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Jonathan A. Hodgson
County Attorney

November 17, 2009

Horacio Tablada
Land Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore MD 21230

Re: Chesapeake Terrace Landfill
Application for State Operating Permit

Dear Mr. Tablada:

I write to you regarding the referenced matter which is before the MDE for permit approval. Two matters are relevant from a County zoning perspective:

1. The County special exception approval is currently dependent on an application for a variance to extend the time period during which the special exception remains valid. Without this variance, the special exception will lapse. A variance hearing was scheduled for June, 2009, but was continued until the fall of 2010. As you are probably aware, SB 958, passed during the 2009 legislative session, tolled local government approvals that would expire between January 1, 2008 and June 30, 2010. Because of the impact of this legislation on the special exception, the Board of Appeals hearing was rescheduled for the fall of 2010. Until the Board of Appeals rules on the time extension variance, the special exception remains in effect. If the Board denies the variance, the approval will lapse and a new special exception hearing will be required.

2. The more serious concern is site access. The attached letter sent to your Department on July 27, 2005 summarizes this issue and raises a number of other important points. To our knowledge none of these concerns have been satisfied by the Applicant.

Mr. Horacio Tablada
November 17, 2009
Page 2 of 2

Please make this letter, and the letter of July 27, 2005, a part of your department's file on this permit application. Thank you.

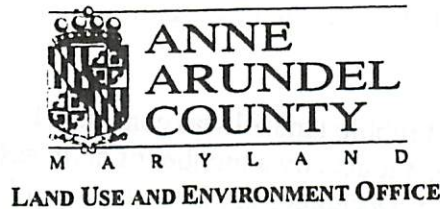
Very truly yours,



Jonathan A. Hodgson
County Attorney

cc: JOHN R. LEOPOLD, County Executive
Larry Tom, Planning & Zoning Director

JANET S. OWENS
County Executive



ROBERT D. MILLER
*Land Use and
Environment Officer*

July 27, 2005

Mr. Kassa Kebede, P.G.
Construction & Maintenance Section
Maryland Department of the Environment
1800 Washington Boulevard, Suite 605
Baltimore, Maryland 21230-1719

Re: Chesapeake Terrace Rubble Landfill
Anne Arundel County, Maryland
CEI No. 23203.00

Dear Mr. Kebede:

Per a request from the Maryland Department of the Environment, I am herein transmitting Anne Arundel County's comments on the Phase III Engineering Plans & Specifications Report for the proposed Chesapeake Terrace Rubble Landfill, Document Control #1993-WRF-0225.

Our primary comment is related to the issue of access.

Paragraph 3.4 of the Phase III Report concerning the Chesapeake Terrace Rubble Landfill submitted by National Waste Managers, Inc. (NWM) to the Maryland Department of the Environment (MDE) is captioned "Anne Arundel County Zoning." The paragraph accurately states that "some of the requirements of the Anne Arundel County zoning approval have not been met." Specifically, NWM has not satisfied the condition imposed by the Anne Arundel County Board of Appeals that specifies the location and manner of access to the site of the proposed rubble landfill.

Paragraph 3.4 refers to "three (3) suitable access road locations" to the proposed rubble landfill described in the MSA report titled "Responses to Comments on Phase 2 Addendum Report" dated December 22, 2004. Regardless of what is intended by NWM by use of the term "suitable," the County responds that there is only one lawful access road location in accordance with the decision of the Anne Arundel County Board of Appeals in Case No. BA26-91S.

In Paragraph 3.4.2, NWM appears to refer to the access road location approved by the Board of Appeals as the location "stipulated by the Anne Arundel County zoning

approval." The following clarification of the legal status of that " zoning approval" is provided:

Zoning approval of the proposed rubble landfill was contested before the Board of Appeals not only by the County, but also by a number of civic associations and aggrieved neighboring property owners. On December 23, 1993, the Board of Appeals granted zoning approval for the rubble landfill in the form of a "special exception." The Board of Appeals approved the location of the access road as depicted on an exhibit presented to the Board of Appeals by the Halle Companies, the predecessor in interest to NWM, and a copy of that exhibit is attached to this response. The Board of Appeals also imposed a number of express conditions relating to the access to the site of the proposed rubble landfill. The 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.

The decision by the Board of Appeals was affirmed by the Maryland Court of Appeals in *Halle v. Crofton Civic Association*, 339 Md. 131 (1995), and the Court of Appeals specifically held that the conditions imposed on the location of the access road, including the requirement that Halle must acquire the access road in fee simple rather than through an easement, constituted affirmative restrictions on Halle's use of the property, and were justifiable in terms relating to the public health, safety and welfare. See 339 Md. at 148-149. The Court also held that no "support facilities" could be located along the approved

access road outside of the 482 acres of the landfill site itself without approval of an additional special exception. 339 Md. at 149.

The location of the access road must conform to the location shown on the approved drawing submitted to the Board of Appeals, and to the conditions described above. According to the information provided by NWM, it has not acquired access that conforms either to the approved location or to the other conditions.

It must be noted that the County lacks the authority to agree to or approve any location for the access road other than the location specified by the Board of Appeals. The location required by the decision was part of the adjudication of the interests not only of the County and NWM, but also of the aggrieved individual property owners in the vicinity. The location specified by the Board of Appeals is binding both on the County as well as on NWM.

Under § 9-210(a)(3)(i) of the Environment Article of the Annotated Code of Maryland, processing of the permit application for the proposed rubble landfill could not proceed until the County provided a written statement that the rubble landfill "meets all applicable county zoning and land use requirements." By Order dated August 1, 1997 in Case No. C-96-32534, a copy of which is attached to this response, the Circuit Court for Anne Arundel County ordered the County to provide the written statement required by § 9-210(a)(3)(i) of the Environment Article. The Order did note that NWM "must obtain a fee simple estate in the Conway Road access land before the landfill operations may proceed" as described in the decision of the Court of Appeals, although concluding that "for purposes of this order, the zoning requirements have been met." (Emphasis added.)

The County sent the statement in the form of a letter dated August 4, 1997 in order to purge itself of contempt of court. Nevertheless, in point of fact as of the date of this response, the proposed rubble landfill has *not* met all applicable County zoning and land use requirements, to the extent those requirements are construed to include acquisition of an access road in the location and manner specified by the Board of Appeals. The County believes that this condition imposed by the Board of Appeals on the use of the property as a rubble landfill must be construed as a zoning or land use "requirement" under any reasonable meaning of that term. It is the County's position that § 9-210(a) of the Environment Article makes satisfaction in fact of all County zoning and land use requirements, including requirements governing access to the site, a prerequisite to the issuance of a permit by MDE for the proposed rubble landfill.

In addition to the access issue we provide the following technical comments:

Page 3-3:

Reference to Solid Waste Management Plan is incorrect. The proposed landfill is included in the 2003 Plan adopted in August 2003.

Page 4-2:

1) Commercial waste from businesses, industrial establishments, and governmental institutions need to be added to the list of unacceptable waste. In

addition, any waste type not listed under "Acceptable Solid Waste" is automatically unacceptable.

2) Fly ash should be deleted from list of Acceptable Waste.

3) Tires should be deleted from list of Acceptable Waste.

Page 4-2:

The waste placement density value and the number of annual operating days need to be specified to support the life expectancy calculation presented; preliminarily, the compaction density used is likely too high and unachievable.

Page 5-1:

It is critical that the perched water interceptor ensure that water does not come into contact with the waste. Regardless, MDE should carefully review this design feature.

Section 5.4 indicates that there are several areas of severe erosion that encroach upon the proposed buffers and the project proposal indicates that these areas will be filled and replanted with white pines. It is recommended that the proposal regarding filling of the eroded areas be performed in a manner that supports the restoration of these areas. It is also suggested that the cause of the erosion be investigated and remediated in a manner that will accommodate existing and future conditions of this site. Finally, the County forester should be consulted for the best approach to replanting.

Page 6-3:

It is stated that 3.4M yd³ of soil is needed to build the landfill. Soil excavation amounts total over 6.0M yd³. Thus there is a significant soil surplus as designed. The operator needs to identify (as part of the permit documents) where the 2.6M plus yd³ will be placed once full build-out of the landfill occurs.

Page 12-1:

The site is proposed to operate for 15 years. Please indicate the level of stormwater management water quality & quantity treatment provided during the 15 years of site operation.

The elevation of the existing FEMA water surface elevation in the vicinity of the site should be noted.

Page 12A-1:

The report indicates that the site was previously in use as a sand and gravel surface mining operation. Examination of historical aerial photography has indicated that the site has been abandoned for approximately 20 years allowing natural reforestation to occur. Please document this existing condition.

The assumptions concerning the imperviousness of the site during existing conditions, service period, and after final stabilization were not discussed in the report. This information is requested to assess the water quality requirements.

The minimum requirement for providing Channel Protection Volume (CPV) was not proposed for the site. It is our understanding that exemptions may only be granted if it can be demonstrated that the river is currently stable and will remain stable under the proposed discharge conditions. Please clarify what is proposed for CPV.

Altering the drainage area would result in increased imperviousness and runoff to the Little Patuxent River and decreased runoff to the Upper Patuxent River. Impacts due to increased runoff result in erosion and flooding. It is our recommendation that the FEMA model for the Little Patuxent River be rerun with the proposed discharge points added. Impacts due to decreased runoff are lowered water tables and the possibility of depriving existing wetlands of their hydric source.

The points of investigation for the proposed conditions do not match the existing points of investigation where the predevelopment TR20 was computed. It is our recommendation that the existing drainage area boundaries be revised to the proposed points of investigation and that the TR20 model then be rerun. Additionally, it is our opinion that adequate channel conveyance needs to be constructed at the proposed outfalls to the defined channel to accommodate the proposed concentrated discharges and prevent gully formation from the more frequently occurring floods.

Currently, permanent pools are the only method proposed for providing water quality. Detention is the least desirable method of providing water quality and should be coupled with adequate pretreatment measure. Hydrodynamic separators or structural filters without ex-filtration may be used for meeting the pretreatment and water quality volumes.

Page 13-1:

It is unclear what equipment will definitely be purchased to operate and construct this landfill. The equipment listed appears as only a "guide" to the operator. There needs to be specificity to ensure proper and acceptable operation during the life of the facility.

Page 13-3:

A minimum list and type of employees required is lacking in the report. This is critical to ensure that the operation is safe and the environment protected with adequate staffing.

Page 13-6:

The quantities of waste generated solely within Anne Arundel County needs to be part of the regular waste quantity reporting. In keeping with the requirements of MDE's MRA reporting, any other Maryland county should also be identified in the report summaries.

Page 13-8:

There needs to be a water truck on-site at all times in case of a landfill workplace fire.

Page 13-9:

PST Rubble Landfill had a huge problem with debris along County roadsides leading to the site, which caused community concerns and political fallout. This operation needs to commit to regular policing of all roads leading to the facility from Rt. 301 (several times each week). MDE should also require truck wheel washing facilities since this was an issue of concern with the PST Landfill as well.

If you have questions or need clarification of the above referenced comments, please do not hesitate to contact me at 410-222-7502.

Sincerely,

Robert D. Miller
Land Use & Environment Officer

C.c. Janet S. Owens, County Executive
David A. Plymyer, County Attorney's Office
Ed Dexter, MDE