

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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AUG 15 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:)
)
APPLICATION OF RED BARN WASTE) CASE NO.
MANAGEMENT, LLC FOR THE APPROVAL OF) 2006-000284
THE TRANSFER OF OWNERSHIP AND)
OPERATING INTERESTS OF CHIMNEY ROCK)
WASTE MANAGEMENT, LLC)

**RESPONSE TO COMMISSION STAFF INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Comes the Applicant, Red Barn Waste Management, LLC, by counsel, and in response to the Commission Staff's Interrogatories and Request for Production of Documents, states as follows:

1. Attached hereto and identified as Exhibit A to this response are the emails which had previously been requested by the Hon. Dale Wright, counsel for the Staff in this matter. Those emails constitute a response to inquiries from Mr. Wright on behalf of the staff, and are hereby incorporated in this response as if fully set forth.

2. In addition to the statements which have previously been provided by Red Barn, the applicant would state the following in response to Interrogatory No. 2:

a. The Applicant objects to the request made in Paragraph 2(a) to "Provide a list and detailed description of each benefit that the owner of Red Barn can provide that Chimney Rock is currently unable to provide." The standard quoted in Paragraph 2 of the Interrogatory, as set forth in KRS 278.020(6), provides that the Commission must find "that the proposed transaction is in accordance with law, for a proper purpose and is consistent with the public interest."

As the Commission Staff has been made aware, Red Barn and its principal member have recently purchased the adjacent RV Park and dock which are the customers of the proposed Red Barn wastewater treatment facility. Chimney Rock has sold its assets and is liquidating its operation and is no longer in a position to operate the wastewater treatment facility. It is the applicant's understanding that Chimney Rock will terminate the operation of wastewater treatment facility.

Therefore, it is clearly in the public's interest, the public in this case being those users of the wastewater treatment services currently being provided by Chimney Rock, to have a continuation of wastewater treatment services provided to both the RV park, the associated dock, and for those services to be available to potential users who may need the services in the future. It seems very obvious that it is in the public's best interest to continue the availability of the wastewater treatment services which are currently being provided by Chimney Rock.

The issue is not whether Red Barn is capable of providing services which Chimney Rock is currently unable to provide, but whether Red Barn is capable of providing services sufficient to handle the need of the public as those relate to the treatment of wastewater produced by the various user/customers. It is Red Barn's intent to take over the current operation of Chimney Rock, to continue to provide wastewater treatment services to its current users, to be available to provide wastewater treatment services to potential new users; and to be available to provide such other services as it may be capable of providing in the future as the need may arise.

b. To the best knowledge of Red Barn there is no urgent need for system repairs at this time. However, if a situation arises in the future where additional

financial reserves are necessary, over and above the reserves which are currently available to Red Barn for the purpose of system repairs, the principal member of Red Barn will be willing and able to loan the limited liability company any funding that may be necessary to ensure the continued operation of the plant in accordance with applicable law.

3. a. As the Commission has been made aware, Red Barn and its associated companies purchased the RV park and other assets from Chimney Rock as part of this transaction. The parties agreed to assign a value of \$10,000.00 as the purchase price of the wastewater treatment plant as of the date of closing.

b. The parties determined that \$10,000.00 was a fair negotiated price for the sale of the assets of the wastewater treatment plant and support equipment and ongoing accounts receivable and ongoing business.

c. Attached as Exhibit B is the \$8,000.00 note.

(1). Red Barn RV Park, LLC

(2). Five years

(3). 10%

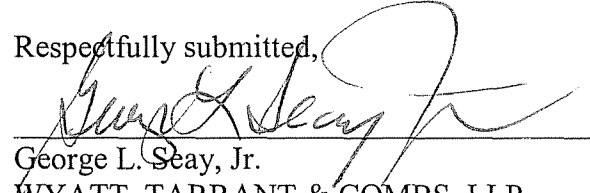
(4). August 8, 2006

d. Red Barn Waste Management LLC is purchasing the waste treatment facilities for a total of \$10,000.00, \$2,000.00 cash and \$8,000.00 as part of the note described above. The source of the initial \$2,000.00 cash contribution for the purchase of Chimney Rock will come from the principal member of Red Barn, LLC.

4. Red Barn, LLC is willing to accept the additional accounts payable that are owed to the RV Park and further is willing to accept the staff calculations which

determined that Chimney Rock owed the RV park \$17,103.45 as of December 31, 2005, and the current balance of which as of June 30, 2006 is \$16,754.45. See Exhibit C.

Respectfully submitted,


George L. Seay, Jr.
WYATT, TARRANT & COMBS, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507-1746
859.233.2012

*Counsel for Red Barn Waste Management,
LLC, and Jeffrey C. Ruttenburg*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, by U.S. Mail, on this the 15th day of August, 2006:

Harold L. Williams
Chimney Rock Waste Management, LLC
220 Chimney Rock Road
Harrodsburg, KY 40330

Gregory D. Stumbo
Attorney General
David Edward Spenard
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204

Hon. Dale Wright
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601


Counsel for Petitioners

30420294.1

Message

SEAY, GEORGE

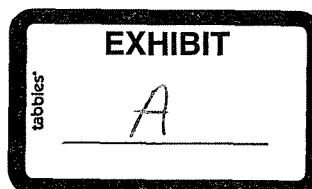
From: SEAY, GEORGE
Sent: Thursday, June 15, 2006 3:01 PM
To: 'Wright, Dale (PSC)'
Cc: GROSS, BRANDEN
Subject: RE: Red Barn

Dale, I am not sure what more to say about the public interest. If the operation of the sewer system is terminated then the homeowners and others who rely up on it will not have any service. I would assume that there is a fund which will cause the system to be operated for a period of time after termination of service but unless some entity comes in and takes over the operation of the system services will of necessity be terminated, or the sewage will be discharged untreated into the environment. Certainly it is in the public interest to have a properly run sewage system for these users. The owner of Red Barn is committed to properly use and maintain the facilities, and as a matter of law is presumed to intend to conform to all requirements of law with respect to the operation of the facility. The operator could be subject to civil penalties of up to \$25,000 per day for violations of its KPDES permit, i.e. for discharging noncompliant effluent. Therefore it is in the best interest of the operator to properly operate the facility, to remain in compliance with the applicable laws, and to provide the services needed to the users of the utility. I hope this is sufficient. Please let me know. Thanks.

-----Original Message-----

From: Wright, Dale (PSC) [mailto:Dale.Wright@ky.gov]
Sent: Thursday, June 15, 2006 12:02 PM
To: SEAY, GEORGE
Subject: RE: Red Barn

Branden, sorry additional questions. (1) How was the allotment for the proposed journal entry determined? (2) " Public Interest ". Need to state a little more about how the transfer is in the public interest. i.e.. Red Barn or the owner's financial status is such that if the utility needed money for repairs, maintenance etc., it would be readily available. Thanks.



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From: SEAY, GEORGE [mailto:GSEAY@wyattfirm.com]
Sent: Thursday, June 15, 2006 10:32 AM
To: Wright, Dale (PSC)
Subject: FW: Red Barn

The following message is a confidential communication and may be protected by attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please reply to the sender that you received the message in error, then delete it. Thank you.

Dale, I hope this addresses your question. If there is any other information which you need please let me know. Thanks.

-----Original Message-----

From: GROSS, BRANDEN
Sent: Thursday, June 15, 2006 10:28 AM
To: SEAY, GEORGE
Subject: RE:

George,

The Chimney Rock is transferring the following monetary assets to Red Barn:

1. Any cash that is currently in the bank accounts.
2. Any accounts receivable for delinquent or unpaid bills by customers.
3. To the extent that expenses (possibly up to \$27K) were not recovered from the customers and the PSC has allowed recovery from the customers, all additional expenses that *our* owed Chimney Rock:
 - a. It is my understanding that expenses incurred during the process of being regulated by the PSC are recoverable.
 - b. It is my understanding that (i) when Chimney Rock requested to be regulated by the PSC several customers were difficult and Chimney Rock had to hire an attorney to resolve the issues of access over customers' land to maintain the facility and ability to have PSC regulate the same and (ii) those items are

recoverable.

c. Any expenses incurred repairing or upgrading the Facility.

NOTE: I believe that the PSC allowed the recovery of those expenses from the customers, but that the recovery was to occur over a number of years and that a balance is remaining.

After the transfer to the facility and delivery of the \$10K purchase money, Chimney Rock Waste will not get any additional funds set forth in Paragraphs 1,2, or 3. All future funds collected will be owned by Red Barn.

Lastly, Red Barn will assume the contractual liabilities of Chimney Rock.

Phillip Branden Gross

WYATT, TARRANT & COMBS, LLP

250 W. Main Street, Suite 1600

Lexington, Kentucky 40507

TPN (859) 233-2012

Fax (859) 259-0649

PROMISSORY NOTE

\$8,000.00

Lexington, Kentucky
May 18, 2006

FOR VALUE RECEIVED, the undersigned **RED BARN WASTE MANAGEMENT, LLC**, a Kentucky limited liability company (hereafter referred to as "Maker"), having an address of P.O. Box 1047, Lexington, Kentucky 40588, hereby promises and agrees to pay to the order of **RED BARN RV PARK, LLC**, a Kentucky limited liability company (hereafter referred to as "Lender"), whose address is P.O. Box 1047, Lexington, Kentucky 40588, or its assigns, the principal sum of Eight Thousand Dollars (\$8,000.00), together with interest thereon as hereinafter provided, in lawful money of the United States of America, on or before August 18, 2011.

The principal of this promissory note (the "Note") shall bear interest on the unpaid balance thereof, from August 8, 2006 until July 8, 2011, at the rate per annum equal to ten percent (10.00%). Lender has foregone interest from May 18, 2006 to August 8, 2006.

All interest on this Note shall be computed daily on the basis of the actual number of days elapsed over an assumed year consisting of three hundred sixty (360) days. All payments on this Note shall be applied first to the payment of any expenses or charges payable hereunder, and next to accrued interest and then to the principal balance hereof.

In the absence of any acceleration of the maturity of this Note under the terms hereof, the principal and interest on this Note shall be due and payable as follows:

[i] Commencing on the 8th day of August, 2006, and continuing on the 8th day of each successive month thereafter, until and including the 8th day of September, 2011, Maker shall pay the principal and interest of this Note in equal monthly payments of Two Hundred Twelve Fifty and 47/100 Dollars (\$212.47) each.

[ii] The entire remaining unpaid principal and interest on this Note shall be paid in full on the 8th day of July, 2011.

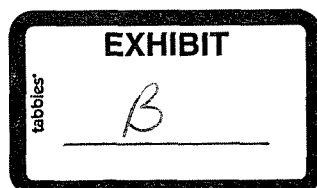
This Note is not secured as of the date of its making by any property of Maker.

Any payment on this Note that is overdue for more than ten (10) days from its due date shall, if requested by the holder of this Note, be increased by an amount equal to five percent (5.0%) of the overdue payment, or such lesser maximum amount as legally may be allowed.

Principal of this Note may be repaid in whole or in part without a premium. Lender shall have no obligation to advance, and Maker shall have no right to reborrow, any amounts so repaid.

All payments of principal and interest and any other sums due under this Note shall be made in immediately available funds to Lender at P.O. Box 1047, Lexington, Kentucky 40588 or to such other person or at such other address as may be designated in writing by the holder of this Note.

The occurrence of any one or more of the following events shall constitute a default under this Note, provided such event of default shall continue for ten (10) days after written notice thereof is given by Lender to Maker: [i] the failure to pay when due any installment or principal or interest under this Note, or the failure to pay or perform, when due, any covenants, agreements, obligations, liabilities or indebtedness of the Maker, whether under this Note or any other agreement, note or instrument, now or hereafter existing as and when due (whether at maturity or by acceleration, and with no prior demand therefor by Lender being necessary except to the extent, if any, required under the express terms of the agreement, note or instrument governing such default); or [ii] the failure to pay off the indebtedness evidenced by this Note, and all obligations, within sixty (60) days of the dissolution of the Maker of this Note; or [iii] a proceeding being filed by or commenced against the Maker, for dissolution or liquidation, or the Maker voluntarily or involuntarily terminating or dissolving or being terminated or dissolved, or the sale of all or substantially all of the assets of the Maker; or [iv] the failure to pay when due any installment of



principal or interest or the failure to perform any of the covenants, agreements or conditions of any other note or indebtedness, (or contained in any mortgage, security agreement or other document securing such note or indebtedness) the security for which constitutes an encumbrance on any property which is security for this Note; or [v] the filing by the Maker of a voluntary petition in bankruptcy pursuant to any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors (collectively "Bankruptcy Law") or the issuing of an order for relief against the Maker, under any such Bankruptcy Law, or the filing by the Maker, of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law, or the insolvency of, business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, or an assignment for the benefit of creditors by the Maker; or [vi] if the indebtedness evidenced by this Note remains unpaid following the expiration of fifteen (15) days after Lender has given written notice to Maker that Lender for any reason believes in good faith that the prospect for payment of the indebtedness evidenced by this Note or any part thereof in accordance of this Note is materially impaired; or [vii] Lender determining that any representation or warranty made by Maker, to Lender is, or was at the time made, untrue or materially misleading.

Whenever there is a default under this Note the entire principal balance of, and all accrued interest on, this Note, and all other existing or hereafter created or arising liabilities, indebtedness and obligations of Maker to Lender (however acquired or evidenced) shall, at the option of Lender, become forthwith due and payable, without presentment, notice, protest or demand of any kind (all of which are expressly waived by Maker). Upon the occurrence of any such default, in addition, the rate of interest applicable to the entire unpaid principal balance of this Note shall be increased by an increment of an additional five percent (5.0%) per annum, or such lesser increment as may be the maximum permitted by law.

Failure of the holder of this Note to exercise any of its rights and remedies shall not constitute a waiver of the right to exercise the same at that or any other time. All rights and remedies of the holder for default under this Note shall be cumulative to the greatest extent permitted by law. Time shall be of the essence in the payment of all installments of interest and principal on this Note and the performance of Maker's other obligations under this Note.

If there is any default under this Note, and this Note is placed in the hands of an attorney for collection, or is collected through any court, including any Lenderrupty court, Maker promises to pay to the holder hereof its reasonable attorneys' fees and court costs incurred in collecting or attempting to collect or securing or attempting to secure this Note or enforcing the holder's rights in any collateral securing this Note, provided the same is legally allowed by the laws of the Commonwealth of Kentucky or any state where the collateral or part thereof is situated.

The invalidity or unenforceability of any provision of this Note shall not impair the validity or enforceability of any other provision of this Note.

This Note has been executed and delivered in and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Maker and any other party who may become primarily or secondarily liable for any of the obligations of Maker hereunder hereby waives presentment, demand, notice of dishonor, protest, notice of protest and nonpayment, and further waive all exemptions to which they may now or hereafter be entitled under the laws of this or any other state or of the United States, and further agree that the holder of this Note shall have the right without notice to deal in any way, at any time, with Maker, or with any other party who may become primarily or secondarily liable for any of the obligations of Maker under this Note without waiving any rights the holder of this Note may have hereunder or by virtue of the laws of this state or any other state of the United States.

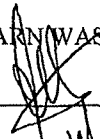
IN THE EVENT LENDER SHALL AT ANY TIME INSTITUTE ANY ACTION OR PROCEEDING AGAINST MAKER, MAKER HEREBY CONSENTS TO THE JURISDICTION OF ALL COURTS OF THE COMMONWEALTH OF KENTUCKY AND ALL FEDERAL DISTRICT COURTS, AND TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN THE STATE OR FEDERAL COURTS IN THE CITY OF LEXINGTON, FAYETTE COUNTY, KENTUCKY. TO THE FULLEST EXTENT PERMITTED BY LAW, MAKER HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION BROUGHT BY THE HOLDER OF THIS NOTE AGAINST MAKER. THE CONSENT AND WAIVER CONTAINED HEREIN HAVE

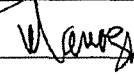
BEEN VOLUNTARILY AND KNOWINGLY MADE, AFTER MAKER HAS BEEN ADVISED AND COUNSELED BY ITS ATTORNEYS TO THE NATURE THEREOF.

IN WITNESS WHEREOF, this instrument has been duly executed on behalf of Maker this 8th day of August, 2006.

"MAKER"

RED BARN WASTE MANAGEMENT, LLC

By:  _____

Its:  _____

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8/7/2006 4:24 PM

BILL OF SALE AND ASSIGNMENT

For valuable consideration, the receipt of which is hereby acknowledged, [i] CHIMNEY ROCK R.V. PARK, L.L.C., a Kentucky limited liability company, and [ii] HAROLD L. WILLIAMS and KATHERINE H. WILLIAMS (collectively, "Seller"), do hereby irrevocably transfer, assign, sell, convey and set over to RED BARN RV PARK, LLC, a Kentucky limited liability company ("Purchaser"), all of Seller's right, title and interest in and to any accounts payable (the "Property"), including for amounts owed for all owner's fees, office rent, legal fees (paid by Chimney Rock R.V. Park, L.L.C. (the "Company")), KPDES Permit (paid by the Company), insurance, Plant Items (paid by the Company), and loan, owed by Chimney Rock Waste Management, L.L.C., a Kentucky limited liability company, to the Seller.

Seller covenants, represents and warrants that Seller is the lawful owner of the Property conveyed and assigned hereby and that Seller has full right and power to sell, convey and assign the same.

It is the intention of Seller that this Bill of Sale and Assignment shall constitute a full and complete conveyance and transfer of the Property described herein, but Seller agrees to execute and deliver from time to time hereafter, promptly after written request made by Purchaser to Seller, such other and further separate and specific documents, including bills of sale, assignments and other instruments of transfer to Purchaser, its successors or assigns, with respect to any and all items of Property set forth or described herein, as reasonably may be required to fully and completely convey such Property. To have and to hold the same unto Purchaser, its successors and assigns forever, to and for its own proper use and benefit forever.

IN WITNESS WHEREOF, this instrument has been duly executed by Seller on August 2, 2006, but is effective as of February 2, 2006.

SELLER:

CHIMNEY ROCK R.V. PARK, L.L.C.

By: Katherine H. Williams, Member
Katherine H. Williams, Member

Katherine H. Williams
KATHERINE H. WILLIAMS

Harold L. Williams
HAROLD L. WILLIAMS

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