

**BEFORE THE  
BERKELEY COUNTY SOLID WASTE AUTHORITY**

**In the Matter of  
ENTSORGA WEST VIRGINIA, LLC  
Request for a Certificate of Site Approval**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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The purpose of this document is to set forth the findings of facts and conclusions of law of the Berkeley County Solid Waste Authority (hereinafter “Authority”) in regard to the request by EntSORGA, West Virginia LLC (hereinafter “Applicant” or “EntSORGA”) for a Certificate of Site Approval (hereinafter “CoSA”) to locate a Class B commercial mixed waste resource recovery facility at 870 Grapevine Road, Martinsburg, Berkeley County, West Virginia. For the reasons hereafter set forth, the requested Certificate of Site Approval is granted.

**Background**

On December 13, 2010, the applicant applied to the WV-DEP, Division of Air Quality (DAQ) for a permit to construct a waste to alternative fuel facility located at 870 Grapevine Road, Martinsburg, Berkeley County WV. On July 12, 2011, the WV-DEP DAQ issued an air quality permit for the proposed facility.

On April 2, 2011, the applicant filed a Pre-Siting Notice with the WV-DEP Division of Water and Waste Management and the Authority.

On May 18, 2011, the applicant formally submitted a request for an amendment to the Berkeley County Commercial Solid Waste Facility Siting Plan to allow for its proposed facility. On November 15, 2011, the Authority approved an amendment in the Berkeley County Commercial Solid Waste Facility Siting Plan creating an authorized zone at 870 Grapevine Road, Martinsburg, WV for the proposed facility. The Siting Plan was subsequently approved on February 15, 2012 by the West Virginia Solid Waste Management Board.

On June 13, 2012, EntSORGA filed an application to the WV-PSC for a Certificate of Need (CON) pursuant to WV Code §24-2-1(c) (b) for authority to construct and operate the aforementioned proposed solid waste facility. Said application is pending before the WV-PSC as Case Number 12-0803-SWF-CN.

On October 25, 2012, EntSORGA, West Virginia submitted its original application requesting a "CoSA" be issued by the Authority.

All of the above applications, notices, requests and approvals pertained to the same proposed facility.

On November 21, 2012, the Authority conducted a legally advertised special meeting to take up the requested CoSA application. During the course of said meeting, the Authority decided to conduct a public hearing on the matter and determined that the original application contained certain omissions and, therefore, was incomplete.

On November 24, 2012, the Authority communicated in writing to EntSORGA detailing the aforementioned omissions and notifying EntSORGA of its decision to conduct a public hearing.

On November 26, 2012, the Authority published a Class I legal advertisement in The Martinsburg Journal, a daily newspaper of general circulation in Berkeley County, notifying the public of the purpose, time and place of the public hearing on the EntSORGA CoSA application. On November 21, 2012, public notices were also placed on the bulletin board in the Berkeley County Courthouse, the Authority's office, and at the entrance of the County offices. As indicated in said notices, a copy of EntSORGA's application and the additional information was placed in every branch of Berkeley County library, and the County Clerk's office and the BCSWA office, on November 15, 2012, and remained available thereafter at said locations for public review and inspection.

On November 28, 2012, EntSORGA submitted a response to the Authority including its response to the stated omissions and its payment of the administrative fee required in WV Code §22-15-6.

On December 19, 2012, the Authority conducted the public hearing at the Chambers of the Berkeley County Council, 400 West Stephen Street, Martinsburg, WV 25401. Written comments were accepted until January 4, 2013.

On January 9, 2013, the Authority conducted a second legally advertised special meeting regarding the CoSA application. During the course of the said meeting, the Authority considered all public comments, concluded that the EntSORGA CoSA application was complete as it relates to the ten CoSA criteria and directed its Chairman to prepare draft findings of facts and conclusions in the matter for Board consideration at the future Board meeting within the next 30 days.

### **Related Studies, Investigations and Proceedings**

The property on which the applicant proposes to build its facility (the “Grapevine Road” property) is owned by the Authority and has been extensively studied as a potential location for a commercial solid waste facility. For instance, in 2007, the Authority commissioned an engineering consulting firm (GAI Consultants) to prepare a comprehensive assessment of the suitability of this property as the location of a commercial solid waste transfer station or commercial recycling facility. The study concluded that certain portions of the property were suitable in all respects, environmentally and legally, for either type of facility.

The Authority’s most recent “Commercial Solid Waste Facility Siting Plan,” completed in 2011, constituted an amendment to its prior Siting Plans in that it designated the Grapevine Road property as “authorized” for the placement of a resource recovery facility such as that proposed by Entsorga. In making that amendment, and in assessing Entsorga’s CoSA application, the Authority has relied upon the results of the GAI study, finding that the conclusions of the study transpose well to the Entsorga facility. In the process of developing said Siting Plan, the Authority conducted a public hearing that included numerous public comments relating to the proposed Entsorga facility as an alternative to, or competitor of, existing landfills. In amending the Siting Plan to allow for a resource recovery facility at the Grapevine Road location, the Authority relied upon the State’s articulated policy goal of reducing dependence on landfilling, and maximizing the reduction, reuse and recycling of solid waste.

The Authority has also investigated the technology proposed by Entsorga and the utility/marketability of its product “Solid Recovered Fuel” (SRF). Two members of the Board toured a manufacturing facility, the ESSROC: Italcementi Group Plant located in Martinsburg, WV, on June 24, 2011. This facility proposes to purchase the SRF to be produced by Entsorga for use in its cement kiln. The observations of the tour were shared with all Board members at subsequent meetings. During the tour, representatives of ESSROC: Italcementi Group described in detail the current cement manufacturing operation, from the quarry hole to the shipping department. They also described in detail where the SRF would be utilized in the operation, the modifications required at the plant to utilize the SRF, and the advantages of utilizing the SRF. ESSROC: Italcementi Group also provided letters supporting the Entsorga project and indicated its ability/desire to accept the SRF.

A tour of three Entsorga facilities in Europe that are similar to that proposed for Grapevine Road occurred during the week of September 12, 2011. It was attended by John Decker, CEO Apple Valley Waste and others. On November 09, 2011, Mr. Decker met in a public meeting with the BCSWA and described in details his observations of the three facilities. He also presented a slide show, video, pictures, etc., to Board members. He described the sights, sounds, smells and operation of the facilities. Mr. Decker answered numerous questions from Board members, four LCS/WMI representatives and two citizens.

The media was also present for that meeting. (At the time of Mr. Decker's tour, Apple Valley Waste Technologies, LLC, had not become an owner of the proposed facility.) The Authority found his presentation both useful and informative.

### **Findings of Fact**

Many of the "Findings of Fact" below cite directly to information provided by the Entsorga to the Authority or to the Public Service Commission. However, the information gleaned independently by the Authority from the above-described activities and from its development of the Berkeley County Solid Waste Facility Siting Plan corroborates the applicant's submissions and assertions and leads the Authority to conclude that Entsorga's CoSA application and related submissions, insofar as they are hereafter cited, are credible and sufficiently accurate to be relied upon by the Authority. Notably, none of the public comments received at the public hearings regarding the Siting Plan (discussed above) or the CoSA application impeached or contradicted any of Entsorga's assertions or representations, nor has the Authority received any other information that contradicts the information hereafter summarized.

- 1) The applicant proposes to develop an estimated \$19M commercial mixed waste resource recovery facility. (CoSA App. Resp. #1; CON App. #5).
- 2) As proposed, the facility will process mixed solid waste utilizing a mechanical biological treatment technology. This technology, referred to as the High Efficiency Biological Treatment (HEBIOT), is designed to 1) reduce the overall weight of the mixed solid waste via forced air drying, and 2) separate certain metals for ultimate recycling via traditional recycling methods, and 3) separate certain high BTU, organic and combustible mixed solid waste for utilization as a product that can be marketed as fuel substitute for co-firing with coal; and 4) separate certain low BTU, inorganic and noncombustible mixed solid waste for ultimate landfilling. (CoSA App. Resp. #25; CON App. #3; CON #15; Siting Plan App #19).
- 3) If the proposed facility is built and performs as proposed by Entsorga, it will significantly reduce the amount of solid waste being placed into nearby landfills from some parts of Wasteshed E. (CoSA App. Resp. #29; CON App. #3).
- 4) The majority of the processed solid waste will be utilized to produce a saleable solid recovered fuel (SRF) for use at cement kilns; one of which is located in Berkeley County, WV. The emissions from the use of the saleable fuel have been evaluated by Entsorga, and determined to be lower or the equivalent to the use of coal. (CoSA App. Resp. #25; CON App. #3).

- 5) The applicant recognizes that this facility will be subject to regulation by the West Virginia Department of Environmental Protection and the Public Service Commission as a commercial Class B mixed waste resource recovery facility, which will be limited to accepting no more than 9,999 tons of waste per month. The facility is initially expected to accept an average of 7,333 tons per month of municipal solid waste, but will accept no more than 500 tons daily and 9,999 tons per month. (CoSA App. Resp. #13). The municipal solid waste will be delivered by Apple Valley Waste Services and other private vehicles. (CoSA App. Resp. #10; Siting Plan App. #15).
- 6) Initially, Apple Valley Waste Services has agreed to deliver a minimum annual commitment of 54,000 tons of municipal solid waste to the proposed facility. (App. Resp. #12). Entsorga anticipates that 80 -100% of the solid waste will originate from sources in West Virginia. (CON App. #6).
- 7) Apple Valley Waste Services presently owns four solid waste haulers, including two (AVW of West Virginia, Inc. and Morgan Sanitation Inc.) that holds a WV-PSC Motor Carrier Certificate. The two other haulers are doing business in Maryland (AVW of Maryland, Inc.) and Pennsylvania (Parks Garbage Service Inc.).
- 8) Apple Valley Waste Technologies, LLC; Chemtex International Inc. and Entsorgafin S.p.A are the equity owners on Entsorga West Virginia LLC. (CoSA App. Resp. #7; COA App #1; CON App #2).
- 9) Entsorga anticipates, on an annual basis, approximately 300 additional tons of solid waste will be delivered from the public during the proposed monthly “free day”. (CoSA App. Resp. # 11).
- 10) The proposed facility does not involve incineration or combustion of solid waste at the proposed location. (CON App. #4).
- 11) The proposed facility’s location has been designated as “approved” in the Berkeley County Commercial Solid Waste Facility Siting Plan (CoSa App. Resp. #19).
- 12) The proposed facility will not accept construction debris, demolition debris, hazardous waste, medical waste, electronic waste, liquid waste, used oil, clean source separated recyclables, clean source separated compostables or appliances (CON App. #3; Siting Plan App. #19).
- 13) The proposed facility will also produce residual waste that can neither be easily recycled nor used as a saleable fuel. This material is expected to be mostly rocks, dirt, glass and PVC plastic and is likely destined for landfill disposal. (Siting Plan App # 19).

- 14) Prior to its being acquired by WMI, the LCS Services/ North Mountain Sanitary Landfill included a narrative in its original 1986 permit submission that “ultimately the landfill facility would include a resource recovery facility or recycling facility, or an industry based on recycling.” Past and current owners have not implemented any of these alternatives. (Geo-Tech Reclamation Industries, Inc. Narrative Page 2).
- 15) The proposed location, on February 21, 1990 was previously granted a “Certificate of Site Approval” by the Authority for the expansion of the Berkeley County Sanitary Landfill. The aforementioned landfill expansion did not occur. (February 21, 1990 Letter, Clyde Spies, Chairman)
- 16) The proposed facility will have a positive impact on economic development via a small amount of job creation. (CoSA App. Resp. # 26). The Authority also notes that the availability of creative waste management alternatives has a positive impact on economic development due to businesses becoming increasingly sensitive to public awareness of the benefits of “green” technologies.
- 17) Route 9 and Grapevine Road will be the primary access roads utilized in the transportation of waste to the proposed facility. Route 9 is a modern, recently upgraded, four (4) lane limited access road. The use of Grapevine Road will be limited to 8/10<sup>th</sup> of a mile. The new entrance on Grapevine Road will be designed to prevent truck traffic from exiting the proposed facility and utilizing the northeast portions of Grapevine Road. The proposed facility will not result in any significant negative impacts on the local transportation infrastructure. (CoSA App. Resp. #27).
- 18) The proposed facility will have no impact upon railroad or water transportation. (CoSA App. Resp. #27).
- 19) The proposed facility will not be located within 10,000 feet of the West Virginia Eastern Regional Airport. (CoSA App. Resp. #29 Revised).
- 20) The larger 140 acre property owned by the Berkeley County Solid Waste Authority has been continuously used for solid waste management since 1970. The proposed facility will be consistent with the current land uses of the property and surrounding area. The proposed facility will manage all solid waste inside a closed building. The proposed facility will not have offsite odors, litter, gas or noise. The proposed facility will have paved roads. (CoSA App. Resp. #28).
- 21) The proposed facility will not place solid waste into or on the ground at the proposed location. (CoSA App. Resp. #29 & #30).

- 22) Leachate will be generated at the proposed location. The leachate will be collected and recycled through an internal closed loop water system. After processing, leachate will be discharged directly to the Berkeley County/City of Martinsburg POTW. There will be no septic systems or underground injection wells associated with the proposed facility. (CoSA App. Resp. #29).
- 23) Storm water will be discharged in accordance with WVDEP NPDES requirements via two onsite stormwater bio-retention facilities. (CoSA App. Resp. #29).
- 24) The proposed facility will not have any significant adverse impact on any natural wetlands. (CoSA App. Resp. #29 Revised).
- 25) The proposed facility will not impact perennial streams. (CoSA App. Resp. #29 Revised).
- 26) The proposed facility will have little to no negative impacts upon the groundwater or surface waters at the proposed site. (CoSA App. Resp. #29).
- 27) The proposed facility lies directly above the Martinsburg Shale Formation, thus karst and groundwater conduction concerns normally associated with limestone bedrock is not a concern. Even so, geological and hydrological concerns are not an issue because the facility will not place solid waste, leachate or processed water into or on the ground. (CoSA App. Resp. #30).
- 28) The proposed facility will have little to no negative impacts due to the geological and hydrological conditions. (CoSA App. Resp. #30).
- 29) The proposed facility will process all solid waste inside a closed building. The proposed facility will have no offsite odors, litter, gas or noise. The proposed facility's staff will pick up any roadside litter daily along Grapevine Road. The proposed facility will be landscaped and maintained as aesthetically pleasing. (CoSA App. Resp. #31).
- 30) The proposed facility will include an onsite educational center that will be used to conduct tours for visitors, school classes and officials to use as a classroom/ meeting room. (CoSA App. Resp. #31).
- 31) The proposed facility will have no negative impacts upon the aesthetic and environmental quality of the area. (CoSA App. Resp. #31).
- 32) The proposed facility is not in or near a recognized historic district, civil war site, or the George Washington Heritage Trail. Additionally, the traffic to the proposed site will not pass through any recognized historic districts, civil war sites, or the George Washington Heritage Trail. (CoSA App. Resp. #32).

- 33) The proposed facility will not result in any negative impacts upon the historic and cultural resources. (CoSA App. Resp. #32).
- 34) The proposed facility is consistent with the traditional land use as the property has been utilized for solid waste management since 1970. This property is owned by the BCSWA and has been reserved for solid waste management purposes. The neighboring land uses consist of a large regional jail, brick and steel can manufacturing, strip mining, automotive repair, commercial and residential establishments. (CoSA App. Resp. #33).
- 35) The proposed location is not within 1,000 feet of any cave preserves, wildlife management areas, nature walking trails, public parks, conservation areas, or other land preserves. There are no impacts on sensitive habitats, endangered or threatened habitats or wetlands. (CoSA App. Resp. #33 Revised).
- 36) The proposed facility will not be located within 1,000 feet of an existing property located into the Berkeley County Farmland Protection Program. (CoSA App. Resp. #33 Revised).
- 37) The proposed facility will have no significant negative impacts upon the present or future land uses for residential, commercial, recreational, environmental, conservation or industrial purposes. (CoSA App. Resp. #33).
- 38) The proposed facility will include a covered drop off area for residents to dispose of household solid waste at a convenient and clean location. (CoSA App. Resp. #34).
- 39) The proposed facility will be operated in a manner which will protect the public health, welfare and convenience. (CoSA App. Resp. #34).



## Conclusions of Law

- 1) WV Code §22C-4-25 (b) states that “in consideration whether to issue or deny the certificate of site approval, as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region; economic development; transportation infrastructure; property values; groundwater and surface waters; geological and hydrological conditions; aesthetic and environmental quality; historic or cultural resources; the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes; and the public health, welfare and convenience.”
- 2) WV Code §22C-4-25 (c) states “The County or regional solid waste authority shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval”.
- 3) WV Code §22C-4-25 (d) states “The siting approval requirements for composting facilities, material recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.”
- 4) WV Code §22-15-6 states “The fee for the certificate of site approval is twenty-five dollars payable upon the filing of the application therefore with the county, county solid waste authority or regional solid waste authority, as the case may be.”
- 5) WV Code §22-15-1 (c) states “The Legislature further finds that solid waste disposal has inherent risks and negative impacts on local communities and specifically finds “...(6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.”
- 6) WV Code §22C-4-1 states “The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper

recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

(1) *Source reduction.* -- This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste and similar activities.

(2) *Recycling, reuse and materials recovery.* -- This involves separating and recovering valuable materials from the waste stream, composting food and yard waste and marketing of recyclables.

(3) *Landfilling.* -- To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.”

- 7) On March 9, 2012, the West Virginia Legislature adopted House Concurrent Resolution # 59, “expressing support for the improvement in the collection, processing and consumption of recyclable material throughout the State of West Virginia.” Furthermore, the adopted resolution expressed support to the West Virginia Public Service Commission and the West Virginia Department of Environmental Protection to permit resource recovery facilities in the state as a means to increase the collection of recyclable materials and the utilization of solid waste as a resource rather than landfilling.”
- 8) The Authority concludes that the county or region’s continuing reliance on landfilling as its overwhelmingly predominant method of handling municipal solid waste is inconsistent with efficient disposal of solid waste in that it will not solve the long term solid waste management problem(s) of the county or region .

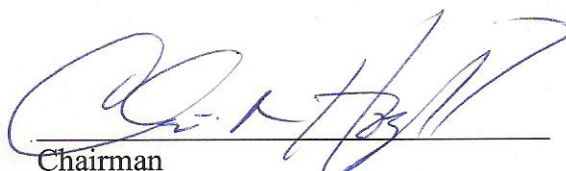
- 9) The Authority concludes that, in order to adhere to the State's solid waste management hierarchy as expressed in WV Code §22C-4-1, to the maximum extent possible, landfill disposal of the municipal waste stream should be reserved for non-recyclables and other materials that cannot be practically managed in any other way.
- 10) The Authority concludes that the proposed facility clearly supports the aforementioned policies through its utilization of resource recovery and recycling techniques.
- 11) The Authority further concludes that the applicant has met the burdens imposed upon it and the unquestionable weight of evidence shows that the local infrastructure, site suitability and environment (cultural, historic, and natural) are appropriately suited for the development of a 500 ton per day, Class B mixed waste resource recovery facility at 870 Grapevine Road, Martinsburg WV. Based on the ten criteria found in WV Code § 22C-4-25 (b), the Authority concludes that the applicant affirmatively and clearly demonstrated that the requested designation is appropriate and proper and that the solid waste facility could be appropriately operated in the public interest.

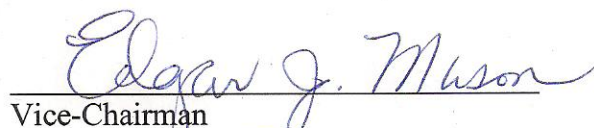
**ORDER**

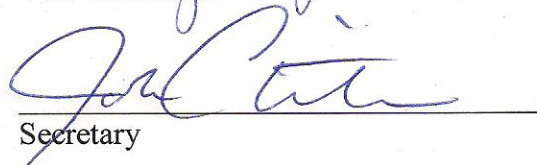
Upon motion duly made and passed at its public meeting of January 24<sup>th</sup>, 2013, the Berkeley County Solid Waste Authority does hereby ADOPT the above Findings of Fact and Conclusions of Law and does GRANT the requested Certificate of Site Approval to Entsorga, West Virginia LLC, to build and locate a facility at the Grapevine Road location that is consistent with the representations and assertions of Entsorga as recited in the Authority's Findings of Fact. The issuance of the Certificate of Site Approval is not transferable to any other entity without approval of this Authority.

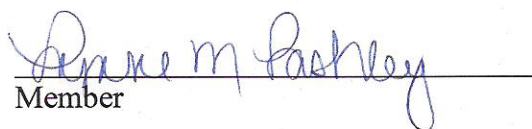
January 24<sup>th</sup>, 2013.



  
Chairman

  
Vice-Chairman

  
Secretary

  
Member

  
Member