

HOST AGREEMENT

By and between Marshall County, Kentucky, the Marshall County Refuse District,
and
Waste Path Sanitary Landfill LLC

THIS HOST AGREEMENT is made and entered into this ___ day of August, 2019, by and between the Marshall County Fiscal Court and the Marshall County Refuse District with Waste Path Sanitary Landfill LLC.

RECITALS

WHEREAS, Waste Path Sanitary Landfill LLC owns and operates a solid waste disposal facility in Marshall County, which is authorized by the Kentucky Energy and Environment Cabinet to dispose of Solid Waste pursuant to Permit Number SW07900015.

WHEREAS, the County and a predecessor in interest to Waste Path Sanitary Landfill LLC entered into a contract on July 7, 1992, that has expired.

WHEREAS, the County and a predecessor in interest to Waste Path Sanitary Landfill LLC entered into an amended contract on or around May 14, 1993, that has expired.

WHEREAS, the County and a predecessor in interest to Waste Path Sanitary Landfill LLC attempted to draft an agreement in 2001 that was never completed.

WHEREAS, the County, the Refuse District and Waste Path Sanitary Landfill LLC enter into this Host Agreement for the following purposes:

- (1) To assure the County and the Refuse District that the Landfill will have adequate disposal capacity for Municipal Solid Waste generated in the County during the term of this Host Agreement;
- (2) To define the area which the Landfill will serve;
- (3) To establish the host fee to be paid to the County by the Landfill and the basis upon which said fee shall be paid;
- (4) To assure that Solid Waste transported to the Landfill is responsibly managed and disposed;
- (5) To assure that the disposal of Solid Waste in the Landfill is properly managed;
- (6) To minimize the risk of both short and long-term contamination by the Landfill of the air, land and water resources of the County, and to assure the provision of funded assurances

for the remediation of any environmental problems that occur during the active life of the Landfill, and during the closure and post-closure care periods for the Landfill: and

(7) For all other lawful purposes addressed herein;

NOW THEREFORE, for mutual consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

Each of the following terms used in this Host Agreement, unless otherwise expressly defined, shall have the meaning set forth below:

1.01 "Host Agreement" shall mean this Host Agreement.

1.02 "Cabinet" shall mean the Kentucky Energy and Environment Cabinet.

1.03 "Commercial Hauler" shall mean a Person who collects, transports or disposes of waste for a fee.

1.04 "County" shall mean Marshall County, Kentucky, and any political subdivisions thereof.

1.05 "Effective Date" shall mean August __, 2019.

1.06 "Fiscal Court" shall mean the Marshall County Fiscal Court.

1.07 "Force Majeure" shall mean any act, event or condition reasonably relied upon by the Landfill or the County as justification for delay in or excuse from performing or complying with any obligation, duty or agreement required of the Landfill or the County under this Host Agreement, which act, event or condition is beyond the reasonable control of the Landfill or the County, including, without limitation, an act of God, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; interference by third parties with any operations or duties of the parties; war, riot, blockade or restraint of government and people; civil disturbance or disobedience, sabotage or similar occurrence; strike, work slowdown or similar labor action; the order or judgment or other act of any federal, state, county or other court, administrative agency or governmental office or body; the denial, loss, suspension, termination or failure to renew any permit, license or other governmental approval which does not result from any act or omission of the party asserting Force Majeure; and the institution of a legal or administrative action or similar proceeding by any individual, agency or other entity which delays or prevents operation of the Landfill which does not result from any negligent or willful act or omission of the Landfill. In no event shall unavailability of funds be considered Force Majeure.

1.08 "Governing Body" shall mean the Marshall County Refuse District, or such other entity that is established as the governing body pursuant to KRS Chapter 224 and KRS Chapter 109, and applicable regulations, and the Marshall County Solid Waste Management Plan.

1.09 "Hazardous Waste" shall mean hazardous waste as defined in KRS 224.01-010 (31) (b).

1.10 "Landfill" shall mean the contained landfill that is described and identified in Permit No. SW07900015 as issued by the Cabinet to Waste Path Sanitary Landfill LLC.

1.11 "Municipal Solid Waste" shall mean municipal solid waste as defined in KRS 224.01-010(31)(a)(4).

1.12 "Naturally Occurring Radioactive Material" or "NORM" shall mean naturally occurring radioactive material as defined in KRS 211.862(8).

1.13 "Nuclear Waste" shall mean source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

1.14 "Refuse District" shall mean the Marshall County Refuse District as created pursuant to the provisions of KRS Chapter 109 and County Ordinance _____ and authorized to manage all Solid Waste activities within the County.

1.15 "Person" shall mean person as defined in KRS 224.01-010(17).

1.16 "Records" shall mean any and all paper or electronic documents, correspondence, permit requests, permits, licenses, statements, personnel forms or anything required by KRS Chapter 224 or 401 KAR Chapters 47 or 48 to be filed with the Cabinet, or required by the Cabinet to be maintained by the Landfill or Waste Path Sanitary Landfill LLC.

1.17 "Regular Customer of the Landfill" shall mean a customer of the Landfill that delivers waste to the Landfill on at least a weekly basis.

1.18 "Solid Waste" shall mean solid waste as defined in KRS 224.01010(31)(a).

1.19 "Solid Waste Coordinator" shall mean the Marshall County Solid Waste Coordinator.

1.20 "Solid Waste Management Plan" or "Plan" shall mean the solid waste management plan developed by the Governing Body pursuant to KRS 224.43-345 and any other applicable law, and approved by the Cabinet.

1.21 "Term" shall mean the term of this Host Agreement as set forth in Section 10.

1.22 "Untreated Medical Waste" shall mean medical waste that has not been rendered noninfectious in accordance with prevailing public health standards and practices.

2. Representations

2.01 Representations of Waste Path Sanitary Landfill LLC. Waste Path Sanitary Landfill LLC represents and warrants that:

(a) Waste Path Sanitary Landfill LLC is a Kentucky limited liability company duly organized and in good standing;

(b) Waste Path Sanitary Landfill LLC has full power and authority and legal right to enter into and perform this Host Agreement and the execution, delivery and performance hereof have all the required approvals and will not violate any judgment, order, law or regulation applicable to Waste Path Sanitary Landfill LLC; and

(c) This Host Agreement has been duly authorized, executed and delivered by Waste Path Sanitary Landfill LLC and constitutes a legal, valid and binding obligation of Waste Path Sanitary Landfill LLC, enforceable in accordance with its terms.

2.02 Representations of the County. The County represents and warrants that:

(a) The County is a political subdivision duly organized and existing in good standing under the laws of Kentucky. The Fiscal Court is the Legislative body of the County, and along with the Governing Body is responsible for Solid Waste management in the County.

(b) The County and the Fiscal Court have full power, authority and legal right to enter into and perform this Host Agreement and the execution, delivery and performance hereof have all required approvals and will not violate any judgment, order, law or regulation applicable to the County.

(c) This Host Agreement has been duly authorized, executed and delivered by the County through the Refuse District and the Fiscal Court, was not executed under duress, and constitutes a legal, valid, binding obligation of the County, enforceable in accordance with its provisions.

2.03 Representations of the Refuse District. The Refuse District represents and warrants that:

(a) The Refuse District is a solid waste district organized under KRS 109.041(13).

(b) The Refuse District is the Governing Body for all Solid Waste management within the County.

(c) This Host Agreement has been duly authorized, executed and delivered by the County through the Refuse District and the Fiscal Court, was not executed under duress, and constitutes a legal, valid, binding obligation of the County and the Refuse District enforceable in accordance with its provisions.

3. Capacity Assurance

3.01 Beginning on the Effective Date, the Landfill shall make available in the Landfill disposal capacity for all Municipal Solid Waste generated within the County during the term of

this Agreement, which shall constitute compliance with the provisions of KRS 224.43-345 (1) (l) and (m). Provided that, this capacity assurance is contingent upon the Landfill being able to submit permit applications in compliance with KRS 224.40-315(1) to construct an expansion to the currently permitted Landfill with an additional capacity of at least eight million nine hundred thousand (8,900,000) cubic yards, or approximately seven million three hundred seventy-eight thousand tons, to provide the disposal capacity for all Municipal Solid Waste generated in the County and additional capacity for the Service Area described in Section 4, and the Cabinet issuing the permits for construction and operation of the additional disposal capacity.

3.02 If during the Term of this Host Agreement the Landfill is unable or unwilling to dispose in the Landfill of all Municipal Solid Waste generated in the County that is delivered to the Landfill by the Refuse District for disposal, the Landfill shall provide for the disposal of such Municipal Solid Waste generated in the County at another permitted disposal facility. The cost for disposal of such Municipal Solid Waste at another facility, including any costs for additional transportation to or disposal at another facility, shall be paid by the Landfill, to the extent such costs exceed the cost, including transportation, for disposal of Municipal Solid Waste delivered to the Landfill for disposal.

4. Service Area

Beginning on the Effective Date, the Landfill shall not accept Solid Waste generated outside the Counties listed in Permit No. SW07900015 on the Effective Date of this Host Agreement.

5. Host Fee

5.01 Beginning on the Effective Date, the Landfill shall pay the County a host fee of:

- Five percent (5%) of gross receipts of the Landfill for all Solid Waste originating within the County; and
- Five and a quarter percent (5.25 %) of gross receipts of the Landfill for all Solid Waste originating outside of the County.

5.02 Payments shall be made quarterly and no later than thirty (30) calendar days after the close of the quarter. The Landfill shall pay interest on any late payment at the rate of one percent (1%) per month.

5.03 The Refuse District shall not pay the host fees imposed by Section 5.01 for Solid Waste delivered by the Refuse District to the Landfill for disposal.

5.04 The host fees established by Section 5.01 shall be paid in lieu of the license fees that could be imposed in accordance with KRS 68.178.

6. Best Price Guarantee

6.01 The Landfill shall accept for disposal all Municipal Solid Waste delivered to the Landfill by the Refuse District at the lowest price charged by the Landfill to any Regular Customer of the Landfill. The Refuse District shall pay the environmental remediation fee required by KRS 224.43-500 for all Municipal Solid Waste that it delivers to the Landfill for disposal.

7. Discretion and Non-Exclusivity

7.01 This Host Agreement is not exclusive, and nothing contained herein shall limit, restrict or prohibit the Fiscal Court or the Refuse District from entering into host agreements with other parties concerning the subject matter of this Host Agreement or the development of other Solid Waste disposal facilities.

7.02 The County reserves the capability to review the technical design and standards for construction and operation of the Landfill, and to comment on or challenge the permit applications in order to assure that the design meets appropriate standards.

8. Solid Waste Management Plan

8.01 Beginning on the Effective Date, the Landfill and the Refuse District agree to cooperate in the implementation of Section 3 – Disposal System of the Solid Waste Management Plan.

9. Operation of Landfill

Beginning on the Effective Date, the Landfill agrees to do the following with respect to operation of the Landfill:

9.01 Compliance with Laws. The Landfill shall at all times operate the Landfill in full compliance with all federal, state and local laws and regulations.

9.02 Rejection of Waste. The Landfill shall have the right to reject any Solid Waste that the Landfill, in its sole judgment, believes may be hazardous or dangerous to the environment. The Landfill shall have the obligation to reject any Solid Waste that it is not permitted by law to accept.

9.03 County Inspection. The Refuse District shall have the right to inspect the Landfill at any time during operation of the Landfill to verify compliance with the terms of this Host Agreement and any applicable laws. The Refuse District shall have the right to inspect the Landfill during non-operating hours if there is reason to believe that an emergency condition is occurring on the Landfill. The Landfill will arrange a representative of the Landfill to accompany the representative of the Refuse District during any such inspection within a reasonable time. The Landfill shall arrange to accompany the representative of the Refuse District within thirty (30) minutes of any such request made during posted Hours of Operation. The representatives of the Refuse District shall possess at least the minimum qualifications required by KRS 224.43-340.

9.04 Litter. The Landfill shall advise Commercial Haulers transporting Solid Waste to the Landfill to cover their loads and shall insure that vehicles are completely empty when leaving the Landfill, in order to avoid wind-blown litter.

9.05 Vehicle Regulation. The Landfill shall cooperate with county and state law enforcement officials and with waste haulers to enforce speed limits on County roads. The Landfill shall also advise haulers that they are required to register (State Requirement) with the County to transport waste within the County and on County roads.

9.06 Highway Cleanup. The Landfill shall be responsible for collecting litter which results from operation of the Landfill or transportation of Solid Waste to the Landfill on Shar-Cal Road from the Highway 1523 Industrial Parkway to the Landfill.

9.07 Prohibition of Wastes. The Landfill shall not knowingly accept for disposal at the Landfill of any of the following:

- (a) Listed or characteristic Hazardous Waste;
- (b) Nuclear Waste;
- (c) Untreated Medical Waste;
- (d) Naturally Occurring Radioactive Material that is prohibited by Kentucky law from disposal in a contained landfill; or
- (e) Any other waste prohibited by state or federal regulation.

9.08 Inspections and Locations of Wastes. The Landfill shall perform daily random inspections of wastes entering the Landfill so that the detection and rejection of wastes prohibited under this section may be accomplished. The Landfill shall maintain sufficient documentation to identify the source of all wastes entering the Landfill and shall furthermore adopt procedures which will enable the Landfill to locate within the Landfill any prohibited wastes which unknowingly were disposed of in the Landfill. In the event the Landfill discovers that any prohibited wastes were disposed of in the Landfill they shall promptly notify the Solid Waste Coordinator of such fact. Such notification may be verbal and shall not be required for the routine removal of tires, batteries and similar items from the Landfill

9.09 Records. A copy of all Records submitted by the Landfill or Waste Path Sanitary Landfill LLC to the Cabinet to comply with the requirements of 401 KAR Chapters 47 or 48 shall be forwarded to the Solid Waste Coordinator at the same time as the Records are submitted to the Cabinet. A full and complete updated copy of the current permit shall be forwarded by the Landfill to the Solid Waste Coordinator within fifteen (15) days of the signing of this Host Agreement. Any future applications, amendments or attachments submitted or received by the Landfill to or from the Cabinet shall be forwarded to the Solid Waste Coordinator by the Landfill within fifteen (15) days of receipt. The Landfill shall maintain documents as required under 401 KAR 48:090. Any notifications from State or Federal Government to the Landfill regarding notifications of

violations, deficiencies, and copies of inspection reports shall be forwarded by the Landfill to the Solid Waste Coordinator within three (3) business days.

9.10 Disclosure Statements. The Landfill shall deliver to the Solid Waste Coordinator, at the same time delivery is made to the Cabinet, any new or amended Key Personnel forms which are required to be filed by KRS 224.40-330 as part of the Landfill's disclosure statement.

9.11 Closed Cells. The Landfill shall, during the operating life of the Landfill and the closure and post-closure care period established by 401 KAR 48:090 or subsequent legislation or regulations, maintain the cap, continue to perform groundwater monitoring and perform necessary corrective action for all areas of the Landfill used for disposal of waste that have been closed.

9.12 Notification of Activities. In the event the Landfill intends to undertake construction or some activity at the Landfill that is likely to temporarily generate extraordinary noise or odor, the Landfill shall notify the Solid Waste Coordinator (which notification may be verbal). When practicable, the Landfill's notice shall be at least seven (7) days prior to undertaking such construction or activity. The Landfill and the Solid Waste Coordinator shall, under circumstances when seven (7) days advance notice can be provided, discuss the scope and anticipated duration of the construction or activity, and mutually agree whether to provide additional notification to the public through a newspaper ad or some other means reasonably calculated to reach a majority of the affected population.

10. Length of Host Agreement

The Term of this Host Agreement shall be for a period of 20 years from the Effective Date.

11. Force Majeure

If the Landfill or the County is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Host Agreement, the obligations of the Landfill or the County, as the case may be, shall be suspended during the continuation of any inability so caused by the event of Force Majeure, but for no longer period. If the Landfill or the County intends to rely upon an event of Force Majeure to suspend obligations as provided in this section, such party shall notify the other party to this Host Agreement as soon as practicable, verbally and in writing, describing in reasonable detail the circumstances of the event of Force Majeure. The party relying upon an event of Force Majeure shall have the duty and obligation to use reasonable business efforts to cure or eliminate such event of Force Majeure and shall, during the period of such Force Majeure, periodically advise the other party of the status of the event of Force Majeure and the projected duration of same. Notice shall again be given when the effect of the Force Majeure has ceased. In no event shall Force Majeure be relied upon by the Landfill to suspend payment to the County of the fees required in Section 5 for Solid Waste disposed in the Landfill or the benefit required in Section 6.

12. Insurance

12.01 Commercial General Liability Insurance. Beginning on the Effective Date, the Landfill shall maintain during the operation of the Landfill and any applicable post-closure care period a Commercial General Liability Policy with limits of liability no less than one million dollars (\$1,000,000.00). The County and Refuse District shall be made additional insureds on the policy. The policy shall pay on behalf of the Landfill or the County or Refuse District for any damages for bodily injury or property damage which the Landfill or the County or Refuse District has or will become legally liable to pay as a result of an occurrence arising from the construction or operation of the Landfill. The Landfill shall pay any deductible applied under the terms of the policy. The Landfill shall provide to the County and Refuse District, on an annual basis, certificates of insurance evidencing that the policy is in effect. The County and Refuse District shall be notified by the insurance company of any cancellation, reduction in coverage, change in coverage, claim, or of any event of whatever kind or nature which might impair the ability of the Landfill to comply with the provisions of this Host Agreement. If the Permit for the Landfill is transferred, the Landfill shall maintain the policy in effect until the successor or assign of the Landfill has put a substitute policy into effect to comply with this section.

12.02 Pollution Liability Insurance. Beginning on the Effective Date, the Landfill shall maintain during the operation of the Landfill and any applicable post-closure care period an Environmental Remediation Legal Liability Policy with limits of liability no less than five million dollars (\$5,000,000.00). The County and Refuse District shall be made additional insureds on the policy. The policy shall pay on behalf of the Landfill or the County or the Refuse District for any losses which the Landfill or the County or the Refuse District has or will become legally liable to pay as a result of pollution conditions on, at, under or emanating from the Landfill. The Landfill shall pay any deductible applied under the terms of the policy. The Landfill shall provide to the County and the Refuse District, on an annual basis, certificates of insurance evidencing that the policy is in effect. The County and the Refuse District shall be notified by the insurance company of any cancellation, reduction in coverage, change in coverage, claim, or of any event of whatever kind or nature which might impair the ability of the Landfill to comply with the provisions of this Host Agreement. If the Permit for the Landfill is transferred, the Landfill shall maintain the policy in effect until the successor or assign of the Landfill has put a substitute policy into effect to comply with this section.

13. Indemnification

Beginning on the Effective Date, the Landfill shall indemnify and hold the County and the Refuse District harmless from any and all claims, damages, suits or causes of action, including reasonable attorney's fees, consultant and expert witness fees, resulting from (i) the design, construction, operation or closure of the Landfill; (ii) failure of the Landfill to comply with post-closure requirements; or (iii) disposal in the Landfill of Solid Waste generated in the County or Solid Waste generated in the County and then commingled with other generator's waste. The Landfill shall make no claim against the County, the Refuse District or the Fiscal Court relating to the disposal in the Landfill of Solid Waste.

14. Dispute Resolution

All claims or disputes arising between the parties to this Host Agreement which relate to this Host Agreement or a breach thereof shall be resolved as follows:

(a) Notice of the claim, dispute or alleged breach shall be delivered to the other party pursuant to Section 16.01 of this Host Agreement;

(b) Any dispute arising under this contract shall be governed by the laws of the Commonwealth of Kentucky and shall be filed in the Marshall Circuit Court or the United States District Court for the Western District of Kentucky (Paducah Division).

15. Closure

15.01 The Landfill shall be responsible for the closure of the Landfill and all required post-closure care in accordance with the provisions of KRS Chapter 224 and the regulations promulgated pursuant thereto.

15.02 The Landfill shall provide and maintain an accurate file at the Landfill, which shall contain a copy of all documents, permit applications, modifications, renewals, enforcement actions, sampling reports, quarterly reports, and all other documents required to be maintained and transmitted to the Cabinet under KRS 224 and the regulations thereunder.

15.03 After closure of the Landfill and release of the Landfill by the Cabinet from post-closure care requirements, the County and the Refuse District shall have the right to enter the Landfill to perform maintenance on the cap, perform groundwater and surface water monitoring, and to perform corrective action necessary to protect human health or the environment. Any actions performed by or on behalf of the County and the Refuse District pursuant to this section shall be subject to oversight and prior approval by the Landfill providing that such approval shall not be unreasonably withheld. The County shall (i) provide a certificate of insurance from the entity conducting the actions demonstrating adequate coverage for damage caused by such entity, and (ii) indemnify and hold harmless the Landfill from any claims, damages, suits or causes of action, including reasonable attorney and expert witness fees, resulting from the actions of the County and the Refuse District on the Landfill.

16. Miscellaneous

16.01 Notice. Any notices or communication required or permitted hereunder, unless otherwise specified herein, shall be in writing and sent by certified or registered mail to the addresses set forth below:

Marshall County
Judge Executive Office
1101 Main St.
Benton, KY. 42025

Marshall County Refuse District / 109 Board
835 Benton-Briensburg Rd.
Benton, KY. 42025

Waste Path Sanitary Landfill LLC
1637 Shar Cal Rd.
Calvert City, KY. 42029

16.02 Submittal of New Proposal. During the term of this Agreement, but not before the nineteenth (19th) anniversary of the Effective Date, the County or the Refuse District may publish a request for bids in compliance with constitutional and statutory requirements for provision of capacity for the disposal of Municipal Solid Waste generated by Marshall County for the twenty (20) period following the expiration of the term of this Agreement. If the County or the Refuse District publishes such a notice, the Landfill shall submit a proposal in response to the request for bids that contains provisions that are equivalent to or better than the provisions in this Agreement. The County or the Refuse District shall consider the proposal in accordance with the applicable procedures then in effect. Provided that, the Landfill will only be required to submit a proposal for a term of years equal to the estimated remaining life of the landfill, based on the average annual rates of disposal at the time the proposal is submitted. The parties further agree that this provision cannot be adequately satisfied by an award of monetary damages in the event of a breach of this provision by the Landfill. If the Landfill breaches this provision, the parties agree that either the County or the Refuse District may seek an order for specific performance of this provision from a court of competent jurisdiction.

16.03 Waiver. Waiver of non-compliance at any time, by any party, of the terms or conditions of this Host Agreement shall not be deemed a waiver of future non-compliance with such terms or conditions.

16.04 Binding. All agreements set out herein shall be binding upon and shall inure to the benefit of each of the parties hereto, and their successors and assigns and to their respective counterparts should any corporation be bought, sold, leased or the status changed in any manner including by purchase contract.

16.05 Entire Host Agreement: Modification. This Host Agreement embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous host agreements, understanding, representations, and statements, oral or written, are merged into this Host Agreement. Neither this Host Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against which the enforcement of such waiver is sought and then only to the extent set forth in such instrument.

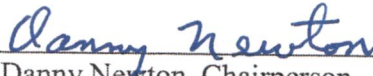
16.06 Headings and Recitals. Neither the headings nor the recitals to this Host Agreement shall be interpreted to create any right or obligation on the part of any party and shall not affect the construction or interpretation of the Host Agreement.

16.07 Enforceability. This Host Agreement has been duly authorized, dated and delivered by all parties and constitutes a legal, valid, binding obligation of all the parties and is enforceable in accordance with its terms.

16.08 Drafting. All parties have been given the right to be represented by counsel during the negotiation and drafting of this Host Agreement, and this Host Agreement has been drafted through the combined efforts of All parties. No provision in this Host Agreement shall be construed in favor of or against either party as a result of that party's participation in the drafting of such provision.

16.09 Transfer or Assignment of Host Agreement. The Landfill may not transfer or assign (whether by operation of law, merger or otherwise) this Host Agreement, or its rights or obligations under this Host Agreement, without the prior written consent of the County, such consent not to be unreasonably withheld. The Landfill shall provide the County and the Refuse District at least thirty (30) days advanced notice of a transfer or assignment.

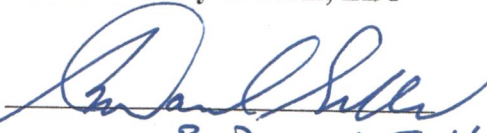
Marshall County Refuse District/109 Bd.

BY: 
Danny Newton, Chairperson

Marshall County, Kentucky

BY: _____
Kevin Neal, Judge-Executive

Waste Path Sanitary Landfill, LLC

BY: 
PRINTED NAME: B. Daniel S. Iles
TITLE: Managing Member