



## AlaFile E-Notice

21-CV-2011-900033.00

Judge: HON. BURT SMITHART

To: MITCHELL NEAH LYN  
nmitchell@balch.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF CONECUH COUNTY, ALABAMA

TOWN OF REPTON, ALABAMA ET AL V. CONECUH COUNTY COMMISSION ET AL  
21-CV-2011-900033.00

The following matter was FILED on 4/5/2013 4:08:13 PM

**C002 TERRI CARTER MAYOR OF REPTON**

**C001 TOWN OF REPTON, ALABAMA**

MOTION TO COMPEL

[Filer: MCCORKLE WALTER JOSEPH JR]

Notice Date: 4/5/2013 4:08:13 PM

DAVID JACKSON  
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 CIRCUIT COURT OF  
 CONECUH COUNTY, ALABAMA  
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**STATE OF ALABAMA**

Unified Judicial System

Revised 3/5/08

Case

21-CONECUH

District Court  Circuit Court

CV20

TOWN OF REPTON, ALABAMA ET AL V.  
 CONECUH COUNTY COMMISSION ET AL

**CIVIL MOTION COVER SHEET**

Name of Filing Party: C001 - TOWN OF REPTON, ALABAMA  
 C002 - TERRI CARTER MAYOR OF REPTON

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

Oral Arguments Requested

WALTER JOSEPH MCCORKLE JR.

POST OFFICE BOX 78  
 MONTGOMERY, AL 36101

Attorney Bar No.: MCC056

**TYPE OF MOTION**

**Motions Requiring Fee**

**Motions Not Requiring Fee**

- Default Judgment (\$50.00)  
 Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Judgment on the Pleadings (\$50.00)
- Motion to Dismiss, or in the Alternative Summary Judgment(\$50.00)  
 Renewed Dispositive Motion(Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- Summary Judgment pursuant to Rule 56(\$50.00)
- Motion to Intervene (\$297.00)
- Other \_\_\_\_\_  
 pursuant to Rule \_\_\_\_\_ (\$50.00)

- Add Party
- Amend
- Change of Venue/Transfer
- Compel
- Consolidation
- Continue
- Deposition
- Designate a Mediator
- Judgment as a Matter of Law (during Trial)
- Disburse Funds
- Extension of Time
- In Limine
- Joinder
- More Definite Statement
- Motion to Dismiss pursuant to Rule 12(b)
- New Trial
- Objection of Exemptions Claimed
- Pendente Lite
- Plaintiff's Motion to Dismiss
- Preliminary Injunction
- Protective Order
- Quash
- Release from Stay of Execution
- Sanctions
- Sever
- Special Practice in Alabama
- Stay
- Strike
- Supplement to Pending Motion
- Vacate or Modify
- Withdraw
- Other \_\_\_\_\_  
 pursuant to Rule \_\_\_\_\_ (Subject to Filing Fee)

\*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

Local Court Costs \$ \_\_\_\_\_

Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees)

Date:  
 4/5/2013 4:02:03 PM

Signature of Attorney or Party:  
 /s/ WALTER JOSEPH MCCORKLE JR.

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.  
 \*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



**IN THE CIRCUIT COURT OF CONECUH COUNTY, ALABAMA**

**TOWN OF REPTON, ALABAMA and  
TERRI CARTER, MAYOR OF REPTON,** )

**Plaintiffs,** )

**v.** )

**CONECUH COUNTY COMMISSION and  
CONECUH WOODS LLC,** )

**Defendants.** )

**CIVIL ACTION NO.:**

**CV-2011-900033.00**

**PLAINTIFFS' MOTION TO COMPEL**

Plaintiffs Town of Repton, Alabama (“Repton”) and Terri Carter (“Mayor Carter”) (together “plaintiffs”) move the Court, pursuant to Rule 37(a) of the *Alabama Rules of Civil Procedure*, for an order compelling defendant Conecuh Woods LLC (“Conecuh Woods”) to identify each person and entity holding an interest in Conecuh Woods and to produce any documents evidencing such interest.

1. On March 7, 2012, plaintiffs served Second Interrogatories and Requests for Production to defendant Conecuh Woods. A true and correct copy of these requests is attached hereto as Attachment A. In these requests, plaintiffs requested that Conecuh Woods “[i]dentify each person and entity that has, or has had, any kind of interest, including but not limited to, ownership, membership, share, partnership, optionee, or security interest, in Conecuh Woods, LLC from its inception to present, and produce any documents evidencing such interests.” Attachment A, ¶ 1.

2. On April 13, 2012, Conecuh Woods served its objections and responses to plaintiffs’ Second Interrogatories and Requests for Production. A true and correct copy of these responses and objections is attached hereto as Attachment B. Conecuh Woods objected to

plaintiffs' request to identify each person and entity holding an interest in Conecuh Woods on the grounds that the request "seeks the disclosure of proprietary business information, trade secrets, or other confidential information" and "seeks information that is irrelevant and is unlikely to lead to the discovery of admissible evidence." Ex. B, ¶ 1.

3. In a subsequent deposition, Donald W. Stone, Jr., the manager and a member of the defendant Conecuh Woods, declined to answer questions asking him to identify other members of the LLC. Stone Dep. 11:3-5; 11:13-12:10; 19:9-21:2. A true and correct copy of deposition questions and Stone's responses in this regard are included in Attachment C, excerpts from the deposition of Stone.

4. The plaintiffs are entitled to the information requested. It is both relevant and reasonably calculated to lead to the discovery of admissible evidence in this case. The plaintiffs contend, among other things, that the Conecuh County Commission's approval of Conecuh Woods' application for a solid waste landfill in Conecuh County (the "Application")<sup>1</sup> was arbitrary and capricious, because the proposed landfill did not comply with the requirements of the Conecuh County Solid Waste Management Plan 2004 Update (the "Plan"), or *Ala. Code* § 22-27-48. The plaintiffs contend further that the Host Fee Agreement (the "Agreement")<sup>2</sup> into which the Conecuh County Commission purportedly entered following approval of Conecuh Woods' Application is null and void, because, among other things, it was not publicized before the Commission's approval of the Application and there was no vote authorizing the Commission to enter into the Agreement.

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<sup>1</sup> A true and correct copy of the Application is Attachment D hereto.

<sup>2</sup> A true and correct copy of the Agreement is plaintiffs' Exhibit 18 in discovery and is Attachment E hereto.

5. In the Application and in the Agreement, Conecuh Woods made a number of promises to the County Commission in order to induce it to approve the Application. Conecuh Woods agreed, at its sole expense, to:

- Permit, develop, construct, and operate the proposed landfill. Application (Attachment D) § 1.1.2; Agreement (Attachment E) p. 1-2; § 3.03; Art. VII.
- Acquire the site.<sup>3</sup>
- Provide labor, material, equipment, and services necessary for the development, construction and operation of the facility. Agreement (Attachment E) Art. VII.
- Provide all post-closure care and monitoring. Agreement (Attachment E) Art. IV.
- Perform all required investigation and remediation required under applicable laws. Agreement (Attachment E) Art. IV.
- Indemnify the County from environmental and other liabilities. Agreement (Attachment E) §§ 5.01, 5.02.
- Regularly patrol Alabama Highway 41 for litter and use commercially reasonable efforts to maintain it in a clean, vector-free and sanitary condition. Agreement (Attachment E) § 9.01(d).
- Inspect Alabama Highway 41 and collect and dispose of litter therefrom on a weekly basis. *Id.*
- Pay \$1,250,000 to the County in five equal installments of \$250,000 once the landfill is opened. Agreement (Attachment E) § 12.01.
- Pay the County \$1.25 per ton for acceptable waste, with an escalator. Agreement (Attachment E) § 12.02.
- Provide a performance and security bond of \$1,000,000. Agreement (Attachment E) § 13.02.
- Provide site screening. Application (Attachment D) §§ 1.2.6., 2.1.1.1, 4.6.6.

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<sup>3</sup> Conecuh Woods does not own the real property on which the proposed landfill would be sited. Stone Dep. (Attachment C) 49:4-51:9. An affiliate of John Hancock Life Insurance Company owns it, and Conecuh Woods has an option to purchase it for a sum that has not been disclosed to the Commission or the plaintiffs. *Id.*

- Grade, compact, and deposit waste, manage traffic flow, place daily cover, manage storm water, manage leachate, and construct access roads. Application (Attachment D) § 1.2.8.1.
- Set aside 500 acres for borrow for daily and final cover. Application (Attachment D) 3.2.4.
- Construct disposal cells with a composite protective bottom lining system. Application (Attachment D) § 1.2.8.2.
- Manage leachate by pumping it from disposal cells to leachate storage tanks and then transfer it to tanker trucks and take it off-site for treatment and disposal. Application (Attachment D) § 1.2.10.
- Manage stormwater by engineering and constructing a system to keep the stormwater from contact with waste or leachate by diverting the stormwater to on-site retention/treatment ponds and then releasing it back into existing surface water systems at a controlled rate. Application (Attachment D) § 1.2.11.
- Control landfill gas and associated odors by constructing a network of vertical extraction wells, installing horizontal collection trenches, and installing a vacuum pump station that exerts a vacuum on the pipeline, extraction wells, and trench network in order to draw landfill gas from the interior of the cells into the pipeline system to be flared. Application §§ (Attachment D) 1.2.12, 4.6.18.
- Conduct ongoing monitoring of groundwater and subsurface combustible gas. Application (Attachment D) §§ 1.2.13.1, 1.2.13.2.
- Provide upgrades to the facility entrance on Highway 41, including dedicated acceleration and deceleration lanes. Application (Attachment D) § 1.2.7.3.
- Erect a security fence around the disposal facility. Application § 2.1.1.1.
- Construct buildings for equipment maintenance and repair. Application (Attachment D) § 4.6.16.
- Create a transfer area specifically designed for unloading waste. Application (Attachment D) § 4.6.19.2.
- Maintain an on-site weather station to monitor wind direction, precipitation, humidity, and temperature. Application (Attachment D) § 4.6.18.3.
- Provide ventilation equipment that collects air in the unloading areas and exhausts the air through filters to prevent odors. Application (Attachment D) § 4.16.9.2.
- Maintain a tire washing operation to reduce the potential for trucks to carry mud from the facility. Application (Attachment D) § 4.6.17.

6. The Plan requires that the site chosen for a proposed landfill be able to satisfy budget constraints, including site development and long-term operation. Application (Attachment D) §§ 3.1; 3.2.11.1. The clear import of this provision is that the applicant for a proposed landfill must have the experience and financial wherewithal to develop, build, and operate the landfill<sup>4</sup> in accordance with the application and any host fee agreement. The only information provided by Conecuh Woods to the County Commission and the plaintiffs, limited information regarding Stone's background, suggests that Conecuh Woods may not be qualified, experientially and financially, to meet its obligations as set forth in the Application and the Agreement. Stone acknowledges that he has never developed, constructed, or operated a landfill, and that he has no experience in the solid waste management industry, other than with the Conecuh Woods project. Stone Dep. (Attachment C) 10:14-11:2. He further acknowledges that he was president and shareholder of the Timmons Corporation, a real estate investment and development corporation against which the United States Environmental Protection Agency obtained a judgment for environmental law violations that allegedly occurred at the time that he was president and a shareholder.<sup>5</sup> Stone Dep. (Attachment C) 182:20-185:2. Stone testified that he rents a home in Conecuh County, where he resides approximately one week a month, and that he does not own or rent another residence, but stays with friends or travels the rest of the time. Stone Dep. (Attachment C) 121:15-124:9.

7. The plaintiffs are entitled to know who, besides Stone, has an ownership interest in Conecuh Woods. Such information is clearly relevant to whether Conecuh Woods has the

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<sup>4</sup> The Plan and *Ala. Code* § 22-27-8, enacted in 2005, after the Plan was updated, also require that an applicant establish and maintain financial assurance for proper closure, post-closure care, or corrective action.

<sup>5</sup> On information and belief, Stone resigned as president of the Timmons Corporation and transferred his shares to his father before the EPA filed suit and obtained its judgment.

ability to perform its promises in the Application and the Agreement to the citizens of Conecuh County, so that the Court can evaluate the bona fides of the undertakings described therein.

8. In addition, although Stone has testified that neither he nor Conecuh Woods made any political contribution to any member of the Commission, one or more members of Conecuh Woods may have, and the plaintiffs should be allowed to inquire about that. Without names of the members, the plaintiffs cannot obtain such information.

9. Conecuh Woods contends that information regarding its members is proprietary and confidential. The plaintiffs disagree. Such information is not a “trade secret or confidential research, development, or commercial information” that falls within *Ala. R. Civ. P.* 26(c)(7). Conecuh Woods has presented no evidence of any agreement with any members of Conecuh Woods that their identities would be kept confidential. The names of the members of Conecuh Woods should have been provided to the County Commission as part of the Commission’s evaluation of whether Conecuh Woods could meet its obligations to the County. But even if the names of Conecuh Woods’ members were confidential, the parties have submitted a proposed protective order that would protect the information from use for any purpose other than the prosecution of this litigation, which should satisfy any need of Conecuh Woods to keep the information confidential.

10. Before filing this motion, counsel for the plaintiffs has endeavored to resolve the subject matter of the motion with counsel for Conecuh Woods.

WHEREFORE, the premises considered, the plaintiffs request the Court to enter an order requiring Conecuh Woods, within ten (10) days, to respond fully to the interrogatories, requests for production, and deposition questions inquiring as to the identities of members of Conecuh Woods. The plaintiffs do not believe that such information is confidential, and therefore should



not be subject to the proposed protective order submitted to the Court, but if the Court believes otherwise, the plaintiffs request that the Court's order make clear that the information provided should be confidential pursuant to the proposed protective order submitted by the parties (but not yet entered by the Court).

/s/ W. Joseph McCorkle, Jr.  
One of the Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the AlaFile system and service will be perfected upon any AlaFile participant(s) electronically and/or I have served a copy of the foregoing by United States Mail, postage prepaid, and properly addressed to any non-AlaFile participant(s) on this the 5<sup>th</sup> day of April, 2013.

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*/s/W. Joseph McCorkle, Jr.*  
Of Counsel

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# ATTACHMENT A



time after compliance with this request Defendant, or any of its agents, servants, employees, or legal representatives, should acquire possession, custody, or control of any information or additional documents within the scope of the interrogatory or request for production, you are requested to promptly supplement your prior responses and/or furnish such documents and/or ESI to counsel for Plaintiffs in this action.

If any information is withheld under the claim of privilege, please identify the information by date, author, recipient, and subject matter, and state the basis of the privilege claim, in a formal privilege log.

Where only a portion of the document requested relates to or refers to the subject indicated, the entire document, along with all attachments, appendices, and/or exhibits, must nevertheless be produced.

#### **Definitions**

1. As used herein, the term **Application** shall mean Conecuh Woods LLC's Application for Approval of Proposed Conecuh Woods Solid Waste Management Facility, Conecuh County, Alabama, that was submitted to the Conecuh County Commission on January 21, 2011, and approved by the Commission on April 18, 2011.

2. As used herein, the term **Commission** shall mean the Conecuh County Commission, its commissioners, agents, assigns, employees, attorney(s) (their agents and employees), accountant(s) (their agents and employees), investigator(s) (their agents and employees), professional associations, consultants, engineers (including, but not limited to, Engineer Services Associates, Inc., and including, but not limited to, Dale Story and Celeste Lachenmyer) and anyone else acting, or purporting to act, on the Commission's behalf.

3. As used herein, the term **Communication** shall have its plain meaning in the ordinary English usage and is intended to include, but not be limited to, any contact, correspondence or exchange of information between the identified parties and the employees or agents thereof by way of telephone, e-mail, letter, memorandum, face to face communication, or otherwise.

4. As used herein, the term **Complaint** shall mean the Complaint filed by Plaintiffs Town of Repton, Alabama and Terri Carter, Mayor of Repton as against the Conecuh County Commission and Conecuh Woods LLC on April 20, 2011.

5. As used herein, the term **Correspondence** shall mean all letters, e-mails, facsimiles, notes, phone messages, notes regarding oral communications, audiotapes, videotapes, written or recorded presentations, advertising, promotional literature, brochures, and any other document relating to communication.

6. As used herein, **Date** shall mean the exact day, month, and year if ascertainable, or, if not, the best available approximation (including the relationship to other events).

7. As used herein, the term **Document(s)** shall mean anything contemplated by Rule 34(a) of the *Alabama Rules of Civil Procedure*, and includes all media by which information or data may be stored or obtained, including, without limitation, books, pamphlets, letters, correspondence, telegrams, reports, memoranda, records, studies, extracts, notes, calendars, working papers, charts, papers, indices, tapes, data sheets or cards, minutes, transcriptions, computer disks, diskettes, e-mail, other electronic media, and any other written, printed, reported, transcribed, punched, taped or typed materials, movies or other photographic matter, however produced or reproduced, and all mechanical or electronic sound recordings or transcripts thereof, in your possession, custody or control.

8. As used herein, the term **ESI** shall mean “electronically stored information” as that term is used, understood, and interpreted under Alabama law and the *Alabama Rules of Civil Procedure*.

9. As used herein, **Identify** or **Specify**, when used in reference to: (a) a person who is an individual, shall mean you are to provide her or his full name, present or last known residential address, job title, employment address, and business and residential telephone numbers; (b) an entity which is a firm, partnership, corporation, proprietorship, association, limited liability company, governmental entity or other organization or entity, shall mean you are to provide the full name and present or last known address and telephone number, the legal form of such entity or organization, and the identity of its chief executive officer(s); and (c) a **Document** shall mean to state the date thereof and to identify the writer or originator of the Document, and persons to whom it was sent, the subject matter dealt with, the present location thereof (including, to the extent known, the street address, floor, room, a post office drawer or box, or other container and file name and description), and the name(s) of the custodian(s) thereof and for each custodian named to give his or her or its address and telephone number.

10. As used herein, the term **Host Agreement** shall mean the agreement titled “Municipal Solid Waste Landfill Development and Host Fee Agreement” between the Conecuh County Commission and Conecuh Woods LLC which was executed by the Commission and Conecuh Woods on or about April 18, 2011.

11. As used herein, the term **Landfill** shall mean any type of waste disposal unit, including, but not limited to, municipal solid waste landfills, construction/demolition landfills, industrial landfills, and hazardous waste landfills.



12. As used herein, the term **Person** shall mean, in addition to its plain meaning, a natural person, firm, association, organization, partnership, limited liability company, business, trust, corporation, or public entity.

13. As used herein, the term **Proposed Landfill** shall mean the proposed Conecuh Woods landfill (i.e., the subject of the Application defined herein).

14. As used herein, the term **Relate(s), Related, or Relating**, as to any given subject matter means any document that constitutes, pertains to, or in any way directly or indirectly bears upon or deals with that subject, including, without limitation, documents concerning the preparation of documents.

15. As used herein, the term **Site** shall mean the proposed area for the Conecuh Woods landfill, which includes 5,075 acres approximately one mile south of the Town of Repton.

16. As used herein, the term **You, Your, Conecuh Woods or Defendant** shall mean Defendant Conecuh Woods LLC, its shareholders, officers, directors, members, managers, agents, assigns, employees, insurance companies (their agents and employees), attorney(s) (their agents and employees), consultants, engineers (including, but not limited to, SCS Engineers), accountant(s) (their agents and employees), investigator(s) (their agents and employees), professional associations, and anyone else acting, or purporting to act, on Defendant's behalf, including, but not limited to, Donald W. Stone, Jr., Algert Agricola, Raymond J. Dever, Paul Hamrick, Rachel Dickinson, and Phillip Kinney.

17. All other words herein shall have their meaning in the ordinary English usage.

INTERROGATORIES AND REQUEST FOR PRODUCTION

1. Identify each person and entity that has, or has had, any kind of interest, including but not limited to, ownership, membership, share, partnership, optionee, or security interest, in Conecuh Woods, LLC from its inception to present, and produce any documents evidencing such interest.

**RESPONSE:**

2. For each lawsuit in which (a) Conecuh Woods, LLC, (b) any person or entity identified in response to interrogatory 1 above, or (c) any entity (excluding publicly traded companies) of which any person or entity identified in response to interrogatory 1 above is an owner, member, shareholder, partner, optionee, or secured creditor, is or has been within the previous ten years, a defendant and in which allegations regarding environmental concerns or issues have been made,

- (a) Identify the parties and state the jurisdiction, court, case number, and disposition of the case;
- (b) Identify each person or entity having possession of records related to the case; and
- (c) Produce a copy of the complaint and final order or judgment.

**RESPONSE:**

Done this the 7<sup>th</sup> day of March, 2012.



\_\_\_\_\_  
One of the Attorneys for Plaintiffs

**OF COUNSEL:**

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CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of March, 2012, I have served a copy of the foregoing by placing same in the United States Mail, postage prepaid, and properly addressed to the following:

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Escambia Soil and Water Conservation  
District*

A handwritten signature in cursive script, appearing to read "M. S. Smith", positioned above a horizontal line.

Of Counsel



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CIRCUIT COURT OF  
CONECUH COUNTY, ALABAMA  
DAVID JACKSON, CLERK

# ATTACHMENT B

IN THE CIRCUIT COURT OF CONECHUW COUNTY, ALABAMA

TOWN OF REPTON, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 vs. ) No. CV-2011-900033  
 )  
 CONECHUW COUNTY )  
 COMMISSION, *et al.*, )  
 )  
 Defendants. )

**DEFENDANT, CONECHUW WOODS LLC'S RESPONSE  
TO PLAINTIFFS' SECOND INTERROGATORIES AND REQUESTS FOR  
PRODUCTION TO DEFENDANT CONECHUW WOODS LLC**

Defendant Conecuh Woods LLC (hereinafter "Conecuh Woods" or "Defendant"), hereby supplements its response to Plaintiffs' Second Interrogatories and Request for Production to Defendant Conecuh Woods LLC ("the Requests"), stating as follows:

**GENERAL OBJECTIONS**

1. Conecuh Woods objects to the Requests to the extent they seek to require Conecuh Woods to comply with requirements outside the scope of or contrary to the *Alabama Rules of Civil Procedure*.

2. Conecuh Woods objects to the Requests to the extent they seek the disclosure of information or documents that are protected by the attorney-client privilege, that constitute attorney work product, or that are otherwise privileged or protected from disclosure.

3. Conecuh Woods objects to the Requests to the extent they seek the disclosure of proprietary business information, trade secrets, or other confidential information.

4. Conecuh Woods objects to the Requests to the extent they seek information or documents not relevant to the subject matter of this action or not reasonably calculated to lead to the discovery of admissible evidence.

5. Conecuh Woods objects to the Requests to the extent they are vague, ambiguous, overly broad and/or unduly burdensome, not appropriately limited geographically, by subject matter, or by time, and to the extent they seek information concerning private financial affairs.

6. Conecuh Woods objects to the Requests to the extent they seek information in the public domain that is as readily available to the Plaintiffs as to Defendant.

7. Conecuh Woods objects to the Requests to the extent they define the terms “You, Your, Conecuh Woods, or Defendant” to include its attorneys, individual members, independent consultants, and wholly separate contracting entities. As a result of this definition, the Requests seek the disclosure of information or documents protected by the attorney-client privilege, that constitute attorney work product, or that are otherwise privileged or protected from disclosure. Also as a result of this definition, the Requests seek information that is outside the possession and control of Conecuh Woods and that is not reasonably accessible to Conecuh Woods. Conecuh Woods has no duty to search out new information, and is required only to produce information available to it. *See, e.g., Ex parte Dorsey Trailers, Inc.*, 397 So. 2d 98, 104 (Ala. 1981).



8. Conecuh Woods objects to the Requests to the extent they seek ESI that is not reasonably accessible to Conecuh Woods, that constitutes information protected by the attorney-client privilege, that constitutes attorney work product, that is otherwise privileged or protected from disclosure, that is outside the possession and control of Conecuh Woods, that is not reasonably accessible by Conecuh Woods, or that constitutes proprietary business information, trade secrets, or other confidential information.

9. The inadvertent production of any privileged information by Conecuh Woods shall not constitute a waiver of any privilege with respect to such information. Conecuh Woods reserves the right to recall any such inadvertently produced documents.

10. These general objections are made without waiver of any specific objections Conecuh Woods may make herein or in the future. Identifying or producing any document or supplying any information shall not constitute an admission that the document or information is relevant to the subject matter of this action or otherwise admissible.

11. These general objections are intended to apply to each and every one of the Plaintiffs' Requests.

12. Conecuh Woods's objections are based on information now available to it and Conecuh Woods reserves the right to amend, modify, or supplement its objections and/or responses if it obtains additional responsive information during the course of investigation or discovery. Additionally, because of the ongoing nature of the interrogatories and requests

for production, Conecuh Woods reserves the right to supplement its responses periodically as new responsive documents are created.

13. Conecuh Woods plans to seek a protective order preserving the confidentiality of some of the information requested by the Plaintiffs. Information to be made subject to that protective order will not be produced or disclosed until such time as a protective order is in place.

Conecuh Woods offers to work with the Plaintiffs to resolve the objections listed herein and encourages Plaintiffs' counsel to contact the undersigned if they insist upon responses to the objectionable discovery Requests so that any appropriate narrowing can be negotiated or appropriate restrictions reached. Additionally, documents will be produced at a mutually convenient time and place. Subject to these general objections, Conecuh Woods responds as follows:

#### **INTERROGATORIES AND REQUEST FOR PRODUCTION**

1. Identify each person and entity that has, or has had, any kind of interest, including but not limited to, ownership, membership, share, partnership, optionee, or security interest, in Conecuh Woods, LLC from its inception to present, and produce any documents evidencing such interest.

**RESPONSE:** Conecuh Woods objects to this Request because it seeks the disclosure of proprietary business information, trade secrets, or other confidential

**information. Conecuh Woods also objects to this Request because it seeks information that is irrelevant and is unlikely to lead to the discovery of admissible evidence.**

2. For each lawsuit in which (a) Conecuh Woods LLC, (b) any person or entity identified in response to interrogatory 1 above, or (c) any entity (excluding publicly traded companies) of which any person or entity identified in response to interrogatory 1 above is an owner, member, shareholder, partner, optionee, or secured creditor, is or has been within the previous ten years, a defendant and in which allegations regarding environmental concerns or issues have been made,

(a) Identify the parties and state the jurisdiction, court, case number, and disposition of the case;

(b) Identify each person or entity having possession of records related to the case; and

(c) Produce a copy of the complaint and final order or judgment.

**RESPONSE: Conecuh Woods objects to this Request because it seeks information that is irrelevant and is unlikely to lead to the discovery of admissible evidence. Conecuh Woods also objects to this Request because the term “environmental concerns or issues” is vague and overly broad and because the term “related to” in sub-part (b) is overly broad. Conecuh Woods also objects to this Request to the extent that it seeks information that is out of the possession or control**

of Conecuh Woods. Without waiving these objections, Conecuh Woods states that, in addition to this action, it has been a defendant in the following actions:

(1) *Town of Repton v. Conecuh County Commission*, CV-2011-900016 (Conecuh Circuit Court, filed February 28, 2011).

(2) *Citizens for a Clean Southwest Alabama v. Conecuh County Commission*, CV-2011-900039 (Conecuh Circuit Court, filed May 25, 2011).

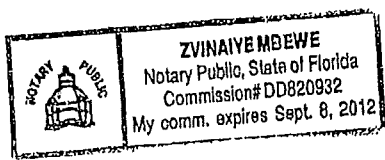
Upon belief, Conecuh Woods need not provide additional information regarding these actions as the Plaintiffs are already in possession of or already have access to the remainder of the information requested in sub-parts (a) to (c).

AS TO ANSWERS:

Donald W Stone Jr  
Donald W. Stone, Jr.  
Managing Member  
Conecuh Woods, LLC

SWORN TO AND SUBSCRIBED before me this 13<sup>th</sup> day of April, 2012.

Blberve  
Notary Public



My commission expires Sept 8 2012

AS TO OBJECTIONS:

S. McPherson  
Susan E. McPherson (MCP014)  
Counsel for Conecuh Woods, LLC

OF COUNSEL:

WALLACE JORDAN RATLIFF &  
BRANDT, LLC  
Post Office Box 530910  
Birmingham, AL 35233-0910  
Telephone: (205) 874-0379  
Facsimile: (205) 874-3279  
Email: smcpherson@wallacejordan.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy via electronic filing or by placing a copy of the same in the United States Mail, postage prepaid, to the following on this the 13th day of April, 2012:

James L. Noles Jr.  
Mary F. Samuels  
Balch & Bingham LLP  
1901 Sixth Avenue North, Suite 1500  
Birmingham, Alabama 35203

Charles B. Paterson  
W. Joseph McCorkle Jr.  
Neah L. Mitchell  
Balch & Bingham LLP  
105 Tallapoosa Street, Suite 200  
Montgomery, Alabama 36104

Greg L. Albritton  
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Evergreen, Alabama 36401

Richard D.C. Nix  
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Evergreen, Alabama 36401-0167

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OF COUNSEL



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CONECUH COUNTY, ALABAMA  
DAVID JACKSON, CLERK

# ATTACHMENT C



Page 1

1           IN THE CIRCUIT COURT OF  
2           CONECUH COUNTY, ALABAMA

3           TOWN OF REPTON, ALABAMA and  
4           TERRI CARTER, individually and  
          as MAYOR OF REPTON,  
          Plaintiffs,

5           versus                   CV-2011-900033

6           CONECUH COUNTY, CONECUH COUNTY  
7           COMMISSION, CONECUH WOODS, LLC,  
8           and ALABAMA-TOMBIGBEE REGIONAL  
          COMMISSION,  
          Defendants.

9           \*\*\*\*\*

10          CITIZENS FOR A CLEAN SOUTHWEST  
11          ALABAMA, et al.,  
          Plaintiffs,

12          versus                   CV-2011-900039

13          CONECUH COUNTY COMMISSION,  
14          Defendant.

15          \*\*\*\*\*

16          DEPOSITION OF DONALD W. STONE, JR.,  
17          taken pursuant to stipulation and agreement  
18          before Jackie Parham, Certified Court  
19          Reporter and Commissioner for the State of  
20          Alabama at Large, in the law offices of Balch  
21          & Bingham, 105 Tallapoosa Street, Suite 200,  
22          Montgomery, Alabama, on Wednesday, the 6th  
23          day of June, 2012, commencing at approxi-  
          mately 9:20 a.m.

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1           APPEARING ON BEHALF OF CONECUH COUNTY, CONECUH  
          COUNTY COMMISSION:

2           CRAIG S. DILLARD, ESQUIRE  
3           Webb & Eley  
4           7475 Halcyon Pointe Drive  
          Montgomery, Alabama 36104

5           RICHARD D. NIX, ESQUIRE  
6           Nix & Nix  
7           112 Court Square  
          Evergreen, Alabama 36401

8           ALSO PRESENT:

9           Jerold Dean  
10          Wendell Byrd

11          APPEARING ON BEHALF OF CONECUH WOODS, LLC:

12          ALBERT S. AGRICOLA, ESQUIRE  
13          Ryals, Plummer, Donaldson,  
14          Agricola & Smith  
15          60 Commerce Street, Suite 1400  
          Montgomery, Alabama 36104

16          ALBERT L. JORDAN, ESQUIRE  
17          Wallace, Jordan, Ratliff & Brandt  
18          First Commercial Bank Building  
19          800 Shades Creek Parkway, Suite 400  
          Birmingham, Alabama 35209

20          APPEARING ON BEHALF OF THE CITY OF ATMORE,  
21          ALABAMA, CITY OF BREWTON, ALABAMA, AND THE  
22          TOWN OF FLOMATON, ALABAMA:

23          EDWARD T. HINES, ESQUIRE  
          Thompson, Garrett & Hines  
          218 Belleville Avenue  
          Brewton, Alabama 36426

Page 2

1           APPEARANCES

2

3           APPEARING ON BEHALF OF THE TOWN OF REPTON,  
4           TERRI CARTER, MAYOR OF REPTON:

5           CHARLES B. PATERSON, ESQUIRE  
6           Balch & Bingham  
          1901 Sixth Avenue North, Suite 1500  
          Birmingham, Alabama 35203

7           W. JOSEPH MCCORKLE, JR., ESQUIRE  
8           NEAH L. MITCHELL, ESQUIRE  
9           Balch & Bingham  
10          105 Tallapoosa Street, Suite 200  
          Montgomery, Alabama 36104

11          ALSO PRESENT:

12          Terri Carter

13

14          APPEARING ON BEHALF OF THE CITIZENS FOR A  
15          CLEAN SOUTHWEST ALABAMA:

16          DAVID A. LUDDER, ESQUIRE  
17          Attorney at Law  
18          9150 McDougal Court  
          Tallahassee, Florida 32312

19          ALSO PRESENT:

20          Don Smith  
21          Dr. George Jervey  
          June Shervezza

22

23

Page 4

1           STIPULATION

2           It is hereby stipulated and agreed by

3           and between counsel representing the parties

4           that the deposition of

5           DONALD W. STONE, JR.

6           is taken pursuant to the Alabama Rules of

7           Civil Procedure, and that said deposition may

8           be taken before Jackie Parham, Certified

9           Court Reporter and Commissioner for the State

10          of Alabama at Large, without the formality of

11          a commission; that objections to questions

12          other than objections as to the form of the

13          question need not be made at this time but

14          may be reserved for a ruling at such time as

15          the said deposition may be offered in

16          evidence or used for any other purpose, by

17          either party, as provided for by the Statute.

18          It is further stipulated and agreed by

19          and between counsel representing the parties

20          in this case that the filing of said

21          deposition is hereby waived, and that said

22          deposition may be introduced at the trial of

23          this case or used in any other manner by

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1 12 years ago.  
 2 Q. That's the most recent deposition you've  
 3 given in any case?  
 4 A. Correct.  
 5 Q. Okay. Was it in state or federal court?  
 6 A. State.  
 7 Q. What state?  
 8 A. New York.  
 9 Q. Do you remember the style of the case, the  
 10 names of the litigants?  
 11 A. I don't recall exactly.  
 12 Q. Okay. Do you recall giving any other  
 13 depositions?  
 14 A. No.  
 15 Q. What is your educational level?  
 16 A. I graduated from Keene High School in  
 17 Keene, New Hampshire. And then graduated  
 18 from Dartmouth College in Hanover, New  
 19 Hampshire.  
 20 Q. When did you graduate from Dartmouth?  
 21 A. 1985.  
 22 Q. And what was your degree in?  
 23 A. Economics.

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1 Q. Do you have any post undergraduate  
 2 education?  
 3 A. No.  
 4 Q. What is your occupation?  
 5 A. Real estate investor/developer.  
 6 Q. And how long have you been doing that?  
 7 A. Since 1985.  
 8 Q. So that's been your primary occupation  
 9 during your working life?  
 10 A. Correct.  
 11 Q. Has most of that activity gone on in New  
 12 Hampshire?  
 13 A. New England and New York.  
 14 Q. Okay. Do you have any experience in the  
 15 solid waste industry?  
 16 A. Other than with the Conecuh Woods project,  
 17 no.  
 18 Q. So you've never been involved in the  
 19 hauling or transportation of solid waste  
 20 or the landfill -- the landfill associated  
 21 with solid waste?  
 22 A. Correct.  
 23 Q. Never have?

Page 11

1 A. Correct, other than outside the Conecuh  
 2 Woods project.  
 3 Q. And what is your current relationship with  
 4 Conecuh Woods?  
 5 A. I'm a member and the manager.  
 6 Q. So am I right in understanding that  
 7 Conecuh Woods, LLC is an Alabama limited  
 8 liability company?  
 9 A. Yes.  
 10 Q. And are you the sole member?  
 11 A. No.  
 12 Q. Are there other members?  
 13 A. Yes.  
 14 Q. Current members?  
 15 A. Yes.  
 16 Q. Can you tell me who they are?  
 17 MR. AGRICOLA: Objection. We're  
 18 going to assert the privacy  
 19 interest in those identities and  
 20 instruct him not to answer. We  
 21 have a pending motion for a  
 22 protective order that has not yet  
 23 been ruled on by the Court in

Page 12

1 which we seek the protection of  
 2 the confidentiality of that  
 3 information. And until that  
 4 order is entered and enforced, we  
 5 will not respond to that  
 6 question.  
 7 MR. PATERSON: So based on that  
 8 representation, you're  
 9 instructing him not to answer  
 10 that question?  
 11 MR. AGRICOLA: That's correct.  
 12 Q. I'll ask you another question of that  
 13 nature, to help him out, where he can just  
 14 say same objection.  
 15 MR. PATERSON: Where you won't have  
 16 to recite that every time, if  
 17 that's fine?  
 18 MR. AGRICOLA: That's fine.  
 19 Q. Does Conecuh Woods, LLC have any  
 20 employees?  
 21 A. No.  
 22 Q. So it's got members. Can you tell me how  
 23 many members there are?

Page 17

1 questions about the substance of  
 2 those documents unless and until  
 3 a protective order is entered.  
 4 Q. So to be clear, Mr. Stone, there are, in  
 5 fact, documents that are covered by this  
 6 notice that are in existence, but they're  
 7 just not produced here today; is that  
 8 correct?  
 9 A. Correct.  
 10 Q. Okay.  
 11 MR. AGRICOLA: Did you receive our  
 12 objections to the subpoena?  
 13 MR. PATERSON: We've received  
 14 everything that's been filed.  
 15 MR. AGRICOLA: Well, it's not filed  
 16 because he's not a party. It was  
 17 served on him pursuant to Rule  
 18 45.  
 19 MR. MCCORKLE: We received it  
 20 yesterday.  
 21 MR. AGRICOLA: Thank you. That's  
 22 all I needed.  
 23 MR. PATERSON: I was busy

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1 yesterday. I didn't look to see  
 2 if I received anything.  
 3 MR. AGRICOLA: I was, too.  
 4 Q. Are you familiar with a company by the  
 5 name of Desoto Woods, LLC?  
 6 A. Yes.  
 7 Q. What is Desoto Woods, LLC?  
 8 A. I believe that was an LLC that was formed  
 9 to look at a similar project in Florida.  
 10 Q. What kind of project?  
 11 A. Construction and demolition landfill.  
 12 Q. A C and D landfill?  
 13 A. Correct.  
 14 Q. Was Desoto Woods a Florida LLC?  
 15 A. I believe so.  
 16 Q. And was Desoto Woods, LLC successful in  
 17 establishing a C and D landfill?  
 18 A. No.  
 19 Q. Is Desoto Woods, LLC still active?  
 20 A. No.  
 21 (Plaintiffs' Exhibit 25 marked)  
 22 Q. I'm going to show you what's been marked  
 23 as Plaintiffs' Exhibit Number 25 and ask

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1 you to please take a look at that. And  
 2 I'll represent to you that 25 is a series  
 3 of records obtained from the Secretary of  
 4 State's office in Alabama. And I just  
 5 want you to confirm some things if you  
 6 would for me.  
 7 Exhibit 25 shows that Conecuh Woods  
 8 was formed on May 30th, 2006. Are you the  
 9 person that had this corporation formed --  
 10 this LLC formed?  
 11 A. Yes.  
 12 Q. Okay. And did you use Mr. Agricola's firm  
 13 to form that for you?  
 14 A. I believe that we used the firm of Hare &  
 15 Hare in Monroeville, Alabama.  
 16 Q. I'm sorry. Who did you say?  
 17 A. I believe we used the firm Hare & Hare in  
 18 Monroeville, Alabama to form the LLC.  
 19 Q. Are the current members of the LLC that I  
 20 previously asked you about, are they the  
 21 same members as when you formed it?  
 22 A. No.  
 23 Q. Have you added members since the formation

Page 20

1 of the LLC?  
 2 A. Yes.  
 3 Q. How was the LLC originally capitalized  
 4 when it was formed?  
 5 A. By contributions from the original  
 6 members.  
 7 Q. And can you tell me who the original  
 8 members were?  
 9 MR. AGRICOLA: I'm going to object  
 10 and assert the same objection.  
 11 Q. Now, you were an original member, correct?  
 12 A. Yes.  
 13 Q. And were you the majority member?  
 14 A. Yes.  
 15 Q. Do you remain the majority member?  
 16 MR. AGRICOLA: I'm going to object.  
 17 Same objection.  
 18 MR. PATERSON: You're not going to  
 19 let him answer whether he's the  
 20 majority holder of the interests  
 21 in that LLC?  
 22 MR. AGRICOLA: No.  
 23 MR. PATERSON: You're instructing

Page 21

1 him not to answer?

2 MR. AGRICOLA: Yes.

3 Q. Now, the Secretary of State's records show

4 that Nick Hare, Jr. was originally the

5 registered agent and then in the spring of

6 '11 Mr. Agricola became the registered

7 agent. Why did you make this change in

8 your registered agent for the LLC?

9 A. Because Chip Hare had not been actively

10 involved for years in representing the

11 LLC; Mr. Agricola was. And it was much

12 more efficient for any notices that were

13 delivered to the company to be delivered

14 directly to Mr. Agricola rather than

15 having to go through Chip Hare.

16 Q. Okay. Is Chip Hare one of the members of

17 the LLC?

18 A. No.

19 Q. Is Mr. Agricola one of the members of the

20 LLC?

21 A. No.

22 Q. Is Mike Fordham one of the members of the

23 LLC?

Page 22

1 MR. AGRICOLA: We're going to object

2 and instruct the witness not to

3 answer.

4 Q. Has Les Prouty -- I know he's deceased.

5 Has Les Prouty ever been a member of the

6 LLC?

7 A. No.

8 Q. Is the company by the name of Tenax,

9 T-E-N-A-X, involved in any way in the LLC?

10 A. No.

11 Q. Does the LLC have any business dealings

12 with Tenax?

13 A. No.

14 Q. Now, does Conecuh Woods, LLC ever file

15 federal and state tax returns?

16 A. Yes.

17 Q. Where do they file those federal and state

18 tax returns?

19 A. With the Internal Revenue Service.

20 Q. In Atlanta?

21 A. I don't know.

22 Q. Do you file the state return in

23 Montgomery?

Page 23

1 A. Correct.

2 Q. Who files those returns?

3 A. Our accountants.

4 Q. Tell me who that is.

5 A. Wilson, Price. And they just recently

6 merged. Whoever they merged with.

7 Q. Is there an individual accountant at

8 Wilson, Price that you use?

9 A. Bill Barranco.

10 Q. Okay. And you rely on Bill Barranco and

11 his accounting firm to file whatever tax

12 returns are needed for Conecuh Woods, LLC?

13 A. Correct.

14 Q. Has Conecuh Woods, LLC filed state and

15 federal returns since it was formed in

16 '06?

17 A. Yes.

18 Q. Where are things like the minute book and

19 the official records of Conecuh Woods, LLC

20 kept?

21 A. The records of the company are kept with

22 me in Evergreen.

23 Q. And I'm talking about specifically the

Page 24

1 minute book of the LLC. You got a minute

2 book, thing like a notebook with the

3 organizational minutes and things like

4 that in it?

5 A. No.

6 Q. You don't have anything like that?

7 A. I don't have an organized minute book.

8 Q. Do you have the original Certificate of

9 Incorporation or charter of the LLC?

10 MR. JORDAN: Object to the form.

11 A. I'm not sure I understand the question.

12 Q. Are any of the papers related to the

13 formation of the LLC and the tax returns

14 filed by the LLC kept by you?

15 A. Yes.

16 Q. At your address in Conecuh County?

17 A. Yes.

18 Q. Okay. Has Conecuh Woods, LLC for tax

19 purposes shown a profit in any year since

20 its formation?

21 A. No.

22 Q. Is Conecuh Woods qualified to do

23 business in states -- When I say Conecuh

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1 Q. So there have been no operating profits of  
 2 the company, correct?  
 3 A. Correct.  
 4 Q. Now, does Conecuh Woods own the land that  
 5 is the proposed site of the landfill or  
 6 does it simply have an option on that  
 7 land?  
 8 A. Conecuh Woods has an option on the  
 9 property.  
 10 Q. And approximately how many acres?  
 11 A. 5,115 acres.  
 12 Q. 5,115 acres. And is all of that  
 13 acreage -- is all that acreage owned by  
 14 one individual or one company?  
 15 A. Yes.  
 16 Q. Who owns that?  
 17 A. John Hancock Life Insurance or an  
 18 affiliate thereof.  
 19 Q. Okay. And is there an option agreement  
 20 between Conecuh Woods, LLC and John  
 21 Hancock?  
 22 A. Yes.  
 23 Q. And you understand when I say John

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1 Hancock, I'm talking about or an  
 2 affiliate?  
 3 A. Sure.  
 4 Q. There's a written option agreement?  
 5 A. Correct.  
 6 Q. Has the written option agreement been  
 7 produced as a part of the production? Do  
 8 you know?  
 9 A. I believe that the memorandums of option  
 10 that were filed with the registry --  
 11 Q. Probate office?  
 12 A. -- the probate office in Conecuh County  
 13 have been produced.  
 14 Q. Has the option agreement itself been  
 15 produced?  
 16 A. No.  
 17 Q. Is that a document that you have in your  
 18 possession?  
 19 A. It's in the possession of counsel.  
 20 Q. You turned it over to your counsel?  
 21 A. Correct.  
 22 (Off-the-Record discussion)  
 23 Q. Now, I know the option is probably many

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1 pages, and I know you don't have it  
 2 memorized. But tell me generally the  
 3 terms of the option.  
 4 A. The terms of the option are to pay amounts  
 5 annually to extend the option to a certain  
 6 period of time.  
 7 Q. And when is the next option payment due?  
 8 Just give me the month if you can.  
 9 A. July 2012.  
 10 Q. And approximately how much is due at that  
 11 time on the option?  
 12 MR. AGRICOLA: We're going to object  
 13 and assert the same objection  
 14 that I asserted earlier. Those  
 15 documents will be produced at the  
 16 point in time when a protective  
 17 order is entered. And, plus,  
 18 they're confidential documents.  
 19 Q. You can't tell me how much the option  
 20 payments are? I mean, do you know how  
 21 much the option payments are?  
 22 A. I do.  
 23 Q. Okay. You know.

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1 MR. PATERSON: But you're just  
 2 instructing him not to answer  
 3 that question?  
 4 MR. AGRICOLA: We believe that's  
 5 confidential information that we  
 6 will produce at the time a  
 7 protective order has been  
 8 entered.  
 9 MR. PATERSON: But for now are you  
 10 instructing him not to answer?  
 11 MR. AGRICOLA: Yes.  
 12 MR. PATERSON: Okay.  
 13 (Plaintiffs' Exhibit 29 marked)  
 14 Q. Let me show you what's been marked as  
 15 Exhibit Number 29. Is this the memorandum  
 16 related to the option that you previously  
 17 referenced that's recorded in the probate  
 18 office of Conecuh County?  
 19 A. This looks like the original Declaration  
 20 and Memorandum of Option to Purchase that  
 21 was recorded in the probate office in  
 22 Conecuh County on July 27, 2006.  
 23 Q. So the company was formed in May 2006, and

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1 Q. Where?  
 2 A. Either at my house or my office. I  
 3 believe Al forwarded it by e-mail to me.  
 4 Q. Do you have a separate office in  
 5 Evergreen?  
 6 A. I do.  
 7 Q. What's your office address in Evergreen?  
 8 A. McIntyre Street.  
 9 Q. Does it have a street address?  
 10 A. Might be 3 McIntyre Street or something  
 11 like that. It's a suite in a building  
 12 there.  
 13 Q. And is that a Conecuh Woods office?  
 14 A. Yes.  
 15 Q. So you have a residence there, a home?  
 16 A. Correct.  
 17 Q. And when's the last time you spent the  
 18 night in that home?  
 19 A. Sunday night.  
 20 Q. Approximately over the last 6 months how  
 21 many nights a week did you stay in that  
 22 home?  
 23 A. Over the last 6 months?

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1 Q. Yes, sir.  
 2 A. Maybe a week a month, a week every two  
 3 months. I haven't been there too much  
 4 over the past 6 months.  
 5 Q. Where do you normally live?  
 6 A. If I'm not in Evergreen, I guess I  
 7 probably would be in New Hampshire, New  
 8 York or Florida or traveling.  
 9 Q. Do you have a residence in Florida?  
 10 A. No. I'd be either traveling or staying  
 11 with family and friends at those  
 12 locations.  
 13 Q. Are you married?  
 14 A. No, I'm not.  
 15 Q. I think you said you vote in New  
 16 Hampshire, correct?  
 17 A. Correct.  
 18 Q. Where do you consider home? Where do you  
 19 go on the weekends?  
 20 A. Depends where I am.  
 21 Q. Where is your home? Where is your primary  
 22 residence?  
 23 A. I don't know that I have a primary

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1 residence. I consider myself a New  
 2 Hampshire resident, and I guess I'd  
 3 consider my primary residence address and  
 4 I get my mail in Evergreen, Alabama.  
 5 Q. So all of your mail, business and  
 6 personal, comes to Evergreen, Alabama?  
 7 A. Correct.  
 8 Q. When you're not spending the night in  
 9 Evergreen, where do you typically spend  
 10 the night?  
 11 A. Either, if I'm not traveling, New  
 12 Hampshire, New York, Florida or traveling.  
 13 Q. Do you own an apartment or rent an  
 14 apartment in New Hampshire or New York or  
 15 Florida?  
 16 A. Not currently.  
 17 Q. When's the last time you had an apartment  
 18 anywhere, a place to stay, a bed of your  
 19 own, anywhere other than Conecuh County?  
 20 A. Probably 2007.  
 21 Q. And I'm not playing games with you.  
 22 A. Oh, I understand.  
 23 Q. I'm trying to figure out where you live.

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1 A. Right.  
 2 Q. It's real simple.  
 3 A. I do a lot of traveling.  
 4 Q. You stay on the road a lot?  
 5 A. I do.  
 6 Q. But other than the residence in Evergreen,  
 7 you currently do not own or are renting  
 8 any residence; is that right?  
 9 A. That's correct.  
 10 Q. Where did you spend Memorial Day weekend?  
 11 A. Miami, Florida.  
 12 Q. In a hotel?  
 13 A. No.  
 14 Q. Stayed with friends and family?  
 15 A. Correct.  
 16 Q. Let's get back to 35. When Mr. Agricola  
 17 presented you with Exhibit Number 35 on  
 18 the night of the 13th of April in 2011 in  
 19 Conecuh County, in Evergreen, did you  
 20 proceed to discuss that draft with  
 21 Mr. Agricola?  
 22 A. Yes, I did.  
 23 Q. Did you proceed to tell him what portions

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1 viable off 15 tons a day of volume?  
 2 A. I don't think there's a Subtitle D  
 3 landfill that would be financially viable  
 4 based on 15 tons per day of operating  
 5 costs.  
 6 Q. So you're relying on the flow of waste  
 7 from outside of Conecuh County to be  
 8 financially successful?  
 9 A. Correct.  
 10 Q. Now, I think you said that you personally  
 11 have no past history of developing and  
 12 operating landfills. And you said Conecuh  
 13 Woods has no employees?  
 14 A. Correct.  
 15 Q. Is there any consultant -- and I'm using  
 16 these terms broadly -- any kind of  
 17 consultant or independent contractor or  
 18 anybody else affiliated with Conecuh Woods  
 19 that has experience operating landfills?  
 20 A. Yes.  
 21 Q. Who is that?  
 22 A. Jim McNaughton.  
 23 Q. Who is Jim McNaughton?

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1 A. Didn't we go over that earlier?  
 2 Q. Refresh my memory. Where is he from?  
 3 A. I believe Jim McNaughton currently resides  
 4 in Brentwood, Tennessee.  
 5 Q. And what is Jim McNaughton doing for  
 6 Conecuh Woods currently?  
 7 A. He's been a consultant to the project.  
 8 Q. In what form?  
 9 A. Business consultant to the project.  
 10 Q. Is he still serving in that capacity?  
 11 A. Yes.  
 12 Q. And if the thing is permitted, do you  
 13 envision him having a role in the  
 14 operation of it?  
 15 A. Possibly.  
 16 Q. Do you envision yourself having a role in  
 17 the day-to-day operations of the landfill  
 18 if it's successful?  
 19 A. Not the day-to-day operations, no.  
 20 Q. Now, have you ever been affiliated with a  
 21 company named Timmons Corporation,  
 22 T-I-M-M-O-N-S?  
 23 A. Yes.

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1 Q. What was your relationship with that?  
 2 A. I was president of Timmons and an owner  
 3 from approximately 1985 maybe through  
 4 2001.  
 5 Q. And what was the business of the Timmons  
 6 Corporation?  
 7 A. Real estate investment and development.  
 8 Q. Was that your primary occupation during  
 9 that period of time, running the Timmons  
 10 Corporation?  
 11 A. Yes.  
 12 Q. Is this Timmons Corporation the same  
 13 corporation that was sued by the United  
 14 States Environmental Protection Agency for  
 15 environmental law violations?  
 16 A. It is the same corporation that was sued  
 17 by the USEPA, yes.  
 18 Q. And were you president of the corporation  
 19 and owning it at that time?  
 20 A. At the time of the initial litigation, I  
 21 believe that I was, yes.  
 22 Q. And is it true that the United States  
 23 Government got a judgment against Timmons

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1 and somebody named Stone, Sr. in 2006 for  
 2 violation of the environmental laws?  
 3 A. I believe that to be correct. But I was  
 4 no longer affiliated with the company at  
 5 that time. So I don't --  
 6 Q. Who is Stone, Sr.? Is your father or  
 7 something -- Is there a Donald W. Stone,  
 8 Sr.?  
 9 A. Yes.  
 10 Q. Was he involved with Timmons?  
 11 A. Yes.  
 12 Q. Was the judgment against Timmons and your  
 13 father individually?  
 14 A. Yes.  
 15 Q. Were you working there at the time of the  
 16 judgment?  
 17 A. No.  
 18 Q. When did you come on board?  
 19 A. 1985.  
 20 Q. Had you left by the time of the judgment?  
 21 A. Yes.  
 22 Q. Were you there at the Timmons Corporation  
 23 at the time the alleged violations

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1 occurred?

2 A. Yes.

3 Q. What was your role in that court case?

4 A. I was not a named party.

5 Q. Did you testify in it?

6 A. No.

7 Q. Did you give a deposition in it?

8 A. No.

9 Q. That's not the case that we talked about

10 earlier? I asked if you had given a prior

11 deposition; it's not that?

12 A. No.

13 Q. Did you have any role in the defense of

14 the Timmons Corporation in the case

15 brought by the U.S. Government?

16 A. Other than as a company officer -- during

17 the period of time in which I was a

18 company officer and the litigation was

19 pending, no.

20 (Plaintiffs' Exhibit 21 marked)

21 Q. I'm going to show you what's been marked

22 as Exhibit 21. I'm going to hand you

23 what's been marked as Plaintiffs' Exhibit

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1 21. Here's a second part of it right

2 here. There are two parts to 21. If you

3 want to staple them together or clip them

4 together, we can do that.

5 A. I don't know that I need to.

6 Q. Take a look if you would at the United

7 States District Court case that's attached

8 there that was part of Exhibit Number 21.

9 Is that the -- is that the legal case of

10 United States of America versus Timmons

11 Corporation and Donald W. Stone, Sr. that

12 we've been talking about?

13 A. Yes.

14 Q. What has been the result of that case?

15 The government got a judgment against your

16 former corporation and your father.

17 What's been the result of that?

18 A. I don't know.

19 Q. In the other part of this exhibit that's

20 sitting there in front of you, it's Bates

21 stamped. Look at the other thing there.

22 A. Okay.

23 Q. It's Bates stamped. And if you look on

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1 the bottom right-hand corner, I think we

2 can see -- it's toward the back. If

3 you'll look at Bates stamped pages 00213.

4 I can't really read the Bates stamp. It

5 got cut off on this. Let me just show you

6 what I'm talking about.

7 MR. PATERSON: You mind if I

8 approach him?

9 MR. AGRICOLA: (Shakes head in a

10 negative response).

11 Q. Take a look at that page I put in front of

12 you. This is -- apparently, this is some

13 document it looks -- says received by the

14 Secretary of State of the State of New

15 York and it has regarding the Timmons

16 Corporation. And I don't really know what

17 it is. But it shows in the upper right-

18 hand corner that there's a lady named

19 Wendy E. Stone that's the director.

20 A. Correct.

21 Q. Is that a relative of yours?

22 A. Yes.

23 Q. Who is that?

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1 A. My sister.

2 Q. And it shows she lives on Stearns Road in

3 Keene, New Hampshire.

4 A. That's what it shows.

5 Q. Is that where you're registered to vote,

6 in Keene, New Hampshire?

7 A. In New Hampshire?

8 Q. Yes.

9 A. Yes.

10 Q. And it also shows as a director Donald W.

11 Stone, Jr. at Stearns Road in Keene, New

12 Hampshire.

13 A. Correct.

14 Q. Did you live at the same residence as

15 Wendy Stone at the time?

16 A. Yes.

17 Q. And it also shows a director Norma

18 J. Stone. Who is that?

19 A. My mother.

20 Q. And it shows the officers, the president

21 as Wendy E. Stone and the treasurer as

22 Donald W. Stone, Jr. That's you,

23 correct?