



2004-01

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JANET S. OWENS
County Executive

April 7, 2004

BY NEXT DAY DELIVERY
AND BY FACSIMILE 1-615-467-2938:

Mr. Scott C. Meneely
Acting Director, Eastern Region
United States Department of the Interior
Bureau of Indian Affairs
711 Stewarts Ferry Pike
Nashville, Tennessee 37214

Re: Delaware Nation of Oklahoma proposed acquisition
of land in Anne Arundel County for use as landfill
and economic development

Dear Mr. Meneely:

I have received a copy of your letter dated March 9, 2004, in which you requested comments from Anne Arundel County concerning a proposed acquisition of land in Anne Arundel County by the Delaware Nation of Oklahoma ("Tribe"). The Tribe proposes to use the land as a landfill and for economic development for its members.

I am the County Executive for Anne Arundel County, the highest elected official in the County. I am writing to inform you that Anne Arundel County is strongly opposed to the proposed acquisition of land in this County by the Tribe.

The proposed landfill would be operated on a parcel of property comprised of approximately 481 acres located in Odenton, Maryland which lies in Anne Arundel County, Maryland. The property is located near the intersection of Routes 3 and 424, a congested commuter route that has been designated by the State of Maryland as a failing intersection. There are many residential communities consisting of tens of thousands of citizens within close proximity to the landfill that would be affected by the increased truck traffic that the landfill is projected to generate. Citizens groups opposing the proposed landfill include, but are not limited to: Crofton Civic Association, Forks of the Patuxent Improvement Association, Inc., Greater Odenton Improvement Association,

Inc., and the Greater Crofton Council. Additionally, many individual property owners in the area oppose the landfill. There is a website that provides information regarding the citizen opposition to the landfill located at <http://www.stopodentonlandfill.com>. I urge you to review the information contained on this website.

The land in question has been the subject of long running litigation concerning land use issues associated with a rubble landfill. Separate and apart from land use issues is the environmental review. The proposed landfill is currently in just the second phase of a multi-phase process of review by the Maryland Department of the Environment. It is fairly transparent that the developer, National Waste Managers, Inc.,¹ believes that it may eliminate or reduce some of the local and state land use, environment and/or regulatory requirements by transferring legal ownership of the real property to the Tribe while continuing to be responsible for the project's operations. National Waste Managers should not be allowed to eliminate or reduce the amount of protection from the many potential environmental dangers that the landfill poses to its citizens.

The closest community to the proposed landfill is Wilson Town. Wilson Town is a predominantly African-American community that contains many families who have resided in the area for scores of years. Wilson Town dates to the 19th century, when a group of Quakers donated land and a building for a church to newly freed slaves. The church, St. John AME Zion, sits near the entrance to the proposed landfill and is included on Anne Arundel County's list of historic places and the Maryland Inventory of Historic Properties. Maryland has created a State Commission on Environmental Justice and Sustainable Communities to assist lower income communities opposing environmental threats. The residents of Wilson Town have met with the Commission to obtain assistance in combating the landfill. Wilson Town residents depend on well water and are concerned that their water supply could be permanently tainted. It is somewhat ironic that the Tribe seeks to operate a landfill almost in the backyards of Wilson Town when the Indian community in general has complained about environmentally sensitive projects being placed near its lands by others because the developers perceive less opposition from minority residents.

We have reviewed 25 Code of Federal Regulations, Part 151 entitled "Land Acquisitions." Section 151.3, entitled "Land Acquisition Policy," provides that land may be acquired for a tribe in trust status when the Secretary of the Interior or his authorized representative determines that the acquisition of the land is necessary to facilitate tribal self determination, economic development, or Indian housing. Clearly the landfill is not going to facilitate Indian housing. Indeed, the proposed landfill lies over 1,200 miles away from the Tribe's headquarters in Bartlesville, Oklahoma. Because of the great distance involved, it is equally difficult to see how acquisition of the landfill would facilitate tribal self-determination.

¹ The landfill was previously known as the Chesapeake Terrace project. At times the landfill is referred to by the name of its developer, Halle Development, Inc. National Waste Managers, Inc. is controlled by Halle Development, Inc.

The Tribe relies heavily on its allegation that the acquisition of land would facilitate "economic development." However, this "economic development" would certainly not come in the form of jobs for the Tribe. It is highly doubtful that any members of the Tribe are going to move 1,200 miles for one of the very few jobs that the landfill is expected to provide. The only "economic development" is that the Tribe will be paid monies by the developer for acting as a front in order to possibly permit the developer to avoid or reduce its local and state environmental and land use responsibilities.

In the letter dated October 31, 2003 from Phil G. Busey, Esquire covering the Tribe's application, Mr. Busey states that the Tribe previously occupied Maryland and claimed that Maryland was one of the Tribe's "aboriginal" lands. In reviewing the Tribe's website at <http://www.delawaretribeofindians.nsn.us/>, the Tribe does not claim to have ever resided in Maryland. Indeed, there is no mention at all of Maryland in the section in which the Tribe discusses its migration westward. The Tribe has ties to Delaware as indicated by its name, but not Maryland. Indeed, if you review the maps at <http://www.manataka.org> discussing the migration, you will clearly see that the Tribe never occupied Maryland at any time. Moreover, as stated above, the proposed landfill is of no value as additional land to the Tribe. No Tribe member is going to move to Maryland to reside upon the landfill land.

There are also many environmental concerns associated with the proposed landfill. Typically in Maryland the environmental aspects of landfills are regulated by the State of Maryland. The Maryland Department of the Environment ("MDE") issues Refuse Disposal Permits for rubble landfills under the authority of the Environment Article, §9-204 of the Annotated Code of Maryland, and regulations at the Code of Maryland Regulations ("COMAR") 26.04.07. The following steps have been instituted to insure the complete review of applications for Refuse Disposal Permits for landfills:

PHASE I - Preliminary Information - Reviewed to see if there are any major, readily-identifiable issues such as endangered species, wetlands, floodplains, Scenic Rivers, Critical Areas, historical sites, karst (limestone), proximity to airports, or regulation under the Highway Beautification Act of 1965. The application is sent to the County government and other agencies; the application is held at Phase I until the County affirms that the project has all necessary local zoning and land-use approvals and is in conformance with the County's 10-year Solid Waste Master Plan. A Public Informational Meeting is scheduled and held to inform the local community of the application. This meeting is held on a weeknight near the proposed landfill site, and is advertised by mailings to the property owners within 1000 feet of the site and the elected legislative representatives for the area. Also, notices are published in a local newspaper at least once a week for two weeks prior to the meeting. Representatives of MDE and the applicant are present to provide information about the application process and the proposed activity. Comments received from other agencies help MDE decide whether to proceed with the application process and, if so, what other permits or approvals may be required (e.g., Army Corps of Engineers wetlands permit, etc).

PHASE II - Geological and Hydrological Report - A site-specific environmental investigation of the property based on borings and wells installed across the site. The report must be prepared by a geologist or geotechnical engineer acceptable to the Department, and must describe the soils, geology, meteorology, and hydrology of the proposed site. The report provides further definition of wetlands, floodplains, historical sites (if needed), and other information needed for further design and monitoring plan development. This report is principally reviewed by MDE but is also distributed to other interested agencies, including the Geological Surveys, the Department of Natural Resources, and the Army Corps of Engineers.

PHASE III - Engineering Report - Detailed Plans, operating manuals, contingency plans, and monitoring plans. These plans depict the nature and function of the pollution control systems; how the landfill will be built and operated; how it will be monitored; the types of equipment and personnel to be used; what the initial and final elevations will be; a conceptual plan for closure and postclosure use of the facility; and contingency plans for dealing with operational problems that sometimes occur at landfills (fires, equipment breakdown, etc.) in order to prevent impact to the environment or the community. This report is principally reviewed by MDE but is also distributed to other interested agencies. Before final approval, the plan must be signed and sealed by a Registered Professional Engineer, and the sediment and erosion control plan approved by the local Soil Conservation District or other appropriate agency. Plans may go through several revisions before final approval.

INTERNAL REVIEW & PREPARATION (Phase IV)

If the application is deficient or there is good cause for denial, the applicant is notified and afforded an opportunity for appeal. If the application is acceptable, the MDE project manager then prepares the draft permit and public notices. Copies of the draft permit and the application documents (the reports submitted for Phases I, II, and III) are placed in a local repository - usually a public library or government office near the proposed landfill site. A Public Hearing is scheduled, and is advertised as required by law.

PUBLIC COMMENT (Phase V) - A formal Public Hearing is scheduled and held to obtain comment from the local community concerning the application. It is generally held on a weeknight at a location near the proposed landfill site, and is advertised by mailings to owners of property within 1000 feet of the proposed site, and the elected legislative representatives for the area, as well as by publication of notices in a local newspaper at least once a week for two weeks prior to the Public Hearing. The Public Record is generally left open for 45 days, during which time the Hearing takes place, so that interested individuals can submit additional written testimony or evidence for consideration.

FINAL DETERMINATION - The Hearing Officer, an official of MDE, reviews the testimony and evidence presented, and the applicable laws and regulatory requirements, and makes recommendations for a Final Determination by the agency. This determination may be to issue the permit as is; to issue the permit with changes to address concerns raised during the hearing; or to

deny the permit, among other possible outcomes. The Final Determination may be appealed by the applicant or parties who have legal standing and who are aggrieved by the decision.

The MDE review of the landfill is currently in phase two as outlined above. Of particular concern to Anne Arundel County and its residents is the potential for the developer to avoid and lessen any aspect of MDE review or compliance with COMAR Title 26, Department of the Environment, Subtitle 4, Regulation of Water Supply, Sewage Disposal, and Solid Waste, Chapter 7, Solid Waste Management. These regulations require a developer to obtain a permit from the MDE prior to operating a landfill. The regulations also limit the type of debris that may be accepted by a rubble landfill. COMAR 26.04.07.13.B(3). COMAR also requires that the landfill be completely lined with a system designed to facilitate the collection of leachate² generated in the landfill. COMAR 26.04.07.16.C(2). Each rubble landfill shall also contain an engineered leachate collection and removal system immediately above the liner to collect and remove leachate from the landfill in order to prevent the migration of pollutants out of the landfill to the adjacent subsurface soil, ground water or surface water. COMAR 26.04.07.16.C(7).

There are many other requirements set forth in COMAR and other Maryland statutes and regulations. The Maryland Legislature has passed these statutes and regulations in order to protect the people of Maryland and Anne Arundel County from environmental dangers associated with rubble landfills. If there is a possibility of the developer being permitted to proceed with the landfill while performing less than the mandated state safety regulations, the results may be disastrous for the citizens of Anne Arundel County. The wells that provide water to the surrounding homeowners could be contaminated. The streams in the area could be polluted with contaminants. The streams ultimately feed into the Chesapeake Bay which is one of the area's greatest natural resources that provides recreation resources for hundreds of thousands of people each year.

25 CFR §151.10(g), made applicable through §151.11(a), provides that in determining whether the land is to be acquired the Secretary shall consider whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status. In the event the Tribe will not be subject to all or some of the State of Maryland environmental regulations, I am interested in whether or not the Department of the Interior or the Bureau of Indian Affairs will be responsible for monitoring the site to insure environmental safety. Also of concern is the increase in truck traffic which should be addressed by the Bureau of Indian Affairs.

CURRENT STATUS OF PROPERTY

Anne Arundel County has opposed the proposed landfill since it was initially proposed. A summary of the extensive litigation concerning the landfill is attached. Despite extensive efforts

² "Leachate" means liquid that has percolated through solid waste and has extracted dissolved or suspended material from it. COMAR 26.04.07.02

opposing the landfill, Anne Arundel County was ordered by the courts to issue the special exception to the developer to operate the rubble landfill. Anne Arundel County has complied with the courts' orders.

The current zoning status of the property is that it may be utilized as a rubble landfill provided that it obtains a permit to operate a rubble landfill from the MDE and complies with all of the conditions of the special exception. Those conditions 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.

Condition number two, at a minimum, appears to be causing NWM difficulty. This condition requires NWM to obtain fee simple access to the property utilizing a specifically designated route from Conway Road. The reason for this condition is that Conway Road is a best of many bad options for large trucks to travel rather than other local roads. However, upon information and belief, NWM has not been able to obtain the required access because the specific route that must be followed crosses the land of third parties who have not agreed to sell their property to NWM. Without the required access, NWM may not operate the landfill.

The determination of the MDE whether or not to grant a permit to National Waste Managers is wholly separate from the zoning process. The application is currently in the "Phase 2" portion of the application as detailed above. The involvement of the Tribe in the landfill provides evidence that the developer is having problems complying with the MDE requirements in Phase 2. Otherwise, the developer would not involve the Tribe.

The amount of property taxes currently levied on the property is \$2,627.29 per year. There are no special assessments currently assessed against the property. We are continuing to assess the impact that the acquisition of the landfill by the Tribe may have on any taxes that may be collected by the County based upon the landfill's operations.

Ordinarily, Anne Arundel County would provide governmental services, such as police department and fire department services, to a landfill owned by a private entity. We are currently assessing whether we would be required to provide these services to the Tribe should it acquire the property. To the extent that the Tribe is claiming that it is not subject to state and local regulations and land use policies, it would be somewhat inconsistent for it to claim that it is entitled to police and fire department services. Given the potential problems for fire in the landfill, this could be a significant problem. There have been instances in which dumps caught fire in Maryland and burned for months, even with full municipal fire department response. This issue is problematic, not only for the Tribe but also for the many residents who reside nearby.

Finally, I am concerned about the possible use of the property once the landfill is full. Anne Arundel County strongly opposes any type of gaming or gambling institution being placed upon the property in question at any time. The close proximity of the property to many thousands of residences causes it to be a wholly inappropriate location for any gaming institution.

In sum, Anne Arundel County is opposed to the proposal of the Tribe to acquire the landfill. Of particular concern are the land use and environmental issues associated with the landfill. Paramount to the County is the safety of its citizens and the environment. I am particularly concerned that the acquisition of the landfill by the Tribe is an attempt by the current developer to

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sidestep some of the state and local regulations because it is not able otherwise to comply with them. I am sure that this result is not what the Department of the Interior envisioned when it enacted the regulations permitting land to be acquired in trust for Indian Nations. I see no reason why the Tribe should be permitted to come into Maryland, where it has never resided, and attempt to sidestep laws and regulations that are put into place for the safety of our citizens.

I strongly urge you to deny the application for the reasons stated above.

We requested a copy of the Tribe's application by letter faxed to your office on April 2, 2004. However, we were informed that the application would not be released to us until our request was approved by Mr. Randall Trickey of your office. We were also informed that Mr. Trickey would not be in the office until April 7, 2004. Because our comments are due the next day, we did not have the benefit of reviewing the application prior to submitting these comments. Therefore, it is necessary for us to request a thirty (30) day extension to submit additional comments to your department.

Thank you for your consideration of this important matter.

Sincerely,



Janet S. Owens
County Executive

JSO/pfg

Enclosure(s)

cc: The Honorable Barbara Mikulski
The Honorable Paul Sarbanes
The Honorable Benjamin Cardin
The Honorable Wayne T. Gilchrest
The Honorable Steny H. Hoyer
The Honorable Robert L. Ehrlich
The Honorable Bill D. Burlison