



**Count Seven for Declaratory Relief**

24.

In late 2008, the Jefferson Parish Recycling Committee, a group of private citizens appointed to make recommendations regarding the recycling in Jefferson Parish, recommended to the Parish Administration and the Environmental Affairs Department that they seek proposals to promote recycling and other beneficial use of yard and woody waste to reduce the amount of waste landfilled by the Parish at the Parish landfill. This recommendation was designed to meet State recommendations that communities reduce waste sent to landfills by 25%.

25.

Pursuant to this recommendation, the Jefferson Parish Environmental Affairs Department drafted a request for proposal (“RFP”) to solicit bids to meet the recommendations of the JP Recycling Committee. The RFP prepared by the Environmental Affairs Department was designed to reduce waste to be landfilled by soliciting recycling and other beneficial reuse of yard and woody waste, for example, composting, etc. The draft RFP was then required to be submitted to the two highest officials of the Jefferson Parish Administration, specifically to President Aaron Broussard (“Broussard”) and Chief Administrator Officer Tim Whitmer (“Whitmer”), at their request, for review and approval, which was a highly unusual procedure for an RFP of this nature.

26.

After the RFP was submitted to them for approval, Broussard and Whitmer returned the RFP to the Environmental Affairs Department with substantial changes and additions which vastly expanded and inexplicably altered its scope and purpose. In particular, where the original RFP sought merely to solicit proposals for the recycling and diversion of yard and woody waste

to other beneficial use to reduce the amount of waste sent to be landfilled to meet State recommended recycling goals, the draft version of the RFP returned by these Administration officials solicited proposals which would have the effect of diverting 100% of all waste currently being disposed of at the Parish Landfill to another location, serving no recycling purpose or goal as envisioned by the appointed Jefferson Parish Recycling Committee and/or the State's recommended recycling goals.

27.

Moreover, this revised RFP was completely inconsistent with the findings of the Parish's own advisors. Years earlier, the Parish had commissioned numerous studies by Camp Dresser McKee ("CDM"), the consultants for the Parish Landfill, on the long term waste disposal plans and utilization of the Parish Landfill. In 2002, CDM stated in its report "Evaluation of Landfill Expansion Alternatives": "JPL [Jefferson Parish Landfill] is one of the most valuable facilities owned by Jefferson Parish and as such should be maximized for long term use by the citizens who paid for it and benefit from it." CDM performed other studies, including a Master Plan for the Landfill, and made various recommendations to maximize use of the available airspace at the Parish Landfill which, if properly utilized could provide over 40 years of disposal capacity for the benefit of the residents and businesses of Jefferson Parish. On information and belief, and subject to certain volumes of waste moving to the Parish Landfill over time, the Landfill has a current value of millions and millions of dollars.

28.

The revised RFP was also inconsistent with the advice of the Parish's Environmental Affairs Department. In fact, the officials with the Environmental Affairs Department were completely surprised by the revised RFP and they objected to the changes authored by the

Administration due to the fact that the RFP completely abandoned the original purpose and intent of the RFP. The Environmental Affairs Department knew that the new RFP could result in the diversion of all waste to another landfill, effectively shuttering the Parish Landfill, which would clearly not be in the best interest of the Parish, but this advice was ignored by Broussard and Whitmer.

29.

In fact, it was the contrary recommendation of the Parish Landfill Engineer that the Parish should actually allow more disposal of waste from out of Parish sources, which would thereby increase the royalty revenues to the Parish under the Waste Management contract, and thereby significantly reduce the amount the citizens of Jefferson Parish would have to pay to dispose of their own waste. Broussard and Whitmer completely ignored this recommendation from the Parish's own Landfill Engineer.

30.

The officials of the Environmental Affairs Department also specifically advised the Administration that the changes to the RFP would completely frustrate the original purpose and intent of the Jefferson Parish Recycling Committee's recommendation as it would only move the disposal of waste from one landfill to another, doing nothing to help the Parish meet the State's recommendations to promote recycling and reduce the amount of waste sent to landfills by municipalities, but their advice was ignored.

31.

Ignoring the objections of the Parish Environmental Affairs Department and the contrary recommendation of the Parish's Landfill Engineer, the changes made to the RFP by Broussard and Whitmer were incorporated into the final version of the RFP, and in September 2008,

Jefferson Parish issued RFP No. 176. In its final form, RFP No. 176 was purposely worded so broadly that it solicited proposals to divert any type of waste in any quantity from the Parish landfill.

32.

When the top officials of the Environmental Affairs Department questioned Broussard and Whitmer as to why the RFP and its original intent had been so dramatically changed and broadened, they were told that the Administration wished to conduct a “fishing expedition.” On information and belief, Broussard and Whitmer knew that River Birch, Inc. (“River Birch”) was looking for an opportunity to obtain the Parish’s waste disposal business, and therefore they specifically designed the RFP in such a way that River Birch could respond with a proposal to take all Parish waste and divert it to its own landfill.

33.

From the outset, the issuance of this RFP was highly unusual and irregular, and violated normal procedures and Ordinances of Jefferson Parish. In particular, the interference in the RFP process by the Parish’s two highest officials, Broussard and Whitmer, was highly unusual and irregular. In addition, the advertisement process was abbreviated and rushed through. In fact, the Finance Director of Jefferson Parish was directly told by Broussard and Whitmer to “rush” the advertisement of the RFP, a request she thought was highly unusual, but which she followed due to their position of authority over her.

34.

Moreover, knowing that their efforts to modify this RFP would likely result in a response by River Birch to take all Parish waste and knowing that River Birch’s response would meet with strong opposition and highly embarrassing questions by the Environmental Affairs Department

and the Purchasing Department and others knowledgeable about the landfill operation, Broussard and Whitmer sought to control the evaluation process for the RFP. In this regard, the Administration, and specifically Whitmer, handpicked the members of the Evaluation Committee for the RFP and in doing so purposely excluded certain officials from the Evaluation Committee required by law. In particular, a representative of the Environmental Affairs Department, which was the department responsible for submitting the RFP, and a representative of the Purchasing Department were excluded, although representatives from both departments were required by Parish Ordinance to be on the Evaluation Committee. No Parish Council Resolution was obtained to authorize this variance from the Parish Ordinance, as required by law. Instead, the Administration appointed Parish Attorney, Tom Wilkinson, as chairman of the Evaluation Committee. One of the other two members of the Committee was another attorney from the Parish Attorney's office, David Fos, who was under the direct control and supervision of Wilkinson.

35.

None of the appointees on the Evaluation Committee had any expertise or experience whatsoever in environmental or landfill management and, in fact, the officials of the Environmental Affairs Department who had the requisite expertise were purposely excluded from the Evaluation Committee. As such, not only did the Evaluation Committee not have the necessary expertise to evaluate the RFP response, but the specific appointment of its members also assured that the Committee and the evaluation process would be under the direct control of Broussard, Whitmer, and Wilkinson. Consequently, the Evaluation Committee was not and could not have been independent and therefore would also not be able to conduct a fair and independent evaluation of the RFP responses.

36.

On December 9, 2009, River Birch submitted its response to RFP No. 176, in which it offered a contract which would result in the diversion of 100% of the waste from the Jefferson Parish Sanitary Landfill to River Birch Landfill, conditioned on Jefferson Parish permanently closing its landfill for the 25 year term of the agreement, and further conditioned on the Parish prematurely cancelling the contract with Waste Management to operate the Parish Landfill. The River Birch proposal was also conditioned on payment of a non-negotiable tipping fee which was significantly more than the tipping fee being charged by Waste Management under the existing contract.

37.

The response by River Birch to RFP No. 176 was beyond the scope of anything contemplated by the highest officials in Jefferson Parish's Environmental Affairs Department who originally drafted the RFP, and they were "shocked" and "very surprised" by the proposal submitted by River Birch. Moreover, these officials voiced objections to the River Birch proposal to Broussard and Whitmer, and to Wilkinson as chair of the Evaluation Committee, and advised the Administration that closing the Parish Landfill would be a waste of the Parish's most valuable multi million dollar asset and contrary to all long-term use studies the Parish had commissioned in the past, as well as the Landfill Master Plan.

38.

The Environmental Affairs Department officials also voiced concern that closing the Parish Landfill would give River Birch a monopoly on waste disposal in Jefferson Parish and would cause an increase in prices paid by the businesses and industries located in Jefferson Parish. The Environmental Affairs Department officials further advised the Administration and

the Evaluation Committee that further study and financial evaluation of the River Birch contract should be undertaken before recommending or rejecting the River Birch proposal.

39.

On January 14, 2009, only a few short weeks after having received the River Birch proposal, and despite the opposition and questions raised by Jefferson Parish's own Environmental Affairs Department, the illegally-constituted Evaluation Committee under the control of Broussard, Whitmer and Wilkinson recommended to the Parish Council that it accept the River Birch proposal, claiming that the River Birch proposal would result in "significant savings" to the Parish.

40.

In making this recommendation, the Evaluation Committee did not perform any financial analysis or evaluation comparing the River Birch contract to the current Waste Management contract, nor did the Committee obtain any credible or reliable information to support the statement that there would be "significant savings" to the Parish under the River Birch contract. In this regard, Broussard, Whitmer and Wilkinson specifically misled the Parish Council regarding the beneficial savings to be gained with the River Birch contract.

41.

Moreover, from the time the River Birch contract was first solicited in November, 2008, until the time it was approved on January 14, 2009, absolutely no comparison or cost savings analysis of the proposed River Birch contract and the current contract with Waste Management was done. Prior to the approval of the River Birch contract on January 14, 2009, even the officials of Jefferson Parish's own Environmental Affairs Department who were the most knowledgeable people concerning landfill operation were not asked to provide any information

to the Evaluation Committee or to the Administration comparing the cost of continuing the operation of the JP landfill and/or the Waste Management's contract with the Parish to operate the landfill versus closing the landfill and diverting 100% of the waste to River Birch.

42.

Following approval of the River Birch proposal by the Parish Council on January 14, 2009, the Jefferson Parish Administration proceeded to negotiate a contract with River Birch, despite the lack of any study or financial analysis to support the claim of "substantial cost savings" to the Parish with the River Birch contract, and despite the opposition and contrary advice of Jefferson Parish's own Environmental Affairs Department. However, the tipping fee demanded by River Birch in its proposal was not negotiated, thus ensuring that the revenue demands by River Birch would be paid by Jefferson Parish.

43.

Subsequently, on June 29, 2009, upon the advice of Broussard, Whitmer and Wilkinson, the Parish entered into a landfill operation contract with River Birch, which provided River Birch with the revenue it demanded, and also provided for the premature termination of the contract with Waste Management and complete cessation of operation of the Parish Landfill for the next 25 years as demanded by River Birch, thus ensuring elimination of any waste disposal competition for River Birch and effectively mothballing a multi million dollar asset owned by the Parish.

44.

Prior to approving the River Birch contract, Jefferson Parish's own Environmental Affairs Department specifically advised the Parish Administration that more time was needed for evaluation of the River Birch proposal, but their advice was ignored. They also advised the

Administration as to the limitations of the information available at that time and suggested that the Administration not proceed with the contract with River Birch until further study could be done, but this advice was also ignored. Despite this advice to slow the process down to allow more time for analysis and study, the Administration purposefully sped up and rushed the process of approval for the River Birch contract, and in the process neglected to conduct the proper analysis required by law.

45.

Even as of today, the Parish still does not know of any value or benefit in closing the Landfill for the next 25 years and does not have any reliable evidence to support that there are any savings, let alone “substantial savings,” to the Parish. In fact, no Parish official, other than Broussard, Whitmer and Wilkinson, all of whom resigned their positions amid scandal, has said or can say that there would be any savings with the River Birch contract over the next 25 years.

46.

Moreover, Parish officials have recently acknowledged in sworn testimony that there is no evidence to support a claim of savings with the River Birch contract. The only report even remotely addressing cost comparison between the Waste Management and River Birch contracts was a preliminary report done by the Landfill Engineer dated May 5, 2009, almost five months after the River Birch proposal was approved. However, the preliminary report by the Parish Landfill Engineer was incomplete and was not intended to provide a basis upon which to make a determination that Jefferson Parish would save money over the 25-year life of the River Birch contract, primarily because the report did not project costs beyond the year 2012, something which needed to be done in order to make a proper comparison of the Waste Management and River Birch contracts. Despite the preliminary nature of the report and other erroneous

assumptions in the report, which were acknowledged by the Landfill Engineer himself, certain Parish officials improperly “extrapolated” projected cost savings over the 25-year life of the River Birch contract in order to mislead the Parish Council and the public concerning alleged cost savings with the River Birch contract. However, the Parish Landfill Engineer, himself, admitted the report had limited reliability and he urged that more time and study was necessary.

47.

In fact, no one, including Jefferson Parish’s own Landfill Engineer, can say, even as of today, that Jefferson Parish would save money over the 25-year term of the contract with River Birch, as compared to the current contract with Waste Management. Parish officials have acknowledged in sworn testimony that there is no one in a better position or more competent than the Landfill Engineer, in terms of expertise and knowledge of the Landfill, who would be able to say that Jefferson Parish would save money by entering the contract with River Birch as compared to the current contract with Waste Management, and he is not able to make such a statement.

48.

Furthermore, during the process of “evaluating” the River Birch proposal, the Parish officials failed to consider other viable cost savings options, such as the vertical and/or horizontal expansion of the Parish landfill which was being recommended by CDM, the Parish’s independent landfill consultants, or amending the current contract to increase the royalties received by the Parish, which was recommended by the Parish’s Landfill Engineer, all of which would have resulted in substantial cost savings and/or substantial revenue to the Parish, much greater than the alleged cost savings incorrectly projected with the River Birch contract.

49.

On information and belief, the above-described scheme which involved Broussard, Whitmer, Wilkinson and River Birch, to divert Parish waste from the Parish Landfill to the River Birch landfill began in 2004, almost immediately after the Broussard Administration took office. At that time, Aaron Broussard stated his intent and “preference” to use River Birch as the Parish waste disposal vendor, and the Broussard Administration, through Tim Whitmer, began efforts to prevent Waste Management from moving forward with plans to expand the Parish Landfill, which had been approved by the previous Parish administration and recommended by the landfill consultant. Their specific goal was to cancel the contract with Waste Management and direct the waste disposal business to River Birch. Documents and evidence show that the Administration and River Birch and/or its representatives were having discussions about this scheme for years prior to the issuance of RFP No. 176 in 2008. In fact, following Hurricane Katrina in 2005, the Broussard Administration directed Parish hurricane waste to River Birch, purportedly to save the disposal space at the Parish Landfill that would now be closed for at least 25 years under the River Birch contract.

50.

RFP No. 176 was specifically admitted by Whitmer to be a “fishing expedition,” and on information and belief was intended by the Administration, specifically Aaron Broussard and Tim Whitmer, to bring to fruition their stated plan going back to 2004 to cancel the Parish’s contract with Waste Management and retain River Birch, due to the political influence exacted by River Birch on these Parish officials.

51.

In furtherance of their plan, Broussard and Whitmer conspired together and with Tom Wilkinson, Parish Attorney, to ensure that RFP No. 176 was put through an accelerated, inadequate RFP approval process in violation of Parish Ordinances, which included an improperly and illegally-constituted Evaluation Committee, chaired by Wilkinson, resulting in a complete lack of any objective evaluation or analysis of the alleged benefit or cost savings of the proposed River Birch contract compared to the existing Waste Management contract. Furthermore, these officials mislead the Parish Council and other Jefferson Parish officials regarding their claim of “substantial cost savings” with the River Birch contract.

52.

Moreover, in furtherance of their plan to divert waste from the Parish Landfill to River Birch, it was necessary to cancel the existing and valid contract with Waste Management so that the River Birch contract could become effective. In this regard, Broussard, Whitmer, and Wilkinson schemed to use the “annual appropriation dependency clause” of the Landfill Contract with Waste Management to prematurely terminate the contract with Waste Management in order to assure that the contract with River Birch could be implemented on January 1, 2010, as called for in the River Birch contract. Their plan was first attempted in the Fall, 2009, shortly after approval of the contract with River Birch when the 2010 budget was first submitted to the Administration for consideration. At that time, Whitmer directed the Finance Director not to include the funds for the Waste Management contract in the proposed 2010 Parish Budget, despite adequate funds being available in the Parish Treasury. Their plan was to falsify budgetary information such that it would appear that there was “insufficient funds” for the continuation of the Waste Management contract, thereby allowing the Administration to cancel

the contract effective January 1, 2010 and to commence the River Birch contract at that time, as demanded by River Birch in their proposal for the contract.

53.

For the reasons state above, including (1) the improper and bad faith revision of RFP No. 176 by certain Jefferson Parish Administration officials following its submission to them by the Jefferson Parish Environmental Department; (2) violation of applicable Parish Ordinances; (3) the improper and illegal exclusion of the Director of Jefferson Parish's Environmental Department from the Evaluation Committee established to review responses to RFP 176; (4) the lack of independence of the Evaluation Committee, which was under the control of Broussard, Whitmer, and Wilkinson; (5) the abbreviated evaluation process for evaluation of the River Birch proposal; (6) the improper and bad faith recommendation by the Evaluation Committee to approve River Birch's response to RFP No. 176 and subsequent contract with River Birch, despite the complete absence of support for the conclusions on which those decisions were based and advice to the contrary by its own Environmental Department; (7) making false and misleading statements concerning "substantial cost saving" with the River Birch contract when compared to the Waste Management contract, despite the complete lack of financial analysis or other evaluation of the contracts; (8) the failure to perform any analysis or prepare any report, as required by Parish Ordinance to seek a change in existing contracts to another vendor; and (9) the failure to consider other viable and cost-saving and/or revenue-producing options related to expansion of the Parish Landfill, both Resolution No. 111491 approving the River Birch proposal and Resolution No. 112564 approving the River Birch contract, as well as the contract between Jefferson Parish and River Birch itself, are illegal and invalid as a matter of law.

54.

The illegal and invalid contract between Jefferson Parish and River Birch was specifically designed to and in fact interferes with the legal and valid contract between Waste Management and Jefferson Parish, as well as other contractual affairs between Waste Management and Jefferson Parish relating to the Parish Landfill. Therefore, Waste Management is entitled to a declaratory judgment declaring invalid Parish Resolution No. 111491 which approved River Birch's response to RFP No. 176, Parish Resolution No. 112564 ratifying the contract with River Birch, and declaring the River Birch contract itself invalid for the reasons set forth in this Amended and Supplemental Counterclaim.

**PRAYER**

WHEREFORE, Waste Management fully incorporates its original PRAYER in its Counterclaim and further prays that in addition to the previous relief requested, that after due proceedings are had, there be a declaratory judgment in its favor against Plaintiffs, the Defendants-in-Counterclaim, invalidating Resolution No. 111491, Resolution No. 112564, and the landfill operation contract between Jefferson Parish and River Birch. Waste Management additionally prays for all costs, interests, and attorneys fees to which it is entitled in prosecuting this Counterclaim.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 13<sup>th</sup> day of January, 2011, served a copy of the foregoing on all counsel of record by filing same with this Court's e-filing (ECF) system or by placing same in the United States mail, postage prepaid and properly addressed to the following:

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