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June 1, 2006

Nina Koger
IDNR Waste Management
502 E. 9th St.
Des Moines, Iowa 50319-0034

Re: Draft of Revised Chapter 113
Municipal Solid Waste Sanitary Landfills

Dear Ms. Koger:

We thank you for contacting FOX and meeting with us on May 16, 2006, to discuss proposed revision of Chapter 113. At your request, this letter has been prepared to offer comments in response to the Draft of Section 113.7(6) *Quality Control and Assurance Programs*.

Basically, this Section sets a standard for Professional Engineers that exceeds the standard of ordinary care as defined by the courts. Section 113.7(6) a. states the QC&A Officer shall be a Professional Engineer not in the employ of the facility, therefore, the facility owner must contract for these engineering services and will most likely require Professional Liability Insurance. However, the Draft Rules create an uninsurable situation whereby the Engineer (QC&A Officer) assumes the responsibility for the facility's personnel and equipment or a third-party contractor to ensure compliance with the Rule.

The liability associated with meeting the Rules should remain with the facility (Permittee). Some liability may be transferred to a third-party contractor through performance specifications included in Contract Documents for a specified warranty period. However, a consulting engineer cannot obtain insurance coverage to "supervise", "inspect", "verify full compliance", "ensure MSWLF units are constructed as good or better than the requirements of the rule", or "assume full responsibility" for the actions of the contractor or the owner's personnel. Once the landfill liner, subgrade, and leachate collection system have been covered with waste and the warranty period expires, the monitoring plan provides the only means of detecting liner failure. In the event of a leachate release, the facility assumes the liability unless provisions of the contract between the facility owner and the Engineer or contractor state otherwise.

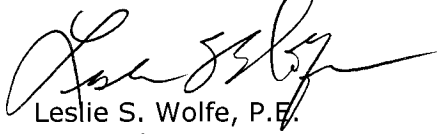
Attached are Exhibits A & D to the Standard Form of Agreement between Owner and Engineer for Professional Services utilized by FOX and other many other Consultants. The contract language has been developed by the Engineer's Joint Contract Documents Committee of the National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers and endorsed by the Association of General Contractors. Section A1.05 specifically relates to Construction Phase services performed by the Engineer and the Engineer's Resident Project Representative which do not

"ensure" compliance, but define an insurable status to "provide for Owner a greater degree of confidence that the completed work of the Contractor will conform in general to the Contract Documents (IDNR approved plans and specifications) and that the integrity of the design concept of the completed Project as a functioning whole as intended by the Contract Documents has been implemented and preserved by Contractor."

We understand the Department's intent to establish minimum quality control and assurance requirements for landfill liner construction. However, as drafted, the Rule attempts to make the QC&A Officer (Engineer) the "guarantor" of the liner construction which creates an unreasonable risk and liability to those of us providing these services. The owner derives the full benefit of the facility and should, therefore, assume the ultimate liability.

We ask that the Department re-draft Section 113.7(6), and we will be available to assist.

Sincerely,
FOX Engineering Associates, Inc.



Leslie S. Wolfe, P.E.
Principal