

ONYX SEVEN MILE CREEK LANDFILL EXPANSION  
FINAL NEGOTIATED AGREEMENT

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A SUBSIDIARY OF ONYX WASTE SERVICES, INC.

AND

AFFECTED MUNICIPALITIES:

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TOWN OF SEYMOUR  
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## **TITLE AND INTRODUCTION**

This Agreement ("Agreement") is made and entered into by and between Onyx Seven Mile Creek Landfill, LLC. ("OSMCL"), a Wisconsin corporation (hereinafter referred to as "Operator") and the Town of Seymour, the City of Eau Claire and Eau Claire County (hereinafter referred to as the "Affected Municipalities"), unless otherwise specified.

This Final Negotiated Agreement is the final product of the negotiating process provided for under § 289.33, Wis. Stats. This Agreement between the Negotiating Committee and the Operator shall be deemed a Final Agreement upon approval thereof by the Negotiating Committee, the Affected Municipalities and the Operator.

This Agreement shall be known as the "OSMCL: Final Negotiated Agreement."

## ARTICLE I

### DEFINITIONS

**Active Fill Area** means the total capacity approved by the Department of Natural Resources as the Disposal capacity for the Disposal of Solid Waste by the Operator at the Solid Waste Facility, in the area depicted and described in Exhibits A and B, herein incorporated by reference in this Agreement.

**Acknowledged Transporter** means any person who is identified in writing by the Operator at any time as a transporter of Solid Waste to and from the Solid Waste Facility and/or any person who disposes Solid Waste in the Active Fill Area at the Solid Waste Facility for the purpose of conducting business-related Disposal. Acknowledged Transporters do not include residents or businesses in the Town of Seymour who are transporting Solid Waste to the Solid Waste Facility for disposal pursuant to Article VI, Paragraph 5.

**Affected Municipality** or **Affected Municipalities** shall mean the Town of Seymour, City of Eau Claire and Eau Claire County. Where this agreement uses the plural term "Affected Municipalities," it shall also be read to include and mean each and any of the Affected Municipalities.

**Agreement** or **Final Agreement** means this Final Negotiated Agreement, approved by the Negotiating Committee and the Operator, and thereafter approved by the Town, County and City and accepted by the Waste Facility Siting Board as the Final Negotiated Agreement under §289.33, Wis. Stats.

**City** means the City of Eau Claire.

**County** means Eau Claire County.

**Department** or **DNR** means the Wisconsin Department of Natural Resources or its successor agency. This also includes multiple agencies to the extent that the existing responsibilities of the Department of Natural Resource are divided among new or additional agencies.

**Design Management Zone** means the area defined by NR 140.22(3), Wis. Admin. Code.

**Discharge** means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, dumping or otherwise disposing of Solid Waste at the Solid Waste Facility, or the dissemination of such wastes or materials by Acknowledged Transporters bringing such wastes to the Solid Waste Facility; except as legally permitted in connection with Disposal Operations at the Solid Waste Facility.

**Disposal** or **Dispose** means the Discharge, deposit, injection, dumping or placing of Solid Waste at the Solid Waste Facility.

**Disposal Operations** means any activities at the Solid Waste Facility related to or associated with the transfer, transportation or Disposal of Solid Waste, including but not limited to the constructing, capping, transporting construction or capping materials, surveying, environmental monitoring, environmental testing, repairing, maintaining, closing and long-term care of the Solid Waste Facility.

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Waste Facility. Disposal operations include but are not limited to treatment of solid waste, such as bioremediation and liquid solidification, prior to disposal in the Active Area; Storage of Solid Waste; maintenance of a collection and separation facility for recyclable material; composting operations; gas extraction; energy generation; and leachate treatment and recirculation.

**Effective Date** means the date the Agreement is signed by all parties.

**Emergency** means an unforeseen circumstance at any time at the Solid Waste Facility that jeopardizes the public health and safety of persons or property in the Affected Municipalities.

**Expansion** means the increase at any time by any means by the Operator of the design capacity of the Solid Waste Facility beyond the capacity approved by the Department of Natural Resources in the pending licensing process. It is anticipated that, in the pending license process, the approved design capacity will be 5,300,000 cubic yards resulting in a total approved design capacity of 9,140,000 cubic yards (existing 3,840,000 cubic yards plus pending 5,300,000 cubic yards).

**Expansion Effective Date** means the date that the currently approved 3,840,000 cubic yards of disposal capacity has been consumed and the Operator begins to actively fill the 5,300,000 cubic yard expansion that is contemplated under and is the subject of this Agreement.

**Final Closure** means the date at which time no further Solid Waste is Disposed in the Active Fill Area by the Operator which shall be the earliest of the following:

- A. the date the Operator notifies the Affected Municipalities in writing that the Operator no longer will Dispose of Solid Waste in the Active Fill Area;
- B. the date the Department orders the Operator, in writing, to no longer Dispose of Solid Waste in the Active Fill Area; or
- C. the date the Operator has Disposed of in the Active Fill Area the number of in-place cubic yards of both Solid Waste and daily and intermediate cover materials in the Active Fill Area approved for Disposal by the Department.

**Hazardous Waste** means any waste identified or defined as a Hazardous Waste by the Department, under § 289.01(12), § 291.01(7) or § 291.05, Wis. Stats., or regulations adopted by the Department in Chapter NR 600 through 690, Wis. Admin. Code, or its successor chapters.

**Initial Term** shall commence on the Effective Date of this Agreement and shall continue through Final Closure, but does not apply to the Operator's obligations that continue after Final Closure.

**Local Approvals** means any local approval as defined in § 289.33, Wis. Stats., or its successor provisions. Local Approvals shall include zoning and conditional use permits.

**Local Committee or Negotiating Committee** shall mean the Negotiating Committee created under Chapter 289.33, Wis. Stats., which consists of four (4) City of Eau Claire members, four (4) Town of Seymour members, and two (2) Eau Claire County members.

**Long-Term Care or Long-Term Care Operations** means any activities at the Solid Waste Facility, including routine care, maintenance and monitoring, that occur any time following the Final Closure of the Active Fill Area.

The **Operator** is Onyx Seven Mile Creek Landfill, LLC., its successors or assigns.

**Pre-existing Local Approvals** means any Pre-Existing Local Approvals as "Pre-Existing Local Approvals" are defined in § 289.33(3)(fm), Wis. Stats., or its successor provisions. Pre-existing Local Approvals shall include zoning and conditional use permits.

**Recyclable Materials** means materials listed in § 287.07(lm)-(4), Wis. Stats., as amended from time-to-time, excepting those listed materials for which the Department has granted an exception or variance, for the period such exception or variance remains in effect.

**Solid Waste** means any garbage, ash, refuse, rubbish, sediments, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded or salvageable materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, residential, mining and agricultural operations, and from community activities wheresoever generated without regard to political boundaries or jurisdiction. Solid Waste includes, but is not limited to, paper, wood, metal, glass, cloth and products thereof; litter and street rubbish; lumber, concrete, dirt, stone, plastic, bricks, tar, asphalt, plaster, masonry, and other debris resulting from the construction or the demolition of structures, buildings, roads and other manmade structures. Solid Waste does not include solids or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Chapter 283, Wis. Stats., or its successor chapter, or source materials as defined in s. 254.31(10) or its successor sections, special nuclear material as defined in s. 254.31(11) or its successor sections, or by-product material as defined in s. 254.31(3), Wis. Stats., or its successor section. Solid Waste as used in this Agreement does not include Hazardous Waste.

**Solid Waste Facility** means the Solid Waste Disposal facility in Eau Claire County specifically depicted in Exhibit B. It includes both the Active Fill Area and the other land depicted in Exhibit B.

**Special Waste** is waste that is regulated pursuant to a DNR approved Special Waste Acceptance Plan, as part of an approved Plan of Operation.

**Standing Committee** means the committee established under Exhibit D.

**Storage or Store** means the holding of Solid Waste, excluding Recyclable Material, at the Solid Waste Facility, at the end of which period the Solid Waste is to be then transported away from the Solid Waste Facility.

**Town** means the Town of Seymour.

**Waste Facility Siting Board** means the Wisconsin Waste Facility Siting Board or its successor agency.

**Wisconsin Administrative Code** means the Wisconsin Administrative Code as amended from time to time.

**Wisconsin Statutes** means the Wisconsin Statutes as amended from time to time.



## **ARTICLE II**

### **SITE INFORMATION**

**1. Address of Solid Waste Facility.**

The location and mailing address of this Solid Waste Facility is:

Onyx Seven Mile Creek Landfill, LLC  
8001 Olson Drive  
Eau Claire, WI 54703

**2. Legal Description.**

The legal description of the Active Fill Area is described and depicted in Exhibit B attached hereto.

**3. Owner.**

The current owner of the Solid Waste Facility is Onyx Seven Mile Creek Landfill, LLC. ("OSMCL"). Such corporation is referred to as "Operator." All of Operator's responsibilities herein shall be guaranteed by Onyx Waste Services, Inc. in the event that Operator is unable to complete or comply with its obligations set forth under this Agreement, as provided for in this Agreement, unless and until such guarantee or its equivalent financial assurances are assumed and provided by a transferee as provided in Article IV, Paragraph 20.

## **ARTICLE III**

### **TRANSPORTATION**

#### **1. Access to Landfill.**

Ingress and egress to the Landfill shall only be gained from County Highway Q.

#### **2. Vehicle Requirements.**

During the Initial Term, the Operator and any affiliate of Onyx Waste Services, Inc. shall use transport vehicles which are designed, constructed, and, to the extent appropriate, are equipped with covers with the intent to prevent or substantially eliminate Solid Waste in such transport vehicles from discharging, leaking, spilling, falling, releasing, blowing out of or otherwise escaping from such transport vehicles onto any public or private property in the Affected Municipalities, excluding the Active Fill Area. Operator shall also take reasonable steps to ensure that Acknowledged Transporters comply with these same requirements.

#### **3. Litter.**

During the Initial Term, the Operator will monitor County Highway Q within three miles to the west and one mile to the east of the landfill entrance and will pick up litter resulting from the transportation of Solid Waste to the Solid Waste Facility on a regular and continuing basis, no less than twice a month or within twenty-four (24) hours of being notified of the same by representatives of either the Affected Municipalities or the Standing Committee.

#### **4. Tracking of Foreign Materials.**

During the Initial Term, and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, the Operator will take reasonable measures designed to prevent or substantially eliminate foreign material from being tracked onto County Highway Q and will be responsible for removing any foreign material on County Highway Q within one mile of the landfill entrance resulting from Disposal Operations or other activities associated with the Solid Waste Facility within twenty-four (24) hours of being notified of the same by representatives of either the Affected Municipalities or the Standing Committee. During the Initial Term and extending until DNR-approved final closure, Operator further agrees to inspect County Highway Q for the presence of foreign materials within one mile of the landfill entrance on a regular and continuing basis, no less than twice a month, and to remove any foreign materials resulting from Disposal Operations or other activities associated with the Solid Waste Facility that are discovered during said inspections.

#### **5. Transporters of Solid Waste.**

##### **A. List of Acknowledged Transporters.**

Within thirty (30) days after the beginning of the Initial Term, the Operator shall prepare a list of its then Acknowledged Transporters. The list shall contain the names, addresses and telephone numbers of the Acknowledged Transporters and their DNR permit numbers. The initial list shall be made available by the Operator for inspection by the Standing Committee and shall be

updated annually. Such updates shall be made available to the Standing Committee. This information shall be subject to the Confidentiality Agreement reflected in Article VII, Paragraph 4 below.

**B. Notice of Agreement and Acknowledged Transporters Compliance Policy.**

During the Initial Term, the Operator shall notify in writing the Acknowledged Transporters who transport Solid Waste to the Solid Waste Facility for Disposal in the Active Fill Area of the applicable provisions of this Agreement. Such written notice shall be provided to such Acknowledged Transporters when they commence transporting Solid Waste to the Active Fill Area. With respect to Acknowledged Transporters that are not the Operator or any affiliate of Onyx Waste Services, Inc, the provision of Exhibit G shall constitute such notification and shall fulfill Operator's responsibility under Article III, Paragraph 2 above.

**6. Clay Transportation**

The Operator agrees that clay to be used in the construction of the Active Fill Area shall not be transported on any County trunk highways other than CTH Q between STH 53 and the Solid Waste Facility. Additionally, the Operator will not use other streets, highways or roads of the Affected Municipalities for such clay transportation, except to the extent necessary due to closure of CTH Q. In the event that a clay source becomes available such that a different route may be utilized, the Standing Committee shall have the authority to negotiate temporary use of such a route.



## **ARTICLE IV**

### **OPERATIONS AT THE SOLID WASTE FACILITY**

#### **1. Reports to the Affected Municipalities.**

##### **A. Notice of Reports from the Operator.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall make available to the Standing Committee all written reports and written correspondence provided by the Operator to the Department or to any other state or federal environmental agency or to any state or federal court provided said reports and correspondence are associated with the operation of the Solid Waste Facility, excluding any tax or corporate filings, and including any recycling information that any Affected Municipality requests that is needed for reporting requirements. These copies shall be made available by the Operator at no cost to the Standing Committee.

##### **B. Notice of Reports from Government Agencies.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall make available to the Standing Committee written copies of all written reports and written correspondence received by the Operator from the Department or from any other state or federal environmental agency or from any state or federal court provided said reports and correspondence are associated with the operation of the Solid Waste Facility excluding tax and corporate filings. These copies shall be made available by the Operator at no cost to the Standing Committee.

##### **C. Residential Concerns of the Affected Municipalities.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall provide to the Standing Committee, within seven (7) days of receipt by the Operator, copies of all written letters, written reports and other written correspondence, except general notifications or general mailings to all residents or property owners, received by the Operator from any public official of any of the Affected Municipalities or from any resident of the Affected Municipalities where the above-noted letters, reports or correspondence are associated with the operation of the Solid Waste Facility. These copies shall be provided by the Operator at no cost to the Standing Committee.

##### **D. Designated Filing Space.**

A designated file cabinet(s) will be provided at the Operator's office which contains an organized file system for all items referenced in preceding Sections A and B immediately above. Such files will be made available to the Standing Committee during normal business hours.

## **2. Hours and Days of Operations.**

Except during an Emergency, the Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall not conduct any Disposal Operations or Long-Term Care Operations, including but not limited to any construction, capping or transportation for construction or capping, at the Solid Waste Facility, nor shall it allow any Disposal Operations or Long-Term Care Operations at the Solid Waste Facility, before 6:30 a.m., Monday through Saturday. Except during an Emergency, the Operator shall terminate all Disposal Operations and Long-Term Care Operations and it shall not allow any Disposal Operations or Long-Term Care Operations at the Solid Waste Facility, after 5:30 p.m., Monday through Saturday. Covering operations may continue for one and one half hours after 5:30 p.m., *i.e.*, until no later than 7:00 p.m.

Except during an Emergency, the Operator shall not conduct any Disposal Operations or Long-Term Care Operations, nor shall it allow any Disposal Operations or Long-Term Care Operations by its agents, by its Acknowledged Transporters or by any other parties at the Solid Waste Facility on Sundays or on the following holidays: Christmas Day, Thanksgiving, Labor Day, New Year's Day, Memorial Day and Independence Day. For the avoidance of doubt and for purposes of this paragraph only, "Disposal Operations" and "Long Term Care Operations" shall be deemed to include the operation of any vehicles, machinery or equipment by Operator, but shall exclude Emergency operations, snow removal, security operations, monitoring, operation of stationary equipment related to mechanical bioremediation, landfill gas control and management and electrical generation resulting therefrom, leachate management including transportation to an off-site facility, or other operations inside enclosed buildings.

In addition, the above-noted hours and days of operation may be temporarily amended by the Standing Committee when and for such duration as the Standing Committee deems necessary to protect and serve the public health and safety in the Affected Municipalities or in response to requests for extended hours from the Operator, such as for landfill construction, remediation, holidays or events of nature (wind storms, floods, or other catastrophic events), or similar unforeseen events; provided that the decision whether to amend such hours and days of operation shall be within the sole discretion of the Standing Committee.

## **3. Dust, Dirt and Debris Control at the Solid Waste Facility.**

The Operator, during the Initial Term, and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall take reasonable actions to control the blowing of dust, dirt and debris from the Solid Waste Facility.

## **4. Groundwater Monitoring.**

The Operator shall undertake the groundwater monitoring program (including private wells) required by the Department, imposed as a condition of its finding of feasibility, or any subsequent requirement made by the Department to test groundwater or private wells.

Routine Private Well Monitoring shall be performed as described in Exhibit F.



**5. Noise.**

During the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, the decibel readings generated at the Solid Waste Facility shall not exceed 70 decibels (as measured on the "A" scale, slow response) at the property line, excluding only noise that is caused by vehicular travel coming to and from the Solid Waste Facility; except that the decibel readings during construction activities shall not exceed 80 decibels (as measured on the "A" scale, slow response) at the property lines adjacent to the north, south and east perimeters of the Active Fill Area. In the event that residents in the vicinity of the north boundary of the Solid Waste Facility complain about noise associated with construction activities that exceed 70 decibels, the Standing Committee may impose further reasonable temporary restrictions to reduce the effect of those activities, including but not limited to hours of operation restrictions that do not substantially interfere with the overall duration of these activities.

**6. Air Quality.**

The Operator shall meet all air quality standards as set forth in Exhibit E.

**7. Prevention and Control of Rodents, Birds and Insects at the Solid Waste Facility.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall Dispose of Solid Waste in the Active Fill Area and shall conduct any Disposal Operations at the Solid Waste Facility in such a manner as to control and minimize rodent, bird (including but not limited to gulls and pigeons) and insect harborage through a vector control program, including but not limited to the application of pesticides, rodent and bird control measures, and agreed upon innovative or alternative control measures.

**8. Fire, Disaster and Hazard Control.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall conduct any Disposal Operations at the Solid Waste Facility (including the Disposal of Solid Waste as authorized by this Agreement and the DNR) in such a manner as to minimize fires and explosions at the Solid Waste Facility and minimize any fire hazards or any potentially explosive hazards from occurring at the Solid Waste Facility.

**9. Erosion, Run-off and Surface Water.**

**A. Erosion Restrictions.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, will control surface water runoff and erosion by compliance with surface water control provisions of the plan of operation and post-closure and long-term care plans for the Solid Waste Facility, as approved and as modified by the Department.



## **B. Abatement of Erosion.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, upon written notice by the Standing Committee or any of the Affected Municipalities describing to the Operator the location of any surface water run-off or erosion discharged from the Active Fill Area and other areas used in connection with current or prior Solid Waste Disposal or other Disposal Operations onto any other lands located in the Affected Municipalities, shall take appropriate and necessary actions to abate or remove the described run-off or erosion from such other lands within three (3) days of written notice or the following business day in the case of a weekend or holiday, subject to the Operator's right to challenge the same.

## **C. Surface Water.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR whichever is later, shall take appropriate and necessary actions to minimize the accumulation of surface water in the Active Fill Area and other areas used in connection with current or prior Solid Waste Disposal or other Disposal Operations, and shall direct all surface water coming into contact with Solid Waste or accumulating in the Active Fill Area into an appropriately maintained leachate collection system. The Operator shall take the reasonable and necessary actions to direct all surface water from the Active Fill Area and other areas used in connection with current or prior Solid Waste Disposal or other Disposal Operations not coming into contact with the Solid Waste into the appropriately maintained sedimentation basin located at the Solid Waste Facility. The Operator shall not Discharge water nor shall it allow the Discharge of water from any sedimentation basin at the Solid Waste Facility into any surface water drainage area at the Solid Waste Facility until the surface water discharge complies with the appropriate regulations and requirements of the Department.

## **10. Security.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall maintain a chain link or woven wire fence in the location and as depicted in Exhibit C. Operator shall also employ or retain at the Solid Waste Facility the employees, personnel and/or equipment necessary to provide and maintain proper security throughout the Solid Waste Facility, including but not limited to the Active Fill Area, for the purpose of controlling physical access by unauthorized parties to or unauthorized Disposal at the Solid Waste Facility.

#### **11. Odor Control.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall take all reasonable steps to prevent and abate objectionable odors at the Solid Waste Facility, and emanating from the Solid Waste Facility, including but not limited to controlling odor by implementing proper landfilling operations in compliance with applicable DNR regulations; applying daily cover in compliance with the DNR approved plan of operation; using alternative daily cover when cover material is the source of objectionable odors; and through implementation of a DNR-approved gas control system. Nothing in this section shall waive or limit the ability of the Affected Municipalities to seek action by the Operator to abate objectionable odors notwithstanding the Operator's compliance with Department requirements.

#### **12. Leachate Management.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall be responsible for the management of the leachate at the Solid Waste Facility and for its transportation for off-site treatment and/or disposal, except to the extent that responsibility for such leachate transportation is assumed by one of the Affected Municipalities under separate written agreement. Operator shall take all reasonable steps to prevent the release, spill or discharge of such leachate and, if such leachate is released, spilled or discharged, to remediate such release, spill or discharge and restore the affected environment to the extent practicable; provided that recirculation of leachate in compliance with the DNR-approved plan of operation shall not be deemed a release, spill or discharge under this paragraph.

#### **13. Temporary/Emergency Closure of Active Fill Area.**

During the Initial Term, the Operator shall notify in writing within forty-eight (48) hours (excluding weekends and holidays observed by the Affected Municipalities), the Clerks for the Affected Municipalities, the County Administrator and Standing Committee of any temporary or Emergency closure of the Active Fill Area, including but not limited to any temporary or Emergency closure of the Active Fill Area ordered by the Department. The Operator shall provide in its written notice to the Affected Municipalities and Standing Committee the specific reasons, to the extent known, for such temporary or Emergency closure of the Active Fill Area.

#### **14. Access to the Solid Waste Facility.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall allow the Affected Municipalities or Standing Committee and their officers, employees or agents, the right of immediate and unobstructed access to enter the Solid Waste Facility during any Emergency at the Solid Waste Facility. They shall also have the right of access to enter the Solid Waste Facility during normal operating hours upon reasonable notice from the Affected Municipalities, the Standing Committee or their respective representatives or members. Physical access to the Solid Waste Facility shall be allowed:



- A. to Observe Disposal Operations at the Solid Waste Facility;
- B. to sample and test groundwater, surface water, leachate and air quality at the Solid Waste Facility (provided that the Operator shall be given the opportunity to have an employee present and to take a split sample);
- C. to sample and test characteristics of the Solid Waste at the Solid Waste Facility (provided that the Operator shall be given the opportunity to have an employee present and to take a split sample); or
- D. to take any reasonable and necessary action at the Solid Waste Facility during any Emergency to protect the public health and safety of the residents of or property in the Affected Municipalities.

The Operator shall be given reasonable opportunity to accompany the designated officers, employees or agents of Affected Municipalities or the Standing Committee. In addition, the activities of the designated officers, employees or agents shall be conducted so as to not unreasonably interfere with the normal business operations at the Solid Waste Facility. Copies of any non-privileged documents generated by such activities shall be provided to the Operator upon its request.

#### **15. Hazardous and Other Unauthorized Waste Disposal Notice.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, upon its receipt of any information that Hazardous Waste or other unauthorized waste has been Disposed in the Active Fill Area or any other location at the Solid Waste Facility, shall then give notice orally within twenty-four (24) hours (excluding weekends and holidays, in which case notice will be given on the next business day) of its receipt of the information to the Affected Municipalities and Standing Committee. The Operator shall, in addition, notify the above-noted parties in writing within a forty-eight (48) hour period (excluding weekends and holidays observed by the Affected Municipalities) of the receipt of this information. Such notice shall describe the date of the occurrence and the type, amount and source of Hazardous Waste.

#### **16. Hazards Notice.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall orally notify the Affected Municipalities and Standing Committee as soon as possible and no later than within twenty-four (24) hours (excluding weekends and holidays, in which case notice will be granted on the next business day) of the receipt of information by the Operator of the following known or suspected hazards or known or suspected occurrences in the Active Fill Area or at any other location at the Solid Waste Facility: fires that are not immediately extinguished by the Operator without outside assistance, explosions, contaminated or polluted surface water, contaminated or polluted groundwater, explosive or combustible gases that are not controlled through Operator's methane gas system and hazardous gases or hazardous dust. The Operator shall, in addition, report in writing within forty-eight (48) hours (excluding weekends and holidays, in which case notice will be granted on the next business day) of the receipt of the information by the Operator regarding the above-noted known or suspected hazards and known or



suspected occurrences, describing in detail the above noted known or suspected hazards or known or suspected occurrences, the location of such hazards or occurrences, any incidents of damages to persons or property that may have occurred as a result of the above-noted known or suspected hazards or occurrences and any actions taken or actions to be taken in the future by the Operator regarding the above-noted known or suspected hazards or known or suspected occurrences.

#### **17. Responsible Managers.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall provide to the Affected Municipalities and Standing Committee, the names, titles, addresses and telephone numbers of any responsible manager or responsible managers retained by or employed by the Operator whose responsibilities to the Operator and whose authority from the Operator shall be to manage, control and administer the Disposal of Solid Waste in the Active Fill Area and to manage, control and administer any Disposal Operations at the Solid Waste Facility. The names or titles, addresses and telephone numbers of the responsible managers shall be provided within five (5) business days after the Agreement is executed by the Negotiating Committee, Affected Municipalities and the Operator, and shall be updated whenever necessary thereafter, in writing, to provide the most current names or titles, addresses and telephone numbers of the current responsible manager or responsible managers.

#### **18. Closure.**

The Operator shall close the Active Fill Area as open green space in accord with the plan of operation as approved and amended by the Department.

#### **19. Restrictions on Waste Disposal.**

##### **A. Restrictions on Solid Waste Disposal.**

Disposal of Solid Waste, including Special Waste, shall be limited to the Active Fill Area, at such times and under such conditions as are set forth in this Agreement and as are approved and authorized by the Department; except that Operator shall not Dispose of or allow the Disposal of PCB-containing sediments from or relating to any water body in volumes exceeding 25,000 tons per year and 375,000 tons during Operation of the Active Fill Area, except as expressly authorized in writing by the Standing Committee. Operator expressly agrees not to dispose of any PCB containing sediments from the Lake Michigan watershed.

##### **B. Prohibition on Hazardous Waste Disposal**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure, shall not knowingly accept for Disposal, Dispose or allow the Disposal of Hazardous Waste in the Active Fill Area at the Solid Waste Facility. Additionally, Operator shall not seek authorization from the DNR to operate as a Hazardous Waste treatment, storage or Disposal Facility at the Solid Waste Facility.



**20. Change in Ownership.**

**A. Applicability to Successors and Assigns.**

This Agreement shall be applicable to the present Operator, Onyx Seven Mile Creek Landfill, LLC, its successors and assigns, and to any person acquiring any rights to ownership, possession, or operation in the Solid Waste Facility, except that this Agreement shall not apply to any person acquiring such rights exclusively to portions of the Solid Waste Facility that have never been used for or in connection with Solid Waste Disposal or other Disposal Operations.

**B. Notification in Change of Ownership, Possession or Operation.**

The Operator, shall notify the Standing Committee and the Affected Municipalities of any person acquiring any rights of ownership, possession, or operation in the Solid Waste Facility, except for any person acquiring such rights exclusively to portions of the Solid Waste Facility that have never been used for or in connection with Solid Waste Disposal or other Disposal Operations and provide proof that any such transferee has notice of and acknowledges this Agreement and the duties and obligations hereunder and has both the financial and operational ability to comply with the terms of this Agreement, the landfill license and state laws.

**C. Transfer of Ownership, Possession or Operation.**

The Operator shall provide documentation sufficient to demonstrate that such transferee has both the financial and operational ability to comply with the terms of this Agreement, the landfill license and State laws, including a financial guarantee equivalent to the Guarantee provided by Onyx Waste Services, Inc. that is a part of this Agreement. The Affected Municipalities shall have standing to challenge such transfer if the transferee is not found to be financially able or operationally able to comply with the requirements of this Agreement, the Department landfill license or State law. The Affected Municipalities shall have thirty (30) days from receipt of the aforementioned documentation in which to bring action in circuit court to void such transfer, unless such deadline is extended by mutual agreement of the Affected Municipalities and the Operator.

**21. Waiver of Local Approvals and Pre-Existing Local Approvals.**

By adoption of a resolution authorizing the execution of this Agreement, the Town through the Town Board, and the County through the County Board and the City through the City Council hereby waive and/or deem inapplicable, pursuant to Section 289.33(5), Wis. Stat., or its successor provisions, its applicable Local Approvals, as defined at Section 289.33(3)(d), Wis. Stat., or its successor provisions, Pre-Existing Local Approvals, as defined at Section 289.33(3)(fm), Wis. Stat., or its successor provisions, and any and all regulations, resolutions and ordinances that may apply to the Disposal Operations at the Solid Waste Facility, except as provided herein, in order to allow the Operator to site, construct, conduct Disposal Operations, use, transport waste to, maintain, repair, close and provide Long-Term Care of the Solid Waste Facility.

The Waiver shall be applicable and effective only as to the Operator, its officers, its employees, and its agents, including but not limited to construction and capping contractors; provided however, that in the event of a transfer of any interest in all or any part of the Solid Waste Disposal Facility, pursuant to Article IV, Paragraph 20.C. of this Agreement, the Waiver shall apply and be effective as to the transferee. This Waiver shall not be applicable or effective to any other



person or entity, including but not limited to Acknowledged Transporters or others who transport or deliver Solid Waste to the Solid Waste Facility.

This Waiver shall not be applicable to Local Approvals, including Pre-Existing Local Approvals, that relate to the collection and transportation of Solid Waste within or through the Affected Municipalities; provided that the Affected Municipalities shall not adopt or enforce Local Approvals in a manner that substantially impairs access to the Active Fill Area.

## **22. Standing Committee.**

The Operator and the Local Committee hereby agree to the formation of a Standing Committee ("Committee") which shall consist of two residents of the Township representing the Town, two residents of the City representing the City, two residents from Eau Claire County, and the Director of the City/County Health Department or his designee. Additionally, the Operator may appoint one (1) non-voting, ad hoc member. The Standing Committee shall have the functions and powers described in Exhibit D and elsewhere in this Agreement. During the Initial Term, the Operator shall pay to the Standing Committee the amount of \$1,000 per year to cover expenses of administering the Standing Committee. Such payments shall be paid to the OSMCL Trust Fund, and shall be paid by no later than December 15<sup>th</sup> of the preceding year.

## **23. Existing Agreements.**

The Affected Municipalities and the Operator do hereby stipulate that this Agreement shall supersede any prior inconsistent terms, provisions or contracts with the Affected Municipalities applicable to the Solid Waste Facility.

## **24. Expansions.**

Nothing in this Agreement shall be deemed a waiver of the rights of any of the Affected Municipalities regarding any Expansions of the Solid Waste Facility, and the Affected Municipalities reserve all rights with respect thereto.

## **25. Enforcement.**

### **A. Contract Enforcement.**

Subject to the enforcement procedures set forth in Exhibit D and notwithstanding any other provisions of this Agreement, during the Initial Term, and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, the Affected Municipalities may enforce any breach of this Agreement through a court action venued in the Circuit Court for Eau Claire County. Operator shall not contest the jurisdiction of the court. Operator will stipulate in any such action that if the court finds a breach occurred, the court may impose an order for specific performance of the applicable terms and conditions of this Agreement. Notwithstanding anything to the contrary in this paragraph, the parties reserve all applicable rights they may have to appeal any adverse decision of the Circuit Court or any appellate court.



**B. Public Nuisance.**

Subject to the provisions of § 823.085, in the event of the occurrence of a public nuisance, any of the Affected Municipalities may bring an action to abate such public nuisance and, if successful, shall be entitled to their reasonable attorneys fees and costs for bringing such action.

**C. Damages for Breach of Hours of Operation.**

The parties to this Agreement acknowledge that a breach of the requirements of Article IV, Paragraph 2, will result in additional costs and damages to the Affected Municipalities, that the value of such damages is difficult to ascertain, and that the payments provided for in this paragraph reflect the good faith effort of the parties to determine the value of those costs and damages. In the event that the Operator has breached Article IV, Paragraph 2, Operator shall pay the OSMCL Fund the following stipulated amounts:

First breach in a 12-month period	\$250 per day
Second breach in same 12-month period	\$500 per day
Third breach in same 12-month period	\$1,000 per day
Any subsequent breach in same 12-month period	\$1,000 per day period.

**D. Reservation of Rights.**

Nothing in this Article IV, Paragraph 25 shall be deemed to be a waiver or limit any rights that the Affected Municipalities may have to pursue other claims and remedies that they may have by statute or common law, including claims for breach of contract or nuisance seeking damages and injunctive relief, and including the right to petition the Department to initiate action against the Operator for a violation of any Applicable Wisconsin Statute, Administrative Code, plan of operation, post-closure care or long-term care plan or other enforceable requirements of the Department. The Operator retains and reserves the right to assert any defense that it may have related to such claims or petitions.

**26. Operator Responsibility to the Affected Municipalities.**

**A. Public Nuisance Prevention.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall conduct any Disposal Operations at the Solid Waste Facility, including but not limited to the Disposal of Solid Waste as authorized by this Agreement and the DNR, in such a manner as to prevent any public nuisance in the Affected Municipalities from occurring relating to the Solid Waste Facility or its operations, including public nuisances associated with polluted groundwater, polluted air and polluted surface water.

**B. Repair, Maintenance and Reconstruction of the Active Fill Area.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until the termination of all post-closure and long-term care requirements by the DNR, whichever is later, shall have the responsibility and duty to the Affected Municipalities to properly and timely maintain, repair, reconstruct and provide Long-Term Care of the Active Fill area and/or, if appropriate and necessary, to temporarily or permanently close the Active Fill Area, if at any time the condition of the Active Fill Area: (a) creates a substantial danger or poses an imminent threat to the public health or safety of any persons in the Affected Municipalities; or (b) causes substantial damage or poses an imminent threat to any public or private property in the Affected Municipalities

**C. Compliance with Agreement.**

The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later, shall be fully responsible to the Affected Municipalities to take reasonable steps to insure that the Operator and Acknowledged Transporters conduct any Disposal Operations relating to the Solid Waste Facility, including any post-closure and long-term care, in full compliance with the applicable provisions of this Agreement.



## ARTICLE V

### INDEMNIFICATION TO THE AFFECTED MUNICIPALITIES

Operator agrees to indemnify, defend and hold harmless the Affected Municipalities, their officers, agents, employees and duly-appointed committees, including the Negotiating Committee established under § 289.33, Wis. Stats., and the Standing Committee, and other committees as may be established, for and from any request, demand, order or any other form of obligation to pay cleanup or remediation costs, under any local, state or federal law, rule, order, ordinance, statute, regulation or decision, and for or from any and all liability, loss, claims or damages that they might suffer as a result of any claim, demand, cost or judgment by any person or entity at any time against any Affected Municipality, its officers, agents, employees or committees arising in any way or as the result of the design, construction, operation, maintenance, control, repair, administration, monitoring, closure, and Long-Term Care of the Solid Waste Facility and any obligations, duties or responsibilities of the Operator under this Agreement.

The terms and conditions of the above paragraph shall apply from the Effective Date until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later.

Notwithstanding the foregoing, the above indemnification and hold harmless provisions shall not apply to the following situations or circumstances:

- (1) **Environmental Cleanup Claims.** If an Indemnified Party disposes or causes to dispose of Hazardous Waste or other waste at the Solid Waste Facility that the Solid Waste Facility is not authorized to accept, the indemnity and hold harmless shall not apply to any environmental cleanup cost to the extent that it is caused by the disposal of such wastes.
- (2) **Vehicular Accidents.** The indemnity and hold harmless shall not apply to any on-site accident to the extent that it is caused by any vehicle that is owned or operated by one of the Indemnified Parties.
- (3) **Contributory Negligence (Other Than Environmental Cleanup or Vehicular Accidents).** The indemnity and hold harmless shall not apply to the extent that an Indemnified Party is contributorily negligent for the liability, loss, claims or damages.
- (4) **Intentional Acts or Omissions.** The indemnity and hold harmless shall not apply to the extent that the liability, loss, claim or damage is due to the intentional act or omission of any of an Indemnified Party.

In any legal proceedings which the Operator is required to indemnify, defend and hold harmless an Indemnified Party, the Operator has the right to assert any defense on behalf of a particular municipality, individual or entity which that municipality, individual or entity is legally entitled to, including the provisions of § 893.80, Wis. Stats. Each municipality, individual or entity indemnified under this section subrogates all counter-claims directly related to the indemnified claims (excepting separate damage claims not subject to the indemnification and hold harmless provisions) and assigns all applicable rights and defenses to the Operator which each may have.



## **ARTICLE VI**

### **COMPENSATION TO THE AFFECTED MUNICIPALITIES**

In consideration of the Affected Municipalities: (1) serving as the host and neighboring municipalities, (2) waiving their Local Approvals and Pre-existing Local Approvals, as set forth elsewhere in this Agreement, and (3) accepting the consequences and numerous responsibilities associated with the location of a sanitary landfill in or in proximity to the municipalities, the following compensation and benefits shall be provided by the Operator to the Affected Municipalities.

#### **1 Reimbursement for Negotiation Expenses.**

The Operator has paid the statutorily prescribed amount of \$20,000 to cover negotiation expenses.

#### **2. Direct Compensation.**

In consideration of the Affected Municipalities: (a) serving as the host and neighboring municipalities; (b) waiving their Local Approvals and Pre-existing Local Approvals, as set forth in Article IV, Paragraph 21 of this Agreement; and (c) accepting the consequences and numerous responsibilities associated with the currently proposed expansion and extended duration of operation of the Active Fill Area and the Solid Waste Facility, the following compensation and benefits shall be provided by the Operator to the Affected Municipalities.

##### **A. Payments Based on Solid Waste Received.**

The Operator shall give 60 days notice to the Standing Committee of the Expansion Effective Date (presently anticipated to be June 2006). Beginning on the Expansion Effective Date, the Operator shall pay an amount equal to:

- (1) \$1.28 per ton of Solid Waste disposed of or received at the Active Fill Area as approved by DNR; and
- (2) \$0.25 per ton of Solid Waste disposed of or received at the Active Fill Area as approved by DNR, subject to the provisions of Paragraph VL5 of this Agreement.

Solid Waste that is beneficially reused in the Disposal Operations as alternative daily cover is not subject to the \$1.28 per ton and \$0.25 per ton direct payment. Each payment shall be made on or before the 10<sup>th</sup> day following the month for which payment is made. The parties understand that the Operator's accounting month for purposes of compensation ends on the 25<sup>th</sup> day of each calendar month. All such payments shall be paid to the OSMCL Trust Fund and such payments shall thereafter be administered and divided by Standing Committee.

The Direct Payments under Paragraph VL2.A(1) (\$1.28 per ton) shall be adjusted annually by the percentage increase or decrease in the Consumer Price Index (U.S. City average - All Urban Consumers - All Items, hereinafter "CPI") for the previous twelve (12) months. The base date for the CPI adjustment is January 1 of the year of the Expansion Effective Date. The first adjustment of such base amount shall be made as of January 1 of the year thereafter, based upon the January index

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released by the Bureau of Labor Statistics of the U.S. Department of Labor. Annual adjustments shall be adjusted retroactively to the first day of that January 1 when such information is available, and each January 1 thereafter. The annual adjustment of direct payments shall not apply to the \$0.25 per ton paid pursuant to Paragraph VI.2.A(2).

Any payment that is received late shall accrue interest at the rate of one and one-half (1-1/2%) percent per month. Such late payment interest charges shall be calculated on a daily basis and shall be compounded on a monthly basis until fully paid.

**B. Verification and Documentation of Solid Waste Received.**

The Operator shall submit detailed statements pertaining to the waste received each month, breaking down such information as to the types of waste, the gate tonnage received based upon the Operators daily records, and as provided for in Article VI.2.A, and any other supporting documents consistent with the provisions of this section. In the event that the weigh scale at the site is not working, another scale may be used, if properly certified by the State. If both scales and the computer-generated information are not available for any day that waste is received, then the Operator shall make payment to the OSMCL Trust Fund based upon the average amount of tonnage received during the preceding sixty (60) business weekdays that the site was open, for the first three days that both scales are not available. For every business day thereafter that both scales are not operational, then the Operator shall make payment based upon the greatest amount of tonnage received on any day in the previous sixty (60) business weekdays of operation of the Solid Waste Facility or for Saturdays, the comparable Saturdays during the 60-day period.

The Operator shall provide to the Affected Municipalities and Standing Committee all documents submitted to the Department pertaining to the recording and documentation of the Solid Waste received or Disposed. The reporting of tonnage to the Department shall have no bearing on amounts paid to the Affected Municipalities. Information supplied to the Affected Municipalities or the Standing Committee of amounts submitted to the DNR are stipulated to be for informational purposes only.

If, at any time, the Affected Municipalities or Standing Committee so desire, they may retain an independent consulting firm to perform computations in order to verify the Operator's reported tonnages. Such firms may independently test the weigh scale, computer-generated information from said scale, or may use field or aerial surveys to verify reported tonnages based upon air space volume consumed within the Active Fill Area. The Affected Municipalities or Standing Committee retaining the independent consulting firm shall pay all costs unless such independent consulting firm's computations accurately demonstrate that the Operator's reported air space or tonnage used has been understated by 10% or greater. If so understated, the costs of such consulting firm shall be borne by the Operator, and the Operator shall pay the costs of such independent consulting firm within thirty (30) days after presentation of such invoice related thereto. The Operator shall also prepare a written report and any documentation necessary explaining the cause of such error. The independent consulting firm's computation shall not be determinative of the amounts of Solid Waste deposited during the period studied if contested by Operator. All such underpaid amounts shall be paid at the then current rate plus one and one-half percent (1-1/2%) per month from the dates the original payment should have been paid.

The Operator shall be required to install, maintain and calibrate (bi-annually) a certified weigh scale for measuring and recording Solid Waste disposed at the Active Fill Area. The weigh scale shall be equipped with sufficient computer software and hardware capabilities to record, generate and summarize all information set forth below pertaining to Solid Waste documentation requirements. The Affected Municipalities and the Standing Committee shall have access to all computer-generated data or written reports pertaining to waste received at the Solid Waste Facility. The Operator shall keep records and logs of all trucks coming to the site and include the following data:

- (1) Name of Acknowledged Transporter.
- (2) Time and date of disposal.
- (3) Truck Weight (gross weight, truck weight and net Solid Waste weight).
- (4) Type of Waste.
- (5) State of origin, whether the shipment was from solid waste generated within or outside the Affected Municipalities, and, if available, municipality of origin.

Weight shall be declared per truck in numerical order of their receipt on a daily basis with the truck ownership and any information which is relevant and kept by the Operator on a regular basis to assist the Standing Committee in reviewing declared Solid Waste weights at the Solid Waste Facility. The Affected Municipalities and Standing Committee may, at their expense and risk, have videotape equipment and have the option of placing personnel on-site in the proximity of the weigh scale, at such times as they choose, to monitor the reporting of Solid Waste received at the Active Fill Area for disposal.

### **3. Payment of Monitoring Expenses.**

During the Initial Term and extending for an additional five years, and in addition to the payments required under Paragraph IV.22, the Operator shall pay the direct costs incurred by the Standing Committee and the Affected Municipalities to monitor the Operator's responsibilities under this Agreement, including but not limited to costs incurred for sampling and testing at and in the vicinity of the Solid Waste Facility, monitoring the receipt of Solid Waste and performing any task that is the responsibility of the Operator; provided that such payments shall not exceed \$5,000 per calendar year. Payments shall be made to the OSMCL Trust Fund or Affected Municipality, as appropriate, within thirty (30) days after the invoice therefor.



#### **4. Waste Disposal Capacity Guarantee.**

After the Expansion Effective Date the Operator guarantees sufficient capacity either in the Active Fill Area or via a transfer station to accommodate 50,000 tons per year of Solid Waste generated within the Affected Municipalities (i.e., within the City of Eau Claire and each municipality and township within Eau Claire County) for a period of twelve (12) years or the life of the Active Fill Area, whichever is longer. The charge for disposal shall not exceed the posted gate rate, at the point in time that the guarantee commences, plus an annual CPI increase and any additional local, federal, or state taxes or fees that become applicable as a result of a change in the law after the date that the guarantee commences or the then posted gate rate, whichever is less. The Operator agrees to notify the Standing Committee and the Affected Municipalities of the date that the guarantee commences and the then posted gate rate. The guarantee is not cumulative, meaning that at the commencement of for example year twelve (12), the Operator shall have available sufficient remaining approved capacity within the Active Fill Area to dispose of 50,000 tons of Solid Waste generated within the Affected Municipalities or have the capacity to transfer said waste.

#### **5. Solid Waste Generated in the Town of Seymour.**

During the life of the expansion and after the Expansion Effective Date the Operator agrees to accept "municipal solid waste," as defined in Wis. Admin. Code § NR 500.03(150) (2004), but excluding "construction and demolition waste," as defined in Wis. Admin. Code § NR 500.03(50) (2004), generated by residents, and commercial facilities existing on the Effective Date, in the Town of Seymour at no charge; provided that a) the Operator shall deduct from the payment of \$0.25 per ton set forth in Paragraph VI.2.A.(2) an amount calculated as the tonnage of Seymour waste disposed of under this paragraph times \$35.00 per ton; and b) the amount so deducted during a calendar year shall not exceed \$0.25 per ton for the total tonnage of Solid Waste received during that calendar year from the Town of Seymour. Solid Waste that is not subject to payment of \$0.25 per ton under Paragraph VI.2.A. shall not be subject to the deduction under this paragraph. Solid Waste that is subject to this Paragraph VI.5 shall not include Special Waste or non-typical Solid Waste, such as but not limited to Solid Waste generated by salvage yards or other facilities as part of a facility clean-up.

The \$1.28 per ton and \$0.25 per ton direct payment in Paragraph VI.2.A shall not apply to waste subject to this Paragraph VI.5.

Proof of residency within the Town of Seymour shall be required. The Operator shall maintain a designated drop-off box that will be dedicated exclusively to Solid Waste subject to this paragraph, and shall prepare and submit to the Standing Committee a monthly report of the amount of waste received under this paragraph. The Town of Seymour and Operator may separately agree on other conditions applicable to Solid Waste disposal by Town of Seymour residents, including but not limited to the days and times of day which such residents may dispose of Solid Waste without charge and the methods of providing notice thereof.

**6. Analytical Testing of Town Landfill.**

The Operator agrees to pay the costs of analytical testing (not sampling) of groundwater samples from nine monitoring wells surrounding the closed Town Landfill for indicator parameters and VOCs.

**7. Street Sweeping.**

After the Expansion Effective Date and extending until Final Closure, the Operator shall accept for Disposal in the Active Fill Area for free 1,000 tons per year of street sweeping wastes generated by the City and for the County, provided the street sweepings are acceptable for beneficial reuse purposes. The 1,000 tons shall be prorated in the first year. The Operator shall also accept for Disposal up to 15,000 tons annually from the City of Eau Claire and the County of Eau Claire at the rate of \$10.00 per ton plus any additional state taxes or fees that become applicable as a result of a change in the law after the Effective Date of this Agreement. The Operator and the City agree to cooperate to maximize the use of the street sweepings for beneficial reuse purposes. Street sweepings accepted under this paragraph shall not be counted as Solid Waste for purposes of the waste disposal capacity guarantee under Paragraph VI.4.

**8. County Brush Site.**

The Operator agrees to cooperate with the County to develop a brush drop-off site for County residents and City of Eau Claire residents residing in Chippewa County, on the Operator's lands generally depicted in Exhibit H. Operator agrees to lease sufficient area on such lands to the County for this purpose, on commercially reasonable terms and conditions, and at a rental rate of no greater than \$1.00 per year in addition to the other consideration set forth in this Agreement. Operator shall have access to any such site and any mulch or shredded wood material generated at that site, but agrees that the County may allow others to take such mulch or shredded wood material on a first-come, first-serve basis.

The Parties further agree that the County is not required to enter into a lease to establish a brush drop-off site on Operator's lands, and that the County may in its sole discretion establish one or more brush drop-off sites at other locations or in addition to a site on the Operator's lands.

**9. Other Payments To Affected Residents.**

Nothing in this Agreement shall waive, limit or otherwise affect the right of any resident or property owner in any of the Affected Municipalities from asserting a claim for compensation, damages or other relief, including but not limited to claims for compensation due to adverse impacts on property values or private or public nuisance. The Operator reserves all rights and defenses with respect to any such claims.



## **ARTICLE VII**

### **MISCELLANEOUS PROVISIONS**

#### **1. Expansion.**

No further Expansion of the Active Fill Area shall occur except pursuant to the procedures set forth by law applicable at that time and by written modification of this Agreement or execution of a separate agreement that expressly supercedes this Agreement.

#### **2. Environmental Impairment Liability Insurance.**

The Operator shall name and maintain the Affected Municipalities as additional insureds on pollution legal liability insurance policy in a face amount of not less than Ten Million Dollars (\$10,000,000), per claim and in the aggregate. Such policy shall provide coverage for releases from the landfill to other property in the Affected Municipalities, including but not limited to groundwater. The Operator shall maintain such insurance coverage from the Effective Date of this Agreement until forty (40) years after Final Closure or until proof of financial responsibility for all post-closure and long-term care requirements is terminated by the DNR, whichever is later. In the event that Operator agrees in any future negotiated agreement to increase the face amount of insurance coverage for any other landfill that it owns or operates to exceed the amount required by this paragraph, it shall provide the insurance required by this paragraph in the same amount. Operator agrees to provide notice to the Standing Committee of any negotiated agreement wherein an increase occurs and to provide the Standing Committee with an updated policy and certificates.

#### **3. Random Load Inspections.**

During the Initial Term, the Operator shall perform random load inspections as required by the DNR for any vehicles permitted to access the site. The Standing Committee or its representatives may be present, if requested and at a reasonable time, during any truck inspection. Any member of the Standing Committee or its representative shall also have the right to take samples, at their own expense, to test the same, as a part of such random load inspections. In the event such samples are taken, the Operator may take a split sample.

#### **4. Confidentiality.**

The Standing Committee covenants and agrees for the period commencing on the Effective Date and extending until forty (40) years after Final Closure, that the Standing Committee shall not, except as explicitly requested by Operator or is otherwise required by law, disclose to any person (other than its attorneys, who shall have agreed to be bound by the terms of this provision) any confidential information provided for in this Agreement as to the conduct of the business of Operator. The Standing Committee further agrees that they will not, individually or collectively, disclose the pricing information, cost structure, tax information, customer names, addresses, or telephone numbers or the terms or conditions of any customer contracts, bids or proposals to any person, firm, corporation, association, governmental body, quasi governmental body, or any other entity, except to authorized representatives of Operator or as required by law. If the Standing Committee becomes legally compelled to disclose such confidential information, the Standing Committee shall provide Operator with prompt notice of such requirement so that Operator may

FINAL January 2005 Agreement

seek a protective order or other appropriate remedy. For purposes hereof, "confidential information" shall mean and include, without limitation, all trade rights in which Operator has an interest, all customer lists, subcontractor lists and customer and, subcontractor information, and all other information concerning the business of Operator's services, taxes, clients, customers, subcontractors, costs, profits, markets, sales, reports, written correspondence, data, trade secrets, processes, programs, products, marketing and distribution methods, but shall exclude any matters which have been or hereafter are independently developed or disclosed by a third party whom is not in breach of a confidentiality undertaking with Operator or which otherwise is or becomes part of the public domain due to no act or omission of the Standing Committee or members thereof. This confidentiality agreement shall not apply to any confidential information provided to the Standing Committee which relates to the monitoring or protection of public or private health, safety and welfare such as DNR reports, groundwater monitoring Discharges or other threats to the environment, public or private property. The Standing Committee agrees that the restrictions contained in this provision are necessary to protect the legitimate continuing proprietary interests of the Operator in performing its obligations under this Agreement.

#### **5. Leachate.**

The acceptance of leachate generated at the Solid Waste Facility for disposal at the City of Eau Claire Wastewater Treatment Plant shall be subject to a separate agreement between the Operator and the City of Eau Claire.



**ARTICLE VIII**  
**GENERAL PROVISIONS**

**i. Notice to Parties.**

Under this Agreement, any notices required by the terms and conditions of this Agreement are, at minimum, to contain the address and names of the parties as noted below, are to be sent either by certified mail, return receipt requested to such parties or are to be personally served and are to be considered by each party as written notice when received, except as otherwise specifically provided herein. It is further understood that the Affected Municipalities, the Operator, and the Standing Committee shall each be responsible to provide to the other parties any appropriate change of address or any appropriate change of name by providing the other parties with a written "Notice of Address Change" or "Notice of Name Change." Such notices shall be sent by certified mail, return receipt requested to the addresses noted below. The current names and addresses are:

- A. Town of Seymour  
Attn: Town Clerk  
6500 Tower Drive  
Eau Claire, WI 54703
- B. City of Eau Claire  
Attn: City Clerk  
City Hall  
203 S. Farwell  
Eau Claire, WI 54701
- C. County of Eau Claire  
Attn: Office of County Administrator  
Eau Claire County Courthouse  
721 Oxford Avenue  
Eau Claire, WI 54703-5481
- D. Onyx Seven Mile Creek Landfill, LLC  
Attn: General Manager  
8001 Olson Drive  
Eau Claire, WI 54703
- E. Onyx Waste Services, Inc.  
Attn: General Counsel  
125 South 84<sup>th</sup> Street  
Suite 200  
Milwaukee, WI 53214

**2. Headings.**

The titles to the paragraphs of this Agreement are for informational purposes only.

**3. Governing Law.**

This Agreement and the provisions contained therein will be construed, enforced and governed, in all respects, in accordance with the laws and statutes of the State of Wisconsin. All numerical references to Wisconsin Statutes or Administrative Codes refer to statutes and administrative codes in existence on the date of this Agreement, together with any amendments, revisions, renumberings or repeals and recreations thereof during the period of applicability under this Agreement.

**4. Waiver.**

A party may waive a breach of any term or condition of this Agreement only by express written waiver. Any waiver by any party to a breach of any term or condition of this Agreement shall not be considered a waiver of any subsequent breach by a party of the same term or any other term or condition of this Agreement.

**5. Complete Agreement.**

This Agreement is the complete agreement as to the currently proposed Solid Waste Facility, pursuant to § 289.33, Wis. Stats., between the Affected Municipalities, the Operator, and the Local Committee. This Agreement specifically supersedes the Seymour Agreement dated April 9, 1986 and the Agreement dated December 2001 except as to those provisions of this Agreement that take effect on the Expansion Effective Date, including Paragraphs VI.2.A, 4, 5, and 7. As to those provisions, the corresponding provisions in the December 2001 Agreement shall remain in full force and effect until those provisions in this Agreement take effect; provided that any payment that is required to be made to the SMCLL Trust Fund shall be made payable to the OSMCL Trust Fund. This Agreement does not supercede, modify, or otherwise affect the Purchase Agreement between Eau Claire County and Superior Seven Mile Creek Landfill, Inc., dated September 30, 1996.

**6. Amendment.**

This Agreement may be amended only by a written agreement between the Affected Municipalities that are signatories to this Agreement and the Operator.

**7. Binding Effect.**

This Agreement will bind the Affected Municipalities, the Operator, the Negotiating Committee, all future owners and operators of the Solid Waste Facility, their respective legal successors and their respective legal assigns upon its execution. However, if any Affected Municipality fails to adopt an approving resolution authorizing officials of said municipality to execute this Agreement or if said authorized officials fail to execute this Agreement within sixty (60) days after the date that the Onyx Seven Mile Creek Landfill, LLC Negotiating Committee executes this Agreement, then said municipality shall receive no benefits under this Agreement.



**8. Recording.**

The Operator shall place a notice of this Agreement on the title records applicable to the Solid Waste Facility. The notice shall state as follows:

Use of the property is subject to the provisions of Onyx Seven Mile Creek Landfill Final Negotiated January 2005 Agreement. A copy of the Agreement can be obtained from:

- A. Town of Seymour  
Attn: Town Clerk  
6500 Tower Drive  
Eau Claire, WI 54703
- B. City of Eau Claire  
Attn: City Clerk  
City Hall  
203 S. Farwell  
Eau Claire, WI 54701
- C. County of Eau Claire  
Attn: Office of County Administrator  
Eau Claire County Courthouse  
721 Oxford Avenue  
Eau Claire, WI 54703-5481

**9. Execution in Counterparts.**

This Agreement may be executed in separate counterparts, each of which shall be deemed an original. Each party to this Agreement shall execute eight (8) duplicate original counterparts and shall circulate the same to all other parties identified in this Agreement.

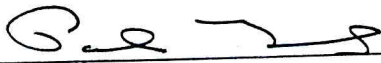
ONYX SEVEN MILE CREEK LANDFILL,  
LLC. NEGOTIATING COMMITTEE,

DATED: December 2, 2004

BY: Douglas A. Krone, Chairperson  
and authorized signatory by vote of and on  
behalf of the Onyx Seven Mile Creek Landfill  
Negotiating Committee

ONYX SEVEN MILE CREEK LANDFILL,  
LLC

DATED: 1/20/05

BY:   
president

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**TOWN OF SEYMOUR**

Approved this 18 day of January, 2005.

BY: Douglas A. Kravitz  
Town Board Chairperson

ATTEST: Angonne Turner  
Town Clerk

(A certified copy of the approving resolution shall be attached and appended to this Agreement and incorporated by reference.)

A meeting of the Seymour Town Board was held on January 18<sup>th</sup> 2004, at the Town Hall. Notice was posted at Sherwood Inn, the Town Hall, Cub Foods, and the Fire Station.

Board members present were Doug Kranig; Chair, Gary McFarlane and Sue Kumferman Supervisors. Also present were Suzanne Turner; Clerk, Konnie Rubenzer; Treasurer, Kerry Parker; Building and Road Supervisor, and 6 Resident.

Chair Kranig called the meeting to order at 7:00 p. m.

The Pledge of Allegiance was recited.

Supervisor Kumferman made a Motion, Supervisor McFarlane seconded to approve the Minutes of the Board Meeting held January 4<sup>th</sup> 2004. Motion Carried 3-0.

The TREASURERS REPORT was reviewed

GENERAL PUBLIC – Procedures pertaining to audience participation were discussed. Copies of Minutes and Treasurers reports were distributed.

Kerry Parker gave his report to the Board

#### OLD BUSINESS

Ordinance Requiring Garbage Haulers to report Recyclables - Tabled

#### NEW BUSINESS

CONDITIONAL USE PERMITS/ZONING PERMITS – None

Ordinance Regarding Replacement of Damaged Mailboxes discussed.

McFarlane made a Motion to approve the REFUSE HAULERS LICENSES for Onyx. Kumferman Seconded. Motion Carried 3-0.

McFarlane made a Motion to ADOPT GASB 34. Kumferman Seconded. Motion Carried 3-0.

McFarlane made a Motion to APPROVE the ONYX SEVEN MILE CREEK LANDFILL AGREEMENT at 37.5% to the Town of Seymour, 37.5% to Eau Claire County, and 25% to the City of Eau Claire. Kranig Seconded. Motion Carried 3-0. (This supersedes the motion of January 4<sup>th</sup>, 2005.)

#### COMMUNICATIONS

VOUCHERS 24675 – 24706 were approved.

*Konnie Rubenzer*  
My Commission expires Sept 25, 2005



Meeting adjourned at 8:25 p.m.

The Minutes were taken at the Board Meeting of the Town of Seymour held on the 14<sup>th</sup> day of December, 2004, and entered into this Record Book the 16<sup>th</sup> day of December, 2004.

Respectfully submitted by:


  
Konnie Rubenzer


  
Suzanne Turner, Clerk

**CITY OF EAU CLAIRE**

Approved this 17 day of Jan, 2005.

BY:   
City Manager

ATTEST:   
City Clerk

Approved as to form. BY:   
City Attorney

(A certified copy of the approving resolution shall be attached and appended to this Agreement and incorporated by reference.)



**RESOLUTION**

**RESOLUTION APPROVING THE ONYX SEVEN MILE CREEK LANDFILL EXPANSION  
FINAL NEGOTIATED AGREEMENT.**

**WHEREAS**, the City of Eau Claire was notified on December 4, 2002 of a proposed expansion of the Onyx Seven Mile Creek Landfill, and

**WHEREAS**, on January 14, 2003 the City of Eau Claire adopted Siting Resolution No. 2003-35 relating to the proposed landfill expansion, pursuant to the provisions of Wis. Stats. § 289.33, and

**WHEREAS**, the proposed expansion would extend both vertically over the existing footprint and horizontally at two distinct locations identified on the north and east sides of Sector 2 of the landfill, located at 8001 Olson Drive in a non-contiguous portion of the City of Eau Claire and a portion of the Town of Seymour, Eau Claire County, Wisconsin, and

**WHEREAS**, the City of Eau Claire, Eau Claire County, and the Town of Seymour, through a Local Negotiating Committee, have negotiated an agreement with Onyx Seven Mile Creek Landfill, LLC, a subsidiary of Onyx Waste Services Midwest, Inc., for expansion of the Onyx Seven Mile Creek Landfill in accordance with the provisions of Wis. Stats. § 289.33, and

**WHEREAS**, the City of Eau Claire, as an affected municipality that is represented on the Local Committee, must approve the Agreement before it can become effective,

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Eau Claire that the "Onyx Seven Mile Creek Landfill Expansion Final Negotiated Agreement", in substantially the form as attached to this resolution, is hereby approved, and

**BE IT FURTHER RESOLVED** that the Agreement approved is explicitly for the proposed expansion only and not to be considered approval for further landfill expansions, which may be proposed, and

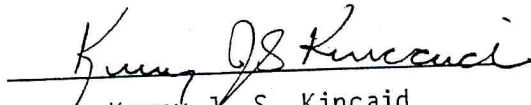
**BE IT FURTHER RESOLVED** that the City Manager and City Clerk are hereby authorized to execute the agreement on behalf of the City.

Adopted,

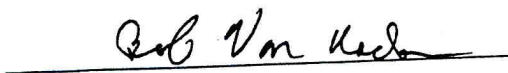
January 11, 2005

\*\*\*\*\*

Motion to adopt the resolution.

  
Kerry J. S. Kincaid

Seconded by:

  
Bob Von Haden

\*\*\*\*\*

**STATE OF WISCONSIN )**

**EAU CLAIRE COUNTY )**

**CHIPPEWA COUNTY )**

I, Donna A. Austad, City Clerk, City of Eau Claire, Counties of Eau Claire and Chippewa, State of Wisconsin, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Eau Claire at a regular session thereof held on January 11, 2005.



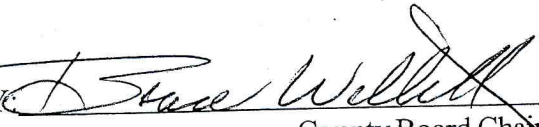
Donna A. Austad  
City Clerk

Dated:  
January 17, 2005



**EAU CLAIRE COUNTY**

Approved this 18 day of Jan, 2005.

BY:   
County Board Chairperson

ATTEST:   
Clerk

(A certified copy of the approving resolution shall be attached and appended to this Agreement and incorporated by reference.)

Enrolled No. R148-96

RESOLUTION

File No. 04-05/153

-APPROVING THE ONYX SEVEN MILE CREEK LANDFILL EXPANSION FINAL  
NEGOTIATED AGREEMENT-

WHEREAS, the County of Eau Claire was notified on December 3, 2002 of a proposed expansion of the Onyx Seven Mile Creek Landfill, and

WHEREAS, on January 13, 2003, the County of Eau Claire adopted a Siting Resolution File No. 02-03/218 relating to the proposed landfill expansion pursuant to the provisions of Wis. Stat. § 289.33, and

WHEREAS, the proposed expansion would extend both vertically over the existing footprint and horizontally at two distinct locations identified on the north and east sides of Sector 2 of the landfill located at 8001 Olson Drive in Eau Claire County, and

WHEREAS, the City of Eau Claire, Eau Claire County and the Town of Seymour, through a Local Negotiating Committee, have negotiated an agreement with Onyx Seven Mile Creek Landfill, LLC, a subsidiary of Onyx Waste Services Midwest, Inc., for the expansion of the Onyx Mile Creek Landfill in accordance with provisions of Wis. Stat. § 289.33, and

WHEREAS, the County of Eau Claire, as an affected municipality that is represented on the Local Committee, must approve the Agreement before it can become effective

NOW, THEREFORE BE IT RESOLVED by the Eau Claire County Board of Supervisors, that the "Onyx Seven Mile Creek Landfill Expansion Final Negotiated Agreement" dated December, 2004, in substantially the form as attached to this resolution, is hereby approved.

BE IT FURTHER RESOLVED, that the Agreement approved is explicitly for the proposed expansion only and not to be considered approval for further landfill expansions which may be proposed.

BE IT FURTHER RESOLVED, that the County Board Chair and County Clerk are hereby authorized to execute the agreement on behalf of the County.

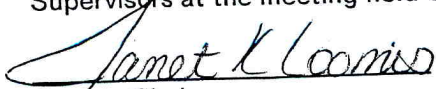
ADOPTED: January 18, 2005

STATE OF WISCONSIN

ss

COUNTY OF EAU CLAIRE

I, Janet K. Loomis, County Clerk in and for said County, do HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Eau Claire County Board of Supervisors at the meeting held on January 18, 2005.

  
County Clerk



## GUARANTEE


Onyx Waste Services, Inc., for valuable consideration, including the mutual covenants and benefits stated in the Final Negotiated Agreement by and between the Affected Municipalities (as defined therein) and Onyx Waste Services, Inc.'s subsidiary corporation, Onyx Seven Mile Creek Landfill, LLC, such consideration and receipt of which is hereby acknowledged, does hereby guarantee the performance of Onyx Seven Mile Creek Landfill, LLC in the event that the latter fails to so perform. Those obligations shall extend to any obligations provided for in said Agreement, including the operation, closure, post-closure responsibilities, and indemnification responsibilities of Onyx Seven Mile Creek Landfill, LLC. The Guarantee shall be maintained and remain valid upon a transfer of ownership of Onyx Seven Mile Creek Landfill, LLC or the Solid Waste Facility as provided for in Article IV, Paragraph 20, until 31 days after each Affected Municipality received notice of the transfer, an extended deadline agreed upon under Article IV, Paragraph 20.C., or in the event of a judicial action challenging the transfer, until final resolution of the challenge, whichever is later.

Onyx Waste Services, Inc. acknowledges receipt of said Agreement and certifies that, by signing below, said officer has the authority to act on behalf of Onyx Waste Services, Inc.

DATED: 1/20/05

ONYX WASTE SERVICES, INC.

BY: 

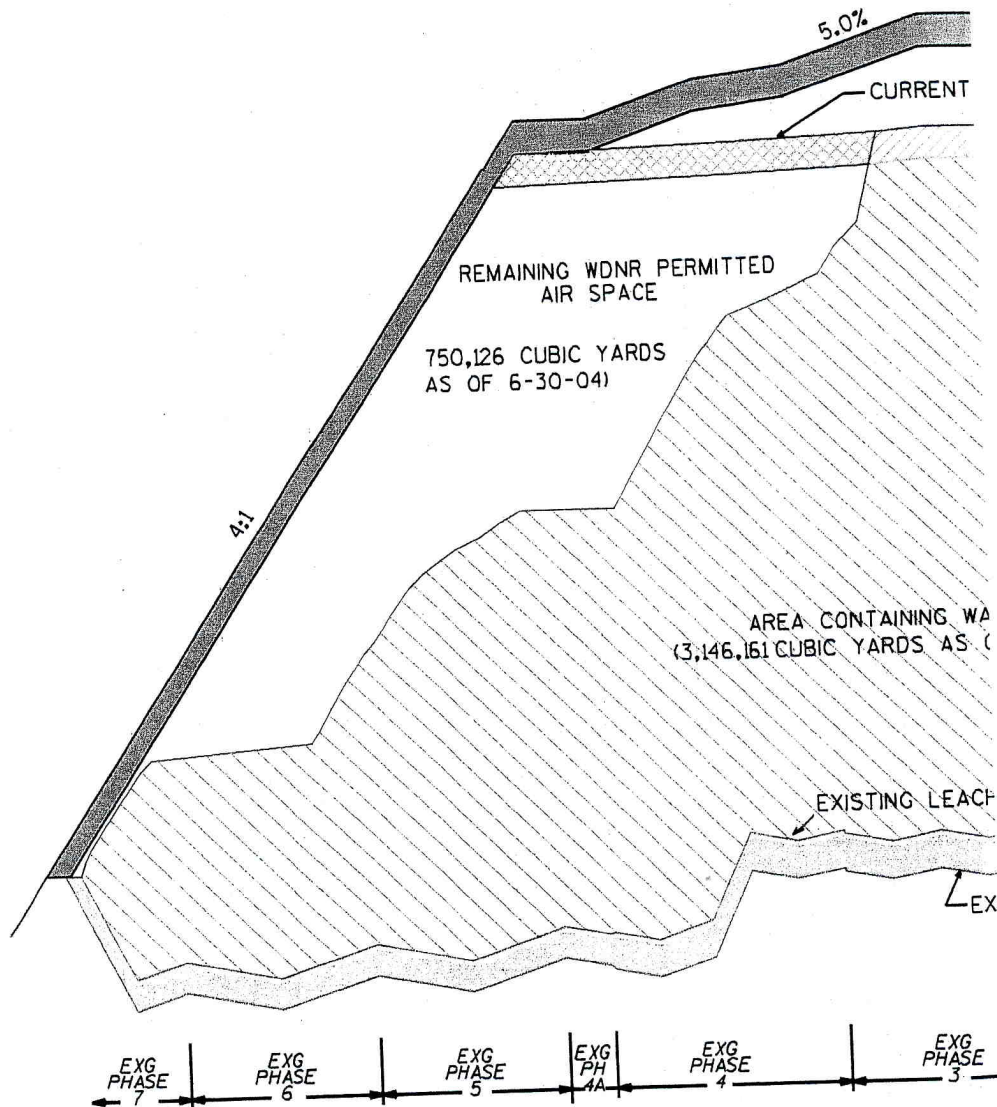
ATTEST: 

**Exhibit A**

**ACTIVE FILL AREA**

**Cross-sectional Drawing Attached**





NOTE: THIS DRAWING WAS PREPARED IN COLOR. REPRODUCTION BY MEANS OTHER THAN EQUIVALENT COLOR COPYING MAY CAUSE SOME DATA TO BE LOST OR MISREPRESENTED.

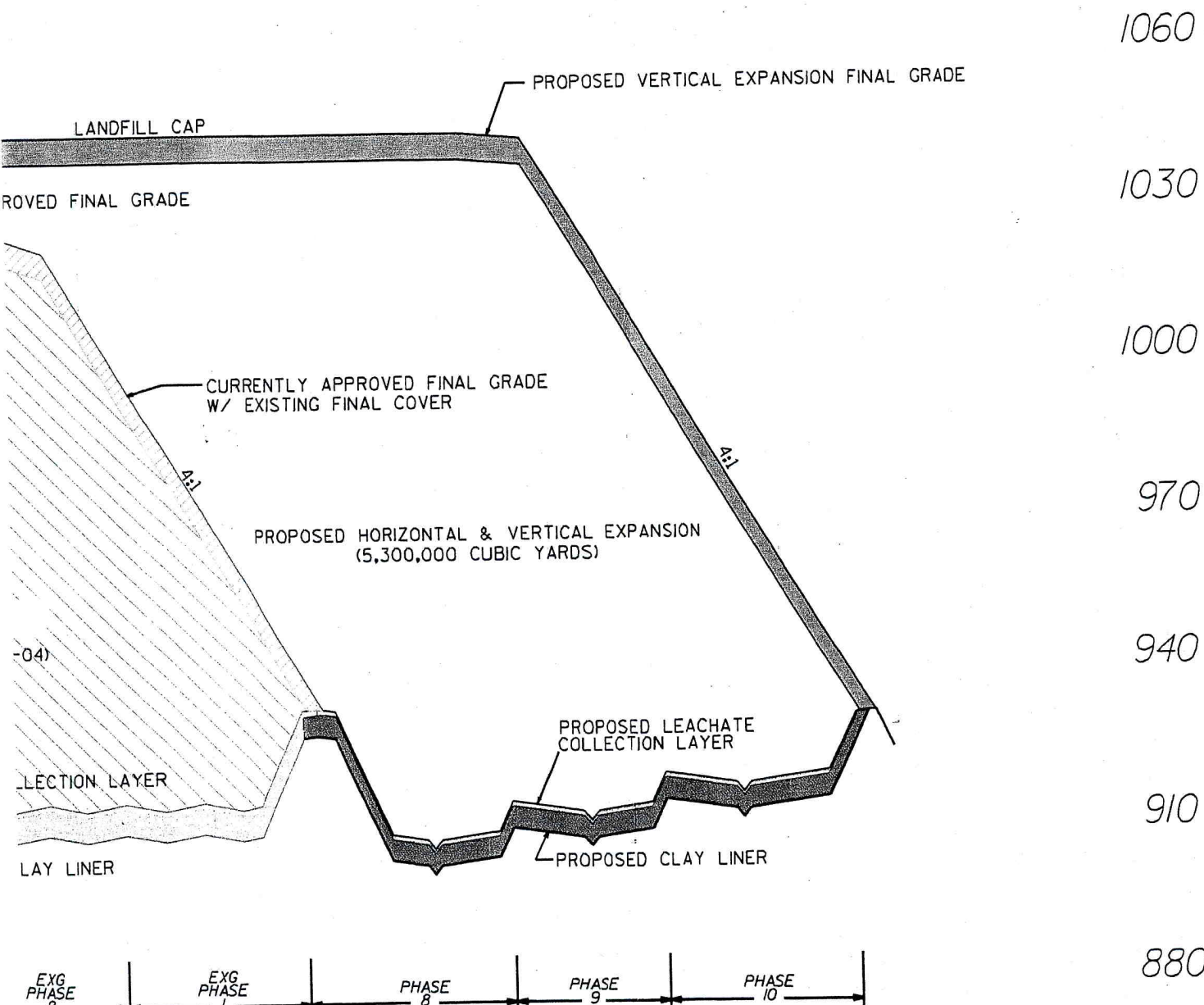
6'00E 7'00E 8'00E 9'00E 10'00E 11'00E 12'00E 13'00E 14'00E 15'00E

DR. BY J.G. SCHMIDT	BOOK NO.	
CHK. BY S.A. BISCHOFF	JOB NO. 10-0139.00	
DATE SEPTEMBER, 2004	SCALE AS SHOWN	NO. DATE REVISION

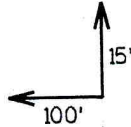
ONYX SEVEN MILE CREEK LANDFILL.  
SECTOR 2  
EAU CLAIRE, WISCONSIN

09/22/2004  
FILM-T.D. 10073972EXH A.DGN  
D:\TMILE\10073972EXH A.DGN

K:\TMILE\10073972EXH A.DGN



22+00N  
(VIEWING NORTH)



HORIZONTAL TO VERTICAL  
EXAGGERATION IS 6.66 : 1

17+00E 18+00E 19+00E 20+00E 21+00E 22+00E 23+00E 24+00E 25+00E 26+00E 27+00E 28+00E

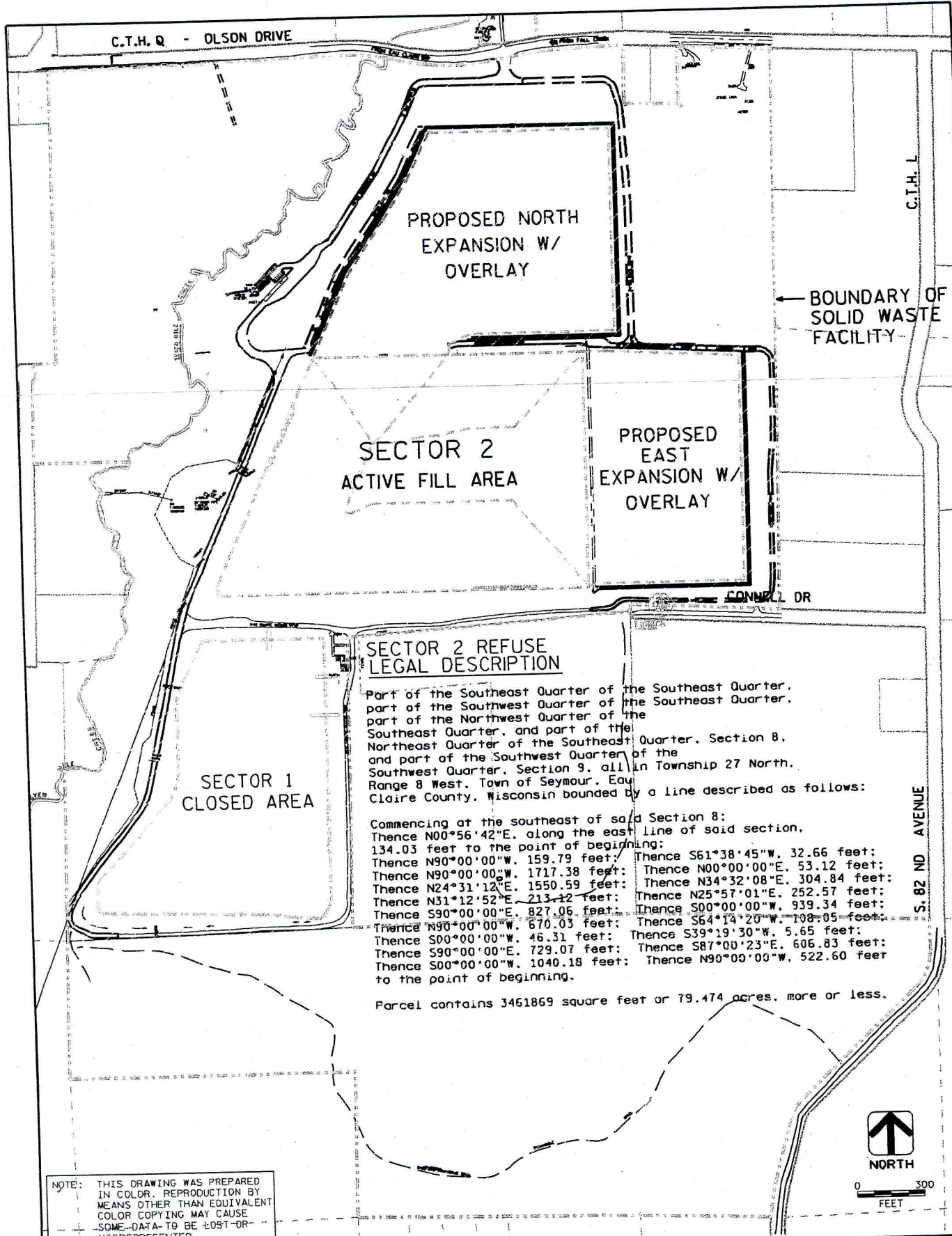
	 <small>Env. Liq. &amp; W. Consol.</small>	<p>CROSS SECTION - 22+00N</p> <p>\$HALF\$</p>	<p>EXHIBIT <b>A</b></p>
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**Exhibit B**

**SEVEN MILE CREEK SOLID WASTE FACILITY  
EAU CLAIRE COUNTY, WISCONSIN**

**Plan View Drawing (Including Legal Description) Attached**





**SECTOR 2 REFUSE  
LEGAL DESCRIPTION**

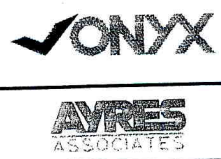
Part of the Southeast Quarter of the Southeast Quarter,  
part of the Southwest Quarter of the Southeast Quarter,  
part of the Northwest Quarter of the  
Southeast Quarter, and part of the  
Northeast Quarter of the Southeast Quarter, Section 8,  
and part of the Southwest Quarter of the  
Southwest Quarter, Section 9, all in Township 27 North,  
Range 8 West, Town of Seymour, Eau  
Claire County, Wisconsin bounded by a line described as follows:

Commencing at the southeast of said Section 8;  
Thence N00°56'42"E. along the east line of said section,  
134.03 feet to the point of beginning;  
Thence N90°00'00"W. 159.79 feet; Thence S61°38'45"W. 32.66 feet;  
Thence N90°00'00"W. 1717.38 feet; Thence N00°00'00"E. 53.12 feet;  
Thence N24°31'12"E. 1550.59 feet; Thence N34°32'08"E. 304.84 feet;  
Thence N31°12'52"E. 213.12 feet; Thence N25°57'01"E. 252.57 feet;  
Thence S90°00'00"E. 827.05 feet; Thence S00°00'00"W. 939.34 feet;  
Thence N90°00'00"W. 670.03 feet; Thence S64°14'20"W. 108.05 feet;  
Thence S00°00'00"W. 46.31 feet; Thence S39°19'30"W. 5.65 feet;  
Thence S90°00'00"E. 729.07 feet; Thence S87°00'23"E. 606.83 feet;  
Thence S00°00'00"W. 1040.18 feet; Thence N90°00'00"W. 522.60 feet  
to the point of beginning.

Parcel contains 3461869 square feet or 79.474 acres, more or less.

NOTE: THIS DRAWING WAS PREPARED  
IN COLOR. REPRODUCTION BY  
MEANS OTHER THAN EQUIVALENT  
COLOR COPYING MAY CAUSE  
SOME DATA TO BE LOST OR  
MISREPRESENTED.

ONYX SEVEN MILE CREEK  
LANDFILL, LLC  
SECTOR 2  
EAU CLAIRE, WISCONSIN



SOLID WASTE FACILITY

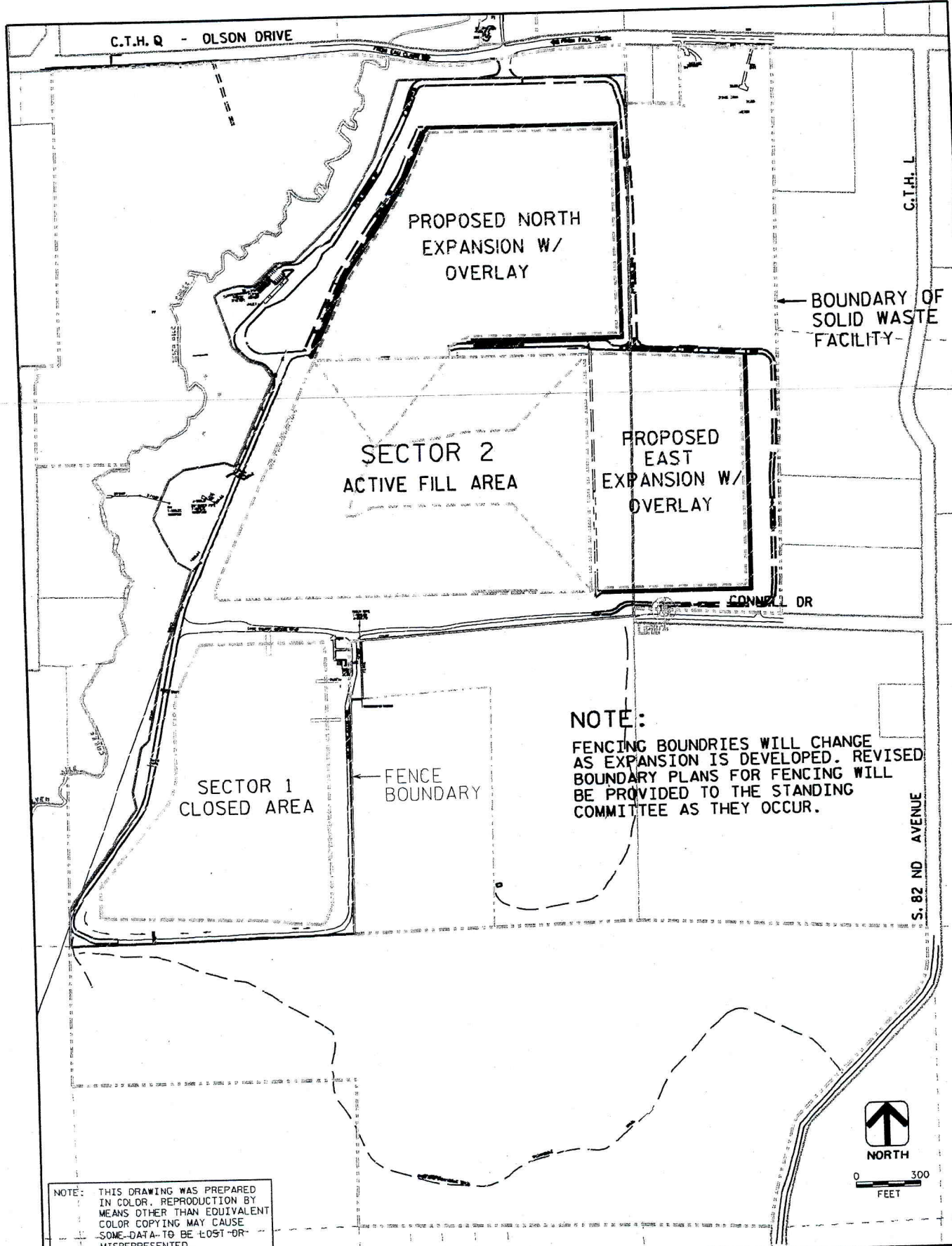
DRN. BY: JGS  
CHK. BY: SAB  
DATE: SEPT 2004  
FIGURE  
EXHIBIT B

K:\7MILE\10073973EXH B.DGN

**Exhibit C**

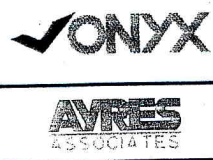
**FENCE BOUNDARY**

**Plan View Drawing Attached**



NOTE: THIS DRAWING WAS PREPARED IN COLOR. REPRODUCTION BY MEANS OTHER THAN EQUIVALENT COLOR COPYING MAY CAUSE SOME DATA TO BE LOST OR MISREPRESENTED.

ONYX SEVEN MILE CREEK  
LANDFILL , LLC  
SECTOR 2  
EAU CLAIRE , WISCONSIN



FENCE BOUNDRY

DRN. BY: *JGS* JGS  
CHK. BY: *SAB* SAB  
DATE: SEPT 2004  
FIGURE  
EXHIBIT C

K: 7MILE/10073974EXH C.DGN



## Exhibit D

### STANDING COMMITTEE

1. **Purpose.** The Affected Municipalities and Onyx Seven Mile Creek Landfill, LLC (hereinafter referred to as the "Operator"), agree to re-establish and continue to participate in the Standing Committee to monitor the construction and operation of the Solid Waste Facility and perform such other activities as are authorized by the Agreement (hereinafter referred to as Committee or Standing Committee).

2. **Membership.** Membership on the Committee shall consist of the following:

Town of Seymour (two members)

- ☐ Town chairman or designee
- ☐ Town Board member or Town resident appointed by Town Board

City of Eau Claire (two members)

- ☐ Director of public works or designee
- ☐ City Council representative or City resident appointed by City Council

Eau Claire County (two members)

- ☐ County Highway Commissioner or designee
- ☐ County Board member or County resident appointed by County Board

Eau Claire City/County Health Department (one member)

- ☐ Director or designee.

The Committee shall elect, from amongst its members, an individual to function in the capacity of chairperson. For any action taken by the Committee, unless otherwise expressly provided, a majority vote of the Committee is required. The Operator may appoint one (1) representative to the Committee who shall be ad hoc member and shall have no vote.

3. **Term.** All members appointed shall serve at the pleasure of the respective entities that appointed them.

4. **Replacement and Removal.** A Committee member may voluntarily resign or be replaced at any time.

Any Committee Member may be removed by the Committee for good cause and upon a five-sevenths (5/7) vote of the Committee.

5. **Quorum and Vote.** A majority of the Committee Members shall constitute a quorum, provided that voting shall be governed by the following rules: each member of the Committee present shall have one vote.

6. **Documents.** The Operator shall provide copies of all technical reports supplied to the Department by the Operator pertaining to the Solid Waste Facility, including the Plan of Operation,

any proposed amendments to the feasibility study or any proposed changes to any special conditions imposed by the Department. Such copies shall be provided free of charge to the Committee.

7. **Meetings.** The Committee may establish a schedule for meetings for the purposes of review, explanation and discussion of said technical data and the status of the Solid Waste Facility construction, operation and closure. Special meetings of the Committee may be called by any member of the Committee upon written notice mailed at least five (5) days prior to the proposed meeting. Said meeting may be called for the purpose of addressing any issue of concern involving the Solid Waste Facility construction, operation or closure. Upon the occurrence of an event deemed by any Committee Member to constitute an Emergency condition, a special meeting may be called with less than five (5) days notice, provided each Committee Member is personally notified. The public may attend any Committee meeting. Any written notice called for in this Agreement or Exhibit shall be deemed effectively provided when either personally delivered or sent by mail to all Committee Members at the addresses listed by them with the Committee.

8. **Committee Inspections.** Individual Committee Members with proper identification shall have the right to conduct on-site inspections of the Solid Waste Facility pursuant to the procedure provided in Paragraphs IV.14 and VII.3 of the Agreement.

9. **Violations.** If, in the reasonable judgment of the majority of the Committee Members, the Solid Waste Facility is not being constructed or operated in compliance with this Agreement, the Operator's approved Plan of Operation, or with any applicable State statute or regulation, or any other provision of law, whether it be in law or equity, the Committee shall serve written notice of such perceived noncompliance upon, and may make recommendations to, the Operator.

Nothing herein shall be construed to limit any legal or equitable right of any neighboring property owner with respect to individual legal rights pursuant to law.

10. **Enforcement.** Only the Affected Municipalities shall have legal standing to enforce this Agreement and only after the stepped enforcement procedure of Paragraphs 9 and 10 has been followed. Upon receipt of any notice of non-compliance from the Committee, the Operator shall investigate any allegation of non-compliance made by the Committee and the Operator shall deliver a written report concerning the investigation to the Committee within thirty (30) days. In the event the Operator does not correct the condition to the satisfaction of a majority of the Committee, the Affected Municipalities may pursue such remedies as are available.

11. **Other Authority.** The Committee shall have authority to temporarily extend hours of operation as set forth under Paragraph 2 of Article IV.

## **Exhibit E**

### **AIR QUALITY STANDARDS**

The Operator shall comply with all air quality standards required under the plan of operation, closure, post-closure and long-term care plans, or any modifications thereof or any other requirements of the Department or United States Environmental Protection Agency.

In addition, the Operator shall specifically comply with all of Administrative Code regulations pertaining to emerging gases emanating from the site including, but not limited to, Wisconsin Administrative Code Chapters 400 et. seq., 500 et. seq., and 600 et. seq. Notwithstanding the foregoing, the Operator shall only be required to comply with those regulations which the Department imposes upon existing landfills and subsequent changes to such regulations.

The Operator shall take all reasonable precautions to minimize the amount of dust and particulate matter that leaves the Active Fill Area or its access roads during construction, operation, and closure. The total concentration of the suspended particulate shall not exceed 150 micrograms per cubic meter measured at the boundary of the Solid Waste Facility.

The Operator shall specifically comply with the Air Pollution Control Construction Permit as issued by the Department of Natural Resources.



## Exhibit F

### WELL TESTING

**Operator's General Requirements.** The Operator shall comply with all background testing and groundwater monitoring as required by the feasibility report, plan of operation, post-closure or long-term care plans, as approved and amended by the Department, and any order or other requirements of the Department.

**Routine Private Well Monitoring Program.** The Operator, during the Initial Term and extending until forty (40) years after Final Closure or until the termination of proof of financial responsibility by the DNR, whichever is later, shall test all wells within one-half mile from the Active Fill Area or any previously filled disposal area at least once every three years, such that approximately one-third of all such wells are tested annually. Descriptions of properties within the one-half mile boundary are included in Addendum 1 to this Exhibit F. The Standing Committee shall identify those wells to be tested each year, and may consider the following criteria in selecting the wells to be tested in each year:

1. Proximity to landfill.
2. Down gradient from landfill.
3. Request by homeowner.
4. Previous testing performed and historical data obtained.

The wells shall be subject to testing by the Operator at the Operator's expense. The Standing Committee and the Operator may mutually agree to terminate the routine private well monitoring program at an earlier date.

Notwithstanding the foregoing, the Operator shall not be required to sample any of the water supply wells serving the properties identified by the Standing Committee for the purpose of determining the water quality of well water of these properties, unless it first receives, in the form attached as Addendum 2 to this Exhibit F, written permission from the respective property owner or if the property is not owner occupied from the occupant. In the event that the owner(s) or user(s) of any well so identified refuses to give the Operator written consent, the Operator shall advise the Standing Committee and the Standing Committee shall designate additional wells to reach the above specified number of wells to be sampled during that year.

A copy of the results of each well test required by this Exhibit shall be promptly provided by the Operator, at its cost, to the property owner (or occupant) in question. The Operator shall also annually provide documentation of notice to property owners and test results to the Standing Committee.

**Sampling Protocol.** All routine well samples shall be analyzed for the following parameters:

Field	pH
	Conductivity
	Color
	Odor
	Turbidity

	Temperature
Lab	Total Alkalinity
	Total Iron
	Total Hardness
	Chloride
	COD
	VOCs

The samples collected from the above specified wells shall be analyzed by a NR 149, Wis. Admin. Code, certified lab.

**Response to Well Contamination.** (a) If the test of a sample collected by the Operator, DNR, or a third party from a private water supply well (said test to have been conducted in accordance with DNR's protocols for sampling and analysis, including the use of a DNR certified lab) indicates an exceedance of a primary non-bacterial maximum contaminant level as defined in NR 809 or a health related Enforcement Standard as defined in NR 140.10, Wis. Admin. Code, then:

- (A) The Operator shall, upon notice from DNR or the Standing Committee, secure a sample from said well and test the same utilizing the procedure stated above to confirm the exceedance. The Operator shall deliver the test results to the Standing Committee within thirty (30) days of said notice. If the results of this test confirm the exceedance, then the exceedance will be said to have been documented.

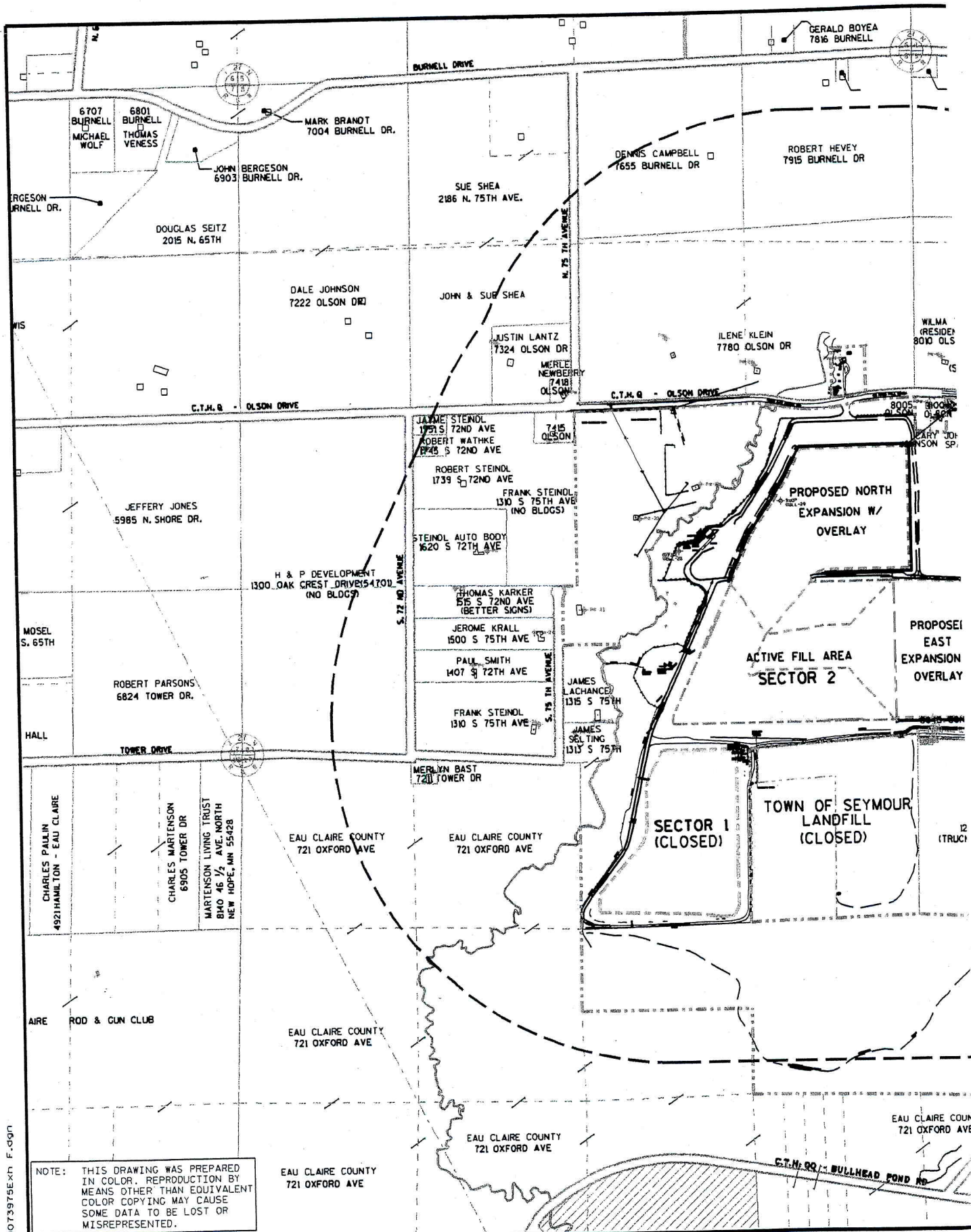
If the results of this test do not confirm the exceedance, then the Operator shall collect a third sample utilizing the same procedure. The Operator shall deliver the test results to the Standing Committee within sixty (60) days of said notice. If results of the third sample confirm the exceedance, then the exceedance will be said to have been documented. If the results of the third sample do not confirm an exceedance, then the exceedance will be said not to have been documented.

- (B) If the results of the Operator's test under Subparagraph (A) document the exceedance, then the Operator shall forthwith deliver, at its sole cost, potable water to residents.
- (C) If upon further investigation, including additional testing by the Operator, it is determined by DNR or an independent third party consulting firm agreed upon by the Standing Committee and the Operator that the exceedance is caused by a source other than the Landfill, then the Operator's obligation to provide potable water will cease.
- (D) In the event the above investigation establishes to the satisfaction of DNR or an independent third party consulting firm agreed upon by the Standing Committee and the Operator that the Solid Waste Facility is the source of the exceedance, then the Operator shall take appropriate measures to provide a permanent potable water supply.
- (E) The foregoing procedure of providing water under Subparagraph B upon the detection of an exceedance ("First Response") shall only be binding upon the

Operator if the well owner and tenant, if any, reasonably cooperates with the Operator in the investigation under Subparagraphs C and D.



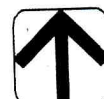
**Addendum 1 To Exhibit F**  
**PRIVATE WELL LOCATIONS**  
**Map Attached**



DR. BY	J. G. SCHMIDT	BOOK NO.	
CHK. BY	S. J. DOUGHERTY	JOB NO.	10-1472.00
DATE	MAR 30, 2004	SCALE	AS SHOWN
		NO.	
		DATE	
		REVISION	

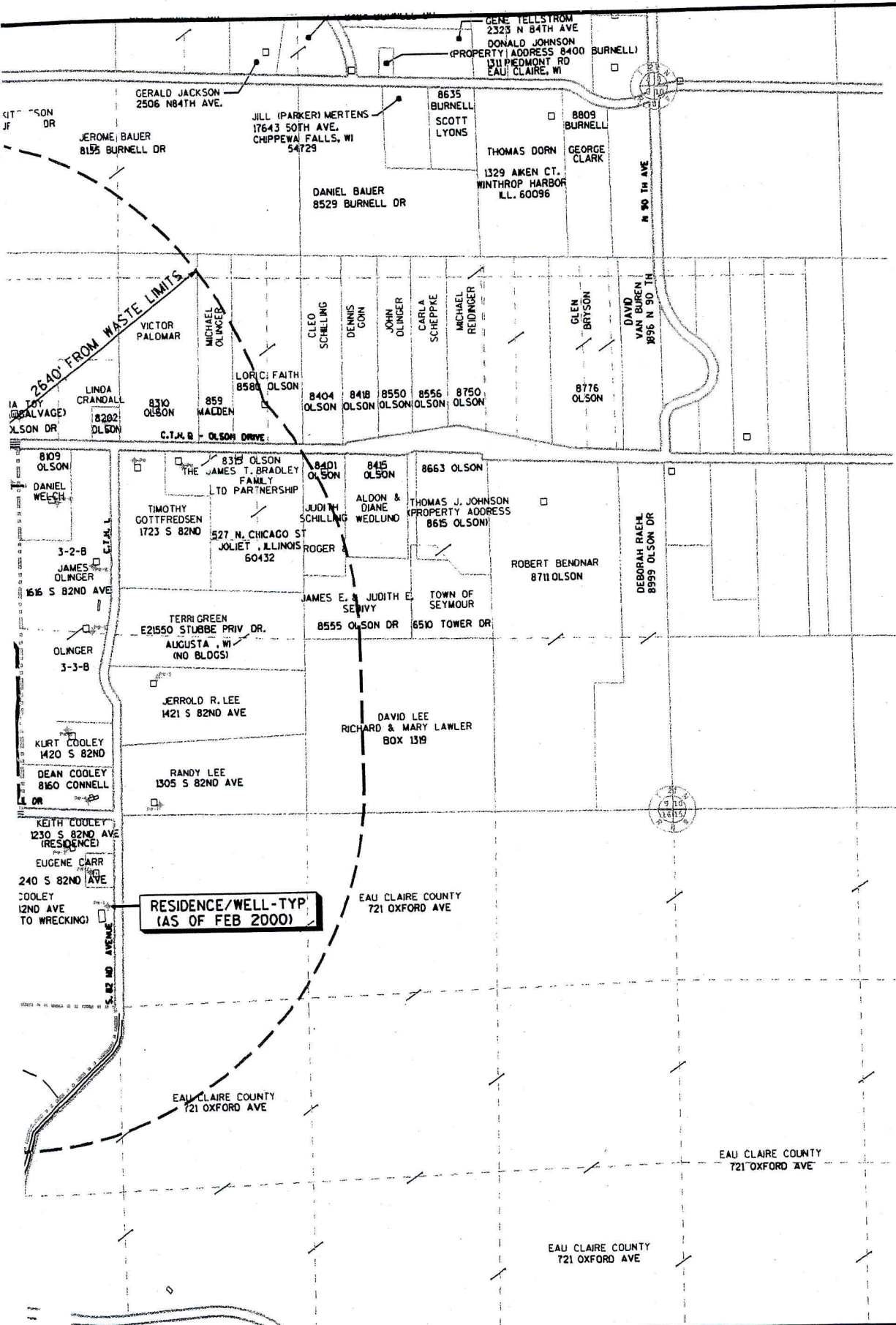
ONYX SEVEN MILE CREEK LANDFILL, L  
SECTOR 2  
EAU CLAIRE, WISCONSIN

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F:\1472-10073975\EXH F.DGN  
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NORTH

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LANDOWNERS & PRIVATE WELL LOCATIONS

\$HALF\$

EXHIBIT

F



**ACCESS AND WELL SAMPLING AGREEMENT**

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_ of \_\_\_\_\_ as the owner of property upon which a well is located and/or the user of a well (hereinafter called well "owner/user") and Onyx Seven Mile Creek Landfill, LLC (hereinafter called "Onyx").

The well owner/user grants Onyx Seven Mile Creek Landfill, LLC, its agents, employees and/or independent contractors the right to temporarily interrupt the well owner/user's water supply during the time that sampling is occurring. Such temporary interruption of the well owner/user's water supply shall only occur when the well owner/user and Onyx agree to a mutually convenient time within the restrictions placed on such sampling by the regulatory agency requiring that such sampling occur.

Onyx, its agents, employees, and/or contractors will take all responsible steps to prevent:

- (1) Polluting the water of well(s) on the premises.
- (2) Damaging the well(s), pump(s) and/or casing(s) located on the property.

Onyx agrees to correct any of the above-noted problems arising due to the negligent acts, willful misconduct or other actionable conduct of Onyx, its agents, employees, and/or independent contractors in performing the sampling of the well. Well owner/user, however, shall not hold Onyx, its agents, employees and/or its independent contractor liable for any diminution in water quality or quantity from the sampled well or for failure, interruption or shortage of water, or any loss or damage resulting therefrom in whole or in part by performance of the sampling except for negligence on the part of Onyx, its agents, employees, and/or independent contractors.

This Access Agreement shall remain in effect until the owner/user ceases to own/use the well on the property.

\_\_\_\_\_  
Well Owner/User

ONYX SEVEN MILE CREEK LANDFILL, LLC

By: \_\_\_\_\_  
Authorized Representative

## Exhibit G

### ACKNOWLEDGED TRANSPORTERS COMPLIANCE POLICY

The Operator shall require any Acknowledged Transporters, other than the Operator or any affiliate of Onyx Waste Services, Inc., to agree to the Acknowledged Transporter vehicular requirements in the form as set forth below. These requirements shall be distributed to any Acknowledged Transporter, other than the Operator or any affiliate of Onyx Waste Services, Inc., the first time the Acknowledged Transporter uses the Solid Waste Facility and every six (6) months thereafter, either through personal delivery of the requirements at the scale or in the billing statement. The requirements shall be posted at all times at the scale window.

#### Acknowledged Transporter Vehicular Requirements

I agree, as a representative of \_\_\_\_\_ (contract hauler), that I/our company and/or our representatives will cooperate with Onyx Waste Services, Inc. and operate in conformance with the vehicular requirements of the Onyx Seven Mile Creek Landfill Final Negotiated Agreement and local ordinances to ensure that as a hauler disposing of waste at the Onyx Seven Mile Creek Landfill our company will comply with the vehicle requirements imposed by the Operator, as stated below. I further acknowledge that the Operator is under obligation to cooperate with the Affected Municipalities in order to substantially minimize Solid Waste transported in such third party vehicles from discharging, leaking, spilling, falling or blowing out of such transport vehicles on public or private lands in the County.

I, \_\_\_\_\_ (contract hauler/individual), agree to conduct the transportation of waste based on the following:

1. Contract Hauler will operate its solid waste transport vehicles so as to prevent and avoid the discharge of waste onto public or private property in the County.
2. All solid waste transport vehicles will be equipped with proper side boards, gates, straps and/or tarps to allow for the safe transport of waste to or from the Solid Waste Facility. This equipment shall meet or exceed DNR or Wisconsin Department of Transportation specifications.
3. Operating hours will be from 6:30 a.m. to 5:30 p.m., Monday through Saturday. Trucks shall not arrive at the gate earlier than ten minutes before operating hours. The Solid Waste Facility will remain gated prior to 6:20 a.m. and trucks will not be permitted access prior to that time.
4. Contract Hauler will only access the Solid Waste Facility from County Highway Q.
5. All loads/trucks will be fully contained and/or tarped as they enter the Solid Waste Facility and will be either swept out inside the Active Fill Area of the landfill or tarped when they leave the Solid Waste Facility.
6. Any failure to comply with these requirements can result in a turn-back of the truck from the Solid Waste Facility and shall result in a turn back if the Acknowledged Transporter has three previous documented violations within a calendar year.

## **EXHIBIT H**

### **General Location of Potential Brush Site**



