

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
JACKSON DIVISION**

WASTE SERVICES OF DECATUR,)	
LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
DECATUR COUNTY, TENNESSEE,)	
)	
Defendant.)	

COMPLAINT

Plaintiff Waste Services of Decatur, LLC (“WSD”), for its Complaint for declaratory judgment and damages against Decatur County, Tennessee (the “County”), states:

I. INTRODUCTION

1. The Defendant County has breached the agreement it entered into with WSD whereby WSD agreed to operate a landfill owned by the County.

2. In exchange for WSD’s agreement to operate the subject landfill, the County made certain promises, including agreeing to provide for disposal and treatment of the liquid that leaches from the waste materials in the landfill, called leachate, at no cost to WSD.

3. The County has materially breached the subject agreement by failing to provide for disposal and treatment of the leachate which has caused WSD to pay for such disposal and treatment at substantial expense to WSD.

4. WSD asks that the Court declare that the County’s failure to provide for the disposal and treatment of the leachate is a material breach of the subject agreement that allows WSD to terminate the agreement and that the Court award WSD damages to compensate WSD for the

leachate disposal/treatment costs it has incurred due to the County's breach of its agreement to provide such services.

II. PARTIES, JURISDICTION, AND VENUE

5. WSD is a limited liability company organized under the laws of the state of North Carolina, authorized to do business in Tennessee. WSD's members reside in states other than Tennessee.

6. The County is a political subdivision of the State of Tennessee designated as a corporation by Tenn. Code Ann. § 5-1-103. The County may be served with process by serving the County Attorney, Jason Percy, at 26 W. Second Street, P.O. Box 100, Parsons, TN 38363.

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs and under the Court's general equity powers. Specifically, WSD is being forced to spend approximately \$1 million per year on leachate disposal and treatment due to the County's breach of the subject agreement.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because all of the events or omissions giving rise to the claims at issue in this action occurred in this District, the County entered into the agreement that is the subject of this action in this District, the County breached the subject agreement in this District, and because the County is a citizen of Tennessee and this District.

III. FACTUAL BACKGROUND

A. Relationship Between the Parties.

9. On March 4, 1996, Waste Services of America, Inc. (“WSA”) entered into the “Agreement for Development and Operation of the Sanitary Landfill” (the “Agreement”) with the County. A true and correct copy of the Agreement is attached hereto as **Exhibit 1**.

10. WSD is the successor in interest to WSA’s rights under the Agreement.

11. On December 21, 2000, WSD and the County entered into the “First Amendment to the March 4, 1996 Agreement for Development and Operation of the Sanitary Landfill” (“First Amendment”) whereby the County consented to the assignment of the Agreement to WSD. A true and correct copy of the First Amendment is attached hereto as **Exhibit 2**.

12. The Decatur County Landfill (the “Landfill”), which is the subject of the Agreement, is owned by the County.

13. The County holds the permit to operate the Landfill, which is issued by the Tennessee Department of Environment and Conservation (“TDEC”).

14. WSD operates the Landfill under the County’s TDEC permit.

B. The Relevant Terms of the Agreement.

15. Pursuant to the Agreement, WSD has “full, complete and sole control and direction over all aspects of the operation of the Landfill.” Agreement § 4.1(e).

16. Under the Agreement, WSD must, among other duties:

(a) “furnish all labor, tools, equipment and power for the operation of the Landfill,” Agreement § 4.1(a);

(b) operate the Landfill “according to generally accepted landfill standards for the operation of a sanitary landfill under the supervision of qualified and trained sanitary landfill personnel,” Agreement § 4.1(a);

(c) comply “with any and all federal, state, and local laws applicable to [WSD] concerning the operation of the Landfill,” Agreement § 4.1(c);

(d) “maintain all necessary permits” required for WSD to operate the Landfill, Agreement § 4.1(d);

(e) “maintain a scale and related equipment” to weigh the waste, Agreement § 4.1(g);

(f) maintain the site appearance keeping the Landfill “reasonably neat and sanitary at all times,” Agreement § 4.1(h).

(g) “visually inspect the Waste at the Landfill,” Agreement § 4.1(l);

(h) address complaints, Agreement § 4.1(m);

(i) prepare reports and maintain records regarding the waste accepted from the County by WSD, Agreement § 4.1(s) and (t); and

(j) “monitor and inspect the impact of the Landfill as required by any applicable Environmental Law,” Agreement § 4.2(b).

17. In exchange for these services, the County made certain promises to WSD.

18. The Agreement specifies that the County has certain responsibilities with regard to the disposal/treatment of leachate¹ at the Landfill. In pertinent part, the Agreement states:

Leachate disposal/treatment will remain at no cost to the Decatur County Landfill and [WSD] for the life of the site, in exchange for free disposal to Parsons and Decaturville pursuant to Schedule B of this Agreement.

Agreement § 2.6 (this provision shall hereafter be referred to as the “Leachate Provision”).

¹ Leachate is the liquid that leaches from the waste materials in a landfill.

19. The referenced Schedule B states, in pertinent part, as follows:

[T]he Cities of Decaturville and Parsons will continue to receive free residential waste disposal pursuant to this Schedule B only so long as leachate treatment and disposal is provided at no cost to the Decatur County Landfill and [WSD.]

Agreement, Schedule B.

20. The term of the Agreement is “for the duration of the site and its expansion(s), which term shall not, in any event, exceed thirty (30) years from the effective date.” Agreement § 8.1.

21. Closure of the landfill shall be undertaken by [WSD] which shall conform to all applicable federal and state governmental rules and regulations now or hereafter enacted relative to closure.” Agreement §4.3(a).

22. WSD “shall undertake post-closure care and pay costs of post closure care of the Landfill for a period of at least thirty (30) years, or for such longer period of time as may be required by any regulatory agency exercising jurisdiction over the Landfill” in a manner required by “applicable Environmental Laws.” Agreement § 4.3(a).

23. While the Agreement does not require it, to comply with the closure and post-closure requirement and TDEC rules, WSD has posted a bond with TDEC as financial assurance of closure and post closure care.

24. WSD may terminate the Agreement upon “any breach or default of this Agreement by the County.” Agreement § 8.2.

25. A breach is defined as “a material failure to comply with a material provision of this Agreement.” Agreement § 11.1.

26. A default is defined as “[a] breach of this Agreement . . . which breach is not cured” pursuant to the cure provision of the Agreement. Agreement § 11.2(a)(iii).

27. If an event of default by the County is not cured, WSD “shall have the right to (i) take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the breaching party under this Agreement; and (ii) terminate the Agreement.” Agreement § 11.4(b).

C. The County Breaches the Agreement by Failing to Provide Leachate Disposal.

28. Contrary to its agreement to provide for disposal and treatment of the leachate at the Landfill at no charge for the life of the site, the County has failed to provide for such disposal and treatment.

29. WSD currently spends approximately \$1 million per year disposing of and treating the leachate even though the County agreed to provide for such disposal and treatment in the Leachate Provision of the Agreement.

30. Such costs include transportation and disposal costs as well as costs to develop and implement leachate management systems.

31. All told, WSD has incurred over \$8,000,000 in leachate costs through the end of 2016.

D. WSD Provides the County Notice of Its Breach of the Agreement and, After the County Failed to Cure the Breach, Notice of WSD’s Termination of the Agreement.

32. On December 15, 2015, WSD provided notice of the County’s breach of the Leachate Provision of the Agreement pursuant to Section 11.3 of the Agreement. This letter is not attached hereto because it includes an inadmissible offer of settlement.

33. In that letter, WSD specified that it was not receiving free leachate disposal/treatment, that the Leachate Provision is a material covenant by the County, and that the

County's failure to perform under the Leachate Provision has caused WSD "significant financial damage."

34. WSD notified the County that, pursuant to Section 11.3 of the Agreement, the County had 90 days within which to cure this breach.

35. On November 8, 2016, after extending the cure period upon request by the County, providing significant documentation requested by the County, and participating in an unsuccessful mediation at the request of the County, WSD served a notice of termination of the Agreement after the County failed to cure, or even attempt to cure, the breach. A true and correct copy of the November 8, 2016 notice of termination is attached hereto as **Exhibit 3**.

36. Pursuant to Section 11.4(c) of the Agreement, WSD stated that it was giving the County until February 7, 2017 (90 days after the November 8, 2016 letter) to cure the breach or the Agreement will terminate on March 9, 2017.

37. On December 5, 2016, the County responded in a letter stating that WSD's obligations to provide landfill services were not conditioned on the County's agreement to provide disposal and treatment of leachate as specified in the Leachate Provision. A true and correct copy of the December 5, 2016 letter is attached hereto as **Exhibit 4**.

38. Later in the same letter, the County stated that WSD's "only remedy" for the County's "failure to treat or dispose of leachate" is the "discontinuation of free residential disposal in the County."

39. The County concluded its letter by threatening to pursue "all available legal actions and remedies" should WSD terminate the Agreement and requesting additional documentation from WSD related to water samples and environmental inspections.

40. On December 21, 2016, WSD responded by stating that it had already provided the County certain of the documents that the County requested in its December 5 letter and sought clarification as to the additional documentation the County was requesting, as well as copies of the materials cited by the County in the letter. A true and correct copy of the December 21, 2016 letter is attached hereto as **Exhibit 5**.

41. The County's only response to the December 21, 2016 letter has been to state that it is gathering the documentation requested by WSD, but the County has not produced any such documentation to WSD to this point.

E. WSD Needs to Construct an Additional Landfill Cell to Continue to Operate the Landfill.

42. In order to continue operating the Landfill, WSD needs to build an additional landfill cell to house the waste being disposed of in the Landfill.

43. WSD has already obtained drawings and bids for this landfill cell, the construction of which is currently estimated at \$1,850,000.

44. Construction on this additional landfill cell will need to start in the near future in order to accommodate the waste that is being disposed of in the Landfill.

45. WSD has suffered and will continue to suffer substantial harm as a result of the County's breach of the Agreement.

IV. CAUSES OF ACTION

COUNT I: DECLARATORY RELIEF

46. WSD adopts by reference the allegations set forth above.

47. The County has asserted that WSD's only remedy for the County's failure to provide for the treatment and disposal of leachate is the discontinuation of free residential disposal for two municipalities within the County.

48. The County's assertion in this regard ignores the material nature of the County's breach of the Leachate Provision to the entire Agreement and WSD's right to terminate the Agreement due to this material breach. *See* Agreement § 11.1.

49. As a result, an actual case and controversy exists between the parties with regard to whether the County's breach of the Leachate Provision is a material breach of the Agreement pursuant to 28 U.S.C. § 2201.

50. The Court should make the requested determination at this time to stop the County from receiving the benefit of WSD's construction of an additional landfill cell at the Landfill at substantial expense to WSD at a time when the County's breach of the Leachate Provision is causing WSD to incur significant damages every year.

51. Because the County's breach of the Leachate Provision is a material breach, the Court should enter judgment declaring that the County's breach of the Leachate Provision is a breach of the Agreement that allows WSD to terminate the Agreement, that the Agreement is terminated, that the County will take all steps necessary to have WSD released from any responsibility to perform closure/post closure care, and that the County must post a replacement surety so that WSD's closure/post closure bond can be released.

COUNT II: BREACH OF THE AGREEMENT

52. WSD adopts by reference the allegations set forth above.

53. The Agreement is a valid contract that exists between WSD and the County.

54. WSD has performed its obligations under the Agreement.

55. The County has breached the Agreement by refusing to provide leachate disposal and treatment as specified in the Leachate Provision.

56. WSD has suffered and will continue to suffer damage as a result of the County's breach of the Agreement.

57. WSD is entitled to an award of damages as a result of the County's breaches of the Agreement.

WHEREFORE, Plaintiff Waste Services of Decatur, LLC respectfully requests that the Court:

A. Enter an order declaring that the County's breach of the Leachate Provision is a material breach of the Agreement that allows Waste Services of Decatur, LLC to terminate the Agreement, that the Agreement is terminated, that the County will take all steps necessary to have WSD released from any responsibility to perform closure/post closure care, and that the County must post a replacement surety so that WSD's closure/post closure bond can be released;

B. Award all damages for the County's breach of the Agreement;

C. Award pre-judgment and post-judgment interest in the maximum amount permitted by law; and

D. Award Waste Services of Decatur, LLC any and all other relief to which it appears entitled.

Respectfully submitted,

/s/James L. Murphy III

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