

01-1019-CD  
MUNICIPAL ASH MANAGEMENT, INC. -vs- CONSOLIDATED TECHNOLOGIES, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

\*

\*

\*

\* Docket No. 01-1019-CO

Type of Pleading:  
COMPLAINT

Filed on behalf of:  
PLAINTIFF:  
Municipal Ash Management, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

JUN 2 6 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	* Docket No.
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you within twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any relief claimed in the complaint by the plaintiff.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	* Docket No.
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*

COMPLAINT

COMES NOW, Municipal Ash Management, Inc., a Pennsylvania corporation, by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Complaint against Consolidated Technologies, Inc.

1. Plaintiff is Municipal Ash Management, Inc., a Pennsylvania corporation, (hereinafter referred to "MAM" or "Plaintiff") which has its offices and principal place of business at 850 Leonard Street, Clearfield, Clearfield County, Pennsylvania, 16830.

2. Defendant is Consolidated Technologies, Inc., a Pennsylvania corporation, (hereinafter referred to as "CTI") which has its principal offices at 1717 Swede Street, Suite 109, Blue Bell, Montgomery County, Pennsylvania, 19422.

3. This Complaint arises out of an Operating Agreement entered into and negotiated between the parties on November 7, 1997. Attached hereto as Appendix A is a copy of the said

future delivery of municipal ash to the Bark Camp Site as required by the Operating Agreement.

10. Plaintiff also seeks pre-judgment interest for the unpaid charges owed to it by CTI for municipal ash delivered under the terms of the said Operating Agreement.

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against Defendant for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, plus interests and costs, including pre-judgment interest.

Respectfully Submitted,

By: 

Dwight L. Koerber, Jr., Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

Operating Agreement.

4. The aforesaid Operating Agreement was negotiated and accepted in Clearfield County, Pennsylvania, and pertains to operations in Clearfield County, Pennsylvania.

COUNT I

5. Under the terms of the aforesaid Operating Agreement, page 13, Defendant is required to pay Plaintiff the sum of \$4.00 per ton of municipal ash that is disposed of at the Bark Camp Site in Clearfield County, Pennsylvania.

6. Beginning on or about May 1, 2001, Defendant has caused to be transported into the said Bark Camp Site approximately one thousand two hundred fifty (1,250) tons of municipal ash per day, used in conjunction with a dredge material operation that is also occurring at Bark Camp.

7. Plaintiff has requested an accounting and has requested payment for the tonnage delivered at the Bark Camp Site, as covered by the Operating Agreement of the parties, but CTI has failed and refused to make an accounting and payment as required.

8. Plaintiff avers that Defendant is required to pay it \$4.00 per ton of municipal ash that Defendant delivers to the Bark Camp site, and requests that it be paid damages accordingly.

9. In addition to payment for the tonnage already delivered for the Bark Camp Site, Plaintiff seeks payment for all

VERIFICATION

I certify that the statements made in the foregoing Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

MUNICIPAL ASH MANAGEMENT, INC.

By: Ernest Rosselli  
Ernest T. Rosselli, President

DATE: 6/21/01

APPENDIX A

Attached hereto is a true and correct copy of the Operating Agreement dated November 7, 1997, between Consolidated Technologies, Inc., E & L Brokerage, Inc., Beneficial Ash Management, Inc., and Municipal Ash Management, Inc.

## OPERATING AGREEMENT

THIS AGREEMENT, entered into by and among CONSOLIDATED TECHNOLOGIES, INC., a Pennsylvania business corporation, referred to hereinafter as "CTI"; E & L BROKERAGE, INC., a Pennsylvania business corporation, referred to hereinafter as "E & L"; BENEFICIAL ASH MANAGEMENT, INC., a Pennsylvania business corporation, referred to hereinafter as "BAM"; and MUNICIPAL ASH MANAGEMENT, INC., a Pennsylvania business corporation, referred to hereinafter as "MAM".

### W I T N E S S E T H :

WHEREAS, CTI is in the process of moving forward to finalize a multi-party contract involving several different governmental and corporate entities that would provide for the disposal of certain dredged materials that are to be removed from certain major harbor areas in the Northeastern part of the United States; and

WHEREAS, in order to enhance and insure its ability to perform on a contract pertaining to the disposal of dredged material, CTI has entered into negotiations with the various parties that are participants in the present Operating Agreement, with the parties acknowledging that it is in their mutual best interests to formalize and confirm the terms and conditions of an Operating Agreement among themselves so as to enable an efficient

and economically sound operation to be set in place for the performance of the anticipated contract that CTI hopes to secure for the disposal of dredged material; and

WHEREAS, E & L currently is operating a facility in Clearfield County, Pennsylvania, referred to as the "Bark Camp Site", whereby it uses ash as one of the ingredients used in a cementitious grout to help abate the environmental damage that has occurred at the Bark Camp Site through past mining operations; and

WHEREAS, E & L has a five year no cost contract dated December 20, 1993 with the Department of Environmental Protection of the Commonwealth of Pennsylvania, so as to permit the disposal of certain ash products at the Bark Camp Site, provided that they are used in a beneficial use operation so as to restore the degraded environmental conditions at the Bark Camp Site; and

WHEREAS, E & L has previously sought to expand the scope of materials that can be beneficially used/disposed of at the Bark Camp site, and has received permission from the Pennsylvania Department of Environmental Protection to utilize a paper pulp waste material in conjunction with coal ash so as to enable environmental remediation under its no cost contract at the Bark Camp site; and

WHEREAS, BAM has overseen certain operations of the Bark Camp site in the past with respect to the beneficial use/

remediation projects that have been undertaken pertaining to coal ash, doing so in conjunction with and pursuant to its agreement with E & L; and

WHEREAS, on September 12, 1996, the Pennsylvania Department of Environmental Protection issued to E & L Beneficial Use Approval Order No. 40030, embracing the beneficial use of municipal waste incinerator ash at the Bark Camp site, to be utilized in abandoned mine reclamation projects; and

WHEREAS, on June 6, 1997, as a result of the efforts undertaken and paid for by CTI, a modification to Beneficial Use Approval Order No. 40030 was issued, so as to include dredged materials, subject to certain detailed requirements, for use at the Bark Camp site; and

WHEREAS, BAM and E & L have entered into certain contractual relationships with one another, whereby BAM oversees the securing of coal ash that is taken to the Bark Camp site and also oversees the operational activities performed at the Bark Camp site, on behalf of E & L, pertaining to the beneficial use/remediation projects that have been undertaken pertaining to coal ash; and

WHEREAS, MAM is in the business of developing and beneficially using incinerator ash that is a residue of municipal waste, and has the potential of furnishing municipal incinerator ash that could be used in conjunction with the operations the parties are undertaking as they relate to the "Bark Camp site";

and

WHEREAS, in order to make the Bark Camp site potentially suitable for the usage of dredged materials in a beneficial use operation, CTI entered into an agreement with E & L whereby CTI would pay for all the costs of securing an amendment to Beneficial Use Approval Order No. 40030, with such amended order being issued in E & L's name on June 6, 1997; and

WHEREAS, CTI and E & L have used their best efforts to seek to have an amended no cost contract issued to E & L, covering an additional five year period of time, the beneficial use/disposal of dredged materials at the Bark Camp site in conjunction with Beneficial Use Approval Order No. 40030; and

WHEREAS, the Pennsylvania Department of Environmental Protection had initially expressed its willingness to issue an amended no cost contract to E & L, pertaining to dredged materials, but it has now determined that it wants to have a clear separation between the past operations at the Bark Camp site involving the flyash and paper pulp beneficial use operations of E & L from the beneficial use of dredged materials at the Bark Camp site; and

WHEREAS, the past operations of E & L under the December 20, 1993 no cost contract pertaining to ash involved no royalty type payment, while the new proposed contract, with the new dredged material beneficial use operations involving CTI would require a

royalty type payment for the Surface Mining Conservation and Reclamation Fund and also a royalty payment to Huston Township, the host municipality for the Bark Camp site; and

WHEREAS, in view of the past, present and future contributions of E & L, BAM and MAM, the parties have recognized that it is necessary to accommodate the interests of E & L, BAM, and MAM in order to permit a no cost contract to be entered into directly between CTI and the Pennsylvania Department of Environmental Protection, on the beneficial use of dredged materials, and

WHEREAS, CTI requires that there be a clear distinction of the responsibilities of E & L for the past remediation work that it has participated in, as opposed to the future anticipated remediation work at the Bark Camp site to be overseen by CTI pertaining to dredged materials, with this separation of responsibility being a key component of CTI's operational plans for dredged materials at the Bark Camp site; and

WHEREAS, the anticipated contract which CTI hopes to enter into pertaining to the beneficial use/disposal of dredged materials at the Bark Camp site requires a two tier payment arrangement, one pertaining to the operations that would be conducted under a "demonstration" project, involving 550,000 cubic yards of airspace at the Bark Camp site, and the long term performance project which CTI hopes to secure thereafter

pertaining to ongoing larger volume operations at the Bark Camp site; and

WHEREAS, the recitals set forth hereinabove have been made for the purpose of disclosing background information to assist in interpreting the intention of the parties with respect to the terms and conditions of this contract;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Demonstration Project - Subject to the execution by CTI of a multipart contract involving several different governmental and corporate entities, it is agreed that a demonstration project at the Bark Camp site will be undertaken covering 550,000 cubic yards of airspace, involving the beneficial reuse/disposal of dredged materials. Such project shall be undertaken pursuant to the terms of a no cost contract to be entered into between CTI and the Department of Environmental Protection. E & L agrees that operations for this demonstration project may be conducted under Beneficial Use Order No. 40030, as amended on June 6, 1997, provided that CTI shall pay all expenses associated with that operation. E & L shall use its best efforts to assist in making the demonstration project successful and in exchange therefore, CTI shall indemnify and hold E & L harmless for any costs or claims arising out of that project.

2. Furnishing of Flyash - BAM shall be responsible for furnishing all coal flyash used at the Bark Camp site for the dredged material operations of CTI, pertaining to both the demonstration project and anticipated permanent projects to be entered into thereafter. BAM shall be entitled to retain all tipping fees which it receives from the generators of the coal flyash for materials which are disposed of/beneficially used at the Bark Camp site. This entitlement shall continue throughout the term of this agreement, subject to the provisions of part 4.1 of this agreement. It is recognized that whenever flyash is delivered to the Bark Camp site, BAM shall have the responsibility for arranging for the transportation services and to insure that they are paid by some third party and not CTI. In no instance shall CTI be charged for any ash delivered to the Bark Camp site by BAM.

3. Quantities, Cure and Default - BAM shall use its best efforts to secure a sufficient quantity of flyash to accommodate the dredged material operations of CTI at Bark Camp, with the recognition that the remedy for failing to provide sufficient quantities of coal ash and CFB ash (jointly referred to herein as ash) shall be limited to the provisions set forth in part 3.1 of this agreement.

3.1 Minimum Quantities of Ash - BAM shall be obligated to furnish a minimum of 800 tons of ash per working day at the Bark

Camp site. If BAM should fail to furnish this minimum quantity of ash as required by CTI for treatment of dredged materials at the Bark Camp site for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own ash supply without the involvement of BAM. Prior to exercising such option, CTI shall give written notice to BAM that it is in default of its ash supply obligations. Upon such notice, CTI may begin to supply ash from any supplier, without restriction, in order to meet its requirements for the treatment of dredged material at the Bark Camp site provided that CTI shall not improperly interfere with existing contracts. From the date of receiving written notice from CTI, BAM shall have sixty (60) days in which to cure the default (the "cure period") of its ash supply obligation to the CTI dredged material treatment project at Bark Camp. A cure of the default shall occur when BAM has delivered one hundred percent (100%) of the ash required by CTI for treatment of the dredged material at the Bark Camp site for a period of fourteen (14) consecutive working days. It is understood as part of this provision that CTI shall accept ash sourced by BAM (at no cost to CTI) during the cure period on a preferred basis to any coal ash sourced by CTI in order to provide BAM ample opportunity to cure the default. Should BAM fail to cure the default of its ash supply obligation within the sixty (60) day period, CTI shall be

given the entitlement for the remaining term of this agreement to furnish ash for use in the dredged materials treatment operation at Bark Camp. When supplying ash under the provisions of this agreement, neither BAM nor E & L shall attempt to disrupt or interfere with, for the purpose of diverting ash from Bark Camp, the relationship of CTI with the ash suppliers utilized by CTI to supply coal ash to the dredged materials treatment project at Bark Camp. During the time that CTI acts under the provisions of this agreement to provide ash to the dredged materials treatment project at Bark Camp, whether during the sixty (60) day period for curing the default, or after the expiration of the cure period, all net tipping fees generated by the ash contracts which BAM heretofore had entered into shall be paid to CTI, with none of those fees being retained by BAM. Should the net tipping fee<sup>1</sup> of all ash material utilized by CTI in the dredged material treatment operations at the Bark Camp site, including the tipping fees generated from ash delivered pursuant to supply contracts of BAM, be greater than zero dollars (\$0.00), BAM shall be entitled to receive Sixty (60%) Percent of the net tipping fees as computed on a daily basis. Payment shall be made thirty-five (35) days after the date of delivery of the ash to the Bark Camp site.

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<sup>1</sup> "Net tipping fee for all ash" is defined as the tip fees generated by supply of fee-paid ash from generators after actual costs of transportation minus the costs of supplying ash from generators who charge for ash and/or whose transportation cost to the site results in a net cost to the dredged material treatment project at Bark Camp.

3.2 Excess Quantities of Ash - For that quantity of ash which CTI requires in excess of 800 tons per working day, BAM shall have the entitlement to furnish the quantities required, but if it fails to furnish the required quantities for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own additional quantities of ash without the involvement or remuneration of BAM. The procedures outlined for Section 3.1 above shall be followed in order to cure a default.

4. Operations - Throughout the term of the demonstration project and continuing through other projects for dredged materials which CTI undertakes at the Bark Camp site, it shall be the responsibility of CTI to furnish all equipment, manpower, engineering, and administrative support necessary to permit the operations to be conducted in conformity with requirements of the no cost contract between CTI and DEP, including the requirements imposed by amended Beneficial Use Approval Order No. 40030. This operational obligation includes all blending, mixing and application procedures involving dredged materials, flyash, and municipal ash, and other additives that are used in conjunction with the dredged materials that CTI disposes at the site. As it relates to municipal incinerator ash or coal flyash, the parties acknowledge that in certain circumstances, it may develop that a contract for the disposal/beneficial use of these materials will

require that there be an ongoing obligation to dispose of these materials during a period of time when dredged materials are not available for the municipal ash and coal ash to be mixed with. In those limited situations where the disposal/beneficial use contracts at Bark Camp are entered into directly by BAM or MAM, CTI will continue to provide the operational services needed to properly handle the coal ash or municipal ash furnished by BAM or MAM in accordance with pertinent no cost contracts and orders from the Department of Environmental Protection, and in consideration of this service during the "bridge" period of time when dredged materials are not available, all tipping fees for the municipal ash shall be paid to CTI, with CTI paying E & L in accordance with part 5 of this agreement. This payment provision applies only to municipal ash, as coal ash is covered by Section 4.1 of this agreement.

4.1 Operational Charge Assessed to BAM - In consideration of the obligation of BAM to furnish a minimum volume of 800 tons of ash per day at the Bark Camp site, so as to be used in dredged material operations of CTI, CTI hereby assumes the full responsibility for processing 800 tons of flyash per day, in accordance with all requirements imposed by state, federal and local regulatory bodies having jurisdiction over the Bark Camp site. In the event that there is not sufficient dredged material being used at the Bark Camp site, so as to enable the 800 ton per

day volume of flyash to be utilized in the dredged material operations of CTI, the parties agree that CTI will handle the cost of processing of the flyash which BAM brings to the Bark Camp site in exchange for payment to it by BAM in the amount of \$2.75 per ton.

**4.2 Volume Cap** - In order to provide BAM with the opportunity to insure that there are sufficient volumes of ash at the Bark Camp site, the pricing formula set forth in the preceding paragraph shall apply to all ash which CTI brings into the Bark Camp site, which is not mixed with dredged material, up to a volume of 1200 tons per working day.

**5. Payment to E & L** - No payment shall be paid to E & L for any airspace used at the Bark Camp site during the demonstration project described in part 1 of this agreement. Starting with a subsequent non-demonstration project, all airspace utilized in the dredged material operations of CTI shall obligate CTI to make payment to E & L the sum of Fifty (\$.50) Cents per cubic yard of dredged material delivered to the Bark Camp site. CTI shall pay E & L thirty (30) days after receipt of invoice. Payment shall be based upon the number of cubic yards of dredged materials delivered to the site as determined by pre-and-post-dredging surveys performed and certified by CTI to its customers. Failure to pay within forty-five (45) days of the date of receipt of invoice shall subject the payment charge to a Twelve (12%)

Percent per annum interest for the unpaid balance.

6. Payment to MAM - It is recognized that in most instances, CTI will enter into contracts to furnish municipal incinerator ash to the Bark Camp site. In exchange for making its technology available and for fully cooperating to assist in making municipal incinerator ash available for use in the dredged materials operations of CTI, MAM shall be paid a royalty of \$4.00<sup>2</sup> per ton for all municipal ash that CTI utilizes in its operations. For those operations which involve municipal incinerator ash that is not mixed with dredged material, but instead municipal incinerator ash that is disposed of separately for a limited period of time<sup>3</sup>, it is agreed that MAM shall pay to E & L the Fifty (\$.50) Cents per ton of cubic airspace which is covered by part 4 of this agreement. It shall be the complete responsibility of CTI to furnish all transportation, pay all costs of operation, to secure all pertinent transportation permits, and to pay any and all other costs associated with the processing of municipal incinerator ash at the Bark Camp site. Payment shall be made thirty-five (35) days after the date of delivery of the municipal ash to the Bark Camp site.

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<sup>2</sup> Such royalty will be paid only if there are sufficient revenues generated from tipping fees to cover the cost of transportation, processing, and placement, with the understanding that any proportionate income generated above that base cost shall be paid to MAM up to the \$4.00 per ton figure.

<sup>3</sup> It is specifically recognized that "stand alone" contracts for municipal ash are not covered by this agreement, meaning that only ash that is secured for the intended purpose of blending with the dredged materials is covered by this pricing formula.

7. Term of Agreement - This agreement shall last for a total of fifteen (15) years. The first ten (10) years shall require payment at the Fifty (\$.50) Cents per cubic yard payment owed to E & L and the Four (\$4.00) Dollar per ton payment owed to MAM, as covered by parts 5 and 6 of this agreement. After the initial ten year term, payment for the next five (5) years shall be adjusted at the beginning of the eleventh (11th) year, so that the price to be paid to E & L and MAM, respectively, shall be adjusted upwards at a level equal to the increase in the CPI index during the initial ten year period covering this contract. After the conclusion of the fifteen year base period, by giving written notice ninety (90) days prior to the expiration of the fifteen year term, CTI shall have the option to extend the term of this agreement by an additional year and in exchange for that the payments made to E & L and MAM hereunder shall be subject to increase based upon an increase in the CPI index during that prior year. Similar one year extensions shall continue indefinitely thereafter.

8. Non-Exclusivity Term - Nothing in this agreement shall obligate CTI to utilize the Bark Camp Site, or BAM, MAM or E & L for disposal of dredged materials. If, however, CTI utilizes the Bark Camp site, the terms and conditions set forth in this agreement shall govern the rights and duties of the parties.

9. Non-Circumvention - CTI agrees that it shall not

directly or indirectly, through its own operations or the operations of any affiliated business entity, engage in any operations pertaining to dredged materials at the Bark Camp site unless the operations are conducted under the terms of this agreement.

10. Regulatory Obligation of E & L - E & L recognizes that it is solely responsible for insuring proper compliance with all state, local and federal obligations pertaining to the operations which it has conducted on its own in the past or will conduct in the future under its no cost contract with the Pennsylvania Department of Environmental Protection, as issued on December 23, 1993, and any extensions related thereto. Under no circumstances shall CTI be responsible for paying the cost of fulfilling these obligations. E & L agrees that it shall use its best efforts to insure that it conducts its operations under its no cost contract in a fashion so as to not interfere with the activities of CTI under the dredged materials no cost contract which CTI will be entering into with the Pennsylvania Department of Environmental Protection.

11. Warranties and Representations -

A. E & L, BAM and MAM have full power in accordance with applicable law to enter into this agreement and to consummate the transactions herein without the need for any further approval whatsoever. Neither the entering

into this agreement nor the consummation of the transactions herein will constitute a violation or breach by E & L, BAM or MAM (i) of any contract or other instrument to which they are a party; (ii) of any judgment, order, writ, injunction, or decree issued against or imposed upon E & L, BAM or MAM; or (iii) that will result in a violation of any applicable law, order, rule or regulation, permit or license.

B. In the event that E & L, BAM or MAM receives any notice of violation or threatened notice of violation from any governmental authority respecting any order, permit, or license by any of them, they will immediately notify CTI of any notice or claim.

C. E & L, BAM and MAM have all necessary and appropriate permits, licenses and orders from the Commonwealth of Pennsylvania, and any other government agency to perform its functions as required under this agreement and shall at all times during the term of this agreement maintain such orders, permits and licenses in good standing.

D. E & L and BAM have valid and enforceable rights and entitlements to use a rail spur that comes onto the Bark Camp site and shall maintain all said rights and entitlements during the entire term of this agreement.

12. Effective Date - This agreement shall be effective

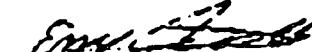
November 7, 1997, and shall continue thereafter until the terms of it have been satisfied.

IN WITNESS WHEREOF, the parties hereunto have entered their signatures, on the dates specified below, doing so with the intention of being legally bound.

CONSOLIDATED TECHNOLOGIES, INC.

By:   
Steven C. Sande, President

E & L BROKERAGE, INC.

By:   
Ernest T. Rosselli, President

BENEFICIAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President

MUNICIPAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

COMPLAINT  
Docket No.

**FILED**

July 24, 2007

Attty Koerber

William A. Shaw

Pd # 80.00

Prothonotary

3cc at H Kober

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.

Plaintiff

Docket No. 01-1019-CD

v.

CONSOLIDATED TECHNOLOGIES, INC.

Defendant

CONSOLIDATED TECHNOLOGIES, INC.

v.

BENEFICIAL ASH MANAGEMENT, INC.

E&L BROKERAGE, INC., and

ETR ENTERPRISES, INC.

Additional Defendants

COMPLAINT OF DEFENDANT,  
CONSOLIDATED TECHNOLOGIES, INC.,  
AGAINST ADDITIONAL DEFENDANTS,  
BENEFICIAL ASH MANAGEMENT, INC.,  
E&L BROKERAGE, INC., AND  
ETR ENTERPRISES, INC.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you within twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any relief claimed in the complaint by the plaintiff.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF  
YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE

FILED

AUG 10 2001

in 10:40 AM  
William A. Shaw  
Prothonotary

1 CIR TO ATTY

THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR

Clearfield County Courthouse

230 East Market Street

Clearfield, PA 16830

(814) 765-2641 Ext. 5982

Marshall Walthew  
Michael Doluisio  
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4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793  
(215) 994-4000

Attorneys for Defendant  
Consolidated Technologies, Inc.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION**

**MUNICIPAL ASH MANAGEMENT, INC.**

Plaintiff,

Docket No. 01-1019-CD

v.

**CONSOLIDATED TECHNOLOGIES, INC.**

Defendant.

---

**CONSOLIDATED TECHNOLOGIES, INC.**

Defendant,

v.

**BENEFICIAL ASH MANAGEMENT, INC.,  
E&L BROKERAGE, INC., and  
ETR ENTERPRISES, INC.**

Additional Defendants.

---

**COMPLAINT OF DEFENDANT CONSOLIDATED TECHNOLOGIES, INC.  
AGAINST ADDITIONAL DEFENDANTS, BENEFICIAL ASH MANAGEMENT, INC.,  
E&L BROKERAGE, INC., AND ETR ENTERPRISES, INC.**

By and through its undersigned attorneys, defendant Consolidated Technologies, Inc. ("CTI"), hereby files this Complaint against additional defendants, Beneficial Ash

Management, Inc. (“BAM”), E&L Brokerage, Inc. (“E&L”), and ETR Enterprises, Inc. (“ETR”), and avers as follows:

1. Additional defendants, BAM, E&L, and ETR, are Pennsylvania corporations. Upon information and belief, BAM, E&L, and ETR have their office and principal place of business at 850 Leonard Street, Clearfield, Pennsylvania, 16830.

2. Plaintiff, Municipal Ash Management, Inc. (“MAM”) instituted this action against CTI, alleging that CTI had breached an Operating Agreement entered into by BAM, E&L, MAM, and CTI. A copy of MAM’s Complaint is attached hereto as Exhibit A. A copy of the Operating Agreement is attached to MAM’s Complaint as appendix A.

#### **BREACH OF CONTRACT AGAINST BAM: COAL ASH**

3. Under Section 2 of the Operating Agreement, BAM is responsible for providing all coal flyash used at the Bark Camp site for the dredge material operations of CTI. See Operating Agreement, Exhibit A. Under Section 3.1 of the Agreement, BAM is obligated to provide a minimum of 800 tons of coal ash per working day.

4. BAM has failed to provide the coal ash required under the Operating Agreement.

5. Despite CTI’s written notification to BAM that it is in default, BAM has failed to cure its default or provide the coal ash required under the Agreement.

6. Under Section 3.1 of the Operating Agreement, as a result of BAM’s breach, CTI is entitled to “all tipping fees generated by the ash contracts which BAM hereto had

entered into.” CTI is also entitled to receive some ash from BAM at no cost. However, BAM has failed to provide CTI with the tipping fees or no-cost ash.

7. In addition, BAM’s failure to provide coal ash has caused CTI damages. Among other things, to induce BAM to provide coal ash, CTI has been required to purchase ash from BAM at prices higher than those set forth in the Operating Agreement. In addition, CTI has been required to pay, and will continue to pay, additional moneys to obtain coal ash from sources other than BAM.

WHEREFORE, CTI respectfully requests that judgment be entered in its favor and against BAM in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

**BREACH OF CONTRACT AGAINST E&L: BEST EFFORTS**

8. Under Section 1 of the Operating Agreement, E&L is obligated to “use its best efforts to assist in making the demonstration project successful. . .”

9. Upon information and belief, MAM was a party to a contract with American Ref-Fuel Company that could have provided MAM with ash needed to fulfill its obligations under the Operating Agreement. MAM allowed the contract with American Ref-Fuel to expire.

10. E&L has failed to use best efforts to make the demonstration project successful by, among other things, failing even to attempt to cause MAM to negotiate an extension of the contract with the American Ref-Fuel Company.

11. E&L's breach has caused CTI to incur damages, including the expenditure of additional moneys.

WHEREFORE, CTI respectfully requests that judgment be entered in its favor and against E&L in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

**PIERCING THE CORPORATE VEIL AGAINST BAM, E&L, ETR**

12. MAM, BAM, E&L, and ETR, in truth, operate as a single entity. The corporate veil of each should be pierced and each of the companies should be held responsible for the liabilities of the others.

13. MAM, BAM, E&L, and ETR are effectively under the common control of one person, Ernest T. Rosselli. In the experience of CTI, all decisions made on behalf of any of the three companies have been made solely by Mr. Rosselli. Mr. Rosselli signed the Operating Agreement on behalf of BAM, MAM, and E&L. See Appendix A to Exhibit A. In addition, other contracts have been signed by one person on behalf of MAM, BAM and E&L. See Confidentiality and Noncompetition Agreement between E&L, BAM, MAM and Waste Concepts, Inc., attached hereto as Exhibit B.

14. MAM, BAM, E&L, and ETR share a common majority owner, Ernest T. Rosselli. Upon information and belief, Rosselli is the sole owner of E&L and ETR.

15. MAM, BAM, E&L, and ETR are under common administrative control and management. Indeed, all three companies operate out of the same office, using similar personnel, record keeping, and under common control.

16. MAM, BAM, E&L, and ETR perform similar or supplementary business functions. Each of the companies is involved with the operations at the Bark Camp site and each performs interrelated functions there. MAM, BAM and E&L signed the Operating Agreement regarding the operation at that Site. Accordingly to the Operating Agreement, attached hereto as appendix A to Exhibit A, E&L operates the Bark Camp site. See Operating Agreement at 2. The Agreement provides that, among other things, BAM has overseen certain operations of the Bark Camp site with respect to the beneficial use/ remediation projects that have been undertaken pertaining to coal ash “doing so in conjunction with” E&L. Id. at 2-3. Among other things, MAM developed and sought incinerator ash to be used at the Bark Camp site. Id. at 3. In truth, the same individuals work for each of the companies and ETR, making any distinction between their purported functions meaningless.

17. Moreover, upon information and belief, corporate formalities among the companies are routinely ignored, and the affairs and funds of each of the companies are significantly intermingled.

18. Mr. Rosselli has signed at least one agreement in which contracts entered into by BAM, E&L or ETR are simply reallocated to MAM's revenue stream. This reallocation apparently was performed without any corresponding compensation being made to BAM, E&L or ETR. See September 29, 1999 Agreement, attached hereto as Exhibit C.

19. As a result of the foregoing, the corporate veils of MAM, BAM, E&L, and ETR should be pierced and the four companies should be treated as a single enterprise such that each of the companies should be held responsible for the breaches of the others.

WHEREFORE, CTI respectfully requests that the Court declare and find MAM, BAM, E&L and ETR, to be a single enterprise such that each company is jointly responsible for the liabilities of the others, and such other and further relief as the court deems just.

**BREACH OF CONTRACT AGAINST E&L AND ETR: COAL ASH**

20. Paragraphs 1 through 19 are incorporated herein as if set forth in full

21. Accordingly, E&L and ETR are legally responsible BAM's failure to provide coal ash.

WHEREFORE, CTI respectfully requests that the Court declare and find MAM, BAM, E&L and ETR to be a single enterprise such that each company is jointly responsible for the liabilities of the others. In addition, CTI respectfully requests that judgment be entered in its favor and against E&L and ETR in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

**BREACH OF CONTRACT AGAINST BAM AND ETR: BEST EFFORTS**

22. Paragraphs 1 through 19 are incorporated herein as if set forth in full,
23. Accordingly, BAM and ETR are legally responsible for E&L failure to use best efforts.

WHEREFORE, CTI respectfully requests that the Court declare and find MAM, BAM, E&L and ETR to be a single enterprise such that each company is jointly responsible for the liabilities of the others. In addition, CTI respectfully requests that judgment be entered in its favor and against BAM and ETR in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

Dated: August 9, 2001

*Marshall Walthew /msd/*

Marshall Walthew  
Michael Doluisio  
Dechert Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793  
(215) 994-4000

Attorney for Consolidated Technologies, Inc.

**VERIFICATION**

I, Steven C. Sands, President of Defendant, Consolidated Technologies, Inc., hereby affirm that the factual statements made in the foregoing Complaint Of Defendant Consolidated Technologies, Inc. Against Additional Defendants, Beneficial Ash Management, Inc., E&L Brokerage, Inc., and ETR Enterprises, Inc. are true and correct to the best of my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: August 7, 2001

  
\_\_\_\_\_  
Steven C. Sands



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

\*

\*

Docket No. 01-1019-CO

Type of Pleading:  
COMPLAINT

Filed on behalf of:  
PLAINTIFF:  
Municipal Ash Management, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

I hereby certify this to be a true  
and attested copy of the original  
Statement filed in this case.

JUN 26 2001

Attest.

William L. Houser  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

\*

-vs-

\* Docket No.

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you within twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any relief claimed in the complaint by the plaintiff.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830  
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	* Docket No.
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*

COMPLAINT

COMES NOW, Municipal Ash Management, Inc., a Pennsylvania corporation, by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Complaint against Consolidated Technologies, Inc.

1. Plaintiff is Municipal Ash Management, Inc., a Pennsylvania corporation, (hereinafter referred to "MAM" or "Plaintiff") which has its offices and principal place of business at 850 Leonard Street, Clearfield, Clearfield County, Pennsylvania, 16830.

2. Defendant is Consolidated Technologies, Inc., a Pennsylvania corporation, (hereinafter referred to as "CTI") which has its principal offices at 1717 Swede Street, Suite 109, Blue Bell, Montgomery County, Pennsylvania, 19422.

3. This Complaint arises out of an Operating Agreement entered into and negotiated between the parties on November 7, 1997. Attached hereto as Appendix A is a copy of the said

Operating Agreement.

4. The aforesaid Operating Agreement was negotiated and accepted in Clearfield County, Pennsylvania, and pertains to operations in Clearfield County, Pennsylvania.

COUNT I

5. Under the terms of the aforesaid Operating Agreement, page 13, Defendant is required to pay Plaintiff the sum of \$4.00 per ton of municipal ash that is disposed of at the Bark Camp Site in Clearfield County, Pennsylvania.

6. Beginning on or about May 1, 2001, Defendant has caused to be transported into the said Bark Camp Site approximately one thousand two hundred fifty (1,250) tons of municipal ash per day, used in conjunction with a dredge material operation that is also occurring at Bark Camp.

7. Plaintiff has requested an accounting and has requested payment for the tonnage delivered at the Bark Camp Site, as covered by the Operating Agreement of the parties, but CTI has failed and refused to make an accounting and payment as required.

8. Plaintiff avers that Defendant is required to pay it \$4.00 per ton of municipal ash that Defendant delivers to the Bark Camp site, and requests that it be paid damages accordingly.

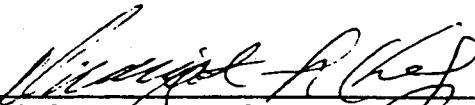
9. In addition to payment for the tonnage already delivered for the Bark Camp Site, Plaintiff seeks payment for all

future delivery of municipal ash to the Bark Camp Site as required by the Operating Agreement.

10. Plaintiff also seeks pre-judgment interest for the unpaid charges owed to it by CTI for municipal ash delivered under the terms of the said Operating Agreement.

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against Defendant for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, plus interests and costs, including pre-judgment interest.

Respectfully Submitted,

By:   
Dwight L. Koerber, Jr., Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

VERIFICATION

I certify that the statements made in the foregoing Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. 34904 relating to unsworn falsification to authorities.

MUNICIPAL ASH MANAGEMENT, INC.

By: Ernest T. Rosselli  
Ernest T. Rosselli, President

DATE: 6/21/01

APPENDIX A

Attached hereto is a true and correct copy of the Operating Agreement dated November 7, 1997, between Consolidated Technologies, Inc., E & L Brokerage, Inc., Beneficial Ash Management, Inc., and Municipal Ash Management, Inc.

## OPERATING AGREEMENT

THIS AGREEMENT, entered into by and among **CONSOLIDATED TECHNOLOGIES, INC.**, a Pennsylvania business corporation, referred to hereinafter as "CTI"; **E & L BROKERAGE, INC.**, a Pennsylvania business corporation, referred to hereinafter as "E & L"; **BENEFICIAL ASH MANAGEMENT, INC.**, a Pennsylvania business corporation, referred to hereinafter as "BAM"; and **MUNICIPAL ASH MANAGEMENT, INC.**, a Pennsylvania business corporation, referred to hereinafter as "MAM".

### W I T N E S S E T H :

WHEREAS, CTI is in the process of moving forward to finalize a multi-party contract involving several different governmental and corporate entities that would provide for the disposal of certain dredged materials that are to be removed from certain major harbor areas in the Northeastern part of the United States; and

WHEREAS, in order to enhance and insure its ability to perform on a contract pertaining to the disposal of dredged material, CTI has entered into negotiations with the various parties that are participants in the present Operating Agreement, with the parties acknowledging that it is in their mutual best interests to formalize and confirm the terms and conditions of an Operating Agreement among themselves so as to enable an efficient

and economically sound operation to be set in place for the performance of the anticipated contract that CTI hopes to secure for the disposal of dredged material; and

WHEREAS, E & L currently is operating a facility in Clearfield County, Pennsylvania, referred to as the "Bark Camp Site", whereby it uses ash as one of the ingredients used in a cementitious grout to help abate the environmental damage that has occurred at the Bark Camp Site through past mining operations; and

WHEREAS, E & L has a five year no cost contract dated December 20, 1993 with the Department of Environmental Protection of the Commonwealth of Pennsylvania, so as to permit the disposal of certain ash products at the Bark Camp Site, provided that they are used in a beneficial use operation so as to restore the degraded environmental conditions at the Bark Camp Site; and

WHEREAS, E & L has previously sought to expand the scope of materials that can be beneficially used/disposed of at the Bark Camp site, and has received permission from the Pennsylvania Department of Environmental Protection to utilize a paper pulp waste material in conjunction with coal ash so as to enable environmental remediation under its no cost contract at the Bark Camp site; and

WHEREAS, BAM has overseen certain operations of the Bark Camp site in the past with respect to the beneficial use/

remediation projects that have been undertaken pertaining to coal ash, doing so in conjunction with and pursuant to its agreement with E & L; and

WHEREAS, on September 12, 1996, the Pennsylvania Department of Environmental Protection issued to E & L Beneficial Use Approval Order No. 40030, embracing the beneficial use of municipal waste incinerator ash at the Bark Camp site, to be utilized in abandoned mine reclamation projects; and

WHEREAS, on June 6, 1997, as a result of the efforts undertaken and paid for by CTI, a modification to Beneficial Use Approval Order No. 40030 was issued, so as to include dredged materials, subject to certain detailed requirements, for use at the Bark Camp site; and

WHEREAS, BAM and E & L have entered into certain contractual relationships with one another, whereby BAM oversees the securing of coal ash that is taken to the Bark Camp site and also oversees the operational activities performed at the Bark Camp site, on behalf of E & L, pertaining to the beneficial use/remediation projects that have been undertaken pertaining to coal ash; and

WHEREAS, MAM is in the business of developing and beneficially using incinerator ash that is a residue of municipal waste, and has the potential of furnishing municipal incinerator ash that could be used in conjunction with the operations the parties are undertaking as they relate to the "Bark Camp site";

and

WHEREAS, in order to make the Bark Camp site potentially suitable for the usage of dredged materials in a beneficial use operation, CTI entered into an agreement with E & L whereby CTI would pay for all the costs of securing an amendment to Beneficial Use Approval Order No. 40030, with such amended order being issued in E & L's name on June 6, 1997; and

WHEREAS, CTI and E & L have used their best efforts to seek to have an amended no cost contract issued to E & L, covering an additional five year period of time, the beneficial use/disposal of dredged materials at the Bark Camp site in conjunction with Beneficial Use Approval Order No. 40030; and

WHEREAS, the Pennsylvania Department of Environmental Protection had initially expressed its willingness to issue an amended no cost contract to E & L, pertaining to dredged materials, but it has now determined that it wants to have a clear separation between the past operations at the Bark Camp site involving the flyash and paper pulp beneficial use operations of E & L from the beneficial use of dredged materials at the Bark Camp site; and

WHEREAS, the past operations of E & L under the December 20, 1993 no cost contract pertaining to ash involved no royalty type payment, while the new proposed contract, with the new dredged material beneficial use operations involving CTI would require a

royalty type payment for the Surface Mining Conservation and Reclamation Fund and also a royalty payment to Huston Township, the host municipality for the Bark Camp site; and

WHEREAS, in view of the past, present and future contributions of E & L, BAM and MAM, the parties have recognized that it is necessary to accommodate the interests of E & L, BAM, and MAM in order to permit a no cost contract to be entered into directly between CTI and the Pennsylvania Department of Environmental Protection, on the beneficial use of dredged materials, and

WHEREAS, CTI requires that there be a clear distinction of the responsibilities of E & L for the past remediation work that it has participated in, as opposed to the future anticipated remediation work at the Bark Camp site to be overseen by CTI pertaining to dredged materials, with this separation of responsibility being a key component of CTI's operational plans for dredged materials at the Bark Camp site; and

WHEREAS, the anticipated contract which CTI hopes to enter into pertaining to the beneficial use/disposal of dredged materials at the Bark Camp site requires a two tier payment arrangement, one pertaining to the operations that would be conducted under a "demonstration" project, involving 550,000 cubic yards of airspace at the Bark Camp site, and the long term performance project which CTI hopes to secure thereafter

pertaining to ongoing larger volume operations at the Bark Camp site; and

WHEREAS, the recitals set forth hereinabove have been made for the purpose of disclosing background information to assist in interpreting the intention of the parties with respect to the terms and conditions of this contract;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Demonstration Project - Subject to the execution by CTI of a multipart contract involving several different governmental and corporate entities, it is agreed that a demonstration project at the Bark Camp site will be undertaken covering 550,000 cubic yards of airspace, involving the beneficial reuse/disposal of dredged materials. Such project shall be undertaken pursuant to the terms of a no cost contract to be entered into between CTI and the Department of Environmental Protection. E & L agrees that operations for this demonstration project may be conducted under Beneficial Use Order No. 40030, as amended on June 6, 1997, provided that CTI shall pay all expenses associated with that operation. E & L shall use its best efforts to assist in making the demonstration project successful and in exchange therefore, CTI shall indemnify and hold E & L harmless for any costs or claims arising out of that project.

2. Furnishing of Flyash - BAM shall be responsible for furnishing all coal flyash used at the Bark Camp site for the dredged material operations of CTI, pertaining to both the demonstration project and anticipated permanent projects to be entered into thereafter. BAM shall be entitled to retain all tipping fees which it receives from the generators of the coal flyash for materials which are disposed of/beneficially used at the Bark Camp site. This entitlement shall continue throughout the term of this agreement, subject to the provisions of part 4.1 of this agreement. It is recognized that whenever flyash is delivered to the Bark Camp site, BAM shall have the responsibility for arranging for the transportation services and to insure that they are paid by some third party and not CTI. In no instance shall CTI be charged for any ash delivered to the Bark Camp site by BAM.

3. Quantities, Cure and Default - BAM shall use its best efforts to secure a sufficient quantity of flyash to accommodate the dredged material operations of CTI at Bark Camp, with the recognition that the remedy for failing to provide sufficient quantities of coal ash and CFB ash (jointly referred to herein as ash) shall be limited to the provisions set forth in part 3.1 of this agreement.

3.1 Minimum Quantities of Ash - BAM shall be obligated to furnish a minimum of 800 tons of ash per working day at the Bark

Camp site. If BAM should fail to furnish this minimum quantity of ash as required by CTI for treatment of dredged materials at the Bark Camp site for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own ash supply without the involvement of BAM. Prior to exercising such option, CTI shall give written notice to BAM that it is in default of its ash supply obligations. Upon such notice, CTI may begin to supply ash from any supplier, without restriction, in order to meet its requirements for the treatment of dredged material at the Bark Camp site provided that CTI shall not improperly interfere with existing contracts. From the date of receiving written notice from CTI, BAM shall have sixty (60) days in which to cure the default (the "cure period") of its ash supply obligation to the CTI dredged material treatment project at Bark Camp. A cure of the default shall occur when BAM has delivered one hundred percent (100%) of the ash required by CTI for treatment of the dredged material at the Bark Camp site for a period of fourteen (14) consecutive working days. It is understood as part of this provision that CTI shall accept ash sourced by BAM (at no cost to CTI) during the cure period on a preferred basis to any coal ash sourced by CTI in order to provide BAM ample opportunity to cure the default. Should BAM fail to cure the default of its ash supply obligation within the sixty (60) day period, CTI shall be

given the entitlement for the remaining term of this agreement to furnish ash for use in the dredged materials treatment operation at Bark Camp. When supplying ash under the provisions of this agreement, neither BAM nor E & L shall attempt to disrupt or interfere with, for the purpose of diverting ash from Bark Camp, the relationship of CTI with the ash suppliers utilized by CTI to supply coal ash to the dredged materials treatment project at Bark Camp. During the time that CTI acts under the provisions of this agreement to provide ash to the dredged materials treatment project at Bark Camp, whether during the sixty (60) day period for curing the default, or after the expiration of the cure period, all net tipping fees generated by the ash contracts which BAM heretofore had entered into shall be paid to CTI, with none of those fees being retained by BAM. Should the net tipping fee<sup>1</sup> of all ash material utilized by CTI in the dredged material treatment operations at the Bark Camp site, including the tipping fees generated from ash delivered pursuant to supply contracts of BAM, be greater than zero dollars (\$0.00), BAM shall be entitled to receive Sixty (60%) Percent of the net tipping fees as computed on a daily basis. Payment shall be made thirty-five (35) days after the date of delivery of the ash to the Bark Camp site.

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<sup>1</sup> "Net tipping fee for all ash" is defined as the tip fees generated by supply of fee-paid ash from generators after actual costs of transportation minus the costs of supplying ash from generators who charge for ash and/or whose transportation cost to the site results in a net cost to the dredged material treatment project at Bark Camp.

3.2 Excess Quantities of Ash - For that quantity of ash which CTI requires in excess of 800 tons per working day, BAM shall have the entitlement to furnish the quantities required, but if it fails to furnish the required quantities for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own additional quantities of ash without the involvement or remuneration of BAM. The procedures outlined for Section 3.1 above shall be followed in order to cure a default.

4. Operations - Throughout the term of the demonstration project and continuing through other projects for dredged materials which CTI undertakes at the Bark Camp site, it shall be the responsibility of CTI to furnish all equipment, manpower, engineering, and administrative support necessary to permit the operations to be conducted in conformity with requirements of the no cost contract between CTI and DEP, including the requirements imposed by amended Beneficial Use Approval Order No. 40030. This operational obligation includes all blending, mixing and application procedures involving dredged materials, flyash, and municipal ash, and other additives that are used in conjunction with the dredged materials that CTI disposes at the site. As it relates to municipal incinerator ash or coal flyash, the parties acknowledge that in certain circumstances, it may develop that a contract for the disposal/beneficial use of these materials will

require that there be an ongoing obligation to dispose of these materials during a period of time when dredged materials are not available for the municipal ash and coal ash to be mixed with. In those limited situations where the disposal/beneficial use contracts at Bark Camp are entered into directly by BAM or MAM, CTI will continue to provide the operational services needed to properly handle the coal ash or municipal ash furnished by BAM or MAM in accordance with pertinent no cost contracts and orders from the Department of Environmental Protection, and in consideration of this service during the "bridge" period of time when dredged materials are not available, all tipping fees for the municipal ash shall be paid to CTI, with CTI paying E & L in accordance with part 5 of this agreement. This payment provision applies only to municipal ash, as coal ash is covered by Section 4.1 of this agreement.

4.1 Operational Charge Assessed to BAM - In consideration of the obligation of BAM to furnish a minimum volume of 800 tons of ash per day at the Bark Camp site, so as to be used in dredged material operations of CTI, CTI hereby assumes the full responsibility for processing 800 tons of flyash per day, in accordance with all requirements imposed by state, federal and local regulatory bodies having jurisdiction over the Bark Camp site. In the event that there is not sufficient dredged material being used at the Bark Camp site, so as to enable the 800 ton per

day volume of flyash to be utilized in the dredged material operations of CTI, the parties agree that CTI will handle the cost of processing of the flyash which BAM brings to the Bark Camp site in exchange for payment to it by BAM in the amount of \$2.75 per ton.

4.2 Volume Cap - In order to provide BAM with the opportunity to insure that there are sufficient volumes of ash at the Bark Camp site, the pricing formula set forth in the preceding paragraph shall apply to all ash which CTI brings into the Bark Camp site, which is not mixed with dredged material, up to a volume of 1200 tons per working day.

5. Payment to E & L - No payment shall be paid to E & L for any airspace used at the Bark Camp site during the demonstration project described in part 1 of this agreement. Starting with a subsequent non-demonstration project, all airspace utilized in the dredged material operations of CTI shall obligate CTI to make payment to E & L the sum of Fifty (\$.50) Cents per cubic yard of dredged material delivered to the Bark Camp site. CTI shall pay E & L thirty (30) days after receipt of invoice. Payment shall be based upon the number of cubic yards of dredged materials delivered to the site as determined by pre-and-post-dredging surveys performed and certified by CTI to its customers. Failure to pay within forty-five (45) days of the date of receipt of invoice shall subject the payment charge to a Twelve (12%)

Percent per annum interest for the unpaid balance.

6. Payment to MAM - It is recognized that in most instances, CTI will enter into contracts to furnish municipal incinerator ash to the Bark Camp site. In exchange for making its technology available and for fully cooperating to assist in making municipal incinerator ash available for use in the dredged materials operations of CTI, MAM shall be paid a royalty of \$4.00<sup>2</sup> per ton for all municipal ash that CTI utilizes in its operations. For those operations which involve municipal incinerator ash that is not mixed with dredged material, but instead municipal incinerator ash that is disposed of separately for a limited period of time<sup>3</sup>, it is agreed that MAM shall pay to E & L the Fifty (\$.50) Cents per ton of cubic airspace which is covered by part 4 of this agreement. It shall be the complete responsibility of CTI to furnish all transportation, pay all costs of operation, to secure all pertinent transportation permits, and to pay any and all other costs associated with the processing of municipal incinerator ash at the Bark Camp site. Payment shall be made thirty-five (35) days after the date of delivery of the municipal ash to the Bark Camp site.

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<sup>2</sup> Such royalty will be paid only if there are sufficient revenues generated from tipping fees to cover the cost of transportation, processing, and placement, with the understanding that any proportionate income generated above that base cost shall be paid to MAM up to the \$4.00 per ton figure.

<sup>3</sup> It is specifically recognized that "stand alone" contracts for municipal ash are not covered by this agreement, meaning that only ash that is secured for the intended purpose of blending with the dredged materials is covered by this pricing formula.

7. Term of Agreement - This agreement shall last for a total of fifteen (15) years. The first ten (10) years shall require payment at the Fifty (\$.50) Cents per cubic yard payment owed to E & L and the Four (\$4.00) Dollar per ton payment owed to MAM, as covered by parts 5 and 6 of this agreement. After the initial ten year term, payment for the next five (5) years shall be adjusted at the beginning of the eleventh (11th) year, so that the price to be paid to E & L and MAM, respectively, shall be adjusted upwards at a level equal to the increase in the CPI index during the initial ten year period covering this contract. After the conclusion of the fifteen year base period, by giving written notice ninety (90) days prior to the expiration of the fifteen year term, CTI shall have the option to extend the term of this agreement by an additional year and in exchange for that the payments made to E & L and MAM hereunder shall be subject to increase based upon an increase in the CPI index during that prior year. Similar one year extensions shall continue indefinitely thereafter.

8. Non-Exclusivity Term - Nothing in this agreement shall obligate CTI to utilize the Bark Camp Site, or BAM, MAM or E & L for disposal of dredged materials. If, however, CTI utilizes the Bark Camp site, the terms and conditions set forth in this agreement shall govern the rights and duties of the parties.

9. Non-Circumvention - CTI agrees that it shall not

directly or indirectly, through its own operations or the operations of any affiliated business entity, engage in any operations pertaining to dredged materials at the Bark Camp site unless the operations are conducted under the terms of this agreement.

10. Regulatory Obligation of E & L - E & L recognizes that it is solely responsible for insuring proper compliance with all state, local and federal obligations pertaining to the operations which it has conducted on its own in the past or will conduct in the future under its no cost contract with the Pennsylvania Department of Environmental Protection, as issued on December 23, 1993, and any extensions related thereto. Under no circumstances shall CTI be responsible for paying the cost of fulfilling these obligations. E & L agrees that it shall use its best efforts to insure that it conducts its operations under its no cost contract in a fashion so as to not interfere with the activities of CTI under the dredged materials no cost contract which CTI will be entering into with the Pennsylvania Department of Environmental Protection.

11. Warranties and Representations -

A. E & L, BAM and MAM have full power in accordance with applicable law to enter into this agreement and to consummate the transactions herein without the need for any further approval whatsoever. Neither the entering

into this agreement nor the consummation of the transactions herein will constitute a violation or breach by E & L, BAM or MAM (i) of any contract or other instrument to which they are a party; (ii) of any judgment, order, writ, injunction, or decree issued against or imposed upon E & L, BAM or MAM; or (iii) that will result in a violation of any applicable law, order, rule or regulation, permit or license.

B. In the event that E & L, BAM or MAM receives any notice of violation or threatened notice of violation from any governmental authority respecting any order, permit, or license by any of them, they will immediately notify CTI of any notice or claim.

C. E & L, BAM and MAM have all necessary and appropriate permits, licenses and orders from the Commonwealth of Pennsylvania, and any other government agency to perform its functions as required under this agreement and shall at all times during the term of this agreement maintain such orders, permits and licenses in good standing.

D. E & L and BAM have valid and enforceable rights and entitlements to use a rail spur that comes onto the Bark Camp site and shall maintain all said rights and entitlements during the entire term of this agreement.

12. Effective Date - This agreement shall be effective

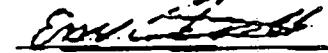
November 7, 1997, and shall continue thereafter until the terms of it have been satisfied.

IN WITNESS WHEREOF, the parties hereunto have entered their signatures, on the dates specified below, doing so with the intention of being legally bound.

CONSOLIDATED TECHNOLOGIES, INC.

By:   
Steven C. Sande, President

E & L BROKERAGE, INC.

By:   
Ernest T. Rosselli, President

BENEFICIAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President

MUNICIPAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President





## CONFIDENTIALITY AND NONCOMPETITION AGREEMENT

This agreement is by and between E & L Brokerage, Inc., a Pennsylvania corporation, Beneficial Ash Management, Inc., a Pennsylvania corporation, and Municipal Ash Management, Inc., a Pennsylvania corporation, having a combined mailing address of R. D. 1, Box 455, Morrisdale, Pa 16858, referred to hereinafter collectively as the "Company", Party of the First Part.

AND

Waste Concepts, Inc. of 2230 Dekalb Street, Norristown, PA 19401, referred to hereinafter as "Client", Party of the Second Part.

### WITNESSETH:

WHEREAS, Company has developed certain processes, procedures and intellectual property rights that it has acquired in the course of its operations, and has derived an appreciable degree of know-how in the use of those procedures that is of considerable value; and

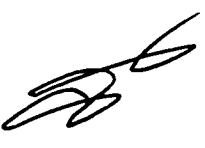
WHEREAS, Client is interested in learning of the potential use of the know-how possessed by Company and its officers, directors and employees, and wishes to enter into negotiations with Company for the purpose of determining whether a mutually beneficial contract pertaining to the application of the said know-how can be entered into between the parties; and

WHEREAS, the parties recognize that in the course of their negotiations, Client will acquire certain knowledge and information about the know-how, supply services, business practices, and intellectual property rights of Company, which are considered to be property interests of Company; and

WHEREAS, in the course of the negotiations between the parties, it is recognized that Client will be presenting certain information concerning its business practices, future plans, and other confidential or proprietary information, and desires that such information not be disclosed or released without its consent;

NOW THEREFORE, in consideration of their mutual covenants set forth herein, and with the intention of being legally bound, the parties hereto agree as follows:

1. Confidentiality - Each party recognizes that it and its affiliates

  
shall maintain and protect the confidentiality of all information provided to it within the course of the negotiations between the parties that they are currently entering into or nondisclosure or such confidential information shall continue to apply without regard to whether a long term contract is entered into between the parties with respect to the use of the know-how which Company possesses. The obligation to maintain confidentiality shall not apply to any proprietary information to the disclosures that were made to it or if the information becomes generally available to the public.

2. Protection Of Know-How and Business Practices - In the course of their discussions, the disclosure of certain know-how currently in the possession of Company will be given to Client. It is agreed that Client shall not under any circumstances disclose the information which it obtains from such negotiations or use in any fashion the know-how or business practices that it becomes aware of though these negotiations without written consent of Company. In the event that the parties enter into a separate contact that specifically addresses the know-how and other intellectual proprietary rights of Company, the terms of the present agreement shall continue to bind or limit client, except for the specific rights extended to Client in such contract. In the event that a separate contact is not entered into by the parties, the Client shall be limited in all respects by the requirement that it not release or use information that it acquires with respect to the know-how and intellectual property rights of Company.

3. Noncompetition - In the course of the negotiations between the parties, it is anticipated that certain information will be furnished to Client with respect to Company's suppliers and it overall method of doing business. In consideration for the willingness of Company to enter into such negotiations and to enable Company to protect its trade secrets and business practices, Client hereby specifically agrees that it will not engage in any business that is similar to the business of Company <sup>regarding municipal incinerators</sup> and will not purchase supplies of materials from any of the suppliers/vendors that Company deals with without the express written consent of Company. This warranty of non-competition shall apply for a period of five (5) years from the date of the signing of the within agreement.



4. Enforcement of Agreement - The parties agree that any violation of the terms and conditions of this agreement could have adverse business and legal consequences upon the opposing party. Accordingly, in the event there is a violation of the terms of this agreement, the breaching party shall be subject to damages at law as well as injunctive relief through a court of competent jurisdiction to grant such relief. The

  
breaching party shall also be responsible for all attorneys fees and cost which the opposing party incurs in enforcing this contract.

5. Choice of Law and Jurisdiction for Litigation - it is agreed that the laws of the Commonwealth Of Pennsylvania shall apply with respect to the interpretation, construction, enforcement or application of any terms, conditions, or provision in this agreement. It is further agreed by the parties that this contact has been entered into in Clearfield County, Pennsylvania, and that venue and jurisdiction for the purpose of enforcement of this contact rest only with the Court of Common Pleas Of Clearfield County, Pennsylvania. The parties hereby specifically agree that no other state, federal or local court shall have jurisdiction or venue to maintain any litigation that is instituted with respect to this agreement.

6. Authority and Application of Agreement - The person signing the document hereby warrants and represents that he/she is authorized to bind his company to the terms and conditions of this agreement, it shall apply to all affiliates and subsidiaries of the basic company for which the agreement has been signed.

IN WITNESS WHEREOF, the parties hereunto have set forth their signatures on the date so specified. In the event the parties elect to use two sets of original documents, it is agreed that this agreement maybe signed in counterparts so as to expedite the acceptance of this agreement.

Party of First Part/ Company

E&L Brokerage, Inc.  
Beneficial Ash Management, Inc.  
Municipal Ash Management, Inc.

BY: Alfred J. Ellman

TITLE: V.P. MAM

DATE: June 21, 1996

Party of the Second Part/ Client

Waste Concepts, Inc.

BY: John S. Silliman

TITLE: President

DATE: 6/25/96



REDACTED

EBR1

000-222-010

AL-5144-REFL

000-222-010

EBR1

FROM

FAX NO. :

Mar. 07 1993 11:04PM P2

FROM : FAXSYSTEM

PHONE NO. :

Mar. 31 1993 12:37PM F4

061-01-90 131014 G. STEPHEN MANNING, P.A. 804 732 9378  
3-30-1993 2 AGM FROM CATERING CAFE CPAS 814 732 6962

P.02

P.2

AGREEMENT

BETWEEN ERNEST ROSELLI, MAJORITY SHAREHOLDER, MUNICIPAL ASH MANAGEMENT, INC. (SELLER) AND MICHAEL ALLOWAY, WILLIAM KLAETIC, TONY JOHNSON, ALBERT HOLKOSKI, BARRY SCHLEITZ, TIMOTHY FANNIN AND NICOLE FANNIN, MINORITY SHAREHOLDERS, MUNICIPAL ASH MANAGEMENT, INC. (SHAREHOLDERS).

WHEREAS, SELLER HAS CONTRACTED TO SELL ALL OPERATING ASSETS OF MUNICIPAL ASH MANAGEMENT, INC. (CORPORATION), AND

WHEREAS, SELLER WISHES FOR SHAREHOLDERS TO EXECUTE CONSENT TO SAID SALE, AND

WHEREAS, SELLER WILL COMBINE ASSETS OF OTHER AFFILIATED CORPORATIONS INTO ONE OPERATING COMPANY (BUYER).

THEFORE, IN CONSIDERATION OF CONSENT OF SHAREHOLDERS, SELLER MAKES THE FOLLOWING WARRANTIES:

1. ALL FINANCIAL RECORDS OF BUYER WILL BE KEPT AT SELLER'S OFFICE, 850 LEONARD STREET, CLEARFIELD, PENNSYLVANIA, AND BE OPEN TO PERIODIC INSPECTION BY SHAREHOLDERS OR THEIR DESIGNEES.
2. SELLER WILL INDEMNIFY SHAREHOLDERS FROM ANY LIABILITIES RESULTING FROM THE SALE OF CORPORATE ASSETS AND THE EXECUTION OF ANY SALES AGREEMENTS BY SHAREHOLDERS.
3. ALL CONTRACTS ENTERED INTO, PRIOR TO THE DATE OF THIS AGREEMENT, BY ERNEST T. ROSELLI, ETR ENTERPRISES, INC., BENEFICIAL ASH MANAGEMENT, INC. OR E & L BROKERAGE, INC. INVOLVING THE MANAGEMENT OR UTILIZATION OF MUNICIPAL INCINERATOR ASH, INCLUDING, BUT NOT LIMITED TO, THOSE PROPOSALS IDENTIFIED AS THE "CINCINNATI" AND "ONEIDA" PROJECTS, WILL BE INCLUDED IN THE REVENUE STREAMS ALLOCATED TO MUNICIPAL ASH MANAGEMENT, INC.

SEPTEMBER 29, 1993

BY:



ERNEST T. ROSELLI



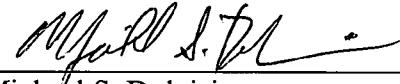
Michael J. Fanning  
WITNESS

**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2001, I caused to be served a true and correct copy of the foregoing Complaint Of Defendant Consolidated Technologies, Inc. Against Additional Defendants, Beneficial Ash Management, Inc., E&L Brokerage, Inc., and ETR Enterprises, Inc. to be served by Federal Express, prepaid, upon the following counsel of record:

Dwight L. Koerber, Jr.  
110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830

Counsel for Municipal Ash Management, Inc.



---

Michael S. Doluisio

FILED

AUG 10 2001

William A. Shaw  
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11161

MUNICIPAL ASH MANAGEMENT, INC.

01-1019-CD

VS.

CONSOLIDATED TECHNOLOGIES INC.

COMPLAINT

**SHERIFF RETURNS**

NOW JUNE 27, 2001, JOHN DURANTE, SHERIFF OF MONTGOMERY COUNTY  
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY  
TO SERVE THE WITHIN COMPLAINT ON CONSOLIDATED TECHNOLOGIES INC.,  
DEFENDANT.

NOW JULY 3, 2001 SERVED THE WITHIN COMPLAINT ON CONSOLIDATED  
TECHNOLOGIES, INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF  
MONTGOMERY COUNTY. THE RETURN OF SHERIFF DURANTE IS HERETO  
ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED  
WILLIAM BON RACHT, PIC

---

Return Costs

Cost	Description
27.89	SHFF. HAWKINS PAID BY: ATTY.
33.00	SHFF. DURANTE PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED  
07/13/2001  
JUL 13 2001  
William A. Shaw  
Prothonotary  
EAS

Sworn to Before Me This

13<sup>th</sup> Day Of July 2001

William A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co., Clearfield, PA.

So Answers,

Chester A. Hawkins  
Chester A. Hawkins  
Sheriff

## SHERIFF'S RETURN

PROTHONOTARY X- 3385

DEFENDANT: Consolidated Technologies, Inc.

DOCUMENT SERVED: Civil

INDIVIDUAL SERVED: William Bon Racht

RELATIONSHIP TO DEFENDANT: Person In Charge

DATE AND PREVAILING TIME: July 3, 2001 @ 10:40

LOCATION 1717 Swede Street, Suite 109, Blue Bell, PA

*The above document was served on the defendant as per information listed above in the County of Montgomery, Commonwealth of Pennsylvania.*

*Affirmed and subscribed before me on this day so answers.*

July 6, 2001  
Notary Public

*John P. Durante*  
Sheriff of Montgomery County

*Helene Friedman*  
Notarial Seal  
Helene Friedman, Notary Public  
Norristown Boro, Montgomery County  
My Commission Expires Apr. 1, 2004

Deputy Sheriff  
Walzak

*J. Walzak*



CHESTER A. HAWKINS  
SHERIFF

Sheriff's Office  
Clearfield County

OFFICE (814) 765-2641  
AFTER 4:00 P.M. (814) 765-1533  
CLEARFIELD COUNTY FAX  
(814) 765-5915

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ  
CHIEF DEPUTY

MARILYN HAMM  
DEPT. CLERK

MARGARET PUTT  
OFFICE MANAGER

PETER F. SMITH  
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MUNICIPAL ASH MANAGEMENT INC.

SERVE BY:

7/26/01

or  
HEARING DATE:

VS:

CONSOLIDATED TECHNOLOGIES, INC

TERM & NO.: 01-1019-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE: CONSOLIDATED TECHNOLOGIES, INC.

ADDRESS: 1717 Swede St., Suite 109, Blue Bell, Pa. 19422

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF of MONTGOMERY County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff  
2001.

MAKE REFUND PAYABLE TO:

PERSON SERVED

WILLIAM VON KACHT

RELATION / POSITION

P/C

PLACE OF SERVICE

AS Given

TIME OF SERVICE

1040 AM

DATE OF SERVICE

7-3-01

NUMBER OF ATTEMPTS

1

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

DEPUTY

WALVAK

X 3385

01 JUL - 2 PM '01  
MONTGOMERY COUNTY  
SHERIFF'S DEPUTY  
RECEIVED

42

42

FORM MCSD 101



**SHERIFF'S OFFICE  
COUNTY of MONTGOMERY**

CUSTOMER'S COPY

325150

AIRY AND SWEDE STREETS  
NORRISTOWN, PENNSYLVANIA 19404  
TELEPHONE (610) 278-3331

Plaintiff

*Municipal Tech Inc*

Defendant

*Consolidated Tech Inc*

Filed By

*Clearfield*

Date  
7-3-01

INVOICE for charges  
 RECEIPT for payment

Docket No  
X 335

Type of Transaction

AMOUNT

33 -

Docketing and Service

Additional Defendant

Surcharge

Writ of Execution

Garnishment

Interrogatory

Affidavit—Notary

Pistol Permit No.

Property Claim

Poundage

Notarial Certificate

Sheriff's Acknowledgment

Prothonotary Acknowledgment

Mileage

Additional Mileage

53603

Check No  
2699

JMW

Clerk

33 -

FIVE THOUSAND FORMS

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,

Plaintiff,

Docket Number  
01-1019-CD

v.

CONSOLIDATED  
TECHNOLOGIES, INC.,

Defendant.

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the defendant in this matter,

Consolidated Technologies, Inc. Thank you.

Respectfully submitted,

Dated: July 31, 2001

  
\_\_\_\_\_  
Marshall J. Walthew  
Pa. I.D. Number 55329  
Martin Joel Bolstein  
Pa. I.D. Number 50159  
Michael S. Doluisio  
Pa. I.D. Number 75060  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

(215) 994-4000 (phone)  
(215) 994-2222 (fax)

**FILED**

AUG 03 2001

William A. Shaw  
Prothonotary

Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2001 I caused a copy of the foregoing Entry of Appearance to be served upon the individual listed below by first class mail, postage prepaid:

Dwight L. Koerber, Jr., Esq.  
110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830

Attorney for Plaintiff

  
\_\_\_\_\_  
Michael S. Dolusio

FILED

AUG 03 2001

71 noc  
William A. Shaw  
Prothonotary

AS

TO PLAINTIFF, MUNICIPAL ASH MANAGEMENT, INC.,  
YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN  
RESPONSE TO THE ENCLOSED CONSOLIDATED  
TECHNOLOGIES, INC.'S ANSWER TO PLAINTIFF'S  
COMPLAINT WITH NEW MATTER AND COUNTERCLAIMS  
WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR  
A JUDGMENT MAY BE ENTERED AGAINST YOU.

  
Michael S. Shaw  
Attorney for Defendant, Consolidated Technologies, Inc.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA  
CIVIL DIVISION**

MUNICIPAL ASH MANAGEMENT,  
INC.,

Plaintiff

v.

Docket No. 01-1019-CD

CONSOLIDATED TECHNOLOGIES,  
INC.,

Defendant.

**CONSOLIDATED TECHNOLOGIES, INC.'S ANSWER  
TO PLAINTIFF'S COMPLAINT  
WITH NEW MATTER AND COUNTERCLAIMS**

**FILED**  
AUG 10 2001  
M 10:40 (w)  
William A. Shaw  
Prothonotary  
1 CENTS TO ANSWER  
*Pls. file* *Pls. file*

By and through its undersigned attorneys Consolidated Technologies, Inc. ("CTI") answers plaintiff's complaint and asserts new matter and a counterclaim as follows:

1. Admitted upon information and belief.
2. Admitted.
3. Admitted in part, denied in part. CTI admits that Appendix A to plaintiff's complaint is a true and correct copy of an Operating Agreement entered into between CTI and plaintiff and others on or about November 7, 1997. Contrary to the allegations of Paragraph 3 of plaintiff's complaint, negotiations took place on days other than November 7, 1997, as well as on November 7, 1997.

4. Admitted in part, denied in part. It is admitted that the Operating Agreement was negotiated, in part, in Clearfield County. The remaining allegations of Paragraph 4 are denied. To the extent Paragraph 4 of plaintiff's complaint purports to characterize the terms of the Operating Agreement, such allegations are denied. The Operating Agreement is a document which speaks for itself and which must be considered in its entirety. By way of further answer, the Operating Agreement was negotiated, in part, in Montgomery County and CTI executed the Operating Agreement in Montgomery County.

5. Denied. Paragraph 5 of plaintiff's complaint characterizes the terms of the Operating Agreement, which speaks for itself and which must be considered in its entirety. Plaintiff's characterizations of the Operating Agreement are denied. Moreover, plaintiff's description is incomplete and misleading. The Operating Agreement provides that royalties will only be paid to plaintiff if "there are sufficient revenues generated from tipping fees to cover the cost of transportation, processing, and placement." In addition, royalties are only due for "municipal ash that CTI utilizes in its operations." Finally, the parties "specifically recognized that 'stand alone' contracts for municipal ash are not covered by" the Operating Agreement. There may be other provisions of the Operating Agreement that further qualify or contradict the allegations of Paragraph 5 of plaintiff's complaint.

6. Admitted in part, denied in part. It is admitted only that, since May 1, 2001, CTI has caused approximately 40 cars of municipal ash to be transported to the Bark Camp Site to be used in connection with the dredge material operations at Bark Camp. The

remaining allegations of Paragraph 6 are denied. To the contrary, since May 1, 2001, CTI has caused less than 1,250 tons per day of pre-amended dredge material to be transported to Bark Camp.

7. Admitted in part, denied in part. CTI admits that plaintiff has requested an accounting and payment for tonnage delivered to the Bark Camp site. CTI denies that an accounting or any payment is due.

8. CTI incorporates Paragraph 5 of its Answer as if set forth in full herein.

9. Admitted in part, denied in part. CTI admits that plaintiff seeks payment for all future delivery of municipal ash to the Bark Camp Site. The remaining allegations of Paragraph 9 are denied. Plaintiff has no current entitlement to payment for any future delivery of municipal ash to the Bark Camp site. By way of further answer, CTI incorporates Paragraph 5 of its Answer as if set forth in full herein.

10. Admitted in part, denied in part. CTI admits that plaintiff seeks prejudgment interest. CTI denies that plaintiff is entitled to pre judgment interest.

WHEREFORE, CTI respectfully requests that judgment be entered in its favor and against plaintiff, together with costs and such other and further relief as may be just.

**NEW MATTER**

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claim is barred in whole or in part because of plaintiff's own material breaches of the Operating Agreement or because of the material breaches of the Operating Agreement by entities which, along with plaintiff, form a single legal entity. A copy of the Operating Agreement is attached hereto as Exhibit A. In this regard, CTI incorporates the allegations of the Counterclaim set forth below as if set forth herein in full.
3. Plaintiff's claim is barred in whole or in part because, under the Operating Agreement, a royalty is due plaintiff only if "there are sufficient revenues generated from tipping fees to cover the cost of transportation, processing, and placement."
4. Plaintiff's claim is barred in whole or in part because, under the Operating Agreement, a royalty payment is due to plaintiff only for "municipal ash that CTI utilizes in its operations."
5. Plaintiff's claim is barred in whole or in part because "stand alone' contracts for municipal ash are not covered by" the Operating Agreement.

## **COUNTERCLAIMS**

### **PIERCING THE CORPORATE VEIL**

6. Upon information and belief, plaintiff, Municipal Ash Management, Inc. (“MAM”) is a Pennsylvania corporation, which has its office and principal place of business at 850 Leonard Street, Clearfield, Pennsylvania, 16830.

7. Plaintiff is the alter ego of two other companies, E&L Brokerage, Inc. (“E&L”) and Beneficial Ash Management (“BAM”), also Pennsylvania corporations. Upon information and belief, E&L and BAM have offices and principal places of business at 850 Leonard Street, Clearfield, Pennsylvania, 16830.

8. MAM, E&L, and BAM, in truth, operate as a single entity. The corporate veil of each should be pierced and each of the three companies should be held responsible for the liabilities of the others.

9. MAM, E&L, and BAM are under the common control of one person, Ernest T. Rosselli. In the experience of CTI, all decisions made on behalf of any of the three companies have been made solely by Mr. Rosselli. Mr. Rosselli signed the Operating Agreement on behalf of each of the three companies. See Exhibit A. In addition, other contracts have been signed by one person on behalf of MAM, BAM and E&L. See Confidentiality and Noncompetition Agreement between E&L, BAM, MAM and Waste Concepts, Inc., attached hereto as Exhibit B.

10. MAM, E&L, and BAM share a common majority owner, Ernest T. Rosselli. Upon information and belief, Rosselli is the sole owner of E&L.

11. MAM, E&L, and BAM are under common administrative control and management. Indeed, all three companies operate out of the same office, using similar personnel, record keeping, and under common control.

12. MAM, E&L, and BAM perform similar or supplementary business functions. Each of the three companies is involved with the operations at the Bark Camp site and each performs interrelated functions there. Each signed the Operating Agreement regarding the operation at that Site. Accordingly to the Operating Agreement, attached hereto as Exhibit A, E&L operates the Bark Camp site. See Operating Agreement at 2. The Agreement provides that, among other things, BAM has overseen certain operations of the Bark Camp site with respect to the beneficial use/ remediation projects that have been undertaken pertaining to coal ash “doing so in conjunction with” E&L. Id. at 2-3. Among other things, MAM developed and sought incinerator ash to be used at the Bark Camp site. Id. at 3. In truth, the same individuals work for each of three companies, making any distinction between their purported functions meaningless.

13. Moreover, upon information and belief, corporate formalities among the three companies are routinely ignored, and the affairs and funds of each of the three companies are significantly intermingled.

14. Mr. Rosselli has signed at least one agreement in which contracts entered into by BAM or E&L are simply reallocated to MAM's revenue stream. This reallocation apparently was performed without any corresponding compensation being made to BAM or E&L. See September 29, 1999 Agreement, attached hereto as Exhibit C.

15. As a result of the foregoing, the corporate veils of MAM, BAM, and E&L should be pierced and the three companies should be treated as a single enterprise such that each of the companies should be held responsible for the breaches of the others.

WHEREFORE, CTI respectfully requests that the Court declare and find MAM, BAM and E&L to be a single enterprise such that each company is jointly responsible for the liabilities of the others, and such other and further relief as the court deems just.

#### **BREACH OF CONTRACT: COAL ASH**

16. Under Section 2 of the Operating Agreement, plaintiff's alter ego, BAM, is responsible for providing all coal flyash used at the Bark Camp site for the dredge material operations of CTI. See Operating Agreement, Exhibit A. Under Section 3.1 of the Agreement, Plaintiff/BAM are obligated to provide a minimum of 800 tons of ash per working day.

17. Plaintiff/ BAM have failed to provide the coal ash required under the Operating Agreement.

18. Despite CTI's written notification to Plaintiff/ BAM that they are in default, Plaintiff/ BAM have failed to cure their default or provide the coal ash required under the Agreement.

19. Under Section 3.1 of the Operating Agreement, as a result of Plaintiff/ BAM's breach, CTI is entitled to "all tipping fees generated by the ash contracts which BAM hereto had entered into." CTI is also entitled to receive some ash from Plaintiff/ BAM at no cost. However, Plaintiff/ BAM has failed to provide CTI with these tipping fees or no-cost ash.

20. In addition, Plaintiff/ BAM's failure to provide coal ash has caused CTI damages. Among other things, to induce Plaintiff/BAM to provide coal ash, CTI has been required to purchase ash from Plaintiff/ BAM at prices higher than those set forth in the Operating Agreement. In addition, CTI has been required to pay, and will continue to pay, additional moneys to obtain coal ash from sources other than Plaintiff/ BAM.

WHEREFORE, CTI respectfully requests that judgment be entered in its favor and against plaintiff in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

**BREACH OF CONTRACT: BEST EFFORTS**

21. Under Section 1 of the Operating Agreement, plaintiff's alter ego, E&L, is obligated to "use its best efforts to assist in making the demonstration project successful. . . ."

22. Upon information and belief, MAM was party to a contract with American Ref-Fuel Company that could have provided MAM with ash needed to fulfill its obligations under the Operating Agreement. MAM allowed the contract with American Ref-Fuel to expire.

23. Plaintiff/ E&L has failed to use best efforts to make the demonstration project successful by, among other things, failing even to attempt to cause MAM to negotiate an extension of the contract with the American Ref-Fuel Company.

24. Plaintiff's/E&L's breach has caused CTI to incur damages, including the expenditure of additional moneys.

WHEREFORE, CTI respectfully requests that judgment be entered in its favor and against plaintiff in an amount in excess of \$20,000 plus interest costs and such other and further relief as the court deems just.

Dated: August 9, 2001

*Marshall Walthew /MSD/*  
\_\_\_\_\_  
Marshall Walthew  
Michael Doluisio  
Dechert Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793  
(215) 994-4000

Attorneys for Consolidated Technologies, Inc.

**VERIFICATION**

I, Steven C. Sands, President of Defendant, Consolidated Technologies, Inc., hereby affirm that the factual statements made in the foregoing Consolidated Technologies, Inc.'s Answer To Plaintiff's Complaint With New Matter And Counterclaims are true and correct to the best of my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: August 7, 2001



---

Steven C. Sands



## OPERATING AGREEMENT

THIS AGREEMENT, entered into by and among CONSOLIDATED TECHNOLOGIES, INC., a Pennsylvania business corporation, referred to hereinafter as "CTI"; E & L BROKERAGE, INC., a Pennsylvania business corporation, referred to hereinafter as "E & L"; BENEFICIAL ASH MANAGEMENT, INC., a Pennsylvania business corporation, referred to hereinafter as "BAM"; and MUNICIPAL ASH MANAGEMENT, INC., a Pennsylvania business corporation, referred to hereinafter as "MAM".

### W I T N E S S E T H :

WHEREAS, CTI is in the process of moving forward to finalize a multi-party contract involving several different governmental and corporate entities that would provide for the disposal of certain dredged materials that are to be removed from certain major harbor areas in the Northeastern part of the United States; and

WHEREAS, in order to enhance and insure its ability to perform on a contract pertaining to the disposal of dredged material, CTI has entered into negotiations with the various parties that are participants in the present Operating Agreement, with the parties acknowledging that it is in their mutual best interests to formalize and confirm the terms and conditions of an Operating Agreement among themselves so as to enable an efficient

and economically sound operation to be set in place for the performance of the anticipated contract that CTI hopes to secure for the disposal of dredged material; and

WHEREAS, E & L currently is operating a facility in Clearfield County, Pennsylvania, referred to as the "Bark Camp Site", whereby it uses ash as one of the ingredients used in a cementitious grout to help abate the environmental damage that has occurred at the Bark Camp Site through past mining operations; and

WHEREAS, E & L has a five year no cost contract dated December 20, 1993 with the Department of Environmental Protection of the Commonwealth of Pennsylvania, so as to permit the disposal of certain ash products at the Bark Camp Site, provided that they are used in a beneficial use operation so as to restore the degraded environmental conditions at the Bark Camp Site; and

WHEREAS, E & L has previously sought to expand the scope of materials that can be beneficially used/disposed of at the Bark Camp site, and has received permission from the Pennsylvania Department of Environmental Protection to utilize a paper pulp waste material in conjunction with coal ash so as to enable environmental remediation under its no cost contract at the Bark Camp site; and

WHEREAS, BAM has overseen certain operations of the Bark Camp site in the past with respect to the beneficial use/

remediation projects that have been undertaken pertaining to coal ash, doing so in conjunction with and pursuant to its agreement with E & L; and

WHEREAS, on September 12, 1996, the Pennsylvania Department of Environmental Protection issued to E & L Beneficial Use Approval Order No. 40030, embracing the beneficial use of municipal waste incinerator ash at the Bark Camp site, to be utilized in abandoned mine reclamation projects; and

WHEREAS, on June 6, 1997, as a result of the efforts undertaken and paid for by CTI, a modification to Beneficial Use Approval Order No. 40030 was issued, so as to include dredged materials, subject to certain detailed requirements, for use at the Bark Camp site; and

WHEREAS, BAM and E & L have entered into certain contractual relationships with one another, whereby BAM oversees the securing of coal ash that is taken to the Bark Camp site and also oversees the operational activities performed at the Bark Camp site, on behalf of E & L, pertaining to the beneficial use/remediation projects that have been undertaken pertaining to coal ash; and

WHEREAS, MAM is in the business of developing and beneficially using incinerator ash that is a residue of municipal waste, and has the potential of furnishing municipal incinerator ash that could be used in conjunction with the operations the parties are undertaking as they relate to the "Bark Camp site";

and

WHEREAS, in order to make the Bark Camp site potentially suitable for the usage of dredged materials in a beneficial use operation, CTI entered into an agreement with E & L whereby CTI would pay for all the costs of securing an amendment to Beneficial Use Approval Order No. 40030, with such amended order being issued in E & L's name on June 6, 1997; and

WHEREAS, CTI and E & L have used their best efforts to seek to have an amended no cost contract issued to E & L, covering an additional five year period of time, the beneficial use/disposal of dredged materials at the Bark Camp site in conjunction with Beneficial Use Approval Order No. 40030; and

WHEREAS, the Pennsylvania Department of Environmental Protection had initially expressed its willingness to issue an amended no cost contract to E & L, pertaining to dredged materials, but it has now determined that it wants to have a clear separation between the past operations at the Bark Camp site involving the flyash and paper pulp beneficial use operations of E & L from the beneficial use of dredged materials at the Bark Camp site; and

WHEREAS, the past operations of E & L under the December 20, 1993 no cost contract pertaining to ash involved no royalty type payment, while the new proposed contract, with the new dredged material beneficial use operations involving CTI would require a

royalty type payment for the Surface Mining Conservation and Reclamation Fund and also a royalty payment to Huston Township, the host municipality for the Bark Camp site; and

WHEREAS, in view of the past, present and future contributions of E & L, BAM and MAM, the parties have recognized that it is necessary to accommodate the interests of E & L, BAM, and MAM in order to permit a no cost contract to be entered into directly between CTI and the Pennsylvania Department of Environmental Protection, on the beneficial use of dredged materials, and

WHEREAS, CTI requires that there be a clear distinction of the responsibilities of E & L for the past remediation work that it has participated in, as opposed to the future anticipated remediation work at the Bark Camp site to be overseen by CTI pertaining to dredged materials, with this separation of responsibility being a key component of CTI's operational plans for dredged materials at the Bark Camp site; and

WHEREAS, the anticipated contract which CTI hopes to enter into pertaining to the beneficial use/disposal of dredged materials at the Bark Camp site requires a two tier payment arrangement, one pertaining to the operations that would be conducted under a "demonstration" project, involving 550,000 cubic yards of airspace at the Bark Camp site, and the long term performance project which CTI hopes to secure thereafter

pertaining to ongoing larger volume operations at the Bark Camp site; and

WHEREAS, the recitals set forth hereinabove have been made for the purpose of disclosing background information to assist in interpreting the intention of the parties with respect to the terms and conditions of this contract;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Demonstration Project - Subject to the execution by CTI of a multipart contract involving several different governmental and corporate entities, it is agreed that a demonstration project at the Bark Camp site will be undertaken covering 550,000 cubic yards of airspace, involving the beneficial reuse/disposal of dredged materials. Such project shall be undertaken pursuant to the terms of a no cost contract to be entered into between CTI and the Department of Environmental Protection. E & L agrees that operations for this demonstration project may be conducted under Beneficial Use Order No. 40030, as amended on June 6, 1997, provided that CTI shall pay all expenses associated with that operation. E & L shall use its best efforts to assist in making the demonstration project successful and in exchange therefore, CTI shall indemnify and hold E & L harmless for any costs or claims arising out of that project.

2. Furnishing of Flyash - BAM shall be responsible for furnishing all coal flyash used at the Bark Camp site for the dredged material operations of CTI, pertaining to both the demonstration project and anticipated permanent projects to be entered into thereafter. BAM shall be entitled to retain all tipping fees which it receives from the generators of the coal flyash for materials which are disposed of/beneficially used at the Bark Camp site. This entitlement shall continue throughout the term of this agreement, subject to the provisions of part 4.1 of this agreement. It is recognized that whenever flyash is delivered to the Bark Camp site, BAM shall have the responsibility for arranging for the transportation services and to insure that they are paid by some third party and not CTI. In no instance shall CTI be charged for any ash delivered to the Bark Camp site by BAM.

3. Quantities, Cure and Default - BAM shall use its best efforts to secure a sufficient quantity of flyash to accommodate the dredged material operations of CTI at Bark Camp, with the recognition that the remedy for failing to provide sufficient quantities of coal ash and CFB ash (jointly referred to herein as ash) shall be limited to the provisions set forth in part 3.1 of this agreement.

3.1 Minimum Quantities of Ash - BAM shall be obligated to furnish a minimum of 800 tons of ash per working day at the Bark

Camp site. If BAM should fail to furnish this minimum quantity of ash as required by CTI for treatment of dredged materials at the Bark Camp site for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own ash supply without the involvement of BAM. Prior to exercising such option, CTI shall give written notice to BAM that it is in default of its ash supply obligations. Upon such notice, CTI may begin to supply ash from any supplier, without restriction, in order to meet its requirements for the treatment of dredged material at the Bark Camp site provided that CTI shall not improperly interfere with existing contracts. From the date of receiving written notice from CTI, BAM shall have sixty (60) days in which to cure the default (the "cure period") of its ash supply obligation to the CTI dredged material treatment project at Bark Camp. A cure of the default shall occur when BAM has delivered one hundred percent (100%) of the ash required by CTI for treatment of the dredged material at the Bark Camp site for a period of fourteen (14) consecutive working days. It is understood as part of this provision that CTI shall accept ash sourced by BAM (at no cost to CTI) during the cure period on a preferred basis to any coal ash sourced by CTI in order to provide BAM ample opportunity to cure the default. Should BAM fail to cure the default of its ash supply obligation within the sixty (60) day period, CTI shall be

given the entitlement for the remaining term of this agreement to furnish ash for use in the dredged materials treatment operation at Bark Camp. When supplying ash under the provisions of this agreement, neither BAM nor E & L shall attempt to disrupt or interfere with, for the purpose of diverting ash from Bark Camp, the relationship of CTI with the ash suppliers utilized by CTI to supply coal ash to the dredged materials treatment project at Bark Camp. During the time that CTI acts under the provisions of this agreement to provide ash to the dredged materials treatment project at Bark Camp, whether during the sixty (60) day period for curing the default, or after the expiration of the cure period, all net tipping fees generated by the ash contracts which BAM heretofore had entered into shall be paid to CTI, with none of those fees being retained by BAM. Should the net tipping fee<sup>1</sup> of all ash material utilized by CTI in the dredged material treatment operations at the Bark Camp site, including the tipping fees generated from ash delivered pursuant to supply contracts of BAM, be greater than zero dollars (\$0.00), BAM shall be entitled to receive Sixty (60%) Percent of the net tipping fees as computed on a daily basis. Payment shall be made thirty-five (35) days after the date of delivery of the ash to the Bark Camp site.

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<sup>1</sup> "Net tipping fee for all ash" is defined as the tip fees generated by supply of fee-paid ash from generators after actual costs of transportation minus the costs of supplying ash from generators who charge for ash and/or whose transportation cost to the site results in a net cost to the dredged material treatment project at Bark Camp.

3.2 Excess Quantities of Ash - For that quantity of ash which CTI requires in excess of 800 tons per working day, BAM shall have the entitlement to furnish the quantities required, but if it fails to furnish the required quantities for a period of greater than three (3) working days, then CTI shall have the option, to be exercised at its sole discretion, of securing its own additional quantities of ash without the involvement or remuneration of BAM. The procedures outlined for Section 3.1 above shall be followed in order to cure a default.

4. Operations - Throughout the term of the demonstration project and continuing through other projects for dredged materials which CTI undertakes at the Bark Camp site, it shall be the responsibility of CTI to furnish all equipment, manpower, engineering, and administrative support necessary to permit the operations to be conducted in conformity with requirements of the no cost contract between CTI and DEP, including the requirements imposed by amended Beneficial Use Approval Order No. 40030. This operational obligation includes all blending, mixing and application procedures involving dredged materials, flyash, and municipal ash, and other additives that are used in conjunction with the dredged materials that CTI disposes at the site. As it relates to municipal incinerator ash or coal flyash, the parties acknowledge that in certain circumstances, it may develop that a contract for the disposal/beneficial use of these materials will

require that there be an ongoing obligation to dispose of these materials during a period of time when dredged materials are not available for the municipal ash and coal ash to be mixed with. In those limited situations where the disposal/beneficial use contracts at Bark Camp are entered into directly by BAM or MAM, CTI will continue to provide the operational services needed to properly handle the coal ash or municipal ash furnished by BAM or MAM in accordance with pertinent no cost contracts and orders from the Department of Environmental Protection, and in consideration of this service during the "bridge" period of time when dredged materials are not available, all tipping fees for the municipal ash shall be paid to CTI, with CTI paying E & L in accordance with part 5 of this agreement. This payment provision applies only to municipal ash, as coal ash is covered by Section 4.1 of this agreement.

4.1 Operational Charge Assessed to BAM - In consideration of the obligation of BAM to furnish a minimum volume of 800 tons of ash per day at the Bark Camp site, so as to be used in dredged material operations of CTI, CTI hereby assumes the full responsibility for processing 800 tons of flyash per day, in accordance with all requirements imposed by state, federal and local regulatory bodies having jurisdiction over the Bark Camp site. In the event that there is not sufficient dredged material being used at the Bark Camp site, so as to enable the 800 ton per

day volume of flyash to be utilized in the dredged material operations of CTI, the parties agree that CTI will handle the cost of processing of the flyash which BAM brings to the Bark Camp site in exchange for payment to it by BAM in the amount of \$2.75 per ton.

4.2 Volume Cap - In order to provide BAM with the opportunity to insure that there are sufficient volumes of ash at the Bark Camp site, the pricing formula set forth in the preceding paragraph shall apply to all ash which CTI brings into the Bark Camp site, which is not mixed with dredged material, up to a volume of 1200 tons per working day.

5. Payment to E & L - No payment shall be paid to E & L for any airspace used at the Bark Camp site during the demonstration project described in part 1 of this agreement. Starting with a subsequent non-demonstration project, all airspace utilized in the dredged material operations of CTI shall obligate CTI to make payment to E & L the sum of Fifty (\$.50) Cents per cubic yard of dredged material delivered to the Bark Camp site. CTI shall pay E & L thirty (30) days after receipt of invoice. Payment shall be based upon the number of cubic yards of dredged materials delivered to the site as determined by pre-and-post-dredging surveys performed and certified by CTI to its customers. Failure to pay within forty-five (45) days of the date of receipt of invoice shall subject the payment charge to a Twelve (12%)

Percent per annum interest for the unpaid balance.

6. Payment to MAM - It is recognized that in most instances, CTI will enter into contracts to furnish municipal incinerator ash to the Bark Camp site. In exchange for making its technology available and for fully cooperating to assist in making municipal incinerator ash available for use in the dredged materials operations of CTI, MAM shall be paid a royalty of \$4.00<sup>2</sup> per ton for all municipal ash that CTI utilizes in its operations. For those operations which involve municipal incinerator ash that is not mixed with dredged material, but instead municipal incinerator ash that is disposed of separately for a limited period of time<sup>3</sup>, it is agreed that MAM shall pay to E & L the Fifty (\$.50) Cents per ton of cubic airspace which is covered by part 4 of this agreement. It shall be the complete responsibility of CTI to furnish all transportation, pay all costs of operation, to secure all pertinent transportation permits, and to pay any and all other costs associated with the processing of municipal incinerator ash at the Bark Camp site. Payment shall be made thirty-five (35) days after the date of delivery of the municipal ash to the Bark Camp site.

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<sup>2</sup> Such royalty will be paid only if there are sufficient revenues generated from tipping fees to cover the cost of transportation, processing, and placement, with the understanding that any proportionate income generated above that base cost shall be paid to MAM up to the \$4.00 per ton figure.

<sup>3</sup> It is specifically recognized that "stand alone" contracts for municipal ash are not covered by this agreement, meaning that only ash that is secured for the intended purpose of blending with the dredged materials is covered by this pricing formula.

7. Term of Agreement - This agreement shall last for a total of fifteen (15) years. The first ten (10) years shall require payment at the Fifty (\$.50) Cents per cubic yard payment owed to E & L and the Four (\$4.00) Dollar per ton payment owed to MAM, as covered by parts 5 and 6 of this agreement. After the initial ten year term, payment for the next five (5) years shall be adjusted at the beginning of the eleventh (11th) year, so that the price to be paid to E & L and MAM, respectively, shall be adjusted upwards at a level equal to the increase in the CPI index during the initial ten year period covering this contract. After the conclusion of the fifteen year base period, by giving written notice ninety (90) days prior to the expiration of the fifteen year term, CTI shall have the option to extend the term of this agreement by an additional year and in exchange for that the payments made to E & L and MAM hereunder shall be subject to increase based upon an increase in the CPI index during that prior year. Similar one year extensions shall continue indefinitely thereafter.

8. Non-Exclusivity Term - Nothing in this agreement shall obligate CTI to utilize the Bark Camp Site, or BAM, MAM or E & L for disposal of dredged materials. If, however, CTI utilizes the Bark Camp site, the terms and conditions set forth in this agreement shall govern the rights and duties of the parties.

9. Non-Circumvention - CTI agrees that it shall not

directly or indirectly, through its own operations or the operations of any affiliated business entity, engage in any operations pertaining to dredged materials at the Bark Camp site unless the operations are conducted under the terms of this agreement.

10. Regulatory Obligation of E & L - E & L recognizes that it is solely responsible for insuring proper compliance with all state, local and federal obligations pertaining to the operations which it has conducted on its own in the past or will conduct in the future under its no cost contract with the Pennsylvania Department of Environmental Protection, as issued on December 23, 1993, and any extensions related thereto. Under no circumstances shall CTI be responsible for paying the cost of fulfilling these obligations. E & L agrees that it shall use its best efforts to insure that it conducts its operations under its no cost contract in a fashion so as to not interfere with the activities of CTI under the dredged materials no cost contract which CTI will be entering into with the Pennsylvania Department of Environmental Protection.

11. Warranties and Representations -

A. E & L, BAM and MAM have full power in accordance with applicable law to enter into this agreement and to consummate the transactions herein without the need for any further approval whatsoever. Neither the entering

into this agreement nor the consummation of the transactions herein will constitute a violation or breach by E & L, BAM or MAM (i) of any contract or other instrument to which they are a party; (ii) of any judgment, order, writ, injunction, or decree issued against or imposed upon E & L, BAM or MAM; or (iii) that will result in a violation of any applicable law, order, rule or regulation, permit or license.

B. In the event that E & L, BAM or MAM receives any notice of violation or threatened notice of violation from any governmental authority respecting any order, permit, or license by any of them, they will immediately notify CTI of any notice or claim.

C. E & L, BAM and MAM have all necessary and appropriate permits, licenses and orders from the Commonwealth of Pennsylvania, and any other government agency to perform its functions as required under this agreement and shall at all times during the term of this agreement maintain such orders, permits and licenses in good standing.

D. E & L and BAM have valid and enforceable rights and entitlements to use a rail spur that comes onto the Bark Camp site and shall maintain all said rights and entitlements during the entire term of this agreement.

12. Effective Date - This agreement shall be effective

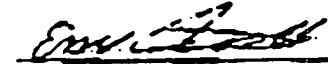
November 7, 1997, and shall continue thereafter until the terms of it have been satisfied.

IN WITNESS WHEREOF, the parties hereunto have entered their signatures, on the dates specified below, doing so with the intention of being legally bound.

CONSOLIDATED TECHNOLOGIES, INC.

By:   
Steven C. Sands, President

E & L BROKERAGE, INC.

By:   
Ernest T. Rosselli, President

BENEFICIAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President

MUNICIPAL ASH MANAGEMENT, INC.

By:   
Ernest T. Rosselli, President





## CONFIDENTIALITY AND NONCOMPETITION AGREEMENT

This agreement is by and between E & L Brokerage, Inc., a Pennsylvania corporation, Beneficial Ash Management, Inc., a Pennsylvania corporation, and Municipal Ash Management, Inc., a Pennsylvania corporation, having a combined mailing address of R. D. 1, Box 455, Morrisdale, Pa 16858, referred to hereinafter collectively as the "Company", Party of the First Part.

AND

Waste Concepts, Inc. of 2230 Dekalb Street, Norristown, PA 19401, referred to hereinafter as "Client", Party of the Second Part.

### WITNESSETH:

WHEREAS, Company has developed certain processes, procedures and intellectual property rights that it has acquired in the course of its operations, and has derived an appreciable degree of know-how in the use of those procedures that is of considerable value; and

WHEREAS, Client is interested in learning of the potential use of the know-how possessed by Company and its officers, directors and employees, and wishes to enter into negotiations with Company for the purpose of determining whether a mutually beneficial contract pertaining to the application of the said know-how can be entered into between the parties; and

WHEREAS, the parties recognize that in the course of their negotiations, Client will acquire certain knowledge and information about the know-how, supply services, business practices, and intellectual property rights of Company, which are considered to be property interests of Company; and

WHEREAS, in the course of the negotiations between the parties, it is recognized that Client will be presenting certain information concerning its business practices, future plans, and other confidential or proprietary information, and desires that such information not be disclosed or released without its consent;

NOW THEREFORE, in consideration of their mutual covenants set forth herein, and with the intention of being legally bound, the parties hereto agree as follows:

1. Confidentiality - Each party recognizes that it and its affiliates

shall maintain and protect the confidentiality of all information provided to it within the course of the negotiations between the parties that they are currently entering into or nondisclosure or such confidential information shall continue to apply without regard to whether a long term contract is entered into between the parties with respect to the use of the know-how which Company possesses. The obligation to maintain confidentiality shall not apply to any proprietary information to the disclosures that were made to it or if the information becomes generally available to the public.

2. Protection Of Know-How and Business Practices - In the course of their discussions, the disclosure of certain know-how currently in the possession of Company will be given to Client. It is agreed that Client shall not under any circumstances disclose the information which it obtains from such negotiations or use in any fashion the know-how or business practices that it becomes aware of though these negotiations without written consent of Company. In the event that the parties enter into a separate contact that specifically addresses the know-how and other intellectual proprietary rights of Company, the terms of the present agreement shall continue to bind or limit client, except for the specific rights extended to Client in such contract. In the event that a separate contact is not entered into by the parties, the Client shall be limited in all respects by the requirement that it not release or use information that it acquires with respect to the know-how and intellectual property rights of Company.

3. Noncompetition - In the course of the negotiations between the parties, it is anticipated that certain information will be furnished to Client with respect to Company's suppliers and it overall method of doing business. In consideration for the willingness of Company to enter into such negotiations and to enable Company to protect its trade secrets and business practices, Client hereby specifically agrees that it will not engage in any business that is similar to the business of Company <sup>regarding municipal incinerators</sup> and will not purchase supplies of materials from any of the suppliers/vendors that Company deals with without the express written consent of Company. This warranty of non-competition shall apply for a period of five (5) years from the date of the signing of the within agreement.

4. Enforcement of Agreement - The parties agree that any violation of the terms and conditions of this agreement could have adverse business and legal consequences upon the opposing party. Accordingly, in the event there is a violation of the terms of this agreement, the breaching party shall be subject to damages at law as well as injunctive relief through a court of competent jurisdiction to grant such relief. The

  
breaching party shall also be responsible for all attorneys fees and cost which the opposing party incurs in enforcing this contract.

5. Choice of Law and Jurisdiction for Litigation - it is agreed that the laws of the Commonwealth Of Pennsylvania shall apply with respect to the interpretation, construction, enforcement or application of any terms, conditions, or provision in this agreement. It is further agreed by the parties that this contact has been entered into in Clearfield County, Pennsylvania, and that venue and jurisdiction for the purpose of enforcement of this contact rest only with the Court of Common Pleas Of Clearfield County, Pennsylvania. The parties hereby specifically agree that no other state, federal or local court shall have jurisdiction or venue to maintain any litigation that is instituted with respect to this agreement.

6. Authority and Application of Agreement - The person signing the document hereby warrants and represents that he/she is authorized to bind his company to the terms and conditions of this agreement, it shall apply to all affiliates and subsidiaries of the basic company for which the agreement has been signed.

IN WITNESS WHEREOF, the parties hereunto have set forth their signatures on the date so specified. In the event the parties elect to use two sets of original documents, it is agreed that this agreement maybe signed in counterparts so as to expedite the acceptance of this agreement.

Party of First Part/ Company

E&L Brokerage, Inc.  
Beneficial Ash Management, Inc.  
Municipal Ash Management, Inc.

BY: 

TITLE: V.P. MAM

DATE: June 21 1996

Party of the Second Part/ Client

Waste Concepts, Inc.

BY: 

TITLE: President

DATE: 6/25/96



ALL-STATE<sup>®</sup> LEGAL 800-222-8510 EDRI 1 RECYCLED

FROM

FAX NO. :

Mar. 07 1993 11:04PM P2

FROM : Pennsylvania FAX SYSTEMS INC. 1000 12th STREET, PHILADELPHIA, PA 19101 215-625-2220

Mar. 31 1999 12:37PM P4

001-01-99 13101A G. STEPHEN MANNING, P.A. 804 732 9378

P.02

3-30-1999 2 46AM FROM CATALOGUE CPAS 814 766 6962

P.2

AGREEMENT

BETWEEN ERNEST ROSSILLI, MAJORITY SHAREHOLDER, MUNICIPAL ASH MANAGEMENT, INC. (SELLER) AND MICHAEL ALLOWAY, WILLIAM KLAESIC, TONY JOHNSTON, ALBERT BILKOBOSIE, BARRY SCHLETTZ, TIMOTHY FANNIN AND NICOLELE FANNIN, MINORITY SHAREHOLDERS, MUNICIPAL ASH MANAGEMENT, INC. (SHAREHOLDERS).

WHEREAS, SELLER HAS CONTRACTED TO SELL ALL OPERATING ASSETS OF MUNICIPAL ASH MANAGEMENT, INC. (CORPORATION), AND

WHEREAS, SELLER WISHES FOR SHAREHOLDERS TO EXECUTE CONSENT TO SAID SALE, AND

WHEREAS, SELLER WILL COMBINE ASSETS OF OTHER AFFILIATED CORPORATIONS INTO ONE OPERATING COMPANY (BUYER).

THEFORE, IN CONSIDERATION OF CONSENT OF SHAREHOLDERS, SELLER MAKES THE FOLLOWING WARRANTIES:

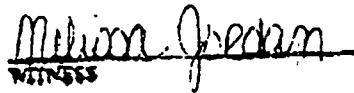
1. ALL FINANCIAL RECORDS OF BUYER WILL BE KEPT AT SELLER'S OFFICE, 850 LEONARD STREET, CLEARFIELD, PENNSYLVANIA, AND BE OPEN TO PERIODIC INSPECTION BY SHAREHOLDERS OR THEIR DESIGNEES.
2. SELLER WILL INDEMNIFY SHAREHOLDERS FROM ANY LIABILITIES RESULTING FROM THE SALE OF CORPORATE ASSETS AND THE EXECUTION OF ANY SALES AGREEMENTS BY SHAREHOLDERS.
3. ALL CONTRACTS ENTERED INTO, PRIOR TO THE DATE OF THIS AGREEMENT, BY ERNEST T. ROSSILLI, ETR ENTERPRISES, INC., BENEFICIAL ASH MANAGEMENT, INC. OR E & L BROKERAGE, INC. INVOLVING THE MANAGEMENT OR UTILIZATION OF MUNICIPAL INCINERATOR ASH, INCLUDING, BUT NOT LIMITED TO, THOSE PROPOSALS IDENTIFIED AS THE "VINEGAR" AND "ONEDSOA" PROJECTS, WILL BE INCLUDED IN THE REVENUE STREAMS ALLOCATED TO MUNICIPAL ASH MANAGEMENT, INC.

SEPTEMBER 29, 1999

BY:



ERNEST T. ROSSILLI



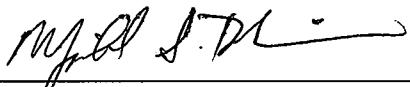
WITNESS

**CERTIFICATE OF SERVICE**

I hereby certify that on August 9, 2001, I caused a true and correct copy of Consolidated Technologies, Inc.'s Answer to Plaintiff's Complaint with New Matter and Counterclaims to be served by Federal Express, prepaid, upon the following counsel of record:

Dwight L. Koerber, Jr.  
110 North Second Street  
P.O. Box 1320  
Clearfield, PA 16830

Counsel for Municipal Ash Management, Inc.

  
\_\_\_\_\_  
Michael S. Doluisio

**FILED**

AUG 10 2001

William A. Shaw  
Prothonotary

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

**Sheriff Docket # 11413**

**MUNICIPAL ASH MANAGEMENT INC.**

**01-1019-CD**

**VS.**

**CONSOLIDATED TECHNOLOGIES, INC.**

**DEFTS. ANSWER TO COMPLAINT W/NEW MATTER & COUNTERCLAIMS;COMPLAINT AGAINST DEFENDANTS**

**SHERIFF RETURNS**

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**NOW AUGUST 22, 2001 AT 2:48 PM DST SERVED THE WITHIN DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER & COUNTERCLAIMS AND COMPLAINT AGAINST ADDITIONAL DEFENDANTS ON BENEFICIAL ASH MANAGEMENT INC., DEFENDANT AT EMPLOYMENT, 850 LEONARD ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOY SWATSWORTH, PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL DEFENDANT'S ANSWER & COMPLAINT AGAINST ADDITIONAL DEFENDANTS AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: SNYDER**

**NOW AUGUST 22, 2001 AT 2:48 PM DST SERVED THE WITHIN DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER & COUNTERCLAIMS AND COMPLAINT AGAINST ADDITIONAL DEFENDANTS ON E&L BROKERAGE, INC., DEFENDANT AT EMPLOYMENT, 850 LEONARD ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOY SWATSWORTH, PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL DEFENDANT'S ANSWER & COMPLAINT AGAINST ADDITIONAL DEFENDANTS AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: SNYDER**

**NOW AUGUST 22, 2001 AT 2:48 PM DST SERVED THE WITHIN DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER & COUNTERCLAIMS AND COMPLAINT AGAINST ADDITIONAL DEFENDANTS ON ETR ENTERPRISES, INC., DEFENDANT AT EMPLOYMENT, 850 LEONARD ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JOY SWATSWORTH, PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL DEFENDANT'S ANSWER & COMPLAINT AGAINST ADDITIONAL DEFENDANTS AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: SNYDER**

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**Return Costs**

<b>Cost</b>	<b>Description</b>
32.34	SHFF. HAWKINS PAID BY: ATTY.
30.00	SURCHARGE PAID BY: ATTY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11413

MUNICIPAL ASH MANAGEMENT INC.

01-1019-CD

VS.

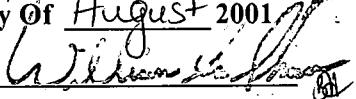
CONSOLIDATED TECHNOLOGIES, INC.

DEFTS. ANSWER TO COMPLAINT W/NEW MATTER & COUNTERCLAIMS;COMPLAINT AGAINST DEFENDANTS

**SHERIFF RETURNS**

---

Sworn to Before Me This

28<sup>th</sup> Day Of August 2001  


WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2002  
Clearfield Co. Clearfield, PA.

  
E.A.C.

So Answers,

  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

Type of Pleading:  
PRAECIPE TO ENTER  
APPEARANCE

Filed on behalf of:  
BENEFICIAL ASH MANAGEMENT, INC.  
E & L BROKERAGE, INC.  
E.T.R. ENTERPRISES, INC.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

SEP 11 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

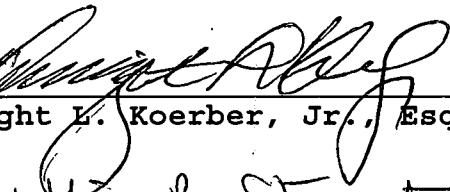
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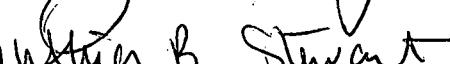
PRAECIPE TO ENTER APPEARANCE

TO: PROTHONOTARY

Please enter our appearance in the above captioned matter  
as counsel for Beneficial Ash Management, Inc., E & L Brokerage,  
Inc., and E.T.R. Enterprises, Inc.

Respectfully Submitted,

By:   
Dwight L. Koerber, Jr., Esquire

By:   
Cynthia B. Stewart, Esquire

Attorneys for ADDITIONAL  
DEFENDANTS:

Beneficial Ash Management, Inc.  
E & L Brokerage, Inc.  
E.T.R. Enterprises, Inc.

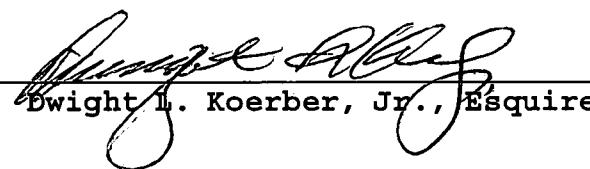
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH \*  
MANAGEMENT, INC., \*  
Plaintiff \*  
  
-vs- \* Docket No. 01-1019-CD  
  
CONSOLIDATED \*  
TECHNOLOGIES, INC., \*  
Defendant \*

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of September, 2001, the undersigned served a certified copy of the foregoing Praeclipe to Enter Appearance in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Marshall Walthew, Esquire  
Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

By: 

Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

PRAECIPE TO ENTER  
APPEARANCE  
Docket No. 01-1019-CD

F 11 3 cc  
013-38 D. H. Koerber  
SEP 1 2001  
W. H. Koerber  
FBI

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*  
\*

-vs-

\* Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*  
\*

Type of Pleading:  
MOTION FOR LEAVE TO  
WITHDRAW AS COUNSEL

Filed on behalf of:

PLAINTIFF:

Municipal Ash Management, Inc.  
AND ADDITIONAL DEFENDANTS:  
Beneficial Ash Management, Inc.  
E & L Brokerage, Inc.  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

SEP 13 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

\*

\*

Docket No. 01-1019-CD

RULE TO SHOW CAUSE

NOW THIS, 25<sup>th</sup> day of September, 2001, upon consideration of the attached Motion of Dwight L. Koerber, Jr., Esquire and the Law Offices of Dwight L. Koerber, Jr., seeking leave of Court so as to withdraw as counsel for Plaintiff and Additional Defendants herein, it is the ORDER AND DECREE of this Court that a Rule is hereby issued upon Municipal Ash Management, Inc., Beneficial Ash Management, Inc., E & L Brokerage, Inc., and E.T.R. Enterprises, Inc., to Show Cause why the Motion should not be granted, so as to permit Dwight L. Koerber, Jr., Esquire and the Law Offices of Dwight L. Koerber, Jr. to withdraw as counsel for Plaintiff and Additional Defendants in this proceeding.

Rule Returnable and hearing thereon should be held the 17 day of October, 2001, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania. at 9:00 A.M.

BY THE COURT:

**FILED**

SEP 25 2001

0140014cc  
William A. Shaw  
Prothonotary atty Koerber

AKT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

\*

\*

Docket No. 01-1019-CD

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL

COMES NOW, Dwight L. Koerber, Jr., Esquire and the Law Offices of Dwight L. Koerber, Jr., counsel for Plaintiff, Municipal Ash Management, Inc., and Additional Defendants, Beneficial Ash Management, Inc., E & L Brokerage, Inc., and E.T.R. Enterprises, Inc., and files the within Motion seeking leave of Court to withdraw as counsel of record.

1. Movant is Dwight L. Koerber, Jr., Esquire, of 110 North Second Street, Clearfield, Pennsylvania, 16830.

2. Movant filed the Complaint herein and also filed Preliminary Objections on behalf of Additional Defendants and Plaintiff, based upon his long term representation of Ernest T. Rosselli, who is a principal in all of these companies.

3. In the past, Movant also performed legal services for Consolidated Technologies, Inc., original Defendant.

4. Through counsel in this matter, Defendant Consolidated Technologies, Inc., has asserted that there is a conflict of interest for Movant to continue to represent Plaintiff,

and has based his position upon the Pennsylvania Rules of Professional Conduct. Movant hereby concurs that he should withdraw as counsel for Plaintiff, as well as Additional Defendants, based upon the Pennsylvania Rules of Professional Conduct.

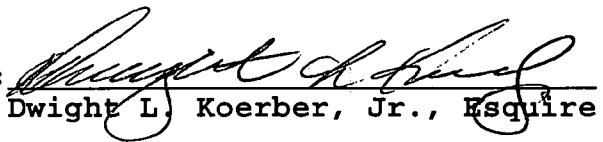
5. Pursuant to Local Rule 182(b) of the Court of Common Pleas of Clearfield County, Forty-Sixth Judicial District, Commonwealth of Pennsylvania, Movant hereby requests leave of Court so that he may withdraw as counsel for the Plaintiff and Additional Defendants.

6. At present, there are pending before this Court Preliminary Objections filed by Plaintiff and Additional Defendants pertaining to the Counterclaim and Joinder of Additional Defendants.

WHEREFORE, Movant requests that a Rule to Show Cause be issued to Municipal Ash Management, Inc. and Additional Defendants, to show cause why Dwight L. Koerber, Jr., Esquire and the Law Offices of Dwight L. Koerber, Jr., should not be permitted to withdraw as counsel in this proceeding.

Respectfully Submitted,

By:

  
Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	*
CONSOLIDATED TECHNOLOGIES, INC., Defendant	* Docket No. 01-1019-CD

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of September, 2001, the undersigned served a true and correct copy of the foregoing Motion for Leave to Withdraw as Counsel in the above captioned matter upon Plaintiff, Additional Defendants and upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

<u>Plaintiff:</u>	<u>Additional Defendants</u>
MUNICIPAL ASH MANAGEMENT, INC. 850 Leonard Street Clearfield, PA 16830	BENEFICIAL ASH MANAGEMENT, INC. 850 Leonard Street Clearfield, PA 16830
<u>Defendant:</u> Michael S. Doluisio, Esquire DECHERT PRICE & RHOADS 4000 Bell Atlantic Tower 1717 Arch Street Philadelphia, PA 19103-2793	E & L BROKERAGE, INC. 850 Leonard Street Clearfield, PA 16830
	E.T.R. ENTERPRISES, INC. 850 Leonard Street Clearfield, PA 16830

By:

  
Dwight L. Koerber, Jr., Esquire

(8)

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

MOTION FOR LEAVE TO WITHDRAW  
AS COUNSEL  
DOCKET NO. 01-1019-CD

**FILED**

SEP 13 2001

William A. Shaw  
Prothonotary  
*DK*

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

Type of Pleading:  
CERTIFICATE OF SERVICE

Filed on behalf of:

PLAINTIFF:

Municipal Ash Management, Inc.  
AND ADDITIONAL DEFENDANTS:  
Beneficial Ash Management, Inc.  
E & L Brokerage, Inc.  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

SEP 28 2001

012311/cathy Stewart  
William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

\* Docket No. 01-1019-CD

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of September, 2001, the undersigned served a certified copy of the foregoing Motion for Leave to Withdraw as Counsel and Rule to Show Cause in the above captioned matter upon Plaintiff, Additional Defendants and upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Plaintiff:

MUNICIPAL ASH MANAGEMENT, INC.  
850 Leonard Street  
Clearfield, PA 16830

Additional  
Defendants

BENEFICIAL ASH  
MANAGEMENT, INC.  
850 Leonard Street  
Clearfield, PA 16830

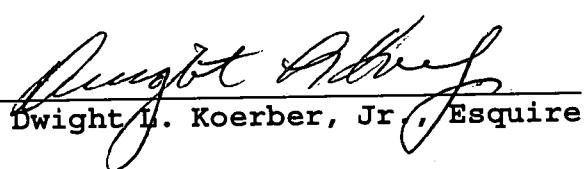
Defendant:

Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

E & L BROKERAGE, INC.  
850 Leonard Street  
Clearfield, PA 16830

E.T.R. ENTERPRISES, INC.  
850 Leonard Street  
Clearfield, PA 16830

By:

  
Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

CERTIFICATE OF SERVICE  
DOCKET NO. 01-1019-CD

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY - AT - LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*  
\*

-vs-

\* Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

-vs-

BENEFICIAL ASH MANAGEMENT,  
INC., E & L BROKERAGE, INC.  
and E.T.R ENTERPRISES INC.,  
Additional  
Defendants

\*

Type of Pleading:  
PRAECIPE TO WITHDRAW/ENTER  
APPEARANCE

Filed on behalf of:

PLAINTIFF:

Municipal Ash Management, Inc.  
AND ADDITIONAL DEFENDANTS:  
Beneficial Ash Management, Inc.  
E & L Brokerage, Inc.  
E.T.R. Enterprises, Inc.

Counsel of record for  
this party:

Michael P. Yeager, Esquire  
PA I.D. No.

P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

OCT 12 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

-vs-

\* Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

-vs-

\*

BENEFICIAL ASH MANAGEMENT,  
INC., E & L BROKERAGE, INC.  
and E.T.R ENTERPRISES INC.,  
Additional  
Defendants

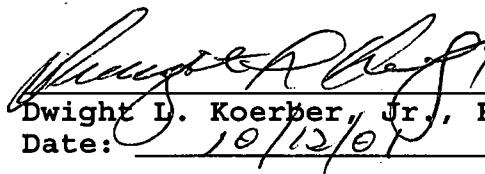
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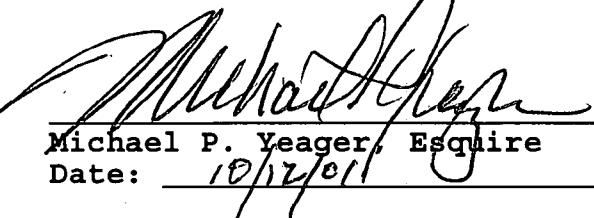
PRAECIPE TO WITHDRAW AS COUNSEL

Please mark the docket to show my withdraw as counsel for Plaintiff, Municipal Ash Management, Inc., and Additional Defendants, Beneficial Ash Management, Inc., E & L Brokerage, Inc., and E.T.R. Enterprises, Inc.

  
Dwight L. Koerber, Jr., Esquire  
Date: 10/12/01

PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Plaintiff, Municipal Ash Management, Inc., and Additional Defendants, Beneficial Ash Management, Inc., E & L Brokerage, Inc., and E.T.R. Enterprises, Inc.

  
Michael P. Yeager, Esquire  
Date: 10/17/01

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

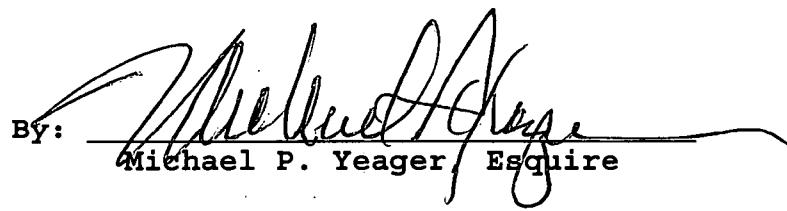
MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	*
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*
-vs-	*
BENEFICIAL ASH MANAGEMENT, INC., E & L BROKERAGE, INC. and E.T.R ENTERPRISES INC., Additional Defendants	*

CERTIFICATE OF SERVICE

This is to certify that on the 12th day of October, 2001, the undersigned served a certified copy of the foregoing Praeclipe to Withdraw/Enter Appearance in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

By:

  
Michael P. Yeager, Esquire

FILED

10C

12/12/2001

Atty

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, CIVIL DIVISION

MUNICIPAL ASH

MANAGEMENT, INC.,

Plaintiff,

v.

CONSOLIDATED

TECHNOLOGIES, INC.,

Defendant.

---

CONSOLIDATED

TECHNOLOGIES, INC.

v.

BENEFICIAL ASH MANAGEMENT,  
INC., E&L BROKERAGE, INC., and  
ETR ENTERPRISES, INC.

Additional Defendants.

Docket No. 01-1019-CD

**DEFENDANT CONSOLIDATED  
TECHNOLOGIES, INC.'S RESPONSES  
TO PLAINTIFF'S PRELIMINARY  
OBJECTIONS TO DEFENDANT'S  
COMPLAINT AGAINST ADDITIONAL  
DEFENDANTS**

Defendant Consolidated Technologies, Inc. ("CTI") responds to plaintiff Municipal Ash Management's ("MAM") preliminary objections to CTI's Complaint Against Additional Defendants Beneficial Ash Management, Inc. ("BAM"), E&L Brokerage, Inc. ("E&L"), and ETR Enterprises, Inc. ("ETR") as follows:

**FILED**

DEC 04 2001

12:10 AM  
William A. Shaw  
Prothonotary

1 court to 12th  
E  
KED

## **I. Demurrer**

### **Improper Joinder**

1. Admitted.
2. Denied. Paragraph 2 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required.
3. Denied. To the contrary, CTI has set forth specific facts regarding the alter ego liability of BAM, E&L, and ETR, as well as the liability of BAM and E&L for breach of the Operating Agreement.
4. Denied. To the contrary, CTI had pled that BAM, in addition to being an alter ego of MAM, E&L, and ETR, has breached its obligations to CTI under the Operating Agreement.
5. Denied. To the contrary, CTI has pled that E&L, in addition to being an alter ego of MAM, BAM, and ETR, has breached its obligations to CTI under the Operating Agreement.
6. Denied. Whether the Operating Agreement is central to the litigation is a conclusion of law to which no responsive pleading is required. Moreover, the Operating Agreement is a writing which speaks for itself. Whether the facts alleged support a claim against ETR is a conclusion of law to which no responsive pleading is required. Subject to and without waiving such objection, it is denied that the facts alleged do not support a claim against ETR, as ETR is the alter ego of MAM, BAM, and E&L. CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or

supplementary business functions, ignore corporate formalities, and intermingle their affairs.

Complaint ¶¶ 12-17.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Complaint Against Additional Defendants.

## **II. Insufficient Specificity In The Pleading**

Paragraphs 1-6 are hereby incorporated by reference as it set forth in full.

7. Denied. Paragraph 7 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required.

8. Denied. Pennsylvania law imposes no requirement that a plaintiff allege fraudulent or illegal practices in order to plead a claim for piercing the corporate veil.

9. Denied. Paragraph 9 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17. Moreover, in its memorandum of law, plaintiff concedes that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Complaint Against Additional Defendants.

### **III. Demurrer**

#### **Piercing The Corporate Veil**

Paragraphs 1-9 are hereby incorporated by reference as if set forth in full.

10. Denied. To the contrary, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17. Moreover, in its memorandum of law, plaintiff concedes that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Complaint Against Additional Defendants.

### **IV. Demurrer**

#### **Breach Of Contract Against E&L And ETR: Coal Ash**

Paragraphs 1-10 are hereby incorporated by reference as if set forth in full.

11. Denied. Paragraph 11 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

12. Denied. Paragraph 12 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

13. Denied. Paragraph 13 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter

ego of BAM and is liable for BAM's breaches of the Operating Agreement. In addition, CTI has alleged that E&L caused it damages directly by failing to use its best efforts to make the demonstration project successful. Complaint ¶¶ 8-11.

14. Denied. Paragraph 14 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is an alter ego of BAM and is liable for BAM's breaches of the Operating Agreement and ETR is an alter ego of E&L and BAM and is liable for E&L's and BAM's breaches of the Operating Agreement. Furthermore, CTI has alleged that E&L breached its own obligations to CTI under the Operating Agreement. Complaint ¶¶ 8-11.

15. Denied. Paragraph 15 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, ETR is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

16. Denied. The Operating Agreement is a writing and speaks for itself.

17. Denied. Paragraph 17 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Complaint Against Additional Defendants.

## V. Demurrer

### **Breach Of Contract Against BAM And ETR: Best Efforts**

Paragraphs 1-17 are hereby incorporated by reference as it set forth in full.

18. Denied. Paragraph 18 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, ETR is the alter ego of E&L and is liable for E&L's breaches of the Operating Agreement.

19. Denied. Paragraph 19 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM is the alter ego of E&L and is liable for E&L's breaches of the Operating Agreement.

20. Denied. Paragraph 20 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM and ETR are alter egos of E&L and are liable for E&L's breaches of the Operating Agreement.

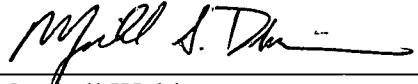
21. Denied. Paragraph 21 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM and ETR are the alter egos of E&L and are liable for E&L's breaches of the Operating Agreement. In addition, CTI has alleged that BAM caused it damages directly by breaching its obligation to provide coal ash. Complaint ¶¶ 3-7.

22. Denied. Paragraph 22 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM is an alter ego of E&L and is liable for E&L's breaches of the Operating Agreement and ETR is an alter ego of BAM and E&L and is liable for BAM's and E&L's breaches of the Operating Agreement.

Furthermore, CTI has alleged that BAM breached its own obligations to CTI under the Operating Agreement. Complaint ¶¶ 3-7.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Complaint Against Additional Defendants.

Respectfully submitted,

  
\_\_\_\_\_  
Marshall Walthew  
Michael S. Doluisio  
Jacob I. Kobrick  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

Dated: December 3, 2001

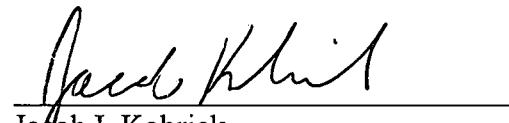
Attorneys for Consolidated Technologies, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2001, I caused a true and correct copy of Defendant Consolidated Technologies, Inc.'s Responses to Plaintiff's Preliminary Objections to CTI's Complaint Against Additional Defendants to be served via Federal Express, postage prepaid, on the following:

Michael P. Yeager, Esquire  
110 North Second Street  
Clearfield, PA 16830

Attorney for Plaintiff and Additional Defendants

  
\_\_\_\_\_  
Jacob I. Kobrick

**FILED**

**DEC 04 2001**

**William A. Shaw  
Prothonotary**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC., :  
Plaintiff, : Docket No. 01-1019-CD

v. :  
:

CONSOLIDATED  
TECHNOLOGIES, INC., :  
Defendant. :  
:

CONSOLIDATED  
TECHNOLOGIES, INC. :  
:

v. :  
:

BENEFICIAL ASH MANAGEMENT, :  
INC., E&L BROKERAGE, INC., and  
ETR ENTERPRISES, INC. :  
:

Additional Defendants. :  
:

**DEFENDANT CONSOLIDATED  
TECHNOLOGIES, INC.'S RESPONSES  
TO ADDITIONAL DEFENDANTS'  
PRELIMINARY OBJECTIONS TO  
DEFENDANT'S COMPLAINT  
AGAINST ADDITIONAL  
DEFENDANTS**

Defendant Consolidated Technologies, Inc. ("CTI") responds to additional defendants' (Beneficial Ash Management, Inc. ("BAM"), E&L Brokerage, Inc. ("E&L"), and ETR Enterprises, Inc. ("ETR")) preliminary objections to CTI's Complaint Against Additional Defendants as follows:

**FILED**

DEC 04 2001  
11/210/01  
William A. Shaw  
Prothonotary  
1 Court to Attn  
G. J. Shaw

## **I. Demurrer**

### **Improper Joinder**

1. Admitted.
2. Denied. Paragraph 2 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required.
3. Denied. To the contrary, CTI has set forth specific facts regarding the alter ego liability of BAM, E&L, and ETR, as well as the liability of BAM and E&L for breach of the Operating Agreement.
4. Denied. To the contrary, CTI had pled that BAM, in addition to being an alter ego of MAM, E&L, and ETR, has breached its obligations to CTI under the Operating Agreement.
5. Denied. To the contrary, CTI has pled that E&L, in addition to being an alter ego of MAM, BAM, and ETR, has breached its obligations to CTI under the Operating Agreement.
6. Denied. Whether the Operating Agreement is central to the litigation is a conclusion of law to which no responsive pleading is required. Moreover, the Operating Agreement is a writing which speaks for itself. Whether the facts alleged support a claim against ETR is a conclusion of law to which no responsive pleading is required. Subject to and without waiving such objection, it is denied that the facts alleged do not support a claim against ETR, as ETR is the alter ego of MAM, BAM, and E&L. CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or

supplementary business functions, ignore corporate formalities, and intermingle their affairs.

Complaint ¶¶ 12-17.

WHEREFORE, CTI requests that this Court overrule in their entirety the additional defendants' preliminary objections to CTI's Complaint Against Additional Defendants.

## **II. Insufficient Specificity In The Pleading**

Paragraphs 1-6 are hereby incorporated by reference as it set forth in full.

7. Denied. Paragraph 7 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required.

8. Denied. Pennsylvania law imposes no requirement that a plaintiff allege fraudulent or illegal practices in order to plead a claim for piercing the corporate veil.

9. Denied. Paragraph 9 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17. Moreover, in its memorandum of law, the additional defendants concede that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety the additional defendants' preliminary objections to CTI's Complaint Against Additional Defendants.

### **III. Demurrer**

#### **Piercing The Corporate Veil**

Paragraphs 1-9 are hereby incorporated by reference as if set forth in full.

10. Denied. To the contrary, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17. Moreover, in its memorandum of law, the additional defendants concede that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety the additional defendants' preliminary objections to CTI's Complaint Against Additional Defendants.

### **IV. Demurrer**

#### **Breach Of Contract Against E&L And ETR: Coal Ash**

Paragraphs 1-10 are hereby incorporated by reference as if set forth in full.

11. Denied. Paragraph 11 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

12. Denied. Paragraph 12 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

13. Denied. Paragraph 13 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement. In addition, CTI has alleged that E&L caused it damages directly by failing to use its best efforts to make the demonstration project successful. Complaint ¶¶ 8-11.

14. Denied. Paragraph 14 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, E&L is an alter ego of BAM and is liable for BAM's breaches of the Operating Agreement and ETR is an alter ego of E&L and BAM and is liable for E&L's and BAM's breaches of the Operating Agreement. Furthermore, CTI has alleged that E&L breached its own obligations to CTI under the Operating Agreement. Complaint ¶¶ 8-11.

15. Denied. Paragraph 15 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, ETR is the alter ego of BAM and is liable for BAM's breaches of the Operating Agreement.

16. Denied. The Operating Agreement is a writing and speaks for itself.

17. Denied. Paragraph 17 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, CTI has pled that MAM, BAM, E&L, and ETR operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Complaint ¶¶ 12-17.

WHEREFORE, CTI requests that this Court overrule in their entirety the additional defendants' preliminary objections to CTI's Complaint Against Additional Defendants.

## **V. Demurrer**

### **Breach Of Contract Against BAM And ETR: Best Efforts**

Paragraphs 1-17 are hereby incorporated by reference as it set forth in full.

18. Denied. Paragraph 18 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, ETR is the alter ego of E&L and is liable for E&L's breaches of the Operating Agreement.

19. Denied. Paragraph 19 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM is the alter ego of E&L and is liable for E&L's breaches of the Operating Agreement.

20. Denied. Paragraph 20 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM and ETR are alter egos of E&L and are liable for E&L's breaches of the Operating Agreement.

21. Denied. Paragraph 21 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM and ETR are the alter egos of E&L and are liable for E&L's breaches of the Operating Agreement. In addition, CTI has alleged that BAM caused it damages directly by breaching its obligation to provide coal ash. Complaint ¶¶ 3-7.

22. Denied. Paragraph 22 of the additional defendants' preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, BAM is an alter ego of E&L and is liable for E&L's breaches of the Operating Agreement and ETR is an alter ego of BAM and E&L and is liable for BAM's and E&L's breaches of the Operating Agreement. Furthermore, CTI has alleged that BAM breached its own obligations to CTI under the Operating Agreement. Complaint ¶¶ 3-7.

WHEREFORE, CTI requests that this Court overrule in their entirety the additional defendants' preliminary objections to CTI's Complaint Against Additional Defendants.

Respectfully submitted,

  
Marshall Walthew  
Michael S. Doluisio  
Jacob I. Kobrick  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

Dated: December 3, 2001

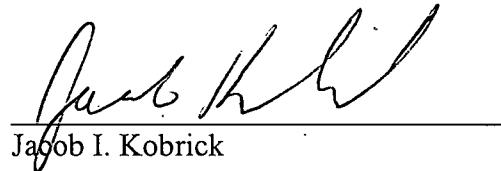
Attorneys for Consolidated Technologies, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2001, I caused a true and correct copy of Defendant Consolidated Technologies, Inc.'s Responses to Additional Defendants' Preliminary Objections to CTI's Complaint Against Additional Defendants to be served via Federal Express, postage prepaid, on the following:

Michael P. Yeager, Esquire  
110 North Second Street  
Clearfield, PA 16830

Attorney for Plaintiff and Additional Defendants



---

Jacob I. Kobrick

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, CIVIL DIVISION

MUNICIPAL ASH

MANAGEMENT, INC.,

Plaintiff,

v.

CONSOLIDATED

TECHNOLOGIES, INC.,

Defendant.

---

CONSOLIDATED

TECHNOLOGIES, INC.

v.

BENEFICIAL ASH MANAGEMENT,  
INC., E&L BROKERAGE, INC., and  
ETR ENTERPRISES, INC.

Additional Defendants.

**DEFENDANT CONSOLIDATED  
TECHNOLOGIES, INC.'S RESPONSES  
TO PLAINTIFF'S PRELIMINARY  
OBJECTIONS TO DEFENDANT'S  
ANSWER TO PLAINTIFF'S  
COMPLAINT WITH NEW MATTER  
AND COUNTERCLAIMS**

Defendant Consolidated Technologies, Inc. ("CTI") responds to plaintiff Municipal Ash Management's ("MAM") preliminary objections to its Answer to Plaintiff's Complaint with New Matter and Counterclaims as follows:

**I. Insufficient Specificity In The Pleading**

**Piercing The Corporate Veil**

1. Denied. Paragraph 1 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required.

**FILED**

DEC 04 2001  
12:10 PM  
William A. Shaw  
Prothonotary  
1 Court to Atty  
GJ

2. Denied. Pennsylvania law imposes no requirement that a plaintiff allege fraudulent or illegal practices in order to plead a claim for piercing the corporate veil.

3. Denied. Paragraph 3 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required. By way of further answer, CTI has pled that MAM, Beneficial Ash Management, Inc. ("BAM"), and E&L Brokerage, Inc. ("E&L") operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Counterclaims ¶¶ 8-13. In addition, in its memorandum of law, MAM concedes that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Answer to Plaintiff's Complaint with New Matter and Counterclaims.

## **II. Demurrer**

### **Piercing The Corporate Veil**

Paragraphs 1-3 are incorporated by reference as if set forth in full.

4. Denied. To the contrary, CTI has pled that MAM, BAM, and E&L operate as a single entity, are under the common control of one person, share a common majority owner, are under common administrative control and management, perform similar or supplementary business functions, ignore corporate formalities, and intermingle their affairs. Counterclaims ¶¶ 8-13. In addition, in its memorandum of law, MAM concedes that the allegations of veil piercing as against MAM, BAM, and E&L are sufficient.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Answer to Plaintiff's Complaint with New Matter and Counterclaims.

### **III. Demurrer**

#### **Improper Joinder**

Paragraphs 1-4 are incorporated by reference as if set forth in full.

5. Admitted. Defendant admits that it has filed a complaint against E&L and BAM. Defendant has not asserted claims against those entities in its counterclaim.

6. Denied. Paragraph 6 of MAM's preliminary objections is a conclusion of law to which no responsive pleading is required.

7. Denied. To the contrary, CTI has alleged that BAM has breached its obligation under the Operating Agreement to provide coal ash and that E&L has breached its obligation under the Operating Agreement to use its best efforts to make the demonstration project successful.

WHEREFORE, CTI requests that this Court overrule in their entirety MAM's preliminary objections to CTI's Answer to Plaintiff's Complaint with New Matter and Counterclaims.

Respectfully submitted,

  
\_\_\_\_\_  
Marshall Walthew  
Michael S. Doluisio  
Jacob I. Kobrick  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103

Dated: December 3, 2001

Attorneys for Consolidated Technologies, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2001, I caused a true and correct copy of Defendant Consolidated Technologies, Inc.'s Responses to Plaintiff's Preliminary Objections to Defendant's Answer and New Matter with Counterclaims to be served via Federal Express, postage prepaid, on the following:

Michael P. Yeager, Esquire  
110 North Second Street  
Clearfield, PA 16830

Attorney for Plaintiff and Additional Defendants

  
\_\_\_\_\_  
Jacob I. Kobrick

12/3/01  
Served by mail  
via FedEx

**FILED**

DEC 04 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

Type of Pleading:  
PRELIMINARY OBJECTIONS  
TO DEFENDANT'S ANSWER  
TO PLAINTIFF'S COMPLAINT  
WITH NEW MATTER AND  
COUNTERCLAIMS

Filed on behalf of:

PLAINTIFF:

Municipal Ash Management, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

AUG 29 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	*
	* Docket No. 01-1019-CD
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*

PRELIMINARY OBJECTIONS  
TO DEFENDANT'S ANSWER TO PLAINTIFF'S  
COMPLAINT WITH NEW MATTER AND COUNTERCLAIMS

COMES NOW, Municipal Ash Management, Inc., Plaintiff in the above-referenced proceeding, and files the within Preliminary Objections to the Answer to Plaintiff's Complaint With New Matter and Counterclaims filed by Consolidated Technologies, Inc., Defendant. Pursuant to Pa.R.C.P. Rule 1028, 42 Pa.C.S.A., Plaintiff avers as follows:

**I. INSUFFICIENT SPECIFICITY IN THE PLEADING**

**PIERCING THE CORPORATE VEIL**

1. Piercing the corporate veil is an extraordinary remedy, and there is a strong presumption against disregarding the corporate entity.

2. Defendant fails to plead specific facts pertaining to fraudulent or illegal practices on the part of the Plaintiff to warrant consideration of such an extraordinary remedy.

3. Due to the virtual absence of any specificity in this regard, Defendant's pleading is deficient and should be stricken.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and the Answer to Plaintiff's Complaint With New Matter and Counterclaims be dismissed.

## **II. DEMURRER**

### **PIERCING THE CORPORATE VEIL**

Paragraphs 1-3 are incorporated by reference as if set forth in full.

4. Defendant has failed to plead requisite factual basis for considering its requested remedy.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and Defendant's pleading be dismissed based on legal insufficiency.

## **III. DEMURRER**

### **IMPROPER JOINDER**

Paragraphs 1-4 are incorporated by reference as if set forth in full.

5. Defendant has raised claims against two other corporations, E & L Brokerage, Inc. (hereinafter "E & L") and Beneficial Ash Management, Inc. (hereinafter "BAM").

6. E & L and BAM are separate legal entities and are not proper parties to this action.

7. Defendant has failed to allege the requisite supporting facts to connect its general assertions to E & L and BAM.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and Defendant's Answer to Plaintiff's Complaint With New Matter and Counterclaims be dismissed based on legal insufficiency.

Respectfully Submitted,

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of August, 2001, the undersigned served a certified copy of the foregoing Preliminary Objections to Defendant's Answer to Plaintiff's Complaint With New Matter and Counterclaims in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Marshall Walthew, Esquire  
Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

CA

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

Defendant

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

PRELIMINARY OBJECTIONS TO  
DEFENDANT'S ANSWER TO PLAINTIFF'S  
COMPLAINT WITH NEW MATTER AND  
COUNTERCLAIMS  
Docket No. 01-1019-CD

3cc Atty Stewart  
All 3/4/01  
William A. Stewart  
FREQUENTLY

Law Office

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

Type of Pleading:  
PRELIMINARY OBJECTIONS  
TO COMPLAINT AGAINST ADDITIONAL  
DEFENDANTS

Filed on behalf of:  
PLAINTIFF:  
Municipal Ash Management, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

FILED

AUG 29 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*	
-vs-	*	Docket No. 01-1019-CD
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*	

PRELIMINARY OBJECTIONS  
TO COMPLAINT AGAINST ADDITIONAL DEFENDANTS

COMES NOW, Municipal Ash Management, Inc., Plaintiff in the above-referenced proceeding, and files the within Preliminary Objections to the Complaint of Defendant, Consolidated Technologies, Inc., against Additional Defendants, Beneficial Ash Management, Inc., E & L Brokerage, Inc., and E.T.R. Enterprises, Inc. (hereinafter "Complaint"). Pursuant to Pa.R.C.P. Rule 1028, 42 Pa.C.S.A., Plaintiff avers as follows:

**I. DEMURRER**

**Improper Joinder**

1. Defendant has raised claims against three other corporations, Beneficial Ash Management, Inc. (hereinafter "BAM"), E & L Brokerage, Inc. (hereinafter "E & L") and E.T.R. Enterprises, Inc. (hereinafter "ETR").

2. BAM, E & L and ETR are each separate legal entities.
3. As to BAM, E & L, and ETR, Defendant has merely set

forth general assertions not connected to supporting facts.

4. Defendant failed to plead necessary facts to support liability on the part of BAM.

5. Defendant failed to set forth the necessary facts to support liability on the part of E & L.

6. The Operating Agreement is central to the litigation. ETR was not privy to that agreement, and the facts alleged fail to support any claim against it.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and the Complaint be dismissed based on legal insufficiency.

## **II. INSUFFICIENT SPECIFICITY IN THE PLEADING**

Paragraphs 1-6 are hereby incorporated by reference and set forth as though in full.

7. Piercing the corporate veil is an extraordinary remedy, and there is a strong presumption against disregarding the corporate entity.

8. Defendant fails to plead facts pertaining to fraudulent or illegal practices on the part of the Plaintiff to warrant consideration of such an extraordinary remedy.

9. Due to the virtual absence of any specificity in this regard, the Complaint is deficient and should be stricken.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and the Complaint be dismissed.

### **III. DEMURRER**

#### **Piercing the Corporate Veil**

Paragraphs 1-9 are incorporated by reference as if set forth in full.

10. Defendant has failed to plead requisite factual basis for considering its requested remedy.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and Defendant's Complaint be dismissed based on legal insufficiency.

### **IV. DEMURRER**

#### **Breach of Contract Against E & L and ETR: Coal Ash**

Paragraphs 1-10 are hereby incorporated by reference and set forth as though in full.

11. Defendant has failed to allege a duty on the part of E & L to act with respect to BAM.

12. Defendant failed to allege conduct or misconduct on the part of E & L concerning the coal ash, which could even remotely be associated with its alleged damage.

13. Defendant has not alleged sufficient facts to establish causation between their alleged injuries and whatever E & L did or did not do that it is objecting to.

14. Defendant has failed to set forth that the actions of E & L or ETR caused it damages; therefore, it has not stated the

requisite elements to establish a breach of contract.

15. Defendant has likewise failed to allege a duty on the part of ETR to act with respect to BAM.

16. ETR was not a party to the Operating Agreement.

17. The effort by Defendant to obtain relief against ETR for breach of contract when ETR was not privy to the contract in question is not actionable as a matter of law.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and the Count for Breach of Contract Against E & L and ETR be dismissed for failure to state a cause of action and/or legal insufficiency.

#### **V. DEMURRER**

##### **Breach of Contract Against BAM and ETR: Best Efforts**

Paragraphs 1-17 are hereby incorporated by reference and set forth as though in full.

18. ETR was not privy to the Operating Agreement and Defendant has failed to allege a duty on the part of ETR to act with respect to E & L.

19. Similarly, Defendant failed to allege duty on the part of BAM to act with respect to E & L.

20. Defendant failed to allege conduct or misconduct on the part of BAM and/or ETR concerning E & L's alleged failure to use best efforts.

21. Defendant has not alleged sufficient facts to

establish causation between its alleged injuries and BAM and/or ETR.

22. Defendant has failed to set forth that the actions of BAM or ETR caused it damages; therefore, it has not stated the requisite elements to establish a breach of contract.

WHEREFORE, Plaintiff prays that his Preliminary Objections be sustained and the Count for Breach of Contract Against BAM and ETR be dismissed for failure to state a cause of action and/or legal insufficiency.

Respectfully Submitted,

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*

-vs-

\*

Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*

\*

CERTIFICATE OF SERVICE

This is to certify that on the 29th day of August, 2001, the undersigned served a certified copy of the foregoing Preliminary Objections to Complaint Against Additional Defendants in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Marshall Walthew, Esquire  
Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

92

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

PRELIMINARY OBJECTIONS TO  
COMPLAINT AGAINST ADDITIONAL  
DEFENDANTS  
Docket No. 01-1019-CD

FILED 1/30/04 BY  
MC 2814 AMY STEWART  
WILLIAM E. KOERBER  
ATTORNEY

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,  
Plaintiff

\*  
\*

-vs-

\* Docket No. 01-1019-CD

CONSOLIDATED  
TECHNOLOGIES, INC.,  
Defendant

\*  
\*

Type of Pleading:  
PRELIMINARY OBJECTIONS  
TO COMPLAINT AGAINST ADDITIONAL  
DEFENDANTS

Filed on behalf of:  
ADDITIONAL DEFENDANTS:  
Beneficial Ash Management, Inc.,  
E & L Brokerage, Inc., and  
ETR Enterprises, Inc.

Counsel of record for  
this party:

Dwight L. Koerber, Jr.  
PA I.D. No. 16332

Cynthia B. Stewart  
PA I.D. No. 82380

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

SEP 13 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC., Plaintiff	*
-vs-	*
	* Docket No. 01-1019-CD
CONSOLIDATED TECHNOLOGIES, INC., Defendant	*

PRELIMINARY OBJECTIONS  
TO COMPLAINT AGAINST ADDITIONAL DEFENDANTS

COMES NOW, the Additional Defendants in the above-referenced proceeding; Beneficial Ash Management, Inc., E & L Brokerage, Inc., and ETR Enterprises, Inc. (hereinafter Additional Defendants), and file the within Preliminary Objections to the Complaint of Defendant, Consolidated Technologies, Inc., (hereinafter "Complaint") against them. Pursuant to Pa.R.C.P. Rule 1028, 42 Pa.C.S.A., Additional Defendants aver as follows:

**I. DEMURRER**

**Improper Joinder**

1. Defendant, Consolidated Technologies, Inc., raised claims against three other corporations, Beneficial Ash Management, Inc. (hereinafter "BAM"), E & L Brokerage, Inc. (hereinafter "E & L") and E.T.R. Enterprises, Inc. (hereinafter "ETR").
2. BAM, E & L and ETR are each separate legal entities.
3. As to BAM, E & L, and ETR, Defendant, Consolidated

Technologies, Inc., has merely set forth general assertions not connected to supporting facts.

4. Defendant, Consolidated Technologies, Inc., failed to plead necessary facts to support liability on the part of BAM.

5. Defendant, Consolidated Technologies, Inc., failed to set forth the necessary facts to support liability on the part of E & L.

6. The Operating Agreement is central to the litigation. ETR was not privy to that agreement, and the facts alleged fail to support any claim against it.

WHEREFORE, Additional Defendants pray that the Preliminary Objections be sustained and the Complaint be dismissed based on legal insufficiency.

## **II. INSUFFICIENT SPECIFICITY IN THE PLEADING**

Paragraphs 1-6 are hereby incorporated by reference and set forth as though in full.

7. Piercing the corporate veil is an extraordinary remedy, and there is a strong presumption against disregarding the corporate entity.

8. Defendant, Consolidated Technologies, Inc., fails to plead facts pertaining to fraudulent or illegal practices on the part of the Plaintiff to warrant consideration of such an extraordinary remedy.

9. Due to the virtual absence of any specificity in this regard, the Complaint is deficient and should be stricken.

WHEREFORE, Additional Defendants pray that the Preliminary Objections be sustained and the Complaint be dismissed.

### III. DEMURRER

#### **Piercing the Corporate Veil**

Paragraphs 1-9 are incorporated by reference as if set forth in full.

10. Defendant, Consolidated Technologies, Inc., has failed to plead requisite factual basis for considering its requested remedy.

WHEREFORE, Additional Defendants pray that the Preliminary Objections be sustained and Defendant's Complaint be dismissed based on legal insufficiency.

### IV. DEMURRER

#### **Breach of Contract Against E & L and ETR: Coal Ash**

Paragraphs 1-10 are hereby incorporated by reference and set forth as though in full.

11. Defendant, Consolidated Technologies, Inc., has failed to allege a duty on the part of E & L to act with respect to BAM.

12. Defendant, Consolidated Technologies, Inc., failed to allege conduct or misconduct on the part of E & L concerning the coal ash, which could even remotely be associated with its alleged damage.

13. Defendant, Consolidated Technologies, Inc., has not alleged sufficient facts to establish causation between their

alleged injuries and whatever E & L did or did not do that it is objecting to.

14. Defendant, Consolidated Technologies, Inc., has failed to set forth that the actions of E & L or ETR caused it damages; therefore, it has not stated the requisite elements to establish a breach of contract.

15. Defendant, Consolidated Technologies, Inc., has likewise failed to allege a duty on the part of ETR to act with respect to BAM.

16. ETR was not a party to the Operating Agreement.

17. The effort by Defendant, Consolidated Technologies, Inc., to obtain relief against ETR for breach of contract when ETR was not privy to the contract in question is not actionable as a matter of law.

WHEREFORE, Additional Defendants pray that the Preliminary Objections be sustained and the Count for Breach of Contract Against E & L and ETR be dismissed for failure to state a cause of action and/or legal insufficiency.

#### V. DEMURRER

##### **Breach of Contract Against BAM and ETR: Best Efforts**

Paragraphs 1-17 are hereby incorporated by reference and set forth as though in full.

18. ETR was not privy to the Operating Agreement and Defendant has failed to allege a duty on the part of ETR to act with respect to E & L.

19. Similarly, Defendant, Consolidated Technologies, Inc., failed to allege duty on the part of BAM to act with respect to E & L.

20. Defendant, Consolidated Technologies, Inc., failed to allege conduct or misconduct on the part of BAM and/or ETR concerning E & L's alleged failure to use best efforts.

21. Defendant, Consolidated Technologies, Inc., has not alleged sufficient facts to establish causation between its alleged injuries and BAM and/or ETR.

22. Defendant, Consolidated Technologies, Inc., has failed to set forth that the actions of BAM or ETR caused it damages; therefore, it has not stated the requisite elements to establish a breach of contract.

WHEREFORE, Additional Defendants pray that the Preliminary Objections be sustained and the Count for Breach of Contract Against BAM and ETR be dismissed for failure to state a cause of action and/or legal insufficiency.

Respectfully Submitted,

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for ADDITIONAL  
DEFENDANTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH \*  
MANAGEMENT, INC., \*  
Plaintiff \*  
  
-vs- \* Docket No. 01-1019-CD  
  
CONSOLIDATED \*  
TECHNOLOGIES, INC., \*  
Defendant \*

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of September, 2001, the undersigned served a certified copy of the foregoing Preliminary Objections to Complaint Against Additional Defendants in the above captioned matter upon counsel for Defendant, Consolidated Technologies, Inc. Such documents were served via United States First Class Mail upon the following:

Marshall Walthew, Esquire  
Michael S. Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

LAW OFFICES OF DWIGHT L. KOERBER, JR.

By: Cynthia B. Stewart  
Cynthia B. Stewart, Esquire  
Attorney for ADDITIONAL DEFENDANTS

CA

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.,  
Plaintiff

-vs-

CONSOLIDATED TECHNOLOGIES, INC.,  
Defendant

PRELIMINARY OBJECTIONS TO COMPLAINT  
AGAINST ADDITIONAL DEFENDANTS  
DOCKET NO. 01-1019-CD

FILED

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William A. Shaw  
Prothonotary  
Komban

*Law Office*

DWIGHT L. KOERBER, JR.  
ATTORNEY-AT-LAW  
110 NORTH SECOND STREET  
P. O. Box 1320  
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MUNICIPAL ASH MANAGEMENT, INC.	:	
Plaintiff	:	
vs	:	No. 01 - 1019 - CD
CONSOLIDATED TECHNOLOGIES, INC.	:	
Defendant	:	
CONSOLIDATED TECHNOLOGIES, INC.	:	ADDITIONAL DEFENDANT,
vs	:	BENEFICIAL ASH MANAGEMENT,
BENEFICIAL ASH MANAGEMENT, INC.	:	INC.'S FIRST SET OF
E & L BROKERAGE, INC., and	:	INTERROGATORIES DIRECTED TO
E.T.R. ENTERPRISES, INC.,	:	DEFENDANT, CONSOLIDATED
Additional Defendants	:	TECHNOLOGIES, INC.

Pursuant to applicable Pennsylvania Rules of Civil Procedure, Additional Defendant, Beneficial Ash Management, Inc. ("BAM") hereby directs these Interrogatories to Defendant, Consolidated Technologies, Inc. ("CTI"). These Interrogatories shall be deemed continuing; requiring amended answers if Defendant obtains information which renders the answers hereto incomplete or inaccurate.

**FILED**

APR 8 1 2002  
012411 no cc  
William A. Shaw  
Prothonotary

N O T I C E

TO: DEFENDANT, CONSOLIDATED TECHNOLOGIES, INC.

TAKE NOTICE that you are hereby required, pursuant to the Pennsylvania Rules of Civil Procedure, Rules 4005 and 4006, to file with the Court and serve upon the undersigned, within thirty (30) days after services of these Interrogatories, your full and complete Answers under oath.

These shall be deemed to be continuing Interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your Answers, you shall promptly furnish said information to the undersigned by supplemental Answers.

Failure to provide the requested information and/or documents or to make objections within the term specified may subject you to sanctions under Rule 4019 of the Pennsylvania Rules of Civil Procedure.

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

Date: 3/29/02

## DEFINITIONS

As used in the following Interrogatories, the following defined terms have the meaning ascribed to them:

- (a) "Person" and "Party" shall refer to any individual partnership, corporation, or other entity, and any director, officer, employee, agent, representative, or other person acting or purporting to act for any of them.
- (b) "You" and/or "Your" and/or "CTI" means Defendant, Consolidated Technologies, Inc., your agents, employees, attorneys, accountants and others acting on your behalf or in furtherance of your position with regard to the claims and causes of action at issue in this case.
- (c) "Document" shall mean any written, printed, typed, and/or other graphic material of any kind or nature, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, or whether sent, received and/or either, including but not limited to: letters and other correspondence; memoranda; notes; work papers; transcripts, policies and contracts of insurance; claim notices and information forms; minutes or reports of meeting; telephone or other conversations; interviews or conferences; reports; legal documents; financial records; invoices; statistical records; appointment books and diaries; charts; graphs; designs; drawings and blueprints; maps; plans or surveys; computer cards; information which is preserved or stored in or on any type of recording, tape, film or electronic memory device; tapes or printouts; films or videotapes; microfilm or microfiche reports, opinions; messages; objects, papers, books and anything similar to any of the foregoing however designated or denominated by the party to whom these Interrogatories are propounded, in possession and/or control of such party or his/her/their/its officers, employees, agents or representatives or known by the party to whom these Interrogatories are propounded to exist. It shall also mean all copies of documents by whatever means made, and all drafts whether or not later finalized, including any marginal notes or other markings appearing on any such "document" or "writing". The term also includes photographs (see Pa. R.C.P. No. 4009 (a)(1)).
- (d) "Identify", when used in reference to an individual person, means to state his full name and present address; his present, or last known position and business affiliation; his positions and business affiliation at the time in question; his educational background; his experience working, for or on behalf of the party

to whom these Interrogatories are propounded and/or other companies; his area of responsibility and title at the time in question.

(e) "Identify", when used in reference to a corporation, or other business entity, means to state its full name, principal place of business or corporate headquarters and the type of business in which it is engaged or otherwise conducted by it.

(f) "Identify" or "Identity", when used elsewhere herein, means to state your total knowledge and information concerning the subject matter.

(g) "Identify", when used in reference to a document or writing, means to state the date and author; type of document (e.g., letter, memorandum, report, chart, etc.) title or some other means of identification; its proprietary classification; if a drawing or blue print, its drawing number, revision date, and number of sheets; its present location and custodian, and to identify each person who presently, and at all relevant times, had custody, control or access. If a copy of the document will be provided voluntarily, its should be attached and/or included with the Answers to these Interrogatories it is provided in answer to should be identified. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

(h) "Written statement" shall mean: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical or other recording or a transcript thereof, which is a substantially verbatim recital of an oral statement given by the person making it and contemporaneously recorded or preserved or stored in or on any type of recording, tape, film or electronic memory device.

(i) "Oral statement" shall mean an oral utterance made by any person, at any time, concerning the liability arising out of the subject matter of this action.

FURTHER INSTRUCTION

(a) In the event that exact information requested in any of these Interrogatories is not available or cannot be ascertained at this time, please answer such Interrogatory with the information available, using estimates or approximations where necessary, and indicate that such estimates or approximations have been used.

(b) In the event that information requested in these Interrogatories is not available or cannot be ascertained at the time of answering these Interrogatories, but such information becomes available or is ascertained thereafter and prior to trial of this case, please submit Supplemental Answers hereto upon such occurrence.

(c) The party propounding these Interrogatories reserves the right to serve further Interrogatories or sets of Interrogatories dealing with subjects covered herein or with subjects not covered herein.

(d) If the information furnished herein is not within the personal knowledge of the person who signs the Affidavit under oath answering these Interrogatories, then and in that event, identify each such other person who assisted and participated in preparing or supplying any of the information given in the Answers to or replied upon in preparing the Answers to these Interrogatories.

(e) Attention is directed to the fact that a copy of the "Notice of Service of Interrogatories", which was filed with the Prothonotary, has been mailed to all other counsel of record in this case. You are required, pursuant to Rule No. 4006 (a)(2) of the Rules of Civil Procedure, to file the original with the Prothonotary, and to serve a copy of the Answers to these Interrogatories upon every party to this action.

(f) All Interrogatories which request that you attach copies of statements or documents (including photographs) with your Answers are a request for production of documents under the provisions of Pa. R.C.P. No. 4009.

(g) Number. Gender. Tense. The singular shall include the plural, and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future. [See Pa. R.C.P. No. 102].

INTERROGATORIES

1. Describe the ash or flyash required by CTI at the Bark Camp Site. In doing so, identify: (a) the type or types of ash or flyash and (b) the quantities of each type or types required.

Answer:

2. Identify all sources for such ash or flyash utilized, required or stockpiled by CTI at the Bark Camp Site. For each such supplier, identify: (a) the name and address of the supplier; (b) the nature of the product supplied by each such supplier; (c) the dates on which such supplier furnished ash or flyash to the Bark Camp Site; and (d) identify all documents which record, relate or refer to such supply.

Answer:

3. Did you supply BAM with written notice that BAM was otherwise in default of its obligations under the Operating Agreement? If so, state the factual basis for this default or these defaults. Indicate the date or dates of such written notice and identify any and all other documents which support these allegations of default by BAM.

Answer:

4. Describe in detail every communication CTI had with BAM regarding BAM's provision of ash or flyash under the Operating Agreement. For each such communication, identify: (a) the date of the communication; (b) the manner or means by which it was made (e.g. in person, by telephone, in writing, etc.); (c) identify each person who made the communication; (d) identify each person who received the communication; (e) describe in detail the full content of the communication; and (f) identify all documents which record, relate or refer to the communication.

Answer:

5. Did CTI or anyone on behalf of CTI notify BAM that CTI could not or would not accept the minimum amounts of ash from BAM as described in the Operating Agreement? If so, and for each such communication, identify: (a) the date of the communication; (b) the manner or means by which it was made (e.g. in person, by telephone, in writing, etc.); (c) identify each person who made the communication; (d) identify each person who received the communication; (e) describe in detail the full content of the communication; and (f) identify all documents which record, relate or refer to the communication.

Answer:

6. Has CTI purchased ash from BAM at prices higher than those set forth in the Operating Agreement. If so, state the factual basis for such purchases and identify any documents that support the same.

Answer:

7. What monetary damages do you intend to claim of BAM in this lawsuit? Describe with particularity: (a) the amount of damage you intend to claim; (b) how you computed each element of damages; (c) how each element of damage was caused by MAM; and (d) identify all documents that relate to your claimed damages.

Answer:

8. Has CTI purchased ash or flyash from other suppliers for the Bark Camp Site. If so, identify: (a) the name and address of the supplier; (b) the dates such supplier furnished ash or flyash; (c) the prices CTI paid or agreed to pay for such ash or flyash; and (d) identify all documents that support these alleged purchases.

Answer:

9. Identify each and every factual witness that you intend to call, or that you expect may be called, at the trial of this case. For each witness identified, provide: (a) the witness' current address and (b) a summary of the testimony that the witness is expected to give at trial.

Answer:

10. Identify each and every expert witness that you intend to call at the trial of this case. For each expert witness identified, provide, pursuant to Pennsylvania Rule of Civil Procedure 4003.5: (a) the subject matter on which the expert is expected to testify; (b) the substance of the facts and opinions to which the expert is expected to testify; and (c) a summary of the grounds for each opinion.

Answer:



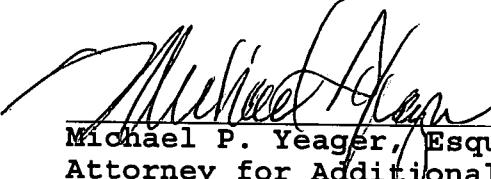
Michael P. Yeager, Esquire  
110 N. 2<sup>nd</sup> Street, P.O. Box 752  
Clearfield, PA 16830  
Attorney for Plaintiff

Dated: March 24, 2002

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Additional Defendant, Beneficial Ash Management, Inc.'s First Set of Interrogatories Directed to Defendant, Consolidated Technologies, Inc. via first class mail upon the following:

Marshall Walther  
Michael S. Doluisio  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attorneys for Consolidated Technologies, Inc.



Michael P. Yeager, Esquire  
Attorney for Additional Defendant  
Beneficial Ash Management, Inc.

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MUNICIPAL ASH MANAGEMENT, INC. :  
Plaintiff :  
:  
vs : No. 01 - 1019 - CD  
:  
CONSOLIDATED TECHNOLOGIES, INC. :  
Defendant :  
:  
:  
CONSOLIDATED TECHNOLOGIES, INC. :  
:  
vs : PLAINTIFF, MUNICIPAL ASH  
: MANAGEMENT, INC.'S FIRST SET  
: OF INTERROGATORIES DIRECTED TO  
: DEFENDANT, CONSOLIDATED  
: TECHNOLOGIES, INC.  
:  
BENEFICIAL ASH MANAGEMENT, INC. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants :  
:  
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Pursuant to applicable Pennsylvania Rules of Civil  
Procedure, Plaintiff, Municipal Ash Management, Inc. ("MAM")  
hereby directs these Interrogatories to Defendant, Consolidated  
Technologies, Inc. ("CTI"). These Interrogatories shall be  
deemed continuing; requiring amended answers if Defendant obtains  
information which renders the answers hereto incomplete or  
inaccurate.

FILED

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William A. Shaw  
Prothonotary *GR*

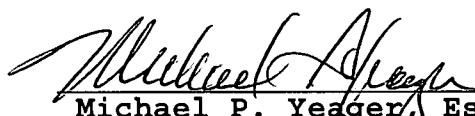
N O T I C E

TO: DEFENDANT, CONSOLIDATED TECHNOLOGIES, INC.

TAKE NOTICE that you are hereby required, pursuant to the Pennsylvania Rules of Civil Procedure, Rules 4005 and 4006, to file with the Court and serve upon the undersigned, within thirty (30) days after services of these Interrogatories, your full and complete Answers under oath.

These shall be deemed to be continuing Interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your Answers, you shall promptly furnish said information to the undersigned by supplemental Answers.

Failure to provide the requested information and/or documents or to make objections within the term specified may subject you to sanctions under Rule 4019 of the Pennsylvania Rules of Civil Procedure.

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

Date: March 29, 2002

## DEFINITIONS

As used in the following Interrogatories, the following defined terms have the meaning ascribed to them:

- (a) "Person" and "Party" shall refer to any individual partnership, corporation, or other entity, and any director, officer, employee, agent, representative, or other person acting or purporting to act for any of them.
- (b) "You" and/or "Your" and/or "CTI" means Defendant, Consolidated Technologies, Inc., your agents, employees, attorneys, accountants and others acting on your behalf or in furtherance of your position with regard to the claims and causes of action at issue in this case.
- (c) "Document" shall mean any written, printed, typed, and/or other graphic material of any kind or nature, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, or whether sent, received and/or either, including but not limited to: letters and other correspondence; memoranda; notes; work papers; transcripts, policies and contracts of insurance; claim notices and information forms; minutes or reports of meeting; telephone or other conversations; interviews or conferences; reports; legal documents; financial records; invoices; statistical records; appointment books and diaries; charts; graphs; designs; drawings and blueprints; maps; plans or surveys; computer cards; information which is preserved or stored in or on any type of recording, tape, film or electronic memory device; tapes or printouts; films or videotapes; microfilm or microfiche reports, opinions; messages; objects, papers, books and anything similar to any of the foregoing however designated or denominated by the party to whom these Interrogatories are propounded, in possession and/or control of such party or his/her/their/its officers, employees, agents or representatives or known by the party to whom these Interrogatories are propounded to exist. It shall also mean all copies of documents by whatever means made, and all drafts whether or not later finalized, including any marginal notes or other markings appearing on any such "document" or "writing". The term also includes photographs (see Pa. R.C.P. No. 4009 (a)(1)).
- (d) "Identify", when used in reference to an individual person, means to state his full name and present address; his present, or last known position and business affiliation; his positions and business affiliation at the time in question; his educational background; his experience working, for or on behalf of the party

to whom these Interrogatories are propounded and/or other companies; his area of responsibility and title at the time in question.

(e) "Identify", when used in reference to a corporation, or other business entity, means to state its full name, principal place of business or corporate headquarters and the type of business in which it is engaged or otherwise conducted by it.

(f) "Identify" or "Identity", when used elsewhere herein, means to state your total knowledge and information concerning the subject matter.

(g) "Identify", when used in reference to a document or writing, means to state the date and author; type of document (e.g., letter, memorandum, report, chart, etc.) title or some other means of identification; its proprietary classification; if a drawing or blue print, its drawing number, revision date, and number of sheets; its present location and custodian, and to identify each person who presently, and at all relevant times, had custody, control or access. If a copy of the document will be provided voluntarily, its should be attached and/or included with the Answers to these Interrogatories it is provided in answer to should be identified. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

(h) "Written statement" shall mean: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical or other recording or a transcript thereof, which is a substantially verbatim recital of an oral statement given by the person making it and contemporaneously recorded or preserved or stored in or on any type of recording, tape, film or electronic memory device.

(i) "Oral statement" shall mean an oral utterance made by any person, at any time, concerning the liability arising out of the subject matter of this action.

FURTHER INSTRUCTION

(a) In the event that exact information requested in any of these Interrogatories is not available or cannot be ascertained at this time, please answer such Interrogatory with the information available, using estimates or approximations where necessary, and indicate that such estimates or approximations have been used.

(b) In the event that information requested in these Interrogatories is not available or cannot be ascertained at the time of answering these Interrogatories, but such information becomes available or is ascertained thereafter and prior to trial of this case, please submit Supplemental Answers hereto upon such occurrence.

(c) The party propounding these Interrogatories reserves the right to serve further Interrogatories or sets of Interrogatories dealing with subjects covered herein or with subjects not covered herein.

(d) If the information furnished herein is not within the personal knowledge of the person who signs the Affidavit under oath answering these Interrogatories, then and in that event, identify each such other person who assisted and participated in preparing or supplying any of the information given in the Answers to or replied upon in preparing the Answers to these Interrogatories.

(e) Attention is directed to the fact that a copy of the "Notice of Service of Interrogatories", which was filed with the Prothonotary, has been mailed to all other counsel of record in this case. You are required, pursuant to Rule No. 4006 (a)(2) of the Rules of Civil Procedure, to file the original with the Prothonotary, and to serve a copy of the Answers to these Interrogatories upon every party to this action.

(f) All Interrogatories which request that you attach copies of statements or documents (including photographs) with your Answers are a request for production of documents under the provisions of Pa. R.C.P. No. 4009.

(g) Number. Gender. Tense. The singular shall include the plural, and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future. [See Pa. R.C.P. No. 102].

INTERROGATORIES

1. Identify CTI's business or service activities including, but not limited to, its business relating to the Operating Agreement and the Bark Camp Site.

Answer:

2. Describe when CTI began to perform the business or service activities described in Interrogatory 1.

Answer:

3. Identify all geographic sites at which CTI conducts its business or performs services of any kind. In connection therewith, provide the: (a) address of such location; and (b) the business or services rendered at such location.

Answer:

4. Identify every person, corporation or other legal entity owning any amount of stock in CTI; and for each such owner, state the amount of that percentage ownership in CTI and the date on which such owner secured the ownership interest.

Answer:

5. Identify all officers and directors of CTI since January 1, 1996 and, for each such person, state the years he or she served as such officer or director.

Answer:

6. Identify every person at CTI who was involved with the negotiation and/or drafting of the Operating Agreement.

Answer:

7. Identify all employees of CTI since January 1, 1996 and indicate: (a) where each such employee is or was physically employed; (b) what service or activity such employee performs or performed; (c) the hours such employee performs or performed such service or activity; and (d) the wages paid to such employees.

Answer:

8. Identify all contracted or subcontracted employees or individuals who perform services on behalf of CTI since January 1, 1996 and indicate: (a) where such individual performs or performed such service or services; (b) what service such individual performs or performed for CTI; (c) the hours such individual performs or performed such services; and (d) the amounts paid to such individual.

Answer:

9. Are any of the individuals or entities described in answer to Interrogatory No. 8 affiliated in any way with CTI? If so, describe the basis of the affiliation.

Answer:

10. Identify all subsidiaries of CTI. In connection therewith, provide: (a) the name of the subsidiary; (b) the address of the subsidiary; (c) the business or service activities of the subsidiary; and (d) the ownership interest CTI holds in said subsidiary.

Answer:

11. Identify all of CTI's affiliated entities or companies. In connection therewith, provide: (a) the name of the entity or company; (b) the address of the company; (c) the business or service activities of the entity or company; and (d) the specific relationship or ownership structure that generates the affiliation.

Answer:

12. Describe in detail how CTI secures "dredge" materials for implementation and disposal at the Bark Camp Site pursuant to the Operating Agreement. In connection therewith, identify: (a) all individuals or entities with which CTI contracts to enable it to secure, transport and dispose of such dredge materials; (b) the specific function or activity such individual or entity performs; and (c) the geographic location or locations at or to which such individual or entity performs such functions.

Answer:

13. Describe in detail what CTI does with dredge materials it secures. In connection therewith, identify: (a) whatever might be mixed with the dredge materials to permit its use at the Bark Camp Site; (b) who supplies whatever might be so mixed; (c) the quantities of whatever might be mixed; (d) where the mixing operation or operations are performed; (e) how the resultant dredge materials are transported to the Bark Camp Site; and (f) by whom the resultant dredge materials are so transported.

Answer:

14. Identify all sources of CTI's initial capitalization, and for each source, state the amount of the respective contribution.

Answer:

15. Identify all bank accounts held or utilized by CTI indicating: (a) the name of the bank at which the account is located; (b) the account number; and (c) who is authorized to sign checks and otherwise approve disbursement of the funds in said account.

Answer:

16. Does CTI share use and/or control of any of the bank accounts listed in answer to Interrogatory 15 above with any other owners, corporations or other entities. If so, indicate: (a) the identities of such other owners, corporations or entities; (b) the amounts of commingled funds in said accounts; and (c) who is authorized to sign checks and otherwise approve disbursement of the funds in said account.

Answer:

17. Identify all governmental entities, whether, local, state, federal or other companies to which CTI supplies or directs daily, weekly, monthly, quarterly or other reports including, but not limited to, tonnage reports relative to ash, MSW ash, flyash, dredge materials, lime, kiln dust or any other materials utilized by CTI in its business or service activities identified in answer to Interrogatory 1. In connection therewith, identify: (a) the nature and description of the report; (b) the governmental body, agency or entity requiring, reviewing and administering the report; (c) the dates of the reports; (d) the geographic location for the activity covered by the report; and (e) all correspondence and documents relating to such reports.

Answer:

18. Does CTI receive daily, weekly, monthly, quarterly or other reports including, but not limited to, tonnage reports relative to ash, MSW ash, flyash, dredge materials, lime, kiln dust or other materials utilized by CTI in its business or service activities identified in answer to Interrogatory 1? In connection therewith, identify: (a) the nature and description of the report; (b) the governmental body, agency, or entity providing the report; (c) the dates of the reports; (d) the geographic location for the activity covered by the report; and (e) all correspondence and documents relating to such reports.

Answer:

19. Identify all permits utilized or otherwise necessary by or for CTI's business or service activities described in answer to Interrogatory 1. In connection therewith, identify: (a) the nature and description of the permits; (b) the governmental body or agency requiring, reviewing and administering the permit; (c) the dates of the permits; (d) the geographic location for the activity covered by the permits; and (e) all correspondence and documents relating to such permits.

Answer:

20. Identify all bonds or bonding currently in place or previously in place relating to CTI's business or service activities described in Interrogatory 1. In connection therewith, identify: (a) the nature and description of the bonds; (b) the individual, corporation or entity supplying the bonds; (c) the dates of the bonds; (d) the geographic location for the activity covered by the bond; (e) the party or parties covered by the bonds; and (f) all correspondence and documents relating to such bonding.

Answer:

21. Do you contend that the Bark Camp operation described in the Operating Agreement generates insufficient revenues from tipping fees to cover the costs of transportation, processing and placement pursuant to the Operating Agreement. If so, state the factual basis for this assertion and provide appropriate financial information in connection therewith for each year of the Operating Agreement.

Answer:

22. Do you contend that CTI has been supplied with municipal ash that is not utilized in CTI's operations and is not mixed with dredged materials and is disposed of separately. If so, state the factual basis for this contention and identify the individuals, corporations or governmental bodies/agencies involved with such municipal ash.

Answer:

23. Has MAM supplied municipal ash that was not mixed with dredge material and was otherwise disposed of separately? If so, state the factual basis for such contention and where such municipal ash was otherwise disposed of.

Answer:

24. Do you contend that MAM has supplied municipal ash to CTI utilizing some form of "stand-alone" contract as defined in the Operating Agreement? If so, state the factual basis for such contention.

Answer:

25. Identify all individuals, corporations or entities who have supplied municipal ash to CTI pursuant to a "stand-alone" contract as described in the Operating Agreement. In connection therewith, identify: (a) the name of the supplier; (b) the address of the supplier; (c) the dates and quantities of municipal ash supplied; and (d) the prices paid for such municipal ash.

Answer:

26. Has MAM supplied CTI with billing information relative to royalties MAM alleges are due for municipal ash utilized by CTI in its operations pursuant to the Operating Agreement? If so, provide copies of all such invoices.

Answer:

27. Describe in detail every communication CTI had with MAM regarding the royalties MAM alleges are owed under Section 6 of the Operating Agreement. For each such communication, identify: (a) the date of the communication; (b) state the manner or means by which it was made (e.g. in person, by telephone, in writing, etc.); (c) identify each person who made the communication; (d) identify each person who received the communication; (e) describe in detail the full content of the communication; and (f) identify all documents which record, relate or refer to the communication.

Answer:

28. Identify each and every fact witness that you intend to call, or that you expect may be called, at the trial of this case. For each witness identified, provide: (a) the witness' current address and (b) a summary of the testimony that the witness is expected to give at trial.

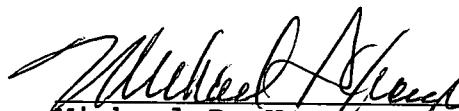
Answer:

29. Identify each and every expert witness that you intend to call at the trial of this case. For each expert witness identified, provide, pursuant to Pennsylvania Rule of Civil Procedure 4003.5: (a) the subject matter on which the expert is expected to testify; (b) the substance of the facts and opinions to which the expert is expected to testify; and (c) a summary of the grounds for each opinion.

Answer:

30. What monetary damages do you intend to claim of MAM in this lawsuit? Describe with particularity: (a) the amount of damage you intend to claim; (b) how you computed each element of damage; (c) how each element of damage was caused by MAM; and (d) identify all documents that relate to your claimed damages.

Answer:



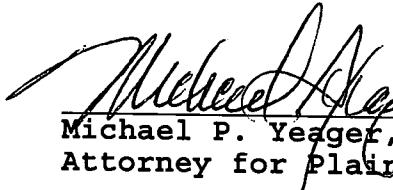
Michael P. Yeager, Esquire  
110 N. 2<sup>nd</sup> Street, P.O. Box 752  
Clearfield, PA 16830  
Attorney for Plaintiff

Dated: March 29, 2002

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiff, Municipal Ash Management, Inc.'s First Set of Interrogatories Directed to Defendant, Consolidated Technologies, Inc. via first class mail upon the following:

Marshall Walthew  
Michael S. Doluisio  
DECHEART PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attorneys for Consolidated Technologies, Inc.

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

MUNICIPAL ASH MANAGEMENT, INC.	:	
Plaintiff	:	
vs	:	No. 01 - 1019 - CD
CONSOLIDATED TECHNOLOGIES, INC.	:	
Defendant	:	
CONSOLIDATED TECHNOLOGIES, INC.	:	ADDITIONAL DEFENDANT,
vs	:	E & L BROKERAGE, INC'S
BENEFICIAL ASH MANAGEMENT, INC.	:	FIRST SET OF
E & L BROKERAGE, INC., and	:	INTERROGATORIES DIRECTED TO
E.T.R. ENTERPRISES, INC.,	:	DEFENDANT, CONSOLIDATED
Additional Defendants	:	TECHNOLOGIES, INC.

Pursuant to applicable Pennsylvania Rules of Civil Procedure, Additional Defendant, E & L Brokerage, Inc. ("E&L") hereby directs these Interrogatories to Defendant. These Interrogatories shall be deemed continuing; requiring amended answers if Defendant obtains information which renders the answers hereto incomplete or inaccurate.

FILED  
APR 01 2002  
012421 NO CC  
William A. Shaw  
Prothonotary

N O T I C E

TO: DEFENDANT, CONSOLIDATED TECHNOLOGIES, INC.

TAKE NOTICE that you are hereby required, pursuant to the Pennsylvania Rules of Civil Procedure, Rules 4005 and 4006, to file with the Court and serve upon the undersigned, within thirty (30) days after services of these Interrogatories, your full and complete Answers under oath.

These shall be deemed to be continuing Interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your Answers, you shall promptly furnish said information to the undersigned by supplemental Answers.

Failure to provide the requested information and/or documents or to make objections within the term specified may subject you to sanctions under Rule 4019 of the Pennsylvania Rules of Civil Procedure.



Michael P. Yeager, Esquire  
Attorney for Plaintiff

Date: March 24, 2002

## DEFINITIONS

As used in the following Interrogatories, the following defined terms have the meaning ascribed to them:

- (a) "Person" and "Party" shall refer to any individual partnership, corporation, or other entity, and any director, officer, employee, agent, representative, or other person acting or purporting to act for any of them.
- (b) "You" and/or "Your" and/or "CTI" means Defendant, Consolidated Technologies, Inc., your agents, employees, attorneys, accountants and others acting on your behalf or in furtherance of your position with regard to the claims and causes of action at issue in this case.
- (c) "Document" shall mean any written, printed, typed, and/or other graphic material of any kind or nature, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, or whether sent, received and/or either, including but not limited to: letters and other correspondence; memoranda; notes; work papers; transcripts, policies and contracts of insurance; claim notices and information forms; minutes or reports of meeting; telephone or other conversations; interviews or conferences; reports; legal documents; financial records; invoices; statistical records; appointment books and diaries; charts; graphs; designs; drawings and blueprints; maps; plans or surveys; computer cards; information which is preserved or stored in or on any type of recording, tape, film or electronic memory device; tapes or printouts; films or videotapes; microfilm or microfiche reports, opinions; messages; objects, papers, books and anything similar to any of the foregoing however designated or denominated by the party to whom these Interrogatories are propounded, in possession and/or control of such party or his/her/their/its officers, employees, agents or representatives or known by the party to whom these Interrogatories are propounded to exist. It shall also mean all copies of documents by whatever means made, and all drafts whether or not later finalized, including any marginal notes or other markings appearing on any such "document" or "writing". The term also includes photographs (see Pa. R.C.P. No. 4009 (a)(1)).
- (d) "Identify", when used in reference to an individual person, means to state his full name and present address; his present, or last known position and business affiliation; his positions and business affiliation at the time in question; his educational background; his experience working, for or on behalf of the party

to whom these Interrogatories are propounded and/or other companies; his area of responsibility and title at the time in question.

(e) "Identify", when used in reference to a corporation, or other business entity, means to state its full name, principal place of business or corporate headquarters and the type of business in which it is engaged or otherwise conducted by it.

(f) "Identify" or "Identity", when used elsewhere herein, means to state your total knowledge and information concerning the subject matter.

(g) "Identify", when used in reference to a document or writing, means to state the date and author; type of document (e.g., letter, memorandum, report, chart, etc.) title or some other means of identification; its proprietary classification; if a drawing or blue print, its drawing number, revision date, and number of sheets; its present location and custodian, and to identify each person who presently, and at all relevant times, had custody, control or access. If a copy of the document will be provided voluntarily, its should be attached and/or included with the Answers to these Interrogatories it is provided in answer to should be identified. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

(h) "Written statement" shall mean: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical or other recording or a transcript thereof, which is a substantially verbatim recital of an oral statement given by the person making it and contemporaneously recorded or preserved or stored in or on any type of recording, tape, film or electronic memory device.

(i) "Oral statement" shall mean an oral utterance made by any person, at any time, concerning the liability arising out of the subject matter of this action.

FURTHER INSTRUCTION

(a) In the event that exact information requested in any of these Interrogatories is not available or cannot be ascertained at this time, please answer such Interrogatory with the information available, using estimates or approximations where necessary, and indicate that such estimates or approximations have been used.

(b) In the event that information requested in these Interrogatories is not available or cannot be ascertained at the time of answering these Interrogatories, but such information becomes available or is ascertained thereafter and prior to trial of this case, please submit Supplemental Answers hereto upon such occurrence.

(c) The party propounding these Interrogatories reserves the right to serve further Interrogatories or sets of Interrogatories dealing with subjects covered herein or with subjects not covered herein.

(d) If the information furnished herein is not within the personal knowledge of the person who signs the Affidavit under oath answering these Interrogatories, then and in that event, identify each such other person who assisted and participated in preparing or supplying any of the information given in the Answers to or replied upon in preparing the Answers to these Interrogatories.

(e) Attention is directed to the fact that a copy of the "Notice of Service of Interrogatories", which was filed with the Prothonotary, has been mailed to all other counsel of record in this case. You are required, pursuant to Rule No. 4006 (a)(2) of the Rules of Civil Procedure, to file the original with the Prothonotary, and to serve a copy of the Answers to these Interrogatories upon every party to this action.

(f) All Interrogatories which request that you attach copies of statements or documents (including photographs) with your Answers are a request for production of documents under the provisions of Pa. R.C.P. No. 4009.

(g) Number. Gender. Tense. The singular shall include the plural, and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future. [See Pa. R.C.P. No. 102].

INTERROGATORIES

1. Do you contend that the demonstration project described in the Operating Agreement was not successful? If so, state the factual basis for this allegation and identify all documents that support the same.

Answer:

2. Describe in detail every communication CTI had with E&L regarding E&L's provision of ash or flyash under the Operating Agreement. For each such communication, identify: (a) the date of the communication; (b) the manner or means by which it was made (e.g. in person, by telephone, in writing, etc.); (c) identify each person who made the communication; (d) identify each person who received the communication; (e) describe in detail the full content of the communication; and (f) identify all documents which record, relate or refer to the communication.

Answer:

3. What monetary damages do you intend to claim of E&L in this lawsuit? Describe with particularity, (a) the amount of damage you intend to claim, (b) how you computed each element of damages, (c) how each element of damage was caused by E&L, and (d) identify all documents that relate to your claimed damages.

Answer:

4. Identify each and every factual witness that you intend to call, or that you expect may be called, at the trial of this case. For each witness identified, provide: (a) the witness' current address, and (b) a summary of the testimony that the witness is expected to give at trial.

Answer:

5. Identify each and every expert witness that you intend to call at the trial of this case. For each expert witness identified, provide, pursuant to Pennsylvania Rule of Civil Procedure 4003.5, (a) the subject matter on which the expert is expected to testify, (b) the substance of the facts and opinions to which the expert is expected to testify, and (c) a summary of the grounds for each opinion.

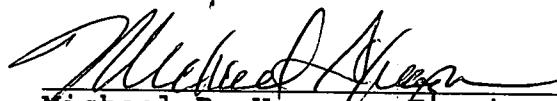
Answer:

6. Has CTI computed the number of cubic yards of dredged materials delivered to the Bark Camp Site utilizing pre- and post-dredging surveys as described in the Operating Agreement? If so, please provide: (a) the results of those surveys; (b) the persons or parties performing those surveys; (c) the dates when those surveys were performed; and (d) the tonnage of dredged material delivered and placed at the Bark Camp Site in accordance with the survey.

Answer:

7. Identify the tonnage of dredged material delivered to the Bark Camp Site from the inception of the Operating Agreement. In connection therewith, identify: (a) the method used in determining said tonnage; (b) the individual or entity calculating the tonnage; (c) any individuals or entities to which reports as to the tonnage were submitted; and (d) identify all documents which record, relate or refer to dredged material delivered to the Bark Camp Site.

Answer:



Michael P. Yeager, Esquire  
110 N. 2<sup>nd</sup> Street, P.O. Box 752  
Clearfield, PA 16830  
Attorney for Additional Defendant,  
E & L Brokerage, Inc.

Dated: April 1, 2001

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Additional Defendant E & L Brokerage, Inc.'s First Set of Interrogatories Directed to Defendant, Consolidated Technologies, Inc. via first class mail upon the following:

Marshall Walthew  
Michael S. Doluisio  
DECHEART PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attorneys for Consolidated Technologies, Inc.

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for E & L Brokerage, Inc.  
Additional Defendant

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

MUNICIPAL ASH MANAGEMENT, INC. :

-vs- : No. 01 - 1019 - CD

CONSOLIDATED TECHNOLOGIES, INC.:

CONSOLIDATED TECHNOLOGIES, INC.:

**FILED**

-vs- : BENEFICIAL ASH MANAGEMENT, INC.:

JAN 16 2002

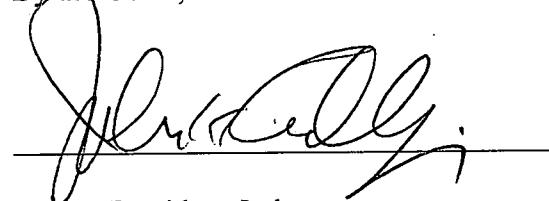
E & L BROKERAGE, INC., AND : E.T.R. ENTERPRISES, INC. :

William A. Shaw  
Prothonotary

**ORDER**

NOW, this 16<sup>th</sup> day of January, 2002, following argument and briefs into Preliminary Objections filed on behalf of Plaintiff above-named to Defendant's Answer with New Matter and Counterclaim, it is the ORDER of this Court that said Objections be and are hereby dismissed without prejudice and Plaintiff granted permission to raise them again following completion of discovery.

By the Court,



President Judge

**FILED**

Q13:38  
JAN 16 2002

1cc Amy Krager  
1cc Amy Matthew

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

MUNICIPAL ASH MANAGEMENT, INC. :

-vs- : No. 01 - 1019 - CD

CONSOLIDATED TECHNOLOGIES, INC.:

CONSOLIDATED TECHNOLOGIES, INC.:

-vs- : 

JAN 16 2002

BENEFICIAL ASH MANAGEMENT, INC.:

E & L BROKERAGE, INC., AND : 

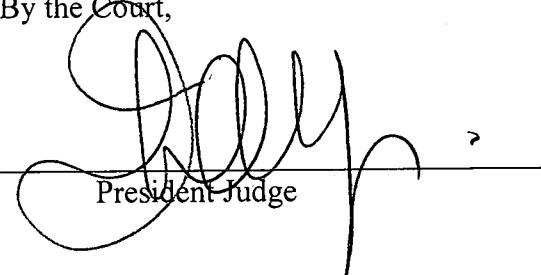
E.T.R. ENTERPRISES, INC. :

O R D E R

NOW, this 16<sup>th</sup> day of January, 2002, following argument and briefs into Preliminary Objections filed on behalf of Additional Defendants above-named to Complaint against Additional Defendants, it is the ORDER of this Court that said Objections be and are hereby dismissed without prejudice as to Beneficial Ash Management, Inc. and E & L Brokerage, Inc. and Plaintiff granted permission to raise them again following completion of discovery; and said Objections be and are hereby continued as to E.T.R. Enterprises, Inc. until completion of discovery with the right on the part of Plaintiff or Additional Defendant E.T.R. Enterprises, Inc. to request further argument.

By the Court,

President Judge



FILED

013:38 AM  
JAN 16 2002

cc Atty Keager  
cc Atty Mathews

William A. Shaw  
Prothonotary

*[Signature]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

MUNICIPAL ASH MANAGEMENT, INC. :

-vs- : No. 01 - 1019 - CD

CONSOLIDATED TECHNOLOGIES, INC.:

CONSOLIDATED TECHNOLOGIES, INC.:

**FILED**

BENEFICIAL ASH MANAGEMENT, INC.:

JAN 16 2002

E & L BROKERAGE, INC., AND : William A. Shaw

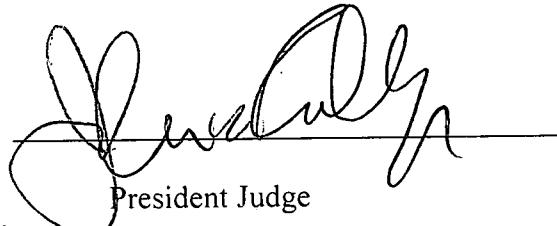
Prothonotary

E.T.R. ENTERPRISES, INC. :

**ORDER**

NOW, this 16<sup>th</sup> day of January, 2002, following argument and briefs into Preliminary Objections filed on behalf of Plaintiff above-named to Complaint against Additional Defendants, it is the ORDER of this Court that said Objections be and are hereby dismissed without prejudice and Plaintiff granted permission to raise them again following completion of discovery.

By the Court,



President Judge

**FILED**

1cc Atty Kager  
01/30/02  
JAN 16 2002  
1cc Atty Walker

William A. Shaw  
Prothonotary

*est*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. : No. 01 - 1019 - CD  
Plaintiff :  
vs : Type of Case: Civil  
: Type of Pleading: PLAINTIFF'S  
CONSOLIDATED TECHNOLOGIES, INC. : FIRST SET OF REQUESTS FOR  
Defendant : PRODUCTION OF DOCUMENTS  
: DIRECTED TO DEFENDANT,  
: CONSOLIDATED TECHNOLOGIES,  
: INC.  
: Filed on behalf of:  
CONSOLIDATED TECHNOLOGIES, INC. : PLAINTIFF, Municipal Ash  
: Management, Inc. AND  
: ADDITIONAL DEFENDANTS,  
: Beneficial Ash Management,  
: Inc., E & L Brokerage, Inc.  
: and E.T.R. Enterprises,  
vs :  
BENEFICIAL ASH MANAGEMENT, INC. :  
Inc. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants : Counsel of Record for these  
: Parties:  
: Michael P. Yeager, Esq.  
: Supreme Court No.: 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-9611

FILED

APR 01 2002

01/21/02  
William A. Shaw  
Prothonotary

9/28

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC.	:	
Plaintiff	:	
vs	:	
CONSOLIDATED TECHNOLOGIES, INC.	:	
Defendant	:	
	:	No. 01 - 1019 - CD
<hr/>		
CONSOLIDATED TECHNOLOGIES, INC.	:	
vs	:	
BENEFICIAL ASH MANAGEMENT, INC.	:	
E & L BROKERAGE, INC., and	:	
E.T.R. ENTERPRISES, INC.,	:	
Additional Defendants	:	

Pursuant to applicable Pennsylvania Rules of Civil Procedure, Plaintiff, Municipal Ash Management, Inc. ("MAM" requests that Defendant, Consolidated Technologies, Inc. ("CTI") produce for inspection and copying the documents described herein that are in CTI's possession, custody or control. Production shall be made within 30 days of the date of service of this Request for Production of Documents, and shall take place at the offices of Michael P. Yeager, Esquire, 110 North Second Street, P.O. Box 752, Clearfield, PA 16830, or at such other time and place that the parties may agree.

INSTRUCTIONS

A. Each request is to be responded to independently and each numbered response is to be forth separately.

B. If a requested document was, or is no longer, in your possession or subject to your control, or is no longer in existence, state whether any such document is:

1. missing or lost;
2. destroyed;
3. transferred to others; or
4. otherwise disposed of

In the case of any such instances, also set forth the surrounding circumstances and any authorization for the latter three dispositions; state the date or best approximate date of any such disposition and, if known, the author, subject matter, location and custodian of any such documents.

C. These requests include the production of all nonidentical copies, inclusive of drafts and of copies upon which any notes or notations have been made.

D. If you object to disclosing some or all of the contents of any documents on grounds of privilege, include in a statement identifying such document or portion of the document the following information:

1. The nature of the privilege which is being claimed. If the privilege is being asserted in connection with a claim or defense governed by federal or state law, indicate the federal or state privilege being invoked;
2. The type of document(s);
3. Without revealing privileged information, the general subject matter of the document(s)
4. The date of the document(s)
5. The author and addressee of the document(s); and
6. Where not apparent, the relationship of the author and addressee to each other.

E. If you encounter any ambiguity in construing a request, definition, or instruction relevant to the request, set forth the matter deemed "ambiguous" and set forth the construction chosen or used in responding to the request.

#### DEFINITIONS

The definitions set forth in MAM's First Set of Interrogatories Directed to Defendant, Consolidated Technologies, Inc. shall apply to these documents requests.

Document Requests

1. All documents identified or that you were asked to identify in MAM's First Set of Interrogatories.
2. CTI's Articles of Incorporation.
3. CTI's Bylaws.
4. Minutes of all CTI board meetings.
5. All CTI Financial Statements, bank records and Federal, State and local tax returns.
6. All correspondence to parties to which financial statements were directed.
7. All documents reflecting or relating to CTI's initial capitalization.
8. All documents reflecting or relating to CTI's ownership structure.
9. All documents including, but not limited to, contracts, reflecting or relating to any transaction involving the Operating Agreement.
10. All correspondence between CTI and other parties relating to the Operating Agreement.
11. All documents relating to the Operating Agreement included, but not limited to, all documents reflecting or relating to the negotiation of the Operating Agreement.
12. All documents or contracts reflecting or relating to

CTI's operations at the Bark Camp Site.

13. All documents or contracts reflecting or relating to CTI's operations at any other sites related to the Bark Camp operation.

14. All CTI's detailed ledgers involving any business activity engaged in by CTI.

15. All payroll tax returns including IRS forms W-3 and 941.

16. All IRS Form 1099 and 1096 forms issued by CTI.

17. All depreciation schedules prepared by or on behalf of CTI.

18. All documents or contracts for transportation services relating to the operations contemplated by the Operating Agreement.

19. All documents or contracts relating to any commodities secured by CTI for the Bark Camp Site including, but not necessarily limited to, ash, coal flyash, municipal ash, dredge or dredged material, lime and kiln dust.

20. All documents or contracts relating to any commodities secured by CTI at any other site relating to the Bark Camp operation including, but not necessarily limited to, ash, coal flyash, municipal ash, dredge or dredged material, lime and kiln

dust.

21. All documents or reports including, but not limited to, tonnage reports that CTI supplies to all entities, whether governmental or otherwise, relating to the operations contemplated by the Operating Agreement.

22. All documents or reports including, but not limited to, tonnage reports that CTI receives from all sources whether governmental or otherwise, relating to the operations contemplated by the Operating Agreement.

23. All permits utilized or otherwise necessary by or for CTI's business or services described in answer to MAM's First Set of Interrogatories Directed to Defendant, CTI.

24. All bonds or bonding documents currently or previously in place relating to CTI's business or services described in answer to MAM's First Set of Interrogatories Directed to Defendant, CTI.

25. All documents reflecting or relating to your claim to damages in this lawsuit.

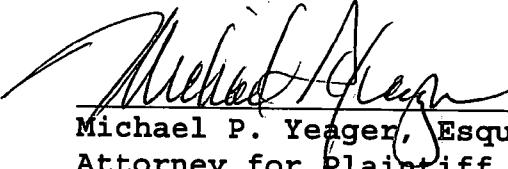


Michael P. Yeager, Esquire  
110 N. 2<sup>nd</sup> Street, P.O. Box 752  
Clearfield, PA 16830  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiff's First Set of Requests for Production of Documents Directed to Defendant, Consolidated Technologies, Inc. via first class mail upon the following:

Marshall Walthew  
Michael S. Doluisio  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
Attorneys for Consolidated Technologies, Inc.

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. : No. 01 - 1019 - CD  
Plaintiff :  
vs : Type of Case: Civil  
: Type of Pleading: ADDITIONAL  
CONSOLIDATED TECHNOLOGIES, INC. : DEFENDANTS' ANSWER, NEW  
Defendant : MATTER & COUNTERCLAIM  
: Filed on behalf of:  
CONSOLIDATED TECHNOLOGIES, INC. : PLAINTIFF, Municipal Ash  
: Management, Inc. AND  
: ADDITIONAL DEFENDANTS,  
: Beneficial Ash Management,  
: Inc., E & L Brokerage, Inc.  
: and E.T.R. Enterprises, Inc.  
: Additional Defendants : Counsel of Record for these  
: Parties:  
: : Michael P. Yeager, Esq.  
: Defendants : Supreme Court No.: 15587  
: : P.O. Box 752  
: : 110 North Second Street  
: : Clearfield, PA 16830  
: : (814) 765-9611

FILED

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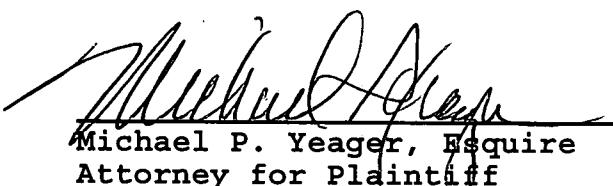
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William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. :  
Plaintiff :  
:  
vs :  
:  
CONSOLIDATED TECHNOLOGIES, INC. :  
Defendant :  
:  
: No. 01 - 1019 - CD  
:  
:  
CONSOLIDATED TECHNOLOGIES, INC. :  
:  
vs :  
:  
:  
BENEFICIAL ASH MANAGEMENT, INC. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants :

NOTICE TO PLEAD

In accordance with Rules 1026 and 1361 of the Pennsylvania  
Rules of Civil Procedure, you are hereby notified to plead to the  
within Additional Defendants' New Matter and Counterclaim within  
twenty (20) days from service hereof or a default judgment may be  
entered against you.



\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. :  
Plaintiff :  
: :  
vs :  
: :  
CONSOLIDATED TECHNOLOGIES, INC. :  
Defendant :  
: :  
: No. 01 - 1019 - CD

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: :  
CONSOLIDATED TECHNOLOGIES, INC. :  
: :  
vs :  
: :  
: :  
BENEFICIAL ASH MANAGEMENT, INC. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants :

ADDITIONAL DEFENDANTS' ANSWER

COME NOW, the Additional Defendants, BENEFICIAL ASH MANAGEMENT, INC. ("BAM"), E & L BROKERAGE, INC. ("E&L") and E.T.R ENTERPRISES, INC. ("ETR") by and through their attorney, Michael P. Yeager, Esquire, and file the within Answer, New Matter and Counterclaim.

1. Admitted.
2. Admitted.

BREACH OF CONTRACT AGAINST BAM: COAL ASH

3. Admitted in part, denied in part. Provisions of the Operating Agreement can speak for themselves. Defendants' interpretation of the same is otherwise denied with respect to

BAM's responsibility thereunder. On the contrary, BAM was not necessarily to be responsible for providing all coal flyash to the Bark Camp Site. Furthermore, BAM has been advised on various occasions by Defendant that further deliveries of coal flyash would not be accepted at the Bark Camp Site.

4. Denied. It is denied that BAM has failed to provide the coal ash required under the Operating Agreement. On the contrary, BAM has been willing to supply the necessary coal flyash to the Bark Camp Site; but has been advised by Defendant on various occasions that further deliveries of coal flyash would not be accepted at the Bark Camp Site. Otherwise, after reasonable investigation BAM is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 4 of Defendant's Complaint against Additional Defendants and strict proof thereof is demanded at the trial of this case. Finally, the provisions of this paragraph plead a conclusion of law to which no response is required.

5. Admitted in part and denied in part. Although it is admitted that various written correspondence from Defendant was received by BAM relative to the supply of coal flyash at the Bark Camp Site, it is denied that BAM was otherwise in default relative to the Operating Agreement. Provisions of the Operating Agreement will otherwise speak for themselves and should be considered in their entirety. BAM also incorporates its

responses to Paragraphs 3 and 4 above.

6. Admitted in part, denied in part. BAM incorporates its responses to Paragraph 3, 4 and 5 above. Otherwise, Defendants' interpretation of the Operating Agreement is specifically denied.

7. Denied. BAM incorporates responses to Paragraphs 2 through 5 above. Otherwise, after reasonable investigation, BAM is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 7 of Defendant's Complaint against Additional Defendants with the same being specifically denied and strict proof thereof is demanded at the trial of this case.

WHEREFORE, BAM respectfully requests that judgment be entered in its favor and as against Defendant and for such other and further relief as the court deems just.

BREACH OF CONTRACT AGAINST E&L: BEST EFFORTS

8. Denied. The terms and conditions of the Operating Agreement with respect to E & L are irrelevant and can speak for themselves with regard to obligations of E&L pursuant to the Operating Agreement. Furthermore, all such provisions should be considered in their entirety; and Defendants interpretation of the same is denied.

9. Denied. The averments contained in Paragraph 9 of Defendant's Complaint against Additional Defendants are irrelevant. BAM otherwise denies that it was a party to such a

contract with American Ref-Fuel Company specifically with regard to the supply of ash. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph with the same being specifically denied and strict proof thereof is demanded at the trial of this case.

10. Denied. E&L specifically denies that it has failed to use its best efforts to make the demonstration project successful. On the contrary, E&L believes that the demonstration project was, in fact, successful and that its obligations pursuant to the Operating Agreement were accordingly met in all respects.

11. Denied. After reasonable investigation E&L is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 11 of Defendant's Complaint against Additional Defendants with the same being specifically denied and strict proof thereof being demanded at this case.

WHEREFORE, E&L respectfully requests that judgment be entered in its favor and as against Defendant and for such other and further relief as the court deems just.

PIERCING THE CORPORATE VEIL AGAINST BAM, E&L & ETR

12. Denied. It is specifically denied that MAM, BAM, E&L and ETR operate as a single entity. Otherwise, the allegations

contained in Paragraph 12 of Defendant's Complaint against Additional Defendants plead conclusions of law to which no response is required.

13. Admitted in part, denied in part. Although it is admitted that MAM, BAM, E&L and ETR. are controlled by Ernest T. Rosselli; and that Mr. Rosselli signed the Operating Agreement on behalf of MAM, BAM and E&L as well as various other contracts affecting those corporate entities; it is specifically denied that said entities operated as a single entity. On the contrary, said companies including ETR operate independently and perform independent functions pursuant to the Operating Agreement with ETR not being a party to that Agreement nor performing any functions thereunder. Otherwise, after reasonable investigation, MAM, BAM, E&L and ETR are without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph and the same are specifically denied and strict proof thereof is demanded at the trial of this case.

14. Admitted.

15. Admitted.

16. Admitted in part, denied in part. It is admitted that each of the named parties signed the Operating Agreement regarding the operation of the Bark Camp Site; and all of the parties to the Operating Agreement did perform functions at the Bark Camp Site. However, the Operating Agreement can speak for

itself. Otherwise, after reasonable investigation, MAM, BAM, E&L and ETR are without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 16 of Defendant's Complaint against Additional Defendants with the same being specifically denied and strict proof thereof is demanded at the trial of this case. Finally, portions of such Paragraph 16 plead conclusions of law to which no response is required.

17. Denied. After reasonable investigation, MAM, BAM, E&L and ETR are without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 17 of Defendant's Complaint against Additional Defendants with regard to their "information and belief" and strict proof thereof is demanded at the trial of this case. Otherwise, said parties deny that corporate formalities as among the various companies are routinely ignored; and on the contrary, those formalities are regularly maintained and the affairs and funds of each of said companies are not significantly intermingled.

18. Admitted in part, denied in part. Although it is admitted that Mr. Rosselli has signed other agreements or contracts entered into by BAM, E&L or ETR, remaining allegations as to intent to reallocate to MAM's revenue stream are denied. Otherwise, the Agreement of September 29, 1999 is irrelevant and the provisions of the same (Defendant's Exhibit C") can speak for

themselves.

19. Denied. The allegations contained in Paragraph 19 of Defendant's Complaint against Additional Defendant plead a conclusion of law to which no response is required.

WHEREFORE, MAM, BAM, E&L and ETR request that the Court declare said companies to be separate and distinct enterprises without joint responsibility for the liabilities of others, and for such other and further relief as the Court deems just.

BREACH OF CONTRACT AGAINST E&L AND ETR: COAL ASH

20. E&L and ETR incorporate responses to Paragraphs 1 through 20 of Defendant's Complaint against Additional Defendants.

21. Denied. The allegations contained in Paragraph 21 of Defendant's Complaint Against Additional Defendants plead a conclusion of law to which no response is required.

WHEREFORE, MAM, BAM, E&L and ETR request that the Court declare said companies to be separate and distinct enterprises without joint responsibility for the liabilities of others, and for such other and further relief as the Court deems just.

BREACH OF CONTRACT AGAINST BAM AND ETR: BEST EFFORTS

22. E&L and ETR incorporate responses to Paragraphs 1 through 21 of Defendant's Complaint against Additional Defendants.

23. Denied. The allegations contained in Paragraph 23 of Defendant's Complaint Against Additional Defendants plead a conclusion of law to which no response is required.

WHEREFORE, MAM, BAM, E&L and ETR request that the Court declare said companies to be separate and distinct enterprises without joint responsibility for the liabilities of others, and for such other and further relief as the Court deems just.

NEW MATTER

1. Defendant's Complaint against Additional Defendants fails to state claims upon which relief can be granted.

2. Defendant's claims are barred in whole or in part because of Defendant's own material breaches of the Operating Agreement. A copy of the Agreement is attached to previous pleadings.

3. The Demonstration Project described in the Operating Agreement was, in fact, a success; and Defendant continues to conduct operations relating to the Operating Agreement at the Bark Camp Site.

4. BAM has delivered or otherwise attempted to deliver sufficient quantities of coal flyash to the Bark Camp Site all pursuant to the Operating Agreement.

5. Defendant has either restricted delivery of coal flyash from current BAM suppliers or has otherwise failed to communicate

with BAM with regard to potential new suppliers of such coal flyash.

6. Accordingly, Defendant has breached the Operating Agreement by failing to provide BAM with a predictable disposal point for coal flyash.

COUNTERCLAIM

BREACH OF CONTRACT: COAL ASH

7. Additional Defendant BAM incorporates previous Paragraphs 1 through 6 of the within New Matter and Counterclaim.

8. The breaches of the Operating Agreement by Defendant in failing to assure BAM of a predictable disposal point for coal flyash have resulted in significant disruptions in BAM's contract performances to secure such flyash.

9. Defendants' breaches have caused BAM to incur damages including the loss of revenue.

WHEREFORE, BAM respectfully requests that judgment be entered in its favor and against Defendant in an amount in excess of Twenty Thousand (\$20,000) Dollars together with interest, costs and such other and further relief as the Court deems just.

BREACH OF CONTRACT: AIR SPACE

10. Additional Defendant, E&L incorporates previous Paragraphs 1 through 9 of the within New Matter and Counterclaim.

11. Paragraph 5 of the Operating Agreement provides:

"...Starting with a subsequent non-demonstration project, all air space utilized in the dredged material operations of CTI shall obligate CTI to make payment to E&L the sum of Fifty (\$.50) Cents per cubic yard of dredged material delivered to the Bark Camp Site..."

12. Additional Defendant E&L believes and therefore avers that the demonstration project was completed and that the Bark Camp Site has subsequently received shipments of dredged materials for which E&L should be paid as provided in the Operating Agreement.

13. Defendants' breaches have caused E&L to incur damages including the loss of revenue.

WHEREFORE, E&L respectfully requests that judgment be entered in its favor and against Defendant in an amount in excess of Twenty Thousand (\$20,000) Dollars together with interest, costs and such other and further relief as the Court deems just.

Respectfully submitted:



Michael P. Yeager, Esquire  
Attorney for Plaintiff  
Municipal Ash Management, Inc.

VERIFICATION

I, ERNEST T. ROSELLI, President of Additional Defendants, Beneficial Ash Management, Inc. and E & L Brokerage, Inc., hereby affirm that the factual statements made in the foregoing Additional Defendants' Answer, New Matter and Counterclaim are true and correct to the best of my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.

  
Ernest T. Rosselli, President  
Beneficial Ash Management, Inc.  
E & L Brokerage  
Additional Defendants

Dated: March 29, 2002

CERTIFICATE OF SERVICE

I, Michael P. Yeager, hereby certify that I served a true and correct copy of the foregoing Additional Defendants' Answer, New Matter and Counterclaim via first class mail upon the following:

Marshall Walthew, Esquire  
Michael Doluisio, Esquire  
DECHERT PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793



\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff,  
Municipal Ash Management and  
Additional Defendants,  
Beneficial Ash Management,  
Inc., E & L Brokerage, Inc.,  
and E.T.R. Enterprises, Inc.

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. : No. 01 - 1019 - CD  
Plaintiff :  
vs : Type of Case: Civil  
: Type of Pleading: PLAINTIFF'S  
CONSOLIDATED TECHNOLOGIES, INC. : REPLY TO DEFENDANT'S NEW  
Defendant : MATTER & COUNTERCLAIM  
: Filed on behalf of:  
CONSOLIDATED TECHNOLOGIES, INC. : PLAINTIFF, Municipal Ash  
: Management, Inc. AND  
: ADDITIONAL DEFENDANTS,  
: Beneficial Ash Management,  
: Inc., E & L Brokerage, Inc.  
: and E.T.R. Enterprises, Inc.  
vs :  
BENEFICIAL ASH MANAGEMENT, INC. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants : Counsel of Record for these  
: Parties:  
: Michael P. Yeager, Esq.  
Defendants : Supreme Court No.: 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-9611

FILED

APR 01 2002

O.A. All No. C  
William A. Shaw  
Prothonotary *JK*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MUNICIPAL ASH MANAGEMENT, INC. :  
Plaintiff :  
: :  
vs :  
: :  
CONSOLIDATED TECHNOLOGIES, INC. :  
Defendant :  
: :  
: : No. 01 - 1019 - CD  
: :  
: :  
CONSOLIDATED TECHNOLOGIES, INC. :  
: :  
: :  
vs :  
: :  
: :  
BENEFICIAL ASH MANAGEMENT, INC. :  
E & L BROKERAGE, INC., and :  
E.T.R. ENTERPRISES, INC., :  
Additional Defendants :

PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER & COUNTERCLAIM

COMES NOW, Michael P. Yeager, Esquire, Attorney for  
Municipal Ash Management, Inc. ("MAM"), Plaintiff in the above  
matter, in reply to Defendant's New Matter and Counterclaim as  
follows:

NEW MATTER

1. Denied. Paragraph 1 of Defendant's New Matter pleads a  
conclusion of law to which no response is required. To the  
extent any such response is required, Plaintiff incorporates the  
allegations contained in its Complaint as if the same were more  
fully set forth at length herein.

2. Denied. Paragraph 2 of Defendant's New Matter pleads  
conclusions of law to which no response is required. To the  
extent any such response is required, Plaintiff specifically  
denies that any such "entities" operate or form a single legal

entity or that Plaintiff has breached the Operating Agreement or that any of the entities Defendant claims form a single legal entity materially breach the same. Otherwise after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph and strict proof thereof is demanded at the trial of this case.

3. Denied. Paragraph 3 of Defendant's New Matter pleads a conclusion of law to which no response is required.

Additionally, the Operating Agreement can speak for itself. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph and strict proof thereof is demanded at the trial of this case.

4. Denied. Paragraph 4 of Defendant's New Matter pleads a conclusion of law to which no response is required. Additionally, the Operating Agreement can speak for itself. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph and strict proof thereof is demanded at the trial of this case.

5. Denied. Paragraph 5 of Defendant's New Matter pleads a conclusion of law to which no response is required. Additionally, the Operating Agreement can speak for itself. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph and strict

proof thereof is demanded at the trial of this case.

COUNTERCLAIMS

PIERCING THE CORPORATE VEIL

6. Admitted.
7. Admitted in part, denied in part. While it is admitted that E & L Brokerage, Inc. ("E&L") and Beneficial Ash Management ("BAM") do have offices and principal places of business at 850 Leonard Street, Clearfield, PA 16830, the remaining allegations contained in Paragraph 7 of Defendant's Counterclaim are specifically denied. On the contrary, Plaintiff avers that it is not and does not act as the alter-ego of E&L and BAM. Otherwise, these remaining allegations plead a conclusion of law to which no response is required.
8. Denied. Plaintiff incorporates its response to Paragraph 7 to Defendant's Counterclaim. Additionally, allegations contained in Paragraph 8 of Defendant's Counterclaim plead a conclusion of law to which no response is required.
9. Admitted in part, denied in part. Although it is admitted that MAM, E & L and BAM are controlled by Ernest T. Rosselli; and that Mr. Rosselli, signed the Operating Agreement on behalf of each of the three companies as well as various other contracts affecting those corporate entities; it is specifically denied that said entities operate as a single entity. On the contrary, said companies operate independently and perform

independent functions pursuant to the Operating Agreement. Furthermore, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 9 of Defendant's Counterclaim especially with respect to the "experience of CTI"; and the same are specifically denied and strict proof thereof is demanded at the trial of this case.

10. Admitted.

11. Admitted.

12. Admitted in part, denied in part. It is admitted that each of the named parties signed the Operating Agreement regarding the operation at the Bark Camp Site; and all of the parties to the Operating Agreement do perform functions at the Bark Camp Site. However, the Operating Agreement can speak for itself. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 12 of Defendant's Counterclaim with the same being specifically denied and strict proof thereof being demanded at the trial of this case. Finally, portions of such Paragraph 12 plead conclusions of law to which no response is required.

13. Denied. After reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 13 of Defendant's Counterclaim with regard to their "information

and belief" and strict proof thereof is demanded at the trial of this case. Otherwise, Plaintiff denies that corporate formalities as among the three companies are routinely ignored; and on the contrary, those formalities are regularly maintained and the affairs and funds of each of the three companies are not significantly intermingled.

14. Admitted in part, denied in part. Although it is admitted that Mr. Rosselli has signed other agreements or contracts entered into by BAM, E & L and MAM, remaining allegations as to an intent to reallocate to MAM's revenue stream are denied. Otherwise, the Agreement of September 29, 1999 (Defendant's Exhibit C) is irrelevant and the provisions of same can speak for themselves.

15. Denied. The allegations contained in Paragraph 15 of Defendant's Counterclaim plead a conclusion of law to which no response is required.

WHEREFORE, Plaintiff respectfully requests that the Court maintain separate entities as to MAM, E & L and BAM because the same are not a single enterprise and each company is not jointly responsible for the liabilities of the others.

BREACH OF CONTRACT: COAL ASH

16. Denied. Provisions of the Operating Agreement with respect to BAM are irrelevant. Plaintiff also denies that BAM is or acts as Plaintiff's "alter-ego"; that these parties can be

characterized as the entity (i.e. Plaintiff/BAM); and that the obligations of BAM pursuant to the Operating Agreement can also be considered obligations of Plaintiff. The terms of the Operating Agreement can speak for themselves and should be considered in their entirety. Otherwise, with regard to obligations of BAM pursuant to the Operating Agreement, Defendant's interpretation of the Operating Agreement is denied with respect to BAM's obligations. On the contrary, BAM was not necessarily to be responsible for providing all coal fly ash at the Bark Camp Site and has supplied sufficient coal fly ash to the Bark Camp Site.

17. Denied. Plaintiff incorporates its responses to Paragraph 16 of Defendant's Counterclaim. Otherwise, BAM's performance pursuant to the Operating Agreement is irrelevant. Plaintiff, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 17 of Defendant's Counterclaim with the same being specifically denied and strict proof thereof is demanded at the trial of this case.

18. Denied. Plaintiff incorporates its responses to Paragraphs 16 and 17 of Defendant's Counterclaim; and after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in such paragraph with the same being specifically denied and strict proof thereof is

demanded at the trial of this case. Otherwise, portions of those averments plead conclusions of law to which no response is required.

19. Denied. The terms and conditions of the Operating Agreement can speak for themselves and should be considered in their entirety. Defendant's interpretation of the same is denied. Plaintiff also incorporates its responses to Paragraphs 16, 17 and 18 of Defendant's Counterclaim. Otherwise, the averments contained in Paragraph 19 of Defendant's Counterclaim plead conclusions of law to which no response is required.

20. Denied. Plaintiff incorporates its responses to Paragraph 16, 17 and 18 of Defendant's Counterclaim. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 20 of Defendant's Counterclaim with the same being specifically denied and strict proof thereof is demanded at the trial of this case.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and as against Defendant in an amount of in excess of Twenty Thousand (\$20,000) Dollars together with interest and costs of suit.

BREACH OF CONTRACT - BEST EFFORTS

21. Denied. Plaintiff denies that E & L is or acts as Plaintiff's alter-ego; that these parties can be characterized as the same entity; and that obligations of E & L pursuant to the Operating Agreement can also be considered obligations of Plaintiff. Plaintiff incorporates its response to Paragraph 9 of Defendant's Counterclaim. Provisions of the Operating Agreement with respect to E&L are irrelevant. Otherwise, the terms and conditions of the Operating Agreement can speak for themselves with regard to obligations of E & L pursuant to the Operating Agreement.

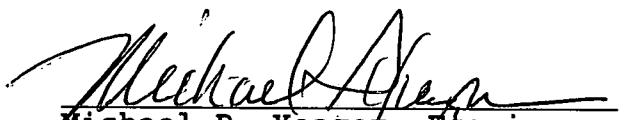
22. Denied. The averments contained in Paragraph 22 of Defendant's Counterclaim are irrelevant. Plaintiff denies that it was party to such a contact with American Ref-Fuel Company specifically with regard to the supply of ash. Otherwise, after reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 22 of Defendant's Counterclaim with the same being specifically denied and strict proof thereof is demanded at the trial of this case.

23. Denied. Plaintiff denies that E & L is or acts as Plaintiff's "alter-ego"; that these parties can be characterized as the same entity (Plaintiff/E & L); and that the obligations of E & L pursuant to the Operating Agreement can also be considered obligations of Plaintiff. Plaintiff incorporates its response to

Paragraphs 21 and 22 above. After reasonable investigation, Plaintiff is also without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 23 of Defendant's Counterclaim with same being specifically denied and strict proof thereof being demanded at the trial of this case. Finally, said provisions also plead conclusions of law to which no response is required.

24. Denied. After reasonable investigation, Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 24 of Defendant's Counterclaim with the same being specifically denied and strict proof thereof being demanded at the trial of this case.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and as against Defendant in an amount of in excess of Twenty Thousand (\$20,000) Dollars together with interest and costs of suit.



Michael P. Yeager, Esquire  
Attorney for Plaintiff  
Municipal Ash Management, Inc.

VERIFICATION

I, ERNEST T. ROSELLI, President of Plaintiff, Municipal Ash Management, Inc., hereby affirm that the factual statements made in the foregoing Municipal Ash Management, Inc.'s Reply to Defendant's New Matter and Counterclaims are true and correct to the best of my personal knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn falsification to authorities.

  
Ernest T. Rosselli, President  
Municipal Ash Management, Inc.

Dated: 3/29/02

CERTIFICATE OF SERVICE

I, Michael P. Yeager, hereby certify that I served a true and correct copy of the foregoing Plaintiff's Reply to Defendant's New Matter and Counterclaim via first class mail, upon the following:

Marshall Walthew, Esquire  
Michael Doluisio, Esquire  
DECHEART PRICE & RHOADS  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793



\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff,  
Municipal Ash Management and  
Additional Defendants,  
Beneficial Ash Management,  
Inc., E & L Brokerage, Inc.,  
and E.T.R. Enterprises, Inc.

Dated: April 1, 2002

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, CIVIL DIVISION

MUNICIPAL ASH  
MANAGEMENT, INC.,

Plaintiff

DOCKET NUMBER  
01-1019-CD

v.

CONSOLIDATED  
TECHNOLOGIES, INC.,

Defendant

**FILED**

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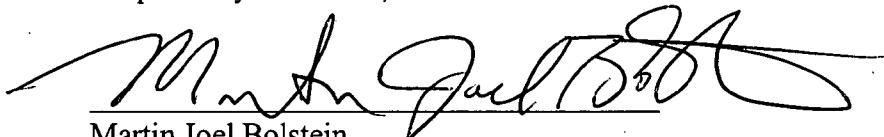
William A. Shaw  
Prothonotary

**ENTRY OF APPEARANCE**

**TO THE PROTHONOTARY:**

Undersigned counsel previously filed an Entry of Appearance on July 31, 2001, on behalf of Consolidated Technologies, Inc. This Amended Entry of Appearance is being filed to reflect counsel's new firm, address, telephone number and fax number.

Respectfully submitted,



Martin Joel Bolstein  
Pa. I.D. Number 50159  
FOX, ROTHSCHILD, O'BRIEN & FRANKEL  
102 North Main Street  
P.O. Box 1589  
Doylestown, PA 18901  
(215) 345-7500 (phone)  
(215) 345-7507 (fax)

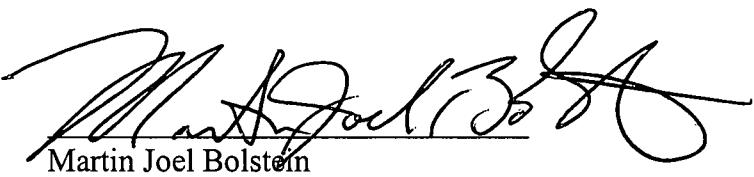
Attorney for Consolidated Technologies, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2002 I caused a copy of the foregoing Amended Entry of Appearance to be served upon the individual listed below by first class mail, postage prepaid:

Michael P. Yeager, Esquire  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830

Attorney for Plaintiff



Martin Joel Bolstein

**FILED**

NO  
cc

31144-764  
NOV 18 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Municipal Ash Management, Inc.,  
Plaintiff

\*

-vs-

\*

\* Docket No. 01-1019-CD

Consolidated Technologies, Inc.,  
Defendant

\*

Type of Pleading:  
Praecipe to Settle, Discontinue and  
End with Prejudice

Filed on Behalf of:  
Plaintiff:  
Municipal Ash Management, Inc.

Counsel of Record for  
This Party:

Michael P. Yeager  
Pa. I.D. No. 15587

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

SEP 11 2003

William A. Shaw  
Prothonotary/Clerk of Courts

**FOX ROTHSCHILD LLP**  
By: M. Joel Bolstein, Esquire  
Attorney I.D. No. 50159  
102 North Main Street, P. O. Box 1589  
Doylestown, PA 18901-0700

Attorneys for Defendant

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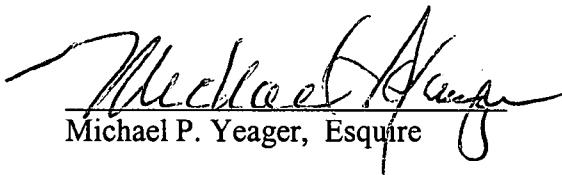
MUNICIPAL ASH MANAGEMENT, INC.,: COURT OF COMMON PLEAS OF  
Plaintiff, : CLEARFIELD COUNTY, PA  
vs. :  
: DOCKET NO. 01-1019-CD  
CONSOLIDATED :  
TECHNOLOGIES, INC., :  
Defendant. :  

---

**PRAECIPE TO SETTLE, DISCONTINUE & END**

TO THE PROTHONOTARY:

Please mark this matter **SETTLED, DISCONTINUED & ENDED WITH PREJUDICE**, upon payment of your costs only.



Michael P. Yeager, Esquire

Attorney for Municipal Ash  
Management, Inc.



M. Joel Bolstein, Esquire

Attorneys for Consolidated  
Technologies, Inc.

Dated: 9/10/, 2003

Dated: 9/9/, 2003

FILED

5CC

Atty Yeager

09/30/03

SEP  
11 2003

5 Cert. of Disc. to Atty

William A. Shaw  
Prothonotary/Clerk of Courts

copy to CIA

**COPY**

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Municipal Ash Management, Inc.**

**Vs.**  
**Consolidated Technologies, Inc.**

**No. 2001-01019-CD**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on September 11, 2003, marked:

Settled, Discontinued and Ended with Prejudice

Record costs in the sum of \$80.00 have been paid in full by Michael P. Yeager, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 11th day of September A.D. 2003.

---

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Municipal Ash Management, Inc.,  
Plaintiff

\*

-vs-

\*

Docket No. 01-1019-CD

Consolidated Technologies, Inc.,  
Defendant

\*

\*

Type of Pleading:  
Certificate of Service

Filed on Behalf of:

Plaintiff:

Municipal Ash Management, Inc.

Counsel of Record for  
This Party:

Michael P. Yeager  
Pa. I.D. No. 15587

110 North Second Street  
P. O. Box 1320  
Clearfield, PA 16830  
(814) 765-9611

**FILED**

SEP 12 2003

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Municipal Ash Management, Inc.,  
Plaintiff

\*

\*

-vs-

\*

Docket No. 01-1019-CD

\*

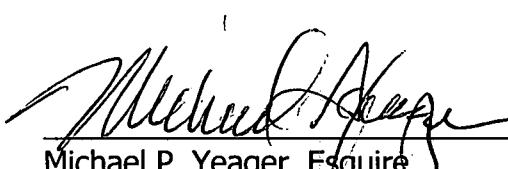
Consolidated Technologies, Inc.,  
Defendant

\*

**CERTIFICATE OF SERVICE**

This is to certify that on the 11th day of September, 2003, the undersigned served a true and correct copy of the Praeclipe to Settle, Discontinue and End with Prejudice in the above captioned matter upon counsel for Defendant. Such documents were served via United States First Class Mail upon the following:

Martin Joel Bolstein, Esquire  
FOX Rothschild, LLP  
102 North Main Street  
P.O. Box 1589  
Doylestown, PA 18901

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for PLAINTIFF:  
Municipal Ash Management, Inc.

FILED NO C  
01274784  
SEP 12 2003  
Clerk

William A. Shaw  
Prothonotary/Clerk of Courts