

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
AND  
THE DELAWARE SOLID WASTE AUTHORITY

WHEREAS, the Department of Natural Resources and Environmental Control ("DNREC") administers the Delaware Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91 ("HSCA"); and

WHEREAS, DNREC HSCA sites are those regulated under the Delaware Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91, the Regulations Governing Hazardous Substance Cleanup; and

WHEREAS, DNREC performs, or oversees the performance of, investigations and cleanups of hazardous substance release sites in Delaware pursuant to HSCA; and

WHEREAS, during cleanup of DNREC HSCA sites, non-hazardous waste materials ("HSCA site waste materials") are often generated and need to be properly treated, disposed, recycled, or re-used at a permitted facility; and

WHEREAS, it may be more cost effective at DNREC HSCA sites for HSCA site waste materials to be sent to permitted landfills operated by DSWA for disposal; and

WHEREAS, HSCA site waste materials may be eligible for beneficial reuse when transported to a DSWA facility for use as alternate daily cover ("ADC"), provided the reuse does not create an unacceptable risk to human health or the environment; and

WHEREAS, DNREC and DSWA ("the Parties") acknowledge that this Memorandum of Agreement furthers the mutual interests of the Parties.

NOW, THEREFORE, the Parties agree as follows:

1. DNREC will ensure that HSCA site waste materials disposed, recycled, or re-used at DSWA landfills comply with all applicable statutory and regulatory requirements, as well as all rules, regulations, and/or permit conditions regulating waste characterization and other applicable land disposal requirements.
2. Prior to transporting any HSCA site waste materials from a HSCA site directly to a DSWA landfill for disposal, recycling, or re-use, DNREC will provide to DSWA a written certification, the form of which has been agreed to by the Parties, pertaining to the specific HSCA site. The certification shall state that:
  - a. the HSCA site waste materials comply with DSWA solid waste permits for disposal;

- b. the HSCA site waste materials do not constitute a "hazardous waste" as defined in 7 Del. C. Chapter 63 or Delaware's Regulations Governing Hazardous Waste;
  - c. the acceptance of the HSCA site waste materials by DSWA is in compliance with Subtitle D of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. ("RCRA") and applicable land disposal regulations;
  - d. the HSCA site waste material is not from a site that has been listed on the Federal National Priority List; RCRA Subtitle C Corrective Action site; or a part of the Emergency Removal Program of the United States Environmental Protection Agency ("USEPA");
  - e. the HSCA site waste material does not contain free liquids including free phase petroleum; and
  - f. when considered for re-use, the HSCA waste material has been sampled according to the DNREC Soil/Material Re-use Policy and has been determined to be acceptable for use as landfill cover provided that the HSCA waste material satisfies the physical characteristics as determined by DSWA for re-use or recycling; and
  - g. when considered for disposal, DNREC or a HSCA certified consultant has characterized, sampled and analyzed the material as determined to be necessary.
3. If the HSCA site waste material is being considered for disposal and is comprised of any of the substances listed below, which have been assessed by DNREC to be non-hazardous and permitted for disposal, analytical testing will generally not be required unless specifically requested by DNREC or DSWA:
  - Wood stumps,
  - Tree limbs greater than 4 inches in diameter,
  - Non-creosote wooden structures from non-industrial sources,
  - Steel structures,
  - RCRA empty containers as defined in Delaware's Regulations Governing Hazardous Waste,
  - Construction and demolition debris consisting of dry waste only, and free of wallboard, lead paint, asbestos, fluorescent lamps, PCB ballasts, mercury switches, and essentially free of soil,
  - Asphalt and concrete not destined for recycling, or
  - Municipal solid waste, and paper.
4. If DNREC issues the certification required by paragraph 2 above, DSWA will consider requests for disposal, recycling or re-use of HSCA site waste materials at its facilities, but may approve or deny such requests at its sole discretion; provided, however, any denial shall not be arbitrary or capricious. If DNREC's request is acceptable to DSWA, DSWA will issue an approval letter, the form of which has been agreed to by both parties. The DSWA approval letter shall accompany each shipment of the HSCA waste material from the HSCA site to the DSWA facility. If DNREC's request is unacceptable to DSWA, DSWA will issue a denial letter stating its reason or reasons for denying DNREC's request.

5. DSWA agrees to take any necessary action, including possible modifications to its regulations or other special waste policies, in order to allow DSWA to accept HSCA site waste materials in accordance with the provisions of this Memorandum of Agreement.
6. DNREC or a HSCA certified consultant will oversee the loading of HSCA site waste materials at the HSCA site for transportation directly to the DSWA facility by a permitted transporter.
7. After DNREC has issued the certification required by paragraph 2, and upon acceptance for disposal, recycling or re-use by DSWA of any HSCA site waste materials, DNREC agrees that:
  - a. acceptance by DSWA is in compliance with applicable statutory, regulatory and DSWA solid waste permit requirements; and
  - b. by virtue of such acceptance and disposal, recycling or re-use of DNREC certified waste materials, DSWA shall not be required to bear the cost of complying with any requirement resulting from an improper certification of the site waste materials by DNREC; and
  - c. DNREC covenants not to sue DSWA, or take administrative enforcement action against DSWA related to the Certification for acceptance and disposal, recycling or re-use of HSCA site waste materials at its landfills, provided DSWA uses standard disposal, recycling and re-use practices as required by applicable statutory, regulatory, and/or DSWA permit requirements. DSWA may rely fully upon the certification of DNREC in selecting the methods and procedures for accepting, handling, disposing, recycling and re-use of the HSCA site waste material; and
  - d. Except with respect to the chemical quality, character or composition of the HSCA Site materials certified by DNREC, in the event DSWA fails to comply with applicable statutes, regulations, and/or permit requirements pertaining to the recycling or re-use of HSCA site waste materials, DNREC may initiate any available enforcement action available to it pursuant to 7 Del. C. Chapters 60, 63, or 91.
  - e. Except with respect to the quality, character or composition of the HSCA Site materials certified by DNREC, in the event DSWA fails to comply with applicable statutes, regulations, and/or permit requirements pertaining to the disposal of HSCA site waste materials, DNREC may initiate any available enforcement action available to it pursuant to 7 Del. C. Chapters 60, 63, or 91.
8. DSWA agrees that the acceptance and disposal, recycling or re-use of HSCA site waste materials at its landfills does not relieve DSWA of its obligation to comply with all applicable statutory, regulatory and/or DSWA permit requirements relating to the management, handling, storage, treatment or disposal of such waste materials.
9. Notwithstanding anything herein to the contrary, DNREC agrees that it shall not initiate any enforcement action against DSWA, including but not limited to notices of violation, Secretary's orders, complaints for injunctive relief or actions at law, arising out of or relating to the quality, character, or composition of material received at a DSWA facility from any DNREC-permitted third party facility that has received, managed, stored or treated HSCA site waste material provided that: (i) such third party was approved by DNREC to supply or dispose of material at a

DSWA facility, and (ii) the material so received by DSWA was certified by such DNREC-permitted third party facility as compliant with all regulatory requirements.

This Memorandum of Agreement supersedes all previous agreements and correspondence between DSWA and DNREC concerning the disposal, recycling, or re-use of HSCA site waste materials.

IN WITNESS WHEREOF, the Parties enter into this Memorandum of Agreement as of the latest signature date below.

DNREC

BY: 

 Shawn M. Garvin, Secretary

DATE: November 5, 2019

DSWA

BY: 

DATE: 10-24-19

Richard P. Watson, P.E., BCEE, Chief Executive Officer