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21ST DISTRICT JUDICIAL COURT
PARISH OF SAINT HELENA, STATE OF LOUISIANA

NUMBER 18370

DIVISION B

DOCKET

George Washington, Louisiana Environmental Action Network,
and Concerned Citizens of St. Helena Parish

versus

St. Helena Parish Police Jury and MRR St. Helena, L.L.C.

FILED: November 7, 2003

DEPUTY CLERK: Ornella Holland

PETITION

Plaintiffs, George Washington, Louisiana Environmental Action Network, Inc. ("LEAN"), and the Concerned Citizens of St. Helena Parish, Inc. ("Concerned Citizens") bring this petition to declare null and void and to set aside the St. Helena Parish Host Agreement Relative to MRR St. Helena, L.L.C. Landfill ("Agreement"), based on the following allegations:

NATURE OF THE ACTION

1.

What began as a police jury agenda item to "discuss garbage collection" ended up as an unannounced decision to approve a landfill operation for the next fifty years. The St. Helena Parish Police Jury ("Police Jury") decided to sign the Agreement with MRR St. Helena, L.L.C. ("MRR") in a single meeting that lasted less than an hour. The proposed landfill exceeds the garbage disposal needs of St. Helena Parish. It will change forever the 700 acres of land that it occupies, as well as the quality of life on the surrounding land.

PARTIES

2.

Plaintiff George Washington is an 88-year-old indigent citizen of St. Helena Parish. He and his 29 grandchildren live near the site of the proposed landfill. The introduction of a landfill would harm Mr. Washington's interest in enjoying a quiet, safe, and peaceful life in the neighborhood where his family lives.

3.

Plaintiff Louisiana Environmental Action Network (“LEAN”) is a non-profit corporation organized under the laws of Louisiana. Its purpose is to protect Louisiana citizens from activities that are harmful to their health, safety, and environment. LEAN includes members that live, work, and recreate near the site of the proposed landfill.

4.

Plaintiff Concerned Citizens of St. Helena Parish, Inc. (“Concerned Citizens”) is a non-profit corporation organized under the laws of Louisiana. Its purpose is to stop the introduction of MRR’s landfill in St. Helena Parish. Concerned Citizens includes members that recreate, hunt, live, and/or work on or near the land that the police jury plans to convert to a landfill. One of their concerns is that the site will harm the parish’s game population.

5.

The interests of LEAN and Concerned Citizens in maintaining a healthy and safe environment would be harmed by the introduction of a landfill not necessary to meet the local garbage needs.

6.

Defendant St. Helena Parish Police Jury is one of 18 police juries that govern Louisiana parishes. It is the local governing body for St. Helena Parish. Its six members, known as jurors, conduct bi-weekly open meetings.

7.

Defendant MRR St. Helena, L.L.C. is a limited liability corporation incorporated in Delaware and doing business in Louisiana.

8.

The parent company, MRR, L.L.C. has incorporated a number of subsidiary limited liability companies for the purpose of opening and operating landfills.

VENUE

9.

Venue in the 21st Judicial District is proper for the Police Jury, a political subdivision, pursuant to La. R.S. 13:5104B, because it is a political subdivision located in the 21st Judicial District.

10.

Venue in the 21st Judicial District is proper for MRR, as co-defendant to the Police Jury, pursuant to La. C.C.P. art. 45(3) and the Louisiana Supreme Court's standard in Underwood v. Lane Mem'l Hosp., 714 So. 2d 715, 719 (La. 1998):

Ancillary venue applies when separate claims involving common or identical questions of fact share no common venue. The concept of ancillary venue allows such claims to be tried together for reasons of judicial economy and efficiency, even though venue is not proper technically for one claim or one party.

LEGAL BACKGROUND

11.

The Louisiana Constitution recognizes two forms of local government subdivisions: (1) home rule charter, and (2) non-home rule charter. La. Const. of 1974, Art. 6, §§ 5(E) and 7(A).

12.

A home rule charter political subdivision is authorized to exercise any powers "not denied by general law or inconsistent with this constitution." La. Const. of 1974, Art. 6, § 5(E).

13.

Parishes without home rule charters, governed by police juries, do not have the authority to determine their own structure and organization. "Police juries, being creatures and subordinate political subdivisions of the state, have only those powers as are conferred upon them by the constitution and laws of the state." B.W.S. Corp. v. Evangeline Parish Police Jury, 293 So. 2d 233, 235 (La. App. 1974).

14.

The Louisiana Constitution of 1974, Art. 6, § 7(A) authorizes a police jury to exercise only those powers "not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers."

15.

"[A]bsent voter approval, a non-home rule charter political subdivision . . . can exercise only those powers expressly granted by the constitution or by the legislature." American Waste v. St. Martin Parish Police Jury, 609 So.2d 201, 203 (La. 1992).

16.

Meetings of the St. Helena Parish police jury are subject to the Open Meeting Law (La. R.S. 42:4.1 et seq.), which provides for broad public participation:

It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of R.S. 42:4.1 through 10 shall be construed liberally.

La. R.S. 42:4.1 (A).

17.

“The primary purpose of the Open Meeting Law and the constitutional provision insuring the right of citizens to participate in the deliberations of public bodies is to protect citizens from secret decisions made without any opportunity for public input. The public has a right to know what is being considered and is entitled to ‘direct participation’ in deliberations as styled by constitution.” Hayes v. Jackson Parish School Bd., 603 So. 2d 274, 275 (La. App.1992).

18.

Under the Open Meeting Law, “All votes made by members of a public body shall be *viva voce* [voice vote] and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.” La. R.S. 42:5 (C).

19.

La. R.S. 33:1236 enumerates the powers of the police juries in this state. Two sections refer to a police jury’s power to control waste in its parish. Part 31 grants the power “to enact ordinances to require, prohibit, or regulate the destruction, disposal, or burning of trash, garbage, leaves, limbs and branches, or debris of any kind and to regulate dumping and the use of borrow pits for sanitary fill.” Part 16 gives the police jury the power to “enact ordinances and regulations, not inconsistent with the laws and constitution of the United States, nor of this state, to protect their respective parishes against the introduction of every kind of contagious disease.”

20.

La. R.S. 33:4169.1 more explicitly defines the extent of a police jury’s power to control waste in its parish. It grants a municipality or a parish authority over collection and disposal of garbage and trash. It authorizes franchising, permitting, and licensing. Part A(3) grants the public body the authority “to enter into time contracts for the collection and transportation of garbage or

trash for a term of up to ten years, and for disposal of garbage or trash for a term of up to twenty-five years.”

21.

St. Helena Parish’s Zoning Law gives the governing authority of St. Helena Parish the authorization to regulate and restrict “the height, number of stories, and size of structures; the percentage of lots that may be occupied; courts and other open spaces; the density of population; and the location and use of the buildings, structures, and land for trade, industry, residence, or other purposes.” La. R.S. 33:4780.1.

22.

The Zoning Law comes with two caveats: First, “[T]he zoning ordinances enacted by said governing authority and the acts of its zoning commission, board of adjustment, or zoning administrator shall be subject to judicial review on the grounds of abuse of discretion, unreasonable exercise of police powers, excessive use of the power herein granted, or the denial of the right of due process.” La. R.S. 33:4780.1. Second, “[T]he right of judicial review of a zoning ordinance shall not be limited by the foregoing.” *Id.*

23.

The Louisiana Supreme Court set the standard of review for actions of political bodies in State ex rel. Kuhlman v. Rost, 47 La. Ann. 53, 16 So. 776, 779 (La. 1895): “[T]here may be cases of such a character as to force the judiciary, in the discharge of its own duty, to review, to declare null and void, and to set aside acts of the legislature or executive departments” providing that the occasion for doing so is “clear and patent.”

24.

Courts may set aside police jury actions when “such bodies abuse [their] power by acting capriciously or arbitrarily.” Caz-Perk Realty, Inc. v. Police Jury of Parish of East Baton Rouge, 22 So.2d 121, 124 (La. 1945).

GENERAL ALLEGATIONS

25.

On September 9, 2003, all six members of the police jury gathered for a meeting as part of their regular session.

26.

One of the jurors came to the meeting with something that none of the other jurors had ever seen or heard about. This was the Agreement— a ten-page contract in which St. Helena Parish was to authorize the use of 700 acres of land for a landfill. A copy of the Agreement is attached to this Petition as Exhibit A.

27.

The Agreement purports to grant MRR the right to operate the landfill in St. Helena Parish for the next fifty years.

28.

Not only would the landfill accept municipal solid waste, it would also harbor industrial waste and construction and demolition debris.

29.

Article 20 of the agenda for St. Helena Parish Police Jury's September 9th 2003 meeting was the only forewarning of anything related to garbage in St. Helena Parish.

30.

Article 20 said: "Placed on agenda by Juror Carter: Discuss garbage collection and disposal for St. Helena Parish."

31.

According to the written minutes, "After discussion of garbage collection and disposal, the Police Jury added to the agenda by unanimous vote thereon, resolution authorizing President to sign Host Agreement contract with MRR St. Helena, LLC."

32.

The audio recorded minutes indicate that one juror made a motion to add to the agenda: "A resolution authorizing President to sign Host Agreement contract with MRR Southern LLC for a landfill in St. Helena Parish."

33.

But following this motion, there was no audible voice vote to add the item to the agenda. There is no sound of a juror seconding the motion, or of any other jurors voicing their votes.

34.

There is no audible record of any vote taken on the resolution itself. The audio recorded minutes fail to include a voice vote to adopt the Agreement.

35.

At the next meeting of the St. Helena Parish Police Jury held on Tuesday, September 23, 2003, “a large crowd of people appeared to express their displeasure.” Letter from Scott M. Perrilloux, District Attorney for the 21st District, to Charlie Ellis, Attorney for MRR St. Helena, L.L.C. *See* Attachment B.

FIRST CAUSE OF ACTION

The Agreement is illegal because the police jury did not follow the Open Meetings Law when voting to sign it.

36.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35.

37.

The recording of the Police Jury’s votes on the Agreement indicates that there was no audible voice vote on the decision to add Item 20 to the agenda. The tape recording of the minutes contains only the voice of a single juror: “A resolution authorizing President to sign Host Agreement contract with MRR . . . LLC for a landfill in St. Helena Parish . . . made by Mr. Davis, seconded by Mr. Smith, all opposed, all are for.”

38.

There was no audible voice vote to adopt the Agreement itself.

39.

This method of voting violates Part 5(C) of the Open Meetings Law, which requires that, “All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.” La. R.S. 42:5(C).

40.

A violation of the Open Meetings Law is a violation of a rule of public order.

41.

“A contract is absolutely null when it violates a rule of public order.” La. C.C. art. 2030. “Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.” *Id.* “An absolutely null contract . . . is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made.” La. C.C. art. 2033.

42.

The police jury acted *ultra vires* in approving the Agreement, because its power is limited to the powers that the Open Meetings Law specifically grants.

43.

Because the police jury violated the Open Meetings Law when it voted to sign the Agreement, the Agreement is absolutely null and must be set aside.

SECOND CAUSE OF ACTION

The Agreement is illegal because St. Helena Police Jury does not have the power to enter a contract for waste disposal for greater than 25 years.

44.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35.

45.

The Agreement is for more than 25 years:

The term of this Agreement (the "Primary Term") will begin on the date of approval and shall continue for *fifty (50)* years unless sooner terminated as provided in this Agreement. The Parish and MRR agree to negotiate in good faith as to the extension, renewal, or re-issuance of the Agreement prior to the expiration of the Primary Term.

Agreement at 7 (*emphasis added*).

46.

La. R.S. 33:4169.1 A(3) allows the police jury "to enter into time contracts for the collection and transportation of garbage or trash for a term of up to ten years, and for disposal of garbage or trash for a term of *up to twenty-five years*" (*emphasis added*).

47.

The Agreement violates La. R.S. 33:4169.1 A(3) because it exceeds the time limit by 25 years.

48.

A violation of La. R.S. 33:4169.1 A(3) is a violation of a rule of public order.

49.

"A contract is absolutely null when it violates a rule of public order." La. C.C. art. 2030. "Absolute nullity may be invoked by any person or may be declared by the court on its own initiative." *Id.* "An absolutely null contract. . . is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made." La. C.C. art. 2033.

50.

The police jury acted *ultra vires* in approving the Agreement, because its power is limited to the powers that the La. R.S. 33:4169.1 A(3) specifically grants.

51.

Because the police jury violated La. R.S. 33:4169.1 A(3) when it voted to sign the Agreement, the Agreement is absolutely null and must be set aside.

THIRD CAUSE OF ACTION

The Agreement is illegal because the police jury violated the Zoning Law when voting to sign it.

52.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35.

53.

The Police Jury spent less than an hour listening to the facts, presented by a party who had an intimate interest in seeing the Agreement implemented. The Police Jury did not seek the advice of any expert on solid waste landfills, let alone that of the public.

54.

There was no advanced review and discussion of the Agreement among the St. Helena police jurors. Of the six jurors who voted to approve the contract, only one was aware of the existence of the contract before the meeting. No one else was prepared to vote on the matter.

55.

The police jurors voted without sufficient knowledge of the circumstances surrounding the Agreement. They voted for it simply because one juror had recommended that they approve the Agreement, and because they were urged to do so that night.

56.

The public had no idea that in the span of an hour, one police juror's contract proposal would change the fate of 700 acres of land in their parish.

57.

Courts have labelled this behavior "arbitrary" and "capricious." One example involves a police jury's decision to adopt a resolution without sufficient information on the nature of the action. The court enjoined the police jury from this arbitrary action:

As we examine the testimony of the police jurors who testified as to the adoption of the resolution of abandonment, we find that it is clear that the action of the jury

was arbitrary or capricious. The members, other than Sharon Lee, voted for the abandonment without any knowledge of the circumstances surrounding the roadway in question. They voted for it simply because it was recommended by Sharon Lee in whose ward the roadway was located. It is clear that the governing body's decision to abandon the roadway was made without any information as to whether it was being used for public purposes.

Sylvester v. St. Landry Parish Police Jury, 461 So. 2d 534, 539 (La. App. 1984).

58.

Arbitrary and capricious behavior is an abuse of discretion subject to judicial review. *See Caz-Perk Realty, Inc. v. Police Jury of Parish of East Baton Rouge*, 22 So.2d 121, 124 (La. 1945) (Courts may interfere with “the functions of police juries or other public bodies in the exercise of the discretion vested in them” when “such bodies abuse this power by acting capriciously or arbitrarily.”).

59.

The police jury abused its discretion and is subject to judicial review under St. Helena's Zoning Law, La. R.S. 33:4780.1.

60.

The Zoning Law prohibits the police jury from abusing its discretion, exercising its police powers unreasonably, or denying citizens “the right of due process.” La. R.S. 33:4780.1.

61.

The Police Jury violated the Zoning Law, which is a violation of a rule of public order.

62.

“A contract is absolutely null when it violates a rule of public order.” La. C.C. art. 2030. “Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.” *Id.* “An absolutely null contract. . . is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made.” La. C.C. art. 2033.

63.

The police jury acted *ultra vires* in approving the Agreement, because its power is limited to the powers that the La. R.S. 33:4169.1 A(3) specifically grants.

64.

Because the Police Jury violated the Zoning Law when it voted to sign the Agreement, the Agreement is absolutely null and must be set aside.

FOURTH CAUSE OF ACTION

The Agreement is illegal because the police jury is not authorized to grant the exclusive power to operate a landfill that accepts industrial waste.

65.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35.

66.

The Agreement grants MRR “exclusive right and authority in the Parish to construct and operate a municipal solid waste landfill” to accept, among other things, industrial waste. Agreement at 2.

67.

Neither the Louisiana Constitution nor Louisiana law specifically grants police juries the power to assign authority over industrial waste. The court in B.W.S. Corp. v. Evangeline Parish Police Jury, 293 So. 2d 233, 235 (La. App.1974), examined La. R.S. 33:1236, “the primary statute enumerating those powers which the police juries in this state have been granted.” It found that a police jury “is not given authority in LSA R.S. 33:1236 to enact ordinances regarding industrial waste disposal. Nor do we find such delegated authority in any other statute.” *Id.* at 236.

68.

In the absence of a public vote on a proposed government action, police juries are limited to the specific powers “not denied by general law or inconsistent with this constitution.” La. Const. of 1974, Art. 6, § 5(E):

[T]he governing authority of a local governmental subdivision which has no home rule charter or plan of government may exercise any power and perform any function necessary, requisite, or proper for the management of its affairs, not denied by its charter or by general law, *if a majority of the electors voting in an election held for that purpose vote in favor of the proposition* that the governing authority may exercise such general powers. Otherwise, the local governmental subdivision shall have the powers authorized by this constitution or by law.

La. Atty. Gen. Op. No. 1987-305 (*emphasis added*).

69.

There was no public vote to adopt the Agreement.

70.

Without a public vote, the Police Jury acted *ultra vires* in granting MRR the power to operate a solid waste landfill that accepts industrial waste.

71.

Because the Police Jury illegally granted MRR the power, the Agreement violates public order.

72.

“A contract is absolutely null when it violates a rule of public order.” La. C.C. art. 2030. “Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.” *Id.* “An absolutely null contract. . . is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made.” La. C.C. art. 2033.

73.

Because the police jury violated the Constitutional limit on its power when it voted to sign the Agreement, the Agreement is absolutely null and must be set aside.

PRAYER FOR RELIEF

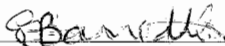
WHEREFORE,

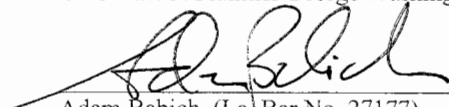
Plaintiffs respectfully pray for a judgment entered in favor of Plaintiffs George Washington, LEAN, and Concerned Citizens, as follows:

- A. Pursuant to La. C.C. art. 1871, a declaratory judgment stating that:
 1. Defendant Police Jury violated the Louisiana Open Meetings Act, La. R.S. § 42:5(C).
 2. Defendant Police Jury violated La. R.S. 33:4169.1 (parish authority over garbage disposal).
 3. Defendant Police Jury violated the Zoning Law, La. R.S. 33:4780.1.
 4. Defendant Police Jury exceeded its constitutional power under La. Const. of 1974, Art. 6, § 5(E).
 5. The Agreement is null and void.
- B. An order to set aside the Agreement and enjoin Defendant police jury and Defendant MRR from executing the terms of the Agreement.
- C. An award of such further relief as the Court deems just and proper.

Respectfully submitted this 7th day of November, 2003

TULANE ENVIRONMENTAL LAW CLINIC


E. Barrett Ristroph, Student Attorney
On behalf of Plaintiff George Washington


Adam Babich, (La. Bar No. 27177)
Supervising Attorney and Counsel for
Plaintiffs George Washington,
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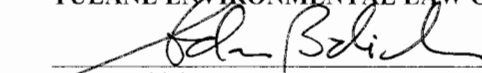
Sheriff, Please Withhold Service

**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT ATTORNEY
AND NOTICE OF APPROVAL OF STUDENT APPEARANCE**

Undersigned counsel respectfully introduces student attorney E. Barrett Ristroph to this Court pursuant to Rule XX. As the student attorney's supervising attorney, I approve of the student attorney's appearance in this case. Written consent of the applicable client to an appearance by a student attorney in this matter is submitted with this pleading.

Respectfully submitted this 7th day of November, 2003.

TULANE ENVIRONMENTAL LAW CLINIC


Adam Babich, (La. Bar No. 27177)
Supervising Attorney and Counsel for
Plaintiffs George Washington,
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CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in Court or before an administrative tribunal

Dated: 11-6-03

(signed)
(name)

George W. Jones

**HOST AGREEMENT RELATIVE TO MRR ST. HELENA, LLC
LANDFILL, HOST FEE PAYMENTS TO HOST PARISH FROM LANDFILL
OPERATIONS AND MATTERS RELATED THERETO**

This Agreement Relative to the proposed MRR St. Helena, LLC Landfill, Host Fee Payments to Host Parish and Matters Related Thereto (the "Agreement") is made and entered into this 9TH day of SEPTEMBER, 2003 by and between the following parties:

MRR ST. HELENA, LLC, a limited liability company organized under the law of Delaware and doing business in Louisiana, being represented by Norbert Hector, its duly authorized representative, (hereinafter referred to as "MRR"); and

THE PARISH OF ST. HELENA, a political subdivision and body politic organized under the laws of the State of Louisiana and domiciled in St. Helena Parish, Louisiana represented herein by Tommy Carter (hereinafter referred to as "the Host Parish.")

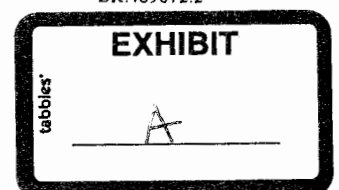
WHEREAS, after an extensive assessment of potential alternative sites for a landfill, MRR has acquired the option to purchase over 700 acres (sometime hereinafter referred to as the "Site"), which is located in St. Helena Parish. MRR anticipates that approximately 300 acres will ultimately be utilized for actual disposal.

WHEREAS, MRR intends to design, permit, construct and operate a landfill within the Parish at the Site (hereinafter sometimes referred to as the "MRR Landfill") and is willing to compensate the Parish for hosting the facility and accepting for disposal solid waste generated outside the Parish;

WHEREAS, MRR is willing to pay to the Parish six and one-half (6.5%) percent of gross revenue derived from the disposal of solid waste on the Site (hereinafter referred to as ("Host Fees".));

WHEREAS, state and federal regulations have made it more costly for local governments to own and operate landfills;

WHEREAS, the Parish is actively attempting to procure for its citizenry a guaranteed source of environmentally sound solid waste disposal capacity for the future. The Parish's attempt to procur a long-term source of disposal capacity has been motivated by concerns that the landfill which currently provides disposal capacity for the Parish is nearing the end of its life, that the Parish is incurring economic hardship as a result of its current arrangement for solid waste disposal, that the Parish's current contract for the disposal waste generated will expire in November 2003 and that the Parish may need to impose additional taxes to fund the provision of solid waste disposal services for its citizens if the Parish does not locate an economically viable alternative to the current arrangement for solid waste disposal.



WHEREAS, the Parish seeks to provide its citizens with an economical and environmentally sound non-hazardous solid waste management disposal system including the means by which sound solid waste management practices such as recycling, waste segregation and source reduction may be encouraged in the Parish;

WHEREAS, the Parish also seeks means by which it can provide its citizens with facilities for recreational and leisure use;

WHEREAS, the Parish seeks to host a regional solid waste landfill and to allow the landfill to accept waste generated outside the Parish, provided: a.) the Parish receives compensation for hosting a landfill within its boundaries, including a Host Fee; b.) the operator of the regional solid waste landfill complies with all regulatory requirements for the construction and operation of a landfill, such compliance to be satisfactorily demonstrated to the Parish if the landfill operator receives all permits needed to operate the landfill and subsequently receives an order authorizing commencement of operations from the Louisiana Department of Environmental Quality ("LDEQ");

WHEREAS, the Parish believes that construction and operation of a regional solid waste landfill represents the highest and best use of the Site;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the terms, conditions, and mutual covenants contained herein and for other good and valuable consideration, and pursuant to law, the Parties hereto agree as follows:

I. HOST AGREEMENT

- (1) Subject to MRR's acquisition and ownership of the Site, MRR is hereby granted the exclusive right and authority in the Parish to construct and operate a municipal solid waste landfill authorized under the Louisiana Solid Waste Regulations to accept Type I waste (municipal solid waste), Type II waste (non-hazardous industrial waste) and Type III (construction and demolition debris and woodwaste) and to construct and operate associated solid waste management facilities on the Site for the term of this Agreement and consistent with the terms of this Agreement. The Parish may, pursuant to a properly-enacted resolution declaring a disaster within St. Helena Parish and determining the need for additional Type III landfills to serve the citizens of St. Helena Parish, authorize the operation of such additional needed Type III landfills for so long as necessary to complete the cleanup of disaster debris.
- (2) To the extent allowed by State or Federal law, the Parish expressly agrees that the MRR Landfill may be constructed on the Site, that no Parish law precludes the construction or operation of the MRR Landfill and that it shall provide all lawful assistance to MRR, including the provision of information to be utilized by MRR in permit applications.

- (3) Upon the execution of this Agreement, this Agreement will govern the duties, responsibilities and obligations of the parties with respect to the Site and shall supercede and replace all other agreements relative thereto.
- (4) MRR agrees to protect, indemnify, defend and save harmless the Parish from any and all liability in connection with or arising out of the construction or operation of the MRR Landfill on the Site.
- (5) To facilitate the development and use of the Site, to enhance the Host Fees ultimately paid to the Parish and to procur unto its citizenry an economical and environmentally sound long-term source of solid waste disposal capacity, the Parish agrees to provide support for MRR in its efforts to obtain all permits for the operation of the MRR Landfill including any permit modifications deemed advantageous by MRR and any necessary removals of permits.
- (6) MRR agrees to not operate an incinerator, an injection well or a hazardous waste treatment, storage or disposal facility on the Site. This provision shall not preclude the disposal of material which would otherwise be characterized as "hazardous waste" except for its status as a portion of municipal solid waste (e.g. "household hazardous waste".)
- (7) MRR shall assume any and all liability for any conditions of the permits under which the MRR Landfill is operated including, but not limited to, closure, post-closure, monitoring, financial responsibilities or any other liability related to the Permit, operation of the MRR Landfill or conditions existing at the MRR Landfill as a result of operations at the MRR Landfill.
- (8) The Parish agrees that if MRR applies for permit(s) to operate a solid waste landfill at the Site, and the application(s) for said permit(s) are/is denied by the LDEQ, then MRR shall have the right, but not the obligation, to attempt to obtain permit(s) for a solid waste landfill in an alternate location of its choosing within the Parish (the "Second Site"). In the event MRR opts to seek permit(s) for a Second Site, MRR shall provide written notice to the Parish of its intention to apply for permits to operate a solid waste landfill at a Second Site and shall designate with specificity the location of the Second Site, within sixty (60) days of the issuance of a final decision or order of the LDEQ denying MRR's application(s) for permit(s) to operate a solid waste landfill at the Site. The Parish shall have the opportunity to object to MRR's designation of the Second Site, by providing written notice to MRR within thirty (30) days of receipt of notice from MRR designating the Second Site. In the event MRR provides such written notice to the Parish, and the Parish does not object to the designation of the Second Site within the designated period, this Agreement shall remain in full force and effect and its terms and conditions shall apply to any efforts to obtain authorization for a solid waste landfill at the Second Site and to any solid waste landfill operations conducted at the Second Site. The sixty (60) day period for providing notice to the Parish shall not begin to run if MRR appeals or seeks review

of any decision by the LDEQ denying permit(s) for the Site. In the event MRR appeals or seeks review of a decision or order denying permit(s) at the Site, the sixty (60) day period for giving notice to the Parish, provided for herein, shall begin to run only after all appeals have been exhausted (or abandoned by MRR, at its option) and the decision or order of the LDEQ (or any reviewing court) has become final and not subject to further review or appeal.

- (9) The Parish and MRR further agree that this Agreement shall apply to any expansion of landfill operations at the Site onto any tract of property adjacent to the Site provided such expansion of landfill operations is approved by LDEQ.
- (10) MRR shall provide, at no cost to the Parish, a portion of the Site to be used for operations of the Parish Solid Waste Liaison Officer (see Section II, paragraph (6), below). The portion of the Site to be used by the Parish Solid Waste Liaison shall be selected by MRR, shall not exceed 5 acres, shall be outside of the portion of the Site which is permitted by MRR as a solid waste disposal facility by the LDEQ and shall be situated/located in such a manner as to facilitate the Parish Solid Waste Liaison Officer in the performance of his/her responsibilities.

The portion of the Site to be used by the Parish Solid Waste Liaison Officer shall include, at the discretion of the Parish: a.) a location for members of the public to meet with the Parish Solid Waste Liaison; b.) a location for the dissemination of information to Parish residents concerning materials that may be accepted at the MRR Landfill for disposal; c.) a location for facilitating recycling, waste reduction and beneficial use efforts in the Parish. In the event any activity related to solid waste is conducted on the portion of the Site used by the Parish Solid Waste Liaison Officer requires permitting by the LDEQ (e.g., separation of recyclable materials), MRR shall assist the Parish and Parish Solid Waste Liaison Officer in obtaining such permits.

- (11) The Parish agrees, if possible, that it will enter into an agreement with MRR or other parties, relative to the provision of emergency response capabilities and use of equipment in the event of accidents or incidents at the MRR Landfill, consistent with the requirements of La. R.S. 30:2157, which provides for emergency response standards at solid waste disposal facilities in the state of Louisiana. Any such agreements shall provide for and allow utilization by the Parish of the emergency response capabilities and equipment of MRR, to the extent allowed by law, and *vice versa*, thereby providing full capabilities for response to any emergency situation that may arise by operation of the MRR Landfill and enhancing the emergency response capabilities for the Parish as a whole.
- (12) To the extent necessary to ensure that the Site is served by roads capable of meeting the demands of the MRR Landfill, the Parish agrees that it will obtain necessary easements or rights of way, by the exercise of its power of eminent domain if necessary, for any construction that may be required, and agrees to enter into any

intergovernmental agreement related to solid waste management, if possible, which would facilitate the use of expropriation authority pursuant to La. R.S. 33:1329.

- (13) The cost of any acquisition of right of way, design and construction work undertaken to enhance access to the Site shall be shared equally (50%-50%) by the Parish and MRR, in the following manner. MRR will pay all of the cost of such acquisition of right of way, design and construction work initially. In the event MRR pays and such costs, the Host Fee paid to the Parish will be reduced by 20% until such time as the amount by which the Host Fee payments have been reduced equals one-half of the value of the cost of any acquisition of right of way, design and construction work undertaken to enhance access to the Site, at which time the ordinary Host Fees payments required by Section IV, below, shall resume.
- (14) MRR agrees that at the end of the life of the MRR Landfill, the Parish shall have the option of accepting, as a donation from MRR, the Site, or any portion thereof, for use as a public facility (e.g., recreation area, park, public wildlife management area, sports complex, etc.). In the event the Parish accepts the donation, MRR will maintain all responsibility for closure, post closure care and monitoring, and all liabilities of any sort arising from or relating to the operation of the MRR Landfill. Additionally, in the event the Parish accepts the donation, the acceptance of the donation shall not act to render ineffective the indemnity in favor of the Parish, or any portion thereof.
- (15) This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

II. ADMINISTRATION, MAINTENANCE, DISPOSAL AND OPERATIONS

- (1) The parties hereto agree that this Agreement shall be governed by the laws of the State of Louisiana.
- (2) Upon opening of the MRR Landfill for business, MRR will accept for disposal at the Site non-hazardous solid waste generated within St. Helena Parish (hereinafter "Parish Waste") at no charge to the Parish. This provision applies only to Parish Waste generated by Parish residents, waste generated in the Parish by the Parish in the exercise of governmental duties and waste generated in the Parish by the Parish school board. "Parish Waste" shall not include: a.) construction and demolition debris, wood waste, or other materials which are characterized as Type III waste, generated by any source; b.) commercial waste generated by Parish residents; and c.) industrial solid waste generated by any source. In order for the Parish to receive the benefits of this paragraph, upon delivery to the MRR Landfill for disposal, Parish Waste must not be commingled with waste that is not classified as Parish Waste.
- (3) MRR agrees that without the prior consent of the Parish, no waste reported from

out of the State of Louisiana will be accepted for disposal by MRR in the MRR Landfill.

- (4) The Parties agree that the MRR Landfill will be able to accept waste from all Parishes identified in its permit as constituting the Service Area of the MRR Landfill.
- (5) The MRR Landfill may accept for disposal wastes allowed by the permit issued by the LDEQ. The waste stream accepted for disposal may include Type I solid waste (municipal solid waste), Type II solid waste (non-hazardous industrial waste) and Type III solid waste (construction and demolition debris and woodwaste).
- (6) In addition to the obligations specified herein, MRR will pay to the Parish, annually, a total of \$50,000.00, in four quarterly installments of \$12,500.00 each (hereinafter referred to as "Salary Compensation Payment"), with the first quarterly installment to be prorated and the remaining \$12,500.00 quarterly installments due and payable each quarter thereafter based on a calendar year until the full sum of \$50,000.00 has been paid. The obligation to begin making Salary Compensation Payments shall arise only after MRR has received an Order from the Louisiana Department of Environmental Quality authorizing the commencement of disposal activity and MRR actually begins disposal operations. The funds specified in this paragraph shall be used to fund the salary and related expenses of a new Parish employee position that shall have the responsibility of acting as liaison with the public on matters pertaining to residential garbage collections and solid waste management in the Parish. This position shall be referred to as the Parish Solid Waste Liaison Officer. The Parish Solid Waste Liaison Officer may inspect the MRR Landfill and make monthly status reports to the St. Helena Police Jury. Should the disposal of waste on the Site cease, by virtue of the loss of any necessary permit or other regulatory approvals, or as a result of any other cause, then in that event the obligation of MRR to make the Salary Compensation Payment shall cease.
- (7) MRR will maintain sufficient records to assure the Parish of MRR's compliance with the terms of its permits, applicable law and the terms of the Agreement relating to the operation of the MRR Landfill including, but not limited to, volume disposed, fees charged and cash receipts and will allow inspection of such records by the Parish, the Parish Solid Waste Liaison Officer or by Parish's outside auditing firm, during reasonable office hours.
- (8) MRR may, but is not obligated to, remove recyclables from waste received at or delivered to the MRR Landfill. In the event MRR elects to remove recyclables, MRR will be entitled to retain all revenues, if any, received from the sale of such recyclables. MRR may establish a recycling facility at the MRR Landfill without further Parish approval, subject only to the issuance of any required permits.
- (9) MRR may reject any portion of solid waste delivered for disposal to the MRR Landfill, including Parish Waste that MRR determines is hazardous or otherwise

unacceptable under state or federal laws, rules or regulations or MRR's rules for the operation of the MRR Landfill.

- (10) The Parish expressly agrees that it will not impose any new restriction or obligation (including, without limitation, any rule, regulation, ordinance, restriction, taxes, fees or dues) that supercedes or is more limiting than those imposed by the State on the operation of the MRR Landfill during the term of this Agreement, plus any extension or renewals thereof, that are not otherwise generally applicable within the Parish, unless required by State or Federal Law.
- (11) MRR will comply with all State laws in the operation of the MRR Landfill and will notify the Parish within seven (7) business days of receipt of any formal enforcement action taken by the State, including any notice of violation, compliance order or penalty assessment issued by LDEQ.

III. TERM AND EXTENSIONS

The term of this Agreement (the "Primary Term") will begin on the date of approval of this Agreement by the Parish and shall continue for fifty (50) years unless sooner terminated as provided in this Agreement. The Parish and MRR agree to negotiate in good faith as to the extension, renewal or re-issuance of this Agreement prior to the expiration of the Primary Term.

IV. HOST FEE

MRR agrees to pay to the Parish six and one-half (6.5%) percent of gross revenues derived from the disposal of solid waste on the Site until the full permitted capacity of the MRR Landfill has been reached. The Parish shall have a right to verify by an independent audit the correctness of the Host Fee paid. However, the audit shall be limited to a period of three (3) years from the date the Host Fee is paid. For purposes of determining the Host Fee due to the Parish in connection with this Agreement, no deduction shall be made from gross revenues for taxes, including but not limited to, any franchise, income, or gross receipts, taxes, or for any other tax based upon income of MRR except any tax, fee or surcharge imposed by any governmental authority upon the disposal or processing of any waste material at the MRR Landfill which amount shall be deducted from gross income. Further, in the calculation of gross income, non-disposal revenue from services performed by MRR, such as solidification surcharges, transportation, washouts, gas recovery, demurrage or like charges shall not be deemed to be included in gross revenues. The Host Fee shall be paid monthly on the 30th day following each month for the amounts due as a result of gross revenues derived from solid waste disposal during the preceding month.

Notwithstanding the foregoing, in the event MRR incurs costs related to work undertaken to enhance access to the Site then in that event, pursuant to Section I (13), the Host Fee payment due in the month following the incurment of costs by MRR (and thereafter, if necessary, for the following months) shall be reduced by 20%, until such time as the amount by which the Host Fee payment(s) have been reduced equals 50% of the value of the costs incurred by MRR for any acquisition of right of way, design and construction work undertaken to enhance access to the Site.

V. TERMINATION OF AGREEMENT

A. Notwithstanding any provision of this Agreement to the contrary, MRR and the Parish agree that MRR will have the right to terminate this Agreement at any time upon occurrence of any of the following events:

1. (A) Any regulatory body including, but not limited to LDEQ, fails or refuses to issue, grant or renew any permit, license, consent, authorization or approval, at anytime hereafter, requested by MRR or permanently suspends, rescinds, revokes or terminates any existing or subsequent permit, license, consent, authorization or approval, or any existing or subsequent permit, license, consent, authorization or approval expires, relating to the construction, operation, expansion or closure of the MRR Landfill;
- (B) Any change occurs in any applicable existing law, regulation, rule, ordinance or permit condition, or in the interpretation or enforcement thereof, or any new law, regulation, rule, ordinance or permit condition is imposed or takes effect, the impact of any of which will adversely affect the ability (financial, economic or otherwise) of MRR to construct, operate, continue to operate or expand the MRR Landfill or otherwise perform under this Agreement or any order, judgment, action or determinations of the LDEQ or any federal, state or local court, agency or governmental body is issued which will adversely affect the ability (financial, economic or otherwise) of MRR to construct, operate, continue to operate or expand the MRR Landfill or otherwise perform under this Agreement;
2. Upon the occurrence of any of the foregoing events described in Paragraph (1) of this Section V, MRR will at any time thereafter have the right to terminate this Agreement by written notice of termination to the Parish, said written notice of termination to be effective ninety (90) days after the date of delivery of said written notice of termination setting forth the reasons for termination; provided, however, that in the event LDEQ or any other local, state or federal court, agency or body having authority over the MRR Landfill orders or requires the MRR Landfill to cease operation or to be closed for any reason, then this Agreement may be terminated by MRR immediately without the necessity for such written notice. Termination of this Agreement will not release MRR of any obligation imposed by this Agreement or state law upon MRR nor will it release MRR from liability for closure and post closure expenses, risks and duties.

B. Upon termination of the Agreement, MRR will be liable for all fees due the Parish as provided herein at the time of termination.

C. The provisions of this Agreement are severable. Therefore, if any one or more of such provisions shall be adjudged unenforceable, this Agreement shall be interpreted and shall remain in full force and effect as though the invalid provisions had never been a part of this Agreement.

D. The Parish and MRR agree that to the extent this Agreement, or any portion of this Agreement is found to be unenforceable, it shall not effect the validity of any decision by the LDEQ (or any other regulatory authority) providing authorization for construction or operation of the landfill at the Site.

E. This Agreement constitutes the entire Agreement between the Parties and cannot be modified except by writing executed by both Parties to this Agreement.

VI. NOTICES

All notices or other communications to be given hereunder will be in writing and will be deemed delivered when mailed by registered or certified United States mail, postage prepaid, with confirmed delivery, or sent by nationally recognized overnight courier service with confirmed delivery, addressed as follows:

MRR St. Helena, LLC

Attention:

Parish

St. Helena Parish Police Jury

Attention:

VII. CLOSURE AND POST CLOSURE

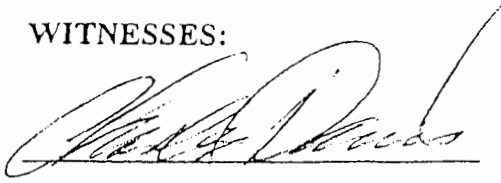
This Agreement shall remain in full force and effect for the remainder of the time disposal operations, closure, post closure care and monitoring operations are conducted on the Site, and as long as sanitary landfill and/or solid waste disposal operations, closure, post closure care and monitoring operations are conducted upon the Site described herein by MRR, its successors or assigns.

VIII. DISPUTE RESOLUTION


In the event of a dispute between the Parish and MRR concerning compliance with the terms of this Agreement, payments made pursuant to this Agreement shall be deposited into an interest bearing escrow account until such time as the parties have mutually agreed to resolve their dispute or until such time as the dissemination of the funds held in escrow are ordered disbursed by a final, unappealable judgment of a court of competent jurisdiction.

SWORN TO AND SUBSCRIBED on this 9th day of Sept, 2003, before the two undersigned competent witnesses, and me, Notary Public.

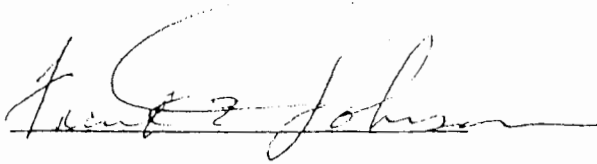
WITNESSES:

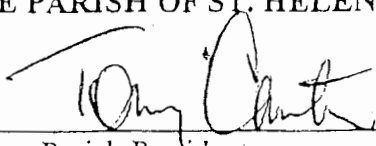


MRR St. Helena, LLC

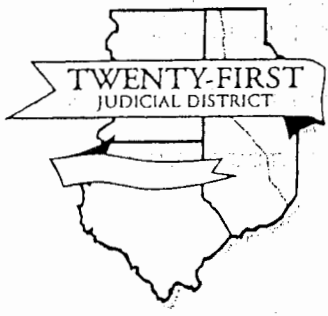
By: 

THE PARISH OF ST. HELENA



By: 
Parish President


NOTARY PUBLIC



Scott M. Perrilloux

District Attorney
21st Judicial District

Livingston, St. Helena and Tangipahoa Parishes
2003 SEP 30 PM 12 41

Ph. (225) 222-3205
Fax (225) 222-4160

ST. HELENA PARISH
POLICE JURY SECRETARY
TREASURER'S OFFICE
P.O. Drawer 787
Greensburg, LA 70441

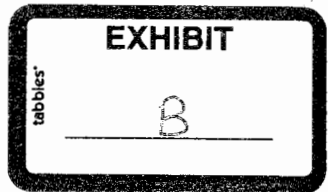
September 25, 2003

Mr. Charlie Ellis
Breazeale, Sachse & Wilson
Attorneys at Law
Post Office Box 3197.
Baton Rouge, Louisiana 70821

Re: St. Helena Parish Host
Agreement Relative To
MRR St. Helena, L.L.C.
Landfill

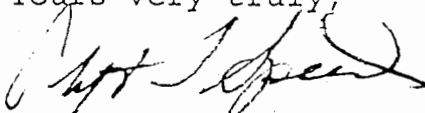
Dear Charlie:

At the regular meeting of the St. Helena Parish Police Jury held on Tuesday, September 23, 2003, a large crowd of people appeared to express their displeasure with the St. Helena Parish Police Jury in its decision to enter into the above captioned contract. Many of the people present were of the opinion that all the St. Helena Parish Police Jury needed to do was to reverse their decision of September 9, 2003 and the contract is cancelled. I explained to the St. Helena Parish Police Jury and the audience that the police jury has entered into a contract with MRR St. Helena, L.L.C. I also explained to them that despite some of the information provided to the police jury by members of the audience that contracts in the State of Louisiana are not voidable at will during their first thirty (30) days. After a lengthy discussion, the St. Helena Parish Police Jury passed a resolution asking me to request that MRR St. Helena, L.L.C. agree to a mutual cancellation of the contract with a possible renegotiation of some future contract. Accordingly, for and on behalf of the St. Helena Parish Police Jury, I am writing you to ask that you contact your client, MRR St. Helena, L.L.C. to request that it consider a voluntary cancellation of the contract. After you have reviewed this issue with your client, please let me know its response.



With best regards, I remain

Yours very truly,


Clifton T. Speed
Assistant District Attorney

CTS/lbh

cc: Mr. Tommy M. Carter
President
St. Helena Parish Police Jury
Post Office Box 339
Greensburg, Louisiana 70441