

This document is in 2 parts

Part 1 is the documents between Bill Radlinski and the Corps of Engineers.

Part 2 is the documents received from the Corps of Engineers.

Part 1 starts on the next page.



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, BALTIMORE DISTRICT
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

October 7, 2022

SUBJECT: Freedom of Information Act (FOIA) Request from E. William Radlinski (FOIA Number FA-22-0021)

VIA EMAIL: bill.radlinski@gmail.com

Mr. E. William Radlinski
1471 Catbriar Way
Odenton, Maryland 21113

Dear Mr. Radlinski:

This letter serves to respond to your FOIA request dated June 2, 2022 submitted to the U.S. Army Corps of Engineers (USACE), Baltimore District. The request is for public records for "ALL file information relating to the decision by the US Army Corps of Engineers to grant the permit CENAB-0P-RMN (CHESAPEAKE TERRACE RUBBLE LANDFILL) 1991-01204-MIS" and to include the following:

- a) All correspondence between the US Army Corps and the Chesapeake Terrace Rubble Landfill owner, lawyer(s) and/or consultant(s) concerning the issuance of the original permit and the subsequent time extension to the original permit by the US Army Corps of Engineers.
- b) All file notes by reviewer(s)/staff that were considered in granting the original permit.
- c) All file notes by reviewer(s)/staff notes that were considered in granting the extension of time by the US Army Corps until December 31, 2023; and
- d) All intra- and interdepartmental correspondence concerning decisions relating to the issuance of the original permit and/or time extension for this referenced rubble landfill.

The responsive records pursuant to your request are maintained by the Operations Division, Regulatory Branch of the USACE, Baltimore District. It is the policy of the Department of the Army to comply strictly with the FOIA, to respond promptly, and to act cooperatively. Accordingly, the Department provides the public with the maximum amount of accurate and timely information concerning its activities, recognizing there is a presumption in favor of disclosure under the FOIA.

After careful consideration, I am granting your request; however, portions of the responsive records have been withheld pursuant to Exemption 5 U.S.C. §552 (b)(6). Exemption 6 provides that disclosure of personal information in agency files are not required when it would constitute a clearly unwarranted invasion of personal privacy. The determination under this exemption requires a balancing of the public's right to disclosure against an individual's right to privacy. Judicial Watch, Inc. v. Department of the Army, 402 F. Supp. 2d 241, 251 (D.D.C. 2005). Pursuant to Exemption 6, I am withholding certain personal information from the responsive records.

The below summary response to your FOIA request corresponds to the lettered parts listed above. All records responsive to your request in the possession of the USACE, Baltimore District are enclosed.

a) The Custodian performed a thorough search resulting in the enclosed documents entitled, 2018 PERMIT EXTENSION LETTER; Chesapeake Terrace RL Corps Extension Request (3-15-2022), which includes the Memorandum Opinion for National Waste Managers, Inc. v. Anne Arundel County, ET AL E-Filed Anne Arundel Circuit Court; NAB-1991-01204 (CHESAPEAKE TERRACE RUBBLE LANDFILL); NAB-1991-01204 20220603 Extension of Time Ltr.; NAB-1991-01204-20220615 MDE ltr-WQC valid and Scanned Doc.pdf April 14, 2022. Redacted from the records are the personal information of individuals identified within the documents. 5 U.S.C. §552 (b)(6).

b) The Custodian performed a thorough search and advised that there are no "reviewer(s)/staff notes that were considered in granting the original permit." Therefore, no responsive records exist for your request.

c) The Custodian performed a thorough search and advised that there are no "reviewer(s)/staff notes that were considered in granting the extension of time by the US Army Corps until December 31, 2023." Therefore, no responsive records exist for your request.

d) Please find the enclosed document entitled FW-Chesapeake Terrace Rubble Landfill (CENAB-OP-RMN 1991-01204-M18) dated March 30, 2022.

You are advised of your right to appeal this determination through this office to the Secretary of the Army (Attn: General Counsel). Your appeal must be postmarked or electronically transmitted to FOIA-NAB@usace.army.mil within ninety (90) days of the date of this letter. The envelope containing the appeal should bear the notation, "Freedom of Information Act Appeal," and should be sent to the letterhead address, attention: CENAB-OC.

If you have any questions about your request and this office's response, please contact Margaret Boyd-Anderson, Paralegal Specialist at 410-962-1707. Please refer to FOIA Number FA-22-0021 in any subsequent correspondences pertaining to this matter.

For further assistance, you also have the right to contact the USACE FOIA Public Liaison or the Office of Government Information Services (OGIS) to inquire about FOIA mediation services. The contact information is listed below.

USACE FOIA Public Liaison:
 U.S. Army Corps of Engineers
 FOIA Public Liaison
 441 G Street, NW
 ATTN: CECC-G
 Washington, DC 20314-1000
 Email: foia-liaison@usace.army.mil
 Phone: 202-761-0511

OGIS:
 Office of Government Information Services
 National Archives and Records Administration
 8601 Adelphi Road
 College Park, MD 20740-6001
ogis@nara.gov
 202-741-5770 (phone)
 877-684-6448 (toll free)
 202-741-5769 (fax)
ogis.archives.gov (website)

Sincerely,

 DIGGS.FRANCINE.DIGGS.FRANCINE.CH
 AMBERS.1287363245
 Date: 2022.10.07
 14:02:10 -04'00'

Francine C. Diggs
 District Counsel

Enclosures

Part 2



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201

January 3, 2019

Operations Division

National Waste Manager, Inc.
Attn: (b) (6)
2900 Linden Lane, Suite #6
Silver Spring, Maryland 20910

Dear (b) (6):

This is in reference to your request for an extension of time to the Department of the Army Permit, **CENAB-OP-RMN (CHESAPEAKE TERRACE RUBBLE LANDFILL) 1991-01204-M18**. The property is located adjacent to the Little Patuxent River on Patuxent Road, Odenton, Anne Arundel County, Maryland.

As there have been no significant changes in the attendant circumstances since authorization was granted, the District has determined that it is not contrary to the public interest to grant an extension of time. Accordingly, the time limit for completing the work authorized ends on December 31, 2023. Please note, no additional extensions for the proposed work will be granted by this office.

All conditions of the original permit remain in effect. You may proceed with the construction indicated therein, provided you have obtained all other required state and/or local authorizations.

If you have any questions concerning this matter, please call Mr. Richard Kibby of this office at (410)962-0694.

By Authority of the Secretary of the Army:

Issued for and in Behalf of

John T. Litz, PMP
Colonel, U.S. Army
Commander and District Engineer

Joseph P. DaVia
Chief, Maryland Section Northern

Enclosure

Cc: (b) (6)

To identify how we can better serve you, we need your help. Please take the time to fill out our new customer service survey at:
<http://www.nab.usace.army.mil/Wetlands%20Permits/survey.htm>



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BALTIMORE DISTRICT, CORPS OF ENGINEERS
ATTN: REGULATORY BRANCH
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<http://www.nab.usace.army.mil/Wetlands%20Permits/survey.htm>



BAY ENVIRONMENTAL, INC.

March 15, 2022

VIA ELECTRONIC MAIL

Mr. Joseph P. DaVia
Chief, Maryland Section Northern, Regulatory Functions Branch
Baltimore District Army Corps of Engineers
2 Hopkins Plaza
Baltimore, MD 21201

Re: CENAB-OP-RMN (Chesapeake Terrace) 1991-01204-M18
Chesapeake Terrace Rubble Landfill
Odenton, Anne Arundel County, Maryland

Dear Mr. DaVia,

I write on behalf of National Waste Managers, Inc. ("NWM") to respectfully request that the Baltimore District Army Corps of Engineers grant a 5-year extension of time to NWM's permit CENAB-OP-RMN (Chesapeake Terrace) 1991-01204-M18 in connection with the above-referenced project, known as the Chesapeake Terrace Rubble Landfill ("**Chesapeake Landfill**"). The current permit is set to expire December 31, 2023.

I understand that, in granting NWM's previous extension request by letter dated January 3, 2019, the Baltimore District Army Corps of Engineers stated that "no additional extensions for the proposed work will be granted by this office," although it did not provide a basis for that statement. *Copy attached.* Since then, the Chesapeake Landfill has encountered a number of unforeseeable and unlawful roadblocks related to NWM's ongoing pursuit to open and operate the Chesapeake Landfill such that a new extension is more than warranted.

NWM has been mired in protracted litigation against Anne Arundel County concerning a special exception granted by the County Board of Appeals to operate the Landfill. Most recently, in 2020, the Maryland Court of Special Appeals remanded NWM's request for a time extension to the special exception—a request which had been litigated since 2014—back to the Board of Appeals. Dissatisfied with that outcome, Anne Arundel County officials took the extraordinary step of sending two letters to the Maryland Department of the Environment ("MDE") Solid Waste Management Division and the State Assistant Attorney General, ordering by unlawful, executive fiat that MDE halt review of NWM's solid refuse permit on legally erroneous grounds. Believing (mistakenly) that it had to accede to the County's demands, MDE halted its review of the rubble fill plan such that NWM was

forced to seek relief in court to undo the County's wrongs. The Anne Arundel Circuit Court ruled resoundingly in NWM's favor, finding that the County "had no authority to send letters to MDE demanding that NWM's permit application process be halted" and enjoined MDE to "continue NWM's permit application process" in its memorandum opinion, which is attached. MDE, to its credit, has not appealed that ruling, although the County has. Consequently, although MDE has now resumed its review, which it expects to complete this year, NWM is still being forced to litigate against the County in order to vindicate its property and due process rights. Because NWM requires more time due to this unanticipated delay, and because the delay occurred through no fault of its own, NWM respectfully requests an extension under 33 C.F.R. § 325.6(d) for an additional five years.

Some brief background helps illuminate why an extension is necessary and warranted. NWM initially obtained a special exception to develop the Chesapeake Landfill from the County Board of Appeals in 1993. Yet despite clear statutory requirements, the County refused to send a conformance letter to MDE or include the Landfill in its Solid Waste Management Plan—two prerequisites for MDE to process a solid waste permit. NWM obtained a court order directing the County to comply with its duties, but the County still refused. When the County was held in contempt and fined \$250,000, it finally relented and sent the letter—only to rescind it three months later on legally erroneous grounds. Maryland courts rejected the County's position, and in 2001, the County finally complied with its statutory duties.

By then, state environmental regulations had evolved significantly. As a result, MDE needed additional information and time to review NWM's application. This process has taken several years, requiring NWM to seek extensions to its special exception from the Board. The Board granted the first three requests, finding that NWM had been diligent in seeking the needed approvals. *Copy attached*. The fourth request is currently pending.

In 2020, just as MDE was finishing its review, County officials wrote letters directing the agency to stop processing the rubble fill application. The County wrongly claimed that NWM was out of compliance with its special exception, and MDE accordingly halted its review. Once again, NWM had to resort to court intervention, and on May 25, 2021, the Circuit Court of Anne Arundel County ruled that the County officials had "overstepped the bounds of their authority and violated the due process rights of NWM," and directed MDE to resume its review. A copy of the Court decision is attached.

With the County rebuffed, the approval process has resumed apace. MDE has recently indicated that it should complete its approval process by the end of the year. Given the delay, however, NWM will require additional time to complete the project—especially given its size and complexity. The Chesapeake Landfill is large, containing over 150 acres. As such, it will need to be constructed in stages, *i.e.*, phased in over a period of several years. To accommodate the phasing of the landfill, a permit extension of five years is required to cover the time necessary to allow the

construction phases after final approval is obtained from the Solid Waste Management Division.

Finally, an extension will not be "contrary to the public interest" under 33 C.F.R. § 325.6(d). To the contrary, the Board has "determined that the landfill would advance the public welfare of the County." *Halle Cos. v. Crofton Civic Ass'n*, 339 Md. 131, 137 (1995). Indeed, the Board "recognized the need for the landfill" and "concluded that its location was well suited to the use" after "three months of deliberation, an on-site visit by the members of the Board to the property, and a review of the record taken as a whole—consisting of more than 2,000 pages of transcribed testimony and voluminous documents." In light of the Board's detailed findings supporting its grant of the special exception, which remains valid today, NWM respectfully submits that an extension will continue to advance the public interest.

* * *

Because NWM was not at fault for the recent delay, because the Chesapeake Landfill's size will require several years to construct, and because the Landfill will "advance the public welfare of the County," NWM respectfully requests that your office grant a five-year extension to its permit.

Very truly yours,

(b) (6)

Milton L. McCarthy (b) (6)

CC: *Amanda Sigillito (Maryland Department of the Environment)*
Stephen N. Fleischman (The Halle Companies)
Andy Chisholm (J.A. Chisholm, P.E. LLC)
Keith H. Forst (Quinn Emanuel Urquhart & Sullivan, LLP)

Attachment A



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201

January 3, 2019

Operations Division

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Attachment B

NATIONAL WASTE MANAGERS, INC. * IN THE
Plaintiff * CIRCUIT COURT FOR
v. * ANNE ARUNDEL COUNTY
ANNE ARUNDEL COUNTY, ET AL. * MARYLAND
Defendants * Case No.: C-02-CV-20-002291

* * * * *

MEMORANDUM OPINION

This matter came before the Court on April 19, 2021 for a motions hearing. Plaintiff, National Waste Managers, Inc. (“NWM”), filed a Motion for Summary Judgment, Defendants Anne Arundel County, Steuart Pittman, Gregory Swain, and Steve Kaii-Ziegler (collectively the “County”) filed a Cross-Motion for Summary Judgment, and Defendants Maryland Department of the Environment and Andrew Grenzer (collectively “MDE”) filed a Motion to Dismiss. The issues and arguments from each party are closely intertwined. Therefore, for the purpose of procedural expedience and judicial economy, the Court heard all pending motions at the same time.

Upon consideration of the record, arguments of the parties, testimony taken, evidence presented, and all pending motions and responses thereto, the Court makes the following conclusions.

BACKGROUND

This case concerns the continuous efforts of NWM to develop the Chesapeake Terrace Rubble Landfill (the “landfill”) in Anne Arundel County. Since first filing for its permit in December 1988, NWM has been in near constant litigation with the County for the past 30 years. The issues involved around the landfill permit application process have been brought before the

05/26/2021 CS

Anne Arundel County Circuit Court, Court of Special Appeals, and Court of Appeals involving multiple separate cases. The crux of this 30-year endeavor has revolved specifically around the special exception that was granted to NWM by the Anne Arundel County Board of Appeals (the “Board”) which allows NWM to continue the permit process. Below is a brief summary of the procedural history.¹

In December 1988 NWM applied for a refuse disposal permit from MDE to construct and operate the landfill. In 1990 NWM sought a special exception and variance from the County because the district was zoned for rural agricultural usage. A County Administrative Hearing Officer initially denied the request, but on appeal the Board granted the special exception. The Board stated that the exception is contingent on NWM using a portion of Conway Road as the entrance to the landfill and NWM must purchase the land used as the access point in fee simple. The Board specified that the land must be purchased before beginning “operations.”

The County appealed the Board decision while also refusing to include the landfill in their Solid Waste Management Plan (“SWMP”) as well as refusing to send a letter to MDE stating that NWM is in conformance with all local zoning regulations. This letter of compliance is required by Section 9-210(b) of the Environment Article of the Maryland Code to continue the application process. In 1995 the Court of Appeals affirmed the Board’s decision to grant the special exception. *See Halle Companies v. Crofton Civic Ass’n*, 339 Md. 131 (1995).

The County continued its resistance against NWM and still refused to send the conformance letter or include the landfill in the SWMP. NWM then filed a Complaint in the

¹ The factual background and procedural history of this action, which are well known to the parties, will not be repeated here in detail. To the extent necessary for the Court to rule on the motions, any facts set forth in this Memorandum Opinion are as alleged in the Plaintiff’s Complaint, Defendants’ Answers, Plaintiff’s Motion for Summary Judgment, Defendant County’s Cross-Motion for Summary Judgment, and Defendant MDE’s Motion to Dismiss, and all responses thereto.

Anne Arundel Circuit Court seeking a mandamus and declaratory judgment. Partial summary judgment was granted for NWM and the County once again refused to issue a conformance letter or include the landfill in the SWMP. NWM then filed for contempt and in 1997 the Court issued a Contempt Order fining the County \$250,000.00 and stating that they can purge the contempt by issuing the conformance letter and including the landfill in the SWMP. The Contempt Order also stated that NWM met all zoning regulations even though the property for the access point was owned by third parties and that NWM did not have to purchase the property for the entrance until landfill operations began.

The County finally complied with the numerous Court Orders and sent the conformance letter on August 4, 1997. However, three months later the County sent another letter to MDE stating that the exception had expired. In 2000 the Court of Special Appeals held that the deadline for the exception was tolled during litigation. *See Nat'l Waste Managers, Inc. v. Anne Arundel Cty.*, 135 Md. App. 585 (2000). Following the Court of Special Appeals' decision, the County sent another conformance letter in 2001 and added the landfill to the SWMP.

The Anne Arundel County Code requires NWM to continually request an extension for their special exception. Anne Arundel, Md., Administrative Hearings § 18-16-405(a). The Board has granted an extension to the special exception three times. In 2013 the Board denied the fourth extension with a 2-2 vote and NWM appealed. In 2017 the Court of Appeals remanded the case back to the Board. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n, Inc.*, 453 Md. 423 (2017). The Board then granted the extension in 2018. In response, the County appealed the Board decision and in October of 2020 the Court of Special Appeals remanded the case back to the Board once again for further consideration. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n*, 2020 WL 5870525 (Md. Ct. Spec.

App. Oct. 2, 2020). The Board has not yet made their decision regarding the fourth extension. A hearing is currently scheduled for June 23, 2021. NWM has also applied for a fifth extension.

The impetus of this current litigation occurred in March 2020 when the County purchased three parcels of land for the alleged purpose of constructing a school. The land acquired is part of the access point that NWM would need to acquire to comply with the special exception. The County has repeatedly stated they have no intention of selling the property to NWM. Additionally, the County owns the WB&A Trail which runs across the across the access point and the County believes the trail cannot be used for the purpose of the landfill.

The County then proceeded to send two letters to MDE stating that NWM was no longer in conformance with the special exception and the permit process should be halted. One letter was sent by County Executive Steaurt Pittman on August 21, 2020 and a second letter was sent by County Attorney Gregory Swain on October 2, 2020. Upon receiving the letters, MDE stopped NWM's application process. NWM once again filed a Complaint for declaratory relief and mandamus requesting the Court to declare the landfill to be in compliance, to declare the County has a statutory duty to issue a written statement to MDE certifying compliance, to declare that MDE violated its statutory duty by halting the review process, and issue an injunction ordering that the County send the conformance letter and ordering MDE to continue the permit application review process.

NWM filed a Motion for Summary Judgment, MDE filed a Motion to Dismiss, and the County filed a Cross Motion for Summary Judgment. After a hearing on April 19, 2021, the Court held the matter *sub curia*.

STANDARD OF REVIEW

In order to withstand a motion to dismiss, the Complaint must “allege facts which, if proven, would entitle the plaintiff to relief.” *Dick v. Mercantile-Safe Deposit & Trust Co.*, 63 Md. App. 270, 272 (1985) (quoting *Tadger v. Montgomery Cnty.*, 61 Md. App. 492, 502-03 (1985) (internal brackets in original removed)). Where the facts and allegations, even if proven, would nonetheless fail to afford the plaintiff relief, dismissal is proper. See *Bd. of Educ. v. Browning*, 333 Md. 281, 286 (1994). In reviewing the Complaint, “courts must assume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 555 (1999).

On a motion pursuant to Md. Rule 2-501, summary judgment is only appropriate “where there is no dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” *Nationwide Mut. Ins. Co. v. Scherr*, 101 Md. App. 609, 694 (1994). A material fact is one “which will somehow affect the outcome of the case.” *Lynx, Inc. v. Ordnance Prods., Inc.*, 273 Md. 1, 8 (1974). In determining whether a genuine dispute of material fact exists, “the court examines the pleadings, admissions, and affidavits, etc., resolving all inferences to be drawn therefrom against the moving party.” *Gross v. Sussex, Inc.*, 332 Md. 247, 256 (1993). “In order for there to be disputed facts sufficient to render summary judgment inappropriate, ‘there must be evidence on which the jury could reasonably find for the plaintiff.’” *Homes Oil Co. v. Maryland Dep’t of Env’t*, 135 Md. App. 442, 454 (2000). “[T]he mere existence of a scintilla of evidence ... is insufficient to preclude the grant of summary judgment....” *Beatty v. Trailmaster Prod., Inc.*, 330 Md. 726, 738 (1993).

DISCUSSION

The main issue for this Court to determine is whether the County had the authority to send the two letters of non-conformance to MDE. The sole issue for Defendant MDE's Motion to Dismiss concerns whether they have a legal duty to cease the application process upon receiving said letters from Mr. Pittman and Mr. Swain.

I. Authority to Send the Letters

NWM argues that Mr. Pittman and Mr. Swain had no authority to send the letters to MDE demanding that the application process be ceased because the Planning and Zoning Officer had already stated in 2001 that NWM is in compliance with all zoning regulations. They further state that there is no statute or regulation that allows the County to change the status of NWM's conformity with the zoning regulations unless a motion is filed with the Board. The County contends that it is incumbent on County officials to notify MDE when a property is not in compliance. The County also states that the Planning and Zoning Office is under the authority of Mr. Pittman and the County is the final authority to declare if property is in compliance with any zoning regulations. Further, they argue that the letters were not making demands, but rather simply informing MDE of the facts of the case.

The Court disagrees with the County and finds that County Executive Steuart Pittman and County Attorney Gregory Swain overstepped the bounds of their authority by sending letters to MDE demanding they halt NWM's application process to operate the landfill. The Court explains its reasoning below.

First, the Court finds that the County's letters were in fact a demand to stop the application process and not merely comments as the County contends. Not only did Mr. Pittman and Mr. Swain make specific requests of MDE, they also stated conclusions of law in an attempt

to persuade MDE. In Mr. Pittman's letter he states, "The proposed project has, in point of fact, *not* satisfied all applicable county zoning and land use requirements." Mr. Pittman then continues with the reasoning for his legal conclusion, "because the applicant has *not* acquired access to the site as required by a special exception that is now more than 26 years old."

Further, Mr. Swain's letter contains even more demands and legal conclusions that the Court finds problematic. Mr. Swain states:

[T]he County Office of Planning and Zoning . . . advised that the zoning compliance was conditioned on the applicant securing specified fee simple access to the site, and nineteen years later . . . this condition has still not been satisfied. *For this reason*, the site does not have the necessary zoning approval.

(emphasis added). Mr. Swain continues, "This letter is to *request* that, at a minimum, MDE follow State law and cease processing this permit application until the statutory zoning prerequisite is satisfied." (emphasis added). Mr. Swain concludes by requesting that the entire application be denied. "Furthermore, in light of the applicant's continued failure to satisfy the zoning condition regarding access, the application should be denied. It is simply not fair to the public to allow the application to proceed under these circumstances."²

In addition to the excerpts above, MDE itself viewed the letters as an order. MDE states both in their pleadings and during the hearing that the sole reason they halted the application was due to the two letters. Further, the entire basis of their Motion to Dismiss is that they had a non-discretionary duty to simply blindly follow the County's instructions, without any analysis of the issues, and halt the application process.

The Court additionally does not find compelling the County's arguments regarding the County Executive's authority over the Planning and Zoning Office and that the County has final

² The Court finds it especially problematic and concerning that a county official would attempt to not only halt the application process, but pressure MDE to completely end NWM's application without any due process.

authority on all zoning regulations. The issue in this case is not whether Mr. Pittman has the authority to approve zoning regulations, but rather whether he has the authority to rescind or modify that approval. It is undisputed that in 2001 the Planning and Zoning Officer, Denis Canavan, sent a letter to Barry Schmidt, MDE Administrator, explicitly stating NWM “meets all applicable county zoning and land use requirements subject to the performance of the conditions required by the special exception approval” This letter clearly fulfilled the requirements of Environment Article Section 9-210(a)(3) of the Maryland Code requiring the County to provide MDE with a written statement of conformance. If the County now believes that the conditions of the special exception cannot be performed, that is a matter solely for the County Board of Appeals to determine.

The Anne Arundel County Code is clear that the proper method to suspend or rescind a zoning application with a special exception is through the Board. “On motion of the County . . . approval of an application for a . . . special exception shall be rescinded, suspended, or modified if the Administrative Hearing Officer determines, *after a hearing*, that . . . the use of the property deviates from . . . any conditions imposed.” Anne Arundel, Md., Administrative Hearings § 18-16-404 (emphasis added). Additionally, the Court has not found, and the County has not provided, any cases, statutes, rules, or regulations that allow a County Executive to circumvent the processes of the Board and order that a permit application be rescinded or halted.³ Therefore, the Court finds that the letters sent by Mr. Pittman and Mr. Swain overstepped the bounds of their authority and violated the due process rights of NWM.

Maryland common law takes seriously the fundamental rights and obligations of landowners and their ability to acquire, use, and maintain their land as permitted within the

³ During the hearing, after being explicitly asked by the Court, the County stated that they were not aware of any cases or statutes that allowed Mr. Pittman or Mr. Swain to send the letters to MDE.

confines of their property interest. The County has no authority to unilaterally decide that NWM no longer has a right to develop the property without a proper hearing by the Board. To do so would place the County as the sole arbiter in determining the rights of landowners seeking a special exception and completely invalidate the right to a hearing as put forth in the Anne Arundel County Code. NWM must be given the opportunity to plead their case before the Board and the County cannot unilaterally ignore NWM's procedural due process right to a hearing by sending what the Court sees as demand letters to MDE.

Finally, during the hearing the County additionally argued that the fourth extension period for the special exception has ended and will only be tolled if the Board makes that decision during their June 23, 2021 meeting. The Court does not find this argument compelling. On October 19, 2018 the Board granted NWM a fourth extension for two years while stating that the extension is tolled during litigation. The County appealed the Board's decision and the Court of Special Appeals remanded the issue and reaffirmed the Board's decision to have the fourth extension remain tolled. *See Nat'l Waste Managers, Inc. v. Forks of the Patuxent Improvement Ass'n*, 2020 WL 5870525 (Md. Ct. Spec. App. Oct. 2, 2020). The Board will not make their decision on the fourth extension until the June meeting and thus the Court agrees with the Board and the Court of Special Appeals that the fourth extension is tolled until then. Therefore, the County's argument is moot.

II. MDE's Motion to Dismiss

In support of their Motion to Dismiss, Defendant MDE argues that they were simply following the letter sent from Mr. Pittman that stated NWM was not in compliance with the proper zoning regulations. MDE points to Environment Article 9-210(b) which requires them to cease processing the application after the initial Phase I until they receive a written statement

from the County. Additionally, MDE states that they do not have the authority to make any determination regarding the legal arguments of NWM or the validity of the County's statements.

The Court does not find MDE's arguments persuasive. While the Court agrees that MDE should cease the application process until the County provides a written statement of compliance, it is undisputed that the County already did in fact send a written statement of compliance per Mr. Canavan's letter in 2001. As previously stated, the County has no authority to unilaterally rescind their statement of compliance and halt the application process. Nevertheless, the Court does recognize that MDE has a non-discretionary duty to follow the information given to them. However, MDE also has a duty to know and follow the proper procedure, and this duty takes precedence to any attempts of the County to skirt the due process rights of landowners.

III. Other Pending Issues

In addition to the letters sent to MDE, the parties have brought forth other issues regarding whether the special exception is still applicable given the current state of affairs. The Court shall not make a determination concerning any other pending issues in this matter. As repeatedly stated, the Court finds that the Board is the proper avenue to consider any and all modifications or rescissions to NWM's special exception. If the Court made a ruling on any other issues besides the authority of the letters, the Court would be allowing the County to go around a Board hearing, which we have already iterated is a crucial procedure in the due process rights of NWM and other landowners.

CONCLUSION

The Court finds that County Executive Steuart Pittman and County Attorney Gregory Swain had no authority to send letters to MDE demanding that NWM's permit application process be halted after a letter of compliance was previously sent by the Planning and Zoning

Office. Further, any issues concerning the relevancy, applicability, or conformity of the special exception should be brought before the Board using the proper procedures as set forth in the Anne Arundel County Code. Finally, the Court does not find it proper to issue an injunction to the County to send a new letter of conformance. Instead, the letters shall be deemed unlawful and void and the Court shall issue an injunction to MDE. The status quo shall be returned to before the letters were sent, and as agreed to, MDE will continue NWM's permit application process.⁴

For the reasons stated in this Memorandum Opinion, the Court shall enter the Order attached hereto.

5/25/21

Date

(b) (6)

RICHARD R. TRUNNELL, Judge
Of the Circuit Court for Anne Arundel County, MD

05/25/2021 3:39:44 PM

(b) (6)

⁴ During the hearing counsel for MDE stated that if the Court ordered MDE to disregard the letters, they would continue NWM's permit application.

Attachment C

Extension Decision 3
January 3, 2011

RE: An Appeal From A Decision Of The
Administrative Hearing Officer

CHESAPEAKE TERRACE/ NATIONAL
WASTE MANAGERS, INC.

Petitioners

* BEFORE THE

* COUNTY BOARD OF APPEALS

* OF ANNE ARUNDEL COUNTY

* CASE NO.: BA 10-09V & 11-09V
* (2008-0294-V & 2008-0295-V)

* Hearing Date: June 23 & 24, 2009
* October 14 & 21, 2010
*

MEMORANDUM OF OPINION

Summary of Pleadings

These are appeals from decisions of the Administrative Hearing Officer. These appeals are taken from the granting of variances to permit further extensions in time for the implementation and completion of previously approved variances and special exceptions for a rubble landfill and sand and gravel operation for properties located 4300' along the southwest side of Patuxent Road and 1500' west of Brager Road, as well as 695' along the south side of Patuxent Road 1500' west of Brager Road, Odenton.

Summary of Evidence

(Testimony from 6/23/2009) Mr. Edward Dexter, an Administrator of the Solid Waste Program for the Maryland Department of the Environment (MDE), testified that there are five phases for approving a rubble landfill; phases one to three deal with engineering and technical aspects of the project, phase four is the internal review for compliance with regulations and the law, and phase five is for public comment. From 1994 to 2001, the MDE suspended processing of this landfill because it was not approved for a special exception and was not included in the county's solid waste management plan in 2001, it was reactivated. The Petitioners submitted their phase three plan on April 14, 2006. On November 27, 2006, a 13 page initial comment

letter regarding the phase three report was released to the applicant. The Petitioners' revised report was dated June 6, 2008. There was some back and forth between the MDE and the Petitioners and a delay occurred, which Mr. Dexter attributed to some staffing issues at MDE. The department issued its next comment letter in February, 2009. On April 28, 2009, the Petitioner submitted an Addendum to its plan. The agency is currently reviewing plans and anticipates scheduling a public hearing later this year. There are a number of structural issues that they are addressing, including layers that may slip.

(Testimony from October, 2010 begins) Mr. Mike Armstrong, who is familiar with the Chesapeake Terrace project and is a civil engineer, testified that he has worked on the Chesapeake Terrace project for the last three years. In April 2005, the Petitioners' first phase three report was submitted to the MDE. The first comments from MDE were dated November 2006. The response to those comments required the services of geotechnical, wetlands, geology and groundwater modeling professionals. The phase three resubmittal (comprising seven volumes) by the Petitioners was delivered to MDE in June 2008. It took months to create the drawings and obtain the data for the June 2008 submittal. The MDE comments thereon were received on April 28, 2009. On August 2, 2010, an addendum was submitted. Presently, Mr. Armstrong has been working full time on this project and has done so since 2009, diligently pursuing comments from MDE; the most recent update being August 2, 2010. Upon questioning, Mr. Armstrong indicated that it takes generally five years to obtain approval for this type of project.

Mr. Stephen Fleischman, the vice president of Chesapeake Terrace, testified that the company acquired the land in two deeds, one portion in 1989 and the other in 1952. Site plans for the project were developed in 1990 and December 2002. Mr. Fleischman has been involved in this project since its inception and feels that all the experts he has engaged for the project have

been diligently working on the project. A meeting with MDE is planned to discuss the approval of phase three.

Mr. Edward Dexter was recalled to testify. The Petitioners have submitted substantial plans for consideration by MDE. He believes that it will be several months before phase three will be completed. Phase three has several different plans that come together as one. This project is one of the larger landfills in the State and is taking a large amount of resources to complete. Once phase three is complete, there is a relatively quick, in-house review of the plans (phase four). Then, phase five, the public comment and public hearing phase will begin. Finally, MDE makes its recommendation; most applications are approved with amendments.

Ms. Diana Lane, a Protestant, stated that this process has been ongoing since 1991. Since that time, the large Piney Orchard development has been constructed and a large project called "Two Rivers" is proposed. Ms. Lane feels that the proposed rubble land fill would be detrimental to public welfare by placing more large trucks on the area roadways and potential impacts to nearby wells and wetlands.

Ms. Ann Marie Thomas, a Protestant, also testified that she had concerns for traffic safety and feels that Route 3 is failing.

Reverend Wilmer Frazier, a Protestant and Pastor of St. John AME Zion Church on Conway Road, testified that the church is located directly across the street from the proposed entrance to the rubble land fill. The church has been in existence since 1929, although was not always located at its present location. With the increased population of the congregation, Reverend Frazier is concerned with the traffic and the dangers to the children that play in the area. The parking lot of the church is very close to the road and near the vehicular access point of the rubble fill.

Ms. Cathy Fleshman, a Protestant and an area resident, testified that she has been involved with the hearings for this project since 1989. Ms. Fleshman feels that extensive development has been done in this area and that the roadways in the area cannot accommodate the traffic that has increased since these developments took place. The landfill will not be compatible with the traffic problems already posed.

Ms. Stacy Murphy, a Protestant who has lived in the area for 11 years, testified that the edge of the landfill is very close to where her home is located. Since 2000, traffic has increased, including tractor trailer trucks, the noise level and vibrations therefrom impacting her home, as well as vehicles hitting the utility pole every few months. Ms. Murphy wants the extensions stopped and the entire project denied. Upon questioning, Ms. Murphy indicated that she purchased her home after the landfill was approved and is aware of the 1,000 foot buffer with landscaping and screening conditions imposed by the prior special exception and variance approvals.

Mr. Michael Murphy, a Protestant and resident of the area, testified that he travels Route 3 every couple of days and Conway Street every day. Mr. Murphy feels that the traffic has increased substantially in the last 11 years.

Mr. John Fury, a planner with the Office of Planning and Zoning, testified that he found that the Petitioners have been diligent in their efforts to acquire approval from the MDE and that, considering the length of time the State takes to review these matters, the request for a variance should be approved. The rubble landfill is located on the southwest side of Patuxent Road and consists of 481.6 acres, and the sand and gravel site consists of 107.99 acres. The subject property is currently zoned RA - Rural Agricultural district. The requested variances are for both sites to extend time for the implementation and completion of previously approved special exceptions and variances (case nos. BA 120-90S, BA 26-91S, BA 27-91V, BA 62-03V, BA 7-

06V and BA 8-06V). The applicant is requesting a two year extension to implement and complete the approved special exceptions and variances. This project has had previous extensions granted by the Board in 2004 and 2006. The Board's approval of a special exception on September 20, 2006 was appealed to the Circuit Court and was vacated, in part, regarding the conditions placed on the Petitioners that if the special exception is not implemented in the allotted time frame, that further extensions would not be granted. The extension from the September 20, 2006 decision expired on September 20, 2008; thus, the applicants have returned for a further extension. The applicant has been pursuing approval from the MDE since the original special exception and variance approvals were given in 1993. The process takes at least three years. The Petitioner cannot implement the special exception and variances until the MDE issues a permit.

All testimony was stenographically recorded and the recording is available to be used for the preparation of a written transcript of the proceedings.

Findings and Conclusion

In 1993, the Board of Appeals granted the Petitioners a special exception for a sand and gravel operation (BA 120-90S) and for a rubble landfill with variances (BA 26-91S and BA 27-91V). The variances were granted to permit the reclamation of a portion of an abandoned sand and gravel pit that are within the more current property line setback restrictions for a sand and gravel use. Section 18-16-405 of the Anne Arundel County Code (the "Code"), provides that a special exception or variance is rescinded by application of law unless the applicant obtains a building permit within 18 months. To date, the Petitioners have not received building permits for the sand and gravel/rubble landfill use. In this appeal, the Petitioners are requesting the approval of variances to permit an extension of time for the implementation and completion of the previously approved special exception and variances.

This case has a long history. After the Board's initial grant of the request in 1993, the case was appealed to the Circuit Court and Court of Special Appeals. While certiorari was requested, the Court of Appeals denied the request. MDE suspended all processing of the application during the pendency of the various appeals. During this same period, many of the requirements governing the uses were revised at the State level and the Petitioners reworked their submission to the State of Maryland.

At the local level, the Petitioners requested and received variances in 2004 to permit a two year extension of time in case nos. BA 62-03V and BA 63-03V. In 2006, the Board granted variances for an additional two year time extension (BA 7-06V and BA 8-06V). The Board's 2006 decision conditioned the grant of the variances on there being no further extensions permitted. On appeal, the Circuit Court for Anne Arundel County vacated the Board's imposed condition. Hence, the applicants are currently before the Board to seek approval for a third extension to the time restrictions.

In order to be granted a variance, an applicant must meet the standards set forth in Section 3-1-207 of the County Code. Turning to each of these criteria separately, we find that the Petitioners are due relief to the time limit criteria for special exceptions and variances.

As a threshold matter, the applicant must show that the need for the requested variance is due to certain unique, physical conditions of the property such that there is no reasonable possibility of developing the lot in strict conformance with the regulation. In this case, there are no physical conditions of the property that render it incapable of being developed in a timely manner. See, id., Section 3-1-207 (a)(1).

However, Section 3-1-207 (a)(2) provides an alternative threshold where, if an applicant can show that "because of exceptional circumstances other than financial considerations, the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop such lot then a variance can be granted." In this case, we again

find that there are exceptional circumstances other than financial considerations, which prohibit the Petitioners from implementing the previously approved special exceptions and variance. Anne Arundel County regulates the land use issues as they relate to sand and gravel/rubble landfills; however, the State of Maryland through its Department of Environment (MDE) regulates the licensing and operation of such facilities. Mr. Edward Dexter, the Administrator of the State's Solid Waste Program, explained in great detail the lengthy process by which the State reviews applications for a rubble landfill. The approval process requires extensive environmental and physical study of the site—including, geology, groundwater, wetlands and other environmental factors. The application and plans are submitted to the State, which then routes them to numerous commenting agencies. At least three years are required to complete the process. That minimum process time can be extended by external factors as well as internal factors, such as change of employment and vacant positions of individuals who are needed to review and process the application through MDE. Mr. Dexter explained that this rubble landfill is one of the largest in the State. Size alone extends the review time and the management of the MDE resources to process not only this large application, but all other applications pending before Mr. Dexter's department.

Additionally, the review process before MDE is not simply the analysis of an application and then approval or denial. The review process is an iterative one where an applicant submits much information over five phases of review. These Petitioners are currently in phase three of the review process (the longest phase) that requires several submittals and resulted in this case in several, substantive comment letters by MDE. These comment letters are not simple undertakings and the responses thereto require additional, expert analysis. For example, MDE may find information in an applicant's submittal that leads to requests for additional scientific data that requires multi-month sampling. The applicant cannot simply fix a problem in an application, the applicant must perform tests and provide the analysis of the samples by experts.

Mr. Dexter of the MDE testified that the processing of an application before MDE would take a minimum of three years to complete. This site is one of the largest in the State of Maryland and, therefore, atypical. If MDE permission were not required to operate the sand and gravel/rubble landfill, then there would be no need for the requested variances. However, there is no way for the applicants to obtain the necessary approvals from MDE (three year minimum) in time (18 months) to comply with the Anne Arundel County regulations. Therefore, this interaction of the overlapping regulations has, in part, resulted in the exceptional circumstance to be suffered by the applicants, something of which is out of their hands.

Admittedly, this application has been pending before MDE for many years. The Protestants voice concern that this undesirable (in their eyes) operation has been pending since 1991. The Petitioners argue that their application has been pending only since 2005, when the phase three application was submitted to MDE. We find the Petitioners' argument relative to their timing and diligence to be more persuasive. This Board is convinced that the Petitioners have been diligent in pursuing completion of the MDE process, including having a full time civil engineer, Mr. Armstrong, on the project. As Ms. Henley noted in her closing argument, this is an iterative process. An applicant must submit information. Then the agency reviews and responds with comments. The applicant must then address the said comments and resubmit. More than one submission is necessary, as described by Mr. Armstrong. Also the applicant is a scientific endeavor with multiple disciplines working toward the submission, as further described by Mr. Armstrong and Mr. Fleischman. The science of the process requires data gathering and testing over time. Months between applicant submissions are reasonable given the sophistication of the process.

While the Protestants argue that the Petitioners failed to show due diligence during the processing of this application, we disagree. Mr. Dexter testified that it is important for MDE to

conserve its limited human and other resources, especially for a project this large. Mr. Dexter explained that some delays in project review occurred since there were changes and vacancies in positions with his department. These issues relative to MDE rules regarding processing and the allocation of the MDE resources are beyond the control of the applicant for a rubble landfill permit. The Petitioners have continued to supply MDE with information and communicated with them on a frequent and diligent basis. We believe that the applicants' responses to the various requests and comments have been timely, particularly given the complexity and detail of the required information.

We find that the requested variances to permit an additional extension of two years is the minimum necessary to afford relief to these applicants. See, id., Section 3-1-207(c)(1). Mr. Dexter from the State of Maryland indicated that the processing of this application takes at least three years. This project is in phase three and Mr. Dexter is hopeful that it can move to phase four within the next few months. Phase four was described by Mr. Dexter as an in house review. Phase five may take a year or more since multiple public hearings are likely. MDE staff will then digest the public comments, revisit the application and make further recommendations.

Although these applicants are at least partially through the State process, we believe, based on Mr. Dexter's testimony, that delays are still likely. Neither the applicants nor we have any control over the ability of the State offices to respond quickly. Additionally, MDE is charged with the duty to review fully these applications. We are certain that no one, especially the Protestants, desires that MDE give short shrift to such a complex project. Also, phase five involves a public hearing, resulting staff comments and amendments per Mr. Dexter. He described the final approval from MDE within two years as "doable"—hardly a firm endorsement of two years as a maximum. We remain hopeful that the Petitioners will not have to reapply for further extensions. Given the remaining phases of this review, followed by the

County's own permit process, two years is no more than the minimum relief necessary to these Petitioners.

The granting of the requested variances to the time limits for the implementation and completion of previously approved special exceptions and the variance will not alter the essential character of this neighborhood. See, id., Section 3-1-207(c)(2)(i). The land use in the immediate proximity of the site is low density residential per the testimony of Ms. Lane and Reverend Frazier. However, Route 3 is near the site and heavily traveled as described by Ms. Thomas. The large, mixed use development of Piney Orchard is part of this community and another large residential community, Two Rivers, may be constructed. We find that the character of the neighborhood is that of mixed use that ranges from rural residential to commercial resources for the Odenton community. The Petitioners have an approved, lawful special exception on this site. The approved use of this property as a sand and gravel operation and a rubble landfill is known within the community and, we believe, is part of the character of the community. The rubble fill will heal a large, old mining scar on the subject property. The land is currently not in use by the community, save a few trespassers who dump trash.

Although the Protestants argue that there is noticeable increased traffic due to increased development in the area (i.e. Piney Orchard) since the special exception was originally approved, we do not find this testimony persuasive that the requested extension of two years will alter the essential character of this neighborhood. Our focus here is not on the special exception for a rubble land fill and sand and gravel mine and variances that were approved, but rather, on whether a variance to permit a two year extension will change the character of the neighborhood. If there is more traffic due to development in the area, that traffic does not persuade us to conclude that a variance for an extension of time will change this neighborhood from a mix of uses to something else. As for arguments that truck traffic may increase following operation of the site, those arguments were dealt in the original special exception and variance requests. The

current variance does nothing more than give the Petitioners more time to obtain State approval and a County building permit. This variance does not guaranty that the Petitioners will ever operate their desired facility.

The variance for extension of time will not substantially impair the appropriate use or development of adjacent properties. See, id., Section 3-1-207(c)(2)(ii). As explained previously, this special exception and variances have been approved for many years. The need for the current request for two year time variances are a direct result of the iterative process of comments and review time for State approval (or denial) for the operations. Although some of the area residents may not like the degree of traffic in the area, time extension variances, will not impair the use or development of adjacent properties with residences or any other lawful use. There is no operation that will occur as a result of a time variance – the sand and gravel/rubble landfill operation would occur by virtue of the Board's 1993 decision. The adjacent properties can continue to be used without impairment during the extension period requested.

This Board need not consider whether the forest cover will be reduced or whether clearing and replanting practices meet the requirements for development within the Chesapeake Bay Critical Area or a bog protection area. See, id., Section 3-1-207(c)(2)(iii) and (iv). This property is not within the Chesapeake Bay Critical Area or a bog protection area.

The time extension variance will not be detrimental to the public's welfare. See, id., Section 3-1-207(c)(2)(v). No traffic will result from the grant of the time extension. No impacts to water will result from the grant of the time extension. The extension of time will only permit full MDE review (and perhaps County building/grading permit review). The MDE may or may not grant the requested licenses and permits. The variances will merely permit the applicant to complete the application process—there is no guaranty that a sand and gravel/rubble landfill will ever operate on this site. In fact, the Protestants argued that the Petitioners are unable to meet

certain access road conditions originally imposed on this special exception and variances thereto in 1993. If true, the Petitioners' attempts at approval could ultimately fail.

This is not a case of whether the sand and gravel operation/ rubble landfill is a popular land use. It is, however, a permitted land use. While some individuals may not like the traffic in the area and are worried about potential impact from a sand and gravel/rubble landfill operation, this case involves only a two year time extension in which to obtain permits. We believe that the extension of two years for these applicants to implement and commence these uses will not be detrimental to the public's welfare. The original 1993 decision, determined that these uses have public benefit and are needed. This Board makes no decision on the merit of the underlying special exception and associated variances. We find only that these applicants deserve a time extension variance since they have not been afforded the opportunity to commence those uses, most recently due to the State's lengthy (and proper) five phase approval procedure.

We find, therefore, that the applicants have presented persuasive testimony to meet the criteria set forth in Section 3-1-207 to obtain variances of two years to the requirements of Section 18-16-405 of the Code. The Petitioners may never operate a sand and gravel/rubble landfill on this site, but these variances give them two more years to go through the process.

ORDER

For the reasons set forth in the foregoing Memorandum of Opinion, it is this 3rd day of JANUARY, 2011, by the County Board of Appeals of Anne Arundel County, ORDERED, that the Petitioners' request for variances to permit a further two (2) year extension in time for the implementation and completion of previously approved variances and a special exception for a rubble landfill and sand and gravel operation are hereby GRANTED.

Any appeal from this decision must be in accordance with the provisions of Section 604 of the Charter of Anne Arundel County, Maryland.

If this case is not appealed, exhibits must be claimed within 90 days of the date of this Order; otherwise, they will be discarded.

Any notice to this Board required under the Maryland Rules shall be addressed as follows: Anne Arundel County Board of Appeals, Arundel Center, P.O. Box 2700, Annapolis, Maryland 21404, ATTN: Deana L. Gibbs, Clerk.

COUNTY BOARD OF APPEALS
OF ANNE ARUNDEL COUNTY

(b) (6)

William C. Knight, III, Chairman

(b) (6)

Arnold W. McKechmie, Vice Chairman

(b) (6)

John W. Boring, Member

(b) (6)

Carol P. Hicks, Jr., Member

(b) (6)

James E. Rzepkowski, Member

(William Moulden, Member, did not participate in this appeal. Andrew C. Pruski, former Member, participated in, but, resigned prior to completion of the appeal.)

C O P Y
TRUE CERTIFIED

From: Davia, Joseph (b) (6)
To: Teresi, Maria (b) (6)
Subject: FW: Chesapeake Terrace Rubble Landfill (CENAB-OP-RMN 1991-01204-M18)
Date: Wednesday, March 30, 2022 3:53:59 PM
Attachments: Chesapeake Terrace RL Corps Extension Request (3-15-2022).pdf

Here is the request. I think it includes the signed letter.

Open in ORM as a permit mod. Add yourself as primary and flip Rich to secondary.

Thx, joe

Joseph P. DaVia
Chief, Maryland North Section
US Army Corps of Engineers, Baltimore District
410.962.5691

(b) (6)
(b) (6)

Assist us in better serving you!

Please complete our brief customer survey, located at the following link:

<https://regulatory.ops.usace.army.mil/customer-service-survey/> <<https://regulatory.ops.usace.army.mil/customer-service-survey/>>

-----Original Message-----

From: (b) (6)
Sent: Thursday, March 17, 2022 9:27 AM
To: Davia, Joseph (b) (6)
Cc: (b) (6)

Subject: [Non-DoD Source] Chesapeake Terrace Rubble Landfill (CENAB-OP-RMN 1991-01204-M18)

Mr. DaVia,

Attached please find a formal request to extend the authorization for the Chesapeake Terrace Rubble Landfill project. If you have any questions, please do not hesitate to contact me. Thanks for your attention to this project.

(b) (6)

(b) (6)

(b) (6)

(b) (6)

(b) (6)

April 4, 2022

Richard Kibby
Dept of the Army
Baltimore District, Corps of Engineers
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201

Re: **Letter to National Waste Managers dated 1/3/2019**

Dear Mr. Kibby:

On January 3, 2019, your office sent the above referenced letter to National Waste Managers (NWM) (attached). The letter indicates that questions about the letter can be directed to you. I left messages at your office twice and received no response. Hence, I have composed this letter.

I am a homeowner in the Two Rivers development, which is adjacent to the proposed Chesapeake Terrace Rubble Landfill. On behalf of the residents of Two Rivers, I am leading a small group of volunteers in a grassroots effort to oppose the permitting of this landfill. We call ourselves the Two Rivers Residents – Landfill Opposition Committee (TRR-LOC).

The letter from your office states that the Dept of the Army Permit **CENAB-OP-RMN (CHESAPEAKE TERRACE RUBBLE LANDFILL) 1991-01204-M18** will expire on 12/31/23 if:

- (a) NWM has not completed the permitting process at the state and local levels, and
- (b) started construction activities.

I have two questions regarding this decision by the Army COE:

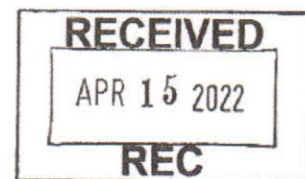
- (1) What is the reason for this decision to not renew the permit? Could it be that the Army COE has determined that siting landfills in wetland areas and/or over aquifers is not a good idea anymore?
- (2) If NWM completed their state & local permitting after 12/31/23, could NWM reapply for a new Army COE permit & would a new permit be approved?

Your response to my information request will be appreciated.

Very respectfully,

(b) (6)

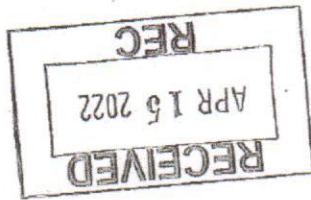
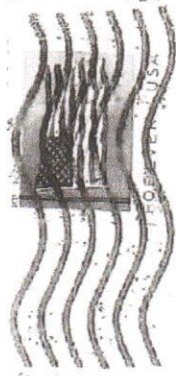
(b) (6)



(b) (6)

BALTIMORE MD 212

6 APR 2022 PM 4 1



RICHARD KIBBY
DEPT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201

21201-293099



From: Teresi, Maria (b) (6)
To: (b) (6)
Subject: NAB-1991-01204 (CHESAPEAKE TERRACE RUBBLE LANDFILL)
Date: Thursday, April 28, 2022 10:31:00 AM

Good Morning (b) (6),

I am the current PM handling this project. The permit is valid until December 31, 2023. National Waste Managers, Inc. has requested a permit extension of time to complete construction of the Chesapeake Terrace Rubble Landfill. The Corps intends to grant the requested extension in the near future.

Please advise if you would still like to be added to our PN mailing list? The addition of your name/email entitles you to notifications of all public notices posted on the Baltimore District Website for projects within the NAB area of review including MD, PA, DC & VA military installations. Hope you find this information helpful.

Thank You,

Maria N. Teresi

Biologist, MD North Section

USACE, Baltimore District, Operations Division, Regulatory Branch

ofc: 410.962.4501

cell: (b) (6)

email: (b) (6)

From: (b) (6)
Sent: Wednesday, April 27, 2022 3:26 PM
To: NAB-Regulatory <NAB-Regulatory@usace.army.mil>
Subject: Please add to public notices mailing list

Your name (b) (6)

Your email (b) (6)

Add a message

I am interested in any news regarding the following permit:
CENAB-OP-RMN (CHESAPEAKE TERRACE RUBBLE LANDFILL) 1991-01204-M18



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

June 3, 2022

Operations Division

(b) (6)
National Waste Manager, Inc.
2900 Linden Lane
Silver Spring, Maryland 20910

Dear (b) (6) :

This is in reference to your letter dated March 15, 2022, requesting an extension of time for Department of the Army (DA) permit, NAB-1991-01204 (CHESAPEAKE TERRACE RUBBLE LANDFILL), issued on February 26, 2015. The property is located adjacent to the Little Patuxent River on Patuxent Road, Odenton, Anne Arundel County, Maryland.

As there have been no significant changes in the attendant circumstances since authorization was granted, the District has determined that it is not contrary to the public interest to grant an extension of time. Accordingly, general condition (1) of the DA permit is revised to read as follows:

"The time limit for completing the work authorized ends on December 31, 2028. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached."

All other conditions of the original DA permit remain in effect. All required State and local authorizations must be secured prior to commencement of construction.

A copy of this letter is being forwarded to Ms. Cheryl Kerr, MDE Nontidal Wetlands Division, Ms. Hanifah Parker-Morrison, MDE Waterways Division, and Mr. Milton McCarthy, Bay Environmental, Inc. for informational purposes. If you have any questions concerning this matter, please contact the undersigned at (410) 962-4501 or

(b) (6)

Sincerely,

(b) (6)

Maria N. Teresi
Project Manager, Maryland North Section



Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Horacio Tablada, Secretary
Suzanne E. Dorsey, Deputy Secretary

June 15, 2022

(b) (6)
The Halle Companies
2900 Linden Lane
Suite 300
Silver Spring, Maryland 20190

Re: Chesapeake Terrace Rubble Landfill
Water Quality Certification No. 91-WQ-0516
AI No. 63592

Dear (b) (6):

The purpose of this letter is to confirm that Water Quality Certification No. 91-WQ-0516, originally issued for the U.S. Army Corps of Engineers' Chesapeake Terrace Rubble Landfill Permit No. CENAB-OP-RMN 1991-01204-M18, remains in effect while the federal permit is still in effect.

Should you have any questions, please feel free to contact me at 410-537-3766 or

(b) (6)

Sincerely,

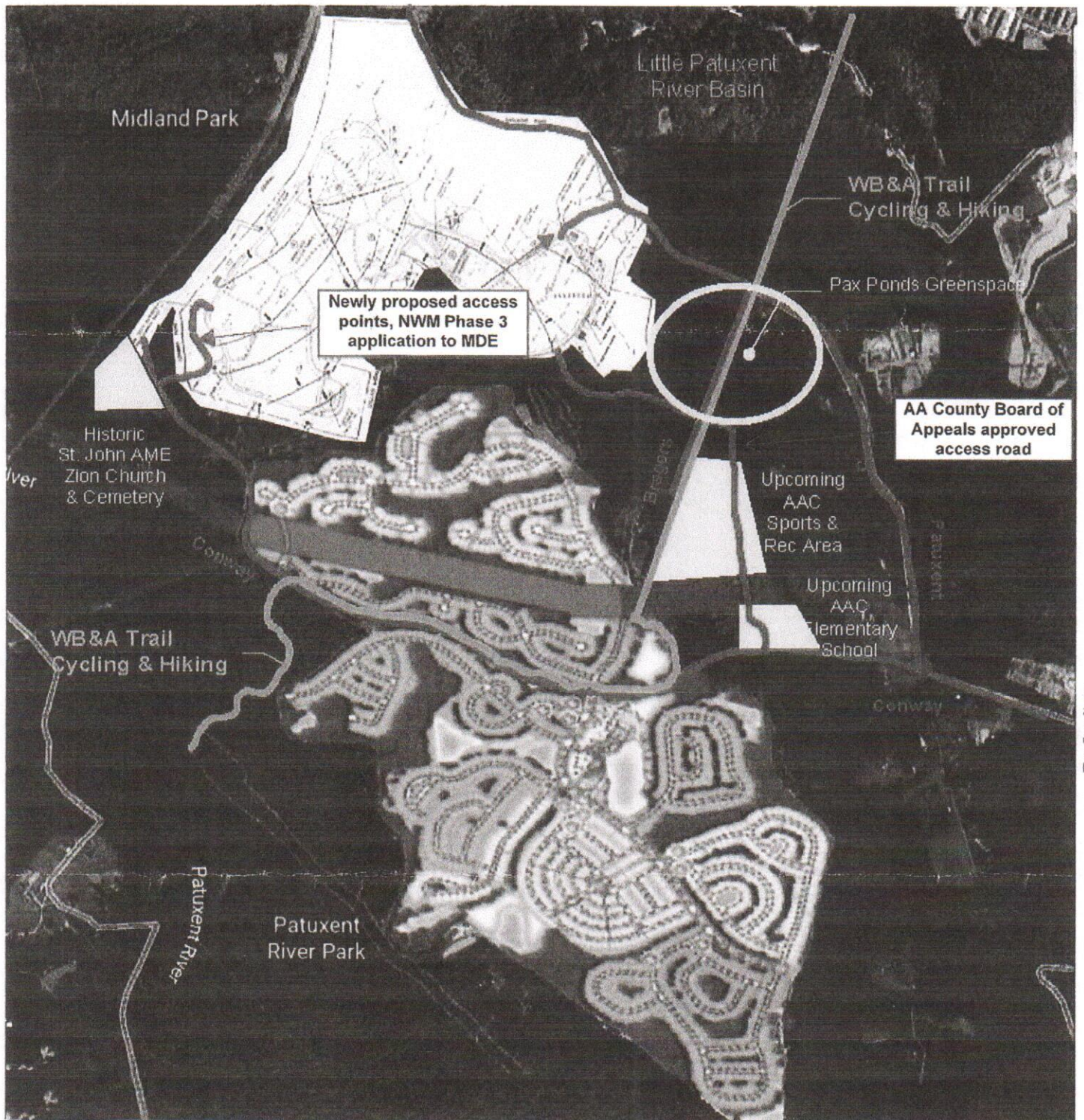
(b) (6)

Amanda Sigillito, Chief
Nontidal Wetlands Division

/AS

C: Maria Teresi, (Maryland North Section, Regulatory Functions Branch, Baltimore District
Army Corps of Engineers, 2 Hopkins Plaza, Baltimore, Maryland 21201)
Milton L. McCarthy (Bay Environmental, Inc., 2661 Riva Road, Bldg. 800, Suite A,
Annapolis, MD 21401)

To Piney Orchard



Location of (Proposed) Chesapeake Terrace Landfill shown in relation to Two Rivers, Patuxent River watershed, St. John AME Zion Church and cemetery, WB&A Trail,

THIS SKETCH WAS PREPARED BY TRR-LOC.