

IN THE APPELLATE COURT OF MARYLAND

No. 0975, September Term 2025
MDEC No.: ACM-REG 0975-2025

IN THE MATTER OF NATIONAL WASTE MANAGERS, INC.

NATIONAL WASTE MANAGERS, INC.

Appellant,

v.

MARYLAND DEPARTMENT OF ENVIRONMENT

Appellee.

On Appeal from the Circuit Court for Anne Arundel County, Maryland

Case No. C-02-CV-24-003026

(Robert Thompson, Judge)

REPLY BRIEF OF APPELLANT

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January 05, 2026

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Factual Background Correction

The statement of Appellee, Maryland Department of Environment (hereinafter “MDE”), that the proposed entrance for Chesapeake Terrace Rubble Landfill remained on the parcel of land now occupied by the Elementary School (Appellee’s Brief p. 9), is categorically untrue. As explained in Appellant’s Brief, pp. 9-10, and summarized below, the entrance off Conway Road has yet to be determined by the Anne Arundel County Office of Planning and Zoning (hereinafter “Zoning Office”). That entrance is to be addressed as part of the County use and construction permitting process after the MDE refuse disposal permit for this project is approved. (E. 0452). MDE’s statement anticipating a specific entrance requirement is simply a red herring to direct the Court’s attention away from the real issue here; whether MDE can usurp the County’s exclusive authority to make land use decisions.

After a lengthy process, the Anne Arundel County Board of Appeals (the “Board”) in 1993 approved the Chesapeake Terrace landfill location under stringent land use laws and regulations, at its designated site on Conway Road in Anne Arundel County (hereinafter “County”), with specific roadway improvements mandated to service the facility (E. 0163-0208). The particulars of the access are not detailed; only that the access be from Conway Road, fee simple entrance.

When the Board approved the landfill use, it considered expert testimony from traffic consultants and traffic studies projecting 300 to 600 truck trips per day. The 1993 approval adopted specific conditions designed to mitigate the impact of the projected truck

traffic, mandating improvements including 12' travel lanes with eight-foot shoulders along Conway Road; a right turn lane on east bound Conway Road at the intersection with Maryland Route 3 with a minimum length of 500 feet; and fee simple access from Conway Road to the site. (E. 0163 at 0190-0195, 0198-0199, 0204). Upon Board approval, the Chesapeake Terrace Rubble Landfill became part of the neighborhood to be considered by the County for purposes of all future land development approvals in the area.

MDE has always enjoyed exclusive authority to permit the onsite design and operation of landfills, but it has never enjoyed or exercised land use authority to determine zoning issues. MDE seeks to change this here.

During each request for extension of time to implement the special exception required by the County Code, (discussed in Appellant's Brief, pp. 6-10), Anne Arundel County consistently refused to address the location of the entrance to the facility off Conway Road. The Zoning Office explained at each extension hearing over the ensuing decades that it would not address entrance particulars until National Waste Managers, Inc. (hereinafter "NWM") applies for use and construction permits after having received the MDE refuse disposal permit. This was expressed by County Planner, John Fury, in 2009 (quoted in Appellant's Brief at pp. 7-8).

The fact that this issue is still pending and will perhaps be brought before the Board on an appeal from initial determination by the Zoning Office after receiving MDE permit, is acknowledged by the Board in decision granting the fourth extension of time to implement the landfill use dated December 22, 2022. (E. 0550-0572). Within this

decision, the Board considered the entrance and roadway arguments now being used by MDE to deny the refuse disposal permit (proximity of the access to an elementary school and walking trail, and public health), (E. 0053), concluding that road access issues were not germane to the issues before them, because access had yet to be determined by the County, stating “Those matters are for another time before another Board.” (E. 0565). The Board of Appeals explained:

The instant request would grant the Petitioners additional time to obtain the necessary approvals from the Maryland Department of Environment (MDE) and the County. The rubble landfill cannot commence operations without those approvals. Nothing happens on this site until MDE grants approval and the County issues building and grading permits and the panoply of permissions required for a project such as this. (E. 0549).

The fact that the entrance location is still pending and remains a County zoning issue to be decided in the future is clearly acknowledged by the Board. (E. 0549).

The location and roads to service the facility are wholly within the authority of local government, and not subject to MDE review. *Piney Orchard Community Association v. Maryland Department of Environment*, 231 Md. App 80, 103 (2016). The County has yet to consider use permits to specify exactly where access to the facility will be located since there is no MDE approved permit in place, a condition precedent to that determination. Moreover, the placement of the road access by the Zoning Office is a decision which allows process for appeal and evidentiary hearing by the Board Appeals. MDE seeks to short-circuit this well-established local land use approval process.

In the extension approval, the Board also recognized that this approved landfill use has been longstanding;

the facts are as follows (1) the character of the neighborhood is a mix of uses that range from rural residential to commercial resources for the community, (2) the Petitioners (Appellant) have an approved lawful special exception on this site; and (3) the approved use of this property as a rubble landfill is, and has been, known within the community, and so, as part of the character of the community. (E. 0566.)

The Board acknowledged that in the intervening 29 years since the 1993 approval, other uses, including residential, have been developed around the site. The adjoining properties to the east are owned by the County and Board of Education, with one parcel used as a park and the other for a school. As the Board noted,

[w]hile we are sympathetic to the voices of the new residents in the Two Rivers community and that their home builder failed to tell them a rubble landfill was possible, the County was fully aware of the approved landfill and approved the developer's Two Rivers subdivision nonetheless. (E. 0567).

The Board concluded that the extension of time would not impair the use or development of adjacent properties, stating that the access point for the landfill has yet to be determined and was not before this Board at that time. (E. 0567). Clearly, Anne Arundel County considers the entrance decision to fall within the County's zoning jurisdiction.

MDE raises the issue of the County's purchase of property in 2020 which might potentially serve as a landfill entrance. (Appellee's Brief, p. 8). But this purchase is immaterial because the County will not identify the entrance location until later in the land use process. The fact that the County chose to transfer property to the Board of Education to build a school that would be using the same intersections and roadways as truck traffic generated by the abutting prior approved rubble landfill facility suggests bad faith by Anne Arundel County, for which it has already been sanctioned by the Courts. But, this issue

should be addressed in the well-established County administrative process designed to address zoning issues, and not in an MDE permit.

MDE suggests that its “request” for NWM to identify an alternate entrance to the facility that would not impact the new elementary school was “simply wished” by MDE to resolve public health concerns. (Appellee’s Brief, pp. 19-20) MDE’s assertion is inconsistent with the facts of this case. Indeed, the existence of the elementary school, opened in 2024, on property over which facility access might eventually have been accomplished has simply been weaponized to falsely justify MDE’s denial of NWM’s refuse disposal permit application that is fully compliant with all technical requirements of the MDE permit process. (E. 0131-0162). This effort to short-circuit the local land use approval process denies to NWM the due process rights and opportunity to be heard on the access issue that is part of the County process for land use determinations; specifically, the aforementioned right to appeal initial County zoning determinations to the County Board of Appeals, and to Maryland courts. Md. Rule 7-202 et seq.

ARGUMENT

I. MDE’s denial of Appellant’s Application is a matter of legal error based on its exercise of land-use authority exclusively reserved to the local government. This court owes no deference to this question of law, which is reviewed *de novo*.

This is not a “substantial evidence” case. Instead, it involves questions of statutory jurisdiction where this court will not defer to the administrative agency and reviews *de novo*. The question presented here is whether MDE can use its permit process to make local planning and zoning decisions -- exclusively reserved for local government. This is

especially true here where MDE repeatedly (and correctly) announced at public hearing that it had no authority to address these questions because they fell within the jurisdiction of Anne Arundel County. Brief of Appellant, pp. 13-15. As a result, no hearing was held on these issues because MDE publicly disclaimed any land use authority—until the moment it denied the permit based upon a land use determination.

Now, in denying the refuse disposal permit, MDE effectively overrides both the approvals of the Board of Appeals to locate this facility at the designated site and the conditions the Board imposed on the landfill's use of entrances and adjacent roadways and intersections designated to serve the landfill. It also improperly preempts the exclusive role of the Board in deciding where the facility entrance should be located, a decision the Board has expressly reserved until the MDE permit is issued and initial determination made by the Zoning Office.

The Express Powers Act specifically authorizes county governments to enact local laws relating to zoning and planning and to enforce those laws to promote public health, safety and welfare. Local Government, §10-305. Indeed, the agency's own permitting statute, Env. §9-210, requires MDE to rely upon the local government's site determinations, which includes deciding which roads and intersections will serve the facility.

MDE's sole obligation during the permit process regarding any duty to ensure compliance with local zoning regulations is to obtain a statement from the County certifying that the facility meets all zoning and land use requirements and that the facility is in conformance with the county solid waste management plan. Sec. 9-210 (a) (3). MDE

must receive this written confirmation before it can proceed with its lengthy engineering review of design and operations requirements created to protect the public health during the landfill operations in its extensive COMAR regulations. Env. 9-210 (b). COMAR 26.04.07.16, *et seq.*, *Piney Orchard*, *supra*, 231 Md. App. 80, 103.

This statutory framework ensures a clear delineation between the responsibilities of the state and local governments, prevents conflicts, and promotes cohesive governance. MDE has historically honored this clear delineation until now; indeed it repeatedly emphasized its lack of land use authority during permit public hearing. It was not until permit denial – at the end of the permit process -- that MDE violated its own permit statute, its longstanding precedent, and the repeated pronouncements it made during public hearing that it has no role in planning and zoning decisions.

When MDE denies a permit based on considerations beyond its statutory remit, such as zoning issues, it not only disrupts this balance but also sets an alarming precedent. Local governments could no longer effectively make planning and zoning decisions if they could be second-guessed and revised during MDE permit process. Applicants and opponents alike would have a two-headed land use process, fraught with ambiguity, and with no clarity as to which process governed, if either.

If change in precedent is allowed, there would be no meaningful limit to what land use decisions MDE could make under the guise of “health and welfare.” MDE would be making decisions outside of its area of expertise, the appropriate operation of landfills. Instead, it would intrude into an area of expertise historically enjoyed by local

governments, planning and zoning, This would fly in the face of the plain legislative intent to provide clear boundaries and a streamlined process. Without clear boundaries, businesses, developers, and citizens would have to prepare for two land use processes, with the risk (like here) of conflicting results, potentially discouraging economic development.

To preserve the integrity of the legislative framework, it is essential to reaffirm the boundaries of authority between MDE and local governments, ensuring that each entity operates within its prescribed boundaries to foster collaboration and efficiency. In this case, it was legal error for MDE to intrude on the authority of Anne Arundel County to make land use determinations within its boundaries, in denying the refuse disposal permit, which cannot and should not be tolerated by this Court. *Piney Orchard, supra*, 231 Md. App. 80, 149 A.2d 1175; *In the Matter of Chesapeake Bay Foundation, Inc.* 264 Md. App. 107, 328. A2nd 860 (2024).

II. MDE’S determination to deny the Refuse Disposal Permit was based on grounds relating to zoning and land use, and exceeded its regulatory authority, therefore legal error.

After multiple decades of addressing the on-site landfill engineering, MDE concluded that the design and operations specifications for the Chesapeake Terrace facility met all of the rigorous requirements of MDE for safe operation of the landfill use. MDE issued Draft Refuse Disposal Permit, No: 1993-WRF-0225 in December 2022, tentatively approving this applicant’s permit. (E. 1031). None of MDE’s extensive staff work addressed local planning and zoning issues; nearly all staff work addressed technical issues involving landfill operations. See text of Refuse Disposal Permit. (E. 1031-1062). In

contrast to the County Board of Appeals, MDE did not require or permit expert studies on zoning issues, including traffic and roadway design, nor did it allow testimony about these issues at hearing on the draft permit on February 23, 2023. The Board of Appeals also respected the statutory boundaries; addressed land use issues only, avoiding technical issues involving the operation of the landfill which fall within MDE's jurisdiction.

MDE held public hearing on this draft refuse disposal permit, as required by Env. §1-604 (a)(4). During this hearing, attendees questioned adequacy of the roadways servicing this facility. The senior officials of MDE who were conducting this hearing, Andrew Grenzer, Chief of the MDE Solid Waste Operations Division, and Edward Dexter, MDE Administrator of the Solid Waste Program, repeatedly reminded attendees that MDE could not make decisions about local government issues such as public roads and access, and that MDE's role was to make sure that the facilities operate properly. See E. 0223-0427 transcript and contents of Appellant's Brief pp. 13-15 for quotes from transcript.

Consistent with MDE's position, NWM offered no studies, reports, or testimony at any stage of the MDE refuse disposal permit process about zoning issues or roadway design because, as MDE repeatedly stated, they were legally irrelevant to the permit process. Yet, after repeatedly announcing it could not consider issues such as site location and road access, MDE proceeded to do exactly that, using roadways as the sole basis for permit denial. (E. 0053). This was despite the fact that local land uses issues had been properly excluded throughout the entire administrative process, until the permit was denied.

After finding the design of this facility compliant with MDE requirements in the draft Refuse Disposal Permit, (E. 0131-0162), and after public hearing during which MDE repeatedly denied authority over site location, access, and road networking issues, MDE received and reviewed during post hearing public comment period, traffic studies from Anne Arundel County suggesting a required entrance for this facility (even though the Zoning Office has yet to address that issue); reporting a school having been planned on the purportedly required site; and challenging the adequacy of neighborhood servicing roads. (E. 0744-0747). MDE, regardless of the restrictions of their role in permitting landfills contained in Env. 9-210, parroted the County's traffic reports and denied the refuse disposal permit for the sole reason that off-site roadways to service the facility posed risk to public health since a school had recently been constructed at an intersection through which truck traffic to the facility must pass. (E. 0127). This decision virtually voids the 1993 approval of this facility by Anne Arundel County in 1993.

Along with the November 6, 2024 letter denying permit to NWM, as operation of the sanitary landfill system would harm public health due to "the proximity of the Two Rivers Elementary School...and the intersection of the WB&A trail", MDE forwarded "Response to Comments for the Chesapeake Terrace Rubble Landfill" to further explain its decision. (E. 0706-0734). Within these comments, MDE notes MDE's statutory preclusion from addressing local land use issues. MDE Response Number 1, Zoning (E. 0708). MDE later addresses adequacy of the roads to service the facility. MDE Response, Number 11, Traffic:

Line of sight and truck traffic issues are outside of the purview of MDE and are within the jurisdiction of the local land use and zoning approval process. The Anne Arundel County Board of Appeals Special Exception includes conditions.... These conditions are County requirements and are outside of the purview of MDE. (E. 0714).

Nevertheless, MDE later inappropriately considers these traffic studies submitted during the Comment period. See MDE Responses Numbers 23 and 24. (E. 0720-0722).

Neither of the aforementioned traffic studies consider or mention traffic generated by the approved Chesapeake Terrace Landfill. The first study dated February 2022 is simply a study of existing traffic conditions generated by the Two Rivers residential development, constructed well after approval of the landfill. (E. 0747, MDE record 0592-6169). The second study dated August 2022 is a report of proposed improvements for Conway Road due to existing traffic generated by the Two Rivers subdivision and the proposed new elementary school. Both studies completely ignore the approved Chesapeake Terrace facility. Neither report has any information relevant to the MDE refuse disposal permit process for this facility.

It was inappropriate for MDE to even consider these traffic submissions of the County after fully acknowledging that traffic studies for off-site roadways are outside the purview and jurisdiction for MDE permitting authority.

Despite repeatedly acknowledging the separately delineated roles of the State and County governments in approving landfills, MDE abruptly reversed the position it took at the public hearing. Without warning—at the conclusion of the administrative process—MDE denied the refuse disposal permit solely on the basis that the location of the entrance

and roadways servicing the landfill were in proximity to other nearby uses concluding the facility therefore would harm public health. (E. 0053). Such a process deprived Appellant of its right to fundamental fairness in the administrative proceeding.

The issue before the Court is the extent of authority granted to MDE in permitting refuse disposal permits. MDE acknowledges in its brief that it does not have authority to decide zoning issues. (Appellee's Brief, p. 14). MDE has explained that it has the authority to approve design and on-site operations of the landfill. (Appellee's Brief, p. 14). MDE, in the permit process, only reviewed the footprint of the facility. (Appellee's Brief, p. 12). MDE does not require nor request traffic studies as part of its approval process because those are considerations for local government in approving a site for landfill use. Traffic studies were required to obtain approval for the landfill from Anne Arundel County when the use was approved by the Board of Appeals. (See, Special Exception approval, E. 0459, at 0467-468, 0488-489, 0493-494.)

MDE has clearly exceeded its permitting authority over refuse disposal facilities in denying a refuse disposal permit on the sole basis that the site location poses a danger to public health because of county managed roadways outside of the operations of the site itself. Particularly alarming is the hubris of MDE in determining where the entrance location is to be approved when the Zoning Office, the entity authorized to make that initial determination, has yet to consider the question. MDE made this determination after an administrative process which did not request, permit or consider evidence on the issue.

MDE's attempt at the end of the permit process to preempt the authority of Anne Arundel County, and the Board of Appeals should be rejected as *ultra vires* and error of law.

The law is clear: MDE does not decide where a proposed landfill can be sited. In fact, MDE is neither required nor permitted to evaluate whether a location of a proposed facility complies with local zoning and land use requirements. *Piney Orchard, supra*, 231 Md. App. 80, 98-99. Instead, MDE relies entirely upon the determination of the county authority in which the proposed facility is to be located about whether the location complies with local zoning and land use requirements. Md. Code Env. §9-210.

MDE ignores the fact that it had recently been a party to litigation involving Anne Arundel County in which the County Executive and County Attorney had attempted unilaterally to change the requirements for the entrance to this landfill facility, effectively revoking the special exception, based on the same assertions stated here, the development occurring in the neighborhood and a new elementary school at a purportedly "required" entrance locations. Anne Arundel County was sanctioned for this unilateral action that denied the property owner his due process rights and the offending correspondences were voided. MDE agreed to follow the directions of the Court to proceed to process NWM's refuse disposal permit application, *National Waste Managers, Inc., v. Anne Arundel County, MDE, et al.*, explained in Appellant's Brief at pages 10-11. Here MDE repeats the arguments of Anne Arundel County concerning requirement of a specific access location, the elementary school at the access site, and adequacy of the roadways; to deny the refuse

disposal permit based on public health concerns related to traffic, to accomplish the same result, revocation of the lawful land use approval.

MDE based its denial upon an access route that has never been finally determined by the County. Although MDE claims it acted under its “public health and welfare” powers, it artificially imposed and presumed in the permit an access route not finally approved by the County. . This assumption formed the sole basis for its denial, and was expressly designed to create public health issues – a route through an elementary school-- in order to justify the denial.

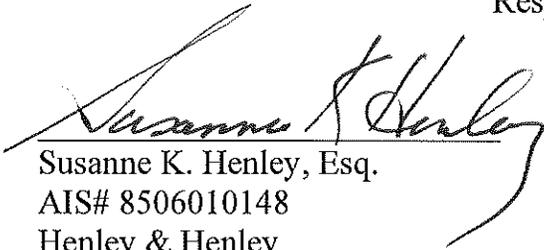
The County’s right to enact and enforce zoning regulations is not preempted by the State statute governing landfills, indeed, the General Assembly has made it clear. Environment, Section 9-204 and Section 9-210 (a) (3) (i) clearly locate environmental permitting with the Maryland Department of Environment and zoning with the local government. *Md. Reclamation Assocs. V. Harford County*, 414 Md. 1, 994 A.2d 842 (2010). Here, MDE uses an impossibly elastic definition of its “public health and welfare” powers to eviscerate the boundaries between state and local government.

In denying NWM’s refuse disposal permit solely on the basis of zoning considerations reserved to local government, MDE has made an error of law, and its legal interpretation is not owed any deference by this court. *In the Matter of the Chesapeake Bay Foundation, Inc.*, 264 Md. App. 107, 328 A.3rd 860 (2024). In this case, there can be no other interpretation other than that MDE has exceeded its authority in denying this permit application on grounds not related to its delegated powers.

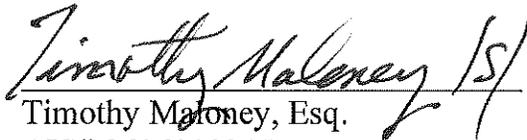
CONCLUSION

Appellant, National Waste Managers, Inc., respectfully request that this Court find that the denial by MDE of the refuse disposal permit based on zoning and land use reasons exceeded the regulatory authority of MDE in its permitting process, and therefore ultra vires, unlawful and void.

Respectfully submitted,



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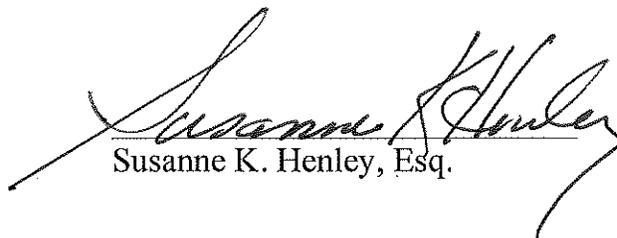


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CERTIFICATE OF WORD COUNT AND COMPLIANCE

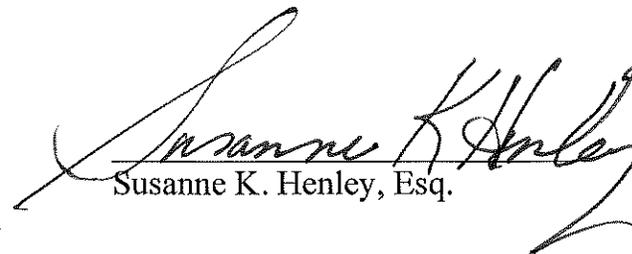
I HEREBY CERTIFY that the foregoing Reply Brief of Appellant contains 3,898 words, excluding the parts of the brief exempted from the word count by Rule 8-503, and complies with the font, spacing, and type size requirements stated in Rule 8-112. Specifically, it has been prepared using 13-point, proportionally spaced Times New Roman font.


Susanne K. Henley, Esq.

CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that this submission does not contain any restricted information as specified in Maryland Rule 20-201(f) and that the above-captioned Reply Brief of Appellant was filed electronically, pursuant to this Court's MDE system, and two copies mailed on the 5th day of January, 2026 to:

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