

*Paul Steven Screnock*  
*Attorney and Counselor at Law*

**NEGOTIATED SETTLEMENT AGREEMENT BETWEEN  
ADAMS COUNTY AND THE TOWN OF PRESTON  
COUNTY LANDFILL SITE**

This Agreement is executed between Adams County, a Wisconsin municipal corporation (herein called "County") and the Town of Preston, a municipality in Adams County, (herein called "Town"). For purposes of this Agreement, the term "County" shall mean Adams County, a municipal corporation and its servants, agents, employees and successors in interest to this Agreement.

This Agreement is made pursuant to Section 144.445(6) Wis. Stats., 1981, and shall run with that certain parcel of land known as the Adams County Landfill site (formerly the Wilbur Jensen property), more specifically described on Appendix A attached hereto.

In consideration of the mutual covenants and agreements contained herein, the parties contract as follows:

**I. TERM OF CONTRACT.**

This Agreement shall be binding on all parties, their successors, and assigns for the period of landfill operations and thirty (30) years after site closure. Any party to this Agreement may request the other party to renegotiate any of the terms and conditions of this Agreement, or request negotiations on other matters, which were unforeseen or due to oversight, were not previously discussed or resolved herein. All such request shall be in writing and shall state with specificity the issue of negotiation and the requesting party's position on the same. Upon receipt of such a request, the non-requesting party may elect to participate in renegotiation and shall notify the requesting party of its election to participate within thirty (30) days of the receipt of the request.

**II. WASTE SOURCE**

**A. Source Limitation.** The waste to be received at such landfill shall be limited to waste generated from within Adams County. No one other than the Adams County government and its employees and representatives and authorized representatives of other Adams County municipalities may deposit any material at the landfill site. The recycling portion of this site shall be directed at recycling normal household products. This site shall not be used as an installation for any reprocessing facility without the consent of the Town of Preston which consent shall not be unreasonably withheld. It is understood that properly licensed private haulers may deposit waste at such site within the terms and restrictions contained in this Agreement and within other rules and regulations imposed by law.

**B. No Hazardous Waste.** No hazardous waste, as defined in Chapter NR 181, Wis. Admin. Code, shall at any time be accepted, received, stored, disposed of or transported to the landfill in such quantities as to require a DNR Hazardous Waste permit. In no case will PCBs exceed 4 parts per million or the Hazardous Waste permit limit, whichever is lower. The Operator agrees that it shall not, at any time, apply to the DNR for a Hazardous Waste permit to store or dispose of hazardous waste at the landfill or at any location in the Town.

### **III. CONFINING WASTE MATERIAL**

**A. Windblown Material.** The County shall be responsible for all windblown material blowing from the site or from vehicles transporting waste to the site. Upon complaints received by the Solid Waste Manager or the landfill operator, the County shall take immediate steps to pick up any such windblown material. In the event that windblown debris from the landfill enters a farmers field, the material well be cleaned up by the County within seventy-two (72) hours of notification.

All trash, debris, garbage, or other refuse, including demolition debris, shall be hauled to the landfill on the designated route in covered or enclosed vehicles or containers.

The County, at all times that such landfill is in operation, shall have in effect an ordinance requiring all individuals, companies and governmental entities who deliver trash, debris, garbage or other refuse to the recycling site or other portion of the landfill site, to use covered or enclosed vehicles to transport such material to such site. The County shall provide a significant monetary fine for failure to comply with such ordinance and shall diligently enforce such ordinance.

The County shall also adopt an ordinance requiring all those transporting materials of any kind to the landfill site (other than members of the general public transporting only recyclables) to do so only along the designated route. The County shall provide a significant monetary fine for failure to comply with such ordinance and shall diligently enforce such ordinance.

**B. Fencing.** The County shall build and maintain all fences at the landfill site during the operation of the landfill and continuing for a reasonable period after closure.

There shall be an interior, paper catcher fence around the operations area that is at least 8 feet in height.

There shall also be a perimeter fence of a minimum of 4 feet in height.

All fencing shall have gates with locks, at all access points.

C. Screening. The landfill shall have a windbreak of trees and shrubs of a minimum of five hundred (500) feet in width.

D. Supervision. The County shall provide supervision at the landfill site during all hours that the site is open.

The public's access to the landfill site shall be limited to that area reserved for recycling, which area shall be clearly defined.

There shall be personnel at the site, at all times the site is open, to see that no unauthorized dumping is done at or near the recycling area and to see that the recycling area is properly maintained. This landfill site may be operated between the hours of 7:00 A.M. and 7:00 P.M..

#### IV. MONITORING PROGRAM AND COMPLIANCE OF APPLICABLE REGULATION

A. Monitoring. The County agrees to carry out all monitoring as required by the Department of Natural Resources.

B. Compliance With Laws and Regulations. In addition, the County agrees to comply with all State, Federal and local laws and regulations pertaining to the construction, use, operation, maintenance, repair and closure of the landfill site.

C. Fire Protection Cost. To the extent the Town can reasonably verify the cost it incurs for fire protection to the landfill site, the County will reimburse the Town for such cost within sixty (60) days after such verification is furnished to the County.

D. Replacement of Water Supply. The County shall supply necessary amounts of water both for human and animal use, for claimants as may be required under Section 144.265(4) of the Wis. Stats., the County shall immediately be responsible and assume the role of the Town in the event such a claim is filed, without cost to the Town of Preston. Replacement water under this paragraph shall be of comparable quality and quantity as exists as of the date of opening the site.

#### V. CREATION AND ROLE OF THE ADVISORY COMMITTEE

A. It is agreed that Adams County will enter into discussion with the Landfill Advisory Committee regarding the possibility of providing for a member of the Town of Preston board serving on the Advisory Committee. If, in such case as this is agreed to by the Landfill Advisory Committee, an addendum to that affect will be included into this Agreement.

## VI. ECONOMIC PROTECTION AND PAYMENT TO NEIGHBORING PROPERTY OWNERS.

To minimize any possible economic impact on properties in the vicinity of the landfill, the County agrees to provide economic protection. The County agrees to provide economic protection for those properties located within one (1) mile of the point constituting the center of the licensed area of the proposed landfill site and listed in Appendix "A" on the terms and conditions hereinafter set forth:

1. Payment under this section shall be made only once on each parcel covered in Appendix "A"; and, shall be made only during the term of this Agreement and only when ownership of a parcel is to be transferred to another owner.
2. This section shall be applicable to owners of record as of the date of the signing of this A, and to their heirs, successors, assigns, or devisees.
3. This economic protection rights provided for in this Article of Agreement shall run with the ownership of the parcels covered by this Article, as described in Appendix "A". An owner may transfer his/her property without implementing the economic protection rights under this Agreement and if he/she does so, such economic protection rights shall be available to his/her successors in title and their heirs, successors, assigns and devisees until such right are fully exercised or until this Agreement expires, whichever occurs first.
4. For an owner to implement the economic protection rights, he/she must notify the County in writing of his/her intent to sell this property and his preliminary protection provision. At that time, the landowner shall also notify the County as to whether he/she intends to sell such property in an arms length transaction or intends to convey it in a transfer that is not an arms length transaction.
5. The first step after the landowner notifies the County his/her preliminary intent to seek economic protection under this Agreement is for the County to meet with the landowner and attempt to negotiate Agreement as to the economic protection payment to be made to the landowner. If agreement is reached and the agreed payment made, then such parcel shall not be the subject of any further economic protection payment under this Article.

6. a) If no agreement is reached with the landowner within thirty (30) days from the date of such notice, unless such deadline is extended by mutual agreement of the parties, then the County, shall initiate procedures for the appraisal of such parcel. The property shall be appraised to determine what its fair market value would be if no landfill had been installed in such vicinity. Also, if the landowner has indicated that such transfer will not be an arms length agreement, then an additional appraisal shall be made determining its "diminished fair market value" in light of the presence of the landfill. The County shall hire a real estate appraiser. The real estate appraiser hired by the County shall be certified as a member of the American Institute of Appraisers (MAI) or recognized by the National Appraisers Association and shall work independently of the County. Upon its completion, the County shall make known the result of the appraisal to the affected property owner. In the event the affected property owner disagrees with the valuations arrived at, he or she or they shall have a right to obtain an appraisal valuing the subject property at its fair market value and, if applicable, "diminished fair market value". Any appraiser retained by the affected property owner shall be certified as a member of the American Institute of Appraisers (MAI) or recognized by the National Appraisers Association and shall work independently of the property owner. The cost for all appraisers under this subsection shall be paid by the County. The two appraisers shall meet within twenty (20) days after the appointment of the second appraiser. If they agree on such appraised values then such values shall be deemed to be such fair market value and "diminished fair market value". If they fail to agree, then they shall select a third appraiser and the values approved by a majority vote of the appraisers shall then be deemed to be such fair market value and "diminished fair market value". If the two appraisers are unable to mutually select a third appraiser, they shall immediately request the Judge of Adams County Circuit Court to appoint the third appraiser. Such third appraiser shall also be a member of the American Institute of Appraisers (MAI) or recognized by the National Appraisers Association.

b) Within ten (10) days after being furnished with such appraised values the landowner shall elect either to proceed with these economic protection proceedings under this Article or to terminate proceedings under this Article so that such economic protection rights will continue to be available to such landowner or his/her successors, heirs, assigns or devisees. If he/she elects to so terminate such economic protection

proceedings, then he/she shall be responsible for reimbursing the County for the costs of such appraisals within sixty (60) days of such election to terminate and he/she may not again elect economic protection under this Article for a period of at least two (2) years from his/her election to terminate.

7.
  - a) If the landowner is to proceed and has indicated that he/she will be conveying in an arms length agreement, then the property is to be placed on the market for sale with a real estate broker licensed under the laws of the State of Wisconsin. The property shall be listed for sale until either (a) the property owner sells it for at least the fair market value price, as determined by his or her or their appraiser, in which case no payment shall be made for diminished fair market value by the County, or (b) the property owner, after the property has been on the market for at least sixty (60) days, receives an arms length written offer for the property which is less than the fair market value or permit the property owner to complete the offer and pay the property owner the difference between the sale price and such fair market value. Nothing in this subsection shall preclude the property owner from immediately accepting an offer to purchase, but all offers so accepted shall clearly state that such acceptance is contingent upon the County's election to purchase the property hereunder. The County shall have thirty (30) days after notification in writing by the property owner of the offer in which to make its election.
  - b) If the landowner is to proceed and has indicated that he/she will be conveying in a non-arms length transaction, the landowner shall notify the County of such planned transfer. In that case, the landowner shall be entitled to payment from the County equivalent to the difference between the fair market value and the "diminished fair market value" of the property as a result of the landfill placement. Such payment shall be made within sixty (60) days after such transfer occurs.

## VI. MISCELLANEOUS

A. Assignment, Transfer or Sale of Site. The County shall not assign, sell, lease or in any manner transfer ownership or operation of the landfill to any other person, entity or corporation, excluding existing contracts, unless by mutual consent of both the County and Town Board. The Town Board shall not unreasonably withhold such consent.

The transfer of any part of the landfill shall comply with the "transference of responsibility" provisions of Section 144.442, Wis. Stats., and with the proof of financial responsibility requirements of Section 144.443, Wis. Stats., so as to ensure the availability of funds for compliance with the closure and long-term care requirements set forth in the Plan of Operation and the requirements of this Agreement.

**B. Uses After Closure.** The landfill site, after closure, shall be used only for such uses as will protect the integrity of the clay cap. The uses of such site shall be subject to the approval of the Town Board. Such approval shall not be unreasonably withheld.

**C. Severability Clause.** If any provision, term or covenant of this Agreement is held unenforceable by a court of law, then it is expressly understood by the parties that all remaining portions of this Agreement shall remain in full force and effect and binding upon them.

This Agreement is signed and sealed in duplicate.

Dated this 13<sup>th</sup> day of June, 19 90

ADAMS COUNTY

George Dixon /  
Chairman, Adams County Board

R. Donald Rogers  
Adams County Solid Waste Director

Beverly Ward,  
County Clerk

TOWN OF PRESTON

Don C. Monroe  
Town Chairman

Anne Gasicinica  
Town Clerk

Bernard Buzd  
Town Supervisor

John J. Porela  
Town Supervisor