the groundwater.

(3) All actions required to complete the remedy have been satisfied.

f. Within 14 days of completion of the remedy, the permittee shall submit to the Department a certification signed by a qualified professional stating that the remedy has been completed in compliance with the requirements of Section 258.58.e.

g. Upon the Department's approval of the certification required in 258.58.f., the permittee shall be released from the requirements for financial assurance for corrective action.

258.59. Reserved.

Subpart F. Closure and Post-closure Care.

258.60. Closure Criteria.

a. Owners/operators of all Class Three landfills shall install a final cover system that is designed to minimize infiltration and erosion. The final cover system shall be designed and constructed to:

- (1) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;
- (2) Minimize infiltration through the closed Class Three landfill by the use of an infiltration layer that contains a minimum eighteen (18) inches of earthen material;
- (3) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum one (1) foot of earthen material that is capable of sustaining native plant growth; and,
- (4) Have a storm water conveyance system for the landfill cap designed to ensure that the hydraulic head at any point does not exceed one (1) foot for a 24-hour period as the result of a 24-hour, 25-year storm event on all areas that have received final cover.

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- b. The Department may approve an alternative final cover design that includes:
- (1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs a.(1) and a.(2) above; and,
 - (2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in a.(3) above.
- c. The permittee shall prepare a written closure plan that describes the steps necessary to close all Class Three landfills at any point during their active life in accordance with the cover design requirements in Section 258.60.a. or b., as applicable. The closure plan, at a minimum, shall include the following information:
- (1) A description of the final cover, designed in accordance with Section 258.60.a. and the methods and procedures to be used to install the cover;
 - (2) An estimate of the largest area of the Class Three landfill ever requiring a final cover as required in Section 258.60.a. at any time during the active life;
 - (3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and,
 - (4) A schedule for completing all activities necessary to satisfy the closure criteria in Section 258.60.
- d. Prior to permit issuance, the permittee shall submit to the Department a closure plan. The closure plan shall be updated if any changes occur at the facility which require a deviation from the approved closure plan.
- e. Prior to beginning closure of each Class Three landfill as specified in Section 258.60.f., a permittee shall submit a notice of intent to close to the Department to include a schedule outlining closure activities.
- f. The permittee shall begin closure activities of each Class Three landfill no later than 30 days after the date on which the Class Three landfill receives the known final receipt of wastes, or if the Class Three landfill has remaining capacity and there is a reasonable likelihood that the Class Three landfill will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the Department if the permittee demonstrates that the Class Three landfill has the capacity to receive additional wastes and the permittee has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed Class Three landfill.
- g. The permittee of all Class Three landfills shall complete closure activities of each Class Three landfill in accordance with the closure plan within 180 days following the beginning of closure as specified in Section 258.60.f. Extensions of the closure period may be granted by the Department if the permittee demonstrates that closure will take longer than 180 days and they have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed Class Three landfill.
- h. Following closure of each Class Three landfill, the permittee shall submit to the Department for approval certification, that is signed by a South Carolina registered professional engineer other than the

design engineer, verifying that closure has been completed in accordance with the closure plan. A copy of this certification shall be placed in the operating record. The certification testing shall be conducted at a minimum rate of one (1) permeability test per acre and four (4) density/thickness tests per acre.

i. Within 30 days of the Department's issuance of final closure approval of a Class Three landfill, and using a form approved by the Department, the permittee shall record with the appropriate Register of Deeds, a notation in the record of ownership of the property - or some other instrument which is normally examined during title search - that will in perpetuity notify any potential purchaser of the property that the land or a portion thereof was used for the disposal of solid waste. This notice shall define the final boundaries of the waste disposal area including the latitude and longitude, identify the type, location, and quantity of solid waste disposed on the property, and advise potential owners of the property that there are land use restrictions.

j. The permittee may request permission from the Department to remove the notation from the deed if all wastes are properly removed from the facility and there is no environmental impact.

k. All facilities constructed with liner systems in accordance with this regulation shall install a final cover system which, at a minimum, consists of:

- (1) A gas management layer or layers, or other gas management design, as necessary;
- (2) Eighteen (18) inches of soil with a maximum permeability of 1×10^{-5} centimeters per second, and capable of providing a suitable foundation for the flexible membrane liner specified in paragraph (3) below;
- (3) A 20-mil flexible membrane liner with a maximum permeability equal to or less than the bottom liner system, if HDPE is used as the FML, then a sixty (60) mil thickness is required;
- (4) A drainage layer; and,
- (5) A minimum of two feet of soil capable of supporting native vegetation.

l. All Class Three landfills closed utilizing a flexible membrane cover system shall be constructed to preclude precipitation migration into the landfill. All flexible membrane cover systems shall be constructed in accordance with the requirements of the approved engineering plans, reports, specifications and manufacturer's recommendations.

m. The erosion layer shall be designed to maintain vegetative growth over the landfill by seeding with native grasses or other suitable cover. A 75% or greater vegetative ground cover with no substantial bare spots shall be established and maintained throughout the post-closure period.

n. The final cover system shall promote positive drainage by grading to create at least a 3%, but not greater than 5%, surface slope and a side slope that does not exceed three horizontal feet to one vertical foot, i.e., a 3:1 slope.

o. The Department may, on a case-by-case basis, approve other landfill closure designs, provided there is adequate information to demonstrate that the proposed design meets or exceeds the environmental and public health protection standards outlined in Subparts B, D and E of this regulation.

258.61. Post-closure Care Requirements.

a. Following closure of each Class Three landfill, the permittee shall conduct post-closure care. Post-closure care shall be conducted for a minimum 30 years, except as provided in paragraph b. below, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in 258.40., if applicable. The Department may allow the permittee to stop managing leachate if the permittee demonstrates to the Department's satisfaction that leachate no longer poses a threat to human health and the environment;

(3) Monitoring the groundwater in accordance with the requirements of Subpart E and maintaining the groundwater monitoring system, if applicable; and,

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of Section 258.23.

b. The length of the post-closure care period may be:

(1) Increased by the Department if the Department determines that the lengthened period is necessary to protect human health and the environment; or,

(2) Decreased by the Department if the permittee can provide technical rationale that the decreased post-closure care period is sufficient to protect human health and the environment.

c. The permittee of all Class Three landfills shall prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in paragraph a. for each Class Three landfill, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and,

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Part. The Department may approve any other disturbance of the containment system if the permittee demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

d. Prior to permit issuance, the permittee shall submit to the Department a post-closure plan for review and approval. The post-closure plan shall be updated if any changes occur at the facility which require a deviation from the approved post-closure plan.

e. Following completion of the post-closure care period for each Class Three landfill, the permittee shall submit to the Department, certification that is signed by a South Carolina registered professional engineer other than the design engineer, verifying that post-closure care has been completed in

accordance with the post-closure plan.

258.62. - 258.69. (Reserved.)

Subpart G. Financial Assurance Criteria. (See Part I., Section E. of this regulation.)

Subpart H. Permit Application Requirements.

Prior to the construction, operation, expansion or modification of a Class Three landfill, a permit shall be obtained from the Department.

1. Prior to submitting a permit application to the Department, the applicant shall satisfactorily complete the following:

a. **Determination of Need.** The applicant shall submit to the Department a request pursuant to Regulation 61-107.17. for determining need of the proposed landfill or landfill expansion, if applicable.

b. **Consistency Determination.** The applicant shall submit to the Department a request for a determination of consistency with items listed below.

(1) **State and County/Region Solid Waste Management Plans.** The permit applicant shall demonstrate consistency with the State Solid Waste Management Plan in effect at the time of submittal of the request for the Determination of Consistency. The permit applicant shall demonstrate consistency with the county/region plan in effect at the time of the submittal of the request for the Determination of Consistency. Class Three landfills managing solid waste generated solely in the course of normal operation on property under the same ownership or control as the Class Three landfill are not required to demonstrate consistency with the State and host County/Region Solid Waste Management Plans;

(2) **Local zoning and land-use ordinances.** Documentation demonstrating consistency with local zoning and land-use plans, e.g., zoning map, land-use map, and applicable part of the zoning ordinance shall be submitted to the Department; and,

(3) **All other applicable local ordinances.** Supporting documentation to include a copy of the ordinance shall be submitted to the Department.

(4) **Buffer Requirement.** The applicant shall demonstrate that it meets the buffer requirement set forth in Subpart B, Section 258.18. a of this Part at the time of submittal of the demonstration. The Department must notify by certified mail, return receipt requested, the applicant and any other affected person who requests to be notified of its determination of compliance with this buffer requirement.

c. If the Department's final determination of need is terminated, pursuant to R.61-107.17, all other determinations under Section H.1.a. and b. above will also be void.

d. **Landfill Siting Study.** If the Department determines there is a need for the proposed landfill/expansion pursuant to R.61-107.17., the applicant shall conduct a landfill siting study and submit the results of the study to the Department for a site suitability determination. This study shall be used to eliminate those sites which, due to location restrictions, are unsuitable sites and to determine if the site conditions warrant further permitting activities. The landfill siting study shall include, at a minimum, the following steps:

(1) A preliminary hydrogeologic characterization report on the site, which contains readily available information on the regional, local, and site hydrogeology and groundwater use. The preliminary

hydrogeologic characterization report shall be used to eliminate hydrogeologically unsuitable sites, and to determine if site conditions warrant further investigation;

(2) Pending approval of the preliminary hydrogeologic characterization report, a work plan detailing the site specific hydrogeologic investigations to be performed at the site shall be submitted to the Department for review and approval; and,

(3) Upon approval of the work plan specified in paragraph b. above, a site hydrogeologic characterization report shall be prepared and submitted to the Department detailing the findings of the site specific investigations. The landfill siting investigation shall ensure that the proposed landfill location complies with the location criteria outlined in Subpart B of this Part. During review by the Department of the suitability of the site based on the site hydrogeologic characterization report, the permit applicant may proceed with site design, and submittal of a groundwater monitoring plan as specified in Subpart H, Section 5.b.(14) below. Approval of the site shall be required before the Department will comment on engineering plans associated with the construction of the facility.

2. Administrative Review. Upon satisfactory completion of Subpart H.1. above, the applicant shall submit to the Department a complete permit application. The applicant shall submit to the Department a minimum of three copies of the following documents:

a. A completed permit application, on a form provided by the Department.

b. Tonnage Limit. The applicant shall submit to the Department a request for a determination of the maximum annual tonnage limit.

(1) Prior to the issuance of a permit for a new or expanded commercial Class Three landfill, the Department shall approve an allowable maximum annual tonnage limit based on the facility's design capacity, operational capacity, the expected operational life, and the planning area as determined by R.61-107.17, SWM: Demonstration-of-Need provided, however, that the maximum annual tonnage limit must not exceed the maximum yearly disposal rate pursuant to Regulation 61-107.17.

(2) Prior to issuance of a permit for a new or expanded noncommercial Class Three landfill, the Department shall approve a maximum annual tonnage limit based on the facility's design capacity, operational capacity, and the expected operational life.

c. A cost estimate for hiring a third party to close the sum of all active areas of the landfill requiring a final cover at any time during the operating life when the extent and manner of its operation would make closure the most expensive, as indicated in the closure plan. This estimate requires Department approval prior to the permittee establishing a financial assurance mechanism pursuant to Part I, Section E. of this regulation:

d. A Disclosure Statement pursuant to Part I, Section F.1. of this regulation. The Department may accept one disclosure statement for multiple facility permit applicants. This requirement shall not apply if the applicant is a local government or a region comprised of local governments;

e. Complete engineering plans and reports that are signed and stamped by a South Carolina Licensed Professional Engineer in accordance with Item 5. below;

f. The names and addresses of the owners of real property as they appear on the county tax maps as contiguous landowners of the proposed permit area.

3. When the submittal is administratively complete, the Department will notify, in writing, the applicant, the host local government if different from the applicant, and any other person who has made a written request for notification to the Department of the determination. Within 15 days of the Department's notification that the submittal is administratively complete:

a. The applicant for a Class Three landfill that will accept municipal solid waste shall submit to the Department demonstration and documentation that the facility issues negotiation process has been initiated in accordance with S.C. Code Section 44-96-470, to include an affidavit of publication of the public notice in the newspaper as required by Code Section 44-96-470(A).

b. The applicant for a Class Three landfill that will not accept municipal solid waste shall publish notice of the permit application pursuant to Part I, Section D.2. of the regulation, and submit an affidavit of publication of the public notice in the newspaper to the Department.

4. Upon completion of the facility issues negotiation process, the facilitator shall provide to the Department a summary of the results of the negotiations within 14 days of the certification of the facilitator's final report of resolution of the host local government as required by S.C. Code Section 44-96-470.

5. Technical Review. After determining that the permit application is administratively complete, the Department will conduct a Technical Review of the proposed project. The Department's technical review of the permit application will involve the documents and issues addressed in this Section. All individual drawings and plans shall be signed and stamped by a professional engineer duly licensed to practice in the State of South Carolina.

a. Engineering Drawings and Plans. All applications for new Class Three landfills and landfill expansions shall contain engineering drawings that set forth the proposed landfill location, property boundaries, adjacent land uses and construction details. Additional requirements for landfills with leachate recirculation are outlined in SubPart A, Section 258.4. of this Part. All construction drawings shall be bound and rolled and shall contain the following:

(1) A vicinity plan or map that shows the area within one mile of the property boundaries of the landfill in terms of: the existing and proposed zoning and land uses within that area at the time of permit application; and, residences, public and private water supply wells, known aquifers, surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility. The plan shall be on a scale of not greater than 500 feet per inch unless otherwise approved by the Department.

(2) Site plans that show: the landfill's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names and addresses of abutting property owners; the location of soil borings, excavations, test pits, gas venting structures, wells, piezometers, environmental and facility monitoring points and devices, benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total landfill area including planned staged development of the landfill's construction and operation, and the lateral limits of any previously filled areas; the location and identification of the sources of cover materials; the location and identification of special waste handling areas; and site topography with five feet minimum contour intervals; and, any other relevant information as necessary for proper operation. The site plan shall show wetlands, property lines, existing wells, water bodies, and soil stockpiles that will be used as cover material. The plan shall show all buildings, to include residences and schools, on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Department.

(3) Detailed plans of the landfill that clearly show in plan and cross-sectional views the following: the original, undeveloped site topography before excavation or placement of solid waste; the existing site topography, if different, including the location and approximate thickness and nature of any existing solid waste; plan view of the location of the seasonal high water table in relation to the bottom elevation of the proposed landfill; a cross sectional view of existing and final elevations, bottom elevation and deflected bottom elevation, and seasonal high water table; geologic units; known and interpolated bedrock elevations; the proposed limits of excavation and waste placement; other devices as needed to divert or collect surface water run-on or run-off; a plan and cross section view of fill progression for the life of the landfill; the final elevations and grades of the landfill; groundwater monitoring system; and, the building locations and appurtenances.

(4) Detailed plans of the sedimentation ponds. These plans shall clearly show in plan and cross sectional views the following: the existing site topography, the seasonal high water table, pond bottom elevation, permanent pool elevation, first flush elevation, maximum elevation for sedimentation clean-out, emergency spillway 100-yr storm elevation, riser pipe, antiseep collars, outlet protection, emergency spillway, dewatering riser, trash/antivortex rack, and sedimentation pond gauge legend.

(5) Detailed plans shall show: the location and placement of each liner system and each leachate collection system, locating and showing all critical grades and elevations of the collection pipe inverts and drainage envelopes, manholes, cleanouts, valves and sumps; and, leachate storage, treatment and disposal systems including the collection network and any treatment, pre-treatment, or storage facilities.

b. Engineering Report. An Engineering Report comprehensively describing the existing site conditions and an analysis of the landfill, including closure and post-closure criteria. Additional requirements for landfills with leachate recirculation are outlined in Section 5.c. below. All engineering reports shall be bound. This report shall:

(1) Specify the filling rate (in tons per day) of the landfill describing the number, types, and specifications of all necessary machinery and equipment needed to effectively operate the landfill at the prescribed filling rate;

(2) Contain a detailed description of all construction phases, including, but not limited to, the liner system, leachate collection system, and final cover system;

(3) Contain an analysis of the site to include:

(a) The name, address, and location of all adjacent landowners; the closest population centers;

(b) A description of the primary transportation systems and waste transportation routes to the landfill (i.e., highways, airports, railways, etc.); and,

(c) An analysis of the existing topography, surface water and subsurface geological conditions;

(4) Discuss the closure and post-closure maintenance and operation of the landfill which shall include, but not be limited to:

(a) A closure design consistent with the requirements contained in Section 258.60;

(b) A post-closure water quality monitoring program consistent with requirements contained in Section 258.61;

(c) Methane monitoring and control systems as needed;

(d) An operation and closure plan for the leachate collection, treatment, and storage facilities consistent with the requirements of this Part; and,

(e) A discussion of the future use of the site including the specific proposed or alternative use. Future uses shall conform to the stabilization plan, required by this regulation and shall not adversely affect the final cover system;

(5) Include appendices demonstrating compliance with pertinent local laws and regulations pertaining to air, land, noise, and water pollution, and other supporting data, including literature citations;

(6) Describe the materials and construction methods for the placement of: each monitoring well; all gas venting systems; each liner and leachate collection and removal system; leachate storage, treatment, and disposal systems; and, cover systems. This description also shall include a discussion of provisions to be taken to prevent frost action upon each liner system in areas where refuse has not been placed;

(7) Estimate the expected quantity of leachate to be generated, including:

(a) An annual water budget estimating leachate generation quantities, prepared for periods of time of initial operation, the interim between the last receipt of waste and application of final cover, and following facility closure. At a minimum, the following factors shall be considered in the preparation of the precipitation infiltration into the landfill: average monthly temperature; average monthly precipitation; evaporation; evapotranspiration, which should consider the vegetation type and root zone depth; surface/cover soil conditions and their relation to precipitation runoff which shall account for the surface conditions and soil moisture holding capacity; and, all other sources of moisture contribution to the landfill;

(b) Liner and leachate collection system efficiencies calculated using an appropriate analytical or numerical assessment. The factors to be considered in the calculation of collection system efficiency shall include, as a minimum, the saturated hydraulic conductivity of the liner, the liner thickness, the saturated hydraulic conductivity of the leachate collection system, the leachate collection system porosity, the base slope of the liner and leachate collection and removal system interface, the maximum flow distance across the liner and leachate collection and removal system interface to the nearest leachate collection pipe, and the estimated leachate generation quantity as computed in accordance with the requirements of the preceding subparagraph; and,

(c) Information gained from the collection efficiency calculations required in the preceding two paragraphs used to predict the static head of leachate on the liners, volume of leachate to be collected, and the volume of leachate that may permeate through the entire liner system on a monthly basis. This assessment shall also address the amount of leachate expected to be found in the leachate collection and removal system in gallons per acre per day;

(8) Include a design of the leachate storage facility based upon the leachate generation calculation. The design capacity for the leachate storage facility shall be based on the proposed leachate disposal method that allows sufficient lead time for either:

(a) Development of a separate set of engineering reports, plans and specifications for the

construction and operation of a leachate treatment facility on-site and to obtain approval of this document before any discharge from the leachate storage facility; or,

(b) Development of a plan to handle leachate destined for off-site treatment at a wastewater treatment facility, and to ensure that the amount of leachate stored on-site is not in excess of the storage capacity available. This plan shall include a legal document (contract, local permit, etc.) certifying acceptance of leachate from the operator of the wastewater treatment facility with all conditions stipulated by the operator of the wastewater treatment facility and all such stipulations addressed in the operations plan;

(9) Include a Construction Plan describing how the landfill will fulfill the requirements of protecting human health and the environment. The plan shall be presented in a manner sufficiently clear and comprehensive for use by the landfill's operator during the life of the landfill. It shall depict the fill progression with respect to site life and shall:

(a) Describe the site's preparation and fill progression for the life of the site in terms of method, depth, location and sequence;

(b) Contain a method of elevation control for the operator including the location and description of the permanent surveying benchmark at the site;

(c) Contain a fill progression discussion describing the placement and compacted thickness of daily, intermediate and final cover;

(d) For soils excavated during construction, identify the stockpile location and volume of soils; and,

(e) Contain a description of stormwater diversion from leachate collection system in areas of constructed cells that have not had waste placement;

(10) Include an Operation and Maintenance Report prepared to demonstrate how the landfill will meet all the operational requirements. This report shall include, at a minimum, the following:

(a) A description of the project's personnel requirements, stating personnel responsibilities and duties including discussions for training and lines of authority at the landfill;

(b) A description of all machinery and equipment to be used at the landfill, their authorized uses, and safety features;

(c) A description of the operational controls, including but not limited to, signs, hours and days of operation, landfill usage rules and regulations, and traffic flow controls;

(d) A description of the anticipated solid waste to be received per day, specifying the quantities received in tons per day, the fill progression of the landfill, and the method of solid waste placement and compaction, and the anticipated in-place density;

(e) A description of the landfill's solid waste receiving process, including inspection of incoming loads, identification of any waste streams to be excluded, and those wastes to receive special handling, or to require treatment before receipt, and a copy of the Special Waste Analysis and Implementation Plan (SWAIP);

(f) A description of the cover material management plan, specifying the types of cover

material (daily, intermediate, and final), identifying the quantities required and sources for each cover material by type, including the method of cover material placement, compaction, and the anticipated density;

(g) A description of the project's gas monitoring program that discusses explosive gas generation at the landfill and the controls used to ensure that gas generated at the landfill will not create a hazard to health, safety, or property;

(h) A description of how winter and inclement weather operations will be conducted; and,

(i) If applicable, a description of the operation of a convenience station at the landfill for smaller private vehicles to unload refuse at an area other than the landfill's working face;

(11) Contain a Stabilization Plan. Measures shall be taken within 30 days of establishing soil stockpiles to stabilize the stockpiles not in active use. The Stabilization Plan shall address adequate seeding or other erosion control measures of the site and:

(a) Identify and locate existing vegetation to be retained and proposed vegetation to be used for cover, soil stockpiles, and other purposes;

(b) If appropriate, provide a seeding and planting schedule, including the identification of the rationale for the seed mixture choice and fertilization and procedures for seed application, mulching, and maintenance; and,

(c) Describe the planting plan and schedule which identifies plants to be used consistent with future use proposals;

(12) Include a Quality Assurance/Quality Control (QA/QC) Report prepared in accordance with accepted QA/QC practices. This report shall address the construction requirements set forth in this Part for each phase of construction and shall include, but not be limited to:

(a) A delineation of the QA/QC management organization, including the chain of command of the QA/QC inspectors and contractors;

(b) A description of the required level of experience and training for the contractor, his crew, and QA/QC inspectors for every major phase of construction, in sufficient detail to demonstrate that the installation methods and procedures required in this document are properly implemented; and,

(c) A description of the QA/QC testing protocols for every major phase of construction, including, but not limited to, the base liner system, leachate collection system, and final cover system. The QA/QC testing protocol shall include at a minimum: the frequency of inspection; field testing; sampling for laboratory testing, the sampling and field testing procedures and equipment to be utilized; the calibration of field testing equipment, the frequency of performance audits; the sampling size; the soils or geotechnical laboratory to be used; the laboratory procedures to be utilized; the calibration of laboratory equipment and QA/QC of laboratory procedures, the limits for test failure; and, a description of the corrective procedures to be used upon test failure;

(13) Include a Contingency Plan that addresses an organized, planned and coordinated, technically and financially feasible course of action to be taken in responding to contingencies during the construction and operation of the landfill. The plan shall provide a description of the criteria to be utilized in evaluating deficiencies, and selecting and implementing corrective actions. The plan shall, at a minimum,

address:

(a) Procedures for responding to deficiencies during the construction phase resulting from circumstances including, but not limited to, inclement weather, defective materials or construction inconsistent with specifications as demonstrated by quality control testing;

(b) Actions to be taken during operation of the landfill with respect to: personnel and user safety; on-site personal injury; fires; explosive landfill gases detected on site; dust; litter; odor; noise; equipment breakdown; unusual traffic conditions; vectors; disposition of unapproved wastes; receipt of unauthorized wastes; releases of hazardous or toxic materials; groundwater and surface water contamination which may include public water supply contamination as a result of an accidental spill; and, the occurrence of the leachate storage facility being at or above capacity; and,

(c) Procedures to be used in response to: tank and surface impoundment spills or leakage, including removal of the waste and repair of such structures; and, the inability of the approved leachate treatment facility to accept leachate from the landfill for an indefinite period of time;

(14) Include a Groundwater Monitoring Plan. Upon obtaining approval of the investigations performed to satisfy the landfill siting study, a groundwater monitoring plan shall be submitted to the Department for review and approval. The groundwater monitoring plan shall detail the activities to be performed to ensure compliance with the requirements of Section 258.51., Section 258.53., and Section 258.54.;

(15) Include a Closure Plan in the permit application that details the activities to be performed to satisfy the requirements of Section 258.60.; and,

(16) Include a Post-closure Plan that details the activities to be performed to satisfy the requirements of Section 258.61.

c. South Carolina Coastal Zone Management Plan. The proposed landfill project shall be consistent with the South Carolina Coastal Zone Management Plan, if the landfill is located in the coastal zone as defined in accordance with the Coastal Zone Management Act.

d. Leachate Recirculation. All landfills proposing leachate recirculation shall comply with the requirements outlined in Subpart I below.

Subpart I. Leachate Recirculation.

1. Leachate recirculation at Class Three Landfills shall be limited to facilities which meet the following criteria:

a. Leachate recirculation shall be allowed only in facilities that were designed and constructed with a minimum of a composite liner system or equivalent, and that comply with all requirements for a Class 3 Landfill.

b. Leachate recirculation shall be allowed only in facilities which have a leachate collection system capable of maintaining less than one foot of leachate head on the liner system at all times.

c. Leachate and gas condensate collected from the facility shall be the only liquids allowed for recirculation back into the landfill.

d. Leachate recirculation will not be allowed in an area of the footprint which exhibits evidence of significant leakage of the liner system. A buffer approved by the Department shall be maintained between the suspected leaking area and the area of leachate recirculation.

e. Leachate recirculation shall be allowed only at facilities which are designed and constructed to have final slopes which are no steeper than three to one.

f. The Class Three Landfill shall have sufficient storage capacity onsite to handle all leachate generated by the facility in the event leachate recirculation activities are suspended.

g. Contracts to handle the total leachate generated by the facility, or approved and permitted onsite treatment facilities capable of handling all leachate generated by the facility shall be maintained at all Class Three Landfills performing leachate recirculation.

h. The permittee shall have adequate landfill gas control measures in place at the start of leachate recirculation to control the migration of methane and to control the presence of any odors associated with leachate recirculation.

i. A minimum thickness of 30 feet of waste shall be placed in a new cell before leachate recirculation can begin.

2. Class Three landfills performing leachate recirculation shall maintain the following buffer distances from facility side slopes:

a. If leachate is applied to the landfill by way of spraying the leachate at the working face, at a minimum, a 50 foot buffer shall be maintained at all times.

b. If leachate is applied to the landfill by way of pumping into a trench system, at a minimum, a 100 foot buffer shall be maintained at all times.

c. If leachate is applied to the landfill by way of injecting the leachate into vertical wells installed into the waste, at a minimum, a 100 foot buffer shall be maintained at all times.

d. Other methods of leachate recirculation into the facility shall have buffer zones from side slopes approved by the Department.

e. The Department may require additional buffer distances should evidence exist that the current buffer zones are not sufficient to protect stability of the landfill, to prevent the outbreak of leachate seeps, or to otherwise protect human health and the environment.

3. Approval to perform leachate recirculation shall be requested by the facility and approved by the Department on an annual basis. Upon a request for annual renewal of approval to leachate recirculate, the facility shall submit to the Department the following information in the form of an annual report:

a. Analytical results from leachate testing for the parameters specified in Appendix VI;

b. A summary of daily leachate recirculation rates along with injection locations;

c. Monthly leachate recirculation system inspection records, training procedures, and notification procedures;

-
- d. Monthly landfill leachate and gas generation rate (if applicable) results; and,
 - c. Any requests for modification to the leachate recirculation system.
4. If problems associated with leachate recirculation are identified, the permittee shall:
 - a. Take all steps necessary to ensure protection of human health and the environment; and,
 - b. Within seven days of detection of a problem with leachate recirculation, place in the operating record and submit to the Department a copy of all actions taken to remedy the problem, and any proposed changes to the leachate recirculation system to prevent future problems.
 5. Engineering Report. In addition to the permitting requirements outlined for Class Three Landfills in this Part, the permit application shall contain, at a minimum, the following:
 - a. Engineering drawings with detailed plans of the landfill that clearly show in plan and cross-sectional views the following: each leachate injection well; pipe lines; pipe inverts; drainage envelopes; manholes; cleanouts; valves; sumps; other devices as needed for leachate injection and monitoring, if applicable; and, a proposed waste saturation profile;
 - b. An engineering report containing a description of the existing site conditions and an analysis of the proposed landfill. The report shall:
 - (1) Contain design calculations using waste shear strength at 100% saturation that demonstrate that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. Class Three landfills shall have a minimum 1.7 safety factor against failure, where the soil conditions are complex and when available strength data do not provide a consistent, complete, or logical picture of the strength characteristics. Where the soil conditions are uniform and high quality strength data provides a consistent, complete, and logical picture of the strength characteristics as determined by the Department, a minimum 1.2 safety factor against failure shall be used.
 - (2) Specify the leachate application rate of the landfill in gallons per day, specify the current leachate generation rates, and list the number, types, and specifications of all necessary machinery and equipment needed to effectively operate the application system at the landfill.
 - (3) Contain liner and leachate collection system efficiencies calculated using an appropriate analytical or numerical assessment. The factors to be considered in the calculation of collection system efficiency shall include, at a minimum, the saturated hydraulic conductivity of the liner, the liner thickness, the saturated hydraulic conductivity of the leachate collection system, the leachate collection system porosity, the base slope of the liner and leachate collection and removal system interface, the maximum flow distance across the liner and leachate collection and removal system interface to the nearest leachate collection pipe, the estimated leachate generation, including both natural quantity and the approved injection rate. The estimated leachate generation shall be used to predict the static head of leachate on the liners, volume of leachate to be collected, and the volume of leachate that may permeate through the entire liner system on a monthly basis. This assessment shall also address the amount of leachate expected to be found in the leachate collection and removal system in gallons per acre per day.
 - (4) Contain a leachate recirculation operation and maintenance report for the landfill that includes, at a minimum, the following:

(a) A description of the project's personnel requirements, stating personnel responsibilities and duties including discussions for training and lines of authority at the landfill; and,

(b) A description of all machinery and equipment to be used at the landfill for leachate recirculation, their authorized uses, and safety features.

(5) Contain a contingency plan discussing the course of action to be taken in responding to fires, leachate seeps, leachate releases, and other pertinent situations.

(6) Contain a description of the method for collecting and controlling landfill gases based on calculations of the estimated landfill gas generation during life of the landfill.

(7) Contain a demonstration of adequate storage capacity for all leachate generated at the site.

(8) Contain analytical results from leachate testing for the parameters specified in Appendix VI. prior to the start of leachate recirculation at the site.

Subpart J. Permit Conditions and Permit Review.

1. Application forms for permits shall be provided by the Department and shall be submitted with sufficient detail to support a judgment that operation of the disposal system will not violate the laws and regulations of the State of South Carolina. The application shall be signed by the permittee of the Class Three landfill. The approved application and associated plans and drawings shall be an enforceable part of the permit. Permits shall be effective for the design and operational life of the facility.

2. Prior to issuance of a permit for major modifications, as determined by the Department, and for new construction, the Department will make the draft permit available for public review and comment pursuant to Part I, Section D of this regulation.

3. The Department shall review the permit for each Class Three landfill at least once every five years, unless otherwise specified by the Department. Upon notification from the Department, the landfill shall submit to the Department a topographic survey map of the site that shows the contours at the beginning and the end of the period since the last permit review.

a. If, upon review, the Department finds that material or substantial violations of the permit demonstrate the permittee's disregard for, or inability to comply with, applicable laws, regulations, or requirements, and would make continuation of this permit not in the best interests of human health and safety or the environment, the Department may, after a hearing, amend or revoke the permit, as appropriate and necessary. When a permit is reviewed, the Department shall include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation.

b. The Department may amend or attach conditions to a permit when:

(1) There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect human health and safety and the environment;

(2) The investigation has shown the need for additional equipment, construction, procedures, and testing to ensure the protection of human health and safety and the environment; and,

(3) The amendment is necessary to meet changes in applicable regulatory requirements.

4. Any permits issued pursuant to this regulation shall not be valid after a period of twelve (12) months from the effective date of the permit, if construction of the facility has not begun by the end of this period unless granted a variance by the Department.

Subpart K. Transfer of Ownership.

The Department may, upon written request, transfer a permit to a new permittee where no other change in the permit is necessary pursuant to Part I, F.2.c. of this regulation.

Appendix I

ACCEPTABLE WASTE FOR CLASS TWO LANDFILLS

The following types of waste have been determined by the Department to be environmentally safe and may be accepted at Class Two Landfills unless specifically prohibited by the Department. Acceptable wastes may be generated by construction, demolition, land-clearing, industrial, and/or manufacturing activities, and/or obtained from segregated commercial waste. However, any of the materials listed in this appendix that have been contaminated by any hazardous constituent listed in the S.C. Hazardous Waste Management Regulations 61-79.261, or petroleum products, are prohibited from disposal at a Class Two Landfill.

Acceptable Land-Clearing Debris Such As:

- | | |
|---|--|
| <ul style="list-style-type: none"> • brush & limbs • earthen material, e.g., clays, sands, gravels, & silts • logs • rock | <ul style="list-style-type: none"> • root mats • top soil • tree stumps • vegetation |
|---|--|

Acceptable Debris Such As:

- | | |
|--|---|
| <ul style="list-style-type: none"> • asbestos-containing material² • bricks & masonry blocks • cardboard • dry paint cans • dry caulking tubes • fiberglass matting • floor covering • glass • glass wire (optical fiber) • hardened asphaltic concrete³ • hardened cement • hardened concrete (may include rebar) • insulation material • lumber (includes treated lumber) • mirrors | <ul style="list-style-type: none"> • other items physically attached to structure, e.g., signs, mailboxes, awning, vinyl siding • other structural fabrics • packaging material • painted waste (includes lead-based paint) • pallets & crates • pipes • plaster & plasterboard • polyfiberglass (highly polished, cured material used for shower stalls, roofing, etc.) • shingles & roofing materials • structural steel • tile (floor, wall & ceiling) • tires⁴ • tubing • wall coverings |
|--|---|

² Friable and nonfriable asbestos-containing material shall be disposed in a designated area and covered immediately upon receipt with at least six inches (6") of acceptable material. Prior to disposal of asbestos-containing material, the generator of the asbestos waste shall obtain a "permission for disposal" letter from the Department's Bureau of Air Quality (BAQ) and submit this letter to the landfill. All landfills accepting asbestos-containing material for disposal are subject to the BAQ regulation 61-86.1 Standards of Performance for Asbestos Abatement Operations, and the National Emissions Standards for Hazardous Air Pollutants[40CFR61, Subpart M:]

³ Tar sealant material is not acceptable.

⁴ Tires shall be reduced in size by a minimum of one-eighth the size of the original tire prior to landfill disposal.

Acceptable Brown Goods:

- | | |
|---|---|
| <ul style="list-style-type: none">. box springs. mattresses. wooden swing sets. nonmotorized bulky outdoor children's toys | <ul style="list-style-type: none">. furniture including lawn furniture:<ul style="list-style-type: none">- laminated- metal⁵- plastic- PVC- vinyl- wooden |
|---|---|

Animal Carcasses Acceptable Under Following Conditions:

. Animal carcasses shall be buried in a separate designated area. The facility shall submit to the Department a written request to dispose of animal carcasses including a plan that shows the portion of the landfill to be used for this type of disposal. The permit will be modified to reflect the designated disposal area, and;

. Animal carcasses shall be buried and covered with at least twelve inches (12") of dirt immediately upon receipt.

. Hydrated lime shall be added to the carcass and surrounding area before cover is applied to control bacterial growth and odor.

. Mass kill burial shall not be acceptable at Class Two Landfills unless approved by the Department prior to disposal.

⁵The Department recommends that all metal furniture be recycled if feasible.

Appendix II

UNACCEPTABLE WASTE FOR CLASS TWO LANDFILLS

The following types of waste have been determined to pose a potential threat to the environment and shall not be accepted at Class Two Landfills. Wastes are considered to be contaminated if a waste has come into contact with and maintains a residue or characteristic of the contaminated materials as described herein.

Any Waste That Has Been Contaminated by Petroleum Products Such As:

- | | |
|----------------------------|------------------------|
| . absorbent (vermiculite) | . paper towels & rags |
| . concrete | . pipes |
| . containers | . soil |
| . filters (oil, etc.) | . storage tanks |
| . mechanical/machine parts | . tar sealant material |

Any Waste That Has Been Contaminated by Polychlorinated Biphenyls (PCBs) Such As:

- | | |
|--------------------------------------|-------------------------|
| . any waste that has come in contact | . electrical components |
| . with any liquid-containing PCBs | . lighting ballasts |
| . capacitors | . transformers |

Any Waste That Has Been Contaminated by Organic Chemicals or Solvents (industrial plants, chemical plants, laboratories, construction sites, etc.) Such As:

- | | |
|---------------------------------|---|
| . absorbent | . mechanical/machine parts (valves, etc.) |
| . adhesives | . paint thinner |
| . caulking compounds | . pipes |
| . cement | . pumps |
| . containers (packaging) | . soil |
| . filters | . storage tanks |
| . flooring (wood, carpet, etc.) | . tar |
| . glazing compound | . vats |

Any Waste That Has Been Contaminated by Preservatives, (pentachlorophenol & creosote) Such As:

- | | |
|----------------------------|-----------------|
| . containers | . railroad ties |
| . mechanical parts used in | . soil |
| . manufacturing processes | . utility poles |

Any Waste That Has Been Contaminated by Pesticides/Herbicides Such As:

- | | |
|----------------------------------|-----------------------|
| . concrete | . pallets & crates |
| . containers (packaging) | . soil |
| . equipment used for application | . vats |
| . mechanical/machine parts | . wood (storage area) |

Miscellaneous Waste Such As:

- | | |
|---|---|
| . lamps ⁶ | . unpolished fiberglass (Bondo) |
| . liquid waste (paint, paint thinner, etc.) | . wastes/substances determined by the Department to be unacceptable |

Cathode Ray Tubes (CRTs) and Electronic Equipment Such As:

- | | |
|--|--|
| . cameras | . microwave ovens |
| . compact discs (CDs) | . personal digital assistants (PDAs) |
| . computers | . radios |
| . computer monitors | . stereos |
| . communication & navigation equipment | . televisions |
| . Digital Versatile Disc (DVDs) | . test equipment (oscilloscopes, etc.) |
| . displays | . video cassette recorders (VCRs) |
| . hand-held video game machines | . video game machines |
| . mainframes | |

⁶Fluorescent lamps and high intensity discharge (HID) lamps such as metal halide and mercury vapor lamps.

Appendix III

CONSTITUENTS FOR DETECTION MONITORING FOR CLASS TWO LANDFILLS

<u>Common name</u>	<u>CAS RN</u>
pH	
Specific Conductance	
Temperature	
<u>Inorganic Constituents:</u>	
(1) Arsenic	(Total)
(2) Barium	(Total)
(3) Cadmium	(Total)
(4) Chromium	(Total)
(5) Lead	(Total)
(6) Mercury	(Total)
(7) Selenium	(Total)
(8) Silver	(Total)
(9) Chloride	(Total)
(10) Nitrate	(Total)
(11) Sulfate	(Total)
<u>Organic Constituents:</u>	
(12) Benzene	71-43-2
(13) Carbon tetrachloride	56-23-5
(14) Chlorobenzene	108-90-7
(15) Chloroform; Trichloromethane	67-66-3
(16) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(17) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(18) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(19) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(20) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(21) Ethylbenzene	100-41-4
(22) Methylene chloride	75-09-2
(23) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(24) Toluene	108-88-3
(25) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(26) 1,1,2-Trichloroethane	79-00-5
(27) Trichloroethylene; Trichloroethene	79-01-6
(28) Vinyl chloride	75-01-4
(29) Xylenes	1330-20-7

Appendix IV
CONSTITUENTS FOR DETECTION MONITORING FOR CLASS THREE LANDFILLS

<u>Common name⁷</u>	<u>CAS RN⁸</u>
pH	
Specific Conductance	
<u>Inorganic Constituents:</u>	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
<u>Organic Constituents:</u>	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2

⁷Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

⁸Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

Appendix V
LIST OF HAZARDOUS INORGANIC AND ORGANIC CONSTITUENTS

<u>Common name⁹</u>	<u>CAS RN¹⁰</u>
Acenaphthene	83-32-9
Acenaphthylene	208-96-8
Acetone	67-64-1
Acetonitrile; Methyl cyanide	75-05-8
Acetophenone	98-86-2
2-Acetylaminofluorene; 2-AAF.	53-96-3
Acrolein	107-02-8
Acrylonitrile	107-13-1
Aldrin	309-00-2
Allyl chloride	107-05-1
4-Aminobiphenyl	92-67-1
Anthracene	120-12-7
Antimony	(Total)
Arsenic	(Total)
Barium	(Total)
Benzene	71-43-2
Benzo[a]anthracene; Benzanthracene	56-55-3
Benzo[b]fluoranthene	205-99-2
Benzo[k]fluoranthene	207-08-9
Benzo[ghi]perylene	191-24-2
Benzo[a]pyrene	50-32-8
Benzyl alcohol	100-51-6
Beryllium	(Total)
alpha-BHC	319-84-6
beta-BHC	319-85-7
delta-BHC	319-86-8
gamma-BHC; Lindane	58-89-9
Bis(2-chloroethoxy)methane	111-91-1
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4
Bis-(2-chloro-1-methylethyl) ether; 2,2[prime]-Dichlorodiisopropyl ether; DCIP. ¹¹	108-60-1
Bis(2-ethylhexyl) phthalate	117-81-7
Bromochloromethane; Chlorobromomethane	74-97-5
Bromodichloromethane; Dibromochloromethane	75-27-4
Bromoform; Tribromomethane	75-25-2
4-Bromophenyl phenyl ether	101-55-3
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7
Cadmium	(Total)

⁹Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

¹⁰Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

¹¹This substance is often called bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, propane, 2,2[sec]-oxybis[2-chloro- (CAS RN 39638-32-9).

Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlordane	footnote ¹²
p-Chloroaniline	106-47-8
Chlorobenzene	108-90-7
Chlorobenzilate	510-15-6
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7
Chloroethane; Ethyl chloride	75-00-3
Chloroform; Trichloromethane	67-66-3
2-Chloronaphthalene	91-58-7
2-Chlorophenol	95-57-8
4-Chlorophenyl phenyl ether	7005-72-3
Chloroprene	126-99-8
Chromium	(Total)
Chrysene	218-01-9
Cobalt	(Total)
Copper	(Total)
m-Cresol; 3-Methylphenol	108-39-4
o-Cresol; 2-Methylphenol	95-48-7
p-Cresol; 4-Methylphenol	106-44-5
Cyanide	57-12-5
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7
4,4[prime]-DDD	72-54-8
4,4[prime]-DDE	72-55-9
4,4[prime]-DDT	50-29-3
Diallate	2303-16-4
Dibenz[a,h]anthracene	53-70-3
Dibenzofuran	132-64-9
Dibromochloromethane; Chlorodibromomethane.	124-48-1
1,2-Dibromo-3-chloropropane; DBCP.	96-12-8
1,2-Dibromoethane; Ethylene dibromide; EDB.	106-93-4
Di-n-butyl phthalate	84-74-2
o-Dichlorobenzene; 1,2- Dichlorobenzene.	95-50-1
m-Dichlorobenzene; 1,3- Dichlorobenzene	541-73-1
p-Dichlorobenzene; 1,4- Dichlorobenzene.	106-46-7
3,3[prime]-Dichlorobenzidine	91-94-1
trans-1,4-Dichloro-2-butene	110-57-6
Dichlorodifluoromethane; CFC 12	75-71-8
1,1-Dichloroethane; Ethyldiene chloride	75-34-3
1,2-Dichloroethane; Ethylene dichloride.	107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene	75-35-4
Vinylidene chloride cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
trans-1,2-Dichloroethylene trans-1,2-Dichloroethene	156-60-5
2,4-Dichlorophenol	120-83-2
2,6-Dichlorophenol	87-65-0
1,2-Dichloropropane; Propylene dichloride.	78-87-5

¹²Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).

1,3-Dichloropropane; Trimethylene dichloride	142-28-9
2,2-Dichloropropane; Isopropylidene chloride	594-20-7
1,1-Dichloropropene	563-58-6
cis-1,3-Dichloropropene	10061-01-5
trans-1,3-Dichloropropene	10061-02-6
Dieldrin	60-57-1
Diethyl phthalate	84-66-2
O,O-Diethyl O-(2-pyrazinyl) phosphorothioate	297-97-2
Dimethoate	60-51-5
p-(Dimethylamino)azobenzene	60-11-7
7,12-Dimethylbenz[a]anthracene	57-97-6
3,3[prime]-Dimethylbenzidine	119-93-7
alpha, alpha-Dimethylphenethylamine	122-09-8
2,4-Dimethylphenol; m-Xylenol	105-67-9
Dimethyl phthalate	131-11-3
m-Dinitrobenzene	99-65-0
4,6-Dinitro-o-cresol 4,6-Dinitro-2- methylphenol	534-52-1
2,4-Dinitrophenol	51-28-5
2,4-Dinitrotoluene	121-14-2
2,6-Dinitrotoluene	606-20-2
Dinoseb; DNBP; 2-sec-Butyl-4,6- methylphenol dinitrophenol.	88-85-7
Di-n-octyl phthalate	117-84-0
Diphenylamine	122-39-4
Disulfoton	298-04-4
Endosulfan I	959-98-8
Endosulfan II	33213-65-9
Endosulfan sulfate	1031-07-8
Endrin	72-20-8
Endrin aldehyde	7421-93-4
Ethylbenzene	100-41-4
Ethyl methacrylate	97-63-2
Ethyl methanesulfonate	62-50-0
Famphur	52-85-7
Fluoranthene	206-44-0
Fluorene	86-73-7
Heptachlor	76-44-8
Heptachlor epoxide	1024-57-3
Hexachlorobenzene	118-74-1
Hexachlorobutadiene	87-68-3
Hexachlorocyclopentadiene	77-47-4
Hexachloroethane	67-72-1
Hexachloropropene	1888-71-7
2-Hexanone; Methyl butyl ketone	591-78-6
Indeno(1,2,3-cd)pyrene	193-39-5
Isobutyl alcohol	78-83-1
Isodrin	465-73-6
Isophorone	78-59-1
Isosafrole	120-58-1
Kepone	143-50-0
Lead	(Total)
Mercury	(Total)

Methacrylonitrile	126-98-7
Methapyrilene	91-80-5
Methoxychlor	72-43-5
Methyl bromide; Bromomethane	74-83-9
Methyl chloride; Chloromethane	74-87-3
3-Methylcholanthrene	56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
Methyl iodide; Iodomethane	74-88-4
Methyl methacrylate	80-62-6
Methyl methanesulfonate	66-27-3
2-Methylnaphthalene	91-57-6
Methyl parathion; Parathion methyl	298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
Methylene bromide; Dibromomethane	74-95-3
Methylene chloride; Dichloromethane	75-09-2
Naphthalene	91-20-3
1,4-Naphthoquinone	130-15-4
1-Naphthylamine	134-32-7
2-Naphthylamine	91-59-8
Nickel	(Total)
o-Nitroaniline; 2-Nitroaniline	88-74-4
m-Nitroaniline; 3-Nitroaniline	99-09-2
p-Nitroaniline; 4-Nitroaniline	100-01-6
Nitrobenzene	98-95-3
o-Nitrophenol; 2-Nitrophenol	88-75-5
p-Nitrophenol; 4-Nitrophenol	100-02-7
N-Nitrosodi-n-butylamine	924-16-3
N-Nitrosodiethylamine	55-18-5
N-Nitrosodimethylamine	62-75-9
N-Nitrosodiphenylamine	86-30-6
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine;	621-64-7
Di-n-propylnitrosamine	
N-Nitrosomethylethylamine	10595-95-6
N-Nitrosopiperidine	100-75-4
N-Nitrosopyrrolidine	930-55-2
5-Nitro-o-toluidine	99-55-8
Parathion	56-38-2
Pentachlorobenzene	608-93-5
Pentachloronitrobenzene	82-68-8
Pentachlorophenol	87-86-5
Phenacetin	62-44-2
Phenanthrene	85-01-8
Phenol	108-95-2
p-Phenylenediamine	106-50-3
Phorate	298-02-2
Polychlorinated biphenyls; PCBs;	Footnote ¹³

¹³Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6),

Pronamide	23950-58-5
Propionitrile; Ethyl cyanide	107-12-0
Pyrene	129-00-0
Safrole	94-59-7
Selenium	(Total)
Silver	(Total)
Silvex; 2,4,5-TP	93-72-1
Styrene	100-42-5
Sulfide	18496-25-8
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5
2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
1,2,4,5-Tetrachlorobenzene	95-94-3
1,1,1,2-Tetrachloroethane	630-20-6
1,1,2,2-Tetrachloroethane	79-34-5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
2,3,4,6-Tetrachlorophenol	58-90-2
Thallium	(Total)
Tin	(Total)
Toluene	108-88-3
o-Toluidine	95-53-4
Toxaphene	Footnote ¹⁴
1,2,4-Trichlorobenzene	120-82-1
1,1,1-Trichloroethane; Methylchloroform.	71-55-6
1,1,2-Trichloroethane	79-00-5
Trichloroethylene; Trichloroethene	79-01-6
Trichlorofluoromethane; CFC-11	75-69-4
2,4,5-Trichlorophenol	95-95-4
2,4,6-Trichlorophenol	88-06-2
1,2,3-Trichloropropane	96-18-4
O,O,O-Triethyl phosphorothioate	126-68-1
sym-Trinitrobenzene	99-35-4
Vanadium	(Total)
Vinyl acetate	108-05-4
Vinyl chloride; Chloroethene	75-01-4
Xylene (total)	Footnote ¹⁵
Zinc	(Total)

Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5).

¹⁴Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

¹⁵Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7)

Appendix VI
LEACHATE TESTING PARAMETERS FOR CLASS THREE LANDFILLS

1. BOD
2. TOC
3. COD
4. Total Suspended Solids
5. TKN Nitrogen
6. Ammonia Nitrogen
7. Nitrate
8. Total Phosphorus
9. Alkalinity as CaCO₃
10. Total Hardness as CaCO₃
11. pH
12. Calcium
13. Magnesium
14. Potassium
15. Sodium
16. Chloride
17. Sulfate
18. Total Iron
19. VOC's Listed in Appendix III

Client Name	Company Name	Address	City	State	Zip	Phone	Fax	E-Mail	Website	Notes
ABC Company	ABC Company	123 Main St	New York	NY	10001	212-555-1234	212-555-5678	info@abc.com	www.abc.com	
DEF Company	DEF Company	456 Elm St	Los Angeles	CA	90001	213-555-2345	213-555-6789	info@def.com	www.def.com	
GHI Company	GHI Company	789 Oak St	Chicago	IL	60601	312-555-3456	312-555-7890	info@ghi.com	www.ghi.com	
JKL Company	JKL Company	101 Pine St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@jkl.com	www.jkl.com	
MNO Company	MNO Company	202 Cedar St	Phoenix	AZ	85001	602-555-5678	602-555-9012	info@mno.com	www.mno.com	
PQR Company	PQR Company	303 Birch St	Philadelphia	PA	19101	215-555-6789	215-555-0123	info@pqr.com	www.pqr.com	
STU Company	STU Company	404 Spruce St	San Diego	CA	92101	619-555-7890	619-555-1234	info@stu.com	www.stu.com	
VWX Company	VWX Company	505 Ash St	Dallas	TX	75201	214-555-8901	214-555-2345	info@vwx.com	www.vwx.com	
YZA Company	YZA Company	606 Hickory St	San Antonio	TX	78201	210-555-9012	210-555-3456	info@yza.com	www.yza.com	
BCD Company	BCD Company	707 Maple St	Fort Worth	TX	76101	817-555-0123	817-555-4567	info@bcd.com	www.bcd.com	
EFG Company	EFG Company	808 Elm St	Columbus	GA	31901	706-555-1234	706-555-5678	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	909 Oak St	Indianapolis	IN	46201	317-555-2345	317-555-6789	info@hij.com	www.hij.com	
KLM Company	KLM Company	1010 Pine St	San Jose	CA	95101	408-555-3456	408-555-7890	info@klm.com	www.klm.com	
NOP Company	NOP Company	1111 Cedar St	Denver	CO	80201	303-555-4567	303-555-8901	info@nop.com	www.nop.com	
QRS Company	QRS Company	1212 Birch St	Seattle	WA	98101	206-555-5678	206-555-9012	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	1313 Spruce St	Portland	OR	97201	503-555-6789	503-555-0123	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	1414 Ash St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	1515 Hickory St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@zab.com	www.zab.com	
ACD Company	ACD Company	1616 Maple St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@acd.com	www.acd.com	
EFG Company	EFG Company	1717 Elm St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	1818 Oak St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@hij.com	www.hij.com	
KLM Company	KLM Company	1919 Pine St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@klm.com	www.klm.com	
NOP Company	NOP Company	2020 Cedar St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@nop.com	www.nop.com	
QRS Company	QRS Company	2121 Birch St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	2222 Spruce St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	2323 Ash St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	2424 Hickory St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@zab.com	www.zab.com	
ACD Company	ACD Company	2525 Maple St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@acd.com	www.acd.com	
EFG Company	EFG Company	2626 Elm St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	2727 Oak St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@hij.com	www.hij.com	
KLM Company	KLM Company	2828 Pine St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@klm.com	www.klm.com	
NOP Company	NOP Company	2929 Cedar St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@nop.com	www.nop.com	
QRS Company	QRS Company	3030 Birch St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	3131 Spruce St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	3232 Ash St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	3333 Hickory St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@zab.com	www.zab.com	
ACD Company	ACD Company	3434 Maple St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@acd.com	www.acd.com	
EFG Company	EFG Company	3535 Elm St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	3636 Oak St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@hij.com	www.hij.com	
KLM Company	KLM Company	3737 Pine St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@klm.com	www.klm.com	
NOP Company	NOP Company	3838 Cedar St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@nop.com	www.nop.com	
QRS Company	QRS Company	3939 Birch St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	4040 Spruce St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	4141 Ash St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	4242 Hickory St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@zab.com	www.zab.com	
ACD Company	ACD Company	4343 Maple St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@acd.com	www.acd.com	
EFG Company	EFG Company	4444 Elm St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	4545 Oak St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@hij.com	www.hij.com	
KLM Company	KLM Company	4646 Pine St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@klm.com	www.klm.com	
NOP Company	NOP Company	4747 Cedar St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@nop.com	www.nop.com	
QRS Company	QRS Company	4848 Birch St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	4949 Spruce St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	5050 Ash St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	5151 Hickory St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@zab.com	www.zab.com	
ACD Company	ACD Company	5252 Maple St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@acd.com	www.acd.com	
EFG Company	EFG Company	5353 Elm St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	5454 Oak St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@hij.com	www.hij.com	
KLM Company	KLM Company	5555 Pine St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@klm.com	www.klm.com	
NOP Company	NOP Company	5656 Cedar St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@nop.com	www.nop.com	
QRS Company	QRS Company	5757 Birch St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	5858 Spruce St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	5959 Ash St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	6060 Hickory St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@zab.com	www.zab.com	
ACD Company	ACD Company	6161 Maple St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@acd.com	www.acd.com	
EFG Company	EFG Company	6262 Elm St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	6363 Oak St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@hij.com	www.hij.com	
KLM Company	KLM Company	6464 Pine St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@klm.com	www.klm.com	
NOP Company	NOP Company	6565 Cedar St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@nop.com	www.nop.com	
QRS Company	QRS Company	6666 Birch St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	6767 Spruce St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	6868 Ash St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	6969 Hickory St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@zab.com	www.zab.com	
ACD Company	ACD Company	7070 Maple St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@acd.com	www.acd.com	
EFG Company	EFG Company	7171 Elm St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	7272 Oak St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@hij.com	www.hij.com	
KLM Company	KLM Company	7373 Pine St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@klm.com	www.klm.com	
NOP Company	NOP Company	7474 Cedar St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@nop.com	www.nop.com	
QRS Company	QRS Company	7575 Birch St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	7676 Spruce St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	7777 Ash St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	7878 Hickory St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@zab.com	www.zab.com	
ACD Company	ACD Company	7979 Maple St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@acd.com	www.acd.com	
EFG Company	EFG Company	8080 Elm St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	8181 Oak St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@hij.com	www.hij.com	
KLM Company	KLM Company	8282 Pine St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@klm.com	www.klm.com	
NOP Company	NOP Company	8383 Cedar St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@nop.com	www.nop.com	
QRS Company	QRS Company	8484 Birch St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	8585 Spruce St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	8686 Ash St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	8787 Hickory St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@zab.com	www.zab.com	
ACD Company	ACD Company	8888 Maple St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@acd.com	www.acd.com	
EFG Company	EFG Company	8989 Elm St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	9090 Oak St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@hij.com	www.hij.com	
KLM Company	KLM Company	9191 Pine St	San Francisco	CA	94101	415-555-4567	415-555-8901	info@klm.com	www.klm.com	
NOP Company	NOP Company	9292 Cedar St	San Francisco	CA	94101	415-555-5678	415-555-9012	info@nop.com	www.nop.com	
QRS Company	QRS Company	9393 Birch St	San Francisco	CA	94101	415-555-6789	415-555-0123	info@qrs.com	www.qrs.com	
TUV Company	TUV Company	9494 Spruce St	San Francisco	CA	94101	415-555-7890	415-555-1234	info@tuv.com	www.tuv.com	
WXY Company	WXY Company	9595 Ash St	San Francisco	CA	94101	415-555-8901	415-555-2345	info@wxy.com	www.wxy.com	
ZAB Company	ZAB Company	9696 Hickory St	San Francisco	CA	94101	415-555-9012	415-555-3456	info@zab.com	www.zab.com	
ACD Company	ACD Company	9797 Maple St	San Francisco	CA	94101	415-555-0123	415-555-4567	info@acd.com	www.acd.com	
EFG Company	EFG Company	9898 Elm St	San Francisco	CA	94101	415-555-1234	415-555-5678	info@efg.com	www.efg.com	
HIJ Company	HIJ Company	9999 Oak St	San Francisco	CA	94101	415-555-2345	415-555-6789	info@hij.com	www.hij.com	
KLM Company	KLM Company	10000 Pine St	San Francisco	CA	94101	415-555-3456	415-555-7890	info@klm.com	www.klm.com	

January
2016

COAL COMBUSTION RESIDUAL CLASS 2 AND CLASS 3 LANDFILL INSPECTION – CROSS GENERATING STATION

Pineville, South Carolina



santee cooper®



Table of Contents

EXECUTIVE SUMMARY.....	3
SUMMARY OF RECOMMENDATIONS.....	3
Class 2 Landfill.....	3
Class 3 Landfill.....	4
1.0 GENERAL INFORMATION AND INTRODUCTION	5
1.1 PURPOSE AND SCOPE.....	5
2.0 DESCRIPTION OF COAL COMBUSTION RESIDUAL MANAGEMENT UNITS.....	7
2.1 LOCATION AND GENERAL DESCRIPTION.....	7
2.2 TYPE OF CCRs CURRENTLY STORED IN LANDFILL.....	7
2.3 PRINCIPAL PROJECT STRUCTURES	8
2.3.1 Class 2 Landfill	8
2.3.2 Class 3 Landfill	8
3.0 SUMMARY OF RELEVANT REPORTS AND INCIDENTS	10
3.1 SUMMARY OF REPORTS ON THE SAFETY OF CCR UNITS	10
4.0 FIELD OBSERVATIONS.....	11
4.1 PROJECT OVERVIEW AND SIGNIFICANT FINDINGS.....	11
4.2 CLASS 2 LANDFILL.....	11
4.2.1 Crest/Operating Area.....	11
4.2.2 Outside Slopes – Northern and Southern Side Slopes	12
4.2.3 Outside Slopes – Eastern and Western Sides	12
4.2.4 Stormwater Conveyance Structures.....	12
4.2.5 Roads/Ramps/Other Infrastructure	12
4.3 CLASS 3 LANDFILL.....	13
4.3.1 Operating Area, Liner, and Leachate Collection System	13
4.3.2 Outside Slopes.....	13
4.2.4 Stormwater Conveyance Structures.....	13
4.3 ADEQUACY OF MAINTENANCE, OPERATING, AND SURVEILLANCE PROCEDURES	14
4.3.1 Adequacy of Maintenance Procedures	14
4.3.2 Adequacy of Operating Procedures	14
4.3.3 Adequacy of Surveillance Procedures.....	14
5.0 CONCLUSIONS AND RECOMMENDATIONS.....	15
5.1 CONCLUSIONS REGARDING THE STRUCTURAL SOUNDNESS OF THE MANAGEMENT UNIT(S).....	15
5.2 CONCLUSIONS REGARDING FIELD OBSERVATIONS	15
5.3 RECOMMENDATIONS	16
5.3.1 Class 2 Landfill	16
5.3.2 Class 3 Landfill	17

Cross Generating Station
Santee Cooper
Pineville, SC

Page 2
Coal Combustion Residual Class 2
and Class 3 Landfill Inspection
Report

Executive Summary

This assessment of the stability and functionality of the Cross Generating Station (CGS) coal combustion residual (CCR) Class 2 and Class 3 Landfill is based on a review of available documents and on-site assessment conducted by Santee Cooper engineering staff on November 16, 2015. We found the supporting technical information to be generally adequate. As detailed in Section 1.3, there are several recommendations based on field observations that may help CGS to maintain the landfill in safe condition.

In summary, the CGS CCR Class 2 Landfill is generally satisfactory for continued safe and reliable operation. No recognized existing or potential management unit safety deficiencies were noted at the time of inspection within the parameters of design and operation. The CGS CCR Class 3 Landfill is also in generally satisfactory condition for future safe and reliable operation. No recognized existing or potential management unit safety deficiencies were noted at the time of inspection within the parameters of design and operation.

Summary of Recommendations

Class 2 Landfill

1. Minor erosion noted in several locations on the active face of the Class 2 Landfill and on the northern and southern slopes of the structure should be repaired within ninety (90) days of completion of this report. (NOTE: repairs to northern and southern slopes were completed within two (2) weeks of the date of inspection. The active face will be repaired as part of closure during the 1st and 2nd quarter of 2016).
2. Clogged downdrain inlets located on the 1st and 2nd benches on the northern and southern ends of the Class 2 Landfill should be cleaned out and re-lined with sediment tubes or silt fence within sixty (60) days of completion of this report. (NOTE: this maintenance was completed within two (2) weeks of the date of inspection).
3. Minor ponding noted in several locations on the benches of the Class 2 Landfill should be monitored following cleanout of the downdrains to ensure that further ponding of storm water is eliminated.

4. Erosion and undermining of the concrete revetment channel noted along the northern access ramp for the Class 2 Landfill should be repaired within ninety (90) days of completion of this report to improve drainage in the area and to prevent potential personnel/equipment safety concerns.
5. Sediment buildup noted in the Class 2 Landfill perimeter drainage ditch should be cleaned out within sixty (60) days of completion of this report to avoid ponding of water around the toe of the landfill. (NOTE: this maintenance was completed within two (2) weeks of the date of inspection).

Class 3 Landfill

6. Minor erosion in the foundation drainage layer just above the liner noted in the Class 3 Landfill should be repaired just prior to placement of waste in these areas. (NOTE: this repair was completed within two (2) weeks of the date of inspection).

This assessment of the Class 2 and Class 3 Landfills at Cross Generating Station reported herein is based on field observations and review of readily available information provided to the inspection team of the subject coal combustion residual (CCR) management unit(s). Qualified Santee Cooper engineering staff performed the field observations and review of pertinent information and made the assessment in conformance with the requirements of Section 257.84 of the Federal Register and in accordance with reasonable and generally accepted engineering practices.

**Cross Generating Station
Santee Cooper
Pineville, SC**

**Page 4
Coal Combustion Residual Class 2
and Class 3 Landfill Inspection
Report**

Coal Combustion Residual Class 2 and Class 3 Landfill Inspection – Cross Generating Station

1.0 General Information and Introduction

1.1 Purpose and Scope

The purpose of this report is to fulfill the requirements of Section 257.84(b) of the Federal Register regarding the safety and inspection of CCR surface impoundments. Section 257.84(b) states that "Existing and new CCR landfills and any lateral expansion of a CCR landfill must be inspected on a periodic basis by a qualified professional engineer to ensure that the design, construction, operation, and maintenance of the CCR unit is consistent with recognized and generally accepted good engineering standards." The inspection must, at a minimum, include:

- i. A review of available information regarding the status and condition of the CCR unit, including, but not limited, to, files available in the operating record (e.g., the results of inspections by a qualified person, and results of previous annual inspections)
- ii. A visual inspection of the CCR unit to identify signs of distress or malfunction of the CCR unit.

The inspection report must also be written by a qualified professional engineer and must address the following:

- i. Any changes in geometry of the structure since the previous annual inspection
 - **No changes in the geometry of the Class 2 Landfill beyond normal filling operations**
 - **No changes in the geometry of the Class 3 Landfill (final construction inspection and approval to operate were pending at time of inspection)**
- ii. The approximate volume of CCR contained in the unit at the time of the inspection
 - **The Class 2 Landfill contains approximately 7,780,000 cubic yards of CCRs**

*Cross Generating Station
Santee Cooper
Pineville, SC*

*Page 5
Coal Combustion Residual Class 2
and Class 3 Landfill Inspection
Report*

- The Class 3 Landfill was not certified for operation at the time of inspection and did not contain any CCRs
- iii. Any appearances of an actual or potential structural weakness of the CCR unit; in addition to any existing conditions that are disrupting or have the potential to disrupt the operation and safety of the CCR unit
- Some maintenance items noted on Class 2 Landfill as discussed in the Executive Summary and Sections 4.2 and 5.3.1; however, landfill is safe for continued operation
 - One (1) maintenance item noted on Class 3 Landfill as discussed in the Executive Summary and Sections 4.3 and 5.3.2; however, landfill is safe for future operation
- iv. Any other change(s) which may have affected the stability or operation of the CCR unit since the previous annual inspection
- No other changes noted on the Class 2 Landfill that impact the stability or operation of the landfill
 - No other changes noted on the Class 3 Landfill that impact the stability or operation of the landfill

2.0 Description of Coal Combustion Residual Management Units

2.1 Location and General Description

The Cross Generating Station (CGS) is located on the east bank of the Diversion Canal in Berkeley County, South Carolina, approximately 5.2 miles northeast of Cross, South Carolina. CGS is located on Cross Station Road, Pineville, South Carolina, 29468. Lake Marion is northwest of CGS, and Lake Moultrie is southeast of the station.

CGS currently has a single operational CCR landfill (the Class 2 Landfill) and another entering operation by the end of 2015 (the Class 3 Landfill). Final receipt of waste for the Class 2 Landfill was December 31, 2015 and the Class 3 Landfill entered operation in mid-December 2015 (after completion of the field inspection of this report). Table 2.1 below shows a summary of the size and general dimensions of the CCR management units at CGS as well as their current capacity:

Table 2.1: Summary of Landfill Dimensions and Size

	Class 2 Landfill	Class 3 Landfill (Cell 1B-1)
Base Width (ft)	1500	800
Base Length (ft)	3000	1600
Side Slopes H:V	3:1	-
Approximate Current Storage Volume (cy)	7,780,000	0

2.2 Type of CCRs Currently Stored in Landfill

The Class 2 Landfill currently accepts flue gas emissions (FGD) control residuals, bottom ash, fixated fly ash, and boiler slag. FGD residuals are limited to portions of the landfill more than 100 feet from the outside slopes to mitigate slope stability concerns with the material. All materials are carefully compacted using tracked bulldozers and a vibratory roller where needed to ensure that the landfill space is used efficiently and to minimize the risk of settlement and/or slope instability. The Class 3 Landfill will begin accepting

SCDHEC-approved waste streams before the end of 2015.

2.3 Principal Project Structures

2.3.1 Class 2 Landfill

The CGS Class 2 Landfill is regulated under SCDHEC's Solid Waste Management regulations. It was originally permitted in 1982 and began receiving CCRs in 1984. The original permit allowed placement of material up to elevation 120 feet (NGVD 1929), which is approximately 38 feet above grade. A consent agreement in 2011 allowed Santee Cooper to continue placement of material above this elevation, with a maximum top elevation of 210 feet (NGVD 1929).

The Landfill is approximately 1500 feet wide at its base and 3000 feet long. The side slopes are 3:1 (horizontal to vertical), with terraces to prevent excessive storm water runoff velocity built approximately every 20 vertical feet. Storm water is routed from the slopes to these terraces and then through downdrains at each end of the landfill, helping to minimize erosion on the slopes.

2.3.2 Class 3 Landfill

Santee Cooper is currently constructing a new Class 3 CCR landfill adjacent to the existing Class 2 landfill on its eastern and western sides. As a result, the eastern and western perimeter slopes of the Class 2 landfill are covered with Class 3-grade landfill liner. The entire top deck of the Class 2 landfill will also be closed in this manner; the liner in these areas is still under construction. This liner serves as permanent cover/closure for the Class 2 side slopes under the authorization of the Class 3 construction permit. The northern and southern ends of the landfill are both covered with a more traditional clay cap and vegetative cover.

The Class 3 Landfill cell (Cell 1B-1) currently under construction is approximately 800 feet wide at its base and 1600 feet long. This cell is the only operational cell of the Class 3 landfill at this time and as a result is the only cell analyzed in this report. Subsequent reports will include other cells as they enter service.

The landfill abuts the current Class 2 Landfill and consists of lined cells with a geocomposite drainage net and sand drainage layer to facilitate removal of leachate water from the landfill into the leachate pond to the south of the landfill. No CCRs have been placed in the Class 3 Landfill as of the date of inspection; however, an operating permit was issued by SCDHEC during December 2015.

3.0 Summary of Relevant Reports and Incidents

3.1 Summary of Reports on the Safety of CCR Units

Furnished reports of weekly inspections, conducted by CGS personnel for the period October 2015 to November 2015 indicated no major structural or operational problems at the CGS Class 2 Landfill or the CGS Class 3 Landfill. No significant deterioration was indicated in the documentation reviewed.

4.0 Field Observations

4.1 Project Overview and Significant Findings

Santee Cooper qualified engineer Michael Melchers, P.E. performed a site visit to CGS on November 16, 2015. The site visit began mid-morning. Weather conditions during the visit were approximately 65 degrees Fahrenheit, sunny, and dry, although approximately five (5) inches of rain had been received in the previous ten (10) day period.

The overall condition of the CCR Class 2 Landfill was satisfactory with no significant findings noted. Similarly, the CCR Class 3 Landfill was found to be in satisfactory condition with no significant findings noted.

All findings were discussed with station personnel following completion of the field inspection to facilitate monitoring and repair of any deficiencies noted.

Please note that field observations as outlined in Sections 4.2 and 4.3 below are indicative of conditions on-site as of November 16, 2015. Several of the observations noted have now been corrected as outlined in the Executive Summary and Section 5.3 of this report. In addition, the Class 2 Landfill has ceased to receive waste and is in the midst of closure, while the Class 3 Landfill has entered operation and is now receiving waste streams in accordance with SCDHEC regulations.

4.2 Class 2 Landfill

4.2.1 Crest/Operating Area

The crest of the Class 2 Landfill was generally found to be in satisfactory condition. The southern half of the crest area is currently being covered with Class 3 landfill liner in advance of the opening of the new Class 3 CCR landfill being constructed adjacent to the existing Class 2 landfill. The northern half was operational as of the date of inspection with material being placed and compacted by Santee Cooper personnel. Several areas on the northern end of the landfill showed signs of erosion due to excessive storm water

runoff; however, no significant areas of concern were noted during the field inspection.

4.2.2 Outside Slopes – Northern and Southern Side Slopes

The northern and southern side slopes of the Class 2 CCR landfill are covered with a clay cap and vegetative cover in accordance with SCDHEC regulations and were found to be in generally satisfactory condition. The condition of the cap and vegetative cover on the northern and southern slopes was found to be generally satisfactory with isolated areas of minor erosion and loss of grass cover. Some more significant erosion was noted at the interface between the clay cap and the Class 3 landfill liner on the southwest corner of the Class 2 Landfill. No obvious signs of slumps, slides, bulges, tension cracks, seepage, or animal burrows were observed on the slope.

4.2.3 Outside Slopes – Eastern and Western Sides

The eastern and western slopes of the Class 2 CCR Landfill are covered with Class 3-type landfill liner as a part of construction of the adjacent Class 3 landfill expansion at CGS. These slopes were found to be in generally satisfactory condition, as the liner protects the slopes from erosion resulting from rainfall. No obvious signs of slumps, slides, bulges, tension cracks, seepage, or animal burrows were observed.

4.2.4 Stormwater Conveyance Structures

Storm water on the Class 2 CCR Landfill is primarily handled with working surface grading to the perimeter slopes, where water is directed to benches built approximately every twenty (20) vertical feet. Downdrains are built into each bench on the northern and southern ends of the landfill which convey storm water into a perimeter drainage ditch at the toe of the landfill. Several of the downdrains were found to be clogged with sediment from recent significant rain events, resulting in minor ponding of water on the storm water benches, although the pipes themselves appeared to be in satisfactory condition. Heavy sedimentation was also noted in the perimeter drainage ditch in multiple locations.

4.2.5 Roads/Ramps/Other Infrastructure

Two (2) ramps are used to access the working face of the Class 2 CCR Landfill. The northern ramp runs from the northeast corner to the west, entering the working face of the landfill on the northwestern side. The access road surface was found to be in satisfactory condition. A concrete revetment channel is used to convey storm water along the interface between the ramp and the slope of the landfill. A portion of the channel was found to be undercut by erosion near the 2nd bench of the landfill, likely due to excessive flows during recent large storm events. A second ramp runs from the southwest corner towards the north. The access road surface was found to be in satisfactory condition. Some erosion damage was noted in the channel running along the interface between the ramp and the landfill.

4.3 Class 3 Landfill

4.3.1 Operating Area, Liner, and Leachate Collection System

The operating area of the Class 3 landfill was found to be in satisfactory condition upon inspection. As previously noted, no CCRs have been placed in the Class 3 Landfill as of the date of inspection. The sand drainage layer placed above the Class 3 liner was found to be in satisfactory condition overall with several isolated areas of erosion due to recent heavy rains noted, particularly along the interface between the Class 2 Landfill and the Class 3 Landfill where storm water runoff from the slopes of the Class 2 Landfill drains down the new Class 3 liner into the Class 3 drainage layer placed at the base of the structure. The drainage layer and associated leachate collection pump system appeared to be in good condition and were functioning as designed, as no ponding was noted in the new Class 3 landfill cell.

4.3.2 Outside Slopes

The outside slopes of the Class 3 Landfill cell were found to be in satisfactory condition. Construction of the containment for the base of the cell was recently completed and vegetative cover is still being established; however, no obvious signs of slumps, slides, bulges, tension cracks, seepage, or animal holes were observed on the slope.

4.2.4 Stormwater Conveyance Structures

Storm water on the Class 3 CCR Landfill is managed by collecting and pumping all

stormwater from the sand drainage layer above the Class 3 liner through HDPE outlet pipes and into the on-site leachate pond. Stormwater is directed to the pump inlets by proper grading of the drainage layer. The HDPE conveyance pipes from the pump intakes to the leachate pond appeared to be in satisfactory condition at the time of inspection. The storm water channel around the perimeter of the Class 3 Landfill cell also appeared to be in satisfactory condition and was functioning as designed at the time of inspection.

4.3 Adequacy of Maintenance, Operating, and Surveillance Procedures

4.3.1 Adequacy of Maintenance Procedures

Overall, maintenance of the Class 2 and Class 3 CCR Landfills appears to be adequate. No major maintenance issues were noted during the field inspection or in the weekly inspection reports completed by CGS personnel and reviewed by the inspection team. Some minor maintenance of storm water control structures is warranted as noted in the Recommendations section and the Field Observations section; however, most damage appeared to have occurred as a result of historic rainfall received in the weeks leading up to the inspection.

4.3.2 Adequacy of Operating Procedures

Based on field observations and discussions with CGS personnel, the operating procedures for the Class 2 and Class 3 CCR Landfills appear to be adequate.

4.3.3 Adequacy of Surveillance Procedures

CGS personnel complete daily informal inspections and weekly formal inspections on the Class 2 and Class 3 CCR Landfills in accordance with good engineering practice and Section 257.84 of the Federal Register. These inspections are being properly documented and should continue as they are currently being conducted.

5.0 Conclusions and Recommendations

Conclusions are based on visual observations from a one-day site visit on November 16, 2015, and review of technical documentation provided to the inspection team.

5.1 Conclusions Regarding the Structural Soundness of the Management Unit(s)

Based on a review of the engineering data provided and the observations of the inspection team during the site visit, the CGS Class 2 Landfill appears to be structurally sound under static loading conditions. The slopes of the landfill also appear to be structurally sound under moderate seismic loading conditions. The factor of safety associated with the stability of the Class 2 Landfill should also continue to increase as construction and initial filling of the adjoining Class 3 Landfill (entering operation in 2016) continues.

Based on a review of the engineering data provided and the observations of the inspection team during the site visit, the CGS Class 3 Landfill appears to be structurally sound under static loading conditions. No waste had been placed into the Class 3 Landfill at the time of inspection; however, design documents appear to be soundly engineered and existing infrastructure, including liner, drainage layers, and storm water/leachate management systems appeared to be in acceptable condition.

5.2 Conclusions Regarding Field Observations

The inspection team was provided access to the CGS Class 2 Landfill and Class 3 Landfill as required to conduct a thorough field inspection. The east and west slopes of the Class 2 Landfill are currently covered by liner for the Class 3 Landfill lateral expansion and are thus properly closed in accordance with SCDHEC permit documents. The liner appeared to be in good condition and is adequately covering those portions of the Class 2 Landfill abutting the expansion. The visible (not covered by Class 3 liner) portions of the perimeter slopes were observed to have no signs of overstress, significant settlement, shear failure, or other signs of instability. Storm water controls on the landfill also appear to be generally adequate at this time. There are no apparent

indications of unsafe conditions or conditions needing emergency remedial action. Some minor maintenance is needed (see Section 1.4.1). The Class 3 Landfill was similarly found to be in good condition, with only minor erosion noted in the drainage layer directly above the liner. No CCRs had been placed in the Class 3 Landfill at the time of inspection.

This is the first annual engineering inspection of the Class 2 Landfill and Class 3 Landfill at CGS. As a result, no geometry change from a previous inspection is noted. A review of annual surveys from 2012 to 2015 also revealed no changes to geometry beyond normal filling of the landfill. The Class 2 Landfill is currently being operated in accordance with its South Carolina Department of Health and Environmental Control (SCDHEC) permit and will continue to be filled vertically until December 31, 2015, at which time placement of CCR in the landfill will cease. Closure will be completed by June 2016. No additional changes in the geometry of the Class 2 Landfill are expected after completion of closure. Operations in the Class 3 Landfill will begin on December 16, 2015.

5.3 Recommendations

A number of maintenance concerns were noted during the field inspection. These items were as follows:

5.3.1 Class 2 Landfill

1. Minor erosion was noted in several locations on the active face of the Class 2 Landfill and on the northern and southern slopes of the structure where a traditional soil and vegetative cover is being used for closure, likely due to the large volume of rain (over 30 inches) received in the six (6) weeks preceding the inspection. These areas should be repaired within ninety (90) days of completion of this report. (NOTE: repairs to northern and southern slopes were completed within two (2) weeks of the date of inspection. The active face will be repaired as part of closure during the 1st and 2nd quarter of 2016).
2. Several of the downrain inlets located on the 1st and 2nd benches on the northern and southern ends of the Class 2 Landfill were filled with sediment at the time of inspection, again due to heavy rains received on-site in the weeks

preceding the inspection. These inlets should be cleaned out and re-lined with sediment tubes or silt fence within sixty (60) days of completion of this report to keep the discharge lines clear until final closure is complete. (NOTE: this repair was completed within two (2) weeks of the date of inspection).

3. Minor ponding in several locations on the benches of the Class 2 Landfill was noted due to clogging of the downdrains. These areas should be monitored following cleanout of the downdrains to ensure that further ponding of storm water is eliminated.
4. Erosion and undermining of the concrete revetment channel along the northern access ramp for the Class 2 Landfill was noted as a result of heavy rains on-site. This area should be repaired within ninety (90) days of completion of this report to improve drainage in the area and to prevent potential personnel/equipment safety concerns.
5. Sediment buildup was noted in the drainage ditch that runs along the perimeter toe of the Class 2 Landfill, likely resulting from surface erosion and runoff during recent heavy rains. This ditch should be cleaned out within sixty (60) days of completion of this report to avoid ponding of water around the toe of the landfill. (NOTE: this repair was completed within two (2) weeks of the date of inspection).

5.3.2 Class 3 Landfill

1. Minor erosion in the foundation drainage layer just above the liner was noted in the Class 3 Landfill. The damage should be repaired prior to placement of waste in these areas. (NOTE: this repair was completed within two (2) weeks of the date of inspection).



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

November 3, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.
MRR Pickens, LLC
11743 Trails End Lane
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for
Highway 93 C&D Landfill
Permit No. LF2-00003
Location: 34° 47' 50" N, 82° 40' 30" W
Pickens County**

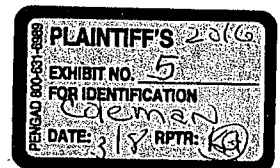
Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 93 Construction and Demolition Landfill in Laurens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Pickens, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.



SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

ROA 1035

November 3, 2008 letter
MRR Pickens Class 2 Landfill
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264.
All other questions should be directed to Bill Rampey in the Region 2 – Greenville EQC Office
at (864) 241-1090.

Sincerely,



Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tme

Enclosures

cc: Bill Rampey, Region 2, Greenville EQC Office
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section
Marty Lindler, Manager, Solid and Hazardous Waste Compliance
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC
BLWM File # 021212

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:
 - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
 - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
 - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

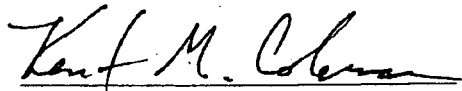
Permit Issued Date: November 3, 2008 Permit Effective Date: November 18, 2008

Permission is hereby granted to:

Name of Facility: Highway 93 C & D Landfill
Permittee: MRR Pickens, LLC
Address: 11743 Trails End Lane
Charlotte, NC 28078
Contact: Mr. Ronald C. Gilkerson
Phone: (704) 947-6652

for the operation of a Class 2 landfill at 2180 Greenville Highway, Liberty, South Carolina, 29657 in Pickens County located off Highway 93 at Clardy Road approximately 2,000 feet NE of the City of Liberty, SC.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code of Regulations Section 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
November 3, 2008
Page 1 of 4

MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received November 30, 2007; and last revised August 26, 2008, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1st of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than twelve (12) acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd³ of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. Within ninety (90) days of the effective date of this permit, the Permittee shall submit a detailed Compliance Plan that describes steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19 that relate to Class 2 Landfills. This Compliance Plan shall include, but not limited to, the following: a groundwater monitoring design workplan, a landfill post-closure care plan, and a landfill post-closure care cost estimate. Upon the Department's approval of said Compliance Plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of **November 19, 2009**.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. SPECIAL ENVIRONMENTAL PERMIT CONDITIONS

Within ninety (90) days of the effective date of this permit, the Permittee shall submit to the Department for review, a Groundwater Monitoring Design Workplan in accordance with R.61-107.19, Part IV, Section E (Groundwater Monitoring and Corrective Action). In addition, an approved groundwater monitoring system must be installed and operating prior to November 19, 2009, pursuant to R.61-107.19, Part I, Section A.6.c. Upon the Department's approval of the Groundwater Monitoring Design Workplan, permit conditions C.2, C.3 and C.4 will become effective.

2. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit.

The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.

- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

3. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

4. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
November/December	January 15 (Semi-Annual)
May/June	July 15 (Annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.2.A.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Groundwater Section, and to the Solid Waste Consultant in Region 2 EQC (Greenville).

5. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required comply with R.61-107.19, Part IV, Section C.21.

COPY



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

August 10, 2015

Mr. Christopher T. Roof
MRR Pickens, LLC
Highway 93 Landfill
5842 Faringdon Place, Suite 1
Raleigh, North Carolina 27609

RE: Issuance of Modified Class 2 Landfill Permit
Highway 93 Landfill
Permit No. LF2-00003
Pickens County

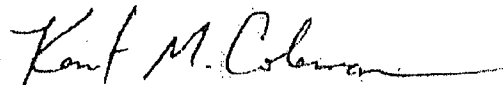
Dear Mr. Roof:

Enclosed is a modified Class 2 landfill permit for the Highway 93 Landfill located at 2180 Greenville Highway, Liberty, SC in Pickens County. The modification includes an alternate liner design and associated changes resulting from the design change. Enclosed is a copy of the Department approved revised engineering report to be kept at the referenced facility at all times. The guidelines and requirements to operate the site can be found in Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill* and the conditions can be found in the attached Permit.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Guide to Board Review*, provided as a courtesy by the Department.

If you have any questions regarding the permit, please contact Timothy M. Eleazer, (803) 898-1374. General questions should be referred to Susan Turner with the Upstate Region EQC, BEHS Greenville Office, and (864) 372-3273.

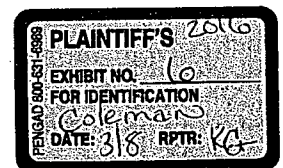
Sincerely,



Kent M. Coleman, Director
Division of Mining & Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tmc

cc: Marty Lindler, Manager - BLWM Solid Waste & HW Compliance Section
Tom Knight, P.G. Manager - BLWM Solid Waste Groundwater Section
Susan Turner, Upstate Region, BEHS Greenville Office
Scott L. Brown, P.E., Civil & Environmental Consultants, Inc.
BLWM File 021212



South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

1. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties
 - Description of facility/site
 - Applicable statutes and regulations
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.



Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

OFFICE OF ENVIRONMENTAL QUALITY CONTROL
BUREAU OF LAND AND WASTE MANAGEMENT
CLASS 2 LANDFILL
PERMIT No. LF2-00003

Date of Issuance: November 3, 2008

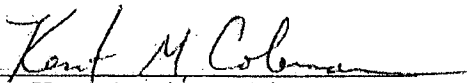
Date of
Modification: August 10, 2015

Permission is hereby granted to:

Name of Facility: Highway 93 Class 2 Landfill
Permittee: MRR Pickens, LLC
Address: 5842 Faringdon Place, Suite 1
Raleigh, NC 27609
Supervisor: Mr. Christopher T. Roof
Phone: (919) 436-3570

for the operation of a Class 2 landfill at 2180 Greenville Highway, in Pickens County located off Highway 93 near the City of Liberty, SC 29657.

This permit is issued pursuant to Sections 44-96-10 et seq., and 25A S.C. Code Regulation 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.


Kent M. Coleman, Director

Division of Mining and Solid Waste Management
Bureau of Land & Waste Management

Permit No. LF2-00003
August 10, 2015
Page 1 of 4

**MRR PICKENS, LLC
CLASS 2 LANDFILL
PERMIT No. LF2-00003**

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the approved design specifications, and construction plans received November 30, 2007; revised August 26, 2008, and last revised August 5, 2015, unless permit conditions state otherwise.
2. This permit is limited to the disposal of the items listed in Appendix I of R.61-107.19 and any other waste approved by the Department for disposal in a Class Two Landfill pursuant to R.61-107.19, Part IV, Section C.2.
3. The allowable rate of disposal for this facility is seventy thousand five hundred (70,500) tons per fiscal year (July 1 to Jun30). Information concerning the facility's previous Fiscal Year's waste receipts is due on the form of an annual report to the Department no later than **September 1st** of each year, as required by R.61-107.19 Part IV. Subpart C.16, to the attention of:

**Manager, Solid and Hazardous Waste Compliance Section
SC DHEC Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201**

4. All Appendix-I acceptable wastes must be covered at least once every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to five (5) acres. For an area to be considered closed, the following items shall be completed:
 - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
 - b. The area shall be inspected and deemed closed by Department staff.
6. On or before **July 1** of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than five (5) acres (at the time of the certification). The certification shall be completed within sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (16,133 yd³ of soil for 5 acres with 2' thickness). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
8. Sixty (60) days prior to starting construction of the Class Two landfill, the Permittee shall notify the Department of their selection between Option 1 (traditional Class Two landfill design), or Option 2 (alternate liner design). If the financial assurance mechanism needs to be increased, this shall be done prior to the acceptance of waste into the landfill.

B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.

C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan and as required in R.61-107.19, Part IV, Section E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19, Part IV, Section E.
- b) The Permittee shall perform all groundwater sampling activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19, Part IV, Section E, along with any subsequent modifications deemed necessary by the Department to uphold the intent of this permit. The Permittee shall evaluate analytical results in accordance with the most recently approved Groundwater Sampling and Analysis Plan and any subsequent modifications required by the Department.
- c) The Permittee must determine during each sampling event the groundwater elevation in each well relative to mean sea level (MSL) to the nearest one-hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- d) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Subpart E.3.

3. REPORTING

- a) The permittee shall submit to the Department the result of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following schedule:

Sampling Schedule	Results Due
November/December	January 15 (Semi-Annual)
May/June	July 15 (annual Report)

- b) The Permittee shall submit a properly bound annual report signed by a South Carolina qualified professional summarizing the semi-annual determinations of groundwater flow rate and direction. In addition, the report shall make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management, Division of Mining and Solid Waste Management, Solid Waste Ground water Section, and to the Solid Waste Consultant in Upstate Region BEHS Greenville.

4. METHANE MONITORING

In accordance with R.61-107.19, Part IV, Subpart C, methane monitoring is not required at the time of issuance of this permit. However, should the Department determine that methane is of concern at this Facility, the Facility may be required to comply with R.61-107.19, Part IV, Section C.21.



October 16, 2015

Kent M. Coleman, P.G. Director
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management
SC Department of Health & Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Re: MRR Pickens, LLC. Class 2 Landfill (Permit No. LF2-00003); Pickens County
Large Class 2 Waste Disposal Project

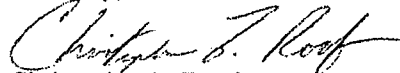
Dear Mr. Coleman:

MRR Pickens, LLC (MRR Pickens) has recently entered into a preliminary agreement to handle a need for a large disposal project relating to the above-referenced facility ("Large Project Agreement"). The Large Project Agreement relates to the immediate need for disposal of coal combustion residuals which meet Class 2 specifications. Documentation for the project can be provided upon request. Therefore, pursuant to SC Regulation 61-107.17(D)(3)(d)(2), MRR Pickens hereby requests the South Carolina Department of Health and Environment ("SCDHEC") grant MRR Pickens a temporary variance to the permitted annual disposal rate in SCDHEC Permit No. LF2-00003. MRR requests the temporary variance for a term of five years.

We are prepared to ensure the waste meets the required specifications for Class 2 waste pursuant to Appendix I of SC Regulation 61-107.19. MRR understands if granted, the temporary variance does not modify any conditions of its SCDHEC Permit No. LF2-00003.

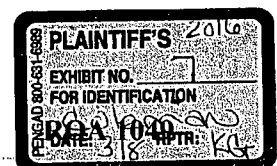
Please let me know if you need any further information relating to this important project.

Sincerely,


Christopher T. Roof

cc: Jessica J.O. King

MRR Southern, LLC. 5842 Faringdon Place, Suite 1 Raleigh, NC 27609 P: (919) 436-3570





Catherine E. Heigel, Director

Promoting and protecting the health of the public and the environment

December 11, 2015

MRR Pickens LLC
Attn: Mr. Chris Roof
431 Raleigh View Road
Raleigh, NC 27610

Comment Letter

RE: Variance Request received October 19, 2015
Highway 93 Class 2 Landfill – Permit # LF2-00003
Pickens County

Dear Mr. Roof:

The Department has received your letter dated October 16, 2015, that requests a variance to the permitted annual disposal rate stated in your current permit. After careful review of the letter and the regulations, the Department requests additional information before proceeding:

- 1) Provide specific information regarding the documented large project:
 - a. What type of waste(s) is/are to be accepted and disposed?
 - b. Who is the generator?
 - c. From where is the waste coming? List all sites if more than one.
 - d. How much waste is coming from each listed site?
 - e. Analytical data showing that the waste from each site is acceptable in a Class 2 Landfill.
- 2) Provide a plan that demonstrates how you will insure that all disposed waste will be Class 2 material.
- 3) Provide an annual disposal rate and estimate for the duration of the variance.

Once the Department receives the requested information, we will proceed with our review. The Department may also require additional information, such as updates to financial assurance and to the waste operation plan, once we learn more about the large project.

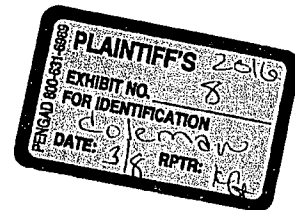
If you have any questions, please contact me at (803) 898-1339.

Sincerely,

Justin Koon, Project Manager
Mining and Solid Waste Permitting Section
Division of Mining and Solid Waste Management
Bureau of Land and Waste Management

JTK/jtk

cc: Bureau File # 21212



**WORK PLAN
FOR
SITE-SPECIFIC HYDROGEOLOGIC INVESTIGATION**

**HIGHWAY 93 LANDFILL
2180 GREENVILLE HIGHWAY
LIBERTY, SC 29657
PICKENS COUNTY**

Prepared For:

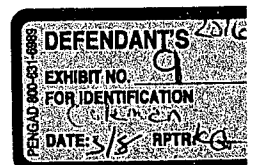
**MRR PICKENS, LLC
421 RALEIGH VIEW ROAD
RALEIGH, NC 27610**

Prepared By:

**CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
1900 CENTER PARK DRIVE, SUITE A
CHARLOTTE, NC 28217**

CEC Project 142-152

**August 2014
Revised September 19, 2014**



Civil & Environmental Consultants, Inc.

Charlotte

1900 Center Park Drive, Suite A | Charlotte, NC 28217 | p: 980-237-0373 | f: 980-237-0372 | www.cecinc.com

ROA 1051

TABLE OF CONTENTS

	<u>Page</u>
1.0 INTRODUCTION.....	1
1.1 Site Location	1
1.2 Physical Setting.....	1
1.3 Regional Geology	2
1.4 Local Geology And Hydrogeology.....	2
2.0 PROPOSED WORK PLAN FOR SITE-SPECIFIC HYDROGEOLOGICAL INVESTIGATION.....	5
2.1 Minor Permit Modification For Change In Landfill Classification	5
2.2 Reliance On Previous Data	5
2.3 Purpose Of Work Plan	6
2.4 Scope Of Work	6

FIGURES

- Figure 1 – Site Location Map
- Figure 2 – Site Topographic Map
- Figure 3 – Aerial Site Vicinity Map
- Figure 4 – Regional Geologic Map
- Figure 5 – Proposed Boring Location Map

APPENDICES

- Appendix A - Enviro-Pro, P.C. - Lithologic Logs and Water Well Records

2.0 PROPOSED WORK PLAN FOR SITE-SPECIFIC HYDROGEOLOGICAL INVESTIGATION

2.1 CLASS TWO PERMIT MODIFICATION

MRR previously received a Class Two Landfill Permit for the subject landfill facility to be constructed at 2180 Greenville Highway, Liberty, South Carolina. The permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill with 7.3 million cubic yards of capacity. The permitted facility has not been constructed, and is currently a heavily wooded area with limited access consisting of overgrown, unimproved dirt roads installed for drilling activities that took place in March 2007.

During recent meetings between MRR and DHEC, it was confirmed that the modification of the Class Two permit to meet the requirements of Regulation R61-107.19, Part V, Class Three Landfills would require a minor permit modification.

2.2 RELIANCE ON PREVIOUS DATA

As previously described in Section 1.4, soil classification and depth-to-bedrock data have been obtained from 15 borings advanced at the proposed landfill site in March 2007. In addition, seven borings were converted to piezometers during the 2007 investigation, and these piezometers still exist, allowing for further data collection (i.e. water levels, slug tests, and gradient data). Previous data indicate that soil and bedrock conditions across the landfill footprint are uniform. This Work Plan has been designed to utilize the existing data in combination with newly acquired data to provide an appropriate site-specific hydrogeological characterization of the site. Both existing and proposed soil boring/well locations are shown in Figure 5.

SITE-SPECIFIC HYDROGEOLOGIC INVESTIGATION REPORT

**HIGHWAY 93 LANDFILL
2180 GREENVILLE HIGHWAY
LIBERTY, SC 29657
PICKENS COUNTY**

Prepared For:

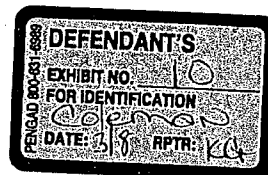
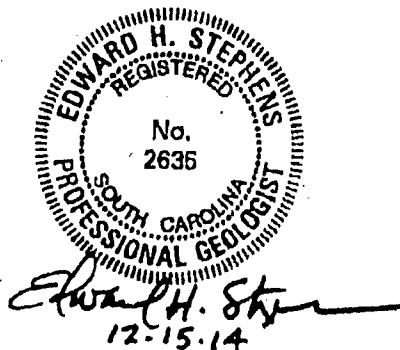
**MRR PICKENS, LLC
7413 SIX FORKS ROAD, SUITE 358
RALEIGH, NC 27615**

Prepared By:

**CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
1900 CENTER PARK DRIVE, SUITE A
CHARLOTTE, NC 28217**

CEC Project 142-152

December 2014



Civil & Environmental Consultants, Inc.



1.0 INTRODUCTION

1.1 BACKGROUND AND PURPOSE

MRR Pickens, LLC (MRR) previously received a Class Two Landfill Permit for the subject landfill facility at 2180 Greenville Highway in Liberty, South Carolina in Pickens County. The permit, issued in November 2008, is for a Construction, Demolition, and Land-Clearing Landfill with 7.3 million cubic yards of capacity. The permitted facility has not been constructed, and is currently a heavily wooded area with limited access consisting of overgrown, unimproved dirt roads installed for site evaluation activities that initially took place in March 2007 and also recently in September-October 2014.

During recent meetings between MRR and DHEC, it was confirmed that a modification of the Class Two Landfill Permit to meet the requirements of Regulation R61-107.19. Part V. Class Three Landfills would require a minor permit modification. To satisfy the Class Three Landfill requirements, MRR engaged Civil & Environmental Consultants, Inc. (CEC) to conduct further hydrogeologic evaluation of the proposed landfill to provide additional data for a permit modification. The recent data collection effort was performed in September and October 2014. A previous site hydrogeologic investigation of the proposed landfill was reported by BP Barber in June 2007. This subject report provides an interpretation of the newly acquired site data in concert with the older June 2007 data collected by BP Barber to provide an appropriate site hydrogeologic characterization.

1.2 SITE LOCATION

The proposed MRR landfill site is situated off Highway 93 at Clardy Road approximately 2,000 feet northeast of the city limits of Liberty, SC. Access to the site is from Highway 93. The general geographic coordinates of the land parcel are 34° 47' 57" N and 82° 40' 37" W. A site location map is provided as Figure 1.

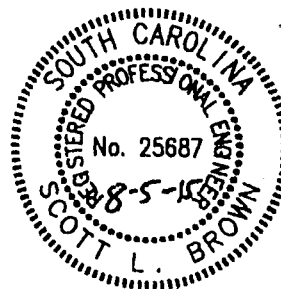
MINOR PERMIT MODIFICATION
HIGHWAY 93 LANDFILL
PICKENS COUNTY, SOUTH CAROLINA

Prepared For:
MRR SOUTHERN, LLC

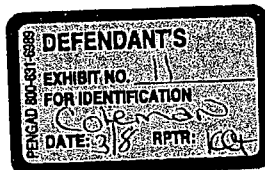
Prepared By:
CIVIL & ENVIRONMENTAL CONSULTANTS, INC.
CHARLOTTE, NC

CEC Project 142-152

MARCH 2015
UPDATED: AUGUST 2015



Scott L Brown



Civil & Environmental Consultants, Inc.

Charlotte

1900 Center Park Drive, Suite A | Charlotte, NC 28217 | p: 980-224-8104 | f: 980-224-8172 | www.cecinc.com

ROA 1056

1.0 GENERAL INFORMATION

1.1 INTRODUCTION

MRR Pickens, LLC owns the Highway 93 Landfill (Facility) located off Greenville Highway (SC Highway 93) in the southern portion of Pickens County, SC. This facility was originally permitted in November, 2008 as a Class 2 Landfill under Permit Number LF2-00003.

This document consists of a Minor Permit Modification Application to obtain the option to develop cells of the Facility with an Alternate Liner system as opposed to the currently permitted Class 2 system. These cells will be developed in accordance with *South Carolina Department of Health and Environmental Control (SCDHEC) R.61-107.19, SWM: Solid Waste Landfills and Structural Fill*.

A completed Permit Application Form for the Highway 93 Landfill is provided in the first tabbed section of this document. SCDHEC regulatory requirements for a permit application are summarized in Table 1-1, which also indicates where the sections that correspond to these requirements can be found in this document.

TABLE 1-1 - REGULATORY REQUIREMENTS SCDHEC R.61-107.19, PART IV			
Section	Sub Section	Requirement	Location in This Permit Modification
Subpart B		Location Restrictions	1.3.3
	2	Airport Safety	1.3.3.1
	1.b	Floodplains	1.3.3.2
	1.c	Wetlands	1.3.3.3
	1.a, e – h	Buffer Zones	1.3.3.8
	1.d	Access Requirements	3.2.2

- Training of facility personnel to recognize unapproved or unauthorized waste, hazardous wastes as defined in the South Carolina Hazardous Waste Management Regulations R.61-79.261, and polychlorinated biphenyls (PCB) wastes as defined in Toxic Substances Control Act (TSCA), Part 761;
- All inspections shall take place in an area adjacent to the working face but not on the working face. Mechanical tools shall be used to separate and inspect for unapproved or unauthorized waste items; and
- Should unapproved or unauthorized materials be detected, the area shall be cordoned off while the site supervisor and SCDHEC are contacted.

SCDHEC will be notified within 72 hours if a hazardous waste or PCB waste is discovered.

4.11 RELEASES OF HAZARDOUS OR TOXIC MATERIALS

The landfill will accept Class 2 and certain special wastes as may be specified in the permit or otherwise specifically approved in writing by SCDHEC. No hazardous or toxic wastes will be accepted; therefore, releases of hazardous or toxic materials should not occur.

4.12 GROUNDWATER AND SURFACE WATER CONTAMINATION, WHICH MAY INCLUDE PUBLIC WATER SUPPLY CONTAMINATION AS A RESULT OF AN ACCIDENTAL SPILL

The facility is monitored by a comprehensive groundwater and surface-water monitoring system. Should statistical analysis of testing results indicate possible contamination, subsequent testing will follow with enhanced groundwater parameters. An assessment plan will be provided to SCDHEC and upon approval will be implemented. No hazardous or toxic wastes will be accepted; therefore, accidental spills should not occur.

4.13 LEACHATE STORAGE FACILITY BEING AT OR ABOVE CAPACITY

In the event that leachate levels reach or exceed storage capacity through equipment breakdown or facility outages, excess leachate will be pumped and transported via privately owned or



Civil & Environmental Consultants, Inc.

August 5, 2015

Mr. Tim Eleazer
Division of Mining and Solid Waste Permitting
Bureau of Land and Waste Management
SC Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201-1708

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AUG 06 2015

Dear Mr. Eleazer:

DIVISION OF MINING &
SOLID WASTE MANAGEMENT
BLWM

Subject: Highway 93 Landfill
Minor Permit Modification
CEC Project 142-152

Civil & Environmental Consultants, Inc. (CEC), on behalf of MRR Highway 93, LLC (MRR), requests a Minor Permit Modification for the abovementioned facility. Please find attached one hard copy and an electronic copy of the application for the minor modification of the Permit Number LF2-00003 for the Highway 93 Landfill in Pickens County, SC.

The modification includes an alternate liner design and associated changes resulting from the alternate liner design. Changes include modified subgrade elevations that are appropriate for the alternate liner design, modified limits of waste, final cover elevations, perimeter grading, and other associated details. The proposed revisions associated with this minor permit modification will not increase the disposal capacity for the landfill, increase the size or limits of the waste footprint, or increase the final cover elevation of the landfill.

Should you have any questions or require any additional information in support of this application, please do not hesitate to contact me at 980-237-0373.

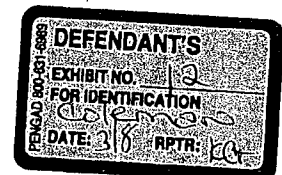
Sincerely,

CIVIL & ENVIRONMENTAL CONSULTANTS, INC.

Nathan Bivins
Project Manager

Scott L. Brown, PE
Vice President

Attachments





Catherine E. Helgel, Director

Promoting and protecting the health of the public and the environment

August 10, 2015

Mr. Christopher T. Roof
MRR Pickens, LLC
Highway 93 Landfill
5842 Faringdon Place, Suite 1
Raleigh, North Carolina 27609

RE: Issuance of Modified Class 2 Landfill Permit
Highway 93 Landfill
Permit No. LF2-00003
Pickens County

Dear Mr. Roof:

Enclosed is a modified Class 2 landfill permit for the Highway 93 Landfill located at 2180 Greenville Highway, Liberty, SC in Pickens County. The modification includes an alternate liner design and associated changes resulting from the design change. Enclosed is a copy of the Department approved revised engineering report to be kept at the referenced facility at all times. The guidelines and requirements to operate the site can be found in Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills and Structural Fill* and the conditions can be found in the attached Permit.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Guide to Board Review*, provided as a courtesy by the Department.

If you have any questions regarding the permit, please contact Timothy M. Eleazer, (803) 898-1374. General questions should be referred to Susan Turner with the Upstate Region EQC, BEHS Greenville Office, and (864) 372-3273.

Sincerely,

Kent M. Coleman, Director
Division of Mining & Solid Waste Management
Bureau of Land and Waste Management

KMC/TME/tms

cc: Marty Lindler, Manager - BLWM Solid Waste & HW Compliance Section
Tom Knight, P.G. Manager - BLWM Solid Waste Groundwater Section
Susan Turner, Upstate Region, BEHS Greenville Office
Scott L. Brown, P.E., Civil & Environmental Consultants, Inc.
BLWM File 021212

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-9432 • www.scdhec.gov

ROA 1060

Gary W. Pollakoff
atty@gpollakoff.com

Raymond P. Mullman, Jr.
rmullmanjr@gmail.com



POLIAKOFF
& ASSOCIATES

Bernard B. Pollakoff
(1916-1955)

J. Manning Pollakoff
(1923-1949)

Matthew Pollakoff
(1919-1979)

February 29, 2016

(VIA EMAIL & U.S. MAIL)

Jessica J.O. King, Esq.
WILLIAMS MULLEN
1441 Main Street, Suite 1250
Columbia, SC 29201

Re: MRR Pickens, LLC v. Pickens County, et al.
C.A. No.: 2016-CP-39-100
Highway 93 C&D Landfill

Dear Ms. King:

This letter is in response to the letter of February 23, 2016 from Christopher T. Roof of MRR Southern, LLC to Tom Hendricks, Interim Administrator of Pickens County.

As to Judge Stillwell's Order of February 22, 2016, the Order speaks for itself. Pickens County intends to abide by the Order and we request that MRR Pickens, LLC and MRR Southern, LLC abide by the Order.

As stated at the hearing on February 8, 2016, Pickens County agrees that MRR Pickens, LLC may operate the Highway 93 C&D Landfill, in accordance with the Permit issued by DHEC on November 3, 2008, Permit No. LF2-003, which includes, among other provisions therein, the following Special Condition:

This permit is limited solely to the disposal of items listed in Appendix I of R. 61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.

For your reference, we enclose herewith two copies of Appendix I to R. 61-107.19, titled "Acceptable Waste for Class Two Landfills." One copy is for you and we request that you forward the other copy to your clients, MRR Pickens, LLC and MRR Southern, LLC.

Please note that neither Appendix I nor the Permit dated November 3, 2008 allows Coal Combustion Residue, coal ash, or any "Special Waste" (as defined by S.C. Code Section 44-96-390, and as referenced in the Pickens County Solid Waste Management Plan).

Courthouse Square
215 Magnolia Street, Spartanburg, South Carolina 29306
Mailing Address: P.O. Box 1571, Spartanburg, South Carolina 29304
Telephone: 864-582-5472, 864-582-8101 • Facsimile: 864-582-7280
www.gpollakoff.com

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ROA 1061

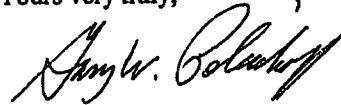
Jessica J.O. King, Esq.
Re: MRR Pickens, LLC v. Pickens County, et al.
C.A. No.: 2016-CP-39-100
Highway 93 C&D Landfill
February 29, 2016
page 2

Please inform us immediately if it remains the intent of your clients to dispose of Coal Combustion Residue, coal ash, or any other "Special Waste," or any waste not specifically included in Appendix I to R. 61-107.19, into this landfill. Please also inform us immediately if your clients intend to continue any actions which violate state law, Pickens County Ordinances, Pickens County agreements, and/or the Pickens County Solid Waste Management Plan.

We also reference to you the many representations of MRR Southern, LLC and MRR Pickens, LLC to Pickens County officials, over many years, that MRR intended to utilize this landfill for disposal of Construction & Demolition and Land Clearing Debris (C&D/LCD) only.

Further, we are happy to discuss with you anytime all issues related to the above.

Yours very truly,



Gary W. Poliakoff
POLIAKOFF & ASSOCIATES, P.A.

GWP/tjd

Enclosures

cc: (with enclosures)
✓ Robert F. Goings, Esq.
Kenneth S. Roper, Esq.

ROA 1062

Appendix I ACCEPTABLE WASTE FOR CLASS TWO LANDFILLS

The following types of waste have been determined by the Department to be environmentally safe and may be accepted at Class Two Landfills unless specifically prohibited by the Department. Acceptable wastes may be generated by construction, demolition, land-clearing, industrial, and/or manufacturing activities, and/or obtained from segregated commercial waste. However, any of the materials listed in this appendix that have been contaminated by any hazardous constituent listed in the S.C. Hazardous Waste Management Regulations 61-79.261, or petroleum products, are prohibited from disposal at a Class Two Landfill.

Acceptable Land-Clearing Debris Such As:

- | | |
|--|--|
| <ul style="list-style-type: none"> • brush & limbs • earthen material, e.g., clays, • sands, gravels, & silts • logs • rock | <ul style="list-style-type: none"> • root mats • top soil • tree stumps • vegetation |
|--|--|

Acceptable Debris Such As:

- | | |
|--|---|
| <ul style="list-style-type: none"> • asbestos-containing material² • bricks & masonry blocks • cardboard • dry paint cans • dry caulking tubes • fiberglass matting • floor covering • glass • glass wire (optical fiber) • hardened asphaltic concrete³ • hardened cement • hardened concrete (may include rebar) • insulation material • lumber (includes treated lumber) • mirrors | <ul style="list-style-type: none"> • other items physically attached to structure, e.g., signs, mailboxes, awning, vinyl siding • other structural fabrics • packaging material • painted waste (includes lead-based paint) • pallets & crates • pipes • plaster & plasterboard • polyfiberglass (highly polished, cured material used for shower stalls, roofing, etc.) • shingles & roofing materials • structural steel • tile (floor, wall & ceiling) • tires⁴ • tubing • wall coverings |
|--|---|

² Friable and nonfriable asbestos-containing material shall be disposed in a designated area and covered immediately upon receipt with at least six inches (6") of acceptable material. Prior to disposal of asbestos-containing material, the generator of the asbestos waste shall obtain a "permission for disposal" letter from the Department's Bureau of Air Quality (BAQ) and submit this letter to the landfill. All landfills accepting asbestos-containing material for disposal are subject to the BAQ regulation 61-86.1 Standards of Performance for Asbestos Abatement Operations, and the National Emissions Standards for Hazardous Air Pollutants [40CFR61, Subpart M;]

³ Tar sealant material is not acceptable.

⁴ Tires shall be reduced in size by a minimum of one-eighth the size of the original tire prior to landfill disposal.

Acceptable Brown Goods:

- . box springs
- . mattresses
- . wooden swing sets
- . nonmotorized bulky outdoor children's toys
- . furniture including lawn furniture:
 - laminated
 - metal⁵
 - plastic
 - PVC
 - vinyl
 - wooden

Animal Carcasses Acceptable Under Following Conditions:

- . Animal carcasses shall be buried in a separate designated area. The facility shall submit to the Department a written request to dispose of animal carcasses including a plan that shows the portion of the landfill to be used for this type of disposal. The permit will be modified to reflect the designated disposal area, and;
- . Animal carcasses shall be buried and covered with at least twelve inches (12") of dirt immediately upon receipt.
- . Hydrated lime shall be added to the carcass and surrounding area before cover is applied to control bacterial growth and odor.
- . Mass kill burial shall not be acceptable at Class Two Landfills unless approved by the Department prior to disposal.

⁵The Department recommends that all metal furniture be recycled if feasible.

Gary Poliakoff

From: Gary Poliakoff
Sent: Friday, March 18, 2016 3:04 PM
To: 'Robert F. Goings'; Jessica King
Cc: Amy Snyder; 'Johnson, Matthew K.'; Ken Roper
Subject: MRR v. Pickens County, et al.

Dear Robert and Jessie-

I am in receipt of MRR's Motion Pursuant to Rule 60, dated March 14, 2016.

On behalf of Pickens County, I respectfully request that you reconsider such Motion, and further respectfully request that you withdraw it.

Our request is based upon (1) Judge Stihwell's Order dated March 8 and filed March 11, 2016; (2) the remaining portions of Kent Coleman's deposition starting at page 95, wherein he admits that his decisions and actions were in contravention of State Regulations; (3) Coal Ash and Special Wastes being a violation of the Pickens County SWMP, which by statute must be followed; (4) Failure to obtain a Letter of Consistency from Pickens County, as to the 2015 Permit Modification; and (5) all other grounds advanced in our response to MRR's original Motion.

Please understand that we believe this March 14 Motion of MRR to be frivolous and groundless, and in violation of the S.C. Frivolous Civil Proceedings Sanctions Act, Secs. 15-36-10, et seq., and also further Abuse of Process. Therefore, if the Motion is not withdrawn by Wednesday, March 23, please understand that we will need to request attorneys fees and costs related to the defense of this Motion.

Thank you and best wishes.

Gary Poliakoff



Gary W. Poliakoff
Attorney at Law

P.O. Box 1671, Spartanburg, SC 29304
215 Magnolia St., Spartanburg, SC 29306
(864) 582-5472 Fax (864) 582-7280
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attv@gpoliakoff.com
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STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

) COURT OF COMMON PLEAS
) 2016-CP-39-100
)
)
)

MRR PICKENS, LLC)

PLAINTIFF)

vs.)

) TRANSCRIPT OF RECORD
)
)

COUNTY OF PICKENS, ET AL)

DEFENDANTS)

ORIGINAL

February 18, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

ROBERT F. GOINGS, ESQ.
JESSICA J.O. KING, ESQ.
KIP MCALISTER, ESQ.
Attorneys for the Plaintiff

GARY POLIAKOFF, ESQ.
RAYMOND P. MULLIMAN, JR., ESQ.
KEN NORSWORTHY, ESQ.
Attorneys for the Defendants

APRIL HERRON
Official Court Reporter

RECEIVED MAR 23 2016

ROA 1066

1 There were no witnesses.

2 There were no exhibits.

3
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5 Certificate of Reporter 72

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1 THE COURT: All right, let's call to bar the
2 case of MRR Pickens, LLC vs. County of Pickens, et
3 al. This case No. 2016-CP-39-100. It is a Pickens
4 County case which is being heard in Greenville. It
5 is my understanding that venue is being waived for
6 purposes of hearing this motion this morning. Am I
7 correct in that, sir?

8 MR. POLIAKOFF: Well, the Plaintiff picked the
9 venue but it's the same judicial circuit and as I
10 understand the rules, if there is not a sitting Judge
11 in Pickens County that Greenville would be
12 appropriate. So, I don't object to --

13 THE COURT: Yes, sir.

14 MR. POLIAKOFF: -- being in front of you in
15 Greenville this morning.

16 THE COURT: Yes, sir. Thank you, very much.

17 It's my understanding that this comes before the
18 Court pursuant to the Plaintiff's motion for
19 injunctive relief and/or temporary restraining order.

20 Mr. Goings, I believe it's your motion, sir, and
21 I'll be happy to hear from you, sir.

22 MR. POLIAKOFF: Your Honor, may I approach --

23 THE COURT: Yes, sir.

24 MR. POLIAKOFF: -- to hand my brief and memo up?

25 THE COURT: Please do.

1 MR. POLIAKOFF: I think we got notice of this
2 entire motion roughly 10 days ago. I've had it on my
3 desk about a week. And during the week I've had to
4 hire an expert, I've obtained five affidavits after
5 many interviews and we finished this about 8:00 p.m.
6 last night. I have the original memo with exhibits
7 and one copy for your clerk, Your Honor.

8 THE COURT: All right, thank you, very much.

9 All right, Mr. Goings, I'll be happy to hear
10 from you, sir.

11 MR. GOINGS: Thank you, Your Honor, may it
12 please the Court?

13 THE COURT: Yes, sir.

14 MR. GOINGS: Your Honor, I stand before you
15 today on behalf of MRR Pickens, LLC on a motion for
16 preliminary injunction. Let the record reflect that
17 I have provided Your Honor with a memorandum in
18 support of our motion as well as a signed, verified
19 complaint along with our memo in support and motion
20 for preliminary injunction. Your Honor, we're here
21 today because MRR Pickens is being wrongfully
22 prevented from operating a Class 2 landfill in
23 Pickens County. MRR Pickens has received proper
24 permitting from DHEC and has entered into binding
25 contractual agreements with the county to operate

1 this Class 2 landfill. MRR Pickens has a legally
2 vested right pursuant to South Carolina law to
3 operate this landfill.

4 However, Your Honor, last month after my client
5 has incurred nearly 4 million dollars developing the
6 landfill, the county has shut down our rights to
7 operate, Your Honor. And all of this is an attempt
8 to prohibit the type of Class 2 waste that we're
9 lawfully allowed to accept. And that waste, Your
10 Honor, is CCR, which stands for coal combustion
11 residuals or often referred to as coal ash.

12 Your Honor, the actions of the county has
13 completely shut down our ability to do business. And
14 they've done that with threats of criminal
15 prosecution and civil fines. And the record will
16 reflect that the actions of the county were
17 overreaching and heavy handed in an attempt to
18 prevent the type of waste that DHEC says that we're
19 allowed to accept. And the important part of this
20 motion, Your Honor, is that every single day that
21 we're ordered to cease and desist from developing and
22 operating our Class 2 landfill, we continue to miss
23 out on business opportunities, business goodwill and
24 we are not able to continue our viable business.

25 Pickens County does not have the authority to

1 issue this termination notice. Not only do they lack
2 the authority, Your Honor, the termination notice of
3 Pickens County is in direct violation of the
4 development agreement and the host agreement that our
5 client has entered into lawfully with Pickens County.
6 Let it be clear, Your Honor, that South Carolina law
7 is well established that a county does not have the
8 authority to regulate what type of waste is allowed
9 in a Class 2 landfill.

10 I provided, Your Honor, with some case law. The
11 first one is Green Eagle vs. DHEC. It's a Court of
12 Appeals opinion from 2012 and it says this, That DHEC
13 has the sole authority to issue, deny and revoke
14 permits. DHEC, not a county, is the final arbiter
15 and charged with the authority to determine what
16 types of waste falls within the classifications of
17 these landfills. And the Court of Appeals made very
18 clear that a county is not allowed to usurp DHEC's
19 responsibility. Not politicians, not the county.

20 To understand this dispute, Your Honor, this
21 goes back to 2007. A deal that was made back in 2007
22 starting in March of 2007, Your Honor, MRR Pickens,
23 and I'll say this, if this is a little too small for
24 you to read, in the binder that I handed, is a--

25 THE COURT: Same timeline?

1 MR. GOINGS: Yes, sir, Your Honor.

2 THE COURT: Okay, good enough, thank you.

3 MR. GOINGS: In March of 2007 MRR Pickens and
4 Pickens County entered into a commercial landfill
5 development agreement. And that is what it said.
6 That this property would be zoned for the duration of
7 the development. The duration of the development is
8 10 years. The county will provide all necessary
9 permits and approvals. The county will fully
10 incorporate in the development of this landfill and
11 that MRR Pickens is allowed to construct and operate
12 this Class 2 landfill. That these rights are legally
13 vested.

14 Which means, Your Honor, that these rights
15 cannot be changed in the future. And that's what
16 happened here. Last month the county wanted to
17 change the deal.

18 Now, this commercial land development agreement,
19 Pickens County agreed and has gifted to Pickens
20 County about nearly 1.5 million dollars of land.
21 Here is a color plat of what we're dealing with near
22 Liberty, Your Honor. The landfill is approximately
23 60 acers. This was all MRR Pickens property. But in
24 2007, we agreed to give 162 and 62.2 acers, and we
25 have given to the county, by deed, by gift, to the

1 county for a future park. We have industrial lots
2 as well. And the only section that we're talking
3 about is this landfill. Which is approximately 68
4 acres. So, the county has had the benefit of our
5 property. To this day has our property that we gave
6 to them.

7 Also, in addition, to the development agreement,
8 Your Honor, in March we also entered into a host
9 agreement. And the host agreement said that the
10 landfill shall be constructed and operated in
11 accordance with the DHEC rules and regulations,
12 statutes and requirements. Then in November 2008,
13 DHEC issued its Class 2 permit to MRR Pickens for
14 this site. And this what it says.

15 The permit allows disposal of all items listed
16 in Appendix 1 of Regulation 61-17.19.

17 I can provide you a copy of the regulations but
18 these are the DHEC regulations that govern what types
19 of waste are permitted in each type of landfill.
20 Okay. And it's DHEC's determination as to what types
21 of waste. You submit a waste characterization to
22 DHEC and DHEC tells you if it's allowed or not in
23 that landfill. And that is what our permit provides
24 and that is what our right to operate as a landfill
25 provides.

1 THE COURT: Yes, sir.

2 MR. GOINGS: So, 2008 we get the permit.
3 Economic down turn. The waste industry is not as
4 strong during this period of time. The county is
5 still operating its own county landfill and gets
6 approval to increase its annual tonnage. So, the
7 project is still pending. It's a 10 year
8 development. Economy rebounds, the waste industry
9 rebounds, in November of 2014 we submit a letter of
10 intent and a land use application to Pickens County
11 pursuant to the development agreement, okay. And the
12 proposed land use was for a SC DHEC permitted Class 2
13 landfill. And the letter said, and this is important
14 to understand, the letter said that the project will
15 include approximately 60 acers of lined, underscore
16 lined, landfill disposal area in various sediment
17 erosion control procedures. Here's a copy of that
18 letter, Your Honor. That was submitted November
19 2014. This is the cover letter to our land use
20 application.

21 THE COURT: I presume that's a tab appendix to
22 your motion?

23 MR. GOINGS: Yes, Your Honor, this is
24 actually -- this is actually in our verified
25 complaint.

1 THE COURT: Okay.

2 MR. GOINGS: This is actually in our motion.

3 And it's also an exhibit, Your Honor, to our
4 memorandum in support. You can find this document in
5 various places throughout the record.

6 THE COURT: Good enough.

7 MR. GOINGS: Approximately 60 acres of lined
8 landfill. That's in November. In January, Your
9 Honor, Pickens County Planning Commission holds a
10 meeting on this proposal for a lined landfill
11 pursuant to the development agreements. For the use
12 of a permitted Class 2 landfill is approved
13 unanimously. At this meeting, Your Honor, it was
14 approved unanimously. Following that on
15 January 13th, 2015, Pickens County sent a letter that
16 says on January 12th, 2015, the Pickens County
17 Planning Commission voted unanimously to approve the
18 land use request. The various body of the language
19 states that Pickens County will do everything to
20 provide all permit, all building approval permits and
21 everything that it needs to finish and continue the
22 construction of its landfill.

23 In April, that was last January, Your Honor.

24 THE COURT: Yes, sir.

25 MR. GOINGS: In April Pickens County and MRR

1 Pickens entered into an amended development
2 agreement, okay. The development agreement was
3 amended just to alter wording based on changes in
4 South Carolina law, okay. The substance did not
5 change. But when the first development agreement was
6 entered in 2007, South Carolina law related to the
7 regulations of landfills used certain terminology, in
8 2008 and thereafter it changed. It was based on a
9 class system. Class 1 landfill, Class 2 landfill,
10 Class 3 landfill. So, the amended development
11 agreement deleted all references to construction and
12 demolition debris and land clearing debris, which use
13 to be an old Class 2 landfill, and replaced them with
14 terms of Class 2 solid waste and Class 2 solid waste
15 landfill.

16 In the original development agreement, Pickens
17 County had Haynsworth, Sinkler, Boyd negotiate, draft
18 and approve that agreement. For the amended
19 development agreement, attorney Ken Roper assisted
20 and then negotiate, draft and approve the amended
21 development agreement. Entered into and filed as a
22 matter of public record in Pickens County.

23 In 2015 my client continued to work on the
24 development of the landfill. Clearing. Everything.
25 Then in January 2016, a month ago, MRR Pickens

1 receives a termination notice. And it required them
2 to immediately cease and desist from all activities
3 on the property. Prohibited any use of the property,
4 threatened criminal prosecution, threatened civil
5 fines. Did not afford a hearing. Gave no due
6 process rights, no prior notice before issuing this.
7 And this comes, this termination notice, comes after
8 Pickens County voted unanimously to approve the land
9 use request. And after nearly 10 years of
10 contractual relationships between the county and this
11 private business.

12 This is what the termination notice accused this
13 landfill of. They accused this landfill of now
14 constructing a Class 3 landfill instead of Class 2.
15 They said in their letter, We understand that you
16 want to take coal ash. We believe coal ash, now this
17 is the county saying, We believe coal ash is Class 3.

18 DHEC says it's not Class 3. DHEC says it's
19 Class 2. We have said in our affidavits of Norbert
20 Hector, the affidavits of Scott Brown, an engineer,
21 enviromental engineer, we're not constructing a Class
22 3 landfill. We don't want a Class 3 landfill. We
23 want what we got and what we contracted with Pickens
24 County to have which is a Class 2 landfill.

25 They claim that CCR, which is coal ash, is only

1 permitted in a Class 3 landfill. That's what their
2 letter says. I think after they sent the letter,
3 they started looking for the first time at what the
4 law said. Because the law clearly allows coal ash to
5 be submitted in a Class 2 landfill. So much so that
6 Pickens County has now been lobbying its legislative
7 delegation and the General Assembly to enact a law
8 that changes, and with a number of exceptions,
9 changes the destination of coal ash. So, it can only
10 be put into a Class 3 based on the language that they
11 want. So, now they -- they now know what we're doing
12 is completely lawful. So, what they did is run down
13 to Columbia to the General Assembly to try to get
14 the law changed. All the while MRR Pickens has been
15 following the law.

16 Now, this is important to understand. The
17 termination notice doesn't say you can't accept coal
18 ash. The termination notice doesn't say you cannot
19 accept coal combustion residuals, the termination
20 notice says you cannot even operate a Class 2
21 landfill, your business is shut down.

22 MRR Pickens has spent nearly 4 million dollars
23 to get to where they are, okay. And we need a
24 preliminary injunction for this reason. There is
25 waste that my client will be able to bid on around

1 the 24th or the 25th of next week, February 24th,
2 25th. We have been told, and this is in the
3 affidavits of Norbert Hector and Scott Brown, that
4 due to the termination notice we're deemed
5 nonresponsive and our bid will not be considered
6 because we now lack a required land use permit.
7 We're not considered a viable business. So, the
8 actions of the county--

9 MR. POLIAKOFF: Point of information, Your
10 Honor, I understood we had 30 minutes and we're 16
11 minutes into counsel's argument. As long as I have
12 equal time.

13 THE COURT: You have equal time. You have equal
14 time.

15 Go ahead, Mr. Goings. If you can sum it up
16 within the next 10 minutes, I'd appreciate it.

17 MR. GOINGS: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. GOINGS: This termination prevents us from
20 doing any business. So, the standard for a
21 preliminary injunction is this. The first elements,
22 potential for irreparable harm and no adequate remedy
23 of law. We can address those two together. And this
24 is why, Your Honor. This landfill is being
25 prohibited from any use or development of this

1 property. It's being denied the ability to operate
2 its Class 2 permit. South Carolina law holds that a
3 party suffers irreparable harm to which there is no
4 adequate remedy of law in cases involving a loss of
5 business opportunity. The business opportunity that
6 we will lose is real. The business opportunity that
7 we will lose is immanent without this injunction.

8 South Carolina law also holds that a party
9 suffers irreparable harm where there is no adequate
10 remedy of law in cases involving loss of goodwill.
11 And also in cases involving actions by a defendant
12 that threatens the very existence of ones business.
13 The only business that MRR Pickens, LLC has is this,
14 a Class 2 landfill on the subject property that it
15 has spent since 2007 developing, okay. There's two
16 cases of import that I provided, Your Honor. One is
17 Lavine vs. Spartanburg Regional Services District and
18 HH Hunt Corp v. Town of Lexington. And these cases
19 say this, the Lavine vs. Spartanburg Regional case
20 says without a doubt that actions that threatens ones
21 business or actions that threatens a future business
22 opportunity or actions that threaten the loss of
23 goodwill of a company, those things cannot be
24 adequately measured by way of compensation. Okay.

25 And then Professor Flanagan in his book

1 regarding South Carolina Rules of Civil Procedure and
2 it's mentioned in our brief, Your Honor, says that
3 damages by way of -- if you can receive some damages
4 or damages, that does not forego what is irreparable
5 harm. Because a loss of business opportunity is
6 irreparable and is not always able to be calculated
7 by pecuniary losses.

8 The case of HH Hunt vs. Town of Lexington says
9 this. Says that when a party suffers an action that
10 restricts ones property rights, which we have here,
11 that is irreparable harm, okay. Because ones
12 property rights can never be measured in dollars,
13 okay. And that's what that case said. And the Court
14 of Appeals of this state upheld a preliminary
15 injunction in this case where the actions of the Town
16 to Lexington prevented them from the rights to use
17 their property. And that's what we've got. The
18 likelihood success on the merits.

19 So, Your Honor, this prong, the law is clear
20 that the Plaintiff does not need to prove an absolute
21 legal right. The Plaintiff only needs to present a
22 fair question, a fair question, to raise the
23 existence of a right. As it relates to irreparable
24 harm, no adequate remedy of law and the likelihood
25 success on the merits. All we have to show is a

1 prima facia case from the Plaintiff's side. And as
2 it relates to the likelihood of success on the
3 merits, the court -- the South Carolina Supreme Court
4 has said that a trial court should not posture it as
5 to what the ultimate determination would be in the
6 case. The trial court's not to look at well,
7 whatever you enter in a preliminary injunction must
8 be the ruling at the very end of the day. That's not
9 the purpose of a preliminary injunction. And the
10 Court must only look as to whether or not there's
11 been a prima facia showing.

12 The analysis in this case is simple for
13 likelihood success on the merits. There is a signed
14 agreement between these parties and an amended signed
15 agreement between these parties, a permit that has
16 been given to us by DHEC. And a termination letter
17 that prevents us from ever using our property or
18 you're going to jail. That's what we have.

19 Now, the Defendant has submitted a memorandum in
20 opposition. And I just got it this morning. It's
21 got four affidavits to it. They received notice of
22 this -- of this hearing 18 days ago. Eighteen days
23 ago. They held town hall meetings where --

24 MR. POLIAKOFF: Objection, Your Honor, we
25 received the summons and complaint on or about

1 February 1st. I believe it was 10 days ago that we
2 received notice of this hearing.

3 THE COURT: Okay.

4 MR. GOINGS: Your Honor--

5 THE COURT: Go ahead, that's not necessary.

6 MR. GOINGS: They received notice of the
7 hearing -- this is where I'm getting at, okay. The
8 affidavits they submitted under rules four, rule five
9 and rule six required them to be served two days
10 before the hearing. And what they did is come to
11 this proceeding and hand it to us on the day of it.
12 I would just respectfully object to those affidavits
13 as untimely under the rules.

14 MR. POLIAKOFF: Objection, Your Honor. This is
15 counsel's motion, the Plaintiff's motion. We got
16 their last memo last night at the close of business.
17 And it's their motion.

18 THE COURT: I'm not concerned with the
19 technicalities of the rules. I'm, right now, I'm
20 more concerned with the equities of the case. And at
21 this very early juncture of the proceeding, each
22 party having the opportunity to fully address the
23 Court. Therefore, I'm going to look at everything
24 you give me, okay. Because I think that's fair to
25 both parties.

1 MR. GOINGS: Absolutely. Thank you, Your Honor,
2 I just wanted to note that for the record.

3 THE COURT: Yes, sir, sure.

4 MR. GOINGS: Your Honor, we would request most
5 respectfully that this Court enter an injunction to
6 maintain the status quo of the parties during the
7 pendency of this case. When you balance the
8 equities, there's only one party that's irreparably
9 harmed. And that is this landfill. There's only one
10 party that's irreparably harmed and that is this
11 landfill. When you balance the equities, when you
12 weigh the evidence, the County is not damaged at all
13 by allowing us to continue. Because the waste that
14 they don't want us to have wouldn't come into this
15 county or in the landfill for nearly a year. Because
16 we're going through the process. But for them to
17 issue this termination notice when they did was at a
18 critical time that forever enjoins him, prevents the
19 viability of this business.

20 And keep in mind they just didn't say, You can't
21 accept coal ash. They said, You can't operate. They
22 said, You can't operate your business. And for
23 sophisticated parties, a county and a business to
24 enter into an agreement since 2007, both sides
25 represented by well experienced environmental

1 lawyers, to pull the rug at this very late stage
2 opens the county up to extraordinary liability. And
3 it's not the way that we do business in this state.
4 And we would most respectfully, Your Honor, allow and
5 request this Court grant our motion for preliminary
6 injunction.

7 THE COURT: Okay. Let me ask you this one
8 question just to clarify. The contract on which the
9 Plaintiff intends to bid includes the dumping of coal
10 ash, is that correct?

11 MR. GOINGS: That's my understanding, Your
12 Honor, yes, sir.

13 THE COURT: All right, good enough. Thank you.

14 MR. GOINGS: Thank you, Your Honor.

15 THE COURT: All right, Mr. Poliakoff.

16 MR. POLIAKOFF: Thank you, Your Honor, may it
17 please the Court?

18 THE COURT: Yes, sir.

19 MR. POLIAKOFF: Your Honor, the omissions by
20 counsel for MRR are serious and troubling and
21 compelling. And I believe that this Court will find
22 them to be serious and compelling and very troubling.
23 For several years now we don't know how far back in
24 time but we know now from the research we've had to
25 do literally in the past week, that where MRR is

1 today is based on a course of deceit and fraud and
2 misrepresentations. I will show some of those direct
3 misrepresentations and deceit and fraud to the Court
4 this morning.

5 Worst than the material misrepresentations that
6 they have told these county officials from Pickens
7 County, for a course of years as to what their
8 intentions were, some of which we like to -- we
9 prefer to call them misrepresentations, Your Honor,
10 they're bareface lies. Worst than that there's now a
11 fraud upon the court. That I believe would be very
12 troubling to this Court, I believe, Your Honor, will
13 find it to be very troubling.

14 In the affidavits submitted with this motion,
15 one is an affidavit from Mr. Norbert Hector, I
16 believe is here. I know there's an affidavit from
17 Mr. Scott Brown who I believe is here. There are
18 statements in those that I can show Your Honor that
19 are simply false. Now, those statements regards what
20 was said at the County Planning Commission of
21 January 12, 2015. Now, in the course of all these
22 things Your Honor saw part of the timeline that
23 occurred, there were major omissions from that
24 timeline. Some of which I'll get into depending on
25 how much time Your Honor gives me this morning.

1 But this meeting was no mere formality in the
2 chain of things. It was critical, the meeting was
3 referred to in their affidavits and counsel's
4 argument in their memo. The meeting was crucial
5 because County Planning Commission had some
6 questions. The answers given were false, fraudulent,
7 misleading. Worst, the Court has now have been given
8 information which is false. In the affidavit of
9 Mr. Norbert Hector, in the affidavit of Scott Brown,
10 they talk about what was said and not said at that
11 meeting. Now, they have a copy of the minutes of the
12 meeting but, Your Honor, I think what it looks like
13 is they didn't realize, fortunately, the County
14 Planning Commission recorded that meeting. We have
15 the audio. We have the transcript in the documents
16 that I've submitted to Your Honor. One of the county
17 official's position and affidavit identifying the
18 recording as being an accurate recording of the
19 meeting submitted to a court reporter and the court
20 reporter has her normal affidavit.

21 What I would like to start with and I would --
22 Your Honor, I would -- I would be presenting more of
23 a timeline and if I had half a day to present then 20
24 minutes or so to present. But --

25 THE COURT: I'm protecting you from yourself.

1 MR. POLIAKOFF: Thank you, sir, I need that.

2 THE COURT: Yes, sir. Yes, sir.

3 MR. POLIAKOFF: All right, first of all, the
4 sworn affidavit of Mr. Norbert Hector, this is
5 attached to the motion that's before you right now.
6 And again, this planning commission meeting was
7 crucial. Mr. Norbert Hector, who is the managing
8 member of MRR and he has, I believe he said it in his
9 affidavit, he has oversight for all MRR sites. This
10 is MRR Pickens, which is a subsidiary wholly owned by
11 MRR Southern, LLC, a North Carolina, LLC. Says, this
12 a direct quote from Mr. Hector's affidavit.

13 That at planning commission public meeting, MRR
14 never stated that it was not linning the landfill.

15 This is crucial. Or that it was planning to
16 restrict its waste to construction and demolition
17 C&D, land clearing debris, LCD waste.

18 Also very critical. Because county counsel and
19 county planning always from 2006, 2007 forward,
20 always made it clear, this is only a C&D, LCD
21 landfill. Nothing else. The original permit issued
22 in 2008 has limiting language that is exactly what
23 the parties agreed to. I show Your Honor direct
24 quotes from the 2008 permit that says only those
25 waste listed on Appendix 1 of the Regulation

1 61-107.19 Part 1. It's Appendix 1 to that and I can
2 show you that. And I've actually attached a copy of
3 Appendix 1.

4 Appendix 1 talks about construction and
5 demolition. C&D waste, Your Honor, is when you tear
6 down a building, it's the building materials. LCD is
7 land clearing debris. Tree stumps, tree limbs,
8 etcetera. So, this talked about those, it even said
9 no animal carcasses.

10 Quote, All other waste are prohibited.

11 That was in the 2008 permit. That's what the
12 parties agreed to. In the years after that, behind
13 the backs of Pickens County, MRR goes to DHEC. MRR
14 has a series of meetings which they lied about, which
15 I'll show Your Honor, at the January 12, 2015
16 meeting. They lied about it. They had meetings
17 behind closed doors with DHEC to change the permit.
18 The permit that was issued in 2015 to this day has
19 never been formally given to Pickens County. Made
20 major changes. They go out of their way to say
21 minor, because I'll get to that. Minor means you
22 don't have to -- if it's a minor change you don't
23 have to give public notice. A major change, under
24 the regs, you have to give public notice.

25 They go behind the backs after a series of

1 meetings with DHEC, which I'll get into, and obtained
2 major changes where they had a liner to a landfill.
3 C&D landfill is under Class 2 don't require liners.
4 They wanted to change the requirements for ground
5 water monitoring because they wanted to put more
6 serious waste into it. They want to change the
7 requirements for final cover because there's more
8 serious waste that they want to do. A series of
9 meetings conducted throughout the year 2014. Not
10 only meetings, not only emails and letters but
11 engineering plans, which I'll get into.

12 Engineering reports. Some 60, 80, 90 pages long
13 filled with engineering information. They never told
14 Pickens County about. Never shared it. Colluding
15 and conspiring with DHEC, which I'll show Your Honor.
16 And they lied about this at the January 12th, 2015
17 planning commission because they were meeting behind
18 the backs of Pickens County, they were meeting
19 secretly. Subterfuge, deceitfully.

20 So, let's see what Mr. Norbert Hector told --
21 apparently Mr. Hector didn't realize that there was a
22 tape recording transcript of it. So, we look to the
23 transcript, bear with me, Your Honor. Okay, Dan
24 Moore, at this meeting, January 12, 2015 meeting, Dan
25 Moore, MRR's project manager did the primary speaking

1 according to the transcript. The transcript is
2 Exhibit 11 to the materials I have submitted today.

3 First of all, on the issue of quote, MRR never
4 stated that it was not lining the landfill.

5 Well, yes, Your Honor, they did send one letter
6 saying -- mentioning liner one time. And so county
7 planning it was an important issue.

8 By a commission member: Do you have to provide
9 the same kind of liners and so forth for your
10 landfill?

11 By Mr. Moore: We do not.

12 By commission member: Do not have to for
13 demolition, that kind of --

14 By Mr. Moore: That's right.

15 So, here you got Mr. Norbert Hector, MRR never
16 stated it was not lining the landfill.

17 The question, Do you have to provide the same
18 kind of liners?

19 We do not.

20 Your Honor, that was a lie to County Planning
21 Commission, it is now a lie to this Court because
22 it's attached to an affidavit for which they are
23 seeking relief today.

24 Second part of Mr. Norbert Hector -- by the way,
25 Your Honor, before Your Honor even considers ruling I

1 need to depose Norbert Hector, I need to depose Scott
2 Brown, I need to depose Dan Moore and I need to
3 depose several DHEC people that they have been
4 dealing with, negotiating with and in our view
5 colluding with.

6 Second part, MRR never stated it was not lining
7 the landfill or that it was planning to restrict its
8 waste to construction and demolition, land clearing
9 debris waste, C&D, LCD.

10 Now, you go back to 2007, all of the discussion
11 in 2007, which we can show Your Honor, was all about
12 C&D, LCD, no mention of other waste. And as I
13 mentioned to Your Honor, that permit that finally
14 resulted in 2008 specifically says the Appendix 1
15 waste, all other waste are prohibited. The permit
16 they got in 2015 to this moment has never been
17 formally provided. And so -- also, Pickens County
18 has an old landfill right now that's near in
19 capacity, going to close in a couple of years and
20 that's why Pickens County needed a new C&D, LCD.

21 But they made it clear in the Solid Waste
22 Management Plan, that counsel did not mention, that
23 it was only going to be C&D, LCD. No special waste.
24 That's a specific important piece of information,
25 special waste is what those are. I'll get to that.

1 But keep in mind that the current landfill in Pickens
2 County that's about to close is only C&D, LCD. And
3 that all of the discussions back in '07 were about
4 C&D, LCD. Now, this is January of '15. And again,
5 I'll show Your Honor in just a minute what was going
6 on behind the backs of Pickens County officials all
7 during 2014 including an engineering report submitted
8 one month before this, all about seeking changes.

9 So here's what Dan Moore told the county
10 planning people. It's probably also important to
11 note right up front that the land use details and
12 development details for the project are just the same
13 as they were when we got the initial approval on the
14 site back in 2007. Your Honor, that by Mr. Moore was
15 a barefaced misstatement, misrepresentation, lie,
16 whatever we want to call it to the County Planning
17 Commission.

18 I'll show Your Honor momentarily that they were
19 already negotiating with DHEC and submitting detailed
20 engineering reports to DHEC to make changes behind
21 the backs of Pickens County officials. He goes on to
22 say, this is Mr. Moore at the January 15th County
23 Planning Commission.

24 As y'all know a proposed activity is a class --
25 DHEC Class 2 landfill, this was previously called and

1 referred to as a construction and demolition debris
2 landfill. This is the same type of facility that the
3 county is operating.

4 County operates only a C&D, LCD.

5 Quote, This is exactly, says it twice, the
6 second time saying exactly, This is exactly the same
7 type of landfill that the county is operating over on
8 Old Liberty Road just, I guess, West of Liberty.

9 So, he's saying nothing's changed from '07.
10 Even though they're negotiating with DHEC and
11 submitting detailed engineering reports to make
12 changes for the whole year before this and the same
13 type facility that the county is operating, they're
14 already negotiating with DHEC to add a liner, already
15 negotiating with DHEC to add new kinds of waste,
16 they're already negotiating with DHEC to change the
17 permit that the county was party to and agreed to.

18 So, the information provided to County Planning
19 Commission was false. But worst, Your Honor, the
20 sworn affidavit basically to this Court, MRR never
21 stated it was not lining the landfill or planning to
22 restrict its waste to C&D, LCD, that's exactly what
23 they said here. Because all the discussions back in
24 '07 were only C&D, LCD. And being the same telling
25 twice that it's the same type of operation that the

1 county is currently doing. The county only does C&D,
2 LCD. This was a false statement to the Court.

3 We go to Mr. Dan Moore's sworn affidavit -- I'm
4 sorry, sworn affidavit of Scott Brown, similar to
5 Mr. Hector, Scott Brown says during the public
6 meeting, Neither I nor other representatives of MRR
7 Pickens stated the company was not lining the
8 landfill.

9 Sorry, the transcript says differently.

10 Provide the same kind of liners?

11 We do not.

12 That's the only discussion of liners at that
13 meeting and he made it pretty darn clear, we do not.
14 In regard to liners. Same thing about nobody ever
15 said we're restricting its waste to C&D, LCD. Well,
16 if you read these two paragraphs here, that the land
17 use details and development details for the project
18 are just the same as they were back in '07 and it's
19 exactly the same facility the county is -- first of
20 all, Dan Moore's statement to County Planning
21 Commission was false. And second, the affidavit of
22 Scott Brown that says, We never said that it's false.
23 Either their memories are terrible or they didn't
24 know there was an actual recording of the meeting and
25 they thought they could get away with it.

1 I suggest the later, here's why, Your Honor. It
2 gets worst. Additionally, in order to convince -- in
3 order to convince county planning on January 12th,
4 2015, issue that final land use approval. In order
5 to convince them they wanted to apparently lull the
6 planning commission into complacency. They were
7 successful in doing that. So additionally, to lull
8 them into complacency, Mr. Moore, MRR's project
9 manager says, and this is straight out of the
10 transcript, Exhibit 11 to the materials that we
11 submitted today.

12 Earlier I mentioned the development agreement
13 which is in effect between ourselves and the county.
14 Now, counsel for MRR talked about how it's DHEC that
15 approves waste, etcetera, etcetera. Your Honor, that
16 is ignoring the host agreement that MRR has with the
17 county. That is ignoring the development agreement
18 that MRR has with the county. That is ignoring the
19 County Solid Waste Management Plan which is no mere
20 perfunctory document. Because state law says that
21 any landfill that they do has to be consistent with
22 the County Solid Waste Management Plan. I will show
23 how their current plan for coal ash is not consistent
24 and therefore a violation of the County Solid Waste
25 Plan.

1 But in order to lull county planning into
2 complacency, Mr. Moore's talking about the
3 development agreement. The agreement was reached
4 after very thoughtful consideration of the disposal
5 needs for the county. This agreement provides MRR to
6 provide the county with all irregulatory reports.
7 Things such as semi-annual ground water monitoring
8 reports, any compliance issues, notice of violation.
9 We have that to emphasis. Anything we submit to DHEC
10 has to be submitted to you all at the very same time
11 we submit it to DHEC. Anything we get from DHEC has
12 to be submit to you all, I think, I forget in the
13 agreement but in a matter of a day or so. So,
14 telling County Planning Commission, Anything we give
15 to DHEC has to be given to you simultaneously. That
16 was correct.. It does require that. And anything
17 from DHEC to them has to be timely provided to county
18 planning.

19 The statement about their duty is absolutely
20 correct. The development agreement does require that
21 as with everything else one looks at the total body
22 of host agreement, development agreement and all of
23 the representations made to get those agreements.
24 The County Solid Waste Management Plan, WMP, that was
25 modified in 2013 to accommodate all the above

1 requires that.

2 So, here's what we now know. We only discovered
3 this because a staffer at the county, after all these
4 controversies with MRR come up, the Freedom of
5 Information Act request, a FOIA request to DHEC and
6 comes back with a bunch of documents that I was going
7 through the first time literally in the past few
8 days. And I find -- let's go back to middle of 2014.

9 Now, here's a guy saying that, Anything we
10 submit to DHEC -- anything we submit to DHEC has to
11 be given to you simultaneously.

12 Yes, they did have that duty. Did they follow
13 it? No. Work plan for site specific hydrogeological
14 investigation, this was 13 pages plus 36 pages of
15 engineering tables and logs [indiscernible] this one
16 is Exhibit No. 8, Your Honor. And it's August,
17 revised in September of 2014. So again, we're
18 looking at five months or so. This was submitted to
19 DHEC this nearly 50 page report, written report, was
20 submitted to DHEC August, revised September of 2014.
21 Keeping in mind that January of '15 is when he's
22 saying any documents we give to DHEC we have to give
23 to y'all simultaneously.

24 On page five of this report it says, During
25 recent meetings between MRR and DHEC, it was

1 confirmed that the modification of the Class 2 permit
2 to meet the requirements, that's regulation 61-107.19
3 Part 5, Class 3 landfills. They're talking to DHEC
4 about modifying the Class 2 permit to meet the
5 requirements for Class 3. This the huge. Coal ash
6 is supposed to be deposited in Class 3 landfill.
7 Would require a minor permit modification. This is
8 not minor. Part of the conclusion, which I'll soon
9 get to if I have time, talks about the -- I'll
10 address the conclusion between MRR and DHEC to call
11 these major changes. And I'll recite the reg which
12 defines minor and major modifications to permits to
13 you shortly as well, Your Honor.

14 So, they want to make changes to what they're
15 negotiating behind the backs of Pickens County, no
16 notice to Pickens County. Although, the MRR guys
17 says correctly says that anything we give to DHEC has
18 to be submitted to you. They never gave these
19 documents to them. To this day have never formally,
20 only through a very recent FOIA request did we ever
21 see this stuff, that behind the backs of county
22 council, behind the backs of county planning, behind
23 the backs of Pickens County and its citizen, MRR and
24 DHEC, by middle of 2014 are having meetings to talk
25 about changing requirements from Class 2 to Class 3.

1 There's engineer document.

2 So, Your Honor, they weren't furnishing -- they
3 didn't do what they told county planning that they
4 had to do. This is subterfuge. It gets worst. This
5 is August, submitted in August. Now, when you do an
6 engineering report that's 50 pages long or
7 thereabouts, it takes a long time to put that
8 together. So, we don't know yet because we're so
9 early into it. Which is why I need to depose these
10 DHEC people, I need to depose Mr. Hector and I need
11 to depose Mr. Brown and I need to depose Dan Moore,
12 in particular. But sometime by middle or so of 2014
13 they are talking to DHEC about changing this permit.

14 So, then we go to December 15th of 2014. And
15 again, Your Honor, I'm referring to going back to Dan
16 Moore's statement to County planning January 12th of
17 2015 about anything we submit to DHEC has to be
18 submitted to you at the very same time. More
19 subterfuge. One month before he makes that statement
20 is the site specific hydrogeologic investigation
21 report. This by CEC, which is an engineering firm of
22 which Scott Brown is the primary engineer. Scott
23 Brown being one of the people who submitted an
24 affidavit for today's motion.

25 So, Scott Brown's firm on behalf of MMR

1 [verbatim], one month before these statements are
2 made to County Planning Commission, quote on Page 1.

3 During recent meetings between MRR and DHEC, it
4 was confirmed that a modification of the Class 2
5 landfill permit to meet the requirements of, cites
6 the reg, to meet the requirements of Class 3
7 landfills, would require a minor permit modification.
8 To satisfy Class 3 landfill requirements, MRR engage
9 Civil Enviromental Consultants, CEC, to provide
10 additional data for permit modification.

11 So, this is a month before these false
12 fraudulent statements are made to county planning.
13 They submit yet another report, this one is 19 pages
14 plus about 60 pages, I didn't count them page by
15 page, but a good 80 pages roughly of engineering
16 reports, table, logs, appendices in order to convince
17 DHEC to add a liner, to change the types of waste, to
18 make changes in regard to such things as final cover,
19 ground water monitoring, basically to change this
20 from a Class 2 really to meet the requirements of a
21 Class 3 so that could put CCR in it behind the backs
22 of Pickens County. If this were on the up and up why
23 would they have not notified Pickens County, Hey
24 guys, we'd like to make a change, do you have some
25 input? They did not do that. They were required to

1 do that.

2 As Mr. Moore says the development agreement, We
3 view the whole body of the agreements between MRR and
4 Pickens County, development agreement, host
5 agreement, County Solid Waste Management Plan, all
6 those things would require input because they end up
7 making changes.

8 I'll get to changes that were made and then we
9 can talk about whether these are really minor or
10 major and whether there has been efforts to convince
11 DHEC of calling this piece of furniture blue. And if
12 we call it blue all day long maybe people will think
13 it's blue but it's really brown. Anyway---

14 THE COURT: Let me ask a question.

15 MR. POLIAKOFF: Yes, sir.

16 THE COURT: Just to clarify my understanding.
17 Was the definition of Class 2 changed by DHEC and if
18 so when?

19 MR. POLIAKOFF: The definition of Class 2 has
20 never been changed by DHEC.

21 THE COURT: Okay. All right.

22 MR. POLIAKOFF: What occurred, Your Honor, was
23 in the permit, here's the original permit. And
24 here's -- DHEC has interpretation and apparently
25 DHEC's interpretations we will show you, and I have

1 affidavits to show that DHEC's interpretations if
2 it's going to allow CCR in a Class 2 landfill, I have
3 convincing affidavits from knowledgeable people that
4 say that A, it violates federal regulations. B, it
5 violates South Carolina statutes and regulations, you
6 cannot put it into a Class 2 landfill, it's required
7 to be Class 3. Much of the discussion around the
8 United States of America is whether it should be
9 classified as hazardous, which is a massively higher
10 regulated standard. It's not currently classified as
11 hazardous.

12 So, the thinking around the country is that it
13 has to be different states define their own landfills
14 differently. South Carolina has Class 1, 2 and 3.
15 Class 2 being construction and demolition and land
16 clearing debris, building materials and tree stumps
17 that don't cause environmental problems. Class 3 is
18 municipal solid waste. It is for solid waste and
19 includes a whole host of things including something
20 called special waste. I've got affidavits from
21 extremely knowledgeable people, Your Honor, they are
22 Exhibits 2, 3, 4 and 5 regarding special waste. This
23 is a special waste. CCR is a special waste. By law
24 in South Carolina special waste can only go into a
25 Class 3 landfill.

1 Additionally, per the County Solid Waste
2 Management Plan which everybody has to follow, they
3 have to be consistent with the plan. They cannot be
4 inconsistent with the county solid waste plan. On
5 Page 18, I've got the Solid Waste Management Plan,
6 Your Honor, as Exhibit 7. No special waste in
7 landfills in Pickens County. No special waste in
8 landfills in Pickens County. So, even if they want
9 to try to say that CCR or some type of CCR isn't a
10 special waste, it is. But even if they're claiming
11 that it's not a special waste, it's still prohibited
12 by the County Solid Waste Management Plan.

13 THE COURT: So, is DHEC taking a position as to
14 whether the coal ash is allowed under Scheduled 2 or
15 whether it's special waste?

16 MR. POLIAKOFF: They have -- based from what we
17 know, and again, their knowledge is very limited
18 because none of this was shared with the county and
19 we've only got one FOIA request and I have not had
20 opportunity to depose DHEC people or depose these
21 people from MMR -- MRR that I need to. Apparently
22 DHEC is discussing that with them. There's plenty of
23 communications about approving this for CCR.
24 Apparently DHEC is on a track saying we want to see
25 the waste, we want to be able to test it and then

1 tell you if it's below these thresholds, then it
2 might be allowable for this landfill.

3 THE COURT: Mr. Goings, is DHEC taking a
4 position as to whether this is special waste or
5 whether it's allowable as Class 2?

6 MR. GOINGS: Great question. So, the regulation
7 that we point out.

8 THE COURT: Yes, sir.

9 MR. GOINGS: Says this. That the landfill
10 submits a waste characterization to DHEC. That's
11 what happens, that's the procedure. Submits a waste
12 characterization to DHEC and DHEC says whether or not
13 it's Class 2 or not. And our company will not bring
14 in any waste that's not Class 2. If DHEC says it's
15 not Class 2, you got my word it's not coming into the
16 landfill.

17 THE COURT: So, it's not -- they hadn't taken
18 the position yet, is that what I'm hearing?

19 MR. GOINGS: Right.

20 THE COURT: Okay. All right.

21 MR. GOINGS: They're preventing us from even
22 getting the waste characterization so DHEC can make
23 that. But I'll say this, DHEC has come out and said,
24 if you look at the last tab to our memo, it is
25 statements contained made by DHEC. DHEC says that,

1 Yes, coal ash that meets this requirement is a proper
2 Class 2 waste.

3 And because they found out that DHEC made that
4 determination, that prompted the termination notice.
5 And at the end of the day you got the county wanting
6 to be DHEC.

7 THE COURT: Okay. And I apologize, I'm
8 diverging a little bit, okay. Here's the question.
9 You indicated, Mr. Goings, that essentially the
10 Plaintiff is disqualified from submitting a bid
11 because of the uncertainty of whether they can accept
12 this type of waste. Specifically coal ash. Is that
13 what you told me?

14 MR. GOINGS: Well, we're being -- we cannot --
15 they will not accept our bid. They as in the entity
16 or company in which we will get the waste --

17 THE COURT: Sure.

18 MR. GOINGS: -- has told us, this is in the
19 affidavits, has told us that due to the termination
20 notice you do not have a right to operate a landfill,
21 therefore, you do not have a right to even bid. And
22 we know you've bidden and you will bid but we will
23 deem your bid nonresponsive based on the actions of
24 the county. So, we can't even get that waste
25 characterization because of this end run.

1 THE COURT: And not withstanding the existing
2 uncertainty and the uncertainty that exists because
3 DHEC has not officially made a decision in that
4 regard. And the uncertainty of a ruling based on a
5 hearing on the merits, are they qualified for that
6 company allow a bid under those circumstances?

7 MR. GOINGS: No. It is our understanding that
8 they will not allow us to bid because as it stands
9 right now we don't even have a right to operate. You
10 see what I mean? The termination notice says, You
11 can't operate.

12 THE COURT: I understand. And I understand that
13 very clearly. But here's my question. And
14 ultimately, what it means is would the -- would a
15 temporary injunction, would it be merely academic if
16 the uncertainty remains because of a potential DHEC
17 ruling and classification? And because of a
18 potential ruling on the merits? Because even if I
19 were to grant the temporary injunctive relief today,
20 there's still a question of a ruling subsequent to a
21 hearing on the merits after all of the facts or all
22 the evidence is vetted?

23 MR. GOINGS: Well two things here. First, we
24 cannot even do the waste characterization to get DHEC
25 to say it is Class 2. And the affidavit testimony

1 and the engineering testimony says that this will be
2 Class 2 waste. We're not bidding on non Class 2
3 waste, we're bidding on Class 2 waste, okay? So, we
4 are very confident that it will be a Class 2 waste or
5 we wouldn't be bidding on it. Second, and to a
6 larger point, keep in mind, this landfill accepts
7 other types of waste other than coal ash, okay. This
8 is a Class 2 landfill that accepts Class 2 waste.
9 Coal ash is just one of many types of waste that fall
10 within a Class 2. The injunction request that we're
11 asking the Court to provide is to allow us to operate
12 under our permit.

13 THE COURT: I gotcha. I gotcha.

14 MR. GOINGS: See this is the thing, we can't
15 even accept yard debris.

16 THE COURT: I understand.

17 MR. GOINGS: You see? So, this is what we want,
18 it's very clear. We want the ability to operate and
19 go forward with a Class 2 landfill, okay? Whether or
20 not coal ash is a Class 3 or Class 2, we know it's
21 Class 2 but put that to the side. We can't even do
22 anything or you're going to jail. I mean, that's
23 literally what the letter said. So, if you throw
24 coal ash out of the way, this is what you got. You
25 got the county and DHEC going at each other, okay.

1 And the victim of this whole process is a private
2 business that's done literally everything possible.

3 So, you got the county wanting to be DHEC, you
4 got these people that are being shut down. And at
5 the end of the day this whole thing was subterfuge,
6 misrepresentation and going around the backs of the
7 County. Well, the fact of the matter is Pickens
8 County is in Pickens County. Pickens County isn't
9 DHEC. So, Pickens County doesn't need to get to tell
10 DHEC what waste they can accept. These folks, Class
11 2 landfill, they're entitled under the law to accept
12 Class 2 waste. And the action, the end run, to go
13 around DHEC, to cut them off and say, you're not
14 allowed to do anything is an absolute encroachment of
15 our right. We got permits that allow us to do it, we
16 got agreements that allow us to do it but they don't
17 like the waste that they agreed to accept, which is
18 Class 2 waste. And now they want to cut the deal
19 off.

20 And this is the thing--

21 THE COURT: Hold on, you're getting a little
22 excited. You're going beyond the scope of the
23 question that I posed to you. I understand your
24 position very clearly--

25 MR. GOINGS: Okay.

1 THE COURT: I do --

2 MR. GOINGS: The coal ash is just one part of
3 it.

4 THE COURT: I understand.

5 MR. GOINGS: But the termination notice, what
6 we're asking, we don't want you to make a
7 determination -- or you shouldn't make a
8 determination whether or not coal ash is Class 2 or
9 3, that's not what we're asking. We're asking to
10 just allow us status quo to continue on the process
11 to do what we're lawfully allowed to do. If they got
12 problems with DHEC, let them deal with DHEC. We just
13 want to operate a business. Because they got our
14 property, they got 2 million dollars of our property.
15 They certainly hadn't deeded back, okay. And we're
16 not able to operate business, so.

17 So, as far for exceeding the scope--

18 THE COURT: I understand. I full, well
19 understand your position, okay?

20 MR. GOINGS: Okay.

21 THE COURT: And I'm going to give you time to
22 respond.

23 MR. POLIAKOFF: Thank you, Your Honor.

24 THE COURT: I know that I diverged then
25 Mr. Goings diverged even further.

1 So, Mr. Poliakoff, get us back on track.

2 MR. POLIAKOFF: I have many responses to what
3 counsel just said. The last comment, if they have a
4 problem with DHEC is the most interesting. Because
5 again, I refer to the meetings between MRR and DHEC
6 hidden, concealed from Pickens County, hidden,
7 concealed from County Planning Commission, the
8 citizens of Pickens County to change very important
9 things without any notice to them, notice was
10 required to them. So, here's what the old permit,
11 2008, that was negotiated in good faith by the county
12 and which is the appropriate permit.

13 This permit is limited solely to the disposal of
14 items listed in Appendix 1 of Regulation 61-107.19.
15 Now, that thing list C&D, LCD, another benign
16 category called brown goods, which is busted up
17 furniture and similar. And another thing of animal
18 carcasses. It doesn't consist of industrial,
19 chemical process, ash, sludge, etcetera. So, to
20 cover that point, Quote, All other waste, including
21 animal carcasses, are prohibited from disposal in
22 this landfill. This is the appropriate permit. The
23 illegal permit --

24 THE COURT: That's the county permit to which
25 you're referring?

1 MR. POLIAKOFF: No, this is a permit granted to
2 the MRR but in conjunction with the County Solid
3 Waste Management Plan--

4 THE COURT: I'm just trying to make sure that
5 that's the permit granted by DHEC or by the county.

6 MR. POLIAKOFF: It's a permit granted by DHEC,
7 yes sir.

8 THE COURT: Gotcha.

9 MR. POLIAKOFF: For this landfill it is
10 appropriate. Behind the backs of the county they
11 negotiated without ever -- they to this day never
12 sent this new permit to Pickens County. This new
13 permit that they keep quoting from that they say
14 allows them to put CCR, they never even mailed it to
15 Pickens County to this day. Nor has DHEC. They just
16 never sent it. For the county to even have the
17 ability to appeal, the DHEC regs say, We mailed a
18 permit to effected parties and then there's
19 opportunity for public comment, public review. The
20 reason to subterfuge and to avoid public comment and
21 avoid public review, you call it a minor modification
22 instead of a major modification.

23 So, let's look and see what changes were.

24 THE COURT: Mr. Poliakoff, I'm going to take a
25 very short break.

1 MR. POLIAKOFF: All right, sir.

2 THE COURT: I'm going to come back in and give
3 you five minutes to sum up, okay? And then, I may
4 have a couple questions for you. I just need to take
5 a break, I apologize to you.

6 MR. POLIAKOFF: Yes, sir.

7 THE COURT: Okay, so we'll come back in on the
8 record in five or ten minutes.

9 MR. POLIAKOFF: Thank you, sir.

10 THE COURT: All right.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: All right, Mr. Poliakoff.

13 MR. POLIAKOFF: Thank you, Your Honor. Your
14 Honor, I want to make a reference again when Mr. Dan
15 Moore's told the County Planning Commission that
16 Anything we submit to DHEC has to be submitted to you
17 at the very same time.

18 Wasn't done. Many things filed not done.

19 And anything we get from DHEC has to be
20 submitted to you in a matter of a day or so.

21 Not done. So, we talk about this valid permit
22 from 2008. And then we talk about the invalid
23 permit. And Your Honor is part of -- I'm going to
24 show Your Honor the administrative remedies have not
25 been exhausted yet. I'll get to that in just a

1 minute. But additionally we are appealing that
2 permit.

3 And yes, there typically is only 15 days,
4 sometimes 30 days to appeal a permit issuance but
5 it's from the time that DHEC mails it. DHEC never
6 mailed this permit nor did MRR never mail the
7 permits. Never even been furnished the permit for
8 the landfill that's the subject of the host agreement
9 between MRR and Pickens County, the subject of the
10 development agreement between MRR and Pickens County,
11 the subject of the County Solid Waste Management Plan
12 has never been finished. These people do not -- MRR
13 does not have clean hands. Since this is an
14 equitable relief, a motion for injunction is
15 equitable relief, case law is clear you got to have
16 clean hands. You can't come in with uncleaned hands.
17 The hands of MRR Your Honor are dirty.

18 So, let's see the new permit that they say are
19 minor modifications. Where previously all other
20 waste other than CD -- C&D, LCD, are prohibited, that
21 was clarified, the old one. So, the new permit
22 issued without any involvement, any notice, any
23 opportunity to Pickens County or its citizens. They
24 eliminated this sentence about all other waste are
25 prohibited. They added, this is deceit and

1 subterfuge, they added quote, And any other waste
2 approved by the department for disposal in a Class 2.
3 That's a major change from what Pickens negotiated
4 with MRR. They added provisions for a liner. You
5 don't have a liner for normal C&D, LCD. You have a
6 liner when you have more hazardous, more serious,
7 more difficult to manage waste. They changed
8 provisions for final cover. They're other changes in
9 there as well.

10 Now again, the reason for calling it minor
11 instead of major, major the regulations require
12 public review and comment, minor they don't. So,
13 this is part of the way that they continue their
14 subterfuge with keeping Pickens County in the dark.
15 And so, we've gotten material misstatements to the
16 Court, material misstatements to county planning on
17 which county planning issued a letter for land use
18 approval in January of 2015. And so, then we get to
19 some other issues of whether this is special waste.
20 And I believe that counsel said that they didn't
21 think this was special waste. And so, on that issue
22 of special waste in South Carolina clearly has to go
23 into a Class 3 special waste is defined by statute
24 44-96-390. Define special waste and it talks about
25 waste that are hard to characterize, hard to manage.

1 And it talks about quote, Industrial process wastes,
2 waste from pollution control processes.

3 I have affidavits from extremely knowledgeable
4 people, I'll address those if I have time. They are
5 Exhibits 1, 2, 3, 4 and 5 that talk about how any
6 CCR, whether it's got low threshold issues or higher,
7 meets the qualifications of special waste. So,
8 they're not telling the Court they don't think it
9 meets the definition of special waste. This is
10 crucial. Because in the county's Solid Waste
11 Management Plan, people refer to as SWMP, this is an
12 important document because the statutes are clear
13 that the -- anything they do has to be consistent.
14 The word consistent is a big deal. There's been a
15 lot of litigation about whether things are consistent
16 or not consistent. DHEC cannot legally act in a
17 manner that is inconsistent with the county's solid
18 waste plan.

19 County Solid Waste Plan on Page 18, and I've
20 included this excerpt as Exhibit number -- Exhibit
21 No. 7, Your Honor. Page 18, Paragraph 3, Special
22 waste. Special waste is defined as commercial or
23 nonresidential. It goes on with definition includes
24 pretty much the same language as the statute
25 44-96-390. Includes industrial process waste, waste

1 for pollution control processes. Bottom line,
2 special waste is not accepted at any of the county
3 facilities. No facility, private owned, public owned
4 in Pickens County per this can accept special waste.

5 So, is it special waste? Well, I got affidavits
6 from extremely knowledgeable people that says it's
7 waste, meets all the definitions of special waste.
8 So, what is MRR's consultant telling DHEC? This is a
9 another MRR document. This is 68 pages plus
10 appendixes. Big engineering document. They go minor
11 permanent modification. Again, like calling this
12 furniture here blue, it's blue furniture, it's blue
13 furniture to try to make it blue, it's still brown
14 furniture. Minor permanent modification. We've seen
15 largely what the minor -- what the modifications are.

16 So, this is submitted in March of 2015. A
17 couple of months after this county planning
18 commission. This document consists of a minor permit
19 modification application to obtain the option to
20 develop sells of the facility with an alternate liner
21 system as opposed to the currently permitted Class 2
22 system. They're showing a distinction between a
23 liner system. Now, these words alternate liner
24 system, when you get to whether something is a minor
25 modification or a major modification of a regulation,

1 an alternate design is one of the things that
2 qualifies it as a major modification. If a alternate
3 liner system is not an alternate design, I don't know
4 what else would be.

5 Other documents that CEC, the engineering firm
6 for MRR submits talks about alternate liner design.
7 There's also DHEC correspondence that calls it
8 alternate liner design. It's an alternate design.
9 The regs, Your Honor, they're kind of hard to find
10 and read through. I've attached some of the regs as
11 our Exhibit 16.

12 R61-107.19 Part 1 A48, Major modification means
13 a change that substantially alters the facility, as
14 other language, alternate designs from the designed
15 prescribed alternate designs.

16 This is an alternate design.

17 And so, it also has liner system engineering
18 that they've included in this report. Page 51 this
19 quote. Again, this is the question, is it special
20 waste or not? The landfill will accept Class 2 and
21 certain special wastes. They agreed with what they
22 told DHEC. They called it special waste. This is
23 important. Special wastes are prohibited in Pickens
24 County through the Pickens County Solid Waste
25 Management Plan. They were crafty in getting --

1 there's an amendment to the development agreement and
2 they were crafty at changing some things from calling
3 it C&D. Counsel admitted that these were not
4 substantive changes only language changes. But they
5 didn't change everything. They didn't change the
6 Solid Waste Management Plan and outside of the couple
7 of characterizations, they didn't change the rest of
8 it either. And they sure didn't change South
9 Carolina or federal statutes and regulations. But
10 they called it themselves. This is a 68 pages plus
11 numerous pages of tables and appendixes to DHEC, huge
12 engineering report. This landfill will accept Class
13 2 and certain special waste. Those are prohibited in
14 Pickens County.

15 I'm wrapping up, Your Honor. First of all,
16 they've not excluded their administration remedies.
17 They have a right to appeal to the Pickens County
18 Planning Commission. Sometimes people say it would
19 be futile. I can assure Your Honor it would not be
20 futile. Pickens County, if they would agree to limit
21 it as they agreed in everything in the light of day
22 that they told Pickens County about this landfill.
23 If they would limit it to C&D, LCD, they can start
24 taking it as soon as DHEC says you can take it.
25 We're not trying to restrict that.

1 THE COURT: Well, you addressed one of my
2 questions then.

3 MR. POLIAKOFF: It would not be futile. County
4 Planning Commission -- the county officials have
5 assured me that they want a dialogue. They attempted
6 to have a dialogue questions such as where is the CCR
7 coming from? Tell us about it. And they were met
8 with a brick wall from MRR. We suspect it's coming
9 from out of state for the simple reason that the
10 major utilities in South Carolina who produce coal
11 ash have already entered into agreements for proper
12 disposal and to proper types of landfills. There are
13 apparently some minor generators that produce small
14 generation of this type of waste that may do it but
15 for large quantities they have -- they have since
16 indicated that they also want a variance instead of
17 making this a landfill so that the citizens of
18 Pickens can put their building debris and tree stump
19 debris for 20 to 25 years, which is what all the
20 discussions were, they want to fill it up in five
21 years. It's likely out of state, they just won't say
22 it.

23 But to get to the point, Your Honor, the
24 planning commission wants a dialogue. And they keep
25 saying that this letter from County Planning

1 Commission issued January 11th threatens criminal
2 penalties, etcetera, etcetera. I ask Your Honor to
3 read the letter, it's Exhibit 14 to ours. And
4 towards the bottom of the page, talking about the
5 significant deviations for the information you
6 provided to us in 2007, 2015, these changes are
7 material alterations. Talks about cease and desist.
8 Quote, Until such time as you have presented
9 sufficient information to the commission of your
10 intention to strictly comply with their 2007, 2015
11 land use approval.

12 County commission was offering a dialogue here.
13 But instead what did they do? They sued, get this
14 Your Honor, not only did they sue Pickens County for
15 25 million dollars, the five individuals who sit on a
16 County Planning Commission, these are not paid
17 people, these are volunteers, they all have other
18 jobs. They sued them individually in their
19 individual capacity and individually for 25 million
20 dollars. Being the same five people they just
21 barefaced lied to in January of 2015, they have the
22 gall, the bad faith to do a frivolous proceeding.
23 You know what this proceeds is Your Honor? It's
24 called a SLAPP suit, S-L-A-P-P. It stands for
25 Strategic Lawsuit Against Public Participation. It's

1 for the purpose of bullying and intimidation.

2 First of all, under the South Carolina Tort
3 Claims Act, one doesn't name individuals of a
4 governmental body. One sues the body if it has a
5 legitimate beef against the body. If you want to
6 intimidate you name individuals and ask for millions
7 of dollars from them. Again, the people that they're
8 suing are the people they told barefaced lies to.
9 But these people are still on county planning saying
10 present sufficient information. So, they have not
11 exhausted their administrative remedies. It would
12 not be futile. County Planning Commission wants a
13 dialogue, they want information. And from what I --
14 the indications that I've heard, the county, if they
15 would agree, if MRR would agree that it's just C&D,
16 and land clearing debris, you can start bringing it
17 in. We don't want the coal ash because that's a
18 change.

19 Now, Your Honor, additionally, as far as
20 irreparable harm -- also we're appealing the permit,
21 the DHEC permit, this illegal permit that was done in
22 2015. We're appealing that. That appealed document.
23 I didn't have time to do it this week. I literally
24 have been swamped this week in trying to put all of
25 this history, interviews, affidavits, hiring an

1 expert together, hopefully will be filed tomorrow.
2 We're appealing that permit. I believe that we will
3 be -- we will be successful. If the staff doesn't
4 change it immediately, then the DHEC board will do
5 it. I predict a high likelihood of success. Because
6 it cannot be with anyone using any intelligent
7 interpretation of Regulation 61-107.19 Part 1 A48, if
8 I remember it, Your Honor.

9 THE COURT: Be precisely right because I'm
10 certainly not going to recall it.

11 MR. POLIAKOFF: Tell us how you define major and
12 minor modifications. And be no one with the ability
13 to read would characterize this as a major
14 modification. So, 2015 permit is invalid, it should
15 be rendered null and voided. I think we have it high
16 lightened there. So, they haven't exhausted
17 administrative remedies with the county. The county
18 intends to appeal the 2015 invalidly, illegally
19 obtained permit.

20 In addition, there's no irreparable harm, all
21 they're talking about is income from it. We will let
22 them, if they'll limit it to C&D, LCD, we'll let them
23 do that. The county's not particularly happy with
24 them after learning about all the fraud and
25 misrepresentations. If they would limit it, they

1 would agree to that. They just don't want these
2 other wastes that are specifically prohibited
3 previously. And by the way MRR has other landfills,
4 this is MRR Pickens. But MRR7, which really we
5 understand calls the shots on all these, has other
6 landfills. They can put CCR in and they do. They've
7 got landfills in other states.

8 And by the way, if they want DHEC to do
9 characterization of wastes, they can do that. DHEC
10 can come test their waste. They got to tell DHEC
11 where it is, where it's coming from and then DHEC can
12 do it. So, DHEC can do that. Whether or not the
13 county wants them to do it or not. But there's no
14 irreparable harm. If by quirk if the judicial system
15 fails and this fraudulent behavior is rewarded some
16 day with a judgment against the county, Pickens
17 County is not leaving the state, it's not leaving the
18 county, it's doing business, it has assets, it has
19 income, it's not irreparable harm. They have an
20 adequate remedy of law, the county has assets, the
21 county has income. There's nothing necessary for
22 them. Irreparable harm would occur if Your Honor
23 allows them to do anything toward the development of
24 bringing CCR into this county.

25 I ask Your Honor to look first of all at our

1 affidavit, Exhibit No. 1, which is a recorded
2 affidavit from a man who has devoted most of his
3 adult life to researching such things as CCR. His
4 name is Dr. Avner Vengosh. His CV is 35 pages long.
5 It is attached to his report. He is a professor -- a
6 Ph.d professor at Duke University who's done
7 extensive research of coal ash who talks about the
8 dangers to water ways, even with a liner, the dangers
9 to water ways. CCR has a high potential, it's dust.
10 So, it has a high potential to be carried by the air.
11 It carries toxins which are dangerous to people,
12 dangerous to water ways, it gets in surface water, it
13 gets in ground water, it causes terrible problems for
14 human health and terrible problems for the
15 environment. It belongs to a minimum of Class 3
16 landfill.

17 But I ask you also to consider the affidavits of
18 Shelley Robins, who is the vice chair of The State
19 Solid Waste Advisory Counsel. Wes Hulsey, who is the
20 engineer, has got his own private firm, who's been
21 the engineer for Pickens County. And a couple of the
22 Pickens County Christopher Brink, Joe Wilson who are
23 heads of departments of Pickens County. But they
24 have -- there's no irreparable harm, they've got a
25 adequate remedy of law. If some day something goes

1 array they can have some chance of success.

2 Additionally, Your Honor, before Your Honor
3 should consider anything like this with the issues
4 that Your Honor has heard today, I need to depose,
5 Mr. Hector, I need to depose Mr. Brown, I need to
6 depose Dan Moore and I sure need to depose several of
7 these DHEC people. And I would like to do that and
8 submit that, Your Honor. If Your Honor has any
9 inclination but to simply deny this motion outright,
10 I need to submit those to Your Honor.

11 Additionally, Your Honor, I did get their brief
12 last night, their legal brief last night. I did have
13 the motion, I personally had it about eight days, I
14 think the county had it maybe 10 days ago. So, I
15 responded to the motion in the memo that I handed
16 everyone this morning. The memo that they handed
17 last night I would need time to respond to that, Your
18 Honor. Perhaps 10 days if Your Honor would allow me
19 to respond to that. Unless Your Honor is willing to
20 dismiss the motion outright then I should not need to
21 respond.

22 The legislature, Your Honor, counsel for MRR
23 mentioned the legislature, here's what's occurred so
24 far in the legislature. A bill passed the house
25 unanimously last week, not a single dissenter that

1 says coal ash can only be placed into Class 3 not
2 Class 2 landfills in the State of South Carolina.
3 They're not many pro environment bills that pass the
4 South Carolina House of Representative without a
5 single dissenter. It did. It is in the senate. I
6 understand the senate committee -- my information is
7 that a senate committee is voting on it today.
8 Senate rules are a little more complex, as I
9 understand it, than house rules. I am assured by
10 people in the senate that it has a high likelihood of
11 passing. But I can tell you what the house thought
12 of it. The house thought unanimously that it is
13 inappropriate in a Class 2 landfill whether you add a
14 liner or try to make a Class 2 into a Class 3 behind
15 the scenes.

16 Your Honor, finally, anytime somebody is
17 requesting an equitable relief, they've got to have
18 clean hands. MRR has no clean hands in this case.
19 It has submitted false statements under oath to this
20 Court. It has given material misrepresentations,
21 false statements to county planning on which the
22 county planning letter on land use approval issued
23 about a year ago was based -- they do not have clean
24 hands, Your Honor. They're not entitled to this
25 relief. Thank you.

1 THE COURT: Thank you, Mr. Poliakoff.

2 Now, let me understand the position of the
3 County. The county acknowledges that it did enter
4 into an agreement with the Plaintiff for a landfill
5 in compliance with the 2008 permit, am I correct?
6 Which essentially excluded coal ash and special
7 waste. That's the position of the County. I believe
8 your argument was that the county acknowledges that
9 it did enter into an agreement with the Plaintiff to
10 provide a landfill that was in compliance with the
11 2008 permit?

12 MR. POLIAKOFF: Yes, sir. If MRR would give
13 assurances to the county they will strictly comply
14 with the 2008 permit, limiting it to C & W
15 [verbatim], LCD, prohibiting all other wastes, I
16 believe the county would readily agree.

17 THE COURT: Or in the alternative the Court,
18 could issue an injunctive relief of enjoining the
19 county from prohibiting the Plaintiff from conducting
20 a landfill or operating a landfill under the 2008
21 permit? To which all parties acknowledge there
22 clearly was a meeting of the minds?

23 MR. POLIAKOFF: Actually, Your Honor, I have
24 contemplated having likely will file a motion showing
25 irreparable harm to the County if CCR comes into this

1 county. It's clearly against the intentions of all
2 of the county officials. And a motion prohibiting
3 MRR from bringing coal ash into Pickens County. I
4 have been playing--

5 THE COURT: I understand coal ash. Coal ash I
6 understand that y'all are at an impasse regarding
7 coal ash. And that's essentially the substance of
8 the dispute that's arisen between the parties.

9 MR. POLIAKOFF: It is.

10 THE COURT: But with regard to all other waste
11 as permitted under the 2008 DHEC permit, the parties
12 aren't at odds, am I correct?

13 MR. POLIAKOFF: The parties are not at odds.

14 THE COURT: All right, I just want to make sure.
15 Is this a jury trial or non-jury trial?

16 MR. POLIAKOFF: We request a jury trial.

17 THE COURT: Okay. All right. I'm going to let
18 you respond. I've been very liberal with the time
19 this morning and I'm going to give you the
20 opportunity to respond too although I'm going to
21 limit you as well. Okay. Okay. All right.

22 Mr. Goings, I'll give you three minutes, okay?

23 MR. GOINGS: Yes, Your Honor. I'm going to show
24 you this 2008 permit.

25 THE COURT: Yes, sir.

1 MR. GOINGS: The 2008 permit, I'll use his
2 board. 2008, Permit's limited solely to disposable
3 items listed in Appendix 1 of Regulation 61-107.119,
4 okay. That's what the 2008 permit says. If you ask
5 DHEC, DHEC says that coal ash falls within this
6 regulation. You see?

7 MR. POLIAKOFF: I object to hearsay. And I need
8 to depose DHEC on that.

9 MR. GOINGS: And so, it's not, Your Honor.
10 Appendix one, I've got Appendix 1.

11 THE COURT: I don't want to argue this point
12 because I think you both told me that DHEC hasn't
13 issued an opinion in that regard yet. Am I right?

14 MR. POLIAKOFF: They have not issued an opinion
15 specifically on CCR to my knowledge. We have not
16 been privy to most of what DHEC's doing. But I've
17 got -- if Your Honor wants to see it--

18 THE COURT: No, I --

19 MR. POLIAKOFF: Attached to Appendix 1 is
20 Exhibit 15 --

21 THE COURT: I want to read it all. It's a good
22 thing it's not football and so I have some time this
23 weekend to read what you've given to me, okay? But
24 if it's in your submission at this point, I'm going
25 to read it.

1 MR. POLIAKOFF: Exhibit 15 has Appendix 1 in it,
2 that's what's allowed other than animal carcasses.
3 Because that's excluded.

4 THE COURT: Okay.

5 MR. POLIAKOFF: We would agree to Appendix 1
6 waste.

7 THE COURT: Okay.

8 All right, you get a extra minute, Mr. Goings,
9 because Mr. Poliakoff interrupted you.

10 MR. GOINGS: Your Honor, this is the thing, we
11 disagree substantively that under the old permit that
12 CCR is prohibited, okay. And this goes back to the
13 ultimate issue. That's a DHEC call, not a county
14 call. You see? We want to operate under this permit
15 and the current permit. Because it's DHEC's purview.
16 It's DHEC's right under the law to say what is Class
17 2 and Class 3. They want to limit it, our landfill,
18 to grass clippings out of somebody's yard and
19 branches that fell because of an ice storm, okay.

20 MR. POLIAKOFF: That's what they agreed to, C&D,
21 LCD.

22 THE COURT: I understand, Mr. Poliakoff.
23 Go ahead, Mr. Goings.

24 MR. GOINGS: That is not what this appendix
25 relates to. So, they want us to have a little tiny

1 landfill that only takes just a little bit of stuff.
2 But that's not what our permit allows and that's not
3 what they agreed to. The amended development
4 agreement, which is in effect, that they signed, they
5 had a legal counsel to draft, says, We have a right
6 to have a Class 2 permit, okay. Those with Class 2
7 permits have a right to accept Class 2 waste. That's
8 all we're asking. Is to accept Class 2 waste. We're
9 not asking the Court to make a legal determination
10 for or against coal ash. We just want to be able to
11 continue doing what was agreed to and promised for
12 us.

13 And this is the thing, if DHEC says that coal
14 ash doesn't meet the requirements for this
15 regulation, you know what, we're not accepting it.
16 But we know that the waste that we're bidding on is
17 Class 2 waste. And we know that they're preventing
18 us from even submitting a bid. This whole argument
19 about misrepresentation, subterfuge, okay, that they
20 conjured up is fantasy, okay. It's fantasy.

21 This thing of liner, you didn't tell us you were
22 having a liner. Well, the first document in the
23 submission says it's going to be a lined landfill.
24 You got to understand that a landfill, the whole
25 landfill is not lined. There's certain portions

1 lined for certain types of disposal waste.
2 Demolition waste is not lined under the law, okay.
3 Other types of waste are lined. So, we are having a
4 lined waste landfill. And we represented that. This
5 thing about we lied about the type of landfill. We
6 said it was going to be the same kind of landfill as
7 Pickens County, that is the truth. Because you know
8 what kind of landfill Pickens County has? A Class 2
9 landfill. Class 2 landfill. You know what kind of
10 landfill we have? A Class 2 landfill. But Pickens
11 County's preventing us from operating ours.

12 So, this whole thing of subterfuge and
13 misrepresentation, I try to keep account how many
14 times he said it, it's more for soundbites than
15 anything else. Because at the end of the day, this
16 company is being deprived of their legal right, a
17 vested legal right to operate a landfill. And
18 whether or not it's -- it's the same permit. It's
19 permit LF2-0003. Whatever they want to do about
20 appealing DHEC or complaining to DHEC or saying that
21 DHEC is engaging in this huge conspiracy against the
22 company and with a company to conspire against the
23 poor citizens of Pickens County, is absolutely
24 fantasy.

25 We would request that this motion be granted.

1 We would request Your Honor to avoid irreparable
2 harm, that it would be granted by next Wednesday.
3 Now, this is the first time I've ever heard that you
4 can you can still operate as a landfill. The letter
5 we got was you shall immediately cease and desist
6 from all operations. When we got that letter, the
7 only legal right that we had to do was file this
8 action. Because you got to understand that our
9 complaint is a verified complaint and petition for
10 appeal.

11 South Carolina Code Annotated 6-29-1150 says
12 that when they take the action that they took, you
13 have to appeal to the Circuit Court. That's what we
14 did. And that's what we're required to do. And all
15 we're asking for, Your Honor, is for an injunction
16 to prevent them from continuing irreparable harm
17 until this Court, and that's -- until this Court can
18 hear that appeal. He may want a jury trial because
19 of the town hall meetings that's going on in Pickens
20 County about this, but the truth of the matter is
21 this appeal under this statute and the deprivation of
22 our legal right is a judge issue. It's a matter of
23 law for the Court in its equitable powers. It's not
24 some jury trial in Pickens County after we drum up
25 support against -- in town hall meetings, okay.

1 So, that's what we have. Thank you for your
2 patience here today and allowing us to have our
3 spirited arguments on this. Because it is an
4 important matter, Your Honor. It's an important
5 matter to this company and it's an important matter
6 to Pickens County.

7 THE COURT: Okay, all right, gentlemen, thank
8 you, very much, I appreciate it. I do recognize that
9 it is an important issue. It's one of the reasons
10 why I've heard it on a expedited basis. I also
11 recognize that there are very probably a lot of
12 conversations going on at the state house about this
13 very issue right now. And those conversations may
14 work to supercede any rulings of the Court but I know
15 that you have an immanent question before the Court
16 that needs to be resolved. I'm going to take it
17 under advisement. I'm going to take the opportunity
18 to read everything that you submitted to me.
19 Obviously, you've given me a lot of paper work, a lot
20 of affidavits, regulations to read and I shall do
21 that. And I'll rule as quickly as possible.

22 With respect to additional discovery, additional
23 depositions, at this point in time, I'm not inclined
24 to wait until additional discovery has been
25 performed. However, I'm not -- I'm also without

1 sufficient information to make an absolute ruling on
2 that. I want to take the time to deliberately read
3 everything that's been submitted so that I can make
4 an intelligent and informed decision as to whether
5 I'm ready to enter a ruling on it. I recognize from
6 the Plaintiff's perspective that you need something
7 by next Wednesday. I may, I may not, it just all
8 depends. This at first blush appears to be a simple
9 temporary Restraining Order, but I recognize that
10 it's nuance and there's a lot of issues at play that
11 I need to consider deliberately. So, thank you, very
12 much for your arguments today. And I wish you each
13 luck.

14 MR. WILSON: Thank you, Your Honor.

15 MR. POLIAKOFF: Thank you.

16 (WHEREUPON, the proceedings were concluded.)
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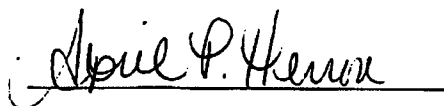
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
18th day of February, 2016.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 18, 2016



APRIL P. HERRON, Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Court Judge

Case No. 2016-CP-39-100
Appellate Case No. 2016-000762

MRR Pickens, LLC,.....Appellant,

v.

County of Pickens and William Cato,
Weldon Clark, Robert Ballentine, Jo
Johnston, Dennis Reinert, and Bob Young,
Individually and in their capacity as
Appointed members of the Pickens County
Planning Commission,.....Respondents,

CERTIFICATE OF COUNSEL

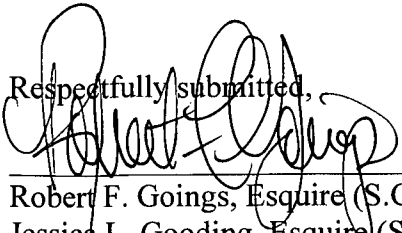
Pursuant to Rule 210(g), SCACR, the undersigned hereby certifies the Record on Appeal
in the above-captioned matter contains all material proposed to be included by any of the parties
and not any other material.

[SIGNATURE PAGE TO FOLLOW]

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October _____, 2016

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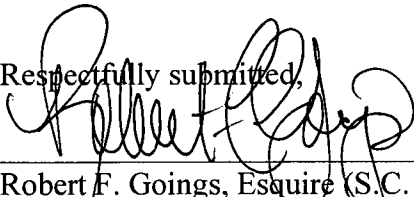
CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Record on Appeal complies with Rule 211(b), SCACR, and the August 31, 2007 Order from the South Carolina Supreme Court entitled “Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings.”

[SIGNATURE PAGE TO FOLLOW]

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