



Kestrel Horizons, LLC  
As Trustee of the  
Pinewood Site Custodial Trust  
  
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September 18, 2014

*In accordance with the July 25, 2014 Agreement to Transfer the Pinewood Site Custodial trust Trustee Duties to the Interim Administrator (Agreement between Kestrel Horizons, LLC and the South Carolina Department of Health and Environmental Control), I hereby state that I deem necessary the direct participation of William Stephens, Managing Principal of Kestrel Horizons, in communications with the agency regarding matters related to the Pinewood Site Custodial Trust discussed in the following correspondence. The words of this correspondence and its attachments are those of Mr. Stephens unless otherwise noted.*

A handwritten signature in blue ink that reads "Bryan J. Williams".

*Bryan J. Williams, PE, Manager of Engineering, Construction, and Remediation*

Mr. David Scaturo, P.E., P.G.  
Director, Division of Waste Management  
Bureau of Land and Waste Management  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Re: Response to DHEC's September 2, 2014 Notice of Deficiency (NOD) with regard to the submittal of the RCRA Post-Closure Part B Permit Application Supplement submitted by Kestrel Horizons, LLC, as Trustee of the Pinewood Site Custodial Trust

Mr. Scaturo:

We are in receipt of DHEC's Notice of Deficiency (NOD) dated September 2, 2014, concerning the RCRA Part B Post-Closure Permit application supplement Kestrel Horizons, as Trustee of the Pinewood Site Custodial Trust, submitted on July 18, 2014 – one week before Director Templeton announced DHEC would be seeking the resignation of Kestrel, as Trustee.

This response has been prepared primarily for the citizens of South Carolina and not for DHEC. The truth is DHEC is not entitled to a civil response to the September 2, 2014 regulatory directive of DHEC.

I will get right to the point:

1. The answer to DHEC's September 2, 2014 regulatory directive to omit legally-required information from the RCRA Part B Post-Closure Permit Application and to knowingly and willfully sign and certify as true, accurate and complete a permit application which is none of those things, is **"NO."**
2. In case anyone wonders whether the Trustee of the Pinewood Site Custodial Trust has the authority to say **"NO."** to DHEC management, the following excerpts from the Trust Agreement speak to that point:

**5.03 Authority to Represent Trust Before Agencies. The Trustee shall represent this Trust with regard to any matter concerning this Trust or its purpose before any federal, state or local agency or authority which has authority or attempts to exercise authority over any matter which concerns this Trust.**

**7.03 Limitation on Financial Liability. No provision of this Trust shall require the Trustee to expend or risk its own individual funds or otherwise incur any personal financial liability in the performance of any of its duties as Trustee hereunder, or in the exercise of any of its rights or powers, nor to take any action pursuant to this Trust, which in the reasonable judgment of the Trustee may conflict with any rule of law or with the terms of the Settlement Agreement.**

3. By the directives of July 18 NOD the South Carolina Department of Health and Environmental Control, as a regulatory agency with the police power of the State of South Carolina and the delegated authority of the United States of America, is ordering Kestrel Horizons and me to commit a matched set of patently illegal acts.
4. Our understanding of the law is that the illegal acts being solicited by DHEC are major felonies under the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) – and the state and federal regulations promulgated pursuant to those federal statutes and their South Carolina equivalents. All punishable by imprisonment, huge fines, and civil prosecution – of me. From my standpoint, you either know that or most certainly should know that.
5. In particular, DHEC is demanding Kestrel Horizons, LLC, as Trustee and RCRA hazardous waste facility permit holder, and William A. Stephens, PE, Managing Principal of Kestrel, violate the requirements of federal and state statutes and associated regulations by:
  - knowingly and intentionally omitting required information regarding newly-discovered releases of hazardous waste constituents outside of containment of the single lined cells of the hazardous waste landfill; and

- knowingly and intentionally submitting an inaccurate and incomplete representation of the landfill, the natural features underlying and surrounding the landfill, and the current conditions of the landfill – which representation is employed as the basis for evaluation of potential exposures and risks to human health and the environment; and
- knowingly and intentionally omitting relevant information regarding the full scope of needs for and inadequacy of monitoring of the landfill and its surroundings; and
- knowingly and intentionally omitting information regarding the ability to respond to various realistic release scenarios (some of which may have already occurred or may be imminent) in a timely manner such that significant harm was not done to Lake Marion; and
- knowingly and intentionally omitting critical cost estimates over the state mandated post-closure care period of 90 more years, financial statements, and other important information as to the imminent insolvency of the Pinewood Site Custodial Trust, making impossible the required proof of financial assurance to carry out the permitted activities after 2015; and
- knowingly and intentionally omitting information as to the potential applicability of location standards for RCRA permitted treatment, storage, and disposal units; and
- knowingly and intentionally submitting a RCRA Part B Post-Closure Permit Application with a certification, signed by William A. Stephens, PE, Managing Principal of Kestrel Horizons, LLC as Trustee of the Pinewood Site Custodial Trust, attesting that the application, which is based on all of these knowing and intentional omissions and misrepresentations, is “true, accurate, and complete” and that it meets all requirements of the applicable state and federal hazardous waste regulations – when I know such a statement to be patently false in many different ways, grossly misleading to the citizens of the State, and which may facilitate and conceal very substantial undetected and unmanaged harm to the environment; and
- knowingly and willingly allowing myself and others under my control and direction to be coerced or coopted by government officials also charged with the responsibility of protecting human health and the environment into such illegal and unethical acts

There is more, but I believe this gets the point across.

6. To make sure we were not misunderstanding DHEC’s directive and intent, during a September 10, 2014 conference call, Bryan Williams of Kestrel Horizons, asked David Scaturo, PE, PG, Director of the Division of Waste Management, and Daphne Neel, Land and Waste Management Bureau Chief, whether Kestrel understood correctly that DHEC is directing Kestrel to withdraw the July 18, 2014 RCRA Part B Post-Closure Permit Application Supplement and submit a supplement which

included only the eleven items referenced by DHEC since the June 7, 2013 permit application – and to certify the June 7, 2013 application with only that minor DHEC-directed supplement. The response by Mr. Scaturo was an enthusiastic, **“Yes, Bryan. That would be fantastic. We don’t need all that other stuff.”** (This may be a slight paraphrase, but is very close to the wording used.) Ms. Neel voiced her enthusiastic agreement. So we can all be certain there is no mistaking just exactly what DHEC is trying to get Kestrel Horizons team members to be party to and me to bless and sign. And yes, Kestrel agrees that would be really “fantastic”.

7. We have provided, in writing, detailed references of RCRA/HSWA regulations which demonstrate what you are requiring us to do would be illegal. (Please see Attachment A for examples of legal citations and statements of concern by Kestrel managers and by the Trust’s legal counsel.) From our perspective, the only substantive responses we have ever received from DHEC are feeble, obtuse attempts to cite tangential regulations and technicalities that might provide cover to Kestrel, as Trustee, for the illicit actions DHEC is ordering – and for DHEC management, should they be called out on their judgments and directives.
8. This issue is not new. We have stated many times in meetings and in writing to you, to DHEC legal staff, and to Bureau of Land and Waste managers and staff our commitment to legal, ethical, and moral acts regardless of The Department’s pragmatic strategies, creative interpretations, and pathological parsing of clear and unambiguous statutes and regulations, and (in our judgment) illegal and unethical directives.
9. Most recently, DHEC management appears to have taken comfort in the inclusion of a provision in the Agreement to Transfer Pinewood Site Custodial Trust Trustee Duties to Interim Administrator (the July 25, 2014 “divorce decree” between DHEC and Kestrel Horizons), the provision to place all environmental permits in the name of the Pinewood Site Custodial Trust rather than Kestrel Horizons, LLC, as Trustee.
10. No one at DHEC seems to grasp the legal principle that placing all environmental permits in the name of the Pinewood Site Custodial Trust rather than Kestrel Horizons, LLC, as Trustee, accomplishes only one thing: At the stroke of midnight on Halloween, when Kestrel ceases to be Trustee, Kestrel will not have to worry about getting our name off the permits or compliance reports. However, in the meantime, nothing changes since a Trust only operates by virtue of the acts of the Trustee. Therefore, the Trustee has identical duties and responsibilities, and liability exposures whether government permits are in the name of the Trustee or in the name of the Trust, itself. A distinction without a difference. Or maybe DHEC management understands that full well and hoped we didn’t. Someone else will decide that.

11. Here is the most important point. If the first ten points did not resonate, this short summary should – at least with the citizens of South Carolina:

- All permit applications submitted to DHEC – the RCRA Part B Post-Closure Permit Application, the NPDES Storm Water Discharge Permit Application, the Air Quality Management Permit Application, all of these and any others – are permit applications of the Pinewood Site Custodial Trust made on behalf of the citizens of South Carolina. They are not DHEC's permit applications to DHEC.
- The Trustee is not DHEC's surrogate, contractor, or agent with regard to government permitting of any kind. The Trustee is the fiduciary of a completely separate legally-constituted entity. Kestrel didn't establish the Pinewood Site Custodial Trust or write the Trust Agreement – DHEC did. Kestrel didn't establish fiduciary law – the state and federal governments did.
- And Kestrel certainly did not write the federal laws and regulations – or the South Carolina equivalents – that make knowingly and willingly signing, certifying and submitting incomplete, inaccurate, misleading, or patently false permit applications felony crimes.
- When DHEC considers and ultimately issues a permit, that permit is a covenant representing the government's representation to the citizens that the government has exercised due diligence and sound judgment in requiring the relevant information, evaluating the proposed activities, and establishing the appropriate terms and conditions for the legal conduct of the activities.
- When DHEC issues a permit for a commercial enterprise to receive waste from other entities for responsible management, that permit is also the government's representation to customers of the commercial enterprise that the government has exercised due diligence and sound judgment to insure that the customers can be reasonably confident the commercial waste company will be compelled to exercise the required stewardship and care to protect the environment.
- With the Pinewood Site, the citizens of South Carolina and the commercial waste companies' past customers are all counting on DHEC to exercise due diligence and sound judgment to protect the environment and to responsibly manage risks, liabilities, and economic decisions.
- All of DHEC's machinations on the Pinewood Site should be completely transparent. Too much is at stake to allow hidden agendas, people hiding under desks, or abuse of staff, non-DHEC stewards, stakeholders, or citizens.
- If DHEC managers allow, promote or require unethical, illegal, secretive, or nefarious conduct, those managers need to be held personally accountable just the way any other citizen would be. If not, then citizens need to reconsider the validity of charter of the agency and its performance standards.

Attachment A is a tedious “narrative” for the record and for the citizens of South Carolina. It explains some basic background for the statements above by Kestrel, as Trustee; however the story is much more complicated. Understanding the full story could begin with reading my Final Report to the Citizens of South Carolina, dated September 18, 2014, and the large collection of key documents attached to that Final Report. Most cannot be understood without some explanation of the technical and regulatory frame of reference. Anyone desiring to gain that frame of reference will need some time, discussion, dedication, and patience.

**What Kestrel Horizons, LLC, as Trustee  
and William A. Stephens, P.E., as Managing Principal  
Will and Will Not Do**

So here is what we will and will not do in our final weeks as Trustee of the Pinewood Site Custodial Trust:

We WILL:

1. Be happy to meet with representatives of DHEC to continue towards completion of the RCRA Part B Post-Closure Permit Application on the basis of the July 18, 2014 Permit Application Supplement as proposed in Director Dieck’s August 15, 2014 letter, the text of which is inserted below. The time frame proposed in Director Dieck’s letter has necessarily shifted due to the press of many other Trust transition tasks, meeting date conflicts, and Kestrel’s need to seek a new expert consultant – Dr. Ronald Falta.

August 15, 2014

Mr. Bryan Williams, PE  
Kestrel Horizons, LLC as Trustee of the Pinewood Site Custodial Trust  
706 Orleans Road  
Charleston, SC 29407

RE: Pinewood RCRA Part B Application

Dear Bryan:

I am writing to follow-up on provision 7 of the Agreement for Transition of Pinewood Site Custodial Trust Trustee Duties to Interim Administrator ("Transition Agreement") dated July 25, 2014, specifically with regard to the Trustee's agreement to continue work on the Pinewood Site RCRA Part B Permit application.

As you know, the effort to finalize the RCRA Part D permit application has extended over several years at a significant cost. Because this particular task would not be easily transitioned to another entity and would thus result in significant costs to the trust if left incomplete, and the application is almost complete, we assume it is the Trustee's intent to complete the application before October 31. There is ample time for the application to be completed, and the Department stands ready to provide whatever support the Trustee needs to ensure a final, complete, and certified application is submitted to the Department before the transition is final.

We understand the Trustee must still obtain certifications from AECOM and Smith + Gardner before it can submit the final application. Additionally, we understand the Trustee desires to meet with the Department to discuss incorporation of information to supplement that contained in the application submitted on July 18, 2014. To ensure a final, complete and certified application is submitted well before October 31, 2014, we propose the following schedule:

1. By August 22- DHEC and Trustee will meet to discuss additional information to be incorporated into the application and authorize funding for certifications by AECOM and Smith + Gardner.
2. By September 8 -Trustee will obtain certifications from AECOM and Smith + Gardner.
3. On or before September 26 - A final, complete, and certified application will be submitted to the Department.

If there are other items that need to be considered and incorporated into the above schedule, please let me know as soon as possible. We appreciate your consideration of this important matter.

Yours truly,



Elizabeth A. Dieck  
Director of Environmental Affairs

cc: William Stephens  
Phil Conner

**We WILL NOT:**

1. Retract our comprehensive RCRA Part B Post-Closure Permit Application supplement of July 18, 2014 as you have directed as an inherent part of

complying with the orders in David Scaturo's September 2, 2014 letter, and omit (as you have directed) all information related to discovery of hazardous waste constituents in gas, pore water, and soils outside of containment around and above the single-lined hazardous waste landfill cells that abut Lake Marion.

### **Discussion:**

To submit and certify a RCRA Part B Permit application with clear deficiencies in compliance with state and federal regulations would be a major federal and state felony under RCRA, and would make me eligible for a long term in the penitentiary and forfeiting everything I have ever worked for. That is not a surprise to you – I have told all DHEC managers and staff working on Pinewood's RCRA Post-Closure permitting that numerous times - verbally and in writing.

We believe that, in any other case, DHEC would likely be referring the RCRA permit applicant to who omitted relevant and required information to South Carolina State Law Enforcement Division (SLED) and the US Attorney for prosecution. Such an act by an applicant would also subject an applicant to third part suits and would subject the Trustee, as applicant on behalf of the Trust, to claims of "willful negligence", "willful misconduct", and "gross negligence" which are specifically described in the Trust Agreement as acts for which the Trustee is personally liable.

We must assume DHEC has considered whether ordering and/or knowingly accepting or condoning a RCRA Part B Permit application with clear deficiencies in compliance with state and federal regulations would constitute felony inducement. If not, DHEC managers and staff might want to consult a criminal attorney for a reading on that.

Please reference the following provisions of South Carolina and United States law:

**Note that all three hazardous waste landfill sections (Section I, Section II, and Section III) at the Pinewood facility are defined both as permitted units and solid waste management units.**

**270.14(d) Information requirements for solid waste management units. (1) The following information is required for each solid waste management unit at a facility seeking a permit:**

*(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.*

*(ii) Designation of type of unit.*



(iii) *General dimensions and structural description (supply any available drawings).*

(iv) *When the unit was operated.*

(v) *Specification of all wastes that have been managed at the unit, to the extent available.*

*(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.*

*(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, landsurface, and subsurface strata, surface water, or air, which may include the installation of wells, where the Director ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary.*

**Note that the RCRA permit applicant's information and DHEC permitting elements required in the excerpt below were never fully completed in the facility's RCRA permitting process before or during Safety-Kleen's bankruptcy. DHEC denied the facility's renewal application in 2000 with no Human Health and Ecological Risk Assessment completed. At least that was what we could determine from examination of the piles of records left behind for Kestrel, as Trustee, to grapple with.**

**270.10(j) Exposure information.** (1) After August 8, 1985, any part B permit application submitted by an owner or operator of a facility that stores, treats, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (j)(1)(i) of this section; and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a part B application must submit the exposure information required in paragraph (j)(1) of this section.

2. Sign and certify, as true, accurate, and complete, a permit application that misrepresents or omits important information regarding the real environmental conditions, potential risks, and needed actions to protect Lake Marion.

**Discussion:**

To do that would also be a felony and as unethical as unethical can get. No. No. No. I won't do it and if you don't like that, issue two more Notices of Deficiency and an Enforcement Action ASAP, and we will go visit with the Administrative Law Judge together. I will waive a settlement conference and go straight to litigation.

If you try to use police power at your disposal to intimidate me or any Kestrel team member into complying with an illegal and unethical directive, I promise you will regret it. [Note: If a SLED agent just happens to show up at the site gate again babbling to site workers about "improprieties in the use of funds" (as one did four days after we submitted our July 18, 2014 comprehensive RCRA Part B Permit Application supplement in contravention to your desires - and three days before you asked for our resignation). we will sit her down and have a very long talk. We will invite as many SLED agents as we can accommodate in the cinder block building that houses the site operations personnel.]

3. Rely on opinions of AECOM as to the Conceptual Site Model which shapes the environmental monitoring program, for groundwater, soil, soil pore water, gas, sediment, and storm water.

**Discussion:**

We believe AECOM's Conceptual Site Model prepared for DHEC in 2002 during the Safety-Kleen bankruptcy was critically flawed in that it assumed landfills only leak out the bottom, and not the sidewalls, liner/cover interface, or cover system. Despite the Trust paying hundreds of thousands of dollars to AECOM to prepare a very detailed three dimensional digital computer representation of the entire site and to evaluate the performance of the landfill, focusing on the single lined cells, AECOM's June 6, 2013 report was basically an update of the groundwater monitoring for soil and rock layers below the Opaline claystone layer that underlies the actual landfill sections.

DHEC demanded that Kestrel Horizons submit the June 7, 2013 RCRA Part B Post-Closure Permit application the day after AECOM's report was provided to Kestrel. Kestrel Horizons submitted a RCRA Part B Post-Closure Permit application on June 7, 2013 – in compliance with DHEC's curiously-mandated deadline.

Just 3 days later, on June 10, 2013, AECOM submitted a draft report on soil gas investigations around the single-lined landfill cells. That report shows high gas concentrations of hazardous waste constituents in soils outside of containment – both above and beside the single-lined cells. The gas results correlate well with earlier sample results of the AECOM investigation of pore water from the soils above the containment layers of the cover systems of the single-lined cells of Section I and Cells IIA and IIB. DHEC had seen the data prior to AECOM's issuance of the June 10, 2013 Technical Memorandum.

We have stated repeatedly that we believe the pore water and gas results constitute incontrovertible evidence of newly-discovered releases of hazardous waste and/or hazardous waste constituents. RCRA regulations very clearly require that the permit holder immediately notify the permitting agency of the newly-discovered releases and incorporate the information and a plan to address the newly-discovered conditions in any pending permit application.

On July 18, 2014 Kestrel Horizons submitted a comprehensive supplement to the June 7, 2013 RCRA Post-Closure Permit Application. That comprehensive permit application supplement addressed all eleven items listed in DHEC correspondence between July 2013 and July 14, 2014. David Scaturo, in a July 14, 2014 letter attempts to lay out the foundation for DHEC to require Kestrel to omit all information on newly-discovered releases from the various AECOM reports addressing gas and pore water.

In direct contravention to DHEC's directives, the comprehensive July 18, 2014 supplement included AECOM's reports on hazardous waste constituents outside of containment in soils and pore water, which is defined as groundwater in authoritative documents on groundwater Kestrel provided to you and your staff.

We also withdrew certifications by AECOM, S&G, and Kestrel, as Trustee, of the June 7, 2013 RCRA Part B Post-Closure Permit Application, noting that the inclusion of the newly-discovered releases confirmed that the Site Conceptual model must address all pathways – not just leakage out the bottom of the landfill, as AECOM has maintained in their work.

To be clear: We believe AECOM's work on the monitoring system below the Opaline claystone layer is technically sound, complete, and of great value. That is as far as we will go in accepting the validity of AECOM's analysis and recommendations regarding the Conceptual Site Model and their recommendations for the environmental monitoring program. Most of the rest of their recommendations are critically flawed because their Conceptual Site Model is critically flawed. It considers no dynamics within the landfill and the engineering and scientific analyses appear to be based on outdated understandings of municipal solid waste landfills. The AECOM

report that includes the updated Conceptual Site Model is signed by two registered professional geologists who specialize in groundwater modeling and monitoring, but is not stamped or signed by a registered professional engineer.

Kestrel's recent interviews with AECOM staff have confirmed our concerns regarding what was supposed to be a comprehensive, interdisciplinary review and analysis of the conditions, surroundings, performance, and monitoring needs of the Pinewood Landfill. Further, those interviews confirmed our concerns that the principal AECOM team members were not adequately versed in the regulatory and technical requirements applicable to RCRA hazardous waste landfills.

In our March 10, 2014 packages presented to you and DHEC staff, we laid out in narratives and drawings, an illustration of the Conceptual Site Model required to address all current and potential releases of hazardous wastes and hazardous waste constituents in compliance with state and federal hazardous waste regulations. That March 10 package is included in our July 25, 2014 resignation package.

We knew that you would view inclusion of information on newly-discovered releases in the July 18 permit application supplement and withdrawal of certifications of the June 7, 2013 application as an unacceptable act of defiance. Our email of July 18 to you and your staff (attached) reflects that sense of inevitability. It also conveys our pride in doing the right thing despite DHEC's inducement to commit what we believed would be both highly unethical and certainly illegal acts.

On July 25, 2014 Kestrel provided a comprehensive analysis and response to DHEC's July 14, 2014 abomination. That was the last attachment in our three volume set of documents provided with our resignation that day. We had been preparing that set of documents since July 19 – the day after our comprehensive Part B Permit application supplement was submitted.

Our July 25, 2014 resignation package also included extensive documentation of Kestrel's ten year effort to help DHEC understand the complexity of the landfill environment, to adopt a much more complete and accurate Conceptual Site Model, and to modify the environmental monitoring program to include monitoring of the water and gas above the "competent" Opaline claystone.

We have also repeatedly proposed – since May 2004 - to install sand blanket drains and French drains around the single-lined landfill cells for use in monitoring of the water table aquifer and unsaturated zone and to serve as a real-time interception of contamination which might be released from the single-lined cells. None of this is a surprise to you, as we have reviewed many times with you virtually all of the documents included in our July 25 resignation package and your staff. So

persistently have we done this that DHEC staff and managers recoil at any indication this subject might arise.

DHEC, in David Scaturo's September, 2014 Notice of Deficiency, has demanded that Kestrel re-certify and re-sign the June 7, 2013 application package, including only the eleven relatively benign additions required by DHEC (and by definition omitting all information submitted to DHEC on July 18, 2014.)

With that demand, we believe DHEC has made clear its intent to "archive" (bury?) the information submitted by Kestrel which is included in the July 18, 2014 comprehensive RCRA Part B Permit Application supplement and the information included and summarized in our July 25 resignation package. For that reason, Kestrel Horizons is today distributing paper copies of those documents to the list of recipients listed in Kestrel's *Final Report to the Citizens of South Carolina*. We have also posted those documents on our web site.

### **Conclusion**

Note: Kestrel has stated numerous times in writing and verbally to DHEC that AECOM's investigations from 2010 through June 2013 have produced incontrovertible evidence of substantial and widespread releases outside of containment of single lined hazardous waste landfill cells. The source of some or all of these hazardous waste constituents could be releases from within the landfill containment or historical releases which are only now being discovered.

The hazardous waste constituents discovered and measured are all leachate constituents, and the measured concentrations of hazardous waste constituents in the pore water of the cover soils above the containment layers are several times to 150 times the Maximum Contaminant Level (MCL), which would, by our reading of the state and federal regulations and US EPA guidance, trigger the corrective action process. In fact, for comparison, the threshold quantity for corrective action for a leachate spill is 16 ounces. The quantity of hazardous waste constituents in newly-discovered releases are orders of magnitude above the quantity of leachate constituents which would trigger a cleanup of a spill, on the basis of the long-expired RCRA permit the Trustee has been required to comply with since the inception of the trust on December 24, 2003.

As we have discussed many times with DHEC managers and staff – and stated in correspondence to DHEC management and legal counsel – state and federal hazardous waste regulations clearly place the facility in the mode of expanded RCRA Facility Investigation and Supplemental Corrective Measures Study. Additionally, state and federal hazardous waste regulations clearly require inclusion of all relevant data in any pending RCRA Part B Permit Application.

David Scaturo  
September 18, 2014  
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Kestrel Horizons stands ready to meet with representatives of DHEC to pursue work towards the completion of the RCRA Part B Post-Closure Permit Application. By issuance of David Scaturo's September 2, 2014 "Notice of Deficiency", DHEC has wasted at least three weeks of time and effort spent on this foolishness.

In addition, DHEC's misuse of regulatory power and interference with the contractual relationship between Kestrel Horizons, LLC, as Trustee, and AECOM, as a Trust consultant, has made the completion and certification of the RCRA Part B Post-Closure Permit Application by October 31, 2014 virtually impossible. The only potential path I see is for DHEC to accept Dr. Falta's report and approve funds to further flesh out a true and accurate Conceptual Site Model. If DHEC is willing to consider that, we may have a path forward. We will have to hustle if DHEC wants to do that. There is not another moment to waste. Kestrel will be closing on October 31.

Regards,

William A. Stephens, PE, Managing Principal  
Kestrel Horizons, LLC as Trustee of the Pinewood site Custodial Trust

Attachment

cc:

**Attachment A**  
**to the Response of Kestrel Horizons, LLC,**  
**as Trustee of the Pinewood site Custodial Trust**  
**to DHEC's Notice of Deficiency**  
**regarding**  
**the Trustee's July 18, 2014 RCRA Part B Post-Closure Permit Application**

As a preliminary matter, Kestrel Horizons shares DHEC's goal to have the RCRA Part B Post-Closure Permit Application completed. In fact, we have shared that goal since 2004 – because we have operated under a RCRA Treatment, Storage, and Disposal Facility Operating Permit issued to Laidlaw Environmental Services nearly three decades ago which expired in 1992, then was perpetuated by annotating the expired permit with the provisions of a Consent Decree. Then, in 2000, DHEC denied to renew the expired RCRA Part B Operating Permit (immediately preceding the Safety-Kleen bankruptcy filing). In 2004, the expired permit (cited as the 1994 permit) was modified or “reissued” to approve facility closure plans and clean up some (but not nearly all) of the ragged edges and inapplicable provisions from 1994. Then in 2007, DHEC issued a permit modification to approve RCRA corrective action for releases from certain solid waste management units. I believe I have that hairy dog story about right.

The Trust's legal counsel believes that the most recent hazardous waste permit issued for the Pinewood Site which went through the full RCRA permitting process may actually be a Part B Operating Permit that officially expired on July 27, 1992 – and was amended by various other legal documents, including a Consent Decree. The resulting 1994 “annotated permit” was employed until DHEC denied until DHEC denied Safety-Kleen's RCRA Part B Renewal Permit in 2000. The fact that the exact scope and terms of the long-expired RCRA permit Kestrel, as Trustee, was required to comply with over the past 10+ years are still ambiguous - and that Kestrel had to dig for 18 months after the inception of the Trust to compile the large set of relevant documents – should tell anyone interested a lot about the historical regulation of this facility.

Please note that, since the inception of the Pinewood Site Custodial Trust, Kestrel Horizons, as Trustee, has submitted three separate fully-certified RCRA Post-closure Part B Permit Applications; however, the Department has failed to issue a Post-Closure Part B Hazardous Waste Permit over the past eight years. That failure to act has resulted in Kestrel Horizons, as Trustee, enduring untenable liability exposures we never would have accepted had DHEC been forthright and honest with Kestrel before the inception of the Trust.

Since becoming the Trustee for the Pinewood Site Custodial Trust (PSCT) in December of 2003, Kestrel has repeatedly and routinely expressed concern and frustration arising from its efforts to conduct closure activities under the antiquated and inapplicable terms of an Operating Permit that expired in 1992 and was amended in 1994 while the actual permit

renewal process dragged on until 2000. The Trustee has also been frustrated in that it has previously submitted and certified three RCRA Part B Post-Closure Permit Applications, the last one now consisting of nineteen large volumes of information. For reasons unclear to us, none of these efforts has resulted in the Department issuing a Part B Post-Closure Permit. Few would imagine that the Trustee of the Pinewood Site Custodial Trust – with daily contact with DHEC managers and staff – is still working under an Operating Permit that is two decades old.

Worse yet, hundreds of thousands of Trust dollars (more than \$1 million) have been wasted due to the default need to comply with onerous provisions of the Laidlaw Operating Permit and Consent Decree provision that have little or no applicability or value to the citizens of the State or to the goal of protection of human health and our environment. In general, that situation has created and maintained a keen sense for the minimal – leaving the most critical aspects of environmental regulation and compliance to be sideshows or outright omissions from the process.

Based on the contents of your September 2 letter and many other letters over the past year from David Scaturo and other DHEC managers, it is apparent that, despite our previous discussions, DHEC is still not willing to recognize that the Trustee functions as an independent entity with fiduciary duties that are legally binding. While DHEC is the Beneficiary under the PSCT Agreement, the Trustee does not serve as the DHEC's contractor. Instead, the Trustee is legally bound to act in its best judgment, and not according to instructions from any other party. This is the system that the DHEC put in place to manage the closure and post-closure of the Pinewood Site. So long as Kestrel remains Trustee, it must act in accordance with its fiduciary duties imposed by the PSCT Agreement.

With this in mind, we present the following responses to specific items mentioned in your letter.

#### **1. DHEC's Meeting with Trustee's Consultant**

Your September 2, 2014 "Notice of Deficiency" states that, because the Trustee has questioned the accuracy and validity of certain reports included in the Part B application, the Department met with the Trustee's consultant (AECOM) "with the consent of the Trustee" and, having received direct assurances from the consultant, the Department is satisfied that the previous work is scientifically and technically sound. Based on this, the Department requests that the Trustee submit revised pages for the Part B application and certify the application in accordance with R.61-79.270.11 by September 30, 2014.

The statement that the Trustee consented to the meeting between DHEC and the Trustee's consultant is true. What we said was that we did not understand why AECOM – the Trust's major environmental consultant since 2009 – had refused to accept a Work Authorization to compensate AECOM for a meeting with both Kestrel and DHEC, and that AECOM unilaterally terminated all services to the Trustee. We suggested maybe DHEC could meet



with AECOM to learn why AECOM had made those decisions. The Trustee was actually informed of the meeting by AECOM's Greenville operations manager, and DHEC never actually notified Kestrel of a planned meeting. (See Attachment B for an email string related to those communications.)

Kestrel Horizons absolutely did not consent to an *ex parte* discussion between DHEC and the Trust's Consultant about the Conceptual Site model or any other aspect of the Consultant's work for the Trustee. Kestrel Horizons considers DHEC's interaction with AECOM regarding the Conceptual Site Model as tortious interference with a contract, and that action by Mr. Scaturo and Ms. Neel ended Kestrel's ability to interact with the Consultant on performance issues and work needed to complete the Part B Post-Closure Permit application as well as implementing training on the use of the 3D Model.

Since DHEC and AECOM apparently have an extensive business relationship on other projects, we believe DHEC may need to contract with AECOM directly for the 3D computer model training services. Unfortunately, that arrangement will not be acceptable for services to complete the Part B Permit Application, as we have no further use for the AECOM's services.

We can only speculate as to the reasons for the Consultant's action. We can state, however, that this development will cause further delays in finalizing the Part B application since the Trustee will now have to seek another consultant to complete work need for the Part B permit application.

## **2. Consultant's Previous Work**

Your September 2, 2014, letter states that the Department has received assurances from the Trustee's former consultant regarding its reports and that the Department is satisfied that the consultant's previous work is scientifically and technically sound. The Trustee, however, cannot accept the Consultant's previous work as accurate and complete with regard to the Pinewood Site because the work is based on a flawed Conceptual Site Model.

In short, the Conceptual Site Model adopted by the Consultant is that the landfill cells at the Pinewood Site can only leak from the bottom. The 2013 update is simply the 2002 Conceptual Site Model prepared under contract the DHEC, with flow directions of groundwater in geologic layers below the Opaline claystone layer modified on the basis of the flow study done by the Consultant.

Studies by landfill experts (See Attachment \_ for one example of authoritative technical documents) as well as the Trustee's own experience, demonstrate that the Conceptual Site Model upon which the Consultant and DHEC agree is fatally flawed. Landfill cells such as those at the Pinewood Site have been shown to leak from the sidewalls into shallow groundwater as well as from the bottom.

In addition, the Consultant's work resulted in a recommendation to install 27 additional monitoring wells, only nine of which would be hydrogeologically down gradient of the single-lined cells, which are the oldest cells, the closest cells to Lake Marion, and the cells that are the most likely to leak. Due to the size of the area comprising the single-lined cells, this would result in shallow monitoring wells being located approximately one-quarter of a mile apart. The Trustee believes that a monitoring system this minimal would be very unlikely to detect any current or future leak from the landfill cells.

In addition, the premise upon which the Conceptual Site Model agreed upon by DHEC and the Consultant has historically yielded a conclusion that Lake Marion is located approximately 1,200 feet from the closest landfill cells and that any release would take hundreds of years to reach the Lake, allowing enough time for some type of remedial action. This conclusion is false because the Conceptual Site Model upon which it is based is fatally flawed.

The open channel between two storm water settling ponds is located approximately 75 feet from the edge of waste in Section I. During a rain event, massive amounts of water flow into the pond which, in turn, discharges directly and uncontrolled into Lake Marion. Any hazardous constituents that are present in the storm water Pond A can therefore reach Lake Marion undetected and uncontrolled. In addition, the French drain system adjacent to 40+% of the perimeter of Section I discharges uncontrolled to Pond A.

For practical purposes and contaminant pathway assessment, the channel and the uncontrolled perimeter French drain place the hazardous waste in the oldest cell at the Pinewood Site, as close as 75 feet to Lake Marion.

The Trustee believes that the issue addressed in the consultant's previous work - monitoring down gradient of the single-lined cells - is of primary importance because of the very real potential for a leak from the landfill sidewalls into the shallow groundwater. This concern is validated by recent data showing that hazardous constituents are present outside of containment in the area of the single-lined cells.

The following is an excerpt of May 16, 2014 letter from David Scaturo, P.E., P.G. of SC DHEC to Bryan Williams, P.E. of Kestrel Horizons, as Trustee, referring to the Trustee's proposal to conduct additional investigations of newly-discovered hazardous waste constituents outside containment of single-lined hazardous waste landfill cells of Section I and Section II, Cells IIA and IIB:

"The Department will not at this time approve any supplemental investigation of soil, groundwater, and/or surface water. Any unapproved supplemental work would be performed at Kestrel's own expense. The Department prefers to wait until results from the work recommended by AECOM in their June 6, 2013 Technical Memorandum are submitted and

evaluated. If, at that time, conditions at the Site warrant additional work, or if data gaps from this initial work are identified, the Department will revise the conceptual site model with Kestrel, and decide on a path forward for additional investigation.”

Now, the work proposed by AECOM included nine shallow monitoring wells over a perimeter of single lined cells of approximately 7,000 feet. That’s about one well every 1150 feet. Given that a plume from a sidewall leak might be expected to be as wide as maybe 15 feet by the time it got to the well, there would be about a 1 in 75 chance of one of those wells detecting a leak.

Further, Kestrel has supplied DHEC with authoritative literature from 1991 through 2013 that highlighted the unreliability of monitoring wells detecting such releases and the ineffectiveness of detecting releases that flow in thin layers on top of a formation such as the Opaline claystone layer. One of the AECOM consultants even quipped, *“If you’re going to do something stupid, do it cheap.”* Now we are about to install those wells at DHEC’s instruction, because DHEC and the consultant agree we should. I think it might turn out to be a bust, but DHEC has ordered the work.

So, on the subject of Mr. Scaturo’s email, we put our money where our mouths are. Kestrel Horizons (in effect my wife, Gail, and I) retained Dr. Ronald Falta, PhD to provide a third party opinion about the Conceptual Site Model, the needs for contaminant control, and the needs for environmental monitoring. Dr. Falta’s concise report is included as Attachment C. Dr. Falta’s *curriculum vitae* is also included, as is his invoice and a copy of our payment for his services. Dr. Falta is a world renowned expert in groundwater modeling, environmental monitoring, and environmental remediation. Dr. Falta is a professor at Clemson University who also serves as an expert in litigation and in environmental projects. Mr. Falta’s \$7,700 fee for expert services came out of our retirement savings, and we both believe the money was well spent for a good cause.

You can read the brief report for yourself. The upshot is that DHEC and everyone else should take a longer look at what we have included as attachments and references to this final report.

We joked at Kestrel after we received Mr. Scaturo’s email that we could take up a collection and maybe have a car wash and bake sale to raise money to take DHEC up on their suggestion that, if we thought this stuff was so important, we spend our own money to pursue it. We never had a car wash or bake sale, but if you know anyone who might want to contribute to replenish our retirement savings, please let us know.

**4. Department’s Request to Certify the Part B Permit Application  
by September 30, 2014**

Your letter requests that, based on the assurances that the Department received from the Trustee's former consultant, the Trustee submit revised pages for the Part B application and certify the application in accordance with R.61-79.270.11 by September 30, 2014. This request is improper and illegal because, if followed by the Trustee, it would place the Trustee in the position of violating (1) its fiduciary duty under the PSCT Agreement to protect the citizens of South Carolina, and (2) its obligation, under penalty of law, to comply with the certification requirements set forth in applicable regulations stating that submittals must be accurate and complete to the best knowledge of Trustee.

The Trustee's cover letter to additions and replacements to the Part B application, delivered to the Department on July 18, 2014, sets forth a detailed checklist of items that need to be addressed before a certification can be made by the Trustee. As has been offered in the past, we will be happy to meet with the Department to discuss these items at the Department's convenience; however, until the Trustee considers the application to be accurate and complete, the Trustee cannot and will not certify the application under R.61-79.270.11.

#### **4. Information Requested in Eleven Items**

Your letter requests that the Trustee submit revised pages to the Part B application that include information as outlined in eleven items listed in the letter. All of the information set forth in the eleven items has been given to the Department in the seventeen volumes comprising the Part B permit application previously submitted or in the additions and revisions submitted on July 18, 2014. If needed, we will be happy to meet with the Department in order to point out where the information is located. Regardless of any additional information that the Department may request, we must emphasize that the Trustee cannot and will not certify the application until the Trustee is satisfied that the application is accurate and complete.

#### **5. One more time for the Record**

Containment of hazardous waste and hazardous waste constituents is paramount. Without accomplishing containment of hazardous waste and hazardous waste constituents, accomplishing the objectives of other issues is virtually irrelevant. Ensuring containment is especially challenging given the following conditions:

- The membrane liner system for Section I is virtually non-existent. It was likely breached at the seams before the cover system was ever placed. Only five feet of re-compacted clay and the underlying Opaline Claystone serve to contain the 1 million cubic yards of hazardous waste in Section I. Additional discussion of the construction of Section I has been provided in several previous documents including the Trustee's Proposed 2010 Improvement Project Budget with 2009 Improvement Project Status Report, dated March 17,

2010. An excerpt of this document related to the construction qualities/issues for Section I is provided for your reference as an Attachment.

- All liner systems leak to some extent. Further, liner systems for landfills can leak out sidewalls – not just out the bottom. That is why removing free liquids (leachate) from within a landfill – especially where the containment system may not be intact – is so critical.
- Steel drums containing liquid hazardous wastes were placed into Section I and parts of Section II. Some drums were intentionally stacked along the leachate collection system as part of the construction designs (See attached figures). These drums have likely reached, or are fast approaching their life expectancy in a landfill environment. This creates two stresses on the landfill cell system. One, the liquid contents of the drum is released as the drum deteriorates and two, the void space of a collapsed drum creates settlement within the landfill cell. Both of these conditions combined together create a situation where liquid hazardous waste mounds and pools within the landfill cell, making the potential for a release in the sidewalls more likely over time.
- The leachate extraction system (the underdrain system that routes leachate to the primary sumps on the floor of the landfill) is beginning to fail in a number of cells – particularly in Section I. The leachate extraction system throughout the landfill was not designed or constructed to facilitate cleanout. This is a particularly serious issue in single lined cells. Only extraordinary efforts - introducing solutions under pressure that would dissolve the residue accumulated in the leachate underdrain system and/or installing new leachate extraction wells within the landfill where the existing systems are failing – will address this situation.
- The current monitoring system is out of date and incomplete. Technical work has been completed by consultants to the Trust, the Trustee, and DHEC staff to implement major changes in the groundwater monitoring – shifting emphasis and resources to real-time monitoring of shallow groundwater and surface water and making use of 30+ years of comprehensive data to optimize overly extensive and expensive monitoring of geologic layers beneath the landfill. This was never done in the past because consultants for SCA/GSX/Laidlaw/Safety-Kleen maintained that any release from the landfill would be from the bottom. Technical literature on landfills and real-life experience with solid waste landfills contradicts that technical assumption. In fact, EPA's 1980 design standards for hazardous waste landfills requiring drainage layers extend all the way from the bottom to the "rim" of the landfill is included precisely to address the potential for sidewall releases and the fact that leachate travels a tortuous path - often moving horizontally in the layer-

cake waste mass and being trapped against the sidewall liner, unless provisions are made to drain the leachate to the bottom so it can be collected. Even these sidewall drainage layers can get plugged over time.

We believe AECOM's Conceptual Site Model prepared for DHEC in 2002 during the Safety-Kleen bankruptcy was critically flawed in that it assumed landfills only leak out the bottom, and not the sidewalls, liner/cover interface, or cover system. Despite the Trust paying hundreds of thousands of dollars to AECOM to prepare a very detailed three dimensional digital computer representation of the entire site and to evaluate the performance of the landfill, focusing on the single lined cells, AECOM's June 6, 2013 report was basically an update of the groundwater monitoring for soil and rock layers below the Opaline claystone layer that underlies the actual landfill sections.

DHEC demanded that Kestrel Horizons submit the June 7, 2013 RCRA Part B Post-Closure Permit application the day after AECOM's report was provided to Kestrel. Kestrel Horizons submitted a RCRA Part B Post-Closure Permit application on June 7, 2013 – in compliance with DHEC's curiously-mandated deadline.

Just 3 days later, on June 10, 2013, AECOM submitted a draft report on soil gas investigations around the single-lined landfill cells. That report shows high gas concentrations of hazardous waste constituents in soils outside of containment – both above and beside the single-lined cells. The gas results correlate well with earlier sample results of the AECOM investigation of pore water from the soils above the containment layers of the cover systems of the single-lined cells of Section I and Cells IIA and IIB.

We have stated repeatedly that we believe the pore water and gas results constitute incontrovertible evidence of newly-discovered releases of hazardous waste and/or hazardous waste constituents. RCRA regulations very clearly require that the permit holder immediately notify the permitting agency of the newly-discovered releases and incorporate the information and a plan to address the newly-discovered conditions in any pending permit application.

On July 18, 2014 Kestrel Horizons submitted a comprehensive supplement to the June 7, 2013 RCRA Post-Closure Permit Application. That comprehensive permit application supplement addressed all eleven items listed in DHEC correspondence between July 2013 and July 14, 2014. David Scaturo, in a July 14, 2014 letter attempts to lay out the foundation for DHEC to require Kestrel to omit all information on newly-discovered releases from the various AECOM reports addressing gas and pore water.

In direct contravention to DHEC's directives, the comprehensive July 18, 2014 supplement included AECOM's reports on hazardous waste constituents outside of containment in soils and pore water, which is defined as groundwater in authoritative documents on groundwater Kestrel provided to you and your staff.

We also withdrew certifications by AECOM, S&G, and Kestrel, as Trustee, of the June 7, 2013 RCRA Part B Post-Closure Permit Application, noting that the inclusion of the newly-discovered releases confirmed that the Site Conceptual model must address all pathways – not just leakage out the bottom of the landfill, as AECOM has maintained in their work.

To be clear: We believe AECOM's work on the monitoring system below the Opaline claystone layer is probably technically sound, complete, and of great value. That is as far as we will go in accepting the validity of AECOM's analysis and recommendations regarding the Conceptual Site Model and their recommendations for the environmental monitoring program. Most of the rest of their recommendations are critically flawed because their Conceptual Site Model is critically flawed. It considers no dynamics within the landfill and the engineering and scientific analyses appear to be based on outdated understandings of municipal solid waste landfills. The AECOM report that includes the updated Conceptual Site Model is signed by two registered professional geologists who specialize in groundwater modeling and monitoring, but is not stamped or signed by a registered professional engineer.

Kestrel's recent interviews with AECOM staff have confirmed our concerns regarding what was supposed to be a comprehensive, interdisciplinary review and analysis of the conditions, surroundings, performance, and monitoring needs of the Pinewood Landfill. Further, those interviews confirmed our concerns that the principal AECOM team members were not adequately versed in the regulatory and technical requirements applicable to RCRA hazardous waste landfills.

In our March 10, 2014 packages presented to you and DHEC staff, we laid out in narratives and drawings, an illustration of the Conceptual Site Model required to address all current and potential releases of hazardous wastes and hazardous waste constituents in compliance with state and federal hazardous waste regulations. That March 10 package is included in our July 25, 2014 resignation package.

We have also repeatedly proposed – since May 2004 - to install sand blanket drains and French drains around the single-lined landfill cells for use in monitoring of the water table aquifer and unsaturated zone and to serve as a real-time interception of contamination which might be released from the single-lined cells. None of this is a surprise to you, as we have reviewed many times with you virtually all of the documents included in our July 25 resignation package and your staff. So persistently have we done this that DHEC staff and managers recoil at any indication this subject might arise.

Based on these conditions, the salient potential threats at the Site have been summarized in our March 10, 2014 correspondence with Director Templeton and Director Dieck – as well as many other documents. These risks and recommendations are based on our observations since the inception of the Trust, and information and concepts presented to the Trust by its consultants. For each threat, the Trustee advocates taking necessary actions as **preventative** measures, since the flow path is so short and time of travel for a release to

the water table is so short, that relying on detecting a shallow release and installing “just-in-time” remedial measures is a risky strategy.

Again, the text of Kestrel Horizons’ July 25, 2014 resignation letter:

July 25, 2014

Directors Catherine Templeton, Esq. and Elizabeth Dieck, Esq.  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201

Re: Resignation of Kestrel Horizons, LLC from Position of Trustee of the Pinewood Site Custodial Trust

Dear Director Templeton and Director Dieck:

Effective today, we are providing notice of our resignation from the position of Trustee of the Pinewood Site Custodial Trust. After months of concentrated effort trying to work with Department managers and staff to fully and finally address what we believe to be serious environmental, technical, legal, regulatory, financial, and economic issues, we have reached an impasse.

We will not provide detail here, but rather refer to the RCRA Post-Closure Part B Permit application amendments submitted to the Department on July 18, 2014 by Kestrel Horizons, as Trustee, and the three volume set of documents submitted to you today.

The purposes of the Pinewood Site Custodial Trust, as stated in Section 3 of the Trust Agreement (effective date December 24, 2003) include the following phrases:

- “. . . maintaining the Pinewood Facility in an environmentally protective manner and in accordance with applicable law.”
- “. . . for the benefit and protection of the people of the State of South Carolina.”

The Trust Agreement requires the Trustee to do the following (among other things):

- “. . . perform such measures as are necessary to comply with the Permit [the Hazardous Waste TSD Facility Permit, dated March 21, 1994]. . . “
- “...to employ and compensate engineers, environmental consultants, project managers, . . . attorneys, . . . and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust, and the achieving of its purposes...”

We have concluded that Kestrel’s orientation towards addressing potential threats to health and the environment rather than waiting for substantial threats to develop, and prevention of adverse environmental effects rather than develop “just-in-time” cures, are incompatible with the Department’s preferred approaches.



Kestrel has always been committed to full public disclosure of all aspects of the Trust operations and of Pinewood Site conditions and challenges. *The Pinewood Story*, which is updated and posted on the Pinewood Site web page each January, is one example of this commitment. All correspondence with the Department over the past 10 years and seven months since the inception of the Trust on December 24, 2003 conveys that transparency and clear articulation of issues, concerns, legal and regulatory frameworks, alternatives, economics and financials, risks and risk management strategies, required decisions, and proposed plans.

Kestrel Horizons, LLC will, of course comply with the terms of the Trust Agreement and will plan to meet with Department managers regarding arrangements for a transition.

Sincerely,

William A. Stephens, P.E.  
Managing Principal