



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

Gerald M. Cabbage, Chair
Page County Board of Supervisors
117 South Court Street
Luray, Virginia, 22835

Certified Mail
March 10, 2004

RE: In Re: Page County Battle Creek Landfill (Permit No. 579)

Dear Mr. Cabbage:

I am enclosing the case decision issued in the above referenced matter. The Director of the Virginia Department of Environmental Quality has the authority, pursuant to Virginia Code § 2.2-4020 (Formal Hearings) to decide matters before the Department. In a memo to me, dated November 21, 2003, the Director delegated his authority to make decisions in this matter to me. You have the right to appeal this decision pursuant to §2.2-4026 of the Code of Virginia in the manner provided by Rule 2A:2 of the Rules of the Virginia Supreme Court. You have 30 days from the date of service of this decision (the date you actually receive this decision or the date on which it was mailed to you, which ever occurred first) to initiate an appeal of this decision. A Notice of Appeal should be direct to:

Robert G. Burnley
Department of Environmental Quality
629 East Main Street
Richmond, Virginia, 23219

In the event this decision is served on you by mail, 3 days are added to the period in which a notice must be filed. Please refer to Part 2A of the Rules of the Supreme Court of Virginia for the required contents of the Notice of Appeal and additional requirements governing appeals from the decisions of administrative agencies.

Sincerely,

Francis L. Daniel

Enclosure

Cc: James E. Cornwell, Jr., Esq.
Cathie F. Hutchins, Esq.
Amy T. Owens, Esq.
John T. Byrum, Esq.
Deborah Love Field, Esq.

VIRGINIA:

THE DEPARTMENT OF ENVIRONMENTAL QUALITY

In Re: Page County Battle Creek Landfill (Permit No. 579)

The Department of Environmental Quality, by counsel, sent a notice of its intent to revoke Permit Number 579 to operate the Battle Creek Landfill on October 28, 2003. The grounds specified for such revocation included allegations that the County, as permittee, has had persistent history of alleged violations of the Permit and the Solid Waste Management Regulations that are representative of a pattern of serious or repeated violations and that demonstrate the permittee's disregard for or inability to comply with the applicable law, regulations or requirements within the meaning of Virginia Code §10.1-1409.A.1.

In accordance with the provisions of 9 VAC 20-80-600.C, the County expressly waived its right to a hearing on the issues implicated under §10.1-1409.A.1 of the Code of Virginia in a letter dated February 24, 2004. The Department has proceeded with this matter based upon the agency files and assembled record, including a report from SCS Engineering that Page County requested be included in the record. Accordingly, based upon the agency files and assembled record, I am adopting the following Findings of Fact and Conclusions of Law:

Findings of Fact

- (1) Page County ("the County") is a political subdivision of the Commonwealth of Virginia.
- (2) The County is the owner of the Battle Creek Landfill ("the Landfill") located on Route 340 in Page County.
- (3) The County holds Virginia Solid Waste Facility Permit No. 579 ("the Permit"). A true and accurate copy of the Permit is attached hereto as Jt. Ex. 2. The Permit is modular as stated on page ii of the Permit. The Operations Manual constitutes one module of the Permit and consequently all contents of this module constitute valid permit conditions of Permit No. 579.
- (4) The Permit was issued to the County on February 21, 1995.
- (5) The Landfill began operation in January 1999, and has been in continuous operation since that time.

- (6) National Waste Services of Virginia, Inc. (“NWS”) is a Virginia corporation in good standing and is licensed to do business in Virginia.
- (7) The Virginia Department of Environmental Quality (“DEQ”) is authorized to implement and enforce the Virginia Waste Management Act (“Act”) and Virginia Solid Waste Management Regulations (“VSWMR”). The Director of DEQ, currently Mr. Robert Burnley, is vested with the authority of the Virginia Waste Management Board when the Board is not in session.
- (8) The construction and operation of the Landfill is regulated by the Commonwealth of Virginia pursuant to the Act, Code of Virginia §§ 10.1-1400 through 10.1-1457, and the VSWMR, 9 VAC 20-80-10 *et seq.*
- (9) The VSWMR requires that solid waste disposal facilities be maintained and operated in accordance with the permit issued and in accordance with the approved design and intended use of the facility (See 9 VAC 20-80-240.B.).
- (10) The Landfill is currently permitted to accept and dispose of municipal and other non-hazardous solid waste from municipal and commercial customers located in Virginia, Maryland, Delaware, West Virginia, Pennsylvania and the District of Columbia.
- (11) The Permit contains an express limit on the total amount of waste the Landfill may receive over its lifetime, which amount is capped at 3,775,000 cubic yards.
- (12) The County and Tellurian, Inc. (“Tellurian”) entered into a Disposal Facility Agreement (the “DFA”) for the construction and operation of the Landfill on March 8, 1993.
- (13) On December 13, 2001, Tellurian and the County executed an “Amended and Restated Disposal Facility Agreement and Settlement Agreement” (the “Amended DFA”). The Amended DFA was subsequently assumed by NWS on December 14, 2001, whereby NWS took over operation of the Landfill from Tellurian. (See Jt. Ex. 10.)
- (14) The County is the statutory owner and operator of the Landfill under the Act. Pursuant to the DFA, NWS is the contract operator of the Landfill.
- (15) Beginning prior to NWS’ contract operation of the Landfill, and with certain exceptions since then, the Landfill has regularly received more than 250 tons of solid waste per day, based on a monthly average. At times the Landfill has received in excess of 1400 tons per day.
- (16) The Landfill has been inspected by DEQ regularly since it first began operation in 1999.

- (17) On August 30, 2002, DEQ issued a Notice of Violation to the County (the "August NOV"). (See Jt. Ex. 42 and 44.)
- (18) DEQ issued the County a Notice of Violation on March 21, 2003 (the "March NOV"). (See Jt. Ex. 71.)
- (19) DEQ issued the County a Notice of Violation on May 28, 2003 (the "May NOV"). (See Jt. Ex. 76.)
- (20) DEQ issued the County a Notice of Violation on September 2, 2003 (the "September NOV"). (See Jt. Ex. 82.)
- (21) DEQ issued the County a Notice of Violation on October 9, 2003 (the "October NOV"). (See Jt. Ex. 89.)
- (22) DEQ issued the County a Notice of Violation on January 30, 2004 (the "January NOV"). (See Com. Ex. D.)
- (23) Page County and DEQ entered into a Consent Order dated June 26, 2003 (the "Consent Order"). (See Jt. Ex. 80.)
- (24) On or about September 24, 2003, the County and NWS negotiated a Third Addendum to the Amended DFA whereby the County agreed to seek a permit modification to transfer the Permit to NWS (the "Third Addendum"). (See Jt. Ex. 86.)
- (25) By letter dated October 24, 2003, DEQ issued a "Notice of Intent to Render Case Decision," to the County. (See Jt. Ex. 91.)
- (26) By letter dated October 28, 2003, DEQ by counsel, issued an "Amended Notice of Hearing" to the County. (See Com. Ex. 290.)
- (27) By letters dated February 24, 2004, the County waived its right to a hearing on A.1.a and A.3.a through A.3.t of the Department's October 28, 2003, Amended Notice of Hearing and requested that DEQ withhold final decision on approval of the minor permit amendment which sought to transfer the Permit to NWS. (See Com. Ex. A and B.)
- (28) By letter dated February 26, 2004, counsel for DEQ submitted a letter referencing Page County's waiver of Formal Hearing and requesting the decision maker to accept the Commonwealth's Proposed Findings of Fact and Conclusions of Law. (See Com. Ex. C.)
- (29) There was no submittal of Proposed Facts and Conclusions of Law or exceptions to the Commonwealth's Proposed Facts and Conclusions of Law by Page County.

Conclusions of Law

- (1) Page County is unable to manage the excessive amount of waste (excessive meaning surpassing the ability of the operator to properly manage and handle such quantity and volume per day while simultaneously complying with the requirements of the operational plan module of the Virginia Solid Waste Facility Permit No. 579) received at the Landfill as evidenced by the repeated and persistent operational violations (contained in the Findings of Fact) at the Landfill.

- (2) Page County violated the conditions of the Permit, the VSWMR, and the Act as follows:
 - a. Page County failed to cover wastes at the end of the working day in violation of 9 VAC 20-80-250.C.2.
 - b. Page County failed to maintain check dams in storm water channels and storm water ditches in violation of 9 VAC 20-80-250.C.11.
 - c. Page County failed to contain litter and blowing waste in violation of 9 VAC 20-80-250.C.13.
 - d. Page County improperly handled special waste in violation of Permit Attachment II-1, 4.2.I.
 - e. Page County managed solid waste and construction/demolition/debris waste outside the disposal cell in violation of Permit Attachment II-1, 4.2.G.
 - f. Page County failed to add key personnel to the Facility Disclosure Statement in violation of ' 10.1-1408.1.
 - g. Page County failed to prevent ponding water on top of the Landfill in violation of 9 VAC 20-80-250.B.6.c.
 - h. Page County failed to construct storm water control structures in accordance with the Permit in violation of Permit Attachment II-1, 5.4 and Permit Attachment III-2, 5.2.
 - i. Page County failed to install a storm water pipe as specified in drawing #510 of Permit Attachment III-1, Design Plans and Permit Attachment III-2, 5.2., Design Report. In addition, Page County failed to notify DEQ of the change in violation of Permit Module I, I.F.1.
 - j. Page County failed to compact intermediate soil cover leading to erosion, leachate seeps and exposed waste in violation of 9 VAC 20-80-250.C.2 and Permit Attachment II-1, 4.4.E.
 - k. Page County failed to replace out of service landfill gas monitoring wells in violation of Permit Attachment II-2, 3.2 and 9 VAC 20-80-280.B.
 - l. Page County failed to monitor landfill gas wells in violation of Permit Attachment II-2, 4.1. and 9 VAC 20-80-280.C.

- m. Page County failed to maintain reverse alarms on compactors in violation of Permit Attachment II-1,4.5.A. and 9 VAC 20-80-250.C.6.
 - n. Page County failed to maintain adequate vegetative cover on the interior and exterior intermediate slopes in violation of Permit Attachment II-1, 4.4.E. and 5.4.
 - o. Page County failed to produce employee training records in violation of Permit Module I, I.C.6.c. and Permit Attachment II-1, 2.2.
 - p. Page County failed to update the Emergency Plan in violation of Permit Attachment II-3, 5.0.
 - q. Page County failed to spread and compact waste due to excess waste received in violation of Permit Attachment II-1, 4.4, Permit Attachment III-2, 8.1. and 9 VAC 20-80-250.C.2.a. and b.
 - r. Page County failed to document operational problems during operator's weekly inspection in violation of Permit Attachment II-1, 4.6.
 - s. The leachate tank overflowed into the lined secondary containment system in violation of 9 VAC 20-80-290.
 - t. Page County moved a groundwater monitoring well without prior approval from DEQ in violation of Design Sheet #401, Permit Attachment X-1, 3.1 and Permit Module I, I.F.1.
- (3) The regular intake of waste, many times that authorized by the operating plan of Solid Waste Facility Permit No. 579, has resulted in repeated and persistent operational violations at the Landfill.
- (4) The County's operation of the Landfill is representative of a pattern of serious, repeated violations which demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations or requirements.
- (5) Solid wastes are no longer being stored, treated, or disposed at the Page County Battle Creek Landfill in accordance with Department regulations.

CASE DECISION

Pursuant to the Director's authority under §10.1-1409.A.1 and C, as delegated to me by memo dated November 21, 2003, and in accordance with 9 VAC 20-80-600.B, I am revoking Solid Waste Facility Permit Number 579 issued to Page County for the operation of the Battle Creek Landfill. Accordingly, Page County shall cease accepting waste at the Battle Creek Landfill immediately and proceed with closure of the landfill in accordance with 9 VAC 20-80-250.E.

Approved this 10th day of March 2004.

Francis L. Daniel, Tidewater Regional Director
Department of Environmental Quality