

STATE OF VERMONT

SUPERIOR COURT

ENVIRONMENTAL DIVISION

Docket No. 37-3-13 Vtec

FILED

SEP 16 2013

Moretown Landfill Cell 3 Recertification)
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VERMONT
SUPERIOR COURT
ENVIRONMENTAL DIVISION

CONSENT ORDER AND JUDGMENT ORDER

This matter involves Moretown Landfill, Inc.'s appeal of the Agency of Natural Resources' March 14, 2013 decision denying the application for recertification of Cell 3 and all of the solid-waste related operations located at the Moretown Landfill. Based on ANR and MLI's Joint Motion for Entry of Consent Order and Judgment Order in this matter, and pursuant to V.R.E.C.P. 5(j), and this Court's inherent equitable powers, the Court hereby ORDERS, ADJUDGES AND DECREES:

The Parties

1. The Vermont Agency of Natural Resources (ANR) is a state agency with various offices in Vermont.
2. The Attorney General pursuant to 3 V.S.A. Chapter 7 is authorized to represent the State in this action and may settle the action as the interests of the State.
3. Moretown Landfill, Inc. (MLI) is a foreign corporation organized under the laws of Delaware, which is registered to do business in Vermont.

Background

4. MLI operates a solid waste disposal facility known as the Moretown Landfill located in Moretown, Vermont, under certification issued by ANR pursuant to 10 V.S.A. § 6605 (Facility).

5. The Facility contains an unlined landfill and two lined landfill cells, Cells 1 and 2, into which waste was disposed in the past, and Cell 3, in which MLI is currently disposing of waste.

6. MLI contemplates applying in the future for certification from ANR for a new landfill cell, Cell 4, which, if approved, would partially overlie Cell 3. No such Cell 4 application is currently pending with ANR.

7. MLI applied for recertification of the Facility in June 2009.

8. On March 14, 2013 ANR issued a decision which denied the application for recertification, ordered MLI to cease accepting waste at the Facility on April 15, 2013, ordered MLI to revise its closure plan and closure and post-closure cost estimate, and ordered MLI to submit odor and groundwater corrective action plans.

9. On March 29, 2013 MLI filed with this Court its Notice of Appeal of ANR's March 14, 2013 decision.

10. This Court's April 12, 2013 Order extended to July 15, 2013 the date on which MLI must cease accepting waste at the Facility.

11. ANR and MLI now desire to resolve the appeal through a consent order by the Court.

12. The Attorney General believes that this settlement is in the State's interest.

Cessation of Waste Acceptance

13. MLI shall not accept any solid waste as defined in 10 V.S.A. § 6602(2) at the Facility after July 15, 2013, unless and until MLI receives all appropriate certifications, permits and licenses required for management of waste at the Facility.

Cell 3 Closure

14. MLI shall implement a phased closure of Cell 3 pursuant to §§ 6-1002(b)(4) and 6-1002(h) of ANR's Solid Waste Management Rules ("SWMR"), in accordance with Paragraphs 15-17 of this Consent Order. MLI shall diligently file for and use best efforts to obtain all regulatory approvals required to implement this section. Subject to obtaining the required regulatory approvals, MLI shall implement this section in accordance with the plans approved by ANR.

15. MLI shall complete the closure of the north slope of Cell 3 (approximately 6.5 acres) as depicted in the Map attached hereto as **Exhibit A** through the installation of final cover in accordance with the design described in the Amended Closure Plan that MLI submitted to ANR on or about March 29, 2013, as may be modified in a manner that renders it equally or more protective by a revised plan submitted by MLI no later than August 1, 2013 and approved by ANR. Subject to the receipt of the necessary approvals from governmental agencies (e.g., the Development Review Board ("DRB"), stormwater management program, Act 250

District Commission), and subject to favorable weather conditions, MLI shall complete the installation of the final cover for the north slope of Cell 3 by October 15, 2013. Subject to favorable weather conditions, MLI shall establish grass or ground cover within four months of completion of installation of the final cover.

16. In addition, within 30 days of the Effective Date of this Consent Order, MLI shall submit for ANR's review and approval a revised closure plan that provides for the following:

a. Installation of a first phase of cover of the south slope of Cell 3 as generally depicted in the Map attached hereto as **Exhibit B**, which shall be a temporary cover that utilizes a Dura Skrim (or equivalent) temporary cap. Subject to the receipt of the necessary approvals from governmental agencies, and subject to favorable weather conditions, MLI shall complete the installation of the first phase of cover of the south slope of Cell 3 by October 15, 2013.

b. Replacement of the first phase of cover of the portions of the south slope of Cell 3 that are not within the Cell 4 Overlay Area described in Paragraph 16c as generally depicted in the Map attached hereto as **Exhibit C** with a second and final phase of cover which shall at a minimum meet the requirements of SWMR §§ 6-606(b)(2)(M) and 6-606(b)(2)(O). Subject to obtaining all necessary approvals from governmental agencies, MLI shall complete the installation of final cover in these areas no later than August 1, 2014. Subject to favorable weather conditions, MLI shall establish grass or ground cover within four months of completion of installation of the final cover.

c. If MLI submits to ANR an administratively complete application for certification of Cell 4 by December 31, 2013 and ANR approves the application, MLI shall replace the first phase of cover of the area of Cell 3 that underlies the area for which MLI anticipates seeking approval for construction of Cell 4, as is generally depicted in the map attached hereto as **Exhibit D** ("the Cell 4 Overlay Area"), in accordance with the plans for Cell 4 which have been approved by ANR.

d. If MLI submits to ANR an administratively complete application for certification of Cell 4 by December 31, 2013 and ANR denies the application, MLI shall replace the first phase of cover of the Cell 4 Overlay Area with a second and final phase of cover which shall at a minimum meet the requirements of SWMR §§ 6-606(b)(2)(M) and 6-606(b)(2)(O). Subject to obtaining all necessary approvals from governmental agencies and subject to favorable weather conditions, MLI shall complete installation of the second and final phase of cover no later than 90 days following the date of ANR's denial of the certification application, and subject to favorable weather conditions, MLI shall establish grass or ground cover within four months of completion of installation of the final cover. Notwithstanding the foregoing, MLI's obligation to comply with this subparagraph will be stayed if MLI files an appeal of the denial and obtains a court order staying its obligation to comply with this subparagraph.

e. If MLI fails to submit an administratively complete application to ANR for Cell 4 by December 31, 2013, MLI shall replace the first phase of cover of the Cell 4 Overlay Area with a second and final phase of cover which shall at a

minimum meet the requirements of SWMR §§ 6-606(b)(2)(M) and 6-606(b)(2)(O). Subject to obtaining all necessary approvals from governmental agencies and subject to favorable weather conditions, MLI shall complete installation of the second and final phase of cover no later than August 1, 2014. Subject to favorable weather conditions, MLI shall establish grass or ground cover within four months of completion of installation of the final cover.

f. Provisions for addressing the pre-construction work that took place preparing for Cell 4 and the settlement that took place on Cell 2.

17. Within sixty (60) days of the Effective Date of this Consent Order, MLI shall provide updated cost estimates and financial assurance mechanisms for closure of Cell 3 at the Facility.

Groundwater Corrective Action

18. MLI hereby acknowledges that three contaminants of concern (“COCs”) have been identified in the groundwater at the Facility: Arsenic (As), Iron (Fe), and Manganese (Mn). ANR has established a primary enforcement standard of 10 µg/l for As and 300 µg/l for Mn and a secondary enforcement standard of 300 µg/l for Fe. MLI hereby acknowledges that there are levels of As, Fe, and Mn that exceed the State’s primary or secondary enforcement standards in groundwater at the Facility, and that historical operations at the landfill have contributed to those exceedances for one or more of the COCs.

19. ANR hereby acknowledges that As, Fe, and Mn are naturally occurring and that there are background levels of the COCs present in the groundwater at the

Facility and that further characterization is necessary to establish background levels.

20. Within ninety (90) days of the Effective Date of this Consent Order, MLI shall submit a Feasibility Study to ANR that will identify the range of potential alternatives designed to reduce the level of COCs in the groundwater at the property boundary of the Facility (point of compliance) to regulatory levels, or background levels, whichever is higher, which shall include active remediation technologies and may include a monitored natural attenuation remedy option. The Feasibility Study shall also outline a plan and schedule for completing any additional monitoring necessary for developing and submitting a Groundwater Corrective Action Plan, including but not limited to: i) establishing the background levels of the COCs in the groundwater at the Facility; ii) confirming the direction and flow of groundwater at the Facility; iii) determining the current groundwater conditions (baseline); iv) updating the trend analysis using historical and supplemental (ongoing) groundwater data; and v) a schedule for achieving compliance with groundwater standards or achievement of background levels, as applicable. The feasibility study is subject to ANR review and approval.

21. In accordance with the schedule set forth in the approved Feasibility Study by ANR, MLI will prepare and submit to ANR a Groundwater Corrective Action Plan (Corrective Action Plan), which selects the remedial action that best meets the following criteria: i) overall protection of human health and the environment; ii) compliance with Applicable or Relevant and Appropriate

Requirements (ARARs); iii) long-term effectiveness and permanence; iv) reduction of toxicity, mobility, and volume; v) short-term effectiveness and implementability; and vi) cost. This Corrective Action Plan will, at a minimum, present a schedule with milestones. The Corrective Action Plan shall also provide for a monitoring plan that requires at least semi-annual monitoring. The Corrective Action Plan is subject to ANR review and approval.

22. MLI shall implement the Corrective Action Plan, as approved by ANR, in accordance with the schedule set forth in the approved Plan.

Odor Plan

23. Within sixty (60) days of the Effective Date of this Consent Order, MLI shall submit to ANR for review and approval an Odor Maintenance and Preventative Action Plan (Odor Plan). The Odor Plan shall be organized as a comprehensive and easily referenced manual for prevention and control of odors from the facility and shall include:

- operations and maintenance manual for the landfill gas and condensate management systems;
- gas well monitoring and balancing procedures and responsibilities;
- update to the post-closure plan for Cell 3 to include annual odor and gas maintenance costs;
- preventative maintenance provisions;
- ongoing monthly gas system monitoring, including but not limited to the existing monitoring and reporting;

- record keeping and reporting requirements;
- standard operational procedures for odor control;
- an annual budget allotment for odor control;
- gas well pump and well replacement/addition plan;
- gas well liquid level monitoring schedule;
- odor control Standard Operating Procedure (SOP) for any activities that breach the cap, excavate into waste, or require removal of cleanouts or wellheads;
- leachate odors control procedures;
- odor patrol/inspections plan;
- procedures in case of complaints or confirmed off-site odors;
- gas system extraction and combustion plant maintenance;
- ongoing monitoring plan for methane and hydrogen sulfide at compliance points;
- H₂S and methane action levels and minimum response actions at various action levels and averaging times; and
- hazardous air sampling.

24. MLI shall implement the Odor Plan, as approved by ANR, in accordance with the schedule set forth in the approved Plan.

General Provisions

25. This Consent Order affirms and, as set forth herein, modifies the March 14, 2013 ANR decision denying MLI's application for recertification of the Facility. ANR's findings and conclusions in the March 14, 2013 Denial shall be unaffected by entry of this Consent Order, and shall remain in effect following entry of this Consent Order.

26. MLI hereby waives: 1) all rights to contest or appeal this Consent Order; and 2) all rights to contest the obligations imposed upon MLI under Paragraphs 13 - 24 of this Consent Order in this or any other administrative or judicial proceeding. Notwithstanding the foregoing, if the Court does not execute this Consent Order as submitted, minor deviations in the form of the document excepted, it shall be voidable at the option of either the State or MLI.

27. This Consent Order is binding upon MLI and its successors and assigns.

28. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

29. This Consent Order shall become effective only after it is entered as an order of the Court, and the date of entry will be the Effective Date of the order. When so entered by the Court, this Consent Order shall become a final Judgment Order.

30. Any violation of this Consent Order shall be deemed to be a violation

of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 & 211, and 12 V.S.A. § 122.

31. The State of Vermont and the Court reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and circumstances set forth herein.

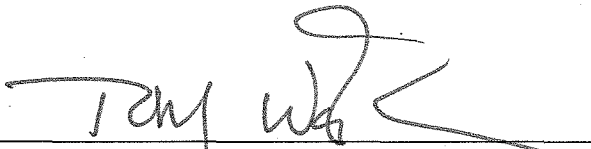
32. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected MLI's obligations to comply with all federal, state, or local statutes, regulations, permits and directives applicable to MLI.

33. This Consent Order resolves only the appeal by MLI of ANR's March 14, 2013 denial decision for recertification of the Facility. Nothing in this Consent Order shall be construed to preclude or prevent an enforcement action by ANR or the State against MLI relating to the Facility. Similarly, nothing in this Consent Order shall be construed to preclude or prevent any defense that may be raised by MLI in such action. Additionally, nothing in this Consent Order shall be construed to have any effect on ANR's regulatory review of and decision on any future solid waste facility certification application, including any application for certification of Cell 4, submitted by MLI to ANR. Further, the plans and activities authorized under this Consent Order apply only to the closure of Cell 3 and ANR may modify such plans or require new plans as a part of its review of any future solid waste facility certification application.

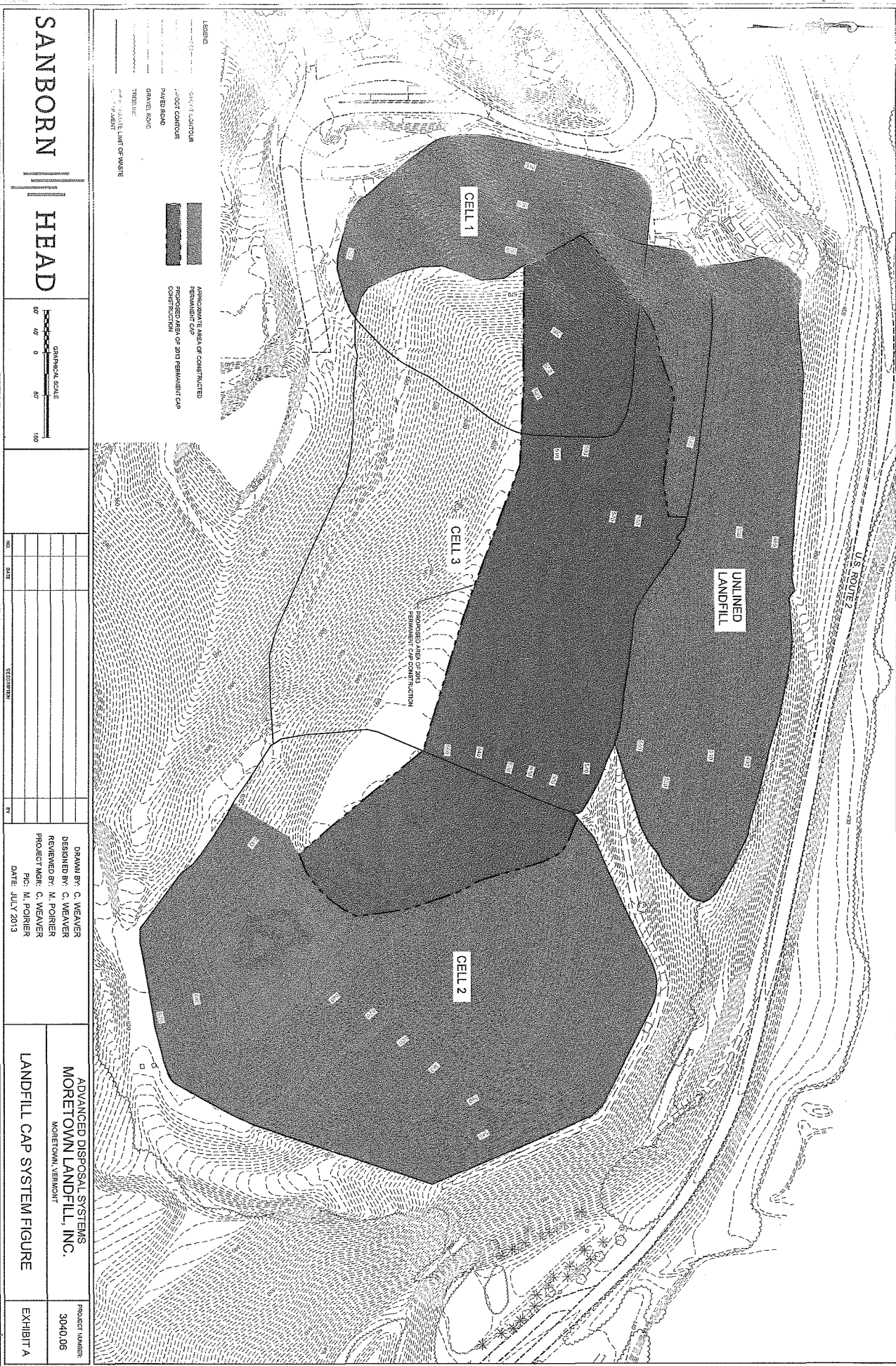
34. This Consent Order sets forth the complete agreement of the parties, and may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated into an order issued by the Superior Court, Environmental Division. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and shall be of no legal force or effect.

35. The Court hereby finds that the State and MLI have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable and in the State's interest. The Court hereby enters this Consent Order as a final Judgment Order of the Court.

Dated: Sept. 16, 2013



The Honorable Thomas G. Walsh
Superior Court Judge



SANBORN

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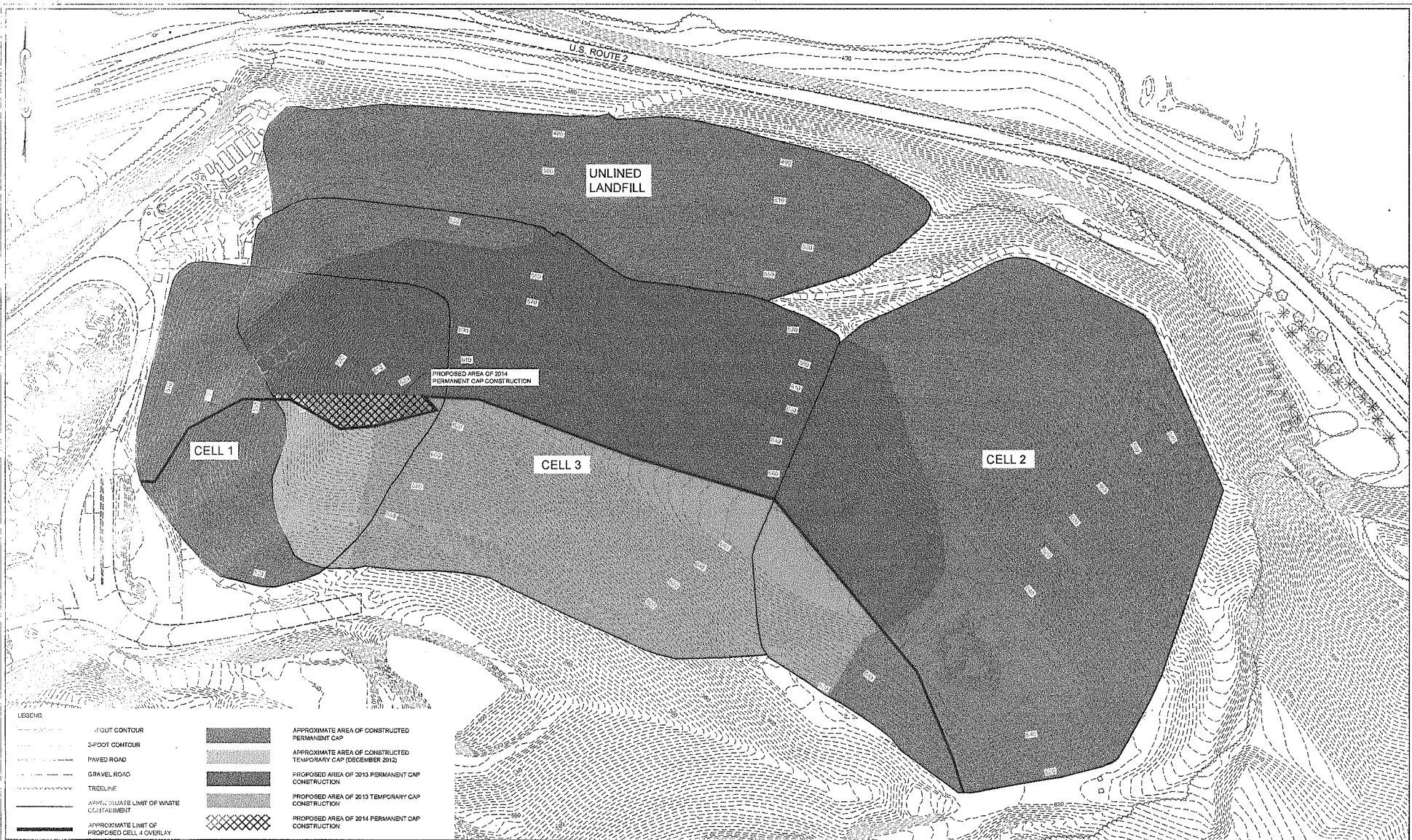


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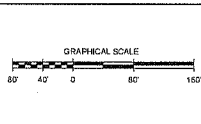
DRAWN BY: C. WEAVER
 DESIGNED BY: C. WEAVER
 REVIEWED BY: M. POIRIER
 PROJECT MGR: C. WEAVER
 P.C.I: M. POIRIER
 DATE: JULY 2013

ADVANCED DISPOSAL SYSTEMS
 MORETOWN LANDFILL, INC.
 MORETOWN, VERMONT
 LANDFILL CAP SYSTEM FIGURE

PROJECT NUMBER:
3040.06
EXHIBIT A



SANBORN HEAD



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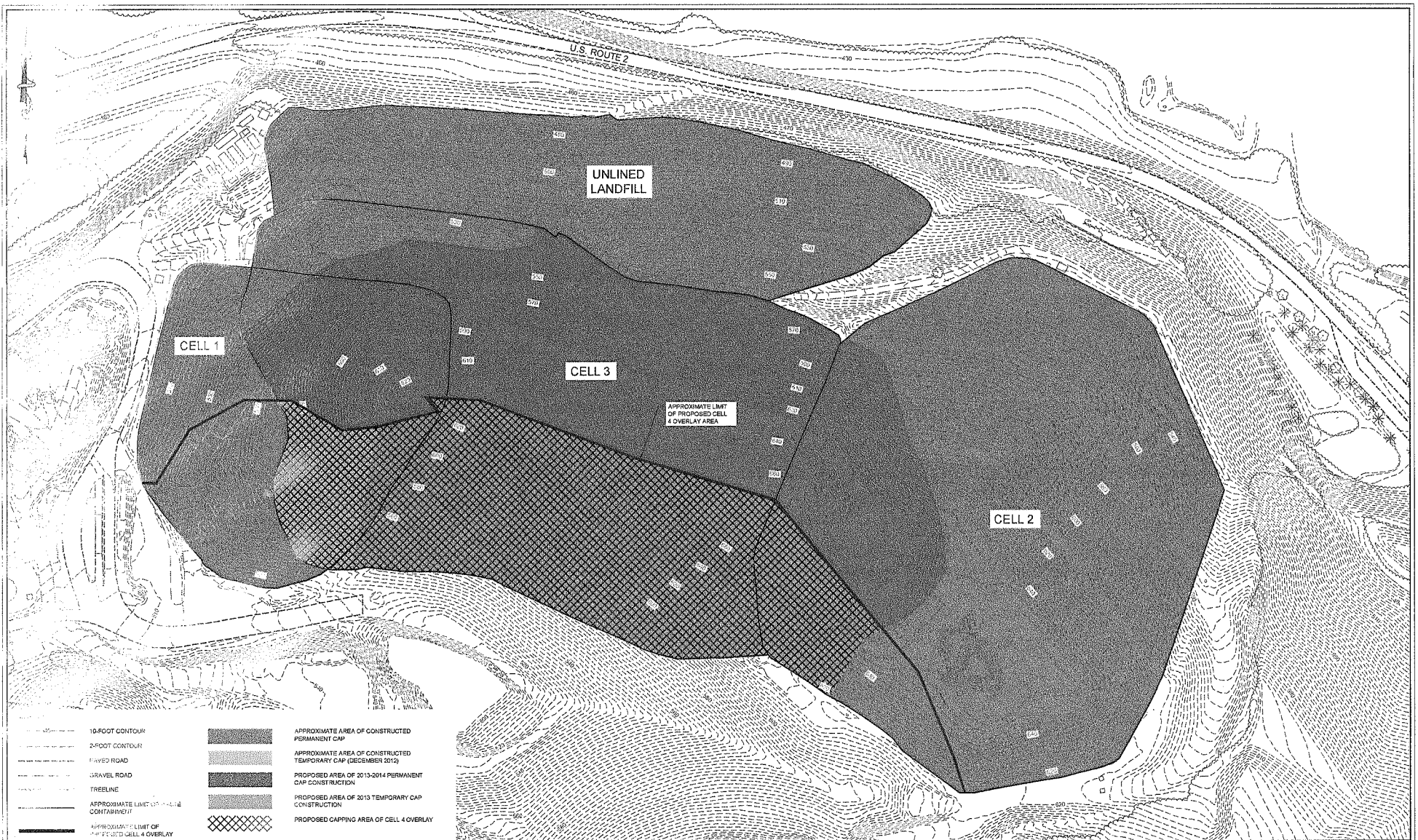
DRAWN BY: C. WEAVER
 DESIGNED BY: C. WEAVER
 REVIEWED BY: M. POIRIER
 PROJECT MGR: C. WEAVER
 PIC: M. POIRIER
 DATE: JULY 2013

ADVANCED DISPOSAL SYSTEMS
 MORETOWN LANDFILL, INC.
 MORETOWN, VERMONT

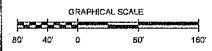
LANDFILL CAP SYSTEM FIGURE

PROJECT NUMBER
 3040.06

EXHIBIT C



SANBORN HEAD



NO.	DATE	DESCRIPTION	BY

DRAWN BY: C. WEAVER
 DESIGNED BY: C. WEAVER
 REVIEWED BY: M. POIRIER
 PROJECT MGR: C. WEAVER
 PIC: M. POIRIER
 DATE: JULY 2013

ADVANCED DISPOSAL SYSTEMS
 MORETOWN LANDFILL, INC.
 MORETOWN, VERMONT

PROJECT NUMBER
 3040.06

LANDFILL CAP SYSTEM FIGURE

EXHIBIT D