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IN THE
Supreme Court of Virginia
at Richmond

RECORD NO. 001350

DEPARTMENT OF ENVIRONMENTAL QUALITY,
DENNIS H. TREACY, DIRECTOR
and
AEGIS WASTE SOLUTIONS, INC.
a Virginia Corporation,

Appellants,

v.

CONCERNED TAXPAYERS OF BRUNSWICK COUNTY, *et al.*,

Appellees.

JOINT APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

CONCERNED TAXPAYERS OF BRUNSWICK COUNTY;)
J.M. MOSELEY, Jr.; M.K. MOSELEY; JUNIUS)
DRUMGOLD; JAMES TOWNSEND; MABEL TOWNSEND;)
JERRY L. MARSTON; H. BRUCE BRANDON; JULIA)
REAVIS BLANDFORD; DONALD WILSON; LILLIAN)
B. CALLIS; LILLIAN J. BELL; MILTON HARRISON,)
JR.; FANNIE M. WILSON; JAMES F. HITE;)
CHARLES M. BLAND; LUCILLE S. REAVIS; and)
SIDNEY E. BROWN,)

Appellants,)

v.)

DEPARTMENT OF ENVIRONMENTAL QUALITY, Peter)
W. Schmidt, Director, 629 East Main Street,)
Richmond, Virginia 23219,)

Appellees.)

IN RE: SOLID WASTE FACILITY PERMIT NO.)
583, BRUNSWICK WASTE MANAGEMENT)
FACILITY AEGIS WASTE SOLUTIONS, INC.)

Chancery No. HG 689-3

Judge T. J. Markow

PETITION FOR APPEAL

Preliminary Statement

This is an appeal by the Concerned Taxpayers of Brunswick County and eighteen named plaintiffs, hereinafter collectively "Concerned Taxpayers", of a case decision by the Director of the Virginia Department of Environmental Quality ("DEQ") to grant a permit to AEGIS Waste Solutions, Inc. ("AEGIS") to construct, operate, and maintain a solid waste management facility in Brunswick County, Virginia.¹

¹/ According to the State Corporation Commission, AEGIS Waste Solutions, Inc. changed their name to AEGIS of Brunswick County, Inc. on July 7, 1994. AEGIS letterhead, and the DEQ permit, however, continue to refer to AEGIS Waste Solutions, Inc.

The DEQ, a department of the Commonwealth of Virginia, through its Solid Waste Commission, issues permits for the operation and control of solid waste management facilities. Permits are issued pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1400, et seq. and Virginia Solid Waste Management Regulations (VR-620-20-10, March 15, 1993).

In this case, DEQ issued Solid Waste Facility Permit Number 583 to AEGIS for the operation of a landfill in Brunswick County, Virginia. As part of the statutory prerequisites to permit issuance, DEQ must have a certification of the applicant's compliance with all applicable local government ordinances. Va. Code § 10.1-1408.1(B)(1) (1994 Supp.). Brunswick County certified such compliance on October 22, 1993.

After the Board of Supervisors ("Board") of Brunswick County approved a conditional use permit ("CUP") for AEGIS on September 15, 1993, the decision was challenged by the Concerned Taxpayers of Brunswick County and many of the same individuals named in this action, by suit filed on October 15, 1993. The trial court dismissed all counts of the Concerned Taxpayers of Brunswick County action on demurrer by defendants Brunswick County and Aegis. Concerned Taxpayers of Brunswick County, et al. v. The County of Brunswick, Virginia, et al., Case No. CH93-82 (January 3, 1994).

On appeal, however, the Virginia Supreme Court reversed the trial court's dismissal of two counts challenging the validity of the CUP by the Board to AEGIS. The Court concluded that the Board could only issue the CUP in the manner prescribed by law. If, as

alleged by Concerned Taxpayers, AEGIS was neither the owner of record nor a contract purchaser of property intended to become part of the landfill site, then the CUP issued to AEGIS is void. The Court concluded that the Concerned taxpayers allegations state a cause of action and remanded the claim for decision in the trial court. The Court also remanded for trial allegations that the Board action was arbitrary and capricious. Concerned Taxpayers of Brunswick County, et al. v. County of Brunswick, et al., 249 Va. 320, 455 S.E.2d 712 (1995). As a result, the Virginia Supreme Court has determined that Concerned Taxpayers' allegations regarding the legal sufficiency of the local land use decision are at issue. Count I of the present action raises an issue of first impression as to how DEQ must consider, under Va. Code § 10.1-1408.1 and its own regulations, reasonable evidence that the underlying certification may be invalid with respect to the applicant's legal control over the landfill site.

Va Code § 10.1-1408.1(D) also states that the Director of DEQ shall not issue a permit for a new solid waste facility, as here, until he has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The conditions or requirements deemed necessary as a result of such determination must be included in the permit. Va. Code § 10.1-1408.1(E). Count II of the present action alleges that the Director failed to make such determination or include such conditions in the subject solid waste permit.

Count III of the Petition asserts that the DEQ permit authorizes landfill construction and waste disposal operations in areas where the applicant in fact had no CUP or certification under section 10.1-1408.1 in violation of the Director's authority under Va. Code § 10.1-1408.1. In this case, DEQ included three additional parcels of land in the Part B technical and operational part of the permit application that were not identified in the initial "Part A" site evaluation, nor included in the Board certification. Two of these parcels subsequently became part of the landfill operation approved in Solid Waste Permit No. 583. The DEQ Director was without statutory authority to include any land areas not included as part of the Part A evaluation and not included in the Board certification under Section 10.1-1408.1.

Count IV alleges that DEQ failed to comply with the requirements of the Virginia Administrative Process Act ("VAPA"), Section 9-6.14:12, by failing to provide opportunity for the formal taking of evidence where the basic law provides for decisions upon or after hearing.

ACTIONS ON APPEAL

1. Concerned Taxpayers asserts that DEQ violated the statutory intent of Va. Code § 10.1-1408.1 and its own permit regulations by issuing Solid Waste Permit No. 583 when the certification of compliance with all applicable ordinances from the local governing body, a prerequisite to a complete application, is under a valid legal challenge and substantial evidence exists that the applicant does not, in fact, have the prerequisite legal

control over the property at the proposed landfill site.

2. Concerned Taxpayers asserts that the Director of DEQ violated the statutory mandate of Va. Code § 10.1-1408.1(D) by failing to make an independent determination that the proposed facility poses no substantial present or potential danger to human health or the environment; and further failed to include such requirements found by such determination as conditions or requirements in the solid waste permit issued to AEGIS as mandated by Va. Code § 10.1-1408.1(E).

3. Concerned Taxpayers asserts that DEQ erroneously and without legal authority included in its permit evaluation three parcels of land for which the Board had not certified compliance with local ordinances and which had not been included or evaluated in Part A of the permit application, and subsequently issued Solid Waste Permit No. 583 authorizing landfill operation and construction on two of these parcels.

4. Concerned Taxpayers asserts that DEQ failed to comply with the requirements of Section 9-6.14:12 of the Virginia Administrative Process Act ("VAPA") by failing to provide opportunity for the formal taking of evidence where the basic law provides for decisions upon or after hearing.

PARTIES AND STANDING

5. Appellant Concerned Taxpayers of Brunswick County is an unincorporated association consisting of members who own real property in Brunswick County, Virginia. Concerned Taxpayers of Brunswick County was organized and operates for the purpose of

advancing the interests of its members. This action is brought on behalf of its members who are harmed by the unlawful actions of appellee Department of Environmental Quality ("DEQ") through the actions of its Director in the issuance of a solid waste facility permit to AEGIS. Appellants are harmed by DEQ's action and the approved landfill through decreased property values, potential pollution of groundwater water, exposure to waste materials and other harms as detailed herein.

6. Mr. J.M. Moseley, Jr. is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

7. Mr. M.K. Mosely is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

8. Mr. Junius Drumgold is a Brunswick County resident who owns or occupies real property consisting of 175 acres, more or less, located immediately adjacent to the proposed landfill and between the existing boundaries of the present landfill and the proposed landfill.

9. Mr. James Townsend is a Brunswick County resident who, jointly with Ms. Mabel Townsend, owns or occupies real property consisting of 5.6 acres, more or less, located immediately adjacent to the proposed landfill.

10. Mr. Jerry Marston is a Brunswick County resident who owns or occupies real property consisting of 10 acres, more or less, located in Brunswick County within approximately one mile of the

proposed landfill.

11. Mr. H. Bruce Brandon owns real property consisting of 300 acres, more or less, located in Brunswick County within one-half mile of the proposed landfill.

12. Ms. Julia Reavis Blandford is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located immediately adjacent to the proposed landfill.

13. Mr. Donald Wilson is a Brunswick County resident who owns real property consisting of 25 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

14. Ms. Lillian B. Callis is a Brunswick County resident who owns real property consisting of 96 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

15. Ms. Lillian J. Bell is a Brunswick County resident who owns real property consisting of 25 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

16. Mr. Milton Harrison, Jr. is a Brunswick County resident who owns real property consisting of 1 acre, more or less, located in Brunswick County within approximately one mile of the proposed landfill.

17. Ms. Fannie M. Wilson is a Brunswick County resident who owns real property consisting of 7.5 acres, more or less, located in Brunswick County within one mile of the proposed landfill.

18. Ms. Eva M. Wilson is a Brunswick County resident who owns real property consisting of 5 acres, more or less, located in Brunswick County within one mile of the proposed landfill.

19. Mr. James F. Hite is a Brunswick County resident who owns real property consisting of 3 acres, more or less, located in Brunswick County within one mile of the proposed landfill.

20. Mr. Charles M. Bland is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

21. Ms. Lucille S. Reavis is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

22. Ms. Evelyn Reavis is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

23. Mr. Sidney E. Brown is a Brunswick County resident who owns real property consisting of 300 acres, more or less, located in Brunswick County.

24. Concerned Taxpayers and its members, including but not limited to, James and Mabel Townsend, Julia Blandford, Donald Wilson, Lillian Callis, Lillian Bell, Charles Bland, Lucille Reavis, Evelyn Reavis, and James Moseley, Jr. are adversely affected by the potential for groundwater contamination from the proposed site, exposure to waste material hauling and storage, along with such activity's inherent loss of waste materials to the nearby environment, spillage, insect and vermin population increases and reduced property values. All members of Concerned Taxpayers listed herein rely upon groundwater resources for their drinking water needs, a use which is threatened by the proposed

facility's potential for groundwater contamination.

25. Defendant Department of Environmental Quality ("DEQ") is a department of the Commonwealth of Virginia, which, through its Director, Peter W. Schmidt, has final control over the issuance of permits for solid waste facilities in Virginia. Peter W. Schmidt is named in his official capacity as Director of the Department of Environmental Quality.

26. Although this action is an appeal by Concerned Taxpayers of a case decision by the Board, the permit applicant may seek to intervene in this action. While not admitting that the permit applicant is an appropriate intervenor in this case, the applicant is identified as AEGIS Waste Solutions, Inc. ("AEGIS") [now apparently AEGIS of Brunswick County], a Virginia corporation organized in December 1992, under the laws of the Commonwealth of Virginia and has its principal place of business at 8101 Roanoke Road, Elliston, Virginia 24087. AEGIS is the recipient of Solid Waste Facility Permit No. 583.

Jurisdiction and Venue

27. This Court has jurisdiction over this action pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1457, which authorizes appeal of any final decision of the Board or Director by any person aggrieved in accordance with the Virginia Administrative Process Act, Va. Code § 9-6.14:.1 et seq. The "Director" is the Director of DEQ. Va. Code § 10.1-1185. This action was filed in accordance with Supreme Court Rule 2A:2 and 2A:4.

28. Notice of Appeal of the Director's case decision was timely filed on May 17, 1995 by Concerned Taxpayers in accordance with the Virginia Administrative Process Act and Part 2A of the Rules of the Supreme Court of Virginia.

29. Venue is vested in this court pursuant to Va. Code § 9-6.14:5 and Va. Code § 8.01-261(1)(a)(2) where the Concerned Taxpayers Association, for the purposes of this permit, has conducted its business activities, meetings and communications with the Department of Environmental Quality and counsel, all of which are located in the City of Richmond, Virginia.

Applicable Law

30. The basic law authorizing the issuance of solid waste permits is Va. Code § 10.1-1408, et seq., of which the provisions of sections 10.1-1408.1 are at issue in this action. The VAPA, at Va. Code § 9-6.14:12, provides for the formal taking of evidence whenever the basic law provides for decision after hearing.

Issues on Appeal

- I. Certification of consistency with applicable local ordinances under Va. Code § 10.1-1408.1(B) is invalid for the purposes and intent of the Code when evidence is presented that the underlying ordinance is invalid; or, alternatively, DEQ has an independent regulatory responsibility to require any person applying for a solid waste permit have legal control over the site for the period of the permit life, and DEQ may not rely upon local government certification to satisfy such responsibility when evidence is presented indicating that the prerequisite certification and legal control by the applicant is invalid.

31. The Virginia legislature provides for dual roles for the siting and permitting of landfill facilities. The power to zone and determine appropriate land use locations for such facilities is

reserved to the local government. Operation, maintenance, management, fiscal responsibility and safety are regulated by permits issued by DEQ, though the Virginia Waste Management Act. Va. Code § 10.1-1408 et seq.

32. The distinct roles of local government and state agencies are maintained both through the general circumscriptions of the Dillon Rule and, as in the case at bar, by statutory mandate. Under the Virginia Waste Management Act, no "application for a new solid waste facility permit shall be complete unless it contains...[a] certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances." Va. Code § 10.1-1408.1(B).

33. The provisions of Va. Code § 10.1-1408.1(B) are similar to limitations on permit authority given to other state agencies and boards. See, State Water Control Law, Va. Code § 62.1-44.15:3 (application incomplete without local government certification). These limitations reflect a legislative directive that no permit application should be considered by any state agency unless the proposed project is first in complete conformity with local government land use ordinances.

34. The purpose of such legislation serves to distinguish the unique roles that the agency and local government each play in the safe and appropriate location of regulated facilities such as landfills. These separate roles are not advisory or parallel in scope; rather, they are separate and distinct and must be accorded

the weight and importance assigned to them by the legislature.

35. In a similar fashion, DEQ solid waste regulations also require assurances that the permit applicant has the necessary legal control over the proposed landfill site property: "The Department will not consider an application for a permit from any person who does not demonstrate legal control over the site for a period of the permit life...." Department of Waste Management, Solid Waste Management Regulations VR 672-20-10, § 7.3(D) (1993).

36. In the case at bar, the Brunswick County Board of Supervisors granted a CUP to AEGIS for the subject solid waste facility on September 15, 1993.

37. Concerned Taxpayers filed their Bill of Complaint challenging the Board's CUP decision on October 15, 1993.

38. On October 22, 1993, the County of Brunswick, through its Planning Director, provided certification to DEQ that the proposed AEGIS facility was "consistent with all ordinances". The County Certification fails to mention the fact that the zoning ordinance is under legal challenge, nor does it characterize the legal action in any way.

39. In apparent reliance on this certification, DEQ proceeded with review of the permit application submitted by AEGIS.

40. On January 3, 1994 Judge Robert G. O'Hara, Jr. issued an order granting defendant's motions to dismiss the zoning permit challenge by Concerned Taxpayers on all counts. Concerned Taxpayers of Brunswick County, et al. v. County of Brunswick, et al., Cir. Ct. Brunswick County, Chan. No. 93-82 (January 3, 1994).

41. The Circuit Court decision was appealed to the Virginia Supreme Court, which ruled that two counts of the complaint were improperly dismissed on demurrer and presented triable issues on the facts. These two counts were remanded to the Circuit Court. Concerned Taxpayers of Brunswick County, et al. v. County of Brunswick, et al., 249 Va. 320, 455 S.E.2d 712 (1995).

42. Comments submitted by Mr. Jerry Marston, Chairman of Concerned Taxpayers, at the DEQ public hearing held for the proposed landfill on March 10, 1995, advised DEQ of the Virginia Supreme Court decision, and the fact that the decision and Concerned Taxpayers allegations questioned the validity of the County zoning decision.

43. In it's April 18, 1995 response to public comments received at the hearing, DEQ, through its Senior Engineer Rebecca Clark, acknowledged the Virginia Supreme Court decision of March 3, 1995 but simply responded: "This issue deals with local requirements and should be resolved at the local level." DEQ response to citizen comments, p.2 (April 18, 1995).

44. DEQ issued Solid Waste Facility Permit No. 583 to AEGIS on April 17, 1995. No conditions or requirements were imposed in the permit regarding the validity of the CUP or the legal control of the proposed landfill property.

45. To the best of information and belief, and based on DEQ's response to public comments which form part of the record of this decision, DEQ did not consider or evaluate in any way the fact that the certification required by statute was under challenge and may

be found in error or contrary to law, or the impact such a decision would have upon the legal control of the applicant of the proposed landfill site. Nor did DEQ consider the consequences to the environment or operation of the solid waste facility if the underlying land use approval was found invalid.

46. DEQ's actions ignore the intent of an important statutory prerequisite to permit issuance. The Legislature made local government certification a condition of the permit application, not final permit issuance. Without assurance that the certification is valid, and certainly faced with judicial rulings that it may not be, DEQ is without authority to consider the permit application complete, and therefore without authority to issue the solid waste permit.

47. Alternatively, DEQ's own regulations prohibit consideration of a permit application from any person who cannot demonstrate legal control over the site. VR 672-20-10, supra. Obtaining proper zoning and compliance with all applicable local ordinances is an essential component of the applicant's legal control over the landfill site. Thus, DEQ may not even consider an application, much less issue a permit, without satisfying itself that the applicant has the prerequisite legal control over the proposed site.

48. DEQ's decision to proceed to permit issuance, leaving the certification issue solely to "local government" ignores DEQ's obligation to ensure that each permit application is complete within the intent of section 10.1-1408.1 and its regulations. DEQ

cannot, in good faith to the citizens of Virginia or in honoring legislative intent, simply ignore substantial allegations concerning a statutory and regulatory prerequisite to permit application. Such action violates both statutory and procedural mandates and are reviewable pursuant to Va. Code § 9-6.14:16, 17.

49. The statutory restriction on DEQ's authority is not merely a procedural question. Certification applies only to new facilities, not permit renewals; thus a Legislative priority to protect new sites from expensive and costly mistakes is obvious. If the underlying local ordinance is invalidated after permit issuance, as here, serious environmental harm could result. The solid waste facility would have to cease operation until local ordinance requirements are satisfied (if that remains possible). This abrupt halt to an ongoing operation could result in a cessation of monitoring and maintenance, broken contract agreements, loss of funds and operating personnel as well as general environmental protection. Any or all of the above could subject the facility and surrounding Brunswick County residents to environmental contamination and unexpected costs.

II. The Director of DEQ failed to make an independent determination that the proposed facility poses no substantial present or potential danger to human health or the environment and to include such conditions or requirements deemed necessary as a result of such determination in the solid waste permit.

50. Paragraphs 1-49 are realleged and incorporated herein.

51. The Virginia Waste Management Act states as follows:

No permit for a new solid waste management facility shall be issued until the Director has determined, after investigation and evaluation of comments by the local

government, that the proposed facility poses no substantial present or potential danger to human health or the environment. Va. Code § 10.1-1408.1(D).

52. The Director of DEQ issued Solid Waste Facility Permit No. 583 on April 17, 1995 without making, reporting or documenting any determination with regard to whether the proposed facility poses a present or potential danger to human health or the environment as required by Va. Code § 10.1-1408.1(D).

53. The Virginia Waste Management Act further states:

The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to prevent a substantial present or potential hazard to human health and the environment. Va. Code § 10.1-1408.1(E).

54. The Director of DEQ issued Solid waste Facility Permit No. 583 on April 17, 1995 without including conditions or requirements to prevent a substantial present or potential hazard to human health and the environment in accordance with Va. Code § 10.1-1408.1(E).

55. The Director's obligation to determine whether the proposed facility poses no substantial present or potential danger to human health or the environment, and to include such conditions or requirements as indicated in the final permit is mandatory and was not done. Such actions constitute a statutory violation reviewable under Va. Code § 9-6.14:16 and 17.

56. A determination of present or potential danger was particularly appropriate in this case, where the public record contains extensive evidence of groundwater problems and the difficulty in accurately measuring and monitoring groundwater

contamination. In addition, this landfill will accept both industrial and municipal wastes. In fact, AEGIS has already requested permission to dispose of industrial waste exceeding DEQ guidelines and regulations, including the highly toxic compound dioxin.

57. A further reason for the Director to make an independent determination of substantial present or potential danger is the fact that local residents rely exclusively upon groundwater resources for their potable water supply.

58. Appellants note that the duty of the Director to make such a determination was recently considered by this Circuit in R.I.S.E. v. Commonwealth, Cir. Ct. City of Richmond, Chan. No. HD-822-1 (May 4, 1995), another case involving a challenge to a DEQ solid waste permit. In that case, Judge Melvin Hughes, Jr. opined that the Director's duty was limited by the modifying clause "after investigation and evaluation of comments by the local government" and required no independent decision as to potential danger. R.I.S.E., opin. at 2.

59. Judge Hughes' final order was not issued until the end of May 1995 and, based on conversation with counsel for R.I.S.E. and upon best information and belief, the decision will be appealed. Concerned Taxpayers wishes to preserve this issue for further argument in this case and pending appellate court review.

60. Also, based upon information and belief, appellants do not believe that Judge Hughes was made aware of the recent dicta by the Virginia Supreme Court addressing this question in Concerned

Taxpayers, supra. In viewing the roles of the local government and the state agency, the Court stated:

"The Waste Management Act does not require a local governing body to determine whether a use is in compliance with the Act's provisions. Rather, that function is committed to the Director of the Department of Environmental Quality, who issues the permit required for the operation of a sanitary landfill or like facility, after determining that the proposed facility poses no substantial danger to human health or the environment." Concerned Taxpayers, 249 Va. at 328; 455 S.E.2d at 716.

III. DEQ acted without statutory authority in issuing Solid Waste Permit No. 583 permitting construction and operation of a landfill on land not certified as in compliance with applicable local ordinances and not part of the Part A permit application.

61. Paragraphs 1-60 are realleged and incorporated herein.

62. The Part A application for Solid Waste Facility Permit No. 583, which provides the information essential for assessment of site suitability for the proposed facility, must designate the precise location of the facility. According to DEQ records and responses to public comment, the Part A application designated the landfill area as 755 acres.

63. As noted, certification of the landfill area CUP was provided by the County of Brunswick on October 22, 1993.

64. On July 15, 1994 AEGIS submitted a request to the Board for a CUP amendment to the subject landfill use approval. This amendment requested approval for use of three additional parcels of land for (1) the addition of a third disposal area and (2) new location for designated environmental treatment facilities; and (3) a change in time allowed to unload solid waste delivered by rail to

the site.

65. According to the Brunswick County Planning Commission staff report, dated July 26, 1994, the AEGIS action is a requested amendment to the CUP approved by the Board on September 15, 1993 and is to provide for an additional third waste disposal area, relocate environmental facilities and amend condition 71. The staff report notes that the approved CUP site is 755 acres.

66. The Board held a public hearing on the requested CUP amendment on August 17, 1994.

67. An undated document signed by the Clerk to the Board of Supervisors indicates that the Board approved all three requested amendments at the August 17, 1994 hearing.

68. This document is contradicted, however, by the minutes of the August 17, 1994 meeting and members of Concerned Taxpayers, who were present at the hearing. The minutes of the August 17, 1994 meeting reflect that the Board held the hearing and after closure, voted to take no action until the September 21, 1994 meeting in order to provide an opportunity to identify any grave sites or cemeteries located on the proposed landfill property. Newspaper reports appearing in the South Hill Enterprise, August 24, 1994, also state the Board postponed a vote at the August 17, 1994 meeting.

69. The minutes of the September 21, 1994 meeting also confirm that no action was taken at the August 17, 1994 hearing. The Board did act on the requested changes at the September 21 meeting, however, but granted only the AEGIS request for railroad

car unloading hours. The minutes also make clear the Board's position that the addition of more land parcels, as requested, would require an amendment to the present CUP and that AEGIS had decided not to proceed with such amendments at that time. Upon best information and belief, review of the DEQ record in this case, and discussion with Concerned Taxpayers members who attended Board meetings, the Board did not, and has not, approved any CUP amendment for the three additional parcels of land for the landfill site as requested by AEGIS.

70. Nonetheless, the final solid waste permit issued by DEQ, dated April 17, 1995 approves a landfill area of 854 acres, including authorization for landfill disposal and treatment facilities on two of the three parcels of land comprising the requested CUP amendment submitted by AEGIS to the Board on July 15, 1994.

71. Upon best information and belief, and review of the DEQ files and record in this case, DEQ has no certification from Brunswick County for the two parcels authorized for landfill disposal and operation in Solid waste Permit No. 583. Furthermore, it appears impossible for DEQ to have certification for such properties as the contracts presented by AEGIS to the Board of Supervisors for consideration are dated in July, 1994, nine months after the County certification submitted to DEQ.

72. Upon best information and belief, and review of DEQ files and interviews with Concerned Taxpayers members who attend all Board meetings, no CUP amendment has been granted for the use of

the two parcels approved by DEQ in Solid Waste Permit No. 583.

73. Without certification of compliance with local ordinances, DEQ is without authority to even consider the application of AEGIS, and without authority to issue a permit authorizing waste disposal and operation of the landfill site lands so affected. Such violations constitute both statutory and procedural violations subject to judicial review under Va. Code § 9-6.14:16 and 17.

IV. The DEQ failed to comply with the requirements of Section 9-6.14:12 of the VAPA by failing to provide opportunity for the formal taking of evidence where the basic law provides for decisions upon or after hearing.

74. Paragraphs 1-73 are realleged and incorporated herein.

75. The Waste Management Act specifies that the "Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste." Va. Code § 10.1-1408.1(D).

76. The Waste Management Act does not define "public hearing".

77. It is well settled that the term "hearing" has specific meaning under the VAPA, and is defined at Va. Code § 9-6.14:4(E) to mean an opportunity for parties to submit factual proofs in formal proceedings.

78. The VAPA states that the agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing. Va. Code § 9-6.14:12.

79. It is equally settled that the basic statute need not

specify that the "hearing" is formal or evidentiary in the statute itself, it is enough that the basic law requires a decision after hearing. Nor is it necessary for a party to demand a formal or evidentiary hearing to exercise the right granted by the VAPA. See, Commonwealth of Virginia, ex rel. State Water Control Board v. Appalachian Power Company, 9 Va. App. 254, 386 S.E.2d 633 (1989), rehearing en banc, 12 Va. App. 73, 402 S.E.2d 703 (1991).

80. In the public hearing held for Solid Waste Permit No. 583, the DEQ did not provide for the formal taking of evidence or other provisions as required by Va. Code § 9-6.14:12, a violation of statute judicially reviewable under Va. Code § 9-6.14:16 and 17.

Assignments of Error

81. The DEQ is required to follow statutory mandates in all solid waste permit actions. The DEQ erred in the processing and issuance of Solid Waste Facility Permit No. 583 by:

(a) Failing to ensure that the certification submitted by the County of Brunswick was consistent with the intent and purpose of section 10.1-1408.1 that the proposed landfill be consistent with all local ordinances when presented with evidence that the land use ordinance may be invalid; or, in the alternative, failing to exercise its independent regulatory responsibility requiring that any person applying for a solid waste permit have legal control over the site for the period of the permit life without sole reliance upon local government certification to satisfy such responsibility when evidence is presented indicating that the prerequisite certification and legal control by the applicant is

invalid.

(b) Failing to make the required independent determination of whether the proposed facility poses any substantial present or potential danger to human health or the environment and to include such conditions or requirements in the solid waste permit to prevent such potential danger in accordance with statutory mandates.

(c) Issuance of Solid Waste Permit No. 583 permitting construction and operation of a landfill on land not certified as in compliance with applicable local ordinances and not part of the Part A permit application.

(d) Failing to provide opportunity for the formal taking of evidence in accordance with the provisions of Va. Code § 9-6.14:12 where the basic law provides for decisions upon or after hearing.

Request for Relief

WHEREFORE, in accordance with the authority vested in this Court by Va. Code § 9-6.14:19, Appellant Concerned Taxpayers respectfully requests the court to grant the following relief:

(a) Declare that the Department of Environmental Quality improperly considered the AEGIS permit application complete when there was evidence presented that the certification of compliance with local government ordinances, required by Va. Code § 10.1-1408.1(B)(1), was invalid; or, in the alternative, declare that DEQ failed to follow its own regulations to ensure that the applicant had legal control over the proposed landfill site in the face of evidence that the applicant did not have such control;

(b) Declare that the Department of Environmental Quality failed to make the required independent determination of whether the proposed facility poses any substantial present or potential danger to human health or the environment and to include such conditions or requirements in the solid waste permit to prevent such potential danger in accordance with statutory mandates;

(c) Declare that the DEQ was without authority to consider or approve land parcels for landfill operation or disposal which were not subject to certification by the County;

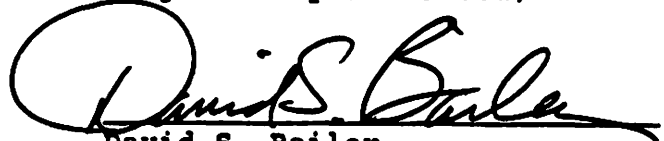
(d) Declare that the DEQ must provide for the taking of evidence and other attributes of an evidentiary hearing in accordance with Va. Code § 9-6-14:12 prior to issuance of any landfill permit pursuant to Va. Code § 10.1-1408.1;

(e) Remand to the Department of Environmental Quality Solid Waste Facility Permit No. 583 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court;

(f) Award Concerned Taxpayers their costs, including reasonable attorneys fees, expended in this matter, in accordance with Va. Code § 9-6.14:21; and

(g) Grant such other relief in this action as it may deem appropriate.

Respectfully submitted,


David S. Bailey
Counsel, Concerned Taxpayers of
Brunswick County, et al.

DATE: June 16, 1995

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VIRGINIA:

IN THE CIRCUIT COURT FOR BRUNSWICK COUNTY

CONCERNED TAXPAYERS OF BRUNSWICK COUNTY;)
J.M. MOSELEY, Jr.; M.K. MOSELEY; JERRY L. MARSTON;)
H. BRUCE BRANDON; JULIA REAVIS BLANDFORD; JAMES)
F. HITE; CHARLES M. BLAND; SIDNEY E. BROWN,)

Appellants,)

v.)

Chancery No. 98-02

DEPARTMENT OF ENVIRONMENTAL QUALITY, THOMAS)
L. HOPKINS, DIRECTOR,)

AND)

AEGIS WASTE SOLUTIONS, INC., a Virginia Corporation.)

Appellees.)

IN RE: AMENDMENT OF SOLID WASTE FACILITY
PERMIT NO. 583, BRUNSWICK WASTE MANAGEMENT
FACILITY, AEGIS WASTE SOLUTIONS, INC.

SERVE: Thomas L. Hopkins, Director
Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

Meade A. Spotts, Esq.
Counsel/Registered Agent AEGIS
Spotts, Smith, Fain & Buis, P.C.
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Richmond, Virginia 23219

PETITION FOR APPEAL

PRELIMINARY STATEMENT

This is an appeal by the Concerned Taxpayers of Brunswick County and nine named plaintiffs, hereinafter collectively "Concerned Taxpayers," of a case decision by the Director of the Virginia Department of Environmental Quality ("DEQ") to grant a major permit amendment to AEGIS Waste Solutions, Inc. ("AEGIS") to construct, operate, and maintain a solid waste management facility, with

amendments and modifications, in Brunswick County, Virginia.

The DEQ, a department of the Commonwealth of Virginia, through its Solid Waste Commission, issues permits for the operation and control of solid waste management facilities. Permits are issued pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1400, et seq. and Virginia Solid Waste Management Regulations (9 VAC 20-80-10 to 9 VAC 20-80-790, March 15, 1993).

DEQ first issued Solid Waste Facility Permit Number 583 to AEGIS for the operation of a landfill in Brunswick County, Virginia on April 17, 1995. The DEQ permit decision was challenged by Concerned Taxpayers on June 16, 1995¹, alleging illegal action on the part of the DEQ (1) for failing to determine whether the application did in fact contain properties not properly zoned by the local government; (2) for accepting an application from AEGIS which contained land which was not certified by the County; (3) for failing to make the required statutory determination that the proposed facility poses no substantial present or potential danger to human health or the environment; and (4) failing to offer the opportunity for a formal hearing on the AEGIS permit. *Concerned Taxpayers of Brunswick County, et al. v. Department of Environmental Quality*, Brunswick County Circuit Court, Chancery No. CH95-57 (1995). The case was argued before this Court March 18, 1996. As of the time of this complaint, the Court has rendered no opinion.

While a decision was pending before this Court, the Virginia Court of Appeals decided *Residents Involved in Saving the Environment, Inc. ("R.I.S.E.") v. Department of Environmental*

¹/ The 1995 complaint also recites the history of legal challenges to the land use decisions of Brunswick County regarding conditional use permits for AEGIS which need not be repeated here.

Quality, 22 Va. App. 532, 471 S.E.2d 796 (1996). The R.I.S.E. decision addressed the third issue before this court, holding that the Director of the Department of Environmental Quality is required to make a separate determination under Va. Code § 10.1-1408.1(D) as to any substantial present or potential danger to human health or the environment.²

As a result of that decision DEQ agreed to take a voluntary remand of the third issue in this case. This Court granted such remand on November 8, 1996, and on December 10, 1996 DEQ made the required determination.

As part of the statutory prerequisites to any permit issuance, DEQ must have a certification of the applicant's compliance with all applicable local government ordinances. Va. Code § 10.1-1408.1(B)(1) (1997 Supp.). Brunswick County certified such compliance on October 22, 1993. However, the application submitted to DEQ by AEGIS contained property and boundary determinations that included land that was not certified by the County. Nonetheless, DEQ processed the application anyway and issued Solid Waste Permit No. 583.

When AEGIS submitted its application for the major amendment which is the subject of this appeal, both AEGIS and DEQ relied upon the same local government certification and the same property boundaries (amended slightly to reflect survey errors not relative here) to decide, and issue, the major amendment to Solid Waste Permit No. 583 even though the disputed properties *still* have not been zoned or certified for solid waste landfill use.

²/ The Court of Appeals decision on this issue was affirmed by unanimous decision of the Virginia Supreme Court. *Browning-Ferris Industries of South Atlantic, Inc. v. R.I.S.E. and Commonwealth of Virginia Department of Environmental Quality v. R.I.S.E.*, Record Nos. 961426 and 961462 (September 12, 1997).

However, in issuing the amended permit, DEQ did evaluate and review compliance with the local government certification, alleged error number one in the original permit challenge. DEQ determined that the areas permitted for landfilling do not encroach upon the properties included in the Part A application not certified by the local government. DEQ thus determined that the county conditional use permit was not violated, nor had DEQ violated the local agreements by allowing these properties to be used for landfill purposes. Since DEQ has granted the relief requested by Count I of the original suit, i.e., has reviewed the local government certification for compliance with the application, Concerned Taxpayers does reallege that count in this petition.

Because a "major amendment" may be, and likely will be considered by the agency as a stand alone permit decision, Concerned Taxpayers brings this action challenging the major permit amendment on the remaining grounds raised in the original permit issuance, i.e., that the application submitted by AEGIS contained property neither certified by nor zoned by the County for landfill use, and that DEQ was without authority to accept, process or issue such permit where, on its face, the application included lands not certified by the local government.

Because the issues and facts of this action are the same or similar to the pending action before the Court, Concerned Taxpayers has requested that the cases be consolidated for one determination.

ACTIONS ON APPEAL

1. DEQ erroneously and without legal authority under Va. Code 10.1-1408.1 included in its permit amendment evaluation parcels of land which the local government had not certified compliance with local ordinances, and which had not been included or evaluated in Part A of the permit application, and subsequently issued the major amendment to Solid Waste Permit No. 583 including such uncertified land parcels.

PARTIES AND STANDING

2. Appellant Concerned Taxpayers of Brunswick County is an unincorporated association consisting of members who own real property in Brunswick County, Virginia. Concerned Taxpayers of Brunswick County was organized and operates for the purpose of advancing the interests of its members. This action is brought on behalf of its members who are harmed by the unlawful actions of appellee Department of Environmental Quality ("DEQ") through the actions of its Director in the issuance of a major amendment to a solid waste facility permit to AEGIS. Concerned Taxpayers are harmed by DEQ's action and the approved landfill through decreased property values, potential pollution of groundwater water, exposure to waste materials and other harms as detailed herein.

3. Mr. J.M. Moseley, Jr. is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

4. Mr. M.K. Mosely is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

5. Mr. Jerry Marston is a Brunswick County resident who owns or occupies real property consisting of 10 acres, more or less, located in Brunswick County within approximately one mile of the proposed landfill.

6. Mr. H. Bruce Brandon owns real property consisting of 300 acres, more or less, located in Brunswick County within one-half mile of the proposed landfill.

7. Ms. Julia Reavis Blandford is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located immediately adjacent to the proposed landfill.

8. Mr. James F. Hite is a Brunswick County resident who owns real property consisting

of 3 acres, more or less, located in Brunswick County within one mile of the proposed landfill.

9. Mr. Charles M. Bland is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

10. Mr. Sidney E. Brown is a Brunswick County resident who owns real property consisting of 300 acres, more or less, located in Brunswick County.

11. Concerned Taxpayers and its members, including but not limited to, Julia Reavis Blandford, Charles M. Bland, and James Moseley, Jr. are adversely affected by the potential for groundwater contamination from the proposed site, exposure to waste material hauling and storage, along with such activity's inherent loss of waste materials to the nearby environment, spillage, insect and vermin population increases and reduced property values. All members of Concerned Taxpayers listed herein rely upon groundwater resources for their drinking water needs, a use which is threatened by the proposed facility's potential for groundwater contamination.

12. Defendant Department of Environmental Quality ("DEQ") is a department of the Commonwealth of Virginia, which, through its Director, Thomas L. Hopkins, has final control over the issuance of permits and permit amendments for solid waste facilities in Virginia. Thomas L. Hopkins is named in his official capacity as Director of the Department of Environmental Quality.

13. AEGIS Waste Solutions, Inc., a Virginia Corporation, is the permit applicant and operator of the landfill facility at issue in this case. AEGIS is joined a necessary party to any determination of the legality of the permit amendment. AEGIS has its principal place of business at 8101 Roanoke Road, Elliston, Virginia 24087.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1457, which authorizes appeal of any final decision of the Board or Director by any person aggrieved in accordance with the Virginia Administrative Process Act, Va. Code § 9-6.14.1 et seq. The "Director" is the Director of DEQ. Va. Code § 10.1-1185. This action was filed in accordance with Supreme Court Rule 2A:2 and 2A:4.

15. Notice of Appeal of the Director's case decision was timely filed by Concerned Taxpayers in accordance with the Virginia Administrative Process Act and Part 2A of the Rules of the Supreme Court of Virginia.

16. Venue is vested in this court pursuant to Va. Code § 9-6.14:5 and Va. Code § 8.01-261(1)(a)(1,3) where Appellants reside and the property affected is located.

APPLICABLE LAW

17. The basic law authorizing the issuance of solid waste permits is Va. Code § 10.1-1408, et seq., of which the provisions of sections 10.1-1408.1 are at issue in this action.

ISSUES ON APPEAL

- I. DEQ acted without statutory authority in approving a major amendment of Solid Waste Permit No. 583 where the application contained properties not certified as in compliance with applicable local ordinances for solid waste landfill use.**

18. Paragraphs 1-17 are realleged and incorporated herein.

19. The Virginia legislature provides for dual roles for the siting and permitting of landfill facilities. The power to zone and determine appropriate land use locations for such facilities are reserved to the local government. Operation, maintenance, management, fiscal responsibility and

safety are regulated by permits issued by DEQ, though the Virginia Waste Management Act. Va. Code § 10.1-1408 et seq.

20. The distinct roles of local government and state agencies are maintained both through the general circumscriptions of the Dillon Rule and, as in the case at bar, by statutory mandate. Under the Virginia Waste Management Act, no "application for a new solid waste facility permit shall be complete unless it contains...[a] certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances." Va. Code § 10.1-1408.1(B).

21. The provisions of Va. Code § 10.1-1408.1(B) are similar to limitations on permit authority given to other state agencies and boards. See, State Water Control Law, Va. Code § 62.1-44.15:3 (application incomplete without local government certification). These limitations reflect a legislative directive that no permit application should be considered by any state agency unless the proposed project is first in complete conformity with local government land use ordinances.

22. The purpose of such legislation serves to distinguish the unique roles that the agency and local government each play in the safe and appropriate location of regulated facilities such as landfills. These separate roles are not advisory or parallel in scope; rather, they are separate and distinct and must be accorded the weight and importance assigned to them by the legislature.

23. In a similar fashion, DEQ solid waste regulations also require assurances that the permit applicant has the necessary legal control over the proposed landfill site property: "The Department will not consider an application for a permit from any person who does not demonstrate legal control over the site for a period of the permit life...." Department of Waste Management, Solid Waste Management Regulations 9 VAC 20-80-10, § 7.3(D) (1993).

24. DEQ issued Solid Waste Facility Permit No. 583 to AEGIS on April 17, 1995. No conditions or requirements were imposed in the permit regarding the validity of the CUP or the legal control of the proposed landfill property.

25. At least two parcels relied upon by AEGIS in the Part A application to DEQ were, in fact, subsequently determined by the local government to not be conditionally zoned for landfill uses, and subsequent attempts by AEGIS to obtain such conditional zoning have been rejected. Nonetheless, DEQ continues to rely upon the original certification by the local government, has not sought any clarification, and has issued this major permit amendment based on the same certification, application and properties included therein.

26. AEGIS filed the present application for a major amendment of Solid Waste Permit No. 583 on April 2, 1997. After numerous further revisions, DEQ determined the application complete on September 12, 1997.

27. In response to public comments raised in the course of the amendment proceedings, DEQ stated that the local government conditional use permit still does not allow the properties [referring to parcels 63-33A, 63-47 & 53-143A] to be included in the Part A area.

28. DEQ issued the amended permit to AEGIS on December 14, 1997, including approval of Part A permitted acreage of 822 acres, which included land parcel nos. 63-33A, 63-47 and 53-143A.

29. DEQ regulations prohibit consideration of a permit application from any person who cannot demonstrate legal control over the site. 9 VAC 20, et seq. Obtaining proper zoning and compliance with all applicable local ordinances is an essential component of the applicant's legal control over the landfill site. Thus, DEQ may not even consider an application, much less issue a

permit or amendment, without satisfying itself that the applicant has the prerequisite legal control over the proposed site.

30. The Part A application for Solid Waste Facility Permit No. 583, which provides the information essential for assessment of site suitability for the proposed facility, must designate the precise location of the facility. DEQ records, the actual permit, and responses to public comment all show the Part A application designated landfill area as 755 acres.

31. The solid waste permit issued by DEQ to AEGIS, dated April 17, 1995 approves a landfill area of 854 acres, including lands not certified or subject to conditional use zoning for landfill disposal and treatment facilities.

32. In reliance on the same Part A and Part B application papers, and incorporating same therein, modified only for technical issues regarding the type of waste, liners and other non-property related issues, DEQ issued a major amendment to Solid Waste Permit No. 583 on December 14, 1997.

33. In DEQ's response to public comment regarding the amended permit, DEQ states that as was the case at [original] permit issuance, the Part A permitted acreage remains at approximately 822 acres.

34. Without certification of compliance with local ordinances, DEQ is without authority to even consider the application of AEGIS, and without authority to issue a permit authorizing waste disposal and operation of the landfill site lands so affected, or to amend such permits based on the same underlying application. Such violations constitute both statutory and procedural violations subject to judicial review under Va. Code § 9-6.14:16 and 17.

ASSIGNMENT OF ERROR

The DEQ is required to follow statutory mandates in all solid waste permit actions. The DEQ erred in the processing and issuance of amended Solid Waste Facility Permit No. 583 by: approving an amendment of Solid Waste Permit No. 583 to permit construction and operation of a landfill on land not certified by the local government as in compliance with applicable local ordinances and not part of the Part A permit application.

Request for Relief

WHEREFORE, in accordance with the authority vested in this Court by Va. Code § 9-6.14:19, Appellant Concerned Taxpayers respectfully requests the court to grant the following relief:

(a) Declare that the Department of Environmental Quality was without legal authority to consider or approve an application by AEGIS for a major permit amendment which contained land parcels not certified by the local government;

(b) Remand to the Department of Environmental Quality Solid Waste Facility Permit No. 583 and the major amendment of December 10, 1997 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court, and processes any application by AEGIS in full accordance with the Virginia Code;

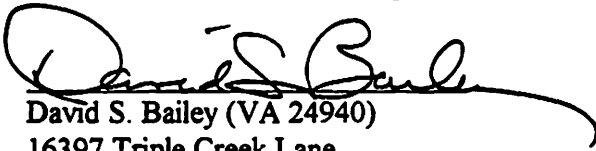
(c) Award Concerned Taxpayers their costs, including reasonable attorneys fees, expended in this matter, in accordance with Va. Code § 9-6.14:21; and

(d) Grant such other relief in this action as it may deem appropriate.

Respectfully submitted,

Concerned Taxpayers of Brunswick County, et al.

By Counsel:

A handwritten signature in black ink, appearing to read "David S. Bailey", with a long horizontal flourish extending to the right.

David S. Bailey (VA 24940)
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TEL: 804-227-3122
FAX: 804-227-3581

DATE: February 6, 1998

VIRGINIA:

IN THE CIRCUIT COURT FOR BRUNSWICK COUNTY

CONCERNED TAXPAYERS OF BRUNSWICK COUNTY,)
J.M. MOSELEY, JR., M.K. MOSELEY, JERRY L. MARSTON,)
H. BRUCE BRANDON, JULIA REAVIS BLANDFORD, JAMES)
F. HITE, CHARLES M. BLAND, SIDNEY E. BROWN,)

Appellants,)

v.)

Chan. No. 98-34

DEPARTMENT OF ENVIRONMENTAL QUALITY, DENNIS)
TREACY, ACTING DIRECTOR,)

AND)

AEGIS WASTE SOLUTIONS, INC., a Virginia Corporation.)

Appellees.)

IN RE: AMENDMENT OF SOLID WASTE FACILITY
PERMIT NO. 583, BRUNSWICK WASTE MANAGEMENT
FACILITY, AEGIS WASTE SOLUTIONS, INC.

SERVE: Dennis Treacy, Acting Director
Department of Environmental Quality
629 East Main Street
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Meade A. Spotts, Esq.
Counsel/Registered Agent
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PETITION FOR APPEAL

PRELIMINARY STATEMENT

This is an appeal by the Concerned Taxpayers of Brunswick County and nine named plaintiffs, hereinafter collectively "Concerned Taxpayers," of a case decision by the Director of the Virginia Department of Environmental Quality ("DEQ") to grant a major permit amendment to AEGIS Waste Solutions, Inc. ("AEGIS") to construct, operate, and maintain a solid waste facility, with amendments and modifications, in Brunswick County, Virginia.

The DEQ, through its Solid Waste Commission, issues permits for the operation and control of solid waste management facilities. Permits are issued pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1400, et seq. and the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 to 9 VAC 20-80-790, March 15, 1993).

DEQ first issued Solid Waste Facility Permit Number 583 to AEGIS for the operation of a landfill in Brunswick County, Virginia on April 17, 1995. The DEQ permit was challenged by Concerned Taxpayers on June 16, 1995¹, alleging illegal action on the part of DEQ for, *inter alia*, accepting an application from AEGIS which contained land which was not certified by the County. *Concerned Taxpayers of Brunswick County, et al. v. Department of Environmental Quality, Brunswick County Circuit Court*, Chancery No. CH95-57 (1995). The case was argued before this court on March 18, 1996. As of the time of this Petition, the Court has rendered no opinion.

As part of the statutory prerequisites to any permit issuance, DEQ must have a certification of the applicant's compliance with all applicable local government ordinances. Va. Code § 10.1-1408.1(B)(1) (1997 Supp.). Brunswick County certified such compliance on October 22, 1993. However, the application submitted to DEQ by AEGIS contained property and boundary determinations that included land that was not certified by the County. Nonetheless, DEQ processed the application and issued Permit No. 583.

AEGIS subsequently sought a major amendment to Permit No. 583 in April 1997, with AEGIS continuing to rely upon the original County certification and at the same time, submitting

^{1/} The 1995 complaint also recites the history of legal challenges to the land use decisions of Brunswick County regarding conditional use permits for AEGIS which need not be repeated here.

application papers and amendments to the original application which contained uncertified properties. In addition, AEGIS failed to even maintain the entire waste disposal facility within the certified properties but used uncertified lands for monitoring wells and other landfill site necessities such as the landfill office. Nonetheless, DEQ issued the first major permit amendment on December 14, 1997. Concerned Taxpayers challenged this permit amendment on February 6, 1998. *Concerned Taxpayers of Brunswick County, et al. v. Department of Environmental Quality, et al.*, Brunswick County Circuit Court, Chancery No. 98-02.

When AEGIS submitted its application for the first major amendment, and for the second major amendment which is the subject of this Petition, both AEGIS and DEQ relied upon the same local government certification and the same property boundaries (amended slightly to reflect survey errors not relevant here) to decide, and issue, the major amendment to Solid Waste Permit No. 583 even though the disputed properties *still* have not been zoned or certified for solid waste landfill use.

Because a “major amendment” may be, and likely will be considered by the DEQ as a stand alone permit decision, Concerned Taxpayers brings this action challenging what is now a second major amendment on the same grounds raised in the original permit issuance and the first major amendment, i.e., that the application submitted by AEGIS contained property neither certified by nor zoned by the County for landfill use, and that DEQ was without authority to accept, process or issue such permit where, on its face, the application included lands not certified by the local government. This fatal flaw in the original application is repeated, and reinstated in each subsequent major permit application which relies upon the original certification, and DEQ remains without authority to process the original permit or any subsequent amendment based

upon uncertified properties.

ACTIONS ON APPEAL

1. DEQ erroneously and without legal authority under Va. Code § 10.1-1408.1 included in its permit amendment evaluation parcels of land which the local government had not certified compliance with local ordinances, and which had not been included or evaluated in Part A of the permit application, and subsequently issued a Second Major Permit Amendment to Solid Waste Permit No. 583 including such uncertified land parcels.

PARTIES AND STANDING

2. Appellant Concerned Taxpayers of Brunswick County is an unincorporated association of members who own real property in Brunswick County, Virginia. Concerned Taxpayers was organized and operates for the purpose of advancing the interests of its members. This action is brought on behalf of its members who are harmed by the unlawful actions of appellee DEQ through the actions of its Director in the issuance of a major amendment to a solid waste facility to AEGIS. Concerned Taxpayers are harmed by DEQ's decision and the approved landfill through decreased property values, potential pollution of groundwater, exposure to waste materials and other harms as detailed herein. Concerned Taxpayers has participated in the public participation process through the appearance and comments of its members at hearings before DEQ as authorized by its members.

3. Mr. J.M. Moseley, Jr. is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

4. Mr. M.K. Moseley is a Brunswick County resident who owns or occupies real property consisting of 230 acres, more or less, located immediately adjacent to the proposed landfill.

5. Mr. Jerry Marston is a Brunswick County resident who owns or occupies real property consisting of ten acres, more or less, located in Brunswick County within approximately one mile of the landfill.

6. Mr. H. Bruce Brandon owns real property consisting of 300 acres, more or less, located in Brunswick County within one-half mile of the proposed landfill.

7. Ms. Julia Reavis Blandford is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located immediately adjacent to the proposed landfill.

8. Mr. James F. Hite is a Brunswick County resident who owns real property consisting of 3 acres, more or less, located within one mile of the proposed landfill.

9. Mr. Charles M. Bland is a Brunswick County resident who owns real property consisting of 50 acres, more or less, located in Brunswick County immediately adjacent to the proposed landfill.

10. Mr. Sidney E. Brown is a Brunswick County resident who owns real property consisting of 300 acres, more or less, located in Brunswick County.

11. All of the above-named persons are members of Concerned Taxpayers of Brunswick County.

12. Concerned Taxpayers and its members, including but not limited to, Julia Reavis Blandford, Charles M. Bland, and J.M. Moseley, Jr. are adversely affected by the potential for

groundwater contamination from the proposed site, exposure to waste material hauling and storage, along with such activity's inherent loss of waste materials to the nearby environment, spillage, insect and vermin population increases and reduced property values. All members of Concerned Taxpayers listed herein rely upon groundwater resources for their drinking water needs, a use which is threatened by the proposed facility's potential for groundwater contamination. All members of Concerned Taxpayers have participated directly in the public participation process, or have authorized other members to express their views in such public participation process.

13. Defendant Department of Environmental Quality is a department of the Commonwealth of Virginia, which through its Director, Thomas L. Hopkins, has final control over the issuance of permits and permit amendments for solid waste facilities in Virginia. Although still listed as the Director of DEQ, Thomas L. Hopkins is deceased, and Dennis Treacy is acting as DEQ Director, and he is named in his official capacity.

14. AEGIS Waste Solutions, Inc., a Virginia Corporation, is the permit applicant and operator of the landfill facility at issue in this case. AEGIS is joined as a necessary party to any determination of the legality of the permit amendment. AEGIS has its principal place of business at 8101 Roanoke Road, Elliston, Virginia 24087.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to the Virginia Waste Management Act, Va. Code § 10.1-1457, which authorizes appeal of any final decision of the Board or Director by any person aggrieved in accordance with the Virginia Administrative Process Act, Va. Code § 9-6.14.1 et seq. The "Director" is the Director of DEQ. Va. Code §

10.1-1185. This action was filed in accordance with Supreme Court Rules 2A:2 and 2A:4.

16. Notice of Appeal of the Director's case decision was timely filed by Concerned Taxpayers in accordance with the Virginia Administrative Process Act and Part 2A of the Rules of the Supreme Court of Virginia.

17. Venue is vested in this Court pursuant to Va. Code § 9-6.14:5 and Va. Code § 8.01-261(1)(a)(1,3).

APPLICABLE LAW

18. The basic law authorizing the issuance of solid waste permits is Va. Code § 10.1-1408, et seq., of which the provisions of sections 10.1-1408.1 are at issue in this action.

ISSUES ON APPEAL

- I. **DEQ acted without statutory authority in approving a second major amendment of Solid Waste Permit No. 583 where the application contained properties not certified as in compliance with applicable local ordinances for solid waste landfill use.**

19. Paragraphs 1-18 are realleged and incorporated herein.

20. The Virginia Legislature provides for dual roles in the siting and permitting of solid waste landfill facilities. The power to zone and determine appropriate land use locations for such facilities is reserved to the local government. Operation, maintenance, management, fiscal responsibility and safety are regulated by permits issued by DEQ, through the Virginia Waste Management Act. Va. Code § 10.1-1408.1(B).

21. The distinct roles of local government and state agencies are maintained both through the general circumscriptions of the Dillion Rule, and, as in the case at bar, by statutory mandate. Under the Virginia Waste Management Act, no "application for a new solid waste

facility permit shall be complete unless it contains...[a] certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances.” Va. Code § 10.1-1408.1(B).

22. The provisions of Va. Code § 10.1-1408.1(B) are similar to limitations on permit authority given to other state agencies and boards. See, e.g., State Water Control Law, Va. Code § 62.1-44.15:3 (application incomplete without local government certification). These limitations reflect a legislative directive that no permit application should be considered by any state agency unless the proposed project is first in complete conformity with local government land use ordinances.

23. The purpose of such legislation serves to distinguish the unique roles that the agency and the local government each play in the safe and appropriate location of regulated facilities such as landfills. These separate roles are not advisory or parallel in scope; rather they are separate and distinct and must be accorded the weight and importance assigned to them by the legislature. Together, they form an important set of substantive protections afforded the citizens of Virginia that solid waste landfill construction and operation will protect the environment and the public health.

24. In a similar fashion, DEQ solid waste regulations also require assurances that the permit applicant has the necessary legal control over the proposed landfill site property: “The Department will not consider an application for a permit from any person who does not demonstrate legal control over the site for a period of the permit life....” Dept. Waste Management, Solid Waste Management Waste Regulations 9 VAC 20-80-10, § 7.3(D) (1993).

25. DEQ issued the original Solid Waste Facility Permit No. 583 to AEGIS on April

17, 1995. No conditions or requirements were imposed in the permit regarding the validity of the County Conditional Use Permit or the legal control of the landfill property.

26. At least two parcels relied upon by AEGIS in the Part A application to DEQ were, in fact, subsequently determined by the local government to not be conditionally zoned for landfill uses, and subsequent attempts by AEGIS to obtain conditional zoning for these parcels have been rejected. Nonetheless, DEQ continues to rely upon the original certification by the local government, knowing that such parcels are not certified, and has now a second major permit amendment based on the same certification, application and properties included therein.

27. AEGIS filed the application for this second major permit amendment to further expand the disposal area in October 1997. After review and revision, DEQ issued the second major amendment on May 4, 1998.

28. In response to public comments by Concerned Taxpayers in the course of the permit amendment proceedings, DEQ stated that the local government conditional use permit still does not allow the property parcels 63-33A, 63-47 & 53-143A, all of which were included in the AEGIS permit application, to be included in the Part A area.

29. Nonetheless, DEQ issued the second major permit amendment to AEGIS, including approval of Part A permitted acreage of 822 acres, which included land parcels nos. 63-33A, 63-47 and 53-143A.

30. DEQ regulations prohibit consideration of a permit application from any person who cannot demonstrate legal control over a site. 9 VAC 20, et seq. Obtaining proper zoning and compliance with all applicable local ordinances is an essential component of the applicant's legal control over the site. These regulations are but an extension of the statutory bar to

consideration of any application without local government certification that the applicant has the proper zoning for the site. Thus, DEQ may not consider an application, much less issue a permit or an amendment, without having satisfied the requirements for local government approval and legal control over the site.

31. The Part A application for Solid Waste Facility Permit No. 583, which provides the information essential for assessment of site suitability for the proposed facility, must designate the precise location of the facility. DEQ records, the actual permit, and responses to public comment all show the Part A application designated landfill area as 755 acres.

32. The solid waste permit amendment issued by DEQ to AEGIS, however, in reliance on the same Part A and Part B application papers of the original permit, and incorporating the same therein, approves a landfill area of 854 acres, including the lands not certified or subject to conditional use zoning for landfill disposal and treatment facilities.

33. In DEQ's response to public comment regarding the amended permit, DEQ states that as was the case at [original] permit issuance, the Part A permitted acreage remains at approximately 822 acres.

34. Without certification of compliance with local ordinances, DEQ is without authority to even consider the application of AEGIS, and without authority to issue a permit authorizing waste disposal and operation of the landfill site lands so affected, or to amend such permits based on the same underlying application. Such violations constitute both statutory and procedural violations subject to judicial review under Va. Code § 9-6.14:16 and 17.

ASSIGNMENT OF ERROR

The DEQ erred in the processing and issuance of a major permit amendment of Solid Waste Permit No. 583 by approving an amendment to permit construction and operation of a landfill in land not certified by the local government as in compliance with applicable local ordinances and not part of the original Part A permit application.

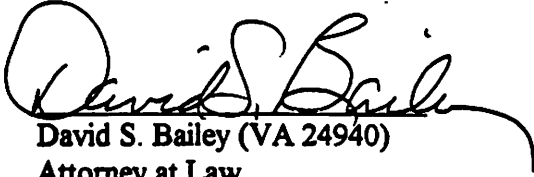
REQUEST FOR RELIEF

WHEREFORE, in accordance with the authority vested in this Court by Va. Code § 9-6.14:19, Appellant Concerned Taxpayers respectfully requests the court to grant the following relief:

- (A) Declare that the Department of Environmental Quality was without legal authority to consider or approve an application by AEGIS for a major permit amendment which contained land not certified by the local government;
- (B) Remand to the Department of Environmental Quality Solid Waste Facility Permit No. 583 and the Second Major Permit Amendment of May 4, 1998 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court, and processes any application by AEGIS in full accordance with the Virginia Code;
- (C) Award Concerned Taxpayers their costs, including reasonable attorney's fees, expended in this matter, in accordance with Va. Code § 9-6.14:21; and
- (D) Grant such other relief in this action as it may deem appropriate.

Respectfully submitted,

Concerned Taxpayers of Brunswick County, et al.
By Counsel

A handwritten signature in black ink, appearing to read "David S. Bailey". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline that extends to the right.

David S. Bailey (VA 24940)
Attorney at Law
16397 Triple Creek Lane
Beaverdam, Virginia 23015
TEL: 804-227-3122

Date: June 29, 1998

VIRGINIA:

IN THE CIRCUIT COURT FOR BRUNSWICK COUNTY

| | | |
|--|---|----------------------|
| CONCERNED TAXPAYERS OF BRUNSWICK COUNTY, |) | |
| ET AL., |) | |
| |) | |
| Appellants, |) | |
| |) | |
| v. |) | Chancery No. CH95-57 |
| |) | Chancery No. CH98-02 |
| DEPARTMENT OF ENVIRONMENTAL QUALITY, DENNIS |) | Chancery No. CH98-34 |
| H. TREACY, DIRECTOR |) | |
| |) | |
| AND |) | |
| |) | |
| AEGIS WASTE SOLUTIONS, INC., a Virginia Corporation. |) | |
| |) | |
| Appellees. |) | |

FINAL ORDER

On July 14, 1998, the parties, by counsel, appeared before the Court, sitting at Sussex Courthouse, to be heard on their respective motions for summary judgment filed in Chancery No. CH98-02 pursuant to Supreme Court Rule 2:21. All parties agreed that no material fact was genuinely in dispute and that summary judgment was appropriate to dispose of CH98-02. In supporting memoranda and arguments of counsel, each party asserted that it was entitled to judgment as a matter of law.

On March 18, 1996 the parties, by counsel, had appeared before the Court, sitting at Lawrenceville, to be heard on the merits of the petition for appeal filed in Concerned Taxpayers of Brunswick County, et al. v. Virginia Department of Environmental Quality, et al., (Chancery No. CH95-57). After consideration of arguments of counsel and the memoranda in support thereof, the Court at that time took CH95-57 under advisement.

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DEP
CIRCUIT COURT
STA
BRUNSWICK

While those two appeals were pending, a third appeal was filed in this Court styled Concerned Taxpayers of Brunswick County, et al. v. Virginia Department of Environmental Quality, et al., (Chancery No. CH98-34). Responsive pleadings were filed by the Appellees and No. CH98-34 is ripe for decision. It is the intention of the Court that this Final Order dispose simultaneously of CH95-57, CH98-02 and CH98-34.

Chancery No. CH95-57 is an appeal, taken by Appellants Concerned Taxpayers of Brunswick County and others ("Concerned Taxpayers") pursuant to Code Section 10.1-1457, from the April 17, 1995 decision of the Director of the Virginia Department of Environmental Quality ("DEQ") to issue Permit No. 583 ("Permit") to AEGIS Waste Solutions, Inc. ("AEGIS"), authorizing construction and operation of a solid waste landfill in Brunswick County. The Permit was issued by the DEQ Director pursuant to Chapter 14 of Title 10.1 of the Code of Virginia.

Chancery No. CH98-02 was filed by Concerned Taxpayers pursuant to Code Section 10.1-1457, appealing the December 10, 1997 decision by the DEQ Director to amend the Permit. Chancery No. CH98-34 is an appeal filed by Concerned Taxpayers from a decision of the DEQ Director amending the Permit again, on May 4, 1998. Both amendments to the Permit were made pursuant to applications submitted by AEGIS.

In CH95-57, Concerned Taxpayers alleged that the DEQ Director acted unlawfully in issuing the Permit. They asserted four assignments of error in their Petition for Appeal. Only one of those assignments of error remains to be decided. That is, whether issuance of the Permit complied with § 10.1-1408.1.B.1. of the Code of Virginia, which provides that no application to DEQ for a new solid waste management facility permit is complete unless it contains certification from the local governing body that the location and operation of the facility are

consistent with all applicable ordinances. The Court finds that the agency record that was filed in CH95-57 in accordance with Code § 9-6.14:17 includes certification from Brunswick County, dated October 22, 1993, to the effect that the location and operation of the facility proposed by AEGIS are consistent with all applicable ordinances. The Court finds further that this certification was included with the permit application that was submitted by AEGIS to DEQ, as required by § 10.1-1408.1.B.1.

In CH98-02 and CH98-34, Concerned Taxpayers alleged that subsequent amendments to the Permit also violated § 10.1-1408.1.B.1. Concerned Taxpayers have conceded that the statute does not require that a new local government certification accompany applications for permit amendments. They contend, however, that the Permit was unlawfully issued as not in conformance with the local government certification required under § 10.1-1408.1.B.1. and that subsequent amendments to the Permit are therefore void.

These three appeals share a common issue of law, that is, whether DEQ and the DEQ Director complied with § 10.1-1408.1.B.1 in processing the Permit application and issuing the Permit. Because the appeals share a common issue of law, because there are no material issues of fact in any of the appeals, and because the parties by counsel have advised the Court that they do not object to consolidation of the appeals for the purpose of final disposition, it is

ORDERED that the appeals be, and they hereby are, consolidated for decision.

After consideration of the agency files, minutes and records that have been filed in accordance with § 9-6.14:17, the pleadings, arguments of counsel and memoranda in support thereof, and the provisions of § 10.1-1408.1.B.1., the Court is of the opinion that the DEQ Director and the Department of Environmental Quality acted in compliance with the requirements of applicable law in processing AEGIS' permit application and in issuing the

Permit. The Court also finds that the Director and the Department acted lawfully in amending the Permit on December 10, 1997 and on May 4, 1998. The Court finds that the Appellants have failed to designate or demonstrate an error of law on the part of the DEQ Director or the Department of Environmental Quality, as required by § 9-6.14:17 and that the Appellees are therefore entitled to judgment in their favor. The Court finds further that, compliance with § 10.1-1408.1.B.1 being the sole issue remaining for decision in these three appeals, a final order disposing of them is appropriate.

NOW THEREFORE, for the reasons stated herein, and in accordance with § 9-6.14:19, it is hereby ADJUDGED, ORDERED and DECREED:

1. As to Chancery No. CH95-57, the decision of the DEQ Director to issue Solid Waste Facility Permit No. 583 to AEGIS Waste Solutions, Inc., on April 17, 1995 is affirmed. The relief requested in the Petition for Appeal filed by Concerned Taxpayers of Brunswick County and others is denied, and the appeal is dismissed with prejudice;

2. As to Chancery No. CH98-02, the summary judgment motion filed by Appellants Concerned Taxpayers of Brunswick County and others is overruled. The summary judgment motions filed by Appellees Commonwealth of Virginia and AEGIS Waste Solutions, Inc. are granted. The decision of the DEQ director to amend the Permit on December 10, 1997 is affirmed. The relief requested in the Petition for Appeal is denied and the appeal is dismissed with prejudice.

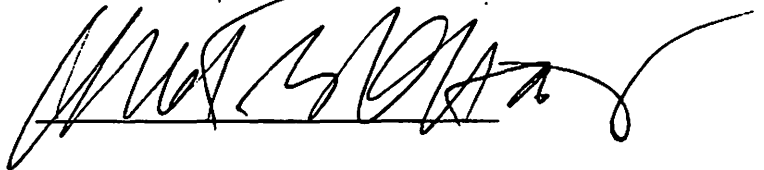
3. The issue on appeal in Chancery No. CH98-34 is hereby determined to be barred by the doctrine of *res judicata* as a result of the preceding decisions dismissing CH95-57 and CH98-02. The decision of the DEQ Director to amend the Permit on May 4, 1998 is therefore affirmed. The relief requested in the Petition for Appeal is denied and the appeal is dismissed with prejudice.

4. Each party shall bear its own costs.

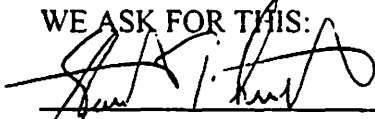
There being nothing further to be done in these appeals, it is hereby ORDERED that they be stricken from the docket. The Clerk is instructed to remove them from the list of active causes pending before this Court. The Clerk shall send an attested copy of this Final Order to all counsel of record.

Enter:

8/25/98



WE ASK FOR THIS:



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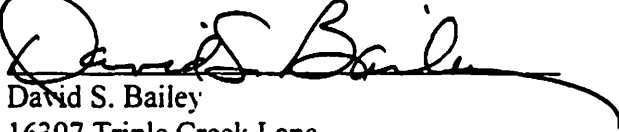
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Counsel for Appellee AEGIS Waste Solutions

SEEN AND OBJECTED TO:



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Beaverdam, Virginia 23015

Counsel for Appellants Concerned Taxpayers of
Brunswick County, et al.

Doc #: 237175: V. 1

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Frank and Senior Judge Baker
Argued at Norfolk, Virginia

CONCERNED TAXPAYERS OF BRUNSWICK COUNTY,
J. M. MOSELEY, JERRY L. MARTON, H. BRUCE
BRANDON, JULIA REAVIS BLANDFORD, JAMES F.
HITE, CHARLES M. BLAND AND SIDNEY E. BROWN

OPINION BY
JUDGE ROBERT P. FRANK
MARCH 14, 2000

v. Record No. 2180-98-2

DEPARTMENT OF ENVIRONMENTAL
QUALITY, DENNIS TREACY, ACTING DIRECTOR
AND AEGIS WASTE SOLUTIONS, INC.

FROM THE CIRCUIT COURT OF BRUNSWICK COUNTY
Robert G. O'Hara, Jr., Judge

David S. Bailey (David S. Bailey, L.L.C., on
briefs), for appellants.

Stewart T. Leeth, Assistant Attorney General;
(Mark L. Earley, Attorney General; Deborah L.
Feild, Assistant Attorney General, on brief),
for appellee Department of Environmental
Quality, Dennis Treacy, Acting Director.

Christopher Graham (Timothy G. Hayes;
Hunton & Williams, on brief), for appellee
AEGIS Waste Solutions, Inc.

Concerned Taxpayers of Brunswick County, et al. (appellants)
appeal the Brunswick County Circuit Court's decision finding that
the Department of Environmental Quality (DEQ) and the Director of
DEQ (Director) complied with the requirements of Code
§ 10.1-1408.1(B)(1) in issuing a permit and permit amendments to
AEGIS Waste Solutions, Inc. (AEGIS) authorizing construction and

operation of a solid waste landfill in Brunswick County.

Appellants argue that three parcels of land encompassed by the permit and the permit amendments were not certified as complying with all local ordinances as required by Code § 10.1-1408.1(B)(1). We reverse the decision of the circuit court and enter final judgment.

I. BACKGROUND

Appellants are an unincorporated organization of Brunswick County taxpayers and property owners and eight individuals who own property adjacent to or within a short distance of a solid waste landfill owned and operated by AEGIS.

In October 1993, as part of the permit application process, AEGIS requested certification from Brunswick County that the proposed facility complied with all local ordinances. On October 22, 1993, the Planning Director of Brunswick County issued a certification that the "proposed location and operation of the facility is consistent with all ordinances."

On December 6, 1993, AEGIS submitted Part A of the permit application. The Part A application included the "Near Vicinity Map" which identified the proposed site boundaries of the solid waste management facility. The "Near Vicinity Map" submitted by AEGIS with the Part A application included three parcels, 53-143A, 63-47, and 63-33A, that were marked by the letter "A" on the map. One of the notes on the map stated that parcels designated by the

letter "A" were under negotiation for inclusion in the site. DEQ approved the Part A application on March 25, 1994.

AEGIS submitted the Part B application on June 20, 1994. The Part B application contained a different map, entitled "Proposed Site Features." The "Proposed Site Features" Map included the three parcels within AEGIS's property boundary that were marked by the letter "A" on the "Near Vicinity Map."

DEQ published a draft permit and held a public hearing on March 6, 1995. On April 17, 1995, DEQ issued the permit to AEGIS. The permit stated that the "total site property consists of approximately 854 acres." The approved Part A application acreage was 822 acres.

DEQ granted the first amendment to the permit on December 10, 1997, which allowed a change in classification from industrial disposal to sanitary landfill, a liner design change for the existing landfill, and acceptance by the facility of regulated asbestos-containing material. The maps submitted by AEGIS for this amendment fully incorporated the three parcels as part of the property and facility boundary.

AEGIS submitted an application for a second permit and included a second local government certification, dated October 9, 1997. The second certification contained no clarifying language as to the three parcels. DEQ granted the second permit amendment on May 4, 1998, allowing expansion of the sanitary landfill area by 141 acres.

II. ANALYSIS

A. Standing

Appellees challenge appellants' standing to appeal under Code § 10.1-1457(B).

Code § 10.1-1457(B) sets forth the requirements for judicial review under the Virginia Waste Management Act (Act).

It states:

Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the Board or Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the Board's or Director's decision; shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

Code § 10.1-1400 defines a "person" as "an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity."

Code § 8.01-15 permits all unincorporated associations to sue and be sued under the name by which they are commonly known.

See Code § 8.01-15. "The words 'unincorporated association' . . . denote a voluntary group of persons joined together by mutual consent for the purpose of promoting some stated objective." Yonce v. Miners Mem. Hosp. Ass'n, 161 F.Supp. 178, 186 (W.D. Va. 1958).

Concerned Taxpayers of Brunswick County describes itself as an "unincorporated association consisting of members who own real property in Brunswick County, Virginia." The organization states that it was "organized and operates for the purpose of advancing the interests of its members."

We find that Concerned Taxpayers of Brunswick County satisfies the Yonce definition of an unincorporated association, and, therefore, qualifies as a "person" pursuant to the definition set forth in Code § 10.1-1400. Members of the association who sued individually clearly are "persons" as defined by the Act.

It is apparent from the record that appellants participated in the submittal of written comments in the public comment process.

Further, once the Director issued the permit for the landfill facility, appellants properly appealed the decision of the Director to the Circuit Court of Brunswick County.

The Act requires appellants to meet the requirements for standing under Article III of the United States Constitution. In Lujan v. Defenders of Wildlife, et al., 504 U.S. 555, 560-61

(1992) (alterations in originals) (citations omitted), the United States Supreme Court set forth the three requirements for Article III standing:

First, the plaintiff must have suffered an "injury in fact"-an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) "actual or imminent, not 'conjectural' or 'hypothetical,'" Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." . . . Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

In Warth v. Seldin, 422 U.S. 490 (1975), the United States Supreme Court addressed the Article III standing requirements for associations. The Court held that an association

must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. So long as this can be established, and so long as the nature of the claim and the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

Warth, 422 U.S. at 511.

In Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977), the United States Supreme Court developed a

three-prong test for associational standing based on the holding in Warth. The Court stated an association has Article III standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt, 432 U.S. at 343.

Code § 10.1-1457(B) merely reiterates the requirements set out in Lujan. Therefore, fulfillment of the tests set forth in Lujan and Hunt results in satisfaction of the standing requirement under Code § 10.1-1457(B).

The first prong of the test for associational standing requires that members of the association have standing to sue in their own right. See id. In United Food and Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 555 (1996), the Court stated that this prong requires "at least one member with standing to present, in his or her own right, the claim . . . pleaded by the association." Therefore, at least one member of the association, but not all of the members, must satisfy the Lujan test for Article III standing.

The Lujan test first requires that the injury be "concrete and particularized" and "imminent," not "hypothetical." See Lujan, 504 U.S. at 560. The Court defined a particularized

interest as one in which "the injury must affect the plaintiff in a personal and individual way." Id. at 561 n.1.

Environmental interests are legally protected under this standard. See Sierra Club v. Morton, 405 U.S. 727, 734 (1972).

"The 'injury in fact' test requires [however] that the party seeking review be himself among the injured." Id. at 734-35.

For the purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. At the same time, it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, after this opportunity, the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed.

Warth, 422 U.S. at 501-02 (citations omitted).

Under the Act, the procedures for issuance of a permit to construct and operate a landfill are designed to prevent "substantial or potential danger to human health or the environment." Code § 10.1-1408.1(D).

Appellants' allegations, taken as true, indicate that they have environmental, human health, and economic interests at stake. In their petition for appeal, appellants stated:

[A]ppellants are harmed by DEQ's action and the approved landfill through decreased property values, potential pollution of groundwater . . . , exposure to waste

materials and other harms as detailed herein. . . .

All members of Concerned Taxpayers listed herein rely upon groundwater resources for their drinking water needs, a use which is threatened by the proposed facility's potential for groundwater contamination.

Appellants' allegations demonstrate the potential danger to environmental, human health, and economic interests posed by the improper issuance of the permit. We, therefore, find that appellants are subject to a "concrete and particularized" injury as a result of the improper issuance of the permit and the operation of the landfill pursuant to such permit.

Additionally, we believe that appellants have suffered a violation of their procedural rights. Generally, "the person who has been accorded a procedural right to protect his concrete interest can assert that right without meeting all the normal standards for redressability and immediacy." Lujan, 504 U.S. at 573 n.7. In Lujan, the United States Supreme Court illustrated a violation of a procedural right:

One living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years.

Id. We believe that this case is analogous to the Court's example in Lujan, and hold that appellants have suffered injury

because their procedural right to proper governmental certification of the location of the landfill facility was violated by the issuance of the permit and subsequent operation of the landfill.

Lujan next requires that there be a causal connection between the complained of actions and the injury. See id. at 560. Code § 10.1-1408.1(D) states that the Director must determine that the "proposed facility poses no substantial present or potential danger to human health or the environment" prior to the issuance of the permit. Code § 10.1-1408.1(B)(1) requires certification from the local government that the proposed facility is "consistent with all applicable ordinances." Code § 10.1-1408.1(B)(1).

Code § 10.1-1408.1, therefore, supports the inference that the legislature intended the Act to protect environmental and public health interests. DEQ's issuance of a permit without proper certification does not achieve such purpose, nor does operation of the landfill by AEGIS. Therefore, the causal connection between appellants' alleged injuries and the actions of the appellees is clear.

The final requirement under Lujan is the redressability of the injury. See Lujan, 504 U.S. at 561. Invalidation of the landfill permit would result in a cessation of landfiling at the facility, which would protect appellants' environmental, human health, and economic interests. Further, in order to

resume landfilling at the facility, a permit with the requisite certification must be obtained. Such a permit, as intended by the legislature, would ensure protection for appellants' interests. We, therefore, find that the individual appellants and members of Concerned Taxpayers satisfy the Luian test.

Additionally, Concerned Taxpayers must satisfy the second and third prongs under Hunt. The second prong under Hunt requires that the purpose of the association must be germane to the interests it seeks to protect. See Hunt, 432 U.S. at 343. Concerned Taxpayers' self-description states that it is composed of Brunswick County landowners and operates to further the interests of its members. We find that the purpose of Concerned Taxpayers, to protect the property and interests of its members, is germane to its challenge of the permit issued by DEQ to AEGIS, which Concerned Taxpayers alleges will impact its members' property values and potentially pollute its members' groundwater resources. We, therefore, hold that Concerned Taxpayers has satisfied the second prong under Hunt.

The third prong of the Hunt test states that the claim asserted or the relief sought cannot require the participation of individual members of the association in the lawsuit. See id. The Court, in United Food, stated that this prong is a prudential requirement, rather than a constitutional necessity. See United Food, 517 U.S. at 555-56. Concerned Taxpayers' requests for relief in its appeals to the circuit court stated:

(a) Declare that the Department of Environmental Quality improperly considered the AEGIS permit application complete when there was evidence presented that the certification of compliance with local government ordinances, required by Va. Code § 10.1-1408.1(B)(1), was invalid; or, in the alternative, declare that DEQ failed to follow its own regulations to ensure that the applicant had legal control over the proposed landfill site in the face of evidence that the applicant did not have such control;

(b) Declare that the Department of Environmental Quality failed to make the required independent determination of whether the proposed facility poses any substantial present or potential danger to human health or the environment and to include such conditions or requirements in the solid waste permit to prevent such potential danger in accordance with statutory mandates;

(c) Declare that the DEQ was without authority to consider or approve land parcels for landfill operation or disposal which were not subject to certification by the County;

(d) Declare that the DEQ must provide for the taking of evidence and other attributes of an evidentiary hearing in accordance with Va. Code § 9-6[.]14:12 prior to issuance of any landfill permit pursuant to Va. Code § 10.1-1408.1;

(e) Remand to the Department of Environmental Quality Solid Waste Facility Permit No. 583 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court;

(f) Award Concerned Taxpayers their costs, including reasonable attorneys fees, expended in this matter, in accordance with Va. Code § 9-6.14:21; and

(g) Grant such other relief in this action as it may deem appropriate.

* * * * *

(a) Declare that the Department of Environmental Quality was without legal authority to consider or approve an application by AEGIS for a major permit amendment which contained land parcels not certified by the local government;

(b) Remand to the Department of Environmental Quality Solid Waste Facility Permit No. 583 and the major amendment of December 10, 1997 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court, and processes any application by AEGIS in full accordance with the Virginia Code;

* * * * *

(B) Remand to Department of Environmental Quality Solid Waste Permit No. 583 and the Second Major Permit Amendment of May 4, 1998 until such time as DEQ resolves and corrects the statutory and procedural errors found by the Court, and processes any application by AEGIS in full accordance with the Virginia Code;

We find that the relief requested by Concerned Taxpayers does not require individualized proof and may be resolved in a group context.

We, therefore, hold that Concerned Taxpayers and its members who brought claims individually, have standing to bring their claims pursuant to Code § 10.1-1457(B) and Article III of the United States Constitution.

B. Statutory Analysis

Appellants contend: 1) DEQ lacked authority to consider a solid waste facility permit application complete or to issue the permit when the application contained land parcels which were not certified by the local government pursuant to Code

§ 10.1-1408.1(B) (1) and 2) DEQ lacked authority to consider and issue amendments to the solid waste facility permit because it contained land parcels which were not certified by the local governing body pursuant to Code § 10.1-1408.1(B) (1). We agree with appellants and reverse the decision of the circuit court.

Code § 9-6.14:17 authorizes judicial review of agency decisions. In Johnston-Willis Ltd. v. Kenley, 6 Va. App. 231, 243, 369 S.E.2d 1, 7 (1988), we defined "the appropriate standard of review in terms of the degree of deference to be given to agency decisions." We stated:

[A]gency findings of fact are to be accorded great deference under the substantial evidence standard of review. However, when deciding whether an agency has followed proper procedures or complied with statutory authority . . . , an inquiry into whether there is substantial evidence in the record to support findings of fact of an agency is wholly inappropriate. Indeed, even though an agency's findings of fact may be supported by substantial evidence in the record, it may be subject to reversal because the agency failed to observe required procedures or to comply with statutory authority. See, e.g., Atkinson v. Virginia Alcoholic Beverage Control Commission, 1 Va. App. 172, 336 S.E.2d 527 (1985). Thus, where the legal issues require a determination by the reviewing court whether an agency has, for example, accorded constitutional rights, failed to comply with statutory authority, or failed to observe required procedures, less deference is required and the reviewing courts should not abdicate their judicial function and merely rubber-stamp an agency determination.

Johnston-Willis, 6 Va. App. at 243, 369 S.E.2d at 7-8. However, when the question requires an interpretation that is "within specialized competence of the agency," the agency's decision is afforded special deference. Id. at 244, 369 S.E.2d at 8.

In this case, we must determine whether DEQ properly issued the permit for operation of the landfill pursuant to Code § 10.1-1408.1(A). The Act and the Administrative Code clearly state the steps necessary for issuance of a landfill permit. We find that this is a statutory issue. Further, we do not find that determination of the fulfillment of the statutory requirements for the permitting process necessitates the "specialized competence" of DEQ. We, therefore, afford DEQ's decision little deference.

Code § 10.1-1408.1(A) states that no person shall be permitted to operate a landfill for the treatment, disposal or storage of non-hazardous waste without a permit from the Director. See Code § 10.1-1408.1(A). In order to initiate the permit application process, the person proposing to build a new solid waste management facility, modify an existing solid waste management facility or amend an existing permit must file a notice of intent with the Director stating the desired permit or permit amendment, the precise location of the proposed facility, and the intended use of the facility. See 9 Virginia Administrative Code § 20-80-500(B)(1). The notice of intent must be accompanied by area and site location maps. See id.

Code § 10.1-1408.1(B)(1) states that the permit application is not complete unless it contains "[c]ertification from the governing body of the county, city or town in which the facility is to be located and that the location and operation of the facility are consistent with all applicable ordinances." The Virginia Administrative Code augments the procedure set forth in Code § 10.1-1408.1(B)(1), and states that the certification from the local government must accompany the notice of intent. See 9 Virginia Administrative Code § 20-80-500(B)(3). If the location and operation of the facility are certified by the local governing body as consistent with its ordinances, without qualifications, conditions, or reservations, the applicant may submit the application in two parts, Part A and Part B. See 9 Virginia Administrative Code § 20-80-500(B)(4). "Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility." 9 Virginia Administrative Code § 20-80-500(C). "The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility." 9 Virginia Administrative Code § 20-80-500(D).

In this case, it is undisputed that AEGIS submitted a certification from Brunswick County dated October 22, 1993

stating that the proposed landfill facility complied with all local ordinances. Appellees argue that this certification fulfilled the statutory requirement under Code § 10.1-1408.1(B). Appellees assert that once DEQ received the certification from Brunswick County, DEQ was under no statutory obligation to investigate whether the facility did in fact comply with all local ordinances.

We believe appellees' argument is flawed. Chronologically, the notice of intent, accompanied by the certification, initiates the permit application process. The notice of intent must include a statement as to the precise location of the facility. If such location is certified by the local government, then the application may be submitted in two parts: Part A and Part B. Thus, the certification and the permit application are based on the precise location of the facility as designated in the notice of intent.

At the time of the certification and the subsequent submittal of the Part A application, it is undisputed that AEGIS did not own the three land parcels at issue in this case. Appellees concede AEGIS acquired the three parcels after the issuance of the certification and after AEGIS submitted Part A of the permit application but before AEGIS submitted Part B of the application. The three parcels were included within the property boundaries on the map submitted with Part B of the application. DEQ was aware that the three parcels were not

acquired by AEGIS until after it submitted Part A of the permit application because the map submitted with Part B stated that the parcels were under negotiation at the time Part A was submitted. DEQ issued the permit to include the property boundaries represented on the maps submitted with the Part B application. We hold that the county certification never included the three after-acquired land parcels. The regulations clearly specify that the permit application process can proceed only as to the parcels included in the certification. We hold, therefore, that the permit application process, i.e. Parts A and B, and, ultimately, the issuance of the permit could proceed only as to those parcels included in the certification.

Appellees argue that the disposal activities at the facility occur within the boundaries authorized by the Part A application approval, and, therefore the facility is consistent with the certification. We believe that by arguing such, appellees are attempting to bifurcate the permit. It is the permit application process, however, that is bifurcated into Parts A and B. The actual permit indicated that the "total site property consists of 854 acres," which includes the three after-acquired parcels. The permit discusses the acreage suitable for disposal as determined during the review of Part A of the application, but does not contain a Part A permit and a Part B permit. There is but one permit, and in this case the three after-acquired parcels were included in the "total site

property" for which the permit was issued. While appellees' argument that disposal only occurs in the 822 acres approved for disposal during Part A of the application process may be correct, it is irrelevant as to the determination of whether the three after-acquired parcels were included in the actual permit.

Appellants contend that DEQ lacked authority to consider and issue amendments to the permit because the permit contained parcels not certified by the local governing body pursuant to Code § 10.1-1408.1(B)(1). We agree.

In Hurt v. Caldwell, 222 Va. 91, 98, 279 S.E.2d 138, 142 (1981), the Supreme Court of Virginia held that a building permit issued by a municipal zoning administrator was a nullity because the permit application did not comply with a local zoning ordinance. Additionally, the Court reversed the trial court's direction to the city to treat the building permit as the initial step in correctly completing the application process pursuant to the ordinance. See id.

From Hurt, we conclude that if a permit is a nullity, one that is void ab initio, the permit cannot be used to create subsequent valid action. If the original permit is void, any subsequent action based on the original permit is void as well. Therefore, we hold that because the original landfill permit was improperly issued in this case and was void, the amendments to that permit also are void.

III. CONCLUSION

For these reasons, we hold that appellants have satisfied the standing requirement set forth in Code § 10.1-1457(B). Additionally, we hold that DEQ and the Director improperly issued the permit and permit amendments that authorized the landfill facility operated by AEGIS because three parcels which were included in the permit and permit amendments were not certified by the local government pursuant to Code § 10.1-1408.1(B)(1).

Reversed and final judgment.

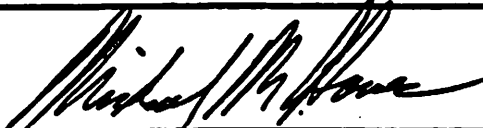
REQUEST FOR CERTIFICATION

| | |
|---|---|
| APPLICANT: <i>AEGIS Waste Solutions, Inc.</i> | |
| APPLICANT'S MAILING ADDRESS: <i>8101 Roanoke Road Elliston, Va. 24087</i> | DATE OF APPLICATION: <i>10/20/93</i> TELEPHONE: <i>703-268-9781</i> CONTACT PERSON: |
| TYPE OF THE FACILITY: <i>Sanitary + Industrial Landfill</i> <i>Michael M. Hawes</i> | |

The applicant is in the process of completing an application for a permit for a solid waste management facility to be issued by the Virginia Department of Waste Management. In accordance with Section 10.1-1408.1, Title 10.1, Code of Virginia (1950), as amended, before such a permit application can be considered complete, the applicant has to obtain a certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The undersigned requests that a authorized representative of the local governing body sign the certification below.

SIGNATURE OF THE APPLICANT:

TITLE: *President*



NOTE: The applicant should enclose an appropriate map showing the location of the proposed facility.

CERTIFICATION

The undersigned certifies that the proposed location and operation of the facility is consistent with all ordinances.

SIGNATURE OF THE AUTHORIZED REPRESENTATIVE: *Timothy L. Wilson*

TYPED OR PRINTED NAME: *TIMOTHY L. WILSON*

TITLE: *PLANNING DIRECTOR, BRUNSWICK COUNTY* DATE: *10-22-93*

COUNTY, CITY OR TOWN:

BRUNSWICK COUNTY VA



DWM Form SW-11-1



County of Brunswick

OFFICE OF THE COUNTY ADMINISTRATOR

POST OFFICE BOX 399
LAWRENCEVILLE, VA. 23868
PHONE - (804) 848-3107
FAX - (804) 848-0424

October 9, 1997

Mr. Kevin L. Green, CPG
Virginia Department of Environmental Quality
Post Office Box 10009
Richmond, Virginia 23240

Dear Mr. Green:


Aegis Waste Solutions, Inc., has submitted a request that I certify on behalf of Brunswick County that its proposed Major Part B Amendment for the Southern Landfill Area (SLA) Expansion is consistent with all local ordinances as may be adopted by the Brunswick County Board of Supervisors.

Based on the plan prepared by Construction Quality Assurance Services, Inc., dated August, 1997, depicting the proposed site improvements which accompanied the certification form, the proposed expanded landfill operation and footprint lies within the limits of and is consistent with the existing Conditional Use Permit as approved by the Brunswick County Board of Supervisors.

Prior to receiving approval by the County's Department of Planning and Zoning allowing construction on this expansion or a portion thereof, Aegis Waste Solutions, Inc. is to submit a detailed site plan to verify that the location and operation of the expansion is in technical compliance with the Conditional Use Permit and all other applicable local ordinances.

Should you have any questions, please do not hesitate to contact me or Darla Gentry, Director of Planning.

Sincerely,


R. Bryan David
County Administrator

Enclosure

cc: Brunswick County Board of Supervisors
Russell O. Slayton, Jr., County Attorney
Darla Gentry, Director of Planning
Jeffery P. Burrier, P.E., Allied Waste Industries, Inc.

REQUEST FOR CERTIFICATION

APPLICANT: AEGIS Waste Solutions, Inc.

APPLICANT'S MAILING ADDRESS:

107 Mallard Crossing Road
Lawrenceville, VA 23868

DATE OF APPLICATION: 9/16/97

TELEPHONE: (804) 242-9277

CONTACT PERSON:

Michael M. Hawes

TYPE OF THE FACILITY: SANITARY LANDFILL

The applicant is in the process of completing an application for a permit for a solid waste management facility to be issued by the Virginia Department of Waste Management. In accordance with Section 10.1-1402.1, Title 10.1, Code of Virginia (1950), as amended, before such a permit application can be considered complete, the applicant has to obtain a certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The undersigned requests that a authorized representative of the local governing body sign the certification below.

SIGNATURE OF THE APPLICANT:

TITLE: General Manager

NOTICE: The applicant should enclose an appropriate map showing the location of the proposed facility.

CERTIFICATION

The undersigned certifies that the proposed location and operation of the facility is consistent with all ordinances.

SIGNATURE OF THE AUTHORIZED REPRESENTATIVE:

TYPED OR PRINTED NAME: R. Bryan David

TITLE: County Administrator

DATE: October 9, 1997

COUNTY, CITY OR TOWN: Brunswick County, Virginia





COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Peter W. Schmidt
Director

SOLID WASTE FACILITY PERMIT PERMIT NUMBER 583

P. O. Box 10000
Richmond, Virginia 23240-0009
(804) 762-4000

Facility Name: Brunswick Waste Management Facility

Facility Type: Sanitary Landfill and
Industrial Landfill

Latitude: 36°45'38"

Site Location: Brunswick County

Longitude: 77°48'07"

Location Description: The proposed landfill site is located in central Brunswick County, approximately three miles east-southeast of the Town of Lawrenceville. State Route 733 runs along the western limits of the site, but ends near the mid-portion of the site.

Background: Brunswick Waste Management Facility is owned and operated by AEGIS Waste Solutions, Inc. The total site property consists of approximately 854 acres. This landfill will consist of two separate sections for disposal of Industrial waste and Sanitary waste. The total allowable disposal acreage determined by the Part A Application approval was approximately 82 acres for the Industrial Landfill Area (ILA) and approximately 137 acres for the Sanitary Landfill Area (SLA) (Please see Permit Attachment III-1A). Initial development of the Brunswick Waste Management Facility, which is contained in this permit, will only include a 33-acre SLA and a 24.4-acre ILA.

Permit Highlights: This permit includes permit modules and associated permit attachments that are, in general, based on information submitted in the permit application. For this Permit, the ILA will be divided into two cells: Cell A will be dedicated to auto fluff waste; Cell B will be dedicated to soils contaminated with petroleum hydrocarbons. Also, the SLA will be divided into two Cells, all of which will accept sanitary waste, as listed in the Design Report, Permit Attachment III-2. Based on an estimated disposal rate of 1,000 tons per day, 312 days per year, the approximate disposal volume of the proposed SLA (Cells 1, 1A, and 2) is 2.47 million cubic yards over an estimated life of 5.5 years. Similarly, based on an estimated disposal rate of 500 tons per day, 312 days per year, the approximate disposal volume of the proposed ILA Cell A is

673,700 cubic yards and for Cell B is 281,800 cubic yards over an estimated life of 4.3 years for Cell A and 4.9 years for Cell B.

This permit incorporates, as part of its design, elements for sanitary landfill and industrial landfill liner systems. The SLA will have a composite liner design which includes, from bottom to top, the following components:

- ♦ 24-inch thick Soil Liner with a maximum hydraulic conductivity of 1×10^{-7} cm/sec. The Soil Liner may be natural soil obtained from on-site excavation or borrow, or possibly soils amended with bentonite to reduce hydraulic conductivity.
- ♦ 60-mil thick High Density Polythene (HDPE) geomembrane, textured surface, placed in direct and intimate contact with the underlying low-permeability Soil Liner.
- ♦ 10-ounce per square yard non-woven Geotextile for protection of the underlying Geomembrane
- ♦ 18-inch thick combined Drainage Layer and Protective Cover (12-inch thick Drainage Layer and 6-inch thick Protective Cover) with a minimum hydraulic conductivity of 3×10^{-2} cm/sec.

The ILA will have a single liner system that includes, from bottom to top the following components:

- ♦ 18-inch thick Soil Liner with a maximum hydraulic conductivity of 1×10^{-7} cm/sec. The Soil Liner may be natural soil obtained from on-site excavation or borrow, or possibly soils amended with bentonite to reduce hydraulic conductivity, or 60-mil textured HDPE overlying 18 inches of compacted earthfill.
- ♦ 10-ounce per square yard non-woven geotextile for protection of the underlying geomembrane
- ♦ 18-inch thick combined Drainage Layer and Protective Cover (12-inch thick Drainage Layer and 6-inch thick Protective Cover) with a minimum hydraulic conductivity of 3×10^{-2} cm/sec.

The SLA will be located in the upper end (higher elevation) of the overall disposal area permitted during the Part A permit process. For this initial Part B permitted area, a temporary berm has been included on the downside toe of the disposal unit to prevent stormwater runoff from migrating beyond the boundaries of the composite lined area. The temporary berm will be removed if the SLA is laterally expanded in the future.

All leachate from Cells 1, & 1A will flow to a low point sump area located in Cell 1. Leachate from Cell 2 will flow to a low point sump located in Cell 2. A duplex pump will be located in the

sump for pumping leachate to a dedicated SLA 175,000 gallon leachate storage tank located on the eastern side of the site. Leachate collected in the storage tank will be pumped into leachate tanker trucks for disposal at a Publicly Owned Treatment Works (POTW).

The ILA will be located in the lower end (lowest elevation) of the overall area permitted during the Part A permit process. Because the initial ILA being permitted is located at the toe of the overall Part A permitted area, a permanent berm at the toe has been designed and the sideslope riser concept will be employed.

Similar to the SLA, all leachate from the ILA will drain to a low point sump, located in Cell A. A duplex pump will be located in the sump for pumping leachate to a separate, dedicated ILA 175,000 gallon leachate storage tank adjacent to the SLA leachate storage tank. Leachate collected in the storage tank will be pumped into leachate tanker trucks for disposal at a POTW.

The cap system for the SLA will consist of the following components, from bottom to top:

- ◆ 18-inches of Infiltration Barrier Layer with hydraulic conductivity less than or equal to 1×10^{-5} cm/sec
- ◆ 40-mil thick smooth or textured VLDPE geomembrane
- ◆ 12-ounce Geocomposite Drainage Layer
- ◆ 18-inches of Vegetative Support Layer
- ◆ 6-inches of Topsoil, covered with seed, mulch, and fertilizer

An alternative to the SLA final cap includes substituting a 6-inch granular drainage layer for the geocomposite drainage layer.

The final cover system for the ILA will consist of the following components (from bottom to top), if the Cells have a recompacted Soil Liner:

- ◆ 18-inches of Infiltration Barrier Layer with hydraulic conductivity less than or equal to 1×10^{-7} cm/sec
- ◆ 12-inches of Vegetative Support Layer
- ◆ 6-inches of Topsoil, covered with seed, mulch and fertilizer

If the liner system for the ILA incorporates an FML, the final cover system will include substituting a 40-mil smooth or textured geomembrane such as VLDPE for the 18-inch Infiltration Barrier layer. The cap system will have the following components (from bottom to top):

- ◆ 40-mil smooth or textured VLDPE, placed over 12-inches of bedding soil no coarser than USCS sand (SP)
- ◆ Gecomposite Drainage Layer
- ◆ 18-inches of Vegetative Support Layer
- ◆ 6-inches of Topsoil, covered with seed, mulch and fertilizer

THIS IS TO CERTIFY THAT:

Aegis Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087

is hereby granted a permit (see Permit Module I, I.F, Site Specific Conditions) to construct, operate, and maintain the facility as described in the attached Permit Module I, Permit Module II, Permit Module III, Permit Module X, Permit Module XI, Permit Module XII, Permit Module XIII, and Permit Module XIV, and Permit Attachments that are as referenced hereinafter and are incorporated into and become a part of this permit.

The herein described activity is to be established, modified, constructed, installed, operated, used, maintained, and closed in accordance with the terms and conditions of this permit and the plans, specifications, and reports submitted and cited in the permit. The facility shall comply with all regulations of the Virginia Waste Management Board.

Failure to comply with the terms and conditions of this permit shall constitute grounds for the revocation or suspension of this permit and for the initiation of necessary enforcement actions.

The permit is issued in accordance with the provisions of § 10.1-1408.1.A, Chapter 14, Title 10.1, Code of Virginia (1950) as amended.

APPROVED:

Hassan Vekic.
For Peter W. Schmidt
Director

Date 4/17/95



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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George Allen
Governor

Becky Norton Dunlop
Secretary of Natural Resources

Thomas L. Hopkins
Director

(804) 698-4000
1-800-592-5482

SOLID WASTE FACILITY PERMIT PERMIT NUMBER 583

Facility Name: Brunswick Waste Management Facility

Facility Type: Sanitary Landfill

Latitude: 36°45'38"

Site Location: Brunswick County

Longitude: 77°48'07"

Location Description: The facility is located in central Brunswick County, approximately three miles east-southeast of the Town of Lawrenceville. The facility is accessible via State Route 733, which runs along the western limits of the site, but ends near the mid-portion of the site., approximately 3/4 mile south of State Route 678, and approximately 1 mile south of State Route 606.

Background: The facility is to serve as a sanitary landfill, in compliance with 9 VAC 20-80-10 *et seq.* (VR 672-20-10), Amendment 1. The Brunswick Waste Management Facility is owned and operated by AEGIS Waste Solutions, Inc. The total site property consists of approximately 854 acres. Of that acreage, 755 acres are approved by the County and the DEQ for potential waste disposal. There are two separate disposal areas, one for ordinary sanitary waste as listed in the Design Report (Permit Attachment III-2), and the other primarily for municipal solid waste incinerator ash. The total allowable disposal acreage determined by the Part A Application approval is approximately 82 acres for the Northern Solid Waste Disposal Area (NSWDA) and approximately 137 acres for the sanitary Landfill Area (SLA). Development of the facility which is allowed under this permit, is the 33 acre SLA and the 24.4 acre NSWDA. Based on an estimated disposal rate of 1,000 tons per day, 312 days per year, the approximate disposal volume of the proposed SLA is 2.6 million cubic yards over an estimated life of 6.7 years. Similarly, based on an estimated disposal rate of 500 tons per day, 312 days per year, the approximate disposal area of the proposed NSWDA Cell A is 673,700 cubic yards and for Cell B is 281,800 cubic yards over an estimated life of 4.5 years for Cell A and 2.3 years for Cell B. The Brunswick Waste Management Facility will accept waste primarily from Brunswick County and the surrounding region. There are no specific geographical limitations on the waste service area. The normal hours of operation for the facility are 6:00 am to 6:00 pm, Monday through Saturday.

Permit Highlights: This permit amends the existing permit which was issued April 17, 1995. This permit includes permit modules and associated permit attachments which are, in general, based on information submitted in the permit application. For this permit, the NSWDA will be divided into three cells, (A-1, A-2 and B) and will accept primarily ash from the combustion of municipal solid

waste. Also, the SLA will be divided into Cells 1A, 1B, and 2. This permit incorporates design elements for a composite liner, which are not provided for in the regulations, but were petitioned for by the permittee pursuant to the requirements of Part IX of the regulations at the time of initial permit issuance.

THIS IS TO CERTIFY THAT:

Aegis Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087

is hereby granted a permit to construct, operate, and maintain the facility as described in the attached Permit Module I, Permit Module II, Permit Module III, Permit Module X, Permit Module XII, Permit Module XIII, and associated Permit Attachments that are as referenced hereafter and are incorporated into and become a part of this permit. These Permit Modules and Permit Attachments are as referenced hereinafter and are incorporated into and become a part of this permit.

The herein described activity is to be established, modified, constructed, installed, operated, used, maintained, and closed in accordance with the terms and conditions of this permit and the plans, specifications, and reports submitted and cited in the permit. The facility shall comply with all regulations of the Virginia Waste Management Board. In accordance with § 1408.1(D) of the Code of Virginia, prior to issuing this permit, any comments by the local government and general public have been investigated and evaluated and it has been determined that the proposed facility poses no substantial present or potential danger to human health or the environment. The permit contains such conditions and requirements as are deemed necessary to comply with the requirements of the Virginia Code, the regulations of the Board, and to prevent substantial or present danger to human health or the environment.

Failure to comply with the terms and conditions of this permit shall constitute grounds for the revocation or suspension of this permit and for the initiation of necessary enforcement actions.

The permit is issued in accordance with the provisions of § 10.1-1408.1.A, Chapter 14, Title 10.1, Code of Virginia (1950) as amended.

Issued: April 17, 1995
Minor Amendment 1: February 28, 1997
Minor Amendment 2: April 11, 1997

APPROVED:


for Thomas L. Hopkins
Director

DATE: December 10, 1997
Amended



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

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Thomas L. Hopkins
Director

(804) 698-4000
1-800-592-5482

SOLID WASTE FACILITY PERMIT PERMIT NUMBER 583

Facility Name: Brunswick Waste Management Facility

Facility Type: Sanitary Landfill

Latitude: 36°45'38"

Site Location: Brunswick County

Longitude: 77°48'07"

Location Description: The facility is located in central Brunswick County, approximately three miles east-southeast of the Town of Lawrenceville. The facility is accessible via State Route 733, which runs along the western limits of the site, but ends near the mid-portion of the site, approximately 3/4 mile south of State Route 678, and approximately 1 mile south of State Route 606.

Background: The facility is to serve as a sanitary landfill, in compliance with 9 VAC 20-80-10 *et seq.* (VR 672-20-10), Amendment 1. The Brunswick Waste Management Facility is owned and operated by AEGIS Waste Solutions, Inc. The total site property consists of approximately 974 acres. Of that acreage, 822 acres are approved by the County and the DEQ for potential waste management activities, with approximately 428.5 acres approved for potential waste disposal, as shown on drawing 3 of the permit design drawings. There are two separate disposal areas, one for ordinary sanitary waste which is designated the Sanitary Landfill Area (SLA), and the other primarily for municipal solid waste incinerator ash which is designated the Norther Solid Waste Disposal Area (NSWDA). Development of the facility which is allowed under this permit is 174 acres in the SLA and 24.4 acres in the NSWDA. Based on an estimated disposal rate of 1,000 tons per day, 312 days per year, the approximate disposal volume of the proposed SLA is 20.4 million cubic yards over an estimated life of approximately 35 years. Similarly, based on an estimated disposal rate of 500 tons per day, 312 days per year, the approximate disposal area of the proposed NSWDA Cell A is 673,700 cubic yards and for Cell B is 281,800 cubic yards over an estimated life of 4.5 years for Cells A-1 and A-2, and 2.3 years for Cell B. The Brunswick Waste Management Facility will accept waste primarily from Brunswick County and the surrounding region. There are no specific geographical limitations on the waste service area. The normal hours of operation for the facility are 6:00 am to 6:00 pm, Monday through Saturday.

Permit Highlights: This permit amends the existing permit which was issued April 17, 1995. This permit includes permit modules and associated permit attachments which are, in general, based on information submitted in the permit application. For this permit, the NSWDA will be divided into three cells, (A-1, A-2 and B) and will accept primarily ash from the combustion of municipal solid

waste. Also, the SLA will be divided into six cells (1A, 2, 3, 4, 5, and 6). This permit incorporates design elements for a composite liner, which were not provided for in the regulations at the time of initial permit issuance, but were petitioned for by the permittee pursuant to the requirements of Part IX of the regulations at that time.

Permit Amendment: The permit is amended in accordance with a request initially submitted May 28, 1997. The request was then withdrawn, and resubmitted on September 15, 1997, with additional revisions dated November, 1997. The amendment is to allow a 141-acre expansion of the solid waste disposal footprint in the sanitary area, or SLA. The proposed expansion incorporates 3 additional cells and increases the total disposal footprint in the SLA to 174 acres in 6 cells. The total capacity of the SLA is increased from approximately 2.47 million cubic yards to approximately 20.4 million cubic yards, and the site life of the SLA is increased from approximately 5.5 years to approximately 35 years, based on the estimated disposal rate of 1,000 tons per day, operating 312 days per year. AEGIS has been granted permission from the Corps of Engineers to displace two wetland areas and reconstruct a larger wetland area also within their property. An amended Part A application was submitted relative to this expansion, and it was approved by the Director's letter dated January 30, 1998. The expansion incorporates no more than 2.68 acres of wetlands within the proposed cells 3 and 5, as indicated in the Joint Permit Application No. 97-F089, dated June 13, 1997, under the VWPP Regulation (9 VAC 25-210-60 Part 4 Exclusions). The special conditions relative to incorporation and mitigation of wetlands are contained in Section I.H, of Module I. The change in footprint has resulted in a change in the overall cell development of the facility. All amendments are summarized and outlined in Permit Module I, Section I.G.

THIS IS TO CERTIFY THAT:

Aegis Waste Solutions, Inc.
107 Mallard Crossing Road
Lawrenceville, Virginia 223868

is hereby granted a permit to construct, operate, and maintain the facility as described in the attached Permit Module I, Permit Module II, Permit Module III, Permit Module X, Permit Module XII, Permit Module XIII, and associated Permit Attachments that are as referenced hereafter and are incorporated into and become a part of this permit. These Permit Modules and Permit Attachments are as referenced hereinafter and are incorporated into and become a part of this permit.

The herein described activity is to be established, modified, constructed, installed, operated, used, maintained, and closed in accordance with the terms and conditions of this permit and the plans, specifications, and reports submitted and cited in the permit. The facility shall comply with all regulations of the Virginia Waste Management Board. In accordance with § 1408.1(D) of the Code of Virginia, prior to issuing this permit, any comments by the local government and general public have been investigated and evaluated and it has been determined that the proposed facility poses no substantial present or potential danger to human health or the environment. The permit contains such conditions and requirements as are deemed necessary to comply with the requirements of the Virginia Code, the regulations of the Board, and to prevent substantial or present danger to human health or the environment.

Failure to comply with the terms and conditions of this permit shall constitute grounds for the revocation or suspension of this permit and for the initiation of necessary enforcement actions.

The permit is issued in accordance with the provisions of § 10.1-1408.1.A, Chapter 14, Title 10.1, Code of Virginia (1950) as amended.

Issued: April 17, 1995

Minor Amendment 1: February 28, 1997

Minor Amendment 2: April 11, 1997

APPROVED:

Dennis H. Treacy
for Dennis H. Treacy
Acting Director

DATE: May 4, 1998
Amended



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Peter W. Schmidt
Director

April 18, 1995

P O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000

**RE: Brunswick Waste Management Facility
Public Comments on Draft Permit**

Dear Commenter,

This letter is written in response to the public comments presented at the Brunswick Waste Management Facility Draft Permit Public Hearing, which was held Monday, March 6, 1995, and during the ten-day comment period that ended March 16, 1995. The citizens of Brunswick County are to be commended for informing themselves in order to express their concerns regarding this landfill. Every statement made at the public hearing and written comment submitted has been reviewed by our staff to ensure that the Permit is in full compliance with the Virginia laws and regulations regarding siting, design, operation, closure and post closure of solid waste management facilities.

Before addressing site specific concerns and issues, it may be helpful to briefly describe the permit process for solid waste management facilities. The Part A Application provides the information essential for assessment of the site suitability for the proposed facility. To initiate the permit application process, the applicant must file a notice of intent with the Director stating the desired permit or permit amendment, the precise location of the facility, and the intended use of the facility. After the Part A Application is submitted, it undergoes an initial administrative review. If the Application has been found administratively complete, the reviewer begins the technical review. The Director notifies the Applicant in writing of approval or disapproval of the Part A Application or provide conditions to be made part of the approval. The Part A for this facility was approved with conditions on March 25, 1994.

The Part B Application involves the submission of the detailed engineering design and operating plans for the proposed facility. After the Part B Application is submitted, it undergoes an initial administrative review. If the Application has been found administratively complete, the permit writer begins the technical review. Once the Application has been deemed technically adequate, a draft permit is prepared and its availability for public comment is advertised. No sooner than 30 days after the publication of the notice, the public hearing is held in the locality near the facility. The purpose of this public hearing is to gather comments regarding the adequacy of the Draft Permit. The public participation period extends for 10 days after the public hearing is held. The time between the end of the public participation period and permit issuance or permit denial is limited by regulation to 30 days.

Public Comment Response Letter
Brunswick Waste Management Facility
Page 2

Regarding Brunswick Waste Management Facility, the Public Hearing was held March 6, 1995, and the public comment period extended until 5:00 P. M. March 16, 1995. This letter, contains the Department responses to the public comments related to the technical aspects of the Application.. The Draft Permit was therefore amended and issued on April 17, 1995.

Following is a list of the questions and corresponding answers. Please note that the comments and questions are presented in bold type and the answers are provided immediately below each question.

1. **Friday, March 3, 1995, the Virginia Supreme Court issued a decision in a case styled "Concerned Taxpayers of Brunswick County, et. al. v. County of Brunswick, et. al. Record No. 94-0494".**

In Count I Concerned Taxpayers state that AEGIS was neither owner of record nor a contract purchaser of the Bassette parcel (63-34). Since its contract with the Bassettes was unenforceable, as determined by the Court, so that AEGIS did not meet the prerequisite for its submission of an application as required by the zoning ordinance, Concerned Taxpayers conclude that these allegations are sufficient to state a cause of action for noncompliance with the County's zoning ordinance and, thus, does not have legal control over this parcel of land, which was included with the approved Part A Application.

This issue deals with local requirements and should be resolved on a local level.

2. **The Industrial Landfill Area (ILA) is located within 5,000 feet of the runway at Brunswick Airport. The Part B allows food and food by-products to be disposed in the Industrial Landfill. This will be a hazard for planes.**

The airport runway setback requirement does not apply to Industrial Landfills. However, in recognizing the citizen's concerns, the Department will allow only auto fluff and petroleum contaminated soil (PCS) to be deposited in this area. The other waste types mentioned has been stricken from the Design Report and a condition allowing only PCS and auto fluff was added to Permit Module I.

3. **The boundary of the Sanitary Waste Landfill Cell 1A is too close to a perennial stream and a pond.**

Field investigations indicate that there is not a direct surface water connection between the pond and wetland area "P," located eastward downstream of the pond. These two areas are separated by a steeply sloping upland berm. There is an 8-inch metal standpipe along

the eastern side of the pond that serves as an overflow control for the pond. The wetland and stream delineation performed for the Part B study was field verified by the Norfolk District of the U. S. Army Corps of Engineers and the boundaries confirmed by field survey. The boundaries are representative of actual field conditions.

The subject stream does not occur as depicted on the Part A. The stream does occur within the boundaries of the wetland area "P," and becomes perennial as it approaches its discharge point from the site. The Part B design considers this information and provides for the appropriate 200-foot setback distance.

4. **The orientation of the springs to the north and south of SLA Cell 1A line up approximately north-south, fitting in perfectly with the fracture pattern described in the Part A. The regional tectonics depicted on the geologic map of Virginia (Part A - Figure 5) is oriented approximately north-south. The location of these two springs may be controlled by a regional fracture system that may indicate a preferred path for the groundwater and possible contamination to travel along. If there is a leak, the contamination may bypass the monitoring wells and exit into the surface waters at the location of these springs. Should the Commonwealth permit a landfill here?**

Much of the Piedmont Province of Virginia is underlain with the igneous and metamorphic rock. In-situ weathering degrades this rock to soils consisting of primarily silts and sand with variable amounts of clays. The underlying bedrock developed fractures due to stresses that occur within the rock. Shallow groundwater flow occurs primarily at the soil-bedrock interface. Where the bedrock is in close proximity to the surface, springs sometimes occur. Deeper groundwater flow within the bedrock occurs almost exclusively in fractures. The existing site conditions have been adequately characterized and none of the geotechnical site characteristics prohibit the development of a landfill at this site.

5. **The Applicant did not sign the application form.**

The Part A Application process consists of the Notice of Intent and the Part A Application. The Notice of Intent, which was submitted October 27, 1993, was signed by the applicant. However, the Part A Application Form submitted with the Part A Application should have been signed. DEQ has corrected this omission by obtaining a signed copy of the Part A Application Form.

6. **The Part A was approved with the condition that all containment structures be designed to resist the maximum horizontal acceleration of 0.23g. However, the Part B analysis included a horizontal acceleration of 0.10g. Explain.**

The slope stability calculations presented in the Part B Application used a pseudo-static analysis and the PCSTABL program for earthquake analysis. The earthquake coefficient is different from the maximum acceleration value for pseudo-static analysis. Acceleration has the units of distance per time squared (m/s^2) so the duration of the acceleration is extremely important. There is only a small amount of time during the earthquake when the acceleration exceeds the yield value. Yield value is the acceleration at which the factor of safety against failure is one. Thus, the value of the earthquake coefficient to be used in a pseudo-static analysis will be less than the maximum acceleration value.

For pseudo-static analysis, the following short table presents the appropriate seismic coefficient and factor of safety for a given earthquake magnitude.

| <u>Earthquake Magnitude</u> | <u>Seismic Coefficient</u> | <u>Min. Req'd. FS</u> |
|-----------------------------|----------------------------|-----------------------|
| 6.5 | 0.10 | 1.15 |
| 8.25 | 0.15 | 1.15 |

The above criteria were found to yield displacements less than about three feet for earthquakes inducing peak accelerations less than 0.75g.

In Virginia, the "maximum credible earthquake" for any region in Virginia does not exceed a magnitude of 6.5. For Virginia, values of 6.4 and 6.2 are applicable in most areas. Thus, a seismic coefficient value of 0.1 should be used.

7. **Gas monitoring is very lax or nonexistent**

- a) **Can operate without it (33 acre start-up)**
- b) **None on IWA in spite of allowing organics to be deposited (food and food by-products)**
- c) **Probes are further apart than allowed**

- a) Section VI of the Application states that the design and/or construction of an active gas system for the 33-acre area is not justified at this time. However, the facility will install a passive gas system in the sanitary landfill that will allow accumulated gas to passively vent through the cap system. The passive gas system is common practice among many landfills and is acceptable by the regulations. In addition, the facility will install gas probes and will monitor the sanitary landfill area and on-site structures in accordance with the Regulations.

- b) As previously stated, the Application will allow only petroleum contaminated soil

and auto fluff to be accepted in the ILA. This will preclude the requirement for a gas management system.

- c) The distance of 250-feet between probes is *recommended* by the Submission Instructions, but not required by the Regulations. In fact, the Submission Instructions allows for wider spacing of the probes if proper demonstration is provided. Page VI-2, Part VI.C.2.b. justifies the additional spacing between probes.

8. What type soils are the subsoils? The Part A indicates that the site subsoils below the landfill consist of predominantly compact coarse-grained soils and firm to stiff fine-grained soils with isolated small areas of loose coarse-grained soils or soft fine-grained soils. The average soil thickness at the site is approximately 20 feet.

However, of 63 "B" wells drilled, 34 were 17 feet or less at auger refusal. Ten others hit gravel from 6 feet to 17 feet (angular, felsitic, and mafic rocks - feldspar part, quartz, hornblende, mica) 2 to 4 inches in size. In addition, of 30 PZ wells drilled, three had auger refusal at 15 feet or less, 11 hit gravel from 5 to 18 feet (angular, felsitic, and mafic rocks - feldspar part, quartz, hornblende) 2 to 4 inches in size. Please explain what type of soil is on-site and how the average soil depth is 20 feet.

Soils at the site were developed from the in-situ weathering of the underlying biotite genesis rocks. Due to variations in the rock composition (lenses), differing weathering rates, and the fracturing of the bedrock, variations in the size of soil particles encountered between specific boring locations are common. All soils encountered at the site, as reported in the Part A Application, are consistent with saprolite over metamorphic bedrock. These soils were deemed adequate for foundation support of the landfill.

9. This comment references the proposed monitoring wells listed in Table 7-1. The wells have been designed with 15-feet of screen so that 12 feet will be set below the water table as encountered during drilling, and 3 feet will extend above the water table. It appears as though the water table may extend below the bottom of the well. Please explain how this can occur.

Table 7-1 does contain some typographical errors and/or incorrect well construction parameters. This table has been revised to reflect valid well construction parameters.

10. How did the Part A, approximately 755 acres, increase to 854 acres (Map 2 of 35, Existing Site Conditions).

The Part permitted acreage remains at approximately 755 acres. Sheet 2 of 35 has a note that states "FOR PERMITTED BOUNDARIES SEE DRAWING NO. 3." Sheet 3 of 35 delineates the Part A approved boundary. This boundary line type is defined in the Legend as "Potential disposal area boundaries as shown on Figure 3, Revision 2, dated March 15, 1994, Near Vicinity Map, Part A Permit Application by Draper Aden Associates." In addition, Note #4 on Sheet 3 of 35 explains why the three additional properties are shown on Sheets 2 and 3. The note states "This property (Tax Map and Parcel #63-33A, 63-47, and 53-143A) were under negotiation for inclusion in the site at the time of the Part A Application.

11. The Part A was submitted to the Virginia Department of Environmental Quality on December 6, 1993, and approved on March 25, 1994, page 2, LA.2. Also look at the Deeds of Trust or Ownership. Please look at the dates on the contracts. All but 3 have 1994 as dates.

The Part A Application contains three complete contracts for purchase. The dates of these Contracts are all dated either June or July 1993. The remaining three Contracts included in the Part A did not have the front page. DEQ obtained copies of these pages from the applicant. The dates on these Contract are July, 1993. The owner must submit the deed for the entire site before any construction begins. This stipulation was added as a site specific condition to Part IF of Permit Module I in the Permit.

12. Part B Permit, Page V-14 "Leachate Removal System": Pumping leachate from the sump to a dedicated SA and IA 175, 000-gallon leachate storage tanks. Map 30 (Leachate storage Tanks) shows leachate force main south of the containment area. What will protect the pipe and insure that leachate will not enter state waters or the environment?

The proposed force main will be a 4-inch diameter High Density Polyethylene (HDPE) material, using a 3408 type resin. The pipe will be chemically resistant to leachate. Pipe segments will be heat fused together. As part of the Quality Assurance/Quality Control, the force main pipe will undergo a hydrostatic test to ensure that no leaks exist.

13. Page VIII-1 Cell Design (Cell 1 filling will commence near the southern limits of the SLA and progress in the northerly direction toward Cell 2). See Map 7 Cell 1A cannot progress in the northerly direction toward Cell 2.

Page VIII-1, Part VIIIA.1. states, "Cell 1A filling will commence near the southern limits of the SLA and progress in the northerly direction toward Cell 1B. Cell 1B will be filled in the same direction, with the initial fill overlapping on the northern slope of Cell 1A.

Cell 2 will be the last cell filled and will generally progress from the southeast to the northwest, also overlapping onto the north slope of Cell 1A and west slope of Cell 1B. This Cell filling scenario agrees with the Design Drawings.

14. The initial five-year estimate provides financial assurance for a total of approximately 31 acres (19 acres of the SLA and 12 acres of the IWA). See Table 2-3, page II-5 SLA: Cell 1A, 9.3 acres. Cell life 1.5 years; Cell 1B, 8.2 acres, Cell life 1.4 years; Cell 2, 15.5 acres, Cell life 2.6 years. Table 2-4, page II-6 IWA Cell A, 16.2 acres, Cell life 4.3 years; Cell B, 8.2 acres, Cell Life 4.9 acres.

This trust fund will be funded based upon the expectancies in five-year increments contained in Tables 10.1 through 10.4, and 10.6 of this permit application.

Financial Assurance: has total 31 acres, 19 acres SLA and 12 acres IWA, Total 31 acres for the initial five years. Table 2-3 shows SLA with a total life of 5.5 years. Table 2-4 shows IWA with a total life of: Cell A, 4.3 years and Cell B, 4.9 years resulting in a total of 57.4 acres for a life of 5.5 years. Please explain.

For the IWA, the life of each Cell is approximately 5 years. It is anticipated that closure may commence within the sixth year of operation of the facility. Therefore, approximately half of the area will be closed as operations proceed. In accordance with the *Financial Assurance Regulations of Solid waste Facilities (VR 672-20-01)*, §3.3.A.1 and as stated in Permit Module I, the selected financial responsibility instrument or instruments shall be filed with the Department as part of the permit application procedures and prior to the issuance of an operating permit.

15. Delineation and protection of wetlands

a. Erroneous maps concerning springs, streams, and woodlands

b. Very poor impact studies of rock bed and water table. Submitted information in Part B is too shallow and uncertain.

a & b. The Part A Application stated that all woodland areas were confined to the drainage areas within the planned 200-foot buffers, as depicted on Figure 3. However, subsequent site visits by Department personnel and the U S Army Corps of Engineers provided sufficient information to request a further investigation by the Applicant. The U. S. Army Corps of Engineers has made a final determination for the portion of the site north of the existing power lines regarding woodland delineation and impact. Attached are a copy of the jurisdictional delineation confirmation, dated January 6, 1995, and the Nationwide Permit (26) confirmation

for a proposed 0.48 acre impact to a jurisdictional woodland, dated January 20, 1995. In addition, the following maps were included with the Draft Permit:

- ◆ Drawing 1 of 1 entitled "Northern Parcel, Woodland Assessment Parcel," which shows the surveyed woodlands jurisdiction, as approved by the U. S. Army Corps of Engineers
- ◆ Drawing 1 of 2 entitled "Phase 1 Construction" and Drawing 2 of 2 entitled "Woodland and Stream Map Northern Parcel" show the impact of the proposed site construction on the delineated woodlands. The U. S. Army Corps of Engineers determined woodland impact to be less than 1 acre. The disposal area has been designed to maintain the buffers stated in the Part A Application and to limit woodland impact.

16. **There are many concerns such as the close proximity of the landfill site to the existing prison and proposed private prison facility, two schools, nursing, recently closed County contaminated landfill, and the great Meherrin River.**

VSWMR, §5.1.A.7, states no sanitary landfill disposal unit and leachate storage units shall extend closer than 100 feet of any regularly flowing surface water body or river, 50 feet from the facility boundary, or 200 feet from the active filling areas to any residence, school, hospital nursing home or recreational park area in existence at the time of application. Likewise, VSWMR, §5.3.A.4, states no new industrial landfill disposal area or expansion of existing facilities shall extend closer than 100 feet of any regularly flowing surface water body or river or 200 feet from the active filling areas to any residence, school, or recreational park. This site meets these requirements.

17. **If an explosion occurs at the proposed landfill and the area has to be evacuated or an accident with hazardous waste or a chemical spill occurs near the prison will the inmates be evacuated? If so, where will they take them?**

The Operations Manual includes an "Emergency Contingency Plan" and a "Safety Plan" for the facility. The Emergency Contingency Plan must be submitted to the local police, fire, and nearby health care facilities. On-site personnel will initially implement safety and fire control procedures. If the fire cannot be immediately controlled, the facility emergency coordinator, fire department, rescue squad, and sheriff's department will be notified for assistance. Evacuation needs and procedures will be identified by local authorities.

18. **The Part B Permit Process Application states that except for hazardous wastes ALL TYPES of wastes will be accepted at this landfill; and any waste which is not obviously an acceptable waste must be screened. The application reveals that certain toxic wastes will be accepted at this facility. Solid wastes, residues, or soil containing less than 50 ppm is listed as acceptable in the application and VR 672-20-10. The application also states that if waste is a hazardous or a PCB waste the DEQ director should be notified. I think this is contradictory or possibly another cover up.**

Certain wastes other than hazardous wastes will not be accepted at the landfill. For example, bulk or noncontainerized liquid waste, other than household waste and leachate of gas condensate generated at this facility, containerized liquid waste, except for small household waste containers, unstabilized sewage sludge or sludges that have not been dewatered, and drums that are not empty, properly cleaned, and opened will not be accepted at this landfill. In accordance with VSWMR, if a waste contains residues, or soils containing less than 1.0 ppb dioxins or 50 ppm PCB's it is considered a solid waste and will be accepted at the sanitary landfill. Any waste that exceeds these requirements is not permitted to be disposed of in this facility.

The Operations Manual states that all acceptance criteria will be in compliance with local, state, and federal regulations. VSWMR, §5.1.C.1 requires the owner or operator to implement an inspection program to detect and prevent disposal of hazardous wastes and PCB's. This program must include random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes, records of any inspections, training of facility personnel to recognize regulated hazardous waste and PCB wastes, and notification of the Director if a hazardous waste or PCB waste is discovered at the facility.

19. **Members of the community request that an extensive environmental assessment be conducted within this area.**

VSWMR does not require environmental assessments be performed for proposed or existing. However, the facility application has complied with the requirements of VSWMR in relation to siting of the landfill.

20. **Cover-ups result in exposure of people to cancer causing asbestos materials. In the operation's section, asbestos waste is listed as an unacceptable waste, but industrial and demolition waste which will be accepted at the landfill can have asbestos properties.**

The ILA of this facility is permitted to accept only two types of industrial waste: petroleum contaminated soil and auto fluff. However, all asbestos-containing materials generated in a manufacturing, fabrication, or spraying operation and all asbestos-containing waste materials (ACM) generated in a demolition or renovation operation shall be disposed in a special purpose landfill or in a designated area of a sanitary landfill. Category I and Category II nonfriable ACM may be disposed in a landfill providing daily soil cover, providing that the operator is notified and other pertinent requirements of VSWMR, §8.1 are met.

21. Solid wastes, residues, or soil containing less than 50 ppm of PCB's is listed as acceptable wastes in the application and VR 672-20-10. The application also states that if waste is a hazardous or a PCB waste the DEQ Director should be notified. I think this is contradictory or possibly another cover up.

PCB, as defined by VSWMR, means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contain such substance. VSWMR, §5.1.C.17.d prohibits sanitary landfill from accepting solid wastes, residues, or soils containing 50 ppm (parts per million) or more of PCB's. As previously stated, the Industrial Landfill is permitted to receive only petroleum contaminated soil and auto fluff. The Operations Manual of the Application states, "Any unauthorized waste should be segregated and removed. If such waste is hazardous or a PCB waste, the Director of the DEQ should be notified." These instructions are part of the Inspection procedures for the facility. The Operations Manual also requires the inspector to assure that the waste is removed and disposed of properly and document the incident, including time, date, carrier, generator and the corrective action, and notify the Department. If the carrier or generator leaves the site and is not identified, the landfill becomes the generator of the waste and must assure proper disposal.

22. Groundwater monitoring and gas monitoring is mentioned - what about air monitoring?

As required by VSWMR, §5.4, the Design Report, Part VII "Gas Management System" provides for the protection of public health and safety, and the environment, to ensure that decomposition gases generated at the facility are controlled during these periods of operation, closure and post-closure care. In particular, all on-site structures will be monitored for methane to ensure the concentration does not exceed 25% of the LEL (lower explosive limit), excluding gas control or recovery system components. In addition, methane gas will be monitored around the perimeter of the sanitary landfill area. The concentration of methane gas must not exceed the LEL at the property boundary. There are no other requirements for air monitoring at solid waste facilities.

23. **Dry industrial wastes (powdery wastes) requires special handling, like special wastes, and are problems as well as dust due to cover and fill material, since they are stirred by equipment and wind. Once airborne, the dust may be hazardous to personnel. What about nearby residents? The wind blows long distances. Watering is a planned control method if it is known that the water will not react with the waste. What control method will be used for waste that reacts with water?**

As previously stated, only auto fluff and petroleum contaminated soil will be accepted in the Industrial Landfill Area. It is not expected that these wastes will react with water in such a way as to create harmful airborne constituents. Applying water will, however, produce leachate. The Industrial Landfill Area has been designed with a leachate collection and removal system to prevent the leachate from entering groundwater.

24. **The FAA review determined the proposal to be an incompatible land use that could serve as a wildlife attraction and have an adverse effect on aviation safety at the nearby airport and recommended the Dept. of Waste Management by letter not to issue an operating permit to this site proposal; then later reversed its decision. But train car loads of waste sitting at the site for 48 hours will attract wildlife.**

The use of train cars to transport waste to and store waste at this site is not addressed in this Application and therefore is not allowed at this facility.

25. **How can animals or insects be controlled?**

The property is mostly surrounded by woods and the main entrance will have a controlled access to deter animals and illegal dumping. In addition, the SLA waste will receive daily cover to keep rodents and vectors out, and help eliminate odors.

26. **Contaminated soils can be used as cover soil - will it be used at this facility or just geosynthetic product as indicated in lieu of soils - Even more chemicals.**

The use of petroleum contaminated soils as daily cover is not addressed in this Application. However, the facility owner may use this material as alternate daily cover with specific approval by the Department or by complying with the disposal criteria in VSWMR, §8.7. Also, any geosynthetic product used will be evaluated for its adverse effect on the environment.

27. **Will there be any impact from explosives used at Vulcan Material rock quarry only a few miles away?**

Demonstrations have been presented to Department staff that indicate that explosives such as those at the Vulcan quarry will have no effect on this facility.

28. Roads are not to be established in cemeteries and on disturbing burial grounds according to the National Historic Preservation Act of 1966. This site was owned by the Winn Family Estate, Tax Map Parcel 53-140 and 143. County records 1720, 1975, Page 127 also show notes written by the grandchildren and children note that burials were on the family cemetery at the old Winn place on Highway 733.

On September 28, 1994, Ms. Mary Harding Sadler, Historical Architect, Department of Historic Resources (DHR) sent a letter to DEQ stating that if the landfill is developed under regulations or permits issued by the Environmental Protection Agency or any other Federal Agency, the undertaking is subject to review under Section 106 of the National Historic Preservation Act of 1966, as amended. The Department sent a response letter October 5, 1994, to Ms. Sadler that updated the project status and informed her that department policy requires DEQ - OWRM to notify other state agencies of Draft Permit availability, including DHR. As follow up, the Department sent DHR a letter January 31, 1995 notifying DHR of the Draft Permit availability and informing them of the public comment response deadline date of March 16, 1995. Attached to the letter was a copy of the newspaper advertisement and USGS map with the facility's boundaries delineated. The Department received no comment on the Draft Permit from DHR.

29. You talk about a blowout, and I brought a chart up here, and I think the chart is Section B.11.3.5. If you'll look at your Part B, you'll see the landfill sits on top of the ground. It's not like most landfills, but it sits on top of the ground. just about half of one side you've got to have fill in there. What happens if we have a blowout?

As stated in the Part B Application, Section IV.B.1.e.(3), blowout of the bottom or sides of an excavation is caused by excessive hydrostatic pressure acting upward against an overlying, confining soil layer. Blowout is likely to occur when the hydrostatic pressure acting beneath a confining, low permeability soil layer, exceeds the resisting weight of the confining soil. From the Part A Application, subsurface and hydrogeological conditions necessary for a blow-out condition are not present. Therefore, blowout of the bottom or sides is not a concern.

30. You have had five or six walkovers, why?

There is no set limit to the number of walkovers performed by the Department during the review of a Part A and Part B Permit Applications. If issues arise which warrant further examination, the Department will make a site visit to investigate.

31. **If this landfill is fenced and a gate locked at night, then please explain for me technologically just how this family is to have the quiet and comfortable use and employment and enjoyment of their land.**

Note #2 on Sheet 3 of 35 in the Design Plans states that the location of property 63-35 (this particular parcel in question) as depicted in Figure 3 of the Part A Application by Draper Aden Associates is shown in actual location on this drawing based on survey data. The property is accessible by the existing road, which is shown on Sheet 3 of 35 of the Design Drawings.

32. **Where are the facility boundaries, and where are the disposal boundaries? The total allowable acreage determined by the Part A Application or permit was only 82 acres for the industrial land area and 24 acres for the industrial use.**

The total acreage included in the Part A Application is approximately 755 acres. This Part B Application includes a 33-acre sanitary landfill area and a 24.4-acre industrial landfill area. The Part A permitted property line, Part A permitted total disposal acreage for the sanitary and industrial areas, and the acreage proposed for this Part B Application are delineated on Sheet 3 of 35 of the Design Plans.

33. **What studies have been conducted by AEGIS and Brunswick County to determine if there will be long-term damaging effects on this virgin land?**

The Permit Application was prepared in accordance with the Regulations. Several requirements such as wetland delineation and impact study for permit from the U S Army Corps of Engineers, geological and hydrogeological studies, and liner and leachate containment designs have been implemented to ensure the environment will be protected.

34. **Will AEGIS be at our side to rectify any and all problems that might arise because of this project?**

Section 10-273 of the Code of Virginia authorizes the Virginia Waste Management Board to exercise general supervision and control over solid waste management activities in this Commonwealth and promulgate regulations for financial responsibility by privately owned solid waste disposal facilities in the event of abandonment and §9-6.14: 4.1.(c)(5) for emergency regulations. The regulations that were created for this purpose are *Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-10)*, which became effective July 22, 1987. The purpose of these regulations is to assure that owners and operators of nonhazardous solid waste facilities are financially responsible for the closure and post closure of their facilities and can provide financial assurance for liability that may result

from any sudden or nonsudden accidental occurrences.

35. **When one looks at the numbers of personnel and the monitoring that's needed, there's no one to inspect incoming waste with the incoming trucks every eight to nine minutes.**

As previously stated in comment #18, VSWMR, §5.1.C.1 requires the owner or operator to implement an inspection program to detect and prevent disposal of hazardous wastes and PCB's. This program must include, at a minimum, random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes. Page 3-3 of the Operations Manual provides a strategy for random inspections. The loads should be inspected at the scale house and at the working face. Frequency should be set up to ensure that each type of vehicle using the landfill receives a regular inspection.

36. **We get approximately 25 inches of rainfall a year. That is a tremendous amount of runoff, tremendous leachate. Once a problem has been determined, the operator has 180 days to do anything about it.**

Part 5.4 of the Operations Manual addresses the problem of contaminant release to the environment. The landfill operator must notify DEQ and, if groundwater becomes contaminated, must follow the requirements of VSWMR, §5.7 for Corrective Action.

37. **If the soil is appropriate, why is it necessary to amend it with bentonite?**

The option of amended soil liners was included to provide flexibility in the event that the native clayey soils obtained from excavations or borrow areas cannot achieve the low permeability requirements.

38. **Part A identifies adequate supply of clay readily available to cover on site. Why is AEGIS planning to use experimental geosynthetic daily cover in lieu of soil for a six-month period?**

VSWMR, §5.1.C.2.c states, "Alternate materials of an alternate thickness may be approved by the Director if the owner or operator demonstrates that the alternate material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment."

39. **What are you going to do about regulation §5.1.C.2.e and §5.3.C.12.e, Virginia Solid Waste Management concerning vegetative cover?**

The Operations Manual, Part 3.4.4.3, lists the requirements, in accordance with the regulations, for daily cover, intermediate cover, final cover, and vegetative cover for the sanitary landfill and the industrial landfill areas.

40. In many instances, words such as Cell A may be dedicated to or Cell B may be dedicated to, either they are going to be or they aren't going to be.

Section VIII "Cell Design" of the Design Report clearly states that Cell A is planned for receiving shredded auto-fluff and Cell B is planned for receiving soil contaminated with petroleum hydrocarbon.

41. If you look at the record-keeping and the submittal of this page 3-21, a lot of the answers in terms of frequency of recording are as needed. As needed by whom? AEGIS? Or you? Or some other agency? Post-closure inspection log. Monthly. Who is going to verify this? Drainage inspection log. Monthly and after storms. Who is going to keep up when there are storms after which there needs to be inspections?

The records listed in Exhibit 3-6, "Recordkeeping - Submittals" will be kept at the site and be made available for the Department when compliance inspections are performed.

42. Industrial disposal facility sites §5.3.A.7.b - Lack of readily available material may prevent approval or permit. If they have more cells than they have acreage and they don't have enough soil on that acreage to use to cover those cells and don't have the land yet or the material proven on that land yet to bring over and cover these cells, then guess what, they do not have readily available materials.

The Part A Application boring logs indicated the site will have adequate overburden soil to use for operation of the facility.

43. Are there sufficient number of borings under the site?

The Part A Application indicates that 95 borings were conducted at the site. The number of borings was based on a disposal area of 750 acres. In accordance with the minimum boring requirements, a project of 750 acres requires a minimum of 79 borings. One commenter remarked that an inconsistency was observed regarding the auger refusal depth and the total depth recorded for Boring B-25.

The same commenter made a statement regarding a boring where the surface elevation was at 315 feet and groundwater was contacted 15 feet below the surface. It was the

commented concern that the groundwater was at a "... pretty high elevation." An analysis of Boring B-76 that matched the comment does not appear anomalous. The number, location, and depth of the borings performed at the site are sufficient to adequately characterize the soils and groundwater movement at the site.

44. The 100-year flood plain was not identified.

The limits of the 100-year flood plain of Stevens Branch and great Creek are clearly indicated on the Near Vicinity Map. None of the proposed disposal limits (at the time of the Part A Application) are located in the floodplain.

45. The landfill is located too close to a fault.

The VSWMR stipulates that no disposal area shall be located within two hundred feet of an active fault. Active fault areas have been defined as a faulting event which has occurred since the Holocene time frame. The Holocene time frame is the most recent geologic time period and cover the time period from the Last Ice Age (about 12,000 years age) to present. There are no Holocene faults near the proposed facility.

46. Shallow bedrock is present within a portion of the proposed fill area.

The blasting of bedrock is not envisioned as an excavation tool for installation of the landfill liner. However, if blasting is deemed necessary, the applicant has provided an additional section to Specification 02225, which has been included in the Permit, to cover this event.

47. Should MW-3 be moved 1100 feet north to a lower elevation?

Well MW-3 should not be located to the north of the facility as sufficient coverage is provided in that area by monitoring well MW-16. Also, MW-3 must be maintained in its current location to ensure immediate detection of a release from Cell B.

48. MW-4 and MW-10 in Table 7-1 note a well depth of 15 feet, yet an intake zone of 19 feet is indicated.

Table 7-1 outlines general proposed well construction parameters only. Appendix X-1 states that wells will be constructed with three (3) feet of screened interval above the watertable and twelve (12) feet below the watertable. This design is intended to ensure that the screened interval intercepts the water table throughout the life of the landfill monitoring program, allow for the identification of immiscible layers, and facilitate

sampling in a reasonable amount of time should the wells recharge slowly.

49. **MW-4 is located within the SLA, Cell 1B. Will MW-4 penetrate the liner? MW-5 is located within the SLA, Cell 2.**

Review of plan sheet 34 of 35 shows that changes in the waste unit boundaries for the SLA were made after finalization of the proposed monitoring system. However, the groundwater monitoring system was not modified to reflect the changes in the waste management unit boundaries. A modified plan sheet indicating the revised waste management unit boundaries along with proposed monitoring well locations have been included in the Permit.

50. **The location of MW-4 is expected to encounter groundwater at a depth of 1-foot. What will happen to the well after the cell is filled?**

The well will be located outside the revised waste management unit boundary and Table 7-1 will be revised to reflect valid well construction parameters. It has been noted that Appendix X-1 states that wells will be constructed with three (3) feet of screened interval above the water table and twelve (12) feet below the water table.

51. **In the area of MW-11, the expected depth to the water table is just 3 feet. What will the groundwater elevation be when the eastern part of the cell is excavated?**

Based on Table 7-1, the water table in this area should be approximately 245 feet above mean sea level (MSL). The planned excavation depth of the cell near this sea is 256 feet above MSL. The development of the cell (i.e., placement of the liner and collection and management of stormwater runoff) may depress the water table surface. However, the intake zone of the monitoring well should be adequate to ensure that groundwater monitoring will continue to be performed at this location.

52. **Table 7-1:**

- a) **MW-15 has an intake zone elevation of 251 - 702 feet.**
- b) **MW-16 has a well depth of 24 feet with the depth to the water table being 24 feet. This would result in a dry well.**

These are typographical errors in the Table and the depths will be revised to reflect valid well construction parameters.

53. **Should there be more monitoring wells in a downgradient position?**

Proposed monitoring wells are located approximately 500 feet apart. This will provide adequate monitoring well coverage to detect a release from each waste management unit. Therefore, no additional wells will be required at this time.

54. Will the well bores become a contaminant pathway?

The monitoring wells will not be located within the waste management unit boundaries. Also, the monitoring wells will be constructed with a bentonite seal above the sand pack interval. The remaining portion of the annulus will be filled to the surface with a cement/bentonite mixture. The surface completion will include a cement well collar, slightly mounded to prevent surface water from accumulating around the well casing. This construction will prevent the monitoring well from becoming a pathway for contamination.

55. A concern was expressed regarding how the groundwater monitoring system is designed with regard to fractures.

The upper aquifer is unconfined and occurs within the saprolitic soils and fractured bedrock. The fracturing appears to be parallel and subparallel to the orientation of bedrock foliations. Bedrock foliations trend approximately N5°E. Monitoring wells are spaced approximately 500 feet apart and several are placed with regards to a N5°E trend through each waste management unit. Well MW-16 is located north of IWA just below the head of the drainage way. Well MW-9 will be moved closer to the SLA waste management unit boundary and will be located towards the head of the drainage way. Also, wells MW-6 and MW-7 have been located south of the SLA. The configuration of the monitoring network does consider the orientation of fracturing through the area, along with the occurrence of springs, and provides adequate coverage for detection of constituents in the uppermost portion of the upper aquifer.

56. A comment was raised concerning proper abandonment of existing borings to ensure that potential contaminant pathways are eliminated.

The permit has been modified to allow only grouting, via a tremie pipe, for borehole abandonment.

57. How can the landfill be monitored effectively?

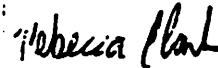
The configuration of the monitoring network provides one (1) upgradient well and fifteen (15) downgradient monitoring wells. The downgradient monitoring wells are placed with consideration to the occurrence of springs and bedrock foliation/fracturing orientations.

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The current system exceeds the minimum requirements of VSWMR.

Should you have any questions concerning this letter please call Rebecca Clark at (804) 527-5158 or Aziz Farahmand, P.E., at (804) 527-5114.

Sincerely,



**Rebecca Clark
Environmental Engineer Senior**

**cc: Michael M. Hawes, AEGIS Waste Solutions, Inc.
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RESPONSE TO PUBLIC COMMENT

BRUNSWICK COUNTY WASTE MANAGEMENT FACILITY

PERMIT NO. 583

AEGIS Waste Solutions, Inc.

- C1. Why does the permit say there are over 800 acres when there are only 755 acres approved in the Brunswick County Conditional Use Permit?
- R1. The original permit for this facility states that the total site property consists of approximately 755 acres, as indicated on Page i of the draft permit amendment. The Part A approval granted by the Department of Environmental Quality is for 755 acres, as indicated on Page II-4 of the draft permit amendment. These approximate acreages are based on Brunswick County tax maps and indicate the difference between the total facility property owned by AEGIS versus the portion of the total property approved for waste disposal activities under the Part A approval. It is important to note that the Part A acreage is consistent with the Conditional Use Permit issued by Brunswick County. The above approximate acreages are unchanged within the current draft permit amendment and are consistent with the original permit.
- C2. The permit maps continue to show three parcels of land that the previous Board of Supervisors did not authorize to be in the landfill. This means that the State of Virginia, through the Department of Environmental Quality, has approved the inclusion of property that has not been zoned by the locality to be used by the landfill.
- R2. As was the case at permit issuance, the Part A permitted acreage remains at approximately 822 acres. The permitted boundaries are depicted on Drawing 3. The potential disposal boundary delineates an area within the Part A area where actual liner construction and waste disposal are allowed. The Part A area does not include Parcel #s 63-33A, 63-47, or 53-143A. These parcels were under negotiation for inclusion in the site at the time of the initial Part A application. Since that time, the properties have been acquired by AEGIS Waste Solutions, Inc., however, the Conditional Use Permit still does not allow the properties to be included in the Part A area. There are notes on the drawing to this effect. Just because a property is shown on a landfill drawing does not necessarily indicate that it is included in the facility plans for landfilling. None of the areas currently permitted for disposal encroach on these properties, therefore, the conditional use permit has not been violated, nor has the DEQ

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violated the local agreements by allowing these properties to be used for landfilling purposes.

- C3. As legal issues such as the one regarding the permit boundary and zoning are before the Courts, why would the DEQ go ahead with this amendment before final decisions are rendered by the Court?
- R3. The current amendment affects only cells which are already built and/or permitted, and does not involve increasing disposal areas. Also, it is quite common for any facility to be involved in legal actions at any given time. Unless there are issues uniquely specific to the amendment, which pose a substantial present or potential threat to health and the environment, the DEQ is obligated to go forward with its responsibility relative to the permitting and amendment of permits as legally requested by applicants and permittees respectively.
- C4. The first page of the permit (page i) says the Northern Solid Waste Disposal Area (NSWDA) is divided into two cells, A and B. Elsewhere, it is indicated that the NSWDA consists of three cells. Why is there a discrepancy?
- R4. Actually, Cell A consists of two subcells, A-1 and A-2. Therefore, technically speaking, there are 3 cells in this area. Language has been added to indicate this designation.
- C5. The emergency coordinator's address is listed as 107 Mallard Crossing Road, which is on land not included in the Brunswick County Conditional Use Permit for use as a landfill. If this land is not zoned for landfill use, why is the landfill office located on it?
- R5. There is an AEGIS office located on that property, however, the office is not considered a waste management facility. This is due to the fact that no waste management activities occur at this location. There is no landfilling of waste, transporting of waste, storing of waste, weighing of waste, examination of waste, or even recycling of waste occurring at this location.
- C6. Since the Northern Solid Waste Disposal Area (NSWDA) now meets the standards of a sanitary landfill, it is therefore allowed to accept putrescible waste, or waste that is decaying, odor causing, and often attractive to scavenging birds. This is known to cause a hazard to aviation due to the potential of a bird striking aircraft. Further, in a letter from the Federal

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Aviation Administration, or FAA, dated May 4, 1994, it is indicated that this area was located 4,150 feet from the end of the runway at the Lawrenceville-Brunswick Airport. State and Federal regulations prohibit these types of landfills from being located within 5,000 feet of an airport used by only piston type aircraft. Why is the DEQ allowing AEGIS to site this landfill in direct violation of this requirement?

- R6. The 4,150 foot distance referenced in the May 4, 1994 letter was based on a hand measurement from a topographic map with a scale of 1 inch = 2000 feet, which is very inaccurate and allows for a very large margin of error. This distance has since been verified using actual field surveys, and it has been determined with a much greater degree of accuracy that both the sanitary landfill area (SLA) and the NSWDA are well outside of the 5000 foot distance measured from the end of the paved runway at the airport.
- C7. Page II-9 of the design report references that the NSWDA will accept primarily non-decaying (i.e., non-putrescible) waste. The first one they have listed agricultural waste. What kind of agricultural waste is non-decaying? By using the term primarily, which is very vague, aren't they opening up the possibility to accept almost anything?
- R7. Agricultural operations could produce non-decaying waste, whether they be discarded pesticide containers, fertilizer bags, farm equipment, etc. This is irrelevant, however, in that as referenced in R6 above, both the SLA and NSWDA meet sanitary landfill standards and are therefore eligible to receive putrescible waste. All of the waste referenced in the permit is acceptable for receipt in a sanitary landfill. There are prohibitions against accepting hazardous waste in the permit. Other non-hazardous wastes not necessarily specified by the regulations are considered to be acceptable wastes. Special wastes can be accepted only with specific approval from the DEQ.
- C8. In the draft B permit amendment there is a monitoring probe schedule. In a version of the Part B dated December 19, 1994, this same schedule list Probe GP-12 as having an elevation of 280. Then you look at this amended permit and it says 320. Also, in the December 1994 version it list GP-13 with elevation 301, while the amended permit lists elevation 254. That is a difference of over 50 feet. What is the reason for this discrepancy?

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- R8. The probes designated GP are gas monitoring probes used to determine whether the landfill is producing gas which is moving through the ground and off-site, which could pose a hazard to the landfill personnel or adjacent property owners. The locations shown on the December 1994 were proposed locations. Since that time, the locations have been changed from the original office location (which is now the staging area) and in the vicinity of the leachate tank farm, to more logical and beneficial locations around the NSWDA. Since the land in the area is not flat, relocating the gas probes, even a short distance, may result in the surface elevation being significantly different, whether higher or lower, and by as much as 50 feet or greater, or as little as 2 or 3 feet or less.
- C9. The old Part B permit application did not contain a specification for rock blasting. Why does the amendment contain the specification now? Did no one know there was rock there before?
- R9. Older versions of the original permit application did not have a specification for blasting rock. This specification was in the original permit, however, and is unchanged in this permit amendment.
- C10. In comparing the old Part B permit with the new permit, 14 of the 16 groundwater monitoring wells have contradicting information from the original permit.
- R10. Comparison of information on groundwater monitoring wells (Table 7-1) between the original "permit" and this amendment shows no change. It is important to note that the initial Part B permit application is just that, an application. In support of a proposed waste management facility, a Part B "application" is submitted that propose potential locations for groundwater monitoring wells. During the course of the permitting process, the location of the wells, as proposed initially, is subject to change. It is not unusual for many, if not most, of the proposed locations to be rejected. It is very important to note that all information submitted in support of a permit application is available for public scrutiny, whether approved, or unapproved. In comparing an unapproved older version of a Part B application with the final, approved permit, one can easily confuse the facts, which appears to be the case in this situation. This is understandable when one realizes that the permitting process can take several years to complete, and during this time several proposed versions of the Part B application can be

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submitted until the one that is finally approved is ultimately developed.

- C11. Why is the depth to the water table varying so much from one permit to the other?
- R11. This difference can be accounted for the same reasons stated above, however, it is possible that changes from the permit occurred during construction of the groundwater monitoring wells. There is a footnote that states that actual elevations and construction details will depend on field located well sites and the depths to groundwater encountered may differ from those shown on the table.
- C12. What confirmation and assurance can DEQ give the citizens of Brunswick County on the actual water levels at this landfill? Have accurate measurements been obtained? How were they verified? Do you know if the water table is below the liner?
- R12. The permit requires the facility to measure the groundwater elevation at each monitoring well during each sampling event. Samples are required to be collected semi-annually during detection monitoring. Water elevation data will be collected from the monitoring wells throughout the detection monitoring program and during the assessment monitoring program, if assessment monitoring is required. The elevations are required to be measured to 0.01 foot accuracy. Continued monitoring of the groundwater elevation will verify the initial data collected to date. The groundwater table is beneath the liner, which is usually the case with most landfills.
- C13. The depth to water table, bottom of boring depth, elevation and intake elevations in Table 7-1 differ from that included in the December 19, 1994 Part B Draft Permit and Part A Permit.
- R13. Review of Table 7-1 in the approved permit and proposed permit amendment show that only the seal thickness for MW-11 changed from 1 foot to 2 feet. As referenced above, the permit that was issued differed significantly from the initial Part B permit application.
- C14. How could anyone know if the groundwater flow direction changes seasonally at the site when the water table, boring depth and elevation is not known?

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- R14. Groundwater monitoring was conducted during the permitting process and will continue throughout the life and post-closure care period of the permit. The groundwater flow rate and direction will be evaluated at least annually. Any seasonal fluctuations which may occur will be detected and the monitoring system modified in response to any changes in the groundwater flow direction.
- C15. VSWMR restricts the siting of facilities where groundwater monitoring cannot be performed in accordance with the regulations. In accordance with these requirements, please provide a general description of the groundwater monitoring scenario for this site.
- R15. The facility must monitor the groundwater on at least a semi-annual basis. Monitoring shall include groundwater elevations and groundwater quality.

The groundwater flow rate and direction shall be determined for each sampling event. Any changes in the groundwater flow rate or direction noted must be addressed by proposing additional monitoring wells to ensure adequate monitoring in response to the changes.

Groundwater quality data shall be determined for the Appendix 5.5 constituents. Background data will be collected during the first semi-annual monitoring event. Future data will be statistically compared to the background data. Any statistically significant increase noted in the downgradient wells, as compared to the upgradient well(s), shall be require implementation of assessment monitoring unless an alternate source for the increase can be provided. The requirements for assessment monitoring are outlined in Module XI of the proposed permit amendment.

- C16. Due to a lack of public drinking water systems, rural communities usually have no choice but to rely only on groundwater to meet their water supply needs. So far, DEQ has addressed that problem with nothing more than a promise to enforce cleanup and remediation programs if/when contamination occurs. What assurances can DEQ provide that this sole source of drinking water is protected?
- R16. To the extent provided by the State and Federal laws, DEQ can assure that such facilities take all the required precautions to avoid contamination of the groundwater. The Brunswick Waste Management Facility has met the requirements of these laws with regard to siting, design, operation, closure, and

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post closure. To that end, the facility has deployed EPA approved Subtitle D liners and leachate collection systems, and has in place systems to monitor the potential migration of contaminated groundwater or landfill gases. State or Federal government cannot guarantee that such systems will never fail.

- C17. AEGIS Waste Solutions, Inc. and Allied Waste Industries have consistently made every effort to disguise their business relationship before the DEQ and the Courts. The Virginia Code, § 59.1-69 makes it a violation of Virginia law to operate under an assumed or fictitious name.
- R17. AEGIS Waste Solutions, Inc., (AEGIS) was incorporated on December 18, 1992. Due to the affiliation with Brunswick County, a name change was filed with the Virginia State Corporation Commission (SCC) on July 7, 1994, changing the name to Aegis of Brunswick County, Inc. Due to the fact that the corporation had existing contracts and overtures under the original name, a fictitious name affidavit was filed for AEGIS Waste Solutions, Inc., on August 24, 1995. In 1997, all of the stock in the company was acquired by Allied Waste Industries, Inc. (Allied). AEGIS continued its existence as a wholly owned subsidiary of Allied. During the course of negotiations for purchase of the AEGIS stock, Allied had incorporated Allied Waste Industries of Virginia, Inc., as a vehicle to acquire either the assets or the stock of AEGIS. After the acquisition of the AEGIS stock by Allied, a decision was made by Allied to merge Allied Waste Industries of Virginia, Inc., into AEGIS as there was no need to maintain a separate shell corporation. Due to the fact that some limited business had been transacted under the name of Allied Waste Industries of Virginia, Inc., and to avoid any confusion on the part of the public, on September 8, 1997, a fictitious name affidavit was filed with the SCC. Simultaneous with this filing a fictitious name affidavit was filed allowing for the use of the name Brunswick Waste Management Facility, Inc. Allied, as a common business practice, maintains a local name whenever possible in order to equate its operation nationwide. Indeed, few national corporations operate today without wholly owned subsidiaries and names separate and distinct from their original corporate title.

The DEQ has on file copies of documentation evidencing the history of AEGIS as outlined above, including the most recent "good standing certificate" for the corporation dated June 30, 1997. This documentation is also of record with both the SCC, and in regard to the fictitious name affidavits, with the

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circuit Court of Brunswick County, Virginia. In addition, the files of DEQ contain written notification of the acquisition of the AEGIS stock by Allied, and disclosure been made repeatedly with the filing of all permits and amendments to same. In regard to local notification, the records of numerous Brunswick County Board of Supervisor meetings in both 1996 and 1997 contain statements by AEGIS and its counsel advising the Board of Allied's status as a contractor for AEGIS prior to the merger, and of the acquisition of the AEGIS stock by Allied. In addition, the management of Allied was in fact introduced by AEGIS prior to and after acquisition in an open session of the Board. With regard to the legality of operating under a fictitious name, § 59.1-69 of the Code of Virginia states..."Certification of person, partnership, limited liability company or corporation transacting business under assumed name. -- A. No person, partnership, limited liability company or corporation shall conduct or transact business in this Commonwealth under any assumed or fictitious name unless such person, partnership, limited liability company or corporation shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted..... and file the same in the office of the clerk of the circuit court in which deeds are recorded in the county or city wherein the business is to be conducted." Virginia Code Section 59.1-70 further requires that this certificate be then filed with the SCC. All such filings were made and have been of record with both the SCC and the Circuit Court of Brunswick County.

To conclude, AEGIS is a valid Virginia corporation and has the authority to both hold permits and operate the landfill that is the subject of the current permit amendment.

RESPONSE TO PUBLIC COMMENT

BRUNSWICK COUNTY WASTE MANAGEMENT FACILITY

PERMIT NO. 583

AEGIS Waste Solutions, Inc.

- C1. Why does the permit say there are over 800 acres when there are only 755 acres approved in the Brunswick County Conditional Use Permit?
- R1. The total site property consists of approximately 974 acres, including all out parcels as designated on Sheet 3. When AEGIS initially submitted the application for the Conditional Use Permit to Brunswick County, the acreage was estimated to be approximately 755 acres. This acreage was based on tax maps and deed descriptions and did not include out parcels (tax map and parcel # 63-33A, 63-35, 63-47, and 53-143A). Those parcels were under negotiation for purchase and included in the site at the time of the initial Part A application. While AEGIS has since purchased these properties, and they are included in the total site property, they are not included in the Part A approval, initially, or now. The Part A approval is still based on the original properties which were certified by Brunswick County as being consistent with all applicable ordinances. AEGIS has had a more recent survey of the properties within the boundaries that were estimated to be 755 acres, and the results of that survey indicate that the actual acreage is 822 acres. While the actual acreage may be subject to a debate between the old descriptions or a recent survey, it is important to note that the parcels and their boundaries remain the same as they ever were. Most importantly, it must be realized that waste disposal activities can only take place within the areas designated potential disposal areas. These areas are delineated on plan sheet 3, and consist of only 428.5 acres, and consider all buffers and unsuitable areas to provide protection of the environment. Finally, the officials of Brunswick County, to include those responsible for interpreting zoning ordinances, are advised of all revisions relative to this issue, and have not indicated any objections.
- C2. The permit maps (particularly Sheet 3) continue to show three parcels of land that the previous Board of Supervisors did not authorize to be in the landfill. There is a note (3) that says these parcels are included in the Part A permit limits. This means that the State of Virginia, through the Department of Environmental Quality, has approved the inclusion of property that has not been zoned by the locality to be used by the landfill. What is to prevent these or any other land in the area from being used for waste five or ten years from now? _

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- R2. The permitted boundaries depicted on Drawing 3 are the same, and contain the same parcels that were approved in the initial permit issuance. The note 3 is misleading and is meant to indicate that the parcels were included in the initial Part A permit application. There is no such thing as a Part A permit, only a Part A approval. The only permit is the landfill permit, which is based on both the Part A and Part B applications. The note 3 has been revised to indicate that the parcels are "not" included in the Part A approval limits. It is important to note that the potential disposal limits avoid these parcels. The only expansion with regard to approved disposal limits relative to Part A consideration by this department is 2.68 acres of wetlands in Cells 3 and 5, which are clearly indicated on the plans, and which are not in the vicinity of the parcels referenced above. AEGIS has been granted permission from the Corps of Engineers to displace the wetlands area. These wetlands must be replaced by AEGIS in the wetland mitigation area designated on plan sheet 3. Again, and as referenced in R1 above, the Part A approval area does not include Parcel #s 63-33A, 63-35, 63-47, and 53-143A. These parcels were under negotiation for inclusion in the site at the time of the initial Part A application. Since that time, the properties have been acquired by AEGIS Waste Solutions, Inc., however, the Conditional Use Permit still does not allow the properties to be included in the Part A area. Just because a property is shown on a landfill drawing does not necessarily indicate that it is included in the facility plans for landfiling. None of the areas currently permitted for disposal encroach on these properties, therefore, the conditional use permit has not been violated, nor has the DEQ violated the local agreements by allowing these properties to be used for landfiling purposes. Finally, for the out-parcels, or any other parcels that AEGIS owns or may purchase in the future, to be included within the limits of a Part A approval, they must first be declared by Brunswick County to be consistent with all applicable ordinances. Then the facility must submit a request for a major permit amendment, complete with a public hearing conducted by this department. The same holds true for any future expansions of the disposal footprint within the areas already approved by the Part A and conditional use permit.
- C3. On page IV-6 of the permit design report, it is indicated that boring B-53 is outside the limits of the landfill by 50 feet. Whose land is it on? Even the permit admits that its on somebody else's land.

- R3. Boring B-53 is clearly within the boundary of the land owned by AEGIS, as indicated on drawing sheet No. 45. Soil borings are taken to evaluate the physical properties and quantities of soil in the area. These borings are usually made by an auger type of drill which is advanced to a point where the drilling machinery cannot proceed any further (often called auger refusal). This point is usually where soil becomes rock at greater depth. Some borings are advanced beyond auger refusal with other types of drilling equipment into the fractured bedrock, to be developed into water wells (or piezometers) for taking water level determinations in the characterization of the site hydrogeology. Boring B-53, however, was not advanced or developed into a water well, and was sealed shortly after the drilling program was completed way back in 1993, and no longer exists. All borings completed in the drilling program were on land owned by AEGIS. The terminology that the location is outside the limits of the landfill means that it is outside of the landfill disposal footprint, or where actual waste is to be placed on a liner. Nowhere in the design report is it referenced that borings are located on land not owned by AEGIS. AEGIS does not need a permit or DEQ approval to take borings on its own land.
- C4. The landfill office, certain gas probes, and certain groundwater monitoring wells are located on land not included in the Brunswick County Conditional Use Permit for use as a landfill. If this land is not zoned for landfill use, why is the landfill office, gas probes, and groundwater monitoring wells located on it?
- R4. There is an AEGIS office located on that property, however, the DEQ does not regulate buildings used as offices. As for groundwater monitoring wells and gas monitoring probes, there is no prohibition against these features being located outside the limits of Part A approval, as long as they are located on land owned by AEGIS and have a permanent easement recorded. As a result of this comment, a permanent easement has been obtained for the groundwater monitoring wells and the gas monitoring probes are being relocated within the Part A approval limits.
- C5. Aren't there requirements to have benchmarks on the site to established horizontal and vertical control?
- R5. Yes, § 7.4.A.1.j.(1), VR 672-20-10, [9 VAC 20-80-520.A.1.j.(1)], requires benchmarks for this purpose. More specifically, § 5.1.B.16, [9 VAC 20-80-250.B.16], requires that two survey benchmarks

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shall be established and maintained on the landfill site, and their location identified or recorded on drawings and maps of the facility. There are two benchmark monuments indicated on plan sheet 2 of the facility design plans. Facility site inspections by the DEQ have verified that these benchmark monuments are indeed in place.

- C6. On page V-20 of the design report, it is indicated that the leachate from the facility is taken to a Publicly Owned Treatment Works (POTW). It is referenced that a copy of the agreement between AEGIS and the POTW is contained in Appendix 12. That agreement to treat leachate from the landfill is between AEGIS and the City of Hopewell, and expired on December 31, 1995. Where is the leachate being treated now?
- R6. This is a copy of the agreement that was in effect at the time of permit issuance. The agreement is renewed on an annual basis. The facility is required to maintain this information current in its operating record. Additionally, AEGIS may negotiate other agreements with other providers of treatment services at any time. The wording in the design report has been revised to indicate more specifically that the agreement will be kept current and in the facility operating record, and the copy in the appendix has been removed. As a result of this comment, DEQ has verified that there is a current agreement in place, and obtained a copy of said agreement.
- C7. Has another Part A Permit been issued for this facility? If so, what happened to § 2.9, VR 672-20-10, [9 VAC 20-80-110] with regard to public participation?
- R7. The requirements of § 2.9, VR 672-20-10, [9 VAC 20-80-110] of the regulations require that a public hearing be conducted for new permits and amendments of existing permits. That is the reason the public hearing which was conducted for the amendment of the AEGIS permit on March 13, 1998. There are not two public hearings conducted because there is only one permit. As referenced above, there is no such thing as a Part A permit, or a Part B permit. There is only one permit, which is supported by a Part A application and a Part B application.
- C8. In § 7.3.E.1, VR 672-20-10, [9 VAC 20-80-510.E.1], the minimum number of borings required for sub-surface investigation is established, and is based on the acreage of a proposed site. More specifically, in Table 7-1, it is indicated that on sites larger than 200 acres, the minimum number of borings is 24, plus 1 boring for each additional 10 acres. Since the site

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acreage has been corrected (i.e., increased) from 755 acres to 822 acres, is the number of borings initially advanced sufficient? If the acreage has increased by 67 acres, aren't 7 more borings required?

- R8. In the Part A application for this facility, there is a Section II.A, entitled "Part A Drilling Summary." According to this summary, based on the initial acreage estimation of approximately 750 acres, 79 borings were initially chosen to characterize the site in accordance with Table 7-1. The boring location pattern was designed to enable the development of detailed cross-sections through the site that sufficiently define existing geotechnical and hydrogeologic conditions. As the drilling project progressed, 16 additional borings were added in order to more fully characterize bedrock topography in certain areas of the site. These additional 16 borings are more than sufficient to account for the increased acreage, which would only require 7 more borings technically. Ultimately, the number of borings is determined by the geologic and hydrogeologic complexity of the site.
- C9. Who is monitoring what is being disposed of in the landfill? What assurances can be given that hazardous or nuclear waste is not going to be put into the landfill?
- R9. The Solid Waste Management Regulations and facility permit contain minimum requirements for inspection and control of waste disposed of in the landfill. There are civil and criminal penalties for violating these requirements. The DEQ has regional inspectors that can inspect the facility operating record at any time, to include records of waste received. In addition to this, there is an agreement between Brunswick County and AEGIS that the landfill will have a full time County inspector on site during all times of operation and waste placement. Note that this inspector is an employee of the County and not AEGIS. Also, there are random load inspections as well as laboratory analytical testing of any special wastes prior to disposal. The County inspector and facility operators are trained in identifying improper or unacceptable materials. Once discovered, loads containing unacceptable materials are rejected and required to be removed from the site.
- C10. Why are there groundwater monitoring wells located on property which is not part of the permitted facility?
- R10. Review of plan sheet three shows the facility boundary which is slightly different than the permitted boundary. However,

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MW-25 and MW-35 are on property owned by AEGIS Waste Solutions. As a condition of the permit, access easements will be required to be added to the permit.

- C11. Will the final detection groundwater monitoring program be capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the SLA and the NSWDA during the active life and post-closure care period of the facility?
- R11. Yes, the Part A approval verified site suitability for solid waste management. Based on the information in the Part A and Part B application(s), a groundwater monitoring program was developed which is capable of immediately detecting a release to the groundwater by monitoring the uppermost portion of the uppermost aquifer at the waste management unit boundary. Wells are to be phased in as cells are constructed and the waste management unit boundary expands.
- C12. Will the groundwater be monitored at the location shown on Drawing 45?
- R12. Yes, groundwater monitoring wells will be phased in as cells are developed. The locations of the monitoring wells currently in place and wells to be installed in the future are outlined on Drawing 45. The wells associated with each cell are outlined in Module X and XI.
- C13. Will, or can the owner/operator implement a groundwater monitoring program capable of determining the facility's impact on the quantity of groundwater and the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility during the structural life, the active life of the facility and during the post-closure care period?
- R13. The groundwater monitoring program outlined in Modules X and XI is capable of determining the impact on groundwater resources at the site by monitoring the uppermost portion of the uppermost aquifer at the waste management unit boundary. The facility is required to implement this groundwater program in accordance with Modules X and XI.
- C14. The groundwater monitoring plan appears to indicate that there is a possibility of fluctuation of water elevations by as much as 6.6 feet relevant to the screened intervals of the monitoring wells.

- R14. Fluctuations in groundwater levels referred to in the narrative generally represent lowering of these elevations and not raising of groundwater levels. Current well designs incorporate 15 foot screens with up to an additional 2 feet of sand above the screen. This design allows for a sand pack around the screen of up to 17 feet which should ensure the monitoring wells will continue to monitor the uppermost portion of the uppermost aquifer even with fluctuations of up to 6 feet. If the wells become inoperable due to groundwater fluctuations, new wells will be required to be installed with deeper screened intervals.
- C15. Monitoring wells are proposed to be installed at depths which the Part A investigation indicated groundwater was not encountered.
- R15. Comparison of the Part A borings B-12, B-22, B-23, B-26, B-27, B-30, B-33, B-36, B-38, B-41, B-43 B-54 and the 1997 groundwater elevation data show good agreement. The borings were drilled at different locations and elevations than the proposed monitoring wells. When no groundwater was encountered in the Part A boring at the depth of auger refusal, these depths compare well with the 1997 data which indicates groundwater often follows the bedrock surface. The 1997 data shows current conditions at the site and is the basis for establishment of the groundwater monitoring system. The monitoring wells will be installed to monitor the uppermost portion of the upper aquifer. The depths indicated may be adjusted in the field to account for the conditions encountered. The groundwater surface elevations will be evaluated semi-annually.
- C16. Table 7-1A shows the ground elevation for well MW-29 at 239 feet and the potentiometric map shows the groundwater elevation at the proposed MW-29 elevation at 240 feet.
- R16. The ground surface elevation of the proposed monitoring well MW-29 was incorrectly shown on Table 7-1A. The table has been revised to correct the groundwater surface elevation and corresponding well characteristics for MW-29.
- C17. On sheet 45, the groundwater contours indicate that in some instances, the surface of groundwater is above the surface elevation of a certain wells. Are these wells flooded, or located below surface water?
- R17. No, these wells are not below surface water. When the groundwater contours were drafted, there were some minor

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AEGIS Waste Solutions, Inc.
Brunswick County Waste Management Facility
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drafting errors in that some of the well data for certain wells was not considered, or was otherwise omitted. The contours have been re-evaluated as a result of this comment, and minor adjustments made. The error is considered to be minor in that these contours are not used for determining excavation grades for design of the disposal unit base grades, but are intended to indicate the direction of groundwater flow for the purposes of determining whether the location of upgradient and downgradient groundwater monitoring wells is appropriate. This is based on a broad consideration of groundwater well elevation data site-wide, therefore, the omission of a few data points is not critical in that the omission has a limited affect on the overall "big picture" of groundwater flow and direction beneath the entire site.

- C18. In evaluating data from the groundwater monitoring plan, it appears that in some instances groundwater is at or near the same elevation as bedrock? How can this be?
- R18. The bedrock near the soil and bedrock interface, or boundary, is usually fractured. It is not uncommon for groundwater to be found in these bedrock fractures.
- C19. The design report text indicates that it is 10 to 15 feet to the groundwater beneath the site, yet, in many of the groundwater monitoring wells, it is only 5 feet or less to groundwater. Which is correct? If the groundwater is this close to the bottom of the landfill, will this cause bottom heave, and blowout of the liner?
- R19. It is important to note that the landfill disposal units for this facility are located higher topographically than the monitoring wells which show groundwater at shallow depths. In other words, groundwater is encountered deeper in the ground at the hilltop, where the disposal cells are located, than the valleys, where the groundwater monitoring wells are located. The facility disposal cells are designed to be above groundwater. Bottom heave and blowout are not likely to occur in the relatively shallow and unsaturated excavations required to establish the base grades for this facility. Further, as liners are installed, groundwater recharge in these areas will be diminished, causing groundwater elevations beneath the disposal cells to fall gradually over the life of the facility and post closure.



COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Thomas L. Hopkins
Director

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MEMORANDUM

TO: Don Brunson, Environmental Engineer Sr.

THROUGH: Howard Freeland, Environmental Program Manager **H**

FROM: Shawn Davis, Environmental Engineer Sr. **ASD 5/1/98**

DATE: May 1, 1998

SUBJECT: Public Comment Response on Draft Solid Waste Permit #583
AEGIS Waste Solutions/Brunswick Waste Management Facility

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Per your memorandum of March 24, 1998, the public comments concerning the subject groundwater monitoring program have been reviewed. The following responses are provided.

SYDNEY E. BROWN

Comment: Page 7. The comment was made that monitoring wells are on property which is not part of the permitted facility.

Response: Review of plan sheet three shows the facility boundary which is slightly different than the permitted boundary. However, MW-25 and MW-35 are on property owned by AEGIS Waste Solutions. As a condition of the permit, access easements will be required to be added to the permit.

JERRY MARSTON

Comment: Page 14. The comment was made that monitoring wells MW-25 and MW-35 are outside the permitted boundaries of the facility.

Response: See response to Sydney E. Brown comment above

Comment: Page 17. The comment was made whether the final detection groundwater monitoring program shall be capable of determining the facility's impact on the qualify of

groundwater in the uppermost aquifer underlying the SLA and the NSWDA during the active life and post-closure care period of the facility.

Response: The Part A approval verified site suitability for solid waste management. Based on the information in the Part A and Part B application, a groundwater monitoring program was developed which is capable of immediately detecting a release to the groundwater by monitoring the uppermost portion of the uppermost aquifer at the waste management unit boundary. Wells are to be phased in as cells are constructed and the waste management unit boundary expands.

Comment: Page 17. Will the groundwater be monitored at the location shown on Drawing 45.

Response: Yes, groundwater monitoring wells will be phased in as cells are developed. The locations of the monitoring wells currently in place and wells to be installed in the future are outlined on Drawing 45. The wells associated with each cell are outlined in Module X and XI.

Comment: Page 20. The comment was made whether the owner/operator can or will implement a groundwater monitoring program capable of determining the facility's impact on the quantity of groundwater and the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility during the structural life, the active life of the facility and during the post-closure care period.

Response: The groundwater monitoring program outlined in Modules X and XI is capable of determining the impact on groundwater resources at the site by monitoring the uppermost portion of the uppermost aquifer at the waste management unit boundary. The facility is required to implement this groundwater program in accordance with Modules X and XI.

Comment: Page 20. The comment was made concerning the possible fluctuation of water elevations as much as 6.6 feet relevant to the screened intervals of the monitoring wells.

Response: Fluctuations in groundwater levels referred to in the narrative generally represent lowering of these elevations and not raising of groundwater levels. Current well designs incorporate 15 foot screens with up to an additional 2 feet of sand above the screen. This design allows for a sand pack around the screen of up to

17 feet which should ensure the monitoring wells will continue to monitor the uppermost portion of the uppermost aquifer even with fluctuations of up to 6 feet. If the wells become inoperable due to groundwater fluctuations, new wells will be required to be installed with deeper screened intervals.

Comment: Page 23. Monitoring wells are proposed to be installed at depths which the Part A investigation indicated groundwater was not encountered.

Response: Comparison of the Part A borings B-12, B-22, B-23, B-26, B-27, B-30, B-33, B-36, B-38, B-41, B-43 B-54 and the 1997 groundwater elevation data show good agreement. The borings were drilled at different location and elevations than the proposed monitoring wells. When no groundwater was encountered in the Part A boring at the depth of auger refusal, these depths compare well with the 1997 data which indicates groundwater often follows the bedrock surface. The 1997 data shows current conditions at the site and is the basis for establishment of the groundwater monitoring system. The monitoring wells will be installed to monitor the uppermost portion of the upper aquifer. The depths indicated may be adjusted in the field to account for the conditions encountered. The groundwater surface elevations will be evaluated semi-annually.

Comment: Page 24. Table 7-1A shows the ground elevation for well MW-29 at 239 feet and the potentiometric map shows the groundwater elevation at the proposed MW-29 elevation at 240 feet.

Response: The ground surface elevation of the proposed monitoring well MW-29 was incorrectly shown on Table 7-1A. The table has been revised to correct the groundwater surface elevation and corresponding well characteristics for MW-29.

Comment: Page 26. Comment was made that monitoring well 130 show water about three or four feet above the top of the ground.

Response: No monitoring well 130 is included on drawing 45. Also, there is no monitoring well 130 in the groundwater monitoring system.

Should you require any additional information, please advise.

**NOTICE OF PUBLIC HEARING
BRUNSWICK COUNTY BOARD OF SUPERVISORS
APPLICATION FOR A CONDITIONAL USE PERMIT
BY AEGIS WASTE SOLUTIONS, INC.
FOR A PRIVATE SANITARY LANDFILL AND
WASTE MANAGEMENT FACILITIES IN
BRUNSWICK COUNTY**

Notice is hereby given that the Board of Supervisors of Brunswick County, Virginia will on August 18, 1993 at 7:30 p.m. in the Basement Auditorium of the County Government Building, Tobacco Street, Lawrenceville, Virginia, conduct a public hearing to receive public comments on an application for a Conditional Use Permit for the construction and operation of a private sanitary landfill and waste management facilities by AEGIS WASTE SOLUTIONS, INC. on parcels of property in Brunswick County zoned Agricultural District, A-1. Application is being made for such Conditional Use Permit pursuant to Section 2-1-26 of the Zoning Ordinance of Brunswick County which allows Sanitary Landfills in Agricultural District A-1 with a Conditional Use Permit. Application is being made by AEGIS WASTE SOLUTIONS, INC. as contract purchaser with written approval of the owners for such use and permit on the following parcels of property:

1. Parcels owned by E.B. Matthews, containing approximately 470 acres, located on State Route 733 approximately 0.25 mile South of State Route 678 being parcel numbers 63-40, 63-41, and 63-142 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Will Book 34 at Page 631.
2. Parcel owned by James Bassette, containing approximately 25 acres, located on State Route 733 approximately 1.0 mile South of State Route 678 being parcel number 63-34 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Will Book 36 and Page 777.
3. Parcel owned by James Treme, containing approximately 27 acres, located on State Route 733 approximately 0.5 mile South of State Route 678 being parcel number 63-160 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Deed Book 219 at Page 635.

4. Parcel owned by Laurence Stephens, containing approximately 33 acres, located on State Route 733, approximately 0.5 mile South of State Route 678 being parcel number 53-161 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Deed Book 219 at Page 528.
5. Parcel owned by John H. Maclin, Jr., containing approximately 43.48 acres, located on State Route 733, approximately 1.0 mile South of State Route 678 being parcel number 53-38 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Deed Book 144 at Page 447.
6. Parcels known as the James Wynn Estate and owned by the heirs of James Wynn, containing approximately 150 acres, located on State Route 733, approximately 0.26 mile South of State Route 678 being parcel numbers 53-140 and 53-143 as shown on the tax records of the Commissioner of Revenue of Brunswick County and being that same property conveyed unto the owners by deed of record in the Circuit Court Clerks Office of Brunswick County, Virginia in Deed Book 95 at Page 350.

The public is FURTHER NOTIFIED that the Board of Supervisors will consider at that same time and place compliance of such proposed use on the properties involved in the Application with the Comprehensive Plan of Brunswick County as previously adopted by the Board of Supervisors of Brunswick County, any conditions of use for such activity at the proposed site and compliance of such use at the proposed site with all ordinances of the County of Brunswick and the previously adopted Waste Management Plan of Brunswick County.

A copy of the Application is available for public inspection at the Office of the County Administrator, County Government Building, Tobacco Street, Lawrenceville, Virginia during normal business hours. The public is invited to attend this hearing and express their views on the Application.

BY AUTHORITY OF THE BOARD OF SUPERVISORS
OF BRUNSWICK COUNTY
JEFFREY D. JOHNSON, CLERK

SECTION II SITE LAYOUT

A. GENERAL SITE PLANS

The Brunswick Waste Management Facility (BWMF) includes an initial 33-acre Sanitary Landfill Area (SLA) and an initial 24.4-acre Industrial Waste Area (IWA) located within the Part B Permit limits as shown on Drawing No. 5, Engineering Modifications Plan - Sanitary Landfill and Drawing No. 17, Engineering Modifications Plan - Industrial Waste Area. The SLA will be situated within the central portion of the site; the IWA will be situated approximately 1800 feet north of the SLA. Both areas will be accessible by a dual purpose access road and weigh scale off of State Route 733.

The site layout has been developed to achieve the buffer distances and set-backs as indicated in the approved Part A Permit, which meet or exceed criteria established in VR 672-20-10 and the Conditional Use Permit #21-93 approved by Brunswick County. In this design, allowances have been made for future lateral expansion of the SLA and IWA cells; however, future cells are not included in this Part B permit application. Expansion will be addressed in future Part A and Part B permit amendment submittals. Therefore, the 57.4 acres of fill covered in this Part B Permit Application represent the initial phase of site development and operation and will be the basis for future expansion.

Overall, the BWMF has been designed and will be operated in accordance VDEQ requirements including groundwater monitoring, gas management and monitoring, surface water controls, leachate management, construction quality control, geotechnical stability, and closure and post-closure considerations. Support facilities will include an all-weather access road and entrance gate, weigh scales, scale house, leachate storage tanks and unloading facility, potable water, electrical and telephone communications systems, erosion and sedimentation control structures, site office and maintenance facility.

1. Existing Site Conditions

Drawing No. 2, Existing Site Conditions, depicts current site topography and other site features within the initial 755-acre BWMF area. Additional information regarding existing site conditions has been previously discussed in the approved Part A Permit Application.

2. Base Grade Plan

Base grade plans for the SLA and IWA are shown on Drawing Nos. 4 and 16, respectively. The contours shown on these plans represent the base excavation prior to installation of the initial engineering modifications (liner and leachate collection systems) for both areas.

In the case of the SLA, a 60 mil HDPE (textured) geomembrane will be placed over, and in intimate contact with the low permeability soil liner, to form the single composite base liner required by VR-672-20-10. The IWA base liner will consist of a single 18" low

permeability soil layer, which exceeds the 12" soil liner requirement for industrial waste disposal units, or a 60-mil textured HDPE overlying 18 inches of compacted earthfill. Details of the liner systems are presented in Section IV. In both cases, the base grades are shown excavated in their entirety, before the installation of any engineering modifications.

3. Modification Plans

Drawing No. 5, Engineering Modifications - Sanitary Landfill and Drawing No. 17, Engineering Modifications - Industrial Waste Area, shows the appearance of the site after installation of all engineering modifications. Principal modifications include base liner and leachate collection systems in the various SLA and IWA phases, leachate distribution piping and leachate sumps, stormwater ponds and drainage channels both on and outside the landfill limits. Typical cross-sections are shown on Drawing Nos. 11 and 12 for the SLA and Drawing Nos. 19, 20 and 20A for the IWA.

4. Phasing Plans

Phasing plans are shown on Drawing Nos. 7, 7A, 8, and 9 for the SLA; there is only one phase planned for the IWA. These plans depict progression of site development with time for the three SLA cells and two IWA monofill cells. A list of construction items and quantities for each phase of the SLA and IWA facilities is provided on Table 2-1 and Table 2-2, respectively.

5. Cross Sections

Drawing Nos. 11 and 12 show cross-sections of the SLA, and Drawing Nos. 19, 20 and 20A show cross-sections of the IWA, parallel and perpendicular to the site grid system at the maximum 500 feet spacing. The locations of each cross-section are shown on the Base Grade Plan, Engineering Modifications and Final Grading Plan drawings for the SLA and IWA.

6. Floodplain

The SLA and IWA facility boundaries are outside the 100-year floodplain as presented on Figure 3 of Part A Permit Application. As noted on Figure 3, the 100-year floodplain was interpolated from the Flood Insurance Rate Map for Brunswick County prepared by the Federal Emergency Management Agency, Community Panel No. 510236 0130 B.

**TABLE 2-1
SLA CONSTRUCTION QUANTITIES**

| SANITARY LANDFILL AREA | CELL 1A | CELL 1B | CELL 2 | TOTALS |
|--|----------------|----------------|---------------|---------------|
| Area (acres) | 9.3 | 8.2 | 15.5 | 33 |
| Soil Liner (cu.yd.) | 30,000 | 26,500 | 50,000 | 106,500 |
| HDPE Liner (sq. ft.) | 405,000 | 357,000 | 675,000 | 1,437,000 |
| Geotextile (sq. ft.) | 405,000 | 357,000 | 675,000 | 1,437,000 |
| Drainage and Protective Layer (cu. yd.) | 22,500 | 19,800 | 37,500 | 79,800 |
| Infiltration Barrier (cu. yd.) | 24,000 | 21,100 | 39,700 | 84,800 |
| Textured Geomembrane Cover (sq. ft.) | 431,000 | 379,000 | 714,000 | 1,524,000 |
| Geocomposite Drainage Layer | 431,000 | 379,000 | 714,000 | 1,524,000 |
| Vegetative Support Layer (cu.yd.) | 24,000 | 21,100 | 39,700 | 84,800 |
| Topsoil (cu.yd.) | 8,000 | 7,000 | 13,200 | 28,200 |

**TABLE 2-2
IWA CONSTRUCTION QUANTITIES**

| INDUSTRIAL WASTE AREA | CELL A | CELL B | TOTALS |
|--|---------------|---------------|---------------|
| Area (acres) | 16.2 | 8.2 | 24.4 |
| Soil Liner (cu.yd.) | 39,200 | 19,800 | 59,000 |
| Drainage and Protective Layer (cu.yd.) | 39,200 | 19,800 | 59,000 |
| Infiltration Barrier (cu.yd.) | 39,200 | 19,800 | 59,000 |
| Vegetative Support Layer (cu.yd.) | 26,000 | 13,200 | 39,400 |
| Topsoil (cu.yd.) | 13,000 | 6,600 | 19,700 |

B. GENERAL FACILITY INFORMATION

Project Title: Brunswick Waste Management Facility

Engineering Consultant: SCS Engineers
11260 Roger Bacon Drive
Reston, Virginia 22090
Mr. Paul Mandeville, PE (703) 471-6150
Mr. Robert Isenberg, PE (703) 471-6150
Mr. Charles Leung, PE (703) 471-6150

Owner/Permittee: AEGIS Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087
Mr. Michael M. Hawes (703) 268-9781

Operator: AEGIS Waste Solutions, Inc.

1. Proposed Permitted Acreage

The BWMF area covered under the Part A permit is 755 acres, which encompasses the three approved disposal areas as depicted on Drawing No. 3, Proposed Site Features of this Part B Permit Application. Drawing No. 3 was derived from Figure No. 3 of the approved Part A Permit Application. However, for this Part B Permit Application, it is intended to obtain a permit for 33 acres of sanitary landfill area and 24.4 acres of industrial waste disposal area, for a total of 57.4 acres. As noted previously, subsequent permit amendment submittals will increase the area of the SLA and IWA units, but will be within the approved disposal area limits as referenced above, or amendment to the Part A permit will be sought.

2. Site Life and Capacity

Tables 2-3 and 2-4 depicts the capacity and site life for each phase of the SLA and IWA facilities. These tables also include cut and fill earthwork volumes and an overall net soil balance.

3. Site Monitoring

Groundwater and landfill gas will be monitored at the locations shown on Drawing No. 34, Monitoring Well Plan.

SECTION III SITE PREPARATION

A. SITE CONDITIONS

The Part A Permit Application was approved by the VDEQ in a letter to Mr. Mike Hawes of AEGIS dated March 25, 1994. Specific conditions of approval are indicated below.

Condition 1. The facility boundary and the maximum extent of the disposal units shall be maintained as shown on the revised Near Vicinity Map, submitted to the Waste Division on March 15, 1994.

Response The limits of the SLA and IWA units are within the boundaries shown on the referenced drawing.

Condition 2. Sanitary waste disposal units shall not be located closer than 5000 feet from the nearest runway end (coordinates 36°46'47" N latitude, 77°47'57" W longitude) at the Lawrenceville-Brunswick County Airport.

Response The SLA unit will be situated not closer than 7100 feet from the airport runway. In a letter from the Federal Aviation Administration to Draper-Aden dated May 4, 1994 (copy included in Appendix 3) the FAA concludes that the facility "...should not pose a bird hazard to aircraft operating at the Lawrenceville-Brunswick Airport." Also, the FAA stated that "...stated distances meet the criteria separation requirements as defined in FAA Order 5200.5A, "Waste Disposal Sites On or Near Airports".

Condition 3. All containment structures including liners, leachate collection systems, and surface water control systems shall be designed to resist the maximum horizontal ground acceleration, (with a 10% or greater probability of occurring in 250 years) for this site. This value was estimated to be .23g in the seismic analysis submitted with the Part A Permit Application.

Response The structures noted in Condition 3 will be designed to resist seismic ground acceleration. The Part A permit report suggested using a maximum horizontal ground acceleration of 0.23 g based on a 1.5 soil amplification factor. However, research performed by Dr. George Filz of Virginia Polytechnic Institute and State University suggests that the maximum probable earthquake for Virginia, based on historical data, is a magnitude of approximately 6.50. An earthquake magnitude of 6.50 corresponds to a maximum horizontal ground acceleration of 0.10 g according to Dr. Filz. As a result, the use of 0.23 g is excessively conservative. Consequently, a value of 0.10 g was used in the seismic stability analysis.

B. PLANS AND DISCUSSIONS

The boundaries of the cells to be constructed in the SLA and IWA units are shown on Drawing No 4, Base Grading Plan - Sanitary Landfill, and Drawing No. 16, Base Grading Plan - Industrial Waste Area.

Prior to initiating site development, AEGIS, or its designated representative, will survey and stake-out the limits of earthwork for cell construction, access road alignment, buildings, leachate storage tanks, utilities and underground piping, groundwater and gas monitoring points, stockpile and loading/unloading areas, and other pertinent features. AEGIS will provide horizontal and vertical control points based on the site-specific grid system for this effort.

During construction, the Contractor, or designated agent of AEGIS, will provide construction survey control of grades and horizontal locations to verify that structures will be built in the intended locations and to design elevations. The surveyor will routinely check all lines, grades, and dimensions and compare with the design and construction plans and specifications.

The designated Construction Quality Assurance consultant, as discussed in Section IX Quality Assurance and Quality Control, will provide full-time, on-site observation and testing of construction, including photographic documentation and daily records, for documentation and certification of construction. Should conditions differ from what is expected, which would require a modification to the design or construction, AEGIS will be duly notified, and a decision made as to how best to proceed.

Record drawings will be developed from survey information to document that key features, such as the excavation base, liner grades, berms and slopes, manholes and underground utilities, weigh scale and access roads, have been constructed in accordance with the design drawings. Any modifications will be noted.

The Contractor will maintain all survey monuments and benchmarks during and after construction, replace or repair monuments that are damaged or have shifted, for future construction phases.

C. SPECIFICATIONS

Appendix 4 of this Part B Permit Application contains specifications for site construction and operation. The following specifications are provided:

SECTION 01050 - SURVEYING
SECTION 01411 - QUALITY CONTROL TESTING
SECTION 02110 - CLEARING, GRUBBING AND TOPSOIL STRIPPING
SECTION 02233 - AGGREGATE
SECTION 02225 - EARTHWORK
SECTION 02270 - GABIONS, RIP RAP, AND GEOCELLS
SECTION 02432 - MONITORING WELLS AND BORINGS
SECTION 02920 - HDPE GEOMEMBRANE

general



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard N. Burton
Director

MAR 15 1994

WASTE DIVISION
P.O. Box 10009 •
Richmond, Virginia
23240-0009

P. O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000
TDD # (804) 762-4021

Mr. Michael M. Hawes, President
AEGIS Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087

RE: Part A Permit Application
AEGIS Solid Waste Management Facility
Brunswick County, Virginia

Dear Mr. Hawes:

On February 22, and March 10, 1994, the Waste Division of the Virginia Department of Environmental Quality received addendum information for the referenced Part A Permit Application. This information was submitted in response to a Waste Division comment letter, dated February 8, 1994. The Part A addenda address the majority of the issues outlined in the 8 February comment letter. There is, however, one issue that will have to be resolved before approval of the Part A Application can be recommended.

An isolated plat (Plat #63-35) of land is located totally within the facility boundaries shown on the Near Vicinity Map for this site. This property creates a complicated situation that may delay the permitting process. Some of the problems associated with the location of this property are outlined below:

- 1) The owner of the isolated property may have the right to access his/her property. If so, how will their right-of-way be maintained. Please note that §5.1.B.1. of the Virginia Solid Waste Management Regulations (VR 672-20-10, Amendment 1) requires that all sides of a facility are surround by means of limiting vehicular traffic.
- 2) If the rights to this property were secured at any time in the future, the Part A Application would have to be amended and a new Local Government Certification would have to be submitted.

Mr. M. M. Hawes
AEGIS Landfill
Page 2

- 3) In addition to monitoring the facility as a whole, landfill gas and groundwater would have to be monitored at the boundaries of the isolated plat.
- 4) The boundaries of a facility are specified in a solid waste management permit. The entire land area within a facility boundary is part of the permitted or approved facility. This would not be the situation at this site, as it is currently proposed.

To address these issues the Waste Division suggests that the proposed facility boundaries should be modified so that Plat #63-35 is not enclosed within the landfill site. Another option may be to show legal control of Plat #63-35 and incorporate this acreage into the facility. Please note that the latter option will require the submission of a revised Local Government Certification.

During a site visit on March 9, 1994, several preexisting structures were noted at the proposed facility. Some of these structures appeared to be quite old. Although the VSWMR do not specifically address cultural resources, approval of a Part A Permit Application does not relieve an applicant of the regulatory requirements of other federal, state, and local agencies. Therefore, the Waste Division suggests that the Virginia Department of Historic Resources should be contacted to discuss potential cultural resources at this site.

If there are any questions regarding this letter or the Part A Permit Application, please feel free to contact me at (804) 527-5289.

Sincerely,



Richard Essex
Geologist Supervisor
Office of Waste Resource Management

c: Jeff Smith, DAA
Rob Timmins, DEQ



COMMONWEALTH of VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

Richard N. Burton
Director

P. O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000
TDD (804) 762-4021

March 25, 1994

Mr. Michael M. Hawes, President
AEGIS Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087

RE: Part A Permit Application
AEGIS Solid Waste Management Facility
Brunswick County, Virginia

Dear Mr. Hawes:

On March 17, 1994, the Waste Division of the Department of Environmental Quality received addendum information for the referenced Part A Permit Application. This information was submitted in response to a Waste Division comment letter dated March 15, 1994. The addendum information has satisfactorily addressed the Waste Division's comments. Accordingly, the Part A Permit Application, dated December 6, 1993, as amended with additional information (dated February 22, 1994; March 10, 1994; and March 15, 1994) is deemed complete and is hereby approved.

In accordance with §7.1. of the Virginia Solid Waste Management Regulations (VR 672-20-10), approval of a Part A Permit Application can be made subject to specific conditions. Listed below are the requirements of the conditional approval of the referenced Part A Permit Application:

1. The facility boundary and the maximum extent of the disposal units shall be maintained as shown on the revised Near Vicinity Map, submitted to the Waste Division on March 15, 1994.
2. Sanitary waste disposal units shall not be located closer than 5000 feet from the nearest runway end (coordinates: 36°46'47" N latitude, 77°47'57" W longitude) at the Lawrenceville-Brunswick County Airport.

629 East Main Street, Richmond
Fax (804) 762-4500

Mr. Michael M. Hawes

March 25, 1994

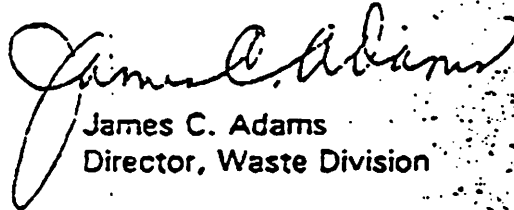
Page Two

3. All containment structures including liners, leachate collection systems, and surface water control systems shall be designed to resist the maximum horizontal ground acceleration, (with a 10% or greater probability of occurring in 250 years), for this site. This value was estimated to be .23g in the seismic analysis submitted with the Part A Permit Application.

The Part B Application, when prepared, should be submitted directly to Mr. Hassan Vakili. Prior to submittal of the Part B Application, it is recommended that you contact Mr. Vakili at (804) 527-5175, to set up a meeting to discuss your Part B Application.

Should there be any questions regarding the Part A Application or about the contents of this letter, please contact Mr. Richard Essex at (804) 527-5289.

Sincerely,



James C. Adams
Director, Waste Division

JCA/rme

c: Jeff Smith, DAA
Richard Essex, DEQ
Aziz Farahmand, DEQ

#6



County of Brunswick

OFFICE OF THE COUNTY ADMINISTRATOR

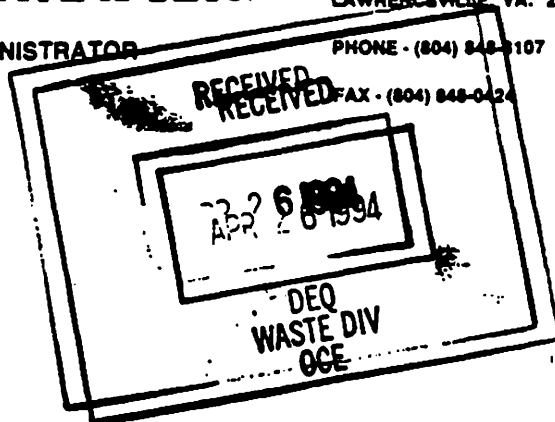
April 21, 1994

POST OFFICE BOX 399

LAWRENCEVILLE, VA. 23868

PHONE - (804) 848-1107

FAX - (804) 848-0424



Charles White, President
George R. Smith, Vice-President
Concerned Citizens of Brunswick County
P.O. Box 663
Lawrenceville, Virginia 23868

Dear Messrs. White and Smith:

The Board of Supervisors of Brunswick County has directed me to reply to your letter of February 18, 1994 regarding the Aegis solid waste management facilities as follows:

The Board of Supervisors has completed its legislative actions with respect to the solid waste management facilities. Aegis Waste Solution's application to establish the landfill is now pending before the Department of Environmental Quality. The Board is not required and does not intend to take any further action with respect to the permitting process.

The Board is aware that its decisions regarding the landfill generated controversy, and that a sizeable number of citizens, both minority and non-minority, were opposed to the actions ultimately taken by the Board. Indeed, the members of the Board were themselves of differing views. However, none of the five Board members took any action or made any decision in connection with the landfill based on racial animus.

The Board has asked me to inform you that it does not wish to commission a study of the type you proposed with respect to the landfill.

Sincerely,

Jeffrey D. Johnson
County Administrator

twm



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

DEPT OF
ENVIRONMENTAL QUALITY

AUG 03 1994

OWRM/ PERMITTING

Peter W. Schmidt
Director

AUG 2 1994

P. O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000

Mr. Jerry L. Marston, Chairman
Concerned Taxpayers of Brunswick County
Rt. 2 Box 46
Lawrenceville, Virginia 23868

Dear Mr. Marston:

The Virginia Department of Environmental Quality (DEQ) recently received a copy of a letter from you to Ms. Carol Browner of the U. S. Environmental Protection Agency in which you discussed the issue of "environmental justice" as it applies to a proposed commercial landfill in Brunswick County, Virginia. The DEQ would like to take this opportunity to address the current status of the proposed landfill with regard to the issue of "environmental justice".

In February of 1993, the Virginia General Assembly agreed to House Joint Resolution No. 529. This resolution requests that the Joint Legislative Audit and Review Commission (JLARC) study how policies and procedures for the siting, monitoring, and cleanup of solid and hazardous waste facilities have impacted minority communities. HJR-529 stipulates that if the DEQ receives a Local Government Certification of Consistency after July 1, 1993, the DEQ "shall inquire as to the impact the siting has on minority communities." If adverse impact is identified for the facility, the resolution requires local governments to indicate how the impact was considered in their siting decision.

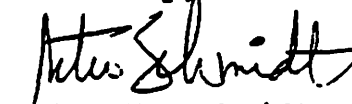
On October 27, 1993, AEGIS Waste Solutions, Inc., submitted to the DEQ a Notice of Intent to establish a sanitary/industrial landfill in Brunswick County, Virginia. A Local Government Certification of Consistency was submitted with the notice. As stipulated by HJR-529, Department staff inquired as to the impact of the proposed facility on minority communities. On December 14, 1993, the County of Brunswick submitted a letter to the DEQ indicating that an adverse impact on minority communities was not identified. Neither the Virginia Solid Waste Management Regulations (VR 672-20-10, Amendment 1) or HJR-529 provide the DEQ with applicable standards or the authority to pursue this issue in greater detail.

Mr. Jerry L. Marston
Page 2

Once JLARC has completed their study and submitted recommendations to the DEQ, the Waste Management Board will consider changes to the regulations based on the recommendations of the commission. For more information regarding the JLARC study, you may wish to contact Mr. Wayne Turnage of JLARC at 804/786-1258, who is currently coordinating the study requested by HJR-529.

As you are aware, the Department has no authority to address local government authority to zoning and land use planning. These issues are the responsibility of local government. If you have specific questions about the permit application for the AEGIS landfill in Brunswick County, please contact Richard Essex at (804) 527-5289 or Rebecca Clark at (804) 527-5158.

Sincerely,



Peter W. Schmidt

PWS/rme

cc: Honorable Charles Robb
Honorable Becky Norton Dunlop
Wayne Turnage, JLARC
James C. Adams, DEQ

AEGI Waste Solutions, Inc

October 14, 1994

Mr. Paul A. Mandeville, P.E.
Vice President
SCS Engineers
11260 Roger Bacon Drive
Reston, Virginia 22090-5282

Dear Paul:

In follow up to our conversation earlier today on the Near Vicinity Map, a copy of an earlier March 15, 1994 map done by Draper Aden is enclosed. As part of the Part A process we showed access to the Ross property. This letter is to restate the fact that there has always been access to that property, predating our property contracts, and that access by a long, prior existing road remains intact.

The property or area under our issued Part A Permit and that covered under our Part B Permit application has not changed. The amount of property we have under contract has changed. During and subsequent to the Part A process we contracted for an additional 140 acres. However, this property is not, repeat not, included in either the Part A or Part B areas. We fully expect to add additional parcels as we proceed, including the Ross property discussed above. We will file for an amendment to both permits when or if there is a need or desire to include all or part of these added properties within DEQ permitted areas.

Please let me know if there are further questions on this issue.

Sincerely,


Michael M. Hawes

MMH/sa

Enclosures

cc: Ms. Rebecca Clark, Environmental Engineer Senior, DEQ (w/enc)



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

October 21, 1994

Peter W. Schmidt
Director

P O Box 10009
Richmond, Virginia 23110-0009
(804) 762-4000

Michael M. Hawes
Aegis Waste Solutions, Inc.
8101 Roanoke Road
Elliston, Virginia 24087

RE: Brunswick Waste Management Facility
Part B Permit Application
Brunswick County, Virginia

Dear Mr. Hawes:

I would like to take this opportunity to update the outstanding issues related to the Part B Permit Application for Brunswick Waste Management Facility. The Department informed you of the wetland impact issue, October 14, 1994, by copy of my letter to Ed Graham with the U S Army Corps of Engineers (USACE) to confirm my October 13, 1994, telephone conversation with him and telephone conversations with you and your Consultant. Also, the Department discussed the property boundary delineation provided for the Part B Application and the Department of Historic Resources' request to ensure consideration of the potentially affected historic properties as well during our telephone conversation October 14, 1994.

Since this time, DEQ personnel (Kevin Greene, Aziz Farahmand, P.E., and I) met Jerry Marston on-site at the facility Thursday, October 21, 1994, to perform a site visit. As a result of this meeting, additional issues have arisen.

Summarized below are the issues resulting from the Department's Technical Review and resulting site visit October 20, 1994.

- ◆ In accordance with the Virginia Solid Waste Management Regulations, Amendment 1 (VSWMR), § 7.3.C.9., the near-vicinity of the Part A Application shall depict wetlands' areas. In addition, VSWMR, §5.1.A.4., states the facility will not cause or contribute to significant degradation of wetlands.

During the Technical Review of the Part B Application, the question of wetland delineation and impact at the site was raised. The USACE was not consulted during the wetland delineation process. Thus, apparently all of the wetland areas on the site may not have been included with the Part A Application. Since this

issue is a major consideration for technical adequacy of the Part B Application, it must be completely resolved and all permit(s), if any, required from the USACE must be obtained prior to Draft Permit is prepared.

- ◆ The Part A approval letter, dated March 25, 1994, listed requirement #1 of the conditional approval to be:

"The facility boundary and the maximum extent of the disposal units shall be maintained as shown on the revised Near Vicinity Map, submitted to the Waste Division on March 15, 1994."

However, the facility boundary provided in the Part B Application is not consistent with the Part A Application. Several issues must be resolved to meet this requirement. Please note that, where possible, the tax map number and parcel number are included for the referenced properties, i.e., (63-35) refers to tax map number 63 - parcel number 35.

1. The facility boundary shown on the Near Vicinity Map of the approved Part A Application (denoted as Figure 3) provides clear access to Parcel A (63-35) without having to cross the facility boundary. However, the Part B Application shows this parcel to be "landlocked" by the facility. As required by the Part A conditional approval, the facility boundary shown in Figure 3 must be maintained.

In addition, the location and size of Parcel A (63-35) as shown in Figure 3 is not consistent with what is shown in the Part B Application. If the facility boundary lines around Parcel A provided in Figure 3 are not consistent with those that will be revised for the Part B Application, the effect of new property lines on the deeds must be addressed and the revised deed submitted, if applicable.

2. The adjacent triangular-shaped Parcel A located outside the western portion of the facility, as denoted on Figure 3, is included as part of the facility boundary in the revised Part B Application. As previously stated, the facility boundary in the Part B Application must be consistent with Figure 3.

In addition, Sheet 10 of 35 of the Design Plans delineate this Parcel and show part of Basin C, its outlet structure, and part of the rip-rap

downchute from the Sanitary Area are located on this Parcel. The owner must demonstrate control over this parcel or the structures must be relocated to prevent outfall onto this property.

3. The facility boundary presented in the revised Part B Application includes (63-47). However, Figure 3 does not include this property. This inconsistency must be resolved.

- ◆ The Department of Historic Resources (DHR) has requested, by letter dated September 28, 1994, consideration of the potentially affected historic properties on the facility, in particular, the tombstones located in the northwestern portion of the facility (See attached map).

In addition, during the site visit Thursday, October 20, 1994, another stone was discovered located a few feet from the southeast corner of Parcel A (63-35), within the facility boundary (See attached map). This area must also be included in the study for DHR.

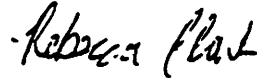
- ◆ Some additional wet springs were located in Area A of the Sanitary Disposal Area during the site visit yesterday that were not included on Figure 3 (See attached map for approximate locations). One of the springs may impact the proposed Cell 3 in the Part B Application. These and all springs and their impacts must be located evaluated, and, if necessary, proper engineering controls provided.
- ◆ In accordance with VSWMR, §5.1.B.2., "Access roads to the entrance of a facility or site and any public access area shall be all-weather, and shall be provided with a base capable of withstanding anticipated heavy vehicle loads."
- ◆ Please note that, the Director may amend a permit upon his own initiative or at the request of a third party:
 - ◆ when there are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit (VSWMR, §7.14.E.1.); or
 - ◆ the Director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of

Mr. Michael M. Hawes
Brunswick Waste Management Facility
Page 4

different conditions, the permit may be amended accordingly if, in the judgement of the Director such amendment is necessary to prevent significant adverse effects on public health or the environment (VSWMR, §7.14.E.4.).

All of the above issues must be adequately and fully addressed prior to Draft Permit preparation. Should you have any questions concerning this matter, please do not hesitate to contact me at (804) 527-5158 or Aziz Farahmand, P.E., at (804) 527-5114.

Sincerely,



Rebecca Clark
Environmental Engineer Senior

Attachment

cc: Jerry Marston
Charles Leung, P.E., SCS Engineers
Paul Mandeville, P.E., SCS Engineers
Aziz Farahmand, P.E., DEQ

SCS ENGINEERS

January 5, 1995
File No. 0294009

DEPT OF
ENVIRONMENTAL QUALITY

JAN 06 1995

OWRM/ PERMITTING

Ms. Rebecca Clark
Environmental Engineer Senior
Virginia Department of Environmental Quality
4900 Cox Road
Glen Allen, Virginia 23060

RE: Response to Third Technical Review Comments
Brunswick Waste Management Facility
Part B Permit Application
Brunswick County, Virginia

OFFICIAL FILE COPY

Dear Ms. Clark:

In accordance with your letter dated January 3, 1995, we are submitting herewith responses to the Third Technical Review Comments. A total of 9 design drawings have been revised since our December 16, 1994 submittal and are included as part of this submittal. VDEQ comments to the Design Drawings and Technical Manual (printed in bold type) along with our responses are provided below.

DESIGN DRAWINGS

Drawing No. 2

1. "Please add the following note to clarify the property boundary for this sheet:

"For permitted boundaries see Drawing No. 3"

Response 1.: The referenced note "For Permitted Boundaries See Drawing No. 3" has been added to Drawing No. 2.

Drawing No. 3

1. "Parcel 53-43A (Northwest corner of property) delineated in Figure 3 of the Part A is denoted as an adjacent parcel to the permitted boundary. However, Drawing No. 3 includes this parcel in the Part A permitted boundary. Please clarify.

Response 1.: Drawing No. 3 has been revised to show Parcel 53-143A outside of the Part A permitted boundary.



Ms. Rebecca Clark
January 5, 1995
Page 2

Drawing No. 5

1. "Please show the limits of the liner."

Response 1.: The limits of the SLA composite liner have been added to Drawing No. 5.

Drawing No. 6

1. "Please show the force main vent pipe through the cap."

Response 1.: The 4" leachate force main is positioned within a general fill earthen embankment that is outside of the waste limits, and thus does not require a vent pipe. Refer to Drawing No. 13, Detail 1 for the revised Typical Embankment Cross Section Detail and leachate force main position.

Drawing No. 9

1. "Please verify if the grading shown represents final cover or intermediate cover."

Response 1.: The grading shown on Drawing No. 9 represents the intermediate cover, as is noted on the drawing.

Drawing No. 11

1. Cross-Section A

- a. "The base grade and engineering modification grade do not appear to match those shown on Drawings 5 and 6. Please clarify."

Response 1a.: Cross-Section A has been revised to depict base grades and engineering modifications that are consistent with Drawings 5 and 6. The embankment cross-section and perimeter road have also been revised to be consistent with Detail 1 on Drawing No. 13.

- b. "The leachate pipe locations do not appear to coincide with Drawing No. 5. Please clarify."

Response 1b.: Cross-Section A has been corrected to show the leachate pipes in their proper locations consistent with Drawing No. 5.

2. Cross-Section B

- a. "A leachate line is shown outside the final closure limits. Please clarify."

Ms. Rebecca Clark
January 5, 1995
Page 3

Response 2a.: Cross-Section B has been revised to depict the leachate line location in it's correct location, which will be within the final closure limits. The embankment cross-section and perimeter road has also been revised for consistency with Detail 1 on Drawing No. 13.

Drawing No. 13

1. TYPICAL EMBANKMENT CROSS SECTION DETAIL

- a. "The detail denotes an "8-inch leachate force main." However, the leachate profile on Drawing No. 27 denotes a 4-inch leachate force main. Please clarify.
- b. "Please clarify the location of the sump pumps in relation to the subgrade, liner and exterior embankment for this detail and other sump pump details (i.e., Detail 3, Drawing No. 14). Please note that this detail shows the sump pump to be located within the clay liner, which jeopardizes the required two-foot thick compacted soil liner required by the Virginia Solid Waste Management Regulations, Amendment 1 (VR-672-20-10), 5.1.B.9."
- c. "Please clarify what measures will be taken to ensure the 18-inch drainage layer does not erode from the external side of the exterior berm."
- d. "Please clarify what measures will be taken to ensure leachate remains within the landfill area to flow to the leachate collection system."

Responses 1a., 1b., 1c. and 1d.: The Typical Embankment Cross Section Detail has been redesigned. The design revisions will resolve the VDEQ comments noted above. Specifically, the referenced embankment cross section detail shows the leachate force main as a 4-inch pipe, rather than 8-inch pipe. The leachate collection sump detail has been removed from this drawing and a clarified sump detail is provided on Drawing No. 14, Detail 3. The sump design has not changed; however, this clarified detail shows that the sump does overlie the required two-foot thick composite liner. The composite liner is recessed in the area of the sump to maintain compliance with the regulations.

The revised detail also shows that the 18-inch drainage layer is terminated at the top of the embankment (at the liner system anchor trench), and underlies the intermediate cover. Thus, the drainage layer is not exposed and is protected from erosion by the intermediate cover.

As shown on the revised embankment detail, an approximate 4 foot of freeboard is provided along the inside leachate collection system sideslope to ensure that leachate remains within the landfill area.

Ms. Rebecca Clark
January 5, 1995
Page 4

Drawing No. 27

1. **"Please provide additional information to clearly indicate the location of the force main (i.e., if the force main is located within the landfill, please include the base grade and engineering modification grade and other pertinent information such as air release valves."**

Response 1.: The force main shown on Drawing No. 27 is to be located outside of the landfill limits. A note has been added to Drawing No. 27 and states "Leachate force main is located in the Typical Embankment Cross Section. See Detail 1, Drawing No. 13."

OTHER DESIGN DRAWING CHANGES

In addition to the drawing changes noted above, Drawing No. 12 and Drawing No. 14 have been revised and are included in this submittal. Drawing No. 12, Cross-Sections C and D have been revised to show the new base grades, modification grades and final grades, embankment cross-section and perimeter road. Drawing No. 14, Detail 3-Leachate Collection Sump, has been clarified to show that the sump overlies two-foot of composite liner. No design changes were made to Drawing No. 14.

TECHNICAL MANUAL

Section IV-Liners

1. **"Part IV.B.2.c, "Amended Soil Liners". In the September 16, 1994, revision the second sentence in this paragraph read as follows:**

"Prior to performing such soil amendment, a complete series of laboratory tests will be performed at varying bentonite contents for potential borrow soils to optimize design and verify that the amended soil will meet project specifications."

However, in the December 16, 1994, revision, the phrases "a complete series of" and "optimize design and" were eliminated. Please clarify. Also, please note that this subject was not a topic of discussion in the October 21, 1994, outstanding issues letter from DEQ, and therefore should remain as previously submitted."

Response 1.: The referenced phrases were eliminated from the Part B Permit Application text since Appendix 16 Soil-Bentonite Admixture Program was incorporated into the October 10, 1994 revision. The eliminated phrases were non-specific in comparison to Appendix 16 and are essentially superseded by Appendix 16. Should a soil-bentonite admixture be needed, the soil-bentonite program outlined will be followed.

Ms. Rebecca Clark
January 5, 1995
Page 5

Section V-Liquids Management System

- 1. "Part V.A.4. "Leachate Removal System": Please provide calculations for the operating conditions of the additional sump pump (denoted as P-2, located at SLA-Cell 2 Sump Area) and revised calculations for sump pump P-1 (Virginia Solid Waste Management Regulations, Amendment 1, VR-672-20-10, (VSWMR), 5.5A.2). Be sure to include operating conditions for all pumps in Specification 15160."**

Response 1.: The additional sump pump P-2 (which serves Cell 2) is essentially identical to P-1 (which serves Cells 1A and 1B). Calculations for the operating conditions of P-1 are applicable to P-2. The calculations provided in Appendix 11A have been modified to reflect that there are now two sumps in the SLA. Although the flow rates to each SLA sump pump has been reduced (due to the reduced area covered by each sump), the sump dimensions, storage capacity and pumping rate have not changed.

The Specification 15160 will be modified to include performance requirements.

2. Part V.B.3, "Construction":

- a. "Please include the following stormwater details in the Design Plans. Please note that these details were included in the September 16, 1994, revision, but were excluded in the December 16, 1994, revision."**

Drawing No. 15: "Outlet Riser Detail":

Drawing No. 23: "Emergency Spillway" and "Outlet Riser Detail"

Response 2a.: The "Outlet Riser Detail" is shown in "Sediment Basin Outlet Structure, Detail 1" and "Riser Structure Detail, Detail A" on Drawing No. 15.

The sedimentation basin for the Industrial Landfill Area has been redesigned and relocated to a different location as compared to the September 16, 1994 submittal. Site conditions and basin geometry indicate that a separate emergency spillway is not necessary. The principal spillway, which consists of a riser structure and a concrete pipe, will pass the entire peak runoff expected from the 25-year storm and maintain a minimum 2-foot freeboard.

The "Outlet Riser Detail" is shown in "Sediment Basin Outlet Structure, Detail 1" and "Riser Structure Detail, Detail A" on Drawing No. 23.

- b. "The Design Plans do not provide erosion control measures during construction, phasing, and development of the site. Please note that, in accordance with VSWMR, Section 5.1.B.6, runoff from the active portion of the landfill unit shall be handled in a manner that will not cause the discharge of pollutants or non-point sources of pollution into waters of the United States, and that will prevent flow onto the active portion of the landfill."**

Response 2b.: The "Erosion and Sediment Control Plan and Narrative" (E&S) will be prepared before any disposal units are constructed. Approval of the E&S plans is required from the Chase City, Virginia Department of Conservation and Recreation prior to commencement of construction. In addition, a Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Stormwater Discharges from Construction site has been obtained from the Department of Environment Quality (DEQ), Water Division, Water Resources Management. A site specific Stormwater Pollution Prevention Plan will be developed prior to commencement of land disturbing activity. (A copy of the permit is attached.)

3. **"Part V.C., "Run-off Control System": The runoff control basins in the September 16, 1994, revision were termed "sediment detention basins." However, the same structures in December 16, 1994, revision are termed "stormwater sedimentation basin". Please note that, in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, STD. & Spec 3.14, these structures are limited to a useful life of 18 months unless they are designed as permanent impoundments."**

Response 3.: In the December 16, 1994 revision, basins were designed as permanent structures with different basin geometry, site location, and different watershed and outfall structures as compared to the September 16, 1994 submission. To contain the majority of sediment which flows to the basin, the basin was designed with a permanent pool, or wet storage area and dry storage area which dewater over time. Therefore, they are termed "stormwater sedimentation basins". A sediment detention basin has no wet storage or permanent pool.

Section VI-Gas Management System

1. **"Part VI.C.2.c, "Depth": The December 16, 1994, revision includes additional information concerning limiting factors for well depth criteria. Please note that demonstrations showing alternative depths are sufficient to detect migrating and decomposition gas must be submitted to DEQ for approval prior to implementation."**

Response 1.: The referenced paragraphs in Part VI GAS MANAGEMENT SYSTEM of the December 16, 1994 submittal, which refer to gas probe depths, are identical to the October 10, 1994 submittal. As is noted in this section, consideration will be given to site specific soil conditions in determining well probe depths and locations. The overall intent will be to position the probes in areas and at depths that are more likely to transmit landfill gas laterally. Prior to implementation, demonstration to the VDEQ will be provided that alternative depths are sufficient to detect migration of decomposition gas.

Ms. Rebecca Clark
January 5, 1995
Page 7

Section X-Closure and Post-Closure Care Requirements

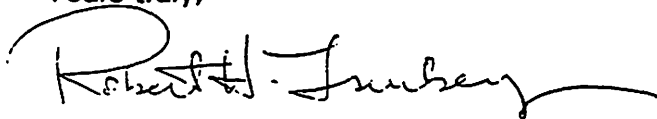
1. **"Part X.A.4.b, "Cover Design":** The alternate cover design for the ILA includes a 24-inch thick cover over the flexible membrane liner (FML). However, the "Typical Final Cover Detail," Drawing No. 24, includes only an 18-inch cover over the FML. Please note that in accordance with VSWMR, 5.3.E.1.c.(2), if the Director approves the use of FML as the infiltration layer or the upper portion of the infiltration layer, the erosion layer shall be no less than two-feet thick."

Response 1.: The Final Cover Detail on Drawing No. 24 has been corrected to show the 24-inch thick cover over the FML and is now is consistent with Part X.A.4.b. of the Technical Manual.

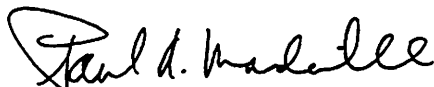
This completes our responses to your Third Technical Review Comments. After you have reviewed these responses and revised drawings, we will prepare and submit three complete sets of final Part B Permit Application documents for your records.

If you have any further questions or comments regarding this letter or the revised Part B Permit Application, please do not hesitate to contact the undersigned.

Yours truly,



Robert H. Isenberg, PE, CPG
Project Manager



Paul A. Mandeville, PE
Project Director
SCS ENGINEERS

CC: Mike Hawes, AEGIS Waste Solutions, Inc.

N:\LF\0294009\CORRESP\DEQ1-95



MAR 30 1995

OW/RA/ PERMITTING

COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Attorney General

Office of the Attorney General
Richmond 23219

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

MEMORANDUM

To: Robert Burnley
Director, Division of Program Support and Evaluation
Department of Environmental Quality

RECEIVED

From: Deborah Love Feild *DL*
Assistant Attorney General

WORKING FILE

MAR 31 1995

Re: AEGIS Waste Solutions, Inc., Permit Application

DEQ-Program Support & Evaluation

Date: March 23, 1995

Confidential: Attorney-Client Privilege

By letter of March 6, 1995, the Concerned Taxpayers of Brunswick County ("CTBC") has asked the Director to stay the issuance of a landfill permit to AEGIS Waste Solutions, Inc. ("AEGIS"). The basis of CTBC's request is a pending challenge to certain actions of the Board of Supervisors of Brunswick County in connection with the proposed facility. CTBC previously filed two lawsuits against the County, alleging violations of the Procurement Act and challenging the issuance of a conditional use permit to AEGIS. Those lawsuits were dismissed on the County's demurrer, which asserted that CTBC's suits failed to state a claim. In *Concerned Taxpayers of Brunswick County v. County of Brunswick*, Record No. 940494 (March 3, 1995), the Virginia Supreme Court upheld the trial court in most respects, but reversed the decision of the trial court dismissing two counts of the challenge to the conditional use permit.¹ Although this action revitalizes the CTBC suit, it is important to understand the limitations of the Court's action: the Court merely affirmed that CTBC alleged sufficient facts which, if proven, state a cause of action. The decision does not forecast any outcome of the litigation, which may now move forward.

¹The remaining counts assert that AEGIS did not have a sufficient legal interest in the property to apply for a conditional use permit, and that the County's action in issuing the conditional use permit was arbitrary, capricious, and unreasonable. *Concerned Taxpayers*, slip op. at 7.

Robert Burnley
March 23, 1995
Page 2

CTBC contends that if it is successful, the County's certification that the proposed location and operation of the landfill are consistent with local ordinances may be invalid. CTBC further speculates that if the local certification is invalid, the Director may be without jurisdiction to issue a permit. Accordingly, and on the strength of the mere existence of a lawsuit, CTBC asks that the Director refrain from issuing a permit to AEGIS.

AEGIS responded by letter of March 9, asking that its permit application be processed in the ordinary course of business. AEGIS points to the limitations of the Supreme Court's action, and contests Mr. Buniva's assertions of the consequences were CTBC to prevail in circuit court.

Since the inception of the requirement, the Department (and its predecessor) has been asked to enter into disputes over local certifications. My consistent advice and the Department's consistent position has been to take the local government certification at face value and act accordingly. Whether the certification has been correctly issued is a matter between the disputing parties, and the Department ought not to become involved. Obviously, the Department will respond appropriately to any change in certification or issuance of a relevant court order.

I recommend that the Department continue to process the permit in accordance with standard practice. I note that if the Department were to suspend action on the permit, it might be vulnerable to a mandamus action.

Please let me know if I can be of further assistance to you. I would be happy to review or discuss any draft response to these letters.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Peter W. Schmidt
Director

April 13, 1995

P. O. Box 10009
Richmond, Virginia 23240-0009
(804) 762-4000

Brian L. Buniva, Esquire
Mezzullo & McCandlish
1111 East Main Street, Suite 1500
Post Office Box 796
Richmond, VA 23208

Dear Mr. Buniva:

I am writing in response to your letter of March 6 in which you asked the Director of the Department of Environmental Quality to suspend action on the pending permit application of AEGIS Waste Solutions, Inc. The basis of your request was the recent ruling of the Supreme Court of Virginia in *Concerned Taxpayers of Brunswick County v. County of Brunswick*, Record No. 94-0494 (March 3, 1995). In that case, the court ruled that two causes of action filed by your client against the County were pled sufficiently well to withstand the County's demurrer. The opinion does not forecast any outcome of the litigation and expressly avoids addressing the trial court's decision not to enjoin the County from certifying to the Department that the proposed location and operation of the facility were consistent with all local ordinances.


Since the inception of the requirement for local government certification, the consistent position of the Department and its predecessor has been to take the local government certification at face value. Whether the certification has been correctly issued is a matter between the disputing parties, and the Department will not invade the jurisdiction of the court and prejudge the outcome of such controversies.

I must refuse your request. The Department has a local certification from the County that satisfies statutory and regulatory requirements. Obviously, the Department will respond appropriately to any change in certification or issuance of a relevant court order.

Brian L. Buniva, Esquire
April 6, 1995
Page Two

This letter does not constitute a case decision. I hope
this fully responds to your questions regarding this issue.

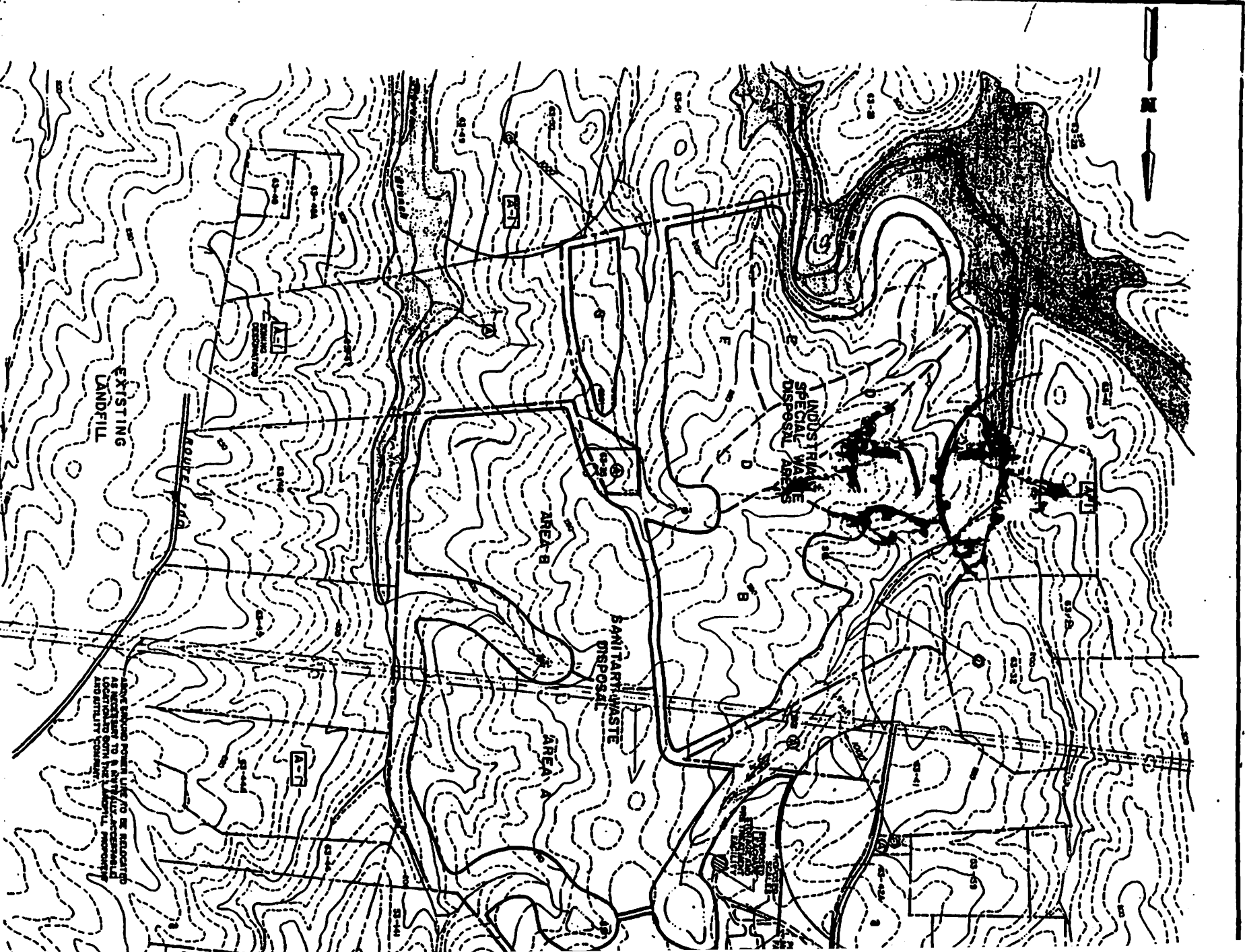
Sincerely,



Robert G. Burnley
Director
Program Support and Evaluation

RGB/m

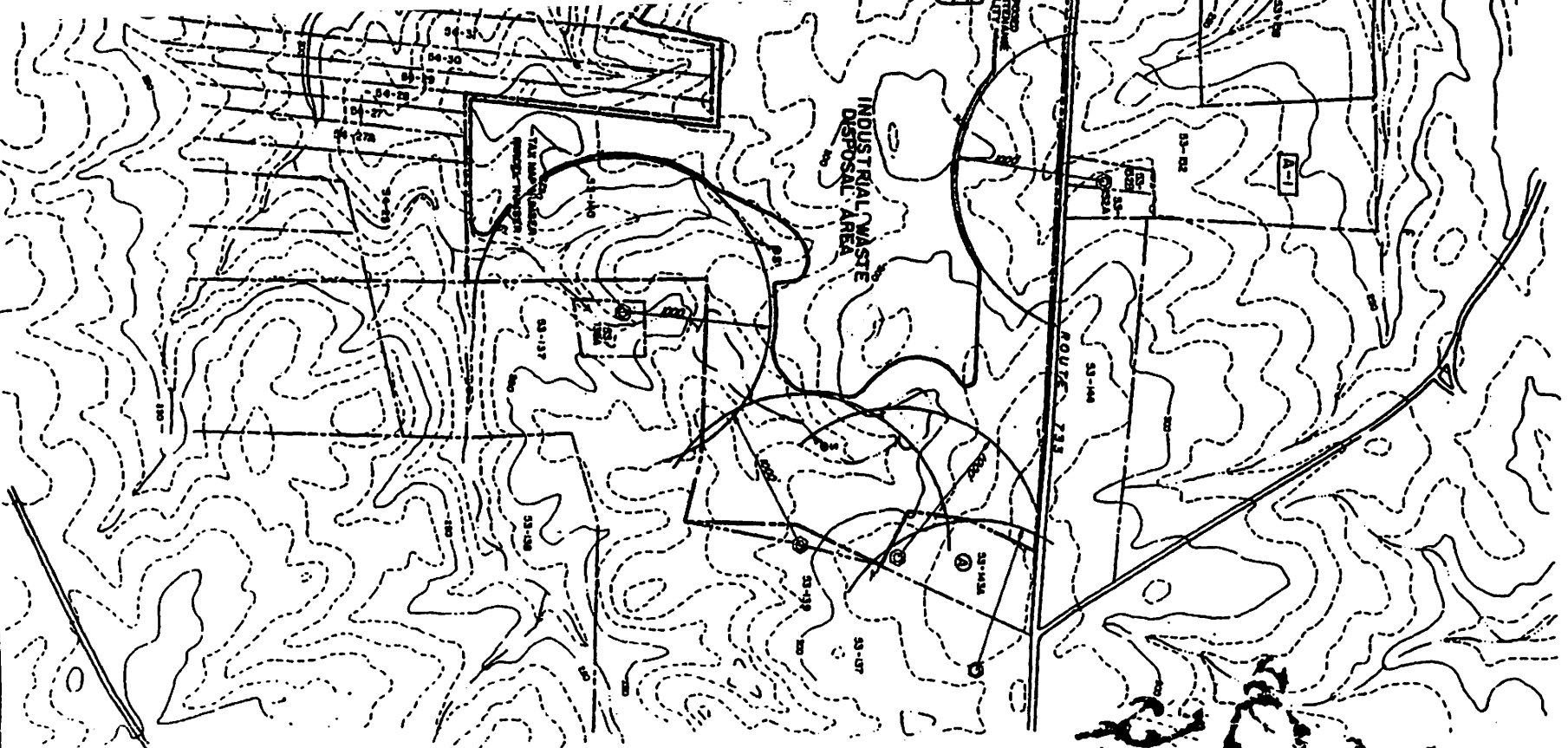
cc: Mr. Peter W. Schmidt
Mr. Hassan Vakili, DEQ
Mr. Michael M. Hawes



Draper Aden Associates
CONSULTING ENGINEERS
Bloomington - Richmond - Virginia & Kentucky, Tennessee

DESIGNED BY JES
DRAWN BY LCH
CHECKED BY WDN
DATE 12/1/53

NEAR VICINITY MAP
BRUNSWICK WASTE MANAGEMENT
BRUNSWICK COUNTY, VIRGINIA



FACILITY - PART A APPLICATION

REVISIONS:
REVISION 1 8/4/74 (LST)
REVISION 2 3/2/74 (LST)

SCALE: 1" = 500', CONTOUR INTERVAL: 10'
PLAN No T - 6886

FIGURE 3

- NOTES**
1. Site topography is taken from the Lammontville U.S.G.S. Quadrangle, and the Revision U.S.G.S. Quadrangle, each photorevised 1972.
 2. The proposed property boundary is a continuation of existing deed information. Deeper Adm. Associates has neither prepared a boundary survey for this site nor field verified the existing boundary information. A boundary survey will be completed for the B Application. The bearing and distances have not been shown since several parcels are still under acquisition and the boundary is not complete at this time. Parcels designated by an (X) are currently under negotiation for inclusion in the site.
 3. The proposed site and all adjacent parcels are zoned A-1 agricultural.
 4. All adjacent parcels are currently used for agricultural or residential purposes. Existing residences are possible and have been shown on the site plan. Existing and well locations are shown as necessary as possible but due to discrepancies between U.S.G.S. quadrangles, lot maps, deed descriptions, and field information, some inconsistencies in location may occur. If any, these will be corrected in the B Application.
 5. The 100-year floodplain boundary was interpolated from the Flood Insurance Rate Map for Brunswick County prepared by the Federal Emergency Management Agency, Community Panel No. 510225 0130 B direction. The line owned by Virginia Power has a 100 foot easement. No underground utilities cross the site.
 6. A 2 medium-voltage transmission line crosses the site in an east-west direction. The line owned by Virginia Power has a 100 foot easement.
 7. Buffers to be applied to landfill development include:
100' from delivery facility; 500' from public road; 500' from occupied residences, church, school, or recreation area; and 1000' from any wet or swamp used for existing uses.

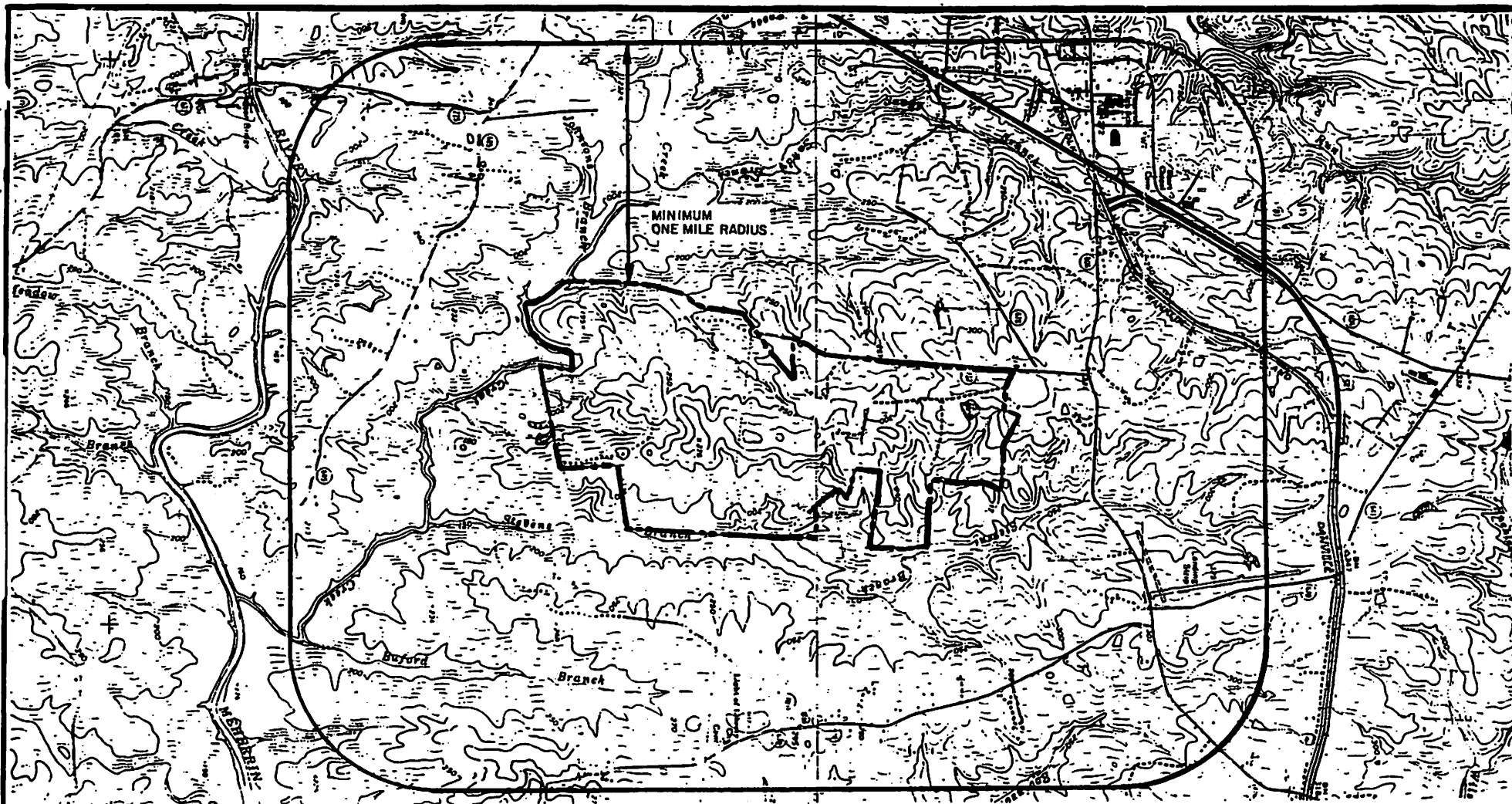
Legend

- Existing Ground Contour
- Existing Intermittent Stream
- Existing Perennial Stream
- Existing 100 Year Floodplain
- Existing Potable Well (Approximate Location)
- Existing Overhead Transmission Line
- Proposed Site Boundary
- Adjacent Parcel Boundary
- Potential Disposal Area Boundary
- Tax Map Number - Parcel Number
- Spring

RECEIVED

MAY 17 1974

ENVIRONMENTAL QUALITY
DEPARTMENT



MAP TAKEN FROM LAWRENCEVILLE AND POWELLTON
U.S.G.S. QUADRANGLES, PHOTOREVISED 1973.

36°46'47" N
77°47'57" W

KEY MAP BRUNSWICK COUNTY

JOB No.

6886



Draper Aden Associates
CONSULTING ENGINEERS
Blacksburg, Virginia - Richmond, Virginia
Nashville, Tennessee

DATE:

12/7/93

SCALE:

"=2000

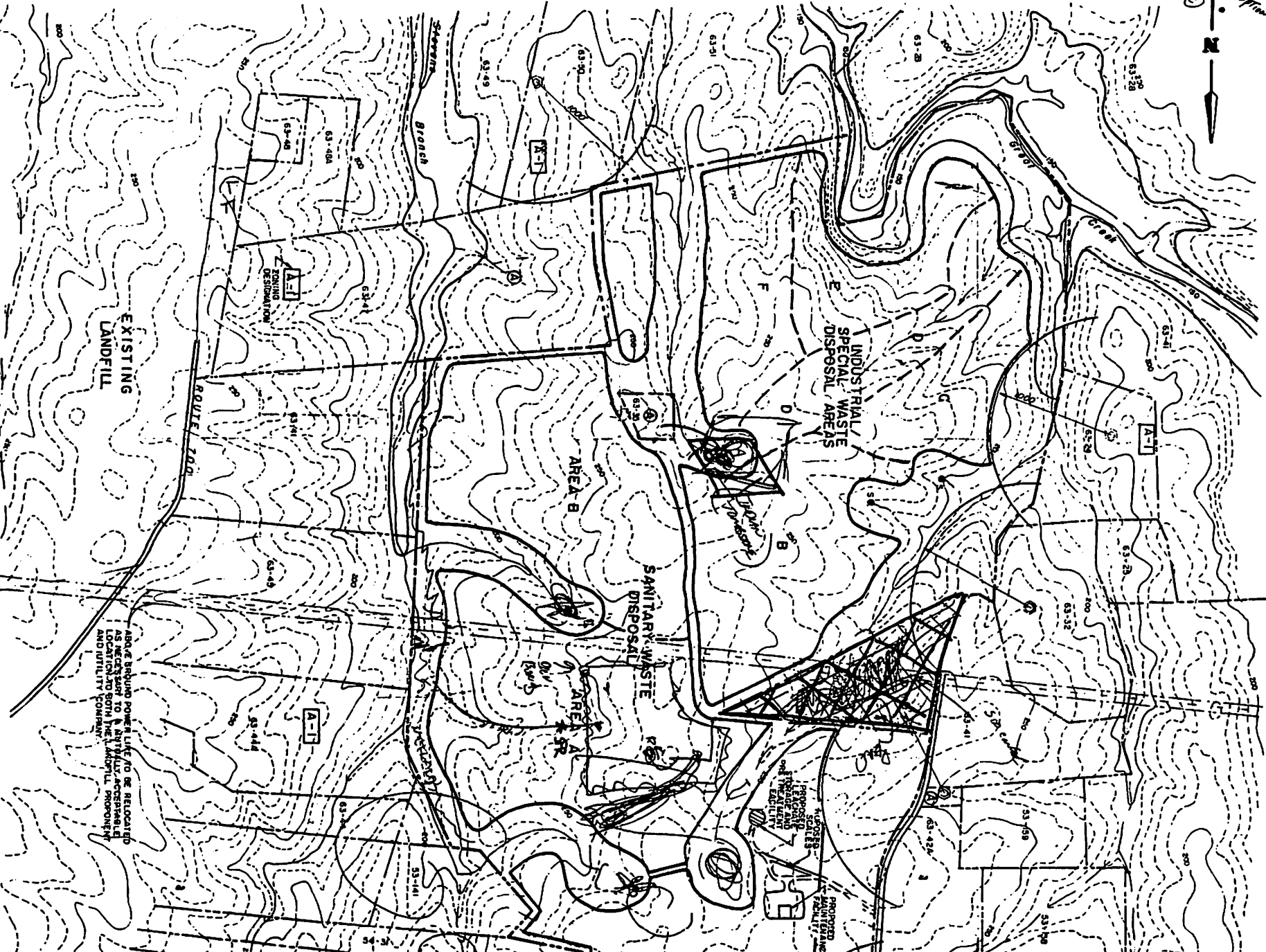
FIGURE

2

5/28/83
W. H. H. H.

Dist. should be optimum for

 ①



Draper Aden Associates
 CONSULTING ENGINEERS
 Blacksburg - Richmond, Virginia & Nashville, Tennessee

DESIGNED JES
 DRAWN I.C.J.
 CHECKED W.D.V.
 DATE 12/1/83

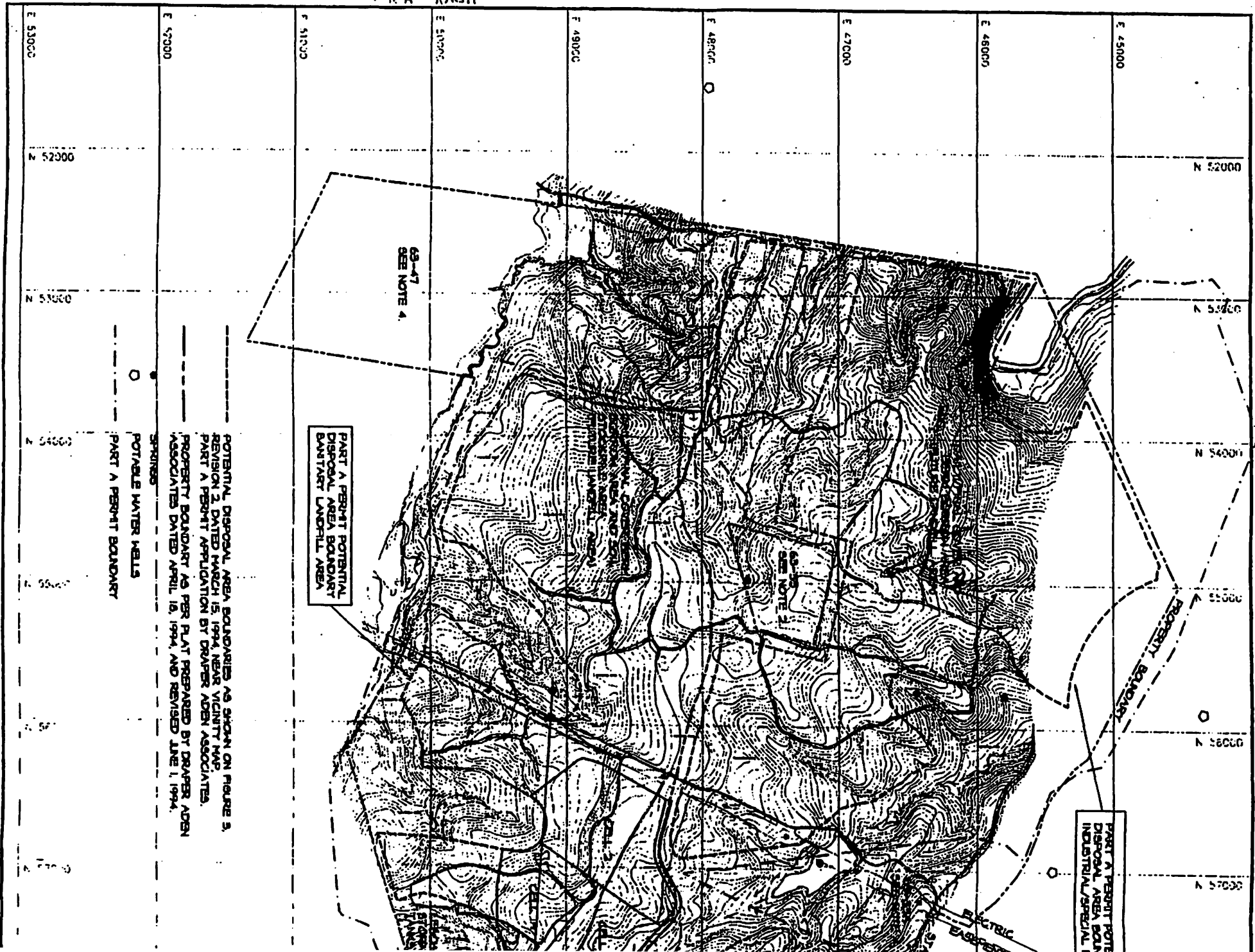
NEAR VICINITY MAP
BRUNSWICK WASTE MANAGEMENT FAC
 BRUNSWICK COUNTY, VIRGINIA

161A

10-11-93 JAY GUISHAW

P1634A
RAGEN

TOPO



POTENTIAL DISPOSAL AREA BOUNDARIES AS SHOWN ON FIGURE 3, REVISION 2, DATED MARCH 15, 1994, NEAR VICINITY MAP. PART A PERMIT APPLICATION BY DRAPER ADEN ASSOCIATES, PROPERTY BOUNDARY AS PER PLAT PREPARED BY DRAPER ADEN ASSOCIATES DATED APRIL 16, 1994, AND REVISED LINE 1, 1994.

SPRINGS
POTABLE WATER WELLS
PART A PERMIT BOUNDARY

PART A PERMIT POTENTIAL DISPOSAL AREA BOUNDARY

PART A PERMIT POTENTIAL DISPOSAL AREA BOUNDARY

1634

| | | | | |
|--|-------|-------|-------|-------|
| 90085 N | 52000 | 51000 | 62000 | 63000 |
| NOTES: | | | | |
| 1. WITHIN 90 DAYS OF LANDFILL CLOSURE A NOTATION ON THE DEED THAT THE PROPERTY HAS BEEN USED TO HANDLE SOLID WASTE WILL BE ADDED PER VARIOUS SECTION 11.15.4(D) REPERMITS. | | | | |
| 2. LOCATION OF PROPERTY 62-35, AS DEPICTED ON FIGURE 2 IN PART A PERMIT BY DRAPER AGEN ASSOCIATES, IS SHOWN IN ACTUAL LOCATION ON THIS DRAWING BASED ON SURVEY DATA. PROPERTY IS ACCESSIBLE BY EXISTING ROAD. | | | | |
| 3. ACTUAL SITE BOUNDARIES SHOWN IN THIS PART B PERMIT APPLICATION ARE BASED ON SURVEY BY DRAPER AGEN ASSOCIATES, DATED 11.7.1994. THE PROPOSED SITE BOUNDARIES AS SHOWN IN THE PART A PERMIT APPLICATION, FIGURE 3, DATED MARCH 15, 1994, WERE BASED ON 1988 QUADRAWABLE TAX MAPS, DEED DESCRIPTIONS, FIELD INFORMATION AND INFORMATION ACCORDING TO NOTE 4 ON FIGURE 5 OF THE PART A PERMIT APPLICATION TO BE CORRECTED IN THE PART B PERMIT APPLICATION. | | | | |
| 4. THIS PROPERTY (TAX MAP 6 PARCELS 62-35-36A, 62-47 & 62-48) WERE UNDER NEGOTIATION FOR INCLUSION IN THE SITE AT THE TIME OF THE PART A PERMIT APPLICATION. | | | | |
| TOTAL PART WASTE AREA | | | | |

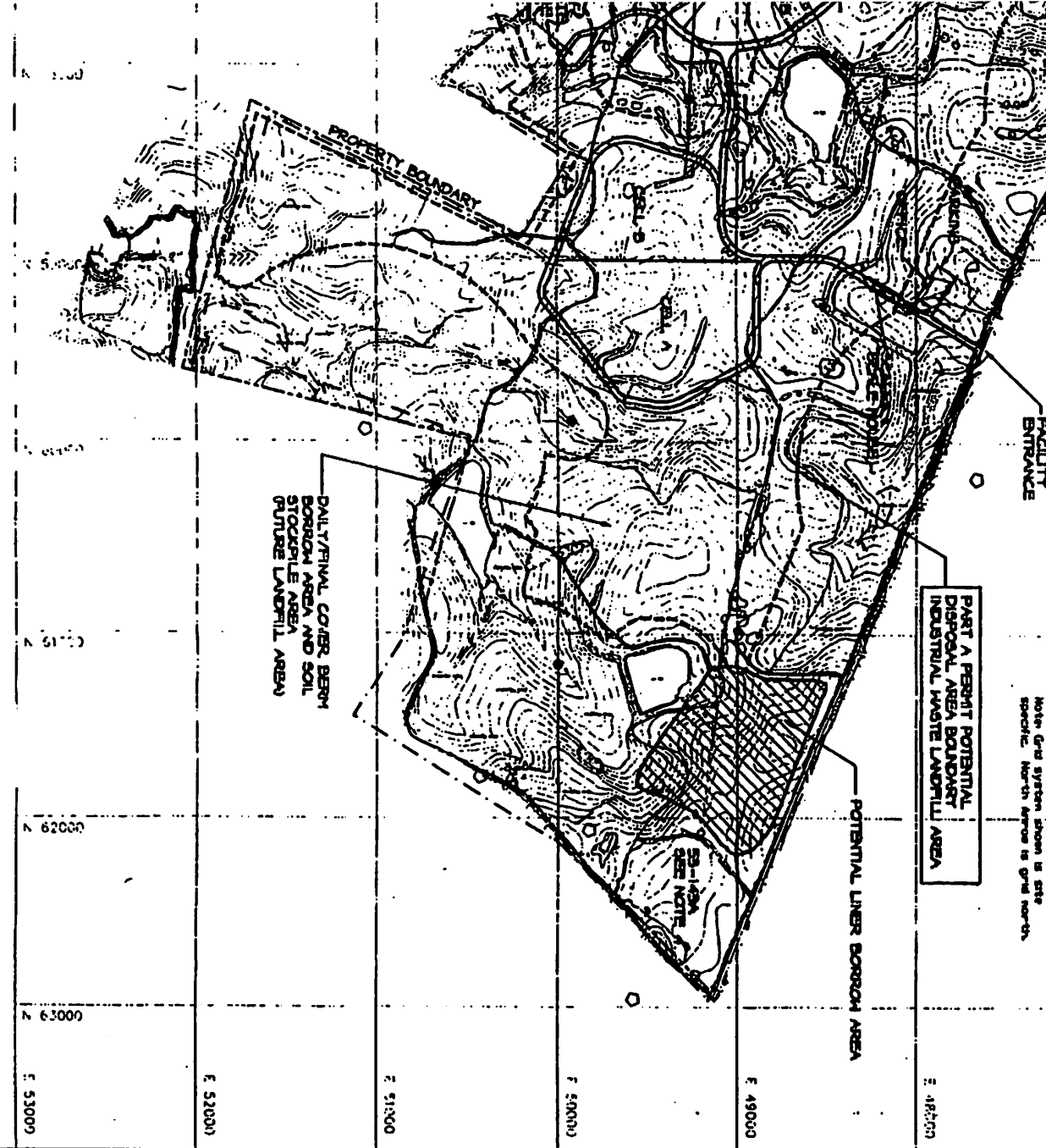
| SMART LANDFILL AREA | | | |
|---------------------|---------|--------|------|
| CELL 1A | CELL 1B | CELL 2 | |
| AREA IN ACRES | 9.5 | 0.3 | 13.5 |

| INDUSTRIAL WASTE AREA | | |
|-----------------------|--------|-----|
| CELL A | CELL B | |
| AREA IN ACRES | 16.2 | 0.2 |



Base Map was prepared by Draper AGEN ASSOCIATES, Inc. of Reston, VA. Dated 1994. For Brunswick Co. Landfill. Contour Interval: 2 ft.

Note: Grid system shown is site specific. North Arrow is Grid North.



| NO. | REVISION | DATE |
|-----|----------|------|
| | | |
| | | |
| | | |
| | | |



SHEET TITLE
PROPOSED SITE FEATURES

PROJECT TITLE
BRUNSWICK WASTE MANAGEMENT FACILITY
BRUNSWICK COUNTY, VIRGINIA

CLIENT
AEGIS WASTE SOLUTIONS, INC.
8101 ROANOKE ROAD
ELLISTON, VIRGINIA 24087

SCS ENGINEERS
STEARNES, CONRAD AND SCHMIDT
CONSULTING ENGINEERS, INC.
1800 BROADWAY DRIVE - SUITE 100
FELT 200 474-0000 FAX 200 474-0070

DATE: 1-9-95
SCALE: 1"=400'
DRAWING NO. 3

| FOOTPRINT | APPROX. AREA (acres) |
|----------------------------|-------------------------|
| CUP PARCELS | 822 |
| POTENTIAL DISPOSAL AREA | 428.5 |

- PROPERTY & FACILITY BOUNDARY TAKEN FROM PLAN PREPARED BY
JULIAN E. MOORE, INC. DATED MAY 29, 1997. (-/- 974 Acres)
- CONDITIONAL USE PERMIT LIMITS & DEO PERMITTED BOUNDARY
- SPRINGS
- POTABLE WATER WELLS
- DELUCEATED WETLANDS
- PART A POTENTIAL DISPOSAL AREAS
(SPRINGS REFLECT CUP OR STATE LIMITATIONS)
(WETLANDS IS MORE STRINGENT)
- SLA EXPANSION AREA
- ADDITION TO POTENTIAL DISPOSAL AREA
PER WETLANDS PERMIT

POWER LINE TO BE REROUTED
PRIOR TO CELL CONSTRUCTION

63-47
SEE NOTE 3.

63-35
SEE NOTE 3

63-33
SEE NOTE 3

CELL 1A

CELL 2

CELL 3

CELL 4

CELL 5

CELL 5

STATE ROUTE

ELECTRIC
EASEMENT

AGRIATE
LANDS

164A

SLA EXPANSION AREA

| | | | | | | |
|---------------|---------|--------|--------|--------|--------|--------|
| AREA IN ACRES | 9.3 | 11.1 | 12.6 | 52.4 | 47.3 | 41.3 |
| | CELL 1A | CELL 6 | CELL 2 | CELL 3 | CELL 4 | CELL 5 |

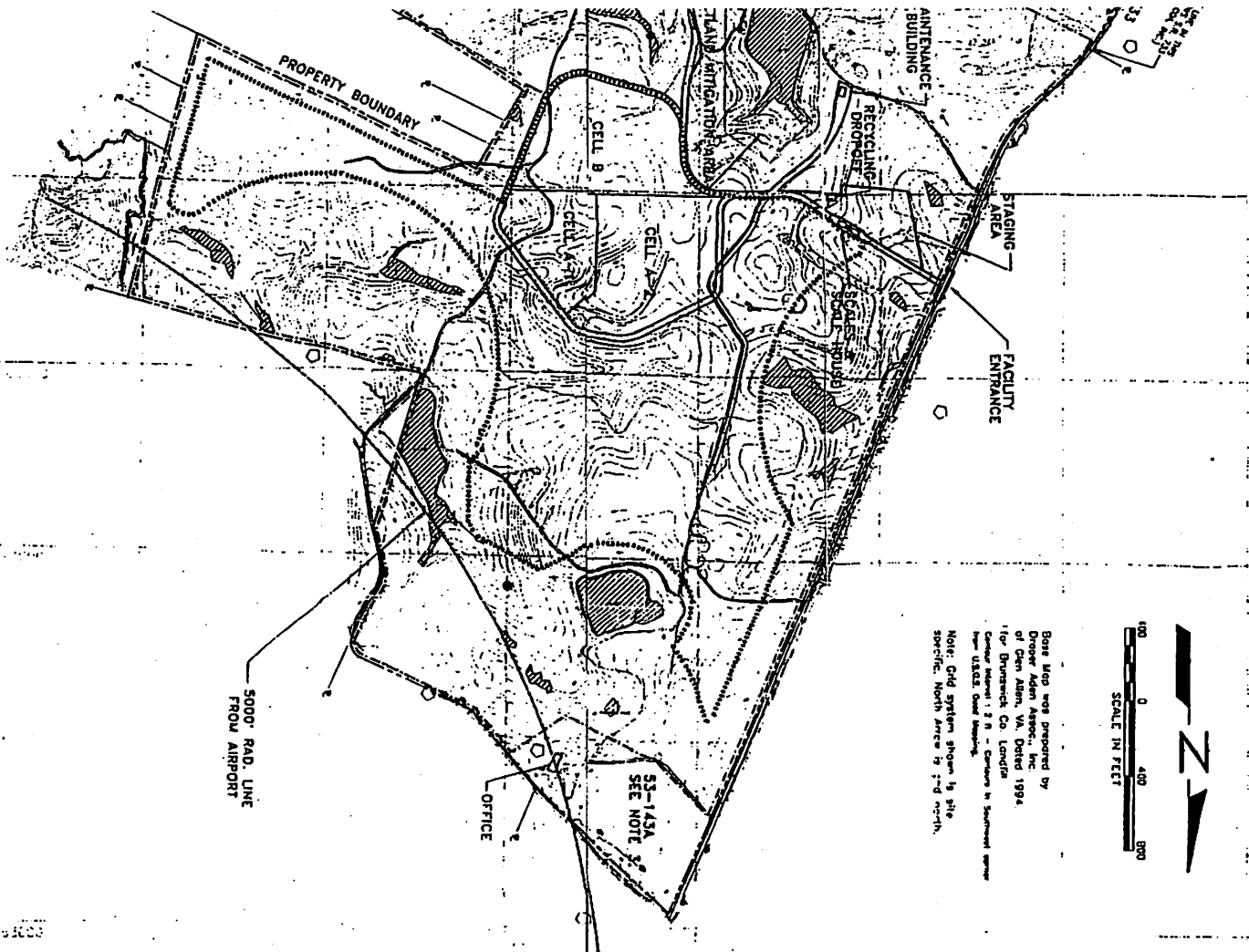
NORTHERN SOLID WASTE DISPOSAL AREA

T



| | | | |
|---------------|-----|------|-----|
| AREA IN ACRES | 5.7 | 10.5 | 8.2 |
|---------------|-----|------|-----|

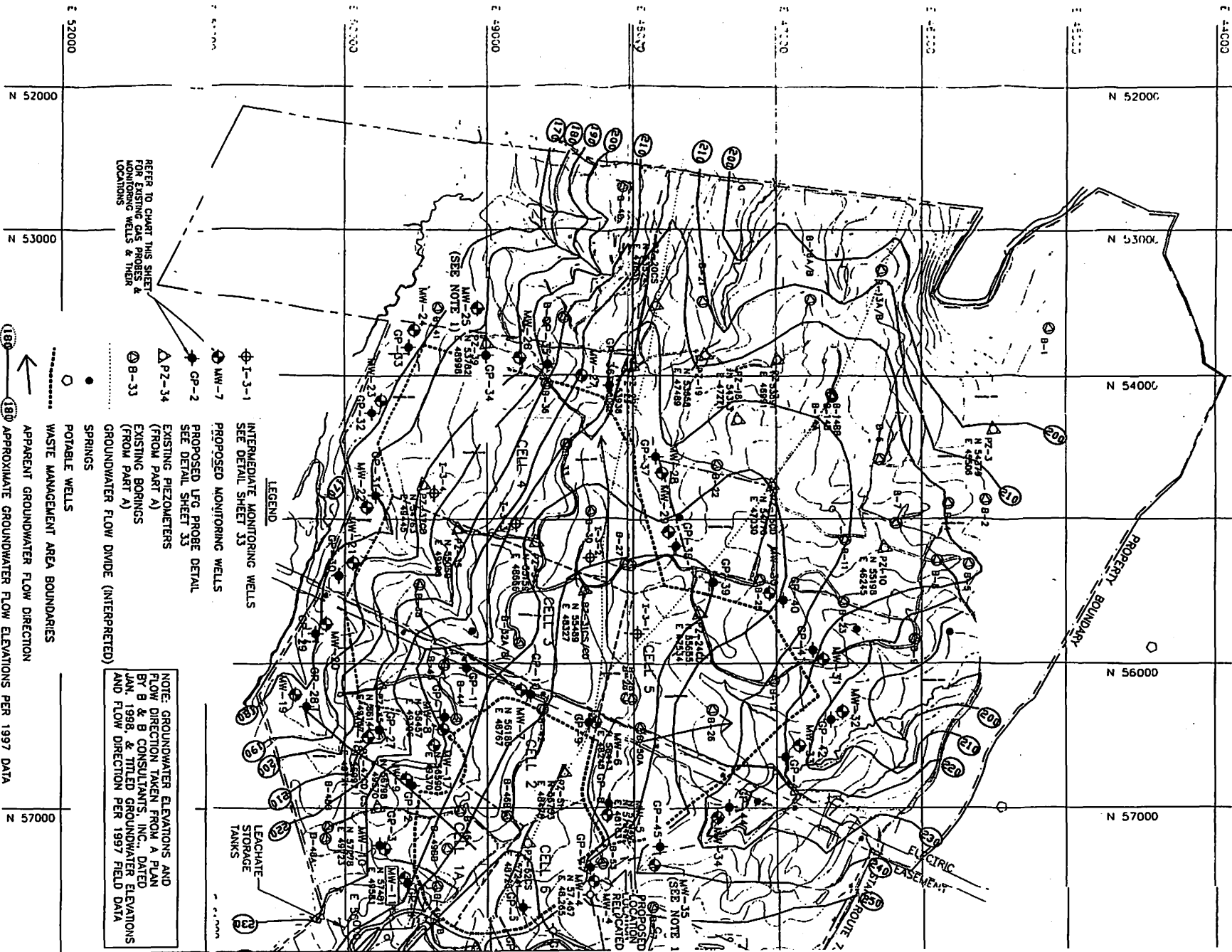


Base Map was prepared by
Droser Asten Assoc., Inc.
of Glen Allen, VA. Dated 1994.
For Brunswick Co. Landfill
Contract Internal 2 H - Contains 10 Southwest quarter
from U.S.G.S. Quad 26094.



164B

| | | | | | | | | | | |
|----------------------|--------------------|------------------|-----------------------|--|---|---|--|--|--------------------------------------|---|
| DRAWING NO. 3 | SCALE 1" = 400' | DATE MAY 1997 | SHEET NO. S-1, 092 |  CONSTRUCTION QUALITY ASSURANCE SERVICES, INC. 17 E. 100th STREET, SUITE A, CHANDLER, ARIZONA, 85226 901 WILSON STREET, COLUMBIA, SC 29202 | CLIENT AEGIS WASTE SOLUTIONS, INC. 8101 ROANOKE ROAD ELLISTON, VIRGINIA 24087 | SHEET ONE - SLA EXPANSION - PROPOSED SITE FEATURES PROJECT TITLE BRUNSWICK WASTE MANAGEMENT FACILITY BRUNSWICK COUNTY, VIRGINIA | NO. 1 2 3 4 5 6 7 8 9 10 | REVISION 1. CONTOURS, PART A, MISC. NOTES 2. NOTE 3, NOTE ADDED BY COA | DATE NOV. 97 JAN 98 APR. 98 |  |
| | | | | | | | | | | |



EXISTING GAS PROBE/COORD.

£ 44000

E 450C.0

MONITORING WELL #11
 NORTHING: 61712.00
 EASTING: 480727.00
 MONITORING WELL #2
 NORTHING: 59320.9797
 EASTING: 48939.16207
 MONITORING WELL #3
 NORTHING: 56506.85774
 EASTING: 48028.67603
 MONITORING WELL #4
 NORTHING: 57467.4026
 MONITORING WELL #12
 NORTHING: 56326.04077
 EASTING: 48477.76897
 MONITORING WELL #13
 NORTHING: 58832.04177
 EASTING: 49170.14556
 MONITORING WELL #14
 NORTHING: 58848.97554
 EASTING: 50083.97374
 MONITORING WELL #15
 NORTHING: 59440.29701

EASTING: 49990.48087
MONITORING WELL #16
NORTHING: 58822.69543
EASTING: 49676.42660

| | | |
|-----|----------|------------|
| GAS | PROBE #1 | 56408.5586 |
| | NORTHING | 49256.8968 |
| GAS | PROBE #2 | 56841.8138 |
| | NORTHING | 49543.6375 |
| GAS | PROBE #3 | 57329.5555 |
| | NORTHING | 49722.4020 |
| GAS | PROBE #4 | 57513.3572 |
| | NORTHING | 48574.1782 |
| GAS | PROBE #5 | |

GAS PROBE #8
NORTHING: 56975.7157
EASTING: 48155.8211

GAS PROBE #9
NORTHING: 56403.3099
EASTING: 49280.0697

GAS PROBE #10
NORTHING: 56209.7854
EASTING: 48717.1265

GAS PROBE #11
NORTHING: 56022.3813
EASTING: 49134.2804

① GAS PROBE #6
NORTHING: 57200 58000

① GAS PROBE #7

EASTING: 48274.6989

① EXISTING GAS PROBES THAT MUST BE RELOCATED, SUGGESTED LOCATIONS:

GAS PROBE NO. _____

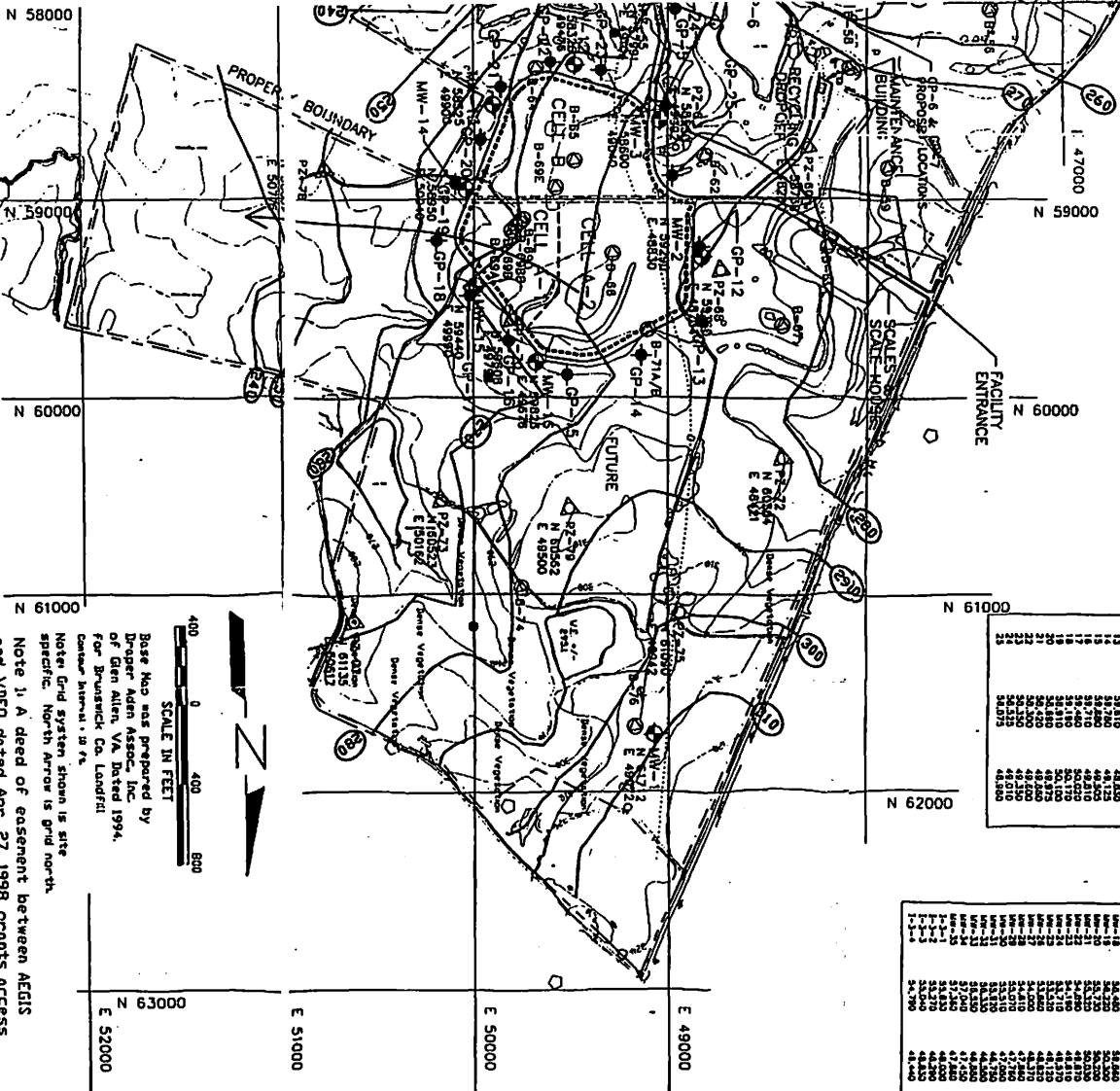
NORTHWIC: 57.920
EASTING: 48.725
GAS PROBE #7

NORTHING: 57,530
EASTING: 48,200

① EXISTING MONITORING WELL THAT MUST BE RELOCATED, SUGGESTED LOCATIONS:
MONITORING WELL #4
NORTHING: 57,525
EASTING: 48,190

| Existing Gas Probe/Coordinates | | |
|--------------------------------|-----------|----------|
| CD# | Northings | Eastings |
| 12 | 50215 | 45845 |

| Proposed Monitoring Well Locations | |
|------------------------------------|---------|
| Northing | Easting |



Note 1: A deed of easement between AEGIS and VDEO dated Apr. 27, 1998 grants access to HW-25 & HW-35 situated within the facility boundary but outside of the VDEO permitted area.

COA

37 1
W03

PROJ NO. 751.45

DATE BY: DUD

**TRUCTION QUALITY
RANCE SERVICES, INC.**
STREET, SUITE A, CHAMBERSBURG, PA. 17301
RE STREET CARLE PA 17013

| | |
|----|-------------|
| FR | Q/A SIVE SE |
| FR | APP. SE |

CLIENT

AEGIS WASTE SOLUTIONS, INC.
8101 ROANOKE ROAD
ELLISTON, VIRGINIA 24087

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|-------------|---------------------------------------|
| SHEET TITLE | SLA EXPANSION MONITORING WELL PLAN |
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PROJECT TITLE

BRUNSWICK WASTE
MANAGEMENT FACILITY
BRUNSWICK COUNTY, VIRGINIA

| NO. | REVISION | DATE |
|-----|-----------------------------|----------|
| 1 | SEPT. 1997 | |
| 2 | REV./PART A SETBACK LINE | NOV. 97 |
| 3 | INTERMEDIATE WELLS/G. WATER | JAN. 98 |
| 4 | GROUNDWATER CONTOURS | APRIL 98 |
| 5 | CUP LINE | APRIL 98 |
| 6 | GP-34, GP-45 LOCATION | MAY 98 |



On October 9, 1997, the local governing body issued a second certification that the Landfill complied with all local ordinances. (J.A. 58). At the same time the County Administrator informed DEQ by letter that “the landfill operation and footprint lies within and is consistent with the existing Conditional Use Permit as approved by the Brunswick County Board of Supervisors.” (J.A. 57). The County Administrator also advised DEQ that any construction at the site required prior submittal of a detailed site plan, to allow the County to verify compliance with the Conditional Use Permit and applicable ordinances. (Id.).

On July 14, 1998, the Circuit Court consolidated the Taxpayers’ appeals. Following oral argument, the Circuit Court dismissed all three appeals on the ground that the Permit complied with the requirements of Code § 10.1-1408.1.B.1. Taxpayers then appealed to the Court of Appeals, which ruled on March 14, 2000, that the Permit was void because DEQ had incorporated the Outparcels into the permitted area and that the Outparcels were added to the facility after the date of the original local governing body certification. The Court of Appeals ruled that the inclusion of parcels in the facility after the application had been accepted as complete rendered the Permit null and void. It reversed the Trial Court and entered final judgment for Taxpayers.

AEGIS and DEQ requested a rehearing en banc. Their request was denied on May 8, 2000. This appeal is taken from the Court of Appeals decision of March 14, 2000.

ASSIGNMENTS OF ERROR

1. The Court of Appeals erred in finding that the Outparcels were included in the area permitted for use as a waste management facility, when the record and DEQ’s findings show that they were not.

2. The Court of Appeals failed to apply the correct standard of review because it did not afford appropriate deference to DEQ's factual determination that the Permit did not include the Outparcels.

3. The Court of Appeals erred in its interpretation of Code § 10.1-1408.1.B.1. There was no dispute that the permit application contained the requisite local government certification, which is all that the statute requires. The statute imposes no conditions on subsequent processing of applications.

4. The Court of Appeals erred in entering final judgment and voiding the Permit. Even if the Outparcels had been included, the application as filed complied with the statute and the error could have been corrected on remand, as required by Va. Code § 9-6.14:19.

QUESTIONS PRESENTED

1. Were the Outparcels included in the Permit? (Relates to Assignment of Error No. 1)

2. Was the Court of Appeals required to defer to DEQ's factual determination that the Outparcels were not included in the Permit?
(Relates to Assignment of Error No. 2)

3. If a permit application is accompanied by local government certification as required by Va. Code § 10.1-1408.1.B.1., and determined complete by DEQ, does the subsequent addition of parcels to the project area require the Permit to be declared void?
(Relates to Assignments of Error Nos. 3 & 4)

4. May a court reviewing agency action under the Virginia Administrative Process Act enter final judgment without a remand as provided by Va. Code § 9-6.14:19?
(Relates to Assignment of Error No. 4)

ASSIGNMENTS OF ERROR

1. The Court of Appeals erred in determining under Va. Code 10.1-1408.1.B.1. that DEQ must investigate and make substantive determinations about the validity of local land use decisions where no such authority is expressed in the statute.

2. The Court of Appeals erred in finding that Outparcels were included in the area permitted for use as a waste management facility, when the record and DEQ's findings show that they were not.

3. The Court of Appeals erred in entering final judgment rather than ordering the Permit remanded as required by the Virginia Administrative Process Act.

4. The Court of Appeals erred in finding that the Virginia Waste Management Act authorizes representational standing.

QUESTIONS PRESENTED

1. Does Code § 10.1-1408.1.B.1 require DEQ to investigate and make substantive decisions concerning the validity of local government land use decisions where no such authority is expressed in the statute, and may a court, when reviewing agency action under this statute, impose such requirements? (Assignment of Error No. 1.)

2. Did the Court of Appeals err in finding that Outparcels were included in the area permitted for use as a waste management facility, when the record and DEQ's findings show that they were not, and did the court err in failing to defer to the factual findings of the agency. (Assignment of Error No. 2.)

3. May a court reviewing agency action under the Virginia Administrative Process Act enter judgment in a manner contrary to the express requirements of Code § 9-6.14:19? (Assignment of Error No. 3.)