



**FAX TRANSMISSION SHEET**

DATE: January 15, 2003

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On behalf of Metro Enviro Transfer LLC, I attach its response to the Draft Statement of Findings.

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Response of Metro Enviro Transfer LLC  
to Statement of Findings of the  
Village of Croton-on-Hudson  
Village Board of Trustees  
Regarding Renewal of the Special Use Permit for  
the Metro-Enviro Transfer LLC --  
Croton-on-Hudson Waste Transfer Station

Metro Enviro Transfer LLC ("Metro Enviro") respectfully presents this submission in response to the Draft Statement of Findings dated December 23, 2002 ("Statement") of the Village of Croton-on-Hudson Village Board of Trustees (the "Board").

I. Summary

Metro Enviro, which is a wholly-owned subsidiary of Allied Waste Industries, Inc. ("Allied"), acquired the assets constituting the Croton-on-Hudson Transfer Station (the "Transfer Station" or the "Facility") in March 2000. Since that date, Metro Enviro has operated the Transfer Station in substantial compliance with the Special Use Permit issued on May 4, 1998 (the "Permit"), a permit issued by the New York State Department of Environmental Conservation in November 1997 (the "DEC Permit"), the Operations and Maintenance ("O&M") Manual, and other applicable law. As discussed below and as will be discussed further at the meeting of the Board on January 15, 2003, there is absolutely no evidence that Metro Enviro's operation of the Transfer Station has had any adverse impact on the health, safety or welfare of the residents of the Village of Croton-on-Hudson (the "Village"). Accordingly, under New York law, the Village cannot continue to refuse to grant Metro Enviro's application for renewal of the Permit and cannot order Metro Enviro to cease accepting waste at the Facility.

II. Alleged Violations of the Terms of the Special Use Permit

Metro Enviro takes issue with many of the assertions made in the Statement regarding alleged violations of the Permit. Given the limited time that Metro Enviro has been afforded to respond to the Statement, Metro Enviro discusses the most significant issues below.

A. Industrial Waste

Metro Enviro first became aware that it may have improperly accepted industrial waste at a meeting with Walter Mack, Esq. (the "Monitor"), in June 2002. At that time, the Monitor informed Metro Enviro that he had received information suggesting the Facility had improperly accepted industrial waste not from his own monitoring activities but from Bruce Berger, Esq., the Executive Director of the Westchester Solid Waste Commission (the "WSWC"). Since that time, Mr. Berger has informed Metro Enviro's counsel that Engelhard Corporation ("Engelhard") had approached the WSWC with regard to Allied's handling of Engelhard's industrial waste, and Mr. Berger had called the Monitor about the issue.

Metro Enviro immediately conducted a thorough investigation of the available facts concerning the Facility's handling of industrial waste from Engelhard. At Metro Enviro's own initiative, Metro Enviro disclosed to the Village that it had accepted industrial waste at the Transfer Station on up to 42 occasions. Metro Enviro initially disclosed that the Facility had accepted 18 loads of industrial waste from Engelhard's facility located at 1050 Lower South Street, Peekskill, New York (the "Film Plant"). At that time, Metro Enviro advised the Village that its findings were preliminary and that they would be supplemented with the results of a continuing investigation of issues concerning the Facility's acceptance of waste from Engelhard and a waste audit of Metro Enviro's current customers. Metro Enviro subsequently disclosed that the Facility may have accepted up to another 24 additional loads of industrial waste from the Film Plant and from other Engelhard facilities in Westchester.

Contrary to the assertion in the Statement that Metro Enviro failed to supply dates on which the loads at issue were accepted by Metro, Metro Enviro provided Village Trustee Georgianna K. Grant with detailed information regarding the receipt of industrial waste, including information concerning the dates on which industrial waste was accepted, as well as information regarding the quantities of that waste and the sizes and types of containers in which that waste was contained. To ensure that the record is clear, a copy of the information previously provided to Ms. Grant is annexed hereto as Exhibit 1

Metro Enviro denies that it made any misrepresentations regarding the number of loads of industrial waste accepted by the Facility. At the time of the initial disclosures, Metro Enviro provided information regarding loads that it believed in good faith contained industrial waste. Metro Enviro did not include in that disclosure information regarding loads that it believed in good faith did not contain industrial waste. Moreover, Metro Enviro representatives explained orally and in writing that a further investigation and a waste audit were still underway, thereby informing the Village that its initial disclosure was preliminary and subject to change. Based on information received from the Monitor to the effect that all of the loads Metro Enviro accepted from Engelhard contained industrial waste, Metro Enviro made a supplemental disclosure to the effect that all of the 42 loads from Engelhard that were accepted by Metro Enviro may have contained industrial waste.

In fact, since Metro Enviro made its disclosures to the Village, Metro Enviro has learned from Engelhard, and obtained a sworn statement from Engelhard stating, that the loads the Facility accepted were not composed exclusively of industrial waste. The loads at issue were composed of non-hazardous industrial waste and other non-hazardous solid waste. That waste may have included film and equipment used in the manufacturing process. However, it was all non-hazardous, solid and stable. A copy of an affidavit from Scott W. Clearwater is annexed hereto as Exhibit 2.

Moreover, Metro Enviro has obtained a sworn statement from Engelhard stating that Engelhard's facilities in Westchester County, New York, have a hazardous waste management program pursuant to which Engelhard manages its hazardous waste entirely separately from all

of Engelhard's other waste. As part of Engelhard's comprehensive hazardous waste management program, Engelhard manages and disposes of hazardous waste in strict accordance with all applicable federal and state laws and regulations. Most important, Engelhard did not ask Allied or any of its subsidiaries to handle its hazardous waste. (See Exhibit 2.)

As previously discussed, Metro Enviro has taken several steps to ensure that the Transfer Station does not accept industrial waste in the future. Among other things, Metro Enviro has conducted and continues to conduct an audit of its waste streams to make sure that none of the Facility's customers gives Metro Enviro unacceptable waste for handling. In addition, Metro Enviro has conducted and will continue to conduct training to ensure that all employees involved in the handling of waste know that industrial waste -- or any other unacceptable or unauthorized waste -- cannot be accepted at the Facility.

#### B. Other Violations

None of the other violations referred to in the Statement has had an adverse impact on the safety, health and welfare of the Village residents, the environment or the surrounding community. Indeed, many of the alleged violations were at least to some extent within the contemplation of the Village when it granted the Permit in 1998. The balance of the other violations are relatively minor, primarily concern the internal operations of Metro Enviro, and could not conceivably have had or have a negative impact on the Village.<sup>1</sup>

##### 1. Capacity Exceedance

The Permit contemplated (in paragraph 33) that the capacity of Metro Enviro's Transfer Station would increase to 1,000 tons per day for the third year of the permit -- from May 5, 2000 until May 4, 2001. The DEC Permit also contemplated that Metro Enviro would be permitted to accept up to an average of 1000 tons per day. Metro Enviro's capacity exceedances -- of which Metro Enviro believes there were 21, not 25 -- were below 1000 tons per day on all but one occasion. Accordingly, the exceedances resulted in Metro Enviro's accepting waste well within the contemplation of the Village and the DEC, certainly within limits the Facility was safely able to handle, and did not have any negative impact on the health, safety and welfare of the Village residents.

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<sup>1</sup> Given that the Board has known about many of the issues discussed in the Statement under the heading "Other Violations" for over a year, and further given that the Board knew of most of the issues discussed in the Statement prior to September 2002, when Metro Enviro paid a substantial fine to the Village, it appears that the Board is now acting in response to generalized community opposition to Metro Enviro and not on the basis of empirical evidence that any of Metro Enviro's actions have actually had any impact on the health, safety and welfare of the Village residents.

## 2. Vehicle Tires

When Metro Enviro receives vehicle tires incidental to loads of acceptable waste, Metro Enviro promptly removes them from the facility and sends them to be recycled. The O&M Manual acknowledges that unacceptable waste might be accidentally received at the Facility incidental to loads of acceptable waste and sets forth procedures pursuant to which such unacceptable waste is to be removed from the Facility. While Metro Enviro may have failed to remove tires from the Facility within 12 hours of their having been received, Metro Enviro currently removes tires in accordance with the applicable time requirements and stores them in closed containers while they are on the premises. (Metro Enviro acknowledges that vehicle tires are described in the O&M Manual as hazardous and industrial; however, that designation is clearly incorrect.) Given the nature of the tires, there was no adverse impact on the health, safety and welfare of the Village residents as a result of Metro Enviro's failure to remove them within 12 hours of the tires having been received incidental to loads of acceptable waste.<sup>2</sup>

## 3. Refrigerators

When Metro Enviro receives household appliances, including refrigerators, incidental to loads of acceptable waste, Metro Enviro promptly removes them from the Facility. As mentioned above, the O&M Manual acknowledges that unacceptable waste might be accidentally received at the Facility incidental to loads of acceptable waste and sets forth procedures pursuant to which such unacceptable waste is to be removed from the Facility. Metro Enviro did not fail to remove any refrigerators from the Facility within the required time period. Nor did Metro Enviro process or handle any refrigerators in a manner that could otherwise have had any adverse impact on the health, safety and welfare of the Village residents. Notably, the Village did not issue a notice of violation when the Village was informed about this issue.

## 4. Collection of Leachate

Metro Enviro has an approved leachate collection system designed to collect leachate in a collection tank. Metro Enviro denies that any leachate evades that system. However, to ensure that the activities at the Transfer Station do not have any negative impact on the surrounding surface water, Metro Enviro tests the surface water at the Facility. The results of that testing indicate that there have not been any exceedances of any federal or state health or environmental limits, which are set at levels designed to protect against harm to human health and the environment. Moreover, Metro Enviro is unaware of any data or test results to the contrary. Again, it is noteworthy that the Village did not issue a notice of violation when the Village was informed about this issue.

<sup>2</sup> That is particularly so in light of the fact that there is a tire wholesaler nearby the Transfer Station that regularly stores large volumes of new tires on its premises, presumably for periods substantially longer than 12 hours.

## 5. Training, Reporting and Record-Keeping

Metro Enviro has previously detailed for the Village the employee training Metro Enviro has conducted and plans to conduct in the future. That training has included some training and will include regular training with regard to the handling of unacceptable waste such as industrial waste. To the extent possible, Metro Enviro has remedied past violations with regard to reporting and record-keeping, and will maintain all required documentation and submit all required reports in a timely fashion in the future.

Any failure on the part of Metro Enviro to train its employees or to maintain certain documentation has been relatively insignificant and relates purely to the internal operations of Metro Enviro. Moreover, any such failure has clearly not had an impact on the health, safety and welfare of the Village residents. Neither the DEC nor OSHA has ever questioned the thoroughness or appropriateness of Metro Enviro's training protocols.

## II. Improvements in Metro Enviro's Ability To Comply with Applicable Requirements

The Village does not have a reasonable basis for concern about Metro Enviro's willingness and ability to comply with the Permit and applicable law and regulations. In United States of America v. Suburban Carting Corp. et al., which is pending in the United States District Court for the Southern District of New York, Allied recently moved for termination of the federal monitorship of Allied's Westchester operations, which Allied had voluntarily extended to cover the operations of Metro Enviro. In support of its motion, Allied noted that the Monitor observed in his last periodic report to the Court that Allied was "committed to giving the monitored Westchester companies the scrutiny and attention they have always deserved." Monitor's Fifteenth Report, November 5, 2002, at 56. In response to Allied's motion, the Government acknowledged that Allied had taken "significant steps in establishing a compliance program and otherwise attempting to inculcate a culture of good corporate citizenship," and further observed that there was an "apparent absence of the types of criminal activity that warranted the imposition of the Monitorship." Letter from AUSA Stanley J. Okula, Jr., to the Court, November 25, 2002, at 2. The Court granted Allied's motion, with certain limited exceptions, and stated in an Order dated December 12, 2002, that Allied has "taken the proper steps to bring itself into substantial compliance with the requirements of the monitorship," which include compliance with all applicable federal, state and local laws and with a very detailed Corporate Compliance Plan

Metro Enviro has substantially improved the management of the Facility since many of the incidents of concern to the Village occurred. In that regard, Allied has hired, among other personnel, a new and highly experienced Transfer Station General Manager, whose responsibilities include supervising the overall operations of Metro Enviro; a new Safety and Compliance Manager, whose responsibilities include ensuring that Metro Enviro complies with all permits, and safety and environmental laws and regulations; a new and highly qualified District Manager, whose responsibilities include supervising the overall operations of Metro

Enviro; and a new District Safety Manager, whose responsibilities include ensuring that Metro Enviro complies with all applicable safety laws and regulations. Those individuals are supported by the Northeast Region personnel, including the Northeast Region Engineer, who has oversight responsibility for Metro Enviro's compliance with applicable permits and environmental laws and regulations, and the Northeast Region Safety Manager, who has oversight responsibility for ensuring that Metro Enviro complies with applicable safety laws and regulations. Those individuals are, in turn, supported by corporate personnel, who are responsible for ensuring that Allied's nationwide operations are conducted in compliance with all applicable laws and regulations.

Many of the issues of concern to the Board relate to conduct by supervisory personnel employed by the prior owners of the Westchester companies that Allied purchased in 1999 and 2000. With the exception of two relatively low-level supervisory employees, all of the supervisory personnel previously employed by the prior owners have been replaced. None of the supervisory personnel who previously operated or supervised the operations of Metro Enviro continues to work at Metro Enviro. The General Manager who was responsible for the management of Metro Enviro is no longer employed by Allied.<sup>3</sup> The supervisory employee who was responsible for the day-to-day operations of the Transfer Station when industrial waste was accepted by the Facility is no longer employed at Metro Enviro. The supervisory employee who was largely responsible for the exceedances is no longer employed by Allied. The remaining employees have been and will continue to be trained to ensure that Metro Enviro is run in compliance with the Permit and all other applicable law.

### III. Conclusion

In light of the foregoing, the Village has no reasonable or defensible basis for refusing to grant Metro Enviro's application for renewal of its Permit or to order Metro Enviro to cease accepting waste at the Facility. Given that there is no evidence whatsoever -- let alone substantial empirical evidence -- that Metro Enviro's actions described in the Statement or otherwise have had any adverse impact on the health, safety and welfare of the Village residents, the environment or the surrounding community, the Village has no legal justification for denying Metro Enviro the renewal of its Permit and mandating closure of the Facility. Any such action would clearly be arbitrary and capricious, and in violation of applicable federal and state law. Such action would also constitute a bad faith denial of Metro Enviro's investment-backed expectations solely in response to generalized -- albeit persistent -- community opposition.

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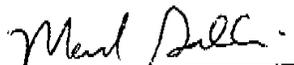
<sup>3</sup> He was not, however, terminated for cause.

On behalf of Metro Enviro, I want to stress, once again, that Metro Enviro is committed to being a lawful and productive member of the Croton-on-Hudson business community and a good and reliable neighbor.

January 15, 2003

Respectfully submitted,

Metro Enviro Transfer LLC



By: Mark Saleski  
Its: Vice President

BTDS215 BTDS215

Allied Waste Industries  
 DAILY DISPOSAL REPORT

Company 274  
 DETAIL

Disposal Account Contract Revenue Dist. Industrial Dist Source  
 22169 ENGELHARD CORPORATION

1/01/01 to 5/31/02  
 A to 9999  
 A to 9999

02 = 90 c/y  
 compacted Bdx

Ticket #	Route	Date	Sq	Truck	Acct	Site	Op	Name	Volume	Mt/Yd	Weight or Quantity	UoM	CYA	Disposal Cost/Rev	F Adj	Customer
						Leq	Leq							Y/c Value		Chg/Cred
002625A	5602	02/02	3	615229	22169	00001	01	ENGELHARD COR	4.70000	TN	C		238.50			
002733A	1602	02/05	3	691086	22169	00001	01	ENGELHARD COR	4.50000	TN	C		252.45			
002883A	3602	02/07	3	691086	22169	00001	01	ENGELHARD COR	8.50000	TN	C		464.75			
2917A	4602	02/08	5	691086	22169	00001	02	ENGELHARD COR	4.31000	TN	C		347.05			
003092B	2602	02/13	2	691086	22169	00001	02	ENGELHARD COR	7.02000	TN	C		386.10			
003184A	3602	02/14	5	691086	22169	00001	02	ENGELHARD COR	5.21000	TN	C		284.55			
003223A	4602	02/15	3	691086	22169	00001	02	ENGELHARD COR	4.62000	TN	C		281.10			
003359A	2602	02/20	2	691086	22169	00001	02	ENGELHARD COR	9.45000	TN	C		519.75			
003493A	3602	02/21	3	691086	22169	00001	02	ENGELHARD COR	3.98000	TN	C		218.04			
003628A	5602	02/23	2	615229	22169	00001	02	ENGELHARD COR	9.35000	TN	C		311.25			
003754A	1602	02/26	4	615229	22169	00001	02	ENGELHARD COR	5.09000	TN	C		277.95			
003818A	2602	02/27	4	615229	22169	00001	02	ENGELHARD COR	331.10	TN	C		131.10			
003994A	4602	03/01	5	615229	22169	00001	02	ENGELHARD COR	499.95	TN	C		499.95			
004113A	1602	03/05	4	615229	22169	00001	02	ENGELHARD COR	9.09000	TN	C		289.90			
004267A	4601	03/08	6	615229	22169	00001	02	ENGELHARD COR	2.58000	TN	C		141.90			
004267A	4601	03/08	6	615229	22169	00001	02	ENGELHARD COR	147.40	TN	C		147.40			
004267A	4601	03/08	6	615229	22169	00001	02	ENGELHARD COR	4.28000	TN	C		259.40			
004267A	4601	03/12	7	615229	22169	00001	02	ENGELHARD COR	8.30000	TN	C		454.50			
004399A	1602	03/12	1	615229	22169	00001	02	ENGELHARD COR	8.26000	TN	C		454.50			
004741A	3602	03/14	4	615229	22169	00001	02	ENGELHARD COR	6.32000	TN	C		336.40			
004741A	1602	03/19	1	615229	22169	00001	02	ENGELHARD COR	4.57000	TN	C		251.35			
004837A	1602	03/19	1	615229	22169	00001	02	ENGELHARD COR	6.08000	TN	C		334.40			
007789A	2606	03/01	8	615229	22169	00001	02	ENGELHARD COR	1.87000	TN	C		102.85			
002900A	5602	01/02	5	615229	22169	00001	02	ENGELHARD COR	132.80000	TN	C		7304.00			

TOTALS 20 Roll Off 23 855.00 0.155 132.80000 C 7304.00

TOTALS ME 01 METRO ENVIRO/DEN 23 855.00 0.155 132.80000 C 7304.00

TOTALS ME METRO ENVIRO 23 855.00 0.155 132.80000 C 7304.00

18  
 LOADS  
 TO  
 METRO



5. The waste Allied handled for Engelhard was non-hazardous industrial waste and other non-hazardous solid waste. These wastes may have included film and equipment used in the manufacturing process. All of that material was non-hazardous, solid and stable.

I hereby state under the penalty of perjury  
that the foregoing is true and correct.

Scott W. Clavett

Sworn to before me this  
10th day of January 2003

Patricia K. Gonter

Notary Public

**PATRICIA K. GONTER**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Jan. 9, 2007