

FACILITY COOPERATION AGREEMENT

THIS AGREEMENT, made and executed as of this 2nd day of March, 2004, by and between the **BOROUGH OF PEN ARGYL**, an incorporated Borough within Northampton County, Pennsylvania with its municipal offices at 11-13 N. Robinson Avenue, Pen Argyl, Pennsylvania (hereinafter "Pen Argyl")

AND

WASTE MANAGEMENT OF PENNSYLVANIA, INC. with a business address at 1963 Pen Argyl Road, Pen Argyl, Pennsylvania 18072 (hereinafter "Waste Management", "WM", "GCSL" or "Facility")

WITNESSETH

WHEREAS, Waste Management, through its subsidiary Grand Central Sanitary Landfill, Inc. is the owner and operator of the Grand Central Sanitary Landfill (hereinafter "GCSL" or "Facility"), a municipal solid waste landfill located at 1963 Pen Argyl Road, Pen Argyl, Northampton County, Pennsylvania; and,

WHEREAS, the Facility operates pursuant to Permit No. 100265 (the "Permit") issued by the Pennsylvania Department of Environmental Protection ("DEP") as may be modified from time to time as the law allows; and,

WHEREAS, Pen Argyl is a neighboring community which because of its unique contiguous location, has on occasion, raised issues of impact upon it by the routine operations of the Facility; and,

WHEREAS, Waste Management recognizes the importance of a good working relationship with its neighboring community, and will work diligently to mitigate any impact on Pen Argyl by its routine operations; and,

WHEREAS, Waste Management and Pen Argyl Borough officials have identified certain economic and environmental issues of common interest, including those related to the proposed Facility expansion, and desire to establish a good cooperative relationship with each other to resolve these issues; and,

WHEREAS, Waste Management also desires, in light of this cooperation, to assist Pen Argyl with immediate financial assistance, and Pen Argyl wishes to accept such assistance as provided herein in paragraph 3 of this Agreement.

NOW THEREFORE, for and in consideration of all of the recitals, terms and provisions of this Agreement, as well as for other good and valuable consideration, Waste Management and Pen Argyl agree as follows:

Objectives

1. (a) To establish a long term working cooperative relationship with Pen Argyl for the mutual benefit of the government, citizens, facilities and projects of Pen Argyl and Waste Management.

(b) To identify, discuss and work cooperatively to negotiate solutions to community, economic and environmental issues of common interest to Pen Argyl and to Waste Management.

(c) To provide a minimum guaranteed level of funding for the Pen Argyl operating budget from funds derived from the current and future operations of the Facility as provided in this Agreement.

Minimum Guarantee of Funds

2. In any quarter in which the Facility disposes of solid waste under the Permit, Waste Management will guarantee to Pen Argyl that under this Agreement it will receive a minimum sum of \$600.00 per day based on the minimum quarterly average

tonnage (MQA) of waste disposed of at the Facility for which a disposal fee has been paid.

Initial Fee Schedule

3. Provided the Pen Argyl Borough Council passes a Resolution approving of and signing this Agreement on or before March 2, 2004, or otherwise at the regular monthly meeting of Pen Argyl Borough Council for March 2004, Waste Management will:

(a) From March 1, 2004, pay \$0.70 per ton for solid waste disposed of under the Permit for which a disposal fee has been paid. Such payment shall be made monthly, 30 days in arrears.

(b) Make an additional one-time payment of \$500,000 to Pen Argyl for solid waste disposed of in the remaining permitted airspace. Such payment will be made within 30 days of the signing of this Agreement.

Additional Fees Upon Increase in Disposal Capacity

4. If the DEP approves the current Facility application to modify the Permit to allow an increase in the disposal capacity, and that such approval is final as a matter of law, Waste Management will:

(a) Pay an additional one time payment of \$300,000 to Pen Argyl for its general operating budget; and,

(b) Pay an additional \$0.45 per ton for solid waste disposed of under the Permit at the Facility for which a disposal fee has been paid. Such payment will be made monthly, 30 days in arrears.

(c) Pay an additional \$0.15 per ton for solid waste disposed of under the Permit at the Facility for which a disposal fee has been paid, from and after the fifth anniversary of the execution date of the Agreement. Such payment will be made monthly, 30 days in arrears.

Continued Long Term Financial Support

5. The fees specified in paragraphs 3 (a) and 4 (b) and 4 (c) will continue at the same rate unless:

(a) The Facility is issued a modification to its Permit by the DEP to increase its MQA tonnage in excess of 2,750 tons per day, whereupon the terms of this Agreement will be re-opened for discussion of fees and benefits pertaining to the tonnage in excess of 2,750 tons per day MQA; or,

(b) A change in this Agreement is otherwise mutually negotiated and agreed upon in writing by Waste Management and Pen Argyl at any time.

Operating Permit Cooperation

6. The Parties hereby acknowledge that the operation and continued development of the Facility by Waste Management is subject to the Plainfield Township Zoning Ordinance, to the extent this Ordinance is not pre-empted, as well as defined federal and state regulatory permitting criteria designed to protect public health, safety and the environment, and that pursuant to such criteria Waste Management maintains air, water and solid waste permits issued by the DEP for the Facility. The parties further acknowledge that effective communication and cooperation between them with regard to ongoing major modifications to such permits is of mutual benefit to both. To facilitate same, the parties agree as follows:

(a) The present application of Waste Management known as the "Southern Expansion" is included in this provision except that Waste Management is excused from subparagraph (b) with respect to this application.

(b) At least 45 days prior to the submission of a major permit modification application by Waste Management to DEP, Waste Management shall provide Pen Argyl with a draft copy of its proposed application for review. Waste Management may request a reduction in the 45-day notice period and such request, if reasonable, will be granted.

(c) Waste Management shall meet with Pen Argyl, or Pen Argyl's designee, to provide further information for review or comments, with the time of such meeting to be set by Pen Argyl with at least two (2) business days notice.

(d) In its review of the permit applications prepared by Waste Management, Pen Argyl agrees to utilize its best efforts to provide fair, reasonable and timely comments to Waste Management. In the formulation of any such comments, Pen Argyl agrees to evaluate all proposed modifications, related to the amount of waste flow, method of disposal, size of the Facility or other operational or technical matters, without limitation, with due regard for the health, safety and welfare of its citizens.

(e) In the event Waste Management responds to all inquiries of Pen Argyl, if any, to the reasonable satisfaction of Pen Argyl, then, upon reasonable request

of Waste Management, Pen Argyl will so indicate its satisfaction to or before any public body, regulatory agency or media outlet.

Miscellaneous Covenants

7. Waste Management agrees that for so long as the Facility is disposing of a Monthly Quarterly Average (MQA) of at least 1,200 TPD of solid waste under the Permit, then Waste Management will provide Pen Argyl with residential municipal waste collection, once weekly, and the collection of recyclables every two weeks, without charge. Collection will exclude commercial accounts and be designated only for individual residential units and will take effect on the later of January 1, 2005 or otherwise one month after the Facility has obtained its final unappealed conditional use permit from Plainfield Township. Collection service under the existing contract of November 11, 1999, shall continue on a month-to-month basis until such time. Leaf and yard waste shall be excluded from the free service, but, otherwise there shall be no diminution in service from the existing contract of November 11, 1999.

8. Waste Management agrees that during the term of this Agreement and so long as the Facility is disposing of solid waste under the Permit, traffic to the Facility shall continue to be routed to the existing traffic patterns or other traffic patterns that do not further adversely affect the Borough of Pen Argyl. Long haul tractor-trailers will use the thoroughfares designated of either Route 78 or Route 80 to Route 33 and then Route 512 to the Facility. The parties understand that trucks servicing Pen Argyl and

other local communities may continue to use Pen Argyl streets as necessary. Local communities, for purposes of this Agreement include Pen Argyl, Plainfield Township, Washington Township, Lower Mt. Bethel Township, Upper Mt. Bethel Township, Roseto, East Bangor, and Portland.

9. The consideration for any real estate acquired by Waste Management within the Borough of Pen Argyl shall be fully disclosed either on the Deed or the Affidavits of Value which accompany the recording of Deeds in the Commonwealth of Pennsylvania. No sale or purchase of any real estate by Waste Management shall abridge or require a waiver or release of any proper cause of action as between the Buyer or the Seller. All transactions shall proceed and be conducted using real estate practices customary in Northampton County, Pennsylvania. The preferred sales agreement will be on the forms of the Pennsylvania Board of Realtors.

10. In addition to the existing deed covenants (which will be recorded), Waste Management agrees to:

(a) Add "Dumpster Storage" to the uses not permitted in paragraph 2 of the existing November 11, 1999 in the area defined hereinafter in paragraph 10(b); and,

(b) Extend the area of land described in paragraph 1 of the November 11, 1999 Agreement to land owned by Waste Management or its subsidiary corporations within 500 feet of the Borough limits of the Borough of Pen Argyl (the

parties agree that the 500 foot limit is as set forth on the map attached hereto as Exhibit "A" titled "Site Plan Proposed Southern Expansion" prepared by Earthres Group, Inc., dated January 7, 2004 and identified as Drawing No. E-519; and,

(c) Fully comply with the spirit and intent of paragraph 6 of this Agreement and to be subject to the Plainfield Township Zoning Ordinance to the extent the Ordinance is not preempted.

11. Waste Management agrees to provide to the Borough of Pen Argyl access to the reports from Waste Management's meteorological station located at the Facility and to supply reports in response to reasonable requests to do so from the Borough of Pen Argyl.

12. Waste Management agrees that Pen Argyl may appoint or designate a Facility Inspector, who must be a licensed Pennsylvania Professional Engineer, or engineer in training, and who further meets the qualifications and certifications for host municipality inspectors set forth in 1102 of the Municipal Waste Planning, Recycling and Waste Reduction Act ("Act 101") 53 P.S. 4000.101, 1102. The Facility Inspector will have access to the Facility, and will liaison with the Facility Manager, Site Engineer, the Plainfield Township Host Municipal Inspector, and the Department of Environmental Protection for the purpose of addressing any operational matters or conditions at the

Facility which are of concern to the Borough of Pen Argyl. The procedure for the Facility Inspector to access the Facility shall be to:

- (1) Sign in and out at the Facility scale house.
- (2) Notify the District Manager or Operations Manager of his or her arrival, or intent to arrive.
- (3) Comply with all current safety regulations in effect at the Facility.
- (4) Be accompanied by a Facility representative at all times.

Pen Argyl shall assure that proper insurance coverage is in effect to insure the Facility Inspector against bodily harm or injury.

13. Waste Management licensed a tract of its land to the Green & White Association, a not for profit corporation. Waste Management intends to convey the title to this tract, identified as part of Parcel Number E8-8-17 to the Association. Waste Management agrees that the deed to the Green & White Association, Inc. shall include a provision that title to the premises shall revert to the Borough of Pen Argyl in the event the Green & White Association, Inc. is dissolved according to the procedures required for the dissolution of not for profit corporations in the Commonwealth of Pennsylvania.

14. Pen Argyl agrees to use the funds derived from this Agreement only for the direct benefit of its community organizations, taxpayers, citizens or the general public, and not for any legal, engineering, professional, or political activities directed against the interests of Waste Management other than the interpretation and enforcement of Pen Argyl's rights under this Agreement.

15. The services provided and fees paid by Waste Management to Pen Argyl shall be in lieu of any and all fees of whatever nature that Pen Argyl might otherwise be entitled to impose upon Waste Management by virtue of the ownership or operation of the Facility. In the event that Pen Argyl is ever deemed as a "host municipality" according to law, the parties hereby acknowledge and agree that Pen Argyl may elect to receive the benefits of this Facility Cooperation Agreement or elect to accept fees of whatever nature that Pen Argyl might be entitled to impose upon Waste Management by virtue of being deemed a "host municipality" according to law. In the event that Pen Argyl elects to continue the benefits under the Facility Cooperation Agreement, the parties hereby acknowledge and agree that this Agreement has been negotiated in accordance with and in full satisfaction of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. §§4000.1301-4000.1305. Pen Argyl shall not impose any other fees in connection with the subject matter hereof. Pen Argyl further agrees to support Waste Management upon reasonable request in the description of the unique geographic and logistical conditions pertinent to the Facility's location relative to Pen Argyl; it is agreed and understood between the Parties that such conditions are not

present or pertinent or applicable to other Waste Management facilities in the Commonwealth.

16. This Agreement shall bind the heirs, successors, devisees and assigns of Waste Management and Pen Argyl.

17. If any provision of this Agreement shall be determined to be void by any Court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

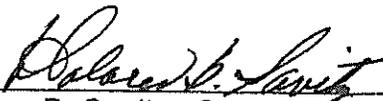
18. All notices given under the terms of this Agreement shall be in writing and sent by registered or certified United States mail, return receipt requested, addressed to the party to be notified at the following addresses:

(a) If to Pen Argyl: Pen Argyl Borough Council
11-13 N. Robinson Avenue
Pen Argyl, PA 18072

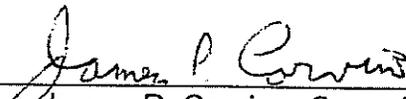
(b) if to Waste Management: 1963 Pen Argyl Road
Pen Argyl, PA 18072

IN WITNESS WHEREOF, with the intent of being legally bound hereby, the parties hereto have caused this Agreement to be duly executed on the dates set forth below.

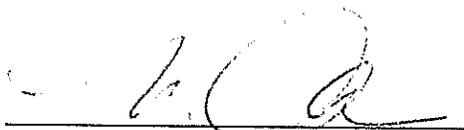
ATTEST:


Dolores B. Savitz, Secretary

BOROUGH OF PEN ARGYL

By: 
James P. Corvino, Council President

ATTEST:


Nicole Charles,
Site Controller

WASTE MANAGEMENT OF PENNSYLVANIA,
INC.

By: 
Scott N. Perin, District Manager