

## **2004 BCSECCOM 486**

### **Headnote**

Mutual Reliance Review System for Exemptive Relief Applications – first trade relief for securities of a U.S. company to be distributed to shareholders of a private company in connection with an arrangement – after the distribution, residents of Canada will hold more than 10% but less than 12% of the outstanding securities of the U.S. company

### **Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s. 76

### **IN THE MATTER OF THE SECURITIES LEGISLATION OF ALBERTA, BRITISH COLUMBIA, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, ONTARIO, PRINCE EDWARD ISLAND, SASKATCHEWAN, NORTHWEST TERRITORIES AND NUNAVUT**

**AND**

### **IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS**

**AND**

### **IN THE MATTER OF CAPITAL ENVIRONMENTAL RESOURCE INC.**

### **MRRS DECISION DOCUMENT**

WHEREAS the local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, Northwest Territories and Nunavut (the Jurisdictions) has received an application from Capital Environmental Resource Inc. (CERI) for a decision under the securities legislation of the Jurisdictions (the Legislation) that the prospectus requirement under the Legislation shall not apply to the first trade of common shares (WSI Common Shares) of Waste Services, Inc. (WSI) issued to the holders (CERI Shareholders) of CERI common shares (CERI Common Shares), the holders (CERI Optionholders) of options (CERI Options) to purchase CERI Common Shares and the holders (CERI Warrantholders) of warrants (CERI Warrants) to purchase CERI Common Shares, in connection with a proposed arrangement (the Arrangement) under section 182 of the *Business Corporations Act* (Ontario) (the OBCA) involving, among others, CERI, WSI and Capital Environmental Holdings Company (Capital Holdings).

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AND WHEREAS under the Mutual Reliance Review System (MRRS) set forth in National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (the Policy), the Ontario Securities Commission is the principal regulator for this application;

AND WHEREAS unless otherwise defined, the terms herein have the meaning set out in National Instrument 14-101 *Definitions*;

AND WHEREAS CERI has represented to the Decision Makers that:

1. CERI was formed on the amalgamation of its predecessor, Capital Environmental Resource Inc., with a number of its predecessor's wholly owned subsidiaries, pursuant to the OBCA effective January 1, 2003. CERI's predecessor was incorporated in May 1997 and began operations in June 1997.
2. CERI is a "registrant" under, and is subject to, the requirements of the United States *Securities Exchange Act of 1934*, as amended (the 1934 Act). CERI is not a "reporting issuer" under the securities legislation in any jurisdiction in Canada and will not become a reporting issuer following completion of the Arrangement. CERI Common Shares are quoted on the NASDAQ National Market (the NNM) under the symbol "CERI".
3. CERI's authorized capital consists of an unlimited number of CERI Common Shares and preferred shares issuable in series. As at May 31, 2004, there were 95,383,778 CERI Common Shares and no preferred shares issued and outstanding.
4. Residents of Canada currently own directly or indirectly approximately 11% of the outstanding CERI Common Shares and represent in number approximately 12.5% of the total number of beneficial holders of CERI Common Shares.
5. WSI is currently a subsidiary of CERI. WSI is a corporation organized under and governed by the laws of the State of Delaware.
6. WSI is not a "reporting issuer" under the securities legislation in any jurisdiction in Canada and will not become a reporting issuer following completion of the Arrangement.
7. The authorized capital of WSI consists of 500,000,000 WSI Common Shares and 5,000,000 shares of preferred stock, 100,000 of which have been designated as Series A Preferred Stock (WSI Series A Preferred Stock). As at May 31, 2004, one WSI Common Share, held by CERI, and 55,000 WSI

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Series A Preferred Stock were issued and outstanding. Neither the WSI Common Shares nor the WSI Series A Preferred Stock are currently listed on any stock exchange or quoted on any quotation and trade reporting system.

8. WSI proposes to (i) have its WSI Common Shares quoted on the NNM following the Arrangement becoming effective, (ii) be registered with the Securities and Exchange Commission in the United States of America under the 1934 Act, and (iii) not be exempt from the reporting requirements of the 1934 Act.
9. Capital Holdings is a wholly-owned direct subsidiary of WSI.
10. Capital Holdings was incorporated as an unlimited liability company under the laws of the Province of Nova Scotia solely to hold all of the CERI Common Shares and to hold the various call rights related to the Exchangeable Shares (as defined below).
11. Capital Holdings has no assets and does not carry on any business. Capital Holdings intends to conduct no business following the Arrangement apart from holding CERI Common Shares and various call rights.
12. Capital Holdings is not a “reporting issuer” under the securities legislation of any jurisdiction in Canada and will not become a reporting issuer following completion of the Arrangement.
13. The Arrangement will modify the corporate structure of CERI and its subsidiaries, and will ultimately result in CERI becoming a direct subsidiary of Capital Holdings. Capital Holdings will continue to be a direct subsidiary of WSI. CERI will not, by virtue of the Arrangement, change its business or operations after the date on which the Arrangement is effective.
14. Through the Arrangement, CERI will effectively convert the CERI Shareholders into holders of WSI Common Shares as follows:
  - CERI Shareholders who are U.S. residents will have their holdings automatically transferred to Capital Holdings in exchange for WSI Common Shares on a one-for-one basis;
  - CERI Shareholders who are not U.S. residents and who elect to receive exchangeable shares in the capital of CERI (the Exchangeable Shares) will have their CERI Common Shares reclassified as Exchangeable Shares that are exchangeable for WSI Common Shares on a one-for-one basis; and

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- CERI Shareholders who are not U.S. residents and who do not elect to receive Exchangeable Shares will also have their holdings automatically transferred to Capital Holdings in exchange for WSI Common Shares on a one-for-one basis.
15. The Exchangeable Shares will be exchanged for WSI Common Shares upon the occurrence of prescribed retraction, redemption and, if applicable, liquidation events. The Exchangeable Shares will not be listed or posted for trading on any stock exchange.
  16. WSI will provide to beneficial owners of Exchangeable Shares and of WSI Common Shares resident in Canada copies of all disclosure materials provided to holders of WSI Common Shares resident in the United States.
  17. Each CERI Option will continue to be an obligation of CERI; however, it shall permit the holder to purchase a number of WSI Common Shares equal to the number of CERI Common Shares that may be purchased if such CERI Option were exercisable and exercised immediately prior to the Arrangement taking effect.
  18. Each CERI Warrant will continue to be an obligation of CERI; however, it shall permit the holder to purchase a number of WSI Common Shares equal to the number of CERI Common Shares that may be purchased if such CERI Warrant were exercisable and exercised immediately prior to the Arrangement taking effect.
  19. CERI Shareholders, CERI Optionholders and CERI Warrantholders will not be able to rely on Section 2.14 of Multilateral Instrument 45-102 - *Resale of Securities* with respect to first trades of WSI Common Shares because, as of the effective date of the Arrangement, residents of Canada will own directly or indirectly more than 10 percent of the outstanding WSI Common Shares.

AND WHEREAS pursuant to the Policy this Decision Document confirms the determination of the Decision Makers (the Decision);

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Makers with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the prospectus requirement will not apply to the first trade of WSI Common Shares

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acquired by CERI Shareholders, CERI Optionholders and CERI Warrantholders in connection with the Arrangement, including on the exchange, redemption or retraction of Exchangeable Shares or on exercise of the CERI Options or CERI Warrants, provided that the trade is made on the facilities of the NNM or any other exchange or market outside of Canada on which the WSI Common Shares may be quoted or listed for trading at the time that the trade occurs or to a person or company outside of Canada.

DATED the 30<sup>th</sup> day of July, 2004.

Robert L. Shirriff

H.Lorne Morphy