

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

CITY OF STONECREST, GEORGIA)
)
 Plaintiff,)
)
 And)
)
 CITIZENS FOR A HEALTHY AND)
 SAFE ENVIRONMENT)
)
 Intervenor-Plaintiff,)
 v.)
)
 METRO GREEN RECYCLING THREE,)
 LLC, et al.)
)
 Defendants.)
 _____)

Civil Action No. 20-CV-5610

**CHASE’S MOTION FOR AN INTERLOCUTORY INJUNCTION AND
MEMORANDUM OF LAW IN SUPPORT**

Intervenor-Plaintiff Citizens for a Healthy and Safe Environment (CHASE), an environmental justice organization focused on protecting the health and wellbeing of south DeKalb County residents, moves for an interlocutory injunction against Defendant Metro Green Recycling Three, LLC (Metro Green) under O.C.G.A. § 9-5-1, and asks the Court to enjoin Metro Green from completing any remaining construction and from commencing operations in order to stop serious and ongoing harms to CHASE and its members during this litigation.

Introduction

Metro Green is constructing and intends to operate a massive solid waste handling facility directly next to hundreds of homes and apartments in a solidly Black community in south DeKalb County, just inside the City of Stonecrest’s boundary. In late 2018, Metro Green received a solid waste handling permit from the Georgia Environmental Protection Division

(EPD) to construct and operate the facility. In order to obtain that permit, Metro Green had to submit a letter from the “host jurisdiction” verifying that the solid waste facility was consistent with the local solid waste management plan, which in this case is the DeKalb County Solid Waste Management Plan (SWMP).

DeKalb County informed Metro Green, however, that its facility would not be consistent with the SWMP. In turn, the company asked the City of Stonecrest for the letter instead. The City signed the letter, despite not being a part of the DeKalb County SWMP and despite lacking authority under its charter to perform any solid waste management planning functions or services. CHASE did not discover the City’s unauthorized activity until well after Metro Green obtained its solid waste handling permit.

CHASE has members who live directly next to and across the street from Metro Green’s proposed solid waste facility in both the City of Stonecrest and unincorporated DeKalb County. Many of the families and individuals living in those neighborhoods have lived there for over 20 years, and before Metro Green arrived, their neighborhoods were peaceful and quiet. All that changed in 2020, when Metro Green cleared approximately 50 acres of mature trees, moved around tons of dirt, covered the area in concrete, and built an enormous industrial building along Miller Road in plain view of the neighbors. *See infra*, Fig. 1.

Now, dust and dirt from the site consistently coat nearby residents’ windows, porches, and cars, loud booms and beeping sounds bother these residents almost daily, unpleasant odors from the site waft through the neighborhoods, and vibrations from Metro Green’s ongoing construction shake their homes. If Metro Green is allowed to complete construction and begin operating, these injuries will continue.

Fig. 1: Aerial Photograph of Metro Green Site on December 19, 2020



Credit: Geronimo Usuga

Legal Background

“An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication.” *Outdoor Advertising Ass’n of Ga., Inc. v. Garden Club of Ga., Inc.*, 272 Ga. 146, 147 (2000) (quotations omitted). A trial court has broad discretion in granting a request for an interlocutory injunction. *Id.*

The trial court should grant an interlocutory injunction if the moving party shows:

(1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest.

City of Waycross v. Pierce Cnty. Bd. of Comm’rs, 300 Ga. 109, 111 (2016).

Because the test for issuing an interlocutory injunction is a balancing test, the moving party is not required to prove all four factors to obtain an injunction. *Id.* A “trial court may issue

an interlocutory injunction to maintain the status quo until the final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction.” *Lee v. Env'tl. Pest & Termite Control*, 271 Ga. 371, 373 (1999) (citation omitted). Here, the equities favor CHASE, and an injunction should be granted.

Argument

I. There is a substantial threat that CHASE will suffer irreparable injury absent an injunction against Metro Green.

Irreparable injury is injury that “cannot be readily, adequately, and completely compensated with money, or when the damages . . . cannot be measured by any certain pecuniary standard.” *Colter v. Livingston*, 154 Ga. 401, 114 S.E. 430, 433–34 (1922) (quotation omitted). The term “irreparable injury” means that “the injury would be a grievous one, or at least a material one, and not adequately reparable by damages.” *Camp v. Dixon*, 112 Ga. 872, 38 S.E. 71, 73 (1901) (quotation omitted).

The U.S. Supreme Court has held that environmental injury, “by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable. If such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 545 (1987). Environmental injuries include air pollution and increased noise, dust, traffic, and odor. *See, e.g., Latin Ams. for Social & Econ. Dev. v. Fed. Hwy. Admin.*, 756 F.3d 447, 453 (6th Cir. 2014); *RB Jai Alai, LLC v. Sec., Fla. Dep’t of Transp.*, 47 F. Supp. 3d 1353, 1361–63 (M.D. Fla. 2014); *see also* 40 C.F.R. § 1508.1 (defining “human environment” and “effects” as including ecological, aesthetic, social, and health effects). Environmental injury can occur even if the defendant is in compliance with its permits. *Galaxy*

Carpet Mills, Inc. v. Massengill, 255 Ga. 360, 360–61 (1986) (holding compliance with air permit was no excuse for bothersome soot and ash, loud and offensive noises, and vibrations).

- A. CHASE will suffer irreparable injury because a solid waste handling facility that is not consistent with the DeKalb County SWMP will be allowed to operate directly next to its members and the community it strives to protect.**

The Georgia legislature enacted the Georgia Comprehensive Solid Waste Management Act “to assure that solid waste does not adversely affect the health, safety, and wellbeing of the public and that solid waste facilities, whether publicly or privately owned, do not degrade the quality of the environment by reason of their location, design, method of operation, or other means.” O.C.G.A. § 12-8-21(a). To meet that goal, each city and county in Georgia must develop or be included in a local solid waste management plan. *Id.* § 12-8-31.1(a)(1).

Solid waste management plans are so important in Georgia that “no permit, grant, or loan shall be issued” for a solid waste handling facility unless the host jurisdiction is part of an approved solid waste management plan and the facility is consistent with that plan. *Id.* §§ 12-8-24(g), 12-8-31.1(e)(3). An applicant’s eligibility for a solid waste permit “is contingent upon a local government having adopted a plan.” Ga. Comp. R. & Regs. r. 110-4-3-.01(2)(a).

Solid waste management planning by local governments “is necessary to prevent environmental degradation.” *Id.* r. 110-4-3-.01(3). It therefore follows that a local government’s determination that a proposed solid waste handling facility is not consistent with its solid waste plan demonstrates that the facility would “adversely affect the health, safety, and wellbeing of the public” and would “degrade the quality of the environment.” *See* O.C.G.A. § 12-8-21(a).

The only approved local solid waste management plan at issue in this case is the DeKalb County SWMP. DeKalb County’s Sanitation Division Director, Tracy Hutchinson, testified that the DeKalb County SWMP was adopted in part for “racial justice” reasons and to “stabilize

South DeKalb.” (Ex. 1 at 40.) Not that long ago, south DeKalb County “had the highest number of landfills and transfer stations that actually operated in the state of Georgia,” and those solid waste facilities “basically degraded that whole section” of the county. (*Id.* at 40–41.) Director Hutchinson testified that DeKalb County therefore adopted the SWMP to ensure that solid waste handling facilities, like Metro Green’s facility, “would not return” to south DeKalb County and “to protect the citizens of DeKalb County.” (*Id.* at 41, 65.)

DeKalb County informed Metro Green that its solid waste handling facility “was not going to be consistent” with the SWMP’s goal “to protect the citizens of the county” because of racial justice and environmental concerns and because DeKalb County already recycles the same waste at its own facilities. (*Id.* at 40, 60, 64–65.) In other words, DeKalb County determined that Metro Green’s facility would adversely affect the health, safety, and wellbeing of the public and would degrade the quality of the environment. *See* O.C.G.A. § 12-8-21(a).

DeKalb County’s inconsistency determination alone is sufficient to establish that CHASE will suffer irreparable injury absent injunctive relief.¹ Indeed, had EPD known then what we know now, it would have been required to deny Metro Green’s permit based on DeKalb County’s inconsistency determination and the fact that Stonecrest does not belong to the DeKalb SWMP. In other words, this facility should not be here and its unlawful presence is an injury.

Unless this Court enjoins Metro Green from completing construction and commencing operation, CHASE will suffer irreparable injury because a solid waste handling facility will begin operating in the exact type of community that both the DeKalb County SWMP and CHASE strive to protect: a Black community in south DeKalb County. *Colter*, 114 S.E. at 433–34 (holding irreparable injury cannot be compensated by money damages).

¹ The City of Stonecrest’s ultra vires consistency determination has no legal effect, as discussed in more detail in Section III.A below. Moreover, even though Stonecrest is not a part of the DeKalb SWMP, Stonecrest intended to join that plan, so DeKalb County’s determination is highly relevant.

B. CHASE will also suffer irreparable injury because its members and the Black community it works to protect will be subjected to air pollution, noise, traffic, vibrations, and other environmental injustice impacts of living next to a solid waste site that should not have been approved.

CHASE members already have been harmed by intrusive noise, dust, odors, and vibrations from Metro Green’s construction activities. For instance, Kamla Gonzales lives in the Miller Woods subdivision just north of the Metro Green site in the City of Stonecrest, and until recently, her neighborhood was quiet. (Ex. 2, Gonzales Aff. ¶ 4.) Now, however, she hears construction noise from Metro Green’s site “that sounds like banging, beeping, and heavy machinery.” (*Id.* ¶ 8.) Ms. Gonzales is a nurse practitioner who works the night shift on the front lines of the coronavirus pandemic, and Metro Green’s construction noise during the day has kept her awake and has increased her stress and anxiety. (*Id.* ¶ 15.)

Ever since Metro Green began construction, Ms. Gonzales has noticed “numerous dust events” where her car and house get covered in dust. (*Id.* ¶ 10.) The dust gets everywhere, “like pollen in the spring.” (*Id.*) During the summer of 2020, many of those dust events had a foul smell, like something had died. (*Id.* ¶ 11.) Ms. Gonzales also has a nine-year-old son who has asthma and uses a nebulizer machine, and she has had to restrict his playtime outside because of the dust in the air. (*Id.* ¶¶ 3, 20.) Because he has had to do virtual school from home during the pandemic, the restricted amount of outdoor time “has been particularly rough on him.” (*Id.* ¶ 20.)

Jacqueline Bryant is a CHASE member who lives in unincorporated DeKalb County, and Metro Green is building its facility right across the street from her backyard. (Ex. 3, Bryant Aff. ¶¶ 2–4.) Throughout the summer, fall, and winter of 2020, Ms. Bryant regularly heard loud thuds and booms from the Metro Green site, even from inside her house. (*Id.* ¶ 10.) She still frequently hears beeping sounds coming from the site, even with her doors and windows closed, as well as occasional pounding noises. (*Id.* ¶ 11.) More than once, she has felt her house tremble and shake

from vibrations coming from the site. (*Id.* ¶ 14.) Since Metro Green began construction, a cabinet in her kitchen has pulled away from the wall. (*Id.* ¶ 15.)

Ms. Bryant’s back deck and windows have been covered with dust and dirt from Metro Green’s site. (*Id.* ¶ 17 & attached photograph.) She never had this problem before Metro Green started construction. (*Id.*) Although the dust and dirt are not as bad now as in the summer and fall of 2020, she still gets enough dust (and noise) that she cannot sit comfortably on her back deck to watch birds as much anymore. (*Id.* ¶¶ 6, 17–18.) She has also noticed fewer birds in the area since Metro Green cut down all the trees and began construction across the street. (*Id.* ¶ 16.)

Jennifer Wilson also lives in unincorporated DeKalb County, and Metro Green is building its facility right across the street from her neighborhood. (Ex. 4, Wilson Aff. ¶¶ 2, 8.) Ms. Wilson has lived in her home for over 25 years, and her neighborhood is filled with working-class, mostly Black families. (*Id.* ¶¶ 2, 4.) She is particularly concerned about the environmental justice harms here, because solid waste facilities are disproportionately concentrated in communities of color and because asthma affects African-Americans at a greater percentage than other races. (*Id.* ¶ 12.) In fact, her adult son, who has been living with her during the pandemic, has moderate to severe asthma requiring daily medication. (*Id.* ¶¶ 5–6.)

Ms. Wilson’s backyard used to be “an oasis” where she could work and enjoy fresh air, but now she hears invasive construction noise and trucks moving around on Metro Green’s site. (*Id.* ¶ 9.) She has also smelled pungent odors coming from the site. (*Id.* ¶¶ 13–14.) Ms. Wilson has suffered significant stress as a result of Metro Green’s construction in her community and is constantly worried about what this facility will do in terms of dust and air pollution, health impacts to her asthmatic son, and increased truck traffic. (*Id.* ¶¶ 16–18.)

Each of these examples completely undercuts Metro Green’s statement last summer to elected officials that the company “want[s] to be a good neighbor” and is “confident that neighbors won’t see or hear anything that is going on on the site.”² If anything, CHASE’s members are confident that they will continue to suffer harm and will continue to see dust, hear loud noises, and experience other injuries like emotional distress from Metro Green’s activities if it starts accepting and processing solid waste.

Metro Green’s own plans demonstrate that these harms will continue. The facility will accept on average 400 tons of solid waste every day of operation, which means more dump trucks, traffic, and diesel fuel emissions will come to the community. (Ex. 5 at Sheet 4). The facility will also crush large quantities of concrete, and the concrete crushers, combined with excavators, wood grinders, conveyers, dump trucks, and other heavy equipment, will generate noise that will disrupt the peace and quiet that neighbors used to enjoy. (*Id.*)

In fact, one weekday last summer, Ms. Gonzales drove to Metro Green’s other mixed construction and demolition solid waste recycling facility at 4351 Pleasantdale Road in Atlanta to get an idea of what the Stonecrest site would be like when it starts operating. (Ex. 2 ¶ 18.) She saw a line of trucks going in and out of the facility, and in her opinion the site was an “eyesore” and looked like “piles of garbage.” That facility is located in an industrial area, but was still the loudest facility around. (*Id.*) Ms. Gonzales heard “what sounded like dumping or crunching heavy debris and machinery noise.” She is confident that she would be able to hear those same noises from her house if Metro Green operates its Stonecrest facility like the Pleasantdale Road location. (*Id.*) Given that both sites are mixed construction and demolition solid waste recycling facilities operated by the same company, this is a reasonable assumption.

² J.D. Capelouto, “Officials Incensed over Recycling Plant Planned for Residential Area in DeKalb,” The Atlanta Journal-Constitution (July 2, 2020), <https://www.ajc.com/news/local/officials-incensed-over-recycling-plant-planned-for-residential-area/icBef5D4Lv8pWrm3QqYKQL/> (last visited Jan. 22, 2021).

Metro Green’s activities certainly will emit pollution like fugitive dust and particulate matter (PM) into the air, which the company acknowledges. (Ex. 6, Application at 4-1, 4-3, App’x B) (Metro Green’s Air Permit & Application). Metro Green calculated that it could emit up to 59.02 tons per year of filterable PM, 20.20 tons per year of PM₁₀, and 2.20 tons per year of PM_{2.5}, and its permit allows for emissions. (*Id.* at 3-1 & Permit.)³ CHASE is concerned that, like the construction dust, the larger dust particles from operations would settle on the homes closest to the site and smaller particles, including fine particulate matter (PM₁₀ and PM_{2.5}), would disperse farther out into the neighborhoods depending on wind speed and direction.⁴

PM is an air pollutant that “has been associated with a number of health effects, including respiratory and cardiovascular diseases as well as premature mortality.” (Ex. 7 at 480.) A recent peer-reviewed study conducted by U.S. Environmental Protection Agency researchers found that Black Americans are more likely to live near PM-emitting facilities than White Americans. (*Id.* at 481.) This “potential increase in exposure for the Black population coupled with higher prevalence of conditions such as cardiovascular disease mortality and asthma, which are known to be linked to PM exposure, makes for a population of concern.” (*Id.* at 484.) “Equivalent increases in PM_{2.5} have been linked to statistically significantly higher associations in Blacks than in Whites for health outcomes ranging from asthma attacks to overall mortality.” (*Id.*)

Notably, there are people living next to the Metro Green site who have asthma, including Ms. Gonzales’s son and Ms. Wilson’s son, and the surrounding community is primarily Black. (Ex. 2 ¶ 3; Ex. 4 ¶ 6.) And even though Metro Green has a permit to emit fugitive dust and fine

³ PM_{2.5} refers to fine inhalable particles, with diameters that are generally 2.5 micrometers and smaller. PM₁₀ refers to inhalable particles with diameters that are generally 10 micrometers and smaller. U.S. EPA, Particulate Matter Pollution, <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

⁴ See U.S. EPA, AP 42, 5th Ed., Vol. I, Ch. 13.2, Introduction to Fugitive Dust Sources 1–2 (1995), available at <https://www3.epa.gov/ttnchie1/ap42/ch13/final/c13s02.pdf> (stating that large dust particles settle out near source, “often creating a local nuisance problem,” and that fine particles like PM₁₀ are dispersed over greater distances).

PM from EPD, the agency was not required to consider the environmental justice impacts at issue here, including the possibility for disparate health impacts to this Black community or intrusive noise, increased traffic, vibrations, and odors.⁵

Critically, this facility should have zero impacts on this community, because it should not have been permitted in the first place based on DeKalb County's determination that it is not consistent with the SWMP and would not protect the citizens of DeKalb County and because Stonecrest is not a part of the SWMP. *Infra*, Section III.A.

Absent an injunction, Metro Green's operation would continue to injure CHASE members and their neighbors by exposing them to air pollution like PM, visible dust, noise, emotional and psychological stress, and other injuries. These irreparable injuries, especially when combined with DeKalb County's determination that the facility is not consistent with the SWMP, demonstrate that an injunction is warranted. *Cf. Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C. 1998) (finding that aesthetic injury to plaintiffs combined with injury suffered due to defendant's failure to comply with law bolstered case for injunction); *see also Amoco Prod. Co.*, 480 U.S. at 545 (holding environmental injury is often irreparable).

II. The threatened injury to CHASE far outweighs any threatened harm that the injunction may do to Metro Green.

If an injunction is not issued, Metro Green's operation will seriously and negatively affect the character of this community and will impair CHASE's mission to promote environmental justice and protect south DeKalb County communities from industrial facilities. Meanwhile, Metro Green's ability to turn a profit will simply be delayed if the Court ultimately

⁵ Deganian, David, "Environmental Justice on my Mind: Moving Georgia's Environmental Protection Division Toward the Consideration of Environmental Justice in Permitting," *Environmental and Earth Law Journal (EELJ)*: Vol. 2: Iss. 1, Article 3 at 35–36 (2012), available at <https://lawpublications.barry.edu/ejej/vol2/iss1/3> (noting EPD has no environmental justice laws in place requiring it to consider environmental justice in decisionmaking).

rules in its favor. Metro Green can afford this delay, particularly because any injuries it suffers would be self-inflicted.

On this latter point, Metro Green knew in 2018 that its solid waste handling facility was not consistent with the DeKalb County SWMP, yet it circumvented DeKalb County's authority and got a consistency letter from Stonecrest instead. (Ex. 8) (Email from Director Hutchinson); (Ex. 1 at 40–41, 65) (TRO Hearing Testimony). Metro Green knew that Stonecrest lacked authority to issue that letter, but it incurred the costs of seeking a solid waste handling permit and beginning construction anyway. (Ex. 9) (Email from Metro Green citing City charter); *see United States v. Jenkins*, 714 F. Supp. 2d 1213, 1224 (S.D. Ga. 2008) (finding defendant's "disregard for authority" and refusal to stop work after being directed undercut argument that equities fell in his favor).

Metro Green also knew it was facing legal hurdles last summer, when the community started protesting and the City issued a temporary stop-work order. (Ex. 10.) Rather than live up to its assurances that it would "be a good neighbor," the company kept building. This Court even warned Metro Green during the September 3, 2020 hearing on the City's motion for a temporary restraining order that Metro Green was taking a risk with construction because the City had a high likelihood of success on the merits of its claim that the City lacked authority to issue the consistency letter. (Ex. 1 at 101–02.)

Because Metro Green knew at the outset that its facility was not consistent with the DeKalb County SWMP and was warned that it was taking a risk by continuing with construction, it cannot now complain that it will suffer irreparable injury if it is enjoined from operating during the pendency of this lawsuit. *Aliera Healthcare, Inc. v. Anabaptist Healthshare*, 355 Ga. App. 381, 389 (Ga. Ct. App. 2020) (holding any harm to defendant was self-inflicted because

defendant could have avoided harm by taking action as soon as plaintiff terminated contract); *Jenkins*, 714 F. Supp. 2d at 1224 (“Equity does not shine on those with unclean hands.”).

Furthermore, this likely is not a situation where Metro Green will go out of business or face financial ruin if the injunction is granted. The company could still make money by accepting solid waste at its other three locations, two of which are in the metro Atlanta area.⁶ *Aliera Healthcare*, 355 Ga. App. at 389 (holding injury to enjoined party did not outweigh injury to requesting party because the enjoined party could continue making money by selling its own healthcare products to customers).

And even if Metro Green would suffer a significant financial hardship, courts have issued interlocutory injunctions that created such hardships, including bankruptcy, where the equities weighed in favor of the party seeking injunction. *See, e.g., Kennedy v. Shave Barber Co.*, 348 Ga. App. 298, 308 (Ga. Ct. App. 2018) (upholding injunction where court found injunction could lead to bankruptcy for enjoined party but equities favored requesting party). Here, the equities clearly favor CHASE, given that CHASE had no actual notice of the plans for the site, the community it strives to protect will suffer serious environmental injustices if this facility is allowed to operate, and any injury to Metro Green would be self-inflicted, as described.

III. There is a substantial likelihood that CHASE will prevail on the merits at trial.

CHASE also meets the third factor in the balancing test for injunctive relief: a substantial likelihood of success on the merits. “Although the merits of the case are not controlling, they nevertheless are proper criteria for the trial court to consider in balancing the equities” when ruling on injunctive relief. *Kennedy*, 348 Ga. App. at 306. CHASE need not show “ultimate success” on the merits, just a strong likelihood of success. *City of Waycross*, 300 Ga. at 112.

⁶ According to its website, Metro Green has three locations: two recycling facilities and one construction and demolition waste landfill. <https://www.mgreecycle.com/contact-us/>.

A. The City of Stonecrest lacked legal authority to verify whether Metro Green’s facility is consistent with the DeKalb County SWMP.

The City of Stonecrest signed a letter purporting to verify that Metro Green’s facility was consistent with DeKalb County’s SWMP on October 31, 2018, so the issue is whether the City had authority to issue that consistency letter as of that date. It did not.

Where a city acts “with the total absence or want of power,” those acts are ultra vires and are therefore void. *Jester v. Red Alligator, LLC*, 344 Ga. App. 15, 23 (Ga. Ct. App. 2017). One way a city commits an ultra vires act is when its action is not authorized by the city’s charter. *Infinite Energy, Inc. v. Marietta Nat. Gas, LLC*, 349 Ga. App. 343, 345, 347 (Ga. Ct. App. 2019) (noting that municipal charters have the force of law); *see also City of Baldwin v. Woodard & Curran, Inc.*, 293 Ga. 19, 29 (2013) (holding contract with city was ultra vires and not binding because mayor did not have authority under the city charter to unilaterally bind city to contracts).

Here, the City of Stonecrest’s charter provides that during the City’s transition period, which ran from May 8, 2017 through May 8, 2019, the City lacked authority to exercise any power that was “specifically and integrally related to the provision of a governmental service, function, or responsibility not yet provided or carried out by the city.” (Ex. 11 at 46, § 6.02(c).)⁷ In that situation, only DeKalb County had authority to exercise those powers. (*Id.* § 6.02(b).)

Solid waste management planning is a government function required of all Georgia cities and counties. O.C.G.A. § 12-8-31.1(a)(1). “To be included as part of a local, multijurisdictional, or regional solid waste plan, each city and county included as part of the plan shall adopt the plan and any plan updates by local ordinance or resolution.” *Id.* § 12-8-31.1(c) (emphasis added). Only a city which is a part of an approved solid waste management plan may verify whether a proposed solid waste handling facility is consistent with that plan. *Id.* § 12-8-24(g); *see also* Ga.

⁷ To save space, only excerpts from the City of Stonecrest charter are attached as exhibits to this motion.

Comp. R. & Regs. r. 110-4-3-.01(2)(a). Thus, the power to verify consistency with solid waste management plans is “specifically and integrally related” to the provision of solid waste management planning functions and responsibilities. (Ex. 11 at 46, § 6.02(c).)

Here, when the City of Stonecrest signed the consistency letter on October 31, 2018, it had not yet engaged in any solid waste management planning functions or services. It had not adopted DeKalb County’s SWMP by local ordinance or resolution, which is the only way to be included in the SWMP. O.C.G.A. § 12-8-31.1(c). And the City had not adopted its own solid waste management plan or any basic solid waste ordinances. (Ex. 12) (Email string from Stonecrest Clerk discussing lack of solid waste resolutions and ordinances).

Although the City expressed intent to join the DeKalb SWMP in a November 19, 2018 Intergovernmental Agreement with DeKalb County for garbage collection services, that agreement was a contract, not an ordinance or resolution. *See* Ga. Const. Art. IX, § III, Par. I(a). In fact, that contract required the City to “take all steps necessary to join and be a part of the County’s SWMP,” (Ex. 13 at 3, § 4.1), but the City took no further action. Even if that contract somehow allowed the City to become a part of the DeKalb SWMP, which it did not, the November 19, 2018 contract did not apply retroactively and its terms did not take effect until January 1, 2019, well after the City signed the letter on October 31, 2018. (*Id.* at 3, Art. 3.)⁸

Thus, when the City signed the consistency letter, it exercised a power that it did not have under its charter. (Ex. 11 at 46, § 6.02(c).) Moreover, the City acted “with the total absence or want of power” because it did not belong to the DeKalb SWMP. A city cannot verify a solid waste handling facility’s consistency with another jurisdiction’s solid waste plan. Consequently, the City’s consistency letter is void as an ultra vires act. *Infinite Energy*, 349 Ga. App. at 347.

⁸ It also appears that the Intergovernmental Agreement terminated on February 17, 2019 because the City failed to adopt local solid waste management ordinances that are at least as stringent as DeKalb County’s ordinances within 90 days of the date of the agreement, as required by the agreement. (Ex. 13 at 5, § 8.5; Ex. 12).

Alternatively, this Court could find that the area encompassing the City of Stonecrest remained a part of the DeKalb County SWMP until the end of the City's transition period on May 8, 2019, because the City was not a "full functioning municipal corporation and subject to all general laws of this state" until that time. (Ex. 11 at 47, § 6.02(f).) If that is the case, the City still lacked authority to sign the consistency letter because the City could not have been considered the "host jurisdiction" under the state Solid Waste Management Act; it was not yet a jurisdiction subject to all laws of the state. Instead, DeKalb County, which retained authority over all government functions and services until they could be transferred to the City, would have been the "host jurisdiction." (*Id.* at 46, § 6.02(a), (b).) And here, DeKalb County unequivocally determined that Metro Green's facility was not consistent with the SWMP.

In conclusion, CHASE has demonstrated a substantial likelihood of success on its claim that the City of Stonecrest lacked authority to verify that Metro Green's facility was consistent with the DeKalb County SWMP.

B. The EPD Director committed a gross abuse of discretion by failing to review evidence provided by CHASE, the City, and others, and determine whether revocation of Metro Green's solid waste handling permit was warranted.

CHASE can also demonstrate a substantial likelihood of success on its mandamus claims against the EPD Director. "Mandamus will issue against a public officer under two circumstances: (1) where there is a clear legal right to the relief sought, and (2) where there has been a gross abuse of discretion." *Jackson City v. Earth Res., Inc.*, 280 Ga. 389, 390 (2006) (citations omitted).

"If a mandamus complainant cannot show a clear legal duty incumbent upon the respondent, the complainant may still be entitled to relief if he can show that the respondent grossly abused his or her discretion in taking or refusing to take official action." *Gilmer Cnty. v.*

City of E. Ellijay, 272 Ga. 774, 777 (2000). A public official commits a gross abuse of discretion when his actions are “arbitrary, capricious, and unreasonable.” *Id.* (quotations omitted).

“Although a court may not direct the manner in which public officers exercise discretion, it may compel an officer to exercise his discretion.” *Chatham Cnty. v. Mulling*, 248 Ga. 878, 881 (1982). Mandamus relief should be granted if “a defect in legal justice would ensue from a failure” to grant it. O.C.G.A. § 9-6-20.

1. The EPD Director has authority to revoke Metro Green’s solid waste handling permit.

As an initial matter, the EPD Director has authority to revoke solid waste handling permits under a wide variety of circumstances. First, the EPD Director has implied authority to revoke a solid waste handling permit that was issued by mistake or in violation of law. *United Gas Improvement Co. v. Callery Props.*, 382 U.S. 223, 229 (1965) (holding that an “agency, like a court, can undo what is wrongfully done by virtue of its order”); *Gun South, Inc. v. Brady*, 877 F.2d 858, 862 (11th Cir. 1989) (recognizing agencies have implied authority “to reconsider and rectify errors even though the applicable statute and regulations do not provide for such reconsideration”); *Kudla v. Modde*, 537 F. Supp. 87, 89 (E.D. Mich. 1982) (finding power “to require a license implies the power to revoke a license which has been improperly issued”).

In *Café Risque/We Bare All Exit 10, Inc. v. Camden County*, the Supreme Court of Georgia held that Camden County properly revoked a special use permit where that permit was issued in violation of a local ordinance. 273 Ga. 451, 452 (2001) (noting where “a permit is issued by a governing body in violation of an ordinance, even under a mistake of fact, it is void” and the governing body can properly revoke such permit in those circumstances); *see also Corey Outdoor Advertising, Inc. v. Bd. of Zoning Adjustments*, 254 Ga. 221, 226–27 (1985) (holding that zoning officials may revoke permits mistakenly issued or permits that are plainly illegal).

Second, the EPD Director has explicit authority to revoke solid waste handling permits under section 12-8-23.1(a)(3) of the Solid Waste Management Act:

(3)(A) To issue all permits contemplated by this part, stipulating in each permit the conditions or limitations under which such permit is to be issued, and to deny, revoke, transfer, modify, suspend, or amend such permits.

(B) To refuse to grant such permit if the director finds by clear and convincing evidence that the applicant for a permit . . . :

(i) Has intentionally misrepresented or concealed any material fact in the application submitted to the director; [or]

(ii) Has obtained or attempted to obtain the permit by misrepresentation or concealment[.]

Id. § 12-8-23.1(a)(3)(A)–(B) (emphasis added). Under these provisions, the Director has discretion to revoke solid waste handling permits generally and when the permit holder “has obtained” the permit by misrepresentation or concealment. *Id.*

While section 12-8-23.1(a)(3)(B) outlines scenarios in which the Director may “refuse to grant” a permit, the scenario listed in roman numeral (ii) specifically authorizes the Director to “refuse to grant” a permit when the permit applicant “has obtained” the permit by misrepresentation or concealment. The literal reading of this provision creates a contradiction, however, because the Director cannot “refuse to grant” a permit that an applicant already “has obtained.” Thus, this provision may be construed to grant the Director authority to revoke a permit that an applicant already obtained by misrepresentation or concealment.

In Georgia, if the plain language of a statute “produces contradiction, absurdity or such an inconvenience as to insure that the legislature meant something else,” courts must “divine the legislative intent.” *Telecom*USA, Inc. v. Collins*, 260 Ga. 362, 363–64 (1990). Courts read statutes in the “context of the other statutory provisions of which it is a part.” *Hendry v. Hendry*, 292 Ga. 1, 3 (2012).

Here, the legislature’s inclusion of the past tense phrase “has obtained” in O.C.G.A. § 12-8-23.1(a)(3)(B)(ii) means that it intended to give the Director authority to revoke permits of bad actors who obtained permits through deceit. This construction is bolstered by reading this provision in the context of the entire paragraph, which authorizes the Director to grant, deny, and revoke permits generally. *Id.* § 12-8-23.1(a)(3). To conclude otherwise would lead to an absurd result in which a permittee can get away with misrepresentation or concealment as long as EPD does not discover the bad acts right away. Thus, the Director may revoke a solid waste permit if he “finds by clear and convincing evidence” that the permit holder “has obtained . . . the permit by misrepresentation or concealment.” O.C.G.A. § 12-8-23.1(a)(3)(B)(ii) (emphasis added).

The EPD Director also has discretion to revoke a solid waste handling permit if the permitted activity “creates a threat to human health or the environment.” Ga. Comp. R. & Regs. r. 391-3-4-.02(2). Permitted activities include both construction and operation of a solid waste handling facility. O.C.G.A. § 12-8-24 (requiring permit before any person may construct or operate a solid waste handling facility in Georgia). Thus, construction activities alone may warrant permit revocation if they create a threat to human health or the environment.

2. The EPD Director committed a gross abuse of discretion by ignoring evidence that the City of Stonecrest is not a part of the DeKalb County SWMP and that Metro Green was not eligible for a solid waste handling permit.

Director Dunn grossly abused his discretion by failing to determine whether permit revocation was necessary in light of evidence that the City of Stonecrest was not a part of the DeKalb County SWMP.

Chatham County v. Mulling is instructive. In that case, the Supreme Court of Georgia affirmed the trial court’s grant of mandamus relief where the Chatham County Commissioners

denied requests for an additional judge in Savannah. 248 Ga. at 881. The statute at issue in that case authorized the commissioners to appoint an additional judge as follows:

[W]henever in the opinion of the Chatham County Commissioners the case load of the Municipal Court of Savannah has become too voluminous for the Senior Judge and the other Judge to dispose of such cases properly and to carry out properly the functions of said Court, the Chatham County Commissioners are hereby authorized to appoint an additional Judge to serve during any such period in carrying out the functions of said Court.

Ga.L. 1969, p. 2870.

The Supreme Court held that the commissioners committed a gross abuse of discretion when they summarily denied requests for additional judges “with no consideration for the functioning and caseload of the court” and despite evidence of a “massive increase in caseload [and] the reduction of fulltime judges from two to one.” *Mulling*, 248 Ga. at 881. The Supreme Court affirmed the trial court’s order that the commissioners must “exercise their discretion in determining whether a judge pro tem be appointed.” *Id.*

Just as the Chatham County Commissioners have discretionary authority to appoint a new judge “whenever in the opinion” of the commissioners the court’s case load becomes too heavy, the EPD Director has discretionary authority to revoke a solid waste handling permit whenever he finds that the permit was issued by mistake or in violation of the law. *See Gun South, Inc.*, 877 F.2d at 862; *Café Risque*, 273 Ga. at 452; *Corey Advertising*, 254 Ga. at 226–27.

Here, CHASE informed EPD Director Dunn in September 2020 that the City of Stonecrest was not a part of the DeKalb County SWMP. (Ex. 14 at 8.)⁹ Specifically, CHASE explained that the City had not adopted the DeKalb County SWMP by local ordinance or resolution—as required under O.C.G.A. § 12-8-31.1(c)—and therefore, the City lacked authority to verify whether Metro Green’s facility was consistent with DeKalb’s SWMP. (*Id.*)

⁹ The exhibits to the September 2020 letter to Director Dunn are identical to other exhibits in this instant motion and are not included to save space.

This new information should have been alarming to the Director, because Metro Green's eligibility for a solid waste handling permit was "contingent upon [the City of Stonecrest] having adopted a plan," Ga. Comp. R. & Regs. r. 110-4-3-.01(2)(a), and "no permit, grant, or loan shall be issued" for a solid waste handling facility unless the host jurisdiction is part of an approved solid waste management plan, O.C.G.A. §§ 12-8-24(g), 12-8-31.1(e)(3). The EPD Director is "responsible for enforcing the environmental protection laws of Georgia." *Id.* § 12-2-2(b)(1). CHASE's information shows, however, that Director Dunn mistakenly and illegally issued a solid waste handling permit to Metro Green.¹⁰

But just as the Commissioners did in *Mulling*, Director Dunn summarily denied CHASE's request to revoke Metro Green's solid waste handling permit with no consideration of the purpose and importance of local solid waste management plans and despite evidence that no Stonecrest ordinances or resolutions adopting the DeKalb SWMP could be found. At a minimum, Director Dunn should have reviewed CHASE's assertions, opened an investigation, and determined whether Metro Green was even eligible for a solid waste permit. *Cf. Corey Outdoor Advertising*, 254 Ga. at 221, 224 (holding official could revoke a billboard permit where third party informed official that permit was illegal and official conducted an investigation, confirmed the violation, and ordered the company to remove billboard). The failure to do so was a gross abuse of discretion.

Director Dunn also acted arbitrarily, capriciously, and unreasonably when he stated that he could not comment on CHASE's assertion because the legal issues "overlap with those raised in the Litigation" already pending in this Court. (Ex. 15.) But none of the other parties to this litigation informed the Director that the City of Stonecrest was not a part of the DeKalb County

¹⁰ Notably, CHASE is not challenging Director Dunn's initial issuance of the permit back in October 2019. Rather, CHASE is challenging Director Dunn's refusal to consider new evidence and determine whether permit revocation is warranted.

SWMP. CHASE shared new information that was not before this Court, and Director Dunn should have considered it. Also, the mere filing of a lawsuit does not preclude or enjoin the Director from exercising his discretion to revoke a permit or take any other official action relating to permitted facilities.

3. The EPD Director committed a gross abuse of discretion by ignoring evidence that Metro Green obtained its permit by misrepresentation and concealment.

The EPD Director also has a discretionary duty to revoke a solid waste handling permit whenever he “finds by clear and convincing evidence” that the permit holder has obtained the permit by misrepresentation or concealment. *Compare Mulling*, 248 Ga. at 881 (discretionary duty to appoint judge), *with* O.C.G.A. § 12-8-23.1(a)(3)(B)(ii) (discretionary duty to revoke permit). Honesty and full disclosure are so important in the solid waste permitting process that the applicant is required to include in its permit application a “sworn statement that the applicant . . . [h]as not intentionally misrepresented or concealed any material fact in the application submitted to the Director; [and is] not attempting to obtain the permit by misrepresentation or concealment.” Ga. Comp. R. & Regs. r. 391-3-4-.02(7)(a)(1)–(2).

In this case, CHASE, the City of Stonecrest, DeKalb County Commissioners, and other elected officials wrote to Director Dunn and provided evidence that Metro Green (1) knew that the City of Stonecrest lacked authority under its charter to verify consistency with the DeKalb County SWMP; (2) knew that that its facility was not consistent with the DeKalb County SWMP; (3) knew that the sign it posted at the site advertising the public hearing was virtually invisible to the public; and (4) intentionally hid and/or misrepresented each of these material facts in its solid waste handling permit application to EPD. (*See, e.g.*, Ex. 14.) Based on this evidence, CHASE and others requested that Director Dunn revoke Metro Green’s permit.

But Director Dunn summarily denied the requests to revoke Metro Green's solid waste handling permit despite evidence that Metro Green may have obtained its permit by misrepresenting or concealing material information in its permit application. *See Mulling*, 248 Ga. at 881 (holding commissioners grossly abused discretion by summarily denying request for new judge without considering evidence that a new judge was needed). At a minimum, Director Dunn should have reviewed the allegations, opened an investigation, and determined whether there was "clear and convincing evidence" that Metro Green obtained its permit through deceit.

The Director's failure to do so was arbitrary, capricious, and unreasonable and a gross abuse of discretion. *Gilmer County*, 272 Ga. at 777.

4. The EPD Director committed a gross abuse of discretion by ignoring evidence that Metro Green's ongoing permitted activities create a threat to human health or the environment.

The EPD Director has a discretionary duty to revoke a solid waste handling permit whenever the permitted "activity creates a threat to human health or the environment." Ga. Comp. R. & Regs. r. 391-3-4-.02(2). Here, CHASE and others provided evidence to Director Dunn that Metro Green's construction activities, which are authorized by its solid waste handling permit, are creating a threat to human health and the environment.

For instance, CHASE informed Director Dunn that Metro Green was constructing its facility in a primarily Black community, right next to and across the street from hundreds of single family homes and apartments. (Ex. 14 at 1-2.) CHASE explained the environmental injustices facing this community from Metro Green's activities and the negative effects like dust, noise, and vibrations that community members are facing from Metro Green's construction. (*Id.* at 2.) CHASE also explained how south DeKalb County historically has been overburdened with

solid waste sites and that DeKalb County determined Metro Green's facility was inconsistent with its SWMP based in part on those racial and environmental justice concerns. (*Id.* at 1.)

Furthermore, DeKalb County's determination that Metro Green's facility was "not consistent" with the SWMP is strong evidence that the facility's construction poses a risk to human health or the environment. This is because solid waste management plans are "necessary to prevent environmental degradation," Ga. Comp. R. & Regs. r. 110-4-3-.01(3), identify "sites which are not suitable for solid waste handling facilities based on environmental and land use factors," O.C.G.A. § 12-8-31.1(b), and are meant to assure that "solid waste does not adversely affect the health, safety and well-being of the public," *id.* § 12-8-21(a). DeKalb County found that Metro Green's facility would not "protect the citizens of DeKalb County" for racial justice reasons and because that part of the county previously had been "degraded" by other solid waste sites. (Ex. 1 at 40–41, 65); *see also Murray Cnty. v. R & J Murray, LLC*, 280 Ga. 314, 315 (2006) (holding local government may consider any relevant factor in determining whether a proposed facility is consistent with its SWMP that it considered in developing the SWMP).¹¹

But again, as in *Mulling*, Director Dunn summarily denied requests to revoke Metro Green's permit with no consideration of the fact that Metro Green's ongoing construction is a permitted activity and despite evidence that Metro Green's ongoing construction activities are creating a threat to human health and the environment as a result of environmental injustices, noise and dust impacts (among others), and DeKalb County's finding that Metro Green's facility is not consistent with the SWMP. *Cf. Mulling*, 248 Ga. at 881.

¹¹ Even if the City of Stonecrest was not a part of the DeKalb County SWMP, the County's determination is nevertheless strong, persuasive evidence of a risk to human health or the environment because the City intended to be a part of the SWMP and that area was part of the SWMP before the City was incorporated.

In sum, Director Dunn committed a gross abuse of discretion by failing to consider whether Metro Green's permitted construction activities create a risk to human health and the environment and, if so, whether permit revocation is warranted.

IV. Granting the interlocutory injunction will not disserve the public interest.

Finally, "the public interest, i.e., the public as a whole, will not be disserved by the grant of the interlocutory injunction." *City of Waycross*, 300 Ga. at 113. Enjoining Metro Green from completing construction and commencing operation is clearly in the public interest where it will halt an environmental injustice to a primarily Black community and will help achieve the Georgia Solid Waste Management Act's goal to "assure that solid waste does not adversely affect the health, safety, and wellbeing of the public and that solid waste facilities, . . . do not degrade the quality of the environment." O.C.G.A. § 12-8-21(a).

Moreover, the public has a significant interest in ensuring that government officials are performing their official duties reasonably and in compliance with all applicable laws. This interest will be served by enjoining Metro Green from operating its facility until the Court can decide whether the EPD Director committed a gross abuse of his discretionary duties.

Conclusion

In light of the foregoing, CHASE requests that this Court grant this motion for an interlocutory injunction and order Metro Green to halt any remaining construction and refrain from commencing operations of its solid waste handling facility in the heart of this community.

Respectfully submitted this 5th day of February, 2021.

/s/ April S. Lipscomb

April S. Lipscomb

Georgia Bar No. 884175

Robert D. Sherrier

Georgia Bar No. 979890

Southern Environmental Law Center

10 10th Street NW, Suite 1050

Atlanta, GA 30309

(404) 521-9900 (office)

(404) 521-9909 (fax)

alipscomb@selcga.org

bsherrier@selcga.org

Counsel for Intervenor-Plaintiff CHASE

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **Motion for an Interlocutory Injunction and Memorandum of Law in Support** via the Odyssey E-filing system, which will automatically send e-mail notification of such filing to the following attorneys of record:

Winston A. Denmark
Valorri C. Jones
Aliayah J. Baaith
Shirnelle R. Council
FINCHER DENMARK LLC
100 Hartsfield Center Parkway, Suite 400
Atlanta, GA 30354
wdenmark@fincherdenmark.com
vjones@fincherdenmark.com
abaaith@fincherdenmark.com
scouncil@fincherdenmark.com
Attorneys for the City of Stonecrest

Matthew Benson
Brian Easley
MAHAFFEY PICKENS TUCKER, LLP
4351 Pleasantdale Road
Atlanta, GA 30340
mbenson@mptlawfirm.com
beasley@mptlawfirm.com
Attorneys for Metro Green

Noah Priest-Goodsett
DEKALB COUNTY, GEORGIA
1300 Commerce Drive
Decatur, GA 3030
nwgoodsett@dekalbcountyga.gov
Attorney for DeKalb County

Robin J. Leigh
Christopher R. Held
GEORGIA DEPARTMENT OF LAW
40 Capitol Square, S.W.
Atlanta, GA 30334
rleigh@law.ga.gov
cheld@law.ga.gov
Attorneys for EPD and Director Dunn

This 5th day of February, 2021.

/s/ April S. Lipscomb
April S. Lipscomb (884175)

Exhibit 1

In The Matter Of:
City of Stonecrest v.
Metro Green Recycling Three, LLC, et al

Hearing before Judge Barrie
September 3, 2020


WSG Reporting, LLC
Certified Court Reporting & Video

wsgreporting.com
3430 Heartwood Lane • Atlanta, GA 30340
office@WSGreporting.com • (770) 367-7822

Original File 0903metrogreenhearing.txt
Min-U-Script® with Word Index

Page 1

1 IN THE SUPERIOR COURT OF DEKALB COUNTY
2 STATE OF GEORGIA

3 CITY OF STONECREST,)
4 Plaintiff,)
5 vs.) CIVIL ACTION FILE
6 METRO GREEN RECYCLING THREE,) NO. 20CV5610-10
7 LLC, et al,)
8 Defendants.)

10 HEARING BEFORE JUDGE TANGELA M. BARRIE
11 RE: MOTION FOR TEMPORARY RESTRAINING ORDER AND
12 INTERLOCUTORY INJUNCTION

13 SEPTEMBER 3, 2020

14 10:15 a.m.

18 HEARING HELD VIA ZOOM MEETING

20 *****

21 Whitney S. Guynes, CCR
22 WSG REPORTING, LLC
23 3430 Heartwood Lane
24 Atlanta, Georgia 30340
25 (770) 367-7822
 office@WSGreporting.com

Page 3

1 A P P E A R A N C E S (continued.)

2

3 Also Present:

4 Jason Lary - Mayor of Stonecrest
5 Alina Marshall - Assistant to Judge Barrie
6 Marissa Dunn - Law Clerk to Judge Barrie
7 Mitchell Stephens - Metro Green Representative
8 Tracy Hutchinson - DeKalb County Solid Waste Director
9 Adrion Bell - City of Stonecrest Representative
10 Matthew Cheek - Consultant for Metro Green
11 Plez Joyner - Representative of City of Stonecrest

12 * * *

Page 2

1 A P P E A R A N C E S

2 VIA ZOOM

3 On Behalf of Metro Green Recycling:

4 MATTHEW P. BENSON, ESQ.
5 R. LEE TUCKER, ESQ.
6 BRIAN T. EASLEY, ESQ.
7 Mahaffey, Pickens, Tucker, LLP
8 1550 North Brown Road
9 Suite 125
10 Lawrenceville, Georgia 30043
11 (770) 232-0000 (T)
12 (678) 518-6880 (F)

13 On behalf of DeKalb County:

14 NOAH PRIEST-GOODSETT, ESQ.
15 CLARK CANDLER, ESQ.
16 Assistant County Attorney
17 DeKalb County Law Department
18 Manuel J. Maloof Center
19 1300 Commerce Drive
20 Fifth Floor
21 Decatur, Georgia 30030
22 (404) 371-3011 (T)
23 (404) 371-3024 (F)

24 On behalf of the City of Stonecrest:

25 WINSTON A. DENMARK, ESQ.
 ALIYAH J. BAAITH, ESQ.
 Fincher, Denmark & Minnifield, LLC
 100 Hartsfield Center Parkway
 Suite 400
 Atlanta, Georgia 30354
 (770) 478-9950 (T)

Page 4

1 INDEX TO EXAMINATION

2

3 WITNESS: TRACY HUTCHINSON 16

4 EXAMINATION BY Mr. Denmark17

5 EXAMINATION BY Mr. Priest-Goodsett42

6 EXAMINATION BY Mr. Benson43

7

8

9 * * *

Page 5

1 Hearing RE: Motion for Temporary Restraining Order and
2 Interlocutory Injunction
3 SEPTEMBER 3, 2020
4 MS. MARSHALL: Good morning everyone.
5 This is Division 10 with the Honorable Tangela
6 Barrie presiding.
7 THE COURT: Good morning. How are you?
8 This is Judge Tangela Barrie, the judge
9 presiding over Division 10. We're having this
10 hearing via Zoom. It is being recorded and also
11 streaming live on YouTube to comply with Open
12 Courtroom.
13 So we have a continuation of our hearing
14 dealing with the City of Stonecrest's request or
15 Motion for a Temporary Restraining Order or
16 Interlocutory Injunction. This is 20CV5610.
17 The City of Stonecrest is being
18 represented today -- well, initially by
19 Mr. Denmark. Is Mr. Denmark with us, as well,
20 today? Great.
21 And this Metro Green Recycling, LLC was
22 being represented by Mr. Benson. I think I saw
23 Mr. Benson on the first screen. Yes.
24 DeKalb County was being represented by
25 Mr. Noah Goodsett. I think Mr. Clark was with

Page 6

1 Mr. Goodsett, Mr. Easley was with Mr. Benson,
2 and with Mr. Denmark was Ms. Baaith. I hope I
3 pronounced her name correctly.
4 So, it looks like everyone is here. I
5 know last time Mr. Denmark indicated that the
6 Mayor was with us, and I believe I see him. And
7 Mr. Joyner was with us, and I can't recall
8 Mr. Joyner's position with the City.
9 Mr. Denmark, what's his position with the
10 City?
11 MR. DENMARK: He's the Deputy Government
12 Manager --
13 (Audio difficulties.)
14 THE COURT: -- with the City.
15 And then with Metro Green, I believe we
16 have a CEO, and I can't recall his name. I see
17 only "Mitch" on the screen.
18 MR. BENSON: Mitch Stephens.
19 THE COURT: Stephens. Mr. Stephens.
20 And I think I've announced everybody with
21 us. We do have a court reporter. Of course you
22 all know that, and I understand y'all are
23 sharing in the takedown of the court reporter --
24 I'm sorry, actually we do have another, a
25 Mr. Bell. And it looks like Mr. Bell is with

Page 7

1 the City of Stonecrest. Oh, Mr. Cheek --
2 Mr. Cheek, who were you with?
3 MR. BENSON: Your Honor, he is with us --
4 with Metro Green.
5 THE COURT: Okay. Oh, Metro Green. All
6 right, then.
7 And of course we have a few people, as I'm
8 told, following on YouTube. Okay.
9 So that is the call of the calendar for
10 this morning, only one matter, and I indicated
11 that we would come back -- either the Court will
12 make a decision, or we'll come back on a
13 continuation.
14 So the -- I think I -- one of the things
15 that I said last time where the Court was
16 stalled was on the issue of harm, and then there
17 was some argument on the issue of likelihood of
18 success that the Court needed to deal with. But
19 I think on the issue of likelihood of success,
20 on one portion of the analysis, I think that is
21 completed, and I don't need to hear any more on
22 that. The issue was the level of harm that the
23 City indicates that this injunction, if the
24 Court did not enjoin Metro Green, the harm it
25 would cause, and I continued the hearing to hear

Page 8

1 about that harm.
2 Specifically that there was a stop work
3 order, and in the stop work order -- I believe
4 because I didn't see the actual stop work
5 order -- the testimony was, or at least the
6 argument was, that it was a violation of DeKalb
7 County's solid waste management plan. And so my
8 position was: What specifically was Metro Green
9 failing to do, or what specifically would Metro
10 Green need to do to comply with the waste
11 management program. And so that was essentially
12 the reason why we are here.
13 So that I don't keep you all very long, I
14 wanted to focus on that area, because I think
15 that's the only area that, after reviewing --
16 definitely after reviewing all of the exhibits
17 from the last hearing, I think that's
18 essentially where the Court needs to hear
19 information or evidence on.
20 So with that being said, I'm going to let
21 you -- I'm going to let the City of Stonecrest,
22 Mr. Denmark be heard.
23 MR. DENMARK: Good morning, Your Honor.
24 THE COURT: Good morning.
25 MR. DENMARK: I think that -- I don't know

Page 9

1 if the County wants to lead, but we have
2 Ms. Hutchinson present to testify, and so
3 Ms. Hutchinson is on the call presently, and as
4 Your Honor will recall, it was Ms. Hutchinson
5 who made the initial determination in August of
6 2018 that the Metro Green facility was not
7 consistent with the County's solid waste
8 management plan. She made that determination.
9 And when the Court inquired, during the last
10 hearing what was the nature of the harm, I
11 indicated that, well, the City of Stonecrest did
12 not make the determination that the facility was
13 non-compliant, and therefore we would not be in
14 a position either then or now to say what the
15 basis for that determination was. That would
16 fall to the County through the person of
17 Ms. Tracy Hutchinson who is now present, and she
18 can state for herself what factors led her to
19 arrive at that conclusion back in 2018, a
20 conclusion which she reaffirmed in February of
21 2019, and I believe it's a position that she
22 still maintains today.
23 Mr. Goodsett obviously represents
24 Ms. Hutchinson. She's here on behalf of the
25 County and pursuant to a subpoena issued by the

Page 10

1 City of Stonecrest, but I would defer to
2 Mr. Goodsett to lead with his own client, and I
3 would like, if necessary, to ask questions of
4 Ms. Hutchinson after, if the Court is
5 comfortable with that manner of proceeding.
6 THE COURT: And what's your position,
7 Mr. Goodsett?
8 MR. PRIEST-GOODSETT: Well, the County has
9 certainly brought Ms. Hutchinson here to discuss
10 and, you know, I think that this is, you know,
11 the City of Stonecrest's motion so, you know, I
12 think that, you know, Winston, I'm entirely
13 comfortable with you examining Tracy and asking
14 for the evidence that you need to, you know,
15 make whatever argument that you intend to make.
16 MR. DENMARK: Okay.
17 THE COURT: I think therein lies the issue
18 that I had, initially, and we're kind of
19 touching on it again now. It's not that -- it
20 doesn't appear to be the County's issue, it's
21 the City of Stonecrest's issue, because City of
22 Stonecrest brought the action. And so you're
23 bringing an action wherein you're saying to the
24 Court that I believe harm will come to the
25 citizens of Stonecrest if the -- if this permit

Page 11

1 isn't enjoined or these actions from the Metro
2 Green is not enjoined. And so my position was:
3 What are the actions that they're doing that you
4 want enjoined, or what are the things they're
5 not doing that you want enjoined? In the last
6 hearing you could not tell me what it was that
7 they were doing, or not doing, other than this
8 summary concept that they're not meeting the
9 Waste Management Plan without any specifics,
10 whatsoever.
11 And so that was what concerned me last
12 time, and I think that the -- to some extent the
13 punting to DeKalb County again this morning, on
14 Ms. Hutchinson, again gives me some concern.
15 Either the City of Stonecrest is protecting its
16 citizens, because it knows that something is
17 wrong, or the City of Stonecrest is saying well,
18 I know something -- I think something is wrong,
19 but I'm not really sure something is wrong --
20 then if you're not really sure something is
21 wrong, why are we here?
22 So I just want to make sure that City of
23 Stonecrest understands that you're asking the
24 Court to do an extraordinary remedy which is to
25 stop these activities that someone has a permit

Page 12

1 right now to do. And if you want me to do
2 that -- if you're asking for me to do that --
3 you need to be clear on what I'm stopping them
4 from doing, or what they're not doing -- why is
5 this activity infringing upon the health,
6 safety, wellbeing of your citizens, because
7 right now I don't know what -- I don't know what
8 that is. So I just want to make sure that we're
9 clear that this is the City's action, not the
10 County's.
11 MR. DENMARK: Your Honor, what we have
12 said from the very beginning is that the City of
13 Stonecrest is not here to deal with the
14 scientists or an expert to make the case that
15 there are -- there is groundwater contamination
16 or carcinogens that are associated with this
17 facility. That might be the case, but that's
18 not what our position has been.
19 In the documents we've filed with the
20 Court, what we have said consistently is: The
21 violation is that the Metro Green facility does
22 not comply with the DeKalb County Solid Waste
23 Management Plan. That has been our position.
24 Your Honor has said that, well, what is
25 the harm? And we have responded each and every

Page 13

1 single time by saying that the harm is their
2 failure to comply with the DeKalb County Solid
3 Waste Management Plan.
4 Now, Ms. Hutchinson can say precisely
5 why -- Ms. Hutchinson works for DeKalb County,
6 not for the City of Stonecrest. Ms. Hutchinson
7 made that determination in 2018. We do not have
8 the ability or the technical expertise in the
9 City of Stonecrest to say why it is that
10 Ms. Hutchinson felt that the facility failed to
11 comply. We believe that failing to comply with
12 the Solid Waste Management Plan is enough.
13 That, in and of itself, is enough. We're not
14 presenting evidence on scientific harm or
15 dangers to the public. And if that's what Your
16 Honor is waiting to hear, then I doubt that
17 Ms. Hutchinson is going to testify about
18 environmental hazards to the public.
19 THE COURT: No, that's not what I want. I
20 simply want you to tell me why they're not
21 meeting the plan.
22 For example, if the plan indicates you're
23 supposed to have X-Y-Z in place in your
24 facility, and they don't have that thing in
25 their facility, then I think the City of

Page 14

1 Stonecrest should be able to say they violated
2 the plan, because they didn't have "X" in their
3 facility.
4 I'm not asking you to tell me some
5 scientific harm. I'm asking you to be able to
6 make your case. You can't say that they're in
7 violation and have no concept of why they're in
8 violation.
9 MR. DENMARK: (Unintelligible.)
10 THE COURT: I think that if you -- and I
11 hope -- okay. Well, if that's where you're
12 going today, fine, but I don't want this to be
13 another general concept, because I don't know
14 how you can have this general -- you can have
15 the general idea, if you're talking about maybe
16 the Court handling your declaratory judgment --
17 perhaps, but you're asking me to stop something.
18 So if you're asking me to stop something,
19 the elements that I have to look at are very
20 different from whether or not they met the Waste
21 Management Plan. Because, remember, the
22 elements for -- the four elements that I have to
23 consider for a TRO, that's not the same thing as
24 whether or not you -- whether or not they
25 rightfully had a permit. Answering that

Page 15

1 question is one thing. Answering whether or not
2 I should stop them from what they're doing in
3 order to go back and look at that issue is
4 another.
5 And the elements there are different.
6 There are four elements that you have to meet
7 before the Court can enjoin them from doing
8 anything -- four elements. And, of course, you
9 know them. You've put them in your brief. And
10 so that's what I'm looking for you to be able to
11 articulate that -- what those four elements are.
12 So go ahead and -- I'm sorry, before you
13 begin, let me hear from Mr. Benson, and then
14 I'll let you continue with your case.
15 MR. BENSON: Are you ready, Your Honor?
16 THE COURT: Yes.
17 MR. BENSON: Okay. Thank you.
18 Your Honor is hitting on the issue that we
19 thought the Court meant to address this morning,
20 which is if there is any particular harm to the
21 citizens of Stonecrest as a result of the
22 conditions Metro Green has through the City and
23 through the State EPD. All we've heard so far
24 is speculation, which is not allowed to be
25 considered under 958, which is not allowed to be

Page 16

1 considered under the Supreme Court -- a number
2 of Supreme Court cases.
3 There has to be a reasonable certainty of
4 actual and urgent harm. And so that's what we
5 have yet to hear -- we didn't hear last time, we
6 didn't hear any evidence of it, so we believe
7 that issue is already foreclosed, because there
8 was no evidence brought. Regardless, we
9 seriously doubt that there is any evidence,
10 because, keep in mind, the facility is not
11 operational yet. There is not a facility that
12 is not in compliance with the Solid Waste
13 Management Plan yet.
14 THE COURT: All right. Thank you.
15 All right. Mr. Denmark, you may proceed.
16 MR. DENMARK: Yes, Your Honor. I don't
17 know, procedure-wise, if the court reporter is
18 going to swear in Ms. Hutchinson?
19 THE COURT: Yes, I can swear her in.
20 Sure.
21 (Witness sworn.)
22 WHEREUPON:
23 TRACY HUTCHINSON,
24 having been first duly sworn, was examined and
25 testified as follows:

Page 17

1 EXAMINATION
2 BY MR. DENMARK:
3 Q Ms. Hutchinson, if you would state your
4 name for the record, please.
5 A I am Tracy Hutchinson.
6 Q Ms. Hutchinson, how are you presently
7 employed?
8 A I am the Division Director for DeKalb
9 County Government. I'm the Division Director for the
10 Sanitation Division and the Beautification Department.
11 Q Okay. How long have you been employed in
12 that capacity, ma'am?
13 A I have been the Director for five years.
14 Excuse me, I was Interim Director, and I was appointed
15 to Director by CEO Thurmond, so I've been Director for
16 four years.
17 Q Were you the Director in 2018?
18 A I was the Director in 2018.
19 Q If you would, for the benefit of the
20 Court, explain what it is that your job requires you
21 to do day-to-day.
22 A Okay. Again, as Division Director of the
23 Sanitation Division, I have the overall responsibility
24 to manage the Solid Waste Management Program, which I
25 will elaborate on.

Page 18

1 DeKalb County Sanitation, we have a very
2 comprehensive Solid Waste Management Program, that
3 includes collection for residential and commercial
4 businesses, and we also operate three transfer
5 stations, and then we also have a landfill; so pretty
6 much anything related to solid waste services, DeKalb
7 County Sanitation provides for residents and
8 businesses.
9 Q Okay. You -- have you ever had occasion
10 to determine whether or not -- I'm sorry, we have
11 talked about the DeKalb County Solid Waste Management
12 Plan. Can you explain to the Court what is the Solid
13 Waste Management Plan?
14 A Well, the Solid Waste Management Plan was
15 put in place back in 2004. It was a plan to ensure
16 that residences and businesses had long-term goals
17 and/or disposal, that cities could be sure that their
18 garbage collected would have a -- that it would be
19 collected, processed, and disposed of in a manner that
20 meets 391-3-4, which is the Solid Waste Management
21 rules for the State of Georgia.
22 Q Okay. And so do you enforce and
23 administer that Solid Waste Management Plan in DeKalb
24 County?
25 A I do. Yes, we do.

Page 19

1 Q And how large is your staff?
2 A So the Sanitation Department employs about
3 650 employees.
4 Q Okay. And in terms of your facilities,
5 what facilities, if any, does your department
6 maintain?
7 A We have -- when you look at our overall
8 division, we have a big inventory of fleet that we
9 manage. We manage our transfer stations. We have
10 three transfer stations that basically handles all of
11 our residential garbage and our commercial garbage,
12 which includes all municipal solid waste, construction
13 and demolition waste, yard debris waste, and also the
14 recycling waste, also. And then, of course, we
15 actually transfer that material from our transfer
16 station to our landfill, where that material is
17 basically buried in accordance with the Solid Waste
18 Rules.
19 Q So the County collects their solid waste?
20 A We do collect, yeah. So we provide
21 collections, processing, and disposal for all solid
22 waste services in DeKalb County.
23 Q Okay. So that's solid waste of all kinds.
24 That would include construction and demolition waste
25 and such?

Page 20

1 A It does. So the program includes
2 municipal solid waste, which is the garbage -- and
3 municipal solid waste includes quite a bit more -- so
4 it includes municipal solid waste. It also includes
5 construction/demolition material, and it also includes
6 recycling. Recycling, we actually transfer that out,
7 but it includes all the collection services related to
8 solid waste.
9 Q So besides the County, itself, is any
10 other entity authorized to collect the solid waste
11 within DeKalb County?
12 A No. No. Well, we have haulers that will
13 actually haul different materials in the county.
14 DeKalb County is the only facility -- the only
15 facilities located in the county that have
16 processing -- where the material is actually processed
17 and actually disposed of, but there is different
18 haulers in the county.
19 Q Okay. Under the Solid Waste Management
20 Plan -- I'm referring specifically to Section 1.1.1 of
21 the Solid Waste Management Plan -- what does that
22 provision say, and how do you interpret it?
23 A Well, the plan actually states, you know,
24 again, that the County provides all standard solid
25 waste services -- collection and disposal services,

Page 21

1 you know, for all residents and businesses, and we
2 provide that service. We are the sole provider of
3 those services for residents and businesses.
4 Q So does that mean that no other entity can
5 provide those services within DeKalb County?
6 A What that means is that no other -- the
7 criteria was set to establish a criteria so that no
8 other facilities could duplicate those services. We
9 provide those services for the residents of the county
10 and businesses for the county.
11 Q Okay. Shifting to this situation with
12 Metro Green, are you familiar with Metro Green
13 Recycling?
14 A I am familiar with Metro Green Recycling,
15 back in 2018, yes. They actually came to me and met
16 with me.
17 Q Do you remember when in 2018 they met with
18 you?
19 A I don't recall the exact month, but I met
20 with the -- either a lobbyist at first, and then I met
21 with their consultant, and I met with the owner.
22 Q Okay. What was the nature of that
23 meeting?
24 A The nature of that meeting was that they
25 wanted -- they basically approached me about getting a

Page 22

1 letter from DeKalb County stating that they were
2 consistent with the Solid Waste Management Plan, which
3 is necessary under the EPD guidelines in order for you
4 to get a permit.
5 Q Okay. And did they present the letter
6 that they wanted you to sign?
7 A They did. They presented a draft letter
8 to me, and basically was requesting me to put it on
9 the county letterhead, and the letter was very clear
10 that they were consistent with the Solid Waste
11 Management Plan; but yes, they did present a letter to
12 me -- a draft letter.
13 Q And how did you initially respond to the
14 request that you provide this letter?
15 A I explained to them the Solid Waste
16 Management Plan, the policies, why the plan was
17 adopted on behalf of DeKalb County, and then I also
18 explained to them just very openly and honestly that
19 this plan -- that their operations would not be
20 consistent with the Solid Waste Management Plan.
21 But I also wanted to be sure that I had a
22 good understanding of their operations, so I asked
23 them to -- so I submitted questions to them so I had a
24 clear understanding of what their operations would
25 entail, and then based on that, their responses --

Page 23

1 their engineers did respond. I issued the letter
2 stating that they would not be consistent with the
3 Solid Waste Management Plan.
4 Q Okay. And so what was the reason that the
5 facility would not be compliant with the Solid Waste
6 Management Plan?
7 A We provide those services. DeKalb County
8 Sanitation provides -- I mean, we have a comprehensive
9 program. We provide those services, and there would
10 be no reason for anybody to duplicate any services
11 within the county.
12 Q And specifically which services are you
13 referring to?
14 A We provide collection, we provide
15 processing, and then, of course, disposal also.
16 Q Would that include recovered materials, as
17 well -- recycled?
18 A Absolutely, yes. Yes. We have our own
19 C&D landfill located at our landfill -- Seminole Road
20 Landfill, we have our own C&D landfill there.
21 Q Would this include the kind of concrete
22 and drywall, rebar, construction debris -- those type
23 of materials that the County collects and disposes of
24 those, as well?
25 A Yes, yes. We actually -- we actually

Page 24

1 accept that material at the landfill. We actually
2 crush it on-site. We have a vendor that crushes
3 concrete on-site, and we use that material as part of
4 our road base. That's a part of our operations, so we
5 have those operations at Seminole Road Landfill.
6 Q Okay. So the non-compliance -- just for
7 the edification of the Court and for perfect
8 clarity -- the non-compliance was based on the fact
9 that the services that Metro Green was purporting to
10 provide are services that the County exclusively
11 provides?
12 A We provide that service, and also based on
13 the fact that, again, their operations required a
14 Solid Waste Handling Permit, which we have that -- we
15 are the entity that has that Solid Waste Handling
16 Permit to provide all of those services for the
17 County. And under 391-3-4, the host county provides a
18 review of any operations that may come into play, and
19 basically you state if that operation is consistent
20 with the Solid Waste Management Plan.
21 Q If you could give that citation again, I
22 believe the Court was trying to write what you said.
23 A The citation for the Solid Waste
24 Management Plan? So a part of the Solid Waste
25 Management Plan, it is under Section 1.1.1.

Page 25

1 Q You cited another provision.
2 A Oh, okay. Sorry. Sorry.
3 So the Solid Waste Management Rules -- the
4 state of Georgia, all solid waste facilities operate
5 under the Solid Waste Management Rules, which is
6 391-3-4. Anybody in the state of Georgia operates
7 under those rules and regulations.
8 Q Okay. Now, would you explain -- what you
9 are explaining to the Court now, did you explain that
10 to Metro Green?
11 A Absolutely.
12 Q Now, was that in the in-person meeting
13 that you explained it, or did you explain it somewhere
14 else?
15 A When Metro Green originally met with me,
16 again, I did explain the policy, or why the Solid
17 Waste Management Plan was adopted years ago. I
18 explained that. And I also explained that -- you
19 know, I made it pretty much very clear that, based on
20 the general information that I had received from them
21 in that meeting that it -- you know, that I did not
22 think that they were going to be consistent with the
23 Solid Waste Management Plan, and so I said -- I said,
24 so I will submit a list of questions, and I wanted to
25 get it back from them to get a clear understanding of

Page 26

1 their operations. But I made it very clear, if their
2 operation required a Solid Waste Handling Permit, that
3 I would not be able to issue a Letter of Consistency
4 to them.
5 Q And --
6 THE COURT: I'm sorry. Let me back up a
7 little bit. So the reason that they're
8 inconsistent with the Solid Waste Management
9 Plan is because the County provides the
10 services -- not because they're not meeting some
11 type of regulation, it's just because the County
12 exclusively provides those things, consequently
13 there can be no other company providing it. Is
14 that what you're saying?
15 THE WITNESS: That is correct, Judge
16 Barrie.
17 (Phone ringing.)
18 That is correct, Judge Barrie, and I
19 certainly apologize for the phone ringing, but
20 that is correct.
21 THE COURT: Okay. So the -- and did Metro
22 Green know that according to DeKalb County that
23 you were denying it or indicating they were
24 inconsistent, not because they did not do a
25 certain thing that you wanted done, but simply

Page 27

1 because it was something that was, I guess,
2 encroaching on your exclusive rights to be able
3 to handle the solid waste material, correct?
4 THE WITNESS: That is correct. When Metro
5 Green came in, they had a -- and again, I'm
6 saying this from my understanding of meeting
7 with them -- they had a clear understanding that
8 there was a Solid Waste Management Plan that was
9 in place at DeKalb County. Because, when they
10 came in, they had a draft letter prepared for me
11 with my name on it that they wanted me to sign,
12 stating that the facility was consistent with
13 the Solid Waste Management Plan; so they had a
14 clear understanding of what the intent of this
15 plan was.
16 THE COURT: Okay. So let me ask you
17 specifically, because I'm a little confused --
18 just a tad.
19 So if this -- let's say -- I know that
20 Metro Green has a facility in Cobb County -- I
21 believe that was the discussion -- Cobb County
22 would have a Solid Waste Management Plan, as
23 well. Would they be able to do this facility,
24 let's say, in Cobb County? Or are you telling
25 me that if a county has an exclusive Solid Waste

Page 28

1 Management Plan, then a facility like Metro
2 Green would not be able to work within it,
3 because --
4 THE WITNESS: Right. So, I can't speak
5 for Cobb County --
6 THE COURT: Okay.
7 THE WITNESS: -- but that is -- basically,
8 that is correct. I mean, so our plan basically
9 states that there's a duplication of services.
10 That is correct.
11 THE COURT: Got it.
12 So if Stonecrest, then, had not been a
13 part of your Solid Waste Management Plan, but
14 instead decided to use Metro Green, they could
15 very well have decided to use Metro Green, not
16 use the county, and then Metro Green would be
17 responsible for handling their solid waste -- or
18 at least the recycling portion of it.
19 Could that have happened if DeKalb -- if,
20 let's say, Stonecrest decided not to go with
21 DeKalb County?
22 THE WITNESS: Yes. Stonecrest would need
23 to establish some type of Solid Waste Management
24 Plan to establish -- yes, that is correct, yes.
25 THE COURT: So there is a Solid Waste

Page 29

1 Management Plan that outlines what should and
2 should not be done to solid waste. DeKalb has
3 that plan, but the reality is, is that it
4 doesn't matter what Metro would do, or did not
5 do, with regard to setting up their facilities,
6 they could not do service in DeKalb County or in
7 the City of Stonecrest, because, according to
8 the Solid Waste Management Plan that is with
9 DeKalb, because you offer the service they can't
10 offer it?
11 THE WITNESS: That's correct.
12 THE COURT: Got it. Okay.
13 BY MR. DENMARK:
14 Q So Ms. Hutchinson --
15 THE COURT: I'm sorry. One more question,
16 and I'll let you go back.
17 You said that the state of Georgia has a
18 Solid Waste Management Plan, correct?
19 THE WITNESS: The State -- those are the
20 rules that we follow, Judge Barrie. So there is
21 a set of rules that's followed by all solid
22 waste facilities in the state of Georgia, and
23 the State of Georgia has -- they're the overall
24 regulatory agency, and so there is a set of
25 rules that you follow that includes operations,

Page 30

1 environmental, closure, post-closure, there's a
2 set of rules that you must follow, and so those
3 are the rules that I'm referring to.
4 THE COURT: Yeah. And that solid waste --
5 okay, those rules.
6 Now, the EPD, when you sent -- if you had
7 signed the letter, and they received the letter,
8 the EPD would go: I got this letter, I'm going
9 to hand them their permit? Or would the EPD go:
10 I got this letter, now I need to make sure that
11 they check off everything in Section 391?
12 In other words, they do their own
13 background to make sure that the Solid Waste
14 Management Plan -- that they're doing everything
15 according to the Solid Waste Management Plan?
16 So the EPD will do their own analysis, as well?
17 They're not just dependent on what the County
18 has indicated is a good Solid Waste Management
19 Plan?
20 THE WITNESS: Of course. The EPD should
21 do their own review and their own checklist to
22 make sure that facility has checked off all
23 that -- yes. For sure.
24 THE COURT: Can your Solid Waste
25 Management Plan require more than the State's

Page 31

1 Solid Waste Management Plan?
2 THE WITNESS: The --
3 MR. PRIEST-GOODSETT: Judge, just for some
4 clarity here. I think that what the Court is
5 wrestling with is the fact that there's sort of
6 two different rules. The Solid Waste Management
7 Plan that's adopted by the County -- all
8 counties or all post-jurisdictions have their
9 own Solid Waste Management Plan, and that plan
10 has its own set of rules that are in line with
11 the State regulation.
12 THE COURT: Yeah, and I'm asking you: Is
13 DeKalb -- so DeKalb -- obviously, the plan would
14 have to be in line with the State's regulation.
15 Can they have more rules that are not, say,
16 listed in the state regulations?
17 MR. PRIEST-GOODSETT: Yes. That's what
18 I'm -- I guess that's what I'm trying to get to,
19 Judge is that -- you know, as long as the SWMP
20 is in -- it doesn't make any -- it doesn't make
21 any regulations that are specifically prohibited
22 by the State guidelines, you know, the County
23 can make other adjustments to the Solid Waste
24 Management Plans such that Cobb could allow
25 certain things that DeKalb doesn't, and --

Page 32

1 THE COURT: That's what I mean.
2 MR. PRIEST-GOODSETT: Here it's not
3 that -- the basis for denying Metro Green isn't
4 because DeKalb just does everything. It's
5 because the policy, the written policy in the
6 SWMP which governs it, in 1.1.1, states the
7 criteria for operations.
8 So, as Ms. Hutchinson noted, there are
9 certain types of businesses that deal with waste
10 that do operate in the county, because they're
11 not covered under 1.1.1.
12 THE COURT: Okay. Then now I'm confused,
13 because are you telling me that Metro Green got
14 denied not because they're doing the exact same
15 thing that the County is doing, but because
16 they're not meeting something? That's what I'm
17 trying to get at. I'm trying to determine what
18 it was, or what it is, that Metro Green is not
19 doing that it's inconsistent.
20 I understand the letter wasn't written
21 because DeKalb is of the opinion that because
22 they do it there's no need for Metro Green,
23 consequently we're not going to send them the
24 letter. I get that.
25 My second question is: Is there something

Page 33

1 else, as to the reason why you're telling them
2 that they -- that they're inconsistent with the
3 Solid Waste Management Plan?
4 MR. PRIEST-GOODSETT: Because that
5 restriction is codified in the County's Solid
6 Waste Management Plan in 1.1.1.
7 THE COURT: Oh, the restriction -- I see.
8 MR. PRIEST-GOODSETT: That is a criteria
9 that's in 1.1.1.
10 THE COURT: Okay.
11 MR. PRIEST-GOODSETT: And so they don't
12 meet that criteria.
13 THE COURT: And I haven't seen this 1.1.1.
14 I saw 39 point -- -3-4. I've reviewed that. I
15 haven't seen the one you're talking about.
16 Which -- 1.1.1, is that the ordinance? What is
17 that?
18 MR. PRIEST-GOODSETT: That's the provision
19 of the SWMP. So the Court was asking the
20 parties to address the specific provision of the
21 SWMP that Metro Green didn't comply with, and --
22 THE COURT: Let me go back to Mr. Denmark.
23 Mr. Denmark, on that issue, where can I find
24 that SWMP provision in your exhibits?
25 MR. DENMARK: I don't have that in front

Page 34

1 of me right now. I'll have to look in my file.
2 I believe that's a part of the record, but I'm
3 not 100 percent certain.
4 MR. BENSON: Your Honor, this is Matt
5 Benson. It's not part of the record. The plan
6 is not in evidence, hasn't been tendered, it's
7 not in the pleadings.
8 THE COURT: Well, I got the IGA. Is that
9 what you're talking about or something else?
10 MR. DENMARK: No, no, no. The Solid Waste
11 Management Plan is a separate document
12 completely. I believe it was my intention to
13 put it in the record. I would be surprised if
14 it's not a part of the record, but I cannot
15 verify that, as I sit here now. And to the
16 extent it's not, we can certainly tender that
17 within the next several minutes.
18 THE COURT: Well, I need to see it,
19 because now I'm confused with regard to -- well,
20 I shouldn't say that. I was confused as to what
21 it was that they were not meeting. I wanted to
22 know specifically, because I thought that they
23 gave -- I thought that Ms. Hutchinson gave him
24 back a list saying you're not compliant because
25 you didn't do A, B, C, D, E, and then I just

Page 35

1 thought the City didn't know what A, B, C, D,
2 was.
3 Now it becomes clear that the reason why
4 the letter was an issue is because DeKalb County
5 is not going to issue the letter, because,
6 according to their rules, they can be the only
7 facility doing the very thing that Metro Green
8 wants to do. Consequently, their position is,
9 you know, we can't offer you the letter, and
10 therefore you're inconsistent. We don't know
11 exactly what you're doing, but it wouldn't
12 matter what you're doing, because according to
13 our rule, you're inconsistent. That sounds like
14 the summary. Am I correct, Ms. Hutchinson?
15 THE WITNESS: That is basically the
16 summary. That is basically the summary.
17 THE COURT: All right. Go ahead,
18 Mr. Denmark. Do you have any additional
19 questions?
20 MR. DENMARK: Yes, Your Honor. I have
21 just a couple more for Ms. Hutchinson.
22 BY MR. DENMARK:
23 Q Ms. Hutchinson, the verification of
24 compliance with the Solid Waste Management Plan, in
25 2018, when you issued your determination that it was

Page 36

1 not compliant, was that the role for the City of
2 Stonecrest or was that something that should have come
3 from DeKalb County?
4 A No, that would have come from DeKalb
5 County.
6 Q Okay. And why would the County verify
7 compliance with the Solid Waste Management Plan as
8 opposed to the City of Stonecrest?
9 A Well, according -- the City of Stonecrest,
10 with the IGA that they have, they basically state --
11 that was signed -- it was a fully-executed IGA that
12 stated they would follow the policy in regards to the
13 Solid Waste Management Plan.
14 Q Okay. And so -- but the IGA came about in
15 2019; is that correct?
16 A I think it was. I think it was. Right.
17 Q And why would DeKalb County, if you know,
18 have been -- was DeKalb County providing solid waste
19 services in the City of Stonecrest in 2018?
20 A We were. We were. We -- I mean, prior to
21 them becoming a city, we provided all solid waste
22 services for that Lithonia/City of Stonecrest area.
23 We've always been the sole provider over there.
24 Q And that continues to this day?
25 A That is the same today. We are the sole

Page 37

1 provider for all services for the City of Stonecrest.
2 Q And is that what -- and so, is that why
3 you believe the letter with regard to the Solid Waste
4 Management Plan should have come from the County as
5 opposed to the City?
6 A Well, yes. I mean, you know, again, the
7 plan was put in place back in 2004, to, you know,
8 again, to assure that the criteria was set for the
9 county as being the host county -- as being the county
10 that has the jurisdiction to issue that letter.
11 Q So the -- when you made your determination
12 and you met with Metro Green, did they disagree with
13 your determination or send you something in writing
14 saying that they disagreed with you?
15 A No, I have -- no, I've never gotten
16 anything back from Metro Green. I mean, they did not
17 appeal my determination or -- no, I didn't hear
18 anything back from them.
19 Q Okay. Were you aware that -- were you
20 aware that the City of Stonecrest had issued a letter
21 verifying compliance with the County's Solid Waste
22 Management Plan?
23 A No.
24 Q Do you know when you first became aware of
25 that?

Page 38

1 A That would have been recently. I mean, I
2 don't have a date or a time, but that would have been
3 recently.
4 Q Okay. And by "recently" you mean sometime
5 in 2020?
6 A Yes, absolutely. Absolutely, I'm sorry,
7 yes.
8 Q And it's almost in the last couple of
9 months?
10 A It would have been the last couple of
11 months. Yes, it would have been the last couple of
12 months when it was brought to my attention.
13 Q Were you aware that Metro Green had
14 commenced construction of their facility?
15 A I did not. I was not aware of that. I
16 mean, I was -- no, I was not aware of that.
17 Q If Metro Green had come to the County for
18 any permits with regard to this facility after you've
19 determined that it did not comply with the Solid Waste
20 Management Plan, what would your position have been?
21 A I mean, it would have been -- because,
22 again, I mean, no construction, nothing should have
23 started under the fact that they didn't -- that they
24 were not consistent with the Solid Waste Management
25 Plan. So it would have been trying to stop its

Page 39

1 operations. Because, again, I mean, the letter was
2 issued -- it was issued to them, it was issued to EPD,
3 from me, stating that this facility was not consistent
4 with the Solid Waste Management Plan.
5 Q Does anyone else -- any other entity in
6 DeKalb County -- presently provide these type of
7 services, materials, recovery facility, or these types
8 of services in DeKalb County? Is anybody else doing
9 that right now?
10 A Not to my knowledge.
11 Q Would they -- do you know if there are any
12 other EPD permit holders operating in DeKalb County
13 with regard to recovered materials or solid waste
14 handling?
15 A Not to my knowledge. I mean, to my
16 knowledge -- I mean, previously it was -- years ago it
17 was landfills and transportation in DeKalb County.
18 All those facilities are closed. DeKalb County
19 Sanitation, to my knowledge, is the only facilities in
20 DeKalb that is operating. We own those facilities.
21 We operate those facilities. We have gotten permits
22 from EPD to operate those facilities.
23 Q Okay. And you mentioned previously -- I
24 mean, you explained to me -- maybe I misheard you, and
25 you'll correct me if I'm wrong, I'm sure -- you

Page 40

1 explained to Metro Green when you met with them the
2 reasons why the Solid Waste Management Plan was
3 adopted.
4 Can you share with the Court what those
5 reasons were, or what you explained to Metro Green at
6 the time?
7 A Yes, yes. I explained that years ago
8 there was a push from the community, community
9 activists, to stabilize South DeKalb. South DeKalb, a
10 few years ago, had the highest number of landfills and
11 transfer stations that actually operated in the state
12 of Georgia. So it was, you know, to stabilize the
13 ratio -- I guess, somewhat racial justice -- and then
14 also the coordination of services, that DeKalb County
15 had the ability and the equipment, the inventory, the
16 staff to provide all that services for all residents
17 of the county and businesses for the county, and then
18 our landfill had the capacity.
19 Years ago, landfills had an issue as far
20 as having long-term capacity. Seminole Road Landfill
21 has capacity to provide services for all of the cities
22 in the county. And so this plan was put in place to
23 actually state that there was a 10-year capacity
24 projection and that all cities could join into that
25 plan to ensure that they had long-term solid waste

Page 41

1 management, or plans, to make sure that their garbage
2 would be disposed of properly. But South DeKalb had a
3 cluster of landfills and transfer stations that just
4 basically degraded that whole section of town.
5 Q All right. And so would it be fair to say
6 that that was on the southern end of the county?
7 A It was.
8 Q And the Solid Waste Management Plan sought
9 to address that situation by not allowing those
10 facilities to continue to operate?
11 A Absolutely. When those facilities closed,
12 those facilities closed. The Solid Waste Management
13 Plan was actually put in place, again, to establish a
14 criteria to make sure that those facilities would not
15 return back to DeKalb County, period -- primarily
16 South DeKalb -- but primarily South DeKalb.
17 Q And to your knowledge there is no such
18 facility now operating in DeKalb County?
19 A No. DeKalb County Sanitation, as I
20 stated, we have a premiere solid waste comprehensive
21 program here that we operate, and again, we provide
22 state of the art compliance operations at all our
23 facilities. Our landfill has capacity to handle all
24 solid waste services -- collect it, transport it,
25 process -- for all residents and businesses of the

Page 42

1 county.
2 Q In your opinion would it be a good idea to
3 have multiple facilities, again, operating in DeKalb
4 County, handling solid waste, collecting solid waste,
5 and locating these facilities in South DeKalb?
6 MR. PRIEST-GOODSETT: I'm just going to
7 state a friendly objection to that question
8 about her feelings on the matter.
9 THE COURT: Sustained.
10 MR. PRIEST-GOODSETT: I mean, really --
11 THE COURT: I sustained it.
12 MR. PRIEST-GOODSETT: -- it should be a
13 determination based on the policy.
14 THE COURT: I sustained that.
15 MR. DENMARK: I'm going to wrap it up for
16 the moment, Judge.
17 THE COURT: All right. Mr. Goodsett, do
18 you want to question this witness? If not, I'm
19 going to go to Mr. Benson.
20 MR. PRIEST-GOODSETT: I'll just briefly --
21 yes, I just have just a couple of questions.
22 THE COURT: Okay.
23 EXAMINATION
24 BY MR. PRIEST-GOODSETT:
25 Q Is 1.1.1 a part of the Solid Waste

Page 43

1 Management Plan, Tracy?
2 A Yes, it is.
3 Q And all of the criteria of the Solid Waste
4 Management Plan is designed to protect the County.
5 Would you agree with that?
6 A I absolutely would agree with that.
7 MR. PRIEST-GOODSETT: That's all I have.
8 THE COURT: All right. Mr. Benson, do you
9 have any questions for Ms. Hutchinson?
10 MR. BENSON: Yes, I do. Thank you, Your
11 Honor.
12 EXAMINATION
13 BY MR. BENSON:
14 Q Ms. Hutchinson, I may be a little
15 scattered, just because my outline doesn't reflect
16 what I expected your testimony to be, so just bear
17 with me, and I'll try to be clear with my questions.
18 To the extent you don't understand them, or my accent,
19 just let me know and I'll ask again.
20 You stated, I believe, that the State of
21 Georgia, through the EPD, regulates materials
22 recycling facilities, correct?
23 A That's correct.
24 Q And it supervises those facilities once
25 they're in operation, correct?

Page 44

1 A I wouldn't say supervised. They have the
2 overall responsibility to ensure that operational
3 plans are being met.
4 Q Okay. Take a look -- let's look at --
5 MR. BENSON: And Your Honor, I'm not sure
6 if I have share screen ability. Let's see -- I
7 don't.
8 THE COURT: Okay. So Alina, you're going
9 to have to make me host, or if you would just
10 make Mr. Benson a co-host.
11 MR. BENSON: Co-host sounds great.
12 THE COURT: Yes. Either one of the --
13 either one, let's see. Okay. Mr. Benson,
14 you're a co-host, so you can go ahead.
15 MR. BENSON: All right.
16 BY MR. BENSON:
17 Q I'm looking at the wrong -- let's see
18 here. Okay. Are you able to see the screen,
19 Ms. Hutchinson?
20 A I can.
21 Q Okay. I'm sorry that took a minute. I'm
22 not the most technologically adept lawyer. This, do
23 you recognize as a letter from the Georgia Department
24 of Natural Resources Environmental Protection
25 Division?

Page 45

1 A Yes, I see that letter.
2 Q Do you recognize that it's written by the
3 Director, Mr. Dunn?
4 A Yes.
5 Q Okay.
6 A Okay. Got it. Okay. I see it at the
7 bottom, yes.
8 Q Okay. Have you had an opportunity to
9 review this letter at all?
10 A I have not.
11 Q Okay. I'll represent to you, and I'll let
12 you read it, to the extent you want, fully, but in
13 Paragraph 3, do you see where it starts "With
14 respect" -- do you see that line?
15 A Uh-huh. "With respect to the facility"?
16 Q What does it say? Could you read that one
17 sentence?
18 A "With respect to the facility, the host
19 jurisdiction is the City of Stonecrest."
20 Q Okay. So the City of Stonecrest -- the
21 EPD, who you testified oversees these kinds of
22 facilities, made an independent determination,
23 confirmed through its Director, that Stonecrest was
24 the host jurisdiction, correct?
25 A The letter does state that.

Page 46

1 Q Okay. Back in February 2019, do you
2 remember sending an e-mail to the EPD wherein you
3 stated that the facility was not in compliance with
4 the Solid Waste Management Plan?
5 A I do recall sending that, uh-huh.
6 Q I'm trying to find it for you, just so you
7 don't have to speak without seeing it.
8 Here we go. Is this a copy of that
9 e-mail?
10 A That is a copy of that e-mail.
11 Q And that was February 27, 2019?
12 A Yes, uh-huh.
13 Q And you unequivocally stated you do not
14 believe, on behalf of the County, that the proposed
15 use by Metro Green was consistent with the County's
16 Solid Waste Management Plan?
17 A That it was not consistent.
18 Q Right. That was your position, correct,
19 in February of 2019?
20 A Uh-huh.
21 Q Okay. And then do you have an
22 understanding, then, that after that date the EPD
23 issued the permit, in spite of receiving your
24 objection?
25 A That is my understanding, correct. Now,

Page 47

1 in the past few months, that was my understanding that
2 EPD issued a permit, but I haven't -- but I did not
3 see the letter.
4 Q Okay. Let's look, again, at the Solid
5 Waste Management Plan. Can you look with me at -- by
6 the way let me ask you this -- I'm sorry to jump
7 around: You do not represent the City of Stonecrest
8 in any way, do you?
9 A No, I do not. I work for DeKalb County
10 Government.
11 Q Okay. In 1.1.1 -- and I'll just have to
12 read this, and if you've got a copy you can tell me if
13 I'm reading it wrong, but it says that DeKalb County
14 provides all standard municipal solid waste collection
15 and disposal requirements for its residents and
16 businesses.
17 Do you see that?
18 A Yes.
19 THE COURT: Mr. Benson, where are you
20 reading from?
21 MR. BENSON: 1.1.1.
22 THE COURT: Okay. You're not sharing it,
23 are you, because I can't see it if you're
24 sharing it?
25 MR. BENSON: I don't have --

Page 48

1 THE COURT: Oh, okay.
2 MR. BENSON: I didn't prepare a copy -- if
3 that --
4 THE COURT: That's fine.
5 BY MR. BENSON:
6 Q Ms. Hutchinson, do you have a copy of that
7 plan in front of you?
8 A I do.
9 Q If you would look at Page 3 where the
10 definitions are located --
11 A Yes, uh-huh.
12 Q -- where solid waste is defined?
13 A Right.
14 Q Do you see where about six lines into that
15 definition it says specifically and expressly that it
16 does not include recovered materials?
17 A Yes.
18 Q So solid waste, pursuant to the plan, does
19 not include recovered materials, correct?
20 A Right. That is what the State of Georgia
21 rules define as solid waste.
22 Q Okay. And recovered materials is defined
23 two terms up, correct?
24 A That is correct.
25 Q And it's those materials which have a

Page 49

1 known use, reuse, or recycling potential, correct?
2 A That's correct.
3 Q But those aren't solid waste, according to
4 this plan, correct?
5 A That would still be under the umbrella of
6 solid waste, because solid waste -- because you're
7 collecting that material, all that material is going
8 to be collected -- before it's actually returned or
9 restored into recovered material, all that material,
10 when it's collected is considered solid waste first.
11 Q So if someone is doing collection your
12 opinion is if they're collecting recovered materials
13 they're also collecting solid waste?
14 A When you -- solid waste is -- everything
15 is considered solid waste.
16 Q Can you explain to me why the plan's own
17 definition says it does not include recovered
18 materials?
19 A That would be --
20 Q I'm not trying to be funny. It's defining
21 a specific term nominated as "solid waste."
22 A Uh-huh. So under the rules -- so under
23 the generation of solid waste, all that material would
24 be considered solid waste first. It is up to the
25 resident, it is up to the commercial business to

Page 50

1 separate and/or sort to determine if it's going to be
2 recycled material.
3 But solid waste -- as solid waste is
4 generated, all materials are under that umbrella of
5 solid waste first. The end product is what you're
6 referring to when you go into recovered material.
7 That's the end product from the original generation of
8 solid waste.
9 Q Where does it say that? Where does the
10 plan say that?
11 A I mean, that is the -- that is the
12 operation for solid waste. I mean --
13 Q By the way, is this plan part of the Code
14 of Ordinances of DeKalb County?
15 A This -- state that question again for me.
16 Q This plan is simply that, a plan. It's
17 not an ordinance, correct?
18 A It is not an ordinance, but it is a plan
19 that is followed and can be enforced, and the plan has
20 been implemented. We ensure that all cities of the
21 county -- all cities that are in this joint Solid
22 Waste Management Plan have a long-term capacity for
23 solid waste for their residents and businesses of the
24 county.
25 Q So where is this plan codified in the

Page 51

1 County code?
2 MR. PRIEST-GOODSETT: Objection; asked and
3 answered.
4 MR. BENSON: I don't think it was
5 answered.
6 THE COURT: If you know.
7 THE WITNESS: Under the County code -- the
8 County code, you know, states that solid waste
9 has got to have a -- solid waste -- solid waste
10 is basically put in place, because solid waste
11 could be a harm to the environment that -- the
12 code actually states that. A county/a city must
13 have long-term solid waste management plans to
14 make sure that solid waste is being disposed of
15 in a proper manner. That is part of the code
16 for just basic human health, public safety.
17 BY MR. BENSON:
18 Q I'm not talking about a general
19 instruction to create a plan. I'm talking about this
20 particular plan with the definitions you and I just
21 talked about?
22 A I'm going to state this is a part of our
23 County code.
24 Q That's good. I appreciate that answer.
25 Now, you discussed with Mr. Denmark a

Page 52

1 meeting you had with representatives of my client,
2 correct?
3 A Yes, yes, I did meet with your clients. I
4 met with them and your consultants.
5 Q I'm going to share, if I can, what I
6 believe is an e-mail -- let's see if I can find it.
7 Okay. Finally.
8 Can you see what's on the screen?
9 A Yes.
10 Q Okay. Do you recognize this e-mail from
11 August 23, 2018?
12 A Yes, I do.
13 MR. BENSON: Do I need to increase the
14 size, Judge?
15 THE COURT: No, no, you do not.
16 BY MR. BENSON:
17 Q Okay. This e-mail contains specific
18 criteria you wanted Metro Green and its
19 representatives to address before you made a
20 determination as to whether it complied with the Solid
21 Waste Management Plan, correct?
22 A That is correct.
23 Q So these were -- these specific issues you
24 would look at in determining compliance?
25 A Not necessarily compliance. I was

Page 53

1 trying -- compliance, yes, but I was trying to
2 determine if the facility would require a Solid Waste
3 Handling Permit, which, again, we have the Solid Waste
4 Handling Permit for all solid waste services for
5 DeKalb County.
6 Q Okay.
7 A So these were the questions -- I posed
8 these questions to Metro Green so I could get a better
9 understanding of what their operations were.
10 Q Do you remember getting an answer?
11 A Yes. Their consultant -- I was going to
12 say Tribble & Hodges -- yeah, they provided the
13 response back to me.
14 Q Is this a copy of that response?
15 A It is.
16 Q And do you see where all ten of your
17 questions were answered -- or at least there were
18 responses given, correct?
19 A There were responses given, and one of
20 them in particular actually stated that they would
21 require a Solid Waste Handling Permit.
22 Q All right. So that's a good way of
23 leading to my next question. Of their responses,
24 which one, or more, led you to the determination that
25 the proposed use did not comply with the Solid Waste

Page 54

1 Management Plan?
2 A Basically, you know, I looked at it, you
3 know, from a professional standpoint, and looking at
4 the consistent -- how they were going to be consistent
5 with the Solid Waste Management Plan. Basically
6 beyond the hours of operation, I mean, and number of
7 employees, I was looking at their operations. And
8 they had recovered materials, which means that we have
9 our own recovered material facilities, we have a C&D
10 landfill, basically how they were going to store --
11 basically their entire operations. And then also
12 stating that -- my question was: Did it require a
13 Solid Waste Handling Permit? And their facility --
14 and they responded back and said a permit from Georgia
15 EPD for a materials recovered facility will be
16 required.
17 Q So that was the answer, Number -- Comment
18 Number 6 and its response, that was --
19 A Well, that was not the primary one, but
20 again, I wanted to make sure I had a clear
21 understanding of what their operations were, because
22 when you talk about a MERTH [phonetic] it could be
23 different things, so --
24 Q What was the primary one?
25 A All -- basically everything in here

Page 55

1 basically showed me that they were not going to be
2 consistent, but the fact that they needed a Solid
3 Waste Handling Permit was one of the triggering
4 factors -- it was one of the triggering factors.
5 Q Okay. All right. Well, I guess we'll go
6 through all of them. Tell me what in Response
7 Number 1 is inconsistent with the plan.
8 A I mean, the fact that, you know, again,
9 that the construction/demolition waste -- you know,
10 again, we actually handle construction and demolition
11 waste here at DeKalb County. So when you look at
12 anything like that -- I mean, anything considered
13 construction/demolition waste, we handle that.
14 And then again I was concerned about, you
15 know, just in general, you know, like, what material
16 will be stored indoors or outdoors, because, again, I
17 wanted to be sure that -- I wanted to have a clear
18 understanding of their basic operations.
19 And if you keep going, I asked them other
20 questions also: How long would the material be stored
21 on the property? Again, I'm just asking general
22 information about their operations, so I can get a
23 clear understanding of what their operations were.
24 And then I asked them, you know, would any
25 hazardous waste be stored, because, again, because we

Page 56

1 want to be sure -- again, that's just a question --
2 I'm just curious, and they responded back.
3 Q But there's nothing in that response,
4 either the previous Number 4 or Number 5, that led you
5 to believe there was inconsistency with the plan,
6 right?
7 A The fact that we -- that the services were
8 going to be duplicated. We handle recovery, we handle
9 construction/demolition material under the umbrella of
10 DeKalb County Government Sanitation.
11 Q Okay. Let me short circuit this, then.
12 So is there a reason other than DeKalb County handles
13 what Metro Green proposes to handle, therefore it's
14 inconsistent with the Solid Waste Management Plan?
15 MR. PRIEST-GOODSETT: I'm going to object
16 to this question. It misstates her testimony.
17 She's never said that it was based on her
18 opinion. She said that it's based on the
19 criteria in the SWMP.
20 MR. BENSON: I didn't ask her opinion.
21 THE COURT: Can you repeat the question,
22 please?
23 BY MR. BENSON:
24 Q Is there anything else -- is there
25 anything other than the conclusion that Metro Green

Page 57

1 duplicates services provided by the County that led
2 you to decide Metro Green's use was inconsistent with
3 the Solid Waste Management Plan?
4 MR. PRIEST-GOODSETT: Same objection.
5 THE COURT: I'm going to allow her to
6 answer. I don't know what the objection is. I
7 think he's asking is there any additional issues
8 that she has with their application, other than
9 the fact that DeKalb County provides the
10 service.
11 MR. PRIEST-GOODSETT: Right. And my
12 objection is that her testimony was that -- not
13 that it doesn't provide the service, but that it
14 didn't comply with the 1.1.1.
15 THE COURT: I thought 1.1.1 is that the
16 County exclusively provides the service.
17 MR. PRIEST-GOODSETT: That's correct. I
18 was -- you know, I took a little issue with the
19 way he characterized it, you know, but if my
20 objection isn't sustained, she can answer.
21 THE COURT: Yes, I'm going to overrule
22 that objection, and Ms. Hutchinson, if you would
23 please answer.
24 THE WITNESS: So, you know, again I'm
25 going back to the fact that they did not comply

Page 58

1 with -- you know, that they were not consistent
2 with the Solid Waste Management Plan, which is
3 the standard language whenever you give --
4 writing a letter, responding back to if a
5 facility were to come to DeKalb County to
6 request this type of operation, that would be
7 the standard letter, standard language, that I
8 would use was that they were not consistent.
9 They did not meet the established criteria.
10 And then again, you know, going back to
11 why the -- you know, why the County adopted the
12 Solid Waste Management Plan also. I mean, the
13 plan was adopted for many reasons.
14 BY MR. BENSON:
15 Q All right. You just used the word
16 "established." It didn't meet the established
17 criteria. What do you -- what specifically is the
18 established criteria on which you based your decision?
19 A Again, the decision was based on the fact
20 that the services were being provided under the
21 umbrella of DeKalb County.
22 Q Okay.
23 A And again, I keep going back to the fact
24 that the policies -- that this adoption of the plan
25 was set in place for several reasons -- to protect the

Page 59

1 citizens of DeKalb County.
2 Q You understand that the ordinance of the
3 City of Stonecrest authorized it to protect its
4 citizens' health?
5 MR. PRIEST-GOODSETT: Object to the form
6 of the question. She can't speak to Stonecrest.
7 MR. BENSON: I'm asking her if she knows.
8 THE COURT: I agree. I'm going to sustain
9 that objection.
10 MR. BENSON: Fair enough.
11 BY MR. BENSON:
12 Q Let's look at Exhibit E to the City's
13 complaint. Do you recognize this as your response to
14 Metro Green's submission of the exhibit we just looked
15 at?
16 A Yes, uh-huh.
17 Q The exhibit we just looked at, I believe
18 was dated August 24th, and this e-mail is dated
19 August 31.
20 Do you see that?
21 A Okay.
22 Q And let's take a look at your -- I'm
23 sorry?
24 A (No audible response.)
25 Q All right. Let's take a look at your

Page 60

1 conclusion, which is the last line before your
2 signature, and you say, "Based on information provided
3 regarding the proposed facility, from a memorandum
4 dated August 24, 2018, for a recycling facility, it
5 appears to be not consistent with the DeKalb County
6 joint Solid Waste Management Plan."
7 Did I read that correctly?
8 A You did.
9 Q Did you provide any reason in your e-mail
10 to Metro Green or its representatives about why you
11 thought their proposed use appeared to be not
12 consistent with the plan?
13 A Not in this particular e-mail, but when I
14 met with Metro Green face-to-face -- when Metro Green
15 met with me, brought in this draft letter requesting
16 me to transfer it over to DeKalb County letterhead, I
17 explained very clear to them in that meeting that they
18 were not going to be consistent with the Solid Waste
19 Management Plan. And I put -- I very clearly stated
20 the reason why -- why the Solid Waste Management Plan
21 was adopted, you know, to protect the citizens of the
22 county, and I explained -- I explained this very clear
23 to them, that they would not be consistent, but I
24 wanted to review their operation, so I asked them --
25 okay. I'm going to submit some questions to you to

Page 61

1 make sure I have a clear understanding, to make sure I
2 have all the facts, a clear understanding of what
3 their operations would be.
4 Q Bear with me just a moment. I'm going to
5 try not to be redundant with you. Let me ask you a
6 couple of questions. This will probably be like a
7 true and false.
8 A Okay.
9 Q I'm not trying to tell you how to answer.
10 I was being cute.
11 All right. Would you agree that the State
12 of Georgia's Solid Waste Management Act of 1990
13 requires local governments to have a plan for meeting
14 the statewide goal for a 25 percent reduction of solid
15 waste?
16 A Yes. I mean -- yeah, it's been a minute,
17 but the State of Georgia does have a comprehensive
18 Solid Waste Management Plan for reduction of waste,
19 yes. That was attributed back to they wanted to
20 prohibit tires from going into the landfill, and they
21 wanted to -- years ago, the State of Georgia was
22 running into an issue as far as capacity with
23 landfills, and running out of air space, and what the
24 cities and counties was going to do if there was no
25 landfills in the state of Georgia.

Page 62

1 So the reduction came into place, and they
2 were trying to prohibit tires and yard debris from
3 going into a landfill, because, again, we wanted to
4 make sure we had long-term capacity for garbage.
5 Q Speaking of capacity, can you look at
6 Page 40 of the Solid Waste Management Plan?
7 A Okay.
8 Q Do you see where the plan contemplates
9 that capacity at Seminole Road will be filled by
10 October 2009?
11 A That was -- 2009? I'm trying to think.
12 Let me just look at -- that was for the C&D site. So
13 look at the top where it says "MSW," it says
14 "Seminole," because I know the landfill has got 70
15 years of life. I mean, Seminole landfill is the
16 largest landfill in the state of Georgia as far as
17 capacity.
18 Q I'm sorry. My question -- yeah, I see
19 that. But my question -- I should have been more
20 particular what was in regard to C&D. You do
21 understand that Metro Green is not a landfill,
22 right -- isn't proposing a landfill?
23 A Right. I understand.
24 Q And you understand that Metro Green is --
25 if anything, pulling recovered materials from

Page 63

1 construction and demolition?
2 A Right. It's a processing facility.
3 Q For C&D, correct?
4 A It's a processing facility for C&D, which
5 we offer also. We have a C&D landfill, and we have
6 our own processing facilities in DeKalb County.
7 Q But that was my question. So, pursuant to
8 the plan, which is what we seem to be relying on, the
9 C&D portion of the Seminole Road Landfill is expected
10 to reach capacity in October 2009. That's what the
11 plan says?
12 A That's what the plan says, but I want to
13 state today, September the 3rd, that Seminole Landfill
14 is still open.
15 Q Has the plan been amended?
16 A The plan has not been amended to actually
17 state that it's still open, but the landfill is still
18 open. We submit a remaining capacity report to EPD
19 every year. That landfill is still open.
20 Q Let me ask you this: The plan, you'd
21 agree with me, expressly acknowledges the State
22 requirement to reduce the amount of C&D material
23 otherwise bound for a landfill, correct?
24 A Say that one more time.
25 Q The plan expressly acknowledges the State

Page 64

1 requirement to reduce the amount of C&D material
2 otherwise bound for a landfill?
3 A I think that is a part of the Solid Waste
4 Management Plan. Yeah, that is a part of the Solid
5 Waste Management Plan -- I think it is, yes.
6 Q Would you agree that Metro Green's
7 facility, as proposed, would reduce that C&D material
8 that would otherwise be bound to a landfill?
9 A I mean, the material that they actually --
10 if they were open, that material could go to a
11 landfill also. It's not material that -- right, the
12 material could go to a landfill also.
13 Q Right. And so by Metro Green's proposed
14 use, the material that would otherwise go to a
15 landfill would therefore be reduced, correct?
16 A It would be reduced, which again, I mean,
17 we have that same material that comes in every day to
18 the landfill. We have rock, asphalt -- all that
19 material comes across our scales every day here at
20 Seminole Road Landfill that does not go to our
21 landfill, it goes to a separate operations where we
22 actually crush it, and we actually pull the aggregate
23 back out for reuse.
24 Q Which is what Metro --
25 A Yes.

Page 65

1 Q Which is what Metro Green proposed to do,
2 correct?
3 A Yes.
4 Q And because the County -- the County's
5 position is that it has exclusive rights to do that
6 activity; Metro Green can't, therefore, do it also,
7 correct?
8 A Again, the Solid Waste Management --
9 right, the Solid Waste Management Plan says that those
10 efforts should not be duplicated. And again, I would
11 go back to the policy stated as to why the plan was
12 adopted. This plan was adopted, you know, again,
13 primarily, to protect the citizens of DeKalb County.
14 Q Do you agree that the plan identifies
15 material recovery facility on Page 2?
16 A As a definition.
17 Q Yes. Is the implication that such a
18 facility ought to exist in the county?
19 A No --
20 MR. PRIEST-GOODSETT: Objection to the
21 form of the question.
22 THE COURT: Sustained.
23 BY MR. BENSON:
24 Q The plan identifies recyclables on Page 4,
25 doesn't it?

Page 66

1 A Yes. Because when you're putting a plan
2 like this in place, definitions are very general. The
3 definitions is a general guideline for anyone that --
4 a layperson that doesn't understand what this plan is,
5 the definitions is provided to provide information.
6 That's all it is, it's just definitions.
7 Q Okay. And look again at 1.1.1. Does it
8 not conclude with "In addition, residents and
9 businesses are able to utilize open subscription
10 agreements for construction and demolition solid waste
11 collection and disposal services"?
12 A Right. Haulers -- there is haulers that
13 operate here within the County. But there is no --
14 the only processing facilities in DeKalb County is
15 under the umbrella of DeKalb County Sanitation. The
16 only landfill --
17 Q Where does it say "haulers" in what I --
18 A Well, I'm just saying, when you say "open
19 agreements," I mean, there is services that can be
20 provided, but as far as processing and disposal,
21 that's just under us.
22 Q Well, where does it say that only DeKalb
23 does processing and disposal, but other people can do
24 hauling?
25 A The open subscription is a -- you know,

Page 67

1 again, I'm going to refer back to the intent of the
2 plan is that the open subscription agreement -- I
3 mean, we have agreements within the County. There is
4 people that utilize us, and then -- but there is,
5 like, haulers. It doesn't necessarily state
6 "haulers," per se.
7 Q Yeah, I agree with you.
8 In 3.1.1 the plan states "Ideally, solid
9 waste management combines an integrated approach
10 reducing the overall waste stream through such methods
11 and source reduction, reuse, and recycling, prior to
12 disposal."
13 Do you see that?
14 A That is correct, because again, I mean,
15 under the DeKalb County Sanitation Government Plan, I
16 mean, our government, our sanitation services --
17 again, we provide an Integrated Solid Waste Management
18 Program, which includes garbage, you know, yard
19 debris, recycling, construction/demolition. We have a
20 very robust recycling program here at DeKalb County
21 under our umbrella for residents and all commercial
22 businesses.
23 Q Again, Metro Green would fall under 3.1.1,
24 but for the County's position that it's the exclusive
25 authority to recycle C&D?

Page 68

1 A Metro Green would not fall under --
2 because again, I mean, Metro Green would have a Solid
3 Waste Handling Permit, which is prohibited. And
4 you're the only facility -- I mean, anybody that
5 requires a Solid Waste Handling Permit would not be
6 consistent with the Solid Waste Management Plan; so I
7 disagree on that one.
8 Q Because the County's position is that only
9 it can have such a permit?
10 A Right.
11 Q Let me just, let me cut to it. There's
12 nothing in this plan -- and I'll keep going through it
13 if you want me to -- we can go through it
14 exhaustively -- but there's nothing in this plan that
15 would indicate Metro Green's proposed use violates the
16 plan, other than the County's position that it is the
17 exclusive entity to have the permit from the EPD for
18 these purposes?
19 A That is correct.
20 Q Okay.
21 A There is no --
22 THE COURT: Ms. Hutchinson, let me make
23 sure I understand, because I didn't see 1.1.1.
24 In that provision it indicates -- it does
25 state that DeKalb County is the only -- it has

Page 69

1 exclusive jurisdiction over anything dealing
2 with solid waste handling. Does it say, in
3 general, that in that provision, 1.1.1?
4 THE WITNESS: Yes, Judge Barrie, it does.
5 THE COURT: Okay. All right. Thank you
6 so much.
7 THE WITNESS: Judge Barrie, I mean, I know
8 that the letter states that Mr. Dunn states that
9 City of Stonecrest has host jurisdiction -- I
10 mean, DeKalb County is the host. I mean, we're
11 the host jurisdiction, so I respectfully
12 disagree with Mr. Dunn's statement in that
13 letter.
14 THE COURT: And why do you say you're the
15 host jurisdiction?
16 THE WITNESS: Because we are the host
17 county. So normally under -- normally under --
18 when you look at solid waste management, that
19 county is the host county, and the cities fall
20 under that jurisdiction.
21 And so, basically, if you were to look at
22 Cobb or anybody else, they are the host county,
23 and then whatever city is under that, they are
24 under that jurisdiction; so I respectfully
25 disagree with Mr. Dunn's statement in that

Page 70

1 letter.
2 THE COURT: So are you saying that --
3 okay. But if you -- I don't know if you had an
4 opportunity to read the letter. They indicated
5 that you're not the host jurisdiction. You
6 could potentially be a generating jurisdiction,
7 but because they indicated that they would not
8 be getting any waste from you, that's the reason
9 why it's not necessary.
10 I think Mr. Benson just put the letter
11 back up. If you'll look at that last paragraph,
12 it says, with respect to the facility, the host
13 jurisdiction is the City of Stonecrest. EPD
14 received a letter from Stonecrest stating that
15 the facility is consistent with its Solid Waste
16 Management Plan before it issued the permit.
17 Although the applicant initially intended
18 to receive solid waste from DeKalb County, as
19 well, which would have made DeKalb County a
20 jurisdiction generating solid waste destined for
21 the facility, Metro Green later amended its
22 application stating that it would only receive
23 waste from Stonecrest.
24 So apparently their position was they only
25 needed DeKalb County if DeKalb County was

Page 71

1 generating solid waste, but since they're
2 indicating they're not going to get any solid
3 waste from DeKalb County, that they don't need
4 DeKalb County's letter.
5 Okay. So I understand your position is
6 that DeKalb County is the host jurisdiction.
7 But I'm just letting you know that's there, and
8 that's the analysis that was put towards why a
9 letter from DeKalb is not needed if Metro Green
10 has indicated they're not going to receive any
11 waste from DeKalb County. So that's --
12 THE WITNESS: Okay.
13 THE COURT: All right. So thank you.
14 Any further witnesses from the City of
15 Stonecrest?
16 MR. DENMARK: Judge, we don't have any
17 other witnesses.
18 THE COURT: All right. And what about
19 you, Mr. Benson?
20 MR. BENSON: No, I don't believe we need
21 any witnesses.
22 THE COURT: All right. Thank you. All
23 right. Hold for a second I'm going to see if I
24 can get this provision up. I want to take a
25 look at it real quick, please hold.

Page 72

1 (Short break from 11:41 a.m. to 11:56 a.m.)
2 THE COURT: All right. Anything you want
3 me to -- any final words before the Court makes
4 a ruling? Mr. -- I'm sorry, Mr. Denmark -- I
5 don't know Mr. Denmark is on the third page. I
6 wish I could move you, but anyway.
7 MR. DENMARK: Just briefly, Your Honor, I
8 don't believe that the Solid Waste Management
9 Plan or Ms. Hutchinson's interpretation of it is
10 properly before the Court.
11 Ms. Hutchinson made her determination back
12 in 2018, and Metro Green took no action to
13 either appeal her determination or to do
14 anything about it. And now two years later, for
15 the very first time, they are wanting to
16 challenge it. It wasn't a part of their filings
17 or their proceedings as it relates to these
18 proceedings, so I believe that Ms. Hutchinson's
19 determination -- they cannot attack it at this
20 point.
21 She administers this plan for the County
22 pursuant to her testimony, and just like Metro
23 Green argued in their filings that the
24 determination of the EPD Director who
25 administers the State statute is entitled to

Page 73

1 great deference under the law, I would argue
2 that Ms. Hutchinson's interpretation of the
3 Solid Waste Management Plan, which she
4 administers is entitled to great deference.
5 And she has determined that Metro Green is
6 not in compliance with the Solid Waste
7 Management Plan. I believe that determination
8 is entitled to great deference from this Court.
9 She was subjected to a thorough and sifting
10 cross-examination about the Solid Waste
11 Management Plan. She answered every question.
12 Metro Green may not have gotten the answers that
13 they wanted, but she certainly provided answers
14 that explained how -- what the plan said, and
15 how it is to be interpreted.
16 And that plan, based on both its letter
17 and its interpretation, says that the County
18 provides these services and that Metro Green, in
19 attempting to do so, is out of compliance with
20 the Solid Waste Management Plan. So I believe
21 her determination in that regard is entitled to
22 deference, is correct, and is not subject to
23 attack by Metro Green at this belated juncture.
24 Also the determination by the EPD
25 Director, I don't know if that fully constitutes

Page 74

1 an agency determination, that was just a letter
2 from the EPD Director. He's not here to
3 testify. I don't know if the EPD Director
4 understands that under Stonecrest's charter,
5 Section 6.03, that the City of Stonecrest did
6 not provide solid waste services in 2018. So he
7 was operating under the misconception that
8 Stonecrest had the technical ability and legal
9 ability to determine whether or not this
10 facility would be consistent with the Solid
11 Waste Management Plan. He would be mistaken
12 about that.
13 The City of Stonecrest, as a matter of
14 fact, didn't have the technical will or law to
15 make that determination, and the City of
16 Stonecrest, as a matter of law, was legally
17 prohibited from making that determination by the
18 City's charter during the transition period, and
19 then by the intergovernmental agreement
20 following the transition agreement which
21 commenced in January of 2019.
22 So the EPD director was dead wrong, and
23 he's not here for us to tell him he's dead
24 wrong. So I think this letter constitutes
25 hearsay, he's not subject to cross-examination,

Page 75

1 I did not get an opportunity to ask him the
2 questions that Mr. Benson got to ask
3 Ms. Hutchinson, so I don't think the Court
4 should give any consideration to what the EPD
5 Director said, because, given that he's subject
6 to subpoena in this state, he ain't here.
7 Ms. Hutchinson sat right there and answered
8 everybody's questions, and I think her testimony
9 and her interpretation of the Solid Waste
10 Management Plan is entitled to great deference.
11 The City has always taken a position that
12 we want to revoke the -- excuse me, Land
13 Disturbance Permit because Metro Green does not
14 comply with the Solid Waste Management Plan.
15 Ms. Hutchinson has confirmed that through her
16 testimony here today, and we believe that that
17 failure to comply with the Solid Waste
18 Management Plan subjects their EPD permit to
19 revocation, as well as their Land Disturbance
20 Permit to revocation, and it authorizes the
21 Court to grant the injunctive relief that we're
22 seeking here today.
23 THE COURT: Thank you. Mr. Benson?
24 MR. BENSON: Thank you, Your Honor.
25 First of all, the City is the movant, it's

Page 76

1 their burden. Moreover, we're not attacking
2 Ms. Hutchinson or her decision, because we
3 didn't do anything to rely on any decision she
4 made. She didn't take an official position with
5 the EPD.
6 I don't even understand the logic behind
7 opposing counsel's argument. It's his witness.
8 I was just trying to determine whether she
9 thought there was compliance with the Solid
10 Waste Management Plan. I'll tell you why I
11 think it doesn't matter, but that's all I was
12 doing with her examination.
13 Moreover, it's not for opposing counsel to
14 speculate on what the Director of the EPD relied
15 on in making his decisions. Again, they're the
16 movant. Call the EPD as a witness, add them as
17 a party. I mean, if we're going to enjoin an
18 entity from relying on a permit issued by the
19 EPD, shouldn't they be a necessary party?
20 Again, they're the movant. They've got
21 the burden. We didn't -- we're not asking the
22 Court to disregard anything Ms. Hutchinson did,
23 because she didn't do anything. We didn't rely
24 on anything she did.
25 Now, that was the part I didn't mean to

Page 77

1 cover. The part I do want to cover with you is
2 what a Solid Waste Management Plan is under the
3 state laws of Georgia. The Supreme Court has
4 defined what it is, and it is a policy tool.
5 That's it. It's not law. And I'm citing the
6 Lamar County versus E.T. Carlisle Company case,
7 277 Georgia 690.
8 THE COURT: 690?
9 MR. BENSON: Yes, ma'am. 277 Georgia 690.
10 The Supreme Court found, "The Lamar County
11 Solid Waste Management Plan merely serves as a
12 guide for the future development of the
13 community but does not have the force of law to
14 regulate the use of land."
15 The Court further held that, "Given that
16 the Solid Waste Management Plan was just a plan,
17 without the force of law, it cannot bind the
18 county" -- or in this case the City -- "in the
19 performance of legislative duties which are
20 guided, as another case noted, by constitutional
21 considerations."
22 The Solid Waste Management Plan is just
23 that -- it's a plan. It's a plan that
24 jurisdictions who have adopted it use as a
25 guide. Here the City of Stonecrest looked at

Page 78

1 the plan and determined -- and by the way it's
2 part of the plan -- and determined that the
3 Metro Green facility, in its jurisdiction,
4 complied with that plan. That should be as far
5 as this Court looks at the issue as it relates
6 to the Solid Waste Management Plan.
7 Whatever Ms. Hutchinson thinks, and with
8 all due respect to her -- and I do have a ton of
9 respect for Ms. Hutchinson in her job with the
10 County -- with all due respect to her, her
11 opinion simply doesn't matter in Stonecrest.
12 The EPD, by the way, agrees with me. And
13 I'm not -- I don't even have to look behind the
14 letter to make a determination about what EPD
15 Director Dunn considered/relied on, it's there
16 on it's face. Stonecrest is the jurisdiction.
17 THE COURT: Okay.
18 MR. BENSON: Now --
19 THE COURT: Oh, I'm sorry. You paused
20 long, so I thought you were done, sorry. Go
21 ahead.
22 MR. BENSON: I do that. I try to create
23 drama.
24 I will say that there has also been no
25 evidence of an actual harm here. It's still

Page 79

1 sheer speculation. Metro Green hasn't done
2 anything. There's no harm. There's been --
3 nobody cared to testify on behalf of Stonecrest
4 why its citizens are being harmed, or will with
5 reasonable certainty be harmed. That's because
6 that testimony doesn't exist -- that's my
7 speculation -- but it certainly is not before
8 this Court.
9 Georgia law provides -- and this is
10 another Supreme Court case, Collins versus
11 Lanier, 201 Georgia 527, quote, "A mere
12 apprehension of injury, based on the assumption
13 that a lawful business not in operation will be
14 operated in an improper manner, is not
15 sufficient to authorize the granting of an
16 injunction." [as read]
17 In that same case, the Supreme Court said,
18 "Speculation that a person who plans to
19 establish a business, which the law recognized
20 as legal, will operate it in an improper and
21 illegal manner, so as to constitute a nuisance
22 is insufficient to authorize the granting of an
23 injunction." There cannot be that assumption
24 without evidence.
25 And finally, the Supreme Court found in

Page 80

1 Elder versus the City of Winder, which is 201
2 Georgia 511, that if it affirmatively appears
3 from the petition that none of the alleged
4 injuries have actually occurred, then an
5 injunction can't issue. That's the state law.
6 The state law identifies what a Solid
7 Waste Management Plan is. It's a plan. It's
8 policy. The EPD determines who gets to
9 interpret that plan. And the Georgia Supreme
10 Court says injunction won't issue if there's no
11 harm, and certainly if the user has a legal
12 permit to do what he did, you cannot assume that
13 user is going to perform that duty illegally.
14 So we believe there's a not clear and urgent
15 case to do anything, because there's just an
16 apprehension of an unspecified injury.
17 So again, I'll go back to what I asked
18 this Court last week at our hearing: What else
19 was Metro Green supposed to do to address the
20 City's now-revealed concern versus what else
21 could Stonecrest do? And I gave the Court the
22 list of things Stonecrest could have done:
23 Rezone the property, not certify the use under
24 the zoning ordinance, not certify compliance
25 with the Solid Waste Management Plan, revoke

Page 81

1 their certifications after it issued them but
2 before the EPD permit was issued, appeal the
3 position of the EPD, refuse to issue and take
4 payment for, by the way, a Land Disturbance
5 Permit, appeal the issue of its own Land
6 Disturbance Permit -- it did none of these
7 things. Now it wants this Court to intervene
8 when there's no harm, and we think that's
9 improper.

10 Thank you, Judge. Now I'm done.

11 THE COURT: All right. Thank you.

12 I'm sorry, Mr. Goodsett, can I ask you one
13 more question with regard to the Solid Waste
14 Management Plan, and this is something that Mr.
15 Benson touched on, but it was one of the things
16 after I had taken my break to kind of dissect
17 the information -- so the Waste Management
18 Plan -- in the Waste Management Plan it mentions
19 the DeKalb County Waste Management Ordinance,
20 which is Chapter 27, but the plan is separate
21 from that ordinance, so that -- are they
22 duplicates of each other, so one is just
23 considered the plan? Or are they actually
24 separate, such that what's in this plan is not
25 found in that ordinance?

Page 82

1 MR. PRIEST-GOODSETT: So they are, in
2 fact, separate, thanks to the Department of
3 Community Affairs it is a state law. So it's
4 not as if the Solid Waste Management Plan is
5 incorporated into the County ordinances.

6 THE COURT: Okay. So --

7 MR. PRIEST-GOODSETT: But we're required
8 to hold the plan, pursuant to state law and the
9 Department of Community Affairs.

10 THE COURT: Okay. Pursuant to state law
11 you're required to have the plan?

12 MR. PRIEST-GOODSETT: That's right.

13 And we, every year -- as Ms. Hutchinson
14 testified, we provide the EPD with an update on,
15 you know -- in relation to our own -- you know,
16 our own compliance with the plan, we provide the
17 EPD with information regarding that, so the SWMP
18 is operational.

19 THE COURT: Okay. So let me tell you how
20 I look at this. I think I'm ready to rule on
21 it. So with regard to the case, I look at it in
22 two different segments. I think I talked about
23 this last time, where you have the environmental
24 permit dealing with -- specifically dealing with
25 the Solid Waste Management Plan, and then you

Page 83

1 have the Land Disturbance Permit. Even though
2 they kind of interact with each other a tad bit,
3 I'm going to look at it just from that
4 perspective.

5 So I understand that initially the --
6 Metro Green basically purchased this land, got
7 their permits and things of that nature from the
8 City. It appeared that the City was in line
9 with trying to assist Metro Green to develop
10 this recycling center. However, there is the
11 bill, after the City became a City, which
12 specifically appears to the Court to state
13 that -- that the County -- DeKalb County --
14 should basically stay in place.

15 So the DeKalb County should stay in place,
16 the provisions should stay in place, their
17 services should stay in place, and then actually
18 when I read the bill, which is Section 6.02,
19 there are two sections where it specifically
20 says during the transition period the governing
21 authority of the City of Stonecrest may
22 generally exercise any power granted by this
23 charter or general law, except to the extent
24 that the power is specifically and intricately
25 related to the provisions of governmental

Page 84

1 services, functions, or responsibilities not yet
2 provided or carried out by the City. Those
3 governmental services would include the
4 collection, disposal, recycling, because those
5 are the things that the County was doing prior
6 to the City.

7 And then it goes on to say in Part B it
8 says that during the transition period all
9 ordinances of DeKalb County shall remain
10 applicable within the territorial limits of the
11 City, unless amended. So any ordinance of
12 DeKalb County still is applicable during that
13 time frame.

14 And then "E" specifically says that during
15 the transition period the governing authority of
16 the City of Stonecrest may at any time, without
17 the necessity of any agreement, commence and
18 exercise the planning and zoning powers provided
19 that the City gives a notice to -- provided the
20 City gives notice to the County.

21 So it seemed to me to be generally --
22 generally clear, and I obviously understand that
23 there's some arguments to be made that the
24 County -- that Stonecrest was not working as a
25 City during that transition -- that transition

Page 85

1 period. However, the Court still notes that the
 2 City took numerous actions in furtherance of
 3 Metro Green's development, both before and after
 4 the issuance of the permit.
 5 So the concern that the Court has when I'm
 6 looking at this injunction, I have to take all
 7 of that into consideration. I recognize what
 8 this bill specifically says, but I also
 9 recognize some of the activities that the City
 10 was involved in prior to issuing the letter to
 11 the EPD.
 12 But with regard to the injunction, there
 13 are, as you all are aware, four elements that
 14 the Court has to consider, and one is the
 15 substantial threat that the moving party will
 16 suffer irreparable injury. So that means I
 17 have to believe that the City will suffer
 18 irreparable injury if the injunction is not
 19 granted -- the City, including, of course, the
 20 residents of DeKalb County -- I mean, excuse me,
 21 of the City of Stonecrest. Two, that the injury
 22 to the moving party outweighs the threatened
 23 harm that the injunction may do to the party.
 24 And three, that there's a substantial likelihood
 25 that the moving party will prevail on the merits

Page 86

1 of their claim.
 2 So I started there with Number 3, the
 3 substantial likelihood that the moving party
 4 will prevail on its merits, and then, of course,
 5 there's four, granting the interlocutory
 6 injunction will not disserve the public
 7 interest.
 8 So with regard to Number 1 being what is
 9 the likelihood of the City of Stonecrest's
 10 success. So I'm looking at the EPD permit, and
 11 as I indicated to you previously, I'm quite
 12 aware of all the backgrounds related to that
 13 permit -- Metro Green argues a point which --
 14 which it could be a very final point, and that
 15 is that the City failed to exhaust the
 16 administrative remedies by failing to timely
 17 appeal the EPD permit, and so their position is
 18 it forecloses the City's chance of success in
 19 this action, because the EPD will -- gives --
 20 makes the determination, and then they give all
 21 interested parties an opportunity to be heard,
 22 and then the appeals process takes place, and
 23 then you have 30 days to appeal. And if you
 24 don't appeal, then that means you basically
 25 didn't take advantage of the administrative

Page 87

1 remedies, and basically you're done. And
 2 essentially that's what Metro Green is arguing,
 3 which was a very strong argument to be made.
 4 In fact, there is a long -- this is a
 5 longstanding concept of law that you have to
 6 exhaust your administrative remedies. However,
 7 there is an exception to that which is argued by
 8 the City, which is that if you're talking about
 9 a jurisdictional issue, then perhaps you do not
 10 need to exhaust your administrative remedies.
 11 That is, did the EPD have jurisdiction to issue
 12 the permit?
 13 If that becomes the question -- did the
 14 EPD have jurisdiction to issue the permit --
 15 then that means that the Court could hear the
 16 issue, because we're not talking about you
 17 arguing, oh, well, they didn't -- you're not
 18 arguing something -- some type of administrative
 19 matter, you're actually arguing the jurisdiction
 20 to issue the permit in the first place.
 21 The City basically is saying that the EPD
 22 did not have jurisdiction to issue the letter in
 23 the first place, because Stonecrest had no
 24 authority at the time the letter was written.
 25 And as a result of that, they believe they have

Page 88

1 a likelihood of success, because Stonecrest did
 2 not have authority.
 3 Now, in Stonecrest's letter that was
 4 written -- Stonecrest's letter is written by
 5 Mr. Harris, and he specifically starts out by
 6 saying the City of Stonecrest was formed in 2017
 7 and has not yet adopted a comprehensive Solid
 8 Waste Management Plan. So he specifically says
 9 at the beginning, we don't have a plan, but we
 10 anticipate -- this year the City intends to
 11 execute an intergovernmental agreement with the
 12 County to continue receiving solid waste
 13 services from the County, and therefore continue
 14 to be a part of the Waste Management Plan.
 15 So at the time this letter was written,
 16 Mr. Harris even acknowledges there is no plan in
 17 place. We anticipate there being one, but we
 18 don't have one right now. But to the extent
 19 that we're going to get this plan, we believe
 20 that they will follow or comply with the local
 21 zoning rules, as well as the DeKalb County Solid
 22 Waste Management Plan.
 23 So the letter is not definitive indicating
 24 that it meets the plan, that we have a Solid
 25 Waste Management Plan. It basically says we

Page 89

1 don't have one, we anticipate doing this, and I
2 think they meet the plan.
3 So this letter, of course, makes this
4 whole issue, of course. It is the -- it is the
5 crux of the issue, which is whether or not that
6 letter has any validity, and then as a result of
7 that, does that affect the EPD's jurisdiction in
8 this case to have issued the letter.
9 So if the Court believes that the analysis
10 is that they are -- Stonecrest could not be the
11 host jurisdiction, because the bill specifically
12 indicates that they cannot have these
13 authorities -- they did not have the authority,
14 and the letter specifically indicates we do not
15 have a plan, we anticipate having a plan, but
16 here's what I think would -- I shouldn't say he
17 said "here's what I think" -- he says, but based
18 upon -- but based upon what they anticipate
19 happening, Metro Green is within the City of
20 Stonecrest and complies with the local zoning
21 and ordinances, as well as DeKalb County Waste
22 Management Plan.
23 So the issue becomes, from this Court's
24 perspective, looking at whether the right
25 question is jurisdiction. I'm not saying it is,

Page 90

1 I'm just saying that is one of the -- the issue
2 that I first have to deal with.
3 Because, if we're not talking about a
4 jurisdictional issue, then I believe that the
5 City cannot proceed with these matters, because
6 it appears that the time frame for the City to
7 have acted under the EPD would have passed when
8 they did not appeal -- at least from the City.
9 I know the County has a different analysis, i.e.
10 they did not get notice of a hearing, and so
11 there might be something left there, but as we
12 know, they're not prosecuting. They've been
13 brought in as a -- basically as a defendant at
14 this juncture.
15 So, if this is a jurisdictional issue,
16 then I think that the Court can hear it, and the
17 Court then has to make a determination as to
18 whether or not that letter has validity. If the
19 letter does not have validity, then whether or
20 not the letter having validity surrounds or is a
21 part of the jurisdiction of the EPD.
22 Now, if the EPD's position is we would
23 have jurisdiction even without this letter, then
24 of course, we wouldn't be talking about
25 jurisdictional, we would be talking about

Page 91

1 administrative. And then your administrative
2 rights would have been foreclosed, because you
3 didn't -- you didn't take up the matter within
4 the 30 days. But if this is a jurisdictional
5 issue, the law is very clear that the Court can
6 continue to hear a jurisdictional issue, which
7 means that the declaratory action -- the Court
8 may be able to answer the declaratory action,
9 because this is a jurisdictional issue and not
10 one dealing purely administratively.
11 The problem becomes when I further dig
12 into the issue of likelihood of success, what --
13 as with regard to the injunction, what is it
14 that the City wants me to do? The City wants me
15 to prevent Metro Green from using this license
16 that was given to them by the EPD. And the EPD,
17 in their letter, has clearly stated we think we
18 properly gave the permit. It seems to me,
19 therefore, that the EPD has to be a part of this
20 hearing. They have to be. Because you're
21 asking me to infringe upon an interest that they
22 have, or that they believe they have, the
23 interest, that is, to give the permit.
24 So the EPD has to be involved, because I'm
25 going to be taking something from them, which is

Page 92

1 their -- which they could argue is their
2 jurisdiction or their authority to give the
3 permit; so they have to be a part of these
4 proceedings. I believe they are indispensable.
5 And so I cannot answer the question of your
6 likelihood of success without the right parties
7 in the suit.
8 And so the EPD, I think, has to be a part
9 of the suit before the Court could answer your
10 likelihood of success question. And then we go
11 to the harm question. I can't get to the harm
12 question, as well, as a result of the EPD not
13 being here, because I don't know what criteria
14 they considered and whether or not they believe
15 that Metro Green met all of the requirements.
16 And what potential harms could the
17 residents of DeKalb County -- well, they're in
18 DeKalb County -- but the residents of the City
19 of Stonecrest would likely face as a result of
20 this facility being there? So I don't believe
21 that the City has met its burden of showing that
22 there's harm to the residents.
23 Now, I clearly understand that the
24 residents of Stonecrest are bothered by the fact
25 that the facility is there. I do not read the

Page 93

1 letters that come in from the citizens, because,
2 by law, I cannot review the letters that come in
3 from the citizens of Stonecrest, but I know I've
4 been getting them. I know that the office has
5 received them, and I know that there is some
6 concern regarding the citizens in that area.
7 However, the rule of law specifically
8 indicates that there has to be a likelihood of
9 success, which means that you have to have the
10 right parties involved in the lawsuit, and I do
11 not believe that the right parties are here.
12 The EPD has to be a part of this lawsuit, for
13 one, and also there has to be a likelihood --
14 there has to be some harm, and right now the
15 facility is not even -- it's not even in
16 operations, and so if they're not in operations,
17 where is the harm coming from them just building
18 the facility?
19 And so that concerns me, too, is that
20 there might be this idea that the citizens do
21 not want them there. There might be the idea
22 that the citizens are bothered by the pollution
23 as a result of the building. They might be
24 bothered by the noise. They may be bothered by
25 the smells. I don't know exactly what they --

Page 94

1 their concerns could be. I understand that
2 they're likely there, but that's not the type of
3 harm, specifically, that is necessary for the
4 Court to hear, looking at the rules of law that
5 I have to make a decision on.
6 So consequently, I don't believe that
7 that's there. So on the injunction, as it
8 relates to the EPD, that motion is denied,
9 because I believe that there is an indispensable
10 party that needs to be a part of that case
11 before the Court can consider a TRO in that
12 matter.
13 Along those lines, the same analysis with
14 regard to the declaratory judgment. The EPD, of
15 course, needs to be a part of that for the Court
16 to make a decision on the declaratory judgment,
17 as well. As I specifically said, it's important
18 for the Court to know: What is the question
19 that I'm dealing with? If I'm dealing with one
20 administratively, I think the law has a pretty
21 clear analysis on that, is that you have to
22 exhaust your administrative remedies, unless you
23 find yourself in an exception. I haven't heard
24 but one exception thus far, and that exception
25 is that the EPD did not have jurisdiction to

Page 95

1 issue the permit in the first place, and that is
2 because they did not get the letter from the
3 proper jurisdiction. The proper jurisdiction
4 being DeKalb County, by way of the legislation,
5 by way of the bill that is in Section 6.02.
6 That argument appears to be a strong
7 argument; however, without the EPD in place for
8 them to say, hey, the way I look at host is
9 this. Here are the provisions that we looked at
10 to determine what would be a host jurisdiction.
11 Here's what we see as being a generating
12 jurisdiction, and this is the reason why we came
13 to this analysis.
14 We know they strongly feel one way about
15 it, because the letter says, we did our own
16 analysis, and based upon our analysis, we
17 believe that the City of Stonecrest had the
18 ability to give us the letter. Now, I clearly
19 read the bill. I know what the bill says. I
20 know what the legislation says is that DeKalb
21 County has those authorities, but I don't know
22 what the EPD is basing their opinions on, hence
23 the reason why the EPD needs to be here before I
24 enjoin them from doing something they have a
25 clear interest in, at least at this juncture.

Page 96

1 All right? So I think the EPD has to be a part
2 in order for the Court to consider that matter.
3 With regard to the Land Disturbance
4 Permit -- so with regard to this, the Land
5 Disturbance Permit basically is subject to all
6 ordinances. And I know there's the argument of
7 what is "all ordinances." And Metro Green says
8 that all ordinances cannot be DeKalb County
9 ordinance, and it can't be these particular
10 things, because it has to be just what the City
11 has adopted. I disagree with that.
12 I think that the City's analysis of all
13 ordinances, all rules, State rules, could
14 encompass things that they have adopted, and
15 they have clearly adopted the rules and
16 procedures set out by DeKalb County. So because
17 the City has adopted those rules, and those --
18 and the IGA, and the ordinances, or looking --
19 an interpretation of the IGA is based on the
20 ordinances of DeKalb County, I think that that
21 is considered a City ordinance, and I don't
22 think you should read it so tightly, that is,
23 that if it's not a specific City ordinance then
24 you cannot look at it. I don't think that makes
25 much sense.

Page 97

1 So I do believe that the City can make the
2 Land Disturbance Permit subject to the
3 ordinances, which connects to DeKalb County
4 ordinances, which also connects to DeKalb
5 County's Solid Waste Management Program.
6 The City's position is, is that they are
7 in violation of it. They're in violation of it
8 because the DeKalb Waste Management Program
9 specifically says only DeKalb can have this
10 permit. So Metro Green cannot have the permit,
11 and having the permit would be inconsistent with
12 the Solid Waste Management Program -- it would
13 appear inconsistent with the Solid Waste
14 Management Program.
15 And so let me tell you -- I've got to tell
16 you, now, with regard to Metro Green, what
17 concerns me with regard to this TRO. I do think
18 that if I'm looking at the likelihood of success
19 for the TRO, the likelihood of success appears
20 high, because there is this Waste Management
21 Program, and it specifically says in here that
22 only DeKalb County can have this particular
23 permit. And Ms. Hutchinson has said -- on
24 several occasions she said no. She said no when
25 there was a -- when she was approached. She

Page 98

1 said no via e-mail. She said no when she sent
2 the letters to the State saying it's
3 inconsistent, because only DeKalb County can
4 have this permit, and that is because DeKalb
5 County, in the south, has had some issues with
6 landfills in the past, and consequently, to
7 protect our citizens, we're trying to
8 synchronize, or trying to limit the amount of
9 this type of landfills/recycling -- I know this
10 is -- I'm kind of balling it all into one, but
11 this whole type of process in DeKalb County.
12 That's the rationale she gives.
13 I don't know how -- I can't tell you, and
14 I'm not trying to rule on this case right now,
15 because Mr. Benson has some significant
16 arguments with regard to this -- the plan and
17 how it's actually connected to the ordinance
18 and/or the State rules. I don't know right now.
19 I'm not trying to make that argument or to
20 understand specifically that argument. But from
21 what I've gotten thus far, I think that there is
22 a likelihood of success there.
23 My concern, though, is the measure of
24 harm. The measure of harm concerns me, again,
25 because Ms. Hutchinson's position is it is only

Page 99

1 because it's not the County that I have some
2 concerns about -- the reason why they didn't get
3 the permit is because it's not the County. It's
4 not because they didn't do X, Y, and Z, it's not
5 because they're missing something that could
6 cause some type of environmental harm,
7 specifically. It's just generally they cause
8 harm, because our citizens do not like them.
9 Generally they cause harm because of the air
10 pollution and things of that nature that relates
11 to landfills and buildings and facilities of
12 such, but that's a generalized idea.
13 And for the TRO it has to be specific.
14 There needs to be something that says that
15 because you're violating this, it's causing this
16 particular harm. And I think the generic harm
17 of property values, when the place is zoned
18 properly -- it is zoned M. It is zoned
19 properly. When people bought their homes in and
20 around that area, they bought it knowing they're
21 buying their home in an area that potentially
22 will bring in businesses zoned for that area.
23 So I think that the harm there, although I
24 definitely understand and can appreciate it, I
25 don't think it's the legal harm that's necessary

Page 100

1 here. And so that concerns me with regard to
2 the TRO, because I cannot -- I cannot articulate
3 the harm, okay. How do I know? Because I type
4 it out. I'll type out the pro -- I'll type it
5 out one way and see how it reads one way. I'll
6 type it out the other way to see how it reads,
7 to see whether or not the harm is met or not
8 met. And there's no way of typing that out,
9 based on what I've heard, other than I
10 understand the reason for the landfills; you
11 don't want them. I understand that they're
12 bothersome -- I get that part. I just don't
13 know if the County has met the position that it
14 is detrimental, and namely because there is no
15 operation right now. There is no operation
16 right now.
17 And so the Land Disturbance Permit,
18 although they're building on it -- I get that
19 part -- but the thing that you would be stopping
20 them from, per the announcement -- or per the
21 stop order is that you are interfering with the
22 Solid Waste Management Plan. But the Solid
23 Waste Management Plan is only because you're not
24 the County. There's not a specific thing that
25 could harm a resident or a citizen; and so I

Page 101

1 don't believe that the harm is met here.
2 Now, let me tell you my concern. My
3 concern is that I've already told -- based on
4 what I've seen -- I'm not making a ruling, but
5 this is -- the TROs are really funny, because I
6 almost have to make a mini ruling, but not
7 necessarily the ruling in the case, because I
8 have to tell you the likelihood of success, and
9 I believe, like I indicated, the likelihood of
10 success is high, because it appears that
11 Stonecrest could not have issued the letter.
12 What worries me about that is, I'm denying
13 this TRO, and -- at this juncture. And so that
14 means that the Court is not going to stop you
15 from building. But you build under the concept
16 that the City has made a strong argument. So if
17 you continue to build, you're building
18 understanding that the City's argument is
19 strong.
20 I think they have the wrong parties at
21 this juncture. I think that the harm that
22 they're trying to articulate for a TRO cannot be
23 met, but that doesn't mean that they do not have
24 a likelihood of success, and so that concerns
25 me. Because I hate for there to be this

Page 102

1 continued building, and then there's this
2 likelihood of success, and then Metro Green is
3 not in the best position.
4 So I'll leave that up to -- obviously, you
5 do what you think is best, but I'm letting you
6 know what I see, based on what I've heard thus
7 far. And I think Mr. Benson has made some great
8 argument, but every time he makes the argument I
9 roll back around to this bill. And this bill is
10 a legislative bill, and it specifically says
11 Stonecrest has no authority during those two
12 years.
13 And so now I have to balance -- I
14 anticipate balancing what the EPD analysis is on
15 host jurisdiction with what this legal
16 definition from this section is on host
17 jurisdiction and whether or not the EPD had the
18 jurisdiction to issue that letter; so that's
19 kind of where I am on it.
20 So there is a declaratory judgment
21 request. That declaratory judgment, by law, the
22 Court can hear it in 21 days, which means that I
23 can set this for a final hearing in 21 days.
24 And I think it's probably best, because if Metro
25 Green is going to be building, they need to know

Page 103

1 whether or not what they're -- they need to know
2 what they're doing. And I think that the City
3 of Stonecrest needs to know, as well, but I want
4 to -- I want Mr. Benson and I want Mr. Denmark
5 to conference and let me know what your thoughts
6 are about the Court setting it immediately so
7 that we can come to some resolution.
8 And of course, I don't want to move too
9 fast, but I just -- I do have some concerns
10 about what's going to be happening on this
11 property during this time frame. Even though
12 the court denied this TRO, I do have some
13 concerns about just, kind of, what's going to
14 happen on this property considering some of the
15 arguments that have been made.
16 And the last issue -- and I -- there's
17 another thing, too. The -- and I understand
18 that the IGA -- and I think Mr. Benson has made
19 some arguments that the IGA is not applicable
20 based on how he reads the IGA. And that, of
21 course, is -- would be a large issue in the
22 case, as well -- the analysis of the IGA. I got
23 that part. I understand that, as well. So
24 we're talking about whether or not the IGA is
25 applicable, and we're talking about the

Page 104

1 jurisdiction of the EPD. That's a part of the
2 declaratory judgment that I'll have to make.
3 And I want you all to go ahead and talk,
4 figure out what you want me to do. If you want
5 me to set it as quickly as the law will allow,
6 or I know there are obviously some other
7 administrative things you have to consider,
8 which is pulling in the EPD, of course, and some
9 other matters as a result of what's going on
10 with your individual clients. So I'll let you
11 all think that through, but I just kind of
12 wanted to put that out there.
13 Any questions or concerns? I'm going to,
14 obviously, put this decision in writing. I have
15 thought through it significantly based on the
16 documents that you all presented to me last
17 time, based on what I heard this time, and so I
18 will have this ready for you hopefully by the
19 end of the day. And so you'll have it by the
20 end of the day, and then you can think through
21 how you want the Court to proceed.
22 Any questions or concerns that you have
23 based on, I guess, the summary that I've just
24 given you? Of course, you'll have it in
25 writing. I'll get my -- it won't ramble like

Page 105

1 this as much once you get it in writing, but
2 that's essentially what I'm looking at.
3 Anything from the City of Stonecrest
4 regarding the Court's ruling?
5 MR. DENMARK: Well, I guess Your Honor is
6 not asking me to state whether I agree or
7 disagree.
8 THE COURT: Oh, no, I'm not asking you
9 that. Just any questions you have about what I
10 ruled. So, essentially, I just want you all to
11 talk with each other to determine whether or not
12 you want the Court to move in that light. I can
13 move in 21 days, based upon the declaratory
14 judgment. I have already made it very clear I
15 ruled against the TRO, because I don't think you
16 have the right parties in place. And secondly,
17 I'm concerned about the harm.
18 I get the general harm, but I really do
19 think that the TRO specifically -- it being an
20 extraordinary remedy for the Court to stop
21 someone from doing something they have an
22 appearance of a right to do. So in order for me
23 to do that, you have to meet those rules
24 specifically, and I don't believe you met the
25 harm rule. And so that's the reason I'm moving

Page 106

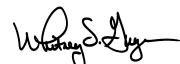
1 that direction. So I do want you just to talk,
2 and determine whether or not you want the Court
3 to handle it as quickly as the law will allow.
4 MR. DENMARK: I thoroughly understood Your
5 Honor's ruling from the bench, and I'll talk to
6 Mr. Benson.
7 THE COURT: All right. Mr. Benson, do you
8 have any questions regarding the ruling I made
9 from the bench.
10 MR. BENSON: No, Your Honor. Would you
11 like me to tell you if I object or agree?
12 THE COURT: No, not to the ruling.
13 MR. BENSON: All right. No, I understand
14 your instructions, and I'll talk to Mr. Denmark.
15 THE COURT: All right, then. Y'all take
16 care.
17 MR. PRIEST-GOODSETT: I'd like the County
18 to be included in that discussion, as well,
19 please.
20 THE COURT: I'm sorry, Mr. Goodsett. Yes,
21 you will definitely be included in that
22 discussion. Okay?
23 MR. PRIEST-GOODSETT: Thank you.
24 THE COURT: All right. Y'all take care.
25

Page 107

1 (Whereupon the deposition was concluded at 12:39 p.m.)
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 108

D I S C L O S U R E

1
2
3 I, WHITNEY S. GUYNES, CCR, (WSG Reporting,
4 LLC) do hereby disclose pursuant to Article 10.B of the
5 Rules and Regulations of the Board of Court Reporting of
6 the Judicial Council of Georgia, that I was contacted by
7 the party taking the deposition to provide court
8 reporting services for this deposition, and there is no
9 contract that is prohibited by O.C.G.A. 15-14-37(a) and
10 (b) or Article 7(c) of the Rules and Regulations of the
11 Board for the taking of this deposition.
12 There is no contract to provide reporting
13 services between WSG Reporting, LLC or any person with
14 whom I have a principal and agency relationship nor any
15 attorney at law in this action, party to this action, or
16 party having a financial interest in this action.
17 Any and all financial arrangements beyond my
18 usual and customary rates have been disclosed and
19 offered to all parties.
20
21 
22
23 Whitney S. Guynes, CCR B-1897
24 October 20, 2020
25

1 C E R T I F I C A T E

2 G E O R G I A :

3 D E K A L B C O U N T Y

4 I hereby certify that the total transcript,
5 pages 5 through 106, represent a true, complete, and
6 correct transcript of the proceedings taken down by me
7 in the case aforesaid (and exhibits admitted, if
8 applicable); that the foregoing transcript is a true and
9 correct record of the evidence given to the best of my
10 ability.

11 The above certification is expressly withdrawn
12 upon the disassembly or photocopying of the foregoing
13 transcript, unless said disassembly or photocopying is
14 done under the auspices of myself, and the signature and
15 original seal is attached thereto.

16 I further certify that I am not a relative or
17 employee or attorney of any party, nor am I financially
18 interested in the outcome of the actions.

19 This the 30th day of October, 2020.

20
21
22
23
24
25



Whitney S. Guynes, CCR B-1897

Exhibit 2

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

CITY OF STONECREST, GEORGIA,)
)
 Plaintiff,)
)
 And)
)
 CITIZENS FOR A HEALTHY AND)
 SAFE ENVIRONMENT,)
)
 Intervenor-Plaintiff)
)
 v.)
)
 METRO GREEN RECYCLING)
 THREE, LLC, et al.,)
)
 Defendants.)
 _____)

Civil Action No. 20-CV-5610

AFFIDAVIT OF KAMLA GONZALES

I, Kamla Gonzales, testify as follows:

1. I am over the age of 18 and suffer from no legal incapacity. This affidavit is based on my personal knowledge, information, and belief.
2. I live in Stonecrest at 5146 Miller Woods Trail, Decatur, Georgia 30035. I have lived there since the subdivision's inception almost 15 years ago. Our subdivision, Miller Woods, has about 78 homes, mostly Black families and retirees.
3. I live with my husband and two children aged 9 and 18. My 9-year-old has pretty severe asthma and uses a nebulizer machine.
4. Until recently, the neighborhood was pretty quiet. Even the Marshall's, which has been back behind our house since before we moved in, is a good neighbor and you wouldn't know it was there without a sign because of the tree buffer.

5. I am familiar with Metro Green Recycling Three, LLC (Metro Green) and the solid waste handling facility it is building adjacent to my neighborhood.

6. I first heard of Metro Green around May 2020 when there was a change.org petition circulating. I did not see any signs posted at the site. I started going door-to-door in my neighborhood notifying other neighbors and a group of us eventually met up with Renee Cail and Pyper Bunch.

7. I am a member of Citizens for a Healthy and Safe Environment (CHASE).

8. From my house I have been able to and continue to hear construction noise that sounds like banging, beeping, and heavy machinery.

9. The fence that was built around the site around September 2020 did not decrease the noise levels.

10. Since construction started there have been numerous dust events where our cars and house and neighborhood get covered in dust from the site. The residual dust gets everywhere, like pollen in the spring.

11. Often the dust events are malodorous, like something died. This was happening up to 4–5 days a week and was unbearable, especially in the summer of 2020.

12. I was quoted in the Atlanta Journal Constitution on July 28, 2020 discussing the dust, noise, and smell in the air.

13. My husband mentioned that he felt vibrations from the site once or twice but I have not personally felt them.

14. Sometimes I will purposefully avoid driving south down Miller Road because the fence, big building, and ongoing construction are depressing reminders of this whole ordeal.

15. I am a nurse practitioner who works the night shift on the front lines of the coronavirus response, and the construction noise throughout the day has kept me awake and increased my stress and anxiety during this pandemic.

16. The emotional and psychological effects of this site are serious. When you see the structure and hear the noise you can't help but think about the future and having to hear that all day every day.

17. It is my understanding that Metro Green will crush large amounts of concrete every day as part of its operation and that concrete crushing is very noisy and creates a lot of dust and fine air particles.

18. One weekday in summer 2020, I drove to Metro Green Recycling One at 4351 Pleasantdale Road, Atlanta, GA 30340, to see what it would be like when the facility by my house starts operating. My understanding is that the two facilities would be similar. When I arrived, I noticed a line of trucks going in and out on a beat up road. From the street the site was an eyesore and looked like piles of garbage. And even though Metro Green One is in a more industrial area, it was still the loudest facility there. I could hear what sounded like dumping or crunching heavy debris and machinery noise. I am sure that from my house I would be able to hear similar noises from the Metro Green Three site and my thought was 'this is a noise that would keep me up.'

19. I am worried that I will no longer be able to sleep during the day because of the noise from the concrete crushers, and that my job as a night-shift nurse and my mental and physical health will suffer as a result.

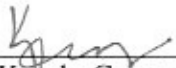
20. My son who has asthma would normally play outside but we restrict that now because of the dust in the air. With him having to do school from home, it has been particularly

rough on him. I fear we will have to continue restricting his outdoor playtime if Metro Green starts operating and crushing concrete.

21. My home should be a sanctuary but since Metro Green started construction I have been very stressed. I am concerned about a loss of property values and our investment in our house and renovations. I am worried that I may have to move and it would be harder to sell our property with a huge concrete recycling facility nearby. I am concerned about the quality of life in our neighborhood if Metro Green starts operating. If you can't breathe safe at home then where can you be safe?

22. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 3 day of February 2021



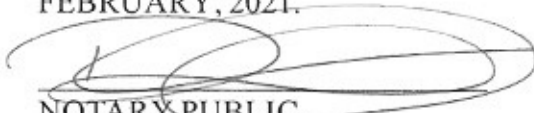
Kamla Gonzales

GEORGIA

Dekalb COUNTY

I, Deborah Abraham, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT Kamla Gonzales PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT.

WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 3rd DAY OF FEBRUARY, 2021.


NOTARY PUBLIC

MY COMMISSION EXPIRES ON:



Exhibit 3

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

CITY OF STONECREST, GEORGIA,)	
)	
Plaintiff,)	
)	
And)	
)	
CITIZENS FOR A HEALTHY AND)	
SAFE ENVIRONMENT,)	
)	
Intervenor-Plaintiff)	Civil Action No. 20-CV-5610
)	
v.)	
)	
METRO GREEN RECYCLING)	
THREE, LLC, et al.,)	
)	
Defendants.)	
_____)	

AFFIDAVIT OF JACQUELINE BRYANT

I, Jacqueline Bryant, testify as follows:

1. I am over the age of 18 and suffer from no legal incapacity. This affidavit is based on my personal knowledge, information, and belief.
2. I live in unincorporated DeKalb County on Kentwell Lane, Decatur, Georgia 30035. I will have lived there for 4 years in March.
3. I am a member of Citizens for a Healthy and Safe Environment (CHASE).
4. I am familiar with Metro Green Recycling Three, LLC (Metro Green) and the solid waste handling facility it is building right across the street from my backyard.
5. I am retired and I moved to my current address from Covington so I could be closer to my two daughters and my grandchildren. We visit each other a lot, although COVID-19

has made our visits a little less frequent. When they would come over we would often relax on the back deck.

6. I enjoyed watching birds and sitting on my back deck, but because of Metro Green's construction I do not sit out there as much.

7. Around May 2020 I began to notice something going on across the street at what I now know is Metro Green's property. Loud noises started to come from the site and I thought it might be new house construction. I went online and discovered it was a recycling yard. After speaking and meeting with my neighbors I began to realize that something was not right.

8. Until they built the big fence, I could see across the construction lot from my property.

9. I have noticed that construction begins around 7:30 am and continues until dark, including on some Saturdays.

10. Throughout the summer, fall, and winter of 2020 I regularly heard loud thuds and booms from the site, even from inside my house. Late summer was the worst.

11. Even with my doors and windows closed I still frequently hear beeping throughout the day from what seem to be trucks or heavy machinery. I also still hear pounding from time to time.

12. The noise increases my stress levels.

13. Around the New Year, I was sitting in the house talking with my daughter and all of a sudden it went 'boom boom boom' outside and my daughter noted that it was really loud.

14. On more than one occasion my house trembled and shook from the vibrations coming off the site.

15. Since construction started, a cabinet in my kitchen has pulled away from the wall about a half an inch and a crack in the sidewalk near my house is exaggerated. I think Metro Green's construction had something to do with it.

16. I have also noticed less birds in the area since the trees were cut down and construction began across the street.

17. Some days my back deck gets covered with dust and dirt from the site. I have had to clean reddish dust from my windows too. This was really bad during last spring, summer, and fall, but happens less regularly now. I took the attached photograph on July 17, 2020 facing my deck from inside my home, which shows the red dust coming from the Metro Green site. Before Metro Green started construction, I never had this problem.

18. When it's noisy and/or the air is dusty and dirty I do not want to sit in my back yard and breathe it.

19. One day I was out raking leaves and noticed big trucks filled with what looked like debris driving down Miller to the site and then coming back up empty.

20. At one rally I attended on Miller Road, I heard others talking about a smell coming from the site, but I do not have a good sense of smell.

21. I am worried about what the site will become, health effects to myself and my neighbors, environmental harms (including to the birds in the area), increased traffic and road damage, lowered property values and just quality of life with a construction recycling facility across the road from me.

22. I fear I may have to move if they operate with all this noise and if there are air quality and water quality impacts.

23. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 2 day of Feb

Jacqueline Bryant
Jacqueline Bryant

GEORGIA

DEKALB COUNTY

I, A. Marie Martinez, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT Jacqueline Bryant PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT.

WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 2nd DAY OF ~~NOVEMBER, 2020~~ February, 2021

A Marie Martinez
NOTARY PUBLIC

MY COMMISSION EXPIRES ON: 10/19/2024





Attachment to ¶ 17 (photo taken July 17, 2020).

Exhibit 4

6. My son has been staying with us for several months and often visits throughout the year. He was diagnosed with severe to moderate asthma at age 4 and takes medication both daily and as needed, including with an inhaler. His lung function has never been more than 80% and we do not need any additional air quality issues.

7. My mom is 84 years old and suffers from high blood pressure, diabetes, and dementia. We take her walking in the neighborhood to keep her strength up in her legs.

8. I am familiar with Metro Green Recycling Three, LLC (Metro Green) and the solid waste handling facility it is building right across the street from my neighborhood.

9. I have been working from home during the coronavirus pandemic and frequently work and get some air in my back yard. It was an oasis, but now I can hear construction noise and trucks moving around on Metro Green's site.

10. In fact, the noise from the site preparation and construction has invaded our area since mid-2020 when it began.

11. I did not see the sign posted at the driveway off Snapfinger Woods Drive and did not know a major development was planned until the trees were cut down and the project got underway.

12. In May 2020, my husband and I emailed public officials raising environmental justice concerns and pointing out the fact that waste facilities are disproportionately concentrated in communities of color and that asthma affects African-Americans at a greater percentage than other races.

13. In July, after the stop-work order, I noticed a pungent stench as we came out of our subdivision from Windsor Downs Lane. It smelled like an active landfill when the wind blew

downstream and we were at the end of the stream. You could smell it all the way up to Miller Grove Middle School.

14. I emailed Chris Wheeler at the City of Stonecrest about the smell and continued movement on the site and he said Metro Green was only stabilizing the ground and was using some chemical which was causing the smell.

15. Sadly, I can see the large building Metro Green built next to Miller Road when I leave my neighborhood and I cannot believe someone would think that is a good location for such a building. Now I prefer to leave through the other exit, though I still see the fence they built along Miller Road.

16. Having a cement recycling center just 1,000 feet from our home is both scary and unbelievable. I am worried about dust particles and air pollution from the site, which could cause lung inflammation and harm to my asthmatic son or to my mom when she's on her walks.

17. I am also worried about increased truck traffic in and off Miller Road and/or Snapfinger Woods. The trucks that attempt to turn into Marshall's off Miller cannot effectively make that turn now and cause major traffic jams while they try and figure out how to turn around.

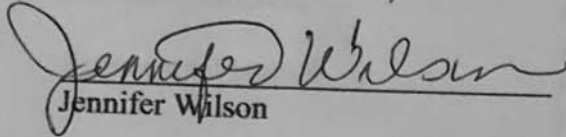
18. The stress and strain of COVID-19, unlawful deaths of African American in 2020 and then finding out that Metro Green is building a cement crushing facility literally 1,000 feet away from our home has been exhausting.

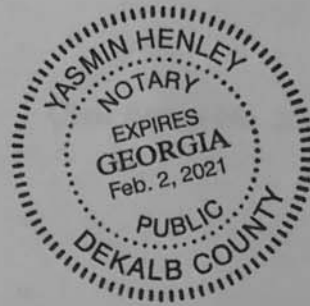
19. I understand that DeKalb County adopted the Solid Waste Management Plan (SWMP) partly because of environmental justice concerns and to ensure that solid waste handling sites like Metro Green would not return to south DeKalb. I do not understand why the Georgia Environmental Protection Division Director doesn't do the right thing, now that he

knows the City was not a part of DeKalb's SWMP. Now that everyone has better information about what happened, he should ensure the SWMP meets its goal of protecting our communities.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This 28 day of January 2021


Jennifer Wilson

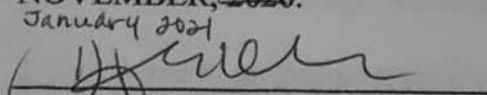


GEORGIA

DeKalb COUNTY

I, Yasmin Henley, A NOTARY PUBLIC FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT Jennifer Wilson PERSONALLY APPEARED BEFORE ME THIS DAY AND HAVING BEEN DULY SWORN, ACCORDING TO LAW, MADE THE ATTACHED AFFIDAVIT.

WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 28 DAY OF ~~NOVEMBER, 2020.~~

January 2021

NOTARY PUBLIC

MY COMMISSION EXPIRES ON: 2/2/2021

Exhibit 5

DESIGN AND OPERATION PLAN STONECREST MATERIALS RECOVERY & PROCESSING FACILITY

FOR
METRO GREEN RECYCLING THREE, LLC
STONECREST, GEORGIA

FEBRUARY, 2019
REVISED JUNE, 2019



RESPONSIBLE OFFICIAL

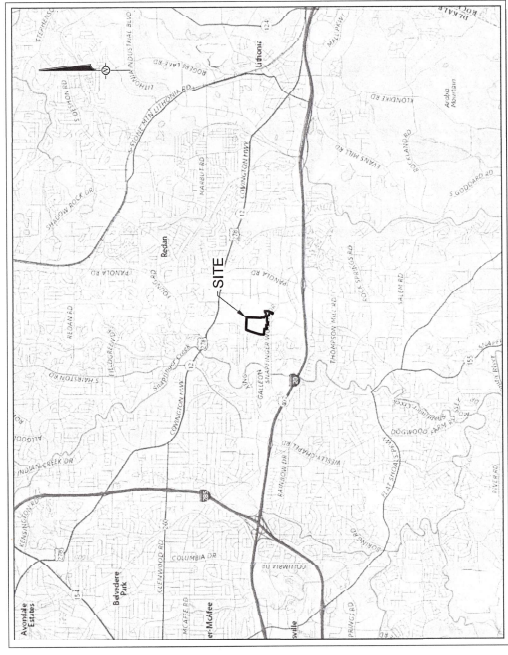
MITCHELL D. STEPHENS
4351 PLEASANTDALE ROAD
DORAVILLE, GA 30340
(770) 361-8258

OWNER / OPERATOR / PERMITTEE

METRO GREEN RECYCLING THREE, LLC
4351 PLEASANTDALE ROAD
DORAVILLE, GA 30340
(770) 361-8258

INDEX TO DRAWINGS

SHEET NO.	DESCRIPTION
-	TITLE SHEET
1	ALTAIRNSPS LAND TITLE SURVEY
2	EXISTING SITE CONDITIONS
3	FACILITY LAYOUT AND PROCESS FLOW DIAGRAM
4	ENVIRONMENTAL NARRATIVE AND PROHIBITED WASTE EXCLUSION PLAN



PROJECT SITE LOCATION
SCALE 1" = 1 MILE

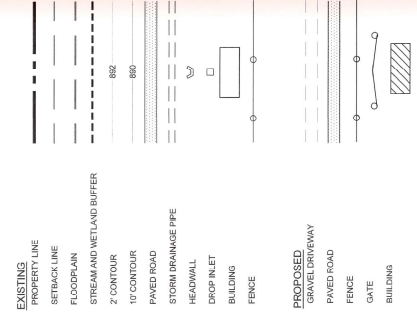


HHNT
HODGES, HARRIN,
NEWBERRY & TRIBBLE, INC.
Consulting Engineers

3920 ARKWRIGHT ROAD, SUITE 101 - MARIETTA, GEORGIA 31210
(478) 765-7175



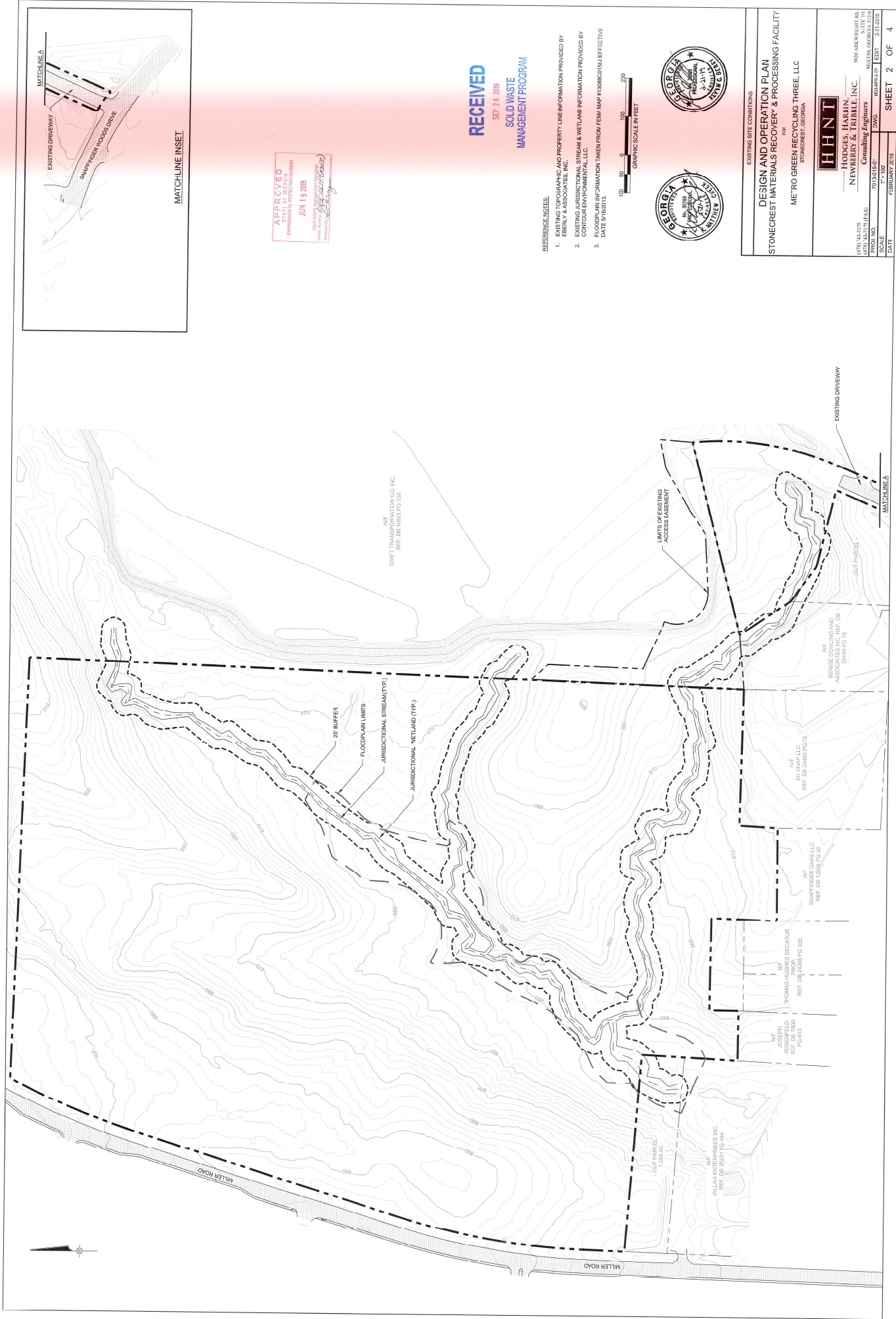
LEGEND



RECEIVED
SEP 16 2019
SOLID WASTE
MANAGEMENT PROGRAM

REVISION HISTORY

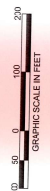
DATE	SHEET NO.	REQUESTED BY
JUNE 10, 2019	TS, 4	GEORGIA EPD



APPROVED
STATE OF GEORGIA
ENVIRONMENTAL PROTECTION DIVISION
JUN 13 2019
SWIFT TRANSPORTATION CO. INC.
REF. DB 10033 PG 238

RECEIVED
SEP 26 2019
SOLID WASTE
MANAGEMENT PROGRAM

- REFERENCE NOTES:
1. EXISTING TOPOGRAPHIC AND PROPERTY LINE INFORMATION PROVIDED BY EBERLY & ASSOCIATES, INC.
 2. EXISTING JURISDICTIONAL STREAM & WETLAND INFORMATION PROVIDED BY CONTOUR ENVIRONMENTAL, LLC.
 3. FLOODPLAIN INFORMATION TAKEN FROM FEMA MAP #13088C016J EFFECTIVE 01/08/01.



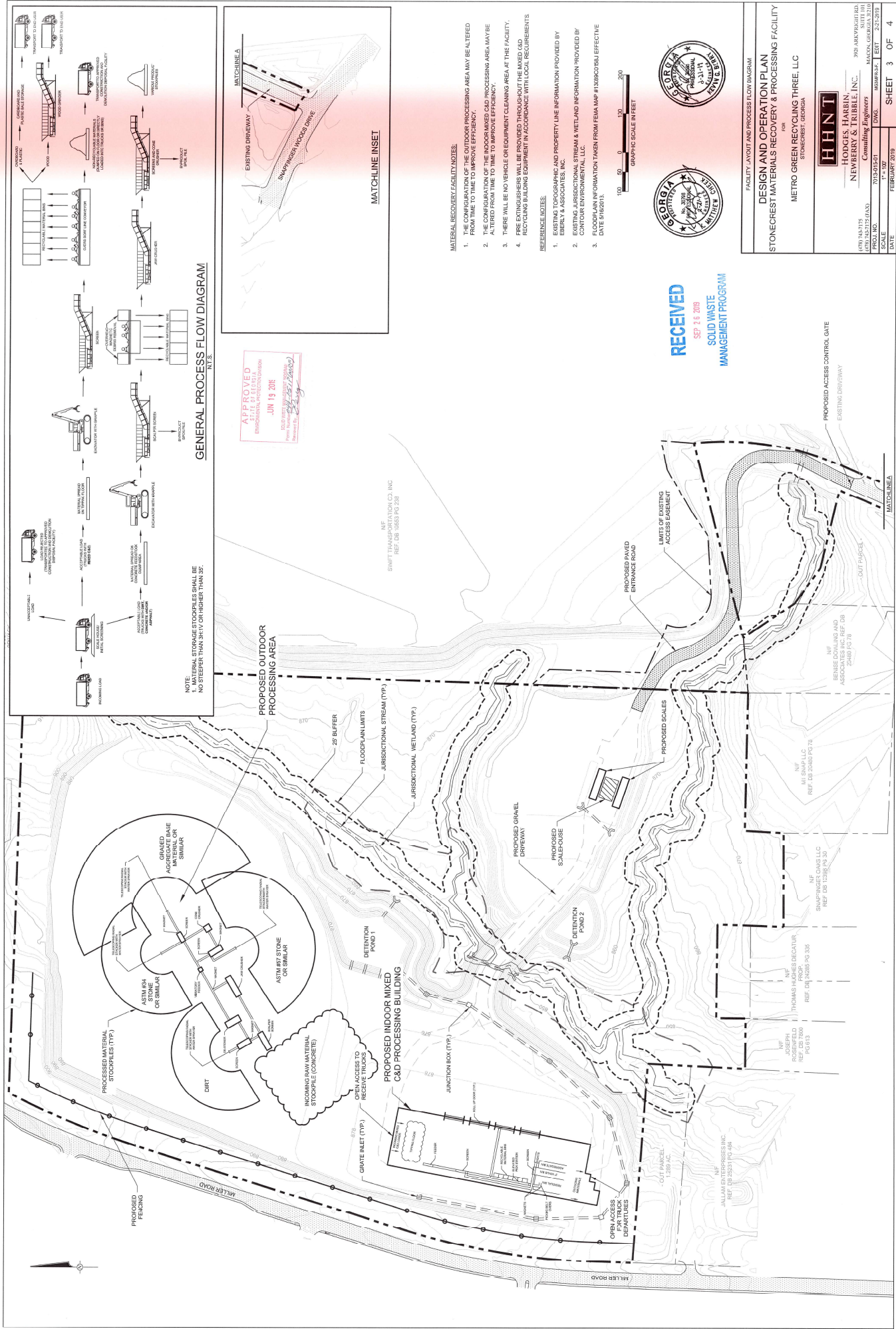
EXISTING SITE CONDITIONS

DESIGN AND OPERATION PLAN
STONECREST MATERIALS RECOVERY & PROCESSING FACILITY
FOR
METRO GREEN RECYCLING THREE, LLC
STANFORD, GEORGIA

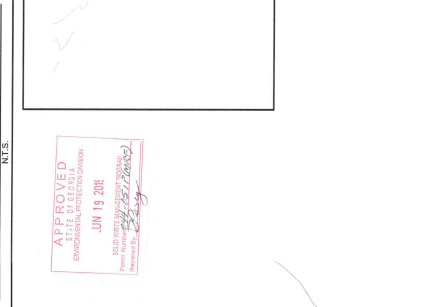
HHNI
HODGES, HARRIS,
NEWBERRY & HARRIS, INC.
Consulting Engineers
701501507 DWS, MEMPHIS, TN
RD 400, SUITE 101
MARIETTA, GEORGIA 30067
PHONE: 770-421-1775
FAX: 770-421-1776
SCALE: 1" = 100'
DATE: FEBRUARY 2019

PROJECT: METRO GREEN RECYCLING THREE
SHEET 2 OF 4





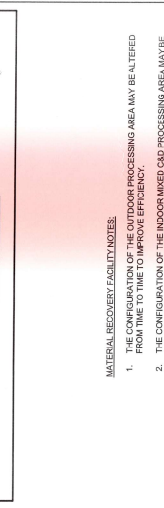
GENERAL PROCESS FLOW DIAGRAM



NOTE: MATERIAL STORAGE STOCKPILES SHALL BE NO STEEPER THAN 3:1 V OR HIGHER THAN 5'.
N.T.S.

APPROVED
STATE OF GEORGIA
REGISTERED PROFESSIONAL ENGINEER
JUN 19 2018
Professional Seal of Joseph R. DeCaratur
Professional Engineer
No. 27231

MATCHLINE INSET



- MATERIAL RECOVERY FACILITY NOTES:**
1. THE CONFIGURATION OF THE OUTDOOR PROCESSING AREA MAY BE ALTERED FROM TIME TO TIME TO IMPROVE EFFICIENCY.
 2. THE CONFIGURATION OF THE INDOOR MIXED CAD PROCESSING AREA MAY BE ALTERED FROM TIME TO TIME TO IMPROVE EFFICIENCY.
 3. THERE WILL BE NO VEHICLE OR EQUIPMENT CLEANING AREA AT THE FACILITY. FIRE EXTINGUISHERS WILL BE PROVIDED THROUGHOUT THE MIXED CAD RECEIVING BUILDING EQUIPMENT IN ACCORDANCE WITH LOCAL REQUIREMENTS.

- REFERENCE NOTES:**
1. EXISTING TOPOGRAPHIC AND PROPERTY LINE INFORMATION PROVIDED BY EBERLY & ASSOCIATES, INC.
 2. EXISTING JURISDICTIONAL STREAM & WETLAND INFORMATION PROVIDED BY CONTOUR ENVIRONMENTAL, LLC.
 3. FLOODPLAIN INFORMATION TAKEN FROM FEMA MAP #1388C0158L EFFECTIVE DATE 5/16/2013.



RECEIVED
SEP 21 2018
SOLID WASTE
MANAGEMENT PROGRAM

DESIGN AND OPERATION PLAN
STONECREST MATERIALS RECOVERY & PROCESSING FACILITY
FOR
METRO GREEN RECYCLING THREE, LLC
STONECREST, GEORGIA

HENNT
HODGES, HARRIS,
NEWBERRY & TABERLE, INC.
Consulting Engineers
7013/015/01
1" = 10'
FEBRUARY 2018
SHEET 3 OF 4

PROPOSED ACCESS CONTROL GATE
EXISTING DRIVEWAY
7 MATCHLINE A

Exhibit 6



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

September 24, 2020

Mr. Mark Black
General Manager
Metro Green 3
4351 Pleasantdale Road
Atlanta, Georgia 30340

Re: SIP Application No. 27589, Dated July 8, 2020
Facility AIRS No. : 08900409
Construction and demolition waste recycling plant

Dear Mr. Black:

Enclosed please find Air Quality Permit No. **5093-089-0409-S-01-0** for a construction and demolition (C&D) waste recycling plant to be located in Stonecrest, Georgia.

Note that any future modifications that might affect potential emissions from your facility will require review and possible permitting through this office.

The following types of correspondence should be sent to the Division personnel indicated:

- Testing notices and test results: Dan McCain – Unit Coordinator, Stationary Source Compliance Program
- All other required notifications and reports: Sean Taylor – Program Manager, Stationary Source Compliance Program.

Thank you for your cooperation. If you have any questions or need more information, please contact me at (404) 362-4859 or via email at mohamed.abdalla@dnr.ga.gov.

Sincerely,

Mohamed Abdalla

Mohamed Abdalla
Environmental Engineer
Stationary Source Permitting Program

Enclosure

cc:SSPP webmaster

PF
Richard E. Dunn, Director

Air Protection Branch
4244 International Parkway
Suite 120
Atlanta, Georgia 30354
404-363-7000

PERMIT NO. 5093-089-0409-S-01-0

ISSUANCE DATE: 09/24/2020



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Air Quality Permit

In accordance with the provisions of the Georgia Air Quality Act, O.C.G.A. Section 12-9-1, et seq and the Rules, Chapter 391-3-1, adopted pursuant to and in effect under that Act,

Facility Name: Metro Green 3
Facility Address: 5152 Snapfinger Woods Drive
Stonecrest, Georgia 30035 (DeKalb County)
Mailing Address: 4351 Pleasantdale Road
Atlanta, Georgia 30340
Facility AIRS Number: 04-13-089-00409

is issued a Permit for the following:

Construction and operation of a construction and demolition (C&D) waste recycling facility. This Permit is issued for the purpose of establishing practically enforceable emission limitations such that the facility will not be considered a major source with respect to Title V of the Clean Air Act Amendments of 1990.

This Permit is conditioned upon compliance with all provisions of The Georgia Air Quality Act, O.C.G.A. Section 12-9-1, et seq, the Rules, Chapter 391-3-1, adopted and in effect under that Act, or any other condition of this Permit.

This Permit may be subject to revocation, suspension, modification or amendment by the Director for cause including evidence of noncompliance with any of the above; or for any misrepresentation made in Application No. 27589 dated July 8, 2020; any other applications upon which this Permit is based; supporting data entered therein or attached thereto; or any subsequent submittals or supporting data; or for any alterations affecting the emissions from this source.

This Permit is further subject to and conditioned upon the terms, conditions, limitations, standards, or schedules contained in or specified on the attached 9 pages.



Richard E. Dunn, Director
Environmental Protection Division

State of Georgia
Department of Natural Resources
Environmental Protection Division

Permit No.
5093-089-0409-S-01-0

Page 1 of 9

1. General Requirements

- 1.1 At all times, including periods of startup, shutdown, and malfunction, the Permittee shall maintain and operate this source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Division which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection or surveillance of the source.
- 1.2 The Permittee shall not build, erect, install or use any article, machine, equipment or process the use of which conceals an emission which would otherwise constitute a violation of an applicable emission standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard that is based on the concentration of a pollutant in the gases discharged into the atmosphere.
- 1.3 The Permittee shall submit a Georgia Air Quality Permit application to the Division prior to the commencement of any modification, as defined in 391-3-1-.01(pp), which may result in air pollution and which is not exempt under 391-3-1-.03(6). Such application shall be submitted sufficiently in advance of any critical date involved to allow adequate time for review, discussion, or revision of plans, if necessary. The application shall include, but not be limited to, information describing the precise nature of the change, modifications to any emission control system, production capacity and pollutant emission rates of the plant before and after the change, and the anticipated completion date of the change.
- 1.4 Unless otherwise specified, all records required to be maintained by this Permit shall be recorded in a permanent form suitable for inspection and submission to the Division and shall be retained for at least five (5) years following the date of entry.
- 1.5 In cases where conditions of this Permit conflict with each other for any particular source or operation, the most stringent condition shall prevail.
- 1.6 For all equipment subject to 40 CFR 60, *Standards of Performance for New Stationary Sources*, the Permittee shall comply with the applicable provisions of 40 CFR 60 Subpart A, *General Provisions*.
[40 CFR 60.1-19]

2. Allowable Emissions

- 2.1 The Permittee shall comply with the provisions of 40 CFR 60 Subpart OOO, *Standards of Performance for Nonmetallic Mineral Processing Plants*, for all subject equipment (for reference, see listing in Table 1). In particular, for equipment in fixed or portable nonmetallic mineral processing plants which is subject to 40 CFR 60 Subpart OOO, the Permittee shall comply with the following for each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station:
[40 CFR 60.672]

State of Georgia
Department of Natural Resources
Environmental Protection Division

Permit No.
5093-089-0409-S-01-0

Page 2 of 9

- a. The Permittee shall not discharge or cause the discharge into the atmosphere, from each affected facility/source constructed, modified, or reconstructed on or after April 22, 2008, any fugitive emissions (including those escaping capture systems) exhibiting greater than 7 percent opacity except for any crusher that does not use a capture system, which shall not exhibit fugitive emissions greater than 12 percent opacity.
- b. Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of paragraph a.

3. Fugitive Emissions

- 3.1 The Permittee shall take all reasonable precautions to prevent fugitive dust from becoming airborne from any operation, process, handling, and transportation or storage facility. The opacity from any fugitive dust source shall not equal or exceed twenty percent. Reasonable precautions that should be taken to prevent dust from becoming airborne include, but are not limited to, the following:

[391-3-1-.02(2)(n)] [Vault GA-003-EL, 02/10]

- a. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
 - b. Application of asphalt, water, or suitable chemicals on dirt roads, materials, stockpiles, and other surfaces that can give rise to airborne dusts;
 - c. Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods can be employed during sandblasting or other similar operations;
 - d. Covering, at all times when in motion, open-bodied trucks, transporting materials likely to give rise to airborne dust; and
 - e. The prompt removal of earth or other material from paved streets onto which earth or other material has been deposited.
- 3.2 The Permittee shall maintain and operate a water truck to water the plant roads and material storage areas as needed to prevent dust.
- 3.3 The Permittee shall pave the haul road as indicated in Sheet C3.0 of Air Quality Application No. 27589.

4. Process & Control Equipment

- 4.1 The Permittee shall maintain an inventory of spray nozzles sufficient to accommodate replacement of any defective nozzles within the affected facility.
[391-3-1-.02(6)(b)1 and 391-3-1-.03(2)(c)]

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 3 of 9

4.2 Routine maintenance shall be performed on all air pollution control equipment. Maintenance records, including those for water trucks and all plant water spray control devices, shall be recorded in a permanent form suitable and available for inspection by the Division. The records shall be retained for at least five years following the date of such maintenance.
[391-3-1-.02(6)(b)1 and 391-3-1-.03(2)(c)]

4.3 The Permittee shall have, maintain and use at all times the processing plant is in operation the wet suppression/water spray control systems, except during natural wet conditions. The Permittee shall only operate the stone processing plant when there is sufficient water and water pressure to adequately supply the dust control devices specified.
[391-3-1-.02(6)(b)1, Title V avoidance, and 391-3-1-.03(2)(c)]

5. Monitoring

5.1 Any monitoring system installed by the Permittee shall be in continuous operation except during periods of repair. Maintenance or repair shall be conducted in the most expedient manner to minimize the period during which the system is out of service.

5.2 The Permittee shall perform the following daily operation and maintenance checks on each dust suppression device. The inspection shall be conducted at least once per each day of operation. A daily record of the conditions found and any corrective actions taken shall be retained for at least five years following the date of such record (a checklist or other similar log may be used for this purpose). The records shall be kept in a logbook in form which is suitable and available for inspection by the Division.

- a. Visually inspect water sprays to ensure that the designed nozzle water spray pattern is produced (i.e. a fine, conical mist).
- b. Check water sprays to ensure that they are directed toward the stone material.
- c. Check nozzles to ensure none are clogged, and that proper and adequate water flow sufficient to wet the stone occurs.
- d. Check nozzles and pumps to ensure that there is sufficient pressure and flow to each nozzle to wet stone.

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 4 of 9

5.3 For wet suppression systems used to control emissions from affected facilities constructed, modified or reconstructed on or after April 22, 2008, that are subject to 40 CFR 60 Subpart OOO, the Permittee shall perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system. If it is found that water is not flowing properly during an inspection of the water spray nozzles, the Permittee shall initiate corrective action within 24 hours and complete it as expediently as practical. The Permittee must record each inspection of the water spray nozzles, including the date of each inspection and any corrective actions taken in the logbook required in Condition 5.2. If an affected facility relies on water carryover from upstream water sprays to control fugitive emissions, then that affected facility is exempt from the 5-year repeat testing requirement specified in Table 3, of 40 CFR 60 Subpart OOO, provided that the affected facility meets the following criteria:
[40 CFR 60.674(b) & 40 CFR 60.676(b)(1)]

- a. The Permittee shall conduct periodic inspections of the upstream water spray(s) that are responsible for controlling fugitive emissions from the affected facility.
- b. The Permittee shall designate which upstream water spray(s) will be periodically inspected at the time of the initial performance test required under Condition 6.2.

If an affected facility that routinely uses wet suppression water sprays ceases operation of the water sprays or is using a control mechanism to reduce fugitive emissions other than water sprays during the monthly inspection (for example, water from recent rainfall), the logbook entry required must specify the control mechanism being used instead of the water sprays.

6. Performance Testing

- 6.1 The Permittee shall cause to be conducted a performance test at any specified emission point when so directed by the Division. The following provisions shall apply with regard to such tests:
- a. All tests shall be conducted and data reduced in accordance with applicable procedures and methods specified in the Division's Procedures for Testing and Monitoring Sources of Air Pollutants.
 - b. All test results shall be submitted to the Division within sixty (60) days of the completion of testing.
 - c. The Permittee shall provide the Division thirty (30) days prior written notice of the date of any performance test(s) to afford the Division the opportunity to witness and/or audit the test, and shall provide with the notification a test plan in accordance with Division guidelines.

State of Georgia
Department of Natural Resources
Environmental Protection Division

Permit No.
5093-089-0409-S-01-0

Page 5 of 9

- d. All monitoring systems and/or monitoring devices required by the Division shall be installed, calibrated and operational prior to conducting any performance test(s). For any performance test, the Permittee shall, using the monitoring systems and/or monitoring devices, acquire data during each performance test run. All monitoring system and/or monitoring device data acquired during the performance testing shall be submitted with the performance test results.
- 6.2 In accordance with the provisions of 40 CFR 60.8, for any equipment which is subject to the New Performance Standard, constructed or modified at the facility, the Permittee shall conduct a performance test within 60 days after achieving the maximum production rate at which the equipment will be operated, but no later than 180 days after initial startup, unless the equipment is specifically exempt from testing in the applicable Subpart of 40 CFR Part 60.
[40 CFR 60.8]
- 6.3 For any affected facilities, as defined in 60.670 and 60.671 of 40 CFR 60 Subpart OOO, *Standards of Performance for Nonmetallic Mineral Processing Plants*, that commence construction, modification, or reconstruction on or after April 22, 2008, the Permittee shall repeat performance test according to 40 CFR 60.11 and 40 CFR 60.675 within 5 years from the previous performance test for fugitive emissions from affected facilities without water sprays. Affected facilities controlled by water carryover from upstream water sprays that are inspected according to the requirements in Condition 5.3 are exempt from this 5-year repeat testing requirement.
[Table 3 to 40 CFR 60 Subpart OOO]
- 6.4 If any wet material processing operation switches from processing saturated materials to processing unsaturated materials, the Permittee shall submit a report of this change within 30 days following such change. At the time of such change, this operation (e.g. screening operation, bucket elevator, or belt conveyor) becomes subject to the applicable opacity limit in Condition 2.1a. The Permittee shall conduct performance tests on the operation in accordance with the emission test requirements of Condition 6.2.
[40 CFR 60.676(g)]

7. Notification, Reporting and Record Keeping Requirements

- 7.1 The Permittee shall submit written notification of startup to the Division within 15 days after such date. The notification shall be submitted to:

Mr. Sean Taylor
Stationary Source Compliance Program
4244 International Parkway, Suite 120
Atlanta GA 30354

- 7.2 In accordance with the provisions of 40 CFR 60.7, for any equipment which is subject to the *New Source Performance Standard*, the Permittee shall furnish the Division written notification of the actual date of initial startup of NSPS equipment postmarked within 15 days after such date.

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 6 of 9

7.3 In addition to complying with the applicable *General Provisions* of 40 CFR 60, *Standards of Performance for New Stationary Sources*, the Permittee shall comply with the detailed notification, reporting, and recordkeeping requirements of 40 CFR 60 Subpart OOO, *Standards of Performance for Nonmetallic Mineral Processing Plants*, for all subject equipment. In particular,
[391-3-1-.02(6)(b)1 and 40 CFR 60.7, 60.48(c) & 60.676]

- a. For each affected facility constructed, modified, or reconstructed on or after April 22, 2008, the Permittee shall record each periodic inspection required under 40 CFR 60.674(b) or (c), including dates and any corrective actions taken, in a logbook (in written or electronic format). The Permittee shall keep the logbook onsite and make hard or electronic copies (whichever is requested) of the logbook available upon request by the Division.
[40 CFR 60.676(b)(1)]
- b. The Permittee shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in Condition 2.1, including reports of opacity observations made using Method 9 (40 CFR 60, Appendix A-4) to demonstrate compliance with the provisions of Condition 2.1.
[40 CFR 60.676(f)]
- c. The Permittee using wet material processing operation that processes saturated and subsequently processes unsaturated materials, shall submit a report of this change within 30 days following such change. At the time of such change, this screening operation, bucket elevator, or belt conveyor becomes subject to the applicable opacity limit in Condition 2.1 and the emission test requirements of Condition 6.2.
[40 CFR 60.676(g)]
- d. The Subpart A requirement under 40 CFR 60.7(a)(1) for notification of the date construction or reconstruction commenced is waived for affected facilities under this subpart.
[40 CFR 60.676(h)]
- e. A notification of the actual date of initial startup of each affected facility shall be submitted as follows:
[40 CFR 60.676(i)]
 - i. For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the Permittee to the Division. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.
 - ii. For portable aggregate processing plants, the notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 7 of 9

- f. The requirements of this condition remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected facilities within the State will be relieved of the obligation to comply with the reporting requirements of this section, provided that they comply with requirements established by the State.
[40 CFR 60.676(j)]

- g. Notifications and reports required for demonstrating compliance need only to be sent to the EPA Region IV or the Division.
[40 CFR 60.676(k)]

8. Special Conditions

- 8.1 At any time that the Division determines that additional control of emissions from the facility may reasonably be needed to provide for the continued protection of public health, safety and welfare, the Division reserves the right to amend the provisions of this Permit pursuant to the Division's authority as established in the Georgia Air Quality Act and the rules adopted pursuant to that Act.

- 8.2 The Permittee shall calculate and pay an annual Permit fee to the Division. The amount of the fee shall be determined each year in accordance with the "Procedures for Calculating Air Permit Application & Annual Permit Fees."

- 8.3 The Permittee shall keep at the permitted facility the originals or complete copies of this Air Quality Permit and any subsequent Amendments to it.

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 8 of 9

**Table 1: Facility Description/Equipment List
Metro Green 3
Stonecrest, Georgia (DeKalb County)**

Equipment/Process	Source Code	Control	NSPS Subpart OOO
Lippmann Scalper	1	Water Sprayer	Yes*
100' Pick Station	2	Wet Material	Yes*
Jaw Crusher	3	Water Sprayer	Yes*
Pan Feeder	3A	Water Sprayer	Yes*
48" X 60' Conveyor	4	Wet Material	Yes*
48" X 60' Conveyor	5	Wet Material	Yes*
36" X 60' Conveyor	5B	Wet Material	Yes*
48" X 40' Conveyor	5C	Wet Material	Yes*
6' x 20' Air Screen	6	Water Sprayer	Yes*
18" X 10' Cross Belt	6-TC	Wet Material	Yes*
48" X 26' Under Screen Belt	6-US	Wet Material	Yes*
30" X 20' Cross Belt	7-BC	Wet Material	Yes*
48" x 60' Conveyor	8	Water Sprayer	Yes*
48" x 60' Conveyor	9	Water Sprayer	Yes*
Vibrating Feeder	10	Water Sprayer	Yes*
48" X 100' Conveyor	11	Water Sprayer	Yes*
6' X 20' Triple Deck Screen	12	Water Sprayer	Yes*
48" X 26' Under Screen Belt	12-US	Wet Material	Yes*
30" X 15' Top Cross Belt	12-TC	Wet Material	Yes*
30" X 20' Bottom Cross Belt	12-BC	Wet Material	Yes*
36" X 60' Jump Conveyor	13	Wet Material	Yes*
36" X 60' Stacker	14	Water Sprayer	Yes*
300 HP Cone Crusher	15	Water Sprayer	Yes*
36" X 80' Over Conveyor	16	Water Sprayer	Yes*
6' X 20' Triple Deck Screen	17	Water Sprayer	Yes*
48" X 26' Under Screen Belt	17-US	Wet Material	Yes*
30" X 15' Top Cross Belt	17-TC	Wet Material	Yes*
30" X 20' Bottom Cross Belt	17-BC	Wet Material	Yes*
36" X 60' Jump Conveyor	18	Water Sprayer	Yes*
36" X 60' Stacker	19	Wet Material	Yes*

**State of Georgia
Department of Natural Resources
Environmental Protection Division**

**Permit No.
5093-089-0409-S-01-0**

Page 9 of 9

Equipment/Process	Source Code	Control	NSPS Subpart OOO
36" X 60' Jump Conveyor	20	Wet Material	Yes*
36" X 60' Jump Conveyor	21	Wet Material	Yes*
100' Stacker	22	Water Sprayer	Yes*
100' Stacker	23	Wet Material	Yes*
150' Telestacker	24	Water Sprayer	Yes*
150' Stacker	25	Water Sprayer	Yes*

**Equipment is subject to NSPS Subpart OOO and has been constructed, modified, or reconstructed on or after April 22, 2008.*

- [1] This "Facility Description" contains information regarding specific emissions points and was created as a reference for certain other Conditions in this Permit. It is not intended to be a comprehensive list of all air pollution sources at this facility and may not include every minor or fugitive emission source. Future minor modifications or additions at this facility may be exempted from permitting by the Georgia Rules for Air Quality Control and may occur without causing this Attachment to be updated.
- [2] The control system column is intended to identify emission controls. Sources identified as "water carryover" rely on water moisture previously applied by required water sprays; and "wet process" requires saturation of aggregates with water.
- [3] The NSPS column is intended to distinguish between "affected facilities" and "existing facilities" or "exempt facilities". Sources identified as N/A are those types of process equipment not regulated by NSPS Subpart OOO. Hence the NSPS limits do not apply regardless of age.

SYNTHETIC MINOR PERMIT APPLICATION

MetroGreen
RECYCLING_Δ

Metro Green Recycling, LLC > Metro Green 3 Facility

TRINITY CONSULTANTS

3495 Piedmont Road
Building 10, Suite 905
Atlanta, Georgia 30305
(678) 441-9977

July 2020

Project 201101.0166

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY 1-1

2. PROCESS DESCRIPTION 2-1

3. EMISSION CALCULATIONS 3-1

3.1 Material Handling Emissions..... 3-1

4. REGULATORY REVIEW 4-1

4.1 New Source Review Applicability..... 4-1

4.2 Title V Applicability 4-1

4.3 New Source Performance Standards 4-1

 4.3.1 40 CFR 60 Subpart A – General Provisions..... 4-1

 4.3.2 40 CFR 60 Subpart OOO – Nonmetallic Mineral Processing Plants..... 4-2

 4.3.3 Non-Applicability of All Other NSPS 4-2

4.4 National Emission Standards for Hazardous Air Pollutants 4-2

4.5 Georgia Rules for Air Quality Control..... 4-2

 4.5.1 GRAQC 391-3-1-.02(2)(a)(7) – Excess Emissions..... 4-2

 4.5.2 GRAQA 391-3-1-.02(2)(b) – Visible Emissions 4-3

 4.5.3 GRAQC 391-3-1-.02(2)(e) – Particulate Emission from Manufacturing Processes..... 4-3

 4.5.4 GRAQC 391-3-1-.02(2)(n) – Fugitive Dust..... 4-3

 4.5.5 Non-Applicability of Other SIP Rules..... 4-3

APPENDIX A. SIP FORMS A-1

APPENDIX B. EMISSION CALCULATIONS B-1

APPENDIX C. SITE PLAN C-1

1. EXECUTIVE SUMMARY

Metro Green Recycling, LLC (Metro Green) owns and operates two construction and demolition (C&D) waste recycling facilities in Georgia operating under Permit Nos. 5093-135-0301-S-01-0 and 5093-121-0928-B-01-0 issued by the Georgia Environmental Protection Division (EPD).

Metro Green is submitting this application to EPD to request a synthetic minor source permit to construct and operate a similar third facility (Metro Green 3) to be located at 5152 Snappfinger Woods Drive, Stonecrest, GA 30035 (DeKalb County) and to remain under Title V (Part 70) permitting thresholds. The site will consist of crushers, screens and conveyors which will all be controlled by water sprays and wet material.

The potential to emit (PTE) of the new site, calculated using controlled emission factors from AP-42 Section 11.19.2 *Crushed Stone Processing and Pulverized Mineral Processing*, will be less than 100 tons per year (tpy) of particulate matter (PM). Metro Green is applying for this synthetic minor permit through the expedited permitting program.

The following information is included as part of this permit application submittal:

- ▶ Section 2 describes operations at the site;
- ▶ Section 3 summarizes potential air emissions from the new facility;
- ▶ Section 4 details the regulatory applicability analysis for the proposed operations;
- ▶ Appendix A contains the State Implementation Plan (SIP) construction permit application forms;
- ▶ Appendix B contains the PTE calculations; and
- ▶ Appendix C contains the site plan.

2. PROCESS DESCRIPTION

The Metro Green 3 facility will be a C&D waste recycling plant. Metro Green will process the debris resulting from construction, renovation, repair, and demolition of commercial buildings, houses, roads, bridges, and other structures. The materials that will be recycled include concrete, rock, wood, cardboard, and metal. Products from the site will include recycled concrete #34S, recycled concrete #57S, and recycled concrete graded aggregate base (GAB). Once constructed, the site will consist of two (2) crushers, six (6) screens, and 28 conveyor belts for a total of 36 pieces of process equipment, all controlled by 17 water sprayers and wet material. Table 2-1 provides a list of the proposed new equipment. All equipment will be electrically powered and there will be no stationary engines or generators on site.

Table 2-1. Proposed Emission Units

Unit ID	Unit Name
1	Lippmann Scalper
2	100' Pick Station
3	Jaw Crusher
3A	Pan Feeder
4	48" X 60' Conveyor
5	48" X 60' Conveyor
5B	36" X 60' Conveyor
5C	48" X 40' Conveyor
6	6' x 20' Air Screen
6-TC	18" X 10' Cross Belt
6-US	48" X 26' Under Screen Belt
7-BC	30" X 20' Cross Belt
8	48" x 60' Conveyor
9	48" x 60' Conveyor
10	Vibrating Feeder
11	48" X 100' Conveyor
12	6' X 20' Triple Deck Screen
12-US	48" X 26' Under Screen Belt
12-TC	30" X 15' Top Cross Belt
12-BC	30" X 20' Bottom Cross Belt
13	36"X 60 Jump Conveyor
14	36" X 60' Stacker
15	300 HP Cone
16	36" X 80' Over Conveyor
17	6' X 20' Triple Deck Screen
17-US	48" X 26' Under Screen Belt

17-TC	30" X 15' Top Cross Belt
17-BC	30" X 20' Bottom Cross Belt
18	36" X 60' Jump Conveyor
19	36" X 60' Stacker
20	36" X 60' Jump Conveyor
21	36" X 60' Jump Conveyor
22	100' Stacker
23	100' Stacker
24	150' Telestacker
25	150' Stacker

3. EMISSION CALCULATIONS

Air emissions at the Metro Green 3 facility will be from conveyor belts, screens, and crushers throughout the facility. These units will emit PM, PM less than 10 microns in diameter (PM₁₀), and PM less than 2.5 microns in diameter (PM_{2.5}). All processes will be controlled by water sprayers and wet material. The methodology for quantifying potential emissions is discussed in the following section. Detailed PTE calculations are provided in Appendix B.

3.1 Material Handling Emissions

Emissions from the proposed process equipment are calculated using AP-42 Table 11.19.2-2 *Emission Factors for Crushed Stone Processing Operations* for controlled tertiary crushing, screening, and conveyor drop points. Potential facility-wide emissions of air pollutants are listed in Table 3-1 and are compared with Title V permitting thresholds. The facility will qualify as a synthetic minor source after construction as the controlled emissions are below Title V permitting thresholds.

Table 3-1. Estimated Facility-Wide Potential Emissions

	Filterable PM (tpy)	Total PM₁₀ (tpy)	Total PM_{2.5} (tpy)
Potential Emissions	59.02	20.20	2.20
Title V Threshold	N/A	100	100

4. REGULATORY REVIEW

The Metro Green 3 facility will be subject to certain federal and state air regulations once complete. This section of the application summarizes the air permitting requirements and key air quality regulations that apply to the construction and operation of the Metro Green 3 facility. Specifically, the applicability of the New Source Review (NSR) program, Title V of the 1990 Clean Air Act Amendments (CAAA), New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and the Georgia Rules for Air Quality Control (GRAQC) are addressed.

4.1 New Source Review Applicability

The New Source Review (NSR) permitting program requires that federal permitting of new emission sources or modifications to existing emission sources be completed when significant net emission increases result. Two distinct NSR permitting programs apply depending on if the facility is located in an attainment or nonattainment area for a particular pollutant. Nonattainment New Source Review (NNSR) permitting applies to new construction or modifications that result in emission increases of a particular pollutant for which the area in which the facility is located is classified as "nonattainment" for that pollutant with respect to the National Ambient Air Quality Standards (NAAQS). The Prevention of Significant Deterioration (PSD) program applies to project increases of those pollutants for which the area the facility is located in is classified as "attainment" or "unclassifiable".

The Metro Green 3 facility is located in DeKalb County, which is classified as attainment or unclassifiable with the NAAQS for all regulated pollutants except ozone. The Metro Green 3 facility will not be a major source as defined in GRAQC 391-3-1-.03(8)(c)(14)(i) as the facility does not have the potential to emit at least 100 tpy of volatile organic compounds (VOC) or nitrogen oxides (NO_x).

4.2 Title V Applicability

As defined in 40 CFR Part 70 and implemented in GRAQC 391-1-03(10), Title V operating permits are required for major stationary sources of air pollutants. Metro Green is requesting a synthetic minor permit as the site will not emit more than 100 tpy of one or more criteria pollutants using control devices. As water sprayers and wet material will control potential facility-wide PM₁₀ and PM_{2.5} emissions to below the Part 70 Major Source Threshold of 100 tpy, the facility will be considered a synthetic minor source with regard to the Title V permitting program.

4.3 New Source Performance Standards

The New Source Performance Standards (NSPS), located at 40 CFR 60, requires new, modified, or reconstructed sources to control emissions to the level achievable by the best demonstrated control technology as specified in the applicable provisions. Moreover, any source subject to an NSPS is also subject to the general provisions of NSPS Subpart A, except where expressly noted. The following is a summary of applicability and non-applicability determinations for NSPS regulations of relevance to the Metro Green 3 facility.

4.3.1 40 CFR 60 Subpart A – General Provisions

Any source subject to NSPS is also subject to general provisions of NSPS Subpart A, unless specifically excluded by the source-specific NSPS. NSPS Subpart A requires initial notification and performance testing, recordkeeping and monitoring and provides reference methods, provides for certain exceptions, and

mandates general control device requirements for all other subparts as applicable. The Metro Green 3 facility is subject to 40 CFR 60 Subpart A.

4.3.2 40 CFR 60 Subpart 000 – Nonmetallic Mineral Processing Plants

The Metro Green 3 facility is subject to all standards and provisions contained within NSPS Subpart 000 as process equipment at the facility is considered to be an affected source per §60.670(a)(1). As such, each crusher, screening operation, and belt conveyor is subject to this regulation.

As the facility will not operate any capture systems, each emission unit is subject to the requirements contained in Table 3 of NSPS Subpart 000 for units constructed on or after April 22, 2008. As such, emissions from each belt conveyor and screening operation will be subject to a 7 percent opacity limit. Additionally, emissions from each crusher will be subject to a 12 percent opacity limit. The opacity from each affected unit shall be tested (Method 9 as stated in §60.11 and §60.675) within 60 days of achieving the maximum production rate at which the equipment will be operated, but no later than 180 days after initial startup.

In addition to the opacity limits, the facility is also required to conduct monthly inspections of the water sprayers to ensure proper control of fugitive dust (§60.674(b)). It should be noted that the 5 year schedule relating to opacity performance testing is excused as long as the facility's water spray system is evaluated alongside the initial opacity performance testing for each unit and maintained as required (Table 3 of NSPS Subpart 000 and §60.674(b)).

4.3.3 Non-Applicability of All Other NSPS

NSPS standards are developed for particular industrial source categories and the applicability of a particular NSPS to a facility can be readily ascertained based on the industrial source category covered. All other NSPS are categorically not applicable to the Metro Green 3 facility.

4.4 National Emission Standards for Hazardous Air Pollutants

NESHAP, located in 40 CFR 61 and 40 CFR 63, have been promulgated for source categories that emit hazardous air pollutants (HAP) to the atmosphere. A facility that is a major source of HAP is defined as having potential emissions of greater than 25 tpy of total HAP and/or 10 tpy of individual HAP. Facilities that are not major sources of HAP are considered area sources of HAP. The Metro Green 3 facility will be an area source for HAP.

Applicability of a particular NESHAP to a facility can be readily ascertained based on the industrial source category covered. All NESHAP are categorically not applicable to the Metro Green 3 facility.

4.5 Georgia Rules for Air Quality Control

In addition to federal air regulations, GRAQC 391-3-1 establishes regulations applicable at the emission unit level (source specific) and at the facility level. The rules also contain requirements related to the need for construction and/or operating permits.

4.5.1 GRAQC 391-3-1-.02(2)(a)(7) – Excess Emissions

This Rule is a conditional exemption for excess emissions resulting from startup, shutdown or malfunction of any source. Such excess emissions are allowed if ordinary diligence is employed, provided that (i) best

operational practices to minimize emissions are followed, (ii) all associated air pollution control equipment is operated in a manner consistent with good air pollution control practice for minimizing emissions, and (iii) the duration of excess emissions is minimized. Excess emissions caused entirely or in part by poor maintenance, poor operation or any other equipment or process failure that may reasonably be prevented during startup, shutdown or malfunction are prohibited. The exemption applies to all non-NSPS-based limits.

4.5.2 GRAQA 391-3-1-.02(2)(b) – Visible Emissions

Rule (b) limits opacity from all sources to 40% unless the source is subject to a more stringent opacity standard. All units at the facility will be subject to the more stringent opacity standards in NSPS Subpart OOO. The use of water sprayers and wet material will ensure compliance with this rule and NSPS Subpart OOO. No specific recordkeeping or monitoring requirements are required in order to continually demonstrate compliance with this standard.

4.5.3 GRAQC 391-3-1-.02(2)(e) – Particulate Emission from Manufacturing Processes

Rule (e), also known as the Process Weight Rule (PWR), determines the allowable PM emissions from the manufacturing of materials in accordance with the following equations:

$$E = 4.1 \times P^{0.67} \text{ for process input weight rates up to and including 30 tons per hour}$$

$$E = 55 \times P^{0.11} - 40 \text{ for process input weight rates above 30 tons per hour}$$

where:

$$E = \text{maximum allowable PM emission rate [lb/hr]}$$

$$P = \text{process input weight rate [tons/hr]}$$

The use of water sprayers and wet material will ensure compliance with the PWR.

4.5.4 GRAQC 391-3-1-.02(2)(n) – Fugitive Dust

Rule (n) requires that facilities which may generate fugitive dust take all reasonable precautions to prevent such dust from becoming airborne. This rule limits opacity from any fugitive dust source to 20%. Metro Green will take reasonable precautions to limit fugitive dust at the facility, including during periods of construction.

4.5.5 Non-Applicability of Other SIP Rules

A thorough examination of the Georgia SIP rule applicability to the proposed operations reveals many SIP regulations that do not apply and do not impose additional requirements on operations. Such SIP rules include those specific to a particular type of industrial operation which will not be performed at the Metro Green 3 facility.

APPENDIX A. SIP FORMS



**EXPEDITED PERMITTING PROGRAM – APPLICATION FOR ENTRY TO
PROGRAM FOR AIR PERMITS**

RECEIVED

Date Received:	JUL 10 2020	EPD Use Only	Application No.	
----------------	-------------	--------------	-----------------	--

To be eligible for expedited review, this application form must be accompanied by the complete permit application for the type of air permit being requested, and a pre-application meeting with EPD must have been conducted.

1. Contact Information

Facility Name: Metro Green 3

AIRS No. (if known): 04-13-

Contact Person: Mark Black Title: General Manager

Telephone No.: 770-326-6000 Alternate Phone No.: 770-289-7599

Email Address: mblack@mgrecycle.com

If EPD is unable to contact me, please contact the alternate contact person:

Contact Person: Shiv Tailor Title: Consultant

Telephone No.: 404-751-0234 Alternate Phone No.: 678-925-7427

Email Address: stailor@trinityconsultants.com

On Page 2 of this form, please check the appropriate box for which type of air permit you are requesting expedited review.

I have read the Expedited Review Program Standard Operating Procedures and accept all of the terms and conditions within. I understand that it is my responsibility to ensure an application of the highest quality is submitted and to address any requests for additional information by the deadline specified. I understand that submittal of this request form is not a guarantee that expedited review will be granted.

Signature: *Mark Black* Date: 7/8/20

2. Applying For Which Type Of Permit: (Please Check Appropriate Box)

Expedited Review Fees for Air Permits	
<u>Permit Type – Please Check One</u>	<u>Expedited Review Fee*</u>
<input type="checkbox"/> Generic Permit: Concrete Batch Plant – Minor Source	\$1,000
<input type="checkbox"/> Generic Permit: Concrete Batch Plant – Synthetic Minor Source	\$1,500
<input type="checkbox"/> Generic Permit: Hot Mix Asphalt Plant – Synthetic Minor Source	\$2,000
<input type="checkbox"/> Minor Source Permit (or Amendment)	\$3,000
<input checked="" type="checkbox"/> Synthetic Minor Permit (or Amendment)	\$4,000
<input type="checkbox"/> Major Source SIP Permit not subject to PSD or 112(g)	\$6,000
<input type="checkbox"/> Title V 502(b)(10) Permit Amendment	\$4,000
<input type="checkbox"/> Title V Minor Modification with Construction	\$4,000
<input type="checkbox"/> Title V Significant Modification	\$6,000
<input type="checkbox"/> Major Source SIP Permit subject to 112(g) but not subject to PSD	\$15,000
<input type="checkbox"/> PSD Permit (or Amendment) not subject to NAAQS and/or PSD Increment Modeling	\$15,000
<input type="checkbox"/> PSD Permit (or Amendment) subject to NAAQS and/or PSD Increment Modeling but not subject to Modeling for PM _{2.5} , NO ₂ , or SO ₂	\$20,000
<input type="checkbox"/> PSD Permit (or Amendment) subject to NAAQS and/or PSD Increment Modeling for PM _{2.5} , NO ₂ , or SO ₂	\$25,000
<input type="checkbox"/> PSD Permit (or Amendment) subject to NAAQS and/or PSD Increment Modeling for PM _{2.5} , NO ₂ , or SO ₂ and also impacting a Class I Area	\$30,000
* Do not send fee payment with this form. Upon acceptance of application for the expedited permit program, EPD will notify you by phone. Fees must be paid via check to "Georgia Department of Natural Resources" within five (5) business days of acceptance.	

3. Comments.

This section is optional. Applicants may use this field to include specific comments or requests for EPD consideration. For example, the applicant may use this field to request a public hearing or to remind EPD of review time needs and/or expectations that may differ from the time frames in the procedures.



SIP AIR PERMIT APPLICATION

RECEIVED

EPD Use Only	
Date Received: <u>JUL 10 2020</u>	Application No. _____

Air Protection Branch

FORM 1.00: GENERAL INFORMATION

1. Facility Information

Facility Name: Metro Green 3
AIRS No. (if known): 04-13- -
Facility Location: Street: 5152 Snapfinger Woods Drive
City: Stonecrest Georgia Zip: 30035 County: Dekalb
Is this facility a "small business" as defined in the instructions? Yes: No:

2. Facility Coordinates

Latitude: 33° 42' 42" NORTH Longitude: 84° 10' 44" WEST
UTM Coordinates: 761445.05 EAST 3733769.86 NORTH ZONE 16S

3. Facility Owner

Name of Owner: Metro Green Recycling, LLC
Owner Address Street: 4351 Pleasantdale Road
City: Atlanta State: GA Zip: 30340

4. Permitting Contact and Mailing Address

Contact Person: Mark Black Title: General Manager
Telephone No.: 770-326-6000 Ext. _____ Fax No.: 770-326-6009
Email Address: mblack@mgrecycle.com
Mailing Address: Same as: Facility Location: Owner Address: Other:
If Other: Street Address: _____
City: _____ State: _____ Zip: _____

5. Authorized Official

Name: Mark Black Title: General Manager
Address of Official Street: 4351 Pleasantdale Road
City: Atlanta State: GA Zip: 30340

This application is submitted in accordance with the provisions of the Georgia Rules for Air Quality Control and, to the best of my knowledge, is complete and correct.

Signature: *Mark Black* Date: 7/8/20

6. Reason for Application: (Check all that apply)

- New Facility (to be constructed) Revision of Data Submitted in an Earlier Application
- Existing Facility (initial or modification application) Application No.: _____
- Permit to Construct Date of Original Submittal: _____
- Permit to Operate
- Change of Location
- Permit to Modify Existing Equipment: Affected Permit No.: _____

7. Permitting Exemption Activities (for permitted facilities only):

Have any exempt modifications based on emission level per Georgia Rule 391-3-1-.03(6)(i)(3) been performed at the facility that have not been previously incorporated in a permit?

- No Yes, please fill out the SIP Exemption Attachment (See Instructions for the attachment download)

8. Has assistance been provided to you for any part of this application?

- No Yes, SBAP Yes, a consultant has been employed or will be employed.

If yes, please provide the following information:

Name of Consulting Company: Trinity Consultants

Name of Contact: Shiv Tailor

Telephone No.: 404-751-0234 Fax No.: _____

Email Address: stailor@trinityconsultants.com

Mailing Address: Street: 3495 Piedmont Road, Building 10, Suite 905

City: Atlanta State: GA Zip: 30305

Describe the Consultant's Involvement:

Trinity Consultants prepared emissions calculations and application.

9. Submitted Application Forms: Select only the necessary forms for the facility application that will be submitted.

No. of Forms	Form
1	2.00 Emission Unit List
	2.01 Boilers and Fuel Burning Equipment
	2.02 Storage Tank Physical Data
	2.03 Printing Operations
	2.04 Surface Coating Operations
	2.05 Waste Incinerators (solid/liquid waste destruction)
1	2.06 Manufacturing and Operational Data
1	3.00 Air Pollution Control Devices (APCD)
	3.01 Scrubbers
	3.02 Baghouses & Other Filter Collectors
	3.03 Electrostatic Precipitators
1	4.00 Emissions Data
	5.00 Monitoring Information
	6.00 Fugitive Emission Sources
	7.00 Air Modeling Information

10. Construction or Modification Date

Estimated Start Date: Q3 2020

11. If confidential information is being submitted in this application, were the guidelines followed in the "Procedures for Requesting that Submitted Information be treated as Confidential"?

No Yes

12. New Facility Emissions Summary

Criteria Pollutant	New Facility	
	Potential (tpy)	Actual (tpy)
Carbon monoxide (CO)		
Nitrogen oxides (NOx)		
Particulate Matter (PM) (filterable only)	59.02	<59.02
PM <10 microns (PM10)	20.20	<20.20
PM <2.5 microns (PM2.5)	2.20	<2.20
Sulfur dioxide (SO ₂)		
Volatile Organic Compounds (VOC)		
Greenhouse Gases (GHGs) (in CO ₂ e)		
Total Hazardous Air Pollutants (HAPs)		
Individual HAPs Listed Below:		

13. Existing Facility Emissions Summary

Criteria Pollutant	Current Facility		After Modification	
	Potential (tpy)	Actual (tpy)	Potential (tpy)	Actual (tpy)
Carbon monoxide (CO)				
Nitrogen oxides (NOx)				
Particulate Matter (PM) (filterable only)				
PM <10 microns (PM10)				
PM <2.5 microns (PM2.5)				
Sulfur dioxide (SO ₂)				
Volatile Organic Compounds (VOC)				
Greenhouse Gases (GHGs) (in CO ₂ e)				
Total Hazardous Air Pollutants (HAPs)				
Individual HAPs Listed Below:				

14. 4-Digit Facility Identification Code:

SIC Code: 5093 SIC Description: Scrap and Waste Materials

NAICS Code: 423930 NAICS Description: Recyclable Material Merchant Wholesalers

15. Description of general production process and operation for which a permit is being requested. If necessary, attach additional sheets to give an adequate description. Include layout drawings, as necessary, to describe each process. References should be made to source codes used in the application.

Metro Green Recycling, LLC is a construction and demolition waste recycling company. This plant will process the debris resulting from construction, renovation, repair and demolition of commercial buildings, houses, roads, bridges, etc. Recycled materials include concrete, rock, wood, cardboard, and metal.

At this facility, materials will be crushed, screened, and moved with conveyor belts. Water is used as a control device for particulate matter.

16. Additional information provided in attachments as listed below:

Attachment A - SIP Forms

Attachment B - Potential to Emit Calculations

Attachment C - Site Plan

Attachment D - _____

Attachment E - _____

Attachment F - _____

17. Additional Information: Unless previously submitted, include the following two items:

Plot plan/map of facility location or date of previous submittal: See Site Plan

Flow Diagram or date of previous submittal: See Site Plan

18. Other Environmental Permitting Needs:

Will this facility/modification trigger the need for environmental permits/approvals (other than air) such as Hazardous Waste Generation, Solid Waste Handling, Water withdrawal, water discharge, SWPPP, mining, landfill, etc.?

No Yes, please list below:

19. List requested permit limits including synthetic minor (SM) limits.

Requesting synthetic minor limitations for criteria pollutants.

20. Effective March 1, 2019, permit application fees will be assessed. The fee amount varies based on type of permit application. Application acknowledgement emails will be sent to the current registered fee contact in the GECO system. If fee contacts have changed, please list that below:

Fee Contact name: Mark Black

Fee Contact email address: mblack@mgrecycle.com

Fee Contact phone number: 770-326-6000

Fee invoices will be created through the GECO system shortly after the application is received. It is the applicant's responsibility to access the facility GECO account, generate the fee invoice, and submit payment within 10 days after notification.

Facility Name: Metro Green 3

Date of Application: July 2020

FORM 2.00 – EMISSION UNIT LIST

Emission Unit ID	Name	Manufacturer and Model Number	Description
1	Lippmann Scalper	Lippmann, VGF - 6624	Screen
2	100' Pick Station	MG Shop	Conveyor
3	Jaw Crusher	Lippmann, 30X62	Crusher
3A	Pan Feeder	Syntron, RF-120-B	Screen
4	48" X 60' Conveyor	Vale Industries, 48X60	Conveyor
5	48" X 60' Conveyor	Vale Industries, 48X60	Conveyor
5B	36" X 60' Conveyor	Superior Industries, 36X60	Conveyor
5C	48" X 40' Conveyor	Vale Industries, 48X40	Conveyor
6	6' X 20' Air Screen	Vale/JCI-KPI	Screen
6-TC	18" X 10' Cross Belt	Vale Industries	Conveyor
6-US	48" X 26' Under Screen Belt	Vale Industries	Conveyor
7-BC	30" X 20' Cross Belt	Vale Industries	Conveyor
8	48" X 60' Conveyor	Vale Industries, 48X60	Conveyor
9	48" X 60' Conveyor	MG Shop	Conveyor
10	Vibrating Feeder	Syntron, MF-200-DD	Screen
11	48" X 100' Conveyor	MG Shop, 48X100	Conveyor
12	6' X 20' Triple Deck Screen	Fab-Tec/JCI-KPI, 6203-32	Screen
12-US	48" X 26' Under Screen Belt	Fab-Tec	Conveyor
12-TC	30" X 15' Top Cross Belt	Fab-Tec	Conveyor

12-BC	30" X 20' Bottom Cross Belt	Fab-Tec	Conveyor
13	36" X 60' Jump Conveyor	MG Shop, 36X60	Conveyor
14	36" X 60' Stacker	Superior Industries, 36X60	Conveyor
15	300 HP Cone	JCI/KPI, K300S	Crusher
16	36" X 80' Over Conveyor	MG Shop, 36X80	Conveyor
17	6' X 20' Triple Deck Screen	Fab-Tec/JCI-KPI, 6203-32	Screen
17-US	48" X 26' Under Screen Belt	Fab-Tec	Conveyor
17-TC	30" X 15' Top Cross Belt	Fab-Tec	Conveyor
17-BC	30" X 20' Bottom Cross Belt	Fab-Tec	Conveyor
18	36" X 60' Jump Conveyor	Superior Industries, 36X60STKP	Conveyor
19	36" X 60' Stacker	Superior Industries, 30X60STKP	Conveyor
20	36" X 60' Jump Conveyor	Superior Industries, 30X60STKP	Conveyor
21	36" X 60' Jump Conveyor	Superior Industries, 30X60STKP	Conveyor
22	100' Stacker	Pond River, 36X100	Conveyor
23	100' Stacker	Pond River, 36X100	Conveyor
24	150' Telestacker	Superior Industries, 36X150TSSA	Conveyor
25	150' Stacker	Pond River, 36X150	Conveyor

Facility Name: Metro Green 3 Date of Application: July 2020

FORM 2.06 – MANUFACTURING AND OPERATIONAL DATA

Normal Operating Schedule: 24 hours/day 7 days/week 52 weeks/yr
 Additional Data Attached? - No - Yes, please include the attachment in list on Form 1.00, Item 16.

Seasonal and/or Peak Operating Periods: N/A

Dates of Annually Occurring Shutdowns: N/A

PRODUCTION INPUT FACTORS

Emission Unit ID	Emission Unit Name	Const. Date	Input Raw Material(s)	Annual Input	Hourly Process Input Rate (tph)		
					Design	Normal	Maximum
1	Lippmann Scalper	TBD	C&D Waste		1,500		1,500
2	100' Pick Station	TBD	C&D Waste		500		500
3	Jaw Crusher	TBD	C&D Waste		400		400
3A	Pan Feeder	TBD	C&D Waste		600		600
4	48" X 60' Conveyor	TBD	C&D Waste		700		700
5	48" X 60' Conveyor	TBD	C&D Waste		700		700
5B	36" X 60' Conveyor	TBD	C&D Waste		600		600
5C	48" X 40' Conveyor	TBD	C&D Waste		700		700
6	6' X 20' Air Screen	TBD	C&D Waste		700		700
6-TC	18" X 10' Cross Belt	TBD	C&D Waste		75		75
6-US	48" X 26' Under Screen Belt	TBD	C&D Waste		500		500
7-BC	30" X 20' Cross Belt	TBD	C&D Waste		250		250
8	48" X 60' Conveyor	TBD	C&D Waste		800		800
9	48" X 60' Conveyor	TBD	C&D Waste		600		600
10	Vibrating Feeder	TBD	C&D Waste		600		600
11	48" X 100' Conveyor	TBD	C&D Waste		800		800
12	6' X 20' Triple Deck Screen	TBD	C&D Waste		700		700
12-US	48" X 26' Under Screen Belt	TBD	C&D Waste		500		500
12-TC	30" X 15' Top Cross Belt	TBD	C&D Waste		250		250
12-BC	30" X 20' Bottom Cross Belt	TBD	C&D Waste		250		250
13	36" X 60 Jump Conveyor	TBD	C&D Waste		600		600
14	36" X 60' Stacker	TBD	C&D Waste		600		600
15	300 HP Cone	TBD	C&D Waste		300		300
16	36" X 80' Over Conveyor	TBD	C&D Waste		600		600
17	6' X 20' Triple Deck Screen	TBD	C&D Waste		700		700

17-US	48" X 26' Under Screen Belt	TBD	C&D Waste		500		500
17-TC	30" X 15' Top Cross Belt	TBD	C&D Waste		250		250
17-BC	30" X 20' Bottom Cross Belt	TBD	C&D Waste		250		250
18	36" X 60' Jump Conveyor	TBD	C&D Waste		600		600
19	36" X 60' Stacker	TBD	C&D Waste		600		600
20	36" X 60' Jump Conveyor	TBD	C&D Waste		600		600
21	36" X 60' Jump Conveyor	TBD	C&D Waste		600		600
22	100' Stacker	TBD	C&D Waste		600		600
23	100' Stacker	TBD	C&D Waste		600		600
24	150' Telestacker	TBD	C&D Waste		600		600
25	150' Stacker	TBD	C&D Waste		600		600

PRODUCTS OF MANUFACTURING

Emission Unit ID	Description of Product	Production Schedule		Hourly Production Rate (Give units: e.g. lb/hr, ton/hr)			
		Tons/yr	Hr/yr	Design	Normal	Maximum	Units
1	Recycled C&D aggregate		8,760	1,500		1,500	Ton/hr
2	Recycled C&D aggregate		8,760	500		500	Ton/hr
3	Recycled C&D aggregate		8,760	400		400	Ton/hr
3A	Recycled C&D aggregate		8,760	600		600	Ton/hr
4	Recycled C&D aggregate		8,760	700		700	Ton/hr
5	Recycled C&D aggregate		8,760	700		700	Ton/hr
5B	Recycled C&D aggregate		8,760	600		600	Ton/hr
5C	Recycled C&D aggregate		8,760	700		700	Ton/hr
6	Recycled C&D aggregate		8,760	700		700	Ton/hr
6-TC	Recycled C&D aggregate		8,760	75		75	Ton/hr
6-US	Recycled C&D aggregate		8,760	500		500	Ton/hr
7-BC	Recycled C&D aggregate		8,760	250		250	Ton/hr
8	Recycled C&D aggregate		8,760	800		800	Ton/hr
9	Recycled C&D aggregate		8,760	600		600	Ton/hr
10	Recycled C&D aggregate		8,760	600		600	Ton/hr
11	Recycled C&D aggregate		8,760	800		800	Ton/hr
12	Recycled C&D aggregate		8,760	700		700	Ton/hr
12-US	Recycled C&D aggregate		8,760	500		500	Ton/hr
12-TC	Recycled C&D aggregate		8,760	250		250	Ton/hr
12-BC	Recycled C&D aggregate		8,760	250		250	Ton/hr
13	Recycled C&D aggregate		8,760	600		600	Ton/hr

14	Recycled C&D aggregate		8,760	600		600	Ton/hr
15	Recycled C&D aggregate		8,760	300		300	Ton/hr
16	Recycled C&D aggregate		8,760	600		600	Ton/hr
17	Recycled C&D aggregate		8,760	700		700	Ton/hr
17-US	Recycled C&D aggregate		8,760	500		500	Ton/hr
17-TC	Recycled C&D aggregate		8,760	250		250	Ton/hr
17-BC	Recycled C&D aggregate		8,760	250		250	Ton/hr
18	Recycled C&D aggregate		8,760	600		600	Ton/hr
19	Recycled C&D aggregate		8,760	600		600	Ton/hr
20	Recycled C&D aggregate		8,760	600		600	Ton/hr
21	Recycled C&D aggregate		8,760	600		600	Ton/hr
22	Recycled C&D aggregate		8,760	600		600	Ton/hr
23	Recycled C&D aggregate		8,760	600		600	Ton/hr
24	Recycled C&D aggregate		8,760	600		600	Ton/hr
25	Recycled C&D aggregate		8,760	600		600	Ton/hr

Facility Name: Metro Green 3

Date of Application: July 2020

Form 3.00 – AIR POLLUTION CONTROL DEVICES - PART A: GENERAL EQUIPMENT INFORMATION

APCD Unit ID	Emission Unit ID	APCD Type (Baghouse, ESP, Scrubber, etc)	Date Installed	Make & Model Number (Attach Mfg. Specifications & Literature)	Unit Modified from Mfg Specifications?	Gas Temp. °F		Inlet Gas Flow Rate (acfm)
						Inlet	Outlet	
WS1	1	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS2	3	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS3	3A	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS4	6	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS5	8	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS6	9	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS7	10	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS8	11	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS9	12	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS10	14	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS11	15	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS12	16	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS13	17	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS14	18	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS15	22	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS16	24	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A
WS17	25	Water Sprays	TBD	N/A	N/A	N/A	N/A	N/A

Facility Name: Metro Green 3

Date of Application: July 2020

Form 3.00 – AIR POLLUTION CONTROL DEVICES – PART B: EMISSION INFORMATION

APCD Unit ID	Pollutants Controlled	Percent Control Efficiency		Inlet Stream To APCD		Exit Stream From APCD		Pressure Drop Across Unit (Inches of water)
		Design	Actual	lb/hr	Method of Determination	lb/hr	Method of Determination	
WS1	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS2	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS3	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS4	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS5	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS6	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS7	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS8	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS9	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS10	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS11	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS12	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS13	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS14	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS15	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS16	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
WS17	PM	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Facility Name: Metro Green 3

Date of Application: July 2020

FORM 4.00 – EMISSION INFORMATION

Emission Unit ID	Air Pollution Control Device ID	Stack ID	Pollutant Emitted	Emission Rates					Method of Determination
				Hourly Actual Emissions (lb/hr)	Hourly Potential Emissions (lb/hr)	Actual Annual Emission (tpy)	Potential Annual Emission (tpy)		
1	WS1		PM		3.3			14.45	AP-42 Section 11.19.2 (controlled)
2	N/A		PM		.07			.31	AP-42 Section 11.19.2 (controlled)
3	WS2		PM		.48			2.10	AP-42 Section 11.19.2 (controlled)
3A	WS3		PM		1.32			5.78	AP-42 Section 11.19.2 (controlled)
4	N/A		PM		.098			.43	AP-42 Section 11.19.2 (controlled)
5	N/A		PM		.098			.43	AP-42 Section 11.19.2 (controlled)
5B	N/A		PM		.084			.37	AP-42 Section 11.19.2 (controlled)
5C	N/A		PM		.098			.43	AP-42 Section 11.19.2 (controlled)
6	WS4		PM		1.54			6.75	AP-42 Section 11.19.2 (controlled)
6-TC	N/A		PM		.0105			.05	AP-42 Section 11.19.2 (controlled)
6-US	N/A		PM		.07			.31	AP-42 Section 11.19.2 (controlled)
7-BC	N/A		PM		.035			.15	AP-42 Section 11.19.2 (controlled)
8	WS5		PM		.112			.49	AP-42 Section 11.19.2 (controlled)
9	WS6		PM		.084			.37	AP-42 Section 11.19.2 (controlled)
10	WS7		PM		1.32			5.78	AP-42 Section 11.19.2 (controlled)
11	WS8		PM		.112			.49	AP-42 Section 11.19.2 (controlled)

12	WS9	PM			1.54		6.75	AP-42 Section 11.19.2 (controlled)
12-US	N/A	PM			.07		.31	AP-42 Section 11.19.2 (controlled)
12-TC	N/A	PM			.035		.15	AP-42 Section 11.19.2 (controlled)
12-BC	N/A	PM			.035		.15	AP-42 Section 11.19.2 (controlled)
13	N/A	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
14	WS10	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
15	WS11	PM			.36		1.58	AP-42 Section 11.19.2 (controlled)
16	WS12	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
17	WS13	PM			1.54		6.75	AP-42 Section 11.19.2 (controlled)
17-US	N/A	PM			.07		.31	AP-42 Section 11.19.2 (controlled)
17-TC	N/A	PM			.035		.15	AP-42 Section 11.19.2 (controlled)
17-BC	N/A	PM			.035		.15	AP-42 Section 11.19.2 (controlled)
18	WS14	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
19	N/A	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
20	N/A	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
21	N/A	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
22	WS15	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
23	N/A	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
24	WS16	PM			.084		.37	AP-42 Section 11.19.2 (controlled)
25	WS17	PM			.084		.37	AP-42 Section 11.19.2 (controlled)

APPENDIX B. EMISSION CALCULATIONS

**Metro Green 3
Emission Calculations**

Table 1. Potential to Emit

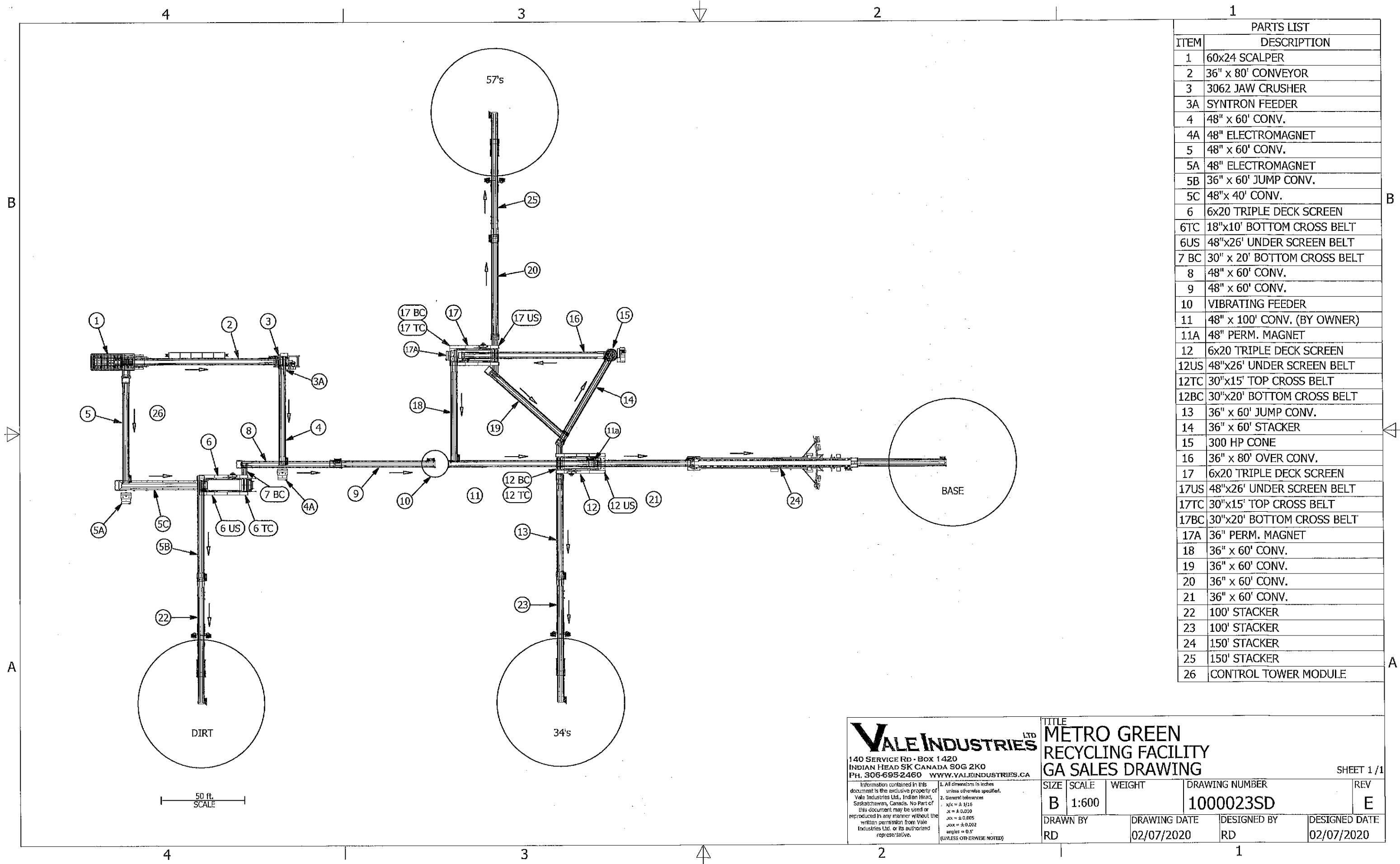
Unit ID	Unit Name	Control Type	Capacity (tph)	PM Emission Factor ¹ (lb/ton)	PM ₁₀ Emission Factor ¹ (lb/ton)	PM _{2.5} Emission Factor ¹ (lb/ton)	PM Emissions ² (tpy)	PM ₁₀ Emissions ² (tpy)	PM _{2.5} Emissions ² (tpy)
1	Lippmann Scalper	Water Sprayer	1,500	2.2E-03	7.4E-04	5.0E-05	14.45	4.86	0.33
2	100' Pick Station	Wet Material	500	1.4E-04	4.6E-05	1.3E-05	0.31	0.10	0.03
3	Jaw Crusher	Water Sprayer	400	1.2E-03	5.4E-04	1.0E-04	2.10	0.95	0.18
3A	Pan Feeder	Water Sprayer	600	2.2E-03	7.4E-04	5.0E-05	5.78	1.94	0.13
4	48" X 60' Conveyor	Wet Material	700	1.4E-04	4.6E-05	1.3E-05	0.43	0.14	0.04
5	48" X 60' Conveyor	Wet Material	700	1.4E-04	4.6E-05	1.3E-05	0.43	0.14	0.04
5B	36" X 60' Conveyor	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
5C	48" X 40' Conveyor	Wet Material	700	1.4E-04	4.6E-05	1.3E-05	0.43	0.14	0.04
6	6' x 20' Air Screen	Water Sprayer	700	2.2E-03	7.4E-04	5.0E-05	6.75	2.27	0.15
6-TC	18" X 10' Cross Belt	Wet Material	75	1.4E-04	4.6E-05	1.3E-05	0.05	0.02	0.00
6-US	48" X 26' Under Screen Belt	Wet Material	500	1.4E-04	4.6E-05	1.3E-05	0.31	0.10	0.03
7-BC	30" X 20' Cross Belt	Wet Material	250	1.4E-04	4.6E-05	1.3E-05	0.15	0.05	0.01
8	48" x 60' Conveyor	Water Sprayer	800	1.4E-04	4.6E-05	1.3E-05	0.49	0.16	0.05
9	48" x 60' Conveyor	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
10	Vibrating Feeder	Water Sprayer	600	2.2E-03	7.4E-04	5.0E-05	5.78	1.94	0.13
11	48" X 100' Conveyor	Water Sprayer	800	1.4E-04	4.6E-05	1.3E-05	0.49	0.16	0.05
12	6' X 20' Triple Deck Screen	Water Sprayer	700	2.2E-03	7.4E-04	5.0E-05	6.75	2.27	0.15
12-US	48" X 26' Under Screen Belt	Wet Material	500	1.4E-04	4.6E-05	1.3E-05	0.31	0.10	0.03
12-TC	30" X 15' Top Cross Belt	Wet Material	250	1.4E-04	4.6E-05	1.3E-05	0.15	0.05	0.01
12-BC	30" X 20' Bottom Cross Belt	Wet Material	250	1.4E-04	4.6E-05	1.3E-05	0.15	0.05	0.01
13	36"X 60 Jump Conveyor	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
14	36" X 60' Stacker	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
15	300 HP Cone	Water Sprayer	300	1.2E-03	5.4E-04	1.0E-04	1.58	0.71	0.13
16	36" X 80' Over Conveyor	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
17	6' X 20' Triple Deck Screen	Water Sprayer	700	2.2E-03	7.4E-04	5.0E-05	6.75	2.27	0.15
17-US	48" X 26' Under Screen Belt	Wet Material	500	1.4E-04	4.6E-05	1.3E-05	0.31	0.10	0.03
17-TC	30" X 15' Top Cross Belt	Wet Material	250	1.4E-04	4.6E-05	1.3E-05	0.15	0.05	0.01
17-BC	30" X 20' Bottom Cross Belt	Wet Material	250	1.4E-04	4.6E-05	1.3E-05	0.15	0.05	0.01
18	36" X 60' Jump Conveyor	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
19	36" X 60' Stacker	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
20	36" X 60' Jump Conveyor	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
21	36" X 60' Jump Conveyor	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
22	100' Stacker	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
23	100' Stacker	Wet Material	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
24	150' Telestacker	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
25	150' Stacker	Water Sprayer	600	1.4E-04	4.6E-05	1.3E-05	0.37	0.12	0.03
Total³							59.02	20.20	2.20
Title V Threshold							N/A	100	100
Exceeds Threshold?							N/A	No	No

1. Emission factor from AP-42 Table 11.19.2-2 (controlled). All PM is assumed to be filterable.

2. Emissions (tpy) = Emission Factor (lb/ton) * Capacity (tph) * 8,760 (hrs/yr) / 2,000 (lb/ton)

3. It is assumed that uncontrolled emissions would exceed the Title V thresholds, therefore synthetic minor limits are requested.

APPENDIX C. SITE PLAN



PARTS LIST	
ITEM	DESCRIPTION
1	60x24 SCALPER
2	36" x 80' CONVEYOR
3	3062 JAW CRUSHER
3A	SYNTRON FEEDER
4	48" x 60' CONV.
4A	48" ELECTROMAGNET
5	48" x 60' CONV.
5A	48" ELECTROMAGNET
5B	36" x 60' JUMP CONV.
5C	48"x 40' CONV.
6	6x20 TRIPLE DECK SCREEN
6TC	18"x10' BOTTOM CROSS BELT
6US	48"x26' UNDER SCREEN BELT
7 BC	30" x 20' BOTTOM CROSS BELT
8	48" x 60' CONV.
9	48" x 60' CONV.
10	VIBRATING FEEDER
11	48" x 100' CONV. (BY OWNER)
11A	48" PERM. MAGNET
12	6x20 TRIPLE DECK SCREEN
12US	48"x26' UNDER SCREEN BELT
12TC	30"x15' TOP CROSS BELT
12BC	30"x20' BOTTOM CROSS BELT
13	36" x 60' JUMP CONV.
14	36" x 60' STACKER
15	300 HP CONE
16	36" x 80' OVER CONV.
17	6x20 TRIPLE DECK SCREEN
17US	48"x26' UNDER SCREEN BELT
17TC	30"x15' TOP CROSS BELT
17BC	30"x20' BOTTOM CROSS BELT
17A	36" PERM. MAGNET
18	36" x 60' CONV.
19	36" x 60' CONV.
20	36" x 60' CONV.
21	36" x 60' CONV.
22	100' STACKER
23	100' STACKER
24	150' STACKER
25	150' STACKER
26	CONTROL TOWER MODULE

		TITLE METRO GREEN RECYCLING FACILITY GA SALES DRAWING		SHEET 1 / 1	
140 SERVICE RD - BOX 1420 INDIAN HEAD SK CANADA S0G 2K0 PH. 306-695-2460 WWW.VALEINDUSTRIES.CA		SIZE B	SCALE 1:600	WEIGHT 	DRAWING NUMBER 1000023SD
<small>Information contained in this document is the exclusive property of Vale Industries Ltd., Indian Head, Saskatchewan, Canada. No part of this document may be used or reproduced in any manner without the written permission from Vale Industries Ltd. or its authorized representative.</small>		<small>1. All dimensions in inches unless otherwise specified. 2. General tolerances .x/2 = ±.125 .x = ±.010 .xxx = ±.005 angles = 0.5° (UNLESS OTHERWISE NOTED)</small>		DRAWN BY RD	DRAWING DATE 02/07/2020
		DESIGNED BY RD	DESIGNED DATE 02/07/2020	REV E	

Exhibit 7

Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status

Ihab Mikati, BS, Adam F. Benson, MSPH, Thomas J. Luben, PhD, MSPH, Jason D. Sacks, MPH, and Jennifer Richmond-Bryant, PhD

Objectives. To quantify nationwide disparities in the location of particulate matter (PM)-emitting facilities by the characteristics of the surrounding residential population and to illustrate various spatial scales at which to consider such disparities.

Methods. We assigned facilities emitting PM in the 2011 National Emissions Inventory to nearby block groups across the 2009 to 2013 American Community Survey population. We calculated the burden from these emissions for racial/ethnic groups and by poverty status. We quantified disparities nationally and for each state and county in the country.

Results. For PM of 2.5 micrometers in diameter or less, those in poverty had 1.35 times higher burden than did the overall population, and non-Whites had 1.28 times higher burden. Blacks, specifically, had 1.54 times higher burden than did the overall population. These patterns were relatively unaffected by sensitivity analyses, and disparities held not only nationally but within most states and counties as well.

Conclusions. Disparities in burden from PM-emitting facilities exist at multiple geographic scales. Disparities for Blacks are more pronounced than are disparities on the basis of poverty status. Strictly socioeconomic considerations may be insufficient to reduce PM burdens equitably across populations. (*Am J Public Health.* 2018;108:480–485. doi:10.2105/AJPH.2017.304297)

 See also Houston, p. 441.

The inequitable distribution of hazardous sites such as landfills and industrial facilities is one of the longest-standing concerns in the field of environmental justice. More than 3 decades ago in one of the earliest environmental justice studies, the US government reported a disproportionately high representation of socially disadvantaged populations residing in communities near landfills.¹ Disparities in residential proximity to pollution sources have been evaluated in terms of income level and poverty as well as race/ethnicity. A nationally representative 1986 sample found that Blacks were 1.54 times more likely than were Whites to live within 1 mile of a facility listed in the Toxics Release Inventory—a gap that remained statistically significant even after accounting for income and education level.² The distributions of specific air pollutants, and not just the facilities emitting them, also reflect racial disparities. For example, mean residential ambient nitrogen dioxide concentrations in 2010 were about 7% higher for

those in poverty than for those above the poverty line, whereas the disparity for non-Whites (37% higher concentrations than for Whites) was substantially greater.³

There is considerable evidence concerning human health impacts of residential proximity to facilities emitting air pollutants.⁴ One such pollutant is particulate matter (PM), a mixture of solid and liquid particles suspended in the air.⁵ Exposure to PM₁₀ (PM ≤ 10 μm in diameter) and especially to PM_{2.5} (PM ≤ 2.5 μm in diameter) has been associated with a number of health effects, including respiratory and

cardiovascular diseases as well as premature mortality.^{6–8} Although proximity to facilities emitting PM is not a direct measure of exposure, it is a valuable metric. Unlike natural events that contribute to ambient PM, such as wildfires, the siting of a facility is the result of a decision-making process. Disparities in siting may indicate underlying disparities in the power to influence that process. For example, an Environmental Protection Agency (EPA) investigation in Flint, Michigan, found a direct link between racial discrimination and the permitting of a power station there, stating, “The preponderance of evidence supports a finding of discriminatory treatment of African Americans by [the Department of Environmental Quality] in the public participation process.”⁹

We aimed to quantify nationwide disparities in the distribution of PM-emitting facilities by the characteristics of the surrounding residential populations and to illustrate various spatial scales at which to consider such disparities. Previous literature has shown that non-Whites and below-poverty individuals are more likely to reside near stationary sites of PM_{2.5} emissions¹⁰; we sought to update and expand on these findings.

METHODS

We combined facility emissions data with demographic data to investigate racial/ethnic and economic disparities in residential proximity to sources of air pollution.

ABOUT THE AUTHORS

Ihab Mikati and Adam F. Benson are participants in the Oak Ridge Institute for Science and Education research training program stationed with the National Center for Environmental Assessment, Office of Research and Development, US Environmental Protection Agency, Research Triangle Park, NC. Thomas J. Luben, Jason D. Sacks, and Jennifer Richmond-Bryant are staff members with the National Center for Environmental Assessment, Office of Research and Development, US Environmental Protection Agency, Research Triangle Park, NC.

Correspondence should be sent to Ihab Mikati, ORISE Program participant at the National Center for Environmental Assessment, Office of Research and Development, US Environmental Protection Agency—109 T.W. Alexander Drive, Research Triangle Park, NC 27709 (e-mail: mikati.ihab@epa.gov; please cc: mikati.ihab@gmail.com to ensure receipt). Reprints can be ordered at <http://www.ajph.org> by clicking the “Reprints” link.

This article was accepted December 16, 2017.

doi: 10.2105/AJPH.2017.304297

Data Sources

We accessed population data via the US Census Bureau's 2009 to 2013 American Community Survey (ACS).¹¹ The ACS provides self-reported data on racial/ethnic identification and poverty status at the census block group level for all 50 states and Washington, DC. The block group is a single level of resolution finer than the census tract and commonly contains 600 to 3000 residents.

For our analyses, "White" refers to only non-Hispanic Whites; "non-White" refers to all others. Included in the latter group are Black (non-Hispanic) and Hispanic (any race). The Census Bureau determines poverty status by comparing household income to a threshold that varies by household size and composition.¹²

Because there are differences between rural and urban areas both in industrialization and in demographic composition, we also noted rural-urban status for all block groups. We made rural-urban status determinations from the US Department of Agriculture's rural-urban commuting area (RUCA) codes for 2010.¹³ These codes are determined on the basis of census tract-level population density, urbanization, and daily commuting levels; they can be used to distinguish between metropolitan and micropolitan urban centers, commuting (suburban) areas, small towns, and rural areas.¹³

We collected emissions data on stationary human-made point sources from the US EPA National Emissions Inventory (NEI) "Facility-level by Pollutant" files for 2011, the year most closely aligned to the census data we used for our analysis.¹⁴ This data source allowed us to consider not just the presence or absence of a facility but also the amount of the pollutant emitted. We considered annual NEI totals, in tons per year, for primary PM_{2.5} and primary PM₁₀.

Data Analysis

The spatial size (i.e., land area) of block groups can vary substantially between urban and rural areas because of the block group's restricted population range. As population densities increase and block groups shrink in urban areas, assignment via "unit-hazard coincidence" (the matching of a site to its host unit and no others, regardless of proximity) may underestimate the number of nearby

hazards relative to those in large rural tracts.¹⁵ To address this, we used a distance-based "centroid-containment" assignment instead.¹⁵ We assigned each facility and its corresponding emissions (in tons per year) to all census block groups containing a centroid within a set radius of the facility's geographic coordinates. We analyzed radii ranging from 0.5 to 5.0 miles; in our main analysis, we used a 2.5-mile radius, following the NEI facility assignment of Boyce and Pastor.¹⁰ We assigned facilities and emissions meeting the centroid-containment criteria for a block group to the population residing within that block group.

We measured the between-group differences in residential proximity to facilities and facility emissions by using 2 metrics: the absolute burden (i.e., the average number of facilities or average amount of PM, in tons/year, emitted within a set distance from an individual's block group centroid) and the proportional burden (i.e., the ratio between a demographic subgroup's average burden and that of the overall population).

To determine average absolute burden (Equation 1) for demographic subgroups, we multiplied the emissions (or total number of facilities) assigned to each block group by the subgroup's population size. We divided the sum of this value across block groups by the total subgroup population, similar to previous studies.^{10,16,17}

$$(1) \text{ Absolute Burden} = \frac{\sum (\text{Population}_{\text{BlockGroup}} \times \text{Emissions}_{\text{BlockGroup}})}{\sum \text{Population}_{\text{BlockGroup}}}$$

We calculated proportional burdens (Equation 2) by dividing the absolute burden in a subgroup of the population by the absolute burden in the overall population. Scores above 1.0 indicate that the subgroup experienced higher burden than would be expected in a perfectly equitable scenario.

$$(2) \text{ Proportional Burden}_{\text{Subgroup}} = \frac{\text{Absolute Burden}_{\text{Subgroup}}}{\text{Absolute Burden}_{\text{Overall}}}$$

We carried out all data management and analysis by using R software version 3.1.2 (R Foundation for Statistical Computing, Vienna, Austria; packages used: dplyr, tidy, bit64, data.table for data management; tigris for block group coordinates; Hmisc for calculation of correlations).

Sensitivity Analyses

We conducted several sensitivity analyses to address the potential for small methodological changes to bias our results. To examine whether disparities were consistent at various distances from emissions sources, we used assignment radii at 0.50, 1.25, and 5.00 miles as alternatives to the 2.50-mile centroid-containment radius in the main analysis. To address whether the reported disparities were driven by assignments in extremely sparse or dense areas, we repeated the main analysis after eliminating the largest and smallest decile of block groups (by area). An additional analysis ensured that facilities were always assigned to their host block group by combining the centroid-containment assignment with the traditional unit-hazard coincidence; this helped us address concerns that centroid-containment assignment could underestimate the burden in rural areas, where facilities may be far from their host block group's centroid.

We repeated the main analysis using racial/ethnic population data from the 2010 Decennial Census (poverty data unavailable for this data set) to show that disparities were not specific to the census methodology of the ACS. We considered recent shifts in pollution data by substituting the 2008 or 2014 NEI in place of the 2011 data set. To gauge general applicability to other emissions, we also analyzed other criteria air pollutants available in the NEI: carbon monoxide (CO), lead (Pb), oxides of nitrogen (NO_x), and sulfur dioxide (SO₂).

RESULTS

On average, there are 5.7 NEI facilities within 2.5 miles of an individual's census block group centroid (i.e., a facility burden of 5.7). For an individual in the overall US population, the mean absolute burden of PM_{2.5} and PM₁₀ emitted from nearby facilities is 22.4 and 29.2 tons per year, respectively. As reported in Table 1, non-Whites and those living in poverty face a disproportionate burden from PM-emitting facilities. Blacks in particular are likely to live in high-emission areas; the average PM_{2.5} burden in this group is 1.54 times that of the population overall. It is notable that this racial

TABLE 1—Mean Absolute and Proportional Burdens From Facilities Emitting PM in the 2011 National Emissions Inventory, Selected Subgroups: American Community Survey, United States, 2009–2013

Variable	Proportion of Population, %	PM _{2.5} Burden, Absolute (Proportional)	PM ₁₀ Burden, Absolute (Proportional)	Facility Burden, Absolute (Proportional)
Overall population	1.00	22.4 (. . .)	29.2 (. . .)	5.7 (. . .)
Race/ethnicity^a				
White	0.63	18.8 (0.84)	24.7 (0.85)	4.1 (0.72)
Non-White	0.37	28.6 (1.28)	37.0 (1.27)	8.5 (1.49)
Black	0.12	34.5 (1.54)	43.6 (1.49)	6.2 (1.09)
Hispanic	0.17	26.9 (1.20)	35.9 (1.23)	9.8 (1.70)
Poverty level				
Above poverty	0.85	20.9 (0.93)	27.2 (0.93)	5.5 (0.95)
Below poverty	0.15	30.3 (1.35)	39.3 (1.35)	7.2 (1.26)

Note. PM = particulate matter; PM_{2.5} = PM of ≤ 2.5 μm in diameter; PM₁₀ = PM of ≤ 10 μm in diameter. Poverty level determined by the US Census Bureau in 2013. Burdens represent the PM emissions or the number of facilities in the 2011 National Emissions Inventory that are near the block group of residence for an average individual in the 2009–2013 American Community Survey population. Absolute burden units for PM emissions are tons/year; for facilities, they are the total number. Proportional burden is the ratio of subgroup burden to overall population burden.

^a“White” refers to only non-Hispanic Whites; “non-White” refers to all others. Included in the latter group are Black (non-Hispanic) and Hispanic (any race).

disparity is larger than is the poverty-based PM_{2.5} disparity (1.35 times the overall population average). Proportional burdens for PM_{2.5} are highly similar to those for PM₁₀, but this is not true for proportional burdens in the total number of facilities. This difference suggests that the magnitude of emissions from a facility, and not simply its presence or absence, is valuable information when characterizing burden.

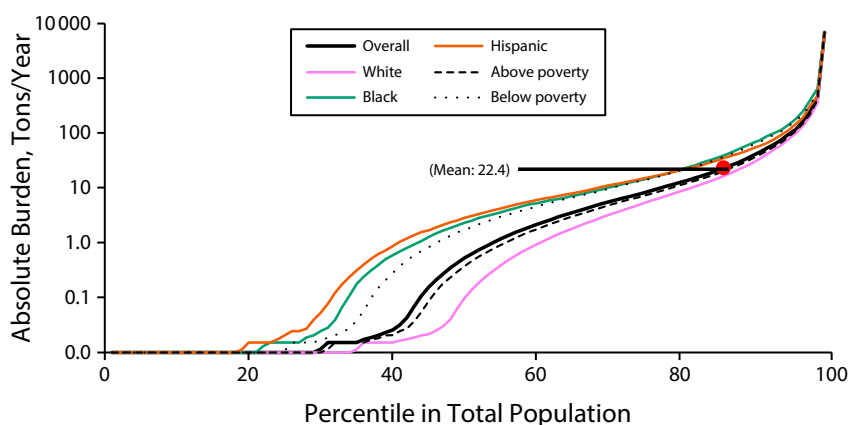
Figure 1 illustrates the population-wide distribution of absolute PM_{2.5} burden for the overall population as well as for several

subgroups. Because of a highly nonnormal distribution, individuals residing in block groups with emissions above the overall mean are among the top 15% most burdened. Across the distribution, the gap in burden between those above and those below the poverty line is smaller than is the gap between Whites and non-Whites. At the 50th percentile, Whites have an absolute PM_{2.5} burden below 0.1 tons per year—more than an order of magnitude below the burden of any of their non-White counterparts. At the 80th percentile, the absolute burden for

Whites (8.7 tons/year) is less than is half the absolute burden for equivalent non-Whites (20.1 tons/year).

The proportional PM_{2.5} burden for non-Whites at the national level is 1.28 (Table 1). This indicates that high non-White populations coincide with high emissions nationally. Burdens can also be considered within finer spatial scales—for example, the ratio of burdens between non-Whites and the overall population in a particular state or county. Disparities operate in different ways at each scale, yet overall higher burdens for non-Whites are a consistent outcome at both state (Figure A, part a [available as a supplement to the online version of this article at <http://www.ajph.org>]) and county (Figure A, part b) levels. All but 4 states (Maryland, New Mexico, North Dakota, and West Virginia) and Washington, DC, have an elevated mean PM_{2.5} burden for the non-White population (i.e., proportional burdens > 1.0). Comparing the White and non-White burdens across all states confirms a statistically significant overall difference in absolute PM_{2.5} burdens (paired *t* test mean of differences = -11.04 (-15.30, -6.79); *t*(50) = -5.22; *P* < 10⁻⁵). Likewise, the majority of counties have higher absolute PM_{2.5} burdens for their non-White residents (paired *t* test mean of differences = -3.43 (-4.37, -2.48); *t*(3140) = -7.12; *P* < 10⁻¹¹).

We recognized rural–urban status as a potential modifier because of the



Note. PM_{2.5} = particulate matter of 2.5 micrometers in diameter or less. Burden scale (y-axis) is displayed logarithmically. Poverty level determined by the US Census Bureau in 2013.

FIGURE 1—Distribution of Absolute Burdens of PM_{2.5} Emissions From Nearby Facilities in the 2011 National Emissions Inventory, Stratified by Race/Ethnicity and Poverty Status: American Community Survey, United States, 2009–2013

industrialization of cities combined with the high representation of non-Whites in population-dense centers. For this reason, we used the RUCA codes to characterize and stratify block groups by rural-urban status (Table A [available as a supplement to the online version of this article at <http://www.ajph.org>]). As shown in Figure 2, the overall national burdens are largely driven by high emissions in the metropolitan and micropolitan cores (those with populations of at least 50 000 and those with populations of at least 10 000 but less than 50 000, respectively). Although those living above the poverty line do experience a lower burden than do those below it within these urban areas, the disparities in emissions are especially pronounced for Blacks—reinforcing the overall finding that racial disparities appear to be markedly higher than are poverty-based disparities.

We also explored recent changes in emission distributions by considering available NEI year data for a 6-year range (Table B [available as a supplement to the online version of this article at <http://www.ajph.org>]). Absolute PM_{2.5} burden dropped for all examined subgroups between the 2008 and

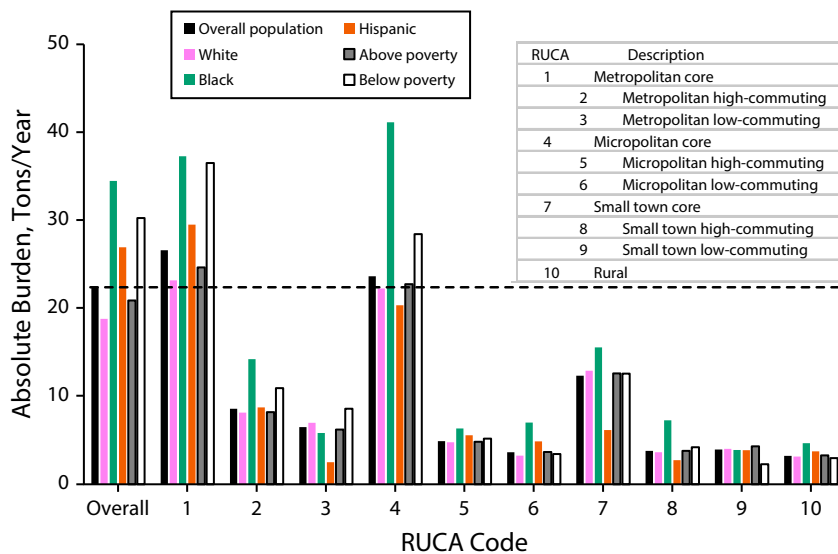
2014 NEI by a mean of 11.7 tons per year in the overall population (i.e., a 38% drop over the 6-year interval). This drop was slightly smaller (33%) for Blacks and slightly greater (41%) for Hispanics. Despite large drops in absolute burden for all groups, proportional burdens appear stagnant. The proportional PM_{2.5} burden of 1.61 for Blacks in the 2014 NEI is higher than are the proportional burdens in the 2011 NEI (1.54; Table 1) and the 2008 NEI (1.50; Table B). Data are also provided using the 2012 to 2016 ACS and 2014 NEI (Table B). However, because comparison of overlapping ACS data sets is advised against,¹⁸ this analysis is limited in that it considers only changes in PM_{2.5} emissions and not changes in demographics during this time span. It is not possible to determine a causal relationship for changes over time from this analysis. Although there is evidence that lower property values attract minority populations after siting, high representation of those groups generally also exists before the siting of a facility in an area.¹⁹

We performed sensitivity analyses by repeating the main analysis after adjusting the centroid-containment radius; removing the smallest and largest decile of block groups;

including all facilities hosted in a block group, regardless of distance to centroid; and using 2010 Decennial Census data instead of the 2009 to 2013 ACS. The results of these analyses were largely consistent with the original analysis, suggesting robustness in results despite alterations in methodology (Table C [available as a supplement to the online version of this article at <http://www.ajph.org>]). Extending the analysis to other criteria pollutants tracked by the NEI (CO, Pb, NO_x, and SO₂) also remained largely consistent with PM results with few exceptions (Table D [available as a supplement to the online version of this article at <http://www.ajph.org>]). The block group Spearman correlation of CO, Pb, NO_x, and SO₂ to PM_{2.5} assignments were 0.92, 0.77, 0.94, and 0.93, respectively (Table E [available as a supplement to the online version of this article at <http://www.ajph.org>]); the amount of PM_{2.5} emitted near a block group is likely a general indicator of the overall emissions in that area.

DISCUSSION

We characterized the populations residing near NEI facilities to determine whether individuals from certain subgroups face disproportionately high burden from nearby PM emissions. We observed disproportionately high burdens for non-Whites and those living in poverty (Table 1; Figure 1). Disparities for non-Whites persist at multiple scales: nationally, in the vast majority of states (Figure A, part a) and in the majority of individual counties (Figure A, part b). The lack of individual-level data on the intersection of racial/ethnic identification and poverty status limited our ability to make direct comparisons; however, overall, racial disparities for both PM_{2.5} and PM₁₀—specifically between Blacks and Whites—are stronger than are poverty-based disparities (Table 1). This is a consistent observation even when considering urban Whites and Blacks alone (Figure 2). PM_{2.5} and PM₁₀ disparities for Hispanics are less pronounced or consistent but still present. The diversity within the Hispanic population, which includes both native-born persons and recent immigrants from a variety of countries, has made the catchall “Hispanic” designation vexing for public health research.^{20,21}



Note. PM_{2.5} = particulate matter of 2.5 micrometers in diameter or less; RUCA = rural-urban commuting area. Dashed line indicates mean overall burden for all groups in the United States (22.4 tons/year). The US Department of Agriculture defines and assigns RUCA codes. Poverty level determined by the US Census Bureau in 2013.

FIGURE 2—RUCA-Stratified Absolute Burdens of PM_{2.5} Emissions From Nearby Facilities in the 2011 National Emissions Inventory, Further Stratified by Race/Ethnicity and Poverty Status: American Community Survey, United States, 2009–2013

Our main finding of national disparities in PM_{2.5} burdens by race is consistent with that of Boyce and Pastor,¹⁰ who carried out a similar analysis on PM_{2.5} using the 2008 NEI and reported results equivalent to a proportional burden of 1.25 for non-Whites (compared with our finding of 1.28). Such disparities in residential proximity to sites of pollution potentially correspond to disparities in a range of health outcomes.^{22–24}

Exposure to PM_{2.5} has been linked to increased morbidity and mortality.^{6–8} Although our study focused on point source emissions and not on ambient PM_{2.5}, the racial disparity in burdens from nearby facilities parallels the disparities seen in both modeled¹⁶ (Table F [available as a supplement to the online version of this article at <http://www.ajph.org>]) and monitored¹⁷ ambient PM_{2.5} concentration data. Disparities in exposure between Blacks and Whites have been reported to be greater than are disparities on the basis of poverty status,¹⁶ whether considering only urban, suburban, or rural census tracts.¹⁷ This potential increase in exposure for the Black population coupled with higher prevalence of conditions such as cardiovascular disease mortality²⁵ and asthma,²⁶ which are known to be linked to PM exposure, makes for a population of concern. Equivalent increases in PM_{2.5} have been linked to statistically significantly higher associations in Blacks than in Whites for health outcomes ranging from asthma attacks²⁷ to overall mortality.²⁸ In the US Medicare population, Blacks who are not eligible for Medicaid (a proxy for higher economic status) have higher PM_{2.5}-related mortality risk than do Whites who are eligible.²⁸

Our analysis considered disparities at various scales. Racial disparity at the national scale is driven by high emissions in areas with high non-White populations. However, areas with a proportionately higher White population may still be internally inequitable. The few non-Whites who do reside in such an area are disproportionately likely to live near a source of PM emissions. Figure A, part a highlights such areas; the largely White Midwestern states contain some of the most disproportionately high internal PM_{2.5} burden for non-Whites. Indiana, for instance, is more than 80% White, but the disproportionality in non-White burden is greater there than in any other state. Mohai

et al.² found a disproportionately high number of Black residences near polluting facilities in Midwestern metropolitan areas—much more so than in Southern cities and in rural areas. No single scale can be considered best for grouping populations. In this case, results at national, state, and county scales all indicate that non-Whites tend to be burdened disproportionately to Whites.

Strengths and Limitations

Our methodology has advantages as well as limitations. We relied on proximity to stationary, human-made point sources of primary PM emissions rather than ambient concentrations. Because there is a collection of other factors that may affect ambient PM concentrations—including natural events, roadway activity, and the formation of secondary PM from precursor pollutants—this metric should not be interpreted as a direct measure of PM exposure. Aggregation of burdens to the census tract level allowed us to compare our absolute burden assignments to EPA's Fused Air Quality Surface Using Downscaling²⁹ model of PM_{2.5} daily concentration averages for 2011. Despite the presence of small racial disparities in residential ambient PM_{2.5} for the contiguous United States (Table F), mean ambient PM_{2.5} concentration and tract PM_{2.5} burden from emissions were only weakly correlated (Spearman $\rho = 0.30$). However, there are benefits to understanding proximity that go beyond direct health impacts, including monetary reasons. Nearby pollution-generating sites are a tangible and accessible marker of pollution, and residents' awareness of such sites is demonstrated by the negative effect on housing values.³⁰

Our method of assignment was to link facilities to all block groups that had a centroid within a set radius of the coordinates given in the NEI. Centroid-containment and other distance-based methods employing circular buffers are better equipped than is unit-hazard coincidence (i.e., the assignment of point sources to only their host census unit) in assigning nearby hazards to a population.^{15,31} Unit-hazard coincidence inherently de-emphasizes the impact of facilities near borders, which becomes increasingly important in small, dense, urban block groups. The result is an overrepresentation of large, rural

areas. Because of the higher representation of the non-White population in urban areas, centroid containment offers a more appropriate characterization of Black burdens nationally. We took several sensitivity measures to address the potential resulting underestimates of burdens in rural areas. In one analysis, we combined unit-hazard coincidence with centroid containment to calculate burdens; in others, we varied the containment radius between 0.5 and 5.0 miles. Neither of these alterations to the methodology substantially changed the values reported in the main analysis, suggesting a robust result (Table C). Furthermore, even limiting analysis only to urban areas, a Black individual living in a metropolitan or micropolitan core has a higher burden than does her urban White counterpart (Figure 2).

An additional strength of our analysis is the inclusion of the total amount of pollutants emitted at each site, as opposed to only the presence or absence of a nearby facility. As seen in Table 1, the proportional burden in facility number for Blacks is only 1.09; the proportional burdens in total PM_{2.5} (1.54) and PM₁₀ (1.49) are much higher. This is consistent with studies suggesting that scaling sites by the amount of pollution emitted can further reinforce findings of inequity.³² The difference between disparities in facility number and disparities in total PM implies that the few extra facilities near the average Black residence tend to be among the highest emitters. The distribution shown in Figure 1 suggests that a relatively small proportion of the US population bears the vast majority of burden from PM_{2.5} emissions. Analysis on the basis of the EPA's Toxic Release Inventory shows that extremely high-polluting "toxic outliers" tend to exist in places with higher non-White and low-income populations.³³

Public Health Implications

This research demonstrates an aspect of a multifaceted public health problem faced by marginalized groups. As was exemplified in the EPA's investigation of racially discriminatory treatment in a public participation process,⁹ the lack of political capital is an obstacle to obtaining more desirable living conditions. In addition, social and economic challenges can lead marginalized people to further populate an area made less desirable by

proximity to sources of pollution.¹⁹ The potential health effects of the resulting environmental burdens on these groups should be considered in conjunction with existing health disparities: access to health care has well-documented disparities by race/ethnicity,³⁴ and the prevalence of certain diseases is notably higher in non-White populations.^{25,26} Along with other inequitable social and physical determinants of health, these interlocking mechanisms must all be addressed to establish environmental and public health justice.

We have presented a framework with which to consider the racial and economic disparities in residential proximity to sources of pollution in the United States. We have shown that a focus on poverty to the exclusion of race may be insufficient to meet the needs of all burdened populations. Application of this knowledge can be a valuable resource in improving equity. Disparity persists at multiple scales of observation, and this suggests that solutions can also be approached on multiple levels. **AJPH**

CONTRIBUTORS

I. Mikati led project design, data analysis, and writing. A. F. Benson contributed to design, writing, and data visualization. T. J. Luben, J. D. Sacks, and J. Richmond-Bryant supported project design and writing.

ACKNOWLEDGMENTS

This research was supported in part by an appointment to the Research Participation Program for the US Environmental Protection Agency (EPA), Office of Research and Development, administered by the Oak Ridge Institute for Science and Education through an interagency agreement between the US Department of Energy and the EPA.

We thank Julian Marshall for his suggestions on strengthening the study design and Danelle Lobdell and Jen Nichols for their helpful comments on the article.

Note. This document was reviewed in accordance with EPA policy and approved for publication. Mention of trade names or commercial products does not constitute endorsement or recommendation for use. The views expressed in this article are those of the authors and do not necessarily reflect the views or policies of the EPA.

HUMAN PARTICIPANT PROTECTION

No protocol approval was necessary because all data were obtained from publicly available secondary sources.

REFERENCES

- US General Accounting Office. Siting of hazardous waste landfills and their correlation with racial and economic status of surrounding communities. 1983. Available at: <http://www.gao.gov/products/RCED-83-168>. Accessed March 13, 2017.
- Mohai P, Lantz PM, Morenoff J, House JS, Mero RP. Racial and socioeconomic disparities in residential proximity to polluting industrial facilities: evidence from

the Americans' Changing Lives Study. *Am J Public Health*. 2009;99(suppl 3):S649–S656.

- Clark LP, Millet DB, Marshall JD. Changes in transportation-related air pollution exposures by race-ethnicity and socioeconomic status: outdoor nitrogen dioxide in the United States in 2000 and 2010. *Environ Health Perspect*. 2017;125(9):097012.
- Brender JD, Maantay JA, Chakraborty J. Residential proximity to environmental hazards and adverse health outcomes. *Am J Public Health*. 2011;101(suppl 1):S37–S52.
- US Environmental Protection Agency. Particulate matter (PM) basics. Available at: <https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>. Accessed April 6, 2017.
- Franklin M, Zeka A, Schwartz J. Association between PM_{2.5} and all-cause and specific-cause mortality in 27 US communities. *J Expo Sci Environ Epidemiol*. 2006;17(3):279–287.
- Pope CA, Dockery DW. Health effects of fine particulate air pollution: lines that connect. *J Air Waste Manag Assoc*. 2006;56(6):709–742.
- Brook RD, Rajagopalan S, Pope CA, et al. Particulate matter air pollution and cardiovascular disease: an update to the scientific statement from the American Heart Association. *Circulation*. 2010;121(21):2331–2378.
- US Environmental Protection Agency. 01R-94-R5 MDEQ closure letter. 2017. Available at: <https://www.epa.gov/ocr/01r-94-r5-mdeq-closure-letter>. Accessed March 24, 2017.
- Boyce JK, Pastor M. Clearing the air: incorporating air quality and environmental justice into climate policy. *Clim Change*. 2013;120(4):801–814.
- US Census Bureau. American Community Survey (ACS). Available at: <https://www.census.gov/programs-surveys/acs>. Accessed April 17, 2017.
- US Census Bureau. How the census bureau measures poverty. Available at: <https://www.census.gov/topics/income-poverty/poverty/guidance/poverty-measures.html>. Accessed August 1, 2017.
- US Department of Agriculture. 2010 rural-urban commuting area (RUCA) codes documentation. Available at: <https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/documentation>. Accessed April 17, 2017.
- US Environmental Protection Agency. 2011 National Emissions Inventory (NEI) data. Available at: <https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-data>. Accessed April 17, 2017.
- Mohai P, Saha R. Reassessing racial and socioeconomic disparities in environmental justice research. *Demography*. 2006;43(2):383–399.
- Bell ML, Ebisu K. Environmental inequality in exposures to airborne particulate matter components in the United States. *Environ Health Perspect*. 2012;120(12):1609–1704.
- Bravo MA, Anthopolos R, Bell ML, Miranda ML. Racial isolation and exposure to airborne particulate matter and ozone in understudied US populations: environmental justice applications of downscaled numerical model output. *Environ Int*. 2016;92–93:247–255.
- US Census Bureau. Comparing ACS data. Available at: <https://www.census.gov/programs-surveys/acs/guidance/comparing-acs-data.html>. Accessed April 11, 2017.

19. Mohai P, Saha R. Which came first, people or pollution? Assessing the disparate siting and post-siting demographic change hypotheses of environmental injustice. *Environ Res Lett*. 2015;10:115008.

20. Borrell LN. Racial identity among Hispanics: implications for health and well-being. *Am J Public Health*. 2005;95(3):379–381.

21. Palloni A, Arias E. Paradox lost: explaining the Hispanic adult mortality advantage. *Demography*. 2004;41(3):385–415.

22. Maantay J. Asthma and air pollution in the Bronx: methodological and data considerations in using GIS for environmental justice and health research. *Health Place*. 2007;13(1):32–56.

23. Kouznetsova M, Huang X, Ma J, Lessner L, Carpenter DO. Increased rate of hospitalization for diabetes and residential proximity of hazardous waste sites. *Environ Health Perspect*. 2007;115(1):75–79.

24. Choi HS, Shim YK, Kaye WE, Ryan PB. Potential residential exposure to toxics release inventory chemicals during pregnancy and childhood brain cancer. *Environ Health Perspect*. 2006;114(7):1113–1118.

25. Mensah GA, Mokdad AH, Ford ES, Greenlund KJ, Croft JB. State of disparities in cardiovascular health in the United States. *Circulation*. 2005;111(10):1233–1241.

26. Centers for Disease Control and Prevention. Trends in asthma prevalence, health care use, and mortality in the United States, 2001–2010. 2012. Available at: <https://www.cdc.gov/nchs/products/databriefs/db94.htm>. Accessed April 17, 2017.

27. Nachman KE, Parker JD. Exposures to fine particulate air pollution and respiratory outcomes in adults using two national datasets: a cross-sectional study. *Environ Health*. 2012;11:25.

28. Di Q, Wang Y, Zanobetti A, et al. Air pollution and mortality in the Medicare population. *N Engl J Med*. 2017;376(26):2513–2522.

29. US Environmental Protection Agency. RSIG-related downloadable data files. Available at: <https://www.epa.gov/hesc/rsig-related-downloadable-data-files>. Accessed April 17, 2017.

30. Davis LW. The effect of power plants on local housing values and rents. *Rev Econ Stat*. 2011;93(4):1391–1402.

31. Chakraborty J, Maantay JA, Brender JD. Disproportionate proximity to environmental health hazards: methods, models, and measurement. *Am J Public Health*. 2011;101(suppl 1):S27–S36.

32. McMaster RB, Leitner H, Sheppard E. GIS-based environmental equity and risk assessment: methodological problems and prospects. *Cartogr Geogr Inform*. 1997;24(3):172–189.

33. Collins MB, Munoz I, Jaja J. Linking “toxic outliers” to environmental justice communities. *Environ Res Lett*. 2016;11(1):015004.

34. Smedley BD, Stith AY, Nelson AR, eds. *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. Washington, DC: National Academies Press; 2003.

Exhibit 8

Hutchinson, Tracy A

From: Hutchinson, Tracy A
Sent: Friday, August 31, 2018 10:49 AM
To: Dr. Kenneth Augustus Walker
Cc: Rhinehart, William E. (Ted); Lemke, Richard (Rick) W.
Subject: RE: FW: DeKalb Solid Waste Issue - Metro Green Recycling
Attachments: 08312018084638-0001.pdf

Good morning, Dr. Walker,

This proposed facility does constitute solid waste (construction and demolition waste) as defined by the Georgia EPD rules for Solid Waste Management; which will require a permit from Georgia EDPD for a Materials Recovery Facility (per Response No. 6).

Based on information provided regarding the proposed facility from a memorandum dated August 24, 2018 for a Recycling Facility it appears to be **Not Consistent** with the DeKalb County Joint Solid Waste Management Plan (SWMP).

Kind regards,

Tracy

Tracy A. Hutchinson – Division Director
Certified Landfill, Collection and Recycling Systems Manager
DeKalb County Government
Public Works Department – Sanitation Division

3720 Leroy Scott Drive
Decatur, GA 30032
www.dekalbsanitation.gov

404-294-2177 (office)
404-713-2501 (mobile)
tahutchinson@dekalbcountyga.gov



From: Dr. Kenneth Augustus Walker <drkennethaugustuswalker@gmail.com>
Sent: Friday, August 24, 2018 11:26 AM
To: Hutchinson, Tracy A <tahutchinson@dekalbcountyga.gov>
Cc: Rhinehart, William E. (Ted) <werhinehart@dekalbcountyga.gov>; Lemke, Richard (Rick) W. <rwlemke@dekalbcountyga.gov>
Subject: Re: FW: DeKalb Solid Waste Issue - Metro Green Recycling

Good Morning Ms. Hutchinson,

I pray that you are having a wonderful morning. Again, thank you for sending me the questions on yesterday. Our engineer has answered each of your ten questions and I am now leaving my office in South Fulton to deliver them to your office.

I have appreciated your professionalism as you have worked with me on this project since I first met with you.

Exhibit 9

Hutchinson, Tracy A

From: Dr. Kenneth Augustus Walker <drkennethaugustuswalker@gmail.com>
Sent: Sunday, June 17, 2018 12:45 AM
To: Hutchinson, Tracy A
Subject: DeKalb County Solid Waste Management Program - RE: City of Stonecrest

Hello Ms. Hutchinson. My name is Dr. Kenneth Augustus Walker. I am a Consultant. I came to your office two weeks ago seeking a meeting with you to discuss a project that I am currently working on for a client. I left my card with the receptionist who spoke to someone in your office and assured me that I would receive a call to schedule a meeting with you.

I know how busy government is; therefore, after I did not receive a call, I spoke to CEO Michael Thurmond when I gave the invocation at the State of the City of Stonecrest on May 31 to see if he could assist me in getting a meeting with you. I spoke with him again on today and informed him that I would email you.

I am back in the state after my travels. I would like to meet with you ASAP to discuss a letter that my client Metro Green Recycling needs to have sent to the Georgia Environmental Protection Division relative to the DeKalb County Solid Waster Management Plan as it relates to The City of Stonecrest.

Since Stonecrest has not adopted their own plan, they are "governed" by the DeKalb plan according to SECTION 6.03 line 1770 of their City Charter which states, "During such transition period, DeKalb County shall continue to provide with the territorial limits of the city all government services and functions which DeKalb County provided in 2016...."

and line 1784 which states, "During the transition period, all ordinances of DeKalb County shall remain applicable within the territorial limits of the city unless otherwise amended, repealed, or replaced by the City of Stonecrest...."

On May 2, 2018 we secured a letter of endorsement of Metro Green Recycling's future work from Stonecrest Mayor Jason Lary. On April 4, 2018, we received a zoning certification letter from the Stonecrest City Planning Department.

The last letter that is needed is one that states that the City of Stonecrest is subject to the DeKalb County Solid Waste Management Plan.

I have letters and documents for your review and would love to meet with you ASAP to discuss the aforementioned.

Thank you for your consideration in this matter and I may be reached at 678.596.1030.

"Live Your Dreams!"

Dr. Kenneth "Augustus" Walker
The Augustus Group

Exhibit 10



City of Stonecrest
3120 Stonecrest Blvd
Stonecrest, GA 30038
www.stonecrestga.gov



For Immediate Release

Contact: Adrion Bell
 Communications Director
 770 224 0200 office
 404 314 6761 mobile
 abell@stonecrestga.gov

July 14, 2020

Mayor Removes Stop Work Order on Recycling Center

Stonecrest, GA – Mayor Jason Lary announced today that he is removing the stop work order placed on the construction of Metro Green Recycling earlier this month. After consulting with the city attorney, the mayor said that is not wise to maintain an order that could place the city in legal jeopardy.

Metro Green Recycling Center began construction last month at 2450 Miller Road. On July 2nd, the mayor and the city’s planning and zoning director placed a stop work order on the construction site citing a discrepancy regarding the facility’s failure to meet DeKalb County’s Solid Waste Plan. After consulting with the city attorney, the mayor said that the city doesn’t have the legal right to enforce a county ordinance.

Last week, the mayor and council appointed a team to investigate the recycling center’s permits. “We will continue to work to ensure that Metro Green Recycling is within all state, county, and city environmental and safety guidelines. If we find any discrepancies or deficiencies that we can enforce, we will stop this construction; however, at this time it would be irresponsible of me to maintain an order that will certainly place the city on the losing end of a lawsuit,” the mayor said.

###

Exhibit 11

House Bill 1060

By: Representatives Jones of the 91st, Stephenson of the 90th, Kendrick of the 93rd, Williams of the 87th, Carter of the 92nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide a new charter for the City of Stonecrest in DeKalb County; to provide for
2 reconstitution, boundaries, and powers of the city; to provide for general powers and
3 limitations on powers; to provide for a convention and visitors bureau; to provide for a
4 community improvement district; to provide definitions; to provide for a governing authority
5 of such city and the powers, duties, authority, election, terms, method of filling vacancies,
6 compensation, expenses, qualifications, prohibitions, and districts relative to members of
7 such governing authority; to provide for inquiries and investigations; to provide for
8 organization and procedures; to provide for ordinances; to provide for codes; to provide for
9 a charter commission; to provide for the office of mayor and certain duties and powers
10 relative to the office of mayor; to provide for administrative responsibilities; to provide for
11 boards, commissions, and authorities; to provide for a city manager, a city attorney, a city
12 clerk, a tax collector, a city finance director, and other personnel; to provide for a municipal
13 court and the judge or judges thereof; to provide for practices and procedures; to provide for
14 ethics and disclosures; to provide for taxation, licenses, and fees; to provide for franchises,
15 service charges, and assessments; to provide for bonded and other indebtedness; to provide
16 for accounting and budgeting; to provide for purchases; to provide for the creation of a
17 community improvement district; to provide for bonds for officials; to provide for a
18 transition period; to provide for other matters relative to the foregoing; to provide for
19 effective dates; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 ARTICLE I

22 CREATION, INCORPORATION, POWERS

23 SECTION 1.01.

24 Incorporation.

25 This Act shall constitute the charter of the City of Stonecrest, Georgia. The City of
 26 Stonecrest, Georgia, in the County of DeKalb, and the inhabitants thereof, are reconstituted
 27 and declared a body politic and corporate under the same name and style of the "City of
 28 Stonecrest" and by that name shall have perpetual succession, may sue and be sued, plead
 29 and be impleaded, in all courts of law and equity, and in all actions whatsoever, and may
 30 have and use a common seal.

31 SECTION 1.02.

32 Corporate boundaries.

33 The boundaries of the City of Stonecrest shall be those set forth and described in Appendix
 34 A of this charter, and such Appendix A is incorporated into and made a part of this charter.
 35 The city clerk shall maintain a current map and written legal description of the corporate
 36 boundaries of the city, and such map and description shall incorporate any changes which
 37 may hereafter be made in such corporate boundaries.

38 SECTION 1.03.

39 Powers and construction.

40 (a) This city shall have all powers possible for a city to have under the present or future
 41 Constitution and laws of this state as fully and completely as though they were specifically
 42 enumerated in this Act. This city shall have all the powers of self-government not otherwise
 43 prohibited by this Act or by general law.

44 (b) The powers of this city shall be construed liberally in favor of the city. The specific
 45 mention or failure to mention particular powers shall not be construed as limiting in any way
 46 the powers of this city. These powers shall include, but not be limited to, the following:

47 (1) Animal regulations. To regulate and license or to prohibit the keeping or running at
 48 large of animals and fowl, and to provide for the impoundment of same if in violation of
 49 any ordinance or lawful order; to provide for the disposition by sale, gift, or humane
 50 destruction of animals and fowl when not redeemed as provided by ordinance; and to
 51 provide punishment for violation of ordinances enacted hereunder;

1516 be established through intergovernmental agreements or established as otherwise authorized
1517 by statute.

1518 **SECTION 6.02.**

1519 Effective dates and transition.

1520 (a) A period of time will be needed for the orderly transition of various government
1521 functions from DeKalb County to the City of Stonecrest. Accordingly there shall be a
1522 two-year transition period as allowed by law beginning at 12:01 A.M. on May 8, 2017.

1523 (b) During such transition period, DeKalb County shall continue to provide within the
1524 territorial limits of the city all government services and functions which DeKalb County
1525 provided in 2016 and at the same actual direct cost and level of service, except to the extent
1526 otherwise provided in this section; provided, however, that upon at least 30 days' prior
1527 written notice to the governing authority of DeKalb County by the governing authority of the
1528 City of Stonecrest, responsibility for any such service or function shall be transferred to the
1529 City of Stonecrest. The governing authority of the City of Stonecrest shall determine the date
1530 of commencement of the collection of taxes, fees, assessments, fines and forfeitures, and
1531 other moneys within the territorial limits of the city and the date upon which the City of
1532 Stonecrest is considered removed from the special services tax district.

1533 (c) During the transition period, the governing authority of the City of Stonecrest may
1534 generally exercise any power granted by this charter or general law, except to the extent that
1535 a power is specifically and integrally related to the provision of a governmental service,
1536 function, or responsibility not yet provided or carried out by the city.

1537 (d) During the transition period, all ordinances of DeKalb County shall remain applicable
1538 within the territorial limits of the city unless otherwise amended, repealed, or replaced by the
1539 City of Stonecrest. Any transfer of jurisdiction to the City of Stonecrest during or at the end
1540 of the transition period shall not in and of itself abate any judicial proceeding pending in
1541 DeKalb County or the pending prosecution of any violation of any ordinance of DeKalb
1542 County.

1543 (e) During the transition period, the governing authority of the City of Stonecrest may at any
1544 time, without the necessity of any agreement by DeKalb County, commence to exercise its
1545 planning and zoning powers; provided, however, that the city shall give the county notice of
1546 the date on which the city will assume the exercise of such powers. Upon the governing
1547 authority of the City of Stonecrest commencing to exercise its planning and zoning powers,
1548 the Municipal Court of the City of Stonecrest shall immediately have jurisdiction to enforce
1549 the planning and zoning ordinances of the city. The provisions of this subsection shall
1550 control any conflicting provisions of any other subsection of this section.

1551 (f) Effective upon the termination of the transition period, subsections (a) through (e) of this
1552 section shall cease to apply except for the last sentence of subsection (d) which shall remain
1553 effective. Effective upon the termination of the transition period, the City of Stonecrest shall
1554 be a full functioning municipal corporation and subject to all general laws of this state.

1555 **SECTION 6.03.**

1556 Charter commission.

1557

1558 No later than five years after the creation of the City of Stonecrest, the mayor and the city
1559 council shall call for a charter commission to review the city's experience and recommend
1560 to the General Assembly any changes to the charter. The charter commission shall be
1561 composed of seven members who shall be appointed as follows: one by the mayor, one by
1562 each member of the city council, and one member appointed by a vote of the members of the
1563 Georgia House of Representatives and Georgia Senate whose districts lie wholly or partially
1564 within the corporate boundaries of the City of Stonecrest. All members of the charter
1565 commission shall reside in the City of Stonecrest. The commission shall complete the
1566 recommendations under this section within the time frame required by the city council.

1567 **SECTION 6.04.**

1568 Effective date.

1569 This Act shall become effective upon its approval by the Governor or upon its becoming law
1570 without such approval.

1571 **SECTION 6.05.**

1572 Specific repealer.

1573 An Act to incorporate the City of Stonecrest, approved April 21, 2016 (Ga. L. 2016, p. 3538),
1574 and all Acts amendatory thereto are hereby specifically repealed.

1575 **SECTION 6.06.**

1576 Repealer.

1577 All laws and parts of laws in conflict with this Act are repealed.

Exhibit 12

From: [Megan Reid](#)
To: [April Lipscomb](#); [Sonya Isom](#)
Subject: RE: GORA request for copy of resolution
Date: Wednesday, December 02, 2020 3:49:46 PM
Attachments: [image003.png](#)
[Stonecrest and DeKalb Solid Waste IGA.pdf](#)

We have an IGA with DeKalb County Solid Waste. Please see attachment.

Hope this helps.

Thanks-
Megan

From: April Lipscomb <alipscomb@selcga.org>
Sent: Wednesday, December 2, 2020 3:46 PM
To: Megan Reid <MReid@stonecrestga.gov>; Sonya Isom <SIsom@stonecrestga.gov>
Subject: RE: GORA request for copy of resolution

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Megan,

I hope this email means that you are feeling better! Thank you for this ordinance. Can I correctly assume, then, that there is no City [resolution](#) adopting the DeKalb County solid waste management plan?

Thank you again for your time.

Best,
April

From: Megan Reid [<mailto:MReid@stonecrestga.gov>]
Sent: Wednesday, December 02, 2020 2:17 PM
To: Sonya Isom; April Lipscomb
Subject: RE: GORA request for copy of resolution

Please see attachment.

Sincerely,

Megan

Megan Reid

CITY CLERK

City of Stonecrest

office: 770.224.0203

www.stonecrestga.gov



From: Sonya Isom <SIsom@stonecrestga.gov>
Sent: Tuesday, December 1, 2020 2:52 PM
To: Megan Reid <MReid@stonecrestga.gov>
Subject: FW: GORA request for copy of resolution
Importance: High

Hi Megan,
This ORR has not been taken care of.
Sonya

From: Sonya Isom
Sent: Monday, November 23, 2020 4:54 PM
To: April Lipscomb <alipscomb@selcga.org>
Cc: Megan Reid <MReid@stonecrestga.gov>; Sonya Isom <SIsom@stonecrestga.gov>
Subject: RE: GORA request for copy of resolution

Good afternoon Ms. Lipscomb,

Due to our City Clerk, Mrs. Reid, being out of the office at this time, your request will be answered no later than Friday, December 4, 2020.
Have a great evening,

Sonya Isom
Deputy City Clerk



City of Stonecrest

3120 Stonecrest Blvd

Stonecrest, GA 30038

direct: 770.224.0214

main: 770.224.0200

Fax: 470.299.4214

sisom@stonecrestga.gov

www.stonecrestga.gov

From: April Lipscomb <alipscomb@selcga.org>

Sent: Friday, November 6, 2020 3:34 PM

To: Sonya Isom <SIsom@stonecrestga.gov>

Subject: FW: GORA request for copy of resolution

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Isom,

I believe the email below has been automatically forwarded to you, but just in case, please see the following email requesting a copy of any resolutions passed by the City Council adopting the DeKalb County Solid Waste Management Plan.

Kindest regards,
April

April S. Lipscomb

Senior Attorney

[Southern Environmental Law Center](#)

10 10th Street NW, Suite 1050

Atlanta, Georgia 30309

404-521-9900 (office)

919-360-9355 (cell)



This message is intended only for the addressee and may contain privileged or confidential information. If you are not the intended recipient, the use or dissemination of this message or any attachments is strictly prohibited. If you have received this message in error, please notify me immediately by email and delete the original message and any attachments.

From: April Lipscomb
Sent: Friday, November 06, 2020 3:24 PM
To: 'Megan Reid'
Cc: 'lrodriguez@stonecrestga.gov'
Subject: GORA request for copy of resolution

Ms. Reid,

I'm resending this email, as I realized I sent it very early last weekend and it may have gotten lost. I'm looking for a city resolution that adopts the DeKalb County Solid Waste Management Plan. I'm also formally requesting this document, to the extent it exists, pursuant to the Open Records Act and the form is attached. If the resolution cannot be sent electronically, I'm happy to come pay and pay for a copy.

Thank you for all of your help to date!

Best,
April

April S. Lipscomb
Senior Attorney
[Southern Environmental Law Center](#)
10 10th Street NW, Suite 1050
Atlanta, Georgia 30309
404-521-9900 (office)
919-360-9355 (cell)



This message is intended only for the addressee and may contain privileged or confidential information. If you are not the intended recipient, the use or dissemination of this message or any attachments is strictly prohibited. If you have received this message in error, please notify me immediately by email and delete the original message and any attachments.

From: April Lipscomb
Sent: Saturday, October 31, 2020 6:41 AM
To: Megan Reid
Subject: Re: Request for city ordinances

I'm not sure it even exists! I'm looking for a resolution either adopting the DeKalb County Solid Waste Management Plan or a resolution agreeing to enter into the intergovernmental agreement with DeKalb for solid waste management.

Do you know if there is any such resolution?

Thank you again!
April

On Oct 30, 2020, at 9:37 PM, Megan Reid <MReid@stonecrestga.gov> wrote:

They are not electronic. Is there a specific one you are looking for?

Sent from my iPhone

On Oct 30, 2020, at 5:56 PM, April Lipscomb <alipscomb@selcga.org> wrote:

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Megan,

One last question, where can I find all of the resolutions passed by the City Council?

Thank you!
April

From: Megan Reid [<mailto:MReid@stonecrestga.gov>]
Sent: Tuesday, October 20, 2020 1:24 PM
To: April Lipscomb
Subject: RE: Request for city ordinances

In November of 2018, there was a first read of Chapter 22- Solid Waste Ordinance and another first read in March of 2019, but it has never been formally adopted according to my records.

Megan Reid

From: April Lipscomb <alipscomb@selcga.org>
Sent: Tuesday, October 20, 2020 1:02 PM
To: Megan Reid <MReid@stonecrestga.gov>
Subject: RE: Request for city ordinances

CAUTION: This email originated from outside your organization.

Exercise caution when opening attachments or clicking links, especially from unknown senders.

Yes, thank you. That's actually why I was asking, because the intergovernmental agreement requires the City to adopt solid waste management ordinances that are at least as stringent as the County's. Please refer to Section 8.5 of the intergovernmental agreement.

Best,
April

From: Megan Reid [<mailto:MReid@stonecrestga.gov>]
Sent: Tuesday, October 20, 2020 12:55 PM
To: April Lipscomb
Subject: RE: Request for city ordinances

We have an intergovernmental agreement with DeKalb County and it refers to their ordinance.

Megan Reid
CITY CLERK
City of Stonecrest
office: 770.224.0203
www.stonecrestga.gov

<image001.jpg>

From: April Lipscomb <alipscomb@selcga.org>
Sent: Tuesday, October 20, 2020 12:49 PM
To: Megan Reid <MReid@stonecrestga.gov>
Subject: RE: Request for city ordinances

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you for adding the ordinances to Municode! That is extremely helpful.

Also, I do not see any solid waste management ordinances on Municode. Does that mean the City of Stonecrest has not adopted any solid waste management ordinances?

Best,

April

From: Megan Reid [<mailto:MReid@stonecrestga.gov>]
Sent: Monday, October 19, 2020 10:20 PM
To: April Lipscomb
Subject: RE: Request for city ordinances

My apologies. We have our ordinances on municode and are available electronically. I would have to refer you to DeKalb County for the other 2 requests.

From: April Lipscomb <alipscomb@selcga.org>
Sent: Monday, October 19, 2020 2:18 PM
To: Megan Reid <MReid@stonecrestga.gov>
Subject: RE: Request for city ordinances

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Reid,

Thank you for your response. Do I need to come by and have copies made, or are you able to send me the ordinances electronically?

Regards,
April

April S. Lipscomb
Senior Attorney
[Southern Environmental Law Center](#)
10 10th Street NW, Suite 1050
Atlanta, Georgia 30309
404-521-9900 (office)
919-360-9355 (cell)

<image002.png>

This message is intended only for the addressee and may contain privileged or confidential information. If you are not the intended recipient, the use or dissemination of this message or any attachments is strictly prohibited. If you have received this message in error, please notify me immediately by email and delete the original message and any attachments.

From: Megan Reid [<mailto:MReid@stonecrestga.gov>]

Sent: Thursday, October 01, 2020 5:21 PM
To: April Lipscomb
Cc: Leah Rodriguez
Subject: RE: Request for city ordinances

I am in receipt of your request and will have this completed by Monday, October 5, 2020.

Megan Reid
CITY CLERK
City of Stonecrest
office: 770.224.0203
www.stonecrestga.gov

<image001.jpg>

From: April Lipscomb <alipscomb@selcga.org>
Sent: Thursday, September 17, 2020 9:23 PM
To: Megan Reid <MReid@stonecrestga.gov>
Cc: Leah Rodriguez <LRodriguez@stonecrestga.gov>
Subject: Request for city ordinances

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Ms. Reid,

I hope this email finds you well. I'm looking for several of Stonecrest's ordinances but do not see them on the City's website under "Adopted Ordinances". Will you please email me copies of the following city ordinances at your earliest convenience or place them on the website for review?

- The ordinance adopting DeKalb County's Comprehensive Plan (link is there but doesn't work)
- The ordinance adopting DeKalb County's Solid Waste Management Plan
- The City's solid waste management ordinances

Thank you so much for your time. If you have any questions or would like to discuss this request, please email or call me at the contact information below.

To the extent you need a formal Georgia Open Records Act Request, I have attached the requisite form for Ms. Rodriguez. Rather than provide hard copies as stated on the form, please provide the records electronically if at all possible.

Kindest regards,
April

April S. Lipscomb
Senior Attorney
[Southern Environmental Law Center](#)
10 10th Street NW, Suite 1050
Atlanta, Georgia 30309
404-521-9900 (office)
919-360-9355 (cell)

<image003.png>

This message is intended only for the addressee and may contain privileged or confidential information. If you are not the intended recipient, the use or dissemination of this message or any attachments is strictly prohibited. If you have received this message in error, please notify me immediately by email and delete the original message and any attachments.

Exhibit 13

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF SOLID WASTE MANAGEMENT SERVICES
BETWEEN
DEKALB COUNTY, GEORGIA and
THE CITY OF STONECREST, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia and the City of Stonecrest, Georgia.

WHEREAS, DeKalb County, Georgia ("County") is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Stonecrest ("City") is a municipality created by the 2016 Georgia General Assembly pursuant to Senate Bill 208 (hereinafter referred to as "SB 208"); and

WHEREAS, the Georgia Solid Waste Management Act ("SWMA") at O.C.G.A. § 12-8-31.1(a) requires each city and county in Georgia to develop or be included in a comprehensive Solid Waste Management Plan ("SWMP") that conforms to the procedures promulgated by the Georgia Department of Community Affairs; and

WHEREAS, the City desires to ensure that its citizens receive Solid Waste Management Services, as defined herein, in a manner consistent with the SWMA; and

WHEREAS, the County has an approved SWMP in place; and

WHEREAS, the County collects, transports and disposes Solid Waste, as defined herein, in accordance with its SWMP and currently provides Solid Waste Management Services to unincorporated DeKalb County and municipalities located in the County; and

WHEREAS, prior to the formation of the City, the geographic area that now comprises the City was previously a part of the County's SWMP; and

WHEREAS, the City desires to join and be a part of the County's SWMP; and

WHEREAS, the County and the City further desire to establish the cost of the Solid Waste Management Services to be provided by the County to the City pursuant to this Agreement; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

**ARTICLE 1
PURPOSE AND INTENT**

The purpose of this Agreement is to provide for continued Solid Waste Management Services within the City.

**ARTICLE 2
DEFINITIONS**

For purposes of the Agreement, the following terms shall be defined as:

2.1 **Commercial Establishment** means any business, commercial use, hotel, motel, apartment house, rooming house, industrial, public or semipublic establishment of any nature or kind whatsoever other than a single dwelling unit/residential unit and condominiums.

2.2 **Commercial Refuse** means waste material from industrial processes, manufacturing canneries, slaughterhouses, packing plants, poultry processing plants or similar industries, and large quantities of condemned foods. Commercial refuse also includes waste material from the construction, remodeling and repair operations on houses, commercial buildings, multiple dwellings and other structures such as concrete, bricks, plaster, stone, earth, lumber, roofing materials, gutters, shavings and sawdust.

2.3 **Garbage** means food waste, including waste accumulation of animal or vegetable matter used or intended for use as food, or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.

2.4 **Refuse** means Garbage, Rubbish or Commercial Refuse.

2.5 **Rubbish** means waste paper, cartons, boxes, wood, tree branches, yard trimmings, furniture, appliances, metals, cans, glass crockery, dunnage and/or similar materials.

2.6 **Solid Waste** means any garbage or refuse and as defined by Chapter 22 of the Code of DeKalb County, as Revised 1988; any garbage or refuse; sludge from a waste-water treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities, but does not include recovered materials; post-use plastics and nonrecycled feedstock that are subsequently processed using a pyrolysis or gasification to fuels and chemicals process; solid or dissolved materials in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. Section 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923), and as defined by O.C.G.A. § 12-8-22 as may hereafter be amended.

2.7 **Solid Waste Management Services** includes collection, transportation and disposal of Solid Waste from residences, Commercial Establishments and other Special Services as described in this section. The County shall be the sole provider for all commercial solid waste collection services, including garbage and recycling, and the removal of dead animals from public right of ways within the City of Stonecrest.

2.8 Commercial Establishments shall be provided collection services one to six times per week, to be determined by the Commercial Establishments. Commercial Establishments shall also be provided commercial recycling services one to five times weekly, the timing and the fees for such services to be determined by and between the Commercial Establishments and the County. As a service to the public, the County shall also collect mixed paper recycling from drop off sites at various County libraries and fire stations.

2.9 Residential customers shall be provided once weekly curbside garbage collection, including backdoor service for medically eligible residents. For residential customers only, the solid waste services the County provides shall include: once a week yard waste pick-up and appliance pick up; once a week single stream residential subscription recycling service; recycling in City office buildings and facilities; fee-based special and bulky material collection and dead animal collection as set by the County; and glass recycling by drop-off only, at specific recycling locations designated by the County and found on the County's Sanitation website (hereinafter "Residential Services").

2.10 The City agrees to remain in and comply with the Solid Waste Management Plan ("SWMP") managed by the County and conform to the procedures promulgated by the Georgia Department of Community Affairs (the "DCA") and as provided by the Georgia Solid Waste Management Act (the "SWMA"), O.C.G.A. § 12-8-31.1 et seq.

ARTICLE 3 TERM OF AGREEMENT

The term of the Agreement shall commence on 0000 hours on January 1, 2019 through 2400 hours on December 31, 2068, for a total lifetime term of fifty (50) years, unless otherwise terminated in accordance with this Agreement.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 The City shall take all steps necessary to join and be a part of the County's SWMP, as requested by the County.

4.2 For the Solid Waste Management Services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect its fees in a manner consistent with the fees imposed and collected from the residential customers, commercial customers, and Commercial Establishments in the

unincorporated area of the County. Residential customers and property owners may be billed annually as a separate line item on their County tax bill. Commercial Establishments may be billed monthly or annually, at the County's discretion. The County agrees that residential customers, residential property owners, commercial customers and Commercial Establishments shall be charged fees at the same rate for similar services and in the same manner as such fees are imposed and collected within the unincorporated portion of DeKalb County.

**ARTICLE 5
PUBLIC WORKS DIRECTOR**

The County Sanitation Director or their designee shall direct and manage the Solid Waste Management Services provided by the County under this Agreement.

**ARTICLE 6
SERVICES**

During the term of this Agreement, the County shall provide weekly residential and commercial Solid Waste Management Services to the City to be identical to the services provided in unincorporated areas of County, with the same costs and fees charged in the unincorporated areas of the County, unless changed pursuant to this Agreement. All calls, complaints and inquiries from City residential property owners and Commercial Establishments related to Solid Waste Management Services shall continue to be handled by the County in a timely manner. The City Manager and the County Sanitation Director agree to communicate and mutually evaluate the cost and benefit of additional recycling options. The County is not obligated to provide additional recycling services outside the terms of this Agreement, or as otherwise amended.

**ARTICLE 7
EQUIPMENT**

The County agrees to provide all equipment and personnel necessary to execute the Solid Waste Management Services contemplated in this Agreement.

**ARTICLE 8
AUTHORITY TO ENFORCE THE COUNTY'S APPLICABLE COLLECTION
AND DISPOSAL CODE**

8.1 The County shall have concurrent authority to enforce the County codes governing Solid Waste Management within the City of Stonecrest, including collection and disposal services as addressed in the Code of DeKalb County, as Revised 1988, Article I, Section 22-1 through 22-5; Article II, Section 22-26 through Section 22-35, Article III, Section 22-51 through 22-60 and Article IV, Section 22-61 through 22-69 within the City. The County shall have the authority to enforce the City's solid waste collection and disposal code and related provisions within the City's boundaries. The County personnel assigned to the City shall take an oath administered by the Judge of the

Municipal Court of the City, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking code enforcement duties pursuant to this Agreement to enforce the ordinances regulating Solid Waste Management.

8.2 County personnel assigned to the City shall still be deemed an employee of the County while performing the services, duties and responsibilities hereunder and is vested with the police powers of the County that are necessary to provide the code enforcement within the scope of this Agreement.

8.3 Upon being sworn in by the City, County personnel shall be and hereby are vested with the additional power to enforce the applicable ordinances of the City regulating Solid Waste Management, to issue citations incident to the enforcement of applicable County and City ordinances, at the County's discretion, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce these County and City ordinances is made for the sole and limited purpose of giving official and lawful status to the performance of code enforcement services provided by sworn officers within the City.

8.4 County personnel may enforce City ordinances regulating Solid Waste Management Services and shall appear in the Municipal Court of the City as necessary to prosecute cases made therein. The City agrees to compensate the County for any appearances of County personnel in the Municipal Court. The City agrees to provide, at its own expense, citation books containing the printed Municipal Court information to County personnel working within the City.

8.5 Within ninety (90) days of the execution of this Agreement, the City will adopt solid waste management ordinances that are no less stringent and are as broad in scope as Attachment "A", the Code of DeKalb County, Georgia, Article I, Section 22-1 through 22-5, Article II, Section 22-26 through Section 22-35, Article III, Section 22-51 through 22-60 and Article IV, Section 22-61 through 22-69, attached hereto and incorporated by reference, (hereinafter referred to as the County's solid waste management ordinances). If the City does not enact amendments at least as stringent as those adopted by the County and consistent with the requirements of the SWMA and the SWMP within 60 days of the County's enactment, this Agreement will immediately terminate with no further action required of the County. If the City does not enact solid waste management ordinances at least as stringent as the County's solid waste management ordinances, this Agreement will immediately terminate with no further action required of the County. Whenever the County intends to amend its solid waste management ordinances, it will forward a copy of such proposed amendment(s) to the City Manager at least 60 days or as soon as practicable prior to the County's enactment.

ARTICLE 9 EMPLOYMENT STATUS

All County Public Works Department personnel operating in the City, as well as any other County personnel operating under this Agreement are and will continue to be employees of the County for all purposes, including but not limited to duties and

responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

**ARTICLE 10
RECORDKEEPING AND REPORTING**

The County Public Works Department is the central repository for all Solid Waste related records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Solid Waste Management activities it conducts within the City. Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

**ARTICLE 11
CITY – COUNTY RELATIONS**

The County Public Works Department Director shall be the County's main point of contact regarding Solid Waste Management issues and will coordinate with the City Manager as appropriate.

**ARTICLE 12
TRANSITION**

The County and City agree that 180 days prior to the end date of this Agreement, the City Manager and the County's Executive Assistant will meet and confer to determine whether the City desires to extend the Agreement.

**ARTICLE 13
TERMINATION AND REMEDIES**

The City or the County may terminate this Agreement with or without cause or for convenience by giving 180 days prior written notice to the other party. The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

**ARTICLE 14
NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Executive Assistant
1300 Commerce Drive
Maloof Building, 6th Floor
Decatur, Georgia 30030
(404) 687-3585 (facsimile)

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
(404) 371-3024 (facsimile)

If to the City: City Manager
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: City Attorney
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
(470) 299-4214 (facsimile)

With a copy to: Thompson Kurrie, Jr.
City Attorney
3475 Lenox Road, NE
Suite 400
Atlanta, Georgia 30326
(770) 698-9729 (facsimile)

**ARTICLE 15
EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

**ARTICLE 16
NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 17
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 18
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 19
BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 20
COUNTERPARTS**

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

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the City have executed this Agreement through their duly authorized officers.

This 19th day of November, 2018.

DEKALB COUNTY, GEORGIA

MICHAEL J. THURMOND
Chief Executive Officer
(Michael L. Thurmond)

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

TRACY A. HUTCHINSON
Director of Sanitation

APPROVED AS TO FORM:

MARIAN C. ADEIMY North PR 1631 - 6208 SE 11
Assistant County Attorney

CITY OF STONECREST, GEORGIA

JASON LARY, SR.
Mayor

APPROVED AS TO SUBSTANCE:

MICHAEL HARRIS
City Manager

APPROVED AS TO FORM:

THOMPSON KURRIE, JR.
City Attorney

DeKalb County
Contract No. 1148699

Exhibit 14

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

TEN 10TH STREET NW, SUITE 1050
ATLANTA, GA 30309-3848

Facsimile 404-521-9909

September 22, 2020

VIA EMAIL

Mr. Richard Dunn
Director, Environmental Protection Division
Georgia Department of Natural Resources
2 Martin Luther King, Jr. Drive SE
Suite 1456, East Tower
Atlanta, Georgia 30334

richard.dunn@dnr.ga.gov

**RE: Metro Green Recycling Three Material Recovery Facility in Stonecrest, GA;
Solid Waste Handling Permit No. 044-051P(MRF)**

Dear Mr. Dunn,

On behalf of Stop Metro Green, an organization of homeowners and residents affected by Metro Green Recycling's 60-acre facility undergoing construction in the City of Stonecrest, the Southern Environmental Law Center (SELC) requests the Environmental Protection Division (EPD) to take the following actions: 1) involve the neighbors in any and all discussions intended to resolve this untenable situation, and 2) exercise your legal authority to revoke the facility's solid waste handling permit to address the neighbors' environmental and human health concerns.

1. The members of Stop Metro Green deserve a seat at the table as the individuals most affected by this environmental injustice.

When DeKalb County wrote its Solid Waste Management Plan (SWMP) fifteen years ago, a primary driver was to protect the southern part of the county from bearing the brunt of more trash-handling facilities like Metro Green Recycling Three.¹ By the late 1990s, more than 30 percent of Georgia's waste was dumped in south DeKalb.² As DeKalb's Sanitation Division Director Tracy Hutchinson testified earlier this month, this is an environmental justice issue.

¹ TRO Hr'g, Test. of Tracy Hutchinson, Sanitation Division Director, DeKalb County Public Works Department, Sept. 3, 2020 (City of Stonecrest v. Metro Green Recycling Three, LLC, and DeKalb County).

Despite Metro Green Recycling Three's characterization as a "materials recovery facility," it will store, handle, and process tons of construction and demolition waste every single day.

² JENNIFER CHIRICO, GA. INST. OF TECH., THERE IS NO SUCH THING AS "AWAY": AN ANALYSIS OF SUSTAINABLE SOLID WASTE MANAGEMENT TECHNOLOGIES 42 (updated 2009), http://stip.gatech.edu/wp-content/uploads/2010/05/Sustainable-Waste-Management-Technologies_jchirico_updated-092309.pdf.

Stonecrest is nearly 94 percent Black and the median household income trails the state.³ A homeowner who lives just across the street from Metro Green’s facility bluntly told *The Atlanta Journal-Constitution*, “This would never happen in north DeKalb.”⁴ It’s hard to disagree.

Hundreds of families live near the Metro Green site in both the City of Stonecrest and unincorporated DeKalb County. More than a dozen homes in the Miller Woods community in the City of Stonecrest are within 100 feet of Metro Green’s boundary. Windsor Downs, a subdivision just across the street from Metro Green in unincorporated DeKalb County, is an established neighborhood where some residents have lived for more than three decades. Other homes and apartments surround the facility in unincorporated DeKalb. Many of these neighbors send their children to Miller Grove Middle School, less than a half-mile down the road.

These families and residents had no idea that a C&D waste recycling facility was moving in next door until crews razed the trees and began pouring concrete. Only then did they discover that a public hearing had been held months before on the facility’s solid waste handling permit. They never saw the public notice advertising the hearing in *On Common Ground*; even if they had, they would not have realized that the facility’s listed address on Snapfinger Woods Road really meant the 60-acre forested area on Miller Road, right across the street from, or behind their homes. And the residents who keep an eye out for public notices did not think to search in *On Common Ground*. Instead, they review notices in *The Champion*, which is the designated legal organ for DeKalb County.

The residents also never saw any signs notifying them of the plans for the site. Based on our review of photographs and maps, the sign that Metro Green posted to advertise the public hearing was at the end of a private driveway off of Snapfinger Woods Road, behind other businesses and far removed from where the public could see it. Had the facility posted a visible sign at the site’s location along Miller Road, the residents would have turned out in droves to voice their opposition to the facility and would have taken all possible actions to challenge the solid waste handling permit.

Metro Green’s actions are already causing harm to these neighbors. Dust from land clearing activities and noise and heavy vibrations from construction activities are disrupting their lives, and these harms are just a preview of what is to come once the facility begins operating. Residents are worried about dust, fine particulate matter, and other air pollutants from equipment emissions and concrete crushing activities, polluted stormwater flowing into the onsite tributary of the South River, accidents from increased heavy truck traffic, and once again becoming Georgia’s dumping ground if these types of facilities become the norm.⁵

³ Final Draft of the City of Stonecrest’s Comprehensive Plan 2038 (July 12, 2019), https://www.dca.ga.gov/sites/default/files/2019.07.12.stonecrestcicomplan_adopted.pdf.

⁴ J.D. Capelouto, *In south DeKalb, Black neighborhoods fight ‘environmental racism’*, THE ATLANTA JOURNAL-CONSTITUTION (July 28, 2020), <https://www.ajc.com/news/atlanta-news/in-south-dekalb-black-neighborhoods-fight-environmental-racism/SCJUPP3HQVAJ3B5VNYJ3GEJ6FA/>.

⁵ According to Stop Metro Green, another concrete recycling facility is waiting in the wings, ready to place another polluting facility just a few miles away. Allowing Metro Green to operate in blatant disregard for DeKalb County’s SWMP will create a dangerous precedent moving forward.

These Stonecrest and unincorporated DeKalb County residents will be affected the most by Metro Green Recycling Three, but to date, their voices have been ignored and their concerns disparaged by government officials, with a few notable exceptions.⁶ During a recent hearing on the City of Stonecrest’s motion for a temporary restraining order and injunction against Metro Green, the attorneys representing the City and DeKalb County did not identify a single harm suffered by the residents they are supposed to represent. Consequently, these families demand and deserve a special seat at the table for any discussions intended to resolve their harms, both current and anticipated, from Metro Green.

In your August 20, 2020 letter to Stonecrest Mayor Jason Lary, Sr., the Stonecrest City Council, DeKalb County Commissioner Mereda Davis Johnson, and state Sen. Emanuel Jones, you stated that “EPD is eager to work with the City, County, and permittee in an attempt to reach a resolution that will address the concerns... and will ensure protection of the public health and environment.”⁷ In order for you to keep this promise, it is imperative that you hear from community members and understand their concerns. Accordingly, our first request is that you include representatives of Stop Metro Green and SELC in any such discussions.

2. EPD should revoke Metro Green’s solid waste handling permit to address the community’s concerns.

You also stated in your August 20, 2020 letter that you lack the legal authority to revoke Metro Green’s solid waste handling permit. Respectfully, we disagree. Not only do you have the legal authority to revoke the permit, you also have a duty to revoke the permit based on EPD’s own role in this fiasco. Before discussing our rationale, however, we offer the following background information to ensure that we are all operating under the same set of facts.

Background and Timeline of Events

As you are now well-aware, the City of Stonecrest is a new Georgia city. It was created during the 2016 legislative session and adopted by referendum. Following its creation, the City had a two-year transition period, from May 8, 2017 through May 8, 2019,⁸ in which DeKalb County continued to provide all government services and functions for the City until full jurisdiction could be transferred to the City. As specifically set forth in the City’s Charter:

During such transition period, DeKalb County shall continue to provide within the territorial limits of the city all government services and functions which DeKalb County provided in 2016 . . . ; provided, however, that upon at least 30 days’ prior written notice to the governing authority of DeKalb County by the governing

⁶ Representative Doreen Carter, Senator Emanuel Jones, and DeKalb County Commissioner Mereda Davis Johnson all have attempted to stop Metro Green’s actions to no avail.

⁷ We assume this letter was sent based on the email from Laura Williams, EPD Director of Legal Services, to Tamara Fischer, EPD Administrative Assistant, Subject: “Letter for Rick’s Signature” (Aug. 20, 2020, 12:16 PM) ([Attachment 1](#)).

⁸ CITY OF STONECREST ORDINANCE 2017-05-03 ([Attachment 2](#)).

authority of the City of Stonecrest, responsibility for any such service or function shall be transferred to the City of Stonecrest.⁹

All DeKalb County ordinances and resolutions also continued to apply during the transition period until Stonecrest adopted their own.¹⁰ According to the Charter, only “upon the termination of the transition period, [in May 2019 did] the City of Stonecrest [become] a full functioning municipal corporation and subject to all general laws of this state.”¹¹

In spring 2018, Metro Green contacted Stonecrest and asked for a letter verifying that its proposed C&D recycling facility would be consistent with DeKalb County’s SWMP, a prerequisite for receiving a solid waste handling permit. O.C.G.A. § 12-8-24(g). At that time, the City correctly informed Metro Green that it needed to contact DeKalb County for the verification letter because DeKalb retained that authority.¹² Indeed, the SWMP itself specifically requires an applicant for a solid waste handling permit to “prepare a study and provide a report to DeKalb County to determine if a proposed facility, public or private, is consistent with the plan.”¹³ Thus, before issuing verification letters, all municipalities included in the SWMP must confirm with DeKalb County that the applicant has submitted the required report and that DeKalb has determined the facility is consistent.

Following the City’s directive, on June 17, 2018, Metro Green’s agent emailed Ms. Hutchinson, DeKalb’s Sanitation Division Director, to ask for the consistency determination. In that email, Metro Green cited the Stonecrest City Charter and acknowledged that DeKalb still “governed” and remained responsible for performing numerous government services and functions for the City.¹⁴

On August 31, 2018, after reviewing additional information provided by Metro Green, Ms. Hutchinson denied the request and unequivocally informed the company that its proposed facility is “**Not Consistent**” with the SWMP.¹⁵ Rather than behave as a responsible corporate citizen and look for a new location for its facility, Metro Green instead met with the City of

⁹ CHARTER OF THE CITY OF STONECREST, SB 208 § 6.03(c), available at [https://www.stonecrestga.gov/Assets/Files/Administration/StonecrestCharter\(3\).pdf](https://www.stonecrestga.gov/Assets/Files/Administration/StonecrestCharter(3).pdf).

¹⁰ *Id.* at § 6.03(e).

¹¹ *Id.* at § 6.03(g).

¹² Email from Michael Harris, former Stonecrest City Manager, to Emily Macheski-Preston, Assistant City Attorney, Subject: “Metro Green Recycling - City of Stonecrest” (Oct. 15, 2018, 1:30 PM) (Attachment 3).

¹³ SWMP, Section 6.4 (emphasis added), available at <https://www.dekalbcountyga.gov/sites/default/files/Solid%20Waste%20Management%20Plan%202005%20-%202014%202-20-06.pdf>. This study must evaluate four different factors, including how the public will be informed of the proposed activity. Based on public records that have been made available to us, it appears Metro Green did not submit any such study or report to DeKalb County and did not explain how it would notify the public of its proposed actions.

¹⁴ Email from Dr. Kenneth Augustus Walker, Metro Green Consultant, to Tracy Hutchinson, DeKalb County Sanitation Division Director, Subject: “DeKalb County Solid Waste Management Program – RE: City of Stonecrest” (June 17, 2018, 12:45 AM) (Attachment 4).

¹⁵ Email from Tracy Hutchinson to Dr. Kenneth Augustus Walker, copying William “Ted” Rhinehart, DeKalb’s Deputy Chief Operating Officer for Infrastructure, and Richard Lemke, DeKalb’s Public Works Director, Subject: “RE: FW: DeKalb Solid Waste Issue – Metro Green Recycling” (Aug. 31, 2018, 10:49 AM) (Attachment 5).

Stonecrest's now former City Manager a few weeks later.¹⁶ Metro Green informed the City that DeKalb County would not write the verification letter,¹⁷ yet somehow convinced the City to ignore DeKalb's authority over this issue and sign a pre-written verification letter on October 31, 2018.¹⁸

Metro Green submitted its formal application materials to EPD for a solid waste handling permit in November 2018 and included the City's October 31, 2018 in support of the application. Based on materials that have been provided to us, Metro Green never informed EPD that DeKalb County had refused to issue the verification letter or that Metro Green had even communicated with DeKalb County about the SWMP.

On February 5, 2019, months before EPD issued the solid waste handling permit, EPD's former manager of solid waste permitting, Chad Hall, forwarded a copy of Metro Green's permit application package via email to Ms. Hutchinson and copied EPD employee Richard Posey, writing that "We need to look at this again on SWMP consistency."¹⁹ On February 25, 2019, Mr. Hall emailed EPD employees Posey, William Cook, and Lena Chambless, stating that he had conversed with DeKalb County recently and it appeared that Metro Green's "permit application may not meet the requirement for consistency with the local solid waste management plan."²⁰

On February 27, 2019, Ms. Hutchinson emailed Mr. Hall and confirmed to EPD that Metro Green's facility "is NOT consistent" with DeKalb's SWMP and that she had communicated that fact to Metro Green.²¹ She reiterated the message again on April 2, 2019 after Mr. Posey informed her that EPD had approved the siting of Metro Green's facility. Copying Mr. Cook and Mr. Hall, Ms. Hutchinson said "As stated previously, this proposed project is not consistent with [the] DeKalb County Solid Waste Management Plan."²²

On April 5, 2019, Mr. Hall informed Ms. Hutchinson that he understood DeKalb County had "jurisdiction over solid waste management planning within the City of Stonecrest."²³ On April 16, 2019, Mr. Cook, EPD's Solid Waste Management Program Manager, requested materials from Ms. Hutchinson "that pertains to the City of Stonecrest being required to follow

¹⁶ Michael Harris email, *supra* note 12.

¹⁷ *Id.*

¹⁸ Letter from former City Manager Michael Harris to EPD Land Protection Branch Chief Chuck Mueller (Oct. 31, 2018) (Attachment 6).

¹⁹ Email from Chad Hall, former EPD Solid Waste Permitting Unit Manager to Tracy Hutchinson, copying Richard Posey, Subject: "Fwd: HHNT-Metro Green-Proposed Stonecrest Materials Recovery & Processing Facility" (Feb. 5, 2019, 10:58 AM) (Attachment 7).

²⁰ Email from Chad Hall to Richard Posey, Environmental Engineer, William Cook, Solid Waste Management Program Manager, and Lena Chambless, Recovered Materials Unit Manager, Subject: "FW: HHNT - Metro Green Recycling Three, LLC - D&O Plans" (Feb. 25, 2019, 10:13 AM) (Attachment 8).

²¹ Email from Tracy Hutchinson to Chad Hall and Nicole Dyer, Subject: "Metro Green Recycling" (Feb. 27, 2019, 7:51 AM) (Attachment 9).

²² Email from Tracy Hutchinson to Richard Posey, copying William Cook and Chad Hall, Subject: "Re: Metro Green Recycling Three" 4 (Apr. 2, 2019, 4:32 PM) (Attachment 10).

²³ Email from Chad Hall to Tracy Hutchinson and Richard Posey, copying William Cook, Subject: "RE: metro Green Recycling Three" 3 (Apr. 5, 2019, 8:54 AM) (Attachment 10).

DeKalb’s County Solid Waste Management Plan,” stating that he needed to “pass the information along to my Branch Chief, Chuck Mueller.”²⁴ In response, Ms. Hutchinson provided the Intergovernmental Agreement signed by the City of Stonecrest and DeKalb County, dated November 19, 2018.²⁵ The Agreement states that Stonecrest would comply with DeKalb’s SWMP for 50 years starting January 1, 2019.²⁶

In her final email sent on April 19, 2019, Ms. Hutchinson once again informed EPD that Metro Green’s operation “is Not Consistent” with DeKalb’s SWMP.²⁷

Based on the records that EPD has made available to us, not once did EPD question Metro Green or the City of Stonecrest about the SWMP consistency letter. Having received conflicting determinations about the facility’s consistency with the SWMP—and particularly after receiving the inconsistency determination from the jurisdiction that wrote the plan—EPD should have informed the facility, the City, and the County of the problem and should have worked to resolve the issue then. Instead, EPD willfully ignored DeKalb County’s determination and continued to move forward with issuing the permit.

On June 27, 2019, Metro Green posted a sign at the end of a private driveway—behind other businesses and far removed from where neighbors could see it—advertising the August 19, 2019 public hearing on the permit at the site. Notice of the public hearing was also published in *On Common Ground*, a small weekly newspaper. Notice was not published in DeKalb County’s legal organ, despite hundreds of unincorporated DeKalb residents living right across the street from the site and Ms. Hutchinson’s prior involvement. Following the public hearing, EPD issued the final permit on October 1, 2019.

More recent events are omitted from this letter, as we are certain that you are familiar with the neighbors’ protests and the City of Stonecrest’s newfound opposition and the ongoing legal action against Metro Green.

EPD’s legal authority to revoke, suspend or modify Metro Green’s permit

As an initial matter, we are appalled at EPD’s refusal to accept any responsibility for this unjustifiable situation. In your August 20, 2020 letter to elected officials, you shift all responsibility to the City and County to enforce local laws, ordinances, or regulations. You failed to acknowledge that EPD knew about the concerns with the City’s SWMP consistency letter months before you issued the permit. Instead, you conveniently shifted the time frame and

²⁴ Email from William Cook to Tracy Hutchinson, copying Chad Hall and Richard Posey, Subject: “RE: Metro Green Recycling Three” 3 (Apr. 16, 2019, 2:07 PM) ([Attachment 10](#)).

²⁵ Email from Tracy Hutchinson to William Cook, copying Chad Hall and Richard Posey, Subject: “RE: Metro Green Recycling Three” 2 (Apr. 19, 2019, 7:37 AM) ([Attachment 10](#)).

²⁶ INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF SOLID WASTE MANAGEMENT SERVICES BETWEEN DEKALB COUNTY, GEORGIA AND THE CITY OF STONECREST, GEORGIA 3 Art. 2.10 (executed Nov. 19, 2018) ([Attachment 11](#)). As explained below, the Agreement was signed after the former city manager improperly vouched for Metro Green’s consistency with DeKalb’s SWMP.

²⁷ Email from Tracy Hutchinson to William Cook, copying Chad Hall and Richard Posey, Subject: “RE: Metro Green Recycling Three” 1 (Apr. 19, 2019, 8:09 AM) ([Attachment 10](#)).

asserted that the concerns presented by the City, County, and Senator Jones “were not raised before EPD issued the Permit during the public comment period or after the Permit was issued during the 30-day appeal period.”

While technically correct, that statement is incredibly misleading. You are right in that Ms. Hutchinson did not restate her unequivocal determination that Metro Green’s facility is not consistent with the SWMP to EPD for a fifth time during the public comment period on the permit, or during the 30-day appeal period. According to her testimony during the September 3, 2020 TRO hearing, she was not aware until recently that EPD had decided to issue the permit over her clear objection. After one face-to-face conversation and months of email correspondence with EPD’s solid waste managers, she would have been right to assume the issue was closed. But more importantly, why didn’t EPD raise the concerns about the City’s SWMP letter directly with Metro Green?

You also asserted in the August 20, 2020 letter that, because the permit has been issued, EPD lacks the legal authority to revoke it except under the three conditions outlined in O.C.G.A. § 12-8-24(e)(1)(B). We disagree.

The EPD Director has and may exercise the power and duty to “issue all permits contemplated” by the Solid Waste Management Act and “to deny, revoke, transfer, modify, suspend, or amend such permits.” O.C.G.A. § 12-8-23.1(a)(3)(A). In addition, the EPD Director has the power and duty to “refuse to grant such permit if the director finds by clear and convincing evidence that the applicant for a permit . . . “has obtained or attempted to obtain the permit by misrepresentation or concealment.” *Id.* § 12-8-23.1(a)(3)(B)(ii) (emphasis added).

In Georgia, the “well established rules of statutory interpretation require courts to ascertain the legislature’s intent in enacting the law in question.” *Norred v. Teaver*, 320 Ga.App. 508, 512 (Ga. Ct. App. 2013) (internal citations omitted). “As long as the statutory language is clear and does not lead to an unreasonable or absurd result, it is the sole evidence of the ultimate legislative intent.” *Id.* (citations and alteration omitted). The Legislature’s inclusion of the phrase “has obtained” in O.C.G.A. § 12-8-23.1(a)(3)(B)(ii) means that the Legislature did not intend for bad actors to get away with misrepresenting or concealing material facts from EPD. To conclude otherwise would lead to an absurd result, where as long as a permit is issued, a permittee can go unpunished for misleading EPD or concealing information.

Thus, you have the authority to revoke, suspend, or modify Metro Green’s solid waste handling permit if you determine that Metro Green has obtained the permit by misrepresentation or concealment. Here, there can be no question that Metro Green misrepresented and concealed several material facts which contributed or led to EPD issuing the solid waste handling permit.

First, and as discussed above, Metro Green concealed from EPD that the company sought a letter from DeKalb County (under Stonecrest’s direction) confirming that the proposed facility was consistent with the SWMP, and was denied. This alone should have stopped EPD from issuing the permit and is a basis for revocation. But equally if not more important, Metro Green misrepresented to EPD that the City of Stonecrest was the host jurisdiction with authority to issue the verification letter. Unfortunately, EPD fell for this misrepresentation.

Under the Solid Waste Management Act, no solid waste handling permit may be issued “which is not consistent with a . . . solid waste management plan.” O.C.G.A. § 12-8-31.1(e). All permit applications must include a demonstration that “the host jurisdiction and all jurisdictions generating solid waste destined for the applicant’s facility are part of an approved solid waste management plan.” *Id.* § 12-8-31.1(e)(3). The application must also include a letter from the host jurisdiction and generating jurisdictions verifying consistency with the approved solid waste plans. Ga. Comp. R. & Regs. 391-3-4-.02(9). EPD defines “host government” as “the host county or other local governmental jurisdiction within whose boundaries a municipal solid waste disposal facility is located.” *Id.* at 391-3-4-.01(30).

Here, even though the Metro Green site is located within the boundaries of the City of Stonecrest, the City was not the “host jurisdiction” when it issued the October 31, 2018 verification letter. Namely, the City was not yet a “full functioning municipal corporation” according to its Charter and thus was not a “local government jurisdiction” under the law. The City was still in its transition phase, and DeKalb County was the jurisdiction responsible for performing all government functions and services related to solid waste management.²⁸ Thus, DeKalb County was “host government” within whose boundaries Metro Green Recycling Three is located.

Notably, even if the City was the host jurisdiction, which it was not, the City nevertheless was not part of an approved solid waste management plan at that time.

To elaborate, to “be included as part of a local, multijurisdictional, or regional solid waste plan, each city . . . included as part of the plan shall adopt the plan and any plan amendments by local ordinance or resolution.” O.C.G.A. § 12-8-31.1(c). The City of Stonecrest had not adopted the DeKalb SWMP by local ordinance or resolution as of October 31, 2018, the date it issued the verification letter. As such, the City, as a legal entity, was not included in the DeKalb SWMP at that time and had no authority to verify consistency with that plan. The land comprising the City was still included in the SWMP during the transition period, but under DeKalb County’s jurisdiction.

The City purported to join the SWMP through the November 19, 2018 Intergovernmental Agreement with DeKalb County, but that agreement took effect after the City issued the consistency letter and is neither a resolution nor an ordinance. In fact, we have been unable to locate any Stonecrest ordinance or resolution adopting the DeKalb SWMP, even after the transition period.²⁹ Consequently, the City of Stonecrest may currently be in violation of state law for failing to be included in a comprehensive solid waste management plan. *Id.* § 12-8-31.1(a)(1), (c). If true, the City should redress this oversight immediately.

In sum, because the City was not yet a fully functioning local jurisdiction and was not included in a comprehensive solid waste management plan on October 31, 2018, it lacked authority to provide the verification letter to EPD. DeKalb County was the host jurisdiction and

²⁸ CHARTER OF THE CITY OF STONECREST, SB 208 § 6.03(c).

²⁹ We have been unable to identify any such resolution or ordinance on the City’s website. We have submitted an open records request to the City for any such resolution or ordinance and are awaiting a response.

determined that Metro Green Recycling Three is not consistent with the SWMP. Metro Green knew and fully understood each of these facts. Instead of moving elsewhere, the company concealed and misrepresented these material facts in order to obtain a permit from EPD.

Metro Green also concealed from EPD that the sign advertising the public hearing could not be seen by the public. Although Metro Green submitted photos showing that the sign had been posted, and although the sign was technically “at the site,” Metro Green did not provide a map showing the location of the sign or give EPD any other indication that the sign was effectively hidden. Had EPD known, one would hope that EPD would have required Metro Green to move the sign to another area.

Based on each of the aforementioned facts, EPD should exercise its full authority under the law, O.C.G.A. § 12-8-23.1(a)(3), to revoke Metro Green’s solid waste handling permit now. Companies like Metro Green should not be allowed to circumvent laws at the expense of the Georgia residents those laws are designed to protect.

If you don’t act now to revoke the permit, Metro Green will be in violation of it from the first day of operation, assuming that the City of Stonecrest has passed an ordinance adopting the DeKalb SWMP by that time. Paragraph 17 of Metro Green’s solid waste handling permit requires it to operate the facility “in accordance with all . . . applicable Local, State, and Federal rules, regulations and ordinances at all times.” *See also* O.C.G.A. § 12-8-24(e)(1)(B) (“The director may . . . revoke any permit issued . . . if the holder of the permit is found to be in violation of any of the permit conditions . . .) *and* § 12-8-30.7 (“It shall be unlawful for any person to engage in solid waste handling except in such a manner as to conform to and comply with this part and all applicable rules, regulations, and orders established under this part.”).

Permit revocation is the only solution that will protect the members of Stop Metro Green. These individuals, the majority of whom live right across the street from the site in unincorporated DeKalb County, are justifiably fearful of what this facility will do to their community. As stated before, these neighbors had no idea what was going on with this site until recently, highlighting the need to improve public notice requirements. Citizens should not be expected to search the newspaper serving the city next door for public notices or travel down private driveways and into the woods to learn about public hearings.

Nor are the members of Stop Metro Green comforted by your assurances that the facility may only receive construction and demolition waste from within the City of Stonecrest. That limitation does not appear in the permit and only a passing reference to waste coming from the City exists in the D&O plan. Stop Metro Green also questions the enforceability of any such condition and has numerous other concerns that have not yet been addressed.

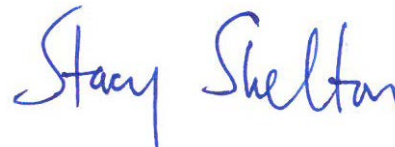
To reiterate, Stop Metro Green’s voices deserve to be heard, and they should be invited to join any discussions or meetings that EPD may have with the facility, the City of Stonecrest, and/or DeKalb County to discuss any and all next steps with regards to this site. Moreover, this facility must not be allowed to operate. Permit revocation is the only appropriate consequence for Metro Green’s disregard of the law and the neighbors living next to the site.

Thank you for your time and attention to this important issue. We welcome the opportunity to discuss our requests at any time and may be reached at alipscomb@selcga.org or 404-521-9900.

Sincerely,



April Lipscomb
Senior Attorney



Stacy Shelton
Associate Attorney

cc: Chuck Mueller (chuck.mueller@dnr.ga.gov)
Laura Williams, Esq. (laura.williams@dnr.ga.gov)
William Cook (william.cook@dnr.ga.gov)
Keith Stevens (keith.stevens@dnr.ga.gov)
Winston A. Denmark, Fincher Denmark LLC (wdenmark@fincherdenmark.com)
Mayor Jason Lary, Sr. (JLary@stonecrestga.gov)
Matthew A. Welch, Deputy County Attorney (macwelch@dekalbcountyga.gov)
Congressman Hank Johnson (*via email portal*)
Senator Emanuel Jones (Emanuel.Jones@senate.ga.gov; Summer.Boone@senate.ga.gov)
Representative Doreen Carter (Doreen.Carter@house.ga.gov)
Commissioner Mereda Davis Johnson (mdjohnson@dekalbcountyga.gov)
Tracy A. Hutchinson (tahutchinson@dekalbcountyga.gov)
Ian Caraway, Local Government Liaison, Office of Governor (Ian.Caraway@georgia.gov)
Cheryl Watson-Harris, DeKalb School Bd. Superintendent (Cheryl.Watson-Harris@dekalbschoolsga.org)

Exhibit 15



ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

EPD Director's Office

2 Martin Luther King, Jr. Drive
Suite 1456, East Tower
Atlanta, Georgia 30334
404-656-4713

September 28, 2020

Via E-Mail and U.S. Mail

Ms. April Lipscomb and Ms. Stacy Shelton
Southern Environmental Law Center
Ten 10th Street NW, Suite 1050
Atlanta, GA 30309-3848

RE: Metro Green Recycling Three Materials Recovery Facility in Stonecrest, Georgia
Solid Waste Handling Permit No. 044-051P(MRF)

Dear Ms. Lipscomb and Ms. Shelton,

The Environmental Protection Division of the State of Georgia, Department of Natural Resources ("EPD") has received your letter of September 22, 2020 regarding the above-referenced permit ("Permit") for the materials recovery facility located in Stonecrest, Georgia (the "Facility"). EPD appreciates the concerns of your client Stop Metro Green and its request on behalf of affected homeowners and residents to be involved in future discussions about the Permit and Facility.

As you may be aware, EPD and I were recently named as defendants in a complaint filed in the Superior Court of DeKalb County, Georgia, Case No. 20-CV-5610-10 (the "Litigation"). The legal issues raised in your September 22nd letter overlap with those raised in the Litigation, as does your request that EPD revoke the Permit. Accordingly, at this time EPD may not comment on these matters. Following the resolution of the Litigation, EPD will assess next steps in light of the decision of the Court.

Sincerely,

Richard Dunn
Director

Attachments

cc: Winston A. Denmark, Fincher Denmark LLC (wdenmark@fincherdenmark.com)
Noa Priest-Goodsett, Deputy County Attorney (macwelch@dekalbcountyga.gov)
Matthew Benson, Mahaffey Pickens Tucker, LLP (mbenson@mptlawfirm.com)
Robin Leigh, Office of Attorney General Chris Carr (rleigh@law.ga.gov)