

**ACTIONS**  
**Board of Supervisors Meeting of March 9, 2005**

March 11, 2005

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> <li>Meeting was called to order at 6:02 p.m. by the Chairman, Mr. Rooker. All BOS members were present. Also present were Bob Tucker, Larry Davis, and Debi Moyers.</li> </ul>	
<p>4. From the Public: Matters Not Listed on the Agenda.</p> <p><u>John Martin:</u></p> <ul style="list-style-type: none"> <li>Questioned the legality of RWSA's Board of Directors closed session on February 28<sup>th</sup>. Suggested that future closed meetings of the RWSA dealing with water supply include one City Council Member and one Board of Supervisors' Member.</li> </ul> <p><u>Liz Palmer:</u></p> <ul style="list-style-type: none"> <li>Gave a copy of a letter to Board members offering observations, opinions and to correct misinformation presented at the March 3<sup>rd</sup> joint water supply meeting.</li> </ul> <p><u>Jamie Spence:</u></p> <ul style="list-style-type: none"> <li>He is President of the Blue Ridge Home Builders Association. Clarified their position with regards to the proposed Subdivision Text Amendment. Remarks were copied and provided to Board members. The BRHBA is in opposition to this proposed amendment and intend to fight it unless their concerns are addressed.</li> </ul> <p><u>John P. Moore:</u></p> <ul style="list-style-type: none"> <li>Stated Butch Davies, representative from the Culpeper District to the CTB, is not going to support the Route 22/231 truck restriction. Asked Board to coordinate with Congressman Rob Bell on this issue.</li> </ul>	
<p>5. Public Hearing to receive comments on the County Executive's Recommended Operating and Capital Budget for FY 2005/2006.</p> <ul style="list-style-type: none"> <li><b>HELD</b> the public hearing.</li> </ul>	
<ul style="list-style-type: none"> <li>The Board recessed at 8:12 p.m. and reconvened at 8:27 p.m.</li> </ul>	
<p>6. Discussion: Water Supply Options.</p> <ul style="list-style-type: none"> <li><b>HELD</b> discussion. Mr. Rooker stated that he would communicate with the Mayor, David Brown, regarding the formation of a committee to meet with federal and state regulators.</li> <li><b>CONSENSUS</b> of Board to pursue the appointment of elected officials on the RWSA Board.</li> </ul>	
<p>7. From the Board: Matters Not Listed on the Agenda.</p> <p><u>Robert Tucker:</u></p> <ul style="list-style-type: none"> <li>Presented a Resolution to the Board Authorizing the Execution of a Memorandum of</li> </ul>	<p><u>Clerk:</u> Forward signed copy of resolution to County Attorney's Office.</p>

<p>Understanding between the City of Charlottesville, Albemarle County, The University of Virginia and the Rivanna Solid Waste Authority for Funding Environmental Remediation Costs at the Ivy Landfill.  <b>ADOPTED</b> by a vote of 6:0.</p> <ul style="list-style-type: none"> <li>Presented Ordinance No. 05-E(1). An emergency ordinance establishing testing requirements to determine whether a private ground water well has been contaminated where the Virginia Department of Environmental Quality has confirmed that there has been a petroleum release or discharge and the well is located in an active contamination area. <b>ADOPTED</b> ordinance, by a vote of 6:0.</li> </ul>	<p>(Attachment 1)</p> <p><u>Clerk:</u> Forward adopted ordinance to County Attorney's Office. Forward copies to Mark Graham, Tamara Green, Jay Schlothauer and Amelia McCulley.  (Attachment 2)</p>
<p>8. Adjourn to March 14, 2005, 1:00 p.m., Room 235.</p> <ul style="list-style-type: none"> <li>The meeting was adjourned at 9:10 p.m.</li> </ul>	

/djm

Attachment 1 – Resolution and Memorandum of Understanding for Remediation Costs at Ivy Landfill  
Attachment 2 – Emergency Ordinance Establishing Testing Requirements for Private Ground Water Wells

**RESOLUTION**  
**AUTHORIZING THE EXECUTION OF A**  
**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE CITY OF CHARLOTTESVILLE, ALBEMARLE COUNTY,**  
**THE UNIVERSITY OF VIRGINIA AND THE RIVANNA SOLID WASTE AUTHORITY FOR FUNDING**  
**ENVIRONMENTAL REMEDIATION COSTS AT THE IVY LANDFILL**

**BE IT RESOLVED** by the Albemarle County Board of Supervisors that the County Executive is hereby authorized to execute, on behalf of the County, the *Memorandum of Understanding Among the City of Charlottesville, the County of Albemarle, the Rector and Visitors of the University of Virginia and the Rivanna Solid Waste Authority* related to the sharing of costs for environmental remediation at the Ivy Landfill, in a form approved by the County Attorney.

The County's payment of its respective share of the remediation costs pursuant to the terms of the Memorandum of Understanding is expressly made contingent on the annual appropriation of sufficient funds by the Board of Supervisors, and on the continuing payment by the University of Virginia and the City of Charlottesville of their respective shares of the remediation costs under the terms of the Memorandum of Understanding. A certified copy of this Resolution shall be attached to and made a part of the Memorandum of Understanding.

**MEMORANDUM OF UNDERSTANDING**  
**AMONG**  
**THE CITY OF CHARLOTTESVILLE**  
**THE COUNTY OF ALBEMARLE**  
**THE RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA**  
**AND**  
**THE RIVANNA SOLID WASTE AUTHORITY**

This **Memorandum of Understanding** ("MOU") is made this \_\_\_ day of \_\_\_\_\_ 2004 by and among the **City of Charlottesville** (the "City"), the **County of Albemarle** (the "County") the **Rector and Visitors of the University of Virginia** (the "University") and the **Rivanna Solid Waste Authority** (the "Authority"), together referred to as the "Parties."

WHEREAS, prior to the formation of the Authority, the City and the County jointly owned a tract of approximately 300 acres of land situated on State Route 637 in Albemarle County, Virginia, on which a solid waste depository was developed known as the Ivy Landfill (the "Landfill");

WHEREAS, on November 20, 1990, the City and the County entered into a certain Solid Waste Organizational Agreement for the purpose of forming the Authority to operate the Landfill, which Landfill operated continuously from 1968 until the closure of Cell 2 in 2001;

WHEREAS, at all times since 1968 the City, the County and the University have utilized the Landfill and benefited from its use as a solid waste depository;

WHEREAS, pursuant to the Virginia Administrative Code, the Virginia Department of Environmental Quality (the "VDEQ") has promulgated regulations for closure of solid waste depositories located within the Commonwealth of Virginia;

WHEREAS, pursuant to such regulations, the Authority has submitted a Corrective Action Plan ("CAP") to the VDEQ for the closure, remediation and monitoring of all disposal cells located at the Landfill;

WHEREAS, beginning July 1, 2005, the Authority expects to incur the following expenses for the closure, remediation and monitoring costs for the Landfill (the "Costs"):

- a. The expenses incurred by the Authority under the CAP;
- b. The cost of such additional remediation activities, which if not required under the CAP, are approved by the Authority's Board of Directors as being reasonably necessary or appropriate to complete the remediation of the Landfill; and
- c. The administrative overhead of the Authority reasonably allocated to such activities;

WHEREAS, the estimated Costs for each fiscal year of the Authority beginning July 1, 2005 (the 2006 fiscal year) through June 30, 2035 are shown on a spreadsheet (i) using current dollars and (ii) assuming an inflation rate of 2.5% per annum attached hereto as Exhibit A;

WHEREAS, the costs and expenses the Authority expects to incur under the CAP cannot be funded by future revenues of operation of the Authority;

WHEREAS, the Parties have agreed that the following allocation of the Costs is reasonable and appropriate:

City:	33%
County:	60%
University:	7%; and

WHEREAS, the University, since it is not a party to the Solid Waste Organizational Agreement and not represented on the Board of Directors of the Authority, desires to fix its share of the Costs, and the City and the County are willing to allow it to do so.

NOW, THEREFORE, the Parties agree as follows:

1. The University agrees to fund its share of the Costs as set forth on Exhibit A on the first day of each fiscal year of the Authority beginning on July 1, 2005 and continuing on each July 1 thereafter through and including July 1, 2034, reserving the option to pay one-quarter of such amount initially, and paying three additional equal quarterly installments on October 1, January 1 and April 1 of each year. The University shall also have the right to prepay all or any portion of its share of the Costs on or before December 31, 2005 based on the amounts set forth on Exhibit B, or at anytime thereafter based on the amounts set forth on Exhibit A with any Costs projected after the prepayment date adjusted to prepayment date dollars using the inflation rate assumed on Exhibit A.
2. Each of the City and the County agrees to fund its share of the balance of the Costs remaining after payment of the University's share of the Costs as the total amount of such Costs for each year may be adjusted in the budget approved by the Authority's Board of Directors each year in the following percentages:

City:	35.5%
County:	64.5%

Such amounts shall be paid to the Authority on the first day of each fiscal year of the Authority beginning on July 1, 2005 and continuing on each July 1 thereafter through and including July 1, 2034, with each reserving the option to pay one-quarter of such amount initially, and paying three additional equal quarterly installments on October 1, January 1 and April 1 of each year.

3. Any amendment to this MOU must be made in writing and signed by the Parties; provided, however, that the City and the County may adjust their share of the balance of the Costs set forth in Paragraph 2 above as between themselves without the consent or agreement of the University; provided further, however, that such adjustment shall be in writing and signed by each of the City and the County.

4. This MOU shall be governed in all respects by the laws of the Commonwealth of Virginia.

5. Any notice, invoice, statement, instructions, or direction required or permitted by this MOU shall be addressed as follows:

a. To the City: Office of the City Manager  
P.O. Box 911  
Charlottesville, VA 22902

b. To the County: Office of the County Executive  
401 McIntire Road  
Charlottesville, VA 22902

c. To the University: Office of the Executive Vice President  
and Chief Operating Officer  
P.O. Box 400228

Charlottesville, Virginia 22904-4228

d. To the Authority: Thomas L. Frederick, Jr., Executive Director  
Rivanna Solid Waste Authority  
P.O. Box 979  
Charlottesville, Virginia 22902-0979

Or to any other party at such other address or addresses as shall at any time or from time to time be specified by the Parties.

6. This MOU, and any amendment or modification that may hereafter be agreed to in accordance with the provisions herein, constitute the entire understanding between the Parties with respect to the matters addressed, and supersede any and all prior understandings and agreements, oral or written, relating hereto.

WHEREAS these terms are agreeable to the City of Charlottesville, the County of Albemarle, the The Rector and Visitors of the University of Virginia, Rivanna Solid Waste Authority, each party offers its signature this \_\_day of \_\_\_\_\_, 2004.

THE CITY OF CHARLOTTESVILLE:

\_\_\_\_\_  
Gary B. O'Connell  
City Manager

\_\_\_\_\_  
Date

THE BOARD OF COUNTY SUPERVISORS  
OF ALBEMARLE COUNTY:

\_\_\_\_\_  
Robert W. Tucker, Jr.  
County Executive

\_\_\_\_\_  
Date

THE RECTOR AND VISITORS OF  
THE UNIVERSITY OF VIRGINIA:

\_\_\_\_\_  
Leonard W. Sandridge  
Executive Vice President and  
Chief Operating Officer

\_\_\_\_\_  
Date

THE RIVANNA SOLID WASTE AUTHORITY:

\_\_\_\_\_  
Thomas L. Frederick, Jr.  
Executive Director

\_\_\_\_\_  
Date

**ORDINANCE NO. 05-E(1)**

**AN EMERGENCY ORDINANCE ESTABLISHING TESTING REQUIREMENTS TO DETERMINE WHETHER A PRIVATE GROUND WATER WELL HAS BEEN CONTAMINATED WHERE THE VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY HAS CONFIRMED THAT THERE HAS BEEN A PETROLEUM RELEASE OR DISCHARGE AND THE WELL IS LOCATED IN AN ACTIVE CONTAMINATION AREA**

**WHEREAS**, Virginia Code § 32.1-176.5 enables the Albemarle County Board of Supervisors to establish reasonable testing requirements for private ground water wells serving as the primary potable water supply to determine whether the water from such wells complies with existing federal or state drinking water quality standards and to require that the testing be done prior to the issuance of building permits;

**WHEREAS**, the release or discharge of petroleum poses a threat to the ground water and to private ground water wells that serve as the primary potable water supply and, in turn, poses a threat to the public health, safety and welfare;

**WHEREAS**, private ground water wells located in areas where a petroleum release or discharge has been confirmed by the Virginia Department of Environmental Quality may pose an immediate threat to the public health where the contamination has not been remediated or otherwise corrected;

**WHEREAS**, it is necessary to protect the public health, safety and welfare in areas where there has been a petroleum release or discharge confirmed by the Virginia Department of Environmental Quality by requiring that new private ground water wells in such areas be tested for petroleum contamination to determine the extent of the contamination, if any, and to assure that the wells satisfy existing federal or state drinking water quality standards for the contaminants;

**WHEREAS**, active contamination areas have been identified in Albemarle County and proposed private ground water wells have not been tested and may be contaminated;

**WHEREAS**, the Virginia Department of Environmental Quality has cautioned that establishing new private ground water wells in the immediate area of a contamination plume could alter the conditions of existing contamination plumes and draw contaminants into areas that are currently free from contamination; and

**WHEREAS**, the Board of Supervisors finds that an emergency exists requiring the adoption of this Ordinance without prior public notice pursuant to Virginia Code § 15.2-1427.

**NOW, THEREFORE, BE IT HEREBY ORDAINED THAT:**

**Section 1. Purpose.**

The Board of Supervisors finds that discharges or releases of petroleum from leaking underground storage tanks may pollute ground water and, at high enough levels, these pollutants may render water unsuitable for drinking and may cause adverse effects on the public health, safety and welfare.

**Section 2. Applicability.**

This Ordinance shall apply to those areas of the County where the release or discharge of petroleum from leaking underground storage tanks has been confirmed by the Virginia Department of Environmental Quality and such area remains an active contamination area. For the purposes of this Ordinance, the term "active contamination area" means those lands within the area identified by the

Virginia Department of Environmental Quality to be contaminated such that, in its judgment, the contamination poses a risk to human health and the environment and warrants corrective action or remediation, and those lands within two thousand (2,000) feet of the contaminated area determined by the Virginia Department of Environmental Quality to be at risk for contamination.

### **Section 3. Well testing and reporting.**

Each private ground water well serving as the primary potable water supply for a structure within an active contamination area shall be tested as provided herein prior to the issuance of a building permit for the structure:

A. *Contaminants to be tested.* The tests shall determine whether the following volatile organic compounds are present in the water: Benzene, Toluene, Ethylbenzene, and Xylenes.

B. *Applicable standards.* Each contaminant identified in Section 3(A) of this Ordinance shall be tested for compliance with the maximum contaminant level established for that contaminant under the federal Safe Drinking Water Act, as follows:

1. Benzene: 0.005 MCL (mg/L)
2. Toluene: 1 MCL (mg/L)
3. Ethylbenzene: 0.7 MCL (mg/L)
4. Xylenes (total): 10 MCL (mg/L)

For the purposes of this Ordinance, "MCL" is the maximum contaminant level, which is the highest level of a contaminant that is allowed in drinking water. The units are in milligrams per liter (mg/L); milligrams per liter are equivalent to parts per million.

C. *Sampling and testing services.* Samples shall be taken and tests shall be performed using appropriate testing methods by either the Virginia Department of Environmental Quality or by a laboratory certified by the Commonwealth of Virginia to perform such services. No such tests shall be conducted by Consolidated Laboratories. The cost of such tests shall be paid by the landowner, provided that nothing herein prohibits the Virginia Department of Environmental Quality from conducting the tests without charge to the landowner.

D. *Reporting of test results.* The testing laboratory shall notify the landowner of the test results in a written report.

### **Section 4. Building permit; withholding.**

Each applicant for a building permit for a structure to be served by a private ground water well as the primary potable water supply within an active contamination area shall present the report containing the test results required by Section 3 of this Ordinance prior to issuance of the building permit.

A. *No contaminants detected.* If there are no tested contaminants detected, then the building permit shall be issued provided that all other applicable requirements are satisfied.

B. *Contaminants detected; exceed applicable standards.* No building permit shall be issued if one or more contaminants are detected and they exceed the federal Safe Drinking Water Act standards identified in Section 3(B) of this Ordinance, unless and until an alternative primary potable water supply is provided.

### **Section 5. Immediate effect; emergency.**

This Ordinance shall take effect immediately, being adopted under emergency procedures pursuant to Virginia Code § 15.2-1427, and shall remain in effect not longer than sixty days unless readopted in conformity with the applicable provisions of the Virginia Code.