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December 31, 2014

**VIA E-MAIL  
AND U.S. MAIL**

Mike Brandt  
Yamhill County Planning Director  
525 NE Fourth Street  
McMinnville, Oregon 97128

RE: Docket No. SDR-16-14/FP-03-14  
Applicant's Rebuttal Evidence

Dear Mr. Brandt:

Cable Huston is submitting this letter on behalf of Riverbend Landfill Co. ("Riverbend"), Applicant in the above-captioned matter. The purpose of this letter is to provide rebuttal evidence to the Planning Commission in response to evidence presented during the open record period that concluded on December 23, 2014. Please include this letter and its attachments in the record.

Allegations of Impacts to Farm Practices

Riverbend submitted a Farm Impacts Assessment ("Farm Assessment") with its initial application. The purpose of the Farm Assessment was to assist the County with its application of ORS 215.296(1), which requires some non-farm uses to demonstrate they will not cause significant changes to accepted farm practices, or the cost of those farm practices, on surrounding farm properties. In response to some of the testimony presented to the Planning Commission during the hearing held on December 4, 2014, Riverbend provided an Updated Farm Assessment to better identify the crops and farm practices that exist near the landfill.

In addition to evidence of crops and farm practices omitted from the initial Farm Assessment, the Planning Commission received testimony asserting that Riverbend has caused, or will cause, changes to farm practices or an increase to the cost of those farm practices. Some of that testimony did not identify the location or nature of the farm practice and, therefore, cannot be analyzed by the County. For the testimony that offered specificity, Riverbend provides the following rebuttal evidence.

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One individual asserted that he operates a pheasantry on property adjacent to the landfill. If such a pheasantry exists, it is for personal use only, and not for profit, and the County therefore does not have to include that farm use in its ORS 215.296 analysis. The Oregon Department of Fish and Wildlife requires a Propagation License for anyone who sells game birds or game mammals. Attached as Exhibit 1 is the most current list of Propagation Licenses issued in the state. According to that list, no license has been issued to anyone in Yamhill County.

Another individual testified that birds from the landfill once attacked a lamb. Attached as Exhibit 2 is a transcript of that same individual's testimony to the Board of Commissioners in 2009, which appears to describe the same incident. As the Updated Farm Assessment points out, the increase in nuisance bird density is a regional phenomenon, caused in part by increased urbanization and in part by the increase in other food sources such as vineyards. The lamb operation identified in this testimony is adjacent to urban-level development in McMinnville, and closer to that development than it is to the landfill. It is also closer to other new food sources like vineyards. Even if it could be shown that some birds attracted to the landfill also visit that farm, a single incident in a five year period does not rise to the level of significance. The frequency of such events, even if they can be shown to be caused by the landfill, is a factor the Planning Commission should consider in its final analysis.

The Planning Commission received testimony alleging that birds attracted to the landfill have spread a specific parasite – coccidia – to their goats or sheep. The attached Exhibit 3 provides a brief summary of scientific and other publications demonstrating that the disease caused by coccidia (coccidiosis) is host-specific. In other words, even if birds attracted to the landfill carried coccidia, any spread of the parasite would impact only other birds. Goats or sheep would not contract coccidiosis from those birds as has been alleged. In fact, almost all goats carry coccidia and if there is an outbreak or flare-up of coccidiosis, the most likely explanation is because those goats are not being managed in a manner that is consistent with accepted farm practices for the management of this common disease.

The Planning Commission received testimony asserting that the landfill has caused, or will cause, impacts to wineries in the vicinity of the landfill. That testimony is based on the assertion that the wineries will lose business because of their “proximity” to the landfill. Riverbend will provide additional legal rebuttal explaining that wineries are not “accepted farm practices” for purposes of ORS 215.296. Indeed, wineries themselves are non-farm uses that are allowed in the Exclusive Farm Use only because they were added to the same statute that allows landfills – ORS 215.283. However, even assuming the County must take into account potential impacts to wineries, the actual experience of local wineries is different than what was stated to the Planning Commission. Attached as Exhibit 4 is a print-out of the website and reviews for Youngberg Hill, the only winery with a direct line of sight to the landfill. Those materials show that Youngberg Hill has been acknowledged by Oregon Bride Magazine as the “Best Of” for four straight years. Reviews by those who have actually visited the winery extoll the “unbeatable” views.

The Planning Commission received testimony asserting that the landfill is infested with rats that then travel to neighboring farms. In a prior submittal, Riverbend documented the extremely small number of rats that actually exist at the landfill based on the few number that have been trapped during earlier rodent control efforts. Rodent control is an express requirement of Riverbend's solid waste disposal permit issued by the Oregon Department of Environmental Quality ("DEQ"). As part of its regular inspection of the landfill site, staff from DEQ note whether rodents are evident at the site. Attached as Exhibit 5 are the inspection reports from DEQ in 2014, each of which note that no rodent issues existed.

#### DEQ Permit Issues

The Planning Commission received testimony from multiple individuals raising issues related to Riverbend's DEQ permit. Riverbend will provide additional legal rebuttal asking the County to disregard most of this testimony, which is irrelevant to the current proceeding that addresses only site design review criteria, the floodplain development criteria, and the ORS 215.296 farm impacts criteria. In order to make a full record and provide the County with complete information, however, Riverbend offers the following evidence as rebuttal.

The attorney for Waste Not of Yamhill County stated that Riverbend cannot expand because it is not a permitted facility. That testimony is based on the fact that Riverbend's permit states an expiration date in 2009. However, this testimony neglects to explain to the Planning Commission that the date originally stamped on a permit is irrelevant to whether or not a permit exists. The attorney that provided this testimony is likely unfamiliar with OAR 340-093-0070(7)(C), which provides for a process whereby a solid waste disposal permit is administratively extended as long as the permit holder has applied for a renewal of the permit, which Riverbend has. Attached as Exhibit 6 is a list of DEQ-permitted facilities in Yamhill County, which includes Riverbend, and should remove all doubt that Riverbend Landfill is a currently-permitted site. That exhibit also contains a letter from DEQ during a recent permit modification application noting the administrative extension of the original permit expiration date.

#### Seismic Issues

The Planning Commission received testimony asserting that the site is not adequate for designing landfill berms that can withstand seismic events. That testimony also implies that DEQ is aware of these alleged shortcomings but has ignored complaints about seismic issues. In fact, DEQ has thoroughly addressed the fact that the landfill site is within a seismic impact zone, and DEQ has specifically addressed some of the very issues raised to the Planning Commission. Indeed, these issues were raised during the Zone Change process earlier this year and rebutted at that time. Attached as Exhibit 7 are portions of DEQ's Response to Comments during the recent permitting approval of the MSE Berm in which DEQ addresses the seismic issues referenced in the comments and materials submitted to the Planning Commission. DEQ notes in its responses that it thoroughly reviewed many issues, including liquefaction, earthquake magnitude, source to

site distance, and associated ground motions associated with the site. In responding to these comments, DEQ hired its own seismic expert to analyze the Riverbend site.

### Water Quality Issues

The Planning Commission received testimony asserting that the expansion of Riverbend Landfill will degrade water quality, both groundwater and surface water. Riverbend will provide additional legal rebuttal explaining that this testimony is largely irrelevant because it does not address any specific approval criterion that is part of the County's land use process. The County does not have environmental regulations in place, and water quality associated with landfill operations falls directly under DEQ's purview. The County does have broad Comprehensive Plan policies that address water quality in general, but those policies were already considered during the Zone Change proceeding and are not directly applicable to this application. In order to make a full record and provide the County with complete information, however, Riverbend offers the following evidence as rebuttal.

Riverbend takes seriously the numerous and stringent regulations imposed on Riverbend Landfill by the U.S. Environmental Protection Agency and DEQ. Those regulations govern every aspect of the landfill and DEQ regulates Riverbend through permits, including permits designed to protect the quality of groundwater and surface water.

Water quality monitoring is not a static process and DEQ permits require Riverbend to perform ongoing groundwater monitoring and reporting. Under DEQ's guidance and approval, Riverbend developed an Environmental Monitoring Plan. That plan results in a highly-designed network of monitoring wells and testing regimes to ensure data collected at the site and surrounding the site are sufficient to detect any potential impacts from the landfill. This groundwater monitoring system includes 28 wells that monitor water quality and an additional 26 wells to understand groundwater flow conditions. Testimony submitted to the Planning Commission attempts to focus on data at only one monitoring site. The testimony noted the presence of VOCs at MW-5A and suggested the VOCs were related to leachate. In fact VOCs in the area of MW-5A have been shown to be attributed to a localized landfill gas source, not from leachate, from the Remedial Investigation performed in 1993. VOC concentrations from this localized landfill gas source are limited to the area of MW-5A and were determined to have no adverse impact on human health or the environment. Since implementing active landfill gas collection, VOC concentrations have decreased dramatically to acceptable regulatory levels. "Farm Impact Assessment, Appendix C, p.7 (Regulatory Monitoring Programs for Water Quality Protection at Riverbend Landfill, McMinnville, Oregon, SCS Engineers, November 5, 2014.) Attached as Exhibit 8 is a letter from DEQ acknowledging its approval of the monitoring plan that created the current monitoring network.

Riverbend is also required to submit annual reports to DEQ to document the results of its monitoring plan. DEQ reviews these reports and determines whether they are sufficient. Attached as Exhibit 9 is a letter from DEQ acknowledging the 2013 report that was submitted in

2014. As noted in that letter, the annual report documents “compliance with the Riverbend Landfill Environmental Monitoring Plan and the solid waste landfill permit. The monitoring of Riverbend Landfill did not indicate any significant change in groundwater quality at the compliance wells during 2013.”

Riverbend Landfill’s surface water discharges are similarly regulated as point sources governed by a set of compliance standards and regularly monitored against a set of benchmarks. Thus, unlike the numerous non-point sources impacting the South Yamhill River, Riverbend takes an active role in monitoring and controlling such discharges. The impact of these regulations is evident when reviewing the water quality throughout the South Yamhill River watershed. Riverbend Landfill is located near the bottom of the Lower South Yamhill - Deer Creek Watershed. Much of its flow originates from several other upstream watersheds, significant portions of which lie in several other counties. Waters passing Riverbend Landfill have been collected from an area nearly 250,000 acres in size and then continue to the Willamette River. Land uses in that watershed are generally composed of forestry and farming, but also include urban uses. All of these watersheds have water quality challenges, including high temperatures, fecal coliform, and phosphorus (see Exhibit 10). According to DEQ, approximately 70 to 80 percent of pollution enters the Willamette River via nonpoint sources such as agricultural activity. This information is provided by DEQ’s Willamette River Basin Water Quality Study Background website, which can be accessed at <http://www.deq.state.or.us/wq/willamette/study.htm>.

DEQ has several other opportunities to review Riverbend’s compliance with its water quality permits. For example, DEQ does periodic inspections of the site. It also reviews Riverbend’s compliance whenever it takes an action on Riverbend’s existing solid waste disposal site permit. A recent example of such a review occurred last year when DEQ approved Riverbend’s proposal for the MSE Berm. As part of that review process, DEQ addressed water quality questions and the same allegations that Riverbend was not in compliance with its water quality permits. In doing so, DEQ concluded the following:

DEQ requires substantial environmental monitoring at the landfill, including periodic sampling of groundwater and surface water. This testing indicates that the landfill is in compliance with its permits, and does not pose a threat to human health or the environment.

The dynamic process of water quality monitoring and reporting has resulted in operational changes at the site. For example, contrary to the statements made by Sid Friedman, Riverbend does not irrigate its poplar stand with leachate. The requirements to protect water quality have resulted in other changes as well. As noted by some individuals who testified, the first cells developed at the landfill were lined only with compacted native materials rather than the robust liner system currently required by federal and state regulations. Modules 1, 2, and 3 were constructed sequentially from 1982 to 1993. These Modules were developed from west to

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east. The final cover and a landfill gas collection system for those modules were developed over the southern side of these modules during 1994 and 1995. The northern side of Modules 1, 2, and 3 were then covered with overliner systems before developing the modules to the north. The overliners drain to the northern modules 4 and 5, effectively isolating the waste in Modules 1, 2, and 3. This process ensures that the environmental protections associated with the remainder of the landfill, including the expansion proposal, minimize the potential for liquids to enter Modules 1-3.

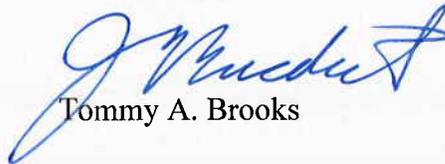
Finally, the County received testimony that included a specific, outdated comment letter submitted by Willamette Riverkeeper ("WRK") (dated October 14, 2008). Exhibit 11 is a response to that letter submitted to the County in 2008, which, in summary, states that the assertions made by WRK were in error, due largely to a lack of understanding of the applicable regulatory framework under which Riverbend operates.

#### Miscellaneous Issues

The Planning Commission received testimony asserting that Riverbend does not own all of the land that contains the current facility and the expansion areas. More specifically, the testimony asserts that the property that will house Module 10 is not part of the same tract of land. The confusion lies in part on the fact that the individuals providing this testimony reviewed only documents obtained from the County Assessor's Office. Those documents relate to the *tax lots* on site and are unrelated to the ownership of the *legal lot* that constitutes Riverbend's ownership. As explained during the Zone Change proceeding, and again in the current application, Riverbend consolidated several lots that now make up a single lot consisting of Tax Lots 100, 200, 400, and 401. Attached as Exhibit 12 is the consolidation deed recorded for that purpose, and which shows that the consolidated lot is owned by "Riverbend Landfill Co." There may be additional confusion in the deed records because Riverbend Landfill Co. originally acquired the property designated Tax Lot 101 as "Riverbend Landfill Company, Inc." The Consolidation Deed cured that discrepancy in the two corporate names. In order to remove all doubt, Riverbend has executed a Correction Deed for Tax Lot 101 to correct the vesting of that property. A copy of that deed, which Riverbend has recorded in the County's deed records, is included in Exhibit 13.

Please let me know if you have any additional questions or requests regarding these attachments.

Sincerely,



Tommy A. Brooks

TAB:rr  
Enclosures: 13 Attachments

**RIVERBEND LANDFILL CO.**

**DOCKET NO. SDR-16-14/FP-03-14**

<b>EXHIBIT</b>	<b>APPLICANT'S REBUTTAL EXHIBITS</b>
1	Propagation License
2	Transcript Excerpt
3	Coccidiosis Research Summary
4	Winery Review and Awards
5	DEQ Inspection Reports
6	DEQ Permitted Facilities
7	DEQ Responses to Comments
8	DEQ Monitoring Plan Approval
9	DEQ Approval of Annual Report
10	South Yamhill Water Quality
11	Response to Riverkeeper Letter
12	Consolidation Deed
13	Correction Deed