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AUG 17 2010

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August 16, 2010

BY FEDERAL EXPRESS

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, Southwest
Washington, DC 20423

ENTERED
Office of Proceedings
AUG 17 2010
Part of
Public Record

Re: STB Finance Docket No. 35397
ABC&D Recycling, Inc.

Dear Ms. Brown:

Enclosed for filing, please find an original and 10 copies of Town of Ware's Verified Petition to Reject and/or Dismiss Verified Notice of Exemption and Request for Stay of Effective Date of Exemption (with Exhibits 1-28); this firm's check in the amount of $250.00 for the Petition's filing fee and three CDs each containing a PDF of the Petition and Exhibits.

I am also enclosing an extra copy of the first page of the Petition which I would ask you to date stamp and return to me in the enclosed self-addressed stamped envelope. Thank you for your assistance. If you need anything further, please do not hesitate to contact me.

Very truly yours,

David A. Wojcik

DAW:mck
Enclosures
cc: Leonard M. Singer,
Counsel for ABC&D Recycling, Inc.
Town of Ware
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AUG 17 2010

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35397

ABC&D RECYCLING, INC. -
LEASE AND OPERATION EXEMPTION OF A LINE
OF RAILROAD IN WARE, MASSACHUSETTS

TOWN OF WARE'S VERIFIED PETITION TO **REJECT and/or DISMISS** VERIFIED NOTICE OF EXEMPTION AND **REQUEST FOR STAY** OF EFFECTIVE DATE OF EXEMPTION

ENTERED
Office of Proceedings
AUG 17 2010
Part of
Public Record

FILED
AUG 17 2010
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
AUG 17 2010
SURFACE
TRANSPORTATION BOARD

Submitted by:

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I. INTRODUCTION[1]

Petitioner, Town of Ware ("Ware"), respectfully requests that the Surface Transportation Board ("STB") reject and/or dismiss the "Verified Notice of Exemption for Lease and Operation of a Rail Line Pursuant to 49 U.S.C. § 10901 and 49 C.F.R. § 1150.31" ("Notice") sought by ABC&D Recycling, Inc. ("ABC&D") and enter a stay of the effective date of the exemption pending ruling on this petition.[2] Both the Massachusetts Department of Environmental Protection ("Mass DEP" or "DEP") and the Massachusetts Department of Transportation ("Mass DOT" or "DOT") support the Town of Ware in this Petition. The Mass DEP letter supporting this Petition is attached at Tab "A" and the Mass. DOT letter supporting this Petition is attached at Tab "B".

II. SUMMARY OF THE PETITION

ABC&D's true motivation in submitting this Notice is not to be a common carrier but rather to obtain the protection of federal preemption for an intended municipal solid waste ("MSW") facility which state law and local authorities have already prevented it from doing. The record in this case, including statements of representatives of ABC&D disclose that ABC&D is improperly using the STB's class exemption process for non-rail purposes. See Milwaukee Industrial Trade Center, STB Docket No. FD 35133 (June 16, 2010). By using the exemption process created for

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[1]On February 24, 2010, ABC&D Recycling, Inc. filed a Verified Notice of Exemption in Docket Number 35356. On March 19, 2010, the Town of Ware filed a Verified Petition to Reject and/or Dismiss and for Stay. On March 26, 2010, ABC&D, without any explanation, filed a Motion to Withdraw its Verified Notice of Exemption. ABC&D's has now resubmitted its Notice of Exemption filing. ABC&D has not offered any significant response to any of the issues raised by Ware in its original Petition. ABC&D's silence on these issues should be construed against ABC&D.

[2]See Northeast Interchange Railway, LLC, STB Docket No. 34735 (Nov. 17, 2005) (STB entered a housekeeping stay of exemption wherein exemption would not become effective until further order of the Board); see also City of Alameda, STB Docket No. 34798 (Dec. 15, 2005) (a housekeeping stay of the effective date of the exemption is appropriate to allow time for the Board to consider the issues presented).

noncontroversial proceedings ABC&D attempts to avoid disclosing those facts which make clear its true intent. Consequently, ABC&D's submission is false and misleading and should be rejected as void *ab initio* or dismissed as a sham transaction. "Where a notice raises too many unanswered questions, the Board will reject it." Swanson Rail Transfer LP, STB Docket 35376 (May 28, 2010). As set forth in greater detail hereinafter, ABC&D has failed to disclose to this Board that:

- throughout its corporate history, ABC&D has never engaged in common carriage.
- contrary to the implication of ABC&D's verified assertion that "if it wishes to handle solid waste...it must....", ABC&D has already applied for, been denied and is presently appealing Ware's rejection of its application to handle MSW.
- ABC&D's only chance of obtaining permission to operate the MSW disposal facility it has publicly stated it desires to operate, is to cloak itself with the mantle of federal preemption and thereby attempt to do an end run around those regulators who have already ruled that ABC&D's planned MSW facility constitutes a threat to the public health and safety of the citizens of the Town of Ware.
- There is pending litigation with the Town of Ware on the issue of whether ABC&D's present facility is in compliance with applicable zoning law.

III. TRUE IDENTITY OF FILING PARTY

The Verified Notice of Exemption purports to be filed by ABC&D Recycling, Inc. In fact, ABC&D Recycling, Inc. is a financially failed business enterprise which presently exists and operates at the discretion of Country Bank for Savings, the bank which provided the financing for the ABC&D facility and which is now attempting to sell the facility pursuant to a February 13, 2009 "Settlement Agreement" (attached hereto as Exhibit 1, without attachments) and a February 22, 2010 "Second Modification to Settlement Agreement" (attached hereto as Exhibit 2) between ABC&D Recycling, Inc., Joan M. O'Riley and Richard C. O'Riley, Trustees of the O'Riley Family Trust and

Country Bank for Savings.[3] Pursuant to the February 13, 2009 Settlement Agreement, Country Bank for Savings is attempting to sell the ABC&D Recycling business and facility to Mr. Chris Berardi. (See Stock Purchase and Sale Agreement dated February 18, 2010, attached hereto as Exhibit 3 and the Real Estate Purchase and Sale agreement dated February 10, 2010, attached hereto as Exhibit 4). A precondition of the sale of the facility and the stock of ABC&D to Mr. Berardi is the requirement that ABC&D Recycling, Inc. obtain all permitting for operation as an MSW facility.[4]

Since February 18, 2010, ABC&D Recycling has ceded all operational duties, responsibilities and control of its facility to Valley Management Services, Inc. (a corporation controlled by Mr. Berardi) pursuant to a Management Agreement dated February 18, 2010. (See Exhibit 5 attached hereto). The Management Agreement is subject to termination at any time at the sole and exclusive discretion of Country Bank for Savings. The Notice of Exemption at issue has in fact been filed by Valley Management Services, Inc., the temporary interim manager of the business pending sale of the ABC&D Recycling, Inc. stock and the facility which it operates. In reality, the Notice of Exemption is being filed by a potential purchaser of the business of ABC&D Recycling, Inc. which purchase is contingent upon ABC&D Recycling, Inc. obtaining approval to handle MSW.

As set forth in detail in Section IV(4) infra, the purchaser, Mr. Berardi, has entered into the agreements with Country Bank, which holds the current loans for the ABC&D facility, the property owner (the O'Riley Family Trust) and the sole stockholder of ABC&D, Richard O'Riley. These agreements conclusively establish that the goal of Mr. Berardi, as the anticipated purchaser, is to

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[3]These agreements document the fact that ABC&D has been in default on approximately $7 million dollars of loan obligations to Country Bank since January 2008.

[4]There is no precondition relating to ABC&D obtaining common carrier status as a rail carrier.

obtain permitting to process MSW at the facility and not to provide common carrier services. That Mr. Berardi's main objective is to use the ABC&D facility to handle MSW (not to provide common carrier services) is demonstrated by the clauses in the agreements which make closing contingent upon obtaining permits to process MSW. Moreover, the agreements clearly spell out that while the STB filing is being made in the name of "ABC&D", all permits, including any relief received from the STB, must be sold to the anticipated purchaser as part of the sale. It is extremely telling that none of the agreements reference any actual or proposed common carrier services. The actual purpose behind the ABC&D's filing of its "Verified Notice of Exemption" is to cloak itself with federal pre-emption in order to obtain permission to handle MSW at the facility.

IV. RELEVANT HISTORY

1. Development of ABC&D's C&D Business

Development of the ABC&D facility in Ware commenced in July 2001 when the O'Riley Family Trust[5] ("Trust") filed an application with the Ware Planning Board for a Special Permit allowing it to expand its existing business (an auto recycling yard) to include a railroad siding[6] and processing areas for transfer and recycling of asphalt, brick, concrete, construction and demolition materials, and wood. ("C&D" facility). (See Exhibit 8, a true and accurate copy of the Special

[5]The Trustees of the O'Riley Family Trust are Richard O'Riley and Joan O'Riley. Richard O'Riley, Joan O'Riley and Sean O'Riley are also the Directors and Officers of ABC&D. (See Exhibit 6, a true and accurate copy of the Notice of Trust recorded in the Hampshire County Registry of Deeds on June 4, 1996 in Book 4900, Page 109 and Trustee's Certification to same, recorded in the Hampshire County Registry of Deeds on November 16, 2004 in Book 8066, Page 30).

[6]The rail siding was to be constructed for the sole purpose of servicing the proposed C&D facility to be constructed. (See Exhibit 7, a true and accurate copy of a plan submitted by ABC&D with its Site Plan Approval Application).

Permit application). As part of that permitting process in 2001, the Trust's application and filings[7] with the Ware Planning Board referenced a railroad siding or spur line to provide rail access to the proposed C&D facility[8]. (See Exhibits 7 and 8). It is clear that the railroad siding or spur line was constructed solely for ABC&D's private use and was never intended to be used for common carriage. (See Exhibits 7 and 8).

Following the Special Permit hearing (which is now the subject of pending zoning litigation), hearings were held on the Trust's Request for Site Plan Approval for the project and Site Plan Approval was granted by the Ware Planning Board. (See Exhibit 12, a certified copy of the Site Plan approval). The proposed facility operator was ABC&D. (See Exhibit 13, a certified copy of the Hampshire Superior Court docket, decision and Notice of Appeal, at p. 2). ABC&D's Articles of Organization state that the purpose of ABC&D is to "operate a Construction [sic] demolition recycling facility" and "any other business in connection with the foregoing...". (See Exhibit 14, a

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[7]The Trust was not the owner of the property in February of 2001 at the time that a Special Permit was sought. The owner of the property in 2001 was Richard and Joan O'Riley. In fact, the property in question was not deeded to the O'Riley Family Trust until November 16, 2004. (See Exhibits 9 and 10 for the deed into Mr. and Mrs O'Riley and the deed from Mr. and Mrs. O'Riley dated November 16, 2004 conveying the property to the O'Riley Family Trust, respectively).

[8]Only the building stub (365') tracks and outside stub (408') tracks were built on property owned by the Trust or ABC&D. The switch line connecting the facility to the main rail line was built on property owned by the Commonwealth of Massachusetts. As discussed in further detail herein, in December of 2005, the Trust and ABC&D entered into a revocable license agreement with the Massachusetts Executive Office of Transportation (now known as the Massachusetts Department of Transportation "Mass DOT") which allowed the siding or spur line to be constructed and accessed until December 5, 2010. (See Exhibit 11 for a copy of this License Agreement). The license is then renewable in one year terms until the Executive Office of Transportation terminates such license. In 2001, when the project was proposed to the Ware Planning Board, there was no disclosure by the Applicant that it did not own the railroad and/or that it had no right to build a rail siding or spur line without the State's permission. Moreover, in 2003 when ABC&D filed with the Massachusetts DEP and Town of Ware Board of Health, there was no disclosure that it did not have permission to construct or access the proposed rail siding or spur line. When the Trust applied for a building permit in December of 2004, it did not disclose that it did not have any permission to construct or access the proposed rail siding or spur. ABC&D's current filing to the STB also fails to disclose the existence of such revocable License Agreement, the fact that the revocable License Agreement's initial term expires this year on December 5, 2010 or the fact that the revocable License Agreement does not include a right to expand the C&D facility to handle MSW.

certified copy of the Articles of Organization). This stated purpose has never been amended. Pursuant to its stated purpose, ABC&D[9] proceeded under Massachusetts General Laws, Ch. 111, §150A to obtain site assignment approval for the proposed C&D facility from the Massachusetts DEP and from the Town of Ware Board of Health ("BOH"). (See Exhibit 13, Decision, at p. 2). ABC&D voluntarily proceeded under relevant Massachusetts law and Ware's Zoning By-Laws with respect to this facility.

On or about December 14, 2004, ABC&D commenced construction on a 26.78 acre piece of land at 198 East Street, Ware, Massachusetts, of a building to accommodate its C&D waste handling business. The building consisted of approximately 22,000 square feet with areas for crushing. sorting and otherwise processing or handling the C&D waste which it was expecting. (See Exhibit 15, a true and accurate copy of the building permit and certificate of occupancy). Construction was completed on or about January 11, 2006 and ABC&D opened its C&D handling facility in February 2006. (See id.).

Consistent with its Articles of Organization, ABC&D was (and is) in the business of charging per ton fees for C&D material which then become the property of ABC&D. When customers deliver C&D materials to ABC&D, it "processes" the materials by crushing, separating, etc. and then either selling or shipping the materials out by truck or rail for disposal. At no time during the last eight years of permitting, constructing and/or operating the C&D operations has ABC&D ever held itself out as a common carrier, or provided any common carrier services. (See Exhibit 14).

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[9]ABC&D sought site assignment approval from the Massachusetts Department of Environmental Protection ("DEP") and the Town of Ware Board of Health ("BOH"), the corporation known as ABC&D Recycling, Inc. did not even exist. That corporation was not formed until May 27, 2004 (See Ex. 14), which is one (1) year after this non-existent entity filed for site assignment with the DEP and BOH.

Moreover, there is no reason to believe that ABC&D, under its temporary interim management (and the anticipated buyer), now intends to provide any common carrier services. As demonstrated herein, the intention of the potential buyer of ABC&D is to process MSW. If the buyer is not successful in his attempt to obtain permission to handle MSW through this filing with the STB, the sale will not close. Permission to handle MSW, not common carriage, is the linchpin of the proposed transactions.

Between the filing of the Town's March 18, 2010 "Petition to Reject and/or Dismiss Verified Notice of Exemption and Request for Stay" and ABC&D's renewed Notice of Exemption filing of July 28, 2010, there has been a significant change in ABC&D's circumstances, which has not been disclosed by ABC&D to this Board. In the course of responding to the prior STB filing, Ware Town Counsel obtained the Planning Board files from 2001.[10] A further review of those files in April of 2010, disclosed significant zoning violations associated with the Special Permit and that in fact, a Special Permit had not been granted. Town Counsel notified the Town of such finding and the Town shared that information with Mr. Patrick Hannon, the temporary interim management of ABC&D.[11]

In response to such notification, the O'Riley Family Trust and ABC&D sued the Town of Ware on May 28, 2010. That litigation, captioned as O'Riley Family Trust et al v. Town of Ware, Massachusetts, is currently pending in the Hampshire Superior Court, Civil Action Number 2010-00115 (hereinafter "Pending Zoning Litigation"). (See Exhibit 17 for a copy of the Trust's

[10]It is evident from the Town of Ware's prior Motion to Reject and/or Dismiss and to Stay that as of March 18, 2010, the Town was still not aware of the zoning violations, including the defects in the Special Permit. The Town became aware of such zoning violations in April of 2010.

[11]A true and accurate copy of the May 7, 2010 letter from Town Counsel to the Town setting forth the zoning violations is attached hereto as Exhibit 16.

Complaint[12] against the Town and Exhibit 18 for a copy of the Town's Counterclaim against the Trust and ABC&D). The Pending Zoning Litigation involves legal questions concerning whether the ABC&D facility must be removed because it was constructed upon property without any frontage and whether the alleged Special Permit is invalid, null and void as a result of, among other things, an insufficient Planning Board vote, the failure to use the alleged Special Permit before it lapsed and the failure to record the alleged Special Permit. The Town's Counterclaim seeks remedies which include enjoining operation and removal of the facility.

In the course of the pending zoning litigation, the Town obtained evidence which conclusively establishes that the filing of the "Verified Notice of Exemption" is part of an "MSW scheme" being advanced by the buyer (Chris Berardi) and new manager, (Patrick Hannon of Valley Management Services, Inc.) This MSW scheme is set forth in greater detail below in Section 4. The sole purpose behind the filing of this "Verified Notice of Exemption" is not to provide common carriage but to obtain authorization to handle MSW by avoiding state and local regulation.

2. Attempt to Expand C&D Business to Include MSW

In its Notice of Exemption, ABC&D failed to disclose to the STB that in August of 2007, ABC&D applied, pursuant to Mass. Gen. Laws ch. 111, §150A, to the Massachusetts DEP for site assignment approval to handle MSW at its C&D facility. (See Exhibit 19, a true and accurate copy of the DEP filing). The Massachusetts DEP allowed the site suitability application on or about December 10, 2007. (See Exhibit 13, Decision at p. 2) Pursuant to Mass. Gen. Laws ch. 111,

[12]The Town filed a Motion to Join the Trustees of the O'Riley Family Trust and ABC&D, Inc. as parties to the pending zoning litigation. The Plaintiff agreed to join those parties and represented to the Court that there would be no substantive changes in its amended complaint. On July 8, 2010, the Court entered an Order that those parties be joined. On July 27, 2010 the Plaintiff filed an Amended Complaint.

§150A, ABC&D was also required to obtain site assignment approval from the Town of Ware BOH to include MSW processing.

ABC&D has also failed to disclose that in the fall of 2007. ABC&D applied for Site Assignment[13] from the Town of Ware. (See Exhibit 13). Pursuant to Mass. Gen. Laws ch. 111, §150A, the Town of Ware BOH was required to hold public hearings on ABC&D's application. During the period of January 8, 2008 through February 13, 2008, five (5) days of well attended, locally televised public hearings were conducted by the Ware BOH . (See Exhibit 20, a certified copy of the BOH decision). This public hearing included the testimony of twelve (12) witnesses, which resulted in a transcript over 1,190 pages long, and 111 exhibits that spanned thousands of pages. (See Exhibit 13. docket showing the filing of the Administrative Record Vol. 1-13).

Notably, ABC&D's Notice of Exemption also failed to disclose to the STB that on or about February 21, 2008, the Ware BOH issued its decision denying ABC&D's Site Plan Assignment to handle MSW at its facility. (See Exhibit 20). Further, ABC&D failed to disclose to the STB in its exemption notice that on March 24, 2008, it appealed the findings of the Ware BOH to the Hampshire Superior Court, Docket No. HSCV2008-00063. (See Exhibit 13). After extensive briefing and oral argument, the Hampshire Superior Court issued a twenty (20) page decision dated March 26, 2009 and entered March 30, 2009. affirming the decision of the Ware BOH to deny Site Plan Approval to ABC&D for MSW, a fact also not disclosed by ABC&D to the STB. (See Exhibit 13). Moreover, ABC&D has failed to inform the STB that on or about April 28, 2009, ABC&D filed a Notice of Appeal to the Massachusetts Appeals Court of the decision of the Hampshire Superior Court and that litigation remains pending. (See Exhibit 13).

[13]ABC&D was seeking to modify its C&D approval to also include MSW.

Since its construction, the spur line to the C&D facility has been operated by the Massachusetts Central Railroad Corporation which operates the railway to which the spur line connects.[14] (See ABC&D's Notice). Nowhere in its filing does ABC&D allege that it has an agreement with Massachusetts Central Railroad Corporation to use its track or to connect to its track to provide common carrier service. From the inception of the planning of ABC&D's facility in 2001 until the filing of the first Notice of Exemption on February 24, 2010 (which was then withdrawn) and now this subsequent Notice of Exemption , ABC&D has never held itself out as a rail carrier or a provider of rail services or a common carrier, but has always held itself as a C&D waste facility that now seeks to handle MSW.[15] (See Exhibits 8, 12, 13, 14, 19, 20 and 21).

It should also be noted that the individual, Patrick J. Hannon, who signed the "Verification" and the "Certification" attached to ABC&D's Notice, has no public record of involvement with common carrier operations but is publicly known to be connected with MSW facilities. (See Exhibit 22, a true and accurate copy of a Worcester Magazine article quoting Mr. Hannon). Mr. Hannon is not identified as an officer or director of ABC&D in any of its Secretary of the Commonwealth filings. (See Exhibit 14). There is no evidence of any vote of the ABC&D directors authorizing Mr. Hannon to file the Verified Notice of Exemption with the STB on behalf of ABC&D.[16]

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[14]The rail line over which Massachusetts Central Railroad Corporation operates is owned by the Commonwealth of Massachusetts.

[15]ABC&D's efforts to handle MSW began in 2007. ABC&D's "Verified Notice of Exemption" states that it "is implementing a new business plan and business strategy." (See ABC&D's Notice at p. 3). In fact, the new business plan and business strategy is nothing more than an attempt to obtain permission to handle MSW by virtue of the Notice of Exemption filed with STB.

[16]In this re-filing, ABC&D notes for the first time that Mr. Hannon's authority to sign on behalf of ABC&D is derived from a Management Agreement entered into between ABC&D/Trust and Valley Management Services, Inc. Despite such Management Agreement, there is still no Board of Directors vote of ABC&D allowing Mr. Hannon to act on its behalf or directing this filing. (See Exhibit 5).

Based upon the above facts, it is clear that only after denial by the Ware BOH of ABC&D's Request for Site Assignment pursuant to Mass. Gen. Laws ch. 111, §150A, and after the Hampshire Superior Court upheld the determination of the Ware BOH, did ABC&D file its first Notice of Exemption (which it withdrew after the Town's filing of a Motion to Reject and/or Dismiss and to Stay) and now this subsequent Notice of Exemption filing, in an attempt to recharacterize itself as a common carrier in order to invoke federal law to allow it to handle MSW after having failed to obtain the necessary local approval under applicable Massachusetts law. It is blatantly apparent that the motivation behind ABC&D's filing of this Notice of Exemption is not to operate as a common carrier over a mere *773* feet of rail line, but to re-characterize itself as a rail carrier in order that it might attempt to put itself under the cloak of the ICCTA and the Clean Railroads Act of 2008 to obtain permission (which has been denied under Massachusetts law) to handle MSW at its facility.

3. Zoning Violations and the Pending Zoning Litigation

ABC&D has failed to disclose to the STB in its filing that, on May 28, 2010, the O'Riley Family Trust and ABC&D Recycling, Inc. filed *another* lawsuit against the Town of Ware seeking a declaratory judgment regarding the validity of the alleged 2001 Special Permit. (See Exhibit 17, a true and accurate copy of Complaint, without exhibits, filed in the Pending Zoning Litigation). As a result of the previous STB filing by ABC&D, the Town's attorney obtained the 2001 Planning Board filings to see if the O'Riley Family Trust ever indicated its intention to become a common carrier. As that review progressed, it was discovered that not only had the Trust and/or ABC&D never indicated such an intention - but - a through review of the 2001 proceedings indicated that the property owned by the Trust was actually two separate parcels (not the one parcel of land the Trust

had misrepresented existed to the Planning Board) and that in fact, the parcels were separated by railroad land which was owned by the Commonwealth of Massachusetts. (See Exhibit 11). As such, it became clear that the parcel upon which the ABC&D facility had been constructed did not actually have legally required frontage on a public way and was in fact a land locked parcel. As a land locked parcel without frontage, neither a special permit nor a building permit could ever have properly issued for the facility. The zoning case is currently pending in the Hampshire Superior Court and is scheduled for a trial to commence on August 23, 2010.

The Town discovered additional serious zoning violations with regards to the special permit process, including the fact that the alleged special permit received an affirmative vote of only three (3) members of a five (5) member Planning Board. As a matter of law, the vote was deficient and a special permit did not in fact issue since Mass. Gen. Laws, ch. 40A, §9 provides that a special permit can only be granted by an affirmative vote of four (4) members of a five (5) member Planning Board. In addition, the Town discovered that the special permit application was not filed with the Town Clerk as required by Mass. Gen. Laws ch. 40A, that the special permit was not recorded, and that the special permit (even if valid) was not used within one (1) year and therefore lapsed. (See Exhibit 18). In addition, the Town discovered violations of the DEP Authorization to Operate Permit, which in turn trigger a violation of the Site Plan Approval which allows for a revocation of the Special Permit, if same exists. Throughout the discovery of this matter, the Trust and ABC&D have seemingly conceded these zoning violations,[17] instead arguing that because they relied on "the

[17] Frontage: Plaintiff has conceded in its interrogatory answers that the intervening parcel is owned by the State but argues that notwithstanding such fact, the property should still be treated as one parcel. Vote: Plaintiff has conceded that there were only three (3) votes but contends that (notwithstanding the statute to the contrary), three (3) votes are enough. Lapse: Plaintiff has conceded that a Building Permit was not sought until 3 ½ years later, in December of 2004, but claims that there have been other uses of the alleged permit such that it has not lapsed. Recording: Plaintiff has conceded the alleged Special Permit was not recorded until 2010 but has alleged that it is

permits" the "equities" should preclude enforcement of the zoning by-laws.

When the Town Manager forwarded a copy of Town Counsel's letter (see Exhibit 16) outlining the zoning violations to Pat Hannon, the new manager of ABC&D, the response of the Trust and ABC&D was to sue the Town. (See Exhibit 17). Upon being served, the Town counterclaimed and brought claims against the Trust and ABC&D seeking to enforce its zoning bylaws and to remedy these zoning violations by removal of the building. (See Exhibit 18).

ABC&D has failed to disclose this zoning litigation to the STB. Certainly, if the Town prevails in its Counterclaims and the facility is removed, ABC&D's current STB filing will be moot since it will not have a facility from which to operate. During this zoning litigation, ABC&D's true intention became abundantly clear. The buyer of ABC&D (who is the one pursuing this STB filing) has stated, on numerous occasions, that his intention is to seek federal preemption of the Ware Board of Health's site assignment denial so that he can conduct MSW operations. ABC&D has actually referred to its scheme as its "MSW campaign." (See Exhibit 23, an email from Pat Hannon discussing the MSW campaign.)

4. The MSW Scheme

A contract has existed since February 18, 2010 wherein the current stockholder of ABC&D has entered into an agreement to sell the stock to Chris Berardi, the anticipated new owner of both the land and facility. (See Exhibit 3). ABC&D has not disclosed to the STB the existence of this agreement for the sale of ABC&D stock.

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not fatal to the alleged Special Permit's validity. Filing: The Plaintiff has conceded the application was not filed with the Town Clerk but alleges (nothwithstanding the requirements of Mass. Gen. Laws ch. 40A) that was the practice in 2001. Site Plan Violations: The Plaintiff has not conceded any violations to its permit but has conceded that if a violation exists, it would be grounds for revocation of any Special Permit that may exist.

Mr. O'Riley, the President and sole stockholder of ABC&D is not actually running ABC&D now and has not run it since February of 2010. Instead, Patrick Hannon of Valley Management Services, Inc. a corporation wholly owned by the anticipated buyer, Mr. Berardi, is running ABC&D.

The Management Agreement provides that:

> The Manager is a corporation formed for the purposes of providing management services to the Corporation during the interim period prior to the anticipated sale of the real property, including the Facility, and the shares of stock of ABC&D Recycling, Inc. to Chris Berardi (the "Buyer") pursuant to a real estate Purchase and Sale Agreement...and an Agreement for the Purchase and Sale of Capital Stock of ABC&D....The Manager is wholly owned by the Buyer.
>
> (See Exhibit 5).

ABC&D (as currently managed by Mr. Berardi and Mr. Hannon), has failed to disclose to the STB its true intent behind the filing of its "Verified Notice of Exemption." The true intent can be gleaned from the Purchase & Sale Agreement for the Real Estate which provides that the Buyer's obligation to perform under the agreement is "expressly subject to and contingent upon the following:"

> Buyer shall obtain, at or prior to Closing, all necessary permits, licenses and approvals from all applicable, local, state and federal authorities to operate the Premises as an MSW transfer station[18], including but not limited to the Federal Surface Transportation Board recognizing Buyer as a railroad and issuing a Declaration of Land Use Exemption allowing Buyer to bring MSW onto the Premises and operate as an MSW transfer station.
>
> (See Exhibit 4 at p. 10, ¶25).

ABC&D has never disclosed to the STB the existence of a "Buyer" or the "Buyer's" true

[18]Despite the fact that the language "transfer station" is used - it is clear that ABC&D's intention is to process and recycle MSW at the facility prior to its disposal.

intentions with regards to this STB filing. The agreements between the Lender, the Trust, ABC&D and the anticipated buyer set forth, on multiple occasions, the true intent of the Buyer with respect to this filing before the STB; that intent is to override the Ware Board of Health's denial of an MSW permit and to seek permission to handle MSW from the STB.

Additionally, the February 13, 2009 Settlement Agreement between the Trust and the Lender requires that Mr. and Mrs. O'Riley "utilize their best efforts to obtain the MSW Permit, including the aggressive prosecution of the Permit Appeal and the undertaking of such additional actions as may be necessary to obtain the MSW Permit from the Town and other applicable governmental entities and agencies." (See Exhibit 1).

The Management Agreement provides that any property hereafter acquired for the benefit of the corporation or the facility, including "railroad and railroad interchange agreements, agreements, licenses, permits, rights and interests including any right, permit or interest which may be acquired or obtained to operate, or in any way related or incident to the operation of the Facility as a Municipal Solid Waste or railroad **facility**..." (emphasis added), remains the property of the corporation. (See Exhibit 5).

The Real Estate Purchase & Sale Agreement provides:

> Provided the Purchaser has, during the term of this Agreement, utilized its best efforts to pursue the permits, licenses, and approvals necessary to operate the facility as an "**MSW Facility**"...the Purchaser may extend the Closing Date in this Agreement..[until] thirty (30) days after all approvals have been obtained to operate as an "**MSW Facility**"...
>
> (See Exhibit 4) (emphasis added).

The Stock Purchase & Sale Agreement also provides that:

> All of the permits, licenses and approvals...necessary for operation as a Municipal Solid Waste transfer station and facility shall have been issued to Purchaser at or prior to the Closing, or shall be validly transferred and assigned for use by Purchaser at or prior to Closing...
>
> *****
>
> Provided the Purchaser has during the term of this Agreement utilized his best efforts to pursue the permits, licenses, approvals and described in Section 8.12 of this Agreement including the necessary approval **to operate the Facility as an "MSW Facility"**...the Purchaser may extend the Closing Date...[until] thirty (30) days after all approvals have been obtained **to operate the Facility as an "MSW Facility"...**
>
> (See Exhibit 3) (emphasis added).

On February 22, 2010, Mr. & Mrs. O'Riley, as Trustees of the Trust (property owner) and stock holder of ABC&D, entered into a Second Modification to Settlement Agreement with the Lender. (See Exhibit 2). In this document, the Lender required Mr. & Mrs. O'Riley to "covenant and agree that they will extend their full cooperation to the Manager in connection with the Manager's management of the Facility and the Manager's efforts to obtain MSW authorization." (Id.)

Perhaps most telling of ABC&D's true intent behind its STB filing are the emails sent by the temporary interim manager of the facility, Mr. Patrick Hannon. On April 18, 2010, Mr. Hannon forwarded to a number of individuals (including two high level executives at Country Bank for Savings, the Lender putting together the deal between O'Riley and Berardi) a copy of an email he had just sent to the Ware Town Manager along with the following note, which unequivocally sets forth the "MSW scheme":

> Once the residents start using the drop off they will be demanding disposal, the pole (sic) of public opinion should leverage the town, **if the town does not cooperate** you can close the drop off any time and

> really piss the people off at the town, we will have access to every person who recycles in town thru the drop off, if we issue a recycling sticker we can maintain a data base and develope (sic) a contract list for **our MSW campaign.**"
>
> (emphasis added). (See Exhibit 23, a true and accurate copy of this email.)

That MSW is the final end game - using the STB as a means to that end - is not in dispute.

On February 24, 2010, at 7:18pm in the evening, just hours after ABC&D filed its first Verified Notice of Exemption with the STB, Mr. Hannon emailed several individuals, including the Lender's executives, and stated:

> The attached document was filed today in Washington at the Surface Transportation Board, it is also available on the STB Web Site, this filing does not require any local or State notification or notice...this filing should become effective in about 30 days, and then we will file the Notice of Land Use Exemption with the STB, that filing will require notification to just about every agency that you can think of, and then a few more, other than being in the radar this is not a big deal and we expect very little push back if any.
>
> (See Exhibit 24, a true and accurate copy of this email).

Of course, the reason Mr. Hannon expected "very little push back" is because he was hoping that the Town of Ware would not even realize that such filing had been made. Despite knowing the Town's involvement with this facility and the BOH's prior denial of an MSW siting, and the fact that litigation was currently pending, ABC&D attempted to capitalize on the fact that the filing "does not require any local or state notification or notice" and did not give Ware notice of this filing. If ABC&D's filing was above board and if ABC&D in fact intended to be a common carrier, one would expect it would have notified the Town of Ware of its filing.

Thereafter, on March 6, 2010, ten (10) days after ABC&D's first filing with the STB and eight (8) days before ABC&D learned that in fact the Town was aware of its filing and had filed its

Motion to Reject and/or Dismiss and to Stay the Notice of Exemption, Mr. Hannon sent the following email to the Trust's attorney and to the executives at the Lender:

> The rail exemption is going along quietly as we expected, Leonard Singer is now preparing the filing for the "Land Use Exemption" David Murphy from Tighe and Bond was at ABC on Friday putting together the necessary documents and making a list of documents we need to get, when this is filed near the end of March, the Town, State and every agency you can think of will get notice of this filing. I would ask that no one have any comment to any agency or the press, they will be calling and Leonard Singer should handle this, I am open to discussing this if you want to be involved.
>
> (See Exhibit 25. a true and accurate copy of this email).

It is therefore beyond any serious dispute that ABC&D's Notice of Exemption is simply a prelude to a request for a land use exemption to handle MSW.

ABC&D was certainly hoping that things would go "along quietly" because it knew that if the Town was aware of its filing, the Town would not only oppose same, but would make the STB aware of all of the misrepresentations and failures to disclose in ABC&D's Notice of Exemption. In fact when Ware learned of the filing that is exactly what happened, leading to ABC&D withdrawing its petition. Now some three (3) months later, and during the pendency of additional zoning violation litigation, ABC&D has re-filed its Notice of Exemption. Its MSW scheme, which was in effect at the time of the first filing, is still present now. ABC&D's failures to disclose relevant information and the misrepresentations present in the first filing are still present now. As previously set forth, the Notice of Exemption should be rejected and dismissed and the effective date of the Exemption should be stayed pending the STB's decision on the Town of Ware's Motion to Reject and/or Dismiss ABC&D's filing.

V. ARGUMENT

A. The Notice of Exemption Should Be Deemed Void *Ab Initio.*

According to its submission, ABC&D filed its Notice pursuant to 49 C.F.R. § 1150.31 et seq. Subpart (c) of 49 C.F.R. § 1150.32, referring to this type of Notice, provides in relevant part:

> (c) if the notice contains false or misleading information, the exemption is void *ab initio*.

In construing a similar provision, this Board ruled:

> In administering the class exemption, the Board depends on the accuracy of the information in the carrier's certification. To ensure the integrity of the class exemption procedure, our regulations provide that "[i]f the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio* and the Board shall summarily reject the exemption notice." 49 CFR 1152.50(d)(3). This rule contains no exception for *de minimis* errors in the notice of exemption concerning usage of the line.

BNSF Railway Company, STB Docket No. AB-6 (Sub-No. 430X). "An exemption expedites and simplifies certain cases where a more searching regulatory inquiry is not necessary to advance the rail transportation policy (RTP), by relieving parties of some of the requirements that would apply under the otherwise applicable regulatory provision." The board will "undo" a transaction in its entirety in order to "protect our processes". SF&L Railway, Inc., STB Docket No. 33995 (Jan. 31, 2003).

1. ABC&D Has Failed to Disclose Pending State Actions Concerning the Property in Question.

In the pending Notice of Exemption, ABC&D has jeopardized "the integrity of the class exemption procedure" by failing to disclose to the Board that its intended use of its facility to process solid waste has already been prohibited by the Town of Ware which, after multiple days of hearings,

denied the application of ABC&D to operate as a solid waste facility. (See Exhibit 20). Furthermore, ABC&D failed to disclose to this Board that it appealed that decision to the Massachusetts Superior Court (Hampshire County), which upheld the decision of the Town of Ware to deny the siting application. (See Exhibit 13). Moreover, ABC&D failed to disclose to this Board that it appealed the decision of the Superior Court to the Massachusetts Appeals Court, and that litigation is still pending. (See Exhibit 13). Finally, ABC&D failed to disclose to this Board that there is a pending zoning litigation (initiated by the Trust and ABC&D) which involves whether the property upon which the facility was constructed has frontage, the alleged zoning violations and the Town's counterclaim seeking removal of the building as a result of the zoning violations.

2. *ABC&D Has Failed to Disclose That Its Operating Permit Prohibits the Use of Its C&D Facility For Any Other Purpose "Without the Prior Written Approval" of the DEP.*

On page 4 of its Notice of Exemption, ABC&D states that "[i]t obtained all state and local permits necessary in order to handle construction and demolition debris." ABC&D obtained those permits and operates its C&D facility pursuant to Mass. Gen. Laws ch. 111, §150A. Pursuant to the requirements of Mass. Gen. Laws ch. 111, §150A, the Massachusetts Department of Environmental Protection issued an "authorization to operate permit" dated February 13, 2006. (See Exhibit 26, a true and accurate copy of this permit). This permit authorized ABC&D Recycling, Inc. to operate a "construction and demolition (C&D) material processing and handling facility (the Facility) ...". The "General Permit Conditions" provided as follows:

> Compliance with Plans – The permittee shall operate the facility in accordance with the approved plans, reports, and other submittals for the project except as may be modified by the conditions set forth in sections II. No material changes in the design or activities set forth in the approved documents shall be performed without prior written

Mass. DEP approval.

(See Exhibit 26 at p. 7).

This condition of the permit to operate would require that ABC&D demonstrate to Mass. DEP's satisfaction and approval that all of the permit conditions for the operation of the C&D material processing and handling facility could still be met if ABC&D Recycling, Inc. was to additionally engage in common carrier activities. ABC&D has not provided this Board with any evidence that it has demonstrated to Mass. DEP's satisfaction that it could still meet all of its permit conditions for handling construction and demolition materials pursuant to its permit while also providing common carrier services. The Town of Ware is not aware of any plans with descriptions of the manner in which common carrier services could be provided at this facility while complying with all of the conditions of the Mass. DEP permit to operate a construction and demolition material processing and handling facility. On information and belief, the Town of Ware does not believe that any such prior written Mass. DEP approval has been obtained to allow for the conduct of common carrier activities at this facility. The requirement for such prior approval is necessitated by the hazardous type of operations conducted at a C&D facility. Such C&D operations would be inconsistent with the conduct of common carriage for the general public. The ABC&D facility was designed, constructed, permitted and operated as a construction and demolition material processing and handling facility. The facility involves large commercial dump vehicles dumping hundreds of tons of demolition materials in a processing facility where machines and equipment sort and process the materials for loading onto rail cars or outgoing trucks. It is difficult to conceive how this facility could continue to provide its specific waste handling functions and also provide common carriage services. ABC&D's failure to disclose these permitting obligations to the Board is another example

of the applicant providing false and misleading information to the Board and is a further ground for declaring the Notice void *ab initio.*

3. ABC&D's Conduct Jeopardizes the Integrity of the Exemption Procedure.

ABC&D's conduct jeopardizes the integrity of the exemption procedure in a manner similar to the conduct of the applicant in Jefferson Terminal Railroad Company (" Jefferson"), STB Docket No. 33950 (March 19, 2001). Jefferson invoked class exemption pursuant to 49 C.F.R. § 1150.31 to operate a 1.2 mile rail line. Jefferson failed to disclose that it had acquired this track from its corporate parent and that the corporate parent had received a notice that the rail line in issue was the subject of a condemnation action that had been commenced by the city of Detroit prior to the transfer of the track to Jefferson. In revoking the Notice of Exemption granted to Jefferson, the Board noted that under the licensing provisions of 49 U.S.C. § 10901, a noncarrier may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." "That means the Board must examine and weigh the public interest." The Board went on to rule that:

> There are instances, however, where full regulatory scrutiny is not necessary, and so, under 49 USC 10502 and 49 CFR 1121, any party may request an exemption from the otherwise applicable regulatory provisions, on the grounds that full regulatory scrutiny is not necessary to carry out the national transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power. . . . Thus, under our regulations at 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad within seven days, subject to the authority being later revoked (if our regulatory scrutiny is found to be necessary) or treated as void *ab initio* (if the exemption notice is found to contain false or misleading information).
>
> Id.

Jefferson's failure to make full disclosure of the circumstances involving the City's condemnation was a basis for the Board's revocation of the exemption previously granted to Jefferson.

This Board also revoked a modified rail certificate of public convenience and necessity which had been issued pursuant to 49 C.F.R. § 1150.23(a), when petitioners demonstrated to the Board that the railroad made false and/or misleading representations regarding the nature and status of its purported interest in the right-of-way that was the subject of the notice. When the true nature of the railroad's interest was shown to be false, the exemption was vacated as void *ab initio*. Black Hills Transportation Inc., STB Docket No. 34924 (Jan. 26, 2010).

There is overwhelming evidence in this case that ABC&D is using the Board's class exemption process for non-rail purposes. ABC&D is using the class exemption process to circumvent state law, and local zoning and site assignment processes that apply to an MSW facility. ABC&D has engaged in exactly the type of conduct that the Board found improper in Milwaukee Industrial Trade Center, STB Docket No. FD 35133 (June 16, 2010). ABC&D's true motive in filing the Notice of Exemption is to circumvent state and local laws and regulations governing permitting of an MSW facility. It could not be more clear that ABC&D has filed the Notice of Exemption "for non-rail purposes."

The importance of disclosing state involvement in the property that is the subject of the notice of exemption was highlighted in the decision in U.S. Rail Corporation, STB Docket No. 35042 (Oct. 7, 2008). In that case this Board rejected US Rail's notice of exemption to lease and operate over certain track that was being constructed because US Rail failed to disclose that the city of Patterson, New Jersey had initiated a condemnation action involving the property at issue, and that this failure was "materially misleading by omission, rendering the notice void *ab initio*."

Since 2006, ABC&D has operated as a private facility that, for a fee, accepts construction and demolition debris, then sorts and recycles that debris. (See Exhibit 14). In August of 2007, ABC&D sought to expand its operations into a facility that also accepts MSW for recycling; first filing with the Massachusetts DEP and then with the Town of Ware BOH. (See Exhibit 19). Its site assignment to operate a MSW facility was denied by the Town of Ware in February of 2008. (See Exhibit 20). ABC&D appealed this decision to the Hampshire Superior Court in Massachusetts and in a twenty (20) page decision, the BOH's decision was affirmed and upheld by the court. (See Exhibit 13). ABC&D has subsequently appealed that decision to the Massachusetts Appeals Court. (See Exhibit 3). The current property owner and stockholder has now entered into a series of agreements with a new buyer of the land and facility and those agreements all repeatedly state, that the Buyer's intention is to operate an *MSW facility*. (See Exhibits 1, 2, 3, 4 and 5).

At no time prior to the submission of its Notice has ABC&D ever even *hinted* to the Town or in any other public forum that it even *considered* being a common carrier. ABC&D's Articles of Organization do not identify common carriage as a type of business it intended to undertake, nor is common carriage mentioned in ABC&D's DEP application, the BOH site assignment proceeding or the pending litigation. (See Exhibits 13, 14, 19 and 20).

Indeed, in January 2008, ABC&D testified under oath concerning its intentions with respect to the property that is the subject of its Notice of Exemption, and never once mentioned the possibility of providing common carriage. ABC&D testified at the BOH hearing in relevant part as follows:

> Well, my future plans are to get the MSW operation up and running to provide funding for the recycling center.

(See Exhibit 27 at pp. 629-630 for a true and accurate copy of Mr. O'Riley's testimony at the BOH hearing). Further, in response to the question "and this facility with respect to MSW is going to be a transfer station isn't it?" ABC&D's consultant, Garrett Keegan, testified "No, *a processing and handling facility.*" (See Exhibit 27 at p. 331) (emphasis added). In addition, Mr. O'Riley testified in the affirmative that with regard to the general MSW that ABC&D intended to process, it was transferred into a railcar or an over-the-road truck, and furthermore ABC&D, instead of getting paid for this material, would actually have to pay to have the material taken away. (See Exhibit 27 at p.705). The anticipated new owner, Mr. Berardi, has likewise stated on a number of occasions in the various contract documents that the intention of the Buyer is to get whatever federal authority is needed to operate as a "*MSW facility.*" (See Exhibits 1, 2, 3, 4 and 5).

Having intentionally failed to disclose this history to the STB, ABC&D now seeks to take advantage of the streamlined process offered to those entities with a sincere interest in providing common carriage service. There can be little doubt that providing common carriage is not consistent with the operation of a C&D and MSW facility. In fact, as evidenced by Massachusetts statutory law, before any other operations can be conducted at a facility that handles C&D, the DEP must approve such operations in writing. The Board should deny the Notice because ABC&D's alleged proposal is not the type of routine matter the notice of exemption proceedings were intended to address and in fact requires prior approval by state regulators. The history of the business of ABC&D, its true future intentions to circumvent existing Massachusetts permitting decisions, its failure to obtain required state approvals, and its ability to reasonably provide common carriage are all subjects that need to be addressed by way of the "more searching regulatory inquiry" which

ABC&D seeks to avoid by using the Exemption procedure. SF&L Railway, Inc., STB Docket No. 33995.

Indeed, the verified statement of ABC&D is not only misleading, but false where it states that ABC&D "understands that if it wishes to handle solid waste...it must (1) obtain all state and local permits necessary in order to handle such solid waste..." when ***in fact*** it had applied for and been denied such permits. (See Exhibits 19 and 20). Further, this statement is false in light of the Buyer's own declaration in the various contracts that he may terminate the agreements for the purchase of the real estate and stock if he is unable to get the "Federal Surface Transportation Board [to] recogniz[e] Buyer as a railroad and issu[e] a Declaration of Land Use Exemption allowing Buyer to bring MSW onto the Premises..." The false and misleading nature of its statements to this Board warrant a determination that the Notice of Exemption in this matter be rejected as void *ab initio*, pursuant to 49 C.F.R. § 1150.32(c).

4. ABC&D's "Statement of Agreements" is False

In furtherance of its intention to deceive the STB, ABC&D asserts at page 3 of its filing, under the heading "Statement of Agreements" that "[a]n agreement has been reached pursuant to which ABC&D leases and will operate the railroad trackage in Ware, Massachusetts owned by the O'Riley Family Trust." This statement appears to be false. In connection with the zoning litigation, a document production request was propounded upon ABC&D which requested it to produce (in response to request number 42): "Any and all leases or other contracts related to the use of the O'Riley Family Trust's property located at 198 East Street in Ware, by ABC&D Recycling, Inc." ABC&D responded to this request by stating that it would produce "all non-privileged communications and other non-privileged documents responsive to this request in ABC&D's

possession, custody or control." ABC&D and the O'Riley Family Trust produced in excess of 9,000 pages of documents to Ware in the context of the zoning litigation. These 9,000 pages did not include any "agreement" or "lease" relating to anything, including the proposed operation of railroad track. (See Exhibit 28 for the relevant document production responses.)

Moreover, in response to a request for the production of "the lease agreement currently in effect with respect to the facility located at 198 East Street, Ware, Massachusetts", ABC&D responded "no written lease agreement exists." (See id.). It is also telling that the Lender does not make any mention of such alleged "agreement" pursuant to which "ABC&D leases and will operate the railroad trackage" in its settlement documents, loan closing documents or in any of the agreements entered into between the Trust, ABC&D and Mr. Berardi.

It is axiomatic that in accordance with the Statute of Frauds, an oral agreement to create a lease is not enforceable. Whaler Motor Inn, Inc. v. Parsons, 2 Mass. App. Ct. 477; see also Mass. Gen. Laws ch. 259, §1, ¶4. ABC&D's assertion of a purported agreement is simply false and a verbal agreement, assuming *arguendo* one exists, is not enforceable. It is further telling that ABC&D has not reached any agreement with the Massachusetts Executive Office of Transportation (now the Massachusetts Department of Transportation "Mass DOT") in which the anticipated new owner of the property would have the rights which were previously granted to the O'Riley Family Trust under the License Agreement. The License Agreement specifically contains a prohibition against assignment or transfer. (See Exhibit 11 at p.12, Section 17). Pursuant to that section, "no assignment or transfer hereof shall be made without the prior written consent and agreement of the Licensor and Railroad." Such consent has not been sought nor can there be any reasonable

expectation that even if sought, such consent would be granted. Moreover, as of December 5, 2010, the License Agreement is subject to termination upon 180 days notice.

B. The Notice of Exemption Should Be Denied as a Sham Transaction.

The Board has "inherent authority to act to ensure 'the fairness, efficiency, and integrity of its processes and the appropriateness of the conduct of the parties appearing before it.' " SF&L Railway, Inc., STB Docket No. 33995 (Jan. 31, 2003) citing Railroad Ventures, Inc. v. STB, 299 F.3d 523, 563-64 (6th Cir. 2002), quoting Unbelievable, Inc. v. NLRB, 118 F.3d 452, 454 (D.C. Cir. 1994) (Wald dissenting). The Board has relied upon this inherent authority to revoke sham transactions to ensure that the integrity of its process. Id.; see also, Land Conservancy - Acq. & Oper. - Burlington Northern, 2 S.T.B. 673 (1997) (reconsideration denied), STB Docket No. 33389, petition for judicial review dismissed *sub nom*, The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000).

Where the Board finds that the applicant seeks to use the class exemption procedures to circumvent the purposes for which they were intended, the Board will revoke a notice of exemption. In Jefferson Terminal Railroad Company ("Jefferson"), STB Docket No. 33950 (March 19, 2001), in addition to finding that false or misleading representations rendered a notice of exemption void *ab initio,* the Board rejected Jefferson's notice because it found that the notice:

> was merely a device to acquire or retain property for non-rail purposes using federal preemption as a shield. The timing and failure to inform us of the condemnation proceedings suggest an effort by [the corporate parent] and Jefferson to use their exemption process to insulate the property from the condemnation process by invoking our jurisdiction to bolster Jefferson's claim that the property is a rail line beyond the reach of state or local condemnation authority. We will not permit our processes to be misused in that manner.

Similarly, in US Rail Corporation, STB Docket 35042 (October 7, 2008), the Board concluded from its finding that since the corporation made no mention of the condemnation proceedings already undertaken by the City of Detroit at the time its notice of exemption was filed, that US Rail:

> was not candid in its notice of exemption, but the statement leaves us with the clear impression that US Rail was attempting to use the federal preemption that the use of our notice of exemption process would confer on SG's property as a means of avoiding the City's authority to pursue the condemnation proceeding.

The Board found that this conduct warranted rejection of the notice of exemption. For precisely the same reasons, the Board should now reject the notice of exemption submitted by ABC&D.

At the time ABC&D filed its Notice it was aware that it was still before the Massachusetts state courts concerning its right to operate a municipal solid waste facility (see Exhibit 13), that those rights had been denied at the municipal level (see Exhibit 20) and the Superior Court level (see Exhibit 13), but failed to disclose this to the Board. Further, it was aware that there was zoning litigation pending (initiated by the Trust and ABC&D) which involved a Counterclaim by the Town alleging that the facility is not constructed upon a parcel with any frontage, that the Special Permit is invalid and seeking injunctive relief removal of the facility. This information was also not disclosed by ABC&D to the Board. Instead it is apparent that ABC&D intends to try to obtain railroad status and thus invoke federal preemption to accomplish that which state law and the Town of Ware have not allowed it to do.

The Board should reject this attempt to use federal preemption as an end run around state and local denial of what ABC&D previously attempted to do pursuant to state law. ABC&D's new found interest in becoming a "common carrier" is clearly the type of sham transaction this Board has

consistently rejected.[19] There is nothing in ABC&D's history that would warrant this Board to accept its representation that it intends to open its doors to the public as a common carrier, when in fact, historically, it had only shipped its own construction and demolition debris.[20]

C. The Notice of Exemption Procedure Pursuant to 49 C.F.R. § 1150.31 is Not Appropriate in a Complicated and Controversial Matter.

The STB will reject a notice of exemption when the transaction is "inappropriate for consideration under the class exemption procedure at 49 C.F.R. § 1150.31, which allows parties involved in *routine transactions* to use abbreviated summary procedures." Northeast Interchange Railway, LLC, ("NIR") STB Docket No. 34735 (Nov.17. 2005); see also Burlington Northern and Santa Fe Railway Company, STB Docket No. 34645 (Jan. 14, 2005) (rejecting an exemption notice because the transaction contemplated was complicated and controversial and the exemption procedure is typically reserved only for such matters which are uncomplicated, uncontroversial and not subject to substantial opposition).

In NIR, citing Riverview Trenton Railroad Company, STB Docket No. 33980 (Feb. 15, 2002), the STB explained that:

> the class exemption is meant to be used for routine transactions that have not attracted substantial controversy and local interest, such as transactions where new operators would be continuing an existing common carrier rail service over lines that selling carriers can no longer operate profitability. Where an individual transaction differs substantially from the

[19]In fact, in its August 2007 Facility Impact Assessment submission to the Town of Ware, ABC&D reported that "the entire interior of the building will be used for the tipping, consolidation, stockpiling and loading of incoming MSW and C&D material," revealing no intention to provide common carrier services. (See Exhibit 21 at p. 3).

[20]As noted above, ABC&D would accept a customer's construction and demolition debris and then sort and recycle those materials for a fee.

> type of routine matter that the class exemption was intended for, the Board may reject or revoke notices seeking to use the class exemption so that it may consider the merits of the proposal in more depth, through either a petition for exemption or an application.

ABC&D's exemption request is neither routine nor non-controversial. In NIR, the STB rejected the notice of exemption finding that "[t]he current construction and demolition waste operation at the site has attracted substantial opposition and local interest, including litigation in which the operations of NIR's predecessor were found to be a threat to the public health by the state court." Similarly, ABC&D's MSW operation has also attracted substantial opposition and local interest, including litigation wherein ABC&D's proposed MSW facility was found by the Ware BOH to be a threat to the public health and safety and/or safety to the environment and such finding was affirmed and upheld by the Hampshire Superior Court. (See Exhibits 13 and 20).

Given the facts of the ABC&D matter, facts which were intentionally not disclosed by ABC&D to the STB, this matter is not appropriate for the abbreviated exemption procedure. Further, given the serious doubts that surround ABC&D's statement that it will provide common carrier services, the matter deserves the more in-depth scrutiny that comes with the formal application process and development of a complete record, pursuant to 49 C.F.R. § 1150.2 through 1150.9. See Winamac Southern Railway Company, STB Docket No. 35208, (Jan. 9, 2009) (noting that in general, the notice of exemption procedure is an expedited means of obtaining Board authority for transactions that do not require greater regulatory scrutiny and therefore, notices of exemption are intended to be used for routine and non-controversial cases and in cases where unresolved issues arise, the STB will reject the notice). ABC&D should be required, among other

things, to set forth the facts showing that the applicant is a common carrier by railroad [1150.3(b)], details about the amount of traffic and a general description of commodities [1150.4(b)], the purpose of the proposal and an explanation of why the public convenience and necessity require or permit the proposal [1150.4(c)], operation data [1150.5], and environmental and energy data [1150.7]. The more extensive record of an application or petition for exemption will allow the Town of Ware to "air its objection and the Board to fully consider the matter." Id.

D. ABC&D's Access to the Side Track and the Railroad Crossing is Only by a License Agreement which can be Terminated for any Reason by the Commonwealth of Massachusetts

In furtherance of its sham filing, ABC&D has failed to disclose a critical fact to the Board which significantly impacts ABC&D's assertion that it seeks to become a common carrier; ABC&D has nothing more than a mere *revocable* License right to access the side track. The 773 foot siding and spur line upon which ABC&D seeks to declare itself a common carrier is currently accessed by ABC&D in accordance with a revocable License Agreement with the Massachusetts Executive Office of Transportation. (See Exhibit 11). The License Agreement's initial five (5) year term expires on December 5, 2010. (See id.). ABC&D has no property interest in such revocable License Agreement and in fact, after the expiration of the initial five (5) year term, the License Agreement can be terminated at any time and for any reason by the Massachusetts Executive Office of Transportation (now Mass DOT) upon 180 days notice to ABC&D[21]. (See id.).

ABC&D's claimed attempt to become a common carrier is belied by the fact that its relying on 773 feet of railroad track that can only be accessed via a revocable License Agreement. Moreover,

[21]During the initial five year term, the License Agreement can be terminated for any reason upon 360 days notice.

the License Agreement was very narrow in scope and is specifically granted with regards to the facility's C&D operation. According to the Massachusetts Department of Transportation, the License Agreement would not extend to ABC&D's intended MSW processing.

ABC&D cannot seek an Exemption from the Surface Transportation Board regarding the usage of the Commonwealth of Massachusetts' property absent the property owner's permission to do so. There is nothing in the License Agreement that would indicate that ABC&D can use the License in another capacity (such as an MSW facility). See August 16, 2002 letter filed by Mass DOT at Tab "B". Moreover, since the granting of the revocable License Agreement by the Department of Transportation was premised upon its belief that ABC&D had received all of its required state and local permits, if the Town of Ware prevails in its Counterclaim in the now pending zoning litigation, that judgment could likely result in an immediate termination of the License Agreement since the condition precedent to such License Agreement (valid state and local permits) would be voided.

E. ABC&D Does Not Intend to Provide Common Carriage Services

ABC&D does not actually intend to provide common carriage services over the 773 feet of railroad siding which it currently accesses via a revocable License Agreement with the Commonwealth of Massachusetts. ABC&D is making this filing strictly and solely for the purpose of attempting to circumvent the Town of Ware Board of Health's site assignment denial (which was upheld by the Hampshire Superior Court) through Federal Preemption. Merely calling oneself a "common carrier" does not in fact make one a common carrier.

ABC&D is nothing more than a shipper of its own materials. ABC&D's intention is to charge for the drop off of MSW at the facility. Trucks will bring the MSW into the facility and tip

same onto the floor of the facility. ABC&D will earn a fee when the truck hauler deposits its load at the facility and once the load is deposited at the facility, ABC&D would take title to that MSW. Once ABC&D has title to the MSW, ABC&D will presumably sort through the MSW that it now owns in order to look for recyclable materials. ABC&D will apparently sort out any recyclable materials it finds in the MSW and will thereafter process the remaining MSW by grinding it up and/or crushing it down and then loading it into either rail cars or trucks.[22] Any MSW or recyclables which ABC&D ships out by rail will be owned by ABC&D and will be shipped to the destination of ABC&D's choosing. ABC&D will not be a provider of common carriage under this scenario - it will be the operator of an MSW processing facility and be a shipper of its own MSW.

Common carriage, by definition, would require ABC&D not to engage in any processing of the MSW and not to take title to the MSW. If ABC&D was a common carrier, it would charge to ship a customer's MSW to the customer's destination.

ABC&D does not own a locomotive. In fact, it would appear that under ABC&D's Notice of Exemption filing, after processing the MSW and removing recyclables, ABC&D would load rail cars at which point the Massachusetts Central Railroad would have to come onto the Commonwealth of Massachusetts' property (which ABC&D uses under a License Agreement) in order to pick up the rail cars and ship them to a destination of ABC&D's choosing. Furthermore, it bears noting that there is absolutely no evidence that ABC&D owns even one train or locomotive - how does it intend to engage in common carrier services without any equipment?

[22]ABC&D has testified under oath as recently as August 2, 2010 that it is currently disposing of most of its C&D residuals on trucks as opposed to rail because it is much cheaper for it to ship it out via truck than train.

ABC&D is not in the business of moving goods for anyone nor is it moving freight any distance. ABC&D is not in the business of shipping someone else's property from Ware to a location of another's choosing. ABC&D seeks to be a processing and recycling facility for MSW and now seeks to cloak itself as a purported "common carrier" as a means to run an MSW processing facility despite prior denial of such request by the Ware Board of Health due to health and safety concerns. ABC&D intends to be nothing more than a shipper of its own product and seeks "common carrier" status only in an effort to become an MSW facility and to circumvent state and local regulation. This is not a case where a railroad seeks to build a facility on its property in order to store and/or load solid waste; this is a case wherein a facility created to process demolition materials seeks to become a railroad in order to engage in the processing of MSW free from all State and Local regulation.

ABC&D's sham filing must be rejected. Revocation (or refusal) to allow an Exemption is proper when the STB has concerns that the applicant is using the Board's exemption authority for non-rail purposes. Milwaukee Industrial Trade Center, LLC, STB Docket No. 35133 (June 16, 2010) (in which the Board concluded that it was troubled by evidence in the record that the applicant intended to use its exemption authority to circumvent the local occupancy permitting process and its title restrictions for purposes other than providing rail transportation.) It is consistent with the STB's prior written decisions to protect the integrity of its class exemption process above all else. Id. Rejection or dismissal of ABC&D's Notice of Exemption is warranted in this case.

VI. Conclusion

For the reasons set forth herein, the Notice of Exemption should be dismissed or rejected by the STB on the grounds that the submission is false and misleading and that the subject of this application has attracted substantial opposition and local interest and indeed remains in litigation before the Massachusetts Appeals Court and the Massachusetts Superior Court. The request of ABC&D Recycling, Inc. is far more suited for the in depth scrutiny contemplated by the formal application process of 49 C.F.R. § 1150.2 et seq. Pending the STB's ruling on this Petition, the Town of Ware requests that the STB stay the effective date of ABC&D's "Verified Notice of Exemption".

TOWN OF WARE

By_____

David A. Wojcik, BBO#532040
John A. Mavricos, BBO#325360
Nicole B. Caprioli, BBO#643829
Christopher, Hays, Wojcik
& Mavricos, LLP
370 Main Street
Worcester, MA 01608
508-792-2800

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VERIFICATION

I, Nancy J. Talbot, Town Clerk for the Town of Ware and Ware Board of Selectmen member, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the *Town of Ware's Verified Petition to Reject and/or Dismiss Verified Notice of Exemption and Request for Stay of Effective Date of Exemption.*

Executed: August 16, 2010.

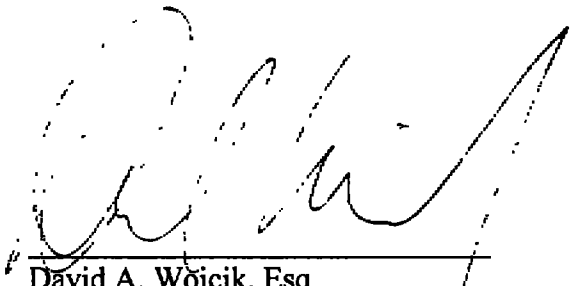
Nancy J. Talbot

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the attached Town of Ware's Verified Petition to Reject and/or Dismiss Verified Notice of Exemption and Request for Stay of Effective Date of Exemption and Exhibits upon all parties of record in this proceeding, by mailing a copy, via first class mail to:

Leonard M. Singer, Esq.
101 Arch Street, Ninth Floor
Boston, MA 02110

August 16, 2010



David A. Wojcik, Esq
Christopher, Hays, Wojcik & Mavricos, LLP
370 Main Street
Worcester, MA 01608
508-792-2800

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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

FD 35397

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, Southwest
Washington, DC 20423

August 9, 2010

Re: Comments of the Massachusetts Department of Environmental Protection to ABC & D Recycling, Inc.'s Verified Notice of Exemption for Lease And Operation of a Rail Line Pursuant to 49 USC 10901 and 49 CFR 1150.31 and the Town of Ware's Response

Dear Ms. Brown:

The Massachusetts Department of Environmental Protection ("MassDEP") is writing to express its opposition to ABC&D Recycling, Inc.'s Notice of Exemption for Lease and Operation of a Rail Line pursuant to 49 USC 10901 and 49 1150.31. MassDEP also expresses its support for the Town of Ware's ("Ware") Verified Petition to Reject. As MassDEP has an interest in regulating solid waste processing facilities, MassDEP submits these comments in response to the Notice of Exemption ("Notice") filed by ABC&D Recycling, Inc. ("ABCD") and in support of Ware's filing.

MassDEP's interest in solid waste processing facilities is based on M.G.L. c. 111, §§ 150A and 150A½ . To regulate solid waste management and disposal for the protection of public health, safety, and the environment, the Massachusetts Legislature enacted the Solid Waste Management Act, M.G.L. c. 111, §§ 150A[1] and 150A½, which require site assignment and permits for all solid waste facilities. See American Friends Service Committee of Western Massachusetts & others v. Commissioner of the Department of Environmental Protection, 30 Mass. App. Ct. 457,

[1] Recent revisions to M.G.L. c. 111, § 150A provide that the local Board of Health determines whether a proposed site meets the site suitability criteria at M.G.L. c. 111, § 150A½ and 310 CMR 16.40 and removes MassDEP from the siting process by eliminating its authority to issue a site suitability report.

461 (1991) (stating "[i]n § 150A, the Legislature has made the determination that refuse treatment and disposal facilities are in every instance a potential threat to the public" and has required that the local board of health assign sites for all solid waste facilities in every case). The MassDEP is the agency entrusted with the authority to administer and enforce the Massachusetts Solid Waste Management Act and has promulgated regulations at 310 to regulate the siting and operation of solid waste facilities for the protection of the public health and safety and the environment. The site assignment, issued by the local board of heath pursuant to Code of Massachusetts Regulations ("CMR") 16.00 et seq., and the permit, issued by MassDEP pursuant to 310 CMR 19.000 et seq., together ensure that both the location and the operation of the facility will adequately protect the public health, safety and the environment. M.G.L. c.111, § 150A.

As background to MassDEP's opposition over ABCD's Notice, ABCD has constructed and been operating a solid waste processing facility in Ware, Massachusetts since 2006 and never indicated to MassDEP during that time that ABCD wished to provide common carrier service by rail. In order to construct and operate a solid waste processing facility, ABCD first obtained a revised site assignment from the Town of Ware to operate a construction and demolition ("C&D") waste processing facility on June 18, 2004. ABCD then filed a permit application with MassDEP to obtain a permit to construct the facility, which permit MassDEP issued on January 25, 2005. Finally, on February 13, 2006, MassDEP issued a permit authorizing ABCD to operate a 750 tons per day ("tpd") C&D processing facility. Although ABCD indicated in its permit application that some processed C&D would be shipped out from the facility by rail, it did not indicate that it wished to provide common carrier service, too. Since 2006, ABCD has been operating a C&D waste processing facility which sorts, grinds and crushes C&D waste at the site. ABCD uses electrically powered processing equipment including a shredder, a C&D residual grinder, and a trammel screen, along with a picking station, magnets and conveyor belts to sort, crush, and grind the C&D waste that is brought to the facility. ABCD has been shipping loads of processed C&D from the facility by truck and rail. At no time during the past 4½ years of operation has ABCD ever indicated a desire or a plan to operate a railroad and provide common carrier service along with the C&D waste processing facility. And in its Notice, ABCD has not adequately shown that it can provide such service with locomotives, engineers and all the other activities necessary for providing common carrier service.

MassDEP is concerned that the Surface Transportation Board ("STB") may not have all the relevant facts while reviewing ABCD's Notice. Although ABCD indicated in its Notice to the STB that it knows it needs to obtain all state and local permits necessary to handle municipal solid waste ("MSW"), it failed to indicate that it has already sought a revision to its site assignment to modify its facility to include the processing of MSW. Although MassDEP issued a site suitability report indicating MassDEP believed the siting criteria at 310 CMR 16.40 were met, on February 21, 2008, the Ware Board of Health ("BOH") denied ABCD's site assignment to handle MSW at its C&D waste processing facility. ABCD appealed the decision of the Ware BOH to the Superior Court but the court affirmed the decision of the Ware BOH to deny the site assignment revision to ABCD for MSW, a fact also not disclosed by ABCD to the STB. ABCD lacks the appropriate site assignment and the subsequent MassDEP permit to process MSW at its facility. The site assignment would assure that the location of the facility will not pose a threat to the public health, safety and the environment; yet, ABCD has been denied such site

assignment. Based on the omission of these important facts, MassDEP urges the STB to deny the Notice for Exemption.

ABCD is using the common rail carrier exemption only to seek a subsequent land use exemption available to common carriers to avoid the siting issues with the Town of Ware. ABCD has not indicated it plans to change its business and hold itself out as a common carrier. It simply has failed to reach agreement with the town of Ware regarding siting and thus seeks to avoid the statutory siting process pursuant to M.G.L. c. 111, § 150A applicable to all solid waste processing facilities through the land use exemption available to legitimate common rail carriers.

MassDEP has reviewed the filing by the Town of Ware and supports such filing in opposition to ABCD's Notice of Exemption for the reasons stated above and the reasons expressed in the Town of Ware's filing. Specifically, ABCD's filing to the STB is misleading. Second, ABCD fails to meet the definition of common rail carrier. And finally, ABCD's filing to become a common rail carrier is disingenuous because ABCD is using the common carrier status merely to obtain an exemption from the siting requirements of M.G.L. c.111, §§ 150A and 150A½ MassDEP requests that the STB reject ABCD's Notice of Exemption.

Sincerely,

James C. Colman

James Colman
Deputy Assistant Commissioner

cc. (via email)
Jamey Tessler, Esq., MassDOT
Leonard Singer, Esq., Counsel for ABCD Recycling, Inc.
David Wojcik, Esq., Counsel for Town of Ware

B

DEVAL L. PATRICK, GOVERNOR
TIMOTHY P. MURRAY, LT. GOVERNOR
JEFFREY B. MULLAN, SECRETARY & CEO
RICHARD A. DAVEY, ADMINISTRATOR

Moving Massachusetts Forward. massDOT Rail & Transit

August 16, 2010

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E St., S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35397

Dear Ms. Brown:

The Massachusetts Department of Transportation (MassDOT) Rail and Transit Division has significant concerns regarding the applicant's filing, STB Finance Docket No. 35397, ABC & D Recycling, Inc.–Lease and Operation Exemption–a Line of Railroad in Ware, MA. Consequently, MassDOT strongly supports the Town of Ware's verified petition that the Surface Transportation Board ("STB") reject and/or dismiss the Verified Notice of Exemption for Lease and Operation of a Rail Line Pursuant to 49 USC §10901 and 49 CFR §1150.31 ("Notice") sought by ABC&D Recycling, Inc. ("ABC&D") and to enter a stay of the effective date of the exemption pending ruling on the petition.

The MassDOT Rail and Transit Division, pursuant to Section 4 of Chapter 161C of the General Laws of the Commonwealth of Massachusetts, is responsible for "the development, promotion, preservation, and improvement of an adequate, safe, efficient and convenient rail system for the movement of passengers and freight in the [C]ommonwealth." Accordingly, the MassDOT Rail and Transit Division is responsible for implementing policies and programs to support the growth of freight rail in the Commonwealth. In addition to being the principle agency focused on railroad policy issues in the Commonwealth of Massachusetts, MassDOT is the owner of the right of way and track known as the Ware River Secondary, which is licensed to the Mass Central Railroad Company ("Mass Central"). Mass Central presently provides rail services to ABC&D for its existing business. As a result, MassDOT has a considerably strong policy interest in supporting the growth of freight rail business along the Ware River Secondary.

However, MassDOT strongly disagrees with the approach undertaken by the applicant in this filing. In particular, MassDOT believes that the freight rail business cannot grow in Massachusetts without the support and cooperation of the local communities in which shippers locate. In this instance, MassDOT agrees with the Town of Ware that ABC&D's true motivation in submitting this Notice is not to be a common carrier, but, rather, to obtain the protection of federal preemption for an intended municipal solid waste ("MSW") facility. MassDOT does not believe either its policy objective, growing freight rail business throughout the Commonwealth of Massachusetts, or the purpose of the applicable federal law is served through this attempt to circumvent local and state permitting. In particular, prior to the current permitting dispute with the Town of Ware as well as this Notice, ABC&D has demonstrated

no interest in providing common carrier services in Massachusetts. MassDOT agrees with the Town of Ware that ABC&D has submitted this filing solely for the purpose of attempting to circumvent the Town of Ware Board of Health's site assignment denial by seeking federal preemption. In doing so, ABC&D undermines the community support necessary to develop businesses throughout Massachusetts that will ship by rail.

MassDOT also notes that certain critical facts were not addressed in the applicant's filing with the Board. In 2005, MassDOT, which was formerly known as the Executive Office of Transportation, granted ABC&D a revocable license ("License") right to access the siding and spur line. Indeed, the siding and spur line upon which ABC&D seeks to declare itself a common carrier is actually owned, in part, by the MassDOT. The License's five (5) year term expires on December 5, 2010 and, after the expiration of the initial five (5) year term, the License can be terminated at any time by MassDOT upon 180 days notice. Moreover, the License was specifically granted by MassDOT with regards to the facility's construction and demolition operation, based upon MassDOT's understanding that this operation had received the appropriate local permits. Notably, the License does not envision ABC&D providing common carrier services on the license premises. Furthermore, the License would not extend to ABC&D's intended MSW processing and, in fact, any MSW use would require a new or amended license agreement to be negotiated with MassDOT.

Based upon the reasons discussed above, MassDOT supports the Town of Ware's petition to reject and/or dismiss the Notice filed by ABC&D.

Sincerely,

Jamey Tesler
Legal Counsel
Massachusetts Department of Transportation

Cc (Via email): David Wojcik, Esq., Counsel for the Town of Ware
Leonard Singer, Esq., Counsel for ABC&D Recycling, Inc.
Laura Swain, Esq., Massachusetts Department of Environmental Protection

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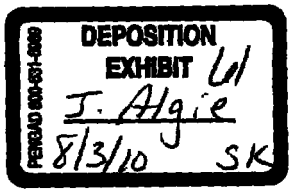

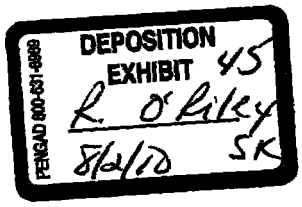

SETTLEMENT AGREEMENT

Agreement made this 13th day of February, 2009 by and between ABC & D RECYCLING, INC. ("ABC & D"), having a principa place of business at 198 East Street, Ware, Massachusetts; JOAN M O'RILEY and RICHARD C. O'RILEY, Trustees of the O'Riley Family Trust (the "O'Riley Trust"), of 265 Upper Church Street, Ware, Massachusetts; RICHARD C. O'RILEY, in his individual capacity ("Richard O'Riley"), having a residential address of 265 Upper Church Street, Ware, Massachusetts; JOAN M. O'RILEY, in her individual capacity ("Joan O'Riley"), having a residential address of 265 Upper Church Street, Ware, Massachusetts (ABC & D, the O'Riley Trust, Richard O'Riley, and Joan O'Riley are collectively referenced to as the "Obligors"), and COUNTRY BANK FOR SAVINGS, (the "Lender"), having a principal place of business at 75 Main Street, Ware, Massachusetts.

RECITALS

A. Whereas, the Lender has extended certain credit facilities to ABC & D and the O'Riley Trust (the "Borrowers") in connection with the operation of a certain recycling facility (the "Facility") operated by ABC & D upon the premises owned by O'Riley Trust known as 198 East Street, Ware, MA (the "Premises"), as follows:

1. Revenue Bond (ABC & D Recycling, Inc. Facility, Series 2004) by the Borrowers dated November 16, 2004 in the aggregate principal amount of $5,000,000.00 as amended by a certain First Amendment to Loan Agreement and Bond dated December 15, 2006 and other related documentation (the "Bond"); and

2. Commercial Note by ABC & D dated November 16, 2004 in the original principal amount of $500,000.00, as modified by a certain First Modification and Promissory Note dated December 15, 2006 ("Note 1"); and

3. Demand Revolving Line of Credit Note by ABC & D dated November 16, 2004 in the original principal amount of $200,000.00 ("Note 2"); and

4. Commercial Note by ABC & D dated February 2, 2006 in the original principal amount of $400,000.00, as modified by a certain First Modification to Commercial Note dated March 7, 2006 and as further modified by a certain Second Modification to Commercial Note dated December 15, 2006 ("Note 3"); and

5. Commercial Note by ABC & D dated February 2, 2006 in the original principal amount of $150,000.00, as modified by a certain First Modification to Commercial Note dated March 7, 2006 and as further modified by a certain Second Modification to Commercial Note dated December 15, 2006 ("Note 4"); and

6. Demand Line of Credit Note by ABC & D dated January 18, 2006 in the original principal amount of $231,350.00 with letter of credit availability, under which an Irrevocable Letter of Credit was issued for the benefit of the Massachusetts Department of Environmental Protection ("Note 5"), (the Bond, Note 1, Note 2, Note 3, Note 4 and Note 5 are hereinafter collectively referred to as the "Commercial Debt Instruments"), and

B. Whereas, the Commercial Debt Instruments and all other obligations of the Borrowers to the Lender are, and remain, the joint and several obligations of all of the Obligors by virtue of the applicable loan documentation, including various guaranties executed by the Obligors, as applicable, (any and all loan documents executed by the Obligors, or in any way respecting or arising out of the Commercial Debt Instruments are collectively referred to as the "Loan Documents" and any and all obligations of the Obligors under the Commercial Debt Instruments and the other Loan Documents are collectively referred to as the "Obligations"), and

C. Whereas, the Lender is the holder of various security documents including mortgages, assignments and security agreements securing, *inter alia*, payment of the Commercial Debt Instruments and the guaranties of the Obligors, as

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applicable, which encumber various real and personal property as set forth therein and within the other Loan Documents (the "Collateral"), including, without limitation, the following:

1. Mortgage and Security Agreement upon the Premises dated November 16, 2004 granted by the O'Riley Trust and recorded with the Hampshire County Registry of Deeds at Book 8066, Page 34;

2. Mortgage and Security Agreement upon the Premises dated November 16, 2004 granted by the O'Riley Trust and recorded with the Hampshire County Registry of Deeds at Book 8066, Page 48;

3. Commercial Mortgage upon the Premises dated February 2, 2006 granted by the O'Riley Trust and recorded with the Hampshire County Registry of Deeds at Book 8608, Page 294;

4. Security Agreements granted by ABC & D and the O'Riley Trust dated November 16, 2004 and February 3, 2006 (the "Security Agreements"); and

5. Collateral Assignment of Contracts and other Rights (the "Collateral Assignment"), which Collateral Assignment includes, without limitation, a duly perfected first security interest in any and all permits, licenses and approvals issued in connection with the Facility (the "Permits").

D. Whereas, the Obligors are in default of their obligations to the Lender under the Commercial Debt Instruments and the other Loan Documents for reasons which include, without limitation, the failure to make payments to the Lender as due, which payment default includes the failure of the Obligors to make any regularly scheduled payments since January, 2008; and

E. Whereas, the following amounts remain outstanding upon the Commercial Debt Instruments, as of February 13, 2009:

1. Bond (Account no. 600361):

Principal due:	$4,978,747.44	
Interest due:	570,213.07	
Late Charges due:	23,280.66	
Escrow balance:	677.44	
Legal Expense Due	15,743.75	
Appraisal Expenses Due	10,000.00	
Other:	19,053.68	
Net Payoff:	**$5,617,716.04**	**Per Diem:$ 1,341.46**

2. Note 1 (Account no. 600379):

Principal due:	$ 493,139.28	
Interest due:	61,233.40	
Late Charges due:	6,289.06	
Other:	275.25	
Net Payoff:	**$ 560,936.99**	**Per Diem: $119.86**

*PLUS ANY LEGAL FEES AND COSTS INCURRED

3. Note 2 (Account no 600387):

Principal due:	$ 200,000.00	
Interest due.	22,417.66	
Late Charges due:	662 50	
Net Payoff:	**$ 223,080.16**	**Per Diem: $ 51.39***

* PLUS ANY LEGAL FEES AND COSTS INCURRED

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4. Note 3 (Account no. 911859):

Principal due:	$ 393.043 94
Interest due:	46,100.28
Late Charges due:	1,638.60
Net Payoff:	**$ 418,519.51 Per Diem: $94.36**

* PLUS ANY LEGAL FEES AND COSTS INCURRED

5. Note 4 (Account no. 911867):

Principal due:	$ 150,000.00
Interest due:	15,953 02
Late Charges due:	1,433.50
Net Payoff:	**$ 167,386.52 Per Diem: $ 35.96***

* PLUS ANY LEGAL FEES AND COSTS INCURRED

6. Note 5 (Account no. 898486):

No present outstanding balance. Maximum exposure is $231.350.00, plus applicable interest, fees and costs to the extent the Letter of Credit is drawn upon.

together with legal fees, expenses and costs incurred by the Lender to date (the "Outstanding Fees and Expenses") and continuing interest, default rate of interest, penalties, costs, charges and late charges as permitted by the Loan Documents and applicable law; and

F. Whereas, as a result of the default, the Lender is entitled to exercise its rights under the Loan Documents, including the exercise of foreclosure remedies in connection with the Collateral held by the Lender; and

G. Whereas, the Facility is presently operating pursuant to a governmental permit which authorizes the operation of a construction and demolition processing facility (the "C & D Permit"); and

H Whereas, the Obligors have endeavored to obtain a municipal solid waste permit (the "MSW Permit") from the Town of Ware (the "Town") in order to enhance the scope of the Facility's operation and increase the value thereof, and

I. Whereas, the Town has declined to issue the MSW Permit and the Borrowers have initiated an appeal, which is now pending with the Hampshire County Superior Court, Docket No. HSB 2008-00063-A (the "Permit Appeal"), and

J. Whereas, the Lender has obtained a Facility Assessment Report dated December, 2008 (the "Assessment Report") from Orion Consulting Services (the "Broker"), which reflects that the value of the Facility is substantially less than the total indebtedness owed to the Lender; and

K. Whereas, the Obligors acknowledge that even if the Borrowers prevail in connection with the Permit Appeal and the MSW Permit is ultimately issued , the value of the Facility would still be less than the total indebtedness owed to the Lender in connection with the Commercial Debt Instruments; and

L. Whereas, the Obligors have determined and hereby agree that the present market value of the Facility is less than the total indebtedness owed to the Lender and that the issuance of the MSW Permit would not cause the value of the Facility to exceed the indebtedness owed to the Lender; and

M. Whereas, the Obligors have requested that the Lender retain the services of the Broker to market and sell the Facility and the Obligors have agreed to extend their full cooperation, to the very best of their ability, and utilize their best efforts in order to effect a market value sale of the Facility at the earliest possible opportunity and to undertake such additional action as may be necessary in order to maximize the recovery to the Lender; and

N. Whereas, Richard O'Riley and Joan O'Riley (the O'Rileys") and the O'Riley Trust have requested that the Lender forbear from obtaining an attachment or execution against the real property owned by the O'Riley Trust known as 265 Church Street, Ware, Massachusetts (the "Residence") which is the residence of the O'Rileys and 255 Village Road, Brownsville, Vermont (the "Vacation Home"), which is the vacation home of the O'Rileys, respecting any deficiency balance remaining in connection with the Commercial Debt Instruments after the liquidation or transfer of the Facility; and

O. Whereas, the O'Rileys have also requested that the Lender forbear from filing an action against them in their individual capacities under their personal guaranties, respecting any deficiency balance remaining in connection with the Commercial Debt Instruments, after the liquidation or transfer of the Facility; and

P. Whereas, the Lender is agreeable to forbearing from exercising certain rights (a) against the Residence and the Vacation Home and (b) against the O'Rileys in their individual capacities pursuant to their personal guaranties, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Lender and the Obligors agree as follows:

1 Following execution of this Agreement the Lender shall retain the services of the Broker for the purpose of marketing and selling the Facility, provided, however, the Lender shall have the right, at any time, to retain a successor broker if it deems such retention is necessary.

2. The Obligors agree to convey the Facility, or cause the Facility to be conveyed, to any buyer referred by the Broker and approved by the Lender or, in the Lender's discretion, to the Lender or its nominee (the "Transferee"). Such conveyance shall be absolute and free from any right of redemption or other right or interest of the Obligors or any party claiming by or through the Obligors, and such conveyance will specifically include the following real and personal property comprising the Facility:

(a) Good record and marketable fee simple title to the Premises, free and clear of any and all liens, leases, mortgages, rights or interests (except such mortgages, rights and interests in favor of the Lender); together with all privileges, rights, easements, hereditaments and appurtenances thereunto belonging, all right, title and interest of the Obligors in and to any streets, alleys, ramps, passages, abutter's rights and other rights-of-way appurtenant thereto; and all water, mineral and other subsurface rights owned by the Obligors.

(b) All buildings, improvements, fixtures and related facilities, together with all systems, facilities, machinery equipment and conduits to provide fire protection, security, heat, exhaust, ventilation, air conditioning, electrical power, light, plumbing, refrigeration, gas, sewer, water, communication and other services to the Premises or any part thereof.

(c) All licenses, permits, franchises, concessions, revenues, deposits, income, issues and profits.

(d) Any and all Collateral (as defined in the Security Agreements), and all property described in any UCC Financing Statement between the Borrowers and the Lender, including all of the Borrowers' goods, chattels, goods to become fixtures, motor vehicles, machinery, equipment, dumpsters, containers, tools, appliances, fixtures, furniture, furnishings, trade fixtures, window treatments, floor coverings, inventory, consumables, supplies, instruments, certificates of title, documents, books, business records, customer lists, files, correspondence, manuals, computer disks, software, electronic information systems, keys, locks, security devices, appraisal reports, drawings, plans, specifications, diagrams, soil reports, environmental reports, surveys, other architectural or engineering work product and other tangible personal property situated on or used in connection with the construction, renovation, ownership, maintenance, management, marketing or operation of the Facility or any part thereof

(e) All the Obligors' right, title and interest in the trade name "ABC&D Recycling" and all other logos, designs, trade names, trademarks, service marks, copyrights and other intellectual property used by the Borrowers in connection with the construction, renovation, ownership, maintenance, management, marketing or operation of the Facility, all general intangibles and goodwill of all businesses conducted on the Facility or any part thereof; all licenses, franchises, certifications, authorizations, approvals and permits issued or approved by any governmental authority or other

person relating to the construction, renovation, ownership, management, maintenance, marketing or operation of the Facility or any part thereof, including, without implied limitation, all certificates of occupancy, occupancy permits, building permits, sign permits, environmental permits, elevator permits, machinery permits, business licenses, ingress and egress permits; all rent, deposits and other sums paid for the use or occupancy of the Facility or any part thereof; all insurance policies, proceeds, prepaid premiums, uncollected claims and all rights relating thereto; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any obligation of the Borrowers or any affiliate of the Borrowers in connection with the Facility or any part thereof; all accounts, deposits, escrow accounts, accounts receivable, matured and unmatured claims, chattel paper, royalties, causes of action and condemnation awards; all telephone numbers and directory advertising agreements; all written or oral: (i) service, maintenance, operating, repair, collective bargaining, employment, employee benefit, supply, purchase, consulting, professional service, advertising, promotion, public relations and other contract rights and commitments in any way relating to the Facility or any part thereof (the "Service Contracts"); (ii) equipment leases, conditional sale contracts and all rights and options of the Borrowers thereunder, including, without implied limitation, rights to renew or extend the term or purchase the leased equipment; (iii) guaranties and warranties and other assurances of performance in effect with respect to the property herein described or any portion thereof; (iv) agreements with contractors, materialmen, laborers, managers and other persons providing for the construction, renovation or installation of all or portions of the Facility, together with all payment and/or performance bonds, insurance policies, certificates and other assurances relating thereto; (v) agreements with architects and engineers for architectural and engineering design and supervision services in connection with the construction, renovation or installation of the Facility; and (vi) agreements with all other contractors, engineers, architects, property managers, brokers, professionals and consultants entered into by the Borrowers or any predecessor in title to the Borrowers relating to or in any way connected with the design, construction, installation, renovation, ownership, financing, management, marketing, maintenance or operation of the Facility or any part thereof.

(f) All additions to, replacements of, substitutions for, accessions, proceeds and products of any of the foregoing items.

3. Immediately upon execution of this Agreement the Obligors will deliver or cause to be delivered to the Lender, the following items duly executed and acknowledged where required (the "Transfer Documents"):

(a) Deed. A quitclaim warranty deed of the Premises (the "Deed") in substantially the form and containing the terms of Exhibits "A1" and "A2" attached as a part hereof;

(b) Bill of Sale. A general warranty bill of sale and assignment (the "Bill of Sale") in substantially the form and containing the terms of Exhibits "B1" and "B2" attached as a part hereof;

(c) Title Endorsement. An endorsement to the existing policy of Lender's title insurance (the "Title Endorsement") issued by the applicable title insurer (the "Title Insurer") extending the effective date of the existing Lender's title insurance policy to the date hereof and containing such insuring provisions, endorsements, requirements and exceptions and affirmative coverage as required by the Lender in its sole and exclusive discretion;

(d) Borrowers' Affidavit. An affidavit of the Borrowers in substantially the form and containing the terms of Exhibit "C" attached as a part hereof;

(e) Nonforeign Affidavit. An affidavit in substantially the form and containing the terms of Exhibit "D" attached as a part hereof;

(f) Legal Opinion. A legal opinion issued by counsel to the Obligors in the form of Exhibit "E" attached hereto;

(g) General Power of Attorney. A General Power of Attorney executed by the Obligors in favor of the Lender authorizing the Lender to execute modify, complete, deliver, record and file such documents as the Lender may require in order to effect a conveyance of the Facility to the Transferee in the form of Exhibit "F" attached hereto;

(h) Assignment of Permits. An absolute assignment, transfer and conveyance of all Permits in the form of Exhibit "G" attached as a part hereof.

(i) Authorization Documents. Evidence of authority for the Borrowers in the form of Exhibits "H1", "H2", 'H3" and "H4" attached as a part hereof.

(j) Additional Documents. Such additional documents as may be requested by the Lender, the Title Insurer or the Transferee in order to consummate the transfer of the Facility to the Transferee, to the very best of the Obligors' capacities and abilities. Such documents may include, without limitation, additional or supplemental deeds, bills of sale, assignments and any and all documents necessary to effect, confirm and perfect a transfer of all shares of stock and other ownership interests in an to ABC&D (the " ABC&D Shares")

4. The Obligors and the Lender agree that the transfer of the Facility will be fully consummated on the date which is the earliest of the following (the "Closing Date"):

(a) that date which is six (6) months after the final judgment is issued by the Superior Court in connection with the Permit Appeal and all subsequent proceedings with the Town and all other governmental offices and agencies in connection with the MSW Permit have been fully and finally exhausted and resolved;

(b) February 15, 2010;

(c) the date selected by the Lender and the Transferee upon which the sale of the Facility to a third party (which is neither related to nor affiliated with the Lender) is fully consummated, with all proceeds received by the Lender and otherwise in full accordance with such terms, conditions and amounts as are acceptable to the Lender, in its sole and exclusive discretion;

(d) such date and time prior to February 15, 2010, as the Lender may determine, in its sole and exclusive discretion.

The closing will take place at the offices of Lender's counsel or other location determined by the Transferee, with the time for closing to be designated by the Transferee by written notice to the Borrowers.

5. The Obligors represent and warrant to the Lender as follows:

(a) Recitals. All of the recitals set forth hereinabove are true, accurate and complete in each and every respect;

(b) Borrowers' Status. The Borrowers are a Trust and Corporation, as applicable, properly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts; the Borrowers are qualified to own and operate the Facility and to conduct business as now being conducted by the Borrowers; the persons executing this Agreement on behalf of the Borrowers are fully authorized to execute, deliver and perform the terms of this Agreement on behalf of the Borrowers;

(c) Borrowers' Authority. The execution of this Agreement by the Borrowers, the performance by the Borrowers of the Borrowers' obligations hereunder, and the transfer of the Facility does not require the consent or approval of any third party; neither this Agreement nor anything provided to be done hereunder (including, without implied limitation, the transfer of the Facility pursuant to the Transfer Documents) violates or will violate any contract, document, understanding, agreement or instrument to which the Borrowers are a party or by which the Borrowers or the Facility might be bound or affected;

(d) Financial Status. The Borrowers have not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy; (iii) suffered the filing of an involuntary petition in bankruptcy; (iv) suffered the appointment of a receiver to take possession of all or any part of the Borrowers' assets; (v) suffered the attachment or other judicial seizure of all or any part of the Borrowers' assets; (vi) admitted in writing an inability to pay debts as they come due; or (vii) made an offer of settlement, extension or composition to creditors generally; the Borrowers are

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solvent and able to pay debts in the usual and ordinary course of business and the transfer of the Facility and the performance of the obligations of the Borrowers under this Agreement will not render the Borrowers insolvent;

(e) Title to Facility. The Borrowers own the entire legal and beneficial fee title to the Facility, including all applicable personal property, free and clear of all liens and encumbrances, except those interests in favor of the Lender.

(f) Facility Condition. All fixtures, machinery, equipment, furniture, furnishings and appliances comprising a portion of the Facility and all heating, ventilating, electrical and plumbing systems on the Facility are in good working order and comply with the requirements of all governmental agencies having jurisdiction thereover, including, without implied limitation, all air pollution and environmental control laws, orders, rules and regulations; the roof and basement of the Facility are water-tight and free from leaks and there are no structural defects, latent or patent, in the Facility;

(g) Service Contracts. Each of the Service Contracts is in full force and effect and is enforceable in accordance with their respective terms; none of the parties to the Service Contracts is in material default in the performance of any obligation thereunder and no event has occurred which, with the giving of notice, passage of time, or both, would constitute a default thereunder;

(h) Compliance. The Facility as constructed and operated by the Borrowers conforms to, is operated and is maintained in accordance with all permits and licenses and all applicable town, county, state, local, federal and other applicable laws, statutes, ordinances, rules and regulations; the Facility complies with all private deed restrictions and restrictive covenants affecting the Facility;

(i) Utilities. All water, sewer, gas, electric, telephone, drainage and other utilities required by law or by the normal operation of the Facility are installed across public property or valid private easements to the property lines of the Facility, are connected with valid permits, are adequate to serve the Facility and to permit full compliance with all requirements of law and the cost of installation of such utilities is fully paid;

(j) Permits. The Borrowers have obtained all licenses, permits, easements and rights-of-way required from all governmental authorities having jurisdiction over the Facility or from private parties in connection with the use and operation of the Facility;

(k) Notices. The Borrowers have not received any notice and have no knowledge of any notifications from any local, town, county, state or federal authority having jurisdiction over the Facility or of any utility providing service or of any party to a restrictive covenant affecting the Facility requiring any work to be done to, or affecting the use of, the Facility or any portion thereof; the Borrowers have not received notice from any insurance carrier or board of underwriters and is not aware of defects or inadequacies in the Facility that if not corrected would result in termination of insurance coverage or an increase in insurance premiums;

(l) Litigation. There is no pending litigation, or threatened litigation, or asserted or unasserted claims against the Borrowers or relating to the Facility other than the claims relating to the Permit Appeal;

(m) Assessments There are not presently pending any special or other assessments for public improvements or condemnation actions with respect to the Facility or any part thereof, the Borrowers have no knowledge of any special assessments or condemnation actions being contemplated; the Borrowers have no understanding or agreement with any taxing authority respecting the imposition or deferment of any taxes or assessments relating to the Facility;

(n) Use. The Borrowers know of no facts which would prevent the use and operation of the Facility after the Closing Date in the manner in which the Facility is currently being used and operated;

(o) Access. The Facility has full and free access to and from public streets and roads and there are no facts or conditions that could result in the termination of the present access from or to the Facility to or from any such existing roads or in the termination or expiration of any conditional use permits, sign permits or other governmental permits or approvals necessary for the use and operation of the Facility for the purposes for which the Facility is presently being used and operated;

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(p) Employees None of the employees at the Facility is employed pursuant to a written agreement and the employment of all employees may be terminated at will: the Borrowers have not entered into any union contract pertaining to employees of the Facility nor is the Facility subject to any union contract; the Borrowers are not aware of any efforts to organize any or all of the employees at the Facility into a union or other collective bargaining arrangement; the Borrowers have no "employee benefit plan" (as defined in Section 3 [3] of the Employee Retirement Income Security Act of 1974, as amended);

(q) Environmental Matters. There are no hazardous or toxic substances located on the Facility which have caused or could cause any violation or claimed violation of any law, rule or regulation relating to hazardous or toxic substances; no urea-formaldehyde or asbestos or asbestos by-products were used in the construction of or are stored on the Facility; the Facility has not been used for the storage of oils, other petroleum by-products or hazardous materials and there have been no spills of any hazardous or toxic substances on the Facility or on the property within one hundred (100) feet of the Facility's boundaries;

(r) Facility Claims. On the Closing Date, there will be no options, leases, tenancies, parties in possession, purchase contracts or other agreements of any kind or nature, written or oral, whereby any person has or could, directly or indirectly, claim or assert any right, title or interest in any part of the Facility;

(s) Obligors' Claims. On the Closing Date, the Obligors will have no claim for funds advanced to the Facility;

(t) Binding Effect. This Agreement constitutes the legal and binding obligation of the Obligors and is fully and completely enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights;

(u) Disclosure. No representation or warranty made by the Obligors in this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein not misleading; there is no fact known to the Obligors which has or might reasonably be anticipated to have a material adverse effect on the business, assets, financial condition or operations of the Facility which has not been disclosed to the Lender; and

(v) Information. All documents, records and other items delivered by the Obligors to the Lender pursuant to this Agreement are genuine, true, correct and complete copies of what they purport to be and none of such documents, records or other items have been amended or modified except as the Obligors have advised the Lender in writing

6. The Obligors agree to perform or cause to be performed the following agreements:

(a) Covenant to Operate. Until the Closing Date, the Borrowers shall operate the Facility in accordance with their prior practices and the Obligors will not dissipate the Facility nor remove any personal property therefrom. No sale of any of the property relating to the Facility shall be made by the Obligors other than in the ordinary course of business.

(b) Contracts. After the date of this Agreement, the Obligors will not enter into any new contract or agreement respecting the Facility or amend, modify or terminate any existing contract or agreement without the prior written consent of the Lender

(c) Information Releases. The Obligors will not issue or cause to be issued any announcement, press release or other statement concerning the transfer of the Facility to the persons employed at the Facility, the press or the general public without the prior written approval of the Lender If any inquiry is made by any person with respect to any transaction contemplated by this Agreement, the Obligors will consult with the Lender prior to responding to such inquiry.

(d) Cooperation. After the Closing Date, the Obligors will utilize their very best efforts to cooperate with the Transferee including the execution and delivery of such documents as the Transferee may require, in order to ensure an orderly transfer of the Facility so that the change of ownership can be accomplished with minimum interference to the efficient operation of the Facility.

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(e) Voluntary Agreement. The Obligors acknowledge that they all are represented by legal counsel of their choice, are fully aware of the terms contained in this Agreement and have voluntarily and without coercion or duress of any kind entered into this Agreement and the documents executed in connection with this Agreement.

(f) Third Party Obligations. The Obligors agree that the acceptance by the Transferee of ownership of the Facility pursuant to the terms of this Agreement and the assignment to the Transferee of any contracts and agreements pertaining to the Facility will not create any obligation on the part of the Transferee to third parties which might have claims of any kind whatsoever against the Obligors or the Facility and that the Transferee does not assume or agree to discharge any liabilities pertaining to the Facility which originated, arose, or were incurred prior to the Closing Date, unless the transfer of the Facility includes the conveyance of the ABC&D Shares. To the extent requested to do so by the Lender, on the Closing Date the Obligors agree to terminate any one or more of any contracts and agreements affecting the Facility. No person not a party to this Agreement will be a third party beneficiary of any term contained in this Agreement or acquire any rights hereunder.

(g) Absolute Conveyance. The Obligors warrant, covenant and agree that: (i) the conveyance of the Facility to the Transferee pursuant to the terms of this Agreement is an absolute conveyance of all the Obligors' right, title and interest in and to the Facility in fact, as well as in form, subject only to the Loan Documents and other exceptions set forth in the Deed; (ii) the Deed, Bill of Sale, and all of the other Transfer Documents are not intended to be a mortgage, trust conveyance, deed of trust or security instrument of any kind; (iii) the consideration for each conveyance includes, without limitation, the agreements of the Lender herein contained and shall include the application of any payment made by the Transferee to the Obligations, all as allocated by the Lender in its sole and exclusive discretion; and (iv) after the Closing Date, the Obligors will have no further interest (including rights of redemption) or claims in, to or against the Facility or to the proceeds or profits that might be derived therefrom. The Obligors acknowledge that all proceeds from the sale of the Facility, including all Collateral, shall be payable to the Lender for application against the Obligations and that the amount of the sale price for the Facility shall be determined by the Lender in its sole and exclusive discretion. The Lender shall at all times have the right to sell or convey the Facility including all Collateral as an entirety or piecemeal, all in the sole and exclusive discretion of the Lender.

(h) Indemnification. The Obligors agree to indemnify and hold the Lender harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including, without implied limitation, attorneys' fees and litigation expenses), actions or causes of action, arising out of or relating to any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of the Obligors contained in this Agreement or contained in any other document delivered to the Lender by the Obligors, or any party acting by or on behalf of the Obligors.

(i) Completion of Transfer Documents. The Lender is hereby authorized by the Obligors to complete the Transfer Documents by inserting therein the name of the Transferee and the applicable consideration, and also by inserting such other term or provision as the Lender deems necessary to effect a transfer of the Facility or as otherwise requested or required by the Transferee.

(j) Supplemental Transfer Documents. At any time hereinafter, upon the request by the Lender, the Obligors shall forthwith execute updated, replacement or supplemental Transfer Documents if requested by the Transferee, all of which shall be satisfactory to the Transferee in form and substance.

(k) Residence and Vacation Home The Obligors shall not sell, assign, convey, mortgage, or encumber all or any portion or interest in and to the Residence or the Vacation Home, until 30 days after the Closing Date

7. The parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement, all of the Loan Documents will remain in full force and effect after the transactions contemplated by this Agreement have been consummated The parties further acknowledge and agree that the interests of the Lender in the Facility created by all of the conveyances provided for herein will not merge with the interests of the Lender in the Facility created by the Loan Documents. It is the express intention of each of the parties (and all of the conveyances provided for herein will so recite) that such interests of the Lender in the Facility will not merge, but be and remain at all times separate and

distinct, notwithstanding any union of said interests in the Lender at any time by purchase, termination or otherwise and that the liens held by the Lender against the Facility created by certain of the Loan Documents will remain at all times valid and continuous liens against the Facility. The Lender has specifically reserved the right to assert all claims held by the Lender against all of the collateral described in the Loan Documents from time to time after the Closing Date.

8. Until the Closing Date, the Obligors shall, at their own expense:

(a) continue to operate the Facility as a going concern in the ordinary course of business;

(b) pay to the Lender on or before the tenth (10th) day of each month that amount which is equal to the net operating income of the Facility after deducting reasonable and customary operating expenses paid during the preceding month;

(c) deliver to the Lender on or before the tenth (10th) day of each month, a written report specifying: (i) the identity of each person who has expressed to the Obligors any interest in purchasing any of the Collateral;

(d) utilize their best efforts to obtain the MSW Permit, including the aggressive prosecution of the Permit Appeal and the undertaking of such additional actions as may be necessary to obtain the MSW Permit from the Town and other applicable governmental entities and agencies;

(e) preserve, keep current and maintain in good standing all Permits;

(f) timely process all materials accepted by the Facility for recycling in full compliance with applicable local, state and federal environmental rules, regulations and laws;

(g) provide such monthly financial statements and reports to the Lender, as the Lender may require in its sole and exclusive discretion, including, but not limited to the following:

(i) Profit and Loss Statement,

(ii) Balance sheet;

(iii) In and out tonnage report;

(iv) Accounts receivable reports; and

(v) Accounts payable report.

(h) pay all of their federal and state withholding tax obligations and all other local, state and federal taxes, charges and assessments including all real estate taxes and assessments affecting the Premises, in full and when due. Further, the Obligors acknowledge and agree that they shall provide Lender with copies of all Internal Revenue Service Forms 941 and deposit slips evidencing the payment by the Obligors of their federal withholding tax obligations by not later than seventy-two (72) hours following each payment and, at Lender's request;

(i) timely, properly and diligently process any and all materials located upon the Premises or accepted by the Facility; and

(j) keep all of the Collateral insured, for the benefit of Lender, in such amounts, with such companies, and against such risks as may be acceptable to Lender, and deliver the policies evidencing such insurance to Lender. If Obligors fail to take the action called for herein, Lender may, in its discretion obtain insurance covering Lender's interest in the Collateral and the amount of the premium for said insurance shall be added to the Obligations. The Obligors shall deliver to Lender the original (or certified copy) of each policy of insurance and evidence of payment of all premiums therefor. Such policies of insurance shall contain an endorsement, in form and substance satisfactory to Lender, showing loss payable to Lender. Such endorsement or an independent instrument furnished to Lender, shall provide that the insurance companies will give Lender at least thirty (30) days prior written notice before any such policy or policies of insurance shall be altered or canceled

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and that no act or default of Borrowers or any other person shall affect the right of Lender to recover under such policy or policies of insurance in case of loss or damage. Obligors hereby direct all insurers under such policies of insurance to pay all proceeds payable thereunder directly to Lender. Obligors irrevocably make, constitute, and appoint Lender (and all officers, employees, or agents designated by Lender) as Obligors' true and lawful attorney (and agent-in-fact) for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the name of Obligors on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. In the event Obligors, at any time or times hereafter, shall fail to obtain or maintain any of the policies of insurance required above or to pay any premium in whole or in part relating thereto, then Lender, without waiving or releasing any obligation or default by Obligors hereunder, may (but shall be under no obligation to do so) at any time or times thereafter obtain and maintain such policies of insurance and pay such premium and take any other action with respect thereto which Lender deems advisable. All sums so disbursed by Lender, including attorneys' fees, court costs, expenses, and other charges related thereto, shall be payable, on demand, by Obligors to Lender and shall be additional Obligations hereunder secured by the Collateral. Obligors also agree to at all times maintain insurance, both hazard and liability, against such risks and in such amounts as reasonably prudent to companies similarly situated as Borrowers would maintain and to furnish to Lender from time to time evidence that such insurance is in full force and effect.

9. No payments shall be made by Borrowers in the nature of compensation, repayment of officer loans, dividends, distribution or otherwise, to the O'Rileys or any, officer, trustee, shareholder, relative or insider of the Obligors, in excess of six thousand dollars ($6,000) per month, in the aggregate.

10. Provided, the Obligors have fully complied with all of their agreements hereunder and there shall have occurred no Event of Default hereunder, the Lender agrees that it shall forever forbear from (a) filing or imposing an attachment or execution against the Vacation Home or the Residence; and (b) filing an action with any Court against the O'Rileys in their individual capacities under their personal guaranties, in furtherance of any deficiency claim arising out of the Commercial Debt Instruments.

11. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any Event of Default under this Agreement, the Lender's agreements in Section 10 above shall terminate, without requirement of prior notice or demand, and the Lender (i) shall be entitled to commence, or continue, exercising its rights to collect the Obligations, including all rights under the Loan Documents and applicable law, including, without limitation, the right to file or impose an attachment or execution against the Vacation Home and the Residence and the right to fully pursue the O'Rileys in their individual capacities under their personal guaranties, at any time all in the Lender's sole and exclusive discretion and (ii) and the entire indebtedness in connection with the Commercial Debt Instruments and all other Obligations, including all principal, accrued interest, late fees penalties, charges, costs, fees, legal fees and expenses, and further including all of the Outstanding Fees and Expenses, shall continue to remain due and payable, in full, without any rebate, forgiveness or discount.

12 In the event of a voluntary or involuntary liquidation or reorganization case by or against the Obligors under bankruptcy, receivership, or other insolvency law, the Obligors hereby agree that the Lender shall be free to pursue foreclosure and other remedies with respect to its Collateral, without opposition or interference by the Obligors, that the Lender shall be entitled to seek and obtain relief from the automatic stay under 11 U.S.C. 362 without objection by the Obligors, and that any rights to stay, enjoin, or otherwise delay or impede the Lender's remedies against the Collateral, including foreclosure, which might be available to the Obligors, including any rights under 11 U S.C. §105 and §362, are hereby released and waived (hereinafter referred to as the "Waiver of Stay"). The Obligors acknowledge and agree that they are currently in default to the Lender and the Lender has an immediate, non-contingent right to foreclosure of the Collateral, that the Lender's security interest in the Collateral is senior, enforceable, duly perfected and nonavoidable, and that the Lender has specifically bargained for the waivers herein set forth in consideration of its granting forbearance, as to the Residence and the Vacation Home as set forth herein. The Obligors further acknowledge and agree that there is no equity in the Collateral, the value thereof being less than the current indebtedness owed to the Lender

13 The Obligors hereby covenant, confirm, warrant, acknowledge and agree that:

(a) the Lender has fully satisfied any and all express or implied duties of good faith and fair dealing to them (to the extent that such duties exist under law), by both prior indulgences, as well as the contemporaneous modifications being provided by the Lender to them by this Agreement;

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(b) they have no offsets, defenses, counterclaims, charges or other claims, asserted or unasserted, against the Lender or any of its officers, directors or agents arising out of or relating to any loan transactions they have entered into with the Lender, or in connection with the Commercial Debt Instruments, the Loan Documents, any of the Obligations or any proceedings commenced by the Lender which could in any way reduce or affect their liability to repay the sums owed under the Commercial Debt Instruments, and to pay and perform the Obligations and the Loan Documents, as set forth above;

(c) the Commercial Debt Instruments, the Obligations and all Loan Documents are in default for reasons which include, without limitation, the failure of the Obligors, as applicable, to make payments as due thereunder;

(d) the indebtedness to the Lender as described above is due and payable, in full, and is correct and accurate;

(e) as a result of such default, the Lender has the right to, and has properly accelerated and demanded, payment of all of the Obligations and that any cure period that may have existed has expired or has been waived by the Obligors;

(f) the Lender is entitled to and has properly terminated and been relieved of any obligation to fund loans or extend credit to the Obligors pursuant the Loan Documents, or otherwise;

(g) the security interests and liens granted to Lender by the Obligors in the Collateral remain properly perfected, and constitute valid liens therein, and the Obligors represent and warrant that as of the date hereof, there are no claims, set-offs or defenses to Lender's exercise of any rights or remedies available to it as a creditor in realizing upon the Collateral under the terms and conditions of this Agreement, the other Loan Documents and applicable law. The Obligors, or any one of them, have not assigned any claim, set-off or defense to any person, individual and/or entity;

(h) the Lender, the Broker and any prospective Transferee shall have the right to audit the business operations of the Borrowers, including, but not limited to, inspection of the Facility, their offices and books and records during normal business hours and as frequently as Lender deems necessary, in Lender's sole and absolute discretion. All costs and expenses incurred by Lender in conducting any such audit shall be added to the Obligations, payable on demand and secured by the Collateral;

(i) the Lender shall be free to conduct such verifications of ABC & D's accounts receivable as Lender deems necessary, in Lender's sole and absolute discretion, including, but not limited to, correspondence and/or telephone calls between Lender and ABC & D's account debtors as often as Lender deems necessary;

(j) any and all Permits, including all permits, licenses and approvals relative to the Facility, are now, and at all times in the future shall be, kept and maintained fully current and in good standing and capable of complete and unconditional assignment by the Lender to any third party including the Transferee.

(k) the Loan Documents (as modified by this Agreement) may be enforced in accordance with their terms by the Lender against the Obligors and all Collateral.

(l) the execution, delivery and performance of this Agreement and the Transfer Documents and the consummation of the transactions thereby contemplated will not conflict with any law, statute or regulation to which the Obligors or the Facility are subject or any judgment, license, order or permit applicable to the Obligors or the Facility or any indenture, mortgage, deed of trust or other instrument to which the Obligors or any Collateral is subject; no consent, approval, authorization or order of any court, governmental authority or other person is required in connection with the execution, delivery or performance by the Obligors of this Agreement or any related document.

(m) all financial statements delivered by the Obligors to the Lender prior to the date of this Agreement are true and correct, fairly present the financial condition of the Obligors and the Facility and have been prepared in accordance with generally accepted accounting principles, consistently applied; as of the date of this Agreement, there are no obligations, liabilities or indebtedness (including

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contingent liabilities) which are material to the Obligors or the Facility which are not reflected in such financial statements; and no material adverse change has occurred in the financial condition of the Obligors or the Facility since the date of the most recent financial statements which the Obligors have delivered to the Lender;

(n) the Borrowers own the Facility free and clear of all liens, security interests or other encumbrances, except the liens and encumbrances permitted by the Loan Documents,

(o) the Lender is hereby authorized, in its capacity as a secured party and lien holder, to undertake such action as it deems necessary, in the Lender's sole and exclusive discretion, to protect, preserve and enhance the Permits, including without limitation, the right to intervene within the Permit Appeal and assert such legal positions as it deems necessary in order to enhance the scope or applicability of the Permits, or otherwise as it deems necessary. In furtherance thereof, the Lender may engage such consultants, attorneys and experts it deems necessary, at the expense of the Obligors; provided, however, nothing herein shall obligate the Lender to undertake any activity concerning the Permits; and

(p) the Lender may publish, release, consult, share information and documents of any nature or kind (including any and all appraisals and financial records and reports respecting the Obligors and the Collateral), and negotiate with any party expressing an interest in acquiring Loan Documents or the Facility or as otherwise determined by the Broker as necessary to market and sell the Facility or the Loan Documents, all in the Lender's sole and exclusive discretion.

14. All of the representations and warranties of the Obligors herein contained are not intended to replace or limit in any manner any express or implied warranty provided under applicable law. The Lender will be entitled to rely on all representations and warranties of the Obligors notwithstanding the Lender's inspection and investigation of the Facility. The Obligors' acknowledge that representations and warranties of the Obligors constitute a material inducement to the Lender's willingness to enter into and perform this Agreement and the Lender has relied upon such representations and warranties.

15. As additional collateral for the payment and performance of the Obligations (including the Commercial Debt Instruments and all other obligations, whether now existing or hereafter arising, of the Obligors to Lender), Lender shall at all times have, and is hereby granted, a security interest in and a right of offset against all cash, deposit balances and/or accounts, instruments, securities, or other property of the Obligors now or hereafter in the possession of Lender, whether for safekeeping or otherwise. This right of offset shall permit Lender, at any time, and without notice to the Obligors, to transfer such funds or property as may be deemed by Lender to be appropriate so as to reduce or satisfy any obligation of the Obligors to the Lender, whether or not such obligation is then due.

16. Notwithstanding anything in this Agreement to the contrary, this Agreement shall be IN DEFAULT and the Obligations (including all principal outstanding in connection with the Commercial Debt Instruments and all interest and late fees which may be permitted by the Loan Documents and applicable law, together with the Outstanding Fees and Expenses, together with any and all other legal fees, costs, late charges, expenses and charges incurred by the Lender) shall at the Lender's option, be immediately due and payable, without prior notice, protest, or demand and the Lender shall be entitled to exercise any and all remedies which may be available under the Loan Documents and applicable law, including the attachment and execution against the Vacation Home and the Residence and the right to fully pursue the O'Rileys in their individual capacities under their personal guaranties, upon the occurrence of any one or more of the following events of default ("Events of Default"): (i) the failure of the Obligors to pay and/or perform any agreement or obligation to the Lender as required hereunder; (ii) any representation, covenant, or warranty made by any of the Obligors in this Agreement, or any of the Loan Documents, or in connection with any agreement, document, instrument of guaranty or security furnished to Lender or any Transferee shall have proved to have been inaccurate as of the date or dates with respect to which it is deemed to have been made; (iii) the granting of any trust mortgage upon any assets of the Obligors, the occurrence of any assignment for the benefit of the Obligors' creditors or the appointment of a custodian, trustee or receiver with respect to any assets of the Obligors, or the filing of any petition by or against the Obligors under Title 11 of the U. S. Code, as amended (the "Bankruptcy Code") or any other federal or state law by which the Obligors are or may be relieved from debts; (iv) the service of any process upon the Lender by which any funds of the Obligors being held by the Lender may be attached which occurs as the result of any action or inaction within the Obligors' control; (v) if any of the Obligations, this Agreement, any of the Loan Documents, or any provision thereof or hereof, for any reason attributable to the Obligors, ceases to be in full force and effect or shall be declared to be null and void or the validity or enforceability thereof shall be contested by any of the Obligors or any of the Obligors shall deny that they have any further liability or obligation thereunder; (vi) the incapacity or dissolution of the Obligors or any guarantor of the Obligors, as applicable; (vii) if a

notice of lien, levy or assessment is served on Obligors or is filed of record with respect to all or any of Obligors' assets by the United States or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency or any other taxing which occurs as the result of any action or inaction within the Obligors' control; (viii) if Obligors are in default in the payment of any obligation hereunder or have defaulted in any, covenant, representation and/or warranty hereunder; (ix) if any of the Obligors, or any person claiming by or through any of the Obligors, commence, join in, assist, cooperate in or participate as an adverse party or as an adverse witness (subject to compulsory legal process which requires testimony) in any suit or other proceeding against Lender or any affiliates of Lender relating to the Obligations, this Agreement or any other obligations of the Obligors; (x) if the release of Lender and other related parties set forth in Section 21 is alleged to be invalid or unenforceable by any claim or proceeding initiated or commenced in favor of, through or by any of the Obligors or any of the Obligors' heirs, successors, assigns, representatives or beneficiaries; or (xi) any breach by any of the Obligors to keep the terms of this Agreement confidential pursuant to Section 37 of this Agreement; or (xii) if any payment to the Lender, or any portion thereof, or any transfer of property to Lender or any portion of such property, whether paid or transferred to Lender pursuant to this Agreement or otherwise, is rescinded, avoided, set aside, rendered void and/or undone or otherwise may be restored by Lender to any of the Obligors, or to any of the creditors of any of the Obligors, or to any representative of any of Obligors, or to any representative of any of the Obligors' creditors, or otherwise, upon the insolvency, bankruptcy or reorganization of any of the Obligors, or otherwise.

17. The forbearance granted by Lender in this Agreement and the enforceability of this Agreement against Lender shall be contingent upon compliance with the following conditions:

(a) as determined by Lender, no Event of Default shall have occurred;

(b) receipt by Lender of the following:

(i) certified copies of Resolutions of the Board of Directors, Trustees and/or beneficiaries of the Obligors, as applicable, reaffirming, ratifying, authorizing and approving the execution and delivery of this Agreement and all other documents or instruments to be executed and delivered in conjunction herewith;

(ii) incumbency Certificates with respect to the officers and/or Trustees of the Obligors, as applicable, executing this Agreement and all other documents or instruments to be executed and delivered in conjunction herewith; and

(iii) to the extent deemed necessary by Lender, fully completed Uniform Commercial Code Financing Statements executed by the Obligors with respect to the Collateral.

18. Notwithstanding anything to the contrary in this Agreement, the Lender may at any time, in its sole and exclusive discretion, effect a sale of the Facility through foreclosure of the Collateral or an owner's public auction sale and nothing herein shall be construed to constitute any obligation by the Lender to forbear from the exercise of such rights and remedies provided, however, as long as no Event of Default has occurred, the Lender shall not proceed with the imposition of an attachment or execution against the Vacation Home or the Residence nor the filing an action with any Court against the O'Rileys in their individual capacities under their personal guaranties, in furtherance of any deficiency claim arising out of the Commercial Debt Instruments The Lender's rights and remedies shall include, without limitation, the exercise of any and all rights the Lender deems necessary to foreclose upon the Collateral, including the right to file and prosecute an action under the Soldiers and Sailors Civil Relief Act and to advertise, undertake and consummate a mortgage foreclosure sale of the Premises and to undertake such action under the Uniform Commercial Code or otherwise in order to effect a sale on any and all Collateral including all tangible and intangible property of the Borrowers and all permits relating to the Facility. In the event the Lender elects to effect a sale of the Facility through an owner's public auction sale, the Obligors shall forthwith execute such additional documents, in order to effect such sale, as the Lender may require in its sole and exclusive discretion, including a deed to the premises, bills of sale and assignments of the Permits.

19 The Obligors hereby authorize the Broker and the Lender at any time to sell or cause to be sold the Commercial Debt Instruments and to transfer the Loan Documents (as modified by this Agreement) to any person designated by the Lender on such terms and for such consideration as the Lender might determine, from time to time, in the Lender's sole and absolute discretion. The Lender is hereby authorized by the Obligors to release any and all information, including all financial information concerning the Commercial Debt Instruments, the Obligors, the Facility, the Collateral, and all Loan Documents to any interested third party, without further notice. Within ten (10) days after each written request therefor, the Obligors agree to provide to the Lender estoppel certificates executed by the Obligors stating the unpaid balance of the Commercial Debt Instruments, the status of the Obligors' performance

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under the Loan Documents (as modified by this Agreement) and whether the Obligors assert any claims, counterclaims, defenses or other rights against the Lender or under the Loan Documents (as modified by this Agreement) and, if so, a detailed description of each such claim. The Obligors specifically agree that if the Lender elects to sell the Commercial Debt Instruments for less than the amount owing to the Lender, any such discount will not reduce the amount owing by the Obligors to the Lender or any successor in interest to the Lender.

20. When requested by the Lender, the Obligors will, to the fullest extent of their capabilities, provide the Lender, and any third parties designated by the Lender, including the Broker and any agents or consultants, retained by or on behalf of the Lender, complete access to Facility. The Obligors agree to permit the Lender and such third parties to inspect the Facility and to examine copy and make excerpts from all books, records and documents relating to the financial condition and business affairs of the Borrowers and the Facility. The Obligors warrant that all information provided to the Lender and such third parties will be complete, true and correct in each and every respect. The Lender will not be liable to the Obligors for the use made of information provided by the Lender or Obligors to any third party

21. The Obligors, their successors, heirs and estates, jointly and severally for and in consideration of the execution of this Agreement by the Lender, which would not otherwise be undertaken but for this covenant, do hereby remise, release and further discharge, and by these presents do for themselves and for their successors, heirs, and estates, remise, release and forever discharge the said Lender, its officers, agents, affiliates, assignees and all persons acting in its behalf or at its direction of and from any and all manner of action and actions, cause and causes of action, suits, debts, controversies, damages, judgments, executions, claims and demands, whatsoever, in law or equity which against the Lender the Obligors ever had hereto, now have, or which they or their assigns hereinafter can, shall or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to date of these presents.

22. The Obligors hereby represent, warrant, covenant and agree with Lender that so long as any of the Obligations shall remain outstanding and unpaid to Lender and so long as this Agreement remains in effect, Obligors shall not, without the express prior written consent of Lender or as otherwise permitted herein:

(a) grant a security interest in, assign, sell or transfer any of the Collateral to any person, individual or entity, or permit, grant or suffer a lien, claim or encumbrance upon any of the Collateral, except only to the extent that any such security interest, lien, claim or encumbrance existed as of the date hereof;

(b) permit or permit or suffer any levy, attachment or restraint to be made on or affecting the Collateral;

(c) permit or suffer any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of any of the Collateral, and

(d) enter into any transaction which materially and adversely affects Obligors' ability to pay or perform the Obligations

23. All of the Lender's rights and remedies hereunder and under the Commercial Debt Instruments, the Loan Documents, and any other of the Obligations, shall be cumulative and may be exercised singularly or concurrently, at the Lender's sole and exclusive discretion with the sole exception of the forbearance agreement respecting the Vacation Home, the Residence, and the personal liability of the O'Rileys in connection with any deficiency claims as set forth herein.

24. No failure or delay on the part of the Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. No waiver of any default hereunder shall operate as a waiver of any other default hereunder or as a continuing waiver. The Lender's acceptance of any payment hereunder, following any default, shall not constitute a waiver of such default or of any of the Lender's rights or remedies hereunder, unless waived in writing by Lender. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or otherwise available to the Lender. The Lender's remedies may be exercised without resort or regard to any other source of satisfaction of any liabilities of the Obligors to the Lender. The provisions of this Agreement are not in derogation or limitation of any obligations, liabilities or duties of the Obligors under the Commercial Debt Instruments, the other Loan Documents, or any other agreement with or for the benefit of the Lender. No inconsistency in default provisions or any such other agreement will be deemed to create any additional grace period or otherwise derogate from the express terms of each such default provisions. The Obligors hereby expressly waive any right to require the marshalling of any assets or collateral

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25. All covenants, agreements, representations and warranties made herein or in other documents delivered by or on behalf of the Obligors pursuant to or in connection with this Agreement are material and shall be deemed to have been relied upon by the Lender, notwithstanding any investigation now or hereafter made by the Lender and shall continue in full force and effect so long as the Obligations, the Loan Documents, and other amounts due under this Agreement remain outstanding and unpaid. All statements contained in any certificate or other paper delivered to the Lender at any time by or on behalf of the Obligors pursuant hereto shall constitute representations and warranties by the Obligors hereunder.

26. The Obligors agree to pay all costs and expenses (including, without limitation, legal fees) of the Lender in connection with the preparation, execution and delivery of this Agreement, and any and all other instruments and documents to be delivered hereunder and any amendments or modifications of any of the foregoing, or in connection with the examination, review or administration of any of the foregoing, or in connection with the confirmation, perfection and/or protection of any interest granted hereby, as well as the costs and expenses (including, without limitation, the fees and out-of-pocket expenses of legal counsel) incurred by the Lender in connection with interpreting, administering, preserving, enforcing or exercising any rights or remedies under this Agreement, the Loan Documents, and all other instruments and documents to be delivered hereunder, all whether or not legal action is instituted.

27. The terms and conditions of all Loan Documents, except as otherwise expressly amended hereby, shall remain in full force and effect following the execution of this Agreement, and nothing herein shall constitute a waiver of any of the Lender's rights or remedies contained in said instruments nor of any defaults having occurred to date thereunder. By entering into this Agreement, the Lender does not extinguish the defaults upon the Obligations, and the Lender does not waive or otherwise abrogate its rights upon any of the collateral secured to it, nor waive any claims or rights as against any guarantors, endorsers, hypothecators, sureties or any collateral provided by any of them, with the sole exception of the Lender's agreement to forbear to the extent expressly set forth in Section 10 above. All such rights shall continue to remain in favor of the Lender in their original tenor, without exception.

28. Nothing herein shall constitute a forgiveness of any portion of the indebtedness under the Commercial Debt Instruments, or any obligations under the Loan Documents, or any of the other Obligations. The Obligors covenant and agree that all outstanding principal plus all interest, fees, costs, late charges and penalties in connection with the Obligations, including the Outstanding Fees and Expenses, shall continue to remain their liability in their entirety, jointly and severally with all other Obligors and without any discount, rebate or forgiveness subject only to the Lender's agreement to forbear to the extent expressly set forth in Section 10 above.

29. Notwithstanding, anything to be the contrary in this Agreement, at no time shall the Lender be obligated to release its' interest in any of the Collateral, nor accept a sale, transfer and/or conveyance of the Facility for consideration which is less than the total amount outstanding in connection with the Obligations, including all Commercial Debt Instruments, including all principal, interest, fees, costs and expenses which may be permitted pursuant to the Loan Documents and applicable law. Any sale of the Facility which would not result in payment in full of all outstanding Obligations to the Lender, shall be subject to the Lender's approval in its' sole and exclusive discretion.

30. Until all of the Obligations are irrevocably paid in full, any and all of the Obligors who have guaranteed the Obligations hereby waive any and all rights to be subrogated to the position of Lender or to have the benefit of any lien, security interest or other guaranty now or hereafter held by Lender in connection with the Obligations or to enforce any remedy which Lender now has or hereafter may have against any and all of the Obligors or any other individual, person or entity. Until the Obligations are irrevocably paid in full, any such guarantor shall have no right of reimbursement, indemnity, exoneration, contribution or other right of recourse to or with respect to any and all of the Obligors or any other individual, person or entity. The Lender shall have no duty to enforce or protect any rights which any such guarantor may have against any and all of the other Obligors or any other individual, person or entity and any such guarantor assumes full responsibility for enforcing and protecting any such rights.

Notwithstanding any provision of the preceding paragraph or anything else in this Agreement or the Loan Documents to the contrary, if any such guarantor is or becomes an "insider" or "affiliate" (as defined in Section 101 of Bankruptcy Code, as amended) with respect to any of the Obligors, then that guarantor irrevocably and absolutely waives any and all rights of subrogation, contribution, indemnification, exoneration, recourse, reimbursement and any similar rights against any and all of the Obligors (or any other guarantor) with respect to such guaranty, whether such rights arise under an express or implied contract or by operation of law, it being the intention of Lender and the Obligors that such guarantor shall not be (or be deemed to be) a "creditor" (as defined in the Bankruptcy Code) of the other Obligors (or any other guarantor) by reason of the existence of such guaranty in the event that any of the Obligors becomes a debtor in any proceeding under the Bankruptcy Code. This waiver is given to induce Lender to enter into certain written contracts with the Obligors including this Agreement. The Obligors warrant and agree that none of Lender's rights, remedies or interests shall be directly or indirectly impaired because of any of their status as an

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"insider" or "affiliate" of any of the other Obligors and the Obligors shall take any such action, and shall execute any document, which Lender may request in order to effectuate this warranty to Lender.

31 In the absence of any specific allocation hereunder, any and all amounts received by the Lender in connection with the Obligations shall be applied by the Lender in such manner and in such fashion as the Lender shall determine, in its sole and exclusive discretion.

32. The Obligors shall do all things and deliver all instruments requested by the Lender to protect or perfect any interest granted or intended to be granted under this Agreement or as the Lender deems necessary to effect a transfer of the Facility. Upon request by the Lender, the Obligors shall immediately execute and deliver such documents as the Lender may require, in a form acceptable to the Lender, in order to confirm that any and all obligations of the Obligors, including all of the Obligations hereunder, including any and all amounts which may be due under the Commercial Debt Instruments are secured by valid, duly perfected, liens in all Collateral and to effect a transfer of the Facility. If for any reason the Obligors fail to promptly comply with any such request, or if any Event of Default shall have occurred hereunder, the Obligors authorize the Lender to execute, in the name or on behalf of the Obligors, any document or instrument that the Lender may require to perfect, protect or establish any interest to which the Lender may be then entitled or to effect a transfer of the Facility and the Obligors further authorize the Lender to sign the Obligors' name on the same. The Obligors appoint (but only for the purposes of protecting the Lender's interest in any Collateral or its rights to receive payments under this Agreement or the Commercial Debt Instruments or otherwise exercising any of its rights or causing the performance and fulfillment of the obligations and agreements intended to be performed and fulfilled by the Obligors hereunder, including the transfer of the Facility) such person or persons as the Lender may designate as Obligors' attorney-in-fact with the power to endorse the name of the Obligors on any deeds, bills of sale, assignments, checks, notes, drafts, or other forms of payment or security relating to any collateral that may come into the possession of the Lender or as otherwise required or deemed necessary by the Lender to effect a transfer of the Facility. The powers conferred on the Lender by this Agreement are coupled with an interest and are solely to protect the interest of the Lender and shall not impose any duty upon the Lender to exercise any such power, and neither the Lender nor such attorney-in-fact shall be liable for any act or omission, error in judgment or mistake of law.

33. Until such time as the Obligations are paid in full, the Obligors shall deliver to the Lender such financial information as the Lender may require from time to time, in its sole and exclusive discretion, including, but not limited to, the 2008 tax returns for all Obligors including all exhibits.

34. All notices or demands hereunder to the parties hereto shall be sufficient, if made in writing, upon deposit in the United States mail, postage prepaid and addressed to the parties, respectively, as follows:

If to Lender:
COUNTRY BANK FOR SAVINGS
75 Main Street
Ware, MA 01082
Attn: James Algie, First Senior Vice President

With a copy to:
SAPIRSTEIN & SAPIRSTEIN, P.C.
1350 Main Street – 12th Floor
Springfield, MA 01103
Attn: Jonathan C. Sapirstein, Esq.

If to the Obligors:

(a) **Richard C. O'Riley**
265 Upper Church Street
Ware, MA 01082

(b) **Joan M. O'Riley**
265 Upper Church Street
Ware, MA 01082

(c) **ABC & D Recycling, Inc.**
195 East Street
Ware, MA 01082

(d) **Richard C. O'Riley**
Joan M. O'Riley

As Trustees of
the O'Riley Family Trust
265 Upper Church Street
Ware, MA 01082

With a copy to: **Matthew L. Donohue, Esquire**
DONOHUE, HYLAND & DONOHUE, PC
1707 Northampton Street
Holyoke, MA 01040

35 The Obligors hereby waive presentment, demand and protest and notice of dishonor, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which Obligors may in any way be liable, and hereby ratify and confirm whatever Lender may do in this regard. Obligors also waive the benefit of all valuation, marshalling, appraisal and homestead exemption laws, to the fullest extent permissible by applicable law.

36 Obligors hereby covenant and agree that they will now and hereafter forever indemnify, defend and hold Lender harmless of and from any loss, cost, damage, claim, judgment, expense or any other liability incurred or suffered by Lender arising out of or in any way connected with the transactions contemplated herein and/or Obligors' relationships with any or all of their agents or creditors, secured or otherwise.

37 The Obligors agree to keep all of the terms and conditions of this Agreement strictly confidential and agree to limit any disclosure of the terms and conditions of this Agreement only to:

(a) legal counsel retained by the Obligors.

(b) the Obligors' accountants.

(c) as otherwise required by law.

The confidentiality agreement of the Obligors hereunder shall survive the Closing Date and the transfer of the Facility.

38 The Obligors irrevocably submit to the non-exclusive jurisdiction of any state or federal court sitting within the Commonwealth of Massachusetts over any suit, action or proceeding arising out of or relating to this Agreement. The Obligors irrevocably waive, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The Obligors agree that final judgment in any such suit, action or proceeding brought in such a court shall be enforced in any court of proper jurisdiction by a suit upon such judgment, provided that service of process in such action, suit or proceeding shall have been effected upon the Obligors in one of the manners specified hereinbelow or as otherwise permitted by law.

39 The Obligors hereby consent to process being served in any suit, action or proceeding of the nature referred to in the preceding paragraph by mailing a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Obligors at the last addresses for the Obligors maintained by the Lender. The Obligors irrevocably waive, to the fullest extent permitted by law, all claims of error by reason of any service as contemplated herein and agree that such service shall be deemed in every respect effective service upon the Obligors in any such suit, action or proceeding and to the fullest extent permitted by law, be taken and held to be valid personal service upon and personal delivery to the Obligors.

40. This Agreement shall not be binding upon the Lender until (i) this Agreement is signed by the Obligors; and (ii) any and all conditions and/or requirements which are to be satisfied and/or performed by Obligors at the time of execution of this Agreement are performed and/or satisfied to the Lender's satisfaction; and (iii) this Agreement is accepted in writing by a duly authorized officer of the Lender

41 The Obligors hereby represent and warrant that they were not induced to enter into this Agreement by any representations on the part of the Lender, except as the same are expressed herein, nor have they placed any reliance on any undertaking of the Lender except to the extent expressed herein.

42. Obligors acknowledge that the Lender has not, by the terms hereof, acted to intrude into any of its management decisions, or prerogatives, nor has it entered into control or management of Obligors' affairs. Any reference herein to

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limitation of action(s) or conduct on the part of the Obligors represents only undertakings, or forbearance(s) necessary to preserve the management, cash flow, and asset and financial status quo promised by the Obligors upon which the Commercial Debt Instruments were onginally contemplated, and which the Lender relied as a condition-precedent thereto, and which are necessary to the protection of Lender, in its sole status as secured lender, and not otherwise.

43. This Agreement shall not be construed strictly against the Lender, but liberally for its benefit as to all particulars and any discrepancy or inconsistency between this Agreement and any of the Loan Documents shall be resolved by the Lender in its sole and exclusive discretion.

44. OBLIGORS AND LENDER WAIVE ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, AND ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

45. To the extent that any paragraph or portion hereof is deemed to be in violation of law or equity, then so much thereof shall be excised from this Agreement and the remaining provisions shall remain in full force and effect.

46. The whole of this Agreement is herein set forth and there are no verbal or other written agreements, and no understandings or customs affecting the terms hereof. The Obligors have placed no reliance upon any undertaking of the Lender except to the extent expressed herein. This Agreement can be modified only by a written instrument signed by all parties hereto.

47. Time is of the essence with respect to all of the Obligors' obligations hereunder.

48. The Lender may report the resolution of the indebtedness represented by the Obligations to credit reporting and gathering agencies and to other parties making inquiry, in such manner as the Lender deems appropriate, and the Lender may share and disclose this Agreement and all of the terms and conditions hereof, to the Broker, any party interested in acquiring the Facility or Loan Documents, or any other party, all in the sole and exclusive discretion of the Lender

49. The masculine and singular as used herein, shall be instead of, and shall stand for the plural number, as well as estates, conservators, heirs and executors, as successors-in-interest, as the context may require. The liability of the Obligors in connection with any and all matters set forth in this Agreement, including any and all Obligations, shall at all times be joint and several.

50. The Obligors have of this day: (i) consulted with counsel of their choice regarding this Agreement; (ii) reviewed with counsel the terms and provisions of this Agreement and all documents executed in connection herewith, if any; (iii) understood and assented to the obligations imposed by this Agreement and all documents executed in connection herewith; (iv) knowingly and willingly entered into this Agreement and all documents executed in connection herewith.

51 This Agreement and all other instruments, documents and papers which relate thereto which have been or may be hereafter furnished to the Lender may be reproduced by the Lender by any digital, photographic, photostatic, micro-card, miniature photographic, xerographic, or similar process, and the Lender may destroy the original from which any document was so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business)

52 This Agreement is executed as a sealed instrument, shall be construed under the laws of the Commonwealth of Massachusetts and shall inure to the benefit of the Lender's successors and assigns, but may not be assigned by the Obligors without the prior express written consent of the Lender

53. Subject to the limitations and restrictions set forth, herein, the Lender agrees that in the event the Facility is sold to a Transferee other than the Lender (or any party that is in any way related to, or affiliated with, the Lender) and such sale is fully consummated with all proceeds paid to the Lender on or before February 15, 2010, then the Lender shall effect payment to the O'Rileys in the amount of twenty-five thousand and 00/100 ($25,000) dollars (the "Expense Reimbursement Payment") if the Lender receives Net Proceeds from said sale of at least four million and 00/100 ($4,000,000) dollars, which Expense Reimbursement Payment shall be increased to fifty thousand and 00/100 ($50,000 00) dollars if the Lender receives Net Proceeds of at least five million five hundred thousand and 00/100 ($5,500,000) dollars, not later than February 15, 2010. If earned pursuant to the terms hereof, the Expense Reimbursement Payment shall be paid to the O'Rileys, for the purpose of reimbursing the O'Rileys for fees and expenses they have incurred in helping to facilitate a sale of the Facility.

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Notwithstanding the foregoing, the Expense Reimbursement Payment shall not be deemed earned and shall not be paid or payable and the O'Riley's claim for payment of the Expense Reimbursement Payment shall be terminated and deemed void, upon the occurrence of any of the following events:

(a) the occurrence of any Event of Default under this Agreement

(b) in the event the Facility or any of the Collateral is sold to any party through foreclosure, or other liquidation or auction process,

(c) in the event the Lender does not timely receive Net Proceeds in an amount of at least four million and 00/100 ($4,000,000) dollars from the sale of the Facility;

(d) in the event the Lender effects a sale of all or any portion of the Loan Documents; and

(e) in the event the Facility or any of the Collateral is sold, transferred and/or conveyed to the Lender or any party or entity affiliated with the Lender.

For purposes hereof the term "Net Proceeds" shall mean the aggregate gross sales proceeds received by the Lender in good funds, which are directly attributable to the sale of the Facility, minus any and all expenses associated with such sale, including all brokerage fees and commissions, recording and filing fees, legal fees, and other costs and expenses incurred by the Lender, all as determined by the Lender in its sole and exclusive discretion.

54. The O'Rileys acknowledge that they are indebted to the Lender in connection with guaranties, promissory notes and other obligations not specifically referred to herein, including those obligations arising out of the loan to Allied Rocoso Auto Parts, Inc. This Agreement shall not serve to modify, restructure or amend any such indebtedness which shall continue to remain the joint and several responsibility of the O'Rileys and all other obligated parties in accordance with the applicable loan documents.

EXECUTED as a sealed instrument on the date first hereinabove written.

Witness:

witness to both

ABC & D Recycling, Inc.

By: _____
Richard C. O'Riley, President

By: _____
Joan M. O'Riley, Treasurer

witness to both

_____
Richard C. O'Riley, individually

_____
Joan M. O'Riley, individually

witness to both

O'RILEY FAMILY TRUST

By: _____
Joan M. O'Riley, Trustee

By: _____
Richard C. O'Riley, Trustee

COUNTRY BANK FOR SAVINGS

By: _____

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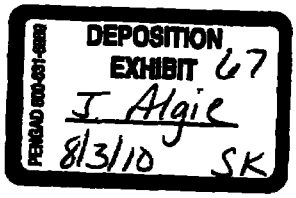
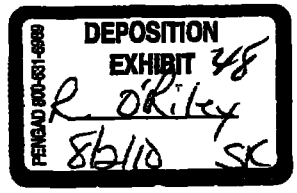




SECOND MODIFICATION
TO SETTLEMENT AGREEMENT

This Second Modification to Settlement Agreement (the "Agreement") dated as of February 22, 2010, is among ABC&D RECYCLING, INC. ("ABC&D"), a Massachusetts corporation having a principal place of business at 198 East Street, Ware, Massachusetts; JOAN M. O'RILEY and RICHARD C. O'RILEY, Trustees of the O'Riley Family Trust (the "O'Riley Trust"), of 265 Upper Church Street, Ware, Massachusetts, RICHARD C. O'RILEY, in his individual capacity ("Richard O'Riley"), having a residential address of 265 Upper Church Street, Ware, Massachusetts; JOAN M. O'RILEY, a/k/a Joann O'Riley in her individual capacity ("Joan O'Riley"), having a residential address of 265 Upper Church Street, Ware, Massachusetts (ABC&D, the O'Riley Trust, Richard O'Riley, and Joan O'Riley are collectively referenced to as the "Obligors"), and COUNTRY BANK FOR SAVINGS, (the "Lender"), having a principal place of business at 75 Main Street, Ware, Massachusetts.

WHEREAS, on February 13, 2009, the Obligors and the Lender entered into a certain Settlement Agreement (the "Settlement Agreement") respecting the Obligations of the Obligors to the Lender as set forth therein, as amended by a certain First Modification to Settlement Agreement dated September 16, 2009 (the "First Modification") and as further amended by a certain Amended and Restated First Modification to Settlement Agreement dated December 30, 2009 (the "Amended First Modification"); and

WHEREAS, in addition to the Obligations delineated within the Settlement Agreement, Joan O'Riley and Richard O'Riley (the "O'Rileys") are also obligated to the Lender for payment of amounts outstanding in connection with a certain Revolving Business Credit Note dated November 12, 2002 made by Allied Rocoso Auto Parts, Inc. ("Allied Rocoso") in favor the Lender in the original principal amount of ONE HUNDRED FIFTY THOUSAND and 00/100 ($150,000.00) DOLLARS (the "Rocoso Note") the payment of which Rocoso Note has been guaranteed by the O'Rileys pursuant to certain Unlimited Guaranties dated February 13, 2006; and

WHEREAS, the ABC&D and the O'Riley Trust have entered into a Management Agreement of even date (the "Management Agreement") with Valley Management Services, Inc (the "Manager") respecting the management of the Facility, and

WHEREAS, Richard O'Riley has entered into an Agreement for the Purchase and Sale of Capital Stock of ABC&D with Chris Berardi (the "Identified Purchaser") for the sale of all outstanding shares of stock (the "Stock Shares") of ABC&D (the "Stock Purchase Agreement"); and

WHEREAS, the O'Riley Trust has entered into a Purchase and Sale Agreement for the sale of the Premises (the "Real Estate Purchase Agreement") with the Identified Purchaser, and the Obligors have further advised the Lender that if consummated, the

sale of the Stock Shares and the sale of the Premises to the Identified Purchaser will result in the payment to the Lender of a net payment in an amount not less than FOUR MILLION and 00/100 ($4,000,000.00) DOLLARS; and

WHEREAS, the Obligors have requested that the Lender modify the Settlement Agreement to change the terms and conditions respecting the payment of the Expense Reimbursement Payment to the O'Rileys and also to provide for the opportunity for the O'Rileys to be released from their obligation to effect payment to the Lender of the Rocoso Note in the event that the sale of the Facility to the Identified Purchaser is consummated as set forth herein; and

WHEREAS, the Lender and the Obligors desire to amend and restate the First Modification to reflect the terms and conditions set forth in this Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. This Agreement shall replace and supercede the First Modification and the Amended First Modification.

2. All capitalized terms not defined herein but defined in the Settlement Agreement shall have the meaning as ascribed in the Settlement Agreement.

3. Notwithstanding anything in this Agreement to the contrary, except only as expressly amended, modified and supplemented by this Agreement, the Settlement Agreement shall remain in full force and effect and is hereby ratified, confirmed, and reaffirmed. Nothing herein shall constitute a waiver of any of the Lender's rights and remedies under the Settlement Agreement, including any and all instruments and documents delivered or obtained in connection therewith.

4. The Obligors shall utilize their best efforts to consummate the sale of the Stock Shares and the Premises to the Identified Purchaser in compliance with the Stock Purchase Agreement and the Real Estate Purchase Agreement (the "Purchase Agreements"), with all proceeds to be paid to the Lender, for an amount which will produce Net Proceeds to the Lender of at least FOUR MILLION and 00/100 ($4,000,000.00) DOLLARS.

5 The Settlement Agreement is hereby amended and modified, effective as of the date hereof, by deleting from the Settlement Agreement the entire Section 53 thereof. Subject to the limitations and restrictions set forth herein, the Lender agrees that in the event the Stock Shares and the Premises are sold to the Identified Purchaser, and such sale is fully consummated with all proceeds paid

Initials of Obligors: _____

to the Lender on or before November 15, 2010 (the "Closing Deadline") and the Lender has received Net Proceeds from the sale of at least FOUR MILLION and 00/100 ($4,000,000.00) DOLLARS, then the Lender shall effect payment to the O'Rileys in the amount of ONE HUNDRED FIFTY THOUSAND and 00/100 ($150,000.00) DOLLARS (the "O'Riley Reimbursement Payment"). If earned pursuant to the terms hereof, the O'Riley Reimbursement Payment shall be paid to the O'Rileys, for the purpose of compensating the O'Riley's for their time and effort in consummating the sale and also to reimburse the O'Rileys for fees and expenses they have incurred in helping to facilitate the sale of the Facility. If earned, the O'Riley Reimbursement Payment shall be payable to Donahue, Hyland & Donohue, attorneys for Richard C O'Riley and Joan M. O'Riley. Prior to issuing this payment, the Obligors shall provide to the Lender a Release of any and all claims, which is satisfactory to the Lender in form and substance.

Notwithstanding the foregoing, the O'Riley Reimbursement Payment shall not be deemed earned and shall not be paid or payable, and the O'Riley's claim for payment of the O'Riley Reimbursement Payment shall be terminated and deemed void, upon the occurrence of any of the following events:

(a) the occurrence of any Event of Default under the Settlement Agreement; the Obligors' breach of or failure to comply with any term, condition, provision or agreement herein contained; or in the event any warranty or representation of the Obligors is not accurate or correct when given;

(b) in the event the Facility, the Stock Shares, the Premises or any of the Collateral is sold, transferred or conveyed to any party other than the Identified Purchaser;

(c) in the event the Facility or any of the Collateral is sold to any party through foreclosure, or other liquidation or auction process;

(d) in the event the Lender does not timely receive Net Proceeds in an amount of at least FOUR MILLION and 00/100 ($4,000,000 00) DOLLARS directly from the sale of the Facility to the Identified Purchaser;

(e) in the event the Lender effects a sale of all or any portion of the Loan Documents;

Initials of Obligors: _____

00195

(f) in the event the Facility or any of the Collateral is sold, transferred and/or conveyed to the Lender or any party or entity affiliated with the Lender; or

(g) in the event the Broker or any other party is entitled to any commission, fee or claim for reimbursement or other payment in connection with the sale of the Facility or any of the Collateral.

For purposes hereof the term "Net Proceeds" shall mean the aggregate gross sales proceeds received by the Lender in good funds, which are directly attributable to the sale of the Facility to the Identified Purchaser, minus any and all expenses associated with such sale, including all recording and filing fees, Lender's legal fees, and other costs and expenses incurred by the Lender, all as determined by the Lender in its sole and exclusive discretion.

6. The Lender agrees that it shall forbear from effecting a collection action against the O'Rileys in their individual capacities, respecting any deficiency balance in connection with the Rocoso Note, subject to and contingent upon compliance with all of the following conditions:

(a) there has occurred no breach of, or failure by the Obligors to comply with, any term, condition, provision or agreement herein contained or under the Settlement Agreement, including the Obligors' continuing obligation to fully and completely cooperate with the Lender and the Manager respecting the sale and management of the Facility, nor has there occurred any other Event of Default under the Settlement Agreement;

(b) each and every warranty and representation to the Lender and Manager, made by or on behalf of the Obligors, shall have been accurate when given.

7. The Obligors shall cause Allied Rocoso to convey any and all rights, permits, property and assets to the Indentified Purchaser, all as may be required by the Indentified Purchaser (the "Rocoso Permits") but subject to the Lender's approval and consent. In the event the Rocoso Permits have been conveyed to the Identified Purchaser, and provided the O'Rileys have earned the O'Riley Reimbursement Payment as set forth in Section 5 above, then the O'Riley Reimbursement Payment will be increased by the sum of TWENTY-FIVE THOUSAND and 00/100 ($25,000.00) DOLLARS to equal the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND and 00/100 ($175,000 00) DOLLARS, which additional TWENTY-FIVE THOUSAND and 00/100 ($25,000 00)

Initials of Obligors: _____

DOLLARS payment shall constitute consideration to the O'Rileys for effecting or causing the conveyance of the Rocoso Permits.

8. The Settlement Agreement is hereby amended and modified, effective as of the date hereof, by deleting from the Settlement Agreement, the entire Section 4 thereof. The Obligors agree to utilize their best efforts and extend their full cooperation to the Lender so that the transfer of the Facility will be fully consummated on the date which is the earliest of the following (the "Closing Date"):

   (a) November 15, 2010;

   (b) the date selected by the Lender upon which the sale of the Facility to a third party (which is neither related to nor affiliated with the Lender) is fully consummated, with all proceeds received by the Lender and otherwise in full accordance with such terms, conditions and in amounts as are acceptable to the Lender, in its sole and exclusive discretion; or

   (c) such date and time prior to November 15, 2010, as the Lender may determine, in its sole and exclusive discretion.

Notwithstanding the foregoing, the Lender may in its sole and exclusive discretion, extend the Closing Date to correspond to such later closing date as may be set forth in the Purchase Agreements. The closing will take place at the offices of Lender's counsel or other location determined by the Transferee, with the time for closing to be designated by the Transferee by written notice to the Borrowers.

9. The Settlement Agreement is hereby amended and modified, effective as of the date hereof, by deleting from the Settlement Agreement, the entire Section 54 thereof. The Obligors acknowledge that they may be indebted to the Lender in connection with guaranties, promissory notes and other obligations not specifically referred to within the Settlement Agreement or herein. The Settlement Agreement and this Agreement shall not serve to modify, restructure or amend any such indebtedness or obligation which shall continue to remain the joint and several responsibility of all obligated parties in accordance with the applicable documents.

10. The Obligors hereby assign and convey to the Lender all amounts to be paid pursuant to the Purchase Agreements and hereby authorize the Identified Purchaser, or any nominee, without further notice, to effect all such payment directly to the Lender.

Initials of Obligors: _____

11. The Settlement Agreement is hereby amended and modified, effective as of the date hereof, by deleting from the Settlement Agreement, the entire subsection "a" of Section 6 thereof entitled "Covenant to Operate." The remaining subsections of Section 6 of the Settlement Agreement shall remain in full force and effect The Obligors hereby covenant and agree that they will extend their full cooperation to the Manager in connection with the Manager's management of the Facility and the Manager's efforts to obtain MSW authorization, and the Obligors will not dissipate the Facility nor, without the express prior written consent of the Lender, remove any personal property therefrom. No sale of any of the property relating to the Facility shall be made by the Obligors other than in the ordinary course of business. It is anticipated that the O'Rileys will not be required to undertake day to day management responsibility of the Facility, but shall be fully available to cooperate with the Manager in connection with reasonable requests for assistance or documentation.

12 Section 9 of the Settlement Agreement is deleted in its entirety. Effective as of the date hereof, no payments shall be made by the Borrower, or the O'Riley Trust, in the nature of compensation, repayment of officer loans, dividends, distribution or otherwise to the O'Rileys, or the O'Riley Trust, or any officer, trustee, shareholder, relative or insider of the Obligors, and all such obligations are hereby released.

13 Notwithstanding, anything to be the contrary in the Settlement Agreement or this Agreement, at no time shall the Lender be obligated to release its interest in the Facility nor any of the Collateral, nor accept or approve of a sale, transfer and/or conveyance of the Facility or any of the Collateral for consideration which is less than the total amount outstanding in connection with the Obligations, including all Commercial Debt Instruments, including all principal, interest, fees, costs and expenses which may be permitted pursuant to the Loan Documents and applicable law. Any sale of the Facility which would not result in payment in full of all outstanding Obligations to the Lender, shall at all times be subject to the Lender's approval in its sole and exclusive discretion. The Lender may, at its option, at any time, pursue the sale of the Facility or any of the Collateral to a party other than the Identified Purchaser and the Obligors shall at all times extend their full cooperation to the Lender in order to effect a sale of the Facility that is acceptable to the Lender.

14. The Obligors agree to keep all of the terms and conditions of this Agreement strictly confidential and agree to limit any disclosure of the terms and conditions of this Agreement only to:

(a) legal counsel retained by the Obligors;

Initials of Obligors: _____

(b) the Obligors' accountants; and

(c) as otherwise required by law.

The confidentiality agreement of the Obligors hereunder shall survive the Closing Date and the transfer of the Facility.

15. The Obligors hereby confirm and acknowledge that they have no offsets, defenses, counterclaims, charges or other claims, asserted or unasserted, against the Lender or any of its officers, directors or agents arising out of or relating to the transaction referred to herein or any transactions of any nature they have entered into with the Lender or any predecessor in interest of the Lender, or in connection with the Commercial Debt Instruments, the Loan Documents, the Obligations or any proceedings commenced by the Lender, or otherwise, which could in any way reduce or affect their liability to repay the sums owed under the Commercial Debt Instruments as set forth in the Settlement Agreement and the Obligors hereby release the Lender, its agents and employees, from any and all claim or causes of action, of any nature, from the beginning of the world to this date. The Obligors specifically acknowledge and confirm the full amount of the indebtedness to the Lender in connection with the Obligations as described in the Settlement Agreement and that the full amount of the Obligations continues to be the uncontested joint and several liability of the Obligors.

16. The whole of this Agreement is herein set forth and there are no verbal or other written agreements, and no understandings or customs affecting the terms hereof. The Obligors have placed no reliance upon any undertaking of the Lender except to the extent expressed herein. This Agreement can be modified only by a written instrument signed by all parties hereto.

17. The masculine and singular as used herein, shall be instead of, and shall stand for the plural number, as well as estates, heirs, conservators, and executors, as successors-in-interest, as the context may require.

18. All covenants, agreements, representations and warranties made in the Settlement Agreement and herein or in other documents delivered by or on behalf of the Obligors pursuant to or in connection with the Settlement Agreement or this Agreement are material and shall be deemed to have been relied upon by the Lender, notwithstanding any investigation now or hereafter made by the Lender, shall continue in full force and effect so long as the Obligations remain outstanding and unpaid. All statements, warranties, representations, and covenants made by the Obligors in the Settlement

Initials of Obligors: _____

Agreement or in any certificate, document or other paper delivered to the Lender at any time by or on behalf of the Obligors pursuant thereto or pursuant to this Agreement are hereby reaffirmed and shall be deemed continuing and in full force and effect.

19. This Agreement and all other instruments, documents and papers which relate thereto which have been or may be hereafter furnished to the Lender may be reproduced by the Lender by any digital, photographic, photo static, micro-card, miniature photographic, xerographic, or similar process, and the Lender may destroy the original from which any document was so reproduced. Any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

20. This Agreement shall not be binding upon the Lender until (i) this Agreement is signed by the Obligors; and (ii) any and all conditions and/or requirements which are to be satisfied and/or performed by Obligors at the time of execution of this Agreement are performed and/or satisfied to the Lender's satisfaction; and (iii) this Agreement is accepted in writing by a duly authorized officer of the Lender.

21. The Obligors hereby represent and warrant that they were not induced to enter into this Agreement by any representations on the part of the Lender, except as the same are expressed herein, nor have they placed any reliance on any undertaking of the Lender except to the extent expressed herein.

22. This Agreement shall not be construed strictly against the Lender, but liberally for its benefit as to all particulars and any discrepancy or inconsistency between this Agreement, the Settlement Agreement and any of the Loan Documents shall be resolved by the Lender in its sole and exclusive discretion.

23. To the extent that any paragraph or portion hereof is deemed to be in violation of law or equity, then so much thereof shall be excised from this Agreement and the remaining provisions shall remain in full force and effect.

24 Time is of the essence with respect to all of the Obligors obligations hereunder

25. The Obligors have of this day: (i) consulted with counsel of their choice regarding this Agreement; (ii) reviewed with counsel the terms and provisions of this Agreement and all documents executed in connection herewith, if any; (iii) understood and assented to the obligations imposed by this Agreement and all documents executed in connection herewith; (iv) knowingly and willingly entered into this Agreement and all documents executed in connection herewith

Initials of Obligors: _____

26. Within fifteen (15) days following the timely execution, in full, of the Purchase Agreements, the Lender shall effect payment to the O'Rileys of the sum of Five Thousand Dollars ($5,000) as reimbursement for fees and expenses incurred by O'Rileys in order to implement the Purchase Agreements. The Obligors warrant and represent that they have obtained the consent of their counsel, Donohue, Hyland and Donohue (the "Obligors' Firm") to release ABC&D and the Trust from any and all liability for all outstanding fees and expenses and that upon closing the Firm has agreed to issue a release of such obligations for the benefit of any purchaser

27 This Agreement is executed as a sealed instrument, shall be construed under the laws of the Commonwealth of Massachusetts and shall inure to the benefit of the Lender's successors and assigns, but may not be assigned by the Obligors without the prior express written consent of the Lender.

28. The O'Rileys and the Trust hereby release ABC&D from any and all claims and obligations including without limitation, all officer loans, notes, debts, causes of action of any kind and nature, and hereby agree to execute such additional documents as the Lender or the Identified Purchaser may require in order to confirm the release contained herein.

EXECUTED as a sealed instrument as of the day and year first written.

Witness:

ABC&D Recycling, Inc.

By: _____
Richard C. O'Riley, President

By: _____
Joan M. O'Riley, Treasurer

_____
Richard C. O'Riley, Individually

_____
Joan M. O'Riley, Individually

Initials of Obligors: _____

00201

Witness:

O'Riley Family Trust

By: _____
Joan M. O'Riley, Trustee

By: _____
Richard C. O'Riley, Trustee

Witness:

Country Bank For Savings

By: _____
Its

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb, 2010, before me, the undersigned notary public, personally appeared Richard C. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily, on behalf of ABC&D Recycling, Inc., for its stated purpose.

_____

My commission expires: 10/24/2014

{Affix notary seal here}

MATTHEW L. DONOHUE
MY COMMISSION EXPIRES OCT. 24, 2014
COMMONWEALTH OF MASSACHUSETTS
NOTARY PUBLIC

Initials of Obligors: _____

00202

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb, 2010, before me, the undersigned notary public, personally appeared Joan M. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily, on behalf of ABC&D Recycling, Inc., for its stated purpose.

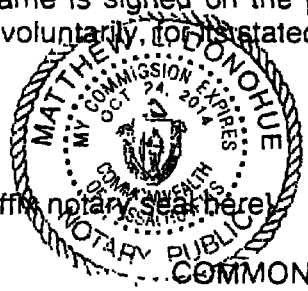
{Affix notary seal here}

My commission expires: 10/24/2014

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb., 2010, before me, the undersigned notary public, personally appeared Richard C. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily, for its stated purpose.



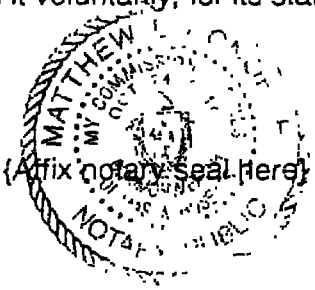
{Affix notary seal here}

My commission expires: 10/24/2014

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb, 2010, before me, the undersigned notary public, personally appeared Joan M. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily, for its stated purpose.



{Affix notary seal here}

My commission expires: 10/24/2014

Initials of Obligors: _____

00203

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb, 2010, before me, the undersigned notary public, personally appeared Richard C. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily, on behalf of the O'Riley Family Trust, for its stated purpose.

{Affix notary seal here}

My commission expires: 10/24/2014

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

On this 22 day of Feb, 2010, before me, the undersigned notary public, personally appeared Joan M. O'Riley, proved to me through satisfactory evidence of identification, which was MA Driver's Lic., to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily, on behalf of the O'Riley Family Trust for its stated purpose.

{Affix notary seal here}

My commission expires: 10/24/2014

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Initials of Obligors: _____

00204

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DEPOSITION EXHIBIT 65
J. Algie
8/3/10 SK
PENGAD 800-631-6989

DEPOSITION EXHIBIT 49
R. O'Riley
8/2/10 SK
PENGAD 800-631-6989

AGREEMENT FOR THE PURCHASE AND SALE OF CAPITAL STOCK OF ABC&D RECYCLING, INC.

This Agreement for the Purchase and Sale of Capital Stock of ABC&D Recycling, Inc. ("Stock Purchase Agreement") dated February 18, 2010, is by and between Chris Berardi, an individual with an address of 1365 Main Street, Waltham, Massachusetts 02451 (hereinafter referred to as "Purchaser"), and Richard C. O'Riley, an individual residing at 265 Upper Church Street, P. O. Box 719, Ware, MA 01082 (hereinafter referred to as "Seller").

WITNESSETH:

WHEREAS, ABC&D Recycling, Inc. (hereinafter "ABC&D") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, principally engaged in the business of operating a construction and demolition transfer facility in Ware, Massachusetts (the "Facility"); and

WHEREAS, Seller owns one hundred (100) shares of the common capital stock of ABC&D (the "Shares"), being all of the issued and outstanding shares of stock in ABC&D; and

WHEREAS, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Shares upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS. commencing this date, the Facility is presently being managed and operated by the Purchaser's management company, Valley Management Services, Inc. (the "Manager") pursuant to a certain Management Agreement of even date by and between the Manager, ABC&D and the O'Riley Family Trust (the "Management Agreement")

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1. **Closing Date**. The term "Closing Date" shall mean the date that is the earlier of (x) the date that is thirty (30) days after all conditions precedent to the closing hereunder, and to the closing of the transactions contemplated by the real estate Purchase & Sale Agreement of even date (the "Real Estate

Agreement") between the O'Riley Family Trust and the Purchaser (or its permitted nominee) for the purchase of 198 East Street, Ware, Massachusetts, have been satisfied or waived, and (y) September 22, 2010 at the offices of the Seller's counsel or, at the option of ABC&D's lender, Country Bank for Savings (the "Lender") at the offices of the Lender or its counsel, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this Agreement; provided, that if the closing date under the Real Estate Agreement is extended, the Closing Date in this Agreement shall be extended to the same date.

1.2 **Financial Statements**. The term "Financial Statements" shall mean the Balance Sheet and the related statements of income and changes in financial position and notes thereto of ABC&D as of and for the period ended December 31, 2009, certified by ABC&D's independent public accountants as fairly presenting the financial condition and results of operations of ABC&D as of and for the period ended December 31, 2009 and attached hereto as Schedule 1.2. The Seller agrees and acknowledges that the obligation owed to Donohue, Hyland and Donohue, in the amount of $41,307.50, set forth in Schedule 1.2 and all officer and shareholder loans will be discharged as of the Closing Date and that these specific obligations shall not survive the closing. Any and all other obligations of ABC&D, whether known or unknown, disclosed or undisclosed, shall survive the closing, remain the obligation of ABC&D subsequent to the Closing Date. Notwithstanding anything in this Agreement to the contrary, absolutely no adjustment shall be applied to the Purchase Price, notwithstanding the existence of any such obligation, or otherwise.

1.3 **Shares**. The term "Shares" shall mean all the issued and outstanding shares of common stock of ABC&D owned by Seller, as identified in Schedule 1.3

ARTICLE II

PURCHASE AND SALE OF SHARES

2.1 **Transfer of Shares**. Upon the terms and subject to the conditions contained herein, and in reliance on the respective representations and warranties of the parties, on the Closing Date Seller will sell, convey, transfer, assign and deliver to Purchaser, and Purchaser will purchase from Seller, the Shares for the price specified in Section 2.2, free and clear of all claims, liens, charges, security interests, equities, encumbrances and adverse claims of any kind.

2.2 **Purchase Price**. The purchase price to be paid to Seller in full payment for the Shares shall be Fifty Thousand Dollars ($50,000.00) (the "Purchase Price") which Purchase Price the Seller hereby irrevocably assigns over to the Lender . Upon delivery by Seller of the Shares at Closing, Purchaser shall pay the Purchase Price to the Lender in good and immediately available

funds. Nothwithstanding anything to the contrary in this Agreement or any other agreement, under no circumstance shall there be any adjustments to, or refund of, the Purchase Price and the Purchaser covenants, warrants, understands and agrees that regardless of the discovery of any undisclosed liabilities, at the Closing the Purchase Price shall be due and payable, if full, without any right of set off, discount, adjustment, or refund at any time.

ARTICLE III

CLOSING

3.1 **Closing**. The closing of the purchase and sale of the Shares will take place at 10 o'clock A.M. on the Closing Date.

3.2 **Documents to be Delivered**. To effect the transfer referred to in Section 2.1 hereof and the delivery of the consideration described in Section 2.2 hereof, Seller and Purchaser shall, on the Closing Date, deliver the following:

(a) Seller and Purchaser shall each deliver all documents and instruments required to be delivered pursuant to Articles VII and VIII hereof.

(b) Seller shall deliver to Purchaser the certificate or certificates evidencing the Shares, and with executed stock assignment forms validly conveying such Shares to Purchaser.

(c) All instruments and documents executed and delivered to Purchaser and Seller shall be in form and substance, and shall be executed in a manner, reasonably satisfactory to counsel for the receiving party and in any event, satisfactory to the Lender.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, on the date hereof and on the Closing Date, as follows:

4.1. **Authority of Seller**. The Seller has full authority and power to enter into this Agreement and consummate the transactions contemplated thereby.

4.2 **Authorization of Seller**. All actions by Seller necessary to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly taken by Seller. This Agreement has been duly and validly executed by Seller and constitutes a valid and binding obligation of Seller, enforceable against

Seller in accordance with its terms.

4.3. **Title to Shares in Seller**. Seller has good, legal title to the Shares, free and clear of all claims, liens, charges, security interests, equities, encumbrances and adverse claims of any kind, and subject to no proxy, shareholder's agreement or voting trust. There are no outstanding subscriptions, options, warrants or rights of any kind, absolute or contingent, to purchase or acquire any of the Shares, and there are no contracts, commitments, understandings, arrangements or restrictions by which Seller is bound to sell any Shares to any person or entity other than purchaser. The Shares owned by Seller constitute all of the issued and outstanding shares of stock in ABC&D; and Seller has full authority to sell and deliver the Shares to Purchaser in the manner provided in this Agreement.

4.4 **Organization of ABC&D**. ABC&D is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts and has full corporate power and authority to conduct its business as it is presently being conducted and to own, lease and operate its properties and assets. ABC&D is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which such qualification is necessary under applicable law as a result of the property owned, leased or operated by it or the conduct of its business.

4.5 **Financial Statements**. The Purchaser has been furnished with a true and complete copy of the Financial Statements attached hereto as Schedule 1.2. The Balance Sheet (including any related notes) contained in the Financial Statements fairly present the financial position of ABC&D as of its date, and the Financial Statements (including any related notes) fairly present the results of operations and changes in financial positions of ABC&D for the periods therein set forth in each case in accordance with generally accepted accounting principles consistently applied during the periods involved. Except as disclosed in Schedule 4.5 or as reflected in the Financial Statements and except for liabilities arising in the ordinary course of business since December 31, 2009, ABC&D has no liabilities of any nature, secured or unsecured, contingent or absolute, matured or unmatured which are material to ABC&D, and no act or condition exists or, to the knowledge of Seller, is threatened which might cause any such liability in the future.

4.6 **Absence of Certain Changed Events**. Except as set forth in Schedule 4.6, since December 31, 2009 through the date hereof, there has not been:

(a) Any material damage, destruction, loss or forfeiture (whether or not covered by insurance) (i) affecting any person or asset of ABC&D or (ii) causing any change in the financial condition, assets, liabilities or results of operations of ABC&D, except for changes which have not, individually or in the

aggregate, been materially adverse;

(b) Any increase in the compensation payable or to become payable by ABC&D to any of its respective directors, officers, employees, agents or consultants; any change in any employee welfare, pension, retirement, profit-sharing or similar payment or arrangement made or agreed to by ABC&D for any employees; or any new employment agreements to which ABC&D is a party;

(c) Any mortgage or pledge of, or creation of any lien, lease, security interest, pledge, or other charge or encumbrance with respect to, or any sale, assignment or transfer of any of the assets of ABC&D, material singly or in the aggregate, other than in the ordinary course of business other than to or for the benefit of the Lender;

(d) Any waiver of any material rights or cancellation of any debts or claims of ABC&D, or any transaction or agreement between ABC&D and any officer, director, or affiliate thereof; whether or not in the ordinary course of business;

(e) Any failure to repay any material obligation of ABC&D, except in the ordinary course of business or where such failure would not have a material adverse effect on the business or financial condition of ABC&D;

(f) Any failure to operate the business of ABC&D in the ordinary course consistent with past practice; the institution of any unusual or novel method of transacting business, which has had or may reasonably be expected to have a material adverse effect on the assets, properties, liabilities, business prospects, condition (financial or other) or results of operations of ABC&D;

(g) Any material change by ABC&D in accounting methods, principles or practices except as required or permitted by GAAP;

(h) Any creation, incurrence or assumption of any indebtedness for money borrowed by ABC&D (or the assumption, guarantee or endorsement of liability for the obligations of any person other than ABC&D) or any commitment for such creation, incurrence, or assumption except for indebtedness (other than for borrowed money) in the ordinary course of business;

(i) Any material capital expenditure made or any commitment for any addition to property, plant or equipment entered into by ABC&D;

(j) Any direct or indirect redemption, purchase or other acquisition of any capital stock of ABC&D or any declaration setting aside or payment of any dividend on any capital stock of ABC&D; or

(k) Any contractual commitment to any third party, other than in

the ordinary course of business, by ABC&D, relating to the property, assets, or business of ABC&D or the acquisition or disposition of property or assets, other than to or for the benefit of the Lender; or

(l) Payment of any material liability or obligation other than current liabilities and obligations incurred in the ordinary course of business; or

(m) Any agreement by ABC&D to do any of the foregoing.

4.7 **Real Property**. ABC&D does not own any real property.

4.8 **Condition of and Title to Tangible Assets**. The buildings, improvements, facilities and equipment of ABC&D used in the operations of its business are structurally sound and in good operating condition and repair, except as set forth in Schedule 4.8 and except for ordinary wear and tear. Except as set forth in Schedule 4.8, ABC&D has good and marketable title to the, motor vehicles, machinery, equipment, fixtures, furniture and other tangible personal property used by ABC&D in the conduct of its business, free and clear of any liens, claims, security interests, charges, options, leases, restrictions, encumbrances and adverse claims of any kind, except those liens, rights and security interests in favor of the Lender

4.9 **Inventories**. The items of inventory set forth in the Financial Statements were properly stated therein at the lower of cost or market, and the Financial Statements contained adequate reserves for any items of inventory below standard quality. All items of inventory acquired by ABC&D since December 31, 2009, have been acquired in the ordinary course of business and are properly accounted for in the books and records of ABC&D on the same basis.

4.10 **Contracts and Commitments**. Except as set forth in Schedule 4.10, ABC&D is not a party to, nor are its properties or assets bound by, any written agreement except those with the Lender:

(a) commitment, contract, purchase order, letter of credit or agreement involving any obligation or liability on the part of ABC&D of longer than one (1) year in duration measured from the date of such commitment, contract, purchase order or letter of credit or for more than Five Thousand Dollars ($5,000) and not cancellable (without liability) within sixty (60) days;

(b) lease of real property;

(c) lease of personal property involving any annual expense in excess of Five Thousand Dollars ($5,000) and not cancellable (without liability) within forty-five (45) days;

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(d) employee stock option or stock purchase, profit-sharing, pension, retirement, health, welfare, deferred or incentive compensation, insurance or other benefit plan or program for, or employment agreements with, or any loan or advance (excluding expense advances) to any of the employees, agents, or consultants of ABC&D;

(e) any joint venture or partnership agreement;

(f) any sales agency, dealer, manufacturers' representative, or similar agreement;

(g) any material contracts and commitments not otherwise described above (including purchase orders, franchise agreements, and undertakings or commitments to any governmental or regulatory authority) relating to the business of ABC&D;

(h) collective bargaining agreements or other union contracts;

(i) agreement or covenant or other provision limiting the freedom of ABC&D to compete in any line of business or with any person or in any area, except as provided by this Agreement;

(j) license, whether as licensee or licensor;

(k) employment contracts or any other contract or agreement with or for the benefit of any director or officer of ABC&D or the Seller.

Except to the extent, if any, set forth in Schedule 4.10 or any other relevant Schedule, all contracts, instruments, leases, agreements, commitments, bids, offers, powers, policies and arrangements are valid and binding obligations of the parties thereto in accordance with their terms and are in full force and effect and no event has occurred which, under the terms thereof (with the passage of time or the giving of notice), would result in or permit the termination thereof or the acceleration of any obligation thereunder without the consent of ABC&D, except respecting obligations owed to the Lender Except as disclosed in Schedule 4.10, neither ABC&D nor any other party is, to the knowledge of Seller, in default in the payment of any obligation under, or in the performance of any material covenants or obligations to be performed by it pursuant to, any contract, instrument, lease, agreement, commitment, bid, offer, power, policy, plan or arrangement, of a type required to be disclosed in the Schedules hereto, except respecting obligations owed to the Lender No such contract, instrument, lease, agreement, commitment, bid, offer, power, policy, plan or arrangement, or right, privilege or option in favor of ABC&D thereunder, will become terminable, or be terminated, impaired, or breached, and no obligation thereunder will be accelerated or become capable of being accelerated, by reason of any transaction contemplated by this Agreement, except respecting obligations owed

to the Lender

4.11 **No Conflict or Violation.** The execution and delivery of this Agreement does not, and consummation of the transactions contemplated hereby will not, result in (a) a violation of or a conflict with any provision of the Articles of Organization or Bylaws of ABC&D, or any agreement or instrument relating to or affecting Seller, except as otherwise disclosed in any Schedule hereto, (b) a violation of or conflict with any federal, state or local statute, rule, regulation, ordinance, order, judgment, writ, injunction or decree applicable to Seller, the violation of which would have a material adverse effect on the business or financial condition of ABC&D, or (c) an imposition of any material lien, mortgage, pledge, encumbrance, claim, restriction or other charge on the business of ABC&D or on any of its assets, except in favor of the Lender.

4.12 **Consents and Approvals.** ABC&D has all permits, concessions, grants, franchises, licenses and other governmental authorizations and approvals necessary for the appropriate conduct of the business of ABC&D, and all such permits, concessions, grants, franchises, licenses, authorizations and approvals are in full force and effect, and there are no proceedings pending or threatened which may result in the revocation, cancellation or suspension or any materially adverse modification of any thereof. Except as set forth in Schedule 4.12 hereto, no consent, approval or authorization of, or declaration, filing or registration with, any foreign, United States, federal, state, or local governmental or regulatory authority is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Agreement or the consummation by Seller and ABC&D of the transactions contemplated hereunder.

4.13 **Litigation.** Except as set forth in Schedule 4.13, there is no action, suit, proceeding, arbitration, claim, charge or investigation, pending or, to the knowledge of Seller, threatened against Seller or ABC&D at law or in equity, or before any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, which may reasonably be expected to result in any material adverse change in the prospects, financial conditions, results of operations, properties, assets, liabilities or business of ABC&D, or which will or could prevent or interfere with the consummation of any transaction contemplated hereunder. ABC&D is not subject to any order, judgment, decree, writ, injunction or obligation which would materially limit the ability of ABC&D to operate its business in the ordinary course, or which could prevent or interfere with the consummation of any transaction contemplated hereunder.

4.14. **Compliance with Law.** Except as set forth in Schedule 4.14, ABC&D is in compliance with all applicable laws, statutes, ordinances, regulations, rules, orders, judgments, decrees and other requirements imposed by a foreign, federal, state or local governmental authority, including, without

limitation, all such laws, statutes, ordinances, regulations, rules, orders, judgments, decrees and other requirements concerning occupational safety, product safety, environmental protection, or employment practices. Neither Seller nor ABC&D has received any written notice to the effect that, or otherwise been advised that, ABC&D is not in compliance with any of such laws, statutes, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by and foreign, federal, state or local governmental authority, nor has Seller any reason to anticipate that any presently existing circumstances are likely to result in such non compliance or violations.

4.15 **Insurance.** No notice has been received from any insurance or bonding company that has issued a policy with respect to the business or property of ABC&D, or from any board of fire underwriters (or others, exercising similar functions) claiming any material defects or deficiencies or requiring the performance of any material repairs, replacements, alterations or other work. ABC&D has not been advised by an insurance carrier, bonding company, or broker that any of its policies may not be renewable.

4.16 **No Brokers.** Seller has not entered into and will not enter into any agreement, arrangement or understanding with any person or firm that will result in the obligation of Purchaser to pay any finder's fee, brokerage commission, or similar payment in connection with the transactions contemplated hereunder.

4.17 **No Other Agreements to Sell Shares** There is no legal obligation, absolute or contingent, to any other person or firm to sell the Shares.

4.18 **Trademarks, Etc.** No person has a right to receive a royalty or similar payment in respect of any trademarks, copyrights, service marks or trade names ("Trademarks") owned or used pursuant to any contractual arrangements entered into by ABC&D and no person otherwise has a right to receive a royalty or similar payment in respect of any such Trademarks. Use of the Trademarks by ABC&D does not infringe upon or otherwise violate the rights of any third party in or to such Trademarks, and to the best of Seller's knowledge no proceedings have been instituted or claims received by ABC&D alleging that use of any of the Trademarks of ABC&D infringes upon or otherwise violates any rights of a third party in or to such Trademarks.

4.19 **Tax Matters.** All federal, state, county, local and other taxes, including without limitation, corporate, franchise, income, profits, capital stock, purchase, occupation, property, excise, employee, payroll, sales, use ad valorem and other taxes, due and payable by ABC&D, together with any additions to tax, interest, and penalties thereon, have been paid or provided for, and ABC&D has filed, in connection with the business of ABC&D, tax returns and reports required to be filed with all taxing authorities. All taxes and assessments that ABC&D is required bylaw to withhold or to collect have been duly within and collected, and, to the extent due and payable, have been paid over to the proper government

authorities, and all withholdings and collections and all other payments due in connection therewith are duly reflected on the Financial Statements. Any liabilities for taxes reflected in the Financial Statements represent adequate provision for the payment of all accrued and unpaid federal, state, county, local and other taxes of ABC&D for all periods ending on or prior to the date of the Financial Statements. Except as set forth in Schedule 4.19 no audit of any federal, state, local or other tax return of ABC&D is in progress or pending, and no waiver of any statutes of limitation has been given and is in effect with respect to the assessment of any taxes against ABC&D or its properties or assets.

4.20 **Labor Matters**. Except as disclosed on Schedule 4.20, there are no pending or threatened disputes, labor controversies, strikes or work stoppages with any union or other organization representing employees of ABC&D.

4.21 **Accounts Receivable**. The Financial Statements contain an adequate reserve for the accounts receivable reflected in the Financial Statements.

4.22. **Guarantees**. Except as disclosed in Schedule 4.22 hereto, ABC&D is not, directly or indirectly, a guarantor or indemnitor or otherwise liable for or in respect of any indebtedness of any person except as an endorser of checks received by it and deposited in the ordinary course of business of ABC&D, except in favor of the Lender.

4.23 **Environmental Liabilities**. Except as set forth in Schedule 4.23, ABC&D has no liability, absolute or contingent, known, or unknown, determined or determinable, arising out of or resulting from the following:

(a) Any violation of any state, federal, or local government environmental law, regulation, permit or license; or

(b) The Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, Massachusetts General Laws, Chapter 21E, or any regulations promulgated thereunder ("Chapter 21E Laws"), or any violation of said Chapter 21E Laws; or

(c) The generation, transport, storage, release or disposal of oil or any hazardous material or substances, as defined by the Chapter 21E Laws or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, at any site at which ABC&D may have generated, transported, stored, released or disposed of oil or any hazardous material or substances or at any site which is or was owned, leased or otherwise controlled by ABC&D; or

(d) Any violation of any current or previously effective federal,

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state or local statute, regulation, ordinance or authority including without limitation, the Resource Conservation and Recovery Act ("RCRA"), or the Clean Air and Water Acts, as amended.

4.24 **Disclosure**. Neither this Agreement, nor any of the Schedules attached hereto, nor any of the certificates, statements, or other information or documents caused to be furnished to Purchaser in connection with the transaction contemplated hereunder contain to the best of Seller's knowledge any untrue statement of a material fact or omit to state a material fact necessary to make the statements herein or therein, in light of the circumstances under which they were or are made, not misleading. There is no fact known to Seller which materially adversely affects, or threatens in the future (so far as Seller can now reasonably foresee) materially and adversely to affect, the business, operations, affairs, condition (financial or otherwise), prospects, properties or assets of ABC&D that has not been disclosed to Purchaser.

4.25 Intentionally Omitted

4.26 **Employee Matters**. ABC&D presently employs 3 full-time and 1 part time employees. Seller has provided to Purchaser a complete and accurate list of all the employees employed by ABC&D as of the date hereof, showing for each such employee (i) the position held, (ii) the current base pay or base compensation and annual bonus for ABC&D's last fiscal year, (iii) such employee's years of service, and (iv) whether such employee is on leave of absence or short term disability and if so the nature and expected duration of such leave. Schedule 4.26 contains a complete and accurate list, and Seller has delivered to Buyer a true and accurate copy of any and all written employment agreements. There is no union contract or collective bargaining agreement to which ABC&D is a party, and no employee of ABC&D is covered by any collective bargaining agreement and no union has been recognized as the collective bargaining representative of any employees or has attempted to engage in negotiations with ABC&D. No unfair labor practice charge, work stoppage or other labor related activity has occurred relating to the ABC&D. ABC&D is in compliance with all requirements of federal, state or local law related to employee relations and employment, employment practices, terms and conditions of employment and wages and hours and is not engaged in any unfair labor practice and is not in arrears in payment of wages or withholding taxes on other employee benefit tax.

4.27 **Employee Benefit Plans**. ABC&D has no employee benefit plans or employee welfare plans as such terms are defined in ERISA, and no stock purchase, stock option, severance, employment, fringe benefit, bonus incentive, deferred compensation or any other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, existing as of the date hereof for the employees of ABC&D (collectively, the "Employee Plan(s)"); and ABC&D does not maintain, contribute to or have any

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liability to any Employee Plan. ABC&D has no obligation for retiree health insurance and life insurance or other retiree benefits. ABC&D has no obligation to contribute to or any liability (potential or otherwise) with respect to any multiemployer plan on behalf of any current or former employee.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Purchaser hereby represents and warrants to Seller as follows:

5.1 **Authorization**. Purchaser has all necessary authority to enter into this Agreement. This Agreement has been duly executed and delivered by Purchaser and is a valid and binding obligation of Purchaser enforceable against him in accordance with its terms.

5.2 **Investment Purpose**. Purchaser is acquiring the Shares for his own account, for investment only, and not with a view to resale in connection with, or with intent of participating directly or indirectly in, any distribution of the Shares within the meaning of the Securities Act of 1933, as amended (the "Act"). Purchaser understands and agrees that the sale of the Shares to Purchaser has not been registered under the Act or any state securities laws, and that the Shares may not be resold without registration under the Act or applicable state securities laws or an exemption therefrom.

5.3 **Consents and Approvals**. No consent, approval, or authorization of, or declaration, filing, or registration with, any United States federal or state governmental or regulatory authority or other party is required to be made or obtained by Purchaser in connection with the execution, delivery, and performance by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereunder.

5.4 **No Brokers**. Purchaser has not entered into and will not enter into any agreement, arrangement, or understanding with any person or firm which will result in the obligation of Seller, to pay any finder's fee, brokerage commission, or similar payment in connection with the transactions contemplated hereunder.

ARTICLE VI

COVENANTS OF SELLER

Seller covenants and agrees that from the period from the date hereof through the Closing Date, he will vote all of his Shares so as to insure that:

6.1 **Maintenance of Corporation**. Except as to the duties and

functions to be performed by the Manager under the terms of the Management Agreement and while such Management Agreement is in effect, ABC&D shall:

(a) not change its structure as a Massachusetts corporation;

(b) not incur any indebtedness for borrowed money; or assume, guarantee, endorse or otherwise become responsible for the obligations of any other individual, partnership, firm or corporation, or make any loans or advances to any individual, partnership, firm or corporation, except in the ordinary course of business and consistent with past practice;

(c) not amend Articles of Organization or Bylaws, change the number of authorized or outstanding shares of the capital stock of ABC&D or issue any capital stock or any warrants, options, or other rights to subscribe for or to purchase any capital stock or securities convertible into capital stock of ABC&D;

(d) not mortgage, pledge, or otherwise encumber, or sell, transfer, or otherwise dispose of any of the properties or assets of ABC&D, or cancel, release, or assign any indebtedness owed to ABC&D or any claims held by ABC&D, except in favor of the Lender or otherwise in the ordinary course of business and consistent with past practice;

(e) not make any investment of a capital nature or enter into a commitment for such investment either by purchase of stock or securities, contributions to capital, property transfer or otherwise, or by the purchase of any property or assets of any other individual, partnership firm or corporation;

(f) not enter into or terminate any material contract and/or agreement, other than entering into a certain Management Agreement of even date or agreements with the Lender, or make any material change in any of the leases and contracts of ABC&D, other than in the ordinary course of business and consistent with past practice; or

(g) not redeem or otherwise acquire, directly or indirectly, any shares of capital stock of ABC&D; or

(h) not pay any long-term liability, other than in accordance with its terms; or

(i) not pay any bonus, loan or compensation to any officer, director, shareholder or employee of ABC&D; or

(j) not take or omit to take any action the effect of which does or could render inaccurate any representation or warranty made by Seller; or

(k) not sell, assign, or transfer any trademarks, trade names, logos, copyrights, formulae or other intangible assets; or

(l) not purchase any securities except treasury bills with maturities of less than ninety days; or

(m) not contract with or commit to any third party (a) to sell the Shares, (b) to sell substantially all of the assets of ABC&D, (c) to effect any merger, consolidation, or other reorganization of ABC&D, or (d) to enter into any agreement with respect thereto.

6.2 Intentionally Omitted

6.3 **Consents and Best Efforts**.

(a) Seller shall, as soon as practicable after the execution and delivery of this Agreement, commence to take all reasonable action required to obtain all consents, approvals and agreement of, and to give all notices and make all other filings with, any third parties, necessary to authorize, approve or permit the full and complete sale, conveyance, assignment and transfer of all of the Shares.

(b) Seller shall, upon the terms and subject to the conditions contained herein, use his best efforts to take, or cause to be taken, all action or do, or cause to be done, all things necessary, under applicable laws and regulations to consummate and make effective the transactions contemplated hereby.

6.4 **Notification of Certain Matters**. Seller shall give prompt notice to Purchaser of (i) the occurrence, or failure to occur, of any event which occurrence or failure would cause any representation or warranty contained in this Agreement to be untrue or inaccurate any time from the date hereof to the Closing Date and (ii) any failure of Seller to comply with or satisfy any covenant, condition or agreement to be compiled with or satisfied by it hereunder.

ARTICLE VII

CONDITIONS TO SELLER'S OBLIGATIONS

The obligations of Seller to sell and transfer the Shares at Closing to Purchaser are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived by Seller:

7.1 **Representations, Warranties, and Covenants**. All representations and warranties of Purchaser contained in this Agreement shall be true and correct at and as of the Closing Date as if such representations and

warranties were made at and as of the Closing Date, and Purchaser shall have performed all agreements and covenants required hereby to be performed by it prior to or at the Closing Date, except where any misrepresentations, breach of warranty, or failure to perform would not have a material adverse effect upon Seller. There shall be delivered to Seller at the Closing a certificate (signed by Purchaser) to the foregoing effect.

7.2 **Consents**. All consents, approvals, waivers and actions of governmental authorities and other parties necessary to permit Seller and Purchaser to consummate the transactions contemplated hereby shall have been obtained, unless the failure to obtain any such consent, approval, or waiver would not have a material adverse effect upon Seller.

7.3 **No Injunction**. No preliminary or permanent injunction or other order, decree, or ruling issued by a court of competent jurisdiction or by a governmental, regulatory, or administrative agency or commission nor any statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect, that would make the acquisition or holding by Purchaser of the Shares illegal or otherwise prevent the consummation of the transactions contemplated hereby.

7.4 **Certificates**. Purchaser will furnish Seller with such certificates to evidence compliance with the conditions set forth in this Article VII as may be reasonably requested by Seller

7.5 **Performance**. Purchaser shall have duly performed or complied with all of the covenants, acts, and obligations to be performed or complied with hereunder by Purchaser at or prior to the Closing.

7.6 **Real Estate Purchase and Sale Agreement**. The obligations of Seller hereunder shall be further subject to the condition that the transaction contemplated by the Real Estate Agreement between O'Riley Family Trust as seller, and Ware Environmental Associates, Inc. or its nominee, as buyer, for the purchase and sale of 198 East Street, Ware, Massachusetts and dated the date hereof, shall close simultaneously with the transactions contemplated by this Agreement.

ARTICLE VIII

CONDITIONS TO PURCHASER'S OBLIGATIONS

The obligation of Purchaser to purchase the Shares at Closing as provided hereunder is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any one or more of which may be waived by Purchaser:

8.1 **Representations, Warranties, and Covenants**. All representations, warranties and covenants of Seller contained in this Agreement shall be materially true and correct at and as of the Closing Date as if such representations, warranties, and covenants were made at and as of the Closing Date, and Seller shall have performed all agreements and covenants required hereby to be performed by him prior to or at the Closing Date. There shall be delivered to Purchaser at the Closing a certificate signed by the Seller to the foregoing effect.

8.2 **Consents**. All consents, approvals, waivers and actions of governmental authorities and other parties necessary to permit Seller and Purchaser to consummate the transactions contemplated hereunder shall have been obtained.

8.3 **No Injunction**. No preliminary or permanent injunction or other order, decree, or ruling issued by a court of competent jurisdiction or by a governmental, regulatory, or administrative agency or commission nor any statute, rule, regulation or executive order promulgated or enacted by any governmental authority shall be in effect, that would make the acquisition or holding by Purchaser of the Shares illegal or otherwise prevent the consummation of the transactions contemplated hereby or would impose any material limitation on the ability of the Purchaser to exercise full rights of ownership of the Shares.

8.4 **Opinion of Counsel**. Seller shall have delivered to Purchaser an opinion of its counsel in form and substance reasonably satisfactory to Purchaser, to the effect that:

(a) Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereunder; this Agreement has been duly executed and delivered by Seller and is the valid and binding obligation of Seller enforceable against him in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights generally and by general equitable principles; and

(b) Seller has taken all action necessary to authorize the execution, delivery, and performance of this Agreement and to consummate the transactions contemplated hereby; and

(c) Neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated hereby will to the knowledge of such counsel, after due inquiry, violate, conflict with, or constitute a default under, any material agreement or commitment to which Seller or ABC&D is a party and which is identified to such counsel by Seller as a material agreement or commitment; and

(d) Seller is not subject to or obligated under any charter, bylaw, or any law or regulation under the laws of the Commonwealth of Massachusetts or any order decree issued thereunder, which would be breached or violated or in respect of which a right of acceleration would be created by Seller executing or carrying out this Agreement, other than any such breach, violation or right which will not have a material adverse effect on ABC&D; and

(e) All of the Shares have been duly and validly authorized and issued, and are fully paid and nonassessable, and Seller is the record owner of the Shares. Based on review of relevant records, counsel has no reason to believe that Seller does not have good legal title to the Shares, free and clear of all pledges, security interests, liens, charges or other encumbrances or claims of any nature whatsoever and subject to no proxy, shareholders' agreement, or voting trust. To the best of counsel's knowledge, upon payment of the purchase price and delivery of certificates for the shares as contemplated by this Agreement, and assuming Purchaser acquires the Shares in good faith without notice of any adverse claims, Purchaser will have good title to the Shares, free and clear of all pledges, security interests, liens, charges or other encumbrances or claims of any nature whatsoever. Counsel does not know of any outstanding subscriptions, options, warrants or rights of any kind, absolute or contingent, to purchase or acquire any of the shares of capital stock of ABC&D and counsel does not know of any contracts, commitments, understandings, arrangements or restrictions by which ABC&D is bound to sell any such shares.

8.5 **Certificates**. Seller shall furnish Purchaser with such certificates to evidence compliance with the conditions set forth in this Article VIII as may be reasonably requested by Purchaser.

8.6 **Corporate Actions**. All corporate acts and votes necessary to authorize the execution, delivery, and performance of the Agreement and the consummation of the transactions contemplated hereunder shall have been taken by Seller and ABC&D. Purchaser shall have received from Seller and ABC&D, resolutions adopted by the Seller and the board of directors of ABC&D approving this Agreement and the transactions contemplated hereunder, certified by the respective officials of Seller and ABC&D, as may be required for such proper authorization and consummation

8.7 **Shares**. Seller shall have delivered to Purchaser certificates representing the Shares, duly endorsed for transfer to Purchaser or accompanied by a valid assignment of the Shares to Purchaser, duly executed.

8.8 **Performance**. Seller shall have duly performed or complied with all of the covenants, acts, and obligations to be performed or compiled with hereunder by Seller at or prior to Closing.

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8.9 Letter of Credit Obligation The Purchaser acknowledges that the existing Letter of Credit obligation, in favor of the Lender, as memorialized by the Demand Line of Credit Note dated January 18, 2006 in the original principal amount of $231,350 under which an Irrevocable Letter of Credit was issued for the benefit of the Massachusetts Department of Environmental Protection (the "Letter of Credit Obligation"),shall constitute a surviving obligation of ABC&D

8.10 Restrictive Covenant Agreements. The Seller shall have delivered at the Closing separate Restrictive Covenant Agreements in the form attached hereto as Exhibit 8.10, executed by Seller, by ABC&D and by Richard C. O'Riley, respectively, and the Seller shall be responsible for providing any economic benefits (out of the Purchase Price or otherwise) to any such individuals, to assure the execution and delivery of each such Restrictive Covenant Agreements.

8.11 Due Diligence. Purchaser and his authorized representatives and agents shall, until May 14, 2010 (the "Due Diligence Period"), have access to all assets, properties, customer lists and information, books, corporate, accounting and financial records, and other records of ABC&D, to conduct such due diligence as Purchaser may deem necessary, in his sole discretion, to review, analyze and inspect the assets, debts, liabilities and financial condition of ABC&D, and confirm that the same are satisfactory to Purchaser. To enable Purchaser to complete such due diligence review of the assets and business of ABC&D and to take over the operation of ABC&D at the Closing without interruption, Purchaser and his representatives shall, by making arrangements with Seller, upon reasonable notice, have the opportunity during normal business hours, so as not to interfere unreasonably with the business of ABC&D, to continue to review and inspect the assets, liabilities, business and records of ABC&D, and the information and documents related to such assets, liabilities and business; and Seller shall fully cooperate with Purchaser facilitating such due diligence.

If, at any time during the Due Diligence Period, Purchaser determines in its sole discretion that the results of such due diligence are unsatisfactory to Purchaser, for any reason or for no reason, Purchaser may terminate this Agreement upon written notice to Seller, and any deposits hereunder shall be promptly returned to Buyer, and this Agreement shall be of no further effect hereto, and without recourse to the parties.

8.12 Licenses and Permits. All of the permits, licenses and approvals listed on Schedule 8.12 hereto, and any other permits, licenses and approvals held by ABC&D and/or relating to the business of ABC&D or the use of the property on which such business is located, or otherwise necessary for operation as a Municipal Solid Waste transfer station and facility shall have been issued to Purchaser at or prior to the Closing, or shall be validly transferred and assigned

for use by Purchaser at or prior to Closing, and any governmental approvals or consents required for such transfer and assignment shall have been obtained at or prior to Closing, all to the satisfaction of Purchaser's counsel.

8.13 Real Estate Purchase and Sale Agreement. The obligations of Purchaser hereunder shall be further subject to the condition that the transaction contemplated by the Real Estate Agreement between O'Riley Family Trust as seller, and the Purchaser or its permitted nominee, as buyer, for the purchase and sale of 198 East Street, Ware, Massachusetts and dated the date hereof, shall close simultaneously with the transactions contemplated by this Agreement.

8.14 Election Under IRC §1377(a)(2). Seller, ABC&D and Purchaser shall have executed an election under IRC §1377(a)(2) in substantially the form attached hereto as Exhibit 8.14.

If any of the foregoing conditions in 8.1 through 8.14 have not been satisfied at or prior to the time of Closing, Purchaser may terminate this Agreement, receive a refund of all deposits made hereunder, and this Agreement shall thereafter be without further recourse to the parties.

ARTICLE XI

ACTIONS BY SELLER AND PURCHASE AFTER THE CLOSING

9.1 Cooperation. After the Closing Date, Purchaser and Seller shall cooperate fully with each other with respect to all matters relating to this transaction, including but not limited to, all actions in connection with the preparation, filing ,and auditing of any tax return relating to taxes owed with respect to the purchase and sale of the Shares, including but not limited to, the furnishing or making available of records, books of account or other materials necessary or helpful for the defense against assertions of any taxing authority as to any such tax returns.

9.2 Further Assurances. On and after the Closing Date, Seller and Purchaser will take all appropriate action and execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions of this Agreement.

ARTICLE X

TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Closing (including at the Closing) (a) upon the mutual written consent of Purchaser and Seller; or (b) by the Purchaser, if the conditions set forth in Article VIII hereof shall not have been fully satisfied or waived by the Purchaser before

the Closing Date; or (c) by the Seller, if the conditions set forth in Article VII hereof shall not have been fully satisfied or waived by the Seller before the Closing Date; or (d) by the Purchaser or the Seller if for any reason Closing shall not have occurred on or before November, 15 2010.

10.2 **Procedure and Effect of Termination**. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by any or all of the parties pursuant to Section 10.1, written notice thereof shall forthwith be given to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties.

10.3 **Specific Performance**. Seller agrees that Purchaser would be irreparably injured in the event Seller refuses to close notwithstanding that his conditions to Closing have been satisfied. Accordingly, notwithstanding any other provision of this Agreement, the parties agree that Purchaser will be entitled to specific performance of the Closing in accordance with terms and conditions of this Agreement.

ARTICLE XI

INDEMNIFICATION AND SURVIVAL

11.1 **Indemnification by Seller**. Subject to the provisions of this Section 11.1, Seller shall indemnify and hold Purchaser harmless from any losses, damages, claims, actions, suits, proceedings, claims, demands, assessments, judgments, liabilities, costs or expenses, including, without limitation, interest, penalties, and attorney fees and accounting fees (collectively "Damages"), insofar far as such Damages arise out of or are based upon or in any way relate to a breach by Seller of any representation or warranty, or any covenant, restriction, or agreement made by or applicable to Seller and contained in this Agreement or in any certificate delivered to Purchaser hereunder.

11.2 **Indemnification by Purchaser**. Subject to the provisions of this Section 11.2, Purchaser shall indemnify and hold Seller harmless from any Damages incurred by Seller insofar as such Damages arise out of or are based upon or in any way relate to a breach by Purchaser of any representation, warranty or any covenant, restriction, or agreement made by or applicable to Purchaser and contained in this Agreement, or in a certificate delivered by Purchaser hereunder.

11.3 **Survival**. All representations and warranties contained in Articles IV and V of this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith and the provisions of this Article XI shall survive the Closing. Any representation and warranty herein or in any such

certificate or writing shall be deemed to be material and to have been relied upon by the party or parties to which made, notwithstanding any investigation or inspection made by or on behalf of such party or parties and shall not be affected in any respect by any such investigation or inspection.

11.4 **Process for Indemnification**.

(a) Any party making a claim for indemnification hereunder shall notify the indemnifying party of the claim in writing describing the claim, the amount (to the extent then feasible) and the basis therefore within sixty (60) days of notice of such claim.. The party from whom indemnification is sought shall respond to each claim within ten (10) business days of receipt of such notice. No action shall be taken by the party seeking indemnification until the expiration of such ten (10) business day response period unless necessary to protect its rights. If such claim for such indemnification is based upon a claim by a third party, the indemnifying party, provided he acknowledges in writing his obligation to indemnify, shall have the right to assume the entire control of the defense thereof including, at his own expense, employment of counsel reasonably satisfactory to the indemnified party and in connection therewith the parties claiming indemnification shall cooperate fully with the indemnifying party and the indemnified party shall make no payment on such claim as long as the indemnifying party is conducting a good faith and diligent defense. If the proceeding in which indemnification is sought also includes a matter of sole concern to the indemnified party, such matter which is of sole concern to the indemnified party shall be within the sole control and at the sole cost of the indemnified party and his counsel. No settlement shall be made by an indemnifying party without the consent of the indemnified party unless such settlement only requires the payment of money damages and such amounts are paid by the indemnifying party. The indemnified party may fully participate in any proceeding to any such claims as to which the indemnifying party assumed control, at the expense of the indemnified party, unless the named parties to the action or proceeding include both the indemnified and indemnifying party and representation of both parties by the same counsel would be inappropriate, in which case the indemnified party's legal expenses shall be paid by the indemnifying party.

(b) Any compromise of any asserted liability by the indemnifying party shall require the prior written consent of the indemnified party provided, however, that if the indemnified party refuses to consent to a settlement which the indemnifying party wishes to accept and that involves no payment by or limitation on the indemnified party, the indemnified party may continue to pursue such matter free of any participation by the indemnifying party at the sole expense of the indemnified party. In such event, the obligation of the indemnifying party to the indemnified party shall be the lesser of (a) the amount of the offer of settlement which the indemnified party refused to accept, plus the costs and expenses of the indemnified party prior to the date of the offer of

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settlement or (b) the actual out-of-pocket amount that the indemnified party is obligated to pay as a result of its continuing to pursue such matter. An indemnifying party shall be entitled to recover from the indemnified party any additional expenses incurred by such indemnifying party as a result of the decision of the indemnified party to pursue such matter.

(c) If the indemnifying party does not so acknowledge his obligation to indemnify or if the indemnifying party does not or ceases to conduct a good faith and diligent defense, the indemnified party may, at the expense of the indemnifying party, undertake such defense with counsel chosen by the indemnified party and shall have the right to compromise or settle such claim at the expense of the indemnifying party.

ARTICLE XII

SURVIVAL OF LIABILITIES

The Purchaser acknowledges that at the time of Closing any and all liabilities of ABC&D which are now existing or hereafter arising shall survive the Closing and all such liabilities shall remain the obligation of ABC&D without any adjustment, discount, or refund.

ARTICLE XIII

MISCELLANEOUS

13.1 **Assignment**. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Seller or without the prior written consent of Purchaser, or by Purchaser without the prior written consent of Seller and the Lender. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13.2. **Notices; Transfer of Funds**. Unless otherwise provided herein, any notice, request, instruction or other documents to be given hereunder by any party to the other shall be in writing and delivered personally or mailed by certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is acknowledged), as follows:

If to Seller, addressed to:

Richard C. O'Riley
265 Upper Church Street
P. O. Box 719
Ware, MA 01082

With a copy to:

Matthew L. Donohue, Esq.
Donohue, Hyland & Donohue
1707 Northampton Street
Holyoke, MA 01040

Jeffrey M. Brayton, First Vice President
Country Bank for Savings
75 Main Street
Ware, MA 01082-2003

If to Purchaser, addressed to:

Chris Berardi
1365 Main Street
Waltham, MA 02451

With a copy to:

George Lemelman, Esq.
1365 Main Street
Waltham, MA 02451

Or to such other place and with such other copies as either party may designate as to itself by written notice to the others.

13.3 **Choice of Law**. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with and pursuant to the laws of the Commonwealth of Massachusetts, except with respect to matters of law concerning the internal corporate affairs of any corporate [or trust] entity which is a party to or the subject of this Agreement, and as to those matters the law of the jurisdiction under which the respective entity derives its powers shall govern.

13.4 **Entire Agreement; Amendments and Waivers**. This Agreement, together will all exhibits and schedules hereto, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing and signed by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

13.5 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.6 **Invalidity**. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

13.7 **Headings**. The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

13.8. **Confidentiality**. Neither party shall issue any public statement regarding the transactions contemplated hereby, without the prior approval of the other party.

Additionally, this Agreement, including the existence and negotiation, thereof, shall remain strictly confidential, and neither Seller nor Purchaser shall disclose the existence or substance of this Agreement, or any information relating thereto, except as required to comply with the terms of this Agreement or any order of a court or governmental agency, or with the written consent of the other party.

13.9 **Expenses**. Each party shall bear its own expenses in connection with this Agreement and the transactions contemplated hereunder, including, without limitation, all fees of counsel, accountants, and consultants.

13.10 **Extension of Closing Date**. Provided the Purchaser has during the term of this Agreement utilized his best efforts to pursue the permits, licenses, approvals and described in Section 8.12 of this Agreement including the necessary approval to operate the facility as an "MSW Facility" , and provided the Manager has fully complied with the terms and conditions of the Management Agreement, the Purchaser may extend the Closing Date in this Agreement by tendering to the Seller and Lender notice of such extension not earlier than July 15, 2010 nor later than August 15, 2010 , in which event the Closing Date shall be extended to the earlier of (x) November 15, 2010 or thirty (30) days after all approvals have been obtained to operate the facility as an "MSW Facility", time being of the essence. If this Agreement is extended as set forth above, the parties agree to sign equivalent extensions for the performance dates set forth in the Management Agreement and the Real Estate Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective officers, thereunto duly authorized as of the day and year first above written.

WITNESS

SELLER

Richard C. O'Riley

PURCHASER

Chris Berardi

ADDENDUM

It is agreed, that upon closing, the Officer Loan in the amount of $527,890.83 as shown on Financial Statement dated December 31, 2009 shall be forgiven without payment.

Richard C. O'Riley

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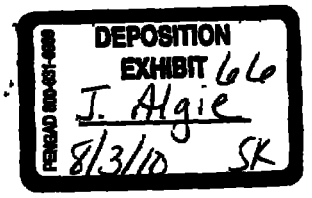

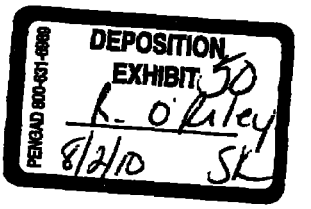

PURCHASE AND SALE AGREEMENT

This 18th day of February, 2010

1. PARTIES AND MAILING ADDRESSES.

Richard C. O'Riley and Joan M. O'Riley as Trustees of O'Riley Family Trust u/d/t recorded in the Hampshire County Registry of Deeds in Book 4900, Page 109, with an address at 265 Upper Church Street, Ware, Massachusetts 01082, hereinafter called the Seller, agree to sell, and Chris Berardi, (or his permitted nominee), an individual with an address at 1365 Main Street, Waltham, Massachusetts 02451, hereinafter called the Buyer or Purchaser, agrees to buy, upon the terms hereinafter set forth, the following described Premises:

2. DESCRIPTION.

All that certain land with buildings thereon and containing approximately 25 acres located at 198 East Street, Ware, Hampshire County, Massachusetts more particularly described in Exhibit A hereto (the "Land"), together with all privileges, rights, easements and appurtenances belonging to such Land, and all right, title and interest (if any) of Seller in and to any streets, alleys, passages, and other rights-of-way or appurtenances included in, adjacent to or used in connection with such Land, and together with all buildings and other improvements located on the Land (any buildings and improvements being hereinafter collectively referred to as the "Improvements," the Land and the Improvements being hereinafter collectively referred to as the "Real Property" or "Premises").

3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.

Included in the sale as a part of said Premises are:

(a) All buildings, improvements and fixtures attached to the Real Property or the Improvements thereon, or otherwise owned by Seller; and

(i) located on or within the Real Property; or

(ii) used in connection with the Real Property or the business operated thereon;

(b) All furniture, equipment and other tangible personal property owned by Seller; and

(i) located on or within the Real Property; or

(ii) used in connection with the Real Property or the business operated thereon ("Tangible Personalty");

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(c) All of Seller's rights and obligations in all service, management and leasing contracts affecting the Land or Improvements (the "Property Contracts"), to the extent Seller is entitled to transfer the same to Buyer, that Buyer elects to assume or is deemed to have elected to assume pursuant to the terms of this Agreement; and

(d) All of Seller's right, title and interest, if any, in all intangible assets of any nature relating to the Land, the Improvements or the Tangible Personalty, including without limitation all of Seller's right, title and interest in all;

(i) warranties and guaranties relating to the Improvements or Tangible Personalty;

(ii) all licenses, permits, and approvals running with the Real Property and/or related to the Real Property, including without limitation the licenses, permits and approvals listed on Exhibit B attached hereto and incorporated herein by reference;

(iii) all logos and trade names; and

(iv) all plans and specifications, in each case to the extent that Seller may legally transfer the same (collectively the "Intangible Personalty").

4. TITLE DEED.

Said Premises are to be conveyed by a good and sufficient quitclaim deed running to Buyer or to the permitted nominee designated by the Buyer and approved by Seller and Seller's lender, Country Bank for Savings (the "Lender"), in their discretion, by written notice to the Seller and Lender, at least thirty (30) days before the Deed is to be delivered as herein provided and said deed shall convey a good and clear record, marketable and insurable title thereto, free from encumbrances, except:

(a) Provisions of existing building and zoning laws;

(b) Existing rights and obligations in party walls which are not the subject of written agreement;

(c) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;

(d) Any liens for municipal betterments assessed after the date of this Agreement; and

(e) Easements, restrictions, and reservations of record, if any, insofar as they

do not prohibit or interfere with the current use of the Premises as a construction and demolition recycling and transfer station, the proposed use as a Municipal Solid Waste ("MSW") transfer station or otherwise for commercial purposes.

(f) The presently existing cell phone tower lease affecting the Premises

(g) A Special Permit and Decision on Site Plan Approval issued by the Town of Ware Planning Board and recorded at the Hampshire County Registry of Deeds in Book 10086 Pages 65 and 67 (the "Planning Board Documents").

5. PLANS.

If said deed refers to a plan necessary to be recorded therewith, the Seller shall deliver such plan with the deed in form adequate for recording or registration.

6. REGISTERED TITLE.

In addition to the foregoing, if the title to said Premises is registered, said deed shall be in form sufficient to entitle the Buyer to a Certificate of Title of said Premises, and the Seller shall deliver with said deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title.

7. PURCHASE PRICE.

(a) The agreed purchase price for said Premises is Four Million Two Hundred Thousand and no/100 ($4,200,000.00) Dollars.

(b) The Purchase Price for the Real Property shall be payable as follows:

(i) The sum of $50,000.00 shall be paid upon execution of this Agreement, of which shall be tendered to the Lender and shall be absolutely and unconditionally non refundable (the "Non Refundable Payment"). The Non Refundable Payment shall be forthwith tendered to the Lender for immediate application against the obligations of the Seller to the Lender, in such fashion as the Lender determines in its sole and exclusive discretion and shall not be refunded nor returned notwithstanding anything in this Agreement or any other agreement to the contrary. The Non Refundable Payment shall be applied against the Purchase Price at Closing.

(ii) The balance of the Purchase Price, in the amount of Four Million One Hundred and Fifty Thousand and no/100 ($4,150,000) Dollars shall be paid by Buyer to Seller's counsel or at the option of the Lender, directly to the Lender, on the Closing Date (as hereinafter

defined), for disbursement to Lender upon recording the deed of conveyance, by certified or bank check, attorney's conveyancing account check or by wire transfer of immediately available funds to an account designated by Seller. The Buyer shall be entitled to a credit to be applied towards the Purchase Price in an amount equal to fifty percent (50%) of the aggregate amount of Lender Net Proceeds Payments paid to and received by the Lender pursuant to that certain Management Agreement of even date (the "Management Agreement") by and between Valley Management Services, Inc. (the "Manager"), the Seller and ABC&D Recycling, Inc.

8. TIME FOR PERFORMANCE; DELIVERY OF DEED.

Such deed is to be delivered at 10:00 AM on the date (the "Closing Date") that is the earlier of (x) the date that is thirty (30) days after all conditions precedent to the closing hereunder, and to the closing of the transactions contemplated by the Agreement for the Purchase and Sale of Capital Stock of ABC&D Recycling, Inc. of even date (the "Stock Purchase Agreement") between Richard C. O'Riley, Joan M. O'Riley and the Buyer, have been satisfied or waived, and the date that is thirty (30) days after all conditions precedent to the transactions contemplated by the management agreement of even date (the "Management Agreement") between ABC&D and the Manager and (y) September 22, 2010 at the office of Seller's counsel, or, at Lender's option, at the offices of the Lender or its counsel, unless otherwise agreed upon in writing. Provided the Purchaser has, during the term of this Agreement, utilized its best efforts to pursue the permits, licenses, and approvals necessary to operate the facility as an "MSW Facility," and provided that the Manager has fully complied with the terms and conditions of the Management Agreement, the Purchaser may extend the Closing Date in this Agreement by tendering to the Seller and the Lender notice of such extension not earlier than July 15, 2010 nor later than August 15, 2010 , in which event the Closing Date shall be extended to the earlier of (x) November 15, 2010 or thirty (30) days after all approvals have been obtained to operate the facility as an "MSW Facility" as referred to in paragraph 25 hereof. It is agreed that time is of the essence of this Agreement.

9. POSSESSION AND CONDITION OF PREMISES.

Full possession of said Premises, free of all tenants and occupants (except the existing cell tower lease), is to be delivered at the time of the delivery of the deed, said Premises (including all Improvements, fixtures and Tangible Personalty) to be then;

(a) in the same condition as they now are, reasonable use and wear thereof excepted;

(b) in compliance with the provisions of any instrument or condition referred to

in paragraph 4 hereof; and

(c) not in violation of local building and zoning laws. Notwithstanding the foregoing or anything to the contrary in this Agreement, the Purchaser hereby waives any claim relating to the timeliness of the recording of the Planning Board Documents. The Seller agrees to remove all property owned by Allied Rocoso Auto Parts, Inc., including the tires behind the office, at the Seller's expense, at least thirty (30) days prior to the closing.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.

If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the deed the Premises do not conform with the provisions hereof, then the Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said Premises conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to the Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days or until the date of expiration of Buyer's first mortgage commitment, or rate lock, whichever is sooner.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, ETC.

If at the expiration of the extended time the Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on said Premises shall refuse to permit any insurance proceeds, if any, to be used for such purpose, all other obligations of the parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE.

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said Premises in their then condition and to pay therefore the purchase price without deduction, in which case the Seller shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said Premises shall have been damaged by fire or casualty insured against, then the Seller shall, unless said Premises have previously been restored to their former condition, either

(a) pay over or assign to the Buyer all amounts recovered or recoverable by the Seller on account of such insurance, less any amounts reasonably expended by the Seller for any partial restoration, or

(b) if a holder of a mortgage on said Premises shall not permit the insurance proceeds or a part thereof to be used to restore the said Premises to their former condition or to be so paid over or assigned, give to the Buyer a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the Seller for any partial restoration.

13. ACCEPTANCE OF DEED.

The acceptance of a deed by the Buyer or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF PURCHASE MONEY TO CLEAR TITLE.

To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed, or within a reasonable period of time thereafter in accordance with standard conveyancing practices.

15. INTENTIONALLY OMITTED.

16. ADJUSTMENTS.

Notwithstanding anything in this Agreement or any other agreement to the contrary, with the exception only of those credits expressly set forth in paragraph 7 above, the Purchaser shall be not be entitled to any discount, set off, adjustment, or credit in connection with the Purchase Price. At closing the Purchase Price shall be due and payable to the Lender, if full, with no reduction, except only as may be expressly permitted pursuant to paragraph 7 above. The Purchaser acknowledges that no adjustments shall be made for any taxes, operating expenses, charges, utilities, recording fees or expenses all of which shall be the responsibility of the Buyer.

17. INTENTIONALLY OMITTED.

18. BUYER'S DEFAULT.

If,

(a) the Buyer shall fail to fulfill the Buyer's agreements herein; or

(b) Buyer defaults in his obligations under the Stock Purchase Agreement or

the Stock Purchase Agreement and this Agreement is terminated as a result of such breach or default, then Seller may retain the Deposit as liquidated damages and this shall be Seller's sole remedy at law or in equity in the event of Buyer's default.

19. SELLER'S DEFAULT.

Notwithstanding any other provision in this Agreement, if Seller fails to perform any of its obligations under this Agreement, or upon the occurrence of a default under the Stock Purchase Agreement, then Buyer may:

(a) terminate this Agreement by written notice to Seller given prior to or on the Closing Date; or

(b) enforce specific performance of Seller's obligations under this Agreement and the Stock Purchase Agreement; and Buyer may pursue any and all rights to recover for his damages arising from such breach by Seller, provided however, in no event shall the Non Refundable Payment be returned or refunded.

20. TERMINATION OF MANAGEMENT AGREEMENT OR STOCK PURCHASE AGREEMENT.

In the event that the Management Agreement is terminated by the Lender, as provided therein, or if the Stock Purchase Agreement is terminated pursuant to its terms without breach or default of either party thereto, the rights and obligations of the parties under this Agreement shall terminate and be of no further force or effect, effective as of the date of termination of the Management Agreement or Stock Purchase Agreement.

21. LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.

If the Seller or Buyer executes this Agreement in a representative or fiduciary capacity, only the principal of the estate represented shall be bound, and neither the Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express, or implied, hereunder.

22. EXISTING DATA ON PREMISES.

Within one (1) week of the execution of this Agreement, Seller agrees to deliver to Buyer for Buyer's use, copies of any and all reports, studies, tests, plans, surveys, documents, permits and other information relating to the Premises (collectively "Information"), whether in Seller's possession or in Sellers' engineer's, lawyer's or other consultant's or agent's possession, falling within the following categories:

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(a) All plans, surveys, and all engineering and survey data, including without limitation, all soils analysis, percolation tests, etc.;

(b) All information relative to the absence or presence of hazardous waste materials or oils as defined in Massachusetts General Laws, Chapter 21E;

(c) Any and all information relative to the zoning of the Premises, including without limitation all prior applications (whether withdrawn or rejected) made to governmental bodies relative to the use and development of the Premises;

(d) Any and all information relative to the presence of any wetland areas on or near the Premises;

(e) Copies of all title documents and of any prior or outstanding title insurance policies with respect to the Premises or any portion thereof; and

(f) Copies of all permits, licenses and approvals relating to the Premises and/or to the business operated thereon.

23. MORTGAGE CONTINGENCY CLAUSE.

This Agreement is contingent on the Buyer's ability to obtain a commercial loan commitment of Three Million, Seven Hundred Thousand and no/100 ($3,700,000.00) Dollars. The Buyer agrees to apply for said mortgage loan forthwith and to make every effort to obtain said mortgage loan commitment on or before the date hereinafter set forth. In the event the Buyer is unable to obtain a commitment for said mortgage loan on or before the date hereinafter set forth, the Buyer shall so advise the Seller and the Lender in writing and this Agreement shall become null and void. It is agreed that the time granted for obtaining a mortgage loan commitment shall expire on May 14, 2010.

24. DUE DILIGENCE.

Until May 14, 2010, Buyer, as may be reasonably necessary, and at its own expense and with advance notice to Lender and Seller, may conduct or cause to be conducted surveys, tests, studies and inspections of the Premises, including without limitation test borings, tests and inspections of buildings, structures, utility and mechanical systems (including, without limitation, the adequacy of water, sewer, electricity, gas, telephone, and other utility services on the Premises or utility lines and/or pipes on or adjacent to the Premises which are available to service the Premises), sanitary systems, wells, drainage, and storm water detention and retention facilities and access to public streets and ways, may review the Information and all other documentation and records pertaining to the Premises, including without limitation

all licenses, permits, authorizations, and approvals which have been issued with respect to the Premises, may consult with any governmental agency or official with respect to the Premises, and may perform such other due diligence with respect to the Premises, and Buyer's proposed use thereof, provided such due diligence undertakings do not adversely affect the condition of the Premises.. The complete results of all such undertakings shall be provided by the Buyer to the Seller and the Lender immediately upon the Buyer's receipt thereof.

Such due diligence may include, without limitation, Oil and Hazardous Material testing and studies, as hereafter provided in paragraph 33.

Neither Buyer nor his engineers, consultants or contractors shall be responsible for notifying any party (other than the Seller and the Lender), including any public agency, of the results or contents of any such testing, studies or reports, including without limitation testing for Oil and Hazardous Materials, unless otherwise required by applicable law. Seller shall assume all responsibility for such notification and, in respect thereto, provided the Buyer has given notice to the Seller as herein set forth. Provided the Buyer has fully complied with his notice obligations as herein set forth, Seller agrees to indemnify, hold harmless and defend Buyer from and against any costs, losses, claims, damages, and liabilities resulting from Seller's failure to give any such notification required by applicable law, such indemnity to survive the Closing or earlier termination of this Agreement. Buyer shall request his engineers, consultants and contractors not to disclose the contents of any testing or reports to any governmental authority unless they are required by law or by professional ethical standards to disclose the same. Buyer shall, in any event, provide Seller with a copy of any such report or studies prior to Buyer disclosing the contents of the same to any governmental authority.

All of the aforementioned activities referred to in this paragraph 24 shall be referred to herein as "Buyer's Due Diligence," and Seller shall provide Buyer with reasonable access to the Premises to conduct Buyer's Due Diligence. If Buyer is not satisfied, in Buyer's sole and absolute discretion, with the results of Buyer's Due Diligence, Buyer, for any reason or for no stated reason, may terminate this Agreement by sending written notice to Seller at any time prior to May 14, 2010. In such event, the Deposit shall be returned to Buyer, and this Agreement shall be void and without recourse to the parties hereto.

25. CONTINGENCIES RELATING TO PERMITS, LICENSES, APPROVALS AND INTERCHANGE AGREEMENT.

Buyer's obligations to perform hereunder are also expressly subject to and contingent upon the following:

(a) All of the permits, licenses and approvals listed on Exhibit B, and any other permits, licenses and approvals held by Seller and/or relating to the

Premises or the use of the Premises, shall be issued to Buyer at or prior to the Closing, or shall be validly transferred and assigned to Buyer at Closing, and any governmental approvals or consents required for such transfer and assignment must be obtained at or prior to the Closing, said permits, licenses and approvals having expired without any appeals having been taken from the granting of said permits, licenses and approvals within the applicable appeal period, all to the satisfaction of Buyer's counsel.

(b) Seller shall obtain and validly assign to Buyer at Closing, an Interchange and Facilities Agreement for the Premises, with Massachusetts Central Railroad Corporation, in a form satisfactory to counsel for Buyer.

(c) Buyer shall obtain, at or prior to Closing, all necessary permits, licenses and approvals from all applicable, local, state and federal authorities to operate the Premises as an MSW transfer station, including but not limited to the Federal Surface Transportation Board recognizing Buyer as a railroad and issuing a Declaration of Land Use Exemption allowing Buyer to bring MSW onto the Premises and operate as an MSW transfer station.

In the event any of the above conditions are not satisfied at or prior to Closing, Buyer may terminate this Agreement by written notice to Seller, in which event the Deposit shall be returned to Buyer and this Agreement shall be null and void and without further recourse to the parties. Seller agrees to cooperate with Buyer, at Buyer's request, in any proceedings necessary to obtain the issuance or transfer of such permits, licenses and approvals to Buyer including, without limitation, by executing such applications and other documents as may be necessary to obtain approval for the issuance or transfer of such permits, licenses and approvals to Buyer and by appearing on Buyer's behalf in support of the issuance or transfer of the same at public hearings and other governmental proceedings, as required to obtain approval of the same, and to sign any documents necessary to achieve the goals of this Agreement.

26. CONSTRUCTION OF AGREEMENT.

This Instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument; sets forth the entire contract between the parties, is binding upon and enures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified, or amended only by a written instrument executed by both the Seller and the Buyer. If two or more persons are named herein as Buyer their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it.

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27. TITLE STANDARDS.

Any title matter which is the subject of a title standard of the Real Estate Bar Association for Massachusetts at the time of the delivery of the deed shall be covered by said title standard to the extent applicable. Seller agrees not to further encumber the Premises during the term of this Agreement.

28. BROKERS.

Each of Buyer and Seller represents to the other that it has not dealt with any broker or agent in connection with this transaction. Each party hereby indemnifies and holds harmless the other party from all loss, cost and expense (including reasonable attorneys' fees) arising out of a breach of its representation or undertaking set forth in this paragraph. The provisions of this paragraph shall survive Closing or the termination of this agreement.

29. NOTICE.

Any notice required or desired hereunder shall be given in writing and shall be deemed duly delivered when mailed, Certified Mail, Return Receipt Requested, when delivered by nationally recognized overnight delivery service, by hand or when sent by telecopier with acknowledgment of transmission/receipt to:

(a) In the case of notice to Seller:
O'Riley Family Trust
265 Upper Church Street
Ware, MA 01085

with a copy to:

Matthew L. Donohue, Esq.
Donohue, Hyland & Donohue
1707 Northampton Street
Holyoke, MA 01040
Phone: (413) 536-1977
Fax: (413) 538-7138

Jeffrey M. Brayton, First Vice President
Country Bank for Savings
75 Main Street
Ware, MA 01082-2003

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(b) In the case of notice to Buyer:

Chris Berardi
1365 Main Street
Waltham, MA 02451

with a copy to:

George Lemelman, Esq.
1365 Main Street
Waltham, MA 02451

30. CLOSING OF STOCK PURCHASE TRANSACTION.

The obligations of each party hereunder shall be subject to the condition that the transaction contemplated by the Stock Purchase Agreement dated the date hereof shall close simultaneously with the transactions contemplated by this Agreement. If this condition is not satisfied, at the Buyer's option, this Agreement shall terminate and this Agreement shall be of no further recourse to the parties.

31. SELLER DELIVERIES.

31.1. At Closing, Seller shall execute and deliver to Buyer the following, and it shall be a condition to Buyer's obligation to close that Seller shall have executed and delivered the same to Buyer:

(a) A Massachusetts Quitclaim Deed ("Deed") to the Real Property from Seller, duly executed and acknowledged by Seller.

(b) A Non-Foreign Affidavit as required by the Foreign Investors in Real Property Tax Act ("FIRPTA"), duly executed by Seller.

(c) Keys (or, if applicable, security cards and/or security codes) to all doors in the Property and passwords to all computer systems included in the Property, labeled for identification.

(d) A customary title insurance affidavit enabling Buyer and Buyer's mortgagee to obtain title insurance on the Premises without the standard exceptions for mechanic's liens and parties in possession (except for Boston Saturn, Inc.).

(e) All other documents customarily and reasonably required by the Buyer's lender, and all other documents and instruments referred to or required under this Agreement.

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(h) Copies of all books and records at the Property held by or for the account of Seller, including, without limitation, plans and specifications, as available.

(i) All other documents, including without limitation licenses, permits, approvals, and agreement, required to be delivered to Buyer hereunder; and valid assignments of all licenses, permits, approvals and agreements required to be assigned by Buyer hereunder.

31.2. At Closing, Buyer shall deliver to Seller the following, and it shall be a condition to Seller's obligation to close that Buyer shall have delivered the same to Seller:

(a) The balance of the Purchase Price via bank, certified or attorney's conveyancing account check or wire transfer of immediately available funds to an account designated by Seller or Lender;

(b) All other documents customarily and reasonably required by the Lender.

32. SELLER'S REPRESENTATIONS AND WARRANTIES

The Seller makes the following representations and warranties, all of which are true and correct as of this date and shall be true and correct as of the Closing Date and all of which shall survive the Closing and the recording of the deed:

(a) To the best of Seller's knowledge, there is no Hazardous Waste or Oil contamination in, on or under the Premises; and Seller has not received any notice or communication from any federal, state or local agency relating to any such contamination or to any violation of any applicable environmental laws, statutes or regulations.

(b) Seller has not received any written notice or written request from any insurance company or board of fire underwriters or the Department of Environmental Protection (or any organization exercising functions similar thereto) requesting the performance of any work or alterations to the Premises as a result of a violation of or noncompliance with any applicable statutes, regulation, by-law, rule or other applicable law, which violation or noncompliance has not been remedied or corrected.

(c) Seller has not received any notice of any litigation or threatened litigation affecting Seller or the Premises that would in any way constitute a lien, claim or obligation of any kind against the Premises or which could prevent Seller from performing Seller's obligations under this Agreement and, to the best of Seller's knowledge, there are no such actions or proceedings pending or threatened.

(d) Seller has received no written notice of condemnation or threatened condemnation proceedings affecting the Premises or any portion thereof or any assessments made or threatened with respect to the Premises or any portion thereof, and, to the best of Seller's knowledge, there are no such proceedings or assessments pending, made or threatened.

(e) Seller has received no written notice or communication of any violation or other adverse condition affecting the Premises from any federal, state, or city agency, department or commission, which violation or condition has not been corrected by Seller.

(f) The Premises are not located within a flood zone.

(g) There are no underground tanks located on or under the Premises, active or abandoned.

(h) As of the date hereof, there is no pending Seller bankruptcy, mortgage foreclosure, or other proceeding that might in any material way impact adversely on the Seller's ability to perform on the Closing date.

(i) There are no leases of the Premises or any part thereof, and no occupants of the Premises other than ABC&D and the lessee pursuant to a cell tower lease.

33. HAZARDOUS MATERIALS

(a) Definitions. Oil or Hazardous Material (hereinafter sometimes referred to as "OHM") refers to any petroleum product, substance, waste, or material (including without limitation asbestos) determined by any federal, state or local governmental authority to be capable of posing a risk of injury to health, safety, the environment, or property, including, but not limited to, all products, substances, wastes, and materials as defined by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA); the Resource Conservation and Recovery Act (RCRA); the Clean Water Act as amended; the Clean Air Act as amended; the Toxic Substance and Control Act (TSCA); the Occupational Safety and Health Act (OSHA); the Emergency Planning and Community Right To Know Act (EPCRA); and similar state laws and regulations thereunder including, but not limited to, Massachusetts General laws, Chapters 21C, 21D, and 21E, the Massachusetts Clean Air Act and Clean Water Act, and the Toxic Use Reduction Act (TURA).

(b) Presence of OHM. Seller represents and warrants to Buyer that Seller;

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(i) has no knowledge that any release or threat of release of Oil or Hazardous Material has occurred and continues to exist at, in, or on the Premises, in each case in violation of applicable law; and

(ii) has received no written notification or other communication from the Massachusetts Department of Environmental Protection (DEP) concerning any such release. This warranty and representation shall survive the Closing and recording of the deed.

(c) Investigation by Buyer. Buyer or his lender may, at his sole option and expense, at any time prior to May 14, 2010 (the "Inspection Period"), undertake an environmental site assessment or assessments in one or more phases, including subsurface investigation, to determine the nature and extent of any Oil or Hazardous Material on, in or under the Premises. Throughout the Inspection Period, Buyer and his lender and their designated employees, agents, and consultants shall have a right of access to the Premises to perform said site assessments. Buyer shall be responsible for repair of any damage caused to the Premises or any other property or assets of Seller, or affiliates of Seller, by such access, inspections, or testing, which shall be conducted by licensed and insured contractors.

(d) Scope of Site Assessments. The site assessments by the Buyer shall be performed by duly licensed and insured environmental engineers, scientists, or consultants selected by the Buyer (or his lender) in his sole discretion, and shall include, but shall not be limited to, all conditions, characteristics, history, and documents concerning the Premises and any surrounding properties, and may include, in the sole discretion of the Buyer or his lender, engineering or geological tests, physical inspections, drilling and intrusive testing, soil, water and groundwater sampling and testing, document reviews, interviews, or any other evaluation as reasonably deemed necessary by the Buyer or his lender to determine the nature and extent of any Oil or Hazardous Materials. Seller may, in its sole discretion, elect to observe and monitor any site assessment activities undertaken by the Buyer or his lender, their employees, agents, or consultants and may, at the expense of the Seller, take split or duplicate samples of any soil, water, groundwater, or other materials sampled by the Buyer or his lender.

(e) No Documents. Seller represents to Buyer that, to the knowledge of the Trustee, it does not have in his possession any site assessments, submittals to DEP or any other government agencies, field data, field reports, laboratory analyses, laboratory reports, scopes of work, or other information or documents relating to soils or groundwater on or under the

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Premises or the environmental condition thereof showing OHM on, in or under the Premises.

(f) Delivery of Site Assessments to Seller. Buyer shall provide to Seller, at no cost to Seller and free of all liens, a copy of his site assessment or assessments upon completion in final form.

(g) Buyer's Right to Terminate Purchase. In the event that any site assessment conducted by the Buyer reveals the presence of Oil or Hazardous Material in a nature or extent deemed unfavorable, in the sole discretion of the Buyer or his lender, or if the Buyer or his lender are not satisfied with any such site assessment, his results, or the recommendations of his engineers, scientists, or consultants in any respect, in the sole discretion of the Buyer or his lender, the Buyer may so notify the Seller at any time prior to expiration of the Inspection Period, and thereupon Buyer shall have the right to terminate this Agreement by written notice delivered to Seller prior to expiration of the Inspection Period, whereupon all obligations of the parties hereto shall cease and this Agreement shall become null and void and without recourse to the parties.

34. MAINTENANCE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES:

It shall be a condition of the Closing that Seller's representations and warranties contained in this Agreement are true and correct in every material respect as of the date of this Agreement and as of the Closing Date. The representations or warranties of Seller contained in this Agreement shall survive the Closing and the recording of the deed.

35. LICENSES AND PERMITS.

Buyer's obligations to close hereunder are further subject to and contingent upon Buyer or his nominee being able to obtain any requisite issuance or transfer of all licenses and/or permits, from the Town of Ware and/or from any other state, federal or local governmental body, required for the use of the Premises by Buyer as a construction and demolition transfer station and/or MSW transfer station. In the event Buyer is unable to obtain the issuance or transfer of any such license or permit, Buyer may terminate this Agreement by written notice to Seller, in which event this Agreement shall be of no further effect and shall be without further recourse to the parties.

36. HEADINGS.

The headings preceding the text of the paragraphs and subparagraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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37. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

38. ENTIRE AGREEMENT; AMENDMENTS.

This Agreement and the Exhibits hereto set forth all of the promises, covenants, agreements, conditions and undertakings between the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as contained herein. This Agreement may not be changed orally but only by an agreement in writing, duly executed by or on behalf of the party or parties against whom enforcement of any waiver, change, modification, consent or discharge is sought.

39. MISCELLANEOUS.

39.1. This Agreement may not be assigned other than to an entity which is wholly owned by the Buyer, without the prior written consent of the Seller and the Lender.

39.2. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

39.3. For all purposes of this Agreement the "effective date" or "date" of this Agreement shall be the date on which the last party to execute this Agreement so executes it and a fully-executed copy, or a fully-executed counterpart original, is received by the other party.

39.4. Neither this Agreement nor any memorandum or notice thereof shall be recorded or filed at any public records office, including but not limited to, the Hampshire County Registry of Deeds or Registry District of the Land Court. Any such recording or filing by Buyer or anyone acting on Buyer's behalf shall, at the election of the Seller, void this Agreement and terminate the rights of the Buyer hereunder.

39.5. The parties to this Agreement acknowledge and agree that TIME IS OF THE ESSENCE of this Agreement.

39.6. The parties executing this Agreement on behalf of Seller and Buyer, by executing this Agreement, each acknowledge herein that they have the authority to enter into this transaction; further, that the individuals executing this Agreement for the Seller and Buyer respectively have all necessary authorizations to enter into the purchase and sale of the Property; further, that this Agreement is a legal, valid and

binding obligation of Seller and Buyer enforceable in accordance with its terms. Further, the Seller and Buyer will furnish each other with authorization for the Trustees of Seller and the officers, trustees or managers of any nominee of Buyer, respectively, to execute any necessary, appropriate or convenient conveyance documents at the Closing.

40. TITLE MATTERS.

Notwithstanding anything herein contained, the Premises shall not be considered to be in compliance with the provisions of this Agreement with respect to title, unless:

(a) all buildings, structures and improvements, including but not limited to, any driveways, septic systems and components and leaching fields thereof, and all means of access to the Premises, shall be located completely within the boundary lines of the Premises and shall not encroach upon or under any property of any other person or entities:

(b) no building, structure, improvement or property of any kind encroach upon or under the Premises from other premises;

(c) the Premises abut a public way, duly laid out or accepted as such by the town or city in which the Premises are located (or have record title access thereto);

(d) title to the Premises is insurable, for the benefit of the Buyer in a fee owner's policy of title insurance at normal premium rates, on a standard ALTA insurance policy by a title insurance company licensed to do business in the Commonwealth of Massachusetts without exception for any matters not expressly permitted hereunto.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written.

Seller:

O'RILEY FAMILY TRUST

BY: _____
Richard C. O'Riley, Trustee

_____
Joan M. O'Riley, Trustee

Buyer:

Chris Berardi

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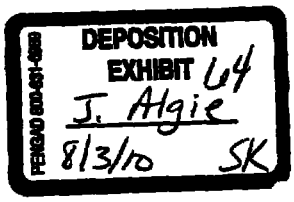

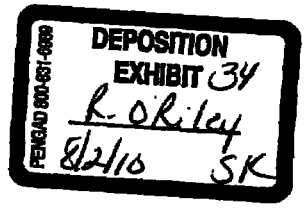

MANAGEMENT AGREEMENT

This Management Agreement (this "Agreement") is made this 18th day of February, 2010 between Valley Management Services, Inc., a Massachusetts corporation with a principal place of business located at 1365 Main Street, Waltham, MA 02451 ("Manager"), ABC&D Recycling, Inc., a Massachusetts corporation with a principal place of business at 198 East Street, Ware, MA 01082 and Richard C. O'Riley and Joan O'Riley as Trustees of the O'Riley Family Trust (collectively the "Corporation").

RECITALS

A. The Corporation collectively owns the real property, improvements, fixtures, equipment and other personal property and assets, and operates a construction and demolition processing facility, located at 198 East Street, Ware, MA 01082 (the real and personal property and assets and the construction and demolition facility are collectively referred to as the "Facility").

B. The Manager is a corporation formed for the purposes of providing management services to the Corporation during the interim period prior to the anticipated sale of the real property, including the Facility, and the sale of the shares of stock of ABC&D Recycling, Inc to Chris Berardi (the "Buyer") pursuant to a real estate Purchase and Sale Agreement between the O'Riley Family Trust and the Buyer (the "Real Estate Agreement") and an Agreement for the Purchase and Sale of Capital Stock of ABC&D Recycling, Inc. between Richard C. O'Riley and Joan M. O'Riley and the Buyer ("Stock Purchase Agreement") of even date (the Real Estate Agreement and the Stock Purchase Agreement being collectively referred to as the "Purchase Agreements"). The Manager is wholly owned by the Buyer.

C. The Manager and the Corporation desire that Manager's management team operate the Facility pursuant to this Management Agreement until the earlier of (1) the date upon which Buyer purchases the Facility pursuant to the Purchase Agreements, or (2) this Agreement is otherwise terminated or expires pursuant to the terms hereof.

D. This entire Agreement is subject to any and all prior service and or lease contracts, any and all rights, liens and interests in and to the Facility held by Country Bank for Savings (the "Lender") including without limitation, any and all rights and interests of the Lender set forth in a certain Settlement Agreement dated February 13, 2009 between, *inter alia*, the Corporation and the Lender, as modified

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and amended, copies of which Settlement Agreement and the most recent amendment thereto, are attached hereto as Exhibit "A" and incorporated herein by reference.

In consideration of the foregoing, of the mutual benefits and obligations set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION ONE
DURATION AND TERMINATION

The term of this Agreement shall commence on the date hereof and shall terminate on the earliest to occur of any of the following events, each of which shall be a "Termination Event" hereunder, (a) the date of closing of Buyer's purchase of the Facility pursuant to the Purchase Agreements, (b) the date of termination of the Real Estate Agreement and/or the Stock Purchase Agreement pursuant to their respective terms without a purchase by Buyer, (c) the mutual agreement of the parties, (d) breach or default of any provisions of this Agreement by the Manager, (e) November 15, 2010, (f) the issuance of a written termination notice by the Lender to the Manager, which may be issued at the Lender's sole and exclusive discretion or (g) other termination as provided herein, including without limitation a termination for default. In the event that the time for performance in the Purchase Agreements is extended, the term of this Agreement shall be automatically extended to the same date, subject however, to termination upon the occurrence of any Termination Event as set forth above.

SECTION TWO
SERVICES IN GENERAL

A. Manager shall provide management services to the Corporation in a manner consistent with good business practices within the waste industry, and in a manner consistent with, and subject to, the responsibilities of the Corporation as a facility and a party to the February 13, 2008 Massachusetts Department of Environmental Protection's Authorization to Operate ("ATO") and in full compliance with all other laws, rules, regulations of the federal, state or local governing bodies that may have jurisdiction or authority over activities or business of the Corporation and the Manager.

B. Manager shall provide management services for all departments and shall engage in those customary activities incident to the operation of the Facility, including the management of the sales, personnel, purchasing, service, accounting, credit, collections, billing, insurance, and other business and administrative departments.

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C. The parties acknowledge that the Manager's powers and responsibilities under this agreement may be limited or regulated by local, state, or federal laws or regulations. Manager shall fully comply with applicable laws and regulations, and with the ATO, in performing under this Agreement. Any acts required by law or regulation to be performed in connection with the operation and management of the Facility shall be performed by Manager.

D. Manager shall take any and all reasonable actions, including the initiation of legal proceedings, to maintain the Corporation's waste business, to protect its rights, and to enter into, amend, cancel or terminate contracts or leases as may be reasonably necessary for such purposes, provided however, Manager shall not enter into any contract or agreement which is not terminable, by September 22, 2010, pursuant to its terms, by the Corporation without the prior express written consent of the Corporation and the Lender.

E. During the term of this Agreement, to the extent earned and subject to the terms and conditions herein, the Manager shall be paid compensation for managing and operating the Facility which shall equal fifty percent (50%) of the Net Income during any calendar month (the "Management Fee"). The Management Fee, if earned, shall be payable, in arrears, from the Net Income. For purposes hereof, "Net Income" shall mean the balance of the gross proceeds and receipts attributable to the Facility, during each such calendar month, remaining after payment of any and all of the Operating Expenses. "Operating Expenses" shall mean customary obligations and operating expenses attributable to the management and operation of the Facility, which have been approved by the Lender and an auditor, if retained by the Lender, as set forth herein, with respect to each such calendar month, including but not limited to: (1) payroll for employees which shall not exceed the aggregate sum of $35,000 during any calendar month, (2) any and all taxes fees, and governmental charges attributable to the Facility, including payroll taxes, permit fees and charges, sales and excise taxes and real estate taxes, which real estate taxes shall be escrowed on a monthly pro rata basis with the Lender, in an amount determined by the Lender, (3) utilities, (4) reasonable health insurance premiums for full time employees, consistent with past practices, (5) liability insurance and such other insurance coverage as may be required hereunder, (6) equipment lease payments for all existing lease obligations of the Corporation existing as of the date of this Agreement, (7) all obligations and expenses respecting the Facility which have been incurred after the date of this Agreement, including all ongoing vendor payments (8) payments necessary to maintain any state or local reports required

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for the operation of the facility (9) the fees and expenses for the services of an independent auditor to be selected by the Lender, if deemed necessary by the Lender, in its sole and exclusive discretion (the "Auditor") (10) customary depreciation expense and (11) any and all costs necessary for the disposal of all materials received or situate upon the Facility. For purposes hereof, interest which accrues in connection with outstanding loans to the Lender shall not be deemed an Operating Expense. Under no circumstance will the Manager effect any payment to any affiliate, shareholder, owner, or insider of the Manager without the prior written consent of the Corporation and the Lender, nor shall the Manager effect any payment for any obligation or expense incurred hereinafter which is not customary, reasonable and necessary.

F. Within the fourteen (14) day period following the end of each calendar month during the term of this Agreement, the Manager shall provide to the Lender and the Corporation, written certification that all of the Operating Expenses have been duly paid for the most recent month, together with such detail and supporting documentation as the Lender or the Auditor may require (the "Payment Certification"). Within ten (10) business days of the Lender's receipt of the Payment Certification (the "Review Period"), the Lender and the Auditor (if retained by the Lender) shall review the Payment Certification in order to determine whether all requisite Operating Expenses have been paid and that all payments made by the Manager are customary, reasonable and necessary for the operation of the Facility. Prior to the expiration of such Review Period, the Lender or the Auditor (if retained by the Lender) shall make a final determination as to the amount of Net Income, if any, which will applicable to each such monthly period, in which event, provided the Manager has not breached any of its obligations or failed to comply with any term or condition under this Agreement, the Management Fee shall be deemed earned and may then be paid to the Manager. The Management Fee, if earned, shall be paid by check payable to the Manager and delivered to the Manager at the Manager's address specified herein. The Remaining fifty percent (50%) of the Net Income shall be deemed immediately earned by the Lender and forthwith paid and payable to the Lender (the "Lender Net Income Payment"). Under no circumstance shall the Lender Net Income Payment be refundable. The Manager agrees and acknowledges that it shall be entitled to no compensation other than the Management Fee, to the extent earned and the Manager hereby relinquishes any right or interest in and to the Lender Net Income Payment.

G. Manager will maintain any and all accounts respecting the Facility exclusively with the Lender and all such accounts (and all proceeds relating thereto) shall at all times be subject to the Lender's duly perfected first security interest.

H. During the term of this Agreement, the Lender and the Auditor (if retained by the Lender), shall have the right to audit the business operations of the Manager, including, but not limited to, inspection of the Facility, its offices and books and records during normal business hours and as frequently as Lender deems necessary, in Lender's sole and absolute discretion. The Manager will extend its full cooperation to the Lender and the Auditor, in connection with any such audit, and shall make fully available to the Lender and the Auditor such documentation as they may require, in their sole and exclusive discretion.

I. The Manager shall withhold monies to pay local, state and federal income, sales and use taxes affecting the Corporation or the Facility, in such amounts, and at such times, as the Auditor or the accountant for the Corporation may require.

J. The Manager shall remove all materials presently contained in all rail cars located upon the Facility, with all such materials processed and removed in accordance with applicable law, within fourteen (14) days from the date hereof.

SECTION THREE
FACILITY STAFF; DEPARTMENTS

Manager shall perform all customary functions reasonably required to maintain an adequate staff for the operation of a construction and demolition processing facility consistent with the Facility's earnings and budget. During the term of this Agreement, all employees shall be hired by Manager, but shall be employees of the Corporation; and neither the Manager nor the Manager's officers, directors, agents, employees, or representatives (collectively "Manager's Representatives") shall have any employment obligations or liabilities whatsoever to any such employees. The Manager shall be responsible for the payment of compensation to such employees, including applicable state and federal taxes and withholdings, during the term hereof. The Manager shall have the authority, without approval, but on behalf of the Corporation, to terminate the services of any employee for cause or otherwise in accordance with applicable law in which event the Manager shall promptly notify the Corporation and the Lender of such action.

SECTION FOUR
INDEPENDENT CONTRACTOR

In entering into and complying with this Agreement, Manager is and shall at all times be performing as an independent contractor. Nothing in this Agreement shall constitute or be construed as a creation of a partnership, joint venture or any other relationship between the Corporation, the Lender and the Manager, or their successors or assigns.

SECTION FIVE
SYSTEMS, PURCHASING, REPAIRS

A. Manager, shall maintain, supervise, and revise as needed the Facility's management, financial and information systems to properly conduct the fiscal and administrative functions of the Corporation, including record-keeping, billing, collections, auditing, and purchasing.

B. To the extent that repairs are required to the Facility, including without limitation the Corporation's fixtures or equipment therein, such repairs shall be the Manager's responsibility.

SECTION SIX
CONTRACTS, LICENSING, PERMITS

A. Manager, with Corporation's approval, which shall not be unreasonably withheld or delayed, shall negotiate contracts or agreements in the Corporation's name as may be necessary to conduct business at the Facility in the ordinary course of such business, and such contracts and agreements shall be executed by and on behalf of the Corporation and shall constitute contracts and agreements of the Corporation and not of the Manager; and the Manager and Manager's Representatives shall have no obligations or liability whatsoever under any such contracts and agreements.

B. Manager shall assist the Corporation in maintaining all licenses and permits required for management and operation of the Facility. The Corporation shall cooperate with the Manager in maintaining all licenses and permits required for the management and operation of the facility.

C. The Manager shall fully comply with all applicable laws relating to the operation of the Facility and any and all acts required by law or regulation shall be performed by the Manager.

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D. The Corporation shall extend its full cooperation to the Manager in connection with the Manager's efforts to obtain MSW authorization in the name of ABC&D Recycling, Inc.

SECTION SEVEN
EXPENSES OF OPERATION OF FACILITY

A. During the term of this Agreement, the Manager shall supervise the Corporation's employees and will prepare and provide to the Corporation and the Lender within fourteen (14) days following the end of each calendar month , and more frequently if requested by the Lender or the Auditor, a balance sheet, cash flow, income and expense statement, a detailed "tonnage report" showing all materials received, processed, and shipped out and an operating budget for the Facility, all in a form generally acceptable within the industry and consistent with generally accepted accounting principles together with such additional reports as may be required by the Lender, in its sole and exclusive discretion.

B. Manager shall not take action nor incur expenses, or commit the Corporation to pay expenses, for any item in excess of $25,000 without the Corporation's prior approval, which shall not be unreasonably withheld or delayed, unless the item was included in the Corporation's budget approved by Corporation and the Lender, or the expenditure is justified on an emergency basis and there is not adequate time to obtain such approval.

C. The Manager agrees to use its best efforts to generate sufficient income in order to provide for efficient operation of the Facility.

D. During the term of this Agreement, all Operating Expenses for each calendar month shall be paid first from the gross proceeds and receipts received during such monthly period, provided however, in the event of any deficit during such period, the amount of such deficit shall be forthwith paid by the Manager from its own funds.

SECTION EIGHT
EXCUSED PERFORMANCE; INDEMNIFICATION

A Manager is and shall be released, discharged and excused from any obligation to effect any required payment hereunder , other than due to the fault of the Manager or to the extent the Manager is wrongfully prevented from making such payment by the Corporation, In performing its duties under this Agreement, Manager shall not be responsible or liable for any losses, damages, costs or expenses incurred by the Corporation as a result of any

mistake of judgment or other action or omission made in good faith by Manager, unless such loss, damage, cost or expense resulted from Manager's willful misconduct or gross negligence or its violation of any term or provision contained herein and the Corporation hereby releases and discharges the Manager from all liability for any such losses, damages, costs or expenses so incurred.

B. Manager shall not be liable to the Corporation or to any other person for any obligation of the Corporation (including without limitation wage, employment or tax obligations) or any contractual obligation that arises or has arisen in the course of the business of the Facility, other than due to the fault of the Manager and the Corporation shall indemnify, defend and hold Manager and Manager's Representatives harmless from and against all claims, liabilities, losses and damages (including all costs and reasonable attorneys fees incurred) for any such obligations. With respect to any act or omission of the Corporation or any agent, employee, or contractor of the Corporation, the Corporation shall indemnify, defend and hold harmless Manager and Manager's Representatives from and against any and all claims, liabilities, losses, damages, personal injuries (including death), costs and expenses (including reasonable attorneys fees) arising in any way out of any such act or omission. With respect to any act or omission of Manager or Manager's Representatives, the Manager shall indemnify and hold harmless the Corporation from all liabilities (including costs, expenses and reasonable attorneys' fees) for losses, damages and injuries to person or property, to any third party except any act or omission by the Manager taken in good faith and with the reasonable belief such act or omission was within the scope of its authority hereunder, and Manager shall indemnify the Corporation and hold it harmless from all liability, loss, damage, cost or expense. In no event shall the Corporation make any claims against Manager or Manager's Representatives on account of any alleged errors of judgment made in good faith in determining the operating policies of the Facility or on account of any contracts or agreements executed by and/or in the name of the Corporation, and the Corporation hereby releases and discharges Manager and Manager's Representatives from all such claims.

C. The Corporation further agrees to indemnify Manager and Manager's Representatives and their successors and assigns, and to hold Manager, Manager's Representatives and their successors and assigns harmless from, any and all claims, actions, suits, proceedings (including governmental proceedings), losses, damages, costs, expenses, penalties, interest, fines, and liabilities, including attorneys'

fees and costs in connection therewith, including without limitation bodily injury, property damage or government-mandated clean-up costs, arising or resulting from any oil or hazardous waste contamination on, in or under the Facility (including any land that is a part thereof) , which occurred prior to the date hereof.

SECTION NINE
CORPORATION PROPERTY, LENDER'S SECURITY INTEREST

The Manager acknowledges that all property now owned or hereafter acquired by or for the benefit of the Corporation or the Facility, including without limitation, any and all tangible and intangible property, and all contracts, railroad and railroad interchange agreements, agreements, licenses, permits, rights and interests including any right, permit or interest which may be acquired or obtained to operate, or in any way related or incident to the operation of the Facility as a Municipal Solid Waste or railroad facility, and further including those items representing to the public or to the waste industry a connection between the Facility and the Corporation, including logos, trade names, symbols, and specialized systems or procedures, used by Manager in rendering services under this Agreement are and shall remain Corporation's property during the term of this Agreement and subject to a duly perfected first security interest in favor of the Lender. After termination of this Agreement, Manager shall have no interest or right to use of such items without obtaining the prior written consent of Corporation and Lender. In the event of termination of this Management Agreement that was not the result of the sale of the Facility pursuant to the Purchase Agreements, any and all licenses, permits, authorizations now existing or hereafter arising, or otherwise applied for in the course of this Management Agreement will remain and become (as applicable) the exclusive property of the Corporation, subject to the Lender's security interest, without any claim or recourse of the Manager, Manager's Representatives, or any affiliate and the Manager hereby unconditionally and irrevocably releases all of its rights and interests in and to all such property, rights and interests.

SECTION TEN
INSURANCE

During the term of this Agreement, the Manager shall maintain, commercial general liability and motor vehicle liability insurance with a minimum coverage of Three Million ($3,000,000) Dollars purchased from a financially responsible insurance company qualified to do business in Massachusetts, and shall maintain all other insurance normally and customarily carried with respect to its business and assets, or otherwise required by the Lender, in its sole and exclusive discretion, including without limitation, fire and casualty insurance on a replacement cost basis on all of the Corporation's real and personal property, fixtures and equipment, and workers compensation insurance as required by law. All insurance policies carried pursuant to this Section shall name Manager as an

additional insured and the Lender as secured party, mortgagee, additional insured and loss payee. An endorsement shall be attached to the policies stating that the policies may not be changed or cancelled without at least thirty (30) days' prior written notice to the Lender.

SECTION ELEVEN
DEFAULT

A. Any of the following events shall constitute a default under this Agreement:

1. Failure of any party to pay any other party any amount that becomes due under this Agreement for a period of five (5) days after the amount becomes due;

2. Filing by any party of a voluntary petition in bankruptcy or a petition for reorganization under bankruptcy laws, or a petition for appointment of a receiver for all or a substantial portion of the petitioning party's property, when such filing precludes Manager's continued operation of the Facility;

3. Consent by any party to an involuntary petition in bankruptcy, or failure to vacate an order approving such an involuntary petition within forty-five (45) days from the date of entry of the order, when consent to or failure to vacate such an order precludes Manager's continued operation of the Facility;

4. On application of a creditor, entry of an order or judgment by a court of competent jurisdiction adjudicating either party bankrupt or insolvent, approving a petition for reorganization, or appointing a receiver, trustee, or liquidator of all or a substantial portion of a party's assets, when such order continues in effect for any period of forty-five (45) consecutive days and precludes Manager's continued operation of the Facility;

5. Failure of any party to perform or fulfill any other obligations, agreement, covenant or condition set forth in this Agreement, when such failure continues for a period of five (5) business days after notice of such failure from the non-defaulting party.

SECTION TWELVE
MAINTENANCE AND CONDITION OF THE FACILITY

Notwithstanding anything in this Agreement to the contrary, the Manager covenants and agrees that upon termination of this Agreement, that the Facility, including all equipment and personal property located therein (reasonable wear and tear excepted), will be returned to the Corporation or the Corporation's designee (unless purchased by the Manager) in a condition which is equal to or better than the condition of the Facility as of the date hereof, and that all materials which are presently located upon the Facility, or which have been accepted for processing during the term of this Agreement, shall be removed from the Facility and properly disposed of by the Manager in full compliance with all applicable laws.

The Manager acknowledges that all real and personal property which comprises the Facility is the Lender's collateral and that no sale of any property will occur other than in, and through, the ordinary course of business.

The Manager agrees that Manager, its agents, servants, employees, licensees and contractors shall not use, manufacture, store or dispose of any flammable explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials or other similar substances (collectively "Hazardous Materials") on, under or about the Facility. Without limiting the above, Manager shall indemnify and hold harmless the Corporation and the Lender from and against any and all claims, losses, liabilities, damages, costs and expenses, including without limitation, attorneys' fees and costs arising out of or in any way connected with the use, manufacture, storage, or disposal of Hazardous Materials by Manager, its agents, servants, employees, licensees or contractors on, under or about the Facility including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required plans in connection herewith. The indemnity obligations of Manager under this Section shall survive any termination of this Agreement.

SECTION THIRTEEN
TERMINATION FOR DEFAULT OR OTHER CAUSE

A. In the event of default as defined in Section Eleven of this Agreement, the nondefaulting party may give notice to defaulting party of intent to terminate this Agreement after expiration of ten (10) days from the date of notice. At the end of the ten (10) day period, this Agreement shall terminate. If however, on receipt of notice of intent to terminate, the defaulting party promptly and diligently cures the default, the notice shall have no force or effect, provided however no such right to cure shall be available in the event the Lender provides notice of termination as permitted by subsection f of SECTION ONE above.

B. The rights granted pursuant to this section are In addition to any other rights and remedies for breach of contract available to the nondefaulting party at law or in equity.

SECTION FOURTEEN
SUCCESSORS AND ASSIGNS

A. Neither party may assign this Agreement, or any rights hereunder, without the prior written consent of the other party.

B. Subject to paragraph A of this Section, the terms of this Agreement shall be binding on such permitted transferees, successors, or assigns of the parties as though named in this Agreement.

C. No change in ownership of the Manager shall occur without the express, prior written consent of the Corporation and the Lender.

SECTION FIFTEEN
NOTICE

A. All notices, requests, or approvals required or permitted under this Agreement shall be in writing and shall be delivered by hand, or sent by a recognized overnight mail service (such as Federal Express), or deposited in the United States mail, postage prepaid, and either registered or certified.

B. Correspondence should be sent to the addresses set forth at the beginning of this Agreement.

C. A change of address must be noticed in the manner set forth in this Section. Any notice, request, or approval required or permitted and sent by United States mail as provided above shall be deemed given and received by addressee on the third (3rd) business day after mailing.

SECTION SIXTEEN
BOOKS

The Manager shall maintain the Corporation's books of account and other records reflecting Facility operations in accordance with generally accepted accounting principles and as otherwise may be required by the Lender. The records shall be available to Lender, the Auditor (if retained by the Lender) and the Corporation at reasonable times.

SECTION SEVENTEEN
INTEGRATION, WAIVER, AND CONSTRUCTION

The whole of this Agreement is herein set forth and there are no verbal or other written agreements, and no understandings or customs affecting the terms hereof. The parties hereto have placed no reliance upon any undertaking of each other, except only to the extent expressed herein. The parties acknowledge and agree that the Lender has made no warranty, representation, promise or commitment concerning any aspect of this Agreement. A party's waiver of a breach of any term of this Agreement shall not constitute a waiver of any subsequent breach of the same or another term contained in the Agreement. A party's subsequent acceptance of performance by the other party shall not be construed as a waiver of a preceding breach of this Agreement other than failure to perform the particular duties so accepted. This Agreement shall be construed under the laws of the Commonwealth of Massachusetts.

SECTION EIGHTEEN
SEVERABILITY

If any provision of this Agreement is held unenforceable or invalid by a court of competent jurisdiction, the remaining provisions of this agreement shall not be affected.

SECTION NINETEEN
AMENDMENT

This Agreement may not be altered or amended except by an instrument in writing executed by all of the parties hereto.

WITNESS our hands and seals.

Witness:

MANAGER,

VALLEY MANAGEMENT SERVICES, INC.

By:

CORPORATION,

THE O'RILEY FAMILY TRUST,

By: _____
Richard C. O' Riley, Trustee
198 East Street
Ware, MA 01082
Tel. 413-967-7046

By: _____
Joan M. O' Riley, Trustee
198 East Street
Ware, MA 01082
Tel. 413-967-7046

ABC&D Recycling, Inc.

By: _____
Richard C. O' Riley, President
198 East Street
Ware, MA 01082
Tel. 413-967-7046

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NOTICE OF TRUST

KNOW ALL MEN BY THESE PRESENTS

THAT,

Pursuant to the registration procedures in effect in this state, notice is given that an Inter Vivos TRUST was established by instrument dated the **31ST** day of **MAY, 1996**, in the jurisdiction of this court, known as **THE O'RILEY FAMILY TRUST**, by and between the Grantors and Trustees named below:

GRANTORS:

(1) Richard C. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

(2) Joan M. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

TRUSTEES:

(1) Richard C. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

(2) Joan M. O'Riley
Name
101 Beaver Road
Address
Ware, MA 01082
City/State/Zip

RICHARD C. O'RILEY and **JOAN M. O'RILEY**, appointed initial trustees, expressly acknowledge and assume these duties as trustees dated this **31ST** day of **MAY, 1996**.

Grantor

Trustee

Co-Grantor

Co-Trustee

COMMONWEALTH OF MASSACHUSETTS)
) :ss.
COUNTY OF HAMPSHIRE)

On **MAY 31, 1996, RICHARD C. O'RILEY** and **JOAN M. O'RILEY**, Grantors and Joint Trustees of the trust estate created by the Declaration of Trust agreement dated **MAY 31, 1996**, came before me and acknowledged that the facts stated in the above Trust Notice are true as they believe.

My Commission Expires:

September 7, 2001

Notary Public

JOHN P. REGISH
Notary Public
My Commission Expires Sept. 7, 2001

ATTEST: HAMPSHIRE, REGISTER
MARIANNE L. DONOHUE

2004 00034848
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Recorded: 11/16/2004 02:25 PM

TRUSTEE'S CERTIFICATE PURSUANT TO
CHAPTER 184, §35 OF THE
MASSACHUSETTS GENERAL LAWS

NAME OF TRUST: THE O'RILEY FAMILY TRUST

DATE OF TRUST: MAY 31, 1996

CERTIFICATION

I/We, RICHARD O'RILEY and JOAN O'RILEY, Trustee(s) of "THE O'RILEY FAMILY TRUST" Trust under Declaration of Trust dated May 31, 1996 (the "Trust"), between RICHARD O'RILEY and JOAN O'RILEY as settler and RICHARD O'RILEY and JOAN O'RILEY as original and current trustees, whose mailing address is 265 Upper Church Street, Ware, MA , certify as follow:

1. We are the current trustees of the Trust (the "Trustee(s)"),

2. The named successor Trustees are as follows: COLLEEN O'RILEY-MUCHA and SEAN O'RILEY. ARTICLE XII of the Trust provides that during the lifetime of the grantor, RICHARD O'RILEY and JOAN O'RILEY , the grantor may appoint additional or successor trustees of the "Trust" ,

3. Pursuant to ARTICLE II & VIII of the Trust, the Trustees have the authority and power to convey any interest in real estate and improvements thereon held in said Trust and to mortgage the same, and no purchaser, mortgagee or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the Trustee for a conveyance thereof,

4. There are no facts which constitute a condition precedent to acts by the Trustee(s) or which are in any other manner germane to affairs of the Trust in connection with this conveyance,

5. That either, RICHARD O'RILEY or JOAN O'RILEY, acting singly, are each authorized by the TRUST and the Trustees to sign any and all instruments necessary to effectuate a loan from Country Bank for Savings to ABC & D Recycling, Inc. (the "BORROWER") and the issuance of $5,000,000 Massachusetts Development Finance Agency Revenue Bonds (ABC&D Recycling Inc. Project), which documents shall include a Guaranty by the TRUST of the indebtedness of BORROWER, and

6. That there are no unrecorded amendments in connection with the TRUST.

Sworn to under the pains and penalties of perjury on this November 16, 2004.

RICHARD O'RILEY, Trustee

JOAN O'RILEY, Trustee

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss November 16, 2004

On this Nov 16 2004 before me, the undersigned notary public, personally appeared RICHARD O'RILEY and JOAN O'RILEY, proved to me through satisfactory evidence of identification, namely the person was [known to me, identified by affirmation of a credible witness, or identified in Mass Drivers Lic.], to be the persons whose names are signed on the preceding or attached document and acknowledged to me that such persons signed it voluntarily as such persons' free act and deed for its stated purpose.

NOTARY PUBLIC
Expires: 11/8/07

MATTHEW L. DONOHUE NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS MY COMMISSION EXPIRES NOVEMBER 8, 2007

ATTEST: HAMPSHIRE, REGISTER
MARIANNE L. DONOHUE

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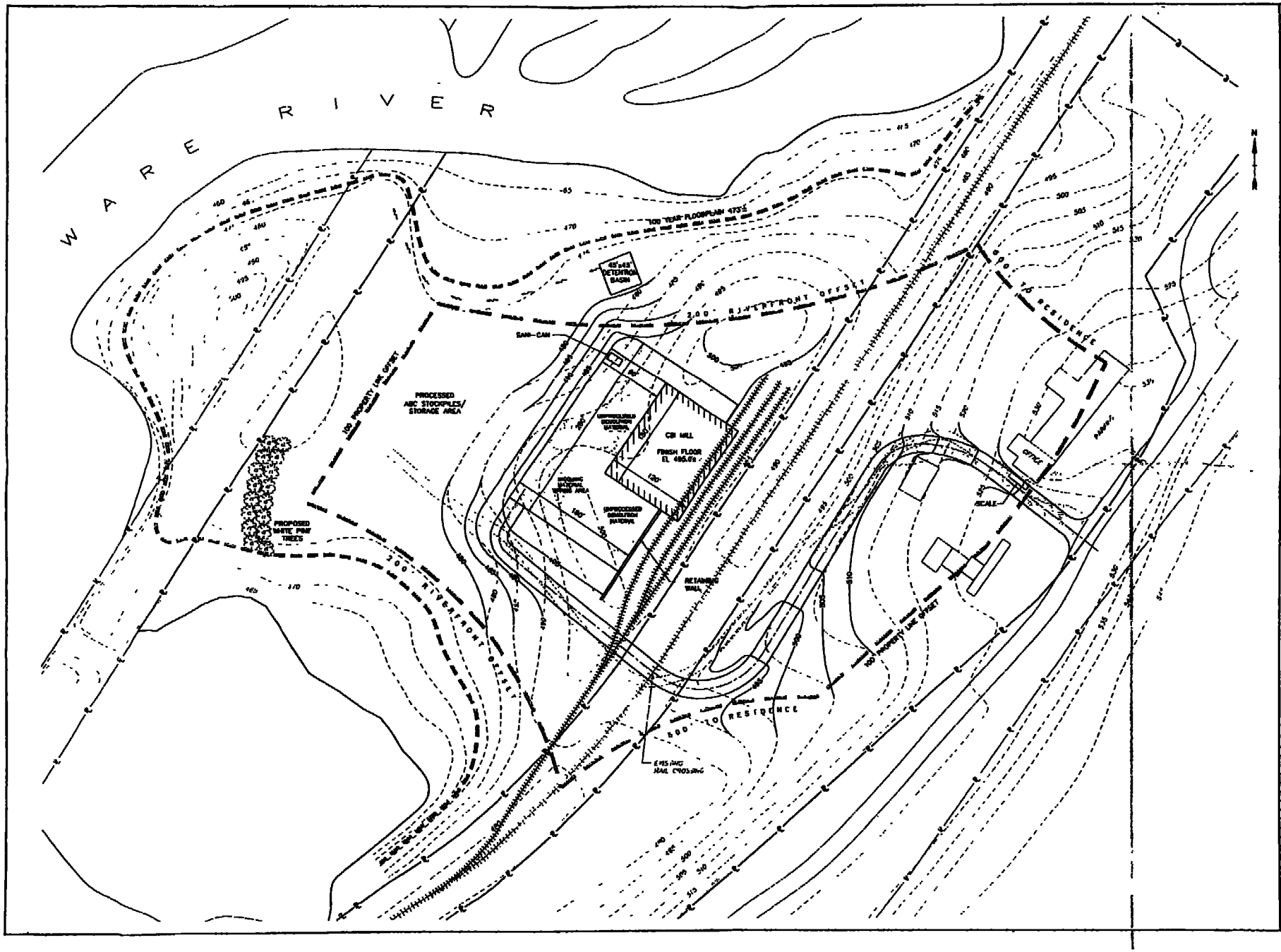

Tighe&Bond
Consulting Engineers
53 Southampton Road
Westfield, Massachusetts
(413) 562-1600
www.tighebond.com

O' Riley Family Trust

Recycling and Transfer Facility Site Plan Approval

Ware, Massachusetts

PROJECT NO.	WH08
FILE	WH08Plan2
DRAWN BY	EJA
CHECKED	DSA
APPROVED BY	TCC

PROPOSED FACILITY LAYOUT

SCALE 1"=60'

SHEET 2

8

A True Copy Attest
Nancy J. Talbot
Nancy J. Talbot
Town Clerk

TOWN OF WARE
MASSACHUSETTS 01082
PLANNING BOARD

RECEIVED
APR 28 2010
TOWN CLERK'S OFFICE
TIME RECEIVED 2 PM

DEPOSITION EXHIBIT 6
R. O'Riley
8/2/10

APPLICATION FOR SPECIAL PERMIT CONCERNING EXISTING TOWN BY-LAWS

Name of Applicant O'Riley Family Trust Date 2/21/01

Address of Applicant 165 Church St Rt Box 719

Location of Property 198 East St Ware Mass. 01082

Recorded at the Hampshire County Registry of Deeds, Book 4901 Page 45

In this space, please state what you desire a Special Permit for.

Expansion of our existing business to include a Railroad siding and processing area for transfer and recycling of asphalt, brick, concrete, construction and demolition materials and wood

A *certified* list, from the Board of Assessors, of all Abuttors and Owners of land within 300 feet of the property lines of the parcel listed above must be submitted as part of this application.

The charge for this Special Permit will be based upon the actual cost of newspaper advertisements of the Public Hearing Notice and the Certified Mailings of Notices as required by law. The applicant must pay for these costs at the time the application is made.

Signature of Applicant [signature] Date 2/21/01

Please do not fill in below this line — to be completed by the Board.

Application received on: 2/21/01

Charge for Public Notice and Mailings: $ 250.00 Received on: 2/21/01

Date of Scheduled Public Hearing: 4/4/01

Assigned Application Number: SP-2001-001

By: Christopher Kimarjo for the Ware Planning Board
Chairman & Clerk

Ware000885

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09670 1915-199

SEE BOOK 6058 PAGE 332

SEE BOOK 2711 PAGE 273

We, RONALD LABBE and THERESE LABBE, husband and wife, both

of Cumberland, Province of Quebec, Canada,

in consideration of forty thousand ($40,000.00) dollars

grant to RICHARD C. O'RILEY and JOAN M. O'RILEY, husband and wife, as tenants by the entirety, both of 024 Gilbertville Road, Ware, Massachusetts,

with

the land in Ware, Hampshire County, Massachusetts, bounded and described as follows:-

SEE RELEASE Book 3[illegible] Page 211

BEGINNING at a point on the Northerly line of the Ware-West Brookfield Road (State Highway Route 9, 1960 relocation), at the Southeasterly corner of land of the Town of Ware; and from said point of beginning running

thence North 49° 08' 34" East, by said Highway, six hundred seventy (670) feet, more or less;

thence North 33° 24' 21" East, by said Highway, three hundred eight and thirty-three hundredths (308.33) feet to a point opposite Station 356 + 10.00 of said 1960 Relocation of Routes 9 and 32; thence North 29° 46' 51" East 55.29 feet to a point;

thence North 40° 53' 33" West, along the line of State Highway Route 32 (Ware-Gilbertville Road, 1960 Relocation), one hundred eight and seventy-seven hundredths (108.77) feet;

thence North 30° 24' 32" East, along said Route 32, three hundred sixteen and seventy hundredths (316.70) feet to a point at the Town Line between Ware and West Brookfield, said point being also at land formerly of Joseph Kendrat, et ux, as described in deed from Ronald Labbe, et ux, dated October 10, 1953, and recorded with Hampshire County Registry of Deeds, Book 1156, Page 236;

thence North 57° 45' West, along last-described land, two hundred twenty-four (224) feet, more or less, to the Easterly line of land of the Boston & Albany Railroad Company;

thence Southwesterly along last described land, twenty-four hundred (2400) feet, more or less, to land of the Town of Ware; and

thence along said land to said Road and the point of beginning.

ALSO, the land lying between the Ware River and land of the Boston & Albany Railroad Company, however the same may be bounded and described, and save and excepting therefrom the land now or formerly of the Boston & Maine Railroad Company.

SUBJECT to easements of record.

Meaning to convey and hereby conveying all of the premises conveyed to us by deed of Louis A. Strack dated May 31, 1969, and recorded in Hampshire County Registry of Deeds, Book 1069, Page 137, and by deed of Wilfred L. Labbe dated March 3, 1955, and recorded in said Deeds, Book 1190, Page 240, with the exception of such portions of the premises described in the aforesaid deeds as has been heretofore conveyed by us by duly recorded deeds.

Being the same premises described in a mortgage given by us to Ware Savings Bank under date of January 31, 1972, which has been recorded with said Deeds, in Book 1627, Page 280.

Massachusetts Excise Stamps amounting to $91.20 are affixed hereto and cancelled.

DEEDS EXCISE CANCELLED 08/[illegible]/20

1915-200

Executed as a sealed instrument this sixth day of October, 1976.

Neill W. Schoonmaker Jr. Ronald Labbe

Denise Lablé Therese Lablé

The Commonwealth of Massachusetts

Hampshire, ss. October 6, 1976.

Then personally appeared the above named Ronald Labbe

and acknowledged the foregoing instrument to be his free act and deed, before me,

Neill W. Schoonmaker Jr.

Notary Public

My commission expires 19

My Com...

NEILL W. SCHOONMAKER, JR.
NOTARY COMM. EXP. 12-11-81

October 7,1976 at 10 O'clock and 55 minutes A.M.

Rec'd, Ent'd & Exam'd.

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Bk: 8066Pg: 32 Page: 1 of 2
Recorded: 11/16/2004 02:25 PM

DEPOSITION EXHIBIT 5
R. O'Riley
8/2/10 SK

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS that We, RICHARD C. O'RILEY and JOAN M. O'RILEY both of 265 Upper Church Street, Ware, Hampshire County, Massachusetts

for consideration paid and in full consideration of

----- ONE and NO/100 DOLLARS ($1.00)-----

grants to THE O'RILEY FAMILY TRUST date May 31, 1996 see attached Certificate of Trust recorded as Book 8066 page 30 of 265 Upper Church Street, Hampshire County, Massachusetts Ware,
with *QUITCLAIM covenants*

(Description and encumbrances, if any)

SEE ATTACHED EXHIBIT "A"

Being the same premises conveyed to the Grantors herein by deed dated October 6, 1976, and recorded in the Hampshire County Registry of Deeds in Book 1915, page 199.

Witness my hand and seal this 16 day of November, 2004.

RICHARD C. O'RILEY

JOAN M. O'RILEY

The Commonwealth of Massachusetts

Hampden , ss. November 16, 2004

Then personally appeared the above named CYNTHIA A. GREENE and JOAN M. O'RILEY who showed MA Drivers Licenses as proof of identity, and acknowledged the forgoing instrument to be their free act and deed before me,

Matthew L. Donohue, Notary Public
My Commission Expires: 11/8/2007

MATTHEW L. DONOHUE NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS MY COMMISSION EXPIRES NOVEMBER 8, 2007

Donohue, Hyland & Donohue, P.C., [illegible] Chapman St., Holyoke, MA 01040

198 East Street Ware, MA

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EXHIBIT "A"

Beginning at a point on the northerly line of the Ware-West Brookfield Road (State Highway Route 9, 1960 Relocation), at the southeasterly corner of land of the Town of Ware; and from said point of beginning running

thence North 49° 08' 34" East, by said Highway, six hundred seventy (670) feet, more or less;

thence North 33° 24' 21" East, by said Highway, three hundred eight and 33/100 (308.33) feet to a point opposite Station 356 + 10.00 of said 1960 Relocation of Routes 9 and 32;

thence North 29° 46' 51" East, fifty-five and 29/100 (55.29) feet to a point;

thence North 40° 53' 33" West, along the line of State Highway Route 32 (Ware-Gilbertville Road, 1960 Relocation), one hundred eight and 77/100 (108.77) feet;

thence North 30° 24' 32" East, along said Route 32, three hundred sixteen and 70/100 (316.70) feet to a point at the Town Line between Ware and West Brookfield, said point being also at land formerly of Joseph Kondrat, et ux, as described in deed from Ronald Labbe, et ux, dated October 10, 1953, and recorded with Hampshire County Registry of Deeds, Book 1156, Page 236;

thence North 57° 45' West, along last-described land, two hundred twenty-four (224) feet, more or less, to the easterly line of land of the Boston & Albany Railroad Company;

thence southwesterly, along last-described land, twenty-four hundred (2400) feet, more or less, to land of the Town of Ware; and

thence along said land to said Road and thence to the point of beginning.

ALSO, the land lying between the Ware River and land of the Boston & Albany Railroad Company, however the same may be bounded and described, and save and excepting therefrom the land now or formerly of the Boston & Maine Railroad Company.

SUBJECT to easements of record.

ATTEST: HAMPSHIRE, _____, REGISTER
MARIANNE L. DONOHUE

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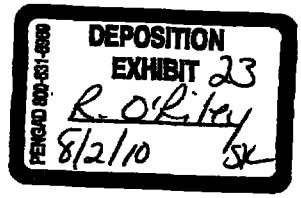

FD 35391

EXECUTIVE OFFICE OF TRANSPORTATION

LICENSE AGREEMENT
for
PRIVATE RAILROAD GRADE CROSSING AND SIDETRACK

Ware, MA

This **LICENSE AGREEMENT** entered into this 5th day of December 2005, by and between the Commonwealth of Massachusetts, through the **EXECUTIVE OFFICE OF TRANSPORTATION**, established and existing pursuant to Chapter 6A, Section 19 of the Massachusetts General Laws, as amended, and with a principal place of business at 10 Park Plaza, Boston, MA 02116 (hereinafter referred to as "**Licensor**"), and the **O'RILEY FAMILY TRUST,** a Massachusetts trust, and **ABC&D RECYCLING, INC.**, a Massachusetts corporation, each with a principal place of business at 198 East Street, Ware, MA 01082, jointly and severally (hereinafter "**Licensee**").

WHEREAS, Licensor, on behalf of the Commonwealth of Massachusetts, owns the right of way and track known as the Ware River Secondary (USRA Line Code 4139);

WHEREAS, Licensor has entered into a Lease and Operating Agreement with the Massachusetts Central Railroad Corporation (hereinafter referred to as **"MCER" or "Railroad"**) providing, in part, that Railroad shall operate railroad freight service on and be responsible for maintenance of Licensor's aforesaid Ware River Secondary, and that MCER shall be notified of any non-railroad use of such property, which use may not interfere with the efficient and safe operation of the property; and

WHEREAS, Licensor may enter into a License, Lease, Operating or other Agreement with other railroads and/or operators in the future for the operation of passenger, freight or related rail services on Licensor's aforesaid property, and the term "**Railroad**" or "**Operator**" as used herein shall also refer to such future railroads or operators;

WHEREAS, Licensee has applied to Licensor for a license to construct and maintain a private grade crossing over Licensor's right of way and track of the Ware River Secondary at approximately Mile Post 12.8, located in the Town of Ware, MA, the location of said private grade crossing being more fully described below and in Exhibit A of this Agreement (hereinafter referred to as the "**Premises**" or the "**Crossing**");

WHEREAS, Licensee has applied to Licensor for a license to construct and maintain a sidetrack adjacent to Licensor's right of way and track of the Ware River Secondary located in the Town of Ware, MA, the location of said sidetrack being more fully described below and in Exhibit B of the Agreement (hereinafter referred to as the "Sidetrack");

WHEREAS, Licensee intends to develop Licensee's property abutting the Ware River Secondary in the vicinity of the Premises for the purpose of receiving, processing and distributing asphalt, brick and construction demolition materials (hereinafter referred to as "**Licensee's Facilities**"), and wishes to construct, maintain and utilize the Crossing to gain access from East Street (Route 9 & 32) to the land on which Licensee's Facilities will be

constructed;

WHEREAS, Licensee intends to place the Sidetrack on the Licensor's property abutting the Ware River Secondary in the vicinity of the Premises for the purpose of gaining rail access to Licensor's right of way, thereby promoting the use of rail for industrial purposes;

WHEREAS, the operations to be undertaken at Licensee's Facilities will utilize freight rail service, which rail service will be provided by the Railroad authorized to provide such service on the Ware River Secondary;

WHEREAS, Licensor is willing to grant to Licensee the license and permission to construct, use, occupy, improve, maintain, repair and renew the Premises and the Crossing, but only upon the terms, conditions and limitations set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereby agree as follows:

Section 1: License

Licensor, pursuant to the authority contained in Chapter 6A, §19 and Chapter 161C §6(c) - (d) of the Massachusetts General Laws, and insofar as it has the legal right to do so, hereby grants to the Licensee the right to construct, use, occupy, improve, maintain, repair and renew said Crossing and Sidetrack across and over said tracks, right-of-way and property of Licensor at the aforesaid location; provided, however, that:

(a) Railroad shall perform and/or oversee all work on said Crossing and Sidetrack, including work related to the construction, maintenance, repair, improvement and renewal of the Crossing and Sidetrack.

(b) Licensee shall pay Railroad the entire cost and expense of all labor and materials furnished by Railroad in performing any construction, maintenance, repair, improvement and renewal of the Crossing and Sidetrack, including any expense incurred in protecting trains, persons using the Crossing and Sidetrack or other property. Licensee shall pay for such work in accordance with the terms of this Agreement.

(c) All improvements, repairs, maintenance and renewal of the Crossing and Sidetrack shall be subject to the inspection, supervision and approval of Licensor and Railroad, or their successors and assigns, as so designated by Licensor.

(d) Any entry, construction, maintenance, repair, and renewal made in connection with the Premises shall be subject to the inspection, supervision and approval of Licensor, the Railroad (if so required by Licensor), and their successors and assigns.

(e) The crossing shall be used only for the commercial purposes of the Licensee and shall not be for the use of the general public.

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(f) Upon execution of this Agreement and construction of the Crossing, any and all existing crossing rights over Licensor's property between approximately RR Station 655+00 and RR Station 690+00 (+/-) shall cease and terminate.

Section 2: Premises

(a) The property subject to this License Agreement (the "Premises" or the "Crossing") is located in the Town of Ware, Massachusetts, at approximately Mile Post 12.8 (RR Station 675+35 +/- to RR Station 675+85 +/-) along the Ware River Secondary. Reference is hereby made to Valuation Series 5, Map No. 13, showing the location and layout of said Ware River Secondary, as well as Exhibits A and B hereto, showing the location, layout and proposed improvements to the Crossing.

(b) Licensee covenants and agrees that it accepts the Premises in "as is" condition, that Licensor is under no obligation to make any repairs, renovations, or alterations to the Premises, and that Licensor makes no representations or warranties, express or implied, regarding the fitness of the Premises for Licensee's intended purpose or use.

(c) Licensee has inspected the Premises, and has determined that the Premises are suitable for the uses Licensee contemplates. Licensee assumes all risk of entry and use of the Premises.

Section 3: Permitted Uses

(a) The Crossing shall be a private grade crossing and shall be located and maintained in exact accordance with Exhibits A and B hereto, and no departure shall at any time be made therefrom except upon permission in writing granted by Licensor and Railroad.

(b) Licensee shall permit the Crossing to be used for vehicular access by Licensee, its agents, employees, licensees and invitees in connection with the development, construction and operation of Licensee's Facilities. Licensee covenants and agrees to enforce this provision. The Crossing shall be limited to industrial purposes and at no time will be used by the general public.

(c) All improvements to the Premises shall be constructed, located and maintained by Licensee in exact accordance with such plans and specifications as may from time to time be submitted to Licensor for review and approval, and no departure shall at any time be made therefrom except upon written permission of Licensor and, if so requested by Licensor, by Railroad; provided, however, that if any commission or other regulatory body duly constituted and having jurisdiction over the Premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the activities and uses herein described.

Supervision over the location of the construction work, inspection of the Premises and any approved improvements thereto, and approval of materials to be used in construction, maintenance, repair, alteration, renewal, relocation and removal of any and all facilities on and improvements to the Premises, shall be within the jurisdictional rights of Licensor. Licensor and Railroad shall have the right to review and approve any improvements or

alternations, including without limitation, the method of installation, the scheduling of installation and all related matters (including receipt of all required permits).

(d) Licensor's and Railroad's right to inspect the Crossing and Sidetrack from time to time shall extend for such distance on each side of the Crossing as may, in Licensor's and Railroad's judgment, be necessary to support and sustain the tracks and roadbed of Licensor and the safe operations of Railroad and Operator.

(e) The rights and privileges granted herein are subject to any and all easements and rights of record, and to existing leases and licenses.

(f) Licensee accepts the Crossing "as is" and Licensor makes no warranty, express or implied, as to its condition.

(g) Licensee shall not enter into any agreement that would preclude the delivery of freight rail service to Licensee's Facilities and occupants thereof by any Railroad authorized by Licensor to provide freight rail service on and over the Railroad Property, and shall permit only rail operators authorized from time to time to provide freight rail service on and over the Railroad Property to provide freight rail service to Licensees Facilities.

Section 4: Term

This License Agreement shall be effective as of the date noted above ("Effective Date"), and shall continue for a term of five (5) years, unless sooner terminated as provided for herein.

The Agreement shall continue from year to year thereafter, unless sooner terminated as provided for herein.

Section 5: Fees

The rights contained in this License Agreement are granted for good and valuable consideration, including without limitation the License, Administrative and other Fees hereinafter stated.

(a) Administrative Fee

Licensee shall pay Licensor the **one time** sum of **Five Hundred ($500.00) Dollars** upon the execution of this Agreement as reimbursement for the costs and expenses incident to the preparation and review of this Agreement, including any Exhibits attached hereto.

(b) Annual License Fee

Licensee shall also pay to Licensor an Annual License Fee in the amount of Five Hundred Dollars **($500.00) Dollars** as an annual fee for each year that this Agreement is in effect, commencing as of the Effective Date this Agreement, and due annually thereafter on the anniversary of the Effective Date.

(c) Adjustments to Annual License Fee

After the first five (5) years that this Agreement is in effect, Licensor reserves the right to make adjustments in the Annual License Fee upon written notice to Licensee issued no later than (90) days prior to the date upon which such adjustment is to take effect.

(d) Reimbursement of Improvement and Maintenance Costs

Licensee shall be responsible for the cost of any improvements, repair or alterations to the Crossing and Sidetrack.

Licensee shall likewise reimburse Railroad for the costs of specific maintenance or improvement projects not otherwise included in Railroad's annual maintenance program, and costing more than Two Hundred Dollars ($200.00). Such payments shall be in addition to the Fees referenced above, and shall be due and payable within thirty (30) days of submittal by Railroad of invoices therefor.

(e) Interest

In the event any payment required to be paid to Licensor hereunder is not made when due, Licensee shall pay interest on such overdue amount at the annual rate of eighteen percent (18%) or the highest rate permitted by law, whichever is greater, commencing on the date that such payment is due. If any check from Licensee is returned to Licensor for lack of sufficient funds, Licensee shall be charged an administrative fee for such returned check.

Section 6: Security

As security for the performance of Licensee' obligations hereunder, including the payment of amounts due as set forth herein, Licensee shall provide Licensor with a standby letter of credit naming Licensor as the sole beneficiary available by sight draft and a statement by Licensor that Licensee has failed to perform an obligation required to be performed or make a payment due hereunder, or that the issuer thereof has failed to renew such letter of credit for the next succeeding year in which this License Agreement is in effect (the "Security"). The Security shall at all times be in the minimum undrawn amount of Two Thousand Dollars ($2,500). Five Hundred RCO.

Licensor may draw upon the Security or any part thereof to cure any breach of Licensee's covenants and obligation hereunder or to compensate Licensor for any reasonable costs incurred in performing any of the terms of this License which Licensee was obligated to perform and failed to perform. In the event this License Agreement is properly terminated by Licensor for breach of any provision hereof, Licensor may also draw upon the Security as partial damages (for which Licensor shall upon request provide an accounting to Licensee), and without prejudice to Licensor's right to pursue additional legal or equitable remedies for such breach.

Section 7: Improvements, Maintenance, Relocation and Repairs

(a) Licensee covenants and agrees that it shall provide, at its sole cost and expense, all improvements, maintenance, security and other services reasonably required to make and

keep the Premises and the Crossing and the Sidetrack in a safe, clean, and attractive condition, and that, should Licensee fail to comply with this paragraph, Licensor may provide such services at the sole cost and expense of Licensee. Licensee further agrees not to commit or suffer waste or impairment of the Premises, ordinary wear and tear excluded.

(b) Any improvements to or maintenance, repair and renewal of the Crossing or Sidetrack shall be accomplished under such general conditions, including access to the site, as will be satisfactory to Licensor and Railroad and as will not unreasonably interfere with the proper and safe use of the property by Licensor, Railroad, their successors and assigns, or any other authorized party (including, without limitation, Operator).

(c) In addition to, but not in limitation of any of the foregoing provisions, if at any time Railroad should deem it necessary to place inspectors, flagmen or watchmen for the protection of any person or property during the construction of any improvements to, or maintenance, repair or renewal of the Crossing or Sidetrack, Railroad shall have the right to place such inspectors, flagmen, watchmen or other persons at the sole cost and expense of Licensee. The furnishing or failure to furnish inspectors, flagmen, watchmen or other persons by Railroad under this paragraph, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this License Agreement.

(d) Licensee acknowledges that Railroad shall have the right to perform and/or oversee all work on the Crossing or Sidetrack, including work related to the construction, maintenance, repair, improvement and renewal of the Crossing or Sidetrack. To the extent Licensee wishes to perform any work in within the Premises and/or in connection with the Crossing, which work shall be subject to the prior written consent of Licensor and Railroad, Licensee shall, request Railroad to furnish any necessary inspectors, flagmen or watchmen for the protection of any person or property, including persons not parties hereto and their property. The services of any inspectors, flagmen or watchmen furnished by Railroad shall be provided at Licensee's own cost and expense. Licensor and Railroad shall be notified at least three (3) weeks in advance of the performance of any work in connection with the Crossing or Sidetrack.

(e) Railroad shall perform such maintenance of the Crossing on Licensor's property as it may determine is required for the safe operation of the properties of Licensor. If necessary to protect the property, traffic, patrons or employees of Licensor, Railroad or any other person from damage or injury, Licensor or Railroad may at any time, with or without notice to Licensee, make such repairs and furnish such materials as it deems adequate and necessary, all at the sole cost and expense of Licensee. Any costs incurred by Licensor or Railroad pursuant to this paragraph shall be reimbursed to Licensor or Railroad by Licensee in the manner and to the extent provided herein.

(f) If Licensee desires or is required by Licensor or Railroad to repair or renew the crossing in any manner whatsoever, it shall submit plans to Licensor and Railroad and obtain their written approval thereto before any work is performed. Licensor and Railroad reserve the right to make reasonable adjustments in their charges in connection with any such work.

(g) Licensee agrees that in any work performed in, on or about the Premises, it will employ only labor which can work in harmony with all elements of labor being employed by

Licensor, the Railroad and Operator.

(h) Upon completion of any improvement or any other work requiring Licensor's approval herein, Licensee shall provide written notice ("Notice of Project Completion") to Licensor's Manager of Rail of the date of project completion. Licensee shall also provide the Manager of Rail and the Railroad with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. All Record Drawings shall be received and accepted by the Licensor and the Railroad(s) prior to final inspection. The Notice of Project Completion and the Record Drawings shall be delivered to:

Manager of Rail
Executive Office of Transportation
10 Park Plaza, Suite 3170
Boston, Massachusetts 02116

and

Railroad Contact and Address noted in Section 22, "Notices".

Section 8: Licensor and Railroad Right to Repair

Licensor and Railroad shall have the right from time to time, at the sole cost and expense of Licensee, to take up and replace all or any part of the Crossing in order to maintain, repair or renew facilities of Licensor within the Crossing, and to bill Licensee for such work. Licensee shall pay for such costs and expenses upon receipt of invoices for such work, as provided for in this Agreement.

Section 9: Paramount Use of Crossing

Licensor, Railroad, and Operator shall have the right at all times to paramount use of the track and right of way at the Premises and the Crossing, and Licensee shall exercise the greatest care in the use of the Crossing and Sidetrack and all activities undertaken in relation thereto, and shall require its agents, employees, licensees, invitees and others permitted hereunder to use the Crossing, likewise to exercise the greatest care in the use of the Crossing.

Section 10: Safety and Security of Crossing

(a) Licensee shall be solely responsible for protecting the Crossing and Sidetrack from the standpoint of safety and of otherwise policing the Crossing and Sidetrack at all times and under all circumstances. Licensee shall take or cause to be taken such precautionary measures as may be necessary to avoid injury to or death of persons or damage to or destruction of property at the Crossing and Sidetrack. In addition, Licensee shall erect, maintain and renew, at the sole cost and expense of Licensee, appropriate signs or notices, satisfactory to Licensor and Railroad, setting forth the fact that the Crossing and Sidetrack are private and urging that the Crossing and Sidetrack be used with caution.

(b) If requested by Licensor or Railroad, Licensee shall, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate gates on both sides of the Crossing satisfactory to Licensor and Railroad, which shall be suitably situated and shall be kept closed at all times when the Crossing is not in actual use.

(c) If requested by Licensor or Railroad, Licensee shall, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate warning signals and lights at the Crossing and Sidetrack satisfactory to Licensor and Railroad.

(d) If it is deemed necessary by Licensor, Railroad, federal, state or municipal authorities, or any other governing body, to install automatic protection at the Crossing, said automatic crossing protection shall be installed, maintained and ultimately removed by Licensor or Railroad, at the sole cost and expense of Licensee.

(e) If Licensor or Railroad should at any time, and from time to time, request Licensee to take any other measures to protect the Crossing and Sidetrack(either new or additional), Licensee, at its sole cost and expense, shall promptly cause the measures requested or directed by Licensor or Railroad to be taken. In the event Licensee fails promptly so to do, Licensee or Railroad may, at its option, take such measures, and Licensee hereby agrees to pay in the first instance or to reimburse Licensor or Railroad for the cost and expense thereof.

Section 11: Settlement of Railroad Property

Licensee shall be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of Licensor, Railroad or Operator arising from or as a result of the installation, maintenance, repair, renewal or removal of the Crossing and/or Sidetrack for a period of two (2) years from the date of completion of any work, and Licensee agrees to pay Licensor, Railroad or Operator (as applicable) on demand, the full cost and expense of repair or restoration of such facilities.

Section 12: Indemnification and Insurance

(a) It is understood between the parties hereto that the existence of the Crossing and Sidetrack, as well as the railroad operations at or near the Crossing and Sidetrack, involve serious risk, and Licensee, as part of the consideration for this License Agreement, hereby releases and waives any right to ask for or demand damages for or on account of loss or injury as a result of the installation or use of the Crossing and Sidetrack or other property of Licensee that is over, under, upon or in the property or facilities of Licensor, including the loss of or interference with service or use of the Crossing and Sidetrack

(b) Licensee also covenants and agrees to, and shall at all times indemnify, defend (at the option of Licensor), protect and save harmless Licensor, Railroad, and Operator from and against all cost or expense resulting from any and all losses, liabilities, damages, detriments, suits, causes of action, claims, demands, costs and charges (including, without limitation, attorneys' fees) which Licensor, Railroad or Operator may directly or indirectly suffer, sustain or be subjected to by reason of or on account of the presence, use,

maintenance, alteration, renewal, relocation or removal of said Crossing and/or Sidetrack in, on, or about the premises of Licensor whether such losses and damages be suffered or sustained by Licensor, Railroad, or Operator, or by the employees, patrons, or licensees of Licensor, Railroad, or Operator, or be suffered or sustained by other persons or corporations, including Licensee, its employees and agents who may seek to hold Licensor, Railroad, or Operator liable therefor,

(c) If a claim or action is made or brought against any party, and for which another party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

(d) Railroad Protective Liability & Property Damage Insurance

Licensee shall procure and maintain railroad protective liability and property damage insurance with respect to the activities and operations of Licensee or of any of its employees, contractors, subcontractors, tenants, licensees, or other agents, as well as all activities allowed hereunder, providing for a limit of not less than Three Million Dollars ($3,000,000) for all damages arising out of bodily injury to or death of one person and for all damages arising out of injury to or destruction of property in any one accident, and, subject to that limit for each person, a total of Five Million ($5,000,000) Dollars for all damages arising out of bodily injury to or death of two or more persons in any one accident, and for all damages arising out of injury to or destruction of property. Railroad(s) and Operator(s) shall be named as insured(s) on the railroad protective liability and property damage insurance policy.

Licensee shall furnish to Railroad(s) a signed copy of said policy or policies of insurance prior to entry upon the railroad right of way, and shall simultaneously provide a copy of the policy to Licensor. All policies of insurance shall be endorsed to provide ten (10) days notice to each named insured by the insurance company before any change in or cancellation of the policy or policies. The policy or policies shall provide that it shall not be terminated, cancelled or materially modified without providing Railroad(s) with written notice no less than twenty (20) days prior to such termination, cancellation or material alteration.

Licensee shall deliver certificates of insurance to Licensor, Railroad(s) and Operator(s) as proof of coverage within twenty (20) days after execution of this Agreement. Failure to provide said proof within the time specified, and failure to maintain such policy as herein required shall be a material breach of this Agreement, and may be cause for immediate termination of the rights and privileges provided for herein.

(e) General Commercial Liability Insurance

Licensee shall procure and maintain Commercial General Liability Insurance, insuring Licensee, Licensor, Railroad, Operator, and all activities allowed hereunder, as well as Licensee's indemnification obligations contained elsewhere in this License Agreement, with minimum liability coverage for personal injury, bodily injury and property damage with limits of not less than One Million Dollars ($1,000,000) per occurrence, and Three Million Dollars ($3,000,000) in aggregate. Umbrella liability coverage with limits of not

less than Five Million Dollars ($5,000,000) covering all work performed must also be provided. Such insurance shall be written on an-occurrence basis (rather than a claims-made basis). This policy shall name Licensor, Railroad and Operator as additional insureds.

The policy or policies shall provide that it shall not be terminated, cancelled or materially modified without providing Railroad(s) with written notice no less than twenty (20) days prior to such termination, cancellation or material alteration.

Licensee shall deliver certificates of insurance to Licensor, Railroad(s) and Operator(s) as proof of coverage within twenty (20) days after execution of this Agreement. Failure to provide said proof within the time specified, and failure to maintain such policy as herein required shall be a material breach of this Agreement, and may be cause for immediate termination of the rights and privileges provided for herein.

(f) Automobile Liability Insurance

Licensee shall procure and maintain automobile liability insurance with limits of not less than One Million Dollars ($1,000,000) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its employees, officers and invitees that are used in the activities permitted hereunder. This policy shall name Licensor, Railroad(s) and Operator(s) as additional insureds.

(g) Workers Compensation Insurance

Licensee shall maintain Workers Compensation Insurance insuring all persons employed by Licensee in connection with any work done on or about the Premises, with respect to which claims for death or bodily injury could be asserted against Licensor, Railroad, Operator, or the Premises, with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of EOT, Railroad and Operator. Each of Licensee's contractors, subcontractors and consultants shall have similar policies covering their employees.

(h) Limitation on Damages

Neither Licensor, Railroad, nor Operator shall be liable to Licensee for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

All policies of insurance required under this section shall be in a form customary in the industry.

Licensee shall furnish to Railroad(s) a signed copy of all policies of insurance required herein prior to entry upon the railroad right of way, and shall simultaneously provide a copy of the policy to Licensor. In addition, Licensor may require that Licensee furnish Licensor with a signed copy of all policies of insurance or other evidence of insurance

satisfactory to Licensor for all policies of insurance required herein prior to execution of this License Agreement by Licensor.

All policies of insurance shall be endorsed to provide ten (10) days notice to each named insured by the insurance company before any change in or cancellation of the policy or policies.

Section 13: Compliance with Laws

(a) Licensee shall comply with, and shall cause all work performed by its agents or employees to comply with all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances, and to indemnify and hold harmless Licensor against all fines, damages, costs, expenses and other penalties for violations thereof.

(b) Licensee shall also be responsible for obtaining any and all Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

Section 14. Environmental Cooperation

(a) Environmental Cooperation

If, as a result of Licensee's activities hereunder, "oil" or "hazardous materials", as those terms are defined in Massachusetts General Laws, Chapter 21E ("Chapter 21E") and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP") (collectively, "Hazardous Materials") are discovered on the Premises, the Licensee agrees to cooperate with Licensor in the determination of the party liable for the remediation of the Premises under applicable Federal and/or state law. Such cooperation may include the temporary adjustment or termination of the rights granted to Licensee hereunder. Licensor shall not be responsible for any damages incurred by the Licensee as a result of such temporary adjustment or permanent termination.

(b) Remediation Obligation of Licensee

Notwithstanding and in addition to the obligation of Licensee stated above and the obligation to indemnify the Licensor and others pursuant hereto, Licensee, upon written demand of the Licensor, shall conduct, at Licensee's sole cost and expense (or, at the Licensor's election, reimburse Licensor for the cost and expense incurred by the Licensor in connection with Licensor's conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional) that are present, discovered or revealed on the Premises (or on other property of Licensor adjacent to the Premises) as a result of (1) the Licensee's activities hereunder, or (2) the migration of such Hazardous Materials from land now or previously owned, leased, occupied or operated by the Licensee or for which Licensee is a potentially responsible party under Chapter 21E.

Any such response action, if performed by Licensee, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by Licensor, shall be completed in a timely manner to the reasonable satisfaction of Licensor, and shall allow Licensor to use the Premises, and/or

adjacent or contiguous property, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by Licensor in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

Section 15: Results

If this License Agreement or subsequent authorization related hereto explicitly allows Licensee to conduct certain investigations on Licensor's property, then Licensee agrees to provide to Licensor, at no cost, a copy of the results of such investigations (including data and analysis) and all other work conducted under this License Agreement or related authorization in both hard copy form and in a digital format specified by Licensor regardless of whether the report was prepared by Licensee, its agent, consultant or contractor, or prepared on behalf of the Licensee. All results and reports shall be provided to Licensor within ten (10) days of receipt by Licensee. Licensee agrees to consult with Licensor prior to contacting any governmental entity, regarding any information, results of analysis or reports regarding the Premises. Licensee shall give Licensor a copy of any reports or notifications, including but not limited to release notifications, prior to submitting the same to any governmental entity.

Section 16: Taxes and Liabilities

Licensee agrees to pay all taxes and municipal charges when due, and to indemnify and hold harmless Licensor, Railroad and Operator from any such charges and liens regarding the siderail on Licensee's Property.

Section 17: Prohibition against Assignment or Transfer

(a) The rights conferred herein shall be the privilege of Licensee only, and no assignment or transfer hereof shall be made without the prior written consent and agreement of Licensor and Railroad. Consent by Railroad shall be based on its rights as set forth in any then current Operating Agreement with the Commonwealth, and Railroad's consent shall not be unreasonably withheld.

(b) In the event Licensee intends to transfer its property to any other person or corporation, Licensee shall provide one hundred and twenty (120) days prior written notice of such transfer to Licensor and Railroad. Within ninety (90) days of said written notice, Licensor shall inform Licensee whether Licensor will terminate the license if the prospective transfer transpires and, in the event of transfer by Licensee, the license granted herein shall terminate on the date of transfer.

(c) The rights and privileges granted herein shall terminate immediately upon any assignment or attempted assignment of this License Agreement, or upon any sub license or attempt to sub license the rights and privileges granted herein, without the prior written consent of Licensor and Railroad.

Section 18. Default and Termination

(a) This License Agreement with the rights granted herein may be terminated during the initial five (5) year period as stated in Section 4 above at any time by either party hereto upon not less than three hundred sixty (360) days written notice to the other; and upon the execution of said three hundred sixty (360) days after service of said notice, this Agreement and the privileges hereby granted shall absolutely cease and terminate.

In addition, this License Agreement with the rights granted herein may be terminated after the initial five (5) year period as stated in Section 4 above at any time by either party hereto upon not less than one hundred and eighty (180) days written notice to the other; and upon the execution of said one hundred and eighty (180) days after service of said notice, this Agreement and the privileges hereby granted shall absolutely cease and terminate.

(b) Upon termination of this License Agreement or upon the abandonment of the Crossing and Sidetrack, all rights of the Licensee hereunder shall cease and terminate, and this instrument shall thereupon terminate without any liability on the part of either party to the other(s), except only as to any charges and liabilities accrued prior thereto. All property of Licensor shall be restored in good condition and to the satisfaction of Licensor and Railroad. If Licensor so requests, Licensee shall remove any improvements to the Premises installed or constructed by Licensee, and any appurtenances thereto, upon termination of this License Agreement. If Licensee fails or refuses to so remove said improvements and any appurtenances, Licensor and Railroad shall be privileged to do so at the sole cost and expense of Licensee, and neither Licensor nor Railroad shall be liable in any manner to Licensee for such removal.

(c) Termination for Non-Payment

In the event that Licensee shall neglect or fail to pay the License Fee, Administrative Fee or any other sum herein specified to be paid upon the date such fee is due hereunder, Licensee shall be in default, and Licensor shall have the right at any time thereafter to terminate this Agreement by giving Licensee sixty (60) days written notice of Licensor's decision to terminate for non-payment ("Termination Notice"). Licensee shall not be entitled to cure any such default by tendering payment after the expiration of the sixty (60) day grace period which starts upon Licensee's, or Licensee's servants, agents or employee's receipt of (or refusal to accept) Licensor's Termination Notice.

(d) Default of Terms and Conditions

Licensee shall also be in default if Licensee:

(1) fails to perform or observe any of the other covenants or agreements contained in this instrument and on its part to be performed or observed, or

(2) makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law, or

(3) has a bankruptcy petition filed against it that is not dismissed within sixty (60) days, or

(4) has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise, and

if such defaults continue after two (2) weeks' written notice given by Licensor to Licensee to cure, the Licensor may terminate this Agreement by written notice to Licensee and/or deny access to the Premises, Crossing and the Sidetrack, and expel Licensee and those claiming through or under Licensee and remove Licensee's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of Licensee created by this License Agreement shall terminate. Licensee agrees to pay any expense including reasonable attorneys' fees incurred by the Licensor in enforcing any of Licensee's obligations hereunder.

In the event this License Agreement is terminated pursuant to this Paragraph 18(d), Licensor shall retain the License Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

Section 19: Successors and Assigns

The terms of this License Agreement shall be binding and effective upon the parties hereto, and unless and until terminated, as hereinbefore provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, subject, however, to the provisions of Section 17 hereof.

The terms "Railroad" or "Operator" as they appear in this License Agreement refer to any entity, its successors and assigns, which is granted the right by Licensor to operate passenger, freight or related rail services on Licensor's aforesaid property. Licensor expressly reserves the right to empower Railroad or Operator to use Licensor's property and tracks described herein. If future actions by Licensee affect such Railroad or Operator, Licensee shall be bound to the terms and conditions set forth herein to the same extent it would be bound to Licensor or any Railroad or Operator specifically named herein.

Section 20: No Third Party Beneficiaries

This License Agreement shall not be construed to create any third party beneficiary rights in favor of any other parties (except the explicit rights granted herein to Railroad or Operator) or any right or privilege for the benefit of any other parties.

Section 21: Nondiscrimination

(a) Licensee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

(b) Licensee shall not exclude from, or deny use of the Premises or the services provided thereon to any person on the grounds of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status.

(c) Consistent with the law, Licensee shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this License Agreement.

(d) With respect to its exercise of all rights and privileges herein granted, Licensee shall undertake affirmative action as required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. Licensee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal Law and applicable state laws, rules and regulations.

Section 22: Notices

All notices which may or are required to be given or served or sent by any party to the other parties pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or sent, if hand delivered, or mailed by registered mail, return receipt requested. Each notice which shall be mailed as aforesaid shall be deemed sufficiently given, served or sent at the time such notice shall be deposited in the mail properly addressed, and in any event, upon receipt of the addressee.

01139

All notices shall be sent:

If to Licensor:

Executive Office of Transportation
Ten Park Plaza, Room 3710
Boston, MA 02116

Attention: Manager of Rail

With a copy to:

Attention: General Counsel

If to Licensee:

Mr. Richard C. O'Riley
President, ABC&D Recycling, Inc.
Trustee, O'Riley Family Trust
198 East Street
Ware, MA 01082

If to Massachusetts Central Railroad Corporation:

Massachusetts Centrail Railroad Corporation
Two Wilbraham Street
Palmer, MA 01082

Attention: Mr. Gary Hoeppner
Vice President & CFO

Section 23: Governing Law

This License Agreement is governed by the Laws of the Commonwealth of Massachusetts. Licensee shall be responsible for obtaining any and all federal, state and/or local permits necessary to carry out the activities permitted hereunder.

01140

Section 24: Terms Severable

If any court of competent jurisdiction holds any provision of this License Agreement invalid, illegal or unenforceable, the remainder of this Agreement shall not be affected and shall remain in force.

Section 25: Entire Agreement

The provisions of this License Agreement represent the entire Agreement and understanding between the parties and may not be changed or modified except by written Agreement executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be duly executed and delivered as of the day and year first written above.

COMMONWEALTH of MASSACHUSETTS
Acting by & through its Executive Office of Transportation

By: _____
John Cogliano
Secretary

Witness:
EOT CHIEF OF STAFF.
EDWARD F. CURLEY.

Approved as to Form:
EOT General Counsel

LICENSEE:

By: _____
Richard C. O'Riley
President,
ABC&D Recycling, Inc.

Richard C. O'Riley
Trustee,
O'Riley Family Trust

Witness:

011??

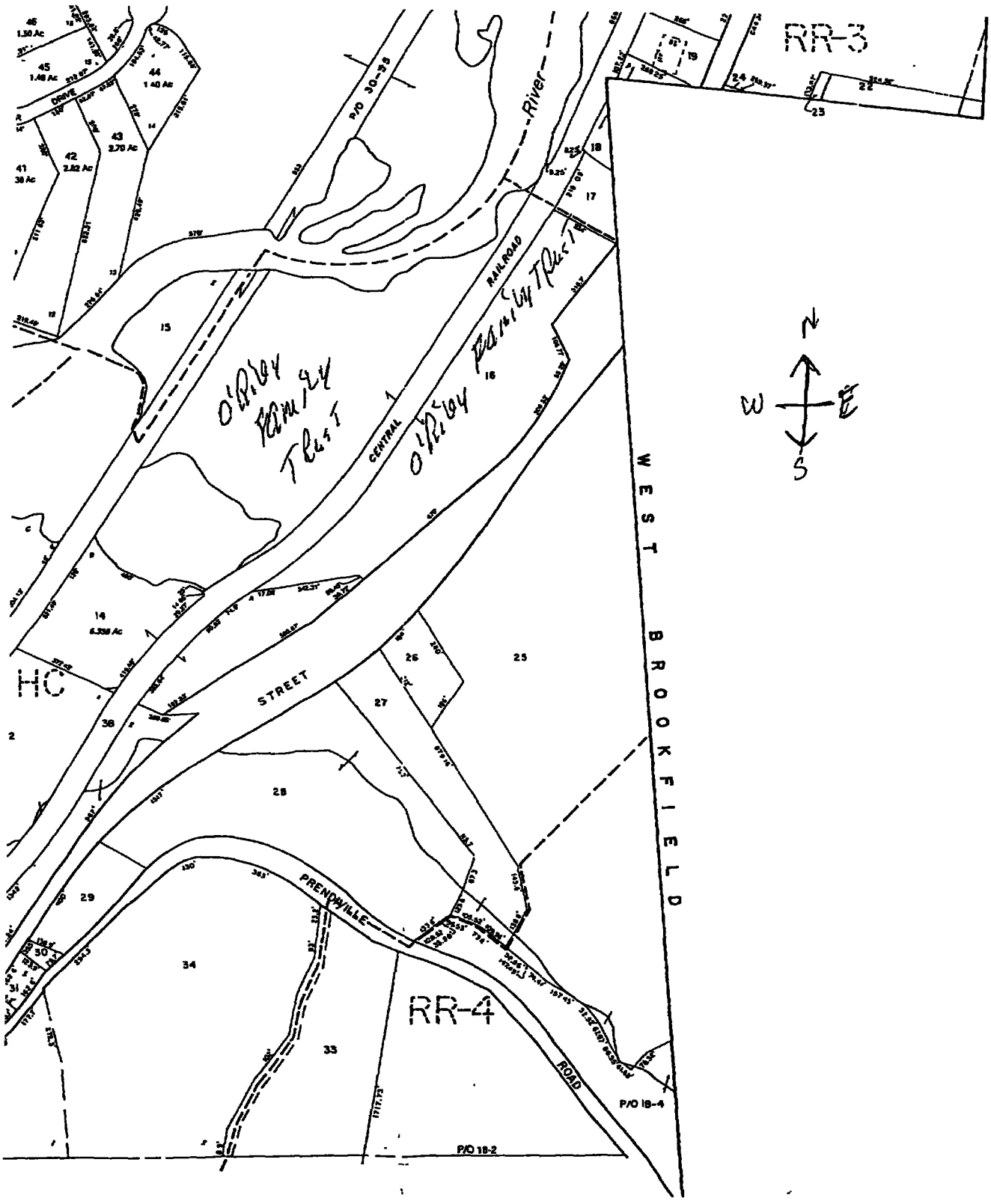
Exhibit A:

PREMISES / CROSSING

ATTACH:

- Overall Site Plan Showing Property Lines
- Applicant's "DWG. No. TA – 01"
- Copy RR Valuation Plan V5.13

01129

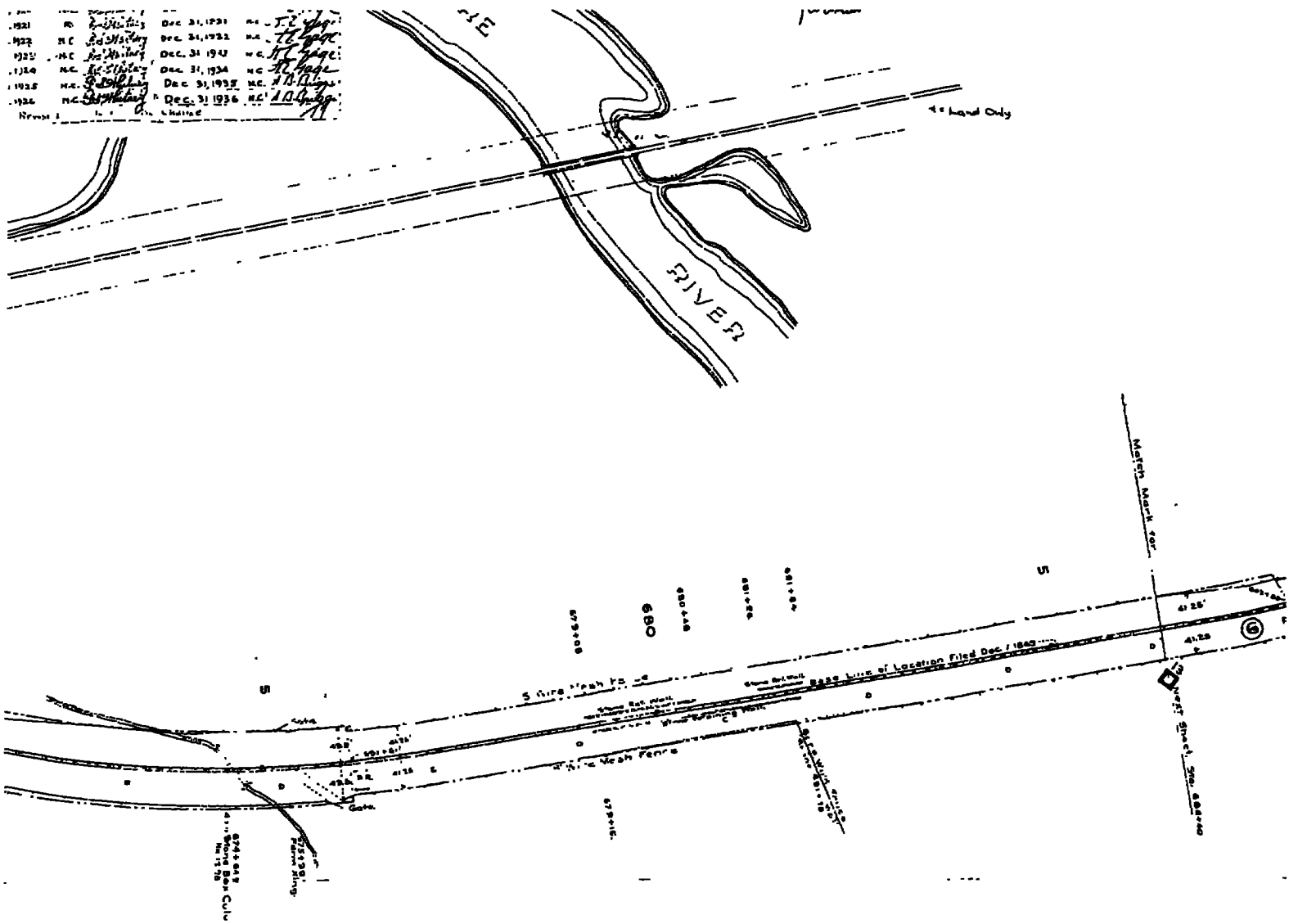


For Assessment Purposes
Not to be used for Conveyances

TAX MAP
TOWN OF WARE
HAMPSHIRE COUNTY, MASSACHUSETTS
PREPARED BY
JAMES W. SEWALL COMPANY, OLD TOWN, MAINE
SCALE: 1 INCH = 200 FEET

CURRENT TO JANUARY 1, 2005

23



RIGHT OF WAY AND TRACK MAP
LAND MAP

WARE RIVER RAILROAD COMPANY

Operated by

THE NEW YORK CENTRAL RAILROAD COMPANY

as assignee of lease to the

BOSTON AND ALBANY RAILROAD COMPANY

SHEET NO 13 OF 30 SHEETS VAL SEC 6 OF BOSTON AND ALBANY RAILROAD WARE RIVER BRANCH FROM SURVEY STATION 633+60 TO SURVEY STATION 686+40

VALUATION ENGINEER

WARE RIVER BRANCH

From Sta. 633+60 To Sta. 686+40

WARE—GILBERTVILLE

Scale. 1" = 100' June 30, 1915 REVISED TO JUNE 30, 1919

Office of Valuation Engineer

Boston Mass.

011[illegible]

V.S. 13

Exhibit B:

CROSSING DETAILS / IMPROVEMENTS

ATTACH:

- Applicant's "DWG. No. TD – 01"

Licensee shall submit such additional plans and specifications as Licensor and/or Railroad may reasonably request, and shall obtain their written approval thereto prior to undertaking the construction of any improvements to the Crossing. Upon approval by Licensor and Railroad, such plans and specifications shall be attached to this Exhibit B.

Licensee shall ensure that the design and construction of all improvements to the Crossing, including, but not limited to, all roadway facilities (including, but not limited to, traffic signals and related roadway facilities) and railroad facilities (including, but not limited to, railroad warning signals, crossing gates, track and related railroad facilities) and appurtenances thereto shall comply with all requirements of the Massachusetts Highway Department ("MHD") the Massachusetts Department of Telecommunications and Energy ("DTE"), the Federal Railroad Administration ("FRA"), and all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances. Licensee shall indemnify and hold harmless Licensor and Railroad(s) against all fines, damages, costs, expenses and other penalties for violations thereof. Licensee shall be responsible for obtaining any and all federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

12

2010 00003223
Bk: 10103Pg: 20 Page: 1 of 5
Recorded: 02/18/2010 09:49 AM

TOWN OF WARE
MASSACHUSETTS 01082

PLANNING BOARD

DECISION ON SITE PLAN APPROVAL

RECEIVED
JAN 27 2010
TOWN CLERK'S OFFICE
TIME RECEIVED

Date: November 7, 2001

Reference: SP 2001-002

TO: The O'Riley Family Trust

Affecting the rights of the owner with respect to the use of premises on 198 East Street (Route 9) Ware, Massachusetts 01082

The record standing in the name of the O'Riley Family Trust by a deed duly recorded in the Hampshire County Registry of Deeds in Book 4901, Page 45.

Notice is hereby given that following the Public Hearing on October 17, 2001*

On the application in this case so as to permit the expansion of the existing business to include a railroad siding and processing area for transfer and recycling of asphalt, brick, concrete, construction and demolition material and wood.

* original Public Hearing held on September 5, 2001

The Board, at its meeting on November 7, 2001

XX VOTED TO GRANT the application under Sections 2.5 and 2.6 of the Zoning By-Law based on findings as detailed in the Record of the Proceedings, subject to the ORDER OF CONDITIONS, attached hereto and made a part hereof plus compliance with all other applicable laws, regulations and codes.

February 5, 2010 The document is a true copy of the one filed in the Office of the Town Clerk, Ware, MA and contains 5 pages

Nancy J. Talbot Town Clerk of Ware, MA

ANY APPEAL from this decision can be made only to the Court and must be made pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within 20 days after the date of filing of this decision with the Town Clerk.

WARE PLANNING BOARD
(Acting as Special Permit Granting Authority for the Town of Ware)

BY: _____
Christopher DiMarzio
Clerk

Signed and Certified: _____
James Roach
Town Clerk

On DATE: Dec. 3, 2001

I, James M. Roach, Town Clerk of the Town of Ware, MA, hereby certify that as of this date, Dec. 3, 2001, no notice of appeal of the above decision of the Planning Board has been received by my office.

_____
James M. Roach, Town Clerk

ORDER OF CONDITIONS

THE O'RILEY FAMILY TRUST
SITE PLAN APPROVAL

1. Bond shall be posted for cleanup in the event that cleanup is needed, said amount to be determined by Department of Environmental Protection.

2. Buffer vegetation:

   a. Shall be placed along Rts. 9 and 32 and shall consist of arborvitae planted outside fence 4' on center, no less than 4' tall
   b. to be maintained at maturity no lower than 6 feet as shown on plan
   c. there will be perpetual maintenance
   d. all vegetated buffers shall be planted no later than one and one-half (1.5) years after issuance of special permit approval, site plan approval
   e. request for additional vegetated buffer to be determined after site work completed as necessary
   f. white pine buffer on south corner shall be planted as shown on plan, with perpetual maintenance

   PLEASE REFER TO DEFINITIVE PLAN

3. Mandated pavement of entrance/exits to weigh station and 30' beyond
   PLEASE REFER TO DEFINITIVE PLAN

4. Queuing of trucks shall conform to plan as specified and all areas for queuing shall always be clear and ready for safe passage

5. An access road to facility shall be constructed according to Plan and at all times maintained for safe passage of municipal and emergency vehicles

6. All tipping shall take place inside the building with the exception of clean up material and ABC PLEASE REFER TO DEFINITIVE PLAN

7. All paved areas to be pitched in such a way to channel all rainwater and runoff to catch basis as shown on Plan

8. Combined noise levels shall not exceed the levels set forth in The Town of Ware Zoning By-Laws Section 5.630 (b).

9. There will be a 20' height cap on cubic yards of exterior storage of processed and unprocessed materials

10. Dust control shall be maintained at all times to the satisfaction of the Town of Ware

11. Hours of Operation:

    a. Monday - Friday operating hours 7:00a.m. to 4:00 p.m.
    b. Saturday hours 7:00 a.m. to 1:00 p.m. Tipping and internal processing only, no exterior crushing allowed
    c. Saturday hours will be reviewed on a 6-month basis to determine whether there is a noise nuisance. Reviews will be held every six (6) months for a period of one (1) year. Such determination shall be made by the Ware Planning Board.
    d. There will be no hours of operation on the following days:
        (1) Christmas
        (2) New Years
        (3) Thanksgiving
        (4) Veterans Day
        (5) Fourth of July
        (6) Labor Day
        (7) Memorial Day

12. Non Compliance of any condition imposed on this permit can and shall result in a revocation of Special Permit

13. The proponent agrees to accept, without charge, a total of two hundred fifty (250) tons of clean wood, brick, concrete or asphalt from the Municipality of Ware per year of operation.

14. The construction, operation, maintenance and closure of this facility shall be performed in strict compliance with the Final Permit Conditions which shall be issued by the Massachusetts Department of Environmental Protection pursuant to MGL c. 111 s. 150A and 310 CMR 19.036, a copy of which shall be attached and made a condition of this Site Plan Approval when it becomes available.

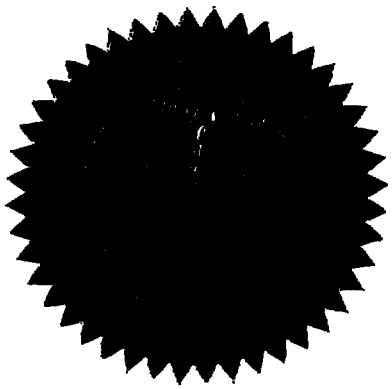
ATTEST HAMPSHIRE, Marianne L. Donohue REGISTER
MARIANNE L. DONOHUE

COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

Superior Court Department
Civil Action No. 08-063

I, Nancy A. Foley, First Assistant Clerk of the Court for the County of Hampshire aforesaid, hereby certify that the attached is a certified copy of the Docket Sheet, Decision of Judge Rup, Judgment, and Notice of Appeal in **Civil Action No. 08-063, A,B,C & D RECYCLING, INC. VS. TOWN OF WARE BOARD OF HEALTH**



Witness my hand and the seal of the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts this 16th day of March , 2010.

Nancy A. Foley
First Assistant Clerk

Commonwealth of Massachusetts
HAMPSHIRE SUPERIOR COURT
Case Summary
Civil Docket

HSCV2008-00063
ABC & D Recycling Inc. v Board of Health of the Town of Ware

File Date	03/24/2008	**Status**	Suspended (Pending other case) (suothr)
Status Date	08/17/2009	**Session**	A - Civil A- CtRm 2-3rd fl
Origin	1 - Complaint	**Case Type**	E02 - Admin agency appeal (30A)
Track	X - Accelerated track	**Lead Case**	
		Jury Trial	Unknown

DEADLINES

	Service	Answer	Rule12/19/20	Rule 15	Discovery	Rule 56	Final PTC	Judgment
Served By								
Filed By	06/22/2008							03/19/2009
Heard By								

PARTIES

Plaintiff
ABC & D Recycling Inc.
Active 03/24/2008

Private Counsel 547503
Shephard S Johnson Jr
Shepard S. Johnson Jr & Assoc PC
628 Pleasant Street Suite 428
New Bedford, MA 02740
Phone: 508-991-5000
Fax: 508-991-5252
Active 03/24/2008 Notify

Private Counsel 564255
Matthew L Donohue
Donohue Hyland & Donohue
1707 Northhampton Street
Holyoke, MA 01040
Phone: 413-536-1977
Fax: 413-538-7138
Active 03/24/2008 Notify

Defendant
Board of Health of the Town of Ware
Served: 03/28/2008
Answered: 04/28/2008
Answered 04/28/2008

Private Counsel 643829
Nicole B Caprioli
Christopher Hays Wojcik & Mavricos
370 Main Street
Suite 700
Worcester, MA 01608
Phone: 508-792-2800
Fax: 508-792-6224
Active 04/28/2008 Notify

ENTRIES

Date	Paper	Text
03/24/2008	1.0	Verified Complaint for Appealof Administrative Decision & civil action cover sheet filed
03/24/2008		Origin 1, Type E02, Track X.
03/24/2008	2.0	Atty Matthew L Donohue's notice of appearance for ABC & D Recycling Inc.
03/28/2008	3.0	SERVICE RETURNED: Board of Health of the Town of Ware(Defendant)
04/28/2008	4.0	ANSWER and COUNTERCLAIM: Board of Health of the Town of Ware(Defendant)

HSCV2008-00063
ABC & D Recycling Inc. v Board of Health of the Town of Ware

Date	Paper	Text
05/19/2008	5.0	ANSWER by ABC & D Recycling Inc. to COUNTERCLAIM of Board of Health of the Town of Ware.
06/25/2008	6.0	Administrative record filed by Board of Health of the Town of Ware. (Volume 1 through 13)
08/28/2008	7.0	Defendant Board of Health of the Town of Ware's MOTION for Assessment of Costs and Attorney's fees incurred in preparing the administrative record along with MOTION of the plaintiff to strike and for costs.
09/02/2008	8.0	Plaintiff ABC & D Recycling Inc.'s MOTION for leave to file a reply memorandum to defendant's opposition to plaintff's motion to strike and for cotsts.
09/25/2008		Motion (P#7) Defendant's Motion for Assessment of Costs and attorneys fees incurred in preparing the administrative record. - After hearing the motion is DENIED. Plainitff's motion to strike and costs - I will leave the decision as to this motion to the judge hearing this motion upon representation of counsel for the defendnat that all documents presented to and relied upon by the board are part of the record. Motion for costs DENIED. (Judd J. Carhart). Notices mailed 9/26/2008
11/12/2008	9.0	Plaintiff ABC & D Recycling Inc.'s MOTION for Judgment on pleadings (Rule 12)
11/12/2008	10.0	Opposition of the Board of Health of the Town of Ware to ABC&D Recycling, Inc's Motion for Judgment on the Pleadings.
11/19/2008	11.0	Plaintiff's motion for leave to file a reply memorandum to defendant's opposition to plaintiff's motion for judgment on the pleadings.
12/04/2008	12.0	Defendant's motion to submit a sur-reply memorandum to plaintiff's motion for judgment on the pleadings and sur-reply memorandum.
12/11/2008		Notice sent to appear on 1/2/2009 at 10:00 am for a rescheduled hearing on Motion for Judgment on the Pleadings and other relevant matters.
01/02/2009		Hearing on (P#9) motion for judgment on the pleadings) held, matter taken under advisement. (Mary-Lou Rup)
03/30/2009		Motion (P#7) Plaintiff's Motion to strike DENIED. See Memo of Decision #13. (Mary-Lou Rup) Notices mailed 3/30/2009
03/30/2009		Motion (P#9) The Board's decision is affirmed. See Memo of Decision #13. (Mary-Lou Rup). Notices mailed 3/30/2009
03/30/2009	13.0	MEMORANDUM OF DECISION AND ORDER on the plaintiff's motion for judgment on the pleadings and the plainitff's motion to strike. (Mary-Lou Rup). Copies mailed 3/30/09.
03/30/2009	14.0	JUDGMENT as a result of Motion/Hearing: Judg on Pleading (Mary-Lou Rup). Copies mailed 3/30/2009
04/28/2009	15.0	Plaintiff ABC & D Recycling Inc.'s notice of appeal
05/11/2009	16.0	Certification of transcript ordered by Attorney Marsh.
05/28/2009	17.0	Plaintiff ABC & D Recycling Inc.'s MOTION for reconsideration of Memorandum of Decision on the Plaintiff's Motion for Judgment on the Pleadings and the Plaintiff's Motion to Strike. (Copy mailed to Judge Rup in Springfield)

HSCV2008-00063
ABC & D Recycling Inc. v Board of Health of the Town of Ware

Date	Paper	Text
06/11/2009		Motion (P#17) So much of this motion as seeks reconsideration is denied. To the extent that this motion renews the plaintiff's earlier request to strike certain documents and evidence, it is denied as the Board was not a "party" within the meaning of 310 CMR section 16 et seq. Finally, Count II (seeking declaratory judgment regarding technical fees) is more appropriately addressed in a motion for summary judgment, and further clarification is denied. On Deft's Opposition - To the extent that the defendant requests an award of its costs and attorneys fees, that request is denied, as the plaintiff's motion was not"blatantly frivolous" as the defendant argues. (Rup, J.) Notices mailed 6/18/2009
06/17/2009	18.0	Transcript of Hearing on Plaintiff's Motion for Judgment on the Pleadings received (1 volume) from Court Reporter Trudeau, Roger
08/10/2009	19.0	Defendant's MOTION to stay assembly of the record on plaintiff's appeal of the court's decision on ABC&D's motion for judgment on the pleadings and motion to strike until final judgment on defendant's counterclaim. Copy mailed to Judge Rup in Springfield
08/17/2009		Motion (P#19) ALLOWED. No opposition having been filed. (Rup, J.) Notices mailed 8/17/2009

EVENTS

Date	Session	Event	Result
09/02/2008	Civil A- CtRm 2-3rd fl	Status: administrative (7) 9A pckg & (8)	Event held as scheduled
09/25/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Assess Costs (7) Defendant's Motion for assessment of costs and attorneys fees incurred in preparing the administrative recordwith Plaintiff's Motion to strike and for costs; (8) Plaintiff's Motion for leave to file a reply memorandum to defendant's opposition to plaintiff's motion to strike and for costs.	Event held as scheduled
11/13/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading Motion to be filed.	Event not held-joint request
11/19/2008	Civil A- CtRm 2-3rd fl	Status: administrative (11) Motion To be scheduled for hearing	Event held as scheduled
12/11/2008	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading (7) Plaintiff's Motion to strike; (9) Plaintiff's Motion for Judgment on the pleadings; (10) Opposition of the Board of Health of the Town of Ware to motion for judgment on the pleadings; (11) Plaintiff's Motion for leave to file a reply memorandum to defendant 's opposition to plainitff's motion for judgment on the pleadings.	Event not reached by Court
01/02/2009	Civil A- CtRm 2-3rd fl	Motion/Hearing: Judg on Pleading Motion for Judgment on the Pleadings and other relevant matters.	Event held as scheduled
05/28/2009	Civil A- CtRm 2-3rd fl	Status: administrative #17 Motion for Reconsideration mailed to Judge Rup in Springfield.	Event held as scheduled
08/10/2009	Civil A- CtRm 2-3rd fl	Status: administrative #19 mailed to Judge Rup in Springfield.	Event held as scheduled
03/29/2010	Civil A- CtRm 2-3rd fl	Conf: review status Status on counterclaim	

15

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss

SUPERIOR COURT
C.A. No.2008-00063-A

ABC & D RECYCLING INC.,

Plaintiff,

v.

BOARD OF HEALTH OF THE TOWN OF WARE,

Defendant,

HAMPSHIRE SUPERIOR CRT
HARRY JEKANOWSKI JR
CLERK
2009 APR 28 A 10:19

PLAINTIFF'S NOTICE OF APPEAL

Plaintiff, ABC & D Recycling Inc. (hereinafter "Recycling"), hereby file their Notice of Appeal of this Honorable Court's Judgment on Plaintiff's Motion for Judgment on the Pleadings and Plaintiff's Motion to Strike, entered on March 30, 2009.

This Notice of Appeal is filed in pursuant to Rule 4, Rules of Appellate Procedure, within the 30-day period from the Court's Decision.

Respectfully submitted by the Plaintiff,
ABC & D RECYCLING INC.
By its Attorneys,
Shephard S. Johnson, Jr. & Associates, P.C.

Shephard S. Johnson, Jr. (BBO #547503)
James W. Marsh (BBO #652425)
628 Pleasant Street, Suite 428
New Bedford, MA 02740
(508) 991-5000

DATE: April 23, 2009

CERTIFICATE OF SERVICE

I, James W. Marsh of Shephard S. Johnson, Jr. & Associates, P.C., Attorney for the Plaintiff, Defendant-in-Counterclaim, hereby certify that a true copy of above document was served upon the following counsel of record via first-class mail, postage prepaid mail on April 23, 2009:

David A. Wojcik, Esquire
Nicole B. Caprioli, Esquire
Christopher, Hays, Wojcik & Mavricos, LLP
370 Main Street
Worcester, MA 01608

James W. Marsh

Commonwealth of Massachusetts
County of Hampshire
The Superior Court

CIVIL DOCKET# **HSCV2008-00063**

ABC & D Recycling Inc.,
Plaintiff(s)

vs

Board of Health of the Town of Ware,
Defendant(s)

JUDGMENT ON MOTION FOR JUDGMENT ON THE PLEADINGS

This action came on for hearing before the Court, Mary-Lou Rup upon the Plaintiff's, ABC & D Recycling, Inc., Motion for Judgment on the Pleadings, and pursuant to the Court's Memorandum of Decision and Order,

It is **ORDERED** and **ADJUDGED**:

That the decision of the Board of Health of the Town of Ware is hereby affirmed.

Dated at Northampton, Massachusetts this 30th day of March, 2009.

By the Court (Rup, J.)

Harry Jekanowski, Jr.
Clerk/Magistrate

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COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2008-00063-A

ABC&D RECYCLING, INC.

vs.

BOARD OF HEALTH OF THE TOWN OF WARE

MEMORANDUM OF DECISION AND ORDER ON THE PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AND THE PLAINTIFF'S MOTION TO STRIKE

INTRODUCTION

In this action brought pursuant to G. L. c. 30A, § 14, the plaintiff, ABC&D Recycling, Inc. ("Recycling"), seeks judicial review of a decision by the Board of Health of the Town of Ware ("Board"). Recycling claims that the Board's decision denying its application for a site assignment modification, which would permit it to accept municipal solid waste ("MSW") at its solid waste handling facility in Ware, was not supported by substantial evidence.

Recycling now moves for judgment on the pleadings in accordance with Superior Court Standing Order 1-96(4), and Mass. R. Civ. P. 12(c). It also moves to strike certain materials from the administrative record which it claims were erroneously included, and seeks attorney's fees and costs for bringing that motion. After a hearing, Carhart, J. presiding, this court denied both the Board's motion for costs and attorney's fees for preparing the administrative record, and Recycling's motion for costs and attorney's fees for bringing the motion to strike. (See docket item #7).

After reviewing the administrative record and the submissions by both parties, the Board's decision will be **AFFIRMED**. Recycling's motion to strike will be **DENIED**.

BACKGROUND

The following facts are taken from the administrative record and the parties' submissions, with discussion of additional facts reserved for the issues raised.

In 2003, Recycling applied to the Massachusetts Department of Environmental Protection ("DEP") and the Board for a determination of site suitability for a proposed solid waste handling facility in the town of Ware. (ABCD01488 - ABCD01738).[1] The proposed facility would handle and process a maximum of 750 tons per day of construction and demolition ("C&D") waste. The application was prepared by Green Seal Environmental, Inc. ("GSE"), and was submitted pursuant to G. L. c. 111, § 150A, as amended by St. 1997, c. 19, § 20, which states, in pertinent part, that no place shall be maintained or operated as a waste processing or handling facility "unless, after a public hearing, such place has been assigned by the [local] board of health."

Before the local board of health holds a hearing, DEP reviews the application to determine whether the proposed facility satisfies certain preliminary criteria. G. L. c. 111, § 150A. If it does, DEP will send a positive report to the local board of health, which must then decide whether or not a site within the town will be assigned for the facility. The local board must take specific "site suitability" criteria promulgated by DEP into consideration, *Id.*, and is charged with ensuring "that the facility or expansion thereof will not present a threat to the public health, safety or the environment." 310 Code Mass. Regs. 16.40(1)(b). The local board must "assign a place requested by an applicant as a site for a new facility or the expansion of an existing facility which has received a positive site suitability report from the Department" unless doing so would present such a threat. *Id.* Finally, the board must issue a written decision stating the reasons why a site will or will not be assigned. G. L. c. 111, § 150A.

DEP approved Recycling's 2003 application, and in 2004, the Board assigned a site at 198 East Street in Ware. (ABCD01483 - ABCD01487). In 2006, the facility was constructed and opened for operation. (ABCD00008). Thereafter, in 2007, Recycling applied for a modification of its existing site assignment to allow it to accept MSW in addition to C&D. The application was prepared by Garrett Keegan ("Keegan") of GSE. DEP issued a positive site suitability report (ABCD00005), and on January 8, 2008, the Board began the public hearing process. The hearing took place over the course of five nights between January 8th and February 13th of 2008. At the beginning of each session, the Hearing Officer explained that "[t]he Board of Health is acting in this

[1] Pages in the administrative record will be hereinafter referred to by their bate-stamped numbers.

case as the deciding body" whose decision "is based on the public hearing and the information and the documentation that's provided to the Board of Health as established under 310 CMR 16.20(10)(k)"[2] (ABCD00006), and that both the Board and Recycling would have the opportunity to examine and cross-examine each witness. (ABCD00007).

DISCUSSION

Judicial review of administrative agency proceedings is conducted through a motion for judgment on the pleadings. Superior Court Standing Order 1-96(4).[3] While Superior Court Standing Order 1-96 sets forth the procedure for appealing a final agency decision, the substance of that decision is reviewed under the standards of the State Administrative Procedure Act, General Laws, chapter 30A, sections 1-17. After reviewing the entire record, the court will affirm an administrative decision unless it is "[a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." G. L. c. 30A, § 14(7), as amended by St. 1998, c. 463, § 33. The court may reverse the decision if it determines that a party's substantial rights have been prejudiced by a decision "unsupported by substantial evidence," G. L. c. 30A, § 14(7)(e), that is, "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1. See also *Arnone* v. *Commissioner of the Dep't. of Soc. Serv.*, 43 Mass. App. Ct. 33, 34 (1997); *Salaam* v. *Commissioner of the Dep't. of Transportational Assistance*, 43 Mass. App. Ct. 38, 39 (1997).

The party appealing the decision of an agency such as the Board of Health bears the burden of demonstrating its invalidity. See *Merisme* v. *Board of Appeals on Motor Vehicle Liability Policies & Bonds*, 27 Mass. App. Ct. 470, 474 (1989); *Boston* v. *Outdoor Advertising Bd.*, 41 Mass. App. Ct. 775, 782 (1996); *Coggin* v. *Massachusetts Parole Bd.*, 42 Mass. App. Ct. 584, 587 (1997). When the court reviews an administrative decision, it must give due weight to the agency's experience, technical competence, specialized knowledge, and the discretionary authority conferred

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[2] 310 CMR 16.20(10)(k) states, in relevant part, that "[a] board shall determine that a site is suitable for assignment as a site for a new or expanded solid waste facility unless it makes a finding, supported by the record of the hearing, that the siting thereof would constitute a danger to the public health, safety or environment, based on the criteria set forth and established under 310 CMR 16.40."

[3] Pursuant to Superior Court Standing Order 1-96, effective March 18, 2002, "[c]laims filed in the Superior Court seeking judicial review of administrative agency proceedings on the administrative record pursuant to the standards set forth in G. L. c. 30A, § 14," must be heard in accordance with the procedures outlined in the order.

upon it by statute. *Iodice* v. *Architectural Access Bd.*, 424 Mass. 370, 375-376 (1997), citing G. L. c. 30A, § 14(7). The reviewing court may not substitute its judgment for that of the agency, *Southern Worcester County Regional Vocational Sch. Dist.* v. *Labor Relations Comm'n.*, 386 Mass. 414, 420-421 (1982), citing *Old Towne Liquor Store, Inc.* v. *Alcoholic Beverages Control Comm'n.*, 372 Mass. 152, 154 (1977), and it must "defer to [the] administrative agency's fact-finding role, including its right to draw reasonable inferences from the facts found." *City of Salem* v. *Massachusetts Comm'n. Against Discrimination*, 44 Mass. App. Ct. 627, 641 (1988), overturned on other grounds by *Bain* v. *Springfield*, 424 Mass. 748, 763-764 (1997), and citing *Smith College* v. *Massachusetts Comm'n. Against Discrimination*, 376 Mass. 221, 224 (1978). Furthermore, the court may not dispute the agency's choice between two conflicting views, even though the court could justifiably make a different choice if the matter came before it de novo. *Zoning Bd. of Appeals of Wellesley* v. *Housing Appeals Comm'n.*, 385 Mass. 651, 657 (1982); *Seagram Distillers Co.* v. *Alcoholic Beverages Control Comm'n.*, 401 Mass. 713, 721 (1988).

In this case, the court must review the entire administrative record to determine whether the Board's decision denying Recycling's application for a site assignment modification was supported by substantial evidence, taking into account whatever in the record fairly detracts from the evidence's weight. *Arnone*, 43 Mass. App. Ct. at 34; *Salaam*, 43 Mass. App. Ct. at 39; *Edward E.* v. *Department of Soc. Serv.*, 42 Mass. App. Ct. 478, 480 (1997).

I. SITE SUITABILITY CRITERIA

A site is suitable for a solid waste handling facility if it does not create substantial health and environmental hazards. DEP promulgates criteria for analyzing these risks, taking into consideration factors such as: the location or existence of any current or potential drinking water supplies; "the relationship of the site to groundwater elevations;" proximity to any wetlands, surface waters, or flood plains; proximity to, and density of, nearby residential areas; the availability and suitability of access roads; whether nearby sites have been used for solid waste disposal; potential adverse impacts on air quality; "the potential for creation of a nuisance from noise, windblown litter, or the proliferation of rodents, flies or other vermin;" any potential effects on health and public safety; any potential impact on agricultural lands, wildlife, or habitats; potential traffic increases; and the need and availability for solid waste disposal in the community. G. L. c. 111, § 150A½, as amended by

St. 1997, c. 19, § 21. Even if DEP, relying solely on the application, finds that the proposal satisfies its criteria, the local board of health must conduct a *de novo* proceeding to determine whether a site can actually be assigned. *RicMer Properties, Inc.* v. *Board Of Health of Revere*, 59 Mass. App. Ct. 173, 179 (2003). "By statute, the DEP's site suitability determination is not binding on the local board which must make an independent determination whether the proposed site complies with the criteria," *TBI, Inc.* v. *Board Of Health of North Andover*, 431 Mass. 9, 11-12 (2000), and "no site shall be deemed to be suitable where the impacts from the solid waste management facility will by itself, or in combination with impacts from other sources within the affected area, constitute a danger to public health or safety or the environment." 310 CMR 16.40(1)(a). Finally, "the applicant bears the burden of showing that the proposed facility meets the criteria." 310 CMR 16.40(1)(a)(2).

Here, Recycling contends that there was not substantial evidence to support the Board's determination that the proposed modification does not comply with DEP criteria. Therefore, the court will examine those criteria with which the Board found Recycling's proposal does not comply.

II. THE BOARD'S DETERMINATION

A. Was There Substantial Evidence that Impacts on Traffic would Threaten Public Health, Safety and the Environment?

1. The Board's Determination that Increased Truck Traffic would Create Congestion and Threaten Public Safety

To support its contention that an expansion of the facility's operations "will not have a significant impact on traffic operations within the study area" because its maximum permitted daily intake would not change (ABCD00388), Recycling relies on the traffic study submitted with its 2003 application for the original site assignment containing figures dating as far back as 1996. (ABCD00026). Recycling's assertion does not account for the fact that the facility has been operating at only five to seven percent of its capacity since it opened. (ABCD00085). The Board ordered a new traffic study to understand what impacts, if any, the proposed modification would have on traffic in the town (ABCD00031), and the new study showed that if Recycling operated at one hundred percent capacity, there would be a twenty-eight to fifty-eight percent increase in traffic through Ware at peak morning hours. (ABCD00257).

Recycling estimated that the bulk of the waste would be transported from the north on Route

32 and from the east on Route 9, thus avoiding the downtown area. (ABCD00082, ABCD00166). While Recycling had no market study research to support its estimation (ABCD00083), and could only speculate on any impact the modification would have on traffic (ABCD00166 - ABCD00168), the traffic study ordered by the Board showed that fifty-six percent of the waste would come to Recycling's facility from the south and west. (ABCD00278). The Board took specific note of DEP's "Active Facilities List"[4] (Board's Decision, p. 4), which shows that area MSW landfills are located in Granby (west of Ware), Agawam, Chicopee, and South Hadley (south west of Ware), Northampton (north west of Ware), Sturbridge, and Southbridge (south east of Ware). (ABCD01077 - ABCD01082). As of May 2007, the Chicopee, Granby, and Northampton landfills were scheduled for closure in 2010; the South Hadley landfill was scheduled to close in 2008; and the Sturbridge and Southbridge landfills would close in 2016 and 2026, respectively. (*Id.*). Along with the traffic study, evidence that landfills to the south and west of Ware would close in the near future substantially supported the Board's determination that trucks carrying MSW to Recycling's facility would "travel through the densely populated center of Ware endangering public health, safety and the environment." (Bd., p. 4).

2. The Board's Determination that Harmful Emissions from Increased Truck Traffic would Threaten Public Health, Safety and the Environment

The Board found that: diesel exhaust "is estimated by EPA's National Scale Assessment to contribute to the human health risks in New England" by aggravating asthma and allergies and contributing to lung cancer; diesel exhaust is made up of small particles called "fine particulate matter" which "pose a serious health risk because they can easily pass through the nose and throat and lodge themselves in the lungs;" and that "[c]hildren are more sensitive to air pollution because they breathe at a faster rate than adults." (Bd., p. 4). Its finding that "the various fleets of diesel trucks delivering to, and exiting from, the facility may not be retrofitted or use cleaner burning fuels" (*Id.* at 5), was substantiated by evidence that even though Recycling would mitigate emissions from its stationary machines by installing catalytic converters and using ultra-low sulphur diesel fuel, it had no plan for mitigating emissions from the increased number of trucks (most without catalytic converters) traveling to and from its facility. (ABCD00122). While Recycling posits that it would

[4] Issued by DEP in May 2007, and updated annually. (ABCD01077).

also mitigate emissions by limiting idling time to five minutes (ABCD00178 - ABCD00179), the Board could infer, based on evidence that Recycling's truck queuing area can accommodate up to ten trucks at one time (ABCD00009), that an increase in truck traffic would result in more non-retrofitted diesel trucks idling in the queuing area, overlapping five minute idling periods, and constant idling, which would increase the amount and concentration of harmful emissions.

The Board determined that emissions would not be reduced by Recycling's plan to conduct all waste processing and handling operations indoors. (ABCD00164). Assuming the facility was working at full capacity, evidence that six trucks would be entering and exiting the three-door building every ten minutes (ABCD00177), and that Recycling would vent "whatever odors, effluent air pollution, diesel fumes that are generated within the building" (ABCD00184), out into the open air (ABCD00288), provided substantial evidence to support the Board's finding that the modification would create a substantial risk to public health, safety and the environment from diesel emissions.

3. The Board's Determination that Increased Truck Traffic Using Alternate Routes would Create a Public Safety Risk

The Board received substantial evidence to support its finding that increased truck traffic on Routes 9 and 32 would threaten public safety because they are the main routes through Ware to Recycling's facility. (ABCD00254). Along these routes are a bridge over the Ware river and a railroad overpass, both slated for repair. (ABCD00203). Gilbert St. George-Sorel ("St. George-Sorel"), the Superintendent of Public Works, testified that repairs to the bridge would necessitate closure of either one or both of the bridge's lanes (*Id.*), which would divert traffic up Church Street to South Street, then onto Maple Street and Knox Avenue, back to Route 32. (*Id.*). St. George-Sorel testified that diverted traffic would also have to travel up Church Street to return to Route 32 if repairs to the railroad overpass require road closure. (*Id.*). School buses pick children up daily on each of these streets (ABCD00969 - ABCD00979), and along Church Street and East Street are a number of very old houses situated close to the road. (ABCD00202, ABCD00204). The Board had previously found that "[u]se of these residential streets by trash trucks creates a danger to residents, school children, pedestrians, and local traffic" (ABCD00999 - ABCD01005), and residents had previously complained that garbage trucks traveling to the Hardwick Landfill[5] were so big that they

[5] Hardwick Landfill, located 4.5 miles north of Recycling's site, closed in February 2007. (ABCD00416).

caused their houses on Church and East Streets to shake. (ABCD00217). This evidence, combined with testimony from Thomas Coloumbe ("Coloumbe"), the Ware Fire Chief, that any traffic increase on Routes 9 and 32 could hinder responders' ability to exit the fire station and that large trucks driving on narrow secondary roads are hazardous (ABCD00225), provided substantial evidence that trucks utilizing alternate routes to reach Recycling's facility would endanger public health and safety.

B. Was there Substantial Evidence that the Modification would Negatively Impact the Use and Enjoyment of Open Space?

A local board of health may not grant a site assignment "where such siting would have an adverse impact on the physical environment of, or on the use and enjoyment of" state forests, open space held for natural resource conservation, state or municipal parkland, MDC reservations,[6] or conservation land. 310 CMR 16.40(4)(e).

Here, the Board determined that Recycling's acceptance of MSW would detract from the use and enjoyment of Grenville Park, Veteran's Memorial Park, and Reed Pool and Playground- town parks that either abut or are located on the traffic routes to Recycling's facility. (ABCD00194). While substantial evidence supported the Board's decision regarding Veteran's Park, evidence supporting its finding that the modification would impede the public's use and enjoyment of the other parks was weak. Nevertheless, the Board is entitled to deference because testimony from town officials, when considered in conjunction with evidence supporting its decision regarding Veteran's Park, provided substantial evidence to support the Board's determination.

1. The Board's Determination that the Modification would Interfere with the Use and Enjoyment of Veteran's Memorial Park

Veteran's Memorial Park is located on Main Street across from the Town Hall. (ABCD00193). John Carroll ("Carroll"), a Ware Parks Commissioner, testified that if Recycling were to accept MSW, "anyone sitting in the park will have to deal with the noise of the trucks, the diesel fumes and the odors of the rotting garbage." (ABCD00193). Paul Hills, Director of the

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[6] Metropolitan District Commission, which merged with the former Department of Environmental Management to become the Department of Conservation and Recreation ("DCR"). *Padden* v. *West Boylston*, 64 Mass. App. Ct. 120, 130 n. 3 (2005). DCR further consists of a Division of Parks and Recreation, G. L. c. 21, § 1, as amended by St. 2008, c. 451, § 33, which is responsible for designating, maintaining, and preserving open spaces in urban park districts for exercise and recreation. These open spaces are called "reservations." G. L. c. 93, § 33, as amended by St. 2003, c. 26, § 242.

Department of Community Development, agreed that from his Town Hall office he had personally observed garbage trucks being very loud. (ABCD00232). St. George-Sorel testified that, during the operation of Hardwick Landfill, the town experienced litter flying off the large, heavy trucks onto the roadway near Veteran's Park. (ABCD00202). This testimony provides substantial evidence to support the Board's finding that "[t]he handling and transfer of municipal solid waste is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, diesel vehicle emissions, nuisance dust, vibration and noise," all of which interfere with the public's use and enjoyment of Veteran's park. (Bd., p. 11).

2. The Board's Determination that the Modification would Interfere with the Use and Enjoyment of Grenville Park and Reed Pool and Playground

Grenville Park, which extends from Recycling's facility across the Ware River, is used by residents for activities such as fishing, boating, and summer programs for challenged teenagers. (ABCD00190 - ABCD00191). Recycling claims that its acceptance of MSW would not create nuisances at the park because of the facility's distance from Grenville Park and its planned mitigation measures. (ABCD00393). In 2007, GSE conducted a "Sound Level Impact Assessment" of noise at various locations including the park. The Assessment showed that noise was detectable from the C&D facility, vehicle traffic, and rail traffic (ABCD00675 - ABCD00692), but concluded that "the effect of offsite noise was minimal in GSE's opinion." (ABCD00687, ABCD00690). Carroll agreed that there was "not much of a problem with the noise" from the current facility, and that noticeable noise at the park is "sporadic." (ABCD00192). However, Carroll expressed concern that an increase in activity at Recycling could create more noise, which would be amplified by the water, and that noise from more vehicle and train traffic would disturb residents using the park. (*Id.*).

Carroll expressed similar concerns for residents' ability to use and enjoy Reed Pool Park and Playground, located on Route 9. (ABCD00194). He posited that increased truck traffic on Route 9 would endanger children and other patrons using the pool and ball fields because the sidewalk is located near the road. (*Id.*). However, upon questioning, Carroll acknowledged that his negative opinions and concerns over Recycling's proposed modification were not based on any documentation or expert analysis performed by himself or the Parks Commission. (ABCD00200).

Despite the lack of documentary evidence, the Board was entitled to conclude that the

modification would interfere with residents' use and enjoyment of town parks. See *Lisbon* v. *Contributory Ret. Appeal Bd.*, 41 Mass. App. Ct. 246, 257 (1996)("In order to be supported by substantial evidence, an agency conclusion need not be based upon the "clear weight" of the evidence or even a preponderance of the evidence, but rather only upon "reasonable evidence," that is, "such evidence as a reasonable mind might accept as adequate to support a conclusion," after taking into consideration opposing evidence in the record")(internal citations omitted). The Board's finding that Keegan's testimony "with regards to his site visit at Grenville Park and his observations of the facility from the Park was not supported by credible evidence and was contrary to the personal knowledge of Board members and the Board's agent of the location of the riverfront within the Park, and its relationship to the facility" (Bd., p. 19), is entitled to deference. See *Cobble* v. *Commissioner of Dep't. of Soc. Serv.*, 430 Mass. 385, 391 (1999)("The substantial evidence test accords an appropriate degree of judicial deference to administrative decisions, ensuring that an agency's judgment on questions of fact will enjoy the benefit of the doubt in close cases").

3. Has Recycling Demonstrated that the Decision is Invalid or that it Suffered Prejudice?

Furthermore, Recycling has not satisfied its heavy burden of showing that the Board's decision is invalid. See *Attorney Gen.* v. *Department of Public Utilities*, 453 Mass. 191, 196 (2009); *Fitchburg* v. *Department of Telecommunications and Energy*, 440 Mass. 625, 631 (2004); *Massachusetts Inst. of Tech.* v. *Department of Public Utilities*, 425 Mass. 856, 867 (1997). The Board rejected Recycling's claim that the modification would not impact the town's parks. The inquiry does not end there, however, because "nonacceptance of testimony does not create substantial evidence to the contrary," *Salisbury Water Supply Co.* v. *Department of Public Utilities*, 344 Mass. 716, 721 (1962), and the Board's decision will not stand where "the cumulative weight of the evidence tends substantially toward opposite inferences." *Cobble*, 430 Mass. at 391. During the hearing, Keegan stated that he had done very little "to evaluate the impact of the proposed ABC&D facility on the use and enjoyment of these Town parks and natural resources." (ABCD00125). He testified that he had visited Grenville Park only once for 15 minutes (ABCD00123), and that he did nothing to determine what, if any, impact increased truck traffic would have on Veteran's Park or Reed Pool and Playground. (ABCD00124 - ABCD00125). Such testimony does not constitute

evidence which "tends substantially toward opposite inferences." *Cobble*, 430 Mass. at 391.

The Board was entitled to rely on its town officials who testified that, in their experience, garbage trucks inhibit residents' use and enjoyment of these parks. The Board could draw reasonable inferences based on the evidence presented before it, *Id.* at 390, and the fact that Keegan's testimony, if believed, would have supported Recycling's position does not entitle it to relief. *Duato* v. *Commissioner of Public Welfare*, 359 Mass. 635, 641 (1971). "The inferences drawn from the evidence in this case were largely matters of common experience and common sense, not matters of specialized or technical knowledge," and therefore the Board's decision may stand. *Arthurs* v. *Board of Registration in Medicine*, 383 Mass. 299, 312 (1981).

C. Was There was Substantial Evidence that the Modification would Increase Emissions?

According to DEP regulations, "[n]o site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment." 310 CMR 16.40(4)(f). The Board must consider "the concentration and dispersion of emissions," whether there are sensitive populations nearby, and "the attainment status of the area." *Id.*

1. Compliance with Federal Air Quality Standards

The Board found Recycling's proposed air emission mitigation measures were inadequate to prevent the area from falling further out of compliance with federal air quality standards. John Blaisdell ("Blaisdell")[7] and Keegan testified that in preparing the site suitability application, they neither measured emission levels from on-site equipment, nor calculated how much particulate matter trucks operating on-site would emit. (ABCD00130). They also failed to estimate the amount of particulate matter that trucks idling at, traveling to, and traveling from the facility would emit. (ABCD00131). Keegan and Blaisdell did not consider whether the combination of emissions from the facility, trucks, and the neighboring Ware CoGen power plant[8] would exceed the Environmental Protection Agency's ("EPA") National Ambient Air Quality Standards in violation of the Clean Air

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[7] Also of GSE.

[8] Ware CoGen, located within one mile of Recycling's facility, is a power plant wherein biomass such as wood and paper is burned and converted to gas. The gas is then burned to create electricity. (ABCD00061). As of February, 2008, the facility was not in operation. (ABCD00059).

Act. (ABCD00131). The Board's finding that town of Ware is currently located in an "8-Hour Ozone Non-Attainment Area"[9] (Bd., p. 10) was supported by evidence that EPA classifies the region as such (ABCD01473), and there was substantial evidence that more trucks carrying MSW to Recycling's facility would create more emissions, which would push the area further from attaining National Ambient Air Quality Standards.

2. Concentration and Dispersion of Emissions

The Board heard evidence that Recycling's indoor waste handling and processing operations would involve six to twelve trucks idling within the confined space of the building (ABCD00178), and that "odors, effluent air pollution, [and] diesel fumes that are generated within the building" would be vented directly out into the air. (ABCD00288). Recycling stated that it would install a misting system equipped with a reservoir holding "concentrated odor counteractant chemical," but that it did not plan to install a negative air pressure system. (ABCD00053). In the September 21, 2007 Certificate of the Secretary of Energy and Environmental Affairs on the Notice of Project Change, Secretary Ian A. Bowles suggested that Recycling "consider the use of additional available technologies, including but not limited to the installation of a negative air pressure system with appropriate air pollution controls, to control dust and odor emissions from the proposed facility." (ABCD00868). Finding that Recycling had "failed to identify and consider the concentration and dispersion of emissions from the facility in consideration of the comments and encouragement of Secretary Ian A. Bowles," the Board determined that "[i]t will be necessary for the protection of public health and the environment from fugitive dust and particulate emissions, odors and windblown litter to . . . requir[e] negative air pressure be maintained within the building and the installation of more advanced odor control mechanisms." (Bd., p. 10).

Recycling could also mitigate air pollution by mandating that "[a]ll loads will be inspected for unacceptable material at the point of generation and while being tipped." (ABCD00516). However, Recycling explicitly stated that it would only inspect the minimum of five bags from eight trucks per month unless market conditions made it profitable to inspect more. (ABCD00089 -

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[9] The national 8-hour ambient air quality standard for ozone is 0.08 parts per million, which is the daily maximum 8-hour average. 40 CFR § 50.10(a)(1997). "Non-attainment" therefore means that average daily ozone levels exceed 0.08 parts per million.

ABCD00090). Blaisdell testified that Recycling would not inspect each bag to ensure that there were no banned materials. (ABCD00090). When asked how Recycling could know whether items containing asbestos, hazardous waste, radioactive waste, or medical waste were in a load if it did not inspect each bag, Blaisdell answered "I don't know." (ABCD00095). Keegan also testified that Recycling cannot know whether small amounts of hazardous waste, hidden within larger containers, are accepted at the facility unless each bag is inspected. (*Id.*). Finding that "[o]ther hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates (sic) contained therein" (Bd., p. 11), the Board could infer that Recycling's limited inspection of incoming waste creates a higher potential for the release of harmful emissions from banned materials into the atmosphere.

D. Was There was Substantial Evidence that the Modification Would Increase Potential Nuisances?

A site may not be assigned "where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment." 310 CMR 16.40(4)(g). Noise, litter, vermin, odors, and birds are all potential nuisances. *Id.* A local board of health may "include in any decision to grant a site assignment such limitations with respect to the extent, character and nature of the facility or expansion thereof, as may be necessary to ensure that the facility or expansion thereof will not present a threat to the public health, safety or the environment." 310 CMR 16.20 (12).

In this case, the Board found that "[t]he transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions and truck idling, nuisance dust, noise and vibration and is a danger to the public health and environment." (Bd., p. 4). It therefore conditioned its approval of Recycling's application on the institution of more stringent mitigation measures to protect the town from such nuisances.

1. Noise

As previously noted, noise could be detected off-site from the C&D facility's operations and from vehicle and train traffic (ABCD00675 - ABCD00692), and the Board could infer that permitting Recycling to accept MSW would increase the noise because the number of large trucks

traveling to the facility during peak hours would increase by twenty-eight to fifty-eight percent. (ABCD00251). Moreover, the town had previously experienced noise nuisances from garbage trucks going to Hardwick Landfill. John Desmond ("Desmond"), a member of the Ware Board of Selectmen, testified that residents had complained to him in the past about loud garbage trucks and their jack brakes traveling down narrow residential streets, creating vibrations they could feel in their homes, on their way to the Hardwick Landfill. (ABCD00218 - ABCD00219). Thus, there was substantial evidence to support the Board's finding that Recycling's acceptance of MSW would create a "vibration and noise" nuisance from garbage trucks. (Bd., p. 11).

2. Odor and Litter

The Board's finding that "[t]he handling and transfer of municipal solid waste is accompanied by malodorous smells" (Bd., p. 11), was supported by testimony from Keegan that MSW has an "objectionable odor." (ABCD00072). David Kopacz, chairman of the Ware Conservation Commission, testified that he had personally detected odors from garbage trucks carrying MSW to Hardwick Landfill (ABCD00209), and that specific materials, such as bleach and diapers, had "a very noticeable odor." (ABCD00210). Desmond testified that he had received complaints from residents about the unpleasant smells from trucks carrying MSW to Hardwick Landfill. (ABCD00218). This testimony supported the Board's inference that Recycling's proposed mitigation techniques of deodorizing the waste with an indoor misting system (ABCD00073), cleaning the tipping floor (ABCD00401), and monitoring trucks when they arrive at the facility (ABCD00080), would not alleviate outdoor odors as trucks traveled through town to Recycling's facility. Therefore, the Board asked Recycling to install "ventilation equipment capable of maintaining negative air pressure, including during period[s] when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air." (Bd., p. 11).

The Board's finding that handling and transferring MSW is accompanied by "garbage truck spillage and leaks" was supported by testimony from St. George-Sorel that litter and debris would fall from garbage trucks hauling MSW to Hardwick Landfill (ABCD00202), and by evidence that trucks carrying MSW through town would not be sealed or airtight (ABCD00074), but would be covered only by a tarp. (ABCD00077). Recycling asserts that litter will be controlled because "all containers subjected to windy conditions will be properly covered and/or contained to the extent

practicable;" because staff will "inspect the facility daily for material which could disperse due to windy conditions" (ABCD00577); and because nonconforming loads where the truck is leaking or the coverings are defective will be rejected. (ABCD00078). However, the Board found that "the proposed pollution and nuisance reduction strategies . . . such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will traverse roads and travel past homes and municipal parkland to the facility and on the return trip out of the Town of Ware." (Bd., p. 5). Thus, the Board requested that Recycling institute and maintain a "Hot Line" wherein town residents could call to report nuisances to which Recycling would respond, and that Recycling sweep and clean all driveways, access roads, and paved areas of the facility, as well as all town roads leading thereto. (Bd., p. 22).

3. Vermin

The Board determined that "[t]he putrescible nature of municipal solid waste, and the offal contained therein, provides a food source and harborage of rodents, insects, gulls, and other pests which contribute to the creation or spread of disease." (Bd., p. 11). Recycling's testimony that if vermin would be found anywhere, "they would be on the over-the-road trailers off the site headed out of town" (ABCD00066), could support an inference that a vermin nuisance at the facility would threaten public health, safety and the environment because over-the-road trailers would carry the vermin directly through town when traveling from the facility. Although Recycling claims that contracting with an exterminator, installing rodent traps, conducting all waste handling activities indoors, and cleaning the tipping floor, will mitigate vermin nuisances by eliminating food sources (ABCD00400, ABCD00066), the Board determined it was necessary for Recycling to (1) retain an exterminator to inspect the facility weekly, and (2) remove all materials from the tipping floor daily, in order to protect the town from vermin infestation. (Bd., pp. 11, 12). And although Recycling states that there will be no problem with bird nuisances "given the completely closed operation" and the fact that "[n]o waste handling, loading, or unloading, or uncovering, will be allowed outside of the building" (ABCD00403), the Board was justified in requiring institution of a gull control program to protect neighboring properties and parks from potential bird nuisances. (Bd., p. 12).

E. Was There Substantial Evidence that the Modification Would Increase the Risk of Industrial Waste Water Contamination?

Substantial evidence supported the Board's finding that public health, safety and the environment would be threatened by the modification because "[s]torm water management control features and erosion control measures can fail during flood or fire events or from lack of maintenance." (Bd., p. 6).

Coloumbe testified that the combination of certain wastes either in the garbage truck or on the tipping floor can emit gases that create "hot loads," which are fire hazards (ABCD00224), and that, in his experience, firemen using the hose to put out a fire caused by a hot load expend approximately 125 gallons of water per minute. (ABCD00226). If such a fire occurred at the facility and took 15 minutes to extinguish, over 1500 gallons of water would come into contact with MSW and C&D, which would collect in the 1500 gallon tight-tank under the tipping floor. (ABCD00011). That water would be treated as industrial waste water, as "the constituents are likely to leach out of municipal solid waste or C&D." (ABCD00120). The Board heard evidence that, although catch basins able to hold up to 20,000 gallons of water are available, Recycling did not consider installing a larger one (ABCD00287), and that once the tight-tank reached its 1500 gallon capacity, excess water would move into a stone retention basin located downhill from the facility toward the river. (ABCD00286-ABCD00287). Because this secondary retention basin is not a tight-tank leak-proof pond (ABCD00287), the Board determined that public health, safety and the environment "should be protected from adverse impacts from the proposed solid waste management facility and/or any malfunctioning of its storm water control features which would result in discharge to the Ware River;" and that "the establishment of a monitoring program at the facility and of the Ware River in the immediate vicinity of the proposed solid waste management facility" was required. (Bd., p. 6).

III. RECYCLING'S MOTION TO STRIKE

Claiming that they were improperly included in the administrative record, Recycling asks the court to strike: (1) testimony and documents submitted by Kerri Pyke; (2) cross-examination by Judy Metcalf; (3) testimony by John Desmond, John Carroll, Jr., Gilbert St. George-Sorel, Thomas Coloumbe, David Kopacz, and Paul Hills; (4) testimony and documents submitted by Christopher Koehler; (5) documents submitted by Attorney Nicole Caprioli; (6) documents produced by the

Board and offered as exhibits; (7) "Administrative Notice Exhibits;" and (8) "Offer of Proof Only Exhibits."

It is the Board's duty to compile and file the administrative record, which consists of "(a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties." G. L. c. 30A, § 14(4). In this case, the Board proposed that the record consist of only those documents it actually used to reach its decision to avoid the expense of transcribing, assembling, binding, printing and copying nearly 4,000 pages. The Board sought Recycling's input and approval for limiting the record by, for example, excluding documents marked for administrative notice but of which the Board never actually took such notice. Recycling, however, insisted that "the record can not be limited in any way from the entire package of documents that were marked as exhibits, introduced or otherwise referred to by any of the testimony- this includes ALL Admin. Notice documents not just those cited or referred to in the BOH Decision."[10] In a formal letter dated June 12, 2008, Recycling further stated that, "[i]n the event that the Board of Health fails to appropriately produce the entire Administrative Record, including all so-called Administrative Notice Documents and all the original Site Assignment Application documents and supporting materials, then the Applicant shall have no alternative but to seek court intervention . . . ."[11] For Recycling to now ask the court to strike these same materials seems disingenuous at best. The court reviews the entire record, including materials reproduced at Recycling's insistence, while being cognizant of the various documents' role in the proceedings.

Even if Recycling was not precluded from objecting to the inclusion of these materials, its claim that testimony and cross-examination by town representatives was impermissible is invalid because, "[t]o the extent that there were any procedural deficiencies, they were inconsequential in view of the [town]'s obvious and overriding interest in the location of a waste disposal site within its borders . . . ." *RicMer Properties, Inc.*, 59 Mass. App. Ct. at 177. Recycling's claim that the Board impermissibly used outside consultants and experts is similarly invalid. See *Arthurs*, 383 Mass. at 310, citing G. L. c. 30A, § 11(5)("[a]n agency may introduce technical or specialized facts in the record through expert witnesses, or by taking official notice of facts").

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[10] Exhibit 1 attached to Defendant's Opposition to Plaintiff's Motion to Strike
[11] Exhibit 2 attached to Defendant's Opposition to Plaintiff's Motion to Strike

V. REMAINING ISSUES

Recycling's assertion that it was denied the right to examine and cross-examine witnesses can quickly be disposed of by examining the record. The remaining issues raised by Recycling in its motion for judgment on the pleadings and the Board in its opposition are addressed below.

A. Timeliness

Recycling claims that the Board's decision is void because it was issued more than forty-five days after the public hearing commenced, G. L. c. 111, § 150A; 310 CMR 16.30(10)(k)(1), and that the untimeliness constitutes a constructive approval of its application. Although the Board's decision was issued forty-eight days after the commencement of the hearing, the delay does not render its decision invalid. Nothing in G. L. c. 111, § 150A, states that the Board's failure to adhere to the forty-five day time limit constitutes a constructive approval of the site assignment application, and the Legislature would have specifically provided for such a result had it so intended. *Oyster Creek Preservation, Inc.* v. *Conservation Comm'n.*, 449 Mass. 859, 865 n. 11 (2007). Indeed, construing G. L. c. 111, § 150A, to lead to such a result "would require this court to read words into the statute that are not there." *Anderson Street Associates* v. *City of Boston*, 442 Mass. 812, 817 (2004).

Furthermore, Recycling waived its right to object to the decision's untimeliness by failing to raise it when it filed its notice of appeal. A waiver "may occur by an express and affirmative act, or may be inferred by a party's conduct, where the conduct is "consistent with and indicative of an intent to relinquish voluntarily a particular right [such] that no other reasonable explanation of [the] conduct is possible."" *KACT, Inc.* v. *Rubin*, 62 Mass. App. Ct. 689, 695 (2004), quoting *Attorney Gen.* v. *Industrial Natl. Bank*, 380 Mass. 533, 536 n. 4 (1980). An implied waiver is "premised on clear, decisive and unequivocal conduct," *Id.*, and in civil cases where procedural rules and not constitutionally protected rights are involved, "a party may waive rights simply by failing to assert them." *Spence* v. *Reeder*, 382 Mass. 398, 411 (1981). Here, Recycling's failure to raise the issue of timeliness at its first opportunity to do so, and its own failure to adhere to statutory deadlines,[12] clearly and unequivocally reflect an "intent to relinquish voluntarily a particular right." *KACT, Inc.*,

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[12] Pursuant to Superior Court Standing Order 1-96(4), Recycling was required to file its motion for judgment on the pleadings within thirty days of service of the record. The Board served the record on June 23, 2008, and Recycling filed its motion for judgment on the pleadings one hundred and forty-two days later, on November 12, 2008.

62 Mass. App. Ct. at 695.

B. Application Not Prepared by Professional Engineer

DEP requires that "[a]ll papers pertaining to the design, operation, maintenance, or engineering of a site or a facility shall be prepared under the supervision of a registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer." 310 CMR 16.08(5)(b). A professional engineer is "a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering, as attested by his registration as a professional engineer," G. L. c. 112, § 81D, as amended by St. 1958, c. 584, § 2, and "[w]hoever practices or offers to practice engineering . . . in the commonwealth without being registered" may be punished by a fine or imprisonment. G. L. c. 112, § 81T, as amended by St. 1958, c. 584, § 10. Only an engineer either qualified by the laws of the Commonwealth or working under another engineer so qualified may conduct engineering work. 250 CMR 3.05(9).[13]

Here, there was evidence before the Board that Keegan was not a registered professional engineer in Massachusetts,[14] that the only Massachusetts license he possesses is "Wastewater Treatment Plant Operator Grade 6" (ABCD00290), that his college degree was in biology (ABCD00290), and that most of his experience has been working with solid waste handling and landfill facilities in Maine. (ABCD00289). The Board found that Keegan gave conflicting testimony that he had prepared the site suitability application (ABCD00052, ABCD00288), and that he had prepared the application under the supervision of Gary James, who is a licensed professional engineer in the Commonwealth. (ABCD00290). Based on this conflicting testimony and the fact that "[t]he Ware Board of Health finds only one document within the Site Assignment Modification Application, a map entitled "Site Plan" contains the seal and signature of Mr. Gary James" (Bd., pp.

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[13] A non-resident licensed to practice in their home state may become registered in Massachusetts without taking an examination. G. L. c. 112, § 81J(1)(a), as amended by St. 1970, c. 707, § 5. The non-resident must apply to the Board of Registration, however, and he/she "should file an application for a Temporary Permit" as well. 250 CMR 3.07(1). The applicant must be a registered professional engineer in his/her home state. 250 CMR 3.01(7).

[14] He is a licensed professional engineer in Maine, and though he has resided in Massachusetts since 1999, Keegan did not begin "working on certification" in the Commonwealth until "just a few months" before the public hearing. (ABCD00289 - ABCD00291). He did not say whether or not he had obtained a temporary permit. (*Id.*).

17-18), the Board decided not to consider Keegan's testimony as that of an expert.[15]

"[F]ailure to register as a professional engineer is some evidence, which may be rebuttable," that a person is not qualified to give expert testimony. *Commonwealth* v. *Monahan*, 349 Mass. 139, 166 (1965). Keegan offered no evidence to rebut the Board's findings that he: is not a licensed professional engineer in the Commonwealth; does not hold a college degree in the field of engineering; lacks significant work experience in the design of enclosed MSW handling facilities in the Commonwealth; and most of his experience is with landfill design and closures in Maine. (Bd., p. 17). Thus, the Board's conclusion that, "[b]ased on the above findings of credentials, education, and work experience, the Board does not weigh Mr. Keegan's opinions and testimony as an expert, but rather as a lay person" (*Id.*), is entitled to substantial deference.[16] *Vinal* v. *Contributary Retirement Bd.*, 13 Mass. App. Ct. 85, 101 (1982)(when findings "rest on the hearings officer's resolution of credibility questions . . . they should be entitled to substantial deference").

ORDER

Based upon the foregoing, it is hereby **ORDERED** that the Board's determination is **AFFIRMED**. It is further **ORDERED** that Recycling's motion to strike is **DENIED**.

Dated: March 26, 2009
Entered: March 30, 3009

Mary-Lou Rup
Justice of the Superior Court

[15] In fact, two maps in the 392-page application bear the seal of Gary James. (ABCD00698, ABCD00704).

[16] With respect to Keegan presenting himself as a professional engineer and/or practicing engineering without being registered in the Commonwealth, the decision to pursue or impose civil or criminal penalties lies with the Attorney General or District Attorney, and not with this court. G. L. c. 112, § 81T.

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D

KK
Examiner

UA
Name
Approved

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF ORGANIZATION
(General Laws, Chapter 156B)

ARTICLE I
The exact name of the corporation is:

ABC & D Recycling, Inc.

ARTICLE II
The purpose of the corporation is to engage in the following business activities:

To operate a Construction demolition recycling facility.

To borrow or raise money for any of the purposes of the Corporation, and from time to time, without limit as to amount, draw, make, accept, endorse, execute, and issue promissory notes, drafts, bills of exchange warrants, bonds, debentures, and other negotiable and non-negotiable instruments and evidences of indebtedness, and to secure the payment thereof and of the interest thereon by mortage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Corporation and to sell, pledge, or otherwise dispose of such bonds or other obligations of the Corporation for its Corporate purposes. In general, to carry on any other business in connection with the foregoing and to have and exercise all the powers conferred upon corporations by the laws of the Commonwealth of Massachusetts, and to do all and everything necessary, suitable, and proper for the accomplishment of any of the purposes or attainment of any of the objects herein set forth. Capital stock issued shall be the type as defined under Section 1244 of the Internal Revenue Code and shall be known as "Section 1244 Stock".

C ☐
P ☐
M ☐
R.A. ☐

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P.C.

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on one side only of separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet so long as each article requiring each addition is clearly indicated.

ARTICLE III

State the total number of shares and par value, if any, of each class of stock which the corporation is authorized to issue.

WITHOUT PAR VALUE		WITH PAR VALUE		
TYPE	NUMBER OF SHARES	TYPE	NUMBER OF SHARES	PAR VALUE
Common:	2,000	Common:		
Preferred:		Preferred:		

ARTICLE IV

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the corporation must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

None

ARTICLE V

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

See Attachment 5A

ARTICLE VI

**Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

None

***If there are no provisions state "None"*

Note: The preceding six (6) articles are considered to be permanent and may ONLY be changed by filing appropriate Articles of Amendment.

ATTACHMENT 5A:

Any stockholder, including the heirs, assigns, executors, or administrators of a deceased stockholder, desiring to sell or transfer such stock owned by him or them shall first offer it to the Corporation through the Board of Directors in the following manner:

He shall notify the Directors of his desire to sell or transfer by notice in writing, which shall contain the price at which he is willing to sell or transfer and the name of one arbitrator. The Directors shall, within thirty days thereafter, either accept the offer, or by notice to him in writing, name a second arbitrator, and these two shall name a third. It shall then be the duty of the arbitrators to ascertain the value of the stock, and if any arbitrator shall neglect or refuse to appear at any meeting appointed by the arbitrators, a majority may act in the absence of such arbitrators.

After the acceptance of the offer, or the report of the arbitrators as to the value of the stock, the Directors shall have thirty days within which to purchase the same at such valuation, but if at the expiration of thirty days, the Corporation shall not have exercised the right so to purchase, the owner of the stock shall be at liberty to dispose the same in any manner he may see fit.

No shares of stock shall be sold or transferred on the books of the Corporation until these provisions have been complied with, but the Board of Directors may, in any particular instance, waive the requirements.

ARTICLE VII

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

ARTICLE VIII

The information contained in Article VIII is not a permanent part of the Articles of Organization.

a. The street address (*post office boxes are not acceptable*) of the principal office of the corporation *in Massachusetts* is:

198 East Street, Ware MA 01082

b. The name, residential address and post office address of each director and officer of the corporation is as follows:

	NAME	RESIDENTIAL ADDRESS	POST OFFICE ADDRESS
President:	Richard O'Riley	265 Upper Church St.	P.O. Box 719,Ware,MA 01082
Treasurer:	Joann O'Riley	265 Upper Church St.	P.O. Box 719,Ware,MA 01082
Clerk:	Sean O'Riley	8 Orchard St.	8 Orchard St.,Acton,MA 01720
Directors:	Richard O'Riley	265 Upper Church St.	P.O. Box 719,Ware,MA 01082
	Joann O'Riley	265 Upper Church St.	P.O. Box 719,Ware,MA 01082
	Sean O'Riley	8 Orchard St.	8 Orchard St.,Acton, MA 01720

c. The fiscal year (i.e., tax year) of the corporation shall end on the last day of the month of: December

d. The name and business address of the resident agent, if any, of the corporation is: NONE

ARTICLE IX

By-laws of the corporation have been duly adopted and the president, treasurer, clerk and directors whose names are set forth above, have been duly elected.

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address(es) *are clearly typed or printed* beneath each signature do hereby associate with the intention of forming this corporation under the provisions of General Laws, Chapter 156B and do hereby sign these Articles of Organization as incorporator(s) this 25 day of May, 2004.

_____

_____

_____

_____

Note: If an existing corporation is acting as incorporator, type in the exact name of the corporation, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said corporation and the title he/she holds or other authority by which such action is taken.

28507

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF ORGANIZATION

(General Laws, Chapter 156B)

I hereby certify that, upon examination of these Articles of Organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of $ 275 having been paid, said articles are deemed to have been filed with me this 27 day of May 20 04.

Effective date: 085517

A TRUE COPY ATTEST
WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH
DATE 3/16/10 CLERK

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

FILING FEE: One tenth of one percent of the total authorized capital stock, but not less than **$275.00**. For the purpose of filing, shares of stock with a par value less than $1.00, or no par stock, shall be deemed to have a par value of $1.00 per share.

TO BE FILLED IN BY CORPORATION

Contact information:

John P. Regish
8 River Drive
Hadley, MA 01035

Telephone: 413-584-2941

Email: John@JohnRegish.com

A copy this filing will be available on-line at www.state.ma.us/sec/cor once the document is filed.

FILED
2004 MAY 27 PM 12:13
SECRETARY OF STATE
CORPORATIONS DIVISION

15

CERTIFICATE ISSUED
DATE

$2180.25

BUILDING PERMIT - CERTIFICATE OF OCCUPANCY

DATE DECEMBER 14, 2004 PERMIT NO 5757

APPLICANT RICHARD O'RILEY ADDRESS NEW 265 UPPER CHURCH STREET OWNER
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO CONST. STORAGE BLDG. 1 (TYPE OF IMPROVEMENT) STORY NO. STORAGE (PROPOSED USE) NUMBER OF DWELLING UNITS 0

AT (LOCATION) 198 EAST STREET (NO.) (STREET) ZONING DISTRICT

BETWEEN (CROSS STREET) AND (CROSS STREET)

SUBDIVISION LOT BLOCK LOT SIZE

BUILDING IS TO BE 120 FT. WIDE BY 180 FT. LONG BY 28 FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 5B USE GROUP STORAGE BASEMENT WALLS OR FOUNDATION CONCRETE (TYPE)

REMARKS CONST. BUTLER TYPE BUILDING

Mike Agnes 1/11/06

AREA OR VOLUME (CUBIC/SQUARE FEET)

OWNER RICHARD SIXTY O'RILEY

ADDRESS 265 UPPER CHURCH STREET

☑ APPROVED

TO BE POSTED ON PREMISES
SEE REVERSE SIDE FOR CONDITIONS OF CERTIFICATE

FORM NO. BOCA-7F 1996

November 29, 2005

Michael Agnew
Building Inspector
Town of Ware
126 Main Street
Ware, Massachusetts 01082

RE: ABC&D Recycling, LCC
198 East Street, Ware, MA
Building Permit Number 5757

I certify that the building located at 198 East Street, *building permit number* 5757, *has been built under my supervision and in accordance with the approved plans, and that such plans do conform to all provisions of the Massachusetts State Building Code.*

BRUCE W. MacLEOD CIVIL NO. 45530

Architect or Engineer Seal Bruce W. MacLeod
Signature

16

DEPOSITION
EXHIBIT 52
L. O'Riley
8/2/10 SL
PENGAD 800-631-6989

Christopher, Hays, Wojcik & Mavricos, LLP

COUNSELLORS AT LAW
370 MAIN STREET
WORCESTER, MASSACHUSETTS 01608
TELEPHONE (508) 792-2800
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WILLIAM W HAYS
DAVID A. WOJCIK
JOHN A. MAVRICOS
DONALD C. KEAVANY, JR
NICOLE B CAPRIOLI
PATRICE J. MAVRICOS
ERIK D. SCHEINFELDT
SARAH E. MONTGOMERY

Of Counsel
CHRISTOPHER CHRISTOPHER

WILLIAM C. PERRIN, JR 1947-1997

May 7, 2010

By E-Mail & First Class Mail

Mary Tzambazakis, Town Manager
Town of Ware
Town Hall
Ware, MA 01082

RE: ABC&D

Dear Mary:

You have asked us to provide you wit an outline of all the outstanding issues regarding the ABC&D facility. This letter summarizes the issues as set forth in a series of correspondence with you recently.

ZONING

A. Special Permit

There are three (3) issues regarding the Special Permit:

1. The minutes of the Planning Board meeting of April 18, 2001 document that only three members of the five member Planning Board voted in favor of the decision. Only four members were present at the meeting and one member abstained from voting. The grant of a special permit requires a vote of four members of a five member Planning Board. Therefore, although it was recorded that a vote of three of five members of the Planning Board in favor caused the special permit to be granted, that was not in fact the case. The April 18, 2001 decision did not actually grant any special permit.

2. The issues with respect to whether any special permit was ever actually granted are probably rendered moot by the fact that even if there was a special permit, it clearly has lapsed. Section 2.535 provides that "a special permit shall lapse within one year if a substantial use thereof has not commenced except for good cause ...". Additionally, G.L.c.

40A §11 requires that a special permit be recorded before it takes effect. Based upon my review, it appears that not only was no use made of this alleged special permit until 2006 but a building permit was not even obtained until December 14, 2004 - more than three and one-half years after the special permit was issued.

Additionally, the April 18, 2001 document was not recorded until January 28, 2010, almost nine years after it was issued. Therefore, even if we assume that the decision dated April 18, 2001 was a special permit, it lapsed under the zoning by-law and by virtue of G.L.c. 40A §11 in 2002 and the ABC&D facility presently is operating without the benefit of a special permit. The Massachusetts Supreme Judicial Court has recently made it quite clear that a "variance could not become operative, and by implication, could not be exercised until it was recorded." Cornell v. Board of Appeals of Dracut, 453 Mass. 888, 891 (2009). This holding in the Cornell case would, in my opinion, be applicable to a special permit especially a special permit which was not used within one year. Since the alleged special permit of April 18, 2001 was not recorded within one year and since no use of the special permit was made within one year, that special permit has lapsed and is a legal nullity.[1]

3. The April 18, 2001 "Decision on Special Permit or Extension, Modification or Renewal of Special Permit" incorrectly identifies the Book and Page of the property and does not explicitly state that a special permit is being granted.

B. Frontage

There is a very significant zoning issue that needs to be addressed. The applications to the Ware Planning Board for the C&D facility were, apparently, presented for a single parcel of land "identified as 198 East Street, Ware, MA and designated as Parcel #16 on Map 24 of the Town of Ware Assessor's Maps." However, a review of the relevant deeds reveals that the land, in fact, consists of two different parcels separated by a 90' wide strip of land owned by the Commonwealth of Massachusetts and used for railroad purposes. Only the parcel of land lying between East Street and the railroad tracks actually has any street frontage. The other parcel of land located between the railroad tracks and the river has no frontage on any street. The ABC&D building was constructed on the parcel which has no frontage. The construction of the ABC&D facility on a landlocked parcel of land with no street frontage is in violation of the Ware Zoning By-Law. Certainly, this zoning issue should be addressed and resolved before any other uses are made of this property. If this zoning issue is not

[1]Although a one page undated and unsigned document entitled Extension Agreement in the Planning Board file states that the April 18, 2001 special permit is extended for one year, we have found nothing to indicate that the Planning Board ever voted to grant such an extension, no extension was ever filed with or certified by the Town Clerk or recorded, all as required by G.L.c. 40A §11 (an unrecorded extension does not take effect) and, in any event, even if a one year extension was granted and effective, any special permit would still have lapsed.

resolved, the Town would need to commence an action before November 30, 2010 in order to ensure that its rights to enforce the zoning by-law are not lost.

Technical Fees Owed

ABC&D has still not paid the technical fees it owes the Town of Ware with respect to the Board of Health hearings concerning its MSW site application hearings. The sum of $15,495.55 is owed for the technical fees plus approximately 2 years of interest at the rate of 12% per year which amounts to approximately $4,000 in interest. This matter was filed as a Counterclaim to ABC&D's litigation challenging the Board of Health's decision on the site assignment modification. While the portion of the case brought by ABC&D has been decided by the Superior Court, our counterclaim issue is still pending. We are prepared to bring a Summary Judgment Motion and in fact, have a Motion practically finished, but have been holding off on filing it while some of these other issues were dealt with. There is a Status Conference at the Court on May 27th. I would suggest that we serve our Summary Judgment on Attorneys Donohue and Johnson for ABC&D (although both of them have indicated to Nicole that they are not sure they are authorized to still represent ABC&D in this matter) and get it filed. Mr. Hannon has promised that all the technical fees would be paid via an installment payment plan, but he has failed to put forth any proposal or to make any payments.

STB

As you know, we believe that ABC&D's filing of its "Verified Notice of Exemption" with the STB (and without any notice to the Town) was done as an attempt to bring ABC&D under the cover of federal preemption in order to allow ABC&D to overcome the Board of Health's denial of ABC&D's application for site assignment authorizing the handling of municipal solid waste ("MSW"). In Hannon's recent email to you, he indicated that they are planning to make another filing with the STB. We have previously sent a request to Attorney Singer than we be copied on any STB filings. We will continue to monitor the STB's website for any new filings and will respond appropriately to any filings.

Recycling Proposal

ABC&D has indicated that they are establishing "a recycling drop off facility" and they have filed a Notice of Intent regarding same with DEP. DEP's inquiry appears to be focused on whether the recycling activities are taking place in the site assigned area or on other property of the ABC&D facility that is not part of the site assignment. DEP also seems to have a concern about the safety hazards posed by the entrance/exit, particularly given that it is shared with the trucks and requires the driver to enter on the wrong side of the road. We have a concern with whether this type of recycling activity is even allowed on the site but certainly, at a minimum, it

would require a special permit. Moreover, despite you request to Mr. Hannon for more information, we have not received any specifics from ABC&D including what they intend to be recycling, where the recycling will take place, how the recycling facility will be accessed, the facilities where the materials will be handled and/or stored, the manner in which the materials will be removed from the site, or the anticipated vehicle volumes and traffic flow within the site.

In our opinion, If ABC&D desires to commence MSW recycling operations at its facility, then it must make appropriate inquiries of the Ware Building Inspector and appropriate determinations would need to be made with respect to whether the Ware Zoning By-Laws allow the proposed additional use with a special permit and/or site plan approval. Depending on exactly what ABC&D intends to do, the additional use may or may not be allowed by special permit. As we previously noted to you, the Ware Zoning By-Law prohibits the dumping off of refuse in a highway commercial district and I do not see anything in the Zoning By-Law which authorizes a recycling facility in a highway commercial district. The By-Law prohibits all uses "not specifically or generically listed ..."

We will stay in touch with DEP regarding the Notice of Intent. A determination must be made regarding whether a special permit and/or site plan approval is needed. It would also be beneficial if ABC&D would provide the Town with information regarding the proposed Recycling activity. I had previously set forth the information we would like to receive in my last correspondence to you. However, for your convenience I will restate the information again herein.
ABC&D should provide you with the following information, at a minimum:

- detailed description of the proposed recycling program (operating days/hours, materials to be accepted, daily and yearly tonnage to be accepted, manner of delivery and removal of the recyclables, manner and methods by which the materials will be recycled, traffic study, and environmental protections;

- Detailed information from licensed engineers with respect to the program should be provided including plans showing traffic flows, recycling buildings, recycling stations and detailed description of proposed recycling operation;

- Commitments with respect to the tonnage/quantities of materials to be handled and description of future plans.

- Compliance with all DEP, Board of Health statutes and regulations and permitting and compliance with the Ware Zoning Bylaw.

- Manner in which ABC&D will address outstanding zoning issues with respect to the ABC&D facility.

- Written guarantees, agreements, commitments and restrictions that ABC&D will provide to the Town to ensure that it operates any recycling program at the ABC&D facility consistent with the representations and promises made by ABC&D.

****

If you have any questions regarding the above or wish to discuss anything further, please do not hesitate to contact me or Nicole.

Very truly yours,

David Wojcik/nc

David A. Wojcik

NBC/
cc: Nicole B. Caprioli, Esq.
T:\CORR\WAREG101\wareg101 2122 wpd

17

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE COUNTY		SUPERIOR COURT
		Docket # _____

****

The O'Riley Family Trust,	)	
Plaintiff	)	COMPLAINT FOR
v.	)	DECLARATORY JUDGMENT
The Town Of Ware, Massachusetts,	)	
Defendant	)	

****

Now comes the Plaintiff in the above entitled and captioned matter seeking this honorable court issue a Declaratory Judgment regarding the validity and enforceability of Special Permits granted to the Plaintiff, the O'Riley Family Trust, by the Town of Ware Planning Board. This action is brought as a result of the letter from Town of Ware, through its counsel, David A. Wojcik, dated May 7, 2010 to Town of Ware Manager, Mary Tzambazakis (hereinafter "Manager"). (see attached Exhibit "A") This letter was distributed via e-mail to the Plaintiff through his counsel and the prospective purchaser of the Plaintiff's business from the Town Manager. The Opinion Letter calls into question the Special Permit granted by the Town of Ware Planning Board dated April 18, 2001 (see attached Exhibit "B") as well as other procedures conducted by the Town of Ware and relied upon by the Plaintiff in developing real property for a construction and demolition processing facility over the last nine years. This Court's jurisdiction over this matter is found in Massachusetts General Laws Chapter 40A Section 17.

Facts

1. Plaintiff, the O'Riley Family Trust, is a trust duly established in the Commonwealth of Massachusetts and has as a current Trustee, Richard C. O'Riley, the address for the Trust and Richard C. O'Riley is 265 Church Street, Ware, MA 01082.
2. The Defendant, The Town of Ware, is a municipality with an address for service at 126 Main Street, Ware, Massachusetts 01082, care of Nancy J. Talbot, Town Clerk and Mary Tzambazakis, Town Manager, said Town of Ware consisting of multiple departments including but not limited to Town of Ware Planning Board.
3. In August of 2001 Plaintiff, O'Riley Family Trust, as the Owner of real property located at 198 East Street in the Town of Ware (hereinafter "Plaintiff") submitted an application for Special Permit with the Town of Ware Planning Department to "permit the expansion of the existing business to include a railroad siding and processing areas for transfer and recycling of asphalt, brick, concrete, construction and demolition materials and wood." (see Ware Planning Board Decision of Site Plan Approval dated April 18, 2001 Reference: SP 2001-001 attached as exhibit "B").
4. Notice by publication was made pursuant to the requirements set forth in the Towns By-Laws and MGL Chapter 40A Section 11 and the hearing regarding the Special Permit began on April 4, 2001 and on April 18, 2001 the Board granted the Plaintiff's application. (see exhibit "B")
5. Several meetings of the Planning Board were held at the Town Offices during 2001 with regard to the application for Special Permit and Site Plan Approval. (See exhibit "B & C")
6. On September 5, 2001 a hearing was held by the Planning Board, for the purpose of Site Plan Approval, the original meeting was continued to October 17, 2001 and the finally

commenced November 7, 2001 at which time the Planning Board again voted to grant the "application in this case so as to permit the expansion of the existing business to include a railroad siding and processing are for transfer and recycling of asphalt, brick, concrete, construction and demolition material and wood." (see Ware Planning Board Decision of Site Plan Approval dated November 7, 2001 Reference: SP 2001-002 attached as exhibit "C").

7. The decision dated November 7, 2001 was signed by "Ware Planning Board (Acting as Special Permit Granting Authority for the Town of Ware) By: Christopher DiMarzio Clerk Signed and Certified: James Roach Town Clerk." As well as being certified on December 3, 2001 that no appeal of the Board's decision had been filed signed again by the Town Clerk. (see Ware Planning Board Decision of Site Plan Approval dated November 7, 2001 Reference: SP 2001-002 attached as exhibit "C").
8. At the time of the hearings with the Planning Board, the town was made aware of the process that the Plaintiff would have to go through to acquire all permitting for the proposed use on the property, including but not limited to the procedures set forth in 310 CMR 16.00 regarding site assignment and the site assignment application as well as the extensive amount of engineering that would have to be developed for the use as proposed. (see attached exhibits "D &E")
9. The Plaintiff did work continuously toward the Site Assignment required by 310 CMR 16.00 and the authorization to construct from the date of receiving the Special Permit issued by the Town of Ware Planning Board. The Site Assignment Application pursuant to 310 CMR 16.00 includes but is not limited to the following:

    a. Traffic study;

b. Environment impact study;

c. Wetlands delineations;

d. Property surveys;

e. Protected wildlife study;

f. Noise study; and

g. Study of surrounding properties and the impact the proposed use would have on those properties.

10. In early 2002 the Plaintiff began the extensive site work on the property in reliance on the Special Permit that had been issued by the Planning Board. Including but not limited to earth removal, installation of road base, excavation and other earth moving all in preparation for the Site Assignment. Prior to application for a building permit the Plaintiff would need an authorization to construct issued by the DEP which can only be applied for after the approval of the Site Assignment by the Board Of health which can only happen after the DEP has issued a determination that the Site is Suitable, which again is prefaced on the Application being complete which requires significant work, studies etc as noted above. (all facts known to the Planning Board at the time of the issuance of their decision See Exhibit "D & E")

11. In 2003 Plaintiff filed their application with the Department of Environmental Protection for Site Assignment for an a Construction and Demolitions materials processing facility allowing for the processing and handling of up to 750 tons of Construction and Demolition material daily.

12. In 2003 the Site Assignment hearing was held in front of the Town of Ware Board of Health on the issue of site assignment for said C&D processing facility. After said hearing the Board of Health approved the Site Assignment with some very strict restrictions which were appealed and the Petitioner was successful in their appeal to this court, final Site Plan Approval was received in 2004. Which the Town of Ware is aware was a prerequisite to beginning construction of the building itself.
13. From the inception of the Plaintiff's plan for the development of the parcel through completion of construction, Plaintiff has expended in excess of $7,000,000.00 developing said parcel.
14. After suffering two years of a steady decline in materials to be processed at the facility due to a lack of enforcement of the "Massachusetts Solid Waste Ban" the financial condition of the facility was dire and as a result late in 2007 the Plaintiff filed an application for a major modification to the DEP for the acceptance of Municipal Solid Waste (hereinafter "MSW") as part of the stream of materials allowed to be processed and handled from the Property.
15. Site Assignment hearing was held and said petition was denied by the Town of Ware Board of Health and was brought before this court which upheld said denial.
16. This course of events set in motion the ultimate failure of the Plaintiff's business operations causing him to enter into and agreement with the bank holding the financing on the facility for the sale of the business and the real property.
17. In January of 2010 and agreement was entered into by the Petitioner for the management of the business pending a sale to that entity.

18. The Management Company's vision for the business includes a petition to the Surface Transportation Board (federal) for approval as a rail carrier and thus would federally pre-empt the Town from restricting a vast majority of the types of materials that could be processed at the facility including but not limited to MSW.
19. The Town has indicated that it would oppose any attempt to include MSW for the facility and has sent the May 7, 2010 letter in response to discussions with the manger of the business. (see attached Exhibit "A")
20. In the event that the Town rescinds, withdraws or revokes the Special Permit the Plaintiff would suffer a complete closure of his business, a business that has been operating in the Town of Ware since early 2006 without one single complaint on file with any department of the Town.
21. In the event that the Town rescinds, withdraws or revokes the Special Permit, Plaintiff will lose his sale of the facility and the property in that it would no longer have any value as a viable business.

The Plaintiff requests the ability to supplement the facts as contained herein after receipt of the Certified records from the Town of Ware and other documentation requested from additional sources.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff respectfully asks this court issue a Judgment declaring the Special Permits issued to the Plaintiff as being valid and enforceable against the Town and all others.

Respectfully Submitted by the Plaintiff,

5/28/2010

The O'Riley Family Trust by its Attorney

Matthew L. Donohue

BBO # 564255

Donohue, Hyland & Donohue, P.C.

1707 Northampton Street

Holyoke, MA 01040

(413) 536-1977

Fax (413) 538-7138

18

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

HAMPSHIRE, SS. CIVIL ACTION NO. HSCV2010-00115

THE O'RILEY FAMILY TRUST,
Plaintiff

v.

THE TOWN OF WARE,
MASSACHUSETTS,
Defendant

ANSWER AND COUNTERCLAIMS OF DEFENDANT, THE TOWN OF WARE, MASSACHUSETTS TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT

The Defendant, The Town of Ware, Massachusetts (hereinafter "Ware" or "Town of Ware"), responds to the Plaintiff, the O'Riley Family Trust's (hereinafter "O'Riley") Complaint as follows:

With regards to the Plaintiff's introductory paragraph, to which no response is required, the Defendant, Ware, denies that a Special Permit was granted by the Ware Planning Board dated April 18, 2001, denies that the Plaintiff relied upon any so-called Special Permit or other procedures conducted by the Town of Ware and denies that the Plaintiff's Complaint is properly before the Court pursuant to G. L. c. 40A §17 and further answering states that the Plaintiff is barred from maintaining this Complaint.

1. The Defendant is without knowledge and information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Plaintiff's Complaint and calls upon Plaintiff to prove same and further answering the Defendant states that a Trust may bring an action only in the name of its Trustees and all Trustees must be named as parties.

2. The Defendant, Town of Ware, admits that it is a municipal corporation consisting of multiple departments including but not limited to the Town Manager, Board of Selectmen, Planning Board and Building Inspector.

3. Denied.

4. Denied.

5. Denied that there was a proper application for a Special Permit but admit that several meetings of the Planning Board were held with respect to Plaintiff's submittals.

6. Admit that on September 5, 2001, a hearing was held by the Ware Planning Board for the purpose of discussing the Plaintiff's site plan approval application and admit that a Planning Board meeting of November 7, 2001 the Planning Board issued "Decision on Site Plan Approval" and further answering state that said decision and documents speak for themselves.

7. The Defendant states that the documents referred to in Paragraph 7 speak for themselves and no further answer is required.

8. Admit that certain Officials and Boards of the Town became generally aware of the site assignment process pursuant to 310 CMR 16.00, as time passed, but deny that Town officials or boards had knowledge of the engineering involved.

9. Denied.

10. Denied that the Plaintiff commenced work in reliance of the actions by the Planning Board, denied that any site work on the property was required prior to application for site assignment from DEP and the Board of Health. Further deny that the Plaintiff applied for or obtained an authorization to construct from DEP, a site assignment from the Board of Health or a site suitability determination from DEP. And further answering, state that site assignment could have and should

have been obtained prior to any applications or permitting pursuant to the Ware Zoning By-Law.

11. Denied that the plaintiff filed an application for site assignment with DEP and further answering state that any such application was filed by ABC&D Recycling, Inc., a different corporate entity.

12. Admit that on or about June 18, 2004, the Ware Board of Health granted site assignment for the C&D processing facility to ABC&D Recycling, Inc. (hereinafter referred to as "ABC&D"). The remaining allegations are all denied.

13. The Defendant is without knowledge and information sufficient to form a belief as to the truth of falsehood of the allegations set forth in Paragraph 13 and calls upon the Plaintiff to prove same.

14. Denied and further answering the Defendant states that ABC&D, and not the Plaintiff, filed an application for major modification of DEP site assignment approval.

15. Admit that ABC&D's site assignment application was denied by the Ware Board of Health and that this Court upheld said denial.

16. The Defendant has insufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 16 and calls upon Plaintiff to prove same.

17. The Defendant has insufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 17 and calls upon Plaintiff to prove same.

18. The Defendant admits that the Plaintiff and others operating in concert with the Plaintiff including, perhaps, the "management company" wrongfully and for improper motive, are attempting to pre-empt and avoid G. L. c. 111 §150A, the Environmental Laws of the Commonwealth of Massachusetts and the decisions of the Ware Board of Health all meant to protect

the public safety, health and environment of the Town of Ware. The remaining allegations are denied.

19. The Town of Ware admits that its Board of Health rightfully denied site assignment to include MSW at the facility and further states that the Town of Ware has opposed attempts by ABC&D and others to evade the provisions of G. L. c. 111 §150A the Environmental Laws of the Commonwealth of Massachusetts and the decision of the Ware Board of Health to deny site assignment for MSW at the facility. The remaining allegations are denied.

20. Denied and further answering the Defendant states that the business at the facility is not being operated by the plaintiff but is being operated by ABC&D.

21. Denied and further answering state that, upon information and belief, the Plaintiff has already lost all value in the property and the business which property and business have already been effectively taken over by Country Bank for Savings, the Bank holding the financing on the project.

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint is barred because the Plaintiff has failed exhaust the administrative remedies available to it.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's Complaint is barred for failure to join indispensable parties.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's Complaint is barred since a trust may only bring suit in the names of all its trustees.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint must be dismissed for failing to state a claim upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint must be dismissed because the Plaintiff lacks standing to assert a claim or harm on behalf of ABC&D Recycling, Inc. and/or Country Bank for Savings, which are not named as Plaintiffs.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint must be dismissed because the Plaintiff has waived its right to question the denial Special Permit decision by failing to timely appeal same pursuant to G.L. c. 40A §17.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint must be dismissed because necessary parties have been excluded from the litigation.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint must be dismissed because as a matter of law there is no Special Permit.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint is barred because the property in question lacks the required frontage in accordance with the Ware Zoning Bylaws, and therefore any alleged special permit with respect to said property is null and void.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred y the doctrine of unclean hands.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations.

WHEREFORE, the Defendant, The Town of Ware, Massachusetts, prays that this Court enter judgment dismissing the Plaintiff's Complaint or enter judgment in favor of the Defendant and against the Plaintiff declaring that the Plaintiff has no Special Permit and has unlawfully constructed and is unlawfully operating a construction and demolition materials facility on its property in violation of the Ware Zoning Bylaws and G.L. c. 40A.

COUNTERCLAIMS

1. The Plaintiff-in-Counterclaim is the Town of Ware, a municipal corporation, acting by and through its Town Manager, Board of Selectmen, Planning Board and Building Inspector in bringing this counterclaim (hereinafter "Town" or "Ware").

2) The Defendant-in-Counterclaim is the O'Riley Family Trust and/or its Trustees, Richard C. O'Riley and Joan O'Riley (hereinafter collectively referred to as "O'Riley").

3. Ware brings this Counterclaim to enforce its zoning by-laws on behalf of the citizens of the Town of Ware.

4. The Defendant-in-Counterclaim, O'Riley, is the owner of two separate parcels of

land in Ware and collectively referred to as 198 East Street. The first parcel is located on East Street and has frontage on East Street (Parcel 1). The second parcel (Parcel 2) has no frontage on East Street or any other public way or subdivision road in the Town of Ware and is separated from the first parcel by a lot of land 90 feet in width owned by the Commonwealth of Massachusetts and used for railroad purposes. Collectively these properties are referred to as the "site".

5. In violation of the zoning by-laws of the Town of Ware, the Defendant-in-Counterclaim, O'Riley, has constructed and is allowing ABC&D Recycling, Inc. (hereinafter referred to as "ABC&D") and/or other entities to operate a facility as defined in G. L. c. 111 §150A for the transfer and recycling of asphalt, brick, concrete, wood and demolition materials at the site.

6. In violation of the Ware zoning by-laws, the defendant-in-counterclaim, O'Riley has constructed and allowed to be operated on said Parcel 2, a building wherein asphalt, brick, concrete, wood and construction and demolition materials are separated, recycled and/or shipped for disposal.

7. The building erected and owned by the Defendant-in-counterclaim, O'Riley, on Parcel 2, is in violation of the Ware Zoning By-Laws, including but not limited to: violation of the frontage requirements of the Ware Zoning By-Laws and violation of the requirements of the Ware Zoning By-Laws to obtain a Special Permit.

8. The Defendant-in-Counterclaim, O'Riley constructed the building on Parcel 2 without properly applying for a Special Permit and is allowing said building to be used for the purpose of transfer and recycling of asphalt, brick, concrete, construction and demolition materials and wood without having applied for and/or obtaining a Special Permit pursuant to the Town of Ware Zoning By-Laws and G. L. c. 40A.

9. The Town of Ware Planning Board has no authority or jurisdiction to issue a Special

Permit unless a proper Special Permit application is first filed with the Town by an applicant pursuant to the provisions of G. L. c. 40A §9. The Defendant-in-Counterclaim, O'Riley, failed to properly file such an application with the Town.

10. During 2001, the Town of Ware Planning Board was a five (5) member elected Planning Board.

11. Pursuant to G. L. c. 40A §9, a 5 member Planning Board can grant a Special Permit only upon a vote of four (4) of its five (5) members.

12. On or about February 21, 2001, the Defendant-in-Counterclaim, O'Riley, filed a document entitled "Application for Special Permit Concerning Existing Town By-laws" with the Town of Ware Planning Board. Said document was not filed in accordance with the requirements of G. L. c. 40A §9.

13. On April 18, 2001, the Planning Board acted on the purported application for Special Permit and three (3) members of the Board voted to grant the purported application for Special Permit. One member was absent and one member abstained from voting.

14. As a matter of law, the vote of April 18, 2001 was insufficient to cause the grant of a Special Permit and constituted a denial of said application. Since the vote of the Planning Board on April 18, 2001 was insufficient under G. L. c. 40A §9, to cause the grant of a Special Permit, any document indicating to the contrary is null and void and of no legal effect.

15. The so-called "Decision on Special Permit or Extension, Modification or Renewal of Special Permit" dated April 18, 2001 was not recorded by the Defendant-in-Counterclaim, O'Riley, until January 28, 2010, and therefore did not take effect pursuant to G.L. c. 40A §11.

16. The Defendant-in-Counterclaim, O'Riley, did not commence the use purportedly

authorized by the "Decision on Special Permit or Extension, Modification or Renewal of Special Permit" dated April 18, 2001, within the time required by the Ware Zoning By-Laws and the provisions of G. L. c. 40A §9, and therefore, if said purported "Decision on Special Permit or Extension, Modification or Renewal of Special Permit" had any legal effect, the alleged permit lapsed.

17. On December 14, 2004, the Defendant-in-Counterclaim, O'Riley, obtained a Building Permit to construct a building for storage on Parcel 2. The Building Permit was improperly issued in violation of the Town of Ware Zoning By-Laws since Parcel 2 is landlocked and has no frontage on any public way or subdivision road in the Town of Ware, and since O'Riley had no required Special Permit.

18. Neither the Building Inspector of the Town of Ware nor the Planning Board of the Town of Ware or any other town official has the authority to waive, alter or modify the requirements of the Town of Ware Zoning By-Laws.

19. The building constructed by the Defendant-in-Counterclaim, O'Riley, on Parcel 2, is in violation the Ware Zoning By-Laws and the Defendant-in-Counterclaim, O'Riley's use or authorization of use by others of the building and land comprising Parcel 2, is in violation of the Town of Ware Zoning By-Laws.

20. The Defendant-in-Counterclaim, O'Riley, caused this Court to issue a temporary restraining order prohibiting the Town of Ware from issuing a cease and desist order with respect to the zoning violations.

21. In order to bring the property and use, located at 198 East Street and consisting of Parcels 1 and 2 as set forth above, into compliance with the Ware Zoning By-Laws, the use of said

property for a facility as defined in G. L. c. 111 §150A for the transfer and recycling of asphalt, brick, concrete, construction and demolition materials and wood, must cease, and the structure erected on Parcel 2 must be removed.

22. The use that the Defendant-in-Counterclaim, O'Riley, is conducting or allowing to be conducted on the premises (Parcel 1 and Parcel 2 at 198 East Street, Ware, Massachusetts), consists of an operation which is not allowed by the Ware Zoning By-Laws in highway/commercial district and said use may not be authorized by issuance of a Special Permit.

23. On or about November 7, 2001, the Planning Board of Ware issued its "Decision on Site Plan Approval" on the Defendant-in-Counterclaim, O'Riley's application for site plan approval.

24. The Decision on Site Plan Approval contained conditions.

25. The Defendant-in-Counterclaim, O'Riley, and/or his agents, employees, lessees and related corporations including ABC&D Recycling, Inc. have not complied with all of the conditions imposed in the site plan decision, therefore, the Town is authorized and required to revoke site plan approval and/or the Special Permit if any.

26. Ware brings this Counterclaim to seek enforcement on all relevant provisions of its zoning bylaws and G.L. c. 40A.

WHEREFORE, the Town of Ware prays that this Court:

1. Issue an Order declaring that the Defendant-in-Counterclaim, The O'Riley Family Trust, its officers, agents, employees, tenants, lessees, subsidiaries and/or related corporations, including but not limited to, ABC&D Recycling, Inc., have not complied with all of the conditions imposed in the Planning Board's site plan approval thereby authorizing and requiring the Town of Ware through its appropriate officers, agents and employees to revoke site plan approval and the Special Permit, if any was granted.

2. Order that the Defendant-in-Counterclaim, the O'Riley Family Trust, its officers, agents, employees, tenants, lessees, subsidiaries, and/or related corporations, permanently cease and desist from operating a facility as defined in G. L. c. 111 §150A for the handling, transfer and recycling of asphalt, brick, concrete, construction and demolition materials and wood and from using Parcel 1 and/or Parcel 2 located at 198 East Street, Ware, Massachusetts in any manner in violation of the Town of Ware Zoning By-Law.

3. Order that the structure constructed on said Parcel 2 located at 198 East Main Street, Ware, Massachusetts be removed.

4. Order such other and further relief as this Court deems just and appropriate in order to enforce the Zoning By-Laws of the Town of Ware with respect to the property of the Defendant- in-Counterclaim, the O'Riley Family Trust, located at 198 East Street, Ware, Massachusetts, all for the benefit of the citizens of the Town of Ware.

THE TOWN OF WARE,
MASSACHUSETTS

By _____

David A. Wojcik, BBO#532040
Nicole B. Caprioli, BBO#643829
Christopher, Hays, Wojcik
& Mavricos, LLP
370 Main Street
Worcester, MA 01608
508-792-2800

CERTIFICATE OF SERVICE

I, Nicole Caprioli, hereby certify on this 10th day of June 2010, I served a copy of the foregoing document, to all counsel of record by causing a copy of same to be sent by first class mail, postage prepaid, to:

Matthew L. Donohue, Esq.
Donohue, Hyland & Donohue, P.C.
1707 Northampton Street
Holyoke, MA 01040

T:\pleadings\WAREG101\WAREG101 585.wpd

19

RECEIVED
AUG 2 2 2007
BOARD OF HEALTH

ABC&D RECYCLING, INC.

Site Suitability Application

Transmittal #W146097

August 2007

Prepared for:

ABC&D Recycling, Inc.
198 EAST STREET
WARE, MA 01082

Providing Innovative Solutions For . . .

- Solid Waste
- Hazardous Waste
- Materials Management
- Health & Safety
- Environmental Monitoring
- Compliance Outsourcing

Main Office
28 Route 6A, Sandwich, MA 02563
Phone: (508) 888-6034 • Fax: (508) 888-1506

www.gseenv.com

New Hampshire Office
301 Daniel Webster Highway, Merrimack, NH 03054
Phone: (603) 424-3004 • Fax: (603) 424-3241

Enter your transmittal number → W146097
Transmittal Number

Your unique Transmittal Number can be accessed online: http://mass.gov/dep/service/online/trasmfrm..sntml or call MassDEP's InfoLine at 617-338-2255 or 800-462-0444 (from 508, 781, and 978 area codes).

Massachusetts Department of Environmental Protection

Transmittal Form for Permit Application and Payment

1. Please type or print A separate Transmittal Form must be completed for each permit application.

2. Make your check payable to the Commonwealth of Massachusetts and mail it with a copy of this form to: DEP, P.O. Box 4062, Boston, MA 02211.

3. Three copies of this form will be needed.

Copy 1 - the original must accompany your permit application. **Copy 2** must accompany your fee payment **Copy 3** should be retained for your records

4. Both fee-paying and exempt applicants must mail a copy of this transmittal form to:

MassDEP
P.O. Box 4062
Boston, MA
02211

* Note:
For BWSC Permits, enter the LSP.

A. Permit Information

BWP SW 38 — 1. Permit Code: 7 or 8 character code from permit instructions
Site Suitability Major Modification — 2 Name of Permit Category
Waste Handling & Processing — 3. Type of Project or Activity

B. Applicant Information – Firm or Individual

ABC&D Recycling, Inc. — 1 Name of Firm - Or, if party needing this approval is an individual enter name below.

2 Last Name of Individual | 3. First Name of Individual | 4. MI

198 East St. — 5. Street Address

6. City/Town	7 State	8. Zip Code	9. Telephone #	10 Ext. #
Ware	MA	01082	(413) 967-3110	

Richard C. O'Riley — 11. Contact Person
abcdrecycling@verizon.net — 12. e-mail address (optional)

C. Facility, Site or Individual Requiring Approval

ABC&D Recycling, Inc. — 1 Name of Facility, Site Or Individual
198 East St. — 2. Street Address

3. City/Town	4 State	5. Zip Code	6. Telephone #	7 Ext. #
Ware	MA	01082	(413) 967-3110	

8. DEP Facility Number (if Known)	9. Federal I.D. Number (if Known)	10. BWSC Tracking # (if Known)
04-309-005		

D. Application Prepared by (if different from Section B)*

Green Seal Environmental, Inc. — 1 Name of Firm Or Individual
28 Rt. 6A — 2. Address

3. City/Town	4 State	5. Zip Code	6 Telephone #	7. Ext #
Sandwich	MA	02563	(508) 888-6034	

Garrett Keegan — 8. Contact Person
9. LSP Number (BWSC Permits only)

E. Permit - Project Coordination

1 Is this project subject to MEPA review? ☒ yes ☐ no
If yes, enter the project's EOEA file number - assigned when an Environmental Notification Form is submitted to the MEPA unit: 12699 — EOEA File Number

F. Amount Due

DEP Use Only

Permit No:

Rec'd Date:

Reviewer:

Special Provisions:

1 ☐ Fee Exempt (city, town or municipal housing authority)(state agency if fee is $100 or less).
There are no fee exemptions for BWSC permits, regardless of applicant status.
2 ☐ Hardship Request - payment extensions according to 310 CMR 4.04(3)(c).
3. ☐ Alternative Schedule Project (according to 310 CMR 4.05 and 4.10).
4. ☐ Homeowner (according to 310 CMR 4.02)

1980	$1,565.00	August 15, 2007
Check Number	Dollar Amount	Date

Massachusetts Department of Environmental Protection
Bureau of Waste Prevention – Solid Waste Management

BWP SW 01 Site Suitability Report for a New Site Assignment

BWP SW 38 Site Suitability for a Major Modification of an Existing Site Assignment

W146097
Transmittal Number

04-309-005
Facility ID# (if known)

Section I. General Information

Instructions. All Applicants should complete Part I.

A. Site Location and Project Description

Please provide the information requested.

1. Project name:

   ABC& D Recycling, Inc.
   Name of Project

2. Site address:

   198 East St.
   Street

   Ware | MA | 01082
   City/Town | State | Zip Code

3. Type of facility:

   ☐ landfill
   ☐ combustion
   ☒ waste handling and processing

4. Total area of the site, including all buffer zones:

   26.78
   acres

5. Total area to be site assigned for solid waste activities

   8.9
   acres

6. Capacity and expected life of proposed facility:

   a. State the maximum daily capacity of the proposed facility in tons per day. (This number should represent the maximum amount of waste to be accepted on any single day.):

   750
   tons per day

   b State the average daily capacity of the proposed facility and describe how the average was computed:

   708 tons/day
   average daily capacity (tons per day)

   750 tpd on weekdays and 500 tpd on Saturday
   how average was computed

A. Site Location and Project Description (cont.)

c. State the yearly capacity of the proposed facility and, if the capacity is expected to change over the life of the facility, indicate the capacity in each year the proposed facility is expected to operate:

214,500
yearly capacity

Expected change in capacity (if applicable):

Expected yearly capacity	Year

d. State the number of years the facility is expected to operate:

Indefinately
years

e. State the total lifetime capacity of the proposed facility:

Not limited, no disposal on site
total lifetime capacity

7 Type of Waste: What type of waste will be accepted at the proposed facility? (check all that apply)

- ☒ municipal solid waste
- ☒ construction and demolition waste
- ☐ industrial waste
- ☐ other, please specify: _____

8. Project Description: describe the proposed project:

ABC&D is proposing to modify an existing 750-ton per day (tpd) construction and demolition waste (C&D), handling and processing facility to also handle and process municipal solid waste (MSW). The overall 750-tpd capacity will remain unchanged, and no site alterations are proposed other than minor modifications to the waste handling building (addition of quick-close doors).

B. Applicant Identification

1 Identify the owner of the site

O'Riley Family Trust
Name

198 East St.
Street Address

Ware | MA | 01082
City/Town | State | Zip Code

(413) 967-3110
Telephone

Richard C. O'Riley | (413) 967-3110
Contact Person | Contact Telephone

2. Identify the operator of the proposed facility if the owner has entered into an agreement with an operator:

ABC&D Recycling, Inc.
Name

198 East St
Street Address

Ware | MA | 01082
City/Town | State | Zip Code

(413) 967-3110
Telephone

Richard C. O'Riley | (413) 967-3110
Contact Person | Contact Telephone

C. Fees {16.08(4)}

1. Proof of Payment: Documentation must be submitted showing that the requirements for paying the Technical Fee to the Board of Health as per 16.08(4) have been satisfied.

Proof of payment may be either (please check which one you have provided):

☐ Document from the Board of Health stating that the Board of Health has waived the technical fee or that the Applicant has satisfied the Technical Fee payment requirements; or

☒ Receipt showing that the Applicant has paid the Maximum Technical Fee to the municipality.

Location of Attachment:

Attachment 1
section and/or page numbers

C. Fees {16.08(4)} (cont.)

2 Amount of Maximum Technical Fee: Enter the Maximum Technical Fee as computed using Appendix A of 310 CMR 16.99·

$32,020.60
Maximum Technical Fee

D. Collection Center for Household Hazardous Waste

Does the applicant intend to apply, pursuant to 310 CMR 30.190, for approval to operate a collection center for hazardous waste from households on the proposed site?

☐ Yes ☒ No

If "yes," the Applicant should contact the Permitting Section of the Bureau of Waste Prevention in the appropriate DEP Regional Office.

E. Declaration of Waiver Request {16.08(5)(c)}

1 Is a waiver from any of the site suitability criteria being requested under provisions of 310 CMR 16.40(6)? (If "yes," complete Part V.A. of this application form.)

☐ Yes ☒ No

2. Is a waiver from any of the requirements of Part I of 310 CMR 16.00 being requested under provisions of 310 CMR 16.18? (If "yes," complete Part V B. of this application form.)

☐ Yes ☒ No

F. Massachusetts Environmental Policy Act (MEPA) {16.08(5)(d)}

Indicate which one of the following is attached to the application:

☐ Evidence that the project does not require MEPA review.

☐ Certificate from the Secretary of the Executive Office of Environmental Affairs stating that an Environmental Impact Report is **not** required.

☒ Evidence that the MEPA process does apply and the Secretary has determined that an EIR is required. (Note: The DEP will not complete its technical review of the application until the applicant submits the Certificate from the Secretary of the Executive Office of Environmental Affairs stating that the Final Environmental Impact Report is acceptable.)

☐ Certificate from the Secretary of the Executive Office of Environmental Affairs stating that the Final Environmental Impact Report is acceptable.

F. Massachusetts Environmental Policy Act (MEPA) {16.08(5)(d)} (cont.)

Location of Attachment:

Section 1 Page 12. A Notice of Project Change has been prepared and will be submitted to the MEPA office simultaneously with this Site Suitability Application.
section and/or page numbers

G. Wetlands Resources

1. Buffer Zone Is any part of the proposed site located within 100 feet of any wetlands?

   ☐ Yes ☒ No

2. Riverfront Area: Is any part of the site located within a riverfront area?

   ☐ Yes ☒ No

3. Floodplain: Is any part of the proposed site located within a 100-year floodplain?

   ☐ Yes ☒ No

   If the answer to question I.G 1 I.G.2 or I.G.3 is "yes," please describe what activities, if any, will occur within the 100-foot buffer zone, the riverfront area or the 100-year floodplain.

   Respond here or identify location of attached response:

   Section 1. Page 13. The proposed modification to allow processing and handling of MSW will all take place inside the existing building and will have no effect on the wetlands.
   section and/or page numbers

4. Order of Conditions. Will an Order of Conditions under the Wetlands Protection Act (c.131, s.40) be required?

   ☐ Yes ☒ No

5. Variance: Will a variance from the Wetlands regulations be required?

   ☐ Yes ☒ No

H. Maps

1. Ground Water Contour Map Has a ground water contour map for the site been developed?

   ☒ Yes ☐ No

   If Yes, please attach the map and identify the location of the attachment:

   Insert #4
   section and/or page numbers

Please submit the following with the Application:

2 Locus Map: A US Geological Survey (USGS) topographic map of at least 8.5 x 11 inches in size (7.5 minute series scale) should be attached which clearly delineates the proposed site boundaries and shows all access roads to the proposed site.

Identify the attachment:

Insert #1
section and/or page numbers

3. Water Resources Site Plan: The following information regarding water resources should be indicated on a site plan (scale no larger than one inch equals two hundred feet) that covers the site plus a one-half mile extension in all directions from the site boundary. Please refer to the definitions at 310 CMR 16.02 for guidance on the meaning of the terms.

- All wetlands, associated buffer zones and riverfront areas as defined in 310 CMR 10.00
- All 100-year flood plains
- All surface water bodies (rivers, streams, ponds, lakes. reservoirs etc),
- All perennial streams draining to surface drinking water supplies,
- All private water supply wells
- All public water supply wells
- All or any fractions of Interim Wellhead Protection Areas (IWPA) or Zone II areas
- All or any fractions of Proposed Drinking Water Source Areas
- All or any fraction of a Zone A or B of a surface water supply

Identify the location of the attachment:

Insert #2
section and/or page numbers

H. Maps (cont.)

4. Land Use Site Plan The following information regarding land use should be indicated on a site plan (scale no larger than one inch equals two hundred feet) that covers the site plus a one-half mile extension in all directions from the site boundary:

- All wildlife management areas,
- All Areas of Critical Environmental Concern (ACEC) as established by the Secretary of the Executive Office of Environmental Affairs (EOEA),
- All lands actively devoted to agricultural or horticultural uses and lands classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service;
- All of the Following Open Space Protected Areas:
  - state forests
  - state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution
  - MDC reservations
  - lands with conservation. preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs
  - conservation land owned by private non-profit land conservation organizations that is open to the public
  - All residential dwellings on site and within 500 feet (1000 feet for landfills) of the property boundary
  - All occupied commercial buildings within 500 feet of the property boundary,
  - All of the following.
    - health care facilities
    - prisons
    - Elementary Schools
    - middle schools
    - high schools
    - children's' pre-schools
    - licensed day care centers
    - senior centers
    - youth centers
- Other Solid Waste Facilities
- All proposed waste handling areas on the site,
- All proposed areas of waste deposition on the site,
- All buildings and other facilities proposed on the site,
- All access roads on the site and traffic flow off the site,
- All abutting properties and their appropriate zoning designation (include any zoning abbreviations in plan legend).
- The zoning designation of the proposed site.

Identify the location of the attachment:

Insert #3
section and/or page numbers

Section II. Facility Specific Criteria

Part II is divided into three sections. Complete only the appropriate section.

II.A. Landfills
II.B. Combustion Facilities
II.C. Waste Handling and Processing Facilities

A. Landfills {16.40(3)(a)}

Complete Part II.A., if Site Assignment is sought for a landfill

1. Zone II of Existing Public Water Supply {16.40(3)(a)1.}: Will any area of waste deposition be located within the designated Zone II area of an existing public water supply well?

   ☐ Yes ☐ No

   Location of supporting information or comments:

   _____
   section and/or page numbers

   _____

2. IWPA of Existing Public Water Supply {16.40(3)(a)2.}: If the Zone II of an existing public water supply well has not been determined, will any area of waste deposition be within the Interim Wellhead Protection Area (IWPA) as defined at 310 CMR 22.02?

   ☐ Yes ☐ No

   If "Yes" see the note at Question II.A.4. and identify where additional information is attached:

   _____
   section and/or page numbers

   _____

3. Zone II or IWPA of a Proposed Drinking Water Source Area {16.40(3)(a)3.}: Will any area of waste deposition be within the area of a Zone II or Interim Well Head Protection Area (IWPA) of a proposed drinking water source area for which the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR;

   ☐ Yes ☐ No

   If "Yes" see the note at Question II.A.4. and identify where additional information is attacned:

   _____
   section and/or page numbers

   _____

A. Landfills {16.40(3)(a)} (cont.)

4. 15,000 Feet Upgradient of Existing Public Water Source Well or Proposed Drinking Water Source Area {16.40(3)(a)4.}: In instances where the Zone II has not been calculated will any area of waste deposition be 15,000 feet or less hydraulically upgradient of an existing public water source well or proposed drinking water source area?

☐ Yes ☐ No

See the note and identify where additional information is attached:

section and/or page numbers

Note: If the answer to Questions II.A.2., 3, or 4 is "YES." the applicant may conduct and submit with this application a preliminary Zone II study, approved of by the Department, showing that the waste deposition area would be beyond the Zone II of the public water supply well or proposed drinking water source area in question. Alternatively, the applicant may prepare and submit, with this application, other evidence showing the well or proposed drinking water source area and the ground water under the proposed site are not hydraulically connected

The Applicant should consult with the DEP Drinking Water Program in the Bureau of Resource Protection prior to conducting a preliminary Zone II investigation to determine the scope of the investigation At a minimum, the preliminary Zone II submittal should consist of:

1) A review and discussion of all available pertinent geologic and hydrologic data including bedrock and surficial geologic maps hydrologic data reports and atlases, consultant reports and pumping test reports;

2) An estimate and orientation of the regional hydraulic gradient across the well site;

3) A preliminary conceptual model of the aquifer including a discussion of pertinent recharge and till boundaries, and

4) A preliminary estimate of the Zone II area as defined in the Drinking Water Program's Water Supply Guidelines.

5 Danger to existing or proposed drinking water source area {16.40(3)(a)5.}: State why a discharge from the facility would not pose a danger to any existing or proposed drinking water source area.

Respond here or identify where the response is attached:

section and/or page numbers

A. Landfills {16.40(3)(a)} (cont.)

6. Sole Source Aquifer {16.40(3)(a)6.}: Will any area of waste deposition be located within the recharge area of a designated sole source aquifer? (Sole Source Aquifers are designated by the US Environmental Protection Agency. To inquire as to whether a site is located above a Sole Source Aquifer contact the US Environmental Protection Agency, Region I, Ground Water Management Section.)

☐ Yes ☐ No

Identify location of attached information:

section and/or page numbers

If the answer to question II.A.6. is "yes," then the site is not suitable unless the criteria in 310 CMR 16.40(3)(a)6.a., b. and c. are met. Attach documentation showing that these criteria are satisfied.

Identify location of attached information:

section and/or page numbers

7. Zone of Contribution or Recharge Area {16.40(3)(a)7.}: Is any area of waste deposition within the zone of contribution of an existing public water supply or proposed drinking water source area, or the recharge area of a surface drinking water supply, pursuant to a municipal ordinance or by-law enacted in accordance with M.G.L. c. 40A, § 9?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

8. Zone A or B of Surface Drinking Water Supply {16.40(3)(a)8.}: Will any area of waste deposition be within the Zone A or Zone B of a surface water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

A. Landfills {16.40(3)(a)} (cont.)

9. Perennial stream draining to Surface Drinking Water Supply {16.40(3)(a)9.} Will any area of waste deposition be located within 400 feet upgradient, as defined by groundwater flow or surface water drainage, of a perennial water course that drains to a surface water supply that itself is within one mile of the waste deposition area?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

10. Potentially Productive Aquifer {16.40(3)(a)10.}: Will any area of waste deposition be within a Potentially Productive Aquifer?

☐ Yes ☐ No

Identify location of supporting information or comments

section and/or page numbers

If the answer to question II.A.10. is "yes," then the site is not suitable unless documentation is attached showing that either 16.40(3)(a)10.a., b. or c. applies.

Identify location of attached documentation:

section and/or page numbers

11. Within 1000 feet Upgradient or Otherwise within 500 Feet of an Existing or Potential Private Water Supply Well {16.40(3)(a)11.}: Will any area of waste deposition be within 1000 feet upgradient, and where not upgradient, within 500 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☐ No

Identify location of supporting information or comments

section and/or page numbers

A. Landfills {16.40(3)(a)} (cont.)

If the answer to question II.A.11 is "yes," attach documentation showing a valid option to purchase each such supply. Also indicate whether a replacement drinking water supply will be provided.

Identify the location of attached documentation:

_____
section and/or page numbers

_____

12. Four Feet Depth to Ground Water {16.40(3)(a)12.}: Will the maximum high ground water level under any area of waste deposition be less than four (4) feet below the lowermost level of the waste or, if a liner system is employed, four feet below the bottom of the lower most liner?

☐ Yes ☐ No

Identify location of supporting information or comments:

_____
section and/or page numbers

_____

13. Wetlands 16.40(3)(a)13.}: Will any area of waste deposition or any leachate containment structure be within any resource area, including the 100 year floodplain, protected by the Wetlands Protection Act?

☐ Yes ☐ No

Identify location of supporting information or comments:

_____
section and/or page numbers

_____

14. 400 Feet to a Lake or 200 feet to a Riverfront Area {16.40(3)(a)14.}: Will any area of waste deposition or any leachate containment structure be within 400 feet of a lake or within 200 feet of a Riverfront Area as defined in 310 CMR 10.00, that is not a drinking water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

_____
section and/or page numbers

_____

A. Landfills {16.40(3)(a)} (cont.)

15. 1000 Feet to Various Occupied Facilities {16.40(3)(a)15.} Will any area of waste deposition be within *1000 feet of any of the following (excluding equipment storage or maintenance structures)*:

- an occupied residential dwelling,
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's' pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☐ No

Identify location of supporting information or comments:

_____
section and/or page numbers

_____

If the answer to II.A.15. is "yes" attach documentation showing evidence of a valid option to purchase the facility in question.

Identify location of attached documentation:

_____
section and/or page numbers

_____

16. Ground water Protection System {16.40(3)(a)16.}. Will a ground water protection system be employed?

☐ Yes ☐ No

If a ground water protection system will be employed describe the general features and components of the system which will prevent the migration of leachate and avoid adverse impact to the ground water.

If a ground water protection system will not be employed, demonstrate that the facility will not discharge leachate that presents a threat of adverse impact to ground water.

Identify location of attached explanation.

_____
section and/or page numbers

_____

B. Combustion Facilities {16.40(3)(c)}

Complete Part II.B if site assignment is sought for a combustion facility.

1 Zone I of Public Water Supply {16.40(3)(c)1.}: Will any waste handling area be within the Zone I of a public water supply?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

2. IWPA or Zone II of Existing Supply or Proposed Drinking Water Source Area {16.40(3)(c)2.}: Will any waste processing area be within:

a) the Interim Wellhead Protection Area (IWPA) of an existing public supply

☐ Yes ☐ No

Identify location of supporting information or comments

section and/or page numbers

b) Zone II of an existing public water supply

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

c) a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable, the Secretary's Certificate on the EIR or Final EIR,

☐ Yes ☐ No

B. Combustion Facilities {16.40(3)(c)} (cont.)

Identify location of supporting information or comments

section and/or page numbers

If the answer to all the above is "No," do not respond to the following and go on to section II.B.3. If the answer to any of the above is "Yes," respond to the following requests:

Supply information to demonstrate to the Department that the risk of an adverse impact to the ground water will be minimized.

Identify location of attached information:

section and/or page numbers

Supply information to demonstrate to the Department that at least one of the following is true:

1) The proposed facility cannot reasonably be sited outside the IWPA or Zone II.

2) If the site has been previously used for solid waste management activities, there would be a net environmental benefit to the ground water by siting the facility within the Zone II or the IWPA.

Identify location of attached information

section and/or page numbers

3. Zone A of Surface Water Supply {16.40(3)(c)3.}: Will the waste processing area be within the Zone A of a surface water supply?

☐ Yes ☐ No

Identify location of supporting information or comments

section and/or page numbers

B. Combustion Facilities {16.40(3)(c)} (cont.)

4 Within 500 feet Upgradient or Otherwise within 250 Feet of an Existing or Potential Private Water Supply Well {16.40(3)(c)4.}: Will the waste processing area be within 500 feet upgradient, and where not upgradient, within 250 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If the answer to question II.B.4 is "yes," attach documentation showing a valid option to purchase each such supply. Also indicate whether a replacement drinking water supply will be provided.

Identify location of attached documentation:

section and/or page numbers

5. Two Foot Depth to Ground Water {16.40(3)(c)5.}: Will the maximum high ground water level be less than 2 feet below the surface in any waste handling or processing area?

☐ Yes ☐ No

Identify location of supporting information or comments:

section and/or page numbers

If "yes," indicate how the project can be designed to maintain a two foot separation

Identify location of explanation:

section and/or page numbers

B. Combustion Facilities {16.40(3)(c)} (cont.)

6. 500 Feet to Various Occupied Facilities {16.40(3)(c)6.}: Will any waste handling or processing area be within 500 feet of any of the following (excluding equipment storage or maintenance structures):

   - an occupied residential dwelling,
   - health care facility
   - prison,
   - Elementary School
   - middle school
   - high school
   - children's' pre-school
   - licensed day care center
   - senior center
   - youth center

   ☐ Yes ☐ No

   Identify location of supporting information or comments:

   _____
   section and/or page numbers

   _____

   If the answer to II.B.6. is "yes", attach documentation showing evidence of a valid option to purchase the facility in question.

   Identify location of attached documentation:

   _____
   section and/or page numbers

   _____

7. Riverfront Area {16.40(3)(c)7.}: Will the waste handling area be within the Riverfront Area as defined at 310 CMR 10.00?

   ☐ Yes ☐ No

   Identify location of supporting information or comments:

   _____
   section and/or page numbers

   _____

C. Waste Handling and Processing Facilities {16.40(3)(d)}

Complete Part II.C if site assignment is sought for a waste handling and processing facility (all facilities other than landfills and combustion facilities).

1. Zone I of Public Water Supply {16.40(3)(d)1.}: Will any waste handling area be within the Zone I of a public water supply?

   ☐ Yes ☒ No

   Identify location of supporting information or comments:

   Section 2 p. 23, & Map Insert #2
   section and/or page numbers

2. IWPA or Zone II of Existing Supply or Proposed Drinking Water Source Area {16.40(3)(d)2.}. Will any waste handling or processing area be within:

   a) the Interim Wellhead Protection Area (IWPA) of an existing public supply

      ☐ Yes ☒ No

      Identify location of supporting information or comments:

      Section 2 p. 23, & Map Insert #2
      section and/or page numbers

   b) the Zone II of an existing public water supply

      ☐ Yes ☒ No

      Identify location of supporting information or comments:

      Section 2 p. 23, & Map Insert #2
      section and/or page numbers

   c) a proposed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form or Notice of Project Change, or where applicable. the Secretary's Certificate on the EIR or Final EIR,

      ☐ Yes ☒ No

C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

Identify location of supporting information or comments

Section 1 p. 17, and Section 2. p. 23 & Map Insert #2
section and/or page numbers

If the answer to II.C.2.a, b and c is "No " do not respond to the following and go on to section II.C.3.
If the answer to II.C.2.a, b or c is "Yes." respond to the following requests

Supply information to demonstrate to the Department that the risk of an adverse impact to the ground water will be minimized.

Identify location of attached information

section and/or page numbers

Supply information to demonstrate to the Department that at least one of the following is true:

1) The proposed facility cannot reasonably be sited outside the IWPA or Zone II

2) If the site has been previously used for solid waste management activities, there would be a net environmental benefit to the ground water by siting the facility within the Zone II or the IWPA.

Identify location of attached information:

section and/or page numbers

3. Zone A of Surface Water Supply {16.40(3)(d)3.}. Will the waste handling or processing area be within the Zone A of a surface water supply?

☐ Yes ☒ No

Identify location of supporting information or comments

Section 2 p. 23, & Map Insert #2
section and/or page numbers

C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

4 Within 500 feet Upgradient or Otherwise within 250 Feet of an Existing or Potential Private Water Supply Well {16.40(3)(d)4.}: Will the waste handling or processing area be within 500 feet upgradient, and where not upgradient, within 250 feet, of a private water supply well existing or established as a potential supply at the time of submittal of the application?

☐ Yes ☒ No

Identify location of supporting information or comments:
Section 2 p. 23, & Map Insert # 3 and Section 1, p.. 20 There is no residential property within 500 feet of the waste handling area.
section and/or page numbers

If the answer to question II.C.4 is "yes," attach documentation showing a valid option to purchase each such supply Also indicate whether a replacement drinking water supply will be provided.

Identify location of attached documentation:

section and/or page numbers

5 Minimum Distances to Various Occupied Facilities {16.40(3)(d)5.}:

a) Is the facility a transfer station using a fully enclosed storage system such as a compactor unit that proposes to receive less than or equal to 50 tons per day of solid waste

☐ Yes ☒ No

Identify location of supporting information or comments:
Section 1, p. 5&6
section and/or page numbers

Note: Respond to this question if the answer to question a) above is "Yes."

b) Is the waste handling area 250 feet or less from any of the following (excluding equipment storage or maintenance structures)

- an occupied residential dwelling.
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☒ No

C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

Identify location of supporting information or comments:

Section 1, p. 20 and Section 2, p 23 & Map Insert #3
section and/or page numbers

Note: Respond to this question if the answer to question a) above is "No."

c) Is the waste handling area 500 feet or less from any of the following (excluding equipment storage or maintenance structures)

- an occupied residential dwelling.
- health care facility
- prison,
- Elementary School
- middle school
- high school
- children's' pre-school
- licensed day care center
- senior center
- youth center

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 1, p. 20 and Section 2, p.23 & Map Insert #3
section and/or page numbers

6. Riverfront Area {16.40(3)(d)6.}: Will the waste handling area be within the Riverfront Area as defined at 310 CMR 10.00?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 2, p 23 & Map Insert #2
section and/or page numbers

C. Waste Handling and Processing Facilities {16.40(3)(d)} (cont.)

7. Two Foot Depth to Ground Water {16.40(3)(d)7.}: Will the maximum high ground water level be less than 2 feet below the surface in any waste handling or processing area?

☐ Yes ☒ No

Identify location of supporting information or comments:
Section 2, p. 23 & Map Insert #4
section and/or page numbers

If "yes," indicate how the project can be designed to maintain a two foot separation.

Identify location of explanation:

section and/or page numbers

Section III. General Criteria {16.40(4)}

All applicants should complete all sections of Part III

Note: When a response includes a description of a potential adverse impact, the applicant should describe both the qualitative and quantitative aspects of the potential impact.

A. Agricultural Land {16.40(4)(a)}

1. Does the site contain any land classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service?

☐ Yes ☒ No

Identify location of supporting information or comments
Section 3, p. 25 & Map Insert #3
section and/or page numbers

2. Does the site contain any land deemed Land Actively Devoted to Agricultural or Horticultural Uses except where the facility is an agricultural composting facility?

☐ Yes ☒ No

Identify location of supporting information or comments:
Section 3, p. 25 & Map Insert #3
section and/or page numbers

3. Will the facility be less than 100 feet from any land classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service?

☐ Yes ☒ No

Identify location of supporting information or comments

Section 3, p. 25 & Map Insert #3
section and/or page numbers

A. Agricultural Land {16.40(4)(a)} (cont.)

4. Will the facility be less than 100 feet from any land deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 25 & Map Insert #3
section and/or page numbers

B. Traffic Impacts {16.40(4)(b)}

1 ENF/EIR Accepted by MEPA

If the applicant prepared an Environmental Notification Form (ENF) to comply with the requirements of the Massachusetts Environmental Policy Act (MEPA), please attach all portions of the ENF that are relevant to traffic impacts. If the applicant was also required to submit an Environmental Impact Report (EIR) to comply with MEPA, please attach all portions of the EIR relevant to traffic impacts.

☒ ENF/EIR traffic impacts attached
☐ ENF/EIR not required

Identify location of attachments or comments:

Section 3, p. 25 and Attachment #7.
section and/or page numbers

2. ENF/EIR Not Required by MEPA

If no ENF or EIR was required to comply with MEPA, please provide the following information in an attachment:

a) Maximum number of trips to the site per day by type of vehicle:

b) Indicate, by vehicle type, the anticipated number of trips that will be made on each of the roads serving the facility.

c) Identify any intersections, school zones, hospitals, or other locations on the roads serving the facility that may be adversely impacted by traffic accessing the site.

B. Traffic Impacts {16.40(4)(b)} (cont.)

Identify the location of the attached information or comments

section and/or page numbers

C. Wildlife and Wildlife Habitat {16.40(4)(c)}

The Natural Heritage and Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife administers the programs dealing with the Wildlife and Wildlife Habitats referred to in these questions. The NHESP should be contacted to obtain the information and documentation needed to respond to the questions in this section.

The applicant must obtain a specific response from NHESP regarding the proposed site and attach the response to this application.

1 Habitat of Endangered Threatened. or Special Concern Animal or Plant: Is the proposed site within the habitat of a state-listed Endangered, Threatened or Special Concern animal or plant, as documented by the Natural Heritage and Endangered Species Program in its database?

☒ Yes ☐ No

Identify location of supporting information or comments.

Section 3, p 27-28, Map Insert #3 and Attachment #8
section and/or page numbers

2 Ecologically Significant Natural Communities: Is the proposed site located in or adjacent to an area described on the most recent map of Ecologically Significant Natural Communities as documented by the Natural Heritage Program in its database?

☒ Yes ☐ No

Identify location of supporting information

Section 3, p 27-28. Map Insert #3 and Attachment #8
section and/or page numbers

C. Wildlife and Wildlife Habitat {16.40(4)(c)} (cont.)

3. *Wildlife Management Area:* Is the proposed site located in an area adjacent to or with the potential to impact upon a Wildlife Management Area designated and managed by the Division of Fisheries and Wildlife?

   ☒ Yes ☐ No

   Identify location of supporting information or comments:

   Section 3, p. 27-28 and Map Insert #3
   section and/or page numbers

   Instructions: If the answer to any of the above questions (III.C.1., III.C.2. or III.C 3.) is "yes," and the proposed facility does have the potential to adversely impact one or more Endangered, Threatened, or Special Concern animals or plants or Wildlife Management Area, then answer questions III.C.4 and, if necessary, III.C.5. If the answer to each of the above questions (III.C.1., III.C.2. and III.C.3.) is "no," do not answer question III.C.4. or III.C.5.

4. Adverse Impact on Habitat: Will the proposed site have an adverse impact on the habitat of a state-listed Endangered, Threatened, or Special Concern animal or plant, Ecologically Significant Natural Community, or Wildlife Management Area. as determined by the Natural Heritage and Endangered Species Program? (Attach determination from NHESP.)

   Identify location of supporting information or comments.

   Exempt from MESA review by 310CMR 10.14(2), see Section 3, p. 27-28 and Map Insert #3
   section and/or page numbers

   Instructions: If the Natural Heritage and Endangered Species Program has determined there will not be an adverse impact, do not answer question III C.5. If NHESP determined there is a potential for an adverse impact, respond to question III.C.5

5. Mitigation of Adverse Impacts: If there is a determination by the Natural Heritage and Endangered Species Program that the proposed facility may potentially impact the habitat of a state-listed Endangered, Threatened or Special Concern animal or plant, Ecologically Significant Natural Community, or Wildlife Management Area. are there any reasonable mitigation measures the proponent may use to minimize or eliminate any adverse impacts?

   ☐ Yes ☐ No

   If "no," then the site is unsuitable and the proposed facility shall not be sited.

   If "yes," then with regard to this criterion the site may be assigned with conditions which will meet Division of Fisheries and Wildlife approval for mitigation of the adverse impacts. The mitigation measures proposed shall be appended to this application.

C. Wildlife and Wildlife Habitat {16.40(4)(c)} (cont.)

Identify location of supporting information or comments.

section and/or page numbers

D. Areas of Critical Environmental Concern {16.40(4)(d)}

Programs for designating and protecting Areas of Critical Environmental Concern (ACEC) are administered by the Executive Office of Environmental Affairs (EOEA). EOEA should be contacted to obtain the information and documentation needed to respond to the questions in section III.D. Responses by EOEA should be appended to this application.

A specific response from EOEA is not required when EOEA's data show the site is not located near any ACEC.

1 Site Within ACEC: Is the proposed site located within the boundaries of an area designated as an Area of Critical Environmental Concern by the Secretary of EOEA?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 29 and Map Insert #3
section and/or page numbers

If the answer to question III.D 1 is "yes, the site is not suitable.

2. Site Adjacent to ACEC. Is the proposed site adjacent to an ACEC with the potential to impact the *resources designated by the Secretary of EOEA as worthy of protection? (As defined in* 16.02, "adjacent" may include areas not contiguous to the boundaries of the site.)

☐ Yes ☒ No

Identify location of supporting information or comments.

Section 3, p. 29 and Map Insert #3
section and/or page numbers

D. Areas of Critical Environmental Concern {16.40(4)(d)} (cont.)

3. Mitigation Measures. If there is a determination by EOEA that the proposed facility may potentially adversely impact the ACEC, are there any reasonable mitigation measures the proponent may use to minimize or eliminate any adverse impacts?

   ☐ Yes ☐ No

   If "no," the site is not suitable.

   If "yes," then with regard to this criterion the site may be assigned with conditions which will meet EOEA approval for mitigation of the adverse impacts. The mitigation measures proposed shall be appended to this application.

   Identify location of supporting information or comments:

   _____
   section and/or page numbers

E. Protection of Open Space {6.40(4)(e)}

1. State Forests: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of state forests?

   ☐ Yes ☒ No

   Identify location of supporting information or comments:
   Section 3. p. 30 and Map Insert #3
   section and/or page numbers

2. State or Municipal Lands: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of state or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution?

   ☐ Yes ☒ No

   Identify location of supporting information or comments:
   Section 3, p. 30 and Map Insert #3
   section and/or page numbers

E. Protection of Open Space {6.40(4)(e)} (cont.)

3 *MDC Reservation: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of MDC reservations?*

☐ Yes ☒ No

Identify location of supporting information or comments.

Section 3. p. 30 and Map Insert #3
section and/or page numbers

4. Lands Protected by EOEA Restrictions Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of lands with conservation preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3. p. 31 and Map Insert #3
section and/or page numbers

5. *Privately Owned Public Conservation Land: Will the proposed solid waste management facility have an adverse impact on the physical environment of, or on the use and enjoyment of conservation land owned by private non-profit land conservation organizations and open to the public?*

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3 p 31 and Map Insert #3
section and/or page numbers

F. Air Quality Impacts {16.40(4)(f)}

Instructions: If the proposed facility is a combustion facility, complete only section III.f.1 If the proposed facility is **not** a combustion facility, complete only section III.f 2.

1. Air Quality Impacts: Combustion Facilities

The Applicant shall, pursuant to the Air Pollution Control regulations, 310 CMR 7.02, submit a complete application to the Department for its review. The application shall be submitted on forms furnished by the Bureau of Waste Prevention. A copy of the permit application shall be appended to this application.

In addition to the Air Quality Control application, the Applicant shall provide information on any populations within the area impacted by emissions from the facility which might be sensitive to the projected emissions from the facility Information should include relevant health statistics for the impacted population.

Identify location of supporting information or comments:

section and/or page numbers

2. Air Quality Impacts: Non-Combustion Facilities

a) Characterize the possible airborne emissions from the proposed facility. Include the composition and quantity of possible emissions. Indicate how these emissions are expected to vary over the life of the facility. Also characterize any other air emissions associated with the proposed facility such as emissions from vehicles.

b) Demonstrate that the anticipated emissions from the facility will meet required state and federal air quality standards and criteria and otherwise will not constitute a danger to the public health, safety or the environment. Take into account the concentration and dispersion of emissions, the number and proximity of sensitive receptors and the attainment status of the area.

Identify location of supporting information or comments:

Section 3, p. 32-33 and Attachment #10
section and/or page numbers

G. Nuisance Conditions {16.40(4)(g)}

For each of the following nuisance conditions that could occur during the construction and/or operation of the proposed facility, indicate the extent of the possible nuisance conditions and the measures that will be taken to mitigate or prevent the occurrence of the nuisance condition:

- Noise.
- Dust.
- Litter.
- Vectors such as rodents and insects.
- Odors,
- Bird hazards to air traffic, and
- Other nuisance conditions (please specify).

Identify location of supporting information or comments:

Section 3. p. 34-40
section and/or page numbers

H. Size of Facility {16.40(4)(h)}

Explanation: The information requested in this section is needed to determine whether the size of the site, considering access roads, areas for vehicles to wait before unloading, unloading facilities, storage areas, waste processing areas and pollution control equipment, is adequate for a facility with the proposed daily capacity.

1. Discussion. Discuss the waste delivery, unloading, and handling (including processing and storage) activities and pollution control equipment to demonstrate whether the size of the site is adequate to properly manage the proposed facility. Be specific with respect to the proposed capacity of the facility.

   Identify the location of supporting information or comments:

   Section 3. p. 41-45
   section and/or page numbers

2. 100 Foot Set Back: Will the waste handling area or deposition area be less than 100 feet from any property boundary except where the property boundary borders a separate solid waste management facility?

   ☒ Yes ☐ No

H. Size of Facility {16.40(4)(h)} (cont.)

Identify location of supporting information or comments:

Section 3, p 45
section and/or page numbers

I. Areas Previously Used for Solid Waste Disposal {16.40(4)(i)}

1. Previous Solid Waste Activities: Have the proposed site or any of the abutting properties been previously used for the legal or illegal disposal of solid wastes?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3. p. 46
section and/or page numbers

If "yes," please supply the following information and append to this application:

a) Address: The address of the area previously used for the disposal of solid waste,

b) Owner: The owner and the address of the owner of the area previously used for the disposal of solid waste,

c) Dimensions: The dimensions of the area previously used for the disposal of solid waste.

d) Status: Current status of the area previously used for the disposal of solid waste (e.g., active, inactive),

e) Impacts on Site: The nature and extent to which the area previously used for the disposal of solid waste currently impacts or threatens to impact the proposed site,

f) Impacts of Site: The nature and extent to which the proposed site may impact the area previously used for the disposal of solid waste,

g) Combined Impacts: The nature and extent of any combined impacts from the area previously used for the disposal of solid waste and the proposed facility to public health, safety or the environment (Include factors such as ground water contamination and surface water runoff.),

h) Mitigation. The extent to which use of the proposed site would result in mitigation of existing or potential impacts from the previously used site through remediation, closure or other activities.

I. Areas Previously Used for Solid Waste Disposal {16.40(4)(i)} (cont.)

Identify location of supporting information or comments.

section and/or page numbers

J. Existing Disposal Facilities {16.40(4)(j)}

1. Existing Disposal Facilities in Municipality: Are there any existing (active or inactive) disposal facilities (solid waste landfills or combustion facilities) in the municipality in which the proposed site is located?

   ☒ Yes ☐ No

   Identify the location of supporting information or comments.

   Section 3, p. 47
   section and/or page numbers

2. Exclusive Use of Facility: Will the proposed facility be limited to the exclusive use of the municipality in which the proposed facility is to be sited?

   ☐ Yes ☒ No

   Identify the location of supporting information or comments:

   Section 3, p. 48
   section and/or page numbers

Instructions: If the answer to III.J.1 is "yes" and the answer to III.J.2. is "no," please provide the information requested in III.J.3. Otherwise, go on to question III.K.

3 Existing Facility Identification: Provide the following information about the existing disposal facility or facilities in the municipality in which the proposed site is located:

   a) Existing facility identification (name, address, type of facility):

   b) How much of the waste (tons/day) accepted at the proposed facility will be generated in the municipality in which the facility is located?

   c) What percentage of the waste accepted at the proposed facility will come from the municipality in which the site is located?

J. Existing Disposal Facilities {16.40(4)(j)} (cont.)

d) Discuss to what extent the proposed facility meets the needs of the region in which the site is located

e) Explain to what extent the proposed facility incorporates recycling, composting and waste diversion. (Refer to other responses, if appropriate.)

Identify the location where the information is attached:

Section 3, p. 48 and Section 4, p. 54
section and/or page numbers

K. Other Sources of Contamination or Pollution {16.40(4)(k)}

Attach an evaluation of whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department, and whether the proposed facility will mitigate or reduce those sources of pollution or contamination.

The Department has prepared a guidance document that describes how to make this evaluation. The document is titled, *Interim Risk-Evaluation Guidance Document for Solid Waste Site Assignment and Permitting in Support of 310 CMR 16.00 and 19.000* (first issued June 8, 2001). This guidance document, including its title, will be revised from time to time Please contact the Department or visit the Department's web site to obtain the most recent version of the guidance document.

The applicant should contact the Department to discuss the scope of work prior to undertaking the evaluation

Identify the location of the attached evaluation:

Attachment 10
section and/or page numbers

L. Regional Participation

1 Municipal Participation in Regional Disposal: Does the municipality in which the proposed site is located now participate in a regional disposal facility?

☐ Yes ☒ No

Identify location of supporting information or comments:

Section 3, p. 50

section and/or page numbers

Instructions: If the answer to question III.L.1. is "Yes," supply the information requested in question III.L.2. Otherwise, go on to part IV.

2. Proposed Facility Provide the following information about the proposed facility:

a) How much of the waste (tons/day) accepted at the proposed facility will be generated in the municipality in which the facility is located?

b) What percentage of the waste accepted at the proposed facility will come from the municipality in which the site is located?

c) Discuss to what extent the proposed facility meets the needs of the region in which the site is located.

d) Explain to what extent the proposed facility incorporates recycling, composting and waste diversion. (Reference other responses, if appropriate)

Identify the location of the information or comments:

section and/or page numbers

Section IV. Integrated Solid Waste Management {16.40(5)}

Instructions: Complete Part IV only if site assignment is sought for a **Landfill** or **Combustion** facility.

It is likely that the information requested in Part IV will have been included in the EIR submitted to complete the MEPA process. If this is the case, the applicant should attach the relevant sections from the EIR that was accepted by the Secretary of EOEA. If all the information requested below is not included in the EIR attach additional information

In order to complete this section, the Applicant will need information on the Commonwealth's goals for recycling and composting and for establishing a statewide integrated solid waste management (ISWM) system. This information is contained in the Commonwealth's Solid Waste Master Plan which is available on the DEP's web site or by calling the DEP. The Master Plan is periodically revised and may be updated by issuing annual Status Reports, so it is important to make sure you have the current version before completing this application

A. Capacity Need {16.40(5)(a)1.}

Demonstrate the need for the capacity that will be provided by the proposed facility. For each year of the expected life of the proposed facility identify the sources (residential, commercial, industrial) of the solid waste that will supply the amount of waste equal to the proposed capacity. Please be as specific as possible in identifying "sources." Include the municipalities in which the waste will be generated and the type of waste (demolition/construction, wood waste, sludge, ash, special wastes, commercial wastes, household wastes, etc.).

Show how the capacity that will be provided by the proposed facility will contribute to providing the capacity needed by the Commonwealth as identified in the most recent Solid Waste Master Plan and/or most recent annual Status Report.

B. Waste Diversion {16.40(5)(a)2.}

Explain how the proposed facility will maximize the diversion of recyclable and compostable materials from the waste prior to combustion or landfilling. Include a discussion of how the proposed facility will coordinate with other facilities or programs to maximize the diversion.

C. Contribution to ISWM {16.40(5)(a)3.}

How will the proposed facility contribute to the establishment and maintenance of a statewide system for integrated solid waste management? Include a discussion of how the proposed facility will complement the other facilities in the service area.

D. Recycling and Composting {16.40(5)(b)}

Explain to what extent the proposed facility itself incorporates recycling and composting and explain how the proposed facility will be integrated into the recycling and composting activities in the service area.

Identify the location of the information requested in Part IV.

Section 4, p 51-53
section and/or page numbers

Section V. Waivers

A. Site Suitability Criteria Waiver {16.40(6)}

The Site Suitability Criteria Waiver Application should be completed only if the applicant is seeking a waiver from one or more of the Site Suitability Criteria set forth in the Site Assignment Regulations, 310 CMR 16 40(3) or the setback distance at 310 CMR 16.40(4)(h). (The intention to seek a waiver must be noted in Part I of the Site Assignment Application Form.)

Note: As required by 310 CMR 16.08(5)(c), an application for a waiver must be accompanied by all data and documentation necessary to support the waiver request.

☐ Check here if a waiver from the Site Suitability Criteria is requested

Identify the location of the information requested in V.A.1 through V.A.9:

section and/or page numbers

1. Criteria: Identify the Site Suitability Criteria in 310 CMR 16.40(3) or 310 CMR 16.40(4)(h) from which a waiver is sought and for each explain the nature of the waiver being requested
2. Hardship: State the nature of the hardship which would result if a waiver were not granted.
3. Interest Served: State the community, regional or state public interest that would be served by granting the waiver.
4. Maintain Protection. Explain why granting the waiver will not result in less protection of the public health and safety and the environment than would exist in the absence of the waiver.
5. Alternative Site: Explain why the proposed facility cannot be located at another site in the affected municipality or region at which a waiver would not be needed
6. Preferred Municipality: Is the proposed site located in a preferred municipality as defined in MGL c.111, s. 150A1/2? (A "preferred Municipality" is a municipality that does not have existing disposal facilities and is not part of a regional waste disposal district.)
7. Environmental Benefit: Will granting the waiver result in any environmental benefits in excess of those benefits achievable in the absence of a waiver? Explain.
8. Integrated Solid Waste Management: Explain how the proposed facility contributes to integrated solid waste management.
9. Waiver Needed for Project Goals: Explain why the solid waste management objectives of the proposed project could not be achieved in the absence of the waiver.

BWP SW 01 Site Suitability Report for a New Site Assignment

BWP SW 02 Site Suitability for a Major Modification of an Existing Site Assignment

E. Waiver from Application Process (310 CMR 16.18)

This waiver application should be completed only if the applicant is seeking a waiver from one or more of the provisions of Part I (310 CMR 16.01-16.19) of the Site Assignment Regulations that deals with the application process. The intention to seek a waiver must be noted in Part C of the application form.

Note: As required by 310 CMR 16.08(5)(c), an application for a waiver must be accompanied by all data and documentation necessary to support the waiver request.

☐ Check here if a waiver from the Application Process is requested.

Identify the location of the information requested in WE 1 through WE 4.

1. Regulatory Provision: Identify the provision of the regulations from which a waiver is being requested and explain the specific nature of the request.

2. Interest Served: State the community, regional or state public interest that would be served by granting the waiver.

3. Interference with Suitability Evaluation: State why the granting of the waiver would not interfere with the ability of the Board of Health to evaluate the suitability of the proposed site.

4. Public Review and Comment: State why granting the waiver would not diminish the ability of the general public to review and comment on the proposed project.

WP-0077
Transmittal Number

04-309-001
Facility Date Known

VI. Signatures and Certification {16.08.5(e)}

A. Land Owner's Signature

Where the applicant is not the owner of the legal title to the land described as the "site" in this application, the owner or other person with control of the site pursuant to an order of a court of competent jurisdiction shall sign the application here.

Owner's Signature

Date 8/15/07

B. Applicant's Signature and Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties both civil and criminal for submitting false information including possible fines and imprisonment.

Applicant's Signature

8/15/07
Date

Agent's Signature

8/15/07
Date

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March 16, 2010 Document includes twenty-two (22) pages of records on file in the Office of the Board of Health, Ware, MA

A true copy attest:
Nancy J. Talbot - Town Clerk, Ware, M

Application for Site Assignment Modification
ABC&D Recycling, Inc.
198 East Street
Ware MA
DEP DSWM File # 07-309-005
Town of Ware
Board of Health
Decision

The Ware Board of Health duly voted on February 21, 2008, after holding the requisite Public Hearing pursuant to 310 CMR 16.20 which commenced on January 8, 2008 and continued to its conclusion on February 13, 2008, to issue the following findings, conditions, and decision regarding the site assignment modification application, pursuant to MGL Ch. 111, sec. 150A and the subsequently promulgated regulation 310 CMR 16.00, for ABC& D Recycling, Inc. at 198 East Street Ware, MA, 01082:

1. With regards to the prohibition that no waste handling or processing area be located within the Zone 1 of a public water supply well as set forth in 310 CMR 16.40 (3) (d) (1) ; *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

2. With regards to prohibition that no waste handling or processing area be located within the Interim Wellhead Protection Area (IWPA) or a Zone II of an existing public water supply well, within a processed drinking water source area, provided that the documentation necessary to obtain a source approval has been submitted prior to the earlier of either the site assignment application, or if the MEPA process does apply, the Secretary's Certificate on the Environmental Notification Form as set forth in 310 CMR 16.40 (3) (d) (2); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

3. With regards to the prohibition that no waste handling or processing area be located within the Zone A of a surface drinking water supply as set forth in 310 CMR 16.40 (3) (d) (3); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

4. With regards to the prohibition that no waste handling or processing area be located within five hundred (500) feet upgradient, and where not upgradient, within two hundred fifty (250) feet, of an existing or potential private drinking water supply well existing or established as a Potential Private Water Supply at the time of submittal of the application, provided, however, the applicant may show a valid option to purchase the restricted area

including the well and guarantee not to use the well as a drinking water source, the exercise of which shall be a condition of any site assignment as set forth in 310 CMR 16.40 (3)(d) (4); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

5. With regards to whether waste handling area of any transfer station or handling facility that proposes to receive more than 50 tons per day of solid waste would be within five hundred (500) feet of an occupied residential dwelling, prison, health care facility, elementary school, middle school or high school, children's pre-school, licensed day-care center, or senior center or youth center, excluding equipment storage or maintenance structures as set forth in 310 CMR 16.40 (3) (d) (5) (i); *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the transfer station and handling facility proposes to receive more than 50 tons per day of municipal solid waste in addition to construction and demolition waste. The Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that portions of the property of the facility are less than 500 feet from residential dwellings, but the active area proposed for the transfer station and waste handling facility will be located at 500 feet or more from residential dwellings. The Ware Board of Health therefore finds the site meets the above- stated criteria.*

6. With regards to whether the waste handling area would be within the Riverfront Area as defined at 310 CMR 10.00 as set forth in CMR 16.40 (3) (d) (6); *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that while portions of the property on which the facility is located is within the Riverfront Area of the Ware River, the active waste handling area is not within the Riverfront Area as defined. The Ware Board of Health therefore finds the site meets the above- stated criteria.*

7. With regards to whether the maximum high groundwater table would be within two (2) feet of the ground surface in areas where waste handling is to occur unless it is demonstrated that a two (2) foot separation can be designed to the satisfaction of the Department as set forth in 310 CMR 16.40 (3) (d) (7); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

8. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where:

1. The land is classified as Prime, Unique, or of State and Local Importance by the United States Department of Agriculture, Natural Resources Conservation Service; or
2. The land is deemed Land Actively Devoted to Agricultural or Horticultural Uses, except where the facility is an agricultural composting facility; and

3. A 100 foot buffer would not be present between the facility and those lands as classified at 310 CMR 16.40(4) (a) 1 or 2

as set forth in 310 CMR 16.40(4) (a); *the Ware Board of Health, based on the record of the public hearing, information contained within the application, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds the site meets the above- stated criteria.*

9. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where traffic impacts from the facility operation would constitute a danger to the public health, safety, or the environment taking into consideration the following factors:

1. Traffic congestion;
2. Pedestrian and vehicular safety;
3. Road configurations;
4. Alternative routes; and
5. Vehicle emissions, as set forth in 310 CMR 16.40 (4) (b).

The Board of Health heard evidence that:

(1) Trucks hauling MSW through the East Street, Main Street, West Main Street, and West Street areas will be proceeding at slow speeds with numerous stops.

(2) Trucks hauling MSW through the East Street, Main Street, West Main Street, and West Street areas will be traversing heavy pedestrian traffic areas.

(3) Slow moving MSW truck traffic through East Main Street, Main Street. West Main Street and West Street will subject pedestrians, residents, businesses, etc. to odor, leakage, litter and other nuisance issues.

(4) The traffic study indicates that the crash rate at two Main Street intersections already exceeds state wide and district wide averages

(5) Increases of MSW traffic during peak hours of up to 58% will make these Two Main Street intersections less safe and more crash prone.

(6) Use of MSW trucks of school bus routes will expose school children to increased traffic hazards at school bus stops and while on buses traveling these routes.

(7) Increased MSW traffic will result in increased diesel emissions, MSW odors, MSW leakage, MSW litter and attendant vermin, all exposing residents and school children to health and safety risks.

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds:

I. The putrescent nature of municipal solid waste provides a food source and harborage of rodents, insects and other pests of public health importance which contribute to the creation or spread of disease.

II. Other hazardous and dangerous components and contaminates which may be present in the municipal solid waste stream poses a risk due to fire, burns, accidents

or other dangers or impairments to health and safety.

III. *The transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions and truck idling, nuisance dust, noise and vibration and is a danger to the public health and environment.*

IV. *The MSW trucks routes will be along densely populated areas of the Town of Ware with older homes set at or very near the roadway and sidewalks. The Ware Board of Health also takes notice that many of these same densely populated neighborhoods are designated as an "Environmental Justice Population" by the Executive Office of Environmental and Energy Affairs, the MSW trucks will be a danger to the public health, safety, and environment.*

V. *The rate of traffic accidents at key intersections - West Main/West/ Main and Main/North- along the anticipated MSW truck routes exceed MASS Highway District and statewide averages (HSH page 20).*

VI. *Truck traffic will increase by 28%-58% along all segments of Main, East Main, and East Street (HSH page 1) at peak morning hours and will be a danger to public safety.*

VII. *School bus routes, pick -up and drop off locations coincide with anticipated MSW trucks routes and the MSW truck routes will be a danger to school children and school buses.*

VIII. *Anticipated truck routes were determined by standard engineering practices utilizing the best information available at the time of the application submittal and public hearing process.*

IX. *With specific note to population distribution of the region and the DEP document entitled " Active Facilities List" which lists anticipated closure dates of area solid waste disposal facilities located to the south and west of Ware, and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds logical and reasonable the conclusion of the traffic report prepared by Howard-Stein/ Hudson that 66% of trips to the facility will originate from points west and south (HSH page 29) and therefore travel through the densely populated center of Ware endangering public health, safety, and the environment.*

X. *Diesel exhaust is commonly found throughout the environment and is estimated by EPA's National Scale Assessment to contribute to the human health risk Diesel exhaust is composed of two phases, either gas or particle and both phases contribute to the risk. Diesel particulate matter is part of a complex mixture that makes up diesel exhaust. It is made up of small particles, known as fine particulate matter. Fine particles pose a serious health risk because they can easily pass through the nose and throat and lodge themselves in the lungs. When inhaled repeatedly, the fine particles in diesel exhaust may aggravate asthma and allergies or cause other serious health problems including lung cancer. Diesel exhaust is estimated by EPA's National Scale Assessment to contribute to the human health risk in New England. EPA has classified diesel particulate matter as a likely human carcinogen. Children are more sensitive to air pollution because they breathe at a faster rate than adults. Massachusetts has childhood asthma rates above 10 percent. (Health Effects | Diesel Exhaust | New England | US EPA). Therefore, MSW trucks will endanger public health, safety, and the environment.*

XI. *With specific regards to the public health impacts of the diesel engine emissions,*

the reduction of emissions for existing diesel engines include the utilization of strategies such as the use of cleaner fuels, and retrofitting and repairing existing fleets. While the proponent provides such reduction strategies for "off road" vehicles and equipment owned and operated at the facility, the various fleets of diesel trucks delivering to, and exiting from, the facility may not be retrofitted or use cleaner burning fuels.

XII. *With specific regards to transportation of municipal solid waste, the proposed pollution and nuisance reduction strategies advocated by the proponent and his representatives, such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will transverse roads and travel past homes and municipal parkland to the facility and on the return trip out of the Town of Ware.*

XIII. *The applicant did not work with the Town of Ware officials and local residents within the project area to establish haul routes and mitigate impacts as encouraged and directed in the September 21, 2007 Certificate of the Secretary Of Energy and Environmental Affairs on the Notice of Project Change signed by Ian A. Bowles (NPC Certificate 09/21/07 page 2) .*

XIV. *The applicant and representatives rejected working with the Town of Ware officials to schedule operations around bus routes and/or to stagger deliveries to, and exits from, the facility to mitigate congestion and idling, potential for increased accidents at cited intersections, and safety concerns of children waiting, embarking, or exiting school buses.*

In consideration of the above findings, and after due deliberations, the Board finds the siting of this waste handling facility receiving municipal solid waste would constitute a danger to the public health, safety, or the environment taking into consideration traffic impacts from the facility operation including the following factors:

1. Traffic congestion;
2. Pedestrian and vehicular safety;
3. Road configurations;
4. Alternative routes; and
5. Vehicle emissions.

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

10. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would:

1. Have an adverse impact on Endangered, Threatened, or Special Concern species listed by the National Heritage and Endangered Species Program of the Division of Fisheries and Wildlife in its database;
2. Have an adverse impact on an Ecologically Significant Natural Community as documented by the National Heritage and Endangered Species Program in its database; or
3. Have an adverse impact on the wildlife habitat of any state Wildlife Management

Area, as set forth in 310 CMR 16.40(4) (c).

The Ware Board of Health, based on the record of the public hearing and utilizing The experience, technical competence, and specialized knowledge of the Board and its Agents, finds:

I. *The putrescent nature of municipal solid waste as well other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein.*

II. *Storm water management control features and erosion control measures can fail during flood or fire events or from lack of maintenance.*

III. *With specific reference to the letter from Division of Fisheries and Wildlife dated September 5, 2007 that the Ware River immediately adjacent to ABC&D Recycling Inc. is a priority habitat and estimated habitat for the following rare species: Triangle Floater Mussel, Creeper Mussel, the endangered Spine-crowned Clubtail Dragonfly, and Wood Turtle.*

IV. *These Endangered, Threaten, or Special Concern species should be protected from adverse impacts from the proposed solid waste management facility and/or any mal-functioning of its storm water control features which would result in discharge to the Ware River; and to do so requires the establishment of a monitoring program at the facility and of the Ware River in the immediate vicinity of the proposed solid waste management facility.*

The Ware Board of Health therefore finds the site would meet the above stated criteria only with the imposition of the following conditions, which it finds necessary to ensure the facility will not present a threat to the environment:

1) The owner and/ or operator shall maintain all storm water management/ control features and mechanisms as designed and in operational condition. Twice annually, once in Spring and then once again in the Fall , but at times when there is no snow cover which could hinder or hide from view a complete inspection, the owner and/or operator shall have performed a thorough inspection of all drains and drainage ways, catch basins, detention and/or retention basins by a licensed civil engineer; perform any maintenance or repairs as needed; and within thirty (30) days submit a written report of the inspection findings and actions taken to the Ware Board of Health and the Ware Conservation Commission.
2) At any time during the year, the owner and/or operator shall immediately report to the Ware Board of Health and the Ware Conservation Commission any failure of the storm water management system at the facility site to adequately retain and or treat storm water or a significant erosion occurrence at the facility site within 24 hours of the event.
3) The owner and/or operator shall retain the services of a competent, independent third party professional qualified to conduct an adequate biological evaluation and monitoring program of the Ware River in the immediate vicinity of the solid waste management facility. The program shall at a minimum include, but shall not be limited to, five sample sites- one being immediately upstream from the facility and

one other immediately downstream. The water samples shall be analyzed for, but shall not be limited to: Turbidity, nitrogen, phosphorous, dissolved oxygen, BOD, COD, as well as an assessment of the microorganisms in the water such as zooplankton and phytoplankton. In addition sediment samples shall be taken and analyzed for metals, polychlorinated biphenyls (PCBs), and polynuclear hydrocarbons (PAHs). Such analysis shall be performed by a certified laboratory. In addition, the program shall include the evaluation and monitoring of the vegetative growth and bank stabilization status along the banks and cove of Ware River where it serves as the property line boundary for the facility. Such monitoring shall be performed twice annually for the first five years of the facility's acceptance of municipal solid waste and thereafter once annually provided the initial five year testing results reveal no discernable negative impacts. Monitoring and evaluation results, including laboratory reports and chain of custody documentation, shall be provided to the Ware Board of Health and Ware Conservation Commission in written format within thirty (30) days of completion twice annually or once annual as set forth in the terms above.

11. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting:

1. Would be located within an Area of Critical Environmental Concern (ACEC), as designated by the Secretary of the Executive Office of Environmental Affairs; or
2. Would fail to protect the outstanding resources of an ACEC as identified in the Secretary's designation if the solid waste management facility is to be located outside, but adjacent to the ACEC; as set forth in 310 CMR 16.40(4) (d);

the Ware Board of Health, based on the record of the public hearing and information contained in the application, finds the site meets the above- stated criteria. However, the Ware Board of Health took notice that while the site is not located within an ACEC, it is within 1 mile and 5 miles respectively of an Environmental Justice Area as designated by EOEEA.

12. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where such siting would have adverse impact on the physical environment of, or on the use and enjoyment of:

1. State forests;
2. State or municipal parklands or conservation land, or other open space held for natural resource purposes in accordance with Article 97 of the Massachusetts Constitution;
3. MDC reservations;
4. Lands with conservation, preservation, agricultural, or watershed protection restrictions approved by the Secretary of the Executive Office of Environmental Affairs; or
5. Conservation land owned by private non-profit land conservation organizations and open to the public; as set forth in 310 CMR 16.40(4) (e).

The Ware Board of Health heard evidence that:

(1) The MSW facility will be visible and audible from municipal park lands.
(2) The MSW facility will be visible and audible from recreational river areas within Grenville Park and adjacent to the site.
(3) Truck traffic hauling MSW to and from and at the MSW facility will be visible and audible from municipal park lands.
(4) Truck traffic hauling MSW to and from and at the MSW facility will be visible and audible from recreational river areas.
(5) Odors from the MSW facility, including deodorized odors, will be vented from the facility and will, on occasion, be wind carried over park lands.
(6) Odors, diesel fumes, litter, leakage from MSW traffic to and from the facility will affect municipal park lands along the routes to and from the facility.
(7) MSW truck traffic will impact residents including children utilizing and walking to and from municipal park lands located along the MSW truck traffic routes.
(8) MSW truck traffic to and from the facility will pass directly in front of Veteran's Park, the portions of Grenville Park on Routes 9/32, Nenameseck Square and Reed Memorial Pool and Beauregard Memorial Playground.

Therefore, the Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents with regards to parkland and recreation land and its uses within the Town of Ware finds:

I. The solid waste management facility is located directly across the Ware River from Grenville Park, a municipal park of significant historical, scenic landscape, and cultural value designed by renowned landscape architect Arthur A. Shurtleff and registered as a Historic Place; and that the facility immediately abuts Map 24 Lot 14 East Street, 10.34 acres of municipal parkland owned by the Town of Ware.

II. The Ware Board of Health takes specific notice that the 10 plus acres of woods and its purpose for securement in 1922 was particularly referenced in the document entitled " Landscape Ideals Embodied in the Design of Grenville Park Ware, Massachusetts. Being a report by the Landscape Architect to the Board of Park Commissioners" dated January 2, 1923.

III. Map 24, Lot 14 is used by area residents and children (including children with special needs) as a location for nature walking, hiking, and as access to boat and canoe launching, fishing, ice fishing, and ice skating.

IV. The conclusion listed in the Department's " Site Suitability report Modification" dated December 10, 2007 at pages 4 and 11, categorizing Map 24 Lot 14 as "apparently unused" is factually incorrect.

V. MSW trucks will also pass by other parkland of the Town of Ware including Veteran's Park on Main Street, Reed Memorial Pool and Beauregard Memorial Playground on West Main Street, and Nenameseck Square at the corner of Main and South Streets, which will have an adverse impact on the use and enjoyment

of municipal parkland.

VI. *The putrescent nature of municipal solid waste provides a food source and harborage of rodents, insects and other pests of public health significance which contribute to the creation or spread of disease, which will have an adverse impact on the use and enjoyment of municipal parkland.*

VII. *Other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein, which will have an adverse impact on the use and enjoyment of municipal parkland.*

VIII. *The transportation of municipal solid waste to and from a transfer and handling facility is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, air pollution from diesel vehicle emissions, nuisance dust, noise, vibration and the potential for increased vehicle safety concerns, which will have an adverse impact on the use and enjoyment of municipal parkland.*

IX. *With specific regards to the public health and safety impacts of the transportation of municipal solid waste, the proposed pollution and nuisance reduction strategies advocated by the proponent and his representatives, such as rejection of loads or turning away offending patrons, will not prevent or mitigate impacts since the offending vehicle and/or its contents will transverse roads and travel past homes and parkland on trips to the facility and on the return trip out of the Town of Ware, which will have an adverse impact on the use and enjoyment of municipal parkland.*

X. *The Ware Board of Health takes specific notice that Article 97 of the Constitution of the Commonwealth of Massachusetts states:* "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose"

Based on the above findings, which will have an adverse impact on the use and enjoyment of municipal parklands, and after due deliberations, the Board finds the siting of a waste handling facility receiving municipal solid waste abutting active recreational municipal park land, and the transportation of municipal solid waste and its attending public health nuisances past municipal park land, would have adverse impact on the physical environment of, and on the use and enjoyment of said municipal park land, and is not in accordance with Article 97 of the Massachusetts Constitution.

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

13. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where the anticipated emissions from the facility would not meet required state and federal air quality standards or criteria or would otherwise constitute a danger to the public health, safety or the environment, taking into consideration:

1. The concentration and dispersion of emission

2. The number and proximity of sensitive receptors; and
3. The attainment status of the area; as set forth in 310CMR 16.40 (4) (f).

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents finds:

I. The applicant failed to identify and consider the concentration and dispersion of emissions from the facility in consideration of the comments and encouragement of Secretary Ian A. Bowles in the September 21, 2007 Certificate of the Secretary of Energy and Environmental Affairs on the Notice of Project Change (NPC Certificate 09/21/07 page 3).

II. The attainment status of the area is classified by the US EPA as "Non-attainment for 8- hour Ozone".

III. The application failed to identify and consider all SSEIS register polluters within a one (1) mile radius and any potential attending cumulative impacts on public health.

IV. It will be necessary for the protection of public health and the environment from fugitive dust and particulate emissions , odors, and windblown litter to impose conditions requiring negative air pressure be maintained within the building and the installation of more advanced odor control mechanisms (see following criterion for additional details) and such imposed conditions will require air quality permit review by MA DEP under 310 CMR 7.00- as referenced in the Department's " Site Suitability Report Modification" dated December 10, 2007, at page 13.

Therefore, upon due consideration of the above-stated findings, the Ware Board of Health finds it necessary to ensure the facility will not present a threat to public health, safety, or the environment to impose the following conditions :

1) The owner/operator shall , prior to obtaining from the Department Authorization to Construct and/or Authorization to Operate Permits, have performed by credentialed and qualified consultants, air quality modeling utilizing both dispersion and photochemical model applications and tools. The modeling shall consider anticipated emissions from the facility, air pollution from emissions of both on-road and off- road vehicles at the facility, as well as all SSEIS register polluters within a one (1) mile radius. The results of such air quality modeling will then serve to assist in the design and implementation of effective control strategies to reduce emissions of harmful air pollutants and to meet required state and federal air quality standards. A complete report, including but not limited to: model results, recommendations, and any reduction strategies identified; shall be submitted to the Ware Board of Health for review, comment, and final approval.

14. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility where the establishment or operation of the facility would result in nuisance conditions which would constitute a danger to the public health, safety or the environment taking into consideration the following factors:

1. Noise;
2. Litter;

3. Vermin such as rodents and insects;
4. Odors;
5. Bird hazards to air traffic; and
6. Other nuisance problems, as set forth in 310 CMR 16.40 (4) (g).

The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds, with respect to the facility itself:

I. The putrescible nature of municipal solid waste, and the offal contained therein, provides a food source and harborage of rodents, insects, gulls, and other pests which contribute to the creation or spread of disease.

II. Other hazardous and dangerous components which may be present in the municipal solid waste stream poses a risk of pollution by biological or chemical substances and contaminates contained therein.

III. The handling and transfer of municipal solid waste is accompanied by malodorous smells, garbage truck spillage and leaks, windblown litter, diesel vehicle emissions, nuisance dust, vibration and noise.

Therefore, upon due consideration of the above-stated findings, the Ware Board of Health finds it necessary to ensure that the facility itself will not present a threat to public health, safety, or the environment to impose the following conditions :

1) The facility shall retain a competent, qualified, and licensed exterminator to once weekly inspect and conduct surveillance activity at the facility and on the grounds (including the constructed storm water drainage and retention features) for rodents, vermin and other pests of public health significance. Any pest control method applied shall utilize integrated pest management techniques as well as insecticide and rodenticide resistance control strategies. The exterminator shall issue a monthly, written activity report to the Board of Health detailing the results of inspections and surveillance, and any pest management control utilized during the previous month.

2) For the protection of public health and the environment from fugitive dust and particulate emissions , odors, and windblown litter the facility shall install ventilation equipment capable of maintaining negative air pressure, including during period when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air. Exhaust air shall be ventilated thru air filters and/or dust collectors and other equipment necessary to remove particulate matter and malodorous by-products. All filter and equipment shall be maintained in proper working order. Odor control equipment shall be installed that shall automatically neutralize odor in exhaust air as it is ventilated from the facility. The odor control equipment shall include a permanent hard-piped high-pressure system, suspended above the facility's tipping floor with nozzles strategically aimed at fans and exhaust vents. The odor-neutralizing agent shall be applied as a mist in the vicinity of exhaust points from the facility. A scented masking agent is <u>not</u> an odor neutralizing agent. Dust suppression misting equipment shall also be maintained in proper working order.

Ventilation and air-exchanges within the structure shall be of sufficient capacity and exchanges per hour to meet applicable health regulations, including occupational health standards.

3) The industrial wastewater holding tank shall be sized, using standard practices of 200% of anticipated daily wastewater generation, and shall include a reasonable surge capacity in the event of fire fighting activity. In the event generally available engineering and/or technical standards are not available to estimate gallons per day generation based on square footage and/or tons per day, the size of the holding tank shall be determined by actual water usage and waste water generation by a similar size and type facility located in Massachusetts.

4) The Town of Ware shall establish a "Facility Monitor Account" operated under the direction and control of the Ware Board of Health. The Ware Board of Health shall employ a qualified person to monitor activity and compliance at the facility. Prior to accepting MSW, the owner shall deposit the amount of $46,400.00 to be placed in the Facility Monitor account to cover the reasonable and anticipated expenses of the Town of Ware Board of Health for such monitoring. On January 1st in every following year thereafter, the owner shall deposit $46,400.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure.

5) The Town of Ware shall establish a "Emergency Responder Facility Impact Account" operated under the joint direction and control of the Ware Board of Health and the Town of Ware Fire Chief. Prior to accepting MSW, the owner shall deposit the initial amount of $20,000.00 to be placed in the Emergency Responder Facility Impact account to cover the reasonable and anticipated expenses of the Town of Ware for equipping and training first responders for chemical or hazardous emergencies at the facility. On January 1st in every following year thereafter, the owner shall deposit $5,000.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure for the purpose of continuing education and training of first responders.

6) Rapid close door shall be maintained in the down, closed position when not in use by a vehicle entering or exiting the facility.

7) All material, including C&D due to the potential of vermin harborage from the MSW operations, shall be removed from the tipping floor at the close of operations daily.

8) Any MSW in partial full rail cars within the interior facility shall be in sealed air-tight containers at the close of operations. Any MSW in full rail cars stored on the exterior rail spur shall be sealed at all times in air-tight containers.

9) The owner/ operator shall institute a proactive gull control program in compliance with DEP Policy. The operator shall maintain a contract with a qualified professional to administer such a gull control program and the program shall include responding and remediating gull complaints on neighboring properties. A written gull control program shall be submitted to the Ware Board of Health for final approval prior to obtaining "Authorization to Operate" from DEP.

10) The owner/operator shall maintain on site and in working order at all times

radiation detection devises. Such devices shall be examined and tested by an independent third party qualified to make such an examination on a monthly bases, with the written results of such testing and examination forwarded to the Ware Board of Health Office. If at any time such examination reveals the inoperability or malfunctioning of the radiation detection devices, such examination, testing, and written reporting shall occur on a weekly bases.

11) The Ware Board of Health asserts and re-affirms that all previous ordered conditions as enumerated in their June 9, 2004 final decision for the original site assignment for the property remain in full effect and unchanged by this decision.

Additionally with respect to MSW truck traffic to and from the facility:

IV. Based upon the above findings and those findings under criterion number 9 (which are repeated and incorporated by reference herein), the Ware Board of Health finds MSW truck traffic to and from the facility will cause nuisance conditions and constitute a danger to the public health, safety, or the environment.

Therefore, the Ware Board of Health finds the site does not meet the above-stated criteria.

15. With regards to the prohibition that no site shall be determined to be suitable or be assigned as a solid waste management facility if the size of the proposed site is insufficient to properly operate and maintain the proposed facility, and that the minimum distance between the waste handling area or deposition area and the property boundary for the facility shall be 100 feet, provided that a shorter distance may be suitable for that portion of the waste handling or deposition area which borders a separate solid waste management facility as set forth in 310 CMR 16.40(4) (h) ; *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the waste handling and disposition area of the proposed facility is one hundred (100) feet or more from the property boundary except to the shared property line with the Massachusetts Central Railroad. The Ware Board of Health finds, based on the information contained within the application, the facility was granted a waiver request to this criteria, issued by the Department of Environmental Protection on May 19, 2003. The Ware Board of Health therefore finds the site meets the above-stated criteria.*

16. With regards to the criteria as set forth in 310 CMR 16.40 (4)(i), *the Ware Board of Health finds, based on the record of the public hearing and information contained in the application, that the area adjacent to the site of a proposed facility has not been previously used for solid waste disposal . Therefore, the Ware Board of Health finds the site meets the above-stated criteria.*

17. In regards to the criteria as set forth in 310 CMR 16.40 (4) (j), Existing Facilities:

1. In evaluating proposed sites for new solid waste management facilities the Department and the board of health shall give preferential consideration to sites located in municipalities in which no existing landfill or solid waste combustion facilities are located. This preference shall be applied only to new facilities which

will not be for the exclusive use of the municipality in which the site is located. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community with an existing disposal facility:

a. The extent to which the municipality's or region's solid waste will be met by the proposed facility; and
b. The extent to which the proposed facility incorporates recycling, composting or waste diversion activities; *the Ware Board of Health finds:*

I. *There are no active landfills or existing solid waste combustion facilities located in the Town of Ware.*

II. *The existing C&D operations meet the municipalities and region's needs. The Ware Board of Health finds the existing C&D operations incorporates waste diversion and recycling and produces beneficial products for re-use.*

III. *This site is a proposed modification, not a siting for a new solid waste management facility.*

IV. *The facility's proposed MSW operations does not meet the municipalities solid waste or recycling needs.*

V. *The facility's proposed MSW operations do not incorporate recycling beyond minimum waste ban compliance.*

Therefore, the Ware Board of Health finds the proposed facility is not entitled to preferential consideration.

18. In regards to the determination of whether a site is suitable and should be assigned as a solid waste management facility shall consider whether the projected impacts of the proposed facility pose a threat to public health, safety or the environment, taking into consideration the impacts of existing sources of pollution or contamination as defined by the Department (emphasize added), and whether the proposed facility will mitigate or reduce those sources of pollution or contamination as set forth in 310 CMR 16.40 (4) (k); *the Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds:*

I. *The Department of Environmental Protection has defined the manner, type and sources by which consideration the impacts of existing sources of pollution or contamination. Such manner is detailed in the Department's Guidance document entitled " Guidance for Conducting Facility Impact Assessment for Solid Waste Facility Site Assignment" .*

II. *The Department's definition and Guidance Document greatly restricts the Board's ability to consider the cumulative impacts on public health of all existing sources of particulate matter, both mobile and stationary under this criteria.*

In light of such restrictions and limitations, the Board finds the site meets the above-stated criteria as solely defined by the Department.

19. With regards to the criteria that the Department and the board of health shall give

preferential consideration to sites located in municipalities not participating in a regional disposal facility. The Department and the board of health shall weigh such preference against the following considerations when the proposed site is located in a community participating in a regional disposal facility:

1. The extent to which the proposed facility meets the municipality's and the region's solid waste management needs; and
2. The extent to which the proposed facility incorporates recycling, composting, or waste diversion activities, as set forth in 310 CMR 16.40 (4) (l).

The Ware Board of Health finds:

I. The existing C&D operations meet the municipalities and region's needs.

II. The existing C&D operations incorporates waste diversion and recycling and produces beneficial products for re-use.

III. The facility's proposed MSW operations does not meet the municipalities solid waste or recycling needs.

IV. The facility's proposed MSW operations do not incorporate recycling beyond minimum waste ban compliance.

V. *The facility's proposed MSW operations will not meet the municipal solid waste recycling needs of the Town of Ware as the proposal does not incorporate any activity that will increase the percentage of consumer sorted recyclables in the Town of Ware.*

The Ware Board of Health finds therefore, the proposed facility is not entitled to preferential consideration.

General Findings:

Marketing Study

I. The Ware Board of Health finds that although a marketing analysis/ study was referenced in the application at page 53 of section IV and in testimony from the proponent's consultants (Day 1 page 22; Day 2 page 314), and cited as the bases for testimony received that the majority of trips to the facility would originate from points North and East (Day 4 page 646 and 647) ; upon request no such market analysis or study was produced for review by the Board's traffic consultant for trip distribution analysis or entered into evidence for consideration by the Board of Health.

II. The Board of Health does find that upon request for the above- referenced marketing data, the Board's traffic consultant was provided with a simple centroid radius geographical map. The map was prepared by Green Seal Environmental Inc. and dated 01-28- 08, after commencement of the public hearing.

III. The Ware Board of Health finds the testimony received on a market analysis and/or analyzed data supporting the proponent and representative's assertions that the majority of traffic will originate from points North and East of the facility was not supported by credible evidence.

Traffic Study

I. *The Ware Board of Health finds the traffic impact portion of the 2007 Application for Site Assignment Modification and Notice of Project Change was a re-printed copy of the original 2003 application data.*

II. *The Ware Board of Health finds the original 2003 traffic impact assessment included data, traffic counts, and other information collected in 1995 and 1996 for different projects pending in Ware at that time.*

III. *The Ware Board of Health finds the 2003 traffic report was based on 20-ton capacity trucks delivering C&D material for an estimated 37.5 daily trips into the facility. The Board finds MSW is delivered in trucks which include to a significant proportion 6- ton capacity garbage packer trucks. Therefore, the Board finds the testimony that MSW loads are expected to reduce existing trips (Day 1, page 33) was not supported by credible evidence.*

IV. *The Ware Board of Health finds the peer-review report prepared by Howard Stein Hudson and received on December 28, 2007 raised a number of questions and concerns. The Board therefore motioned at the public hearing that a new traffic impact study be performed (Day 1, page 109) .*

V. *The Ware Board of Health finds the current C&D processing operates at approximately 6% of permitted capacity and heard evidence that actual, current traffic associated the facility averages about 10 vehicles per day (Day 1 page 55).*

VI. *The Ware Board of Health finds the intersections and routes studied in the 2008 traffic impact study are the same as those listed in the first MEPA submittal of 2003, the 2003 original Site Assignment Application, the MEPA Notice of Project Change of 2007, and the 2007 Site Assignment Modification Application with the exception of driveway counts at the facility itself. The Ware Board of Health also notes that in the December 2007 HSH peer review of the Tighe and Bond study originally submitted in 2003, the intersection studied were found appropriate for the proposed project with the exception of the lack of driveway counts at ABC&D.*

VII. *The Ware Board of Health finds Ms. Keri Pyke is currently licensed by the Commonwealth of Massachusetts as a civil engineer. The Board also finds Ms. Pyke has obtained national certification as a Professional Transportation Operation Engineer. The Board finds Ms. Pyke is a graduate of Rensselaer PolyTechnical Institute's School of Engineering and has extensive work experience in the field of traffic and transportation. Based on the findings of credentials, education, and work experience, the Board does weighs the opinions and testimony of Ms. Keri Pyke as that of an expert in the field of traffic engineering and transportation impacts.*

VIII. *The Ware Board of Health, based on the record of the public hearing and utilizing the experience, technical competence, and specialized knowledge of the Board and its agents, finds that the projected truck routes and volumes as listed in the HSH Traffic Impact Report were determined by standard engineering practices utilizing the best information available at the time of the application submittal and public hearing process.*

IX. *The Ware Board of Health takes notice that the proponent offered no new traffic study and did not provide testimony from their traffic expert who was present and available at 2/13/08 hearing.*

Testimony with respect to PAYT Program

I. *The Ware Board of Health finds that the application for site assignment modification as submitted to the Ware Board of Health on August 15, 2007 did not contain any provisions for a recycling drop-off location for use by Ware residents or a pay-as-you-throw program. Nor did the design provide for or address safety concerns of personal vehicles entering or leaving the facility. Traffic counts and considerations listed in the application did not include personal vehicles.*

II. *The Ware Board of Health finds the proponent communicated with and attended a Town of Ware Board of Selectmen meeting on September 25, 2008 at which he promoted and inferred a PAYT and recycling program for residents was an integral component of the site assignment modification.*

III. *The Ware Board of Health finds, upon cross-examination conducted on February 11, 2008, the applicant admitted the modification does not provide for PAYT and recycling drop-off for Ware residents. (Day 4 page 664)*

IV. *The Ware Board of Health also takes notice that the communication of the PAYT program and resident recycling drop-off to the Board of Selectmen was reported by local newspapers (as known by the personal knowledge of Board members and agent) and occurred just prior to the opening of the public comment period to DEP on the proposed modification.*

Testimony of Mr. Garrett Keegan and Mr. John Blaisdell

I. *Board finds Mr. Garrett Keegan is not licensed as a professional engineer in the Commonwealth of Massachusetts by the Division of Professional Licensure /Board of Registration. The Ware Board of Health finds Mr. Keegan repeatedly referred to himself as a "licensed professional engineer" and did not disclose or reveal to the Board or its agents that his licensure as a professional engineer was from the State of Maine until cross-examination conducted on February 13, 2008.*

II. *Board finds, based on his testimony, that Mr. Keegan does not hold a college degree in the field of engineering.*

III. *Board finds, based on his testimony, Mr. Keegan does not have significant work experience in the design of an enclosed MSW transfer station in the State of Massachusetts, rather his work experience is in landfill design and closures.*

IV. *Based on the above findings of credentials, education, and work experience, the Board does not weigh Mr. Keegan's opinions and testimony as an expert, but rather as a lay person.*

V. *The Ware Board of Health also finds Mr. Keegan provided conflicting testimony regarding supervision in the preparation of the application and supporting documentation. In pre-filed direct testimony (page 2), Mr. Keegan stated preparation of documentation was provided under his direct supervision. Upon cross-examination on Day 5 of the hearing, Mr. Keegan stated he was supervised by Mr. Gary James of Green Seal Environmental Inc. a licensed professional engineer in the Commonwealth of Massachusetts. The Ware Board of Health finds only one document within the Site Assignment Modification*

Application, a map entitled "Site Plan" contains the seal and signature of Mr. Gary James.

VI. *The Ware Board of Health also finds Mr. John Blaisdell, who testified for the applicant at the public hearing, is not a professional licensed engineer.*

VII. *The Board finds therefore, no expert testimony in support of the application was provided by the applicant during the public hearing process.*

Transfer Station Definition

I. *The Ware Board of Health finds a transfer station is defined at 310 CMR 16.02 : " Transfer Station means a handling facility where solid waste is brought, stored and transferred from one vehicle or container to another vehicle or container for transport off-site to a solid waste treatment, processing or disposal facility".*

II. *The Ware Board of Health finds the proposed handling of MSW, and the limited recovery of recyclables in the MSW stream as proposed, meets the definition of a transfer station.*

III. *The Board found the testimony to the contrary by both proponent and representatives confusing as to the nature of the proposed modification with regards to MSW operations (Day 2 Page331 and 332, Day 2 Page 353 and 354, Day 4 page701 and 702).*

IV. *The Board of Health does find the existing C&D operations diverts and recovers waste, and produces and manufactures products for beneficial re-use.*

Internal Inconsistencies within the Application

The Ware Board of Health and its agent noted a number of internal inconsistencies within the application, including but not limited to:

I. *Use of rail and truck verses use of rail only for transportation out of the facility. Application Section 1A, page 6 states the transportation of MSW to disposal and/or incinerator facilities will use rail cars or large capacity over-the road trailers. However, application section 3L , page 50 states " All of the MSW will be diverted by rail to an out-of - state permitted facility". Application Section 3H, page 43 lists only handling procedures for rail car loading.*

II. *Acceptance verses rejection of recyclables mixed in MSW. Application Section 3L, page 50 states the facility will not accept recyclable materials mixed into MSW. However, page 7 of the ABC&D WBCP Narrative states if banned recyclable material is found over failure limits, it will be separated or rejected and page 11 states the facility may sort out the banned recyclable material. By page 30 of the Operations and Maintenance Plan, it is stated "Banned items will be removed from the C&D debris and MSW streams to the extent possible."*

Inconsistencies in testimony

The Ware Board of Health and its agent noted a number of inconsistencies within the testimony , including but not limited to:

I. *Mr. Keegan and Mr. Blaisdell contradicted each other with regards to the nature and extent of the inspection and recyclable diversion activities for the MSW*

stream (Day 2, page 342-343 and 348-351).

II. *Mr. Keegan and Mr. Blaisdell provided conflicting and varying testimony on traffic impacts as the hearing progressed (Day 1, page 33, 68, and 77)*

III. *Mr. Keegan testimony with regards to his site visit at Grenville Park and his observations of the facility from the Park was not supported by credible evidence and was contrary to the personal knowledge of Board members and the Board's agent of the location of the riverfront within the Park, and its relationship to the facility (Day 3, pages 477-481).*

Decision:

The Ware Board of Health, by unanimous vote based on its findings that the proposed site assignment modification for ABC&D Recycling will not meet the criteria as set forth 310 CMR 16.40 (4)(b) , 310 CMR 16.40(4)(e) and 310 CMR 16.40 (4)(g). The Ware Board of Health denies the site assignment modification of the property located at 198 East Street , Ware, MA 01082, for the reason the siting of this facility modification would constitute a danger to the public health, safety, or the environment.

In the event that this denial of site assignment modification is overturned upon judicial review then the Board finds that the following conditions are necessary to attempt to reduce the dangers to the public health, safety or environment from this facility:

I. The owner and/ or operator shall maintain all storm water management/ control features and mechanisms as designed and in operational condition. Twice annually, once in Spring and then once again in the Fall , but at times when there is no snow cover which could hinder or hide from view a complete inspection, the owner and/or operator shall have performed a thorough inspection of all drains and drainage ways, catch basins, detention and/or retention basins; perform any maintenance or repairs as needed; and within thirty (30) days submit a written report of the inspection findings and actions taken to the Ware Board of Health and the Ware Conservation Commission.

II. At any time during the year, the owner and/or operator shall immediately report to the Ware Board of Health and the Ware Conservation Commission any failure of the storm water management system at the facility site to adequately retain and or treat storm water or a significant erosion occurrence at the facility site within 24 hours of the event.

III. The owner and/or operator shall retain the services of a competent, independent third party professional qualified to conduct an adequate biological evaluation and monitoring program of the Ware River in the immediate vicinity of the solid waste management facility. The program shall at a minimum include, but shall not be limited to, five sample sites- one being immediately upstream from the facility and one other immediately downstream. The water samples shall be analyzed for, but shall not be limited to: Turbidity, nitrogen, phosphorous, dissolved oxygen, BOD, COD, as well as an assessment of the microorganisms in

the water such as zooplankton and phytoplankton. In addition sediment samples shall be taken and analyzed for metals, polychlorinated biphenyls (PCBs), and polynuclear hydrocarbons (PAHs). Such analysis shall be performed by a certified laboratory. In addition, the program shall include the evaluation and monitoring of the vegetative growth and bank stabilization status along the banks and cove of Ware River where it serves as the property line boundary for the facility. Such monitoring shall be performed twice annually for the first five years of the facility's acceptance of municipal solid waste and thereafter once annually provided the initial five year testing results reveal no discernable negative impacts. Monitoring and evaluation results, including laboratory reports and chain of custody documentation, shall be provided to the Ware Board of Health and Ware Conservation Commission in written format within thirty (30) days of completion twice annually or once annual as set forth in the terms above.

IV. The owner/operator shall , prior to obtaining from the Department Authorization to Construct and/or Authorization to Operate Permits, have performed by credentialed and qualified consultants air quality modeling utilizing both dispersion and photochemical model application and tools. The modeling shall consider anticipated emissions from the facility, air pollution from emissions of both on-road and off- road vehicles at the facility, as well as all SSEIS register polluters within a one (1) mile radius. The results of such air quality modeling will then serve to assist in the design and implementation of effective control strategies to reduce emissions of harmful air pollutants and to meet required state and federal air quality standards. A complete report, including but not limited to: model results, recommendations, and any reduction strategies identified; shall be submitted to the Ware Board of Health for review, comment, and final approval.

V. The facility shall retain a competent, qualified, and licensed exterminator to once weekly inspect and conduct surveillance activity at the facility and on the grounds (including the constructed storm water drainage and retention features) for rodents, vermin and other pests of public health significance. Any pest control method applied shall utilize integrated pest management techniques as well as insecticide and rodenticide resistance control strategies. The exterminator shall issue a monthly, written activity report to the Board of Health detailing the results of inspections and surveillance, and any pest management control utilized during the previous month.

VI. For the protection of public health and the environment from fugitive dust and particulate emissions , odors, and windblown litter the facility shall install ventilation equipment capable of maintaining negative air pressure, including during period when the rapid close doors are in the open position, that is sufficient to prevent the escape of litter, particulate matter, and malodorous air. Exhaust air shall be ventilated thru air filters and/or dust collectors and other equipment necessary to remove particulate matter and malodorous by-products. All filter and equipment shall be maintained in proper working order. Odor control equipment shall be installed that shall automatically neutralize odor in exhaust air as it is ventilated from the facility. The odor control equipment shall include a permanent hard-piped high-pressure system, suspended above the facility's tipping floor with nozzles strategically aimed at fans and exhaust vents. The odor-

neutralizing agent shall be applied as a mist in the vicinity of exhaust points from the facility. A scented masking agent is not an odor neutralizing agent. Dust suppression misting equipment shall also be maintained in proper working order. Ventilation and air-exchanges within the structure shall be of sufficient capacity and exchanges per hour to meet applicable health regulations, including occupational health standards.

VII. The industrial wastewater holding tank shall be sized, using standard practices of 200% of anticipated daily wastewater generation, and shall include a reasonable surge capacity in the event of fire fighting activity. In the event generally available engineering and/or technical standards are not available to estimate gallons per day generation based on square footage and/or tons per day, the size of the holding tank shall be determined by actual water usage and waste water generation by a similar size and type facility located in Massachusetts.

VIII. The Town of Ware shall establish a "Facility Monitor Account" operated under the direction and control of the Ware Board of Health. The Ware Board of Health shall employ a qualified person to monitor activity and compliance at the facility. Prior to accepting MSW, the owner shall deposit the amount of $46,400.00 to be placed in the Facility Monitor account to cover the reasonable and anticipated expenses of the Town of Ware Board of Health for such monitoring. On January 1st in every following year thereafter, the owner shall deposit $46,400.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure.

IX. The Town of Ware shall establish a "Emergency Responder Facility Impact Account" operated under the joint direction and control of the Ware Board of Health and the Town of Ware Fire Chief. Prior to accepting MSW, the owner shall deposit the initial amount of $20,000.00 to be placed in the Emergency Responder Facility Impact account to cover the reasonable and anticipated expenses of the Town of Ware for equipping and training first responders for chemical or hazardous emergencies at the facility. On January 1st in every following year thereafter, the owner shall deposit $5,000.00 plus any inflation increased based on the CPI- Boston- All Urban Consumers of the previous year using the October figure for the purpose of continuing education and training of first responders.

X. Rapid close door shall be maintained in the down, closed position when not in use by a vehicle entering or existing the facility.

XI. All material, including C&D due to the potential of vermin harborage from the MSW operations, shall be removed from the tipping floor at the close of operations daily.

XII. Any MSW in partial full rail cars within the interior facility shall be in sealed air-tight containers at the close of operations. Any MSW in full rail cars stored on the exterior rail spur shall be sealed at all times in air-tight containers.

XIII. The owner/ operator shall institute a proactive gull control program in compliance with DEP Policy. The operator shall maintain a contract with a qualified professional to administer such a gull control program and the program shall include responding and remediating gull complaints on neighboring properties. A written gull control program shall be submitted to the Ware Board

of Health for final approval prior to obtaining "Authorization to Operate" from DEP.

XIV. The owner/operator shall maintain on site and in working order at all times radiation detection devises. Such devices shall be examines and tested by an independent third party qualified to make such an examination on a monthly bases, with the written results of such testing and examination forwarded to the Ware Board of Health Office. If at any time such examination reveals the inoperability or malfunctioning of the radiation detection devices, such examination, testing, and written reporting shall occur on a weekly bases.

XV. The Ware Board of Health asserts and re-affirms that all previous ordered conditions as enumerated in their June 9, 2004 final decision for the original site assignment for the property remain in full effect.

XVI. As testified to in the public hearing, the owner/operator (and any future owner/operator of the facility shall maintain a "hotline" by which resident can report nuisance condition resulting from the operation directly to facility, and the facility shall respond, investigate, and remediate the nuisance. A written list of complaints received and corresponding action taken by the facility (including dates and times as well as name and of complainant if known) shall be forwarded to the Ware Board of Health on a monthly bases.

XVII. The owner/operator shall have performed daily during operations the sweeping/ cleaning of all driveways, access roads, and paved areas of the facility. In addition, as weather permits, the owner/operator shall have performed at their own expense, or incur the costs of the Town of Ware performing, the sweeping and cleaning of Town of Ware roadways used leading to and exiting from the facility within 2.5 miles. The manner and frequency shall be determined by the Town of Ware Department of Public Works Superintendent.

Signed this day, February 25, 2008

Joseph J. Ciejka **Michael Juda** **Donna Rucki**

Any person aggrieved by this decision may, within 30 days of publication of the notice of decision, appeal under the provisions of MGL C. 30A, section 14.

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, SS February 25, 2008

Then personally appeared the above named members of the Ware Board of Health, known to me personally, and acknowledged the foregoing instrument to be their free act and deed before me.

Margaret D. Sorel, Notary Public
Commission Expires: 09-12-2008

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DRAFT

ABC&D RECYCLING, INC.

Facility Impact Assesment

August 2007

Prepared for:

ABC&D Recycling, Inc.
198 EAST STREET
WARE, MA 01082

Green Seal Environmental

Providing Innovative Solutions For . . .

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Facility overview

ABC&D proposes to modify a large solid waste handling facility at 198 East Street, Ware, Massachusetts. The existing facility is a 750-ton per day (tpd) processing and handling facility that accepts construction and demolition (C&D) waste. The modification planned is to accept municipal solid waste (MSW) in addition, without increasing the total volume of waste accepted. MSW will be tipped and transferred within the existing building into airtight/leak-tight rail cars or large over the road trailers, which will be transported off-site to disposal and/or incineration facilities.

The facility has been developed using state-of-the-art BMPs to minimize potential impacts to the site and surrounding environment. The proposed improvements of this site, will include segregation of C&D and MSW on the tipping floor, installation of quick closing fabric overhead doors, and addition of an odor control essential oil mixture to the existing water mist dust suppression system.

ABC&D intends to develop and operate a solid waste handling facility with limited processing activities including handling and packaging of MSW. C&D materials will continue to be separately processed by shredding, screening and sorting as appropriate to recover useful materials. Limited separation of unacceptable material from the MSW will occur in order to comply with applicable Massachusetts waste bans (i.e. cardboard, aluminum cans, etc.).

The entire interior of the building will be utilized for the tipping, consolidation, stockpiling and loading of incoming MSW and C&D material.

The following is a partial listing of the major proposed facility BMPs:

1. Modify an existing approximate 21,600-square foot steel building to allow separate tipping and handling of C&D and MSW with indoor rail integration to allow for the operation to be conducted entirely indoors,

2. Maintain the on-site infrastructure to properly control/treat stormwater, noise, odor and traffic congestion,

3. Replace the existing truck access overhead doors with quick closing fabric overhead doors to allow the doors to remain closed except for truck entry and exit, preventing release of fugitive odors during operations.

4. Institute proper inspection and handling protocols to reduce the potential for on and/or off site nuisance conditions,

5. Incorporate an indoor odor control modification to the existing dust suppression system to assist in the reduction of fugitive odors,

6. Institute proper controls to mitigate on/off-site environmental impacts.

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WORCESTER magazine

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CITY DESK

The real dirt | Kindergarten controversy | Infograph
Perp Talk | Development Watch

The real dirt on the Greenwood Street landfill

A lawsuit questions where the money's going

By Noah Schaffer

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It looked for a minute there as if the heated controversy over the re-use of the Greenwood Street landfill was over for good. Well, it's not. A lawsuit is questioning the handling of money coming into the project.

Before it was under way, the project was put under close scrutiny on several fronts. One was the quiet way in which Worcester officials helped Chelmsford-based Mass. Environmental Associates principal Pat Hannon navigate the political hurdles facing the re-opening of a long-closed dump. Another was the city administration's desultory opening of bids to other companies, followed by an apparent rush to designate Hannon as the official contractor. Finally, there were the repeated reductions in the original promise that the project would generate something like $6 million in fees to the city.

The Greenwood Street landfill.

Now there's another kind of controversy in the form of a lawsuit between MEA and Casella Systems Inc., which competed for the project and is now working with MEA. The lawsuit charges that MEA may be diverting proceeds to cover Pat Hannon's significant personal debts. A court has ordered changes in the handling of that money.

Meanwhile, MEA fires back that Casella violated its contract by asking to meet with City Manager Michael O'Brien. According to his office, the meeting never took place.

As many questions as there were when the City of Worcester selected Mass. Environmental Associates to dump and then re-seal the Greenwood Street landfill, more arose when it was revealed that MEA owner Pat Hannon had IRS troubles concerning a piece of property he owned. MEA was obligated to provide a financial guarantee that the work would be done. Enter the more-financially-secure Casella Systems Inc., a larger, Vermont-based firm and one of the losing bidders for the project. In May, Casella issued a press release announcing that it was part of a "joint venture" with MEA.

Now, Suffolk Superior Court documents show that the business arrangement became strained after the state refused to allow "fines and residuals," a certain class of construction and demolition material, to be brought into the landfill under the first phase of the project. Handling that stuff is very lucrative, so the ban cut deeply into the potential profitability of the project. In fact, as the suit shows, the project has yet to make money, even as MEA owner Hannon struggles with his personal financial problems.

The IRS has placed more than $5 million in tax liens against Hannon's holdings. Also, a court recently put an $800,000 attachment on a Newton property he owns. "Hannon's precarious financial position suggests one obvious reason for the refusal to account for the

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funds and the refusal to place the funds in a controlled account. The funds are being used to pay or secure personal debts or personal debts of MEA," reads the Casella complaint.

In a written affidavit, Hannon responds that the "project is losing money now and for the foreseeable future .... The soil market is depressed and tipping fees are more than 40% lower than reasonably anticipated when the project started. The monthly expenses exceed the monthly income generated to date."

Hannon also states that he is "not insolvent and I am able to resolve the IRS issues described in the complaint."

At the time of the affidavit, court records show, Casella had contributed more than $2 million to the project, and made monthly $72,000 management fee payments to MEA. The company also secured a $3.45 million bond; however, it complains that the proceeds were being deposited directly into MEA's account instead of going to News of Worcester, an LLC set up for the project. The complaint said that MEA refused to account for $1.46 million in funds that Casella should have received "for selling space at the landfill project that the LLC was created to complete."

In his affidavit, Hannon says that Worcester Public Works Commissioner Robert Moylan refused to entertain the prospect of having Casella be named on the license for the site. According to Hannon, Moylan said, "We don't want another Brockton or Southbridge situation," referring to problems in two other Casella projects. "I'm not hearing any good things about Casella." (MEA has had other problems as well; earlier this year, it was fined $46,000 and settled with the state Department of Environmental Protection over the use of contaminated soils to cap a landfill in Wilmington.)

The city and DEP's refusal to allow dumping fines and residuals at the site and to list Casella on the license created the "resulting disintegration of the operating agreement," writes Hannon. He did not return several calls seeking comment.

Hannon also claims in the lawsuit that "Casella attempted to disparage MEA's reputation to the city [of Worcester] and get the city to terminate the contract with MEA. Most recently Casella contacted MEA's longtime customer, Charter [Environmental Inc. of Wilmington], threatening to 'blow the job up.'" The suit alleges that by asking for a meeting with Worcester's city manager, Casella violated the contract. Both sides are seeking arbitration for their complaints.

MEA has something of an alarming warning: that if the project is unable to continue, it will result in "incomplete investigation and remediation of explosive levels of gas at the property line currently under investigation by MEA's consultants along with the DEP."

Moylan explains, "There is a location that, from time to time, shows concentrations of gas above a certain threshold. The conventional thinking has been that, for lack of a better term, it is a hot spot."

According to DEP spokesman Edmund Coletta, "We were aware of it going back six to eight weeks. They had moderately exceeded their explosion limit from some tests. There's no imminent hazard, no imminent danger."

One of the court documents is a statement from Moylan that MEA has performed in "an exemplary manner ... [MEA has] maintained full neighborhood support and has satisfied the terms of the agreement. We look forward to your continued work with the city."

Suffolk Superior Court Judge Ralph Gants ordered a partial preliminary injunction commanding that MEA deposit revenues into the LLC, which lists only Casella as a principal. Gants ruled that while the contract might not explicitly state that the tipping fees go to the LLC, it "makes no sense" otherwise, since the LLC has to pay MEA tipping fees greater than $9 per ton as well as the city it's $1.25 per ton royalty fee.

"MEA appears to have been depositing tipping fees earned ... into an MEA account .... MEA has not adequately responded to the request by Casella for documents and information ... involving invoices and bank documents reflecting where the tipping fees were deposited and how they have been spent," wrote Gants. "MEA's failure to cooperate with [Casella]'s efforts to learn the status of its tipping fees is troubling, especially in light of the apparent financial difficulties faced by MEA."

Gants found that Casella is "likely to prevail" in the arbitration, but he refused to order that Casella approve any monies spent on the project, saying that MEA "has the exclusive responsibility to manage [the landfill] and owes important obligations to the city ... for the

management and capping of the landfill."

Gants also ordered that no money from the fees can be spent by MEA except on behalf of the landfill. The court also ordered that MEA release to Casella full accounting and financial records for the project.

Moylan says that he's "not concerned" about the fighting between Casella and MEA, or whether the project is profitable. "The concern we have is that we're going to get $1.25 per ton from every ton that comes in, and then, when they get in excess of $12 a ton, we share a higher premium," he says. "If [Hannon] can also make money while doing that, I'm a happy guy, but if he can't, that's for him to deal with. And they have gotten over $12 a ton from time to time. So they send us a schedule each month and we have that checked, and their tip fees vary from vendor to vendor and in some cases they have gotten over $12 a ton and it is nice."

As for whether he bashed Casella in a conversation with Hannon, Moylan says his simple wish was that MEA remain the only license holder for the landfill project, so that any of the other firms that had applied for the job wouldn't come back and demand another shot at it. "It has nothing to do with Casella or their reputation, which as far as I'm concerned, they've got a good reputation with regulators," says Moylan. o

Noah Schaffer may be reached at nschaffer@worcestermag.com.

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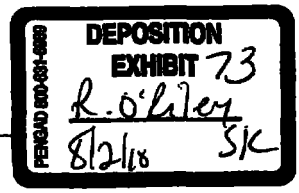

Brayton, Jeff

From: Wecapfree@aol.com

Sent: Sunday, April 18, 2010 7:13 PM

To: DAMurphy@tigheBond.com; Algie, James; Brayton, Jeff; james.mcquade@state.ma.us; george@lemelmanpc.com

Subject: Fwd: ABC&D

Attachments: ABC&D

This went out to the Town manager today, the cost of opening the drop off is minimal, Casella will take the recyclables in Auburn, and does it make sense to a resident that they can recycle at the waste facility in town but they cant drop off their trash!

Once the residents start using the drop off they will be demanding disposal, the pole of public opinion should leverage the town, if the town does not co operate you can close the drop off any time and really piss the people off at the town, we will have access to every person who recycles in town thru the drop off, if we issue a recycling sticker we can maintain a data base and develope a contact list for our MSW campaign.

I started the first drop off in Taunton, and expanded it to mandatory recycling for rubbish pickup, no recycling bin at the curb no pick up, we then expanded it to one barrell with pay as you throw for additional waste, recycling went up 43% in two months.

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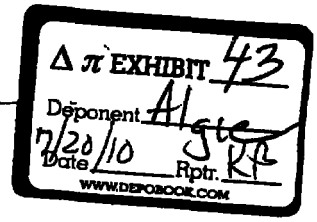

Brayton, Jeff

From: Wecapfree@aol.com

Sent: Wednesday, February 24, 2010 7:18 PM

To: DAMurphy@tigheBond.com; DDuffy@Geosyntec.com; rrussell@pabianrussell.com; pjd@truelovedee.com; hannonp@bc.edu; Brayton, Jeff; Algie, James

Subject: STB Filing

,The attached document was filed today in Washington at the Surface Transportation Board, it is also available on the STB Web Site, this filing does not require any local or State notification or notice, we did get a courtesy copy to MDOT via ABC's engineers, this filing should become effective in about 30 days, and then we will file the Notice of Land Use Exemption with the STB, that filing will require notification to just about every agency you can think of, and then a few more, other than being in the radar this is not a big deal and we expect very little push back if any.

It's good for the environment!

Pat

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Brayton, Jeff

From: Matthew Donohue [matthewdonohue@donohuehyland.com]
Sent: Wednesday, March 10, 2010 5:00 PM
To: jon@sandslaw.com; Brayton, Jeff
Subject: FW: ABC Residuals and Fines
Attachments: Matthew L Donohue.vcf

From: Matthew Donohue [mailto:matthewdonohue@donohuehyland.com]
Sent: Wednesday, March 10, 2010 5:00 PM
To: 'Wecapfree@aol.com'
Subject: RE: ABC Residuals and Fines

I have had a discussion with Dick. He will "not be available for comment" on any matter regarding ABC&D. If you do need him for anything let us know. Great to see things moving forward. Good luck on the permitting.

Very truly yours,
Matthew L. Donohue

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From: Wecapfree@aol.com [mailto:Wecapfree@aol.com]
Sent: Saturday, March 06, 2010 8:11 AM
To: matthewdonohue@donohuehyland.com; jbrayton@countrybank.com; jalgie@countrybank.com
Subject: ABC Residuals and Fines

I know that Dick has been concerned about the pricing of incoming materials at ABC, just so everyone understands my pricing I have been successful in negotiating a tipping fee at the Southbridge Landfill with my friends at Casella of $15.00 per ton for residuals and fines, fortunately NASDI picked up two large jobs that had

material that Casella wanted, so Chris met with Casella and he negotiated with them to get ABC on Casellas radar screen.

They have also agreed to take our processing residue and waste for $35.00 a ton, so with Tafisa taking 50% of the processed waste for free and Casella taking residual and fines for $15.00 a ton and the trash component for $35.00 a ton the picture should get clearer, compared to $50 in a rail car, this is a great thing for ABC.

The rail exemption is going along quietly as we expected, Leonard Singer is now preparing the filing for the "Land Use Exemption" David Murphy from Tighe and Bond was at ABC on Friday putting together the necessary documents and making a list of documents we need to get, when this is filed near the end of March, the Town, State and every agency you can think of will get notice of this filing, I wolud ask that no one have any comment to any agency or the press, they will be calling and Leonard Singer should handle this, I am open to discussing this if you want to be involved.

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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WESTERN REGIONAL OFFICE
436 Dwight Street • Springfield, Massachusetts 01103 • (413) 784-1100 • FAX (413) 784-1149

MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

STEPHEN E. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

ABC&D Recycling, Inc.
198 East St.
Ware, MA 01082
Attention: Richard O'Riley

Feb. 13, 2006

Re: Ware-DSWM-C&D Processor
Authorization to Operate (ATO) Permit
ABC&D Recycling, Inc.
198 East St.
06-309-005
BWPSW06
Transmittal #W073238

THIS DOCUMENT REPRESENTS THE MassDEP'S AUTHORIZATION TO OPERATE PERMIT ISSUED PURSUANT TO 310 CMR 19.037, ISSUANCE OF PROVISIONAL PERMIT DECISION.

Dear Mr. O'Riley:

On January 17, 2006 the Massachusetts Department of Environmental Protection (MassDEP) received the Authorization to Operate (ATO) permit application (the application) for the ABC&D Recycling, Inc. (ABC&D) construction & demolition (C&D) material processing and handling facility (the Facility), which has been constructed on a portion of the Rocoso Auto Parts auto salvage yard property at 198 East Street (Route 9) in Ware, MA. The application was prepared by Green Seal Environmental (GSE) on behalf of the applicant, ABC&D Recycling, Inc. (ABC&D), and the application was signed by Richard C. O'Riley, president of ABC&D. The certification statement and as-built construction plan contained within the application bear the signature and seal of Gary D. James, registered Massachusetts Professional Engineer (P.E.) #32531, and the signature of John S. Blaisdell, Project Manager, certifying that the Facility was constructed as proposed and approved.

On August 30, 2002, the Secretary of the Massachusetts Executive Office of Environmental Affairs (EOEA) issued a Certificate which determined that the Final Environmental Impact Report (FEIR) submitted for the proposed project complied with the Massachusetts Environmental Policy Act (MEPA) regulations at 301 CMR 11.00. The MassDEP issued its Positive Site Suitability Report (SSR) for the Facility on May 23, 2003, pursuant to 310 CMR 16.13, which concluded that the proposed site is suitable for use as a C&D Processing & Handling Facility. On June 18, 2004 the Ware Board of Health (the BOH) issued a revised,

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final Site Assignment (the Site Assignment) for the Facility, pursuant to 310 CMR 19.020. MassDEP issued the Final Authorization to Construct (ATC) permit approval for the Facility on January 25, 2005. Construction of the Facility began in the Spring of 2005 and was completed recently. The application contained a copy of the deed notice containing reference to the ATC permit (as required at 310.CMR 19.041(6)), which was registered at the Hampden County Registry of Deeds on January 12, 2006.

Facility Description

The Facility is located on the site-assigned portion(10 acres) of the Rocoso Used Auto Parts property. A new 21,600 square foot (sf), fully enclosed building was constructed in the center of the property, west of the Massachusetts Central Railroad tracks, to provide cover for all tipping, processing, and truck/rail loading activities for C&D material.

The Facility building meets the minimum setback distance of 500 feet from all existing residential buildings. The Facility building is located approximately 1,700 feet from the Town of Ware's Grenville Municipal Park, located southwest of the facility, across the Ware River. The Facility building, and all associated pavement, roadways and storage areas are located at least 100 feet from the property line, except that the Facility building is closer than 100 feet to the property line of the Massachusetts Central Railroad Line, which will service the facility. On May 19, 2003, ABC&D received from the Commissioner's Office of the MassDEP a waiver of the site suitability criteria at 310 CMR 16.40(4)(h) for the 100-foot setback to the property line of the Massachusetts Central Railroad Line.

The Facility is outside the 100-year floodplain boundary, and outside of the 200-foot Riverfront Area to the Ware River. The only work performed within the Riverfront Area has been plantings for visual screening purposes and the installation of the Facility's storm water management systems. An approved Order of Conditions was issued by the Ware Conservation Commission on October 15, 2004 for the project. Plantings of white pine were completed along the southwestern property line, between the Facility and Grenville Park, as required by the ATC.

As required in the ATC, three groundwater monitoring wells were installed on-site and sampled for the parameters outlined in the Solid Waste regulations at 310 CMR 19.132(1)(h). The sampling showed that the groundwater at the Facility site has apparently not been significantly impacted by the auto salvage operation, with all volatile organic compounds (VOCs) non-detectable (ND), except for traces of the VOC methyl tertiary butyl ether (MTBE, a gasoline additive) at 2 to 3 parts-per-billion (ppb), and only apparent background (natural) levels of heavy metals.

Proposed Facility Operation

The Facility will be serviced by trucks for transport of incoming C&D materials and by rail and trucks for transport of outgoing reclaimed materials and process residuals. The Facility building includes four large overhead doors for the truck and rail entrances, which will be kept closed when not in use. Additionally, clean, pre-sorted materials including asphalt, brick and concrete (ABC), as well as

clean wood, will be tipped and processed in designated outdoor areas just west of the Facility building, and clean, sorted, recyclable metal and gypsum will be stored in covered containers adjacent to the Facility building. The outside ABC holding areas have been walled with moveable pre-cast retaining walls and partitions and 15-foot mesh fencing. Although the Site Assignment allows a total volume of 35,000 cubic yards (cy) of outdoor storage of processed and unprocessed ABC and clean wood material, ABC&D has proposed in the application to not exceed a total volume limit of 10,000 cy for outdoor storage of these materials. ABC&D proposes to perform outside crushing and grinding of ABC and clean wood on 60 days per calendar year.

The maximum capacity at the facility is proposed to be 750 tons per day (TPD) of C&D material, including ABC and clean wood, except that the maximum capacity on Saturdays will be 500 TPD. The proposed maximum yearly capacity of the Facility is 214,500 tons of C&D material, including ABC material and clean wood. Municipal solid waste (MSW) and hazardous wastes will not be accepted at the facility. The proposed hours of operation for the facility are Monday through Friday, 7:00 AM to 4:00 PM, and Saturday 7:00 AM to 1:00 PM.

Truck traffic will utilize one entrance and one exit onto Route 9, at the Facility scalehouse. As required in the Site Assignment, there is an overflow truck queuing area located just within the entrance, so that trucks will not queue onto Route 9 waiting to enter the Facility. The gates at the Facility entrance will be closed and locked when the Facility is not in operation. The entire access road on-site and the area around the Facility building has been paved, to reduce dust conditions. Outgoing materials to be transported from the site will be via both rail and truck. To facilitate rail use, three rail spurs were constructed off of the existing Massachusetts Central Railroad line; a portion of the westernmost rail spur is located within the building for loading of rail cars.

All stationary processing equipment within the Facility building is electrically powered, and consists of a shredder, a C&D residual grinder, a clean wood grinder, a trommel screen, a picking station, magnets, and conveyor belts. Mobile equipment to be used both within and outside the Facility building will include trucks, a wheeled loader, Bobcat loader, and two excavators. A water truck will also be used for outside dust control. GSE states that the mobile equipment to be used at the Facility is primarily new and fully complies with current emission standards, therefore diesel retrofits are not necessary. Outdoor processing will include periodic crushing and screening of ABC material using a concrete crusher and concrete screener, and grinding of clean wood using a wood grinder, proposed by ABC&D to occur a maximum of 60 days per calendar year. ABC&D submitted to MassDEP a completed Very Small Quantity Generator (VSQG) registration form (#MV 4139677046) for the Facility, for both hazardous waste and waste oil which will be generated from operation of the Facility equipment.

Incoming C&D loads will be tipped within the building, and each load will then be inspected by an ABC&D employee possessing a minimum of 24-hour Asbestos Inspector certification. Any asbestos containing materials (ACM) found in incoming loads will be separated, and properly handled and disposed as ACM. The ABC&D employee will also inspect each load for any other banned items, such as municipal solid

waste (MSW), hazardous wastes, or waste ban items, which will be removed for proper disposal (or recycling, as appropriate) off-site. Gypsum will be removed from incoming loads for shipment to an off-site gypsum recycling facility, and to reduce gypsum content in C&D residuals and C&D fines.

The equipment within the Facility building will be utilized to reduce the incoming C&D material in size, and to separate recyclable materials from the incoming C&D material. Screening will remove C&D fines (less than 1-inch in size) and C&D residuals (generally less than 3 inches in size) from recyclable materials. Screened material will be conveyed to several raised picking stations. Recyclable materials, including metals, clean wood, ABC, and cardboard will be removed and deposited into bins below the picking stations. Processed C&D residuals, C&D fines, unprocessed C&D material, and recyclables will be loaded into rail cars or trucks, with all loading being done within the building. Processed C&D residual or fines material will be stored within the building and also in up to three covered rail cars on the rail siding.

The application contained copies of written agreements for the following:

- the disposal of C&D material at permitted out-of-state disposal facilities (the Minerva Landfill in Waynesburg, OH, and the Seneca Meadows Landfill in Waterloo, NY);
- a revised Beneficial Use Determination (BUD) permit approval for the in-state beneficial reuse of C&D residuals for landfill grading and shaping at the Cottage Street Landfill in Springfield, MA;
- the acceptance of "clean" wood fuel material at the Boralex facility in Fort Fairfield, ME;
- the recycling of metal at Freedman Steel of Springfield, MA; and
- the recycling of clean gypsum at G-P Gypsum Corp. of Newington, NH.

The Facility is serviced by the Town of Ware public water supply system. Water misting nozzles and misting fans have been installed and will be used for dust suppression inside the building above the processing line, and on tipping and loading areas inside the building. A water cannon has been installed within the building for dust suppression for the tipping floor area. The amount of water to be used will be limited to the amount required to adequately wet the target areas. All such water that comes into contact with C&D material will be treated as industrial wastewater, and will drain within the building to a permitted, 1,500 gallon tight tank, which will be pumped periodically and removed off-site for disposal at a permitted wastewater disposal facility. Additional dust suppression will occur on a periodic basis outside the buildings on roadways and on concrete prior to its crushing. The Facility building contains an automated sprinkler system and fire extinguishers for fire suppression. A Fire Contingency Plan for the Facility was prepared and submitted to the Ware Fire Department and was deemed acceptable.

Bathrooms were installed within the Facility building, which utilize a separate, on-site, permitted septic system (utilized only for the wastewater from the bathrooms and break room, not for C&D contact water). Exhaust fans and air intake louvers have been installed in

the building to ensure proper airflow requirements for worker health and safety. The building will be closed and locked when the Facility is not in operation.

The storm water management system includes five catch basins at the edge of the paved area around the Facility building, which direct stormwater to an oil/water separator, sedimentation basin and detention (infiltration) basin. The catchbasins are each equipped with hoods to keep oil or gasoline from flowing out of the catchbasins. Any oil or gasoline collected in the catchbasins or oil/water separator will be disposed of properly off-site. A second, smaller stormwater detention basin was constructed for stormwater runoff from the ABC storage area.

As required by the ATC and the Site Assignment, a Pre-Construction Noise Study was performed by GSE in August 2005, which included a determination of the existing ambient noise level at five locations along the property line, and modeling of anticipated worst-case noise levels at these locations during Facility operation. Modeled noise levels were compared to both the MassDEP's Division of Air Quality Noise Policy DAQC 90-001 (no more than 10 dB above background at the property line) and the noise standards of the Ware Zoning Bylaw. Noise impacts from activities outside the Facility building are anticipated from trucks, a wheeled loader, and from ABC crushing machinery and a grinder for clean wood. Noise impacts from activities inside the Facility building are anticipated from trucks, the two excavators, a wheeled loader, and from the stationary screening and grinding machinery; these noise impacts were modeled with attenuation from the building walls taken into effect and for both a "doors closed" and "doors open" scenario. The Pre-Construction Noise Study concluded that:

- The cumulative noise level at the property line for the operations within the Facility building would not exceed the MassDEP or Town of Ware criteria, even under the worst-case conditions, with the doors open;
- The cumulative noise level at the property line for the outside ABC crushing and wood grinding operations could exceed the MassDEP and Town of Ware criteria, however operation of the outside ABC grinder and wood shredder will be "occasional", and an earthen sound berm could be constructed to sufficiently attenuate the noise levels to meet the criteria;
- Backup alarms on mobile equipment used outside the building (i.e. loaders) could exceed the MassDEP and Town of Ware criteria. GSE recommends the installation of "ambient-type" audible backup alarms on all on-site mobile equipment, which adjust the alarm level to the ambient noise level, to sufficiently attenuate the noise levels to meet the criteria; and
- As required by the Site Assignment and ATC, Post-Construction noise surveys will be conducted at 1-week and 3-months after startup of the Facility, and the 3-month survey will include outside ABC crushing and clean wood grinding noise measurements.

The application contained an updated Operations & Maintenance (O&M) Plan, which includes:

- Procedures for inspection and sampling of incoming C&D material, including inspection and sampling procedures for asbestos;
- Documentation of the required 24-hour Asbestos Inspector

certification for three facility employees, and proposals for the ongoing training and certification of facility employees for asbestos inspection and sampling;

- Contingency plans for any unacceptable wastes encountered;
- A Waste Ban Plan in compliance with the current requirements of 310 CMR 19.017;
- A gypsum removal plan;
- An Environmental Monitoring Plan, including maintenance procedures for regular inspection and cleaning of stormwater catchbasins and the oil/water separator, and provisions for the handling and disposal of any recovered oil or gasoline;
- A Spill Prevention, Containment and Control Plan (SPCC), including contingency plans for the handling and reporting of any potential oil, gasoline or other chemical spills at the Facility building, paved area, or other portions of the Facility grounds;
- Provisions to comply with the MassDEP's requirements at 310 CMR 7.11 for idling limits for motor vehicles (5 minute limit) and diesel locomotives (30 minute limit);
- Speed limits and recommended safety practices for vehicles within the facility limits;
- Provisions to ensure that outgoing truck loads do not exceed applicable local, state, and federal Gross Vehicle Weight (GVW) limits for over-the road transport;
- Measures to control dusts, windblown litter, vectors, and other potential nuisance conditions;
- Provisions for the maintenance of tonnage and other operational records at the scalehouse, and the submittal of monthly and annual reports to the MassDEP and the BOH, containing information on the total tonnages of materials accepted at the site (for each day of operation for monthly reports, and monthly and annual tonnage totals for the annual report);
- Maintenance of a facility "hot line" and log for the receipt of nuisance complaints and documentation of actions to investigate and mitigate any nuisance conditions;
- Statements by GSE that the Facility building complies with applicable OSHA and MADLI requirements or standards for worker health and safety, including ventilation requirements; and
- A copy of the material haulers education plan (Delivery Procedures manual, or DPM), including haul route restrictions, as required in the Site Assignment.

A Financial Assurance Mechanism (FAM) was included as part of the ATO permit, for potential closure costs which could be associated with the maximum, permitted storage of materials at the site. A FAM with a total value of $231,350.00 was established for the Facility through an Irrevocable Letter-of-Credit with Country Bank for Savings of Ware, MA, for potential closure costs associated with the transport and disposal of 950 tons of C&D waste and/or residuals and fines, the transport and recycling of 10,000 tons of ABC material and/or clean woodwaste, and the transport and recycling of metals and gypsum.

MASSDEP DETERMINATIONS

This application complies with the application requirements at 310 CMR 19.042 Authorization to Operate and was reviewed in accordance with 310 CMR 19.037 Review Procedure for Other Approvals. The plans and reports described above establish that the facility complies with the criteria of 310 CMR 19.042.

This document is a Final Permit issued pursuant to Massachusetts General Laws Chapter 111, Section 150A and 310 CMR 19.000, subject to the conditions set forth below. In the event this permit conflicts with all or parts of prior plan approvals or permits issued pursuant to c. 111, s. 150A or solid waste regulations in effect prior to July 1, 1990 the terms and conditions of this permit shall supersede the conflicting provisions of the prior permit approvals. This permit does not convey property rights of any sort or any exclusive privilege.

I. General Permit Conditions

Compliance with plans – The permittee shall operate the facility in accordance with the approved plans, reports, and other submittals for the project except as may be modified by the conditions set forth in Sections II. No material changes in the design or activities set forth in the approved documents shall be performed without prior written MassDEP approval.

1. Standard Conditions – The permittee shall operate the facility in accordance with the requirements and conditions of 310 CMR 19.007 – 19.011, 310 CMR 19.043(5), and 310 CMR 19.200 – 19.207.

2. Transfer – No transfer of this permit shall be permitted except in accordance with 310 CMR 19.044.

3. This permit is issued subject to the conditions of joint liability of the permittee and owner in accordance with 310 CMR 19.043(3).

4. Waste Disposal Restriction – The permittee shall maintain compliance with all of the current and future requirements of 310 CMR 19.017.

5. Permit Modifications – The MassDEP reserves the right to rescind, suspend or modify this permit by the imposition of additional conditions based upon a determination of actual, or the threat of, adverse impacts from the operation, maintenance or closure of the facility.

6. Before commencing any construction which would result in an increase in the throughput capacity of the facility beyond the capacity approved by this permit, the permittee shall obtain a new Authorization to Construct permit in accordance with 310 CMR 19.041.

II. Specific Conditions

1. Amount of Solid Waste – The Facility shall not accept more than

a total of 214,500 tons of waste material in any calendar year. The maximum peak daily tonnage rate of waste materials accepted shall not exceed 750 tons per day (TPD) during Monday through Friday, and 500 TPD on Saturdays.

2. The permitted hours of operation for the Facility shall be Monday through Friday, 7:00 AM to 4:00 PM, and Saturday 7:00 AM to 1:00 PM. The outside crushing of ABC material and grinding of woodwaste shall only occur during Monday through Friday, 7:00 AM to 4:00 PM, on a maximum of 60 days per calendar year. The Department reserves the right to further limit to any extent the total number of days per year for such outside crushing and grinding, should nuisance conditions occur, particularly noise and dust conditions. ABC&D shall notify the MassDEP in advance of the first five days of outside ABC crushing or clean woodwaste grinding.

3. Waste materials which may be accepted at the Facility include C&D material, ABC material and clean woodwastes (ABC material and clean woodwastes shall be included in all computations of tonnages of wastes received at the Facility). The Facility shall not accept any municipal solid waste (MSW), hazardous wastes as defined at 310 CMR 30.00, or any special wastes as outlined at 310 CMR 19.061, including asbestos containing materials (ACM) as defined at 310 CMR 7.00. There shall be no disposal of waste materials at the site, only processing and transfer of waste materials and recyclables.

4. Incoming trucks and other vehicles shall not queue at any time on Route 9; all incoming trucks shall utilize the on-site truck queuing loop if needed. As proposed, incoming and outgoing truck traffic for the Facility shall utilize the Mandatory Traffic Route Map contained within the Delivery Procedure Manual of the application. The Department may defer to the Town of Ware authorities for the supervision and enforcement of such truck traffic routing.

5. All tipping, processing and loading of C&D material shall be performed only within the facility building. A maximum of one day's operation (750 tons) of C&D material (total of unprocessed and processed) may be kept on the tipping floor of the Facility building at any time.

6. ABC&D shall conduct inspections of each incoming truckload at the Facility for banned waste and other unacceptable materials, in accordance with the Facility's O&M Plan and Waste Ban Plan, 310 CMR 19.017 and 310 CMR 19.061, as follows:

   (A) An ABC&D employee possessing a minimum of 24-hour Asbestos Inspector certification (the ABC&D inspector) shall thoroughly inspect each load as it is tipped for the presence of any asbestos-containing materials (ACM), as defined at 310 CMR 7.00;

   (B) Any asbestos containing materials (ACM), or suspect materials which have the potential to contain ACM, found in incoming loads shall be separated and properly handled and disposed as ACM (in accordance with all applicable local, state and federal regulations), or analyzed for

the presence of ACM by the PLM method and found to be ACM free prior to any processing or loading;

(C) The ABC&D inspector shall also thoroughly inspect each load for any waste ban items as defined at 310 CMR 19.017. All waste ban violations shall be handled (and failed loads rejected, as appropriate) as outlined in the Facility's Waste Ban Plan and the provisions of 310 CMR 19.017, and follow-up notification shall be sent to haulers for each failed load. Outgoing railcar and truckloads of all C&D materials sent for disposal shall comply with all of the provisions of 310 CMR 19.017, including the waste ban provisions on the transfer of wood for disposal.

(D) The ABC&D inspector shall also thoroughly inspect each load for any other banned items, such as municipal solid waste (MSW), hazardous wastes as defined at 310 CMR 30.00, special wastes as defined at 310 CMR 19.061, liquid wastes, and the reminder of the banned items outlined on page 27 of the Facility O&M Plan. Any waste material delivered to the Facility and determined to be unacceptable shall be rejected, properly handled and disposed (or recycled, as appropriate) at permitted, off-site facilities; and appropriate procedures implemented so as to inform haulers not to deliver unacceptable materials in the future.

7. Gypsum shall be removed as required from any C&D residuals or C&D fines, according to the Facility Gypsum Removal Plan and the conditions of any separate MassDEP BUD permit(s) for the off-site reuse of those materials, and as outlined below:

(A) Removal of gypsum wallboard by hand picking and/or picking by excavator at the delivery area and prior to any mechanical crushing, shredding, or compacting;

(B) Removal of gypsum wallboard from the C&D residuals and C&D fines stream by hand picking; and

(C) A program to encourage customers to presort clean wallboard at construction sites to facilitate recycling, similar to clean wood and asphalt, brick, and concrete wastes.

8. Outside storage of waste materials or recyclable materials at the site shall only be performed as follows:

(A) Clean woodwaste and clean ABC material shall only be stockpiled in the designated outside storage areas. The clean woodwaste and ABC areas shall contain no painted, treated, or contaminated wood or ABC material, or other solid waste. As proposed, the total maximum amount of outside storage of ABC and clean woodwaste shall be 10,000 cubic yards (total of both). There shall be no speculative accumulation of ABC or clean woodwaste material, either processed or unprocessed. The processed ABC and woodwaste material is only considered an exempt material according to the Solid Waste regulations at 310 CM 16.05 if it contains no painted, treated, or contaminated material, or other solid waste;

(B) Recyclable metals and recyclable gypsum may be stored

within covered containers adjacent to the outside of the facility. A maximum of two (2) containers of recyclable gypsum may be stored in such a fashion; and

(C) A maximum of three (3) railcars containing processed C&D materials (no more than 200 tons total) may be stored outside the Facility building at the site. These railcars shall be covered at all times, and there shall be no release from the railcars of any stormwater which has contacted C&D materials. No other C&D materials shall be stored outside the facility building at any time.

The storage of other clean materials not governed by MassDEP regulation (i.e. rocks and soil generated as part of the construction of the facility) are not restricted by this ATO permit.

9. Noise levels from operations at the Facility shall not exceed either the MassDEP's Division of Air Quality Noise Policy DAQC 90-001 (including no more than 10 dB above background at the property line) or the standards of the Ware Zoning Bylaw. As proposed, Post-Construction noise surveys shall be conducted by a qualified consultant at 1-week and 3-months after startup of the Facility, which shall include the determination of noise levels at the five previous locations along the property line for the following operating conditions:

(A) Full operations within the Facility building, for both doors-closed and doors-open scenarios of the building;
(B) Outside ABC crushing and clean wood grinding operations; and
(C) Use of the existing backup alarms for all on-site mobile equipment.

The results of the Post-Construction Noise Study monitoring shall be submitted to the MassDEP and the Board of Health within 7 days of each monitoring event. If the results show any exceedances of the MassDEP's Division of Air Quality Noise Policy DAQC 90-001 (i.e., no more than 10 dB above background at the property line) or the standards of the Ware Zoning Bylaw, remedial recommendations and a schedule for their completion shall be included with the monitoring results. MassDEP retains all rights to require ongoing noise monitoring, to require remedial actions (including the installation of ambient-type audible backup alarms on all mobile equipment, and the installation of earthen sound attenuation berms, as proposed by GSE) or to further restrict or prohibit the outside ABC crushing and clean wood grinding operations at the Facility as deemed necessary. MassDEP reserves its rights to utilize its enforcement authority for any noise violations observed at the Facility.

10. The 1,500 gallon tight tank for the wastewater collected from the Facility tipping floor shall be pumped by a licensed hauler and properly disposed of as industrial wastewater at a permitted facility within 48 hours of the high-water alarm for the tank.

11. The Facility shall not create nuisance conditions, including nuisance odors, dusts, windblown litter, or litter from incoming or outgoing vehicles at the Facility or on Route 9 near the Facility entrance. There shall be no tracking of C&D materials outside the Facility building or onto Route 9. If C&D materials or soil are tracked from the Facility onto Route 9, ABC&D shall immediately contract for sweeping of the affected roadway. Rail cars and rail storage areas, ABC and clean woodwaste storage areas, and the remainder of the Facility grounds shall be inspected and cleaned as needed to ensure that these areas are kept litter free and are not sources of windblown litter or otherwise represent a nuisance condition. ABC&D shall take immediate steps to eliminate rodents or other vectors if such are observed. There shall be no open burning at the Facility.

12. MassDEP reserves the right to require sampling of the Facility groundwater monitoring wells at any time that is deemed necessary.

13. The additional tree plantings (arborvitaes) along the eastern boundary of the site (towards Route 9) as required by the Site Assignment shall be installed by June 1, 2006 and subsequently maintained.

14. Facility inspections shall be performed on a monthly basis for the first 6 months of operation and on a bi-monthly (once every two months) basis thereafter by an independent, consultant knowledgeable in the solid waste field to determine compliance with this permit, and a report from the consultant shall be submitted to the MassDEP (and copied to the BOH) as outlined at Condition 18 of this permit. In addition to inspecting operations of the Facility, the consultant shall review the Facility records and document whether operations at the Facility have been in accordance with all conditions of this permit since the last inspection.

15. A qualified, third-party, minimum 24-hour certified Asbestos Inspector (the Asbestos Inspector) shall perform Facility inspections on a monthly basis for the first 6 months of operation and on a bi-monthly basis thereafter, and a report from the consultant shall be submitted to the MassDEP (and copied to the BOH) as outlined at Condition 18 of this permit. The Asbestos Inspector shall, during each inspection, perform the following:

(A) Visually inspect a minimum of 10 incoming truckloads (after tipping) for the potential presence of asbestos;
(B) Sample a minimum of one incoming truckload which has the greatest potential to contain asbestos (if additional truckloads appear to contain asbestos, these shall also be sampled), and submit the sample for analysis for the presence of asbestos by Polarized Light Microscopy (PLM);
(C) Perform any additional sampling of products (i.e. C&D Residuals or C&D Fines) which may be required by separate MassDEP BUD permits;
(D) All asbestos samples shall be analyzed by a laboratory

that is a successful participant in the American Industrial Hygiene Association's Asbestos Analytical Registry (AIHA's AAR), or alternatively, by a laboratory which is licensed by the Commonwealth to perform such analysis and is accredited with either the AIHA or National Voluntary Laboratory Accreditation Program (NVLAP);

(E) Record the name of the ABCD Inspector(s) working at the Facility during the inspection, and check that each such inspector has a valid 24-hour Asbestos Inspector certification;

(F) Document whether the ABC&D Inspector procedures for inspection of incoming loads are in accordance with Condition 15 of this permit;

(G) Review the Facility records and document whether asbestos inspection, sampling, handling and disposal procedures at the Facility have been in accordance with Condition 15 of this permit since the last inspection; and

(H) Record the name and document the certification of the third-party Asbestos Inspector.

The MassDEP reserves the right to require ambient air sampling for asbestos at the Facility at any time, if deemed necessary.

16. ABC&D shall retain, at the Facility, all records and copies of applications, reports, and other documents required by this permit, which shall be readily available for inspection by the Department and the BOH. ABC&D shall maintain on-site, at a minimum, the following records on a daily basis:

(A) Tonnages of C&D debris, ABC material and clean woodwaste received at the Facility;

(B) Tonnages of ABC material and clean woodwaste processed at the Facility;

(C) Tonnages of recyclables, including metals, ABC, and clean wood shipped from the Facility, and gypsum wallboard shipped for disposal or recycling;

(D) Tonnages of C&D debris shipped for disposal, and C&D residuals and/or C&D fines for reuse; and

(E) A material shipping record for each incoming and outgoing load detailing, at a minimum: the contents of the load; the site of generation; the receiving facility; tonnage received or shipped; date of shipment and receipt; truck ownership; and driver identification.

ABC&D shall also maintain on-site the following records:

(F) The results of all sampling and analysis performed for materials at the Facility; and

(G) Documentation of all Asbestos Inspector training and certification for ABC&D employees, and of other external or in-house training of employees.

17. The following sampling, analysis and reporting shall be completed for all C&D residuals and C&D fines produced and

shipped from the Facility:

(A) The C&D products must be well graded so that they are suitable for the engineering application intended. No more than 10% of the material (by weight) shall exceed 6 inches in size in any dimension, and the maximum size shall be 12 inches in any dimension.

(B) ABC&D shall remove gypsum-containing material, paper, plastic and cardboard from the C&D residuals and C&D fines to the fullest extent possible.

(C) ABC&D shall perform sampling and analysis of final products in accordance with the following requirements:

1. All analyses shall be performed on representative samples of the material.

3. A qualified environmental professional shall perform any sampling using approved ASTM or other recognized sampling methods.

4. Samples taken shall be composite samples made up of at least eight aliquots taken at equal intervals throughout the day.

5. Samples shall be sent to a Massachusetts-certified laboratory for analysis using standard chain of custody procedures.

6. All analyses shall be performed pursuant to Massachusetts and/or EPA approved test methods.

(D) Asbestos Sampling and Analysis. A daily composite sample shall be taken and analyzed for the presence of asbestos fibers. The daily composite shall be made up of at least eight aliquot samples taken at equal intervals throughout the day.

1. Samples must be sent via chain of custody to a certified lab.

2. Samples shall be analyzed utilizing Polarized Light Microscopy (PLM) testing methods.

3. ABC&D shall obtain written approval from the Department before using an alternative test method.

4. If sampling of the final product detects asbestos twice in a thirty (30) day period, ABC&D shall notify the Solid Waste Section Chief at the Department's western regional office within five (5) business days and provide an evaluation of why asbestos may have entered the facility in each circumstance, as well as steps taken to prevent re-occurrences.

(E) The following sampling and analysis shall be conducted on a monthly basis:

1. Volatile organic compounds (VOCs) by EPA Method 8260 or equivalent.

2. Semivolatile organic compounds (SVOCs) by EPA method 8270 or equivalent.

3. Extractable petroleum hydrocarbons (EPH).

4. Metals

   a. Arsenic, barium, cadmium, chromium, lead, selenium, silver, and mercury (total concentrations).

   b. RCRA metals (TCLP). Where the total concentration of a metal in any sample is greater than 20 times the Toxicity Characteristic Rule standard, a Toxicity Characteristic Leaching

Procedure (TCLP) by EPA Method 1311 and analysis for that metal shall be performed.

5. Loss on ignition (LOI).
6. Sulfate: TCLP by EPA Method 1311 and sulfate by EPA Method 9035 or 9036 or equivalent and EPA method 9056.

18. Monthly operating reports shall be submitted to the MassDEP's Solid Waste section (and copied to the BOH) by the fifteenth day of the following month, containing the following information:

(A) A summary of the tonnages of C&D material, ABC material, clean woodwaste and recyclables accepted at the Facility and shipped from the Facility during the month and the current calendar year;

(B) A summary of the tonnages of ABC material and clean woodwaste processed at the Facility during the month and the current calendar year;

(C) The monthly or bi-monthly reports (as completed during that month) from the independent solid waste consultant and third-party Asbestos Inspector, as outlined at Conditions 14 and 15 of this permit;

(D) A description of any unacceptable loads or materials received at the Facility during the month, including ACM or potential ACM materials, hazardous wastes, waste ban materials, or other banned materials, and the steps taken by the Facility to segregate, handle and dispose such unacceptable loads;

(E) The results of all sampling and analysis that were received during the month, including but not limited to asbestos analyses as required at Condition 15 of this permit, and asbestos and other analyses as required at Condition 17 of this permit;

(F) A summary of waste ban activities during the month, including a description of the handling of any failed loads and copies of all failed load follow-up letters to generators;

(G) A description of any periods of Facility downtime or operational problems experienced during the month; and

(H) A summary of any complaints received regarding the facility during the month. All complaints shall also be forwarded immediately to the MassDEP upon their receipt by ABC&D.

19. Annual reports for the facility shall be submitted to both the Western Regional and Boston offices of MassDEP by February 15 of the following calendar year, on the form supplied by the MassDEP, which shall include updated FAM amount and documentation.

20. This ATO shall be valid <u>for a period of ten (10) years from the date of this permit</u>, provided that the MassDEP may amend the term of the ATO in accordance with an approved modification pursuant to either 310 CMR 19.039 or 19.040. If ABC&D intends to operate the facility after the expiration of this ATO, ABC&D is required to submit a request for a renewal

of the ATO at least 180 days prior to the expiration of the ATO in accordance with 310 CMR 19.042(4).

21. All appropriate Health & Safety (H&S) procedures shall be followed at the Facility to protect workers and the public. The MassDEP notes that all worker health and safety issues, including proper ventilation of the Facility building, are governed by the federal Occupational Safety & Health Administration (OSHA) and by the Massachusetts Department of Labor & Industries (DLI).

22. The MassDEP and its agents and employees shall have the right to enter upon the site at all reasonable times and without notice, to inspect the Facility and any equipment, structures or land located thereon, take samples, recover materials or discharges, have access to and photocopy records, to perform tests and to otherwise monitor compliance with this Permit and all environmental laws and regulations. This right of entry and inspection shall be in addition to the MassDEP's access authorities and rights under applicable federal and states laws and regulations, as well as any permits or other agreements between the Permittee and the MassDEP.

III. Notice of Appeal

Any aggrieved person intending to appeal the decision to the superior court shall provide notice to the MassDEP of intention to commence such action. Said notice of intention shall include the MassDEP File Number (06-309-005) and shall identify with particularity the issues and reason(s) why it is believed the approval decision was not proper. Such notice shall be provided to the Office of General Counsel of the MassDEP and the Regional Director for the regional office which made the decision. The appropriate addresses to which to send such notices are:

General Counsel
MassDEP
One Winter Street-Third floor
Boston, Massachusetts 02108

&

Regional Director
MassDEP
Western Regional Office
436 Dwight Street
Springfield, Massachusetts 01103

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the public health or environmental impact of the permitted activity.

Please contact Larry Hanson of this office at the letterhead address or at (413)' 755-2287 with any questions or comments relative to your permit.

Sincerely,

Daniel Hall
Section Chief
Solid Waste Management

DH/lgh
word:wareabcdato
cc: Quabbin Health District - Judy Metcalf, Director
Ware Board of Selectmen
Ware Planning Board
Ware Fire Dept.
Ware Conservation Commission
Ware Parks & Recreation Dept.
DEP/Boston - James Doucett, Paul Emond
GreenSeal Environmental - John Blaisdell

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Pages: 128-379

T O W N O F W A R E

BOARD OF HEALTH

PUBLIC HEARING
Pursuant to 310 CMR 16.20

SITE SUITABILITY O'RILEY FAMILY TRUST
(Owner)

ABC&D RECYCLING, INC.
(Operator)

BEFORE:
WAYNE M. LEBLANC, HEARING OFFICER

DAY TWO
January 30, 2008
7 p.m.
Ware Town Hall

Reporter: Kathleen M. Bradley, RPR

BAY STATE REPORTING AGENCY
76 MILL STREET (At Park Avenue)
WORCESTER, MASSACHUSETTS 01603
(508)753-4121

A P P E A R A N C E S:

FOR THE TOWN:

CHRISTOPHER, HAYS, WOJCIK & MAVRICOS
370 Main Street
Worcester, Massachusetts 01608
BY: DAVID A. WOJCIK, ESQ.
WILLIAM W. HAYS, ESQ.

FOR THE APPLICANT:

DONOHUE, HYLAND & DONOHUE, P.C.
1707 Northampton Street
Holyoke, Massachusetts 01040
BY: MATTHEW L. DONOHUE, ESQ.

BOARD OF HEALTH MEMBERS:

JOSEPH J. CIEJKA, CHAIRMAN
MICHAEL JUDA, VICE CHAIRMAN
DONNA RUCKI, Member

JUDY METCALF, Director of Quabbin Health District

GREEN SEAL ENVIRONMENTAL, INC.

I N D E X

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what the percentages are.

(Conference between all Applicant Representatives)

MR. BLAISDELL: Okay. The proponent has allowed us to share with you that the C&D operations are more profitable than MSW operations.

MR. WOJCIK: Okay. But my question was what percentage going forward is going to be C&D in your view and what percentage MSW?

MR. BLAISDELL: No, that we don't know.

Q. Okay. And this facility with respect to MSW is going to be a transfer station, isn't it?

(All Answers by Mr. Keegan)

A. No, a processing and handling facility.

Q. A processing and handling facility.

A. As defined by the DEP.

Q. I believe I have a memorandum that was submitted by Counsel for the proponent.

At the conclusion it's seeking

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Pages: 610-935

T O W N O F W A R E

BOARD OF HEALTH

PUBLIC HEARING
Pursuant to 310 CMR 16.20

SITE SUITABILITY O'RILEY FAMILY TRUST
(Owner)

ABC&D RECYCLING, INC.
(Operator)

BEFORE:
WAYNE M. LEBLANC, HEARING OFFICER

DAY FOUR
January 11, 2008
6 p.m.
Ware Town Hall
Ware, Massachusetts

Reporter: Kathleen M. Bradley, RPR

BAY STATE REPORTING AGENCY
76 MILL STREET (At Park Avenue)
WORCESTER, MASSACHUSETTS 01603
(508)753-4121

A P P E A R A N C E S:

FOR THE TOWN:

CHRISTOPHER, HAYS, WOJCIK & MAVRICOS
370 Main Street
Worcester, Massachusetts 01608
BY: DAVID A. WOJCIK, ESQ.
NICOLE B. CAPRIOLI, ESQ.

FOR THE APPLICANT:

DONOHUE, HYLAND & DONOHUE, P.C.
1707 Northampton Street
Holyoke, Massachusetts 01040
BY: MATTHEW L. DONOHUE, ESQ.

BOARD OF HEALTH MEMBERS:

JOSEPH J. CIEJKA, CHAIRMAN
MICHAEL JUDA, VICE CHAIRMAN
DONNA RUCKI, Member

JUDY METCALF, Director of Quabbin Health District

GREEN SEAL ENVIRONMENTAL, INC.
JOHN BLAISDELL, PROJECT MANAGER

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W I T N E S S E S

APPLICANT WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
RICHARD C. O'RILEY				
MR. DONOHUE:	621		702	
MR. WOJCIK:		645		715
MS. RUCKI: (BOARD OF HEALTH)		690		

WITNESSES OF BOARD OF HEALTH

WITNESS	DIRECT	CROSS
JOHN E. CARROLL, JR.		
MR. WOJCIK:	741	
MR. DONOHUE:		761
HEARING OFFICER:	783	

WITNESS	DIRECT	CROSS
GILBERT ST. GEORGE-SOREL		
MS. CAPRIOLI:	787	
MR. DONOHUE:		804
HEARING OFFICER:		

WITNESS	DIRECT	CROSS
DAVID KOPACZ		
MR. WOJCIK:	818	
MR. DONOHUE:		832
HEARING OFFICER:	848	

WITNESS	DIRECT	CROSS
JOHN DESMOND		
MS. CAPRIOLI:	850	
MR. DONOHUE:		858
HEARING OFFICER:	873	

WITNESS	DIRECT	CROSS
THOMAS COLOUMBE FIRE CHIEF		
MS. CAPRIOLI:	875	
MR. DONOHUE:		899
HEARING OFFICER:	906	

WITNESS	DIRECT	CROSS
PAUL HILLS COMMUNITY DEVELOPMENT		
MS. CAPRIOLI:	907	
MR. DONOHUE:		917
HEARING OFFICER:	932	

facility?

A. Yes, sir.

Q. What was the nature of the Fire Chief coming out to your facility?

A. The Fire Chief came out to make sure that we had all the proper procedures in place, proper equipment, proper connections.

He checked the sprinkler panels. And we also took the Fire Department one evening and ran them through the entire facility so that they would know what would happen in case there was a fire. And they've all been briefed on that.

Q. There's been some talk with regard to your intent with regard to this project. And I'm making specific reference to the recycling program for the residents of the Town of Ware.

Can you explain what your hope is with regard to your facility in the future?

A. Well, my future plans are to get the MSW operation up and running to provide

funding for the recycling center. I have a great idea to do it, and I think I can put the whole package together. And I need the funding.

The Town tried it years ago, they didn't have the funding, they didn't have the personnel, but I have the facility and I can do that.

Q. Is that part of this initial Site Suitability application that you put forward?

A. No, it's not. It's future plans.

Q. But is it part of this Site Suitability modification application that you put forward, is Recycling a component of that?

A. Recycling is a component, but on a next Committee process or next procedure. MSW has to be approved first so we can carry out everything that Recycling requires.

MR. DONOHUE: Sorry, I'm just going to go through my notes a little bit.

Q. Mr.O'Riley, has anybody ever

get paid for, correct?

A. Yes, sir.

Q. As opposed to the general MSW, the general MSW you process and then it goes into a railcar or it goes into an over-the-road truck and now you have to pay for that.

Instead of getting paid for it, you're actually paying to have that taken away, correct?

A. Yes.

Q. So there is motivation for you to go through this MSW stream?

A. Very much so.

Q. So when you say that you don't know how much recycling you're going to be able to do, it would kind of depend on how quickly the loads are coming in and how much material you're taking in?

A. That's correct.

Q. So if one load comes in per hour, you know, at 20 tons, you might not able to be very thorough with regard to how much recycling you can pull from that load?

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COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE COUNTY, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

RICHARD C. O'RILEY and
JOAN M. O'RILEY, as
Trustees of The O'Riley Family Trust, and
ABC&D RECYCLING, INC.,

Plaintiffs,

v.

TOWN OF WARE, MASSACHUSETTS,

Defendant.

Civil Action No. HSCV2010-00115

ABC&D RECYCLING, INC.'S RESPONSES TO THE TOWN OF WARE'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34, Mass. R. Civ. P., the Standing Order on Written Discovery, and the expedited discovery schedule agreed to by the parties, plaintiff ABC&D Recycling, Inc. ("ABC&D Recycling") responds to the first set of document requests from the Town of Ware, as follows.

Scope of Search

ABC&D Recycling has or will search and produce documents from the following locations, including tangible and digital media:

- the files and records of The O'Riley Family Trust, including the files and records of the trustees;
- the files and records of ABC&D Recycling, Inc. ("ABC&D Recycling");
- the files and records of Tighe & Bond; and

Objection: ABC&D Recycling objects to this request as overly broad and unduly burdensome, particularly given that discovery is taking place on a highly expedited schedule. ABC&D Recycling further objects to this request to the extent that it seeks information not relevant to the zoning issues in dispute, and is not reasonably calculated to lead to the discovery of admissible evidence. At issue in this matter are the validity of the Special Permit and Site Plan Approval; the reliance of the Trust and ABC&D Recycling on the Special Permit and Site Plan Approval; the application of the frontage requirements of the Zoning Bylaws to the Property and its current use; and the appropriate remedy or remedies for the parties. This request does not seek documents pertinent to these issues and is not reasonably calculated to lead to the discovery of evidence admissible at the trial of these issues. " '[D]iscovery cannot be used as a vehicle for discovering a right of action.' " *E.A. Miller, Inc. v South Shore Bank*, 405 Mass. 95, 100 (1985), quoting from *MacKnight v. Leonard Morse Hosp.*, 828 F.2d 48, 51 (1st Cir.1987). Moreover, the Town "may not 'fish' for evidence on which to base [its] complaint 'in hopes of somehow finding something helpful to their case in the course of the discovery procedure.' " *E.A. Miller, Inc*, 405 Mass. at 102, quoting from *Charbonnier v. Amico*, 367 Mass. 146, 153 (1975).

Request No. 21

The lease agreement currently in effect with respect to the facility located at 198 East Street, Ware, Massachusetts.

Response: No written lease agreement exists.

Request No. 22

The management agreement currently in effect with respect to the facility located at 198 East Street, Ware, Massachusetts.

Request No. 42

Any and all leases or other contracts related to the use of the O'Riley Family Trust's property, located at 198 East Street in Ware, by ABC&D Recycling, Inc.

Response: Subject to and without waiving these objections, ABC&D Recycling states that it will produce all non-privileged communications and other non-privileged documents responsive to this request in ABC&D Recycling's possession, custody or control.

Request No. 44

All financial reports, monthly reports, or other reports provided by ABC&D Recycling, Inc. to the O'Riley Family Trust.

Objection: ABC&D Recycling objects to this request as overly broad and unduly burdensome, particularly given that discovery is taking place on a highly expedited schedule. ABC&D Recycling further objects to this request to the extent that it seeks information not relevant to the zoning issues in dispute, and is not reasonably calculated to lead to the discovery of admissible evidence. At issue in this matter are the validity of the Special Permit and Site Plan Approval; the reliance of the Trust and ABC&D Recycling on the Special Permit and Site Plan Approval; the application of the frontage requirements of the Zoning Bylaws to the Property and its current use; and the appropriate remedy or remedies for the parties. This request does not seek documents pertinent to these issues and is not reasonably calculated to lead to the discovery of evidence admissible at the trial of these issues. " '[D]iscovery cannot be used as a vehicle for discovering a right of action.' " *E.A. Miller, Inc. v. South Shore Bank*, 405 Mass. 95, 100 (1985), quoting from *MacKnight v. Leonard Morse Hosp.*, 828 F.2d 48, 51 (1st Cir.1987). Moreover, the Town "may not 'fish' for evidence on which to base [its] complaint 'in hopes of somehow