

NATIONAL WASTE MANAGERS v. ANNE ARUNDEL COUNTY

Summary of Litigation

In 1990, the Halle Companies, on behalf of its wholly-owned enterprise, Chesapeake Terrace ("Halle"), filed two special exception requests and related variance requests. The special exception applications were for a sand and gravel mine to be operated in conjunction with a rubble landfill. Both special exceptions, as well as the variance applications, were denied by Anne Arundel County's Administrative Hearing Officer on September 24, 1990.

Halle appealed the decision of the Anne Arundel County Administrative Hearing Officer to the Anne Arundel County Board of Appeals which heard the appeal *de novo*. Halle's appeal was opposed before the Board of Appeals by numerous community associations, including the Crofton Civic Association as well as individual property owners. Anne Arundel County ("AACO") joined the civic associations and individuals in opposing the rubble landfill's special exception before the Board of Appeals. Sixteen administrative hearings were held before the Board of Appeals over a period of 17 months from April, 1992 through September, 1993.

On January 19, 1993, AACO introduced and held a public hearing on Bill 12-93 entitled, "An Ordinance Concerning: Zoning-Sanitary Landfills-Rubble Landfills." The bill provided that it would govern any special exceptions for a sanitary landfill operated solely for the disposal of rubble granted on or after January 19, 1993. This bill imposed a number of new evidentiary requirements upon Halle's case before the Board of Appeals. The Board of Appeals reconvened its hearings to allow Halle to address the issue of the applicability of Bill 12-93 and, subsequently, to allow Halle to meet the additional requirements of the bill.

On December 23, 1993, the Board of Appeals granted special exception approval for Halle's rubble landfill and sand and gravel operation. However, the Board imposed a number of conditions. The conditions upon which the special exceptions are based are:

1. Patuxent Road shall not be used as an entrance to the operation;
2. Conway Road is to be used as the entrance to the operation with the following conditions:
 - a. A right turn lane shall be constructed on eastbound Conway Road at Md. Rt. 3 to a minimum length of 500 feet;
 - b. From the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12 foot travel lanes and 8 foot shoulders improved to County standards where the County right-of-way

exists. Additionally, the petitioner shall pursue a diligent course to obtain the right-of-way from private owners, where possible;

- c. The road improvements on Conway Road from Rt. 3 to Patuxent Road shall be constructed before any rubble landfill or sand and gravel operation begins; road improvements from the intersection of Conway Road and Patuxent Road to the entrance of the site are to be completed within one year of the start of operations;
 - d. The access obtained to the site from Conway Road shall be through a fee-simple right-of-way, not through an easement.
3. The life of the landfill operation, from beginning of waste collection to the final waste acceptance, shall be limited to 12 years;
 4. The hours of operation for both the rubble landfill and the sand and gravel operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, with no weekend hours;
 5. The petitioners are to notify all landowners within 3/4 of a mile that they can opt to have the petitioners replace a shallow well at the petitioners' expense prior to and up until 12 months after commencement of the operations;
 6. The granting of the special exceptions neither approves nor denies railroad operations to bring rubble fill to the site. If the operation is to be used, the petitioners shall receive further approval from the County and other monitoring agencies;
 7. Fencing shall be erected around the active operation to a height of 6 feet with only one lockable gate.

On January 19, 1994, a Petition for Judicial Review of the Board of Appeals' Order was filed in Circuit Court for Anne Arundel County by five of the civic associations and 18 individuals who had opposed the project before the Board of Appeals. On February 8, 1994, AACO notified the Court of its intention to participate in the action and moved to intervene as a party appellant in the case.

On February 22, 1994, Bill No. 14-94 was introduced before the County Council for the purpose of adopting revisions to the Anne Arundel County Solid Waste Management Plan ("SWM plan"). The Halle-Chesapeake Terrace Landfill Project was included in the SWM Plan as introduced in Section 3.5.8 as a proposed facility.

- was this bill passed at that time? OR was it in draft form?

On April 4, 1994, an amended Bill 14-94 was introduced to remove all reference to Halle's Project from the SWM plan. Bill 14-94, as amended to delete any reference to the Halle-Chesapeake Terrace Landfill, was passed by the Anne Arundel County Council on May 25, 1994 and approved and enacted into law on May 31, 1994.

On August 31, 1994, the Honorable Martin A. Wolff of the Circuit Court for Anne Arundel County reversed the decision of the Board of Appeals. The Circuit Court held that the Board of Appeals had expanded the scope of its inquiry to such a degree that the nature of the original application was significantly altered when it imposed the Conway Road access requirement as a condition of the special exception. The Circuit Court held that the Board of Appeals exceeded the bounds of its *de novo* authority and erred as a matter of law when it granted the special exception and variance beyond the scope of Halle's original application.

Halle noted an appeal to the Court of Special Appeals and then filed a Petition for *Writ of Certiorari* in National Waste Managers, Inc. v. Anne Arundel County in the Court of Appeals prior to consideration of the case by the Court of Special Appeals. *Certiorari* was granted by the Court of Appeals to determine whether the Board of Appeals exceeded its *de novo* authority requiring the Conway Road access as a condition of the grant of the special exception and variance.

On July 17, 1995, the Court of Appeals issued its opinion in Halle Company, et al. v. Crofton Civic Association, et al., 339 Md. 131, 661 A.2d 682 (1995). The Court of Appeals held that the Board of Appeals could properly consider the issue of access through Conway Road and impose a condition that access be exclusively from Conway Road to the proposed facility. In upholding the condition, the Court indicated it was justifiable in terms relating to the public health, safety and welfare. The Court also stated:

... Halle must obtain a fee-simple estate rather than an easement in the Conway Road access land before the landfill operations may proceed. That was explicitly made a condition of the Board's grant of exception and variance. The uncertainty of a prerequisite's occurrence is irrelevant if the Board is satisfied that, once the prerequisite occurs, the approved activities would be appropriate.

Id. at 148, 661 A.2d at 690.

On October 9, 1996, Halle's successor in interest to the rubblefill project, National Waste Managers, Inc. ("NWM"), filed case #C-96-32534 in the Circuit Court for Anne Arundel County. The Complaint alleges that NWM applied to the Maryland Department of the Environment ("MDE") for a solid waste refuse disposal permit to install and operate a rubblefill to be located near Crofton, Maryland. NWM alleges that the MDE will not issue the permit unless AACO includes the project in its SWM plan. The Complaint further alleges that the County Council took specific action to remove the project from the plan while leaving the Cunningham landfill within the SWM plan.

NWM asserts that AACO improperly removed all references to its project from the 1994 SWM plan and that AACO's position that because the landfill did not yet exist, it did not have to include the project in the SWM plan was improper and essentially vetoed the decision of the Board of Appeals. The Complaint further states that in June, 1994, MDE notified NWM and AACO that no action would be taken upon NWM's state permit because the proposed facility was not included in the current SWM plan, and further processing of the application would not occur until the MDE received a written statement from AACO that the proposed facility meets all applicable County zoning and land use requirements and is in conformity with the County SWM plan. - but it does not - no entrance?

The original Complaint contained seven counts:

Count 1-Mandamus - *required by law* requests that the Court order AACO to include NWM's project in the SWM plan;

Count 2-Mandamus - requests an order of the Court requiring AACO to provide a written statement that NWM's project meets all applicable County zoning and land use requirements and is in conformity with the County SWM plan; *Did it at that time?*

Count 3-Declaratory Judgment - requests the Court to declare that NWM is entitled to have its project included within AACO's SWM plan and to have AACO deliver a statement that the project is in conformity with the plan; that AACO's acts in failing to include NWM's project in the 1994 amendments to the SWM plan and failure to provide a written statement regarding the conformity of the plan was unlawful;

Count 4-§1983 - Due process;

Count 5-Art. III, §40 of the Maryland Constitution - taking of property; *basis of*

Count 6-§1983 - taking of property without just compensation; and *large law suit?*

Count 7-§1983 - Equal protection.

NWM filed a Motion for Partial Summary Judgment on Count 1-Mandamus, requesting that the Court order that its project be included in the SWM plan and that the Court issue a declaration that AACO violated NWM's rights in failing to include the proposed project in the plan. AACO filed a Cross-Motion for Summary Judgment requesting judgment on all counts of the Complaint.

On March 26, 1997, the Honorable Clayton Greene, Jr. issued a written Memorandum Opinion and Order which ordered that NWM's project be included in the SWM plan. The Order also stated that in deleting all references to the NWM landfill as a proposed facility in Bill 14-94, AACO invaded the State's permit review prerogative. Finally, the Court ordered AACO to amend the SWM plan to include NWM's proposed facility.

In its analysis, the Circuit Court found that the decision to exclude the NWM landfill from AACO's SWM plan was arbitrary and was inconsistent with the determination made by the Board of Appeals that the landfill was needed. The Court specifically stated that if AACO refused to include the project in the SWM plan because of public opinion, that decision was inconsistent with the statutory scheme. The Court held that if NWM is entitled to any damages, they should be determined at trial. The Court also stated that NWM's claims for damages may be severely limited because the Court's determination only gives NWM the right to be included in the SWM plan and does not required the MDE to issue a permit. On April 24, 1997, AACO appealed the decision of the Court of March 26, 1997 to the Court of Special Appeals. *was it needed?*

NWM subsequently filed a Petition for Contempt for failure of AACO to comply with the March 26, 1997 Order of the Court. On August 1, 1997, the Honorable Clayton Greene, Jr. found that AACO was in contempt of the Court's order of March 26, 1997 and was fined \$250,000. The Court further ordered that AACO could purge itself of the contempt by providing a written statement to the MDE that NWM's proposed project meets all applicable County zoning and land use requirements and is in conformity with AACO's SWM plan. It further required AACO to take all steps consistent with law to enact an ordinance to include NWM's proposed facility in the SWM plan as an emergency measure and that this measure be enacted at the earliest possible date. It was also required that AACO delete certain language from a proposed ordinance that had been previously submitted to the Court. *3 DAYS AFTER \$250,000 FINE.*

On August 4, 1997, AACO sent a letter to the MDE which stated, "[p]ursuant to the enclosed judicial order, the Anne Arundel County Department of Public Works informs you that the above-referenced facility meets all applicable County zoning and land use requirements and is in conformity with the County solid waste plan." *??*

On August 21, 1997, the Court amended its Order of August 1, 1997 and the Court struck the provisions set forth above that AACO was required to take to purge itself of the contempt except for the requirement that AACO send the letter to the MDE, which condition AACO had already satisfied. The Order also stated that AACO shall comply with State law as interpreted by the Court so that the MDE may consider whether the proposed facility is necessary.

NOTE: THAT MDE may consider need!!

On August 28, 1997, AACO appealed the decision of the Circuit Court for Anne Arundel County finding it in contempt in the judgment/order of August 1, 1997 as amended on August 21, 1997.

On November 19, 1997, AACO sent a letter to the MDE stating that, "[p]ursuant to Art. 28, Title 12, 12-107(a) of the Anne Arundel County Code, please be advised that the special exception approval obtained by the referenced applicant on December 12, 1993, was rescinded by operation of law effective August 23, 1997."

On December 30, 1997, NWM filed a Petition for Contempt and on January 6, 1998 the case was specially assigned to Judge Eugene Lerner. The Petition for Contempt asserted that AACO's action in forwarding its letter of November 19, 1997 to the MDE violated the Court's prior Orders as well as the state permitting statute.

On March 25, 1998, the Court of Special Appeals confirmed Judge Greene's original grant of summary judgment on Count 1, Writ of Mandamus, in an unreported opinion captioned as Anne Arundel County, Maryland v. National Waste Managers, Inc., No. 810, September Term, 1997. The Court of Special Appeals held that AACO's decision to delete the NWM facility from the SWM plan was not within the scope of its involvement as set forth in Md. Code Ann., Envir. §9-210 (1996 repl. vol.). The Court of Special Appeals further held that the action of AACO in deleting the NWM facility from the SWM plan was beyond the scope of any authorized county involvement. AACO's Petition for *Writ of Certiorari* was denied on June 25, 1998 in Anne Arundel County v. National Waste, 350 Md. 275, 711 A.2d 867 (1998).

On April 21, 1998, Judge Lerner held that AACO could not be held in contempt of the Court Order for sending the November 19, 1997 letter regarding the expiration of NWM's special exceptions approval. Judge Lerner ruled that it was NWM's responsibility, not AACO's, to safeguard its special exception approval by requesting an extension prior to its expiration on August 17, 1997.

On May 22, 1998, NWM filed a Notice of Appeal in the Court of Special Appeals seeking a review of Judge Lerner's Order which denied its Petition for Contempt against AACO. However, AACO moved to dismiss the appeal, arguing that the ruling was not a final appealable order. On July 16, 1998, the Motion to Dismiss was granted by the Court of Special Appeals and the appeal was dismissed in National Waste Managers, Inc. v. Anne Arundel County, PHC No. 365, September Term, 1998.

On September 1, 1998, NWM filed a Petition for *Writ of Certiorari* in the Court of Appeals of Maryland captioned as National Waste Managers, Inc. v. Anne Arundel County, Maryland, No. 406, September Term, 1998, seeking *certiorari* on the issue of Judge Lerner's prior order not being a final appealable order. On October 13, 1998, the Court of Appeals denied this *Writ of Certiorari*.

On September 29, 1998, in an unreported opinion captioned as Anne Arundel County v. National Waste Managers, Inc., No. 96, September Term, 1998, the Court of Special Appeals affirmed Judge Greene's finding of contempt as to Anne Arundel County in the orders dated August 1, 1997 and August 21, 1997. However, the Court of Special Appeals remanded the case to the Circuit Court for reconsideration of an appropriate purging provision. The Court ruled that the purging provision imposed upon AACO that it send a letter to the MDE indicating that NWM's proposed facility meets all applicable County and zoning and land use requirements and was in conformity with the SWM plan was beyond the scope of Count 1 of the Complaint for which summary judgment had been originally granted.

On December 1, 1998, NWM filed a Request for Issuance of an Injunction and a Motion for Partial Summary Judgment on Count 3 (declaratory judgment) of the Complaint. NWM was seeking the issuance of an injunction directing AACO to provide the MDE with a written statement that NWM's project conforms to the SWM plan and complies with local zoning and land use regulations. NWM also moved for summary judgment on its claim that AACO violated Md. Code Ann., Envir. §9-210 (1996 repl. vol.) by refusing to issue its written statement to the MDE as indicated above.

On July 7, 1999, NWM filed an Amendment By Interlineation of its Complaint. The Amendment alleges additional allegations that AACO blocked MDE processing of NWM's application by refusing to forward a written statement to the MDE that NWM was in conformance with the SWM plan because AACO alleged that sufficient disposal capacity already existed for rubble. The Amendment further alleges that AACO's actions in removing the NWM project from the SWM plan were judged to be unlawful. The Amendment indicates that AACO's actions in sending the MDE a letter indicating that its special exception had lapsed by operation of law were wrongful. Finally, the Amendment alleged that AACO failed to treat NWM in the same fashion as Cunningham because AACO took the inconsistent position that Cunningham's special exception was tolled during litigation.

The Amendment By Interlineation also added Count 8 which requested an injunction compelling AACO to forward a written statement to the MDE withdrawing its letter which stated that NWM's special exception had lapsed by operation of law. Additionally, the injunction requested an order compelling AACO to notify the MDE that NWM's project meets all applicable zoning and land use requirements.

On September 10, 1999, Judge Lerner denied NWM's request for injunction as well as its request for the imposition of an appropriate purging provision. Judge Lerner found that AACO acted properly in notifying the MDE that the special exception had expired by operation of law on August 17, 1997. On September 20, 1999, NWM appealed the denial of its request for an injunction and request for the issuance of an appropriate purging order to the Court of Special Appeals.

On October 13, 2000, in an unreported opinion issued by the Court of Special Appeals in National Waste Managers, Inc. v. Anne Arundel County, Maryland, No. 1717, September Term, 1999 authored by Judge Hollender, the Court of Special Appeals held that the two year period during which the special exception must be utilized under County law was tolled by the circuit court litigation. The Court held that tolling principles applied to the circumstances of the case.

On November 9, 2000, AACO filed a Motion for Reconsideration in which it requested that the opinion be published and certain portions of the opinion be stricken. On December 4, 2000, the Motion for Reconsideration was granted and on December 6, 2000, the Court of Special Appeals issued a slightly revised reported opinion in National Waste Managers v. Anne Arundel County, 135 Md.App. 585, 763 A.2d 264 (2000).

On January 22, 2001, AACO filed a Petition for *Writ of Certiorari* in the Court of Appeals, PD No. 649, September Term, 2000. On April 13, 2001, the Court of Appeals denied the Petition for *Writ of Certiorari* in Anne Arundel County v. National Waste Managers, 363 Md. 659, 770 A.2d 167 (2001). The case was remanded to the Circuit Court for Anne Arundel County where it is currently pending.

First meeting 12/3 MDE
Second " 2/20 Greater Odenton Improvement Assoc

CANAL STN

**SUMMARY OF NATIONAL WASTE MANAGERS/
CHESAPEAKE TERRACE BOARD OF APPEALS' LITIGATION**

In 1990, the Halle Companies, on behalf of its wholly-owned enterprise, Chesapeake Terrace ("Halle"), filed two special exception requests and related variance requests. The special exception applications were for a sand and gravel mine to be operated in conjunction with a rubble landfill. Both special exceptions, as well as the variance applications, were denied by Anne Arundel County's Administrative Hearing Officer on September 24, 1990.

Halle appealed the decision of the Anne Arundel County Administrative Hearing Officer to the Anne Arundel County Board of Appeals which heard the appeal *de novo*. Halle's appeal was opposed before the Board of Appeals by numerous community associations, including the Crofton Civic Association as well as individual property owners. Anne Arundel County ("AACO") joined the civic associations and individuals in opposing the rubble landfill's special exception before the Board of Appeals. Sixteen administrative hearings were held before the Board of Appeals over a period of 17 months from April, 1992 through September, 1993.

On December 23, 1993, the Board of Appeals granted special exception approval for Halle's rubble landfill and sand and gravel operation. However, the Board imposed a number of conditions. The conditions upon which the special exceptions are based are:

RA Zone
150 AC.

1. Patuxent Road shall not be used as an entrance to the operation;
2. Conway Road is to be used as the entrance to the operation with the following conditions:

481.6 AC

- a. A right turn lane shall be constructed on eastbound Conway Road at Md. Rt. 3 to a minimum length of 500 feet;

① Conway and
Patuxent Rd

- b. From the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12 foot travel lanes and 8 foot shoulders improved to County standards where the County right-of-way exists. Additionally, the petitioner shall pursue a diligent course to obtain the right-of-way from private owners, where possible;

- c. The road improvements on Conway Road from Rt. 3 to Patuxent Road shall be constructed before any rubble landfill or sand and gravel operation begins; road improvements from the intersection of Conway Road and Patuxent Road to the entrance of the site are to be completed within one year of the start of operations;

481.6 ac.

Bridge over Conway Rd / concrete piers

4

- d. The access obtained to the site from Conway Road shall be through a fee-simple right-of-way, not through an easement.
3. The life of the landfill operation, from beginning of waste collection to the final waste acceptance, shall be limited to 12 years; *queing of trucks on the roads*
4. The hours of operation for both the rubble landfill and the sand and gravel operation shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, with no weekend hours;
5. The petitioners are to notify all landowners within 3/4 of a mile that they can opt to have the petitioners replace a shallow well at the petitioners' expense prior to and up until 12 months after commencement of the operations;
6. The granting of the special exceptions neither approves nor denies railroad operations to bring rubble fill to the site. If the operation is to be used, the petitioners shall receive further approval from the County and other monitoring agencies; ✓
7. Fencing shall be erected around the active operation to a height of 6 feet with only one lockable gate.

On January 19, 1994, a Petition for Judicial Review of the Board of Appeals' Order was filed in Circuit Court for Anne Arundel County by five of the civic associations and 18 individuals who had opposed the project before the Board of Appeals. On February 8, 1994, AACO notified the Court of its intention to participate in the action and moved to intervene as a party appellant in the case.

On August 31, 1994, the Honorable Martin A. Wolff of the Circuit Court for Anne Arundel County reversed the decision of the Board of Appeals. The Circuit Court held that the Board of Appeals had expanded the scope of its inquiry to such a degree that the nature of the original application was significantly altered when it imposed the Conway Road access requirement as a condition of the special exception. The Circuit Court held that the Board of Appeals exceeded the bounds of its *de novo* authority and erred as a matter of law when it granted the special exception and variance beyond the scope of Halle's original application.

Halle noted an appeal to the Court of Special Appeals and then filed a Petition for *Writ of Certiorari* in National Waste Managers, Inc. v. Anne Arundel County in the Court of Appeals prior to consideration of the case by the Court of Special Appeals. *Certiorari* was granted by the Court of Appeals to determine whether the Board of Appeals exceeded its *de novo* authority requiring the Conway Road access as a condition of the grant of the special exception and variance.

On July 17, 1995, the Court of Appeals issued its opinion in Halle Company, et al. v. Crofton Civic Association, et al., 339 Md. 131, 661 A.2d 682 (1995). The Court of Appeals held that the Board of Appeals could properly consider the issue of access through Conway Road and impose a condition that access be exclusively from Conway Road to the proposed facility. In upholding the condition, the Court indicated it was justifiable in terms relating to the public health, safety and welfare. The Court also stated:

. . . Halle must obtain a fee-simple estate rather than an easement in the Conway Road access land before the landfill operations may proceed. That was explicitly made a condition of the Board's grant of exception and variance. The uncertainty of a prerequisite's occurrence is irrelevant if the Board is satisfied that, once the prerequisite occurs, the approved activities would be appropriate.

Id. at 148, 661 A.2d at 690.

The Court of Appeals reinstated the decision of the Board of Appeals to issue the special exception with the conditions described above.