

COMMONWEALTH OF KENTUCKY  
BOYD CIRCUIT COURT  
CIVIL ACTION NO. 15-CI-00618  
DIVISION NO. II

ENTERED  
TRACEY L. KELLEY

2015 NOV 24 AM 10:27

CIRCUIT COURT  
BY *[Signature]*  
PLAINTIFF

CITIZENS OF BOYD COUNTY ENVIRONMENTAL COALITION, INC.

v.

FISCAL COURT OF BOYD COUNTY, KENTUCKY,

RIVER CITIES DISPOSAL, LLC

**AGREED ORDER OF JUDGMENT**

and

ENERGY AND ENVIRONMENTAL PROTECTION CABINET

DEFENDANTS

\* \* \* \*

All Parties having agreed to settlement of this action upon the following terms and conditions, without adjudication of any factual or legal issue, and without Defendants admitting any of the matters alleged in the Complaint, the Parties hereby agree to the entry of this Agreed Order and Judgment. The Parties stipulate and agree to the following:

A. On April 19, 2005, Defendant Fiscal Court of Boyd County, Kentucky ("Fiscal Court" or "County") passed Resolution 05-10.

B. On July 26, 2005, the Fiscal Court passed a second resolution, Resolution 06-01, in which it determined that Defendant River Cities Disposal, LLC's ("the Company") Notice of Intent to Apply for an expansion of the Big Run Landfill ("the landfill") was consistent with the Boyd County Solid Waste Management Plan in accordance with KRS 224.40-315. The Fiscal Court provided an opportunity for public comment and a hearing on Resolution 06-01 under KRS 224.40-315.

C. Based upon Resolution 06-01, Defendant Energy and Environmental Cabinet (“Cabinet”) issued a solid waste permit for the expansion of the landfill.

D. On August 14, 2015, Plaintiff Citizens of Boyd County Environmental Coalition, Inc. (“CBCEC”) filed its Complaint in this action against the Fiscal Court, the Company, and the Cabinet. CBCEC alleged that the Fiscal Court’s passage of Resolution 05-10 and Resolution 06-01 violated Section 2 and Section 164 of the Kentucky Constitution. CBCEC also sought an order from this Court declaring that the solid waste permit issued by the Cabinet should be rescinded.

E. Upon consideration of the record, and as agreed by the Parties, this Court finds that it has subject-matter jurisdiction over the Complaint and personal jurisdiction over the Parties.

F. The Parties have negotiated an agreement to settle all claims and issues arising from and which are the subject matter of the Complaint, on the terms and conditions set forth in this Agreed Order of Judgment as a complete resolution of the claims and issues contained in the Complaint, and without trial, adjudication or admission of any issue of fact or law raised in the Complaint.

G. The Parties represent to the Court that this Agreed Order of Judgment is the sole and complete agreement negotiated between them.

H. The Parties expressly waive any findings of fact and conclusions of law, and consent to the entry of this Agreed Order of Judgment as a complete resolution of the claims and issues raised in the Complaint.

I. The Parties expressly acknowledge and represent that they have read this Agreed Order of Judgment and understand its provisions, and that each of the undersigned legal counsel and Party representative expressly acknowledges and represents that he or she is authorized and

empowered to execute this Agreed Order of Judgment on behalf of the Party represented, and that each of the undersigned legal counsel has fully disclosed any conflicts of interest relating to their representations for purposes of executing this Agreed Order of Judgment.

J. For purposes of this Agreed Order of Judgment, unless otherwise defined herein, the terms used in this Agreed Order are intended to be defined in a manner identical to the same terms as used in KRS Chapter 224 and 401 KAR Chapters 30, 40, 47 and 48.

K. The parties agree to the following terms and conditions in full settlement of this action:

1. The Company agrees not to challenge the Cabinet conditions on the September 18, 2015 approval of Cells 5B/6B. Construction on final cap will begin on or before March 1, 2016, subject to approval of the plan by the Cabinet prior to that date and to force majeure, and shall be completed no later than September 1, 2016. For current and future active cell areas, including 5B and 6B, the Company will maintain an active gas management system capable of preventing odors from such areas, and will at all times be in compliance with the Cabinet's regulation 401 KAR 48:090.

2. The Company will end receipt of all waste by rail by July 1, 2016 and will commence removal of the rail transfer station and any remediation as directed by the Cabinet and consistent with KRS Chapter 224, immediately after cessation of receipt of waste by rail, with completion four months after cessation of receipt of waste by rail. All Parties agree that the prohibition on acceptance of sludge for disposal via rail, and of baled waste for disposal by rail, shall be permanent and shall remain in effect.

3. In the interim, the Company will reduce the volume of waste by rail to no more than 96,000 tons per month beginning January 1, 2016, and will reduce rail shipments from six (6) to five (5) days per week after January 1, 2016.

4. The Company agrees that only on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) may be used for daily cover; that alternative cover is not permitted; and that daily cover must be applied in accordance with 401 KAR 48:090 Section 3 at the end of each operating day.

5. The Company agrees that only treated sewage wastes or residues shall be accepted by the landfill, and such sewage wastes or residues shall be limited to those generated in Boyd, Greenup, Carter, Floyd, Johnson and Elliott Counties in Kentucky, and Cabell and Wayne Counties in West Virginia, and Scioto and Lawrence Counties in Ohio, provided that the volumes of such wastes or residues from those counties shall not exceed the volumes of such wastes or residues accepted by the landfill from those counties during the past one year by more than 5% for any county during any year. In no event shall the percentage of sewage wastes or residues relative to total waste disposed in any year be more than 3%. Any sewage wastes or residues received by the facility shall have been solidified to satisfy applicable liquids standards prior to acceptance, or will be solidified at the landfill in an enclosed, vented structure with air filtration to minimize odors.

6. The Parties agree that no additional special or industrial wastes other than those allowed under permit at the time of entry of this Agreed Order of Judgment shall be accepted for disposal unless the Company files for a permit modification, and such modification shall be processed by the Cabinet as a major modification. No new special or industrial waste streams shall be accepted unless the Cabinet determines that disposal of such wastes are compatible with waste streams currently approved for disposal at the facility.

7. The Company agrees to provide and keep current a complete copy of the permit file, including all testing, correspondence, notices of violation or warning letters, to the office of the

Judge Executive of Boyd County, and such files shall be open to public inspection consistent with the KORA (Kentucky Open Records Act).

8. The Company agrees to install equipment capable of automated fence line monitoring for hydrogen sulfide and methane on a continuous basis, with results provided to the Cabinet and to the County, no later than September 1, 2016. The monitoring equipment shall be installed at three permit boundary locations, between the landfill and the Boyd County High School, Interstate 64, and Princeland Estates, and shall be located so as to avoid interference with sampling from other sources of hydrogen sulfide or methane. The equipment shall be installed and maintained in accordance with the manufacturer's specifications, at the Company's expense.

9. The written manual of Standard Operating Procedures for the landfill and transfer station shall be reviewed and modified to include a detailed approach to operations, environmental monitoring, and response to violations encountered by monitoring.

10. The Company and Cabinet agree to enter into an Agreed Order within forty-five (45) days of entry of this Agreed Order of Judgment, resolving all pending Notices of Violation and dismissing or withdrawing all administrative and judicial challenges to the Cabinet's enforcement actions filed prior to entry of this Agreed Order of Judgment. The Agreed Order will include a stipulated penalty that will be assessed for each future violation of Cabinet odor or nuisance regulations that may occur within one year following entry of the Agreed Order of Judgment. All parties retain those rights and defenses that they have under state laws and regulations respecting such future violations.

11. The County agrees to terminate the pending amendment process for Boyd County Solid Waste Plan upon the entry of this Agreed Order of Judgment in the Boyd Circuit Court.

12. The Company agrees to provide for disposal of all municipal solid waste generated within the county at least until such time as the Boyd County solid waste plan is next revised in accordance with state law.

13. The Parties agree that no additional geographic sources of municipal solid waste, including industrial waste, and no additional sources of special wastes, may be added to the landfill permit until after cessation of acceptance of waste by rail, and that any proposal to add a new geographic source of municipal solid waste, including industrial waste, or additional source of special waste, shall be done by major modification to the permit, with all parties receiving notice by certified mail prior to the filing of the modification request. The Parties further agree that any minor modifications approved by the Cabinet prior to the date of entry of the Agreed Order of Judgment that added new geographic sources or types of waste to the landfill permit are superceded to the extent they are in conflict with any provisions of this Agreed Order of Judgment limiting the sources and types of waste that can be accepted by the Company at the landfill.

14. The Company agrees to remit to the County an aggregate per-ton license fee of \$1.50 commencing on January 1, 2016 for all solid and special waste disposed of at the landfill. On and after January 1, 2017, that fee will rise to \$2.00. The fee referenced in this Paragraph 14 is inclusive of the license fee paid pursuant to Boyd County Ordinance No. 2014-02 and represents the total license or host fee to be paid by the Company. Company agrees that the County may periodically review Company waste acceptance records to verify that the fee has been accurately calculated. Payments shall be remitted monthly with 5% penalty on any late payments.

15. The Company agrees that until cessation of acceptance of waste by rail, the maximum daily limit for all waste (including municipal solid wastes, industrial wastes, and special wastes)

other than waste by rail disposed at the landfill shall not exceed 1,300 tons per day, calculated on a 6-day week and averaged over a monthly period, and of that 1,300 tons, no more than 400 tons per day shall be municipal solid waste. The Parties agree that after cessation of acceptance of waste by rail, the volume of wastes accepted for disposal may increase to no more than 1,500 tons per day, with no more than 400 tons per day of that waste being municipal solid waste. The Parties further agree that upon completion of the final cap on all areas other than Cells 5B/6B, the volume of wastes accepted for disposal may increase to 2,000 tons per day (with no more than 700 tons of which are municipal solid waste or any non-MSW putrescible wastes), provided that there shall be no increase in municipal solid wastes or any non-MSW putrescible wastes after that date, absent agreement by the parties that the current odor problems have been satisfactorily resolved, and absent such agreement, a finding by the Cabinet to that effect. The Parties further agree that the geographic boundary for any non-rail waste accepted by the facility shall be a 75-mile radius from the landfill, and no waste generated outside from sources in counties outside of that boundary and transported into that area shall be accepted for disposal.

16. All Parties reserve the right to review and comment on the technical design and standards for construction and conditions for operation of the landfill, and comment on permit applications or to challenge issued permits in order to assure that the design meets appropriate standards. The Cabinet retains all rights to consider and to accept or reject such comments in accordance with state law and regulations.

17. The Company agrees to operate the landfill in full compliance with all federal, state and local laws and regulations. All parties reserve the right to seek appropriate administrative and judicial remedies for any violations of such laws and regulations. The Cabinet agrees to provide

copies of any warning letters and notices of violation to the County and CBCEC as soon as practicable after issuance.

18. The Company agrees that the County shall have the right to visit and tour the landfill at any time without prior notice, in order to verify compliance with the terms of this Agreement and any applicable laws. On reasonable notice, CBCEC Board members shall have opportunity to inspect landfill, provided that if the CBCEC is accompanying the County on a visit, prior notice need not be provided. Both the County and CBCEC Board agree to follow all applicable safety rules established by OSHA and the state Labor Cabinet, and to be accompanied by a representative of the facility.

19. The Company shall notify all commercial haulers transporting solid waste to the landfill to cover their loads and to completely empty their vehicles when leaving the landfill in order to avoid wind-blown litter.

20. The Company shall be responsible for preventing mud, trash, waste, and litter from being tracked onto the roads around the landfill. The Company shall be responsible for the proper removal and disposal of any mud, trash, waste, or litter that accumulates on any of the roads around the landfill.

21. The Company agrees to limit the hours that the landfill is open to the public from 6 a.m. to 4 p.m., Monday through Saturday, with no waste receipt or disposal on Sundays. All waste disposed of during any day shall receive daily cover by the end of that work day, and any waste delivered by rail shall be unloaded and disposed of prior to the end of that work day, and for weekend shipments received, by the end of the next working day, and shall be spread and compacted within two (2) hours of the arrival of the waste at the landfill face.



22. The Company agrees to refuse acceptance of listed or characteristic hazardous waste, nuclear waste, untreated medical waste, wastes or wastewaters from hydraulic fracturing operations, Naturally Occurring Radioactive Material, and any other waste prohibited by State or Federal Regulation.

23. The Company shall maintain during the operation of the landfill and any applicable closure care period a Commercial General Liability Policy or other insurance policy(s) with limits of liability no less than ten million dollars (\$10,000,000). The County shall be made an additional insured on the policy. The policy shall pay on behalf of the Company for any damages for bodily injury or property damage which the Company or the County has or will become legally liable to pay as a result of an occurrence arising from the construction or operation of the landfill, including but not limited to environmental contamination of land, air or water, creation of conditions determined by a court to constitute a nuisance, or other off-site damage to person or property, in each case reasonably consistent with the existing Zurich "Z Choice Real Estate Environmental Liability" policy currently in place. The Company may propose alternative financial assurance mechanisms if changes in insurance markets make such coverage unavailable or unreasonably expensive providing any such financial assurance mechanism provides for liability limits equal to or greater than that provided for under the policy as described in this paragraph.

24. The Company agrees to indemnify County for any out-of-pocket expenses arising from any breach of this Agreed Order of Judgment by the Company, including any attorney and expert witness fees incurred due to such breach.

25. The ultimate parent company of the Company, EnviroSolutions Holdings, Inc., by signing this Agreed Order of Judgment, guarantees all commitments made by the Company under this

Agreed Order of Judgment until after completion and approval of the installation of the final cap on all existing areas other than Cells 5B/6B. The Company agrees that it will maintain adequate financial assets to meet all commitments made by the Company under this Agreed Order of Judgment, and will not seek relief under state or federal law that would impair the contractual obligations made under this agreement. Inability to pay shall not be used as a defense by the Company to any motion by a Party for specific performance of any commitment made by the Company in this Agreed Order of Judgment.

26. Notice will be given by the Company to all Parties prior to any transfer of ownership of the landfill, and the terms of this Agreed Order of Judgment are binding on any successors in interest.

27. The County and other Parties will be given notice by the Company at the time of the filing of any permit modification to transfer ownership or managerial responsibility for the operation of the landfill, and the Cabinet agrees that any permit modification to transfer ownership or managerial responsibility for the operation of the landfill will be processed as a major modification subject to public comment or the opportunity to request a hearing.

28. The Company will provide a drop-off location for recycling from residential and commercial sources, and donate any net profits of the recycling program at the landfill annually to the County for community clean-up and recycling efforts.

29. All Parties reserve their rights and defenses regarding any nuisance conditions created by the operation of the landfill, including the right to seek additional administrative or judicial relief.

30. The Cabinet agrees to provide one (1) full-time equivalent (FTE) Department for Environmental Protection staff to monitor conditions at the facility until completion of the final

*cap on all areas under interim cap as of the date of this Agreed Order of Judgment*, with an inspector present during each working day.

31. The Company agrees to reimburse the County for out-of-pocket engineering and legal expenses incurred prior to the entry of the Agreed Order of Judgment, up to \$100,000.

32. The Parties agree to convene at least a quarterly basis if requested by any party.

33. The Company agrees to continue to provide free disposal services for the annual county cleanup day.

34. This Court shall have continuing jurisdiction over the compliance of the Parties with the terms and conditions of this Agreed Order of Judgment, and upon entry of this Agreed Order of Judgment, the case shall be removed from the active docket of this Court. Nothing in this Agreed Order of Judgment shall restrain, reduce, or otherwise limit the authority or remedies available to the Cabinet under state or federal law.

35. Authorized representatives of all parties, as well as counsel, have signed this Agreed Order of Judgment.

36. No later than December 31, 2016, a facility capable of capturing and converting the methane to a beneficial purpose from all capped areas at the facility shall be installed, and operational, subject to force majeure and to approval by the Cabinet of any necessary permits, the applications for having been timely filed.

37. The Parties agree that the Company is relieved of its obligations to comply with the terms and conditions of this Agreed Order of Judgment if the Cabinet denies the application for a renewal of Solid Waste Permit # SW0100054 and the Company has exhausted all administrative and judicial review opportunities or if such approval is overturned by a court of law resulting in a permanent loss of operating status as a municipal solid waste landfill, provided that in each case

the landfill is allowed to continue operation during any review or appeal. If the permit renewal is denied or overturned by a court of law resulting in a permanent loss of operating status as a municipal solid waste landfill, or should this Agreed Order of Judgment be set aside in whole or in part, this matter may be redocketed for further proceedings on the Complaint upon Motion of any Party, with each party preserving any defenses to said Complaint. The Company withdraws its Motion to Dismiss Complaint, but reserves its right to resubmit the Motion to the Court if this matter is redocketed for further proceedings on the Complaint.

38. All Parties consent to the entry of this Agreed Order of Judgment, and by their signatures below, agree to the foregoing provisions, which shall be binding on the Parties upon execution by all Parties and the entry of the Agreed Order of Judgment by the Boyd Circuit Court.

39. The Agreed Order of Judgment may be executed in counterparts with signatures transmitted by facsimile or scanned electronically and transmitted by electronic mail.

CITIZENS OF BOYD COUNTY ENVIRONMENTAL COALITION, INC.

BY: Sean Borst Date: 11-23-15  
Name: Sean Borst  
Title: CRCEC Board Member, Agent  
Counsel: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_

FISCAL COURT OF BOYD COUNTY, KENTUCKY

BY: Steve Towler Date: 11/24/15  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Counsel: Greg Owen Perke Date: 11/24/15  
Name: \_\_\_\_\_

RIVER CITIES DISPOSAL, LLC

BY: See Next Page Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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38. All Parties consent to the entry of this Agreed Order of Judgment, and by their signatures below, agree to the foregoing provisions, which shall be binding on the Parties upon execution by all Parties and the entry of the Agreed Order of Judgment by the Boyd Circuit Court.

39. The Agreed Order of Judgment may be executed in counterparts with signatures transmitted by facsimile or scanned electronically and transmitted by electronic mail.

CITIZENS OF BOYD COUNTY ENVIRONMENTAL COALITION, INC.

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:  
Counsel: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:

FISCAL COURT OF BOYD COUNTY, KENTUCKY

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:  
Title:  
Counsel: \_\_\_\_\_ Date: \_\_\_\_\_  
Name:

RIVER CITIES DISPOSAL, LLC

BY: \_\_\_\_\_ Date: 11/24/15  
Name: DEAN KATTON  
Title: PRESIDENT + CEO  
Counsel: \_\_\_\_\_ Date: 11-23-15  
Name: DENNIS F. CONNIFF

ENERGY AND ENVIRONMENT CABINET

BY: C. Michael Harris Date: 11-23-15  
Name: C. Michael Harris  
Title: General Counsel  
Counsel: [Signature] Date: 11/23/15  
Name: J. Michael West

Solely for the purpose of Numerical Paragraph K25:

ENVIROSOLUTIONS HOLDINGS, INC.

BY: [Signature] Date: 11/24/15  
Name: DEAN KATLER  
Title: PRESIDENT  
Counsel: [Signature] Date: 11-23-15  
Name: DENNIS J. COURTNEY

**THEREFORE**, based upon the above stipulations, and this Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that this **AGREED ORDER OF JUDGMENT BE ENTERED** in accordance with the terms and conditions recited above, and that each party is directed to comply with such terms and conditions. This is a final and appealable order.

[Signature]  
JUDGE DAVID HAGERMAN  
BOYD CIRCUIT COURT

DATE: 11/25/15

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by mailing same to:

Hon. Tom Fitzgerald  
Kentucky Resources Council, Inc.  
P. O. Box 1070  
Frankfort, KY 40602-1070  
*Attorney for Plaintiff*

Hon. Barry D. Hunter  
Hon. Medrith Lee Norman  
Frost Brown Todd LLC  
250 West Main Street, Suite 2800  
Lexington, KY 40507

Hon. Dennis J. Conniff  
Hon. Emily C. McKinney  
Frost Brown Todd LLC  
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Louisville, KY 40202

*Attorneys for River Cities Disposal, LLC*

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Hon. John S. West  
Hon. J. Michael West  
Office of General Counsel  
2 Hudson Hollow  
Frankfort, KY 40601

Hon. Phillip Bruce Leslie  
McBrayer, McGinnis, Leslie & Kirkland  
PO Box 280  
Greenup, KY 41144

This 24<sup>th</sup> day of Nov., 2015.

CLERK, BOYD CIRCUIT COURT

BY: J. Smith D.C.