

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)

BRIEF OF APPELLANT

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October 24, 2025

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STATEMENT OF CASE

This case involves decades-long efforts by Appellant, National Waste Managers, Inc. ("NWM") to obtain a refuse disposal permit from the Maryland Department of Environment ("MDE"). NWM first received County zoning approval in 1993 to operate a rubble landfill on its property in Anne Arundel County.

Besides local zoning approval, NWM is required to obtain a state permit from MDE to operate a landfill. Maryland Code, Environment § 9-204. NWM first filed its MDE permit application in 1989. MDE has been processing this application since that date, subject to constant litigation interruptions in the ensuing 36 years. See MDE chronology, E. 216-222. In December 2023, MDE issued Draft Refuse Disposal Permit, Number 1993-WRF-0225, giving tentative approval of the permit after finding that NWM's detailed project submissions were in full compliance with MDE's rigorous technical, and regulatory criteria necessary to obtain the permit. (E. 56). These submissions included voluminous detailed geological, hydrological, engineering and operations plans for construction and operation of the facility, which is located on a site approved and zoned for rubble landfill use by the local government, Anne Arundel County ("the County").

On November 1, 2024, MDE confirmed in a memorandum that NWM had complied with all of its criteria for construction and operation of the landfill. (E.706). But just five days later, on November 6, 2024, MDE issued correspondence purporting to make a final determination denying NWM's application. The denial was based solely on local zoning and neighborhood considerations concerning the location, neighborhood, and roads servicing the facility--all issues reserved under MDE's operating statute exclusively to the

local government. MDE's determination represented a complete about face by the agency in disregard of their statement that NWM had fully satisfied all of their design and operations criteria. (E. 053). It was also contrary to repeated statements made by MDE in the hearing process that zoning decisions were outside of their authority and fell within the exclusive purview of the County.

MDE denial of the refuse disposal permit based solely on zoning issues exceeds the bounds of MDE's statutory authority. NWM appeals this unlawful denial of the refuse disposal permit.

QUESTION PRESENTED

Did MDE illegally exceed its permitting authority in denying the refuse disposal permit to NWM where the sole basis for the denial was based on grounds related to zoning and land use considerations reserved to the local government and clearly outside of MDE's regulatory authority and where the application has met all of the stringent statutory, regulatory and technical requirements of the MDE permit process?

STATEMENT OF FACTS

This long and tortured history of this case is summarized from prior Maryland Appellate decisions concerning review of this project by MDE and Anne Arundel County. *See, National Waste Managers, Inc. v Forks of Patuxent Improvement Association*, 453 Md. 423, 162 A.3d 874 (2017); *National Waste Managers, Inc. v Anne Arundel County*, 135 Md. App. 585, 590-602, 563A.2d 264 (2000). Cert. denied, 363 Md. 657 (2001).

NWM purchased the Chesapeake Terrace site, a severely eroded and unreclaimed sand and gravel pit, with intent to operate a rubble landfill. In order to do so, NWM needed zoning approval from Anne Arundel County to locate the facility at the Odenton site and a

refuse disposal permit from MDE. In 1988, NWM began this process with County to obtain special exception to permit a rubble landfill use on the Chesapeake Terrace site. Separately, NWM filed with MDE a Refuse Disposal Permit Application and Phase I report for the proposed Chesapeake Terrace Rubble Landfill.

For zoning approvals, the Anne Arundel Board of Appeals conducted hearings over sixteen separate days, spanning over one-and-a-half years, from April 1992 through September 1993. The hearings exhaustively covered all land use issues related to the landfill, including traffic, noise, vibrations, fumes, compatibility with the neighborhood, and the health, safety, and welfare of the public. After considering the voluminous testimony, exhibits, traffic studies, and expert studies, the Board granted a special exception for rubble landfill use under Article 28, Section 12-242 of the Anne Arundel County Code. The Board's approval was accompanied by a 44-page opinion. (E. 0163).

The Board found that NWM's proposal met all of the rigorous zoning standards for rubble landfill use required by Anne Arundel County Code, Section 12-242; that the location would not endanger the public health, safety, and welfare; and that the use would be compatible with the neighborhood. The Board attached conditions to the special exception use concerning access and road improvements consistent with its local land use and zoning authority.

The Board's detailed, specific findings included the following:

Special Exceptions

The special exceptions for a sand and gravel operations and rubble landfill operation are granted with the following conditions:

1. Patuxent Road shall not be used as an entrance to the operation.

2. Conway Road is to be used as the entrance to the operations, with the following conditions:

a. A right turn lane shall be constructed on eastbound Conway Road at Maryland Route 3 to a minimum length of 500 feet.

b. From the intersection of Patuxent Road and Conway Road to the entrance of the site, the road shall be improved with 12-foot travel lanes and 8-foot shoulders improved to county standards (pursuant to Article 26, §3-202(d), Anne Arundel County Code) where the county right-of-way exists. Additionally, the Petitioners shall pursue a diligent course to obtain the right-of-way from private property owners where possible.

c. The road improvements on Conway Road from Route 3 to Patuxent Road shall be constructed before any rubble landfill or sand and gravel operation begins; road improvements from the intersection of Conway Road and Patuxent Road to the entrance of the site are to be completed within one year of the start of operations.

d. The access obtained to the site from Conway Road shall be through a fee-simple right-of-way, not through an easement. (E. 0198-0199).

Thus, the Board granted NWM a special exception for the landfill in 1993, subject to conditions that Conway Road be used as the entrance to operations and that access to the site from Conway Road be obtained through fee simple right of way, rather than by easement. These conditions do not, however, specify any particular route for the access road, nor do they impose any temporal deadline for compliance with these conditions beyond commencement of operations.

MDE had approved the Phase I geological studies for the refuse permit at the time of the 1993 special exception but stopped processing NWM's permit application pending receipt of statement from County stating that the proposed facility was in compliance with County zoning regulations and was included in the County's Solid Waste Management Plan. The foregoing statement is required under Env. § 9-210 (b) for MDE to continue the permit application process beyond Phase I. The County declined to timely provide such

statement despite the fact that NWM was in compliance with all zoning regulations and has been approved for inclusion in the County Solid Waste Management Plan.

Subsequently, “there began a determined effort, mostly by the County, to overturn [the special exception] and scuttle any prospect of the landfill ... ever opening.” *National Waste Managers, Inc. v. Forks of Patuxent Improvement Association*, supra, 453 Md. at 429. See also, *National Waste Managers vs. Anne Arundel County*, supra, 135 Md. App. at 590-602. That effort has now spanned more than a half dozen separate lawsuits, thirty years of litigation, and four appellate cases.

In 1995, the Court of Appeals rejected the initial challenge to NWM’s special exception, *Halle Companies v. Crofton Civic Association*, 339 Md. 131, 149, 661 A.2d 682. (1995). Nevertheless, the County obstructed efforts to comply with the Special Exception resulting in a contempt order setting a \$250,000.00 fine on the County unless it included the landfill in County’s Solid Waste Management Plan and provided statement of zoning conformance to MDE. *National Waste Managers, Inc. v. Anne Arundel County*, supra, 135 Md. App. at 598.

The County finally issued a statement of conformance to avoid the contempt fine but then withdrew the statement several months later, claiming, wrongly, that the special exception had expired. Once again, NWM was forced to litigate, and the Appellate Court ultimately held that the “special exception” was tolled during the entire course of the litigation. *National Waste Managers v. Anne Arundel County*, supra, 135 Md. App. at 605. Thereafter, County Office of Planning and Zoning sent notice to MDE that the facility meets all applicable County zoning and land use requirements and included the facility in

County Solid Waste Management Plan on June 20, 2001. (E. 0209). The repeated litigation and resulting seven-year delay caused NWM to become subject to significant regulatory changes adopted by MDE in 1997, including requirement of landfill liners, and additional hydrology and engineering studies. NWM virtually had to start the MDE permitting process over again.

Upon receipt of County compliance letter in 2001, MDE immediately began to process the NWM's Phase II and Phase III submittals. These hydrogeological, engineering, and operational plans involve complicated interactive processes between NWM and MDE designed to protect the public from dangers which might be caused by internal operations of a landfill. Again, there were intermittent delays related to continued obstruction by the County and litigation related to protestants' appeals. See, e.g. National Waste Managers, Inc. v. Forks of the Patuxent Improvement Association, supra, 453 at 590-602, for full history of the County's conduct during this period.

During the time that MDE was conducting permit review on NWM's submittals, the County required NWM to continually request extensions of time for their special exception. The County's regulations require a special exception to be implemented and operational within two years of the granting of the special exception. Anne Arundel County Code § 18-16-105. The applicant therefore has been back to the Board of Appeals on five occasions (2004, 2005, 2011, 2022 and 2025) to obtain extensions. During each hearing, the applicant had to show that the extensions were required by unusual circumstances caused by lengthy MDE permitting processes; the extension would be compatible with the neighborhood; would not adversely affect neighboring properties; and would not be

detrimental to public welfare. The most recent extension was granted by the Board on March 20, 2025. (E. 0751).

During each of the five extension proceedings, the issue of access to the approved landfill site was raised. From the beginning of processing this permit, it has been MDE's consistent position that "non-environmental impacts to the community such as traffic patterns and location are under the purview of Anne Arundel County government, not the State of Maryland." See responses of MDE to public comments dated 2002, (E. 0748-0755). From the onset of these extensions, it has been County's consistent position that the road access will again be addressed as part of the County permitting process only after the applicant receives final refuse disposal permit from the State, and that this access issue would not be considered during the extension requests. (E. 0504).

The County's position that it will again address road access after MDE issues the final refuse permit was repeatedly brought to the attention of MDE, and recently summarized to them in Memorandum response dated May 7, 2024. (E. 0437). See report of Suzanne Schappert, Planner III, County Office of Planning and Zoning on second extension application, Findings and Recommendations dated June 8, 2006, (E. 0504).

This policy to once again review road access after MDE issues refuse disposal permit was addressed by John Fury, Planner, County Office of Planning and Zoning, during testimony on the fourth request for extension hearing on August 15, 2013. (E. 0509).

.... The Board stipulated that the only access to this facility to be from Conway Road. It has to be fee simple. That was a condition of the special exception and variance approvals this Board placed on this applicant back in 1993.

So, this facility won't operate, cannot get a permit to do anything, county permit, until all of those conditions have been satisfied including the fee simple ownership of an access road originating from Conway Road (E. 0530).

When asked why NWM can't file a building and access permit application even without MDE approval, John Fury responded that if the applicant were to file to get County permitting approvals for this facility, they would not be accepted or processed; that the applicant would have to have MDE approvals first before the Office of Planning and Zoning could process such a permitting request. (E. 0542).

This issue was most recently addressed by the Board in Second Supplemental Memorandum of Opinion dated December 1, 2022, (E.0549), a continuation of the 2013 and 2018 hearings, granting fourth extension, as follows:

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 these approvals. Thus, nothing happens on this site until MDE grants approval, and the County issues building and grading permits and the full panoply of permissions required for a project such as this.... (E. 0565).

Board concluded by granting the extension, stated

it will only provide time for the Petitioners to finalize the MDE permit review process and perhaps initiate the County building/grading permit process. (E. 0566).

It is significant that in its 2022 opinion, the Board of Appeals referred to hearing testimony by Edward Dexter, Administrator of the MDE Solid Waste Program, who, after being questioned about road access from Conway Road, stated "it is not something that MDE would have required; it is a requirement of the County." (E. 0552). MDE, as confirmed by

its senior solid waste administrator, clearly knows the location and entrance are County local land use issues to be addressed after MDE issues permit. Administrator of the Solid Waste Program, Edward Dexter, testified at each of the first four NWM extension hearings. Each of the decisions granting extensions were forwarded to MDE by the County.

In considering the criteria for the variances necessary for extensions of time to implement the use under Anne Arundel County Code, §18-16-405 (a), the Board of Appeals also addressed whether each successive variance would alter the essential character of the neighborhood, or substantially impair the development/or use of adjacent properties, or be detrimental to the public welfare. The Board addressed this issue most recently in its 2022 opinion:

In addressing the actual issue, potential alteration to the essential character of the neighborhood, 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 have an approved landfill special exception on this site; and (3) the approved use of this property as a rubble landfill is and has been known to the community, and so, is part of the character of the neighborhood,” (E. 0566).

This site has been approved as a landfill since 1993. In the intervening years, the community has been extensively developed around the Petitioner’s property. The adjoining properties to the east are in County and Board of Education ownerships. One parcel is used as a park and the other is now in the permitting process for a school. While we sympathize to the voices of new residents in the Two Rivers community that their home builders failed to tell them that 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 variance would not change the character of the neighborhood; would not impair the appropriate use of adjacent properties and will not be detrimental to the public welfare, concluding “the original 1993 decision determined that

these uses have public benefit and are needed.” (E. 0568). In its Opinion, the Board refused to consider the issue of road access as untimely, stating “that the access matters are for another time, before another Board.” (E. 0565). The Board clearly considers road access to be a local County issue which will only be determined by the County after a State permit is issued.

During pendency of judicial and administrative reviews on the fourth extension, and just as MDE was completing permit review, Anne Arundel County addressed correspondences to MDE, one by County Executive on August 21, 2020, and second by County Attorney on October 2, 2020, claiming, wrongly, that the NWM was no longer in conformance with the special exception and that MDE permit process should be halted due to their interpretation of the required access for the landfill and development within the neighborhood, including a planned school. (E. 0581).

Upon receiving these letters from the County, MDE stopped permit review. NWM filed a complaint for mandamus against County and MDE in the Circuit Court for Anne Arundel County, Case No. C-02-CV-20-00229, captioned National Waste Managers, Inc. vs. Anne Arundel County, MDE, et al. The Circuit Court, in its decision dated May 26, 2021, (E. 0578), determined that County officials overstepped the bounds of their authority by sending the letters to MDE demanding they halt NWM’s permit processing. The Court explained:

It is undisputed that in 2001, the Planning and Zoning Officer, Dennis Caravam, sent a letter to Barry Schmidt, MDE Administrator, explicitly stating NWM (Applicant) meets all applicable county zoning and land use requirements subject to 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. (E. 0585).

The Court ruled that the Anne Arundel County Code is clear that the only proper method to modify, suspend, or rescind a zoning application with a special exception is through the Board of Appeals. "On motion of the County [a]pproval of an application for a special exception shall be rescinded, suspended, or modified if the administrative hearing officer determines, after hearing, thatthe use of the property deviates fromany conditions imposed...." citing Anne Arundel Code, Administrative Hearings, §18-16-404. (E. 0585).

The Circuit Court concluded that there were no avenues that would allow County to unilaterally circumvent zoning procedures governing the Board of Appeals process, which require notice and hearing before approved special exception can be amended or revoked. The Court found that the County's letters unlawfully violated the due process rights of NWM. (E. 0585). The Court concluded that while County decides zoning issues, the fundamental rights of property owners to notice and opportunity to be heard before the Board of Appeals cannot be merely overridden by letters sent by the county executive or the county attorney. (E. 0586).

MDE, a party defendant to this litigation, filed Motion to Dismiss claiming it had no authority to question the County's position on zoning and access issues under the Env. § 9-210, which fall within the jurisdiction of local government. (E. 1413-1414). The Circuit Court acknowledged that MDE has a non-discretionary duty to accept land use certification

provided by the County under Env. §9-210. However, the Court also found that MDE also has a duty to know and follow proper procedure, which takes precedence to any attempts by County to skirt the due process rights of landowners. MDE was wrongly complicit with the County in stopping permit review process in reliance on these unlawful letters. (E. 0587). After recognizing that the 2001 County letter confirming zoning conformance under Env. § 9-210 remained in effect, the Circuit Court ruled that the letters of the County were void, and the Court ordered MDE to continue its review of NWM's landfill permit. (E. 0588).

This decision was appealed by County and affirmed by this Court.¹ MDE did not appeal, indicating that it would follow the determination of the Circuit Court.

In the case of the County, the Circuit Court considered a motion for attorneys' fees filed by NWM under Maryland Rule 1-341 which governs bad faith and unjustified proceedings in civil actions. After extensive review of the purpose of the bad faith rule to prevent abusive litigation that is clearly without merit, the Circuit Court, by decision dated January 26, 2024, found that County's actions in choosing to send letters in an effort to force MDE to halt review and to delay, perhaps forever, the refuse disposal permitting process, were in bad faith, and that the County's position in the ensuing litigation was pursued without substantial justification, meriting an award of attorneys' fees under Md. Rule 1-341. (E. 0589).

¹ Unreported decision, dated December 8, 2022, Case No. 0565, September Term 2021, Court of Special Appeals, captioned Anne Arundel County v. National Waste Managers.

Meanwhile, MDE's statutory, five-phase permitting process resumed. Based on MDE timeline: On June 16, 2020, MDE sent a letter to applicant, stating that Phase II Geological and Hydrogeological Report is approved; On January 12, 2022, MDE sent a letter to applicant stating that responses to Phase III Engineering Plans and Specifications Report are satisfied and requested NWM to submit final Phase III report; On March 11, 2022, MDE sent letter to NWM confirming that the that Phase III report was complete; On March 25, 2022, MDE received the declaration of covenant for the landfill property; On June 15, 2022, MDE received the Surety Bond necessary to permit landfill use under COMAR 26.04.07.09; MDE concluded its Phase IV Internal Review and issued draft Refuse Disposal Permit No. 1993-WRF-0225 in December 2022. (E. 216-222).

As a final step, MDE scheduled a public hearing on the tentative approval for February 23, 2023. (E. 0211). (Env. §19-204 et seq.; COMAR 26.04.07), (E. 131-162). At the hearing, MDE representatives distributed to attendees copy of Department's explanation of their Solid Waste Permitting Process for landfills (E. 213-215); and the aforementioned chronology of MDE activities on NWM's permit application from December 20, 1988 to the present (E. 0216).

To begin the hearing, the Hearing Officer, Andrew Grenzer, chief of MDE Solid Waste Operations Division, explained that the purpose of the hearing was to address issues relating to the design and operations of the proposed landfill and not to address matters which are outside the jurisdiction of MDE. (E. 0234-0235) The Hearing Officer announced that he was specifically excluding from the hearing issues that were subject to separate approvals at the local government level such as County zoning determinations and noise

(E. 0234). During presentation of NWM's design engineer, Paul Stratman, concerning the design and safety provisions for operations of the landfill, he was repeatedly interrupted by public comments concerning development in the neighborhood, roadways and access to the facility, and a new elementary school being constructed nearby. Mr. Grenzer stopped the Stratman technical testimony and explained to attendees that Anne Arundel County controls the zoning and location of the special exception use, Grenzer further advised that:

MDE is actually restricted from making any zoning determinations. MDE is not allowed to weigh in on zoning determinations. All I am allowed to do, or MDE is allowed to do, is ask the local jurisdiction whether a facility meets zoning criteria which the Department did do and the county responded in the affirmative that the facility does meet local zoning.... They are the one who makes the decision in regards to zoning, not MDE. (E. 0248).

In response to continuing comments on zoning issues, another representative from MDE, Edward Dexter, Administrator, Solid Waste Program, MDE, reminded the audience that MDE could not make decisions about local government issues such as "public roads".

Because of the way the legislation has developed the scheme for looking at these things, there is a division between what the Department's responsibility is and what the local governments responsibility is. We are given significant control over what happens on site. We are not given significant control about public roads, whether they are adequate or not".... That's a decision that made ... by the County ... all I can do is try to make sure that the facilities are operating properly... (E. 0408).

During the hearing Mr. Dexter expressly stated the Conway Road access was a zoning issue "not within our purview"....

In regards to an access road, MDE doesn't have a ---- Is a zoning issue. Now, the zoning special exception has an allowance for an access off Conway Road (E. 0383).

The public roads are not within our purview. (E. 0383).

Mr. Dexter explained that the MDE permit would be issued in “our world” and “then the project goes back to the County for certificate of use proceedings and County through its permitting process has its own rights to enforce its own rules.” (E. 0378). Now, after MDE made it clear in the hearing process that roadways were exclusively a County decision, and not the State’s, MDE proceeded to base its decision precisely and solely upon those issues.

At the conclusion of hearing, attendees were advised that the record would be held open for written public comments for 60 days. MDE would forward to NWM any comments on which it desired additional information from them. (E. 0424).

The only comments timely referred to applicant for response was from U.S. Fish & Wildlife Service and the Army Corps of Engineers, sent June 2023, expressing concern about endangered species, Northern Long-Eared Bat. NWM immediately undertook requested studies which resulted in finding by these agencies dated November 8, 2023, that with agreed restrictions of months for land-clearing, the project would be unlikely to adversely affect the habitat of this species. (E. 0428).

Despite *numerous* pleas by NWM to MDE for action on permit application, and multiple requests for meetings, it was not until fourteen months later, on April 9, 2024, that MDE scheduled a meeting with NWM to discuss additional items upon which it requested supplemental responses necessary to final approval of permit. MDE submitted to NWM a list of 24 items which arose from their review and public comments to which they requested additional input. (E. 0431). Twenty-three of these requests were technical in nature and many had been previously addressed in interactions between NWM and MDE experts. Request No. 24 demanded that NWM seek approval from Anne Arundel Board

of Appeals for a *different* access road that would not impact the roadway that serves the recently constructed Two Rivers Elementary School. This demand effectively rejects the existing special exception as approved by the County in 1993.

Within a month, on May 7, 2024, NWM provided responses to the technical questions 1-23, (E. 0836) and a 20-page legal memorandum (E. 0435) in response to Question 24, explaining that it was beyond the authority of MDE to address off-site roadways, traffic and development, nor could MDE require a modification of the County's special exception as a condition of approval of the refuse disposal permit. The arguments contained herein were clearly provided to MDE in this Memorandum before MDE issued denial letter on November 6, 2024.

MDE did not respond to this May 2024 NWM submission for months, despite NWM's repeated requests for action. (E. 0609). Finally, NWM filed petition for contempt against MDE in the Circuit Court for failing to process NWM's application for permit as it had advised the Court it would in the 2021 litigation. A Show Cause hearing date was scheduled on the contempt action on November 10, 2024. (E. 0609).

On November 6, 2024, the day after the Maryland general election, and four days before scheduled contempt hearing, MDE published a response to comments raised at the public hearing (E. 0706) and also issued its denial letter. (E. 0053). All supplemental information provided by NWM to meet the technical criteria for design and operations of the landfill (Questions 1-23) was accepted by MDE as satisfying their requirements. (E. 0706). But relying upon Question 24, MDE denied the application for the sole reason that "[t]he proposed East Entrance from Conway Road constitutes a risk to public health, due

to the proximity of the Two Rivers Elementary School (formerly West County Elementary School) and the intersection of the WB&A Trail.” (E. 0053).

Paradoxically, on the same date that it issued the denial, MDE issued Response to Comments contradicting the basis for the denial, stating that “[s]tate law precludes MDE from considering land uses issues.”

the location of the proposed landfill relative to surrounding uses was approved by Anne Arundel County. State law precludes MDE from considering land use issues. As long as the facility meets local zoning and land use requirements, MDE is obligated to review an application for a rubble landfill. citing *Piney Orchard*, 231 Md. App 80, 103 (2016). (E. 0708).

After disclaiming any authority to address land use issues, on the same day, MDE proceeded to do exactly that, objecting to the County’s access decision, and effectively requiring an amendment to the Special Exception.

In the Response Comments, (0714, 0720, 0744-0747) MDE thereafter refers to a traffic impact studies dated February 2022 and August 2022 *conducted by Anne Arundel County* (over 300 pages) to evaluate transportation needs along Conway Road caused by “stress of the Two Rivers community and the newly built Two Rivers Elementary School.” (E. 0721). Even though both Two Rivers community and elementary school (built in 2022) were both approved by County *long after the rubble landfill use was approved in 1993*, the referenced traffic studies do not include the pre-approved existing truck traffic generated by the landfill. MDE merely concluded, without any underlying data, that *any truck traffic would pose imminent harm to the persons using the school; the residents of*

the Two Rivers community; and the users of the WB&A hiking trail, (E. 0053). (A.A. County traffic reports, MDE Record pg 05824-6169).

The entrance to Chesapeake Terrace Landfill was approved by County in 1993, along with the truck traffic that would be generated. (E. 0163). Fully aware of this, the County nevertheless determined to approve Two Rivers residential subdivision and elementary school at their current locations. (E. 0568). The County did not determine this to be dangerous to the public health. The County determined the locations of these uses, and determined the locations of road accesses for them. It is clear that MDE seeks to reject and modify County approved special exception by a collateral attack outside of its own permitting authority.

Standard of Review

This Court very recently reviewed the standards for judicial review of administrative agency determinations by MDE. *In the Matter of the Chesapeake Bay Foundation, Inc. et al*, 264 Md. App. 107, 328 A3d 860 (2024), citing *Maryland Dep't of Environment vs. County Commissioner of Carroll County*, 465, Md. 169, 184 (2019), and *Maryland Department of Environment v. Anacostia Riverkeeper*, 447 Md. 88, 118-21 (2016). Consistent with general agency review principles, the level of deference accorded to MDE varies depending upon whether the Court is reviewing Department's fact finding, discretionary decisions, or legal conclusions. The Court explained:

When reviewing the factual findings of the Department we apply the substantial evidence standard, pursuant to which we ask "whether a reasoning mind reasonably could have reached the factual conclusion the

[Department] reached.” *Anacostia Riverkeeper*, 447 Md. At 120 (quotations omitted). We defer “to the facts found and inferences drawn by the [Department] when the record supports those findings and inferences.” *Carroll Cnty.*, 465 Md. At 201 (citing *Anacostia Riverkeeper*, 447 Md. At 118-21). Moreover, we review the Department’s decision in the light most favorable to it. *Anacostia Riverkeeper*, 447 Md. At 120 (quotations omitted). The Department is entitled to “great deference” with respect to factual issues that involve scientific matters within its area of technical expertise. *Carroll Cnty.*, 465 Md. At 201-02. When reviewing matters committed to the Department’s discretion, we apply the “arbitrary and capricious” standard. *Id.* at 202. “This standard is highly contextual, but generally the question is whether the [Department] exercised its discretion ‘unreasonably or without a rational basis’” *Id.* (citations omitted). ***Finally, when reviewing the Department’s legal conclusions, we accord the Department less deference than with respect to factual findings or discretionary decisions. Id. at 202-03. We will not uphold an action based on legal error,*** but we “give careful consideration to the [Department’s] interpretation” of laws it has been charged to administer. *Id.* at 202-03 (citing *Anacostia Riverkeeper*, 447 Md. at 122). *In the Matter of Chesapeake Bay Foundation*, supra, at P. 11-12.

It is legal error for MDE to attempt to intrude on the zoning and land use authority reserved by statute to local government to deny application for refuse disposal permit. Such an erroneous determination is *ultra vires*, legal error, and cannot be upheld on review.

ARUGMENT

Maryland law provides a distinct division of regulatory responsibilities between MDE and local zoning authorities. MDE regulates landfill permitting, including technical compliance with design standards specified in Env. § 9-204(d), COMAR 26.04.07. But planning and zoning approvals associated with landfill siting fall within the exclusive jurisdiction of local governments. Maryland delegates to local governments broad

authority to comprehensively regulate local land use to protect and promote public health, safety and welfare. Art. XIA, E; Local Govt, Art. 10-305.

Land use decisions regarding landfills have always been determined by local governments. MDE has never made--nor does it have authority to make--siting decisions. Consistent with this delegation of authority, the Anne Arundel Board of Appeals approved this Chesapeake Terrace location in 1993 for a special exception use as a rubble landfill/sand and gravel site. (E. 0163). The Board made this decision after exhaustively considering access to the site, and applicable County zoning and land use laws, *inter alia*. Express conditions were imposed for site access and road improvements. (E. 0198).

MDE is the state agency vested with authority to regulate the installation, alteration, and extension of refuse disposal systems. Env. § 1-101(k), § 9-204(d); *see also* COMAR 26.04.07.03B(1). By law, MDE is required to review all refuse disposal applications through a five-phase permitting process for compliance with all technical engineering, design, and operations criteria adopted by MDE for safe on-site implementation of a proposed landfill, prior to issuing a refuse disposal permit for the use. COMAR 26.04.07, et seq. (E. 0213). Planning and Zoning decisions are not a part of the five-phase permitting processing mandated by law.

To the contrary, MDE's permitting statute expressly recognizes the exclusive role of local government in making land use and zoning decisions concerning landfills. Maryland Code, Env. § 9-210 clearly delineates the distinctly separate roles of MDE and local governments, as follows:

(a) In general – Subject to the provisions of subsection (b) of this section, the Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal permit regulated under §9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase I technical review of the proposed refuse disposal system;

(2) The Department has reported the findings of its preliminary phase I technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) **The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:**

(i) **Meets all applicable county zoning and land use requirements; and**

(ii) Is in conformity with the county solid waste plan.

(b) Completion of requirements—Upon completion of the requirements of subsection (a)(1) and (2) of this section, the Department shall cease processing the permit application until the requirements of subsection (a)(3) of this section are met. [Emphasis supplied.]

Section 9-210(a)(3)(i)(ii) makes it clear that MDE's only responsibility with regard to site location is to obtain confirmation from the county that "the refuse disposal system ... (i) meets all applicable county zoning requirements and (ii) is in conformity with the county solid waste plan." In fact, confirmation that local zoning requirements have been satisfied is a condition precedent to continuing the MDE permit review process beyond Phase I.. Env. § 9-210(b).

MDE's own role is limited to obtaining confirmation of local zoning approval--but not to make local zoning decisions itself. Env. § 9-210(a) (3). As this Court stated in *Piney Orchard Community Association v Maryland Department of Environment*, 231 Md. App 80, 149 A.3d 1175 (2016),

we hold that § 9-210(a)(3) *places no requirement on MDE to make any determination regarding a facility's status of compliance with local zoning and land use codes, except that it must receive a letter from the County stating its compliance* before MDE may continue through the remaining phases of the process. See § 9-210(a)(3)(a)–(b). Id., 231 Md. App. at 95). [Emphasis added.]

MDE is statutorily precluded from second-guessing local land use decisions. The Appellate Court made it clear that nothing in the statute “*require or permit*” MDE to evaluate compliance with local zoning and land use codes:

MDE and the County maintain separate and distinct roles. Notably, *the plain language of ENV § 9-210(a)(3) does not require or permit MDE to evaluate a facility's compliance with local zoning and land use codes.*⁸ No evaluation or factual determination on the part of MDE is required by the statute, except to determine whether it has received the statement.

Piney Orchard Community Association v. MDE, Id. at 100. [Emphasis added]

In this case, there is no dispute that MDE received written statement from Anne Arundel County confirming land use approval of the landfill by way of the special exception on June 20, 2001. (E. 0209).

MDE, after completing an unprecedented 35-year review of design, engineering, and operations of this refuse disposal operation, determined the proposed facility to be

compliant with all regulations and criteria within MDE's technical expertise to ensure safe operation of the facility. Therefore, MDE issued its Draft Final Refuse Disposal Permit for Chesapeake Terrace Rubble Landfill in December 2022. (E. 0131). After required public hearing, MDE sent correspondence to NWM dated November 6, 2024, (E. 0053), reversing its prior determination just 23 months earlier, and denying NWM's application for a refuse disposal permit, citing Env. § 9-212.1(2), MDE declared in pertinent part,

... as the operation of the sanitary landfill system would harm public health.

The proposed East Entrance from Conway Road constitutes a risk to public health due to the proximity of the Two Rivers Elementary School (formerly West County Elementary School) and the intersection with the WB&A Trail. (E. 053).

In its denial letter, MDE further stated that *an alternative entrance modification to the special exception granted by the County had not been provided (E.0053), in other words, that the special exception had not been modified.* The express requirement of a modification to the approved special exception is improper as MDE effectively invalidates or requires modification of the existing special exception—authority exclusively reserved to the County government.

The MDE decision relies upon general language of Env. § 9-212.1 to deny a permit if it finds that operation of the facility within its permitting authority would harm “public health” or “the environment.” Under this elastic interpretation, MDE could easily swallow up any local zoning authority. MDE's interpretation of Env. § 9-212.1 makes the

delineation of responsibility between state and local government meaningless. Under this interpretation, any local zoning decision would be subject to second-guessing by MDE.

In denying the instant permit, MDE has effectively abrogated to itself the previously exclusive authority of Anne Arundel County to: 1) locate landfill facilities within the County; and 2) through the County Board of Appeals to grant and modify special exception for landfill uses and to place conditions on those uses; and 3) through the County Department of Planning and Zoning to determine and approve access routes from public right of ways within the County as part of its permitting process. This land use authority is vested solely in Anne Arundel County Government.

Local access and siting decisions are plainly not within the expertise or authority of MDE. The reasons given by MDE for denial of the permit application do not relate to on-site technical criteria for design and operation of the landfill or any part of its legally mandated five-phase permit process. Instead, they relate solely to location of the facility near a new school opened in 2022, a hiking trail long in existence predating the special exception, and access roads, all of which are located outside of the landfill operations site. MDE Response to Hearing Comments, (E. 0720-0722).

MDE's partial response concerning traffic is as follows:

Anne Arundel County conducted a traffic impact study in February 2022 to evaluate the transportation improvement needs of the Conway Road Corridor from MD 3 to its western terminus near the St. John A.M.E. Zion Church. The intent of this study was to identify existing geometric deficiencies, improve traffic level of service (LOS), reduce crash potential, provide additional access to all modes including emergency response services, improve pedestrian and bicycle compatibility, and evaluate

alternatives to address deficiencies while minimizing impacts to the natural and built environment.... MDE reviewed the traffic impact study, the preliminary recommendations and the Future Conditions Technical Memorandum and agreed the existing infrastructure along the Conway Road corridor had existing issues with pedestrian level of comfort and bicyclist level of traffic stress **without considering the introduction of the proposed Chesapeake Terrace Rubble Landfill**. The stress of the Two Rivers Community and the newly built Two Rivers Elementary School (formerly West County Elementary) would not allow for the operation of a sanitary landfill through the currently approved entrance without direct harm to public health. MDE is gravely concerned that the heavy truck traffic associated with the operation of the proposed Chesapeake Terrace Rubble Landfill along the approved East Entrance poses imminent harm to students, parents, visitors and faculty of the Two Rivers Elementary School (formerly "West County Elementary School").... MDE has made the determination to deny the permit for the proposed Chesapeake Terrace Rubble Landfill pursuant to Env. Art. § 9-212.1(2) as the operation of the sanitary landfill system would harm public health....(E. 0720). See also Comment 7 (E. 0711) and Comments 23, 24 (E. 0720-0722). MDE Response to Comments E. 720). Emphasis added.

These traffic studies are related to County plans for road improvements without consideration of this approved landfill.

It is significant that there was no testimony, expert reports, or data about the public health impacts of this facility during public hearing and indeed, MDE properly precluded such considerations during the public hearing (E.0223-0427).

NWM's site and access roads have already been determined by County Board of Appeals in the 1993 special exception. (E. 0163-0208). MDE's requirement of a modification of the special exception attempts to unilaterally override that local land use decision. It attempts to expand its authority beyond that authorized by statute. The Court should find that MDE's determination is unlawful, exceeds its jurisdiction, and conflicts

with the valid land use decisions of local government. The statutes and MDE regulations preclude MDE from considering land use issues already specifically addressed and determined to meet all zoning and land use requirements by County. Md. Code, Env. § 9-210.

It was legal error for MDE to require “an alternative entrance modification to the special exception granted by the County.” (E. 053). It is apparently unprecedented for MDE to demand a modification of a local special exception as a condition to its technical permit review.

The County’s right to enact and enforce zoning regulations was not preempted but instead preserved by the State statute for permitting landfills. In enacting Environment § 9-204 and § 9-210(a)(B)(1), the General Assembly made a clear delineation of responsibility locating environmental permitting with the Maryland Department of Environment and zoning with the local County government. *Md. Reclamation Associates v. Harford County*, 414 Md. 1, 994 A.2d 842 (2010). *Piney Orchard*, supra, 221 Md. App. at 95.

Under Md. Code, Local Government §10-305, it is the County that enacts local laws and regulations relating to zoning and planning to promote orderly development of use of land and management of roadways to promote public safety, health, and welfare. Env. § 9-210(a)(3) plainly states that the County is the one to review whether the site meets all applicable zoning requirements; and once the County submits written statement that the site meets all applicable zoning requirements, MDE’s responsibility on zoning issues is

concluded, and MDE is to proceed to consider Phase II, Geology and Hydrology, Phase III, Engineering Design, and Operations; Phase IV, Internal Review; and Phase V, Public Hearing and Final Determination on the project. MD. Code § 1-101(k), § 9-204(d), COMAR 26.04.07 et seq. NWM already cleared Phase I – these remaining phases have nothing to do with local zoning or access—and indeed--these phases of their permit have no category for local zoning or access. (E. 214-215).

Throughout these distinct permitting phases, MDE and the County maintain separate and distinct roles. Once a letter of compliance with local zoning regulations is issued by local County zoning authority, there is no requirement of updated written compliance despite the passing of perhaps years in the permitting process. Notably, the plain language of Environments § 9-210(a)(B) does not require or permit MDE to evaluate a facility's compliance with local land use ordinances. No evaluation of factual determination on the part of MDE is required by statute or in any of the extensive COMAR provisions governing its permit review, except to determine whether it has received the County's statement of compliance. *Piney Orchard Community Association*, supra, 231 Md. App. at 100.

MDE concluded its technical review and determined that NWM's exhaustively detailed project submissions were in complete compliance with MDE's technical regulatory criteria to obtain the permit, issuing Refuse Disposal Permit in December 2022. (E. 56). MDE conducted public hearing during which it repeatedly made clear to the public that it would not consider local zoning issues, such as the road issue or the location of the

new elementary school because they were outside of its jurisdiction and were county responsibilities. (E. 0223). MDE then based its permit denial on matters it expressly (and properly) excluded from the public hearing process.

After the public hearing, protracted delays, MDE circulated its Memorandum dated November 1, 2024 confirming that NWM's permit application continued to comply with all of MDE's technical criteria for the permit, yet, recommending denial because of proximity of the facility to the newly constructed West County Elementary School and the WB&A trail and off-site traffic, claiming it would harm public health in violation of Environmental Art. § 9-212.1. This recommendation is based solely on comments regarding land use and traffic concerns, particularly County's traffic studies omitting traffic from this approved facility. (E. 0744). No expert reports or data was presented on traffic or health impact of this facility.

No MDE regulations address traffic, studies nor does MDE entertain conduct, or review such studies. Indeed, MDE addressed traffic issues specifically telling public in correspondences in 2002, at interim hearings, and at February 23, 2023 final hearing that MDE has no authority to consider these road issues because access and traffic issues fall within the exclusive jurisdiction of the County. See Comments of Grenzer and Dexter, Transcript public hearing, (E. 0807). MDE's last-minute entry of land-use concerns in the denial letter was not only unprecedented; but it was not part of the authorized regulatory process and not part of the hearing process.

NWM's application for refuse disposal permit was not filed with MDE to define, interpret, modify, reconsider, or enhance the terms of the special exception that was granted by the Board in 1993, nor does MDE's permit review process allow MDE to consider those issues. In this case, MDE has overstepped the bounds of their authority to permit landfills within the State of Maryland to void or require modification of the existing zoning special exception granted in 1993 by requiring change to County approvals.

NWM continues to have a valid special exception despite these efforts by MDE. The County approved this facility location and directed requirements for road access. In essence, MDE, through its November 6, 2024 correspondence is attempting to use its generic charge to protect public health to ultimately veto local zoning decisions concerning landfills. Under this limitless interpretation, MDE can effectively make its own land use decisions concerning landfills, regardless of local land use determination.

Most offensive here is that MDE was party to recent litigation where County unlawfully took the position that MDE should stop the state permitting process because of the proximity of recently constructed elementary school and the congestion and safety concerns of access and public roadways, notwithstanding valid local zoning approvals. As a party, MDE knows very well the Circuit Court strongly rejected that position and affirmed the primacy of the local zoning approval, violating due process rights of NWM. The Court determined that Anne Arundel County Code is clear that the proper procedure to suspend or rescind a zoning application with a special exception is through Administrative Hearings §18-16-404 which provides "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 hearing, that The case of the property deviates from ... any condition imposed.” (E. 0549). Neither the County nor MDE have yet to file proceedings under Section 18-16-404 to modify or rescind this special exception.

MDE as a party to that case agreed to be bound by the outcome. Yet now, MDE once again is complicit with the County, relies upon the exact same grounds asserted unsuccessfully by the County to deny this permit, that were rejected by the Circuit Court in the prior litigation. MDE again tries to unilaterally require modification of the existing special exception and defeat NWM’s project without legal authority and without due process. This game of “Hot Potato” between MDE and the County needs to end.

Env. § 9-212.1 does not expand authority of MDE to encompass zoning matters clearly delegated to local government. The duty to protect the public health under Env. § 9-212.1 relates to the obligations MDE has to the public in addressing environmental concerns related to technical landfill operations under its permitting regulations; detailed requirements for subsurface liners systems to contain any leachate contamination; venting systems to dispose of gas emissions; groundwater monitoring, phases of construction and clean cover requirements; closure specifications, etc., under COMAR regulations. All of these on-site highly technical design and operations concerns are under supervision of MDE to protect public health. Env. § 9-212.1.

The accepted regulatory scheme contemplates that once MDE completes its permitting process and issues permit, the matter will be returned to County for use and

occupancy permits and access permits and for enforcement of local zoning regulations. Testimony John Fury, (E.0242-0281), Board of Appeals decision (E. 0459).

The plain language of Env. 9-210(a)(3) demonstrates that MDE is not required nor permitted to evaluate or make a finding of fact that a refuse disposal site is in compliance with all applicable county zoning and land use requirements. *Piney Orchard Community Association v. Maryland Department of Environment*, supra, 331 Md. App. at 99. The statute does not require—nor authorize—MDE to seek recertification of applicant's compliance with local land use on any other stage of the process other than after MDE completes Phase I of the approval process. Once MDE receives certification that local land use and zoning requirements are satisfied, MDE is satisfied and continues its review for compliance with on-site design and operations for the proposed landfill facility. *Piney Orchard*, supra.331 Md. App at 99-100.

Section 9-212.1 does not blur nor make these specific provisions defining the roles of dual governance rendered ambiguous or meaningless. It is significant that at no point in 35 plus years that MDE has been processing NWM's permit, prior to this 2024 denial correspondence, has MDE previously ventured or asserted any right to control the location of the approved facility, the access, or road improvements. The county, state, courts and MDE senior administrators, have repeatedly acknowledged that the location and road access issues are zoning issues, exclusively, within the purview of the local county agency.

In this case, MDE attempts to unilaterally void the approved special exception or to invalidate and modify the terms of the existing special exception through its November 6,

2024 correspondence, just as County tried to halt the MDE permitting process to stop the project in the recent mandamus litigation through administrative correspondences. The reasons given to deny the permit, traffic and proximity of school, are the same concerns touted by the county executives in their unilateral unlawful attempt to defeat this project. These are County concerns which can only be addressed through lawful means.

The State of Maryland has fixed the boundaries of the authority it has granted to MDE with great specificity. This agency must engage in reasonable decision making within those boundaries. In this instance, MDE made decisions concerning the design and operation of the Chesapeake Terrace Rubble Landfill when it compiled its tentative Final Refuse Disposal Permit in 2022. The denial of this permit solely for zoning reasons clearly exceeds the agency's regulatory authority and legal error. The regulations § 9-212.1 that require MDE to protect the public health during its permitting of on-site development of landfills simply do not expand the on-site regulatory authority to include the County's off-site zoning and land use responsibilities. This general responsibility to protect the public does not create ambiguities in the responsibilities between MDE and local governmental. Instead, those are read in conjunction with the other provisions of MDE's authorizing statute.

This litigation involves yet another far-reaching and unlawful effort by governmental agency, MDE, to "scuttle" and defeat the implementation of the approved special exception use, once again suggesting bad faith litigation by governmental agency and suggests improper political intervention in its regulatory responsibilities.

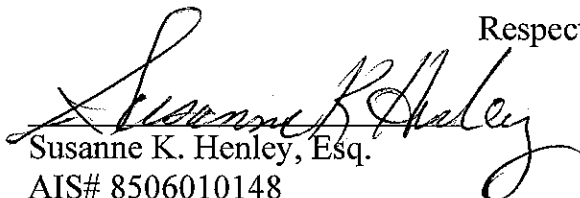
CONCLUSION

WHEREFORE, Petitioner, National Waste Managers, Inc. respectfully requests that this Court find that the denial by MDE of the refuse disposal permit through correspondence dated November 6, 2024, based on zoning and land use reasons reserved to the local government, exceeded the regulatory authority of MDE in its permitting process, and therefore ultra vires, unlawful and void. The Petitioner further requests that the Court direct that the tentative Final Refuse Disposal Permit be determined the final effective refuse disposal permit of MDE permitting this Chesapeake Terrace Landfill operation or to remand this matter to MDE with direction to enter Final Refuse Disposal permit consistent with MDE's permitting authority.

Request for Oral Argument

Pursuant to Md. Rule 8-504(8), the Appellant request oral argument.

Respectfully submitted,



Susanne K. Henley, Esq.

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Henley & Henley

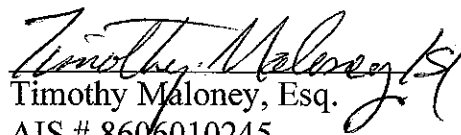
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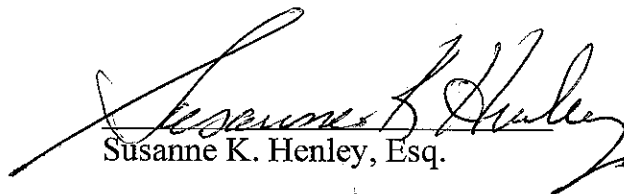
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CERTIFICATE OF WORD COUNT AND COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief of Appellant contains 9,100 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.

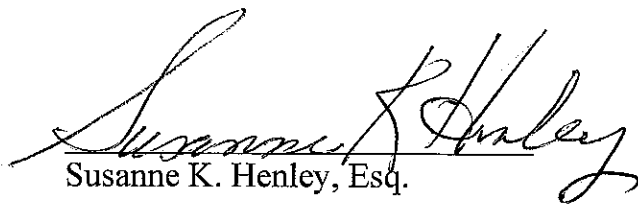


Susanne K. Henley, Esq.

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 Brief of Appellant and Joint Record Extract were filed electronically, pursuant to this Court's MDE system, and two copies mailed on the 29th day of October, 2025 to:

Matthew Standeven, Esq.
Office of the Attorney General
MD Department of Environment
1800 Washington Blvd., Suite 6048
Baltimore, Maryland 21230


Susanne K. Henley, Esq.

MD Code, Environment, § 9-204

Permit requirements

Permit required before work begins

(d) A person shall have a permit issued by the Secretary under this section before the person installs, materially alters, or materially extends a water supply system, sewerage system, or refuse disposal system.

Duties of the Secretary upon application for a permit and payment of the fee

(g)(1) When a person applies for a permit and pays the fee under this section, the Secretary shall:

(i) Examine the application without delay; and

(ii) 1. Approve the application and issue the permit;

2. Disapprove the application; or

3. State the conditions under which the Secretary would approve the application.

(2) The Secretary shall act within 30 working days after receiving an application and payment of fee for a permit under this section for a water distribution line or a sewage collection line.

(3) If the Secretary does not act within the time set by paragraph (2) of this subsection:

(i) The application is approved automatically; and

(ii) The Secretary shall issue a permit for the work.

MD Code, Environment, § 9-210

Process to issue permit

In general

(a) Subject to the provisions of subsection (b) of this section, the Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under § 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse disposal system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

Sequence of requirements

(b) Upon completion of the requirements of subsection (a)(1) and (2) of this section, the Department shall cease processing the permit application until the requirements of subsection (a)(3) of this section are met.

Permit for a rubble landfill

(c)(1) The Secretary may not issue a permit for a rubble landfill under § 9-204(a) of this subtitle unless the county in which the rubble landfill is located has specified the types of waste that may be disposed of in that rubble landfill in its county solid waste management plan under Subtitle 5 of this title.

(2) The types of waste that a county may allow to be disposed of in a rubble landfill under this section include:

- (i) Trees;
- (ii) Land clearing debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article;
- (iii) Demolition debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article; and
- (iv) Construction debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article.

(3) The following types of waste may be disposed of in a rubble landfill subject to the regulations adopted under this subtitle if the disposal of these wastes is expressly approved by the county in its county solid waste management plan:

- (i) Asbestos, if:
 - 1. The asbestos is wet or otherwise in accordance with federal national emission standards for hazardous air pollution when delivered to the landfill; and
 - 2. The owner or operator of the landfill retains a record that clearly delineates where the asbestos has been deposited;
- (ii) White goods; and
- (iii) Subject to § 9-228(t) of this subtitle, scrap tires.

MD Code, Environment, § 9-212.1

Grounds for denial

The Department may deny an application for a permit for a sanitary landfill system to any nongovernmental person if:

- (1) The owner of the land, the operator, or the applicant has violated:
 - (i) Any law of this State or any other state concerning sanitary landfills; or
 - (ii) Any regulation or permit condition of this State or any other state concerning sanitary landfills;or
- (2) The Department finds that operation of the sanitary landfill system would harm public health or the environment.