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Matthew Standeven, Esq.
Assistant Attorney General
Office of the Attorney General
Via email only: matthew.standeven@maryland.gov

Re: Chesapeake Terrace Solid Waste Facility

Dear Mr. Standeven:

I am writing regarding the pending refuse disposal permit application for the Chesapeake Terrace Rubble Landfill.

Under § 9-210 of the *Environment* Article of the State Code, a prerequisite to processing a permit application beyond Phase 1 is a confirmation from the local jurisdiction that the site meets all applicable zoning and land use requirements; specifically:

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

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

and

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

Md. Code Ann., *Environment* Article, § 9-210(a)(3). While the site is in conformity with the County's Solid Waste Management Plan, the site still does not meet all applicable County zoning requirements. The use was allowed by special exception in 1992 and the decision granting the special exception required the Applicant to acquire fee simple ownership of the access road. On June 20, 2001, the County Office of Planning and Zoning wrote to MDE advised that the zoning compliance was conditioned on the applicant securing specified fee simple access to the site, and nineteen years later (28 years after the grant of the SE) this condition has still not been satisfied. For this reason the site does not have the necessary zoning approval. I also note that property the County purchased this year for use as a school or recreational site includes the property that would have been necessary to satisfy the access condition of the special exception approval for the Chesapeake Terrace site. A copy of County Council Resolution 3-20 approving

that purchase is attached to this letter.

By clear mandate of State law, the Applicant's failure to satisfy zoning requirements should have stopped the review process:

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

Md. Code Ann., *Environment* Article, § 9-210(b). Despite this statutory mandate, the Applicant was allowed to complete Phase II and move into Phase III of the permit process. That is contrary to State law and improper in light of the failure of the applicant to obtain full zoning approval.

MDE has indicated that a letter from Deputy County Attorney Hamilton Tyler from the County Office of Law in November 2018 constituted affirmation of County zoning approval. That is absolutely incorrect and not at all what was conveyed. The referenced letter, which I attach to this communication, was to advise MDE that the County Board of Appeals had recently granted a variance to the applicant to extend the time to implement the special exception. Mr. Tyler goes on to say that a recent County Bill, 21-14, removed rubble landfills as a special exception use in residential districts, and that:

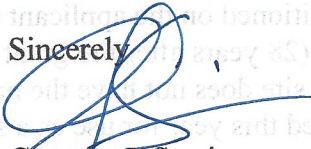
because Chesapeake Terrace had already obtained its special exception prior to the passage of Bill 21-14, its proposed landfill is grandfathered and, therefore, permissible under applicable zoning laws.

Plainly, Mr. Tyler was advising that Bill 21-14 would not retroactively outlaw this proposed rubble landfill, and was not making any statement that the project had full zoning approval. Furthermore, Mr. Tyler has no authority to grant any type of zoning approval (that authority rests with the County Planning and Zoning Officer), and clearly did not do so here.

This letter is to request that, at a minimum, MDE follow State law and cease processing this permit application until the statutory zoning prerequisite is satisfied. Furthermore, in light of the applicant's continued failure to satisfy the zoning condition regarding access, the application should be denied. It is simply not fair to the public to allow the application to proceed under these circumstances.

I thank you for your attention to this important matter.

Sincerely,


Gregory J. Swain
County Attorney