To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Doyle, Colleen
Sent: Wed 11/29/2017 7:06:50 PM
Subject: Hanson Aggregates' Request for Guidance Re Common Control - (Part 2 of 2)
Amended License-c.pdf
APCD Letter-c.pdf

FIRST AMENDMENT TO LANDFILL DEVELOPMENT AGREEMENT

This First Amendment to Landfill Development Agreement (the "Amendment") is hereby entered into and effective as of December 5, 2016, by and between Hanson Aggregates Pacific Southwest, Inc., a Delaware corporation ("Hanson") and Sycamore Landfill, Inc., a California corporation ("SLI," collectively, the "parties").

RECITALS

A. South Coast Materials Company, a California corporation, as predecessor to Hanson, and SLI entered into that certain Landfill Development Agreement dated as of December 31, 2006 ("Development Agreement," together with this Amendment, the "Agreement").

B. When the parties entered into the Development Agreement, they contemplated that Hanson's payment of the Fixed Royalty in Section 3.2 of the Development Agreement would equally balance with SLI's payment of the Extraction Fee in Section 4 of the Development Agreement. In and around December 31, 2008, the parties determined that the Fixed Royalties and the Extraction Fees were not equally balancing as contemplated. Fixed Royalties paid by Hanson were substantially more than the Extraction Fees paid by SLI.

C. On or about December 31, 2008, SLI contends that the parties agreed to temporarily suspend Hanson's obligation to pay the Fixed Royalties to SLI and agreed that the parties would reassess the Fixed Royalty provision in the Development Agreement in the future. Hanson contends that currently SLI owes Hanson $2,453,477 ("Extraction Fees Receivables Balance"), which represents the difference between the total Fixed Royalties paid by Hanson ($8,280,920) and the total Extraction Fees paid by SLI ($5,827,442) under the Development Agreement. SLI disputes these contentions.

D. On or about November 20, 2014, SLI provided notice to Hanson that SLI required Hanson to relocate its equipment to another location on the Property. Hanson incurred $3,410,665.80 of costs to relocate its equipment ("Relocation Costs"). Pursuant to Section 6.1 of the Development Agreement, SLI is obligated to pay Hanson $1,591,644.04 ("SLI Relocation Obligation") – which represents 7/15ths of the Relocation Costs.

E. On or about November 20, 2014, SLI determined that it needed Hanson to substantially increase its rate of excavation of the Material from the Property. SLI contends that it anticipated that, as of December 2015, Hanson would have excavated a total of 16 million cubic yards of Materials, and SLI contends that Hanson has excavated slightly over 3.1 million cubic yards of Materials as of December 2015. Hanson disputes these contentions.

F. SLI hired and paid a contractor, Rumco, in 2014 to excavate the Material from the Property ("Contractor Excavation Cost"). SLI has been and will be providing such excavated Material to Hanson, and Hanson will pay SLI the Production Royalty Rate for the saleable Aggregates contained in such excavated Material.

G. On or about March 18, 2016, SLI requested that Hanson relocated certain utility

lines to another location on the Property. Hanson contends that pursuant to Section 6.1 of the Development Agreement, SLI will be obligated to pay Hanson 5/15ths of the total cost to relocate the utility lines ("Utility Relocation Cost"), the total cost of which is estimated to be about $750,000.

H. SLI wishes to induce Hanson to accelerate its excavation rate, and the parties wish to resolve their current disputes and to that end, Hanson and SLI desire to amend the Development Agreement on the terms set forth herein.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing Recitals, and the mutual covenants contained herein, and for such other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby expressly acknowledged by each of Hanson and SLI, and intending to be legally bound hereby, Hanson and SLI hereby specifically covenant and agree as follows:

1. Amendments to Development Agreement:

(a) Recital B of the Development Agreement shall be amended in its entirety to read: "The parties estimate that there are thirty four million two hundred thousand (34,200,000) cubic yards of material to be extracted from the Property (the "Material"). Of this Material, forty percent (40%) is estimated to be saleable aggregates (the "Aggregates") with the remainder being material that is not saleable aggregates (the "Fine Material")." All references to "fine material" in the Development Agreement shall mean "Fine Material."

(b) Section 2 of the Development Agreement shall be amended in its entirety to read as follows:

> "Unless earlier terminated as provided herein, the term of this Agreement shall begin on the effective date of this Agreement and terminate on December 31, 2033 ("Initial Term"). Notwithstanding the foregoing, Hanson shall have five (5), one (1) year options to extend the Term for the period of time between January 1, 2034 and December 31, 2038. "Term" shall mean the Initial Term and any exercised option to extend the Term. To exercise each such option, Hanson must give SLI a minimum of one hundred and twenty (120) days' written notice before the end of each term.
>
> Subject to an extension granted to Hanson pursuant to Section 9.6, Hanson agrees: (i) to complete this mining project within the Initial Term and in accordance with the excavation schedule and Mining Plan attached hereto as Exhibit F, and (ii) if Hanson exercises one or more options to extend the Term, Hanson and SLI shall meet and confer in good faith to determine if agreement can be reached on an excavation schedule and Mining Plan for such option periods. If the parties cannot reach agreement on a revised excavation schedule and Mining Plan, then either

party may terminate this agreement on one hundred twenty (120) days' notice to the other party.

As provided in Section 9.5, the Term may be extended if the parties mutually agree for additional phases on the Property."

(c) The following sentences shall be added to Section 3.3 of the Development Agreement, "Production Royalty":

"Notwithstanding the foregoing, starting on January 1, 2017, regardless of the amount of Aggregate removed from the Property and sold by Hanson each Year, Hanson shall pay SLI a minimum Production Royalty of Five Hundred Thousand Dollars ($500,000.00) per Year ("Minimum Annual Production Royalty"), provided however that Hanson shall be allowed to "bank" any Production Royalty paid in any Year that exceeds the Minimum Annual Production Royalty to be applied towards satisfaction of the Minimum Annual Production Royalty for a maximum of three subsequent Years. For example, if in year 1, Hanson pays a Production Royalty of $750,000; in year 2, Hanson pays a Production Royalty of $500,000; in year 3, Hanson pays Production Royalty of $300,000; and in year 4 Hanson pays a Production Royalty Payment of $600,000, then Hanson shall not be obligated to pay any additional Production Royalties in year 1 (because $750,000 Production Royalty exceeded the Minimum Annual Production Royalty); or in year 2 (because $500,000 is the Minimum Annual Production Royalty; or in year 3 (because Hanson banked $250,000 from year 1 and applied $200,000 of such banked amount to satisfy the Minimum Annual Production Royalty for year 3); or in year 4 because the $600,000 Production Royalty payment exceeded the Minimum Annual Production Royalty. But in Year 5, Hanson will have no further "banked" credits eligible from Year 1 and will only have the $100,000 banked credit (available from its year 4 payment in excess of the Minimum Production Royalty) to offset against the Minimum Production Royalty in year 5, because there is a three year limit on the carry forward or "banking" of payments in excess of the Minimum Annual Production Royalty.

Any shortfall in the annual Production Royalty paid and the Minimum Annual Production Royalty shall be paid by Hanson to SLI within thirty (30) days of the end of the Year. The Minimum Annual Production Royalty will escalate each Year by the same percentage adjustment as applied to the per-ton Production Royalty. "Year" shall mean a 12-month calendar year. For any partial Year during the Term, the Minimum Annual Production Royalty shall be pro-rated based on a 365-day Year."

(d) Sections 3.2, "Fixed Royalty," 4 "Extraction Fee," and Exhibit E of the Development Agreement shall be deleted in their entirety.

(e) Section 3.3 shall be amended in its entirety to read as follows:

"(a) Subject to the adjustment provided in Section 3.3(b), Hanson shall pay a royalty of Eighty-Six Cents ($.86) per ton of Aggregates as a production royalty during the Term of this Agreement (as adjusted, the "Production Royalty Rate"). Such royalties are due thirty-five (35) days after the end of the month in which the Aggregates are sold by Hanson.

(b) Beginning on January 1, 2017, and each January 1st thereafter during the Term, the Production Royalty Rate shall be an amount equal to the amount in effect in the immediately preceding Year increased by a percentage equal to the greater of: (a) the percent increase, if any, in the PPI during the most recent twelve month period for which such data is available or (b) the year over year percentage increase in the average selling price to all third parties (excluding Hanson's Affiliates) of Aggregates produced or sold at or from the Property. The increase in the average sales price per ton shall be calculated as follows: (1) the prior Year's average selling price shall be calculated as the per ton price received by Hanson during the twelve month period ending one full year before the January 1 royalty recalculation date, by averaging the per ton price received by Hanson during that twelve month period and giving equal weight to the price of each ton sold, compared with (2) the average selling price, similarly calculated, received by Hanson during the twelve month period immediately preceding the January 1 royalty recalculation date. "Affiliate" means any business entity that directly or indirectly is in control of, is controlled by, or is under common control of such business entity.

(c) The term "PPI" means the United States Department of Labor, Bureau of Labor Statistics, Producer Price Index for Construction sand, gravel, and crushed stone (commodity code 13-21) on the basis of 1982 = 100. If the format or components of the PPI are materially changed after the execution of this Agreement, the parties shall substitute an index which is published by the Bureau of Labor Statistics, or a similar agency, and which in the parties' judgment, is equivalent to the PPI in effect on the date of this Agreement.

(d) The Parties will review and monitor market conditions to determine if the Production Royalty Rate fairly represents and compensates SLI during the duration of the Term. The review is designed to address unique price improvement conditions (for example, >300% improvement in average selling price of Aggregates from the Property), and restructure the Production Royalty Rate to reflect those circumstances. Any changes will be discussed and modified only if approved by both Parties."

(f) Section 5, "Quantity and Quality of Materials," of the Development Agreement is amended in its entirety to read as follows:

(a) It is a material term and condition of this Agreement that Hanson excavate sufficient native (i.e., not stockpiled) Material (saleable or not) ("Native Material") to meet the excavation schedule and adhere to the Mining Plan set

forth in Exhibit F to this Amendment. This is necessary to enable SLI to prepare additional air space for disposal at the landfill. Therefore, Hanson agrees to excavate, at a minimum, the quantity of Material described for each month or annual period (stated in Exhibit F) and at the designated areas at the Property, as set forth in Exhibit F hereto.

(b) Title to the saleable Aggregates shall pass to Hanson upon excavation of such saleable Aggregates from the Property; provided, however, that upon the expiration of Term of the Development Agreement as amended herein, legal title and ownership to all saleable Aggregates and all other excavated materials remaining on the Property, if any, shall revert to and be deemed solely vested in SLI. SLI may thereafter sell such saleable Aggregates and shall retain all proceeds thereof.

(c) Notwithstanding the foregoing, SLI is obligated to excavate Fine Materials that Hanson previously conveyed to SLI pursuant to Section 6.3 of the Development Agreement and SLI placed in an area that Hanson must excavate pursuant to the Mining Plan ("Previously Removed Fine Material"). Such materials excavated by SLI shall not count towards Hanson's excavation obligations in Exhibit F or the Mining Plan. "Fine Materials" shall mean the portion of the Material that is not composed of saleable Aggregate."

(g) Section 6.2, "Mining Plan," is amended in its entirety to read as follows:

"Hanson shall adhere to the Mining Plan attached hereto as Exhibit F unless the parties agree otherwise, in a writing signed by both parties. In addition, on or about September 1st of each year of the Agreement, SLI shall provide Hanson with copies of Landfill development plans detailing the specific location of Landfill development needed for the upcoming calendar year along with the Landfill development progression anticipated over the next five-year period. SLI's plans shall include engineering estimates of quantities of Material to be removed along with details regarding any and all permit limitation and/or restriction that would impact Hanson's ability to perform under this Agreement. Hanson shall use the Mining Plan to develop the anticipated Cost of Extraction ("Cost") for removing and processing Material. Except as expressly provided in Section 5(c), all said Cost shall be the sole responsibility of Hanson and shall include the cost of excavation and transportation and disposal of fines into the Designated Fines Materials Conveyance Area (except the Previously Removed Fine Material). Nothing in this Agreement shall prohibit SLI from the following activities: (i) excavation, extraction, drilling, and blasting of Material, (ii) placing liners in all or a portion of the Property, (iii) stockpiling Material, or (iv) doing any other activity reasonably necessary for SLI to timely and effectively operate its landfill according to its permits; provided, however, that (x) SLI will extract Material as reasonably practical to preserve the Aggregates for extraction by Hanson."

(h) In Section 6.1, "Labor and Equipment", the second sentence shall be replaced in its entirety with the following:

> "In the event SLI requires Hanson to relocate any or all of the equipment or utilities sooner than 24 months before the end of the Initial Term, then SLI shall pay to Hanson the pro-rata share of the relocation expenses based on a straight-line depreciation over the total years in the Initial Term. For example, if SLI requires Hanson to relocate equipment in July 2029, then SLI would be obligated to pay Hanson 4/17th of the relocation cost or, in lieu of such payment, Hanson may then elect to terminate the agreement on 120 days' written notice to SLI."

(i) The following sentences shall be added to Section 6.3, "Removal of Fines":

> "Hanson shall also, at its sole expense, convey Fine Materials to the pit designated on Exhibit G (the "Additional Fine Materials Area") until the Additional Fine Materials Area is filled to its capacity. "Filled to its capacity" shall mean non-engineered placement of material up to the approximate elevation of 810 ft. Hanson shall be responsible for the costs to convey and place the Fine Materials into the Additional Fine Materials Area. When the "Additional Fine Materials Area" is filled to its capacity, the parties shall meet and confer on an alternate location for the Fine Materials ("Alternative Fine Materials Area"). Hanson shall convey Fine Materials to the Alternative Fine Materials Area. Hanson shall only be responsible for the cost to convey fines to the Alternative Fine Materials Area up to the average annual capital and operating costs incurred by Hanson to convey Fine Materials to the Additional Fine Material Area ("Hanson's Conveyance Obligation"). Hanson's Conveyance Obligation shall be determined by adding up the following marginal costs incurred by Hanson to convey fines to the Additional Fine Materials Area: labor, power, fuel, equipment (e.g., dozer, loader, haul trucks), and capital costs such as conveyor extensions. These costs will then be calculated on a per cubic yard basis using the volume of materials conveyed to the Additional Fine Material Area. The resulting average per cubic yard cost shall be the Hanson Conveyance Obligation. Following the Year in which the Hanson Conveyance Obligation is first calculated, the Hanson Conveyance Obligation shall be escalated annually thereafter by the percent increase, if any, in the PPI during the most recent twelve month period for which such data is available.
>
> Hanson shall review its Fine Material conveyance costs per cubic yard with SLI in September of each year during the Term, and shall allow SLI to audit Hanson's books and records to verify all such costs. SLI shall be obligated to pay for the costs incurred by Hanson to convey the Fine Materials to the Alternative Fine Material Area in excess of the Hanson Conveyance Obligation. SLI shall pay Hanson such amount within thirty (30) days following issuance of an invoice by Hanson to SLI.

If Hanson requires the placement of structural fill in connection with their operations during the Term of this Agreement, this fill will be constructed in accordance with engineering specifications for structural fill placement provided by SLI and attached hereto as Exhibit H, and shall be paid for by Hanson.

(j) Section 6.4, "Progress Meetings and Reports," is amended in its entirety to read as follows:

"Hanson shall provide SLI with a monthly report stating the total quantity of Material excavated by Hanson during the prior month. This report shall be delivered to Republic no later than the tenth business day of the following month. Further, unless the parties agree otherwise, Hanson and SLI shall meet monthly to review Hanson's progress towards meeting the excavation schedule requirements in Exhibit F and, if agreed to by both parties in a writing signed by both parties, may amend or update the schedule and/or the Mining Plan.

Following Phase 1 and 2 of the Mining Plan, Hanson shall excavate at the minimum rate of 750,000 cubic yards per Year of Native Material. This requirement may be waived annually by SLI, in SLI's sole discretion. Such waiver, if requested by Hanson, shall be discussed at the annual meeting described in Section 6.2 of the Agreement. If given by SLI, SLI shall provide Hanson any such waiver in writing.

If it is determined that Hanson is not making "Adequate Progress" based on the Mining Plan in Exhibit F and the annual excavation requirements after the completion of Phases 1 and 2 described herein, and as these requirements may be amended in writing by the Parties from time to time, SLI may, at is option, provide written notice to Hanson of the shortfall in excavation and shall allow Hanson to cure the shortfall in full within 60 days of Hanson's receipt of such notice. "Adequate Progress" shall mean (A) 200,000 cubic yards per month during Phase 1 of the Mining Plan in Exhibit F, or (B) 125,000 cubic yards per month during Phase 2 of the Mining Plan in Exhibit F, or (C) following Phase 1 and 2 of the Mining Plan, 50,000 cubic yards per month. If the shortfall is not cured by the end of such 60-day period, SLI may, at is sole option and discretion, hire a third party contractor at the expense of Hanson to reach the level of Adequate Progress, provided however that Hanson may continue to excavate the Property in conjunction with such third party contractor. During the period that SLI's third party contractor is excavating on the Property, Hanson shall not unreasonably interfere with the excavation plans and activities of SLI's third party contractor. Hanson shall reimburse SLI, within thirty (30) days of invoice receipt, for SLI's reasonable out-of-pocket costs of hiring such third party contractor to reach the level of Adequate Progress."

(k) Section 9.6 of the Development Agreement shall be amended to replace "in 17 years" with "the Term

2. Extraction Fees and Fixed Royalties.

(a) Hanson waives, and SLI shall not be obligated to pay Hanson, the Extraction Fees Receivables Balance. SLI waives, and Hanson shall not be obligated to pay SLI, the Contractor Excavation Cost.

(b) Hanson waives any and all right to, and SLI shall no longer be obligated to pay Hanson, any Extraction Fees for the remaining Term. SLI waives any and all right to, and Hanson shall not be obligated to pay SLI, any Fixed Royalties under the Development Agreement.

3. SLI Relocation Obligations.

(a) SLI shall pay Hanson the $1,591,644.04 SLI Relocation Obligation on or before December 31, 2016.

(b) SLI shall pay Hanson the Utility Relocation Cost within 60 days of Hanson's issuance of an invoice for such cost to SLI.

4. Conflicts; No Other Amendment. In the event of a conflict between the provisions of this Amendment and the provisions of the Development Agreement, the provisions of this Amendment shall control. Capitalized terms not defined herein shall refer to the definitions of such terms in the Development Agreement. Except as expressly set forth in this Amendment, the provisions of the License remain in full force and effect.

5. Miscellaneous.

(a) Authority. Each signatory of this Agreement represents and warrants that he or she has full authority to enter into this Amendment on behalf of the respective parties.

(b) Entire Agreement. This Amendment, together with the Development Agreement, represents the entire understanding and agreement between Hanson and SLI with respect to the subject matter hereof, and no amendment or modification of this Agreement shall be effective unless it is set forth in a writing specifically stating that it is intended to be an amendment hereof, specifying what provision hereof is being amended thereby, and signed by each of the parties. This Amendment resolves all reciprocal payment obligations of the Parties arising prior to the date of execution of this Amendment arising under sections 3, 4 and 6.1 of the Development Agreement, and establishes the reciprocal payment obligations of the Parties relating to the matters covered by these sections from and after the date of execution of this Amendment, unless this Amendment expressly provides otherwise.

(c) No Third Party Beneficiaries. Nothing in this Amendment, express or implied, is intended or shall be construed to confer upon, or give to, any person, other than the named parties to this Amendment, any rights, remedies, obligations or liabilities.

(d) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same Amendment. The parties contemplate that they may be executing counterparts of this Amendment transmitted by facsimile or email in PDF format and agree and intend that a signature by facsimile machine or email in PDF format shall bind the party so signing with the same effect as though the signature was an original signature. Hanson and SLI shall execute and deliver such additional documents and take such additional actions as either may reasonably request to carry out the purposes of this Amendment.

(e) Severability. If any term or provision of this Amendment is invalid, illegal, or incapable of being enforced by virtue of any federal or state law, or public policy, all other terms and provisions of this Amendment shall nevertheless remain in full force and effect so long as the legal substance of the transaction contemplated hereby is not affected in any manner materially adverse to any of the parties to this Amendment. Upon such determination that any such term or provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Amendment so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

IN WITNESS HEREOF, Hanson and SLI have executed this Agreement intending it to be effective as of the date first written above.

HANSON AGGREGATES PACIFIC SOUTHWEST, INC., a Delaware corporation

By: Chris Hobby

Name: Chris Hobby

Title: VP GM

Date: 12/5/16

SYCAMORE LANDFILL, INC., a California corporation

By: Heath Eddleblute

Name: Heath Eddleblute

Title: Vice President

Date: 12/5/16

EXHIBIT F

Mining Plan and Excavation Schedule

- Excavate MPC-1 Phase 1, approximately 2.2 million cubic yards, of Native Material during the eight (8) month period starting on Phase 1 Commencement Date (the "Phase 1 Excavation"). See drawing number 1.
    - Phase 1 Commencement Date shall be September 1, 2016, unless SLI provides Hanson advance notice of a delay in the Phase 1 Commencement Date.
    - Assuming that the Phase 1 Commencement Date begins on September 1, 2016, the Phase 1 Excavation shall be completed by no later than April 30, 2017.
    - Minimum excavation rate will be 200,000 cubic yards per month starting on Phase 1 Commencement Date.
    - Excavated material to be stockpiled in area shown on drawing number 1.

- Complete excavation of remaining area of MPC-1, approximately 2.4 million cubic yards of Native Material, during the twenty (20) month period starting on the Phase 2 Commencement Date, unless SLI provides Hanson advance notice of a delay such of commencement. See drawing number 2.
    - Phase 2 Commencement Date shall be the day following the conclusion of the Phase 1 Excavation.
    - Minimum excavation rate will be 125,000 cubic yards per month.
    - Excavated material to be stockpiled in area shown on drawing number 2.

- Following Phase 1 and 2 of the Mining Plan, Hanson shall excavate at the minimum rate of 750,000 cubic yards per Year of Native Material. See drawing number 3 for remaining landfill footprint excavation. Stockpile locations for future excavated material and additional fines material to be determined as the landfill development progresses.

County of San Diego

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May 2, 2017

Stephen J. O'Neil
Sheppard Mullin Richter & Hampton
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422

VIA EMAIL AND U.S. MAIL

Re: Hanson Aggregates Pacific Southwest, Inc.- Santee Title V Issues

Dear Stephen:

Thank you for your letter of March 15, 2017. I have reviewed your letter as well as the Landfill Development Agreement ("Agreement") and the First Amendment ("Amendment") to that Agreement which you provided. As a preliminary matter, the District will agree to protect the information in Exhibit B, C, and D, as trade secret information. If a public records act request is submitted asking for these materials, the District will follow the procedures prescribed in District Rule 177(g) prior to releasing those materials. Additionally, for the reasons discussed below, we do not require the pricing and billing information that you offered to submit as Exhibits C and D. You may choose to submit that information at a later time, but we do not find it necessary to determining whether the Hanson Aggregates Pacific Southwest Inc. operation of the Hanson Santee Aggregate Plant ("Hanson Santee") at Sycamore Landfill should be aggregated with the operations of the landfill itself.

From the review of the Agreement and Amendment, and in consideration of your letter, the District finds that Hanson Santee and Sycamore Landfill should be considered a single stationary source for purposes of Title V permitting. The following are the reasons for this conclusion.

I. Hanson Santee and Sycamore Landfill meet the definition of a single stationary source under District Rule 1401.

For purposes of permitting under Title V, a stationary source is defined as "an emission unit, or aggregation of emission units which are located on the same or

contiguous properties and which units are under common ownership or entitlement to use." District Rule 1401(c)(46). As we discussed in our phone call of September 15, 2016, the District interprets the phrase "entitlement to use" to be the same as "common control" which is extensively discussed in federal Environmental Protection Agency ("EPA") letters related to stationary source determinations[1]. Thus, there are two prongs to identifying a stationary source under the District Title V Rules: location on a contiguous parcel, and entitlement to use (common control).

A. The Hanson Santee and Sycamore Landfill operations are located on a contiguous parcel.

There is no dispute that the Hanson Santee operations are located on the same parcel as the Sycamore Landfill operations. In fact, what is apparent from the aptly named Landfill Development Agreement submitted as Exhibit B is that Hanson Santee is located upon and was contracted to excavate the landfill itself, as well as provide the daily cover for the landfill.

B. There is clearly common control between the parties as reflected in the Agreement and Amendment.

As the EPA has long noted, "Typically, companies don't just locate on another's property and do whatever they want. Such relationships are usually governed by contractual, lease, or other agreements that establish how the facilities interact with one another. Therefore, we presume that one company locating on another's land establishes a "control" relationship." Letter from William A. Spratlin, Director, Air, RCRA, and Toxics Division to Peter R. Hamlin, dated September 18, 1995. This presumption is rebuttable, so it is important to look at the contractual relationship between Hanson Santee and the Sycamore Landfill to determine whether common control exists.

As repeatedly stated in EPA determination letters, EPA has no adopted regulatory definition of "common control". Instead, "... the Agency has relied on the common definition. Webster's Dictionary defines *control* as 'to exercise restraining or directing influence over,' 'to have power over,' 'power of authority to guide or manage,' or if it [regulates] economic activity." Letter from Matt Haber, Chief, Permits Office, to Jennifer B. Schlosstein, dated November 27, 1996. The Spratlin letter referenced above includes a list of screening questions often employed in analyzing the operations of

[1] However, to clear up any confusion from our call, I did not indicate that the District interpreted "entitlement to use" as also encompassing the concept of common SIC code, contrary to the assertion in your letter. As will be discussed below, however, under either the federal or local definition of stationary source, the Hanson Santee operations must be aggregated with the Sycamore Landfill.

sources to determine whether common control exists between the entities. Even in the absence of shared corporate structures or administrative functions, "the new facility may still be considered to be under the control of the existing source if a significant number of the indicators point to common control." Spratlin letter, at 2.

After review of the Agreement and Amendment, the District finds that several of the screening questions in the EPA guidance can be answered in the affirmative, and thus are indicative of common control. These include the following:

- Does one operation support the operation of the other? Yes- Hanson Santee is essentially operating as the excavation operation for the Sycamore Landfill. This is reflected in the terms of the Agreement and Amendment. The Landfill Development Agreement provides, "The parties desire to enter into an arrangement whereby [Hanson Santee's predecessor] will cause the Material to be removed from the Property… in a manner consistent with [Sycamore's] needs to develop the Property as a landfill, and the Aggregates to be marketed…." Agreement at page 1, Recitals- section D. The Amendment provides, "It is a material term and condition of this Agreement that Hanson excavate sufficient… Material… to meet the excavation schedule and adhere to the Mining Plan set forth in Exhibit F to this Amendment. This is necessary to enable [Sycamore] to prepare additional air space for disposal at the landfill." Amendment at section I(f)(a), (emphasis added).

- What are the financial arrangements between the two entities? The financial arrangements are mutually beneficial. As you note in your letter, it is not unlawful to engage in a mutually beneficial contract; however it can indicate common control, as it does here. Under the Agreement, Hanson Santee has an exclusive license to extract the aggregates on the site. Agreement at section I.(1.1)(a). Under the Amendment, Hanson Santee provides a minimum production royalty to Sycamore Landfill, and pays royalties based upon the aggregate it is able to sell. Amendment section 1(c). Under the Agreement, Sycamore Landfill was required to pay an Extraction Fee per cubic yard of material removed. This fee is no longer required under the terms of the Amendment. Agreement section I(4); Amendment section 1(d).

- What are the contractual arrangements for providing goods and services? The Amendment provides that Hanson will extract materials as specified in the Mining Plan and Excavation Schedule in order to create the space for the landfill. Amendment section I(f)(a), Exhibit F. If Hanson Santee fails to

comply with the established schedule, Sycamore Landfill may hire another contractor at Hanson Santee's expense. Amendment at I(j).

- Do the facilities share intermediaries, products, byproducts, or other manufacturing equipment? Hanson Santee is also required to deposit the "fine materials" byproduct to an area specified by Sycamore Landfill. Agreement section I(6.3); Amendment section I(i). Fine Materials are defined in the Amendment as the portion of excavated material that is not composed of saleable aggregate. According to the Joint Technical Document for Sycamore Landfill, approximately 60% by volume of the excavated material (i.e. the fine materials) is being supplied to Sycamore Landfill for daily cover, and this is projected to supply 100% of the landfill's daily and final cover needs. 2015 Joint Technical Document for Sycamore Landfill at 6-1 and 6-2. There is no fee for this material in the Agreement or Amendment.

Based upon the above answers to these screening questions, Hanson Santee and Sycamore Landfill are under common control. Hanson Santee provides all of the excavation for the Sycamore Landfill, in addition to all of the soil for the daily and final cover. Sycamore Landfill can control the location and the amount of materials to be removed from the site, in order to develop the Landfill. While Hanson Santee benefits from being able to sell the aggregates it produces, this does not detract from the considerable control over its operation under the terms of the Agreement and Amendment.

Additionally, EPA screening also looks for a contract-for-service relationship as evidence of common control. An EPA policy guidance letter on the treatment of temporary and contracted operations at stationary sources instructs that, "temporary and contractor-operated units be included as part of the source with which they operate or support." Letter from John Sietz, Chief of the Office of Air Quality Planning and Standards to the Minnesota Pollution Control Agency, November 16, 1994). Additional EPA guidance provides, "a determination of common control may be made on the basis of … indirect control, such as when the goods or services provided by a co-located, contract-for-service entity are integral to or contribute to the output provided by a separately owned or operated' activity with which it operates or supports." Haber letter, at 3.

In this case, Hanson Santee's excavation operation is integral to the operation of the landfill. While a contractor was brought on to supplement the excavation in 2014, this does not detract from the fact that Hanson Santee is the primary provider of excavation services to Sycamore Landfill. In fact, under the initial Agreement, Hanson's

predecessor was paid an "Extraction Fee" per cubic yard of material removed to perform this service. Agreement at section I(4). And as noted above, Hanson Santee must comply with the Mining and Excavation Schedule established by the Amendment. If Hanson Santee does not comply with the excavation schedule, Sycamore Landfill "may, at its sole option and discretion, hire a third party contractor at the expense of Hanson to reach the level of Adequate Progress." Amendment at section I(j) (emphasis added). This is clear evidence of contract-for-service arrangement, and as such, common control.

II. Hanson Santee must be aggregated with the Sycamore Landfill because they meet the definition of a single stationary source under federal Title V regulations.

As you correctly noted in your letter, the federal definition of stationary source has a three-prong test.[2] For purposes of Title V permitting, federal regulations define major source as one or more stationary sources that: 1) are located on contiguous or adjacent properties; 2) are under common control of the same person or persons under common control; and 3) have the same two-digit Standard Industrial Classification ("SIC") code. 40 Code of Federal Regulations §70.2. As discussed above, Hanson Santee and Sycamore Landfill operate on the same parcel, and are under common control by virtue of the contractual relationship between them. They also can be considered to be under the same SIC code, since Hanson Santee is operating as a support facility to Sycamore Landfill.

A. Hanson Santee is operating as a support facility to Sycamore Landfill, and as such can be considered to be operating under the same SIC code.

As discussed above, Hanson Santee supports the operation of the Sycamore Landfill by providing excavation services to develop the landfill as well as the fine materials needed for the daily and final cover for the landfill per the terms of the Agreement and Amendment. EPA guidance provides that "a support facility is considered to be part of the same industrial grouping of that as the primary facility it supports even if the support facility has a different two-digit SIC code." Letter from Robert B. Miller, Chief, Permits and Grants Section, to William Baumann, dated August 25, 1999. A support facility relationship is presumed to exist when more than 50 percent of the output or services that are provided by one facility is dedicated to another facility

[2] The District's Title V Rules including this definition were approved by EPA initially on February 5, 1996. As a result, it is the District definition of stationary source that would govern this determination. Regardless, as further discussed herein, the Hanson Santee and Sycamore Landfill operations would be aggregated under either definition.

that it supports. Letter from Kathleen Anderson, Chief, Air Permits and Technical Review Branch, to Sharon G. Foley, dated October 22, 2009. In this case, 100% of Hanson Santee's excavation operation is dedicated to excavation of the Sycamore Landfill, and this operation provides 100% of the daily cover needed for the landfill.

Furthermore, additional factors may be considered in determining whether a support facility relationship exists. Support facility determinations can also depend upon the following:

- The degree to which the supporting activity receives materials or services from the primary activity (which indicates a mutually beneficial arrangement between the primary and secondary activities);
- The degree to which the primary activity exerts controls over the support activity's operations;
- The nature of any contractual arrangements between the facilities; and
- The reasons for the presence of the support activity on the same site as the primary activity (e.g. whether the support activity would exist at that site but for the primary activity).

Miller letter, at 2.

As discussed above, it is clear from the review of the Agreement and Amendment that Hanson Santee receives the ability to mine aggregate for sale, Sycamore Landfill exerts complete control over the location and amount of materials to be removed, and Hanson Santee would not be located upon this property were it not for its role in excavating the space for the Sycamore Landfill. As such, it is a support facility to the Sycamore Landfill and can be considered to be operating under the same two-digit SIC code as Sycamore Landfill.

B. The support facility concept is not limited to permitting decisions under the Prevention of Significant Determination ("PSD") program.

Contrary to the assertion in your letter, the support facility concept is not limited to permitting under the PSD program. The EPA letter to John D. Lowe referenced in your letter simply does not specify as such. While the concept was initially described in the preamble to the PSD regulations, it has subsequently been referenced in many EPA determinations related to Title V permits. See Haber letter, November 27, 1996 at 1; Anderson letter, October 22, 2009 at 3; and (most recently) Letter from Kenneth Moraff, Director, Office of Ecosystem Protection to Douglas L. McVay, dated March 25, 2016 at 3, 4.

Conclusion

Based upon its analysis of the factors discussed above, the District finds that the Hanson Santee operations at the Sycamore landfill must be aggregated with the emissions of the landfill itself, because Hanson Santee is essentially operating as the excavation operation for the Sycamore Landfill, and provides the daily cover materials for the landfill. As such, Hanson Santee should have submitted a Title V permit application within 12 months of commencing operation at that location. District Rule 1414(c). The District sent notice of the Title V permit requirement to your client on March 11, 2016. Under even the most generous reading of District Rule 1414, an application for Hanson's Title V permit was due to the District by March 11, 2017. Further delay in submittal of the application will put your client at added risk for District, federal or citizen enforcement.

Please contact me with any questions you may have.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By 
Paula Forbis, Senior Deputy