

Public Hearing Material

Affidavit of Publication

STATE OF MICHIGAN,
County of St. Clair, ss.

In the Matter of 2000 Update of the St. Clair
County Solid Waste Management Plan

Bonnie M. Brown being duly sworn, deposes and says that she is the Publisher of the
Yale Expositor

a newspaper printed, published and circulated in the county of St. Clair and State of Michigan, and that the notice attached hereto is an exact copy of a notice which was printed in the aforesaid newspaper, on the following dates, to-wit:

**Notice of Availability for Inspection, or Copying
2000 Update of the St. Clair County
Solid Waste Management Plan**

On February 28, 2000 the St. Clair County Solid Waste Management Planning Committee authorized the release of the proposed 2000 Update of the St. Clair County Solid Waste Management Plan (Plan) for public review and comment. As required by Part 115 of the Michigan Natural Resources and Environmental Protection Act, P.A. 451 of 1994 as amended, a public comment period of at least 90 days must be held prior to plan adoption.

Copies of the proposed Plan have been placed in all branches of the County Library and are available for review during normal library hours. The document can also be viewed or copied for a fee, at the Metropolitan Planning Commission offices at 200 Grand River Avenue, Suite 202, in Port Huron between the hours of 8:00 a.m. and 4:30 p.m.

The Solid Waste Management Planning Committee will also accept written comments received prior to June 26, 2000. Written comments can be sent to the attention of Geoffrey Donaldson at the St. Clair County Metropolitan Planning Commission, 200 Grand River Avenue, Suite 202, Port Huron, MI 48060.

Published: April 2000
The Yale Expositor

April 19, 2000 19.....
..... 19..... 19.....
..... 19..... 19.....
..... 19..... 19.....
..... 19..... 19.....
..... 19..... 19.....
..... 19..... 19.....

Signed: Bonnie M. Brown
Bonnie M. Brown

Sworn to and subscribed before me, a Notary Public in and for St. Clair County, Michigan,

this 21ST day of April 2000

Jarvis Brown

My Commission expires 4-10-2001

COUNTY OF ST. CLAIR
NOTICE OF PUBLIC HEARING

The St. Clair County Solid Waste Management Planning Committee and the Metropolitan Planning Commission will hold three Public Hearings to review the Draft of the 2000 Update of The St. Clair County Solid Waste Management Plan ('Plan'). The hearings are scheduled for the following dates and locations:

7:00 pm June 12, 2000
St. Clair County Board of
Commissioners' Room
2nd Floor
County Administrative Building
200 Grand River Avenue
Port Huron, Michigan

7:00 pm June 13, 2000
Capac High School Library
Capac High School
541 N. Glassford Street
Capac, Michigan

3:30 pm June 14, 2000
Algonac City Council Room
Algonac City Offices
805 St. Clair River Drive
Algonac, Michigan

The purpose of the hearing is to give the general public the opportunity to review and comment on the 'Plan'. Since July of 1998, The Solid Waste Management Planning Committee has been in the process of updating the existing County Solid Waste Management Plan. The 'Plan' provides a framework for solid waste management in St. Clair County for the next ten years.

Ted Frantz, Chairperson
St. Clair County Solid Waste Management Planning Committee
Publish: May 12, 2000

**PUBLIC HEARING
ST. CLAIR COUNTY
SOLID WASTE MANAGEMENT PLAN UPDATE
June 12, 2000 7:00 p.m.
County Board of Commissioners Room
200 Grand River Avenue, Port Huron, Michigan**

Present: Ted Frantz, Chairperson Solid Waste Management Planning Committee

Guests: Bill Angerbrandt, 4165 Quaker Hill, Fort Gratiot
Joe Stevens, 9388 St. Clair Highway, Casco Township.

Staff: Gordon Ruttan, Planning Director
Geoff Donaldson, Environmental Planner
Dale Whitehead, Planning Department Secretary

Chairperson Ted Frantz opened the Public Hearing at 7:00 p.m., to discuss the update of the St. Clair County Solid Waste Management Plan.

A short presentation was presented by Chair Frantz and Geoff Donaldson.

Chair Frantz stated that in the comment section any speaker will be allowed three minutes to address their concerns and written comments will be taken. Individuals are asked to rise, state their name, and whether at the hearing as a citizens or representative of an organization. The comments will be taken back to the Solid Waste Management Planning Committee

No comments were received on the Solid Waste Management Plan Update.

Questions were asked:

Joe Stevens Casco Township Board and Planning Commission.

Mr. Stevens: More of a question than a comment. Back in February a company approached us down on Bethuy Road, right near Marine City Highway, they want to put in a transfer station of equipment, I mean of building materials, a transfer station, and they wanted to get it in before your plan came in to being. When they found out how long it would take to go through the planning process they never came back. Could you shed light on that. Would they have been "grandfathered" in if we would have allowed them to have a transfer station there?

Staff replied that they would not be able to be "grandfathered" in but they could apply to have the plan amended to include their site.

Staff also reviewed the amendment process and the costs involved to be considered for an amendment.

Frantz announced that the next public hearing will be at the Capac High School Library at 7:00 p.m., and then on Wednesday at 3:30 p.m., at the Algonac City Hall.

CLOSING OF PUBLIC HEARING and adjourn at this time. See you at Capac tomorrow night. Thank you all for coming.

The Public Hearing adjourned at: 7:16 p.m.

Respectfully Submitted,



Dale Whitehead, Secretary
St. Clair County Metropolitan Planning Commission

**PUBLIC HEARING
ST. CLAIR COUNTY
SOLID WASTE MANAGEMENT PLAN UPDATE
June 13, 2000 7:00 p.m.
Capac High School Library**

Present **Ted Frantz, Chairperson Solid Waste Management Planning Committee**
Kay Cumbow, Solid Waste Management Planning Committee Member

Guests: **James Cumbow, 15184 Dudley Road (Lynn Township Planning Commission)**
Nancy Beaufait, 7050 Bailey Road, Yale
Kay Cumbow, 15184 Dudley Road, (Committee Member)
Cynthia Frantz, 3110 Abbottsford, North Street

Staff: **Gordon Ruttan, Planning Director**
Geoff Donaldson, Environmental Planner
Dale Whitehead, Planning Department Secretary

Chairperson Ted Frantz called the Public Hearing meeting to open at 7:05 p.m., to discuss the update of the St. Clair County Solid Waste Management Plan.

Chair Frantz and Geoff Donaldson presented a short presentation.

Chair Frantz opened the floor for comments, either verbal or written, at 7:12 p.m. He requested anyone with comments or questions to state their name, address and if speaking for a group, company or individual.

No one had comments regarding the update of the Solid Waste Plan. Several did have questions, however, which were answered by Staff and Chair Frantz.

Jim Cumbow: I am Kay's husband and a member of the Lynn Township Planning Commission. I have different things I am curious about. First of all, recycling. A number of years ago Lynn Township purchased a compartmentalized recycling container, in conjunction with several of the other townships in the area and it was set up in Capac for a couple of years and then suddenly it disappeared. No one seems to know where it went or what became of it. I know there was a problem at the supermarket and they didn't like people dumping all their trash around it.

Gordon Ruttan and Geoff Donaldson: Stated how it came about and where the current roll-off containers are. There was a problem at the CAPAC IGA and it was moved. There is one in Lynn and the City of Yale. It may be one of the ones that was at the Capac IGA.

Kay Cumbow: My other question I had was regarding the fly ash. Do you treat it, are you disposing of it for Detroit Edison, I am assuming they are the primary ones for fly ash.

Ted Frantz: Detroit Edison has their own site. They operate it strictly for their own use. One truck load is brought in from Harbor Beach to the Range Road Facility. That is included in the plan. Detroit Edison's disposal is around 230,000 tons a year.

Nancy Beaufait: How much space do we have left in our landfill?

Ted Frantz: We are at approximately 30 to 40 years at this time, depending on how the engineering, plans go and how the new technologies and the additions and expansions at the landfill are engineered.

Gordon Ruttan: There are plans to raise the final contour to make it higher. There are 80 acres that have not even been used and there may be other land adjacent there that is under ownership that isn't used but projected to be used

Nancy Beaufait: So we will have enough space.

Gordon Ruttan: Yes, one could argue is it 30 years or 40 years, but we have to revisit this plan every five years. Certainly within one, or two or three visits of this plan, we are in no danger of losing the capacity within those time periods.

Ted Frantz: We are in a very fortunate position and it has been stewarded well by the planning committees in the past.

Nancy Beaufait: How many reciprocal counties do we have?

Geoff Donaldson: The old feeling behind reciprocal agreements is no longer the case. It doesn't necessarily mean the other county has to guarantee the same. But even that being the case there are not any existing reciprocating or any sort of agreement outside of the Huron County/St. Clair County ash agreement. The plan does have a contingency disposal agreement with Sanilac County and Huron County. There are certain specific details listed in the Solid Waste Plan that outlines what a contingency situation would be. If a catastrophe or emergency was to shut down one of the disposal facilities in either of the two counties we would open our borders for a period of six months, I think, until they could find an alternate situation, or if they went into another agreement with the Board of Commissioners to continue that six month period of time.

Gordon Ruttan: That has never been exercised in almost 20 years that St. Clair County has had a plan. We had it in the last plan and prior to that and since then we have never had to.

Ted Frantz: The reciprocal language is in the Act itself so it allows other counties that won't have landfills, they are going to have some other county receive their waste.

Nancy Beaufait: Is there a lot of Canadian waste coming over now?

Gordon Ruttan: Not to Smiths Creek. It is transported through St. Clair County to places beyond.

Geoff Donaldson: 2.5 million tons of garbage are brought into Michigan from Canada each year.

Nancy Beaufait: I know there was one county thinking of taking waste from practically all of the counties in Michigan. They had like 53 counties out of 83.

Gordon Ruttan: A lot of landfills or counties have requested that, let us just take Branch County for example, that we put Branch County in our plan as accepting waste from St. Clair County and some counties want 82 county agreements to move. Should any waste ever move back and forth they want to be able to have it. We have had many requests, generic requests, non-specific requests, which we just said we are not interested in it.

Kay Cumbow: How many waste haulers do we have?

Ted Frantz and Donaldson: More than nine. The plan identifies nine as being responsible for more than the majority of waste hauled. I don't have the exact figure for you, but I remember when I was putting together the initial contact sheet, in 1998, I contacted everyone who was licensed at that time and it was in excess of 30, but less than 40. But that could change. Right now it could be 20 and 25.

Kay Cumbow: That just means the independents are going out.

Nancy Beaufait: What about low level radioactive waste? Do you get any of that in there? Or can you tell if we get it in there because you have to have monitors. From what I was hearing if they put it on a certain side of the truck the monitors didn't know.

Gordon Ruttan: As you know it is now allowed or permitted, unless it is

Geoff Donaldson: Not very well versed on that but I think what you are referring to is a provision for some of medical waste. It is allowed. There was some relaxation on that.

Kay Cumbow: Are there other generators of fly ash besides Edison in this county?

Geoff Donaldson: yes, very small ones, I am not sure the current name of it. Akzo Salt, (formerly Diamond Crystal).

Chair Frantz asked if anyone else wished to comment or ask a question. There being none, Chair Frantz closed the public hearing at 7:50 p.m.

Chair Frantz extended his thanks to the High School for letting us use their library for the public hearing.

Respectfully submitted,



Dale Whitehead
Planning Department Secretary

**PUBLIC HEARING
ST. CLAIR COUNTY
SOLID WASTE MANAGEMENT PLAN UPDATE**

**June 14, 2000 3:30 p.m.
Algonac City Council Room
Algonac, Michigan**

Present **Ted Frantz, Chairperson Solid Waste Management Planning Committee**

Guests: **John F. Jones, Supervisor, Ira Township
Tim Klunger, Manager, City of Algonac
Donald Dodge, County Commissioner, District 7**

Staff: **Geoff Donaldson, Environmental Planner
Dale Whitehead, Planning Department Secretary**

Chairperson Ted Frantz called the Public Hearing meeting to open at 3:38 p.m., to discuss the update of the St. Clair County Solid Waste Management Plan.

A short presentation was presented by Chair Frantz and Geoff Donaldson.

Chair Frantz opened the floor for comments, either verbal or written. He requested those with comments or questions to state their name, address and if speaking for a group, company or individual.

No comments were received on the Solid Waste Management Plan Update..

Questions were asked:

John Jones, Ira Township Supervisor

On number five, can you expand a little bit on the significant changes of this plan from the old one. In other words, it says the deletion of siting criteria.

Staff: Geoff Donaldson: The last plan included siting mechanism and siting criteria at the disposal facility in St. Clair County and that included landfills, transfer stations and processing plants. After much discussion at the committee level, this plan go around it was decided we had ample disposal facilities in the county and we did not need to open up the doors to siting of any new ones in the county. The ones that are there meet the solid waste management needs in the county and we didn't see the need to open the doors for any new solid waste facilities in the county. That would be probably the most significant change from the last plan, that is the omission of the siting mechanism and siting criteria.

Chairperson Frantz: For the record we would like to welcome Commissioner Don Dodge to the public hearing. We appreciate your participation.

Chair Frantz: I would also like to put on the record, if we may, many thanks to Supervisor John Jones' community for including in their specs for the removal of solid waste, the inclusion into their bid, the need to use of Smiths Creek Landfill as the official landfill to be used. I would also like to thank Tim Klunder of Algonac as well. Both of these communities have supported the work of this Committee in the past and we appreciate the support from both communities.

Chair Frantz asked if anyone else wished to comment or ask a question. There being none, Chair Frantz closed the public hearing at 4:44 p.m.,

Chair Frantz thanked the City of Algonac for their hospitality and hosting of the public hearing.

Respectfully submitted,



Dale Whitehead
Planning Department Secretary



JOHN ENGLER, Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY*"Better Service for a Better Environment"*

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48909-7973

INTERNET: www.deq.state.mi.us

RUSSELL J. HARDING, Director

REPLY TO:

WASTE MANAGEMENT DIVISION
PO BOX 30241
LANSING MI 48909-7741

April 20, 2000

Mr. Geoffrey E. Donaldson, Environmental Planner
St. Clair County Metropolitan Planning Commission
200 Grand River Avenue, Suite 202
Port Huron, Michigan 48060

RECEIVED
APR 25 2000
S. C. C. M. P. C.

Dear Mr. Donaldson:

I have received and reviewed a copy of the draft St. Clair County (County) Solid Waste Management Plan Update (Plan) released for the 90-day public comment period ending June 26, 2000. I will address our comments in the same order as the topics appear in the Plan. The following areas of the County's Plan may be cause for concern and may require revision or additional information.

- Cover page Please indicate the date when the final Plan is submitted to the Department of Environmental Quality (DEQ) for approval. If different versions of the Plan are prepared during the update process, listing the date can ensure that discussions between the DEQ and the County are referring to the correct document.
- Page II-5 The proposed expansion outlined for Howard's Solid Waste Transfer and Reclamation Center should be included in the Authorized Disposal Area Types section of the Siting Review Procedures on page III-35.
- Page II-28 The "Collection Processes and Transportation" paragraph states hauling companies are listed on page II-19. There are no haulers listed on page II-19; however, they are listed on page II-9 and II-10. Please reference the proper page numbers.
- Page II-29 The "Institutional Arrangements" paragraph refers to pages III-33 through III-38 for the "Management Responsibilities" section of the plan; however, this section is found on pages III-36 through III-43 of the draft plan. Please reference the proper page numbers.
- Page II-29 The "Alternative Solid Waste Management Systems" paragraph states that alternative methods had been evaluated; however, a description of the non-selected systems are not included. List and briefly summarize each alternative that was evaluated.
- Page III-1 This section of the Plan is to provide a detailed description of the system for solid waste management that was selected by the County for implementation. A detailed description of the system that was selected should be included in this section.
- Page III-2 Huron County is listed twice as the exporting county to Smiths Creek Landfill. It appears Sanilac County should be included in this table because on page D-6,

the Plan states both Huron and Sanilac Counties are authorized to import waste into St. Clair County under special conditions.

Page III-35 The Plan identifies three possible future expansions of the Smith's Creek Landfill and states any of those possibilities shall be deemed consistent with the Plan. In order to alleviate any discrepancy regarding where the expansions are proposed, please identify on a map the locations used to perform the volume calculations or include a more detailed description of the areas identified for future expansion including any limitations imposed on size, height, etc.

Page III-43 The purpose of the Local Responsibility for Plan Update Monitoring & Enforcement section is to indicate who will have this responsibility. The Monitoring and Enforcement Mechanism located in Appendix E does not include this information. However, on pages III-36 through III-40, the Plan does include a detailed description of the parties involved in implementing and enforcing the Plan. In order to give a clear understanding of each party's responsibility, please include a reference to pages III-36 through III-40 in this section of the Plan.

The page with the heading Capacity Certifications has no page number. The Plan states that more than ten years of capacity has been identified; however, there are no calculations on this page. Please include demonstration of available capacity in relation to the County's disposal needs. In addition, please include the capacity information on page D-3 before submitting for final approval.

Page A-4 The last paragraph states there is a proposed recycling program at Brockway Township Hall. There are no proposed recycling programs listed in the table on page III-27; therefore, if this is a proposed recycling program, I recommend this program be added to the table.

Page B-3 The Plan states the 1983 and 1990 St. Clair County Solid Waste Management Plans evaluated several solid waste management components and those conclusions are still valid. Although the conclusions and recommendations are valid, each non-selected alternative evaluated as part of preparing this plan should be discussed in the Non-Selected Systems section.

I appreciate the efforts that you have shown in the development of the Plan and the degree to which the Plan format has been utilized. This makes the document much easier to review. I hope that these comments are useful to St. Clair County as you attempt to develop an approvable Plan. If you have any questions or comments, please contact me at the telephone number below, or by e-mail, at dumroesl@state.mi.us.

Sincerely,



Lynn Dumroese
Solid Waste Management Unit
Waste Management Division
517-373-4738

cc: Mr. Seth Phillips, DEQ
St. Clair County File



RECEIVED

JUN 26 2000

S. C. C. M. P. C.

Domtar Industries Inc.
1700 Washington Avenue
P.O. Box 5003
Port Huron, MI 48061-5003

tel 810.982.0191
fax 810.982.7124

June 22, 2000

Mr. Geoffrey Donaldson, Environmental Planner
St. Clair County Metropolitan Planning Commission
200 Grand River Avenue Suite 202
Port Huron MI 48060

Dear Mr. Donaldson:

Thank you for the opportunity to comment on the Draft 2000 update of the St. Clair County Solid Waste Management Plan. Overall, I feel the Plan was well written but I do have a few concerns that I would like to point out.

On page II-2 the current volume for commercial and industrial waste for the entire County is listed as 53,422 tons and 18,923 tons respectively. As you are well aware even after pollution prevention activities, the paper industry generates a large amount of waste as part of its process. After looking at this number and reviewing our SIC code (2621), I believe our waste generation along with the other paper industry facilities was placed in the commercial category instead of the industrial category.

For example, the Domtar site generated 22,000 cubic yards of paper mill sludge in 1999 which equates to 14,400 tons. Domtar also generated 5700 tons of fly ash for a grand total of 20,100 tons to the landfill (total does not include general trash from the site). Any changes will also affect the table for the City of Port Huron on page II-18.

The last comment I have is a misspelling on page C-5. Our company name is spelled with a "m" not an "n".

Please feel free to contact me should you have any questions concerning these comments.

Sincerely,

Christine J. Lupu, CHMM
Environmental Engineer

cc: S. Bentley

R. Belanger



Blue Water Fiber Limited Partnership

June 22, 2000

Phone: (810) 984-3531
Fax: (810) 984-2332

P.O. Box 611367
Port Huron, Michigan
48061-1367

Mr. Geoffrey Donaldson, Environmental Planner
St. Clair County Metropolitan Planning Commission
200 Grand River Avenue Suite 202
Port Huron MI 48060

RECEIVED

JUN 26 2000

S. C. C. M. P. C.

Dear Mr. Donaldson:

I would like to first thank you for these taking comments on the Draft 2000 update of the St. Clair County Solid Waste Management Plan. Overall, the plan was well written, but I do have a concern that I would like to bring to your attention.

On page II-2, the current volume for commercial and industrial waste for the County is listed as 53,422 tons and 18,923 tons respectively. As you are well aware even after recycling, the recycling process generates a large amount of waste as part of its process. After looking at these numbers and reviewing our sic code (2621), I believe our waste and the other paper industry facilities were placed in the commercial category instead of the industrial category.

For example, Blue Water Fiber generated 82,146 cubic yards of paper mill sludge in 1999. The list on page III-13 states that 60,000 cubic yards is used as alternative daily cover. This leaves 22,146 cubic yards that is placed in the landfill which equates to 14,495 tons. (which does not include general trash from the site). This change will also affect page II-18 which lists the waste volume by city, township, etc.

Please feel free to contact me should you have any questions concerning these comments.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey J. Brusky".

Jeffrey J. Brusky
Technical Leader

Cc: T. Karig

Douglas A. Bell, AICP
Community Planning Consultant

214 East State Street
Clare, Michigan 48617

Telephone & Fax: 517-386-6491
e-mail: dabell@voyager.net

June 22, 2000

Mr. Geoffrey Donaldson
St. Clair County Metropolitan Planning Commission
200 Grand River Avenue, Suite 202
Port Huron MI 48060

RECEIVED
JUN 26 2000
S. C. C. M. P. C.

RE: St. Clair County Solid Waste Management Plan Update

Dear Geoff:

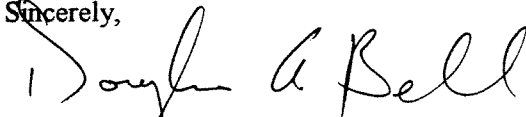
I have reviewed the draft St. Clair County Solid Waste Management Plan Update as it relates to the Sanilac County Plan Update. My comments are as follows:

1. The St. Clair plan is compatible with Sanilac's plan in the sense that Sanilac County will accept solid waste from St. Clair County for disposal on a contingency basis. This is indicated in Table 2-A, "Current Export Volume Authorization" on page III-4 of the St. Clair plan.
2. However, there is no indication that St. Clair County will also accept waste from Sanilac County on a "contingency-only" basis. Only Huron County is listed in Table 1-A, "Current Import Volume Authorization" on page III-2. Based on our earlier discussions, it has been my understanding that St. Clair County would accept solid waste from Sanilac on a contingency basis, subject to conditions specified in the plan. The Sanilac County Plan Update lists St. Clair County in this manner. This topic is addressed in your August 20, 1999 letter to the Sanilac County Board of Commissioners that is included in Appendix D.

Therefore, I am requesting that you add a listing in the "Import Authorization" section that authorizes the acceptance of solid waste from Sanilac County on a contingency basis. I think that your August 20, 1999 letter adequately defines a contingency situation. I have included similar language in the Sanilac County Plan.

Thank you for the opportunity to comment. Please call me at 517-386-6491 if you have any questions.

Sincerely,



Douglas A. Bell, AICP
Solid Waste Plan Consultant to Sanilac County

Fink, Zausmer & Kaufman

A P R O F E S S I O N A L C O R P O R A T I O N

David H. Fink
Mark J. Zausmer
Avery K. Williams
Richard C. Kaufman
Michael L. Caldwell
Ruben Acosta

31700 Middlebelt Road
Suite 150
Farmington Hills, MI 48334-2374
(248) 851-4111 Fax (248) 851-0100

Detroit Office:
2430 First National Building
Detroit, MI 48226-3535
(313) 963-3873
Fax (313) 961-6879

Gary K. August
Karen Liberty Ludden
Daniel S. Peace
Amy M. Sitner
Marcus A. Williams
Coquese S. Wilson

Of Counsel

David A. Dornzal
Eli Grier
John T. Peters, Jr.
Alan D. Wasserman**
Harvey I. Wax

RECEIVED

JUN 26 2000

S. C. C. M. P. C.

22 June 2000

Lansing Office:
721 N. Capitol, Suite 2
Lansing, MI 48906-5163
(517) 374-2735
Fax (517) 487-0372

Email:
contact @ lawsite.com
Internet URL Address:
<http://www.lawsite.com>

*Also Admitted in Illinois and Ohio
**Also Admitted in District of Columbia

St. Clair County Solid Waste Planning Committee
St. Clair County Board of Commissioners

Re: Proposed Provisions of St. Clair County Solid Waste Plan
Which Prohibit Import or Export of Solid Waste

Dear Solid Waste Planning Committee Members and Board Members:

I am writing on behalf of Pine Tree Acres, Inc., a Waste Management-owned landfill which is located in Macomb County, Michigan. As you may be aware, Pine Tree Acres is located off of 29 Mile Road, directly adjacent to County Line Road, and thus directly adjacent to St. Clair County. I wish to express my client's concerns regarding the flow control provisions of the proposed County Solid Waste Management Plan ("Plan"), specifically those provisions which prevent solid waste from entering into or leaving St. Clair County. The clear result of these flow control provisions is to establish the County-owned Smith's Creek Landfill as the sole disposal facility for Type II solid waste generated within St. Clair County. This in turn deprives Pine Tree Acres and other area landfills of participating in the local disposal market, to the direct financial benefit of County government and to the direct financial detriment of County residents.

Specifically, we have two concerns regarding the flow control provisions of the Plan. First, I believe these provisions violate federal antitrust laws and thus expose the County to substantial monetary damages. Second, these provisions violate the interstate commerce clause of the U.S. Constitution, particularly the principles set forth in recent federal court decisions which have issued after the U.S. Supreme Court decision in *C & A Carbone, Inc. v Town of Clarkstown, New York*, 511 US 383 (1994). Simply put, the Plan does not meet legal muster.

Antitrust Issues

St. Clair County, by its own public statements, seeks to allocate the local disposal market for the purposes of maintaining the Smith's Creek Landfill as the sole disposal alternative. This legislated elimination of competition allows the County to maintain artificially high pricing at Smith's Creek Landfill. The attached letter from Blue Water Plastics, Inc., is a good example of the impact of lack of competition. Blue Water Plastics, through a competitive bidding process, determined that it is paying a premium of about \$13,000 per year for having its waste disposed of at Smith's Creek. It has no disposal alternatives.

There has been much litigation in the past on the issue of whether local government is subject to insulation from federal antitrust laws. The U.S. Supreme Court, in *Parker v Brown*, 317 US 341 (1943), set forth the general principle that "state action" is exempt from liability under the Sherman Act. Later federal court cases extend this principle to local government, including County government, as long as two conditions are met: (i) the local government's exercise of authority must be an authorized implementation of state policy, and (ii) the local government must possess a clearly delegated authority to suppress competition, *Hallie v Eau Claire*, 471 US 34 (1985). In this particular case, neither exception applies, and the County is subject to federal antitrust laws. While Part 115 of Public Act 451 of 1994 requires Counties to establish county plans to provide for 10 years of disposal capacity, there is no legislative requirement to restrict competition. In fact, the opposite is true. MCL 324.11548 states as follows:

"This part is not intended to prohibit the continuation of the private sector from doing business in solid waste disposal transportation. This part is intended to encourage the continuation of the private sector in the solid waste disposal and transportation business when in compliance with the minimum requirements of this part."

The elimination by the County of competition for solid waste disposal services through the implementation of the flow control provisions of the Plan clearly violates federal antitrust laws. The County should carefully review its legal exposure.

Interstate Commerce Issues

A substantial number of federal court cases have been issued subsequent to the landmark U.S. Supreme Court decision in the *Carbone* case. Specifically, Courts have had to determine what types of local government conduct constitutes a violation of the interstate commerce clause provisions of the U.S. Constitution. St. Clair County is no stranger to federal litigation on this subject. It is noteworthy that a number of local communities who own solid waste facilities have agreed to modify their conduct as a result of *Carbone* type issues, notably Kent County and Grosse Pointe-Clinton Solid Waste Authority.

A very recent Sixth Circuit Court of Appeals case, *Huish Detergents Inc. v Warren County, Kentucky*, 2000 WL690173 (2000), sets forth what we believe to be an appropriate analysis. In this case, the Court looked at whether or not the County was acting as a "market participation" or "market regulator." To the extent the County is determined to be a market participant, it is generally held to be exempt from interstate commerce violations. Since Warren County was not taxing its residents for hauling and disposal services, but was rather regulating the market, the flow control ordinance was struck down on the basis of the *Carbone* case.

In this particular case, St. Clair County is caught on the horns of a dilemma. Both the antitrust statutes and the interstate commerce clause promote fair and open competition. What St. Clair County proposes to do here flies in the face of such policies. To the extent the County seeks to protect itself from interstate commerce clause challenges as a "market participant," it puts itself in the shoes of private enterprise and further subjects itself to antitrust liability. The County cannot have it both ways. It is either a market participant or a market regulator, but it cannot regulate a market for its own financial enhancement.

Leaving aside the market participant issue, St. Clair County has not attempted to comply with other standards which Courts have recently set down in interstate commerce clause decisions. For instance, in several cases Courts have upheld flow control ordinance where the governing body has sought competitive quotes from both in-state and out of state firms. To our knowledge, St. Clair County has taken no competitive bids for disposal services.

Recommendation

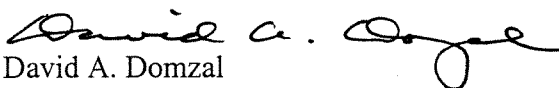
We strongly recommend that no action be taken on the Plan until such time as a full detailed legal review of the various issues is completed by the County's legal representatives.

My client firmly believes that open competition for disposal in the St. Clair County market is of benefit to all, and it is proposing that the disposal market be opened up not only to Pine Tree Acres but also to other competitive landfills. Further, my client recognizes the investment of the County taxpayers in the Smith's Creek Landfill, and wishes, within certain parameters, to support such investment. As such, my client is willing to enter into a disposal agreement with Smith's Creek Landfill, as part of a negotiated settlement, which agreement would establish disposal volumes and pricing levels. Such pricing levels, of course, must be based upon competitive market rates. The approach would avoid long-term litigation, would introduce a level of competition to the market, and would constitute an improvement in governmental policy.

Please feel free to call us if you have any questions regarding this matter. In the meantime, we propose that a meeting take place between legal representatives of the parties to review this matter. Pending such a meeting, we respectfully request that no action be taken on the Plan.

Sincerely,

FINK, ZAUSMER & KAUFMAN, P.C.


David A. Domzal

DAD:vr

cc: Don Barretta
David Fink, Esq.
Jeff Harris
Ed Hoover
Richard Kaufman, Esq.
John Skoutelas, Esq.

WB Engineering Services, P.C.
1127 North River Rd
St. Clair, MI 48079
(810) 329-9723

A REPORT

TO: DAN LOCKWOOD

FROM: BILL BIER

7/19/99

RE: ESTIMATED ADDITIONAL COST FOR BLUE WATER PLASTICS, INC. RESULTING FROM WASTE HAULED TO THE SMITH CREEK LANDFILL

Dan had discussed, with Mr. Troy Feldman, County Administrator, the fact that Blue Water was paying a premium to have its waste disposed at the St. Clair County Landfill. Dan asked me to compile a report for him to use in a future discussion with Mr. Feldman, and the Solid Waste Committee of the St. Clair County Metropolitan Planning Commission.

BACKGROUND:

Early in 1998, Ms. Penny Eisenga, of Blue Water Plastics, Inc., sent inquires to three waste disposal contractors, asking for prices for the next several years. She sent out a listing of the plants, along with their current costs. She received varying responses. One firm laid out a four year plan, based on a percentage of the then current costs. Another submitted total cost per site, while the third submitted unit pick up charges.

In addition, a bidder, wrote a letter stating that they were the only firm, that was currently hauling waste material to Smith Creek, the St. Clair County Landfill.

After receipt of the above quotations and letter, I was asked to review the proposals. I reported to Management that the proposals were not comparable. It was decided to rebid the waste disposal package. I determined the number of pickups at each site, as well as the type of containers to be used. I also stipulated that the waste be taken to the Smith Creek Landfill.

After the requests had been sent out, I received a phone call from The President of Co. "A." Co. "A." currently was hauling most of the compactor loads from Blue Water's St. Clair County plants. He explained to me that they did not currently haul Blue Water's waste to Smith Creek. The waste was trucked to their transfer station, where it was transferred to large trucks owned by City Waste. City Waste then took the material to the Pine Tree Landfill in Macomb County. He then asked me why we wanted to sent the waste to Smith Creek, when the County had a contract with City Waste, and City Waste took the County's waste to the Pine Tree Landfill. I told him that Blue Water Plastics, Inc. wanted to be a good citizen, and live up to the County Ordinance. He then told me that his costs for hauling to Smith Creek would be higher than his present contract, which did not require the waste to go to Smith Creek.

I reported this to Dan. We decided to ask for an Alternate Proposal asking for the unit costs to haul the waste out of the County. I issued an Addendum for this purpose.

RESULTS 1998/1999 BIDS:

We received five proposals, two from Co. "A.", and Co. "B.". A single proposal was received from Co. "C.". Co. "C." bid only to haul to Smith Creek. The other two bid both in-county and out-county disposal.

We selected a combination of Co. "A." for the St. Clair County plants with 42 yd compactors, and Co. "C." for the non compacted front load containers. My recommendation was to award the work to Co. "A." for the 42 yd compactors, with the waste to go out of the county, and Co. "C." to do the front load sites. I stated that this would result in a saving to Blue Water Plastics, Inc. My July 1, 1998 letter stated that it would cost Blue Water Plastics, Inc. \$2,989.84 more to have Co. "A." haul the waste to Smiths Creek.

Blue Water paid the added price for Co. "A." to haul to Smith Creek. Co. "B." was not low, therefore I did not state their difference. I computed this, for the first time today. Co. "B." bid \$9,288.00 more, last year, to haul the waste to Smith Creek rather than out of the County.

This poses some interesting questions. The gate rate at Smith Creek, at the time of last years bids were received, was \$273.00 per 42 Yd compactor. Co. "A." average bid was \$308.00 per 42 yd pick up, or \$35.00 over the land fill cost. For this they had to furnish a 42 yd container, a truck and driver for about 2 hours per pickup, insurance and profit.

Co. "B." cost difference last year was \$131.00, per load, as compared to Co. "A." per load cost difference of \$35.00.

CHANGES SINCE JULY 1998

1. Waste Management Purchased City Waste, and Pine Tree Landill..
2. Another national firm purchased Standard Disposal, and later merged with Waste Management.
3. Standard Disposal personnel started two new companies, Metro Sanitation, LLC, World Waste Services.
4. Metro Sanitation had proposed to buy Howard Trucking/Disposal. This merger fell through.
5. Howard Trucking/Disposal accepted a purchase by a Chicage firm. This reportedly did not happen.
6. B.F.I. is currently waiting approval of sale. If sold, they will close their Lapeer Rd. location.

Note: Items 4., 5., and 6. were reported to me by Metro Sanitation. I do not have any verification.

1999/2000 BID RESULTS:

We received unit bids for 42 yd containers hauled to Smith Creek for \$259.00, \$319.00, \$325.00, an ave. of \$340.00, \$375.00 with 10% discount, and \$375.00.

Since the new gate fee at Smith Creek is \$7.50 per Yd, the 42 Yd container fee is now \$315.00. This is a 15.4% increase over last years rate. The amount of money to cover containers, trucking, insurance and profit, per container load, were respectively, a negative (-)\$56.00, \$4.00, \$10.00, \$25.00, and \$60.00.

On 7/5/99, I called the \$259.00, and \$325.00 bidders. I asked them how they could pay a gate

fee of \$315.00, and quote these prices.

The \$259.00 bidder said that they would haul the material to their yard in Lapeer County, and sort it. They planed to sell the recyclable waste and reload the rest and take it back to Smith Creek. I asked how we would be sure that the remaining waste would go to Smith Creek. He suggested that they furnish load tickets. He then asked, how could we be sure that any waste would be taken to Smith Creek. I said that we currently could not be sure. He then asked me if they could submit a Smith Creek price. Since they did not know any of the other bids, I said yes. He called back shortly with a \$319.00 price. This was only \$4.00 over cost. On July 6th. they called to find out what had happened. I informed them that we had awarded the contract elsewhere. He stated that it was impossible for them to not be low. I told him that his front load prices were so high that it made the total quote unacceptable. I then asked him how they planed to haul the waste to Smith Creek for \$4.00. He told me that they had a special deal at Smith Creek. They had a "Put and Place" agreement. He said that they had agreed to use X number of cubic yards of land fill at about \$245.00± per 42 yard container. Therefore, they could haul the waste and make money at \$319.00.

Today I had another call from the same firm. The caller had his boss on the line. He asked that I repeat what I had said before. I did. They then said that they would like to bid next year, if we would make sure that the waste was really going to Smith Creek. I asked him to explain his remarks. He said that to cover all costs, and have a profit, the bidders should have about \$150.00 per container over the landfill costs. He then said that anyone who bid less that \$465.00 per 42 yd container was cheating. I did not point out that he was one of the cheaters. It is difficult to believe, as accurate, anything they have said. However I find that I generally agree with their conclusions. .

The bidders may have been cheating, or they are not factoring in the total costs of containers trucking, insurance and profit, in an attempt to keep others out of "their" territories.

I also called the \$325.00 Bidder, on 7/5/99. I asked them how they could haul the waste for \$10.00 a load. They told me that they did not play \$315.00. He said that they paid by weight. And that their costs were well under \$300.00, about \$240.00 per average load. I later found out that Smith Creek does not have a scale. The \$325.00 bidder was not on our bid list. In checking them out, I found out that their office was in Warren, but they operated out of a yard at 6 mile and Livemois. This made their claim even less believable.

Lastly I talked to the \$375.00 bidder, who said that the rest were not planning on hauling to Smith Creek. He suggested that scales at Smith Creek would reduce the cost to dump industrial waste, in the county. This statement is based on the tonnage rate being set competitively with Macomb and Sanilac landfill. He expressed an opinion, that the higher the County set their gate rate, the less commercial and industrial loads they received. The response to this is to raise the rates again, with another drop in volume.

Another suggestion was for us, to require submission of Smith Creek load tickets for every 42 Yard load invoiced. My caller today, suggested that Blue Water negotiate a per compactor container load cost directly with the landfill, and bid only the cost of the containers and trucking.

These suggestions make sense. Although it is too late to require load tickets this year, I recommend that we do so next year, or if possible, use direct payment to the land fill.

Based on all of the above information and hearsay, I would say that the difference between the 1999/2000 quotation of Co. "A.", and the \$259.00 price is \$12,313.00, or roughly the added cost to take waste to Smith Creek. This is only a estimate, since we don't have any knowledge that our waste is really going to Smith Creek.

APPENDIX TO REPORT OF 7/19/99

TOTAL COST OF 1999/2000 BLUE WATER PLASTICS, INC.
WASTE DUMPED AT THE SMITH CREEK LANDFILL

Plant	Annual No. of 42 Yd. Containers	
Blue Water Plastics, Co.....	15	
Jordan Creek Plastics, Inc.	24	
Port Huron Molded Products, Inc.	42	
Marysville Products, Inc.	20	
Blue Water Molded Products, Inc.	54	
Total five plants	155.	
Total Cu. Yds. to Smith Creek. 155 loads x 42 Cu. Yds. per load		6510 Cu. Yds.
Total Landfill cost @ \$7.50 per Cu. Yd.		\$48,825.00
199/2000 contract for haul to Smith Creek.....		\$52,428.00
Contractor's fee to haul 155 loads from the plants to Smith Creek		\$ 3,603.00
Contractor margin per load for all costs and profit		\$23.25
Other Bid price		\$40,145.00
Contractor's fee to haul 155 loads to Smith Creek.		-8,680.00
Contractor margin per load for all costs and profit		(-)\$56.00
Another Bid Price		\$50,375.00-
Contractor's fee to haul 155 loads to Smith Creek.		\$ 1,550.00
Contractor margin per load for all costs and profit		\$10.00
Another Bid Price		\$52,042.50
Contractor's fee to haul 155 loads to Smith Creek.		\$ 3,216.50
Contractor margin per load for all costs and profit		\$20.75
Another Bid Price		\$56,963.00
Contractor's fee to haul 155 loads to Smith Creek.		\$ 8,138.00
Contractor margin per load for all costs and profit		\$52.50

NOTE:

Contractors margin has to cover:

1. Cost and depreciation of 42 Cu. Yd. Container.
2. Cost and depreciation of hauling truck.
3. Cost of operating the truck on a average \pm 45 mile round trip per load.
4. Labor cost, and fringes of driver for at least 1½ hours to make round trip and dump load.
5. PL & PD insurance for truck, and Worker Compensation Insurance on driver.
6. Profit.