

2003-10

**BOARD OF APPEALS OF  
ANNE ARUNDEL COUNTY**

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IN RE:  
CHESAPEAKE TERRACE/NATIONAL WASTE MANAGERS, INC.

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CASE NUMBERS:  
BA 62-93V and BA 63-03V

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HEARING DATES:  
OCTOBER 30, 2003 and DECEMBER 9, 2003

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**MOTION TO STRIKE ATTACHMENTS TO  
PROTESTANT'S ARGUMENT AND  
RESPONSE TO CLOSING ARGUMENT**

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SUBMITTED BY:

Susanne Koster Henley  
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PROTESTANT'S ARGUMENT AND  
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**MOTION TO STRIKE**

Applicant, Chesapeake Terrace/National Waste Managers, Inc., (hereinafter "Chesapeake Terrace") preliminarily moves to strike the attachments to the Closing Argument of Protestants marked as Exhibit A. The initial two-page document called "MDE Fact Sheet for Chesapeake Terrace Landfill" is not a document presented at the hearing on this matter or admitted into evidence and cannot be considered by this Board. The third page is a compilation of "facts" prepared by Mr. Nelson, none of which were presented at the hearing, none of which are supported by any evidence in the record, and none of which can be considered by this Board. Accordingly, please strike and disregard in total the attachments to Protestant's closing Argument.

**RESPONSE TO PROTESTANT'S ARGUMENT**

While this applicant began the permit application process for the Chesapeake Terrace proposed landfill with the Maryland Department of Environment, (MDE), in 1990, that permit process was suspended by that Department from 1993 until April 13, 2001. During the intervening years, the State of Maryland and MDE adopted new regulations concerning the requirements or hydrogeologic studies for landfill approvals and requirements for operations of such facilities.

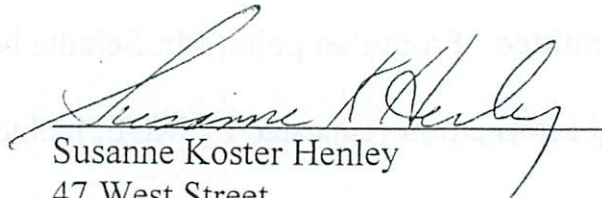
Mr. Edward Dexter testified that as a consequence of these changes and the significant lapse of time from the initial application for permit, that the applicant had to virtually start over with the hydrogeology studies required in the Phase II process. The new regulations required additional testing and well monitoring than had been previously required. Mr. Mark Schultz testified that although he had submitted completed Phase II study in July 1997, with responses to MDE comments of Mr. Alhija's submitted in March 1998, the MDE did not respond to this submittal and report until August 5, 2002, more than four years after it was submitted. From that point, Mr. Schultz began accumulating the additional studies and information requested by MDE, including the twelve consecutive month water level testing that although not specifically written, is now required by departmental interpretation. This information has been compiled and submitted to MDE for further comment.

The applicant introduced an abundance of evidence at the hearing that shows it has at all times acted with due diligence to pursue the issuance of a permit since that process was begun in 1990. The "exceptional circumstances" that justify the granting of a variance are compelling in that the permit process requires a minimum of three years to complete. This process has been further complicated and extended by virtue of the failure of Anne Arundel County to include this approved facility in its Solid Waste Management Plan and the extended litigation that ensued to correct that failure, as well as by significant changes to State

regulations governing these facilities. Attached as Exhibit "A" is copy of time line that was submitted as evidence through Mark Schultz, that chronicles his activities and due diligence on the hydrogeologic studies necessary for this facility.

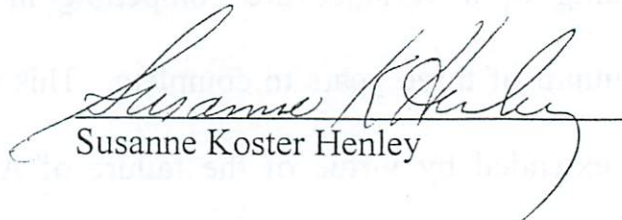
#### CONCLUSION

This Board should grant the variances of two years to the requirements of Section 12-107 that special exceptions be fully operational within two years, and requirements of Section 11-102.2(a) that building permit and construction be completed within two years of their approval.

  
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#### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on this 5 day of February, 2004, a copy of the foregoing Closing Argument was mailed, postage pre-paid to: Macy G. Nelson, 401 Washington Ave., Suite 803, Towson, Maryland 21204; and, courtesy copy to Suzanne Diffenderfer, Office of Planning and Zoning, Heritage Office Complex, 2664 Riva Road, Annapolis, Maryland 21401.

  
Susanne Koster Henley

## **Chronology of Activities - Chesapeake Terrace Rubble Landfill**

Prepared 12/9/03

For Chesapeake Terrace/National Waste Managers (Applicant)

By Mark Schultz Associates

- 7 & 8/89      Applicant conducts Phase 2 investigation per Maryland Department of the Environment (MDE) requirements including the installation of 23 borings, 14 monitoring wells, water quality testing, well inventory, etc.
- 3/19/90      Applicant submits Phase 2 Hydrogeologic Report to the MDE.
- 4 & 5/91      Applicant installs additional 10 borings and 2 monitoring wells to better define site hydrogeology.
- 5/93          Applicant expands well inventory from 1/2 to 3/4 miles from the site to meet an Anne Arundel County (not an MDE) requirement.
- 12/23/93      Anne Arundel County appeals inclusion of the proposed landfill in the County's Solid Waste Plan. Without the required local approval the MDE stops processing the landfill permit application.
- 1997          Change in COMAR regulations governing MDE permitting requirements for rubble landfill permits.
- 4 & 7/97      Applicant resamples monitoring wells at the request of the MDE.
- 7/31/97      Applicant submits Groundwater Quality Data Report for April-July 1997 to the MDE.
- 12/29/97      Applicant receives comments from Hussain Alhija of the MDE on the Phase 2 report and subsequent investigations including groundwater contour maps based of water level measurements over a "period of not less than 12 months or derived using a hydrogeologic simulation or prediction technique."
- 3/23/98      Applicant submits report titled Response to Comments Report which provides responses to MDE's comments (Mr. Alhija's 12/29/97 letter) and summarizes all site characterization work completed to date. The responses include updated groundwater contour maps based on twelve non-consecutive water level measurements including two sets of measurements made during the most critical period, specifically, periods of high water tables in the spring. Additional field work is proposed to address some of the MDE's concerns. Note that the MDE does not provide responses to this report until 8/5/02, more than four years after it is submitted.



- 12/6/00 Court of Appeals requires Anne Arundel County to put the landfill in the county's Solid Waste Plan.
- 1/26/01 Applicant submits request to MDE for reactivation of the permit application process.
- 3/29/01 MDE sends a letter to the Applicant informing them of the steps that need to be taken to reactivate the permit including the need for confirmatory water level measurements; however, there is no specification for twelve consecutive months of water level measurements.
- 4/13/01 **Court of Appeals denies Certiorari at which time the proposed Chesapeake Terrace Rubble Landfill is included in the County's Solid Waste Plan and the two-year limit to obtain a landfill permit from the MDE becomes effective.**
- 4/24/01 Applicant conducts inventory of onsite monitoring wells and measures water levels in all of the wells.
- 5/17/01 Applicant meets with Edward Dexter of the MDE. MDE provides clarification of the comments in their 3/29/01 letter. MDE states that the required documents will have to be submitted in order, that is, the Phase 1 report will need to be submitted, reviewed for completeness and approved and that a public hearing will be required after the Phase 1 report is considered to be complete. This will be required before the MDE will proceed with Phase 2 report review. MDE stresses the need for documentation of local (County) approvals.
- 6/4/01 Applicant submits to the MDE: (1) a revised refuse disposal permit application and (2) responses to comments in the MDE's 3/29/01 letter including an explanation of the adequacy of the water level measurement program and a summary of the thirteen-rounds of water level measurements made through April 2001
- 6/22/01 MDE receives letter from Anne Arundel County Office of Planning and Zoning stating that the proposed facility is deemed to be in conformance with the County Solid Waste Plan and meets all Applicable county zoning and land use requirements.
- 7/17/01 MDE sends letter to the Applicant acknowledging receipt of the Applicant's 6/4/01 submittal stating that "the documentation required for Phase 1 of the Permit Application is now considered completed" and that for the MDE to schedule the required informational meeting and public hearing, the Applicant must submit a list of all record owners of real property within 1,000 feet of the property line of the landfill system and notify these individuals of the landfill application.

- 8/14/01 Applicant submits to the MDE the required list of all record owners of property within 1,000 feet of the property and requests that the MDE schedule the required information meeting and public hearing.
- 10/1/01 Applicant requests (via fax) a status report from the MDE on the scheduling of the public hearing since no response has been received from the MDE following the Applicant's 8/14/01 submittal.
- 10/24/01 MDE notifies the Applicant that the required public information hearing has been scheduled for 12/3/01 and requests delivery of documents pertaining to the landfill to local public libraries to allow public access and review of these documents.
- 11/9/01 Applicant delivers twenty-nine reports, applications, documents, and letters pertaining to the landfill to the Odenton and Crofton libraries in order to allow the public to review these materials.
- 12/3/01 The informational meeting is held at the Odenton Fire Hall to provide the public with information on the proposed landfill. The MDE describes the permitting process and status of the landfill application. The Applicant describes the hydrogeology of the site and the technical aspects of the proposed landfill. The meeting is well attended by the public and local politicians. Oral testimony is taken from all who wish to speak.
- Jan-Jun 01 MDE solicits comments on the landfill application from other state and county agencies and leaves the record open for comments from the public.
- 1/9/02 Per a request from the MDE, the Applicant's consultant Mark Schultz Associates (MSA) submits responses to comments of a hydrogeologic nature included in MDE's 3/29/01 letter to the Applicant. The responses are the same as those included in the Applicant's 6/4/01 submittal including an explanation of the adequacy of the water level measurement program and a summary of the thirteen rounds of water level measurements made at the site.
- 1/21/02 MDE receives comments from the Maryland Senator Robert Neall. Senator Neall's comments are not forwarded to the Applicant until 8/5/02.
- 3/5/02 MDE's Waste Management Administration receives comments on the landfill from the MDE's Water Rights Division. These comments are not forwarded to the Applicant until 8/5/02.
- 4/5/02 MDE receives comments from the Maryland Department of Natural Resources (DNR) on rare species in vicinity of the landfill. Comments are not forwarded to the Applicant until 8/5/02.



- 6/17/02 MDE receives comments from Community & Environmental Defense Services on projected water levels. Comments are not forwarded to the Applicant until 8/5/02.
- 8/5/02 Applicant receives a letter from the MDE stating that the MDE has completed its review of the geohydrologic report for the site. The letter contains 6-pages of comments from the MDE and additional comments from third parties (see previous four items in chronology). MDE comments include the requirement for twelve consecutive months of water levels measurements.
- 8/02 Applicant's consultant (MSA) begins collection of monthly water levels in order to comply with the twelve consecutive month requirement in the MDE's 8/5/02 letter as quickly as possible.
- 8/20/02 Applicant's consultant (McCarthy & Associates, Inc.) requests a meeting with the Maryland DNR (via certified mail) to discuss their 4/5/02 letter to the MDE regarding rare species.
- 9/02 MSA collects round of water level measurements.
- 10/4/02 Applicant's consultants meet with the MDE to discuss ways in which to respond to comments in MDE's 8/5/03 letter that will most adequately address MDE concerns. Monthly water level measurements continue.
- 11/02 Applicant's consultants prepare final set of responses to MDE comments. Monthly water level measurements continue.
- 12/3/02 Applicant's consultants meet with the MDE to present detailed responses to MDE comments and obtain input on the proposed field activities that will be required to address some of the MDE concerns.
- 12/02 Monthly water level measurements continue.
- 1/3/03 Applicant and its consultants conduct an internal meeting to discuss the field activities being required by the MDE. It is estimated that these activities will cost over \$100,000. It is decided to proceed with the work.
- 1/03 A drilling contractor is selected for installing required additional monitoring wells and borings and a groundwater modeling contractor is selected for preparation of a groundwater flow model of the perched groundwater zone above clay.
- 1/03 Site is inaccessible to drilling equipment because of ice and snow conditions. Monthly water level measurements continue.



- 1/14/03      Applicant files request with the County for extensions of time on the special exceptions and variances to complete improvements and have facilities operational.
- 2/03          Site is inaccessible to drilling equipment because of ice and snow conditions. Monthly water level measurements continue.
- 3/03          Site is surveyed and the locations of proposed additional wells and borings are staked. Site is inaccessible to drilling equipment because of wet conditions. Monthly water level measurements continue.
- 4/03          Site dries out enough to allow access of a tracked ATV drilling rig. Twelve (12) monitoring wells are installed, developed, and surveyed as agreed to in meetings with the MDE. Soil and clay samples are collected and submitted to a geotechnical lab for analysis and testing in order to meet MDE requirements for structural stability analysis. Monthly water level measurements include the new wells.
- 4/29/03      An Administrative Hearing is held on a variance to extend the two-year period in which the special exception requires completion of the landfill permitting process. Anne Arundel County Planning and Zoning recognizes that initial two-year time limit was not sufficient to gain MDE approvals for this facility and testifies in favor of an extension.
- 5/03          Pumping tests are conducted on the new wells to generate the aquifer coefficients required to construct a computer groundwater flow model for the perched aquifer at the site. Monthly water level measurements continue.
- 6/03          Clay stability analyses and the first iteration of the required computer model of the perched groundwater zone above clay are completed. Monthly water level measurements continue.
- 6/3/03        The Office of Administrative Hearings rules in favor of extending the special exception time limits for an additional two years after finding that The Applicant has "pursued implementation of the special exceptions with due diligence", that "the MDE permitting process for a rubble landfill takes at least three years", that "two year extensions will not be detrimental to the public welfare" and are the "minimum necessary to afford The Applicant relief."

- 7/18/03 Applicant's consultants meet with the MDE to review the results of the field work conducted in April and May, subsequent computer modeling, and to present the latest interpretation of the hydrogeologic framework for the site. The MDE indicates that the final report should include an analysis of groundwater flow in the water bearing zone below the clay confining unit in Area B even though this zone is below the 50-foot depth (below cell base) specified in COMAR. Monthly water level measurements continue.
- 8 & 9/03 The applicant begins work to generate the data requested by the MDE at the meeting held on 7/18/03. Monthly water level measurements continue.
- 10/21/03 Maryland DNR responds to Applicant's consultants (McCarthy & Associates, Inc.) 8/20/02 letter regarding concerns that the DNR expressed to the MDE about rare species in the vicinity of the landfill. Note that it took the DNR over a year to respond to the Applicant's letter despite repeated calls from McCarthy & Associates for a meeting or a response to the rare species issue. Additional water level elevations are established in response to the request made by the MDE at the 7/18/03 meeting.
- 11/03 Applicant takes a final round of water level measurements and begins preparation of a comprehensive hydrogeologic report addressing MDE concerns. The report describes the installation and testing of fifteen monitoring wells, hydraulic conductivity analyses, geotechnical analyses, groundwater level projections, liner stability analyses, and calculated impacts on nearby residents and ecology. Numerous simulations are performed using a computer groundwater flow model (MODFLOW) in order to predict the impacts of mining and landfilling.
- 12/5/03 Applicant's consultants submit a hydrogeologic report to the MDE that provides comprehensive responses to the comments MDE's letter of August 5, 2002. The report submitted to the MDE includes 30 pages of text, 17 figures, 11 large plates, 11 tables, and 13 appendices that include water level and aquifer analysis test data, well logs, soil stability and hydraulic conductivity test analyses, floodplain analysis, a residential well inventory, perched water table control plans, USGS hydrograph data, and a groundwater flow model with four impact scenarios, two when the landfill is operating and two post-closure.