



**WALSH COLUCCI  
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June 10, 2015

The Hon. Gerald M. Foreman II, Mayor  
Town of Dumfries, Virginia  
17555 Main Street  
Dumfries, Virginia 22026

Re: Potomac Landfill Proposal to Create a Host Fee Agreement  
and for Modifications to the Existing Stipulation and Order

Dear Mr. Mayor and Members of the Town Council:

Over the past few years, Potomac Landfill, Inc., (“PLI”) has on several occasions discussed its present and future relationships with the Town of Dumfries. During that time, PLI has worked diligently to ensure that its operations have complied with applicable DEQ Regulations, and that it has acted as a responsible citizen of the Town.

In pursuance of those discussions, the Landfill here formally proposes modifications to its plans that would permit it to continue successful operations in conjunction with the Town, and that would, for the first time, permit the Town to enjoy an income stream from those operations. To that end, PLI proposes that it and the Town enter into a Host Fee Agreement in substantially the form attached to this letter, and that, upon such agreement the parties present an Amended Stipulation and Order to the Prince William Circuit Court that would conform the Order that constitutes the legal basis for PLI’s current operations, to the changed conditions reflected in a Host Fee Agreement. A draft of that Amended Order is attached for review.

**I. What is PLI proposing?**

- a. Creation of additional airspace through reasonable expansion.

PLI asks that the Council agree that it may expand vertically and horizontally in the areas depicted on the Landfill Plat that is attached to this letter, and that would become an exhibit to the Amended Stipulation and Order. PLI also asks that the Council concur in the proposal that both the operational and closure elevations for the Landfill be set at 250 feet, rather than the 195 feet set out in the existing Stipulation and Order, an increase of 55 feet.<sup>1</sup>

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<sup>1</sup> The Town is likely aware that PLI’s position is that the 195 feet set out in the Original Stipulation and Order is a closure, and not an operating, elevation, but that DEQ has taken the

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In order to provide specificity as to what is proposed, and where it is proposed, the Landfill Plat would replace the ancient and largely superseded Rezoning Plat that was an exhibit to the Original Stipulation and Order. This Plat graphically identifies the areas of the Landfill that may be used for waste disposal, and that which can be used for administration and ancillary landfill services.

In order to expand vertically, PLI must construct a mechanically stabilized earthen berm (“MSE Berm”) that would create space to permit such vertical expansion. An MSE Berm is a construction method that has been in use in the United States for many years. It uses materials that are available from landfill operations, as well as sources other than landfills, but “encapsulates” those materials in a liner system that has already been approved by DEQ. The Company has conducted detailed discussions with experienced principals of EnCAP-IT (<http://www.mseberms.com/>), and that company is of the view that it would indeed be possible to construct such a berm at the PLI facility.<sup>2</sup>

b. Creation of an agreed Host Fee.

The Landfill has been resident in the Town since 1983, and was acquired by Jack Crippen in September 1985. It has on past occasions proposed to provide the Town with income related to landfill operations. As an inducement to the Town for agreement on expansion with this submittal, PLI formally proposes that it pay the Town a “Host Fee” based on the net tonnage of waste that is deposited in the Landfill. The Company suggests that the initial fee be set at \$.50 per net ton commencing immediately upon execution of an agreement. This sum would increase to \$2.00 per ton as the Landfill achieves the milestones associated with the amendment of its DEQ permits. Each Virginia landfill currently paying a Host Fee is a municipal solid waste (“MSW”) facility and not a CDD landfill. If this proposal is accepted by the Town, the Host Fee paid by PLI will represent the only Virginia construction and demolition debris landfill paying such a Fee.

c. Creation of a Joint End Use Plan.

The Landfill will, regardless whether this proposal is deemed acceptable, continue in operation. It will, however, eventually cease to accept waste and go into “closure” procedures

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position that the height is both. Amendment of the Stipulation and Order would eliminate ambiguity and the possibility of friction, and would clarify the matter. The proposed 250 foot elevation would be both an operational and closure height.

<sup>2</sup> The Original Stipulation and Order also authorized PLI to construct a tire recycling facility on the Property subject to the provisions of an Attachment A. This facility was never constructed and would be eliminated in an Amended Stipulation and Order.

with DEQ. If this proposal is approved, however, the geometry of the closed facility will result in a flat field of some 11.5 acres on the top that could be put to productive use, especially when linked to potential uses on the present administrative areas of the property that have never been used for landfilling and which could be put to productive use immediately upon commencement of closure activities. PLI proposes that in due course it and the Town enter into discussions as to an End Use Plan for the usable acreage that will be available upon closure.

## **II. Why is PLI making this proposal?**

With the closure of the Lorton CDD Landfill coming in 2018, there will be a demand for additional CDD landfill space in the immediate northern Virginia area. PLI recognizes that this presents it with an opportunity that it is commercially reasonable to pursue by the maximization of available airspace. This will permit it to provide an essential service to the building and development community. It will also present the Company the wherewithal to offer tangible near- and long-term financial benefits to the Town that are directly tied to the successful operation of the facility. Although PLI may presently expand horizontally with the appropriate DEQ permits, it has expressed its desire to work with the Town in connection with a proposed expansion that offers the potential for substantial contributions to the Town over time.

## **III. What does PLI suggest happen next?**

We propose that representatives of PLI and the Town meet as soon as possible to discuss the details of this proposal.

We further respectfully request that this matter be presented to the Town Council for its authorization to enter into a Host Fee Agreement, and to submit the Amended Stipulation and Order to the Court.

PLI is providing the following documents:

- a. An Overview. This provides an introduction to the project and a summary of its scope.
- b. A Draft Host Fee Agreement. This is a proposed contract between PLI and Town that addresses details for ongoing landfill operations and the payment of a Host Fee to the Town based on the amount of waste that is landfilled.
- c. A Draft Amended Stipulation and Order. The existing Stipulation and Order must be amended if this proposal is accepted. PLI has drafted an amended order for discussion.

- d. An Executive Summary of the DEQ Permit Amendment Process. This offers an overview of the first phase of the DEQ permitting process, and DEQ requirements applicable to the PLI proposal.
- e. An Outline Summary of the EnCAP-IT Method.

These materials are intended to outline specific plans for expansion, and to respond to the questions that PLI has been asked in the past with respect to its plans, and opportunities for improved engagement with the Town.

Thank you for your kind attention to this.

Very truly yours,

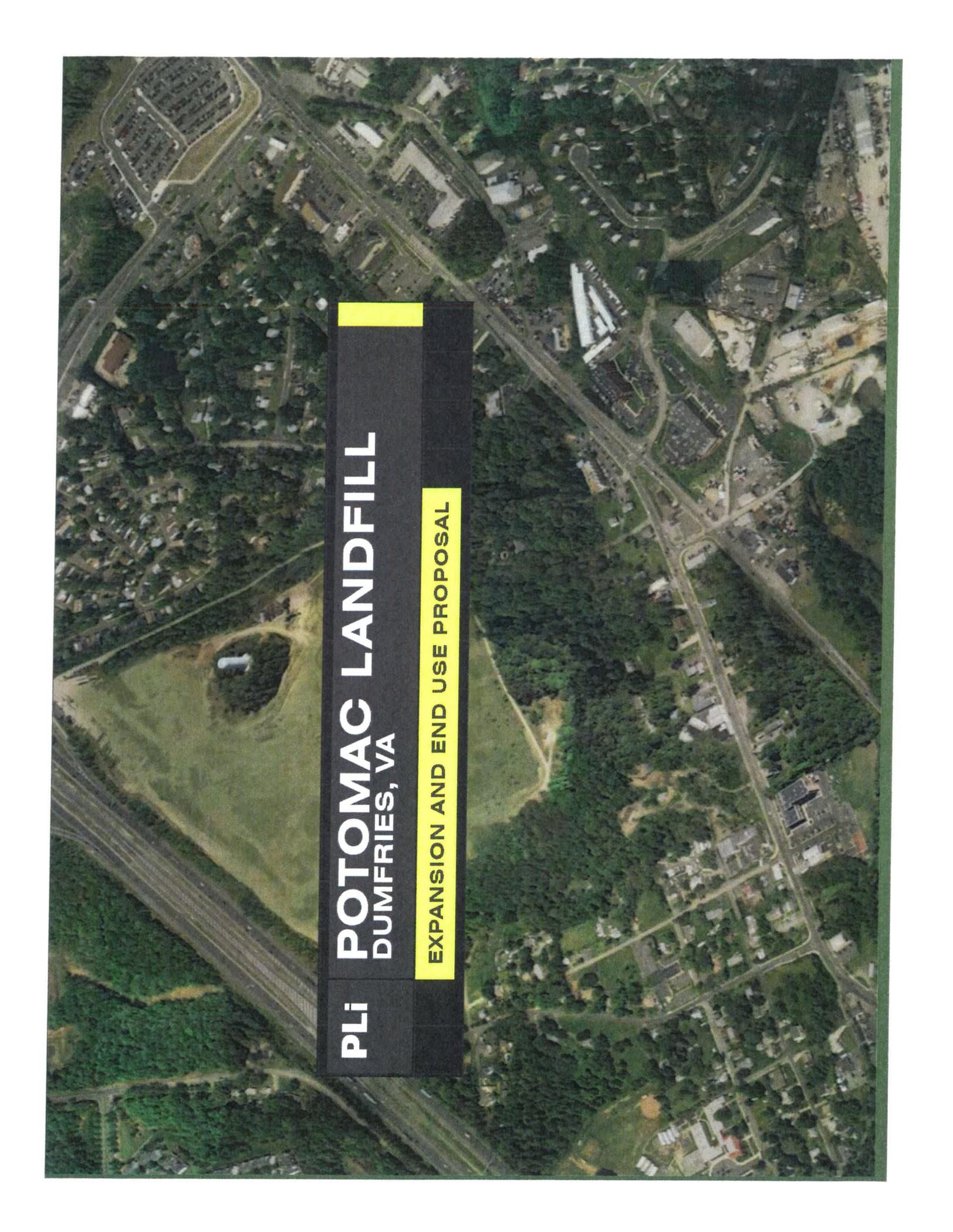
WALSH, COLUCCI,  
LUBELEY & WALSH, P.C.



John H. Foote

JHF/jf

cc: Members of the Dumfries Town Council  
Daniel Taber, Town Manager  
Olaun Simmons, Esq., Town Attorney  
Laura O'Dell, Planning Director  
Phil Peet, PLI  
Steve Danahy, PLI  
Larry Bertolet, Joyce Engineering  
Marian Harders, WCLW  
Richard Doucette, Virginia DEQ

An aerial photograph showing a mix of residential housing, commercial buildings, and green spaces. A prominent feature is a large, irregularly shaped green field in the center-left. To the right, there are several large industrial or commercial buildings with flat roofs. The surrounding area is densely packed with houses and smaller commercial structures. A road network is visible throughout the scene.

**PLI**

**POTOMAC LANDFILL  
DUMFRIES, VA**

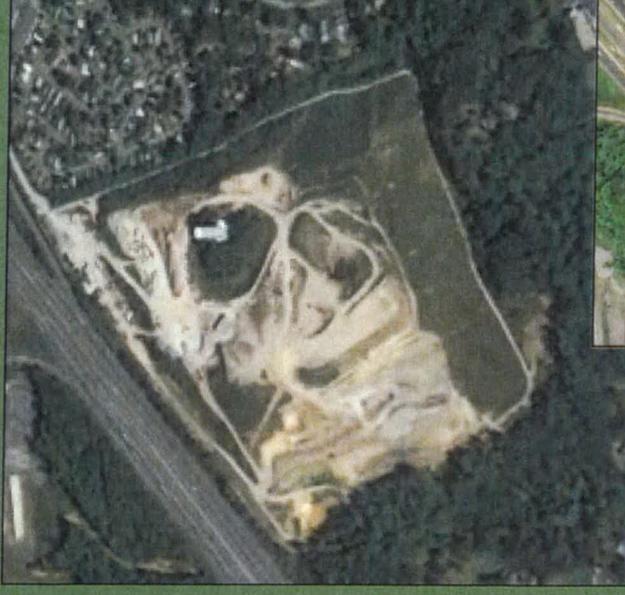
**EXPANSION AND END USE PROPOSAL**

## Project Overview

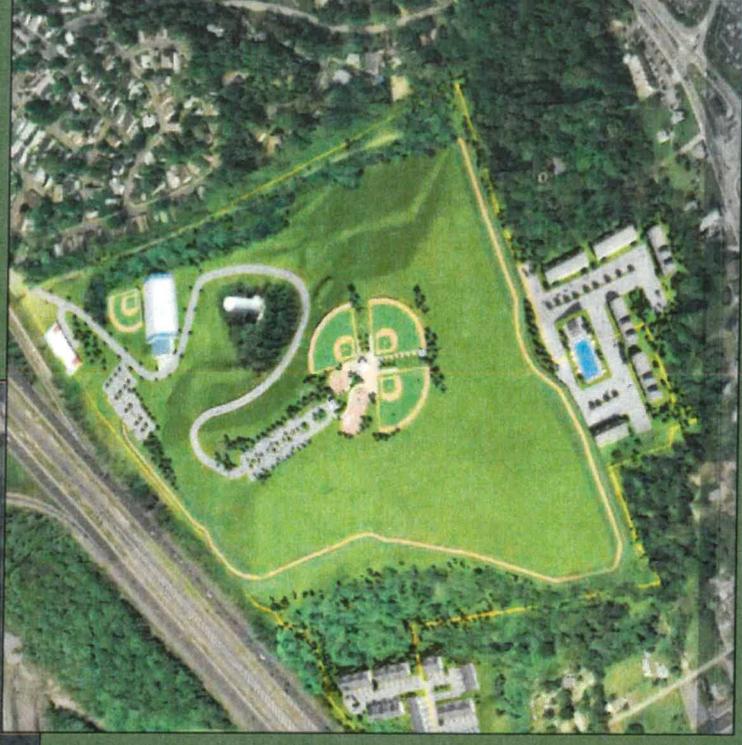
**POTOMAC LANDFILL, INC.**, is focused on present and long term operations of its facility as well as the future ultimate use of the landfill property, once operations have ended.

**PLI** has carefully and thoughtfully developed an operations and end use proposal that promotes state of the art technology and construction methods and institutes tangible economic benefits to the Town from Landfill operations.

**PLI** proposes to create an opportunity for the Town to share in the economic fortunes derived from the continuing operations of the facility and the eventual reuse of the site. **PLI** wishes to work with the Town to develop signature opportunities unique to Dumfries.



Operate  
and  
Envision





# The Process (continued)

## Legal Parameters

**PLI** proposes that the existing Stipulation & Order be amended to reflect current needs and conditions.

- Modernize the provisions to reflect current realities and past compliance
- Removal of Lot #12 from the landfill property classification
- Revise closure and operational height limitations
- Permit limited vertical expansion
- Maintain confined horizontal limits



Standard slopes; approved and permitted by DEQ



Phase 1



Phase 2



Phase 3



Phase 4

PLI LANDFILL COMPLETION

# Information Exchange

**PLI** proposes to create a digital data base to facilitate the dissemination of information on all aspects of the landfill proposal. The information will be accessed from a categorized and interactive digital Dashboard. With a click of the mouse, a wide range of documents can be reviewed immediately. Documents include:

- Case Studies
- View Corridor Studies
- Technical Support Documents
- Legal Support Documents
- Future Land Use Plan
- Project Video

**PLI POTOMAC LANDFILL**  
DUMFRIES, VA  
EXPANSION AND END USE PROPOSAL

Potomac Landfill  
Future Plan

Phasing Construction of Expansion

View Corridor Studies

End Use Proposal Envisioning the Future

Case Studies

HOST FEE

PHRASING

SUPPORT DOCUMENTS  
HOST FEE

SUPPORT DOCUMENTS  
PHRASING TECHNICAL DRAWINGS

SUPPORT DOCUMENTS  
MACROENCAPSULATED BERMS

JOYCE ENGINEERING  
PART A SUMMARY AND  
DEQ REQUIRED FORMS

Digital Dashboard

# Adapt Restore Transform

**PLI** proposes to work with the Town of Dumfries to change the landfill site into one that **ADAPTS** and is responsive to the proposed final site conditions – **RESTORES** the site to a more natural condition – **TRANSFORMS** the site from an industrial use into one that is truly a successful community amenity.



June 10, 2015

# HOST FEE AGREEMENT

BETWEEN

TOWN COUNCIL OF DUMFRIES, VIRGINIA

AND

POTOMAC LANDFILL, INC.  
WITH RESPECT TO ASPECTS OF THE  
OPERATION OF A CONSTRUCTION, DEMOLITION  
AND DEBRIS (CDD) SOLID WASTE  
MANAGEMENT FACILITY

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the TOWN COUNCIL OF THE TOWN OF DUMFRIES, VIRGINIA (hereinafter, the "Town") and POTOMAC LANDFILL, INC., a Virginia corporation, its successors and assigns (hereinafter, the "Company") (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the promises and mutual obligations set forth herein, and other good and valuable considerations, the receipt of which is conclusively acknowledged by the Parties hereto, the Town and the Company agree as follows:

*Section 1. **Definitions.***

- 1) Acceptable Waste – Construction Waste, Demolition Waste, and Debris Waste (all as defined herein) approved by VDEQ and allowed by the Landfill Permit.
- 2) Agreement – this Host Fee Agreement and all schedules, exhibits, attachments, documents and instruments affixed or attached hereto and made a part hereof by specific reference and all written amendments hereto.
- 3) Applicable Laws and Regulations – all current Federal, State and Local laws and regulations, imposed on the Landfill, governing the design, construction, operation, maintenance and closure of solid waste management facilities and the receipt, transportation, handling or disposal of waste in Virginia.
- 4) CDD Landfill – a construction, demolition, and debris landfill as defined in Virginia law and regulation.
- 5) Council or Town Council – the Town Council of the Town of Dumfries,

Virginia.

6) Closure – means that point in time when the Landfill has been capped in accordance with its VDEQ approved Landfill Permit and VDEQ regulations as may be in effect at that time, certified as properly closed by a professional engineer, inspected by the VDEQ, and closure notification performed in accordance with 9VAC20-81-160.D. The date of approval by the VDEQ of final closure activities for the facility will set the beginning date of Post-Closure care for the facility.

7) Construction Waste – solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

8) Debris Waste – wastes resulting from land-clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

9) Demolition Waste -- that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

10) Host Fee – means the fee to be paid to the Town for Net Tons of Acceptable Waste accepted at the Landfill, as further provided herein

11) Industrial Waste – shall be as defined by the Virginia Solid Waste Management Regulations, 9VAC20-81.

12) Landfill – The Landfill shall be the area as defined in the Amended

Stipulation and Order as further set forth herein and VDEQ's Amended Landfill Permit. For the purposes of this Agreement, the Landfill is permitted as a CDD Landfill under 9VAC20-81. Expansions to the Landfill will be subject to the VDEQ permitting processes.

13) Landfill Permit – means the Amended Solid Waste Facility Permit issued by VDEQ authorizing the construction and operation of the Landfill in accordance with and as required by 9VAC20-81 et seq.

14) MSE Berm – means a mechanically-stabilized earthen berm consisting of geosynthetic or metallic reinforcing elements in combination with VDEQ approved soil, and approved facing elements, to create safe grade separations for highways, civil earthworks, property boundaries, and waste containment facility areas.

15) Municipal Solid Waste - waste that is normally composed of household or residential, commercial, and institutional solid waste and residues derived from combustion of these wastes in accordance with VDEQ Regulations.

16) Net Tons - daily gross tons of all Acceptable Waste, minus tons of concrete, dirt, aggregate, salvaged materials such as cardboard, metal, plastic, wood or tires, and similar materials that are not deposited in the landfill..

17) Permit(s) – any and all governmental permits, grants, permissions, consents, approvals, licenses, land use designations, written authorizations granted by VDEQ, or other governing authorities or any future authorized agent or governmental authority granting permission or authority to the Company as may be necessary to construct, permit and operate the Landfill and related facilities.

18) Post-Closure – that specific time period after Closure, as set by the VDEQ, during which the Company will implement all Post-Closure care

requirements as established under the Landfill Permit. These activities shall include but not be limited to continued maintenance of the cap and all infrastructure, monitoring, and reporting.

19) Prohibited Waste – shall mean any substance defined as "commercial waste" (except as otherwise permitted by this Agreement), "municipal solid waste," "industrial waste," "infectious waste", "regulated medical waste", "municipal sewage sludge," "hazardous waste," and any "hazardous substance" as these terms are defined by VDEQ Regulations. In addition, auto fluff, food wastes, household waste, and sludge or other biosolids are considered Prohibited Waste.

20) Salvaging – any process or system by which disposed materials or material that would otherwise become waste is collected, separated, or processed and reused or returned to use in the form of usable materials or products. Materials removed from the waste stream and intended for recycling are not a "solid waste" under this Agreement.

21) Solid Waste – means any of those materials defined as "solid waste" under 9VAC20-81-95.

22) Stipulation and Order –

a. The Original Stipulation and Order means the Stipulation and Order entered by the Circuit Court of Prince William County in Chancery Number 23451, December 22, 1987.

b. The Amended Stipulation and Order means the Amendment of the Original Stipulation and Order, as provided for and to be submitted to the Court in conformance with this Agreement.

23) Town – means the Town of Dumfries, Virginia, a political subdivision

of the Commonwealth of Virginia, its council, authorities and other subdivisions.

24) Town Residents – all the residents of the Town of Dumfries, Virginia.

25) VDEQ – the Virginia Department of Environmental Quality or any agents, boards or authorities appointed by the Commonwealth of Virginia for the purpose of regulating, permitting, construction or operation of a landfill and other solid waste treatment, management or disposal facility and related facilities.

26) VDEQ Regulations – the Virginia Solid Waste Regulations of the VDEQ published in the Administrative Code of Virginia as they may be amended from time to time.

27) White Goods – shall include any large household, consumer or office appliances, such as but not limited to ovens, refrigerators, dishwashers, clothes washers, and dryers.

28) Year – every reference in this Agreement to the word "year" shall refer to a twelve-month period, regardless of how the word "year" is modified or otherwise described. The intent of the Parties is that every reference in this Agreement to a "year," a "year of operation", a "fiscal year", a "first year of operation" or any other phrase in which the word "year" appears, shall be construed as referring to a twelve month period.

*Section 2. Term of the Agreement.* The Term of this Agreement shall be from the date of execution hereof through the final confirmation by VDEQ of completion of Closure activities and the initiation of Post-Closure care activities.

*Section 3. Disposal of Waste.* During the operating life of the Landfill, the Company will continue to receive Construction, Demolition, and Debris Waste at the Landfill. The Company shall retain copies of all weight tickets for a period of three

years. It shall also maintain records of all such received Acceptable Waste, including type, area of waste origination, and any rejected waste or removed waste for a period of three years, all of which shall be available to the Town during normal business hours upon reasonable notice.

At no time shall Prohibited Waste be placed in the Landfill. Any Prohibited Waste delivered to the Landfill shall be immediately removed and disposed of in accordance with the Landfill Permit. The Company is solely responsible for controlling the receipt and disposal of Prohibited Waste and for payment of any fines or costs associated with any remediation activities that may arise out of the receipt or disposal of Prohibited Waste.

In the event that the Company has actual knowledge that any Prohibited Waste was deposited in the Landfill during the term of this Agreement, the Company shall notify the Town and the VDEQ in accordance with the Landfill Permit that such Prohibited Waste was deposited and shall fully disclose the facts and circumstances involving any such depositing of such wastes. The Company shall have the same removed at its expense from the Landfill and properly disposed of.

In the event that the Company determines the identity of the individual or entity depositing Prohibited Waste at the Landfill, the Company shall take all reasonable steps necessary to prevent the individual(s)/entity(ies) from continuing to deposit Prohibited Waste at the Landfill, including but not limited to initiating appropriate legal action(s).

*Section 4. **Operating and Closure Limits and Elevations.*** The Landfill shall be permitted to operate within the limits set forth in the Amended Stipulation and Order, and may fill to an operational and final closure height of 250 feet above mean sea level

(“MSL”).

*Section 5. Hours of Operation.* Landfill operations shall be permitted Monday-Saturday as provided for in the approved VDEQ Landfill Permit.

*Section 6. Payment of Host Fee*

The Company will pay the Town a Fee per Net Ton accepted into the Landfill (the “Host Fee”), as follows:

- a. The Company will pay a Fee of \$0.50 per Net Ton commencing upon the execution of this Agreement by both parties.
- b. The Company will increase that Host Fee to \$1.00 per Net Ton upon approval of the Landfill “Part A” application by the VDEQ.<sup>1</sup>
- c. The Company will increase that Host Fee to \$1.50 per Net Ton upon approval of the Landfill “Part B” Permit Modification by the VDEQ.
- d. The Company will increase that Host Fee to \$2.00 per Net Ton upon the issuance of the initial Certificate to Operate (the “CTO”) consistent with the approved modified Permits by the VDEQ.
- e. Host fees shall be paid semiannually within forty-five days of June 30, and December 31.
- f. Waste volume measured in Net Tons for the purposes of

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<sup>1</sup> The VDEQ mandates a two-step process for approval of a solid waste management facility or modification of an existing permit. The Part A application is prepared pursuant to the provisions of Virginia Administrative Code 9VAC20-81-460. Upon approval of the Part A application, the operator must further obtain a Part B Permit under 9VAC20-81-470 et seq. Only upon approval of the Part B Permit and completion of approved construction is a CTO authorizing the facility to receive waste issued pursuant to 9VAC20-81-490.

determining the Host Fee amount shall be calculated on the trailing 6-month total of Net Tons. Net Tons will be based on scale records for the 6 month period as follows: January 1 – June 30; July 1 – December 31.

g. The Host Fees shall accrue when Acceptable Waste is received at and deposited into the Landfill. The Town acknowledges and agrees that: (i) the Town is entitled to receive Host Fee payments only when Company accepts Acceptable Waste at the Landfill and only on actual Net Tons of Acceptable Waste accepted; (ii) Company has the sole and absolute discretion in the exercise of its business judgment to operate the Landfill consistently with its Permits; (iii) Company has no obligation to bring in or accept any particular tonnage of Acceptable Waste at the Landfill or to otherwise take any action to maximize or increase the tonnage of Acceptable Waste accepted at the Landfill and, therefore, to increase the Host Fee payments; and (iv) the Town shall not be entitled to receive any further Host Fee payments if, for whatever reason, the Landfill ceases to accept Acceptable Waste.

*Section 7. End Use Planning.* When waste is no longer being received, and prior to Closure, the Parties shall collaborate on a mutually agreeable Landfill End Use Plan for the Landfill. Any such Plan will be subject to approval by VDEQ, but the purpose and intent of such planning shall be to identify and develop public and private uses of those portions of the closed Landfill for such purposes as, but not limited to, recreational areas and parks.

*Section 8. Weigh-In of Trucks.* All trucks transporting Acceptable Waste for disposal at the Landfill shall be weighed at on-site scales prior to the delivery of any waste at the Landfill. The Scales shall be inspected by Department of Weights and

Measures and have at all times a current inspection sticker. In the event that the scales become temporarily inoperable and cannot be repaired after diligent and good faith effort by Company, the Company shall estimate the weight of all waste accepted in accordance with standard volume averages or utilize other certified scale data, if available, until such time as the scales are repaired or replaced. The Company shall be obligated to promptly repair and/or replace any malfunctioning scales.

*Section 9. **Inspection Duties and Rights.*** Town personnel or agents shall have the right, during normal business hours, to inspect the Landfill's disposal operations to assure that the Landfill complies with its approved design and is in compliance with the terms of this Agreement, and its Landfill Permit. Town personnel or agents shall have the further right at any time during normal business hours to inspect all waste delivered at the Landfill before and during its deposit at the Landfill.

The Company shall be required to have personnel trained in waste inspection procedures at the Landfill at all times during its operation for the receipt of any waste. The Company shall notify Town Staff in advance of the training and invite Town Staff to participate in scheduled waste inspection training sessions. The Company agrees that periodic truckloads of waste received from any Waste Stream Providers shall be visually inspected by the Company at the time of unloading. All such waste shall be visually inspected as required by the Landfill Permit.

The Town and its personnel and agents shall have full access to the Landfill for inspection purposes during normal business hours and without prior notification, including the reasonable inspection of waste deposited in the Landfill and waste at the gates held in incoming trucks, and may conduct soil and water samples or other tests on

the Landfill site at the Town's expense. The Company's records, logs, and documentation pertaining to the operations of the Landfill shall be made available to the Town during normal business hours upon the Town's written request.

In addition to any other requirements stated in this Agreement, the Company shall provide the Town with: (a) the results of tests of surface water, ground water and leachate; (b) semi-annual reports regarding the tonnages and types of Acceptable Waste deposited at the Landfill; (c) annual report on the capacity of the landfill based on an annual survey or equivalent and a copy of the annual VDEQ Solid Waste Information and Assessment Report; (d) information on any notice of violation at the Landfill of the terms of this Agreement, or any Regulations (e.g. VDEQ, VDOT).

*Section 10. **Complaints.*** If either the Company or the Town receives a written complaint by any Town Resident or regulatory agency, a copy will be provided to the other party within 24 business hours of receipt. The Company shall have five (5) business days from receipt of the complaint to investigate the complaint and provide the Town with its evaluation and any proposed action to address the Complaint if it is determined to be legitimate. The Company shall implement the proposed action within seven (7) business days.

*Section 11. **Force Majeure.*** In the event that the Company is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes or lockouts lasting longer than thirty (30) days, extended severely inclement weather conditions, restrictive governmental laws or regulations, material breaches of this Agreement by the Town, its agents and employees, delays of governmental authorities in responding to permit applications or requests for approvals, riots,

insurrections, terrorist acts, war or other reason of a similar nature not the fault of the Company in performing work or doing acts required under the terms of this Agreement, then performance of that act shall be excused for the period of the delay, hindrance or prevention. In order to avail itself of the terms of this Section, the Company must notify the Town in writing within thirty (30) days of the occurrence of any such event, otherwise such event shall be deemed as waived for the purposes of force majeure until such time as notice is provided.

*Section 12. Notices.* Any notice involving this Agreement shall be made either by personal delivery or by registered or certified mail, return receipt requested, or by nationally recognized commercial courier service delivery (e.g. UPS, FedEx, etc.) and shall be deemed given upon personal delivery or five (5) business days after delivery of such Notice into the U.S. Postal System postage fully prepaid or one (1) business day following delivery to such commercial courier service. Any such notice shall be given to the Parties at the following addresses:

**Town of Dumfries:**

Town Manager  
17755 Main Street  
Dumfries, Virginia 22026

With copies to:

Town Attorney  
17755 Main Street  
Dumfries, Virginia 22026

**Company:**

Philip Peet  
3730 Greentree Lane  
Dumfries, Virginia 22026

With copies to:

John H. Foote, Esq.  
Walsh, Colucci, Lubeley & Walsh, P.C.  
4310 Prince William Parkway, Suite 300  
Prince William, Virginia 22192

Either party may change the location or individuals for receipt of notices hereunder by providing written notice to the other party aforesaid.

*Section 13. **Insurance.*** During the Term, Company agrees to carry the following types and amounts of insurance coverage with companies having at least a "B+" financial strength rating by A.M. Best Company:

- (a) Commercial General Liability - \$1,000,000 per occurrence, and \$2,000,000 aggregate
- (b) Worker's compensation - Statutory requirements
- (c) Property Insurance (Special Form) - Coverage amount sufficient for replacement of physical building structures and leasehold improvements
- (d) Pollution Legal Liability - \$5,000,000 per condition.

*Section 14. **Governing Law.*** This Agreement is made and intended to be performed in the Commonwealth of Virginia, and shall be governed by the laws of that state. Any dispute or matters involving litigation between the Parties hereto shall be heard in the Circuit Court of Prince William County.

*Section 15. **Enforcement.*** Failure by the Company to abide by any provision of this Agreement shall be deemed to be a material failure, and if not promptly remedied after notice thereof from the Town, may be deemed a breach pursuant to this Agreement.

*Section 16. **Breaches.*** Upon written notice by either party (the "Notifying Party") to the other party (the "Breaching Party") of any material breach of the terms and

provisions of this Agreement, the Breaching Party shall have fifteen (15) business days to cure any such monetary breach and thirty (30) calendar days to cure any such non-monetary breach. If such breach is not cured within such fifteen (15) business days or thirty (30) calendar days, as applicable, or in the event such non-monetary breach cannot be reasonably cured within thirty (30) calendar days, if the Breaching Party has failed to act with due diligence within such 30-day period and continuously acted to correct such breach in a timely manner, the Notifying Party may avail itself of any remedies available to it at law or in equity, including injunctive relief and termination of this Agreement. No waiver or waiver of a breach of any of the covenants or terms contained in this Agreement shall be construed as a waiver of any prior or succeeding breach of the same covenant or any other covenant of this Agreement.

*Section 17. **Attorney Fees.*** In the event that either party incurs any expenses in enforcing the terms of this Agreement or in collecting any of the sums due pursuant to this Agreement, the Parties agree that the prevailing party shall be entitled to reasonable expenses and attorney fees from the non-prevailing party.

*Section 18. **No Partnership.*** Nothing in this Agreement shall be construed to constitute a joint venture or partnership between the Company and the Town.

*Section 19. **Modification.*** No modification, release, discharge, or waiver of any provision hereof shall be of any force or effect, unless in writing signed by both Parties hereto.

*Section 20. **Assignability.*** The Company may transfer or assign or subcontract its rights and obligations hereunder to any third party without the express written consent of the Town.

*Section 21. **Construction of Language.*** Both Parties to this Agreement have been represented by counsel during the negotiating and drafting of this Agreement. Accordingly, the rule of construction of contract language against the drafting party is hereby waived by both Parties.

*Section 22. **Definition of Other Terms.*** To the extent the definition of specific terms is not provided herein but is nonetheless required by the context of this Agreement, it is the intention of the Parties to incorporate herein the definitions contained in the Applicable Laws and Regulations in effect as of the date hereof.

*Section 23. **Severability.*** If any term, covenant or provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such provision.

*Section 24. **Binding Effect.*** This Agreement shall be binding upon the Parties hereto and their successors and assigns, including, but not limited to, any successor-in-title to the real estate that may be used for the Landfill site.

*Section 25. **Execution of Agreement.*** The original and multiple copies of this Agreement may be executed in one or more counterparts, each of which shall be an original and all of which shall be one and the same instrument. The original and each such copy shall be of equal dignity and effect.

*Section 26. **Holidays.*** The Landfill may be closed, at the Company's discretion, on all recognized holidays, including but not limited to, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, Christmas, and New Year's Day.

*Section 27. **Amendment of the Original Stipulation and Order.*** The Parties agree that, as soon as it may practically be scheduled following execution of this

Agreement, they shall present to the Circuit Court of Prince William County a modification of the Original Stipulation and Order in substantially the form attached hereto and incorporated herein by reference as Exhibit A, and that each shall be responsible for its own legal fees and expenses in connection with the preparation and presentation of such Amended Stipulation and Order. In the event that the Court fails or refuses to enter such Amended Stipulation and Order, this Agreement shall be null and void and of no effect, unless otherwise amended by mutual agreement of the Parties.

*Section 28. Entire Agreement and Modification.* There have been no other promises, consideration, or representations made which are not set forth in this Agreement and there may be no modification hereto, except in writing, executed by the authorized representatives of the Town and the Company or its successors and assigns.

Witness the following signatures and seals effective the day and date first entered above.

THE TOWN COUNCIL OF THE TOWN OF  
DUMFRIES, VIRGINIA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Town Clerk

Approved As To Form:

\_\_\_\_\_  
Town Attorney

POTOMAC LANDFILL, INC.

By: \_\_\_\_\_  
President

DRAFT



June 10, 2015

construction/demolition/debris (“CDD”) landfill (the “Landfill”) pursuant to permits issued by the Virginia Department of Environmental Quality (“VDEQ”) or its successor governmental agency. Petitioners and Respondent are herein referred to as the “Parties,” unless the context requires otherwise.

Respondent filed a Demurrer to that original action contending that the Petition was multifarious, that Petitioners lacked the authority to bring the actions alleged, that the various Courts failed to state causes of action, that the Petition failed to meet the requirements of Rule 1:4, and that the Petition was otherwise defective.

On December 22, 1987, The Hon. Percy Thornton, Jr., then a judge of this Court, entered an agreed Stipulation and Order by which the Parties resolved this action and all issues raised by the Petition and Demurrer (the “Original Stipulation and Order”).

That Original Stipulation and Order has regulated relations between the Parties since its entry, but in the ensuing years there have been material changes in circumstances affecting the Parties, and the Parties therefore pray that this Court amend the Original Stipulation and Order as agreed and set forth below.

NOW THEREFORE, upon consideration of the motion of the Parties, this Court hereby finds that the interests of the Parties, and of the ends justice, will be served by amendment of the Original Stipulation and Order as the Parties request. It is therefore ordered, stipulated, and agreed as follows:

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Parcel 85A is now Parcel 8189-82-4794 (2.0 acres), and  
Parcel 141A is now Parcel 8189-94-1110 (54.0492 acres).

1. **Substitution of a Party.** The Dumfries Town Zoning Administrator, (presently Laura O'Dell), is hereby substituted as a Petitioner in this matter, in the place and stead of E. Joe Lamont.

2. **Removal of Parcel 12 from the Property as defined.**

Parcel 8189-73-7582 (formerly Parcel 12) is not now and has never been considered or used for landfilling activities, and shall no longer be deemed a part of the Property subject to this Amended Stipulation and Order. Development and use of this Parcel shall be subject to applicable Town ordinances.

3. **Previous Compliance with terms of the Original Stipulation and Order.** The Parties agree that the Respondent has satisfied the requirements of Paragraph 1 of the Original Stipulation and Order and that the Petitioner duly issued all permits required under the Town's Ordinances and the terms of the Original Stipulation and Order.

4. **Access and limitations thereon.** The Town and the public today possess and shall continue to possess a permanent right of vehicle access to that property comprised of approximately 2.3124 acres owned by the Prince William County Service Authority, identified as GPIN 8189-94-1363, such access to be from Greentree Lane. This access may be located or relocated in Respondent's sole discretion in order to accommodate its operational needs. Respondent shall not allow truck or semi-trailer truck ingress or egress onto the Property, for any purpose associated with the use of the Property as a CDD landfill, from Duke Street, Washington Street, or Tripoli Street. All ingress and egress shall be from Greentree Lane.

5. **Gross receipts taxation.** Respondent shall continue to comply with the requirements of the Town's local license tax on gross receipts, so long as

a. the tax shall comply with all of the requirements of Virginia Code §§ 58.1-3703 to 3706, inclusive, and any amendments thereto that may hereafter become law, and

b. the tax imposed on Respondent shall be identical in every respect to the tax imposed upon other "repair, personal and business service, and all other businesses and occupations not specifically listed or excepted in [§ 58.1-3706]," as provided in paragraph 4 of § 58.1-3706.

The Parties further acknowledge the Respondent paid all taxes that were due and owing at the time of the entry of the Original Stipulation and Order, and that it is not in arrears on any tax lawfully levied against it at the time of entry of this Amended Stipulation and Order.

**6. Continuation of the zoning and permitted uses of the Property.**

a. The Original Stipulation and Order required the Petitioners to review the Respondent's Proposed Rezoning Plat for the Property dated December 11, 1987, which showed proposed zoning classifications for the Property and the permitted limits of landfilling, a copy of which was attached to the Original Stipulation and Order ("Original Plat") as a rezoning plan. Petitioners declined to rezone the property as authorized by the Original Stipulation and Order, and as of the date of the entry of this Amended Order the Property remains zoned to the Town's R-1 zoning classification.

b. Notwithstanding the continued zoning of the Property as set forth above, the Property may continue to be used as a CDD Landfill together with its ancillary services and activities, which shall continue to be permitted uses of the Property as established in that Original Stipulation and Order. Those areas of the Property that may be used for landfilling of debris, as it may be permitted by the VDEQ, shall be those areas depicted on the Landfill Area

Plat attached hereto and incorporated herein by reference (the "Landfill Plat"). Those areas of the Property shown on the Landfill Plat for Ancillary Services may be used for offices, roads, repair shops, parking, or other support facilities, but shall not be used for the landfilling of debris.

c. No other uses than those authorized in this Amended Stipulation and Order shall be permitted on any portion of the Property except as may be hereafter authorized by the Town pursuant to law.

**7. Limitations.**

a. No permitted waste will be placed within fifty (50) feet of the Property line in any portion(s) of the Property (the "Buffer").

b. The Respondent may construct access roads, mechanically stabilized earthen berms ("MSE Berms") as they may be approved by VDEQ, for the purpose of containing waste lawfully deposited in the Landfill, and erosion and sedimentation control devices approved by the Town. All landfilled waste shall be deposited and retained on the interior of the Property and behind any MSE Berm.

**8. Mutual cooperation.** Petitioners shall continue to use their best good faith efforts to assist the Respondent in obtaining all required approvals and permits from the Commonwealth of Virginia ("the State") necessary to allow the continued use and development of the Property in accordance with this Amended Stipulation and Order, the Landfill Plat, and applicable state or federal regulations. The Town need not actively support, but shall assent to and shall not oppose an operational and closure maximum Landfill elevation of 250 feet above Mean Sea Level ("MSL") and shall promptly execute any local government certifications required by VDEQ in connection with permits or amendments thereto required. The Town will not oppose the

continued use of the Property as a CDD Landfill, or for its ancillary services, nor will it oppose any permits or application for amendment of permits, either directly or indirectly.

Respondent shall promptly provide the Petitioners with copies of all applications filed with VDEQ, and shall promptly notify Petitioners in the event that Respondent receives any Notice of Violation, and provide the Petitioners with copies thereof.

**9. Amended Erosion and Sedimentation Control Plan Submittal and Review.**

The Respondent has heretofore submitted and had approved Erosion and Sediment Control Plans with respect to the operation of the Landfill. Respondent shall continue to submit promptly, and Petitioners shall promptly review, any further revised E&S Plans that may be required upon the issuance of further or amended permits for expansion of the Landfill, or as may be otherwise required by law. Approval of such Erosion and Sedimentation Control Plans shall not be unreasonably withheld, and landfill operations may continue in accordance with any existing Erosion and Sediment Control Plan, until approval of any revised such Plans.

**10. Mutual Releases.** Petitioners and Respondent do hereby mutually release, acquit, and forever discharge each other, their agents, servants, employees, attorneys, successors and assigns, past or present, from any and all claims, violations, or causes of action of every name, nature or description, whether at common law, contract, statute or otherwise, known or unknown, which either Party may have or may have had against the other arising out of any matter involving the construction, operation, or maintenance of the CDD Landfill from any time in the past of to the date of this Amended Stipulation and Order. Without limiting the foregoing, it is the intent of the Parties that the previous sentence shall include all claims that were or could have

been asserted against Respondent by Petitioners in the litigation giving rise to the Original or this Amended Stipulation and Order.

**11. Authorization to submit this Amended Stipulation and Order.** This Amended Stipulation and Order has been executed by counsel for the Parties, and counsel possess all necessary authority to do so on behalf of their principals. This Amended Stipulation and Order shall be binding upon, and inure to the benefit of, each of the Parties and their successors and assigns.

**12. No admission of liability or fault.** Application for or entry of this Amended Stipulation and Order shall not constitute a finding on the merits of any of the Petitioners' allegations in the original Petition, or of Respondent's contentions in the Demurrer thereto, and shall in no manner be construed as an admission of liability or culpability by Petitioners or Respondent as to any actions either may have taken with respect to the operation of a CDD landfill on the Property from the date of the filing of that Petition to the date of entry hereof.

**13. Provisions of this Order to govern.** The provisions of this Amended Stipulation and Order shall supersede and replace the Original Stipulation and Order in its entirety, and shall be binding on the parties hereto and their successors and assigns.

**14. Reservation of jurisdiction.** The Court reserves and retains jurisdiction of this matter for further such proceedings as the parties may deem appropriate.

ENTERED THIS \_\_\_\_ day of \_\_\_\_\_, 2015.

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Circuit Court Judge

WE ASK FOR THIS:

THE TOWN OF DUMFRIES, VIRGINIA

By: \_\_\_\_\_

Olaun A. Simmons, Esq., VSB Number \\  
Dumfries Town Attorney  
17755 Main Street  
Dumfries, Virginia 22026  
(703) 221-3400  
[osimmons@dumfriesva.gov](mailto:osimmons@dumfriesva.gov)

POTOMAC LANDFILL, INC.

By: \_\_\_\_\_

John H. Foote, Esq., VSB Number 14336  
Walsh, Colucci, Lubeley & Walsh, P.C.  
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Prince William, Virginia 22192  
(703) 680-4664 (o)  
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[jfoote@thelandlawyers.com](mailto:jfoote@thelandlawyers.com)



1604 Ownby Lane  
Richmond, VA 23220  
Phone: (804) 355-4520  
Fax: (804) 355-4282

## EXECUTIVE SUMMARY

### DEQ PERMITTING PROCESS

The Virginia Waste Management Act requires all solid waste management facilities (SWMFs) to obtain a permit from the Department. Applications for a full solid waste permit shall contain a Notice of Intent, a Part A Permit Application and a Part B Permit Application. The Notice of Intent and the Part A Application may be submitted together.

#### **NOTICE OF INTENT (NOI)**

To apply for a new solid waste management facility permit or amend an existing permit, the owner or operator must file a notice of intent with the Department. The NOI describes the precise location of the proposed facility, and the intended use of the facility. The NOI consists of the cover letter, maps and documents required by the Virginia Waste Management Act and the regulations. Also included with the NOI is a certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable local ordinances. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use by the local governments. A copy of DEQ Form SW-11-1 is attached for reference.

#### **PART A APPLICATION**

To continue with the permit application process, the owner or operator submits a Part A Application to the Department. The Part A Application for a solid waste management facility permit contains information essential for the assessment of the suitability of the site for a landfill. It provides information on all siting criteria applicable to the proposed facility, as well as, the geotechnical and hydrogeologic conditions at the site. Attachments to the Part A Application include those listed on the attached DEQ Form SW PTA (Part A Permit Application Form). Included in the Part A Application is the Hydrogeologic and Geotechnical Report.

The purpose of the hydrogeologic and geotechnical report is to accomplish two tasks: (1) define the geology beneath the site area with an assessment of the availability and suitability of on-site soils for use in constructing the proposed landfill and an assessment of the subsurface foundation and (2) identify the groundwater flow paths and rates of the uppermost aquifer.

#### **PART B APPLICATION**

After receiving Part A approval, the Part B Permit Application is submitted. The Part B Permit Application contains the detailed engineering design, calculations and drawings, groundwater monitoring, closure, and post-closure plans for the proposed facility. Similar to the Part A Application, DEQ requires the completion and submission of the DEQ Form SW PTB (Part B Application Form) with the Part B Application. Attachments to the Part B Application include those listed on the attached DEQ Form SW PTB.

#### **APPLICATION FEES**

Part A Application fee is \$4,180.

Part B Application fee is \$18,680.

#### **DEQ REVIEW AND PERMIT ISSUANCE**

Upon receipt of the NOI/Part A Application, the DEQ performs completeness and technical reviews. The technical reviews do not begin until the application has been deemed to be administratively complete, essentially having all of the required information. During the technical review, additional information may be requested or DEQ may visit the site before the review is completed. Review of the Part B Application follows the same procedures as the Part A Application. Once the Part B Application is found to be technically adequate and in full compliance with the solid waste management regulations, a draft permit is prepared by the DEQ.

A notice announcing the beginning of the public comment period, date of the public hearing and the availability of the draft permit, is published in the local newspaper. A decision to permit shall be rendered by the Director (DEQ) within 90 days of the close of the public comment period.

#### **Attachments**

DEQ Form SW-11-1

DEQ Form SW PTA

DEQ Form SW PTB

# REQUEST FOR CERTIFICATION

APPLICANT:

APPLICANT'S MAILING ADDRESS:

TYPE OF FACILITY:

The applicant is in the process of completing an application for a permit for a solid waste management facility to be issued by the Virginia Department of Environmental Quality. In accordance with §10.1-1408.1 and §10.1-1411, Code of Virginia (1950), as amended, before such a permit application can be considered complete, the applicant has to obtain certification from the governing body of the county, city, or town in which the facility is to be located that the location and the operation of the proposed facility and/or its proposed expansion is: either consistent with the regional solid waste management plan (SWMP) or has initiated the process of amending the SWMP to include the new or expanded facility; and is in accordance with all the local ordinances. For a permit by rule (PBR) application; in accordance with §10.1-1408.1.Q, the SWMP must be consistent with the application and be approved in accordance with §10.1-1411. *The undersigned requests that an authorized representative of the local governing body sign the certification below.*

SIGNATURE OF THE APPLICANT:

TYPED OR PRINTED NAME:

DATE:

TITLE:

TELEPHONE:

**NOTE:** The applicant should enclose an appropriate map showing the location of the proposed facility/expansion.

## CERTIFICATION

*The undersigned certifies that the proposed facility/expansion is consistent with the regional solid waste management plan or this plan is being amended for consistency. If the application is for a PBR, the undersigned certifies that the proposed facility is consistent with the SWMP and the SWMP has been approved in accordance with §10.1-1411.*

SIGNATURE OF THE AUTHORIZED LOCAL GOVERNMENT REPRESENTATIVE:

TYPED OR PRINTED NAME:

DATE:

TITLE:

TELEPHONE:

SOLID WASTE PLANNING UNIT:

*The undersigned certifies that the location and operation of the proposed facility/expansion is consistent with all local ordinances.*

SIGNATURE OF THE AUTHORIZED LOCAL GOVERNMENT REPRESENTATIVE:

TYPED OR PRINTED NAME:

DATE:

TITLE:

TELEPHONE:

COUNTY, CITY OR TOWN:

# Solution: The EnCAP-IT Method

## The EnCAP-IT Method

99.7% of EnCAP-IT systems consist of recycled fill material of all types; from coal combustion residuals (CCRs) and other environmentally controversial substances to common soil, crushed concrete and glass. By using a sustainable method of full encapsulation that responsibly reuses the material and keeps it stable and harmless for hundreds of years. EnCAP-IT supports recycling and responsible reuse.

## For the Environment

In our work with the waste industry, constructing high berms adjacent to landfills extends the landfills' lifespan by increasing vertical capacity (airspace) without enlarging their geographic footprint. However, the ultimate beneficiaries are communities and municipalities who find their long-term waste disposal dilemmas resolved.

## Unparalleled Safety

- Proper design, construction quality control (CQC) and construction quality assurance (CQA).
- Internal and external drainage controls using an EnCAP-IT-patented proactive internal drainage system.
- Liquid/pore pressure management. No liquids = No liquefaction.
- Encapsulation to eliminate moisture, with a uniaxial geogrid for added stability.
- Berms constructed with un-encapsulated, non-cohesive CCRs or other materials do not have this important protection.

# Why are EnCAP-IT Methods Unique?

- Uses multiple common and proven technologies including:
  - Subtitle D Composite liners & Geomembrane cap systems
  - MSE (mechanically stabilized earthen) berms
  - Geogrids for structural stability

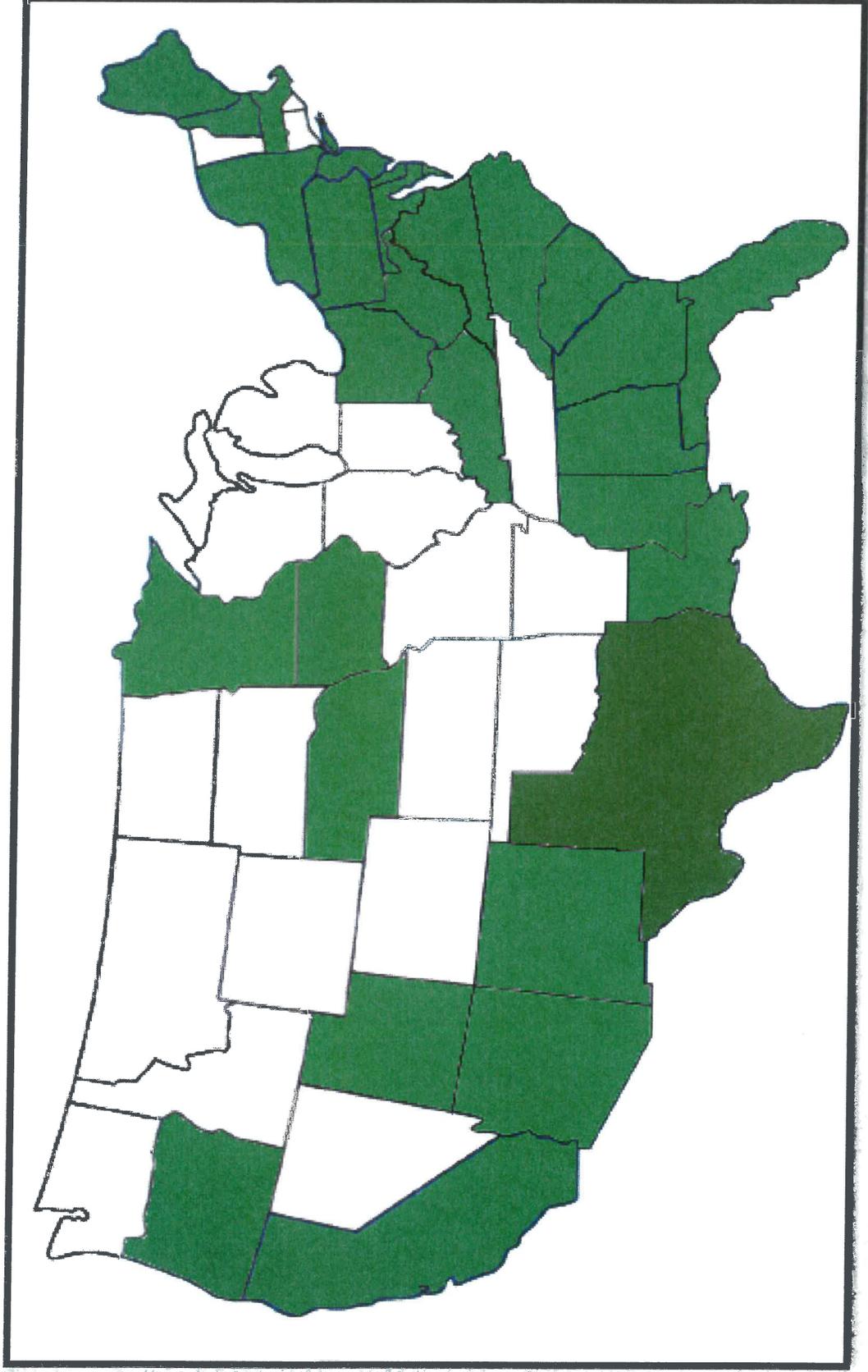
• The manner in which these technologies are combined – complete encapsulation, structural stabilization and pore pressure management – make them unique.

- Methods are extremely flexible and can be used in various combinations dependent on site specific conditions and requirements.

- Certain key elements of encapsulation techniques are trade secret and patent(s) pending protected.

- The unique configurations for all MSE berm sections (> 150) are currently utility patent(s) or patent(s) pending.

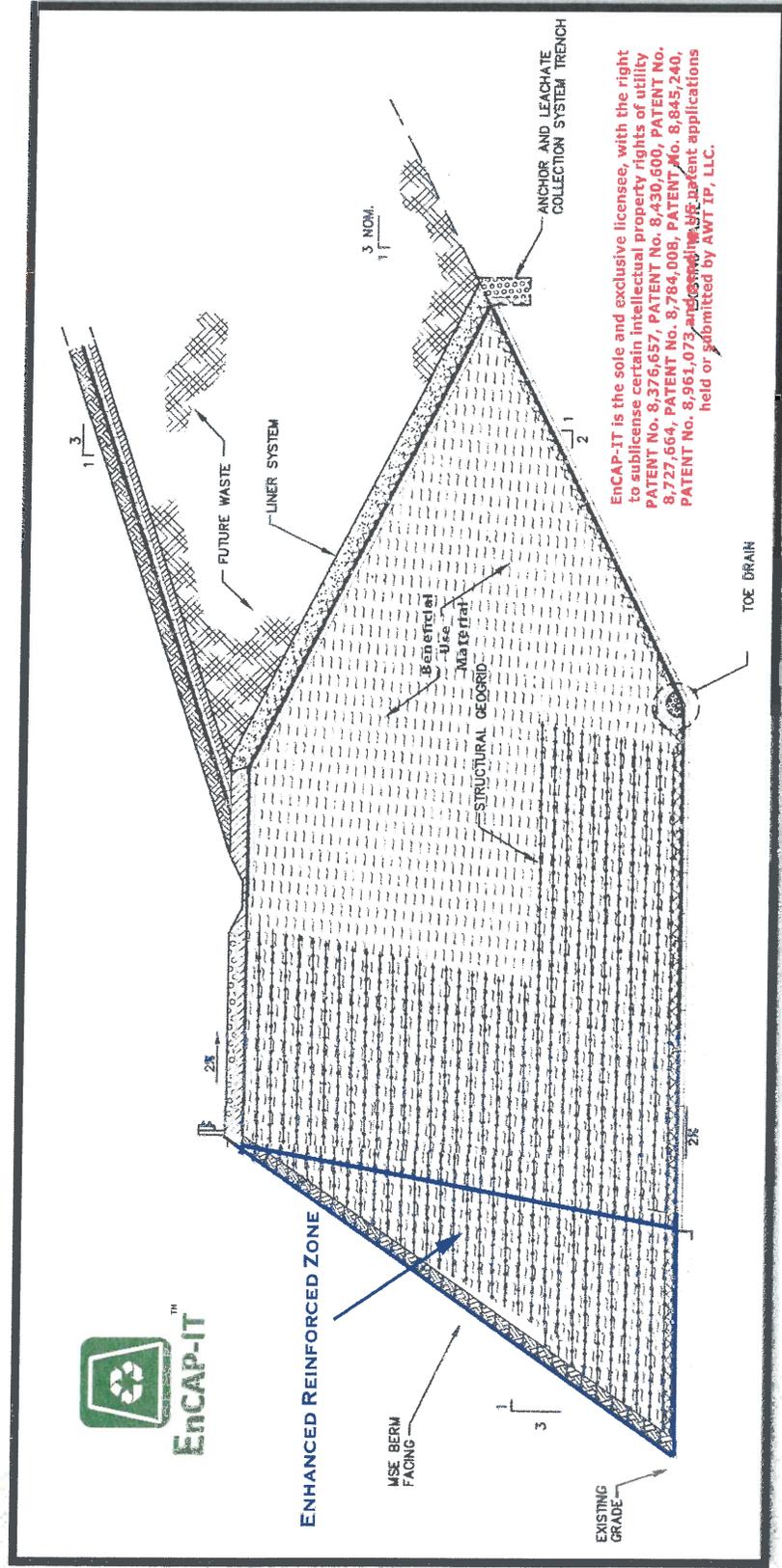
# States with Permitted or Planned Landfill MSE Berms



*There has never been a substantive failure of a Landfill MSE Berm in the United States*

Responsible **REUSE** 

# EnCAP-IT Macroencapsulation Berm



EnCAP-IT is the sole and exclusive licensee, with the right to sublicense certain intellectual property rights of utility PATENT No. 8,376,657, PATENT No. 8,430,600, PATENT No. 8,727,664, PATENT No. 8,784,008, PATENT No. 8,845,240, PATENT No. 8,961,073 and other pending patent applications held or submitted by AWT IP, LLC.