

P98000078645



236 East 6th Avenue . Tallahassee, Florida 32303

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1.) GWC Florida, Inc.
(CORPORATE NAME & DOCUMENT #) Ento

2.) Earth Resource Management Inc.
(CORPORATE NAME & DOCUMENT #)

3.) _____
(CORPORATE NAME & DOCUMENT #)

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4.) _____
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5.) _____
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DIVISION OF CORPORATION

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ARTICLES OF MERGER
Merger Sheet

MERGING: _____

FLORIDA GWC, INC., a Florida corporation P01000105274

INTO

EARTH RESOURCE MANAGEMENT, INC., a Florida entity, P98000078645.

File date: March 1, 2002

Corporate Specialist: Annette Ramsey



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

February 4, 2002

CORPORATE ACCESS, INC.

TALLAHASSEE, FL

SUBJECT: GWC FLORIDA, INC.
Ref. Number: W02000003154

We have received your document for GWC FLORIDA, INC. . However, the enclosed document has not been filed and is being returned to you for the following reason(s):

Our records show no entity by this name.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6903.

Cheryl Coulliette
Document Specialist

Letter Number: 502A00006741

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FLORIDA DEPARTMENT OF STATE
TALLAHASSEE, FL 32301

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Thanks
Ginda



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

February 11, 2002

Corporate Access, Inc.
236 East 6th Avenue
Tallahassee, FL 32303

SUBJECT: EARTH RESOURCE MANAGEMENT, INC.
Ref. Number: P98000078645

Corrected
3/1 to 2
File with
thus done

We have received your document for EARTH RESOURCE MANAGEMENT, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

Please attach all the exhibits that are referenced to "as attached hereto".

If you have any questions concerning the filing of your document, please call (850) 245-6907.

Annette Ramsey
Corporate Specialist

Letter Number: 902A00008426

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LETTER - 1 PM 1:47
FLORIDA DEPARTMENT OF STATE
CORPORATE REGISTRATIONS
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER
of
FLORIDA GWC, INC.,
a Florida corporation and wholly owned subsidiary of
GENERAL WASTE CORPORATION,
a Delaware corporation
into
EARTH RESOURCE MANAGEMENT, INC.,
a Florida corporation and wholly owned subsidiary of
EARTHCARE COMPANY,
a Delaware corporation

02 MAR -1 PM 4:23
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to Section 607.1105 of the Florida Business Corporation Act, the undersigned corporations, FLORIDA GWC, INC., a Florida corporation and wholly owned subsidiary of GENERAL WASTE CORPORATION, a Delaware corporation and EARTH RESOURCE MANAGEMENT, INC., a Florida corporation, and wholly owned subsidiary of EARTHCARE COMPANY, a Delaware corporation, adopt the following Articles of Merger, for the purpose of merging FLORIDA GWC, INC. into EARTH RESOURCE MANAGEMENT, INC.

1. **Plan of Merger.** The Plan of Reorganization and Merger Agreement ("Merger Agreement") setting forth the terms and conditions of the merger ("Merger") of FLORIDA GWC, INC. into EARTH RESOURCE MANAGEMENT, INC. is attached to these articles as Exhibit 1 and incorporated by reference herein. EARTH RESOURCE MANAGEMENT, INC. shall be the surviving corporation to the Merger ("Surviving Corporation").

2. **Adoption of Merger Agreement.** The Merger Agreement was approved and adopted by the Board of Directors of FLORIDA GWC, INC. and GENERAL WASTE CORPORATION, at a special meeting of the respective Boards held on January 2, 2002, and the approval of the shareholders of FLORIDA GWC, INC. and GENERAL WASTE CORPORATION is not required to effectuate the Merger Agreement.

The Merger Agreement also was approved by the Board of Directors of EARTH RESOURCE MANAGEMENT, INC. and EARTHCARE COMPANY at a special meeting of


the respective Boards held on January 2, 2002, and the approval of the shareholders of EARTH RESOURCE MANAGEMENT, INC. and EARTHCARE COMPANY is not required to effectuate the Merger Agreement.

3. **Effective Date.** The Merger Agreement shall be effective upon the filing of these Articles of Merger with the Department of State of the State of Florida (the "Effective Date").

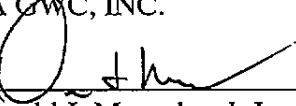
4. **Succession.** On the Effective Date, EARTH RESOURCE MANAGEMENT, INC. shall continue its corporate existence under the laws of the State of Florida, and the separate existence and corporate organization of FLORIDA GWC, INC., except insofar as it may be continued by operation of law, shall be terminated and cease.

IN WITNESS WHEREOF, each of the undersigned corporations has caused these Articles to be signed as of February 6, 2002.


GENERAL WASTE CORPORATION

By: 
Donald F. Moorehead, Jr., Chairman

FLORIDA GWC, INC.

By: 
Donald J. Moorehead, Jr., Chairman

EARTHCARE COMPANY

By: 
William W. Solomon, Jr., Vice President
and Chief Financial Officer

EARTH RESOURCE MANAGEMENT, INC.

By: 
William W. Solomon, Jr., Vice President

**PLAN OF REORGANIZATION
AND
MERGER AGREEMENT**

This Plan of Reorganization and Merger Agreement (this "Agreement"), dated as of January 8, 2002, is by and among General Waste Corporation, a Delaware corporation (hereinafter referred to as "General Waste"), Florida GWC, Inc., a Florida corporation and a wholly-owned subsidiary of General Waste (hereinafter referred to as "GWC Florida"), Earth Resource Management, Inc., a Florida corporation (hereinafter referred to as "ERM") and EarthCare Company, a Delaware corporation and the sole shareholder of ERM (hereinafter referred to as "EarthCare").

WITNESSETH:

WHEREAS, in exchange for the contribution of \$2,500,000 in cash, \$12,315,000 face amount of the issued and outstanding EarthCare Series A 10% Pay In Kind Dividend Convertible Preferred Stock, par value \$0.0001 per share (the "Series A preferred stock"), and \$5,711,000 in principal amount of issued and outstanding EarthCare 12% Subordinated Notes Due March 30, 2008 (the "12% Notes"), General Waste has, or prior to Closing, will have, issued 1,000,000 shares of its common stock, par value \$0.01 per share, to Donald F. Moorehead, Jr. ("Moorehead"), which shares constitute all of the issued and outstanding shares of capital stock of General Waste;

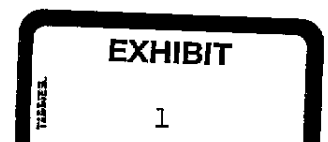
WHEREAS, EarthCare owns all of the issued and outstanding common stock, par value \$0.01 per share, of ERM (the "ERM Shares"), which constitute all of the issued and outstanding capital stock of ERM;

WHEREAS, EarthCare conducts its Solid Waste division operations through ERM;

WHEREAS, EarthCare has agreed to sell and has sold the real property located in West Palm Beach, Florida (the "West Palm Beach Property") where it conducts its Solid Waste division operations to Fairground Road Property, LLC, an affiliate of Raymond Cash, a significant equity holder and creditor of EarthCare, for \$2.5 million;

WHEREAS, General Waste has proposed to the Board of Directors of EarthCare that General Waste acquire all of the equity interest in ERM;

WHEREAS, Moorehead, as the chairman of the board and chief executive officer and a significant equity holder and creditor of EarthCare, is an affiliate of EarthCare;



WHEREAS, the Board of Directors of EarthCare has established a special committee (the "EarthCare Special Committee") to consider, among other things, the General Waste proposal and make a recommendation to the Board of Directors of EarthCare with respect thereto;

WHEREAS, it is proposed that EarthCare and General Waste shall cause GWC Florida to merge with and into ERM in exchange for the Merger Consideration (as defined below), causing ERM to become a wholly-owned subsidiary of General Waste (the "Merger");

WHEREAS, the EarthCare Special Committee has determined that (i) it is fair to and in the best interests of EarthCare and its stockholders to consummate the Merger upon the terms and subject to the conditions of this Agreement and the agreements contemplated hereby and in accordance with the applicable provisions of the Florida Business Corporation Act ("Florida Law") and (ii) the Merger and this Agreement should be approved and declared advisable by the Board;

WHEREAS, based on the recommendation of the EarthCare Special Committee, the Board of Directors of EarthCare has (i) determined that it is fair to and in the best interests of EarthCare and its stockholders to consummate the Merger upon the terms and subject to the conditions of this Agreement and the agreements contemplated hereby and in accordance with Florida Law and (ii) approved the Merger, this Agreement and the transactions contemplated hereby and declared this Agreement to be fair to and in the best interests of its stockholders;

WHEREAS, the Board of Directors of each of General Waste, GWC Florida and ERM has determined that the Merger is fair to and in the best interests of such corporation and its respective stockholders and has approved this Agreement and the transactions contemplated hereby;

WHEREAS, each of the parties to this Agreement desires to make certain agreements in connection with the Merger and also to prescribe various conditions to the consummation of such Merger;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties adopt this Plan of Reorganization and Merger Agreement and agree as follows:

ARTICLE I **THE MERGER**

1.1 *The Merger.* (a) Upon the terms and conditions set forth in this Agreement and the other agreements identified herein, and in accordance with the applicable provisions of Florida Law, at the Effective Time (as defined in Section 1.2), GWC Florida shall merge with and into ERM and the separate existence of GWC Florida shall thereupon cease.

(b) ERM will be the surviving corporation in the Merger (sometimes referred to herein as the "Surviving Corporation") and will continue to be governed by the laws of the State of Florida, and the corporate existence of ERM and all of its rights, privileges, immunities and franchises, public or private, and all its duties and liabilities as a corporation organized under Florida Law will continue unaffected by the Merger.

(c) At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of Florida Law. Without limiting the foregoing, and subject thereto, at the Effective Time, the separate corporate existence of GWC Florida shall cease, and ERM shall succeed without other transfer, to all the rights, privileges, immunities, property and franchises, public or private of GWC Florida and shall be subject to all the debts, liabilities, duties and obligations of GWC Florida in the same manner as if ERM itself had incurred them. All rights of creditors and all liens on the property of each constituent corporation shall be preserved, unimpaired, with the amount and nature of the liens limited to the property affected by the liens immediately prior to the merger.

1.2 **Effective Time.** As soon as practicable following fulfillment or waiver of the conditions specified in Article IV hereof, and provided that this Agreement has not been terminated or abandoned pursuant to Article VI hereof, subject to the provisions of this Agreement, the constituent corporations will cause the Merger to be consummated by filing duly executed articles of merger (the "Articles of Merger") with the office of the Secretary of State of the State of Florida as provided in Section 607.1101 of the Florida Business Corporation Act. Subject to and in accordance with the laws of the State of Florida, the Merger will become effective at the date and time the Articles of Merger are filed with the office of the Secretary of State of the State of Florida or such later time or date as may be specified in the Articles of Merger (the "Effective Time"). Each of the parties will use its best efforts to cause the Merger to be consummated as soon as practicable following the fulfillment or waiver of the conditions specified in Article IV hereof.

ARTICLE II

THE SURVIVING CORPORATION

2.1 **Articles of Incorporation.** The Articles of Incorporation of ERM shall be amended in their entirety to read as set forth on Exhibit A, and, as so amended, shall be the Articles of Incorporation of the Surviving Corporation after the Effective Time, until thereafter amended as provided therein and by applicable law.

2.2 **By-Laws.** The By-Laws of ERM, as in effect immediately prior to the Effective Time, shall be the By-Laws of the Surviving Corporation after the Effective Time, until thereafter amended as provided therein and by applicable law.

2.3 **Officers and Board of Directors.** From and after the Effective Time, the officers and members of the Board of Directors of GWC Florida immediately prior to the Effective Time shall be the officers and members of the Board of Directors of the Surviving Corporation, until their successors have been duly elected or appointed and qualified or until their earlier death,

resignation or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws.

ARTICLE III
MERGER CONSIDERATION;
CANCELLATION OF ERM SHARES IN THE MERGER

3.1 Merger Consideration; Conversion and Cancellation of Shares in the Merger.

The manner of converting or canceling shares of ERM Shares and GWC Florida shares shall be as follows:

(a) Conversion of ERM Shares. EarthCare represents and warrants to General Waste that it is the holder of the ERM Shares. At the Effective Time, the ERM Shares shall, in the aggregate, by virtue of the Merger and without any further action on the part of EarthCare, be converted automatically into the right to receive the Merger Consideration. The ERM Shares converted into the right to receive the Merger Consideration pursuant to this Section 3.1(a) shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, be canceled and cease to exist, and EarthCare shall thereafter cease to have any rights with respect to the ERM Shares, except the right to receive, upon the surrender of such certificate(s), the Merger Consideration.

(b) Conversion of GWC Florida Shares. At the Effective Time, each share of common stock, par value \$0.001 per share, of GWC Florida issued and outstanding immediately prior to the Effective Time shall be converted into, and shall become, one share of common stock, par value \$0.001 per share, of the Surviving Corporation.

3.2 Payment for Shares in the Merger. At the Effective Time, EarthCare shall surrender the certificate(s) representing the ERM Shares for cancellation to General Waste in exchange for the Merger Consideration.

3.3 Transfer of Shares after the Effective Time. After the Effective Time, there shall be no further registration of transfers of shares of capital stock of ERM. The Merger Consideration issued upon the surrender for exchange of the ERM Shares in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to the capital stock of ERM. If, after the Effective Time, certificates are presented to the Surviving Corporation or General Waste for any reason, they shall be canceled.

3.4 Merger Consideration. (a) The "Merger Consideration" shall consist of:

(1) \$12,315,000 in face amount of the issued and outstanding Series A preferred stock;

(2) \$6,011,000 in principal amount of the issued and outstanding 12% Notes (the 12% Notes, together with the Series A preferred stock, the "Securities Consideration");

(3) Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in cash; and

(4) a warrant (the "General Waste Warrant") to purchase eight percent (8%) of the issued and outstanding shares of common stock, par value \$0.001 per share, of General Waste, which warrant shall be in substantially the form as Exhibit B.

(b) The principal amount of 12% Notes to be included in the Securities Consideration shall be subject to adjustment based on the estimated principal balance of equipment and mortgage notes and accrued interest thereon (the "Equipment Notes Balance") referenced in Section 4.1(a)(2) outstanding at Closing. At the Closing, EarthCare shall deliver to General Waste a good faith estimate of the Equipment Notes Balance, certified by the Chief Financial Officer of EarthCare. To the extent that the Equipment Notes Balance exceeds \$6,011,000 in multiples of \$1,000, the face amount of 12% Notes contributed to the Securities Consideration will be reduced dollar for dollar, and the face amount of 12% Notes will be increased dollar for dollar if the amount of the Equipment Notes Balance is less than \$6,011,000, in multiples of \$1,000.

3.5 **Closing.** The closing (the "Closing") of the transactions contemplated by this Agreement shall take place as soon as practicable following the execution of this Agreement and all other documents and/or agreements necessary to consummate the transactions contemplated hereby, and the satisfaction of the conditions set forth in Article IV, and shall be held at the principal offices of EarthCare, 14901 Quorum Drive, Suite 200, Dallas, TX 75254 no later than January 11, 2002, unless another place or time is agreed upon in writing by the parties.

ARTICLE IV

CONDITIONS PRECEDENT TO CLOSING

The respective obligations of each party to effect the Merger shall be subject to the fulfillment of all of the following conditions precedent at or prior to the Closing:

4.1 ***Delivery and Execution of Transaction Agreements.*** The Closing shall be conditioned upon execution and delivery of the following agreements (hereinafter referred to as the "Transaction Agreements") necessary to facilitate the transactions contemplated by this Agreement:

(a) Assignment and Assumption Agreement. Prior to or at the Closing, GWC Florida, ERM and EarthCare shall enter into an Assignment and Assumption Agreement regarding the assignment and assumption of all liabilities and obligations of ERM and/or EarthCare that directly or indirectly relate to the business of ERM. The Assignment and Assumption Agreement shall be substantially in the form of Exhibit C. Without limiting the foregoing, GWC Florida will specifically agree to assume and become responsible for all of the liabilities and obligations related to the business of ERM, including without limitation:

(1) indebtedness of ERM in the estimated amount of twenty-three million five hundred thousand dollars (\$23,500,000) which amount includes but is not limited to items (2) through (5) below;

(2) indebtedness of ERM to Marine Bank in the estimated amount of seven million five hundred twenty thousand dollars (\$7,520,000);

(2) indebtedness of ERM and Earth Resource Management of South Florida, Inc., including equipment and mortgage note payables in the combined estimated amount of four million one hundred fifty four thousand dollars (\$4,154,000);

(3) indebtedness of Earth Resource Management of South Florida, Inc. under the SMH Bridge Loan (as defined below) in the amount of Two Million, Five Hundred Thousand Dollars (\$2,500,000.00);

(4) indebtedness of ERM under a bridge loan payable to Donald F. Moorehead, Jr. which is turn payable to Solid Waste Resources, Inc. in the amount of Three Million Dollars (\$3,000,000.00);

(5) indebtedness of Earth Resource Management of South Florida, Inc. under the Sagemark Bridge Loan (as defined below) in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00);

(6) EarthCare's obligations and liabilities under the employment agreement with Harry Habets, the President and Chief Operating Officer of EarthCare; and

(7) all performance bonds issued by or on behalf of EarthCare for its Solid Waste Division.

(b) Reimbursement Agreement. Prior to or at the Closing, certain affiliates of General Waste, including but not limited to Moorehead, Raymond Cash and certain of their affiliates, shall enter into a Reimbursement Agreement in substantially the form of the Reimbursement Agreement as Exhibit D.

(c) Subordinated Debt Conversion Agreement. Prior to or at the Closing, General Waste will execute and deliver a subordinated debt conversion agreement substantially in the form of the Subordinated Debt Conversion Agreement as Exhibit E.

(d) Consent Solicitation Relating to 10% Convertible Subordinated Debentures. The Solid Waste Transaction Requisite Consents (as defined in the 10% Debenture Consent Solicitation Statement as Exhibit F) must have been received (and not revoked) from holders of at least two-thirds (2/3rds) of the aggregate outstanding principal amount of EarthCare's 10% Convertible Subordinated Debentures due October 31, 2006 ("10% Debentures"), including consents from Moorehead and his wife, Shelley Moorehead (collectively, the "Select 10% Debenture Holders"), and the Solid Waste Transaction Waivers and Amendments contemplated thereby must have become effective in accordance with their respective terms.

(e) Solid Waste Transaction Supplement to Debenture Agreement and Replacement Debentures. At Closing and upon surrender by the Select 10% Debenture Holders of the 10% Debentures held by them, Replacement Debentures shall be issued to such holders in substantially the form of Exhibit G pursuant to the terms of a Solid Waste Transaction Supplement to Debenture Agreement in substantially the form as Exhibit H.

(f) Consent Solicitation Relating to 12% Notes. The Solid Waste Transaction Requisite Consents (as defined in the 12% Debenture Consent Solicitation Statement as Exhibit I) must have been received (and not revoked) from holders of at least two-thirds (2/3rds), of the aggregate outstanding principal amount of the 12% Notes, including consents from Moorehead and the Moorehead Charitable Remainder Unit Trust (collectively, the "Select 12% Note Holders"), and the Solid Waste Transaction Waivers and Amendments contemplated thereby must have become effective in accordance with their respective terms.

(g) Solid Waste Transaction Supplement to Note Agreement and Replacement Notes. At Closing, and upon surrender by the Select 12% Note Holders of the 12% Notes held by them, Replacement Notes shall be issued to such holders in substantially the form as Exhibit J pursuant to the terms of a Solid Waste Transaction Supplement to Note Agreement in substantially the form as Exhibit K.

(h) Agreement and Indemnity. Moorehead and the Moorehead Charitable Remainder Unit Trust and EarthCare shall have executed an Agreement and Indemnity in substantially the form as Exhibit L.

(i) First Amendment to Letter Loan Agreement And Waiver And Consent Regarding Sanders Morris Harris and Lenders. EarthCare, Earth Resource Management of South Florida, Inc., a Florida corporation, EarthCare Acquisition Sub, Inc., an Illinois corporation, and the lenders under that certain Letter Loan Agreement, dated as of March 5, 2001 (the "SMH Bridge Loan"), shall have executed a First Amendment to Letter Loan Agreement and Waiver & Consent in substantially the form as Exhibit M.

(j) First Amendment to Convertible Loan Agreement And Waiver And Consent Regarding Sagemark Capital, LLP. EarthCare, ERM, Earth Resource Management of South Florida, Inc., a Florida corporation, and EarthCare Acquisition Sub, Inc., an Illinois corporation, and Sagemark Capital, L.P. ("Sagemark Capital") as parties to that certain Convertible Loan Agreement, dated as of April 11, 2001 (the "Sagemark Bridge Loan"), shall have executed a First Amendment to Convertible Loan Agreement and Waiver & Consent in substantially the form as Exhibit N.

(k) Sanders Morris Harris Letter. General Waste Corporation shall have executed and delivered to Sanders Morris Harris a letter in substantially the form of Exhibit O.

4.2 **Contribution.** (a) Prior to the Closing, Moorehead and Solid Waste Ventures, Inc. (the "GWC Shareholders") shall have transferred to General Waste the securities constituting the Securities Consideration.

(b) Prior to Closing, General Waste shall transfer to GWC Florida, the securities constituting the Securities Consideration and any and all right, title and interest therein, in exchange for the issuance to General Waste of 1,000 shares of Florida GWC, Inc. common stock, par value \$.001 per share, which shares shall constitute one hundred percent (100%) of the issued and outstanding capital stock of Florida GWC, Inc.

4.3 **Acquisition of Additional Necessary Consents and Approvals.** Written consents and approvals of the execution and delivery of this Agreement and the Transaction Agreements and the consummation of the transactions contemplated hereby and thereby shall be obtained from the following persons and entities (each such consent and approval being satisfactory in form to EarthCare and General Waste):

(a) the holders of that certain \$3,000,000.00 bridge loan payable to Solid Waste Resources, Inc.; and

(b) Sinclair Leasing, McClain Leasing, Sun Trust Bank and Community Bank of Manatee, which entities are the lenders under the equipment and mortgage notes of ERM and its subsidiaries; and

(c) CIB Marine, the senior lender to ERM and its subsidiaries; and

(d) Bank of America and Fleet Bank, N.A., as EarthCare's senior lenders.

4.4 **Reissuance of Performance Bonds.** The insurance companies or other entities providing the performance bonds listed on Exhibit P shall have reissued such bonds in the name of ERM or General Waste and EarthCare shall have no continuing responsibility or liability therefor.

4.5 **Approval of the EarthCare Special Committee and the Board of Directors of EarthCare.** The EarthCare Board of Directors and Special Committee shall each have approved

the execution and delivery of this Agreement and the related Transaction Agreements and the consummation of the transactions contemplated hereby and thereby.

4.6 ***Acquisition of Financing.*** General Waste shall have obtained financing to fund the \$2,500,000 Cash Consideration portion of the Merger Consideration, on terms that General Waste deems acceptable and prudent.

4.7 ***Receipt of Fairness Opinion.*** The EarthCare Special Committee shall have received a fairness opinion, in form and substance satisfactory to the EarthCare Special Committee, from William H. Murphy & Co. that the terms and conditions of this Agreement are fair, from a financial point of view, to EarthCare and to its stockholders.

4.8 ***Receipt of Opinions of Delaware Counsel.*** EarthCare and the EarthCare Special Committee shall have received such opinions as they deem necessary from Delaware counsel, in form and substance reasonably satisfactory to EarthCare and the EarthCare Special Committee, regarding the execution and delivery of this Agreement and the related Transaction Agreements and the consummation of the transactions contemplated hereby and thereby.

4.9 ***Receipt of Certificate of Chief Financial Officer.*** General Waste shall have received the certificate of the Chief Financial Officer of EarthCare as contemplated by Section 3.4(b).

4.10 ***Receipt of UCC Search Reports.*** EarthCare shall have received Uniform Commercial Code search reports, in form and substance satisfactory to EarthCare, from such jurisdictions as EarthCare may require, related to any liens, claims or restrictions on the securities constituting the Securities Consideration.

4.11 ***Receipt of Required Releases.***

(a) Releases, in form and substance satisfactory to EarthCare, shall have been received as are necessary to ensure that the securities constituting the Securities Consideration are free and clear of any liens, security interests, charges, claims or other encumbrances.

(b) A release shall be obtained from EarthCare's senior lenders of the liens on (i) the property and assets utilized by EarthCare's Solid Waste division in West Palm Beach, Florida and (ii) approximately forty-three percent (43%) of the outstanding common shares of ERM.

4.12 ***Solid Waste Division Real Property Conveyance.*** EarthCare shall have conveyed the West Palm Beach Property to Fairgrounds Road Property, LLC, an affiliate of Raymond Cash, for \$2.5 million in cash.

4.13 ***Due Performance.*** Moorehead and his affiliates, General Waste, GWC Florida, EarthCare and ERM shall have performed and complied with all the terms and conditions required by this Agreement to be performed before the Closing.

4.14 **Legal Impediments.** As of the Closing of this Merger, there shall not be pending any injunction or order or decree by any Federal, state or foreign court which would prevent the consummation of the Merger. Furthermore, there shall have been no statute or regulation enacted prior to the Closing that would prevent consummation of the Merger. Finally, all necessary government consents and approvals required for the Merger shall have been obtained.

ARTICLE V CONDUCT OF EARTHCARE AND ERM PENDING THE CLOSING

From and after the execution and delivery of this Agreement except in the ordinary course of business and until the Closing Date, except as otherwise provided by the prior written consent or approval of General Waste and GWC Florida:

5.1 **Conduct of Business.** EarthCare and ERM agree that they will cause ERM to conduct its business and operations in the manner in which the same has heretofore been conducted and EarthCare will use its best efforts to cause ERM to: (i) preserve ERM's current business organization intact; (ii) keep available to EarthCare the services of ERM's current employees and ERM's agents and distributors; and (iii) preserve ERM's current relationship with material customers, suppliers and others having business dealings with ERM.

5.2 **Maintenance of Property.** EarthCare and ERM agree that they will cause ERM to maintain (i) all of its properties in customary repair, order and condition, reasonable wear and use excepted, and (ii) its existing insurance upon all of its properties and with respect to the conduct of its business in such amounts and of such kinds comparable to that in effect on the date of this Agreement.

5.3 **Extraordinary Actions.** EarthCare and ERM agree that they will take action to insure that ERM will not: (i) pay any bonus or increase the rate of compensation of any of ERM's employees or enter into any new employment agreement or amend any existing employment agreement; (ii) make any general increase in the compensation or rate of compensation payable or to become payable to ERM's hourly-rated employees; (iii) sell or transfer any of ERM's assets; (iv) obligate itself for capital expenditures other than in the ordinary course of business and not unusual in amount; or (v) incur any material obligations or liabilities, which are not in the ordinary course of business, or enter into any material transaction.

5.4 **Capitalization, etc.** EarthCare shall not permit ERM to, and ERM shall not, issue or enter into any subscription, option, agreement or other commitment in respect of the issuance, transfer, sale or encumbrance of any shares of ERM common stock, or to declare or pay any dividend or other distribution. Further, EarthCare shall not enter into any agreement or other commitment in respect of the sale, transfer or encumbrance of any shares of ERM common stock held by EarthCare.

5.5 **Articles of Incorporation, Bylaws.** EarthCare will take action to insure that ERM will not amend its Articles of Incorporation or Bylaws.

ARTICLE VI
TERMINATION

This Agreement may be terminated (1) by mutual consent of the parties hereto in writing; or (2) by EarthCare if the Closing shall not have taken place, unless adjourned to a later date by mutual consent in writing, by the earlier of (i) the date of the closing of the sale of EarthCare's EarthLiquids division to USFilter or (ii) January 31, 2002.

ARTICLE VII
GENERAL PROVISIONS

7.1 **Notices.** Any notice, request or other document shall be in writing and sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the party to be notified at the following addresses, or such other address as such party may hereafter designate by written notice to all parties, which notice shall be effective as of the date of posting, substitute; or alternatively by hand delivery or complete fax transmission. Notices are effective upon receipt.

- (a) If to EarthCare and/or ERM:
Attention: William W. Solomon, Jr.,
Vice President and Chief Financial Officer
EarthCare Company
14901 Quorum Drive, Suite 200
Dallas, TX 75254

with a copy to:

Baker Botts LLP
Attention: Andrew M. Baker
2001 Ross Avenue, Suite 700
Dallas, Texas 75201-2980

- (b) If to General Waste and/or GWC Florida:
Donald F. Moorehead, Jr., Chairman of the Board
General Waste Corporation
105 Magnolia Road
Pinehurst, NC 28374

with a copy to:

Becker & Poliakoff, P.A.
Attention: Clifford J. Hunt

401 East Jackson Street, Suite 2400
Tampa, FL 33602

7.2 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

7.3 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

7.4 **Headings.** The subject headings of the Sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

7.5 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.6 **Entire Agreement; Modification.** This Agreement and the documents delivered pursuant hereto constitute the entire agreement and understanding between the parties, and supersede any prior agreements and understandings relating to the subject matter hereof. This Agreement may be modified or amended by a written instrument executed by all parties hereto.

7.7 **Omission of Representations & Warranties.** The parties hereto acknowledge and expressly accept that this Agreement reflects an intention to consummate various transactions between related parties, well known to each other, and that under such circumstances, representations and warranties that would typically be included in an agreement of this nature have been intentionally omitted at the request of the respective parties.

7.8 **Post Closing Indemnities.** The parties hereto acknowledge and expressly accept that this Agreement reflects an intention to consummate various transactions between related parties, well known to each other, and that under such circumstances, post-closing indemnity provisions designed to hold the parties harmless from damages, etc. that may arise from any breach of representations or warranties and that would typically be included in an agreement of this nature have been intentionally omitted at the request of the respective parties.

7.9 **Due Diligence & Warranty Waiver.** The parties hereto acknowledge and expressly agree that consummation of this Agreement and execution and delivery of all Transaction Agreements shall not be subject to completion of any due diligence procedures by any party to this Agreement and that each business and all assets associated with the businesses conveyed by this Agreement and the Transaction Agreements will be acquired on an "as is, where is" basis and that no express or implied warranties are being given, conveyed or are otherwise attached to any business or asset that is the subject matter of this Agreement and any and all Transaction Agreements.

7.10 ***Costs of this Transaction.*** Each party shall be responsible for its/their own costs associated with the negotiation and consummation of the proposed transaction, including without limitation, all legal, consulting, financial advisory and accounting expenses and any fees or commissions due any broker as a result of the consummation of the proposed transaction.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

GENERAL WASTE:

General Waste Corporation

By: _____

Name: Harry M. Habets

Its: President

GWC FLORIDA:

Florida GWC, Inc.

By: _____

Name: Harry M. Habets

Its: Vice President

EARTHCARE:

EarthCare Company

By: _____

Name: William W. Solomon, Jr.

Its: Vice President and
Chief Financial Officer

ERM:

Earth Resource Management, Inc.

By: _____

Name: William W. Solomon, Jr.

Its: Vice President