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Dear Mr. McQuerrey:

There are several independent questions before us which the Department tends to lump together in correspondence. Foremost among these is the issue of plant performance. I must point out to you that the only reason we have a problem (if indeed we do) at this point is that Islip was open-minded enough to undertake an unprecedented level of ash testing and disclose the results. Your enforcement stance seems to assume that the only way to effect improvements in burn-out is to refuse to consider our proposal for ash treatment until we show better burnout. The implication is that we would refuse to do anything about plant performance if you did not employ the leverage of financial punishment.

I don't know if you are aware that our default litigation against the original designer and builder of the MacArthur plant was not finally concluded until March 25th of this year. We are only now gaining use of electrical revenues and other funds contributed by Aetna which had been held in escrow for almost two years. These funds are specifically designated for a variety of plant improvements which can only now begin to be implemented. I must tell you that our files do not contain a single piece of correspondence from the Department, from February 1988 when the litigation was commenced, to the present time, which references the default in any context. Not even a "how's it going?" much less any evidence of concern as to the unique problems associated with default and plant acceptance. We feel rather fortunate to have this plant at all, and we certainly have never claimed it to be perfect although it has the capability to be very good indeed. The complete

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indifference of the State agency charged with planning solid waste management for Long Island to the construction problems of this key component, is frankly rather staggering.

Nevertheless it came as no surprise to read your threat to order a cessation of operations and permit denial in your March 15th correspondence. We are well aware of your powers. As an attorney I can recognize the advantage to be gained in any dispute by successfully casting the opposition as shockingly irresponsible in the public eye. I presume these tactical considerations influenced your choice of language.

For our part we would remind you that, unlike most facility operators in this industry who test as little as legally possible and demand anonymity when it comes to ash research, we discovered the laboratory error which negated the assumptions which formed the basis of the December 18th Consent Order. I hope you don't think we would have signed it if we knew either that 1) we had higher levels of burnout than 10% or 2) you would react as you have upon learning of it.

The fact of the matter is that several problems now exist which must be addressed. The neat solution to all of them would be termination of the project as a whole. We strongly argue that such an answer would create far many more problems than it resolves.

The issues before us are as follows:

1. Plant Performance. As discussed above we intend to improve burnout pursuant to regulation. This issue does not need to be tied to materials management in the Rolite project. We are submitting herewith another copy of the revised protocol to achieve this.

2. Loss on Ignition Testing. We have authorized and directed Montenay to purchase the necessary equipment to conduct these tests on site, pursuant to your request. We expect this capability will expedite our implementation of the protocol, although we cannot guarantee a date by which you will find LOI levels acceptable.

3. Relationship of LOI tests to performance of the Rolite gas layer. This issue was extensively discussed at the meetings held between all DEC division representatives and Islip on January 16th and February 8th. We were requested to make an extensive submission on the subject by March 1st. We did so but have not received any comment on it.

We recognize the potential relationship between organics, structural weakness of the Rolite particles and subsequent particle breakdown, compaction and inefficient gas

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migration. There is, however, no proof that it will occur at any particular level of organics. Nor is there proof that it will not occur even with 5% or less organics. For this reason, and to guard against any other unforeseen failure, we reiterate our proposal to install a redundancy layer beneath the Rolite gas layer. "Off-spec" Rolite will be handled separately.

4. Materials Management. The proposal enclosed herewith assumes that all Islip ash generated between December 18th and the present is off-spec and further that all Islip ash generated henceforth, or until the Department determines a definition of "consistency" with regard to LOI levels under 10%, or 5%, or some other figure acceptable to the Department, will also be considered "off-spec". This material will not be incorporated into the Rolite gas layer. With the exception of start-up ash, shut-down ash, or oversize screenings, it will be nevertheless treated via the Rolite process and employed as cleanfill in contour grading beneath the redundant sand layer and gas venting layer. The Department's approval of the use of Rolite treated material as cleanfill pursuant to the Consent Order (pgs 5-6) is required to be made "after review of all data to be submitted by Respondent pursuant to its approved Closure Plan...". This determination is separate and distinct from the Department's tentative approval of the use of treated ash as a gas venting layer.

All plant residue generated for a two hour period following combustor shut down or start-up, as well as any load of ash containing visible uncombusted material either at the plant or found in stockpile at the landfill will be segregated in containers and sent to Arkansas. The distinction here is that shut-down, start-up, or visibly uncombusted ash may contain putrescibles. This material is distinct from visibly combusted but high organic ash which may contain excessive carbon but not be considered unburned waste.

In the event that after completion of all necessary grading and contouring with off-spec Rolite, the MacArthur Facility is still not producing an ash with organic levels acceptable to the Department, we propose to incorporate limited amounts of this ash into the Rolite gas layer. We would map it, test it's quality in place and measure the effectiveness of the gas layer over time. We believe the performance of a gas layer utilizing ash with over 10% organics is a legitimate inquiry, not least because at some point all plants will produce some material over 10%. It would be good to know at what point failure will occur.

In addition, our ability to spread out daily loads of ash, with corresponding LOI results will be possible only after we have processed the stockpiled material with both

Rolite units. Presumably we will be able to go through the stockpiles at the rate of 400-500 tons per day, place the Hempstead material on the slopes, grade out the peak with Islip Rolite, and leave room to segregate batches of ash to some workable degree. The present lack of space at the landfill and lack of equipment by our carting contractor prohibits any meaningful batch segregation pending return of lab results. This may improve once Montenay begins testing itself, but we are assuming everything to be off-spec until the Department tells us otherwise.

If this proposal is acceptable to you, work may continue on the long term cleanfill determination needed for the future. If a positive determination can be made prior to the completion of the capping process we may begin cleanfilling without enduring any interim cost of export.

You will note we do not propose to ship any significant portion of our ash this year. We have neither the funds to do so or the ability to raise them. Our budget will not allow us to ship our ash to Arkansas and meet our other commitments at the same time. Disposing of all of the ash generated from December 18, 1990 through the end of 1991 would cost between \$4.5 - \$5 million. That money is not available. Further the Town is restricted by contract with its carting firms to imposing tipping fee increases only on January 1 of any given year. Since we are receiving almost no commercially generated waste as it is, a higher fee would generate little or no revenue until it could be passed on to the taxpayer next December.

Consequently our only response to a direction by you to ship ash to Arkansas (assuming we do not litigate) will be to cut projects and services. As President of the Agency I will be required to make recommendation to the Town Board to cut, delay, or defer various solid waste projects and services. No other municipal function will be affected as all solid waste functions in Islip are supported by the IRRA.

We are going to be talking about delaying the closures of the Blydenburgh landfill or Sayville landfill, deferring portions of the RIFS to another fiscal year, deferring improvements at MacArthur, deferring or canceling construction of the Edgewood compost facility, cutting service in recycling and composting. Not all programs or projects need be affected, but to give you an idea, dropping our yard waste compost program altogether would only save \$2.5 million. Clearly a lot of things are going to have to give.

I do not mention these items as a threat, since we will have no choice. I would point out that Islip's solid waste program will no longer be in a position to play a leadership role in waste management, nor could we realistically continue to support abstract concepts like 60% recycling. There

would be no benefit to the public in such a result.

We remain available to discuss all of these issues and proposals should you change your policy against meeting with us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael J. Cahill", written in a cursive style.

Michael J. Cahill  
President and General Counsel