



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

May 28, 2013

CERTIFIED MAIL

Return Receipt Requested

Mr. Timothy L. Firestine
Chief Administrative Officer
Montgomery County
101 Monroe Street, 2nd Floor
Rockville MD 20850

**Re: Consent Order; Gude Landfill
Case Number: CO-11-SW-036**

Dear Mr. Firestine:

Enclosed please find the executed Consent Order that was negotiated between the Maryland Department of the Environment and Montgomery County for the Gude Landfill located at 600 East Gude Drive in Rockville, Maryland.

We look forward to working with you to facilitate the successful completion of the requirements of the order. Please feel free to contact me or Mr. Edward M. Dexter, Administrator of the Solid Waste Program at 410-537-3315, or via email at edexter@mde.state.md.us should you have any questions.

Sincerely,

Horacio Tablada, Director
Land Management Administration

HT:ATG:atg
Enclosure

cc: D'Arcy Talley, Esquire
Andrea Baker, Esquire
Mr. Edward Dexter
Mr. Brian Coblentz



**STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT**

v.

MONTGOMERY COUNTY, MARYLAND

**Serve on:
Mr. Isiah Leggett
County Executive
101 Monroe Street, 2nd Floor
Rockville MD 20850**

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**SECRETARY OF THE
ENVIRONMENT**

**LAND MANAGEMENT
ADMINISTRATION
1800 Washington Blvd.
Baltimore MD 21230-1719**

MDE Case No. CO-11-SW-036

RECEIVED

MAY 20 2013

Land Management Administration

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**CONSENT ORDER
(Gude Landfill)**

The State of Maryland, Department of the Environment (“MDE” or “Department”), and Montgomery County, Maryland (“County”), collectively, (~~“the Parties”~~) hereby enter into this Consent Order, in lieu of litigation and agree as follows:

WHEREAS, the Department is charged with responsibility for regulating the management and disposal of solid waste in the State of Maryland. The Department’s authority is set forth in the applicable provisions of Titles 1 and 9 of the Environment Article of the Annotated Code of Maryland (“Environment Article”) and in the Code of Maryland Regulations (“COMAR”) 26.04.07;

WHEREAS, pursuant to the authority delegated by the Secretary of the Department, the Director of the Land Management Administration regulates the closure and post closure monitoring and maintenance of sanitary landfills in accordance with COMAR 26.04.07.21 and 22;

WHEREAS, the County, a body politic and a political subdivision of the State of Maryland, owns and is responsible for the property on which is located a closed previously-permitted municipal solid waste landfill operated by the County, currently known as the Gude Landfill (formerly the Gude-Southlawn Landfill, and formerly the Central Sanitary Landfill), located at 600 East Gude Drive, Rockville, MD 20850 (“Landfill”), as described in greater detail on plans in the possession of the Department and the County;

WHEREAS, since the time of closure of the Gude Landfill, the Department has inspected the condition of the Landfill in an effort to monitor it for environmental contamination and can confirm, through monitoring reports submitted by the County, the migration of groundwater contamination at and beyond the Landfill property boundary and the intermittent detections of temporary explosive gas exceedences from landfill gas at the Landfill property boundary;

WHEREAS, the Gude Landfill is governed by and subject to the requirements of state law and regulation regarding the continued maintenance of the closed Landfill;

WHEREAS, the Chief Administrative Officer of the County is the designated County official with full authority to execute this Consent Order on behalf of the County;

WHEREAS, the groundwater in the vicinity of the Landfill is not subject to public consumption or public exposure as this area is within the Washington Suburban Sanitary Commission’s service area via a public water supply system;

WHEREAS, the Landfill was closed by the County in 1982 in accordance with the Emergency Health Order dated December 2, 1977, issued by the Maryland Department of Health and Mental Hygiene, and is currently being monitored and maintained by the County’s

Department of Environmental Protection. A copy of the Emergency Health Order is attached hereto as Exhibit "A";

WHEREAS, from the date of the Emergency Health Order to the date of closure of the Landfill, the County sited, designed, permitted, and constructed the Oaks Sanitary Landfill in Laytonsville, Maryland;

WHEREAS, upon closure, the Landfill was capped with at least a two-foot soil cover system, which was the applicable standard for closure at the time. During the post-closure care period from 1982 through 1984, a groundwater monitoring well network was installed at the Landfill. During the post-closure care period from 1983 through 1985, a landfill gas-to-energy facility and a landfill gas collection and extraction system (of approximately fifty (50) gas extraction wells) were also installed at the Landfill;

WHEREAS, the County has monitored water quality (groundwater and surface water) around the perimeter of the Landfill since 1984 to the present with a groundwater monitoring well network of twenty (20) permanent groundwater monitoring wells and at five (5) stream locations in vicinity of the Landfill;

WHEREAS, the County continued to monitor water quality (groundwater) through the installation of sixteen (16) new permanent groundwater monitoring wells in 2010 and three (3) new permanent groundwater monitoring wells in 2011 as part of the Nature and Extent Study ("NES"). The NES is an investigation to determine the potential nature (characteristics) and extent (horizontal and vertical limits) of environmental contamination in the vicinity of and potentially resulting from the Landfill;

WHEREAS, the County has managed the generation of methane gas from 1985 to the present and has monitored for the presence of methane gas from 2005 to the present. The

County implemented improvements to the landfill gas collection, extraction, and monitoring systems from 2005 to the present that include: a Flare Station with two enclosed ground stack flares, a new Gas-to-Energy Facility, approximately fifty (50) additional gas extraction wells (over 100 total) and seventeen (17) gas monitoring wells. The expansion of the gas collection and extraction system during the past seven years has resulted in improvements in gas control, with limited, sporadic methane detections along the northwest and southern perimeter property boundaries of the Landfill;

WHEREAS, the County identified and performed repairs to leachate seeps at the Landfill and also made repairs in response to detections of seeps during MDE inspections since the 1990s to the present;

WHEREAS, the County implemented site improvements at the Landfill to manage stormwater including a major Capital Improvement Program (“CIP”) project in the mid 1990’s, to assure flow of clean stormwater off the surface of the Landfill. The County implemented and continues to implement annual regrading and drainage improvement projects to prevent standing water on the Landfill, which could infiltrate into the Landfill and generate leachate;

WHEREAS, despite the County’s actions, the groundwater in the vicinity of the Landfill continues to contain levels of contamination above enforceable limits of the Department, and there is a possibility for landfill gas migration;

WHEREAS, the groundwater monitoring wells in the approved MDE monitoring program and associated Groundwater and Surface Water Monitoring Plan (dated May 11, 2009) for the Landfill are located in close proximity to the property boundary of the Landfill;

WHEREAS, the County has previously and continues (1984 – present) to conduct semi-annual groundwater and surface water monitoring for the Landfill. Historically, groundwater

and surface water contamination have been detected in the form of Volatile Organic Compounds (“VOCs”) and inorganic compounds. The contaminants are detected at low levels. However, there are maximum contaminant level (“MCL”) exceedences in groundwater at the Landfill property boundary. The majority of the MCL exceedences have occurred in the groundwater monitoring and observations wells on the north, northwestern and southern portions of the Landfill;

WHEREAS, COMAR 26.08.02.09C(1) provides that the discharge of pollutants may not cause groundwater to exceed primary or secondary drinking water standards as provided by COMAR 26.04.01;

WHEREAS, COMAR 26.04.01.06A establishes the MCLs for certain constituents in drinking water;

WHEREAS, COMAR 26.04.07.03B(9) establishes the lower explosive limit (“LEL”) requirement for methane gases at the Landfill property boundary, by prohibiting a facility to be designed or operated in such a manner that the concentration of explosive gases generated by the facility exceeds 25 percent of the LEL for the gases in facility structures, excluding gas control or recovery system components, and the LEL for the gases at the property boundary;

WHEREAS, the County has previously and continues (2005 – present) to conduct quarterly landfill gas monitoring for the Landfill. Historically, gas monitoring has detected intermittent exceedences of the LEL for methane gas in the monitoring wells at the Landfill property boundary. The County has actively improved the landfill gas collection system on a timely basis to mitigate the intermittent exceedences, which has reduced the frequency of exceedences and the concentration levels of the methane gas detections;

WHEREAS, the County has intermittently exceeded the LEL requirement for methane gas at the Landfill property boundary;

WHEREAS, Section 9-215(a) of the Environment Article requires that when landfill operations end, permitted landfills must be closed and covered in a manner that prevents erosion, health and safety hazards, nuisances, and pollution;

WHEREAS, COMAR 26.04.07.03A prohibits the handling of solid waste in a manner that will likely (a) create a nuisance; (b) cause a discharge of pollutants to waters of this State unless otherwise permitted under § 7-232 or § 9-323 of the Environment Article; (c) impair the quality of the environment; or (d) create other hazards to the public health, safety, or comfort as may be determined by the Approving Authority;

WHEREAS, State regulations allow the Department to specify requirements for the groundwater monitoring of municipal sanitary landfills, including COMAR 26.04.07.09(F) and 26.04.07.10(R). State regulation also mandates that if it is discovered that Maryland's waters of the State are contaminated, periodic monitoring and testing can be required;

WHEREAS, the Department formally directed the County by letter dated December 12, 2008 to formalize the existing monitoring programs for the Landfill for landfill gas, and by letter dated January 28, 2009, directed the County to formalize the existing monitoring programs for groundwater and surface water. The County prepared and submitted the formal monitoring plans to the Department and received Department approvals on April 22, 2009 for the landfill gas monitoring program and May 11, 2009 for the groundwater and surface water monitoring program;

WHEREAS, the Department formally directed the County in a letter dated January 28, 2009 to formalize a remedial action plan for the Landfill. On April 29, 2009, the County submitted a Remediation Approach: Project Sequence and Schedule which contained a scope of work for both a Limit of Waste Delineation and a NES. The Remediation Approach was approved by the Department on May 27, 2009;

WHEREAS, on January 28, 2010, in accordance with the Remediation Approach, the County submitted a Survey and Limit of Waste Delineation Study that identifies the horizontal extent of waste at the Landfill;

WHEREAS, on November 19, 2010, in accordance with the Remediation Approach, the County submitted a NES for the Landfill outlining the potential nature (characteristics) and extent (horizontal and vertical limits) of environmental contamination in the vicinity of and potentially resulting from the Landfill. The County and the Department attended a meeting on February 23, 2011 to review Department comments, identify information gaps, and develop an approach to finalize the NES. The County prepared meeting minutes and a MDE Comment/County Response package to document specific guidance on the necessary steps to finalize the NES (Addendum No. 1), which was approved by the Department by a letter dated May 11, 2011. The County made contractual arrangements with a technical/environmental Consultant and staff commitments to complete the NES (Addendum No. 1) as directed by the Department;

WHEREAS, pursuant to a Department directive contained in a letter dated May 11, 2011, the County agreed to complete the NES (Addendum No. 1) by November 21, 2011;

WHEREAS, on November 21, 2011, the County completed work as part of the NES (Addendum No. 1), including; 1.) additional data analyses, site mapping and field work better

defining the nature and extent of any potential offsite environmental impacts resulting from the Landfill for groundwater and surface water quality, landfill gas migration and discharges to the waters of the State, 2.) updated work on exposure pathways, and 3.) submission of an updated NES Report to the Department;

WHEREAS, under applicable State regulations, additional investigatory and remedial actions at the Landfill are required to protect public health and the environment;

WHEREAS, under applicable State regulations, the County has continuing responsibility for the ongoing monitoring and maintenance of the Landfill;

WHEREAS, the Department entered into negotiations with the County regarding the evaluation of environmental impacts of the Landfill associated with the migration of groundwater contamination, the intermittent detections of temporary explosive gas exceedences from landfill gas, non-stormwater discharges and assessing potential corrective measures for the Landfill;

WHEREAS, both Parties are dedicated to protecting the environment and the public health, and believe that it is in the best interests of the citizens of Montgomery County and the State of Maryland that a cooperative approach be adopted to address the problems identified at the Landfill; and

WHEREAS, in consideration of the foregoing and the commitments set forth herein and without any admission of liability, guilt, or fact by Montgomery County, the Department and County agree to the following:

I. ACTIONS TO BE TAKEN

THEREFORE, it is **ORDERED** by the Department, and **CONSENTED TO** by Montgomery County, Maryland, that:

1. The County shall continue to perform required monitoring and maintenance activities at the Landfill in accordance with State and federal regulations, and in accordance with the Monitoring Plans submitted and approved by the Department.

2. Within sixty (60) calendar days of the execution of this Consent Order, the County shall submit to the Department for approval a Work Plan and schedule to complete the following investigative work at the Landfill:

- A. Determine whether any potential risks to human health or the environment exist, and if so, determine the appropriate interim remedial measures necessary to address such potential risks;
- B. Implement the Department-approved interim corrective measure;
- C. Develop and submit to the Department for approval an Assessment of Corrective Measures ("ACM) Work Plan;
- D. Evaluate and prepare the ACM;
- E. Prepare and submit a final ACM Report and associated schedule for implementation of the corrective measures; and
- F. Implement the Department-approved corrective measures for the Landfill.

3. The investigative tasks to be accomplished by the County pursuant to Paragraphs 4, 5, 6 and 8 of this Consent Order must be performed by or under the supervision of a qualified geologist or other groundwater scientist in accordance with applicable State and federal regulations, federal guidance for the performance of remedial investigations, and the advice of the Department.

4. Within forty-five (45) calendar days of approval of the ACM Work Plan by the Department, the County shall initiate the evaluation and preparation of the ACM.

5. Within two hundred and forty (240) calendar days of initiating the ACM, the County shall prepare and submit a final ACM Report to the Department, along with a schedule of the corrective measures to be implemented.

6. The results of the ACM shall be presented to the Department in the form of two (2) copies of a written report (the "ACM Report") including a narrative with suitable maps; cross-sections and tables depicting existing geologic and hydrologic conditions at the Landfill and vicinity; the nature and vertical and horizontal extent of water quality impact and landfill gas migration; and the projected area that may be affected by such impacts in the foreseeable future. This may include the use of computer modeling or other predictive aids. The results of the investigation shall also be explained to the public in a Public Informational Meeting as described in Paragraph 9 of this Consent Order.

7. Upon submission of the Preferred Corrective Action by the County and its approval by the Department, the County shall comply with all obligations and deadlines set forth therein. The approved ACM Report is incorporated herein by reference.

8. The County shall conduct any additional remedial work at the Landfill as is determined to be necessary as a result of the ACM or by subsequent monitoring, or as required by the Department. The specifics of any additional remedial work shall be developed through discussions between the Parties and shall be made a part of this Consent Order upon approval of a plan of action by the Department.

9. Within sixty (60) calendar days of the approval of the ACM Report by the Department, the County shall schedule and hold a Public Informational Meeting to discuss the findings of the investigation and to discuss remedial actions for the Landfill. The meeting shall be held on a weeknight, and notification of property owners and other inhabitants of the area

near the Landfill shall be undertaken to inform them of the date, time, location, and subject matter of the meeting.

10. The County agrees to continue holding monthly status meetings with local community representatives who wish to attend these meetings at mutually agreeable dates and times during the duration of the ACM and the implementation of corrective measures. Discussion of the land use and reuse process will continue during this period. The County also agrees to continue holding larger community meetings based on milestone achievements of the NES and during the ACM and land use and reuse processes that include: Completion of the NES (MDE Approval) and Introduction of the ACM; Completion of the ACM (MDE Approval); and any interim or decision-based Land Use and Reuse discussions during the implementation of corrective measures as requested by the County or the community.

11. During the six (6) month period following the Department's approval of the ACM Report, the County (Department of Environmental Protection) agrees to forward, verbatim, to the County Executive and the County Council any written recommendations from the nearby communities concerning the potential future land uses and reuses of the Landfill site and the incorporation of potential future land uses and reuses in the design and implementation of corrective measures selected through the ACM process. All written recommendations from the nearby communities shall be submitted to the Director of the County's Department of Environmental Protection at 255 Rockville Pike, Suite 120, Rockville, MD 20850. Community recommendations shall be forwarded by the County Department of Environmental Protection within thirty (30) calendar days of receipt.

12. The work described in the final Department approved ACM Report shall be implemented by the County with any amendments required by the Department in accordance

with the schedule approved by the Department. Modifications to the schedule may be negotiated by the Parties as the need arises and are incorporated into this agreement to the extent they are approved by the Department.

13. Once approved and made part of this Consent Order, any noncompliance with the Department's mandated actions specified in writing resulting from the ACM Report, any of its approved attachments, or any other report related to the ACM, etc., shall be deemed as noncompliance with this Consent Order.

14. In the event the Department does not approve (in whole or in part) of any plan or report required by this Consent Order, the Department shall notify the County in writing ("Deficiency Letter") and identify those deficiencies that are not acceptable.

15. The County shall modify the plan or report to correct the deficiencies within sixty (60) calendar days from receipt of the Deficiency Letter by the Department. Modifications to correct the deficiencies shall be submitted to the Department in writing for review and approval.

16. If the County takes exception to all or part of the Department's disapproval as specified in the Deficiency Letter, within sixty (60) calendar days upon receipt of the Deficiency Letter, the County shall confirm its exception(s), in writing to the Department and provide specific grounds for the exception(s).

17. Representatives of the Department and the County may confer in person or by telephone in an attempt to resolve any disagreement. If an agreement is reached, it shall be confirmed in writing and signed by representatives of each party and shall be incorporated into this Consent Order as of the date it is signed by the Department. In the event that a resolution is *not* reached, the Department shall confirm that in writing and the County shall modify the plan or report as provided in the Department's letter within sixty (60) calendar days of receiving it.

18. No informal advice, guidance, suggestion, or comment by the Department regarding reports, plans, specifications, schedules, or any other writing submitted by the County shall relieve the County of its obligation to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless it is formally modified. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this Consent Order are, upon approval by the Department, incorporated into and enforceable under this Consent Order.

19. Any request to modify the Work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Order during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties.

20. Nothing herein shall be construed to preclude the Department from pursuing any remedies or sanctions available to the Department for violations of the Consent Order or any other violation of State law, regulations, permits, or orders issued by the Department not expressly made the subject of this Consent Order. The Department reserves the right to take, direct, or order any additional corrective or other action it deems necessary to prevent or abate any nuisance or threat to public health, welfare, or the environment.

II. STIPULATED PENALTIES

21. Unless there has been a written modification of a requirement of this Consent Order executed by all Parties, the Department may assess the County stipulated penalties for failure to meet any deadline set forth in this Consent Order, or any deadline set forth in a Department-approved plan adopted pursuant to this Consent Order.

22. Beginning on the date of execution of this Consent Order and continuing until the Department acknowledges in writing that all obligations of the Consent Order have been

completed, upon written demand by the Department, the County shall pay a stipulated penalty for noncompliance with this Consent Order. Stipulated penalties shall accrue in the amount of \$500 per day for the first one hundred and twenty (120) calendar days of non-compliance and \$1,000 per day for each day of non-compliance thereafter. Each missed deadline is a separate violation.

23. All stipulated penalties shall begin to accrue on the date that complete performance was due or a violation occurs and shall continue to accrue through the final day of noncompliance. The County has the obligation to document to the Department's satisfaction that compliance has been achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

24. The Department shall provide the County with an invoice demanding payment of the stipulated penalty, if any, providing guidance on how the check is to be transmitted to the Department. Any demand for stipulated penalties shall be mailed by First Class U.S. Mail to Chief, DEP, Division of Solid Waste Services, 101 Monroe St., 6th Fl., Rockville, MD 20850. The County shall pay in full the stipulated penalty within thirty (30) calendar days of the Department's demand. Payment shall be made by check made payable to the Clean Water Fund, c/o the Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21203-2057, and shall reference Case Number MDE Case No. CO-11-SW-036.

25. None of the stipulated penalties in this Consent Order shall be construed as an election of remedy or other limitation on the Department's discretion to seek in lieu of stipulated penalties any other remedy or sanction available to it for violations of this Consent Order or any other violation of State law or regulation not expressly made the subject of this Consent Order.

26. Except as otherwise expressly set forth in this Consent Order, payment of any stipulated penalty shall not relieve the County from the obligations imposed by this Consent Order, any permit that may be issued or any other statute or regulation, nor shall such payment limit the right of the Department to seek enforcement of the terms of this Consent Order or any other statute or regulation.

27. The Department may, in its discretion, reduce or waive any stipulated penalty if it determines that noncompliance is due to an event of Force Majeure as set forth in this Consent Order.

III. PERSONS BOUND BY THIS CONSENT ORDER

28. This Consent Order shall apply to and be binding upon the Department, the County and the County's officers, directors, employees, agents, successors, assigns, heirs, trustees, receivers, and upon all persons acting on behalf of the County, as well as upon subsequent purchasers of the Gude Landfill.

29. The County shall provide a copy of this Consent Order within seven (7) calendar days of the execution date, or the date that such services are retained, to all contractors, subcontractors, laboratories, and consultants that are retained to conduct or monitor any portion of the work performed pursuant to this Consent Order.

30. The County will include performance schedules and scopes of work within its contracts related to this Consent Order that are consistent and in compliance with this Consent Order.

31. Notwithstanding the County's contracts with others, the County continues to honor its obligations under this Consent Order. Therefore, any breach of this Consent Order caused by, or related to, a contractor's or subcontractor's action or inaction shall not constitute a

force majeure except as provided for within the Force Majeure section of this Consent Order, or otherwise relieve the County of an obligation in this Consent Order.

32. The County shall not transfer equitable and/or legal title of the Gude Landfill prior to receiving written notice from the Department that the County has fulfilled all conditions of this Consent Order. In the event of a transfer, the County will convey the Consent Order and all of the applicable conditions and requirements thereunder to the new holder of the equitable and/or legal title. Notwithstanding the preceding sentences, the Department may, in its reasonable discretion, consent to any such transfer prior to the fulfillment of all conditions of the Consent Order provided that the County (a) notifies the Department in writing at least one hundred and eighty (180) calendar days prior to the contemplated transfer, (b) ensures that the transfer agreement, a copy of which shall be provided to the Department, does not limit the County's access to Gude Landfill or otherwise prevent the County from fulfilling all conditions of this Consent Order. The Department's consent to any such transfer shall not modify or excuse the County's obligation to comply with all conditions of this Consent Order. The land transfer between the County and the Maryland-National Capital Park and Planning Commission (M-NCPPC) regarding the findings of the Waste Delineation Study shall be excluded from this provision to enable the County to acquire all land adjacent to the Gude Landfill that contains waste.

IV. ENFORCEMENT

33. This Consent Order is a contract and a Final Administrative Order enforceable in a judicial forum.

34. Representatives of the Department shall at reasonable times and upon presentation of proper credentials be allowed entry to the Landfill for the purpose of collecting samples,

information, and/or photographs. The information obtained from these site visits will be used to ascertain and evaluate whether the closed Landfill's post-closure maintenance systems are being maintained within the terms and conditions of this Consent Order and the statutes and regulations of the State of Maryland. Upon request of the Department, the County shall provide the Department with access to any records or information which may be related to the operation, closure or monitoring of the Landfill.

35. The provisions of this Consent Order, including those related to statutory requirements or corrective actions, including record keeping, reporting and schedules shall be enforceable by the Department.

36. This Consent Order shall be binding upon the Department and the County, and their respective agents, employees, successors and assigns. Actions taken to satisfy the conditions of this Consent Order by the County, its successors, assigns, officers, directors, employees, agents, independent contractors, contractors, subcontractors, and consultants shall be carried out in accordance with the requirements of this Consent Order, and the County shall be responsible for the failure of its officers, directors, employees.

37. By executing this Consent Order, the County represents that all the factual information in this Consent Order is true, accurate, and complete to the best of its knowledge, information and belief. The Department is entering into this Consent Order in reliance on these representations that all factual information contained in this Consent Order is accurate and complete. To the extent that any of the information in this Consent Order is materially untrue, inaccurate and/or incomplete, the Department reserves the unilateral right to declare this Consent Order null and void and to seek any available legal, equitable, administrative and/or judicial remedies.

38. No modification of this Consent Order, or any part thereof, shall be valid except by written amendment executed by all Parties.

39. If any of the provisions of this Consent Order contravene or are held to be invalid under any applicable law, such provision shall not invalidate the Consent Order in its entirety, but the Consent Order shall be construed as if not containing the particular provision and all remaining obligations of the Parties shall remain in effect and in force to the maximum extent reasonable.

40. The County shall comply with the requirements of this Consent Order within the time limits and manner set forth herein, unless performance is prevented or delayed by events that constitute a Force Majeure, including an Act of God, fire, flood, strike, riot, catastrophe, failure to obtain a necessary permit, authorization or approval via a public process, public entity, or local, State, and federal agency provided that the County or its agents timely submitted a complete application for such a permit, authorization, or approval or other cause beyond the control of the County (hereinafter a "Force Majeure Event"). Force Majeure Events do not include:

- a) difficulties caused by reasonably foreseeable weather conditions which could have been overcome;
- b) increased cost of performance; or
- c) changed economic circumstances.

41. The burden of demonstrating that a Force Majeure Event occurred shall rest with the County. If the County establishes to the Department's satisfaction that it has been delayed in the implementation of any obligation under this Consent Order by a Force Majeure Event, then the Department shall extend the date or dates specified in this Consent Order for the affected

actions for such a period of time as allows compliance to be achieved as expeditiously as practicable after the delay excused pursuant to this paragraph. Any extension granted shall in no event exceed the period of delay caused by the Force Majeure Event.

42. The County shall notify the Department of any Force Majeure Event or other delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made orally as soon as possible and in writing not later than seven (7) calendar days after the County, or any of its agents or contractors becomes aware, or through the exercise of due diligence should have become aware, of such delay or anticipated delay. The oral and written notification shall be made to the Chief of the Department's Solid Waste Program's Compliance and Project Management Division, or designee, and shall fully describe the nature of the delay, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay, and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Department may, in its discretion, grant an extension of time for achieving compliance with a requirement of this Consent Order for reasons other than a Force Majeure Event.

43. The Department may in its discretion reduce or waive the stipulated penalty if it determines that noncompliance is due to a condition other than a Force Majeure Event or that it is beyond the reasonable control of and without fault of the County. Increased cost or equipment disputes shall not constitute an appropriate justification to excuse noncompliance with any of the terms of this Consent Order.

V. RELEASE AND RESERVATION OF RIGHTS

44. Upon the full completion of all of the obligations set forth in this Consent Order, the Department agrees to refrain from pursuing any civil enforcement action for violation of § 9-

215 and § 9-322 of the Environment Article, COMAR 26.04.07.03A(4), COMAR 26.04.07.03B(9), COMAR 26.04.07.09(F), and COMAR 26.04.07.10(R) which could have been brought prior to the execution of this Consent Order against the County arising out of the facts alleged in this Consent Order. The Department reserves, and this Consent Order is without prejudice to, all rights against the County with respect to the following matters: (a) civil and administrative enforcement actions for violations of § 9-215 and § 9-322 of the Environment Article, COMAR 26.04.07.03A(4), COMAR 26.04.07.03B(9), COMAR 26.04.07.09(F), and COMAR 26.04.07.10(R) which occur after the date of execution of this Consent Order, (b) criminal enforcement actions, or (c) violations of any other State law.

45. Notwithstanding any other provision of this Consent Order, no action or decision by the Department or any authorized representative of the Department pursuant to this Consent Order, shall constitute final agency action giving rise to any right of judicial review prior to the Department's initiation of a judicial action to enforce this Consent Order including an action for penalties or an action to compel the County's compliance with the terms and conditions of this Consent Order.

46. The County and the Department intend that nothing in this Consent Order shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Order. Nothing contained in this Consent Order shall affect any right, claim, cause of action or defense of any Party hereto with respect to third parties. The County and the Department specifically reserve any and all rights, defenses, claims, demands, and causes of action which the County and the Department may have against any third parties relating in any way to the subject matter of this Consent Order.

47. Nothing in this Consent Order shall be construed to relieve the County of any violations or obligations under laws or regulations promulgated or enforced by local, municipal, State, or federal entities.

48. This Consent Order is not to be construed to be a permit of any kind, including, but not limited to, a permit to operate a system of refuse disposal for public use or a permit to discharge pollutants into the waters for this State.

49. Neither the terms nor the conditions of this Consent Order, nor any act of performance by the County or the Department, shall collaterally estop the Department in any other proceeding with any third party not a signatory to this Consent Order.

50. Nothing in this Consent Order shall be construed to prevent the Department from seeking any remedies or sanctions available to the State for violations of State law, regulations, permits or orders issued by the Department not expressly addressed in this Consent Order.

51. Nothing in this Consent Order shall be construed to prevent the Department from taking direct action or ordering any additional corrective or other action it deems necessary to prevent or abate any threat to public health, welfare or the environment to the extent authorized by State law. Except as expressly provided by this Consent Order, nothing in this Consent Order shall be construed to relieve the County of the obligation to comply with all applicable existing and future federal, State and local laws and regulations.

52. Nothing in this Consent Order shall be construed to preclude the Department from pursuing any remedies or sanctions available to the Department for violations of the Consent Order or any other violation of State law, regulations, permits or orders issued by the Department not expressly made the subject of this Consent Order. The Department reserves the right to take,

direct, or order any additional corrective or other action it deems necessary to prevent or abate any nuisance or threat to public health, welfare of the environment.

53. Notwithstanding the site-specific terms and conditions for the Gude landfill as negotiated herein, the Parties acknowledge that consents or agreements for future sites that may require similar remedial treatment would be negotiated on a case by case basis.

54. The effective date of this Consent Order shall be the date upon which all Parties have fully executed this Consent Order.

55. Each person signing this Consent Order certifies that he or she is duly authorized by the party on behalf of which each signs to execute this Consent Order and to bind that party to the terms of this Consent Order.

56. The County agrees to undertake and complete all actions required by the terms and conditions of this Consent Order. In any action by the Department to enforce the terms of this Consent Order, the County consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Order, and agrees not to contest the validity of this Consent Order or its terms or conditions. The County agrees this Consent Order is a contract and final administrative order enforceable in a judicial forum.

57. The County shall acquire and retain copies of all documents that relate to the State that are in the possession of its employees, agents, accountants, contractors or attorneys. The County shall preserve all documents and information, including raw data, relating to the Work performed under this Consent Order, or relating to any solid waste or hazardous waste found at the Site, for five (5) years following the completion of the Work.

58. If a court issues an order that invalidates any provision of this Consent Order or finds that the County has sufficient cause not to comply with any one or more provision of this

Consent Order, the County shall remain bound to comply with all provisions of this Consent Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

59. This Consent Order shall be construed in accordance with Maryland law.

60. This Consent Order may be terminated, in writing, upon mutual agreement of the Department and the County.

[SIGNATURE PAGE FOLLOWS]

IT IS SO AGREED AND CONSENTED TO:

For Montgomery County, Maryland:

5/15/2013
Date

Tim Firestine
Timothy L. Firestine
Chief Administrative Officer
Montgomery County, Maryland

Approved as to form and legal
sufficiency this 8th day
of May, 2013

Terrilyn E. Brooks
Terrilyn E. Brooks
Associate County Attorney

For the State of Maryland, Department of the Environment, Land Management Administration:

5/29/13
Date

Horacio Tablada
Horacio Tablada, Director
Land Management Administration
Maryland Department of the Environment

Approved as to form and legal
sufficiency this 22nd day
of May, 2013

Andrea Baker
Andrea Baker
Deputy Counsel

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

IN THE MATTER OF
MONTGOMERY COUNTY, MARYLAND

* SECRETARY OF HEALTH AND MENTAL
* HYGIENE
*
* ENVIRONMENTAL HEALTH ADMINISTRATION
* 201 West Preston Street
* Baltimore, Maryland 21201
*
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Serve on:

Mr. James P. Gleason
County Executive
County Office Building
Rockville, Maryland 20850

and

Montgomery County Council
County Office Building
Rockville, Maryland 20850

ORDER

MONTGOMERY COUNTY, MARYLAND

WHEREAS, the State of Maryland, Department of Health and Mental Hygiene, pursuant to the powers, duties and responsibilities vested in and imposed upon the Secretary of Health and Mental Hygiene by the provisions of Article 43, Annotated Code of Maryland, as delegated to the Director, Environmental Health Administration has determined that the absence of an adequate public system of refuse disposal in Montgomery County may, or is likely to result in an emergency situation, a nuisance or other health hazard prejudicial to the public health interest, and;

WHEREAS, the approved capacity of the Central Sanitary Landfill, at the Gude/Southlawn site, which was permitted by Refuse Disposal Permit No. 73-15-04-02A on February 22, 1973 has been exhausted, and;

WHEREAS, the potential physical capacity of the Gude/Southlawn site is limited, and;

WHEREAS, no other refuse disposal site exists or is proposed in Montgomery County.

It is this 2nd day of December, 1977, therefore ORDERED by the Director, Environmental Health Administration, that:

1. Montgomery County shall proceed immediately to develop plans and specifications providing for revision of the Central Sanitary Landfill and the adjacent Southlawn Landfill and within 150 days of receipt of this Order Montgomery County shall submit to the Environmental Health Administration an application for a permit, accompanied by such plans and specifications, and shall dispose of the County's solid waste in accordance with said plans and specifications through July 1, 1981.

2. Montgomery County shall proceed immediately to identify a site or sites for a sanitary landfill and initiate engineering studies for such site or sites sufficient to enable the filing of an application(s) for issuance of a permit(s) pursuant to Article 43, Section 394(a).

3. Within 180 days of receipt of this Order, Montgomery County shall submit to the Environmental Health Administration applications for permits accompanied by geologic reports and preliminary engineering plans for one or more sanitary landfill sites. Following designation of a site by Montgomery County, and approval by the Secretary of Health and Mental Hygiene, the County shall obtain all necessary permits and place into operation said site(s) prior to the date when the Central Sanitary Landfill shall reach its redesigned capacity.

DATE:

December 2, 1977

SECRETARY OF HEALTH AND MENTAL HYGIENE

by *Donald H. Noren*

Donald H. Noren
Director
Environmental Health Administration

Approved as to form and legal sufficiency

this 1st day of December, 1977

Shirley Williams
ASSISTANT ATTORNEY GENERAL