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SC Court of Appeals
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2016-001773

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SC Court of Appeals

West/Hobby, LLC,..... Respondent,

v.

County of Newberry, ... Appellant.

RECORD ON APPEAL
(Volume I of III)

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Lexington, South Carolina
July 20, 2017

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS

West/Hobby, LLC

Plaintiff

vs.

County of Newberry

Defendant

ORDER
2012-CP-36-0046

After a very careful review of the Defendant's Motion for Alter/Amend and the excellent arguments presented by both attorneys, it is the decision of the Court to deny said Motion.

So Ordered.

Donald B. Hocker
Circuit Court Judge

Laurens, SC
Date: 7-29-14

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CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	)	
West/Hobby, LLC,	)	Case No.: 2012-CP-36-00046
	)	
Plaintiff,	)	
vs.	)	
	)	**FINDINGS OF FACT AND**
County of Newberry,	)	**CONCLUSIONS OF LAW**
	)	
Defendant.	)	
	)	

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NEWBERRY COUNTY
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West/Hobby, LLC ("West/Hobby" or "Plaintiff") filed this inverse condemnation case against the County of Newberry ("the County" or "Defendant") related to a solid waste landfill the County operated on Cockrell Road in Newberry County ("Landfill"). This matter came before me for trial at the Newberry County Courthouse on December 14-15, 2015. Although Plaintiff asserted various causes of action in its pleading, it dismissed all claims prior to trial save its claim for inverse condemnation. At trial, West/Hobby was represented by James L. Bruner, Esquire and Benjamin C. Bruner, Esquire of Bruner, Powell, Wall & Mullins, LLC in Columbia, South Carolina. Defendant the County of Newberry ("the County" or "Defendant") was represented by Patrick J. Frawley, Esquire of Davis Frawley, LLC in Lexington, South Carolina.

West/Hobby, which owns land adjacent to the Landfill across Cockrell Road, claims landfill gas from the closed Landfill migrated across Cockrell Road and contaminated Plaintiff's property. According to the Plaintiff, the landfill gas migrated because the County installed a clay cap over the Landfill when it closed in 1994. The clay cap caused concentrations of landfill gas containing methane and volatile organic compounds ("VOC's") to migrate horizontally to Plaintiff's property, ultimately contaminating the property and thwarting a profitable sale of the property. The County denies and has defended vigorously against West/Hobby's claims.

"In an inverse condemnation case, the trial court will first determine whether a claim has been established." *Frampton v. S. Carolina Dep't of Transp.*, 406 S.C. 377, 385, 752 S.E.2d 269, 274 (Ct. App. 2013) (citing *Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 365, 618 S.E.2d 299, 301 (2005)). "Then, the issue of compensation may be submitted to a jury at either party's request." *Id.* at 385. Thus, the bench trial held on December 14-15, 2015 was for this Court to receive evidence and make a determination about whether the Plaintiff has established a claim for inverse condemnation. For the reasons set forth below, I find West/Hobby proved its claim.

To prove a claim for inverse condemnation, a plaintiff must show three elements: (1) affirmative conduct of a governmental entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *Byrd v. City of Hartsville*, 365 S.C. 650, 657, 620 S.E.2d 76, 79 (2005). The parties do not dispute that the public use requirement is satisfied. Therefore, the issues before this Court relate to the first two elements. After a thorough review of the evidence presented by the parties and of the arguments of counsel at trial, I find there was affirmative conduct by Newberry County which effected a taking of the Plaintiff's property.

FINDINGS OF FACT

The Court has carefully reviewed and considered all of the evidence presented by the parties during the two-day trial, including the pleadings, the numerous exhibits the parties entered into the record and the testimony from all ten witnesses who testified, three of whom were expert witnesses. Based upon its review and evaluation of the record, the Court finds West/Hobby proved the following facts by a preponderance of the evidence:

1. The County operated the Landfill on land the County owned on Cockrell Road from 1970 until 1994. The County stopped accepting waste at the Landfill on April 1, 1994. (Plaintiff's Exhibit 1).

#2 DBH

2. When the landfill closed, the County installed a 24-inch thick clay cap on top of the Landfill. The County also installed seven (7) gas monitoring points and numerous groundwater monitoring wells around the perimeter of its property.

3. The County hired consulting engineers to monitor periodically the groundwater and the landfill gas emanating from the Landfill and to file reports of their findings with the South Carolina Department of Health and Environmental Control ("DHEC").

4. The gas generated by the decomposition of materials in a solid waste landfill is principally composed of methane and carbon dioxide, both of which are colorless and odorless. The lower explosive limit ("LEL") for methane is 5% in air.

5. On November 1, 2000, Billye West and Raymond D. Hobby bought a 40.7-acre tract of land across Cockrell Road from the closed Landfill for investment purposes ("the Property"). They paid $290,000 for the Property. (Plaintiff's Exhibit 2.)

6. On June 18, 2002, Messrs. West and Hobby conveyed the Property to West/Hobby, a South Carolina limited liability company they formed for the purpose of holding real property they bought for investment purposes. (Plaintiff's Exhibit 3.)

7. The County had readings for landfill gas taken periodically at the Landfill. The first readings which exceeded safe limits for landfill gas were taken in December 2003. (Plaintiff's Exhibit 16-L, Table 6.) In 2004 and 2005, the methane readings detected in five of the seven gas monitoring points exceeded 5% LEL. (Plaintiff's Exhibit 16-M, Table 7.) As a result, the County's consulting engineers prepared—and the County implemented—a Methane Remediation Plan in 2005. (Plaintiff's Exhibit 4.)

#3

8. In the County's Methane Remediation Plan, it was recommended that a Barhole Survey using the Geoprobe™ technique be conducted to determine the extent of lateral migration of off-site methane. (Plaintiff's Exhibit 4 p.8.)

9. On February 6, 2006, Tommy Whitehead, Director of Public Works for Newberry County, wrote to the Plaintiff stating that the County had received a letter from DHEC asking it to perform subsurface testing just outside the borders of the closed Landfill. Since the Plaintiff's Property was adjacent to the landfill, the County asked for permission to enter the Property to perform the tests. (Plaintiff's Exhibit 5.) The County did not tell West/Hobby that the test was part of a Methane Remediation Plan.

10. Mr. West signed the bottom of Mr. Whitehead's letter on behalf of West/Hobby giving the County permission to enter the Property to perform the tests.

11. On March 23 and 24, 2006, the County's consulting engineers conducted the off-site methane investigation by installing twenty (20) Geoprobe™ test holes outside the property boundaries of the Landfill. (Plaintiff's Exhibit 6.) Seven (7) of those test holes were located on Plaintiff's Property. (Plaintiff's Exhibit 6 p. 9.)

12. Five (5) of the seven (7) test holes on Plaintiff's Property reported methane levels in excess of 5% LEL. (Plaintiff's Exhibit 6 p. 8.) The record contains no evidence or indication that the County reported the results of the tests to the Plaintiff.

13. Based upon this evidence and the expert testimony presented at trial, it is evident that the Plaintiff's Property was contaminated with landfill gas from the Landfill on March 23 and 24, 2006. Furthermore, it is evident the Plaintiff had no reason to suspect its Property was contaminated.

#9

14. In the summer of 2006, the County installed a passive remediation trench, known as an Interceptor Trench, along a portion of the Landfill border with adjacent properties. The purpose of the Interceptor Trench was to give the landfill gas an avenue to exhaust itself vertically so it would not migrate horizontally onto adjacent properties. (Plaintiff's Exhibit 4 p. 10.)

15. The Interceptor Trench was not completely effective in remediating the horizontal migration of landfill gas from the closed Landfill. As a result, on January 24, 2008, the County's new consulting engineer recommended installing passive methane vent wells. (Plaintiff's Exhibit 9.)

16. On February 26, 2008, DHEC approved the County's request to install 32 passive gas vents to lower onsite methane levels at the Landfill. (Plaintiff's Exhibit 10.)

17. Over one year later, in June of 2009, the County submitted a Revised Methane Corrective Action Plan to DHEC in which the County sought permission to install only six (6) passive gas vents, rather than 32. (Plaintiff's Exhibit 11.) DHEC approved that plan on August 13, 2009.

18. In December 2010, sixteen months after receiving DHEC's approval for its revised plan, the County installed six (6) passive gas vents on the closed Landfill site.

19. The County did not give any notice to the Plaintiff of the steps it was taking to address the problem, and Plaintiff had no reason to suspect landfill gas from the Landfill was contaminating its Property.

20. On January 19, 2011, the Plaintiff signed an Agreement of Purchase and Sale ("Purchase Agreement") in which Plaintiff agreed to sell the Property to Kiswire, Inc. for $520,000. (Plaintiff's Exhibit 12.) Kiswire was building a new manufacturing facility, and the

#5

Property's proximity roughly a mile from Kiswire's existing location made it the most attractive parcel Kiswire had found.

21. Subsequently, as part of its due diligence, Kiswire commissioned S&ME, consulting engineers, to perform a Phase I Environmental Site Assessment ("ESA") on the Property. Upon completing the ESA, S&ME recommended additional investigation to establish with greater certainty the identified methane levels on the adjoining property. (Plaintiff's Exhibit 13 p. 21.)

22. In March, 2011, S&ME conducted a Limited Soil Gas Assessment on the Plaintiff's Property. (Plaintiff's Exhibit 15.) S&ME installed eight (8) Geoprobe™ test holes on the Plaintiff's Property along the eastern boundary of the Property and parallel to Cockrell Road (directly across the road from the Landfill). (Plaintiff's Exhibit 15, Figure No. 3, Soil Gas Sample Locations.)

23. The Limited Soil Gas Assessment did not report finding any methane levels in excess of the 5% LEL. However, S&ME the reported the following observations:

> 1. Several volatile constituents typically associated with municipal landfills were present at the Property boundary.
>
> * * *
>
> 3. Using the SCDHEC benchmarks for vapor intrusion that the Brownfield program developed, three (3) analytes posed potential concern for buildings that may be placed on the site-benzene, tetrachloroethene & trichloroethene.
> 4. The off-set of point GW-6 towards the interior of the site indicated that the landfill gas has impacted the site interior beyond the property boundary.
> 5. The extent of geographic penetration into the subject site by the landfill effects is unknown.
> 6. The future effects of the landfill on the site is unknown. These data represent current conditions on the day of sampling only . . . .

(Plaintiff's Exhibit 15 p. 6.)

#6

7. After learning of the results of the Limited Soil Gas Assessment from S&ME, David Minnick, President of Kiswire, wrote a letter to the Plaintiff terminating the Purchase Agreement. (Plaintiff's Exhibit 14.)

8. The Court found Mr. Minnick's testimony at trial about termination of the Purchase Agreement particularly credible. Mr. Minnick testified that he called Mr. West to have a face-to-face meeting and to explain why Kiswire was terminating the Purchase Agreement. Although Kiswire had not completed its due diligence at the time it terminated the Purchase Agreement, Mr. Minnick testified that Kiswire most probably would have closed on the purchase of the Property but for the presence of three volatile organic compounds: benzene, tetrachloroethene and trichloroethene.

9. Mr. West and his daughter, Misty West, testified that prior to Kiswire's termination of the Purchase Agreement, they had no reason to suspect the Property was contaminated with landfill gas. Not only did the Court find that testimony credible, the County presented no evidence to the contrary.

10. After the contract was terminated, the Plaintiff contacted the County Administrator, reported the problem and asked that the County either buy the Property or redress the contamination problem. According to Misty West's testimony, the County Administrator responded that the County "was not interested".

11. On January 26, 2012, less than one year after discovering landfill gas was migrating from the Landfill, West/Hobby filed this lawsuit against the County.

12. In February 2014, Terracon, an environmental testing firm, conducted testing on Plaintiff's Property and found various VOC's in the four soil gas samples of the Property with

#7 DSB

benzene and ethylbenzene concentrations in excess of the EPA Regional Screening Levels for residential air. (Plaintiff's Exhibit 16-V.)

13. In May 2015, the County completed installation of an active subsurface soil gas extraction system at the Landfill. (Plaintiff's Exhibit 16-X p. 1.)

14. The active subsurface soil gas extraction system has significantly reduced the landfill gas present at the property boundaries of the closed Landfill. (Plaintiff's Exhibits 16-X and 16-Y.)

15. The clay cap the County installed on the Landfill caused the landfill gas generated from the decomposing waste to migrate horizontally toward adjacent land rather than migrating vertically directly into the atmosphere. The new subsurface soil gas extraction system attempts to overcome that migration phenomenon by drawing the landfill gas out vertically, rather than allowing the gas to passively migrate to the Landfill boundary.

16. The evidence clearly demonstrates that while landfill gas was first shown to be present on the Plaintiff's Property in March 2006, the County did not install an active subsurface soil gas extraction system until May 2015.

17. The active subsurface soil gas extraction system was known by the County to be an available remedy for landfill gas migration in September 2005 when its consulting engineer issued the Methane Remediation Plan. (Plaintiff's Exhibit 4, p. 12.)

18. Based upon the testimony and other evidence presented at trial, it is apparent the County did not install an active subsurface soil gas extraction system earlier than 2015 in an effort to save money at the time. That delay, however, prolonged the contamination of the Property and cost West/Hobby the sale to Kiswire.

#8

CONCLUSIONS OF LAW

As stated at the outset, the Plaintiff must prove three things to establish a claim for inverse condemnation: (1) affirmative conduct of a governmental entity; (2) the conduct effects a taking; and (3) the taking is for a public use. *Byrd*, 365 S.C. at 657, 620 S.E.2d at 79. While prior to *Byrd* there was a fourth element required - "some degree of permanence," the *Byrd* Court dispensed with that element. *Id.* "Whether the plaintiff has established a claim for inverse condemnation is a matter for the court to determine." *WRB Ltd. P'ship v. Cty. of Lexington*, 369 S.C. 30, 32, 630 S.E.2d 479, 481 (2006) (citation omitted). "To prevail in such an action, a plaintiff must prove 'an affirmative, aggressive, and positive act' by the government entity that caused the alleged damage to the plaintiff's property." *Id.*

I. Was there was an affirmative, aggressive, and positive act for a public use?

The Court finds and concludes that the Plaintiff has proved an affirmative, aggressive and positive act by Newberry County that caused the damage to the Plaintiff's Property. It is undisputed that the County installed a clay cap on the Landfill in 1994. In *WRB Ltd.*, *supra*, a case with facts remarkably similar to these, the Supreme Court of South Carolina held Lexington County's installation of a clay cap on a solid waste landfill was an affirmative act that supported an inverse condemnation claim. 369 S.C. at 32-33, 630 S.E.2d at 481. In that case the plaintiff alleged methane gas from Lexington County's closed landfill contaminated its adjacent property.

The plaintiff alleged that the affirmative, aggressive and positive act was the county's installation of the clay cap on the landfill. The trial court disagreed and granted Lexington County summary judgment. On appeal, the Supreme Court addressed the following issue: "Is the capping of the landfill an affirmative, aggressive, and positive act to support an action for inverse condemnation?" *Id.* at 32, 630 S.E.2d at 481. The Court answered the question in the affirmative, holding,

#9 DBM

> Here, County undertook a permanent public project in capping the landfill. Whether this action resulted in a taking is not before us. We simply find on the single element of an affirmative, aggressive, positive act that County's action meets this requirement and summary judgment should not have been granted.

Id. at 32, 630 S.E.2d at 481. I find and conclude that the act of Newberry County in capping the Landfill was likewise a permanent public project that was an affirmative, aggressive, positive act for a public use that supports an action for inverse condemnation. Therefore, the Plaintiff proved the first element of its inverse condemnation claim.

II. Did the County's conduct effect a "taking"?

The Court further finds the County's actions effected a taking of the Plaintiff's Property. The South Carolina Constitution, Article I, §13, provides that "private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property."

> In construing this provision of the Constitution, we have held, along with many other courts, *that an actual physical taking of property is not necessary to entitle its owner to compensation.* A man's property may be taken, within the meaning of this provision, although his title and possession remain undisturbed. To deprive him of the ordinary beneficial use and enjoyment of this property is, in law, equivalent to the taking of it, and is as much a "taking" as though the property itself were actually appropriated.
>
> Property in a thing consists not merely in its ownership and possession but *in the unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements of property to that extent destroys the property itself.* It must be conceded that substantial value of property lies in its use. *Henderson v. City of Greenwood,* 172 S.C. 16, 172 S.E. 689. If the right of use be denied, the value of the property is annihilated and *ownership is rendered a barren right.*
>
> What is a "taking" of property within the constitutional provision is not always clear; but, so far as the general rules are permissable of declaration on the subject, it may be said that there is a taking *where the act involves the actual interference with, or the disturbance of, property rights, resulting in injuries which are not merely consequential or incidental. . . .*

#10 DBB

Hill v. City of Hanahan, 281 S.C. 527, 530-31, 316 S.E.2d 681, 683-84 (Ct. App. 1984) (emphasis provided) (quoting *Gasque v. Town of Conway,* 194 S.C. 15, 21–22, 8 S.E.2d 871, 873–74 (1940)).

> A taking does not require the actual physical entry of the government upon the property.
>
> There may be a taking of property in the constitutional sense although there has been no actual entry within its bounds and no artificial structure has been erected upon it. When a public agency uses land which it has lawfully acquired for public purposes in such a way that neighboring real estate is destroyed or impaired in its usefulness, there is a taking within the meaning of the constitution.

S.C. Dep't of Highways & Pub. Transp. v. Balcome, 289 S.C. 243, 246, 345 S.E.2d 762, 764 (Ct. App. 1986) (citations omitted); *see also Milhous v. State Highway Dep't*, 194 S.C. 33, 8 S.E.2d 852, 854 (1940); *Chick Springs Water Co. v. State Highway Department*, 159 S.C. 481, 157 S.E. 842 (1931).

South Carolina "has previously adopted and adhered to the broadest possible view of 'what is a taking' and has construed the least actual 'damage' to be a 'taking'." *Kline v. City of Columbia*, 249 S.C. 532, 537, 155 S.E.2d 597, 599 (1967) (citing *Webb v. Greenwood County*, 229 S.C. 267, 92 S.E.2d 688).

> Although no set formula exists for determining whether property has been "taken" by the government, the relevant jurisprudence does provide significant guideposts. Determining whether government action effects a taking requires a court to examine the character of the government's action and the extent to which this action interferes with the owner's rights in the property as a whole. *Penn Central,* 438 U.S at 130-31, 98 S.Ct. 2646. Stated more specifically, these "ad hoc, factual inquiries" involve examining the character of the government's action, the economic impact of the action, and the degree to which the action interferes with the owner's investment-backed expectations. *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 426, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) (quoting *Penn Central,* 438 U.S. at 124, 98 S.Ct. 2646); *Byrd,* 365 S.C. at 658-59, 620 S.E.2d at 80 (quoting the same). Generally, the physical occupation of private property by the government results in a taking regardless of the public interest the government's action serves. *See Loretto,* 458 U.S. at 426-28, 102 S.Ct. 3164; *see also Lucas,* 505 U.S. at 1015, 112 S.Ct. 2886.

#11

Hardin v. S. Carolina Dep't of Transp., 371 S.C. 598, 605, 641 S.E.2d 437, 441 (2007). *See also Frampton v. S.C. Dep't of Highways & Pub. Transp.*, 406 S.C. 377, 752 S.E.2d 269 (2013) (holding denial of access to property for 16 months during construction activities constituted a taking); *Newsome v. Town of Surfside Beach*, 300 S.C. 14, 386 S.E.2d 274, 275 (1989) (finding a taking where rebuilding of washed-out portions of a roadway seventeen inches higher than the damaged road's original level rendered plaintiff's property the lowest point on the roadway and caused the property to flood); *Balcome, supra.* (concluding the diversion of groundwater supply away from landowner's property and lowering his lake levels was taking); *Berry's On Main, Inc. v. City of Columbia*, 277 S.C. 14, 16, 281 S.E.2d 796, 797 (1981) (holding the removal of a sidewalk and support during construction with resulting damage from flooding constituted "taking"); *Kline, supra.* (holding the rupturing of a gas line during construction which caused fire on landowner's property constituted "taking"); *Lindsey v. City of Greenville*, 247 S.C. 232, 146 S.E.2d 863 (1966) (holding the discharge of large amounts of water from a reservoir destroying a bean crop was a "taking"); *Chick Springs Water Co., supra* (holding the construction of an embankment which impounds water can constitute a "taking").

In the case at bar, West/Hobby bought the Property for investment purposes, rather than for its own use. According to testimony from Mr. West and Mr. Minnick, the Plaintiff's investment expectations were frustrated, and its ability to sell the Property frustrated, because the Property was contaminated by landfill gas that migrated from the Landfill due to the clay cap. Under the facts of this case, therefore, the Court finds and concludes there was a taking as a result of the County's installation of a clay cap on the Landfill. Though not an exhaustive list, the following facts in particular support this conclusion:

#12

(i) The clay cap diverted the vertical migration of the landfill gas being created by the decomposing waste and caused it instead to migrate laterally onto the Plaintiff's Property;

(ii) The presence of landfill gas on the Plaintiff's Property was first detected in the April 2006 Off-Site Methane Investigation Report for the Newberry County Landfill prepared by the County's consulting engineers;

(iii) The continued presence of landfill gas on the Plaintiff's Property was confirmed in the April 29, 2011 Limited Soil Gas Assessment prepared by S&ME for Kiswire, Inc.;

(iv) But for the continued presence of landfill gas on the Plaintiff's Property in 2011, Kiswire, Inc. would have purchased the Property; and

(v) The presence of landfill gas on the Plaintiff's Property diminished drastically after the County installed an active subsurface soil gas extraction system at the Landfill in 2015.

Although the taking was not immediate, the evidence establishes the Plaintiff's Property was contaminated by landfill gas as a result of the County's installation of a clay cap on the Landfill. The Court further notes, based upon the testimony of Mr. West, Ms. West and Mr. Minnick that the taking could have been avoided altogether had the County installed the active subsurface soil gas extraction system sooner. By electing not to spend the money to address the problem sooner, the County elected to prolong its taking of the Plaintiff's Property and thwart the sale to Kiswire.

III. The County's defenses to liability.

The County asserts a number of defenses to the Plaintiff's claims; however, the record does not support the conclusion that any of those defenses bars Plaintiff's claim.

The County contends the Plaintiff's claims are barred by the statute of limitations. Under the applicable statute of limitations, Plaintiff was required to bring suit within three years. *S.C. Code Ann.* §15-3-530(3). *See also Cutchin v. S. Carolina Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (recognizing that the statute of limitations in S.C.

#13

Code 15-3-530 applies to inverse condemnation claims); *Fuller-Ahrens P'ship v. S. Carolina Dep't of Highways & Pub. Transp.*, 311 S.C. 177, 179, 427 S.E.2d 920, 921 (Ct. App. 1993) (same). The Fourth Circuit Court of Appeals has recognized,

> The effect of the statute of limitations and the extent to which it is applicable depend upon the nature of the cause of action and the time when it accrues. The South Carolina rule is that there is a taking within the meaning of the constitution, and consequently an accrual of a right of action, when 'neighboring real estate, belonging to a private owner, is actually invaded by superinduced additions of water, earth, sand or other material.

Hilton v. Duke Power Co., 254 F.2d 118, 121 (4th Cir. 1958) (quoting *Milhous, supra.*). "Where, however, the cause of the injury is *abatable,* each injury gives rise to a new cause of action which may be commenced within the applicable limitations period." *Cutchin v. S. Carolina Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (emphasis in original).

Furthermore, it is well-established that the discovery rule applies to actions for trespass upon or damage to real property trespass. *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996); *Campus Sweater and Sportswear Co. v. M.B. Kahn Constr. Co.*, 515 F.Supp. 64 (D.S.C. 1979), *aff'd*, 644 F.2d 877 (4th Cir. 1981)). Under the discovery rule, "the statute of limitations begins to run from the date the claimant knew or should have known that, by the exercise of reasonable diligence, a cause of action exists." *Holmes v. Nat'l Serv. Indus., Inc.*, 395 S.C. 305, 309, 717 S.E.2d 751, 753 (2011). South Carolina courts "have interpreted the 'exercise of reasonable diligence' to mean that the injured party must act with some promptness where the facts and circumstances of an injury place a reasonable person of common knowledge and experience on *notice* that a claim against another party might exist." *Dean*, 321 S.C. at 363-64, 468 S.E.2d at 647.

#14

The County contends that if the affirmative act which resulted in the taking was the installation of the clay cap in 1994, then the statute of limitations required Plaintiff to commence its lawsuit no later than 1997, or within three years of when the County installed the clay cap. I disagree. The record in this case presents no indication that Plaintiff or the prior owner of the Property had any notice that landfill gases were migrating from the Landfill and contaminating the Property until 2011, when Kiswire terminated its contract to buy the Property. In addition to Mr. West's testimony, Plaintiff's expert witness testified that closed landfills do not immediately begin venting landfill gas. Rather, a landfill is ordinarily closed for some time before the decomposing waste begin generating and emitting landfill gases primarily composed of methane and carbon dioxide. After that, the production of landfill gas tends to follow a bell-shaped curve out for a period of up to thirty years.

The documentary evidence admitted at trial clearly demonstrates that the County's gas monitoring points along the boundary of the Landfill reported no excessive levels of landfill gas until December 2003 and further that the first time landfill gas was detected on Plaintiff's Property was in March of 2006 after the County had testing performed on the Property. The test results appeared in the Off-Site Methane Investigation Report for the Newberry County Landfill dated April 2006. Although the County received the report following the testing, it never provided the report—or the information in it—to the Plaintiff. Mr. West testified that he believed at the time that if the County found something he needed to know (like landfill gas contaminating the Property), the County would have told him. But the County told him nothing about those test results.

The County contends West/Hobby had constructive notice of its claim by virtue of the records filed with DHEC. I am not persuaded. Had the Plaintiff reviewed those records, the

#15

County argues, the Plaintiff would have discovered the facts giving rise to its claim. That argument is based upon the holding in *Fuller-Ahrens Partnership v. S.C. Department of Highways and Public Transportation,* 311 S.C. 177, 427 S.E.2d 920 (Ct. App. 1993).

In *Fuller-Ahrens,* a land purchaser sued the S.C. Department of Highways and Public Transportation, now known as the S.C. Department of Transportation, for inverse condemnation after the purchaser discovered a drainage pipe under the adjacent highway which discharged surface water onto its property. Relying on specific statutes governing highways, the Court of Appeals held a deed of right-of-way that had been filed pursuant to statute at the Department's office in Columbia "provided a record sufficient 'to impart notice,' albeit constructive notice, to Fuller–Ahrens of the deed and its contents, including the deed's reference to the Department's plans, 'just as though such transaction [was] recorded in the county where the land is situate.'" 311 S.C. at 181, 427 S.E.2d at 922. Accordingly, the Court held the land purchaser was on constructive notice of the Department's right-of-way, which encompassed the portion of the land alleged "taken," just as if the deed of right-of-way had been recorded in the property's chain of title.

I find *Fuller-Ahrens* distinguishable from this case. In *Fuller-Ahrens,* the purchaser had an obligation to examine the chain of title of the property it was buying. Since the deed of right-of-way was deemed to be in the chain of title, the purchaser was on notice of the existence of the deed. In this case, the Court finds no corresponding obligation for Plaintiff to examine the records at DHEC, nor has the County pointed to any statute which imputes notice of records filed with DHEC to potential land purchasers or to land owners. Furthermore, while Mr. West testified that he knew in 2000 that the Property was adjacent to the closed Landfill, the record contains no indication that he or anyone else on behalf of the Plaintiff knew colorless, odorless

#16

landfill gas was migrating from the Landfill to the Property until over a decade later. Had he examined the records at DHEC before buying the Property, he would have learned no more than what he already knew: there was a closed landfill across the street. What the records would not have shown, as previously mentioned, was the presence of landfill gas on the Property in 2000, for the contamination did not begin until after Plaintiff took title to the Property. I therefore find Plaintiff had no obligation to examine the records at DHEC while purchasing the Property. I further find that even if the Plaintiff were deemed to be on notice of the records filed with DHEC, nothing in those records would have placed the Plaintiff on notice of a claim against the County when Plaintiff purchased the Property.

With respect to the County's statute of limitations defense, therefore, the Court finds no fact, circumstance or indication in the record which would have placed a person of common knowledge and experience on notice of a claim against the County prior to 2011. Plaintiff had no reason to know its Property was affected by landfill gas before Kiswire terminated the Purchase Agreement, and the landfill gases contaminating the Property were odorless and colorless. As an additional sustaining grounds, the Court finds the injury the Plaintiff suffered was abatable and continued after Plaintiff commenced this lawsuit.

To apply the statute of limitations as the County suggests would not only disregard the fact that the Plaintiff's injury was abatable and continued long after this suit was commenced but also would unjustifiably and indefensibly reward the County's actions. *See Strong v. University of South Carolina School of Medicine,* 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) (holding statute of limitations is tolled where defendant deliberately withholds information from a potential plaintiff). Indeed, to the extent the statute of limitations did begin to run prior to January 26, 2009 (or three years before suit was commenced), the Court finds as a matter of law

#17

that the statute of limitations was tolled until 2011, when the Plaintiff discovered it may have a claim against the County, because the County withheld the conclusions and information contained in the April 2006 Off-Site Methane Investigation Report from the Plaintiff.

For these reasons, the Court finds the Plaintiff filed suit well within the statute of limitations.

The County also asserts assumption of risk as a defense. "The defense of assumption of risk is established when the plaintiff freely and voluntarily enters into a known danger and is subsequently injured." *Cutchin v. S. Carolina Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 38, 389 S.E.2d 646, 648 (1990) (declining to apply assumption of risk where there was no evidence the homeowners knew when they purchased their home that the home was in a flood plain or that culvert had been improperly designed). The record simply does not support a finding that West/Hobby assumed the risk that the Property would be contaminated because there is no evidence that the contamination existed when the Property was purchased or that Mr. West and Mr. Hobby knew in 2000 that landfill gases were contaminating the Property and bought it anyway. The evidence demonstrates that the contamination of Plaintiff's Property began after Plaintiff took title and was abated years after Plaintiff filed this lawsuit. Consequently, the Court finds no support for the County's assumption of risk defense.

Finally, the County argues the Plaintiff's claim should be barred because Plaintiff failed to mitigate its damages. To the extent that defense applies to a claim for inverse condemnation, the Court finds the County failed to prove it. The sale to Kiswire collapsed due to the presence of landfill gas that migrated from the Landfill onto the Property. Once Plaintiff discovered the presence of landfill gases, it could not sell the Property under terms comparable to the Kiswire Purchase Agreement unless and until the County took measures to abate the problem. When

#18

asked to either purchase the Property or properly address the issue, the County responded that it "was not interested." While the County argued the Plaintiff should have utilized a "brownfield" program, the Court finds no evidence in the record that that program was a viable and reasonable option for the Plaintiff. The evidence in this case clearly demonstrates that abatement of the contamination on Plaintiff's Property required the County to take active measures on the Landfill property. A party is only required to take reasonable measures to mitigate its damages. Nothing required West/Hobby to install an active subsurface soil gas extraction system at the Landfill.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment be entered in this matter in favor of Plaintiff West/Hobby, LLC on its inverse condemnation claim. Having found in favor of the Plaintiff, the Court will proceed with a trial on the issue of damages at its earliest convenience.

AND IT IS SO ORDERED.

Donald B. Hocker, Presiding Judge
Eighth Judicial Circuit

February 11, 2016

#19

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-36-46

West/Hobby, LLC

PLAINTIFF(S)

County of Newberry

DEFENDANT(S)

Submitted by: COURT	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
NEWBERRY COUNTY
2012 AUG 27 PM 12 00
JACKIE OWENS
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: After careful consideration of the Motions for Summary Judgment filed by both parties, the Court declines to grant relief and therefore, both Motions are respectfully denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2167
Judge Code

8-26-15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 26 day of Aug 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of Aug 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Matthew H. Stabler
4101 Lake Boone Tri. Ste 300
Raleigh NC 27607
ATTORNEY(S) FOR THE PLAINTIFF(S)

Patrick J. Frawley
P.O. Box 489
Lexington SC 29071
ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowen
CLERK OF COURT
BB

Court Reporter:

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	)	
West/Hobby LLC,	)	Case No.: 2012-CP-36-00046
Plaintiff,	)	
vs.	)	**CONSENT ORDER RESTORING CASE TO ROSTER (RULE 40(j), SCRCP)**
County of Newberry,	)	
Defendant.	)	

IT APPEARING TO THE COURT that the plaintiff and the Defendant agree to the case being restored to the trial roster. The case was stricken from the roster in May 2014 under Rule 40(j), SCRCP.

NOW, THEREFORE, upon motion of the Plaintiff with the consent of the Defendant, **IT IS HEREBY ORDERED** that the above-captioned action be restored to the trial roster under its original civil action number, **PROVIDED, HOWEVER,** the case shall not be called for trial until one hundred eighty (180) days after it is restored.

AND IT IS SO ORDERED.

Frank R. Addy, Jr. Douglas B. Baker
Chief Administrative Judge-Civil
Eighth Judicial Circuit

February 10, 2015

FILED
NEWBERRY COUNTY
2015 FEB 13 AM 11 22
JACKIE S. BOWERS
CLERK OF COURT

WE CONSENT TO THIS ORDER.

James L. Bruner
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Attorneys for the Plaintiff

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Attorneys for the Defendant

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	)	
West/Hobby LLC,	)	Case No.: 2012-CP-36-00046
Plaintiff,	)	
vs.	)	**CONSENT ORDER PURSUANT TO RULE 40(j), SCRCP**
County of Newberry,	)	
Defendant.	)	

FILED
NEWBERRY COUNTY
2014 MAY 6 AM 10 03
JACKIE S. BOWERS
CLERK OF COURT

The parties have moved that the above-captioned action be stricken from the docket pursuant to Rule 40-(j), SCRCP.

NOW, THEREFORE, upon motion of the parties, **IT IS HEREBY ORDERED** that the above-captioned action be stricken from the docket. The case may be restored upon Motion made within one (1) year after the date the matter is stricken. The statute of limitations shall be tolled during the time the case is stricken. When the action is restored, it shall be restored with the original civil action number 2012-CP-36-00046 but shall not be subject to being called for trial until one hundred eighty (180) days after it is restored. The parties are authorized to continue to engage in discovery during the time the action is stricken.

AND IT IS SO ORDERED.

Frank R. Addy, Jr.
Chief Administrative Judge, Civil
Eighth Judicial Circuit

April 29, 2014

FILED
NEWBERRY COUNTY
2014 MAY 6 AM 10 03
JACKIE S. BOWERS
CLERK OF COURT

WE MOVE FOR AND CONSENT TO THIS ORDER.

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Attorneys for the Defendant

FILED
NEWBERRY COUNTY
2014 MAY 9 P 2:20
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	Case No.: 2012-CP-36-00046
West/Hobby LLC, Plaintiff, vs. County of Newberry, Defendant.	**COMPLAINT** **(Jury Trial demanded)**

FILED
NEWBERRY COUNTY
2012 JAN 26 A 11:48
JACKIE S. OWERS
CLERK OF COURT

Plaintiff, West/Hobby LLC, complaining of the Defendant above-named, would respectfully show:

PARTIES AND JURIDICTION

1. Plaintiff is a South Carolina limited liability company.

2. Defendant is a body politic and political subdivision of the State of South Carolina.

3. All actions that are the subject matter of this litigation occurred in Newberry County, South Carolina. Venue is proper in Newberry County.

4. This court has jurisdiction over the subject matter and parties.

FACTS AND BACKGROUND

5. Plaintiff owns an approximately 40.7 acre tract of land with an address of 591 Cockrell Drive, Newberry, South (the "Property").

6. Defendant presently owns, and at all times relevant hereto owned, the parcel of land directly adjacent to the Property, where Defendant previously operated the Newberry County Solid Waste Landfill (the "Landfill").

7. Upon information and belief, the Defendant began operating the Landfill sometime after 1970.

8. The Landfill remained in operation until 1993.

9. Plaintiff purchased the Property in 2000 as an investment. Plaintiff paid $290,000.00 for the Property.

10. On or about January 19, 2011, Plaintiff agreed to sell the Property to Kiswire, Inc. ("Kiswire") for $520,000.00. A copy of the contract is attached hereto as **Exhibit A**.

11. After signing the contract, but prior to closing, Kiswire commissioned an Environmental Site Assessment of the Property.

12. The Environmental Site Assessment revealed that the Property had been severely contaminated by chemicals, run-off, and by-product from the Landfill.

13. Invoking provisions of the contract, Kiswire cancelled the contract and Plaintiff only received $100.00 as consideration for entering into the contract.

14. To obtain the Environmental Site Assessment and more accurately understand that level of contamination of the Property, Plaintiff paid Kiswire $20,000.00.

15. Despite demands from Plaintiff, Defendant has refused and continues to refuse to compensate Plaintiff for the damage to the Property as a result of Defendant's operation of the Landfill and maintenance of the former site of the Landfill.

FOR A FIRST CAUSE OF ACTION
(Inverse Condemnation)

16. Plaintiff re-alleges and repeats the foregoing allegations the extent required by, but not inconsistent with, the following allegations.

17. Defendant engaged in the affirmative, positive, aggressive act of opening and operating the Landfill.

18. Defendant further engaged in the affirmative, positive, aggressive act of closing the landfill and attempting to seal it to prevent environmental contamination.

19. Defendants' acts complained of above, resulting in a taking of Plaintiff's property in that the Property is now environmentally contaminated and without any market value or beneficial use.

20. Defendant's taking of Plaintiff's Property was for a public use.

21. Defendant's taking of Plaintiff's Property has been without compensation to Plaintiff.

22. Defendant's taking of Plaintiff's Property has a high degree of permanence in that the Property will continue to be environmentally contaminanted absent expensive, time-consuming efforts which likely exceed the fair market value of the Property.

23. The Plaintiff is entitled to be paid for the value of the Property taken by Defendant and to recover its reasonable attorney's fees and costs from Defendant.

FOR A SECOND CAUSE OF ACTION
(Trespass)

24. Plaintiff re-alleges and repeats the foregoing allegations the extent required by, but not inconsistent with, the following allegations.

25. Plaintiff is the owner of the Property.

26. Defendant affirmatively operated the Landfill and allowed waste to be deposited in the Landfill.

27. Defendant still maintains the Landfill.

28. Because of the seepage, leakage, migration, and/or flow of contaminants from the Landfill onto the Property, Defendant has interfered with Plaintiff's right to the exclusive, peaceable possession of the Property.

29. Contaminants continue to seep, leak, migrate, and flow onto the Property from the Landfill, constituting a continuing trespass.

30. The seepage, leakage, migration and/or flow of contaminants from the Landfill onto the Property was not authorized by Plaintiff, and the continuing seepage, leakage, migration and/or flow of contaminants from the Landfill onto the Property is not authorized by Plaintiff.

31. Plaintiff has been damaged by Defendant's trespass and continuing trespass.

FOR A THIRD CAUSE OF ACTION
(Negligence, Gross Negligence)

32. Plaintiff re-alleges and repeats the foregoing allegations the extent required by, but not inconsistent with, the following allegations.

33. Defendant had a duty to operate the Landfill in such a manner to avoid contaminating the property of adjacent landowners.

34. After closing the Landfill, Defendant further had a duty to monitor and maintain the Landfill in such a manner to avoid contaminating the property of adjacent landowners.

35. Defendant breached that duty by allowing contaminants from the Landfill to migrate, flow, and seep onto the Property.

36. Defendant breached that duty by knowingly, willfully, and recklessly allowing contaminants from the Landfill to migrate, flow, and seep onto the Property.

37. Plaintiff has been damaged by Defendant's breach of duty in that a profitable sale of the Property was rescinded because of environmental contamination.

38. Plaintiff has been damaged by Defendant's breach of duty in that the marketability of the Property has been severely impaired and Plaintiff has been deprived of the exclusive use and enjoyment of the Property.

39. Plaintiff has been damaged by Defendant's breach of duty in that the fair market value of the Property has been severely impaired.

40. Defendant's breach of duty was the actual and proximate cause of Plaintiff's damages.

FOR A FOURTH CAUSE OF ACTION
(Negligence per se)

41. Plaintiff re-alleges and repeats the foregoing allegations the extent required by, but not inconsistent with, the following allegations.

42. Defendant owes parties, such as Plaintiff, certain duties as codified by statute and regulation. Those statutes include, but are not limited to, the federal Clean Air Act and regulations promulgated thereunder, the South Carolina Pollution Control Act and regulations promulgated thereunder, and S.C. Regulation 61-107.19.

43. Defendant has violated those statutes and regulations as well as other state and federal environmental statutes and regulations.

44. The essential purpose of those environmental statutes and regulations is to protect from the kind of harm the plaintiff has suffered.

45. Plaintiff is a member of the class of persons the statute is intended to protect.

46. Plaintiff has been damaged by Defendant's breach of duty and violation of those environmental statutes and regulations in that a profitable sale of the Property was rescinded because of environmental contamination.

47. Plaintiff has been damaged by Defendant's breach of duty and violation of those environmental statutes and regulations in that the marketability of the Property has been severely impaired and Plaintiff has been deprived of the exclusive use and enjoyment of the Property.

48. Plaintiff has been damaged by Defendant's breach of duty and violation of those environmental statutes and regulations in that the fair market value of the Property has been severely impaired.

49. Defendant's breach of duty was the actual and proximate cause of Plaintiff's damages.

50. Defendant's violation of those environmental statutes and regulations was causally linked, both in fact and proximately, to the injury.

WHEREFORE, Plaintiff prays for:

a. Judgment in its favor;
b. an award in an amount to be proven at trial, including actual, consequential, and punitive damages;
c. costs and attorneys' fees; and
d. such other and further relief as this court finds just and fair.

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Attorneys for the Plaintiff

Columbia, South Carolina
January 24, 2012

Exhibit A

FILED
NEWBERRY COUNTY
2012 JAN 26 A 11:48
JACKIE S. BOWERS
CLERK OF COURT

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 19 day of Jan., 2011, by and between West/Hobby LLC Hobby Development Company (hereinafter "Seller"), whose address is P.O. Box 734, Newberry, SC 29108, and Kiswire, Inc. (hereinafter "Purchaser"), whose address is 257 Mawsons Way, Newberry, South Carolina 29108.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property. Seller agrees to sell and Purchaser agrees to purchase, upon the terms and conditions hereinafter set forth, that certain parcel of land consisting of approximately 40.700 acres located on Cockrell Drive, off of SC 219 in Newberry County, South Carolina, and being more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), together with all easements, rights-of-way, licenses, permits and other rights of Seller relating to the Property.

2. Purchase Price. The purchase price shall be Five Hundred Twenty Thousand Dollars ($520,000.00) (the "Purchase Price") and shall be payable as follows:

(a) Upon execution of this Agreement, Purchaser shall pay to Haynsworth Sinkler Boyd, P.A. (the "Escrow Agent") as earnest money the sum of $10,000 (the "Earnest Money"). The Escrow Agent shall not be obligated to deposit the Earnest Money in an interest-bearing account nor liable for failure to do so. However, if invested in an interest-bearing account, all interest shall be paid to Purchaser. At Closing, the Earnest Money shall be credited against the Purchase Price and disbursed to Seller. In the event the transaction contemplated herein does not close, Escrow Agent shall disburse the Earnest Money as hereinafter provided.

(b) At Closing, Purchaser shall pay to Seller the balance of the Purchase Price, subject to adjustments as set forth herein, by federal bank wire transfer or by cashier's check or attorney escrow check.

3. Feasibility Study. Any provision hereof to the contrary notwithstanding, Purchaser shall have until one hundred twenty (120) days after the date of this Agreement (the "Feasibility Study Period") to investigate the feasibility of owning and developing the Property, including in Purchaser's discretion financial analyses, feasibility studies, surveys, title examination, engineering tests, appraisals and such other tests, evaluations and examinations of the Property as Purchaser may desire. Without limiting the generality of the foregoing, during the Feasibility Study Period Purchaser shall review to the extent it deems necessary or desirable zoning and governmental requirements, environmental matters, appraisals, tree removal ordinances, and other matters affecting the Property. Purchaser will also attempt to obtain, to the extent it deems necessary or desirable, certain financial incentives from the county or state government. If on or before the conclusion of the Feasibility Study Period Purchaser determines that it does not desire to purchase the Property for any reason or no reason, Purchaser may on or before the end of the Feasibility Study Period terminate this Agreement by written notice to Seller, whereupon Escrow Agent shall disburse $100 to Seller as consideration for executing this Agreement and the balance of the

Earnest Money shall be refunded to Purchaser. In such event, this Agreement shall be deemed terminated, and Purchaser shall have no obligation to purchase the Property. In the event Purchaser does not terminate this Agreement within said time period, this Agreement shall remain in full force and effect, and all matters concerning the Property shall be deemed acceptable to Purchaser. Within ten (10) days of execution of this Agreement, Seller will deliver to Purchaser copies of any title insurance policies, engineering reports (including reports of test borings), surveys, geotechnical or environmental reports and such other documents relating to the Property as are in Seller's possession or readily available to Seller. Purchaser may, by written notice to Seller, shorten the Feasibility Study Period.

4. Title and Survey. Seller shall satisfy any mortgage lien on the Property at the Closing. Purchaser shall have the right, at its expense, to make such examinations of title and survey as it deems necessary or desirable. Purchaser shall notify Seller on or before the end of the Feasibility Study Period of its objection to any matters of title (such objections being referred to as the "Title Exceptions") and of its objection to any matters of survey (such objections being referred to as the "Survey Exceptions"). Seller shall notify Purchaser within ten (10) days after receipt of Purchaser's notice whether it will be able to cure or remove the Title Exceptions and Survey Exceptions, as applicable prior to Closing (with the exception of any mortgage liens which Seller agrees to satisfy at Closing). If Seller shall notify Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions prior to Closing, then Purchaser shall have the option to terminate this Agreement, which shall be exercised within ten (10) days after receipt of Seller's notice, whereupon the Earnest Money will be refunded to Purchaser. If Purchaser does not give such notice of termination within said time, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions. All matters of title and survey as to which Purchaser does not give notice of a Title Exception or Survey Exception within the time period specified above, together with all Title Exceptions and Survey Exceptions which Purchaser is deemed to have waived pursuant to the preceding sentence, and together with the lien for current year property taxes not yet due and payable, are referred to collectively herein as the "Permitted Exceptions."

5. Closing and Conditions to Closing.

(a) Closing shall be held on a date to be determined by Purchaser upon 15 days written notice to Seller, but not later than thirty (30) days after the end of the Feasibility Study Period (the "Closing"). Closing shall take place at the offices of Haynsworth Sinkler Boyd, P.A., 1201 Main Street, Suite 2200, Columbia, South Carolina 29201 or at such other place as the parties may otherwise agree.

(b) Purchaser's obligations to purchase the Property are subject tot the following conditions:

(i) All representations and warranties of Seller in this Agreement shall be true and correct in all materials respects as of the Closing Date and Seller shall have performed all agreements required to be performed by Seller hereunder.

(ii) There shall have been no material adverse change in the physical condition of the Property;

(iii) An easement for the provision of sewer service shall have been granted over adjacent property to the satisfaction of Purchaser and the City of Newberry so that Purchaser shall be assured of sewer service to the Property; AND

(iv) Approval of all economic development incentives from the State of South Carolina, Newberry County, and any third parties.

In the event that the conditions set forth above are not satisfied prior to the Closing, Purchaser may waive any unsatisfied condition in writing or, by written notice, terminate this Agreement in which event the Earnest Money shall be returned to Purchaser and the parties shall have no further obligations hereunder, except for those rights and obligations which by their express terms are to survive termination and except to the extent the failure of such condition was the result of a default under this Agreement by Seller.

6. Seller's Closing Documents. Seller shall execute and deliver the following to Purchaser at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Deed. A general warranty deed, subject only to the Permitted Exceptions. The deed shall be in proper form for recording and shall be duly executed, witnessed and acknowledged.

(c) Affidavits as to Liens and Possession. Affidavits and indemnification agreements, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no amounts owed for labor, materials or services respecting the Property and that there are no parties in possession.

(d) Residency Certificate. Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code § 12-8-580 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code. In the event Seller fails to deliver the certificates referred to above or fails to provide evidence suitable to Purchaser of exemption from the S.C. and IRS Code Sections referenced above then Purchaser shall deduct and withhold from the cash portion of the purchase price the amounts required by said Code Sections and remit said amounts with the required forms to the Internal Revenue Service and the South Carolina Department of Revenue and Purchaser shall receive a credit against the cash portion of the purchase price for the amounts so withheld.

(e) Evidence of Authority. Seller shall provide a certificate, executed by an appropriate officer of Seller, with attached copies of resolutions as appropriate, evidencing that the sale of the Property has been properly approved by the governing body of Seller.

(f) Certificate of Existence. Current certificate of existence from the State of South Carolina.

(g) Tax Compliance Letter. A current tax compliance letter issued by the South Carolina Department of Revenue.

(h) Other Closing Documents. Such other closing documents as are customarily executed by a seller at a South Carolina real estate closing.

(i) A valid and sufficient easement for the provision of sewer service at the Property, to the satisfaction of Purchaser in its sole discretion.

7. Purchaser's Closing Documents. Purchaser shall execute and deliver the following to Seller at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Other Closing Documents. Such other closing documents as are customarily executed by a purchaser at a South Carolina real estate closing.

8. Closing Costs, Taxes and Assessments. Each of the parties shall pay its own attorney's fees arising from this transaction. Seller shall pay the transfer tax on the deed. Purchaser shall pay all other closing costs, including recording fees. Any and all general and special assessments against the Property shall be paid in full by Seller prior to or at closing. Seller will pay all rollback taxes at the Closing. As of the date of Closing, the Purchase Price shall be adjusted as follows:

(a) Ad valorem taxes shall be prorated on a calendar year basis. If the current year tax amount is not available, the parties shall prorate based on an estimate and either party shall be entitled to seek an adjustment of the proration based on the actual tax amount no later than March 31 of the following year.

9. Easements and Rights-of-Way. Seller will convey to Purchaser any and all right, title and interest which Seller has in and to any easements or rights-of-way adjacent to the Property.

10. Inspection and Testing of Premises. After the date hereof, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable business hours.

11. Seller's Warranties. Seller makes the following representations and warranties, all of which shall survive closing, and agrees to indemnify and hold Purchaser harmless against any loss or damage, including reasonable attorneys' fees, resulting from breach of said warranties:

(a) Authorization and Compliance. Seller warrants that this Agreement is duly authorized, executed and delivered and is not a breach of, or in conflict with, any agreement, judgment, restriction, statute or regulation applicable to Seller.

(b) Warranty of Title. Seller warrants that Seller is lawfully seized of the Property in fee simple absolute and that Seller has good right and is lawfully authorized to sell or convey the same. There are no leases or rights of possession or use by any parties other than the Seller affecting the Property.

(c) Pending Actions. Seller warrants that there is no litigation, judicial or administrative proceeding or government investigation against the Seller or the Property which would materially adversely affect the Seller's ability to comply with the terms of this Agreement.

(d) Assessments. Seller warrants that to its knowledge there are no existing or pending assessments which are chargeable against the Property or personal property covered by this Agreement other than ad valorem taxes for the current year which will be prorated at Closing.

(e) Accuracy of Information. To Seller's knowledge, all information and reports provided by Seller to Purchaser under paragraph 3 are true and accurate in all material respects.

(f) Environmental Matters. Seller warrants that it has no actual knowledge of any facts that would cause it to suspect that any present or past use of the Property or any adjacent property has caused, or might have created unusual risks of causing, contamination of the Property in violation of any federal or state environmental laws or regulations, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the South Carolina Pollution Control Act, South Carolina underground storage tank provisions and regulations, and any amendments thereto or regulations issued pursuant to such statutes.

12. Remedies. If Purchaser defaults on any of its obligations under this Agreement, the Escrow Agent shall pay the Earnest Money to Seller as liquidated damages, and Seller shall have no further remedy against Purchaser. Seller and Purchaser agree that the Earnest Money is a fair and reasonable determination of Seller's actual damages in the event Purchaser defaults under this Agreement. If Seller defaults on any of its obligations under this Agreement, the Escrow Agent shall return the Earnest Money to Purchaser, and Purchaser may pursue such other rights and remedies as may be available to it at law or in equity, including without limitation the remedy of specific performance.

13. Destruction or Condemnation. If, prior to closing, all or any part of the Property is damaged by fire, water or any other casualty or is taken or threatened to be taken by eminent domain, Seller shall provide written notice thereof to Purchaser and Purchaser may elect to cancel this Agreement by written notice thereof to Seller. In the event that Purchaser shall so elect, both parties shall be relieved and released from any further liability hereunder, and Purchaser shall be entitled to a refund of the Earnest Money together with any interest earned thereon. Unless this Agreement is so cancelled, it shall remain in full force and effect and, at Purchaser's option, the Seller either shall assign, transfer and set over to Purchaser all of the Seller's right, title and interest in and to any insurance proceeds (plus credit for the deductible) or awards that may be made for

such casualty or taking, or Seller shall agree with Purchaser for a reduction in the Purchase Price based on the extent of casualty or taking.

14. Risk of Loss. The risk of loss in connection with the Property and any improvements thereon shall be borne by Seller until Closing.

15. Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement may be assigned by Purchaser without the consent of Seller.

16. Commissions. Each party represents and warrants that it has not contracted for or is otherwise subject to any claim for brokerage commissions or similar fees with respect to sale of the Property, and agrees to indemnify and hold harmless the other against any such claim arising from the indemnitor's actions.

17. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore and between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

18. Modification. This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

19. Possession. Possession of the Property will be delivered to Purchaser at Closing.

20. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect.

21. Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter general, is used herein, it shall equally include the other.

22. Time of Essence. Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

23. Paragraph Headings. The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

24. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

25. Notices. All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified at its address set forth above. Notice by mail shall be effective on the date placed in the mail.

26. Escrow Agent. The parties shall indemnify and hold harmless Escrow Agent in connection with the exercise of its duties hereunder. The parties acknowledge that except pursuant to the executed Settlement Statement at Closing, Escrow Agent at its option may elect not to release the Earnest Money without written approval from both parties. In the event the Escrow Agent determines in its discretion that there is a bona fide dispute between the parties as to who is entitled to the Earnest Money, and that the rights of the parties as to the Earnest Money are unclear under this Agreement, the Escrow Agent may file an action for interpleader or otherwise seek a judicial determination as to the rights of the parties. In such event, the parties shall hold Escrow Agent harmless and shall share equally any expenses of Escrow Agent in connection with such action. Seller agrees that Escrow Agent may also act as Purchaser's attorney with respect to the transaction contemplated herein and with respect to any dispute between Seller and Purchaser.

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

WITNESSES:

SELLER:

WEST/HOBBY LLC

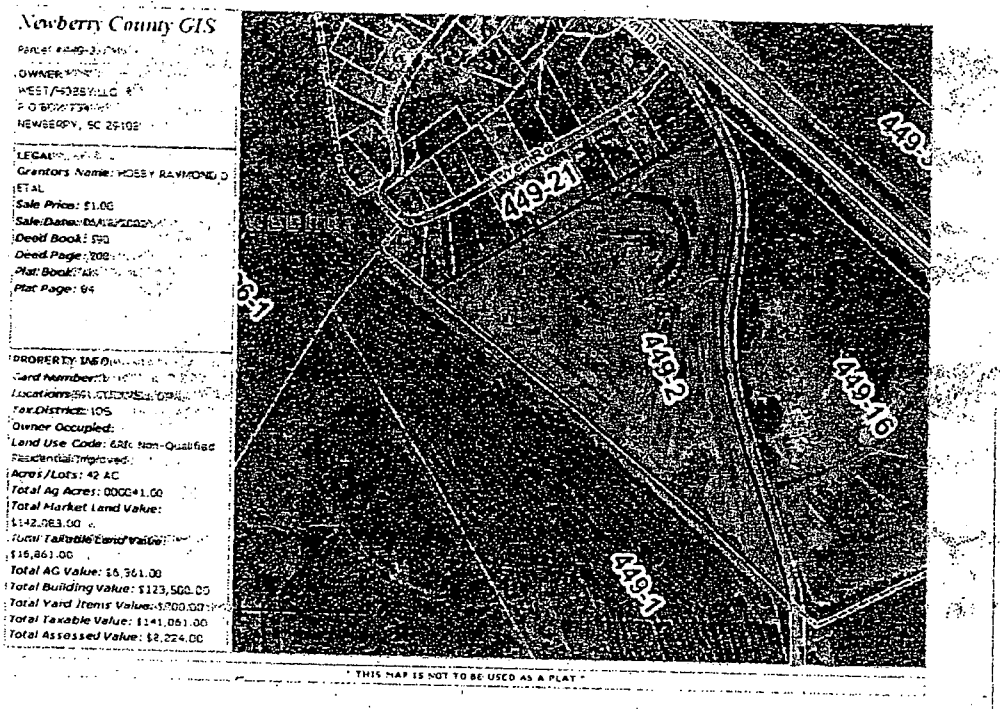
By: _____ (SEAL)
Its: _____

PURCHASER:

KISWIRE, INC.

By: _____ (SEAL)
Its President

EXHIBIT A


Newberry County GIS
OWNER:
NEWBERRY, SC 29108
LEGAL
Grantors Name: HOSEY RAYMOND D
ETAL
Sale Price: $1.00
Deed Book: 590
Deed Page: 209
Plat Book:
Plat Page: 94
PROPERTY INFO
Tax District: 105
Owner Occupied:
Land Use Code: 681 Non-Qualified
Residential Improved
Acres/Lots: 42 AC
Total Ag Acres: 00004 1.00
Total Market Land Value:
$142,083.00
Total Taxable Land Value:
$16,861.00
Total AG Value: $16,861.00
Total Building Value: $123,500.00
Total Yard Items Value: $700.00
Total Taxable Value: $141,061.00
Total Assessed Value: $8,224.00
449-21
449-2
449-16
449-1
THIS MAP IS NOT TO BE USED AS A PLAT

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

WEST/HOBBY, LLC,

Plaintiff,

-vs-

COUNTY OF NEWBERRY

Defendant.

Docket No. 2012-CP-36-0046

ANSWER
(Jury Trial Requested)

The Defendant County of Newberry, answering the Complaint of the Plaintiff West/Hobby, LLC, alleges as follows:

FOR A FIRST DEFENSE

1. The Complaint fails to allege facts sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and should be dismissed.

FOR A SECOND DEFENSE

2. The allegations of paragraph 1 of the First Defense are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Second Defense.

3. Each and every allegation of the Complaint not specifically admitted, qualified, nor otherwise explained, is denied.

4. This Defendant admits so much of paragraphs 2, 3, and 4 of the Complaint as alleges that this Defendant is a Political Subdivision of the State of South Carolina, and as such, is subject to suit under the terms, conditions, and limitations of the South Carolina Tort Claims

Act, codified at *S.C. Code Ann.* § 15-78-10 through -220 (1986 as amended); this Defendant further admits that jurisdiction and venue are properly before this Court.

5. This Defendant admits so much of paragraphs 6, 7, 8, 17, 18, and 26 of the Complaint as alleges that this Defendant operated a landfill on real property owned by this Defendant within Newberry County from the early 1970's until approximately 1993, when this Defendant closed the landfill. The remaining allegations of the foregoing paragraphs of the Complaint are denied.

6. This Defendant admits so much of paragraph 27 of the Complaint as alleges that this Defendant maintains its property, but denies that the property is still operated as a landfill.

7. This Defendant lacks sufficient information to admit or deny the allegations of paragraphs 1, 5, 9, 11, 12, 13, 14, and 25 of the Complaint, and therefore denies the same and demands strict proof thereof.

8. This Defendant lacks sufficient information to admit or deny the allegations of paragraph 10 of the Complaint, and therefore denies the same and demands strict proof thereof; but to the extent that the paragraph purports to selectively paraphrase a written contract and/or other associated documents, this Defendant craves reference to the full text of the contract and associated documents for an accurate enumeration of the message conveyed.

9. This Defendant denies the allegations of paragraphs 33, 34, 42, 43, 44, and 45 of the Complaint insofar as those paragraphs purport to paraphrase the law or reach legal conclusions, and this Defendant craves reference to the applicable legal authority for an accurate enumeration of the law. This Defendant affirmatively alleges that it has, at all times, acted in good faith and in conformance with applicable law in fulfilling its duties to the general public and to adjoining property owners.

10. This Defendant denies the allegations of paragraphs 19, 20, 21, 22, 23, 28, 29, 30, 31, 35, 36, 37, 38, 39, 40, 46, 47, 48, 49, and 50 of the Complaint. With regard to the allegations of paragraph 15 of the Complaint, this Defendant denies that the Plaintiff was or is entitled to compensation from this Defendant.

11. Paragraphs 16, 24, 32, and 41 of the Complaint require no response; but to the extent that they may be deemed to allege acts or omissions on the part of this Defendant that purport to establish liability on the part of this Defendant, they are denied.

FOR A THIRD DEFENSE

12. The allegations of paragraphs 1 through 11 of the First and Second Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Third and affirmative Defense.

13. Any actions of this Defendant in operating the landfill, in subsequently closing it, and in any actions taken since the closing of the landfill, have been in conformance with the applicable law and regulations, and are a direct result of directives or orders from South Carolina Department of Health and Environmental Control and/or the United States Environmental Protection Agency; and this Defendant does plead such regulatory compliance as an affirmative defense and bar to recovery.

FOR A FOURTH DEFENSE

14. The allegations of paragraphs 1 through 13 of the First, Second, and Third Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Fourth and affirmative Defense.

15. This Defendant is informed and believes that the Plaintiff's claims are time-barred by the applicable statutes of limitations, and this Defendant does plead the statute of limitations as an affirmative defense and complete bar to recovery.

FOR A FIFTH DEFENSE

16. The allegations of paragraphs 1 through 15 of the First, Second, Third, and Fourth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Fifth and affirmative Defense.

17. If the Plaintiff was damaged as alleged in the Complaint, which this Defendant denies, then such damage was proximately caused by the sole negligence, gross negligence, willfulness, wantonness, and recklessness of the Plaintiff in the acts or omissions of its own agents and employees in the following particulars:

A. In purchasing real property which it knew, or could reasonably have discovered, had the potential for environmental issues;

B. In ignoring an open and obvious condition;

C. In failing to exercise due diligence in the purchase of commercial property;

D. In knowingly assuming the risk that it could purchase real property with potential environmental issues at a discount, then sell it as commercial property at a premium; and

E. In failing to exercise ordinary care for its own safety, as a reasonably prudent person would have exercised under the same or similar circumstances;

all of which acts or omissions on the part of the Plaintiff, through its agents and employees, were negligent, grossly negligent, willful, wanton, and reckless, and were the sole and proximate cause of the damages complained of; and this Defendant does plead such sole negligence of the Plaintiff as an affirmative defense and complete bar to recovery against this Defendant.

FOR A SIXTH DEFENSE

18. The allegations of paragraphs 1 through 17 of the First, Second, Third, Fourth, and Fifth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Sixth and affirmative Defense.

19. If this Defendant, by and through its agents and employees, was in any way negligent, grossly negligent, willful, wanton, or reckless in any of its acts or omissions, which this Defendant denies, then the Plaintiff, too, was negligent, grossly negligent, willful, wanton, and reckless and unlawful in its own acts or omissions in the following particulars:

A. In purchasing real property which it knew, or could reasonably have discovered, had the potential for environmental issues;

B. In ignoring an open and obvious condition;

C. In failing to exercise due diligence in the purchase of commercial property;

D. In knowingly assuming the risk that it could purchase real property with potential environmental issues at a discount, then sell it as commercial property at a premium; and

E. In failing to exercise ordinary care for its own safety, as a reasonably prudent person would have exercised under the same or similar circumstances;

all of which acts or omissions on the part of the Plaintiff, its agents and employees were negligent, grossly negligent, willful, wanton, and reckless to a comparatively greater degree than any acts or omissions on the part of this Defendant by and through its agents and employees, and were the more proximate cause of any damages complained of; and this Defendant does plead such comparatively greater negligence on the part of the Plaintiff as an affirmative defense and complete bar to recovery; or, in the alternative, as a factor for the Court to consider in discounting any recovery the Plaintiff may be awarded.

FOR A SEVENTH DEFENSE

20. The allegations of paragraphs 1 through 19 of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Seventh and affirmative Defense.

21. This Defendant is informed and believes that, as a political subdivision of the State of South Carolina, this Defendant is entitled to certain limitations, immunities, and

defenses to the Plaintiff's claims under the South Carolina Tort Claims Act, codified at *S.C. Code Ann.* §§ 15-78-10 through -220 (1986 as amended), including, without limitation, immunities and defenses afforded by *S.C. Code Ann.* §15-78-60 (3), (4), (5), (7), (13), (18), and (20); and to the extent that such immunities and defenses are available, this Defendant pleads the various defenses and immunities afforded by the South Carolina Tort Claims Act as an affirmative defense to the claims alleged by the Plaintiff.

FOR AN EIGHTH DEFENSE

22. The allegations of paragraphs 1 through 21 of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Eighth and affirmative Defense.

23. This Defendant is informed and believes that, if the Plaintiff was injured and damaged as alleged in the Complaint, such damage was proximately caused by circumstances and conditions about which this Defendant had no notice, actual or constructive; and this Defendant does plead such lack of notice as an affirmative defense and complete bar to recovery.

FOR A NINTH DEFENSE

24. The allegations of paragraphs 1 through 23 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Ninth and affirmative Defense.

25. This Defendant is informed and believes that, if the Plaintiff has been damaged as alleged in the Complaint, which this Defendant denies, such damage was proximately caused by the intervening acts or omissions of a third party or parties, which acts or omissions were negligent, grossly negligent, willful, wanton, and reckless, in allowing contaminants from other sources to infiltrate the real property now owned by the Plaintiff, which acts or omissions were not foreseeable to this Defendant, and about which this Defendant had no notice; and this

Defendant does plead such intervening acts of negligence on the part of unknown third parties as an affirmative defense and complete bar to recovery.

FOR A TENTH DEFENSE

26. The allegations of paragraphs 1 through 25 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Tenth and affirmative Defense.

27. This Defendant is informed and believes that, in purchasing the real property subject of this action in 2000, as the Plaintiff has alleged in its Complaint, the Plaintiff, through its agents and employees, voluntarily confronted a known risk with a full appreciation of the inherent dangers; and this Defendant does plead the Plaintiff's assumption of the risk in purchasing the property as an affirmative defense and complete bar to recovery.

FOR AN ELEVENTH DEFENSE

28. The allegations of paragraphs 1 through 27 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Eleventh and affirmative Defense.

29. This Defendant does plead failure of the Plaintiff to take adequate steps to mitigate its claimed damages as an affirmative defense.

FOR A TWELFTH DEFENSE

30. The allegations of paragraphs 1 through 29 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Twelfth and affirmative Defense.

31. This Defendant pleads the equitable defenses of laches, waiver and estoppel, and unclean hands as affirmative defenses to the extent they are available.

FOR A THIRTEENTH DEFENSE

32. The allegations of paragraphs 1 through 31 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Thirteenth and affirmative Defense.

33. With regard as to the Plaintiff's prayer for judgment against this Defendant for punitive damages, this Defendant is informed and believes that, under the terms, conditions, limitations, and exceptions of the South Carolina Tort Claims Act, no award for damages shall include punitive nor exemplary damages; and this Defendant is informed and believes that the Plaintiff's prayer for punitive damages against this Defendant is barred by *S.C. Code Ann.* § 15-78-120(b).

WHEREFORE, having fully answered the Complaint of the Plaintiff, this Defendant prays that the same be dismissed, with costs assessed to the Plaintiff, and for such other and further relief as the Court may deem just and proper.

DAVIS, FRAWLEY, ANDERSON, McCAULEY, AYER, FISHER & SMITH, LLC

BY: _____

Patrick J. Frawley
Erica M. Parker
140 East Main Street
Post Office Box 489
Lexington, South Carolina 29071
ATTORNEYS FOR COUNTY OF NEWBERRY

Lexington, South Carolina
March 1, 2012

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	
West/Hobby LLC,	)	Case No.: 2012-CP-36-00046
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED COMPLAINT**
	)	**(Jury Trial demanded)**
County of Newberry,	)	
	)	
Defendant.	)	

FILED
NEWBERRY COUNTY
2014 MAR 14 AM 10 30
JACKIE S. BOWERS
CLERK OF COURT

Plaintiff, West/Hobby LLC, for its Amended Complaint against the Defendant, alleges:

PARTIES AND JURIDICTION

1. Plaintiff is a South Carolina limited liability company.

2. Defendant is a body politic and political subdivision of the State of South Carolina.

3. All actions that are the subject matter of this litigation occurred in Newberry County, South Carolina. Venue is proper in Newberry County.

4. This court has jurisdiction over the subject matter and parties.

FACTS AND BACKGROUND

5. Plaintiff owns a 40.7 acre tract of land with an address of 591 Cockrell Drive, Newberry, South Carolina (the "Property").

6. Defendant owns, and at all times relevant hereto owned, a parcel of land adjacent to the Property, where Defendant previously operated the Newberry County Solid Waste Landfill (the "Landfill").

7. Plaintiff is informed and believes that the Defendant opened the Landfill in the early 1970's and closed it in 1993. After the Defendant closed the Landfill, it placed a clay cap on top of the Landfill.

8. Plaintiff purchased the Property in 2000 as an investment. Plaintiff paid $290,000.00 for the Property.

9. On or about January 19, 2011, Plaintiff agreed to sell the Property to Kiswire, Inc. ("Kiswire") for $520,000.00. A copy of the contract is attached hereto as **Exhibit A** and incorporated herein by reference.

10. After signing the contract, but prior to closing, Kiswire commissioned an Environmental Site Assessment of the Property.

11. The Environmental Site Assessment revealed that the Property had been contaminated by landfill gasses containing volatile organic compounds ("VOC's") from the Landfill. Among others, the VOC's detected above safe limits were benzene, trichloroethene and tetrachloroethene. These VOC's are known carcinogens.

12. Plaintiff is informed and believes that the landfill gasses containing VOC's migrated onto the Property as the direct and proximate result of the Defendant's placement of the clay cap on the landfill. The clay cap diverted the natural vertical migration of the gasses and caused them to vent laterally onto the Property.

13. Invoking provisions of the contract, Kiswire cancelled its contract to buy the Property.

14. To obtain the Environmental Site Assessment and more accurately understand the level of contamination of the Property, Plaintiff paid Kiswire $20,000.00.

15. In 2011, Plaintiff's representatives met with the Defendant's administrator and asked the Defendant to either buy the Property or to do something to stop the contamination. The Defendant responded that it was not interested in buying the Property nor was it interested in a discussion about the Landfill.

16. The Plaintiff is informed and believes that the Defendant was not interested in discussing the Landfill because the Defendant had known since March 2006 that methane, an explosive gas, was migrating onto the Property with other landfill gasses. The Defendant did not tell the Plaintiff.

17. The Defendant constructed a passive remediation system known as an interceptor trench in an effort to alleviate the gas migration. Thereafter, the Defendant installed six passive landfill gas vents in a further effort to stop the migration of VOC's. These passive systems have not stopped the lateral migration of landfill gasses and VOC's.

18. Even though the passive systems did not stop the migration of VOC's off the Defendant's property, the Defendant refused to install an active remediation system which most likely would have alleviated such lateral migration.

19. In spite of the Plaintiff's requests, the Defendant refused, and continues to refuse, to compensate Plaintiff for damage to the Property or to take reasonable and necessary steps to remediate the lateral migration of the landfill gasses.

20. As a direct and proximate result of the migration of landfill gasses containing VOC's onto the Property, the Plaintiff lost its sale to Kiswire. Moreover, the Plaintiff is informed and believes that the Property has little or no fair market value as long as the Defendant refuses to take action to remediate the VOC's migration.

FOR A FIRST CAUSE OF ACTION
(Inverse Condemnation)

21. Plaintiff repeats and re-alleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.

22. The Defendant's act of placing a clay cap on top of the closed Landfill constituted an affirmative, aggressive and positive act by the Defendant which has resulted in a taking of the Property by the Defendant by inverse condemnation without compensation.

23. As a direct and proximate result of the Defendant's affirmative, aggressive and positive act, the Property is now contaminated by VOC's and has little or no fair market value.

24. Defendant's taking of the Property was for a public use and has been without compensation to Plaintiff.

25. Defendant's taking is in all likelihood permanent given the Defendant's failure and refusal to "discuss the landfill" or to install an active remediation system.

26. The Plaintiff is entitled to be paid for the diminution in fair market value of the Property, as well as reasonable attorneys' fees, fees of experts and other costs incurred, as a result of the Defendant's taking.

FOR A SECOND CAUSE OF ACTION
(Injunction; Nuisance *Per Se*)

27. Plaintiff repeats and re-alleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.

28. The lateral migration of landfill gasses containing VOC's and methane has interfered with, and continues to interfere with, Plaintiff's right to the exclusive use and peaceable possession of the Property.

29. Plaintiff is informed and believes that these VOC's and methane constitute a nuisance *per se* because the presence of these contaminants poses a danger at all times and all circumstances to life, health and property.

30. The Plaintiff is informed and believes that the lateral migration of these landfill gasses can be remediated by the reasonable and necessary installation of a subsurface landfill gas barrier system, known as an active system. The Defendant fails and refuses to install such a system.

31. By reason of the Defendant's action in causing the lateral migration of landfill gasses, VOC's and methane and its refusal to take those reasonable and necessary steps to abate this nuisance, the Property is being subjected to a continuing nuisance *per se*.

32. Plaintiff is informed and believes that it is entitled to an Order of the Court in its equitable jurisdiction requiring the Defendant to abate this continuing nuisance *per se* and enjoining the Defendant from so maintaining this closed Landfill in a manner that causes contamination of adjacent properties.

FOR A THIRD CAUSE OF ACTION
(Gross Negligence)

33. Plaintiff repeats and re-alleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.

34. After closing the Landfill, Defendant owed duties to adjoining landowners and the public a.) to monitor the closed Landfill in such a manner so as to detect the migration of VOC's and methane and other contaminants from the closed Landfill, and b.) to take all reasonable and necessary steps to mitigate and remediate any contamination detected on adjacent property.

35. Defendant breached those duties by willfully and recklessly installing a clay cap on the closed Landfill without installing such reasonable and necessary systems to prevent VOC's and methane from migrating laterally onto the Plaintiff's Property when it knew or should have known that the clay cap would cause the lateral migration of Landfill gasses and that an active remediation system would most probably be required to prevent that lateral migration. Moreover, the Defendant failed and refused to mitigate or remediate such lateral migration by taking reasonable and necessary steps as were available including, but not limited to, the installation of a subsurface landfill gas barrier system.

36. But for the Defendant's willful, reckless and staunch refusal to take reasonable and necessary steps to remediate the lateral migration of landfill gasses, the Plaintiff would have enjoyed the sale of the Property to Kiswire and not incurred the diminution in fair market value of the Property. As a result, the Plaintiff has suffered actual damages, attorneys' fees, experts' fees and other costs.

WHEREFORE, Plaintiff prays for judgment against Newberry County:

A. On the First Cause of Action for the fair market value of the Property taken by inverse condemnation, together with reasonable attorneys' fees, fees of experts and other costs incurred; and

B. On the Second Cause of Action for equitable relief in the form of an Order of the Court requiring the Defendant to abate the continuing nuisance *per se* and enjoining the Defendant from so maintaining this closed landfill in a manner that causes contamination of adjacent properties; and

C. On the Third Cause of Action for Plaintiff's actual damages, attorneys' fees, experts' fees and other costs.

James L. Bruner
Matthew H. Stabler.
Bruner, Powell, Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
(803) 252-7693
jbruner@brunerpowell.com
Attorneys for the Plaintiff

March 13, 2014.

FILED
NEWBERRY COUNTY
2014 MAR 14 AM 10 31
JACKIE S. BOWERS
CLERK OF COURT

Exhibit A

To

Amended Complaint

(Kiswire Contract)

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 19 day of Jan., 2011, by and between West/Hobby LLC Hobby Development Company (hereinafter "Seller"), whose address is P.O. Box 734, Newberry, SC 29108, and Kiswire, Inc. (hereinafter "Purchaser"), whose address is 257 Mawsons Way, Newberry, South Carolina 29108.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property. Seller agrees to sell and Purchaser agrees to purchase, upon the terms and conditions hereinafter set forth, that certain parcel of land consisting of approximately 40.700 acres located on Cockrell Drive, off of SC 219 in Newberry County, South Carolina, and being more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), together with all easements, rights-of-way, licenses, permits and other rights of Seller relating to the Property.

2. Purchase Price. The purchase price shall be Five Hundred Twenty Thousand Dollars ($520,000.00) (the "Purchase Price") and shall be payable as follows:

(a) Upon execution of this Agreement, Purchaser shall pay to Haynsworth Sinkler Boyd, P.A. (the "Escrow Agent") as earnest money the sum of $10,000 (the "Earnest Money"). The Escrow Agent shall not be obligated to deposit the Earnest Money in an interest-bearing account nor liable for failure to do so. However, if invested in an interest-bearing account, all interest shall be paid to Purchaser. At Closing, the Earnest Money shall be credited against the Purchase Price and disbursed to Seller. In the event the transaction contemplated herein does not close, Escrow Agent shall disburse the Earnest Money as hereinafter provided.

(b) At Closing, Purchaser shall pay to Seller the balance of the Purchase Price, subject to adjustments as set forth herein, by federal bank wire transfer or by cashier's check or attorney escrow check.

3. Feasibility Study. Any provision hereof to the contrary notwithstanding, Purchaser shall have until one hundred twenty (120) days after the date of this Agreement (the "Feasibility Study Period") to investigate the feasibility of owning and developing the Property, including in Purchaser's discretion financial analyses, feasibility studies, surveys, title examination, engineering tests, appraisals and such other tests, evaluations and examinations of the Property as Purchaser may desire. Without limiting the generality of the foregoing, during the Feasibility Study Period Purchaser shall review to the extent it deems necessary or desirable zoning and governmental requirements, environmental matters, appraisals, tree removal ordinances, and other matters affecting the Property. Purchaser will also attempt to obtain, to the extent it deems necessary or desirable, certain financial incentives from the county or state government. If on or before the conclusion of the Feasibility Study Period Purchaser determines that it does not desire to purchase the Property for any reason or no reason, Purchaser may on or before the end of the Feasibility Study Period terminate this Agreement by written notice to Seller, whereupon Escrow Agent shall disburse $100 to Seller as consideration for executing this Agreement and the balance of the

Earnest Money shall be refunded to Purchaser. In such event, this Agreement shall be deemed terminated, and Purchaser shall have no obligation to purchase the Property. In the event Purchaser does not terminate this Agreement within said time period, this Agreement shall remain in full force and effect, and all matters concerning the Property shall be deemed acceptable to Purchaser. Within ten (10) days of execution of this Agreement, Seller will deliver to Purchaser copies of any title insurance policies, engineering reports (including reports of test borings), surveys, geotechnical or environmental reports and such other documents relating to the Property as are in Seller's possession or readily available to Seller. Purchaser may, by written notice to Seller, shorten the Feasibility Study Period.

4. Title and Survey. Seller shall satisfy any mortgage lien on the Property at the Closing. Purchaser shall have the right, at its expense, to make such examinations of title and survey as it deems necessary or desirable. Purchaser shall notify Seller on or before the end of the Feasibility Study Period of its objection to any matters of title (such objections being referred to as the "Title Exceptions") and of its objection to any matters of survey (such objections being referred to as the "Survey Exceptions"). Seller shall notify Purchaser within ten (10) days after receipt of Purchaser's notice whether it will be able to cure or remove the Title Exceptions and Survey Exceptions, as applicable prior to Closing (with the exception of any mortgage liens which Seller agrees to satisfy at Closing). If Seller shall notify Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions prior to Closing, then Purchaser shall have the option to terminate this Agreement, which shall be exercised within ten (10) days after receipt of Seller's notice, whereupon the Earnest Money will be refunded to Purchaser. If Purchaser does not give such notice of termination within said time, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions. All matters of title and survey as to which Purchaser does not give notice of a Title Exception or Survey Exception within the time period specified above, together with all Title Exceptions and Survey Exceptions which Purchaser is deemed to have waived pursuant to the preceding sentence, and together with the lien for current year property taxes not yet due and payable, are referred to collectively herein as the "Permitted Exceptions."

5. Closing and Conditions to Closing.

(a) Closing shall be held on a date to be determined by Purchaser upon 15 days written notice to Seller, but not later than thirty (30) days after the end of the Feasibility Study Period (the "Closing"). Closing shall take place at the offices of Haynsworth Sinkler Boyd, P.A., 1201 Main Street, Suite 2200, Columbia, South Carolina 29201 or at such other place as the parties may otherwise agree.

(b) Purchaser's obligations to purchase the Property are subject tot the following conditions:

(i) All representations and warranties of Seller in this Agreement shall be true and correct in all materials respects as of the Closing Date and Seller shall have performed all agreements required to be performed by Seller hereunder.

(ii) There shall have been no material adverse change in the physical condition of the Property;

(iii) An easement for the provision of sewer service shall have been granted over adjacent property to the satisfaction of Purchaser and the City of Newberry so that Purchaser shall be assured of sewer service to the Property; AND

(iv) Approval of all economic development incentives from the State of South Carolina, Newberry County, and any third parties.

In the event that the conditions set forth above are not satisfied prior to the Closing, Purchaser may waive any unsatisfied condition in writing or, by written notice, terminate this Agreement in which event the Earnest Money shall be returned to Purchaser and the parties shall have no further obligations hereunder, except for those rights and obligations which by their express terms are to survive termination and except to the extent the failure of such condition was the result of a default under this Agreement by Seller.

6. Seller's Closing Documents. Seller shall execute and deliver the following to Purchaser at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Deed. A general warranty deed, subject only to the Permitted Exceptions. The deed shall be in proper form for recording and shall be duly executed, witnessed and acknowledged.

(c) Affidavits as to Liens and Possession. Affidavits and indemnification agreements, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no amounts owed for labor, materials or services respecting the Property and that there are no parties in possession.

(d) Residency Certificate. Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code § 12-8-580 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code. In the event Seller fails to deliver the certificates referred to above or fails to provide evidence suitable to Purchaser of exemption from the S.C. and IRS Code Sections referenced above then Purchaser shall deduct and withhold from the cash portion of the purchase price the amounts required by said Code Sections and remit said amounts with the required forms to the Internal Revenue Service and the South Carolina Department of Revenue and Purchaser shall receive a credit against the cash portion of the purchase price for the amounts so withheld.

(e) Evidence of Authority. Seller shall provide a certificate, executed by an appropriate officer of Seller, with attached copies of resolutions as appropriate, evidencing that the sale of the Property has been properly approved by the governing body of Seller.

(f) Certificate of Existence. Current certificate of existence from the State of South Carolina.

(g) Tax Compliance Letter. A current tax compliance letter issued by the South Carolina Department of Revenue.

(h) Other Closing Documents. Such other closing documents as are customarily executed by a seller at a South Carolina real estate closing.

(i) A valid and sufficient easement for the provision of sewer service at the Property, to the satisfaction of Purchaser in its sole discretion.

7. Purchaser's Closing Documents. Purchaser shall execute and deliver the following to Seller at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Other Closing Documents. Such other closing documents as are customarily executed by a purchaser at a South Carolina real estate closing.

8. Closing Costs, Taxes and Assessments. Each of the parties shall pay its own attorney's fees arising from this transaction. Seller shall pay the transfer tax on the deed. Purchaser shall pay all other closing costs, including recording fees. Any and all general and special assessments against the Property shall be paid in full by Seller prior to or at closing. Seller will pay all rollback taxes at the Closing. As of the date of Closing, the Purchase Price shall be adjusted as follows:

(a) Ad valorem taxes shall be prorated on a calendar year basis. If the current year tax amount is not available, the parties shall prorate based on an estimate and either party shall be entitled to seek an adjustment of the proration based on the actual tax amount no later than March 31 of the following year.

9. Easements and Rights-of-Way. Seller will convey to Purchaser any and all right, title and interest which Seller has in and to any easements or rights-of-way adjacent to the Property.

10. Inspection and Testing of Premises. After the date hereof, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable business hours.

11. Seller's Warranties. Seller makes the following representations and warranties, all of which shall survive closing, and agrees to indemnify and hold Purchaser harmless against any loss or damage, including reasonable attorneys' fees, resulting from breach of said warranties:

(a) Authorization and Compliance. Seller warrants that this Agreement is duly authorized, executed and delivered and is not a breach of, or in conflict with, any agreement, judgment, restriction, statute or regulation applicable to Seller.

(b) Warranty of Title. Seller warrants that Seller is lawfully seized of the Property in fee simple absolute and that Seller has good right and is lawfully authorized to sell or convey the same. There are no leases or rights of possession or use by any parties other than the Seller affecting the Property.

(c) Pending Actions. Seller warrants that there is no litigation, judicial or administrative proceeding or government investigation against the Seller or the Property which would materially adversely affect the Seller's ability to comply with the terms of this Agreement.

(d) Assessments. Seller warrants that to its knowledge there are no existing or pending assessments which are chargeable against the Property or personal property covered by this Agreement other than ad valorem taxes for the current year which will be prorated at Closing.

(e) Accuracy of Information. To Seller's knowledge, all information and reports provided by Seller to Purchaser under paragraph 3 are true and accurate in all material respects.

(f) Environmental Matters. Seller warrants that it has no actual knowledge of any facts that would cause it to suspect that any present or past use of the Property or any adjacent property has caused, or might have created unusual risks of causing, contamination of the Property in violation of any federal or state environmental laws or regulations, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the South Carolina Pollution Control Act, South Carolina underground storage tank provisions and regulations, and any amendments thereto or regulations issued pursuant to such statutes.

12. Remedies. If Purchaser defaults on any of its obligations under this Agreement, the Escrow Agent shall pay the Earnest Money to Seller as liquidated damages, and Seller shall have no further remedy against Purchaser. Seller and Purchaser agree that the Earnest Money is a fair and reasonable determination of Seller's actual damages in the event Purchaser defaults under this Agreement. If Seller defaults on any of its obligations under this Agreement, the Escrow Agent shall return the Earnest Money to Purchaser, and Purchaser may pursue such other rights and remedies as may be available to it at law or in equity, including without limitation the remedy of specific performance.

13. Destruction or Condemnation. If, prior to closing, all or any part of the Property is damaged by fire, water or any other casualty or is taken or threatened to be taken by eminent domain, Seller shall provide written notice thereof to Purchaser and Purchaser may elect to cancel this Agreement by written notice thereof to Seller. In the event that Purchaser shall so elect, both parties shall be relieved and released from any further liability hereunder, and Purchaser shall be entitled to a refund of the Earnest Money together with any interest earned thereon. Unless this Agreement is so cancelled, it shall remain in full force and effect and, at Purchaser's option, the Seller either shall assign, transfer and set over to Purchaser all of the Seller's right, title and interest in and to any insurance proceeds (plus credit for the deductible) or awards that may be made for

such casualty or taking, or Seller shall agree with Purchaser for a reduction in the Purchase Price based on the extent of casualty or taking.

14. Risk of Loss. The risk of loss in connection with the Property and any improvements thereon shall be borne by Seller until Closing.

15. Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement may be assigned by Purchaser without the consent of Seller.

16. Commissions. Each party represents and warrants that it has not contracted for or is otherwise subject to any claim for brokerage commissions or similar fees with respect to sale of the Property, and agrees to indemnify and hold harmless the other against any such claim arising from the indemnitor's actions.

17. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore and between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

18. Modification. This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

19. Possession. Possession of the Property will be delivered to Purchaser at Closing.

20. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect.

21. Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter general, is used herein, it shall equally include the other.

22. Time of Essence. Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

23. Paragraph Headings. The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

24. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

25. Notices. All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified at its address set forth above. Notice by mail shall be effective on the date placed in the mail.

26. Escrow Agent. The parties shall indemnify and hold harmless Escrow Agent in connection with the exercise of its duties hereunder. The parties acknowledge that except pursuant to the executed Settlement Statement at Closing, Escrow Agent at its option may elect not to release the Earnest Money without written approval from both parties. In the event the Escrow Agent determines in its discretion that there is a bona fide dispute between the parties as to who is entitled to the Earnest Money, and that the rights of the parties as to the Earnest Money are unclear under this Agreement, the Escrow Agent may file an action for interpleader or otherwise seek a judicial determination as to the rights of the parties. In such event, the parties shall hold Escrow Agent harmless and shall share equally any expenses of Escrow Agent in connection with such action. Seller agrees that Escrow Agent may also act as Purchaser's attorney with respect to the transaction contemplated herein and with respect to any dispute between Seller and Purchaser.

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

WITNESSES:

SELLER:

WEST/HOBBY LLC

By: _____ (SEAL)
Its: _____

PURCHASER:

KISWIRE, INC.

By: _____ (SEAL)
Its President

EXHIBIT A

FILED
NEWBERRY COUNTY
2014 MAR 14 AM 10:3
JACKIE S. BOWERS
CLERK OF COURT

Newberry County GIS

OWNER

LEGAL

Grantors Name:

Sale Date:

Deed Book:

Deed Page:

Plat Book:

Plat Page:

PROPERTY INFO

Card Number: 1

Location:

Tax District:

Owner Occupied:

Land Use Code: 681 Non-Qualified

Total Building Value:

Total Yard Items Value: 1700.00

Total Taxable Value: $141,061.00

Total Assessed Value: $8,224.00

* THIS MAP IS NOT TO BE USED AS A PLAT *

Columbia: 1456817 v.3

WEST/HOBBY:002237

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

WEST/HOBBY, LLC,)
)
Plaintiff,)
)
-vs-)
)
COUNTY OF NEWBERRY)
)
Defendant.)

Docket No. 2012-CP-36-00460

ANSWER TO AMENDED COMPLAINT
(Jury Trial Requested)

FILED
NEWBERRY COUNTY
2014 APR 4 AM 11:01
JACKIE S. BOOZER
CLERK OF COURT

The Defendant County of Newberry, answering the Amended Complaint of the Plaintiff West/Hobby, LLC, alleges as follows:

FOR A FIRST DEFENSE

1. The Amended Complaint fails to allege facts sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and should be dismissed.

FOR A SECOND DEFENSE

2. The allegations of paragraph 1 of the First Defense are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Second Defense.

3. Each and every allegation of the Amended Complaint not specifically admitted, qualified, nor otherwise explained, is denied.

4. This Defendant admits so much of paragraphs 2, 3, and 4 of the Amended Complaint as alleges that this Defendant is a Political Subdivision of the State of South Carolina, and as such, is subject to suit under the terms, conditions, and limitations of the South Carolina

Tort Claims Act, codified at *S.C. Code Ann.* § 15-78-10 through -220 (1986 as amended); this Defendant further admits that jurisdiction and venue are properly before this Court.

5. This Defendant admits so much of paragraphs 6, and 7 of the Amended Complaint as alleges that this Defendant operated a landfill on real property owned by this Defendant within Newberry County from the early 1970's until approximately 1993, when this Defendant closed the landfill. The remaining allegations of the foregoing paragraphs of the Amended Complaint are denied.

6. This Defendant lacks sufficient information to admit or deny the allegations of paragraphs 1, 5, 8, 10, and 14 of the Amended Complaint, and therefore denies the same and demands strict proof thereof.

7. This Defendant lacks sufficient information to admit or deny the allegations of paragraphs 9, 11, and 13 of the Amended Complaint, and therefore denies the same and demands strict proof thereof; but to the extent that the paragraph purports to selectively paraphrase a written contract and/or other associated documents, this Defendant craves reference to the full text of the contract and associated documents for an accurate enumeration of the message conveyed.

8. This Defendant denies the allegations of paragraphs 15, 16, 17, 18, 19, 30, and 34 of the Amended Complaint as those allegations are worded, and affirmatively alleges that this Defendant has, at all times, acted in good faith and in conformance with applicable law in fulfilling its duties to the general public and to adjoining property owners.

9. This Defendant denies the allegations of paragraphs 12, 20, 22, 23, 24, 25, 26, 28, 29, 31, 32, 35, and 36 of the Amended Complaint.

10. Paragraphs 21, 27, and 33 of the Amended Complaint require no response; but to the extent that they may be deemed to allege acts or omissions on the part of this Defendant that purport to establish liability on the part of this Defendant, they are denied.

FOR A THIRD DEFENSE

11. The allegations of paragraphs 1 through 10 of the First and Second Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Third and affirmative Defense.

12. Any actions of this Defendant in operating the landfill, in subsequently closing it, and in any actions taken since the closing of the landfill, have been in conformance with the applicable law and regulations, and are a direct result of directives or orders from South Carolina Department of Health and Environmental Control and/or the United States Environmental Protection Agency; and this Defendant does plead such regulatory compliance as an affirmative defense and bar to recovery.

FOR A FOURTH DEFENSE

13. The allegations of paragraphs 1 through 12 of the First, Second, and Third Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Fourth and affirmative Defense.

14. This Defendant is informed and believes that the Plaintiff's claims are time-barred by the applicable statutes of limitations, and this Defendant does plead the statute of limitations as an affirmative defense and complete bar to recovery.

FOR A FIFTH DEFENSE

15. The allegations of paragraphs 1 through 14 of the First, Second, Third, and Fourth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Fifth and affirmative Defense.

16. If the Plaintiff was damaged as alleged in the Amended Complaint, which this Defendant denies, then such damage was proximately caused by the sole negligence, gross negligence, willfulness, wantonness, and recklessness of the Plaintiff in the acts or omissions of its own agents and employees in the following particulars:

A. In purchasing real property which it knew, or could reasonably have discovered, had the potential for environmental issues;

B. In ignoring an open and obvious condition;

C. In failing to exercise due diligence in the purchase of commercial property;

D. In knowingly assuming the risk that it could purchase real property with potential environmental issues at a discount, then sell it as commercial property at a premium; and

E. In failing to exercise ordinary care for its own safety, as a reasonably prudent person would have exercised under the same or similar circumstances;

all of which acts or omissions on the part of the Plaintiff, through its agents and employees, were negligent, grossly negligent, willful, wanton, and reckless, and were the sole and proximate cause of the damages complained of; and this Defendant does plead such sole negligence of the Plaintiff as an affirmative defense and complete bar to recovery against this Defendant.

FOR A SIXTH DEFENSE

17. The allegations of paragraphs 1 through 16 of the First, Second, Third, Fourth, and Fifth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Sixth and affirmative Defense.

18. If this Defendant, by and through its agents and employees, was in any way negligent, grossly negligent, willful, wanton, or reckless in any of its acts or omissions, which this Defendant denies, then the Plaintiff, too, was negligent, grossly negligent, willful, wanton, and reckless and unlawful in its own acts or omissions in the following particulars:

A. In purchasing real property which it knew, or could reasonably have discovered, had the potential for environmental issues;

B. In ignoring an open and obvious condition;

C. In failing to exercise due diligence in the purchase of commercial property;

D. In knowingly assuming the risk that it could purchase real property with potential environmental issues at a discount, then sell it as commercial property at a premium; and

E. In failing to exercise ordinary care for its own safety, as a reasonably prudent person would have exercised under the same or similar circumstances;

all of which acts or omissions on the part of the Plaintiff, its agents and employees were negligent, grossly negligent, willful, wanton, and reckless to a comparatively greater degree than any acts or omissions on the part of this Defendant by and through its agents and employees, and were the more proximate cause of any damages complained of; and this Defendant does plead such comparatively greater negligence on the part of the Plaintiff as an affirmative defense and complete bar to recovery; or, in the alternative, as a factor for the Court to consider in discounting any recovery the Plaintiff may be awarded.

FOR A SEVENTH DEFENSE

19. The allegations of paragraphs 1 through 18 of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Seventh and affirmative Defense.

21. This Defendant is informed and believes that, as a political subdivision of the State of South Carolina, this Defendant is entitled to certain limitations, immunities, and defenses to the Plaintiff's claims under the South Carolina Tort Claims Act, codified at *S.C. Code Ann.* §§ 15-78-10 through -220 (1986 as amended), including, without limitation, immunities and defenses afforded by *S.C. Code Ann.* §15-78-60 (3), (4), (5), (7), (13), (18), and (20); and to the extent that such immunities and defenses are available, this Defendant pleads the

various defenses and immunities afforded by the South Carolina Tort Claims Act as an affirmative defense to the claims alleged by the Plaintiff.

FOR AN EIGHTH DEFENSE

21. The allegations of paragraphs 1 through 20 of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Eighth and affirmative Defense.

22. This Defendant is informed and believes that, if the Plaintiff was injured and damaged as alleged in the Complaint, such damage was proximately caused by circumstances and conditions about which this Defendant had no notice, actual or constructive; and this Defendant does plead such lack of notice as an affirmative defense and complete bar to recovery.

FOR A NINTH DEFENSE

23. The allegations of paragraphs 1 through 22 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Ninth and affirmative Defense.

24. This Defendant is informed and believes that, if the Plaintiff has been damaged as alleged in the Amended Complaint, which this Defendant denies, such damage was proximately caused by the intervening acts or omissions of a third party or parties, which acts or omissions were negligent, grossly negligent, willful, wanton, and reckless, in allowing contaminants from other sources to infiltrate the real property now owned by the Plaintiff, which acts or omissions were not foreseeable to this Defendant, and about which this Defendant had no notice; and this Defendant does plead such intervening acts of negligence on the part of unknown third parties as an affirmative defense and complete bar to recovery.

FOR A TENTH DEFENSE

25. The allegations of paragraphs 1 through 24 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Tenth and affirmative Defense.

26. This Defendant is informed and believes that, in purchasing the real property subject of this action in 2000, as the Plaintiff has alleged in its Amended Complaint, the Plaintiff, through its agents and employees, voluntarily confronted a known risk with a full appreciation of the inherent dangers; and this Defendant does plead the Plaintiff's assumption of the risk in purchasing the property as an affirmative defense and complete bar to recovery.

FOR AN ELEVENTH DEFENSE

27. The allegations of paragraphs 1 through 26 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Eleventh and affirmative Defense.

28. This Defendant does plead failure of the Plaintiff to take adequate steps to mitigate its claimed damages as an affirmative defense.

FOR A TWELFTH DEFENSE

29. The allegations of paragraphs 1 through 28 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Twelfth and affirmative Defense.

30. This Defendant pleads the equitable defenses of laches, waiver and estoppel, and unclean hands as affirmative defenses to the extent they are available.

FOR A THIRTEENTH DEFENSE

31. The allegations of paragraphs 1 through 30 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as not inconsistent with this Thirteenth and affirmative Defense.

32. With regard as to the Plaintiff's prayer for judgment against this Defendant for attorney's fees for tort actions, this Defendant is informed and believes that, under the terms, conditions, limitations, and exceptions of the South Carolina Tort Claims Act, no award for attorneys fees is allowed; and this Defendant is informed and believes that the Plaintiff's prayer for attorneys fees for its tort action against this Defendant is barred by *S.C. Code Ann.* § 15-78-120(b) and other applicable law.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiff, this Defendant prays that the same be dismissed, with costs assessed to the Plaintiff, and for such other and further relief as the Court may deem just and proper.

DAVIS, FRAWLEY, LLC

BY: _____

Patrick J. Frawley
140 East Main Street
Post Office Box 489
Lexington, South Carolina 29071
ATTORNEYS FOR COUNTY OF NEWBERRY

Lexington, South Carolina
April 2, 2014

TRANSCRIPT OF RECORD

TRIAL DAY 1 - 12/14/15

(Whereupon, Plaintiff's Exhibits 1 through 16 and Defendant's Exhibits 1 through 6 were marked for identification prior to commencement of the proceeding.)

(Whereupon, the proceeding was commenced at 10:16 a.m.)

THE COURT: All right. We're on the record this morning in the case of *West/Hobby, LLC v. County of Newberry*. It's a 2012 case, File No. 46.

What I want to do, gentlemen, is just -- even though I have a little recollection, not a whole lot, but a little recollection of when we argued summary judgment motions. If each side just kind of give me a little summary of -- of the case and what your side intends to -- to show, so, Mr. Bruner, I'll let you start first.

MR. JAMES BRUNER: Thank you, Your Honor. Jim Bruner for the plaintiff, and here at the table with me is my son, Ben. I brought the ---

THE COURT: Okay.

MR. JAMES BRUNER: --- the heavy artillery today.

THE COURT: Good.

MR. JAMES BRUNER: And this -- you remember Mr. Billye West and his daughter, Misty West, who are with West/Hobby.

OPENING STATEMENT BY MR. JAMES BRUNER

I can tell you that this is an inverse-condemnation case. Now, you may recall that in our amended complaint, we had other causes of action. We have decided to forgo any pursuit of the other ones, other than inverse condemnation.

THE COURT: Right.

MR. JAMES BRUNER: So we are focused on whether or not there has been an aggressive act by the government that resulted in a taking and it was for public purpose. We think the evidence is going to support our contention there.

And in short -- you want to turn that thing up? Let me orient you first about the real property we will be discussing. I've got a -- a picture up on the projector here for you. And this shows the intersection of Interstate 26 and Highway 219.

This is the Newberry County Industrial Park that I'm indicating here with the Caterpillar plant, Holiday Inn Express, and Kiswire. This is the Love's Travel Stop over here. And then, this is -- this road right here is what is referred to as Cockrell Road, or sometimes in the past, been called Landfill Road.

This pictures shows you the property boundaries of the West/Hobby property, 40.7 acres shown here in green. This

picture shows you in red the property boundaries of the old Newberry County Landfill. Juxtaposed to each other, you can see that they are adjacent. And they -- the properties are separated by Cockrell Road.

When we speak in the testimony about the landfill, we'll be talking about the property in red. When we speak about the West/Hobby property or simply the property, we'll be talking about the property in green, the 40.7 acres.

Your Honor, I think the -- our evidence is going to show the following: Newberry County operated the property in -- the landfill property in red, oh, for some twenty years or so. And it was a solid-waste landfill. And I will indicate to you that there were two phases. The first phase, if this thing would work -- the first phase was up on the northern end of the property. Phase II was down here where you can see the property kind of cleared.

So this was the last phase into which they placed waste and what they covered. Our evidence will show that the landfill stopped accepting waste in 1994, at which time they placed a clay cap over Phase II here and then put earth on the top of that. The purpose of the clay cap, it's an impervious -- almost completely impervious soil barrier, and it keeps rainwater from the sky from penetrating down into the landfill. It sheds it off. That's the purpose.

In -- in 1996 Newberry County submitted a methane-gas-monitoring plan to DHEC. And that was accepted. And under that plan they were required to monitor the groundwater and the landfill gas every quarter. Now, I'm going to tell you front that -- that the property owned by West/Hobby does not have a complaint about the groundwater.

There are two components to -- to landfill problems. One is groundwater; one is landfill gas. We do not have any complaint about groundwater. We will not offer any testimony that the groundwater under our property is contaminated.

In flat -- in fact, the evidence will show that the -- the gradient of the land and of the subsurface is running in the southeast direction this way, which is away from the West/Hobby property. As a result of that, we don't have a problem on our property with groundwater.

The evidence will show that in -- there was no methane, which is a component of landfill gas. No methane was detected at the property boundaries of the old landfill within -- within their own property, but right adjacent to the boundary. No methane was detected until December of 2003. After that, there was a steady series of tests where methane was detected. And as a result, the county was required to submit to DHEC a methane-remediation plan. And they did.

Before any methane or landfill gas was detected in 2000, Mr. West and a friend of his, Ray Hobby, bought the West/Hobby property. In 2002 they conveyed their interest into West/Hobby, LLC, a limited liability company formed for the purpose of holding their investment property.

So the evidence will show that at the time they purchased this property, there was no landfill gas present or had been detected at the boundary of the property. The evidence will always -- also show that in February of 2006, after they had detected methane at their property boundary, the county wrote Mr. West and asked for his permission to conduct some Geoprobe testing on his property. And -- and the purpose of this was to determine whether or not the landfill gas had migrated laterally off of the landfill property.

He gave the county permission to do that. And sure enough, in March of 2006, B.P. Barber, the county's consultant, in fact conducted those tests. We will show you a -- a diagram of where they conducted and what the readings were. In short, we know that in March of 2006, the methane landfill gas had migrated from the landfill property onto the West/Hobby property, and their own tests prove that.

As a result of that, the county requested permission from DHEC and was given permission to install what was

called an "interceptor trench." Simply put, an interceptor trench is dug by a backhoe. It is generally the width of the backhoe bucket on the order of 2 1/2 to 3 feet wide. And it is the depth that the boom and stick of the backhoe can reach: at most, probably 20 feet.

So as they dig this trench, they fill it up with old tire chips. And that's all they do. And they install that interceptor trench around the boundary of Phase II, as I am indicating.

They found subsequently through testing that the interceptor trench did not sufficiently address the landfill gas. Their tests were still showing that they had excessive levels of -- of methane at the property boundary.

And let me mention this about methane: You're going to hear testimony from some of the experts about the lower explosive limit for methane. Generally speaking, according to DHEC, the lower explosive limit for methane, which is an odorless, colorless gas, but is volatile, it is 5 percent. And that is set because methane will explode.

So it is -- it is a potential harm to property and to -- to life. And so as a result of that 5 percent having been exceeded through their test wells, their consultant recommended the installation of what they call "passive-gas vents." And passive-gas vent, for lack of a better description, is a PVC pipe with holes in it that's drilled

down into the ground. And it comes up and it's got a little hook on it.

And what that does is simply penetrate down into the landfill waste, which is decomposing, and the gas comes -- permeates into the PVC through the hole -- comes up and is relieved. So they put in a passive-gas vent. It was recommended and approved in February 2008. And then they put it in, in December of 2010.

The month after they had put in the passive-gas vent, Kiswire, whose original Newberry plant is located right here -- Kiswire signed a contract with West/Hobby to buy their property. And they were motivated because of its proximity to its current plant and ease of -- of traveling between the two. And so the president of Kiswire could keep track of both operations and it would be very efficient for them.

As part of his purchase agreement, the purchase price was $520,000. The -- as part of the purchase, he had the right to conduct environmental site assessment, which he did. He hired a company by the name of S&ME to conduct a Phase I environmental site assessment. And they did that.

They looked at the records with DHEC. And they saw that there had been landfill gas detected at the property boundaries of the landfill. So they recommended to Kiswire that they conduct what they call a "limited soil

assessment," which involves going onto the West/Hobby property and placing Geoprobes down into the soil and measuring the effect of landfill gas to see if there is any.

THE COURT: When was the contract with Kiswire?

MR. JAMES BRUNER: January 2011.

THE COURT: Okay. All right.

MR. JAMES BRUNER: So in March of 2011, S&ME conducted its limited soil assessment and -- and gave its results to Mr. David Minnick, who will testify, who was president of Kiswire. And with the results, it showed two things: It showed the presence of methane, however not above the lower explosive limit of 5 percent.

But it also showed the presence of what they call "volatile organic compounds." We will probably be referring to it in the evidence as "VOCs." But that's what we're talking about, is these volatile organic compounds, which are things like benzene, trichloroethane -- they're a lot of bad things that generally the government considers to be carcinogens.

They are present in landfill gas. And when -- when waste decomposes, it generates methane and generates these nasty carcinogens.

So S&ME gave those results by phone to Mr. Minnick with Kiswire. And as a result of his discussion with them,

he terminated the contract with West/Hobby. And then he called Misty and -- and Billye West and -- and had a meeting with them because he wanted to explain to them why he had terminated the contract. And he told them -- he explained to them that the reason he terminated the contract was because of the presence of these VOCs in the soil and he thought that was an unnecessary risk to -- to the building he was planning on building so he terminated the contract.

He asked them to help him find another property. And they did. They wanted to keep this new plant in Newberry. And he ended up buying a piece of property from Rodney Griffin up on Highway 76. So he built his new plant in Newberry County, but not on this property, up on Highway 76.

In January of 2012, West/Hobby filed suit against Newberry County. What -- what we have -- what the evidence will show is at the time we filed suit, we know for a fact because of the test results that the West/Hobby property was contaminated with landfill gas, beginning no later than the spring of 2006 and continuing until 2011, when S&ME did its test.

After we'd filed suit, the county took no further action on remediating the landfill gas until 2015, three years later. And what they did was the third level of

active remediation, which had been recommended in 2005 by its consultants, the consultant had recommended, first, an interceptor trench and, if that doesn't work, you put in passive-gas vents. And if that doesn't work, you put in an active remediation system.

What that is, in a -- in a simplistic view, is it is PVC pipes inserted down to the level of the waste in the landfill. And it has -- it's perforated, so it will -- it will capture gas. And then, basically, on top it's got a vacuum motor.

So instead of just passively letting landfill gas come through the pipe, as a passive-gas vent does, this is active. And this not only has -- it -- it has a motor on top and a fan. And it sucks that -- the gas out.

In addition, if it's enough landfill gas, they might also put a flame on it and burn it off. Some do that. It just depends on the amount of gas they're bringing out.

What the evidence will show is that in May 2015, the county completed its active gas-remediation system. And almost immediately, all of the landfill-gas readings in their monitoring wells around this property, all but one went to zero. There's still one, Monitoring Well 6 -- it's down here in the southwestern corner -- that showed an excessive level of methane. And so what they recommended doing is simply turning up the RPMs on the fan motor and

pulling more.

Now, we think -- and I think our evidence will show -- that this was the correct move for the county to have made; that the active system appears, from the evidence, to be working, although we're not going to know for sure if it is capturing all the landfill gas on the landfill property probably for another year of tests. But it certainly looks promising that this will prevent the landfill gas from leaving that property and from contaminating the West/Hobby property.

Because it was capable of being remediated, we contend that at the very least, beginning in the spring of 2006, there was a temporary taking by Newberry County of the West/Hobby property. And under our case law, a temporary taking is compensable, just like a permanent taking.

Because it's capable of being remediated -- and, in fact, it looks like they're on the road to remediating this landfill-gas problem -- there's probably not going to be a permanent taking. Our problem and our concern and the evidence will show is that they have known -- the county has known since 2004 that there was landfill gas in excess of the lower explosive limits at their property boundaries.

They were given a plan. They eventually implemented the plan, but they were very slow to react. That is what we think our evidence will show.

After they installed the first-level interceptor trench in the summer of 2006, it took another four years before they put in the next step, which was the passive-gas vents. And once they saw the test results from that, they saw that that wasn't working. And it took them five more years to put in the active remediation system.

We contend, under the case law, that their capping -- putting the clay cap on the landfill property was, in fact, an active, aggressive act and that that eventually caused the taking to take place with the contamination of the West/Hobby property with the landfill gas.

And the evidence will show that Mr. West did not know that his property was contaminated until spring of 2011, when he sat down with Mr. Minnick and Mr. Minnick told him why he cut -- he had terminated the contract. That's when he found out he had a problem on the property.

That will be what the plaintiff's evidence will show ---

THE COURT: Okay.

MR. JAMES BRUNER: --- Your Honor.

THE COURT: All right. Thank you, Mr. Bruner. Mr. Frawley ---

MR. FRAWLEY: May it please the Court?

THE COURT: --- you want to give me your summary, sir?

MR. FRAWLEY: Briefly, Your Honor.

DIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Would you state your full name for the record, please?

A Billye Lee West.

Q All right.

(Off the record briefly.)

Q Mr. West, do you live in Newberry?

A I live in Newberry, South Carolina.

Q You live here all your life?

A All my life.

Q What do you do for a living?

A I am the owner of West Electrical Contractors and some other entities.

Q All right. In addition to electrical contracting, do you also invest in and develop real property?

A Yes. We are very large in property in Newberry County. We invest regularly in properties here.

Q All right. How long have you been investing in real estate?

A 1988.

Q Okay. Did you ever invest in real estate with a gentleman named Ray Hobby?

A Yes, I did.

Q Who is he?

A Ray Hobby was a friend of mine; moved here to Newberry

-- you know, contractor. And we just have an agreement and purchase property.

Q Okay. How did you learn about the old Cockrell property ---

(Whereupon, Mr. James Bruner and Mr. Bejamin Bruner conferred.)

Q I'm going to show you a picture of it here. And -- and it's outlined in green. How did you learn of the availability of that property?

A The previous owner was a friend of mine.

Q Okay.

MR. FRAWLEY: Your Honor, may I move so I can see what ---

THE COURT: Yeah. Position yourself wherever ---

MR. FRAWLEY: Thank you, Your Honor.

THE COURT: --- you -- you need to.

Q Do you -- do you recall what Mr. Cockrell did on this piece of property?

A Mr. Cockrell just farmed and raised Christmas trees.

Q Okay. And how did you come to learn it was on the market?

A Mr. Cockrell came to us and wanted ---

Q Okay.

A --- to sell.

Q All right. And did you and Mr. Hobby buy the piece of

property?
A Yes, we did.
Q And how much did you pay for it? Do you remember?
A No.
Q All right. I'm going to ask you to turn to Exhibit 2 in that trial notebook in front of you, right there. Turn to No. 2.
A (Complied.)
Q All right. Do you recognize that?
A Yes, I do.
Q What is it?
A That is real estate title. We paid $290,000 for it.
Q All right. So you and Mr. Hobby paid $290,000 to Mr. Cockrell for this property. And -- and when did you buy it?
A I am looking for the date. August 22nd, '74, it seems.
Q No. No. No. Look at -- look at the bottom of the stamp when it was filed with the clerk of court.
A 11/1/2000.
Q November 1st of 2000. Okay.
THE COURT: I don't -- Mr. Bruner, I don't mind a little bit of leading, if -- especially to get through some of this preliminary stuff, since we're nonjury. And certainly ---

MR. JAMES BRUNER: All right, sir.

THE COURT: --- if you exceed that, I'm -- I'm sure Mr. Frawley will have ---

MR. JAMES BRUNER: Yes.

THE COURT: --- something to say about it ---

MR. FRAWLEY: Your Honor ---

THE COURT: --- okay?

MR. FRAWLEY: --- I was going to suggest that for this stuff, to go ahead and lead.

THE COURT: Yeah.

MR. JAMES BRUNER: Thank you, Your Honor.

Q Subsequent to that point in time when you bought this property, did you and Mr. Hobby convey your interest into West/Hobby?

A Yes, we did.

Q What was West/Hobby, and why was it formed?

A West/Hobby was a friendly agreement with two -- between two honest gentlemen that we were purchasing property and selling and buying.

Q All right. Did you and Mr. Hobby convey a number of pieces of property into the LLC?

A Yes, we did.

Q All right. I'm going to ask you to look at what is marked as Exhibit 3 there, the next tab.

A (Complied.)

Q Is that the deed where you and Mr. Hobby conveyed your interest into West/Hobby, LLC?

A Yes.

Q All right. Now, subsequent to that did -- did -- what was the purpose of you and Mr. Hobby buying this property in the first place? Did you have a use for it, or what were you going to do with it?

A We knew the location of it and felt it was a great industrial site.

Q All right. Between the time you conveyed it into West/Hobby in 2002 and 2011, did you have any offers on the property?

A I -- we had some minor offers before this one, but nothing that was acceptable.

Q Okay. Was there anything that was -- that was solid, that was real, do you think?

A Yes. I think they were all real.

Q Yeah. All right.

A Because of the location.

Q All right. What happened in -- in January of 2011?

A (No audible response.)

Q Do you remember?

A No.

Q Okay. Look at Exhibit 12, please. Exhibit 12.

A Twelve?

Q Yes.
A (Complied.)
Q All right. Do you recognize that?
A Yes, I do.
Q Is -- is that a contract between your limited liability company and Kiswire for Kiswire to buy your property?
A That's correct.
Q And how much was the purchase price they agreed to pay?
A 520,000.
Q And what was the date of that agreement? Was it January the 12th, 2011?
A Agreement is 19th day of January, 2011.
Q Okay. Now, tell me what you remember happening with respect to this sale to Kiswire after you both signed that contract.
A We continued to negotiate with Kiswire because we've done all their work on what would be put there. And it took awhile before they found this and anybody realized it was there except the county.
Q Okay. And how did the transaction with Kiswire then develop?
A It -- Mr. Minnick called me and told me about the findings ---

MR. FRAWLEY: Objection -- I'll -- I'll object to any hearsay. Mr. Minnick's here to testify. But I'll object to him testifying to what Minnick ---

THE COURT: Well, it ---

MR. FRAWLEY: --- would've said.

THE COURT: --- it would be hearsay. But again, we're nonjury. I'm going to, you know, not stick real hard with the rule, especially if Mr. Minnick's going to be here ---

MR. FRAWLEY: Thank you ---

MR. JAMES BRUNER: He will ---

MR. FRAWLEY: --- Your Honor.

MR. JAMES BRUNER: --- testify.

THE COURT: --- to testify. You may proceed.

Q So what did -- did you learn from your conversation with him?

A That the finding was by S&ME was that it was contaminated and it had methane and some other chemicals in it and he could not take the property because you cannot finance property under these conditions.

Q Now, let me ask you to look at what is marked in your notebook as Exhibit 14.

A All right. That's ---

Q Do you recognize that?

A Yes.

Q Is that the letter that Mr. Minnick sent you in which

he terminated his contract to buy this property?

A Yes. That's -- this is where he asked for his ---

Q Okay.

A --- refund and he could not buy the property.

Q Did Mr. Minnick have a meeting with you in which he explained to you the reasons why he was terminating it?

A Yes.

Q And -- and did he explain the reasons, as you have just stated in your testimony, the presence of those compounds in the -- in the soil?

A That was the only reason.

Q Okay. Before -- let me ask you this, Mr. West: Before he told you that, did you have any idea that this property was contaminated?

A No.

Q All right. Now, I understand -- and -- and we've stated earlier -- that the county had asked for permission to enter your property back in 2006. And in connection with that, I'm going to ask you to turn to Exhibit 5 in the notebook.

A (Complied.)

Q All right. Now, Mr. West, is that a letter dated February the 6th of 2006 from Newberry County to West/Hobby, requesting permission to test on this property?

A Yes.

Q All right. Did you give them permission?
A Yes.
Q Turn to the second page. Is that your signature?
A That is my signature.
Q All right. Now, ask you to turn back to the first page again.
A (Complied.)
Q Read that letter to yourself. Tell me if it is mentioned anywhere in that letter that they want to test for methane gas.
A No mention of any methane or any contamination.
Q Let me ask you to turn to the -- to the next exhibit, 6.
A Okay. Six.
Q Now, this exhibit is -- is titled an "Offsite Methane Investigation Report for the Newberry County Landfill." It's dated April of 2006; is that correct?
A That is correct.
Q When was the first time you saw that?
A When you showed it to me in my office.
Q And when was that?
A Yesterday.
Q Well, last Friday?
A Huh?
Q We didn't -- we didn't work ---

A All right.
Q --- on Sunday.
A Okay.
Q Okay. And you had not seen it before then?
A No.
Q Now, do you recall Newberry County asking for your permission to place Geoprobes on your property?
A No.
Q All right. Let me ask you to look at Exhibit No. 8. Is that a letter dated May 30th, 2006, from Newberry County to you?
A That's -- it was -- that is correct.
Q And what do they ask for permission to do on your property?
A Requesting additional subsurface testing and monitoring outside the borders of the Newberry County Landfill.
Q All right. Do they ask for permission to place Geoprobes on your property, two of them?
A Two 1-inch-diameter monitoring probes.
Q Okay. Do you know if they ever installed those probes?
A No, I do not.
Q Did you ever get any reports from Newberry County about what the readings were on those probes?

A No.

Q After you gave Newberry County permission to go on your property in the first instance, in -- in response to the letter of February 2006, did Newberry County send you a copy of any reports they had?

A Newberry County did not discuss anything with the West firm.

Q Did they send you a letter and tell you what they had found?

A No.

Q Did anybody pick up the phone and call you and tell you what they had found?

A No.

Q All right. Did you call them and ask them what they had found?

A No.

Q Why?

A I felt like with DHEC and Newberry County testing, that they would definitely come to us if they found anything not to -- in operating procedure.

Q And did either of them come to you?

A No.

Q Did their consultant come to you?

A Did not hear from anybody.

Q Did you consider that no news in this instance was

good news?

A Correct. It was farmland. And normally, farmland is not contaminated.

Q Okay. Is -- is this 40.7 acres still on the market?

A (No audible response.)

Q Is it for ---

A Yes.

Q --- sale?

Have you had any offers on it?

A No.

Q Okay. If Kiswire had closed on the sale under its contract in 2011, how much profit would you have made on this piece of property?

A I don't know exact number on it, but ---

Q Well, he -- he agreed to buy it for 520, didn't he?

A Yeah.

Q And you paid 290 for it?

A Plus all the expenses in ---

Q Okay.

A --- the meantime.

Q But the difference between the price you paid for it and what he was going to pay for it is $230,000?

A Yes.

Q So that would've been the profit you would've made, had the sale closed?

A That's correct.

Q Please answer any questions that Mr. Frawley may have for you.

THE COURT: Okay. Cross-examination, Mr. Frawley?

MR. FRAWLEY: May it please the Court: Your Honor, when we argued summary judgment back in August, I brought the original depositions in the event Your Honor needed to review those.

THE COURT: Okay.

MR. FRAWLEY: And -- and yesterday and Saturday, I didn't find those in my office. Do -- do we still have them here? Do you know?

THE COURT: Okay.

MR. FRAWLEY: It -- it would be -- it would be an expandable folder. There was a good bit of them.

THE COURT: That ---

MR. FRAWLEY: That's -- that's them.

THE COURT: Okay. You -- you need it?

MR. FRAWLEY: I -- I may not need them now.

THE COURT: Okay.

MR. FRAWLEY: But ---

THE COURT: Well, they're here ---

MR. FRAWLEY: But we ---

THE COURT: --- if you need them.

MR. FRAWLEY: --- know where they are if I need them.

THE COURT: Right.

MR. FRAWLEY: Thank you, Your Honor. May it please the Court?

THE COURT: Certainly.

CROSS-EXAMINATION

BY MR. FRAWLEY:

Q Mr. West, when you and Ray Hobby bought the 40.7-acre tract across the street, you knew it was across the street from a closed landfill, didn't you?

A Yes.

Q Okay. In fact, you had -- you had used that landfill, when it was still open, prior to the mid-1990s, hadn't you?

A Yeah.

Q Okay. And do you recall occasions when you would've gone there on a Saturday with your daughter riding in the back when you went to the dump?

A Yeah.

Q I mean, that's not an unusual thing for a dad to take his kids to the dump, at least in -- in -- in my case it wasn't. Would you agree with me that's not an unusual occasion for that to happen?

A It is not unusual for guests to travel, but it is when it's tested to not let the landowner know.

Q Yes, sir. We'll -- we'll get into that in a moment. But you knew it was a -- a -- a closed landfill when you

bought the property?

A I knew it was a landfill there.

Q Yes, sir. And you got the property November 1st of 2000. It came in two tracts, didn't it: 22.88 acres; and then, 19.12 acres?

A That's correct.

Q Okay. While the math doesn't add up to 40.7, everybody pretty much concedes it's a 40.7-acre tract, correct?

A That's correct.

Q And your plan was for it to be a future industrial site?

A Correct.

Q Okay. You weren't fixing to develop it as a -- as a day care or for -- for residential purposes, were you?

A I was not interested in that.

Q You planned to sell it and make something more than what the purchase price was, correct?

A Correct. Bring jobs to Newberry.

Q Right. You -- you -- you planned on making a sound business decision in buying that property, correct?

A Correct.

Q Now, you're familiar with the term "due diligence," aren't you?

A I am.

Q All right. And due diligence means that you go to the trouble and you've done the investigating of the property and you know what it is you're buying, correct?

A Correct.

Q So you feel that you knew what you were buying when you bought this property in November of 2000, correct?

A That's correct.

Q All right. But you didn't know that the adjoining land had a clay cap installed, did you?

A I did not at that time.

Q And you didn't know that a clay cap might cause methane gases, landfill gases, to, instead of go vertically, to hit that clay cap and then make a right turn and go horizontally? You didn't know that, did you?

A No.

Q In fact, the due diligence you went to, when you and Ray Hobby bought that property, was just relying on your prior knowledge of how the adjoining property had been used, correct?

A That's correct.

Q And on the 40.7-acre tract, you'd walked that tract of land, haven't you?

A No -- no.

Q All right. You -- you -- you didn't walk it before you bought it?

A Oh, yes. The tract that we bought. Yes.
Q Right. I mean, before you sat down and signed the paper and the $290,000 check, you had walked the Cockrell piece of property, correct?
A We had walked that tract on the property several times.
Q Okay. But you never considered getting a Phase I environmental assessment on it, did you?
A No.
Q In fact, in all of your experience working with buying properties and selling properties, you've never gotten a Phase I environmental assessment on a piece of property you've bought, have you?
A We've had several, but things -- different types of property ---
Q Okay.
A --- not farmland.
Q And I notice, before you answered that question, you cut your eyes to your daughter, who's now the managing member of the LLC, correct?
A Correct.
Q All right. But you and Mr. Hobby didn't do a site assessment -- an environmental site assessment?
A No.
Q You didn't check -- I -- I think you testified on

direct that one of the things you felt comfortable with was that the state and the county were monitoring the landfill; isn't that what you testified to?

A That's correct.

Q All right. But you never checked with the county for any records, did you, before you bought the property?

A No.

Q You never checked with the state before you bought the property, did you?

A We tried to reach DHEC, but to no avail.

Q You tried to reach DHEC, but to no avail. Did you drive down to Bull Street and -- and go to their offices and -- and try to get somebody to talk to you? You didn't do that, did you?

A No.

Q You didn't hire a company like S&ME, which Kiswire did, or like Terracon, which you've done now, to tell you what was on the adjoining property and if there was a business risk in buying that 40.7-acre tract. You didn't do that, did you?

A No.

Q Had you done that, you would've known back before you bought this property exactly what you know now, wouldn't you?

A Yes.

Q Everything that you now know about clay caps, everything that Mr. Bruner is going to put into evidence today and tomorrow about what problems there are with your 40.7-acre tract attributable to the landfill, you could've found all of that out back before November of 2011, couldn't you?

A Yes.

Q Now, after you acquired the property in November of 2000, in June of 2002, I think Mr. -- Mr. Bruner had you put into evidence the -- well, it's already in evidence -- the deed from you and Mr. Hobby to West/Hobby, LLC, correct?

A Correct.

Q All right. And you and Mr. Hobby had been operating -- I think you said just two honest men working together as a partnership. You'd been doing that prior to June of -- of 2002, correct?

A Yes.

Q And then in June of 2002, for whatever reason, you and Mr. Hobby formed an LLC, or kind of formalized your -- your partnership, correct?

A Correct.

Q All right. And once that happened, you and Mr. Hobby deeded all of the properties y'all had acquired and deeded them into West/Hobby, LLC, right?

A Yes.
Q Okay. In other words, the deed that you looked at on direct and said yeah, that's the deed of -- of June 18, 2002, into West/Hobby, the 40.7-acre tract is on that deed, but there are several other properties on that deed as well, correct?
A To my knowledge.
Q Sure. I mean, well, you got it in front of you. I mean, you looked at it and -- and there are a lot of other properties, correct?
A I'll agree.
Q All right. Now, it's your recollection that in June of 2002, when you and Mr. Hobby conveyed the properties to West/Hobby, that your daughter, Misty, was running the company at that time. That was your understanding, correct?
A Yes.
Q And Misty continues to run the LLC, doesn't she? In other words ---
A That ---
Q --- West/Hobby ---
A --- LLC is not in place anymore.
Q Pardon me?
A West/Hobby, LLC, it no longer exists.
Q Okay. West/Hobby, LLC -- have you dissolved the

corporation?
A No.
Q Okay. So West/Hobby, LLC, is still in place and the only piece of property it owns right now is this 40.7-acre tract, correct?
A That's correct.
Q All right. Now, let me ask you this: Have you been actively involved in the management of West/Hobby, LLC, over the past several years?
A Far I haven't.
Q Okay. So you -- you -- you do have an active role that you're taking in it?
A Correct.
Q Okay. All right. Now, as manager Misty was experienced in 2002, wasn't she?
A Yeah.
Q She was college educated, went to Winthrop, and got a bachelor of arts in -- in visual arts; isn't that right?
A That is correct.
Q Okay. And she's been licensed general contractor for about twenty years, hasn't she?
A Yes.
Q Okay. And she's vice-president of the general construction for West Electrical Contractors?
A Correct.

Q And West Electrical Contractors is your business. You're the president, correct?

A That is correct.

Q All right. And Misty has managed all the general-construction projects for your company since 1988; isn't that correct?

A That is correct.

Q And that's when she got out of college, right?

A Right.

Q And now she's managing West/Hobby, LLC?

A She continues to. Yeah.

Q And several other property -- family-property LLCs, correct?

A Correct.

Q Now, Mr. Bruner asked you a question from the time you -- you and Ray Hobby bought the property in November of 2000 up until January of 2011, he asked you if you had gotten offers to purchase the property. And you, as I recall, said there were some minor offers but nothing substantial; is that ---

A Correct.

Q Okay. Do you -- is -- is -- is that your testimony, that there were some offers -- maybe they didn't get formalized, but there were some offers on the property after you bought it but before the Kiswire offer in January

of 2011? Is that your testimony?

A We -- we had inquiries on the property earlier.

Q Okay. Inquiries, but any offer -- any written offer ---

A No cash offers.

Q Okay. So you had no written, cash offer to buy the property from the time you acquired it until the Kiswire offer in January of 2011, correct?

A That's correct.

Q All right. Now, David Minnick is the North American vice-president for Kiswire, isn't he?

A That's correct.

Q And as of today you've known Mr. Minnick for about 16 years, correct?

A That should be correct too.

Q Okay. And Mr. Minnick is the gentleman seated in the second row in the -- the burgundy shirt, correct?

A That's correct.

Q All right. Now, your electrical-contracting company did all of Kiswire's electrical work, didn't it?

A We do the majority of it.

Q Okay. Would it surprise you if I told you that Mr. Minnick said that you do all of it?

A No. At that time when you was talking to him, we did do all of it.

Q All right. Your business still does a lot of electrical work for Kiswire, doesn't it?
A It does.
Q All right. And you had discussed with Mr. Minnick that you had a 40-acre tract that you had had for 10 or 11 years and hadn't gotten the first offer on prior to this January 19 offer; isn't that correct?
A That is correct.
Q And you and Misty both negotiated that contract of sale with Mr. Minnick, correct?
A Yes.
Q And the sales price was to be $520,000; isn't that right?
A Yes.
Q All right. That was nearly twice the tax appraised value of that property on Newberry County records, correct?
A Correct.
Q Now, do you have the contract in front of you? I believe it's . . .

Well, let me ask you this: Did you read the contract with Mr. Minnick from Kiswire?

A Do what, now?
Q Did you read the contract from Kiswire?
A Sometime ago.
Q Okay. It had a portion of -- it had a Section 3 in it

that allowed them 120 days for a feasability study. Do you remember that?

A Yes.

Q Okay. And in that 120 days, they would be able to check into environmental issues with regard to the property, correct?

A Correct.

Q And other issues, such as getting governmental financing, seeing what trees needed to be cut down, zoning, other issues -- do you remember that?

A Yes. I have -- no knowledge ---

Q Okay.

A --- of them, though.

Q All right. Do you know that there was a provision in that Section 3 that said that based on all of that and their feasibility study, for some reason or no reason, they could withdraw from the contract? Did you know that when you signed that contract?

A Yes.

Q You have the notebook -- the exhibits up there?

A Yes.

Q Could you -- could you look at Exhibit No. 14. That's the letter that Mr. Minnick wrote, backing out of the contract -- Kiswire backing out of the contract, correct?

A That is the letter.

Q Okay. It's dated April 14, 2011, isn't it?
A That is correct.
Q All right. And it's addressed to West/Hobby, LLC, at your address. And it says (As read): Dear West/Hobby, LLC, Hobby Development Company, colon. That's what it says, correct?
A Yes.
Q Why doesn't it say "Dear Billye"? Y'all had been friends for 11 years. How come he writes you a letter, pulling out of a $520,000 contract on a piece of property you haven't got the first formal offer on within 11 years, and he addresses you as "Dear West/Hobby"?
A We've been friends for a long time.
Q Okay. And that letter starts out (As read): Pursuant to Section 3 of the agreement of purchase and sale dated January 19, 2011, by and between West/Hobby and Kiswire, the purchaser hereby terminates the agreement.

That's what he says in the first sentence, correct?
A Correct. And the letter was written by a lawyer.
Q Oh, I don't know who it's written by. I know who it's signed by. It's signed by David Minnick, isn't it?
A (No audible response.)
Q Correct?
A Correct.
Q And if you look at the last sentence in there -- the

last two sentences in that letter, there's no mention in that letter as to why they're backing out of the contract, is there?

A No.

Q Did you read the Phase I assessment that Kiswire got?

A Yes.

Q Okay. And in the conclusions portion of the S&ME report, it says that based on our investigation, your property that you're interested in buying is across the street from a landfill and could be a business risk. That's essentially what it said, isn't it?

A I did not -- I do not remember reading that section.

Q Okay. Now, there was some testimony about letters you got from Newberry County in 2006. Do you remember that?

A Yes.

Q Could you turn to Exhibit 5, please.

A (Complied.)

Q You there?

A Yes, sir.

Q Okay. Exhibit 5 is a February 6, 2006, letter from the County of Newberry to West/Hobby, LLC, correct?

A Correct.

Q All right. And this is the letter where they ask if they could do some -- get your permission for access to your property to perform some tests, correct?

A Yes.

Q All right. If you look in that first paragraph, the second sentence of that paragraph says (As read): Since your property is located adjacent to the landfill, we are requesting your permission for access to your property to perform these tests.

You see that?

A Yes.

Q And then, it goes through what the test procedures are going to be, correct?

A Correct.

Q And your testimony is that someone from a governmental agency or -- or political subdivision writing you a letter, telling you that your property is adjacent to a closed, municipal landfill and they want to take tests on your property, that that didn't raise red flags in your mind that there might be problems on your property? Is that ---

A No.

Q --- your testimony?

A No.

Q That's not your testimony?

A That is my testimony. But that did not raise a problem for me, knowing Newberry County. Because if they found something, they would come to me, as a taxpayer of Newberry County, and they'll get duties.

Q All right. That was your understanding. But didn't it put a burden on you that maybe you need to take another step and go back to them and say, What is this about? You didn't do that, did you?

A No.

Q Could you turn to Exhibit 6, please.

A Sir?

Q Turn to Exhibit 6, please, the next exhibit.

A Okay.

Q Okay. This is the B.P. Barber offsite methane-investigation report for the Newberry County Landfill, dated April 2006, isn't it?

A Correct.

Q Okay. And this is the document that you told Mr. Bruner a few moments ago that you didn't see until either today or -- or recently, correct?

A That's correct.

Q All right. But this document was public record at the County of Newberry, wasn't it?

A Yes, I presume.

Q Okay. If you checked, you could've found out way before today, correct?

A I probably could not have.

Q Why not?

A Lack on interest.

Q Lack of interest?
A Right.
Q Okay.
A I trust Newberry County at that time.
Q But do you agree that sometimes a person has to protect themselves and not rely on someone else?
A Every day.
Q Every day.
That's what you do in your contracting business, don't you?
A Correct.
Q And that's why you're -- you're an astute businessman, correct?
A Correct.
Q That you don't assume goodwill or good faith on the part of somebody else, do you?
A Not unless I trust them.
Q That's right.
But you agree that if this was a document that was at Newberry County and if you had access to it, you could've looked for it and you could've read this back in April of 2006, correct?
A I do not know if it's in the records of Newberry County.
Q That ain't what I asked you. I said: If it was

there, you could've looked at it, correct?
A Correct.
Q Could you go to Exhibit 8, please.
A (Complied.)
Q You there?
A Yes.
Q Okay. This Exhibit 8 is -- and again, it's Plaintiff's Exhibit 8. I'm sorry. It's a letter from the County of Newberry Public Works, dated May 30, 2006, to West/Hobby, LLC, correct?
A Correct.
Q And here, they at least know who you are, because they say -- instead of "Dear West/Hobby," they say, "Dear Billye." They address it to you, don't they?
A Correct.
Q All right. Did you know Mr. Tommy Whitehead, the then-director of public works?
A I did.
Q Okay. In this letter Mr. Whitehead said (As read): We received correspondence from the South Carolina Department of Health and Environmental Control requesting additional subsurface testing and monitoring outside the boundary of the Newberry County Landfill.

That's what it says in the first sentence, correct?
A Correct.

Q Then, it says (As read): In May 2006 you gave your permission for testing on your property. SCDHEC is requesting that we test on a regular basis. Therefore, we would like to install two 1-inch-diameter monitoring probes that will be monitored twice monthly.

That's what the next sentence says, right?

A That's correct.

Q Now, your testimony, as I recall it, was that you don't know if those monitoring probes were ever installed; is that right?

A That is correct.

Q And you didn't go back to -- to go to Mr. Whitehead or Newberry or DHEC and find out why they weren't installed, did you?

A No.

Q I mean, you've already been given one letter from the county, saying can we have your permission to check on your property because you're adjacent to a closed landfill. And that didn't raise any red flags for you, correct?

A No.

Q And then, there's a report that's issued that you never went to the trouble of looking for at Newberry County. You didn't do that, did you?

A No.

Q And now we've got a second letter, asking for more

tests and something that needs to be checked -- was it twice monthly or twice yearly? -- and that didn't raise any red flags for you either?

A No.

Q So as of May 30, 2006, when you got this, Plaintiff's Exhibit 8, letter, you're still unconcerned about the possibility of contamination on your property, correct?

A I'm not sure I've seen this May 30th till Mr. Bruner showed it to me.

Q All right. Well, what's -- there's a stamp in the middle of it. You see that stamp?

A It is what?

Q There's a stamp in the middle?

A Yeah. But it's no sign where I ever signed anything.

Q Where it says "received" -- you're looking at Exhibit 8?

A Yeah.

Q Well, look on the front page, this stamp right here.

A All right.

Q All right? What does that say? It says "received June 2, West Electrical Contracting of Newberry, Inc." That's you, right?

A That's me.

Q Go ahead and look on page 1 of Exhibit 8.

A Well, I am in Exhibit 8.

MR. FRAWLEY: May I approach the witness?

THE COURT: Sure.

Q Okay. That's Exhibit 8.

A Right.

Q Read -- read that stamp. That indicates your company received it, correct?

A It may have been received; may have been lost in the mail. But I personally did not see it.

Q Okay. Well, that at least indicates that your company, of which you are president, received this letter, correct?

A Not necessarily.

Q Would you agree with me that it is stamped "received June 2, West Electric Contracture -- Contractors of Newberry"?

A Correct.

Q That's what it says, correct?

A Correct.

Q Mr. West, if your -- if this 40.7-acre tract does have methane on it or landfill gases on it, you have no idea how much of that 40.7-acre tract has methane on it, do you?

A No.

Q None of the experts -- S&ME, Terracon, anybody else that looked at it -- have been able to tell you there's -- there's this much methane gas on these many acres of your

40.7-acre tract. None of them have been able to tell you that, have they?

A No.

Q Mr. West, thank you for your patience.

THE COURT: Any redirect, Mr. Bruner?

MR. JAMES BRUNER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Mr. West, Mr. Frawley asked you a leading question that if you had -- if you had checked -- if you had done a -- a Phase I environmental survey back in 2000 when you and Mr. Hobby bought the property, you could've found out everything you know now.

A Correct.

Q Do you remember that question?

A Yeah.

Q Then -- and my understanding was that you agreed with that. Do you think that's so?

A Probably would not have found what -- after this extensive ---

Q Well, let's -- let's -- let's examine what you know now.

A All right.

Q As of 2011 -- that's when Kiswire backed out of the contract.

A Right.
Q All right. You found out that your property was contaminated with landfill gas; is that correct?
A That's correct.
Q Do you know if the property you bought was contaminated by landfill gas in 2000 when you bought it?
A No.
Q All right. So you don't know whether that was so or not?
A No. Unh-unh. I don't ---
Q All right.
A --- think it would've shown it back in those years.
Q Okay. Now, let's talk about -- did you -- did you expect Newberry County to monitor the methane-gas levels?
A Yes.
Q Did you expect the county to -- to take steps to address any contamination from methane?
A Yes.
Q Did you expect, if high levels of explosive gas were being migrated onto your property from the landfill, that the county would tell you that?
A Yes.
Q Did they tell you that?
A No.
Q Do you think it's reasonable for you to rely on your

county to tell you if they had found something on your property?

A After this? No. They -- all right. They're not reliable.

Q At that time?

A At that time they were not reliable.

Q In 2011 do you think it was reasonable for you to have relied on the county to come to you and explain what they had found on your property?

MR. FRAWLEY: Question's been ---

A Yes.

MR. FRAWLEY: --- asked and answered, Your Honor.

THE COURT: Well, I think probably -- probably as a -- overruled. Go ahead and -- and repeat the question, Mr. Bruner.

MR. JAMES BRUNER: All right.

Q Do you think it's reasonable -- do you think it was reasonable in 2011 for you to have expected the county to come to you and tell you if there was a problem on your property?

A Yes.

Q And they did not come to you?

A They did not.

Q All right. Mr. Frawley asked you questions -- leading questions, suggesting that it was your fault that your

property was contaminated. Do you think it was your fault the property was contaminated?

MR. FRAWLEY: I'll -- I'll object ---

A Absolutely ---

MR. FRAWLEY: --- to the ---

A --- not ---

MR. FRAWLEY: --- mischaracterization ---

A --- does not ---

THE COURT: Okay. Wait ---

MR. FRAWLEY: --- of what we ---

A --- make sense.

THE COURT: --- wait a minute.

MR. FRAWLEY: --- were asking.

THE COURT: Wait a minute, sir. Wait a minute. I got an objection.

MR. FRAWLEY: I -- I didn't -- I don't recall asking any question suggesting it was his fault that his property was contaminated. I'll object based to his -- his mischaracterizing the testimony and the questions.

THE COURT: Okay. Well, instead of stating your question as if Mr. Frawley had asked it, just ask it -- if he believes that it -- it's fault. I don't remember that question being ---

THE WITNESS: Uh-huh.

THE COURT: --- asked either. But you can ask it. It

just didn't come from Mr. Frawley.

Q Do you think it's your fault, Mr. West, that your property was contaminated with landfill gas?

A Absolutely not.

Q Do you think it was the county's fault that it was contaminated with landfill gas?

A Yes.

Q Mr. Frawley suggested that you should have known in 2006, just by the county asking you for permission to come on your property, that you should have known that there was a problem. Do you think that's reasonable?

A No.

Q If you had thought it was reasonable, would you have asked?

A I would have went further with it and not allowed it.

Q At that point in time, did you trust the county to tell you if there was a problem?

A Yes.

Q Thank you, sir.

THE COURT: Okay. Recross?

MR. FRAWLEY: No recross, Your Honor.

THE COURT: Okay.

MR. FRAWLEY: Thank you.

THE COURT: Mr. West, let me ask you two questions. On Exhibit 8 that Mr. Frawley asked you about, on the

second page, is that your signature to the left? Do you have Exhibit 8 in front of you?

THE WITNESS: (No audible response.)

THE COURT: You want to help him find it, Mr. Bruner?

MR. JAMES BRUNER: Yes, sir.

THE WITNESS: Okay. Go ahead. Yeah.

MR. JAMES BRUNER: He's asking you about that page.

THE COURT: Is that -- is that your signature on Exhibit 8?

THE WITNESS: Yeah. And I -- yes, it is.

THE COURT: Okay. All right. And my other question -- and I just want to make sure I heard you correctly, and I may not have. Prior to your purchase of the property, did you testify that you knew the state or the county was monitoring the landfill?

THE WITNESS: They had monitoring stations on the land.

THE COURT: Okay. All right. And was it your testimony that you tried to reach DHEC before your purchase of the property to make whatever inquiries you wanted to make?

THE WITNESS: I was told that they had reports -- was monitoring, but I could never could get monitoring reports from DHEC ever ---

THE COURT: Okay.

THE WITNESS: --- in other words.

THE COURT: You made that request?

THE WITNESS: Yes, we did.

THE COURT: Okay. All right. All right. Mr. Bruner, any questions in connection with the Court's questions?

MR. JAMES BRUNER: No, Your Honor.

THE COURT: Okay. Mr. Frawley?

MR. FRAWLEY: Your Honor, with regard -- I -- I do have a couple, Your Honor.

THE COURT: Okay. Sure.

MR. FRAWLEY: All right.

RECROSS EXAMINATION

BY MR. FRAWLEY:

Q Mr. West, you -- you testified to His Honor's question about whether you checked with DHEC before buying the property and DHEC didn't respond. Do -- do you recall that question?

A Yeah.

Q All right. Did -- did you call them again to see if -- if they would call you back?

A No.

Q Did you -- did you make any other further attempts to check their records, other than the one call where they didn't call you back, to find out what the -- what -- what may have happened with the clay cap or what tests there may

have been from '95 to 2000 to check any of that? Did you do any of that after -- after initially not getting a call back from DHEC?

A No.

Q Thank you, sir.

THE COURT: Okay. Thank you, Mr. West, for your testimony. You can step down. Let's take a short recess.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

(Off the record from 11:50 a.m. until 11:59 a.m.)

THE COURT: Okay, Mr. Bruner. You ready to call your next witness?

MR. JAMES BRUNER: Yes, Your Honor.

THE COURT: Okay.

MR. JAMES BRUNER: We call David Minnick.

THE COURT: Come around, please, sir.

(Whereupon, the witness came forward.)

DAVID MINNICK, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Good morning, Mr. Minnick. Where do you live?

A I live in Chapin, South Carolina.

Q And where are you employed?

A Kiswire.

Q And what is your position with Kiswire?
A I am president and CEO of Kiswire North America.
Q All right. And how long have you held that position?
A Around ten years.
Q All right. Does Kiswire have a plant in Newberry County?
A Kiswire actually has two plants in Newberry County.
Q All right. In 2011 did you have one plant?
A I had one plant.
Q All right. I'm going to ask you to -- if I can make this work -- there we go. Mr. Minnick, this is a photograph of the intersection of Highway 219 and Interstate 26. Is your first plant in Newberry County shown on this?
A Yes, it is.
Q I'm using my little red dot. Is that where it is right there?
A That's it.
Q All right. Did there come a point in time before 2011 when Kiswire needed to build another manufacturing plant?
A Yes.
Q All right. Where -- where other -- where were the other manufacturing plants for Kiswire, let's say in 2010?
A All overseas: Korea, Malaysia, and China.
Q Did you have one in Arkansas or ---

A That was a joint venture.
Q A joint venture?
A (Nodded head up and down.)
Q Okay. Did you have any other -- did you -- did you learn about the availability of the West/Hobby property here that's outlined in green?
A I did after there was no availability in the existing park.
Q Okay. Is -- is the existing park down here where your first plant was?
A True.
Q Okay.
A Yes.
Q And -- and exactly what were you going to do -- what were you going to build upon a piece of property?
A Another factory.
Q Another manufacturing ---
A Another ---
Q --- plant?
A --- manufacturing plant.
Q Okay. Did you have a certain number of acres that were required for that facility?
A Yes. I needed at least 40 or more.
Q Okay. Now, there's been testimony that the -- the West/Hobby property here on Cockrell Road was 40.7 acres.

Did it meet your requirements for size?

A Yes.

Q All right. I'm going to ask you to look in the exhibit notebook there that's in front of you and look -- look at Exhibit 12.

A Okay.

Q Is that a copy of an agreement between your company, Kiswire, and West/Hobby, LLC, in which Kiswire agreed to buy this 40.7-acre tract right here that's owned by West/Hobby?

A Yes.

Q And how much did Kiswire agree to pay?

A 520,000.

Q Can you tell the Court how that purchase price was determined?

A Me knowing Newberry and had checked on pricing of land in the Newberry area, I asked about the property to Billye. And then we negotiated the price of what we would pay per acre.

Q Okay. And Exhibit 12, that agreement, who drafted that agreement?

A I'm not sure. I do know my lawyer reviewed the agreement before I signed it.

Q All right. Do you think maybe your lawyer wrote it?

A Possible.

Q Okay. Did you have the property appraised?
A I did not.
Q All right. Was that because you felt like you were familiar ---
MR. FRAWLEY: Object ---
Q --- enough with ---
MR. FRAWLEY: --- to the leading, Your Honor.
THE COURT: Okay.
Q Why didn't you have it appraised?
A Did not feel like I needed to.
Q Okay. After you signed the contract -- and the -- and the date of the contract is -- is what?
A January 19th, 2011.
Q Okay. After you signed the contract, what's the next thing that you did on behalf of Kiswire to investigate the property?
A Started checking on utilities and actually having a Geotech, which is when you call the company S&ME in to do the testing of the -- the grounds.
Q All right. And -- and did S&ME conduct a Phase I environmental site assessment on your behalf?
A Yes, they did.
Q Let me ask you to look at Exhibit 13. Is that the environmental site assessment conducted for Kiswire by S&ME?

A Yes, it was.
Q All right. As a result of that Phase I environmental site assessment, did you authorize S&ME to conduct further testing?
A Yes, I did.
Q All right. What did you ask them to do?
A I asked them for their recommendations, and I followed their recommendations as to what they needed to do.
Q Okay. And then did -- on your behalf did Kiswire -- I mean, excuse me -- did S&ME conduct a limited soil-gas assessment?
A Yes.
Q And let me ask you to look at what is in the notebook as Exhibit 15. That should be all the way at the back of that notebook.
A That's it.
Q Is that the -- I mean, excuse me -- the limited soil-gas assessment you received?
A Yes.
Q All right. Now, what is the date on that agreement -- I mean, on -- excuse me -- on that report?
A April 29th, 2011.
Q All right. By the time you actually received that written report, had you already terminated the contract with ---

A I -- I can't ---
Q --- West/Hobby?
A I can't remember what day I terminated.
Q Well, I'm going to help you. I'm going to ask you to look at Exhibit 14. You see that?
A Yes.
Q And is that a letter you wrote to West/Hobby, terminating the agreement?
A Yes. This was a letter written by my lawyer ---
Q Written by ---
A --- to ---
Q --- your ---
A --- to ---
Q --- lawyer?
A --- West/Hobby?
Q All right.
A Yes.
Q And it's dated April 14th?
A Yes, sir.
Q Okay. Well, my question to you is: If the -- if the limited soil-gas assessment from S&ME is dated April 29th, did you discuss the results of their testing before you got their written report?
A I did not. But I got a preliminary from them ---
Q All right.

A --- as to what they found.
Q From S&ME?
A Yes.
Q What did they tell you?
A They told me they found gases but they found -- I -- and I'm not a chemist. But they found other chemicals, such as tetrachlorine [sic] and several other chemicals in the ground.
Q All right. And did you ask them what that meant?
A I asked them what it meant. But they could only give me an assessment. They're not chemists.
Q Okay. What was their assessment?
A Their assessment was that in order for me to buy this piece of property and use this piece of property, I would have to cover everything with a vapor barrier.
Q All right. Did they tell you anything about these -- do -- do you remember them using the term VOCs, or volatile organic compounds?

MR. FRAWLEY: Your Honor, I'll object to any further hearsay. I've allowed it up to this point, but I'll object to any further hearsay as to what they told him. The report's in. But as far as any discussion he had beyond the report, I'll ---

THE COURT: Okay.

MR. FRAWLEY: --- object to that as hearsay.

THE COURT: All right. Is anyone from S&ME going to testify?

MR. JAMES BRUNER: No.

THE COURT: No?

MR. JAMES BRUNER: But we -- everything I'm asking is in the report.

THE COURT: All right. Is ---

MR. FRAWLEY: Then, they can point to the report. I -- I just have a problem with him paraphrasing what someone supposedly told him.

THE COURT: Okay. All right.

MR. JAMES BRUNER: Well ---

THE COURT: Well ---

MR. JAMES BRUNER: --- I think he can testify. It is not a violation of the hearsay rule if he testifies what he understood they told him. It is not asserting it for the truth of the matter asserted. What he's saying is: This is what I heard them say and what I understood it meant to me.

THE COURT: Okay. All right.

MR. JAMES BRUNER: And that was the basis of his decision-making.

MR. FRAWLEY: The whole issue is whether the -- the property was contaminated. And he's paraphrasing someone ---

THE COURT: All right.

MR. FRAWLEY: --- supposedly telling him that it was contaminated. That's textbook hearsay.

THE COURT: Right. Well -- and -- and -- and I'm going to sustain the objection. Now, I mean, he can't -- if -- if -- if no one's going to testify for S&ME, then if he testifies to something outside of the report, then, of course, Mr. Frawley is not in the position to cross-examine that person who may have said something.

So if it goes outside the report -- he can certainly testify what was told to him, if it coincides with what's in the report. But if it's anything different than what's in the report, then I'm going to sustain the objection.

MR. JAMES BRUNER: All right.

Q Did you terminate the contract with West/Hobby?

A Yes, I did.

Q Why did you terminate the contract with West/Hobby?

A Because of the contamination of the grounds.

Q All right. Do you recall that the limited soil-gas assessment showed the presence of methane on the property?

A It did.

Q Was that why you canceled the contract?

A No, it's not.

Q Was it the presence of the other organic compounds that caused you to make your decision?

A On the report it actually has three chemicals that are highlighted. And it was because of those three chemicals.

Q What was your understanding of the adverse impact of those three chemicals?

A I'm ---

MR. FRAWLEY: I'll ---

A --- not a ---

MR. FRAWLEY: --- object, Your Honor, unless he's established a foundation as to how Mr. Minnick has that understanding ---

THE COURT: Okay.

MR. FRAWLEY: --- as opposed to getting it from a phone call from the people that we just ---

THE COURT: Okay.

MR. FRAWLEY: --- objected to.

THE COURT: Again, is that related to something that's in the report?

MR. JAMES BRUNER: He's not testifying as to the truth of the matter asserted. He is testifying as to what he understood and why he made the decision to terminate the contract.

THE COURT: Okay. All right. And ask -- ask the question again. Don't answer, Mr. Minnick. Ask the question again. Because I want to hear the -- I want to hear the question.

MR. JAMES BRUNER: Can you read it back?

THE COURT REPORTER: No, sir.

MR. JAMES BRUNER: All right.

THE COURT: Do your best in -- in -- in -- in restating the -- the question.

MR. JAMES BRUNER: What was your understanding, Mr. Minnick, of the potential adverse effects of the volatile organic compounds on any building you might construct on the property?

THE COURT: Okay. All right. The -- if -- if that's not in the report, I'm going to sustain the objection.

Q Did you terminate your contract with West/Hobby because of your understanding of the adverse effects of volatile organic compounds on any building you might build?

A I terminated the agreement due to the chemicals that were in the ground.

Q All right. Now, at the time you terminated the contract, you had not completed your due diligence, had you?

A I had not.

Q All right. There were other issues that you had to resolve before you would close on the contract; is that correct?

A That's correct.

Q All right. What were those issues?

A Gas and sewage connections to this property.

Q All right. Do you think that the gas and the sewage connections could have been resolved to your satisfaction?

MR. FRAWLEY: Object to speculation, Your Honor. He never did it, so he can't really ---

THE COURT: Well ---

MR. FRAWLEY: --- say whether ---

THE COURT: --- I -- I'm ---

MR. FRAWLEY: --- he thinks ---

THE COURT: --- just wondering ---

MR. FRAWLEY: --- it would've happened.

THE COURT: --- the relevance to the -- being able to connect to utility services. How does that -- how -- how does that bear on -- on this issue, Mr. ---

MR. JAMES BRUNER: It -- it ---

THE COURT: --- Bruner?

MR. JAMES BRUNER: --- bears on his willingness to close the contract and whether he would have closed the contract but for the presence of the volatile organic compounds.

MR. FRAWLEY: I -- I -- I agree with him in that there were other contingencies that needed to be fulfilled, and I think that is relevant. But I object to his being able to speculate that these contingencies would've been okay, had there not been an issue here. In other words, they were

never ready and willing to move forward because those contingencies were not completed and he pulled the plug on the contract before he had a chance to ---

THE COURT: Well, I ---

MR. FRAWLEY: --- do those.

THE COURT: --- I think he can testify what, in -- in this situation, he would've done this. It -- it maybe is some speculation. But I'm going to allow it. Overruled. You ---

Q Did you ---

MR. FRAWLEY: Thank you ---

THE COURT: --- may proceed.

MR. FRAWLEY: --- Your Honor.

Q --- investigate the availability of gas for the property?

A I did investigate the gas for the property and how to get it down the Cockrell Road to the property.

Q All right. Were you satisfied that that contingency could be satisfied?

A That could have been satisfied.

Q Then, the other contingency you mentioned was the sewage connection?

A Yes.

Q All right. And what was the issue there?

A The distance from the pumping station on 219 to the

property.

Q All right. And what did you understand you might have to do if you bought the property?

A I might have to pay money to make this connection.

Q And is that -- is this the connection between 219 and up to the property here?

A Yes. But farther down 219.

Q Okay. Did you investigate what would be required in order for you to satisfy that contingency?

A Yes, I did.

Q After your investigation were you reasonably satisfied that that contingency could be met, you could have sewage connection to the property?

MR. FRAWLEY: Same objection as to speculation Your Honor.

THE COURT: Okay. Overruled.

A I could have worked with Newberry County and gotten the sewage. I don't think they would've stopped that factory because of sewage.

Q Okay. So if you had completed your due diligence and had addressed those two issues to your satisfaction, were you satisfied you were going to close on this property?

A If I could've got this, yes, I would've closed on the property.

Q All right. Was it important to you, as the CEO of

Kiswire, that the property you were looking at was very close to your first plant?

A Yes.

Q And why is that?

A It was only 0.7 miles.

Q Would that allow you to move between each manufacturing plant with ease?

A Very easy.

Q All right. Was this a -- a -- a primary point why you were interested in this property or not?

A That was one of the reasons I was interested in this property.

A All right.

Q Yes.

Q All right. Now, so my question to you is this: But for the S&ME limited soil-gas assessment that found volatile organic compounds on this property, but for that, do you think most probably you would have closed on this contract and bought this property?

A Yes.

Q Thank you. Please answer any questions Mr. Frawley has.

THE COURT: Mr. Frawley, any cross?

MR. FRAWLEY: May it please the Court.

CROSS-EXAMINATION

BY MR. FRAWLEY:

Q Mr. Minnick, you have the -- the notebook in front of you. Could you turn to Exhibit 12, please.

A (Complied.)

Q Exhibit 12 is the agreement of -- of January 19th, 2011, in which you, on behalf of Kiswire, agreed to purchase the 40.7-acre tract of land, correct?

A Correct.

Q All right. Now, prior to that time, you had known Billye West for about 11 years; is that correct?

A That's correct.

Q And y'all were friends, weren't you?

A Yes.

Q Business associates, correct?

A Yes.

Q Mr. West's electrical-contracting company did all of the electrical contracting for your company, didn't they?

A At that time, yes.

Q Okay. And they still do a lot of it, don't they?

A Yes.

Q I mean, there's -- do -- do you have another electrical contractor that you use for contracting work for -- for Kiswire?

A Yes.

Q Okay. But as far as getting the lion's share of that

A Any amount of money that I could've got from the county, as far as helping with the construction or the grading, not to buy the property.

Q Right. Such as a -- a property-tax offset or some -- something along those lines for purposes of promoting economic development in the county, correct?

A True.

Q You never did that, did you?

A No.

Q Then, it says: "If, on or before the conclusion of the feasibility-study period, purchaser determines that it does not desire to purchase the property, for any reason or no reason, purchaser may, on or before the end of the feasibility-study period, terminate this agreement."

That's what it says, correct?

A Correct.

Q So you could've decided, on behalf of Kiswire, that this just wasn't a good idea back in January and I don't want to do it, for no real reason, correct?

A Correct.

Q Now, let's look at your letter, which is Tab No. 14. It's Plaintiff's Exhibit No. 14. This is your letter of April 14, 2011, to West/Hobby, LLC, correct?

A Correct.

Q And you say :Dear West/Hobby, LLC, Hobby Development

Company"?
A Correct.
Q All right. You don't say "Dear Billye," do you?
A No.
Q Why not?
A It's a company and I am a company. And there has to be a certain amount of professionalism when you're doing something like this.
Q Okay. So for propriety reasons?
A Yes.
Q Okay. Well, why not say "Dear Mr. West," when you know he's the president of West/Hobby? I mean, you know the guy, don't you?
A Because I'm directing it toward his company, not directly to him.
Q Okay. And that letter starts out "Pursuant to Section 3 of the agreement of purchase and sale, dated January 19, 2011" -- and that's the agreement we just went over as Exhibit 12, correct?
A Correct.
Q " . . . the purchaser hereby terminates the agreement." That's what you say, correct?
A Yes.
Q And you don't say why in the letter, do you?
A No.

Q You don't have any reason given in the letter, do you?
A No.
Q Now, you could've said that we did a Phase I and -- and based on our review of the Phase I, we don't think it's -- we -- we want to go forward. You could've said that, correct?
A Could have.
Q All right. But you didn't, did you?
A No.
Q All right. The S&ME Phase I that you got, let's look at that. That would be Exhibit 13. You need to go back one.
A (Complied.)
Q You see it?
A Yes.
Q Okay. Now, this is dated March 7, 2011, correct?
A Correct.
Q All right. This has sections in it. Could you turn to Section 3.3 on page 7.
A (Complied.)
Q You there?
A I'm there.
Q Okay. You're way ahead of me. I apologize. I don't want to hold you up. Section 3.3, specialized knowledge, you see that?

originating from the landfill -- should be considered for new buildings that are constructed at the site.

That's what it says, correct?

A Correct.

Q They didn't tell you, you can't -- you can't build on the site. They told you that they recommend a vapor barrier, correct?

A Correct.

Q And your recollection was that you -- you thought you had to do it over the entire tract, as opposed to just where the buildings ---

A Where ---

Q --- would go?

A No. Just where the building would be.

Q Mr. Minnick, I appreciate your patience. Thank you.

THE COURT: Redirect, Mr. Bruner?

MR. JAMES BRUNER: Few questions, please, Your Honor.

REDIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Mr. Minnick, could I ask you to look at the limited soil-gas assessment, which is Exhibit 15.

A Okay.

Q And I'm showing you here on the screen Figure No. 3 from that report. And is it your understanding that on Figure No. 3, it shows the locations of the probes they

inserted -- the seven probes? You see that?

A Yes.

Q All right. Now I'm going to ask you to flip back through that to Table No. 4. It's entitled "soil-gas data/soil-gas sampling."

A Okay.

Q All right. I've -- I have a blowup of that here on the screen.

A Right.

Q Is -- is this from the limited soil-gas assessment?

A Yes, it is.

Q And does this, the -- the highlighted portions here on this -- and -- and they're gray -- but do they show the three volatile organic compounds that S&ME found?

A Yes.

Q And one of them at the top, that's benzene. You see that?

A Yes, sir.

Q And then, there's another one two-thirds of the way down. It's tetrachloroethene. You see that?

A Yes, sir.

Q And then, there's another one just below that, trichloroethene.

A Yes, sir.

Q All right. So you knew from this table, from the

limited soil-gas assessment, that these organic compounds were present under the property you were looking at?

A Yes.

Q Please turn to Table 5. I think it's all the way at the back.

A (Complied.)

Q And this table is reporting methane data from soil-gas sampling. You see that?

A Yes.

Q Does it -- does it, in fact, show that S&ME detected methane in every one of their geoprobes?

A Yes.

Q Okay. So you knew, by the report you got from S&ME, that on this property there was methane and there were these volatile organic compounds, didn't you?

A Yes.

Q Now, I want to -- let -- let me see your exhibit notebook. I want to point you to something, please, sir.

A (Complied.)

Q Yes. I'm sorry. I am showing you on page 10 of Exhibit 13 -- this is the limited soil-gas assessment by S&ME -- showing you on page 10 portions that have been highlighted. Please read that to yourself. Let me ask you a couple questions. All right, sir.

A All right.

Q Now, first of all, there in that report S&ME is reporting on their review of the records from DHEC; is that correct?

A That's correct.

Q All right. Anywhere in what you've just read, does it mention the installation of a clay cap over the closed landfill?

A No.

Q All right. Do you see, in the -- in the S&ME Phase I, where they report on the findings in the DHEC records about methane levels?

MR. FRAWLEY: Which page ---

A No.

MR. FRAWLEY: --- are we looking at, again, and what ---

MR. JAMES BRUNER: We're looking ---

MR. FRAWLEY: --- document?

MR. JAMES BRUNER: --- on page 10 ---

MR. FRAWLEY: Of what exhibit?

THE COURT: Thirteen.

MR. JAMES BRUNER: This is Exhibit 13.

MR. FRAWLEY: Thank you.

Q Look underneath this highlighted portion that I'm indicating right there. Do ---

A Yes. I see there.

Q What did they -- what did S&ME report they found in DHEC's records about methane?

A Greater than 100 percent of the lower explosion limit.

Q All right. And then, again, there's no mention of any clay cap in that report of the DHEC records, is there?

A No, sir.

Q All right. Now, Mr. Frawley asked you about a number of things that are mentioned in your contract with West/Hobby that you did not pursue. If they had been required of you, in your opinion, to go forward with this deal, would you have done them, such as the financial and the other things they mention?

MR. FRAWLEY: Same objection, as far as speculation.

THE COURT: Okay. Overruled.

Q You can answer.

A I would have, evidenced as I already built another plant. So I would've had -- I would've gone on with the -- everything that I was planning.

Q All right. Again, but for the presence of these volatile organic compounds on this property, as shown by the limited soil-gas assessment, but for that, do you think most probably you would have bought this property?

A I would have bought this piece of property. Yes.

Q I forgot to ask you on direct examination. Did you, in fact, build another plant in Newberry County?

A I did, in fact, buy a little over 50 acres and build another plant in Newberry County.
Q How'd you find that property?
A Mr. West helped me find it.
Q All right. And do you recall how much you paid for that piece of property?
A No, sir.
Q Was it more per acre than you were going to pay for this piece of property?
A I -- I think it was the -- around the same price ---
Q All right.
A --- maybe a little bit lower than what I was going to pay for this property.
Q Okay. Was this other piece of property as close to your first plant as this piece was?
A No. I had done many checks of property, trying to find property, but could not find any property.
Q Did West Electrical do the electrical work on the new plant you built?
A On the first phase. On the second phase, he did some of it but -- but was not the key contractor.
Q Okay. So it would not be true that he did -- he does all your electrical work, would it?
A No.
Q All right. Thank you, sir. That's all I've got.

THE COURT: Anything on recross?

MR. FRAWLEY: Briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. FRAWLEY:

Q Mr. Bruner asked you a question about Table 5. In fact, it's this table that's up here right here. It's -- it's the last page of Exhibit 15, if you want go to that. You there?

A Yes, sir.

Q Okay. This is the -- Table 5 is the methane-data soil-gas sampling for this 40.7-acre site, correct?

A Correct.

Q And you see on that the -- the top line that begins here with -- with "methane ppm." Do you know what "ppm" stands for?

A Parts per million.

Q Parts per million.

And it lists 8 G.W. Do you know what those are -- what that stands for?

A The G.W. 1, 2 ---

Q Yes.

A Yeah. Those were the locations of the -- the -- the wells ---

Q Those ---

A --- the borings.

A Yes.
Q The applied safety-factor level is 1 percent, correct?
A Yes.
Q And the -- and those percentages are all well below that 1 percent, aren't they?
A Yes.
Q And then, the next one is safety-factor level exceedance. Do you see that?
A Yes.
Q And every one of those wells, it's checked "no," correct?
A Correct.
Q That's all I've got. Thank you, sir.
THE COURT: Okay.
MR. JAMES BRUNER: Just a couple more questions, Your Honor.

REDIRECT EXAMINATION

BY MR. JAMES BRUNER:
Q In their reports to you, did S&ME indicate whether or not the volatile organic compounds they founds were associated with landfill gases? Didn't they say they were associated with that?
A Yes.
Q In their reports did they indicate to you they found any evidence that chainsaws or some sort of petroleum-based

contaminant had been spilled on the property?

MR. FRAWLEY: Your Honor, that's below the -- beyond the scope of my redirect for his -- or recross for his re-redirect.

THE COURT: It -- yeah. It really is. I think it goes beyond his recross.

MR. JAMES BRUNER: All right. Thank you, Your Honor.

THE COURT: All right. Mr. Minnick, let me ask you one question: What caused you to initially decide to do a Phase I environmental study on -- on this property?

THE WITNESS: From the initial factory that was built in Newberry in the industrial park, we had done a Phase I there. And I just know it's common practice that you do a Geotech on the property before you buy it, mainly to make sure that the ground -- that you don't have a bunch of rock or clay or something that won't hold the building.

THE COURT: Okay.

THE WITNESS: And that will require you to do -- cost you more to build a building if the ground's not any good.

THE COURT: Okay. Okay. All right. Okay. Anything in response to the Court's questions, Mr. Bruner?

MR. JAMES BRUNER: No, Your Honor.

THE COURT: Mr. Frawley?

MR. FRAWLEY: Nothing from ---

THE COURT: Okay.

questions from the plaintiff in response to the Court's questions?

MR. JAMES BRUNER: No, Your Honor.

THE COURT: Okay. Mr. Frawley?

MR. FRAWLEY: Nothing from the defense, Your Honor.

THE COURT: Okay.

MR. FRAWLEY: Thank you.

THE COURT: Thank you, sir, for ---

THE WITNESS: Sure.

THE COURT: --- your testimony today. You can step down.

(Whereupon, the witness exited the witness stand.)

THE COURT: All right. It's about ten after 1. Let's -- let's break until 2:30.

(Off the record from 1:12 p.m. until 2:35 p.m.)

THE COURT: All right, Mr. Bruner.

MR. JAMES BRUNER: Thank you, Your Honor. May it please the Court.

THE COURT: Certainly.

MR. JAMES BRUNER: We call Mr. Chuck Clymer.

THE COURT: Okay. Come around, please, sir.

(Whereupon, the witness came forward.)

CHARLES CLYMER, having been first duly sworn, testified as follows:

THE WITNESS: Good afternoon.

DIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Good afternoon, Mr. Clymer. Would you tell the Court where you live?

A I live in Blythewood, South Carolina.

Q Okay. And where do you work?

A I work in Columbia, South Carolina, with an engineering-consulting firm called Terracon ---

Q All right.

A --- Consultants.

Q And how long have you been with Terracon?

A Been with Terracon 15 years.

Q And what do you do for Terracon?

A I'm a senior principal and a environmental -- the environmental-department manager.

Q All right. Can you explain to the Court a little about your work background and experience?

A Certainly. Have a B.S. from University of South Carolina in geology. My major was -- and some of my postgraduate work was in hydrogeology, which is the study of groundwater. After graduating I worked for one year with the U.S. Geological Survey. My project site was a landfill in Barnwell, South Carolina, that was disposing of low-level radioactive waster.

After leaving U.S.G.S. I joined South Carolina DHEC,

Department of Health and Environmental Control, and worked in their groundwater-protection division for seven years. The first four years my duties were related to a grant with the Coastal Plains Regional Commission to -- to study the effects of waste disposal on the shallow aquifers in the lower coastal plain of South Carolina.

So I worked pretty much in the eight coastal counties of South Carolina for about four years and we finished up with a nine-volume report that summarized that land-waste disposal can have pretty good impacts on the groundwater quality. During that time we worked in pretty much all eight of the county landfills that were there.

And after leaving DHEC, I joined a company called Atlanta Testing and Engineering in -- in 1985 and worked in Atlanta for four years with that company, doing a variety of contaminant investigations and -- and contaminant-hydrogeology-type work, including landfills and underground storage tanks and dry cleaners and things like that.

Came back to Columbia in '89; opened an office for Atlanta Testing and Engineering and operated it until 2000. And then started my own company with two partners called GAGE Group. And then we merged in with Terracon in 2003.

During that time with Atlanta Testing and Engineering and GAGE and Terracon, I was pretty much either senior hydrogeologist/department manager/office manager/regional

manager, working in similar-type efforts, working with private and public clients to do environmental site assessments, to do contaminate -- contaminant investigations, and to do cleanups of contaminated sites.

Q Do you hold any professional designations?

A I do. I'm a professional geologist in four states: South Carolina, North Carolina, Georgia, and Tennessee. And I'm also a -- a certified well driller in South Carolina.

Q All right. Explain to the Court your experience in dealing with closed solid-waste landfills and landfill gases.

A Landfills are -- are little incubators. And -- and the -- the science of landfill -- landfills and their design has developed over the years to -- from being unlined dumps, basically, that didn't have any cover to now they have what's called "Subtitle D landfills" that -- which are totally lined on the sides and the bottom; have daily cap; then, have a final cap to keep water from migrating through the landfill. So they're much more sophisticated.

Over the years I've dealt with a lot of dumps, basically just open landfills that have taken anything from yard waste to household waste to industrial waste. So I've worked with numerous county landfills that started out as

dumps, and then went to a landfill that had daily cover, and then they went to landfills that had liners and cover and ---

Q Have you become familiar with the closed Newberry County Landfill on Cockrell Road?

A I have.

Q Have you had experience in your -- in the work -- workplace before you were engaged to examine this one with landfills that were similar to this one?

A I have. I've -- I've probably been at, at least half of the counties -- landfills in South Carolina over my time with consulting and working with regulators.

Q Okay. Thank you.

MR. JAMES BRUNER: Your Honor, we're going to submit Mr. Clymer as an expert geologist, as well as an expert in solid-waste landfill systems and processes and as an expert in evaluating monitoring data and contaminant migration.

THE COURT: Okay. Mr. Frawley, any examination of Mr. Clyer concerning qualifications or any objections in the Court finding him as an expert in those three areas that Mr. Bruner indicated?

MR. FRAWLEY: No objection, Your Honor.

THE COURT: Okay. So deemed a -- an expert in those areas that, Mr. Bruner, you just outlined.

MR. JAMES BRUNER: Thank you, Your Honor.

Q First, Mr. Clymer, we have two exhibit notebooks. I think you've got -- do you have both of them up there? I'll make sure you have both.

A Just have one.

Q Okay. I'm going to give you another one. My first question to you is: Are you familiar with the documents that are in those notebooks?

A Yes. I've read all the documents.

Q And have you had an opportunity to examine them all?

A I have.

Q All right. My question to you is: Are the documents that are contained in these two exhibit notebooks, are these the kind of documents upon which an expert like you would normally rely in reaching opinions?

A Yes, they are.

Q All right. Specifically, Exhibit 16, which contains exhibit -- Subexhibits A through Y, are -- are principally annual monitoring reports or periodic monitoring reports submitted to the Department of Health and Environmental Control. Have you reviewed all those?

A Yes, I have.

Q All right. All right. Tell us -- first, if you would, explain what is landfill gas -- how is it formed?

A Okay. Landfills are like little incubators. They have a variety of wastes that are put in them, and they

mix. And the -- the nature of -- of the waste is -- is typically fairly organic in nature.

So you have microorganisms -- I'll -- I'll call them bacteria from here on out -- bacteria that like to eat and consume and -- and respirate the -- these organic wastes that are in landfills. And for different types of conditions in landfills -- temperatures, pressures, moisture content, permeabilities -- these -- the respiration and decomposition of these organic wastes by initially aerobic bacteria break down the material.

And then, when all the oxygen is gone from the landfill, then the aerobic bugs go away. And anaerobic bacteria continue to degrade and -- and -- and eat the wastes.

The methane is -- is formed from the decomposition of organic waste by anaerobic bugs, or bacteria. So the generation of methane is -- is referenced in numerous publications that any -- any period of time, from three years to five years after a landfill is closed, you can start generating methane -- possibly earlier under certain ideal conditions; possibly later under not-so-good conditions related to oxygen and -- and anaerobic environments.

But -- and then, the methane generates typically for a period of twenty years and then starts -- it's a bell curve

of how it starts generating, maxes out, and then starts dropping off from the -- the methane generation.

And they say it can still hang around for 30/40 years total from the time the landfill is closed.

Q Are there other components of landfill gas, other than methane?

A The prime components of landfill gas are methane and carbon dioxide. There are numerous other compounds that are probably in the -- the final 1 or 2 percent of this whole amount of material called "landfill gas." And those included hydrogen, nitrogen, sulfides, ammonia, and volatile organic compounds, if there was industrial wastes involved or household wastes might've had some volatile organic chemicals in them.

Q Let me ask you this: Do you remember when this Newberry County Landfill was closed?

A I do. It was closed in 1993 and capped in 1994.

Q Let me ask you to look at Plaintiff's Exhibit No. 1. And that's in the first notebook, the small one.

A Okay.

Q And what is that?

A This is a letter from DHEC to Mr. Lominack with the Newberry County Landfill.

Q All right. Does it reference in that letter the last date that the landfill accepted waste?

A Yes. Item No. 1 in this letter says that (As read): The facility must be completely closed in accordance with its DHEC-approved closure plan no later than October 9th, 1994.

Q Okay. Now, do you know if the DHEC-approved closure plan included the installation of a clay cap over this landfill?

A It -- it did on Phase II.

Q Okay.

A They wanted a minimum 2-foot-thick clay cap.

Q So explain to the Court why -- was this clay cap required by DHEC at that time?

A Yes. As part of the solid-waste regulations.

Q Can you explain to the Court why DHEC would require a clay cap over a landfill?

A Well, the thinking of a clay cap is to -- one, to -- to give closure of the site. And cap with vegetation on top would basically create a environment where you wouldn't have erosion and have rainfall/moisture getting into the landfill and going through the landfill to -- to generate leachate, which basically -- when water goes through waste, it picks up some of the waste. And that's called "leachate." And that can migrate down to the water table and create groundwater contamination.

Q All right. So ---

A So other than that, you just have vermin and -- and such that would like to play in the waste. And a clay cap, hopefully, would keep out rats and other types of animals that would play in the waste.

Q So in part, the clay cap is to alleviate groundwater contamination?

A Yes.

Q All right. And a clay cap was installed on this closed landfill?

A Yes. On Phase II.

Q Yes, sir. Does the presence of a clay cap have any effect on how landfill gases migrate from the landfill?

A It does. Landfill gases, and predominantly methane, is lighter or less dense than air. So it will have a tendency to go up and out of a landfill. If you have a low-permeability clay cap, then it won't allow the -- the landfill gases to escape. So they would try to go up, but then they'd migrate sideways or laterally to -- to try to escape.

Q All right. After a clay cap is installed, in your opinion, are landfill gases immediately detectable at its perimeter?

A Probably not.

Q Is there normally some delay?

A Yes. I mentioned earlier, just the generation of the

methane or landfill gases takes a while to happen within the -- the cycle of aerobic and anaerobic degradation. And then from -- let's just pick a point in the landfill -- the middle of the landfill, from it to go from there to 100/200 feet over to the side, that would take some time. That would have to do with how the landfill gases were migrating, if there are preferential flow patterns, which the nature of the soil types and how compact is -- is the landfill itself.

Q What are DHEC's requirements with respect to methane?

A Well, the action level -- DHEC's action level for methane is 1.25 percent in air. And the -- and -- and that's within the landfill boundary. At the perimeter of the landfill, the action level is 5 percent, which is the lower explosive limit.

Q All right. And does DHEC have requirements if the methane above those levels is detected at the property boundary?

A DHEC will request the landfill to install some type of mitigation system in order to vent the -- the methane or landfill gases from the landfill if they see, at the boundary or within the landfill itself, that they're reaching those action levels.

Q Is there -- once the action levels are recognized, does a landowner have a certain number of days within which

to submit a plan to DHEC?

A DHEC typically gives anywhere from 30 to 90 days for the plan submittal and with the understanding is the county has to -- to get with their consultants and -- and contract them to do the work and then get them to -- to write it and then review it and submit it.

Q So once it's approved, how long does a landowner have to implement the plan to ---

A Well ---

Q --- deal with ---

A --- if it's ---

Q --- the methane?

A --- approved at DHEC, that they would typically say they would like it installed or some -- something to be done, typically the same thing: within 30 to 90 days.

Q Okay. Now, from your review of the records concerning this closed landfill, do you know when methane was first detected at the landfill boundaries of the Newberry County landfill?

A Yes. I'll lead to my notes here. I believe it was in 2003.

Q All right. Let me ask you to look at Exhibit 4. And what is that document entitled?

A This is a methane-remediation plan for the Newberry County Landfill.

Q And what is it dated?
A It's dated September 2005.
Q And it was prepared by whom?
A Prepared by B.P. Barber and Associates.
Q All right. Ask you to turn to page 4 to Table 1.
A (Complied.)
Q You see that?
A Yes.
Q And these are methane-monitoring results B.P. Barber reported. And is that the source of your information that in December of 2003, that was the first time that methane was detected at the property boundaries of the landfill?
A Yes.
Q And does this report also show that methane above the lower explosive limit continued to be detected at the boundary points of the landfill through June of 2005?
A That's correct.
Q So were these just low-level readings? Are these high-level? What were they?
A The readings seemed to range from fairly low on occasion and -- and at some of the gas-monitoring probes to fairly high. Between 5 and 15 is considered the explosive limit for methane. These numbers are above that level.
Q Now, you have reviewed the annual reports that are in Exhibit 16 for the years 1997 through 2000; is that

correct?

A I'm sorry. Could you repeat that?

Q Have you reviewed the annual reports that are in Exhibit 16 for the years 1997 through 2000?

A Yes.

Q During those years was there any methane detected at the Newberry County Landfill?

A No. I don't believe there was anything above the action level.

Q And, in fact, as we look at Exhibit No. 4, it appears that there was no methane detected until December of 2003.

A That's correct.

Q All right. And this Exhibit 4, do you know if this was B.P. Barber's response to the methane readings? Is that what it appears to be?

A Yes. They submitted these to, I'm sure, the county and to DHEC. And then, there was probably a request to do a remediation plan. And this is that response.

Q All right. Do you know if B.P. Barber recommended that the county conduct a bar-hole survey to determine the extent of the lateral migration of this methane?

A Yes, they did.

Q And I'd call your attention to page 8 of the methane-remediation plan, Section 3.1. Is that where B.P. Barber recommended that they do a survey off-site to determine

whether the methane had migrated off-site?

A Yes.

Q All right. What corrective measures did B.P. Barber recommend? And I call your attention to page 10 of their remediation plan.

A They -- in Section 3.2 on page 10, the corrective measures were indicated as, in order of increasing costs: first, an interceptor trench; second, passive-gas vents; and third, an active system with gas vents and a flare.

Q All right. Can you explain to the Court your understanding of an interceptor trench?

A Yes. An interceptor trench is a -- a perimeter trench, typically to depth, that would be at about the depth of the landfill that will be filled with porous, or permeable, material so that as landfill gases migrated from the landfill to this perimeter or off-site area, it would be captured in -- in a trench.

Q All right.

A It's a passive trench. So the -- the -- you're just allowing the gases to easily go through the trench. But it's -- since there's no driving force -- there's no vacuum or anything to pull it out -- there's no guarantee it will work 100 percent.

Q What was the next corrective measure that B.P. Barber recommended?

A They recommended passive-gas vents.
Q Explain what a passive-gas vent it to the Court.
A It's -- it's a dry well. Basically, it's a screened well that, as opposed to the trench, you can put these in numerous locations around the perimeter of the landfill. And that, again, is similar to a trench. It's -- it -- it's passive, but it -- it would have a screened interval that would, say, extend for 15 or 20 feet from the bottom of the landfill up towards the ground surface. And it will allow landfill gases to migrate into this and then vent out of the landfill to the atmosphere.
Q After these passive-gas vents are installed, is there monitoring required to determine if they're working?
A (No audible response.)
Q And I call your attention to the middle paragraph on page 11.

MR. FRAWLEY: What page was that again?

MR. JAMES BRUNER: Page 11.

MR. FRAWLEY: Thank you.

A They recommend several temporary gas-monitoring probes to be installed off-site along the property boundary where the lower explosive limit was exceeded.
Q Okay. And then, what sort of periodic monitoring, if any, takes place of those monitor -- monitoring probes?
A The monitoring, as required by DHEC, would typically e

quarterly or semi-annual. For initial installation, a lot of times, the monitoring is done weekly or monthly to see if the system is working fine.

Q What is recommended in B.P. Barber's methane-remediation report?

A They say that the temporary monitoring probes are typically monitored every two weeks for a six-month period ---

Q Okay.

A --- to evaluate the effectiveness of the ---

Q Now ---

A --- of the ---

Q --- what was ---

A --- gas ---

Q --- the ---

A --- vents.

Q What was the third method of remediation recommended by B.P. Barber in their methane-remediation plan?

A That was an active system with gas vents and a flare.

Q Please explain to the Court your understanding of an active-gas system.

A Well, the active-gas system could utilize either the trench-type approach or the gas-vent approach, with the differentiation that instead of those just venting themselves, you would hook those up to a blower and

actually pull a vacuum so you would pull gas from the subsurface and treat it and then it -- allow it to dispel to the -- to the atmosphere.

Q All right. Now, these -- these potential remedies were listed, according to Barber, in their order of -- of costs ---

A Correct.

Q --- least costly to the most costly. Does that also generally follow their effectiveness?

A I -- personally, my opinion, the most effective is an active system.

Q All right. Now, we know, then, now from this report that a bar-hole survey was recommended. Do you know if that off-site bar-hole survey was conducted?

A Yes, it was. B.P. Barber did that study in 2006.

Q I call your attention to Exhibit 6.

(Whereupon, Mr. James Bruner and Mr. Benjamin Bruner conferred.)

Q Is Exhibit 6 a copy of the off-site methane-investigation report prepared by B.P. Barber?

A Yes, it is.

Q And what is its dates -- date?

A It's ---

Q Excuse me.

A The report is dated April 2006.

Q All right. Call your attention to Exhibit D in this report. I have actually -- I've blown it up and put it here.

MR. JAMES BRUNER: And I believe you'll find that as page 9 in this off-site investigation report.

THE COURT: Right. I've got it.

Q All right.

A Okay.

Q Does this exhibit reflect B.P. Barber's understanding of where they tested geoprobes around the perimeter of the landfill but off -- off-site from the landfill property?

A Yes. This ---

Q In ---

A --- shows the location of the 20 geoprobe test holes around the landfill.

Q All right. I'm going to expand this a little bit here and -- and to look at the -- the numbers. If we look on the western property boundary and we're looking at G-13 through G -- G-18, there is a number underneath each of those well or geoprobe numbers. You understand what those numbers represent?

A Those are the percent methane readings.

Q All right. So then, if we are to believe B.P. Barber's off-site investigation in 2006, we know that these geoprobes that are actually on the West/Hobby property

detected methane gas in the percent levels shown below their numbers?

A That's correct.

Q So, for example, I'm looking at G-13 and it detected 51 percent methane by volume in the air.

A Yes.

Q And the lower explosive limit is 5 percent; is that correct?

A Yes.

Q And again, for G-14 we show 26 percent. And all of these readings were taken on the West/Hobby property; is that correct?

A Yes, they were.

Q Let me ask you something: Do you have an -- an opinion within a reasonable degree of certainty in your area of expertise as to whether or not the West/Hobby property was contaminated by landfill gas in the spring of 2006?

A Based upon these methane readings, yes. The -- the landfill has -- has definitely impacted the West/Hobby property.

Q Do you have an opinion within a reasonable degree of certainty in your area of expertise as to what the source of this gas was?

A Yes. I'd say it's from the Newberry County Landfill.

Q All right. Have you physically examined this property? Have you walked on it?

A The West/Hobby property or ---

Q Yes.

A --- the landfill property?

Q West/Hobby property.

A Yes, I have.

Q All right. In your physical examination of the property, did you see anything that would indicate to you that there were spills of petroleum or chainsaw gas or chainsaw oil on the property?

A I did not see any evidence of petroleum or chemical releases on ---

Q All right.

A --- the property.

Q Do you have an opinion within a reasonable degree of certainty in your expertise as to whether or not the readings that are shown along the West/Hobby property could've been caused by the asphalt road?

A No. Asphalt does not create methane ---

Q All right.

A --- gases.

Q Now, in response to the off-site survey, what did B.P. Barber recommend, if you know? And I can call your attention to page 10 of their off-site investigation

report.

A Page 10 of their report lists potential methane-remediation techniques. And ---

Q What was the first one?

A The first one was expansion of the landfill-property boundaries.

Q In other words, you buy the property you've affected?

A Correct.

Q All right. 4.2, the recommendation ---

A The next ---

Q --- was ---

A --- was interceptor trench, as we talked about earlier.

Q And then, 4.3 ---

A Was the ---

Q --- recommendation ---

A --- passive-gas vents.

Q And then, 4.4 was?

A That would be the active remediation system.

Q All right. And did B.P. Barber recommend a sequence in which these remedies should be addressed? And I call your attention to page 13.

A They recommended a phased approach, starting with the least-costly item, which would be the trench.

Q All right. Do you know if the county asked DHEC for

permission to do this, to start with an interceptor trench?

A Yes.

Q Call your ---

A We ---

Q --- attention to Exhibit 7. What is that?

A This is a letter from B.P. Barber to Ms. Melanie Murphy at -- probably the project manager at DHEC -- about the proposed remediation -- proposed methane-remediation trench.

Q All right.

A It's dated May 24th, 2006.

Q So do you have an understanding about whether or not DHEC approved that and the trench was installed?

A Yes. I believe they did approve that.

Q All right. Now I'm going to call your attention to Figure 2 from another report. And then, I'm -- I'm demonstrating this from a later environmental-service report, simply to demonstrate to the Court the location of the interceptor trench. And you can see here it's indicated by a solid line. Does it appear that the interceptor trench was installed around the eastern, southern, and a portion of the western boundary of the landfill?

A Yes, it was.

Q Okay. Do you know -- do you know if the county asked

for permission to place geoprobes on the West/Hobby property?

A (No audible response.)

Q Call your attention ---

A I believe ---

Q --- to Exhibit 8.

A Yes. That was a letter from the County of Newberry to West/Hobby, LLC.

Q And did they request permission to install geoprobes on the West/Hobby property?

A Yes, they did.

Q Now, do you know if the county ever installed those geoprobes on the West/Hobby property?

A Yes. Per the follow-up report from B.P. Barber, they did install those probes.

Q Are you sure?

A Yeah.

Q Have you ever seen any test results from those monitoring probes?

A From the B.P. Barber report we just looked at?

Q Well, the B.P. Barber report was dated before this one -- this letter.

A Oh. You're talking about -- I'm sorry?

Q Now, the ones they did before were geoprobes ---

A Were the test borings. And these would be monitoring

probes.

Q That's right. Permanent monitoring probes.

A I'm sorry. I didn't understand the question.

Q Yes.

A Yeah.

Q I'm sorry. I -- I wasn't ---

A That ---

Q --- clear.

A No. There's no indication that those monitoring probes were put on the West/Hobby property.

Q All right. Now, can you tell me, from your review of the records, whether the interceptor trench worked? I guess it's better to say -- instead of saying worked, did it reduce the methane levels below the lower explosive limits at the property boundary?

A There were still indications from the testing done at the monitoring probes on the landfill site that the -- that had methane in them.

Q Let me ---

A So that ---

Q --- call your ---

A --- would ---

Q --- call your attention to Exhibit 9. What is that?

A This is a letter from Terry Environmental Services to the Newberry County Public Works Department.

Q And its date?
A It's dated January 24, 2008.
Q All right. And I call your attention to the second paragraph in that letter. What does it say?
A Says that (As read): Methane readings persist in several monitoring points at levels in excess of the action level of 5 percent of the LEL. Additional methane-mitigation efforts will be required. The next suggested step is the installation of passive-methane-vent wells.
Q All right. Do you know if DHEC approved the request to install passive-gas-vent wells? And I call your attention to Plaintiff's Exhibit 10.
A Yes. They -- Item No. 4 in the letter from DHEC, dated February 26, 2008, says that (As read): The department has reviewed and approved the locations and construction details of the 32 passive-gas vents in order to lower on-site methane levels.
Q Do you know if the county installed 32 passive-gas vents?
A I do not believe they installed 32.
Q I call your attention to Plaintiff's Exhibit 11. And what is this?
A This is the revised methane-corrective-action plan prepared by Terry Environmental Services for the Newberry County Landfill, directed to Kyle Nash, the public works

director.

Q And how many passive-gas vents was Terry now proposing to DHEC?

A (No audible response.)

Q Call your attention to page 5, Section 3.2, second paragraph.

A Second paragraph under 3.2, vertical passive-gas vents says (As read): Public works proposes to initially install a total of six passive-gas vents on a -- on approximately 150-feet centers along the perimeter of the Phase II cells from just north of GMP-6 to just northeast of GMP-5, as depicted in Figure 3 of Appendix 1.

Q And I have here on the screen for you to review Figure 3. And it's labeled "Proposed Methane-Vent Locations." And from this figure does it appear they propose to install vents there at the southwest corner of -- of Phase II of the landfill?

A Yes.

Q All right. Do you know if those passive-gas vents were installed?

A Yes. I believe they were installed.

Q And do you recall that the records reflect they were installed in December of 2010?

A Yes.

Q Do the records tell you why, instead of installing the

32 passive-gas vents for which permission was requested, the county went back and asked to install just six?

A I do not see any specific records that say why the decision was to reduce it from 32 to six. I can only think that it was done because of financial reasons.

Q Now, we've seen earlier in the B.P. Barber methane-remediation plan that there was a recommendation to monitor every two weeks for six months. Do you know if these passive-gas vents were monitored every two weeks for six months?

A I don't recall seeing that data. No.

Q All right. If they were installed in December 2010, do you recall if there were any monitoring reports for 2011?

A Terry did a report in 2011 that summarized the data from 2010. It was their annual report. And I don't recall seeing another 2011 report. I don't have another report from Terry in my ---

Q All right.

A --- in my files.

Q So my question is: Would it be true that the county conducted no monitoring in the year 2011?

A Apparently not.

Q Now, you are aware, of course, that in January of 2011, Kiswire and West/Hobby reached an agreement to sell

the West/Hobby property? You're familiar with that?

A Yes.

Q And that's what this lawsuit is about. Now, in connection with that proposed sale, are you familiar that S&ME conducted a Phase I environmental survey?

A Yes, they did.

Q And is that Exhibit 13?

A Yes.

Q All right. In the course of examining the property and -- and the public records about the closed landfill, do the records reflect that S&ME reviewed the records of DHEC?

A Yes, they did. That was part of their service.

Q Yes. And in reviewing the records of DHEC, do you recall if S&ME saw that methane -- elevated methane levels had been detected at the property boundary? Do you recall that?

A Yes. At the property boundary.

Q Yes.

A Uh-huh.

Q And I'm going to call your attention to the -- to page 10 ---

MR. FRAWLEY: What exhibit?

MR. JAMES BRUNER: Of Exhibit 13 ---

MR. FRAWLEY: Thank you.

MR. JAMES BRUNER: --- the Phase I.

Q Anywhere in their review of DHEC records, do you see where S&ME referred to the presence of a clay cap on the landfill?

A I -- it doesn't jump out at me. I don't see it on their review of the Freedom of Information -- the information from DHEC.

Q All right. So it would be true, then, that in reporting their findings from Phase I, S&ME did not report the presence of a clay cap on the -- on the landfill -- closed landfill?

A No. They did specifically report that.

Q Now, do you recall that subsequent to the Phase I, S&ME went back on the property and conducted a limited soil-gas assessment?

A Yes, they did.

Q And I ask you to look at Exhibit 15. Is Exhibit 15 S&ME's limited soil-gas assessment?

A Yes.

Q What did they find in the spring of 2011 when they examined the West/Hobby property?

A Well, they did eight soil-gas samples on the West/Hobby property, adjacent to the landfill. And the soil-gas samples found VOCs which exceeded action levels.

Q Now, I'm referring now to a -- a figure from their limited soil-gas assessment, which I have now put on the

screen. And does this figure reflect the location of the test wells installed -- or -- or the test probes by S&ME? Does it show those eight right there?

A Yes, it does.

Q All right. And underneath each -- sometimes they're a little hard to read. That's why I did it this way. Underneath each of the well numbers, there is a -- a number underneath that. What is that?

A The numbers in those boxes adjacent to the gas wells are the total VOC concentrations reported from the laboratory data.

Q And -- and what, if anything, does the total VOC concentrations tell us?

A It tells you that there's a good bit of volatile organic compounds in the soil gas on the West/Hobby property.

Q It doesn't tell you which ones, does it?

A It ---

Q It just ---

A --- does not.

Q Okay.

A It's a -- it's a cumulative ---

Q Let me ask you ---

A --- number.

Q --- to look at Table 4 from that report, which is the

soil-gas data. Do you see that? And is that what I have put up on the screen here?

A This -- are the individual compounds from the soil-gas sampling.

Q All right. And which, if any, of these volatile organic compounds exceeded limits?

A The -- Table 4 highlights benzene, tetrachloroethene, trichlorethene at -- so those three volatile organic compounds are highlighted as exceeding the action level.

Q Are those three compounds carcinogens?

A Yes, they are.

Q Let me ask you to look at Table 5, which I believe ought to be the last page under that Exhibit 15. And this is the methane-gas-soil-sampling data; is that correct?

A Yes.

Q And can you -- can you tell me, in 2011, when S&ME conducted this sampling, whether they detected methane in each one of the gas wells they tested.

A The readings are listed both in parts per million by volume at the top of the table and with methane percent as the second row. And they have listed methane concentrations for all eight of the -- of the soil-gas probes.

Q Now, on any of these soil-gas probes, was the methane-gas lower explosive limit exceeded?

A No, it was not.
Q Okay. But yet in each one, methane gas was detected?
A Yes.
Q All right. Now, based upon this report and the results we've seen in their tables that we've put up on the screen, do you have an opinion within a reasonable degree of certainty in your field of expertise as to whether the West/Hobby property was most probably contaminated with landfill gas at the time of S&ME's limited soil-gas assessment in 2011?
A The question is do I have an opinion about this ---
Q Yes.
A --- data? Yes.
Q And what is that opinion?
A That the S&ME data indicate that the VOCs have impacted the West/Hobby property and the source is most apparent from the Newberry County Landfill.
Q All right. So now we have seen, from the B.P. Barber off-site investigate in 2006, and now we've seen, from the S&ME report in 2007, that at those two points in time, there was landfill gas that had migrated onto the West/Hobby property; is that correct?
A Yes.
Q Again, is it your opinion that in 2006 and in 2011, most probably the West/Hobby property was contaminated with

that landfill gas?

A That's correct.

Q Do you have an opinion within a reasonable degree of certainty in your area of expertise as to whether or not this West/Hobby property most probably was contaminated in the intervening period between 2006 and 2011?

A I'm not sure I understand the question, Jim.

Q All right. We've established that, in your opinion, it was contaminated in 2006.

A Correct.

Q We've established, in your opinion, that it was most probably contaminated in 2011. My question to you is: Do you have an opinion whether most probably the land was contaminated in the intervening years between those?

A Oh. Thank you for explaining that. Yes. I do believe so. And I'll just refer to the data that had been generated by the county consultants themselves with the county monitoring wells, the county gas probes that still showed that there was continuing VOCs and -- and methane being generated by the landfill.

Q All right. Now, I want to ask you a question, because you've brought it up, about VOCs. And here s the Table 4, which reflects S&ME's findings concerning them. As far as I can tell, this is the first time any consultant tested for VOCs. It's -- it appeared to me that every report

before that dealt with methane. Do you know why that would be?

MR. FRAWLEY: I'll object to the question as far as him testifying preceding the question as to what it appeared to him and -- and -- and how he's evaluated this. I think that's -- that's beyond a simple direct-examination question.

MR. JAMES BRUNER: No. Let -- okay.

THE COURT: What I understood the question to be is: Why no one tested for VOCs up until 2011.

MR. JAMES BRUNER: That's exactly right.

THE COURT: Okay. Well, if it ---

MR. JAMES BRUNER: And the ---

THE COURT: --- requires speculation, then, of course, that would not be permissible. But he is an expert. I'm going to overrule it at this time. Let's -- let's hear what -- what he has to say.

MR. FRAWLEY: Thank you, Your Honor.

A The monitoring program at the landfill included groundwater monitoring of the monitoring wells around the landfill. And they did include volatile organic compounds and metals. And it included methane readings from the methane-gas points.

But it did not include volatile organic compounds in the landfill gas or -- or soil gas. So no. The -- no

other readings had been done up until this time until S&ME did this study for volatile organic compounds in soil gas.

Q If one was doing a soil-gas assessment for a client who proposed to put a building on a piece of property, would it be important to report on the existence or nonexistence of volatile organic compounds on that property?

A Absolutely.

Q Prior to the 2011 S&ME -- S&ME report, did any of the prior reports deal with the concept of putting a building on this land?

A No.

Q It was vacant land, wasn't it?

A Correct.

Q And my -- my question was: Why in the world, after all these years, would somebody come in and test for VOCs? That -- that's my question. I -- I think it's a -- a question that needed to be answered. And did you agree that the reason they tested was because Kiswire wanted to put a building on it?

A Yes.

Q All right. Do the records you reviewed show continued elevated landfill-gas levels at the landfill after S&ME's reports?

A Yes.

Q Let me ask you to look -- now I'm going to ask you a few questions about the Exhibit 16. Exhibit 16R -- R as in Robert -- all right.

A Okay.

Q And is that the 2012 annual report?

A This is the semi-annual groundwater ---

Q Yes.

A --- and methane-monitoring report for August 2012.

Q And I call your attention to page 5 of that report and Section 5 of the conclusions.

A The conclusions state that (As read): "On August 30th and 31st, 2012, Terry personnel conducted a comprehensive groundwater sampling and recorded landfill-gas measurements at six GMPs and two structures located at the former landfill. Forty-seven parameters were detected in concentrations greater than their respective method-detection limits in the groundwater samples collected. However, only 12 parameters were detected in concentrations that equaled or exceeded their respective established MCLs, RBSLs, or Als.

"The LEL action level for methane (5 percent in air) was exceeded in monitoring points GMP-3, 31 percent; GMP-4, greater than 40 percent; and GMP-5, greater than 40 percent. Visible off-gassing was observed at monitoring well MW-3 after the well cap was removed prior to

sampling."

Q So then, we -- we recall, from your prior testimony, that the passive-gas vents -- the six passive-gas vents were installed December of 2010. And now in their 2012 report, they are reflecting still methane-gas levels in excess of the LEL limit.

A That's correct.

Q Let me ask you to look at Exhibit 16T, as in Thomas. And I'll call your attention to Table 5, which is at the very end of the report, I believe.

A Okay.

Q And does that reflect that methane levels at the gas-monitoring points around the property are still above the LEL?

A Except for GMP-1, yes. It looks like the recent data for 2013 was above -- well, except the GMP-1 and GM -- GMP-7, they were not above the LEL and also at the clubhouse and at the shed were not above the LEL.

Q But the others were?

A But the others were.

Q All right. Let me call your attention to Exhibit 16U. And that is the 2014 annual monitoring report by Rogers and Calcott. And I'm calling your attention to page 10, Table 5, of that report. And I ask you if -- if the new consultants are still showing elevated LELs.

A Yes. Very similar to the previous data, all of the gas-monitoring probes, except 1 and 7 and the two buildings, were above the -- the LEL.

Q Now, did we hire your firm to conduct some testing on this site to install some probes and do some testing?

A Did you -- yes.

Q Okay. And your -- your firm, Terracon, issued reports regarding your test results, did they not?

A That's correct.

Q I call your attention to Exhibit 16V, as in Victor. And this is a Terracon limited site investigation from 2000 -- March of 2014. Is that correct?

A Correct.

Q Now, did -- as a result of that report, did you find any methane on the gas-monitoring points where you tested?

A We did four soil-gas probes on the West/Hobby property and did not find methane above the detection limit.

Q Did you find any volatile organic compounds?

A Yes. We found numerous volatile organic compounds in the four ---

Q All right. I'm ---

A --- gas ---

Q --- going to ---

A --- parts.

Q --- call your attention to Figure 2 from that report,

which is up on the screen now. And I'm going to blow it up just a little bit. Does this reflect the four monitoring points that your firm installed on the West/Hobby property?

A Yes, it does.

Q And there are numbers under each one. For example, under SG-4, there's a 502. What do those number signify?

A That is a total volatile-organic-compound concentration.

Q Okay. And -- and what does that indicate, if anything, to us?

A That indicates that we have volatile organic compounds at the soil-gas probes on the West/Hobby property.

Q All right. That was in March. Let me call your attention to Exhibit 16W, as in William. Do you recognize that?

A Yes.

Q And is that what -- your environmental-sampling report from December of 2014?

A Yes.

Q And I'm calling your attention now to the Figure No. 3, which is up on the screen. Does this figure, again, reflect your soil-gas-monitoring points along the West/Hobby property?

A Yes, it does.

Q And then, again, does it also reflect the total volatile organic compounds that were detected?

A Yes.

Q Can you tell me which volatile organic compounds you were detecting?

A Yes. They are broken out on the tables. So there's a whole litany of volatile organic compounds that were identified or detected at the soil-gas points. And the ones that were above the action levels were benzene, chloroform, and ethylbenzene ---

Q Okay.

A --- in December of 2014.

Q Now, do you recall that Rogers and Calcott did some sampling and monitoring in February of 2015? And I call ---

A Yes.

Q --- call your attention to this figure, which is Figure 2, methane-monitoring results from February 2015.

MR. FRAWLEY: Which exhibit are you talking about?

MR. JAMES BRUNER: This is from their February 2015 monitoring results.

Q Now ---

MR. FRAWLEY: Which is exhibit ---

Q --- in ---

MR. FRAWLEY: --- what? Where -- I'm sorry, Your

Honor. May -- may I ask which exhibit we're talking about?

MR. JAMES BRUNER: I think it's the first Rogers and Calcott report.

Q Now, the reason I -- I've -- I've put this up here for us to look at is it's February 2015. And looking at this, can you tell me whether or not Rogers and Calcott, in February 2015, is detecting methane at these various gas-monitoring wells or points on the landfill property?

A Yes. Those are the percent-methane readings. And yes. They ---

Q Okay.

A --- they indicate, yeah, that we still have methane on the ---

Q So the ---

A --- property.

Q --- county is consulted -- in February of 2015 is still finding methane on the property. And the reason I mention that is we know that in May of 2015, the county installed -- completed the installation of its active remediation system. And -- oops.

I call your attention to the Rogers and -- and Calcott report. I think that's 16Y or 16X. And I've put Figure 1 from that up here on the picture. And my question is: Does this show where the extraction wells were installed by the county in May of 2015 around the perimeter of the old

landfill?

A Yes.

Q All right. Do you -- do you think that the active system they installed on May 15th -- I mean, may of 2015 has had an impact on the methane levels?

A Well ---

Q Now I'm going to call your attention to Exhibit Y -- 16Y, which is the July 2015 Rogers and Calcott report.

A Yes.

Q Okay. And I have put here on the screen Figure 5 from that report. Okay?

A Yes. The -- Table 5 indicates that the only one of the gas-monitoring points that is above the LEL is at GMP-6.

Q And is -- that's what this figure shows here, is it not?

A Yes.

Q And only GMP-6, which is down in the southwestern corner, is still showing above the action level?

A Yes.

Q Is that correct?

A Uh-huh.

Q Now, so then, if we go back and look at what their tests showed in 2015, we see that every one of the gas-monitoring points, 3 through 7, showed methane

concentrations, did they not?

A (No audible response.)

Q I'm -- I'm showing it to you right here.

A Yes.

Q So in February, we see that the methane is being detected in these gas-monitoring points. And then, in may they put in all these extraction wells, as shown on Figure 1. And then, in July, two months later, we can see the affirmative impact -- oops -- wrong -- wrong set.

That -- that's my point. So would you agree with me that, in fact, the installation of the active remediation system has had a very positive remediatal -- remedial effect on the methane gas/landfill gas escaping from the landfill?

A Yes. It appears to have, because all that's left is GMP-6 that has methane in it at that time.

Q So would you agree with me that since December of 2003, Newberry County has been struggling with a -- a methane-gas or landfill-gas problem with its landfill?

A Yeah. They -- they -- they have had a problem since 2003.

Q Have you undertaken to graph some of the results from the testing through the years?

A Yes, we have.

Q All right. All right. I'm going to show you -- I

tend to use this as a -- simply an explanatory tool. I did not intend to introduce this as evidence. But, of course, Mr. Frawley would be free to ask questions about it, if he wishes.

MR. FRAWLEY: I'm seeing it for the first time, but that's fine.

Q So here is a graph. And on the X-axis is the percent of methane concentration; is that correct?

A Yes.

Q And the y-axis has dates. And these dates begin December 1st of 2003 and go through March 1st of 2015. What -- well -- there it is. Should never let me do anything technical.

What, if anything, can we learn from the graph GMP-6 methane shallow interval?

A What it shows the historical data that, except for a few instances, are the methane readings are way above the lower explosive limit.

Q Let's look at the next one, which graphs GMP-6 methane deep interval. What does that tell us?

A That indicates that the methane was also in the deeper interval at that GMP-6 location. Looks like a delayed response. It wasn't high in '03.

But frankly, I'm not sure it was installed as early as '03. I believe these were done later. So I'd have to

check my records to see if that was when the -- the initial methane readings were done when it was installed.

Q Okay. Let's look at the next one, GMP-7, shallow. What does this tell us?

A At 7 it shows very high concentrations early on. And then they tapered off and only one spike, looks like, in the 2010 area. Other than that, they were below the lower explosive limit.

Q And then, GMP-7, deep interval?

A The deep interval was below the LEL, except for one instance early on in its -- since -- since it was installed. And then it spiked up in 2013.

Q Now, do you think that Newberry County has complied with all of DHEC's requirements concerning methane gas at its property boundaries?

A Well, I -- I would say they have complied, in -- in a -- in a minimal sense. It seems like DHEC has asked them to do a little bit more. And they've recommended a little bit higher level of effort. But they've finally got to the point now in 2015 where they have an active system.

Q Yes. Now, do you have an opinion within a reasonable degree of certainty of your area -- in your area of expertise as to whether or not if Newberry County had installed an active system to deal with the landfill gas in 2006, whether or not it's possible that the West/Hobby

property would not have been contaminated with landfill gas in 2011, when S&ME tested it?

A I can't say without a shadow of a doubt that the -- that there would be nothing on the West/Hobby property, because what's already gone off the property is sort of like letting the horse out of the barn. It's -- it's already there. It's all the -- all the -- already across the street.

However, the evidence indicates that the concentrations at the property boundary would've been reduced, such as there would be no more coming across the property. And with some attenuation and such, the -- the -- the concentrations might be lower than action levels right now or -- or not. But they -- but there wouldn't be a continuing source of material.

Q All right. Now, to -- to sum up, the -- we know, from your review of the records, that the first time methane was detected on the West/Hobby property was December 1st of 2003; is that right?

A Correct.

Q And we know that in 2005, a consultant gave them a methane-remediation plan, proposed by B.P. Barber, correct?

A Right.

Q They also recommended that they do some off-site testing and that that was done in March of -- of 2006 on

the West/Hobby property, correct?

A Right.

Q And that testing showed -- well, I lost that. That testing showed that there was methane gas -- there was landfill gas on the West/Hobby property in the spring of 2011, correct?

A That -- that was 2006.

Q Excuse -- 2006. I apologize. All right.

A Yes.

Q And in response to that, Newberry County puts in a passive gas-vent system that we've seen on Figure 2 up on the board?

A The trench. Yes.

Q The trench. And we've also seen, from the annual reports, that that did not sufficiently address the gas problem. So we see in 2010, four years later, they put in the methane-vent method, which is six methane vents.

A Yeah.

Q And that's shown on the figure that's on the board.

A Six passive vents. Yes.

Q And we also know, from the annual reports you've gone through, that that did not work so that in 2011, when S&ME does its Phase I and its limited soil-gas assessment, they find volatile organic compounds on the property, correct?

A Yes.

Q And they find methane on the property?
A Yes.
Q And we know, from the annual reports you've identified and you've testified from, that after that point in time in 2011, methane levels continued to be high on the property boundary, didn't they?
A They were.
Q And only in -- after they installed the active remediation system five years later in May of 2015, did the gas levels come down; is that right?
A At all the gas point except 6 -- GMP-6.
Q Except gas -- gas -- 6. That's correct. Please answer any questions Mr. Frawley may have for you.

THE COURT: Let's have -- let's take about a ten-minute break before we start your cross.

MR. FRAWLEY: Thank you, Your Honor.

THE COURT: Okay.

(Off the record from 3:55 p.m. until 4:12 p.m.)

THE COURT: Okay, Mr. Frawley. You ready, sir?

MR. FRAWLEY: Yes, sir. May it please the Court?

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. FRAWLEY:

Q Mr. Clymer, in you reviewing the various reports and the S&ME report and your Terracon reports, there's no

landfill and it may be a business risk to buy ---

A Yes.

Q --- correct?

A That was their conclusion.

Q They didn't report a clay cap in there, did they, in their report?

A Not specifically, no.

Q Okay. Well, I mean, does that mean there was no clay cap or does that mean that somebody who should've noted it didn't put it in the report? Or do you even know what that means?

A I don't know why -- why they did -- did or did not report a clay cap. I think, from a technical side, most people consider that a clay cap is sort of a -- a -- the final closure on the landfill.

Q You found out there was a clay cap there, didn't you?

A Yes.

Q How'd you find out?

A It was in the DHEC records ---

Q Okay.

A --- the FOI.

Q That -- that you reviewed?

A Yes.

Q Through -- through FOI, Freedom of Information Act, correct?

A Correct.
Q Had S&ME -- and -- and I'm not indicting S&ME. But the fact that S&ME doesn't have it in their report doesn't mean that it wasn't available to them, does it?
A No.
Q It was available ---
A It's ---
Q --- to you wasn't it?
A It was available. Uh-huh.
Q And had Mr. West hired your company or a company like yours to do a Phase I, you could've told him that there was a clay cap on that closed landfill adjacent to his property, correct?
A Yes.
Q All right. And you could also have explained to him the possible permutations of that clay cap and -- and how that may have impacted, if at all, his property, correct?
A It -- yeah. It would be conjecture. Sure.
Q It'd be conjecture. But, I mean, it -- you and I spoke before. And methane gas, I think you testified, is lighter than air; it goes up; but when it hits a clay cap, it makes a right turn and goes horizontally, correct?
A Yeah. It -- it could go anywhere.
Q Well, is it ---
A Yes.

A --- bottom line was there was no data in FOI that showed that there was -- there was methane on the property.

Q So the only purpose of a Phase I is to see if there's data that there's -- there's methane on the property, as opposed to seeing that there is the possibility that methane may migrate?

A I don't think there was methane on the landfill property in 2000.

Q With a clay cap ---

A It wasn't -- it wasn't indicated until 2003.

Q But he could've found out that there was a clay cap put on it and there was the possibility that methane would reach that clay cap and then migrate horizontally. Do you agree with that statement?

A I'm sorry. Can you repeat that?

Q He could've found out that there is a clay cap on the closed landfill that's going to -- the -- the -- the landfill is going to generate methane that would've hit that impermeable clay cap and then migrate horizontally. He could've ---

A Right.

Q --- found that out?

A Could've found out. He also could've found out the Phase I did not have a clay cap or it's unknown if it had a clay cap. It probably doesn't, from the records I've

looked at. So there's -- it's the different instance of Phase I not having a clay cap, but Phase II having a clay cap.

Q I'm talking about Phase I in the context of a Phase I environmental assessment, not ---

A I'm talking ---

Q --- Phase I ---

A --- about Phase I ---

Q --- of the closing ---

A --- that's ---

Q I understand.

A --- that the -- the northern area of the landfill.

Q But Phase II had a clay cap ---

A Yes ---

Q --- correct?

A --- it does.

Q We don't know for sure what's on Phase I, do we?

A No, we don't.

Q But we do know that Phase II had a clay cap, which is what Mr. Bruner is talking about being impermeable and causing the -- the horizontal migration of the methane, isn't he?

A Yes.

Q And -- and you agreed with that, right?

A I did.

Q Okay.

A Might be dirt.

Q That's all I've got, Mr. Clymer. Thank you, sir.

THE COURT: Mr. Bruner?

REDIRECT EXAMINATION

BY MR. JAMES BRUNER:

Q Mr. Clymer, do you have an opinion whether the VOCs that your company found in these four wells on the West/Hobby property most probably came from the landfill? Do you have an opinion about that?

A I do.

Q What is that?

A That the VOCs that were indicated on the West/Hobby property have come from the Newberry County Landfill.

Q All right. Do you ---

A The landfill ---

Q --- think they ---

A --- sampling ---

Q --- came ---

A --- has shown that there are VOCs are on their property in the groundwater, even though they didn't do soil gas in any of their testing, other than methane from their soil-gas probes. There's enough indication that there are VOCs from the landfill that match the same BTEX and other chlorinated compounds that are -- have been found

on the -- the West/Hobby property.

Q Okay. Now, as between -- Mr. Frawley asked you some questions about brownfield projects and VCCs. As between the owner of a former landfill site and the owner of an adjacent piece of property, who, in your opinion, is in the best position to effectively remediate landfill gas coming from that closed landfill?

A The landfill operator or the landfill owner.

Q Have we not seen, through the installation of the active remediation system in May of 2015, how effective remediation efforts by the landfill owner can be?

A It -- it apparently has knocked down the numbers a good bit. Yes. In -- in all but one of the -- the probes, No. 6, which is still -- still above.

Q Have -- have -- have you ever been involved in a case involving a closed landfill where an adjacent land -- landowner undertook to remediate the contamination caused by the landfill?

A I don't recall a case I've been involved with.

Q Is it not more reasonable and logical for the remediation of contamination to be done by he who has caused the contamination in the first place?

A That's typical. Yes.

Q And, in fact, it is Newberry County who owns and controls the former landfill and is in the best position to

remediate this contamination, is it not?

A Absolutely. Because that's where the continuing source of contaminants are.

Q All right. Thank you.

THE COURT: Any brief recross?

MR. FRAWLEY: Just one question, Your Honor.

RECROSS-EXAMINATION

BY MR. FRAWLEY:

Q Despite your opinion that the VOCs came from the landfill, when you checked up there, you found no methane, did you?

A We did not.

Q All right. Thank you.

THE COURT: Okay. Thank you for your testimony, sir. You can step down.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: I believe that's the plaintiff's case; is that correct?

MR. JAMES BRUNER: Yes, Your Honor.

THE COURT: Okay. All right. Well, we -- five o'clock, plaintiff has finished their case. We'll be in recess until 9:30 in the -- in the morning.

MR. FRAWLEY: Okay. Did -- did I hear him say that they have rested or ---

(Whereupon, the witness came forward.)

JOHN ABERNATHY, having been first duly sworn, testified as follows:

MR. FRAWLEY: May it please the Court?

THE COURT: Sure.

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Good morning, Mr. Abernathy.

A Good morning.

Q You are employed by DHEC; is that correct?

A Yes.

Q Okay. You may -- could you pull that microphone down just a little bit and speak into it. You -- it'll -- it'll be able to pick you up.

What is your position with DHEC, sir?

A I'm a solid-waste groundwater hydrogeologist.

Q Okay. And what are your duties in that capacity?

A We oversee the hydrogeological portions of the solid-waste-permitting program, as well as review groundwater and methane-monitoring semi-annual reports that come in from various landfills.

Q Okay. How long have you been in that position?

A Approximately eight years.

Q Okay.

MR. FRAWLEY: Madam court reporter, can you hear him

EPA maximum contaminant level, then they would be required to assess. And upon those results, they would be directed to either maintain monitoring or it would proceed toward a corrective action, as the solid-waste regulations require.

Q Okay. You review the reports and then direct groundwater remediation as needed; is that right?

A Yes.

Q And landfill gases?

A Correct.

Q Now, when the Newberry County Landfill was closed, was a clay cap installed on Phase II when it was closed? Do you know that?

A Yes.

Q Okay. You do know that. Was a clay cap installed?

A Yes.

Q Was a clay cap required by DHEC for closure of a landfill in the mid '90s?

A Yes.

Q Has Newberry County complied with the monitoring and reporting requests required by DHEC?

A Yes.

Q How long is the postclosure-monitoring period? In other words, how long after a landfill is closed does this monitoring period have to go on?

A It's a minimum of 30 years.

Q Okay. And if this ---

A Or ---

Q --- landfill was closed in the mid '90s, we would be about 20 years into that, correct?

A Correct.

Q Have you received reports annually from environmental companies monitoring the landfill site for Newberry County?

A Yes.

Q And when you have received and reviewed those reports, when you have directed Newberry County to take corrective measures or remedial measures, have they complied with your directives?

A Yes.

Q These reports that DHEC receives and correspondence between Newberry County and DHEC, either the directives or the response -- responses to the directives, are those reports and paperwork maintained in a file that DHEC keeps?

A Yes.

Q All right. Is there a file somewhere at DHEC in Columbia under DWP-117?

A There's currently a electronic file at DHEC. Then, there's an off-site storage that contains physical files of the earlier files ---

Q All right.

A --- of DWP.

Q Are those records kept in the ordinary course of business for DHEC?

A Yes, sir.

Q Are they available to the public if a Freedom of Information Act request is made?

A Yes.

Q Has Newberry County ever gotten or issued a notice of violation -- well, let me back this up. Has Newberry County ever gotten a notice of violation from DHEC for the closure of its landfill designated as DWP-117?

A Not to my knowledge.

Q Not since you have been there ---

A I have ---

Q --- since 2008?

A --- not personally issued any notice of violation.

Q All right. Now, there's a soil-gas-extraction system that's been put in and was completed, I understand, in May of 2015. Is that your understanding?

A Yes.

Q And isn't it true that DHEC required that system to remediate groundwater going under the highway?

A Not primarily. That's a secondary impact of a -- a remediation system.

Q Okay.

A It was installed to remediate the excessive methane

that was -- been on-site.

Q Okay. The excessive ---

A The methane gas.

Q That was on-site?

A That is on-site -- that on-site. Yes, sir.

Q Okay. Excessive methane on-site, and then, also to remediate groundwater that was flowing under the highway -- that'd be Highway 219 or I-26?

A Correct.

Q Mr. Abernathy, that's all I've got. Please answer any questions other counsel have for you.

THE COURT: Okay. Mr. Bruner, any cross-examination?

MR. JAMES BRUNER: I do have just a few questions.

THE COURT: Sure.

CROSS-EXAMINATION

BY MR. JAMES BRUNER:

Q Mr. Abernathy, you've been with DHEC since -- in this position, solid waste, since 2008?

A Yes, sir.

Q And are you familiar with the -- with all of the records and monitoring reports that are in your file concerning this landfill?

A Not -- I mean, I've seen most of them. Yes, sir.

Q Well, let me ask you this: If I ask you whether or not there was any landfill gas, any methane detected, on

this closed landfill in 2000 or before that, would you know the answer to that from having ---

A No, sir.

Q --- reviewed the records?

A (Shook head from side to side.)

Q Okay. You wouldn't know the answer?

A Not personally ---

Q Okay.

A --- no. I ---

Q And I ask you whether or not it was true that the first time methane was detected at this closed landfill in excess of the lower explosive limits was in December of 2003, would you know whether or not that's so?

A Not without seeing it.

Q Okay. And have you reviewed an off-site investigation report prepared by B.P. Barber in 2006?

A It's possible.

Q Do you remember whether or not you've actually done it?

A Not right now. No, sir.

Q Okay. And this report is -- is in evidence. And it showed that the methane had migrated from the closed landfill to an adjacent property owned by West/Hobby. Do you remember whether you've read that report now?

A No, sir, I don't remember. But I ---

Q Okay. Do you know what the status of remediation was for this closed landfill at the time you took your current position?

A (No audible response.)

Q What, if anything, have they done?

A (No audible response.)

Q Do you remember?

A 2008 -- specifically, no, sir. I mean ---

Q All right.

A --- I mean, I ---

Q So you do not recall that, in fact, the county had installed a passive trench around Phase II of the landfill in the summer of 2006?

A No. But I'm aware of that trench. Yes, sir.

Q You're aware that that was ---

A Yeah.

Q --- done. But you don't recall the time?

A No, sir.

Q All right. Are you aware that a -- do you remember that a -- an -- an additional remediation measure was recommended and -- and approved by DHEC?

A Yes, sir. I think so.

Q I'm going to help you out here. I'm going to ask you to look at Plaintiff's Exhibit No. 10. Now, I notice, Mr. Abernathy, that that particular letter, which is dated

February 26th of 2008, is signed by Mary Varga.

A Right.

Q Was she before you in that position?

A Yes, sir.

Q All right. What time in 2008 did you take your position?

A I believe it was April -- or March/April.

Q Okay. All right.

A Prior to the new regulations.

Q And I call your attention to the second page of this letter, under methane mitigation.

A Okay.

Q All right. Do you know if Newberry County complied with this paragraph?

A They did.

Q All right. So your understanding is they put in 32 passive-gas ---

A No. They ---

Q --- vents?

A --- did not.

Q Excuse me?

A No. They did not.

Q Okay. So -- so they did not comply with this letter?

A They weren't required to.

Q Okay. Why were they not required to?

A As I recall, the -- once the directive came to me, 32 points at the time in the basement level seemed excessive and fewer points were allowed ---

Q Okay.

A --- at the time.

Q And how many points were allowed?

A I'd have to look back at the letter.

Q Excuse me?

A I'd have to look at my own letter because I don't remember.

Q Okay. Do you -- now, this letter concerning the passive-gas vents is dated in February of 2008. Do you know when -- do you remember when the passive-gas vents that were approved were actually installed?

A No, sir. I'm not ---

Q The evidence ---

A --- actual date ---

Q --- in this case had showed they were installed in December of 2010.

A Okay.

Q Okay? My question to you is: Is it normal for you to allow a county to wait for two years before they comply with a directive about passive-gas vents?

A Majority of these are site-specific. And, you know, if the -- we -- if we -- in good faith, we see the county

or private owner or whomever is proceeding with a directive, then there would probably be extensions granted ---

Q Okay.

A --- for a certain -- certain ---

Q All right.

A --- certain ---

Q Did you -- did -- did that take place here? Did you see them proceeding in good faith?

A Yes, sir, I did.

Q And what were they doing?

A Well, they've acknowledged receipt of the directives, that I recall. And, you know, I can recall specific conversations or letters, but, I mean, each time there was contact between either myself and the -- and the county or -- or public works director or a contractor who was involved at the time.

Q And who was your contact who was the public works director?

A I don't know. I -- that -- I mean, obviously, Tommy Whitehead's on the letter. But ---

Q Yeah.

A --- I couldn't -- there was some -- you know, there were a number of people who were in that position ---

Q All right. You have ---

A --- while I've been on the project.
Q You testified on direct that, in fact, you -- you believe that the county had complied with all the monitoring requirements of DHEC and had -- since you -- all the annual reports -- the semi-annual reports that were required; is that right?
A Far as I can recall, yes, sir.
Q Okay. Can you explain to me why there were no monitoring reports and no monitoring done during the year 2011?
A I would have to go back and look at the file -- or as to, you know, specifics as to ---
Q If ---
A --- why.
Q If a -- if a former landfill owner owes you -- owes DHEC a monitoring report and it ---
A Uh-huh.
Q --- doesn't come in, do you write them a letter or do you pick up the phone and call them or do anything to get them to report?
A Yes, sir, we do.
Q All right. Do you know if you did anything in this case in 2011?
A Sitting right here, no, sir, I don't know if I did or not. I'd have to go back and look at the file.

Q Okay. Before I just told you that there were no monitoring reports in 2011, did you recall that? Did you know that was so?

A I do recall a period of time where they did not submit. Yes, sir.

Q You do recall a period of time?

A I couldn't specifically tell you the date or, you know, the year.

Q Okay. All right. Were you made aware of any investigation reports performed by S&ME in 2011 -- spring of 2011?

A What sort of investigation?

Q It was a -- a -- particularly a limited soil-gas assessment in the spring of 2006. Did you ever see that?

A 2006 or 2011?

Q I mean, excuse me. 2011.

A Again, I may have. I just don't recall it at this point.

Q Okay. Would you -- would you be able to agree with me, from your knowledge of the file, whether or not, in fact, adjacent property was contaminated with methane in 2006?

A (No audible response.)

Q Do you know whether that's so?

A No. I don't remember 2006 ---

Q Okay.
A --- report. No, sir.
Q And likewise, in -- in the spring of 2011, do you recall whether or not you had any information that adjacent property was contaminated with landfill gas then?
A Not without looking at the report. I mean, again, our entire focus has been on -- any adjacent property would've been down-gradient or downhill of the -- you know, the landfill ---
Q Do you ---
A --- itself.
Q And -- and all I was referring to, sir, was -- was -- was landfill gas ---
A Yeah.
Q --- not groundwater.
A Okay.
Q Okay. Did you require Newberry County to install the active remediation system that was completed in May of 2015?
A Yes.
Q And did you require it to install that because the passive -- because the other methods they have attempted were not working?
A Yes.
Q And isn't the purpose of the DHEC regulations

regarding solid-waste landfills to restrict any contamination generated by the landfill to the property on which it sits?

A Is the goal to restrict -- yes -- on-site.

Q That's the goal? It's to protect life and property an to restrict any contamination to the ---

A From going ---

Q --- property ---

A --- off-site ---

Q --- itself; is that right?

A That's the goal.

Q Okay. I am going to assume -- and you can correct me -- that you are familiar with DHEC's regulations.

A As they stand, yes, sir.

Q And -- and you are familiar with them as they relate to control of explosive gases?

A Yes.

Q All right. And I'm going to hand you one of the judge's books that contains DHEC regulations.

THE COURT: Is it current?

MR. JAMES BRUNER: I believe it is.

THE COURT: Okay.

MR. JAMES BRUNER: This is -- no. This is 2011 cumulative supplement. But the reg I'm talking about was adopted in 2008.

THE COURT: Okay.

Q And I call your attention here at the bottom of -- of this page to Section 258-23.

A Correct.

Q And what is that labeled?

A 258-23 is explosive-gases control.

Q And what I want to ask you is -- is -- there are several things that I was interested in. But generally, my question to you, sir, is: To your knowledge, did Newberry County comply with all of those regulations?

A Yes.

Q So then, at the time while you were there in -- in your position, Newberry County reported excessive methane levels to you within seven days?

A That -- I don't know. But the -- you'd have to look at the ---

Q You don't know whether that's so?

A Not sitting here. No, sir. I mean ---

Q I -- I'm ---

A --- clearly, it's -- it's at the -- it's in their database. It's in our ---

Q Okay.

A --- correspondence.

Q But does -- well, I'm asking you these questions, sir, not because I'm trying to trick you. But -- but you've

come here on the witness stand during this trial, and you have made a blanket statement that Newberry County complied with all the regulations and everything you asked them to. So what I am asking you now is: Looking at your own regulations about volatile gases, did Newberry County comply with that?

A I don't know.

Q You don't know whether they did or not?

A I mean, I can't recall ---

Q Okay.

A --- eight years ago. No, sir.

Q Isn't ---

A But ---

Q --- isn't it true that -- that that regulation requires Newberry County to submit a plan to remediate excessive methane gas within 30 days?

A It goes.

Q And then thereafter, it requires Newberry County to perform its remediation, as it's gotten approved by you, within another 30 days?

A Yes. That does.

Q Okay. And -- and -- and -- and this is where I'm getting at. Now, we know that since you have been with DHEC in this position, we know that there is a record of excessive methane levels at the property boundary of this

landfill, don't we?

A Yes.

Q Okay. But in dealing with those excessive levels, the -- Newberry County did not do what that regulation said they're supposed to, did they?

A They did what was directed.

Q All right. So are you telling me, then, you directed them to do less than the law requires you to do?

A No.

Q All right. Did you tell them to comply with this regulation?

A Yes. I mean, it would've been in the correspondence, the directives.

Q The record -- the evidence in this case reflects that the passive-gas vents were installed at the closed Newberry County Landfill in December of 2010. Okay?

A Okay.

Q The evidence also reflects that thereafter, the county continued to have excessive methane limits at its property boundaries in excess of the lower explosive limits on a consistent basis. All right?

A (Nodded head up and down.)

Q Can you tell me why you did not require Newberry County to take more steps to remediate the methane for another five years?

MR. FRAWLEY: Your Honor, I'll object to that ---

A So ---

MR. FRAWLEY: --- as being a mischaracterization of the evidence. The -- the graphs that Mr. Bruner put in yesterday showed that it would go up and down. It would spike.

His testimony that -- his -- his question that it was consistently high, I think, conflicts with those graphs. The graphs show that it would spike; sometimes it was low; and then it would be up again. So I ---

MR. JAMES BRUNER: I ---

MR. FRAWLEY: --- object to the mischaracterization based on that.

MR. JAMES BRUNER: The statement I just made is borne out by the tables that are in the Rogers and Calcott 2015 quarterly monitoring results. And they show a consistent excessive level of methane in a number of wells. Some wells variate; some don't. Some are consistently high.

THE COURT: Well, and -- and I think that's true. But also, I remember the -- the graph showing and up and down throughout whatever period of time is on the graphs. You may want to ask if he is aware of whether or not the levels have been consistently high or not. Maybe ask it ---

Q Are you aware ---

THE COURT: --- that way.

Q --- if the levels of methane at the property boundary of the closed landfill have been consistently in excess of the lower explosive limit?

A In certain areas, yes.

Q Yes. So my -- my question to you, really, has to do with the time. Why didn't you require Newberry County to do something more than they had done in 2010 when it was apparent that what they did in 2010 was not working?

A The project management is not a cookie-cutter issue. Each site is site-specific in its case. And typically, you're based on receptors, your private wells, creeks, anything like that. You -- you dictate -- dictates the severity or how you are able to look at a site. In this case the downgrade property owner -- down-gradient property was a highway. And below that was a truck stop.

Q So ---

A Our down-gradient -- our focus has always been down-gradient. And based on the data, that's where the focus should be.

Q Okay. I -- I'm -- I -- I appreciate that. The property that we are concerned with in this trial is not down-gradient. It ---

A Right.

Q --- is to the west of the closed landfill. It's across Cockrell Road.

A Right.

Q And -- and the evidence in this Court shows that methane was detected on this property in 2006. But you don't -- you're not familiar with that, because I asked you. And you said you weren't familiar. But if -- here -- here's my question to you, sir: If the -- if the purpose of your regulations is to prevent the migration of landfill gas off of the landfill property per se, to keep it to going -- from going to adjacent properties, then why didn't you ask them to do more than they had done in December of 2010 sooner than five years?

MR. FRAWLEY: Your Honor, I'll object to that again as mischaracterizing the evidence where he's asking when it's repeated had measurements off-site, the only evidence is that the measurements that -- off-site have been in 2006.

And this question's already been asked and answered at least once. Why didn't you require them to do more? He's already answered that question. So I'll object on those two grounds.

THE COURT: Okay. I believe he has already -- you've asked it and he's already answered it, Mr. Bruner ---

MR. JAMES BRUNER: I didn't ---

THE COURT: --- I believe ---

MR. JAMES BRUNER: I didn't hear him answer that particular question.

THE COURT: Okay.

MR. JAMES BRUNER: Or can ---

THE COURT: Ask -- ask that one and let get -- let's get his answer and move on to something else.

Q When it became apparent that what they were doing in December of 2010 was not working -- was not reducing the methane levels at the property boundary, why did it take another five years after that for you to ask them to do to -- the active remediation system?

A I directed, under the regulations, what I felt was necessary to remediate the issue. And when it became apparent that it was not, then you -- under the regulations, we're allowed to go further.

Q Did -- you -- you -- do you understand that adjacent property was contaminated with landfill gas for some -- at -- at some point in time? Do you understand that?

A Yes, sir, I understand that.

Q Okay. Did you ever communicate with that adjacent property owner about the property a problem with methane at the landfill?

A If you're referring to your property owner, no, sir.

Q Yes.

A No, sir. Unh-unh.

Q Okay. Are you here under subpoena today?

A Yes.

Q All right. That's all I got for you. Thank you.

THE COURT: Any redirect?

MR. FRAWLEY: No redirect, Your Honor. And we ask that the witness be -- be excused from his subpoena.

THE COURT: Certainly. Thank you for your testimony, sir. You're free to leave.

THE WITNESS: All right. Thank you.

(Whereupon, the witness exited the witness stand.)

(Off the record briefly.)

MR. FRAWLEY: Your Honor, we next call Mr. Wayne Adams.

THE COURT: Okay.

(Whereupon, the witness came forward.)

WAYNE ADAMS, having been first duly sworn, testified as follows:

MR. FRAWLEY: May it please the Court?

THE COURT: Certainly.

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Mr. Adams, what is your work address?

A It's 1309 College Street here in Newberry.

Q Okay. And -- and by whom are you employed?

A The County of Newberry.

Q In what capacity?

A I am its county administrator.

Q Okay. And what are your duties as county administrator?

A Well, they cut a pretty wide swath. They involve recommending policy to the county council, developing their budgets, supervising the various departments directly -- those that aren't under supervision of an elected official.

Q And how long have you been in that position?

A Since September 2006.

Q All right. Now, you're aware that Newberry County has a closed landfill on Highway 219 and -- near the I-26 intersection?

A I am.

Q All right. Now, that -- that landfill was closed before your tenure as county administrator, correct?

A Yes, sir.

Q All right. Do you deal directly with the closed landfill as county administrator, or do you delegate that?

A I delegate that.

Q And to whom do you delegate it?

A The public works director.

Q And who is the public works director at this time?

A In what year? Who -- oh, at this time. Currently ---

Q 2015.

A --- it's ---

Q Yes, sir.

West make a demand of you as to how much they would sell the property to the county for?

A They were seeking compensation of $750,000.

Q Now, since this lawsuit has been filed, has Newberry County hired a company to install a more active remediation system?

A We have.

Q Okay. Why?

A Well, truthfully, this lawsuit made us concerned about whether we were doing enough. It made us examine the -- the system we were using. We were concerned that we were doing the most that we reasonably could.

Q All right. Prior to this lawsuit, is it your understanding that DHEC -- or that Newberry County had adhered to any directives ---

MR. JAMES BRUNER: Objection ---

Q --- that it ---

MR. JAMES BRUNER: --- leading.

Q --- had been given from DHEC?

THE COURT: Okay.

MR. JAMES BRUNER: Objection: leading.

THE COURT: Okay.

MR. FRAWLEY: I'll rephrase, Your Honor.

THE COURT: Thank you.

Q What is your understanding as to what, if anything,

THE COURT: Any cross?

MR. JAMES BRUNER: Yes. Just a few questions, Your Honor.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. JAMES BRUNER:

Q As I understand your testimony, you said you had a conversation with Misty West?

A Yes.

Q And you -- you recall that she said the county needs to buy the property?

A I recall they were seeking compensation of $750,000.

Q Okay.

A I don't recall whether the conveyance was part of that or not.

Q Do you -- she also asked you that -- that the county -- said the county needed to do something to stop this contamination, didn't she?

A Not at that time. No, sir.

Q You don't recall her saying that?

A I don't.

Q Okay. And do you recall what your response to her questions were?

A Which question, sir?

Q Either one of them?

A Well, the one I didn't hear. What about the one I heard?

Q What about the one you heard?

A Yeah.

Q Your reply was you weren't interested.

A We ---

Q You said ---

A --- could ---

Q --- you were ---

A --- we ---

Q --- not interested.

A Well, we -- I explained that we couldn't simply hand over $750,000 to someone on a verbal claim.

Q Okay. Do you recall telling her you simply were not interested?

A No.

Q Okay. But as I understand it, then really, the reason the county went forward with this active remediation system was because you got sued.

A That played a role in it.

Q Yeah. So the likelihood is you wouldn't have done anything if you hadn't gotten sued?

MR. FRAWLEY: Objection to the speculation, Your Honor.

MR. JAMES BRUNER: I'll with the question.

THE COURT: Okay.

MR. JAMES BRUNER: No further questions.

THE COURT: Anything in redirect?

MR. FRAWLEY: No redirect, Your Honor.

THE COURT: Thank you for your testimony, sir. You can ---

THE WITNESS: Yes, sir.

THE COURT: --- step down.

(Whereupon, the witness exited the witness stand.)

MR. FRAWLEY: Your Honor, we call Mr. Mike Pisano as our next witness.

THE COURT: Okay.

(Whereupon, the witness came forward.)

MICHAEL PISANO, having been first duly sworn, testified as follows:

MR. FRAWLEY: May it please the Court?

THE COURT: Certainly.

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Mr. Pisano, you've given us your name. What's your work address?

A 270 Public Works Drive in Newberry.

Q Okay. You work for Newberry County?

A Yes, sir.

Q In what capacity?

A Public works director.
Q Okay. What are your duties as public works director?
A I'm responsible for maintaining county roads and bridges, solid waste and recycling for the county, the animal control, and also with the closed landfill.
Q Okay. And to whom do you report? Who's your supervisor?
A Mr. Wayne Adams.
Q Okay. Do you have employees over whom you have supervision?
A Yes, sir.
Q How many?
A Approximately 20.
Q Okay. How long have you been with Newberry County as the public works director?
A Since 2011.
Q Do you know who was public works director before you?
A Kyle Nash.
Q Mr. Nash?
A Yes, sir.
Q Do you know who was public works director before Mr. Nash?
A Tommy Whitehead.
Q Okay. Mr. Whitehead's name showed up on some documents yesterday. But he would have been the public

works director at that time?

A I believe so. Yes, sir.

Q Okay. Now, Newberry County has a closed, municipal, solid-waste landfill at the intersection of Highway 219 near I-26, doesn't it?

A Yes.

MR. JAMES BRUNER: I'm going to ---

Q Okay.

MR. JAMES BRUNER: --- leading, Your Honor.

THE COURT: I think this preliminary stuff is -- is okay. You may proceed.

Q Do you know when it was closed?

A I believe 1993.

Q That was before your tenure, wasn't it?

A Yes, sir.

Q Okay. Tell the Court what, if anything, you do with regard to the solid waste -- the closed, solid-waste landfill as public works director.

A I coordinate the activities of our environmental consultant regarding monitoring and reporting to DHEC on a semi-annual basis.

Q Okay. And the environmental consultants that Newberry County has had, that you're aware of -- who's the current environmental consultant?

A Rogers and Calcott.

Q Okay. And -- and that -- that's a fairly recent development with them, correct?

A Within the last year and a half. Yes, sir.

Q Okay. Who was the consultant before Rogers and Calcott?

A Terry Environmental.

Q Okay. And how long had Terry been doing it?

A I'm not sure exactly how long. For the course of my tenure.

Q Okay. And the Terry reports are in evidence as Exhibit 16 -- several exhibits under Exhibit 16. Would it be accurate to say that most of the reports we've gotten have been from Terry?

A I believe so. Yes.

Q So at least since your tenure?

A Yes.

Q Okay. You know who -- who was the -- one of the consultants before Terry?

A No, I'm not.

Q Okay. The consultants that Newberry County has hired, have they issued reports periodically?

A Yes.

Q All right. When they come and do the inspections, what, if anything, do you do with them? Do you accompany them?

What did you mean by that?

A There are caps over top of the well with a -- a lock and hasp. We just make sure that they have the key or ---

Q Okay.

A --- we have the key to open it.

Q All right. When they've done these monitoring tasks when they go out there, do they issue written reports?

A Yes.

Q And are those written reports sent to you and received by you?

A Yes.

Q All right. What, if anything, do you do with monitoring reports when you get them?

A I just ensure that they are forwarded to DHEC. I have an understanding with the -- the consultants: If there's anything that is out of the ordinary that is going to cause concern where we need to take action, they let me know. As a layperson reading through the reports, I don't gain a whole lot out of reading the technical data.

Q All right. But as far as interpretation of that technical data, have the consultants been -- been telling you if there's red flags or issues that need to be addressed by Newberry County?

A Yes.

Q Do you know if they pass that information to DHEC?

A Yes.
Q They copy you with it?
A Yes, sir.
Q Mr. John Abernathy testified earlier today. Have you spoken with Mr. John Abernathy? Do you know who he is?
A Yes.
Q Okay. If Mr. Abernathy or anyone from DHEC directs Newberry County to do something with regard to the closed landfill, while you've been public works director, what, if anything, do you do as public works director?
A We do whatever is necessary to comply with DHEC orders.
Q Does Newberry County keep these copies?
A Yes.
Q All right. Any documentation that goes between Newberry County and DHEC and back, do you keep those copies?
A Yes.
Q Are they available through a Freedom of Information Act request, if you know?
A Yes, sir.
Q Now, there's been a remediation system installed as of May of 2015. Is that your understanding?
A Yes, sir.
Q Do you know the name of the company that installed it?

pullout sheets that you can see, do those records go back -- does that include data going back to 2007?

A Yes, sir.

Q Okay. So it not only includes the -- the current measurements. It also includes data going back -- historical data going back until 2007?

A That's correct.

Q Okay. Mr. Pisano, that's all I've got. Please answer any questions counsel has for you.

THE COURT: All right. Mr. Bruner?

MR. JAMES BRUNER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JAMES BRUNER:

Q So when in 2011 did you take your position as director of public works?

A I took over as the interim director in February of 2011.

Q 2011?

A Yes, sir.

Q And to your knowledge, were monitoring reports being done at the time?

A Yes, sir.

Q By whom?

A Terry Environmental.

Q Can you explain to the Court why there are no

MR. FRAWLEY: Thank you ---

THE COURT: --- we start ---

MR. FRAWLEY: --- Your Honor.

THE COURT: --- with Mr. Lamb.

(Off the record from 10:54 a.m. until 11:09 a.m.)

THE COURT: Okay. Mr. Lamb, you want to come on around.

(Whereupon, the witness came forward.)

STEVEN LAMB, having been first duly sworn, testified as follows:

MR. FRAWLEY: May it please the Court?

THE COURT: Certainly.

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Mr. Lamb, you've given us your name. What's your work address?

A 2520 Whitehall Drive in Charlotte, North Carolina.

Q Okay. By whom are you employed?

A Stearns, Conrad Schmidt & Engineering, also known as SCS Engineers.

Q Okay. And what's your position with them?

A I'm a vice-president with SCS Engineers. I manage the Charlotte, North Carolina, office in the North Carolina region.

Q Okay. Let's talk about your education. What --

wells are installed within the landfill, within the waste mass, and a vacuum is applied to the well, which sucks out the landfill gas, which is about 50 percent methane. So similar to a -- I guess, an analogy is if you have a groundwater well in your backyard or on your farm and you -- you drill down into the aquifer, you put a pump in, and you pump the water out.

A landfill-gas-extraction well is the same principle, except we're drilling those wells in -- in -- in the solid-waste landfill in -- in -- into the municipal-waste landfill. And then we apply a vacuum and gas is removed -- or extracted.

Q All right.

MR. FRAWLEY: Your Honor, at this time we would offer Mr. Lamb as an expert in the areas of solid-waste landfill design and permitting and landfill-gas management.

MR. JAMES BRUNER: No objection, Your Honor.

THE COURT: Okay. Without objection, so found to be a -- an expert in those two areas.

Q Mr. Lamb, can you tell the Court what involvement you've had and when that involvement began with regard to the Newberry County landfill?

A Yes. I believe it was in -- it was in 2012 when Mr. Frawley retained SCS Engineers and myself in particular to help support Newberry County in -- in -- in -- in the then

litigation that -- that was -- that was filed. So that was my first introduction to Newberry County.

During the course of -- of working with Pat and -- and -- and prepping for the -- for the -- for the lawsuit and learning the -- the -- the history of the site, the County of Newberry also retained my company, SCS Engineers, to address the -- to prepare the corrective-measure study that DHEC required in -- in the -- I guess, in, I think, 2013 time frame. A corrective-measure study was being requested of the county to be performed. We were retained by the county to do that.

And then, we started working on that in -- in late 2013. And that went through a design process, a permitting process with the county: permitting with the air -- the air-quality department, permitting with -- with stormwater, E&S permits, and then the -- which led to the construction drawings and -- and the -- and the bidding package that went out to bid -- to public bid in Newberry County.

Q All right. Could ---

A And then -- then, after that it -- we -- we actually did the construction. We started the -- I think the contractor was selected in -- in late 2014 time frame. And the project was finished in -- in -- in may of 2015.

Q Okay. And we'll talk about the project in more detail toward the end of your -- of your testimony. But there was

MR. JAMES BRUNER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JAMES BRUNER:

Q Good morning, Mr. Lamb.

A Good morning.

Q You've reviewed all the annual reports, the monitoring reports?

A I believe so.

Q Yeah. And so you would agree with me that there's no evidence of any methane gas -- any landfill gas on the landfill property before 2003? In fact, December of 2003 was the first time any of the gas-monitoring points reflected excessive methane levels; isn't that correct?

A Can you rephrase that just one more time?

Q Do you know when methane was first detected at excessive levels on the landfill?

A I believe I heard in here today around 2003.

Q Okay. Do you agree with that or -- or did you not read those records that far ---

A No. I -- I -- I haven't seen any data to -- to show that they -- if there was exceedances. There -- there was -- in 1997 methane was detected in the probes, but it was not above the ---

Q Yeah.

A --- action level of DHEC.

Q Now -- and you agree with me that in 2005, B.P. Barber submitted a methane-remediation plan to DHEC? Do you remember that?

A I do. I -- I -- I believe that's correct. Yes.

Q All right. And in that remediation plan, B.P. Barber said there were three methods to deal with this landfill gas. There was an interceptor trench. There was a passive-gas vent. And then, there was an active remediation system. You remember that?

A That's correct.

Q All right. Then, you, of course, agree with me that in the spring of 2006, B.P. Barber conducted an off-site methane investigation and found in its report that there were a number of points on the West/Hobby property where excessive methane gas was detected? You remember that?

A They -- they did detected methane gas. Yes.

Q I'm -- and I'm talking about in excess of the lower explosive limits.

A Okay. Yes. I -- I didn't hear that part. Yes.

Q Yes. All right.

A Correct.

Q And -- and they were significantly in excess, were they not?

A Yes.

Q And those points were not just at the southwest corner

of the property; they extended all the way up the boundary of the West/Hobby property, didn't they?

A I don't recall how far the -- the probes went up. If you show me ---

Q Fair enough.

A --- that, that will refresh my memory.

Q Let me ask you to ---

THE WITNESS: Can I stack these here?

THE COURT: Sure.

THE WITNESS: Thank you.

Q I want you to look at Exhibit 6.

A All right.

Q And I want you to go back to a -- a figure at the back. That's it.

A Okay.

Q And that is -- actually, on this report it's labeled Exhibit D. But that shows the various points at which B.P. Barber tested off-site with geoprobes, does it not?

A Yes, it does.

Q All right. And they tested off-site on the West/Hobby property all the way up to adjacent to Phase I of the landfill?

A And this is the West/Hobby property on this side?

Q That's correct.

A So yeah. G-13 to G-18, it looks like.

Q And -- and what kind of methane levels were they reading then?

A Let me look through here and I can let you know.

Q Actually, the numbers are underneath the -- the geoprobe number.

A Oh, that's what those numbers are?

Q Yes.

A Because it has on the table here too. Yeah. They -- they ranged from zero to 51.

Q All right. Let me ask you a question: If -- if you had conducted that off-site investigation, would you have recommended to the owner of the landfill that it provide a copy of the report to the adjacent landowner?

A That's a good question.

Q That's why I asked it.

A Well, that's good -- it -- it's a good question.

Q It's why I get the big bucks.

A Right. Probably, but it -- it would be up to my -- it would be up to the client and DHEC. I mean, we -- our reports -- we're under contract with the -- the client, typically, in that relationship, unless you're doing work on behalf of DHEC. And you would -- so you -- potentially, we would. Yes.

Q Yes. You would -- you would -- that would be a reasonable thing to do at the time, wouldn't it?

A Yes.
Q All right. Especially if you found something that negatively impacted the adjacent property. It's even more important to pass that information on, isn't?
A Essentially, yes.
Q Okay. Are you aware that this report was not given to the owners of the adjacent property, West/Hobby?
A I -- no. I don't have any knowledge one way or another on that.
Q All right. Now, let me move you on to 2000 -- well, let me ask you something: If -- if West/Hobby was never given this B.P. Barber report and did not know that there were any excessive levels of landfill gas on its property, then there would be no reason for them to test on their property between 2006 and 2011, would there?
A Can you rephrase that?
Q If ---
A Please.
Q --- if West/Hobby did not know that B.P. Barber had found excessive landfill gas on its property in 2006, then they would've not had any reason to test those landfill gases on their property between 2006 and 2011, would they?
A I -- I suppose they wouldn't.
Q They didn't know anything was wrong.
A Right.

Q Why would they test?
A Sure.
Q And I'm asking you that question because you said, on direct examination, you had not seen any evidence of any testing in the interim period between 2006 and 2011. And my question is: Of course there's none. Nobody knew there was a problem. You understand that?
A Well ---
MR. FRAWLEY: Is that a question? I'll object to it to ---
MR. JAMES BRUNER: I -- my ---
MR. FRAWLEY: --- the statement.
MR. JAMES BRUNER: You understand that was my question.
THE COURT: It -- it's cross-examination. I'll allow it. This -- this witness can handle it.
A You said no one knew. That's not true, because B.P. Barber knew. But I -- West/Hobby did not ---
Q Yes. Okay.
A --- allegedly.
Q Now, you are familiar, are you not, with the Phase -- well, excuse me. It's not the Phase I. It's the -- the limited soil-gas examination that was done by S&ME in 2011.
A Yes. I am familiar with that ---
Q And I can ---

A --- document ---
Q --- ask you to turn to Exhibit 15 in our notebook. It should be the last one.
A Yep. I got it.
Q Okay. And if you go to the very back of that report, there is a table. All right.
A Very last page?
Q Yes.
A Okay.
Q Now, you understand -- you have reviewed this limited soil-gas assessment, have you not?
A This is Table 5 you're referring to?
Q Yeah. But you have ---
A Yeah ---
Q --- reviewed this report?
A Yes. I -- I have reviewed this ---
Q All right.
A --- report.
Q And -- and you understand that S&ME found excessive levels of certain volatile organic compounds when they tested the West/Hobby property. You understand that?
A I'm not sure what you mean by excessive. I guess, if you could -- I understand they -- there -- VOCs were detected.
Q They -- yeah. That's right. And they -- a -- a

number of VOCs were detected. And three of those were in excess of certain limits that they refer to in their report?

A Right. The -- the -- the -- the ---

Q That's right.

A --- the DHEC intrusion limits ---

Q Yeah.

A --- or something like that.

Q And then, you're also looking at Table 5. And in Table 5 that, in fact, shows that S&ME found methane. They detected ---

A Yes.

Q --- methane.

A That's correct.

Q All right. Now, I understand you -- you think those limits are minimal. But isn't -- aren't methane and volatile organic compounds constituents and part of landfill gas?

A Yes, they are.

Q Okay. So isn't it reasonable to conclude that in the spring of 2011, there was some evidence of methane gas -- excuse me -- of landfill gas on the West/Hobby property when S&ME tested it?

A There was evidence of residual -- residual landfill gas. But it was not a continuing -- continuing source

coming from the landfill at that time.
Q Well, we're -- I understand. But we're talking about two different things.
A Well, that -- that ---
Q I -- I ---
A --- we were.
Q I -- I am -- I am focusing on two points in time: 2006 and 2011.
A Okay.
Q You and I agree that the West/Hobby property was contaminated with methane in -- in the spring of 2006?
A It was impacted. It had -- I wouldn't say contaminated.
Q Well, I mean ---
A I mean, that ---
Q Tomato/tomato -- I don't know. What word would you use?
A Impacted.
Q Okay. Is that a positive or an adverse impact?
A (No audible response.)
Q Let me put it another way.
A Right.
Q Is having those levels of methane on your property a good thing or a bad thing?
A Well, it -- they're -- they're so -- they're so low.

It's potentially background readings of methane. Methane's a naturally-occurring ---

Q Okay. Wait ---

A --- gas ---

Q --- a minute. Wait a minute. Let's ---

A So ---

Q --- let's you ---

A --- if you ---

Q --- and I ---

A --- if you jump ---

Q --- understand ---

A --- to the ---

Q --- the point in time ---

MR. FRAWLEY: Your Honor, he needs to be able to finish his ---

THE COURT: Yeah.

MR. FRAWLEY: --- his answer.

THE COURT: Yeah. Let him finish his answer, please.

A As I was stating, the -- the concentrations are so low. I -- you -- you can't definitively say it's from landfill gas. It's potentially naturally occurring. Naturally-occurring levels of methane gas in that level is not uncommon.

So, say, it negatively is adverse because the levels are 1.2/2.5 parts per million methane. You may be able to

say that for the property we're on right now. So the -- the numbers are extremely low.

So I -- I can't jump to the conclusion of it's -- it -- it -- it's an adverse impact. I can't get there.

Q All right. That wasn't my question. But thank you for that explanation ---

A Okay.

Q --- anyway.

My question was: In 2006 -- and you agree that the methane levels that were detected on the West/Hobby property in 2006 were not minimally low, were they?

A No.

Q They were high, were they not?

A Some of them were high. Yes, sir.

Q And my question to you was: Is having methane-gas levels that high on your property a good thing or a bad thing?

A That would be -- I would say that would be a bad thing ---

Q Okay.

A --- in 2006.

Q And -- and we were trying -- you were arguing about my use of the word "contamination" and you said "impact." And I was trying to say "adverse" or "positive." That's what I mean. That level of methane in 2006 had an adverse impact

on this property, did it not?

A Yes.

Q I call it "contaminated"; you say "adverse impact."

A Well ---

Q What's ---

A --- what ---

Q --- the difference?

A I was -- I was thinking you were talking about 2011, when you were saying "contaminated." So ---

Q I'm sorry.

A --- maybe ---

Q I'm talking ---

A --- we're getting ---

Q --- about ---

A --- our years -- we were -- we're going back and forth and maybe I was stuck on 2011 earlier.

Q Yes. I understand. I understand that you're stuck on 2011. But I'm -- I'm looking at both of them.

A Okay.

Q Because we know -- even though there were no tests on the West/Hobby property between 2006 and 2011, we know, from the gas-monitoring points that were actually tested that there were still excessive methane levels above the lower -- lower explosive limits on the property boundary of the landfill. We know that, don't we?

A Yes. That -- yes. Yes. Yeah. The data ---

Q Okay.

A --- shows that.

Q And -- and the reason we know that -- there -- there would've been no reason to install passive-gas vents if the passive trench had been working fine. The passive-gas trench had some positive impact, but wasn't doing the job, was it?

A Not 100 percent completely.

Q That's right.

A That is true.

Q And that's why they put in the passive-gas trench -- I mean, the -- the ---

A The gas ---

Q --- vent?

A The gas vents. That's correct.

Q Okay. And they put those in -- in -- the record shows in December of 2010. And sure enough, S&ME tests in the spring of 2011, correct?

A I -- I think -- well ---

Q That's ---

A --- I'm not ---

Q --- the exhibit you're ---

A Yeah.

Q --- looking at.

A I wasn't sure when they did it ---
Q All right.
A --- in 2011.
Q So -- and what they -- what they find is low levels of methane and they find levels of volatile organic compounds, both of which are constituents of landfill gas, correct?
A Correct.
Q All right. So would you agree with me that it is possible that the landfill gas continued to contaminate the West/Hobby property until the spring of 2011?
A It -- it's possible.
Q Okay. That's what I asked you.
You've already said most probably you don't think so.
A Well, I said I don't -- I don't -- I said there's no data to show it one way or ---
Q Okay.
A --- another.
Q That's right. All right. Let's talk about the clay cap. I got confused in time when you discussed the clay cap. All right?
A Okay.
Q Do you agree with me that a clay cap over a closed landfill, in fact, causes landfill gas to migrate horizontally instead of vertically?
A It's a contributing factor.

Q Yes.
A Not the -- not the primary cause, though.
Q And what is the primary cause?
A The pressure within the landfill itself that's generating the landfill gas.
Q And isn't it true that the impervious clay cap on top helps increase the pressure in the landfill?
A No.
Q It doesn't have any impact on the ---
A It doesn't -- it -- it -- it doesn't help increase the pressure. What increases the pressure is how much landfill gas is being generated. The cap itself -- if anything, it might decrease it because the -- there's less liquid getting in. But it -- it might not allow the pressure to dissipate. So you ---
Q Okay.
A --- may think that it -- the pressure ---
Q Okay.
A --- would -- could put -- would -- would increase if it can't -- if it can't dissipate.
Q All right.
A That is true.
Q But the clay cap can contribute to the -- the -- the gas moving horizontally?
A Correct.

Q Now, if I'm -- I know the -- the points aren't shown on this exhibit that Mr. Frawley put up here. But I'm going to use it as -- as a reference for -- for my questions now. The -- the test points for B.P. Barber in 2006 went right up the road like this, didn't it?

A Yes.

Q Okay. And -- and they detected high levels of methane gas this far, right?

A I think it was between zero and 51.

Q Yes. Only one was zero; the rest of them were high.

A No. Two zero. But ---

Q All right.

A --- we won't bicker.

Q Now, you have just testified that you think the distance between the edge of the clay cap and the property boundary of the landfill was 90 to 100 feet?

A No. It was to the property of the -- of the West/Hobby ---

Q No, no.

A --- property ---

Q No. I'm ---

A --- was ---

Q --- sorry.

A --- 100 ---

Q I -- I ---

A --- feet.

MR. FRAWLEY: Your Honor, he needs to be able to finish his ---

THE COURT: Yeah.

MR. FRAWLEY: --- answer.

MR. JAMES BRUNER: I -- I misspoke.

THE COURT: Yeah.

MR. JAMES BRUNER: That was -- my -- my question was wrong.

Q I think what you testified was the distance between the edge of the clay cap and the landfill property was 50 to 60 feet.

A Approximately, yes.

Q Okay.

A Yes.

Q So that gets us to the edge of the Cockrell Road. And then, if we go all the way across to where the -- the probes were put, that's another 90 to 100 feet?

A I'm not ---

Q That's what ---

A I'm not exactly sure where the probes -- I said to the property line of West ---

Q Okay.

A --- what -- of the West/Hobby ---

Q All right.

A --- site. So another 40 feet or 50 ---
Q Okay.
A --- feet.
Q So the total distance between the edge of the clay cap and to the West/Hobby property boundary, you think, is -- is somewhere around, what, 140/150 feet?
A No. It was about -- between 90 and 100 feet.
Q The total was 90 to 100 feet.
A So that's what you just asked me, what was ---
Q Okay.
A --- the distance between the edge of the cap and the West/Hobby property.
Q Property line.
A Correct.
Q All right. So whatever the -- the distance was inside the property when B.P. Barber put its geoprobes down, that would be an additional distance?
A That's -- yeah, depending on where they put those ---
Q Right.
A --- probes.
Q My point is that in 2006, when B.P. Barber tested, that methane gas was moving that far, over 100 feet into the West/Hobby property?
A Yes.
Q Okay. Did you recommend that Newberry County put in

the active system?

A I think I -- I concurred with the -- with the approach that -- I -- I don't know what the chicken before the egg on that one: if DHEC's letter came out before we were retained. Without DHEC's letter, I probably would've -- would've recommended an ---

Q Okay.

A --- active system at this time.

Q And -- and, in fact, it has worked very well from what we see so far.

A Yes, it has.

Q All right.

(Off the record briefly.)

Q Do you know of any reason that prevented Newberry County from installing an active system sooner than May 2015?

A No.

Q I understood your testimony to be -- and I would like you to correct me if I misunderstood it -- that the clay cap has not caused migration of landfill gas. Did I misunderstand your answer to that question?

A I believe you did.

Q Okay. Is your -- is the correct answer that you believe it is a contributing factor to migration of landfill gas?

A I think my answer ---
Q Well, what is your answer, please?
A Well, what's the question?
Q Did the clay cap contribute to the migration of landfill gas at the Newberry County Landfill?
A Okay. Now, that's the first I've -- time I've gotten that question.
Q Well, there you have it.
A There we -- there we go. Most -- probably, it did contribute to the -- to -- to migration.
Q Okay. Now, but you don't believe that it's doing so right now?
A Correct.
Q Okay. But then, again, what we have right now is an active system that is very effectively remediating this landfill-gas issue, is it not?
A The landfill-gas system is -- my opinions is based as much on the -- the -- the passive trench that was installed in 2006, in addition to what was installed in -- in 2015.
Q But we know, from the annual reports, that the passive trench, while it had some impact -- a positive impact on landfill gas, it did not solve the problem, did it?
A Did solve it 100 percent.
Q Yeah.
A That -- that is true.

Q Because the problem the landfill is dealing with is excessive methane levels at its property boundary, correct?

A That is correct.

Q Okay. It had -- at those gas-monitoring points on its property boundary, the methane exceeded 5 percent. And that's above -- and that's more -- that's the lower explosive limit, 5 percent, correct?

A That's correct.

Q All right. And it exceeded that amount?

A In -- in some probes ---

Q Yes.

A --- it did. In some probes it didn't. The -- the two probes by West/Hobby property, it -- it rarely exceeded it whatsoever.

Q And actually, you're referring to Probe 1 and 7?

A That is correct.

Q All right. Do you know where Probe 5 is?

A Yes, I do.

Q All right. Would you agree with me that Probe 5 is about right here?

A No.

Q Where is it? Show me with your cursor, if you would. I'm sorry.

A (Indicated.)

Q I'm sorry. That's 5. I meant Probe 6. I ---

A Probe 6.

Q --- misspoke.

A You're correct. Six is in that -- right ---

Q Six is ---

A --- right there.

Q --- right in here?

A That's correct.

Q And that ---

A Well, on the landfill.

Q No. Yeah. On the landfill property.

A Yeah.

Q It's ---

A That ---

Q --- right ---

A --- that's right ---

Q --- it's right there.

A Yes -- yes, sir.

Q All right. And Probe 6 is between the landfill and the West/Hobby property. And that today, even with the active remediation system, continues to have excessive readings of methane, does it not?

A That is correct.

Q All right. What do you do -- I -- I've looked at reports, and I'm fascinated by them. But all the gas-monitoring probes are almost a zero, if not at zero, except

for 6. So what do you do to get 6 down to zero?
A That's a great question. You ---
Q Boy, I'm ---
A --- you -- you ---
Q --- hitting ---
A --- you ask ---
Q --- home runs ---
A --- good questions.
Q --- here today.
A Yeah.
Q Okay. Mr. Lamb, what ---
A Well, let me -- I'll -- I'll -- can I speculate?
Q No.
A No.
Q No. I'm -- I'm ---
A Okay.
Q You, sir, installed this system.
A That is correct.
Q And -- and your company operates and maintains it.
A Not -- no, we don't.
Q You don't?
A No. No, sir.
Q Who does?
A Rogers and Calcott.
Q Okay. They operate and maintain it?

A That's correct.
Q All right. Did they ask you for a recommendation about what to do to get the ZMP-6 [sic] levels down below 5 percent?
A Not specifically. But our -- our operations and maintenance plan that -- that we submitted to the state -- and we did -- our company did monitor and -- and operate the system for the first three months during a ---
Q Okay.
A --- the startup/shakedown period. And we balanced the well fields and -- and got things running fairly well. And then Rogers and Calcott are taking over those duties in align with their groundwater monitoring and -- and -- and they're already under contract. The O&M manual did provide some recommendations and guidance on what to do if certain probes are -- are not cleaning up and certain probes are and also how to balance the well field.
Q Do you know if Rogers and Calcott have taken any steps to try to get Gas-Monitoring Point 6 down below 5 percent?
A I'm -- I'm not aware.
Q You don't know what they've done, if anything?
A No, I don't.
Q Okay. All right. Well, I'm -- I'm sorry. I mistook -- I knew you operated initially, but I thought your firm was operating now. Since it's not, you don't know; is that

right?

A That's correct.

Q Give me just a second, please.

(Whereupon, Mr. James Bruner and Mr. Bejamin Bruner conferred.)

Q Thank you, sir. That's all I have for you on cross.

THE COURT: Redirect, Mr. Frawley?

MR. FRAWLEY: Brief redirect.

REDIRECT EXAMINATION

BY MR. FRAWLEY:

Q Whether there's reason for it or not, there's no evidence of any methane on the West/Hobby property for the years 2007, 2008, 2009, and 2010, is there?

A That's correct.

Q Thank you.

THE COURT: Okay. Thank you, Mr. Lamb, for your testimony. You can step down. You're free to leave, or you're welcome to remain with us.

THE WITNESS: Thank you.

(Whereupon, the witness exited the witness stand.)

THE COURT: Mr. Frawley, how many more witnesses do you have?

MR. FRAWLEY: Two, Your Honor.

THE COURT: Okay. Can we do those after lunch?

MR. FRAWLEY: Yes, we can, Your Honor.

THE COURT: Okay. All right. Let's break for lunch and start back at a quarter till two. I have a fill-in matter at 1:30 that should not take long. So let's start back at a quarter till two.

MR. FRAWLEY: Thank you, Your Honor.

THE COURT: Everybody have a good lunch.

MR. JAMES BRUNER: Thank you, Your Honor.

(Off the record from 12:17 p.m. until 2:02 p.m.)

THE COURT: Okay, Mr. Frawley. You ready to proceed, sir?

MR. FRAWLEY: I am, Your Honor. Your Honor, we would call as our next witness, Ms. Misty West as an adverse witness, please.

THE COURT: Okay.

(Whereupon, the witness came forward.)

(Off the record briefly.)

MISTY WEST, having been first duly sworn, testified as follows:

MR. FRAWLEY: Your Honor, I would ask to be allowed to ask leading questions of an adverse witness, pursuant to South Carolina Rule of Evidence 611 ---

THE COURT: Right.

MR. FRAWLEY: --- (c).

THE COURT: The -- the rules so allow you to.

MR. FRAWLEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. FRAWLEY:

Q Ms. West, West/Hobby is a real estate development company, correct?

A That's correct.

Q Okay. And it's in the business of acquiring property, then developing or selling it, correct?

A That's correct.

Q Typically, commercial property; is that right?

A I -- that is correct.

Q Okay. Now, you're a graduate of Winthrop College from 1988, correct?

A Yes.

Q In -- in visual arts?

A Yes.

Q I have a sister who's now a judge who was an art major. What -- how did visual arts prepare you for -- for what you've done in your career in the 26 years -- 27 years since then? Or has it?

A I -- I believe it has.

Q Okay.

A Most of my preparation for what I've done for the past 30 years was working in a family business.

Q Okay. And that family business was West Electrical Contractors, correct?

A That's correct.
Q And you -- you manage all of the general-construction projects for West Electrical Contractors, correct?
A I do.
Q Okay. And you're -- you're a VP in the company, correct?
A Yes, I am.
Q All right. And you've been doing that since 1988, when you got out of college, right?
A I have.
Q Okay. And you have been a licensed general contractor for over 20 years?
A Yes.
Q Now, this particular piece of property -- and -- and you maybe can correct me on this. But I -- I think I asked your father yesterday if you were the manager member of the LLC in June of 2002 when the property was conveyed from your father and Ray Hobby into the LLC. I -- I believe he said that you were. But I recall, when I deposed you, you said maybe you weren't yet. Do you know if you were or were not the manager member of the LLC in June of 2002?
A I handled their day-to-day operations. Mr. Hobby and Mr. West are actually the partner -- or actually the partners in the LLC. I -- I wrote letters, created files, followed up on contracts, and reread those.

Q Okay. But you were not a principal in the LLC at that time?

A At all.

Q Okay.

A No.

Q Are you a principal in the LLC now?

A I am not.

Q Okay. So your dad is -- is the guy, since Mr. Hobby has -- has left the LLC, correct?

A That's correct.

Q All right. That was my misunderstanding. I apologize for that.

Now, the 40.7-acre tract, that's the only piece of property West/Hobby owns right now, correct?

A That is correct.

Q Now, you formerly -- or -- or West/Hobby had formerly owned several other pieces of property, hadn't they?

A They had, yes.

Q And those pieces of property have been transferred to other property LLCs; isn't that right?

A That is correct.

Q Okay. And those are West family LLCs, aren't they?

A Yes.

Q And -- and they're West Family Properties, LLC; that's one of them?

A That is a LLC that our -- that my family has. But Billy West, Sr., is not a member of that LLC.

Q Okay. But some of the properties that were owned by West/Hobby, LLC, at the time this lawsuit was filed were conveyed to West Family Properties, LLC?

A (No audible response.)

Q And if you don't know, tell me ---

A I ---

Q --- you don't.

A --- I don't know.

Q Okay. Do you have a managing interest in West Family Properties, LLC?

A I do.

Q Okay.

A I am the managing partner for ---

Q Okay.

A Yes.

Q How about 219 Development Group, LLC? Is that a property ---

MR. JAMES BRUNER: Objection, Your Honor. I'm having trouble following the relevance of these questions.

THE COURT: Okay. Relevance?

MR. FRAWLEY: Show -- showing that -- that she is managing several different property related, family LLCs and that this is not just a -- a hobby, that West/Hobby is

not literally just a -- a hobby that she -- she's working with.

THE COURT: Okay. I'll allow it to continue a little while longer.

MR. FRAWLEY: Thank you, Your Honor.

A Yes.

Q 219 Development Group, LLC, that's another property LLC that you have management responsibilities for, correct?

A That is correct.

Q All right. How about Wilson/West Industries, LLC?

A That is correct.

Q Okay. The Heritage Mini Storage, LLC?

A That is correct.

Q West/Smith Properties, LLC?

A Yes. I'm the managing partner.

Q And then, West Development, LLC?

A I am the managing agent for West Development. West Development is solely owned by Billye West.

Q Okay. Okay. How about Kinard Street Management, LLC?

A I am the managing partner for that.

Q And then, 1200 Wilson, LLC?

A I am the managing partner for that.

Q Okay. Thank you, ma'am. Now, you agree with me that if you buy a piece of property for development or speculation that is located across the street from a known

landfill and you do not get a Phase I environmental assessment, you're taking a risk that there may be environmental problems with the property you're buying? You agree with that statement, don't you?

A We did not think there was a risk at the time.

Q Okay. I -- I take it, that's a yes, but we did not think there was a risk at the time?

A It -- we just didn't think it was a risk at the time.

Q I understand. But ---

A Yeah.

Q --- my question was not did you think it was a risk at the time. Do you now agree with that statement?

A Knowing what I know now?

Q Yes, ma'am.

A Probably, yes.

Q Now, were you the managing partner or -- or managing person with West/Hobby in 2006?

A No.

Q No. What did you do for West/Hobby in 2006?

A Reviewed contracts, wrote letters, made sure our secretary of state filing was complete.

Q Okay. And -- and your dad was still the guy running the show in 2006, correct?

A He and his partner.

Q Okay.

A Correct.
Q He and Mr. Hobby?
A (No audible response.)
Q Now, do you know that the property, this 40.7-acre tract, was assessed for tax purposes by the county in 2010 at $267,283?
A I do.
Q And that was a matter of months before the $520,000 contract that Kiswire offered, correct?
A That is correct.
Q And your father, Billye West, was personal friends with David Minnick, the vice-president of Kiswire?
A That is correct.
Q And your company did a great deal of electrical-contractor work and continues to do a great deal of electrical-contracting work for Kiswire, correct?
A That's correct.
Q All right. Thank you, ma'am.
THE COURT: Mr. Bruner, any questions?
MR. JAMES BRUNER: I do.

CROSS-EXAMINATION

BY MR. JAMES BRUNER:
Q Misty, when is the first time you found out that this particular piece of property on Cockrell Road was contaminated with landfill gas?

A When my father and I met with David Minnick.
Q All right. And do you remember what he told you?
A He provided a -- he provided us a -- a written analysis of what the -- the VOCs and the landfill gases were and expressed that he was terminating the contract because of that problem.
Q Okay. Now, when you learned of that, did you contact the County of Newberry?
A We did.
Q Who did you contact?
A I contacted the chair for county council and the county administrator.
Q All right. Now, tell me what discussions, if any, you had with the county administrator.
A We asked to meet with the county administrator in our office to discuss the landfill issue that David Minnick had brought to our attention.
Q All right. Did you do that?
A We did.
Q And with whom did you meet?
A We met with the chair of the county council, Buddy Livingston, and with Wayne Adams, county administrator.
Q Tell the Court what was said at that meeting.
A We provided them the information that David Minnick had given us on these three elements that were discovered

in testing and asked both -- well, asked Wayne and Buddy what they intended to do about the problem; that, you know, we were -- we had lost our deal with Kiswire over it. You know, what were they going to be able to do about that.

Q All right. And what was their response?

A Nothing initially. They -- they left the meeting taking what we had provided them in advisement and told me that they would get back to me.

Q All right. Did they?

A They got back to me a couple weeks later.

Q Okay.

A Yes.

Q Who -- who -- both of them or just one of them?

A Just -- just one. Wayne Adams responded.

Q And what did he tell you?

A He told me that they had -- they had met -- the county council had met and they weren't interested in the issue.

Q Did you ask him what he meant by "not interested"?

A I did.

Q What did he tell you?

A He stated that they weren't interested in any of it, the landfill issue or our property.

Q Did you -- had you asked them specifically to address the contamination?

A We did. We asked them what they were going to do

about the contamination that was leaching out of the landfill.

Q All right. And his response to you was they weren't interested?

A That's correct.

Q All right. Thank you, Misty. I appreciate it.

THE COURT: Anything in redirect?

MR. FRAWLEY: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. FRAWLEY:

Q Ms. West, one of the things you said to them was you'd sell the property to them for $750,000; isn't that correct?

A No, sir. I sent a letter after -- after we met. I sent a letter to them when they were unresponsive.

Q And you offered to sell the property to them for $750,000?

A Yes, sir, I did.

Q Okay. And they weren't interested in that, were they?

A No, they weren't interested in that.

Q Thank you, ma'am.

THE COURT: Okay. Thank ---

MR. JAMES BRUNER: Misty ---

THE COURT: --- you, ma'am. Oh ---

MR. JAMES BRUNER: Excuse me.

THE COURT: Sure.

MR. JAMES BRUNER: I'm sorry, Your Honor.

RECROSS-EXAMINATION

BY MR. JAMES BRUNER:

Q Did you explain with that letter how you came up with the number $750,000?

A I -- I did. We sent a spreadsheet with that.

Q Explain that to the Court. Tell me -- tell him how you calculated it.

A We calculated that based on what we initially paid for the property; the ten years of taxes, insurance, and maintenance on the property; and the lost contract with Kiswire is what made up that 750,000.

Q All right. Thank you, ma'am.

THE COURT: Thank you, ma'am, for your testimony. You can step down.

(Whereupon, the witness exited the witness stand.)

MR. FRAWLEY: Your Honor, our last witness will be Ms. Nina Marshtein, please.

THE COURT: Okay.

(Off the record briefly.)

(Whereupon, the witness came forward.)

NINA MARSHTEIN, having been first duly sworn, testified as follows:

MR. FRAWLEY: May it please the Court?

THE COURT: Yes, sir.

available -- it was American Development Corporation on Hanahan Road -- 1930 Hanahan Road, North Charleston. And it was conducted in 1997.

Q So exactly what would West/Hobby have cleaned up on this 40.7 acres in the year 2000 when they bought it?

A First, we would've recommended a Phase II, as had S&ME. That may or may not have shown anything. It may have shown -- I don't know. Testing wasn't available at that time.

If something had shown up or not shown up, it would have been -- they would have received the protections from the state that, if something should migrate in the future, they would not be viewed as responsible for it. And they would have the break in liability.

As you would be near a landfill, there would always be the question of vapor mitigation, as was raised by s&ME. Because that now seems to be under control, it would not necessarily -- it would not be an issue further.

Q Do you know when West/Hobby bought this property?

A (No audible response.)

Q Let me help you. They ---

A Was it ---

Q --- bought it November the 1st, 2000. Does that ring a bell with you?

A I was thinking it was 2000/2001. I was not sure.

Q Have you reviewed the reports with DHEC, the annual monitoring reports for 2000 and before, to the point in time when the landfill was closed?

A No, sir, I have not.

Q Okay. So you're not in position to disagree with me that up until that point in time, there was no methane detected on the landfill property, are you?

A I am not in a point to disagree with you, sir. No.

Q All right. Moreover, are you aware that the first time methane was detected on the landfill property was in December of 2003?

A Yes, sir. I believe I heard testimony to that earlier.

Q Okay. And -- and I think your -- your partner, Mr. Lamb ---

A Yes.

Q --- stated that that was so.

All right. So really, there was nothing to clean up; there was nothing to investigate. Even if a Phase I had been conducted in 2000, there was nothing to find, was there?

A No.

Q Other than ---

A But ---

Q --- what was obvious: There's a landfill -- closed

landfill.

A Yes, sir.

Q All right. Now, the question about pursuing some sort of remedy under a brownfield project, that's for a buyer to decide, is it not?

A Could you repeat that?

Q Yes. It is for the buyer to decide whether or not to pursue a brownfield project?

A Yes, sir.

Q So once West/Hobby had a contract to sell this property to Kiswire, it was Kiswire's decision, not West/Hobby's, whether to pursue a brownfield project ---

A Correct.

Q --- correct?

Okay. And if they decided not to do it because there were VOCs on the project -- on the site, who would argue with that?

A Well, VOCs aren't landfill gas, sir. They can be from any other sources.

Q Are VOCs a constituent of landfill gas?

A VOCs are constituents of many things.

Q Okay.

A Dry-cleaning solvents, all petroleum products -- well, lightweight petroleum products. Gosh. Dry-cleaning -- it's used in -- they're used in lots of stuff.

Q The -- you reviewed S&ME's limited soil-gas assessment, their Phase II?

A Yes, sir.

Q All right. And you agreed with their conclusions, didn't you?

A May I refresh my memory as to what their conclusions were?

Q Yes.

A You don't happen to remember what page their conclusions ---

Q I think it's ---

A --- on, would you?

Q --- near the -- just before the figures. And it's under summary.

A Okay. Summary -- they have (As read): "Several volatile constituents typically associated with municipal landfills are present at the property boundary. Thirty of the 58 TO-15 analytes were detected. Most of them did not exceed DHEC benchmarks for vapor intrusion. Using the vapor-intrusion benchmarks, three analytes posed a particular issue: benzene, tetrachloroethylene, trichlorethylene. Off-site point indicates that landfill gas has impacted the site interior" -- oh. Wasn't 6 not on the site? I forget. Let me go to their map.

Q I think there's a diagram. You can see where 6 is.

A Okay.
Q It -- it's a colored-photograph-type ---
A Oh.
Q --- diagram, Ms. Marshtein.
A It's not that one.
Q That's ---
A Here we go. Okay. So 6 is right there. Okay. Why do they say landfill gas specifically? Let me go back. What was the methane amount ---
THE COURT: Ma'am ---
A --- in 6?
THE COURT: --- you need to speak up.
A Okay. They specifically identify landfill gas in GW-6, but it has a 4.3 -- I think it's -- it's not parts per -- yes -- parts per million volatile of methane in it. So at that point I would have no reason to suspect that to be anything but possibly background, because it is so below any thresholds.
Q You're not an expert on landfill gas, are you?
A I will tell you this: What we have heard here is -- from both entities is that methane constitutes approximately 50 percent of landfill gas. If, at 50 percent of landfill gas, we're getting constituents of benzene, trichlorethylene, etc., so much higher than the presence of methane, then we are not looking at those

volatiles necessarily being associated with landfill gas.

Now, soil gas and vapor intrusion, I do a great deal of because I'm constantly trying to keep industrial chemicals out of apartment buildings, restaurants, and offices. I deal daily with intrusions risks from chlorinated solvents: perchlorethylene and trichloroethylene, benzene, etc.

Benzene being present in every single well right along the roadway, in my mind, is equally suggestive that there's a road nearby. There's a major interstate and a large highway. All of those are far greater contributors of benzene than landfill gas, typically, in a roadside location.

Q So my question, initially, to you was: Did you agree with their conclusions?

A No, I do not.

Q All right. Do you recall when I took your deposition?

A Yes, sir.

THE COURT: I'm -- I'm not going to open it up, unless you just need -- you need it opened.

MR. JAMES BRUNER: If I need to, I just ---

THE COURT: Okay.

MR. JAMES BRUNER: --- want to ---

THE COURT: All right.

MR. JAMES BRUNER: --- file it.

THE COURT: I'm just going to -- to listen to the testimony.

Q Do you recall in your deposition when I showed you the limited soil-gas assessment prepared by S&ME?

MR. FRAWLEY: What page is ---

Q Do you ---

MR. FRAWLEY: --- he referring to on the deposition ---

MR. JAMES BRUNER: I'm looking ---

MR. FRAWLEY: --- please?

MR. JAMES BRUNER: --- at page 35.

Q Okay. Do you recall that?

A No.

Q All right.

A I remember at the time I did agree with them, though. But at that time I had not heard what the makeup of landfill gas was.

Q All right. Now, but I asked you -- I'm going to show you on page 36 -- bottom of page 35, I asked you: It's consistent with Exhibit 5, which was the Phase I. But you didn't see anything in 5 or 6 with a Phase I and Phase II upon which you based your opinions.

And your answer was?

A No, sir. I agreed with their conclusions.

Q Okay. So when I asked you under oath, when I took

your deposition, if you agreed with their conclusions, your answer was: Yes, I did.

And now -- and you told me you were not an expert in landfill gas.

A Correct.

Q And now you're telling me you're an expert in landfill gas and you don't agree with their conclusions; is that right?

A I did not say I was an expert in landfill gas. I simply stated that while sitting here, both Mr. Clymer and Mr. Lamb have stated that landfill gas is approximately 50 percent methane; the other part, carbon dioxide, I believe, the other 40 to 50 percent; and then, approximately 5 percent of whatever volatile organics may have been deposited into the landfill. As a result of that, if we are looking strictly at a by-the-numbers, there's a great deal more of volatile organic issues than there are -- than there is methane. By the numbers, it doesn't fit as landfill gas, only in the one statement.

Q Are these your opinions, Ms. Marshtein?

A Yes.

Q Okay. So you are holding yourself out to the Court as being an expert in landfill gas, even though you told me you were not?

A I am not an expert in landfill gas.

Q Okay.
A But I do know how to do basic math.
Q I understand that. But if you take the witness stand as an expert witness, you must be qualified in the area to give opinion testimony. You say you're not an expert on landfill gas. But all you're giving me is opinions on landfill ---
MR. FRAWLEY: I'll object ---
Q --- gas.
MR. FRAWLEY: --- to the ---
Q That's my ---
MR. FRAWLEY: --- argumentative ---
Q --- question.
MR. FRAWLEY: --- question, Your Honor. He understands better than that. I'll object to that question as being argumentative, if ---
THE COURT: Okay.
MR. FRAWLEY: --- it's even a question.
MR. JAMES BRUNER: Well, it ---
THE COURT: All right.
MR. JAMES BRUNER: --- was argumentative. I won't argue with that.
THE COURT: Okay. All right. Let's move on, please.
Q How much does a Phase I environmental site assessment cost when you do one?

A My base price is $3,000.

Q All right. That's just the base price. Can they cost more?

A They can sometimes cost less.

Q Okay. But it depends on ---

A But it ---

Q --- how much ---

A --- can ---

Q --- work you have to do to investigate the property?

A Level of research, size of the property, complexity of the property. A vacant factory is not as expensive as one that's active.

Q All right. Thank you.

THE COURT: Anything on direct?

MR. FRAWLEY: No redirect ---

THE COURT: Okay.

MR. FRAWLEY: --- Your Honor.

THE COURT: Okay. Thank you, ma'am, for your testimony. You can step down.

THE WITNESS: Okay.

THE COURT: That's the defense case?

MR. FRAWLEY: Defense rests, Your Honor.

(Whereupon, the witness exited the witness stand.)

THE COURT: Okay. Do you have any rebuttal case, Mr. Bruner?

MR. JAMES BRUNER: He called my only rebuttal witness. So no, we don't have any ---

THE COURT: Okay.

MR. JAMES BRUNER: --- rebuttal ---

THE COURT: All right.

MR. JAMES BRUNER: --- witnesses.

THE COURT: Okay. All right. I'm -- I'm going to rule -- I'm going to deny your -- your motion to exclude this testimony. And I think it goes to the weight, more so than anything else. So I'm going to allow that. And it will not be -- it'll be part of the record in the case and not a proffer.

The record is now closed, with the one exception that, if you'll remember yesterday, we talked about the -- the issue of damages. Depending upon how I rule, it may be a situation where the record needs to be left open for Mr. Frawley to put in whatever evidence on the issue of damages. And we'll just make that -- that determination. Okay?

Well, guys, y'all have worked very hard in this case. There's no question about that. And certainly, you've given me a lot to -- to think about. And so I'm going to take it under advisement and let y'all know something as soon as I can.

Again, I appreciate y'all's hard work. Okay.

MR. FRAWLEY: Thank you for your patience ---

MR. JAMES BRUNER: May ---

MR. FRAWLEY: --- Your Honor.

THE COURT: Okay.

(Whereupon, the proceeding was concluded at 3:07 p.m.)

--- END OF TRANSCRIPT OF RECORD ---

South Carolina
DHEC
Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201

Commissioner: Douglas E. Bryant

Board: Richard E. Jabbour, DDS, Chairman
Robert J. Stripling, Jr., Vice Chairman
Sandra J. Molander, Secretary

William E. Applegate, III,
John H. Burriss
Tony Graham, Jr., MD
John B. Pate, MD

Promoting Health, Protecting the Environment

DIVISION OF SOLID WASTE MANAGEMENT

August 17, 1994

E.F. Lominack, Jr.
Newberry County Landfill
P.O. Box 156
Newberry, SC 29108

RE: Newberry County Landfill DWP-117

Dear Mr. Lominack:

The above referenced facility discontinued accepting waste on April 9, 1994. This correspondence is a reminder that:

1) The facility must be **completely closed** in accordance with its DHEC approved closure plan, **NO LATER** than October 9, 1994.

2) Any facility not in compliance with closure on October 9, 1994 will be required, under Subtitle D, to secure financial assurance for 30 years of post-closure care. Regulation 61-107.258, Municipal Solid Waste Landfills, Subpart G discusses the requirements of financial assurance.

3) Environmental Quality Control District Offices will perform an inspection of your facility on October 9, 1994 to verify closure.

If you have any questions concerning this matter, please contact Deborah Carter-McCoy at (803) 734-4844.

Sincerely,

Shawn Benzinger

Shawn Benzinger
Regulation Planning, Development and Compliance

cc: Ken Acker, Central Midlands District - EQC
Charles Watson, BSHWM
William W. Culler, Division Director, BSHWM

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PLAINTIFF'S EXHIBIT
1

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NEWBERRY COUNTY 022015 Bk: 0549 Pg: 0262
ASSESSOR
TAX MAP # 449-2
(OLD MAP #)
TAX YEAR 2001
BY

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF NEWBERRY) (Title Not Examined)

KNOW ALL MEN BY THESE PRESENTS, That H. L. Cockrell and Caroline C. Cockrell in the State aforesaid for and in consideration of the sum of Two Hundred Ninety Thousand and no/ Dollars and no/100 ($290,000.00) and no other consideration to them paid by Raymond D. Hobby and Billye E. West in the State aforesaid, the receipt whereof is hereby acknowledged, have granted bargained, sold and released, by these presents do grant, bargain, sell and release unto the said **RAYMOND D. HOBBY AND BILLYE E. WEST, Their Heirs and Assigns Forever:**

All that piece, parcel or tract of land, thereon, situate, lying and being in Tax District No. 1, Outside, County of Newberry, State of South Carolina, consisting of twenty-two and eighty-eight one-hundredths (22.88) acres, more or less, said tract being more particularly described on a plat thereof made by Claude E. Johnson, Surveyor, dated August 22, 1974, and recorded in the office of the Clerk of Court for Newberry County in Plat book AK at page 84. Said tract being bounded on the Northeast by lands of Newberry County; on the Southeast by lands of Harold C. Wicker; on the Southwest by lands of B. A. Fretwell and on the Northwest by lands of Helen Wheeler.

RECORDED THIS 3rd DAY OF November 2000
SEQUENCE # 21386
AUDITOR NEWBERRY COUNTY SC

ALSO: All that piece, parcel or tract of land situate, lying and being in Tax District NO. 1, Outside, in the County of Newberry, State of South Carolina, containing nineteen and twelve one-hundredths (19.12) acres, more or less, said tract being more particularly described as the 42 acre tract shown on a plat recorded in the office of the Clerk of Court for Newberry County in Plat Book "AK" at page 59, less 22.88 acres shown on plat recorded in said office in Plat Book "AK" at page 84, said tract being triangular in shape and bounded on the Northeast by lands of Newberry County on the Southwest by lands of B. A. Fretwell and on the Northwest by lands now or formerly of H. L. Cockrell.

The sellers reserve the right to harvest the Christmas trees on the tracts. Sellers shall have the right to remove the Christmas trees until the last tree is cut or the property is sold by the Grantees, whichever might occur first.

This being the identical property conveyed to Caroline C. Cockrell by deed of H. L. Cockrell dated November 18, 1977 and recorded in the Office of the Clerk of Court for Newberry County in Deed Book 148 at page 37. Caroline C. Cockrell

FILED, RECORDED, INDEXED
11/01/2000 02:15:44PM
Rec Fee: 10.00 St Fee: 754
Co Fee: 319.00 Pages: 3
Clerk of Court
Jackie S. Bowers

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2

conveyed one-half interest in said properties to H. L. Cockrell by deed dated December 28, 1999 and recorded in the office of the Clerk of Court for Newberry County in Deed Book 526 page 35.

TMS NO. 449-2

Grantee's address: PO BOX 457
Newberry, SC 29108

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Raymond D. Hobby and Billye E. West, Their Heirs and Assigns forever. And we do hereby bind ourselves and our Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Raymond D. Hobby and Billye E. West, Their Heirs and Assigns, against me and my Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seal this 1 day of November in the year of our Lord two thousand and in the two hundred twenty-fourth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Donna E. Lucinski

Tina M. Paschal

H L Cockrell (SEAL)
H. L. Cockrell

Caroline C. Cockrell (SEAL)
Caroline C. Cockrell

EXHIBIT A

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF NEWBERRY)

Personally appeared before me Deana E. Linowski and made oath that (s)he saw the within named H. L. Cockrell and Caroline C. Cockrell sign seal and as their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he/she, with Dana M. Paschal witnessed the execution thereof.

SWORN to before me this)
1 day of December, 2000)
Dana M. Paschal)
Notary Public for SC)
My Commission Expires: 4/11/05)

Deana E Linowski

W:\Front office files\forms cd\FORMS\Real Estate\COCKRELL L. BUC\Hobby.deed.wpd

EXHIBIT A

0004167 Bk: 0590 Pg: 0208

Verson

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF NEWBERRY)

KNOW ALL MEN BY THESE PRESENTS THAT, We, Billye L. West and Raymond D. Hobby, in the State aforesaid for and in consideration of the sum of FIVE AND NO/100 ($ 5.00) DOLLARS to us paid by West/Hobby, LLC, have granted, bargained sold and released and by these presents do grant, bargain, sell and release unto the said West/Hobby, LLC and assigns:

NEWBERRY COUNTY
ASSESSOR
TAX MAP
MAP
TAX YEAR 2003
BY

SEE ATTACHED EXHIBIT "A"

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said West/Hobby, LLC, its successors and assigns forever.

AND we do hereby bind ourselves and our heirs, executors and administrators , to warrant and forever defend all and singular the said premises unto the said West/Hobby, LLC against us and our heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS our hands and seals this 18th day of June, in the year of our Lord Two Thousand Two and in the Twenty Sixth year of Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of :

Kay Goldsmith

FILED, RECORDED, INDEXED
07/08/2002 11:42:32AM
Rec Fees: 16.00 St Fees: 0.00
Co Fees: 0.00 Pages: 10
Clerk of Court
Jackie B. Byers

PLAINTIFF'S EXHIBIT 3

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EXHIBIT B

0004167 Bk: 0590 Pg: 0209

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

PERSONALLY appeared before me Kaye Bedenbaugh and made oath that s/he saw the within named Billye L. West and Raymond D. Hobby, sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned and that s/he with James Verner witnessed the execution thereof.

SWORN to before me this 18th day of June, 2002

Notary Public for South Carolina
My Commission Expires: 1-29-2011

grantees address:
P.O. Box 734
Prosperity, SC 29108

EXHIBIT B

EXHIBIT "A"

West/Hobby, LLC

TRACT I: All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in Tax District No. 1, in the City of Newberry, County of Newberry, State of South Carolina fronting on Wilson Road and containing 0.36 of an acre, more or less, and being more particularly shown on a plat thereof prepared for Billye L. West and Raymond D. Hobby on the 11th day of November, 1988 by Foard H. Tarbert, Jr. a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book 3 at Page 663.

This being the same property conveyed to the grantors herein by deed of Carolyn S. Boulknight and Loretta S. Billford recorded in the office of the Clerk of Court for Newberry on the 15th day of November, 1988 in Deed Book 291 at Page 245.

TRACT II: All that certain piece, parcel or tract of land, together with the buildings and improvements thereon, situate, lying and being in Tax District No. 1, in the City of Newberry, County of Newberry, State of South Carolina said tract fronting on Wilson Road and being more particularly shown on a plat thereof prepared for Billy L. West and Raymond D. Hobby on the 3rd day of September, 1987 by Foard H. Tarbert, Jr. a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book 2 at Page 154.

This being the same property conveyed to the grantors herein by deed of Werts Tractor Company, Inc. recorded on the 17th day of August, 1987 in Deed Book 267 at page 293.

TM# 342-2-7-20/21

TRACT III: All that certain piece, parcel or tract of land together with the buildings and improvements thereon, lying and being in the City of Newberry, County of Newberry, State of South Carolina containing .7977 acres (34,821 sq. Ft.) according to a plat of survey prepared for Del-Taco Corporation on the 12th day of January, 1979 by Melvin H. Pair & Associate, RLS, a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book AU Page 45. Also as a appurtenance to the said premises, a non-exclusive easement and the right to lay, build, construct, operate, maintain, repair and tap onto an underground sanitary sewer system in, to , over, through and across a ten (10) foot wide strip of land, five (5) feet on either side of a line running in an easterly direction from U. S. Highway 76 By-Pass (A/K/A Wilson Road) across property

EXHIBIT B

now or formerly owned by Newrolina, Inc. the general location of which line is shown as Exhibit "B" to warranty deed dated April 16, 1979 to Newrolina, Inc. recorded in the office of theClerk of Court for Newberry County in Deed Book 161 Page 50.

Also All that certain piece, parcel or strip of land situate, lying and being in the City of Newberry, County of Newberry, State of South Carolina, said strip being more particularly described as the portion of S.C. Highway 219 lying north of a .7977 acre tract of land as shown on plat for Del Taco Corporation by Melvin H. Pair & Associates, dated January 12, 1979 and recorded in the office of the Clerk of Court for Newberry County in Plat Book AU page 45.

Also all rights reserve by Del Taco Corporation in Right of Way Easement given to the City of Newberry for the construction and maintenance of a sewer line said deed being recorded in the office of the Clerk of Court for Newberry County in Deed Book 287 at page 181.

This being the same property conveyed to the grantors herein by deed of Del Taco Corporation recorded in the office of the Clerk of Court for Newberry County on the 28th day of June, 1990 in Deed Book 322 Page 296.

TM# 397-86

TRACT IV: All that certain piece, parcel or lot of land situate, lying and being on the southwestern side of the right of way of U. S. Highway 76, in the County of Newberry, State of South Carolina, containing 0.58 of an acre, more or less as shown on plat entitled "Property of Newberry Square Associates", dated August 5, 1991 and recorded in the office of the Clerk of Court for Newberry County in Plat Book AS-5 Page 178, reference to which plat is hereby craved for the metes and bounds of description thereof.

This being the same property conveyed to the grantors herein by deed of Newberry Square Associates recorded in the office of the Clerk of Court for Newberry county on the 17th day of September, 1992 in Deed Book 362 at Page 1.

TM# 340-1-70

TRACT V: All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in the County of Newberry, State of South Carolina, fronting on Wilson Road, U. S. Highway 76 and being more particularly shown on a plat thereof prepared for Billye L. West on the 9th day of July, 992 by Foard H. Tarbert, Jr a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book 2 page 479.

EXHIBIT B

WEST/HOBBY, LLC

This being the same property conveyed to the grantors herein by deed of Edward F. McConnell by deed recorded in the office of the Clerk of Court for Newberry County on the 30th day of October, 1992 in Deed Book 78 at page 27.

TM# 340-1-2

TRACT VI: All that piece, parcel or tract of land, together with the improvements thereon, containing 0.72 of an acre, more or less, located in the County of Newberry, State of South Carolina, fronting on U. S. Highway 76 and having the following buttings and boundings: beginning at the northernmost point at an iron pin and thence running S55-52E along Lot 2 for a distance of 130.0 feet to an iron pin, thence running S55-34W for a distance of 244.1 feet along Lot No. 3 to an iron pin, thence running N37-57W along the right of way of U. S. Highway 76 gor a distance of 130.0 feet to an iron pin, thence running N55-39E along the property n/f of Connell for a distance of 239.7 feet to an iron pin, which is the point of beginning. Reference is hereby craved and incorporated herein as a part and parcel of the description to the property to a plat entitled " surveyed for C. R. Koon", said plat prepared by Freeland & Associates, dated February 22, 1981, which is of record in the office of the Clerk of Court for Newberry County in Plat Book "AX" page 69. This property is designated as Lot 1 on said plat.

This being the same property conveyed to the grantors herein by deed of Margaret S. Koon, recorded in the office of the Clerk of Court for Newberry County on the 20th day of August, 1993, in Deed Book 381 at page 160.

TM# 340-1-1

EXHIBIT B

WEST/HOBBY LLC

TRACT VII: All that piece, parcel or tract of land, situate, lying and being in Tax District No. 1, outside, County of Newberry, State of South Carolina, consisting of twenty-two and eighty-eight one hundredths (22.88) acres, more or less, said tract being more particularly described on a plat thereof made by Claude E. Johnson, surveyor, dated August 22, 1974 and recorded in the office of the Clerk of Court for Newberry County in Plat Book "AK" at page 84. Said tract being bounded on the northeast by lands n/f of Newberry County, on the southeast by lands n/f of Harold C. Wicker, on the southwest by lands n/f of B. A. Fretwell and on the northwest by lands n/f of Helen Wheeler.

TRACT VIII: All that piece, parcel or tract of land situate, lying and being in Tax District No. 1, outside, in the County of Newberry, State of South Carolina, containing nineteen and twelve one hundredths (19.12) acres, more or less, said tract being more particularly described as the 42 acre tract shown on a plat recorded in the office of the Clerk of Court for Newberry County in Plat Book "AK" at page 59, less 22.88 acres shown on plat recorded in the said office in Plat Book "AK" at page 84, said tract being triangular in shape and bounded on the northeast by lands n/f of Newberry County on the southwest by lands n/f of B. A. Fretwell and on the northwest by lands n/f of H. L. Cockrell.

This being the same property conveyed to the grantors herein by deed of H. L. Cockrell and Carolina C. Cockrell recorded in the office of the Clerk of Court for Newberry County on the 1st day of November, 2000 in Deed Book 549 at page 262.

TM# 449-2

EXHIBIT B

WEST/HOBBY, LLC

TRACT IX: All that piece, parcel or tract of land situate, lying and being in the City of Newberry, County of Newberry, State of South Carolina, with the improvements thereon (except improvements constructed and owned by McDonalds), said tract being more particularly described as being composed of Lot "A" containing 6.71 acres, more or less, Lot "B" containing 1.22 acres, more or less, Lot "C" containing 0.53 acres, more or less, and Lot "D" containing 0.16 acres, more or less, as shown on a plat thereof prepared for the Estate of Edith L. Matthews on the 19th day of February, 1997 by Foard H. Tarbert, Jr. SCPLS and recorded in the office of the Clerk of Court for Newberry County in Plat Book B-78 at page 5 , said lots bounded on the northeast by Wilson Road, on the southeast by land n/f of William E. DeHihns, et al. and Main Street, on the northwest by Winnsboro Road.

This being the same property conveyed to the grantors herein by deed of Hans J. Kaufman, et al. recorded in the office of the Clerk of Court for Newberry County on the 5th day of February, 1998 in Deed Book 478 at page 62.

TRACT X&:

TRACT XI: All those tracts or parcels of land located in the County of Newberry, State of South Carolina on the south side of S.C. Highway 219 (Main Street), being more particularly shown as Parcel "A", containing 10.000 acres, more or less, and Parcel "B", containing 7.000 acres, more or less, on plat of survey made for Interlink Development, LLC dated April 13, 1999, prepared by Freeland & Associates, Inc; and recorded in the office of the Clerk of Court for Newberry County in Plat Book 8-139 at page 2, to which plat reference is hereby made for a more complete and perfect description.

Saving and excepting therefrom 0.612 acre tract of land conveyed to Newberry Federal Savings Bank by deed recorded in the office of the Clerk of Court on the 14th day of August, 2001 in Deed Book 567 at page 259.

This being the same property conveyed to the grantors herein by deed of Hal Kohn recorded in the office of the Clerk of Court for Newberry County on the 5th day of June, 1999 in Deed Book 508 at page 272.

TM# 397-29-

EXHIBIT B

WEST/HOBBY, LLC

TRACT XII: All that certain piece, parcel or tract of land situate, lying and being in the Newberry Industrial Park in the County of Newberry, State of South Carolina containing 4.70 acres, more or less, and being more particularly shown on a plat thereof prepared for Newberry County on the 19th day of January, 1998 by Thomas B. Abraham, SCRLS, a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book B 107 at page 4, reference to which is craved for a more precise and accurate description according to metes, bounds, courses and distances.

TRACT XIII: All that certain piece, parcel or tract of land situate, lying and being in the Newberry Industrial Park in the County of Newberry, State of South Carolina, containing 5.41 acres, more or less, and being more particularly shown on a plat thereof prepared for Newberry County on the 16th day of March, 1998 by Thomas B. Abraham, SCRLS, a copy of said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book B 107 at page 5, reference to which is craved for a more precise and accurate description according to metes, bounds, courses and distances.

This being the same property conveyed to the grantors herein by deed of the County of Newberry recorded in the office of the Clerk of Court for Newberry County on the 27th day of March, 1998 in Deed Book 481 at page 189.

TM# 451-22

TRACT XIV: All that certain piece, parcel or tract of land situate, lying and being in Tax district No. 1, outside, in the County of Newberry, State of South Carolina, containing 7.904 acres, more or less, said tract being more particularly shown on a plat prepared for Billye L. West and Raymond D. Hobby, by Foard H. Tarbert, Jr. PLS on the 18th day of 1998 and revised on the 26th day of May, 1998, said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book B 112 at page 10.

This being the same property conveyed to the grantor herein by deed of John S. Hammond and Carolyn O. Hammond recorded in the office of the Clerk of Court for Newberry County on the 12th day of June, 1998 in Deed Book 486 at page 285.

TM# 397.95

EXHIBIT B

WEST/HOBBY, LLC

TRACT XV: All that certain piece, parcel or tract of land, situate, lying and being in the City of Newberry, County of Newberry, State of South Carolina, containing 2.95 acres, more or less, and being more particularly delineated on a plat for Newberry East by Claude E. Johnson, RLS, dated September 7, 1988 and recorded in Plat Book AP, Volume 2, at page 91 in the office of the Clerk of Court for Newberry County. As shown on this plat, this tract is bounded on the north by the right-of-way of South Carolina Highway 219, on the east by Chapman Drive, on the south by Lots 1 and 22 of the Loblolly subdivision, and on the west by Wallace Drive.

TRACT XVI: All that certain piece, parcel or tract of land, situate, lying and being in the County of Newberry, and partly inside and partly outside the City limits of Newberry, in the State of South Carolina, containing 12.22 acres, more or less, and being more particularly shown as the 12.22 acre tract on the plat prepared for Newberry East by Claude E. Johnson, RLS, dated September 7, 1988 and recorded in Plat Book AP, Volume 2 at page 91, in the office of the Clerk of Court for Newberry County. As shown on this plat, this tract is bounded on the north by the right-of-way for S.C. Highway 219, on the east by Wallace Drive, on the southeast by Lot 26 on the west by the branch, and on the southwest by property of John and Carolyn Hammond.

Saving and excepting therefrom a 2.333 acres tract conveyed to R. Denny Cole and Roger B. Skeen recorded in the office of the Clerk of Court for Newberry County in Deed Book 508 at page 278 and a 1.570 acre tract conveyed to T. Scott Ward and recorded in the aforesaid office on the 24th day of August, 2000 in Deed Book 544 at page 75.

This being the same property conveyed to the grantors herein by deed of Malhenin-Howell, a South Carolina Partnership and Samuel S. Spicer recorded in the office of the Clerk of Court for Newberry County on the 10th day of March, 1998 in Deed Book 480 at page 152.

TM#

TRACT XVII: All that certain piece, parcel or tract of land, with the improvements thereon, lying and being in the County of Newberry, south Carolina, in Tax District No. 1, outside, containing thirty-eight and 67/100 (38.67) acres, more or less, and being situate on the north side of a paved road leading for Highway 76 to Mt Bethel-Garmany Road, being bounded on the west by n/f of J. C. Lee, on the north by land n/f of W. Fulmer Wells, and on the east by land n/f of Eunice Stewart and R. M. Parrott.

Saving and excepting thereform Lots A-1, E, F and H as shown on plat prepared

EXHIBIT B

by Thomas B. Abraham, SCRLS dated September 4, 1996 and recorded in the office of the Clerk of Court for Newberry County in Plat Book B-70 at page 3 and Lots 1, 15 and 16 Cypress Lake Subdivision, Phase I, as shown on plat prepared by Cannon Surveying, Inc. dated July 28, 1997 and recorded in the aforesaid office in Plat Book B-97 at page 1.

This being the same property conveyed to grantors herein by deed of Robert C. Lake, III as Special Referee recorded in the office of the Clerk of Court for Newberry County on the 6th day of January, 1999 in Deed Book 500 at page 215.

TRACT XVIII: All that certain piece, parcel or tract of land together with the buildings and improvements thereon, situate, lying and being in Tax District No. 6 in the County of Newberry, State of South Carolina, containing 0.85 acre, more or less, and being more particularly shown on a plat thereof prepared for Billye L. West by Foard H. Tarbert, Jr. on the 22nd day of June, 1994 and recorded in the office of the Clerk of Court for Newberry County in Plat Book 3 at page 600.

This being the same property conveyed to the grantors herein by deed of Albert Mencken and Louise W. Mencken recorded in the office of the Clerk of Court for Newberry on the 29th day of June, 1994 in Deed book 397 at page 269 and by deed of Henry Burton Wells recorded in the aforesaid office on the 29th day of June 1994 in Deed Book 397 at page 271.

TM# 652-4-2

EXHIBIT B

METHANE REMEDIATION PLAN
FOR THE
NEWBERRY COUNTY LANDFILL

Prepared for:

Newberry County

September 2005

B.P. Barber & Associates, Inc.
Engineers · Planners · Surveyors

Engineering Excellence Since 1916

PLAINTIFF'S EXHIBIT 4
ALL-STATE LEGAL
County 1677

METHANE REMEDIATION PLAN
FOR THE
NEWBERRY COUNTY LANDFILL

Prepared For:
Newberry County
Post Office Box 156
Newberry, South Carolina 29108

Prepared By:
B.P. Barber & Associates, Inc.
Post Office Box 1116
Columbia, South Carolina 29202-1116

Project No. 04463
September 2005

9/28/05

bpb

County 1678

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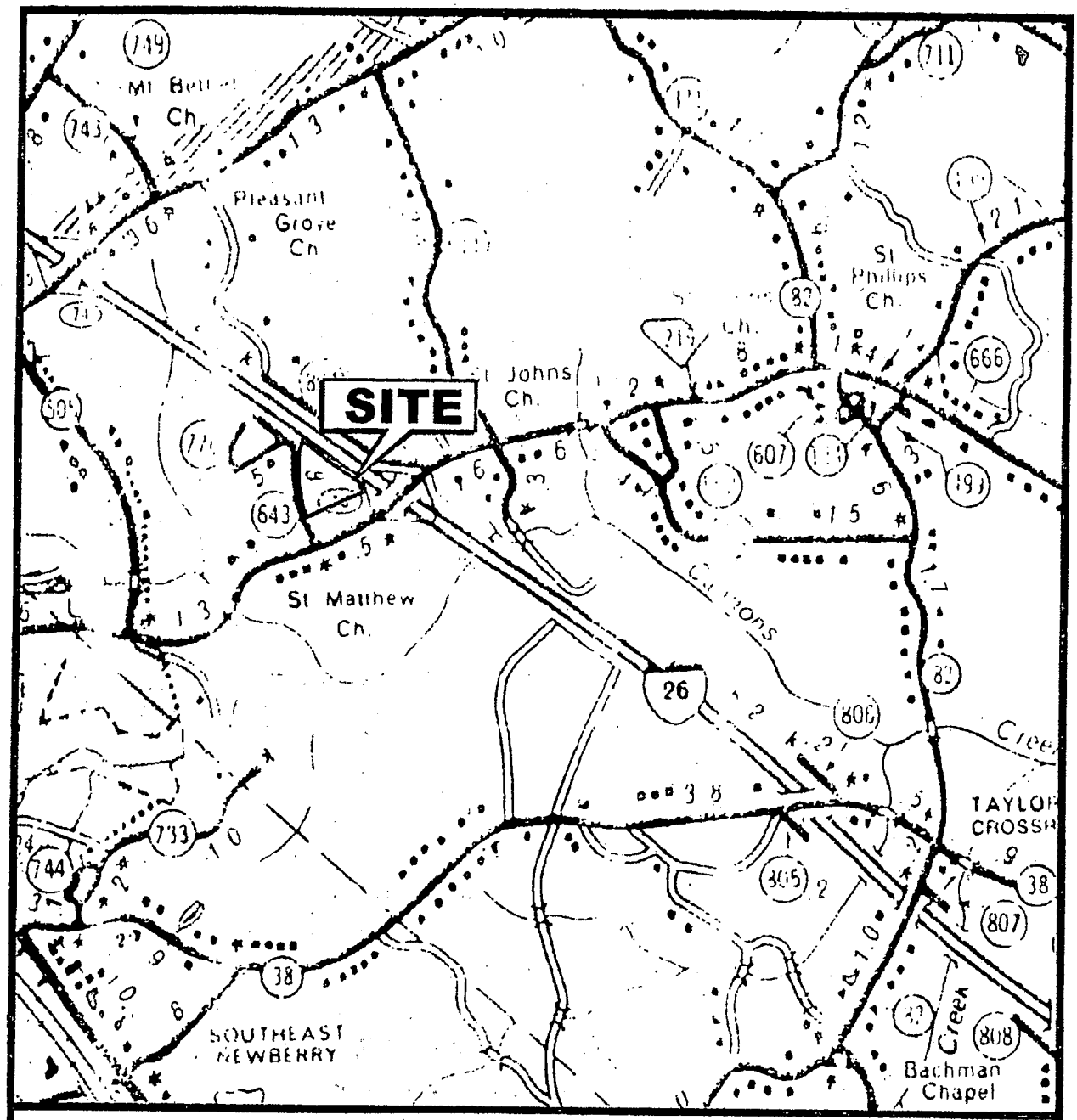
1.0 INTRODUCTION

Project Title:	Methane Remediation Plan for the Newberry County Landfill
Owner:	Newberry County Post Office Box 156 Newberry, SC 29108
Owner's Representatives:	Tommy Whitehead, Public Works Director
Consulting Engineer:	B. P. Barber & Associates, Inc. P.O. Box 1116 Columbia, SC 29202-1116
Consultant's Representatives:	John Culbreath, P.E., Senor Project Manager Michael E. Glowacz, P.G., Hydrogeologist

Site Location and Description: The Newberry County Landfill is between Interstate Highway 26 (I-26), Cockrel Road, and South Carolina State Highway 219 (Exhibit A and Exhibit B) approximately two (2) miles east of the City of Newberry and approximately 40 miles northwest of Columbia, South Carolina. The County stopped accepting Municipal Solid Waste (MSW) at the 56.6-acre facility during December 1993 when the Newberry County Transfer Station began operation. The Newberry County Transfer Station is located approximately 0.1 mile east of I-26 along South Carolina Highway 34. The landfill is currently leased to the Triangle Gun Club and is used for recreational and competitive skeet shooting.



Site Location Map

EXHIBIT A

Newberry County Closed MSW Landfill

INFORMATION TAKEN FROM:

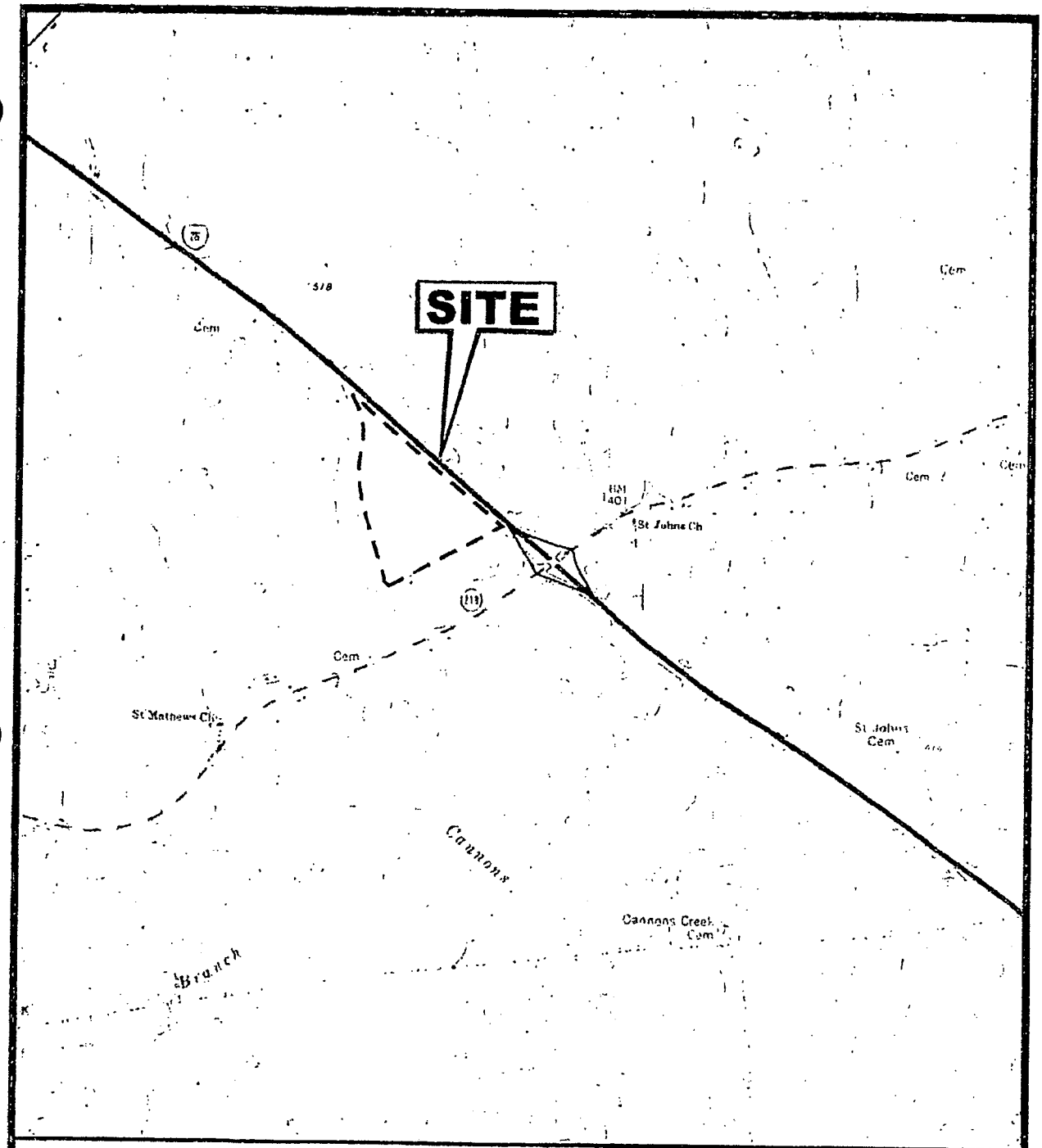
NEWBERRY COUNTY GENERAL HIGHWAY MAP DATED 1971

bpb

B.P. Barber & Associates, Inc.

Engineers · Planners · Surveyors

County 1682



Topographic Map

Newberry County Landfill

Exhibit B

B.P. Barber & Associates, Inc.

Engineers - Planners - Surveyors

County 1683

2.0 BACKGROUND

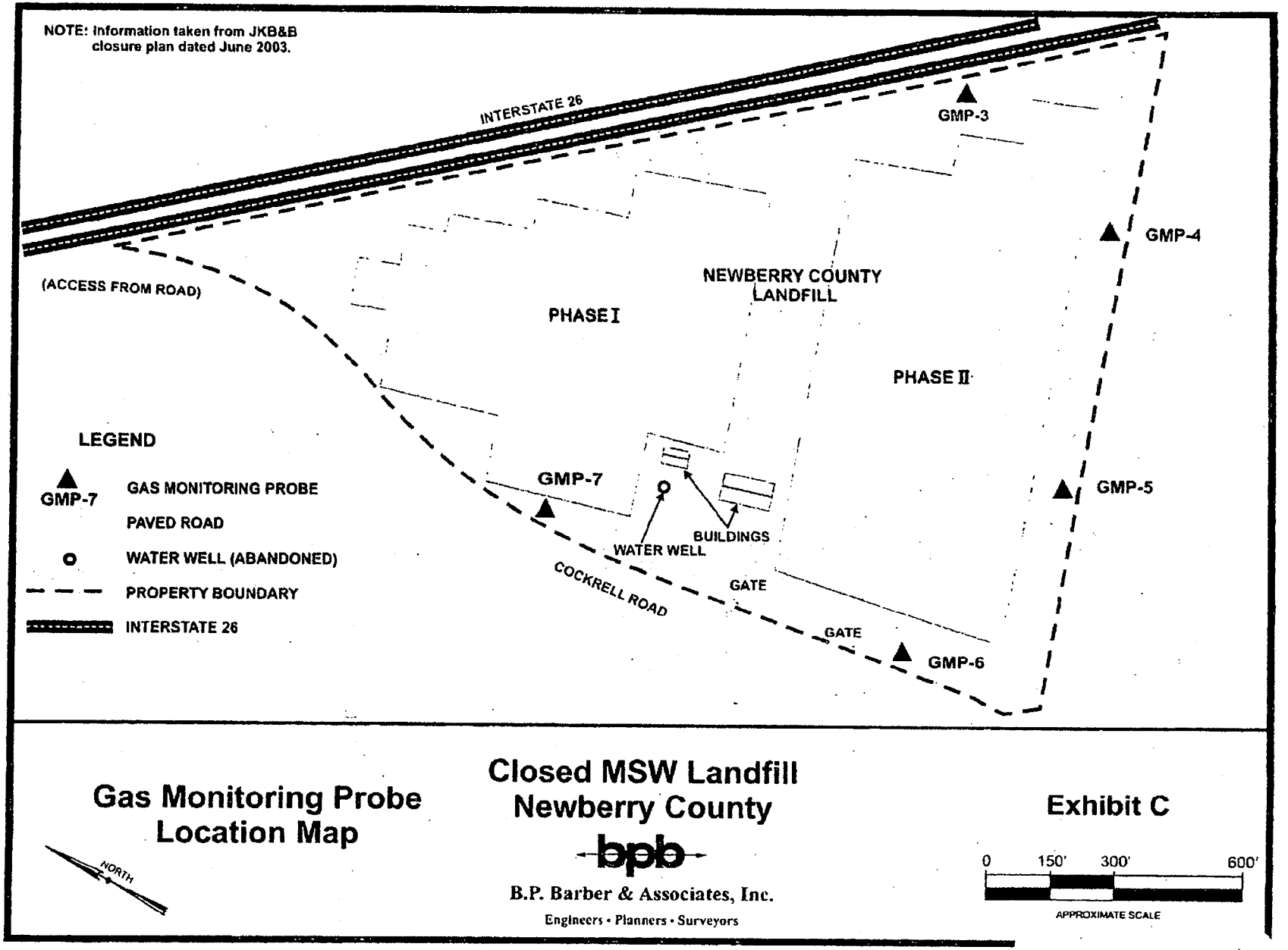
2.1 Gas Monitoring Network

Five (5) Gas Monitoring Probes (GMPs, formerly GMWs), GMP-3 through GMP-7, located near the east, south, and west property boundaries of the landfill (Exhibit C) are currently monitored on a quarterly basis as a requirement of post-closure monitoring in accordance with South Carolina Department of Health and Environmental Control (SCDHEC) MSW Regulations (*R.61-107.258.23 Explosive Gases Control*). Quarterly post-closure methane monitoring has been conducted by B.P. Barber & Associates, Inc. since September 2004. C&L performed the quarterly methane monitoring prior to September 2004. The results of the methane monitoring since 2004 are provided on Table 1.

Table 1 Methane Monitoring Results

GMP NO.*	12/4/03	3/25/04	9/20/04	11/22/04	3/18/05	6/30/05
GMP-3	41	58	0	42	50	45
GMP-4	NM	NM	NM	NM	NM	NM
GMP-5	44	75	52	LF	64	60
GMP-6	40	68	2	58	54	46
GMP-7	38	84	54	42	52	44
Club House	0	0	0	0	0	0
Shed	0	0	0	0	0	0

Notes:
NM = not measured (Could not be located).
* = To minimize confusion with the Groundwater Monitoring Well designation, GMW has been changed to GMP.
Bolded and shaded readings indicate the Lower Explosive Limit (LEL) for methane, 5% in air, has been exceeded.
LF = Lock frozen (needed to be cut and replaced).
12/03 and 3/04 sampling events conducted by C&L Consultants, Inc.
9/04 through 6/05 sampling events conducted by BPB.


NOTE: Information taken from JKB&B closure plan dated June 2003.
INTERSTATE 26
GMP-3
GMP-4
(ACCESS FROM ROAD)
NEWBERRY COUNTY LANDFILL
PHASE I
PHASE II
LEGEND
GMP-7
GAS MONITORING PROBE
PAVED ROAD
WATER WELL (ABANDONED)
PROPERTY BOUNDARY
INTERSTATE 26
GMP-7
WATER WELL
BUILDINGS
GMP-5
COCKRELL ROAD
GATE
GATE
GMP-6
Gas Monitoring Probe Location Map
NORTH
Closed MSW Landfill
Newberry County
bpb
B.P. Barber & Associates, Inc.
Engineers • Planners • Surveyors
Exhibit C
0
150'
300'
600'
APPROXIMATE SCALE
County 1685

0321

2.2 Site Geology and Geomorphology

The site geology consists of metamorphic rocks that are highly chemically weathered forming a saprolitic soil that grades into bedrock. The bedrock beneath the Newberry County Landfill is massive granite that is geologically located in the Charlotte belt of the Piedmont province. The depth of the soil (saprolite) that overlies the bedrock is as shallow as 26 feet as indicated in boring TW-3 conducted by C&L Consultants, Inc. (C&L), which is reported in the Groundwater Assessment Report for the Newberry County Landfill dated October 6, 1998, and as deep as 40 feet in TW-1. Fractured granite was observed along Cannons Creek by C&L during their Groundwater Assessment conducted during 1998. The soil in the saprolite unit of the aquifer is red-brown or green-gray silt with coarse sand and quartz fragments

The landfill is located on the east flank of a north-south trending ridge. The topography in the landfill area is gently rolling. Surface water drainage is primarily toward the southeast into the tributaries of Cannons Creek.

2.3 Methane Monitoring Results

B.P. Barber & Associates, Inc. began methane gas monitoring on a quarterly basis for the five (5) GMPs (GMP-3 through GMP-7) in the third quarter of 2004. The methane concentrations were measured using an MDU-420 continuous-reading methane monitor. The Lower Explosive Limit (LEL) for methane, which is 5% in air, was exceeded in the GMPs during the quarterly measurements for 2004.

The quarterly methane monitoring results obtained from the GMPs are provided on Table 1, page 4. The quarterly methane readings indicate that the LEL has been exceeded along the east, south, and west landfill property boundaries.

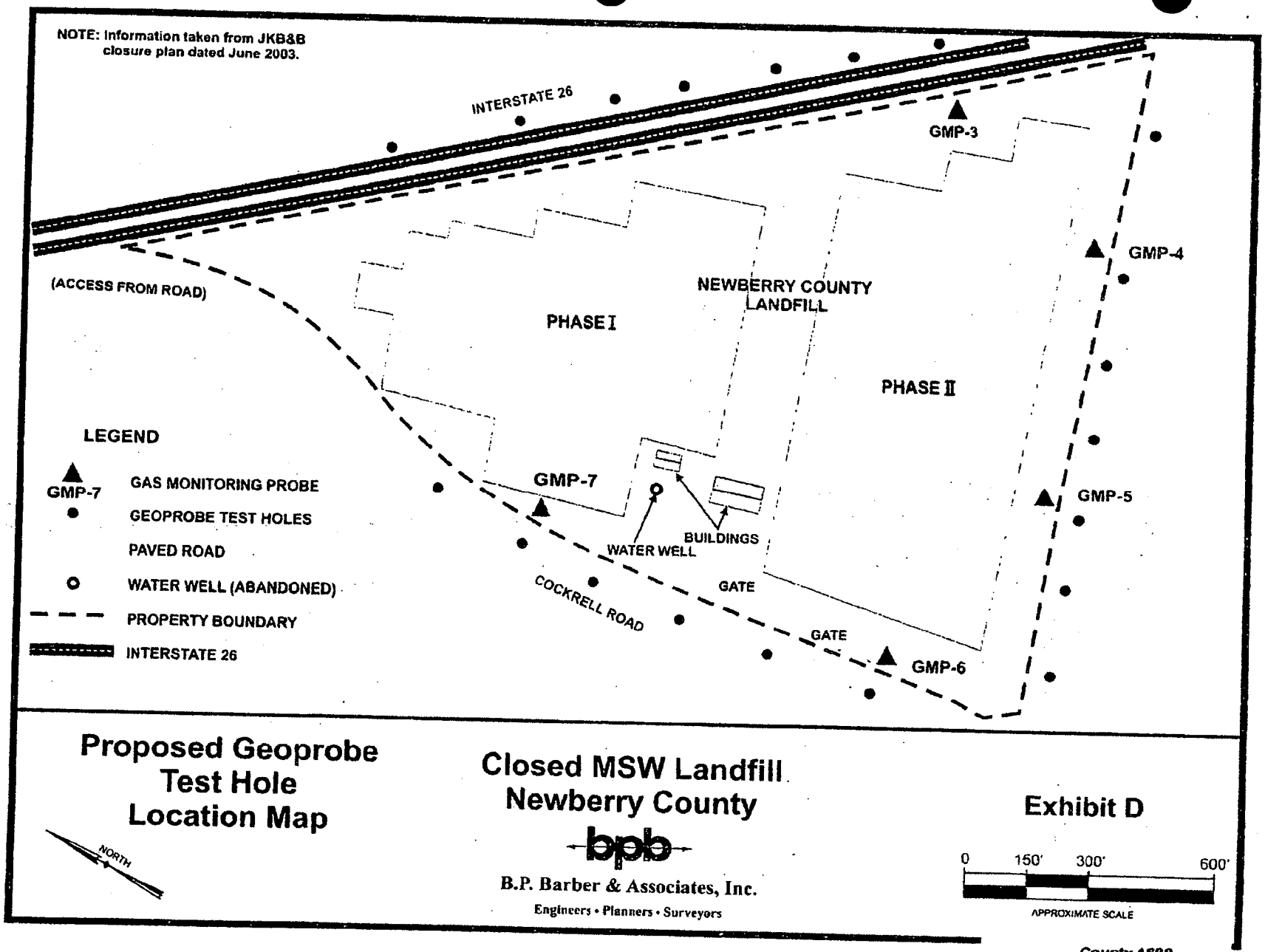
3.0 METHANE REMEDIATION PLAN

3.1 Barhole Survey

A Barhole Survey is recommended to investigate the extent of lateral migration of off-site methane. The Geoprobe™ technique is recommended to obtain the off-site methane readings.

The Geoprobe™ technique includes the use of a direct push rig to construct the temporary test holes. Hollow, 2-inch diameter, core rods with plastic sleeves will be used to construct each Geoprobe™ test hole by first pushing the rod to a depth of approximately four (4) feet below land surface (bls). After each 4-foot core will be removed from the borehole, the next push will be advanced an additional four (4) feet using the hollow core rod. The push rods will be advanced by this method to a depth of approximately twenty (20) feet bls unless bedrock is encountered.

A 1-inch diameter, 6-foot section of PVC pipe will be inserted into the borehole to collect each methane reading. The methane reading will be obtained using an MDU 420 continuous reading methane monitor. The MDU 420 methane gas meter removes gas at an approximate rate of one (1) liter per minute. The methane meter will be read continuously while a minimum of four (4) well volumes will be removed from each Geoprobe™ test hole. The maximum stabilized reading will be recorded for each test hole. The proposed locations for the test holes where the methane readings will be obtained are provided in Exhibit D.


NOTE: Information taken from JKB&B closure plan dated June 2003.
INTERSTATE 26
GMP-3
GMP-4
(ACCESS FROM ROAD)
NEWBERRY COUNTY LANDFILL
PHASE I
PHASE II
LEGEND
GMP-7
GAS MONITORING PROBE
GEOPROBE TEST HOLES
PAVED ROAD
WATER WELL (ABANDONED)
PROPERTY BOUNDARY
INTERSTATE 26
GMP-7
WATER WELL
BUILDINGS
GMP-5
COCKRELL ROAD
GATE
GATE
GMP-6
Proposed Geoprobe Test Hole Location Map
NORTH
Closed MSW Landfill
Newberry County
bpb
B.P. Barber & Associates, Inc.
Engineers • Planners • Surveyors
Exhibit D
0
150'
300'
600'
APPROXIMATE SCALE
County 1689

During the implementation of the Barhole Survey, monitoring of landfill gases for methane will be conducted for health and safety considerations. No smoking or open fires will be allowed. Each Geoprobe™ test hole will be plugged with a cement-bentonite mixture from bottom to top with a tremie pipe after the methane readings are collected.

3.2 Corrective Measures

Monitoring has detected methane in excess of its LEL at the property boundary of many unlined landfills in South Carolina. Several techniques have been used to intercept and remove methane prior to its reaching the impacted property boundary. The methane remediation techniques that have been effective, in order of increasing cost, are:

- Interceptor Trench
- Passive Gas Vents
- Active System with Gas Vents and Flare

3.2.1 Interceptor Trench

The Interceptor Trench Method includes excavation of a trench between the property boundary and the buried waste materials (source area). It has been our experience that Interceptor Trenches are most effective where the trench can be excavated to the water table and left open. Where Interceptor Trenches have been effective, the depth to the water table has been less than twenty (20) feet below land surface and the trench was excavated to the water table. Using County equipment and personnel to excavate the trench has minimized construction expenses. Where the Interceptor Trench needs to be filled, SCDHEC has endorsed tire chips for trench fill materials since it recycles waste tires. Typically, cost of Operation and Maintenance (O&M) of an Interceptor Trench is not a factor since it is a passive system.

3.2.2 Passive Gas Vents

Passive Gas Vents (GVs) would be constructed through the waste by a driller registered in the State of South Carolina in conformance with guidelines outlined in the South Carolina Well Standards and Regulations, (*R.61-71*). Typically, a 3-foot diameter bucket auger is used to construct each borehole through the landfill waste. The GVs are constructed approximately 25-feet apart with 6-inch diameter, Schedule 40 PVC, flush threaded, casing and screen. Each screen is pre-slotted with 0.02-inch slots. Following placement of the casing and screen in each borehole, a gravel pack of 0.5-inch to 1.5-inch washed aggregate is placed around the screen to one (1) foot above the top of the screen. A minimum of one (1) foot of hydrated bentonite is then placed on top of the gravel pack. Native soil or cement grout is then placed above the bentonite seal to the landfill surface. A U-shaped joint of 6-inch PVC may be affixed to the well casing approximately four (4) feet above the ground surface. A description of Gas Vent Installation Techniques and a Typical Gas Vent Schematic are provided in Appendix A.

Once the GVs have been installed, several Temporary Gas Monitoring Probes (TGMPs) would be installed off-site along the property boundary where the LEL is exceeded. These TGMPs are typically monitored every two (2) weeks for a six (6) month observation period to evaluate the effectiveness of the GV system. The six (6) month observation period enables evaluation the GV system over a sustained period and various climatic conditions. After the six (6) month monitoring period, the TGMP monitoring results would be submitted to SCDHEC as a Methane Remediation Effectiveness Report along with appropriate recommendations, as necessary.

If after the six (6) month observation period it is determined that the passive system has reduced the migration of landfill gas across the property boundary to levels below the LEL, a return to quarterly methane monitoring of the GMPs and TGMPs would be recommended. If the

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data from the observation period indicates that the migration of landfill gas has not been significantly reduced (i.e., the levels of methane in the TGMPs has decreased to near the LEL), the need for additional remediation may be reassessed.

Contractors with specialized drilling equipment would be necessary to construct the boreholes and the TGMPs. Costs can be minimized if the County provides personnel and equipment for installation of the PVC, gravel, bentonite, and native soil in the boreholes immediately after each is drilled. O&M are not a cost factor since the GVs are a passive system.

3.2.3 Active Remediation System

An Active Methane Remediation System consists of an extensive array of GVs installed through the waste with a gas extraction and collection system, a gas treatment system, and a flare or generator to burn the methane after extraction from the subsurface. Installation of an Active System and its O&M are costly. Installation of an Active System is not considered until the other less costly options have been attempted or if a source for the energy generated by combustion of the methane is readily available.

3.3 Selection of Remedy for Methane Migration Minimization

After the Barhole Survey has been completed, a Methane Migration Minimization Modification (MMMM) will be recommended. Typically, a phased approach is recommended to minimize the cost of the methane remediation by progressively installing the MMMMs from least to most costly. If the least costly MMMM is successful, the cost to the County will be minimized.

APPENDIX A

GAS VENT (GV) INSTALLATION TECHNIQUE AND TYPICAL GAS VENT CONSTRUCTION SCHEMATIC

County 1693

GAS VENT (GV) INSTALLATION TECHNIQUE

A driller registered in the State of South Carolina will install the Gas Vents (GVs). Construction will conform to guidelines outlined in the South Carolina Well Standards and Regulations, (*R.61-71*). A 3-foot diameter, bucket-auger well-installation system will be used to construct each borehole through the landfill waste to an approximate depth of twenty (20) feet below the landfill surface. It is anticipated that the water table will not be encountered. The depth of waste is twenty (20) feet below the landfill surface, and the landfill cap is 2-feet to 5-feet thick.

Borehole logging for each GV will consist of describing the auger cuttings on a continuous basis. The log contains information concerning the drilling method, date of installation, sampling locations, materials descriptions and placement intervals, and lithologic and waste descriptions.

The GVs will be constructed of 6-inch diameter, Schedule 40 PVC, flush threaded, casing and screen. Each 15-foot screen will be machine-slotted with 0.02-inch slots. Prior to insertion of the screen and casing into the borehole, a minimum of 0.5-inch to 1.5-inch washed aggregate will be placed below the screen to ensure a firm footing and unrestricted flow under the screen. Following placement of the casing and 15-foot screen in each borehole, a gravel pack of 0.5-inch to 1.5-inch washed aggregate will be placed around the screen to one (1) foot above the top of the screen. A minimum of one (1) foot of hydrated bentonite will be placed on top of the gravel pack. Cement grout will be placed above the bentonite seal to the landfill surface. A U-shaped joint of 6-inch PVC will be affixed to the well casing approximately four (4) feet above the ground surface. Each GV will be clearly and neatly labeled using waterproof paint and a stencil. A 1-inch hole will be drilled into the side of each GV approximately three (3) feet above ground surface to facilitate methane monitoring.

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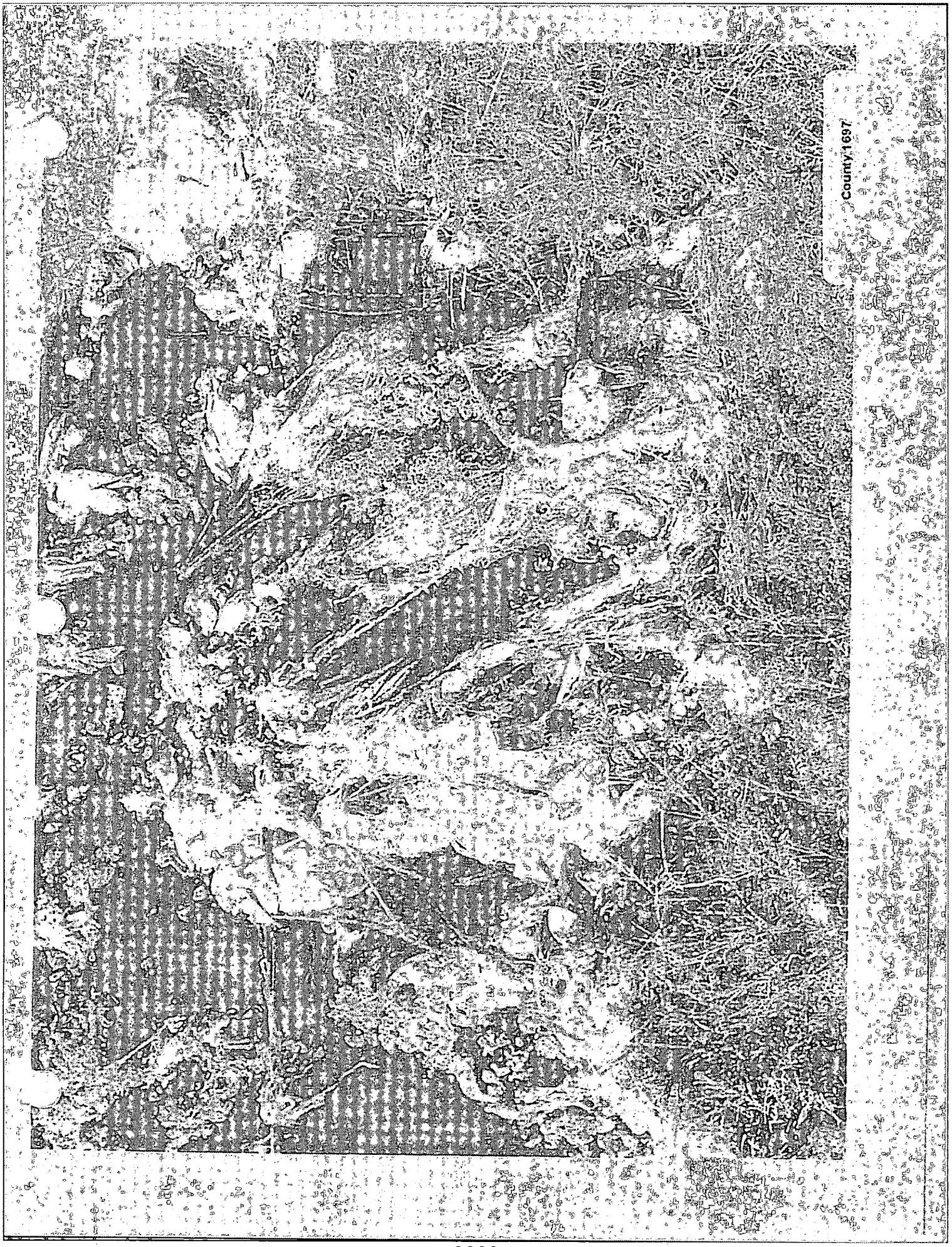
County 1697

Col 898
the bell tolled
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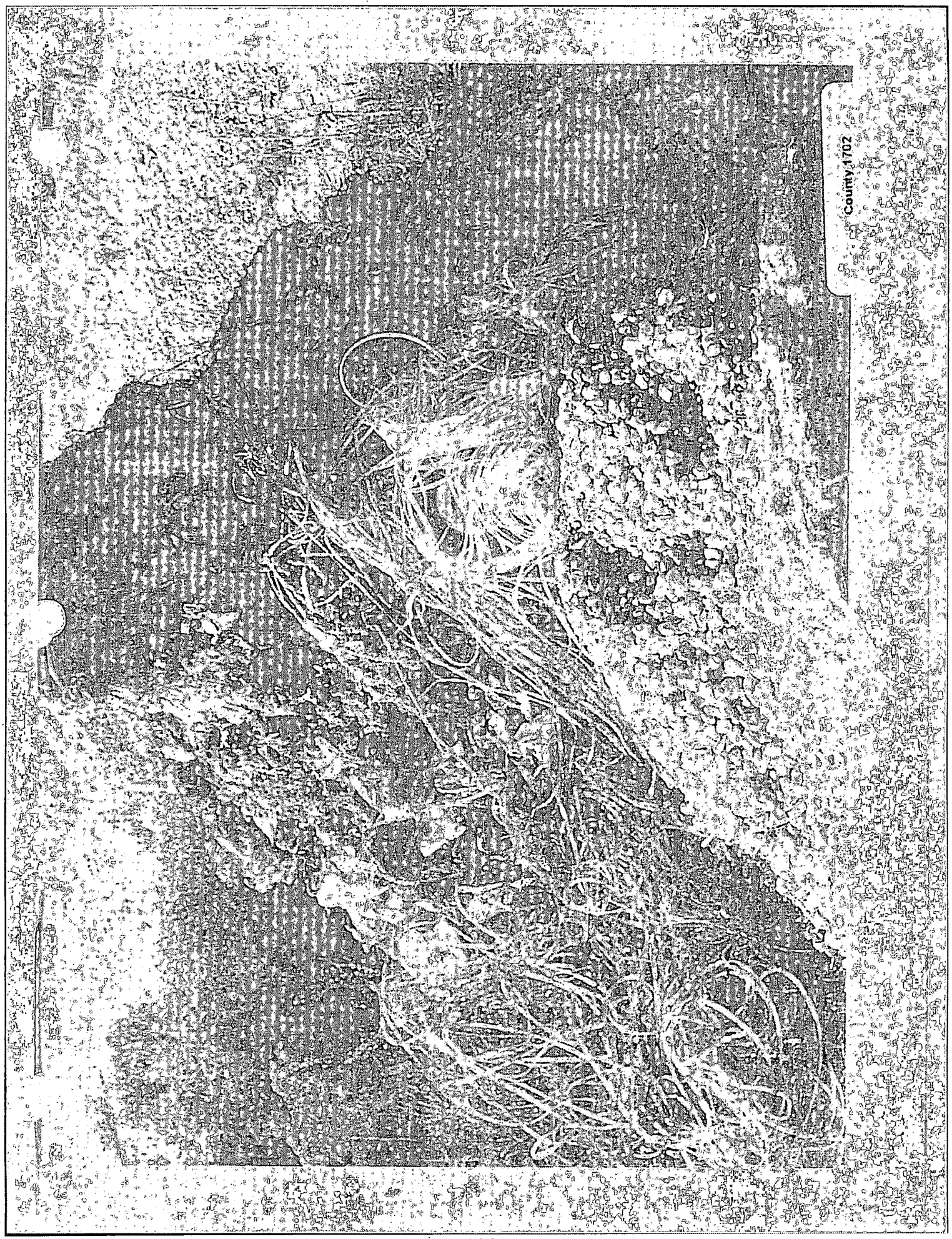
County 1699

County 1701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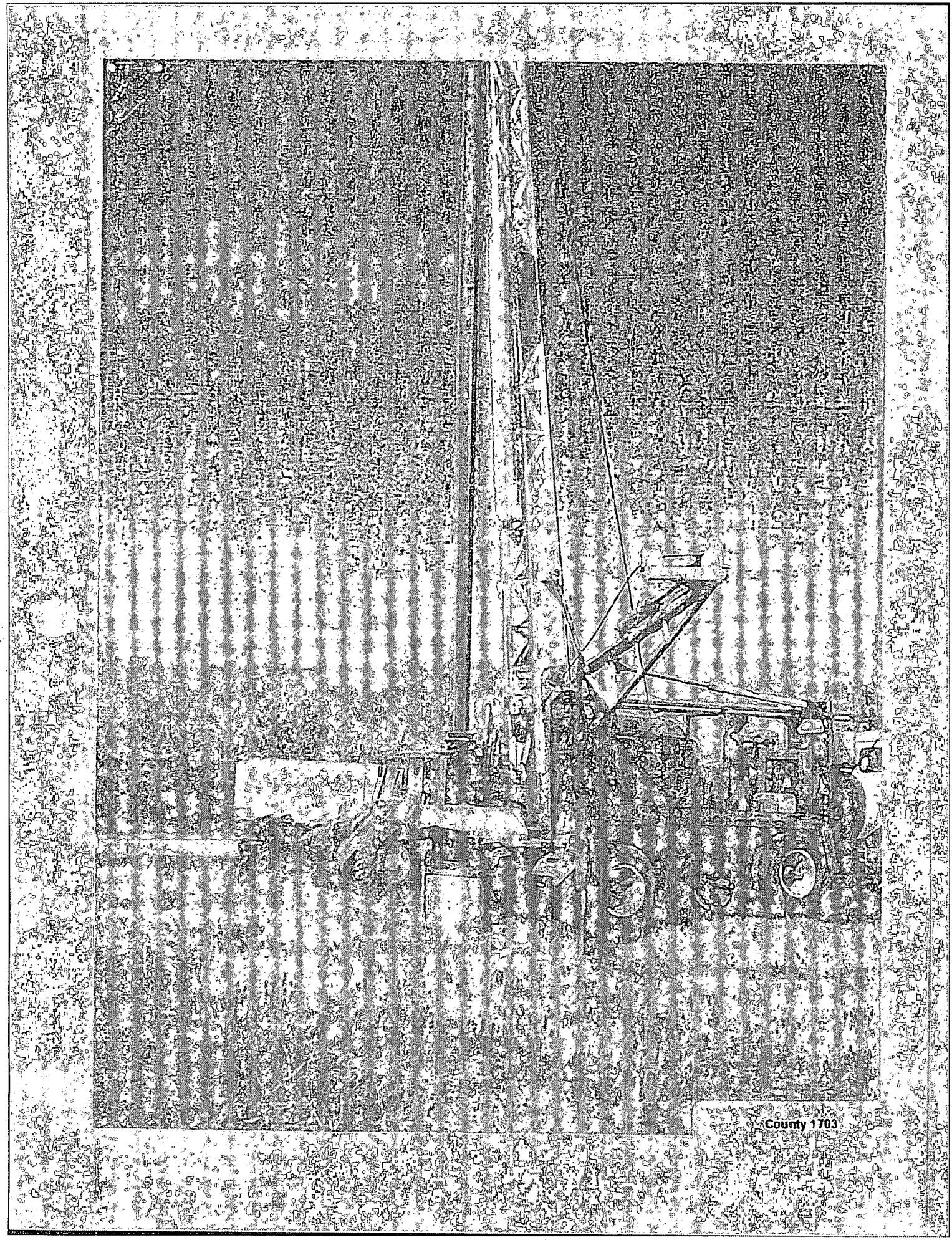
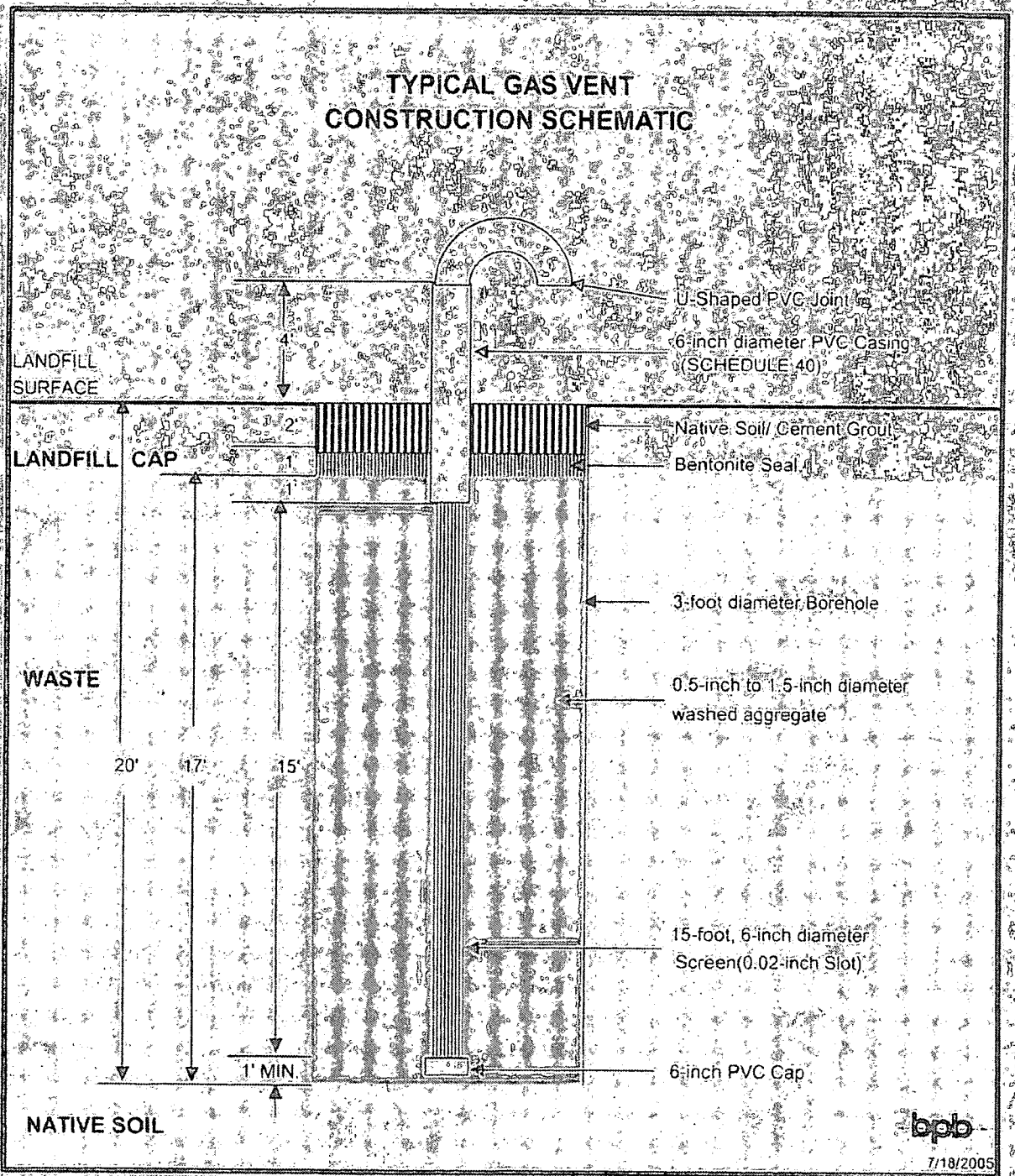

County 1703

TYPICAL GAS VENT CONSTRUCTION SCHEMATIC



County 1704

COUNTY OF NEWBERRY

DEPARTMENT OF PUBLIC WORKS
11592 SC HIGHWAY 34
NEWBERRY, SOUTH CAROLINA 29108

VOICE: (803) 321-2180
FAX: (803) 321-2180

February 6, 2006

West/Hobby, LLC
@ 591 Cockrell Dr. /Hwy 643
P.O. Box 734
Newberry, SC 29108

RE: Newberry County Landfill
Property Access Request for Subsurface Testing

Dear Sir or Madam:

We have received a letter from the South Carolina Department of Health and Environmental Control (SCDHEC) requesting that Newberry County perform subsurface testing just outside the borders of the old Newberry County landfill. Since your property is located adjacent to the landfill, we are requesting your permission for access to your property to perform these tests. The testing procedures include:

- Pushing a 2-inch diameter test hole to the water table using a small machine (Geoprobe™),
- Pumping approximately one (1) quart of water or gas from the test hole, and
- Plugging the test hole with a clay mixture so no evidence of the testing will be observable after the work is complete.

Please indicate your agreement for access by signing below and returning the signed copy to me at the address indicated on the letterhead. Please include your phone number so we can contact you to coordinate the time and date of testing. This permission for testing is for this round of testing only. If we are asked to perform tests in the future, we will ask for access to your property again at that time.

ALL-STATE LEGAL® PLAINTIFF'S EXHIBIT 5

RECEIVED
FEB - 7
West Electrical Contractors of Newberry, Inc.

If you have any questions or comments regarding the above information, please do not hesitate to contact us.

Very truly yours,

Newberry County Public Works.

Tommy Whitehead, Director

I/We consent:

Signature

Date

Phone Number

OFF-SITE METHANE INVESTIGATION REPORT FOR THE NEWBERRY COUNTY LANDFILL

Prepared for:

Newberry County

April 2006

B.P. Barber & Associates, Inc.
Engineers · Planners · Surveyors

Engineering Excellence Since 1916

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
6

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OFF-SITE METHANE INVESTIGTATION REPORT
FOR THE
NEWBERRY COUNTY LANDFILL

RECEIVED
MAY 11 2006
HYDROGEOLOGY

Prepared For:
Newberry County
Post Office Box 156
Newberry, South Carolina 29108

Prepared By:
B.P. Barber & Associates, Inc.
Post Office Box 1116
Columbia, South Carolina 29202-1116

Project No. 04463
May 2006

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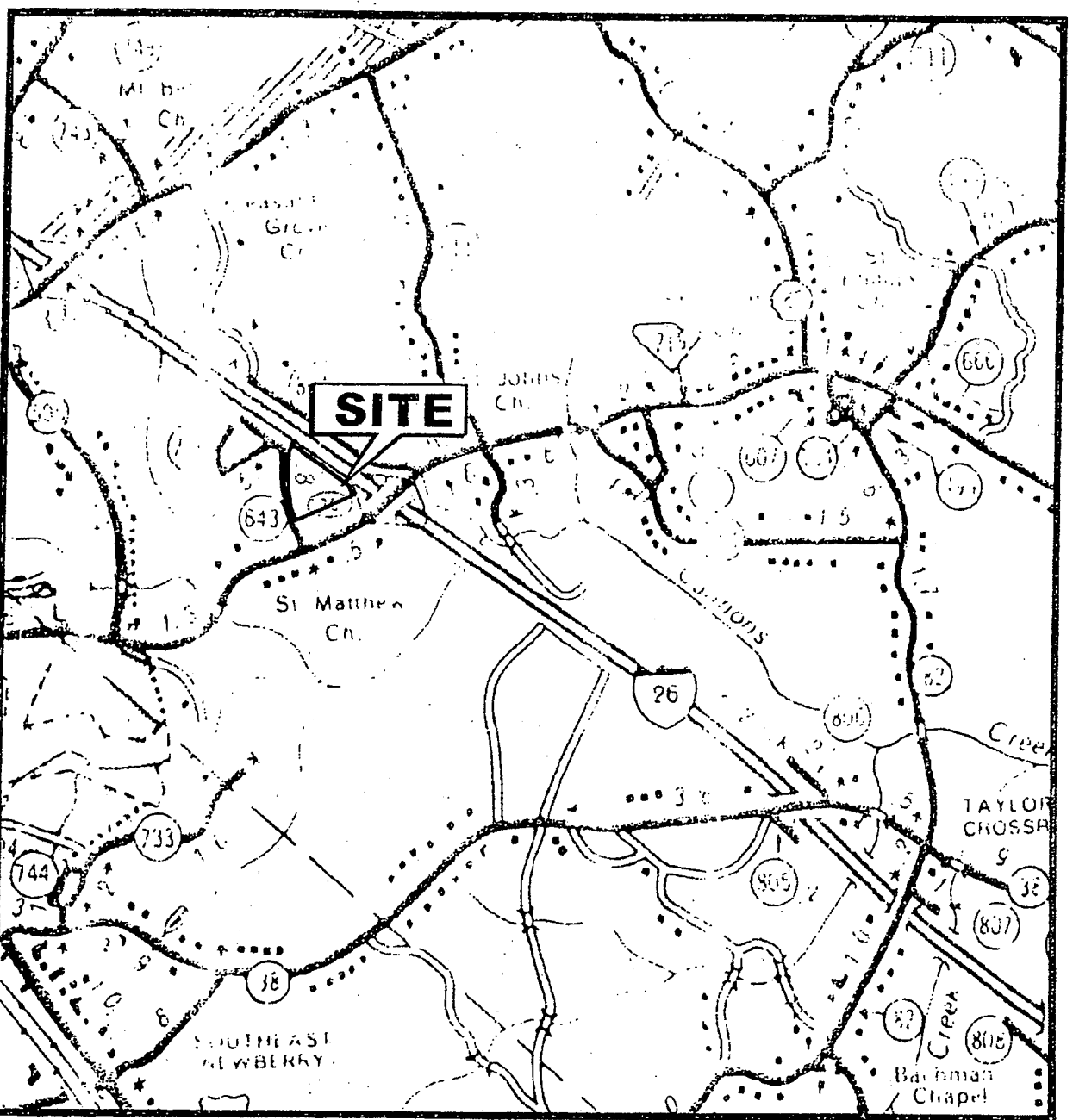
APPENDICES

APPENDIX A	Gas Vent Installation Techniques and Typical Gas Vent Construction Schematic

1.0 INTRODUCTION

Project Title:	Off-Site Methane Investigation Report for the Newberry County Landfill
Owner:	Newberry County Post Office Box 156 Newberry, SC 29108
Owner's Representatives:	Gene Klugh, Interim County Administrator Tommy Whitehead, Public Works Director
Consulting Engineer:	B. P. Barber & Associates, Inc. P.O. Box 1116 Columbia, SC 29202-1116
Consultant's Representatives:	John Culbreath, P.E., Project Manager II Michael E. Glowacz, P.G., Hydrogeologist

Site Location and Description: The Newberry County Landfill is between Interstate Highway 26 (I-26), Cockrell Road, and South Carolina State Highway 219 (Exhibit A and Exhibit B) approximately two (2) miles east of the City of Newberry and approximately 40 miles northwest of Columbia, South Carolina. The County stopped accepting Municipal Solid Waste (MSW) at the 56.6-acre facility during December 1993 when the Newberry County Transfer Station began operation. The Newberry County Transfer Station is located approximately 0.1 mile east of I-26 along South Carolina Highway 34. The landfill is currently leased to the Triangle Gun Club and is used for recreational and competitive skeet shooting.



Site Location Map

EXHIBIT A

Newberry County Closed MSW Landfill

NORTH

INFORMATION TAKEN FROM

NEWBERRY COUNTY
GENERAL HIGHWAY MAP
DATED 1971

bpb

B.P. Barber & Associates, Inc.

Engineers • Planners • Surveyors

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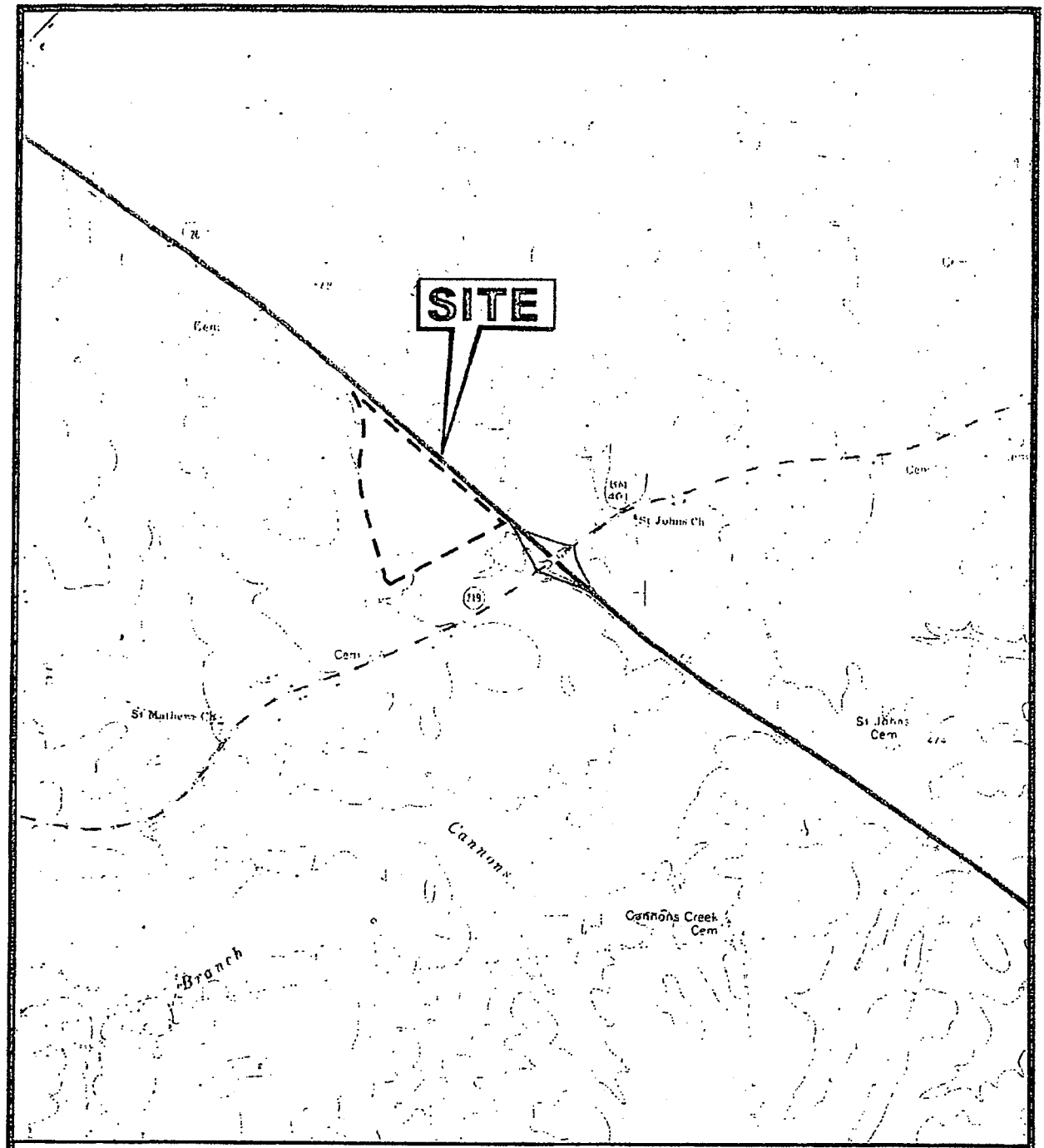
GRAPHIC SCALE
SCALE IN MILES



Topographic Map

INFORMATION TAKEN FROM:

USGS QUAD MAP
NEWBERRY EAST, SC
DATED 1997

Newberry County Landfill

B.P. Barber & Associates, Inc.
Engineers • Planners • Surveyors

Exhibit B

2.0 BACKGROUND

2.1 Gas Monitoring Network

Five (5) Gas Monitoring Probes (GMPs), GMP-3 through GMP-7, located near the east, south, and west property boundaries of the landfill (Exhibit C) are currently monitored on a quarterly basis as a requirement of post-closure monitoring in accordance with South Carolina Department of Health and Environmental Control (SCDHEC) MSW Regulations (*R.61-107.258.23 Explosive Gases Control*). Quarterly post-closure methane monitoring has been conducted by B.P. Barber & Associates, Inc. since September 2004. C&L performed the quarterly methane monitoring prior to September 2004. The results of the methane monitoring since September 2004 are provided on Table 1.

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Shed	0	0	0	0	0	0	0

Notes:
NM = not measured (Could not be located).
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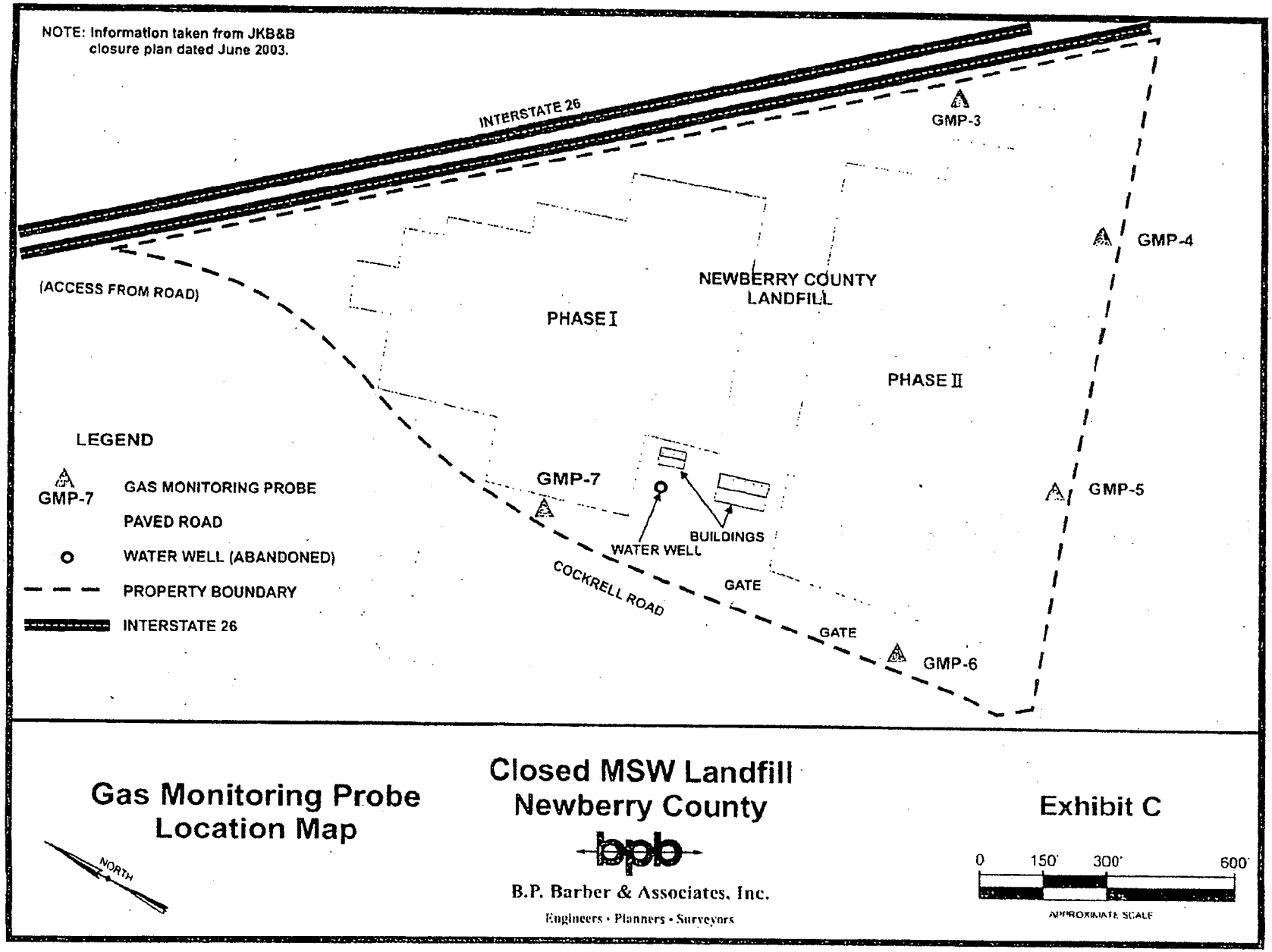
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The landfill is located on the east flank of a north-south trending ridge. The topography in the landfill area is gently rolling. Surface water drainage is primarily toward the southeast into the tributaries of Cannons Creek.

2.3 Methane Monitoring Results

B.P. Barber & Associates, Inc. began methane gas monitoring on a quarterly basis for the five (5) GMPs (GMP-3 through GMP-7) during the third quarter of 2004. The methane concentrations were measured using an MDU-420 continuous-reading methane monitor. The Lower Explosive Limit (LEL) for methane, which is 5% in air, was exceeded in the GMPs during the quarterly measurements for 2004. The quarterly methane monitoring results obtained from the GMPs are provided on Table 1, page 4. The quarterly methane readings indicate that the LEL has been exceeded along the east, south, and west landfill property boundaries.

2.4 Off-Site Landfill Gas (Methane) Investigation Recommendation

Based upon the findings of the quarterly methane monitoring, a Methane Remediation Plan was prepared in accordance with SCDHEC MSW regulation R.61.107.258.23 c. (3). The initial step of the Methane Remediation Plan was to confirm the presence of methane on the off-site properties adjacent to the GMPs that exceeded the LEL for methane. A Barhole Survey (off-site methane investigation) was recommended to investigate the off-site migration of methane from the landfill in the Methane Remediation Plan dated September 2005 prepared by B.P. Barber & Associates, Inc. The Plan was approved in a correspondence for SCDHEC dated November 2005 to Mr. Tommy Whitehead of Newberry County. The Plan recommended that the Geoprobe™ technique be used to obtain twenty (20) off-site methane readings.

The Geoprobe™ technique includes the use of a direct push rig to construct the temporary test holes. Hollow, 2-inch diameter, core rods with plastic sleeves were used to construct each Geoprobe™ test hole by first pushing the rod to a depth of approximately four (4) feet below land surface (bls). After each 4-foot core was removed from the borehole, the next push was advanced an additional four (4) feet using the hollow core rod. The push rods were advanced by this method to a depth of approximately twenty (20) feet bls unless bedrock is encountered.

Each methane reading was obtained using an MDU 420 continuous reading methane monitor and a 1-inch diameter, 6-foot section of PVC pipe which was inserted into the borehole. The pump in the MDU 420 methane gas meter extracts and reports the gas readings at an approximate rate of one (1) liter per minute. The methane meter was read continuously while a minimum of four (4) well volumes were removed from each Geoprobe™ test hole. The maximum stabilized readings were recorded for each test hole.

3.0 METHANE REMEDIATION PLAN IMPLEMENTATION

3.1 Barhole Survey (Off-site Landfill Gas Investigation)

The off-site methane investigation recommended in the Methane Remediation Plan dated September 2005 was conducted on March 23, 2006 and March 24, 2006 using the Geoprobe™ technique. The locations of the twenty (20) Geoprobe™ test locations are illustrated on Exhibit D.

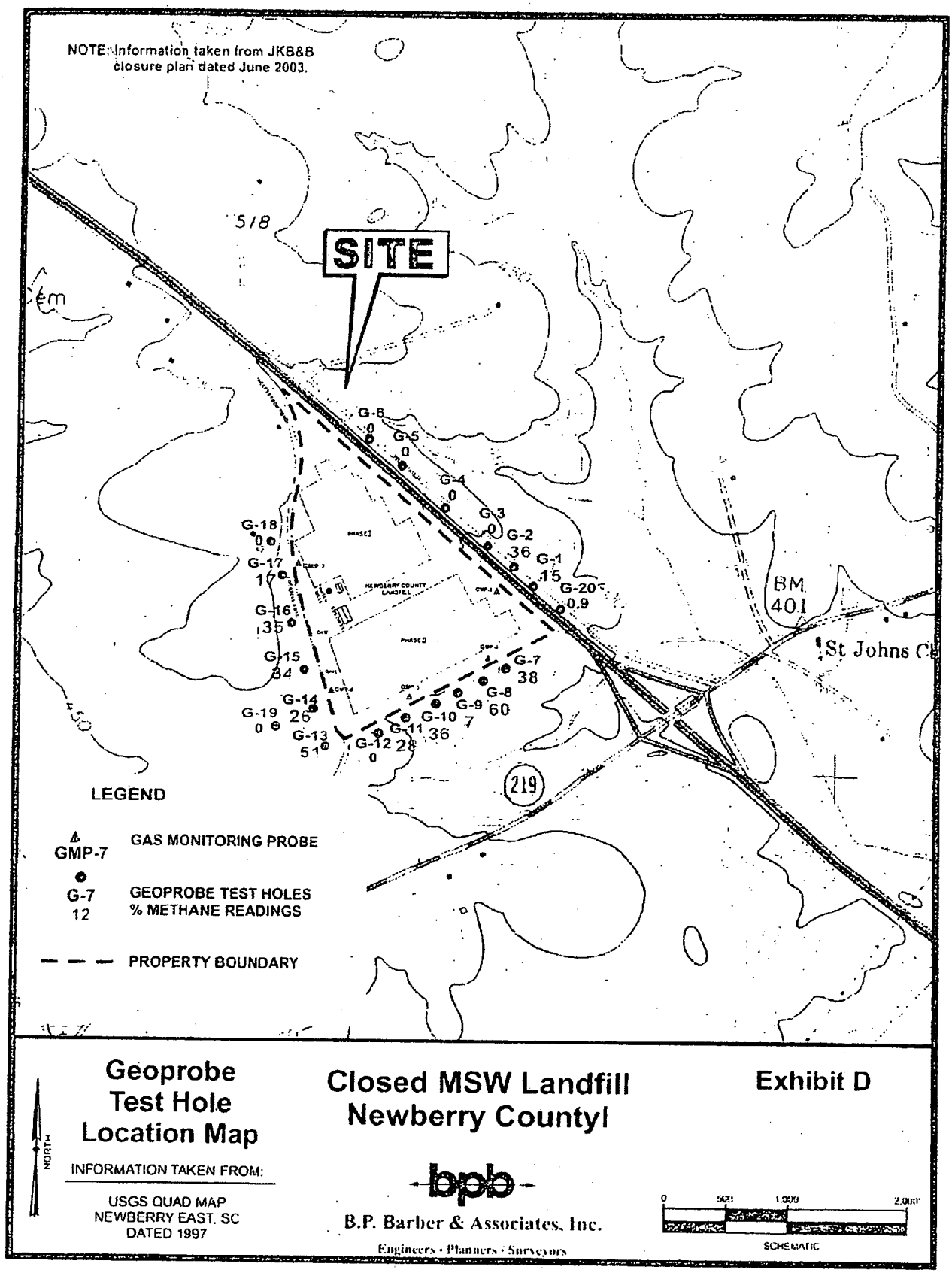
3.2 Findings

Methane was detected in excess of its LEL the Geoprobe™ test holes constructed on all the off-site properties adjacent to the Newberry County Landfill. The findings are summarized on Table 2 and are illustrated on Exhibit D.

Table 2 Off-site Geoprobe™ test hole Methane Readings

Geoprobe Test Hole No.	Test Hole Depth (ft)	Methane Reading (% Methane)
G-1	20	**15**
G-2	18	**36**
G-3	20	0
G-4	20	0
G-5	20	0
G-6	20	0
G-7	16	**38**
G-8	16	**60**
G-9	16	7
G-10	36	**36**
G-11	16	**28**
G-12	28	0
G-13	16	51
G-14	16	26
G-15	16	34
G-16	11	35
G-17	16	17
G-18	16	0
G-19	16	0
G-20	20	0.9

Notes:
Bolded and shaded readings indicate the Lower Explosive Limit (LEL) for methane 5% in air, has been exceeded


NOTE: Information taken from JKB&B closure plan dated June 2003.
SITE
518
BM 401
St Johns Ch
219
G-6 0
G-5 0
G-4 0
G-3 0
G-2 36
G-1 15
G-20 0.9
G-18 0
G-17 17
G-16 35
G-15 84
G-14 26
G-19 0
G-13 51
G-12 28
0
G-11 36
G-10 7
G-9 60
G-8
G-7 38
LEGEND
GMP-7 GAS MONITORING PROBE
G-7 12 GEOPROBE TEST HOLES % METHANE READINGS
PROPERTY BOUNDARY
NORTH
Geoprobe Test Hole Location Map
INFORMATION TAKEN FROM:
USGS QUAD MAP
NEWBERRY EAST, SC
DATED 1997
Closed MSW Landfill
Newberry County
Exhibit D
bpb
B.P. Barber & Associates, Inc.
Engineers · Planners · Surveyors
0
SCHEMATIC

4.0 POTENTIAL METHANE REMEDIATION TECHNIQUES

4.1 Expansion of Landfill Property Boundaries

Methane remediation is required to minimize methane migration across landfill property boundaries since it is an explosive gas. As a potential alternative to costly remediation, adjacent properties can be purchased to expand to point of compliance. Several Counties in South Carolina have purchased the off-site properties where the LEL was exceeded. After the off-site property is purchased, the Methane Monitoring Plan needs to be amended to show the new point of compliance and the locations of new GMPs at the new property boundaries.

4.2 Interceptor Trench

The Interceptor Trench Method includes excavation of a trench between the property boundary and the buried waste materials (source area). It has been our experience that Interceptor Trenches are most effective where the trench can be excavated to the water table and left open. Using County equipment and personnel to excavate the trench has minimized construction expenses. Where the Interceptor Trench needs to be filled, SCDHEC has endorsed tire chips for trench fill since waste tires are recycled. Typically, cost of Operation and Maintenance (O&M) of an Interceptor Trench is not a factor since it is a passive system.

4.3 Passive Gas Vents (GVs)

Passive Gas Vents (GVs) could be constructed through the waste by a driller registered in the State of South Carolina in conformance with guidelines outlined in the South Carolina Well Standards and Regulations, *(R.61-71)*. Typically, a 3-foot diameter bucket auger is used to construct each borehole through the landfill waste. The GVs are constructed approximately 25-

feet apart with 6-inch diameter, Schedule 40 PVC, flush threaded, casing and screen. Each screen is pre-slotted with 0.02-inch slots. Following placement of the casing and screen in each borehole, a gravel pack of 0.5-inch to 1.5-inch washed aggregate is placed around the screen to one (1) foot above the top of the screen. A minimum of one (1) foot of hydrated bentonite is then placed on top of the gravel pack. Native soil or cement grout is then placed above the bentonite seal to the landfill surface. A U-shaped joint of 6-inch PVC may be affixed to the well casing approximately four (4) feet above the ground surface. A description of Gas Vent Installation Techniques and a Typical Gas Vent Schematic are provided in Appendix A.

Once the GVs have been installed, several Temporary Gas Monitoring Probes (TGMPs) could be installed off-site along the property boundary where the LEL is exceeded. These TGMPs are typically monitored every two (2) weeks for a six (6) month observation period to evaluate the effectiveness of the GV system. The six (6) month observation period enables evaluation the GV system over a sustained period and various climatic conditions. After the six (6) month monitoring period, the TGMP monitoring results would be submitted to SCDHEC as a Methane Remediation Effectiveness Report along with appropriate recommendations, as necessary.

If after the six (6) month observation period it is determined that the passive system has reduced the migration of landfill gas across the property boundary to levels below the LEL, a return to quarterly methane monitoring of the GMPs and TGMPs would be recommended. If the data from the observation period indicates that the migration of landfill gas has not been significantly reduced (i.e., the levels of methane in the TGMPs has decreased to near the LEL), the need for additional remediation may be reassessed.

Contractors with specialized drilling equipment are necessary to construct the GVs and the TGMPs. Costs have been minimized where the County provides personnel and equipment for installation of the PVC, gravel, bentonite, and native soil in the boreholes immediately after each is drilled. O&M costs are not a factor since the GVs are a passive system.

4.4 Active Remediation System

An Active Methane Remediation System consists of an extensive array of GVs installed through the waste with a gas extraction and collection system, a gas treatment system, and a flare to burn the methane after extraction from the subsurface. Installation of an Active System and its O&M are costly. Installation of an Active System is not considered until the other less costly options have been attempted or if a source for the energy generated by combustion of the methane is readily available.

5.0 SELECTION OF REMEDY FOR METHANE MIGRATION MINIMIZATION

The next phase of the Methane Remediation efforts is being considered by the County. Typically, a phased approach is recommended starting with the least costly option.

APPENDIX A

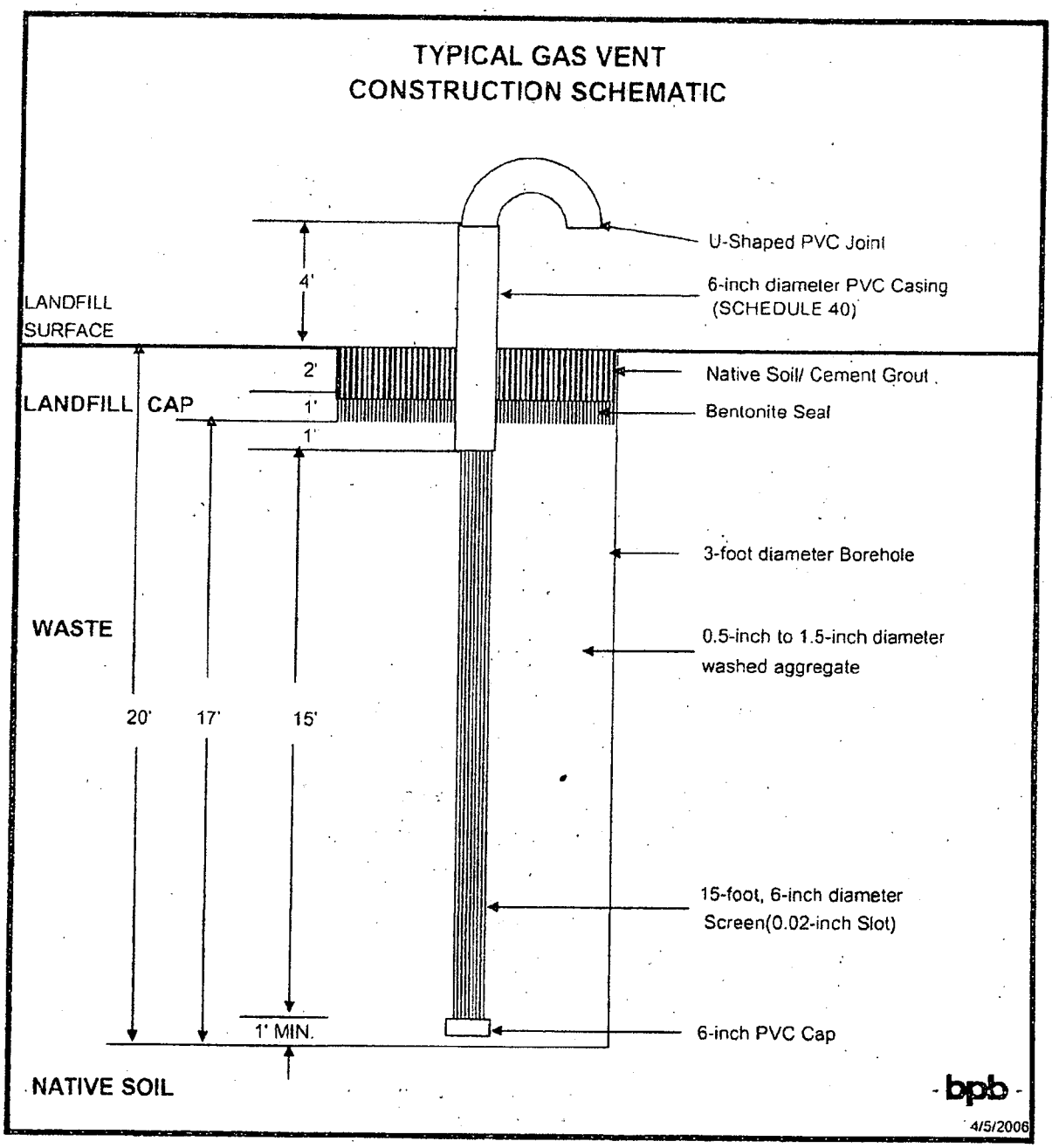
GAS VENT (GV) INSTALLATION TECHNIQUE AND TYPICAL GAS VENT CONSTRUCTION SCHEMATIC

GAS VENT (GV) INSTALLATION TECHNIQUE

A driller registered in the State of South Carolina will install the Gas Vents (GVs). Construction will conform to guidelines outlined in the South Carolina Well Standards and Regulations. (*R.61-71*). A 3-foot diameter, bucket-auger well-installation system were used to construct each borehole through the landfill waste to an approximate depth of twenty (20) feet below the landfill surface. It is anticipated that the water table will not be encountered. The depth of waste is twenty (20) feet below the landfill surface, and the landfill cap is 2-feet to 5-feet thick.

Borehole logging for each GV will consist of describing the auger cuttings on a continuous basis. The log contains information concerning the drilling method, date of installation, sampling locations, materials descriptions and placement intervals, and lithologic and waste descriptions.

The GVs were constructed of 6-inch diameter, Schedule 40 PVC, flush threaded, casing and screen. Each 15-foot screen was machine-slotted with 0.02-inch slots. Prior to insertion of the screen and casing into the borehole, a minimum of 0.5-inch to 1.5-inch washed aggregate were placed below the screen to ensure a firm footing and unrestricted flow under the screen. Following placement of the casing and 15-foot screen in each borehole, a gravel pack of 0.5-inch to 1.5-inch washed aggregate were placed around the screen to one (1) foot above the top of the screen. A minimum of one (1) foot of hydrated bentonite were placed on top of the gravel pack. Cement grout were placed above the bentonite seal to the landfill surface. A U-shaped joint of 6-inch PVC were affixed to the well casing approximately four (4) feet above the ground surface. Each GV were clearly and neatly labeled using waterproof paint and a stencil. A 1-inch hole was drilled into the side of each GV approximately three (3) feet above ground surface to facilitate methane monitoring.


TYPICAL GAS VENT
CONSTRUCTION SCHEMATIC
U-Shaped PVC Joint
6-inch diameter PVC Casing
(SCHEDULE 40)
4'
LANDFILL
SURFACE
2'
LANDFILL CAP
1'
1'
Native Soil/ Cement Grout
Bentonite Seal
3-foot diameter Borehole
WASTE
0.5-inch to 1.5-inch diameter
washed aggregate
20'
17'
15'
15-foot, 6-inch diameter
Screen(0.02-inch Slot)
1' MIN.
6-inch PVC Cap
NATIVE SOIL
bpb
4/5/2006

12 A

20389

B. P. BARBER & ASSOCIATES, INC.

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)
P. O. BOX 1116
COLUMBIA, SOUTH CAROLINA 29202-1116
TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

May 24, 2006

RECEIVED

MAY 25 2006

HYDROGEOLOGY

Ms. Melanie Murphy, Hydrogeologist
Solid Waste Section
Division of Hydrogeology
Bureau of Land and Waste Management
SCDHEC
2600 Bull Street
Columbia, SC 29201

RE: Newberry County Landfill
Proposed Methane Remediation Trench
Installation
Project No. 04463

Dear Melanie:

As a follow-up to the Off-site Methane Investigation Report for the Newberry County Landfill dated May 2006 prepared by B.P. Barber & Associates, Inc., approval is requested for five (5) Temporary Gas Monitoring Probes (TGMPs) to monitor the effectiveness of the interceptor trench to be installed between the waste and the landfill property boundary. The installation of the Interceptor Trench was proposed as an alternative for methane remediation in the Methane Remediation Plan for the Newberry County Landfill dated September 2005 prepared by B.P. Barber & Associates, Inc. and the Off-site Methane Investigation Report for the Newberry County Landfill dated May 2006 prepared by B.P. Barber & Associates, Inc. The County has decided to pursue Interceptor Trench installation to minimize off-site methane migration.

County equipment and personnel will be used to excavate the trench. The trench will be the width of a track hoe bucket (approximately 2.5 to 3 feet wide) and the depth of its arm (approximately 20 feet). A schematic for trench installation is provided on Exhibit A. The trench will be installed on the landfill property where the off-site methane readings exceeded the Lower Explosive Limit (LEL) for methane (Exhibit B). As the trench is being excavated, it will be immediately backfilled with recycled tire chips. Vertical passive PVC vents may be added to the trench to maximize vertical landfill gas migration. The excavated soil will be placed in landfill cap depressions. It is estimated that excavation of the trench should take approximately four (4) weeks. If the County receives authorization to proceed by June 15, 2006 and the weather cooperates, the excavation should be complete by July 15, 2006.

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To monitor the effectiveness of the methane remediation trench, five (5) TGMPs are proposed where off-site methane readings were the greatest (Exhibit B). A construction schematic for the five (5) off-site TGMPs is provided on Exhibit C.

The County is prepared to implement this Plan. Your prompt attention and expeditious approval would be appreciated. If you have any questions or comments, regarding the above information, please do not hesitate to contact us.

Very truly yours,

B. P. BARBER & ASSOCIATES, INC.

Michael E. Glowacz, P.G.
Hydrogeologist

Enclosures

cc: Mr. Tommy Whitehead, Newberry County, w/enclosures
Mr. Gene Klugh, Newberry County, w/enclosures
Mr. John Culbreath, P.E., B.P. Barber & Associates, Inc.,
Mr. Rudy Curtis, B.P. Barber & Associates, Inc.

COUNTY OF NEWBERRY

DEPARTMENT OF PUBLIC WORKS
TOMMY C. WHITEHEAD, DIRECTOR
11374 SC HIGHWAY 34
NEWBERRY, SOUTH CAROLINA 29108
www.newberrycounty.net
VOICE: (803) 321-2180
FAX (803) 321-2383

RECEIVED
JUN - 2
West Electrical Contractors of Newberry, Inc.

May 30, 2006

West/Hobby, LLC
@ 591 Cockrell Dr. /Hwy 643
P.O. Box 734
Newberry, SC 29108

RE: Newberry County Landfill
Access Request for Subsurface Testing

Dear Billye:

We have received correspondence from the South Carolina Department of Health and Environmental Control (SCDHEC) requesting additional subsurface testing and monitoring outside the boundary of the Newbery County landfill. In May 2006, you gave your permission for testing on your property. SCDHEC is requesting that we test on a regular basis; therefore, we would like to install two (2) 1-inch diameter monitoring probes that will be monitored twice monthly. At the surface level, only a three inch plate will be visible to cover and protect the probe. We are requesting your permission for access to perform these tests since your property is located adjacent to the landfill.

Please indicate your agreement for access by signing below and returning the signed copy to me at the address indicated on the letterhead. Please include your phone number so we can contact you to coordinate the time and date of testing.

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If you have any questions or comments regarding the above information, please do not hesitate to contact us.

Very truly yours,

Newberry County Public Works.

Tommy C Whitehead

Mr. Tommy Whitehead, Director

Signature

6/5/06
Date

276-1884
Phone Number

20389

TERRY ENVIRONMENTAL SERVICES
P.O. BOX 25 • SUMMERVILLE, SC 29484 • 843-873-8200 • WWW.TERRYENVIRONMENTAL.COM

RECEIVED
JAN 28 2008
HYDROGEOLOGY

January 24, 2008

Newberry County Public Works Department
P.O. Box 156
Newberry, South Carolina 29108

Attention: Mr. Tommy Whitehead, Public Works Director

Reference: **SEMI-ANNUAL METHANE AND GROUNDWATER MONITORING**
Former Newberry County MSW Landfill, DWP-117
432 Cockrell Road, Newberry, South Carolina
TERRY Project #2314

Dear Mr. Whitehead,

TERRY Environmental Services, Inc. (TERRY) has completed the semi-annual methane and groundwater monitoring at the former MSW landfill located at 432 Cockrell Road, Newberry, South Carolina. Copies of the report are attached for your use. As per your request, a copy has been forwarded to the South Carolina Department of Health and Environmental Control (SCDHEC) for review.

Methane readings persist in several monitoring points at levels in excess of the action level of 5% of the LEL. Additional methane mitigation efforts will be required. The next suggested step is the installation of passive methane vent wells.

Groundwater samples collected from the site indicated two (2) compounds were present in excess of the US EPA MCL for drinking water. In addition, methylene chloride was detected in two (2) off-site wells near Cannons Creek. It appears that groundwater contamination from the landfill is migrating with the groundwater towards Cannons Creek. A sample from the creek did not indicate the presence of any detectable compounds suggesting that either the contaminants have not reached the creek or there is sufficient flow in the creek to dilute the concentrations to non-detectable levels.

It is possible that the methane gas is acting as a "carrier gas" for these compounds and that the mitigation of off-site methane gas migration could effect a positive reduction in the compounds detected in the groundwater.

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If there are any questions regarding the information in the attached report, please contact us at (843) 873-8200. We appreciate the opportunity to provide environmental services to Newberry County.

Sincerely,

TERRY Environmental Services, Inc.

Bryan P. Williams, P.G.
Vice President, Technology Development

Jason A. Terry, P.G.
President

CC: Mr. Laurence Leblang, SCDHEC, 2600 Bull Street, Columbia, SC 29201

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D H E C
PROMOTE PROTECT PROSPER

C. Earl Hunter, Commissioner
Promoting and protecting the health of the public and the environment

February 26, 2008

Mr. Tommy Whitehead, Public Works Director
P.O Box 156
Newberry, SC 29108

Re: Semi-Annual Methane and Groundwater Monitoring Report
Dated January 24, 2008
Former Newberry County MSW Landfill
Permit # DWP 117
Newberry County

Dear Mr. Whitehead:

The above referenced document has been reviewed with regard to the groundwater monitoring requirements of R.61-107.258 Subpart E of the Solid Waste Management Regulations and the referenced solid waste permit. It is evident that offsite groundwater contamination assessment is necessary. Therefore, the Department requests that an Assessment Plan (AP) be submitted on or before March 29, 2008, that addresses the following comments regarding groundwater assessment:

Groundwater Assessment

1. Benzene was detected at concentrations in the groundwater samples collected from monitoring wells TMW-5 and TMW-11 that exceeded the established USEPA maximum contaminant limit (MCL) of 5 micrograms per liter (µg/L). A historical review of groundwater data revealed that these current concentrations are the first detections of VOCs in these monitoring wells. Therefore, in accordance with R. 61-107.258.54, monitoring wells TMW-5 and TMW-11 should be resampled within 30 days of receipt of the laboratory results. Results from the resampling should be submitted in the AP, that is due no later than March 29, 2008. If the current data are validated, then a recommendation for further delineation should be presented in the AP.

2. Per R.61-107.25855.i.(1)(c), offsite groundwater assessment is needed downgradient (to the south) of TMW-6 and TMW-7R due to persistent volatile organic compound (VOC) detections above established USEPA MCLs (benzene in TMW-6 and methylene chloride in MW-7R). Therefore, two monitoring wells should be installed downgradient (southeast) of TMW-6 and TMW-7R. The locations and well construction details should be included in the AP.

3. The Department has reviewed and approved the locations and construction details for proposed monitoring wells TMW-12 and TMW-13 in order to delineate the offsite VOC plume. Please include this information in the AP. The Department will issue

the monitoring well installation permit for all proposed monitoring wells that are necessary for offsite delineation at that time.

Methane Mitigation

4. The Department has reviewed and approved the locations and construction details of thirty-two (32) passive gas vents in order to lower onsite methane levels. Construction should be completed as detailed in the above referenced document and per the South Carolina Oil and Gas Exploration, Drilling, and Production Regulation, R. 121-8, et seq., Code of Laws of South Carolina, 1976, as amended. Please see the attached passive gas vent installation permit. Additionally, the Department approves the six (6) month evaluation period in order to evaluate the effectiveness of the passive gas vents. The Landfill Gas and Remediation Effectiveness Report shall be submitted as part of the 2007 Annual Groundwater Monitoring Report, at which time the need for Phase II (installing passive gas vents in the interior of the landfill) will be evaluated.

If I may be of further assistance, please contact me at (803) 896-4196.

Sincerely,

Mary K. Varga, Hydrogeologist
Solid Waste Groundwater Section
Division of Hydrogeology
Bureau of Land and Waste Management

Cc: Bryan Williams, P.G., Terry Environmental
Al Peeples, Solid Waste Consultant, Region 3 EQC (Columbia)
John Schnabel, P.E., SW Permitting Section
Linda Corley, Division of Hydrogeology
Bureau File #20389

Enclosure: Passive Landfill Gas Vent Installation Permit

sw080126.mkv

REVISED METHANE CORRECTIVE ACTION PLAN

FORMER NEWBERRY COUNTY LANDFILL SITE
SCDHEC Solid Waste Permit #: DWP-117
432 Cockrell Road
Newberry, South Carolina

Prepared for:

Mr. Kyle Nash, Public Works Director
Newberry County
P.O. Box 156
Newberry, South Carolina 29108

Prepared by:

TERRY Environmental Services
CLIENTS FIRST ALWAYS

P.O. Box 25
Summerville, South Carolina 29484
(843) 873-8200
Fax (843) 873-8765
www.terryenvironmental.com

TERRY Project # 2314A

JASON A. TERRY, PG
PRESIDENT

JOHN H. M COX, PG, CGWP
SENIOR PROJECT MANAGER

June 2009

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County 1351

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1.0 INTRODUCTION

This Revised Corrective Action plan is submitted to the South Carolina Department of Health and Environmental Control (SCDHEC) Bureau of Land and Waste Management in response to comments provided to Newberry County Public Works (Public Works) relating to on-going quarterly monitoring at the closed Newberry County Class 3 Landfill (Solid Waste Permit DWP-117) in correspondence dated May 13, 2009 (Abernathy to Nash).

The subject facility is a closed municipal solid waste landfill (MSWL) located at 432 Cockrell Road about 2 miles east of the City of Newberry in Newberry County, South Carolina. The facility is bounded by Interstate Highway 26 (I-26) to the east, County Road 643 (Cockrell Road) to the west and a private real estate parcel to the south. The site location is shown in Figure 1 (Appendix 1).

The subject MSWL reportedly received wastes until December 1993 and is currently in RCRA (Resource Conservation and Recovery Act of 1976) subtitle D post-closure status. The property is leased to the Triangle Gun Club and is used for skeet shooting on a periodic basis. Two structures are situated on the site: a small clubhouse and a storage shed. The adjacent land is comprised of a mix of rural, residential and commercial uses. The contiguous parcel to the south of the MSWL consists of undeveloped agricultural (timber) land.

The MSWL is sited on the east flank of a north-south trending ridge and inter-fluvial area between Rocky Branch to the west and Cannons Creek to the east. Previous studies indicate that groundwater flow across the site is to the southeast with discharge to Cannons Creek. Site lithology consists of a clay residuum and saprolite weathered from metamorphic rocks that overlie a granitic intrusive unit. Previously completed borehole data indicate the saprolite unit ranges from about 26 feet to 40 feet in thickness.

1.1 Recent Methane Assessment Activities

TERRY Environmental Services, Inc. (TERRY) monitored methane gas concentrations within the on-site structures and existing methane gas monitoring probe network (GMP-3, GMP-4, GMP-5, GMP-6 and GMP-7) as part of the 2008 annual reporting. RCRA subtitle D requires that methane concentrations at facility boundaries (point of compliance) not exceed 5% of the lower explosive limit (LEL). The most recently completed methane monitoring event (March 12, 2009) indicated that the LEL was exceeded in GMP-5 (63% of LEL). GMP-4 was not monitored during this event as it could not be found by TERRY personnel. Recorded methane concentrations in the other monitoring points (GMP- 3, GMP-6 and GMP-7) were less than 5% of LEL.

Methane concentrations at GMP-5 had increased steadily during 2007 (except during the third quarter); however, the 2008 annual report indicated substantial methane concentration reductions compared with the previous data that were collected during December 2007. The observed methane concentration reductions were attributed to a previously constructed interceptor trench situated between the landfill cells and monitoring probes GMP-3, GMP-4, GMP-5 and GMP-6. However, it was concluded that the inceptor trench was not effective in reducing methane concentration and/or preventing methane migration away from the Phase II landfill cells in the vicinity of GMP-5.

Methane data collected during June, September and December 2007 indicated concentrations greater than 100% of LEL at GMP-4. Hence, recent data suggests that the interceptor trench is likewise not adequately controlling methane migration in the vicinity of GMP-4. However, the recorded methane concentration at GMP-4 was substantially less during the first quarter of 2007 (6.45% of LEL) compared with those values recorded during the remaining three quarters of 2007.

Likewise, elevated methane concentrations were reported in GMP-6 during the 2007 quarterly monitoring events (6.02%, >100%, >100%, and >100% respectively) but were found to be substantially reduced during monitoring conducted on March 12, 2009 when the methane concentration was reported to be 3% of LEL.

Figure 2 (Appendix 1) provides a plan view of the facility showing the locations of the gas monitoring points, field data collected during the March 2009 monitoring event, and the location of the existing methane interceptor trench.

2.0 METHANE CORRECTIVE ACTION HISTORY

SCDHEC correspondence dated July 3, 2006 granted approval for the construction of a passive methane gas interceptor trench as proposed by a previous consultant (B.P. Barber and Associates) to Newberry County Public Works. The correspondence also granted approval for the installation of the gas monitoring network that is currently in place at the facility. SCDHEC stipulated that construction of the trench commence within 30 days of Public Works' receipt of the subject correspondence and presumably this requirement was met by Public Works.

The results of the first quarter 2007 methane monitoring event and report to SCDHEC triggered correspondence from SCDHEC dated June 7, 2007 (Leblang to Whitehead) acknowledging some reduction in methane concentrations attributable to the passive methane vent trench, but also expressed concerns that methane concentrations remained elevated in some areas. SCDHEC indicated that should methane concentrations not decrease below the required 5% LEL, an expansion of the existing trench or other corrective action would be necessary.

Construction of the initial interceptor trench constitutes the extent of corrective actions completed at the facility to date.

3.0 REVISED METHANE CORRECTIVE ACTION

The 2007 fourth quarter methane and groundwater monitoring report prepared by TERRY (January 2008) recommended installation of passive methane gas vents along the perimeter of the landfill cells in a phased approach. During the first phase, 32 passive vents would be installed and methane monitoring would be conducted on a bi-weekly frequency for a period of six months to evaluate the effectiveness of the passive vent array. An additional 30 passive vents would be installed as a second phase if warranted based on the results of the six-month methane monitoring program.

A subsequent correspondence from SCDHEC dated February 26, 2008 (Varga to Whitehead) granted approval for installation of up to 32 passive methane gas vents. Later correspondence from SCDHEC (Abernathy to Nash; May 13, 2009) recommended installation of a select number of vents or other methodology designed to reduce methane concentrations reported in GMP-5.

Although recorded methane concentrations have, for the most part, indicated a declining trend, the existing passive trench system is not adequately providing control and reduction of methane emanating from the landfill cells. The specific reason(s) for this is (are) unknown and beyond the intended scope of this revised plan; however, one may speculate that the practical depth of cut limitation of a conventional track hoe are such that methane is continuing to migrate away from the landfill cells beneath the invert elevation of the existing passive vent trench.

Two approaches for control and reduction of methane at the subject landfill were preliminarily evaluated: 1) installation of a second passive vent trench and 2) installation of vertical passive gas vents. Active methane venting/recovery systems for the site have not been evaluated to date.

3.1 Passive Gas Venting Trench

Under this scenario a second passive venting trench would be constructed between the existing trench and the Phase II landfill cell boundaries. For the purpose of evaluation, it was assumed that such a trench would extend from just northwest of GMP-3 on the northeast side of the cells to just north of GMP-6 on the southwest side of the Phase II cells or approximately 2,200 linear feet. The average required depth of cut was assumed to be 30 feet and the width of cut was assumed to be 4 feet.

The trench backfill was assumed to consist of Number 5 stone and it was estimated that just less than 9,800 cubic yards of backfill would be required or approximately 13,720 tons (assuming 1.4 tons/cubic yard). Although, a trench of lesser linear dimension could be considered (with the focus on the vicinity of GMP-5), the overall

What if they need to move?

County 1357

effectiveness of such would be questionable. However, a more pressing concern was the depth of cut limitation of conventional track hoes, which is about 20 feet maximum.

3.2 Vertical Passive Gas Vents

Given the practical depth of cut limitations of readily available conventional trench equipment as well as the substantial backfill volume requirements, a network of vertical passive gas vents was evaluated and determined to be the most practical option for control of landfill gas at the site.

Public Works proposes to initially install a total of six (6) passive gas vents on approximately 150-feet centers along the perimeter of the Phase II cells from just north of GMP-6 to just northeast of GMP-5 as depicted in Figure 3 of Appendix 1.

The vents would be constructed by first drilling a nominal 36-inch diameter borehole through the landfill cover material to an approximate depth of 30 feet (or less if saturated conditions are encountered at a shallower depth) with a bucket auger or similar type drill rig. A slotted, six-inch diameter, schedule 40 PVC riser would be inserted into the borehole; the riser section would extend to within approximately four feet of the top of the landfill cover and the annular space between the exterior of the riser and borehole wall would be backfilled with pea gravel or similar aggregate. The backfill would extend upward to a minimum of one-foot above the slotted riser and bentonite and cement seal would be placed immediately above the backfill material.

A non-slotted riser would extend from the top of the slotted riser section to an elevation of approximately four-feet above grade and finished with a 180-degree joint section to preclude rain water from entering the vent. A typical gas vent schematic is provided in Figure 4 of Appendix 1.

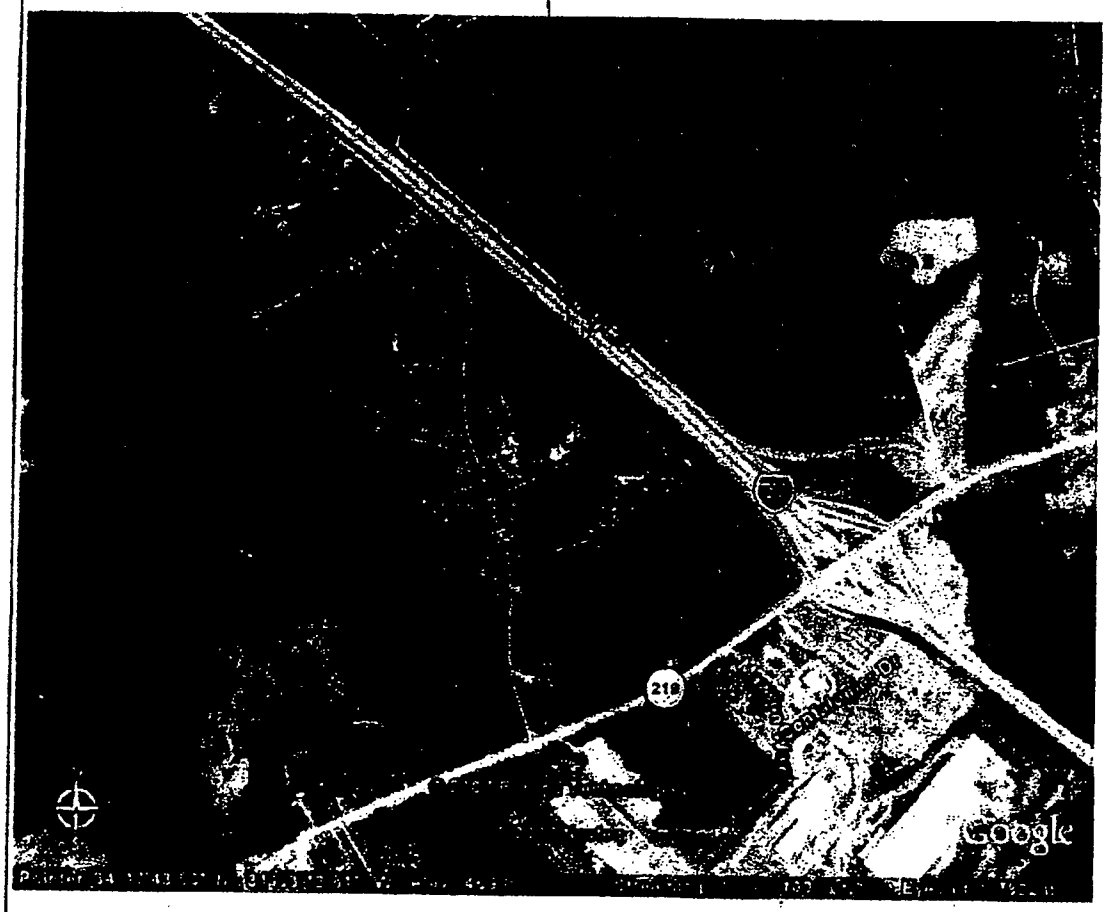
3.3 Status of GMP-4

During the most recent methane monitoring event conducted during March 2009 gas monitoring point GMP-4 could not be located. Public Works personnel searched for GMP-4 during the week of June 14, 2009 and were successful in locating it. Accordingly, GMP-4 will be included in future quarterly gas monitoring events.

APPENDIX 1

Figures

FORMER NEWBERRY CO. MSW LANDFILL
SCDHEC Solid Waste Permit #: DWP-117
432 Cockrell Road,Newberry, SC



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PO Box 25
Summerville, South Carolina 29484
(800) 325-0805 (843)-873-8300 fax (843)-873-8765

FIGURE 1
SITE LOCATION

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

SIZE	TERRY Project No.	DWG NO.	REV
B	2314A	Figure 1 Site Location.dwg	

SCALE: NOT TO SCALE

DATE: JUNE 2009

County 1360

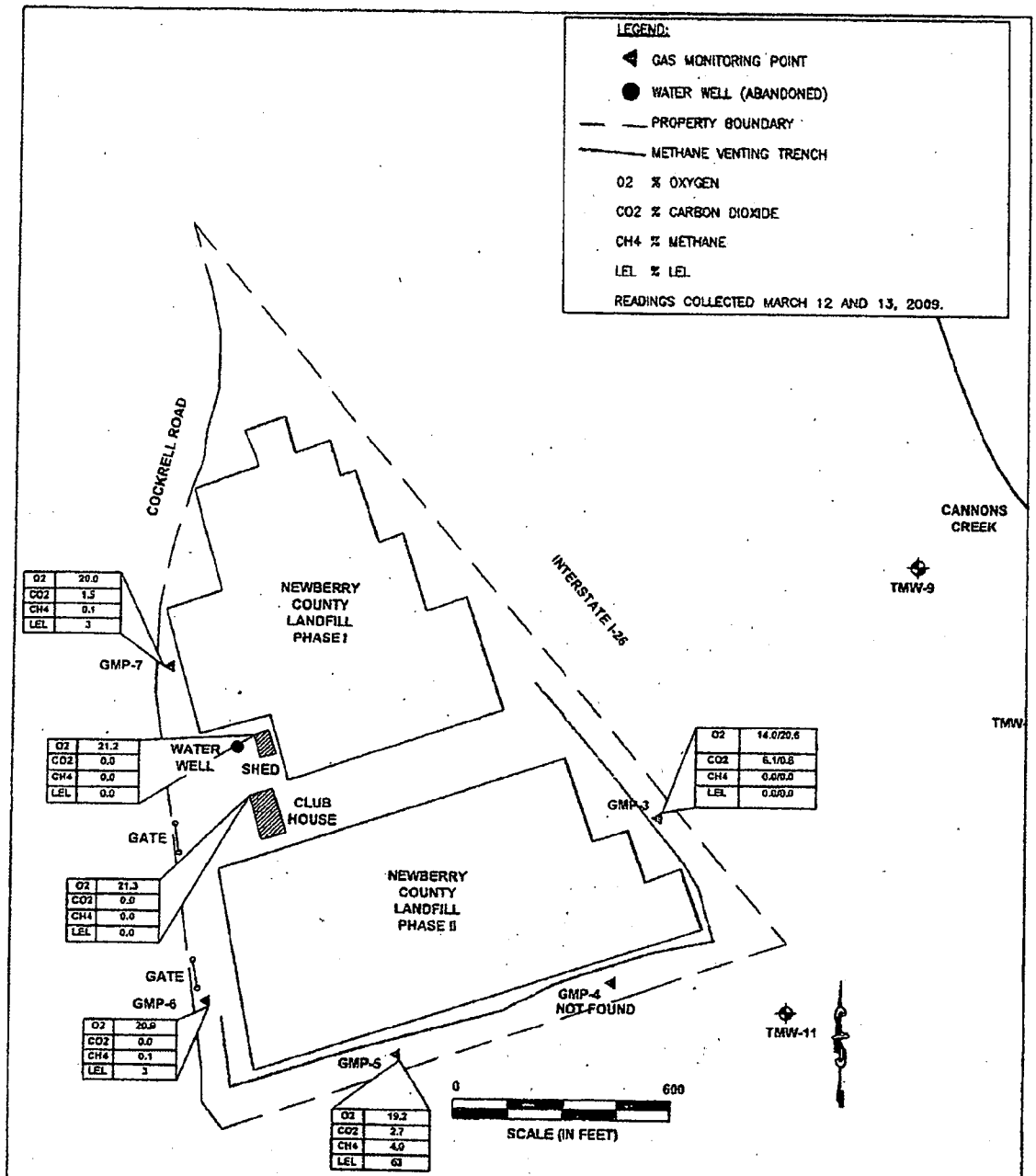

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FIGURE 2
SITE PLAN

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

SIZE	TERRY Project No.	DWG NO.	REV
B	2314A		

SCALE: 1 inch = 400 feet

DATE: JUNE 2009

County 1361

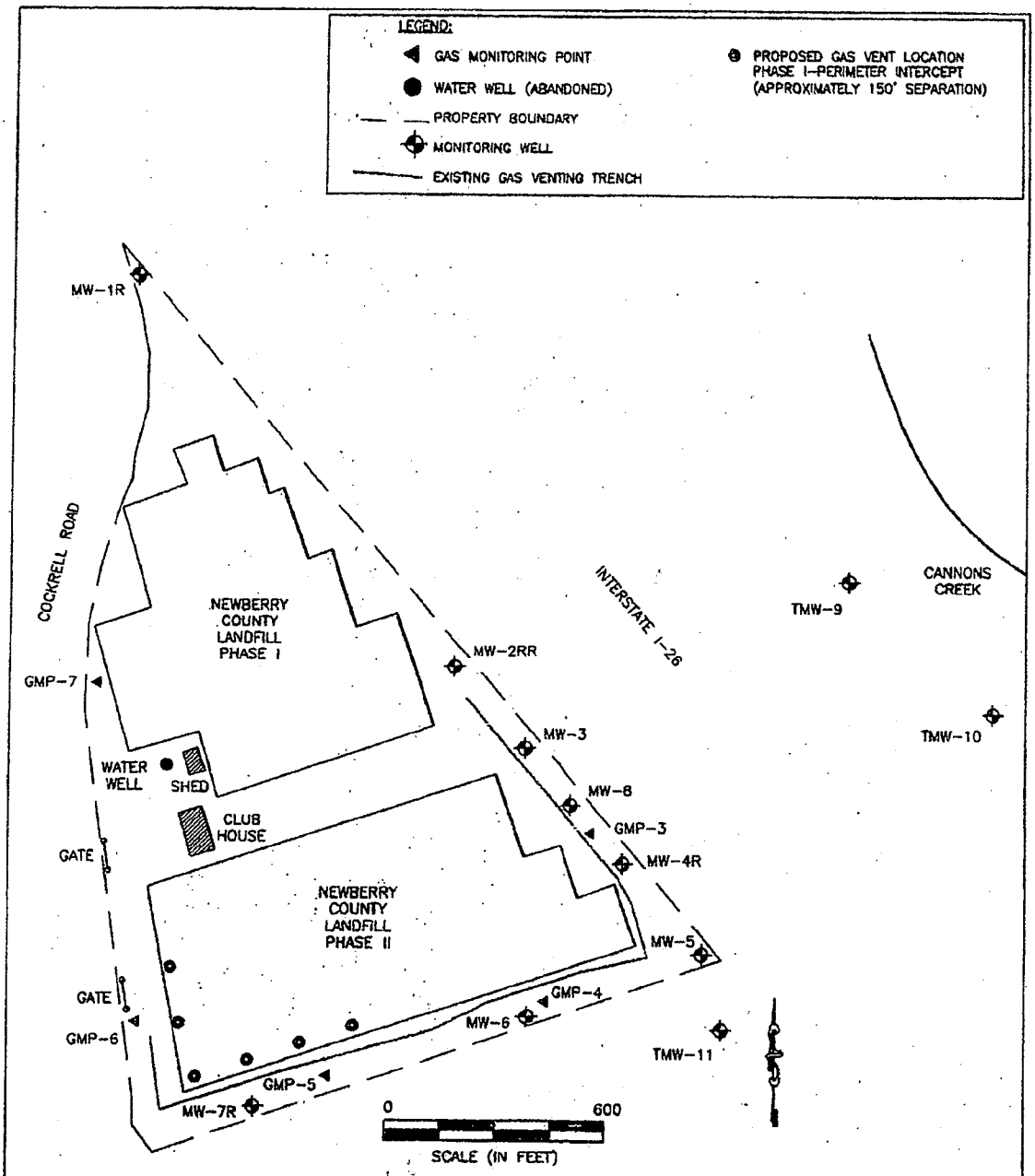

FIGURE 3
PROPOSED METHANE VENT LOCATIONS
FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

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(800) 323-0605 (843)-873-8200 fax (843)-873-8765

SIZE	TERRY Project No.	DWG NO.	REV
B	2314A		

SCALE: 1 inch = 400 feet

DATE: JUNE 2009

County 1362

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 12 day of Jan., 2011, by and between West/Hobby LLC Hobby Development Company (hereinafter "Seller"), whose address is P.O. Box 734, Newberry, SC 29108, and Kiswire, Inc. (hereinafter "Purchaser"), whose address is 257 Mawsons Way, Newberry, South Carolina 29108.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Property. Seller agrees to sell and Purchaser agrees to purchase, upon the terms and conditions hereinafter set forth, that certain parcel of land consisting of approximately 40.700 acres located on Cockrell Drive, off of SC 219 in Newberry County, South Carolina, and being more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), together with all easements, rights-of-way, licenses, permits and other rights of Seller relating to the Property.

2. Purchase Price. The purchase price shall be Five Hundred Twenty Thousand Dollars ($520,000.00) (the "Purchase Price") and shall be payable as follows:

(a) Upon execution of this Agreement, Purchaser shall pay to Haynsworth Sinkler Boyd, P.A. (the "Escrow Agent") as earnest money the sum of $10,000 (the "Earnest Money"). The Escrow Agent shall not be obligated to deposit the Earnest Money in an interest-bearing account nor liable for failure to do so. However, if invested in an interest-bearing account, all interest shall be paid to Purchaser. At Closing, the Earnest Money shall be credited against the Purchase Price and disbursed to Seller. In the event the transaction contemplated herein does not close, Escrow Agent shall disburse the Earnest Money as hereinafter provided.

(b) At Closing, Purchaser shall pay to Seller the balance of the Purchase Price, subject to adjustments as set forth herein, by federal bank wire transfer or by cashier's check or attorney escrow check.

3. Feasibility Study. Any provision hereof to the contrary notwithstanding, Purchaser shall have until one hundred twenty (120) days after the date of this Agreement (the "Feasibility Study Period") to investigate the feasibility of owning and developing the Property, including in Purchaser's discretion financial analyses, feasibility studies, surveys, title examination, engineering tests, appraisals and such other tests, evaluations and examinations of the Property as Purchaser may desire. Without limiting the generality of the foregoing, during the Feasibility Study Period Purchaser shall review to the extent it deems necessary or desirable zoning and governmental requirements, environmental matters, appraisals, tree removal ordinances, and other matters affecting the Property. Purchaser will also attempt to obtain, to the extent it deems necessary or desirable, certain financial incentives from the county or state government. If on or before the conclusion of the Feasibility Study Period Purchaser determines that it does not desire to purchase the Property for any reason or no reason, Purchaser may on or before the end of the Feasibility Study Period terminate this Agreement by written notice to Seller, whereupon Escrow Agent shall disburse $100 to Seller as consideration for executing this Agreement and the balance of the

ALL-STATE LEGAL
PLAINTIFF'S EXHIBIT
12

Earnest Money shall be refunded to Purchaser. In such event, this Agreement shall be deemed terminated, and Purchaser shall have no obligation to purchase the Property. In the event Purchaser does not terminate this Agreement within said time period, this Agreement shall remain in full force and effect, and all matters concerning the Property shall be deemed acceptable to Purchaser. Within ten (10) days of execution of this Agreement, Seller will deliver to Purchaser copies of any title insurance policies, engineering reports (including reports of test borings), surveys, geotechnical or environmental reports and such other documents relating to the Property as are in Seller's possession or readily available to Seller. Purchaser may, by written notice to Seller, shorten the Feasibility Study Period.

4. Title and Survey. Seller shall satisfy any mortgage lien on the Property at the Closing. Purchaser shall have the right, at its expense, to make such examinations of title and survey as it deems necessary or desirable. Purchaser shall notify Seller on or before the end of the Feasibility Study Period of its objection to any matters of title (such objections being referred to as the "Title Exceptions") and of its objection to any matters of survey (such objections being referred to as the "Survey Exceptions"). Seller shall notify Purchaser within ten (10) days after receipt of Purchaser's notice whether it will be able to cure or remove the Title Exceptions and Survey Exceptions, as applicable prior to Closing (with the exception of any mortgage liens which Seller agrees to satisfy at Closing). If Seller shall notify Purchaser that it is unable or unwilling to cure or remove any Title Exceptions or Survey Exceptions prior to Closing, then Purchaser shall have the option to terminate this Agreement, which shall be exercised within ten (10) days after receipt of Seller's notice, whereupon the Earnest Money will be refunded to Purchaser. If Purchaser does not give such notice of termination within said time, Purchaser shall be deemed to have waived such Title Exceptions and Survey Exceptions. All matters of title and survey as to which Purchaser does not give notice of a Title Exception or Survey Exception within the time period specified above, together with all Title Exceptions and Survey Exceptions which Purchaser is deemed to have waived pursuant to the preceding sentence, and together with the lien for current year property taxes not yet due and payable, are referred to collectively herein as the "Permitted Exceptions."

5. Closing and Conditions to Closing.

(a) Closing shall be held on a date to be determined by Purchaser upon 15 days written notice to Seller, but not later than thirty (30) days after the end of the Feasibility Study Period (the "Closing"). Closing shall take place at the offices of Haynsworth Sinkler Boyd, P.A., 1201 Main Street, Suite 2200, Columbia, South Carolina 29201 or at such other place as the parties may otherwise agree.

(b) Purchaser's obligations to purchase the Property are subject tot the following conditions:

(i) All representations and warranties of Seller in this Agreement shall be true and correct in all materials respects as of the Closing Date and Seller shall have performed all agreements required to be performed by Seller hereunder.

(ii) There shall have been no material adverse change in the physical condition of the Property;

(iii) An easement for the provision of sewer service shall have been granted over adjacent property to the satisfaction of Purchaser and the City of Newberry so that Purchaser shall be assured of sewer service to the Property; AND

(iv) Approval of all economic development incentives from the State of South Carolina, Newberry County, and any third parties.

In the event that the conditions set forth above are not satisfied prior to the Closing, Purchaser may waive any unsatisfied condition in writing or, by written notice, terminate this Agreement in which event the Earnest Money shall be returned to Purchaser and the parties shall have no further obligations hereunder, except for those rights and obligations which by their express terms are to survive termination and except to the extent the failure of such condition was the result of a default under this Agreement by Seller.

6. Seller's Closing Documents. Seller shall execute and deliver the following to Purchaser at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Deed. A general warranty deed, subject only to the Permitted Exceptions. The deed shall be in proper form for recording and shall be duly executed, witnessed and acknowledged.

(c) Affidavits as to Liens and Possession. Affidavits and indemnification agreements, for the benefit of Purchaser and Purchaser's title insurance company (in the form required by the title insurance company), that there are no amounts owed for labor, materials or services respecting the Property and that there are no parties in possession.

(d) Residency Certificate. Certificates, certifying under oath, that the Seller is not a "non-resident" within the meaning of S.C. Code § 12-8-580 nor a "foreign person" as defined in Section 1445 of the U.S. Internal Revenue Code. In the event Seller fails to deliver the certificates referred to above or fails to provide evidence suitable to Purchaser of exemption from the S.C. and IRS Code Sections referenced above then Purchaser shall deduct and withhold from the cash portion of the purchase price the amounts required by said Code Sections and remit said amounts with the required forms to the Internal Revenue Service and the South Carolina Department of Revenue and Purchaser shall receive a credit against the cash portion of the purchase price for the amounts so withheld.

(e) Evidence of Authority. Seller shall provide a certificate, executed by an appropriate officer of Seller, with attached copies of resolutions as appropriate, evidencing that the sale of the Property has been properly approved by the governing body of Seller.

(f) Certificate of Existence. Current certificate of existence from the State of South Carolina.

(g) Tax Compliance Letter. A current tax compliance letter issued by the South Carolina Department of Revenue.

(h) Other Closing Documents. Such other closing documents as are customarily executed by a seller at a South Carolina real estate closing.

(i) A valid and sufficient easement for the provision of sewer service at the Property, to the satisfaction of Purchaser in its sole discretion.

7. Purchaser's Closing Documents. Purchaser shall execute and deliver the following to Seller at Closing:

(a) Settlement Statement. A settlement statement reflecting the Purchase Price, prorations and closing costs as provided herein.

(b) Other Closing Documents. Such other closing documents as are customarily executed by a purchaser at a South Carolina real estate closing.

8. Closing Costs, Taxes and Assessments. Each of the parties shall pay its own attorney's fees arising from this transaction. Seller shall pay the transfer tax on the deed. Purchaser shall pay all other closing costs, including recording fees. Any and all general and special assessments against the Property shall be paid in full by Seller prior to or at closing. Seller will pay all rollback taxes at the Closing. As of the date of Closing, the Purchase Price shall be adjusted as follows:

(a) Ad valorem taxes shall be prorated on a calendar year basis. If the current year tax amount is not available, the parties shall prorate based on an estimate and either party shall be entitled to seek an adjustment of the proration based on the actual tax amount no later than March 31 of the following year.

9. Easements and Rights-of-Way. Seller will convey to Purchaser any and all right, title and interest which Seller has in and to any easements or rights-of-way adjacent to the Property.

10. Inspection and Testing of Premises. After the date hereof, Purchaser and its agents may enter upon the Property for purposes of inspection and testing during reasonable business hours.

11. Seller's Warranties. Seller makes the following representations and warranties, all of which shall survive closing, and agrees to indemnify and hold Purchaser harmless against any loss or damage, including reasonable attorneys' fees, resulting from breach of said warranties:

(a) Authorization and Compliance. Seller warrants that this Agreement is duly authorized, executed and delivered and is not a breach of, or in conflict with, any agreement, judgment, restriction, statute or regulation applicable to Seller.

(b) Warranty of Title. Seller warrants that Seller is lawfully seized of the Property in fee simple absolute and that Seller has good right and is lawfully authorized to sell or convey the same. There are no leases or rights of possession or use by any parties other than the Seller affecting the Property.

(c) Pending Actions. Seller warrants that there is no litigation, judicial or administrative proceeding or government investigation against the Seller or the Property which would materially adversely affect the Seller's ability to comply with the terms of this Agreement.

(d) Assessments. Seller warrants that to its knowledge there are no existing or pending assessments which are chargeable against the Property or personal property covered by this Agreement other than ad valorem taxes for the current year which will be prorated at Closing.

(e) Accuracy of Information. To Seller's knowledge, all information and reports provided by Seller to Purchaser under paragraph 3 are true and accurate in all material respects.

(f) Environmental Matters. Seller warrants that it has no actual knowledge of any facts that would cause it to suspect that any present or past use of the Property or any adjacent property has caused, or might have created unusual risks of causing, contamination of the Property in violation of any federal or state environmental laws or regulations, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the South Carolina Pollution Control Act, South Carolina underground storage tank provisions and regulations, and any amendments thereto or regulations issued pursuant to such statutes.

12. Remedies. If Purchaser defaults on any of its obligations under this Agreement, the Escrow Agent shall pay the Earnest Money to Seller as liquidated damages, and Seller shall have no further remedy against Purchaser. Seller and Purchaser agree that the Earnest Money is a fair and reasonable determination of Seller's actual damages in the event Purchaser defaults under this Agreement. If Seller defaults on any of its obligations under this Agreement, the Escrow Agent shall return the Earnest Money to Purchaser, and Purchaser may pursue such other rights and remedies as may be available to it at law or in equity, including without limitation the remedy of specific performance.

13. Destruction or Condemnation. If, prior to closing, all or any part of the Property is damaged by fire, water or any other casualty or is taken or threatened to be taken by eminent domain, Seller shall provide written notice thereof to Purchaser and Purchaser may elect to cancel this Agreement by written notice thereof to Seller. In the event that Purchaser shall so elect, both parties shall be relieved and released from any further liability hereunder, and Purchaser shall be entitled to a refund of the Earnest Money together with any interest earned thereon. Unless this Agreement is so cancelled, it shall remain in full force and effect and, at Purchaser's option, the Seller either shall assign, transfer and set over to Purchaser all of the Seller's right, title and interest in and to any insurance proceeds (plus credit for the deductible) or awards that may be made for

such casualty or taking, or Seller shall agree with Purchaser for a reduction in the Purchase Price based on the extent of casualty or taking.

14. Risk of Loss. The risk of loss in connection with the Property and any improvements thereon shall be borne by Seller until Closing.

15. Assigns. This Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. This Agreement may be assigned by Purchaser without the consent of Seller.

16. Commissions. Each party represents and warrants that it has not contracted for or is otherwise subject to any claim for brokerage commissions or similar fees with respect to sale of the Property, and agrees to indemnify and hold harmless the other against any such claim arising from the indemnitor's actions.

17. Entire Agreement. It is understood and agreed that all understandings and agreements heretofore and between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, neither party relying upon any statement or representation not embodied in this Agreement. The covenants and warranties contained herein shall survive the Closing.

18. Modification. This Agreement may not be modified or amended nor shall any of its provisions be waived except by a written instrument signed by Seller and Purchaser.

19. Possession. Possession of the Property will be delivered to Purchaser at Closing.

20. Severability. In the event any provision in this Agreement shall be held by a court of competent jurisdiction after final appeal (if any) to be illegal, unenforceable or contrary to public policy, then such provision shall be stricken and the remaining provisions of this Agreement shall continue in full force and effect.

21. Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter general, is used herein, it shall equally include the other.

22. Time of Essence. Time is of the essence to the parties with respect to this Agreement and closing of the sale provided for herein.

23. Paragraph Headings. The paragraph headings contained herein are for convenience only, and should not be construed as limiting or altering the terms hereof.

24. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of South Carolina.

25. Notices. All notices required or permitted to be given hereunder shall be in writing and either hand delivered or sent by certified mail, return receipt requested, to the party to be notified at its address set forth above. Notice by mail shall be effective on the date placed in the mail.

26. Escrow Agent. The parties shall indemnify and hold harmless Escrow Agent in connection with the exercise of its duties hereunder. The parties acknowledge that except pursuant to the executed Settlement Statement at Closing, Escrow Agent at its option may elect not to release the Earnest Money without written approval from both parties. In the event the Escrow Agent determines in its discretion that there is a bona fide dispute between the parties as to who is entitled to the Earnest Money, and that the rights of the parties as to the Earnest Money are unclear under this Agreement, the Escrow Agent may file an action for interpleader or otherwise seek a judicial determination as to the rights of the parties. In such event, the parties shall hold Escrow Agent harmless and shall share equally any expenses of Escrow Agent in connection with such action. Seller agrees that Escrow Agent may also act as Purchaser's attorney with respect to the transaction contemplated herein and with respect to any dispute between Seller and Purchaser.

IN WITNESS WHEREOF, this Agreement has been duly signed, sealed and delivered by the parties hereto the day and year first above written.

WITNESSES:

SELLER:

WEST/HOBBY LLC

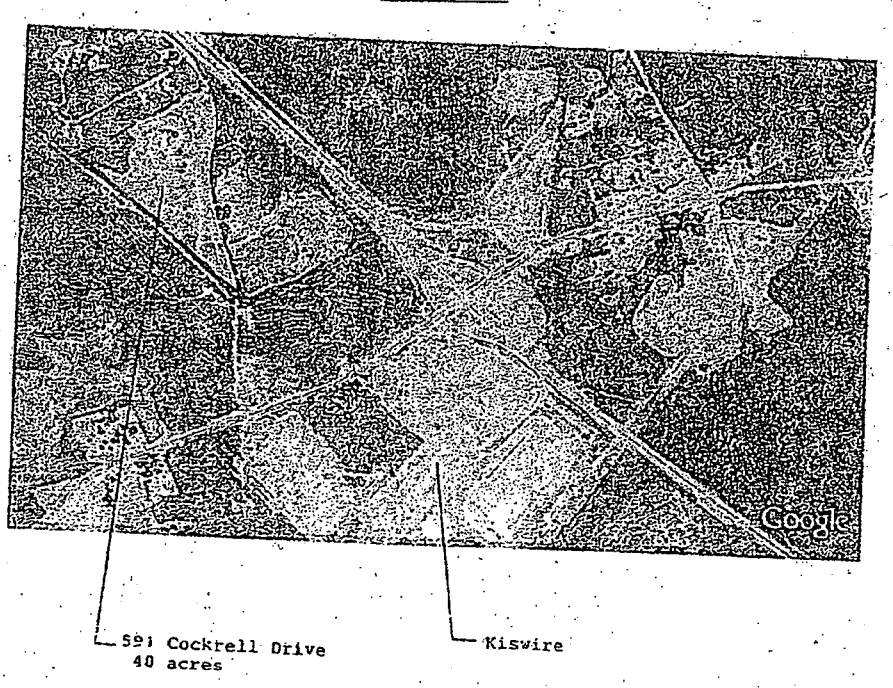
By: _____ (SEAL)
Its: _____

PURCHASER:

KISWIRE, INC.

By: _____ (SEAL)
Its President

EXHIBIT A



Newberry County GIS

OWNER

LEGAL

Grantors Name:

ETAL

Sale Price: $1.00

Sale Date:

Deed Book:

Deed Page:

Plat Book:

Plat Page:

PROPERTY INFO

Card Number:

Location:

Tax District:

Owner Occupied:

Land Use Code:

Acres / Lots:

Total Ag Acres:

Total Market Land Value:

Total Taxable Land Value:

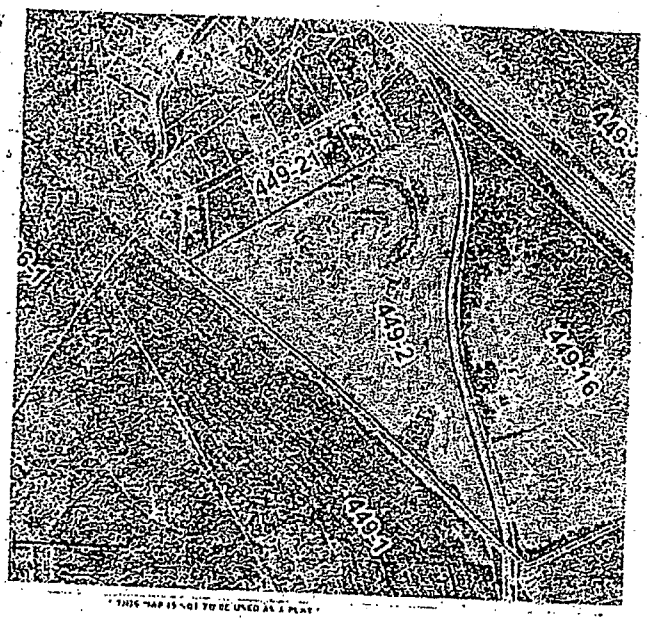
Total AG Value:

Total Building Value:

Total Yard Items Value:

Total Taxable Value:

Total Assessed Value:



THIS MAP IS NOT TO BE USED AS A PLAT

PHASE I
ENVIRONMENTAL SITE ASSESSMENT

40.7-ACRE SITE
591 COCKRELL DRIVE
NEWBERRY, NEWBERRY COUNTY, SOUTH CAROLINA
S&ME Project No. 1614-11-060

Prepared For:

Kiswire, Inc.
257 Mawsons Way
Newberry, South Carolina 29108

Prepared By:

S&ME
134 Suber Road
Columbia, South Carolina 29210

March 7, 2011

March 7, 2011

Kiswire, Inc.
257 Mawsons Way
Newberry, South Carolina 29108

Attention: Mr. David Minnick

Reference: Phase I Environmental Site Assessment
40.7-Acre Site
591 Cockrell Drive
Newberry, South Carolina
S&ME Job No. 1614-11-060

Dear Mr. Minnick:

S&ME, Inc. has completed the Phase I Environmental Site Assessment (ESA) for the referenced property. The attached report presents the findings of S&ME's Phase I ESA which was performed in general accordance with ASTM E 1527-05 as authorized by your acceptance of S&ME Proposal No. 1614-7947-11, dated January 24, 2011 and our Agreement for Services.

S&ME appreciates the opportunity to provide this Phase I ESA for the project. Please contact us at your convenience if there are questions regarding the information contained in this report.

Sincerely,

S&ME, Inc.

Jesse L. Keeffe, Jr., P.G.
Project Geologist

Thomas Behnke, P.G.
Senior Reviewer

S:\ENVIRON\1 6 1 4 - 1 1 JOBS\1614-11-060 Kiswire Site Phase I ESA\Ph I ESA Report - Kiswire 40.7-acres.doc

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SUMMARY

S&ME, Inc. has performed a Phase I Environmental Site Assessment (ESA) of the 40.7-acre site located at 591 Cockrell Drive in Newberry, Newberry County, South Carolina. This Phase I ESA was authorized by the user, Mr. David Minnick, of Kiswire, Incorporated. The following summary is intended as an overview of the Phase I ESA, and does not include the complete findings and opinions of the full report.

The subject site is currently wooded and open agricultural property that was formerly a Christmas tree farm. Building improvements consist of a single story ranch style house, a well house and a few sheds/outbuildings. Historically, the property use appears unchanged from present day. The subject site is adjoined by residential properties, wooded property, a gun club/shooting range, and the former Newberry County Landfill site.

A site visit was conducted by Jesse Keeffe, P.G., an S&ME environmental professional, on February 9, 2011 to evaluate the subject site for drainage patterns, vegetation patterns, stains, discoloration, surrounding land use, and other visual aspects suggestive of the presence of recognized environmental conditions (RECs). At the time of the site reconnaissance, the site consisted of open and wooded undeveloped land.

On-Site Findings

The following on-site findings of potential environmental concern were identified.

At the northwestern corner of the site, land-clearing debris and overgrowth were observed along with other discarded debris that included a small hydraulic cylinder. The hydraulic cylinder did not appear to be leaking or damaged. No evidence of hazardous materials was observed in the debris pile. The debris pile is not considered a REC.

Two plastic containers of unknown chemicals were observed outside of the water supply well house. The containers were sealed and no evidence of spills was observed. The containers are not considered a REC.

Three pole mounted transformers were observed on the site. One transformer is located along the access road near the eastern boundary of the site, a second transformer is located adjacent to the house/barn structure, and a third transformer is located near the residential home. The transformers appear to be in good condition and no spills, leaks, or surface staining was observed on or around the transformers. The pole-mounted transformers are not considered a REC.

Off-Site Findings

Volatile organic compounds and metals have been reported above regulatory limits in groundwater on the adjoining former Newberry County Landfill site. Interim groundwater monitoring by others at the direction of SCDHEC indicate groundwater

flow and contaminant migration is to the southeast and downgradient from the subject site. The groundwater contamination is concentrated on the downgradient side of the landfill. Based on this information, the adjoining former Newberry County Landfill site is not considered a REC in connection with the subject site at this time.

Elevated methane levels were reported in gas monitoring wells located on the adjoining former Newberry County Landfill site in 2010. The methane levels exceeded the Lower Explosive Limit (LEL) as regulated under RCRA for gases at the landfill property boundary. Two of the wells are located within approximately 100 feet of the subject site along Cockrell Drive. Methane is not considered a hazardous material. However, because of the potential for methane migration onto the property and the proposed redevelopment of the site with building structures, the elevated methane gas levels on the adjoining landfill is considered a *business environmental risk* in connection with the site.

1.0 INTRODUCTION

1.1 Purpose

The purpose of this Phase I Environmental Site Assessment (ESA) was to identify, to the extent feasible pursuant to the processes described herein, *recognized environmental conditions* in connection with the subject site. This Phase I ESA was prepared in accordance with the standard developed by the American Society for Testing and Materials (ASTM) entitled "E 1527-05 Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process" (ASTM E 1527-05).

ASTM defines the term *recognized environmental condition* as the presence or likely presence of hazardous substances or petroleum products on the property under conditions that indicate an existing release, a past release, or a material threat of a release of hazardous substances or petroleum products into the structures on the property or into the ground, groundwater, or surface water of the site. The term does not include *de minimis* conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of enforcement action if brought to the attention of appropriate governmental agencies.

1.2 Detailed Scope of Services

Unless specifically authorized as an addition to the Phase I ESA work scope, the assessment did not include any assessment of environmental conditions not specifically included in the ASTM E 1527-05 standard such as the assessment of business risk issues such as; lead in drinking water; mold, fungi or bacteria in on-site buildings; regulatory compliance; cultural/historic risks; industrial hygiene; health/safety; ecological resources; endangered species; indoor air quality including possible vapor intrusion; radon or high voltage power lines.

S&ME's approach to performing this Environmental Site Assessment consisted of four major tasks in accordance with the ASTM Standard Practice E 1527-05.

Task 1 - A review of reasonably ascertainable and practically reviewable public records for the site and the immediate vicinity was conducted to characterize environmental features of the site and to identify past and present land use activities, on or in the vicinity of the site, which may indicate a potential for *recognized environmental conditions*. The review of the public record included:

1. Review of reasonably ascertainable federal, state and tribal standard environmental record sources as well as selected local sources in accordance with the specified minimum search distances in ASTM E 1527-05. The search of these records was performed by a firm specializing in this service subcontracted to S&ME with results presented in a written report that will be appended to S&ME's Phase I ESA report.

2. Examination of one or more of the following resources: aerial photographs, fire insurance maps, property tax records, street directories, USGS topographic maps, building department records, planning department data, fire department or health department records, town historian and zoning/land use records of the property and vicinity for evidence suggesting past uses that might have involved hazardous substances or petroleum products.

Task 2 - A site reconnaissance was performed to identify visible signs of environmental conditions on or adjacent to the site, and to evaluate evidence found in the review of public record that might be indicative of activities resulting in hazardous substances or petroleum products being used or deposited on the site. The site reconnaissance included the following activities:

1. A visual reconnaissance of the site and adjacent properties to observe signs of spills, stressed vegetation, buried waste, underground or aboveground storage tanks, subsidence, transformers, or unusual soil discoloration which may indicate the possible presence of contaminants on the property.

2. The periphery of the property was viewed and a walk-through of accessible areas of the site interior was conducted.

3. Areas of the site were photographed to document the current use(s) of the property as well as significant conditions such as unusually discolored soil, stressed vegetation, or other significant features associated with the property.

Task 3 - Inquiries with appropriate local officials were conducted to consider any local knowledge of hazardous substances or petroleum products on the subject property or on adjacent properties. In addition, the current owner of the property was interviewed regarding his knowledge of any hazardous substances or petroleum products on the subject property or on adjacent properties.

Task 4 - Due to the presence of a regulated municipal solid waste landfill on the adjoining property, a Tier 1 Vapor Encroachment Screening as outlined in ASTM E2600-10 was performed in conjunction with this Phase I ESA. The purpose of Tier 1 is to conduct a screening using information assembled for the Phase I ESA as well as other physical and chemical data to determine if a vapor encroachment condition (VEC) exists at the subject property.

Task 5 - The collected data were evaluated and this report was prepared.

1.3 Significant Assumptions

- The slope of the water table under static conditions (no pumping interference) often approximates the land surface topography in the area. Thus, the movement of groundwater is assumed to be in approximately the same direction as the drop of the topographic slope.
- Information acquired from the public record and interviews is accurate and reliable.

- Existing creeks and perennial surface waterways are either losing to or gaining from the groundwater regime. Thus, existing creeks and perennial surface waterways delineate the locations of hydrogeologic barriers for flow within the subsurface groundwater regime.

1.4 Limitations and Exceptions

The findings of this report are applicable and representative of conditions encountered at the subject property at the time of this evaluation, and may not represent conditions at a later date. The review of public records was limited to that information which was available to S&ME at the time this report was prepared. Interviews with local and state government authorities were limited to those people whom S&ME were able to contact during the preparation of this report. All information was derived from practically reviewable, readily available sources in compliance with the standards set forth in ASTM E 1527-05.

Although this report satisfies ASTM E 1527-05, these results are not a guarantee or warranty that no environmental conditions exist or that the property is free from all contamination. The Standard was developed to outline appropriate inquiry into the assessment of real property and therein "reduce, but not eliminate, uncertainty regarding the potential for recognized environmental conditions."

The opinions presented in this report are based on findings derived from a site reconnaissance, a review of specified regulatory records and historical sources, and comments made by interviewees. Generally, information obtained from public records and from interviews is reliable. However, S&ME cannot warrant or guarantee that information provided is complete or accurate. In the event responses requested by S&ME from public agencies are provided to S&ME following the submittal of our report, they will be forwarded to the client in the form received for evaluation by the client.

Additional limitations to this Phase I ESA are as follows:

- Standard historical sources were not reasonably ascertainable to document the land use in approximately five-year intervals.

- Due to small scale and in some cases poor resolution of historical aerial photographs, only limited detailed review of historic site conditions was feasible.

1.5 Special Terms, Conditions and Reliance

All materials and information used for this project were obtained by S&ME. The resulting report is provided for the sole use of Kiswire, Inc. on the project for which it was prepared. Use of this report by any additional parties will be at such parties' risk, and S&ME disclaims liability for any use or reliance by any additional parties.

Kiswire, Inc. may request in writing additional reports, name another party or parties as addressee(s) or otherwise entitle the party or parties to rely on the report. Such request for additional addressees shall include the name and addresses of the additional

addressees and any suggested wording the additional addressee wishes S&ME to consider for inclusion in the report.

S&ME, Inc. shall have sole discretion in (1) approving client's request for issuance of reports to additional addressees, and (2) incorporating in our report any additional wording or deletions requested by the additional addressees. The additional addressees' use and reliance on the report will be subject to the same rights, obligations, and limitations imposed on the user by our Agreement for Services. However, the total liability of S&ME to all addressees' of the Phase I ESA shall be limited to the remedies and amounts as provided in the current standing contract. The additional addressees' use and reliance on the report shall signify the additional addressees' agreement to be bound by the contract that makes up the agreement between S&ME, Inc. and Kiswire, Inc.

S&ME hereby acknowledges that this report may be relied upon by Kiswire, Inc. subject to the limitations of the current contract that makes up the agreement between S&ME, Inc. and Kiswire, Inc. A copy of this agreement is included in Appendix E.

2.0 SITE DESCRIPTION

2.1 Location and Legal Description

The subject site is located at 591 Cockrell Drive in Newberry County, South Carolina. The site is located approximately 1,300 feet south of the intersection of S.C. Highway 219 and Cockrell Drive and consists of agricultural fields intermixed with wooded land, various dilapidated barn and shed structures, and a residential home. The subject site is approximately 40.7 acres and is owned by West/Hobby, LLC and was purchased from Raymond D. Hobby, et al in 2002. The site is identified by Newberry County tax parcel number 449-2. The approximate location of the site is depicted on Figures 1-3 in Appendix A.

2.2 Site and Vicinity Description

The site is located within a rural area of Newberry County, east of the Newberry city limits, in Newberry County, South Carolina. Properties surrounding the site are open areas, wooded areas, residential properties, a gun club and outdoor shooting range, and former Newberry County solid waste landfill. The site and surrounding properties have gently rolling topography. The major drainage feature in the area is Cannon Creek located approximately 3,200 feet to the south-southwest of the subject site.

2.3 Current Use of the Property

The site is currently vacant with no apparent use at this time.

2.4 Descriptions of Roads, Structures, and Other Improvements on the Site

Improvements on the site include a 1,770 square foot brick ranch style house, an old wood frame house with a canopy, an open covered shed, and an animal pen. A water supply well and well house is located near the residence. An asphalt paved driveway provides access to the site from Cockrell Drive.

2.5 Current Uses of the Adjoining Properties

The northern to northwestern adjoining properties are wooded areas and residential properties. Adjoining property to the southwest to south is wooded property used for harvesting timber and hunting. The eastern adjoining properties consist of wooded areas, a gun club/shooting range, and open land that was the former Newberry County Landfill. Cockrell Drive forms the eastern boundary of the property. Refer to Section 5.2.3 (Current Uses of Adjoining Properties) for a more detailed account of adjoining property use.

3.0 USER PROVIDED INFORMATION

This section is provided to summarize information provided by the user that may help in the identification of RECs. As is discussed in ASTM Practice E-1527-05, the environmental professional does not typically generate this information.

3.1 Title Records

According to records from the Newberry County GIS website, West/Hobby, LLC is the current owner of the site. No environmental liens or activity use limitations were observed in the records.

3.2 Environmental Liens or Activity and Use Limitations

Reasonably ascertainable recorded land title records may contain *environmental liens* or *activity and use limitations* recorded against the property. ASTM Practice E 1527-05 does not impose on the environmental professional the responsibility to check for recorded environmental liens or activity and use limitations. The user of the Phase I ESA is responsible for determining, through their choice of a title company, title professional, or attorney, whether any environmental liens have been recorded against the property. The user did not indicate environmental liens or activity use limitations. See the User Questionnaire in Appendix E.

3.3 Specialized Knowledge

The user indicated that the site was a Christmas tree farm and that a former county landfill is located beside the site to the east.

3.4 Commonly Known or Reasonably Ascertainable Information

The user did not provide commonly known information or provide information regarding any reasonably ascertainable sources of data.

3.5 Valuation Reduction for Environmental Issues

The user did not indicate value reduction for environmental issues.

3.6 Owner, Property Manager and Occupant Information

The user did not provide any contact information of the owner.

3.7 Reason for Performing Phase I ESA

We understand the reason for performing this Phase I is that Kiswire, Inc. has an option to purchase the property for development of a new manufacturing facility and offices. The Phase I ESA was performed to identify, to the extent feasible pursuant to ASTM E 1527-05, *Recognized Environmental Conditions* (RECs) in connection with the site. This practice is intended to permit a user to satisfy one of the requirements to qualify for the "innocent landowner, contiguous property owner, or bona fide prospective purchaser limitations to CERCLA liability."

3.8 Other

The user provided a 2005 survey of the property by ADTECH Surveying, Inc. No other information was provided for review.

4.0 RECORDS REVIEW

4.1 Standard Environmental Record Sources

S&ME contracted Environmental Data Resources (EDR) to prepare a Radius Map Report compiling federal and state environmental database information from the regulatory records of the United States Environmental Protection Agency (USEPA), the United States Geological Survey (USGS), and the South Carolina Department of Health and Environmental Control (SCDHEC). The purpose of the EDR report was to identify environmental sites and activities within a designated radius of potential concern from the subject site, as outlined by ASTM E 1527-05.

General descriptions of the databases are included within the EDR report, which is attached in Appendix C. The major databases reviewed along with the date the information was issued, and the search radii employed are provided in the following table.

Table 1: List of Databases Searched

Database	Approximate Search Distance	Search Results (number of sites)
Federal Environmental Record Sources		
NPL	1 mile	0
Proposed NPL	1 mile	0
DELISTED NPL	1 mile	0
NPL LIENS	TP	0
CERCLIS	0.5 mile	0
CERCLIS-NFRAP	0.5 mile	0
CORRACTS	1 mile	0
RCRIS-TSD	0.5 mile	0
RCRIS-LQG	0.25 mile	0
RCRIS-SQG	0.25 mile	0
ERNS	TP	0
HMIRS	TP	0
CONSENT	1 mile	0
ROD	1 mile	0
TRIS	TP	0

Database	Approximate Search Distance	Search Results (number of sites)
TSCA	TP	0
FTTS	TP	0
PADS	TP	0
MLTS	TP	0
MINES	0.25 mile	0
FINDS	TP	0
RAATS	TP	0
State Environmental Record Sources		
Hazardous Waste (SHWS)	1 mile	0
NON HSI	1 mile	0
Landfills (SWF/LF)	**0.5 mile**	1
LUST	0.5 mile	1
UST	0.25 mile	0
AST	0.5 mile	0
Spills	TP	0
Tribal Records		
Indian Reservations	0.25 mile	0
Indian LUST	0.25 mile	0
Indian UST	0.25 mile	0

TP = Target Property

S&ME evaluated the EDR report for regulated sites located within the ASTM-designated search radii. The EDR Radius Map Report also contains an Orphan Summary which lists facilities that are believed to be in the area of the site, but cannot be located due to incomplete address information. The subject site was not listed on the databases.

The former Newberry County Landfill is listed on the Solid Waste Facility/Landfill database. The site is located on the adjoining property to the east and is topographically downgradient relative to the subject site.

The vehicular reconnaissance identified no obvious facilities within one-half mile of the subject site that were not identified in the EDR Radius Map.

4.2 Additional Environmental Record Sources

- A search of the Environmental Protection Agency (EPA) Envirofacts database (http://maps.epa.gov/enviromapper) was conducted. The subject site did not appear on the database. Eight additional facilities were identified within the search radii as described below:
    - The Confalonieri North America, Inc. located on 29 Confalonieri Drive is listed on air, land, and waste site databases.
    - The FG Wilson, LLC USA Caterpillar site located on 284 Mawsons Way is listed on the air, land, and waste site databases.
    - The Kiswire, Inc. site is located on 257 Mawsons Way is listed on the toxic material, air, land, and waste site databases.
    - The Komatsu America International Company located on 6416 S.C. Highway 219 is listed on the air, land, and waste site databases.

- The South Carolina Department of Agriculture site located on 20759 U.S. Highway 76 is listed on the land and waste site databases.
- The Truecast, Inc. site located on 81 Mawsons Way is listed on the toxic materials and air databases.
- The final two sites that are listed on the air sites database are the Teksid Newberry on Mawsons Way and the Specialized Banking Furniture site located on 81 Mawsons Way.

- S&ME also searched the SCDHEC Land and Waste Management on-line database website (http://www.scdhec.net/environment/lwm/databases.htm) for public records (land use controls, etc.), mining and solid waste facilities, and the Underground Storage Tank Registry. No additional facilities were identified.

S&ME conducted a Freedom of Information (FOI) inquiry at the SCDHEC FOI office for the Newberry County Landfill located on the adjoining property. Groundwater and methane are monitored semi annually at the direction of SCDHEC. Two gas monitoring wells (GMP-6 and GMP-7) are located along the western property line of the landfill bordering Cockrell Drive. The latest groundwater and methane monitoring report dated August 6, 2010 identified levels of methane in gas vent wells GMP-6 and GMP-7 at greater then 100 percent of the Lower Explosive Limit (LEL) which exceeds the action level for methane as regulated by RCRA. Wells GMP-6 and GMP-7 are located within approximately 100 feet of the eastern boundary of the subject site. Review of previous reports indicates that methane control measures at the landfill have included excavation of a venting trench around the south and east perimeters of the landfill. Reports indicate the trench has had little effect in controlling the methane levels. A revised methane Corrective Action Plan was submitted to SCDHEC in June 2009 and included the installation of additional methane vent wells. Additional vent wells are proposed for the site at the request of SCDHEC.

Thirteen groundwater monitoring wells are located on and downgradient of the landfill site. Two of the wells (MW-1R and MW-7R) are located on the upgradient side of the property near Cockrell Drive. A water supply well is also located beside the on site buildings near Cockrell Drive. Historical sampling data from these wells from 2007 to 2009 has not reported any target VOCs or metals above drinking water MCLs. Groundwater flow direction across the site is the southeast toward I-26. Depth to groundwater ranges from approximately 25-35 feet.

The most recent groundwater sampling event (June 2010) included monitoring wells located on the downgradient side of the landfill only. Levels of volatile organic compounds (benzene, 1,2 Dichloroethene, methelyene chloride, trichloroethene) and metals (cadmium, beryllium, lead, and thallium) were reported above drinking water MCLs, and or Risk Based Screening Levels (RBSLs) or Action Levels (ALs). Pertinent reports and site maps are provided in Appendix B.

4.3 Physical Setting Sources

The site is identified on USGS 7.5-minute series Topographic Maps, titled Newberry East, South Carolina quadrangle dated 1968. The original map has a scale of one inch equals 2,000 feet. A Topographic Map, prepared using a portion of the map, is included as Figure 2 in Appendix A.

The map shows the site and surrounding properties as wooded and open areas. A residential structure and out-building is shown on the northern corner of the site. Cockrell Drive is shown as the eastern boundary of the site. A small cemetery is shown to the south of the subject site and Interstate 26 is located to the east of the site. Topography in the area is gently rolling hills. Surface elevation on the site is approximately 472 to 516 feet above Mean Sea Level (MSL).

S&ME also reviewed historic topographic maps on-line via the online system at the Thomas Cooper Library (http://www.sc.edu/library/digital/collections/topomaps.html). Historical topographic maps could not be located for the subject site.

The subject site is located in the Piedmont Physiographic Province of South Carolina. The Piedmont is characterized by rolling relief drained by numerous creeks. Generally, soils in the Piedmont formed by the weathering of the underlying rock. In the general area of the subject property, the soils are gently sloping or sloping sandy loams or loamy sands with red, brown, or yellow subsoil.

S&ME reviewed the United States Department of Agriculture's *Soil Survey of Newberry County, South Carolina* which depicts the soil types underlying the subject site and its surrounding area. Sheet 26 of the soil survey depicts the subject site as being underlain by the following soil:

Table 2: Soil Series

Soil Series	Drainage	Permeability	Characteristics
Cecil sandy loam (CdB)	Well	Moderate	Deep well drained gently sloping to steep soil that is dominate in Newberry County.
Durham sandy loam (DbD)	Well	Moderate to moderately slow	Deep gently sloping to sloping well drained to excessively drained soil.

4.4 Historical Use Information on the Property

The historical use of the subject site was determined by reviewing various historical sources listed below. In summary, the site has been used as agricultural fields and residential property since at least 1949.

Aerial Photographs

Aerial photographs (1949-2010) were reviewed to observe previous conditions and development of the subject site, as well as immediately adjacent properties. A copy of the 2008 aerial photograph is included as Figure 3 in Appendix A. The following table presents the findings of the aerial photograph review.

Table 3: Aerial Photographs

SOURCE	DATE	APPROX. SCALE	COMMENTS
Bing Maps	2010	1" = 400'	Site consists of open agricultural fields, wooded areas, a paved access road at the center of the eastern border, and three structures located in the central to eastern area of the site. An earthen trail is located along the north to northwestern boundary of the site. Throughout the open areas of the site, plow trails can be observed. A section of clear cut timber is located on the western corner of the site. Property to the north is wooded areas and open residential properties. Property to the west, southwest, and south consist of wooded areas that appear to be harvested timber tracts. Property to the east consists of mostly cleared land for the Newberry County Landfill and earthen trails. Structures associated with the gun club can be observed along the central area of the former landfill property. It appears that the landfill is not operational.
Newberry County GIS website	2008	1" = 850'	Similar to 2010.
Google Earth Imagery	2006 2005	1" = 400'	Similar to 2008, but former clear cut area located at the western corner is now wooded. Surrounding properties are similar to 2008.
Newberry County GIS website	2002	1" = 850'	Similar to 2005, but the wooded areas around the southern and western perimeters of the subject site are sparse.
Google Earth Imagery	1999	1" = 400'	Similar to 2002.
Google Earth Imagery	1999	1" = 400'	Similar to 1999.
University of South Carolina (USC) Map Library, Columbia, SC	1981	1" = 2,000'	Site appeared generally unchanged. Landfill appears operational to the east.
USC Map Library, Columbia, SC	1970	1" = 1,320'	The site is open agricultural fields with two structures located along the eastern boundary of the site. Surrounding properties are wooded. Former landfill site to the east is wooded land.

SOURCE	DATE	APPROX. SCALE	COMMENTS
USC Map Library, Columbia, SC	1964	1" = 1,320'	The site is similar to 1970, but agricultural fields and wooded areas are located to the north. Open and wooded areas are located to the east. Property to the south and west are wooded properties.
USC Map Library, Columbia, SC	1949	1" = 1,320'	Similar to 1964.

There was no direct evidence on the reviewed aerial photographs indicating that open dumping, or hazardous material use or storage has occurred on the subject site. However, the scales and clarity of several of the reviewed aerial photographs and high density development prohibited the identification of specific site use or activities.

Sanborn Maps

S&ME contracted with EDR to conduct a database search of Sanborn Fire Insurance maps that depicted the subject site. EDR maintains the largest library of Sanborn Fire Insurance maps available. A search of available maps revealed no coverage for the site.

City Directories

A search of the city directories was conducted at the Newberry County Public County Library in Newberry, South Carolina. The city directories did not list the subject site or surrounding properties.

Tribal Records

The review of the public record including the EDR Radius Map Report did not reveal any listings of tribal environmental records (Indian Reservations, Indian UST, or Indian LUST). According to a fact sheet obtained from the National Indian Child Welfare Association, there are no recognized Tribal lands within the vicinity of the subject site. The site does not appear to be located on or near any tribal lands. According to the U.S. Census, the Catawba Indian Nation in York County is the only federally recognized tribe in South Carolina. South Carolina began to offer state recognition to tribes in early 2005. S&ME reviewed the South Carolina Indian Affairs Commission website (http://southcarolinaindianaffairs.com/members.html) as well as the websites of two state recognized tribes, the Pee Dee Indian Tribe (http://www.peedeeindiantribeofsc.com/) and the Waccamaw Indian Tribe (http://www.waccamaw.us/FRAME_HOME.htm), and one unrecognized tribe, the Marlboro, Chesterfield, Darlington County Pee Dee Indian Tribe (http://mcdcpeedeeindiantrib.tripod.com/), for any information regarding environmental concerns. These sources did not contain information regarding environmental issues.

Building Records

No building records were identified for the site. The property card for the site indicates the on site house is 1,170 square feet.

Zoning/Land Use Records

Zoning/land use records were reviewed on the Newberry County GIS website (http://www.newberrycounty.net/assessor/). Zoning records indicated that a site is zoned as basic industrial (BI).

Land Title Records

Land title records were reviewed on the Newberry County GIS website (http://www.newberrycounty.net/assessor/). These records identify the site as Newberry County tax parcel 449-2. The site is owned by West/Hobby, LLC and they purchased it in 2002 from Raymond D. Hobby, et al.

Property Tax Files

Property tax files were not reviewed because they were unlikely to offer information pertinent to the identification of RECs at this site.

4.5 Historical Use Information of Adjoining Properties

The historical use of the adjoining properties was determined by reviewing available historical topographic maps, historical aerial photographs, county tax assessor records, city directories and Sanborn maps.

Northern Adjoining Properties

Since at least 1949, the northern adjoining properties have been wooded with some residential properties.

Southern Adjoining Properties

Since 1949 to the present, the southern adjoining properties have been wooded timber tracts.

Eastern Adjoining Properties

Property to the east of the subject site is a former solid waste landfill that was closed in 1993. Based historical aerial photographs, the landfill was not operational before 1970 and was formerly undeveloped wooded land.

Western Adjoining Properties

The western adjoining property has been wooded timber tracts since at least 1949 to the present.

5.0 SITE RECONNAISSANCE

An S&ME environmental professional, Jesse L. Keeffe P.G., conducted a site reconnaissance on February 9, 2011 to observe the current uses of the site, adjoining properties, and properties in the surrounding area, as well as the geologic, hydrogeologic, and topographic conditions of the site and the surrounding area. Photographs were taken of various portions of the subject site to document existing conditions. Copies of pertinent photographs are included in Appendix A of this report.

5.1 Methodology and Limiting Conditions

The subject site was observed by walking the perimeter and interior of the site and structure. No limiting conditions were encountered. A vehicular tour of the area was made to confirm the locations of facilities listed by regulatory agencies and to verify nearby land use. The tour involved viewing nearby properties from publicly accessible areas, but not entering private property. Observation of nearby properties was limited to areas visible in the line of sight from public roadways. S&ME did not enter adjacent properties to view areas not visible from the subject site or public property.

5.2 General Site Setting

5.2.1 Current Use(s) of the Property

The site is currently vacant. It was formerly a residential property and Christmas tree farm (Photographs 1 through 9).

5.2.2 Past Use(s) of the Property

Site observations did not reveal any previous uses of the site that are different from the current use.

5.2.3 Current Uses of Adjoining Properties

North: Properties to the north and northwest consist of wooded property and residential properties (Photographs 10 and 11).

South: Properties to the south and southwest is wooded property (Photograph 12).

East: Properties to the east, northeast, and southeast consist of Cockrell Drive followed by wooded areas, open areas, a gun club and shooting range, a former county landfill, and Interstate 26 (Photographs 13 through 15).

West: Properties to the west consist of residential properties to the southwest and west and wooded areas, open areas, and agricultural fields to the west and northwest (Photograph 16).

5.2.4 Past Uses of Adjoining Properties

Site observations did not reveal any previous uses of the adjoining properties that are different from the current use.

5.2.5 Geologic, Hydrogeologic, Hydrologic, and Topographic Conditions

Topography in the area consists of gently rolling to steep hills. The slope of the subject site is in a radial direction toward the southeast and to the west from the highest elevation located at the northern portion of the site. No water bodies were observed on the subject site. Regional groundwater flow can be assumed to roughly mimic the surface topographic slope. No confirmation of surface run-off or groundwater conditions was made during the site reconnaissance.

5.2.6 General Description of Roads, Structures & Other Improvements

Cockrell Drive forms the southeastern, eastern, and northeastern boundary of the site. Ingress/egress to the site is an asphalt paved driveway located at the central portion of the

eastern boundary (Photograph 17). Utility power lines and municipal water lines run along the eastern boundary of the site. The subject site has one wood frame brick veneer residential structure that is approximately 1,770 square feet (ft^2) (Photograph 18). A wood house/barn structure is located southeast of the brick home (Photograph 19). A small wood animal pen (Photograph 20) and an open automobile/tractor shed (Photograph 21) are located on the site. A water supply well with a concrete block pump house is located south of the residential home (Photograph 22).

5.2.7 Potable Water Supply and Sewage Disposal System

The subject site has access to community (City of Newberry and Newberry County) municipal water. It appears the on-site residence is on a septic system. Fire hydrants and water lines are located on the site in the Cockrell Drive right of way easement.

5.3 Exterior Observations

The site is developed with wooded areas, agricultural fields, a wood-frame brick veneer residential home, a house/barn, an open shed, a water supply well, and an animal pen. The structures are located generally at the central to north central area of the site. The residential home has an attached canopy that is located in the back of the structure and has a concrete driveway. Open agricultural fields cover most of the site with wooded areas around the residential home and along the northern, western, and southwestern perimeters of the site. A dry earthen ditch is located along the eastern boundary of the site (or along the shoulder of Cockrell Drive). Three large oak trees are located in the central to north central area of the site around the structures. One large dead oak tree is located near the southeastern corner of the site. An asphalt paved driveway begins at Cockrell Drive (central eastern boundary of the site) and winds around to the barns and residential home. A steel cased water supply well with a concrete block well house was observed south of the residential home (Photograph 23). A propane gas tank was observed behind the residential home (Photograph 24). At the northwestern corner of the site, land-clearing debris and overgrowth were observed (Photograph 25) indicating past clear cutting activities. Tractor parts, mattress bed springs, a propane tank, a small hydraulic cylinder and other metal debris was observed within the overgrowth areas at the northwestern corner of the site (Photograph 26). The hydraulic cylinder did not appear to be leaking or damaged. Residential debris including metal chairs, plastic flower pots, scrap metal, wood scrap, bicycles, and wood pallets was noted around the house/barn structure and within its open sheds and canopies. Two plastic containers of an unknown chemical were located outside of the water supply well house (Photograph 27). Three pole mounted transformers were observed on the site. One transformer is located along the access road near the eastern boundary of the site (Photograph 28). A second transformer is located adjacent to the house/barn structure (Photograph 29). A third transformer is located was located near the residential home (Photograph 30). The transformers appear to be in good condition and no spills, leaks, or surface staining was observed on or around the transformers.

5.4 Interior Observations

The interior of the wood frame brick veneer residential home was locked and was not observed. However, the interior of the house/barn structure was observed. This structure consisted of wood floors, wall, and ceilings (Photograph 31). Paint cans, paper products, scrap metal and wood were observed within the structure (Photograph 32). No floor drains or surface staining was observed within the structure.

6.0 INTERVIEWS

Interviews were conducted by Jesse L. Keeffe, P.G., and Tom Behnke, P.G. S&ME environmental professionals, to obtain information from individuals who have knowledge of current and past activities at the site, and to clarify observations made during the site reconnaissance or data review of the site. Copies of interview correspondence are located in Appendix D.

6.1 Interview With Owner

S&ME interviewed Ms. Misty West of West/Hobby, LLC. Ms. West stated that the property was purchased approximately 8 years ago as an investment. The property was formerly use as a Christmas tree farm but no farming has been done on the site since it was purchased. The house has been vacant since the land was purchased. The site is used mostly for dove hunting and is plowed annually for that purpose. Ms. West stated that the testing associated with the landfill that was requested by Newberry County in a 2006 correspondence was never performed. Ms. West was not aware of any environmental concerns on the property.

6.2 Interview with Key Site Manager

Refer to Interview with Owner, Section 6.1.

6.3 Interview with Occupants

There are no occupants of the property.

6.4 Interview with Local Government Officials

S&ME contacted Ms. Anne Peters, the assistant to the Newberry County Tax Assessor. She verified the zoning designation as basic industrial (BI) for the subject site. She has lived in the area for approximately 8 years and has no knowledge of hazardous material responses, spills, or fires at the site, the adjoining landfill, and the other surrounding properties.

On February 17, 2011, S&ME contacted Ms. Laurie Renwick, Newberry County Clerk of Council regarding the subject site, the adjoining landfill, and other surrounding properties. She stated that she has no knowledge of hazardous material responses, spills, or fires at the site or the landfill. She advised us to pursue SCDHEC for further information on the county landfill.

S&ME interviewed Mr. Kyle Nash, Director of Public Works for Newberry County concerning the ongoing monitoring at the former Newberry County Landfill. Mr. Nash indicated that there was never any test wells or monitoring that occurred on the adjoining property to the west across Cockrell Drive as requested by Newberry Co. to the owner West/Hobby, LLC in February 2006. It is likely the owner never responded to the request. Additional gas vent wells were installed on the site last year and more are proposed. Monitoring of the wells is done twice a year at the request of DHEC.

S&ME interviewed Mr. John Abernathy with the SCDHEC Bureau of Land and Waste Management who is the project manager for the Newberry County Landfill site. Mr. Abernathy stated that there has been no investigation of properties upgradeint of the landfill site. The department's stance is that semi annual monitoring of groundwater and methane will continue at the site. If methane levels continue to be elevated, then additional mitigation efforts will be implemented. Mercury levels in groundwater have not been reported in the existing wells. Most of the groundwater contamination is on the downgradient side of the landfill and has migrated to the southwest toward I-26

6.5 Interviews with Others

S&ME received a questionnaire from the user, Mr. David Minnick of Kiswire, Inc. He stated that he did not have any knowledge of petroleum or hazardous spills or incidents on the site. He further stated that the value of the property reasonably reflects the market value. He stated he was not aware of environmental concerns, environmental liens, AULs, or ECs in association with the subject site.

7.0 TIER I VAPOR ENCROACHMENT SCREENING

Due to the presence of a former regulated municipal solid waste landfill on the adjoining property, a Tier 1 Vapor Encroachment Screening as outlined in ASTM E2600-10 was performed. The purpose of Tier 1 is to conduct a screening using information assembled for the Phase I ESA as well as other physical and chemical data to determine if a vapor encroachment condition (VEC) exists at the subject property from volatile/semi volatile hazardous substances or petroleum hydrocarbons in groundwater. Tasks performed as part of the Tier 1 vapor assessment and findings are presented below:

TASK	FINDINGS
Establish an area of concern (AOC) up-gradient, down-gradient, and side-gradient of the subject property with respect to possible sources of contaminant vapors.	The former Newberry County Landfill is located on the adjoining property to the east and is listed on the State Solid Waste Disposal site database. The site falls within the approximate minimum search distance/Area of Concern (AOC) for non petroleum Chemicals of Concern (COCs) of 1/3 mile (1,760 feet)
Identify the existing and planned use of the subject property	The subject site is currently undeveloped land with the exception of a vacant residence. Planned use for the site consists of industrial manufacturing buildings and office building.

TASK	FINDINGS
Identify the type(s) of existing and planned structures on the subject property.	A vacant ranch style house is located on the property. The location and design of future building improvements has yet to be determined.
Describe the current use of the area surrounding the subject property.	Properties surrounding the site consist of undeveloped wooded and cleared land and light residential. The former Newberry County Landfill and a gun club are located to the east.
Review of federal, state, local and tribal governmental records for the subject property and AOC.	The subject site is not listed on any federal or state environmental databases. The former Newberry County Landfill is located on the adjoining property to the east and is listed on the State Solid Waste Disposal site database.
Review records of past use of the subject property and surrounding properties within the AOC for potential sources of chemicals that could potentially migrate through the subsurface as vapors.	No potential sources of chemicals that could potentially migrate through the subsurface as vapors were identified on the subject site. Groundwater flow and contaminant migration at the Newberry County landfill site is to the east southeast away from the subject site. Elevated levels of methane gas were reported in two gas monitoring wells located within 100 feet of the subject site in August 2010. Volatile organic compounds in excess of drinking water MCLs were reported in monitoring wells located approximately 1,200 feet downgradient from the subject site property boundary. Refer to Section 4.2 and Appendix B for further detail.
Examine the physical setting including soil types as well as geological, hydrogeological, hydrologic, and topographic information.	The subject site is located topographically and hydraulically upgradient of the landfill site. Groundwater flow across the landfill site is to the southwest. Site soils consist of Cecil sandy loam and the Durham sandy loam. Both soil types are moderately permeable well drained soils. Subsurface geology is described as saprolite (weathered rock) overlying crystalline bedrock as shallow as 26 feet below ground surface.
Evaluate potential natural and man-made preferential pathways that could function as a direct path for vapors.	A visual reconnaissance of Cockrell Road located between the landfill and the subject site identified the presence of water and telephone lines along Cockrell Road between the subject site and the landfill. The presence of subsurface utilities may act as preferential pathways for vapor migration.
Specialized or commonly known information possessed by the user.	None Provided
Plume Test and Critical Distance Determination.	Based on available groundwater data, the VOC contaminant plume at the landfill site is outside the ASTM E2600-10 100 foot critical downgradient distance for volatile or semi-volatile hazardous substances.

TASK	FINDINGS
CONCLUSION	
	The former Newberry County Landfill site is located within the ASTME-E2600-10 Area of Concern radii for volatile or semi-volatile hazardous substances. The reported VOC contaminant plume in groundwater at the landfill site is located outside the ASTM E2600-10 100 foot critical downgradient distance for volatile or semi-volatile hazardous substances. Elevated methane gas levels have been reported in gas monitoring points within approximately 100 feet of the subject site property line. *However, methane is excluded as a VEC consideration under ASTM-E2600 -10* Based on the findings of this Tier 1 Vapor Encroachment Screening, a VEC at the site does not exist.

8.0 FINDINGS

8.1 On-Site Findings

The following on-site findings of potential environmental concern were identified.

- At the northwestern corner of the site, land-clearing debris and overgrowth were observed along with other discarded debris that included a small hydraulic cylinder. The hydraulic cylinder did not appear to be leaking or damaged.

- Two plastic containers of unknown chemicals were observed outside of the water supply well house. The containers were sealed and no evidence of spills was observed.

- Three pole mounted transformers were observed on the site. One transformer is located along the access road near the eastern boundary of the site, a second transformer is located adjacent to the house/barn structure, and a third transformer is located was located near the residential home.

8.2 Off-Site Findings

S&ME contracted Environmental Data Resources (EDR) to prepare a Radius Map Report compiling federal and state environmental database information. The review of the EDR Radius Map Report and other public records identified one (1) off-site facility with listings related to hazardous materials or petroleum products in the vicinity of the subject

site. The facility is the former Newberry County Municipal Solid Waste Landfill located on the adjoining property to the east. Groundwater contamination and elevated methane gas levels have been reported at the site.

9.0 OPINIONS

9.1 On-Site Opinions

S&ME offers the following opinions regarding the on-site findings of potential environmental concern identified during this Phase I ESA:

- No evidence of hazardous materials was observed in the debris pile. The debris pile is not considered a REC.
- Because the containers of apparent chemicals were sealed and no evidence of spills was observed, they are not considered a REC.
- The transformers appear to be in good condition and no spills, leaks, or surface staining was observed on or around the transformers. The pole-mounted transformers are not considered a REC.

9.2 Off-Site Opinions

S&ME offers the following opinions regarding the off-site findings of potential environmental concern identified during this Phase I ESA:

Volatile organic compounds and metals have been reported above regulatory limits in groundwater on the adjoining former Newberry County Landfill site. Interim groundwater monitoring by others at the direction of SCDHEC indicate groundwater flow and contaminant migration is to the southeast and downgradient from the subject site. The groundwater contamination is concentrated on the downgradient side of the landfill. Based on this information, the adjoining former Newberry County Landfill site is not considered a REC in connection with the subject site at this time.

Elevated methane levels were reported in gas wells located on the adjoining former Newberry County Landfill site in 2010. Methane gas is lighter than air and is explosive within the range of 5% to 15% by volume of methane in air. Two of the wells are located within approximately 100 feet of the subject site along Cockrell Drive and reported methane levels were reported to be greater than 100% of the LEL in June 2010. Methane is not considered a hazardous material. However, because of the potential for methane migration onto the property and the proposed redevelopment of the site with building structures, the elevated methane gas levels on the adjoining landfill is considered a *business environmental risk* in connection with the site.

We are of the opinion that additional investigation of the subject site would be necessary to establish greater certainty with respect to the identified methane levels on the adjoining property.

9.3 Data Failure

Data failure encountered during the performance of the Phase I ESA is that the operational history of the site was not able to be traced in approximately 5-year intervals, because standard historical sources, such as additional aerials photographs or Sanborn Maps, were not readily ascertainable to obtain the information. A chain of title was not provided for review of AULs, ECs, or environmental liens. These data failures are not considered significant data gaps based on previous site use (agricultural and residential) and the user/owner of the site was unaware of any environmental liens, AULs, or ECs with the site and no records with local, state, or federal authorities indicated these items

10.0 CONCLUSIONS

S&ME has performed a Phase I ESA in conformance with the scope and limitations of ASTM Practice E 1527-05 of the 40.7-Acre parcel (Newberry County tax parcel 449-2) located at 591 Cockrell Drive in Newberry, Newberry County, South Carolina. Any exceptions to, or deletions from this practice are described in Sections 1.4 and 10.0 of this report.

This assessment has revealed no evidence of RECs in connection with the subject site. except for the following:

Potential migration of elevated methane levels onto the subject property is considered a *business environmental risk* in connection with the site.

11.0 DEVIATIONS

S&ME has endeavored to perform this Phase I ESA in conformance with the scope and limitations of ASTM E 1527-05. The environmental professionals who performed the Phase I ESA did not feel the need to deviate from the standard.

12.0 ADDITIONAL SERVICES

No additional services were performed for this assessment.

13.0 REFERENCES

1. *ASTM Standards on Environmental Site Assessments for Commercial Real Estate. E 1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.* American Society for Testing and Materials (ASTM), Philadelphia, PA, 2005.
2. *Geology of the Carolinas,* J. Wright Horton and Victor A Zullo, University of Tennessee Press, 1991.

3. *Soil Survey of Newberry County, South Carolina,* United States Department of Agriculture, Soil Conservation Service, 1976.
4. United States Geological Survey (USGS), 7.5-minute Series, Topographic Map, *Newberry East, S.C.* Quadrangle, 1968.

14.0 SIGNATURE(S) OF ENVIRONMENTAL PROFESSIONAL(S)

We declare that, to the best of our professional knowledge and belief, we meet the definition of Environmental Professionals as defined in Section 312.10 of 40 CFR 312. We have the specific qualifications based on education, training and experience to assess a property of the nature, history and setting of the subject site. We have developed and performed the All Appropriate Inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.

Jesse L. Keeffe, Jr., P.G.
Environmental Professional

Tom Behnke, P.G.
Senior Reviewer

15.0 QUALIFICATION(S) OF ENVIRONMENTAL PROFESSIONAL(S)

The environmental professionals for this project are Mr. Jesse L. Keeffe, Jr., P.G. and Mr. Tom Behnke, P.G. Mr. Keeffe and Mr. Behnke and meet the qualifications per 312.10 of 40 CFR Part 312.

Mr. Keeffe has a B.S. in Geology and over 14 years relevant work experience in environmental consulting. He has performed hundreds of environmental assessments for real estate transactions in South Carolina, North Carolina, and Georgia. He has also attended ASTM training for Phase I ESAs.

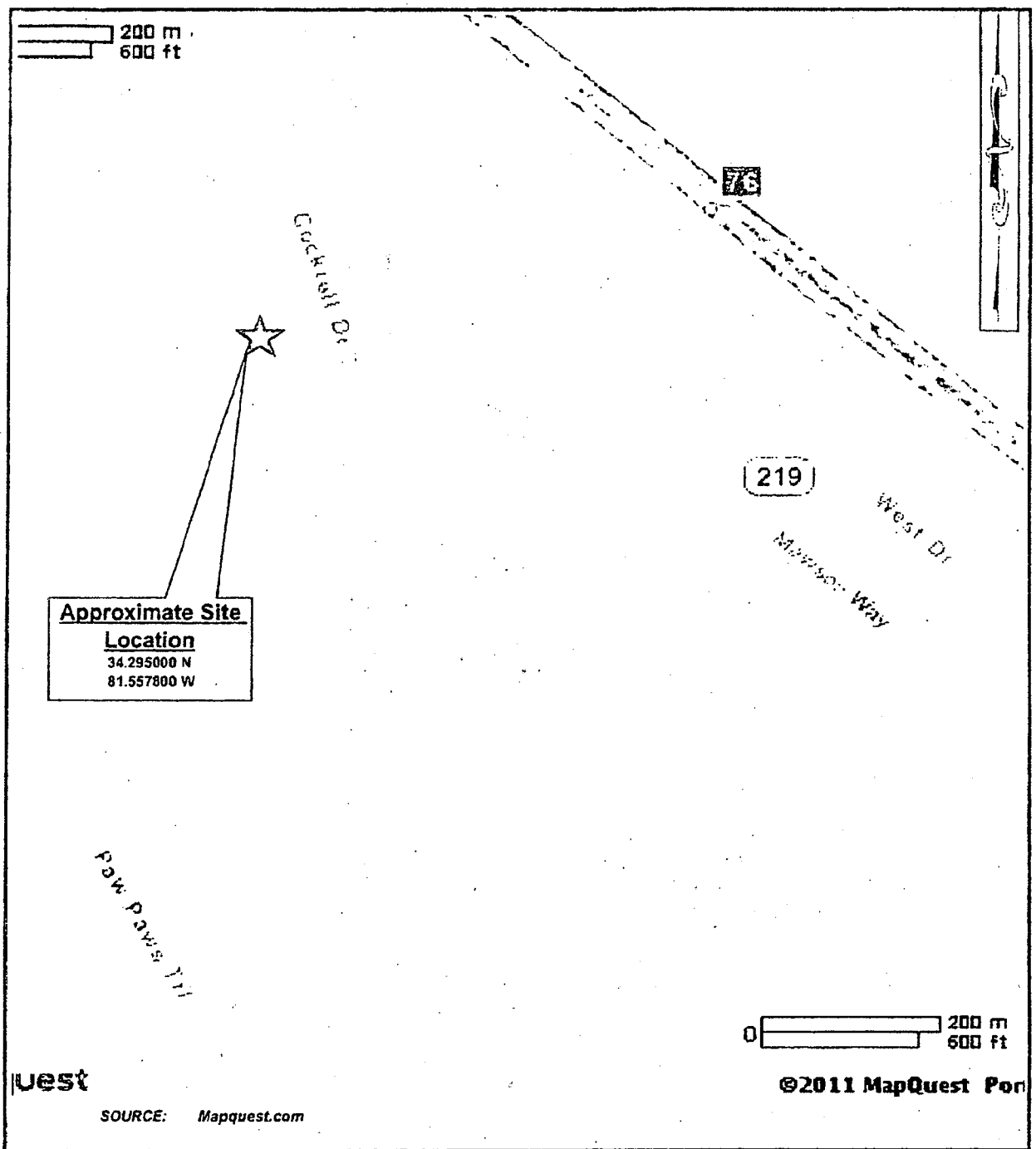
Mr. Behnke has more than 20 years of experience in environmental service and currently serves as a senior hydrogeologist and Environmental Department Manager in S&ME's Columbia, South Carolina office. Mr. Behnke is a South Carolina and North Carolina licensed Professional Geologist and Certified Hazardous Materials Manager. As a licensed Geologist, Mr. Behnke has performed numerous hydrogeologic investigations for petroleum and drycleaner release sites including well installation, soil and ground water sampling, contaminant fate and transport modeling and corrective action plan development and implementation. Mr. Behnke has also been instrumental in the assessment and remediation of solid hazardous waste at former industrial sites in South Carolina. He has performed multiple Phase I & Phase II assessments for real estate transactions in North and South Carolina. Mr. Behnke is a senior reviewer for S&ME and has also attended ASTM training for Phase I ESAs.

APPENDIX A

FIGURES

FIGURE 1 – VICINITY MAP
FIGURE 2 – TOPOGRAPHIC MAP
FIGURE 3 – AERIAL MAP

SITE PHOTOGRAPHS



SCALE:	Shown
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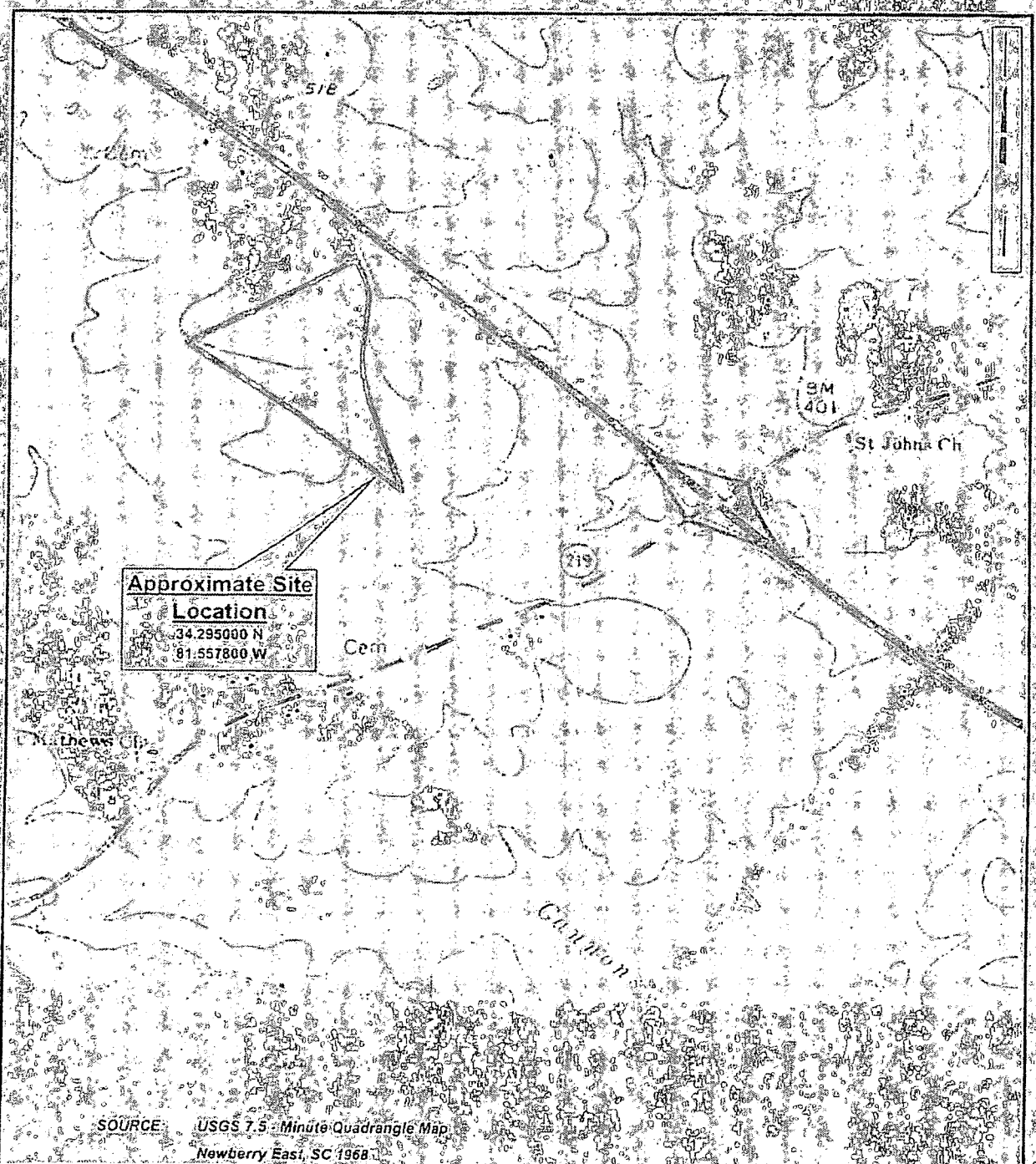
DRAWN BY:	JLK
DATE:	2/11/2011

S&ME

VICINITY MAP
42-Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina

S&ME PROJECT NO. 1614-11-060

FIGURE NO. 1



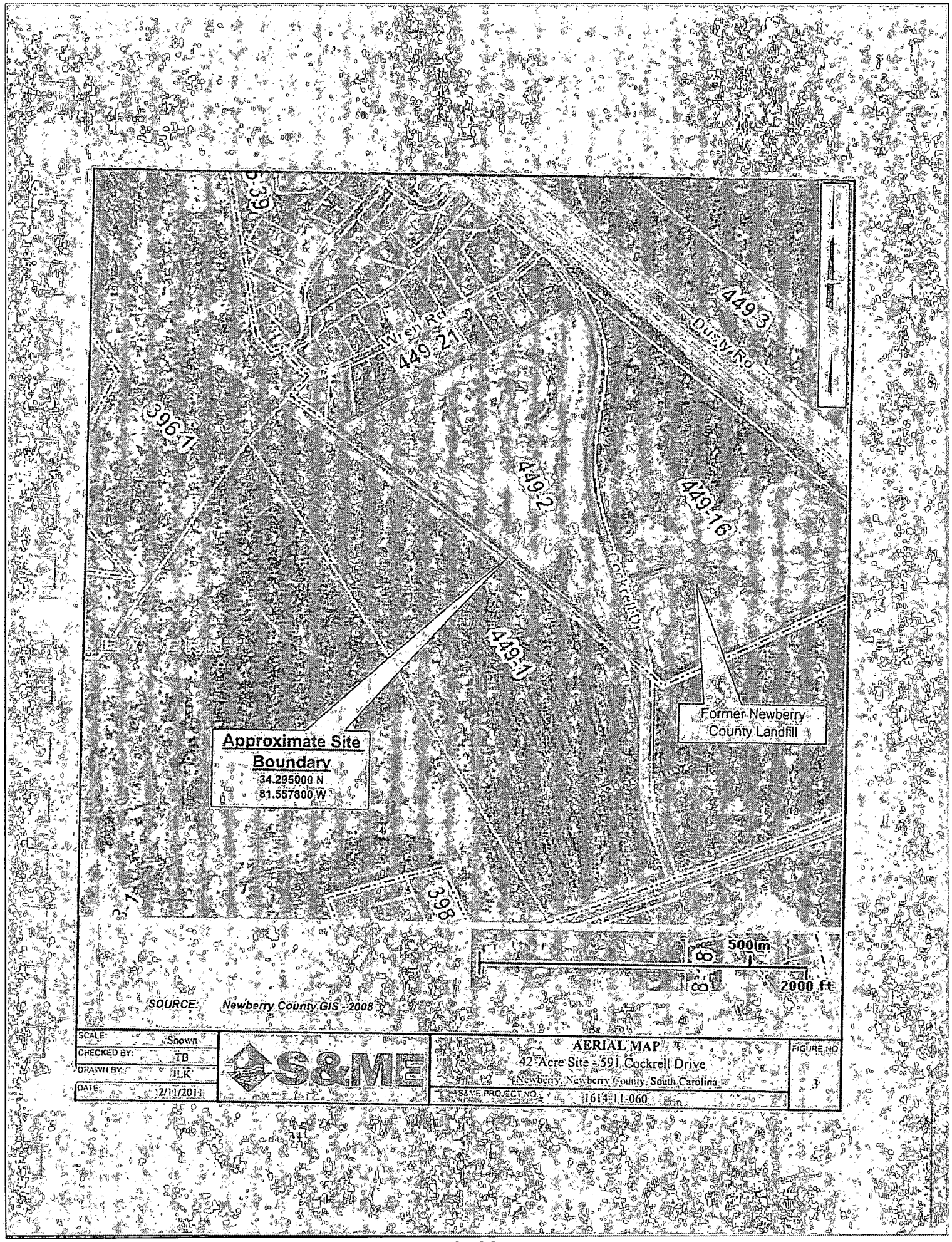
SOURCE: USGS 7.5 Minute Quadrangle Map
Newberry East, SC 1968

SCALE:	1" = 2,000'
CHECKED BY:	TB
DRAWN BY:	JLK
DATE:	2/11/2011

S&ME

TOPOGRAPHIC MAP
42-Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina
S&ME PROJECT NO. 1614-11-060

FIGURE NO. 2


Approximate Site Boundary
34.295000 N
81.557800 W
Former Newberry County Landfill
Wren Rd
Cockrell Dr
Quattlebaum Rd
449-3
449-21
449-2
449-16
449-1
396-1
398
500m
2000 ft
SOURCE: Newberry County GIS - 2008
SCALE: Shown
CHECKED BY: TB
DRAWN BY: JLK
DATE: 2/11/2011
S&ME
AERIAL MAP
42 Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina
S&ME PROJECT NO. 1614-11-060
FIGURE NO 3

1 View facing northwest from the southern corner of the site.

2 View facing north from the south corner of the site. Cockrell Drive to the right. Fire hydrant indicating water line in foreground.

3 View facing southeast from the northern corner of the site. Cockrell Drive is located to the left of the picture.

4 View of cultivated field facing south from the north corner of the site.

S&ME

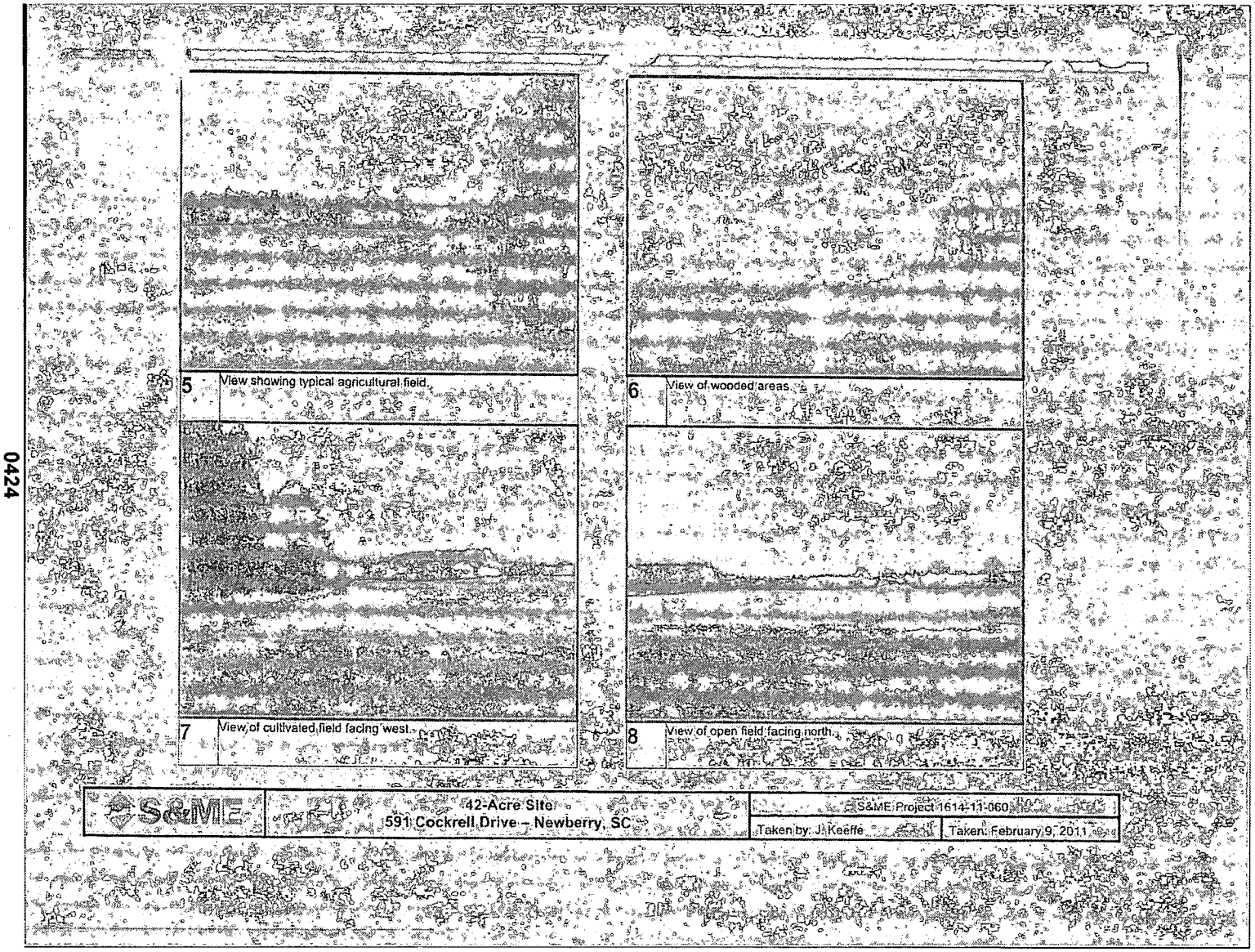
42-Acre Site
591 Cockrell Drive – Newberry, SC

S&ME Project 1614-11-060

Taken by: J. Keeffe

Taken: February 9, 2011

0423



5 View showing typical agricultural field.

6 View of wooded areas.

7 View of cultivated field facing west.

8 View of open field facing north.

S&ME

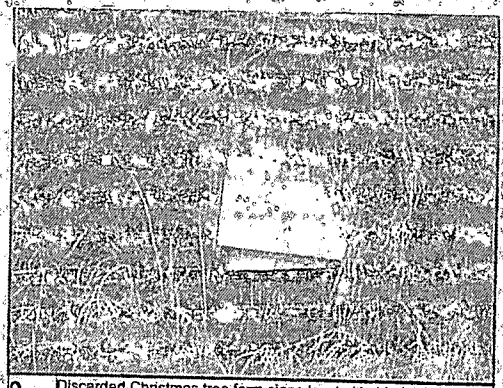
42-Acre Site
591 Cockrell Drive – Newberry, SC

S&ME Project 1614-11-060

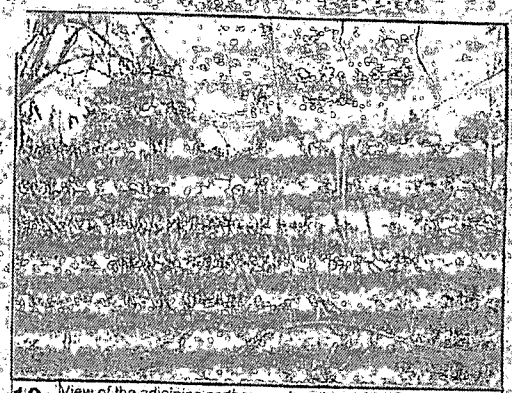
Taken by: J. Keeffe

Taken: February 9, 2011

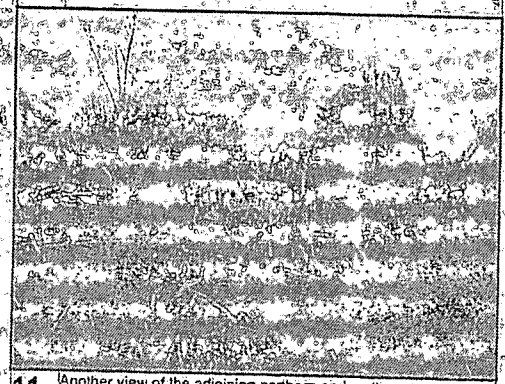
0424



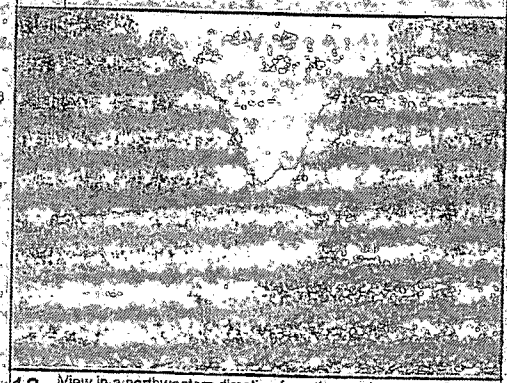
9 Discarded Christmas tree farm signs located behind the old house structure on the site.



10 View of the adjoining northern and northwestern properties that include residential properties and wooded areas.



11 Another view of the adjoining northern and northwestern properties that include residential properties and wooded areas.

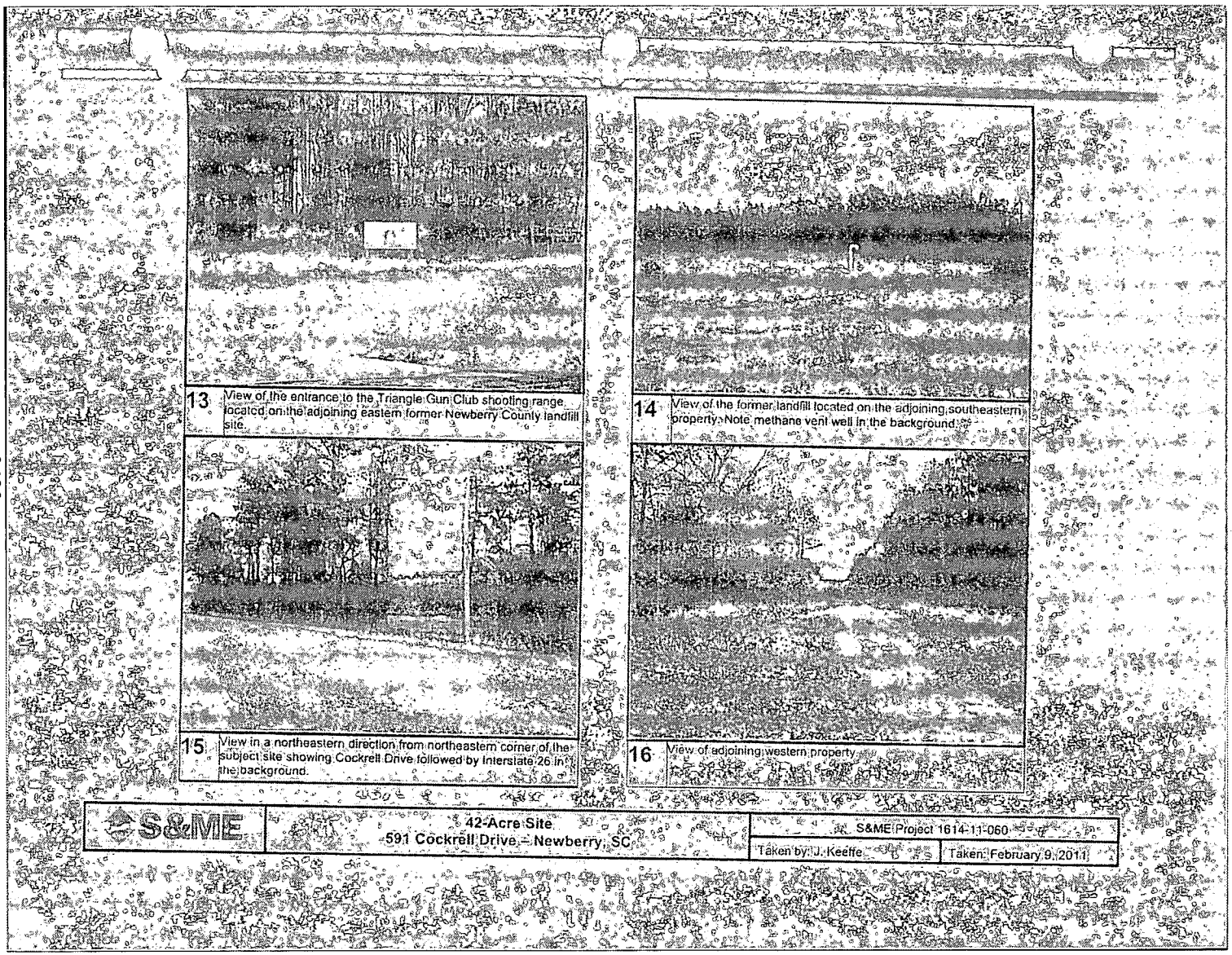


12 View in a northwestern direction from the southwestern adjoining property. This angle is near the southern corner of the subject site (Subject site is to the tree line to the right of the picture).

S&ME	42-Acre Site 591 Cockrell Drive – Newberry, SC	S&ME Project 1614-11-060
		Taken by: J. Keeffe — Taken: February 9, 2011

8

0425



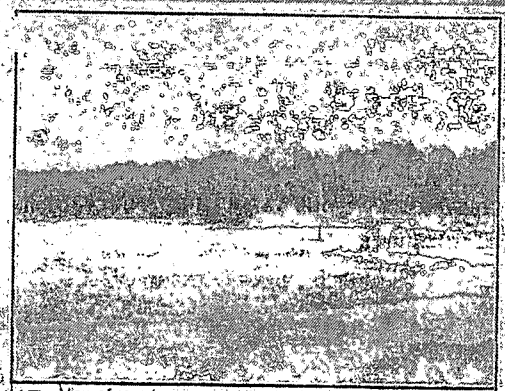
13 View of the entrance to the Triangle Gun Club shooting range located on the adjoining eastern former Newberry County landfill site.

14 View of the former landfill located on the adjoining southeastern property. Note methane vent well in the background.

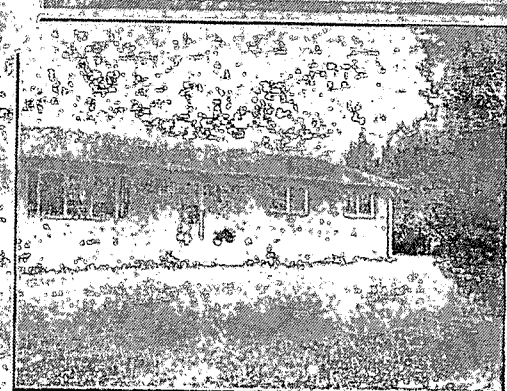
15 View in a northeastern direction from northeastern corner of the subject site showing Cockrell Drive followed by Interstate 26 in the background.

16 View of adjoining western property.

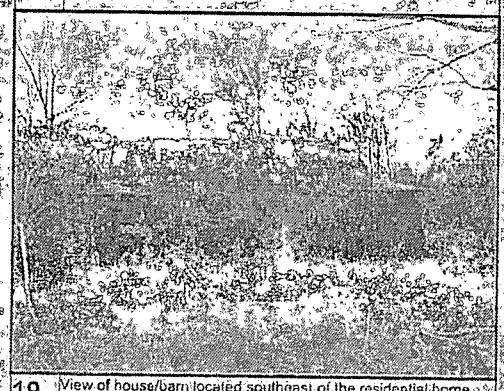
S&ME | 42-Acre Site, 591 Cockrell Drive, Newberry, SC | S&ME Project 1614-11-060 | Taken by: J. Keeffe | Taken: February 9, 2011



17 View of paved access road that begins along the eastern boundary of the site.



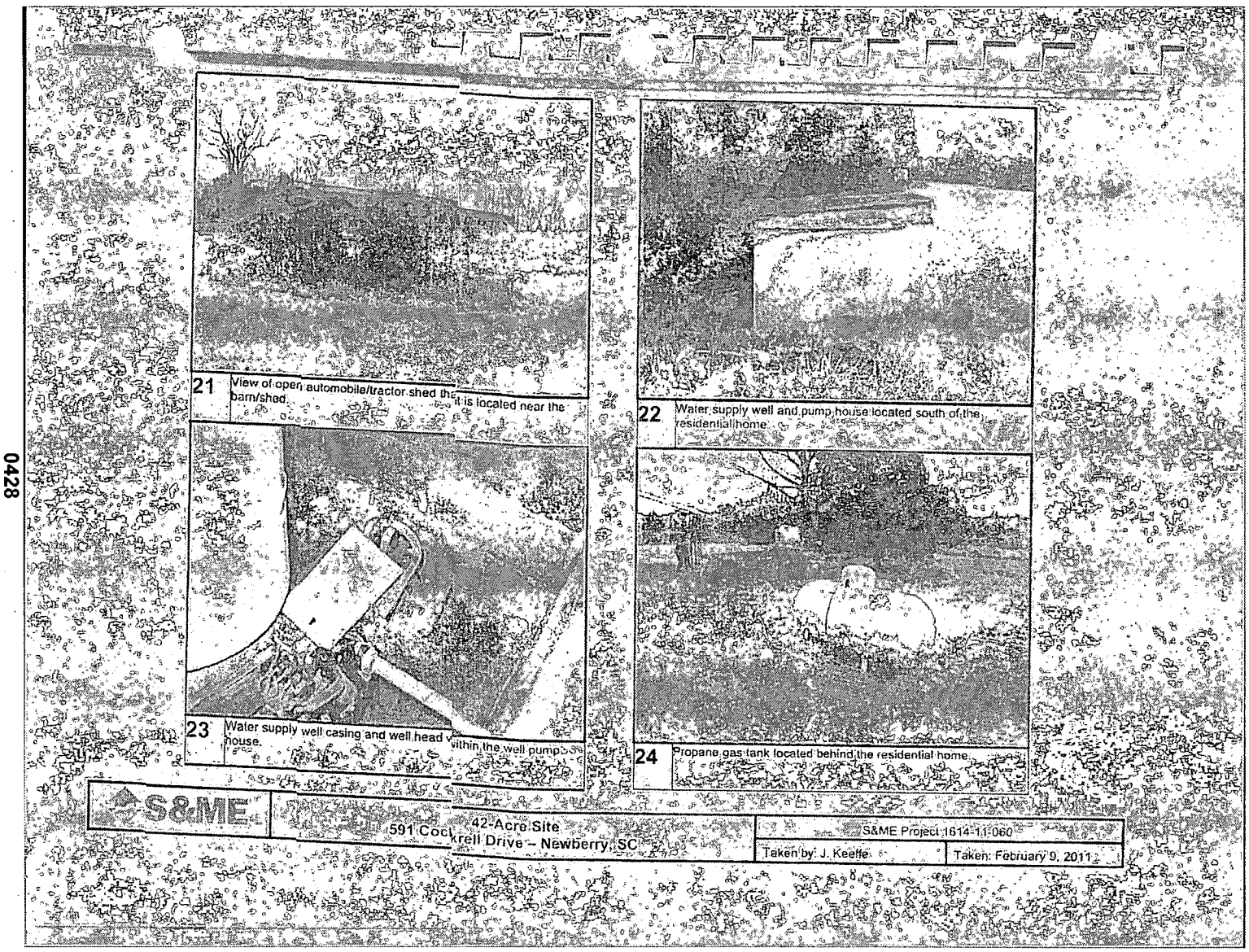
18 View of wood frame brick veneer home located near the north central portion of the site.

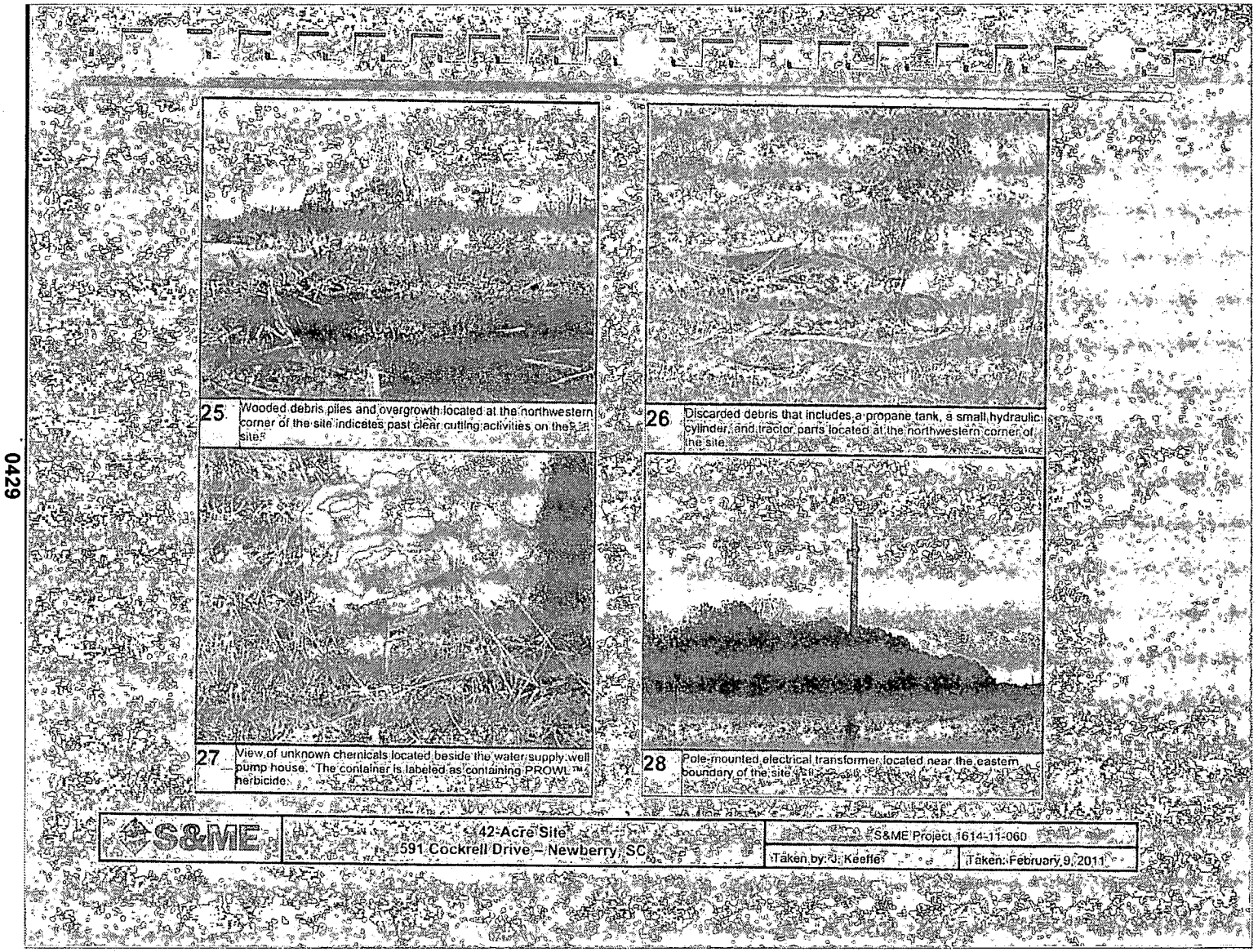


19 View of house/barn located southeast of the residential home.

20 View of animal pen located near the barn/shed.

S&ME	42-Acre Site 591 Cockrell Drive – Newberry, SC	S&ME Project 1614-11-060	
		Taken by: J. Keefe	Taken: February 9, 2011


21 View of open automobile/tractor shed that is located near the barn/shed.
22 Water supply well and pump house located south of the residential home.
23 Water supply well casing and well head within the well pump house.
24 Propane gas tank located behind the residential home.
S&ME
42-Acre Site
591 Cockrell Drive – Newberry, SC
S&ME Project 1614-11-060
Taken by: J. Keeffe
Taken: February 9, 2011



25 Wooded debris piles and overgrowth located at the northwestern corner of the site indicates past clear cutting activities on the site.

26 Discarded debris that includes a propane tank, a small hydraulic cylinder, and tractor parts located at the northwestern corner of the site.

27 View of unknown chemicals located beside the water supply well pump house. The container is labeled as containing PROWL™ herbicide.

28 Pole-mounted electrical transformer located near the eastern boundary of the site.

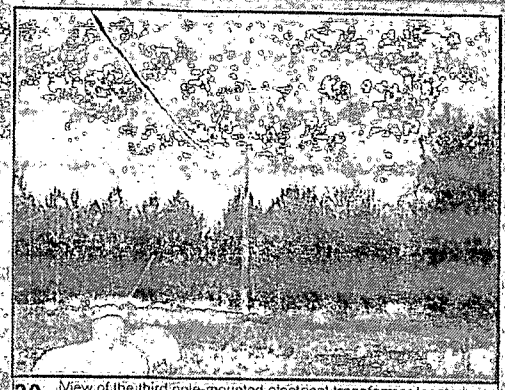
S&ME

42-Acre Site
591 Cockrell Drive – Newberry, SC

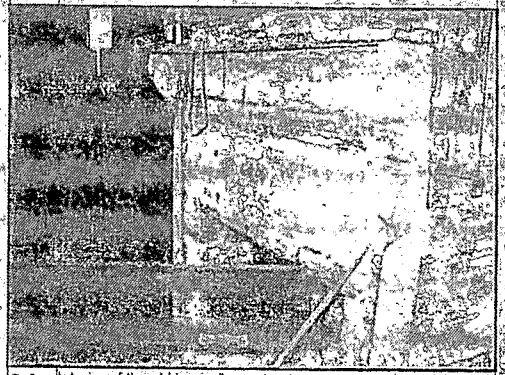
S&ME Project 1614-11-060
Taken by: J. Keeffe
Taken: February 9, 2011

0429

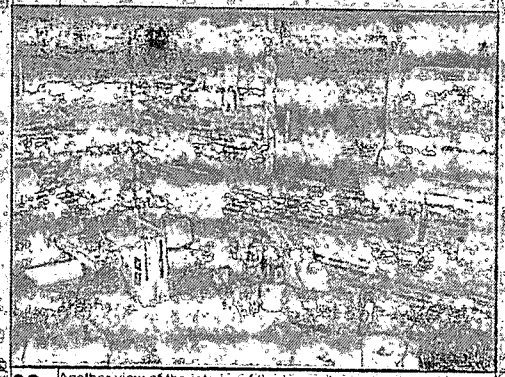
29 View of the second pole-mounted electrical transformer located near the home/barn structure.



30 View of the third pole-mounted electrical transformer located near the residential home.



31 Interior of the old house/barn structure.



32 Another view of the interior of the house/barn structure. Note: paint cans.

S&ME	42-Acre Site 591 Cockrell Drive – Newberry, SC	S&ME Project 1614-11-060	
		Taken by: J. Keeffe	Taken: February 9, 2011

0430

KISWIRE, INC.
257 Mawsons Way
Newberry, SC 29108
Tel: (803) 321-0940 Fax: (803) 405-0307

April 14, 2011

West/Hobby LLC
P.O. Box 734
Newberry, SC 29108

Dear West/Hobby LLC Hobby Development Company:

Pursuant to Section 3 of the Agreement of Purchase and Sale dated January 19, 2011 (the "Agreement") by and between West/Hobby LLC ("Seller") and Kiswire, Inc. ("Purchaser"), the Purchaser hereby terminates the Agreement. By copy of this letter I am instructing the escrow agent, Haynsworth Sinkler Boyd, P.A., to disburse $100.00 to the Seller as consideration for executing the Agreement with the balance of the earnest money to be refunded through the Purchaser, in accordance with Section 3 of the Agreement.

Please contact us if you have any questions regarding this letter.

Best regards,

David Minnick
President, Kiswire, Inc.

cc: Edward Kluiters, Haynsworth Sinkler Boyd, P.A., Escrow Agent

Columbia 1495494v1

PLAINTIFF'S EXHIBIT 14
ALL-STATE LEGAL®

LIMITED SOIL GAS ASSESSMENT
40.7 ACRE SITE
591 COCKRELL DRIVE
NEWBERRY, SOUTH CAROLINA

S&ME Project No. 1614-11-115

Prepared for:

Kiswire, Inc.
257 Mawsons Way
Newberry, South Carolina 29108

Prepared by:

S&ME, Inc.
134 Suber Road
Columbia, South Carolina 29210

April 29, 2011

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
15

S&ME

April 29, 2011

Kiswire, Inc.
257 Mawsons Way
Newberry, South Carolina 29108

Attention: Mr. David Minnick

Reference: **Limited Soil Gas Assessment Report**
40.7-Acre Site
591 Cockrell Drive
Newberry, South Carolina
S&ME Project No. 1614-11-115

Dear Mr. Minnick:

S&ME, Inc. (S&ME) is pleased to provide the findings of a limited Soil Gas Assessment for the 40.7 acre site located at 591 Cockrell Drive in Newberry, Newberry County, South Carolina. The work was performed in accordance with S&ME Proposal No. 1614-8022-11, dated March 7, 2011. Our report contains a summary of the work performed together with our findings, conclusions and recommendations.

We appreciate the opportunity to provide Kiswire, Inc. with environmental services for this project. If you have any questions concerning this project, please do not hesitate to call us at (803) 561-9024.

Sincerely,

S&ME, Inc.

Mike Marcus PhD
Technical Principal/VP

Thomas Behnke, P.G., CHMM
Environmental Department Manager

S&ME, INC. / 134 Suber Road / Columbia, SC 29210 / p 803.561.9024 f 803.561.9177 / www.smeinc.com

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LIST OF ACRONYMS USED IN THIS REPORT

bgs	below ground surface
HASP	Health and Safety Plan
LL	Low Level (related to Analytical Method TO-15)
MCPA	Minnesota Pollution Control Agency
NJDEP	New Jersey Department of Environmental Protection
NCDENR	North Carolina Department of Environment and Natural Resources
SCDHEC	South Carolina Department of Health and Environmental Control
USEPA	United States Environmental Protection Agency
VADEQ	Virginia Department of Environmental Quality
VOC	Volatile Organic Compound

UNITS OF MEASURE USED IN THIS REPORT

°F	degrees, Fahrenheit
ft.	foot/feet
hr.	hour/hours
in.	inch/inches
in. Hg	inches of mercury
%	percent
ug/m^3	micrograms per cubic meter
mph	mile per hour

1.0 INTRODUCTION

The subject site is a 40.7 acre tract of undeveloped land located at 591 Cockrell Drive in Newberry, Newberry County, South Carolina. A Phase I Environmental Site Assessment (ESA) of the property by S&ME, dated March 3, 2011, identified a potential vapor encroachment concern from the former Newberry County Landfill solid waste located on the adjoining property to the east. Elevated methane levels were reported in gas monitoring wells located on the former landfill site in 2010. The methane levels exceeded the 5% Lower Explosive Limit (LEL) as stipulated under the Resource Conservation and Recovery Act (RCRA) Subtitle D, Subpart C as the acceptable level at the property boundary limits of a municipal solid waste landfill. Two of the wells are located within approximately 100 feet of the subject site along Cockrell Drive. Kiswire, Inc. has an option to purchase this property for construction of a new industrial facility to include manufacturing and office buildings.

Accordingly, the overall project objectives were to execute limited soil gas sampling to identify the presence of soil gas vapor on the site boundary that is common to that of the adjoining landfill that may impact future site development. The elements of this evaluation were as follows:

- Collection of soil gas samples from eight (8) locations along the property boundary adjoining the landfill.
- Analysis of applicable gas samples for volatile organic compounds (VOCs) by United States Environmental Protection Agency (USEPA) Method TO-15 [low level (LL)]; methane by USEPA Method TO-3; and, mercury by NIOSH Method 6009.
- Relative comparison of acquired data between locations to ascertain indications of potential environmental contamination issues.

The ensuing data acquired from the soil gas sampling were used to indicate potential or likely environmental issues that may be encountered upon construction of buildings on the site. Because of the nature of soil gas data, assignment of ensuing analytes to an environmental medium (i.e., soil or groundwater or both) as the source was not possible.

The work reported herein was executed in substantial conformance with S&ME Proposal No. 1614-8022-11, authorized on March 8, 2011.

2.0 SITE DESCRIPTION

The site is located within a rural area of Newberry County, east of the Newberry city limits, in Newberry County, South Carolina (see Figures 1 and 2). Properties surrounding the site are open areas, wooded areas, residential properties, a gun club and outdoor shooting range, and former Newberry County solid waste landfill. Cockrell Drive borders the site to the east. Subgrade water utilities are present along the roadway. The site and

surrounding properties have gently rolling topography. Improvements on the site include a 1,770 square foot brick ranch style house, and some agricultural structures. Building improvements are currently unused. An asphalt paved driveway provides access to the site from Cockrell Drive. The slope of the subject site is in a radial direction toward the southeast and to the west from the highest elevation located at the northern portion of the site. No water bodies are present on the subject site. Monitoring well data from the adjoining landfill indicates groundwater flow is to the east.

3.0 MATERIALS AND METHODS

The sampling methodology applied on this project was developed in applicable accordance with USEPA guidance (DiGuilio 2002), as described below.

3.1 Health and Safety

A site and work task specific Health and Safety Plan (HASP) was developed and issued prior to commencement of work activities (S&ME 2011). A tailgate safety meeting was held at the site prior to commencement of work, to orient the project team to the site layout and any potential safety hazards.

3.2 Soil Gas Sampling

Soil gas samples were collected from eight (8) locations (GW-1 – GW-8) along the eastern boundary of the site parallel to Cockrell Drive and the former Newberry County landfill site. The sample locations are identified on Figure 3.

The sampling probes were installed on March 15, 2011, to a depth of approximately six (6) feet below ground surface (bgs) using a Geoprobe®. New polyvinylchloride (PVC) [one (1) in. diameter] well-points with pre-cut screens were used for the sampling probes. Clean filter sand was used to fill the holes for the bottom one (1) foot (ft.) of the holes. The remaining five (5) ft. of the sampling probe holes were filled to the ground surface with bentonite pellets that were then hydrated using deionized water. The probes were sealed with capped fitting and allowed to sit until March 17, 2011. Because the exterior soil gas probes were installed deeper than 5 ft. bgs, a tracer gas for monitoring leakage with ambient surface air during sampling was neither required nor applied.

On March 17, 2011, a portable, low-flow air pump was used to purge the ambient air from each probe assembly for approximately 30 seconds to achieve the recommended purge volume of one (1) vertical column volume (NJDEP 2005). Immediately after purging each probe assembly, the sampling probes were connected to pre-evacuated, certified-clean Summa Canisters and regulators via new Teflon® tubing to collect time-composited samples over an eight (8) hour continuous period (nominal). At the end of the eight (8) hour sampling period, the canisters were collected and submitted under chain-of-custody protocol to Pace Analytical Services, Inc. in Minneapolis, Minnesota, for analyses of VOCs by USEPA Method TO15 LL and Methane by EPA TO-3.

On March 21 and 22, 2011, air samples were collected from each probe using a low flow air pump and laboratory-provided Hopcalite sampling tubes for analysis of mercury. The samples were collected at a flow rate of 0.2 liter per minute over a period of four hours to achieve a sample volume of 48 liters of air. The collected samples were submitted under chain-of-custody protocol to Pace Analytical Services, Inc. in Minneapolis, Minnesota, for analyses of mercury by NIOSH Method 6009.

3.3 Quality Control

The quality control measures specified for this work comprised:

- Use of laboratory-certified clean canisters and regulators
- Sampling probe purge
- Low sample collection flowrate
- Pre-Sampling and Post-Sampling Pressure Readings
- Maintenance of chain-of-custody
- Review of Analytical Support Level II laboratory data packages

3.4 Regulatory Benchmark Screening

The acquired VOC data were evaluated against the screening levels for active soil gas concentrations beneath a slab or basement floor in a commercial setting per the spreadsheets developed and provided by the South Carolina Department of Health and Environmental Control (SCDHEC 2009). These screening levels are equivalent to the USEPA risk target of $1x10^{-6}$ and hazard target of 1.0 based on SCDHEC default factors for commercial buildings. Where SCDHEC did not publish a screening value, reputable alternative benchmarks were used. Sources for these supplemental benchmarks were USEPA, Minnesota Pollution Control Agency (MPCA), North Carolina Department of Environment and Natural Resources (NCDENR), New Jersey Department of Environmental Protection (NJDEP) and Virginia Department of Environmental Quality (VADEQ).

The acquired mercury data were evaluated against the screening levels for active soil gas concentrations beneath a slab or basement floor in a commercial setting per the spreadsheets developed and provided by SCDHEC 2009

The acquired methane data were evaluated against the 5% Lower Explosive Limit (LEL) as stipulated under the Resource Conservation and Recovery Act (RCRA) Subtitle D, Subpart C as the acceptable level at the property boundary limits of a municipal solid waste landfill.

The use of the screening results to evaluate the site was done so only for general, relative information because specific site development and civil lay-out plans are currently unknown. These screening benchmarks were applied to a hypothetical scenario of building construction in the areas of soil gas sample locations.

4.0 RESULTS AND DISCUSSION

4.1 Health and Safety

No health and safety incidents or issues occurred during execution of the work reported herein.

4.2 Sampling Conditions

Weather conditions during the sampling periods were generally cool and mild (Table 1).

4.3 Quality Control

Laboratory-Certified Clean Canisters and Regulators

The analytical laboratory certified that the canisters and regulators shipped for use were clean (Table 2). *Clean* is defined for the purposes of this application as analytical results for the Method TO-15 LL suite less than the analyte-specific reporting limits with no dilution requirements that would yield elevated reporting limits. The use of certified-clean canisters provided a measure of confidence that the analytes detected in the samples were not trace contaminants remaining in the canisters from previous, non-site-related sampling activities.

Sample Collection Flowrate

The samples were collected using laboratory-supplied, laboratory-certified regulators. The regulators were calibrated to collect the samples over an eight (8)-hr. time period (nominal) which was selected to correspond with the average work day duration (Table 3).

Pre-Sampling and Post-Sampling Pressure Readings

The pressure reading on canisters at GW-1 through GW-8 initially read from -26 to -35 inches of mercury (in. Hg) and the final pressures after the eight (8)-hr. sampling period were all one (1) or zero (0) in. Hg (Table 3). Consequently, the absolute sampling time period for these locations could not be confirmed.

- Decision: The analyte concentrations reported from these locations remain usable without limitation (within the context of this discussion) or caution in final decision-making with the notation that the collection period for each was less than eight (8)-hrs.

Chain-of-Custody

All canisters were activated and collected by S&ME personnel. Chain-of-custody was maintained for all samples from release to receipt by the laboratory.

4.4 Analytical Data Quality Review

The analytical laboratory reports (Annexes A and B) were reviewed to verify that the soil gas data were of sufficient quality to use in the intended evaluation. This review found:

- The *Air Sample Condition Upon Receipt* checklists did not flag issues relative to the conditions of the sample containers when received by the laboratory.

- None of the data from samples analyzed were rejected based on laboratory qualifiers.
- Review of the results from the Method Blanks, Laboratory Control Samples and Laboratory Duplicate Samples did not indicate issues with the usability of the data.
- The detection limits for each analyte in the Method TO-15 LL suite were verified to be less than the SCDHEC soil gas screening benchmarks used for this analysis.

4.5 Quality Control and Analytical Data Quality Review Conclusion

Based on the weight-of-evidence obtained from the quality control and analytical data review components summarized above, the analytical data were determined to be of sufficient quality for the specified purposes for which the study was performed and to allow decisions to be made with confidence.

4.6 Soil Gas

- Analytical data from GW-1 through GW-8 are provided in Pace Analytical Report Nos. 10152355 and 10152644 (Annexes A and B).
- Thirty of the 59 analytes in the Method TO-15 Air suite were detected at least once in soil gas from the sampling points. (Table 4).
  - acetone, benzene and trichloroethene were detected at all locations
  - n-hexane was detected most often [seven (7) of eight (8) locations], followed by cis-1,2-dichloroethene and 1,2,4-trimethylbenzene [each at six (6) of eight (8) locations] and acetone and toluene [each at five (5) of eight (8) locations]
  - the most analytes (24 of 29) were detected at GW-2
  - the least analytes [two (2) of the 29] were detected at GW-1
  - the largest total VOC concentration was observed at GW-2 (6,721 ug/m^3), followed by GW-4 (2,577 ug/m^3)
  - the largest total VOC concentration, recorded at GW-2 was driven by the detection of benzene (1,240 ug/m^3), tetrachloroethene (1,360 ug/m^3) and m&p xylene (2,510 ug/m^3)
  - total VOC concentrations ranged from 478 ug/m^3 at GW-7 to 6,721 ug/m^3 (GW-2)
  - total VOC concentrations from sample probe GW-6 which was set further into the site interior was 1,410 ug/m^3
  - Methane concentrations were reported in all sample probes except GW-8. The methane levels ranged from 2.0 parts per million (ppm) to 5.4 ppm.
  - Mercury was not reported in any of the soil gas samples

4.7 Regulatory Benchmark Screening

Evaluation of the data against the regulatory screening benchmarks are presented in Tables 4 and 5 (SCDHEC benchmarks) and as follows:

Volatile Organic Compounds (Method TO-15)

- Benzene exceeded the SCDHEC benchmark at all but one (1) of the locations (GW-3).
- Tetrachlorothene exceeded the SCDHEC benchmark at location GW-2.
- Trichlorothene exceeded the SCDHEC benchmark at location GW-1, GW-2, GW-3, GW-7 and GW-8.
- No other analytes exceeded the SCDHEC benchmarks at the eight (8) sample locations.
- No analytes exceeded the referenced supplemental benchmarks at the eight (8) sample locations.
- None of the non-detected analytes, using the respective maximum Reporting Limits, exceeded either the SCDHEC supplemental benchmarks or the supplemental benchmarks at the eight (8) locations.

Mercury (NIOSH 6009)

- Mercury was not reported in any of the soil gas samples collected.

Methane (Method TO-3)

- Methane levels did not exceed the the 5% Lower Explosive Limit (LEL) in any of the soil gas samples collected.
- Methane levels did not exceed the OSHA Tunneling Safety Factor (0.5%) per 29 CFR 1926.800.

5.0 SUMMARY

Based on the soil gas data collected at the site, the following observations were drawn:

1. Several volatile constituents typically associated with municipal landfills are present at the property boundary.
2. 30 of 58 Method TO-15 analytes were detected. Most of the detected analytes did not exceed the SCDHEC benchmarks for vapor intrusion.
3. Using the SCDHEC benchmarks for vapor intrusion that the Brownfield program developed, three (3) analytes posed potential concern for buildings that may be placed on the site—benzene, tetrachloroethene & trichloroethene.
4. The off-set of point GW-6 towards the interior of the site indicated that the landfill gas has impacted the site interior beyond the property boundary.
5. The extent of geographic penetration into the subject site by the landfill effects is unknown.
6. The future effects of the landfill on the site is unknown. These data represent current conditions on the day of sampling only.
7. It is likely that the effects of the landfill diminish as a function of distance removed from the unit; however, USEPA recommends a 100-ft. buffer be applied around the extent of a potential vapor intrusion source.

6.0 RECOMMENDATION

Based on the observations presented above, installation of a vapor mitigation system (e.g., likely a vapor barrier, installed to a specification to address the VOCs indicated to be originating from the landfill) should be considered for new buildings that are constructed at the site.

7.0 REFERENCES

DiGiulio, D. Undated. Draft -- Standard Operating Procedure (SOP) for Installation of Sub-Slab Vapor Probes and Sampling Using EPA Method TO-15 to Support Vapor Intrusion Investigations. US Environmental Protection Agency, Office of Research and Development, National Risk Management Laboratory. Ada, Oklahoma

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http://portal.ncdenr.org/c/document_library/get_file?uuid=a036efdc-5552-4e57-935a-64e48cdcafb7&groupId=38361

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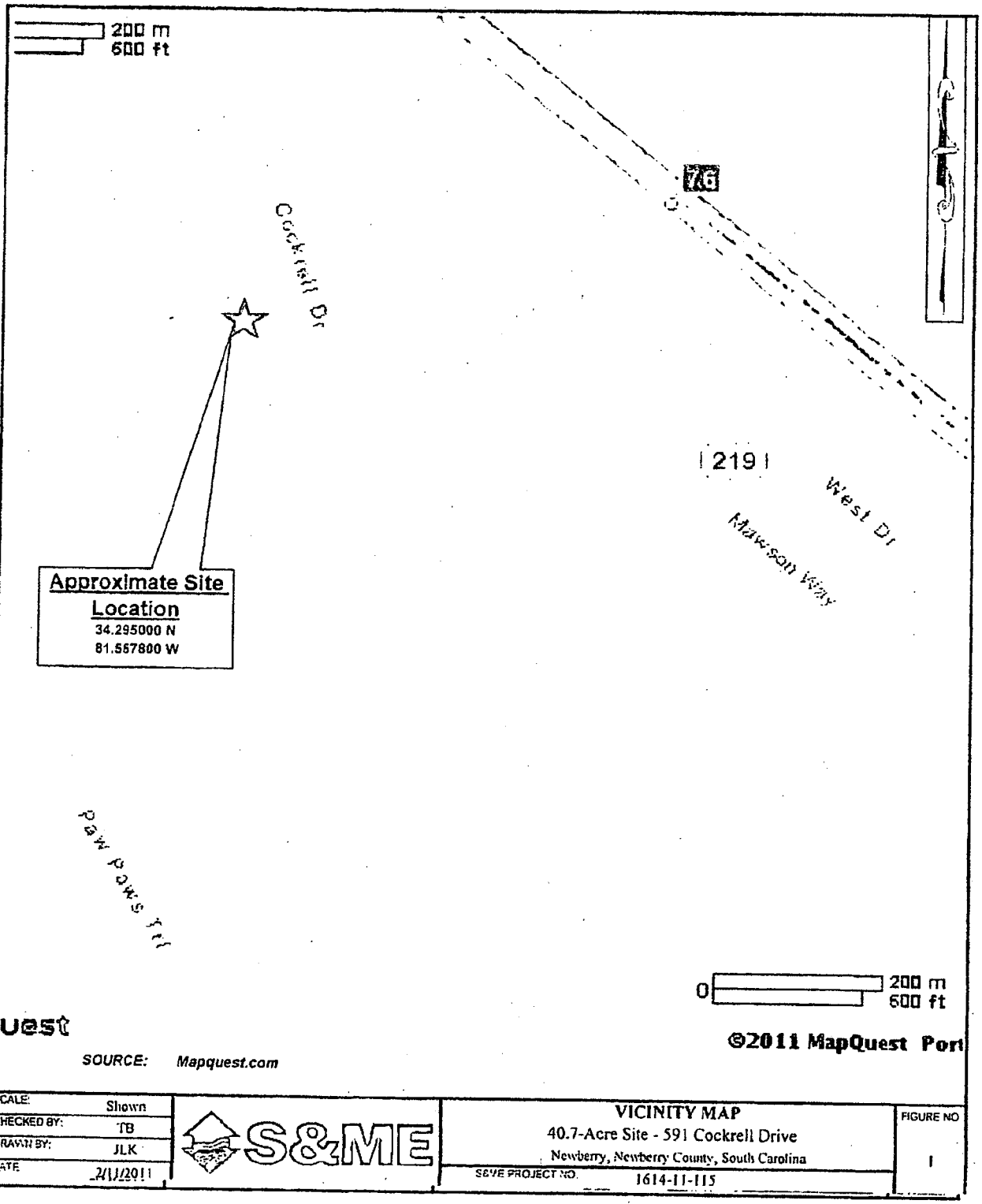
http://www.epa.gov/osw/hazard/correctiveaction/eis/vapor.htm

Virginia Department of Environmental Quality. 2010. Table 2.12. Selection of Contaminants of Concern. Tier III Commercial Subslab Soil Gas Screening Level. Voluntary Remediation Program. Richmond, VA. On-line version dated 11/19/10; accessed 12/7/10.
http://www.deq.state.va.us/vrprisk/tables.html

FIGURES



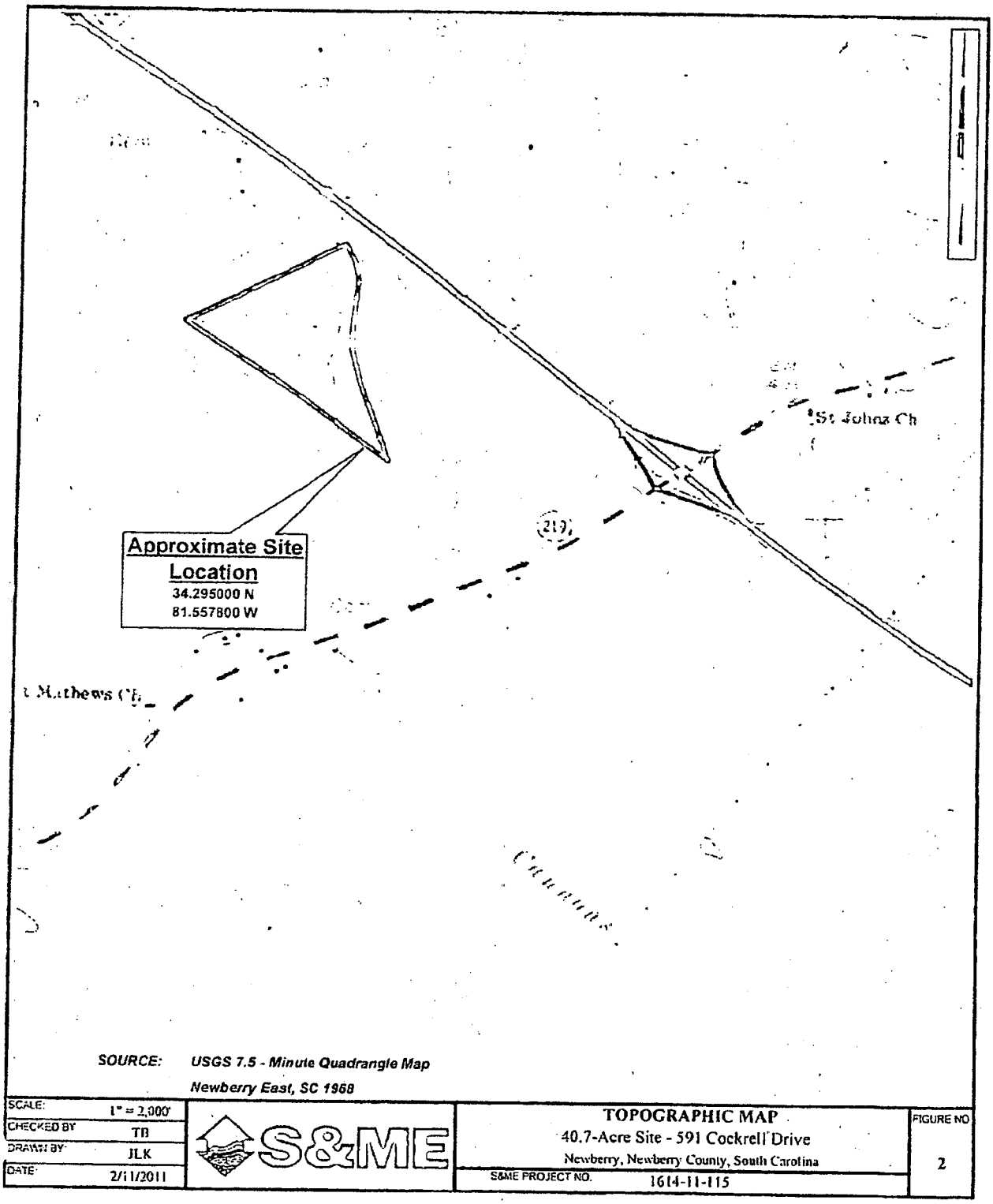
SCALE:	Shown
CHECKED BY:	TB
DRAWN BY:	JLK
DATE	2/1/2011

S&ME

VICINITY MAP
40.7-Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina

SAVE PROJECT NO. 1614-11-115

FIGURE NO 1



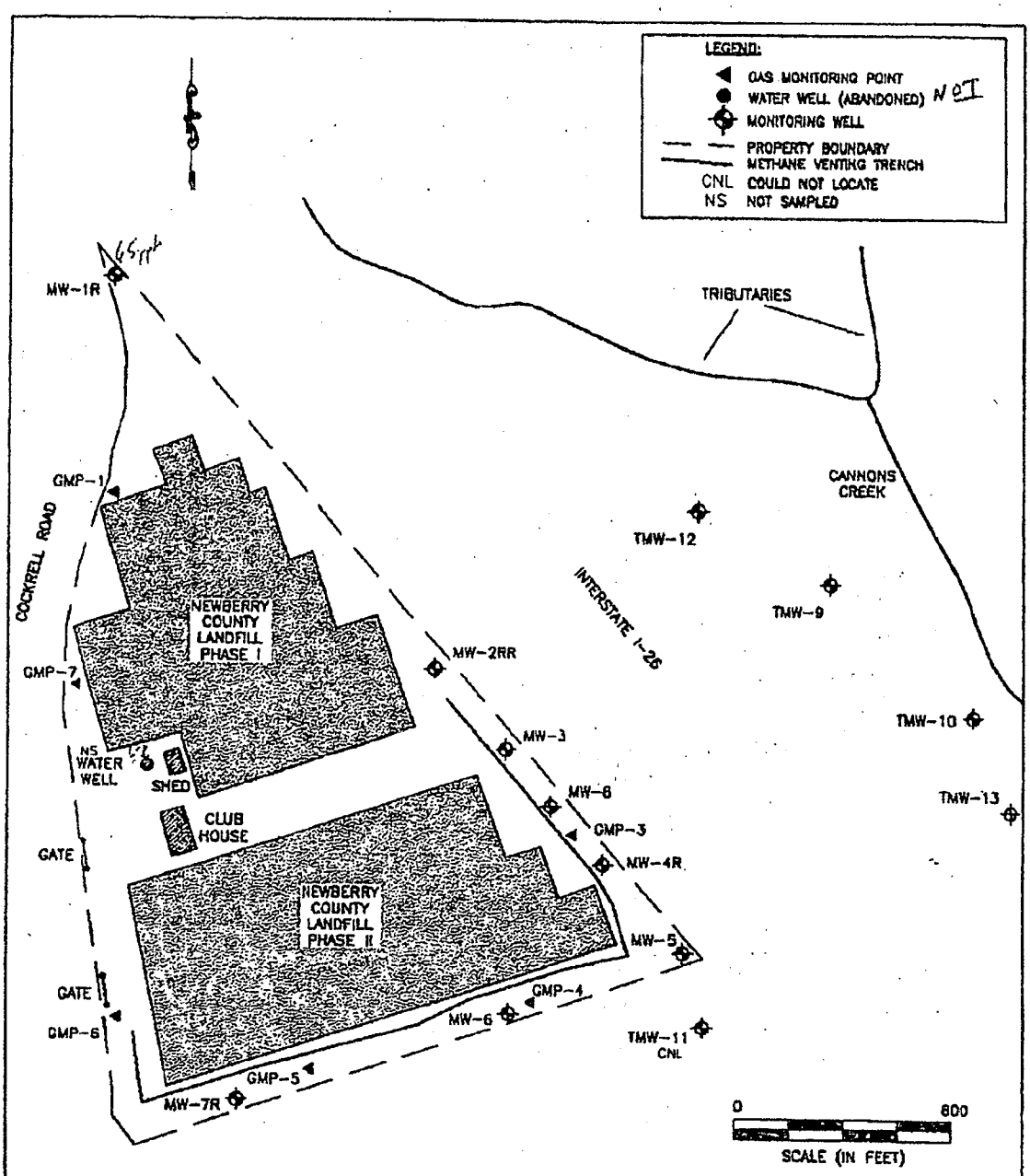
SOURCE: *USGS 7.5 - Minute Quadrangle Map*
Newberry East, SC 1968

SCALE:	1" = 2,000'
CHECKED BY	TB
DRAWN BY	JLK
DATE	2/11/2011

S&ME

TOPOGRAPHIC MAP
40.7-Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina
S&ME PROJECT NO. 1614-11-115

FIGURE NO. 2



TERRY ENVIRONMENTAL SERVICES
CLIENTS FIRST ALWAYS

providing our clients with the best services available, actively understanding our clients objectives, and making their objectives our own

PO Box 75
Summerville, South Carolina 29484
(800) 225-9005 (843)-871-6200 fax (843)-871-6105

FIGURE 2
SITE PLAN

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

SIZE	TERRY Project No.	DWG NO.	REV
B	2314 B	Figure 2 Site Plan.dwg	

SCALE: 1 inch = 400 feet

DATE: June 2010

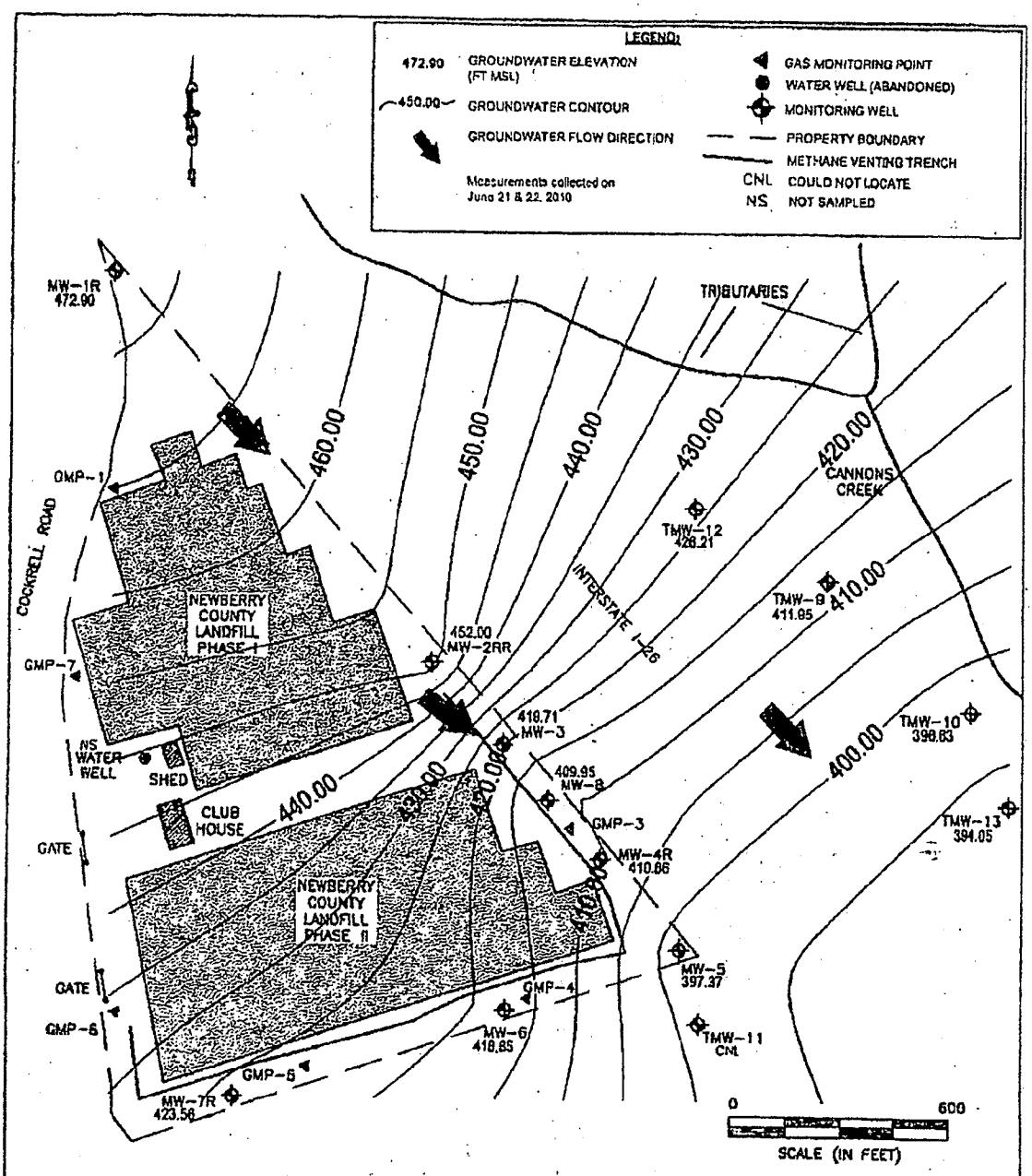


FIGURE 3
PIEZOMETRIC MAP

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

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Summerville, South Carolina 29484
(800) 336-0505 (843)-873-8200 fax (843)-873-8705

SIZE	TERRY Project No.	DWG NO.	REV
B	2314 B	Figure 2 Site Plan.dwg	

SCALE: 1 inch = 400 feet

DATE: June 2010

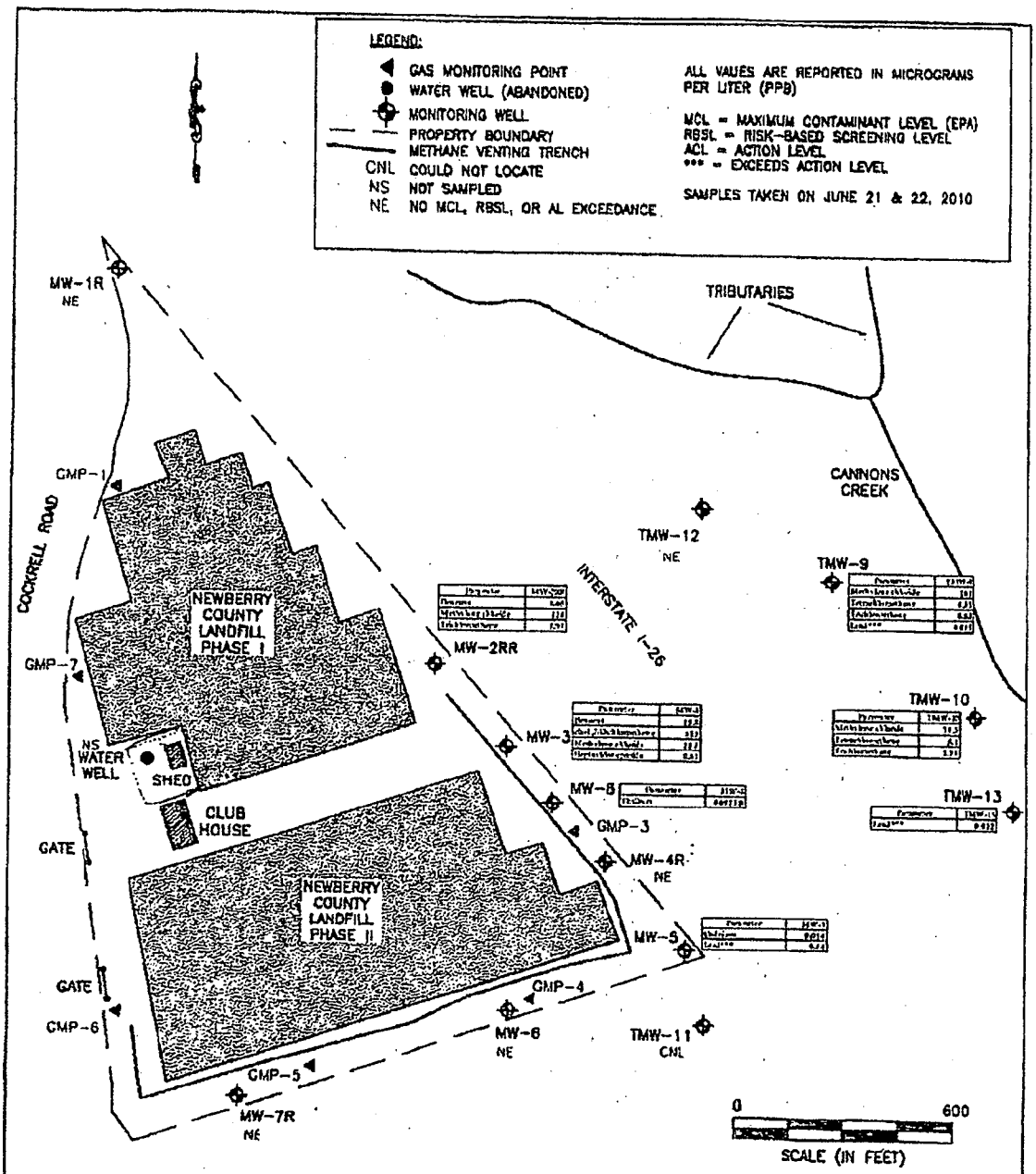

FIGURE 4

Parameters Equal to or Exceeding MCL, RBSL, or AL

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

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SIZE	TERRY Project No.	DWG NO	REV
B	2314 8	Figure 4 Analytical Data.dwg	

SCALE: 1 inch = 400 feet

DATE: June 2010

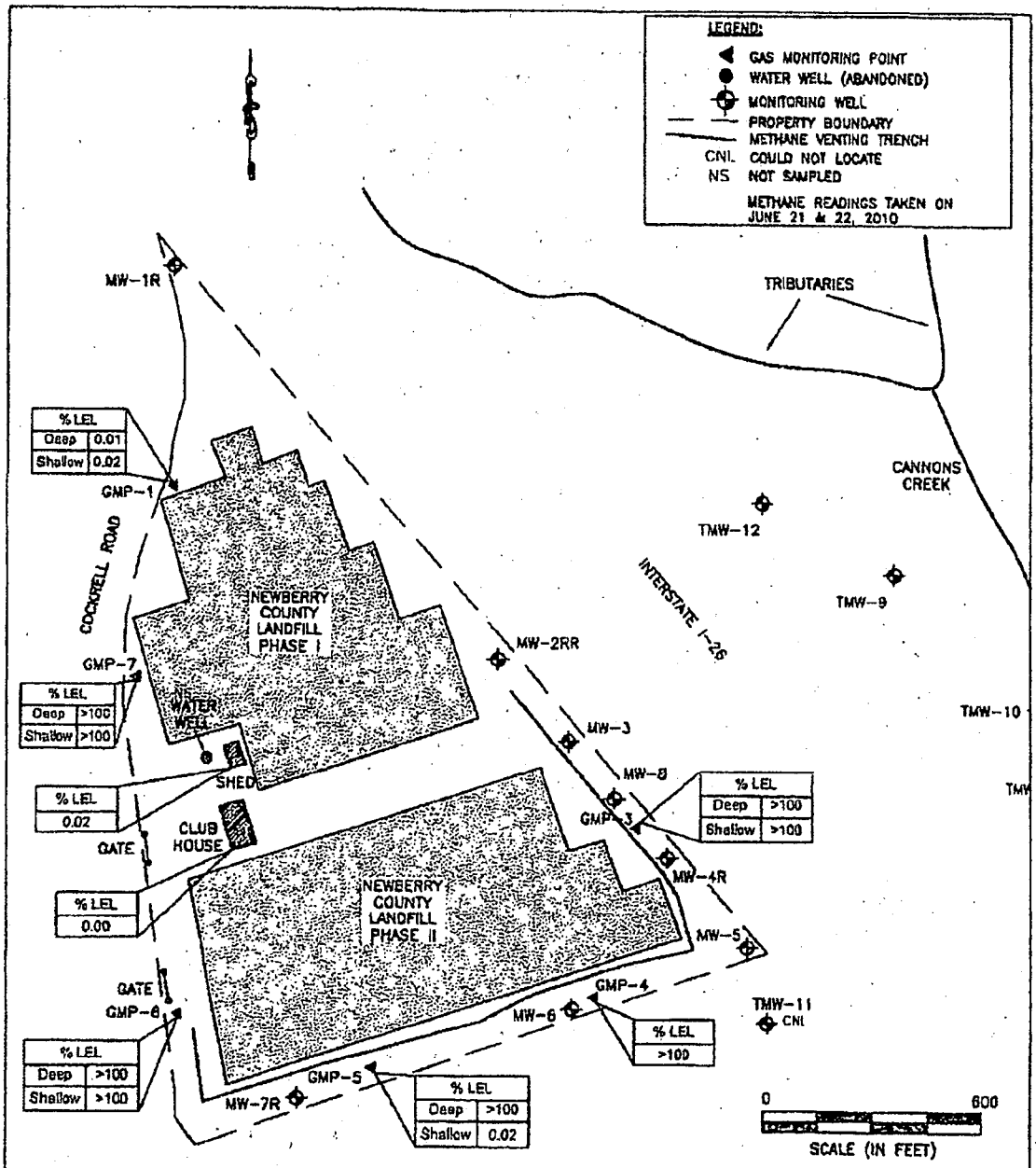

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FIGURE 5
METHANE %LEL

FORMER NEWBERRY COUNTY MSW LANDFILL
432 Cockrell Road
Newberry, South Carolina
SCDHEC Solid Waste Permit #: DWP-117

SIZE	TERRY Project No.	DWG NO.	REV
B	2314 B	Figure 5 Methane LEL Map.dwg	

SCALE: 1 inch = 400 feet

DATE: June 2010

TABLE 1
MONITORING WELL CONSTRUCTION DETAILS
Former Newberry County MSW Landfill
Cockrell Road, Newberry, South Carolina
TERRY Project # 2314B

Monitoring Well ID	Reported TOC Elevation	Reported Total Depth	Measured Well Depth June 21 &22, 2010	Reported Screened Interval	Reported Latitude	Reported Longitude
MW-1R	504.92	63.0	61.00	48.0 – 63.0	Unknown	Unknown
MW-2RR	459.82	63.0	58.00	48.0 – 63.0	Unknown	Unknown
MW-3	453.92	34.0	38.20	Unknown	34° 17' 50"	81° 33' 07"
MW-4R	441.55	63.0	63.20	48.0 – 63.0	Unknown	Unknown
MW-5	420.12	31.0	33.85	Unknown	34° 17' 44"	81° 33' 00"
MW-6	440.55	25.0	27.70	10.0 – 25.0	34° 17' 42"	81° 33' 08"
MW-7R	457.34	63.0	62.90	48.0 – 63.0	Unknown	Unknown
MW-8	443.39	68.0	71.00	58.0 – 68.0	Unknown	Unknown
TMW-9	457.58	75.0	74.85	65.0 – 75.0	Unknown	Unknown
TMW-10	415.07	45.0	44.10	35.0 – 45.0	Unknown	Unknown
TMW-11	Unknown	30.0	Well not located	20.0 – 30.0	Unknown	Unknown
TMW-12	468.18	42.6	42.10	22.6 – 42.6	Unknown	Unknown
TMW-13	409.25	44.4	43.75	14.4 – 44.4	Unknown	Unknown

TABLE 2
WATER TABLE ELEVATION DATA
Former Newberry County MSW Landfill
Cockrell Road, Newberry, South Carolina
TERRY Project # 2314B

Monitoring Well ID	Date	Reported TOC Elevation (ft)	Depth to Water (ft)	Water-Level Elevation (ft)	Comment
MW-1R	6/22/2007	504.92	32.18	472.74	
	12/31/2007		35.48	469.44	
	3/12/2009		36.72	468.20	
	12/04/2009		36.36	468.56	
	6/22/2010		32.02	472.90	
MW-2RR	6/22/2007	459.82	36.10	423.72	
	12/31/2007		36.40	423.42	
	3/12/2009		37.41	422.41	
	12/04/2009		37.10	422.72	
	6/21/2010		34.82	452.00	
MW-3	6/22/2007	453.92	35.28	418.64	
	12/31/2007		37.20	416.72	
	3/12/2009		36.75	417.18	
	12/04/2009		36.52	417.40	
	6/21/2010		34.21	419.71	
MW-4R	6/22/2007	441.55	31.68	409.87	
	12/31/2007		34.70	406.85	
	3/12/2009		32.56	408.99	
	12/04/2009		32.28	409.27	
	6/22/2010		30.69	410.86	
MW-5	6/22/2007	420.12	23.40	396.72	
	12/31/2007		26.03	394.09	
	3/12/2009		23.95	396.17	
	12/04/2009		-	-	Well not located
	6/22/2010		22.75	397.37	
MW-6	6/22/2007	440.55	27.22	413.33	
	12/31/2007		25.55	415.00	
	3/12/2009		24.55	416.00	
	12/04/2009		24.30	416.25	
	6/21/2010		21.70	418.85	
MW-7R	6/22/2007	457.34	35.78	421.56	
	12/31/2007		37.20	420.14	
	3/12/2009		35.91	421.43	
	12/04/2009		35.30	422.04	
	6/22/2010		33.78	423.56	
MW-8	6/22/2007	443.39	35.50	407.89	
	12/31/2007		37.80	405.59	
	3/12/2009		35.29	408.10	
	12/04/2009		35.04	408.35	
	6/21/2010		33.44	409.95	
TMW-9	6/22/2007	457.58	47.35	410.23	
	12/31/2007		47.33	410.25	
	3/12/2009		47.30	410.27	
	12/03/2009		47.21	410.37	
	6/22/2010		45.63	411.95	

TABLE 2
WATER TABLE ELEVATION DATA
Former Newberry County MSW Landfill
Cockrell Road, Newberry, South Carolina
TERRY Project # 2314B

Monitoring Well ID	Date	Reported TOC Elevation (ft)	Depth to Water (ft)	Water-Level Elevation (ft)	Comment
TMW-10	6/22/2007	415.07	18.90	396.17	
	12/31/2007		21.10	393.97	
	3/12/2009		18.75	396.32	
	12/03/2009		18.47	396.60	
	6/22/2010		18.44	396.63	
TMW-11	6/22/2007	Unknown	26.08	-	
	12/31/2007		28.60	-	
	3/12/2009		-	-	Well not located
	12/03/2009		-	-	Well not located
	6/21/2010		-	-	Well not located
TMW-12	12/03/2009	468.18	41.78	426.40	Insufficient volume to sample
	6/22/2010		41.97	426.21	Insufficient volume to sample
TMW-13	12/03/2009	409.25	14.96	394.29	
	6/22/2010		15.20	394.05	

TABLE 3

SUMMARY OF DETECTED REGULATED COMPOUNDS - HISTORICAL

Cockrell Road, Newberry, South Carolina

	Date	Acetone	Acrolein	Acrylonitrile	tert-Amyl methyl ether	Benzene	Bromobenzene	Bromochloromethane	Bromodichloromethane	Bromoform	Bromomethane	2-Butanone (MEK)	n-Butylbenzene	sec-Butylbenzene	tert-Butylbenzene	Carbon disulfide	Carbon tetrachloride	Chlorobenzene	Chloroethane	Chloroform	Chloromethane	2-Chlorotoluene	4-Chlorotoluene	Dibromochloromethane	1,2-Dibromo-3-chloropropane	1,2-Dibromoethane (EDB)	Dibromomethane	1,2-Dichlorobenzene	1,3-Dichlorobenzene	1,4-Dichlorobenzene	Dichlorodifluoromethane	1,1-Dichloroethane	1,2-Dichloroethane	1,1-Dichloroethene	cis-1,2-Dichloroethene	trans-1,2-Dichloroethene	1,2-Dichloropropane
Units		µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l
US EPA MCL						5												100		80								600	600	75			7	5	70	100	5
MW-1R	6/23/07	<25	-	-	-	<1.0	<1.0	<1.0	10	<1.0	3.3	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	-	65	<1.0	<1.0	<1.0	<1.0	2.5	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	3.4	<1.0	<1.0	<1.0	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00
MW-2RR	6/22/07	<25	-	-	-	35	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	1.2	<1.0	-	<1.0	2.2	8.7	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	6.8	-	-	1.5	37	<1.0	3.9	89	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12.3	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	8.88	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	3.23J	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	11.6	-	<5.00	<5.00	35.9	<5.00	1.38J	69.2	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	8.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	5.51	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	17.5	-	<5.00	8.40	32.0	2.25J	1.00J	64.2	<5.00	<5.00
MW-3	6/22/07	<25	-	-	-	19	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	1.4	<1.0	-	<1.0	2.1	10	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	7.5	-	-	1.9	23	<1.0	3.2	310	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	12.8	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	20.5	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	2.74J	6.56	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	6.87	-	<5.00	1.26J	16.5	<5.00	<5.00	142	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	18.1	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	4.44J	1.80J	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	10.7	-	<5.00	1.66J	14.5	1.76J	<5.00	139	<5.00	<5.00
MW-4R	6/22/07	<25	-	-	-	4.4	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	1.2	3.8	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	2.9	<1.0	1.0	1.8	70.0	<1.0	9.9	8.7	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	17.8	<5.0	6.9	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	2.29J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	4.02J	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	1.16J	<5.00	1.05J	-	<5.00	<5.00	31.9	<5.00	8.46	5.42	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	2.19J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	7.11	0.900J	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	2.96J	0.430J	4.31J	-	<5.00	0.630J	19.8	<5.00	4.15J	4.34J	<5.00	<5.00
MW-5	6/22/07	<25	-	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	7.3	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	7.0	<5.0	<5.0	<5.0	<5.0	<5.0	19.1	<5.0	<5.0	<5.0
	4/4/08	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	(0.727J)	<5.00	<5.00	<5.00	<5.00	<5.00
	3/13/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00
	12/4/09	Could Not Locate																																				
MW-6	6/22/07	<25	-	-	-	7.6	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	43.0	6.3	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	8.0	-	-	<1.0	<1.0	<1.0	<1.0	38	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	7.7	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	7.8	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	16.6	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	4.5J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	1.03J	28.5	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	3.61	-	<5.00	<5.00	<5.00	<5.00	<5.00	19.8	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	4.71J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	4.07J	5.81	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	12.0	-	<5.00	<5.00	2.04J	<5.00	<5.00	11.6	<5.00	<5.00
MW-7R	6/22/07	<25	-	-	-	3.2	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	3.6	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	2.9	<1.0	<1.0	5.2	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	9.8	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	1.48J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	5.43	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	1.46J	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	1.93J	1.09J	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	3.72J	<5.00	<5.00
MW-8	6/23/07	<25	-	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	4.3	2.6	<1.0	<1.0	3.4	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	5.4	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/12/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	6.33	<5.00	2.29J	4.65J	<5.00	<5.00
	12/4/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	6.45	7.08	<5.00	2.25J	3.13J	<5.00	<5.00

Notes:

Analysis was performed by US EPA Method 8260B.

Bolded and highlighted values exceed the US EPA MCL.

TABLE 3

SUMMARY OF DETECTED REGULATED COMPOUNDS - HISTORICAL

Cockrell Road, Newberry, South Carolina

	Date	Acetone	Acrolein	Acrylonitrile	tert-Amylmethyl ether	Benzene	Bromobenzene	Bromochloromethane	Bromodichloromethane	Bromoform	Bromomethane	n-Butylbenzene (MEK)	sec-Butylbenzene	tert-Butylbenzene	Carbon disulfide	Carbon tetrachloride	Chlorobenzene	Chloroethane	Chloroform	Chloromethane	2-Chlorotoluene	4-Chlorotoluene	Dibromochloromethane	1,2-Dibromo-3-chloropropane	1,2-Dibromoethane (EDB)	Dibromomethane	1,2-Dichlorobenzene	1,3-Dichlorobenzene	1,4-Dichlorobenzene	Dichlorodifluoromethane	1,1-Dichloroethane	1,2-Dichloroethane	1,1-Dichloroethene	cis-1,2-Dichloroethene	trans-1,2-Dichloroethene	1,2-Dichloropropane
Units		µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l
US EPA MCL						5																														
TWM-9	6/22/07	<25	-	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	1.9	-	-	2.6	11	<1.0	<1.0	21	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	11.1	<5.0	<5.0	19.6	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	4.80	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	2.94	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	5.21	-	<5.00	30.3	18.6	<5.00	<5.00	41.6	<5.00	<5.00
	12/3/09	<25.0	<25.0	<25.0	-	3.91	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	3.07	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	8.25	-	<5.00	7.35	15.7	<5.00	0.9243	36.1	<5.00	<5.00
TMW-10	6/22/07	<25	-	-	-	1.3	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	1.3	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	7.8	11	<1.0	5.5	6.2	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	-	-	39.8	<5.0	<5.0	6.6	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	2.57	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	3.16	-	<5.00	5.32	61.6	<5.00	9.94	13.0	<5.00	<5.00
	12/3/09	<25.0	<25.0	<25.0	-	3.12	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	2.16	-	<5.00	4.27	50.1	<5.00	7.22	15.9	<5.00	<5.00
TMW-11	6/22/07	<25	-	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	8.3	<5.0	<5.0	<5.0	<5.0	<10.0	<10.0	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	-	-	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	<25.0	<25.0	<25.0	<10.0	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	7.6	<5.0	<5.0	<5.0	<5.0	16.3	<5.0	<5.0
	3/13/09	Could Not Locate																																				
	12/4/09	Well Destroyed																																				
TWMW-12	12/3/09	Insufficient Sample Volume																																				
TWMW-13	12/3/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	7.543	<5.00	<5.00	<5.00	<5.00	<5.00
Water Well	6/22/07	<25	-	-	-	<1.0	<1.0	<1.0	1.4	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	2.9	-	8.9	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
	1/8/08	<25	-	-	-	<5.0	<5.0	<5.0	6.2	<5.0	<10.0	<10.0	<5.0	<5.00	<5.00	-	<5.0	<5.0	<10.0	-	33.1	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	-	-	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	9.86	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	82.0	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00
	12/3/09	Not In Service																																				
Cannons Creek	6/24/07	<25	-	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<5.0	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
	12/31/07	<25	<100	<100	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	-	<5.0	-	-	<10.0	<5.0	<5.0	<10.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0
	4/4/08	Not Sampled																																				
	3/13/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	2.571	<5.00	<5.00
	12/3/09	<25.0	<25.0	<25.0	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00

Notes:
Analysis was performed by US EPA Method 8260B.
Bolded and highlighted values exceed the US EPA MCL.

TABLE 3 (Continued)

SUMMARY OF DETECTED REGULATED COMPOUNDS - HISTORICAL

Cockrell Road, Newberry, South Carolina

Location	Date	1,2-Dichloropropane	2,2-Dichloropropane	1,1-Dichloropropene	cis-1,3-Dichloropropene	trans-1,3-Dichloropropene	Diethyl ether (Ethyl ether)	Diisopropyl ether	Ethylbenzene	Hexachloro-1,3-butadiene	n-Butane	n-Propylbenzene	Isopropylbenzene (Cumene)	p-Isopropyltoluene	Methyl Iodide	Methylene chloride	4-Methyl-2-pentanone (MIBK)	Methyl tert-butyl ether (MTBE)	Naphthalene	Pentachloroethane	n-Propyl benzene	Styrene	1,1,1,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	Tetrachloroethene (PCE)	Toluene	1,2,3-Trichlorobenzene	1,2,4-Trichlorobenzene	1,2,4-Trimethylbenzene	1,1,1-Trichloroethane	1,1,2-Trichloroethane	Trichloroethene (TCE)	Trichlorofluoromethane (Freon 11)	1,2,3-Trichloropropane	Vinyl acetate	Vinyl chloride	Xylenes (total)
Units		µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l
US EPA MCL																5		40	25								5	1,000									2	10,000
MW-1R	6/23/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	2.1J	-	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	<3.0
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00	<5.00	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<15.00
MW-2RR	6/23/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	1.8	<1.0	-	32	-	3.6	1.5	-	<1.0	<1.0	<1.0	<1.0	21	1.3	<1.0	<1.0	<1.0	<1.0	14	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	2.8
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	12.3	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	1.96J	-	<5.00	191	<5.00	3.40J	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	2.97	-	<5.00	119	<5.00	4.86J	<5.00	-	<5.00	<5.00	<5.00	<5.00	6.03	<5.00	-	<5.00	<5.00	<5.00	11.9	1.04J	<5.00	-	-	1.13J	<5.00	<5.00	1.75J	11.8
MW-3	6/23/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	2.1	<1.0	-	34	-	3.3	1.7	-	<1.0	<1.0	<1.0	<1.0	27	1.6	<1.0	<1.0	<1.0	<1.0	18	<1.0	<1.0	-	-	<1.0	<1.0	-	2.0J	18.3
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	11.8	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	1.92J	-	<5.00	38.3	<5.00	4.85J	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	1.75J	<5.00	-	<5.00	3.97	-	<5.00	26.6	<5.00	6.64	<5.00	-	<5.00	<5.00	<5.00	<5.00	10.8	1.47J	-	<5.00	<5.00	<5.00	12.0	<5.00	<5.00	-	-	4.34J	<5.00	<5.00	2.17J	15.3
MW-4R	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	1.7	<1.0	-	27	-	3.8	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	2.5	<1.0	<1.0	<1.0	<1.0	3.3	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	2.3
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	17.3	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	1.07J	-	<5.00	8.65J	<5.00	3.07J	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	5.53	-	<5.00	3.09J	<5.00	5.57	9.07	-	<5.00	<5.00	<5.00	<5.00	<5.00	1.23J	-	<5.00	<5.00	<5.00	0.86J	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<10.0
MW-5	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<2.0	-	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	<2.0
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	61.9	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	<5.0	<10.0	13.8	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<15.0
	3/12/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<15.0
	12/4/09																																						
	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	4.5	<1.0	-	<2.0	-	26	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	1.0	<2.0
MW-6	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	67.5	<5.0	18.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	<5.0	<10.0	18.1	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/12/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	2.73J	-	<5.00	<10.0	<5.00	20.0	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	6.59	-	<5.00	1.23J	<5.00	16.0	<5.00	-	<5.00	<5.00	<5.00	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	0.64J	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	1.54J	<10.0
MW-7R	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	12	-	3.3	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	1.1	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	<2.0
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	28.4	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	20.1	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/12/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	9.92J	<5.00	3.75J	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	9.41J	<5.00	7.41J	<5.00	-	<5.00	<5.00	<5.00	<5.00	0.97J	<5.00	-	<5.00	<5.00	<5.00	0.93J	<5.00	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<10.0
MW-8	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<2.0	-	<1.0	<1.0	-	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<1.0	<2.0
	12/31/07	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	<5.0	<10.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	<15.0
	4/4/08																																						
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00	<5.00	<5.00	-	Not Sampled																											
	12/4/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	1.03J	<5.00	<5.00	<5.00	-	<5.00	<5.00	<5.00	<5.00	1.75J	<5.00	-	<5.00	<5.00	<5.00	2.45J	3.22J	<5.00	-	-	<5.00	<5.00	<5.00	<5.00	<10.0

Notes:

Analysis was performed by US EPA Method 8260B.

Bolded and highlighted values exceed the US EPA MCL.

TABLE 3 (Continued)

SUMMARY OF DETECTED REGULATED COMPOUNDS - HISTORICAL

Cockrell Road, Newberry, South Carolina

	Date	1,1-Dichloroethane	1,1-Dichloroethene	1,2-Dichloroethane	1,2-Dichloropropane	Dichlorodifluoromethane	Ethylbenzene	Isopropylbenzene	Methylene Chloride	Naphthalene	Styrene	Tetrachloroethene	Toluene	Trichloroethene	Trichlorofluoromethane	Vinyl Chloride	Xylenes (total)
	Units	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l	µg/l
	US EPA MCL	7	7	5	5	1,000	700	450	5	100	100	5	1,000	5	2,000	2	10,000
TWMW-9	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	56	-
	12/11/07	<5.0	<5.0	<5.0	<5.0	<5.0	37.6	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	43.8	<10.0
	4/4/08	Not Sampled															
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	0.749J	-	<5.00	99.0	<5.00
	12/3/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	5.17	-	<5.00	24.3	<5.00
TWMW-10	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	29	-
	12/11/07	<5.0	<5.0	<5.0	<5.0	<5.0	11.6	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	25.0	<10.0
	4/4/08	Not Sampled															
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	83.7	<5.00
	12/3/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	64.9	<5.00
TWMW-11	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<2.0	-
	12/11/07	<5.0	<5.0	<5.0	<5.0	<5.0	68.4	<5.0	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	<5.0	<10.0
	4/4/08	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00
	3/13/09	Could Not Locate															
	12/4/09	Well Destroyed															
TWMW-12	12/3/09	Insufficient Sample Volume															
TWMW-13	12/3/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00
Water Well	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<2.0	-
	12/11/07	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	-	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	<5.0	<10.0
	4/4/08	Not Sampled															
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00
	12/3/09	Not in Service															
Cummins Creek	6/22/07	<1.0	<1.0	<1.0	-	-	-	<1.0	<1.0	<1.0	-	-	<1.0	<1.0	-	<2.0	-
	12/11/07	<5.0	<5.0	<5.0	<5.0	<5.0	<5.0	-	<5.0	<5.0	<5.0	<10.0	<5.0	<5.0	-	<5.0	<10.0
	4/4/08	Not Sampled															
	3/13/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00
	12/3/09	<5.00	-	<5.00	<5.00	<5.00	-	-	<5.00	<5.00	-	<5.00	<5.00	-	<5.00	<10.0	<5.00

Notes:
Analysis was performed by US EPA Method 8260B.
Bolded and highlighted values exceed the US EPA MCL.

TABLE 4

SUMMARY OF DETECTED REGULATED COMPOUNDS

JUNE 2010

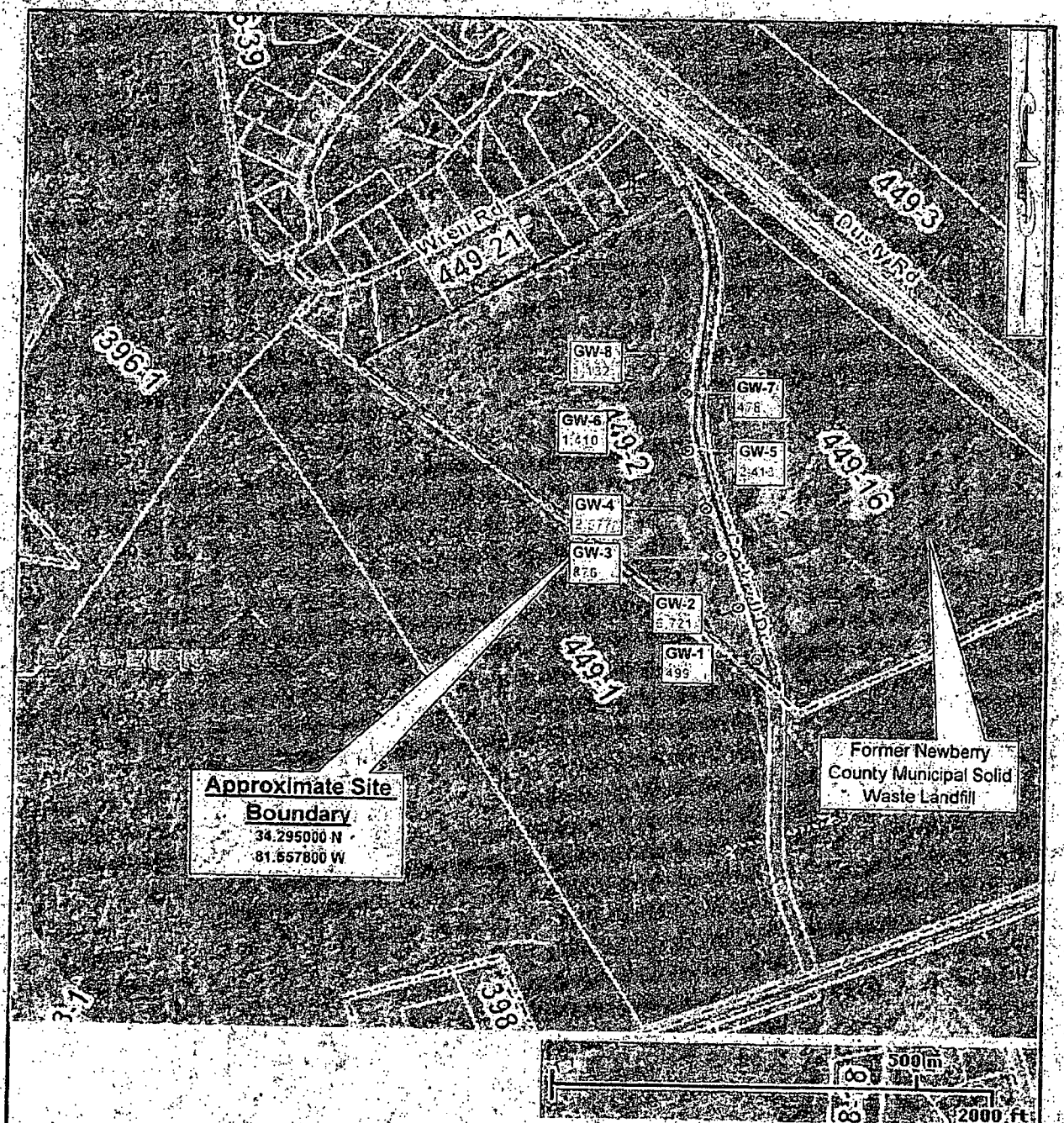
Former Newberry County MSW Landfill

Cockrell Road, Newberry, South Carolina

TERRY Project #23148

Parameter	Analytical Method	Units	MCL	MW-2RR 6/21/2010	MW-3 6/21/2010	MW-6 6/21/2010	MW-7R 6/21/2010	MW-8R 6/22/2010	MW-9 6/22/2010	MW-10 6/22/2010	MW-78 6/22/2010	TMW-5 6/22/2010	TMW-10 6/22/2010	TMW-15 6/22/2010
1,1-Dichloroethane	8260B	W	ug/L	---	25.2	9.6	1.12J	5.16	<5	32.3	<5	<5	18.4	50.6	<5
1,1-Dichloroethene	8260B	W	ug/L	7	<5	<5	<5	<5	2.83J	<5	<5	<5	1.15J	<5	<5
1,2-Dichloroethane	8260B	W	ug/L	5	2.43J	1.03J	<5	<5	<5	<5	<5	<5	1.15J	<5	<5
1,4-Dichlorobenzene	8260B	W	ug/L	---	16.5	10.6	9.18	<5	<5	4.49J	<5	<5	9.01	<5	<5
2-Hexanone	8260B	W	ug/L	---	<5	<5	<5	<5	<5	<5	<5	<5	<5	<5	6.27
Acetone	8260B	W	ug/L	---	<25	<25	2.52J	<25	<25	<25	<25	<25	<25	<25	<25
Benzene	8260B	W	ug/L	5	8.05	15.8	4.93J	<5	<5	2.69J	<5	<5	4.41J	2.58J	<5
Carbon disulfide	8260B	W	ug/L	---	13.2	<5		1.23J	<5	<5	<5	<5	<5	<5	1.02J
Chlorobenzene	8260B	W	ug/L	100	3.91J	3.41J	2.94J	<5	<5	6.11	<5	<5	4.49J	<5	<5
Chloroethane	8260B	W	ug/L	---	<5	<5	7.51	<5	<5	<5	<5	<5	<5	<5	<5
cis-1,2-Dichloroethene	8260B	W	ug/L	70	61.9	129	11.7	2.95J	<5	4.80J	<5	2.03J	38.7	13.8	<5
Dichlorodifluoromethane	8260B	W	ug/L	---	12.1	<5	<5	10.8	<5	<5	<5	<5	12.8	6.97	<5
Ethylbenzene	8260B	W	ug/L	700	<5	<5	0.152J	<5	<5	<5	<5	<5	<5	<5	<5
m,p-Xylene	8260B	W	ug/L	10000*	6.28J	<10	0.579J	<10	<10	<10	<10	<10	2.05J	<10	<10
Methylene chloride	8260B	W	ug/L	5	120	70.5	<10	<10	<10	1.94J	<10	1.24J	102	71.5	<10
Tetrachloroethene	8260B	W	ug/L	5	<5	4.93J	<5	<5	<5	<5	<5	<5	6.35	5.4	<5
Toluene	8260B	W	ug/L	1000	6	1.34J	1.12J	1.01J	0.927J	2.16J	0.998J	0.924J	1.04J	0.911J	0.880J
Trichloroethene	8260B	W	ug/L	5	0.97	1.36J	0.781J	<5	<5	<5	<5	<5	8.53	5.96	<5
Trichlorofluoromethane	8260B	W	ug/L	---	<5	<5	<5	5.17	<5	<5	<5	<5	<5	<5	<5
Vinyl chloride	8260B	W	ug/L	2	<5	<5	1.61J	<5	<5	<5	<5	<5	<5	<5	<5
Xylene (total)	8260B	W	ug/L	10000	11.2	4.36J	0.579J	<10	<10	<10	<10	<10	3.35J	<10	<10
2,4-Dichlorophenol	8270D	W	ug/L	---	<10.1	<10.1	<10.0	<10.2	<10.1	1.03J	<10.0	<10.1	<10.1	<11.1	<10.0
2-Methylnaphthalene	8270D	W	ug/L	---	0.269J	<10.1	0.736J	<10.2	<10.1	0.353J	<10.0	<10.1	<10.1	<11.1	<10.0
Acetophenone	8270D	W	ug/L	---	0.807J	0.881J	<10.0	<10.2	<10.1	<10.0	<10.0	<10.1	0.317J	<11.1	<10.0
Bis(2-Ethylhexyl)phthalate	8270D	W	ug/L	---	0.745J	3.00J	1.54J	0.634J	<10.1	<10.0	1.28J	0.749J	0.878J	11.8	0.304J
Diethyl phthalate	8270D	W	ug/L	---	6.31J	<10.1	<10.0	0.209J	<10.1	2.09J	0.649J	<10.1	2.51J	<11.1	<10.0
Di-n-butyl phthalate	8270D	W	ug/L	---	0.241J	0.347J	0.781J	<10.2	<10.1	<10.0	0.533J	<10.1	<10.1	<11.1	<10.0
m,p-Cresol	8270D	W	ug/L	---	<10.1	<10.1	24	<10.2	<10.1	<10.0	<10.0	<10.1	<10.1	<11.1	<10.0
Naphthalene**	8270D	W	ug/L	25	2.13J	1.79J	0.652J	<10.2	<10.1	<10.0	<10.0	<10.1	<10.1	<11.1	<10.0
Phenanthrene	8270D	W	ug/L	---	<10.1	<10.1	0.247J	<10.2	<10.1	<10.0	<10.0	<10.1	<10.1	<11.1	<10.0
2,4-D	8151A	W	ug/L	70	11.2	5.53	<0.510	<0.505	<0.505	12.2	<0.510	<0.515	0.387J	<0.505	<0.505
4,4'-DDD	8081B	W	ug/L	---	<1.05	<1.03	<0.102	<0.103	<0.102	<0.101	<0.103	<0.105	<0.102	0.044J	<0.103
Aldrin	8081B	W	ug/L	---	<0.524	0.671	0.019J	<0.052	<0.051	<0.050	<0.054	0.036J	0.29J	0.117	0.041J
alpha-BHC	8081B	W	ug/L	---	<0.524	<0.510	<0.051	<0.052	<0.054	0.37R	<0.054	<0.053	0.142	<0.051	<0.051
beta-BHC	8081B	W	ug/L	---	<0.524	2.05	<0.051	<0.052	<0.051	0.85	<0.054	<0.053	<0.051	0.071	<0.051
Endrin aldehyde	8081B	W	ug/L	---	<1.05	<1.02	<0.102	<0.103	<0.102	<0.101	<0.103	<0.105	0.027J	<0.103	<0.103
gamma-BHC (Lindane)	8081B	W	ug/L	---	<0.524	0.327J	<0.051	<0.052	<0.051	<0.050	<0.054	<0.053	<0.051	<0.051	<0.051
gamma-Chlordane	8081B	W	ug/L	---	<0.524	<0.510	<0.051	<0.052	<0.051	<0.050	<0.054	<0.053	<0.051	<0.051	<0.051
Heptachlor	8081B	W	ug/L	0.4	<0.524	<0.510	<0.051	<0.052	<0.051	<0.050	<0.054	0.024J	<0.051	<0.051	<0.051
Heptachlor epoxide	8081B	W	ug/L	0.2	<0.524	0.63	<0.051	<0.052	<0.051	<0.050	<0.054	<0.053	<0.051	0.022J	0.045J
Arsenic	6010	mg/L	0.01	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	0.0046J	<0.010	<0.010	<0.010	<0.010	<0.010
Barium	6010	mg/L	2	1.5	0.86	0.42	0.097J	0.09	0.8	1.94	0.58	1.35	0.19	0.44
Beryllium	6010	mg/L	0.04	0.0004J	0.0004J	0.0002J	0.0003J	0.0003J	<0.0050	0.0017J	0.0003J	0.0007J	0.0003J	0.0003J	0.0012J
Cadmium	6010	mg/L	0.005	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050	0.014	<0.0050	<0.0050	<0.0050	<0.0050	<0.0050
Chromium	6010	mg/L	0.1	0.0008J	0.0023J	0.001J	0.0004J	0.0026J	0.003J	0.04R	0.003J	0.003J	0.0008J	0.012
Cobalt	6010	mg/L	---	<0.010	0.03J	0.01J	<0.010	<0.010	0.005J	0.05G	0.022B	0.006J	<0.010	0.007J
Copper***	6010	mg/L	1.3	<0.010	<0.010	<0.010	<0.010	<0.010	<0.010	0.062	<0.010	0.0064J	<0.010	0.0042J
Lead***	6010	mg/L	0.015	0.002J	0.002J	0.003J	<0.015	<0.015	0.001J	0.14	0.002J	0.015	0.002J	0.022
Mercury	7470A	W	mg/L	0.002	0.0001J	<0.00020	0.0002J	<0.00020	<0.00020	<0.00020	0.00022	0.00034	0.00052	0.00051	0.00103
Nickel	6010	mg/L	---	0.001J	0.021B	0.001J	0.001J	<0.040	<0.040	0.027J	<0.040	0.003J	<0.040	0.002J
Silver***	6010	mg/L	0.005	<0.010	0.0010J	0.0027J	<0.010	<0.010	0.0009J	<0.010	<0.010	<0.010	<0.010	<0.010
Thallium	6010	mg/L	0.002	<0.020	<0.020	<0.020	0.0025J	<0.020	<0.020	<0.020	<0.020	<0.020	<0.020	<0.020
Vanadium	6010	mg/L	---	0.005J	0.003J	0.003J	<0.020	<0.020	0.003J	0.18	0.003J	0.033	0.003J	0.02K
Zinc	6010	mg/L	---	0.04J	0.005J	0.04	0.003J	<0.020	0.01J	1.44	0.009J	0.14	0.007J	0.15
Total Cyanide	335.3	W	mg/L	0.2	<0.0100	0.0050J	<0.0100	<0.0100	<0.0100	<0.0100	<0.0100	0.0031J	0.0042J	<0.0100	<0.0100

Notes:
- ug/L - Micrograms per liter (parts per billion)
- mg/L - Milligrams per liter (parts per million)
- < - Indicates concentration below detection limit
- MCL - Maximum Contaminant Level as established by U.S. EPA.
- Bold - Indicates that the parameter's reported concentration equaled or exceeded its respective MCL value.
- J - J flagged data indicates that the reported concentration is an estimated value.
- * - MCL is for Total Xylenes
- ** - Risk-Based Screening Level (RBSL)
- *** - Action Level (AL)



SOURCE: Newberry County GIS - 2008

GW-1 Soil Gas Sample Location with Total VOC Concentration (ug/m3)

SCALE:	Shown
CHECKED BY:	TB
DRAWN BY:	JLK
DATE:	2/11/2011

S&ME

SOIL GAS SAMPLE LOCATIONS
40.7-Acre Site - 591 Cockrell Drive
Newberry, Newberry County, South Carolina

S&ME PROJECT NO. 1614-11-115

FIGURE NO. 3

TABLES

Table 1
Weather Conditions
Soil Gas Sampling
40.7 ACRE SITE
Newberry, South Carolina
March 2011
S&ME Project No. 1614-11-115

Attribute	Sampling Date [a, b]
	March 17, 2011
Time Period (hrs)	0900 - 1620
General Conditions	Sunny cool
Air Temperature (°F)	37-71
Humidity (%)	68
Barometric Pressure (in)	30.29 - 30.39 ↓
Wind Speed (mph)	5.0 -6.0
Wind Gust (mph)	0.0
Precipitation (in)	0.00

(a) ambient data obtained from Weather Underground Station KSCSIMPS5: Newberry, SC. On-line Version accessed April 6, 2011.

(b) arrow indicates general trend change during sampling period

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Table 2
Canister and Regulator Clean Certification Data
Soil Gas Sampling
40.7 ACRE SITE
Newberry, South Carolina
March 2011
S&ME Project No. 1614-11-115

Location	Equipment ID		Cleaning Batch No.	Date Cleaned	Date Verified
	Canister	Regulator			
GW-1	61	0080	5040	10-Mar-11	10-Mar-11
GW-2	249	215	5047	9-Mar-11	9-Mar-11
GW-3	152	166	5047	9-Mar-11	9-Mar-11
GW-4	815	PA251	5040	10-Mar-11	10-Mar-11
GW-5	1762	327	5028	7-Mar-11	7-Mar-11
GW-6	527	223	5040	10-Mar-11	10-Mar-11
GW-7	1212	323	5048	8-Mar-11	9-Mar-11
GW-8	1524	119	5043	7-Mar-11	10-Mar-11

-- certified by Pace Analytical Services, Inc., Minneapolis, MN

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Table 3
Sampling Durations
Soil Gas Sampling
40.7 ACRE SITE
Newberry, South Carolina
March 2011
S&ME Project No. 1614-11-115

Location	Equipment ID		Sampling			Pressure (in Hg)		Sampling Duration	
	Canister	Regulator	Date	Start Time	Stop Time	Start	Stop	Minutes	Hours
GW-1	361	0080	15-Mar-11	0914	1715	-29	-1	479	7.9
GW-2	249	215		0926	1735	-35	-1	489	8.2
GW-3	152	166		0932	1743	-30	0	<491	<8.2
GW-4	815	251		0938	1745	-26	0	<487	<8.1
GW-5	1762	327		0946	1753	-35	0	<487	<8.1
GW-6	527	223		0951	1757	-30	0	<486	<8.1
GW-7	1212	323		0957	1800	-30	0	<483	<8.1
GW-8	1524	119		1003	1810	-30	0	<487	<8.1

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Table 4
Soil Gas Data
Soil Gas Sampling
40.7 ACRE SITE
Newberry, South Carolina
March 2011
S&ME Project No. 1614-11-115

Analyte [a]	Concentration in ug/m³ [b]								SCDHEC Screening Benchmark (ug/m³) [c]
	GW-1	GW-2	GW-3	GW-4	GW-5	GW-6	GW-7	GW-8	Commercial
Acetone	49.6	104	42.8	271	274	103	55.7	83.4	105,000
Benzene	316	1,240	119	912	1,870	920	167	634	157
2-Butanone	* [d]	3.5	*	34.8	33.9	33.6	*	*	300,000
Carbon disulfide	*	45.3	*	66.5	38.2	91.7	*	*	210,000
Carbon tetrachloride	*	1.6	*	1.7	1.4	1.9	*	*	81.8
Chloroform	*	1.6	*	1.6	1.5	1.5	*	*	53.3
Chloromethane	*	*	*	2.0	*	*	*	*	1,230
Cyclohexane	*	3.4	*	*	*	*	*	*	87,600 [e]
1,2-Dichlorobenzene	*	4.1	*	*	*	*	*	*	60,000
1,4-Dichlorobenzene	*	2.8	*	*	*	*	*	*	240,000
Dichlorodifluoromethane	*	6.0	*	5.8	*	3.4	77.3	76.3	60,000
cis-1,2-Dichloroethene	*	1.7	*	*	*	*	*	*	10,500
Ethylbenzene	*	460	*	2.4	2.3	3.8	*	*	1,110
n-Heptane	*	5.5	*	*	8.2	*	*	*	NP [f]
n-Hexane	*	14.6	88.5	145	24.9	19.9	*	*	60,000
n-Hexanone	*	*	*	*	2.3	*	*	*	438 [e]
Methylene chloride	*	6.7	556	951	2.2	2.1	*	179	2,610
4-Methyl-2-pentanone	*	*	*	*	*	4.6	*	*	24,000
Propylene	*	89.5	*	99.3	98.9	151	*	*	8,000 [g]
Styrene	*	*	*	1.6	1.6	1.8	*	*	300,000
Tetrachloroethene	*	1,360	*	2.9	3.0	2.7	*	*	409
Tetrahydrofuran	*	48.5	*	34.2	11.0	10.6	*	*	NP
Toluene	*	37.1	*	29.6	22.5	34.1	*	*	120,000
Trichloroethene	133	11.8	39.7	1.9	4.8	5.9	178	159	11.1
Trichlorofluoromethane	*	1.9	*	2.1	1.6	2.5	*	*	210,000
1,2,4-Trimethylebenzene	*	6.8	29.9	2.6	2.8	3.1	*	*	1,790
1,3,5-Trimethylebenzene	*	2.7	*	*	*	*	*	*	1,790
Vinyl chloride	*	*	*	0.49	*	*	*	*	139
m&p-Xylene	*	2,510	*	6.4	6.0	9.8	*	*	2,100,000
o-Xylene	*	752	*	2.1	1.9	3.0	*	*	2,100,000
Mercury (NIOSH 6009)	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0	90
Total VOCs	499	6,721	876	2,577	2,413	1,410	478	1,132	

a. samples collected 17-March-2011
b. analyses via USEPA Method TO-15 by Pace Analytical; Lab Report No. 10152355
c. published by SCDHEC/Bureau of Land & Waste management – Brownfield Program. 2009. For deep (> 5 ft-bgs) soil gas samples.
d. * = non-detect
e. Virginia Department of Environmental Quality. Voluntary Remediation Program. On-line version dated November 2010; accessed April 5,2011.
f. NP = not published by SCDHEC or any other sources used for supplemental benchmarks.
g. Minnesota Pollution Control Agency. Intrusion Screening Values (ISVs) for the Petroleum Remediation Program. On-line version dated October 2010; accessed April 5, 2011.
Note: Shaded concentration cell indicates exceedance of SCDHEC Commercial Use Benchmark

Table 5
Methane Data
Soil Gas Sampling
40.7 ACRE SITE
Newberry, South Carolina
March 2011
S&ME Project No. 1614-11-115

Analyte	Concentration at Location							
	GW-1	GW-2	GW-3	GW-4	GW-5	GW-6	GW-7	GW-8
Methane (ppmv) [a]	2.6	5.5	4.0	4.0	2.0	4.3	5.4	<1.5
Methane (%$_v$) [b]	0.00026	0.00055	0.0004	0.0004	0.0002	0.00043	0.00054	0.00015
Lower Explosive Limit (LEL)	5.0%$_v$							
Applied Safety Factor Level [c]	1.0%$_v$							
Safety Factor Level Exceedance ?	No	No	No	No	No	No	No	No
OSHA Tunneling Safety Factor [d]	0.5%$_v$							
OSHA Tunneling Safety Factor Exceedance?	No	No	No	No	No	No	No	No

a. samples collected 17-March-2011; analyses via USEPA Method TO-3 by Pace Analytical; Lab Report No. 10152355

b. $\%_v = \frac{ppm_v}{10{,}000}$

where:

ppm_v = parts per million by volume

$\%_v$ = percent by volume

c. Applied Safety Factor Level = LEL * 20%

d. per 29 CFR 1926.800; LEL*10%

Calcs by:	MMarcus	6-Apr-11
Calcs checked by:		
Calcs verified by:		

EXHIBIT 16 LIST

WestHobby v. Newberry County
2012-CP-36-0046

#	Date	Description
A	8/19/96	Methane Gas Monitoring Plan
B	1/15/97	Letter from C&L Consultants to Newberry County re interim gas monitoring
C	5/2/97	Letter from C&L Consultants to Newberry County re gas monitoring well installation on 4/25/97
D	5/12/97	Letter from C&L Consultants to Newberry County re first quarterly gas monitoring results
E	2/16/98	1997-Annual Groundwater Monitoring Report by C&L Consultants
F	3/2/99	1998-Annual Groundwater Monitoring Report by C&L Consultants
G	2/22/00	1999-Annual Groundwater Monitoring Report by C&L Consultants
H	3/21/01	2000-Annual Groundwater Monitoring Report by C&L Consultants
I	1/31/02	2001-Annual Groundwater Monitoring Report by C&L Consultants
J	2/14/03	2002-Annual Groundwater Monitoring Report by C&L Consultants
K	2/09/04	2003-Annual Groundwater Monitoring Report by C&L Consultants
L	Jan 2005	2004 Annual Groundwater Monitoring Report for the Newberry County Landfill by B.P. Barber & Associates
M	April 2006	2005 Annual Groundwater Monitoring Report for the Newberry County Landfill by B.P. Barber & Associates
N	Jan 2008	Methane and Groundwater Monitoring; Fourth Quarter -

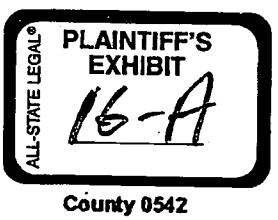
		2007 by Terry Environmental Services
O	April 2009	Annual Methane and Groundwater Monitoring Report for 2008 by Terry Environmental Services
P	Jan 2010	Semi-Annual Groundwater and Methane Monitoring Report for 2009 by Terry Environmental Services
Q	July 2010	Semi-Annual Groundwater and Methane Monitoring Report for 2010 by Terry Environmental Services
R	Oct 2012	Semi-Annual Groundwater and Methane Monitoring Report for August 2012 by Terry Environmental Services
S	April 2013	Semi-Annual Groundwater and Methane Monitoring Report for February 2013 by Terry Environmental Services
T	Sept 2013	Semi-Annual Groundwater and Methane Monitoring Report for September 2013 by Terry Environmental Services
U	Jan 2015	2014 Annual Groundwater & Methane Monitoring Report by Rogers & Callcott
V	3/21/14	Limited Site Investigation by Terracon Consultants, Inc.
W	1/29/15	Environmental Sampling Report by Terracon Consultants
X	11/10/15	Quarterly Methane Monitoring Report, August – October, 2015 by Rogers & Callcott
Y	Aug 2015	2015 Annual Groundwater & Methane Monitoring Report by Rogers & Callcott

Consultants, Inc.
engineering & hydrogeology

METHANE GAS MONITORING PLAN

NEWBERRY COUNTY LANDFILL (DWP-117)

August 19, 1996



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METHANE GAS MONITORING PLAN

NEWBERRY COUNTY LANDFILL (DWP-117)

August 19, 1996

Prepared for:
Newberry County,
South Carolina

Prepared by:

C&L Consultants, Incorporated
P.O. Box 50307
Columbia, S.C. 29250
C&L Job no. 8078-A

County 0543

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II. Site Conditions and Well Locations 1

III. Gas Well Construction Method 1

IV. Monitoring Method and Equipment 2

V. Reporting and Immediate Action 2

Acknowledgement

Attachments:

Fig. 1 Proposed gas monitoring well locations.

Fig. 2 Diagram of proposed gas monitoring well construction detail.

I. INTRODUCTION

On behalf of Newberry County, C&L Consultants, Inc. is pleased to provide the following Methane Gas Monitoring Plan for SCDHEC review and approval. The Plan has been prepared in accordance with Landfill Permit no. DWP-117 and in conformance with applicable portions of South Carolina Municipal Solid Waste Regulation Sections R. 61-107.258.23 and 258.61. This Methane Gas Monitoring Plan has been developed based on technical evaluation and consideration of existing site hydrogeologic conditions, on-site structures, existing property boundaries, site configuration and surrounding land use.

II. SITE CONDITIONS AND WELL LOCATIONS

Seven gas monitoring wells are proposed for methane monitoring around the perimeter of both the Phase I (closed , 19) and the Phase II (in closure at this time) portions of the landfill. The proposed well locations (identified as GMW-1 through GMW-7) are indicated on Figure 1. A private skeet shooting range (Triangle Gun Club) with approximately seven structures (a well house, a shop building, a small club house, and four throw-houses) is located on the Phase I portion of the landfill. None of these structures have basements or crawl spaces. All structures will be monitored fo methane gas in conjunction with the gas monitoring wells. There are no private residences located adjacent the landfill. Figure 1 also provides a depiction of the shape of the landfill foot print and internal elevations. To provide for early detection and warning of potential lateral migration of explosive gases (methane) the gas monitoring stations are to be distributed around the perimeter of the landfill footprint. The wells will be positioned outside of the final landfill close-out cap and within the property boundary.. The proposed gas monitoring wells have been placed to ensure detection of both up-slope gas migration and possible down-slope migration under the final cover cap above the groundwater surface. There does not appear to be any obvious natural or manmade conduits or pathways preferential to gas migration at this time.

III. GAS WELL CONSTRUCTION METHOD

Gas monitoring well construction will be performed by a South Carolina certified well driller. All well construction documentation, including geologist's logs will be submitted to the appropriate state officials. A diagram of a typical gas monitoring well is provided as Figure 2. Well construction will be of 1.25-inch or 1.5-inch diameter, schedule 40, PVC tubing. All necessary connections/couplings will be installed using epoxy cement. The well inlet zone will be positioned above the water table and placed in order to have a substantial portion of the inlet located above the seasonal high water table. The gas entry inlet length will be 5 feet or greater with 0.125-inch open ports, spaced at approximately 3-inch intervals (off-set 90%). The inlet zone will be gravel packed with appropriately sized "pea gravel" up to approximately 1-foot above the uppermost inlet port, over which the annular space will be sealed with cement grout. Infiltration of the cement grout into the gravel pack will be prevented with the placement of plastic sheeting (approx. 6-in. dia. disc), over lain with 6-inches of sand, positioned atop the gravel pack and below the cement grout prior to introduction of the grout material. The well

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head shall be protected with a 3 inch to 4 inch diameter tubular or box steel, locking, protective casing. All gas monitoring wells will be identified on the side of the well casing by the prefix GMW (Gas Monitoring Well) followed by the station identification number. A circular cement collar (1.5-ft. dia.) will be constructed around the casing to provide additional casing support. The well head cap will be threaded and gasketed to allow for accumulation of methane in the riser tubing. The threaded well cap will be fitted with a clamped, flexible shunt to provide ease in monitoring and for gas evacuation if deemed necessary. A riser stick-up of approximately 2-feet above the land surface is proposed. The protective well casings will be painted the same color to assist in future identification of the station as a gas monitoring well.

IV. MONITORING METHOD AND EQUIPMENT

Explosive gas monitoring at the gas monitoring wells and inside the on-site structures will be performed utilizing a portable explosimeter (calibrated to methane gas) or methane-specific gas detector. The wells may be measured for gas either through the clamped shunt or by unscrewing the well head cap. After monitoring and recording the reading, the well head and casing will be secured. On-site structures will be monitored at floor and breathing levels. Special attention will be given to floor cracks, other potential gas entry points, and any potential gas traps identified in the structures. The monitoring frequency will be quarterly, per the Municipal Solid Waste Landfill regulations.

If the levels of detected explosive gas concentrations in the gas monitoring wells or structures indicate an obvious trend towards the lower explosive limit (LEL) (or exceeds 25% of the LEL in the structures) for methane (LEL = 5.3% methane by volume in air) the situation regarding explosive gas generation and migration at the landfill will be brought to the attention of County and SCDHEC officials and corrective measures and/or additional evaluation will be considered, in coordination with the appropriate officials.

V. REPORTING AND IMMEDIATE ACTION

All measurements for explosive gas shall be recorded according to date, time, location, recorder's name, and measurement. The monitoring measurements will be properly documented with the recorder's signature and the record filed in the County office along with other monitoring documents as may be required. A copy of the recorded measurements will be provided to SCDHEC officials on a quarterly basis unless otherwise indicated.

Immediate action requirements - In the event that the LEL for methane (5.3% by volume in air) is exceeded in perimeter monitoring wells or if the concentration of methane exceeds 25% of the LEL (1.3% by volume in air) in on-site structures, then (per R. 61-107.258.23,C) : 1) the owner/operator shall immediately take action to ensure protection of human health and notify the Department; 2) within 7 days of detection, place a record of the subject measurements and a description of the action taken to protect human health into the operating record; and, 3) within 60 days of detection, implement a remediation plan for methane, place a copy of the plan into the record and notify the Department that the remediation plan has been implemented.

ACKNOWLEDGEMENT

C&L Consultants, Inc. appreciates the opportunity to be of service to Newberry County in compiling this gas monitoring plan. If there are any questions regarding this Plan please call me.

Respectfully Submitted
C&L Consultants, Inc.

Clyde M. Livingston, Jr.,PG
SC Reg. no. 772

FIGURES

Figure 1

Proposed Gas Monitoring Well Locations

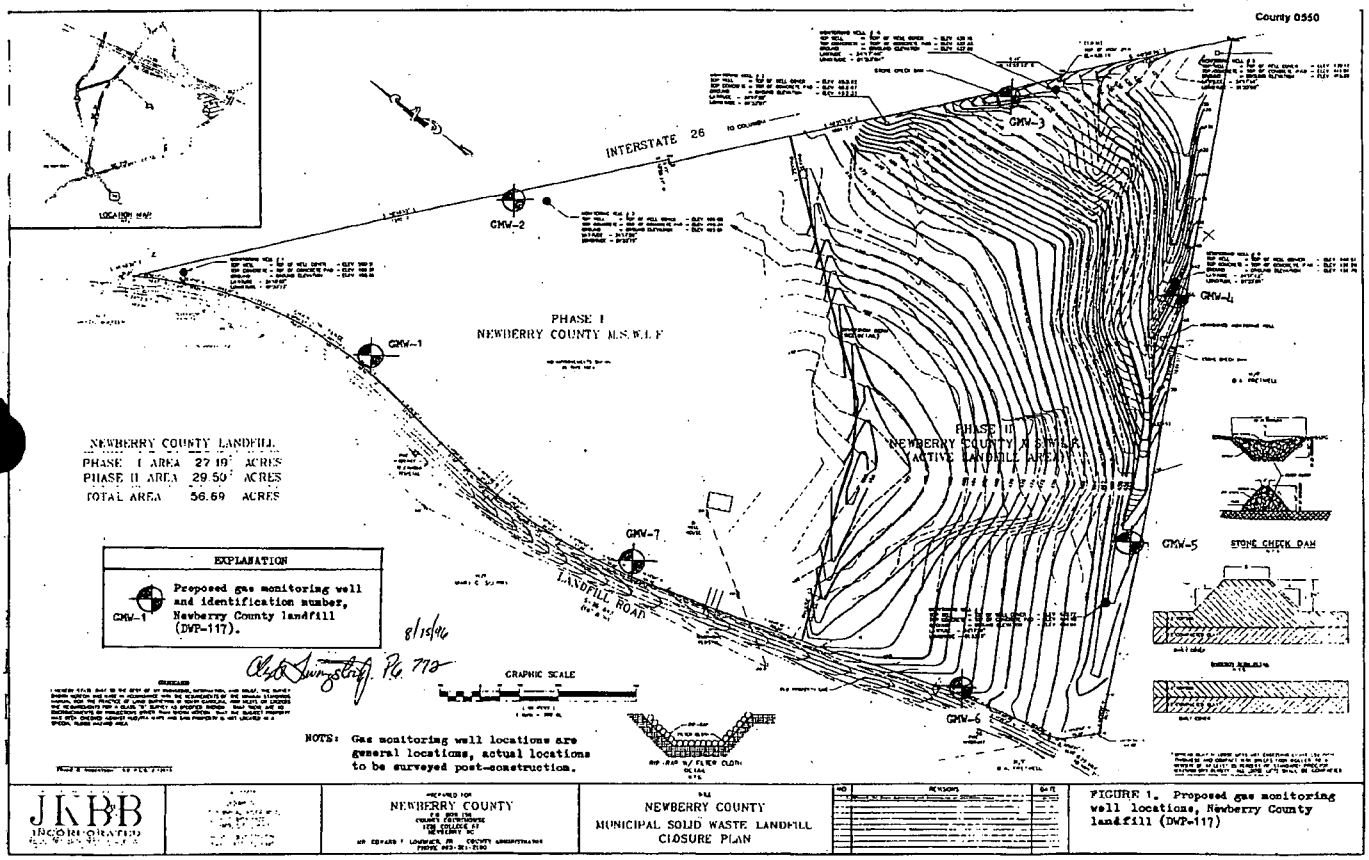
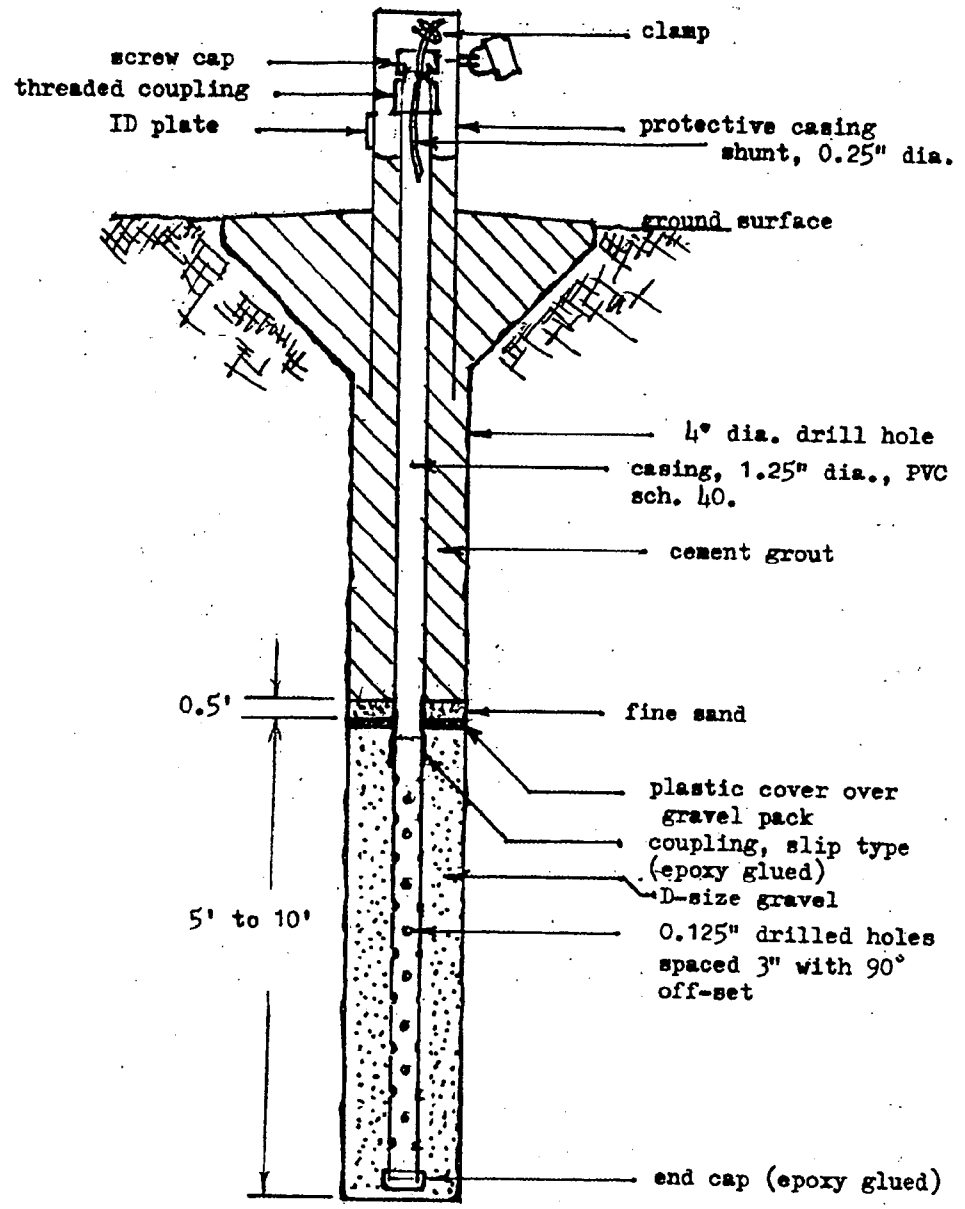


FIGURE 1. Proposed gas monitoring well locations, Newberry County landfill (DWP-117)

Figure 2

Diagram of Proposed Gas Monitoring Wells
Construction Details

County 0551



Note: total depth assumed to be 10' to 15', bottom of screen located above water table.

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Figure 2, Diagram of proposed methane gas monitoring well, Newberry County landfill.

County 0552