

## **AGREEMENT**

This Community Environmental Monitoring Committee Agreement made the 7<sup>th</sup> day of December, 1999.

### **BETWEEN:**

**THE FUNDY REGION SOLID WASTE COMMISSION**, a regional solid waste commission established pursuant to the provisions of the Clean Environment Act (New Brunswick) (hereinafter called the "Commission")

- and -

**THE FUNDY FUTURE ENVIRONMENT AND BENEFITS COUNCIL**, a council of citizens established by direction of the Minister of the Environment (New Brunswick) (hereinafter called "the FFEBC")

**WHEREAS** as a condition for the approval of the environmental impact assessment for the construction of a sanitary landfill at Crane Mountain by the Commission, the Minister of the Environment (New Brunswick) (the "Minister") required that a community environmental monitoring committee be established in accordance with membership, terms of reference and mandate to be determined in consultation with the Department of the Environment [the "Department"] and the Department would have the authority to review the results of the monitoring programs and make appropriate recommendations to such committee;

**AND WHEREAS** an additional condition imposed by the Minister with respect to such approval was that the Commission encourage public access to, development of amenities and enjoyment of, portions of the landfill site not dedicated to waste disposal and management and to fund these amenities from a dedicated portion of the tipping fee and to otherwise develop and maintain amenities for this purpose;

**AND WHEREAS** the FFEBC was organized by its original chairman, Mr. Glenn Carpenter, in consultation with the Commission and the Department, to be the required community environmental monitoring committee and has independently established, through by-laws and otherwise, its membership, mandate and terms of reference in satisfaction of the Minister's condition;

**AND WHEREAS** the Commission has provided for certain assistance to the FFEBC since its organization;

**AND WHEREAS** the parties wish to enter into this Agreement in order to provide additional detail with respect to the mandate and terms of reference of the FFEBC and, generally, its relationship with the Commission.

**NOW THEREFORE** this Agreement witnesses that for and in consideration of the mutual covenants herein set out, and other good and valuable consideration the parties hereto agree as follows:

**1. Definitions**

- 1.01 "Applicable Law" means any law, by-law, rule, regulation, judgment or order of any federal, provincial or municipal court or other governmental body having jurisdiction, applicable to the design, approval, construction, equipping, financing, ownership, possession, testing, acceptance, operation or maintenance of the Facilities or Site, the closing of disposal cells or the care or maintenance thereof after closure.
- 1.02 "Facilities" means the solid waste disposal cells, leachate treatment and other waste disposal and management facilities located at the Site.
- 1.03 "FFEBC" means the Fundy Future Environment and Benefits Council, a community based council established under the direction of the Minister to monitor the Operations or such successor body or bodies established by direction of the Minister for that purpose.
- 1.04 "Host Community" means that area surrounding the Site designated by the FFEBC as the community most directly affected by the siting and Operation of the Facilities, provided that FFEBC may determine that different portions of the host community are affected differently from others by the Facilities and create policies which recognize such reasonable distinctions among the affected communities.
- 1.05 "Host Community Enhancement Fund" is the amount allocated and spent by the Commission from time to time to satisfy the Minister's condition for public access and community benefits in relation to the establishment of the Site.
- 1.06 "Minister" means the Minister of Environment (New Brunswick) or his or her designated representative.
- 1.07 "Operations" or "Operation", and variations thereof, when used in relation to the Facilities, refers to the operations of the Facilities at the Site including any solid waste disposal, waste management, closure, post-closure care and remediation activities related to the Facilities.
- 1.08 "Site" means the lands at Crane Mountain, New Brunswick on which the Facilities are constructed.
- 1.09 "Solid Waste" includes refuse, garbage, rubbish and all other solid spent materials from any source accepted for disposal or management at the Site in accordance with the Certificate of Approval to Operate issued by the Minister and any other government authority in accordance with Applicable Law.

## **2. Operations at the Site**

2.01 The Commission will cause the Facilities to be developed and operated at the Site and will Operate the Facilities and dispose of and manage Solid Waste in accordance with all Applicable Law.

2.02 the FFEBC shall monitor the Operation of Facilities at the Site and otherwise fulfil the responsibilities conferred on it by the Minister or under this Agreement in a manner consistent with this Agreement.

## **3. FFEBC Organization and Reporting**

3.01 the FFEBC agrees not to establish or amend its by-laws, policies, practices or its organizational or administrative documents in such a way as to conflict with the provisions of this Agreement or to render FFEBC incapable of meeting its obligations under this Agreement

3.02 the FFEBC agrees to provide to the Minister a report or reports of its business and affairs, at such times and in such form, as he or she may from time to time reasonably request, with a copy to the Commission. Without limiting the generality of the foregoing, FFEBC agrees to provide an annual report of its activities and accounting of its financial affairs to the Minister.

## **4. FFEBC Mandate and Terms of Reference**

4.01 the FFEBC shall use reasonable efforts in order to:

- (a) monitor the Operation of the Facilities;
- (b) ensure that its members are regularly and fully informed concerning the Operation of the Facilities ;
- (c) receive information and representation from residents of the Host Community concerning any matter relating to the Operation of the Facilities;
- (d) report to the residents of the Host Community information concerning the Operation of the Facilities;
- (e) report to the Minister and other authorities having jurisdiction relevant views of residents of the Host Community;
- (f) advise the Commission and other authorities having jurisdiction the views and comments of the FFEBC, and of residents of the Host Community, concerning the operation of any element of the Commission's solid waste management system where the operation of such element or elements has a direct impact on the Operation of the Facilities;

- (g) comment or make representations to such body or authority, as the FFEBC may think fit, concerning any matter falling within the mandate of the FFEBC as set out in this Agreement;
- (h) conduct from time to time needs and benefits analyses (further to that conducted in 1998) to assist the Commission in the appropriate allocation of the Host Community Enhancement Fund;
- (i) based on needs and benefits analyses, make recommendations to the Commission in the allocation of funds intended to satisfy conditions imposed by the Minister for public access or community benefits;
- (j) establish the boundaries of the Host Community in consultation with the Minister and the Department and, to the extent necessary, may establish good faith policies which recognize reasonable distinctions among the various communities which are affected differently by the Operations and the Site; and
- (k) fulfil such other responsibilities as may be conferred by the Minister or by agreement between the Commission and FFEBC;

provided that the failure to do so shall not, as a result of this Agreement, expose the FFEBC or its members to any criminal or civil cause of action or claim whatsoever.

## **5. Access to Facilities and Relevant Information**

6.01 The Commission shall ensure, for and during the period that the Facilities are in Operation, that:

- (a) the FFEBC receives full and complete reports concerning the Operation of the Facilities, in such form and at such times, as may be reasonably required by the FFEBC;
- (b) the FFEBC has the right, through its Chair or other representative designated by the FFEBC, to access to the Facilities, provided that:
  - (i) if outside normal business hours, reasonable notice is provided to the Commission of the intention to visit the Facilities;
  - (ii) such access shall be made available and any such visitation shall be conducted during normal business hours (if possible) and in a manner which does not otherwise interfere with the Operation of the Facilities; and
  - (iii) all visitors to the Facilities shall be required to comply with all safety and other reasonable rules and regulations applicable to persons present on the Site;

- (c) the FFEBC has, through its Chair or other representative designated by the FFEBC, reasonable access to such information as is from time to time in the possession of the Commission concerning the Operation of the Facilities, including, without limitation, the results of monitoring program tests conducted by the Commission relating thereto; and
- (d) the FFEBC has access to information in the possession of the Commission concerning the operation of any aspect of the Commission's integrated solid waste management program which has a direct impact on the Operation of the Facilities.

5.02 Where the FFEBC is not reasonably satisfied, based on information available to it under Article 5.01, that the FFEBC is accurately informed concerning a matter relating to the Operation of the Facilities, the FFEBC shall have access to the Facilities, on reasonable notice to the Commission, to enable to be conducted in accordance with this Article such test or tests as are necessary to provide the FFEBC with the information which it requires. All such tests shall be conducted subject to the following conditions:

- (a) the cost of such tests shall be borne by the FFEBC; and
- (b) all such tests shall be performed in the presence of a Commission representative and under the supervision of a qualified professional engineer, and at such times and in such manner so as not to interfere with the normal operational routine for the facility to which the test relates.

5.03 Nothing in Articles 5.01 or 5.02 shall entitle the FFEBC to participate in meetings, receive reports or other information relating to financial matters, personnel matters, matters which are the subject of legal advice or matters proprietary to an operator or contractor on the Site, and all such reports or information are excluded from the scope of Article 5.01 except to the extent that they are otherwise accessible to the FFEBC under law.

5.04 The Commission shall ensure that the provisions of Article 5.01 are, to the extent required, supported by appropriate provisions in relevant agreements between the Commission and an operator or contractor on the Site.

## **6. Contribution to FFEBC Operating Costs**

6.01 Although FFEBC was created at the direction of, and reports to, the Minister, it is recognized by the Commission that the effectiveness of the FFEBC in fulfilling its functions under this Agreement depends in part on the allocation of financial and other resources to defray reasonable expenses of the FFEBC.

6.02 Subject to the limitation and adjustments described below, the Commission shall include and transfer annually to the FFEBC, as part of its budget for solid waste management, the sum of Twenty Thousand Dollars (\$20,000.00) (adjusted for inflation as described below) which sum shall be appropriated and expended for the

purposes of meeting those expenses of the FFEBC incurred during each fiscal year. In the event that it does not expend its funds allocated by the Commission in any given year such that its annual financial statements indicate cash or near cash assets in excess of Sixty Thousand Dollars (\$60,000.00), (adjusted for inflation as described below), the annual payment for the upcoming year shall be reduced by the amount shown in excess of Sixty Thousand Dollars (\$60,000.00) (as adjusted). The Commission recognizes the desire of the FFEBC to make scholarship funds available on an annual basis in pursuit of its educational purposes and objectives. In the event that the foregoing limitation on the accumulation of funds is, by mutual agreement, regarded as unfairly limiting this objectives of the FFEBC, the parties agree to discuss an amendment to this Agreement which will permit accumulation for that purpose. The annual contribution by the Commission to FFEBC shall be adjusted annually by one-half of the annual increase for the previous year in the "All Items" Consumer Price Index or a comparable successor index published by the Government of Canada from time to time. Subject to the foregoing, this amount (as adjusted in following years in accordance with this Agreement) shall be transferred unconditionally to the FFEBC for their independent use in carrying out their mandate and terms of reference described in this Agreement FFEBC shall be responsible to account to the Minister with respect to its prudent use of funds transferred hereunder in order to ensure its financial and operational independence from the Commission. The annual payment for an upcoming year shall be made following the delivery to the Commission of the accountant's report of the FFEBC for the previous year.

6.03

The FFEBC shall be responsible for all of its own expenses including (without limitation) the following categories of expenses;

- (a) occupancy costs, including space, office equipment and supplies, telephone, etc. (provided, however, that the Commission has agreed to make office space available at its administrative building to the FFEBC at no cost to the extent reasonably possible);
- (b) part-time administrative and clerical support;
- (c) postage;
- (d) advertising (including printing of public notices and materials for community distribution);
- (e) expenses relating to the holding of public meetings;
- (f) accounting fees and other professional fees for services and advice on matters within the mandate of the FFEBC under this Agreement, including engineering and other technical matters related to the operation of the Facilities;
- (g) the promotion of public education on environmental matters (such as environmental protection, recycling and stewardship) by groups and

individuals within the Host Community including, without limitation, opportunities for continuing educational enhancement by individuals: and

- (h) miscellaneous expenses, including reimbursement of out of pocket expenses incurred by members of the FFEBC and other expenses required to be incurred to enable the FFEBC to fulfill its responsibilities under this Agreement

## **7. Term and Termination**

7.01 This Agreement shall be effective as of the date of its execution and, subject to this Agreement, shall remain in effect for such time as the Facilities are Operated at the Site.

7.02 With the consent of the Minister, this Agreement may be terminated effective upon notice in writing given by either party to the other in the event of any default on the part of the other in the performance of its obligations under this Agreement if, after ninety (90) days' notice in writing of the default, the defaulting party has failed to cure the default.

## **8. Host Community Enhancement Fund**

8.01 The Commission agrees to allocate monies during each year Solid Waste is received at the Site for expenditure as a host community enhancement fund. This fund shall be used to satisfy conditions imposed upon the Commission by the Minister for public access, development of amenities and enjoyment thereof and other community purposes. The annual amount allocated shall be Seventy-Five Thousand Dollars (being approximately One Dollar (\$1.00) per tonne of Solid Waste which is typically directly disposed of or managed by the Commission) a portion of which must be dedicated to expenditures on Site and a portion of which may be expended off Site as may be determined by a consideration of the needs and benefits analyses conducted by the FFEBC. The Commission will annually allocate that amount (adjusted for inflation in the same manner as its contribution to the expenses of the FFEBC) for expenditure as the Host Community Enhancement Fund.

8.02 The Commission will review and consider recommendations from the FFEBC for the allocation of the Host Community Enhancement Fund and will work co-operatively with the FFEBC to determine the best use of such funds on and off-Site. FFEBC acknowledges that monies may be required by the Commission from such fund from year to year to satisfy the cost of operating and maintaining capital projects which have been approved from the Fund in previous years provided that such costs shall, to the extent reasonably possible, be brought to the attention of the FFEBC at the time the project is originally considered for approval.

8.03 FFEBC agrees to institute and administer a fair process for the receipt and evaluation of applications by community groups for funds to be spent off-Site in any given year and to work co-operatively with the Commission's staff to consider

the best use of funds to be spent on-Site in any year. Recommendations from the FFEBC shall be based on the needs and benefit analyses conducted by it in accordance with its mandate.

**9. Miscellaneous**

9.01 This Agreement shall bind and enure to the benefit of the parties hereto, their successors and permitted assigns.

9.02 Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party, which may be withheld in the discretion of the other party.

9.03 This Agreement shall be effective from the date of establishment of the FFEBC in 1997. All actions taken by the Commission and the FFEBC, their officers, members, staff, consultants, participating municipalities and commissioners in fulfilment of the Minister's conditions and the mandate and terms of reference described herein from the effective date to the date hereof are hereby ratified, confirmed and approved.

**10. Disputes**

10.01 The parties shall use best efforts to work through and resolve any and all disputes which may arise with respect to the interpretation or application of this Agreement from time to time. In the event the parties are unable to resolve any such dispute within forty-five days (45) from receipt of a notice from the other party setting out the basis for the dispute, they agree to refer the dispute to the Minister for his or her consideration. The determination of the Minister conveyed to the parties in writing to resolve the dispute shall be final and binding upon the parties.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

[NOTE: The signatures have not been included in this online document for privacy reasons. This document was signed, and each page contained herein was initialed]

**SIGNED, SEALED AND DELIVERED**  
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Witness

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**SIGNED, SEALED AND DELIVERED**  
in the presence of:

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 ) **AND BENEFITS COUNCIL**

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) **FUNDY REGION SOLID WASTE**  
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