
**IN THE
APPELLATE COURT OF MARYLAND**

September Term, 2025

No. 975

IN THE MATTER OF NATIONAL WASTE MANAGERS, INC.

On Appeal from the Circuit Court for Anne Arundel County
(Robert J. Thompson, Judge)

BRIEF OF APPELLEE

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BRIEF OF APPELLEE

STATEMENT OF THE CASE

Appellant National Waste Managers, Inc. seeks review of the final determination by the Maryland Department of the Environment (the “Department”) to deny its refuse disposal permit application (“Application”) for the Chesapeake Terrace Rubble Landfill (the “Proposed Facility”), to be located along Patuxent Road in Odenton, Anne Arundel County, Maryland. After reviewing the Application and all supporting documentation submitted by National Waste Managers, the oral testimony presented at the February 23, 2023 public hearing, and the written comments submitted during the public comment period, the Department made the determination, in accordance with its authority under §

9-212.1(2) of the Environment Article, Maryland Annotated Code, to deny the Application because operation of the Proposed Facility would harm public health. (E. 130.)

On November 22, 2024, National Waste Managers petitioned for judicial review of the Department's denial of the Application in the Circuit Court for Anne Arundel County. (E. 1, 50-52.) In the briefing and hearing that followed, National Waste Managers contended that the Department's determination to deny its Application exceeded its statutory authority and was based solely on zoning and land use considerations reserved for Anne Arundel County. (E. 90-124.) The Department, meanwhile, maintained that § 9-212.1(2) of the Environment Article provided it with clear and explicit statutory authority to evaluate the public health impacts of the Proposed Facility and that its denial of the Application was supported by substantial evidence in the administrative record. (E. 774-92.) On June 23, 2025, after hearing oral argument from the parties, Judge Robert Thompson found that the Department had broad legal authority to deny applications for landfill systems if it determined that a landfill's operation would harm public health. (E. 829-31.) Judge Thompson also found that the Department supported its determination with substantial evidence in the administrative record. (E. 830-31.) This appeal followed. (E. 834- 835.)

QUESTION PRESENTED

Was the Department's final determination to deny the Application due to concerns about the Proposed Facility's impact on public health consistent with its authority and based on substantial evidence in the record?

STATEMENT OF FACTS

Legal Background

The Department is vested with the authority to regulate the installation, alteration, and extension of refuse disposal systems in Maryland, pursuant to Title 9, Subtitle 2, of the Environment Article and Code of Maryland Regulations (“COMAR”) 26.04.07. Before a person can construct or operate a system of refuse disposal for public use, they must obtain a permit issued by the Department. *See* Md. Code Ann., Env’t § 9-204(d); COMAR 26.04.07.03B(1). A rubble landfill, such as the Proposed Facility, is a refuse disposal system. Env’t § 9-201(e); COMAR 26.04.07.02B(25), (29), (30).

Pursuant to its authority under § 9-204(b) of the Environment Article, the Department has promulgated regulations that detail specific permit application and operating requirements for rubble landfills. *See* COMAR 26.04.07.13-18. Once the Department receives a permit application, it begins a complex three “phase” review. *See Piney Orchard Cnty. Ass’n v. Maryland Dep’t of the Env’t*, 231 Md. App. 80, 85 (2016). Phase I of the Department’s application review involves notifying various local, state, and federal government officials about the type of activity being applied for and the topographical characteristics of the proposed location of the facility. *See* COMAR 26.04.07.14; COMAR 26.04.07.06B-C.¹ Anyone who receives notification of the application from the Department is invited to participate in a joint site inspection as well

¹ MDE’s permitting regulations for rubble landfills also reference and incorporate the application requirements for municipal landfills. *See* COMAR 26.04.07.14A.

as to provide written comment on the proposed facility. *See* COMAR 26.04.07.14B; COMAR 26.04.07.06C. Within 60 days, the Department will review the application for completeness and make a determination as to the suitability of the site for its intended use. *Id.* If the Department determines that the site is suitable, it will notify the applicant that Phase I is complete, otherwise it will deny the application, provide the basis for the denial, and include information about the applicant's appeal rights. *Id.*

After completing its Phase I review of a proposed refuse disposal system, the Department must then report its findings to the chief elected official and planning commission of the county where the proposed refuse disposal system is to be located. Env't § 9-210(a)(1)-(2). Once the Department completes the requirements detailed in §§ 9-210(a)(1)-(2), it is required to cease processing a permit application until the relevant county submits a written statement verifying that the proposed refuse disposal system meets all applicable county zoning and land use requirements and conforms to the county solid waste plan. Env't § 9-210(a)(3), (b).

If the requirements of § 9-210(a) of the Environment Article are satisfied, the Department proceeds with its Phase II review of a permit application. Phase II of the Department's review focuses on the soil, geology, and hydrology of the proposed site. *See Piney Orchard*, 231 Md. App. at 86; *see also* COMAR 26.04.07.15. Here, the applicant is directed to prepare a Phase II report that includes, among other things, a topographical map with various drainage features, production wells, and other relevant structures; a discussion of the geological features that underlie the proposed site; and groundwater contour maps that demonstrate the occurrence and flow of groundwater beneath the proposed site. *See*

COMAR 26.04.07.15A. After receiving the Phase II report, the Department disseminates it to various interested parties, provides an opportunity for written comments, and schedules a joint plan review. *See* COMAR 26.04.07.15B. As with Phase I, the Department again determines if the application should be denied, if the Phase II report needs to be revised, or if the applicant is able to proceed to Phase III. *Id.*

In Phase III of its review, the Department compares the applicant's engineering plans and reports with its technical regulatory requirements to ensure that the proposed facility will be constructed in a manner that protects public health, public safety, and the environment. *See Piney Orchard*, 231 Md. App. at 86; *see also* COMAR 26.04.07.16A(8)(e) (proposed operating procedures shall include “[m]eans of preventing public health hazards and nuisances...”). The engineering plans required in Phase III of the Department's review must include, among other things, a description of any existing or proposed water and sewerage systems, the anticipated volume of material accepted during the lifetime of the proposed facility, methods of controlling on-site drainage and erosion, the proposed specifications for collecting and managing leachate, and contingency plans for preventing or abating discharges of pollutants into waters of the State. *See* COMAR 26.04.07.16A. Following the receipt and review of all necessary plans and required information, the Department determines whether the application should be denied or if it can proceed with scheduling a public hearing. *See* COMAR 26.04.07.16B; COMAR 26.04.07.08D.

The General Assembly expressly granted the Department with the ability to deny an application for a permit by a nongovernmental organization if “[t]he Department finds

that operation of the sanitary landfill system would harm public health or the environment.” Env’t § 9-212.1(2). This express authority is clarified in the Department’s implementing regulations, particularly COMAR 26.04.07.03(A) which says that the Department, in exercising its authority to the grant or renew solid waste handling permits, shall consider all materials required to be submitted under these regulations to evaluate, among other things, whether the solid waste handling will impair the quality of the environment or create other hazards to the public health, safety, or comfort as may be determined by the Approving Authority.

Factual Background

National Waste Managers first submitted its Application and Phase I report for the Proposed Facility on December 20, 1988. (E. 218.) The Department subsequently distributed the Application and Phase I report to all interested agencies and conducted a site visit of the proposed location. (E. 218.) After revising and resubmitting its Phase I report, National Waste Managers then submitted its Phase II geological and hydrological report on March 27, 1990. (E. 218.) The Department then distributed the Phase II report and conducted a joint plan review meeting with all interested agencies. On February 4, 1992, the Department advised National Waste Managers that its Phase II report did not adequately address concerns regarding the Proposed Facility’s impact to wetlands, and so its Application review could not continue until these concerns were addressed. (E. 218.) Furthermore, the Department advised National Waste Managers to submit documentation from the County that the Proposed Facility meets all local zoning and land use requirements and is in conformity with its Solid Waste Management Plan. (E.

218.) On August 4, 1997, the County sent a letter to the Department confirming that the Proposed Facility met all applicable local zoning and land use requirements and was in conformity with its Solid Waste Management Plan. (E. 218.)

On December 12, 1997, the Department received notification from the County that National Waste Managers' 1993 special zoning exception allowing development of the Proposed Facility was rescinded by operation of law on August 23, 1997, and that it was no longer in conformity with local zoning requirements. (E. 218.) The Department notified National Waste Managers on January 28, 1998, that its review of the Application would be suspended until the zoning issues were resolved. (E. 218.) National Waste Managers revised and resubmitted its Application on June 5, 2001, and the County subsequently sent the Department a letter dated June 20, 2001, stating that the Proposed Facility met all applicable local zoning and land use requirements and was in compliance with its Solid Waste Management Plan. (E. 218.)

Between January 11, 2002, and January 14, 2014, the Department and National Waste Managers corresponded frequently regarding the Phase II and Phase III application requirements for the Proposed Facility, including comments to various reports, revisions, and joint review meetings on necessary technical information and regulatory requirements. (E. 219-20.)

In 2015, the Department again suspended its review of National Waste Managers' Application due to unresolved zoning issues with the County. (E. 220.) On November 13, 2018, the Department received a letter from the County's Office of Law stating that the County Board of Appeals had issued a Supplemental Memorandum Opinion on October

19, 2018, that granted National Waste Managers’ request for a two-year extension of the previously approved special zoning exception for the Proposed Facility. (E. 220.) The Department subsequently continued its review of the Application and corresponded with National Waste Managers on various additional comments to its Phase II and Phase III reports. (E. 220.)

In March of 2020, the County purchased the land on which National Waste Managers had identified in its Application to construct the entrance to the Proposed Facility. (E. 997-98.) The land was subsequently conveyed to the County Board of Education in 2021, and the County began construction of the Two Rivers Elementary School (the “Elementary School”) on that land in June 2022. (E. 997-98.) The Elementary School would eventually open for the 2024 school year and continues to operate today.

On August 21, 2020, and October 2, 2020, the Department received letters from the County’s Executive and Attorney, respectively, indicating that the Proposed Facility no longer complied with local zoning and land use requirements. (E. 220.) As it had during previous disruptions in local zoning approval for the Proposed Facility, the Department suspended its review of the Application, in reliance on § 9-210 of the Environment Article. (E. 220.) National Waste Managers consequently filed a complaint for declaratory relief and a petition for mandamus against both the County and the Department. *See* Appellant’s Br. 10. In its May 26, 2021, order and opinion, the Circuit Court for Anne Arundel County determined that the County’s Executive and Attorney did not have the authority to revoke its previously issued statement of local zoning and land use conformity, and that its June 22, 2001, letter satisfied the procedural permit review requirements

enumerated in § 9-210(a) of the Environment Article. (E. 576-88.) The Department resumed its processing of Appellant’s Application after receiving the Court’s order and opinion and subsequently provided comments on National Waste Managers’ Phase III report. (E. 221.) National Waste Managers provided a prompt response to the Department’s comments on its Phase III report, and on March 11, 2022, the Department notified National Waste Managers that its Phase III review was complete. (E. 221.) Finally, National Waste Managers satisfied several additional procedural requirements for their Application, including providing the Department with a declaration of covenant for the property underlying the Proposed Facility and a required Surety Bond. (E. 221.) National Waste Managers did not amend its Application during this time, and so the proposed entrance for the Proposed Facility remained on the parcel of land now occupied by the Elementary School.

After concluding that the design of the Proposed Facility met the minimum technical specifications and design criteria enumerated in COMAR 26.04.07.16, the Department published a tentative determination to approve the Application, along with the draft permit and other supporting documents on January 24, 2023. (E. 212 (tentative determination); E. 217-22 (fact sheet); E. 132- 162 (draft permit.)) On February 23, 2023, the Department held a public hearing on the Application, in accordance with § 1-604(a)(4) of the Environment Article, during which it received 121 oral comments from 311 attendees. (E. 224-427, 736, 741.) The Department held the public comment period open until May 1, 2023, during which time it received an additional 354 written comments on the Application. (E. 981-1298.) In response to the written and oral comments provided

during the public comment period, National Waste Managers provided the Department with some additional information by letter dated May 7, 2024. (E. 836-979.) After examining the public comments submitted on its tentative determination to approve the Application, the Department found that all were substantially addressed by the National Waste Managers' responses and supporting documentation except for concerns raised about the public health impacts of the Proposed Facility on the newly constructed Elementary School and the WB&A Trail. (E. 741.) The Department determined that the oral and written testimony presented convincing evidence that the Proposed Facility would harm public health, and as a result, recommended that a final determination to deny the Application be issued, in accordance with its authority under § 9-212.1(2) of the Environment Article. (E. 742.) The Department notified National Waste Managers on November 6, 2024, that it had made a final determination to deny its Application for the Proposed Facility. (E. 128-30.)

ARGUMENT

I. THE DEPARTMENT'S DENIAL OF NATIONAL WASTE MANAGERS' APPLICATION IS SUBJECT TO THE DEFERENTIAL SUBSTANTIAL EVIDENCE AND ARBITRARY AND CAPRICIOUS STANDARD OF REVIEW.

Judicial review of the Department's permit determination is on the administrative record before the agency. Env't §§ 1-601(d), 1-606(c). Where there is no contested case hearing and no statute sets forth an express standard of review, an agency's quasi-judicial decision is reviewed under the substantial evidence and arbitrary and capricious standards. *Maryland Dep't of the Env't v. Anacostia Riverkeeper*, 447 Md. 88, 118

(2016). In applying the substantial evidence test, the court decides “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Id.* at 120; *see also Motor Vehicle Admin. v. Shea*, 415 Md. 1, 18 (2010). The test is one of “reasonableness, not rightness.” *Board of Physician Quality Assurance v. Mullan*, 381 Md. 157, 173 (2004).

As to factual issues, the agency’s decision is viewed in the light most favorable to the agency, as its decisions are “*prima facie correct*” and carry with them “the presumption of validity.” *Giant Food, Inc. v. Department of Labor, Licensing and Regulation*, 356 Md. 180, 185 (1999). The arbitrary and capricious standard of review is “extremely deferential.” *Anacostia Riverkeeper*, 447 Md. at 120. Under that standard, a court is to consider “whether the agency ‘relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.’” *Id.* at 120-21 (internal citations omitted). The reviewing court must be satisfied from the record that the agency “‘examine[d] the relevant data and articulate[d] a satisfactory explanation for its action.’” *Id.* at 121 (citation omitted).

The court must also address whether the administrative decision is premised upon an erroneous conclusion of law. *Id.* at 122. The court reviews an agency’s legal conclusions *de novo*, but it accords “a degree of deference” to “the position of the administrative agency.” *Motor Vehicle Admin. v. Sanner*, 434 Md. 20, 31 (2013) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 572 (2005)). “[A]n administrative

agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts," *Sanner*, 434 Md. at 31 (quoting *Noland*, 386 Md. at 572), as should its own regulations, particularly where "the regulation concerns 'a complex and highly technical regulatory program,' in which the identification and classification of relevant 'criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns,'" *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (quoting *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 697 (1991)).

II. THE DEPARTMENT'S FINAL DETERMINATION TO DENY NATIONAL WASTE MANAGERS' APPLICATION IS CONSISTENT WITH STATE LAW AND SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE ADMINISTRATIVE RECORD.

Although the Department only reviewed the footprint of the Proposed Facility, which includes the proposed entrance, to determine whether operation of the landfill would harm public health and the environment, National Waste Managers contends that the denial of its Application was outside the scope of the Department's regulatory authority and based solely on zoning and land use considerations reserved for the County. *See* Appellant's Br. 2. This argument misconstrues the plain language of the Department's broad statutory authority to evaluate the public health impact of proposed landfills. *See* Env't § 9-212.1(2). National Waste Managers attempts to cast a factual determination as a question of law, and in so doing contends that the Department is entitled to substantially less deference than what is provided for in applicable State law.

Essentially, the National Waste Managers is arguing that the Department is not authorized to deny an application for a sanitary landfill system if it determines that operation of the landfill would harm public health and the environment. That is contrary to both the role of the Department and to the plain statutory and regulatory language. Moreover, National Waste Managers' argument ignores the clear and incontrovertible evidence in the administrative record that led the Department to determine that approving the Application would harm public health: there is an elementary school located in the precise parcel that National Waste Managers wishes to use to construct the entrance to the Proposed Facility.

A. The Department Appropriately Evaluated the Proposed Facility's Impact on Public Health

The Department is charged with regulating the installation, alteration, and extension of refuse disposal systems in Maryland, such as the Proposed Facility. Env't § 9-204(d). The Department permits refuse disposal systems in accordance with specific and explicit statutory authority. *See* Env't § 9-210. In fact, the Department is prohibited from issuing a refuse disposal permit unless certain preliminary requirements are satisfied in the appropriate sequence. *See* Env't § 9-210(a). First, the Department must complete its preliminary Phase I technical review of the proposed refuse disposal system, wherein the applicant provides general information on the site location and proposed activity for the system. Env't § 9-210(a)(1); *see also* COMAR 26.04.07.14. Next, the Department must report the findings of its preliminary Phase 1 technical review to the chief elected official and planning commission of the county where the proposed refuse disposal system

is to be located. Env’t § 9-210(a)(2). Finally, the Department must receive a written statement from the relevant county that the refuse disposal system at issue meets all applicable county zoning and land use requirements and is in conformity with the county solid waste plan. Env’t § 9-210(a)(3). The satisfaction of these requirements enables the Department to proceed with the technical components of its permit review process. *See generally* COMAR 26.04.07.15-17.

The Department’s application review for a refuse disposal system primarily focuses on the geology and hydrology of the proposed site, as well as the engineering specifications of the proposed facility to ensure that it will be constructed and operated in a manner that protects public health, public safety, and the environment. *See Piney Orchard*, 231 Md. App. at 86; *see also* COMAR 26.04.07.18K (“[A] rubble landfill shall be operated to prevent air, land, or water pollution, public health hazards, or nuisances.”). As National Waste Managers correctly notes, the Department does not decide where a proposed landfill can be sited. *See* Appellant’s Br. 20. In fact, the Department is neither required nor permitted to evaluate whether the location of a proposed facility complies with local zoning or land use requirements. *See Piney Orchard*, 231 Md. App. at 98-99. Instead, the Department relies entirely upon the determination of the county authority in which the proposed facility is to be located about whether it complies with applicable zoning and land use requirements. Env’t § 9-210(a)(3). Only after the relevant county authority affirms a proposed facility’s compliance with local zoning and land use requirements can the Department proceed with its review of the underlying permit application. Env’t § 9-210(b).

However, during the course of its application review, the Department must be cognizant of whether the operation of a proposed facility would negatively impact public health or the environment. *See* COMAR 26.04.07.18K. The General Assembly specifically authorized the Department to deny a refuse disposal permit if it determines that its operation would harm public health. Env’t § 9-212.1(2). Despite National Waste Managers’ argument to the contrary, the plain language of this statutory authority makes clear that the Department can assess the public health impacts of a proposed refuse disposal system during its review. *See Marriott Emps. Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445 (1997) (“[W]e seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense.”).

National Waste Managers overlooks the fact that the entrance of a proposed facility “is included as part of the permitted facility and falls under the Department’s purview.” (E. 383, 408, 720.) During its review of the Application, the Department did not attempt to determine the location of the Proposed Facility or approve access routes from the public right of way, as National Waste Managers contends. *See* Appellant’s Br. 24. Instead, the Department has sought simply to evaluate the Application in accordance with its clear regulatory authority and ensure that the Proposed Facility, if permitted, would be able to operate without harming public health or the environment. Unfortunately for National Waste Managers, the Department determined that the proximity of the entrance for the Proposed Facility to the newly constructed Two Rivers Elementary School would not allow for its operation without constituting a direct harm to public health. (E. 721.)

National Waste Managers has conflated zoning and land use decisions, which are in the purview of the county, with a determination that the Proposed Facility will impact public health or the environment, which is squarely within the mandate and authority of the Department. *See* Env't § 9-212.1(2); COMAR 26.04.07.03A. The County's zoning and land use authority is wholly separate and distinct from the Department's authority under the Environment Article. Contrary to National Waste Managers' assertion, Environment § 9-212.1(2) does not limit the Department's authority to the technical operations of the landfill itself. *See* Appellant's Br. 30-32. National Waste Managers' argument that the Department is limited to technical concerns such as "subsurface liners," "leachate contamination," and "groundwater monitoring" when assessing whether the operation of a landfill would harm to public health and the environment is not supported by the plain language of the statute. The Department's regulations promulgated under its statutory authority provide further support that the Department is not limited to narrow technical operational considerations.

COMAR 26.04.07.03A states that the Department, in exercising its authority under these regulations with respect to the granting or renewal of permits or reviewing operations of a facility, *shall* consider all material required to be submitted under these regulations to evaluate whether any of the following factors is likely to occur or has occurred. A person may not engage in solid waste handling in a manner which will likely:

- (1) Create a nuisance;
- (2) Be conducive to insect and rodent infestation or the harboring of wild dogs or other animals;
- (3) Pollute the air;

- (4) Cause a discharge of pollutants to waters of this State unless otherwise permitted under Environment Article, §7-232 or 9-323, Annotated Code of Maryland;
- (5) Impair the quality of the environment; or
- (6) *Create other hazards to the public health, safety, or comfort as may be determined by the Approving Authority.*

COMAR 26.04.07.03A (emphasis added).

The Department may not make a land use decision, but it may determine if the Proposed Facility, including its entrance, will negatively impact public health or the environment. As National Waste Managers concedes, once a facility meets local zoning and land use requirements, the Department is obligated to “review” an application which necessarily means that the Department *shall* consider the factors outlined in COMAR 26.04.07.03(A) and in Environment § 9-212.1(2). That includes whether the proposed facility would harm public health and the environment. This is precisely what the Department did in this case.

B. The Department’s Determination to Deny the Application Is Supported by Substantial Evidence in the Administrative Record.

In 1993, the County Board of Appeals granted a special zoning exception to the National Waste Managers for the Proposed Facility. (E. 994.) As a condition of granting the zoning exception, the Board of Appeals required, among other things, that Conway Road must be used as the entrance to the Proposed Facility and that access to the Proposed Facility from Conway Road shall be obtained by National Waste Managers through a fee simple right-of-way. *See Halle Cos. v. Crofton Civic Ass’n*, 339 Md. 131 (1995) (affirming the special zoning exception). While the Board of Appeals considered Patuxent Road as

another potential access point to the Proposed Facility, it rejected that option due to the greater potential impact on traffic and adjacent wetlands. (E. 996.)

The land on which National Waste Managers has identified in its Application to construct the entrance to the Proposed Facility was ultimately purchased by the County in March 2020 and subsequently conveyed to the County Board of Education in 2021. (E. 997-98.) The County constructed the Two Rivers Elementary School on the property at 2754 Conway Road. The school opened for the start of the 2024 school year and remains in use today. The Elementary School sits directly atop the parcel on which National Waste Managers has identified in its Application to construct the entrance to the Proposed Facility. (E. 243-45, 999.)

During the public comment period on its tentative determination, the Department received a large number of comments expressing concern over the potential environmental and public health impacts of the Proposed Facility on the Elementary School. (E. 274, 278-80, 333, 390, 720, 991, 1284.) Commenters articulated particular concern over the number, frequency, and size of the trucks that would be expected to travel to the Proposed Facility over its expected lifespan. (E. 285-86, 293, 302, 328, 367, 1065, 1067.) Specifically, National Waste Managers estimated in the Application that approximately 80 heavy trucks would be traveling to the Proposed Facility per day, each hauling up to 20 tons of rubble waste each. (E. 720; 1000.) Averaged over the course of a typical eight-hour day, the expected truck traffic to the Proposed Facility would mean that there would be roughly one truck every six minutes traveling along the Conway Road entrance. (E. 285, 1000.) In reality, however, these trucks would not be evenly distributed throughout the day but would

instead arrive at the Proposed Facility during peak travel hours, resulting in “stacking” and significant queuing along the Conway Road entrance. (E. 243, 993, 1000.) As a result of the County’s construction of the Elementary School, and after reviewing all of the public comments, the Department became “gravely concerned” that the heavy truck traffic associated with the operation of the Proposed Facility along the Conway Road entrance would pose “imminent harm to students, parents, visitors and faculty” of the Elementary School. (E. 721.)

Both the Department and members of the public were understandably concerned about the feasibility of operating the Proposed Facility, as articulated in the Application, because the Elementary School was constructed in the same parcel that National Waste Managers proposed to construct the entrance to the Proposed Facility. (E. 294, 391-92, 1273-74). The Department consequently requested that National Waste Managers identify an alternative entrance to the Proposed Facility, consistent with the County’s zoning approval, that would not impact the Elementary School.² (E. 434, 721.) Despite National Waste Managers’ characterization of this request as an unauthorized “demand” to modify the 1993 special zoning exception, *see* Appellant’s Br. 16, the Department simply wished

² The Appellant mischaracterizes the Department’s request to identify an alternate entrance to the Proposed Facility as “effectively reject[ing] the existing special exception.” Appellant’s Br. 16. The zoning exception does not mandate that the entrance to the Proposed Facility be located on the particular parcel that the Appellant has identified in its Application, only that “Conway Road is to be used as the entrance to the operations.” (E. 198.) As a result, it would not conflict with the special exception for National Waste Managers to revise its Application to provide an alternate entrance along Conway Road to the Proposed Facility that would not harm public health.

to help resolve the public health concerns of both it and the public with National Waste Managers' interests in developing the Proposed Facility. After all, protection of the environment and public health for all citizens of Maryland is the "foremost principle and guiding doctrine of the Department." (E. 387.) On May 7, 2024, National Waste Managers provided a lengthy response to the Department that amounted to a rejection of its request for an alternative entrance to the Proposed Facility. Without the ability to consider alternative entrances to the Proposed Facility that comply with National Waste Managers' zoning exception but would not present a significant risk of harm to public health, the Department made the final determination to deny the National Waste Managers' Application, pursuant to § 9-212.1(2) of the Environment Article.

CONCLUSION

The judgment of the Circuit Court for Anne Arundel County should be affirmed.

REQUEST FOR ORAL ARGUMENT

Appellee requests oral argument.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 5,014 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Matthew Standeven

Matthew Standeven

TEXT OF PERTINENT PROVISIONS
(Rule 8-504(a)(10))

Annotated Code of Maryland, Environment Article
(LexisNexis Supp. 2025)

§ 1-601(d)

(d) (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

- (i) The objections were not reasonably ascertainable during the comment period; or
- (ii) Grounds for the objections arose after the comment period.

§ 1-606(c)

(c) Any judicial review of a determination provided for in accordance with § 1-601 of this subtitle or § 5-204 or § 16-204 of this article shall be limited to a record compiled by the Department or Board, consisting of:

- (1) Any permit or license application and any data submitted to the Department or Board in support of the application;
- (2) Any draft permit or license issued by the Department or Board;
- (3) Any notice of intent from the Department or Board to deny the application or to terminate the permit or license;
- (4) A statement or fact sheet explaining the basis for the determination by the Department or Board;

- (5) All documents referenced in the statement or fact sheet explaining the basis for the determination by the Department or Board;
- (6) All documents, except documents for which disclosure is precluded by law or that are subject to privilege, contained in the supporting file for any draft permit or license;
- (7) All comments submitted to the Department or Board during the public comment period, including comments made on the draft application;
- (8) Any tape or transcript of any public hearings held on the application; and
- (9) Any response to any comments submitted to the Department or Board.

§ 9-201(e)

(e) “Refuse disposal system” includes:

- (1) An incinerator;
- (2) A transfer station;
- (3) A landfill system;
- (4) A landfill;
- (5) A solid waste processing facility; and
- (6) Any other solid waste acceptance facility.

§ 9-204(b), (d)

- (b) (1) The Secretary may adopt reasonable and proper regulations for submission of plans. These regulations may include the collection of a fee at the time of application for:
 - (i) A permit issued under this section for a privately owned water supply or sewerage system; or

(ii) A permit applied for by a local unit of government for a privately financed water supply or sewerage system.

(2) The Secretary shall provide the regulated community an opportunity to participate in the rate setting and regulatory processes.

(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.

§ 9-210(a), (b)

(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.

(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.

§ 9-212.1

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.

Regulations

Code of Maryland Regulations (COMAR)

COMAR 26.04.07.02B

B. Terms Defined.

* * *

(25) “Refuse” is synonymous with solid waste.

* * *

(29) “Solid waste acceptance facility” means any landfill, incinerator, transfer station, or processing facility whose primary purpose is to dispose of, treat, or process solid waste.

* * *

(30) “System of refuse disposal for public use” means the services, facilities, or properties used in connection with the intermediate or final disposal of any solid waste unless these activities are limited to waste generated by an individual, a single corporation or business, or are disposed of as authorized by a permit issued by the Department under Environment Article, § 7-232, 9-224, or 9-323, Annotated Code of Maryland.

COMAR 26.04.07.03A

A. General Restrictions. The Department, in exercising its authority under these regulations with respect to the granting or renewal of permits or reviewing operations of a facility, shall consider all material required to be submitted under these regulations to evaluate whether any of the following factors is likely to occur or has occurred. A person may not engage in solid waste handling in a manner which will likely:

- (1) Create a nuisance;
- (2) Be conducive to insect and rodent infestation or the harboring of wild dogs or other animals;
- (3) Pollute the air;
- (4) Cause a discharge of pollutants to waters of this State unless otherwise permitted under Environment Article, §7-232 or 9-323, Annotated Code of Maryland;
- (5) Impair the quality of the environment; or

(6) Create other hazards to the public health, safety, or comfort as may be determined by the Approving Authority.

COMAR 26.04.07.03B

B. Specific Prohibited Acts.

(1) Operation of a System of Refuse Disposal for Public Use Without a Permit. A person may not:

- (a) Construct or operate a system of refuse disposal for public use without first obtaining a valid permit issued under these regulations, or a permit issued under Environment Article, §7-232 or 9-323, Annotated Code of Maryland;
- (b) Cause, suffer, allow, or permit the construction or operation of an unpermitted system of refuse disposal for public use on his or her property.

COMAR 26.04.07.06B

B. Contents of Phase I Report. At a minimum, the Phase I report shall include a:

- (1) Completed and signed application form referenced in Regulation .05B of this chapter;
- (2) Current U.S.G.S. 7.5 minute quadrangle map with the proposed site outlined;
- (3) Current topographic map, which is an accurate depiction of the site at the time of application, at a scale not smaller than 1 inch equals 200 feet, which depicts the property boundaries, on-site buildings and structures, and pertinent surficial features including but not limited to:

(a) Springs,

(b) Seeps,

- (c) Streams,
- (d) Rock outcrops,
- (e) Sink holes,
- (f) Surface impoundments,
- (g) Water wells,
- (h) Forested areas, and
- (i) The location of any buried or overhead power transmission lines, utility pipelines, or storage tanks on the property;

(4) Map which depicts the surrounding zoning and land use within 1/2 mile of the site boundaries;

(5) Map showing the distribution of the soils at the site;

(6) Narrative description of the soils at the site;

(7) Map showing the geology at the site based on available data;

(8) Narrative description of the geology at the site based on available data;

(9) Description of the proposed activity including:

- (a) Type of facility;
- (b) Area served;
- (c) Capacity; and
- (d) Types of waste accepted.

COMAR 26.04.07.06C

C. Phase I Report Review.

(1) Following receipt of the specified number of copies of the required information, the Department shall distribute one copy to each of the following:

- (a) Chief executive officer or the governing body, or both, of a county or municipality in which the activity is proposed;
- (b) Local operating agency responsible for solid waste management;
- (c) Local health official;
- (d) Secretary, Department of Natural Resources;
- (e) Director, Water Resources Administration;
- (f) Director, Maryland Geologic Survey;
- (g) U.S. Geological Survey;
- (h) Federal Aviation Administration;
- (i) Appropriate Soil Conservation District;
- (j) U.S. Army Corp of Engineers; and
- (k) State Highway Administration.

(2) A person receiving a copy of the application and supporting information shall be invited to inspect the proposed site and requested to submit comments to the Department within 20 days of receipt of the report.

- (3) The Department shall set a date, time, and place for a joint site inspection meeting with interested agencies and the applicant.
- (4) When practicable, within 60 days of receipt of a complete Phase I report, the Department shall:

(a) Review the Phase I report for completeness. The Department shall notify the applicant that the Phase I report is complete.

(b) Make a determination with respect to the site. If the Department determines that the site is not suitable for the intended use, the Department shall deny the application. The applicant shall be notified in writing by the Approving Authority, informed of the basis for the denial, and the appeal process. Otherwise the Approving Authority shall advise the applicant in writing of any limitations which the preliminary investigation revealed concerning the use of the site, and of any general recommendations. The applicant shall be advised to proceed with the preparation of a geologic report.

(5) If the Department is unable to complete the review within the established 60-day time schedule, the Department shall notify the applicant in writing within 30 days of receipt of the information and inform the applicant of the anticipated time required to complete the review.

COMAR 26.04.07.08D

D. Phase III -Plan Review.

(1) Following receipt of complete plans and specifications, the Approving Authority shall distribute a copy to each of the interested agencies and set a date, time, and place for a joint plan review meeting with the Approving Authority and the applicant.

(2) When practicable, within 60 days following this meeting, the Approving Authority shall either deny the permit or determine if:

- (a) Sufficient information is available to schedule a public hearing on the request for a permit; or
- (b) Revisions to the plans and specifications are needed.

(3) If the permit is denied, the applicant shall be informed of the basis for the denial and the procedures for appeal of this determination.

(4) If the Department is unable to complete the review within the established 60-day time schedule, the Department shall notify the applicant in writing within 30 days of receipt of the information and inform the applicant of the anticipated time required to complete the review.

COMAR 26.04.07.14

A. Permit Application. To obtain a permit required under Regulation .04 of this chapter to construct or operate a rubble landfill, an applicant shall submit 12 copies of a Phase I report which contains the informational requirements specified in Regulation .06B(1)-(9) of this chapter.

B. Phase I Site Inspection.

- (1) Following receipt of the specified number of copies of the required information, the Department shall distribute one copy to each of the persons specified in Regulation .06C(1)(a)-(g) and (i)-(k) of this chapter.
- (2) A person receiving a copy of the report shall be requested to submit comments to the Department within 20 days of receipt of the report.
- (3) The Department shall set a date, time, and place for a joint site inspection meeting with interested agencies and the applicant.

(4) When practicable, within 60 days following the meeting in §B(3) of this regulation, the Approving Authority shall either deny the permit or determine if:

- (a) Sufficient information is available to proceed to the Phase II report;
- (b) Revisions to the Phase I report are needed.

(5) If Department is unable to complete the review within the established 60-day time schedule, the Department shall notify the applicant in writing within 30 days of receipt of the information and inform the applicant of the anticipated time required to complete the review.

COMAR 26.04.07.15

A. Phase II Report-Site Geology. The applicant shall prepare and submit to the Approving Authority ten copies of a Phase II report describing the soils, geology, and hydrology of the proposed site. This report shall be developed and signed by a geologist who possesses at least a bachelor's degree from an accredited college or university in the field of geology or a related field of earth science. The Phase II report shall include the following information in sufficient detail to permit a comprehensive review of the project:

(1) A topographic map which is an accurate depiction of the site at the time of the preparation of the Phase II Report using a contour interval which is practical for that site. The following items shall be shown on the map:

- (a) Surface waters and natural drainage features;
- (b) 100-year flood plain;
- (c) Property lines;
- (d) On-site buildings and structures;

- (e) Forested and other vegetated areas; and
- (f) The location of any buried or overhead power transmission lines, utility pipelines, or storage tanks on the property.

(2) A discussion of the geologic formations directly underlying and in close proximity to the site, the present and projected use of these formations as a ground water source, and the hydrogeologic relationship between the formations.

(3) A survey of all production wells within 1/2 mile of the site boundary. Each well shall be located on the current topographic map and a table shall be developed which specifies all the available pertinent information such as well depth, screen type, productivity, lithology penetrated, and water level.

(4) A minimum of three separate ground water contour maps superimposed on the current topographic map to represent the occurrence and direction of ground water flow beneath the site for a period of time not less than 12 months in duration. The three separate ground water contour maps shall be constructed for each distinct water-bearing formation occurring within 50 feet of the anticipated lowest elevation of the refuse cell floor using monthly ground water elevation data collected from piezometers on or near the site, from available historical sources of ground water information, or using a hydrologic simulation or predictive technique approved by the Department. One ground water contour map shall be constructed from a set of:

- (a) Water elevations measured or predicted during the month that best represents:
 - (i) An elevated ground water condition,

- (ii) A depressed ground water condition;
- (b) The highest observed or predicted water elevations.

(5) Geologic cross sections in sufficient detail, orientation, and number to clearly identify subsurface conditions at the site.

(6) A bedrock contour map (except in the coastal plain outside the fall zone) to show the elevation of the bedrock surface beneath the site.

(7) An isopachous map to show the thickness of soil and other unconsolidated sediments above the elevation of ground water as determined in §A(4) of this regulation, or bedrock as determined in §A(6) of this regulation, whichever is higher.

(8) A discussion of the chemical quality of ground water in the aquifers beneath the site as determined in §A(2) of this regulation. The list of chemical parameters shall include:

- (a) pH;
- (b) Alkalinity;
- (c) Hardness;
- (d) Chloride;
- (e) Specific conductance;
- (f) Nitrate;
- (g) Chemical oxygen demand;
- (h) Arsenic;
- (i) Barium;
- (j) Cadmium;
- (k) Chromium;

- (l) Zinc;
- (m) Lead;
- (n) Mercury;
- (o) Volatile priority pollutants;
- (p) Other pollutants specified by the Department.

(9) A discussion of the potential for the vertical and horizontal movement of pollutants into the waters of the State.

(10) The results of a fracture trace or aerial photographic lineament analysis (except in the coastal plain) which identifies the relationship between these features and the local ground water hydrology.

(11) Test boring logs, well completion reports, piezometric measurements, chemical and physical soil/sediment analyses, and all accompanying geotechnical analyses. All laboratory and field methodologies and procedures shall be included.

(12) A preliminary conceptual design of the proposed rubble landfill based on the geotechnical information gathered in §A(1)-(11) of this regulation.

B. Phase II-Plan Review.

(1) Following receipt of the specified number of copies of the Phase II report, the Department shall distribute one copy to each of the following:

- (a) Secretary, Department of Natural Resources;
- (b) Director, Water Management Administration;
- (c) Director, Maryland Geological Survey;
- (d) U.S. Geological Survey;

- (e) County Soil Conservation District;
- (f) Chief executive officer or the governing body, or both, of the county or municipality in which the activity is proposed;
- (g) Local health official; and
- (h) Local operating agency responsible for solid waste management.

(2) A person receiving a copy of the Phase II report shall be requested to submit any comments to the Department within 30 days of receipt of the report.

(3) The Department shall set a date, time, and place for a joint plan review meeting with interested agencies and the applicant.

(4) When practicable, within 60 days following this meeting, the Approving Authority shall either deny the permit or determine if:

- (a) Sufficient information is available to proceed to the Phase III report; or
- (b) Revisions to the Phase II report are needed.

(5) If the Department is unable to complete the review within the established 60-day time schedule, the Department shall notify the applicant in writing within 30 days of receipt of the information and inform the applicant of the anticipated time required to complete the review.

COMAR 26.04.07.16

A. Phase III-Engineering Plans and Specifications. Ten complete sets of plans and engineering reports covering the proposed project, prepared, signed, and bearing the seal of a registered professional engineer shall be submitted to the Approving Authority. These

plans and specifications shall include the following information in sufficient detail to permit a comprehensive review of the project:

- (1) A map which designates the property boundaries, the actual area to be used for filling, and existing and proposed structures and on-site roads.
- (2) A description of any vehicle weighing facilities, communications (telephones, radios), maintenance and equipment storage facilities, and water supply and sewerage systems. On-site water supply and sewerage systems shall be approved by the Approving Authority.
- (3) A description of the:
 - (a) Types of solid waste:
 - (i) To be accepted,
 - (ii) Not to be accepted;
 - (b) Area and population to be served by the facility.
- (4) The anticipated quantities of solid waste to be accepted and the calculations used to determine the useful life of the facility.
- (5) Proposed methods of collecting and reporting data on the quantities and types of solid waste received and for revising facility life expectancy projections.
- (6) The volume and type of available cover material, the calculated volume of earth needed for periodic, intermediate, and final cover, the location of earth stockpiles, and provisions for saving topsoil for use as final cover.
- (7) Proposed means of controlling unauthorized access to the site.
- (8) Proposed operating procedures including:

- (a) Hours and days of operation;
- (b) Number and types of equipment to be used;
- (c) Number of employees and their duties;
- (d) Provisions for fire prevention and control;
- (e) Means of preventing public health hazards and nuisances from blowing paper, odors, rodents, vermin, noise, and dust; and
- (f) Proposed method of daily operation including wet weather operation.

(9) The location and depth of solid waste cells and the sequence of filling.

(10) Natural or artificial screening to be used.

(11) Methods of controlling on-site drainage, drainage leaving the site, and drainage onto the site from adjoining areas. Erosion and sediment control provisions shall be approved by the local soil conservation district and satisfy the requirements of Environment Article, Title 4, Subtitle 1, and COMAR 26.09.01.

(12) A contingency plan for preventing or mitigating the pollution of the waters of this State.

(13) Proposed methods for covering and stabilizing completed areas.

(14) A system for monitoring the quality of the waters of the State around and beneath the site, including the location and types of monitoring stations, and the methods of construction of monitoring wells. Wells shall be installed by a State licensed well driller in accordance with COMAR 26.04.04.

(15) If the Department determines that contamination of waters of the State has occurred or is liable to occur as a result of operation of the landfill, the Approving Authority may:

- (a) Require the permit holder to periodically collect and analyze ground water or surface waters at the permitted site and to submit the results to the Approving Authority;
- (b) Specify the number and location of the sampling stations, the frequency of the analyses, the sampling and analyses procedures, the pollutants to be monitored, and the reporting period.

(16) A schedule for implementing construction and implementation of the operation plans and engineering specifications once the refuse disposal permit has been issued.

(17) A landfill closure and post-closure plan to be followed over a period of not less than 5 years after application of final cover.

(18) The name, address, and telephone number of the person or agency responsible for the maintenance and operation of the site. Changes to this information shall be submitted to the Approving Authority once effected.

(19) An engineered design, as described in §C of this regulation, for a liner system and leachate collection system for the proposed rubble landfill based upon geotechnical information developed in Regulations .14 and .15 of this chapter.

(20) A proposed method, engineering specifications, and plans for the collection, management, treatment, and disposal of leachate generated at the facility, including the

calculations used to determine the estimated quantities of leachate to be generated, managed, stored, treated, and disposed.

B. Phase III-Plan Review. The plan review shall be conducted in accordance with the provisions of Regulation .08D of this chapter.

COMAR 26.04.07.18

K. Environmental Protection. The rubble landfill shall be operated to prevent air, land, or water pollution, public health hazards, or nuisances.

* IN THE
* APPELLATE COURT
IN THE MATTER OF NATIONAL * OF MARYLAND
WASTE MANAGERS, INC. * September Term, 2025
* No. 975

* * * * *

CERTIFICATE OF SERVICE

I certify that, on this 8th day of December, 2025, the Brief of Appellee in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service, and that on the next business day two copies will be served by first class mail on all parties entitled to service:

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