

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

ON WRIT OF CERTIORARI

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Case No. 08-ALC-07-0425-CC

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Engaging and Guarding Laurens County's Environment ("EAGLE")..... Petitioner,

vs.

South Carolina Department of Health and Environmental Control  
and MRR Highway 92, LLC,..... Defendants,

of whom MRR Highway 92, LLC, is..... Respondent.

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**APPENDIX  
VOL I OF II  
(Pages 000001-000498)**

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October 24, 2011

2011-201706

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

ON WRIT OF CERTIORARI

Case No. 08-ALC-07-0425-CC

**RECEIVED**

**OCT 25** 2011

S.C. Supreme Court

Engaging and Guarding Laurens County's Environment ("EAGLE") ..... Petitioner,

vs.

South Carolina Department of Health and Environmental Control  
and MRR Highway 92, LLC, ..... Defendants,

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October 24, 2011

**CONTENTS**

1.	RECORD ON APPEAL .....	1
2.	FINAL BRIEF OF APPELLANT .....	841
3.	BRIEF OF RESPONDENT, EAGLE .....	884
4.	FINAL REPLY BRIEF OF APPELLANT .....	941
5.	FINAL ORDER AND DECISION .....	965
6.	PETITION FOR REHEARING .....	974
7.	APPELLANT MRR HIGHWAY 92, LLC'S RETURN TO PETITION FOR HEARING .....	984
8.	COURT OF APPEALS OPINION .....	992
9.	COURT OF APPEALS RULING ON PETITION FOR REHEARING .....	994

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

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Case No. 08-ALJ-07-0425-CC

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Engaging and Guarding Laurens County's Environment ("EAGLE")..... Respondent,

v.

South Carolina Department of Health and Environmental Control and  
MRR Highway 92, LLC ..... Defendants,

of whom MRR Highway 92, LLC is ..... Appellant.

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**RECORD ON APPEAL  
VOLUME I OF II**

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("EAGLE")*

**INDEX**

**VOLUME I of II**

**ORDERS**

Order for Prehearing Statements dated October 30, 2008 ..... 4

Order Denying Petitioner's Motion for Summary Judgment dated August 7, 2009 ..... 6

Order Denying Respondent MRR Highway 92, LLC's Motion for Partial  
Summary Judgment dated August 7, 2009 ..... 11

Final Order and Decision dated October 23, 2009 ..... 16

**TRANSCRIPTS**

Transcript of Hearing on Motions for Summary Judgment held on May 27, 2009..... 25

Transcript of Hearing on the Merits held on July 22, 2009 ..... 82

Testimony of Larry Scott Holland:

    Direct Examination by Mr. Chandler..... 108

    Cross Examination by Mr. Lavender ..... 133

    Cross Examination by Ms. Williams ..... 138

    Redirect Examination by Mr. Chandler ..... 143

Testimony of Kent Coleman:

    Direct Examination by Mr. Chandler ..... 144

    Proffered Direct Examination by Mr. Chandler ..... 213

    Cross Examination by Mr. Lavender ..... 217

    Proffered Cross Examination by Mr. Lavender ..... 234

    Cross Examination by Mr. Lavender..... 237

    Cross Examination by Ms. Williams ..... 238

    Redirect Examination by Mr. Chandler ..... 242

    Proffered Redirect Examination by Mr. Chandler ..... 246

    Redirect Examination by Mr. Chandler ..... 247

    Recross Examination by Mr. Lavender ..... 257

    Redirect Examination by Mr. Chandler ..... 259

Testimony of James Travis Martin:

    Direct Examination by Mr. Chandler ..... 263

    Cross Examination by Mr. Lavender ..... 268

**ADMINISTRATIVE HEARING EXHIBITS**

Pet. Ex. 5 – Transcript of 30(b)(6) Deposition of Kent Coleman..... 288

Pet. Ex. 7 - February 21, 2006 letter from Rudy M. Curtis to Joan Litton..... 366

Pet. Ex. 8 - March 3, 2006 letter from Joan Litton to Ronald C. Gilkerson..... 367

Pet. Ex. 9 – June 23, 2006 memo from Jana White to Jeff Nichols with attached  
June 12, 2006 letter from Jeff Nichols to Laurens County Council ..... 368

Pet. Ex. 10 – June 26, 2006 letter to C. Earl Hunter..... 376

Pet. Ex. 12 – June 28, 2006 letter to Art Braswell from Ernest Segars ..... 378

Pet. Ex. 16 – February 14, 2008 letter from Joan Litton to Ron Gilkerson..... 381

Pet. Ex. 17 – DHEC agenda for Public Hearing on March 13, 2008..... 388

Pet. Ex. 20 – March 21, 2008 letter from Kelly Lowry to DHEC ..... 391

Pet. Ex. 21 – July 18, 2008 letter from Kent Coleman to Ronald Gilkerson..... 399

Pet. Ex. 22 – July 18, 2008 memo to Concerned Citizens with copy of permit..... 406

Pet. Ex. 24 – Excerpt from 2007 South Carolina Solid Waste Management Annual  
Report..... 414

Pet. Ex. 25 – 2008 S.C. Solid Waste Management Annual Report..... 422

Pet. Ex. 26 – Reports on Curry Lake C&D Landfill..... 430

Pet. Ex. 28 (Proffered) – Demonstration of Need Map ..... 438

**VOLUME II of II**

**MOTIONS AND MEMORANDA**

Respondent MRR Highway 92, LLC’s Motion for Partial Summary Judgment and  
Respondent MRR Highway 92, LLC’s Memorandum of Law in Support of its  
Motion for Partial Summary Judgment dated March 17, 2009 ..... 439

Respondent MRR Highway 92, LLC’s Motion to Make More Definite and  
Certain dated March 17, 2009..... 551

Petitioner’s Motion for Summary Judgment and Response to MRR Highway 92,  
LLC’s Motion for Summary Judgment dated May 1, 2009..... 572

Respondents' Joint Reply to Petitioner's Motion for Summary Judgment and Response to MRR Highway 92, LLC's Motion for Summary Judgment dated May 18, 2009.....	712
Petitioner's Response to Motion to Dismiss dated August 4, 2009.....	719
Respondent MRR Highway 92, LLC's Reply to Petitioner's Response to Motion to Dismiss dated August 12, 2009 .....	784
Petitioner's Sur-Reply in Opposition to Motion to Dismiss dated August 18, 2009.....	795

**OTHER**

July 24, 2008 letter from Jill C. Stewart to Ronald C. Gilkerson.....	799
Request for Final Review Conference dated August 4, 2008.....	805
August 21, 2008 letter from Lisa Lucas Longshore notifying parties of the Board decision not to conduct final review conference.....	811
Request for Contested Case Hearing dated September 16, 2008.....	813
Pre-Hearing Statement of Petitioner dated November 17, 2008.....	821
Pre-Hearing Statement of Respondent MRR Highway 92, LLC dated November 14, 2008.....	828
Pre-Hearing Statement of Respondent South Carolina Department of Health and Environmental Control dated November 13, 2008.....	833
May 1, 2009 letter from James S. Chandler, Jr. to The Honorable Ralph King Anderson, III.....	837
Certificate of Counsel .....	838

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Engaging & Guarding Laurens County's )  
Environment ("EAGLE"), a non-profit )  
membership organization, )

Petitioner, )

vs. )

South Carolina Department of Health and )  
Environmental Control and MRR Highway )  
92, LLC, )

Respondents. )

Docket No. 08-ALJ-07-0425-CC

**ORDER FOR  
PREHEARING STATEMENTS**

**IT IS HEREBY ORDERED** that each party who intends to appear at the hearing must file with the undersigned's office a Prehearing Statement stating the following:

1. The nature of this proceeding;
2. Statutory provisions(s) conferring subject matter jurisdiction to the agency and other applicable statutes and regulations;
3. The issues presented for determination;
4. The action requested of the Court, if any;
5. A brief summary of the facts to be presented at the hearing;
6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;
7. A list of proposed witnesses and exhibits;
8. A statement regarding the necessity for discovery, if any;
9. The estimated length of the hearing;

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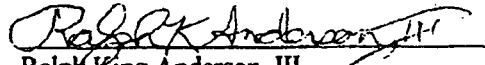
OCT 30 2008

SC ADMIN. LAW COURT

10. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing; and
11. An email address where you can be reached.

**IT IS FURTHERMORE ORDERED** that the Prehearing Statement must be filed with the Court and served on all parties within fifteen (15) days of the date of this Order. The parties have a continuing obligation to update the information during the course of the proceedings.

**AND IT IS SO ORDERED.**

  
Ralph King Anderson, III  
Administrative Law Judge

October 30, 2008  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 30th day of October, 2008  
By: Frederick M. Scott  
Judicial Law Clerk

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Engaging and Guarding Laurens County's  
Environment ("EAGLE"), a non-profit  
membership organization,  
  
Petitioner,  
  
vs.  
  
South Carolina Department of Health and  
Environmental Control and MRR Highway 92,  
LLC,  
  
Respondents.

Docket No. 08-ALC-07-0425-CC

ORDER DENYING PETITIONER'S  
MOTION FOR SUMMARY  
JUDGMENT

APPEARANCES: For the Petitioner: James S. Chandler, Jr., Esquire and Amy E. Armstrong, Esquire  
For the Respondent SC DHEC: Etta R. Williams, Esquire  
For the Respondent MRR Highway 92, LLC: W. Thomas Lavender, Jr., Esquire and Joan W. Hartley, Esquire

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2008) and S.C. Code Ann. § 44-1-60(F)(2) (Supp. 2008) upon the request for a contested case hearing filed by Engaging and Guarding Laurens County's Environment (EAGLE). EAGLE contests the issuance of a permit to MRR Highway 92, LLC (MRR) by the South Carolina Department of Health and Environmental Control (DHEC) for the construction and operation of a Class Two landfill to be located 322 Choice Road, Gray Court in Laurens County (Proposed Landfill). On May 1, 2009, EAGLE moved for summary judgment in this matter. Upon careful consideration, the Court finds that EAGLE's Motion for Summary Judgment should be denied.

STANDARD OF REVIEW

Rule 68 of the Administrative Law Court Rules provides that "[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment shall be

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granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRCP. "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 833 (2001). Summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004).

#### UNDISPUTED MATERIAL FACTS

On February 21, 2006, a request for a demonstration of need determination was submitted to DHEC for the Proposed Landfill. At that time, there was only one commercial Part IV C&D landfill within a ten-mile radius of the location of the Proposed Landfill. There were a total of three permitted Part IV C&D landfills—one commercial and two non-commercial—in Laurens County at that time. On March 3, 2006, DHEC issued a demonstration of need (DON) determination for the Proposed Landfill. The existing permitted capacity for Laurens County was not taken into account in DHEC's decision to issue the DON approval for the Proposed Landfill.

In determining the annual disposal rate for the Proposed Landfill, DHEC considered the amount of waste generated in 2004 in Laurens, Greenville, and Spartanburg Counties—the three counties within the ten-mile planning radius for the Proposed Landfill. Specifically, Laurens County reported 8,434 tons of C&D waste generated in 2004. For that same period, Greenville County reported 87,157 tons and Spartanburg County reported 58,803 tons. Accordingly, DHEC issued the DON approval with a maximum annual disposal limit of 154,000 tons per year.

On February 14, 2008, DHEC issued a draft permit for the Proposed Landfill. On March 13, 2008, DHEC held a public hearing on the permit. On July 18, 2008, DHEC issued MRR a permit for construction and operation of the Proposed Landfill.

## DISCUSSION

EAGLE contends that 25A S.C. Code Ann. Regs. 61-107.17 is facially inconsistent with the demonstration of need requirement of S.C. Code Ann. § 44-96-290(E) of the Solid Waste Act and thus is invalid. Section 44-96-290(E) provides that “[n]o permit to construct a new solid waste management facility or to expand an existing solid waste management facility may be issued until a demonstration of need is approved by the department.” S.C. Code Ann. § 44-96-290(E) (2002). Section 44-96-290(E) also requires DHEC to promulgate regulations governing the approval of the demonstration of need for proposed solid waste management facilities. Id. Regulation 61-107.17 was promulgated in 2000 in accordance with the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10 et seq. (APA), which requires public notification of proposed regulations and submittal to the General Assembly. See S.C. Code Ann. §§ 1-23-110 and 1-23-120 (2005 & Supp. 2008).

Regulation 61-107.17 establishes the criteria for the demonstration of need for the construction of new Part IV (long-term) construction, demolition, and land-clearing debris (C&D) landfills. 25A S.C. Code Ann. Regs. 1-107.17(A)(1) (Supp. 2008).<sup>1</sup> Pursuant to Regulation 61-107.17(D)(3)(a), “[w]here there are at least two (2) commercial disposal facilities under separate ownership within the planning area<sup>2</sup> that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, no new disposal capacity will be allowed.” 25A S.C. Code Ann. Regs. 61-107.17(D)(3)(a) (Supp. 2008). Conversely, where there are fewer than two commercial Part IV C&D landfills within the planning area of the proposed landfill, new disposal capacity may be allowed.

Pursuant to Regulation 61-107.17(D)(3)(b), capacity for a proposed landfill is determined based on the total yearly waste generated in all counties within the ten-mile radius planning area. Specifically, the regulation provides as follows:

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<sup>1</sup> Prior to DHEC's decision on MRR's permit application, DHEC promulgated a new regulation governing the permitting and operation of landfills. See 25A S.C. Code Ann. Regs. 61-107.19 (Supp. 2008). Under the new regulation, C&D landfills are permitted as Class Two landfills. However, the new regulation expressly provides that a determination of need made prior to its effective date “shall remain applicable and become the agency's final determination.” 25A S.C. Code Ann. Regs. 61-107.19. Part I(D)(1)(b). Here, DHEC made its determination of need on March 3, 2006, which was substantially before May 23, 2008, the effective date of Regulation 61-107.19. Accordingly, the Department's demonstration of need approval as a Part IV C&D landfill conforms to the requirements for a Class Two landfill.

<sup>2</sup> Pursuant to Regulation 61-107.17(B)(6)(a), the planning area for a Part IV C&D landfill is the area comprising a ten-mile radius around the landfill.

Each disposal facility in the planning area will be allowed **up to a maximum yearly disposal rate equal** to the **total** amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area. Disposal rates for existing facilities shall not be reduced pursuant to this provision.

25A S.C. Code Ann. Regs. 61-107.17(D)(3)(b) (Supp. 2008). Accordingly, depending on the number of permitted landfills in a county and the number of counties within the landfill's planning area, it is possible for the permitted landfill capacity in a county to exceed the amount of waste generated in the host county. Indeed, in this case DHEC approved an annual disposal limit of 154,000 tons per year for the Proposed Landfill even though Laurens County, the host county, reported only 8,434 tons of C&D waste generated in 2004.

EAGLE contends that this result demonstrates that Regulation 61-107.17 is invalid as it does not require a demonstration of need in the plain and ordinary use of that term. However, "[s]imply because another definition exists does not mean the ALC is empowered to invalidate an otherwise proper regulatory definition." Home Medical Systems, Inc. v. S.C. Dep't of Revenue, 382 S.C. 556, 677 S.E.2d 582 (2009). In fact, the South Carolina Supreme Court has expressly held that the ALC, as a segment of the executive branch, has no authority to rule on the "facial validity" of a regulation under state law. See Drummond v. State, 378 S.C. 362, 370, 662 S.E.2d 587, 591 (2008). Accordingly, EAGLE's claim that Regulation 61-107.17 is facially inconsistent with Section 44-96-290(E) of the Solid Waste Act cannot be considered by this Court, and summary judgment on this ground is therefore denied.

EAGLE further contends that DHEC's application of Regulation 61-107.17 was arbitrary and capricious because DHEC's staff failed to consider certain additional factors as allowed by subsection (D)(3)(d) of the regulation. Specifically, Regulation 61-107.17(D)(3)(d) provides that DHEC "reserves the right to review additional factors in determining need on a case-by-case basis." 25A S.C. Code Ann. Regs. 61-107.17(D)(3)(d) (Supp. 2008). EAGLE asserts that DHEC's failure to consider the existing permitted capacity and waste generation figures within Laurens County or the surrounding region in approving the demonstration of need approval for the Proposed Landfill establishes that such approval violated Regulation 61-107.17(D)(3)(d).

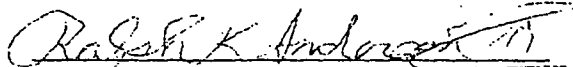
However, the Court finds that a genuine issue of material fact exists as to whether any "additional factors" beyond those specifically set forth in Regulation 61-107.17 required denial of the DON request. The Court notes in this regard that, according to EAGLE's own figures, as

of 2007. Spartanburg County—a county within the planning area of the Proposed Landfill—was utilizing over 90% of its permitted C&D landfill capacity. It further notes that, under Section 44-1-60(F)(2), this Court is required to give consideration to the provisions of S.C. Code Ann. § 1-23-330 regarding DHEC's specialized knowledge. Accordingly, the Court concludes that summary judgment on this ground is not appropriate.

Finally, relying on Ziffrin v. United States, 318 U.S. 73 (1943), EAGLE contends that the Court should consider an amendment to Regulation 61-107.17 (Document No. 3198) that became effective on June 26, 2009, which was prior to the administrative hearing held by this Court. In Ziffrin, the Supreme Court held that "a change of law pending an administrative hearing must be followed in relation to permits for future acts." Id. at 78. However, Ziffrin was decided in 1943. In more recent years, the U.S. Supreme Court has held that a law may not be applied retroactively absent a clear indication from the legislature that it intended such a result. See I.N.S. v. St. Cyr, 533 U.S. 289, 316 (2001). Here, the amendment to Regulation 61-107.17 does not provide for retroactivity; rather, quite the contrary, Section (C)(6) of the amendment expressly provides that determinations of need made prior to the effective date of the amendment are to remain applicable. Accordingly, the recent amendment to Regulation 61-107.17 will not be considered by this Court in making its determination.

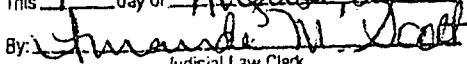
**ORDER**

**IT IS THEREFORE ORDERED** that Petitioner's Motion for Summary Judgment is **DENIED**.

  
Ralph King Anderson, III  
Chief Administrative Law Judge

August 7, 2009  
Columbia, South Carolina

LETTER OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 7th day of August, 2009  
By:   
Judicial Law Clerk

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Engaging and Guarding Laurens County's )  
Environment ("EAGLE"), a non-profit )  
membership organization. )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
South Carolina Department of Health and )  
Environmental Control and MRR Highway 92, )  
LLC, )  
 )  
Respondents. )  
 )

Docket No. 08-ALC-07-0425-CC

ORDER  
DENYING RESPONDENT  
MRR HIGHWAY 92, LLC'S  
MOTION  
FOR PARTIAL  
SUMMARY JUDGMENT

APPEARANCES: For the Petitioner: James S. Chandler, Jr., Esquire and Amy E. Armstrong, Esquire  
For the Respondent SC DHEC: Etta R. Williams, Esquire  
For the Respondent MRR Highway 92, LLC: W. Thomas Lavender, Jr., Esquire and Joan W. Hartley, Esquire

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2008) and S.C. Code Ann. § 44-1-60(F)(2) (Supp. 2008) upon the request for a contested case hearing filed by Engaging and Guarding Laurens County's Environment (EAGLE). EAGLE contests the issuance of a permit to MRR Highway 92, LLC (MRR) by the South Carolina Department of Health and Environmental Control (DHEC) for the construction and operation of a Class Two landfill to be located 322 Choice Road, Gray Court in Laurens County (Proposed Landfill). On March 17, 2009, MRR moved for partial summary judgment in this matter. MRR contends that DHEC properly approved a demonstration of need for the Proposed Landfill since DHEC's decision conforms to the requirements set forth in subsections (a) through (c) of 25A S.C. Code Ann. Regs. 61-107.17(D)(3) (Supp. 2008). Upon careful consideration, the Court finds that MRR's Motion for Partial Summary Judgment should be denied.

**FILED**

AUG 07 2009

SC ADMIN. LAW COURT

### STANDARD OF REVIEW

Rule 68 of the Administrative Law Court Rules provides that “[t]he South Carolina Rules of Civil Procedure . . . may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules.” Rule 56(c) of the South Carolina Rules of Civil Procedure provides that summary judgment shall be granted if it is shown “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) SCRCP. “Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed.” Garvin v. Bi-Lo, Inc., 343 S.C. 625, 628, 541 S.E.2d 831, 833 (2001). Summary judgment should be granted “when plain, palpable and undisputed facts exist on which reasonable minds cannot differ.” Bayle v. S.C. Dep’t of Transp., 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004).

### UNDISPUTED MATERIAL FACTS

On February 21, 2006, a request for a demonstration of need determination was submitted to DHEC for the Proposed Landfill. At that time, there was only one commercial Part IV C&D landfill within a ten-mile radius of the location of the Proposed Landfill. There were a total of three permitted Part IV C&D landfills—one commercial and two non-commercial—in Laurens County at that time. On March 3, 2006, DHEC issued a demonstration of need (DON) determination for the Proposed Landfill. The existing permitted capacity for Laurens County was not taken into account in DHEC’s decision to issue the DON approval for the Proposed Landfill.

In determining the annual disposal rate for the Proposed Landfill, DHEC considered the amount of waste generated in 2004 in Laurens, Greenville, and Spartanburg Counties—the three counties within the ten-mile planning radius for the Proposed Landfill. Specifically, Laurens

County reported 8,434 tons of C&D waste generated in 2004. For that same period, Greenville County reported 87,157 tons and Spartanburg County reported 58,803 tons. Accordingly, DHEC issued the DON approval with a maximum annual disposal limit of 154,000 tons per year.

On February 14, 2008, DHEC issued a draft permit for the Proposed Landfill. On March 13, 2008, DHEC held a public hearing on the permit. On July 18, 2008, DHEC issued MRR a permit for construction and operation of the Proposed Landfill.

### DISCUSSION

S.C. Code Ann. § 44-96-290(E) (2002) provides that “[n]o permit to construct a new solid waste management facility or to expand an existing solid waste management facility may be issued until a demonstration of need is approved by the department.” S.C. Code Ann. § 44-96-290(E) (2002). Section 44-96-290(E) also requires DHEC to promulgate regulations governing the approval of the demonstration of need for proposed solid waste management facilities. Id. In accordance with that directive, 25A S.C. Code Ann. Regs. 61-107.17 was promulgated in 2000. Subsection (D)(3) of that regulation provides that:

In determining if there is a need for a new or expansion of an existing solid waste disposal facility, the Department will use the criteria outlined below:

- a. Where there are at least two (2) commercial disposal facilities under separate ownership within the planning area that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, no new disposal capacity will be allowed. Disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be considered in determining need.
- b. Each disposal facility in the planning area will be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area. Disposal rates for existing facilities shall not be reduced pursuant to this provision.
- c. In determining the amount of solid waste destined for disposal, the Department will use figures in the current Solid Waste Annual Report for the proposed waste stream, e.g., the generation rate for a Part IV construction, demolition debris and land-clearing debris landfill will be determined by adding the amounts of construction and demolition debris, and land-clearing debris destined for disposal in permitted construction, demolition, and land-clearing debris landfills in the counties that fall within the planning area.
- d. The Department reserves the right to review additional factors in determining need on a case-by-case basis.

25A S.C. Code Ann. Regs. 61-107.17(D)(3) (Supp. 2008).

In this case, MRR argues that DHEC properly approved a demonstration of need for the Proposed Landfill since it is undisputed that DHEC's decision did not violate any of the requirements set forth in subsections (a) through (c) of Regulation 61-107.17(D)(3). EAGLE, on the other hand, contends that DHEC neglected to consider "additional factors" in determining need as authorized by subsection (d) of Regulation 61-107.17(D)(3) and thus failed to properly apply Regulation 61-107.17. As support for its argument, EAGLE has submitted the deposition testimony of Kent Coleman, a DHEC employee, and pertinent pages from DHEC's 2007 Solid Waste Management Annual Report.

In response to EAGLE's contention, MRR argues that subsection (d) of Regulation 61-107.17(D)(3) does not require DHEC to consider additional factors in every case. It further claims that any failure by DHEC to take into account additional factors was not arbitrary or capricious since no entity ever requested DHEC to consider additional factors.

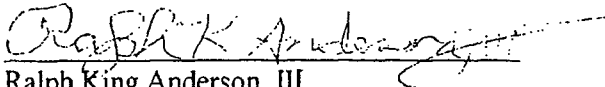
After careful review of the parties' arguments, I find that summary judgment should not be granted in this case. Although Regulation 61-107.17(D)(3)(d) appears to be a discretionary, rather than a mandatory, provision,<sup>1</sup> this Court hears contested permitting cases de novo, not in an appellate capacity. Young v. S.C. Dep't of Health and Env'tl. Control, Op. No. 4555 (S.C. Ct. App. filed June 8, 2009) (Shearouse Adv. Sh. No. 25 at 71). Accordingly, the Court's review in this case is not limited to determining whether DHEC's decision was erroneous under one of the grounds set forth in S.C. Code Ann. § 1-23-380(5) (Supp. 2008).

Furthermore, "[s]ummary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Jackson v. Swordfish Investments, L.L.C., 365 S.C. 608, 611, 620 S.E.2d 54, 56 (2005). Indeed, even when there is no dispute as to the evidentiary facts, summary judgment should not be granted if there is a dispute as to the conclusion to be drawn therefrom. Id. at 611-12, 620 S.E.2d at 56. Here, the Court concludes that further inquiry into the facts of this case is desirable to clarify the proper application of Regulation 61-107.17(D)(3)(d). Accordingly, summary judgment is denied.

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<sup>1</sup> For instance, in Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454 (1989), the U.S. Supreme Court held that an inmate visitation regulation that contained the caveat that "administrative staff reserves the right to allow or

IT IS HEREBY ORDERED that the Respondent MRR Highway 92, LLC's Motion for Partial Summary Judgment is DENIED.

  
Ralph King Anderson, III  
Chief Administrative Law Judge

August 7, 2009  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).  
This 7<sup>th</sup> day of August, 2009  
By: Amanda M. Scott  
Judicial Law Clerk

---

disallow visits" was not mandatory and thus did not give inmates a liberty interest in receiving visitors.



## FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

By letter dated February 21, 2006, a request for a demonstration of need (DON) was submitted to DHEC for the Proposed Landfill. At the time, there were fewer than two commercial Part IV C&D landfills within a ten-mile planning radius of the Proposed Landfill. The ten-mile planning radius for the Proposed Landfill includes portions of Laurens, Spartanburg, and Greenville Counties

On March 3, 2006, DHEC issued its initial DON approval for the Proposed Landfill with a maximum annual tonnage limit of 154,000 tons per year. This annual disposal rate was based on the reported amount of C&D waste generated in Laurens, Spartanburg, and Greenville Counties for fiscal year 2004. The Department continued to review comments received on the Proposed Landfill throughout the permitting process, including comments regarding the need for the Proposed Landfill. It subsequently issued a permit for construction and operation of the Proposed Landfill on July 18, 2008.

At the time of the DON approval, there were three permitted C&D landfills in Laurens County—the City of Clinton C&D Landfill, the Laurens County C&D Landfill, and Curry Lake C&D Landfill (Curry Lake). The site of the Proposed Landfill is approximately three miles from Curry Lake. It was the only privately owned C&D Landfill in Laurens County and had an annual rate of disposal of 241,591 tons per year. The other Laurens County landfills were appreciably less of a factor in evaluating need. The City of Clinton C&D Landfill had a permitted annual rate of disposal of only 1,375 tons per year. The Laurens County C&D Landfill had an annual rate of disposal of 8,900 tons per year. However, the Laurens County Landfill ceased accepting waste in May of 2009 and is currently in the process of closure.

The most significant factor according to the Regulations in evaluating need is the number of C&D landfills in a ten-mile radius around the proposed location. As noted above, the ten-mile planning radius for the Proposed Landfill includes portions of Laurens, Spartanburg, and Greenville Counties. According to the South Carolina Solid Waste Management Annual Report for Fiscal Year 2007, the **permitted annual rate of disposal** for the C&D landfills in Greenville, Laurens, and Spartanburg Counties is as follows:

- 510,157 tons per year in Greenville County.

- 251,866 tons per year in Laurens County, and
- 80,000 tons per year in Spartanburg County

— for a total of 842,023 tons per year. Therefore, the proposed landfill meets the requisites of 25A S.C. Code Regs. § 61-107.17(D)(3)(a), (b) and (c) (Supp. 2008).

EAGLE nevertheless contends that there are additional factors that reflect that the proposed location is not needed. See 25A S.C. Code Regs. § 61-107.17(D)(3)(d) (Supp. 2008). Specifically, EAGLE argues that this Court should consider the excess capacity in Greenville County; the fact that the ten-mile radius encompasses only a small portion of Greenville County; and the proximity of existing commercial landfills.

The Greenville County C&D landfills in proximity to the proposed location are Twin Chimneys C&D Landfill (Twin Chimneys) and Republic Industries. Twin Chimneys is located approximately five miles from the Laurens County boundary line and Republic Industries is located approximately ten to twelve miles from the county line. The only permitted C&D landfill in Spartanburg County is Wasp Nest Road C&D Landfill (Wasp Nest). However, the estimated remaining life of Wasp Nest is only about 1.6 years.

An important consideration in addressing the need for a landfill is that the planning area established in the DON Regulation is a regional concept. Many of the C&D landfills in the three-county planning area for the Proposed Landfill accept waste from other counties. That factor however must also be considered in conjunction with the utilization of those landfills. The waste generation and landfill capacity figures for Fiscal Year 2005, 2006 and 2007 are summarized in the following charts:

<b>Fiscal Year 2005</b>	<b>Tons of C&amp; D Waste Generated Annually</b>	<b>Existing Annual C &amp; D Landfill Capacity</b>	<b>Percentage Utilization of Existing Capacity</b>
<b>Laurens County</b>	6,635	251,866	2.6%
<b>Greenville County</b>	142,767	510,157	28.0%
<b>Spartanburg</b>	71,424	80,000	89.3%
<b>Total - 3 counties</b>	220,826	842,023	26.2%

Fiscal Year 2006	Tons of C& D Waste Generated Annually	Existing Annual C & D Landfill Capacity	Percentage Utilization of Existing Capacity
Laurens County	9,479	251,866	3.8%
Greenville County	163,450	510,157	32.0%
Spartanburg	68,662	80,000	85.8%
<b>Total - 3 counties</b>	<b>241,591</b>	<b>842,023</b>	<b>28.7%</b>

Fiscal Year 2007	Tons of C& D Waste Generated Annually	Existing Annual C & D Landfill Capacity	Percentage Utilization of Existing Capacity
Laurens County	16,860	251,866	7.8%
Greenville County	161,738	510,157	31.7%
Spartanburg	72,161	80,000	90.2%
<b>Total - 3 counties</b>	<b>250,759</b>	<b>842,023</b>	<b>29.8%</b>

#### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, I conclude the following as a matter of law:

#### **Jurisdiction and Standard of Proof**

The Administrative Law Court has jurisdiction over this contested case matter pursuant to S.C. Code Ann. § 1-23-600(A) (Supp. 2008) and S.C. Code Ann. §44-1-60(F)(2) (Supp. 2008). Petitioner, as the party challenging the Department's approval for the Proposed Landfill, bears the burden of proof in this case. See Leventis v. S.C. Dept. of Health & Env'tl. Control, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that the burden of proof in administrative proceedings generally rests upon the party asserting the affirmative of an issue). The standard of proof in weighing the evidence and making a decision on the merits at a contested case hearing is a preponderance of the evidence. Nat'l Health Corp. v. S.C. Dept. of Health & Env'tl. Control, 298 S.C. 373, 380 S.E.2d 841 (Ct. App. 1989). This Court reviews the evidence presented *de novo*. Marlboro Park Hosp. v. S.C. Dept. of Health & Env'tl. Control, 358 S.C. 573, 595 S.E.2d 851 (2004).

#### **Demonstration of Need**

Permitting of solid waste management facilities, including C&D landfills, is governed by the South Carolina Solid Waste Policy and Management Act, S.C. Code Ann. §§ 44-96-10 et seq. (2002) (Solid Waste Act), and the regulations promulgated pursuant to the Act. Section 44-96-290(E) of the Solid Waste Act provides that no permit "may be issued until a demonstration of need is approved by the department." S.C. Code Ann. § 44-96-290(E) (2002). The Solid Waste Act does not specify procedures for DHEC to follow in making need determinations. Southeast Resource Recovery, Inc., 358 S.C. 402, 408, 595 S.E.2d 468, 471 (2004). The Solid Waste Act however does require that the Department promulgate regulations for demonstrating need for solid waste management facilities. S.C. Code Ann. § 44-96-290(E) (2002). The regulation governing demonstration of need for a new facility is found at S.C. Code Regs. § 61-107.17 (DON Regulation). 25A S.C. Code Regs. § 61-107.17 (Supp. 2008).<sup>2</sup>

The DON Regulation establishes the criteria for the demonstration of need for the construction of new Part IV (long-term) construction, demolition, and land-clearing debris landfills. 25A S.C. Code Regs. § 61-107.17 (A)(1) (Supp. 2008).<sup>3</sup> Regulation 107.17 specifies a ten-mile "planning area" for construction, demolition, and land clearing debris landfills. Part D of Regulation 61-107.17 specifies the drawing of a circle with a ten-mile radius, the counting of "commercial" solid waste landfills within the planning area, and the method of establishing an annual disposal rate. Specifically, Regulation 61-107.17(D)(3) provides that: "In determining if there is a need for a new or expansion of an existing solid waste disposal facility, the Department will use the criteria outlined below:

- a. Where there are at least two (2) commercial disposal facilities under separate ownership within the planning area that meet the disposal needs for the area, e.g., that accept special waste and, if applicable, are capable of handling additional tonnage, **no new disposal capacity will be allowed.** Disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be considered in determining need.

<sup>2</sup> The DON Regulation was amended effective June 26, 2009. This decision is thus based on the DON Regulation in effect at the time of the permitting decision published in the State Register 33 S.C. State Register (No. 6, June 26, 2009).

<sup>3</sup> Prior to the Department's decision on MRR's permit application, the Department promulgated new regulations governing the permitting and operation of landfills. See 25A S.C. Code Ann. Regs. § 61-107.19. Under the new Landfill Regulation, C&D landfills are permitted as Class Two Landfills. However, the new Landfill Regulation expressly provides that a determination of need made prior to the effective date of the new Regulation "shall remain applicable and become the agency's final determination." S.C. Code Ann. Regs. § 61-107.19 Part I.D.1.b. Accordingly, the Department's demonstration of need approval as a Part IV C&D Landfill conforms to the requirements for a Class Two Landfill.

- b. Each disposal facility in the planning area will be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion thereof, within the planning area. Disposal rates for existing facilities shall not be reduced pursuant to this provision.
- c. In determining the amount of solid waste destined for disposal, the Department will use figures in the current Solid Waste Annual Report for the proposed waste stream, e.g., the generation rate for a Part IV construction, demolition debris and land-clearing debris landfill will be determined by adding the amounts of construction and demolition debris, and land-clearing debris destined for disposal in permitted construction, demolition, and land-clearing debris landfills in the counties that fall within the planning area.
- d. The Department reserves the right to review additional factors in determining need on a case-by-case basis.

(emphasis added).

This Regulation thus excludes the permitting of more than two facilities under separate ownership within the planning area. However, it does not mandate that a permit be granted if there are less than two facilities in the planning area and the applicant meets the remaining criteria of Regulation 61-101.17 (D)(3)(a) through (c). Rather, pursuant to Regulation 61-107-17 (D)(3)(d) it is appropriate to consider any additional factors that reflect whether or not the facility is needed on a case-by-case basis.<sup>4</sup>

Petitioner conceded that MRR's application conformed to the requirements of Subsections (D)(3)(a) through (c) of the Regulation. However, EAGLE contends the Department's approval for the Proposed Landfill was improper because additional factors should be considered pursuant to Subsection (D)(3)(d) of the DON Regulation. Other than the criteria set forth in Regulation 61-107-17 (D)(3), no other definitions of the term "need" are provided in either the Act or the DHEC regulation. Accordingly, the Court should look to the "plain and ordinary" meaning of these terms. New York Times Co. v. Spartanburg Cty. School Dist. No. 7, 374 S.C. 307, 649 S.E.2d 28 (2007). "Need" has been defined to mean: "a condition requiring supply or relief." Merriam-Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary>. Applying that definition to this case, it is obvious that the General Assembly intended that a demonstration of "need" must involve proof that the circumstances

<sup>4</sup> Respondents' desire to have a bright line test regarding these permits is understandable and, in fact, reasonable. However, I simply do not find that the language of the Regulation establishes that result. Nonetheless, I do recognize that determining need in these cases involves many variables for which future legislative guidance would be helpful.

within the region of the landfill indicate additional landfill capacity is needed to meet the public's demands.

#### Laurens County Consideration

According to the 2007 Solid Waste Management Annual Report, the amount of C&D waste generated in Laurens County for the fiscal years 2004 through 2007 is as follows: 6,635 tons in 2005; 9,479 tons in 2006; and 16,860 tons in 2007. At the time of the Department's approval, the three permitted C&D landfills in Laurens County had a total annual disposal rate of 251,866. EAGLE contends that this excess permitted capacity within Laurens County is an "additional factor" which required denial of the demonstration of need for the Proposed Landfill. This Court finds this argument unpersuasive and contrary to express provisions of the Solid Waste Act.

Section 44-96-290(E) does not require the Department to assess the need for a new solid waste management facility or expansion of an existing facility within the confines of the needs of a particular county. S.C. Code Ann. § 44-96-290(E) (2002). In enacting the Solid Waste Act, the General Assembly made the specific finding that "a coordinated statewide solid waste management program is needed to protect public health and safety, protect and preserve the quality of the environment, and conserve and recycle natural resources." S.C. Code Ann. § 44-96-20(A)(13) (2002). The DON Regulation carries out that directive to implement a statewide program by assessing the need for a commercial facility within defined planning areas, which, as in this case, may encompass multiple counties. In fact, according to fiscal year 2004/2005 reporting to the Department, Curry Lake Landfill in Laurens County accepted C&D waste from seven other counties in South Carolina. Such evidence demonstrates that C&D landfills serve the disposal needs beyond the host county and even the planning area defined by the DON Regulation.

Additionally, the excess permitted disposal capacity within Laurens County does not constitute an additional factor requiring denial of the demonstration of need request for the Proposed Landfill. Such disposal capacity is a result of an express provision of the DON Regulation which sets forth the mechanism for determining the annual disposal rate for a proposed facility. Subsection (D)(3)(b) provides that "[e]ach disposal facility in the planning area will be allowed up to a maximum yearly disposal rate equal to the total amount of solid waste destined for disposal that is generated in the county or counties that fall, either all inclusive or a portion there of, within the planning area." S.C. Code Ann. Regs. § 61-

107.17(D)(3)(b) (Supp. 2008) (emphasis added). This provision of the DON Regulation provides that the combined maximum yearly disposal rate for all facilities within a county may exceed the waste disposal needs of the host county. When there is more than one facility in a ten-mile radius planning area, each is allowed a maximum yearly disposal rate up to the total amount of waste generated in the host county. Depending on the size of the county, there could be any number of facilities located within the county—each with a permitted maximum annual disposal rate equal to the total annual waste generated in the host county. Moreover, as is the case with the Proposed Landfill, the maximum yearly disposal rate for a proposed landfill will always exceed the amount of waste generated within the host county when the ten-mile radius planning area for a proposed facility touches on more than one county. Accordingly, the fact that the host county for a proposed facility already has sufficient or excess permitted disposal capacity to meet the needs of the host county is not an “additional factor,” in and of itself, which warrants denial of a demonstration of need for permitting of additional facilities.

#### **Regional Consideration**

Petitioner argues further that the fact that the region already has more landfill capacity than either the county or the region needs is an additional factor warranting the denial of the permit. In fact, the Respondents agree that this matter should be reviewed taking into consideration the multi county area or a regional view. In this case, the regional need for C&D disposal is increasing. Moreover, the remaining life of the Wasp Nest Landfill which has an annual disposal rate of 80,000 tons per year is basically finished. Recognizing that fact, after the annual capacity of Spartanburg is eliminated, the percentage utilization of existing capacity would be 32.9%. The regional capacity is thus declining. In that regard, one of the goals of siting more than one commercial landfill within the ten-mile planning area is to address the need for competition and encourage facilities to compete with each other in terms of price.

Nevertheless, the number of existing landfills in proximity to the site of the proposed MRR landfill, and the utilization of those landfills, offsets the implications of the Wasp Nest closing. The proposed MRR Highway 92 landfill is only about 4 miles from the existing 241,000 tons-per-year Curry Lake landfill. The 87,187 tons-per year Twin Chimneys landfill in Greenville County is about 5 miles outside Laurens County, or about 11 miles from the site of the proposed MRR landfill. Finally, Greenville County landfill also has the Republic Landfill which has an annual disposal capacity of 200,000 tons-per-year and is about 10-12 miles outside Laurens County or 14-16 miles from the site of the proposed MRR landfill.

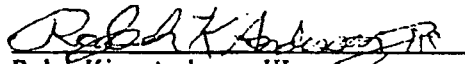
More importantly, even considering the loss of the Wasp Nest landfill, the 32.9% utilization of existing capacity simply does not reflect a need for another landfill in the area. In other words, the three county area is generating less than 300,000 tons of C & D waste per year, and even excluding the Wasp Nest landfill it has over 750,000 tons of existing annual C & D landfill capacity. Furthermore, once the annual tonnage of the proposed landfill is factored into the existing C & D landfill capacity, even considering the loss of the Wasp Nest landfill the use of existing capacity would only be 27.38%. Looking further into the future, after the remaining life of the Republic landfill is finished, the use of existing capacity would still only be 35.02%.<sup>5</sup>

I therefore find that the proposed facility is not needed.

**ORDER**

**IT IS THEREFORE ORDERED** that the permit to construct the Proposed Landfill is DENIED.

**AND IT IS SO ORDERED.**

  
Ralph King Anderson III  
Chief Administrative Law Judge

October 23, 2009  
Columbia, South Carolina

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 23<sup>rd</sup> day of October 2009

By: Annalee M. Scott  
Judicial Law Clerk

<sup>5</sup> The remaining life of the Greenville County 200,000 tons-per-year Republic landfill is less than seven years.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT DIVISION  
Docket No. 08-ALJ-07-0425-CC

Engaging and Guarding Laurens )  
County Environment (EAGLE), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
South Carolina Department of )  
Health and Environmental Control, )  
and MRR Highway 92, LLC, )  
 )  
Respondents. )

**COPY**

**ADMINISTRATIVE HEARING**

\*\*\*\*\*

**Wednesday, May 27, 2009**  
9:55 a.m. - 11:07 a.m.

The hearing before the Honorable Ralph King Anderson, III was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 27<sup>th</sup> day of May, 2009 before Suzanne R. Bryant, Court Reporter and Notary Public in and for the State of South Carolina.

**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

APPEARANCES:

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INDEX

	<u>PAGE</u>
<b>MOTIONS:</b>	
MR. LAVENDER . . . . .	3
MR. CHANDLER . . . . .	14
<b>REPLY:</b>	
MR. LAVENDER . . . . .	30
MS. WILLIAMS . . . . .	39
MR. CHANDLER . . . . .	42
MR. LAVENDER . . . . .	47
MS. WILLIAMS . . . . .	50
Certificate . . . . .	57

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

**CREEL COURT REPORTING, INC.**  
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1 THE COURT: All right. This is a hearing in the  
2 matter of ... I'm just going call it EAGLE,  
3 Petitioner, versus South Carolina Department of  
4 Health and Environmental Control and MRR  
5 Highway 92, LLC, Respondents. The docket  
6 number 08-ALJ-07-0425-CC. It's the hearing on  
7 the Motions for Summary Judgement. So ...

8 (Off the record discussion)

9 THE COURT: All right. Who's going to go first  
10 because there's dueling summary judgements?

11 MR. LAVENDER: There is. I don't know. I think we  
12 filed our motion first.

13 THE COURT: Okay.

14 MR. LAVENDER: I don't know whether that matters to  
15 the Court or ... so ...

16 THE COURT: We'll go one of the principles of FIFO.

17 MR. LAVENDER: First in, first out.

18 THE COURT: Right.

19 MOTION BY MR. LAVENDER:

20 MR. LAVENDER: First in, first up. Thank you, Your  
21 Honor. And we're here presenting or arguing  
22 our Motion for Summary Judgement. Just to kind  
23 of set it up, when we filed our Motion for  
24 Summary Judgement, it was filed and the  
25 materials originally before you were on the

1 basis of the entire issues originally presented  
2 in the pre-hearing statements and the appeal.  
3 Subsequent to the various replies, the parties  
4 basically have ... the issues have pared down,  
5 the Petitioners have limited the issue of  
6 inquiry in their Summary Judgement Motion and  
7 thus to us in our arguments on Summary  
8 Judgement to the issue of the Department's  
9 determination and the propriety of that  
10 determination on the demonstration of need  
11 question. So all of the other issues are not  
12 ... I believe this is a correct statement ...  
13 I hope it is because that's the way we  
14 predicated, is that we're down to the issue of  
15 the provisions of the statute and the  
16 regulation and the Department's determination  
17 relative to need.

18 **THE COURT:** So we're beyond now the issue of ...

19 **MR. LAVENDER:** Consistency and ...

20 **THE COURT:** And ...

21 **MR. LAVENDER:** ... all the cited issues.

22 **THE COURT:** And how about the issue of whether the  
23 regulation ...

24 **MR. LAVENDER:** That's all ...

25 **THE COURT:** Are you challenging the regulation ...

1 MR. LAVENDER: All of those I ...

2 THE COURT: Y'all are not challenging that?

3 MR. CHANDLER: We have argued it in our brief, a  
4 question of the validity of the regulation.  
5 We've sort of got a two-pronged argument. We  
6 realize that that may not be properly before  
7 the Court ...

8 THE COURT: May not under Drummond, yeah.

9 MR. CHANDLER: Well, the background ... the backdrop  
10 of that is a hearing we had in front of another  
11 ALJ who seemed to indicate that maybe the Court  
12 did have jurisdiction and so, to be safe, we  
13 went ahead and briefed that. But we realize  
14 ... we know what Drummond says.

15 THE COURT: All right. I think I do, too. Okay.  
16 All right. Just so I can be clear then, Mr.  
17 Lavender, when you make your argument, the way  
18 I was looking at this, after reading all of  
19 y'all's briefs, although I don't have them ...  
20 probably not memorized, but I am not as well  
21 versed in the law as y'all having to put  
22 together briefs. But it appears to me that but  
23 for the provision in I think it's 107.17(d) and  
24 it's the last one ...

25 MR. CHANDLER: Three, four ... 3(d) ... (d)(3)(d).

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1 THE COURT: Yeah ... that provide for the case ...  
2 for case by case consideration of additional  
3 factors, you would win on your Summary  
4 Judgement Motion. So I guess I need you to  
5 approach your Summary Judgement Motion from  
6 that aspect. I'm missing ... I mean, I think  
7 he would win, from what I can tell, but for  
8 that particular provision.

9 MR. LAVENDER: I will spare you the preceding pages  
10 in my argument if what you're telling me is  
11 that you would like me to do that, and I'll go  
12 straight to that issue.

13 THE COURT: Okay.

14 MR. LAVENDER: Provided you're not going to hamper  
15 my other arguments if ...

16 THE COURT: Well, I ...

17 MR. LAVENDER: ... if he brings up ... if those  
18 other issues are addressed.

19 THE COURT: Mr. Chandler convinced me otherwise,  
20 I'll put you back on the bubble on rebuttal.

21 MR. LAVENDER: Right, that's perfect. And it gets  
22 down to ... in that particular issue, the  
23 Petitioner argues that the Department merely,  
24 and using their terms, applied the rote  
25 application of the formula in (3)(d)(3) I

1 believe ... or in (d)(3) which consists of a  
2 number of provisions. At the outset, it leads  
3 by saying, and I'm going to quote from the lead  
4 in for (d)(3), "In determining if there is a  
5 need for a new or expansion of an existing  
6 solid waste disposal facility, the Department  
7 will use the criteria outlined below." "Use  
8 the criteria outlined below." We would argue,  
9 first of all, that (a), (b), (c) and (d) are  
10 below, but that (a), (b) and (c) constitute  
11 criteria, they refer to in (a), no new disposal  
12 facility will be allowed, last line, the  
13 disposal facility as located will not be  
14 considered, will not be considered. The next  
15 one, will be allowed. The next sentence down  
16 below that, shall not be reduced. And in (c),  
17 several places, will use the figures and will  
18 be determined by the Department. And to me,  
19 the Department will use those criteria where  
20 they are mandated to do that. We would then  
21 call your attention to the fourth subsection in  
22 that area there, and it says, simply, that the  
23 Department reserves the right to review  
24 additional factors in determining need on a  
25 case by case basis. And, again, we think that

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1 that falls woefully short of a mandate  
2 requiring, number one, reversal and, more  
3 importantly ...

4 **THE COURT:** Wait a second. I agree with you, it's  
5 not a mandate, so ... and I would also agree  
6 with you that, you know, just looking at this  
7 provision, (a), (b) and (c) are certain,  
8 they're not just rote. A consideration of  
9 those factors for criteria, as the reg says,  
10 that's not just rote, I mean, that's what the  
11 regulation calls for. But where I'm missing it  
12 is this is a de novo hearing and we're at  
13 summary judgement stage. And so if it's a de  
14 novo hearing, cannot Mr. Chandler argue, I  
15 mean, he's got his spin on it, but the bottom  
16 line, if you don't go just with the ... the  
17 phraseology that he uses that go with the  
18 regulation itself, is it not proper for him to  
19 argue, that, well, that there are some other  
20 factors I think should be considered and in  
21 addition to (a), (b) and (c) and that this  
22 hearing should be open for him to present  
23 those?

24 **MR. LAVENDER:** He inquired of Mr. Coleman in Mr.  
25 Coleman's deposition and at the last page and

1 two of his deposition he asked the question, if  
2 they did use that ... and I'll have to ... I  
3 want to read it to you verbatim so that I don't  
4 misquote it, but the answer to that question  
5 ... and the question was, and I'm reading from  
6 page 59, beginning on line 18, "Okay. Despite  
7 those comments," referring to comments received  
8 by the Department, "what you're saying is that  
9 the Department stuck to the parts ... I mean,  
10 section (d), items (1), (2) and (3), (a), (b)  
11 and (c), but you did not utilize the right to  
12 review additional factors that's provided in  
13 subsection (d) of that part?" Answer, "We did  
14 not review additional factors ... well, I  
15 should say we didn't use any additional factors  
16 in ... to make our decision in this case." So  
17 I don't believe the answer was that ... and I  
18 don't believe that, you know, any further  
19 factual inquiry is necessary. And then let me  
20 ... we've got dueling summary judgement  
21 motions. They believe ... they're arguing the  
22 same thing that there's not an issue, that it  
23 requires that inquiry. That's their argument  
24 in Summary Judgement, that it requires that  
25 inquiry and constitutes that reversible error

1 because they failed to do something that was  
2 merely a reservation of rights. Our argument,  
3 then, would be what if the Department had  
4 decided that, well, there's only in section (a)  
5 ...

6 **THE COURT:** I don't agree that it requires an  
7 inquiry. It just ... the Department can look  
8 at the case and decide if it wants to make the  
9 inquiry.

10 **MR. LAVENDER:** It could ...

11 **THE COURT:** But that ...

12 **MR. LAVENDER:** ... and apparently, it did and did  
13 not.

14 **THE COURT:** And that very well may be the ultimate  
15 decision I would make in this case, but what  
16 I'm trying to decide, the Summary Judgement  
17 stage of the litigation, whether they have a  
18 right to make the argument that there are other  
19 factors out there that they think are of  
20 sufficient inquiry to look into.

21 **MR. LAVENDER:** Well, Mr. Braswell's deposition, and  
22 I think both of us have extensively quoted from  
23 Mr. Braswell's deposition, and he was present  
24 at the time that regulation and that provision  
25 was adopted and he described the circumstances

1 under which that language was developed. And,  
2 as he described it, it was to allow the  
3 Department, if it was necessary, to look at  
4 reasons that would cause them to make a  
5 decision in favor of need where the circle test  
6 might not work or where it might preclude it  
7 otherwise when a facility was not truly a  
8 commercial facility, was not accepting  
9 everybody's waste and there was no competition.

10 **THE COURT:** I'm just not familiar ...

11 **MR. LAVENDER:** My point on that, again ...

12 **THE COURT:** ... with the Braswell's testimony  
13 exception to the statutory construction rule.

14 **MR. LAVENDER:** Not the exception ... no, did not  
15 mean to suggest that. It was simply an inquiry  
16 made ...

17 **THE COURT:** Yeah.

18 **MR. LAVENDER:** ... by counsel during the deposition.  
19 Again, our argument on that reservation of  
20 rights is that, had the Department, had the  
21 Department made a decision to deny the permit  
22 based on a review of additional factors, simply  
23 that these tonnage capacities of really one  
24 commercial facility located in Laurens County  
25 and denied the permit, having done that, the

1 first three ... the first subsection (3)(a)  
2 would have given us the right to have it  
3 reversed, we believe, because we met the  
4 mandatory criteria for determination of need.  
5 Having met the mandatory criteria for  
6 determining need, we don't believe that the  
7 reservation of rights gives rise to denying it  
8 on the basis of that type of review.

9 **THE COURT:** All right. Explain that to me. You're  
10 saying that under section (a) ...

11 **MR. LAVENDER:** Section (a) says, "Where there are at  
12 least two commercial disposal facilities under  
13 separate ownership within the planning area,"  
14 and planning area in this case is ten mile  
15 radius, "that meet the disposal needs of the  
16 area," and I'll skip over to, "no new disposal  
17 capacity will be allowed. The disposal  
18 facilities that accept only waste generated in  
19 the County will not be considered in  
20 determining need." And that was Clinton and  
21 Laurens, the other two facilities ... the  
22 public facilities. And then finally it says,  
23 "Each disposal facility in the planning area  
24 will be allowed a maximum yearly disposal rate  
25 and shall not be reduced ... pursuit to the

1 existing one shall not be reduced."

2 **THE COURT:** You still in (a)?

3 **MR. LAVENDER:** I'm in (b), I went to (b) on that  
4 particular one.

5 **THE COURT:** Okay.

6 **MR. LAVENDER:** My argument is that we're entitled to  
7 a demonstration of need approval if we meet the  
8 first three criteria. They are mandatory under  
9 the Department. They tell it multiple times  
10 that it will and shall do these things. And  
11 that the other has no real meaning, other than  
12 whether or not it should give another approval  
13 if you don't meet those three criteria. It  
14 specifies how you do it, not how you not do it.  
15 And I believe we would be standing here today,  
16 if they had turned it down, arguing with you  
17 that we met the first three criteria and are  
18 entitled to a demonstration of need approval.

19 **THE COURT:** All right. An argument I wasn't  
20 expecting.

21 **MR. LAVENDER:** Curve ball that my associate threw me  
22 this morning. I give her fair credit for it.  
23 Your Honor, with respect to Drummond, I think  
24 we've already addressed the law on that, so I  
25 will sit down on that issue.

1 (Off the Record due to telephone ringing)

2 THE COURT: You were sitting down?

3 MR. LAVENDER: I did, Your Honor. I left you with  
4 the premise that we believe we're entitled to  
5 it if we meet ...

6 THE COURT: I understand.

7 MR. LAVENDER: ... the first three criteria,  
8 notwithstanding the reservation of rights. And  
9 that as a consequence, the mere reservation of  
10 rights does not cause the Department's decision  
11 in favor of the demonstration of need approval  
12 to fail.

13 THE COURT: Okay. Ms. Williams?

14 MS. WILLIAMS: Your Honor, I don't have anything  
15 else to add. I concur with everything Mr.  
16 Lavender said.

17 THE COURT: You do? Okay. All right. Everybody  
18 concurs. How about you, Mr. Chandler?

19 MOTION BY MR. CHANDLER:

20 MR. CHANDLER: I don't obviously. I'm sure you're  
21 not surprised. And I would say about your cell  
22 phone, it's always lonesome at the top, Your  
23 Honor. You know, we have briefed our arguments  
24 on the validity of this regulation as an  
25 alteration of the statute. And I understand

1 Drummond, as I indicated earlier, and the  
2 limits that it puts on the jurisdiction of this  
3 Court, but I still think that it is important  
4 to look back to the statute to determine the  
5 meaning of this regulation. This regulation  
6 was promulgated pursuant to section 44-96-  
7 290(f) of the solid ... actually (e), 290(e) of  
8 the Solid Waste Management Act. And what ...  
9 the operative phrase in that section of the act  
10 says that, "no permit to construct a new solid  
11 waste management facility or to expand an  
12 existing solid waste management facility may be  
13 issued until a demonstration of need is  
14 approved by the Department." Now, the word  
15 demonstration has a ... a fairly common  
16 meaning, and it means to demonstrate something,  
17 to show something, to establish something.  
18 Need has a fairly common definition as well,  
19 and, you know, the dictionary definition of  
20 need, "a situation or condition in which  
21 something is required." Now, the Department,  
22 in response to the second paragraph of section  
23 290(e) has promulgated regulations to implement  
24 this section. And so those regulations have to  
25 be seen in light of what that act says, a

1 demonstration of need. Now, in addition to all  
2 of the other language in this regulation, when  
3 we get down to section (d), the Department has  
4 said that it will use the following criteria,  
5 and it has four numbered criteria, (a), (b),  
6 (c) and (d). Taking the last argument that Mr.  
7 Lavender made first, if you stop after (a), (b)  
8 and (c), and if it would be an error to  
9 consider (d), then what he is doing is he's  
10 saying that (d) doesn't mean anything and that  
11 the Court ought to read (d) out of this  
12 regulation. Now, I didn't bring any cases with  
13 me because I ... I'm a little surprised by this  
14 argument, but I know that there is a whole lot  
15 of cases out there that say that a court should  
16 interpret a regulation or a statute, or  
17 whatever, in such a way as to give effect to  
18 every single provision in it, if it is  
19 possible. Now, the idea that you go through  
20 (a), (b) and (c), then if you meet that test,  
21 then if you go further and look at additional  
22 factors and negate the preliminary conclusion  
23 you came through after (a), (b) and (c), then  
24 you're negating subsection (d), you're just  
25 basically writing it out of the entire rule.

1 **THE COURT:** Well, how about his argument that he  
2 says, and this is from what I understand it  
3 because this is anew today, but that (d)  
4 applies if you don't meet the mandatory  
5 requirements of (a), (b) and (c)? I mean,  
6 that's ...

7 **MR. CHANDLER:** Well, he's reading ... he's reading  
8 subsection (a) in a way that the words don't  
9 support. What the words of section (a) of part  
10 (3), says, "where there are at least two  
11 commercial disposal facilities under separate  
12 ownership within the planning area that meet  
13 the disposal needs if the area, e.g. that  
14 accepts special wastes, and, if applicable, are  
15 capable of handling additional tonnage, no new  
16 disposal capacity will be allowed." That's  
17 fairly straightforward, if you've got at least  
18 two, you can't get any more.

19 **THE COURT:** Okay.

20 **MR. CHANDLER:** Now, what he's saying is that it also  
21 means the converse, that if there are less than  
22 two, then you've got to get one.

23 **THE COURT:** I think he had to jump to (b) to get to  
24 converse, didn't he?

25 **MR. CHANDLER:** Well, he talks about if it's going to

1 be allowed, that determines your annual  
2 disposal rate.

3 **THE COURT:** Okay.

4 **MR. CHANDLER:** But in order to determine whether  
5 it's going to be allowed, up there in the  
6 preamble in section three it says, "will use  
7 the criteria outlined below," so you don't have  
8 to take these strictly in order, you've got to  
9 take all of them together. And so (a) is a way  
10 to eliminate an application for a facility if  
11 there are already two or more within there, but  
12 neither (a), nor (a) combined with (b),  
13 actually leads to a definite conclusion that if  
14 there's only one, then you get another  
15 facility. It just doesn't lead to that. The  
16 words are not there. Now, you get down to (d),  
17 "the Department reserves the right to review  
18 additional factors in determining need on a  
19 case by case basis." Now, in Mr. Coleman's  
20 deposition, he acknowledged ...

21 **THE COURT:** Mr. Coleman is who?

22 **MR. CHANDLER:** Mr. Coleman is ... he was testifying  
23 as the 30(b)(6) designated witness on behalf of  
24 Department of Health and Environmental Control.  
25 He is the head of the section that issues ...

1 THE COURT: Okay.

2 MR. CHANDLER: ... permits for landfills. And he  
3 testified that, according to the Department's  
4 own figures, Laurens County generates less than  
5 17,000 tons of C and D waste on an annual  
6 basis. He testified that, according to DHEC's  
7 figures, Laurens County has an existing  
8 capacity to handle C and D waste of at least  
9 241,000 tons. They're generating 17,000,  
10 they've got the capacity to handle 241,000  
11 tons. He said he didn't take that into account  
12 in his decision. What they did in issuing this  
13 permit, they ...

14 THE COURT: So I can be clear because I want to be  
15 clear on your additional factors that you  
16 assert.

17 MR. CHANDLER: Yes, sir.

18 THE COURT: That the first one that you're telling  
19 me is that Laurens County has an additional  
20 capacity that was not considered, is that  
21 right?

22 MR. CHANDLER: Right.

23 THE COURT: Am I reading correctly?

24 MR. CHANDLER: That is correct.

25 THE COURT: I just want to make sure it's in my

1 mind.

2 **MR. CHANDLER:** And Mr. Coleman said that  
3 unequivocally. He said, we didn't consider the  
4 fact that they've got 220,000 tons more  
5 capacity than they need already. They're  
6 generating less than 20,000 tons ... they're  
7 generating actually less than 17,000 tons.  
8 They've got capacity, just at the Curry Lake  
9 Landfill, of at least 241,000 tons.

10 **THE COURT:** Well, did he not consider that solely  
11 just on Laurens County, or was he saying that  
12 he was considering that ... I assume there's a  
13 regional plan in place here?

14 **MR. CHANDLER:** Laurens County has a separate plan of  
15 its own.

16 **THE COURT:** So there isn't ... this is not part of a  
17 regional plan?

18 **MR. CHANDLER:** It's not part of a regional plan.  
19 It's an individual county plan.

20 **THE COURT:** How about the other two counties?

21 **MR. CHANDLER:** Well, the other two counties involved  
22 in this are Spartanburg and Greenville. And he  
23 testified that, according to DHEC's figures,  
24 Greenville County generates a little under  
25 162,000 tons a year of waste. It has existing

1 landfill capacity of 510,000 tons per year. So  
2 Greenville County has got, what is that, nearly  
3 three times as much capacity in its landfills  
4 as the amount of waste it is generating. The  
5 third county was Spartanburg. Spartanburg  
6 County is ... the last year that we have  
7 reports on these things, fiscal year 2007,  
8 Spartanburg County was generating 72,000 tons  
9 of C and D waste. Spartanburg County has  
10 landfill capacity for 80,000 tons of C and D  
11 waste. When you add all of these three  
12 counties together, they are producing slightly  
13 more than 250,000 tons of waste and combined  
14 the three counties have an existing annual C  
15 and D capacity of something in excess of  
16 800,000 tons.

17 **THE COURT:** And all these counties have a ... it's  
18 not regional, so it's their own plan or are any  
19 of them ...

20 **MR. CHANDLER:** We don't have in the record what  
21 Spartanburg and Greenville have ...

22 **THE COURT:** Okay.

23 **MR. CHANDLER:** ... in terms of their plans. They  
24 just happen to be ... you know, using the  
25 formula, you'd put a dot on the map ...

1 THE COURT: Ten ... ten mile radius.

2 MR. CHANDLER: ... you draw a circle and the circle  
3 happened to touch those counties.

4 THE COURT: Okay.

5 MR. CHANDLER: And so ... but the bottom line here  
6 is that in what I would say is a common meaning  
7 of the word need, this landfill is not needed  
8 because these counties together, in 2007 before  
9 the real estate crash, before the market crash,  
10 while construction was booming like it never  
11 had in the history of this country, these  
12 counties were generating 250,000 tons of waste,  
13 they had landfills that would handle over  
14 800,000 tons. Mr. Coleman testified that, no,  
15 I did not take that into account. Now, we're  
16 here today on Summary Judgement. The reply  
17 brief that was filed by MRR said, this matter  
18 is given to the discretion of DHEC, they can  
19 decide whether they want to consider additional  
20 factors or not. They imply that they have  
21 unfettered discretion, that they have the  
22 discretion to be arbitrary, but that's not the  
23 law. We were a little pinched for time in  
24 getting our final reply brief in, but we did  
25 cite at least the Converse Power case that

1 talks about you've got a basis, you've got to  
2 have a sound basis for an exercise of  
3 discretion, you've got to explain why you  
4 didn't exercise your discretion in a different  
5 manner. DHEC has not come forward with any  
6 reason at all.

7 **THE COURT:** Are you depending on the flag as the  
8 definition of arbitrary? Is that what you're  
9 doing? I just want to make sure, or are you  
10 just going under discretion?

11 **MR. CHANDLER:** Well, you know, I think that the  
12 terms arbitrary and discretion go hand in hand.  
13 I can exercise my discretion, but if I want it  
14 to be reviewed by an appellate court, if I'm a  
15 judge, then I've got to show why I exercised  
16 ... I can't just say, I'm going to do this and  
17 not give any reasons and not have any evidence  
18 in the record. I think all of the cases are  
19 clear on that.

20 **THE COURT:** Well, there's cases on abuse of  
21 discretion, that's where you're going.

22 **MR. CHANDLER:** Right.

23 **THE COURT:** And if you go back, I think it was my  
24 father, he cited that there are some ... I  
25 mean, most of the time the court cites where

1 abuse of discretion is failure to follow the  
2 law or either where the factual decision is not  
3 supported by the evidence, but there are two  
4 other factors. And one of them is where you  
5 have discretion and fail to exercise it.

6 **MR. CHANDLER:** Right.

7 **THE COURT:** So if that ... actually, there's four of  
8 them ... there's actually four criteria for  
9 abuse of discretion. Is that what you're going  
10 on, that they had the discretion but failed to  
11 exercise them?

12 **MR. CHANDLER:** Yes, sir.. Certainly, the rule says  
13 that they can consider additional factors. We  
14 laid out in front of them, in the deposition,  
15 some additional factors that we think should  
16 have been considered. They said they didn't.  
17 They have presented this Court, they presented  
18 us, they presented not a single shred of reason  
19 why these additional factors should not be  
20 considered. And that subsection (d) expressly  
21 says that the reason ...

22 (Off the Record due to fire alarm)

23 **THE COURT:** Keep on going.

24 **MR. CHANDLER:** Okay. Subsection (d) says, "the  
25 Department reserves the right to review

1 additional factors," then it goes on to say,  
2 "in determining need on a case by case basis."  
3 Now, let's go back to the statute again. The  
4 statute says no permit can be issued until  
5 there's been a demonstration of need. When you  
6 look at what the regulation does, the  
7 regulation, except for (d), takes away the  
8 demonstration part. You don't have to  
9 demonstrate anything, and it's the record in  
10 this case, the documents that were submitted  
11 with these motions, the company wrote a letter  
12 to DHEC and said, we want to build a landfill  
13 and this is the latitude and longitude we want  
14 to build it at, and we want as much capacity as  
15 you will give us. Less than a week later, DHEC  
16 wrote back and said, bingo, you got it. What  
17 did they demonstrate? They demonstrated where  
18 the landfill would be, and DHEC worked through  
19 this formula ...

20 **THE COURT:** Well, that's a demonstration. Well, you  
21 said they don't have to demonstrate anything.  
22 They've got to put a point ... a dot on the ...

23 **MR. CHANDLER:** They've got to go out and find a dot  
24 on a map ...

25 **THE COURT:** And do a ten mile radius and they've got

1 to meet the criteria of (a), (b) and (c).

2 **MR. CHANDLER:** Right. But the lead in to (a), (b)  
3 and (c) says, "will use the criteria outlined  
4 below," and it doesn't stop at (c).

5 **THE COURT:** I know.

6 **MR. CHANDLER:** It goes on to (d). And so, if you've  
7 got a right to consider additional factors, and  
8 we think you have an obligation to consider  
9 additional factors or, at a minimum, explain  
10 why any additional factors should not be taken  
11 into account. And when you look at the common  
12 definition of need, what did the legislature  
13 have in mind? Did the legislature have in mind  
14 demonstration of need, something that a formula  
15 here works through? Now, we've also submitted  
16 the deposition of Art Braswell. We've actually  
17 submitted to you two depositions from Art  
18 Braswell. I submitted one that we had taken in  
19 a case involving a landfill in York County and,  
20 because I anticipated that maybe I would get  
21 objections to that since it was a deposition  
22 taken without MRR being there, I took it again.  
23 And in both of those depositions, Mr. Brazwell,  
24 who was at DHEC, was in Mr. Coleman's position  
25 at the time the regulations were written, he

1 very candidly admitted that the regulation,  
2 using the formula, does not measure need. He  
3 said, it doesn't measure need at all. He said  
4 that ...

5 **THE COURT:** Did he go that far?

6 **MR. CHANDLER:** Yes, sir.

7 **THE COURT:** Doesn't measure need at all?

8 **MR. CHANDLER:** Yes, sir. In fact, he said that the  
9 title to the regulation is a misnomer. He ...  
10 let me find the ... he said this in the York  
11 deposition, and then in his second deposition  
12 I read it to him and asked him if he still held  
13 to that position, and he said yes, he did. And  
14 he said, "Because the way the regulation is  
15 currently written," and he was talking about  
16 the York landfill, "would not be used to  
17 determine need. We're only looking at  
18 commercial facilities and it's really a spacial  
19 ... it's really ... it's sort of a la ... a  
20 misnomer because the landfill regulation, the  
21 demonstration of need regulation, actually  
22 looks at the location of landfills, not  
23 actually what is needed in the county." I  
24 asked him if he still agreed with that, and he  
25 said, "I may have termed it a little

1           differently, but I agree to the fact that it  
2           only looks at spacial locating landfills and  
3           that the need is based on whether there is a  
4           need based on the number of landfills and the  
5           location.     It doesn't look at tonages to  
6           determine whether there is a need for the  
7           landfill." Now, I asked him, why did you pick  
8           this thing about having to have two within the  
9           circle, and he said, "Well, we thought it'd be  
10          a good idea to promote competition." And I  
11          said, "Well, what is your statutory authority  
12          for using a regulation to promote competition?"  
13          And he candidly said, "We don't have any." So  
14          here you've got a legislature that says you've  
15          got to have a demonstration of need, the person  
16          who wrote this regulation says it doesn't  
17          measure need. We've got a section in here that  
18          allows them to review it ...

19       **THE COURT:**   It doesn't measure need according to  
20          tonnage?

21       **MR. CHANDLER:** Right. To review additional factors  
22          in determining need on a case by case basis.  
23          They didn't do that. They don't say why they  
24          didn't do that. We've given you additional  
25          factors that, on a de novo hearing, we would

1 certainly ask you to take into account, and  
2 with no evidence to the contrary, they haven't  
3 come forward with any evidence at all, we  
4 believe that we're entitled to Summary  
5 Judgement based on the evidence that's in the  
6 record here today. They haven't come forth  
7 with anything to ...

8 **THE COURT:** Now, you're on the other side of that  
9 coin, is the issue's not whether the ... you're  
10 making the argument just because they didn't  
11 consider it, you're entitled to Summary  
12 Judgemnet, but then this is a de novo hearing.  
13 I mean, now we get to decide ... you know, you  
14 get those factors considered here, and so I'm  
15 missing your point.

16 **MR. CHANDLER:** Well, my point is they filed a Motion  
17 for Summary Judgement, I filed a Cross-Motion  
18 for Summary Judgement. And in my Cross-Motion  
19 for Summary Judgement, I said, there is not  
20 need for this landfill, and I submitted  
21 evidence that shows that there is capacity of  
22 over 800,000 tons in these three counties that  
23 produce less than 250,000 tons, showing that in  
24 the commonsense of need, there is no need for  
25 this landfill. That evidence is before you.

1           There is no contrary evidence. They have not  
2           come forward with any contrary evidence on the  
3           question of need. That's what gives me the  
4           basis to argue that we're entitled to Summary  
5           Judgement on that issue going beyond the quasi  
6           appellate function of this Court and getting  
7           into the de novo part. I think we're entitled  
8           to a ruling for the Petitioners on both sides  
9           of that, as both an appellate ruling and as a  
10          de novo ruling.

11       **THE COURT:** All right. Any response?

12       **REPLY BY MR. LAVENDER:**

13       **MR. LAVENDER:** Yes, sir, if I might. I think what  
14          we're hearing ... what you're hearing, Your  
15          Honor, again, is an argument that the circle  
16          test doesn't work, that the circle test doesn't  
17          measure need, which we believe goes back to the  
18          heart of the argument that the Petitioners  
19          challenge the validity of the regulation in  
20          satisfying the statutory requirements. We  
21          believe that Drummond says that this is the  
22          regulation that determines need, and that it's  
23          been the law of the state on demonstration of  
24          need determination since 2000, approved by the  
25          legislature, as our state requires. We never

1 suggested by way of responding to the last  
2 argument that I made that the last criteria had  
3 no meaning at all, but under certain  
4 circumstances because of the mandatory language  
5 in the preceding sections. I think it is  
6 important, if I might, Your Honor, because of  
7 the arguments by the Petitioners, to describe  
8 a little bit about the context of the  
9 regulation as it relates to this proposed solid  
10 waste management facility and the arguments  
11 about Spartanburg and Greenville and Laurens,  
12 et cetera. We're talking about a construction  
13 and demolition debris landfill, concrete,  
14 asphalt, et cetera, all that's defined in the  
15 regulation as a matter of law. We're talking  
16 about heavy waste transported short distances,  
17 the very nature of which led the Department,  
18 obviously, in the regulation, in the DON reg,  
19 to establish a ten mile radius for the planning  
20 area, as opposed to the 75 mile radius provided  
21 for for municipal solid waste. Lower density  
22 waste transported larger distances often  
23 through transfer stations to even greater  
24 distances. So the idea is that there are going  
25 to be a lot more C and D landfills in closer

1           proximity because they need to be close to the  
2           source of generation. They aren't hauled more  
3           than about ten miles in each direction because  
4           of the cost the construction and demolition  
5           debris contractors can't bear that. I mean, in  
6           terms of ... that's why there is a difference  
7           in the distinction. The bottom line is to  
8           suggest that the fact that there is a landfill  
9           in Laurens that has the capacity, the disposal  
10          capacity ... basically, Your Honor, to clarify,  
11          capacity has a dual meaning in some of the  
12          arguments. The difference between air space,  
13          i.e. how big is the bathtub, versus the tonage  
14          rate, i.e. how hard is a faucet turned on. The  
15          tonage rate ...

16       **THE COURT:** I mean, I understand your point, but I  
17          don't understand the concept.

18       **MR. LAVENDER:** Those are two different criteria  
19          looked at in here, more particularly the need  
20          versus a demand. Demonstration of need is  
21          defined by law. Now, since 2000, and the  
22          Department was mandated in the Ballinger case  
23          to promulgate this regulation. The Ballinger  
24          case a number of years ago was a permit  
25          decision made by the Department after the Solid

1 Waste Act and before a demonstration of need  
2 regulation was made. It essentially mandated  
3 ... resulted in mandating the Department to  
4 promulgate this regulation.

5 **THE COURT:** I should have cited that against you in  
6 your other case.

7 **MR. LAVENDER:** You neglected to do Ballinger. And  
8 as a consequence, this need regulation was  
9 developed. It stands on its face as valid.  
10 First of all, what you're hearing ... what we  
11 believe the Petitioners are still arguing is  
12 they just don't like the circle test because  
13 they don't think it measures need. Maybe even  
14 Mr. Braswell says as a misnomer, it doesn't  
15 necessarily measure need by the dictionary  
16 sense, but it is a method by which the  
17 Department, through the rule making process,  
18 decided was the best way to develop the  
19 demonstration of need decision making by virtue  
20 of the circle test. And that that was the test  
21 that was going to be used or the method that  
22 was going to be used to determine need for  
23 purposes of allowing new and expanded landfills  
24 to get permitted. It didn't say, we're going  
25 to ... we're going to decide need on the basis

1 of doing a survey and this, that and the other.  
2 It actually talks about the solid waste plan  
3 and the disposal volume based on those plans  
4 and how they calculate it. And it comes up  
5 with a formula to take the subjectivity out of  
6 it, to take the subjectiv ... we believe that  
7 (a) through (c) take the subjectivity out of  
8 that process. Yes, they do. But, again, the  
9 converse is if you ... if you do it in another  
10 fashion, you do ... and, by the way, to cite  
11 the authority about the competition, we believe  
12 that the provisions, the mandates and the  
13 findings in 44-96-240(a)(6) talk about ...

14 **THE COURT:** Say that again so I can make sure ...

15 **MR. LAVENDER:** I'm sorry. 44-96-240(a)(6).

16 **THE COURT:** Okay.

17 **MR. LAVENDER:** The lead in (a) is "The General  
18 Assembly finds that," and the (6) reads, "a  
19 regional approached to the establishment of  
20 solid waste management facilities should be  
21 strongly encouraged in order to provide solid  
22 waste management services in the most efficient  
23 and cost-effective manner and to minimize any  
24 threat to human health and safety or to the  
25 environment."

1 THE COURT: Hence the need for ...

2 MR. LAVENDER: Competition.

3 THE COURT: ... competition.

4 MR. LAVENDER: Hence the need ... hence the  
5 obligation to insure that there is competition.  
6 What the Petitioners suggest is, because there  
7 is one private facility there that has enough  
8 capacity for more than enough for any waste  
9 generated in Laurens County, that this  
10 shouldn't be permitted, that this shouldn't be  
11 permitted.

12 THE COURT: That argument anyway is leading right  
13 back into Drummond is my problem with that  
14 argument anyway.

15 MR. LAVENDER: I understand. This ...

16 THE COURT: He's presented it in one context, but  
17 there's two contexts to the issue there and I  
18 don't want to go back into the facial ability  
19 of the regulation.

20 MR. LAVENDER: Right. My point in just giving that  
21 discussion, offering that discussion, is to  
22 note that, while Laurens County has a solid  
23 waste plan and while this facility is proposed  
24 to physically be located within Laurens County,  
25 it could be on the county line just as well as

1 it could be in the center of the ... of the  
2 geographic center of the county, the county  
3 boundaries bear no other purpose in terms of  
4 whether or not this facility should be allowed,  
5 other than another test, and that is the  
6 consistency test for whether or not it's, you  
7 know, it's consistent with the host county's  
8 plan. But the county is not ... it's a  
9 regional facility. Every facility in the state  
10 is by nature a regional facility. It is not  
11 allowed to be permitted so as to accept only  
12 out of ... or in county waste. They're not  
13 permitted like that. The law doesn't ... we  
14 don't believe the law allows that to happen.  
15 Now, they may by choice do that, as these  
16 facilities do and I think the deposition  
17 testimony elicited from the Petitioner's  
18 counsel, evidences that there were two other  
19 facilities in the county, one owned by the City  
20 of Clinton, one owned by Laurens County, both  
21 very small.

22 **THE COURT:** Therefore ... you're getting at ...

23 **MR. LAVENDER:** The competition.

24 **THE COURT:** ... regional facilities, whether they  
25 are regional plans is not an issue here? Is

1           that what you were ...

2       **MR. LAVENDER:** Whether there is a regional plan or a  
3           county plan is not an iss ... we don't believe  
4           that's an issue.

5       **THE COURT:** Okay.

6       **MR. LAVENDER:** Most of the counties in the upstate  
7           have individual plans, but most of the counties  
8           ... all the counties, I mean, it's a matter of  
9           public record in the solid waste ... what  
10          facilities are located in what county. There  
11          are numerous C and D facilities throughout the  
12          state, obviously many more than the 18 MSW  
13          landfills that exist in the state today, many  
14          more. But by virtue of the small planning  
15          radius established by the department in the DON  
16          reg, which allows those circles to overlap as  
17          long as two of them don't overlap at a given  
18          point for purposes of insuring ... and by the  
19          way, it calls ... it calls bearing your  
20          attention to the requirement, the one other  
21          phrase, precisely in the regulation, which has  
22          to also be given meaning, under separate  
23          ownership. In (3)(a) it says, "where are there  
24          at least two commercial facilities under  
25          separate ownership." Competition. You're

1 looking for competition. There wasn't anything  
2 to suggest that there was any other reason to  
3 consider anything else in this. There's no  
4 other factual inquiry that we believe is  
5 necessary to look at this and say that the  
6 application of these three criteria, as  
7 outlined there, was sufficient for the  
8 Department to make a proper decision, according  
9 to the regulation in effect, invalid with  
10 respect to the satisfaction of the  
11 demonstration of need requirement. The  
12 demonstration of need required of the  
13 applicant, according to this regulation, is set  
14 forth in the preceding sentence ... section in  
15 (d)(1). It tells exactly what they have to  
16 submit. Does it meet the Petitioner's  
17 definition under Webster of demonstration? No.  
18 Does it meet the statutory definition, or  
19 should I saw the law, the legal requirements in  
20 the regulation? Absolutely, yes. And the  
21 legal requirements in this regulation set forth  
22 what a demonstration is for purposes of this  
23 regulation, not the dictionary.

24 **THE COURT:** All right.

25 **MR. LAVENDER:** As a consequence, we're back to the

1 argument at the end, is it an abuse of  
2 discretion not to exercise it. We believe, in  
3 this case, there's absolutely no argument that  
4 can made that would ... that would cause that  
5 to require any further inquiry. In this case,  
6 the facts are pretty clear that they met the  
7 circle test and the only way there was going to  
8 be competition was to allow this facility as  
9 well. One of the other arguments was that to  
10 suggest that the Department has to always use  
11 other relevant factors. I mean, that's sort of  
12 the argument that is being made now is that the  
13 Department has to use the fourth criteria and  
14 consider all additional factors. I think that  
15 causes an inappropriate result as well, if you  
16 meet the criteria for the first three. That's  
17 it. Thank you, Your Honor.

18 **THE COURT:** Do you want to make any additional  
19 argument or further ...

20 **MS. WILLIAMS:** Your Honor, can I speak on that?

21 **THE COURT:** Oh, yeah. I'm sorry, Ms. Williams.

22 **REPLY BY MS. WILLIAMS:**

23 **MS. WILLIAMS:** No, that's all right. I know I  
24 didn't speak the first time.

25 **THE COURT:** Yeah.

1 MS. WILLIAMS: I just want to make a couple of  
2 comments. I do concur with everything that Mr.  
3 Lavender has said. And what I'm going to say  
4 may be a reiteration of what he said, but Mr.  
5 Chandler is asserting that DHEC should have  
6 looked at capacity in terms of need or tonnage  
7 in terms of need. But the fact of the matter  
8 is that the regulation, it does determine need  
9 but not based on capacity or tonnage. It's  
10 based on, you know, what they have laid out  
11 here and what ... I'm sorry, in (d), and Mr.  
12 Chandler says that there has been no  
13 demonstration of need, but there has been a  
14 demonstration of need. And what the facility  
15 needed to do was submit information as to the  
16 longitude and latitude coordinates, which they  
17 did, and also the proposed disposal rate for  
18 the facility, which they did. So, even though  
19 need was not determined in light of what he  
20 thinks need should be, which is we should have  
21 looked at capacity, but that's not what the  
22 regulation dictates. And so he should not win  
23 his Motion for Summary Judgement based on the  
24 fact that DHEC should have looked at need in  
25 terms of what Mr. Lavender has said is the

1 definition of ... the dictionary definition of  
2 need because need is laid out in the regulation  
3 and this is all that was required of the  
4 facility to present to DHEC and that's what  
5 DHEC looked at. He also argues that because  
6 DHEC didn't look at additional factors, that,  
7 you know, that that right there gives him the  
8 right to win on Summary Judgement, but I think  
9 the keyword here is the Department reserves to  
10 review additional factors. And the fact that  
11 we did not look at additional factors does not  
12 mean that we made an arbitrary decision. I  
13 mean, this ... (d) in the regulation, again,  
14 says, reserves the right, so that mean that we  
15 have the right to look at additional factors or  
16 not look at additional factors. We chose not  
17 to, and there's nothing in the regulation that  
18 requires ... that would have required us to  
19 look at anything additional. So basically, I  
20 don't ... I haven't heard Mr. Chandler tell the  
21 court on what basis that he should win on  
22 Summary Judgement. I mean, the regulation  
23 clearly shows that DHEC followed ... followed  
24 the regulation and looked at what it was  
25 supposed to look at in terms of issuing an

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1 approval for demonstration of need. Thank you.

2 **THE COURT:** Any response to new argument?

3 **REPLY BY MR. CHANDLER:**

4 **MR. CHANDLER:** Just a couple of things. I mean,  
5 we're really back, and to some extent I have  
6 said this before, the ... between DHEC and  
7 facility management, they want to either negate  
8 section (d) altogether or say that it's an  
9 unreviewable exercise of discretion, that  
10 they've got absolute discretion that's not  
11 reviewable. I don't think either one of those  
12 is correct. Now, Mr. Lavender sort of made a  
13 big deal about this ten mile radius thing.

14 **THE COURT:** I thought it was beyond sort of. He  
15 made a big deal about the ten mile radius.

16 **MR. CHANDLER:** Right. Well, we submitted with our  
17 final reply brief, a copy of document number  
18 3198.

19 **THE COURT:** Your final reply brief?

20 **MR. CHANDLER:** Yes.

21 **THE COURT:** I don't know if I read that.

22 **MR. CHANDLER:** Huh?

23 **THE COURT:** I don't know if I read that. I'll find  
24 it later.

25 **MR. CHANDLER:** All right.

1 THE COURT: Anyway, I saw ...

2 MR. CHANDLER: But we ... we were in last week ... I  
3 didn't get, what was it, the first of the week  
4 last week, their reply brief. I supplied one  
5 that I emailed to the parties I think on  
6 Thursday or Friday ... Friday.

7 THE COURT: Okay.

8 MR. CHANDLER: And it went in the mail.

9 THE COURT: Hopefully it will still be in the mail?

10 MR. CHANDLER: Hopefully it will be in the mail. I  
11 can give you a copy of it before we leave here  
12 today.

13 THE COURT: Or I could read it when it comes in. I  
14 assume you're covering the points here anyway.

15 MR. CHANDLER: Basically, we've submitted a copy of  
16 document number 3198. What this is is a  
17 proposed ... and really more than a proposed  
18 amendment to 61-107.17.

19 THE COURT: Okay.

20 MR. CHANDLER: In August of 2008 the DHEC Board gave  
21 an approval to an amendment of this regulation.  
22 Today, May 27, 2009, that regulation times out  
23 on the 180 day review at the General Assembly.  
24 The only thing left to do on that is a formal  
25 publication in the State Register, which is

1 expected to occur in the June edition of the  
2 State Register. The amendment changed the ten  
3 mile radius to a 20 mile radius. When you  
4 expand the radius to 20 miles, there's way more  
5 than one landfill within this circle. There's  
6 more than two landfills within the circle. I  
7 think there's more than three. We've submitted  
8 a copy of a map that has been produced by DHEC  
9 that was printed off of DHEC's website that  
10 shows the resulting 20 mile circles for all  
11 landfills, including this one at issue here in  
12 this proceeding, and when you look at that map  
13 ...

14 **THE COURT:** Stop me ... is it proper for me to  
15 consider that regulation in the context of this  
16 case?

17 **MR. CHANDLER:** I think it is, Your Honor.

18 **THE COURT:** And why would that be?

19 **MR. CHANDLER:** Well, we're talking about a future  
20 activity, a permit for a future activity. As  
21 the law changes during the appeal, I think that  
22 the Court should apply the new law. Now, the  
23 only thing left for it to become new law is the  
24 formal publication in the State Register. What  
25 it also does is that it indicates that DHEC,

1 the very agency that comes in here saying that  
2 we determined that this 10 mile radius is  
3 appropriate, the DHEC Board, last August and as  
4 demonstrated by this document, has said,  
5 actually a 20 mile radius is appropriate. And  
6 so ... and it continues to have the same basic  
7 kind of thing, but it changes the radius of the  
8 circle, it changes the calculation of the  
9 annual tonnage, if there are less than two  
10 landfills within this circle. The map that  
11 we've submitted by it ... even aside from the  
12 regulation, you know, it's ideal, we've got to  
13 spread the landfills out because people can't  
14 drive more than ten miles. Well, when you see  
15 this map, you'll see that the proposed MRR  
16 Highway 92 Landfill is very close to the Curry  
17 Lake Landfill, which has a capacity of 161,000  
18 tons. So it's not like we're putting this  
19 landfill in an area that's not being served.  
20 It's right beside a landfill that's serving the  
21 entire area. Their ten mile circles virtually  
22 overlap, I mean, they do overlap. I mean,  
23 they're almost the same circle. And so we  
24 still get back to the fact that the only thing  
25 that we have here is that Respondents in this

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1 case as you to go through (a), (b) and (c) of  
2 this subpart of this regulation, ignore (d),  
3 don't require them to explain, whatsoever, why  
4 they didn't consider additional factors, offer  
5 no evidence to rebut at all the evidence we  
6 have presented that we think is compelling  
7 evidence of additional factors that should be  
8 taken into account. Now, let me back up a  
9 little bit more too. When you read the ...  
10 you've probably read the deposition of Kent  
11 Coleman. The need determination is made by, as  
12 the documents show, a letter that gets sent  
13 into DHEC and within a couple of days, they  
14 write back and say, we've plotted the circle.  
15 You're okay on need. At that point, there  
16 hasn't been an public notice issued, there  
17 hadn't been a public hearing. Nobody's had an  
18 opportunity to do that. In this case, as Mr.  
19 Coleman testified in his deposition, when they  
20 went through the need and consistency and  
21 technical review, they put the permit out on  
22 public notice. They received a lot of public  
23 comments. They had a public hearing. The  
24 public comments were the effect that we don't  
25 need this landfill. We've got a massive

1 landfill, a landfill that handles eight times  
2 the amount of waste we generate in this county.  
3 We don't need this landfill. Despite all of  
4 those public comments, despite their own  
5 figures and their own solid waste report  
6 showing that Curry Lake Landfill provides eight  
7 times the capacity that Laurens County needs,  
8 that the landfills in Laurens, Greenville and  
9 Spartanburg Counties provides more than three  
10 times the amount of landfill capacity that's  
11 needed in those three counties combined, DHEC  
12 said, we're not going to look at that, and made  
13 no explanation of why not. That's an arbitrary  
14 decision.

15 **THE COURT:** I know he's raised something new.

16 **REPLY BY MR. LAVENDER:**

17 **MR. LAVENDER:** I will ... I think the argument kind  
18 of went beyond what we had before, but I would  
19 at least like to address document whatever  
20 whatever ...

21 **THE COURT:** Give him the ...

22 **MR. LAVENDER:** 3198, document number 3198, currently  
23 pending in the General Assembly for legislative  
24 review, yet to take effect. Clearly, we object  
25 to the relevance or any legal application of

1 that document. More importantly, we call Your  
2 Honor's attention to the provisions of the  
3 statute governing the Agency's decision, that  
4 the Final Agency Decision on this was made with  
5 the DHEC Board declined a final review  
6 conference. And while this might very well be  
7 a de novo inquiry, it is a de novo inquiry of  
8 the Final Agency Decision that was made last  
9 year.

10 **THE COURT:** I don't intend to put Mr. Chandler ...  
11 that could bite both ways. They could change  
12 the law in the future, and if the law goes that  
13 way, you'd be sitting here with somebody having  
14 changed the law and opened it up ... opened it  
15 up wider and you'd be ... in another case.

16 **MR. CHANDLER:** I've actually had that happen, Your  
17 Honor. And ...

18 **THE COURT:** That happened before me because I think  
19 the law should be that which at the time of the  
20 Final ... the application and the Final  
21 Decision. I mean, there may be some debate in  
22 my mind on the ... whether it's application or  
23 Final Decision, which one ... which one becomes  
24 the defining law. But in this case, we're  
25 beyond both, so I do ... will say that if there

1 is ambiguity in the statute, a subsequent  
2 amendment to a statute, although the Court has  
3 gone two ways on that. They've said that the  
4 subsequent amendment can clarify the meaning of  
5 the statute or set forth a departure from the  
6 statute, so ... depending on the statute. You  
7 have an argument on that, but as far as a whole  
8 different standard, I'm not going to go down  
9 that path. All right.

10 **MR. CHANDLER:** Your Honor, if I could just request  
11 one thing on that. I've got a couple of cases  
12 that I don't think I have with me, but I would  
13 like permission to submit to the Court. One is  
14 a case called Zifron Versus United States.  
15 It's a 1943 United States Supreme Court  
16 decision. The other is a case called In Re:  
17 Solomon. It's a 2007 case from the Appellate  
18 Division in the State of New York. Both of  
19 which say that if the law changes during an  
20 appeal of a permit, the Court ought to apply  
21 the new law. And I would like to at least  
22 submit those for your consideration.

23 **THE COURT:** Okay. One is US Supreme Court and one  
24 from New York?

25 **MR. CHANDLER:** Right, yes, sir.

1 THE COURT: I'd like to see what they've got to say.  
2 And I don't know if you all want to respond to  
3 that.

4 MS. WILLIAMS: I didn't want to respond to that.

5 MR. LAVENDER: I do want to respond to that, Your  
6 Honor, and we've been presented those cases in  
7 arguments by Mr. Chandler in another matter, as  
8 well, and we clearly have a different reading  
9 of those cases. Moreover, they are fairly  
10 explicit in referring to changes that occurred  
11 during the agency deliberations on the  
12 proceedings and not the judicial executive ...  
13 judicial branch consideration of an appeal.  
14 And, again, I call your attention back the  
15 Final Agency Decision which was made last July  
16 or August, and that's the snapshot that we  
17 think is when that occurs and we're not talking  
18 about a moving target when it gets over here.

19 THE COURT: Okay.

20 MR. LAVENDER: And I don't believe those cases are  
21 compelling at all.

22 THE COURT: Well, I'll hear your argument on that  
23 later on, if you wish to present one, that is.  
24 Ms. Williams?

25 REPLY BY MS. WILLIAMS:

1 **MS. WILLIAMS:** Yes, Your Honor. I just wanted to  
2 say that Mr. Chandler has stated that DHEC and  
3 MRR doesn't want you to look at the criteria  
4 (a) through (d), and I just wanted to say that  
5 I believe that Mr. Lavender's argument, he can  
6 correct me if I'm wrong, is that ... not that  
7 DHEC didn't look at (d) and not that DHEC (sic)  
8 isn't a relevant criteria, but that no criteria  
9 has been created with (d) because we didn't  
10 look at additional factors. If we had looked  
11 at additional factors and that would have  
12 created some other criteria, but there's no  
13 other criteria created in (d) because we did  
14 not look at additional factors.

15 **THE COURT:** Well, you take ... if I go with that  
16 argument, under that theory, I don't consider  
17 (d) unless DHEC considered (d), and, therefore,  
18 DHEC can trump any de novo review by just not  
19 reviewing the additional factors.

20 **MS. WILLIAMS:** Well, I mean ... no, I don't ...  
21 well, I don't think that's our position, but I  
22 think our position is that ...

23 **THE COURT:** Well, I'm just stating it to the logic  
24 ...

25 **MS. WILLIAMS:** I think that the key, as I said

1 before, is that DHEC reserved the right to look  
2 at additional factors and we did not.

3 **THE COURT:** Well, that goes to your appeal.

4 **MS. WILLIAMS:** And so that criteria was utilized, if  
5 you want us to look at it as criteria.

6 **THE COURT:** Here's where I'm viewing this at this  
7 point in time. I am going to consider the  
8 additional cases, but I'm going to give you ...  
9 you've already sent a reply brief. If you want  
10 to present any additional cases, as far as  
11 that's concerned, I would like them to me  
12 within the two days. And then I'll give Mr.  
13 Lavender and Ms. Williams five days to respond  
14 to that. Is that enough?

15 **MR. CHANDLER:** Yes, sir. We're going to be in trial  
16 tomorrow. If I could send them by email to  
17 your office on Friday, I will certainly do  
18 that. If I can get my computer back up and  
19 running, I'll do it tonight.

20 **THE COURT:** Okay. Five days enough for you all?

21 **MR. LAVENDER:** Yes, Your Honor.

22 **THE COURT:** All right. The way I view this at this  
23 point in time, I'm going to finalize it later  
24 on, but I'm just telling you the way I see it  
25 ... anticipate a proposed order is, Mr.

1 Chandler, I'm going to have to deny your  
2 Summary Judgement request because you present  
3 the abuse of discretion argument, but still to  
4 win on that argument you would have to  
5 establish that there's no genuine issue of  
6 material fact as to whether or not under the  
7 additional facts that you have presented that  
8 they should be denied the permit. And I just  
9 think there's certainly a genuine issue of  
10 material fact under this case of consideration  
11 of those issues. Because even if you appeal  
12 under the abuse of discretion argument, I'd  
13 still ... the purpose of this hearing is the  
14 determine all the factors in a de novo type  
15 approach. I think you can really win at this  
16 with a de novo hearing, can't always win but  
17 you'd have an argument on the genuine issue.  
18 On the ... under the genuine issue factor is  
19 what a de novo and you're only considering that  
20 which the Department considered. As far as the  
21 Summary Judgement request by MRR and the  
22 Department, at this point in time ... I'm going  
23 to read it some more, but at this ... to me, I  
24 go back to where I started the hearing, and  
25 that is it just appears to me that (d) allows

1 Mr. Chandler to argue that additional ... if he  
2 can present additional factors, and I've got to  
3 look at that, whether that which he argues is  
4 an additional factor. But if he presents  
5 additional factors for consideration, then if  
6 there ... if those factors that are presented  
7 raise a reasonable question as to whether the  
8 permit should be granted, and I'd have to go  
9 with a case that I'm thinking of ... it  
10 analyzed the criteria for determining whether  
11 ... I can't remember whether ... I think it was  
12 default judgement, it was something like that,  
13 and it analyzed the review to be made in  
14 determining whether or not a judgement should  
15 be granted under those circumstances and it  
16 addressed both the issue of law standard and  
17 the factual standard. And, in that light, is  
18 where I'm coming from in saying that I just  
19 don't believe that you have raised ... or  
20 established a right to Summary Judgement at  
21 this point in time. I am going to consider the  
22 Hartley angle. I'm just going to have to read  
23 it close to determine that. So with that said,  
24 that's where I'm coming from. It looks like  
25 I'm going to deny both of you. But I'm going

1 to read what you all submit to me in addition,  
2 and then I'm probably going to request you to  
3 make a proposed order, although one side may be  
4 giving me a proposed order denying the other  
5 side. Mr. Chandler, you look like your seat is  
6 getting uncomfortable. Do you want to say  
7 something?

8 **MR. CHANDLER:** Well, I was just asking Ms.  
9 Armstrong, one of the things you said you were  
10 going to consider what I heard is the Hartley  
11 angle, and I just didn't know what that was.

12 **THE COURT:** The Joan Hartley angle that (a), (b) and  
13 (c) are ... once you've reached that criteria,  
14 it's mandatory and you don't get to (d). You  
15 made the argument, I've heard your arguments,  
16 I just want to read over it to be sure on that.  
17 I think at this point in time it ... from a  
18 lawyer angle, I think it's an excellent,  
19 interesting argument, but I don't think it's  
20 going to carry with me. So with that said,  
21 thank you all very much.

22 **MR. LAVENDER:** Thank you, Your Honor.

23 **MR. CHANDLER:** Thank you, Your Honor.

24 **MS. WILLIAMS:** Thank you, Your Honor.

25 **(There being nothing further, the hearing concluded**

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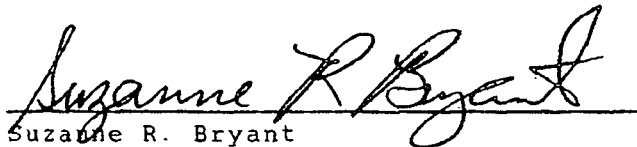
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**CERTIFICATE**

This is to certify that the within hearing consisting of Fifty-Six (56) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on December 9, 2009.



Suzanne R. Bryant  
Notary Public for South Carolina  
My Commission Expires: 9/21/2014

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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT DIVISION  
Docket No. 08-ALJ-07-0425-CC

Engaging and Guarding Laurens )  
County Environment (EAGLE), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
South Carolina Department of Health )  
and Environmental Control, and )  
MRR Highway 92, LLC, )  
 )  
Respondents. )  
 )

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**ADMINISTRATIVE HEARING**

\*\*\*\*\*

Wednesday, July 22, 2009  
10:00 a.m. - 3:57 p.m.

**COPY**

The hearing before the Honorable Ralph King Anderson, III, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 22nd day of July, 2009 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina.

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INDEX

	<u>PAGE</u>
<b>MR. SCOTT:</b>	
MR. CHANDLER . DIRECT EXAMINATION . . . . .	27
MR. LAVENDER . CROSS-EXAMINATION . . . . .	52
MS. WILLIAMS . CROSS-EXAMINATION . . . . .	57
MR. CHANDLER . REDIRECT EXAMINATION . . . . .	62
<b>MR. COLEMAN:</b>	
MR. CHANDLER . DIRECT EXAMINATION . . . . .	63
MR. CHANDLERPROFFERED DIRECT EXAMINATION . . . . .	132
MR. LAVENDER . CROSS-EXAMINATION . . . . .	136
MR. LAVENDER PROFFERED CROSS-EXAMINATION . . . . .	153
MR. LAVENDERCROSS-EXAMINATION (Continued) . . . . .	156
MS. WILLIAMS . CROSS EXAMINATION . . . . .	157
MR. CHANDLER . REDIRECT EXAMINATION . . . . .	161
MR. CHANDLERROFFERED REDIRECT EXAMINATION . . . . .	165
MR. CHANDLERDIRECT EXAMINATION (Continued) . . . . .	166
MR. LAVENDER . RECROSS-EXAMINATION . . . . .	176
MR. CHANDLERFURTHER REDIRECT EXAMINATION . . . . .	178
<b>MR. MARTIN:</b>	
MR. CHANDLER . DIRECT EXAMINATION . . . . .	182
MR. LAVENDER . CROSS-EXAMINATION . . . . .	187
Certificate . . . . .	206

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EXHIBITS

Petitioner's Exhibit Number Five . . . . .	65
(30(b)(6) Deposition of Kent Coleman)	
Petitioner's Exhibit Number Seven . . . . .	66
(Ltr dtd 2/21/06 from Curtis to Litton)	
Petitioner's Exhibit Number Eight . . . . .	68
(Ltr dtd 3/3/06 from Litton to Gilkerson)	
Petitioner's Exhibit Number Nine . . . . .	70
(DHEC memo dtd 6/23/06)	
Petitioner's Exhibit Number Ten . . . . .	72
(Ltr dtd 6/26/06 to SC House of Representatives)	
Petitioner's Exhibit Number Twelve . . . . .	46
(Ltr dtd 6/28/06 to Braswell from Laurens Cty Council)	
Petitioner's Exhibit Number Sixteen . . . . .	109
(Ltr dtd 2/14/08 from Litton to Gilkerson)	
Petitioner's Exhibit Number Seventeen . . . . .	109
(DHEC agenda 3/13/08)	
Petitioner's Exhibit Number Twenty . . . . .	111
(Ltr dtd 3/21/08 from Lowry to Eleazer)	
Petitioner's Exhibit Number Twenty-one . . . . .	112
(DHEC ltr dtd 7/18/08 from Coleman to Gilkerson)	
Petitioner's Exhibit Number Twenty-two . . . . .	113
(DHEC memo dtd 7/18/08)	
Petitioner's Exhibit Number Twenty-four . . . . .	78
(SC Solid Waste Management Annual Report 2007)	
Petitioner's Exhibit Number Twenty-five . . . . .	78
(SC Solid Waste Management Annual Report 2008)	
Petitioner's Exhibit Number Twenty-six . . . . .	47
(Curry's Lake Landfill total tons received Jan '06 to March '09)	
Petitioner's Exhibit Number Twenty-eight . . . . .	134
(Demonstration of Need map)	

(The original exhibits were retained by Judge Anderson.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

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1     **THE COURT:** All right. This is a hearing in the  
2           matter of -- I'm just going to use the  
3           acronym -- EAGLE, Petitioner, versus South  
4           Carolina Department of Health and Environmental  
5           Control, and MRR Highway 92, LLC. The docket  
6           number is 08-ALJ-07-0425-CC.

7           All right. I've already had a summary judgment  
8           motion hearing, which I'm on the verge of  
9           issuing the final written orders, but I think  
10          I'm going to have to wait until lunchtime to  
11          make it. But I set forth on the record what my  
12          ruling was and it hasn't changed.

13          So with that said, are there any additional  
14          motions or stipulations the parties wish to  
15          make before we proceed?

16     **MR. CHANDLER:** Nothing from the Petitioner, Your  
17          Honor.

18     **MS. WILLIAMS:** Nothing from DHEC, Your Honor.

19     **MR. LAVENDER:** Your Honor, we do -- we would like to  
20          make a motion to dismiss the appeal --

21     **THE COURT:** Okay.

22     **MR. LAVENDER:** -- based on the lack of jurisdiction  
23          of this body. This appeal has now been  
24          narrowed down following -- preceding and  
25          following summary judgment to the issue of the

1           appropriateness of the demonstration-of-need  
2           determination made by the Department, at least  
3           in conjunction with the permit. Our motion to  
4           dismiss is predicated upon the letter written  
5           dated March the 3rd, which was attached to, I  
6           think, all of the summary judgment motions.  
7           That letter was dated March 3rd of 2006 and it  
8           was addressed to MRR and stated: "Among other  
9           things, it was the approval of the  
10          demonstration-of-need determination pursuant to  
11          the regulation, a number of things associated  
12          with it, not the least of which is that this  
13          approval may be terminated by the Department if  
14          one or more of the following occurred," yada,  
15          yada. We don't believe any of those occurred.  
16          Our position is, that order at the time --

17       **THE COURT:** That "order"?

18       **MR. LAVENDER:** Excuse me, that letter --

19       **THE COURT:** Okay.

20       **MR. LAVENDER:** That determination approval at the  
21          time the decision was made by the Department  
22          was not appealed; neither was request for  
23          review sought by anybody to, at that time, the  
24          Administrative Law Court or the Board of Health  
25          and Environmental Control I believe preceding

1 the changes to the APA would have gone in March  
2 of '06 to the Administrative Law Court then to  
3 the Board and Circuit Court, et cetera.

4 At the time, the applicable rules of the  
5 Administrative Law Court were 30 days from  
6 actual or constructive notice or not more than  
7 90 days from the decision.

8 We believe that at that time, that decision  
9 became final and unappealable and at this  
10 point, this Court lacks jurisdiction to  
11 consider anything relating to that  
12 demonstration-of-need determination.

13 **THE COURT:** All right. So there's a letter issued.  
14 Was there a follow-up decision after that or  
15 was it ...

16 **MR. LAVENDER:** No, no follow-up decision other than  
17 relating to the application for a permit, which  
18 was subsequently submitted to the Department.  
19 The statute says that the Department can't  
20 issue a permit unless a demonstration of need  
21 is approved. We contend that March 3rd, 2006,  
22 a demonstration of need was approved and became  
23 final once the period within which a request  
24 for review could have or should have been made  
25 and was not made either within the actual or

1 noticed period of 30 days or the reposed period  
2 of 90 days from the date of the decision.

3 And as a consequence, if this letter -- if this  
4 determination could have been terminated, in  
5 fact, could have been appealed if it was  
6 denied, then we contend that it was final and  
7 unappealable by virtue of its having been  
8 issued once the appeal period is expired.

9 **THE COURT:** Was there notice given?

10 **MR. LAVENDER:** There was, to my knowledge, no notice  
11 given; however, there is information in the  
12 record and even in the Petitioner's exhibits  
13 that the Petitioners were aware of this project  
14 within 60 days of that decision having been  
15 made, having attended meetings and met with the  
16 Department within the 90-day period of that  
17 decision.

18 At the time, there was no notice required. The  
19 regs have since changed. We acknowledge that  
20 the regs have since changed.

21 **THE COURT:** I understand. I was just thinking  
22 through this. There's nothing in the record  
23 right now, though, that supports your  
24 contention that they received notice, is there?

25 **MR. LAVENDER:** Other than the letter to which we

1 refer and we will demonstrate that --

2 **THE COURT:** No, no. The second letter --

3 **MR. LAVENDER:** Absent having not filed a written  
4 motion providing you information, we will  
5 supplement this motion with documentation today  
6 that will evidence that they were -- that  
7 Petitioners were aware of the decision, aware  
8 of the plans for the project within the repose  
9 period.

10 **THE COURT:** Okay.

11 **MS. WILLIAMS:** I don't have any comment, Your Honor.

12 **THE COURT:** Can you tell me your position about  
13 whether your decision was final?

14 **MS. WILLIAMS:** Oh, I'm sorry. Well, DHEC's position  
15 is that they could have appealed the DON  
16 approval at the time that it was issued. I  
17 think at the time that it was issued, the rule  
18 was that you had 30 days to appeal it to the --  
19 30 days to appeal it to the ALC, I believe.

20 **THE COURT:** Uh-huh (affirmatively responds).

21 **MS. WILLIAMS:** However, we don't believe that -- we  
22 believe that they can still appeal it now  
23 because of the new regulation that went into  
24 effect on May 23rd, 2008, that says that any  
25 determination that was made prior to the

1 effectiveness of the regulation remains  
2 applicable subject to the public notice and  
3 also the application process.

4 **THE COURT:** Well, where I can understand that, then,  
5 all right, under the rules, if you're required  
6 to appeal within 30 days of notice, then how  
7 can another regulation back-door you back into  
8 procedural jurisdiction for this Court to hear  
9 it, is what I'm missing it.

10 **MS. WILLIAMS:** Well, I believe --

11 **THE COURT:** Maybe I need to read all this.

12 **MS. WILLIAMS:** I believe one reason that it can in  
13 this particular situation is because at the  
14 time that the DON was issued, the regulation  
15 did not have notice; in other words, we did not  
16 do public notice for the DON approval.

17 **THE COURT:** Okay.

18 **MS. WILLIAMS:** But we do now under the new  
19 regulation and the new regulation, you know,  
20 says that any determination made prior to the  
21 regulation remains applicable and subject to  
22 the public notice and application process.

23 **THE COURT:** Any determination --

24 **MS. WILLIAMS:** Any determination --

25 **THE COURT:** Okay.

1 MS. WILLIAMS: -- under -- I think it's  
2 (D)(1)(a) -- which we have four determinations  
3 now under the DON -- the new DON regulation.  
4 One of those determinations is the DON, the  
5 demonstration of need.

6 THE COURT: Yeah.

7 MS. WILLIAMS: And so, anyway, the determination  
8 that was made prior to May 23rd, 2008 -- this  
9 determination was made, I think, March 5th,  
10 2006 -- it remained applicable because we had  
11 not issued a landfill permit at the time the  
12 new regulations went into effect.  
13 So that decision, that approval, remained  
14 applicable subject to the public notice and  
15 application process. So the DON approval that  
16 was made in 2006 actually went on public notice  
17 at the time that we issued the draft permit for  
18 the landfill.

19 THE COURT: Okay.

20 MS. WILLIAMS: So DHEC's position is that they can  
21 still appeal it.

22 THE COURT: All right. Mr. Chandler, here's my  
23 frustration with this. If you look at the law  
24 concerning interlocutory appeals --  
25 Ms. Williams has made a good argument, but the

1           problem I have with that argument is, the law  
2           sets forth that if you have the right to  
3           appeal, even on an interlocutory matter, and  
4           you fail to exercise that right, that  
5           you -- and I think I'm correct on this. You  
6           correct me if I'm wrong on the law, but that if  
7           you fail to exercise that right, you lose the  
8           right to appeal.

9           So on one hand she's saying you had the right  
10          to appeal in the end, but she said you also had  
11          the right to appeal at a certain point. If you  
12          did have that right, then you're bound by that  
13          appellate process. If you didn't have that  
14          right -- which I assume that's what you're  
15          going to argue and tell me wrong that I'm wrong  
16          on the law -- and I wouldn't be offended if you  
17          did, but that's my understanding.

18          So proceed. I throw all that out to hear your  
19          argument.

20       **MR. CHANDLER:** Your Honor, first of all, I find  
21          Ms. Williams' argument very, very interesting.

22       **THE COURT:** Well, she's an interesting lady.

23       **MR. CHANDLER:** And I'm caught a little blind-sided  
24          here today, because this is the first I've  
25          gotten notice of this motion. If I had learned

1 of this motion --

2 **THE COURT:** Well, I'm not going to rule on it right  
3 now, anyway, because I don't have evidence  
4 to -- any evidence to support his argument. I  
5 just want to -- I'm getting background, to be  
6 honest.

7 **MR. CHANDLER:** I understand. If I had had notice as  
8 early as five o'clock yesterday afternoon, I  
9 could have brought into court today at least  
10 three documents filed by Ms. Williams in other  
11 landfill cases in which she has argued,  
12 successfully, that a demonstration-of-need  
13 approval is not appealable at the time that it  
14 is issued. And, in fact, she argued that as  
15 recently as five weeks ago in this court in  
16 front of Judge McLeod and only Monday, two days  
17 ago, Judge McLeod signed an order drafted by  
18 Ms. Williams that tossed out Marlboro County.  
19 Marlboro County appealed a demonstration of  
20 need that was issued in 2007. They appealed a  
21 consistency determination for a landfill that  
22 was issued in early 2008, both before the May  
23 2008 regulations came into effect.  
24 And in response to both of those appeals, the  
25 Department of Health and Environmental Control

1 filed a motion to dismiss.

2 **THE COURT:** Well, here's my problem about that  
3 contention, is if, indeed, and I presume that  
4 you'll correct me if I'm wrong on all that,  
5 which I presume Ms. Williams is going to have  
6 a different argument.

7 **MS. WILLIAMS:** Yes.

8 **THE COURT:** But if I presume that she's bound by  
9 judicial estoppel, she ain't the one that made  
10 the motion.

11 **MS. WILLIAMS:** That's right.

12 **THE COURT:** So, Mr. Lavender, you'd have to show  
13 where he's bound by judicial estoppel.  
14 So, with all that said, I understand your  
15 frustration, so let's get to the ...

16 **MR. CHANDLER:** Okay. Let's look at this from a due  
17 process standpoint. The Department of Health  
18 and Environmental Control has to have due  
19 process in making their decisions.

20 **THE COURT:** Uh-huh (affirmatively responds).

21 **MR. CHANDLER:** There was no public notice given in  
22 2006. In February, when B.P. Barber on behalf  
23 of MRR wrote a letter to DHEC and said, "We  
24 want a demonstration-of-need approval; this is  
25 our latitude and this is our longitude," there

1 was no public notice given.

2 On March the 3rd of 2006, or whatever day in

3 early March it was that DHEC wrote back and

4 said, "Okay, you got it; you're approved."

5 The earliest time that Mr. Lavender could

6 possibly have that indicates that anybody had

7 notice of that decision would have been more

8 than 30 days later.

9 If we would have filed 30 days later or 40 days

10 later or 60 days later, Mr. Lavender would have

11 argued that it was untimely.

12 DHEC has consistently taken the position in

13 every other case that's been up here is that

14 these preliminary rulings are preliminary.

15 They're not final until they go out on public

16 note.

17 In this case, the public notice was issued in

18 February of 2008. The public notice indicated

19 that all of the issues surrounding this

20 landfill were on the table. There was a public

21 hearing held on March the 13th, 2008, in which

22 all of these issues were on the table.

23 When there was a final decision issued in July

24 of 2008, Department wrote up a rationale that

25 addressed the question of need, that addressed

1 the question of consistency, and it was at that  
2 point that those decisions became final and  
3 appealable.

4 **THE COURT:** Okay.

5 **MR. CHANDLER:** And they were not final and  
6 appealable until then. And there's no question  
7 but that EAGLE filed a request for review by  
8 the DHEC board within 15 days of that final  
9 decision.

10 **THE COURT:** Well, I've heard enough to know that I  
11 need to -- I don't want to make an off-the-cuff  
12 ruling on this.

13 You can respond to that.

14 **MR. LAVENDER:** I would at least like to respond to  
15 the comments made by counsels, plural.

16 **THE COURT:** Okay.

17 **MR. LAVENDER:** First of all, I apologize the Court  
18 for the timing of this motion; however, it only  
19 came to our attention at five o'clock yesterday  
20 afternoon that the ruling in the case involving  
21 Marlboro.

22 We consulted briefly with counsel for the  
23 Department only to learn that they would not  
24 join in this motion, so we spent the evening  
25 determining the propriety of making the motion

1 and concluded late in the evening last night  
2 that we had no alternative but to make this  
3 motion, in spite of the timing of it.

4 I would at least like to respond to the notion  
5 about its appealability. And, first of all,  
6 there was no notice required, given. The  
7 distinctions that existed in this Court's rules  
8 at that period of time, again, were 30 days  
9 from actual or constructive notice.

10 Unfortunately, I was the brunt of a decision  
11 appealing my client's permit two years after --  
12 prior to that rule being made, two years after  
13 the permit decision was made, but within 30  
14 days of when they learned of it. And my  
15 client's permit at that time was extracted from  
16 him in a agricultural case in Dillon County.  
17 I remember it very well.

18 Subsequently, the rule --

19 **THE COURT:** Was I the judge in that case?

20 **MR. LAVENDER:** No, sir, you were not.

21 **THE COURT:** I guess that's good.

22 **MR. LAVENDER:** But your predecessor in title was in  
23 that case.

24 Nonetheless, Your Honor, we argued that there  
25 are not notice requirements for every decision

1 that the Department makes. There are hundreds  
2 of decisions that the Department makes that are  
3 appealable and for which no notice is given.  
4 Septic tank permits are the most glaring  
5 example.

6 But, nonetheless, we would argue that this  
7 demonstration-of-need determination and  
8 approval from March the 3rd of '06 did not  
9 contain any language that suggested that it was  
10 preliminary, as compared to the consistency  
11 determination, that was identified as a  
12 preliminary consistency determination.

13 Moreover, we would suggest that the statutory  
14 provisions relating to demonstration-of-need  
15 approval and consistency determinations with  
16 respect to solid waste plans and local zoning  
17 and land use, et cetera, are precedent to  
18 issuing the permit, but not an integral part of  
19 the permit, and that they stand separate on  
20 their own; hence, at least with respect to  
21 demonstration of need, there's a separate,  
22 free-standing regulation.

23 I will concede that today and as of March 23rd  
24 of '08 when the comprehensive landfill  
25 regulation was adopted, there was language in

1           there that described notice requirements that  
2           the Department was going to employ for several  
3           preliminary determinations and changed the  
4           playing field with respect to that.

5           Again, we would argue that those were not the  
6           rules in place at the time that the March 3rd,  
7           2006 letter was written to our clients and for  
8           which the demonstration-of-need approval  
9           decision was made. And, again, the 30 days  
10          from actual or constructive notice, but the  
11          repose period, not more than 90 days from the  
12          date of the decision, was, we believe, the  
13          applicable period --

14       **THE COURT:** I think it was 90, unless substantial  
15          cause --

16       **MR. LAVENDER:** Unless substantial cause.

17       **THE COURT:** Yeah.

18       **MR. LAVENDER:** I don't believe that -- and I  
19          understand that we're making the motion --

20       **THE COURT:** Well, if you establish notice, it would  
21          be difficult to establish substantial cause.  
22          I recognize that.

23       **MR. LAVENDER:** Right. Actual notice.

24       **THE COURT:** Well, what I've got to understand is --  
25          I mean, I've got come to a resolution on, is

1           whether this letter constitutes a final  
2           decision. Because, I can tell you, I think  
3           it's our -- in our rules, they reference  
4           letters as something for which -- when it sets  
5           forth at least on -- in the appellate arena,  
6           that the basis of -- the basis of the final  
7           decision, they do reference letters and other  
8           similar type documents as being potential final  
9           rulings. But it concerns me that there's a  
10          letter and then a subsequent permit involving  
11          the same matter and that the permit goes  
12          through the notice process.

13       **MR. LAVENDER:** Well, again, I simply make the -- for  
14          purposes of this motion, I make the distinction  
15          that that letter is simply a condition  
16          precedent to issuing the permit and --

17       **THE COURT:** But the letter -- but once they issue  
18          that letter, they cannot change their decision  
19          in that letter?

20       **MR. LAVENDER:** We believe that if it became final  
21          and unappealable that we would be arguing  
22          against that change, the change in the  
23          conditions of that letter, and we'd be  
24          appealing that.

25       **THE COURT:** Okay.

1 **MR. LAVENDER:** We'd certainly be appealing that. If  
2 the demonstration of need had been denied, for  
3 example, we'd be appealing that. And then that  
4 would imply -- to us, if it had been appealed,  
5 we would argue that it was appealable if it's  
6 denied, then it's definitely appealable if it's  
7 issued and not appealed, then it has become a  
8 final decision of the agency.

9 **THE COURT:** Okay.

10 **MS. WILLIAMS:** Your Honor --

11 **THE COURT:** A little bit more, but go ahead.

12 **MS. WILLIAMS:** Oh. I just wanted to correct some of  
13 the statements that Mr. Chandler made regarding  
14 my argument to Judge McLeod five weeks ago.

15 **THE COURT:** Well, you can briefly do that.

16 **MS. WILLIAMS:** Excuse me?

17 **THE COURT:** You can briefly do that.

18 **MS. WILLIAMS:** All right. I just wanted to say that  
19 DHEC's position initially in that particular  
20 case was that we felt -- the DON approval was  
21 appealed, initially. That was the first thing  
22 that was appealed in that case. And DHEC took  
23 the position that it was appealable at the  
24 time, that it was ripe for litigation, it was  
25 ripe for a contested case. But once the new

1 regulations became effective, we filed a motion  
2 arguing that it wasn't right anymore for  
3 litigation, because it had to go through the  
4 public notice and application process.

5 So DHEC has not always taken the position that  
6 the DON was not appealable. That is not  
7 correct. So I just wanted to correct  
8 Mr. Chandler.

9 **THE COURT:** Well, I'll address this down the road.

10 But I just can't see, if the decision is  
11 final -- and these are all "if's" -- if the  
12 decision is final and if you have the right to  
13 appeal that final decision at the time, I don't  
14 see how a subsequent regulation can revive a  
15 procedural jurisdiction requirement that  
16 existed in a previous instance.

17 To rephrase that, if there was a requirement to  
18 appeal within 30 days and you failed to  
19 exercise that right, then any subsequent  
20 regulation would not be retroactive under the  
21 law, unless the -- I mean, it says  
22 procedural -- the law says that a retrospective  
23 application is applicable in procedural  
24 matters. I recognize that, but -- at least the  
25 statutory construction rules do -- but I don't

1 believe that it can revive a case that was  
2 already procedurally not valid.

3 Under that theory, I mean, we can go back and  
4 look at cases a long, long time ago. I mean,  
5 where does that theory go?

6 You know, I do say that I'm not making a ruling  
7 right now on this. This is certainly something  
8 that I definitely need to think about.

9 Mr. Chandler, one more last fight, but I'm --  
10 like I said, I'm reserving my ruling, so -- or  
11 I'm not going to make a ruling now, so ...

12 **MR. CHANDLER:** Well, very briefly. In addition to  
13 the Marlboro County case that was in front of  
14 Judge McLeod --

15 **THE COURT:** Which I haven't read yet, either.

16 **MR. CHANDLER:** -- I would like some time to submit  
17 to the Court the position taken by the DHEC  
18 staff in front of the DHEC board just in the  
19 last couple of weeks.

20 There was a letter issued by the staff of the  
21 Department of Health and Environmental Control  
22 to Williamsburg County approving a  
23 demonstration of need for a landfill for  
24 400,000 tons per year. Within 15 days, I  
25 represented two groups that asked the board to

1 hear that case. The staff's response to that  
2 was that my appeal was premature.

3 **THE COURT:** I'm going to allow you to make argument  
4 on that. My struggle, again, on that  
5 particular argument is, as I have told the  
6 Department and I think they -- as a matter of  
7 fact, it may have been Marlboro -- it was one  
8 in the Court of Appeals. They adopted my  
9 interpretation that the staff is not entitled  
10 to deference, so -- it's the board that is  
11 entitled to deference. If the board has not  
12 made a ruling in this regard, the staff may  
13 potentially be judicially estopped from making  
14 the argument, but they're not making the  
15 motion. So I still got to rule on the motion.

16 **MR. CHANDLER:** Well, I think that tells me what I  
17 need to do about the board's refusal to give us  
18 a hearing in that case, Your Honor.

19 **THE COURT:** Well, the board didn't take a position.  
20 All right. With that said, the motion is made.  
21 I'll certainly take it under advisement.  
22 Anything else?  
23 Y'all are throwing some interesting curves at  
24 me in this case.  
25 Anything else? Opening statements, if you

1 think you need to make them.

2 MR. CHANDLER: Your Honor, I don't really feel the  
3 need to make an opening statement. You know,  
4 we in effect made them at the summary judgment  
5 hearing. If you would like an opening  
6 statement --

7 THE COURT: And I've been working on the summary  
8 judgment motion, so -- does anybody else  
9 believe they need to make an opening? Because  
10 I think I understand the facts of the case.

11 MR. LAVENDER: Your Honor, so long as I think we  
12 all -- I think the record is pretty clear.  
13 Just, hopefully, at least this hearing is  
14 limited to the issue of the need question  
15 and --

16 THE COURT: The need question and I think we're down  
17 to section --

18 MR. LAVENDER: Four.

19 THE COURT: -- D?

20 MR. LAVENDER: (D)(4).

21 THE COURT: (D)(4)?

22 MR. LAVENDER: Right.

23 THE COURT: Yeah.

24 MR. LAVENDER: That was our understanding.

25 THE COURT: That's my understanding.

1 MS. WILLIAMS: Your Honor, I waive my opening  
2 statement.

3 THE COURT: Okay. All right. Proceed ahead,  
4 Mr. Chandler.

5 MR. CHANDLER: Your Honor, the Petitioners would  
6 call --

7 THE COURT: Oh, I'm sorry, let me tell y'all one  
8 more thing. I think I'm going to have to break  
9 around 11:30 and then if we could just take an  
10 early lunch. I'm sorry about that, the  
11 schedule aspect of it, but -- so I want to take  
12 a long lunch at like, let's say, 11:30 to 1:00.  
13 And is there -- can we go late tonight or is  
14 this going to be difficult to get in within two  
15 days? If y'all think it's going to be fairly  
16 simple, I won't go late.

17 MR. CHANDLER: I'm hoping we can get it in in one  
18 day, Your Honor.

19 THE COURT: Oh, wow.

20 MR. LAVENDER: I'm with you.

21 THE COURT: Okay.

22 MR. LAVENDER: We would certainly be willing to go  
23 late and finish in one day, if that works for  
24 counsel. We had spoken to Mr. Chandler  
25 earlier, too, and I think we had sort of gotten

1           some idea from both of them -- from each of  
2           them.

3   **THE COURT:**    Would y'all want me to see if I can  
4           change the 11:30 matter and just do a short  
5           lunch hour?

6   **MR. CHANDLER:**  If we break from 11:30 to 1:00 and  
7           come back, you know, I think we can still do  
8           it --

9   **THE COURT:**    Okay.

10  **MR. CHANDLER:**  -- until five or six o'clock this  
11           afternoon.

12  **THE COURT:**    Proceed ahead, then.

13  **MR. CHANDLER:**   All right.    Your Honor, the  
14           Petitioner would call Scott Holland to the  
15           stand.

16           And, Your Honor, as he's coming up, I have put  
17           together a set of premarked exhibits that the  
18           Petitioner has got in here.  There's one loose  
19           page in there that I realized last night  
20           looking through this that got left out.  It's  
21           right here and I put it in in place.  I believe  
22           in all the other copies and in the original,  
23           that page is in there.

24  **THE COURT:**    Okay.

25  **SCOTT HOLLAND,** having been duly sworn, testifies and

1 examines as follows:

2 MR. SCOTT - DIRECT EXAMINATION BY MR. CHANDLER:

3 Q: Would you please give us your name?

4 A: My full name is Larry Scott Holland.

5 Q: Okay. And you're generally known as "Scott"?

6 A: That's correct.

7 Q: Okay. Mr. Holland, where do you live?

8 A: I live in the City of Laurens. It's 103  
9 Buckhead Drive.

10 Q: And how long have you lived in Laurens?

11 A: I've lived in Laurens essentially all my life,  
12 except for seven years of college and another  
13 position.

14 Q: Okay. And by whom are you employed?

15 A: Laurens County.

16 Q: And what's your position with the County?

17 A: I'm the director of public works.

18 Q: And how long have you been in this position?

19 A: It'll be 20 years in September.

20 Q: Okay. Now, as the director of public works,  
21 what types of responsibilities do you have?

22 A: We've got three divisions. We're over the  
23 solid waste management for the county; and  
24 we're over the maintenance and construction of  
25 buildings; we're over the maintenance and

1 construction of the county maintained roadway.  
2 Q: Okay. Now, are you in charge of the County's  
3 dealings with solid waste?  
4 A: Yes, sir.  
5 Q: Okay. Now, does the County have a landfill  
6 that handles construction and demolition  
7 debris?  
8 A: We have a facility that ceased taking the waste  
9 this May, May of 2009, but we have had one in  
10 the past and it's in the process of being  
11 closed down.  
12 Q: And how long did that landfill operate before  
13 it closed out or began closing out in May?  
14 A: It operated initially as an MSW landfill  
15 beginning about 1973, and then the last  
16 approximately ten to 12 years, it was  
17 downgraded to a C&D landfill.  
18 Q: Okay. As a C&D landfill, how much tonnage was  
19 it allowed to receive each year under its  
20 permit?  
21 A: I haven't looked back at the permit. It was in  
22 the --  
23 **THE COURT:** Wait a second. Can you tell me, it was  
24 downgraded to a C&D when?  
25 **THE WITNESS:** I believe that was around 1997. I'm

1 not sure of the exact date, but in that  
2 neighborhood.

3 **THE COURT:** Okay. Go ahead, Mr. Chandler.

4 **Q:** Okay. And I think the question pending was,  
5 when it was operating, what was the capacity  
6 that it was licensed for to receive each year?

7 **A:** I didn't look that exact number up and it was  
8 probably in the seven thousand, eight thousand  
9 tons per year range. It was a low volume  
10 facility.

11 **Q:** Okay. Now, in the last couple of years of the  
12 operation at that landfill, how much C&D  
13 waste -- you understand if I use the term "C&D"  
14 for construction and demolition waste?

15 **A:** Yes, sir.

16 **Q:** How much did it receive over the last, say, two  
17 or three years?

18 **A:** I think the last report I can recall was around  
19 3500 tons. Probably two years ago, it was  
20 about 3500 tons and then it's been going down  
21 as we were phasing out.

22 **Q:** Okay.

23 **A:** Probably the most we've ever received was in  
24 the 5000-ton-a-year range.

25 **Q:** And do you still receive any kind of waste at

1 this facility?

2 A: We still receive brush and natural type waste  
3 that can be ground and turned into a mulch. We  
4 also have received -- not for disposal, but we  
5 operate a recycling site there.

6 Q: Okay. So basically yard waste and other kinds  
7 of things --

8 A: Right.

9 Q: -- you recycle at that site?

10 A: Tree limbs, brush, that sort of thing.

11 Q: Okay. Are there any other C&D landfills in  
12 Laurens County?

13 A: There are two that I'm aware of. City of  
14 Clinton, I believe, has an operating permit.  
15 And also Curry Lake landfill is a privately  
16 owned C&D landfill.

17 Q: Okay. And the landfill that's owned by the  
18 City of Clinton, that's a fairly small  
19 landfill, isn't it?

20 A: As far as I know, yes. It's a fairly small  
21 site.

22 Q: Okay. What about the Curry Lake landfill, what  
23 kind of size does it have?

24 A: You know, I don't know that specifically. I  
25 think it's around -- it's between a 50 and

1 100-acre site. I think it started out as a  
2 50-acre site. They may have expanded. I'm not  
3 positive about that.

4 Q: Okay. Do you have any idea of how much waste  
5 it's allowed to receive in any given year?

6 A: I don't know that specific number. It may be  
7 as much as a six figure per ton year, but it's  
8 between 50,000 and 100,000, I would guesstimate  
9 that they're permitted for.

10 Q: Okay. Now, does Laurens County receive regular  
11 reports on the amount of waste that's actually  
12 taken to the Curry Lake landfill?

13 A: We do. They pay a host fee and that host fee  
14 is based on the number of tons that they  
15 receive, so they have to send in those reports  
16 with their payment.

17 Q: Okay. Now -- and that host fee is sort of a  
18 tax on each ton that's taken to the landfill?

19 A: That's correct. I guess you could call it an  
20 "impact fee."

21 Q: Okay. And so the reports show how much tonnage  
22 they've received and then they calculate the  
23 fee that they have to pay based on that?

24 A: That's correct.

25 Q: I want to hand you a packet of documents that

1 have been marked as Petitioner's Exhibit Number  
2 Twenty-six. Do you recognize these documents?

3 A: Yes, sir. You have requested this information  
4 of the County and my staff prepared these  
5 documents, copies of their monthly reports,  
6 2006 through 2009, a summary of those reports.

7 MR. LAVENDER: Your Honor, we would object to the  
8 relevance of this document -- of these  
9 documents and, in particular, if merely the  
10 relevancy of them as to the single issue at  
11 hand is allowed, that any of the information  
12 beyond the date of the final agency decision is  
13 completely irrelevant --

14 THE COURT: Well --

15 MR. LAVENDER: -- which was sometime in July of '08.

16 THE COURT: I'll tell you what. I'll wait just a  
17 little while longer and I'll take -- remember  
18 what you just said, because he hasn't offered  
19 it yet.

20 Unless you just want to go ahead and offer it  
21 and it would make this more succinct, but ...

22 MR. LAVENDER: I apologize.

23 THE COURT: He's just identifying it at this point  
24 in time.

25 You want to offer it or not?

1 MR. CHANDLER: Let me ask just one more question  
2 before I offer it. And I do intend to offer  
3 it.

4 Q: Mr. Holland, the first page in that batch of  
5 documents, there's sort of a table there?

6 A: Yes, sir.

7 Q: What does that table represent?

8 A: It's a summary of the tons received at Curry  
9 Lake landfill for the year 2006 through March  
10 of 2009 and it's a monthly list -- the amount  
11 of tons received each month and then the totals  
12 for each year.

13 Q: Okay. And then the documents that are attached  
14 to that after that show the amount that was  
15 received in the months that are not on that  
16 table, April, May and June of 2006?

17 A: That's correct.

18 MR. CHANDLER: Your Honor, I would offer this  
19 document, Petitioner's Exhibit Number  
20 Twenty-six, into evidence.

21 THE COURT: All right. Given the fact -- it is my  
22 understanding now that it deals with waste that  
23 was deposited in the landfill after the date  
24 that the permit was issued. Why is it  
25 relevant?

1 MR. CHANDLER: What we're here -- we're here today  
2 not in just an appellate review of what DHEC  
3 did, but for this Court to make an independent  
4 determination of whether or not there's a need  
5 for this landfill.

6 And so I think we're entitled to introduce  
7 evidence that has accrued either before or  
8 after the date this permit was issued. It's  
9 not just appellate review. It's not just  
10 looking at the DHEC record.

11 This Court routinely receives evidence of  
12 things that may or may not have been part of  
13 the Department's record at the time the permit  
14 was -- the permit decision was made.

15 THE COURT: All right. Ms. Williams?

16 MS. WILLIAMS: Yes, Your Honor, I object also.  
17 Anything that was -- any figures that are on  
18 this page after the date that the landfill  
19 permit was issued wouldn't be relevant because  
20 DHEC wouldn't have had the opportunity to  
21 review that information.

22 So I don't understand how that would be  
23 relevant to determining need if we didn't have  
24 that information to see, if we didn't know  
25 about it. I don't see how it's irrelevant. I

1 object also.

2 **THE COURT:** All right. I'm going to allow it in  
3 subject to a determination later that it's not  
4 relevant. I want to do a little research on  
5 that, so it's temporarily admitted.

6 **MR. CHANDLER:** All right, sir. Your Honor, just to  
7 follow up on that, briefly. This report does  
8 show, I believe, tonnage figures for the years  
9 2006 and 2007. The permit decision on appeal  
10 here was made in July of 2008, and so I don't  
11 think, even under the arguments they've made --

12 **THE COURT:** Oh, okay.

13 **MR. CHANDLER:** -- that the tonnage that comes in  
14 at -- came in at least through June of 2008  
15 could not have been available to the  
16 Department.

17 **THE COURT:** All right. Mr. Lavender, what's your  
18 response to that?

19 **MR. LAVENDER:** Again, and I think I made that  
20 distinction when I pointed out that at least to  
21 the point beyond that -- and we stand firmly by  
22 our position that we don't believe that even a  
23 de novo hearing extends through the date of  
24 today with respect to after-created evidence  
25 from the time the -- you know, to the extent

1           that there's evidence offered that was in  
2           existence or evidence of fact or interpretation  
3           of conditions that were in existence might very  
4           well be fair game up until the point the  
5           Department made its determination.       But  
6           certainly with respect to the information  
7           beyond June 30th, because I think this includes  
8           the calendar month of July --

9   **THE COURT:**   Where I can follow your argument, are  
10           you arguing that based on your previous motion  
11           to dismiss, the letter determination as to  
12           need, that that is the date set and that even  
13           if I go beyond that date and I looked at the  
14           permit, still I should stop at the permit?

15   **MR. LAVENDER:**   Well, we argue with respect to our  
16           motion to dismiss that the Court lacks  
17           jurisdiction to make this inquiry.

18   **THE COURT:**   Yeah.

19   **MR. LAVENDER:**   So we reserve our objections to any  
20           of these --

21   **THE COURT:**   I understand that.

22   **MR. LAVENDER:**   -- proceedings in that respect.

23   **THE COURT:**   I understand your argument on this.

24   **MR. LAVENDER:**   All right.   With respect to -- and I  
25           guess sort of this objection is going to come

1 out, at least at this point, to the extent, as  
2 the Court has indicated, we're focused entirely  
3 on an inquiry with respect to the language  
4 which states, indeed, the Department reserves  
5 the right to review additional factors in  
6 determining need on a case-by-case basis, and  
7 assuming that this Court retains jurisdiction  
8 of that inquiry, through the course of this  
9 permit appeal, as opposed to accepting the  
10 finality of that demonstration of need, then we  
11 still contend -- first, our objection is, the  
12 relevance of all of this information, not just  
13 the post June 30 information, but all of this  
14 information into the inquiry remaining before  
15 us and that is, the reservation of rights and  
16 its applicability and the subsequent decision  
17 of whether the Department's decision should be  
18 reversed based on the record relating to this  
19 evidence.

20 **THE COURT:** Okay.

21 **MR. LAVENDER:** I know that was not very succinct,  
22 but we still contend --

23 **THE COURT:** I agree with you on that.

24 **MR. LAVENDER:** -- that this reservation of rights  
25 was not mandatory, hence, was not reversible.

1     **THE COURT:** Go ahead.

2     **MS. WILLIAMS:** Your Honor, I think that -- first of  
3           all, I'd like to say that I made the same  
4           distinction that Mr. Lavender made when I made  
5           my objection. I was objecting primarily to  
6           anything that was after the issuance of the  
7           landfill permit, which was July 18, 2008.

8           But I think beyond that, I think Mr. Chandler  
9           needs to show, since the issue is whether DHEC  
10          should have reviewed additional factors, is  
11          whether this information is additional factors.  
12          I mean, I don't know that it is. We have this  
13          information, we've reviewed it, we --

14    **THE COURT:** I tell you what, I'll sustain that  
15          objection. I'm moving out of my "taking under  
16          advisement" -- I mean, you need to lay a  
17          foundation as to the relevancy in that regard,  
18          Mr. Chandler --

19    **MS. WILLIAMS:** Thank you, Your Honor.

20    **THE COURT:** -- rather than just offering it. Unless  
21          you've got an argument to clarify it?

22    **MR. CHANDLER:** Well, Your Honor, I hadn't even  
23          thought of that idea. I mean, it seems to me  
24          that if what we're looking at is the question  
25          of whether or not there's need for this

1 landfill ...

2 Now, I mean, we've been waiting to see which  
3 order you were going to sign on the motion for  
4 summary judgment. I'm at a disadvantage here  
5 today because I didn't know until this morning  
6 that I was being limited to Section D of  
7 Regulation 61-107.17(D)(3).

8 **THE COURT:** Four.

9 **MR. CHANDLER:** I've been told that. I still haven't  
10 seen an order on that.

11 **THE COURT:** (D)(4). And, you know, that's  
12 interesting, Mr. Chandler, because when I got  
13 your proposed order -- is it three?

14 **MR. LAVENDER:** (3)(d). Sorry.

15 **THE COURT:** Oh. I wondered why you didn't put that  
16 in there because I thought, as I remember -- I  
17 thought pretty clearly, I made my ruling on the  
18 record, but maybe I didn't. I'll have to go  
19 back and look at the record. But I thought  
20 that I clarified on the record how I wanted you  
21 to draft the proposed order and it was in that  
22 regard.

23 **MR. CHANDLER:** Well, I mean, the order denying my  
24 motion for summary judgment was drafted by my  
25 opponents.

1 **THE COURT:** I'm talking about the one concerning  
2 your order denying their summary judgment  
3 motion. You didn't reference that in there, so  
4 I agree with you, that wasn't in there.  
5 I don't have the reg in front of me. I  
6 thought -- y'all are saying (D)(3)?  
7 **MR. LAVENDER:** (3)(d), Your Honor.  
8 **THE COURT:** (3)(d)? That's right. Okay. Because D  
9 would be four.  
10 **MR. LAVENDER:** I think it's capital D, 3, little D.  
11 **MS. WILLIAMS:** Yeah.  
12 **THE COURT:** Okay. Okay. In my mind, I'm going four  
13 down.  
14 All right. Well, with that said, if y'all want  
15 me to take a break, I'll just try to go ahead  
16 and issue this summary judgment orders, but I  
17 was going to try to review it to make sure  
18 they're accurate over lunch one more time.  
19 Actually, I'm at the point now where my law  
20 clerk needs to review it.  
21 **MR. CHANDLER:** Well, I mean, even broader than that.  
22 Let's say, for instance, that I am limited to,  
23 by your order, to simply showing "reviewing  
24 additional factors." Well --  
25 **THE COURT:** Well, I mean, I assume you were limited

1 to that because the other part is not disputed,  
2 is it?

3 **MR. CHANDLER:** It's not disputed that they followed  
4 A, B, and C. I'll grant you that.

5 **THE COURT:** So if that's not disputed --

6 **MR. CHANDLER:** But the bigger issue, though, there's  
7 a statute out there that says there has to be  
8 a demonstration of need.

9 **THE COURT:** Yeah.

10 **MR. CHANDLER:** And that has to be -- everything that  
11 we look at in this regulation has to be done in  
12 the context of the larger statute, which is  
13 what led to this regulation in the beginning.

14 **THE COURT:** Well, I agree with you that your  
15 "additional factors" need to be viewed in the  
16 context of all of the other factors.

17 **MR. CHANDLER:** Okay.

18 **THE COURT:** If that's what you're making the  
19 argument, I agree with that.

20 **MR. CHANDLER:** Well, if what you're saying is  
21 that -- I'm not exactly sure what it is you're  
22 saying. I have to bring in an expert on  
23 "additional factors" to say this is an  
24 additional factor?

25 It's been always my intent that if we've got

1 other landfills out there, that have a certain  
2 amount of landfill capacity, and that if the  
3 figures of how much waste they're actually  
4 receiving, these are additional factors that  
5 you have to look at in determining need.

6 **THE COURT:** Well, number one, I'm not saying  
7 anything except that I said that Ms. Williams'  
8 objection appeared to be salient, but ...

9 And I was listening to your argument about  
10 whether it is or not salient, but the -- her  
11 argument was that it is not. At this point in  
12 time, you haven't established relevancy because  
13 you haven't established how it is a factor to  
14 consider.

15 Is that correct?

16 **MS. WILLIAMS:** An additional factor.

17 **THE COURT:** An additional factor to consider.

18 How else would --

19 **MR. CHANDLER:** Well, let me try it this way.

20 **THE COURT:** Okay.

21 **MR. CHANDLER:** Let me try it this way.

22 **Q:** Mr. Holland --

23 **A:** Yes, sir.

24 **Q:** -- has the question of this proposed new  
25 landfill come up as a topic of discussion in

1           Laurens County?

2       A:    Yes, sir.

3       Q:    And has the County taken a look at this  
4           landfill in terms of whether or not it is  
5           needed?

6       A:    No, sir, we don't get involved in determination  
7           of need.

8       Q:    Well, I know you don't get involved in  
9           determination of need, but ...

10           Let me hand you a document that has been  
11           premarked as Petitioner's Exhibit Number Twelve  
12           and it indicates you received a copy of that  
13           letter. Have you seen that letter and the  
14           attachment?

15       A:    (Reading.) I'm sure I received one since it  
16           showed that it was copied to me. To be honest  
17           with you, I don't recall reading it, but I'm  
18           sure I got one.

19       Q:    Okay. I mean, does that appear to be  
20           Mr. Segar's signature on that?

21       A:    Yes, sir, it does.

22       Q:    And who is Mr. Segar, sir?

23       A:    He's the Laurens County administrator.

24       Q:    Okay. And the attachment to that, what is it?

25       A:    It's a copy of a resolution passed by Laurens

1 County Council.

2 Q: Okay. And do those appear to be the signatures  
3 of the councilmen in Laurens County?

4 A: Yes, sir, they do.

5 MR. CHANDLER: Okay. Your Honor, I would offer into  
6 evidence Petitioner's Exhibit Number Twelve.

7 MR. LAVENDER: Your Honor, again, we would object to  
8 the relevance of this document in particularly  
9 as it relates to Laurens County's opinion about  
10 whether or not there's a need -- I presume only  
11 that portion relating to need for which it's  
12 offered, but in so far as Laurens County's  
13 position with respect to need and the relevance  
14 of that, for a landfill that's -- that was  
15 proposed to serve more than Laurens County.

16 Again, the distinction is, this was a regional  
17 planning area for this particular facility that  
18 covered, I think unquestionably, three counties  
19 that were considered in its planning area.

20 MS. WILLIAMS: I concur with Mr. Lavender's  
21 objection, Your Honor, and I also would like to  
22 note that this isn't relevant because later on  
23 Laurens County issued a solid waste management  
24 plan that allowed for this landfill. I mean,  
25 so the plan would trump the resolution.

1 THE COURT: Well, it does limit the probative value.

2 MR. CHANDLER: Well, I would dispute what  
3 Ms. Williams just said. There's not evidence  
4 of that and I would admit that their solid  
5 waste plan does not prohibit this landfill, but  
6 it leaves the question of need up to DHEC.  
7 There's nothing in that plan that says this  
8 landfill is needed.

9 THE COURT: Or not needed.

10 MR. CHANDLER: Right.

11 THE COURT: All right. I allow the introduction of  
12 Exhibit Twelve as evidence -- well, was this in  
13 the DHEC file?

14 MS. WILLIAMS: This resolution?

15 THE COURT: This Exhibit Twelve.

16 MR. CHANDLER: It was a letter addressed to Art  
17 Braswell, director of mining and solid waste  
18 management division of DHEC.

19 MS. WILLIAMS: Yes, it was in our file, so we were  
20 aware of it.

21 THE COURT: I'll allow the introduction as evidence  
22 pertinent to what was in the DHEC file;  
23 however, I deny the admission of it for any  
24 truth of the matter asserted therein, under  
25 this case, because I don't find that it is

1           certainly relevant to establish this case, is  
2           where I'm missing, Mr. Chandler. So that's my  
3           ruling.

4           (Petitioner's Exhibit Number Twelve was admitted into  
5           evidence.)

6           **MR. CHANDLER:** Your Honor, for the purpose of -- I'd  
7           like to publish one portion of the resolution  
8           that --

9           **THE COURT:** Well, it's in the -- I admitted it.  
10          It's in the record, so there's no need to  
11          publish it because it's a component of the  
12          record now.

13          **MR. CHANDLER:** All right, sir. Then I would renew  
14          my request that Petitioner's Exhibit Twenty-six  
15          be admitted into evidence.

16          **THE COURT:** I'm going to withhold my ruling on that  
17          because it's going along the same lines as the  
18          motion to dismiss argument.

19          I'll tell you what. I'm going to let it in  
20          subject to the determination that I find it  
21          irrelevant later on and I'll -- if I find it  
22          irrelevant, I will address that in my order.

23          **MR. CHANDLER:** Well, Your Honor, it seems that if  
24          you don't have jurisdiction, then none of this  
25          is relevant.

1 THE COURT: That's where I'm going.

2 MR. CHANDLER: Okay. I just want to make sure I  
3 understand that's what you're saying.

4 THE COURT: I know. Well, I'm going a little deeper  
5 than that, but that's a component of my thought  
6 process.

7 (Petitioner's Exhibit Number Twenty-six was admitted  
8 into evidence.)

9 MS. WILLIAMS: Your Honor, are you withholding your  
10 ruling also based on the fact that he needs to  
11 lay a foundation that these are additional  
12 factors?

13 THE COURT: Well, I'm just going to address  
14 that -- well, give me your argument on that one  
15 last time. Y'all, we're going to be here  
16 forever on these exhibits, but ...

17 MR. CHANDLER: Your Honor, what are the elements of  
18 a foundation of determining whether something  
19 is an additional factor? There's nothing in  
20 this regulation that defines what "additional  
21 factors" are.

22 If we present all of our evidence about how  
23 much landfill space there is Laurens County --

24 THE COURT: Can I stop you? All I need to do is  
25 understand whether it's probative to decide

1           this case. Is it probative or not, yes or no,  
2           and why?

3 **MR. CHANDLER:** Okay. Well, I think we'll wrap that  
4           up when we get Mr. Coleman on the stand.

5 **THE COURT:** Well, then do you want to wait and  
6           introduce it then?

7 **MR. CHANDLER:** We'll renew it at that point. But in  
8           terms of authenticity of this document --

9 **THE COURT:** Well, you've established that.

10 **MR. CHANDLER:** -- we've established that with this  
11          witness.

12 **THE COURT:** Yes.

13 **MR. CHANDLER:** All right, sir.

14 **THE COURT:** Okay.

15 **Q:** Now, Mr. Holland, do you know how much waste is  
16          generated each year in Laurens County?

17 **A:** No, sir. We don't have any records on waste  
18          generated. The only thing we see is disposal  
19          rates for our facility and for the Curry Lake  
20          facility.

21 **Q:** Okay. Have you ever received any information  
22          indicating whether anybody in Laurens County  
23          has had any problem finding a legal place to  
24          dispose of C&D waste?

25 **MR. LAVENDER:** Your Honor, may I object to the

1           relevance of the question and it calls for  
2           speculation? Relevance of the inquiry at all,  
3           whether people have had a problem finding a  
4           place.

5       **MR. CHANDLER:** No, the question was has he ever  
6           received any information. That's not  
7           speculation.

8       **THE COURT:** Well, then the next issue is, is it  
9           relevant. You want to address that?

10       **MR. CHANDLER:** Your Honor, I go back to the  
11           definition of what is "need." We've got a  
12           statute that says you have to have a  
13           demonstration of need. What is "need"? It's  
14           something that is necessary.  
15           Evidence of problems finding a legal place to  
16           dump might be evidence of need. If there is  
17           evidence that nobody's ever had a problem  
18           finding a legal place to dump tends to prove  
19           that there is not a need.

20       **THE COURT:** All right. I'm going to let him -- I'm  
21           going to jump beyond the relevant one. The  
22           only thing I want to make my ruling on now is  
23           on speculation.

24           You said you asked him specifically if someone  
25           had ever told him. But, still, whether they

1 told him or not, is that not still speculative  
2 as to whether or not there's a need? Because  
3 it's -- that would be that person speculating  
4 as to need.

5 **MR. CHANDLER:** Well, Your Honor, Mr. Holland --

6 **THE COURT:** It's almost like hearsay within hearsay.

7 **MR. CHANDLER:** Mr. Holland's testified that he's the  
8 director of solid -- of public works and he's  
9 in charge of landfills. If there's information  
10 out there that people have problems, it ought  
11 to come to this person. If he hadn't received  
12 any information, I think that means something.

13 **THE COURT:** Go ahead.

14 **MS. WILLIAMS:** Your Honor, I know you said you  
15 didn't want to rule on relevance, but I would  
16 just like to say that Mr. Holland has already  
17 testified that DHEC has the purview to  
18 determine need, not the County. So whether --

19 **THE COURT:** You've got to evaluate --

20 **MS. WILLIAMS:** Excuse me?

21 **THE COURT:** You've got to evaluate the facts that  
22 you receive, so -- so that's why I jumped  
23 beyond relevance because ...

24 **MS. WILLIAMS:** All right.

25 **THE COURT:** I'm going to let it -- I'm going to do

- 1           what I hate judges doing to me, or at least I  
2           used to hate judges doing to me. I'm going to  
3           let it in for what it's worth at this point in  
4           time. So go ahead and proceed.
- 5    Q:   My question again, Mr. Holland, have you ever  
6           received any information indicating whether  
7           anybody in Laurens County has ever had any  
8           problem finding a legal place to dispose of C&D  
9           waste?
- 10   A:   I don't recall anybody telling me that they  
11           could not find a legal place to dispose of C&D  
12           waste.
- 13   Q:   Okay. Has the County ever experienced any  
14           problems that could be attributed to a lack of  
15           landfill capacity?
- 16   A:   Are you speaking specifically of C&D?
- 17   Q:   C&D.
- 18   A:   I don't recall any.
- 19   Q:   Okay. Has DHEC ever consulted you about  
20           whether Laurens County needs another C&D  
21           landfill?
- 22   A:   No, sir.
- 23   Q:   To your knowledge, has DHEC ever consulted  
24           anybody else in the County?
- 25   A:   Not to my knowledge.

1 Q: All right. Has the County ever determined that  
2 there's a need for another C&D landfill?

3 A: I don't think there's any discussions. I mean,  
4 we don't -- I don't think we discussed whether  
5 there was a need for another one, other than  
6 County Council has issued a resolution that you  
7 brought up earlier.

8 MR. CHANDLER: All right. Thank you, Mr. Holland.  
9 If you would answer any questions the other  
10 attorneys might have.

11 THE COURT: What was that resolution?

12 MR. CHANDLER: There was the resolution that was  
13 introduced as --

14 THE COURT: Oh, okay.

15 MR. CHANDLER: -- Petitioner's Number Twelve.

16 THE COURT: Okay.

17 MR. HOLLAND - CROSS-EXAMINATION BY MR. LAVENDER:

18 Q: Mr. Holland, do you know what the planning area  
19 for the proposed Highway 92 landfill consists  
20 of?

21 A: No, sir, I don't believe I've seen what they  
22 consider their planning area.

23 Q: So you don't know what other counties, if any,  
24 it considered?

25 A: I would make be making an assumption. I

- 1 haven't seen any ...
- 2 Q: Okay. Do you know whether the City of Clinton  
3 accepts waste C&D from outside the city limits?
- 4 A: I don't know that for a fact. My assumption  
5 would be no, but I don't know that for a fact.
- 6 Q: The host fee to which you referred and talked  
7 about, is that an agreement with the other  
8 landfill or is that a mandatory host fee  
9 imposed by the County?
- 10 A: It's mandatory and it's part of our solid waste  
11 management plan.
- 12 Q: In response to some questions from counsel, you  
13 were asked about whether DHEC ever consulted  
14 you. Do you recall ever on behalf of yourself  
15 or the County ever asking DHEC to consider  
16 other relevant factors in connection with a  
17 needs determination for the proposed Highway 92  
18 landfill?
- 19 A: I personally have not, no.
- 20 Q: Okay. You commented on not -- I think you said  
21 something about lack of capacity. How many  
22 alternatives exist for Laurens County citizens  
23 for disposal of C&D within the County,  
24 currently?
- 25 A: Within the County currently there are two

1 facilities, I believe, that they can take that  
2 to. That would be the Curry Lake landfill and  
3 then the transfer station that's operated by  
4 Republic Industries near the City of Clinton.

5 Q: So beyond that, they would have to go out of  
6 the County?

7 A: I believe that'd be correct.

8 Q: Does the County currently have arrangements for  
9 disposing of County generated C&D waste?

10 A: If you're speaking about that we generate in  
11 our operations?

12 Q: Right, for which the County pays for disposal.

13 A: Right. Well, we dispose of that type of waste  
14 now at Curry Lake landfill.

15 Q: Is there another competitive alternative right  
16 now?

17 A: There are.

18 Q: Price wise?

19 A: I would say yes.

20 Q: Have you solicited?

21 A: We've looked at other alternatives.

22 Q: They're how far way?

23 A: There's a facility probably five miles east of  
24 our Laurens County line. There's a facility  
25 probably ten, 12 miles west of our county line

1           that we could, if needed --

2       Q:    These are commercially-owned facilities?

3       A:    One of them is operated by Greenville County,  
4           Twin Chimneys.

5       Q:    Right.

6       A:    And the other is operated by Republic  
7           Industries that I mentioned earlier.

8       Q:    Have you inquired of Greenville County whether  
9           or not they would accept waste from Laurens  
10          County?

11      A:    We've made inquiries, yes, sir.

12      Q:    Recently?

13      A:    In the last six months.

14      Q:    All right. Prior to that, do you know whether  
15          Greenville County accepted waste from outside  
16          the County?

17      A:    Well, shortly after they opened, and I don't  
18          remember when they opened, we made inquiries  
19          then, too.

20      Q:    And they said what?

21      A:    At that time they said yes.

22      Q:    Okay. With respect to the issue of need, do  
23          you know -- and, by the way, let me ask you  
24          about the problem with finding places. Are you  
25          aware of any unlawful dumping activities in

1           Laurens County?

2       A:    I'm aware of them in Laurens County and the  
3           State of South Carolina and all of the United  
4           States, trash and illegal dumping, yes, sir.

5       Q:    All right.  So do you have any -- has Laurens  
6           County taken any steps to try to curb unlawful  
7           dumping of C&D waste?

8       A:    We enforce it as vigorously as we can.  We have  
9           officers that work litter control and all of  
10          our law enforcement.  We try to reduce the  
11          amount of litter, dumping of all types.

12      Q:    Well, in your role as public works director, do  
13          you have any -- do you have any opinion about  
14          whether or not the availability of additional  
15          disposal locations proximate to the point of  
16          generation would have an impact on illegal  
17          dumping?

18      A:    To be honest, I don't think the number or the  
19          distance to facilities is the issue in illegal  
20          dumping, from what I see.

21      Q:    Do you know whether that's what the Department  
22          of Health and Environmental Control is doing  
23          about illegal dumping in terms of proximity?

24      A:    No, sir, I don't.

25      Q:    So you don't have any opinion on that or think

1           that it's not.

2           I understood you to say, I think, is that you

3           understand that the County's role is not to

4           make a determination on need.

5    A:    Yes, sir, that's correct.

6    Q:    That's for DHEC.

7    A:    Right.           We    don't    have    that    legal

8           responsibility.

9    MR. LAVENDER:    Okay.    Your Honor, if I could have

10           one minute.

11                                (Off the record.)

12    MR. LAVENDER:    Your Honor, I don't have any further

13           questions at this time.

14    MS. WILLIAMS:    I just have a couple of questions,

15           Mr. Holland.

16    THE WITNESS:    Yes, ma'am.

17    MR. HOLLAND - CROSS-EXAMINATION BY MS. WILLIAMS:

18    Q:    Are you familiar with Laurens County's most

19           recent solid waste management plan?

20    A:    Yes, ma'am.

21    Q:    And can you tell the Court how many C&D

22           landfills are allowed by that plan?

23    MR. CHANDLER:    Your Honor, I object.    This is

24           irrelevant.    If they're going to hold me to a

25           strict standard of relevancy, the question of

1 consistency with the plan is a separate issue  
2 and not before the Court.

3 **THE COURT:** Well, didn't I allow your evidence in a  
4 while ago?

5 **MR. CHANDLER:** I don't think there was any -- I  
6 don't remember asking anything about the plan  
7 and I don't remember any objection about the  
8 plan.

9 **THE COURT:** Well, let me ask you to rephrase that  
10 question. Isn't the plan, the current plan  
11 right now, relevant as to the determination in  
12 this matter?

13 **MR. CHANDLER:** No, sir. I think if you look back at  
14 the decision you made in the fall of 2008 in  
15 that Horry County case, consistency with the  
16 plan is one issue; need is an entirely separate  
17 and distinct issue.

18 **THE COURT:** Oh.

19 **MS. WILLIAMS:** Well, Your Honor, I think that it  
20 does speak to need, how many C&D landfills they  
21 allow for in their plan, because by them not  
22 prohibiting landfills, C&D landfills, then it's  
23 saying that it has a need for one.

24 **THE COURT:** Well ...

25 **MS. WILLIAMS:** Or it's not saying that it doesn't

1 have a need, and need is the issue here.

2 **THE COURT:** I'm going to let it in. It doesn't  
3 carry a lot of probative value that I can see  
4 at this point in time.

5 Mr. Lavender?

6 **MR. LAVENDER:** With all due respect to the  
7 Department, I find myself aligned with  
8 Mr. Chandler on this issue.

9 We have not only found ourselves on the losing  
10 end of our motion for summary judgment, but  
11 ultimately found ourselves, we thought, limited  
12 to the question of paragraph (D)(3)(d) and the  
13 additional factors with respect to need and so  
14 we -- again, we don't want this --

15 **THE COURT:** Here's my struggle --

16 **MR. CHANDLER:** We don't want, as Mr. Chandler says,  
17 this can of worms open to what we believe,  
18 also, and have consistently taken the position  
19 that the solid waste plan does not bear on need  
20 and that the County's expression of need, for  
21 purposes of demonstration of need, is not  
22 relevant and so we would join in his objection.

23 **THE COURT:** Okay. Number one, Mr. Chandler has made  
24 the argument that in assessing need, I need to  
25 understand the whole picture -- is that -- or

1 the entire picture of need, rather than just  
2 the narration of additional factors. So I take  
3 that and I move to this issue.

4 The County's assessment of -- through this  
5 approach of need -- I tell you what. I said  
6 this is of limited probative value.

7 Ms. Williams, I'm just going to -- to me, it's  
8 not sufficiently probative to establish any --  
9 I keep using that word over and over in this  
10 case -- and that's salient point, because  
11 that's just their assessment. I need to  
12 determine the need based on the facts of the  
13 case, do I not?

14 **MS. WILLIAMS:** That's correct, Your Honor. But I  
15 think his answer will go along with the fact  
16 that DHEC followed the DON regulation in that  
17 it did not site more than two landfills, C&D  
18 privately-owned landfills in that area, in  
19 their County.

20 **THE COURT:** Well, rephrase your question and let's  
21 see where we go from there.

22 **Q:** Let's see how I can rephrase this.

23 How many landfills, C&D landfills, are  
24 currently sited in Laurens County?

25 **A:** I believe they're two; one public, one private.

1 Q: And are you familiar with the DON regulation in  
2 terms of how many privately-owned landfills can  
3 be sited in a county?

4 A: You're talking about the DHEC regulation?

5 Q: Yes, the DHEC state regulations regarding the  
6 demonstration of need.

7 A: Generally familiar with them.

8 Q: Okay. With the siting of the MRR Highway 92  
9 landfill in Laurens County, how many  
10 privately-owned landfills does that give  
11 Laurens County?

12 A: That would be the second one, if it was sited.

13 Q: And if that is the second one, would you say  
14 that that concurs with the  
15 demonstration-of-need regulation, that there  
16 cannot be more than two privately-owned  
17 landfills in one county?

18 A: You're asking me about the DHEC  
19 demonstration-of-need regulation. I'm --

20 Q: Right. You said you were familiar with it.  
21 That's why I was --

22 A: I am familiar with it, but it doesn't speak to  
23 numbers within a county that I'm aware of. It  
24 speaks to numbers within a certain radius.

25 Q: All right. But just for your county, I'm just

1 going to ask about your county, how many --  
2 with the siting of the MRR Highway 92 landfill,  
3 how many privately-owned C&D landfills will  
4 that give your county?

5 A: That will be two.

6 MS. WILLIAMS: All right. Thank you very much.  
7 That's all I had.

8 THE COURT: Follow-up?

9 MR. HOLLAND - REDIRECT EXAMINATION BY MR. CHANDLER:

10 Q: Mr. Holland, a minute ago Mr. Lavender asked  
11 you a question about whether the availability  
12 of more landfills would help with the problem  
13 of open dumping and I think you editorialized  
14 a little bit about your answer there. Let me  
15 make sure I understand what your answer was.  
16 If we have more landfills in the County, do you  
17 think that's going to help with the problem of  
18 illegal dumping?

19 A: I don't believe that's a factor in why people  
20 either litter or dump illegally.

21 Q: And why do you say that?

22 A: My opinion is that it's -- there's two factors.  
23 One is to avoid cost of disposal, if it's large  
24 amounts, and the other is just pure laziness;  
25 don't want to take the time to get to a proper

1 facility.

2 MR. CHANDLER: Thank you. That's all I have.

3 THE COURT: You may step down.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 THE COURT: Let's go as far as we can.

7 MR. CHANDLER: Your Honor, Petitioner would call  
8 Kent Coleman.

9 KENT COLEMAN, having been duly sworn, testifies and  
10 examines as follows:

11 MR. COLEMAN - DIRECT EXAMINATION BY MR. CHANDLER:

12 Q: Would you please give us your name?

13 A: Yes, sir, my name is Kent Coleman.

14 Q: Mr. Coleman, where do you live?

15 A: I live in Northeast Columbia, South Carolina.

16 Q: Okay. And where are you employed?

17 A: South Carolina Department of Health and  
18 Environmental Control.

19 Q: And what's your position?

20 A: I'm the -- I head up the division of mining and  
21 solid waste management.

22 Q: And how long have you been in that position?

23 A: Approximately a year and a half.

24 Q: Okay. And immediately prior to taking that  
25 position, were you in that same section at

1 DHEC?

2 A: No, sir.

3 Q: Where were you prior to taking that job?

4 A: I was heading up the division of underground  
5 storage tank management.

6 Q: Okay. Prior to that where were you working?  
7 You were working within DHEC in another  
8 department prior to that, weren't you?

9 A: That's correct.

10 Q: And what was that?

11 A: I was section manager in CERCLA.

12 Q: And CERCLA is sometimes known as Superfund?

13 A: Yes, sir.

14 **THE COURT:** Speak up a little bit louder.

15 **THE WITNESS:** Sorry.

16 Q: It's a little bit of a misnomer now. Superfund  
17 is not so super in terms of money in it  
18 anymore, is it?

19 A: That's what some folks are saying, yes, sir.

20 Q: Now, earlier in this case you were designated  
21 as the spokesman for the Department under a  
22 deposition taken under what's known as Rule  
23 30(b)(6). Do you recall that?

24 A: Yes, sir.

25 **MR. CHANDLER:** Okay. Your Honor, we have marked as

1           Petitioner's Exhibit Number Five the transcript  
2           of the 30(b)(6) deposition of Mr. Coleman. And  
3           under the rules, we're allowed to use testimony  
4           from a 30(b)(6) deposition for any purpose, I  
5           believe.

6   **THE COURT:** Yeah, I know the rules.

7   **MR. CHANDLER:** And I would like to offer into  
8           evidence -- I have a sealed original and I also  
9           have a copy of it that we have marked and I  
10          would like to offer that into evidence at this  
11          time.

12   **THE COURT:** Any objection?

13   **MR. LAVENDER:** None.

14   **MS. WILLIAMS:** No, Your Honor.

15   **THE COURT:** It's admitted.

16   **MR. CHANDLER:** Do you have a preference as to  
17          whether we put this one as supposed to the  
18          copy?

19   **THE COURT:** Any objection to the copy being put in?

20   **MR. LAVENDER:** None, Your Honor.

21   **MS. WILLIAMS:** No objection, Your Honor.

22   **THE COURT:** Then the copy is admitted.

23   (Petitioner's Exhibit Number Five was admitted into  
24   evidence.)

25   **Q:** Now, Mr. Coleman, I'm going to hand you a few

1 documents that I want you to identify for me.  
2 I've got a letter that's been marked as  
3 Petitioner's Exhibit Number Seven, which  
4 appears to be a letter to Joan Litton at DHEC  
5 from Rudy Curtis of B.P. Barber and Associates.  
6 Do you recognize that letter?

7 A: Yes, sir, I've seen this letter.

8 Q: Okay. And is that the letter that requested a  
9 demonstration-of-need approval for the landfill  
10 that's at issue here today?

11 A: Yes, sir.

12 MR. CHANDLER: Okay. We would ask that Petitioner's  
13 Exhibit Seven be admitted into evidence.

14 MR. LAVENDER: No objection.

15 MS. WILLIAMS: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (Petitioner's Exhibit Number Seven was admitted into  
18 evidence.)

19 MR. CHANDLER: Okay.

20 THE COURT: That's the first one we've gotten no  
21 objection.

22 MR. CHANDLER: I think we have a few of them here,  
23 Your Honor.

24 THE COURT: Okay.

25 Q: Mr. Coleman, I've got another letter here

1 that's been marked as Petitioner's Exhibit  
2 Nine. What is that?

3 A: This is a March 3rd, 2006 letter from the  
4 Department. The "RE" line on the letter is  
5 "demonstration-of-need approval."

6 Q: Okay. So this is the letter under which the  
7 Department said that the demonstration-of-need  
8 request that was made by the letter that is  
9 Exhibit Seven, it was approved by this  
10 letter --

11 THE COURT: I think that's -- you're talking about --

12 MS. WILLIAMS: Your Honor, Eight.

13 THE COURT: You called it -- Petitioner's Eight I  
14 think is what you're referring to?

15 MR. CHANDLER: Well, I was referring to -- I was  
16 just mentioning the letter requested approval  
17 was Number Seven. Number Eight --

18 THE COURT: But he just said the "RE" line said  
19 "demonstration-of-need approval."

20 MR. CHANDLER: Right.

21 THE COURT: That's Petitioner's Eight, I think.

22 MR. CHANDLER: Yes, sir, it is.

23 THE COURT: Okay. You called it Nine, so ...

24 MR. CHANDLER: Okay. All right. I've got Nine in  
25 front of me. I was looking at it rather than

1 thinking.

2 THE COURT: Well, for the record to be clear, you're

3 talking about Eight.

4 MR. CHANDLER: Eight.

5 Q: Okay. So, to make sure we're clear,

6 Petitioner's Number Eight is the approval of

7 the demonstration of need.

8 A: Yes, sir.

9 MR. CHANDLER: Okay. Then we would move Number

10 Eight into evidence, Your Honor.

11 MS. WILLIAMS: No objection, Your Honor.

12 MR. LAVENDER: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Petitioner's Exhibit Number Eight was admitted into

15 evidence.)

16 Q: Now, under the terms of this letter, does

17 something else have to happen if this

18 demonstration-of-need approval is to remain

19 effective?

20 A: Yes, sir.

21 Q: Okay. And what is it that has to happen?

22 A: Just to read a portion of the letter, it says,

23 "Please be aware that this approval may be

24 terminated if any of the following occurs," and

25 then there's a list of items there in that

1 paragraph.

2 Q: Okay. Basically, they have to move forward  
3 with the permitting process.

4 A: Correct.

5 Q: Okay. Now, I've got several sheets of paper,  
6 documents that have been marked as Petitioner's  
7 Exhibit Nine. Do you know what that is?

8 A: (Reading.) Yes, sir, I have seen this before.  
9 It's -- the first -- let's see. The first item  
10 is a list of questions and answers to those  
11 questions that were submitted by Mr. Jeff  
12 Nichols and answered by the Department.

13 **MR. CHANDLER:** Okay. We would ask that Petitioner's  
14 Exhibit Nine be admitted.

15 **THE COURT:** Any objection?

16 **MS. WILLIAMS:** No objection.

17 **MR. LAVENDER:** We would object to the admission of  
18 Petitioner's Exhibit Nine to the extent that  
19 any portions unrelating (sic) to the question  
20 before the Court are considered. And they --  
21 I'd have to go through and --

22 **THE COURT:** Well, I think Mr. Chandler would agree  
23 with that.

24 **MR. CHANDLER:** I mean, we withdraw the other issue --

25 **THE COURT:** Do y'all want it for anything other than

1           what's before me?

2   **MR. CHANDLER:** Exactly, Your Honor.

3   **MR. LAVENDER:** Because this document is inclusive of  
4           a number of other subject matters that were a  
5           subject of the inquiry, so ...

6   **THE COURT:** So it's admitted for the purpose of the  
7           demonstration of need.

8   **MR. LAVENDER:** Yes, sir.

9   **THE COURT:** All right. It's so admitted.

10   **(Petitioner's Exhibit Number Nine was admitted into**  
11   **evidence.)**

12   **Q:** Okay. Now, Mr. Coleman, one of the questions  
13           that was asked back in June of 2006 was, "What  
14           does the Department have showing a need for  
15           this landfill?" That was one of those  
16           questions, wasn't it?

17   **A:** Were you referring to a specific number?  
18           There's a --

19   **Q:** I think the very first one.

20   **A:** Okay. Question number one, "What data do we  
21           have" -- referring to the Department -- "that  
22           shows that Laurens County has a need for a C&D  
23           landfill?"

24   **Q:** Okay. And what did DHEC say in response to  
25           that?

1 A: It says that "The Department uses the  
2 demonstration-of-need regulation to determine  
3 need."

4 Q: Okay. Now, later in June, did the Department  
5 receive this letter that we have marked as  
6 Petitioner's Exhibit Ten?

7 A: (Reading.) Yes, sir. This is a letter that  
8 was submitted to our commissioner's office,  
9 DHEC commissioner's office.

10 Q: Who is the letter from?

11 A: It has multiple signatures: Representative  
12 Pitts, Representative Taylor, Representative  
13 Duncan, and Senator Verdin.

14 **THE COURT:** V-E-R-D-I-N?

15 **THE WITNESS:** Yes, sir.

16 Q: And this letter related to the proposed  
17 landfill that's at issue in this hearing, isn't  
18 it?

19 A: Yes.

20 **MR. CHANDLER:** Okay. And, Your Honor, I would ask  
21 that this -- well, let me ask this.

22 Q: In the second paragraph of that letter, would  
23 you read for me the first two sentences?

24 A: "First, the proximity" --

25 **THE COURT:** Wait a second. He's publishing the

1 exhibit? Doesn't it need to be admitted first?  
2 MR. CHANDLER: Well, I meant to ask. I offer that  
3 it be admitted into evidence.  
4 THE COURT: Any objection?  
5 MR. LAVENDER: Just the same objection as to only  
6 those portions related to the issue before us.  
7 THE COURT: Okay.  
8 MS. WILLIAMS: I concur, Your Honor.  
9 THE COURT: Same qualification, admitted for the  
10 purpose of demonstration of need.  
11 (Petitioner's Exhibit Number Ten was admitted into  
12 evidence.)  
13 Q: Okay. Would you then publish the first two  
14 sentences of that second paragraph?  
15 A: This letter expresses some concerns that are  
16 documented in the letter. "First, the  
17 proximity to a current C&D landfill on Curry  
18 Lake Road in the Gray Court area of Laurens  
19 County. We question the need for a second  
20 landfill in this relatively short distance."  
21 Q: Okay. Now, I've got a letter and an attachment  
22 that's marked as Petitioner's Number Thirteen.  
23 Do you recognize that as a letter the  
24 Department received relating to this proposed  
25 landfill?

- 1 A: (Reading.) I'm not really -- I don't believe  
2 I've seen -- I don't recall seeing this letter  
3 before, but it's -- it is addressed to my  
4 predecessor.
- 5 Q: Okay. And it has a stamp indicating that it  
6 was received by the division of mining and  
7 solid waste management?
- 8 A: Yes, it does.
- 9 MR. CHANDLER: Okay. We would ask that Petitioner's  
10 Exhibit Thirteen be admitted into evidence.
- 11 MS. WILLIAMS: Your Honor, DHEC objects to this  
12 based on relevance. We don't see anything in  
13 this letter that speaks to need for the  
14 landfill. It's just giving the opinion of the  
15 Town of Gray Court that they don't want the  
16 landfill. But they don't address whether or  
17 not the landfill is needed in this letter.
- 18 MR. LAVENDER: Join in that objection, Your Honor.
- 19 THE COURT: Mr. Chandler?
- 20 MR. CHANDLER: Bear with me just a moment, Your  
21 Honor. (Reading.)  
22 Your Honor, I believe they're right. It  
23 doesn't mention need. I'll withdraw that.
- 24 THE COURT: Okay.
- 25 Q: Mr. Coleman, as part of your work at the

1 Department of Health and Environmental Control,  
2 do you supervise the preparation of an annual  
3 report on solid waste in South Carolina?

4 A: Yes, sir.

5 Q: And you issue those reports based on each  
6 fiscal year which runs, what, July 1st to June  
7 30th?

8 A: Yes, sir.

9 Q: Now, I've got two documents that have been  
10 marked as Petitioner's Exhibit Number  
11 Twenty-four and also Twenty-five. Are these  
12 portions of those reports for fiscal year 2007  
13 and 2008?

14 A: They appear to be, yes.

15 MR. CHANDLER: I would ask that Petitioner's  
16 Exhibits Twenty-four and Twenty-five be  
17 admitted into evidence, Your Honor.

18 MR. LAVENDER: Your Honor, we would -- I was looking  
19 for the date of publication of these documents,  
20 but we would object to the relevance of at  
21 least the '08 report because I'm not sure this  
22 information through fiscal year '08 is filed  
23 with the Department until September -- well, he  
24 can ask that question. But I don't believe  
25 that this information was in the Department's

1 hands at the time of its decision for the '08  
2 report. I think that probably is not the case  
3 with '07, with the '07 information is -- was a  
4 matter of public record at the time the  
5 decision was made, but we object to Exhibit  
6 Twenty-five, I think is -- the '08, if they  
7 were in chronological order.

8 **MS. WILLIAMS:** I concur, Your Honor.

9 **THE COURT:** Mr. Chandler?

10 **MR. CHANDLER:** Your Honor, I don't really think the  
11 test of admissibility is whether or not it was  
12 available to the Department at the time of the  
13 decision. I think the test of admissibility is  
14 whether it tends to prove or not a fact at  
15 issue in this case and this proceeding does  
16 have elements of a de novo hearing with the  
17 Court making its own decision and I think that  
18 they are relevant on that basis.

19 **MS. WILLIAMS:** But, Your Honor, I believe the issue  
20 here today is whether DHEC -- or should DHEC --  
21 should have DHEC looked at additional factors.  
22 And DHEC certainly could not have looked at any  
23 factors that came to light after we made the  
24 permitting decision.

25 **THE COURT:** Well, where I struggle --

1 MS. WILLIAMS: So I concur with Mr. Lavender.

2 THE COURT: -- with that is, I think the -- if it's  
3 a de novo hearing -- in other words, the case  
4 law has made it pretty clear -- he said it has  
5 elements. I don't know where he gets the  
6 "elements" from. It is the element of a de  
7 novo hearing -- then the Court stands in the  
8 position of determining whether or not there  
9 are additional factors.

10 Mr. Lavender, I know you're going to object.  
11 Go ahead and put it on the record.

12 MR. LAVENDER: Well, I was going to at least express  
13 a position with respect to this de novo cloud  
14 that's been floating around us because I still  
15 think that the mere fact that the term "de  
16 novo" is used in the statute doesn't  
17 necessarily put the Court in the position of  
18 making a decision based on what you receive  
19 today, even if it occurred --

20 THE COURT: I understand.

21 MR. LAVENDER: -- after it created the information.  
22 I think that this is a de novo hearing to  
23 examine the propriety of the staff decision at  
24 the time it was made, rather than creating an  
25 entirely new case that the Department could not

1           have -- you can't criticize the Department and  
2           say that the Department erred if it didn't  
3           consider information that didn't exist.

4           So the de novo context --

5   **THE COURT:**   I don't know that the purpose of the  
6           hearing is to criticize the Department or  
7           critique the Department. I think the purpose  
8           of the hearing is just to make a determination  
9           as to what should be done.

10          After this case is another exhibit that  
11          y'all -- after this hearing, there's another  
12          exhibit that y'all have offered into evidence  
13          that is following this same issue. And all of  
14          these exhibits, I'm letting it in subject to my  
15          determination that it's proper for the Court to  
16          consider evidence that occurred after the  
17          Department's determination.

18          I don't think I've ever made a ruling in that  
19          regard and I'm going to research it to make  
20          sure I'm correct in my assumptions. And I'll  
21          allow you to brief it, if y'all want to brief  
22          it, but I'm going to have to research into this  
23          issue. So it's admitted subject to that  
24          determination.

25   **MR. CHANDLER:** All right, sir.

1 (Petitioner's Exhibit Numbers Twenty-four and  
2 Twenty-five were admitted into evidence.)

3 MR. CHANDLER: Your Honor, we're at 11:30 --

4 THE COURT: Okay.

5 MR. CHANDLER: -- if you wanted to break now. I do  
6 have one request. Mr. Holland is here under my  
7 subpoena and I would like to release him from  
8 that subpoena so that he can get back to  
9 Laurens.

10 THE COURT: Any objection?

11 MR. LAVENDER: None.

12 MS. WILLIAMS: No objection.

13 THE COURT: All right. He's released.

14 How much further do you have on this witness?

15 MR. CHANDLER: Probably 30 to 45 minutes.

16 THE COURT: Oh, okay. We're going to break.

17 (Lunch break from 11:31 a.m. to 12:57 p.m.)

18 THE COURT: All right. You're still under oath.

19 THE WITNESS: Yes, sir. Thank you.

20 THE COURT: Mr. Chandler, you're back up.

21 Q: Okay. Mr. Coleman, when we broke for lunch, we  
22 had just placed into evidence the two sections  
23 from the 2007/2008 solid waste management  
24 plans. If you would keep those in front of  
25 you.

1 Now, the 2008 plan, that is marked as Exhibit  
2 Number Twenty-five, would you take a look at  
3 that and specifically turn to the page that has  
4 a number at the bottom, page number 77?

5 A: (Witness complies.)

6 Q: Have you got that in front of you?

7 A: Yes, sir.

8 Q: All right. Now, what does that table on that  
9 page show?

10 A: It's table 7.7, C&D debris generated for  
11 disposal in tons for use and demonstration of  
12 need.

13 Q: Now, does that mean that this table represents  
14 the amount of C&D debris that was generated in  
15 each of these 46 counties that are listed here?

16 **THE COURT:** Mr. Coleman, speak up a little bit  
17 louder.

18 A: This is the table generating numbers for those  
19 counties that we use in calculating  
20 demonstration of need.

21 Q: Okay. And so, for example, the first entry in  
22 this, we're not dealing with here today, but,  
23 for instance, Abbeville County in fiscal year  
24 2004 generated 557 tons of C&D waste.

25 A: That's correct.

- 1 Q: That'd be the way you read that. So let's  
2 slide on down that row. How much C&D waste did  
3 Laurens County generate in fiscal year 2004?  
4 A: Eight thousand four hundred and thirty-four --  
5 Q: Okay.  
6 A: -- tons.  
7 Q: Tons. Now, moving across on that, how much  
8 waste did Laurens County generate in fiscal  
9 year 2005?  
10 A: That'd be 6,635 tons.  
11 Q: Okay. And how many tons of C&D waste did  
12 Laurens County generate in 2006?  
13 A: Nine thousand four hundred and seventy-nine  
14 tons.  
15 Q: All right. And in '07, how much C&D waste was  
16 generated in Laurens County?  
17 A: '07?  
18 Q: '07.  
19 A: Sixteen thousand eight hundred and sixty.  
20 Q: All right, sir. And then the last figure  
21 you've got there is for fiscal year '08. Did  
22 that end at the end of June of '08?  
23 A: Yes, sir.  
24 Q: All right. And how much C&D waste was  
25 generated in Laurens County in fiscal year

1 2008?

2 A: Twelve thousand eight hundred and eleven.

3 Q: Okay. So the highest amount that you've ever  
4 had recorded in Laurens County was in 2007  
5 fiscal year and that was 16,860 tons of C&D  
6 waste?

7 A: Yes, sir.

8 Q: All right. Now, if you would, turn back with  
9 me to page 75 of the same exhibit.

10 A: (Witness complies.)

11 Q: And that's a continuation of a table that  
12 begins over there on page 74, isn't it?

13 A: Yes.

14 Q: All right. And that table that starts on page  
15 74 and ends over on page 75, that lists county  
16 by county what landfills accept C&D debris,  
17 doesn't it?

18 A: It lists C&D debris disposal, the amount that  
19 was disposed, the permitted amount and the  
20 estimated remaining life of the facility --

21 Q: Okay.

22 A: -- by county.

23 Q: By county. And it also lists specific  
24 facilities within each county, doesn't it?

25 A: Yes, sir.

1 Q: Okay. Now, let's turn over to 75. We've got  
2 three entries here for Laurens County, don't  
3 we?

4 A: Yes.

5 Q: And the first one that we come to is the City  
6 of Clinton. And it's got a permitted annual  
7 rate of disposal of 1,375 tons. Am I reading  
8 this correctly?

9 A: That's correct.

10 Q: All right, sir. And the second one we come to  
11 is the Curry Lake landfill. And is it true  
12 that they are currently licensed to receive  
13 241,591 tons each year?

14 A: That's correct. That's the number in their  
15 permit.

16 Q: Okay. Of C&D waste?

17 A: Yes.

18 Q: Okay. And then the third facility there, the  
19 Laurens County landfill, which is no longer  
20 operating, but when it did it was licensed to  
21 receive 8900 tons a year.

22 A: That's correct.

23 Q: Now, it doesn't look like the City of Clinton  
24 facility received much in 2008 or the Laurens  
25 County facility. How much did the Curry Lake

1 landfill receive in C&D waste in the fiscal  
2 year we're dealing with here, fiscal year of  
3 2008?

4 A: Looking at the table, it's 67,331 tons.

5 Q: Okay. Now, I want you to turn back to Exhibit  
6 Twenty-four, the prior fiscal year report, and  
7 turn to page 73 of that report. And on page  
8 73, we basically have the same table but  
9 dealing with fiscal year 2007; isn't that  
10 correct?

11 A: Yes, sir. It's the same as the last one we  
12 looked at, the '08 report.

13 Q: And it shows the same three facilities. And  
14 for the Curry Lake landfill, how much C&D waste  
15 did it receive in 2007, the fiscal year?

16 A: Sixty-seven thousand two hundred and sixty  
17 tons.

18 Q: Okay. So Curry Lake received 670,260 tons in  
19 fiscal year '07 and almost the same amount,  
20 67,331 tons of C&D waste in fiscal year 2008;  
21 am I correct?

22 A: Yes.

23 Q: Okay. Now, I want to talk with you a minute  
24 about how DHEC came up with the determination  
25 that this MRR landfill is needed. Why did you

- 1           have to look at the issue of need, anyway?
- 2    A:    The solid waste policy and management act  
3           directs us to promulgate a regulation to  
4           determine demonstration of need and then it  
5           must meet that regulation, a facility must meet  
6           that regulation prior to us issuing a permit.
- 7    Q:    And there's also a statement in Section  
8           44-96-290 of that act that specifically says  
9           that you can't issue a permit for a solid waste  
10          facility until there is, quote, a demonstration  
11          of need for that facility. Isn't that what  
12          that act says?
- 13   A:    I'm not sure about the exact wording. I'd have  
14          to read it, but it's something in that -- along  
15          that line.
- 16   Q:    Okay. Now, under your process, after the  
17          Department received a letter on behalf of MRR  
18          from B.P. Barber, they gave you a latitude and  
19          longitude; isn't that correct?
- 20   A:    Yes.
- 21   Q:    Okay. Did they give you any other information  
22          bearing on the issue of need?
- 23   A:    (Reading.) Not in this letter. This letter  
24          was just asking basically for an approval at  
25          that location that could be approved under the

1 requirements of the demonstration-of-need  
2 regulation.

3 Q: And, in fact, other than that letter, they  
4 never even sent you any other information  
5 regarding need for this landfill, did they?

6 A: We reviewed everything that we needed to review  
7 in the process of the letter and the permit  
8 application and such that has a bearing on the  
9 demonstration-of-need regulation and those  
10 requirements.

11 Q: Okay. My question was, you didn't receive  
12 anything else beyond this letter from MRR  
13 bearing on the question of need, did you?

14 A: I don't -- I'm not sure exactly how to answer  
15 that, other than to say that, you know, we  
16 followed the demonstration-of-need regulation  
17 and reviewed all the things in that regulation  
18 that we are required to look at.

19 Q: Okay. As you sit here today, can you think of  
20 anything that MRR gave y'all related to the  
21 issue of need?

22 A: Per the requirement of the regulation, we  
23 established that the location was allowable  
24 because within that ten-mile planning area,  
25 there was one other landfill and that there

1 would be allowed to have two landfills, so  
2 under that requirement, we determined that they  
3 could have that location as a C&D landfill and  
4 we also established the maximum amount of  
5 tonnage that was allowable for that planning  
6 area.

7 Q: Yes, sir. Please listen to my question. As  
8 you're here today, and in all of your review of  
9 this, can you think of anything other than this  
10 letter that was -- any information that was  
11 provided to you or the Department by MRR  
12 bearing on the question of need?

13 MR. LAVENDER: Your Honor, I would object to the  
14 question. I think it's been asked and answered  
15 and I think we've already indicated that we're  
16 down to section (D)(3)(d) and not section  
17 (D)(1), which sets out the requirements for  
18 submitting the request to the Department, which  
19 I think the letter speaks for itself and the  
20 regulation states are the only two requirements  
21 that were required to be submitted.

22 THE COURT: Well, he's asking if there's any other  
23 information, which isn't --

24 MR. LAVENDER: Which I thought he had already  
25 answered.

1 THE COURT: But "asked and answered" I think is a  
2 legitimate --

3 MR. CHANDLER: Well, it has been asked and he has  
4 said things in response, but he has not  
5 answered the question, Your Honor.

6 Q: Did you get anything else from MRR specifically  
7 that you can think of?

8 A: Without reviewing the application and all the  
9 comments that came in that we responded to, I'm  
10 not sure how I could answer that, other than to  
11 say we followed the regulation.

12 Q: All right. You can't name anything right now,  
13 can you?

14 A: I can't, no.

15 Q: Thank you. Now, I've got a letter here that  
16 we've marked as Petitioner's Exhibit Number Six  
17 dated December 12th, 2005. Do you recognize  
18 that letter (tendering)?

19 A: (Reading.) It's a demonstration-of-need  
20 approval letter.

21 Q: Okay. And who signed it?

22 A: Joan Litton.

23 Q: And she works for you, right?

24 A: That's correct.

25 Q: Okay. And who did she write the letter to?

- 1 A: Mr. Ron Gilkerson of TAMRON Corporation.
- 2 Q: And what was being approved?
- 3 A: Proposed Laurens C&D and recycling center, long  
4 term and construction and demolition and  
5 land-clearing debris landfill.
- 6 Q: Okay. And that letter sets out a latitude and  
7 longitude, doesn't it?
- 8 A: Yes, it does.
- 9 Q: Okay. And a similar letter that we've marked  
10 as Petitioner's Exhibit Number Eight sets out  
11 a slightly different latitude and longitude,  
12 doesn't it?
- 13 A: (Reading.) Yes.
- 14 Q: Okay. Do you know what the letter that has  
15 been marked as Exhibit Six, does it pertain to  
16 the same landfill that we're dealing with here  
17 today?
- 18 A: I don't know.
- 19 Q: You don't know?
- 20 A: I'm not sure.
- 21 Q: Okay. But both of them are described as  
22 proposed Laurens County landfills?
- 23 A: That's right.
- 24 **MR. CHANDLER:** Okay. Your Honor, I would ask that  
25 Petitioner's Exhibit Six be admitted into

1 evidence.

2 **MR. LAVENDER:** Your Honor, we would object on the  
3 grounds of relevance. It appears to state on  
4 the face of the document that it relates to a  
5 different location entirely. Clearly, the  
6 latitude and longitude are not synonomous with  
7 the letter that was previously submitted  
8 without objection.

9 **THE COURT:** Well, I'm going to sustain that because  
10 of his objection and in combination with the --  
11 he hasn't really established or authenticated  
12 the exhibit, either, so there is enough  
13 speculation about that exhibit that it doesn't  
14 have sufficient probative value to be admitted.

15 **MR. CHANDLER:** All right, Your Honor. We'll come  
16 back to that.

17 **Q:** Now, looking back at Exhibits Number Seven and  
18 Eight, Number Seven was the request for need  
19 approval and that was dated February 21st of  
20 2006, and then Number Eight was dated March  
21 3rd, 2006, and that was the actual approval  
22 that that had been seeking; is that right?

23 **A:** (Reading.) Yes, sir.

24 **Q:** Okay. So it took, let's see, a little over a  
25 week, maybe eight to ten days, to make the

- 1 decision on that demonstration of need?
- 2 A: Well, February 21st to March 3rd.
- 3 Q: Okay. Now, the process, when you got in that  
4 request, when the Department got in the request  
5 from B.P. Barber for this landfill, you plotted  
6 that latitude and longitude on a map, didn't  
7 you?
- 8 A: Yes, the staff did. Sure.
- 9 Q: Then the staff drew a circle around that point  
10 that had been determined using that latitude  
11 and longitude and you drew a circle around that  
12 with a radius of ten miles, didn't you?
- 13 A: That's correct.
- 14 Q: Okay. And then within that ten-mile circle,  
15 what did you do?
- 16 A: We looked at that point in time to determine  
17 whether there were -- how many commercial C&D  
18 landfills were within that circle.
- 19 Q: Okay.
- 20 A: A planning area, as it's referred to.
- 21 Q: All right. And how many did you find in this  
22 case?
- 23 A: One other facility.
- 24 Q: Okay. And that was the Curry Lake landfill --
- 25 A: Yes.

1 Q: -- that has a licensed capacity of 241,591 tons  
2 per year.

3 A: Yes.

4 Q: Okay. And once you had reached that point and  
5 you'd found that one facility with that  
6 capacity, was a decision made at that point?

7 A: Ask me that again, I'm sorry.

8 Q: Once you had plotted that circle and counted  
9 one landfill within that circle, was that a  
10 decision point in the process?

11 A: That's one element that you -- you determine  
12 that there cannot be more than two landfills  
13 within that planning area, so this made the  
14 second landfill, so this would be approvable  
15 under demonstration of need.

16 Q: Because there was only one, there was a  
17 decision made at that point that, yes, we do  
18 need another one.

19 A: I don't know if the decision was made at that  
20 point, but certainly we determined that it  
21 would meet the regulation, yes.

22 Q: Okay. And then what did you do?

23 A: We calculated the maximum allowable yearly  
24 disposal rate using that planning area.

25 Q: Okay. And how do you calculate that maximum

1 disposal rate?

2 A: The method that's prescribed and laid out in  
3 the demonstration-of-need regulation is that  
4 you calculate the disposal that -- the amount  
5 of waste that was generated in that planning  
6 area, which includes all the counties that  
7 touch the planning circle. So basically you  
8 add all the waste from those surrounding  
9 counties that are included in the planning  
10 area, along with the waste that's generated in  
11 Laurens County, which was also in the planning  
12 area, and you come up with a total annual  
13 disposal rate that's allowed under 61-107.17,  
14 which is the demonstration-of-need regulation.

15 Q: Okay. And what was the amount that you came up  
16 with in this case?

17 A: A hundred and fifty-four -- let me -- 154,000  
18 tons.

19 Q: Okay. Is it fair to say that your decision at  
20 that point was that there was a need -- the  
21 decision the Department made was there's a need  
22 for a landfill with 154,000 tons per year of  
23 capacity?

24 A: At that point, the staff, through evaluation of  
25 the demonstration-of-need regulation,

1 determined that there could be a second  
2 landfill in the planning area and that the  
3 maximum amount of tonnage would be 154,000 tons  
4 per years.

5 Q: Okay. Did that mean that you had determined  
6 that there was a need for another 154,000 tons  
7 in that area?

8 A: It determined that under the  
9 demonstration-of-need regulation, that has been  
10 promulgated pursuant to the act, that we were  
11 allowed to have another landfill.

12 Q: Okay. Does the Department consider that to  
13 have been a demonstration of need as required  
14 by the statute?

15 A: Yes.

16 Q: So you determined that there was a need for a  
17 new landfill with a capacity of 154,000 tons a  
18 year at that point?

19 A: The regulation defines how "need" is  
20 determined.

21 Q: Okay. But that was your decision, that we need  
22 another landfill here with 154,000 tons per  
23 year capacity.

24 A: That was our staff determination, yes.

25 Q: Okay. Now, Laurens County, as we've seen, the

- 1 most they've ever generated in any one year was  
2 a little less than 17,000 tons; is that right?
- 3 A: That's what I recall. It was 16,000 and  
4 something.
- 5 Q: Okay. Do you know where that waste goes right  
6 now?
- 7 A: Today?
- 8 Q: Uh-huh (affirmatively responds).
- 9 A: No, I don't.
- 10 Q: Do you know where it went back in 2006 when you  
11 issued this letter?
- 12 A: A portion of it must have gone to the Laurens  
13 County facility.
- 14 Q: Okay.
- 15 A: You're talking about the waste that was  
16 generated in Laurens County?
- 17 Q: Yes, sir, just that 16,000 tons.
- 18 A: I don't know where all of it goes.
- 19 Q: You don't know where all of it goes?
- 20 A: No, I don't.
- 21 Q: Okay. Did you have any information that people  
22 were generating any waste in Laurens County  
23 that didn't have a place to take it?
- 24 A: No.
- 25 Q: No, okay. Now, what were the other two

1 counties you looked at?

2 A: I believe the planning circle touched on  
3 Greenville and Spartanburg counties; is that  
4 correct? I'd have to look at it again, but --

5 Q: Yeah, I believe that's right.

6 Now, how much of Greenville County was  
7 included?

8 A: I don't know. You mean like in square miles or  
9 something? I don't know.

10 Q: Okay. All right.

11 A: A portion of it.

12 Q: Under your regulation, on at least the A, B,  
13 and C part of section (D)(3) of your  
14 regulation --

15 A: Uh-huh (affirmatively responds).

16 Q: -- it really doesn't matter how much of  
17 Greenville County was included in that circle,  
18 does it?

19 A: Per the regulation, if the planning circle  
20 touches a county, then the county is included.

21 Q: So if it included one square yard of Greenville  
22 County, Greenville County would be included;  
23 would that be right?

24 A: Yes.

25 Q: Okay. And so if we include -- if we cover one

- 1 square yard or just a small area of Greenville  
2 County, we're going to add into the capacity  
3 of -- put on the license every single bit of  
4 waste that's generated in the entire county.  
5 Isn't that what you did?
- 6 A: They -- if the circle touches Greenville, the  
7 waste generate by Greenville County could be an  
8 amount that they request in the permit  
9 application as part of their maximum amount.
- 10 Q: The entire amount generated in the whole  
11 county?
- 12 A: That's right.
- 13 Q: Okay. And the other county was Spartanburg.
- 14 A: Yes.
- 15 Q: And was all of Spartanburg County included in  
16 the circle?
- 17 A: The waste generated in Spartanburg County was  
18 included.
- 19 Q: Okay. But only a portion of the county was  
20 included within the circle.
- 21 A: That's correct.
- 22 Q: Okay. But, again, no matter how small a  
23 portion of Spartanburg County is covered by the  
24 circle, you will license a landfill large  
25 enough to include all of the waste generated in

1 Spartanburg County.

2 A: Yeah, the --

3 **MR. LAVENDER:** Your Honor, we would object to the  
4 relevance of these questions and -- all these  
5 questions as they appear to relate to the  
6 validity of the regulation as it defines "need"  
7 as opposed to whether the Department considered  
8 other relevant -- considered other -- reviewed  
9 other relevant -- reviewed additional factors,  
10 sorry.

11 But, you know, the exploration with regard to  
12 whether the regulation does what the statute  
13 says, I thought we'd already crossed that  
14 bridge and gotten to the other side. We would  
15 object to the relevance.

16 **THE COURT:** He's asking him what he considers. I  
17 think your objection is seeking to explore the  
18 potential argument behind his evidence, which  
19 you may or may not debate about its legitimacy.  
20 But, I mean, Mr. Chandler, I think I'm clear  
21 about what the reg says, so I can tell you that  
22 much of it.

23 **MR. CHANDLER:** Well, I'm just trying to make a clear  
24 record here as I move on to the next thing. I  
25 understand the limit of what this Court can

1 rule on and I'm not trying to broaden that by  
2 these questions.

3 **THE COURT:** Okay.

4 **MR. CHANDLER:** I'm just laying out what happens so  
5 that when we get to the next part of my  
6 question, we have that behind us and  
7 established.

8 **THE COURT:** Okay.

9 **MR. CHANDLER:** I think I had a question pending.

10 **Q:** Just as with Greenville and Laurens County, you  
11 include all the waste generated in all of  
12 Spartanburg County?

13 **A:** Yes.

14 **Q:** Okay. Now, at that point, that was where your  
15 inquiry stopped, wasn't it?

16 **A:** Well, I mean, there was a lot of additional  
17 information included in the application that  
18 was reviewed from that point forward and  
19 including public noticing and review of  
20 comments and response to comments and the whole  
21 process beyond that.

22 **Q:** Okay. But what I'm really talking about is  
23 that when the Department was issuing the letter  
24 that is marked as Exhibit Eight dated March  
25 3rd, 2006, at the point that that letter was

1 issued, that's called demonstration-of-need  
2 approval, you had plotted the location, drawn  
3 a circle, counted the landfills in there, saw  
4 what counties it touched, and you added up all  
5 of the waste generated in all three counties,  
6 came up with 154,000 and that is where you  
7 stopped and then you issued that letter. At  
8 that point, that's what happened, isn't it?

9 A: Yes, that's the evaluation that we do under the  
10 demonstration-of-need regulation.

11 Q: Okay. And at that point, no public notice had  
12 been issued, had it?

13 A: Not that I'm aware of.

14 Q: Okay. Now, soon after that decision was made,  
15 as early as June of that year, the Department  
16 began receiving questions from people who  
17 started asking questions about need as  
18 reflected in Petitioner's Exhibit Nine; isn't  
19 that right?

20 A: June 23rd, 2006? We responded to this inquiry.

21 Q: Okay. And the first question that was asked  
22 was, "What evidence do you have of need," or  
23 words to that effect?

24 **THE COURT:** Mr. Coleman, if you could try to speak a  
25 little louder.

1 THE WITNESS: Okay.

2 THE COURT: Speak toward the court reporter.

3 THE WITNESS: Sorry.

4 A: The first question in the letter is, "What data  
5 do we have that shows Laurens County has a need  
6 for a C&D landfill."

7 Q: And the answer you gave was that need was  
8 established by the regulation, essentially,  
9 wasn't it?

10 A: Yes.

11 Q: Okay.

12 A: Yeah. We look at the planning area, which is  
13 a regional concept, and determine based on the  
14 regulation what that entails.

15 Q: Okay. Do you have a regional plan for Laurens,  
16 Greenville and Spartanburg County?

17 A: Those counties would have the option of having  
18 a regional plan, but they have chosen to have  
19 their own individual plans. It was the solid  
20 waste act that talks about regional concepts  
21 for a landfill.

22 Q: Okay. So when you talk about a "regional  
23 plan," you're really just talking about the  
24 planning area that's included within this  
25 circle.

- 1 A: That's a region, yes.
- 2 Q: Okay. And that's what you meant a while ago  
3 about that you had -- you looked at the  
4 region --
- 5 A: Right.
- 6 Q: -- the planning ...
- 7 A: I mean, we know that -- we were aware that  
8 Curry Lake was near there and it takes waste  
9 from six or seven other counties and, you know,  
10 that's kind of the concept of how these things  
11 operate.
- 12 Q: All right. Now, let's take a look at these  
13 other counties. We've already looked at  
14 Laurens County and Laurens County, itself, is  
15 generating -- the most its ever generated is  
16 less than 17,000 tons and it's got a landfill  
17 with -- at least one landfill with a capacity  
18 of over 240,000 tons; isn't that right?
- 19 A: Yeah. Based on the table we looked at that  
20 covers the last four or five years, that was  
21 the highest number that was generated, yes,  
22 16,000 and something.
- 23 Q: All right. And looking back at those Exhibits,  
24 what is it, Twenty-four and Twenty-five, and  
25 let's take a look at Number Twenty-five and

1 look on page 77. How much C&D waste was  
2 generated last year in Spartanburg County?

3 A: (Reading.) In F.Y. '08?

4 Q: Yes, sir.

5 A: Twenty-six thousand three hundred and  
6 sixty-four --

7 Q: Okay.

8 A: -- tons.

9 Q: Now, let's back up in that document to page 75  
10 where it lists the facilities that exist, the  
11 landfills in Spartanburg County. And we've got  
12 what's listed as the Wasp Nest Road landfill;  
13 is that correct?

14 A: Yes, sir.

15 Q: And what is its capacity?

16 A: It's permitted annual rate of disposal for Wasp  
17 Nest Road landfill is 80,000 tons per year.

18 Q: All right. Now, let's go back to page 77 and  
19 let's take a look at Greenville County. Over  
20 the course of the last five years, what's the  
21 most waste that's been generated in Greenville  
22 County that would go to C&D landfills?

23 A: Two hundred and ten thousand nine hundred and  
24 twenty-four tons --

25 Q: Okay.

- 1 A: -- in F.Y. '08.
- 2 Q: All right. Now, let's turn back to page 74 of  
3 Exhibit Twenty-five and let's see what kind of  
4 facilities we have in Greenville County. It  
5 looks like to me the first listed facility in  
6 Greenville County something called Carter  
7 Excavation Company, Big Valley?
- 8 A: Yes.
- 9 Q: Okay. And what's its annual permitted disposal  
10 rate in tons?
- 11 A: Seventy-five thousand tons.
- 12 Q: Okay. And the next facility is Greenville  
13 Republic, and it has an annual permitting  
14 capacity of 200,000 tons, doesn't it?
- 15 A: Yes.
- 16 Q: Okay. And then next we have something called  
17 Twin Chimneys and it has an annual permitting  
18 capacity of a little over 87,000 tons, doesn't  
19 it?
- 20 A: Yes.
- 21 Q: Okay. And then we've got something called  
22 W.C.A. Shiloh, a C&D landfill, and it's  
23 permitted to receive 128,000 tons a year, isn't  
24 it?
- 25 A: Yes.

1 Q: Okay. Now, so if we sum this up, we've got  
2 Laurens with about, say, 17, if we want to  
3 round up the best year they had, and  
4 Spartanburg -- even if you go back and look at  
5 the fiscal year 2007, when it was higher, they  
6 seem to have fallen off in 2008. It went down  
7 from 72,000 tons to only 26. So let's use the  
8 72,000-ton figure.

9 So we've got 72,000 tons in Laurens and we've  
10 got -- I mean, 17 in Laurens, 72,000 in  
11 Spartanburg, and Greenville, about 210; so,  
12 we're looking at a little over 300,000 tons in  
13 the three-county area that's being generated in  
14 the maximum year for all those counties.

15 A: Yeah, that's a ballpark number.

16 Q: Okay. And if we go back and add up the  
17 capacity of the landfills in those three  
18 counties, we've got Curry Lake with 240,000  
19 tons a year; we've got Wasp Nest Lake, or  
20 whatever it is, Road at 80,000; and we've got  
21 four facilities in Greenville with -- one with  
22 75,000; one with 200,000; one with a little  
23 over 87,000; one with 128,000; for a total of  
24 something over 810,000 tons a year capacity;  
25 isn't that right?

- 1 A: That's an approximate number, yes.
- 2 Q: Okay. So whether you're looking at this from  
3 a Laurens County's perspective or from all  
4 three county's perspective, we've got maybe  
5 250 percent of the capacity that would handle  
6 all of the waste generated in those three  
7 counties already, don't we?
- 8 A: Yeah. I mean, except that they -- you know,  
9 many of the landfills in those counties take  
10 waste from other counties, as well.
- 11 Q: Okay. So what is our planning area here? Are  
12 we planning for the whole state?
- 13 A: The planning area for the individual landfill  
14 that we made the demonstration-of-need decision  
15 on was the ten-mile radius circle that we  
16 talked about earlier.
- 17 Q: Okay.
- 18 A: That's how you determine their maximum disposal  
19 rate that's allowable and whether they can  
20 locate there.
- 21 Q: All right. Well, let's go back to page 74 of  
22 Exhibit Twenty-five, for example, Greenville  
23 County. That big landfill, Greenville  
24 Republic, they're licensed for 200,000 tons a  
25 year, but in fiscal '08, they didn't receive

- 1 but 48,000 tons, did they?
- 2 A: Which page are you on?
- 3 Q: Page 74 of Exhibit Twenty-five.
- 4 A: Which one are you asking me about, again?
- 5 Q: About the Greenville Republic.
- 6 A: Okay. That's right. They're permitted for  
7 200,000 maximum; they took 48,057 tons.
- 8 Q: Okay. And Twin Chimneys is licensed for a  
9 little over 87,000, but they took in only  
10 51,000.
- 11 A: Correct.
- 12 Q: And W.C.A. Shiloh is licensed for 128,000 tons;  
13 they took in a little over 80,000 tons.
- 14 A: Yes.
- 15 Q: Okay. So wherever they're getting it from,  
16 they're not using up all of their licensed  
17 capacity right now, are they?
- 18 A: That's right.
- 19 Q: Okay. Now, earlier in this case, when we took  
20 your deposition, you said that the existing  
21 capacity, 240,000 tons of capacity that exists  
22 at Curry Lake, was not taken into account in  
23 the need determination. That's what you said,  
24 isn't it?
- 25 A: The amount of waste that they are permitted

1           for?

2       Q:    Yes, sir.

3       A:    That's right.

4       Q:    Okay.  And you also said that the existing  
5           capacity in Spartanburg and Greenville County  
6           was also not taken into account; isn't that  
7           right?

8       A:    That's correct.

9       Q:    Okay.  And so you also didn't take into account  
10           the fact that these three counties have over  
11           800,000 tons of capacity while they're  
12           generating only around 300,000 tons of waste.  
13           You didn't take that into account, did you?

14      A:    That's right.  We followed the regulation --

15      Q:    Okay.

16      A:    -- which gives us the criteria that we look at.

17      Q:    All right.  Now, when was the first time y'all  
18           actually did put this thing out on public  
19           notice and start receiving public comments?

20      A:    I don't know the date.

21      Q:    Okay.

22      A:    I know --

23      Q:    Was it around February of 2008?

24      A:    That could be right.  It was sometime prior  
25           to -- in the summer of '08, we issued the

- 1 permit, so it was sometime prior to that.
- 2 Q: Okay. Let me hand you a document marked  
3 Petitioner's Exhibit Sixteen. Is this a letter  
4 to Mr. Gilkerson attached to a draft permit?
- 5 A: Yes, it is.
- 6 Q: Okay. And that draft permit was actually what  
7 sort of triggered the public notice and public  
8 comment process, wasn't it?
- 9 A: Yes.
- 10 Q: And so attached at the end of that stack of  
11 documents was a public notice that was issued  
12 around that same time, February 14th, 2008;  
13 isn't that correct?
- 14 A: The next to the last page, which is the public  
15 hearing announcement, and then the final page  
16 is the postal service.
- 17 Q: It's just the return receipt from  
18 Mr. Gilkerson.
- 19 A: Uh-huh (affirmatively responds).
- 20 Q: Whose handwriting isn't really that bad.  
21 That's just those electronic things you sign at  
22 the post office that messes your signature up,  
23 isn't it?
- 24 A: No comment.
- 25 Q: All right. So no public notice had been issued

1 before then, had it?

2 A: I'm not aware of any.

3 Q: Okay. Now, then a public hearing was held on  
4 March 13th, 2008. And this exhibit that we've  
5 marked as Number Seventeen, that's the agenda  
6 for that public hearing, isn't it?

7 A: (Reading.) Yes, it is.

8 **MR. CHANDLER:** Okay. Your Honor, I would move that  
9 Exhibits Sixteen and Seventeen, the letter with  
10 the draft permit and public notice and the  
11 agenda and fact sheet for the public hearing,  
12 which is Number Seventeen, that Sixteen and  
13 Seventeen be admitted into evidence.

14 **MS. WILLIAMS:** No objection, Your Honor.

15 **MR. LAVENDER:** One minute, Your Honor. I'm trying  
16 to catch up with the next one, with the second  
17 one. (Reading.)

18 No objection.

19 **THE COURT:** They're admitted.

20 **(Petitioner's Exhibit Numbers Sixteen and Seventeen  
21 were admitted into evidence.)**

22 Q: Mr. Coleman, did you attend the public hearing?

23 A: Yes, I did.

24 Q: Okay. And during that public hearing, did the  
25 Department receive any comments or questions

1 relating to whether or not this landfill was  
2 needed?

3 A: I would really have to look at the transcript  
4 to see specifically, but I do recall that, you  
5 know, at least there were some questions about  
6 why it's needed or whether it's needed, yes,  
7 from the public.

8 Q: Okay. And at that point, you had already had  
9 for a couple of years a resolution from Laurens  
10 County Council questioning the need and the  
11 letter from members of the House and Senate  
12 questioning need. You had had those things for  
13 sometime.

14 A: Yeah, we looked at those letters earlier.

15 Q: Okay. And the document we've marked as  
16 Petitioner's Exhibit Twenty, is that a cover  
17 letter and the comments that were submitted to  
18 the Department by the group that is known as  
19 Engaging and Guarding Laurens County's  
20 Environment or EAGLE?

21 A: Yes, it is.

22 Q: Okay. And the comments of this organization,  
23 the very first numbered point that they made  
24 was an argument that there is no need for this  
25 landfill; isn't that correct?

1 A: That's what it's titled, "There is no need for  
2 the landfill."

3 MR. CHANDLER: All right. Your Honor, we would  
4 offer Petitioner's Exhibit Twenty for the  
5 purpose of showing that the question of need  
6 was raised with the Department during the  
7 public hearing process.

8 THE COURT: Well, he's already testified to that  
9 effect, but any objection?

10 MS. WILLIAMS: No objection, Your Honor.

11 MR. LAVENDER: None, Your Honor.

12 THE COURT: All right. It's admitted for those  
13 limited purpose -- or that limited purpose.

14 (Petitioner's Exhibit Number Twenty was admitted into  
15 evidence.)

16 Q: Now, Mr. Coleman, a few months after that  
17 public hearing, the Department went forward and  
18 issued a permit. And I'm handing you a letter  
19 with attachments marked Petitioner's Exhibit  
20 Twenty-one. Is that the transmittal letter and  
21 the permit that was sent to Mr. Gilkerson for  
22 this landfill that we have at issue?

23 A: (Reading.) Yes.

24 MR. CHANDLER: Okay. I'm going to ask that Exhibit  
25 Twenty-one be admitted into evidence.

1 THE COURT: All right. Is this debateable?  
2 MS. WILLIAMS: No objection.  
3 MR. LAVENDER: Checking pages, Your Honor, sorry.  
4 THE COURT: Oh, okay.  
5 MR. LAVENDER: No objection.  
6 THE COURT: It's admitted.  
7 (Petitioner's Exhibit Number Twenty-one was admitted  
8 into evidence.)  
9 Q: All right. Now, Mr. Coleman, on the same date,  
10 a memorandum was sent out to, as this states,  
11 concerned citizens, just letting other people  
12 know that this permit was being issued; isn't  
13 that correct?  
14 A: Yes, that's correct.  
15 Q: And that's reflected in the document we've  
16 marked as Petitioner's Exhibit Twenty-two; is  
17 that right?  
18 A: Yes, it is.  
19 Q: Okay. Now, attached to this letter is also  
20 a -- what's titled a "staff decision summary  
21 report." Was that sent out with the memo?  
22 A: Yes, sir, it was.  
23 MR. CHANDLER: We would ask that Exhibit Twenty-two  
24 be placed into evidence.  
25 MS. WILLIAMS: No objection, Your Honor.

1 MR. LAVENDER: I don't have the complete one. Do  
2 you know how many pages it consists of?

3 MR. CHANDLER: Let's see.

4 THE COURT: How about just show the exhibit to  
5 Mr. Lavender.

6 MR. LAVENDER: I've got eight sheets, but I don't  
7 think that's everything.

8 (Off the record.)

9 MR. LAVENDER: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Petitioner's Exhibit Number Twenty-two was admitted  
12 into evidence.)

13 MR. CHANDLER: All right. Your Honor, this is the  
14 exhibit that in the packet that I handed up to  
15 the Court has a loose page. When we bound it,  
16 that page somehow got left out, but that loose  
17 page fills that in.

18 Q: Now, Mr. Coleman, in this staff decision  
19 summary report, there is a section that's  
20 titled "Need for the Landfill;" isn't that  
21 correct?

22 A: Yes.

23 Q: Okay. And in response to the comments that you  
24 had received about need, what did the  
25 Department say?

- 1 A: We said that the Department addresses the need  
2 using the demonstration-of-need regulation and  
3 we go on to explain a little bit more about  
4 that.
- 5 Q: Okay. And, basically, you told the public that  
6 you found need based on the formula that we've  
7 been discussing here today; isn't that correct?
- 8 A: Yes, that is correct.
- 9 Q: Okay. And in the permit that was issued, it  
10 set a capacity of 154,000 tons per year.
- 11 A: (Reading.) Let me look at the permit real  
12 quick, because sometimes -- do I still have  
13 that exhibit, with the final permit?
- 14 Q: Let's see. I think it may be right up here.
- 15 A: (Reading.) Yes, the allowable rate of disposal  
16 in the permit is 154,000 tons per year.
- 17 Q: Okay. Now, the regulation that you mentioned  
18 in that explanation to the public, you're  
19 referring to Regulation 61-107.17, aren't you?
- 20 A: Yes, sir.
- 21 Q: Okay. And in the process of determining need,  
22 you had gone through section -- used part D of  
23 that regulation that's titled "determining  
24 need," didn't you?
- 25 A: Yes, sir, I believe that's --

1 Q: Okay. And the rest of the other stuff fits in,  
2 but that's what you went through. And you  
3 looked at the -- as it requires in (1)(A) under  
4 D, you looked at latitude and longitude, right?

5 A: Yes.

6 Q: And you looked at the proposed disposal rate.  
7 Well, what did the company ask for when they  
8 first asked for a demonstration of need?

9 A: I'm not sure I know what you're asking.

10 Q: All right. Well, I'll make it easy for you.  
11 When Rudy Curtis wrote his letter in on behalf  
12 of this landfill, he just asked for a  
13 determination of need based on the maximum  
14 amount he could get, didn't he?

15 A: (No response.)

16 Q: Yeah, he said -- and he underlined this, "the  
17 maximum annual tonnage limit allowed," was what  
18 he wanted.

19 A: He is asking us at this time to determine the  
20 maximum allowable, yes, that's right.

21 Q: Okay. All right. So you look at that for  
22 sections (1)(A) and (1)(B) of part D of this  
23 regulation. Now --

24 A: I don't have the regulation in front of me, so  
25 if you -- I mean, if you want to talk about

1 that, specifically, I'd like to have it,  
2 because I'm not -- you're asking me what we  
3 considered, what parts. I mean, we do consider  
4 the entire regulation, but I'm not -- I'd feel  
5 more comfortable with it in front of me.

6 Q: Okay. (Tendering.) Do you recognize this as  
7 that part of that regulation --

8 A: Yes, I see --

9 Q: -- what I've just handed you?

10 A: Section D, determining need.

11 Q: Okay. All right. And you moved on down  
12 through that regulation and you got to the  
13 point in number three where you located on the  
14 map and you draw a circle and you create a  
15 planning area.

16 A: That's correct.

17 Q: Okay. And then you count and see how many  
18 landfills are within that planning area.

19 A: Yes, sir.

20 Q: And if you stop counting at one, then that  
21 means you move to the next step, which is to  
22 determine the maximum allowable disposal  
23 capacity.

24 A: That's correct.

25 Q: And that's what you did.

1 A: Yes.

2 Q: Okay. Now, that's that takes care of section  
3 (3)(A), (B), and (C). Does the regulation stop  
4 there?

5 A: (No response.)

6 Q: I mean, I'm just talking about that specific  
7 part of it.

8 A: There's a whole other page.

9 Q: Okay. But there's also a little D within that  
10 particular part of the regulation.

11 A: Yes.

12 Q: And it says that, "The Department reserves the  
13 right to review additional factors in  
14 determining need on a case-by-case basis;" is  
15 that right?

16 A: Yes.

17 Q: Okay. And you told me in your deposition that  
18 that was put in there in case you run into a  
19 situation that was not anticipated by the  
20 regulations.

21 A: Yes. That's pretty common for there to be  
22 language like "unless otherwise determined by  
23 the Department," or something like this, just  
24 in recognition that when you're writing and  
25 contemplating a regulation, you can never

1 completely predict every situation that might  
2 arise and you want to be able to make a  
3 decision, if you need to.

4 Q: Okay. Now, in your deposition, you said that  
5 you didn't use this section in your analysis;  
6 isn't that correct?

7 A: We're aware of the section.

8 Q: But you didn't use it in your analysis in this  
9 case?

10 A: We were aware of a lot of other issues that  
11 were brought to our attention through the  
12 process. We considered all of the public  
13 comments and responded to those comments, but  
14 none of them rose to the level of something  
15 that, based on our review of the regulation,  
16 would change our decision in terms of issuing  
17 a permit.

18 Q: Okay. Now, other than the little paragraph  
19 that was in the July 18th, 2008 memorandum to  
20 concerned citizens, Petitioner's Exhibit Two,  
21 other than the little paragraph about "need"  
22 there, and other than the answers to Jeff  
23 Nichols' questions submitted back in June of  
24 2006, is there any document that the Department  
25 ever generated that responds to the comments

1 that you received?

2 A: There were a number of face-to-face meetings  
3 with concerned citizens, I think three, in  
4 addition to the public hearing, which was a  
5 fourth. But there are, you know, notes in the  
6 record that were taken at those meetings where  
7 these issues were also discussed and answered  
8 in those meetings with the citizens. But other  
9 than that, I'm not aware of anything else.

10 Q: Okay. Did you ever tell the citizens anything  
11 other than that "we followed the regulation,  
12 this landfill met the test of the regulations"?  
13 Did you say anything that varied on that answer  
14 at all?

15 A: Not that I'm aware of.

16 Q: Okay. And did you ever give them any answer or  
17 any explanation of why you didn't look at  
18 additional factors?

19 A: We explained why -- how we are directed by this  
20 regulation to evaluate this question in a  
21 certain way and that's what we do; we explained  
22 that.

23 Q: Okay. And what way does this regulation direct  
24 you to evaluate this question?

25 A: We discussed the planning circle, determining

- 1 the maximum number of landfills in the circle,  
2 and calculating the allowable tonnage per  
3 landfill that's proposed.
- 4 Q: Okay. Is there anything in your regulation  
5 that defines what are "additional factors"?
- 6 A: Not specifically, no.
- 7 Q: Is there any guidance document that DHEC has  
8 ever put together that defines what are  
9 "additional factors"?
- 10 A: Not that I'm aware of.
- 11 Q: Is there anything in this rule that says when  
12 you are to consider additional factors?
- 13 A: It says we reserve the right to do so.
- 14 Q: All right. But you don't have anything that  
15 says, "Under these circumstances, we will  
16 consider them; under these set of  
17 circumstances, we will not." You don't have  
18 any kind of instruction like that in the  
19 regulation anywhere, do you?
- 20 A: Not that I'm aware of.
- 21 Q: And you don't have that in any kind of guidance  
22 document within the Department, either, do you?
- 23 A: No, sir, not that I'm aware of.
- 24 Q: Okay. Now, in the public comments that were  
25 submitted to the Department, there was mention

1 of the Curry Lake landfill and its large  
2 capacity, wasn't it?

3 A: Yes.

4 Q: Okay. And in none of the documents did the  
5 Department ever explain why that wasn't enough,  
6 did you?

7 A: We explained why the regulation allows two  
8 landfills in that planning area.

9 Q: Okay. Is there a definition of the term "need"  
10 in your regulations anywhere?

11 A: No, not that I'm aware of.

12 Q: Okay. Is there a definition of the term "need"  
13 in the statute anywhere?

14 A: The statute directs us to promulgate a  
15 demonstration-of-need regulation which defines  
16 the demonstration of need.

17 Q: Okay. Now, the statute mentions the word  
18 "demonstration" and the regulation mentions  
19 that word, as well. But in reality, the only  
20 thing that the regulation requires anybody to  
21 demonstrate is where they want the landfill;  
22 isn't that true?

23 A: No. I think --

24 Q: What do they have to do?

25 A: The act says we have to promulgate a regulation

- 1 for a demonstration of need.
- 2 Q: That's what it says the Department's got to do.
- 3 I'm talking about the applicant.
- 4 A: That we did went through the proper process.
- 5 And what the applicant has to do is ask us if
- 6 a certain location is suitable and allowable
- 7 under the regulation that was promulgated.
- 8 Q: Okay. They have to ask you that --
- 9 A: Yes.
- 10 Q: -- and that is the Department's regulation
- 11 dealing with the idea of a demonstration of
- 12 need.
- 13 A: That's right.
- 14 Q: Okay. Now, has the Department ever, to your
- 15 knowledge, used this section that talks about
- 16 looking at additional factors?
- 17 A: I'm not aware of it being used to deny or
- 18 approve a new landfill ever, no.
- 19 Q: Okay. Would the Department consider the fact
- 20 that a county has a landfill that will take
- 21 care of ten times the amount of waste that's
- 22 generated in the county, would the Department
- 23 ever consider that an additional factor to take
- 24 into account?
- 25 A: And to reach what conclusion?

- 1 Q: To reach any conclusion.
- 2 A: Under the demonstration-of-need regulation in  
3 our evaluation of that, we have not used that  
4 as an additional factor in the past.
- 5 Q: Okay. You've never used it, you didn't use it  
6 in this case.
- 7 A: That's correct.
- 8 Q: Okay. Could you have used that?
- 9 A: No.
- 10 Q: Why not?
- 11 A: Because if we had to use that, we would have  
12 been arbitrary in our decision and we would be  
13 sitting here with someone else arguing why we  
14 denied the permit.
- 15 Q: Okay. So you didn't look at any other factors  
16 because you were afraid that if you looked at  
17 any additional factors, that would be  
18 considered arbitrary? Is that what you're  
19 saying?
- 20 A: I'm saying that the regulation tells us what --  
21 how to do this calculation and how to determine  
22 whether a landfill can locate in a certain  
23 location and that's what we did.
- 24 Q: Okay. Do you think if the Department ever uses  
25 that section D, that allows you to look at

1 additional factors, if the Department ever does  
2 that, is that going to be arbitrary?

3 A: That's way broad. I can't -- I don't know.

4 Q: You don't know?

5 A: I don't know.

6 Q: You don't know?

7 A: I mean, that's --

8 Q: Okay. So you think it would be arbitrary for  
9 the Department to even consider the fact that  
10 this county has already got a landfill that  
11 will take more than ten times the amount of  
12 waste this county has ever generated, you think  
13 it would be arbitrary to even consider that.  
14 Is that what you're telling me?

15 A: I'm saying that I don't see in the regulation  
16 where we have the latitude to just make that  
17 decision at any given time just because we  
18 think we need to.

19 **THE COURT:** Mr. Chandler, at this point you've been  
20 going down this road for a while. The way that  
21 you've survived summary judgment is that this  
22 case is de novo from that of the Department.  
23 But you seem to be basing a lot of your inquiry  
24 here on whether -- on the Department's inquiry  
25 and if that's the issue, then maybe you need to

1 correct me, but I -- or I've been trying to  
2 understand what the relevance of this point is.

3 **MR. CHANDLER:** Well, Your Honor, I remember from the  
4 summary judgment hearing, and maybe I made more  
5 of this than I should have, but in the -- in  
6 announcing the decision to deny summary  
7 judgment, what I remember hearing was that --  
8 I asked him these questions, but I never asked  
9 him why he didn't consider these factors or  
10 whether he considered these factors, and that  
11 was why summary judgment was being denied, or  
12 part of why summary judgment was being denied.

13 **THE COURT:** Okay.

14 **MR. CHANDLER:** And that's why I'm explaining all --  
15 I'm going into all of this. If that's really  
16 not a factor here, then I don't need to go any  
17 further.

18 **THE COURT:** I'm asking you. I put that as a  
19 "inquiry" in trying to figure out where you're  
20 going.

21 **MR. CHANDLER:** Okay. Well, that was why I've been  
22 doing this.

23 **THE COURT:** Okay.

24 **MR. CHANDLER:** I mean, I realize this sometimes  
25 sounds like a waste of time, but I'm trying to

1 take my cues where I can get them.

2 **THE COURT:** Okay.

3 Q: Now, do you think the Department could ever  
4 take into account and consider an additional  
5 factor the fact that a circle only takes in a  
6 little portion of a big county, like  
7 Greenville, and consider that an additional  
8 factor?

9 A: I can -- all I can say to that is we haven't  
10 done that and I can't speculate as to what we  
11 might do in the future. I don't know.

12 Q: Okay. So in this case, this circle only took  
13 in a little bit of Greenville County, didn't  
14 it?

15 A: I haven't looked at a map today, but I'm not  
16 sure what portion of Greenville it took in.

17 Q: Okay. But in writing the capacity limit for  
18 this permit, you wrote in all of the waste  
19 generated in all of Greenville County, didn't  
20 you?

21 A: That was part of the calculation, yes.

22 Q: Okay. But what was not part of the calculation  
23 was the fact that Greenville County itself  
24 already has 800 -- well, not 800,000 in  
25 Greenville County, but over a half a million

- 1           tons of capacity within Greenville County  
2           itself.
- 3    A:   That's not part of the formula in the  
4           regulation, that's correct.
- 5    Q:   Okay. Unless you consider it an additional  
6           factor, right?
- 7    A:   We did not.
- 8    Q:   You did not, okay.  
9           Would it be an additional factor if another  
10           commercial landfill was 10.1 miles away from  
11           this landfill?
- 12   A:   Just to be clear on what you're asking me --  
13           would you try to be a little bit more clear?
- 14   Q:   All right. Let's say you drew your circle.
- 15   A:   Uh-huh (affirmatively responds).
- 16   Q:   And you only found one landfill within that  
17           circle that counted, but there were others that  
18           were just right around the edge of that circle.  
19           Was the fact that there were others that were  
20           just outside that circle, could that be an  
21           additional factor?
- 22   A:   It hasn't been.
- 23   Q:   Could it be?
- 24   A:   I can't speculate. No, not that I know of.
- 25   Q:   Okay. Can you think of anything that would

1 ever be an additional factor?

2 A: No, but we -- you know, we certainly would  
3 evaluate any and all comments and points that  
4 are brought to our attention and if something  
5 came up, it certainly could happen.

6 Q: Okay. Now --

7 MR. CHANDLER: Judge, I've got a few questions here  
8 that are going to be tied up when I put my  
9 witnesses up to deal with standing. But I'm  
10 not trying to broaden out the issues that are  
11 being presented here in terms of the merits of  
12 the case.

13 THE COURT: Well, you can pursue -- you can pursue  
14 questions involving areas where you haven't  
15 sufficiently laid the foundation if you set  
16 forth to the Court that you will connect it up  
17 and that if it's subsequently not connected up,  
18 then it can be stricken.

19 MR. CHANDLER: Exactly.

20 MR. LAVENDER: Your Honor --

21 MR. CHANDLER: And, you know, on questions of  
22 standing, there are often issues that really  
23 might give you standing, but you don't have to  
24 make a ruling on those issues on the merits.

25 MR. LAVENDER: Your Honor, I don't believe we've

1 raised a lack of standing question.

2 **THE COURT:** You can stipulate to that issue.

3 **MR. LAVENDER:** And I think we're prepared to  
4 stipulate to that.

5 **MS. WILLIAMS:** I also stipulate, Your Honor.

6 **MR. CHANDLER:** Okay. Let me make sure. Are you  
7 willing to stipulate that the group EAGLE has  
8 members who live within the vicinity of the  
9 landfill, who have concerns about the impacts  
10 of the landfill, and potentially are going to  
11 be negatively effected by the landfill so that  
12 they have standing?

13 **MR. LAVENDER:** Your Honor, we're prepared to  
14 stipulate that the Petitioners have standing  
15 for purposes of the proceedings here today. To  
16 the extent that that standing is intending to  
17 raise issues beyond the scope of these  
18 proceedings, I think that's a different  
19 question. But we've moved down -- or we've  
20 funneled, I thought, this whole case down to  
21 the issue of need. And we stipulate that the  
22 Petitioners, for purposes of proceedings as  
23 they go forward, have standing.

24 **THE COURT:** Mr. Chandler, if he stipulates to  
25 standing, it doesn't matter how you acquire the

1 standing. He stipulated to the issue, so the  
2 issue is off the table.

3 MR. CHANDLER: Okay. Well, I just want to make sure  
4 that --

5 THE COURT: How you get there is not the issue  
6 because he stipulated to the ultimate --

7 MR. CHANDLER: Well, let me word it in a more  
8 general way. By stipulating to standing,  
9 you're stipulating that we have a factual basis  
10 for standing without getting into the specifics  
11 about what it is? Because I want to make sure  
12 I'm covered on facts and the law.

13 THE COURT: I can make it real simple, is from my  
14 perspective, if he stipulated to standing, he  
15 has stipulated to the three factors that are  
16 set forth in Lujan.

17 MR. CHANDLER: Lujan is exactly what I'm worried  
18 about, Your Honor. And as long as we're  
19 satisfied that I have -- that we have met the  
20 test of Lujan -- Lujan, however you want to say  
21 it -- and the other standing cases, then I'm  
22 comfortable with that.

23 THE COURT: Okay. Is that --

24 MR. LAVENDER: For purposes of these proceedings as  
25 they exist today, subject to our pending

1 motions.

2 THE COURT: Okay.

3 MS. WILLIAMS: I concur, Your Honor.

4 THE COURT: All right.

5 MR. CHANDLER: Okay. All right.

6 THE COURT: So, Mr. Chandler, you're going to the  
7 French pronunciation of Lujan?

8 MR. CHANDLER: I've heard different judges say it  
9 different ways and I probably shouldn't have  
10 said it any other way than the way you said it.  
11 I try to adjust my pronunciation -- as bad as  
12 my Southern accent can be sometimes, I try to  
13 pronounce things the way judges do.

14 THE COURT: Well, that's fine.

15 Q: Mr. Coleman, these questions I ask you about,  
16 the ten-mile line, under the regulations  
17 that -- Regulation 61-107.17, as it exists  
18 right now.

19 A: Today.

20 Q: Now, I understand there may be arguments about  
21 how it applies, but under the regulation that  
22 exists right now, we don't draw a ten-mile  
23 circle; we draw a 20-mile circle, don't we?

24 MS. WILLIAMS: Your Honor, we object to this line of  
25 questioning, because we didn't -- DHEC did not

1           make the DON approval decision under the  
2           regulation now; we made it under the old  
3           regulation. It's not relevant.

4   **MR. LAVENDER:** We object to the relevance.

5   **MS. WILLIAMS:** We strongly object.

6   **MR. CHANDLER:** Your Honor, you know, we talked about  
7           this a little bit in summary judgment and we've  
8           submitted those cases of United States versus  
9           \*Ziffron and In Re: Soloman, and we believe  
10          that when the law changes for an activity  
11          that's to occur in the future, you apply the  
12          law as it's changed. Whatever the ruling is,  
13          I want to at least make a proffer on this  
14          issue.

15   **THE COURT:** Okay. I respectfully disagree with you  
16          on that, so I sustain their objection, but I  
17          will allow your proffer. You can present it in  
18          written form or through questions, if you wish  
19          to make them.

20   **MR. CHANDLER:** All right. Let me just ask a few  
21          questions and this will be the proffer that I  
22          want to make.

23   **MR. COLEMAN - PROFFERED DIRECT EXAMINATION BY MR.**  
24   **CHANDLER:**

25   **Q:** Mr. Coleman, under the regulations that came

- 1           into effect on June 26, 2009, the circle has  
2           grown from a ten-mile circle to a 20-mile  
3           circle; isn't that correct?
- 4    A:    For Class II landfills, it's a 20-mile circle.
- 5    Q:    Okay. And Class II landfill is generally what  
6           is commonly known as a C&D landfill.
- 7    A:    Not exactly, but Class II landfills do take C&D  
8           debris, generally.
- 9    Q:    Okay. And the permit at issue in this case is  
10           a Class II landfill permit?
- 11   A:    I believe so, yeah. I didn't -- I'd have to  
12           look at it, again.
- 13   Q:    Well, let's be sure.
- 14   A:    I'm almost positive.
- 15   Q:    That should be it right there.
- 16   A:    (Reading.) Yes, sir, it's Class II landfill  
17           permit.
- 18   Q:    Okay. And so if you were considering the  
19           question of a demonstration of that need for a  
20           landfill as of today, you would apply a 20-mile  
21           circle.
- 22   A:    Yes.
- 23   Q:    Okay. Now, as part of my proffer, I've got a  
24           map that has been marked as Petitioner's Number  
25           Twenty-eight. Do you recognize that map?

- 1 A: (Reading.) Yes. This map was produced in the  
2 Department, within the Department.
- 3 Q: Okay. And it shows various landfill facilities  
4 around the State and the 20-mile circles around  
5 those landfill locations.
- 6 A: Yes, it does.
- 7 Q: Okay. And is this proposed MRR Highway 92  
8 landfill shown on this map?
- 9 A: Yes, sir, it is.
- 10 MR. CHANDLER: Okay. We're offering this as an  
11 exhibit as part of your proffer.
- 12 THE COURT: As part of the proffer, okay.  
13 What is it marked?
- 14 MR. CHANDLER: Petitioner's Number Twenty-eight.
- 15 THE COURT: All right. It's admitted for purposes  
16 of proffer, so I'm not asking for objections on  
17 it.
- 18 (Petitioner's Exhibit Number Twenty-eight was  
19 admitted into evidence through the proffered direct  
20 examination.)
- 21 MR. CHANDLER: Okay. I understand there's a  
22 continuing objection and all of that and the  
23 Court's ruling.
- 24 Q: Now, Mr. Coleman, how many landfills that count  
25 under this regulation are within the 20-mile

- 1 circle on this map for this landfill?
- 2 A: Twenty-mile circle for the Highway 92 landfill
- 3 that we're talking about?
- 4 Q: Yes, sir.
- 5 MS. WILLIAMS: Excuse me, Your Honor. Is this still
- 6 part of his proffer?
- 7 THE COURT: Correct.
- 8 MS. WILLIAMS: Oh, all right.
- 9 A: Give me a minute. (Reading.)
- 10 It's difficult on this map because it shows all
- 11 facilities. If we were doing this as part of
- 12 our evaluation, we would isolate just the one
- 13 circle and look at it that way. But, I mean,
- 14 it looks like probably four, four total
- 15 facilities, Class II facilities, in the circle,
- 16 maybe five; hard to say.
- 17 Q: Okay. And under the regulation as it's written
- 18 now, with that many facilities within the
- 19 20-mile circle, the decision of the Department
- 20 would be to deny the demonstration-of-need
- 21 request, wouldn't it?
- 22 A: Well, the regulation doesn't retroactively take
- 23 permits away from facilities that are already
- 24 in the circle when the reg is passed.
- 25 Q: I understand the legal position on that. If

1           you were judging a new landfill today and you  
2           drew a circle that was 20 miles and there were  
3           two or more facilities within that 20-mile  
4           circle, your decision would be to deny,  
5           wouldn't it?

6   A:    Yes, it would.

7   Q:    And under the 20-mile circle here, we've got  
8           four, maybe five landfills within that 20-mile  
9           area?

10   A:    Yes, sir, that's what it appears to be.

11   MR. CHANDLER: Thank you, Mr. Coleman.

12   THE COURT: Mr. Lavender?

13   MR. LAVENDER: Can we take a short break?

14   THE COURT: Yes.

15           (Off the record from 2:16 to 2:27 p.m.)

16   THE COURT: All right. Mr. Lavender?

17   MR. LAVENDER: Thank you, Your Honor.

18   THE COURT: I might need you to wait just a second.

19   MR. LAVENDER: All right, sir.

20           (Off the record.)

21   THE COURT: All right. Proceed.

22   MR. COLEMAN - CROSS-EXAMINATION BY MR. LAVENDER:

23   Q:    Mr. Coleman, with respect to the proposed  
24           facility, I think you've spoken about the fact  
25           that the planning area proposed for the MRR

1 Highway 92 facility included three counties; is  
2 that correct?

3 A: Yes.

4 Q: Okay. Can I get you to look briefly -- and  
5 we've talked a lot about Curry Lake. Can I get  
6 you to look at Petitioner's Exhibit Twenty-six,  
7 which I think there's a copy of it beside you.

8 A: Let me go through this.

9 Q: You've got them stacked there?

10 A: I do. They're not in order. Let me -- there's  
11 another stack up on the edge there.

12 Q: It's the one that looks like this on the front  
13 (indicating).

14 A: Okay.

15 Q: This is the stuff that came in for Mr. Holland  
16 earlier. And I just wanted you to take a look  
17 at the last page of that exhibit and tell me if  
18 you can describe what that is.

19 A: This is a reporting form that is submitted to  
20 the Department --

21 Q: Right.

22 A: -- for the annual reporting process and it's  
23 for construction and demolition and  
24 land-clearing debris landfills. It's submitted  
25 from Waste Industries, signed by Mr. Fred

1 Counts, who is the manager, and it basically  
2 gives a listing of the waste that was taken in  
3 that -- at that facility and where it  
4 originated.

5 Q: All right. And if I could get you to look  
6 that, tell me how much waste it indicates was  
7 received from Laurens County.

8 A: This is for the Curry Lake facility --

9 Q: That's right.

10 A: -- and it says -- Laurens County is not listed.

11 Q: Can you draw any conclusions from that?

12 A: Well, it has in-county waste of 3,098 tons.

13 Q: Right. So the conclusion is that it's 3,098.

14 A: From Laurens County.

15 Q: Right.

16 A: That would be my conclusion.

17 Q: All right. And I think Mr. Chandler walked you  
18 through those, but how many other counties out  
19 of county are identified on there?

20 A: Seven additional counties.

21 Q: Now, is that the type of information that goes  
22 into your annual report, both of which I think  
23 are portions of which we referred to, I think,  
24 are Exhibits Twenty-four and Twenty-five. Is  
25 that the type of information that --

1 A: Yeah. This is an example of a report that we  
2 get from an individual facility that we use to  
3 compile the report.

4 Q: Right. Then let me ask you, for example, to  
5 look at Exhibit Twenty-four now. That's the  
6 excerpts from the '07 report.

7 A: Okay.

8 Q: It looks like this on the front.

9 A: I've got Twenty-five. I'm looking to see if  
10 Twenty-four is up here. No, it must be ...

11 Q: Do you have it? I'm going to ask you about  
12 both of those.

13 A: Yes, I have them.

14 Q: You've got them both close at hand? And you're  
15 looking at Twenty-four?

16 A: Yeah, Exhibit --

17 Q: Twenty-four. That's the '07 report?

18 A: Yes, it is.

19 Q: Okay. And on page -- the pages that are  
20 numbered 73, for example, I think you referred  
21 to these earlier.

22 A: Okay.

23 Q: And I want to call your attention to Curry Lake  
24 data line. And we've talked about the  
25 permitted rate of disposal versus the actual

1 information, which was fiscal year '07 appears  
2 to be 67,260; is that correct?  
3 A: Yes.  
4 Q: And what is the "remaining life" indicated on  
5 there?  
6 A: It's estimated at 38 years.  
7 Q: Okay. Let me -- while you're holding that  
8 thought, go to the other Exhibit Twenty-five  
9 and look at page 75.  
10 A: (Witness complies.)  
11 **THE COURT:** Wait a second. Give me that, again.  
12 **MR. LAVENDER:** Your Honor, I'm moving from page 73,  
13 which has the --  
14 **THE COURT:** Okay.  
15 **MR. LAVENDER:** -- estimated remaining life on  
16 Exhibit Twenty-four and I'm jumping to the  
17 same -- the corresponding page in Exhibit  
18 Twenty-five --  
19 **THE COURT:** Okay. Got you.  
20 **MR. LAVENDER:** -- which is page 75 of the exhibit.  
21 Q: Do you follow me? Are you there, Mr. Coleman?  
22 A: Yes, I'm with you.  
23 Q: Now, the same permitted rate of disposal, where  
24 obviously they haven't done anything with the  
25 permit, a few tons more in disposal from the

- 1 following year.
- 2 A: (Nods head affirmatively.)
- 3 Q: And what's the remaining life indicated on  
4 there?
- 5 A: Twenty-three years estimated.
- 6 Q: All right. Now, that's a pretty sizeable jump  
7 between 38 down to 23, isn't it?
- 8 A: Yes, it is.
- 9 Q: Does that suggest that there's any reliability  
10 in the information that was reported to you?
- 11 A: It's an estimate provided to us by the  
12 facility --
- 13 Q: Okay.
- 14 A: -- and I don't -- it certainly does change from  
15 time to time.
- 16 Q: And the one for Clinton in Exhibit  
17 Twenty-four -- or I think as Mr. Holland  
18 pronounced it Clinnon -- said 20 years in the  
19 fiscal year '07 report, is that right, the  
20 remaining life?
- 21 A: Yes.
- 22 Q: And it did not report anything on the '08 one.  
23 Was that something y'all would have asked them  
24 about?
- 25 A: We may have, but it probably just reflects a

- 1 change in their plans for the future.
- 2 Q: Right.
- 3 A: Because we knew the new regulation was coming  
4 into place and such, so ...
- 5 Q: They weren't taking in much waste anyway.
- 6 A: That's right.
- 7 Q: Can you give the Court some idea about how the  
8 useful life is computed and the remaining life?  
9 For example, is there a difference in computing  
10 the remaining life of a facility between using  
11 the actual disposal for the previous year or  
12 the permitted disposal?
- 13 A: Yes, there is a difference.
- 14 Q: And explain what one change makes. If you use  
15 the permitted disposal, will it reduce or  
16 increase the remaining life of the site?
- 17 A: If you use the --
- 18 Q: Permitted.
- 19 A: -- permitted disposal, assuming that they're  
20 actually taking less than that amount, which is  
21 a good assumption, hopefully, but if you use  
22 the permitted annual rate, the life span would  
23 generally go down.
- 24 Q: Considerably, if you look at the difference in  
25 the actual versus permitted for this facility.

- 1 A: For that Curry Lake facility, yes, it would be  
2 a big difference.
- 3 Q: All right. But there's a big jump between 38  
4 and 23.
- 5 A: Right.
- 6 Q: So it's really hard to tell what the remaining  
7 life is for this site at this point.
- 8 A: I would agree.
- 9 Q: Okay. You had that information when you were  
10 reviewing -- the Department has this  
11 information when it reviews demonstrations of  
12 need, right?
- 13 A: We have the information in the '07 report.
- 14 Q: Right. Okay. Yeah, for the '07 report, you  
15 had this information. You had -- in  
16 particularly, you had table 7.7, which is page  
17 75 in Exhibit Twenty-five, because that says  
18 that that's the type of information that you  
19 looked at for determining need.
- 20 A: Well, in Exhibit Twenty-four, which is the '07  
21 report --
- 22 Q: Right.
- 23 A: -- we would have had that table, yes.
- 24 Q: Right, page 25 (sic). You didn't have the  
25 information that comprises Exhibit

1 Twenty-five -- by July 18 of '08, did you have  
2 any of that information that would have allowed  
3 you to compile that report?

4 A: Not much, in the final form.

5 Q: Well, when was the reporting date for the end  
6 of June 30, '08?

7 A: We usually allow until September or so to  
8 get -- that's when we ask people to get it in  
9 by September.

10 Q: Okay.

11 A: Then we continue to vet it and ask questions  
12 and such after that.

13 Q: All right. And when you look at the data on  
14 page 75, which is the C&D generated for  
15 disposal for purposes of the DON, what is the  
16 derivation of that information?

17 A: We're looking at Petitioner's Exhibit  
18 Twenty-four?

19 Q: Exhibit Twenty-four.

20 A: Okay. And page 75?

21 Q: Page 75, which is table 7.7, the DON table.

22 A: Okay.

23 Q: What is the derivation of that information?

24 A: Each facility reports where the origin of the  
25 waste that they dispose of, they report the

1 origin of that waste, so that is -- we use  
2 those numbers to calculate -- like, we might  
3 have seven facilities that say they take waste  
4 from Greenville County. And so you add all  
5 that together as far as the -- to get the  
6 generation rate for Greenville County. Plus  
7 you add the recycling, as well, which is also  
8 part of the waste generation.

9 Q: So it's only as good as what you get.

10 A: I mean, we do ask a lot of questions about it  
11 and try to make sure it's as accurate as  
12 possible, but we do rely on facilities to  
13 report to us.

14 Q: But the form of that information comes in the  
15 manner similar to what was described in the  
16 previous exhibit that we talked about with the  
17 Curry Lake information --

18 A: That's right.

19 Q: -- Exhibit Twenty-six.

20 A: That's right.

21 Q: Is that right? So it comes from the facility.

22 A: It does.

23 **THE COURT:** Wait a second. Twenty-six or  
24 Twenty-five?

25 **MR. LAVENDER:** Twenty-six.

1 THE COURT: Okay.

2 MR. LAVENDER: The last page of Twenty-six --

3 THE COURT: Oh, okay. There you go.

4 MR. LAVENDER: The last page of Twenty-six was the  
5 handwritten annual report for Curry Lake.

6 THE COURT: I got it.

7 Q: So that's the source of the typical  
8 information; is that correct?

9 A: Yeah, that's part of it.

10 Q: When you got the request for the  
11 demonstration-of-need approval for the proposed  
12 MRR facility, did you receive all the  
13 information that was required according to the  
14 regulation to make a determination?

15 A: Yes.

16 Q: At that time were you asked to consider any --  
17 to review any additional factors?

18 A: At what time?

19 Q: At February 21st, which I think -- I forget  
20 which exhibit it is, the February 21st request  
21 that came in of '06. I think it's Exhibit Six  
22 or Seven. Exhibit Seven. Were you asked by  
23 anyone to identify -- to review any additional  
24 factors?

25 A: Not that I recall.

1 Q: Okay. And then you made -- as I think was  
2 pointed out by counsel, you made the  
3 determination that was evidenced by  
4 Petitioner's Exhibit Eight, which is a letter  
5 to MRR dated March the 3rd.

6 A: Yes.

7 Q: At that time, did the Petitioner -- did the  
8 applicant proceed with the submittal of the  
9 permit application?

10 A: I believe shortly thereafter. I'd have to look  
11 at the record to be sure.

12 Q: If I can get you to look at Petitioner's  
13 Exhibit Number Nine.

14 A: (Witness complies.)

15 Q: On the fifth page, fifth sheet of that exhibit,  
16 can you describe what that is?

17 A: If I have the right page that you're referring  
18 to, it's a June 12th, 2006 letter to Laurens  
19 County Council from Jeff Nichols.

20 Q: That's right. And what was attached to that  
21 letter?

22 A: Questions and concerns regarding the proposed  
23 C&D landfill near Lake Martin.

24 Q: And this was admitted in, I believe, because it  
25 raises issues about need, did it not?

- 1 A: It asked questions about need, yes.
- 2 Q: And the cover of that is a memo from Ms. White.
- 3 She works for you?
- 4 A: (No response.)
- 5 Q: The front of page of that exhibit.
- 6 A: Oh.
- 7 Q: I'm sorry, the front page of the exhibit.
- 8 A: Yes, Ms. White works in my division.
- 9 Q: And there's several questions and answers at
- 10 the front of that that relate to need; is that
- 11 right?
- 12 A: Yeah, need is discussed and asked and answered
- 13 on this memo.
- 14 Q: And there hadn't been any information that the
- 15 Department had been -- had the Department been
- 16 in communication with anyone with regard to
- 17 this? Did the Department speak with anyone
- 18 about this prior to this memo?
- 19 A: I'm not sure.
- 20 Q: You don't know? You didn't talk with --
- 21 A: No, I did not speak with anyone.
- 22 Q: All right. You weren't in that position --
- 23 A: That's correct.
- 24 Q: -- at that stage of the game; is that right?
- 25 A: Yes.

1 Q: But you received the questions and attempted to  
2 provide answers to the questions --

3 A: Yes.

4 Q: -- with respect to the need.

5 Now, I think there was another exhibit, you  
6 might recall. I think you were here. There  
7 was an exhibit that consisted of a letter from  
8 various House members and senators to the  
9 commissioner of the Department; is that right?

10 A: Yes.

11 Q: You're familiar with that?

12 A: I recall that letter, yes.

13 MR. LAVENDER: Your Honor, subject to our objections  
14 about jurisdiction, but I'm going to ask some  
15 questions about what the Department did for the  
16 balance of the permitting process.

17 THE COURT: All right.

18 Q: Did you review that letter before making the  
19 permit decision?

20 A: Sure. Yes.

21 Q: Did you review the comments that you received  
22 from various citizens throughout the --  
23 throughout the period from the time that you  
24 got Mr. Nichols first list of questions?

25 A: Yes.

1 Q: Did you -- were those -- was that  
2 information -- were those additional submittals  
3 and comments to you sufficient for the  
4 Department to change its position with respect  
5 to the needs approval?

6 A: No.

7 Q: In your deposition -- I don't know whether you  
8 have a copy of it, but it's been admitted --  
9 Mr. Chandler asked you about paragraph  
10 (D)(3)(d). Are you familiar with the paragraph  
11 to which I refer?

12 A: Yes.

13 Q: And I'm reading from a question that appears on  
14 page 59. Do you have it with you? You do have  
15 it with you. Beginning with line -- beginning  
16 on line 18, and the answer -- Mr. Chandler at  
17 the bottom says, "You did not utilize the right  
18 to review additional factors that's provided in  
19 subsection D of that part." And your answer to  
20 that question is what?

21 A: I don't have that.

22 Q: Oh, I'm sorry.

23 A: I think it's in this document, but it will take  
24 me a minute. It's not numbered the same way,  
25 so ...

1 Q: Here's a copy of it right here.  
2 A: What page are you on?  
3 Q: I'm looking at page --  
4 MR. CHANDLER: Let me have this one back so I can  
5 follow along, too.  
6 MR. LAVENDER: Sorry.  
7 MR. CHANDLER: This was from the exhibits on the  
8 summary judgment.  
9 MR. LAVENDER: Uh-huh (affirmatively responds). Page  
10 59, line 24.  
11 THE COURT: This is exhibit what?  
12 MS. WILLIAMS: Exhibit Five, Petitioner's Exhibit  
13 Five.  
14 THE COURT: Okay.  
15 Q: I read the last -- I read a portion of 21, 22,  
16 and 23.  
17 A: Okay.  
18 Q: And I just wanted you to start on 24. Your  
19 answer begins on 24 and 25.  
20 A: Uh-huh (affirmatively responds).  
21 Q: Do you --  
22 A: Okay. You want me to read that?  
23 Q: Well, my question is, is that still a correct  
24 statement?  
25 A: Yes.

1 Q: Okay. And it says you did not review  
2 additional factors and then it appears to  
3 qualify it. Is that what you intended to do?

4 A: Yes.

5 Q: So is that consistent with what I've asked you  
6 previously and that is, you did consider  
7 additional factors but didn't change your mind;  
8 is that right?

9 A: Yeah, there's a number of factors that we're  
10 aware of and a number of factors that we review  
11 and respond to during the process.

12 Q: And these related to need.

13 A: Yes.

14 Q: They didn't change your mind.

15 A: That's right.

16 MR. LAVENDER: Your Honor, if I could at least cross  
17 Mr. Coleman on the proffer --

18 THE COURT: Yes.

19 MR. LAVENDER: -- please, at this point. This is  
20 just on the proffer.

21 THE COURT: All right. You're crossing him on the  
22 proffer, but when you get through --

23 MR. LAVENDER: I will clearly state that I'm  
24 finished with that inquiry.

25 THE COURT: Okay.

1 MR. COLEMAN - PROFFERED CROSS-EXAMINATION BY MR.

2 LAVENDER:

3 Q: With respect to the proffer, Mr. Coleman, and  
4 that relates just to the questions from counsel  
5 for the Petitioners on the regulation as it  
6 exists today, which I believe was somewhere in  
7 the June of '09 time frame, was the effective  
8 date; is that right?

9 A: Yes.

10 Q: You might remember off the top of your head.

11 A: June 26.

12 Q: I think Mr. Chandler asked you about the  
13 planning radius for a Class II landfill from --  
14 as a result of the June of '09 regulation.

15 A: (Nods head affirmatively.)

16 Q: And that's 20 miles now, right?

17 A: Yes, it is.

18 Q: Can you describe what the effect of that change  
19 does with respect to the number of -- the  
20 possibility for the number of new landfills  
21 going forward?

22 A: It significantly reduces the possibility for  
23 the number of new landfills.

24 Q: Okay. And as a consequence of that, what's the  
25 effect on existing landfills for purposes of

- 1           their allowable tonnage and potential to expand  
2           for the larger planning area?
- 3    A:   Well, they'll be fewer landfills in the future,  
4           so, as growth occurs, they will need to take in  
5           additional amounts of waste on a yearly basis.  
6           And the 20-mile circle now would allow a  
7           larger -- in most cases -- I can't really say  
8           in every case, but in most cases, the 20-mile  
9           circle will now allow a larger annual disposal  
10          rate for the existing facilities.
- 11   Q:   Okay.   And does the 20-mile radius make the  
12          planning area greater than it is, right?
- 13   A:   That's right.
- 14   Q:   Does that further or hinder a regional concept?
- 15   A:   It furthers a regional concept.
- 16   Q:   And do you consider a planning radius that  
17          encompasses more than one county an original  
18          facility?
- 19   A:   That facility certainly has the opportunity to  
20          be a regional facility in that area, yes.
- 21   Q:   And the Curry Lake facility -- I mean, that  
22          annual report from '05 indicated about seven  
23          counties outside of Laurens from which it  
24          received waste, right?
- 25   A:   That's right.

1 Q: Is that some evidence that it serves as a  
2 regional facility --

3 A: Yes.

4 Q: -- in that regard?

5 A: Yes.

6 Q: And a planning radius even of ten miles -- at  
7 that time, the Curry Lake facility had a  
8 planning radius of ten miles; is that right?

9 A: Yes.

10 Q: Okay. So the information with respect to the  
11 20-mile radius is to further limit the number  
12 of future new landfills.

13 A: That's correct.

14 MR. LAVENDER: Your Honor, that's all on the  
15 proffer, all inquiry on the proffer.

16 THE COURT: So that I can be clear, under the new  
17 regulation, you said the facilities will be  
18 taking in more capacity?

19 THE WITNESS: They will be allowed to take in more  
20 on an annual basis.

21 THE COURT: Okay. I shouldn't say "capacity". More  
22 waste on an annual basis.

23 THE WITNESS: Yes.

24 MR. LAVENDER: A higher -- might I comment, Your  
25 Honor?

1 THE COURT: Yes.

2 Q: Would it be correct, Mr. Coleman, to say they  
3 would be allowed a higher maximum allowable  
4 tonnage rate?

5 A: The tonnage -- "tonnage" is the term of art for  
6 annual disposal rate. It's referred to as  
7 tonnage in the regulation.

8 THE COURT: All right. Are you through with the  
9 proffer?

10 MR. LAVENDER: Yes, sir.

11 THE COURT: Okay.

12 MR. COLEMAN - CROSS-EXAMINATION (Continued) BY MR.  
13 LAVENDER:

14 Q: Now, the maximum allowable -- although, I think  
15 counsel for Petitioners has established that in  
16 this particular case, the maximum allowable  
17 tonnage rate was 154,000 and that's what the  
18 applicant sought.

19 A: Yes.

20 Q: That's not always the case, is it?

21 A: That the applicant seeks the maximum in the  
22 permit?

23 Q: Right.

24 A: No, that's not always the case.

25 Q: Okay. But not withstanding the fact that

1           that's the maximum allowable, isn't it fair to  
2           say that even as evidenced by the data from the  
3           annual reports, Exhibits Twenty-four and  
4           Twenty-five, in many cases that's a far cry  
5           from what the actual disposal is?

6           A:    Yes, it's different.

7           Q:    It just allows, then, the flexibility to  
8           continue to take waste as its generated.

9           A:    Yes, that's right, and to seek new contracts.

10          Q:    I mean, the volume of waste is driven by a  
11          number of other factors, isn't it, like the  
12          economy?

13          A:    Correct.

14          MR. LAVENDER:   That's all the questions I have for  
15          Mr. Coleman.

16          THE COURT:   Ms. Williams?

17          MR. COLEMAN - CROSS-EXAMINATION BY MS. WILLIAMS:

18          Q:    Mr. Coleman, my first few questions have to do  
19          with just the DON review, DON request review.

20          A:    (Nods head affirmatively.)

21          Q:    Do you know whether or not staff was aware at  
22          the time of the DON review of all of the  
23          landfills, all of the C&D landfills that were  
24          in Greenville County?

25          A:    Yes, we were aware.

1 Q: Okay. And how about Spartanburg County?

2 A: Yes.

3 Q: And Laurens County?

4 A: Yes.

5 Q: All right. And those are the three counties  
6 that were within the planning area for the  
7 proposed landfill by MRR; is that correct?

8 A: Yes.

9 Q: Okay. Do you know whether or not staff was  
10 aware of the tonnage disposed of at those  
11 landfills in Greenville County?

12 A: Yeah. We would have had the annual report that  
13 we compiled and it includes that information,  
14 yes.

15 Q: And that would include Greenville County,  
16 Spartanburg and Laurens County; is that  
17 correct?

18 A: Yes.

19 Q: Okay. And do you know if your staff was aware  
20 of the permitted annual disposal rate of those  
21 landfills in those counties?

22 A: Yes, we were.

23 Q: All right. During DHEC's DON review, do you  
24 know if the staff was presented with any new  
25 information in regards to demonstration of need

1 for the proposed landfill during the time of  
2 the -- when I say "new information," I mean in  
3 addition to the information I just asked you  
4 about.

5 A: No, I'm not aware of any additional  
6 information.

7 Q: All right. And the information that you  
8 were -- that your staff was aware of regarding  
9 the disposal rates, how many C&D landfills were  
10 in the planning area, the permitted capacity  
11 for the landfills, would any of that -- did any  
12 of that information change the final outcome in  
13 terms of the DON being approved?

14 A: No.

15 Q: And why is that?

16 A: We were aware of that information and we  
17 consider whatever information we get, we review  
18 it, contemplate that versus the regulatory  
19 requirements. But none of those things rose to  
20 the level of changing our decision on DON.

21 Q: If you had received any new or additional  
22 information, would you have looked at that?

23 A: Of course.

24 Q: All right. During the permit application  
25 review, the permit was put out on public notice

- 1 at some point; is that correct?
- 2 A: Yes.
- 3 Q: Okay. And once it was put out on public  
4 notice, did DHEC receive comments regarding the  
5 landfill?
- 6 A: Yes, we did.
- 7 Q: Okay. And did any of those comments include  
8 comments on whether or not the landfill was  
9 needed?
- 10 A: Yes.
- 11 Q: Okay. Did DHEC review those comments?
- 12 A: Yes, we did.
- 13 Q: Okay. And once you issued the permit, you  
14 answered those comments; is that correct?
- 15 A: We did.
- 16 Q: I mean, you responded.
- 17 A: We did respond, yes.
- 18 Q: All right. And did you give those comments  
19 careful consideration?
- 20 A: Yes, we did.
- 21 Q: And if there had been something that you  
22 considered compelling enough for DHEC not to  
23 issue the landfill permit, would that have  
24 occurred?
- 25 A: Yes.

1 Q: All right. So you do look at everything that  
2 is presented to the agency?

3 A: We do -- yes, we do a very thorough review of  
4 all of the information that we have.

5 MS. WILLIAMS: All right. Those are all the  
6 questions I have for now.

7 THE COURT: Any follow-up questions on what they  
8 have asked?

9 MR. CHANDLER: Huh?

10 THE COURT: Follow-up questions on what they have  
11 asked?

12 MR. COLEMAN - REDIRECT EXAMINATION BY MR. CHANDLER:

13 Q: Mr. Coleman, in your deposition, you said you  
14 didn't take into account the capacity at Curry  
15 Lake; isn't that correct?

16 A: We were aware of it.

17 Q: But you said you didn't take that into account  
18 in making your decision on need.

19 A: It wasn't information that was part of the  
20 formula that we use to calculate need and  
21 tonnage.

22 Q: So it was not part of the decision.

23 A: I don't know -- if there's something that we  
24 are aware of and look at but it doesn't change  
25 the decision, is that part of the decision?

- 1 Q: I'm just saying, in your deposition, you said  
2 it was not considered.
- 3 A: Okay. Well, that may have been a misstatement  
4 in terms of the wording, but -- I mean, it did  
5 not rise to the level of changing our decision.  
6 We were aware of that information.
- 7 Q: All right. You were the designated spokesman  
8 for the Department in that deposition, weren't  
9 you?
- 10 A: Yes.
- 11 Q: And it was what's called a 30(b)(6) deposition  
12 notice.
- 13 A: Correct.
- 14 Q: And in that, you said on page 58 of that  
15 deposition that you didn't utilize that section  
16 D to look at any additional factors. So you  
17 didn't look at any additional factors, did you?
- 18 A: You're reading on page 58?
- 19 Q: Fifty-eight.
- 20 A: Okay.
- 21 **MS. WILLIAMS:** Your Honor, I object to this  
22 question, because Mr. Chandler hasn't  
23 established that what he's asking Mr. Coleman  
24 is an additional factor. He's just saying that  
25 this was -- I mean, Mr. Coleman is saying that

1 he was aware of this information. It was  
2 there. They looked at it. But it hasn't been  
3 established that that's an additional factor.  
4 These are things that we look at routinely when  
5 we review permit applications.

6 **THE COURT:** Well, on one hand he's on direct and not  
7 cross, but he has the right to ask him about  
8 the 30(b)(6) deposition as to the meaning of  
9 it. You can always follow up on that.

10 **MS. WILLIAMS:** All right. Thank you.

11 **THE WITNESS:** What lines are you looking at,  
12 Mr. Chandler?

13 **Q:** All right. Looking at page 58, lines 19  
14 through 21.

15 **A:** Okay.

16 **Q:** I asked you the question: "Okay. Now was this  
17 section utilized at all in the permitting of  
18 this MRR landfill?" And your answer was "no".

19 **A:** That's correct.

20 **Q:** That was your answer.

21 **A:** Yes.

22 **Q:** Okay. And you said that earlier on direct  
23 examination when I asked you about that,  
24 correct?

25 **A:** Yeah, and I -- right.

- 1 Q: Okay. And then --
- 2 A: What I said was, nothing has risen to the level  
3 of changing our decision that would be included  
4 in section D.
- 5 Q: But you said and when I took your deposition  
6 that you didn't use that decision at all.
- 7 A: I may have misunderstood your question at the  
8 time. But what I'm saying is that, you know,  
9 we were aware of a number of things. None of  
10 them have risen to the level of us utilizing  
11 other factors or changing the decision, so to  
12 speak.
- 13 Q: Okay. I mean, can you give me an example of  
14 something that would rise to the level of that?
- 15 A: I don't know.
- 16 Q: You don't know?
- 17 A: No, I don't.
- 18 Q: Okay. But you're afraid -- didn't you say just  
19 a little while ago that you were afraid that if  
20 you used any additional factor and changed the  
21 decision, that you were going to be criticized  
22 for that as being an arbitrary thing?
- 23 A: I certainly think that would be a possibility,  
24 yes.
- 25 Q: Okay. Now, under your regulation, your old

1 regulation and your new regulation, when a  
2 landfill comes to the end of its life and  
3 decides that it wants to replace itself, you  
4 will allow that facility to get a permit for  
5 capacity based on a whole new planning area and  
6 can increase that capacity substantially, can't  
7 it?

8 A: A landfill -- an existing landfill can replace  
9 itself once under the regulation in the  
10 planning area. You're talking about the  
11 current regulation or ...

12 Q: Well, yeah, the regulation that's current right  
13 now.

14 A: Okay.

15 MR. LAVENDER: I would object to that question where  
16 I understood now, put that way, if we're  
17 talking about the current regulation.

18 MS. WILLIAMS: I concur, Your Honor.

19 MR. LAVENDER: Unless it's covered in the proffer.

20 MR. CHANDLER: Well, let's just cover these  
21 questions under response to the questions that  
22 were asked on cross on the proffer.

23 THE COURT: Redirect on proffer, okay.

24 MR. COLEMAN - PROFFERED REDIRECT EXAMINATION BY MR.  
25 CHANDLER:

1 Q: Now, these other landfills that might be  
2 outside the circle but are in Greenville and  
3 Spartanburg County, if they decided to replace  
4 themselves, they can substantially increase  
5 their permitted capacity, can't they?

6 A: Perhaps. It depends.

7 Q: And so we could go from 800,000 tons of  
8 existing capacity within this three-county area  
9 to something substantially higher than that  
10 without any new landfills added in there,  
11 couldn't we?

12 A: It depends where they locate. Their tonnages  
13 could change, though, yes.

14 Q: Okay. Now --

15 **THE COURT:** Are you still in the proffer?

16 **MR. CHANDLER:** No, we're outside the proffer now.

17 **MR. COLEMAN - REDIRECT EXAMINATION (Continued) BY MR.**

18 **CHANDLER:**

19 Q: You said a little bit ago in response to a  
20 question that Mr. Lavender asked that there  
21 were certain other factors that you were aware  
22 of. Do you recall what factors those were?

23 A: Well, we were aware of the other landfills in  
24 the vicinity inside and outside the planning  
25 area and the amount of waste that they take,

- 1 the amount of waste that they're allowed to  
2 take and things such as that.
- 3 Q: Okay. And, I mean, you gather that information  
4 every year. All you had to do was pull a book  
5 off the shelf and you would know that in the  
6 three-county area you've got over 800,000 tons  
7 of capacity.
- 8 A: In 2006, it might have been a little bit  
9 different information, but we would be aware of  
10 what the amount of tonnage was available in  
11 those counties, yes.
- 12 Q: Okay. Do you know what it was in 2006?
- 13 A: No, I don't.
- 14 Q: Okay. We know in 2007 it was at least 800,000  
15 tons, don't we?
- 16 A: Yes, it was around that.
- 17 Q: Okay. Do you know whether there were any new  
18 landfills licensed in that area between 2006  
19 and 2007?
- 20 A: There may have been one. I'm not specifically  
21 sure about it right now.
- 22 Q: Okay. All right. And you're also aware that  
23 within that three-county area, that what was  
24 being generated was a lot less than the  
25 permitted capacity.

- 1 A: In the permitted capacity in the three-county  
2 area?
- 3 Q: Yeah.
- 4 A: Yes.
- 5 Q: Okay. Now, any of these other counties that  
6 might have sent some waste to Curry Lake --
- 7 A: Uh-huh (affirmatively responds).
- 8 Q: -- every one of those counties has got a solid  
9 waste management plan, don't they?
- 10 A: Yes, they do.
- 11 Q: And every one of those counties has got a plan  
12 to take care of the amount of waste that's  
13 being generated within their counties, don't  
14 they?
- 15 A: That's what their responsibility under the act  
16 is, to plan for their waste disposal needs,  
17 yes.
- 18 Q: Okay. So if Oconee County might have sent --  
19 let's see. How much was it? If Oconee County  
20 sent some waste down to Curry Lake, 22.99 tons,  
21 23 tons down there in fiscal year 2005, that  
22 doesn't necessarily mean that the Curry Lake  
23 landfill is part of the Oconee County solid  
24 waste plan, does it?
- 25 A: No, it doesn't.

1 Q: No.

2 A: It may or may not be.

3 Q: No. The same thing for Abbeville County and  
4 Anderson County and Pickens County and  
5 Greenwood County. Wouldn't that be true?

6 A: Your question is ...

7 Q: The question is, all these other counties, they  
8 don't necessarily call for their waste to be  
9 sent to Curry Lake, do they?

10 A: In their plan?

11 Q: Right.

12 A: No, not necessarily. We'd have to read each  
13 plan.

14 Q: Okay. You don't know?

15 A: No. I don't know what each plan says in  
16 regards to this facility, no.

17 Q: Okay. What we do know is that Curry Lake has  
18 the capacity to handle every bit of what's  
19 taken in -- I mean, that's produced in Laurens  
20 County, don't we?

21 A: Yes, it does.

22 Q: And it has the capacity to handle most of  
23 what's generated in Laurens County, Greenville  
24 County, and Spartanburg County, doesn't it?

25 A: I'd have to look at the numbers again. I'm not

1           sure.

2   Q:   Okay.  It's permitted for 241,000 tons, isn't  
3           it?

4   A:   Okay.  Yes.

5   Q:   All right.  And in those three counties, the  
6           maximum that's ever been generated is a little  
7           over 300,000 tons, isn't it?

8   A:   Okay.

9   Q:   All right.  So it can handle most of the waste  
10           in that three-county area with just that one  
11           landfill, couldn't it?

12  A:   It could handle 241,000.

13  Q:   Okay.  And, in fact, in addition to it, there  
14           are five more commercial landfills under the  
15           old definition of that term right now.

16  A:   Five where?

17  Q:   Within the three-county area, five more besides  
18           Curry Lake.

19  A:   (No response.)

20  Q:   There's one in Spartanburg and four in  
21           Greenville.

22  A:   (Reading.)  Okay.  Yeah, there appear to be.

23  Q:   Okay.

24  A:   I think I can discern that on this map, four in  
25           Greenville -- three or four in Greenville and

1 one in Spartanburg.

2 Q: Okay. And if you look at Exhibits Twenty-four  
3 and Twenty-five, you can see that those  
4 landfills have the capacity of 80,000 tons in  
5 Spartanburg; 75,000; 200,000; 87,000; and  
6 128,000 in Greenville; isn't that correct?

7 A: Okay. Yes.

8 Q: So what is it we're planning for again, now?

9 A: I don't understand the question.

10 Q: Well, I don't understand, either. You got a  
11 planning area that's ten miles in a circle. Do  
12 you know how much waste is generated within  
13 that ten-mile circle?

14 A: In the circle?

15 Q: Yeah.

16 A: We know how much waste is generated in the  
17 planning area.

18 Q: All right. What does the circle represent?

19 A: The planning area is defined in the regs as  
20 inside the circle and every county that touches  
21 the circle; that's the planning area.

22 Q: Okay. Do you know how much waste is generated  
23 just in the circle?

24 A: Not offhand.

25 Q: Okay. But you only count landfills in the

1 circle, right?

2 A: Yes.

3 Q: Okay. You count landfills in the circle, but

4 you count waste generated outside the circle,

5 right?

6 A: Counties that the circle contacts, that's the

7 definition of a "planning area."

8 Q: And you don't count landfills in those counties

9 that are outside the circle, do you?

10 MS. WILLIAMS: Your Honor, I object. I mean, these

11 questions have been asked and answered. We've

12 gone over the regulation several times already

13 today. I mean, I'm not hearing anything new.

14 THE COURT: You have asked this area once before,

15 Mr. Chandler. Are you addressing anything new?

16 MR. CHANDLER: I don't remember asking these

17 specific questions.

18 MS. WILLIAMS: Well, they're all --

19 THE COURT: I don't know if you phrased it exactly

20 like this --

21 MS. WILLIAMS: Yeah.

22 THE COURT: -- but it was the subject matter that

23 you have already covered.

24 MS. WILLIAMS: He's gone through the regulation -- I

25 mean, the DON regulation. That's where these

1 questions are coming from. I mean, I think  
2 he's asked it, like you said, maybe not  
3 verbatim, but he's asked them already.

4 **THE COURT:** Any response?

5 **MR. CHANDLER:** I just don't think I've asked this  
6 specific question.

7 **THE COURT:** Well, give me the question, again, so I  
8 can know exactly what it was.

9 **Q:** You only look at the landfills that are within  
10 the circle, but --

11 **A:** We look at the criteria in the  
12 demonstration-of-need reg. That's how we  
13 determine whether a landfill is sited there or  
14 not.

15 **Q:** Okay. And that says you look at how many  
16 landfills are in the circle, just the number of  
17 them.

18 **A:** There can be a maximum of two in the circle,  
19 yes.

20 **Q:** Okay. Maximum of two. I mean, if there's  
21 three, what does that mean?

22 **A:** That means there would not be allowed an  
23 additional landfill.

24 **Q:** If there's two, what does it mean?

25 **A:** No additional landfill.

- 1 Q: Okay. So it's really if there's more than one  
2 you're not going to allow another landfill.
- 3 A: No -- yes.
- 4 Q: Okay. And within that circle -- you only look  
5 in that circle to see how many landfills there  
6 are.
- 7 A: We do look in the circle to see how many  
8 landfills there are.
- 9 Q: Okay. But you look in the whole counties, of  
10 every county touched by that circle, to  
11 determine waste generation.
- 12 A: That's the formula in regulation.
- 13 Q: Okay. But you don't look at the landfills in  
14 those other counties that are outside the  
15 circle.
- 16 A: We follow the formula.
- 17 Q: Okay. But the answer to the question is, no,  
18 you don't consider landfills that are outside  
19 the circle, even though you're considering the  
20 waste that's generated outside the circle.
- 21 A: Yeah, the answer is that the regulation doesn't  
22 call for that.
- 23 Q: Okay. I understand that. Do you have  
24 children?
- 25 A: Yes, I do.

- 1 Q: Do you ever explain to your children the  
2 difference between something they want and  
3 something they need?
- 4 A: I've attempted to.
- 5 Q: Okay. All right. That's teaching them a  
6 commonsense -- a common usage of the term  
7 "need", isn't it?
- 8 **MR. LAVENDER:** Your Honor, I would object to the  
9 relevance of this line of questioning because  
10 I think that we've -- I was under the  
11 impression that the regulation spoke for itself  
12 with respect to the manner by which both the  
13 Department and the General Assembly have  
14 defined "need" in the process for demonstrating  
15 need.
- 16 **THE COURT:** Well, I don't remember them going into  
17 this type of questions on cross-examination,  
18 Mr. Chandler.
- 19 **MR. CHANDLER:** That's all I have, Your Honor.
- 20 **THE COURT:** Especially the children.
- 21 **MR. CHANDLER:** That's all I have, Your Honor.
- 22 **THE COURT:** All right. Any follow-up on new matter  
23 raised in his redirect?
- 24 **MS. WILLIAMS:** I don't have any, Your Honor.
- 25 **THE COURT:** Okay.

1 MR. LAVENDER: I'm trying to make sure that I frame  
2 this question properly in response to an  
3 inquiry, but I think Mr. Coleman was asked a  
4 number of questions about what goes in and what  
5 goes out of the circle and why there aren't but  
6 two.

7 MR. COLEMAN - RECROSS-EXAMINATION BY MR. LAVENDER:

8 Q: So, Mr. Coleman, would you say that one of the  
9 inherent goals in the regulation with regard to  
10 allowing greater than one facility within a  
11 planning area is as section 44-96-240(A)(6)  
12 says, "To encourage solid waste services in the  
13 most efficient and cost effective manner"?

14 A: Yes.

15 Q: And describe how that's supposed to be done.

16 MR. CHANDLER: Your Honor, they've been limiting me  
17 to the question of need. And I think now  
18 they're trying to stray outside that question.

19 THE COURT: Well, you evaluate need -- well, I'll  
20 let you respond.

21 MR. LAVENDER: My inquiry is simply to follow up on  
22 this notion about the regulation, because the  
23 regulation seems to have been parsed more than  
24 one time and the point simply is --

25 THE COURT: I'm sorry, I overrule the objection

1           because it's responsive to the questions you've  
2           asked, Mr. Chandler. As a matter of fact, you  
3           even said that they were new matters, so ...

4   **MR. LAVENDER:** Thank you, Your Honor.

5   **Q:** And my question again is, with respect to the  
6           regulation and allowing more than one facility  
7           in Laurens County or, more importantly, in the  
8           planning area proposed by the MRR facility, can  
9           you describe how that, if at all, addresses  
10          cost effectiveness and efficiency to meet the  
11          needs of the -- to meet the goals and the  
12          requirements of the statutes for purposes of  
13          need?

14   **A:** Yes. Certainly I've had conversations about  
15          that issue and a couple of things have come  
16          into play are the distance -- one, the distance  
17          to a facility needs to be reasonable, so that  
18          you can, you know, get to it without expending  
19          too many resources from your construction site  
20          or whatever it is you're doing, and also to  
21          have a certain amount of competition in that  
22          area, would be the second issue, so that, you  
23          know, facilities have to compete with each  
24          other in terms of price.

25   **MR. LAVENDER:** No other questions, Your Honor.

1 THE COURT: On those limited questions --

2 MR. CHANDLER: Just to follow up on this.

3 MR. COLEMAN - FURTHER REDIRECT EXAMINATION BY MR.

4 CHANDLER:

5 Q: How far is Curry Lake landfill from this  
6 proposed site?

7 A: I can give you an approximate number. I  
8 believe it's about four miles.

9 Q: Okay. How far is it from the most distant  
10 point of Spartanburg County to this proposed  
11 landfill?

12 A: I don't know the exact number. I'd have to ...

13 Q: But you're giving this the capacity to handle  
14 waste that's coming from the farthest point  
15 away in Greenville County and Spartanburg  
16 County, aren't you?

17 A: We used the waste generated in those two  
18 counties to calculate the maximum disposal  
19 allowed, yes.

20 Q: All right. So what is the distance factor you  
21 plan for?

22 A: Well, there was a ten-mile circle at the  
23 time --

24 Q: Okay. But you allow -- you count capacity and  
25 waste far outside that ten-mile circle, don't

- 1           you?
- 2    A:    That's correct.
- 3    Q:    Okay.
- 4    A:    In the adjacent counties.
- 5    Q:    Okay.    So how is this thing about "distance"  
6           and "needs to be reasonable" if you're counting  
7           waste that's far outside that circle?
- 8    A:    Well, I can't -- I can only say that during the  
9           promulgation of the regulation, there were  
10           conversations about what's a reasonable  
11           distance to haul and that was taken into  
12           account.
- 13   Q:    All right.       Where were you when these  
14           regulations were written?
- 15   A:    Which ones?
- 16   Q:    The original regulations in, when was it, 1999,  
17           2000?
- 18   A:    Well, I was within the Department.    I was  
19           peripherally aware of those conversations at  
20           that time through managers and directors  
21           meetings that I attended and discussed these  
22           matters, but then very directly related in the  
23           latest revision of these regulations with those  
24           same conversations.
- 25   Q:    Okay.    Now, effectiveness and efficiency -- do

1           you understand the concept of "economies of  
2           scale"?

3       A:    Yes, I do.

4       Q:    Okay.  And do you think we're going to increase  
5           effectiveness and efficiency if we have a bunch  
6           of landfills licensed for 150 to 240,000 tons  
7           in a county that's only generating 16,000 tons?  
8           How is that going to promote effectiveness and  
9           efficiency?  Can you tell me that?

10      A:    Why wouldn't it?  Why would it not?  I don't  
11           understand.

12      Q:    All right.  How many people does it -- does it  
13           take a number of people to run a landfill no  
14           matter how much waste is coming in there?

15      A:    I'm sure it takes a minimum number, yes.

16      Q:    Okay.  Well, then, how do you say this creates  
17           more effectiveness and efficiency to have more  
18           landfills and more competition for the little  
19           bit of waste that's generated in this area?

20      A:    What I said was, there was an element of price  
21           competition that was discussed.

22      Q:    Price competition.

23      A:    Yes.

24      Q:    All right.  And give me example of where having  
25           another landfill in -- that you've documented

1 a benefit to the public from the price  
2 competition? Can you give me a single example?

3 A: That I've documented?

4 Q: Yes, sir.

5 A: Well, I'm aware that, you know, counties put  
6 out bids and get bids from various facilities  
7 in the area, but beyond that, I can't really  
8 comment on that.

9 Q: Okay. So any benefits from competition or  
10 effectiveness and efficiency, you can only  
11 speculate about that with this landfill; isn't  
12 that true?

13 A: No. My statements were not speculating. My  
14 statements were that there were conversations  
15 related to competition during the promulgation  
16 of the regulation.

17 Q: There were conversations about that. That's  
18 the best you can say about these things?

19 A: That's what I said.

20 MR. CHANDLER: Thank you.

21 THE COURT: All right. On new questions he has  
22 asked or new matter.

23 MS. WILLIAMS: None from DHEC, Your Honor.

24 MR. LAVENDER: No, Your Honor.

25 THE COURT: All right. You may step down.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 MR. CHANDLER: Your Honor, with the stipulation on  
4 standing -- can we take a brief break? It's  
5 going to reduce what I'm going to ask. I've  
6 had two more witnesses --

7 THE COURT: If it will reduce what you ask, you  
8 don't have to explain further.

9 MR. CHANDLER: Okay.

10 THE COURT: I'll be happy for you to do that.

11 MR. CHANDLER: Thank you.

12 (Off the record from 3:24 to 3:31 p.m.)

13 THE COURT: All right. Mr. Chandler, you're all  
14 refined and ready to be succinct, huh?

15 MR. CHANDLER: We'll be brief, I believe, Your Honor.

16 Petitioner calls Mr. Jimmy Martin to the stand.

17 JIMMY MARTIN, having been duly sworn, testifies and  
18 examines as follows:

19 MR. MARTIN - DIRECT EXAMINATION BY MR. CHANDLER:

20 Q: Would you please give us your name?

21 A: James Travis Martin.

22 Q: Okay. Mr. Martin, where do you live?

23 A: 1432 Lakeview Drive, Gray Court, South  
24 Carolina.

25 Q: All right. Now, I want to hand you an aerial

1 photograph that's been marked as Petitioner's  
2 Exhibit One. Do you recognize the area that's  
3 shown on this aerial?

4 A: Yes, sir, I do.

5 Q: Okay. And what does it show?

6 A: Footprint of a proposed landfill.

7 Q: Okay. And is it the landfill we're talking  
8 about here today?

9 A: Yes, sir.

10 MR. CHANDLER: Okay. Your Honor, we would offer  
11 Petitioner's Exhibit Number One into evidence.

12 THE COURT: Any objection?

13 MR. LAVENDER: Your Honor -- yes, sir, we object to  
14 the relevance of it at this point. We're just  
15 simply talking about need. We already know the  
16 latitude and longitude of the landfill. I  
17 don't know what the particular picture -- but  
18 I don't know what else it's intended to provide  
19 in terms of additional information relevant to  
20 these proceedings.

21 MS. WILLIAMS: Your Honor --

22 MR. CHANDLER: We'll tie this up with his testimony,  
23 Your Honor. We're just kind of orienting the  
24 Court on where this thing is, is about all  
25 we're doing.

1 THE COURT: I'll just wait for you to tie it up  
2 later on, then.

3 MR. CHANDLER: Okay.

4 MS. WILLIAMS: Your Honor, did he authenticate this  
5 picture? I mean, who created this?

6 THE COURT: Well ...

7 MR. CHANDLER: I believe B.P. Barber did. And I  
8 believe it was part of the permit application  
9 package. But Mr. Lavender might be able to  
10 answer that question better than I can.

11 MS. WILLIAMS: It's really hard to tell from the  
12 picture.

13 THE COURT: Well, it's got to be authenticated for  
14 you to offer it, so -- I assume that's an  
15 objection?

16 MS. WILLIAMS: Yes, Your Honor, that is an objection.

17 THE COURT: All right.

18 MR. CHANDLER: All right. Well, if they don't want  
19 you to know where the landfill is, that's okay  
20 with me.

21 Q: Mr. Martin, what kind of business are you in?

22 A: Contractor.

23 Q: And how long have you been a contractor?

24 A: Thirty-five years.

25 Q: What's the name of your company?

- 1 A: Martin Brothers Construction Company,  
2 Incorporated.
- 3 Q: What type of work do you do?
- 4 A: We're licensed heavy highway contractor, which  
5 in essence means we do heavy civil work.
- 6 Q: Okay. Have you ever done any landfill work?
- 7 A: Yes, sir.
- 8 Q: And tell me about that.
- 9 A: We ran the now closed Laurens County landfill  
10 from 1979 to 1984 as a contractor for the  
11 County of Laurens.
- 12 Q: Okay.
- 13 A: And we've done the cap there since and also  
14 worked at some other landfills.
- 15 Q: Okay. Are you a member of the group known as  
16 EAGLE?
- 17 A: Yes, sir.
- 18 Q: Okay. Do you hold a position within that  
19 group?
- 20 A: Yes, sir.
- 21 Q: And were you one of the forming members of the  
22 group?
- 23 A: Yes, sir.
- 24 Q: Okay. Now, in your contracting business, do  
25 you sometimes have to deal with construction

1 and demolition debris?

2 A: Yes, sir.

3 Q: And about how often do you have to dispose of  
4 this type of debris?

5 A: Monthly.

6 Q: Okay. And where do you generally take the  
7 debris that's generated in your work?

8 A: I probably haul the most to Curry Lake. I haul  
9 to Republic, a landfill in Oconee, Twin  
10 Chimneys.

11 Q: Okay. And Republic is in which county?

12 A: Spartanburg County.

13 Q: Twin Chimneys is in which county?

14 A: Greenville County.

15 Q: Do you know the name of the landfill in Oconee  
16 County?

17 A: No, sir, I don't.

18 Q: Okay. How far is the Curry Lake landfill from  
19 the site of the proposed MRR Highway 92  
20 landfill?

21 A: Just a little over three miles.

22 Q: Okay. Now, in your work, when you have to  
23 dispose of construction and demolition debris,  
24 have you ever experienced any problem finding  
25 a place to take that waste?

1 A: No, sir.

2 Q: Okay. Have you ever heard of any problems  
3 experienced by any other contractors in  
4 disposing of waste in this area around Laurens  
5 County?

6 A: No, sir.

7 Q: Okay. As somebody who disposes of construction  
8 debris on a regular basis, do you think there's  
9 any need for a new landfill in this area?

10 A: No, sir.

11 Q: Why not?

12 A: We already have one there. Twin chimneys is 11  
13 miles away. Republic is 14, 15, 16 miles away,  
14 depending on where you generate the waste.  
15 Then you've got other landfills in Greenville  
16 County.

17 Q: Okay.

18 A: More than likely you're going to haul by a  
19 landfill before you come to Gray Court.

20 **MR. CHANDLER:** Thank you, Mr. Martin. That's all  
21 the questions I've got. If you would answer  
22 any questions any of the other attorneys might  
23 have.

24 **THE COURT:** Mr. Lavender?

25 **MR. MARTIN - CROSS-EXAMINATION BY MR. LAVENDER:**

1 Q: Mr. Martin, you say you're a contractor -- I  
2 mean, road construction work, that's the  
3 primary nature of your --

4 A: That's our license, but we do very little DOT  
5 work. We do more schools, industrial sites,  
6 that type of stuff, industrial park roads.

7 Q: Is that a South Carolina license?

8 A: Yes, sir.

9 Q: Is it limited geographically?

10 A: No, sir.

11 Q: So you can go anywhere in the state --

12 A: That's correct.

13 Q: -- and take a job.

14 A: That's correct.

15 Q: And do you bring it all back to Curry Lake?

16 A: No, we haul to the closest landfill.

17 Q: If the project was in the edge of Spartanburg  
18 County and Curry Lake landfill was closer to  
19 your job than to a landfill up in Spartanburg  
20 County, would you go to Curry Lake or would you  
21 drive all the way up to another landfill 30 or  
22 40 miles farther?

23 A: No, we're going to haul to the shortest ...

24 Q: So it does matter to you for cost purposes to  
25 go to the closest landfill that's available to

1           you.

2   A:    Depending on the tipping fee, yes, sir.

3   Q:    What if there's only one landfill you can go  
4           to, are you going to pay that price?

5   A:    Yes, sir.

6   Q:    So if there's more than one, and they're the  
7           same distance, you're going to do it by price?

8   A:    Yes, sir.

9   Q:    When you say you ran the landfill, are you a  
10           licensed landfill operator?

11   A:    Back in those days, we didn't have to be. They  
12           required us to take a course at Piedmont Tech  
13           to become certified. The course was taught by  
14           DHEC at that time.

15   Q:    Okay. So did you communicate with DHEC your  
16           concerns directly that you didn't have any  
17           problem finding landfill space?

18   A:    In this process?

19   Q:    In this process.

20   A:    No.

21   Q:    Okay. So you didn't contact DHEC and make them  
22           aware of any information you had about your  
23           ability to find landfill space and the need  
24           with respect to this landfill?

25   A:    Our group repeatedly questioned this.

1 Q: But you didn't do it personally.

2 A: No.

3 MR. LAVENDER: I don't think I have any other  
4 questions.

5 THE COURT: Ms. Williams?

6 MS. WILLIAMS: I don't have any questions, Your  
7 Honor.

8 MR. CHANDLER: Thank you, Mr. Martin.

9 (Witness excused.)

10 MR. CHANDLER: Your Honor, the Petitioner rests.

11 THE COURT: All right. You want to break or y'all  
12 ready to go?

13 MR. LAVENDER: I'm ready to go.

14 THE COURT: Okay.

15 MR. LAVENDER: Your Honor, we'd like to move for a  
16 directed verdict at this time based on the  
17 evidence that's before --

18 THE COURT: Directed verdict is denied.

19 MR. LAVENDER: All right. Your Honor, we rest.

20 THE COURT: If you want to move for involuntary  
21 nonsuit ...

22 MR. LAVENDER: Well, involuntary -- I'm sorry,  
23 involuntary nonsuit, Your Honor.

24 THE COURT: I'll hear you out on that.

25 MR. LAVENDER: Well, we believe that, number one --

1 and I won't go back into the motion to dismiss  
2 at this time. I will say this. We believe  
3 we've established, number one, when the  
4 determinations were made with respect to the  
5 demonstration of need -- I'll address the  
6 motion real quickly in terms of the record --  
7 and the fact that as early as June of '06, the  
8 Petitioners -- one or more of the Petitioners  
9 were aware of the need issue and began raising  
10 the need issue without questioning the fact  
11 that the demonstration-of-need determination  
12 had already been made. They obviously were in  
13 contact with the Department, so we've got that  
14 in the Petitioner's Exhibit.

15 But with respect to --

16 **THE COURT:** Well, is there evidence that links the  
17 issuance of the letter and their knowledge of  
18 the issuance of the letter with the time frame  
19 to appeal?

20 **MR. LAVENDER:** Nothing in the record, Your Honor.  
21 And our position on that would be that there  
22 was no public notice required and that the  
23 repose period was irrespective of notice.  
24 The notice component of the appeal period was  
25 within the 30 days under the old rule, the

1 applicable rule at the time, the ALC rule -- 30  
2 days from actual or constructive notice.  
3 Unfortunately, I know it all too well. And  
4 then -- but not more than 90 days of the  
5 decision -- from the decision -- date of the  
6 decision without regard to notice.

7 So, you know, with respect to that, we simply  
8 contend that the notice question is a nonissue.  
9 And as Your Honor has at least commented on but  
10 not ruled on, we take the strong position that  
11 the new regulation that was promulgated  
12 recently cannot serve to open up a healed wound  
13 and grant a new right to appeal a decision that  
14 became final and unappealable in 2006.

15 With respect to the involuntary nonsuit,  
16 addressing -- assuming that --

17 **THE COURT:** All right. Concerning your motion to  
18 dismiss, I'm just going to withhold ruling on  
19 that. I'm not going to deny it. I'm just --  
20 you've made the motion. Y'all haven't briefed  
21 it. I would like to -- that's -- I've got two  
22 things I want y'all to address, in addition to  
23 your -- in your proposed orders and that's one  
24 of them.

25 **MR. LAVENDER:** Yes, sir. And we welcome the

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1 opportunity to do that.

2 Taking that aside and moving on to the  
3 involuntary nonsuit, we believe that the record  
4 is clear that, first of all, at least in terms  
5 of the arguments -- although, I think we  
6 haven't seen your order, but assuming you've  
7 denied the motions -- we believe, again, that  
8 paragraph (D)(3)(d), wherein the Department  
9 reserves the right to consider -- or reserves  
10 the right to review additional factors does not  
11 makes it mandatory and as a consequence --

12 **THE COURT:** Well, I agree with you on that.

13 **MR. LAVENDER:** And the failure --

14 **THE COURT:** And, actually, somewhat have a problem  
15 with the Court getting involved in this -- it's  
16 not a policy decision, but, you know, I  
17 think -- I think the provision is problematic.  
18 But the way it's drafted, is where I'm coming  
19 from, I think it allows -- if we stand in the  
20 stead of the Department in reviewing the case,  
21 it -- but it does give the -- it gives the  
22 option of the Court to say, "Well, if I'm  
23 standing in the stead of the Department, I  
24 don't have to consider the evidence. I do it  
25 on a-case-by-case basis and decide this case

1 warrants it," so ...

2 **MR. LAVENDER:** And that's correct, Your Honor.

3 And we say with respect to that, the record, we  
4 believe -- we would assert that the record is  
5 clear on the fact that this is not a Laurens  
6 County landfill. This was not a landfill  
7 designed to meet solely the demand generated by  
8 the Laurens County citizens and that's evident,  
9 again, in the planning area concept, the  
10 regional concept set forth in the Solid Waste  
11 Policy and Management Act, and embodied in the  
12 regulation dealing with the demonstration of  
13 need.

14 So, you know, we think that the record's fairly  
15 clear that this decision should not rest  
16 entirely upon simply because of the statics  
17 that suggest that there's more capacity by  
18 virtue of adding this proposed facility than  
19 Laurens County needs, or even those other three  
20 counties. They're simply the tool for  
21 determining what the maximum allowable tonnage  
22 rate is for a new facility and there's a  
23 process in that regulation that sets out where  
24 those new facilities can go and, looking at the  
25 document, where they can't go.

1 And there's a distribution that is embodied in  
2 that process such that they're proximate to all  
3 regions of South Carolina, not just to Laurens  
4 County and not just because the people in  
5 Laurens County, or even in the general area,  
6 don't think that it makes sense statistically,  
7 because, as evidenced by the existing facility,  
8 they do ultimately, once they're there, receive  
9 waste from beyond that county boundary and in  
10 some cases from beyond that original ten-mile  
11 circle.

12 **THE COURT:** I can't remember what exhibit, but it  
13 showed about six counties.

14 **MR. LAVENDER:** All that having been said, all of our  
15 argument is simply, first, we don't believe  
16 that that provision mandates the exercise of  
17 that discretion. We also contend that, even if  
18 it doesn't, the record is clear that beginning  
19 as early as June the 12th of 2006, the  
20 Department began receiving information from  
21 concerned citizens, from politicians. And  
22 Mr. Coleman acknowledged that they considered  
23 everything they got, but that it did not  
24 persuade them to change their position,  
25 assuming that that position could have been

1 changed on the demonstration and on the  
2 finality of the demonstration of need, but it  
3 did not persuade them to change their position.  
4 And he's essentially, without even knowing it,  
5 from the Department's standpoint, it's apparent  
6 that they did, in fact, review additional  
7 factors from June the 12th of '06 until July  
8 the 18th, I believe, of '08, when they  
9 ultimately decided that the applicant had still  
10 met the technical requirements of the permit  
11 and that the demonstration-of-need  
12 determination should not be altered.  
13 And we think that based on the record before  
14 you that we're entitled to that judgment.

15 **THE COURT:** Okay.

16 **MR. LAVENDER:** Nonsuit.

17 **THE COURT:** Ms. Williams?

18 **MS. WILLIAMS:** Your Honor, I would just agree with  
19 Mr. Lavender, except the only thing I would  
20 maybe not necessarily disagree with but couch  
21 in a different manner is, he said that we  
22 reviewed additional factors. I would say we  
23 reviewed additional information and we reviewed  
24 all of the information that we received.  
25 Whether or not it was an additional factor, I

1 don't know. But I agree with the rest of what  
2 he said.

3 **THE COURT:** What does section little D say?

4 **MS. WILLIAMS:** It says we reserve the right to  
5 review additional factors in the  
6 determination --

7 **THE COURT:** Factors?

8 **MS. WILLIAMS:** Yes, we reserve the right to review  
9 additional factors in determining need.

10 **THE COURT:** Okay. All right. Mr. Chandler, in  
11 responding to the motion, can you just list for  
12 me each one of the additional factors that you  
13 have presented today for consideration?

14 **MR. CHANDLER:** Okay. Several things. First thing  
15 is the Curry Lake landfill is only about three  
16 miles away from this landfill. In terms of  
17 saving anybody any driving distance, the most  
18 it's going to save anybody is three miles.  
19 That's all.

20 In terms of capacity, the fact that Curry Lake  
21 is licensed for 241,000 tons of waste, yet has  
22 never in its existence ever found more  
23 than -- I mean, they never even reached  
24 one-fourth -- well, they've never reached a  
25 third, anyhow, in their capacity. They've come

1 over 60,000 tons sometimes, which --

2 **THE COURT:** In their yearly capacity.

3 **MR. CHANDLER:** Huh?

4 **THE COURT:** In their yearly capacity?

5 **MR. CHANDLER:** In their yearly amount.

6 They can take 241,000 tons a year. They're  
7 only taking in something in the range of the  
8 low 60's in their best year.

9 If you look at the figures of what they've  
10 taken in for 2009 and extrapolate those out for  
11 the full year, it's going to be less than  
12 50,000 tons. That in a county that only  
13 generates sixteen, 17,000 tons in the best  
14 year. The fact that --

15 **THE COURT:** We're at number three now?

16 **MR. CHANDLER:** Huh?

17 **THE COURT:** We're at number three now?

18 **MR. CHANDLER:** We're at number three now.

19 There are other landfills that may not be  
20 within ten miles of this location, but they're  
21 within the 12, 13, 14 miles. Just a short  
22 distance into Greenville and Spartanburg  
23 County, you come to additional landfills that  
24 are available for people like Mr. Martin to  
25 take his waste in. That's another factor.

1           If we're planning for Spartanburg County and  
2           we're looking at all of Spartanburg County --

3           **THE COURT:** Are you moving to another factor?

4           **MR. CHANDLER:** Moving to another factor.

5           **THE COURT:** Okay.

6           **MR. CHANDLER:** Looking at all of Greenville County,  
7           in those counties, they are already providing  
8           more capacity than they need.

9           In those two counties, they are generating way  
10          less than half of the amount of disposal  
11          factors than they have in those counties.

12          Another factor is that by including everything  
13          in Spartanburg County and in Greenville County,  
14          no matter where in the county, if we look to  
15          the far reaches of those counties, somebody  
16          would have to drive past four or five landfills  
17          to come down to the proposed MRR landfill from  
18          those far reaches, yet we're including that  
19          capacity in here. That's another factor.

20          We've got -- the County Council passed a  
21          resolution saying we don't see a need for this  
22          thing. That ought to be a factor.

23          We've got -- the delegation came in and said,  
24          "We don't see a need for that." That ought to  
25          be a factor.

1 Now, what DHEC has said in the 30(b)(6)  
2 deposition, and basically in the testimony  
3 today --

4 **THE COURT:** Are you now moving to argument?

5 **MR. CHANDLER:** Moving into argument.

6 **THE COURT:** Okay.

7 **MR. CHANDLER:** -- is none of those things entered  
8 into our decision. Now, why not?

9 The only explanation of why not is  
10 Mr. Coleman's fear that if he used those  
11 factors and makes a different decision, he gets  
12 sued over it, that it would be considered  
13 arbitrary.

14 So I asked, "Well, what is the rule for when do  
15 you consider additional factors?" "We don't  
16 have a rule."

17 "What is your rule for when we don't consider  
18 additional factors?" "Well, we don't have a  
19 rule for that, either."

20 **THE COURT:** Well, I'm here to determine -- I tell  
21 you what. At this point in time, because I  
22 don't need to hear about what he did in making  
23 his decision, because I've got to make my own,  
24 I think I'll just deny the motion for  
25 involuntary nonsuit at this point in time.

1           So thank y'all.

2   **MR. CHANDLER:** Just one brief point on the motion to  
3           dismiss, Your Honor.

4   **THE COURT:** You're trying to get me to change my  
5           mind?

6   **MR. CHANDLER:** No, sir, not at all. I just want to  
7           ask this before I forget about it.

8   **THE COURT:** Okay.

9   **MR. CHANDLER:** Since I just heard about this motion  
10           today, normally our process -- I don't know  
11           what you're going to do in this case, but in an  
12           awful lot of cases, we wait, we get a  
13           transcript, we submit proposed orders and  
14           there's been some mention of addressing that in  
15           conjunction with that.

16           The normal time that we have to submit material  
17           in response to a motion is about ten days.  
18           There are going to be other materials that I'm  
19           going to want to submit in response to that  
20           motion to dismiss as part of that.

21           I don't mind being limited to ten days on  
22           submitting those things and briefing it later  
23           on, or else I want to be able to submit those  
24           when I submit the proposed order and other  
25           briefing on those issues.

1     **THE COURT:** That's an interesting point.  
2             Any response to that?  
3     **MR. LAVENDER:** (Shakes head negatively.)  
4     **THE COURT:** In other words, do you want to require  
5             him to respond to the motion to dismiss within  
6             ten days from today's date and submit his  
7             additional materials or --  
8     **MR. LAVENDER:** Your Honor, we have no preference, as  
9             long as we get an opportunity to reply to it.  
10    **THE COURT:** I'll tell you what. If you're going to  
11             do -- because they normally have to respond --  
12             the ability or the right to reply, so I think  
13             I'd like to just make it ten days from today's  
14             date and then allow them to reply. And then  
15             I'll address it in my decision.  
16             And if y'all could send me your -- let's see.  
17             In this instance it would be Mr. Chandler's  
18             response and then Mr. Lavender or Ms. Williams'  
19             reply. If you could send me that in Word,  
20             e-mail it to me --  
21    **MR. CHANDLER:** Okay.  
22    **THE COURT:** -- I'd appreciate it.  
23    **MR. CHANDLER:** One little detail on that. Since  
24             this motion was made here with basically  
25             nothing but argument to support it, if the

1 Respondents' reply to my stuff with material  
2 that maybe should have gone with the motion,  
3 that's going put me in a little bit of an  
4 awkward position, too.

5 **THE COURT:** Well, we'll do a conference call on the  
6 reply to the reply --

7 **MR. CHANDLER:** Okay.

8 **THE COURT:** -- and address that. Like I haven't  
9 heard from y'all enough.

10 **MR. CHANDLER:** I understand. I'm just ...

11 **MR. LAVENDER:** The time on the reply? Just so we'll  
12 stay on track.

13 **THE COURT:** What's the --

14 **MS. HARTLEY:** Five days?

15 **MR. LAVENDER:** We'll give it five.

16 **THE COURT:** Is that --

17 **MR. LAVENDER:** We want to keep it rolling.

18 **THE COURT:** All right.

19 **MR. LAVENDER:** We'll do it.

20 **THE COURT:** Ms. Williams?

21 **MS. WILLIAMS:** That's fine, Your Honor.

22 **THE COURT:** Ms. Hartley is just thrilled at the five  
23 days. You want to make it shorter for her,  
24 Mr. Lavender?

25 **MR. LAVENDER:** I think we got --

1 **MS. HARTLEY:** Mr. Lavender is going on vacation, by  
2 the way, for two weeks.

3 **MR. CHANDLER:** Your Honor, I think Ms. Hartley would  
4 confirm that I'm usually pretty easy. If she  
5 needs more time, I'm not going to object.

6 **THE COURT:** I was just waiting to see her elbow him.  
7 Okay. Mr. Lavender?

8 **MR. LAVENDER:** Yes, Your Honor. It may disappoint  
9 you, but we rest.

10 **THE COURT:** Okay.

11 **MS. WILLIAMS:** So does DHEC, Your Honor.

12 **THE COURT:** Okay. Well, that's interesting.

13 Well, then I'll decide the case on what I've  
14 heard.

15 Proposed orders either 30 days from today or 30  
16 days from the date the transcript is made  
17 available to you. Unless y'all want to give me  
18 a different time frame.

19 **MR. LAVENDER:** Was that an "either/or" or the latter  
20 of the two?

21 **THE COURT:** That's either 30 days from today. If a  
22 transcript is requested, then it's 30 days from  
23 the date it's made available to you. And I  
24 always say "available to you" means when it's  
25 placed in your hands.

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(Off the record.)

THE COURT: All right. With that said, do y'all want to make closing arguments? I think y'all really just did. So this hearing is adjourned.

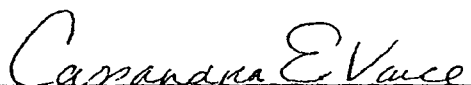
(Proceedings concluded at 3:57 p.m.)

**CERTIFICATE**

This is to certify that the within hearing consisting of Two Hundred Five (205) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 5, 2009.



Cassandra E. Vance  
Court Reporter

Notary Public for South Carolina  
My Commission Expires: February 26, 2018

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STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

ENGAGING AND GUARDING	)	DOCKET NO. 08-ALC-07-0425-CC
LAURENS COUNTY'S	)	
ENVIRONMENT ("EAGLE"),	)	
A NON-PROFIT MEMBERSHIP	)	
ORGANIZATION,	)	30(b)(6) DEPOSITION
	)	
PETITIONER,	)	OF
	)	
VS.	)	SOUTH CAROLINA
	)	DEPARTMENT OF HEALTH
MRR HIGHWAY 92, LLC,	)	AND ENVIRONMENTAL CONTROL
AND SOUTH CAROLINA	)	
DEPARTMENT OF HEALTH AND	)	BY
ENVIRONMENTAL CONTROL,	)	
	)	KENT COLEMAN, P.G.
RESPONDENTS.	)	

30(b)(6) Deposition of South Carolina Department of Health and Environmental Control by Kent Coleman, P.G., taken pursuant to the Federal Rules of Civil Procedure, commencing at the hour of 10:04 a.m., Thursday, February 12th, 2009, at South Carolina Department of Health and Environmental Control, 2600 Bull Street, Conference Room 2256, Columbia, South Carolina.

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1 regulation, 61-107.19, has language related to  
2 that, the handling of those things, and that  
3 language is -- To paraphrase it, basically it says  
4 that if the Department has made those  
5 determinations prior to the effective date of the  
6 regulation, then they remain applicable, those  
7 decisions that we had made, but they are subject to  
8 the continued review of the permit application and  
9 the technical requirements, as well as subject to  
10 appeal.

11 Q Okay. The new regulation made at least some  
12 changes in the -- sort of terminology, how you  
13 refer to these types of landfills, --

14 A Mm-hmm. Right.

15 Q -- and, I mean, what we had been calling a C&D  
16 landfill, there's a new name for that now, isn't  
17 there?

18 A Yes.

19 Q And what is that new name?

20 A It would be a Class Two landfill.

21 Q Okay. Are there differences between what was  
22 called a C&D landfill and a Class Two landfill, or  
23 is it just nomenclature?

24 A There are some differences in terms of the  
25 regulatory requirements that are in place for the

1 start asking him questions?

2 Ms. Williams: Is that Exhibit Five, or  
3 is that still --

4 The Deponent: Yeah, it's called Five  
5 here.

6 Mr. Chandler: Yeah.

7 Ms. Williams: Oh. Okay.

8 Mr. Chandler: Yeah.

9 Q The document I've handed you as Exhibit Five, do  
10 you know what it is?

11 A It's titled Demonstration of Need Approval for the  
12 Proposed Laurens Reclamation & Recycling Center  
13 Long-Term Construction, Demolition and Land-  
14 Clearing Debris Landfill.

15 Q And is that a letter fro Joan Litton to Ron  
16 Gilkerson?

17 A Yes, it is.

18 Q Okay. And attached to that are a couple of sheets  
19 of paper. The second page just seems to be a  
20 return receipt on the mail?

21 A Mm-hmm.

22 Q The third page seems to be a little listing of what  
23 went into the makeup of the 154,000-ton limit  
24 that's set forth in that letter. Do agree with  
25 that?

1 A Yes.

2 Q Okay. And it lists the same three counties that  
3 you just called out, Greenville, Laurens and  
4 Spartanburg; is that correct?

5 A Yes.

6 Q Okay. Now, do you know how much solid waste, or  
7 C&D waste, is generated per year in Laurens County?

8 A I could look at our most recent annual report to  
9 determine the most recent information that we have.  
10 On this particular sheet, there's another listed,  
11 that you've given me in Exhibit Five.

12 Q Okay. is your most recent report the one for  
13 fiscal year 2007?

14 A Yes.

15 Q Okay. I just happen to have a copy of that with  
16 me.

17 A How about that.

18 Mr. Chandler: I don't want to mark this  
19 as an exhibit. It's just information that we  
20 can all get.

21 Q And I think if you'll turn to page 74 -- and also  
22 75 seems to be pertinent to the amount of waste  
23 generated in Laurens County and what might be taken  
24 into account in a needs determination.

25 A Okay.

- 1 A 8,631 tons.
- 2 Q Okay. Now, does this report on page 73 also tell
- 3 you what are the current -- or what was current, as
- 4 of the date of that report, C&D landfills operating
- 5 in Laurens County?
- 6 A I'm sorry. Ask that again.
- 7 Q On page 73 of the report, --
- 8 A Okay, 73. All right.
- 9 Q -- does that give you a list of C&D landfills that
- 10 were operating in Laurens County as of the time of
- 11 that report?
- 12 A Yes.
- 13 Q Okay. And can you tell me what those facilities
- 14 were -- or are?
- 15 A City of Clinton, C&D and LCD landfill. Curry Lake,
- 16 C&D landfill. Laurens County, C&D landfill.
- 17 Q Okay. And what is the permitted capacity of the
- 18 City of Clinton landfill?
- 19 A 1,375 tons.
- 20 Q Okay. And how much was actually disposed of in
- 21 that landfill in the fiscal year 2007?
- 22 A It looks like 200 tons.
- 23 Q Okay. And it's got a 20-year remaining life, it
- 24 was estimated at that time?
- 25 A That's -- Yeah, according to this table.

Appearances

For the Petitioner: James S. Chandler, Jr., Esquire  
SC Environmental Law Project  
P.O. Box 1380  
Pawleys Island, SC 29585

For the Respondent  
SCDHEC: Etta R. Williams, Esquire  
South Carolina Department of  
Health and Environmental  
Control  
Office of General Counsel  
2600 Bull Street  
Columbia, SC 29201-1708

For the Respondent  
MRR Highway 92, LLC: Joan W. Hartley, Esquire  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
P.O. Drawer 2426  
Columbia, SC 29202

Reported By: Sandra M. Snead

Also Present: Jerry Williams  
Jeff Nichols  
Christopher Roof  
Ron Gilkerson

Index

Stipulations . . . . . 4  
Examination by Mr. Chandler . . . . . 4  
Certificate . . . . . 62

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Exhibits

Marked as Petitioner's Exhibit Number One; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of  
Notice of Deposition; two pages . . . . . 9

Marked as Petitioner's Exhibit Number Two; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of  
Laurens Recycling & Reclamation Center C&D Landfill  
map; one page . . . . . 36

Marked as Petitioner's Exhibit Number Three; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of  
Active and Proposed Construction and Demolition (C&D)  
Debris Landfills in SC map; one page . . . . . 37

Marked as Petitioner's Exhibit Number Four; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of  
correspondence dated February 21, 2006 with attached  
maps; three pages . . . . . 39

Marked as Petitioner's Exhibit Number Five; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of DHEC  
correspondence dated March 3, 2006, U.S. Postal Service  
Certified Mail Receipt, Demonstration of Need Worksheet  
and B.P. Barber correspondence dated February 21st,  
2006; four pages . . . . . 40

Marked as Petitioner's Exhibit Number Six; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of  
Laurens County Water and Sewer Commission correspondence  
dated March 17th, 2008; two pages . . . . . 51

Marked as Petitioner's Exhibit Number Seven; 30(b)(6)  
Deposition of SCDHEC by Kent Coleman, P.G.; copy of DHEC  
documents entitled Agenda for Public Hearing, Fact Sheet  
and Feedback Survey; three pages . . . . . 54

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Stipulations

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Kent Coleman, P.G., being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: My name is Kent Middleton Coleman.

Examination

By Mr. Chandler:

Q Mr. Coleman, where do you live?  
A I live in Northeast Columbia, South Carolina.  
Q And how long have you lived in Columbia?  
A Oh, let's see. About 15, 16 years, I guess.  
Q Okay. And where are you employed?  
A I'm employed at the South Carolina Department of Health and Environmental Control.  
Q What is your position?  
A My position is director of the Division of Mining and Solid Waste Management.

- 1 Q And can you give me an overview of what your job  
2 entails in that position?
- 3 A Overseeing the staff, permitting staff, for the  
4 Mining and Solid Waste sections, as well as the  
5 Office of Solid Waste Reduction and Recycling and  
6 the Groundwater Geology Solid Waste Group, the  
7 activities of those staff in terms of reviewing and  
8 issuing permits, assigning permits, and -- I guess  
9 that pretty much -- That pretty well describes it  
10 in general terms.
- 11 Q Okay. And you also are involved in drafting and  
12 the process of promulgating regulations?
- 13 A Yes.
- 14 Q Okay. What types of permits does your office  
15 issue?
- 16 A Well, a variety of permits for solid waste  
17 management facilities, including landfills, solid  
18 waste processing facilities, transfer stations, as  
19 well as mines, for any type of mining in the state  
20 that meets the definition of mining under the  
21 Mining Act, and, you know, solid waste facilities  
22 in general that are covered under the regs of the  
23 Act.
- 24 Q Okay. Now, what I want to do is back up a little  
25 bit and get you to give me your educational

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1 background.

2 A Okay. I have a bachelor's degree in geology and  
3 business from the University of South Carolina at  
4 Aiken. I have a master of earth resource  
5 management from the University of South Carolina in  
6 Columbia.

7 Q When did you obtain those degrees?

8 A I obtained the bachelor's degree in 1988 and the  
9 master's degree, '94, '95 -- I think '94.

10 Q And have you taken any further courses since  
11 getting your master's degree?

12 A I've certainly been involved in a number of  
13 training opportunities through work, through DHEC,  
14 where I've been able to go to different types of  
15 workshops and conferences through the years. Also,  
16 I am a registered professional geologist in South  
17 Carolina, and I take continuing education credits  
18 and have maintained that throughout my career as a  
19 professional geologist.

20 Q And how about walk me through your employment  
21 history.

22 A Okay. DHEC or all the way from the beginning?

23 Q Let's start from the beginning.

24 A Okay. I began, after -- after I received my  
25 bachelor's degree, working as a geologist. I

1 worked for Kennecott Mineral Exploration Company  
 2 located in Camden, South Carolina. After -- After  
 3 leaving there, I went to the University of South  
 4 Carolina where I worked at the Earth Sciences and  
 5 Resources Institute as a manager of the Geologic  
 6 Mapping Area for that institute. And after leaving  
 7 there, went to DHEC in January of 1992. I began  
 8 working at DHEC as a project manager and  
 9 hydrogeologist in the Solid Waste Program. Did  
 10 that for about three years prior to becoming the  
 11 section manager of the CERCLA, or Superfund,  
 12 Groundwater Section where we reviewed cleanup  
 13 activities under CERCLA for the state. After -- I  
 14 think I was in that job approximately nine years.  
 15 Went to a position as the director of the  
 16 Underground Storage Tank Program with DHEC. Did  
 17 that job for about four years, and then became  
 18 director of the Division of Mining and Solid Waste,  
 19 which is my current position.

20 Q Who was your immediate predecessor in your current  
 21 job?

22 A Art Braswell.

23 Q Okay. How many people report to you?

24 A I'm currently -- There's 40, 40 people.

25 Q All right. And who is your immediate supervisor?

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- 1 A Claire Prince.
- 2 Q And what is her position?
- 3 A She is the assistant bureau chief of the Bureau of  
4 Land and Waste Management.
- 5 Q Who is the bureau chief?
- 6 A Daphne Neel is the bureau chief.
- 7 Q Well, you may have said this, but when did you  
8 become head of this division?
- 9 A December 3rd of 2008. Is that right? No. 2007.  
10 I'm sorry.
- 11 Q 2007?
- 12 A Yeah.
- 13 Q I was thinking you were in this position last  
14 August when --
- 15 A Right.
- 16 Q -- I saw you at the DHEC board meeting --
- 17 A That's correct.
- 18 Q -- when the regulations were --
- 19 A That's correct. Yeah, 2007 is right.
- 20 Q Okay. Now, have you seen this Notice of  
21 Deposition?
- 22 A Yes.
- 23 Q Do you understand that you are the spokesman for  
24 the Department on at least some of the issues that  
25 are listed on this notice?

1 A Yes.

2 Q Okay. Are there any of the issues that are listed  
3 on this notice that you are not going to be able to  
4 address?

5 A I think I can address most of these issues. The  
6 issues that deal directly with the storm water  
7 permitting I would not be able to address.

8 Mr. Chandler: Okay. Let's go ahead and  
9 mark this as an exhibit so we'll have it with  
10 the deposition.

11 Marked as Petitioner's Exhibit  
12 Number One; 30(b)(6) Deposition  
13 of SCDHEC by Kent Coleman,  
14 P.G.; copy of Notice of  
15 Deposition; two pages.

16 Q Now, you understand that we're here today to talk  
17 about the application that's been made by a company  
18 called -- what is it -- MRR Highway 92, LLC?

19 A That's my understanding, yes.

20 Q At the time you became head of this division, what  
21 was the status of the permit application? Do you  
22 recall?

23 A I know that the application was under review.

24 There had been some activity on that application  
25 prior to my coming to the job.

1 Q Okay. And can you give me the names of the people  
2 on staff who had been involved up to that point and  
3 who have been involved in the review of that permit  
4 since then?

5 A Sure. The two sections that were involved with  
6 that primarily would have been the Solid Waste  
7 Permitting section, which is managed by Joan  
8 Litton, and the project manager that she has  
9 working on this particular application is Tim  
10 Eleazer. The other section that would have been --  
11 that would have had primary involvement would be  
12 Jana White's Solid Waste Planning Trust Fund  
13 Management section, and she -- she has two staff  
14 that look at planning issues and some other things,  
15 and that would be Celeste Duckett and Ernell  
16 Hartwell.

17 Q Ernell?

18 A Ernell. At the time, he was -- He is no longer in  
19 her section, but he is still with the division.

20 Q Okay. When you talk about solid waste planning,  
21 what kind of role would they have in the permitting  
22 process?

23 A They would look at the solid -- the county's solid  
24 waste plans and review those plans and look at an  
25 application for a particular type of facility as it

1 relates to consistency with the county solid waste  
2 management plan.

3 Q Bear with me a minute. I'm trying to remember a  
4 name. It can't seem to come into my head. Who is  
5 Jana White's predecessor in planning?

6 A Well, it's -- The organization has changed a bit  
7 over the years, but Rudy Curtis did some planning  
8 work prior to and during -- actually, at the same  
9 time Jana was still working on that, as well.

10 Q Okay. Okay. While you were the director of the  
11 Underground Storage Tank Division, I assume that  
12 during that time and up to December 3rd, 2007, you  
13 would not have had any direct involvement with this  
14 permit?

15 A That's correct.

16 Q Okay. And do you recall exactly what the status of  
17 the permit was other than generally being under  
18 review when you -- when it first came onto your  
19 radar screen?

20 A Basically, there was not a draft permit, as I  
21 recall, issued until after I came to the job, and,  
22 so, it was under review in a lot of different, you  
23 know, ways. The specifics of that, I don't -- I  
24 don't know that I could say exactly where it was,  
25 but the application was under review, and then I

1 became more aware of it as we got closer to a  
2 decision, and I was briefed extensively and then  
3 reviewed some of the documentation.

4 Q Okay. Now, as I understand it, -- And you can  
5 tell me if I'm wrong. We're going to go over some  
6 material that both of us are probably familiar  
7 with, but I want to make sure that --

8 A Mm-hmm.

9 Q -- my understanding is correct.

10 A Mm-hmm.

11 Q As I understand it, these -- an application for a  
12 C&D landfill, --

13 A Mm-hmm.

14 Q -- like just about any other landfill, goes through  
15 certain stages, and there are certain preliminary  
16 decisions that are made along the way before you  
17 get up to a draft permit. Can you kind of walk me  
18 through what those stages are?

19 A Right. I guess one of the first steps in that  
20 process would be a request for a demonstration of  
21 need review, and that's the process where the  
22 Department looks at type of facility location and  
23 reviews that application against the requirements  
24 of Regulation 61-107.17. And then another  
25 preliminary step would be when the application is

1 looked at in relation to the county's solid waste  
2 management plan to review whether that application  
3 would be consistent, if the facility were  
4 permitted, would it be consistent with that county  
5 plan. It's also looked at in terms of the state's  
6 solid waste plan for consistency. There would also  
7 be a review of local zoning and ordinances as part  
8 of that process of reviewing the application. And  
9 then there would be a technical review of the  
10 application to see if it meets the requirements of  
11 -- at the time, Regulation 61-107.11, which is when  
12 this application came in, at a time when that  
13 regulation was effective.

14 Q Okay. And at the end of the technical review  
15 process, or at least someways along in that  
16 technical process, is that when a draft permit is  
17 issued?

18 A Once those steps are completed and we're satisfied  
19 that all the technical requirements have been met.

20 Q When is public notice issued?

21 A Well, at that time, under Regulation 61-107.11,  
22 there were no specific requirements, but the --  
23 under the -- The draft permit would have been the  
24 public notice.

25 Q Okay. Now, this particular MRR, -- I'm just going

1 to shorten this -- the name of the company down to  
2 MRR --

3 A Okay.

4 Q -- for the purposes of this deposition. The MRR  
5 application sort of straddled two periods of time,  
6 really almost like three periods of time, because  
7 you had the original set of regulations that might  
8 have been in place at the time the initial  
9 application, or the initial review, of this  
10 landfill came into effect. Then you had an overall  
11 set of new regulations that govern the permitting  
12 process. And I was going to say a third, but,  
13 really, the changes in the need regulation, they've  
14 been in the process, but they still are not  
15 effective. They're sitting at the legislature?

16 A That's correct.

17 Q Okay. Now, if this were a brand new application  
18 today, and we were dealing with somebody that just  
19 walked in your door --

20 A Mm-hmm.

21 Q -- to build this same landfill, --

22 A Mm-hmm.

23 Q -- how would the process work?

24 Ms. Williams: Object to form.

25 Speculative.

1                   Mr. Chandler: What's the objection?

2                   Ms. Williams: Speculative. Object to  
3 the form of the question. You're asking him  
4 to answer something that if -- You said if  
5 you got an application in today, how would you  
6 look at.

7                   Mr. Chandler: Okay.

8 Q               What is your process for a new application that  
9 comes in the door now?

10 A              Okay. Can I get some clarity on that, too, as to --  
11 -- You're talking about the process under which  
12 regulation?

13 Q              Well, you mentioned a little while ago when we were  
14 talking about -- you mentioned 61-107.11, and --

15 A              Mm-hmm.

16 Q              -- you mentioned that it was in effect at the time  
17 of this application --

18 A              Right.

19 Q              -- and implying that it was not anymore --

20 A              That's correct.

21 Q              -- and that a public notice wasn't required.

22 A              Mm-hmm.

23 Q              And, so, what I want to make sure that I'm clear on  
24 is how those amendments changed things, what were  
25 the notice requirements before, --

1 A Okay.

2 Q -- what are the requirements in the future. And we  
3 can do it either way. We can start out with how it  
4 used to work under the old regulations --

5 A Mm-hmm.

6 Q -- and then go through how it works under the new  
7 regulations, but I want to go through both of those  
8 things.

9 A Okay. Well, you've asked me the process as it  
10 currently is, and that would be, based on what you  
11 were saying, under the regulation that has replaced  
12 61-107.11, and that would be Regulation 61-107.19.  
13 And, so, I'll go through -- I'll go through the  
14 process as it exists under 19. I'll call it 19.  
15 There is a -- certainly a much more lengthy process  
16 in terms of phases that you go through with a new  
17 application. One of the most significant changes  
18 about the regulation is that the Department's  
19 decision-making process is broken into two separate  
20 department decisions, the first decision being  
21 related to consistency with the county plan,  
22 demonstration of need, buffer requirements from  
23 residences, and other things like daycares and such  
24 -- such as that, and, also, then, the county zoning  
25 review. We -- Those are called now -- under the

1 new regulation called determinations that are made  
2 in that early process. That -- Those four  
3 determinations that are made that are related to  
4 demonstration of need, county plan, or planned  
5 consistency, zoning and buffers, -- those four  
6 decisions are -- Once we've looked at those four  
7 determinations, once we've looked at all those  
8 things, that decision is made as a separate draft  
9 decision by the Department. That is open to public  
10 comment and appeal as a separate issue. Once we  
11 have completed that portion of the application  
12 process and that decision is made and it is not  
13 appealed, or if it is appealed, then we get through  
14 that process somewhere, and there's a decision  
15 that's made that tells us that we should continue,  
16 then we would accept a permit application, which  
17 would be -- there would be public notice of the  
18 application, and we would do a technical review of  
19 that application. We would make a draft -- again,  
20 a draft decision that it met the technical  
21 requirements, which would again be public noticed,  
22 and after that notice and responding to any  
23 comments, we would do -- make a final staff  
24 decision which was -- would be also subject to  
25 appeal.

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- 1 Q Okay. And under the system that was in place prior  
2 to the new regulation, 107.19, --
- 3 A Mm-hmm.
- 4 Q -- how did the system work? If you could, just  
5 briefly run through that.
- 6 A You mean 11, 61-107.11? Is that what you're  
7 asking, because I just went --
- 8 Q Well, I guess while that was in effect, before the  
9 new regulation kicked in.
- 10 A Okay. So, the old regulation?
- 11 Q Yeah.
- 12 A Okay. There would be a request for demonstration  
13 of need determination by the department. We would  
14 look at that, and we would issue a letter to the  
15 applicant stating that they had either met or not  
16 met that requirement, along with a maximum  
17 available yearly disposal rate which would be also  
18 a part of that determination. Then we would also --  
19 -- I mean, the timing of it could vary depending on  
20 when the applicant sends us different information  
21 or a request, but another piece of that process  
22 would be where they ask us to review the  
23 application for consistency with the county plan.  
24 We would do that, and we would issue a preliminary  
25 consistency determination, and at the same time as

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1 this was happening, we could have already had a  
2 technical application in-house. Most likely, we  
3 would have, once they met -- At least, once they  
4 met the demonstration of need question, they would  
5 generally go ahead and apply. And, of course, as  
6 we went through all the technical review process,  
7 we would still be looking at the same things that  
8 we look at now in a lot of cases as far as zoning  
9 and buffers and those types of things that I  
10 mentioned earlier, as well as the technical  
11 requirements. But at that time, those were not  
12 separated out into different phases like they are  
13 now, so that was -- One of the differences is they  
14 were kind of ongoing at the same time. And once we  
15 -- we'd get ready to make a draft decision on that,  
16 then we would public notice. Although that wasn't  
17 a specific requirement, it was a matter of policy  
18 for the Department that we always public noticed  
19 our draft decisions, allow for a comment period,  
20 and we respond to those comments when we make our  
21 final decision, and may make some revisions to the  
22 permit, you know, accordingly, depending on what  
23 the comments are.

24 Q Okay. So, if I understand correctly, sort of  
25 summarizing, under the old system, everything sort

1 of came to a head at the end, and all of the -- any  
2 preliminary determinations that had been made were  
3 then finalized along with the permit decision that  
4 was then subject to an appeal?

5 A That's correct.

6 Q Under the new system, it's more of a two-step  
7 process; --

8 A Mm-hmm

9 Q -- you make those four determinations that you  
10 named, need and consistency and buffer and zoning,  
11 --

12 A Right.

13 Q -- and anybody wanting to challenge that has to  
14 challenge it at that time rather than wait til the  
15 end?

16 A That's right.

17 Q Okay. Now, with cases that have sort of straddled  
18 the two regulations, --

19 A Mm-hmm.

20 Q -- started under the old regulation and go to the  
21 new regulation, is there any -- I mean, how are  
22 you handling those preliminary determinations --

23 A Mm-hmm.

24 Q -- that were made prior to new regulations?

25 A Right. Well, the regulation itself, the new

1 Class Two versus what was in place for a -- what  
2 was known as a C&D.

3 Q Okay. Can you give me a rundown of the major  
4 differences, you know, not in -- I don't care  
5 about the minor stuff, but --

6 A Sure. One of the -- One of the major differences  
7 is that there is an Appendix One, List of  
8 Acceptable Waste, which has not really -- has  
9 changed a little, not a lot, but then there is also  
10 the prospect of approval of other waste streams  
11 that are appropriate for that type of landfill that  
12 are similar to C&D waste, or have similar  
13 characteristics to C&D waste. Another significant  
14 difference is that they -- there is now a  
15 requirement for groundwater monitoring around the  
16 Class Two facilities, whereas that was not the case  
17 with construction and demolition debris landfills.  
18 And I think that's -- That's really the --  
19 probably the two main changes that have occurred.

20 Q Okay. Now, this possibility of additional waste  
21 being approved for the landfill, -

22 A Mm-hmm.

23 Q -- what is the process? I mean, is that something  
24 that they have to come in and apply for approval  
25 and the department has to issue an approval of a --

1 something that may not be on the standard list and

2 --

3 A Yes. There's also a list of unacceptable items  
4 which would not be available --

5 Q Right.

6 A -- for discussion, but yes, there would be an  
7 approval process for any other -- a waste stream  
8 that was proposed.

9 Q Would that be an amendment to the permit? Would it  
10 be something that the public would be involved in,  
11 or how is that handled?

12 A It would be a permit modification, and I don't  
13 really recall the specifics of public involvement,  
14 but it would depend on whether it was a major  
15 permit modification or a minor permit modification.

16 Q Okay. And do you know whether the regs spell out  
17 what you're going to consider what's major and  
18 what's minor, or is that a judgment call?

19 A They do spell it out, and that's -- I'd have to go  
20 back and read those definitions again to remember  
21 whether or not this was specifically addressed.

22 Q Okay. Now, I want to start out talking about the  
23 technical review of this particular permit for MRR.  
24 The names you've given me in terms of being  
25 involved in this, Joan Litton and Tim Eleazer, --

- 1 A Mm-hmm.
- 2 Q -- were they people who did the technical review?
- 3 A Yes.
- 4 Q Okay. And what is their background and training?
- 5 A Mr. Eleazer is an engineer.
- 6 Q Okay.
- 7 A His background and training is as an engineer, as  
8 well as Ms. Litton. They're both engineers.
- 9 Q All right. They're both registered professional  
10 engineers?
- 11 A I'm not sure about Mr. Eleazer. Ms. Litton is not  
12 a registered professional engineer. I don't recall  
13 on Mr. Eleazer.
- 14 Q Okay. When you say they're an engineer, they have  
15 had some engineering training?
- 16 A I mean that they've got a -- at least a bachelor's  
17 degree from an accredited university in an  
18 engineering program.
- 19 Q Okay. And, so, they would have been the people who  
20 made the technical review of this application?
- 21 A Mr. -- Mr. Eleazer would have been the primary  
22 reviewer of the application under the supervision  
23 of Ms. Litton.
- 24 Q Okay. In terms of zoning and local ordinances, the  
25 documents I got from the DHEC file indicate that

- 1           Laurens County just doesn't have zoning. Is that  
2           what the department also concluded?
- 3    A       My recollection on this case was that there was not  
4           a zoning concern, but I don't remember the  
5           specifics of Laurens County zoning ordinances.
- 6    Q       Okay. Who would be able to answer that question?
- 7    A       Well, I mean, when I did the -- When I reviewed  
8           and was briefed on the materials, I recall seeing  
9           documentation of the fact that there was -- the  
10          zoning was either -- it didn't -- it wasn't an  
11          issue, or was appropriate, but I don't recall the  
12          specific document at this time without looking at  
13          it again.
- 14   Q       Okay. The consistency with the county solid waste  
15          plan, who would have made that determination?
- 16   A       We would have -- It would have been looked at by  
17          Jana White's section, and an internal memo would  
18          have been sent to the permitting group to indicate  
19          that it was -- was or was not consistent, and,  
20          again, that was documentation that I reviewed  
21          during my briefing prior to signing the permit.
- 22   Q       Okay. And are you familiar with the fact that  
23          there was an initial determination that the project  
24          was not consistent?
- 25   A       Yes.

1 Q And then the county passed another ordinance, and  
2 then there was a new determination that it was  
3 consistent?

4 A My recollection is there was an initial  
5 determination that it was consistent, and then that  
6 was changed with the new ordinance that the county  
7 issued to a non-consistent determination, and then  
8 the county withdrew that ordinance later, where --  
9 which then made it again consistent with their  
10 solid waste planning ordinances.

11 Q Okay. Do you know when the current county solid  
12 waste management plan was prepared?

13 A The plan that was in effect at the time of this  
14 application, it's my recollection that that was a  
15 1997 plan.

16 Q Okay.

17 A I don't know the exact month.

18 Q In the oversight of the county plans, how often  
19 does DHEC review county or regional solid waste  
20 plans to determine whether they need to be updated  
21 or amended to reflect changed conditions or  
22 whatever?

23 A Mm-hmm. Well, we -- we do not, as a matter of  
24 course and as a matter of responsibility or  
25 authority, review plans with the intention of

1 telling counties that they have to or need to  
2 update a plan. We -- We update plans when they  
3 come in, when we receive a new plan -- I mean we  
4 review plans when they come in, as a matter of  
5 course, and if we have comments or questions about  
6 that plan, then we will often send a correspondence  
7 to the county with those questions or comments.  
8 However, we don't really have approval authority  
9 over those plans. We can make suggestions and  
10 maybe point out things that they would, perhaps,  
11 look at further. So, as a matter of normal course,  
12 when we get a new plan, we do review it, and it's  
13 not uncommon that we might comment or ask a  
14 question. And then, also, the other normal course  
15 of review for a plan, or at least a part of a plan,  
16 would be when we get an update sent to us from the  
17 county that's been passed through council as an  
18 approval to the plan, or however they had  
19 designated that they were going to update their  
20 plans. And then the third -- I guess the third  
21 most common situation where we would review a plan  
22 would be when we get an application for a type --  
23 some type of facility, and then we would again look  
24 at that plan at that time, relative to that  
25 particular proposal.

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- 1 Q Okay. If a county wants to amend a plan, or if a  
2 county sent something to DHEC saying we have  
3 amended our plan, what do -- what does DHEC require  
4 in order to take that amendment into account in  
5 making a consistency determination for anything  
6 that might be in that county under application?
- 7 A What we would do is look at the -- You're asking  
8 me -- Let me make sure I understand what you're  
9 asking me. You're asking me how we would determine  
10 whether it was a valid amendment or update? Is  
11 that --
- 12 Q Yeah. Let's say you just got a letter from the  
13 county --
- 14 A Right.
- 15 Q -- saying we've amended our plan, --
- 16 A Mm-hmm.
- 17 Q -- and this is the amendment.
- 18 A Right.
- 19 Q Would you consider that an amendment, or would you  
20 require more?
- 21 A We would typically ask for documentation of the  
22 approval process with the county, and that would --  
23 and what type of approval process, that may vary.  
24 It may depend on how the original plan that they  
25 wrote designated that approval process.

- 1 Q Okay. Has the Department's view of changes in  
2 these plans evolved over time, or changed over  
3 time, at all?
- 4 A Has our -- Would you repeat that?
- 5 Q Has the Department's view of what is required to  
6 change a plan, or to amend a plan, changed over  
7 time?
- 8 A I'm sure that we've learned things over time, but I  
9 think that the Act has always been fairly clear  
10 that the original plan has a certain process, and  
11 then that original plan would have -- would lay out  
12 a process, or could lay out a process at least, for  
13 the approval of future plans.
- 14 Q Okay. What if you had a county plan -- I mean, if  
15 a county plan does not lay out a process --
- 16 A Mm-hmm.
- 17 Q -- for amendment of that plan, --
- 18 A Right.
- 19 Q -- or revision of that plan, what's required?
- 20 A Then we would look for a vote -- vote on -- by the  
21 county council to approve that plan as --  
22 generally.
- 23 Q Okay. Do you know whether the department has ever  
24 accepted something as a change without a vote by  
25 county council?

- 1 A Well, again, that process may vary depending on  
2 whether it's a resolution or an ordinance and those  
3 types of things that counties have to decide, but  
4 I'm not -- I don't specifically remember a case  
5 where we -- we found out later that a plan was not  
6 valid. I think there may be cases like that, but I  
7 don't have a specific recollection at this time.
- 8 Q Okay. In this particular case with MRR, are you  
9 familiar with what exactly was in the county plan  
10 that allowed the Department to make a determination  
11 of consistency?
- 12 A Which -- Which determination, the original --  
13 because, as you mentioned earlier, there were some  
14 back-and-forths.
- 15 Q The one that goes with the permit that's under  
16 appeal right now.
- 17 A Okay. So, the 1997 county plan is what -- I guess  
18 that's what you're asking?
- 19 Q Yeah. Do you remember what was in that plan that  
20 the Department relied on in making the  
21 determination of consistency?
- 22 A When I -- Prior to signing the permit, I did see  
23 the documentation which included portions of that  
24 plan. I couldn't quote those portions to you right  
25 now without looking at the plan.

- 1 Q Okay. Do you know whether there is any  
2 documentation at DHEC of which portions of the plan  
3 the Department relied on in making that call?  
4 A I'm not sure.  
5 Q Okay. I ask this because I have a -- I've gotten  
6 what purports to be the entire file --  
7 A Mm-hmm.  
8 Q -- from DHEC, and I haven't found such a thing.  
9 I've seen them in other landfill cases, --  
10 A Mm-hmm.  
11 Q -- the lists of particular sections, and I didn't  
12 see one --  
13 A Right.  
14 Q -- in this one.  
15 A I'd have to look into that. There may be, --  
16 Q Okay.  
17 A -- but I'm not aware of it at this point. I think  
18 you would have seen an internal memo stating that  
19 this was not inconsistent with, or something to  
20 that effect, the plan.  
21 Q Okay. I've seen that language before. I don't  
22 think I saw it on this one.  
23 A Okay.  
24 Q This one seemed to be a straight-up, saying it was  
25 consistent.

1 A Okay.

2 Q Let me ask you this question. That brings up some  
3 of this -- A determination that is not  
4 inconsistent and a -- and a determination that  
5 something is consistent, --

6 A Mm-hmm.

7 Q -- are those the same thing, or are they different?

8 A Not necessarily. No. They're -- And I'm sure  
9 there has been, perhaps, some changes in  
10 terminology over time that I'm not going to -- I'm  
11 not talking about that because I don't know  
12 specifically, you know, if the terminology was, you  
13 know, happenstance or not, because it may mean the  
14 same thing, but I do know that at times if there is  
15 a very specific -- if there is very specific  
16 information about a facility type and it says  
17 something very specific about it whereas -- In  
18 other words, since we're talking about consistency,  
19 let's talk about it as if it were consistent.  
20 There may be something in a plan that says that  
21 they do need this type of facility. And that does  
22 happen. In that case, that certainly would be  
23 consistent. If the plan is pretty much silent on  
24 the issue or does not directly address that type of  
25 a facility, then I think you would probably more --

1 be more likely to see the not-inconsistent-with  
2 language.

3 Q Okay. Does the Department consider the language  
4 not inconsistent to be sufficient to satisfy the  
5 statutory requirement of consistency?

6 A Yes.

7 Q Okay. Let's talk about the demonstration of need.  
8 Can you tell me how the determination was made that  
9 this landfill is needed?

10 A It was the proposal which indicated a location for  
11 this proposed facility. At that time, it was  
12 looked at in relation to the requirements of 61-  
13 107.17.

14 Q Okay. And what are the requirements of 61-107.17?

15 A Well, for a C&D landfill, that regulation  
16 designates a ten-mile planning area, or ten-mile  
17 radius around the facility as a planning area, and  
18 in the case of the geographic piece of that, there  
19 cannot be -- there can be as many as two facilities  
20 of that type within that planning area, and at the  
21 time of this review, there was one facility, as I  
22 recall, and, so, this would have been the second  
23 allowable facility. The other part of that, the  
24 other, I guess, piece of that review is to  
25 determine the annual disposal rate that would be

- 1 allowed, and that -- then the C&D generation, waste  
2 generation, is looked at in the county that that  
3 facility is located in as well as the counties that  
4 touch the planning area.
- 5 Q Okay. Now, in viewing the DHEC file, one of the  
6 earliest things that I find in here is a letter  
7 from the applicant to DHEC essentially saying we  
8 want a determination of need and giving a latitude  
9 and a longitude.
- 10 A Right.
- 11 Q And one of the next things I see in the DHEC file  
12 is a letter saying we're approving the  
13 determination of need, or words to that effect, --
- 14 A Mm-hmm.
- 15 Q -- and giving a tonnage rate of -- In fact, let me  
16 back up a little bit. The first letter that I saw  
17 was a letter dated February 21st, 2006, written by  
18 B.P. Barber, who I understand is the engineer for  
19 this applicant, giving you those coordinates, the  
20 latitude and longitude. And then there is a letter  
21 dated March the 3rd, '06 approving the  
22 determination of need for up to 154,000 tons a  
23 year.
- 24 A Okay.
- 25 Q Do you know whether the Department received any

1 other information regarding the issue of need than  
2 that letter with the latitude and longitude?

3 A No, I'm not -- not aware of any additional  
4 information.

5 Q Okay. Now, as I understand it, you take that  
6 latitude and longitude, and you plot that point on  
7 a map, and then you draw a circle with a ten-mile  
8 radius around that point.

9 A Correct.

10 Q Okay. And then you look and see what counties are  
11 touched by any portion of that circle?

12 A Yes.

13 Q And the total amount of waste that is generated in  
14 each of the counties that is touched by that circle  
15 is then added up to come to the tonnage rate; is  
16 that right?

17 A At that -- At that particular point in time,  
18 that's -- The most recent data, which would be the  
19 previous annual reporting data that the Department  
20 had, would be used to determine that, yes.

21 Q Okay. And, so, the total of 154,000 tons would be  
22 the total of C&D waste, or -- what's the type we  
23 call this now --

24 A Class Two.

25 Q -- Class Two -- Class Two waste, the total that's

1 generated in all the counties touched by that  
2 circle?

3 A Mm-hmm. And at that time, it would have been C&D.

4 Q Okay. All right.

5 Mr. Chandler: Do you want to mark this  
6 as an exhibit?

7 Marked as Petitioner's Exhibit  
8 Number Two; 30(b)(6) Deposition  
9 of SCDHEC by Kent Coleman,  
10 P.G.; copy of Laurens Recycling  
11 & Reclamation Center C&D  
12 Landfill map; one page.

13 Q Okay. I've got a little map that appears to have  
14 been generated at DHEC, maybe obtained --

15 A Okay.

16 Q -- off the website. It's marked as Exhibit Two.  
17 Do you recognize this map as including the circle  
18 that was drawn for this MRR landfill?

19 A Well, it looks like maybe it had a different name  
20 at the time that it was referred to. Are you --  
21 Are you referring to a specific facility on there,  
22 or am I just missing --

23 Q Hmm. I'm not sure it's on there. All right. Let  
24 me do this. I should have looked at that closer.

25 Marked as Petitioner's Exhibit

1                    Number Three; 30(b)(6)  
2                    Deposition of SCDHEC by Kent  
3                    Coleman, P.G.; copy of Active  
4                    and Proposed Construction and  
5                    Demolition (C&D) Debris  
6                    Landfills in SC map; one page.

7                    Ms. Williams: Excuse me. Jimmy, do you  
8                    have copies for the attorneys, of the  
9                    exhibits?

10                  Mr. Chandler: I've got a couple of  
11                  copies of these. These were made -- The one  
12                  that I've marked as Exhibit Three, --

13                  Ms. Williams: Mm-hmm.

14                  Mr. Chandler: -- this is printed  
15                  straight off of the DHEC website --

16                  The Deponent: Okay.

17                  Mr. Chandler: -- in the last couple of  
18                  days.

19                  The Deponent: All right. It's listed as  
20                  the small map for C&D Landfills at the DHEC  
21                  website.

22        Q        Now, this exhibit, Number Three, it shows something  
23                  on there, Highway 92, --

24        A        Highway 92, yes.

25        Q        -- and that's the one we're talking about here that

1 I've been calling MRR, isn't it?

2 A Yes.

3 Q Okay. And what counties are touched by the circle  
4 that is drawn around that landfill? Can you tell?

5 A That's why we do blowups. A little bit hard on  
6 this particular map. Maybe -- Well, it's  
7 certainly Spartanburg -- Can I look at both maps,  
8 Exhibit One and -- I mean Exhibit Two and Three,  
9 and maybe that will help me out because I think  
10 this -- This is also, I believe, the same circle.  
11 It just had a different name at the time. Now I'm  
12 looking at Exhibit Two, trying to look at a blowup  
13 of that Exhibit Three map. But it looks like it  
14 touches Spartanburg, Laurens, and it looks like  
15 maybe Greenville, but I'm trying to see if there's  
16 another county line in there somewhere. It looks  
17 like Laurens, Spartanburg and Greenville from what  
18 I can tell with this particular figure.

19 Q Okay. That's the same conclusion I came to from --

20 A Okay.

21 Q -- looking at it, but I agree it's just difficult  
22 at that scale.

23 A Mm-hmm.

24 Mr. Chandler: Let me go ahead and mark  
25 this letter. And it came to me with maps

1 attached, so I'm going to leave them attached.

2 Marked as Petitioner's Exhibit

3 Number Four; 30(b)(6)

4 Deposition of SCDHEC by Kent  
5 Coleman, P.G.; copy of  
6 correspondence dated February  
7 21, 2006 with attached maps;  
8 three pages.

9 Q Okay. Exhibit Four is what I think is the letter  
10 that I mentioned a little while ago about a  
11 February 21st, '06 letter from B.P. Barber about  
12 this landfill, asking for a determination of need,  
13 and, as it was provided to me by the Department of  
14 Health and Environmental Control, it's got a couple  
15 of maps, one a smaller scale map, one a larger.  
16 The copies are not the best in the world, --

17 A Mm-hmm.

18 Q -- and I don't know whether this little dotted-line  
19 circle on the second map represents this landfill,  
20 but that has been my guess, but it's just a guess.

21 A Okay.

22 Q Does that appear to be the letter that was received  
23 as the request for a determination of need?

24 A Yes. Yes, you can -- The road names and  
25 everything in the letter are consistent with the

1 location that we're talking about, Choice Road,  
2 Highway 92, --

3 Mr. Chandler: Let's get some consistency  
4 here. Let me get this marked, as well.

5 Marked as Petitioner's Exhibit  
6 Number Five; 30(b)(6)  
7 Deposition of SCDHEC by Kent  
8 Coleman, P.G.; copy of DHEC  
9 correspondence dated March 3,  
10 2006, U.S. Postal Service  
11 Certified Mail Receipt,  
12 Demonstration of Need Worksheet  
13 and B.P. Barber correspondence  
14 dated February 21st, 2006; four  
15 pages.

16 Mr. Chandler: All right. I've got a  
17 letter with some attachments that I notice one  
18 of the attachments is that same letter dated  
19 February 21st, but we'll just leave them as  
20 they -- And I don't have extra copies of  
21 these. I'm sorry.

22 Ms. Hartley: Well, may we glance at  
23 those --

24 Mr. Chandler: Sure.

25 Ms. Hartley: -- at least before you

- 1 Q All right. And before anything else, does what I  
2 handed you appear to be a genuine copy of the 2007  
3 Solid Waste Management Report?
- 4 A It does appear to be a copy of that report, yes.
- 5 Q And what does the report indicate, the amount of  
6 C&D waste generated in Laurens County?
- 7 A Well, we're looking at Table 7.7 on page 75, which  
8 is the C&D landfill numbers used for demonstration  
9 of need, --
- 10 Q Mm-hmm.
- 11 A -- and in FY '07, it appears -- Are you asking me  
12 about any particular year or just --
- 13 Q Well, let's -- Let's just go through. You've got  
14 years 2003 through 2007 on that page, don't you?
- 15 A I do.
- 16 Q Okay. And what's the figure for waste generated in  
17 2007?
- 18 A 16,860 tons.
- 19 Q And what's the figure for 2006?
- 20 A 9,479 tons.
- 21 Q And for 2005?
- 22 A 6,635 tons.
- 23 Q And 2004?
- 24 A 8,434 tons.
- 25 Q And in 2003?

- 1 Q Okay. Now, for the Laurens County landfill, --
- 2 A Mm-hmm.
- 3 Q -- what's it permitted for?
- 4 A 8,900 tons.
- 5 Q And how much was disposed of in the fiscal year
- 6 2007?
- 7 A 3,212.
- 8 Q Okay. We've just got a -- sort of a blank space
- 9 there where it says --
- 10 A Mm-hmm.
- 11 Q -- remaining life. What does that mean?
- 12 A That means that information was not reported to us.
- 13 Q Okay. Do you have any personal knowledge of
- 14 whether that landfill has or doesn't have
- 15 additional capacity?
- 16 A The Laurens County C&D landfill? Is that --
- 17 Q Right.
- 18 A -- what you're asking?
- 19 Q (Nods head.)
- 20 A No, I don't.
- 21 Q Okay. How much is the Curry Lake landfill
- 22 permitted for?
- 23 A 241,591 tons.
- 24 Q And how much was actually disposed of there?
- 25 A 67,260 tons.

- 1 Q And what's its remaining life?
- 2 A Thirty-eight years, according to this table which  
3 is page 73.
- 4 Q Okay. So, to sort of summarize where we are, in  
5 2007 Laurens generated 16,860 tons of C&D waste;  
6 Laurens has disposed of a total of 70,672 tons of  
7 C&D waste if you add all three of those landfills  
8 together, and has permitted capacity of 251,866  
9 tons for C&D waste. Is that correct?
- 10 A Well, I didn't do the math, but it appears to be  
11 close, if you would add those together.
- 12 Q Okay. Were any of these figures taken into account  
13 in making the Department's determination of need?
- 14 A The tonnage figures in -- on page 73? That's your  
15 question, are those particular numbers taken into  
16 account?
- 17 Q Well, I've recited some numbers from both page 73  
18 and 75.
- 19 A Mm-hmm.
- 20 Q Were those numbers taken into account?
- 21 A Yes.
- 22 Q Okay. And how did the existing permitted capacity  
23 of roughly 250,000 tons a year -- how was that  
24 taken into account?
- 25 A That number was not taken into account.

1 Q Okay. Now, the other counties that were included  
2 in coming up with the 154,000 tons, Greenville and  
3 Spartanburg, --

4 A Mm-hmm.

5 Q -- how much waste was generated in Greenville  
6 County, C&D waste, in 2007?

7 A In 2007 --

8 Q Right.

9 A -- for Greenville County was 161,738 tons.

10 Q Okay. And how much permitted capacity does  
11 Greenville County have for C&D waste landfills?

12 A It'll take me a minute to add them up. There's a  
13 lot of them in Greenville. Let me -- Give me a  
14 minute to --

15 The Deponent: (to Ms. Williams) Can I  
16 have a piece of paper to add that for him?

17 Ms. Williams: Sure.

18 A Do you want an exact number of them, or close, I  
19 take it?

20 Q Yeah. I mean, it can be an approximation.

21 A Mm-hmm. Like, approximately half a million tons,  
22 500,000 -- 502,000.

23 Q Okay. Now, how much C&D waste was generated in  
24 Spartanburg County in fiscal year 2007?

25 A 72,161 tons.

1 Q And how much permitted capacity does Spartanburg  
2 County have for C&D waste?

3 A They have the Wasp Nest Road C&D landfill with  
4 80,000 tons per year permitted capacity.

5 Q Okay. And in fiscal year 2007, that landfill took  
6 in less than that permitted capacity, in fact, took  
7 in a little under 50,000 --

8 A Yes.

9 Q -- tons; isn't that right?

10 A Mm-hmm. Yes.

11 Q Okay. Was the amount of capacity for C&D landfills  
12 in Greenville and Spartanburg County taken into  
13 account in making the determination of need?

14 A No.

15 Mr. Chandler: I'd like to take a little  
16 break for just a few minutes, if y'all  
17 wouldn't mind.

18 [Off the record at 11:14 a.m.;  
19 back on the record at 11:29  
20 a.m.]

21 Examination Continues

22 By Mr. Chandler:

23 Q Mr. Coleman, the regulation dealing with needs,  
24 Regulation 61-107.17, --

25 A Yes.

1. Q -- the Department has been, for a while, looking at  
2 that regulation, and there's actually a proposed  
3 amendment that's sitting over at the state  
4 legislature right now; isn't that correct?

5 A Yes.

6 Q Okay. What would that proposed regulation -- How  
7 would it affect the analysis of this permit?

8 A You're asking me if this permit came in -- this  
9 request came in today, or under the proposed -- I  
10 guess if it came in under the proposed reg, which  
11 isn't effective, but --

12 Q Right.

13 A -- we're speculating about what -- what might  
14 happen. Well, if -- if that regulation were to  
15 pass as it is, without any changes, which is a big  
16 if, but -- this particular facility would have a  
17 20-mile planning radius, as opposed to a ten, and  
18 I'm not sure without looking at a map whether that  
19 would allow the facility or not, in terms of there  
20 being two facilities within that radius, but then  
21 the tonnage -- the amount of tonnage that it could  
22 take on a yearly basis would be also based on that  
23 20-year planning radius which might touch some  
24 additional counties that it does not currently  
25 touch. So, what you're talking about, in general

1 terms, is having fewer in number but larger in  
2 annual tonnage rates for future facilities like  
3 this.

4 Q Okay. So, the size of the circle that you draw  
5 around the site is going to increase, which, if it  
6 hit a second commercial C&D landfill within that,  
7 it might knock it out?

8 A That's correct.

9 Q If it doesn't hit a second one, then it could  
10 expand the amount of permitted capacity that it  
11 could have if it --

12 A No.

13 Q -- happens to stretch to another county?

14 A No. It would not change the amount of permitted  
15 capacity. It would change the annual disposal  
16 rate.

17 Q Well, annual disposal rate. The annual --

18 A Yes.

19 Q -- disposal rate could go up from --

20 A Yes.

21 Q -- 154,000 if, for instance, the broader circle  
22 touched another county?

23 A Correct.

24 Q Now, in your file, there's a series of letters from  
25 an entity known as the Laurens County Water and

1 Sewer Commission, --

2 A Okay.

3 Q -- and I'm just sort of summarizing, but the  
4 letters that I have seen, the Laurens County Water  
5 and Sewer Commission appears to have some concerns  
6 about the proximity of this landfill to Lake  
7 Martin. Are you familiar with those letters?

8 A I recall seeing those letters, yes.

9 Q Okay. Were those letters taken into account in the  
10 permitting decision?

11 A Well, we review and consider all comments that we  
12 receive on -- on our permits during the review  
13 process.

14 Q Okay. Did those letters affect the decision in any  
15 way?

16 A No.

17 Q And why not?

18 A Can we get a little bit closer to the nature of the  
19 letters so I can maybe comment on that a little  
20 better?

21 Mr. Chandler: Yeah, let's go ahead and  
22 maybe -- Let me get this marked.

23 Marked as Petitioner's Exhibit  
24 Number Six; 30(b)(6) Deposition  
25 of SCDHEC by Kent Coleman,

1 P.G.; copy of Laurens County  
2 Water and Sewer Commission  
3 correspondence dated March  
4 17th, 2008; two pages.

5 Q All right. I've handed you a copy of a letter that  
6 we've marked -- What is that, Exhibit Six?

7 A Yes, Exhibit Six.

8 Q Okay. And the best I can recall, the other letters  
9 were fairly similar to that one in terms of the  
10 comments made by that organization. And I think my  
11 question was did those letters affect the decision  
12 in any way?

13 A Well, it certainly took us a little bit of time to  
14 read and consider these issues in the letter, but,  
15 ultimately, they did not prevent the issuance of  
16 the permit.

17 Q Okay. Does the Department see this landfill as  
18 posing any risks at all to water quality in Lake  
19 Martin?

20 A We don't expect it to impact Lake Martin.

21 Q Okay. Not expecting it to impact it is not the  
22 same as saying there's zero risk --

23 A Well, I don't --

24 Q -- I don't think. I mean, do you think there's  
25 zero risk that it's going to impact Lake Martin?

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- 1 A I don't -- I don't really think I base any of my  
2 decisions on zero risk. I mean, if I did that, I  
3 probably wouldn't do anything. I'd be sitting in  
4 my chair, maybe twiddling my thumbs. But our  
5 charge is to follow the requirements of the  
6 regulations in terms of the separation from surface  
7 water and storm water controls and those types of  
8 things when we permit a facility, and that's what  
9 we did in this case, and based on the facility  
10 meeting those requirements, we do not expect it to  
11 impact surface water.
- 12 Q Okay. And what is your setback from surface water?
- 13 A It's 200 feet.
- 14 Q Okay. And what is your setback from a school?
- 15 A I believe it's 1,000 feet.
- 16 Q Okay. Does the setback vary any if the surface  
17 water is a possible source of drinking water?
- 18 A No.
- 19 Q What kind of setbacks do you require from wetlands?
- 20 A Regulation requires that the facility -- We're  
21 talking about -- I'm going to assume we're talking  
22 about the C&D.
- 23 Q Yeah.
- 24 A There may be different buffers, depending on what  
25 type of facilities you're talking about, but in

1 this case, it's required that they do not disturb  
2 the wetland.

3 Q Okay. Are there floodplain requirements?

4 A Yes.

5 Q And what is the requirement related to floodplains?

6 A It's required that the facility and the structures  
7 related to the facility do not impede the flow of a  
8 hundred-year floodplain, or within a hundred-year  
9 floodplain.

10 Q Okay. How much separation does this C&D landfill  
11 have to have from the bottom of the landfill to the  
12 seasonal high water table?

13 A It will be a two-feet -- a two-foot minimum --

14 Q Okay.

15 A -- separation.

16 Q When there was a public hearing held on March -- I  
17 believe it was March 13th, 2008, a fact sheet was  
18 handed out under what appears to be DHEC  
19 letterhead.

20 Mr. Chandler: Let me get this marked and  
21 show it around.

22 Marked as Petitioner's Exhibit

23 Number Seven; 30(b)(6)

24 Deposition of SCDHEC by Kent

25 Coleman, P.G.; copy of DHEC

- 1 documents entitled Agenda for  
2 Public Hearing, Fact Sheet and  
3 Feedback Survey; three pages.
- 4 Q I've handed you a document. It's several pages  
5 stapled together, marked as Exhibit -- Is it  
6 Seven?
- 7 A Yes, Exhibit Seven.
- 8 Q And if you'll look at the second page in that  
9 packet, there's a statement somewhere on that page  
10 that says that this landfill is going to maintain a  
11 five-foot separation --
- 12 A Mm-hmm. Okay.
- 13 Q -- from the seasonal high water table. Do you know  
14 why that was stated at the public hearing?
- 15 A Well, no, I'm not certain why it was stated at the  
16 public hearing.
- 17 Q Okay. But as far as you're concerned, the permit  
18 requirement is only two feet?
- 19 A That's what I recall. If you'd like me to review  
20 that, I could, but I believe it is.
- 21 Q That's what it looked like to me when I looked at  
22 it.
- 23 A Okay. That's the minimum, so a five-foot would  
24 meet that minimum.
- 25 Q Okay. Do you know who would have prepared this

1 fact sheet and why that five-foot -- Well, let me  
2 ask you this. Do you know who prepared this fact  
3 sheet, and do you know who would know why that fact  
4 sheet said five feet?

5 A I'm not -- I'm not a hundred percent sure who  
6 prepared it. I believe Mr. Eleazer most likely  
7 would have prepared it. It could be a typo, or it  
8 could also be that this landfill does -- is five  
9 feet. I'd have to look.

10 Q But, certainly, the only thing that can be enforced  
11 by the Department is going to be whatever is in the  
12 permit?

13 A What's in the regulation, yes, and the permit.

14 Q Now, this fact sheet also indicates that the  
15 maximum height of this landfill from the existing  
16 grade is going to be around 160 feet; is that  
17 correct?

18 A Yes.

19 Q Okay. And is that part of the permit requirements?  
20 Does the permit -- Do the permit requirements  
21 address the question of how high this landfill can  
22 ultimately reach?

23 A Not directly.

24 Q Okay.

25 A The design would dictate the height that was in the

1 -- The design in the application has to meet the  
2 requirements of the regulation in terms of slopes,  
3 the degree of slopes, and that, along with the size  
4 of the footprint of the landfill, would dictate the  
5 height.

6 Q And in order for you to determine what that height  
7 is approved under, though, you'd have to review the  
8 plans, --

9 A Yes.

10 Q -- the drawings and things?

11 A Yes. Mm-hmm.

12 Q Mr. Coleman, in Regulation 61-107.17 there is a  
13 provision that is numbered as part -- It looks  
14 like it is part capital D, subpart Three, and then  
15 little D, and I want to read this section to you.  
16 "The Department reserves the right to review  
17 additional factors in determining need on a case by  
18 case basis." Are you familiar with that language  
19 in the regulation?

20 A Yes.

21 Q Okay. What does it mean?

22 A Well, it -- It was placed in the regulation to  
23 allow flexibility in the case that a situation were  
24 to come up that was not contemplated during the  
25 process of discussing and promulgating that

1 regulation.

2 Q Okay. Were you involved in the preparation of this  
3 regulation?

4 A No.

5 Q Okay. Do you know when this regulation was  
6 promulgated and became effective?

7 A It was in -- around 2000.

8 Q Okay. And what were you doing in 2000?

9 A I believe I was section manager in the CERCLA  
10 program at that point, if I remember right.

11 Q Okay. All right. So, in terms of your knowledge  
12 of why this was in here, that's at least  
13 secondhand?

14 A Mm-hmm. Yes, --

15 Q Okay. All right. Now, --

16 A -- and, also, based on my experience that it's  
17 fairly common to build some flexibility into  
18 regulatory language for that purpose.

19 Q Okay. Now, was this section utilized at all in the  
20 permitting of this MRR landfill?

21 A No.

22 Q Okay. So, I take it that the fact that Laurens  
23 County currently generates less than 20,000 tons of  
24 waste and already has 250,000 tons of C&D waste  
25 capacity was not considered as an additional factor

1 to be reviewed?

2 A We followed the geographic limitations and the  
3 yearly annual disposal rate calculations as  
4 specified in that -- in that regulation to  
5 determine the need for this facility and the amount  
6 of annual disposal allowed.

7 Q Okay. Now, during the process, did you receive --  
8 the Department receive comments from the public and  
9 others indicating their -- their belief that this  
10 landfill was not needed?

11 A I do recall some of that, yes.

12 Q Okay. And did they offer you the sort of facts and  
13 figures that we went through here this morning in  
14 support of that argument?

15 A I think I recall seeing some facts and figures  
16 presented in some of the comments that were  
17 received, yes.

18 Q Okay. And despite those comments, what you're  
19 saying is the Department stuck to the parts -- I  
20 mean, section D and items One, Two and Three, A and  
21 B and C, but you did not utilize the right to  
22 review additional factors that's provided in  
23 subsection D of that part?

24 A We did not review additional factors -- Well, I  
25 should say we didn't use any additional factors to

1 make our decision in this case.

2 Q Okay.

3 Mr. Chandler: Let me take just a short  
4 break and walk outside, and I think --

5 The Deponent: Okay.

6 Mr. Chandler: -- we may be done.

7 [Off the record at 11:51 a.m.;

8 back on the record at 11:53

9 a.m.]

10 Examination Continues

11 By Mr. Chandler:

12 Q Okay. As I understand it, the public hearing was  
13 held after there was a draft permit put on the  
14 table.

15 A Yes.

16 Q All right. As a result of the comments that were  
17 received, either in the mail or at the public  
18 hearing, were there any changes made in the final  
19 permit?

20 A I'm thinking. I don't recall any specifically  
21 without reviewing the file again.

22 Mr. Chandler: Okay. That's all the  
23 questions I've got.

24 The Deponent: Okay. Thank you.

25 Mr. Chandler: Thank you.

1  
2  
3  
4  
5  
6

Mr. Williams: I don't have any.

Ms. Hartley: I don't have any either.

(Whereupon the deposition was concluded at  
11:54 a.m.)

(Deponent will read and sign his/her  
deposition.)



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FEB 8 2009

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

DHEC  
OFFICE OF GENERAL COUNSEL

Engaging and Guarding Laurens County's )  
Environment ("EAGLE"), a non-profit )  
membership organization, )

Docket No. 08-ALC-07-0425-CC

Petitioner, )

NOTICE  
OF  
DEPOSITION

vs. )

MRR Highway 92, LLC, and South Carolina )  
Department of Health and Environmental Control, )

Respondents. )

TO: THE RESPONDENTS AND THEIR ATTORNEYS:

PLEASE TAKE NOTICE that the Petitioner, pursuant to SCRCP Rule 30 and ALC Rule 21, will take the deposition of the Respondent South Carolina Department of Health and Environmental Control, for all uses permitted by the SCRCP, at the following time and on the following date:

10:00am, Thursday, February 12, 2009, at the offices of DHEC on Farrow Road in Columbia, SC

Pursuant to SCRCP 30(b)(6), the Petitioner gives notice to the South Carolina Department of Health and Environmental Control ("DHEC"), to designate one or more officers, directors or managing agents to testify on its behalf at such deposition in connection with the following matters:

1. Information and evidence considered by DHEC in making the decision to issue the landfill permit at issue in this case.
2. Findings and conclusions made by DHEC in making the decision to issue the landfill permit at issue in this case.
3. The basis of the DHEC determination of need for this landfill.
4. Statutes and regulations applied by DHEC in making the decision to issue the landfill permit at issue in this case.
5. The basis of DHEC's determination that the 1997 Laurens County Solid Waste

PERIOD 800-631-6889

EXHIBIT  
DHEC-  
1 Coleman  
2/12/09 JMS

Management Plan is valid and complies with Section §44-96-80 of the Solid Waste Management Act.

6. The basis of DHEC's determination that this landfill is consistent with an applicable and valid solid waste management plan.

7. The basis of DHEC's determination that this landfill is in compliance with local zoning, land use, and other applicable ordinances and laws.

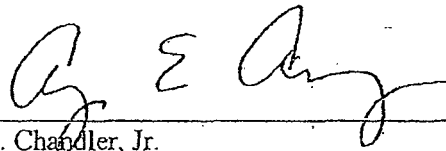
8. The basis of DHEC's determination that the roads to this landfill are of all-weather construction and capable of withstanding anticipated load limits.

9. The basis of DHEC's determination that this landfill will not have adverse impacts, including potential pollution, on adjacent wetlands and Lake Martin.

10. The basis of DHEC's determination that the landfill will not result in pollution of groundwater.

11. The basis of DHEC's determination that the stormwater plan for the landfill complies with applicable state and federal requirements.

12. The nature and extent of Art Braswell's work on seeking approval of the landfill permit on behalf of MRR Highway 92, LLC.



James S. Chandler, Jr.

Amy E. Armstrong

SOUTH CAROLINA ENVIRONMENTAL LAW  
PROJECT

Mailing address: Post Office Box 1380  
Pawleys Island, SC 29585

Office address: 430 Highmarket Street  
Georgetown, SC 29440

Telephone (843) 527-0078

FAX (843) 527-0540

Attorneys for the Petitioner

Georgetown, South Carolina

January 30, 2009

# Laurens Recycling & Reclamation Center C&D Landfill

## Active and Proposed Construction & Demolition Landfills in South Carolina

### Legend

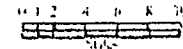
- Active Commercial C&D LF
- Active Non-Commercial C&D LF
- Proposed Commercial C&D LF
- Proposed Non-Commercial C&D LF

Areas Within 10 Miles of More Than One Commercial C&D LF Under Current Ownership

Areas Within 10 Miles of Only One Commercial C&D LF or More Than One Under the Same Ownership

City Boundary

Highways



Source: South Carolina Department of Health and Environmental Control - Bureau of Land and Waste Management

Note: This map and its corresponding data are subject to change. Please contact the BLMW Solid Waste staff for the most current data.

Date: 6/10/2003

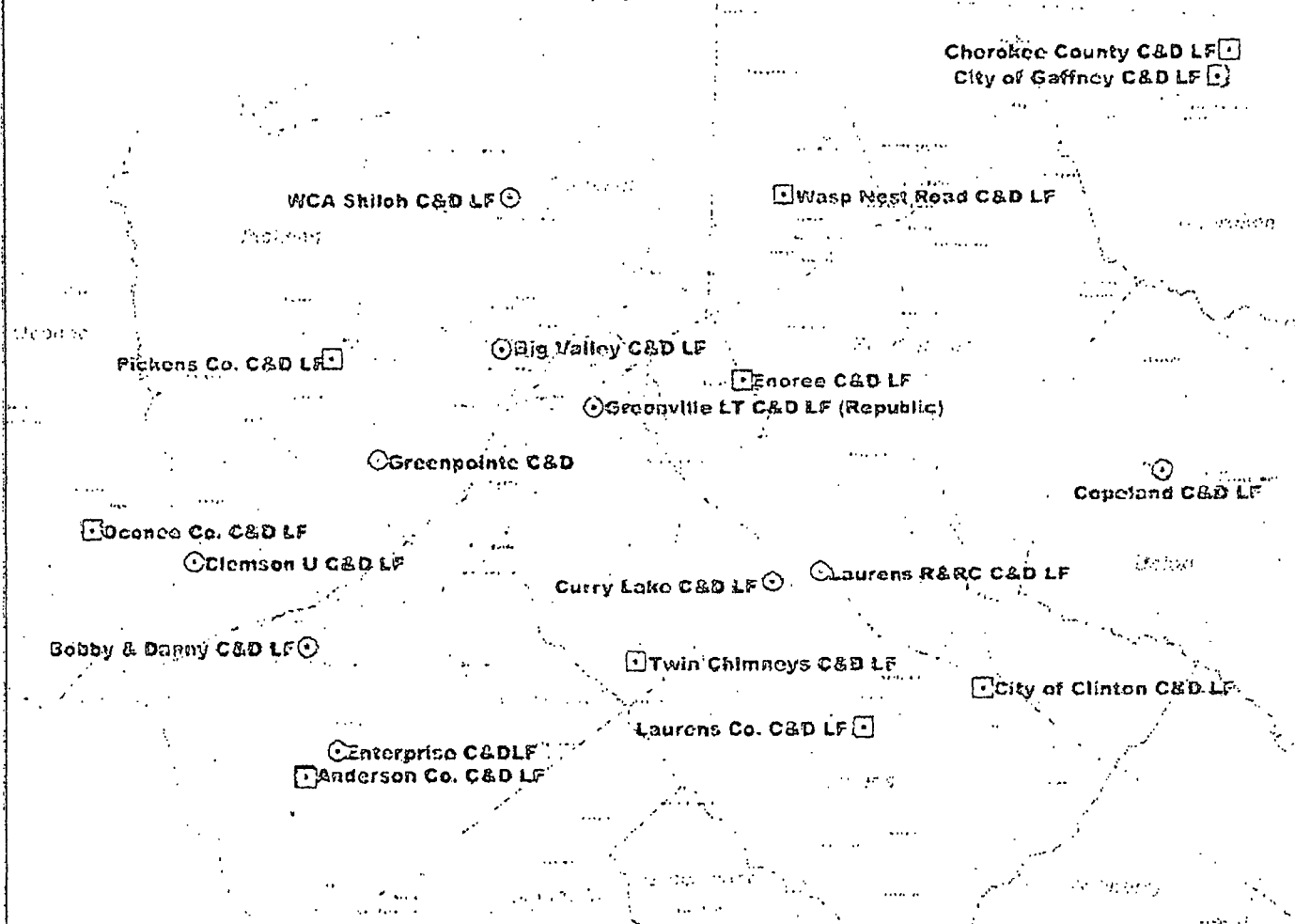
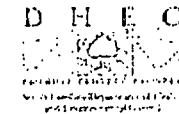
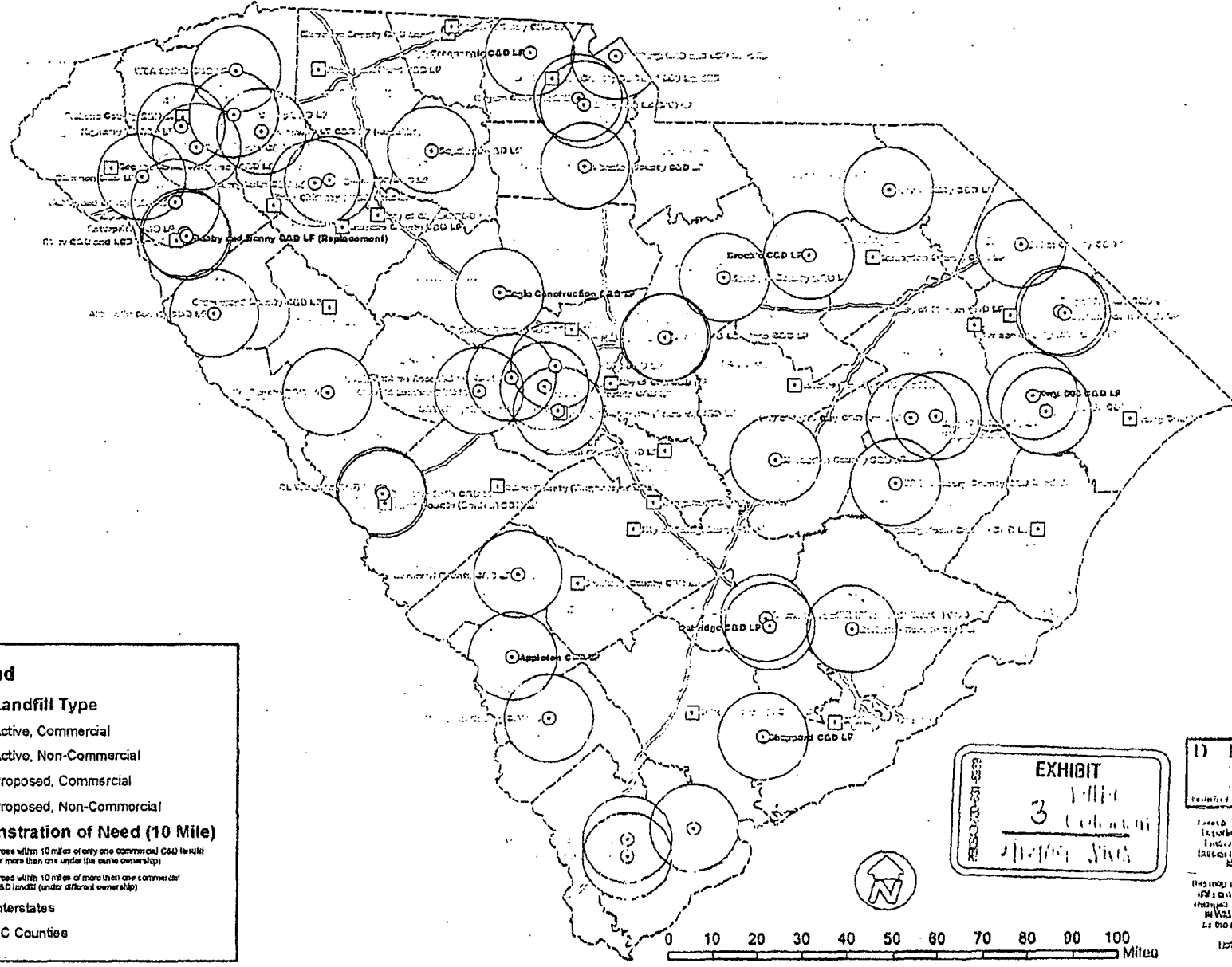


EXHIBIT  
 DHEC-  
 2, Coleman  
 2/12/09 JMS

352

000353

# Active and Proposed Construction and Demolition (C&D) Debris Landfills in SC



**Legend**

**C&D Landfill Type**

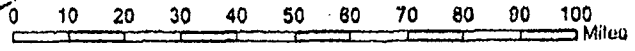
- Active, Commercial
- ◻ Active, Non-Commercial
- ⊙ Proposed, Commercial
- ◻ Proposed, Non-Commercial

**Demonstration of Need (10 Mile)**

- ◻ Areas within 10 miles of only one commercial C&D landfill (or more than one under the same ownership)
- ◻ Areas within 10 miles of more than one commercial C&D landfill (under different ownership)
- Interstates
- - - SC Counties

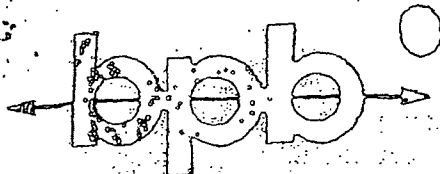
**EXHIBIT**  
 3  
 Columbia  
 Charleston

**D H E C**  
 Department of Health and Environmental Control  
 1601 North Main Street  
 Columbia, SC 29201  
 (803) 732-2000  
 www.dhec.sc.gov



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000354



041135  
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(19)

**B. P. BARBER & ASSOCIATES, INC.**

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

February 21, 2006

Ms. Joan Litton  
Manager, Solid Waste Facility Engineering Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Demonstration of Need Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

Dear Ms. Litton,

On behalf of MRR Southern Company, LLC, I hereby request, pursuant to Demonstration of Need, R.61-107.17, Department approval to develop a private Part IV construction, demolition and land clearing debris landfill at the referenced location on Choice Road in northern Laurens County along I-385 between Hwy 101 and Hwy 92. Site name and location are:

LAURENS RECLAMATION & RECYCLING CENTER  
LATITUDE: 34 DEGREES 37 MINUTES 20.91 SECONDS  
LONGITUDE: -82 DEGREES 05 MINUTES 13.61 SECONDS

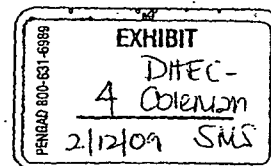
The maximum annual tonnage limit allowed under the regulation based on the latest published disposal data is requested.

Please contact me if you have questions.

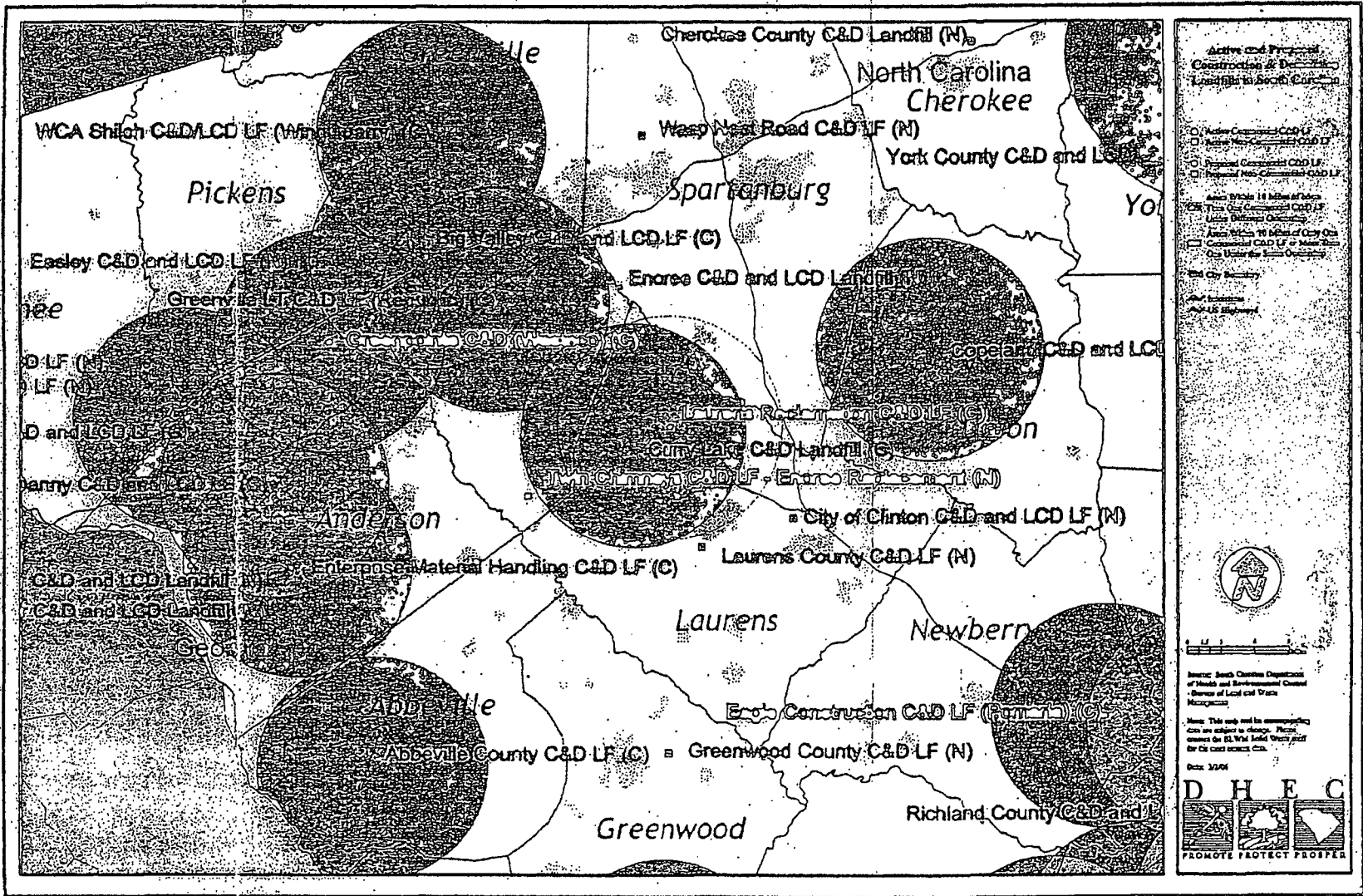
Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269









C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

March 3, 2006

COPY  
4

CERTIFIED MAIL  
7001 2510 0008 6158 4279

Mr. Ronald C. Gilkerson, P.G.  
MMR Southern Company, LLC  
11925 Sam Roper Drive, Suite C, Office 2  
Charlotte, NC 28269

RE: Demonstration of Need APPROVAL  
Proposed Laurens Reclamation and Recycling Center Long-Term Construction, Demolition and  
Land-Clearing Debris Landfill  
Location: 34°37'20.91" N Latitude, 82°05'13.61" W Longitude  
Maximum Annual Disposal Limit of 154,000 tons/year  
Laurens County

Dear Mr. Gilkerson:

This office is in receipt of a demonstration of need request, submitted on your behalf by Rudy M. Curtis of B.P. Barber and Associates, for the above-referenced site, dated February 21, 2006. Staff have evaluated the information and determined that pursuant to the provisions of R.61-107.17, *Demonstration of Need*, there is a need for this type of facility in the corresponding planning area. The Department may consider an annual disposal limit up to 154,000 tons during its consistency determination for this proposed facility.

Securing a site approval under the provisions of the Demonstration of Need regulation in no way supercedes zoning, consistency with local solid waste management plans or other considerations evaluated by the Department during the permitting process.

Also, please be aware that this approval may be terminated by the Department if any one of the following occurs: (A) one hundred twenty (120) days elapse from the date of receipt of this letter of approval without documented evidence of diligent pursuit of the appropriate solid waste permit being presented to the Department or (B) once a permit application has been received by the Department, that permit application is declared inactive or is denied by the Department's solid waste permitting staff or (C) the Department receives official and final notification that the site of the proposed facility does not meet proper zoning for the intended activity or (D) the Department determines that the proposed facility is not consistent with the host county or region solid waste management plan.

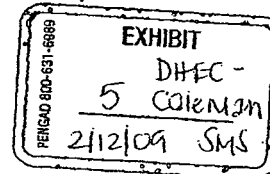
If you have any questions, please contact John McCain of my staff at (803) 896-4067.

Sincerely,

Joan P. Litton, Manager  
Solid Waste Permitting Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

JFL/JMM/jmm

cc: Ernest B. Segars - Laurens County Administrator



**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only - No Insurance Coverage Provided)

701 2510 0000 6158 4279

*MOEF 3/5/06 A. Gilson E*

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To *Ron Gilson*

Street, Apt. No. *Suite C*

or PO Box No. *11925 Sam Roper Dr. Office 2*

City, State, ZIP+4 *Charlotte, NC 28269*

PS Form 3811, February 2004

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<input type="checkbox"/> Complete items 1, 2, and 3, and also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.	1. Signature of Addressee <i>Ron Gilson</i>
1. Article Addressed to: <i>Mr. Ronald C. Gilson, Jr.</i> <i>MMR Southern Company</i> <i>11925 Sam Roper Dr.</i> <i>Suite C, Office 2</i> <i>Charlotte, NC 28269</i>	2. Date of Delivery <i>3/5/06</i>
2. Article Number: <i>7001 2510 0000 6158 4279</i>	3. Signature of Addressee (if different from item 1) 4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/>

### Demonstration of Need Worksheet

Site Name:	Laurens Reclamation and Recycling Center
Permit #:	Proposed
Facility Type:	Long-Term, Commercial C&D LF
Proposed Disposal Amount, tons/yr	Max. Available

Counties included w/i 10 mi. radius	Disposal Amount, tons/yr (FY 2004)	
	C&D-IV	
Greenville		87,157
Laurens		8,434
Spartanburg		58,803
Total		154,394



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ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

February 21, 2006

Ms. Joan Litton  
Manager, Solid Waste Facility Engineering Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Demonstration of Need Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

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LATITUDE: 34 DEGREES 37 MINUTES 20.91 SECONDS  
LONGITUDE: - 82 DEGREES 05 MINUTES 13.61 SECONDS

The maximum annual tonnage limit allowed under the regulation based on the latest published disposal data is requested.

Please contact me if you have questions.

Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269

21153

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POST OFFICE BOX 1006  
LAURENS, SOUTH CAROLINA 29360

(864) 682-3250  
FAX (864) 682-3260

WWW.LCWSC.COM

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MAR 24 2008

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

March 17, 2008

Mr. Timothy M. Eleazer  
SCDHEC BLWM  
2600 Bull Street  
Columbia SC 29201

RE: Proposed Hwy. 92 C&D Landfill  
Laurens County

Dear Mr. Eleazer:

This letter is written concerning the proposed construction and demolition (C&D) landfill to be located near Hwy. 92 and I-385, at the headwaters of Martin Lake. This letter serves to clarify the Laurens County Water and Sewer Commission (LCWSC) understanding of SCDHEC's regulatory position regarding this proposed landfill and to document LCWSC concerns as allowed under the public comment phase of the permitting process.

Within the next 45 days the LCWSC will hire an Engineering Firm for services related to a County wide water resource study. This study will focus on the natural water resources in Laurens County and how these water resources can meet the County's water and sewer needs for the next 10, 25, 50 years and beyond. We will specifically request that Martin Lake be apart of this study because of its location and purpose as a drinking water reservoir. Martin Lake is within the Beaverdam-Warrior Creek Watershed. When the Watershed Work Plan for Martin Lake was developed in May 1969 it included 255 acre-ft of water storage and a minimum of 2.0 MGD of water capacity for the Upper Laurens County Water District to serve the northern portions of Laurens County and the Town of Gray Court. A supplement to this Watershed Work Plan, dated September of 1972 transferred these water withdrawal rights the Laurens County Water Resource Commission (LCWRC). The LCWRC is now known as the Laurens County Water and Sewer Commission (LCWSC) as a result of the merger with Rabon Creek Rural Water District in 1990.

It is our understanding that it is SCDHEC's position that C&D landfills pose no risk to water bodies, both surface water and ground water and that the proposed landfill will not impair Martin Lake or reduce its reliability as a drinking water source for Laurens County. Current regulations allow such landfills to be within 200 feet of a lake or within 100 feet of a drinking water well, but required to be 1000 feet from a school. Furthermore, if a treatment plant currently existed on Martin Lake it would have no bearing on SCDHEC decision to issue a landfill permit.

EXHIBIT  
DHEC-  
6 Coleman  
2/12/09 SMS  
PENGAD 800-637-6888

MASON SECRETARY • BILL TEAGUE, TREASURER

LCWSC Comments  
Hwy. 92 C&D Landfill  
Page 2 of 2  
March 17, 2008

LCWSC would argue that these regulations are woefully inadequate and that this application should be used as an example to develop new regulations for the State of South Carolina. It is our opinion that SCDHEC is ignoring their obligation and over riding purpose as an agency and is about to make a black and white decision when considering MMR's application. If a 1000 foot buffer is technically sound for a school then at the very least this same buffer should apply to a drinking water reservoir. If one of SCDHEC's goals is to protect our children, then what they drink and what their parents cook with should be of top priority. Imagine ten years from now, this landfill is in operation and has committed an operational violation or, God forbid, a contaminate has been found in Lake Martin or in a monitoring well. The LCWSC begins moving forward with plans to construct a package plant on Martin Lake. Public perception would be impossible to overcome and our decision, regardless of the facts, would be in question to a point that it would no longer be feasible. In a time when consumer confidence reports are required to inspire confidence in the water industry, building a water plant within earshot of a landfill would destroy confidence. In effect, SCDHEC will have eliminated a valuable drinking water resource for Laurens County.

SCDHEC can argue that all landfills eventually have a potential to impact drinking water sources or that C&D landfills are technically harmless. Given the proximity of this site to Martin Lake, a known drinking water source for the people of Laurens County and South Carolina, then SCDHEC should NOT be arguing with a public water utility about why it can not protect Lake Martin but rather be building a case to not issue a landfill construction permit to MMR Southern, LLC.

The Board of Commissioners of the LCWSC would strongly argue that it is SCDHEC's right and responsibility to protect Martin Lake and all drinking water sources for the State of South Carolina.

Sincerely,



Jeff Field  
Executive Director  
LCWSC

CC: Senator Danny Verdin  
Representative Adam Taylor  
C. Earl Hunter, Commissioner, SCDHEC  
Bob Jackson, Regional Director, Upper Savannah Region, SCDHEC  
Jimmy Martin

21153

55



**Agenda for Public Hearing**  
**Proposed Hwy. 92 Construction & Demolition (C&D) Landfill**  
**March 13, 2008**  
**6:30 PM**

Welcome/Introductions.....Donna Rowe, SCDHEC Meeting Facilitator  
 Public Officials  
 DHEC Staff

Public Hearing Opening Remarks.....Hearing Officer-Scott Wilson

Application Overview Presentation.....BLWM Project Manager- Tim Eleazer  
 BOW Storm Water Manager- Jill Stewart

Formal Public Comment Period ..... Ron Gilkerson, MRR Hwy. 92 LLC

Public Officials

Citizen Group Representative(s)

Individual Citizens

Closing Remarks for Public Hearing.....Hearing Officer

(Short break)

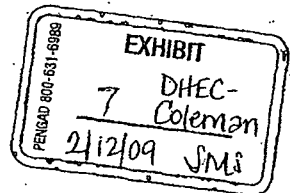
Question/Answer Session

\*\*\*\*\*  
 If you have any additional questions, please contact:

Tim Eleazer, Solid Waste Project Engineer.....(803) 896-4217  
 Sarah Daniels, EQC Region 1, Greenwood Office.....(864) 223-0333

Or mail your written comments to:

SCDHEC- BLWM  
 Attention Tim Eleazer  
 2600 Bull St.  
 Columbia, SC 29201





# Fact Sheet

SC Department of Health and Environmental Control • 2600 Bull Street • www.scdhec.gov • Promoting and protecting the health of the public and the environment

- Project Name:** Proposed Highway 92 Construction, Demolition and Land-Clearing Debris (C&D) Landfill and Reprocessing Center
- Project Location:** In Laurens County, 322 Choice Road, Gray Court, South Carolina. Approximately 2 miles east of Gray Court, South Carolina off SC Highway 92.
- Applicant:** MRR Highway 92, LLC  
Represented By: Mr. Ronald C. Gilkerson

## Project Details:

- Total property for landfill is 130 acres: 69 acres will be used for waste placement
- Lowest point of the property before land filling is 670 feet; after land filling, the expected highest point of the property will be 830 feet, a net increase of 160 feet.
- Limited to 12 acres open for disposal at any one time
- Maximum rate of disposal: 154,000 tons per year
- Estimated total disposal capacity: 7,800,000 cubic yards
- Estimated landfill life expectancy: 31-73 years
- Operations on Monday through Friday, 7:00 am – 6:00 pm, Saturday, 7:00 am – 12:00 pm
- Proposed landfill site has no applicable zoning

## DHEC Requirements for C&D Landfills (not a complete list):

- Landfill must be greater than:
  - 1000 feet from any school, residence, day care, hospital, park
  - 200 feet from any surface water body
  - 100 feet from any property line
  - 100 feet from any drinking water well
- Landfill bottom will be a minimum of 5 feet above seasonal high groundwater table.
- Must make available to DHEC a source of funding to properly close landfill (\$333,200 for 12 acres).
- Wastes that are listed in Appendix I of Regulation 61-107.11 are approved for disposal (copies of Appendix I are available). Examples include: brick, concrete block, plaster/plasterboard, shingles, insulation, structural steel, lumber, tile, glass, hardened concrete/cement
- Groundwater monitoring will be conducted semi-annually at the landfill site.

For more information: The South Carolina Regulation covering C&D Landfills, R.61-107.11, can be found at <http://www.scdhec.gov/environment/lwm/regulatory.htm>

All comments must be submitted by Friday, March 21, 2008. Comments should be sent to the attention of Mr. Timothy M. Eleazer at the mailing address provided on the back.

# DHEC Feedback Survey: Public Meeting

Thank you for your answers, which will be kept anonymous.



Meeting name: Hwy. 92 C&D Landfill Location: Gray Court-Owings Middle Sch  
 DHEC Program Area: BLWM/BOW Date: 03/13/08

1. Please tell us how you heard about this meeting (check all that apply):  
 radio     television     newspaper     flyer(s)     notice (posted)     notice (mail)  
 word of mouth     DHEC website     other (please specify) \_\_\_\_\_

2. What other ways would you like to hear about these type of meetings?

3. Did you receive any background information about what was being discussed tonight?     Yes     No  
 - If yes, was it understandable?     Yes     No  
 - If yes, did it give you a way to contact someone for more information?     Yes     No

4. Did you ask for specific information prior to the meeting?     Yes     No  
 - If yes, did you receive the information you requested?     Yes     No

For the following, please indicate how you feel on each comment	Strongly Disagree	Disagree	Agree	Strongly Agree
5. The notice about the meeting clearly explained the purpose.				
6. The time that the meeting was held was convenient.				
7. The length of the meeting was about right.				
8. The location of the meeting was convenient.				
9. The purpose of the meeting was what I expected.				
10. My questions were answered.				
11. I understand the role of DHEC in this process.				
12. A meeting with the community should have been held sooner.				
13. The speakers at the meeting used language I could understand.				
14. The presentations today were too long.				
15. The written materials I received at the meeting were easy to understand.				
16. The meeting met my needs.				
17. Participants' input will make a difference.				
18. My concerns were heard.				
19. I know how to get follow-up information.				
20. I know what I can do to participate in this process.				
21. I understand the "next steps" in the process.				
22. I trust the information from DHEC.				

23. How could this meeting have better met your expectations?

24. Please indicate which group(s) you represent:  
 neighborhood group     state or tribal or local government     business/industry/trade association  
 local non-profit organization     federal government     other (please specify)  
 national environmental organization     resident

25. Additional comments about how to improve this meeting or this survey:



RECEIVED

FEB 28 2006

B. P. BARBER & ASSOCIATES, INC.

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

February 21, 2006

Ms. Joan Litton  
Manager, Solid Waste Facility Engineering Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Demonstration of Need Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

Dear Ms. Litton,

On behalf of MRR Southern Company, LLC, I hereby request, pursuant to Demonstration of Need, R.61-107.17, Department approval to develop a private Part IV construction, demolition and land clearing debris landfill at the referenced location on Choice Road in northern Laurens County along I-385 between Hwy 101 and Hwy 92. Site name and location are:

LAURENS RECLAMATION & RECYCLING CENTER  
LATITUDE: 34 DEGREES 37 MINUTES 20.91 SECONDS  
LONGITUDE: - 82 DEGREES 05 MINUTES 13.61 SECONDS

The maximum annual tonnage limit allowed under the regulation based on the latest published disposal data is requested.

Please contact me if you have questions.

Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269

PETITIONER'S EX. 7
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C. Ead Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

March 3, 2006

CERTIFIED MAIL  
7001 2510 0008 6158 4279

Mr. Ronald C. Gilkerson, P.G.  
MMR Southern Company, LLC  
11925 Sam Roper Drive, Suite C, Office 2  
Charlotte, NC 28269

**RE: Demonstration of Need APPROVAL**  
**Proposed Laurens Reclamation and Recycling Center Long-Term Construction, Demolition and**  
**Land-Clearing Debris Landfill**  
**Location: 34°37'20.91" N Latitude, 82°05'13.61" W Longitude**  
**Maximum Annual Disposal Limit of 154,000 tons/year**  
**Laurens County**

Dear Mr. Gilkerson:

This office is in receipt of a demonstration of need request, submitted on your behalf by Rudy M. Curtis of B.P. Barber and Associates, for the above-referenced site, dated February 21, 2006. Staff have evaluated the information and determined that pursuant to the provisions of R.61-107.17, *Demonstration of Need*, there is a need for this type of facility in the corresponding planning area. The Department may consider an annual disposal limit up to 154,000 tons during its consistency determination for this proposed facility.

Securing a site approval under the provisions of the Demonstration of Need regulation in no way supercedes zoning, consistency with local solid waste management plans or other considerations evaluated by the Department during the permitting process.

Also, please be aware that this approval may be terminated by the Department if any one of the following occurs: (A) one hundred twenty (120) days elapse from the date of receipt of this letter of approval without documented evidence of diligent pursuit of the appropriate solid waste permit being presented to the Department or (B) once a permit application has been received by the Department, that permit application is declared inactive or is denied by the Department's solid waste permitting staff or (C) the Department receives official and final notification that the site of the proposed facility does not meet proper zoning for the intended activity or (D) the Department determines that the proposed facility is not consistent with the host county or region solid waste management plan.

If you have any questions, please contact John McCain of my staff at (803) 896-4067.

Sincerely,

Joan F. Litton, Manager  
Solid Waste Permitting Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

JFL/JMM/jmm

cc: Ernest B. Segars - Laurens County Administrator

PETITIONER'S
Ex. <u>8</u>



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

## MEMO

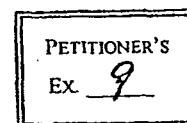
TO: Jeff Nichols

FROM: Jana White, Manager  
Solid Waste Planning and Grants Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

RE: DHEC response to questions made to Laurens County Council by Jeff Nichols

DATE: June 23, 2006

1. What data do we have that shows Laurens County has a need for a C&D landfill? **"Need" as defined by DHEC is determined by the Demonstration of Need (DON) regulation and the county plan. Neither prohibits the proposed landfill. DON addresses regional needs and the local plan should address local needs.**
2. Is Laurens County developing at a rate to require an additional landfill that is close to the Curry Lake Road facility? **Both DON and the local plan allow the placement as proposed. The local plan should account for growth and the needs of the County.**
3. What is the source of the data that supports the requirements i.e. builders permits, census data, tax records etc. **The county plan should address local disposal needs. The applicant selects sites based on expectations of materials available and customers' needs.**
4. What is the capability of the existing landfill on Curry Lake Road? Does this landfill on Curry Lake Road accommodate C&D refuse? **The Curry Lake Rd. site is permitted to take 151,566 tons per year of C&D waste. In FY05 they accepted 54,610 tons. Their estimated life is about 30 years.**
5. Where does the County SWM Plan recommend that the Solid Waste Landfills be located in the County? **The County SWM Plan does not specifically address the geographical areas in which landfills may be placed. Counties can use solid waste plans, zoning and/or land-use planning to designate areas where landfills can be placed.**
6. If no recommendations exist, shouldn't the plan be updated to be proactive and in the best interest of the citizens instead of a private commercial company? **DHEC recommends that local plans be review annually and updated as needed.**
7. When was the Solid Waste plan last updated? Are the planning assumptions still valid based on new data? **The plan was last updated in 1997**



8. Does the Solid Waste Plan consider the Lake Martin area in Gray Court as an ideal location for the majority of the citizens in the county? Why or why not? **The SWM Plan does not address the location geographically. State DON allows it there. The applicant has selected that site.**
9. Why have zoning codes not addressed industry, residential, commercial and growth strategies to improve quality of life and economic conditions in the county? **Zoning codes are a local issue.**
10. What are the Best or Leading practices of other states regarding developing and managing the Solid Waste Management Plan to address the majority of needs of the citizens industry, residential commercial and growth strategies? **Planning requirements vary widely from state to state. There are no federal requirements related to solid waste planning by the states.**
11. How are nearby residents of the proposed C&D Landfill concerns being addressed by the vendor, state and local officials? **DHEC accepts public comment at any time during the application period and will host or attend public meetings at the request of residents. The permit will be public noticed before issuance.**
12. Shouldn't Lake Martin be considered a Wetlands area and wildlife preserve? **The permit application must delineate wetlands and any impact to wetlands must be approved by the Army Corps of Engineers.**
13. Concern areas:
- Pollution to Lake Martin, Wildlife, i.e. fish, deer, turkey etc.
  - Part of the Lake Martin area is a nesting area to water fowl, i.e. ducks, geese **See # 12**
  - Drinking water contamination to nearby well **Setbacks of 100 feet are required from drinking water wells.**
  - Landfill decomposition over a period of time **Because of the nature of the materials allowed in a C&D landfill, there should be no problems as the materials decompose.**
  - Waste runoff **The application and site plan must address how runoff will be managed.**
  - Sediment draining into Lake Martin, Shallow end of the lake fill-in being accelerated **The application and site plan must address how runoff will be managed.**
  - Truck Traffic- Noise pollution- **Traffic considerations are a local planning issue.**
  - Air pollution and foul smelling air, air quality **Because of the nature of the materials allowed in a C&D landfill, there should be no air quality problems as the materials decompose.**
  - Visual pollution- **Aesthetic considerations are a local zoning or planning issue.**
  - Intangible effects
14. What is the expected lifetime and monitoring period of the proposed landfill? **The Department has not received an application for this facility and so cannot state the expected lifetime.**

15. How can local residents be 100% sure of no negative environment, health and economic impact to surrounding areas? i.e. Lake Martin, drinking water, traffic patterns, safety and real estate values? **DHEC will require that the applicant follow all state regulations in the development and operation of the landfill. These regulations were developed to protect the environment and public health. Economic impact is a function of local planning.**
16. What has been the effect of C&D Landfills on residential and commercial growth trajectories in nearby states with a lake nearby? Which non-South Carolina officials and residents can validate the data? **The Department does not have this information available at this time.**
17. How often would the surrounding lake and water areas be tested that is beyond the property boundaries of the landfill? **Checking with Bureau of Water.**
18. If there is a contamination between test periods how would the affected areas be restored and who would pay for restoration and damages? **Operators would be required to assess the problems and remediate the site as needed at their own expense.**
- a. If the county, this increases risk to the tax paying resident
  - b. If the corporation, do they have the capacity to restore the environment and pay for damages?
19. Is it fair that one company is permitted to develop a landfill that is an expense and personal risk to the Laurens citizens if the Solid Waste Plan has not required a landfill be established in the Gray Court/Lake Martin area? **A privately owned landfill is a business and can be limited through local SWM plans, zoning and land-use planning.**
20. At the proposed landfill, how can we be sure of 100% compliance to authorized acceptable refuse? Will all containers and trucks be verified and inspected in their entirety? **DHEC inspectors will visit the site monthly. If problems are identified, the schedule can be accelerated. The operator is responsible for ensuring compliance with the regulations and the conditions of the permit.**
21. Will there be a liner in the landfill in case of accidental or covert contamination? **C&D part IV landfills are not required to have liners because of the limited types of waste going into them.**
22. Are the roads, intersections and bridges prepared to accommodate the additional traffic? **This should be a function of local planning.**
23. Will the trucks and hauling companies have to pay for additional wear and tear on the roads to the state? **This is a local issue.**
24. Will the state commit to provide additional repair or maintenance to the roads because of potholes, traffic and safety issues? **The state does not determine where landfills are placed, that is a local planning function.**
25. How will the speed limit change or be enforced for trucks traversing the residential areas? **DHEC cannot require changes to speed limits.**

26. What references from other counties with a lake near a C&D landfill exist and are willing speak with the Gray Court community? I.e. Local residents near an existing C&D facility; real estate, health officials, environment and transportation. Can a mixed panel be assembled to publicly address the questions and concerns from the community? **DHEC does not have that information available, but can research the question and provide contact information.**
27. How long has the company that is proposing the C&D landfill been in business, what references and expertise do they have? What is the financial health of the company? Are they publicly or privately held? **DHEC requires the applicant submit a statement that discloses any environmental infractions against agents of the facility. This applicant is a limited liability corporation.**
28. What insurance does the company carry and with whom in case of a contamination? **Operators are required to have financial assurance to cover closure of the landfill but not for remediation of problems. In most circumstances, the cost of corrective action would be the responsibility of the permit holder.**
29. What are the company's qualifications and certifications for the type of landfill that is proposed in the Gray Court area? **The Department will offer C&D Landfill Operator Certification training. At this time, there is no requirement that the operator of a C&D landfill be certified.**
30. Why was the Gray Court site selected? **The location is selected by the applicant.**
31. The company has proposed a recycling and reclamation center in the front of the proposed landfill for the county? Is this needed by Gray Court residents? If not, for the county benefits is the proposed location the most convenient location for most of the county? Who is the target beneficiary for the recycling and reclamation operation? Should the site be convenient and benefit the areas that need it most? **The applicant is free to offer space to the county and the county is free to accept it or not.**
32. How does the Laurens County Solid Waste Management plan address the need for a recycling and reclamation operation? **The Laurens County Plan addresses 10 existing drop-off locations.**
33. Where in the US has a similar purpose and size landfill been established as close to a lake and what has been the short term and long term effects, from an environmental , health , community and economic impact, including population growth, and real estate home and land values? **DHEC does not have that data. Who benefits most and least in this proposed transaction? What is being proposed to create equity for all concerned? A landfill is a business. The applicant selects the site based on their expectations of local conditions, needs, etc. Like any business, their operations will impact the owner, the customers and the community.**
34. What is the projected revenue impact from the proposed landfill to the local, county and state agencies? Who receives the revenue and how will it be spent? There is no revenue to the state. **There can be host fees negotiated from a landfill to the host county or city. DHEC would have no say in how those fees would be spent by the host county or city.**

RECEIVED

JUN 16 2006

June 12, 2006

OFFICE OF SOLID WASTE  
REDUCTION & RECYCLING  
BLWM

To: Laurens County Council

Subject: Proposed Landfill in Gray Court, S. C.

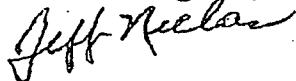
This is in regards to the proposed landfill in the area of Gray Court, S. C.

There are a number of questions and concerns from the local residents that we would like to understand regarding the potential impact to our area.

We would like to respectfully request a written response to the questions and concerns and to discuss your answers in a public forum to be held in the Gray Court/Laurens area as soon as possible.

Your prompt attention to this matter is very much appreciated.

With kind regards,



Jeff Nichols  
864 Lakeview Drive  
Gray Court, SC 29645

cc: Laurens County Advertiser, Sen. Danny Verdin, Rep. Adam Taylor, Rep. Jeff Duncan, Rep. Mike Pitts

Questions and Concerns:

Concerning proposed C&D Landfill near Lake Martin in Gray Court, SC

1. What data do we have that shows Laurens County has a need for a Construction and Demolition landfill?
2. Is Laurens County developing at a rate to require an additional landfill that is close to the Curry Lake road facility?
3. What is the source of the data that supports the requirement, i.e. builders permits, census data, tax records etc?
4. What is the capability of the existing landfill on Curry Lake Road?  
Does this landfill on Curry Lake Road accommodate Construction and Demolition refuse?
5. Where does the County Waste Management Plan recommend that the Solid Waste Landfills be located in the County?
6. If no recommendations exist shouldn't the plan be updated to be proactive and in the best interest of the citizens instead of a private commercial company?
7. When was the Solid Waste plan last updated? Are the planning assumptions still valid based new data?
8. Does the Solid Waste Plan consider the Lake Martin area and Gray Court as an ideal location for the majority of the citizens in the county? Why or why not?
9. Why have zoning codes not addressed industry, residential, commercial and growth strategies to improve quality of life and economic conditions in the county?
10. What are the Best, or Leading Practices of other states regarding developing and managing the Solid Waste Management plan to address the majority of needs of the citizens industry, residential, commercial and growth strategies?
11. How are nearby residents of the proposed C&D landfill concerns being addressed by the vendor, state and local officials?
12. Shouldn't Lake Martin be considered a Wetlands area and wildlife preserve?
13. Concern areas:
  - o Pollution to Lake Martin, Wildlife, i.e. fish, deer, turkey, etc.
  - o Part of the Lake Martin area is a resting area to water fowl, i.e. ducks, geese
  - o Drinking water contamination to nearby wells over a long period of time

- Land fill decomposition over a long period of time
- Water runoff
- Sediment draining into Lake Martin- Shallow end of the Lake fill in being accelerated
- Truck traffic
- Noise pollution
- Air pollution, and foul smelling air – air quality
- Visual pollution
- Intangible effects

14. What is the expected life time and monitoring period of the proposed landfill?
15. How can local residents be 100% sure of no negative environment, health and economic impact to surrounding areas? I.e. Lake Martin, Drinking water, traffic patterns, safety and real estate values?
16. What has been the affect of C&D landfills on residential & commercial growth trajectories in nearby states with a Lake nearby? Which non-South Carolina officials and residents can validate the data?
17. How often would the surrounding lake and water areas be tested that is beyond the property boundaries of the landfill?
18. If there is a contamination between test periods how would the affected areas be restored and who would pay for restoration and damages?
  - If the county, this increases risk to the tax paying resident
  - If the corporation, do they have the capacity to restore the environment and pay for damages?
19. Is it fair that one company is permitted to develop a landfill at the expense and personal risk to the Laurens citizens if the Solid Waste Plan has not required a landfill be established in the Gray Court/ Lake Martin area?
20. At the proposed landfill, how can we be sure of 100% compliance to authorized acceptable refuse? Will all containers and trucks be verified and inspected in there entirety?
21. Will there be a liner in the landfill in case of accidental or covert contamination?
22. Are the roads, intersections, and bridges prepared to accommodate the additional traffic?
23. Will the trucks and hauling companies have to pay for additional wear and tear of the roads to the state?

24. Will the state commit to provide additional repair or maintenance to the roads because of potholes, traffic and safety issues?
25. How will the speed limit change or be enforced for trucks traversing the residential areas?
26. What references from other counties with a Lake near a C&D landfill exist and are willing to speaking with the Gray Court community? I.e. local residents near an existing C&D facility; real estate, health officials, environment and transportation. Can a mixed panel be assembled to publicly address the questions and concerns from the community?
27. How long has the company that is proposing the C&D landfill been in business, what references and expertise do they have? What is the financial health of the company? Are they public or privately held?
28. What insurance does the company carry and with whom in case of a contamination?
29. What are the company's qualifications and certifications for the type of landfill that is proposed in the Gray Court area?
30. Why was the Gray Court site selected?
31. The company has proposed a recycling and reclamation center in the front of the proposed landfill for the county? Is this needed by Gray Court residents? If not, for the counties benefit is the proposed location the most convenient location for most of the county? Who is the target beneficiary for the recycling and reclamation operation? Should the site be convenient and benefit the areas that need it most?
32. How does the Laurens County Solid Waste Management plan address the need for a recycling and reclamation operation?
33. Where in the United States has a similar purpose and size landfill been established as close to a Lake and what has been the short term and long term effects, from an environmental, health, community and economic impact, including population growth, and real estate home and land values? Who benefits most and least in this proposed transaction? What is being proposed to create equity for all concerned?
34. What is the projected revenue impact from the proposed landfill to the local, county and state agencies? Who receives the revenue and how will it be spent?



South Carolina House of Representatives

P. O. BOX 11857 • COLUMBIA, S.C. 29211 • TELEPHONE 784-2010

June 26, 2006

The Honorable C. Earl Hunter, Commissioner  
SC Dept of Health & Environmental Control  
J. Marion Sims Bldg. And R. J. Aycock Bldg.  
2600 Bull Street  
Columbia, SC 29201

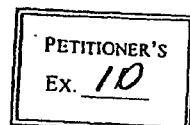
Dear Commissioner Hunter:

This letter is concerning a proposed construction debris landfill in the Lake Martin area of Laurens County. We express the following concerns and ask that you address them during the permitting process:

First, the proximity to a current C & D Landfill on Currys Lake Road in the Gray Court area of Laurens County. We questioned the need for a second landfill in this relatively short distance. Currys Lake Road Landfill is located just above Reason Creek, which flows directly into Lake Raben thereby flowing into Lake Greenwood. The city of Laurens draws raw water from Lake Raben while Greenwood County gains most of its drinking water from Lake Greenwood. By allowing a landfill on Lake Martin, it is our belief that it will increase pollutant and contaminate levels in this water supply, which may be harmful to the citizens of Laurens and Greenwood Counties.

We questioned the environmental impact of a landfill on the wetlands area of Lake Martin and, thereby, request that you have direct contact with the U.S. Corps of Engineers and the South Carolina Department of Natural Resources regarding this issue. It is our belief and concern that the proposed location of this landfill would be detrimental to the economic development of Laurens County into which the state and local government have a high investment.

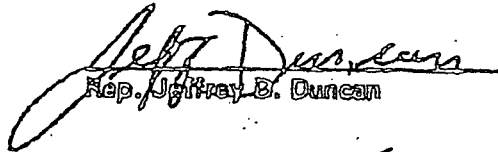
For these reasons, we ask that the South Carolina Department of Health and Environmental Control hold this application process strictly to the standards set forth in state regulation and in law. With this array of concerns of impact on water quality, environment, natural resources and economic development we, the Laurens County Legislative Delegation to the General Assembly, stand in firm opposition to placement of a C & D Landfill at Lake Martin.

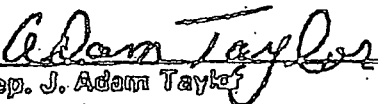


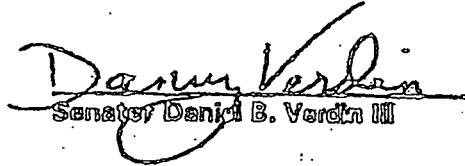
June 26, 2006  
Page Two

Sincerely,

  
Rep. Michael A. Pitts

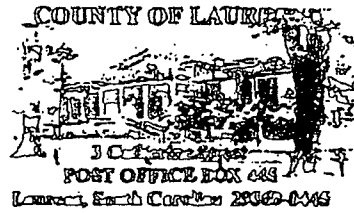
  
Rep. Jeffrey B. Duncan

  
Rep. J. Adam Taylor

  
Senator Daniel B. Verdin III

MAP/jrm/June-26-06-1,2

cc: The Honorable James H. Coleman, Chairman, Laurens County Council, Post  
Office Box 1025, Laurens, SC 29360-1025  
Ms. Wanda Crowell, DHEC, J. Marion Sims Bldg. & R. J. Aycock Bldg., 2600  
Bull Street, Columbia, SC 29201  
Mr. Art Braswell, DHEC, J. Marion Sims Bldg. & R. J. Aycock Bldg., 2600 Bull  
Street, Columbia, SC 29201



(843) 524-5214 FAX - (843) 524-3726

**COUNCIL MEMBERS**

- James A. Coleman, Chairman
- Dircea B. Anderson, Vice Chair
- Edward A. McDaniel
- Ted G. Noah
- Ernest G. Tompsett
- David E. Tribble, Jr.
- Joseph E. Ward, Jr.

**ADMINISTRATION**

- Ernest B. Segon, Administrator
- Benny C. Walsh, Clerk to Council

June 28, 2006

Mr. Art Braswell, Director  
 Mining and Solid Waste Management  
 South Carolina Department of Health and Environmental Control  
 2600 Bull Street  
 Columbia, South Carolina 29201

**RE: PROPOSED LAURENS RECYCLING AND RECLAMATION CENTER,  
 PART IV, C&D / LCD LANDFILL, PROPOSED FOR CONSTRUCTION AT  
 CHOICE ROAD IN NORTHER LAURENS COUNTY ALONG I-385  
 BETWEEN HIGHWAY #101 AND HIGHWAY #92**

Dear Mr. Braswell:

I have enclosed for DHEC's review copies of documents that reflect Laurens County's and Laurens County Council's opposition to the referenced landfill that is proposed for construction in Laurens County.

The documents are as follows:

- 1.) A copy of a Resolution approved unanimously by Laurens County Council on June 27, 2006. You will note that this resolution reflects Council's opposition to the project.
- 2.) A copy of Laurens County Ordinance #622, which is entitled, "An Ordinance to Amend Section II of the Laurens County Solid Waste Management Plan." Please note that, in Paragraph 5, which is entitled "Amendment As to Section II A," Laurens County Council is reducing the number of long-term privately-owned Construction and Demolition Debris Landfills to 'no more than one' at any given time. Council will approve this Ordinance on second reading on June 30<sup>th</sup> and a public hearing and third reading is scheduled for Monday, July 17<sup>th</sup>. The county will provide a signed copy of Ordinance #622 to DHEC following third reading.

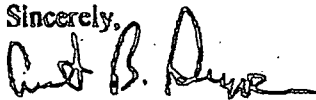
PETITIONER'S  
 Ex. 12

- 3.) The third document is a copy of a letter from Mr. Jeff Field, the Executive Director of the Laurens County Water and Sewer Commission. In the letter, Mr. Field points out that the proposed landfill will be very near Lake Martin, which is a very viable potential source of drinking water for Laurens County.

Laurens County Council is certainly aware of the difficult decisions that must be made locally and at the state level in all areas of solid waste management. I can tell you that the documents enclosed very clearly reflect the opposition of Laurens County Council and the residents of the area to the proposed location of the landfill. Thank you for your assistance.

Please contact me at (864) 984-5484 if I can be of any assistance.

Sincerely,



Ernest B. Segars  
Laurens County Administrator

CC: Laurens County Council  
Scott Holland, Laurens County Department of Public Works

STATE OF SOUTH CAROLINA )

COUNTY OF LAURENS )



A RESOLUTION

WHEREAS, the proposed Laurens Recycling and Reclamation Center, Part IV C & D/LCD Landfill has been proposed for construction at Choice Road in Northern Laurens County along I-385 between Highway #101 and Highway #92; and,

WHEREAS, neighboring property owners and residents of the area have expressed concerns about adverse environmental and economic conditions resulting from the construction of the proposed landfill, and;

WHEREAS, Lake Martin is a major water impoundment and Lake Martin is located adjacent to the site of the proposed landfill, and;

WHEREAS, Lake Martin is a potential source of drinking water for an area of Laurens County and it would not be desirable to have a landfill located adjacent to this very important source of drinking water, and;

WHEREAS, Lake Martin is designed to provide an additional 2.13 million gallons per day for use in Laurens County, and;

WHEREAS, Laurens County does not have an immediate need for the additional landfill space to be provided by the proposed facility.

NOW, THEREFORE, BE IT RESOLVED, that the Laurens County Council, duly assembled, does hereby declare its opposition to the said landfill and Council further requests that the South Carolina Department of Health and Environmental Control deny any further permits for the proposed landfill.

Approved by Laurens County Council, this 27<sup>th</sup> day of June, 2006

LAURENS COUNTY COUNCIL:

James A. Coleman  
James A. Coleman, Chairman

Diane B. Anderson  
Diane B. Anderson, Vice Chair

Edward A. McDaniel  
Edward A. McDaniel, Council Member

Ted G. Nash  
Ted G. Nash, Council Member

Ernest G. Trammell  
Ernest G. Trammell, Council Member

David E. Tribble, Jr.  
David E. Tribble, Jr. Council Member

Joseph E. Wood, Jr.  
Joseph E. Wood, Jr. Council Member

ATTEST:

Ernest B. Segars  
Ernest B. Segars, Administrator  
Laurens County Council  
Laurens County, South Carolina

Betty C. Whish  
Betty C. Whish, Clerk  
Laurens County Council  
Laurens County, South Carolina

June 27, 2006  
Date



21153  
53.aa

C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

February 14, 2008

CERTIFIED MAIL

91 7108 2133 3932 9270 0080

Mr. Ronald C. Gilkerson, P.G.  
MRR Highway 92, Inc.  
11743 Trails End Lane  
Charlotte, NC 28078

RE: Draft Permit for Proposed Highway 92 Construction, Demolition and Land-Clearing Debris  
Landfill and Reprocessing Center  
Location: 34° 37' 20.91" N, 82° 5' 13.61" W  
Laurens County

Dear Mr. Gilkerson:

The Department has completed the review of your submittal dated June 2006, and July 2007 with the revisions dated October 2007. Enclosed is a draft permit for the proposed Highway 92 Construction, Demolition and Land-Clearing Debris Landfill and Reprocessing Center in Laurens County. If you have any comments regarding the permit conditions, please respond by March 21, 2008.

The Public Notice of the draft permit and Public Hearing will be published in *The Laurens County Advertiser* on February 20, 2008, and *The Greenville News* on February 14, 2008. (Copy Attached)

If you should have any questions, please contact Timothy M. Eleazer at (803) 896-4217.

Sincerely,

Joan F. Litton, Manager  
Solid Waste Permitting Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

JFL/TME/tmc

Enclosures

cc: Tyler Smith, Region 1, Greenwood EQC Office  
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section  
Marty Lindler, Manager, Solid and Hazardous Waste Compliance  
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC  
BLWM File #021153

PETITIONER'S  
EX. 16

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL



C. Ead Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
BUREAU OF LAND AND WASTE MANAGEMENT  
CONSTRUCTION, DEMOLITION, AND LAND-CLEARING DEBRIS LANDFILL  
FACILITY ID #####-###

Permit Issued Date: \_\_\_\_\_ Permit Effective Date: \_\_\_\_\_

Permission is hereby granted to:

Name of Facility: Highway 92 Construction, Demolition and Land-Clearing Debris Landfill and Reprocessing Center  
Permittee: MRR Highway 92, LLC  
Address: 11743 Trails End Lane  
Charlotte, NC 28078  
Supervisor: Mr. Ronald C. Gilkerson  
Phone: (704) 947-6652

for the operation of a Construction, Demolition, and Land-Clearing Debris Landfill located at 322 Choice Road off SC Highway 92 two (2) miles east of Cayce, South Carolina.

This permit is issued pursuant to Sections 96-10 et seq. (Supp. 2007) and 25A S.C. Code Regs. 61-107.11 (Supp. 2007). The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

Kent M. Cochran, P.G., Director

R. Craig Kennedy, P.G., Assistant Director

Division of Mining and Solid Waste Management  
Bureau of Land & Waste Management

Facility ID #####-####  
February 14, 2008  
Page 1 of 4

HIGHWAY 92 CONSTRUCTION, DEMOLITION, AND LAND-CLEARING DEBRIS LANDFILL  
FACILITY ID 302###-####

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the Design Drawings and Engineering Report submitted to the Department dated June 27, 2006, and July 30, 2007 with the revision dated October 26, 2007, unless permit conditions state otherwise.
2. The allowable rate of disposal for this facility is one hundred (100) and (1/4 000) tons per-fiscal year (July 1 to June 30). Information concerning the facility's previous fiscal year's waste receipts is due in the form of an annual report to the Department no later than October 15<sup>th</sup> of each year, as required by Section F.4 of R. 61-107.11, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section  
SC DHEC Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29208

3. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.11.
4. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
  - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.11.

The area shall be inspected and deemed closed by Department staff.

5. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 4 (above) is equal to or less than 12 acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd<sup>3</sup> of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.
7. The financial assurance mechanism must be in place prior to accepting construction, demolition, and land-clearing debris waste.
8. All waste, excluding non-friable asbestos containing material, shall be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil.
9. Non-friable asbestos containing material shall be covered immediately upon receipt with at least six (6) inches of clean soil.

#### B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, the water shall be removed before continuing disposal of waste.

#### C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

##### I. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department.
- b) The Permittee shall perform all groundwater activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan.
- c) The Permittee must evaluate analytical results in accordance with the most recently approved Sampling and Analysis Plan and any subsequent modifications required by the Department.
- d) The Permittee must determine during each sampling event the elevation of the groundwater surface in each well relative to mean sea level (MSL) to the nearest hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.

- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

## 2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions.

## 3. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

Sampling Schedule  
March  
September

Results Due  
May  
November (Annual Report)

- b) The Permittee shall submit an annual report prepared by a South Carolina certified groundwater scientist summarizing the semi-annual determinations of groundwater flow direction and rate. In addition, the report shall also make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The established groundwater data collected during the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management Division of Hydrogeology Solid Waste Groundwater Section, and the Solid Waste Consultant in Region 1EQC (Greenwood).

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
NOTICE OF PUBLIC HEARING

**Topic:** Public Hearing for the proposed Highway 92 Construction, Demolition and Land-Clearing Debris (C&D) Landfill and Reprocessing Center

**Date:** Thursday, March 13<sup>th</sup>, 2008

**Time:** 6:30 pm

**Location:** Gray Court - Owings Middle School Auditorium  
9210 Highway 14, Gray Court, SC 29645

The South Carolina Department of Health and Environmental Control's (SCDHEC) Solid Waste Permitting Section has received a permit application from MRR Highway 92, LLC for the construction and operation of a new Long-Term, Construction, Demolition and Land-Clearing Debris Landfill and Reprocessing Center, to be located at 322 Choice Road, Gray Court, SC 29645, approximately one (1) mile NE of the City of Gray Court, SC off SC Highway 92 in Laurens County, South Carolina. The proposed landfill is estimated to have a disposal lifetime of more than fifty (50) years.

SCDHEC requires that a permit be issued for C&D landfills pursuant to SC Code Ann. Sections 44-96-10 et. Seq. (Supp. 2007) and 25A SC Code Reg. 61-107.11, *Construction, Demolition and Land-Clearing Debris Landfills* (Supp. 2007). The types of wastes that can be accepted at the Highway 92 C&D Landfill and Reprocessing Center are described in Appendix I of the above-mentioned regulation. Acceptable wastes include, but are not limited to, land-clearing debris, bricks, blocks, shingles, untreated lumber, and other wastes listed in Appendix I that have not been in contact with lead-based paint, hazardous constituents, or petroleum products. Wastes that are not acceptable at C&D landfills include household garbage, hazardous waste, and infectious waste. For a more detailed description of Appendix-I-acceptable wastes, please contact one of the persons below to view the application or to request a C&D landfill fact sheet. A copy of the regulation may also be viewed at the following website: <http://www.scdhec.gov/environment/lwm/regulatory.htm>.

At this time, the Solid Waste Permitting Section has completed its review of the permit application and found that the application meets all technical requirements of R.61-107.11. The Solid Waste Permitting has completed a draft permit and hereby gives notice to the public. During the public comment period the Department will be taking comments from the public concerning the draft permit and/or the permit application. The Public Hearing has been scheduled to allow members of the public the opportunity to ask questions and make comments regarding all aspects of the permit application and draft permit.

**Who to contact?** Copies of the permit application are available by appointment for public viewing during normal working hours at the following locations:

Bureau of Land and Waste Management  
SC Department of Health and Environmental Control  
8911 Farrow Road  
Columbia, SC 29223

Contact: Timothy M. Eleazer, (803) 896-4217  
E-mail: [eleazetm@dhec.sc.gov](mailto:eleazetm@dhec.sc.gov)

\*\*\*\*\*

Environmental Quality Control Regional Office  
SC Department of Health and Environmental Control  
Region 1

613 South Main Street  
Greenwood, SC 29646  
Contact: Tyler Smith, (864) 223-0333  
E-mail: [smithtg@dhec.sc.gov](mailto:smithtg@dhec.sc.gov)

Any interested person(s) may submit written comments concerning the proposed landfill permit application and/or draft permit to: Mr. Timothy M. Eleazer, SCDHEC BLWM, 2600 Bull Street, Columbia, SC 29201.

To be considered, all comments or requests must be received no later than Friday, March 21, 2008, at which time the public comment will end. Any individuals with disabilities or special needs who want to review the permit application should contact the Department to discuss any special services needed. A minimum of one (1) week's prior notice is requested to allow the Department to make any necessary arrangements.

000387



UNITED STATES  
POSTAL SERVICE.

Date: 03/05/2008

Tammy Whittle:

The following is in response to your 03/05/2008 request for delivery information on your Certified item number 7108 2133 3932 9270 0080. The delivery record shows that this item was delivered on 02/27/2008 at 11:50 AM in HUNTERSVILLE, NC 28078. The scanned image of the recipient information is provided below.

Signature of Recipient:

RONALD C. GILBERT  
*Ronald C. Gilbert*

Address of Recipient:

11743 BRISBEND LANE

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service



Agenda for Public Hearing  
Proposed Hwy. 92 Construction & Demolition (C&D) Landfill  
March 13, 2008  
6:30 PM

Welcome/Introductions.....Donna Rowe, SCDHEC Meeting Facilitator  
Public Officials  
DHEC Staff

Public Hearing Opening Remarks.....Hearing Officer-Scott Wilson

Application Overview Presentation.....BLWM Project Manager- Tim Eleazer  
BOW Storm Water Manager- Jill Stewart

Formal Public Comment Period ..... Ron Gilkerson, MRR Hwy. 92 LLC

Public Officials

Citizen Group Representative(s)

Individual Citizens

Closing Remarks for Public Hearing.....Hearing Officer

(Short break)

Question/Answer Session

\*\*\*\*\*

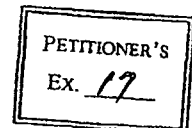
If you have any additional questions, please contact:

Tim Eleazer, Solid Waste Project Engineer.....(803) 896-4217

Sarah Daniels, EQC Region 1, Greenwood Office.....(864) 223-0333

Or mail your written comments to:

SCDHEC- BLWM  
Attention Tim Eleazer  
2600 Bull St.  
Columbia, SC 29201





# Fact Sheet

SC Department of Health and Environmental Control • 2600 Bull Street • [www.scdhec.gov](http://www.scdhec.gov) • Promoting and protecting the health of the public and the environment

**Project Name:** Proposed Highway 92 Construction, Demolition and Land-Clearing Debris (C&D) Landfill and Reprocessing Center

**Project Location:** In Laurens County, 322 Choice Road, Gray Court, South Carolina. Approximately 2 miles east of Gray Court, South Carolina off SC Highway 92.

**Applicant:** MRR Highway 92, LLC  
Represented By: Mr. Ronald C. Gilkerson

## Project Details:

- Total property for landfill is 130 acres: 69 acres will be used for waste placement
- Lowest point of the property before land filling is 670 feet; after land filling, the expected highest point of the property will be 830 feet, a net increase of 160 feet.
- Limited to 12 acres open for disposal at any one time
- Maximum rate of disposal: 154,000 tons per year
- Estimated total disposal capacity: 7,800,000 cubic yards
- Estimated landfill life expectancy: 31-73 years
- Operations on Monday through Friday, 7:00 am – 6:00 pm, Saturday, 7:00 am – 12:00 pm
- Proposed landfill site has no applicable zoning

## DHEC Requirements for C&D Landfills (not a complete list):

- Landfill must be greater than:
  - 1000 feet from any school, residence, day care, hospital, park
  - 200 feet from any surface water body
  - 100 feet from any property line
  - 100 feet from any drinking water well
- Landfill bottom will be a minimum of 5 feet above seasonal high groundwater table.
- Must make available to DHEC a source of funding to properly close landfill (\$333,200 for 12 acres).
- Wastes that are listed in Appendix I of Regulation 61-107.11 are approved for disposal (copies of Appendix I are available). Examples include: brick, concrete block, plaster/plasterboard, shingles, insulation, structural steel, lumber, tile, glass, hardened concrete/cement
- Groundwater monitoring will be conducted semi-annually at the landfill site.

For more information: The South Carolina Regulation covering C&D Landfills, R.61-107.11, can be found at <http://www.scdhec.gov/environment/lwm/regulatory.htm>

All comments must be submitted by Friday, March 21, 2008. Comments should be sent to the attention of Mr. Timothy M. Eleazer at the mailing address provided on the back.

# DHEC Feedback Survey: Public Meeting

Thank you for your answers, which will be kept anonymous.



Meeting name: Hwy. 92 C&D Landfill      Location: Gray Court-Owings Middle Sch.  
 DHEC Program Area: BLWM/BOW Date: 03/13/08

1. Please tell us how you heard about this meeting (check all that apply):  
 radio       television       newspaper       flyer(s)       notice (posted)       notice (mail)  
 word of mouth       DHEC website       other (please specify) \_\_\_\_\_

2. What other ways would you like to hear about these type of meetings?

3. Did you receive any background information about what was being discussed tonight?       Yes       No  
 - If yes, was it understandable?       Yes       No  
 - If yes, did it give you a way to contact someone for more information?       Yes       No

4. Did you ask for specific information prior to the meeting?       Yes       No  
 - If yes, did you receive the information you requested?       Yes       No

For the following, please indicate how you feel on each comment.	Strongly Disagree	Disagree	Agree	Strongly Agree
5. The notice about the meeting clearly explained the purpose.				
6. The time that the meeting was held was convenient.				
7. The length of the meeting was about right.				
8. The location of the meeting was convenient.				
9. The purpose of the meeting was what I expected.				
10. My questions were answered.				
11. I understand the role of DHEC in this process.				
12. A meeting with the community should have been held sooner.				
13. The speakers at the meeting used language I could understand.				
14. The presentations today were too long.				
15. The written materials I received at the meeting were easy to understand.				
16. The meeting met my needs.				
17. Participants' input will make a difference.				
18. My concerns were heard.				
19. I know how to get follow-up information.				
20. I know what I can do to participate in this process.				
21. I understand the "next steps" in the process.				
22. I trust the information from DHEC.				

23. How could this meeting have better met your expectations?

24. Please indicate which group(s) you represent:  
 neighborhood group       state or tribal or local government       business/industry/trade association  
 local non-profit organization       federal government       other (please specify)  
 national environmental organization       resident

25. Additional comments about how to improve this meeting or this survey:

21153

JOHNSON, SMITH, HIBBARD & WILDMAN  
LAW FIRM, L.L.P.

MILTON A. SMITH  
*Of Counsel*

DONALD B. WILDMAN  
DOUG SMITH  
DONNA FAYE SHETLEY  
RANSOME A. COLEMAN  
STEVEN M. QUERIN  
KELLY D. H. LOWRY\*

220 NORTH CHURCH STREET  
MAILING ADDRESS: P.O. DRAWER 5587  
SPARTANBURG, SOUTH CAROLINA 29304-5587  
TELEPHONE: 864-582-8121  
TELECOPIER: 864-585-5328

EDWIN W. JOHNSON (1904-1979)  
PAUL R. HIBBARD (1941-2004)

KRISTIN BURNETT BARBER  
SHANE W. ROGERS  
HOWARD KINARD

Sender's email: klowry@jshwlaw.com

\*also admitted in Vermont

March 21, 2008

Timothy M. Eleazer  
SC DHEC, BLWM  
2600 Bull Street  
Columbia, SC 29201  
(803) 896-4292 (fax)

RECEIVED

MAR 24 2008

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLW58

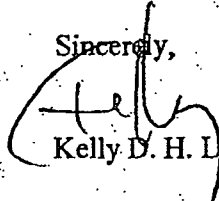
Tyler Smith  
SC DHEC, Region 1 EQC  
613 South Main Street  
Greenwood, S.C. 29646  
(864) 223-0333 (fax)

RE: Draft Permit for a C&D Landfill  
Laurens County, S.C.  
MRR Highway 92, LLC  
JSHW No.: 2061945

Dear Mr. Eleazer and Mr. Smith:

We are enclosing for consideration by the Department the attached comments of EAGLE, Inc., with regard to the proposed C&D landfill in Laurens County, S. C.

Sincerely,

  
Kelly D. H. Lowry

PETITIONER'S  
Ex. 20

KDHL/tfv  
Enclosures

COMMENTS OF EAGLE, INC.

REGARDING THE DRAFT PERMIT FOR

MRR HIGHWAY 92, LLC

RECEIVED

MAR 24 2008

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

To: Timothy M. Eleazer  
SC DHEC, BLWM

Tyler Smith  
SC DHEC, Region 1

From: Engaging And Guarding Laurens County's Environment, Inc.

In Re: MRR Highway 92, LLC

Draft permit for a C&D Landfill in Laurens County

*(Handwritten signature)*

---

On or about February 14, 2008, the South Carolina Department of Health and Environmental Control ("DHEC" or the "Department") issued a draft permit ("Draft Permit") for a construction, demolition, and land-clearing debris landfill for MRR Highway 92, LLC ("MRR"). The present comments are provided on behalf of EAGLE, Inc., a nonprofit environmental organization with members devoted to the conservation, protection and preservation of natural resources and to the education of the public to accomplish these ends. EAGLE represents its members, who use and enjoy the waters, wetlands and other natural resources of Laurens County in the vicinity of this project, and whose use and enjoyment are adversely affected by activities that impair or destroy these resources. The purpose of these comments is to provide a context and basis for more intense scrutiny regarding the proposal by MRR, to locate a landfill in Laurens County, S.C., adjacent to Lake Martin, a reservoir constructed for the primary purpose of providing flood control and water supply for Laurens County.

EAGLE and its members have vital interests in the protection of the land, air, waters, wetlands, and other natural resources in Laurens County, South Carolina, through the implementation and enforcement of the Solid Waste Management Act and the regulations promulgated thereunder. Members of EAGLE regularly use and enjoy the land, air, waters, wetlands, and other natural resources that threatened and impacted by Petitioner's proposed landfilling activity for which it seeks authorization by and through the requested permit under the Solid Waste Management Act. These members enjoy bird-watching, observing nature, fishing, and recreating in the creeks, canals, and marshes in the area of the proposed landfill, and many of them live on the banks of the lake adjacent to which the proposed landfill is located. The existence and operation of the landfill in this particular location will decrease the enjoyment of the area by members of EAGLE.

The interests of EAGLE in the resources affected by the proposed landfill operation and the implementation and enforcement of the S.C. Solid Waste Management Act are such that this group is so situated that the disposition of the Petitioner's claims without EAGLE's participation will adversely affect them because they will not adequately be able to protect those interests. If this case is adjudicated without the participation of EAGLE, there will be no way for this group to protect its interests in the affected resources or in the Solid Waste Management Act.

#### **II. THERE IS NO NEED FOR A NEW LANDFILL**

Fundamental to the concerns of EAGLE is the fact that there is no need for this facility. The Solid Waste Management Act provides that "No permit to construct a new solid waste management facility . . . may be issued until a demonstration of need is

approved by the department.” S.C. Code Ann § 44-96-290(E). The Curry Lake C&D landfill is located less than five miles from MRR’s proposed facility. Based on its existing condition and remaining capacity, this existing facility has decades of life left in it. Anecdotal evidence provided by the operators of the Curry Lake facility suggest that there is not a sufficient waste stream to justify two C&D landfills in such close proximity to one another, and indeed, that the Curry Lake facility occasionally has difficulty finding sufficient waste for its operation. The aerial maps showing the locations of the various landfills in upstate South Carolina clearly demonstrate that another facility of this type is not needed, especially a new facility located on the banks of an existing water supply and recreational water body (see Section II below). Such a facility cannot satisfy any reasonable standard in demonstrating a “need.”

### **III. Clean Water Concerns**

In addition to the concerns of EAGLE with regard to the provisions of the Solid Waste Management Act, EAGLE is concerned – very much concerned, as are many citizens in the area (a statement underscored by the large crowd of impassioned citizens attending the public meeting in Gray Court, S.C., on March 13, 2008) – about the negative effects of the landfill on Lake Martin. Many of these concerns are echoed in the statutory protections provided in the relevant State and Federal laws governing such operations.

#### **A. Statutory Background**

Congress enacted Public Law 92-500, commonly known as the federal Clean Water Act (the “Act”). Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816. The goal of the Act was, and is, to “restore and maintain the chemical, physical, and biological integrity

of the Nation's waters." 33 U.S.C. § 1251(a). Congress sought to achieve this goal through a number of means. One means of achieving the goal is the establishment of water quality standards consisting of designated uses and the criteria necessary to support such uses. The United States Environmental Protection Agency and the State of South Carolina operate their water quality management programs under the Act within their respective jurisdictions to insure that the water quality standards are achieved, with an eye towards ever-increasing water quality and the prevention of degradation in all but the most compelling circumstances. *See, e.g.*, 33 U.S.C. §1342(o); 40 C.F.R. §131.12; 25 S.C. Code Ann. Regs. 61-68.D. These standards include both numeric and narrative standards, and seek to implement the mandate of restoring and maintaining the chemical, physical, and biological integrity of our waters.

Another means that the Act utilizes to achieve the goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is the general prohibition of discharges of pollutants into waters of the United States without a permit issued under the National Pollutant Discharge Elimination System ("NPDES"). 33 U.S.C. § 1311(a); S.C. Code Ann. Regs. § 61-9. The default pollution control limits in NPDES permits are technology-based, but additional water quality-based controls may be implemented where the technological controls are not stringent enough to meet the necessary level of water quality in the receiving waters. 33 U.S.C. §§ 1311 and 1312; S.C. Code Ann. Regs. § 61-9 122.44(d). In fact, more stringent water-quality based effluent limitations above and beyond technology-based effluent limitations are required for discharges with "reasonable potential" to cause or contribute to violations of state water quality standards. S.C. Code Ann. Regs. § 61-9 122.44(d).

In any case, all NPDES permits must be consistent with the other provisions of the Act, including the water quality standards and TMDLs, where applicable. 33 U.S.C. § 1313(d).

**B. MRR's Proposed Landfill and Lake Martin**

EAGLE is concerned about the proposed placement of MRR's proposed landfill for several reasons, not the least of which is the proximity of the landfill to Lake Martin. Given the proximity of the landfill to Lake Martin and its wetland headwaters ("Receiving Waters"), and the fact that it was created as a drinking water reservoir for Laurens County, DHEC should analyze the proposal with particular regard to the construction and operation of the landfill and its effects on these Receiving Waters. Although MRR's application materials did not clearly show the landfill's proximity to the Receiving Waters, agency personnel are aware that they lie just beyond the footprint of the disturbance associated with the landfill. These Receiving Waters are inundated regularly during heavy rain events to the point that they have been known to back up all the way to Interstate 385, resulting in a significant rise of waters below the landfill site.

Although MRR has incorporated several items designed to minimize the environmental impact of the landfill, including, among other things, stormwater control structures, some of which discharge directly above the Receiving Waters, the effectiveness of these structure does not provide sufficient protection against pollution of the Receiving Waters. For instance, the stormwater control structures MRR has selected for treatment during the construction phase are designed to treat for water quality as well as water quantity, and yet, even so, the efficiency of the treatments guarantees that pollutants will be discharged into the Receiving Waters. To wit, the expected treatment

efficiency of the structures are approximately as follows: suspended solids – 80%; phosphorus – 40%; metals (including mercury and arsenic) – 15% or less. In addition, the expected treatment efficiency of turbidity, nutrients (other than P), and any present VOCs (during the operational phase) is rather low. Each of these constituents will be in the construction phase runoff in very high concentrations, and will continue to be present during operation phase runoff.

Waters in the upstate of South Carolina have historically experienced severe problems with eutrophication. Most of these problems are due to enrichment of the waters by nutrients from sources like construction and land disturbance. Related to the problems of eutrophication are dissolved oxygen levels, fish kills, and general biological imbalance. These factors, combined with the certainty of the discharge of the pollutants of concern causing such conditions, suffice to make it unlawful to issue a permit for the construction and operation of the facility without a firm demonstration that these expected contributions of pollutants of concern will not cause or contribute to, or have the reasonable potential to cause or contribute to, a violation of the South Carolina water quality standards. The Solid Waste Management Regulations applicable to C&D landfills in South Carolina require that stormwater be handled appropriately, including the acquisition of any permits required related to stormwater discharges. S.C. Ann. Regs. § 107.11, Part IV(C)(2) If MRR cannot make a demonstration to the Department that the construction and operation of the landfill will not cause or contribute to a violation of the water quality standards, the permit must be denied. This would include, at a minimum, a full characterization of the expected waste stream in the full range of expected conditions,

a mass loading analysis, and an analysis of contribution of pollutants to the wetlands and the body of Lake Martin.

### III. CONCLUSION

EAGLE appreciates the opportunity to provide the Department with these comments. Given the lack of need for the facility, the lamentable choice of location on the banks of a water supply and recreational lake, and the concern the citizens continue to express, EAGLE respectfully requests that the Department do the right thing and deny issuance of this permit.

File 21153

68



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

July 18, 2008

CERTIFIED MAIL (Picked up by Jeff Herboig on 7/21/08)

Mr. Ronald C. Gilkerson, P.G.  
MRR Highway 92, LLC  
11743 Trails End Lane  
Charlotte, NC 28078

RE: Class 2 Solid Waste Landfill Permit for  
Highway 92 C&D Landfill and Reprocessing Center  
Permit No. LF2-002  
Location: 34° 37' 20.91" N, 82° 5' 13.61" W  
Laurens County

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 92 Construction, Demolition and Land-Clearing Debris Landfill and Reprocessing Center in Laurens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Highway 92, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.

PETITIONER'S  
EX. 21

July 18, 2008 letter  
MRR Highway 92 Class 2 Landfill  
Page 2 of 2

If you should have any questions, please contact Joan F. Litton of my staff at (803) 896-4264. All other questions should be directed to Sarah Daniels in the Region 1 - Greenwood EQC Office at (864) 223-0333.

Sincerely,



Kent M. Coleman, P.G. Director  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

KMC/TME/tmc

Enclosures

cc: Sarah Daniels, Region 1, Greenwood EQC Office  
Keith Collinsworth, P.G. Manager, Solid Waste Groundwater Section  
Marty Lindler, Manager, Solid and Hazardous Waste Compliance  
Jeff Herbig, P.E., B.P. Barber and Associates, Columbia, SC (picked up by Jeff Herbig 7/21/08)  
BLWM File # 021153



C. Earl Hunter, Commissioner  
*Promoting and protecting the health of the public and the environment.*

OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
BUREAU OF LAND AND WASTE MANAGEMENT  
CLASS 2 LANDFILL  
PERMIT No. LF2-002

Permit Issued Date: July 18, 2008 Permit Effective Date: August 4, 2008

Permission is hereby granted to:

Name of Facility: Highway 92 Construction, Demolition and Land Clearing Debris Landfill and Reprocessing Center  
Permittee: MRR Highway 92, LLC  
Address: 11743 Trails End Lane  
Charlotte, NC 28078  
Supervisor: Mr. Ronald C. Gilkerson  
Phone: (704) 947-6652

for the operation of a Class 2 landfill located at 322 Choice Road off SC Highway 92 two (2) miles east of Gray Court, South Carolina.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code Regs. 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

  
Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management  
Bureau of Land & Waste Management

MRR HIGHWAY 92, LLC  
CLASS 2 LANDFILL  
PERMIT No. LF2-002

A. SPECIAL CONDITIONS

1. The Permittee shall adhere to the design specifications and construction plans received October 26, 2007, unless permit conditions state otherwise.
2. This permit is limited solely to the disposal of items listed in Appendix I of R.61-107.19. All other wastes, including animal carcasses, are prohibited from disposal in this landfill.
3. The allowable rate of disposal for this facility is one hundred fifty-four thousand (154,000) tons per fiscal year (July 1 to June 30). Information concerning the facility's previous Fiscal Year's waste receipts is due in the form of an annual report to the Department no later than September 1<sup>st</sup> of each year, as required by R.61-107.19 Part IV, Subpart C.16, to the attention of:

Manager, Solid and Hazardous Waste Compliance Section  
SC DHEC Bureau of Land and Waste Management  
2600 Bull Street  
Columbia, South Carolina 29201

4. All Appendix-I acceptable wastes must be covered at least every thirty (30) days with a minimum of six (6) inches of clean soil, except for asbestos-containing material, which must be covered with a minimum of six (6) inches of clean soil immediately upon placement in the landfill.
5. The total surface area within the permitted waste disposal footprint that has not been deemed closed by the Department is limited to twelve (12) acres. For an area to be considered closed, the following items shall be completed:
  - a. Official certification from a Professional Engineer registered in the State of South Carolina that the area has been closed in accordance with final cover requirements pursuant to Regulation 61-107.19, Part IV, Subpart F.1.
  - b. The area shall be inspected and deemed closed by Department staff.
6. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that the total surface area within the permitted waste disposal footprint that is not deemed officially closed by the Department pursuant to Special Condition No. 5 (above) is equal to or less than 12 acres (at the time of the certification). The certification shall have been completed within the last sixty (60) days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd<sup>3</sup> of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

## B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. The Permittee shall submit a detailed plan, due no later than November 19, 2008, describing steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19. Upon the Department's approval of said plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.
3. The Permittee shall submit a revised cost estimate for closure and post-closure to the Department's Solid and Hazardous Waste Compliance Section for approval prior to acceptance of waste. The cost estimate shall be based upon the closure and post-closure requirements stated in Regulation 61-107.19, Part IV, Subpart F and in accordance with the guidelines for preparing cost estimates stated in R.61-107.19, Part I, Subpart E.
4. Financial assurance shall be provided for closure and post-closure care in the amount of the most recent Department-approved closure/post-closure cost estimate specified in Condition B.3. and shall also meet the requirements stated in Regulation 61-107.19, Part I, Subpart E.

## C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

### 1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan, as required by R.61-107.19 Part IV Subpart E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19 Part IV Subpart E.
- b) The Permittee shall perform all groundwater activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19 Part IV Subpart E, along with any subsequent modifications deemed necessary by the Department to uphold.

- c) The Permittee must evaluate analytical results in accordance with the most recently approved Sampling and Analysis Plan and any subsequent modifications required by the Department.
- d) The Permittee must determine during each sampling event the elevation of the groundwater surface in each well relative to mean sea level (MSL) to the nearest hundredth of a foot. All elevations should be determined on the same day. The Permittee shall determine the total depth of each well on an annual basis.
- e) Groundwater samples shall be analyzed by a laboratory certified by the State of South Carolina.

2. ASSESSMENT OF GROUNDWATER IMPACT

If the Permittee determines that a groundwater protection standard has potentially been exceeded for one or more constituents for routine monitoring at any monitoring well at the relevant point of compliance, then the Permittee shall perform any necessary groundwater assessment actions in accordance with the requirements of R.61-107.19 Part IV Subpart E.3.

3. REPORTING

- a) The Permittee shall submit to the Department the results of the groundwater monitoring program as specified in the most recently approved Groundwater Sampling and Analysis Plan, in accordance with the following sampling schedule:

<u>Sampling Schedule</u>	<u>Results Due</u>
March	May 15
September	November 15 (Annual Report)

- b) The Permittee shall submit an annual report signed by a South Carolina certified groundwater scientist summarizing the semi-annual determinations of groundwater flow direction and rate. In addition, the report shall also make a determination as to whether the monitoring well network continues to meet requirements of permit condition C.1.a.
- c) The established groundwater data collected by the implementation of the groundwater monitoring program as specified by this Permit shall be submitted to the SCDHEC Bureau of Land and Waste Management Division of Hydrogeology Solid Waste Groundwater Section, and the Solid Waste Consultant in Region 1EQC (Greenwood).



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

### Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board  
SC DHEC  
2600 Bull Street  
Columbia, SC 29201

3. The request for final review should include the following:

- a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
- b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
- c. a copy of the Department's decision or action under review

4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.

6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.

7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

October 31, 2006



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

Bureau of Land and Waste Management  
MEMORANDUM

RECEIVED

AUG 04 2008

Outreach, Stormwater  
Agricultural & Dam  
Permitting Division

DATE: July 18, 2008  
TO: Concerned Citizens  
FROM: Kent M. Coleman, P.G. Director *KMC*  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management  
SUBJECT: Class 2 Solid Waste Landfill Permit  
Permit Issuance for Highway 92 C&D Landfill or Reprocessing Center  
Permit No. LF2-002  
Laurens County

After careful review of information submitted by MRR Highway 92, LLC (the Applicant), the South Carolina Department of Health and Environmental Control (the Department) has approved the application for a new Class 2 landfill (previously Construction, Demolition and Land-Clearing Debris (C&D) landfill). The landfill is located on Choice Road off Highway 92 in Gray Court, South Carolina, Laurens County, SC. The approved Permit and a Staff Decision Summary Report have been enclosed for your information. The Summary Report addresses comments received during the public comment period for the proposed landfill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

If you have any questions regarding the solid waste permit, you may call Joan F. Litton at (803) 896-4264.

KMC/TME/tmc

Enclosures

PETITIONER'S  
Ex. 22



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment*

July 18, 2008

CERTIFIED MAIL

Mr. Ronald C. Gilkerson, P.G.  
MRR Highway 92, LLC  
11743 Trails End Lane  
Charlotte, NC 28078

**RE: Class 2 Solid Waste Landfill Permit for  
Highway 92 C&D Landfill and Reprocessing Center  
Permit No. LF2-002  
Location: 34° 37' 20.91" N, 82° 5' 13.61" W  
Laurens County**

Dear Mr. Gilkerson:

Enclosed is a Class 2 Solid Waste Landfill Permit for the Highway 92 Construction, Demolition and Land-Clearing Debris Landfill and Reprocessing Center in Laurens County. This permit is issued under Regulation 61-107.19 *Solid Waste Management: Solid Waste Landfills and Structural Fill*. Also, enclosed is the approved landfill Engineering Report and Engineering Drawings, to be kept at the facility at all times.

The financial assurance for closure of this facility is established at three hundred thousand dollars (\$300,000) at this time. A mechanism that is acceptable to the Department must be established in the amount previously specified prior to the facility accepting waste. Please contact Pete Stevens of my staff at (803) 896-4149 for help in establishing a financial assurance mechanism that is acceptable to the Department.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

MRR Highway 92, LLC is responsible for complying with all of the conditions in the attached permit and should review each condition carefully.



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

### Notice of Appeal Procedure

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1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
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Clerk of the Board  
SC DHEC  
2600 Bull Street  
Columbia, SC 29201

3. The request for final review should include the following:
  - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
  - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
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4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**

October 31, 2006



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
BUREAU OF LAND AND WASTE MANAGEMENT  
CLASS 2 LANDFILL  
PERMIT No. LF2-002

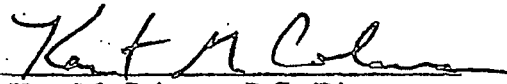
Permit Issued Date: July 18, 2008 Permit Effective Date: August 4, 2008

Permission is hereby granted to:

Name of Facility: Highway 92 Construction, Demolition and Land Clearing Debris Landfill and Reprocessing Center  
Permittee: MRR Highway 92, LLC  
Address: 11743 Trails End Lane  
Charlotte, NC 28078  
Supervisor: Mr. Ronald C. Gilkerson  
Phone: (704) 947-6652

for the operation of a Class 2 landfill located at 322 Choice Road off SC Highway 92 two (2) miles east of Gray Court, South Carolina.

This permit is issued pursuant to Sections 44-96-10 *et seq.* (Supp. 2007) and 25A S.C. Code Regs. 61-107.19. The authority granted hereunder is subject to the requirements of the aforementioned laws and regulations and the attached conditions.

  
Kent M. Coleman, P.G., Director

Division of Mining and Solid Waste Management  
Bureau of Land & Waste Management

7. On or before July 1 of each year, the Permittee shall submit to the Department's Solid and Hazardous Waste Compliance Section certification from a Professional Engineer registered in the State of South Carolina that enough soil is currently available to use for final cover (38,720 yd<sup>3</sup> of soil for 12 acres with 2' thickness). The certification shall have been completed within the last 60 days of submittal to the Department. The Department may, where circumstances warrant, require that any documentation deemed necessary to make such certification be submitted to the Department for review.

## B. GENERAL PERMIT CONDITIONS

1. If the landfill should become inundated with water, all water shall be removed before continuing disposal of waste.
2. The Permittee shall submit a detailed plan, due no later than November 19, 2008, describing steps to be taken in order to fully comply with all regulatory requirements of R.61-107.19. Upon the Department's approval of said plan, the Permittee will have six (6) months to implement the plan and will have a deadline for full compliance with R.61-107.19 of November 19, 2009.
3. The Permittee shall submit a revised cost estimate for closure and post-closure to the Department's Solid and Hazardous Waste Compliance Section for approval prior to acceptance of waste. The cost estimate shall be based upon the closure and post-closure requirements stated in Regulation 61-107.19, Part IV, Subpart F and in accordance with the guidelines for preparing cost estimates stated in R.61-107.19, Part I, Subpart E.
4. Financial assurance shall be provided for closure and post-closure care in the amount of the most recent Department-approved closure/post-closure cost estimate specified in Condition B.3. and shall also meet the requirements stated in Regulation 61-107.19, Part I, Subpart E.

## C. ENVIRONMENTAL MONITORING PERMIT CONDITIONS

### 1. GROUNDWATER DETECTION MONITORING SYSTEM

- a) The Permittee shall maintain a groundwater detection monitoring system consistent with the most recently approved Groundwater Sampling and Analysis Plan, as required by R.61-107.19 Part IV Subpart E. The groundwater detection monitoring system shall consist of monitoring wells as designated in the most recently approved Groundwater Sampling and Analysis Plan and any other monitoring wells specified by the Department. Modifications to the current groundwater detection monitoring system shall be in accordance with the requirements of R.61-107.19 Part IV Subpart E.
- b) The Permittee shall perform all groundwater activities in accordance with the most recently approved Groundwater Sampling and Analysis Plan and in accordance with the requirements of R.61-107.19 Part IV Subpart E, along with any subsequent modifications deemed necessary by the Department to uphold.

## STAFF DECISION SUMMARY REPORT

July 18, 2008

### Approval of Class 2 Solid Waste Landfill (previously C&D) Application Issuance of Permit for the Highway 92 C&D Landfill and Reprocessing Center

This summary report addresses the South Carolina Department of Health and Environmental Control's (the Department's) decision to issue a Class 2 Landfill permit for the proposed Highway 92 C&D Landfill owned and operated by MRR Southern, LLC (Applicant). The site is located on Choice Road off Highway 92, near Gray Court, Laurens County, South Carolina. This summary report provides responses to comments received at the public hearing and throughout the public comment period.

#### SOLID WASTE MANAGEMENT

The principal law governing solid waste management in this state is the South Carolina Solid Waste Policy and Management Act of 1991 (Act) [44-96-10]. One of the main purposes of the Act is to ensure those activities associated with solid waste management are executed in a manner adequate to protect human health, safety and welfare of the environment.

The passage of the Act acknowledged a growing statewide concern about the generation, management, and disposal of solid waste. DHEC was given the responsibility to develop regulations establishing minimum standards for solid waste management facilities. Regulation 61-107.11, Solid Waste Management: *Construction, Demolition and Land-Clearing Debris Landfills* became effective on April 24, 1998, and was the applicable regulation when the Department on June 27, 2006 received the permit application. Regulation 61-107.11 was replaced by Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills & Structural Fill*, on May 23, 2008. This regulation outlines the requirements for permitting the design, construction, operation, maintenance, and closure of landfills. Please see the following web page [http://www.scdhec.gov/environment/lwm/html/solidwaste\\_new\\_regulation.htm](http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm) for a more complete description and for a copy of the new regulation.

In reaching its decision on the permit application, the Solid Waste Permitting Section reviewed all information submitted in the application, supplemental information submitted, and public comments. The Department has reviewed the application with respect to the requirements of the Act and Regulation 61-107.19. The applicant has met the applicable requirements and a permit is being issued.

### TRAFFIC CONCERNS

The current solid waste law and regulations do not grant the Department the authority to regulate traffic on public roads. Jurisdictional authority over the setting and enforcement of weight limits, speed limits, traffic patterns, encroachments, etc. is the responsibility of other state and local entities.

### ACCESS TO ALL-WEATHER ROADS

Regulation 61-107.19- Part IV, Section C.20. states that C&D landfills are to be located adjacent to or have direct access to roads of all-weather construction and capable of withstanding anticipated load limits. The Highway 92 C&D Landfill is located off Choice Road. The Department considers this sufficient to satisfy the requirement of Section C.20.

### GROUNDWATER QUALITY

Class 2 Landfills are required to meet all the design and operational requirements set forth in Regulation 61-107.19 – Part IV. The landfill regulations were promulgated as a means of providing environmentally sound disposal options for those inert construction wastes and demolition wastes listed in Appendix I of R.61-107.19. As such, these landfills are required to monitor groundwater, and are required to design the landfill to achieve a required two (2) feet separation from the seasonal high groundwater table (Regulation 61-107.19 – Part IV.D.1). The permit has groundwater monitoring and reporting requirements. Five (5) groundwater-monitoring wells are proposed with one (1) upgradient and four (4) down gradient locations. The monitoring wells will be monitored semiannually for the constituents in Appendix III of the Regulation R.61-107.19 with the results reported to the Department.

### GROUNDWATER DEPTH

The elevations of the seasonal high ground water table were taken from the BP Barber & Associates, 2006 Piezometer Installation Report, June 2006 and "Construction, Demolition, & Land-Clearing Debris Landfill Engineering Report - June 2006 (Revised October 2007); Engineering Drawings (File No. 33, 623-B79, dated July 2007); see also C23 & C24 (cross-sections). Based on this information the distance from the base of the proposed landfill is greater than 5 feet from the groundwater surface as required by R.61-107.19 Part IV.D.1.

### NOISE

The Department has no regulatory authority regarding noise produced by normal landfill operations. Local zoning and land-use planning may be used to address such concerns. The Highway 92 C&D Landfill and Reprocessing Center operating hours are between 7:00 AM and 6:00 PM Monday through Friday and 7:00AM and 12:00 PM Saturday. The facility will be closed on the following holidays: New Years, Memorial Day, Independence Day, Labor Day,

### FLOODING CONCERNS

Class 2 landfills are not allowed to restrict the flow of the 100-year flood. The 100-year floodplain is determined using maps developed by the Federal Emergency Management Agency (FEMA). The Flood Insurance Rate Map for Laurens County, December 15, 1990, Map Item ID 4501220075B is the current map for this area. The landfill base grade elevations range from 672 feet Mean Sea Level (MSL) to 758 feet MSL. The Department has determined that the 100-year flood will not be restricted.

### WETLANDS

Regulation 61-107.19, Part IV B.1 c. requires a Class 2 landfill to be in compliance with applicable requirements concerning wetlands imposed by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency and the Department. The applicant conducted a wetland delineation and the U.S. Army Corps of Engineers verified that the landfill footprint does not impact jurisdictional wetlands.

### DEBRIS AND LITTER

Comments were received expressing concerns over debris and litter on site and on Choice Road and Highway 92. Trucks approaching the landfill site must have loads covered, or be in violation of state litter laws. The Applicant will use a water truck to control blowing dust from the working face of the landfill. The practice of using a water truck in addition to establishing vegetation on non-operational slopes will reduce the potential for wind-blown dust and litter. On-site debris and litter control has been addressed by the Applicant to the satisfaction of the Department in the permit application.

### ZONING LAND USE PLANNING

Laurens County does not have zoning or land-use plans enacted in the County.

### DEED RESTRICTIONS AND EASEMENTS

The Department was provided with a copy of easement information related to the construction of Lake Martin. The original easement was between Kimberly Clark Corporation and the Beaverdam-Warrior Creeks Watershed Conservation District of Laurens County, South Carolina. The Department has determined that the easement for construction of Lake Martin does not restrict the construction of the landfill.

# CONSTRUCTION & DEMOLITION DEBRIS

Construction and demolition (C&D) debris is defined in the S.C. Solid Waste Policy and Management Act of 1991, Section 44-96-40, as "discarded solid waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing." The debris includes, but is not limited to, "bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving materials, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations."

As mentioned previously, C&D debris is not included in the state's definition of municipal solid waste (MSW) nor the measured MSW recycling rate. The impact of C&D debris, however, is substantial due to its weight as well as its volume.

C&D debris is a significant part of the total solid waste (TSW) generated in South Carolina. In fact, the 3,645,414 tons of C&D debris generated in fiscal year (FY) 2007 (July 1, 2006 to June 30, 2007) represented more than 21 percent of the TSW stream. In addition, the amount of C&D debris in the state has increased nearly 70 percent since FY03. This increase is roughly twice the 33 percent increase in the amount of TSW generated over the same time.

In FY07, 34 percent of the C&D debris generated in South Carolina was recycled. About 61 percent was disposed of in the 150 permitted C&D debris and land-clearing debris (LCD) landfills in South Carolina, while about 5 percent was incinerated or disposed of in a MSW landfill.

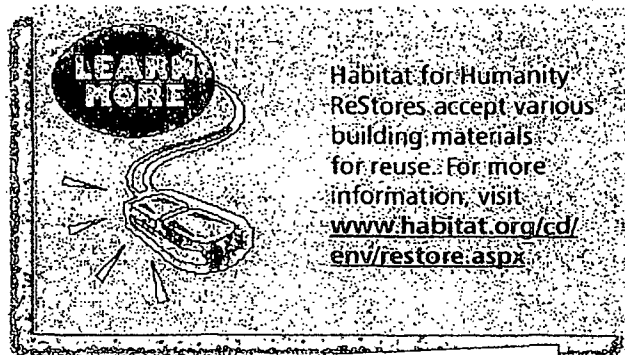
While C&D generation has increased, so has interest in C&D debris recycling – both across the country as well as in South Carolina. Local governments are promoting C&D debris recycling through two approaches – ordinances and voluntary programs.

In order to decrease the amount of C&D debris being disposed of, generators are encouraged to reduce waste and recycle. This results in savings from avoided disposal fees while potentially generating revenue from the sale of recyclables. For example,

homebuilders and contractors can reduce C&D debris by carefully estimating the amount of materials needed for a particular project. Materials that are not needed can be reused on another project or made available to others for reuse.

In all likelihood, interest in C&D debris reduction and recycling will only continue to grow as green building principles and interest in Leadership in Energy and Environmental Design (LEED) certification become more commonplace. Green building – the practice of improving the efficiency of buildings through energy, water and material conservation while reducing impacts on human health and the environment – incorporates C&D debris recycling as well as the use of recycled-content building products. LEED is a nationally recognized rating system that evaluates the design, construction and operation of green buildings.

According to the S.C. Recycling Markets Directory, about two dozen companies are a part of the C&D debris recycling industry in South Carolina. Those that recycle bricks and concrete are plentiful while those that recycle carpet and gypsum wallboard are more limited. C&D debris that is recycled results in valuable products. For example, some C&D debris processors crush concrete, cement blocks and bricks into aggregate that can be sold and used as a substitute for stone. Tree stumps and other wood waste can be ground and sold as boiler fuel or used to produce mulch or compost.



## CLASSIFICATIONS FOR C&D DEBRIS/LCD LANDFILLS

There are four types of C&D Debris and LCD landfills: Part I Short-term Landfills; Part II LCD and Yard Trash Landfills; Part III C&D Landfills that serve utilities and manufacturers; and Part IV Long-term Landfills.

Except for Part II Landfills, C&D landfills accept various types of construction and demolition waste that has not come in contact with hazardous constituents such as lead-based paint, friable asbestos, petroleum products, polychlorinated biphenyls (PCBs), solvents and preservatives.

- **PART I SHORT-TERM LCD LANDFILLS** – These landfills have a proposed life of 12 months or less, occupy one acre in size or less and can only accept land-clearing debris, hardened concrete, hardened/cured asphalt, bricks and block.
- **PART II LCD AND YARD TRASH LANDFILLS** – These landfills are used solely for the disposal of trees, stumps, wood chips, and yard trash that

is generated by land-clearing activities, storm events and natural disasters (e.g., hurricanes and tornadoes).

- **PART III INDUSTRIAL C&D LANDFILLS** – These are private landfills with controlled access that serve permanently located utility facilities and manufacturing firms. They may use certain solid waste that is generated on-site for structural fill.
- **PART IV LONG-TERM C&D LANDFILLS** – These landfills may operate more than a year, are normally larger than one acre and may accept a variety of materials including all materials that can be accepted in Part I, II and III landfills.

Overall, there were 150 C&D debris/LCD landfills in the state in FY07. See the charts and tables on the following pages for details on C&D debris as well as LCD management in FY07.

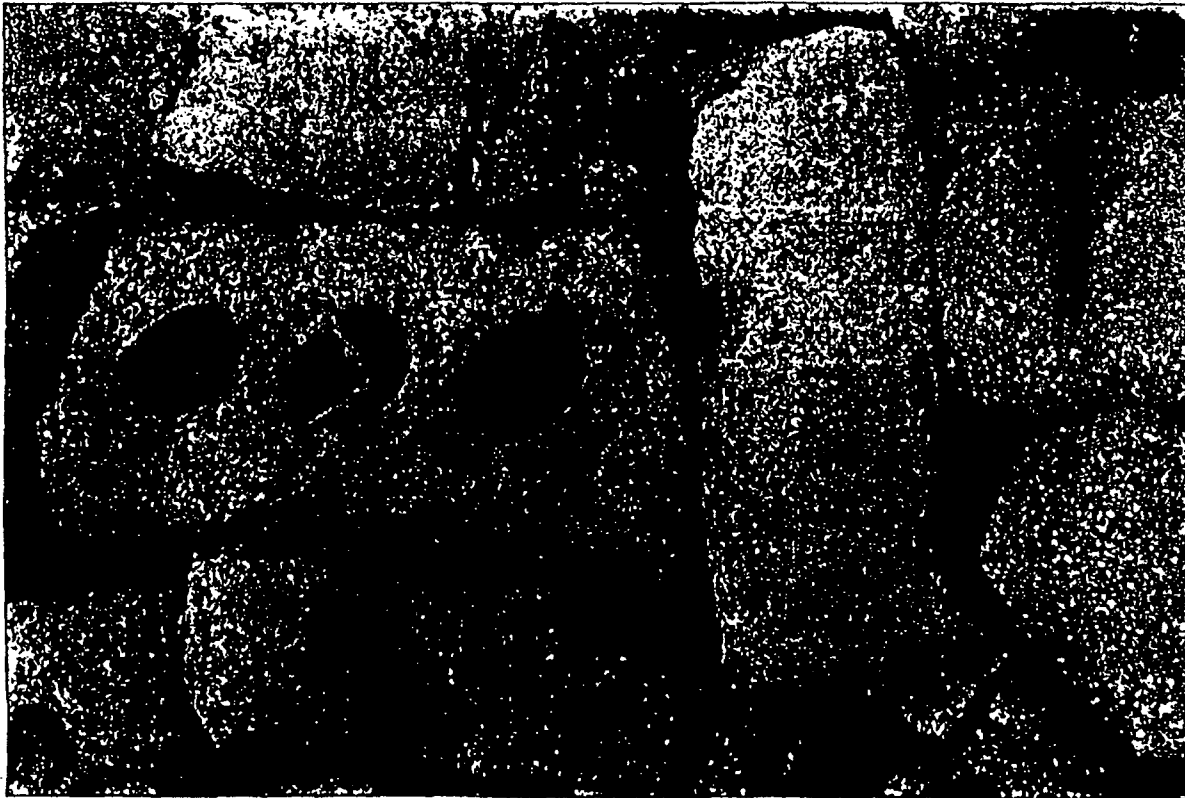


CHART 7.1: Total C&D Debris and LCD Recycled, Mulched or Composted in Millions of Tons, FY03 to FY07

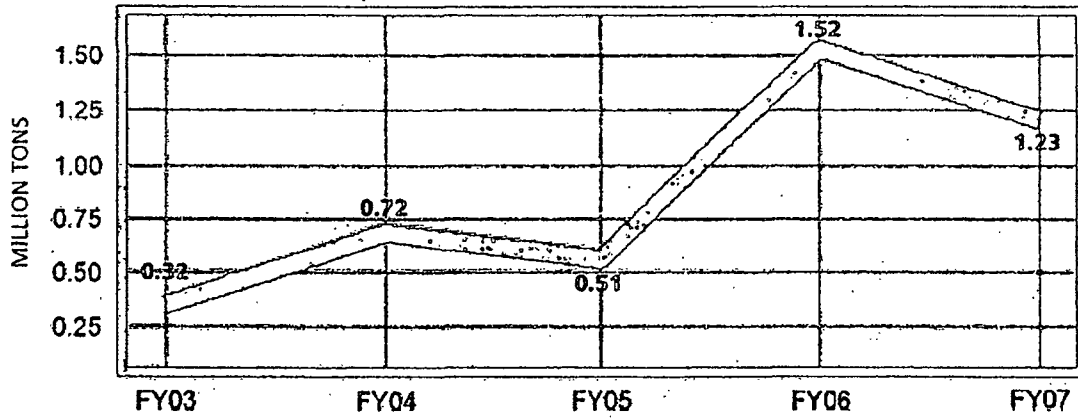


CHART 7.2: Percentage of Solid Waste That is C&D Debris or LCD, FY03 to FY07

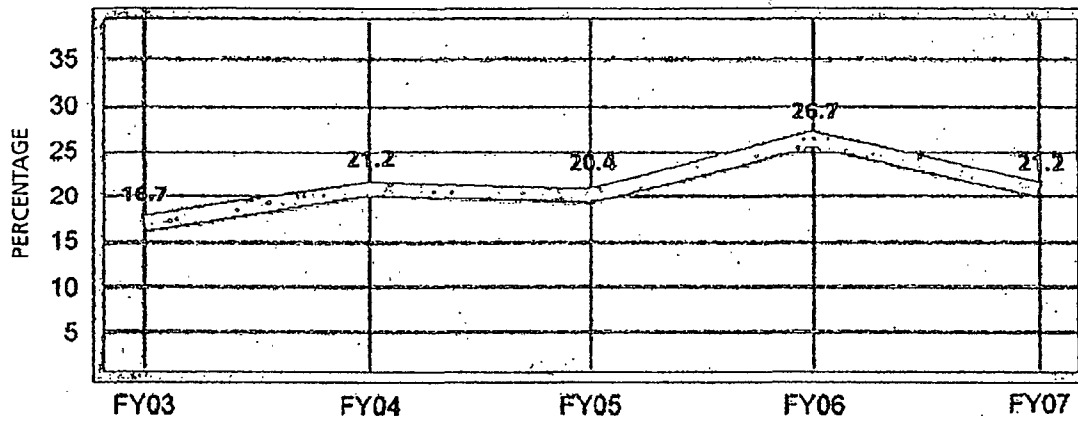


CHART 7.3: Percentage of C&D Debris/LCD that is Recycled, FY03 to FY07

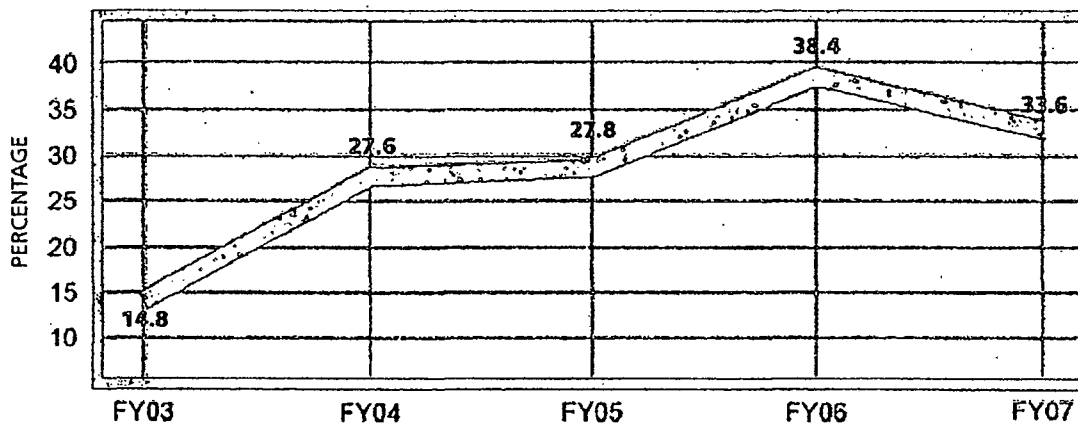


TABLE 7. C&D Debris Landfill Disposal and Estimated Remaining Life				
COUNTY	LANDFILL	PERMITTED ANNUAL RATE OF DISPOSAL IN TONS	FY07 DISPOSAL IN TONS	ESTIMATED REMAINING LIFE OF FACILITY IN YEARS
Abbeville	Abbeville County C&DLF	10,000	3,228	59.0
Aiken	Aiken County (Barden) C&D+LCDLF	80,000	65,631	14.3
Aiken	Aiken County Wagener C&DLF	—	3,144	71.5
Aiken	G.L. Williams C&D+LCDLF	57,500	10,378	20.0
Aiken	Rainbow Falls Road C&DLF	79,100	77,507	30.0
Anderson	Bobby and Danny C&D+LCDLF	31,250	3,078	4.0
Anderson	Clemson University Long-term C&D+LCDLF	15,000	6,000	6.0
Anderson	Enterprise Material Handling C&DLF	58,000	64,169	20.0
Anderson	Starr C&D+LCDLF	43,300	11,250	10.3
Bamberg	Bamberg County C&D+LCDLF	13,000	6,387	15.0
Barnwell	Barnwell County C&DLF	32,000	12,818	—
Beaufort	Barnwell Resources C&D+LCDLF	120,000	30,806	18.0
Berkeley	Berkeley County C&DLF	214,703	69,320	3.0
Calhoun	Calhoun County C&D+LCDLF	13,500	3,134	32.0
Charleston	Charleston County Bees Ferry C&D+LCDLF	200,000	175,322	1.5
Cherokee	Cherokee County C&DLF	20,000	4,977	50.0
Cherokee	City of Gaffney C&DLF	8,930	4,732	16.0
Chester	Chester County C&D+LCDLF	4,800	1,059	5.9
Chesterfield	Furr Facility C&DLF	32,700	11,206	65.0
Clarendon	Clarendon County C&D+LCDLF	10,000	10,288	12.0
Colleton	Colleton County C&DLF	20,000	20,858	27.0
Darlington	Darlington County C&D+LCDLF	8,030	8,572	10.0
Darlington	Darlington County C&D+LCDLF (2)	8,030	3,178	115.0
Dillon	Dillon County C&D+LCDLF	11,700	10,549	6.2
Dorchester	Affordable Waste C&DLF	67,000	11,061	46.5
Edgefield	Lin County C&DLF	10,000	10,590	1.0
Florence	Florence County C&DLF	25,000	60	—
Georgetown	Georgetown County C&D+LCDLF	35,000	29,823	15.0
Greenville	Carter Excavating Company (Big Valley) C&D+LCDLF	75,000	15,417	5.0
Greenville	Enoree C&D+LCDLF	20,000	10,423	10.0
Greenville	Greenville (Republic) C&DLF	200,000	2,479	5.0
Greenville	Wing Chimney C&DLF	87,457	16,337	38.0
Greenville	WCA Shiloh (Wing Quarry) C&D+LCDLF	128,000	92,428	13.1
Greenwood	Greenwood County C&DLF	20,000	20,570	2.5
Hampton	Hampton County C&D+LCDLF	21,000	8,393	8.9
Horry	Horry County Solid Waste Authority C&D+LCDLF	250,000	121,266	15.0
Jasper	Oakwood C&DLF and RC (Cell 2)	188,000	105,801	17.8
Jasper	Snake Road C&DLF	173,200	2,200	10.0
Kershaw	Kershaw County C&D+LCDLF	30,000	24,079	30.0
Kershaw	Loveless & Loveless C&D+LCDLF	72,000	67,819	—

COUNTY	LANDFILL	PERMITTED ANNUAL RATE OF DISPOSAL IN TONS	FY07 DISPOSAL IN TONS	ESTIMATED REMAINING LIFE OF FACILITY IN YEARS
Kershaw	Pine Hill C&DLF	170,000	97,339	27.9
Laurens	City of Clinton C&D+LCDLF	1,375	200	20.0
Laurens	Curry Lake C&DLF	241,591	67,260	38.0
Laurens	Laurens County C&DLF	8,900	3,212	—
Lexington	Carolina Materials C&D+LCDLF	240,000	80,861	—
Lexington	Highway 378 (S&T Grading) C&D+LCDLF	250,000	0	—
Lexington	Lexington County (Edmund) C&D+LCDLF	216,000	78,367	4.0
Lexington	Oswald Lumber C&D+LCDLF	2,400	1,560	4.0
Lexington	S&T Recycling C&DLF	12,000	9,536	—
Lexington	Southeastern Associates C&D+LCDLF	120,000	66,010	25.0
Marion	City of Marion C&D+LCDLF	5,000	4,823	54.5
Marion	City of Mullins C&DLF	135,350	28,326	5.0
Marion	Sandlands C&D+LCDLF (Phase II)	206,500	143,727	1.0
Oconee	Seneca C&D+LCDLF	37,615	24,984	1.5
Orangeburg	City of Orangeburg LF	—	0	—
Orangeburg	Orangeburg County C&DLF	31,000	27,232	1.0
Pickens	Easley C&D+LCDLF	20,000	12,068	0.4
Richland	City of Columbia South C&D+LCDLF	—*	30	—
Richland	Richland County C&D+LCDLF	75,000	31,885	—
Richland	Richland County C&D+LCDLF (2)	200,000	0	28.0
Spartanburg	Wasp Nest Road C&DLF	80,000	49,876	1.6
Sumter	Sumter County C&DLF (Phase 3)	51,332	41,897	20.0
Union	Copeland C&D+LCDLF	100	0	—
Williamsburg	City of Lake City C&DLF	12,900	4,044	0.7
Williamsburg	Williamsburg County C&DLF	1,370	2,447	0.0
York	Coltharp C&D+LCDLF	60,000	57,156	12.0
York	Rogers C&DLF	—	4,500	10.0
York	York County C&D+LCDLF	75,000	63,039	1.5
<b>TOTAL</b>		<b>4,464,333</b>	<b>2,054,694</b>	<b>18.0</b>

\*Not specified in permit

TABLE 7.5 Legend	
C&DLF	Construction and Demolition Debris Landfill
C&D+LCDLF	Construction and Demolition Debris & Land Clearing Debris Landfill
LF	Landfill
RC	Recycling Center

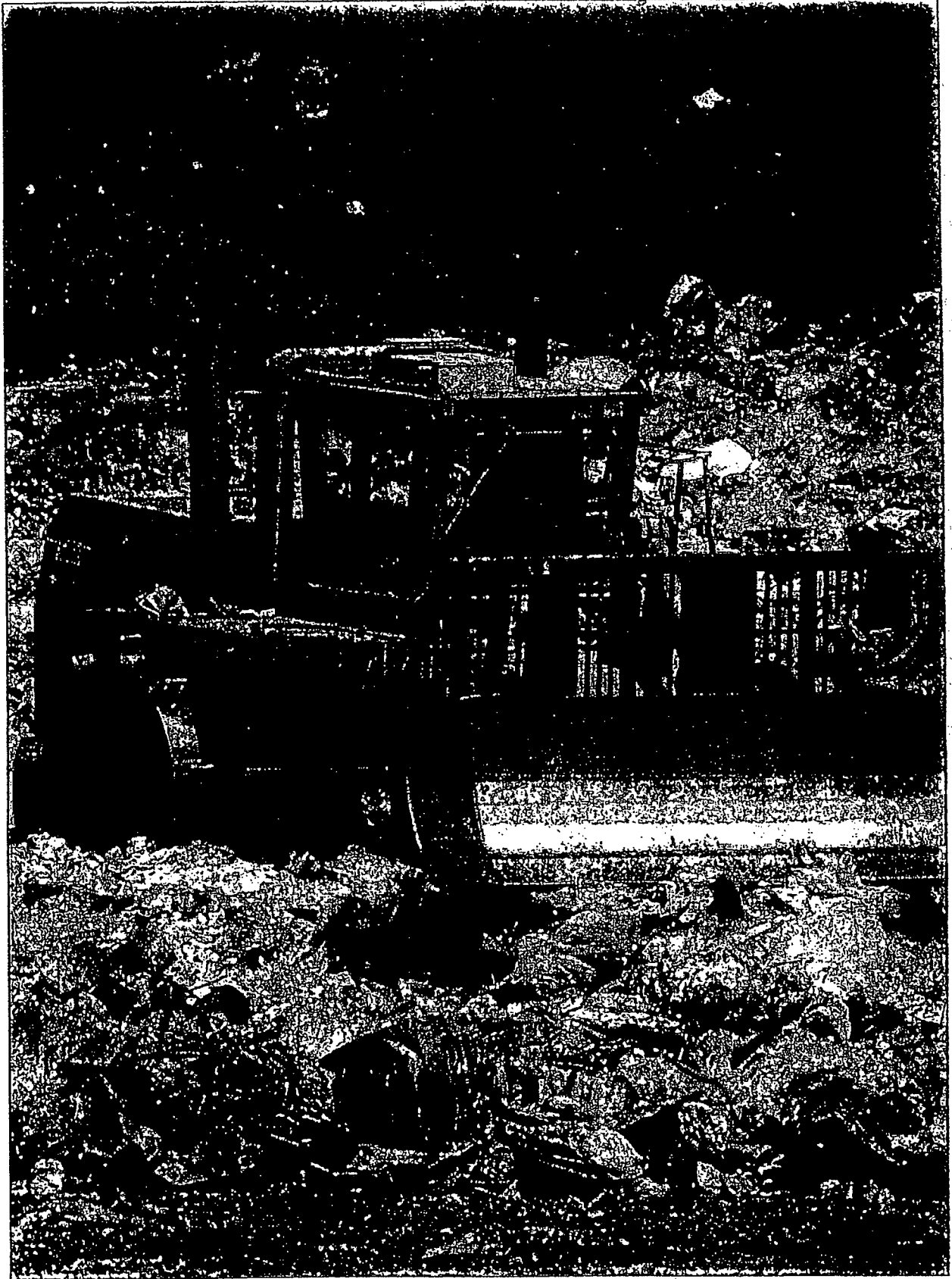
**TABLE 7.6: C&D Debris and LCD Landfill Disposal in Tons by Facility Type and County**

COUNTY OR PLACE OF ORIGIN	PART IV LONG-TERM C&D LANDFILLS	PART II LAND-CLEARING DEBRIS LANDFILLS	PART III INDUSTRIAL C&D LANDFILLS	TOTAL FOR EACH COUNTY
Abbeville	3,256	1,020	0	4,276
Aiken	102,927	29,274	39,509	171,710
Allendale	2,171	0	0	2,171
Anderson	70,823	15,198	0	86,021
Bamberg	6,381	0	0	6,381
Bamwell	10,700	0	39,509	50,209
Beaufort	130,391	0	0	130,391
Berkeley	59,472	0	0	59,472
Calhoun	3,176	0	856	4,032
Charleston	183,421	0	0	183,421
Cherokee	9,818	0	0	9,818
Chester	2,057	0	0	2,057
Chesterfield	10,146	0	0	10,146
Clarendon	10,288	0	0	10,288
Colleton	20,900	0	0	20,900
Darlington	11,755	0	20	11,775
Dillon	10,549	0	0	10,549
Dorchester	12,480	0	375	12,855
Edgefield	12,479	5,453	0	17,932
Fairfield	284	0	0	284
Florence	69	0	0	69
Georgetown	34,270	0	0	34,270
Greenville	168,713	0	0	168,713
Greenwood	26,714	0	0	26,714
Hampton	8,993	0	0	8,993
Horry	262,483	0	0	262,483
Jasper	4,907	1,630	0	6,537
Kershaw	42,346	0	0	42,346
Lancaster	1,286	250	30	1,566
Laurens	16,860	396	0	17,256
Lexington	217,465	8,457	0	225,922
Marion	31,299	0	0	31,299
Marlboro	1,060	0	0	1,060
McCormick	1,993	24	0	2,017
Newberry	1,219	100	0	1,319
Oconee	26,385	8,579	0	34,964
Orangeburg	27,360	0	0	27,360
Pickens	20,807	10,712	0	31,519
Richland	194,955	4,840	0	199,795
Saluda	74,465	0	0	74,465
Spartanburg	72,161	2,685	0	74,846
Sumter	42,033	0	0	42,033
Union	2	854	0	856
Williamsburg	6,491	0	0	6,491
York	124,695	37,440	0	162,135
C&D/LCD from S.C.	2,000,927	133,187	80,299	2,214,413
Out-of-State (origin not specified)	53,767	1,665	0	55,432
<b>TOTAL AMOUNT OF C&amp;D/LCD DISPOSED</b>	<b>2,054,694</b>	<b>134,852</b>	<b>80,299</b>	<b>2,269,845</b>

**TABLE 7-7 C&D Debris Generated in South Carolina and Disposed of in Part IV Long-term C&D Landfills in Tons for Use in Demonstrating Need**

COUNTY	FY07	FY06	FY05	FY04	FY03
Abbeville	3,256	6,597	4,549	557	10
Aiken	102,927	90,100	79,529	74,412	76,117
Allendale	2,171	2,354	3,128	1,578	3,534
Anderson	70,823	51,300	35,801	35,206	42,857
Bamberg	6,381	6,175	4,811	4,883	5,788
Barnwell	10,700	10,921	10,411	8,329	12,749
Beaufort	130,391	141,752	139,916	121,464	102,287
Berkeley	59,472	61,341	36,175	66,023	58,137
Calhoun	3,176	4,474	3,554	4,139	4,067
Charleston	183,421	168,253	130,755	108,148	189,167
Cherokee	9,818	16,210	8,132	10,658	8,586
Chester	2,057	2,908	4,366	3,220	2,346
Chesterfield	10,146	12,021	14,448	12,805	15,192
Clarendon	10,288	8,861	9,296	5,500	4,605
Colleton	20,900	17,439	13,823	13,157	13,295
Darlington	11,755	11,764	12,858	12,614	13,657
Dillon	10,549	8,352	10,995	11,412	10,096
Dorchester	12,480	1,635	2,155	0	10,044
Edgefield	12,479	13,116	13,244	2,678	3,006
Fairfield	284	359	177	126	33
Florence	69	1,142	1,264	883	41
Georgetown	34,270	51,581	30,087	33,680	22,114
Greenville	161,738	163,450	142,767	87,157	147,929
Greenwood	26,714	20,174	14,675	7,408	12,281
Hampton	8,993	7,786	8,590	7,444	3,221
Horry	262,483	211,671	155,676	170,856	135,648
Jasper	1,907	3,681	176	240	500
Kershaw	42,346	52,668	41,923	33,277	30,452
Lancaster	6	6	0	0	0
Laurens	16,860	9,479	6,635	8,434	8,631
Lee	0	0	0	0	0
Lexington	217,465	237,178	246,783	231,899	228,223
Marion	31,299	62,965	29,818	16,493	10,982
Marlboro	1,060	1,212	845	1,040	1,034
McCormick	1,669	4,409	1,335	920	819
Newberry	1,219	1,273	1,098	797	487
Oconee	26,385	23,801	19,867	20,608	15,558
Orangeburg	27,360	26,319	20,915	23,222	21,479
Pickens	20,807	17,881	34,746	16,049	26,334
Richland	194,955	211,729	216,706	199,805	206,794
Saluda	1,465	1,960	1,149	1,176	1,116
Spartanburg	72,161	68,662	71,424	58,803	26,000
Sumter	72,033	43,588	38,925	42,747	51,962
Union	2	3	5	4	1,320
Williamsburg	6,491	7,220	7,386	2,585	3,818
York	124,695	95,632	97,810	82,448	42,550

This data is solely for use in calculating annual C&D tonnage limits as related to RCRA 107.17 Demonstration of Need. Any other use of this data may lead to an inaccurate conclusion.



# CONSTRUCTION & DEMOLITION DEBRIS

Construction and demolition (C&D) debris is defined in the S.C. Solid Waste Policy and Management Act of 1991, Section 44-96-40, as "discarded solid waste resulting from construction, remodeling, repair and demolition of structures, road building and land clearing." The debris includes, but is not limited to, "bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving materials, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations."

As mentioned in Section 2, C&D debris is not included in the state's definition of municipal solid waste (MSW) nor the measured MSW recycling rate. The impact of C&D debris, however, is substantial due to its weight as well as its volume.

C&D debris is a significant part of the total solid waste (TSW) generated in South Carolina. In fact, the 2,915,637 tons of C&D debris generated in fiscal year (FY) 2008 (July 1, 2007 to June 30, 2008) represented about 23 percent of the TSW stream.

In FY08, 30 percent of the C&D debris generated in South Carolina was recycled. About 64 percent was disposed of in permitted Class 1 and 2 landfills in South Carolina, while about 6 percent was incinerated or disposed of in a Class 3 landfill.

While C&D generation has increased, so has interest in C&D debris recycling – both across the country

as well as in South Carolina. Local governments are promoting C&D debris recycling through two approaches – ordinances and voluntary programs.

In order to decrease the amount of C&D debris being disposed of, generators are encouraged to reduce waste and recycle. This results in savings from avoided disposal fees while potentially generating revenue from the sale of recyclables. For example, homebuilders and contractors can reduce C&D debris by carefully estimating the amount of materials needed for a particular project. Materials that are not needed can be reused on another project or made available to others for reuse.

In all likelihood, interest in C&D debris reduction and recycling will only continue to grow as green building principles and interest in Leadership in Energy and Environmental Design (LEED) certification become more commonplace. Green building – the practice of improving the efficiency of buildings through energy, water and material conservation while reducing impacts on human health and the environment – incorporates C&D debris recycling as well as the use of recycled-content building products. LEED is a nationally recognized rating system that evaluates the design, construction and operation of green buildings.

According to the S.C. Department of Commerce's Recycling Business Directory, about two dozen



**LEARN  
MORE**

During FY08, the S.C. Department of Health and Environmental Control's Office of Solid Waste Reduction and Recycling (Office) partnered with The Sustainability Institute (based in Charleston) to produce the S.C. Green Building Directory (Directory). The on-line Directory ([www.scgreenbuildingdirectory.org](http://www.scgreenbuildingdirectory.org)) provides information on C&D debris recycling, recycled-content building products as well as green building techniques. The Directory – which is funded primarily by the Office with additional support from the S.C. Energy Office and the S.C. Department of Commerce – allows users to easily access information on green building products and services offered by more than 200 companies.

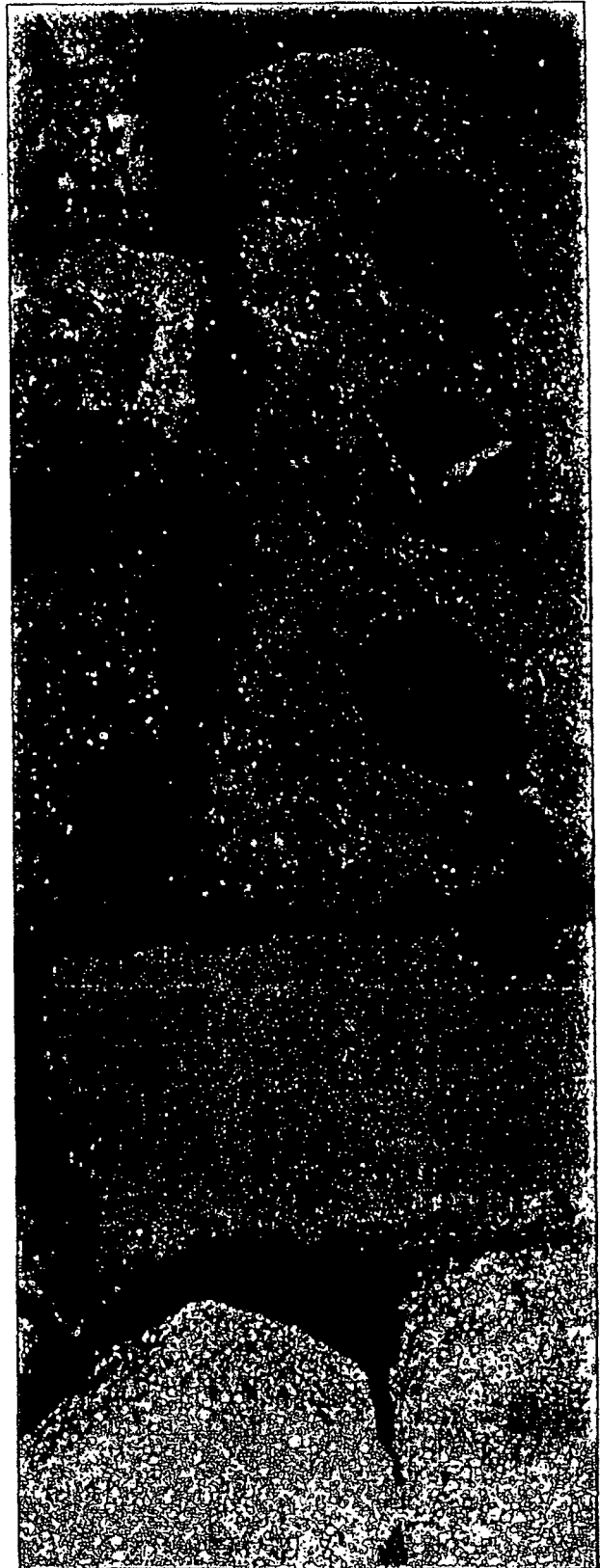
companies are a part of the C&D debris recycling industry in South Carolina. Those that recycle bricks and concrete are plentiful while those that recycle carpet and gypsum wallboard are more limited.

C&D debris that is recycled results in valuable products. For example, some processors crush concrete, cement blocks and bricks into aggregate that can be sold and used as a substitute for stone. Tree stumps and other wood waste can be ground and sold as boiler fuel or used to produce mulch or compost.

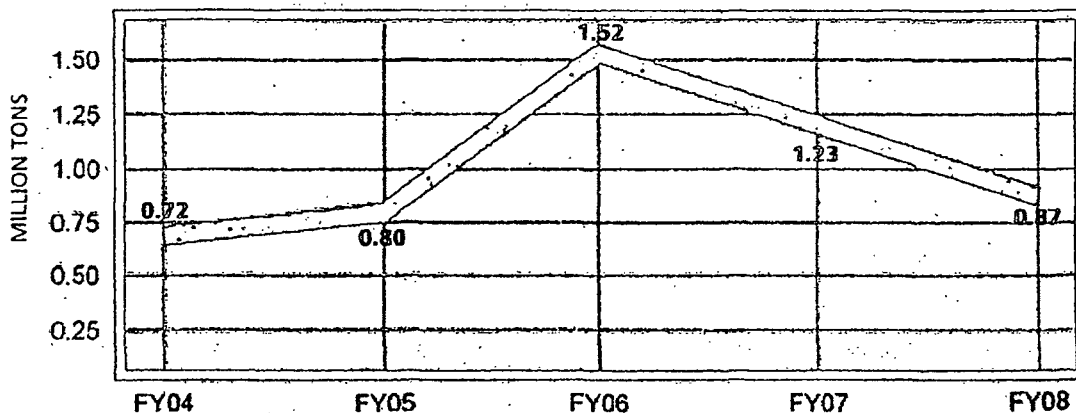
### More About C&D Debris ...

The choice of what and how C&D debris can be recovered depends on many factors including the type of project, space on the building site, the existence of markets for materials, the cost-effectiveness of recovery, the time allowed for the project and the experience of the contractors. Many C&D materials can be reused or recycled. The following describe the different types of projects where C&D debris may be generated:

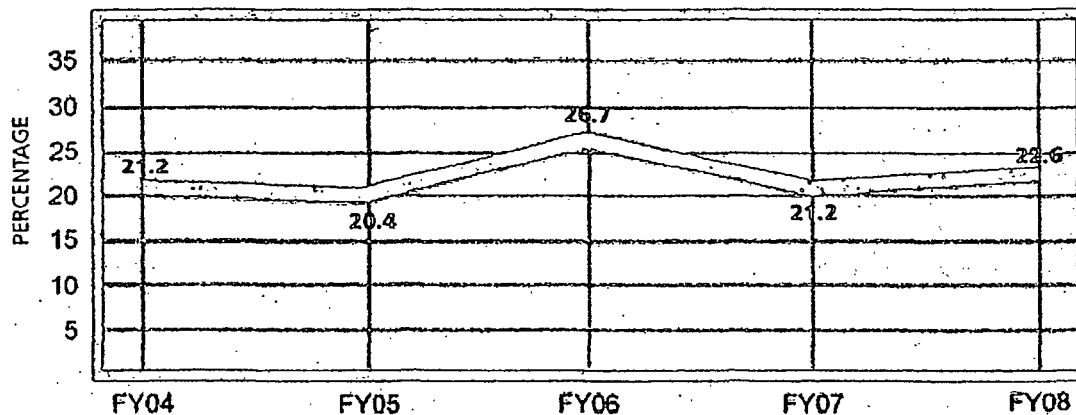
- **CONSTRUCTION** is putting together all or part of a structure. Most construction site debris is generated from packaging and when raw materials are cut or sized. Workers can save large scraps for use in other projects. Durable packaging can be returned to suppliers. Smaller scraps and non-durable packaging can be source separated when produced and recycled.
- **RENOVATION** is partial removal of a building's interior and/or exterior followed by construction. Contractors can adapt the same recovery techniques as above for renovation projects. This also is known as remodeling.
- **DECONSTRUCTION** is a soft demolition technique whereby workers dismantle a significant portion of a building in order to maximize recovery of materials for reuse and recycling.
- **DEMOLITION** is the complete removal of a building. On most demolition projects after extracting easily removable materials for reuse or recycling, workers complete the demolition with sledgehammers, explosives or heavy equipment. Additional recyclables are often sorted from the rubble generated during these demolition activities.



**CHART 7.1: Total C&D Debris and Land-clearing Debris (LCD) Recycled, Mulched or Composted in Millions of Tons, FY04 to FY08**



**CHART 7.2: Percentage of Solid Waste That is C&D Debris or LCD, FY04 to FY08**



**CHART 7.3: Percentage of C&D Debris/LCD that is Recycled, FY04 to FY08**

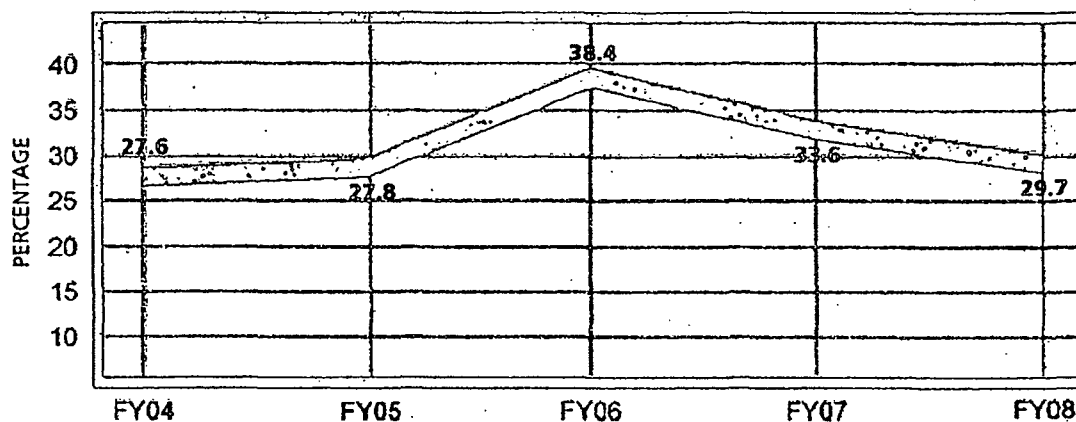


TABLE 7.4 C&D Debris Landfill Disposal and Estimated Remaining Life

COUNTY	LANDFILL	PERMITTED ANNUAL RATE OF DISPOSAL IN TONS	FY08 DISPOSAL IN TONS	ESTIMATED REMAINING LIFE OF FACILITY IN YEARS
Abbeville	Abbeville County C&DLF	10,000	2,641	58
Aiken	Aiken County (Barden) C&D+LCDLF	80,000	0	
Aiken	Aiken County Wagener C&DLF	**	0	*
Aiken	G.L. Williams C&D+LCDLF	57,500	0	
Aiken	Rainbow Falls Road C&DLF	103,216	68,274	30
Anderson	Bobby and Danny C&D+LCDLF	31,250	2,943	
Anderson	Clemson University Long-term C&D+LCDLF	15,000	11,700	5
Anderson	Enterprise Material Handling C&DLF	68,619	68,849	19
Anderson	Starr C&D+LCDLF	43,300	10,760	18
Bamberg	Bamberg County C&D+LCDLF	13,000	0	
Barnwell	Barnwell County C&DLF	32,000	13,117	16
Beaufort	Barnwell Resources C&D+LCDLF	120,000	27,041	16
Berkeley	Berkeley County C&DLF	214,703	60,248	3
Calhoun	Calhoun County C&D+LCDLF	13,500	2,988	30
Charleston	Charleston County Bees Ferry C&D+LCDLF	200,000	176,350	18
Cherokee	Cherokee County C&DLF	20,000	6,147	50
Cherokee	City of Gaffney C&DLF	8,930	4,220	35
Chester	Chester County C&D+LCDLF	4,800	1,978	5
Chesterfield	Furr Facility C&DLF	32,700	0	*
Clarendon	Clarendon County C&D+LCDLF	10,000	7,951	
Colleton	Colleton County C&DLF	20,000	21,777	24
Darlington	Darlington County C&D+LCDLF	15,200	14,721	14
Dillon	Dillon County C&D+LCDLF	11,700	11,233	*
Dorchester	Carolina LF LLC	67,000	38,558	40
Edgefield	Tri-County LF	10,000	5,003	*
Florence	Florence County C&DLF	25,000	806	
Georgetown	Georgetown County C&D+LCDLF	51,000	37,576	4
Greenville	Carter Excavating Company (Big Valley) C&D+LCDLF	75,000	1,585	5
Greenville	Greenville (Republic) C&DLF	200,000	48,057	7
Greenville	Twin Chimneys C&DLF	87,157	51,046	32
Greenville	WCA Shiloh C&D+LCDLF	128,000	80,769	12
Greenwood	Greenwood County C&DLF	20,000	17,102	7
Hampton	Hampton County C&D+LCDLF	21,000	7,367	7
Horry	Horry County Solid Waste Authority C&D+LCDLF	250,000	75,010	17
Jasper	Oakwood C&DLF and RC (Cell 2)	188,000	65,371	26
Jasper	Snake Road C&DLF	113,200	0	
Kershaw	Kershaw County C&D+LCDLF	30,000	20,162	*
Kershaw	Loveless 8 Loveless C&D+LCDLF	72,000	71,113	

\*Not reported by the facility \*\*Not specified in permit

COUNTY	LANDFILL	PERMITTED ANNUAL RATE OF DISPOSAL IN TONS	FY08 DISPOSAL IN TONS	ESTIMATED REMAINING LIFE OF FACILITY IN YEARS
Kershaw	Pine Hill C&DLF	170,000	98,155	27
Laurens	City of Clinton C&D+LCDLF	1,375	0	*
Laurens	Curry Lake C&DLF	241,591	67,331	23
Laurens	Laurens County C&DLF	8,900	137	5
Lexington	Carolina Materials C&D+LCDLF	240,000	80,103	5
Lexington	Highway 378 C&D+LCDLF	25,000	0	*
Lexington	Lexington County (Edmund) C&D+LCDLF	216,000	70,784	12
Lexington	Oswald Lumber C&D+LCDLF	2,400	1,442	1
Lexington	S&T Recycling C&DLF	7,200	24,838	*
Lexington	Southeastern Associates C&D+LCDLF	120,000	67,070	*
Marion	City of Marion C&D+LCDLF	15,000	4,907	53
Marion	City of Mullins C&DLF	135,350	43,578	20
Marion	Sandlands C&D+LCDLF (Phase II)	206,500	64,789	35
Oconee	Seneca C&D+LCDLF	37,615	23,121	2
Orangeburg	City of Orangeburg LF		0	*
Orangeburg	Orangeburg County C&DLF	31,000	30,985	1
Pickens	Easley C&D+LCDLF	20,000	13,226	5
Richland	City of Columbia South C&D+LCDLF	22,000	30	1
Richland	Richland County C&D+LCDLF	200,000	30,653	1
Spartanburg	Wasp Nest Road C&DLF	80,000	0	*
Sumter	Sumter County C&DLF	51,332	50,523	
Williamsburg	City of Lake City C&DLF	12,900	3,276	1
Williamsburg	Williamsburg County C&DLF	4,370	30	
York	Coltharp C&D+LCDLF	70,000	51,419	12
York	Rogers C&DLF		4,000	10
York	York County C&D+LCDLF	75,000	51,892	*
TOTAL		4,246,308	1,810,132	19

\*Not reported by the facility \*\*Not specified in permit

TABLE 7.5 Legend	
C&DLF	Construction and Demolition Debris Landfill
C&D+LCDLF	Construction and Demolition Debris & Land-clearing Debris Landfill
LF	Landfill
RC	Recycling Center

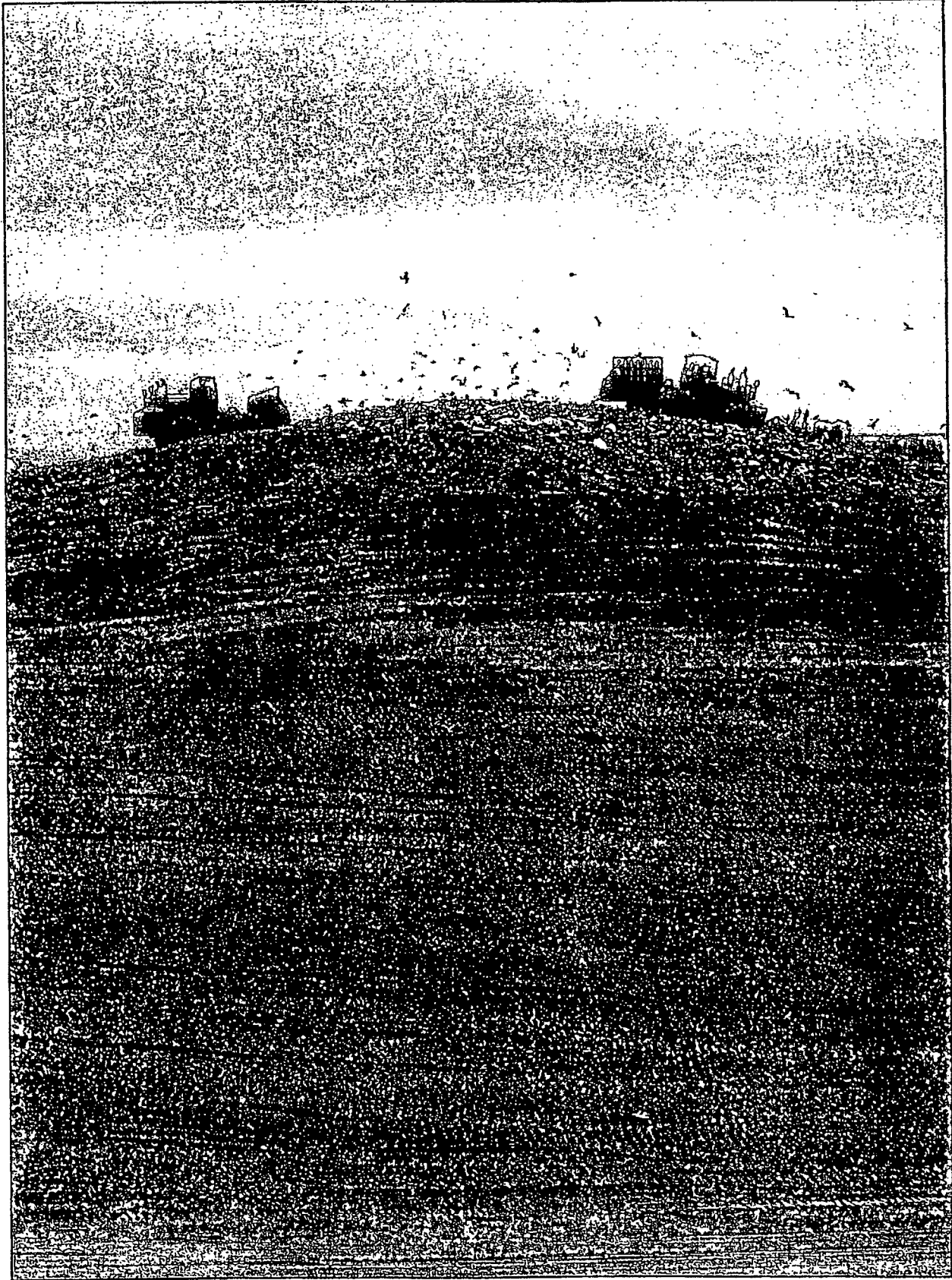
TABLE 7a LCD Landfill Disposal in Tons by County

COUNTY OR PLACE OF ORIGIN	FY05	FY06	FY07	FY08
Abbeville	12,875	1,026	1,020	0
Aiken	18,610	26,797	29,274	23,962
Allendale	0	0	0	0
Anderson	15,014	16,196	15,198	10,920
Bamberg	0	0	0	0
Barnwell	0	0	0	0
Beaufort	0	0	0	0
Berkeley	0	0	0	0
Galhoun	0	0	0	0
Charleston	0	0	0	0
Cherokee	0	0	0	0
Chester	0	0	0	0
Chesterfield	0	0	0	0
Clarendon	0	0	0	0
Colleton	0	0	0	0
Darlington	0	0	0	0
Dillon	0	0	0	0
Dorchester	0	0	0	0
Edgefield	1,421	3,434	5,453	3,119
Fairfield	0	0	0	0
Florence	0	0	0	0
Georgetown	0	0	0	0
Greenville	60	152	6,975	180
Greenwood	1,190	0	0	159
Hampton	0	0	0	0
Horry	0	0	0	0
Jasper	563	666	630	456
Kershaw	0	0	0	2,525
Lancaster	132	119	250	0
Laurens	2,545	227	396	130
Lee	0	0	0	0
Lexington	8,806	1,466	8,457	37,146
Llanon	0	0	0	0
Marlboro	0	0	0	0
McCormick	56	7	32	8
Newberry	0	100	100	215
Oconee	12,745	1,347	8,579	16,055
Orangeburg	250	2	0	0
Pickens	10,107	116,513	10,712	13,392
Richland	7,585	200	4,840	13,287
Saluda	80	0	0	525
Spartanburg	5,749	3,673	2,685	1,305
Sumter	0	0	0	0
Union	800	906	854	0
Williamsburg	0	0	0	0
York	19,981	42,284	37,440	25,241
LCD from S.C.	118,458	126,110	133,187	128,429
LCD from Out-of-State	1,418	4,542	1,665	5,032
TOTAL AMOUNT OF LCD DISPOSED	119,876	130,652	134,852	133,461

**TABLE 7-7: C&D Debris Generated for Disposal in Tons for Use in Demonstrating Need**

COUNTY	FY04	FY05	FY06	FY07	FY08
Abbeville	557	4,549	6,597	3,256	2,554
Aiken	74,412	79,529	90,100	102,927	22,443
Allendale	1,578	3,128	2,354	2,171	1,509
Anderson	35,206	35,801	51,300	70,823	63,670
Bamberg	4,883	4,811	6,175	6,381	126
Barnwell	8,329	10,411	10,921	10,700	11,686
Beaufort	12,464	39,916	141,752	130,391	86,288
Berkeley	66,023	36,175	61,341	59,472	57,027
Calhoun	4,139	3,554	4,474	3,176	3,057
Charleston	108,148	130,755	168,253	183,421	194,137
Cherokee	10,658	8,132	16,210	9,818	10,402
Chester	3,220	4,366	2,908	2,057	1,992
Chesterfield	12,805	14,448	12,021	10,146	0
Clarendon	5,500	9,296	8,861	10,288	7,352
Colleton	3,157	13,823	17,439	20,900	23,668
Darlington	12,614	12,858	11,764	11,755	11,721
Dillon	11,412	10,995	8,352	10,549	11,233
Dorchester	0	2,155	1,635	12,480	22,039
Edgefield	2,678	3,244	13,116	12,479	6,119
Fairfield	126	177	359	284	780
Florence	883	1,264	1,142	69	3,415
Georgetown	33,680	30,087	51,581	34,270	49,886
Greenville	87,157	142,767	163,450	161,738	210,924
Greenwood	7,408	14,675	20,174	26,714	21,063
Hampton	7,444	8,590	7,786	8,993	7,462
Horry	170,856	155,676	211,671	262,483	141,007
Jasper	1,240	176	368	490	583
Kershaw	33,277	41,923	52,668	42,346	41,652
Lancaster	10	0	26	6	43
Laurens	8,434	6,635	9,479	16,860	12,811
Lee	0	0	0	0	0
Lexington	231,899	246,783	237,178	217,465	223,503
Marion	16,493	29,818	62,965	31,299	19,419
Marlboro	1,040	845	1,212	1,060	0
McCormick	920	335	4,409	1,669	1,009
Newberry	797	1,098	1,273	1,219	814
Oconee	20,608	19,867	23,801	26,385	24,337
Orangeburg	23,222	20,915	26,319	27,360	32,023
Pickens	16,049	34,746	67,881	20,807	33,567
Richland	199,805	216,706	211,729	194,955	194,771
Saluda	1,176	1,149	1,960	1,465	1,614
Spartanburg	58,803	71,424	68,662	72,161	26,364
Sumter	42,747	38,925	43,588	42,033	50,656
Union	4	5	3	2	6
Williamsburg	2,585	2,386	7,220	6,491	3,280
York	82,448	97,810	95,632	124,695	107,315

NOTE: This data is solely for use in calculating annual C&D tonnage limits as related to R.61-107.17, Demonstration of Need. Any other use of this data may lead to an inaccurate conclusion. Due to pending DON regulations, this table may be amended and is subject to change.



CURRY'S LAKE LANDFILL  
TOTAL TONS RECEIVED  
JAN 06--MAR 09

MONTH	YEAR 2006 TONS	YEAR 2007 TONS	YEAR 2008 TONS	YEAR 2009 TONS	TOTAL TONS
Jan	2,413.46	3,643.23	4,957.32	3,847.78	
Feb	2,285.85	3,839.36	5,582.17	3,962.97	
Mar	2,982.10	5,561.53	6,103.69	4,582.38	
Apr	3,074.82	5,814.53	3,962.97		
May	4,244.25	6,148.91	4,852.67		
June	5,888.01	5,979.63	5,134.88		
July	5,608.80	6,270.34	5,587.28		
Aug	7,148.74	6,993.93	4,832.28		
Sept	4,414.24	5,695.70	4,829.44		
Oct	10,790.64	6,234.41	4,936.13		
Nov	4,569.87	5,431.22	3,965.89		
Dec	3,767.31	3,964.24	3,787.09		
<b>Total</b>	<b>57,188.09</b>	<b>65,577.03</b>	<b>58,531.81</b>	<b>12,393.13</b>	<b>193,690.06</b>

PETITIONER'S  
EX. *26*

April 2009

Host Fee Tonnage

Tonnage	Customer	Acc #
4.33	Allied Services	6
9.16	Fennell	10
8.76	Garrett & Garrett	11
794.90	J & B Transfer	14
60.31	JVS Roofing	15
		16
	Strange Bros. Grading	20
337.93	Wasteco	24
453.81	Waste Industries	25
	Waste Management	26
27.13	Medinas Hauling	28
10.44	Barbrey Grading	31
		32
		33
		34
		35
	David Snipes Construction	43
602.65	Powells Trash Service C&D	45
	Powells Trash Service ASB	45
	Powells Trash Service Benif	45
	D. H. Griffin	51
	Fountain Inn Ware house	56
	Kelleets Builders	66
	Gilstrap Roofing	70
	Roger Hendricks	80
1,632.07	S H Carter C&D	87
	S H Carter ASB	87
	S H Carter Benificial	87
	Out Bound	92
0.91	Den-Mar	97
	R&M Steel Services	98
	Roger Kuykendall	104
		105
		106
		107
		109
9.79	Waste Corp of America	110
		112
		114
	T M Management	115
11.87	Highlander Roofing	116
	M P Hunter	117
		118
13.94	P & P Enterprises	120
		122
	Gwinn Siding	123
	Laurens water & sewer Comm	124
	Martin Brothers Construction	125
		126
74.57	A D A Enterprises	127
	H & H Grading	128
	Grier Roofing	129

**April 2009 Host Fee Tonnage Continued**

Tonnage	Customer	Acc #
	CLL WI Beneficial fill	130
		131
		132
148.06	Martin Waste Management	133
	Laurens Dept. Public Works	134
73.50	City of Clinton	135
	Southeastern Construction	138
		137
76.85	City of Laurens	138
2.01	S C reg. housing authority	139
	Cannon Roofing	140
	Lloyd Roofing	141
76.90	SC Dept Transportation	142
3.74	Kerber Construction	143
	Cash Customer	144
	E Luke Greene Co.	145
	P.A.R Grading	146
	Laur. Bldg. Codes Dept.	147
78.80	Cash Customer C&D	31280
	Cash Customer ASB	31280
581.97	Cash Customer Road Base	31280

Total	5,094.40
Beneficial fill	581.97 Road Base
Out Bound Metal	
Out Bound MSW	
Out Bound Tires	
Total Tons	<b>4,512.43</b>
Host Fee Rate	0.75
Total Host Fee	3,384.32

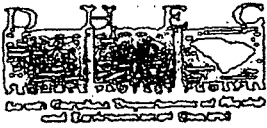
June 2009

## Host Fee Tonnage

Tonnage	Customer	Acc #
1.37	Allied Services	6
54.61	Fennell	10
9.12	Garrett & Garrett	11
1,006.65	J & B Transfer	14
96.71	JVS Roofing	16
		16
	Strange Bros. Grading	20
97.94	Wasteco	24
408.49	Waste Industries	25
	Waste Management	26
48.01	Medinas Hauling	28
	Barbrey Grading	31
		32
		33
		34
		35
	David Snipes Construction	43
472.46	Powells Trash Service C&D	45
	Powells Trash Service ASB	45
	Powells Trash Service Benif	45
	D. H. Griffin	51
	Fountain Inn Ware house	56
	Kelleets Builders	66
	Gilstrap Roofing	70
	Roger Hendricks	80
2,158.84	S H Carter C&D	87
	S H Carter ASB	87
	S H Carter Beniffical	87
	Out Bound	92
		97
1.03	Den-Mar	97
	R&M Steel Services	98
	Roger Kuykendall	104
		105
		106
		107
		109
5.99	Waste Corp of America	110
		112
		114
6.21	T M Management	115
16.88	Highlander Roofing	116
	M P Hunter	117
		118
12.32	P & P Enterprises	120
		122
0.90	Gwinn Siding	123
	Laurens water & sewer Comm	124
1.02	Martin Brothers Construction	125
		126
110.48	A D A Enterprises	127
	H & H Grading	128
	Grier Roofing	129

Jun-09

Tonnage	Customer	Acc #
	CLL Wl Beneficial fill	130
		131
		132
96.93	Martin Waste Management	133
	Laurens Dept. Public Works	134
94.63	City of Clinton	135
	Southeastern Construction	136
		137
42.80	City of Laurens	138
1.05	S C reg. housing authority	139
	Cannon Roofing	140
	Lloyd Roofing	141
302.11	SC Dept Transportation	142
7.79	Kerber Construction	143
	Cash Customer	144
	E Luke Greene Co.	145
	P.A.R Grading	146
	Laur. Bldg. Codes Dept.	147
139.82	Cash Customer C&D	31280
	Cash Customer ASB	31280
	Cash Customer MISC.	31280
204.39	Ace Environmental C & D	124816
<b>Total</b>		
	Beneficial fill	5,397.55
	Out Bound Metal	312.11
	Out Bound MSW	
	Out Bound Tires	
	Total Tons	5,085.44
	Host Fee Rate	0.75
	Total Host Fee	3,814.08



Construction, Demolition and Land Clearing Debris Landfill  
Annual Report  
Division of Mining and Solid Waste Management

20775

36a

1. Fiscal Year: July 2004 - June 2005 2. Facility Permit #: 302693-1201  
 3. Facility Name: Waste Industries 4. County: Lawrens  
 5. Facility Location: 1408 Curry Lake Rd. Gray Court SC 29045  
 6. Facility Phone #: 864-876-4067 7. Facility Fax #: 864-876-4068  
 8. Facility Mailing Address: 1408 Curry Lake Rd. Gray Court SC 29045  
 9. Estimated Life of this Landfill: 30 Years

10. Tonnage of In-county waste	11. Out-of-county (Name County)	12. Out-of-county tonnage received	13. Out-of-state (Name State)	14. Out-of-state tonnage received
3,098.24	Abbeville	13.29		
	Anderson	622.01		
	Greenville	23,779.63		
	Laurens	22.99		
	Dickens	525.09		
	Stromburg	25,450.29		
	Greenwood	1,098.08		
Total: 3,098.24		Total: 51,511.38		Total
15. Total of #10, #12, #14 =	54,609.62			

16. Facility average tipping Fee (\$ per ton): 28.00 17. Number of Tires Disposed of in the Landfill: 0  
 (If Applicable) (If Applicable)

I hereby certify (or declare) that all information submitted in conjunction with this annual report is accurate to the best of my knowledge.

18. Signature: Fred L. Courts Date: 8/8/05

19. Print Name and Title: FRED L. COURTS; Regional Manager, Waste Ind.

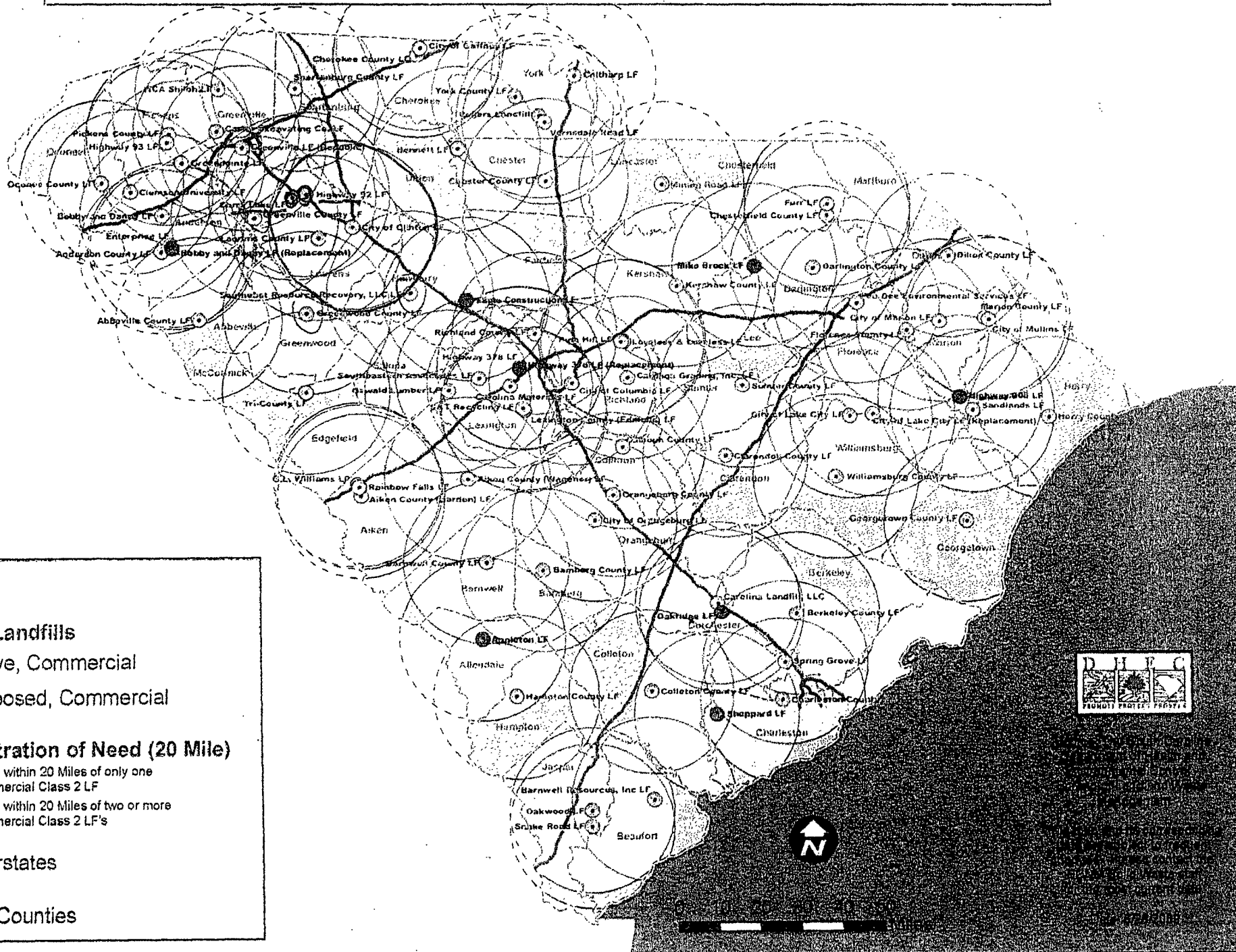
20. Maintain a copy for your records. Submit original to: Dandlao - October 15th

SCDHEC  
Division of Mining and Solid Waste Management  
Area: Compliance  
2600 Bull Street  
Columbia, SC 29201

The owner or operator of a construction, demolition and land clearing debris landfill shall maintain for a minimum of five (5) years, the information contained in the report. These records shall be available on the site for inspection by Department personnel during normal business hours.

DHEC 2705 (04/2000)

# Demonstration of Need (DON) Map for Class 2 Landfills



## Legend

### Class 2 Landfills

- ⊙ Active, Commercial
- ⊛ Proposed, Commercial

### Demonstration of Need (20 Mile)

- ◻ Areas within 20 Miles of only one Commercial Class 2 LF
- ◻ Areas within 20 Miles of two or more Commercial Class 2 LF's

— Interstates

⋯ SC Counties



000437



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

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Case No. 08-ALJ-07-0425-CC

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Engaging and Guarding Laurens County's Environment ("EAGLE") . . . . . Respondent,

v.

South Carolina Department of Health and Environmental Control and  
MRR Highway 92, LLC . . . . . Defendants,

of whom MRR Highway 92, LLC is . . . . . Appellant.

---

**RECORD ON APPEAL  
VOLUME II OF II**

---

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LLC*

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Amy E. Armstrong, Esquire  
South Carolina Environmental Law  
Project  
P.O. Box 1380  
Pawleys Island, SC 29585

*Attorneys for Respondent Engaging and  
Guarding Laurens County's Environment  
("EAGLE")*



STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Engaging and Guarding Laurens County's  
Environment ("EAGLE"),

Petitioner,

vs.

South Carolina Department of Health and  
Environmental Control and MRR Highway 92,  
LLC,

Respondents.

Docket No. 08-ALJ-07-0425-CC

RESPONDENT MRR  
HIGHWAY 92, LLC'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Pursuant to Rules 19 and 68 of the Rules of Procedure for the Administrative Law Court and Rule 56 of the South Carolina Rules of Civil Procedure, Respondent MRR Highway 92, LLC ("MRR"), hereby moves the Court for an Order granting partial summary judgment in its favor with respect to all issues related to the issuance of the permit for a Class Two Landfill to be located 322 Choice Road, Gray Court in Laurens County ("Proposed Landfill"). The grounds for this motion are that MRR is entitled to judgment as a matter of law because:

- (a) The Department properly approved a demonstration of need for the Proposed Landfill as the Department's decision is based on the criteria set forth in the applicable regulation, S.C. CODE ANN. REGS. § 61-107.17 ("DON Regulation");
- (b) The Department did not err in approving a demonstration of need for capacity exceeding the amount of waste generated in Laurens County because the calculation of maximum annual disposal rate for a facility

**FILED**

MAR 17 2009

SC ADMIN. LAW COURT

pursuant to the DON Regulation allows for permitted capacity in excess of the needs of the host county;

- (c) The Proposed Landfill satisfies the buffer requirements in S.C. CODE ANN. REGS. § 61-107.19 ("Landfill Regulation");
- (d) The Department complied with the Landfill Regulation with respect to siting of the Proposed Landfill relative to Lake Martin because the Proposed Landfill satisfied the buffer requirements in S.C. CODE ANN. REGS. § 61-107.19 Part IV.B.1.f;
- (e) The Department did not violate the Landfill Regulation in issuing a permit for the Proposed Landfill on property which contains jurisdictional wetlands because the construction and operation of the Proposed Landfill will not disturb jurisdictional wetlands and thus complies with the U. S. Army Corps of Engineers and the U. S. Environmental Protection Agency requirements concerning wetlands as required by S.C. CODE ANN. REGS. § 61-107.19, Part IV.B.1.c;
- (f) The Department did not violate the Landfill Regulation in issuing a permit for the Proposed Landfill in an area where residents alleged rely primarily upon well water as there are no drinking water wells with 100 feet from the boundary of the fill area of the Proposed Landfill in accordance with S.C. CODE ANN. REGS. § 61-107.11 Part IV.C.1.g ;
- (g) The Department did not violate the Landfill Regulation in issuing a permit for the Proposed Landfill without a traffic study because S.C. CODE ANN.

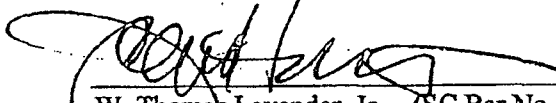
REGS. § 61-107.19 Part IV.C.20 does not require the applicant to submit a traffic study for the Department's consideration;

- (h) Petitioner's claim that an alleged history of permit violations and closures by the owners of MRR precludes issuance of the permit for Proposed Landfill is without a statutory or regulatory basis;
- (i) The Department properly made its determination of consistency pursuant to Section 44-96-290(F) of the South Carolina Solid Waste Policy and Management Act of 1991, S.C. CODE ANN. §§ 44-96-10 *et seq.* ("Solid Waste Act"), based on the 1997 Laurens County Solid Waste Management Plan as this plan was the current local solid waste management plan on file with the Department at the time of the permitting decision; and
- (j) Petitioner's claim that a former Department official allegedly worked as a consultant for MRR precludes issuance of the permit for the Proposed Landfill is without a statutory or regulatory basis.

For the foregoing reasons, MRR hereby requests that the Court issue an order granting judgment as a matter of law in favor of MRR on all issues related to the permitting of the Proposed Landfill.

This motion is based on the pleadings, the accompanying affidavits, the attached exhibits, the applicable law, and the memorandum of law filed contemporaneously herewith.

Respectfully submitted,



W. Thomas Lavender, Jr. (SC Bar No. 3143)

Joan W. Hartley (SC Bar No. 72735)

NEXSEN PRUET, LLC

1441 Main Street, Suite 1500 (29201)

Post Office Drawer 2426

Columbia, SC 29202

803.771.8900

Leon C. Harmon (SC Bar No. 2705)

NEXSEN PRUET, LLC

201 W. McBee Avenue, Suite 400 (29601)

Post Office Drawer 10648

Greenville, SC 29603-0648

864.370.2211

Attorneys for Respondent

MRR Highway 92, LLC

March 17, 2009  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Engaging and Guarding Laurens County's  
Environment ("EAGLE"),

Petitioner,

vs.

South Carolina Department of Health and  
Environmental Control and MRR Highway 92,  
LLC,

Respondents.

Docket No. 08-ALC-07-0380-CC

EXHIBITS TO MOTION FOR  
PARTIAL SUMMARY JUDGMENT

# Exhibit A

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

ENGAGING AND GUARDING	)	DOCKET NO. 08-ALC-07-0425-CC
LAURENS COUNTY'S	)	
ENVIRONMENT ("EAGLE"),	)	
A NON-PROFIT MEMBERSHIP	)	
ORGANIZATION,	)	30(b)(6) DEPOSITION
	)	
PETITIONER,	)	OF
	)	
VS.	)	SOUTH CAROLINA
	)	DEPARTMENT OF HEALTH
MRR HIGHWAY 92, LLC,	)	AND ENVIRONMENTAL CONTROL
AND SOUTH CAROLINA	)	
DEPARTMENT OF HEALTH AND	)	BY
ENVIRONMENTAL CONTROL,	)	
	)	KENT COLEMAN, P.G.
RESPONDENTS.	)	

30(b)(6) Deposition of South Carolina Department of Health and Environmental Control by Kent Coleman, P.G., taken pursuant to the Federal Rules of Civil Procedure, commencing at the hour of 10:04 a.m., Thursday, February 12th, 2009, at South Carolina Department of Health and Environmental Control, 2600 Bull Street, Conference Room 2256, Columbia, South Carolina.

**COPY**

Reported by  
Sandra M. Snead

SCOTT REPORTING SERVICE  
P.O. Box 290482, Columbia, SC 29229 ♦ (803) 736-2408  
www.scottreporting.com ♦ hscott@scottreporting.com

1 regulation, 61-107.19, has language related to  
2 that, the handling of those things, and that  
3 language is -- To paraphrase it, basically it says  
4 that if the Department has made those  
5 determinations prior to the effective date of the  
6 regulation, then they remain applicable, those  
7 decisions that we had made, but they are subject to  
8 the continued review of the permit application and  
9 the technical requirements, as well as subject to  
10 appeal.

11 Q Okay. The new regulation made at least some  
12 changes in the -- sort of terminology, how you  
13 refer to these types of landfills, --

14 A Mm-hmm. Right.

15 Q -- and, I mean, what we had been calling a C&D  
16 landfill, there's a new name for that now, isn't  
17 there?

18 A Yes.

19 Q And what is that new name?

20 A It would be a Class Two landfill.

21 Q Okay. Are there differences between what was  
22 called a C&D landfill and a Class Two landfill, or  
23 is it just nomenclature?

24 A There are some differences in terms of the  
25 regulatory requirements that are in place for the

1 start asking him questions?

2 Ms. Williams: Is that Exhibit Five, or  
3 is that still --

4 The Deponent: Yeah, it's called Five  
5 here.

6 Mr. Chandler: Yeah.

7 Ms. Williams: Oh. Okay.

8 Mr. Chandler: Yeah.

9 Q The document I've handed you as Exhibit Five, do  
10 you know what it is?

11 A It's titled Demonstration of Need Approval for the  
12 Proposed Laurens Reclamation & Recycling Center  
13 Long-Term Construction, Demolition and Land-  
14 Clearing Debris Landfill.

15 Q And is that a letter fro Joan Litton to Ron  
16 Gilkerson?

17 A Yes, it is.

18 Q Okay. And attached to that are a couple of sheets  
19 of paper. The second page just seems to be a  
20 return receipt on the mail?

21 A Mm-hmm.

22 Q The third page seems to be a little listing of what  
23 went into the makeup of the 154,000-ton limit  
24 that's set forth in that letter. Do agree with  
25 that?

1 A Yes.

2 Q Okay. And it lists the same three counties that  
3 you just called out, Greenville, Laurens and  
4 Spartanburg; is that correct?

5 A Yes.

6 Q Okay. Now, do you know how much solid waste, or  
7 C&D waste, is generated per year in Laurens County?

8 A I could look at our most recent annual report to  
9 determine the most recent information that we have.  
10 On this particular sheet, there's another listed,  
11 that you've given me in Exhibit Five.

12 Q Okay. Is your most recent report the one for  
13 fiscal year 2007?

14 A Yes.

15 Q Okay. I just happen to have a copy of that with  
16 me.

17 A How about that.

18 Mr. Chandler: I don't want to mark this  
19 as an exhibit. It's just information that we  
20 can all get.

21 Q And I think if you'll turn to page 74 -- and also  
22 75 seems to be pertinent to the amount of waste  
23 generated in Laurens County and what might be taken  
24 into account in a needs determination.

25 A Okay.

- 1 A 8,631 tons.
- 2 Q Okay. Now, does this report on page 73 also tell
- 3 you what are the current -- or what was current, as
- 4 of the date of that report, C&D landfills operating
- 5 in Laurens County?
- 6 A I'm sorry. Ask that again.
- 7 Q On page 73 of the report, --
- 8 A Okay, 73. All right.
- 9 Q -- does that give you a list of C&D landfills that
- 10 were operating in Laurens County as of the time of
- 11 that report?
- 12 A Yes.
- 13 Q Okay. And can you tell me what those facilities
- 14 were -- or are?
- 15 A City of Clinton, C&D and LCD landfill. Curry Lake,
- 16 C&D landfill. Laurens County, C&D landfill.
- 17 Q Okay. And what is the permitted capacity of the
- 18 City of Clinton landfill?
- 19 A 1,375 tons.
- 20 Q Okay. And how much was actually disposed of in
- 21 that landfill in the fiscal year 2007?
- 22 A It looks like 200 tons.
- 23 Q Okay. And it's got a 20-year remaining life, it
- 24 was estimated at that time?
- 25 A That's -- Yeah, according to this table.



021133  
**RECEIVED**

FEB 23 2006



**B. P. BARBER & ASSOCIATES, INC.**

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

February 21, 2006

Ms. Joan Litton  
Manager, Solid Waste Facility Engineering Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Demonstration of Need Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

Dear Ms. Litton,

On behalf of MRR Southern Company, LLC, I hereby request, pursuant to Demonstration of Need, R.61-107.17, Department approval to develop a private Part IV construction, demolition and land clearing debris landfill at the referenced location on Choice Road in northern Laurens County along I-385 between Hwy 101 and Hwy 92. Site name and location are:

**LAURENS RECLAMATION & RECYCLING CENTER**  
LATITUDE: 34-DEGREES 37 MINUTES 20.91 SECONDS  
LONGITUDE: - 82 DEGREES 05 MINUTES 13.61 SECONDS

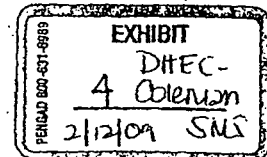
The maximum annual tonnage limit allowed under the regulation based on the latest published disposal data is requested.

Please contact me if you have questions.

Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269









C. Earl Hanner, Commissioner

Promoting and protecting the health of the public and the environment.

March 3, 2006

copy  
4

CERTIFIED MAIL  
7001 2510 0008 6158 4279

Mr. Ronald C. Gilkerson, P.G.  
MMR Southern Company, LLC  
11925 Sam Roper Drive, Suite C, Office 2  
Charlotte, NC 28269

RE: **Demonstration of Need APPROVAL**  
**Proposed Laurens Reclamation and Recycling Center Long-Term Construction, Demolition and**  
**Land-Clearing Debris Landfill**  
Location: 34°37'20.91" N Latitude, 82°05'13.61" W Longitude  
Maximum Annual Disposal Limit of 154,000 tons/year  
Laurens County

Dear Mr. Gilkerson:

This office is in receipt of a demonstration of need request, submitted on your behalf by Rudy M. Curtis of B.P. Barber and Associates, for the above-referenced site, dated February 21, 2006. Staff have evaluated the information and determined that pursuant to the provisions of R.61-107.17, *Demonstration of Need*, there is a need for this type of facility in the corresponding planning area. The Department may consider an annual disposal limit up to 154,000 tons during its consistency determination for this proposed facility.

Securing a site approval under the provisions of the Demonstration of Need regulation in no way supercedes zoning, consistency with local solid waste management plans or other considerations evaluated by the Department during the permitting process.

Also, please be aware that this approval may be terminated by the Department if any one of the following occurs: (A) one hundred twenty (120) days elapse from the date of receipt of this letter of approval without documented evidence of diligent pursuit of the appropriate solid waste permit being presented to the Department or (B) once a permit application has been received by the Department, that permit application is declared inactive or is denied by the Department's solid waste permitting staff or (C) the Department receives official and final notification that the site of the proposed facility does not meet proper zoning for the intended activity or (D) the Department determines that the proposed facility is not consistent with the host county or region solid waste management plan.

If you have any questions, please contact John McCain of my staff at (803) 896-4067.

Sincerely,

Joan F. Litton, Manager  
Solid Waste Permitting Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

IFL/JMM/jmm

cc: Ernest B. Segars - Laurens County Administrator

EXHIBIT  
DHEC -  
5 Coleman  
2/12/09 SWS

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**  
(Domestic Mail Only; No Insurance Coverage Provided)

01 2530 0004 615A 4279

**NO FEDERAL USE**

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Registered Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

Sent To: Tom Colkerson  
 Street, Apt. No.: 11725 San Roper Dr. Suite C  
 or PO Box No.: Office 2  
 City, State, ZIP+4: Charlotte, NC 28269

PS Form 3800, January 2001 See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Tom Colkerson  
11725 San Roper Dr.  
Suite C, Office 2  
Charlotte, NC 28269

**COMPLETE THIS SECTION ON DELIVERY**

*[Handwritten Signature]*

**RECEIVED**

**U.S. POSTAL SERVICE**

**POST OFFICE**

**CHARLOTTE, NC**

**JAN 11 2001**

1. Recipient's Name  Tom Colkerson

2. Recipient's Address  11725 San Roper Dr. Suite C, Office 2

3. Recipient's City, State, ZIP+4  Charlotte, NC 28269

4. Recipient's Delivery Point  28269

### Demonstration of Need Worksheet

Site Name:	Laurens Reclamation and Recycling Center
Permit #:	Proposed
Facility Type:	Long-Term, Commercial C&D LF
Proposed Disposal Amount, tons/yr	Max. Available

Counties Included w/ 10 mi. radius	Disposal Amount, tons/yr (FY 2004)
	C&D-IV
Greenville	87,157
Laurens	8,434
Spartanburg	58,803
<b>Total</b>	<b>154,394</b>

# Exhibit B



RECEIVED

FEB 23 2006

B. P. BARBER & ASSOCIATES, INC.

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLMM

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P.O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

February 21, 2006

Ms. Joan Litton  
Manager, Solid Waste Facility Engineering Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Demonstration of Need Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

Dear Ms. Litton,

On behalf of MRR Southern Company, LLC, I hereby request, pursuant to Demonstration of Need, R.61-107.17, Department approval to develop a private Part IV construction, demolition and land clearing debris landfill at the referenced location on Choice Road in northern Laurens County along I-385 between Hwy 101 and Hwy 92. Site name and location are:

LAURENS RECLAMATION & RECYCLING CENTER  
LATITUDE: 34 DEGREES 37 MINUTES 20.91 SECONDS  
LONGITUDE: - 82 DEGREES 05 MINUTES 13.61 SECONDS

The maximum annual tonnage limit allowed under the regulation based on the latest published disposal data is requested.

Please contact me if you have questions.

Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Engaging and Guarding Laurens County's  
Environment ("EAGLE"),

Petitioner,

vs.

South Carolina Department of Health and  
Environmental Control and MRR Highway 92,  
LLC,

Respondents.

Docket No. 08-ALC-07-0380-CC

**RESPONDENT MRR HIGHWAY 92,  
LLC'S MOTION TO MAKE MORE  
DEFINITE AND CERTAIN**

PERSONALLY APPEARED BEFORE Joan W. Hartley, who, after being duly sworn,  
deposes and says that:

1. I am an associate in the firm of Nexsen Pruet, LLC, 1230 Main Street, Suite 700,  
Columbia, South Carolina 29201. I am an attorney of record in the above-captioned case, and I  
submit this affidavit in support of MRR Highway 92, LLC's Motion for Partial Summary  
Judgment in this action.

2. Attached hereto are true and correct copies of the following documents which  
were produced by Respondent South Carolina Department of Health and Environmental Control  
during the course of discovery in this matter:

- Exhibit 1: February 21, 2006 letter from Rudy M. Curtis to Jana White;
- Exhibit 2: March 14, 2006 letter from Jana M. White to Ronald Gilkerson;
- Exhibit 3: June 27, 2006 letter from Rudy M. Curtis to Joan Litton;
- Exhibit 4: April 23, 2007 letter from Amy Capellino to Britt Felder;
- Exhibit 5: July 18, 2008 Memorandum from Kent M. Coleman to Concerned Citizens;
- Exhibit 6: July 18, 2006 Memorandum from Scott Holland to Jana White;

- Exhibit 7: July 26, 2006 letter from Arthur D. Braswell to Ronald Gilkerson;
- Exhibit 8: February 20, 2007 letter from Scott Holland to Jana M. White;
- Exhibit 9: April 4, 2007 letter from Jana M. White to Ronald Gilkerson;
- Exhibit 10: February 14, 2008 letter from Joan F. Litton to Ronald C. Gilkerson;
- Exhibit 11: March 13, 2008 Agenda for Public Hearing and Fact Sheet.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_  
Joan W. Hartley

SWORN and subscribed to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

---

# Exhibit 1



**B. P. BARBER & ASSOCIATES, INC.**

ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676

**RECEIVED**

FEB 22 2006

OFFICE OF SOLID WASTE  
REDUCTION & RECYCLING  
BLW114

February 21, 2006

Ms. Jana White  
Manager, Solid Waste Planning & Grants Section  
SC Department of Health & Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: Consistency Determination Request  
Laurens Reclamation & Recycling  
Center (Project #05749L)  
Laurens County

Dear Ms. White,

On behalf of MRR Southern Company, LLC, I hereby request that the Department determine if the development of a new Part IV construction, demolition and land clearing debris landfill at the referenced site is consistent with the Laurens County Solid Waste Management Plan on record with the Department. The proposed landfill is to be located on Choice Road in northern Laurens County along I-385 between Hwy 101 and Hwy 92. It will operate as a C&D recycling facility, a C&D landfill and likely will include a wood chipping operation to manage land clearing debris. Site name and other details are as follows:

**LAURENS RECLAMATION & RECYCLING CENTER**  
**LATITUDE: 34 DEGREES 37 MINUTES 20.91 SECONDS**  
**LONGITUDE: -82 DEGREES 05 MINUTES 13.61 SECONDS**

Please contact me if you have questions.

Sincerely yours,  
B.P. Barber & Associates, Inc.

Rudy M. Curtis  
Senior Solid Waste Coordinator

cc: Ronald C. Gilkerson, PG, MRR Southern Company L.L.C.,  
11925 Sam Roper Dr., Suite C Office 2, Charlotte NC 28269

DHEC - 1610

# Exhibit 2



C. Ead Hunter, Commissioner  
*Promoting and protecting the health of the public and the environment.*

→ John → File

5

March 14, 2006

**CERTIFIED MAIL**  
7001 2510 0008 614537  
Mr. Ronald Gilkerson, PG, MRR  
Southern Company  
11925 Sam Roper Drive, Suite C, Office 2  
Charlotte, North Carolina 28269

RECEIVED

MAR 15 2006  
DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BL&WM

**RE: Preliminary Consistency Determination - Consistent**  
**Site: Proposed Laurens Recycling and Reclamation Center**  
**Part IV C&D/LCD Landfill**  
**Location: Choice Road in northern Laurens County,**  
**along I-385 between Hwy 101 and Hwy 92**  
**Coordinates: 34 degrees 37 minutes 20.91 seconds Latitude**  
**-82 degrees 05 minutes 13.61 seconds Longitude**  
**DON: Approved 3/3/2006 for 154,000 Tons/Year**  
**County: Laurens County**  
  
**Plan Reviewed: 1997 Laurens County Solid Waste Management Plan**

Dear Mr. Gilkerson:

The Department has determined that the proposed Part IV C&D/LCD Landfill is consistent with the 1997 Laurens County Solid Waste Management Plan. This determination is based on the following information as stated in the notification of consistency findings letter to Laurens County on March 1, 2006:

The proposed Laurens County Recycling and Reclamation Center Part IV C&D/LCD Landfill is consistent with the 1997 Laurens County Solid Waste Management Plan. The Department's decision is based on language in Section A.3.a (page 5), which states, "no more than three privately owned and operated long term construction, demolition and land-clearing debris landfills will be allowed to operate in Laurens County at any given time." To date, there are three Part IV C&D/LCD landfills in Laurens County. Two of these are publicly owned and one is privately owned.

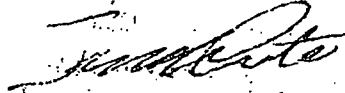
The Department will continue to move forward based on the preliminary determination. You may proceed with the submittal of the permit application if the permitting process has not been initiated. A final consistency determination will be made when the permit is ready for issuance.

DHEC-0109

March 14, 2006  
Preliminary Consistency Determination – Consistent  
Proposed Laurens Recycling and Reclamation Center Part IV C&D/LCD Landfill  
Page 2 of 2

If you require further assistance, please feel free to contact me [(803) 896-4221, [whitejm@dhec.sc.gov](mailto:whitejm@dhec.sc.gov)] or contact Ms. Celeste Duckett [(803) 896-4226, [ducketcw@dhec.sc.gov](mailto:ducketcw@dhec.sc.gov)] regarding this matter.

With kindest regards,



Jana M. White, Section Manager  
Solid Waste Planning, Grants and Trust Fund Administration  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

JMW/cwd

cc: Mr. Ernest B. Segars, Administrator, Laurens County, PO Box 445, Laurens, SC 29360  
Ms. Joan Litton, Manager, Solid Waste Facility Engineering Section  
Mr. Van Keisler, P.G., Manager, Solid Waste Hydrogeology Section

DHEC- 0110

# Exhibit 3



**B. P. BARBER & ASSOCIATES, INC.**

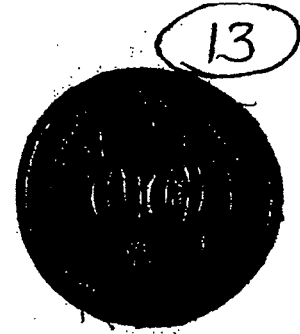
ENGINEERS - PLANNERS - SURVEYORS

101 RESEARCH DRIVE (29203-9389)

P. O. BOX 1116

COLUMBIA, SOUTH CAROLINA 29202-1116

TELEPHONE 803 254-4400 FACSIMILE 803 771-6676



June 27, 2006

**RECEIVED**

JUN 27 2006

DIVISION OF MINING &  
SOLID WASTE MANAGEMENT  
BLWM

Ms. Joan Litton  
Solid Waste Permitting Section Manager  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management  
South Carolina Department of  
Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201

RE: MRR Southern, L.L.C.  
Proposed Highway 92 C&D Landfill and  
Reprocessing Center  
Project Number 05749L

Dear Joan:

We are submitting four (4) copies this C&D Landfill Permit Application Package for the proposed Highway 92 C&D Landfill and Reprocessing Center on behalf of MRR Southern, L.L.C. The proposed facility will be located on a 130-acre± parcel of land located at the intersection of Interstate 385 and Highway 92 near Gray Court, South Carolina as shown in the enclosed application package. A 71-acre disposal cell footprint has been selected within this area for use as a C&D landfill. In addition to the disposal area, MRR Southern is reserving space for a Reclamation/Reprocessing and Wood Chipping Area, (approximately ten (10) acres) and a possible future Convenience Center (approximately two (2) acres) on the above referenced 130-acre± acre parcel.

Note that this facility has been through multiple name changes during the planning, design, and development of the permit application package. Thus the site is referred to by the following names on enclosed documentation submitted in support of this application:

- Laurens County C&D Landfill
- Laurens Reclamation and Recycling Center
- Highway 92 C&D Reclamation and Recycling Center
- Highway 92 C&D Landfill and Reprocessing Center

DHEC- 0149

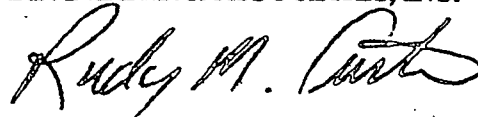
Ms. Joan Litton  
June 27, 2006  
Page 2 of 2

All of these names refer to the site now known as the Highway 92 C&D Landfill and Reprocessing Center.

We look forward to working with you during the review of this application. If you need further information or have any questions, please do not hesitate to call me at (803) 254-4400.

Very truly yours,

B.P. BARBER & ASSOCIATES, INC.



Rudy M. Curtis  
Senior Solid Waste Coordinator

Enclosures

cc: Ms. Jana White, SCDHEC  
Mr. Ronald C. Gilkerson, MRR Southern, L.L.C., w/ enclosure

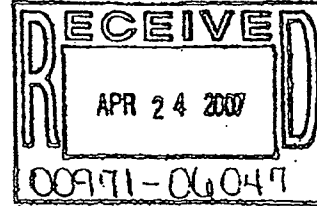
DHEC-0150

# Exhibit 4



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
89A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107



April 23, 2007

Regulatory Division

The Brigman Company, Inc.  
Attn.: Mr. Britt Feldner  
P.O. Box 1532  
Conway, South Carolina 29528

Re: SAC 2006-1205-5JC  
Laurens County

Dear Mr. Feldner:

This is in response to your letter of May 10, 2006, requesting a wetland determination, on behalf of MRR Southern, LLC, for a 126.24 acre tract located north of the intersection of Interstate 385 and South Carolina Highway 92, Laurens County, South Carolina. The project area is depicted on the drawing you submitted which was prepared by The Brigman Company, Inc., dated March 14, 2006, and entitled "Preliminary Wetland Determination Laurens C & D Landfill".

This drawing depicts approximate boundaries of wetlands or other waters of the United States as established by your office. You have requested that this office verify the accuracy of this mapping as a representation of wetlands or other waters of the United States within the regulatory authority of this office. The property in question contains 8.3 acres of jurisdictional freshwater wetlands or other waters of the United States subject to the jurisdiction of this office.

Furthermore, in the wake of the recent Supreme Court combined decisions issued June 19, 2006 in *Rapanos v. United States* and *Carabell v. the U.S. Army Corps of Engineers*, the U.S. Army Corps of Engineers and the Environmental Protection Agency are examining the scope, methodology, and documentation of jurisdictional determinations (JDs) pursuant to the Clean Water Act (CWA). In order to allow the Corps and EPA to prepare and issue substantive guidance, the Charleston District is, in accordance with guidance from our Headquarters and to the extent circumstances allow, delaying making final CWA jurisdictional determinations for areas beyond the limits of traditional navigable waters (Section 10 waters) until new guidance is issued.

With regard to your request, this office has reviewed the information you have provided regarding CWA jurisdiction over the property described above. Based upon the regulations and guidance available to this agency prior to the decisions in *United States v. Rapanos* and *United States v. Carabell*, it appears that the proposed jurisdictional boundaries you have provided to this office are a reasonable approximation of the location and boundaries of the wetlands or other waters of the United States found on this site. However, until final guidance is issued, the Corps will not be able to make a final determination of the limits of CWA jurisdiction on the referenced property. This letter should be used for general planning purposes only and any expenditures based on this letter are at the recipient's own risk. In addition, once final guidance has been

DHEC - 1994

received, this office will re-evaluate this request for compliance with that guidance and at the recipient's request, will provide a letter verifying our final determination.

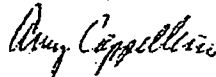
This jurisdictional determination is NOT an appealable action under the Corps of Engineers administrative appeal procedures defined at 33 CFR 331. Placement of dredged material within waters of the United States, including jurisdictional wetlands, without a Department of the Army permit is a violation of Section 301 of the Clean Water Act (33 USC 1311).

If a permit application is forthcoming as a result of this delineation, a copy of this letter should be submitted as part of the application. Otherwise, a delay could occur in confirming that a delineation was performed for the permit project area.

In future correspondence concerning this matter, please refer to SAC 2006-1205-5JC. You may still need state or local assent. Prior to performing any work, you should contact the South Carolina Department of Health and Environmental Control, Bureau of Water.

If you have any questions concerning this matter, please contact me at 803-253-3992.

Sincerely,



Amy Cappellino  
Project Manager

Enclosure:  
Basis for Jurisdiction

**BRIGMAN COMPANY, INC.**  
INCORPORATED

D. Thomas

Wetland Consulting - Forest Management

May 10, 2006

RECEIVED

JUN 10 2006

Mr. Les Parker  
U.S. Army Corps of Engineers  
69 A Hagood Avenue  
Charleston, SC 29402-0919

B. P. BARBER & ASSOCIATES  
COLUMBIA, S.C.

RE: Laurens C&D Landfill  
Laurens County, SC

Dear Mr. Parker:

We have completed a routine wetland determination of the above referenced project. Based on a field reconnaissance conducted on 2/23/2006, the study area was determined to contain wetland areas subject to the jurisdiction of your office. Acting as an agent for MRR Southern, LLC, we hereby request the wetland determination be reviewed by your office and a verification letter be issued after having concurred with our findings.

Enclosed please find a "Request for Verification" form along with the following:

- Project Location Map
- USGS Topographic Map and Soil Survey
- Wetland Determination Sheets
- Preliminary Wetland Determination Map
- Representative photos

Please notify us when you schedule your on-site inspection so we can be available to accompany you. Should you have any questions or require additional information to facilitate your review, please advise.

Sincerely,

*Britt Feldner*

Britt Feldner  
Wetland Ecologist

cc: Ron Gilkerson

M:\Forms\CORPCO\LETR.doc

DHEC - 1996

WWW.THEBRIGMANCOMPANY.COM

P.O. Box 1532 • Conway, SC 29528 • (843) 248-9388 • FAX (843) 248-0502

Regulatory Division-Charleston District-Corps of Engineers, 69-A Hagood Avenue, Charleston, SC 29403

**REQUEST FOR VALIDATION OF JURISDICTIONAL DETERMINATION**

Date: 5/9/2006

County/State: Laurens/SC Total Acreage of Tract: 128.00

Project Name (if applicable): Laurens C&D Landfill

**Property Owner**

(name, address, phone):

Ron Gilkerson  
 MRR Southern, LLC  
 11925 Sam Roper Drive  
 Suite C, Office 2  
 Charlotte NC 28269  
 (704) 947-8652

**Agent/Developer/Engineer:**

The Brigman Company, Inc.  
 P.O. Box 1532  
 Conway, SC 29528  
 (843) 248-9388

**Name and Phone Number of Contact Person for On-site Inspection:**

Britt Feldner The Brigman Company, Inc. (843) 248-9388

**Status of Project (check one):**

- On-going site work for development purposes
- Development in planning stages
- No specific development plans at this time

Project Type-Indicate the proposed use of the land in question or, if no specific work is planned at present,

indicate the current zoning or land use at the site. (check one):

- |                                       |                                      |  |
|---------------------------------------|--------------------------------------|--|
| <input type="checkbox"/> Residential  | <input type="checkbox"/> Commercial  | <input type="checkbox"/> Mixed Use (Residential) + Commercial      |
| <input type="checkbox"/> Industrial   | <input type="checkbox"/> Agriculture | <input type="checkbox"/> Public Works                              |
| <input type="checkbox"/> Silviculture | <input type="checkbox"/> Aquaculture | <input checked="" type="checkbox"/> Other: <u>C&amp;D Landfill</u> |

**Information Required to Accompany Request:**

- Accurate Location Map (from County Map, USGS Quad Sheet, etc.)
- Survey Plat or Tax Map of the Property in Question
- Soil Survey Sheet (from USDA-NRCS) or Aerial Photo (from County Assessor's Office or other Source).  
 Property boundaries should be shown on the soil survey/photo.
- Topographic Survey
- Conceptual Site Plan for the Overall Development

**Endangered Species Evaluation:**

Has the site been evaluated for the presence of federally-protected (endangered, threatened or proposed) species and/or any proposed or designated critical habitat for such species?  yes or  no

If Yes, has this evaluation been coordinated with the US Fish & Wildlife Service (FWS)?  yes or  no

If coordination has occurred, please provide the FWS Log number and enclose a copy of the report

FWS Log Number: \_\_\_\_\_ Copy of Report enclosed?  yes or  no

If the evaluation has not been coordinated with the US FWS, enclose a copy of your report findings.

**IMPORTANT NOTE:** Legible printed name and signature required. The person signing this form must be the present property owner or have the specific authority of the property owner to authorize Corps of Engineers employees or their agents to enter onto the property for on-site investigations if such is deemed necessary.

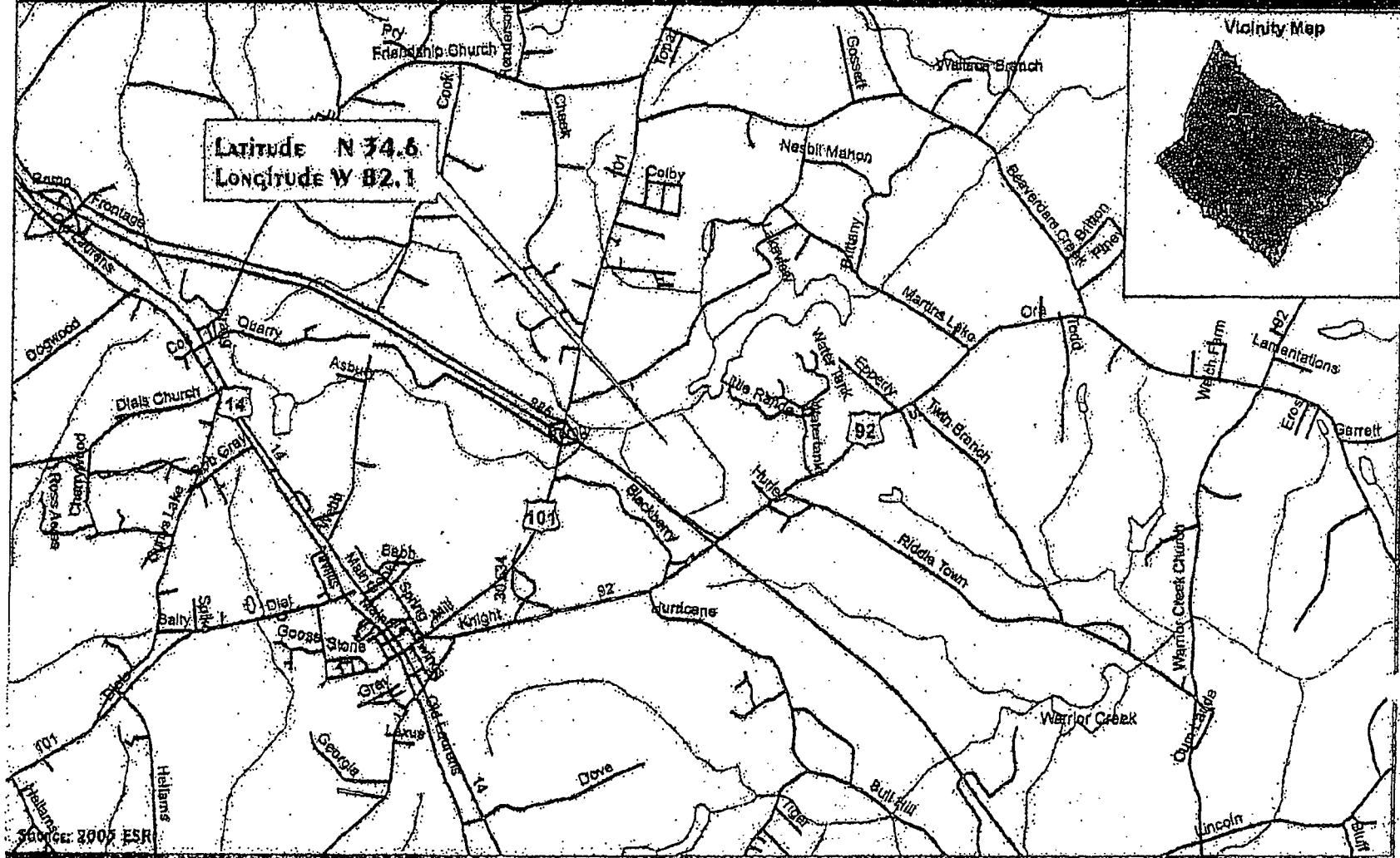
The signature of the owner or authorized agent on this form constitutes prior consent to disclose these records to other federal, state or local governmental agencies and the public at large.

PRINTED NAME of person signing this form, below: \_\_\_\_\_

Britt Feldner

Signature of property owner or Authorized Agent: \_\_\_\_\_

# PROJECT LOCATION



473

**THE BRYGMAN COMPANY INCORPORATED**

**LAURENS C&D LANDFILL**

**FIGURE 1**

DATE: 5/9/06

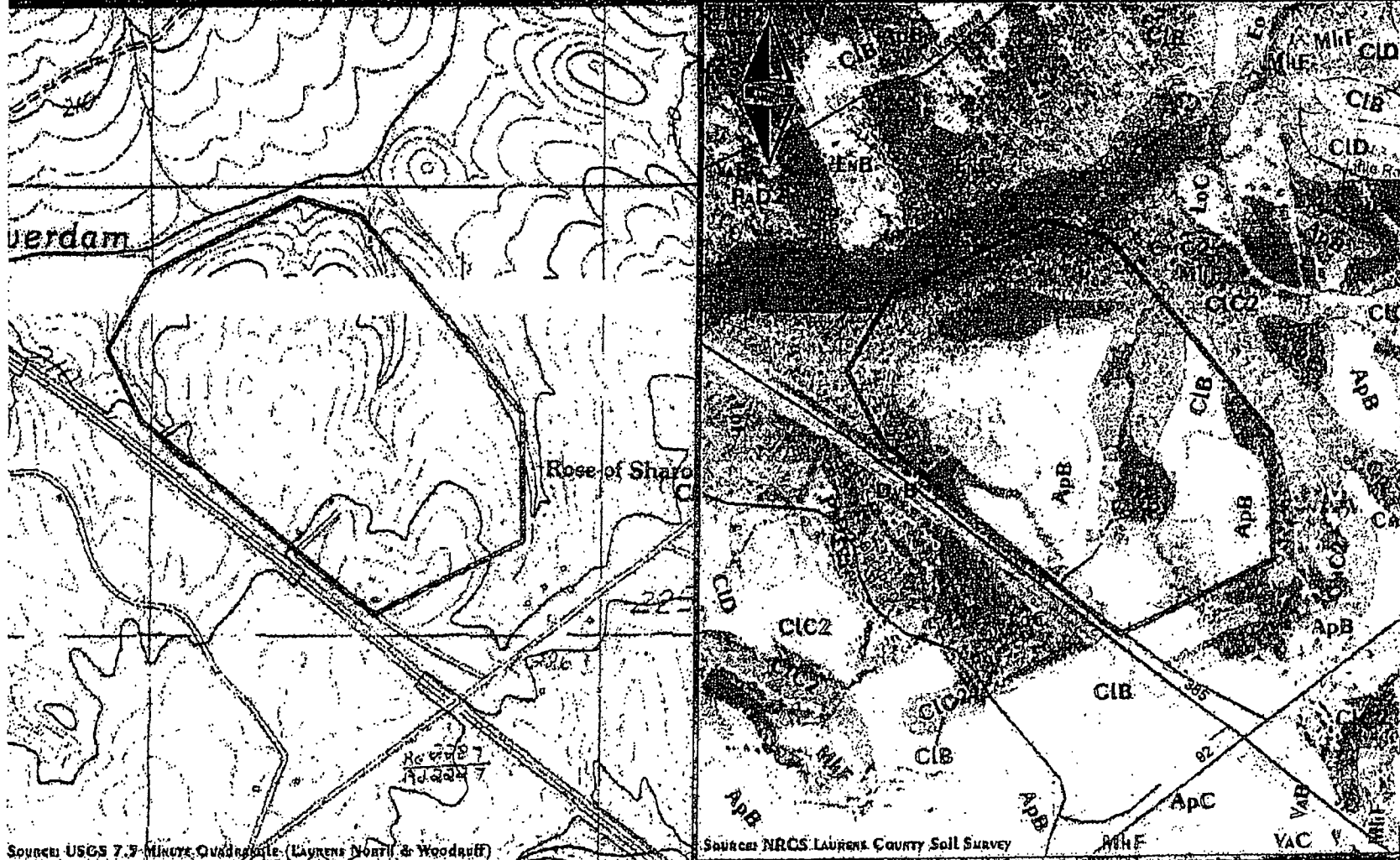
Applicant: MRR Southern, LLC

Scale: 1" = 4,000'

DHEC - 1998

000475

# USCS AND SOIL SURVEY



Source: USGS 7.5 Minute Quadrangle (Laurens North & Woodruff)

Source: NRCS Laurens County Soil Survey

<b>THE BRIGMAN COMPANY INCORPORATED</b>	<b>LAURENS C&amp;D LANDFILL</b>		<b>FIGURE</b> <b>2</b>
	DATE: 5/9/06	APPLICANT: MRE Southern, LLC	SCALE: 1" equals 1000'

Wetland Consulting - Forest Management - [www.thebrigmancompany.com](http://www.thebrigmancompany.com) - P.O. Box 1532 Conway, SC - (843) 248-9388 - Fax (843) 248-9596

474

000476

DHEC - 1999

**Data Form**  
**Routine Wetland Determination**

Job Number: 00971-06047  
City: Gray Corp  
Wetland Data Point: Upland

Project/Site: Laurens O & D Landfill  
Applicant/Owner: MRR Southern, LLC  
Investigator: BAF

Date: May 09, 2008  
County: Laurens  
State: SC  
Community ID: upland forest  
Station ID:  
Plot ID: DP-1

- Do normal circumstances exist on the site?
- Have vegetation, soils, or hydrology been disturbed?
- Is this area a potential problem area?

**Vegetation**

Dominant	Species	Common Name	% Cover	Indicator
	<i>quercus</i>			
<b>Shrub</b>				
X	<i>Ilex opaca</i>	Holly, American		FAC-
<b>Tree</b>				
X	<i>Cornus florida</i>	Dogwood, Flowering		FACU
X	<i>Fagus grandifolia</i>	Beech, American		FACU
X	<i>Quercus falcata</i>	Oak, Southern Red		FACU-
X	<i>Quercus falcata</i>	Oak, Southern Red		FACU-
X	<i>Quercus falcata</i>	Oak, Southern Red		FACU-
<b>Vine</b>				
X	<i>Lonicera japonica</i>	Honeysuckle, Japanese		FAC-

% Species that are OBL, FACW, or FAC (except FAC-): 0

Cowardin Classification:

Remarks:  
Hydrophytic vegetation was not met.

**Hydrology**

- |   |  |  |
|---|--|--|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Recorded Data (describe in remarks)             <ul style="list-style-type: none"> <li><input type="checkbox"/> Stream, Lake, or Tidal Gage</li> <li><input type="checkbox"/> Aerial Photograph</li> <li><input type="checkbox"/> Other (describe in remarks)</li> </ul> </li> <li>Field Observations:             <ul style="list-style-type: none"> <li>Depth of Surface Water (m): n/a</li> <li>Depth to Free Water in Pit (m): n/a</li> <li>Depth to Saturated Soils (m): &gt;48</li> </ul> </li> </ul> | <p><b>Primary Wetland Hydrology Indicators</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Unundated</li> <li><input type="checkbox"/> Saturated in upper 12 inches</li> <li><input type="checkbox"/> Water marks</li> <li><input type="checkbox"/> Drift lines</li> <li><input type="checkbox"/> Sediment deposits</li> <li><input type="checkbox"/> Drainage patterns in wetlands</li> </ul> | <p><b>Secondary Hydrology Indicators</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Oxidized root channels</li> <li><input type="checkbox"/> Water-stained leaves</li> <li><input type="checkbox"/> Local soil survey data</li> <li><input type="checkbox"/> FAC-Neutral test</li> <li><input type="checkbox"/> Other (explain in remarks)</li> </ul> |
|---|--|--|

Remarks:  
Hydrology criteria was not met.

**Soils**

Depth (in.)	Hor.	Matrix Color	Mottle / 2nd Mottle Color	Abundance	Contrast	Texture, Structure, etc.
0-5	Ap	10YR 5/3				Sandy Loam
5-7	Bt1	5YR 5/8				Sandy Clay Loam
7-21	B2t	2.5YR 4/8				Clay
21-39	B2t	2.5YR 4/8				Clay

- |   |  |
|---|--|
| <p><b>Hydric Soils Indicators</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Histosol</li> <li><input type="checkbox"/> Histic Epipedon</li> <li><input type="checkbox"/> Sulfide Odor</li> <li><input type="checkbox"/> Probable Aquatic Moist Regime</li> <li><input type="checkbox"/> Reducing Conditions</li> <li><input type="checkbox"/> Gleyed or Low-Chromia Colors</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Concretions</li> <li><input type="checkbox"/> High Organic % in Surface Layer</li> <li><input type="checkbox"/> Organic Streaking</li> <li><input type="checkbox"/> Listed on Local Hydric Soils List</li> <li><input type="checkbox"/> Listed on National Hydric Soils List</li> <li><input type="checkbox"/> Other (explain in remarks)</li> </ul> |
|---|--|

Unit Name: Cecil  
Drainage Class: Well Drained

Taxonomy: Typic Hapludults  
 Field Observations match map

Remarks:  
Hydric soil criteria was not met.

**Wetland Determination**

- Hydrophytic Vegetation Present
- Hydric Soils Present
- Wetland Hydrology Present
- This Data Point is a Wetland

Remarks:  
Jurisdictional wetland criteria was not met.

DHEC - 2000

**Data Form  
Routine Wetland Determination**

Job Number: 00971-06047  
City: Gray Corp  
Wetland Data Point: Wetland

Project/Site: Laurens O & D Landfill  
Applicant/Owner: MRR Southern, LLC  
Investigator: BAF  
 Do normal circumstances exist on the site?  
 Have vegetation, soils, or hydrology been disturbed?  
 Is the area a potential problem area?

Date: May 08, 2008  
County: Laurens  
State: SC  
Community ID: PFO1C  
Station ID:  
Plot ID: DP-2

**Vegetation**

Dominant Species	Common Name	% Cover	Indicator
<b>Herbaceous</b>			
X Ligustrum sinense	Privet, Chinese		FAC
X Carex ellottii	Sedge, Elliott's		OBL
<b>Shrub</b>			
X Ligustrum sinense	Privet, Chinese		FAC
<b>Tree</b>			
X Salix nigra	Willow, Black		OBL
X Liquidambar styraciflua	Gum, Sweet		FAC+
X Acer rubrum	Maple, Red		FAC
<b>Vine</b>			
X Lonicera japonica	Honeysuckle, Japanese		FAC

% Species that are OBL, FACW, or FAC (except FAC-): 88 Cowardin Classification:

Remarks: Hydrophytic vegetation criteria was met.

**Hydrology**

Recorded Data (describe in remarks):  
 Stream, Lake, or Tidal Gauge  
 Aerial Photograph  
 Other (describe in remarks):

**Field Observations:**  
 Depth of Surface Water (in.): 1  
 Depth to Free Water in Pit (in.): 0  
 Depth to Saturated Soils (in.): 0

**Primary Wetland Hydrology Indicators:**  
 Inundated  
 Saturated in upper 12 inches  
 Water marks  
 Drift Dunes  
 Sediment deposits  
 Drainage patterns in wetlands

**Secondary Hydrology Indicators:**  
 Oxidized root channels  
 Water-stained leaves  
 Local soil survey data  
 FAC-Neutral test  
 Other (explain in remarks):

Remarks: Wetland hydrology criteria was met.

**Soils**

Depth (in.)	Hor.	Matrix Color	Mottles / 2nd Mottles Color	Abundance	Contrast	Texture, Structure, etc.
0-7	AP	2.5Y 6/2				Silt Loam
7-15	C1g	2.5Y 5/2				Sandy Clay Loam
15-27	C2g	10YR 6/2				Sandy Loam

**Hydric Soils Indicators:**  
 Histosol  
 Histic Epipedon  
 Sulfidic Odor  
 Probable Aquatic Moist Regime  
 Reducing Conditions  
 Gleyed or Low-Chroma Colors  
 Concretions  
 High Organic % in Surface Layer  
 Organic Streaking  
 Listed on Local Hydric Soils List  
 Listed on National Hydric Soils List  
 Other (explain in remarks):

Unit Name: Entree  
 Drainage Class: Poorly Drained  
 Taxonomy: Aeric Fluvaquents  
 Field Observations match map

Remarks: Hydric soil criteria was met.

**Wetland Determination**

Hydrophytic Vegetation Present  
 Hydric Soils Present  
 Wetland Hydrology Present  
 This Data Point is a Wetland

Remarks: Jurisdictional wetland criteria was met.

DHEC - 2001

**Data Form**  
**Routine Wetland Determination**

Job Number: 00971-06047  
 City: Gray Corp  
 Wetland Data Point: Upland

Project/Site: Laurens C & D Landfill  
 Applicant/Owner: MFR Southern, LLC  
 Investigator: BAF  
 Do abnormal circumstances exist on the site?  
 Have vegetation, soils, or hydrology been disturbed?  
 Is the area a potential problem area?

Date: May 09, 2008  
 County: Laurens  
 State: SC  
 Community ID: Abandoned pasture  
 Station ID:  
 Plot ID: DP-3

**Vegetation**

Dominant Species	Common Name	% Cover	Indicator
<i>Rubus battifolius</i>	Blackberry		FAC
<i>Eupatorium capillifolium</i>	Thoroughwort, Small Dog-Fennel		FACU
<i>Andropogon virginicus</i>	Broom-Sedge		FAC

% Species that are OBL, FACW, or FAC (except FAC-): 33 Cowardin Classification:

Remarks:  
 Hydrophytic vegetation criteria was not met

**Hydrology**

Recorded Data (describe in remarks)	Primary Wetland Hydrology Indicators	Secondary Hydrology Indicators
<input type="checkbox"/> Stream, Lake, or Tidal Gage	<input type="checkbox"/> Inundated	<input type="checkbox"/> Oxidized root channels
<input type="checkbox"/> Aerial Photograph	<input type="checkbox"/> Saturated in upper 12 inches	<input type="checkbox"/> Water-stained leaves
<input type="checkbox"/> Other (describe in remarks)	<input type="checkbox"/> Water marks	<input type="checkbox"/> Local soil survey data
	<input type="checkbox"/> Crust lines	<input type="checkbox"/> FAC-Neutral test
	<input type="checkbox"/> Sediment deposits	<input type="checkbox"/> Other (explain in remarks)
	<input type="checkbox"/> Drainage patterns in wetlands	

Field Observations:  
 Depth of Surface Water (in.): n/a  
 Depth to Free Water in Pit (in.): n/a  
 Depth to Saturated Soils (in.): >48

Remarks:  
 Hydrology criteria not met

**Soils**

Depth (in.)	Hor.	Matrix Color	Mottle / 2nd Mottle Color	Abundance	Contrast	Texture, Structure, etc.
0-5	Ap	10YR 5/3				Sandy Loam
5-7	B1t	5YR 5/3				Sandy Clay Loam
7-21	B2t	2.5YR 4/3				clay
21-30	B2t	2.5YR 4/3				clay

**Hydro Soils Indicators**

<input type="checkbox"/> Histic	<input type="checkbox"/> Concretions
<input type="checkbox"/> Histic Epipedon	<input type="checkbox"/> High Organic % in Surface Layer
<input type="checkbox"/> Surface Color	<input type="checkbox"/> Organic Strengthening
<input type="checkbox"/> Probable Aquatic Moist Regime	<input type="checkbox"/> Listed on Local Hydro Soils List
<input type="checkbox"/> Reducing Conditions	<input type="checkbox"/> Listed on National Hydroic Soils List
<input type="checkbox"/> Clays or Low-Chrome Colors	<input type="checkbox"/> Other (explain in remarks)

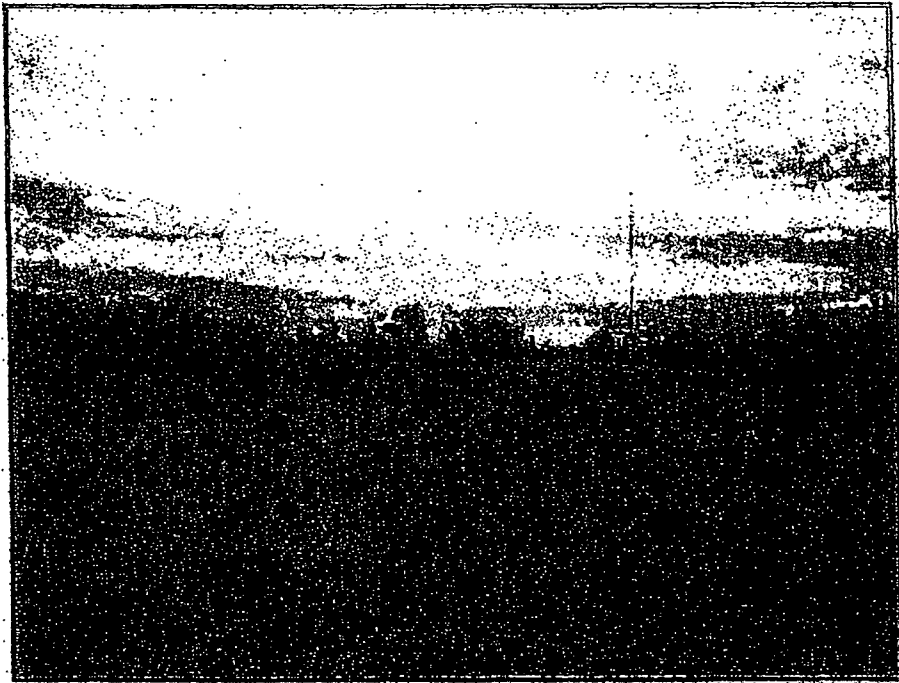
Unit Name: Cecil  
 Drainage Class: Well Drained  
 Taxonomy: Typic Hapludults  
 Field Observations match map

Remarks:  
 Hydro soil criteria was not met

**Wetland Determination**

Hydrophytic Vegetation Present  
 Hydroic Soils Present  
 Wetland Hydrology Present  
 This Data Point is a Wetland

Remarks:  
 Jurisdictional wetland criteria was not met



View of abandoned pasture.



View of upland hardwoods.

DHEC - 2003



View of wetland located in northern portion of site.



View of wetland (Data Point 2).

# Exhibit 5



C. Earl Hunter, Commissioner  
*Promoting and protecting the health of the public and the environment.*

Bureau of Land and Waste Management  
**MEMORANDUM**

DATE: July 18, 2008

TO: Concerned Citizens

FROM: Kent M. Coleman, P.G. Director *KMC*  
 Division of Mining and Solid Waste Management  
 Bureau of Land and Waste Management

SUBJECT: **Class 2 Solid Waste Landfill Permit**  
**Permit Issuance for Highway 92 C&D Landfill or Reprocessing Center**  
**Permit No. LF2-002**  
**Laurens County**

After careful review of information submitted by MRR Highway 92, LLC (the Applicant), the South Carolina Department of Health and Environmental Control (the Department) has approved the application for a new Class 2 landfill (previously Construction, Demolition and Land-Clearing Debris (C&D) landfill). The landfill is located on Choice Road off Highway 92 in Gray Court, South Carolina, Laurens County, SC. The approved Permit and a Staff Decision Summary Report have been enclosed for your information. The Summary Report addresses comments received during the public comment period for the proposed landfill.

This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person. This decision may be appealed by complying with the requirements described in the attached *Notice of Appeal Procedure*, provided as a courtesy by the Department.

If you have any questions regarding the solid waste permit, you may call Joan F. Litton at (803) 896-4264.

KMC/TME/tme

Enclosures

DHEC - 1136



C. Earl Hunter, Commissioner

*Promoting and protecting the health of the public and the environment.*

### Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the Department decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.
2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3393:

Clerk of the Board  
SC DHEC  
2600 Bull Street  
Columbia, SC 29201

3. The request for final review should include the following:
  - a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
  - b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
  - c. a copy of the Department's decision or action under review
4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the Department decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.
5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.
6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.
7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**

October 31, 2006

DHEC - 1137

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • [www.scdhec.gov](http://www.scdhec.gov)

## STAFF DECISION SUMMARY REPORT

July 18, 2008

### **Approval of Class 2 Solid Waste Landfill (previously C&D) Application Issuance of Permit for the Highway 92 C&D Landfill and Reprocessing Center**

This summary report addresses the South Carolina Department of Health and Environmental Control's (the Department's) decision to issue a Class 2 Landfill permit for the proposed Highway 92 C&D Landfill owned and operated by MRR Southern, LLC (Applicant). The site is located on Choice Road off Highway 92, near Gray Court, Laurens County, South Carolina. This summary report provides responses to comments received at the public hearing and throughout the public comment period.

#### SOLID WASTE MANAGEMENT

The principal law governing solid waste management in this state is the South Carolina Solid Waste Policy and Management Act of 1991 (Act) [44-96-10]. One of the main purposes of the Act is to ensure those activities associated with solid waste management are executed in a manner adequate to protect human health, safety and welfare of the environment.

The passage of the Act acknowledged a growing statewide concern about the generation, management, and disposal of solid waste. DHEC was given the responsibility to develop regulations establishing minimum standards for solid waste management facilities. Regulation 61-107.11, *Solid Waste Management: Construction, Demolition and Land-Clearing Debris Landfills* became effective on April 24, 1998, and was the applicable regulation when the Department on June 27, 2006 received the permit application. Regulation 61-107.11 was replaced by Regulation 61-107.19, *Solid Waste Management: Solid Waste Landfills & Structural Fill*, on May 23, 2008. This regulation outlines the requirements for permitting the design, construction, operation, maintenance, and closure of landfills. Please see the following web page [http://www.scdhec.gov/environment/lwm/html/solidwaste\\_new\\_regulation.htm](http://www.scdhec.gov/environment/lwm/html/solidwaste_new_regulation.htm) for a more complete description and for a copy of the new regulation.

In reaching its decision on the permit application, the Solid Waste Permitting Section reviewed all information submitted in the application, supplemental information submitted, and public comments. The Department has reviewed the application with respect to the requirements of the Act and Regulation 61-107.19. The applicant has met the applicable requirements and a permit is being issued.

## PUBLIC PARTICIPATION AND NOTICE

The following is a summary of public involvement that occurred during the Department's consideration of this application:

- o On April 11, 2007, the original application package was advertised to the public in *The Laurens County Advertiser* newspaper of Laurens County.
- o On May 29, 2007, an informational meeting was held for concerned citizens in the auditorium of the Gray Court – Owings Middle School, Gray Court, SC.
- o On August 10, 2007, a meeting was held with EAGLE representatives in Columbia, SC at the SC DHEC EQC Offices.
- o On January 15, 2008, a meeting was held with EAGLE representatives in Columbia, SC at the SC DHEC EQC Offices.
- o On February 14, 2008, notice of a public hearing was advertised to the public in *The Greenville News*.
- o On February 20, 2008, notice of a public hearing was advertised to the public in *The Laurens County Advertiser*.
- o On March 13, 2008, a public hearing was held to receive comments on the proposed Highway 92 C&D Landfill in the auditorium of the Gray Court – Owings Middle School, Gray Court, SC.
- o The final permit decision was mailed to concerned citizens and was advertised to the public in *The Laurens County Advertiser* newspaper of Laurens County.

## NEED FOR LANDFILL

The Department addresses the need for landfills in South Carolina under Regulation 61-107.17, *Demonstration of Need (DON)*. The DON regulation allows for up to two (2) long-term, commercial C&D landfills within a ten (10) mile radius of any given location within South Carolina. At the time of the February 21, 2006 DON request, there was only one long-term, commercial C&D landfill located within the ten-mile radius of the proposed site, (Curry Lake C&D Landfill). Therefore, per Regulation 61-107.17, the permit applicant was able to demonstrate need for a new C&D landfill at the proposed landfill site.

## SOLID WASTE MANAGEMENT PLAN

The Department reviewed the Laurens County Solid Waste Management Plan (dated 1997) and on March 14, 2006 issued a preliminary determination of consistency. On July 17, 2006, Laurens County passed Ordinance No. 622 to change the Laurens County Solid Waste Management Plan. On July 26, 2006, a revised Consistency Determination was made, with consideration of the amended Laurens County Solid Waste Management Plan, and the permit was denied due to inconsistency with the Plan. The Applicant appealed the permit denial to the Administrative Law Court. On February 13, 2007, the Laurens County Department of Public Works passed Ordinance No. 635, which repealed Ordinance No. 622. The Highway 92 C&D Landfill is consistent with the current Laurens County Solid Waste Management Plan.

### TRAFFIC CONCERNS

The current solid waste law and regulations do not grant the Department the authority to regulate traffic on public roads. Jurisdictional authority over the setting and enforcement of weight limits, speed limits, traffic patterns, encroachments, etc. is the responsibility of other state and local entities.

### ACCESS TO ALL-WEATHER ROADS

Regulation 61-107.19- Part IV, Section C.20. states that C&D landfills are to be located adjacent to or have direct access to roads of all-weather construction and capable of withstanding anticipated load limits. The Highway 92 C&D Landfill is located off Choice Road. The Department considers this sufficient to satisfy the requirement of Section C.20.

### GROUNDWATER QUALITY

Class 2 Landfills are required to meet all the design and operational requirements set forth in Regulation 61-107.19 - Part IV. The landfill regulations were promulgated as a means of providing environmentally sound disposal options for those inert construction wastes and demolition wastes listed in Appendix I of R.61-107.19. As such, these landfills are required to monitor groundwater, and are required to design the landfill to achieve a required two (2) feet separation from the seasonal high groundwater table (Regulation 61-107.19 - Part IV.D.1). The permit has groundwater monitoring and reporting requirements. Five (5) groundwater-monitoring wells are proposed with one (1) upgradient and four (4) down gradient locations. The monitoring wells will be monitored semiannually for the constituents in Appendix III of the Regulation R.61-107.19 with the results reported to the Department.

### GROUNDWATER DEPTH

The elevations of the seasonal high ground water table were taken from the BP Barber & Associates, 2006 Piezometer Installation Report, June 2006 and "Construction, Demolition, & Land-Clearing Debris Landfill Engineering Report - June 2006 (Revised October 2007); Engineering Drawings (File No. 33, 623-B79, dated July 2007); see also C23 & C24 (cross-sections). Based on this information the distance from the base of the proposed landfill is greater than 5 feet from the groundwater surface as required by R.61-107.19 Part IV.D.1.

### NOISE

The Department has no regulatory authority regarding noise produced by normal landfill operations. Local zoning and land-use planning may be used to address such concerns. The Highway 92 C&D Landfill and Reprocessing Center operating hours are between 7:00 AM and 6:00 PM Monday through Friday and 7:00AM and 12:00 PM Saturday. The facility will be closed on the following holidays: New Years, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

### COMPLIANCE HISTORY

The Department reviewed the compliance and enforcement history of the Applicant and its responsible parties as listed on the disclosure statement. Based on the Department review, it appears that the Applicant has no documented or continuing history of violations of state or federal environmental laws in accordance with the Act (44-96-300).

### STORMWATER QUALITY

The application for coverage under the NPDES General Permit for Stormwater Discharges From Large and Small Construction Activities (SCR100000) was received by the Department on August 9, 2007. The application meets the criteria specified in the South Carolina Standards for Stormwater Management and Sediment Reduction, Regulation 72-300 et seq. and SCR100000. Based on the information provided, the Department does not foresee any reasonable potential for this site to cause or contribute to violations of water quality standards during the construction phase. Prior to operation, Class 2 Landfills are also required to have an Industrial Stormwater Permit. The Department has not received an application for an Industrial Stormwater Permit at this time.

### PROPERTY VALUES / ECONOMIC DEVELOPMENT

The Act and SC Regulation 61-107.19 do not provide for consideration of impacts to surrounding property values in the Department's review of a permit application.

### BUFFERS

Regulation 61-107.19, Part IV B.1 a. & g. requires that the boundary of the fill area not be located within 1,000 feet of any residence, school, day-care center, church, hospital, or publicly owned recreational park area and not be located within 100 feet of any drinking water well. The Applicant's submittal for the landfill meets all regulatory requirements for buffers.

### FINANCIAL ASSURANCE

Class 2 Landfills are required to have financial assurance as set forth in Regulation 61-107.19 – Part I.E to ensure satisfactory closure and post-closure care of the landfill. This landfill is to be built in seven (7) stages or cells. The financial assurance is calculated based on 12 acres of the site being open at one time. As new cells are constructed, the closed cells are inspected and certified by a South Carolina Professional Engineer as being closed in accordance with final cover requirements. The financial assurance is calculated to be \$300,000 for closure. The permit contains a requirement for the Applicant to submit a revised cost estimate and financial mechanism to cover post-closure care.

### FLOODING CONCERNS

Class 2 landfills are not allowed to restrict the flow of the 100-year flood. The 100-year floodplain is determined using maps developed by the Federal Emergency Management Agency (FEMA). The Flood Insurance Rate Map for Laurens County, December 15, 1990, Map Item ID 4501220075B is the current map for this area. The landfill base grade elevations range from 672 feet Mean Sea Level (MSL) to 758 feet MSL. The Department has determined that the 100-year flood will not be restricted.

### WETLANDS

Regulation 61-107.19, Part IV B.1 c. requires a Class 2 landfill to be in compliance with applicable requirements concerning wetlands imposed by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency and the Department. The applicant conducted a wetland delineation and the U.S. Army Corps of Engineers verified that the landfill footprint does not impact jurisdictional wetlands.

### DEBRIS AND LITTER

Comments were received expressing concerns over debris and litter on site and on Choice Road and Highway 92. Trucks approaching the landfill site must have loads covered, or be in violation of state litter laws. The Applicant will use a water truck to control blowing dust from the working face of the landfill. The practice of using a water truck in addition to establishing vegetation on non-operational slopes will reduce the potential for wind-blown dust and litter. On-site debris and litter control has been addressed by the Applicant to the satisfaction of the Department in the permit application.

### ZONING LAND USE PLANNING

Laurens County does not have zoning or land-use plans enacted in the County.

### DEED RESTRICTIONS AND EASEMENTS

The Department was provided with a copy of easement information related to the construction of Lake Martin. The original easement was between Kimberly Clark Corporation and the Beaverdam-Warrior Creeks Watershed Conservation District of Laurens County, South Carolina. The Department has determined that the easement for construction of Lake Martin does not restrict the construction of the landfill.

## LAKE MARTIN

Regulation 61-107.19, Part IV B.1 c. requires a Class 2 landfill to be in compliance with applicable requirements concerning wetlands imposed by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency and the Department. The applicant conducted a wetland delineation and the U.S. Army Corps of Engineers verified that the landfill footprint does not impact jurisdictional wetlands. The application meets the criteria specified in the South Carolina Standards for Stormwater Management and Sediment Reduction, Regulation 72-300 et seq. and SCR100000. Based on the information provided, the Department does not foresee any reasonable potential for this site to cause or contribute to violations of water quality standards during the construction phase. Prior to operation, Class 2 Landfills are also required to have an Industrial Stormwater Permit. The Industrial Stormwater permit will include procedures for protection of adjacent surface water during operation of the landfill. By protecting wetlands and streams adjacent to the planned facility, which feed into Lake Martin, the lake will in turn be protected.

## OTHER

In closing, many of the questions from the public hearing referenced other issues at Highway 92 C&D Landfill not specifically related to the proposed landfill. Although the purpose of the March 13 public hearing was to hear comments on the proposed Class 2 Landfill, the Department's Solid Waste Permitting Section reviewed all comments and questions received and notified other areas within the Department of those specific concerns.

# Exhibit 6

**RECEIVED**

JUL 20 2006  
OFFICE OF SOLID WASTE  
REDUCTION & RECYCLING  
BLWM

County of Laurens  
Department of Public Works  
Post Office Box 238  
Laurens, South Carolina 29360-0238  
Telephone (864) 984-6812  
Fax (864) 984-3726

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**Facsimile Transmittal**

To: Jana White, SC DHEC

Fax: 803-896-4001

From: Scott Holland

Date: 7-18-06

Fax: 864-984-3726

Pages to follow: 5

Additional Information:

Jana:

I have enclosed copies of both Ordinance #526 passed in 2001 and Ordinance #622, that had third and final reading at last night's (7-17-06) County Council meeting. Ordinance #521 changed the language of section II A 3, b reducing the host fee from \$3.00 per ton to \$0.50 per ton and added section II A 3, d dealing with penalties for failure to comply.

Ordinance #622 as you are aware reduces the number of allowable privately owned, long-term Construction and Demolition Debris landfills from three to one.

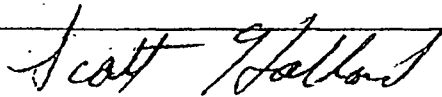
These two amendments should be added to the County's Solid Waste Plan on file with SC DHEC. All other aspects of the plan remain unchanged. I

DHEC - 1861

will mail you a hard copy of this correspondence in today's mail as well. If you need anything further from us at this time please let me know.

Sincerely,

---



Scott Holland, Dir.

AN ORDINANCE TO AMEND SECTION II  
OF THE LAURENS COUNTY SOLID WASTE MANAGEMENT PLAN

~~WHEREAS, Laurens County Council on January 28, 1997 enacted Ordinance 425 which~~  
established, among other things, the Solid Waste Management Plan for Laurens County, South  
Carolina; and

WHEREAS, by the provisions therein and pursuant to the powers vested in the Laurens  
County Council, certain amendments are necessary for the continued enforcement of the provisions of  
said Ordinance;

NOW, THEREFORE, Laurens County Council, pursuant to the authority granted by the  
Constitution of the State of South Carolina and the General Assembly of the State, hereby amends  
Ordinance 425A as set forth herein:

BE IT ORDAINED BY THE LAURENS COUNTY COUNCIL:

1. PURPOSES: It is the stated purpose of this Ordinance to protect the general health, safety  
and welfare of the citizens of Laurens County, South Carolina, and to set forth specific  
elements of the solid waste management plan and the enforcement therein contained.
2. AUTHORITY: This amending Ordinance together with the original Ordinance 425, is  
adopted under the authority and process granted by the General Assembly of the State of  
South Carolina and the Constitution of the State. Jurisdiction should be exclusively within  
Laurens County.
3. APPLICABILITY: The provisions of the amending Ordinance, together with the original  
Ordinance 425 shall apply to all unincorporated areas of Laurens County, South Carolina,  
and those municipalities which, by written agreement, contract to have these provisions  
administered within their municipal limits.
4. LANGUAGE: The language used in the amendment, being consistent with the language  
used in the original Ordinance 425, if used in the present tense, shall include the future tense.  
Words used in the singular shall include the plural, and the plural the singular, unless,  
however, the context clearly indicates the contrary. The use of the word "shall" is  
mandatory and the word "may" is permissive.
5. AMENDMENT AS TO HOST FEE: The following language shall be substituted and  
replace the language now contained in Section II A 3) b): The new language of subsection b)  
shall read as follows: *"A Host Fee shall be imposed on all privately owned long-term  
Construction, Demolition, and Land Clearing Debris Landfills in Laurens County. The Host  
Fee shall be charged at the rate of fifty cents (\$.50) per ton for each ton of waste received by  
the facility for disposal. Payment of the Host Fee shall be made, in full, and received on or*

ORDINANCE #526  
AMENDING .....  
SOLID WASTE MANAGEMENT PLAN  
(ORD #425)

DHEC - 1863

before the fifteenth (15<sup>th</sup>) of the month next following (ie. January waste received shall be reported and the Host Fee paid by February 15<sup>th</sup>). Any facility operating under Section II A 3 of this Ordinance, shall remit the Host Fee together with and accompanied by a full and complete monthly report to Laurens County. This monthly report shall delineate and specify (1) all types of waste received; (2) the generator of the waste, including the type, amount, and date of the waste delivery, and (3) the origin of the waste received. This monthly report shall be submitted to the office of the Laurens County Public Works Director or his designee, and/or received by said agency on or before the fifteenth (15<sup>th</sup>) of the month next following." The language set forth herein is intended to and does replace, in its entirety, the existing language of subsection b).

6. **AMENDMENT AS TO ADMINISTRATIVE PENALTIES:** The following language shall be added to Section II A 3): A new subsection d.) is added to read as follows: "*d.) The failure of any facility owner, licensee, or operator under Section II A 3 of this Ordinance to timely file its reports or fail to timely remit the Host Fee due and payable, shall result in prima facie violation of the Ordinance. In either instance, the failure to report or the failure to remit within the time set forth, the facility, owner, operator, licensee, and/or its agent shall be assessed an administrative penalty as follows: For the first violation of reporting or remittance, a penalty of \$500.00 shall be assessed for each violation. For a second violation of reporting or remittance, a penalty of \$1,000.00 shall be assessed for each violation. A third (or more) violation shall be assessed a penalty of \$2,000.00 for each violation. A failure to remit the Host Fee in full shall be considered a separate violation, and a failure to submit the monthly report as specified hereinabove shall be considered a separate violation. Each day such violation continues shall be considered a separate violation. The facility, its owner, operator, licensee, and/or agent shall be notified by certified mail at the address of the landfill location (or as designated by the owner) of the nature of the violation, together with the amount of the administrative penalty. Failure to pay the Host Fee due or any penalty assessed, shall constitute a lien against the facility and the land if not paid in full by the thirtieth (30<sup>th</sup>) day following written notice of assessment of the penalty by the County. The County may pursue such violations through any action for civil remedies available to it in the courts of this State.*"
7. **REAFFIRMATION:** In all other respects except as amended, changed, altered or modified herein, the original provisions of Ordinance 425 are hereby reaffirmed.
8. **EFFECTIVE DATE:** The effective date of the provisions, modifications, amendments, and changes herein contained shall be January 1, 2001. The provisions set forth in paragraph 5 above (Host Fee) shall remain in full force and effect for a minimum period of forty-eight (48) months from January 1, 2001. Adjustments or modifications of the Host Fee, if any, will become effective not sooner than twelve (12) months following the effective date of any subsequent amendment and the Host Fee, if adjusted, shall not exceed seventy-five cents (\$.75) per ton, through January 1, 2009.
9. **SEVERABILITY:** Should any paragraph, clause, phrase, or provision of this Ordinance or of the original Ordinance be judged invalid or held unconstitutional by a Court of corporate jurisdiction, such declaration shall not effect the validity of any other section of the Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional. All meanings, enforcement and interpretations shall be pursuant to the laws of the State of South Carolina.

ORDINANCE #526  
AMENDING .....  
SOLID WASTE MANAGEMENT PLAN  
(ORD #425)

DHEC - 1864

10. LAWS, REGULATIONS, ORDINANCES, AND FUTURE AMENDMENTS: Whenever the provisions of this Ordinance impose more restrictive standards than are required in or under any other law, regulation, or ordinance, the requirements herein contained shall prevail. Whenever the provisions of any other law, regulation, or ordinance require more restrictive standards than are required herein, the requirements of such law, regulation or ordinance shall prevail. This Ordinance may be amended in the same manner as prescribed by law for its original adoption.

BE IT SO ORDAINED by Laurens County Council

Attested to:

Betty C. Walsh  
BETTY C. WALSH,  
Clerk to Laurens County Council  
Laurens, South Carolina

First Reading: January 23, 2001  
Second Reading: February 13, 2001  
Public Hearing: March 13, 2001  
Third Reading: March 13, 2001

LAURENS COUNTY COUNCIL

Joe V. Edwards Jr  
Joe V. Edwards, Chairman

Michael A. Pitts  
Michael A. Pitts, Vice Chairman

Diane B. Anderson  
Diane B. Anderson

James A. Coleman  
James A. Coleman

Edward A. McDaniel  
Edward A. McDaniel

Ernest G. Trammell  
Ernest G. Trammell

Jay F. Weisner  
Jay F. Weisner

ORDINANCE #526  
AMENDING .....  
SOLID WASTE MANAGEMENT PLAN  
(ORD #425)

DHEC - 1865

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LAURENS )

ORDINANCE #622

**AN ORDINANCE TO AMEND SECTION II  
OF THE LAURENS COUNTY SOLID WASTE MANAGEMENT PLAN**

WHEREAS, Laurens County Council on January 28, 1997 enacted Ordinance 425 (amended by Ordinance #526, March 13, 2001) which established, among other things, the Solid Waste Management Plan for Laurens County, South Carolina; and

WHEREAS, by the provisions therein and pursuant to the powers vested in the Laurens County Council, certain amendments are necessary for the continued enforcement and application of the provisions of said Ordinance;

NOW, THEREFORE, Laurens County Council, pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State, hereby amends Ordinance 425 as set forth herein:

**BE IT ORDAINED BY THE LAURENS COUNTY COUNCIL:**

1. **PURPOSES:** It is the stated purpose of this Ordinance to protect the general health, safety and welfare of the citizens of Laurens County, South Carolina, and to set forth specific elements of the solid waste management plan and the enforcement therein contained.
2. **AUTHORITY:** This amending Ordinance together with the original Ordinance 425 is adopted under the authority and process granted by the General Assembly of the State of South Carolina and the Constitution of the State. Jurisdiction should be exclusively within Laurens County.
3. **APPLICABILITY:** The provisions of the amending Ordinance, together with the original Ordinance 425 shall apply to all unincorporated areas of Laurens County, South Carolina, and those municipalities which, by written agreement, contract to have these provisions administered within their municipal limits.
4. **LANGUAGE:** The language used in the amendment, being consistent with the language used in the original Ordinance 425, if used in the present tense, shall include the future tense. Words used in the singular shall include the plural, and the plural the singular, unless, however, the context clearly indicates the contrary. The use of the word "shall" is mandatory and the word "may" is permissive.
5. **AMENDMENT AS TO SECTION II A:** The following language shall be substituted and replace the language now contained in Section II A 3.) a.): The new language of subsection a.) shall read as follows:

*"No more than one (1) privately owned and operated, long-term Construction and Demolition Debris landfills will be allowed to operate in Laurens County at any given time."*

The language set forth herein is intended to and does replace, in its entirety, the existing language of subsection a.).


ORDINANCE #622  
AMENDING .....  
SOLID WASTE MANAGEMENT PLAN  
(ORD #425 / #526)

DHEC - 1866

6. REAFFIRMATION: In all other respects except as amended, changed, altered or modified herein, the original provisions of Ordinance 425, as amended by Ordinance 526, are hereby reaffirmed.
7. EFFECTIVE DATE: The effective date of the provisions, modifications, amendments, and changes herein contained shall be June 27, 2006.
8. SEVERABILITY: Should any paragraph, clause, phrase, or provision of this Ordinance or of the original Ordinance or amended Ordinance be judged invalid or held unconstitutional by a Court of competent jurisdiction, such declaration shall not effect the validity of any other section of the Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional. All meanings, enforcement and interpretations shall be pursuant to the laws of the State of South Carolina.
9. LAWS, REGULATIONS, ORDINANCES, AND FUTURE AMENDMENTS: Whenever the provisions of this Ordinance impose more restrictive standards than are required in or under any other law, regulation, or ordinance, the requirements herein contained shall prevail. Whenever the provisions of any other law, regulation, or ordinance require more restrictive standards than are required herein, the requirements of such law, regulation or ordinance shall prevail. This Ordinance may be amended in the same manner as prescribed by law for its original adoption.

BE IT SO ORDAINED by Laurens County Council.

LAURENS COUNTY COUNCIL:


  
James A. Coleman, Chairman

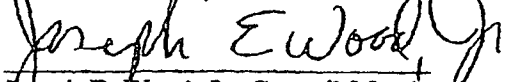
- OPPOSED -  
Diane B. Anderson, Vice Chair

- OPPOSED -  
Edward A. McDaniel, Council Member


  
Ted G. Nash, Council Member


  
Ernest G. Trammell, Council Member

  
David E. Tribble, Jr. Council Member

  
Joseph E. Wood, Jr. Council Member

ATTEST:

  
Ernest B. Segars, Administrator  
Laurens County Council  
Laurens County, South Carolina

  
Betty C. Walsh, Clerk  
Laurens County Council  
Laurens County, South Carolina

First Reading: June 27, 2006  
Second Reading: June 30, 2006  
Public Hearing: July 17, 2006  
Third Reading: July 17, 2006

ORDINANCE #622  
AMENDING .....  
SOLID WASTE MANAGEMENT PLAN  
(ORD #425 / #526)

DHEC - 1867