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Special Instructions:

## Chronology of Events for Chesapeake Terrace Rubble Landfill as of September 1, 2001

In 1990, the Halle Companies, on behalf of its wholly-owned enterprise, Chesapeake Terrace, filed two special exception requests. The special exception applications were for surface mining and to operate a rubble landfill. The Anne Arundel (AA) County Administrative Hearing Officer subsequently denied both special exceptions on September 24, 1990.

The applicant appealed the decision to the AA County Board of Appeals. During the appeal hearing, AA County and the following 4 non-profit civic organizations opposed the rubble landfill's special exception.

Forks of the Patuxent Improvement Association, Inc.  
Greater Odenton Improvement Association, Inc.  
Greater Crofton Council  
Crofton Civic Association

Sixteen administrative hearings were held before the AA County Board of Appeals over a period of 17 months from April 1992 through September 1993.

On December 23, 1993, the AA County Board of Appeals granted a special exception approval for the surface mining and rubble landfill with the following conditions.

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 right turn lane shall be constructed on eastbound Conway Road at Route 3 to a minimum length of 500 feet.

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.

The road improvements on Conway Road from Route 3 to Patuxent Road shall be constructed before any rubble



landfill or surface mining 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.

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 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  $\frac{3}{4}$  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 the commencement of the operations.
6. The granting of the special exception neither approves nor denies railroad operations to bring rubble full 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 AA County by four civic associations and 18 individuals who had opposed the project before the Board of Appeals.

On February 8, 1994, AA County 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 14-94 was introduced for the purpose of revising the AA County Solid Waste Management Plan (SWMP). The Chesapeake Terrace Landfill was included in the draft version as a proposed facility.

On April 4, 1994, an amended Bill 14-94 was introduced to remove all reference to the Chesapeake Terrace Landfill. This Bill was passed by the



AA 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 AA 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 to the special exception. The Circuit Court held that the AA County Board of Appeals exceeded the boundaries of its authority and erred as a matter of law when it granted the special exception beyond the scope of the original application.

On July 17, 1995, the Court of Appeals issued its opinion which stated that the AA County 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.

On October 9, 1996, Halle's successor in the interest to the rubble landfill, National Waste Managers, Inc. (NWM) filed a complaint in the AA County Circuit Court. The complaint contained seven counts:

Count 1

Request that the court order AA County to include NWM in the SWMP.

Count 2

Request an order of the court requiring AA County to provide a written statement be sent to the Maryland Department of the Environment (MDE) stating that NWM's project meets applicable county zoning and land use requirements and is in conformity with the SWMP.

Count 3

Request the court declare that NWM is entitled to have its project included in the AA County SWMP and to have the county deliver the statement that the project is in conformity with the Plan.

Count 4

Request damages because due process was not provided

Count 5

Request compensation for taking of property (state law)



**Count 6**

Request compensation for taking of property (federal law)

**Count 7**

Request equal protection

Note 1: The Complaint alleges that NWM applied to the MDE for a solid waste refuse disposal permit to install and operate a rubble landfill which will not be issued unless AA County includes the project in its AA County SWMP. NWM asserted that AA County improperly removed all references to the project from the 1994 SWMP and that MDE will not take any action on issuing the permit because the proposed facility was not included in the current Plan. Moreover, the complaint further alleges that processing of the application would not occur until the MDE received a written statement from AA County that the proposed facility meets all applicable AA County zoning and land use requirements and is in conformity with the SWMP.

Note 2: NWM filed a Motion for Partial Summary Judgement on Count 1 requesting that the Court order the project be included in the Plan. The Court issued a declaration that AA County violated NWM rights for failing to include the proposed project in the Plan. AA County filed a Cross Summary Judgement requesting judgement on all counts of the Complaint.

On March 26, 1997, the Honorable Clayton Greene, Jr. issued a written Memorandum Opinion and Order which stated that NWM project be included in the SWMP. The Order also stated that in deleting all references to the NWM as a proposed facility in Bill 14-94, AA County invaded the MDE's permit review prerogative. Finally, the Court ordered AA County to amend the Plan to include the proposed facility. The Circuit Court found that the decision to exclude the project from the AA County Plan was arbitrary and inconsistent with the determination made by the Board of Appeals that the landfill was needed. The Court specifically stated that if AA County refused to include the project in the Plan because of public opinion, that decision was inconsistent with the statutory scheme. The Court held that if NWM was entitled to any damages, the decision should be determined at trial. The Court also stated NWM claims for damages may be severely limited because the Court's determination only gives NWM the right to be included in the Plan and does not require MDE to issue a permit. On April 24, 1997, AA County appealed the decision rendered on March 26, 1997, to the Court of Special Appeals. Subsequently, NWM filed a Petition for Contempt for failure of AA County to comply with the March 26, 1997, court order.



On August 1, 1997, a Circuit Court Judge Clayton Greene, Jr. found that AA County was in Contempt of the Court and was fined \$250,000. The Court further ordered that AA County could purge itself of the fine by providing a written statement to the MDE that the proposed project meets all applicable county zoning and land use requirements and is in conformity with the AA County SWMP. It further required AA County to take all steps consistent with law to enact an ordinance to include the proposed facility in the Plan as an emergency measure and that this measure be enacted at the earliest possible date. It was also required that AA County delete certain language from a proposed ordinance that had been previously submitted to Court.

On August 4, 1997, AA County sent a letter to MDE which stated, "pursuant to the enclosed judicial order, the AA County Department of Public Works informs you that the above reference 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 AA County was required to take to purge itself of the contempt except for the requirement that AA County send a letter to the MDE, which condition AA County had already satisfied. The Order also stated that AA County shall comply with State law as interpreted by the Court so that MDE may consider whether the proposed facility is necessary.

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

On November 19, 1997, AA County sent a letter to the MDE stating 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 AA County'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 Green's original grant of summary judgement on Count 1, in an unreported opinion. The Court of Special Appeals held that AA County's decision to delete the proposed facility from the Plan was not within the



scope of its involvement as set forth in the MDE's statute. The Court of Special Appeals further held that the action of AA County in deleting the facility from the Plan was beyond the scope of any authorized county involvement.

On April 21, 1998, Judge Lerner held that AA County could not be held in contempt of the Court order for sending the November 19, 1997, letter regarding the expiration of NWM special exception approval. Judge Lerner ruled that it was NWM responsibility, not AA County'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 AA County. However, AA County 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.

On September 29, 1998, in an unreported opinion by the Court of Special Appeals, they affirmed Judge Greene's opinion that AA County was in contempt of court. 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 AA County that it send a letter to the MDE indicating that the proposed facility meets all applicable zoning and land use requirements and was in conformity with the Plan was beyond the scope of Count 1 of the Complaint for which the summary judgement had been originally granted.

On December 1, 1998, NWM filed a Request for Issuance of an Injunction and a Motion for Partial Summary Judgement on Count 3 of the Complaint. NWM was seeking the issuance of an injunction directing AA County to provide MDE with a written statement that the project conforms to the Plan and complies with local zoning and land use regulations.

On July 7, 1999, NWM filed an Amendment by Interlineation which alleges additional allegations that AA County blocked MDE processing of NWM application by refusing to forward the written statement to the MDE that the proposed project was in conformance with the Plan because AA County alleged that sufficient disposal capacity already existed for rubble. The Amendment further alleges that AA County's action in removing the project from the Plan were judged unlawful. The

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Amendment indicates that AA County's action in sending MDE a letter indicating that NWM special exception had lapsed by operation of law were wrongful. Finally, the Amendment alleged that AA County failed to tread NWM in the same fashion as Cunningham because AA County 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 AA County to forward a written statement to MDE withdrawing its letter which stated that the special exception had lapsed by operation of law. Additionally, the injunction requested an order compelling AA County to notify MDE that the proposed facility meets all applicable zoning and land use requirements.

On September 10, 1999, Judge Lerner denied NWM request for injunction. Judge Lerner found that AA County acted properly in notifying 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, authored by Judge Hollender, the court held that the two-year period during which the special exception must be utilized under the AA 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, AA County filed a Motion for Reconsideration to request 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.

On January 22, 2001, AA County requested an appeal at the Maryland Court of Appeals.

On April 13, 2001, The Court of Appeals denied the request.