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Date: January 24, 2011

CT-2011-002

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REGISTRAR / REGISTRAIRE

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OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c.C-34, as amended;

IN THE MATTER OF an Application by the Commissioner of Competition for an Order pursuant to section 92 of the *Competition Act*;

AND IN THE MATTER OF the acquisition by CCS Corporation of Complete Environmental Inc.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

-AND-

CCS CORPORATION, COMPLETE ENVIRONMENTAL INC., BABKIRK LAND SERVICES INC., KAREN LOUISE BAKER, RONALD JOHN BAKER, KENNETH SCOTT WATSON, RANDY JOHN WOLSEY, AND THOMAS CRAIG WOLSEY

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the "Commissioner") will make an application ("Application") to the Competition Tribunal (the "Tribunal"), on a day and place to be determined by the Tribunal, pursuant to section 92 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the "Act") for an Order or Orders:

- (a) dissolving the merger between CCS Corporation ("CCS") and Complete Environmental Inc. ("Complete") (the "Merger") or, in the alternative, requiring

CCS, in a manner directed by the Tribunal, to dispose of Complete, or Babkirk Land Services Inc., or to effect other appropriate divestitures, to a purchaser that has been approved in advance by the Commissioner;

- (b) requiring the Respondents to provide the Commissioner with at least 30 days advance written notice of any future proposed merger, as such term is defined by section 91 of the Act, among the Respondents for a period of five years, where the proposed merger would not otherwise be subject to notification pursuant to Part IX of the Act;
- (c) requiring the Respondents pay the costs of this proceeding; and
- (d) granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

AND TAKE NOTICE that if you do not file a response with the Registrar of the Tribunal within 45 days of the date upon which this Application is served upon you, the Tribunal may, upon application by the Commissioner and without further notice, make such Order or Orders as it may consider just, including the Orders sought in this Application.

AND TAKE FURTHER NOTICE that the Applicant will rely on the Statement of Grounds and Material Facts below in support of this Application.

AND TAKE FURTHER NOTICE that a concise statement of the economic theory of the case is attached hereto as Schedule "A".

THE ADDRESSES FOR SERVICE ARE:

For CCS Corporation

CCS Corporation
1800, 140 – 10 Avenue S.E.
Calgary, AB T2G 0R1

Attention: Dan Wallace

For Complete Environmental Inc.

c/o CCS Corporation
1800, 140 – 10 Avenue S.E.
Calgary, AB T2G 0R1

Attention: Dan Wallace

For Babkirk Land Services Inc.

c/o CCS Corporation
1800, 140 – 10 Avenue S.E.
Calgary, AB T2G 0R1

Attention: Dan Wallace

For Karen Louise Baker

13020-271 Road (Box 283)
Charlie Lake, BC V0C 1H0

For Ronald John Baker

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For Kenneth Scott Watson

Box 781
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For Randy John Wolsey

10020 Cree Road
Fort St. John, BC V1J 4H7

For Thomas Craig Wolsey

10020 Cree Road
Fort St. John, BC V1J 4H7

The Applicant proposes that the hearing of this matter be held in Ottawa, Ontario and heard in the English language.

For the purposes of this Application, service of all documents on the Commissioner may be

served upon:

Competition Bureau Legal Services
Justice Canada
Place du Portage, Phase 1
22nd Floor, 50 Victoria Street
Gatineau, Quebec
K1A 0C9
Fax: 819.953.9267

Attention:
William J. Miller
Nikiforos Iatrou
Emma Beauchamp

STATEMENT OF GROUNDS AND MATERIAL FACTS

I. OVERVIEW

1. On January 7, 2011, CCS acquired Complete, who, after a lengthy process, had obtained approval to operate a secure landfill at its Babkirk facility in North-Eastern British Columbia. There are currently only two secure landfills in North-Eastern British Columbia in operation that can accept hazardous waste produced at oil and gas fields; both landfills are owned by CCS. Equipped with the requisite approvals for its Babkirk facility, Complete was a poised entrant into the market for hazardous waste disposal into secure landfills and would have competed directly with CCS. But for the Merger, oil and gas companies in North-Eastern British Columbia who must dispose of certain hazardous waste at a secure landfill would have enjoyed the competitive benefits that necessarily would have resulted from Complete's entry. The Commissioner seeks an order dissolving the Merger.

II. THE PARTIES

2. The Commissioner, appointed under section 7 of the Act, is charged with the administration and enforcement of the Act.

3. CCS is a private company with its head office in Calgary, Alberta. It employs 3,000 people in Canada and the United States and offers its customers a range of energy and environmental services. There are only two landfills in British Columbia ("BC"), Silverberry and Northern Rockies, where customers in North-Eastern British Columbia ("NEBC") can securely dispose of hazardous waste ("Secure Landfills"); CCS owns both. Silverberry is located 11 km north-east of Mile 73 of the Alaska Highway, which is approximately 55 km north-west of Ft. St. John, BC. Northern Rockies is located 20 km south of Ft. Nelson, BC.

4. Complete, since the Merger a wholly-owned subsidiary of CCS, is a company located in Fort St. John, BC. Complete's primary asset is a permit it obtained in February 2010 to operate a Secure Landfill at a site it owns called Babkirk, which is located near CCS's Silverberry Secure Landfill. Complete owns Babkirk through its wholly-owned subsidiary, the Respondent, Babkirk Land Services Ltd.

5. Karen Louise Baker, Ronald John Baker, Kenneth Scott Watson, Randy John Wolsey and Thomas Craig Wolsey ("Shareholders") were the individual vendors of the shares of Complete.

III. THE MERGER

6. The Merger closed on January 7, 2011, pursuant to a share purchase agreement dated December 30, 2010, whereby the Shareholders sold their shares to CCS.

7. On December 22, 2010, before closing the Merger and having been made aware of the Commissioner's conclusions with respect to the anticompetitive nature of the Merger, CCS provided to the Commissioner a written undertaking stating that it would preserve Babkirk until this Application is determined. In particular, CCS undertook to preserve and maintain all approvals, registrations, consents, licences, permits, certificates and other authorizations necessary for the operation of Babkirk.

IV. THE HAZARDOUS OIL/GASFIELD WASTE DISPOSAL INDUSTRY IN BC

8. In NEBC, the oil and gas industry is the primary generator of hazardous waste for disposal into Secure Landfills. Oil and gas production in BC is primarily focused in the Western Canadian Sedimentary Basin. This basin stretches from the Rocky Mountains in NEBC to Manitoba. Oil and gas companies generate hazardous waste as a by-product of drilling for, and producing, oil and gas.

9. Oil and gas companies and other hazardous waste generators in BC must comply with the *Hazardous Waste Regulation*, B.C. Reg. 63/88, as amended, made under the *Environmental Management Act*, S.B.C. 2003, c. 53 (the “HW Regulation”) when they generate and dispose of waste. The HW Regulation defines what waste is considered hazardous and prescribes how it must be managed by producers. In this Application, unless otherwise specified, Hazardous Waste refers to all waste produced at BC oil and gas fields that meets the definition of ‘hazardous waste’ in the HW Regulation.

10. Oil and gas companies produce various types of waste streams relevant to this Application that can contain Hazardous Waste, including but not limited to: (a) drill mud and cuttings; (b) flare pit material; and (c) soil and other material that has been contaminated with hydrocarbons, salt, metals and other substances. Oil and gas companies can temporarily store their Hazardous Waste, but ultimately must treat or dispose of it when they have completed drilling or when they are ordered to do so by the BC Ministry of the Environment (“BC MOE”) or the BC Oil and Gas Commission (“BC OGC”). Disposal of Hazardous Waste must be done at a Secure Landfill.

V. THE RELEVANT MARKET

11. The anti-competitive effects of the Merger primarily affect oil and gas companies disposing of Hazardous Waste produced at oil and gas fields within NEBC (the “Relevant Market”).

A. Relevant Product Market

12. The Relevant Product Market in this Application is the disposal of Hazardous Waste into Secure Landfills.

13. Secure Landfills are facilities designed, constructed, and operated to keep Hazardous Waste confined for an indefinite period of time with little likelihood of future removal. Potential Secure Landfill operators must overcome significant regulatory hurdles (described in more detail below) to construct and operate a Secure Landfill.

14. For oil and gas companies, there are two costs associated with the disposal of Hazardous Waste; first, the cost of transporting the waste from the location where it is generated by the oil and gas company to the Secure Landfill and, second, the tipping fee set by the operator of the Secure Landfill to dispose of the Hazardous Waste. Transporting Hazardous Waste by truck is expensive, an important limitation on the distances that Hazardous Waste can be shipped. Trucking companies set their rates independently from Secure Landfill operators.

B. Relevant Geographic Market

15. The Relevant Geographic Market for this Application is the aggregated locations of Hazardous Waste generators located in NEBC that would benefit from the competition between Babkirk and CCS that CCS has denied by the Merger. High transportation costs to more distant landfills mean that Babkirk would have introduced a practical competitive alternative to CCS for oil and gas companies in the Relevant Geographic Market.

C. Babkirk

16. Babkirk is located near Mile 115 on the Alaska Highway, approximately 80 driving kilometres North-West of Silverberry, one of CCS's two Secure Landfills in NEBC.

17. Babkirk was originally licensed to operate as a facility that treats Hazardous Waste. Even if a facility, such as Babkirk, can treat some of the waste, the operator must be able to also dispose of the waste into a Secure Landfill if treatment is unsuccessful, or not permissible.

18. In February 2010, Complete received regulatory approval to open a Secure Landfill at Babkirk. Complete has not yet started building the Secure Landfill.

VI. THE MERGER SUBSTANTIALLY PREVENTS COMPETITION

19. The Merger is likely to prevent competition substantially in the Relevant Market owing to the elimination of Complete as a likely vigorous and effective competitor. In particular:

- a. Complete was poised to enter the Relevant Market;

- b. CCS considered Complete's entry as a significant competitive threat; and
- c. Complete's entry was likely to have lowered tipping fees for producers of Hazardous Waste in the Relevant Market.

20. The likely substantial prevention of competition will not be remedied by other potential competitors entering the relevant market because there are high barriers to entry. Nor will the substantial prevention of competition be mitigated by the operation of other factors listed in section 93 of the Act, or otherwise.

A. But for the Merger, Babkirk likely would have entered as a competitor

21. Prior to the Merger, Babkirk would have been developed as a Secure Landfill, whether by Complete, or a party to whom Complete sold Babkirk. If the Merger is dissolved, Complete will likely capitalize on its regulatory approvals by either converting and operating Babkirk as a Secure Landfill, or selling Babkirk to another operator who will complete the conversion and operate Babkirk as a Secure Landfill. Under either scenario, Babkirk would open as a Secure Landfill and compete with CCS.

B. CCS purchased Complete to eliminate competition

22. CCS acquired Complete to thwart pro-competitive entry. Internal CCS documents reveal that CCS anticipated that it would lose significant revenue, through lower volumes and tipping fees, once Babkirk opened as a Secure Landfill. CCS was also concerned that the loss of revenue could be compounded by a "price war" with Babkirk.

23. CCS determined to address the competitive threat posed by Babkirk (whether owned by Complete or sold by Complete to another company) by acquiring it and completing the authorized conversion to a Secure Landfill as a CCS facility, or by not developing it as a Secure Landfill at all and thereby withholding competition from the market.

C. Other entry is unlikely to occur in a timely and sufficient manner

24. CCS's dominant position will not be constrained by other competitors entering the relevant market as barriers to entry are high; accordingly, entry is not likely, timely, or sufficient.

25. Any potential entrant into the Relevant Market must undergo a full environmental assessment process (the “EA Process”). The EA Process is conducted by the BC Environmental Assessment Office requiring extensive consultations with the local public, First Nations, and other interested branches of governments in addition to an in-depth soil and hydro-geological analysis.

26. In addition to the EA Process, a potential entrant requires approvals from the BC MOE and local governments. The approval process and preparatory work cost in excess of approximately \$1 million.

27. A potential entrant then requires between six and twelve months to construct the landfill. At a minimum, an entrant, under ideal conditions, before beginning construction, would need at least two years and significant capital to overcome the regulatory hurdles alone. These are sunk costs that are unrecoverable in the event of failure.

28. Waste disposal companies’ recent experience with the regulatory process demonstrates that it is lengthy and uncertain. Complete invested over three years obtaining the regulatory approvals for Babkirk. Other potential entrants for sites in NEBC have foundered on lack of financing or local opposition to the construction of Secure Landfills.

D. There are no mitigating factors to the substantial prevention of competition

29. Other relevant section 93 factors support the conclusion that the Merger substantially prevents competition:

- a. *No Alternative Substitutes.* Oil and gas companies have limited alternatives for the disposal of their Hazardous Waste. While a limited amount of Hazardous Waste can be treated, disposal must occur at a Secure Landfill. Significant transportation costs and regulatory barriers prevent facilities in Alberta (the closest) from being a realistic viable geographic substitute for customers in the Relevant Geographic Market.
- b. *Foreign Competition.* Foreign competition is highly unlikely owing to high

transportation costs, given the distance of the Relevant Geographic Market from landfills in the United States that can accept Hazardous Waste.

- c. *Effective Remaining Potential Competition.* CCS currently faces no competition from Secure Landfills in the Relevant Market. The Merger removed a potential Secure Landfill that would have competed in the Relevant Market.

VII. CONCLUSION

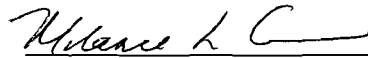
30. If CCS is permitted to retain Babkirk, it will substantially prevent competition in the Relevant Market. CCS will have thwarted competitive entry by removing Babkirk as an independent competitor.

VIII. RELIEF SOUGHT

31. The Commissioner requests an Order:

- (a) dissolving the Merger or, in the alternative, requiring CCS, in a manner directed by the Tribunal, to dispose of Complete, or Babkirk Land Services Inc., or to effect other appropriate divestitures, to a purchaser that has been approved in advance by the Commissioner;
- (b) requiring the Respondents to provide the Commissioner with at least 30 days advance written notice of any future proposed merger, as such term is defined by section 91 of the Act, among the Respondents for a period of five years, where the proposed merger would not otherwise be subject to notification pursuant to Part IX of the Act;
- (c) requiring the Respondents pay the costs of this proceeding; and
- (d) granting such further and other relief as the Commissioner may request and this Tribunal may consider appropriate.

DATED AT GATINEAU, QUEBEC, this 24th day of January, 2011.



Melanie L. Aitken
Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec
K1A 0C9

Schedule "A"

CONCISE STATEMENT OF ECONOMIC THEORY

1. Oil and gas companies generate hazardous waste as a by-product of drilling for and producing oil and gas. Much of this waste is disposed of by oil and gas companies into landfills permitted by the BC government to accept hazardous waste ("Secure Landfills"). Disposal of hazardous waste into Secure Landfills is the relevant product market in this application because there are no competitive substitutes.
2. Currently, all oil and gas companies located in North-Eastern British Columbia (the "Relevant Geographic Market") that send their hazardous waste to a Secure Landfill, send such waste to a Secure Landfill owned by the respondent, CCS Corporation ("CCS").
3. The Respondent, Complete Environmental Inc. ("Complete"), received a permit in February 2010 to operate another facility ("Babkirk") as a Secure Landfill. Babkirk was likely to have commenced operations as a Secure Landfill but for the Merger; as such Babkirk would have competed with CCS for the services required by hazardous waste generators in the Relevant Geographic Market.
4. Obtaining regulatory approval to open a Secure Landfill is a time consuming, expensive, difficult, and uncertain process making barriers to entry very high. The approval process and preparatory work cost in excess of approximately \$1 million. Complete invested over three years obtaining regulatory approval for Babkirk.
5. Oil and gas companies pay two significant costs to dispose of their hazardous waste in a Secure Landfill. First, they pay trucking companies for transportation of the waste from the field to the Secure Landfill. Second, they pay the company operating the Secure Landfill a tipping fee to dispose of the waste. Transporting hazardous waste by truck is expensive.
6. Oil and gas companies ship their waste to the Secure Landfill that offers the lowest total cost of disposal. Oil and gas companies who can choose between two separately-owned and sufficiently proximate Secure Landfills are in a better position to bargain favourable tipping fees

than generators who have only one viable Secure Landfill option.

7. But for the Merger, Complete would have provided oil and gas companies in the Relevant Geographic Market with a competitive alternative to CCS by opening and operating an approved Secure Landfill at Babkirk. Babkirk would have been a viable option for oil and gas companies in the Relevant Geographic Market; as such, it would have competed with CCS to attract waste by lowering its tipping fees. Oil and gas companies would have benefited from this competition by paying less than they do now to dispose of their hazardous waste.

8. By purchasing Babkirk, CCS has caused a substantial prevention of competition by removing a viable future competitor from entering the Relevant Geographic Market. In the absence of the Merger and once Babkirk became operational as a Secure Landfill, these oil and gas companies would have been able to negotiate tipping fees with two independent Secure Landfill owners. If CCS is permitted to own Babkirk it will be able to maintain market power by removing any negotiating leverage that oil and gas companies would otherwise have had through the ability to receive independent offers from CCS and Complete.

CT-2011-

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AND IN THE MATTER OF the acquisition by CCS Corporation of Complete Environmental Inc.

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-AND-

**CCS CORPORATION, COMPLETE ENVIRONMENTAL INC.,
KAREN LOUISE BAKER, RONALD JOHN BAKER,
KENNETH SCOTT WATSON, RANDY JOHN WOLSEY, AND
THOMAS CRAIG WOLSEY**

Respondents

NOTICE OF APPLICATION

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