

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
BY ATTORNEY GENERAL JOSH SHAPIRO

Petitioner

v.

WHITETAIL DISPOSAL, INC.
334 Layfield Road
Perkiomenville, Pennsylvania 18074

and

WD HINKLE, LLC
d/b/a WHITETAIL DISPOSAL
334 Layfield Road
Perkiomenville, Pennsylvania 18074

and

WD TRADEMARK, LLC
d/b/a WHITETAIL DISPOSAL
334 Layfield Road
Perkiomenville, Pennsylvania 18074

and

WHITETAIL ENVIRONMENTAL SOLUTIONS, LLC:
d/b/a WHITETAIL DISPOSAL
334 Layfield Road
Perkiomenville, Pennsylvania 18074

Respondents

Term: _____

Case No.: _____

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro (hereinafter the "Petitioner" or "Commonwealth"), which has entered into this Assurance of Voluntary Compliance (hereinafter "Assurance") following an investigation into the business practices of Whitetail Disposal, Inc., WD Hinkle, LLC, WD

Trademark, LLC, and WD Environmental Services, Inc. (hereinafter “Respondents”), pursuant to the Pennsylvania *Unfair Trade Practices and Consumer Protection Law*, 73 P.S. § 201-1, *et seq.* (hereinafter “*Consumer Protection Law*”), and states the following:

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, by Attorney General Josh Shapiro, with offices located at 15th Floor Strawberry Square, Harrisburg, Pennsylvania 17120, and 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania 19103;

WHEREAS, Respondent Whitetail Disposal, Inc. is a Pennsylvania corporation registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, with a registered business address and principal place of business of 334 Layfield Road, Perkiomenville, Pennsylvania 18074;

WHEREAS, Respondent WD Hinkle, LLC is a Pennsylvania limited liability company registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, with a registered business address of 2473 Big Road, Gilbertsville, Montgomery, PA 19525 and principal place of business of 334 Layfield Road, Perkiomenville, Pennsylvania 18074;

WHEREAS, Respondent WD Trademark, LLC is a Pennsylvania limited liability company registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, with a registered business address and principal place of business of 334 Layfield Road, Perkiomenville, Pennsylvania 18074;

WHEREAS, Respondent Whitetail Environmental Solutions, LLC, is a Pennsylvania limited liability company registered with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations: Corporations Section, with a registered business

address and principal place of business of 334 Layfield Road, Perkiomenville, Pennsylvania 18074; and

WHEREAS, Respondents conduct business under the name “Whitetail Disposal”.

BACKGROUND

WHEREAS, Respondents engage in trade or commerce within the Commonwealth by advertising, marketing, offering to sell, selling, and/or providing waste and recycling removal services within the Commonwealth of Pennsylvania and to Pennsylvania consumers;

WHEREAS, Respondents provide waste and recycling removal services to residential consumers throughout the Commonwealth of Pennsylvania, charging residential consumers a quarterly rate for such services;

WHEREAS, in certain instances, Respondents engaged in door-to-door solicitation and entered into agreements with consumers wherein consumers received subscription waste and recycling removal services from Respondents and were billed on a quarterly basis;

WHEREAS, in certain instances, residential consumers signed up for Respondents’ services via written agreement for an indefinite, open-ended subscription wherein the consumer could terminate the agreement by paying to Respondents a cancellation fee. In certain instances, the agreement provided that Respondents’ quarterly rate for waste and recycling removal services would be guaranteed for a certain, specified number of years;

WHEREAS, in certain instances, Respondents represented verbally and/or in the “Special Instructions” section on the face of the agreement that the quarterly rate for Respondents’ services would be guaranteed in perpetuity, using language which included, but was not limited to, “for life” or “forever”;

WHEREAS, in certain instances, consumers who were promised this guaranteed rate

were senior citizens on a fixed budget and were induced into signing up for Respondents' services with the promise of a rate guaranteed in perpetuity;

WHEREAS, based upon its investigation, the Commonwealth believes Respondents' conduct violated and continues to violate the *Consumer Protection Law* by Respondents subsequently raising the quarterly rate for its services and charging certain consumers more than the previously agreed-upon price, despite having previously promised consumers that the quarterly rate for Respondents' services would be guaranteed and fixed;

WHEREAS, it is Respondents' position that the guaranteed rate included waste removal services only—with recycling removal services previously being offered independently as a complimentary bonus—and that consumers were notified prior to the price increase, which was attributable to a new charge for recycling removal services necessitated by changes in the global recycling market;

WHEREAS, while the Commonwealth disputes Respondents' characterization, even if Respondents' characterization were accepted as true, Respondents nevertheless failed, in both verbal and written representations to consumers, to delineate between the two distinct services and failed to adequately disclose these terms to consumers at the time of the initial agreement. These failures had the tendency to mislead consumers into believing their waste *and* recycling removal services were going to be provided at a guaranteed and fixed rate in perpetuity;

WHEREAS, various consumers who were in fact misled by Respondents' pricing representation(s) filed complaints with the Commonwealth and/or the Better Business Bureau after Respondents increased their quarterly rates;

WHEREAS, in certain instances, these consumers' agreements are still in effect to date and Respondents continue to bill these consumers at the increased rate on a quarterly basis.

WHEREAS, the Commonwealth alleges that the above-stated acts and practices constitute unfair methods of competition and/or unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the *Consumer Protection Law*, including the following:

1. Representing that goods or service have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, 73 P.S. § 201-2(4)(v);
2. Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made, 73 P.S. § 201-2(4)(xiv); and
3. Engaging in any fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

WHEREAS, this Assurance is accepted by the Commonwealth pursuant to Section 201-5 of the *Consumer Protection Law* in lieu of commencing statutory proceedings under Section 201-4. 73 P.S. §§ 201-4, 201-5;

WHEREAS, Respondents affirm their commitment to complying with the civil laws of the Commonwealth and agree by signing this Assurance to recognize and be bound by any and all obligations, liabilities, responsibilities and encumbrances as set forth in this Assurance;

WHEREAS, pursuant to Section 201-5 of the *Consumer Protection Law*, this Assurance shall not be considered an admission by Respondents of a violation of the *Consumer Protection Law* for any purpose. 73 P.S. § 201-5; and

WHEREAS, the Effective Date of this Assurance shall be the date upon which it is filed.

SETTLEMENT TERMS

NOW THEREFORE, Respondents agree for themselves, their successors, officers, assigns, agents, employees, Representatives and all other persons acting on their behalf, jointly or individually, directly or indirectly, or through any other entity or business device, as follows:

I. The Recitals are incorporated herein as though fully set forth.

II. Injunctive and Affirmative Relief

A. Respondents shall not, in the future, engage in conduct which violates the *Consumer Protection Law* and any future amendments thereto, including, but not limited to:

1. Representing that goods or services have a sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have, as prohibited by the *Consumer Protection Law* at 73 P.S. § 201-2(4)(v);

2. Failing to comply with the terms of any written guarantee or warranty given to the buyer at, prior to or after a contract for the purchase of goods or services is made, as prohibited by the *Consumer Protection Law* at 73 P.S. § 201-2(4)(xiv); and

3. Engaging in other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, as prohibited by the *Consumer Protection Law* at 73 P.S. § 201-2(4)(xxi).

73 P.S. §§ 201-2(4)(v), (xiv), and (xxi).

B. Respondents shall not continue to engage in door-to-door solicitation without first obtaining and maintaining all required permits and/or licensure.

C. Respondents shall not continue to bill or collect monies from Pennsylvania Consumers for goods and/or services which are not owed by the consumer pursuant to the terms and conditions of the contract or agreement entered into by Respondents with such consumers.

D. Respondents shall provide three (3) months of waste and recycling removal services entirely free of charge to any and all consumers deemed by the Commonwealth to be eligible for Restitution and/or Additional Restitution pursuant to the terms of paragraphs III.A.3. and III.B., herein below. Respondents shall provide the three months of free services to each eligible consumer during the first applicable quarter after the Effective Date of this Assurance, with no opt-in or other affirmative act required of said consumers.

E. Respondents shall allow any and all consumers to whom Respondents promised a guaranteed and fixed quarterly rate for waste and recycling removal services and subsequently increased said rate to cancel their current agreement—if they so desire—immediately following the three months of free services referenced in paragraph II.D. herein above and with no cancellation fee charged to said consumers.

F. Respondents shall maintain measures reasonably necessary to train its employees, agents, representatives, and the like and to monitor the performance of their duties properly, so that they are compliant with this Assurance and all applicable laws including, but not limited to, the *Consumer Protection Law*.

III. Monetary Relief

A. Respondents hereby agree to pay the amount of Thirteen Thousand Four Hundred Twenty-Nine Dollars (\$13,429.00) (hereinafter “Monetary Payment”) to the Commonwealth of Pennsylvania, Office of Attorney General, to be allocated as follows:

1. **Civil Penalties** - The sum of Eight Thousand Dollars (\$8,000.00) as Civil Penalties (“Civil Penalties”) to be distributed to the Commonwealth of Pennsylvania, Treasury Department.

2. **Public Protection and Education Purposes** - The sum of Two Thousand Five Hundred Dollars (\$2,500.00) (“Costs”) to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

3. **Restitution** - The sum of Two Thousand Nine Hundred Twenty-Nine Dollars (\$2,929.00) (“Restitution”) shall be allocated as Restitution and distributed to affected consumers in the sole discretion of the Commonwealth.

B. **Additional Restitution** - Respondents acknowledge that there may be consumers who have been harmed by Respondents’ conduct as described herein and who have not yet filed complaints with the Commonwealth. In addition to the Monetary Payment, noted herein above in Section III.A., Respondents agree to pay Additional Restitution (“Additional Restitution”), in accordance with the following:

1. Respondents shall pay Additional Restitution, consistent with Section 201-4.1 of the *Consumer Protection Law*, to the Commonwealth, for any consumer who:
 - a. Entered into a written contract with Respondents for waste and recycling removal services based on Respondents’ representation of a guaranteed and fixed quarterly rate—only for Respondents to subsequently raise said rate prior to the expiration, if any, of the guaranteed term;
 - b. Submits a claim, complaint, or restitution request to Respondents or to the Commonwealth within ninety (90) days after the date of the notice described in Section IV, herein below; and

c. Demonstrates to the satisfaction of the Commonwealth that they are owed restitution from Respondents. In order for a consumer to be eligible for consideration for Additional Restitution from Respondents hereunder, the consumer must provide adequate support for his or her claim or complaint or restitution request including a written contract and/or other adequate proof of purchase. The determination as to whether the support is adequate shall be at the sole discretion of the Commonwealth. The Commonwealth will provide Respondents with copies of all claims or complaints received. Respondents will provide to the Commonwealth copies of any and all claims or complaints received by Respondents during the aforementioned ninety (90) day period.

2. Respondents agree to fully cooperate with the Commonwealth and shall supply the Commonwealth with any and all information and documents requested by the Commonwealth, within ten (10) days of the request, with regard to any consumer who submits a claim or complaint within the aforementioned ninety (90) day period. Respondents may also submit to the Commonwealth a written response to the specific consumer complaints included in said Additional Restitution within ten (10) business days of receiving each list of consumers eligible for Additional Restitution as determined by the Commonwealth.

a. The determination of whether a consumer shall receive Additional Restitution hereunder and the determination of the amount of any such

Additional Restitution paid to such consumer shall be within the sole discretion of the Commonwealth.

- b. The Commonwealth shall provide Respondents with a list of validated claims filed by consumers who are entitled to Additional Restitution hereunder, after which Respondents shall have thirty (30) days from the date of submission of the list to pay to the Commonwealth the total amount of Additional Restitution indicated on the list.
 - i. The Additional Restitution shall be distributed to consumers by the Commonwealth.
 - ii. The Commonwealth may submit more than one list of validated claims.
- c. Any claim or complaint that is postmarked by the ninetieth (90th) day from the date of the notice described in Section IV, herein below, shall be deemed timely.

3. The amount, timing, and manner of any distribution of the Additional Restitution to consumers shall be left to the sole discretion of the Commonwealth.

C. **Payment Terms** - Respondents agree to pay the above-referenced amounts toward Civil Penalties, Costs, and Restitution in accordance with the terms of Paragraph III(A) herein, by certified check, cashier's check, or money order, made payable to the "Commonwealth of Pennsylvania, Office of Attorney General," and forwarded to the Office of Attorney General, 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania 19103, upon Respondents' execution of the Assurance.

IV. Notification of Potentially Impacted Consumers

A. Due to the nature of Respondents' business, the most effective method of notifying Respondents' consumers who may have been impacted by Respondents' conduct is to provide notice directly to each potentially impacted consumer.

B. Accordingly, Respondents agree to notify consumers of their ability to seek restitution under this Assurance by sending a copy of the notice attached hereto as Exhibit A—which notice has been agreed to in substance and form by the parties—to all potentially affected customers within the identified sub-class of customers within Respondents' customer rolls which have been previously denoted as receiving a "discount." Respondents have represented to the Commonwealth that any customers who may have been affected by the alleged behavior outlined within this Assurance necessarily fall within that subclass and this notice measure is thus an effective remedy thereto.

C. Respondents shall deliver the notice to its potentially impacted consumers within fifteen (15) days after the Effective Date of this Assurance.

V. Miscellaneous Terms

A. Time shall be of the essence with regard to Respondents' obligations hereunder.

B. Respondents certify that Paul Brady, Chief Operating Officer of Whitetail Disposal, Inc., is authorized to enter into this Assurance on behalf of Respondents and his signature on this document binds the Respondents to all terms contained herein.

C. Respondents further agree to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance, whether required prior to, contemporaneous with or subsequent to the execution of this Assurance.

D. The Court of Common Pleas of Montgomery County, Pennsylvania shall have jurisdiction over the subject matter of this Assurance and over Respondents for purposes of enforcement of this Assurance.

E. Nothing contained herein shall be construed to waive any individual right of action by any consumer, person or entity, or any local, state, federal or other governmental entity.

F. Any failure of the Commonwealth to exercise any of its rights under this Assurance shall not constitute a waiver of its rights hereunder.

G. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and the Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

H. This Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

I. Respondents understand and agree that if its officers and/or agents have made any false statements in or related to this Assurance, that such statement is made pursuant to and under penalty of 18 P.S. § 4904 relating to unsworn falsifications to authorities.

J. Respondents shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondents' past or current business practices, efforts to improve its practices, or any future practices that Respondents may adopt or consider adopting.

K. This Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied relating to the subject matter of this Assurance. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

WHEREFORE, Respondents agree by the signing of this Assurance to abide by each and every one of the aforementioned provisions and that breach of any of the terms of this Assurance shall be sufficient warrant for the Commonwealth of Pennsylvania to petition the Court, to assess penalties including but not limited to civil and other penalties as provided for under Sections 201-8, 201-9 and 201-9.1 of the *Consumer Protection Law*, and to order any other relief which the Court deems necessary or proper in accordance with the *Consumer Protection Law*.

WITNESSETH, that the parties, intending to be legally bound, have hereto set their hands and seals:

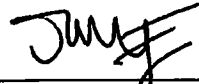
{Signatures on following pages}

FOR THE PETITIONER:

COMMONWEALTH OF PENNSYLVANIA
JOSH SHAPIRO
Attorney General

Date: 10/12/2021

By:




James S. Wise
Senior Deputy Attorney General
Attorney ID # 314913
Commonwealth of Pennsylvania
Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, Pennsylvania 19103

FOR THE RESPONDENTS:

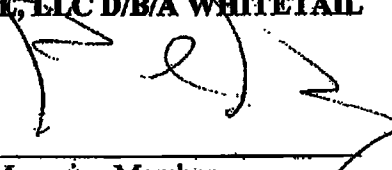
WHITETAIL DISPOSAL, INC.

Date: 10-4-21

By: 
Paul Brady, Chief Operating Officer


WD HINKLE, LLC D/B/A WHITETAIL DISPOSAL

Date: 10-11-21

By: 
Paul Brady, Managing Member

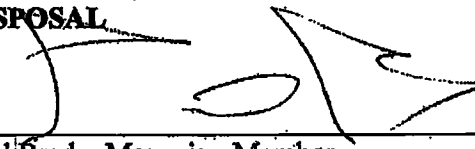
WD TRADEMARK, LLC D/B/A WHITETAIL DISPOSAL

Date: 10-24-21

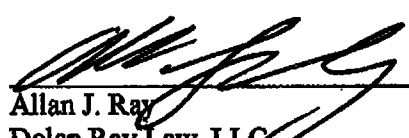
By: 
Paul Brady, Managing Member

WHITETAIL ENVIRONMENTAL SOLUTIONS, LLC D/B/A WHITETAIL DISPOSAL

Date: 10-24-21

By: 
Paul Brady, Managing Member

Date: 10-20-21

By: 
Allan J. Ray
Dolan Ray Law, LLC
2500 E. High Street Building 700
Pottstown, PA 19464
Attorney for the Respondents

Case# 2021-20362-0 Docketed at Montgomery County Prothonotary on 10/12/2021 1:03 PM. Fee = \$68.50. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.


CORPORATE RESOLUTION

**RESOLUTION OF THE BOARD OF DIRECTORS OF WHITETAIL DISPOSAL, INC.
D/B/A WHITETAIL DISPOSAL**

The Board of Directors of Whitetail Disposal, Inc. d/b/a Whitetail Disposal met on the 4th day of October, 2021, and approved the following resolution:

RESOLVED, that Paul Brady, Chief Operating Officer of Whitetail Disposal, Inc. d/b/a Whitetail Disposal, is hereby authorized and empowered on behalf of Whitetail Disposal, Inc. d/b/a Whitetail Disposal to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

Filed with and attested to by the Secretary of the Corporation, this 4th day of October, 2021.


(Signature of Chief Operating Officer)

CORPORATE RESOLUTION

**RESOLUTION OF THE CONTROLLING MEMBERS OF WD HINKLE, LLC D/B/A
WHITETAIL DISPOSAL**

The Controlling Members of WD Hinkle, LLC d/b/a Whitetail Disposal met on the
4th day of October, 2021, and approved the following resolution:

RESOLVED, that Paul Brady, Managing Member of WD Hinkle, LLC d/b/a Whitetail Disposal, is hereby authorized and empowered on behalf of WD Hinkle, LLC d/b/a Whitetail Disposal to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

Filed with and attested to by the Managing Member of the Limited Liability Company,
this 4th day of October, 2021.


(Signature of Managing Member)

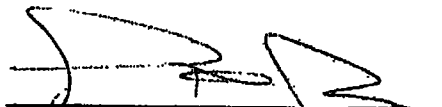
CORPORATE RESOLUTION

**RESOLUTION OF THE CONTROLLING MEMBERS OF WD TRADEMARK, LLC
D/B/A WHITETAIL DISPOSAL**

The Controlling Members of WD Trademark, LLC d/b/a Whitetail Disposal met on the 4th day of October, 2021, and approved the following resolution:

RESOLVED, that _____, Managing Member of WD Trademark, LLC d/b/a Whitetail Disposal, is hereby authorized and empowered on behalf of WD Trademark, LLC d/b/a Whitetail Disposal to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

Filed with and attested to by the Managing Member of the Limited Liability Company, this 4th day of October, 2021.


(Signature of Managing Member)

CORPORATE RESOLUTION

RESOLUTION OF THE CONTROLLING MEMBERS OF WHITETAIL ENVIRONMENTAL SOLUTIONS, LLC D/B/A WHITETAIL DISPOSAL

The Controlling Members of Whitetail Environmental Solutions, LLC d/b/a Whitetail Disposal met on the 4th day of October, 2021, and approved the following resolution:

RESOLVED, that Paul Brady, Managing Member of Whitetail Environmental Solutions, LLC d/b/a Whitetail Disposal, is hereby authorized and empowered on behalf of Whitetail Environmental Solutions, LLC d/b/a Whitetail Disposal to enter into an Assurance of Voluntary Compliance with the Commonwealth of Pennsylvania, Office of Attorney General, upon the terms and conditions contained in the proposed Assurance of Voluntary Compliance attached hereto and made a part hereof.

Filed with and attested to by the Managing Member of the Limited Liability Company, this 4th day of October, 2021.


(Signature of Managing Member)

EXHIBIT A

Dear Loyal Whitetail Disposal Customer,

You are receiving this letter because you have been identified as one of the customers who may have had a Whitetail salesperson promise that your disposal collection would be provided at a “guaranteed” quarterly price “for life” (or using similar language).

Whitetail recently entered into a settlement agreement with the PA Attorney General based on allegations that certain Whitetail customers were guaranteed a trash rate “for life” in their initial service agreements.

If you were previously promised a guaranteed rate “for life” (or using similar language), you may be eligible for a partial refund and 3 free months of trash and recycling services, plus free cancellation of your current agreement—if you so desire.

In order to submit a claim, please contact the PA Attorney General, Bureau of Consumer Protection, via email to sjoyce@attorneygeneral.gov or via regular mail to the Office of Attorney General, Attn: Samantha Joyce, 1600 Arch Street, Suite 300, Philadelphia, Pennsylvania 19103. Customers may also submit claims directly to Whitetail via email to info@whitetaildisposal.com or a call to the customer service manager at (610) 754-0103.

Please submit your claim within 90 days of this notice in order to be considered and be sure to include any proof of purchase you may have.

Thank you for your continued business!

Whitetail Disposal