

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET No. 35116

223034

R. J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES, INC. -
CONSTRUCTION AND OPERATION EXEMPTION - CLEARFIELD COUNTY, PA

FINANCE DOCKET No 35143

223036

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES, INC -
ACQUISITION AND OPERATION EXEMPTION - LINE OF
NORFOLK SOUTHERN RAILWAY COMPANY

DOCKET NO. AB 167 (SUB-NO 1004N)

22037

CONRAIL ABANDONMENT OF THE SNOW SHOE INDUSTRIAL TRACK IN
CENTRE AND CLEARFIELD COUNTIES, PENNSYLVANIA

VERIFIED STATEMENT OF E B ABEL, JR
IN RESPONSE TO THE PENNSYLVANIA DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCE'S STATEMENT OF SUPPORT FOR PPC'S PETITION
TO HOLD PROCEEDINGS IN ABEYANCE

Richard R. Wilson, Esq
RICHARD R WILSON, P.C
127 Lexington Avenue, Ste. 100
Altoona, PA 16601
(814) 944-5302

ENTERED
Office of Proceedings

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ATTORNEY FOR:
RESOURCE RECOVERY, LLC

July 17, 2008

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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CONSTRUCTION AND OPERATION EXEMPTION – CLEARFIELD COUNTY, PA**

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**CONRAIL ABANDONMENT OF THE SNOW SHOE INDUSTRIAL TRACK IN
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**VERIFIED STATEMENT OF E B. ABEL, JR.
IN RESPONSE TO THE PENNSYLVANIA DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCE'S STATEMENT OF SUPPORT FOR PPC'S PETITION
TO HOLD PROCEEDINGS IN ABEYANCE**

My name is E B. Abel, Jr., and I am the President of Resource Recovery, LLC ("RRLLC"). On July 2, 2008, I submitted a Verified Statement in these proceedings in response to the Petition to Hold Proceedings in Abeyance filed by People Protecting Communities ("PPC"). On July 10, 2008, the Pennsylvania Department of Conservation and Natural Resources ("DCNR") filed a supporting statement for the PPC petition. The purpose of this Verified Statement is to briefly respond to certain factual inaccuracies

contained in that DCNR statement of support and to indicate an opportunity that DCNR has overlooked.

During the summer of 2004, RRLLC initiated a dialogue with Headwaters Charitable Trust ("HCT") concerning the reactivation of a portion of the former Conrail/Snow Shoe Industrial Track to provide rail service to the RRLLC proposed landfill and industrial park in Rush Township. On October 7, 2004, representatives of RRLLC and HCT met in Altoona, Pennsylvania and thereafter the parties executed a letter of understanding dated November 17, 2004, a copy of which is attached to the DCNR statement of support and is attached hereto as Exhibit A. The letter clearly states that "it will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein". In December 2005, RRLLC began preparation and internal review of draft implementing agreements. In that same month, we were advised by Ms. Karen Brady, RC&D Coordinator for HCT that the Pennsylvania Department of Transportation ("PennDOT") was requiring a supplemental agreement for HCT reimbursement of grant funds awarded to the Trust to upgrade the Peale Tunnel in the event the line was reactivated for rail service.

On March 14, 2005, Ms. Tricia Meeks, Transportation Planner for Centre County Regional Planning Agency forwarded a memorandum to Ms. Brady regarding a proposed meeting between RRLLC and various state and local agencies to discuss issues related to the reconversion of the railroad line and the relocation of the trail under the terms of the letter of understanding. As indicated in the memorandum attached at Exhibit B, the Regional Planning Agency was concerned that the letter of understanding required negotiation of specific agreements to effectuate its terms and that there was no

mechanism in place to tie these requirements to the land regardless of the ownership of the landfill. Ms. Meeks urged HCT that prior to awarding a construction contract, HCT should contact its legal counsel to assure there were mechanisms for compensation regardless of ownership at the time the railroad activation occurred. During the early part of 2005, RRLLC continued its exchange of information with Ms. Brady and on April 18, 2005 transmitted four draft implementing agreements to HCT. Thereafter, a meeting was held between representatives of RRLLC, HCT, DCNR, PennDOT, the Centre County MPO and other agencies at which I advised the parties that implementing agreements with HTC had not been concluded. I recommended that Centre County MPO not approve the HCT request for grant funds to upgrade the Peale Tunnel in light of the fact that when the line was reactivated for railroad use RRLLC could undertake that upgrade at a much lower cost.

RRLLC continued its attempt to engage HCT in implementing agreement negotiations but HCT failed to proceed with negotiations. Finally, on July 7, 2005 we received a fax from Ms. Brady indicating that she was leaving her position with HCT and that the HCT would get a new coordinator. Attached to her email was a July 21, 2005 summary of several issues which counsel for the Trust was discussing with the Board (Exhibit C). The last paragraph notes "this agreement needs to be decided at this meeting. The outcome of not calling for a vote or acting one way or another will cause this issue to continue to hold up Trust progress, continue the controversy and leave the trail group in limbo."

With the departure of Ms. Brady, RRLLC heard nothing further from HCT regarding to the proposed implementing agreements, and in the absence of any progress

on those agreements, RRLLC had to reallocate the resources which it had planned to devote to the proposals contained in the letter of understanding to other project requirements. On December 17, 2007 RRLLC formally advised HCT that it was terminating its proposals in the letter of understanding given the lack of any progress on the implementing agreements. (Exhibit D)

Notwithstanding the fact that Centre County MPO, DCNR and PennDOT were all fully aware that no implementing agreements had been negotiated between RRLLC and HCT to effectuate the letter of understanding, HCT signed the supplemental PennDOT reimbursement agreement (DCNR Exhibit B) and Centre County MPO approved HCT's grant request for Peale Tunnel upgrade monies and PennDOT disbursed those monies to the Trust. The Commonwealth of Pennsylvania was fully aware of the fact that HCT had failed to conclude implementing agreements with RRLLC, and that without such agreements, the Commonwealth could look only to HCT for repayment of the grants approved for rehabilitation of the Peale Tunnel and other facilities should the line be reactivated.

Accordingly, the representation in the DCNR supporting statement at the bottom of Page 7 which states "Resource Recovery and HCT have not entered into any specific agreements to effectuate the letter of understanding" is factually correct but is incomplete. On June 27, 2008, RRLLC advised DCNR that the proposals set forth in the letter of understanding had been terminated by RRLLC, a fact which DCNR fails to include in its supporting statement. Since DCNR and other state and local agencies were clearly aware that HCT had not concluded implementing agreements with RRLLC, the decision by the state agencies to award grant monies to the Trust under those

circumstances, provides no reason for the Board to hold these proceedings in abeyance or to provide financial relief to state agencies that awarded grants to HCT.

Next, the concerns voiced by DCNR regarding the "Pennsylvania Wilds", have already been addressed in my prior verified statement. However, let me again point out that the property upon which the RRLLC landfill and industrial park is to be located is private property as is the railroad right of way comprising the "eastern segment" which runs for a few miles on the opposite side of Moshannon Creek from the Moshannon State Forest. The Pennsylvania Wilds consist of thousands of acres of public land, not private property such as that utilized for the Beech Creek Branch and for RRLLC's proposed landfill and industrial park. DCNR characterizes the Pennsylvania Wilds as if it were one huge recreational area encompassing all of Northcentral Pennsylvania; that is simply not the case.

Moreover, RRLLC believes that its proposed landfill and industrial park presents a unique opportunity to create a public-private collaboration on a sustainable landfill, solid waste processing and recycling facility. This project will incorporate state of the art landfill technology while providing environmentally compatible recycling and biofuel recovery operations. In fact, much of the property on which the landfill is to be constructed was previously strip mined. As part of the project, RRLLC has entered into a Cooperation Agreement with Moshannon Creek Watershed Coalition to reduce or eliminate acid mine drainage all along the Moshannon Creek and aid the Coalition's efforts to restore the creek for sustainable fisheries. (Exhibit E). This agreement directly supports the recreation and conservation objectives of DCNR's Pennsylvania Wilds program. The project is thus an opportunity for Pennsylvania and RRLLC to demonstrate

that economic development, recreation, conservation and resource management can be coordinated and accomplished in an environmentally beneficial fashion. To that end, RRLLC believes that the environmental review process for transportation access via the Beech Creek Branch should be used to assess the need, if any, for appropriate remedial environmental measures and not as a vehicle for obstructing, delaying and increasing the cost of the environmental review process so that the project becomes infeasible.

VERIFICATION

I, E. B. Abel, Jr., verify under penalty of perjury state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.



E. B. Abel, Jr., President
Resource Recovery, LLC

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

127 Lexington Avenue, Suite 100

Altoona, PA 16601

(814) 944-5302

(888) 454-3817 (Toll Free)

(814) 944-6978 FAX

rrwilson@atlanticbbn.net

**851 Twelfth Street
Oakmont, PA 15139**

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

November 17, 2004

**Mr. Ed Abel
Resource Recovery, LLC
3925 Columbia Avenue
Mountville, PA 17554**

**Mr. Ed Kosa, Chairman
Headwaters Charitable Trust
478 Jeffers Street
DuBois, PA 15801**

**Re: Letter of Understanding – Reactivation of the Snow Shoe Industrial Track Right of Way
for Railroad Service**

Dear Gentlemen:

The purpose of this letter is to confirm the understanding between representatives of Resource Recovery, LLC and the Headwaters Charitable Trust with respect to the potential future reactivation of the former Snow Shoe Industrial Track for rail service to Resource Recovery, LLC facilities to be located in Rush Township. As you are aware, the former Snow Shoe Industrial line was conveyed to Headwaters Charitable Trust by Consolidated Rail Corporation on September 24, 1993 pursuant to a Notice of Interim Trail Use issued by the ICC in a decision and certificate dated February 15, 1990 in ICC Docket No. AB-167(Sub. No. 1004N) and the ICC Decision and Notice dated November 2, 1993 in ICC Docket No. AB-167 (Sub. No. 1004N). Under the provisions of 16 U.S.C. §1247(d) the Snow Shoe Industrial line was not abandoned by Consolidated Rail Corporation but under the Notice of Interim Trail Use issued by the ICC was retained as part of a national rail transportation system for use on an interim basis for recreational trail purposes subject to restoration and reconstruction of the line for railroad purposes.

Resource Recovery, LLC has advised Headwaters Charitable Trust that it plans to invoke the rail restoration provisions of §1247(d) and offers to acquire a 9.3 mile section of the Snow Shoe line in accordance with the following commitments to which Resource Recovery, LLC and the Headwaters Charitable Trust have agreed.

1. Headwaters Trust would proceed with its grant approval and funding for the Peale Tunnel repairs and other trail improvements given the fact that conversion of the trail to railroad use is presently projected to occur no earlier than 2008 and under the National Trail Systems Act, the Trust has a legal obligation to maintain right of way structures for interim trail and future rail use.

EXHIBIT A

2. Headwaters Trust will provide Resource Recovery with allocations of public grant obligations, in kind endeavors, and management, development and overhead expenditures for the 9.3 mile segment of the Snow Shoe line from Milepost 64.5 to Milepost 55.2 at Gorton Road. Headwaters Trust will also make available to Resource Recovery all engineering reports on trail improvements and permit Resource Recovery to confer with its consulting engineers regarding improvements to be made to the 9.3 mile segment to ensure that those improvements are consistent with future rail use of that portion of the line.

3. Resource Recovery, LLC will hold Headwaters Trust harmless from any demands by a governmental agency or other nonprofit entity to repay funds expended by Headwaters Trust allocable to the 9.3 mile segment of the Snow Shoe line upon its reconversion to railroad use. Resource Recovery will also make Headwaters Trust whole for all costs incurred by Headwaters Trust in connection with expenditures undertaken in connection with development of the 9.3 mile section of the Snow Shoe line as a recreational trail in the event that Resource Recovery elects to reconvert the 9.3 mile line segment to railroad use.

4. Upon request of Resource Recovery, Headwaters Trust will convey a suitable interest (to be determined at Resource Recovery's sole discretion) in the Snow Shoe line from Milepost 64.5 to Milepost 55.2 at Gorton Road to be reconverted to common carrier rail use upon 12 months prior written notice by Resource Recovery to Headwaters Trust.

5. Prior to conversion of the 9.3 mile line segment to railroad use, Resource Recovery will build and lease to Headwaters Trust for \$1 per year an alternative recreational trail loop to be designed and constructed at Resource Recovery's sole cost on the Resource Recovery site with the advise and assistance of Headwaters Trust. The alternative trail loop will be leased to Headwaters Trust for as long as the Snow Shoe line is used for railroad purposes and Headwaters Trust will be responsible for maintenance and repair of the alternative recreational trail loop as lessee.

6. Upon termination and abandonment of rail service over the Snow Shoe line, Resource Recovery will provide Headwaters Trust the option of deciding whether or not to reacquire title to the railroad right-of-way. Should the Trust decide that it does not wish to reacquire the railroad right-of-way for recreational purposes, Resource Recovery and the Trust would then agree on an arrangement for the Trust to retain use of the loop trail.

7. Resource Recovery will provide Headwaters Trust with a financial guarantee in the form of a bond or letter of credit satisfactory to the Trust which would assure the refund of private or public grant monies if such refunds can be required. The bond or letter of credit would become effective upon the conversion of the right-of-way to railroad purposes evidenced by the issuance of an exemption notice or a certificate of public convenience and necessity issued by the Surface Transportation Board

Ed Abel
Ed Kosa
Page 3
November 17, 2004

It is the understanding of the Headwaters Trust and Resource Recovery, LLC that these provisions will facilitate the receipt and expenditure of various grants funded through the Pennsylvania Department of Transportation or other agencies which would be used to repair and improve right of way structures, including the Peale Tunnel. These repairs and improvements are necessary in order to make the right of way safe for recreational trail purposes and to ensure its continued preservation and maintenance in accordance with the obligations assumed by the Headwaters Trust under the Notice of Interim Trail Use.

It is the understanding of Resource Recovery, LLC and the Headwaters Charitable Trust that this letter will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein. In the meantime, the parties may use this Letter of Understanding to inform governmental agencies, private groups and the public regarding future disposition and use of the Snow Shoe line and the alternative recreational trail facilities that will be made available to Headwaters Charitable Trust in the event the 9.3 mile section of the Snow Shoe line is reconverted to railroad use.

To indicate your agreement with this Letter of Understanding, please execute this letter on the signature lines provided below.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.
Attorney for Resource Recovery, LLC

RRW/bab

xc: Jake Meyer, Esq.
Ms. Karen Brady


Resource Recovery, LLC

Headwaters Charitable Trust

Ed Abel

Ed Kosa

Page 3

November 17, 2004

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It is the understanding of Resource Recovery, LLC and the Headwaters Charitable Trust that this letter will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein. In the meantime, the parties may use this Letter of Understanding to inform governmental agencies, private groups and the public regarding future disposition and use of the Snow Shoe line and the alternative recreational trail facilities that will be made available to Headwaters Charitable Trust in the event the 9.3 mile section of the Snow Shoe line is reconverted to railroad use.

To indicate your agreement with this Letter of Understanding, please execute this letter on the signature lines provided below.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

Attorney for Resource Recovery, LLC

RRW/bab

xc: Jake Meyer, Esq.

Ms. Karen Brady

Resource Recovery, LLC



Headwaters Charitable Trust

Hendrickson, Ken - DuBois, PA

From: Trish Meek [tmeek@cccog.net]
Sent: Monday, March 14, 2005 9:10 PM
To: Brady, Karen - DuBois, PA; Hendrickson, Ken - DuBois, PA
Cc: Bob Jacobs; Tom Zilla; Chris Price; Mike Bloom; Nanovic, Harold; Kevin McCullough; Vickie Rusnak; Erik Brown
Subject: Terms of the Letter of Understanding

Karen and Ken,

As you are aware, the Centre County Planning Office is trying to schedule a meeting between Resource Recovery, HCT, DCNR, PennDOT and MPO staff to discuss issues related to the reconversion of the railroad line and the relocation of the trail.

After reading through the letter of understanding we would recommend that HCT run the repayment of Federal funds by your legal counsel. The letter of understanding contains the following language:

Point 3. Resource Recovery, LLC will hold Headwaters Trust harmless from any demands by a governmental agency or other nonprofit entity to repay funds expended by Headwaters Trust allocable to a 9.3 mile segment of the Snow Shoe line upon its reconversion to railroad use. Resource Recovery will also make Headwaters Trust whole for all costs incurred by Headwaters Trust in connection with expenditures undertaken in connection with development of the 9.3 mile section of the Snow Shoe line as a recreational trail in the event that Resource Recovery elects to reconvert the 9.3 mile line segment to railroad use.

The letter also states that, "It is the understanding of Resource Recovery, LLC and the Headwaters Charitable Trust that this letter will provide the basis upon which the parties will enter into specific agreements to effectuate the understanding set forth herein."

We are concerned that there is no mechanism in place to tie these requirements to the land regardless of the ownership of the landfill. If Resource Recovery progresses this project through the permit process and then sells the landfill to another operator there does not appear to be a mechanism for the repayment of Federal funds.

As you are aware the supplemental agreement between PennDOT and HCT requires the repayment of Federal funds or the replacement of the trail. This clause was added to protect the Federal funds.

Prior to awarding the construction contract we would encourage HCT to contact legal counsel to ensure that there is a mechanism for you to be compensated regardless of ownership at the time the railroad reactivation occurs. Currently it does not appear that a legal mechanism is in place to handle this situation.

Please contact me if you have any questions.

Thanks,

Trish

3/15/2005

EXHIBIT B

Trish Meek
Transportation Planner
Centre Regional Planning Agency
2643 Gateway Drive, Suite 4
State College, PA 16801

(814) 231-3050
(814) 231-3083 FAX
tmeek@crpog.net

Richard Wilson, P.C.

814 944-6978

Ed Able

717/285-2321

.....

This is my last day at work - I
quit NRCS & thus Headquarters will get a
new coordinator. This is my last effort to
get someone to move forward w/ action on the
Resource Recovery Rail Reactivation. This sheet is
being presented w/ the July agenda for action
again. Attorney Lake Meyer is your contact if need be

Karen Brader

EXHIBIT C

01

July 21, 2005

**Letter of Understanding Legal Review/Resource Recovery LLC and
Headwaters Charitable Trust/Snow Shoe Trail**

Jake Meyer has canvassed the Trustees over the last three months. He has reviewed this sheet.

Items that come to concern are:

1. The \$200,000. payment if Resource Recovery is unable to build the replacement trail because of various demands on the amenities required on this trail by whomever, government, trail group, or Headwaters. This amount would be too small to move forward and build a trail.

Alternatives are:

- simply request that this item be deleted from the agreement all together. *It is a possible "out" for either side. This could be replaced with a statement requiring "replacement of the trail with similar amenities", or a "like" trail. The current trail proposed to be reactivated to rail has no buildings, restroom facilities, no designated parking, no trail head, no improved surface, no signage (other than the "no trespassing" signs installed by the trail group), and is not handicapped accessible. Because of the safety issues concerning the viaduct and tunnel, it cannot be officially open to the public.*
- The amount could be requested to be increased. *To what amount is the question. With already over 1 million dollars in just a few projects on the trail, where would you set this amount.*
- Accept the statement as is.

2. Set back requirements of 300 yards if declared a park in the future. The trail is a side hill step-cut on steep mountainous terrain. The terrain with the forested boundaries, is such that a set back would not be required to protect the trail users.

The definition of a "park" is quite varied. Jake discussed what your typical park is and the rail right of way does not fit this criterion – basically because it has no amenities, no grassy play areas, no play or exercise equipment, no parking facilities (the Gillin town trail head is not within the proposed section to be reactivated, and it is not developed, nor are there funds at this time to develop the trail head for parking and trail access), and it is not accessible to all users. Plus, it has not been open to the public officially, for safety reasons. Some envision it as a "linear" park in the future, however at this time it is simply an old railroad corridor.

Alternatives are:

- Not promise to refrain from changing SnowShoe Rail Trail description to a park in the future. *There could be a question of change of description after the fact. Would that be possible or get the Trust into trouble? It has been a rail trail for motorized use and others. The condition at time of approach to Headwaters may be where the determination lies. To date it has not been a park.*
- Agree with the statement and agree that Headwaters will not designate it a park in the future.

This agreement needs to be decided this meeting. The outcome of not calling for a vote and acting one way or another will cause this issue to continue to hold up Trust progress, continue the controversy and leave the Trail Group in limbo.



December 17, 2007

Mr Ed Kosa, Chairman
Headwaters Charitable Trust
47 Jeffers Street
DuBois, PA 15801

Mr Jake Meyer, Esq.
Meyer & Wagner
115 Lafayette Street
St Marys, PA 15857

RE. Snow Shoe Industrial Track

Dear Gentlemen

As you may recall, in 2005 Resource Recovery, LLC sought to negotiate various agreements required by the November 17, 2004 letter of understanding between Resource Recovery LLC and Headwaters Charitable Trust. However, Headwaters Charitable Trust was unwilling to conclude those negotiations and the arrangements proposed in the letter of understanding have not been implemented. Given the passage of time and in absence of any further negotiations with Headwaters Charitable Trust, we wish to advise you that Resource Recovery, LLC will not undertake the arrangements proposed in the letter of understanding, and any previous understandings between Resource Recovery LLC and Headwaters Charitable Trust are hereby null and void.

Very Truly Yours,

RESOURCE RECOVERY LLC

E B ABEL, JR
President

bcc Richard Wilson

EXHIBIT D

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>x Georgiana Yingling</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) <i>GEORGIANA YINGLING</i> ☐ Date of Delivery <i>1/18/04</i> D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below	
1. Article Addressed to: MR ED KOUSE HEADWATERS CHARITABLE TRUST 47 JEFFERS ST DUBLIN, PA 15801		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ COD	
2. Article Number (Transfer from service label) 7007 1490 0001 2415 3826		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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For delivery information visit our website at www.usps.com

7007 1490 0001 2415 3826

Postage	\$0.41	0366
Certified Fee	\$2.65	05
Return Receipt Fee (Endorsement Required)	\$2.15	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.21	

Postmarked
 18/2004
 10:37 AM

Sent to
 Ken Kosa - Headwaters Charitable Trust
 Street, Apt. No. 47 Jeffers St
 or PO Box No.
 City, State, ZIP+4
 DUBLIN PA 15801

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

COOPERATION AGREEMENT

This Cooperation Agreement (the "Agreement") is entered into by and between Resource Recovery, LLC ("RR") and the Moshannon Creek Watershed Coalition ("MCWC").

Resource Recovery, LLC intends to construct a solid waste landfill, solid waste processing and recycling facilities, and associated infrastructure on a portion of a 5,758+/- acre parcel of land located in Rush Township and Snow Shoe Township, Centre County, PA., (the "Landfill"). The entire Landfill is located within the Moshannon Creek watershed. As an integral element of the Landfill RR will reclaim some abandoned mine lands and reduce or eliminate acid mine drainage from the RR property. Additionally, RR desires to cooperate with and assist MCWC in fulfilling its mission to improve and protect the quality and beauty of the Moshannon Creek and to enhance life in the Moshannon Creek Watershed.

Moshannon Creek Watershed Coalition believes that the Landfill can be developed in a manner that will improve the quality of the Moshannon Creek and that a cooperative relationship with RR will significantly aid MCWC in accomplishing its goal of correcting the harmful effects of acid mine drainage and restoring the entire Moshannon Creek watershed to sustainable fisheries.

The purpose of this Agreement is to set forth the understanding between RR and MCWC with respect to the implementation of various projects and cooperation with each other as described below.

In consideration of the mutual promises of this Agreement, and intending to be legally bound, RR and MCWC agree as follows:

1. **RR Contribution of Funds.** RR shall provide MCWC with the following funding to support MCWC's mission to improve and protect the quality and beauty of the Moshannon Creek and to enhance life in the Moshannon Creek Watershed.
 - a. \$2,000 upon execution of this agreement. There will be no restrictions upon how these monies may be expended by MCWC.
 - b. \$50,000 upon RR's receipt of all governmental permits and approvals necessary for the Landfill project.
 - c. \$50,000 annually commencing in the first calendar year after issuance of all permits and approvals and continuing until the beginning of the first full calendar year of Landfill operations.
 - d. \$75,000 annually for the operational life of the Landfill commencing in the first full calendar year of operation of the Landfill. That amount will be increased by \$25,000 in each of the succeeding three years until the annual contribution reaches \$150,000 with the commencement of the fourth full year of Landfill operations. Thereafter the annual contribution will increase at the rate of inflation calculated by the percentage change in the Consumer Price Index from that of the previous twelve month period. The Consumer Price Index - All Urban Consumers using the U.S. city average of all items with a base period of 1982-1984 = 100 as compiled by the U.S. Department of Labor, Bureau of Labor Statistics will be the specific index referenced. The latest published information available on each applicable January 1st will be used in the percentage change calculation.

- e. With the exception of 1 a above, the funds will be paid to MCWC on a quarterly basis, with 25% of the amount of the annual contribution paid on or before the fifteenth day of January, April, July, and October.

2. MCWC's Use of Funds.

- a. MCWC shall use RR funds to perform a catalogue of discharges within the Moshannon Creek watershed and each sub-watershed as described in attachment A to this Agreement.
- b. Upon completion of the watershed catalogue, MCWC shall prepare a restoration plan and schedule for individual remediation projects that are necessary and appropriate for correcting the harmful effects of acid mine drainage and restoring the entire Moshannon Creek watershed to sustainable fisheries, and shall submit that restoration plan to RR. MCWC shall utilize the continuing flow of funds as set forth in paragraph 1 above to implement those additional projects.
- c. No more than five percent (5%) of the funds contributed by RR shall be utilized for MCWC administrative expenses
- d. The scope of work may be changed at any time upon written consent of both parties.

3 MCWC Eligibility.

- a. In order to remain eligible to receive the funding described above MCWC shall, throughout the term of this Agreement:
 - i. Maintain 501(c)(3) tax exempt status,
 - ii. Support the permitting, construction and operation of the Landfill as described in paragraph 4 below.
 - iii. Make best efforts to leverage the funding provided under this Agreement by applying for matching grants from other sources, and
 - iv. Submit an annual report to RR describing all of the activities financed in whole or in part by RR funds during the prior year, and a description of the benefits that have or will accrue to the Moshannon Creek, its tributaries, and the watershed as a result of those activities financed by RR.
- b. In the event MCWC loses their eligibility to receive funding under this Agreement, RR shall make best efforts to select and fund another organization of RR's choice for the purpose of continuing the funding for the watershed improvements efforts which are contemplated by this Agreement.

4 MCWC Support. MCWC agrees that in consideration of this Agreement and payment received under this Agreement, MCWC shall actively support the permitting, construction and operation of the Tewar Landfill. Such support shall include:

- a. At such time as requested by RR, and in such form as reasonably requested by RR, MCWC shall submit to the approval and permitting agencies a letter, or letters, with supporting documentation describing the benefits that will accrue to MCWC and to the environment from the various watershed improvement projects that will ensue from the funding and support provided to MCWC by RR under this Agreement.
- b. To the extent reasonably requested by RR, and to the extent members of MCWC are available, MCWC shall provide testimony at public meetings and hearings in

support of the Landfill and the benefits that will accrue to the Moshannon Creek watershed pursuant to this Agreement

- c. In any advertising or public relations documents that MCWC prepares for any project or activity funded in full or in part by any of the funds provided to MCWC under this Agreement, MCWC shall include a notation crediting RR as a supporting organization.

5. **Term of Agreement.** This Agreement shall become effective immediately upon the execution by both parties and shall remain in effect until the earlier of:

- a The date when RR abandons the Landfill project prior to the acceptance of waste,
- b. the date when RR permanently closes the Landfill to acceptance of waste after operation begins,
- c. the date when this Agreement is terminated pursuant to paragraph 8 below, or
- d December 31, 2050

6 **Assignment; Amendment.** Neither party may transfer or assign its obligations under this Agreement without the prior written approval of the other party. This Agreement shall not be amended or modified except by a written instrument signed on behalf of MCWC and RR. In the event RR sells the Landfill, this Agreement shall be binding upon the new Landfill owner.

7 **Mutual Obligations.** Each Party's obligations under this Agreement are based upon performance by the other party of its respective obligations. In the event of any failure to perform, the non-performing party shall be given written notice of the failure and a reasonable period to cure the non-performance. The obligations under this Agreement shall be specifically enforceable. In addition, the non-performing party shall be liable to the other party for damages caused by its failure to perform, and for all costs and expenses incurred by the other party as a result of such failure, and to enforce this Agreement.

8 **Right to Terminate.**

- a RR may terminate this Agreement
 - i. If MCWC, or any officer or director of MCWC, opposes or contests the issuance of permits (or the renewal, re-issuance, or modification of any permit) or governmental approvals for the construction or operation of the Landfill and MCWC does not promptly and publicly repudiate such opposition, or
 - ii. If MCWC fails to perform any of its obligations under this Agreement if such non-performance is not cured within 30 days after written notice is given by RR
- b MCWC may terminate this Agreement at any time by providing written notice of termination to RR

9. **Governing Laws; Dispute Resolution.** This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Any controversy, claim or dispute between the parties arising out of or relating to this Agreement or any related agreement or any breach hereof or thereof shall be referred to final and binding resolution

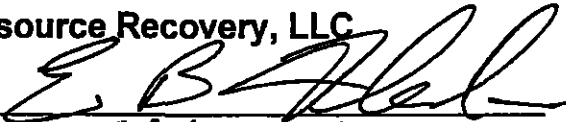
by RR's and MCWC's senior executives who have authority to reach agreement on any matters in dispute upon written request by either party specifying in reasonable detail the nature of the dispute. In the event that the parties' senior executives are unable to resolve the dispute within thirty (30) days after the initial request for dispute resolution, the dispute shall be settled by final and binding arbitration before a sole arbitrator located in State College, Pennsylvania, pursuant to the then-current commercial rules of the American Arbitration Association and the federal substantive and procedural law of arbitration. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator will not have the power to award punitive or exemplary damages or any damages excluded by, or in excess of, any damage limitations expressed in this Agreement. Unless otherwise determined by the arbitrator, each party will bear its own attorneys' fees and costs related to the arbitration.

- 10 **Further Actions, Documents.** MCWC and RR agree to take such actions, and to execute and deliver any further documents or instruments which are not inconsistent with the provisions of this Agreement and which are necessary or appropriate to fulfill all obligations and effect all transactions contemplated by this Agreement
- 11 **Invalid Terms.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction
12. **Notices.** Any notices or communications pursuant to this Agreement shall be in writing and delivered to the following addresses
- | | |
|------------|--|
| If to RR | Resource Recovery, LLC
P O Box 525
3925 Columbia Avenue
Mountville, PA 17554-0525 |
| If to MCWC | PO Box 94
Hawk Run, PA 16840 |

13. **Entire Agreement.** This Agreement sets forth the entire understanding between MCWC and RR with respect to the subject matter of this Agreement and supersedes and replaces all prior agreements, arrangements, representations, letters of intent and memoranda of understanding of the parties with respect to the subject matter of the Agreement.

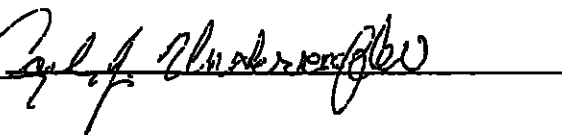
The parties have caused this Agreement to be executed this 18TH day of APRIL, 2005.

Resource Recovery, LLC

By: 
E. A. ANGEL-MR. CEO

Moshannon Creek Watershed Coalition

By: 

By: 

Attachment A: Scope of Work

MCWC agrees to use monies provided by RR to first complete a discharge catalogue of the entire watershed and then to use the results of this and other efforts to create a strategic plan for assessing and remediating portions of the watershed. Monies expended after those used on the initial catalogue will be leveraged as best as possible with other sources of monies

Timeline

Starting in the spring immediately following the first \$50,000 payment from RR:

Milestone 1. Month 1, Spring, Year 1

- Establish database for background information
- Begin training for field reconnaissance
- Develop field sheets for reconnaissance

Milestone 2. Spring – Fall, Year 1

- Begin stream reconnaissance
- Begin field data compilation
- Begin data analysis for development of sampling plan and strategy document
- Compile background information

Milestone 3. Winter, Year 1

- Begin development of Moshannon Creek sampling plan and high level restoration strategy document
- Prioritize sampling points and discharges
- *Possibly* submit grant requests for one or more subwatershed assessments based upon research completed to date
- *Possibly* submit grant requests for Phase II and Phase III of overall restoration plan
- Develop public awareness strategies

Milestone 4. Spring, Year 2

- Complete stream reconnaissance
- Complete data compilation

Milestone 5. Summer, Year 2

- Complete strategy document for restoring Moshannon Creek
- Submission of final document to RR
- Copy and distribute final document elsewhere as is appropriate

The strategy document submitted at the end of the watershed catalogue will provide for the steps that the group will intend to take in subsequent years. The document will include results of the research completed in the watershed catalogue, data gathered during the creation of the watershed clearinghouse, and data gathered during assessments completed in the watershed by the time that the document is drafted

While the strategy document will outline a strategy for restoring the watershed, it will not include a timeline for future activities. Rather, it will include a suggested ordering of activities and a prioritization of actions. A timeline will not be included due to the dependence upon grant agencies for funding.

The strategy document will be a working document which will change as new information becomes available, but it will serve as the driving plan for subsequent restoration work in the watershed. Activities included in this plan of attack which may be funded by RR monies are listed below

- Subwatershed assessments which will include the drafting of a restoration plan for the assessed subwatershed
- Design of treatment systems
- Permitting of treatment systems
- Construction of treatment systems
- Operation and maintenance of treatment systems
- Stream bank restoration
- Natural Stream Design projects
- Highwall reclamation
- Refuse pile relocation

These headings represent all necessary associated acts which are typically required to complete the stated activities (such as surveying, map creation, and printing and reproduction)

Treatment systems may be any type of AMD treatment which is considered proven technology. These may be passive systems such as vertical flow wetlands or active treatment systems such as those using of caustic soda. As new treatment options become accepted, they may be included in MCWC's arsenal for restoring Moshannon Creek.

Items not expressly listed above will not be funded by RR monies unless written approval is obtained from RR for adding these activities to the list of approved activities

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2008, a copy of the foregoing
Verified Statement of E.B. Abel, Jr In Support of R.J. Corman Railroad
Company/Pennsylvania Lines and in Response to Declaration of People Protecting
Communities was served by first class mail, postage prepaid, upon:

Kathryn H.S. Pett
Ballard Spahr Andrews & Ingersoll, LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, UT 84111-2221

Ronald A. Lane, Esq
Thomas Litwiler, Esq
Myles Tobin, Esq
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832

Kimberly A. Hummel, Chief Counsel
Department of Conservation and Natural Resources
Rachel Carson State Office Bldg., 7th Floor
400 Market Street
P.O. Box 8767
Harrisburg, PA 17105


Richard R. Wilson, Esq.