

2012-212776

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From the Administrative Law Court

John D. McLeod, Administrative Law Judge

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S.C. Supreme Court

South Carolina Court of Appeals
Opinion No. 4975, filed May 16, 2012

Greeneagle, Inc. Petitioner

vs.

South Carolina Department of Health and Environmental Control Respondent.

**APPENDIX FOR PETITION FOR WRIT OF CERTIORARI
VOLUME I OF II**

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

AUG 04 2011

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Case No. 08-ALJ-07-0339-CC

Greeneagle, Inc. Appellant,

v.

South Carolina Department of Health and Environmental Control Respondent.

**RECORD ON APPEAL
VOLUME I OF II**

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greeneagle, Inc.,	)	Docket No: 08-ALJ-07-0339-CC
	)	
Petitioner,	)	
	)	
vs.	)	FINAL ORDER AND DECISION
	)	
South Carolina Department of Health and	)	
Environmental Control,	)	
	)	
Respondent.	)	

APPEARANCES:

Leon Harmon, Esquire	For Petitioner Greeneagle, Inc.
Etta R. Williams, Esquire	For Respondent South Carolina Department of Health and Environmental Control

STATEMENT OF CASE

This matter came before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-310 et seq. and the Solid Waste Policy and Management Act, S.C. Code Ann. § 44-96-10 et seq., ("Act") for a contested case hearing regarding Petitioner Greeneagle, Inc.'s ("Greeneagle") objection to the South Carolina Department of Health and Environmental Control's ("DHEC") denial of a permit to allow Greeneagle to construct, in York County, a Class Two landfill ("proposed landfill"), a type of landfill formerly known as a construction, demolition, and land-clearing debris landfill. DHEC issued a Permit Denial to Greeneagle, via certified mail, on May 19, 2008, based on inconsistency with the 2007 York County Solid Waste Management Plan (YC SWMP).

On June 3, 2008, Greeneagle requested from the DHEC Board ("Board") a Final Review of the Permit Denial. On June 24, 2008, the Board decided not to conduct a Final Review Conference. Greeneagle then filed with the Administrative Law Court ("ALC"), on July 25, 2008, a *Notice of Request for Contested Case Hearing* in the matter. The ALC assigned the

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SC ADMIN. LAW COURT

matter to the Honorable Ralph King Anderson, III, ALC Judge, on July 29, 2008, and the matter was reassigned to the Honorable John D. McLeod on August 19, 2009.

This matter was heard by Judge McLeod on April 19 and 20, 2010, and after considering the evidence and arguments of the parties, as well as proposed orders, this Court hereby finds as follows:

FINDINGS OF FACT

Obtaining a Demonstration of Need (DON) approval is the first step in the process of getting a landfill permit. Pursuant to R.61-107.17, DHEC issued a DON Approval to Greeneagle by letter dated April 25, 2006 addressed to James William Frost of Alliance Engineers, the firm which had been hired by Greeneagle. The letter stated that the approval may be terminated for failure to pursue a permit, failure to pursue an application or denial of an application, failure to meet proper zoning requirements and, pertinent to the case at hand, if “... (D) **the Department determines that the proposed facility is not consistent with the host county or region solid waste management plan.**” Thus, the DON Approval is not an assurance of a permit approval.

DON might be better understood as an “Approval of Location.” In order to demonstrate “need” according to the DON regulation, the applicant must submit the location of the proposed facility and the proposed tonnage rate. DHEC looks to see if there are two commercial facilities within the planning area, and if there are, then a third facility cannot be placed in that area. If the location criteria are met, the tonnage is then calculated based on the waste generated within the planning area.

The Solid Waste Policy and Management Act (“Act”) does not define the term “need.” S.C. Code Ann. § 44-96-10 *et seq.* (2002 & Supp. 2009). There is no specific term in the regulations promulgated pursuant to the Act that defines “need.” The DON Approval for Greeneagle’s proposed landfill was made by DHEC pursuant to S.C. Code Ann. Regs. 61-107.17 and DHEC did not rely on anything in the 2007 YC SWMP to make the DON determination.

Consistency with the state and local solid waste management plans and the DON regulation are two separate issues. “Need” within a solid waste management plan is separate from demonstration of need in the DON regulation. The DON regulation does not look at “need” in terms of capacity, but looks at “need” in terms of location.

Early in the process, Greeneagle was granted a special exception for zoning for its landfill.

After the issuance of the DON, DHEC issued to Greeneagle a Preliminary Consistency Determination based on consistency with the 1994 Catawba Regional Solid Waste Management Plan in which York County was then a participant. This was done by letter dated May 8, 2006, directed to Mr. Frost of Alliance Engineers. The letter put Greeneagle on notice that a final consistency determination could not be made until the permit sought by Greeneagle was ready for issuance. The letter also advised that DHEC was aware that York County was preparing a York County Solid Waste Management Plan (YC SWMP) and if, during the permitting process, the Catawba Regional plan was revised or replaced, that DHEC would review the newest plan to make the final consistency determination. The Preliminary Consistency Determination was made as a courtesy to Greeneagle in order that it would know its status at that point in time and whether it should proceed in the matter. The Act does not address the number of consistency determinations that are to be issued by DHEC. The DON and the Preliminary Consistency Determination were made at different times and were based on different criteria. The DON was based on S.C. Code Regs. 61-107.17 while the Preliminary Consistency Determination was based on a review of the 1994 Catawba Regional Solid Waste Management Plan. The two reviews were not merged or intermingled.

As indicated in the Preliminary Consistency Determination, York County was indeed preparing its own solid waste management plan and had been doing so since the year 2000. This plan was known as the 2007 York County Solid Waste Management Plan (YC SWMP) and was enacted as part of Ordinance 207. Ordinance 207 was signed by the Chairman of the York County Council and the County Manager and on the page where their signatures appear there is the notation:

1st reading: August 14, 2006
2nd reading: October 16, 2006
Public hearing: February 28, 2007
3rd reading and adoption: February 28, 2007

DHEC reviewed the foregoing ordinance and considered it properly adopted. The 2007 YC SWMP divided York County into four quadrants or service areas. The YC SWMP contained the following wording relative to the Northwestern Service Area where Greeneagle proposed to build its landfill: "The existing landfills currently meet the C&D needs of this service area;

therefore, no new landfills are needed for the service area." The YC SWMP found that no new landfills were needed in any of the four service areas.

The 2007 YC SWMP allowed for the expansion and replacement of currently permitted Part 2 and Part 4 construction and demolition and land clearing landfills within their respective service areas when their permitted capacity was exhausted. The 2007 YC SWMP also provides that "if a Part II or Part IV C&D landfill in the County ceases to operate, a new landfill with equal capacity to that being closed, will be needed as a replacement for the closed landfill subject to the provisions of this Plan." The 2007 YC SWMP also provides:

York County shall cause a study and analysis to be performed to determine the need for additional privately-operated landfills in the county and following such study the York County Council shall determine the need for new or additional privately-operated landfills in the County and amend this Plan based upon its determination of need for privately operated landfills in the County.

Finally, the Conclusion of the Plan states:

Currently in York County, 122,000 tons of C & D disposal capacity is permitted and based on waste generation projections will adequately serve the County through the year 2011. Prior to year 2012, the York County Landfill will need to expand its landfill capacity in order to provide sufficient disposal capacity in future years. As development and growth continues, the County will need to closely monitor waste disposal rates that are being generated in the County and amend the Plan as necessary to provide for the future needs of C & D waste.

These planning provisions clearly embody the spirit and intent of the Act and stand in stark contrast to the peremptory statement in the Anderson County Ordinance in *Wasteco Inc., Greenpointe C&D Landfill v. SCDHEC*, 06-ALJ-07-0421-CC (S.C. Admin Law Ct. June 28, 2007) to the effect that "no new or replacement Part IV C&D landfills are permissible (emphasis supplied) in Anderson County."

In March 2007, DHEC was provided with a copy of the 2007 YC SWMP and that is the plan that was reviewed for the final consistency determination for Greeneagle's proposed landfill. On January 25, 2008, and more than a year after the enactment of the YC SWMP (Ordinance 207), DHEC received a permit application from Greeneagle for its proposed landfill, which was to be located at 2405 Quarry Road in York, South Carolina, York County. Greeneagle received a letter from DHEC dated January 30, 2008, stating that the proposed landfill application was administratively complete. After DHEC reviewed the 2007 YC SWMP,

it found that the proposed landfill was not consistent therewith and denied the landfill permit. DHEC issued a Permit Denial to Greeneagle, via certified mail, on May 19, 2008.

In conducting its review, DHEC reviewed Ordinance 207 and the county plan. The denial of consistency by DHEC in this case was based not on one thing but a combination of things. The fact that the YC SWMP found that no additional C&D landfills were needed in the northwest quadrant of the county was only part of the reason for denial of consistency in this case. Consistency was not determined on the basis of one sentence. The entire plan was reviewed. DHEC reviewed the 2007 YC SWMP in its entirety and reviewed the same to determine if York County had fulfilled its responsibilities for planning as required by the Act, and specifically if the County had done an analysis of the existing and new solid waste facilities, which will be needed to manage the solid waste generated within that county or region during the projected twenty-year period.

DHEC reviewed the 2007 YC SWMP and determined that York County could manage its current and future waste with the two private and one public facility that were already existent in the County, either with tonnage increases or expansions or with existing capacity. Statements in the 2007 YC SWMP that are in conflict with DHEC regulations were disregarded and not seen as binding on DHEC in regards to the consistency determination for Greeneagle. DHEC, after reviewing the 2007 YC SWMP in its totality, concluded that the County had met its responsibilities under the Act to plan for management of its solid waste needs and that the County had adequate landfill capacity to meet its needs.

The YC SWMP contains provisions that may not comport with the Act but also contains a severability clause that allows proper provisions to survive.

Marvin R. Taylor, owner and president of Greeneagle, was aware, for a number of reasons, that Greeneagle's permit application might not be approved, including but not limited to the conditional wording in both the DON Approval and the Preliminary Consistency Determination.

ISSUES

Was DHEC correct in its decision to deny Greeneagle's landfill permit application?

- a. Did the YC SWMP prohibit the issuance of a permit by DHEC?
- b. Was the YC SWMP preempted by the permitting provisions of the ACT?

- c. Was a second consistency determination proper and did it constitute an improper delegation of authority by DHEC to York County?
- d. Were the DON Approval and the Consistency Determinations combined or intermingled?
- e. Was the YC SWMP created by a valid Ordinance?
- f. Did Greeneagle, for any reason, acquire a vested right to the issuance of a landfill permit?
- g. Is the decision in *Wasteco Inc., Greenpointe C&D Landfill v. SCDHEC*, 06-ALJ-07-0421-CC (S.C. Admin Law Ct. June 28, 2007) controlling in the case at hand?
- h. Was DHEC's denial of the permit consistent with the decision in *Southeast Resource Recovery, Inc. v. SCDHEC, et al.*, 358 S.C. 402, 595 S.E.2d 468 (2004)?

CONCLUSIONS OF LAW

The provisions of the Act in issue here are:

Section 44-96-80. County or regional solid waste management plans; local government responsibilities; local Solid Waste Advisory Councils.

(A) Not later than fifteen months after the date on which the department submits its state solid waste management plan to the Governor and to the General Assembly, the governing body of each county, if the county intends to submit a single county plan, or the governing bodies of the counties in a region, if two or more counties intend to submit a regional plan, in cooperation with the local governments located in the county or region, shall prepare a solid waste management plan for the area within that county or region. Local governments within the county or region shall participate in the development of the county or regional plan and are required to be a part of the plan. This plan must provide for public participation and include, at a minimum, the following:

...
(3) an analysis of the existing and new solid waste facilities which will be needed to manage the solid waste generated within that county or region during the projected twenty-year period;

...
The foregoing is the statute that places responsibility on the county to analyze need.

§44-96-80(J) The governing body of a county has the responsibility and authority to provide for the operation of solid waste management facilities to meet the needs of all incorporated or unincorporated areas of the county.

§44-96-80(K) The governing body of a county is authorized to enact such ordinances as may be necessary to carry out its responsibilities under this

chapter; provided, however, that the governing body of a county may not enact an ordinance inconsistent with the state solid waste management plan, with any provision of this chapter, with any other applicable provision of state law, or with any regulation promulgated by the department providing for the protection of public health and safety or for protection of the environment. ...

Section 44-96-290. Permitting.

...

§ 44-96-290 (E) No 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...The department shall promulgate regulations to implement this section.

The following regulation was promulgated in obedience to §44-96-290 (E)

61-107.17 Solid Waste Management: Demonstration-of-Need.

...

(D) Determining Need.

1. For all new proposed solid waste disposal facilities and all proposed expansions of existing solid waste disposal facilities, the applicant shall submit the following information to the Department: a. The longitude and latitude coordinates for the site of the proposed new facility or proposed expansion; and, b. The proposed disposal rate for the proposed new facility...

...

§44-96-290 (F) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility within a county or municipality may be issued by the department unless the proposed facility or expansion is consistent with local zoning, land use, and other applicable local ordinances, if any; the proposed facility or expansion is consistent with the local or regional solid waste management plan and the state solid waste management plan; ...

DHEC not prohibited.

In the first instance, I conclude that the provisions in the 2007 YC SWMP did not prohibit the issuance of a permit by DHEC. If DHEC had found faulty the analysis done by the county pursuant to Section 44-96-80(A)(3), it could have issued the permit upon such a finding.

It is undisputed that DHEC is the ultimate authority in the issuance of permits.¹ *Southeast Resource Recovery, Inc. v. SCDHEC, et al.*, 358 S.C. 402, 595 S.E. 2d 468 (2004).

No preemption.

I conclude that **express preemption** did not occur. "Express preemption occurs when the General assembly declares in express terms its intention to preclude local action in a given area." *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 397, 629 S.E. 2d 624, 628 (2006). It is clear from the provisions of Section 44-96-290(F) that some deference is accorded to the "local zoning, land use and other applicable local ordinances" and "the local or regional solid waste management plan" Hence, there is no absolute preemption here.

I conclude that **implied field preemption** did not occur. "Under implied field preemption, an ordinance is preempted when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." *SCSPA, id.*, 368 S.C. at 397, 629 S.E. 2d at 628.

The provisions of Section 44-96-290(F) granting deference to local ordinances, as part of the very act that describes the solid waste policy of the state, prevents the application of "implied field preemption."

I conclude that no **conflict preemption** occurred. "Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *SCSPA, id.*, 368 S.C. at 400, 629 S.E.2d at 630. The purpose of Section 44-96-290(F) is not only to allow the county to fulfill its responsibilities under Section 44-96-80(A)(3), but also to allow counties to have reasonable control over disposal of solid waste within the boundaries of the county. The state, speaking through DHEC, has agreed with the County in the case at hand. I further conclude that compliance with both state and local ordinances and solid waste plans is possible when, as in this case, the county does the analysis required under Section 44-96-80(A)(3) and DHEC agrees with that analysis.²

¹ Permitting decisions by DHEC are subject to review by the ALC in a "de novo" contested case hearing.

² A local ordinance could be passed that has the effect, intentionally or unintentionally, of thwarting the Act, but that issue is not before the Court.

York County, in furtherance of its responsibility under Section 44-96-80(A)(3) did an analysis of the solid waste management needs of York County and the results are embodied in the 2007 YC SWMP. When DHEC reviewed Greeneagles's permit for consistency with the 2007 YC SWMP, it was found inconsistent and the permit denied. I conclude that the analysis was precisely what was required and the denial was proper and lawful.

Second consistency determination.

There is nothing found in the Act that prohibits DHEC from making more than one consistency determination, especially where, as in this case, the Preliminary Consistency Determination contained a warning that a new plan (the YC SWMP) was being prepared and that if the current plan was revised or replaced that the final consistency determination would be based on the newest plan. I am not persuaded by Petitioner's argument that there are other instances in the regulations that tie the consistency determination to the time of the demonstration or application. I conclude that both the Preliminary and Final Consistency Determinations were proper.

DON and Consistency Not Intermingled

I conclude as a matter of law that the DON and the preliminary and final consistency determinations were made at separate times and based on separate and distinct criteria and that these determinations were not commingled.

Southeast Resource Recovery, Inc. (SRR) id., Delegation of Authority and Veto

Petitioner asserts that DHEC's practice of making a Preliminary and then a Final Consistency Determination results in an improper delegation of authority under *SRR*. I disagree and conclude that there was no delegation of authority. I have already concluded that, in the case at hand, the issuance of a Preliminary and then a Final consistency determination was lawful and proper. Indeed, *SRR* acknowledges that: "The SWPMA does not specify procedures for DHEC to follow in making need and consistency determinations." *SRR, id.*, 358 S.C. at 408, 595 S.E.2d at 471.

In *SRR*, the Supreme Court held that delegation by DHEC was impermissible saying:

DHEC's practice has been to delegate to the counties the authority to determine consistency through the counties' issuance of LOCs. We conclude this delegation of authority is impermissible. S.C.Code Ann. § 44-96-290(F) does not give a county veto authority over decisions made by DHEC. There is no statutory authority providing a county's consistency determination is determinative of the ultimate permitting decision. Although Section 44-96-290(F) requires a proposed facility comply with local standards, it does not designate the county as the final arbiter on whether the proposed facility complies with its local zoning, land use, and other ordinances.

...
DHEC, not the county, is charged with ensuring such facilities meet the requirements for the permit.

SRR, id.

DHEC has fulfilled its "charge" in the case at hand. It made a preliminary determination of consistency with the warning and qualification that the final determination might be different and then performed a review and thorough analysis of the new or amended plan and based thereon found the YC SWMP to be properly founded and that the proposed Greeneagle landfill was not consistent with it. There was no delegation or authority or veto here by the county changing or amending its plan. Instead, the county fulfilled the duty imposed upon it by Section 44-96-80(A)(3) to analyze the solid waste management needs of the county and upon review by DHEC, the analysis by the county was found to be correct.

Validity of Ordinance

I conclude, for the purposes of this litigation, that Ordinance 207, which embodies the 2007 YC SWMP, is a lawfully enacted ordinance. Ordinances are legislation at the county and municipal level. Legislation is presumptively valid: "a presumption of validity attaches to all legislation, especially legislation relating to police powers." *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443 (1984). "Statutes and municipal ordinances calculated to better the health, safety and welfare of the people have long and universally been recognized to be within the police power." *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683, 687 (1955). Moreover, the U.S. Supreme Court has specifically noted that county ordinances aimed at

addressing waste disposal are “exercises of the police power.” See *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 127 S.Ct. 1786, 1798 (2007).³

No vested rights.

There was an assertion, or at least an intimation, that Greeneagle acquired a vested right to continue with its project after the DON and Preliminary Consistency Determination were approved. I conclude that Petitioner Greeneagle, Inc., did not acquire any vested right to obtain a permit to construct and operate a landfill for any reason whatsoever including but not limited to: (a) the Catawba Regional SWMP; (b) the DON issued to Greeneagle on April 25, 2006; (c) the preliminary consistency determination issued to Greeneagle on May 8, 2006; (d) the special exception for zoning granted to Greeneagle by the county; and, any other reason or cause whatsoever. No law was advanced to support this notion and I find none. Both the DON and the Preliminary Consistency Determination contained adequate limitation to warn any reasonable person that neither was final and could be changed.

Not Inconsistent with *Wasteco*, *id.*

In the first instance, decisions of the ALC cannot be considered as binding precedents. Pursuant to Section 1-23-600(A), decision and orders of the ALC are not required to be published.

Nevertheless, recognizing that both the State and the business community look to prior decisions for guidance, I will comment on the differences in the ruling in this case and that in *Wasteco*.

The Anderson County Order Ordinance in *Wasteco* included a peremptory statement that “no new or replacement Part IV C&D landfills are permissible in Anderson County.” Notwithstanding any amelioratory language in the ordinance, this sentence was so inconsistent with the spirit and intent of the act – and, specifically, with the authority of DHEC, that it could not stand. Moreover, DHEC’s decision turned on this one sentence alone as opposed to the review of the entire YC SWMP made by DHEC in the case at hand.

³ York County is not a party to this proceeding.

CONCLUSION

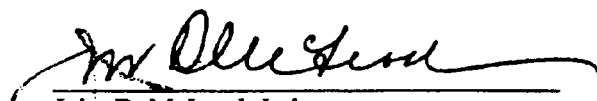
Pursuant to the foregoing, I find that there is no evidence to support the allegations that DHEC unlawfully denied a landfill permit to Greeneagle. I further find that DHEC thoroughly reviewed Greeneagle's permit application and made appropriate DON and consistency determinations pursuant to the requirements of the Act and applicable regulations, and that based upon the Act and applicable regulations that DHEC properly determined that Greeneagle's permit application was not consistent with the 2007 YC SWMP and therefore, properly issued the permit denial for Greeneagle's proposed landfill.

ORDER

Therefore, for the reasons outlined herein and based upon the above *Findings of Fact* and *Conclusions of Law*, **IT IS HEREBY ORDERED** that the relief requested by Petitioner Greeneagle is **DENIED** and the Permit Denial issued by DHEC to Greeneagle on May 19, 2008, is **UPHELD**.

IT IS FURTHER ORDERED, that notwithstanding ALC Rule 29(C) and the last paragraph of ALC Rule 29(D), any issues raised in this proceeding but not addressed in this Order will not be deemed denied. In order to preserve any issues unaddressed by this order for appeal, a party must file a Motion for Reconsideration pursuant to ALC Rule 29 (D). See ALC Rule 29 (D) (incorporating the grounds for relief set forth in Rule 59, SCRCP); *Home Medical Systems, Inc. v. S.C. Dept. of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009) (finding that Rule 59(e), SCRCP motions are permitted in proceedings before the ALC).

AND IT IS SO ORDERED.


John D. McLeod, Judge
S.C. Administrative Law Court

October 20, 2010
Columbia, South Carolina

SEAL: PUBLIC
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 20 day of October, 2010
By: Anthony R. Goldman
Judicial Law Clerk

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greeneagle, Inc.,	)	Docket No: 08-ALJ-07-0339-CC
	)	
Petitioner,	)	
	)	
vs.	)	
	)	AMENDED FINAL ORDER
South Carolina Department of Health and	)	AND DECISION
Environmental Control,	)	
	)	
Respondent.	)	
	)	

APPEARANCES:

Leon Harmon, Esquire	For Petitioner Greeneagle, Inc.
Etta R. Williams, Esquire	For Respondent South Carolina Department of Health and Environmental Control

STATEMENT OF CASE

This matter came before the Administrative Law Court pursuant to S.C. Code Ann. § 1-23-310 et seq. and the Solid Waste Policy and Management Act, S.C. Code Ann. § 44-96-10 et seq., ("Act") for a contested case hearing regarding Petitioner Greeneagle, Inc.'s ("Greeneagle") objection to the South Carolina Department of Health and Environmental Control's ("DHEC") denial of a permit to allow Greeneagle to construct, in York County, a Class Two landfill ("proposed landfill"), a type of landfill formerly known as a construction, demolition, and land-clearing debris landfill. DHEC issued a Permit Denial to Greeneagle, via certified mail, on May 19, 2008, based on inconsistency with the 2007 York County Solid Waste Management Plan (YC SWMP).

On June 3, 2008, Greeneagle requested from the DHEC Board ("Board") a Final Review of the Permit Denial. On June 24, 2008, the Board decided not to conduct a Final Review Conference. Greeneagle then filed with the Administrative Law Court ("ALC"), on July 25, 2008, a *Notice of Request for Contested Case Hearing* in the matter. The ALC assigned the

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matter to the Honorable Ralph King Anderson, III, ALC Judge, on July 29, 2008, and the matter was reassigned to the Honorable John D. McLeod on August 19, 2009.

This matter was heard by Judge McLeod on April 19 and 20, 2010, and after considering the evidence and arguments of the parties, as well as proposed orders, this Court hereby finds as follows:

FINDINGS OF FACT

After observing the witnesses and exhibits presented at the hearing for this matter on April 19-20, 2010, and carefully considering the credibility of the witnesses, as well as the burdens of proof and persuasion applicable here, I hereby make the following findings of fact by a preponderance of the evidence.

Obtaining a Demonstration of Need (DON) approval is the first step in the process of getting a landfill permit. Pursuant to R.61-107.17, DHEC issued a DON Approval to Greeneagle by letter dated April 25, 2006 addressed to James William Frost of Alliance Engineers, the firm which had been hired by Greeneagle. The letter stated that the approval may be terminated for failure to pursue a permit, failure to pursue an application or denial of an application, failure to meet proper zoning requirements and, pertinent to the case at hand, if “... **(D) the Department determines that the proposed facility is not consistent with the host county or region solid waste management plan.**” Thus, the DON Approval is not an assurance of a permit approval.

DON might be better understood as an “Approval of Location.” In order to demonstrate “need” according to the DON regulation, the applicant must submit the location of the proposed facility and the proposed tonnage rate. DHEC looks to see if there are two commercial facilities within the planning area, and if there are, then a third facility cannot be placed in that area. If the location criteria are met, the tonnage is then calculated based on the waste generated within the planning area.

The Solid Waste Policy and Management Act (“Act”) does not define the term “need.” S.C. Code Ann. § 44-96-10 *et seq.* (2002 & Supp. 2009). There is no specific term in the regulations promulgated pursuant to the Act that defines “need.” The DON Approval for Greeneagle’s proposed landfill was made by DHEC pursuant to S.C. Code Ann. Regs. 61-107.17 and DHEC did not rely on anything in the 2007 YC SWMP to make the DON determination.

Consistency with the state and local solid waste management plans and the DON regulation are two separate issues. "Need" within a solid waste management plan is separate from demonstration of need in the DON regulation. The DON regulation does not look at "need" in terms of capacity, but looks at "need" in terms of location.

Early in the process, Greeneagle was granted a special exception for zoning for its landfill.

After the issuance of the DON, DHEC issued to Greeneagle a Preliminary Consistency Determination based on consistency with the 1994 Catawba Regional Solid Waste Management Plan in which York County was then a participant. This was done by letter dated May 8, 2006, directed to Mr. Frost of Alliance Engineers. The letter put Greeneagle on notice that a final consistency determination could not be made until the permit sought by Greeneagle was ready for issuance. The letter also advised that DHEC was aware that York County was preparing a York County Solid Waste Management Plan (YC SWMP) and if, during the permitting process, the Catawba Regional plan was revised or replaced, that DHEC would review the newest plan to make the final consistency determination. The Preliminary Consistency Determination was made as a courtesy to Greeneagle in order that it would know its status at that point in time and whether it should proceed in the matter. The Act does not address the number of consistency determinations that are to be issued by DHEC. The DON and the Preliminary Consistency Determination were made at different times and were based on different criteria. The DON was based on S.C. Code Regs. 61-107.17 while the Preliminary Consistency Determination was based on a review of the 1994 Catawba Regional Solid Waste Management Plan. The two reviews were not merged or intermingled.

As indicated in the Preliminary Consistency Determination, York County was indeed preparing its own solid waste management plan and had been doing so since the year 2000. This plan was known as the 2007 York County Solid Waste Management Plan (YC SWMP) and was enacted as part of Ordinance 207. Ordinance 207 was signed by the Chairman of the York County Council and the County Manager and on the page where their signatures appear there is the notation:

1st reading: August 14, 2006
2nd reading: October 16, 2006
Public hearing: February 28, 2007
3rd reading and adoption: February 28, 2007

DHEC reviewed the foregoing ordinance and considered it properly adopted. The 2007 YC SWMP divided York County into four quadrants or service areas. The YC SWMP contained the following wording relative to the Northwestern Service Area where Greeneagle proposed to build its landfill: "The existing landfills currently meet the C&D needs of this service area; therefore, no new landfills are needed for the service area." The YC SWMP found that no new landfills were needed in any of the four service areas.

The 2007 YC SWMP allowed for the expansion and replacement of currently permitted Part 2 and Part 4 construction and demolition and land clearing landfills within their respective service areas when their permitted capacity was exhausted. The 2007 YC SWMP also provides that "if a Part II or Part IV C&D landfill in the County ceases to operate, a new landfill with equal capacity to that being closed, will be needed as a replacement for the closed landfill subject to the provisions of this Plan." The 2007 YC SWMP also provides:

York County shall cause a study and analysis to be performed to determine the need for additional privately-operated landfills in the county and following such study the York County Council shall determine the need for new or additional privately-operated landfills in the County and amend this Plan based upon its determination of need for privately operated landfills in the County.

Finally, the Conclusion of the Plan states:

Currently in York County, 122,000 tons of C & D disposal capacity is permitted and based on waste generation projections will adequately serve the County through the year 2011. Prior to year 2012, the York County Landfill will need to expand its landfill capacity in order to provide sufficient disposal capacity in future years. As development and growth continues, the County will need to closely monitor waste disposal rates that are being generated in the County and amend the Plan as necessary to provide for the future needs of C & D waste.

These planning provisions clearly embody the spirit and intent of the Act and stand in stark contrast to the peremptory statement in the Anderson County Ordinance in *Wasteco Inc., Greenpointe C&D Landfill v. SCDHEC*, 06-ALJ-07-0421-CC (S.C. Admin Law Ct. June 28, 2007) to the effect that "no new or replacement Part IV C&D landfills are permissible (emphasis supplied) in Anderson County."

In March 2007, DHEC was provided with a copy of the 2007 YC SWMP and that is the plan that was reviewed for the final consistency determination for Greeneagle's proposed landfill. On January 25, 2008, and more than a year after the enactment of the YC SWMP (Ordinance 207), DHEC received a permit application from Greeneagle for its proposed landfill,

which was to be located at 2405 Quarry Road in York, South Carolina, York County. Greeneagle received a letter from DHEC dated January 30, 2008, stating that the proposed landfill application was administratively complete. After DHEC reviewed the 2007 YC SWMP, it found that the proposed landfill was not consistent therewith and denied the landfill permit. DHEC issued a Permit Denial to Greeneagle, via certified mail, on May 19, 2008.

In conducting its review, DHEC reviewed Ordinance 207 and the county plan. The denial of consistency by DHEC in this case was based not on one thing but a combination of things. The fact that the YC SWMP found that no additional C&D landfills were needed in the northwest quadrant of the county was only part of the reason for denial of consistency in this case. Consistency was not determined on the basis of one sentence. The entire plan was reviewed. DHEC reviewed the 2007 YC SWMP in its entirety and reviewed the same to determine if York County had fulfilled its responsibilities for planning as required by the Act, and specifically if the County had done an analysis of the existing and new solid waste facilities, which will be needed to manage the solid waste generated within that county or region during the projected twenty-year period.

DHEC reviewed the 2007 YC SWMP and determined that York County could manage its current and future waste with the two private and one public facility that were already existent in the County, either with tonnage increases or expansions or with existing capacity. Statements in the 2007 YC SWMP that are in conflict with DHEC regulations were disregarded and not seen as binding on DHEC in regards to the consistency determination for Greeneagle. DHEC, after reviewing the 2007 YC SWMP in its totality, concluded that the County had met its responsibilities under the Act to plan for management of its solid waste needs and that the County had adequate landfill capacity to meet its needs.

The YC SWMP contains provisions that may not comport with the Act but also contains a severability clause that allows proper provisions to survive.

Marvin R. Taylor, owner and president of Greeneagle, was aware, for a number of reasons, that Greeneagle's permit application might not be approved, including but not limited to the conditional wording in both the DON Approval and the Preliminary Consistency Determination.

ISSUES

Was DHEC correct in its decision to deny Greeneagle's landfill permit application?

- a. Did the YC SWMP prohibit the issuance of a permit by DHEC?
- b. Was the YC SWMP preempted by the permitting provisions of the ACT?
- c. Was a second consistency determination proper and did it constitute an improper delegation of authority by DHEC to York County?
- d. Were the DON Approval and the Consistency Determinations combined or intermingled?
- e. Was the YC SWMP created by a valid Ordinance?
- f. Did Greeneagle, for any reason, acquire a vested right to the issuance of a landfill permit?
- g. Is the decision in *Wasteco Inc., Greenpointe C&D Landfill v. SCDHEC*, 06-ALJ-07-0421-CC (S.C. Admin Law Ct. June 28, 2007) controlling in the case at hand?
- h. Was DHEC's denial of the permit consistent with the decision in *Southeast Resource Recovery, Inc. v. SCDHEC, et al.*, 358 S.C. 402, 595 S.E.2d 468 (2004)?

CONCLUSIONS OF LAW

The provisions of the Act in issue here are:

Section 44-96-80. County or regional solid waste management plans; local government responsibilities; local Solid Waste Advisory Councils.

(A) Not later than fifteen months after the date on which the department submits its state solid waste management plan to the Governor and to the General Assembly, the governing body of each county, if the county intends to submit a single county plan, or the governing bodies of the counties in a region, if two or more counties intend to submit a regional plan, in cooperation with the local governments located in the county or region, shall prepare a solid waste management plan for the area within that county or region. Local governments within the county or region shall participate in the development of the county or regional plan and are required to be a part of the plan. This plan must provide for public participation and include, at a minimum, the following:

...

(3) an analysis of the existing and new solid waste facilities which will be needed to manage the solid waste generated within that county or region during the projected twenty-year period;

...

The foregoing is the statute that places responsibility on the county to analyze need.

§44-96-80(J) The governing body of a county has the responsibility and authority to provide for the operation of solid waste management facilities to meet the needs of all incorporated or unincorporated areas of the county.

§44-96-80(K) The governing body of a county is authorized to enact such ordinances as may be necessary to carry out its responsibilities under this chapter; provided, however, that the governing body of a county may not enact an ordinance inconsistent with the state solid waste management plan, with any provision of this chapter, with any other applicable provision of state law, or with any regulation promulgated by the department providing for the protection of public health and safety or for protection of the environment. ...

Section 44-96-290. Permitting.

...

§ 44-96-290 (E) No 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...The department shall promulgate regulations to implement this section.

The following regulation was promulgated in obedience to §44-96-290 (E)

61-107.17 Solid Waste Management: Demonstration-of-Need.

...

(D) Determining Need.

1. For all new proposed solid waste disposal facilities and all proposed expansions of existing solid waste disposal facilities, the applicant shall submit the following information to the Department: a. The longitude and latitude coordinates for the site of the proposed new facility or proposed expansion; and, b. The proposed disposal rate for the proposed new facility...

...

§44-96-290 (F) No permit to construct a new solid waste management facility or to expand an existing solid waste management facility within a county or municipality may be issued by the department unless the proposed facility or expansion is consistent with local zoning, land use, and other applicable local ordinances, if any; the proposed facility or expansion is consistent with the local or regional solid waste management plan and the state solid waste management plan; ...

DHEC not prohibited.

In the first instance, I conclude that the provisions in the 2007 YC SWMP did not prohibit the issuance of a permit by DHEC. If DHEC had found faulty the analysis done by the county pursuant to Section 44-96-80(A)(3), it could have issued the permit upon such a finding.

It is undisputed that DHEC is the ultimate authority in the issuance of permits.¹ *Southeast Resource Recovery, Inc. v. SCDHEC, et al.*, 358 S.C. 402, 595 S.E. 2d 468 (2004).

No preemption.

I conclude that **express preemption** did not occur. "Express preemption occurs when the General assembly declares in express terms its intention to preclude local action in a given area." *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 397, 629 S.E. 2d 624, 628 (2006). It is clear from the provisions of Section 44-96-290(F) that some deference is accorded to the "local zoning, land use and other applicable local ordinances" and "the local or regional solid waste management plan" Hence, there is no absolute preemption here.

I conclude that **implied field preemption** did not occur. "Under implied field preemption, an ordinance is preempted when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." *SCSPA, id.*, 368 S.C. at 397, 629 S.E. 2d at 628.

The provisions of Section 44-96-290(F) granting deference to local ordinances, as part of the very act that describes the solid waste policy of the state, prevents the application of "implied field preemption."

I conclude that no **conflict preemption** occurred. "Conflict preemption occurs when the ordinance hinders the accomplishment of the statute's purpose or when the ordinance conflicts with the statute such that compliance with both is impossible. *SCSPA, id.*, 368 S.C. at 400, 629 S.E.2d at 630. The purpose of Section 44-96-290(F) is not only to allow the county to fulfill its responsibilities under Section 44-96-80(A)(3), but also to allow counties to have reasonable control over disposal of solid waste within the boundaries of the county. The state, speaking through DHEC, has agreed with the County in the case at hand. I further conclude that compliance with both state and local ordinances and solid waste plans is possible when, as in this case, the county does the analysis required under Section 44-96-80(A)(3) and DHEC agrees with that analysis.²

¹ Permitting decisions by DHEC are subject to review by the ALC in a "de novo" contested case hearing.

² A local ordinance could be passed that has the effect, intentionally or unintentionally, of thwarting the Act, but that issue is not before the Court.

York County, in furtherance of its responsibility under Section 44-96-80(A)(3) did an analysis of the solid waste management needs of York County and the results are embodied in the 2007 YC SWMP. When DHEC reviewed Greeneagles's permit for consistency with the 2007 YC SWMP, it was found inconsistent and the permit denied. I conclude that the analysis was precisely what was required and the denial was proper and lawful.

Second consistency determination.

There is nothing found in the Act that prohibits DHEC from making more than one consistency determination, especially where, as in this case, the Preliminary Consistency Determination contained a warning that a new plan (the YC SWMP) was being prepared and that if the current plan was revised or replaced that the final consistency determination would be based on the newest plan. I am not persuaded by Petitioner's argument that there are other instances in the regulations that tie the consistency determination to the time of the demonstration or application. I conclude that both the Preliminary and Final Consistency Determinations were proper.

DON and Consistency Not Intermingled

I conclude as a matter of law that the DON and the preliminary and final consistency determinations were made at separate times and based on separate and distinct criteria and that these determinations were not commingled.

Southeast Resource Recovery, Inc. (SRR) id., Delegation of Authority and Veto

Petitioner asserts that DHEC's practice of making a Preliminary and then a Final Consistency Determination results in an improper delegation of authority under *SRR*. I disagree and conclude that there was no delegation of authority. I have already concluded that, in the case at hand, the issuance of a Preliminary and then a Final consistency determination was lawful and proper. Indeed, *SRR* acknowledges that: "The SWPMA does not specify procedures for DHEC to follow in making need and consistency determinations." *SRR, id.*, 358 S.C. at 408, 595 S.E.2d at 471.

In *SRR*, the Supreme Court held that delegation by DHEC was impermissible saying:

DHEC's practice has been to delegate to the counties the authority to determine consistency through the counties' issuance of LOCs. We conclude this delegation of authority is impermissible. S.C.Code Ann. § 44-96-290(F) does not give a county veto authority over decisions made by DHEC. There is no statutory authority providing a county's consistency determination is determinative of the ultimate permitting decision. Although Section 44-96-290(F) requires a proposed facility comply with local standards, it does not designate the county as the final arbiter on whether the proposed facility complies with its local zoning, land use, and other ordinances.

...
DHEC, not the county, is charged with ensuring such facilities meet the requirements for the permit.

SRR, id.

DHEC has fulfilled its "charge" in the case at hand. It made a preliminary determination of consistency with the warning and qualification that the final determination might be different and then performed a review and thorough analysis of the new or amended plan and based thereon found the YC SWMP to be properly founded and that the proposed Greeneagle landfill was not consistent with it. There was no delegation or authority or veto here by the county changing or amending its plan. Instead, the county fulfilled the duty imposed upon it by Section 44-96-80(A)(3) to analyze the solid waste management needs of the county and upon review by DHEC, the analysis by the county was found to be correct.

Validity of Ordinance

I conclude, for the purposes of this litigation, that Ordinance 207, which embodies the 2007 YC SWMP, is a lawfully enacted ordinance. Ordinances are legislation at the county and municipal level. Legislation is presumptively valid: "a presumption of validity attaches to all legislation, especially legislation relating to police powers." *Casey v. Richland County Council*, 282 S.C. 387, 320 S.E.2d 443 (1984). "Statutes and municipal ordinances calculated to better the health, safety and welfare of the people have long and universally been recognized to be within the police power." *Richards v. City of Columbia*, 227 S.C. 538, 88 S.E.2d 683, 687 (1955). Moreover, the U.S. Supreme Court has specifically noted that county ordinances aimed at

addressing waste disposal are “exercises of the police power.” See *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 127 S.Ct. 1786, 1798 (2007).³

No vested rights.

There was an assertion, or at least an intimation, that Greeneagle acquired a vested right to continue with its project after the DON and Preliminary Consistency Determination were approved. I conclude that Petitioner Greeneagle, Inc., did not acquire any vested right to obtain a permit to construct and operate a landfill for any reason whatsoever including but not limited to: (a) the Catawba Regional SWMP; (b) the DON issued to Greeneagle on April 25, 2006; (c) the preliminary consistency determination issued to Greeneagle on May 8, 2006; (d) the special exception for zoning granted to Greeneagle by the county; and, any other reason or cause whatsoever. No law was advanced to support this notion and I find none. Both the DON and the Preliminary Consistency Determination contained adequate limitation to warn any reasonable person that neither was final and could be changed.

Not Inconsistent with *Wasteco, id.*

In the first instance, decisions of the ALC cannot be considered as binding precedents. Pursuant to Section 1-23-600(A), decision and orders of the ALC are not required to be published.

Nevertheless, recognizing that both the State and the business community look to prior decisions for guidance, I will comment on the differences in the ruling in this case and that in *Wasteco*.

The Anderson County Order Ordinance in *Wasteco* included a peremptory statement that “no new or replacement Part IV C&D landfills are permissible in Anderson County.” Notwithstanding any amelioratory language in the ordinance, this sentence was so inconsistent with the spirit and intent of the act – and, specifically, with the authority of DHEC, that it could not stand. Moreover, DHEC’s decision turned on this one sentence alone as opposed to the review of the entire YC SWMP made by DHEC in the case at hand.

³ York County is not a party to this proceeding.

CONCLUSION

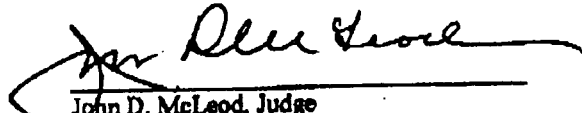
Pursuant to the foregoing, I find that there is no evidence to support the allegations that DHEC unlawfully denied a landfill permit to Greeneagle. I further find that DHEC thoroughly reviewed Greeneagle's permit application and made appropriate DON and consistency determinations pursuant to the requirements of the Act and applicable regulations, and that based upon the Act and applicable regulations that DHEC properly determined that Greeneagle's permit application was not consistent with the 2007 YC SWMP and therefore, properly issued the permit denial for Greeneagle's proposed landfill.

ORDER

Therefore, for the reasons outlined herein and based upon the above *Findings of Fact* and *Conclusions of Law*, **IT IS HEREBY ORDERED** that the relief requested by Petitioner Greeneagle is **DENIED** and the Permit Denial issued by DHEC to Greeneagle on May 19, 2008, is **UPHELD**.

IT IS FURTHER ORDERED, that notwithstanding ALC Rule 29(C) and the last paragraph of ALC Rule 29(D), any issues raised in this proceeding but not addressed in this Order will not be deemed denied. In order to preserve any issues unaddressed by this order for appeal, a party must file a Motion for Reconsideration pursuant to ALC Rule 29 (D). See ALC Rule 29 (D) (incorporating the grounds for relief set forth in Rule 59, SCRCP); *Home Medical Systems, Inc. v. S.C. Dept. of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009) (finding that Rule 59(e), SCRCP motions are permitted in proceedings before the ALC).

AND IT IS SO ORDERED.

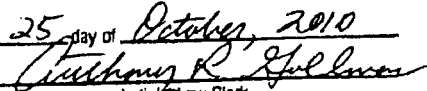

John D. McLeod, Judge
S.C. Administrative Law Court

October 25, 2010
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).

12

This 25 day of October, 2010
By: 
Judith R. Gellman
Judicial Law Clerk

COPY

Respondent.

The hearing before the Honorable John D. McLeod was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 19th and 20th days of April, 2010 before Suzanne R. Bryant, Court Reporter and Notary Public in and for the State of South Carolina.

APX 0000025

APPEARANCES:

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Control
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Columbia, South Carolina 29201
Attorney for the Respondent

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Certificate 364

EXHIBITS

Joint Exhibit Number One 6

(Area Map of Greeneagle location)

Joint Exhibit Number Two 6

(DHEC DON approval letter dated 4/25/06)

Joint Exhibit Number Three 6

(DHEC letter dated 4/20/06 to Al Greene
regarding consistency review)

Joint Exhibit Number Four 6

(DHEC preliminary consistency determination
dated 5/8/06)

Joint Exhibit Number Five 6

(Jana White notes of telephone conferences
with Marty Taylor and David Harmon)

Joint Exhibit Number Six 6

(Letter dated 1/25/08 from Jeffrey Herbig
to Joan Litton transmitting permit)

Joint Exhibit Number Seven 6

(Letter dated 1/30/08 from Jason Wright of
DHEC to Marty Taylor)

Joint Exhibit Number Eight 6

(DHEC Internal Memorandum dated 5/13/08
regarding final Consistency Determination)

Joint Exhibit Number Nine 6

(Letter dated 5/19/08 from Kent Coleman of
DHEC to Marty Taylor)

Joint Exhibit Number Ten 6

(Amended document of Justification and
Support for Request to DHEC for
Determination of Consistency with Catawba
Regional Plan)

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Joint Exhibit Number Eleven 6
(York County Council Actions for
a. 8/14/06, b. 10/16/06, c. 2/28/07)

Joint Exhibit Number Twelve 6
(York County SWMP submitted to DHEC as County
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Petitioner's Exhibit Number One 35
(York County SWMP - 8/10/06 - 1st reading)

Petitioner's Exhibit Number Two 37
(York County SWMP - 8/10/06 - 2nd reading)

Petitioner's Exhibit Number Three 134
(York County SWMP - 2/6/07 - Draft)

Petitioner's Exhibit Number Four 273
(Anderson County SWMP)

(The original exhibits were retained by Judge
McLeod.)

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.

1 **THE COURT:** My name is John McLeod. We will be
2 without a law clerk for today. Our court
3 reporter is Ms. Suzanne Bryant. Nice to see
4 you. All right. Preliminary, I understand
5 that there were extensive negotiations and that
6 at some point that you thought you were close
7 to settling this case. In view of that, are
8 there any stipulations for matters that you
9 have agreed to?

10 **MR. HARMON:** No, Your Honor, we were not able to
11 reach a settlement in this case.

12 **THE COURT:** I understood that, but along the way did
13 you eliminate any issues that we will not have
14 to try?

15 **MR. HARMON:** No, Your Honor.

16 **THE COURT:** Okay. That answers --

17 **MR. HARMON:** We'll have to try them all. But
18 preliminarily I might tell you that Ms.
19 Williams and I have talked about exhibits. We
20 have been able to agree on some of the exhibits
21 that will be used during the course of the
22 trial. We've done a stipulations of exhibits
23 for those and labeled those as Joint Exhibits
24 One through Twelve. I have provided a copy of
25 those, with the original stickers on them, to

1 the court reporter. I also have a set for you,
2 if I may hand it up.

3 **THE COURT:** Thank you, sir. And so I would be
4 correct to say then that Joint Exhibits One
5 through Twelve are admitted without objection
6 and by common consent?

7 **MR. HARMON:** Yes, Your Honor.

8 **MS. WILLIAMS:** That's correct, Your Honor.

9 (Joint Exhibits Number One through Twelve were
10 admitted into evidence.)

11 **THE COURT:** Thank you. I am uncharacteristically
12 interested in your opening statements. I want
13 you to clearly delineate for me the issues as
14 you see them, even though they may be different
15 on different sides of the aisle. I want to be
16 able to focus on what the problem is here
17 today. Okay. Just a moment. This is Docket
18 08-ALJ-07-0339, contested case of Greeneagle,
19 Inc. versus South Carolina Department of Health
20 and Environmental Control. Yes, sir. Mr.
21 Harmon.

22 **OPENING STATEMENT BY MR. HARMON:**

23 **MR. HARMON:** Thank you, Your Honor. May it please
24 the Court. My name is Leon Harmon. I'm with
25 Nexsen Pruet and we represent Greeneagle in

1 this matter. With me here, at counsel table is
2 Mr. Marty Taylor, he's the president of
3 Greeneagle.

4 **THE COURT:** Mr. Taylor, good to have you here.

5 **MR. HARMON:** I just wanted to introduce him to you
6 today.

7 **THE COURT:** Thank you, sir.

8 **MR. HARMON:** What this case is about, Your Honor,
9 the overall issue in this case is whether DHEC
10 properly denied Greeneagle's Application for a
11 C&D Landfill in York County, based upon a lack
12 of consistency with the York County Solid Waste
13 Management Plan. Now, let me first of all just
14 give you a brief summary of the facts that we
15 expect to present to you, and I'll go into a
16 little bit more detail with respect to the
17 issue. In the 2005-2006 time frame two small
18 York County businessmen began developing an
19 idea to get into the construction and
20 demolition, and I'll say C&D probably for that
21 numerous times today, that they wanted to get
22 into the C&D landfill business. They sought
23 the assistance and involved York County in that
24 process, which included location of a site for
25 the proposed C&D facility. Through a search

1 process, Greeneagle selected a site off of
2 Quarry Road. And that's in the Clover area of
3 York County, the northwestern area of the
4 county. Greeneagle then sought and obtained a
5 demonstration of need approval from the
6 Department, and also obtained a Preliminary
7 Consistency Determination for the site. The
8 company also obtained special exception zoning
9 from York County for location of the landfill
10 at the site that had been selected. A
11 neighboring property owner placed some trailers
12 near the property line and that impacted the
13 landfill footprint, and of course the company
14 had to deal with that issue as well. During
15 the course of the development of this landfill
16 proposal, York County was involved in a solid
17 waste planning process for some extended period
18 of time. During the course of development of
19 the landfill, York County left the Catawba
20 Regional Plan. They had been part of the
21 Catawba Regional Plan since 1994. They left
22 the Catawba Regional Plan and developed a
23 separate standalone York County Solid Waste
24 Management Plan. And over the course of
25 several years of development of this plan

1 through various drafts of the plan, Greeneagle
2 would have been allowed to locate its landfill
3 at the proposed location. However, the plan
4 ultimately adopted by York County changed at
5 the last minute to say that no new landfills
6 would be allowed in York County. In other
7 words, that there was not a need for a
8 landfill, any new C&D landfills in York County.
9 And so the sole basis that was provided by DHEC
10 for denying the Greeneagle permit was
11 inconsistency with the York County Solid Waste
12 Management Plan. The DHEC -- we believe the
13 DHEC decision to deny the application was
14 improper and at a summary judgment hearing that
15 we held before Your Honor some time ago we went
16 into some more detail as to what those issues
17 included. Indeed, it also, and I guess a
18 subset of the overall issue of whether or not
19 DHEC properly found that this landfill was
20 inconsistent with the York County Plan is the
21 mixing of need and consistency. That will be
22 something that we will talk about during the
23 course of this hearing and is a sub-issue, if
24 you will, of the overall issue that they denied
25 this permit on the basis of lack of

1 consistency. Also, the procedure by which that
2 was done will be at issue in this hearing.
3 That being that an initial consistency
4 de termination is made, and then after the
5 entity follows through and does engineering
6 work and site work and develops an application
7 and it's submitted to the Department, then at
8 the time a permit is to be issued a second
9 consistency determination is done. That will
10 also be a sub-issue in this case. The fact
11 that there were numerous last minute changes
12 will be brought out as well for your
13 consideration. I might add for Your Honor that
14 the landfill regulations and the Demonstration
15 of Need regulations have changed from their --
16 from the regulations that were in place at the
17 time this process begun. And so in this case
18 the decisions that were made by the Department
19 were made under the previous regulations that
20 were in place.

21 **THE COURT:** And you're speaking of regulations
22 promulgated, not something that York County has
23 done or --

24 **MR. HARMON:** That's correct. Regulations that were
25 promulgated by DHEC. Regulations that, with

1 respect to development and design of a C&D
2 landfill and the Demonstration of Need
3 regulation that are DHEC developed regulations.
4 Those are the issues that we would expect to
5 present to the Court through the evidence that
6 will come in before you today.

7 **THE COURT:** Ms. Williams.

8 **MS. WILLIAMS:** Good morning, Your Honor.

9 **THE COURT:** Good morning.

10 **OPENING STATEMENT BY MS. WILLIAMS:**

11 **MS. WILLIAMS:** May it please the Court. Your Honor,
12 yes, DHEC properly denied a permit, a C&D
13 landfill permit for Greeneagle, Incorporated.
14 And we denied the permit because the permit was
15 not consistent with the solid waste management
16 plan that was on file with DHEC at the time
17 that we issued the permit denial. Our statute,
18 44-96-290(f), requires that DHEC cannot --

19 **THE COURT:** Give me that again, I'm taking my own
20 notes today.

21 **MS. WILLIAMS:** I'm sorry. 44-96-290(f).

22 **THE COURT:** 290(f)?

23 **MS. WILLIAMS:** Yes, sir. It requires that DHEC not
24 issue a landfill permit if the proposed
25 landfill is not consistent with the local solid

1 waste management plan. DHEC determined that to
2 mean the solid waste management plan that is on
3 file with us at the time that we issue a permit
4 or deny a permit.

5 **THE COURT:** Which was on file with you, the Catawba
6 Regional or the later plan by York County?

7 **MS. WILLIAMS:** The latest plan was the 2007 York
8 County Solid Waste Management Plan.

9 **THE COURT:** The York County Plan?

10 **MS. WILLIAMS:** Yes, Your Honor, and that is the plan
11 that DHEC used to determine consistency. Your
12 Honor, we did not deny the permit based on one
13 sentence or one paragraph in the plan, as Mr.
14 Harmon suggests. DHEC reviewed the plan in its
15 totality and we also reviewed additional
16 documentation which would be our annual report,
17 2007 Annual Report, that has population
18 generation, excuse me, population generation --
19 speculations on population growth, it has
20 information on the amount of waste disposed of
21 and generated in the county. And DHEC used
22 those figures, as well as the information that
23 was provided in the plan, to make its
24 consistency determination, so it wasn't made in
25 a vacuum. Mr. Harmon speaks of a mixing of the

1 DON approval process and the consistency
2 process, which was also brought up during a
3 motion for summary judgment. DHEC denies that.
4 There are two separate processes. There's a
5 DON approval, which is the initial step in
6 trying to attain a landfill permit, and then
7 there's the consistency determination, which is
8 the second step. And both of those processes
9 are separate, distinct and separate. We did
10 not mend or combine either one of those
11 processes. Mr. Harmon also brings up the fact
12 that the solid waste management plan was not
13 adopted properly. I'm not quite sure how
14 that's going to be proved here today because
15 Mr. Harmon will not be calling any witnesses
16 from York County, York County Council, the
17 administrator, no one is here to testify on the
18 numerous changes or the changes, so to speak,
19 that he says were made prior to the adoption of
20 the plan. I mean, I would think that we would
21 need to know the reasons and understand the
22 process of what happened, and I don't know how
23 that can happen without having any of those
24 witnesses here. And he has the burden of
25 proving this. Your Honor, what I can tell you

1 and what our witnesses will testify to is that
 2 DHEC thoroughly reviewed the plan. DHEC made
 3 an independent determination on consistency.
 4 We did not rely on York County to dictate to us
 5 what permit decision was to be made. But York
 6 County is responsible for including certain
 7 things in their solid waste management plan
 8 that we have to read and we have to review and
 9 we have to consider if it's relevant and if
 10 it's correct. And that is what we did. And we
 11 believe that we made the correct decision in
 12 denying their landfill permit. Thank you very
 13 much.

14 **THE COURT:** Just briefly in reply, which is a little
 15 unusual, but I want to have a full
 16 understanding of --

17 **MR. HARMON:** Your Honor, as far as reply, the part
 18 about mixing, I guess a better term would be
 19 merged the consistency and need determinations
 20 when the Department got to the consistency
 21 determination. When the county went in and
 22 changed the plan, there was a determination
 23 made by the county that no new C&D facilities
 24 were needed in York County in any -- the plan
 25 had broken the county in quadrants, four

1 quadrants. Previously, in earlier versions of
2 the plan, the plan had indicated that a C&D
3 facility was needed in three of those four
4 quadrants. When the final plan came out, the
5 plan said there was no need for a C&D facility
6 in any of -- new C&D facility in any of the
7 three quadrants. We believe that's precisely
8 what DHEC used to say that this application,
9 the Greeneagle application, was now
10 inconsistent with the local plan. And it's
11 based upon a needs analysis that the county had
12 made, not the need as was determined under the
13 Demonstration of Need regulation that DHEC had
14 developed and the legislature had approved.
15 With respect to whether the plan was properly
16 adopted, DHEC was provided with a significant
17 amount of information with respect to that
18 issue, and I think that DHEC, since it's their
19 decision, not the county's decision on what
20 they looked at and what they included in their
21 analysis, I think the DHEC witnesses will have
22 to speak to that issue, and that's how I would
23 intend to bring that issue out.

24 **THE COURT:** Very well, then. If you will proceed
25 with your case.

1 MR. HARMON: Thank you, Your Honor. We call Mr.
2 Marty Taylor.

3 MARVIN R. TAYLOR, being duly sworn, testifies as
4 follows:

5 MR. TAYLOR - DIRECT EXAMINATION BY MR. HARMON:

6 Q: Good morning, Mr. Taylor.

7 A: Good morning.

8 Q: Please state your full name for the record.

9 A: My name is Marvin R. Taylor, and most know me
10 as Marty.

11 Q: And what is your address, Mr. Taylor?

12 A: My address is 2185 Doby Bridge Road, Fort Mill,
13 South Carolina.

14 Q: How long have you lived in York County?

15 A: I've lived in York County my entire life, I'm
16 41 years old.

17 Q: Please provide a brief summary of your
18 educational background.

19 A: I have a Fort Mill High School education and
20 did not go to college afterwards.

21 Q: What is your current employment status?

22 A: Currently am seeking employment.

23 Q: Who was your most recent employer?

24 A: Most recently I worked for Griffin Brothers
25 Companies of Cornelius, North Carolina, and

1 that expired in October of 2009.

2 Q: And what were you doing for Griffin Brothers?

3 A: I was handling a lot of their, I call it
4 paralegal work for lack of a better term, but
5 I was handling a lot of their legal type
6 documents and research for York County issues.

7 Q: And prior to Griffin Brothers, what business
8 were you in?

9 A: Custom home building industry in York County.
10 I've been a licensed home builder since '86.

11 Q: And are you presently a candidate for political
12 office?

13 A: Yes, sir, I'm running for York County Council.

14 Q: And what seat are you running for?

15 A: I'm running for the District 5 seat of the York
16 County Council. That seat is currently held by
17 Mr. Curwood Chappell.

18 Q: And why are you running for that particular
19 seat?

20 A: Two reasons. We're limited to which seats you
21 run for depending on where you live in the
22 county, and Mr. Chappell happens to be the
23 current representative of the district in which
24 I live in. And the other one, on a more
25 personal note, when I lost my job in October,

1 in November I ended up in the unemployment
2 line, and saw 300 people in line, waited three
3 hours to get to a desk looking for a job, and
4 it became, through that extreme humbling
5 experience, it became apparent to me that our
6 current council had lost their priority and in
7 my view it needs to be job creation.

8 Q: How did you come to make a decision to get into
9 the landfill business?

10 A: At some point in 2005 I had a -- to begin with,
11 I was married, became married in 2002, so in
12 2005 I had a very young family, young children,
13 homebuilding business was going very well at
14 the time, but it was taking an extreme amount
15 of my time, and just started trying to think of
16 ways to find a different type of career, a
17 business to get into, that would allow me to
18 spend more time with my family. I grew up and
19 still own family property next to the Coltharp
20 C&D Landfill in Fort Mill. My mother still
21 lives there, she's probably the closest
22 resident to a C&D landfill in York County, and
23 just in addition to that, being in the
24 homebuilding industry, I actually used that
25 facility for disposal services and just began

1 thinking of the idea of perhaps exploring that
2 option of the C&D landfill facility. And put
3 together a preliminary business plan,
4 determined it was a viable thing to at least
5 pursue and began that process.

6 Q: You mentioned the Coltharp Landfill. Where is
7 that landfill located?

8 A: Geographically, it's in the northeast portion
9 of York County, but it's in the Fort Mill
10 Township area.

11 Q: Did you work with anyone in developing your
12 idea?

13 A: Again, I was in the -- being in the
14 homebuilding industry, was looking for persons
15 of expertise, I guess I should say, to perhaps
16 lead me or assist me in the venture. But Paul
17 Rogers was a grading contractor that was
18 working for me in the homebuilding industry at
19 the time, clearing lots for me. His brother
20 Jules Rogers actually owns a C&D landfill
21 facility in York County, a small landfill
22 facility on the southeast portion. And it just
23 made sense to me with his excavating abilities
24 and equipment and his brother's knowledge of
25 this type of facility, and in addition to that

1 Paul had at least one political relationship
2 that I knew of that may help us give us some
3 direction to see this thing to the end.

4 Q: And how did you go about the process of looking
5 into the viability of a landfill?

6 A: Well, one of the first things that I did was
7 basically set up a camera for a four-day period
8 of time and took pictures of every truck going
9 into that Coltharp facility, and it's quite a
10 book of pictures that I took. But from that,
11 just started the simple process, being a
12 customer of that facility; I had their price
13 list and I knew how much each truck was paying
14 to dispose there, and then through that process
15 just ran the numbers or calculated the numbers
16 from that. And we began talking with
17 professionals, like Alliance Engineering,
18 getting some professional input on some of the
19 other costs and so forth. And in the beginning
20 it was a preliminary plan of sorts, but at
21 least preliminarily it seemed something worth
22 pursuing.

23 Q: So you developed a business plan?

24 A: Correct.

25 Q: And did you involve or did you approach York

1 County about your plan for a C&D landfill?

2 A: Well, my business partner, Paul Rogers,
3 actually approached Councilman Curwood
4 Chappell, which is the person he had a
5 relationship with at the time, and asked him a
6 couple things; if he thought it would be a good
7 idea, was it something that the county may want
8 and how to proceed. And that led to Mr.
9 Chappell arranging a meeting with Paul Rogers
10 and myself, the county manager, which at that
11 time was Al Greene, the county assistant
12 manager, which at that time was Diane Simpson,
13 David Harmon was at the meeting, and David, I
14 believe still is the public works director, and
15 Eric Greenway was at the meeting, who at that
16 time was the planning director, and Mr.
17 Chappell attended also.

18 Q: And what was the approximate time frame of that
19 meeting?

20 A: I believe that was approximately May of 2005.

21 Q: Okay. And what -- where was the meeting held?

22 A: The meeting was at the York County manager's
23 office in York.

24 Q: And what did you learn at this meeting?

25 A: Several things, but most pleasantly we learned

1 that York County had recently performed a
2 study, I believe it was with Joyce Engineering
3 doing the research, and York County had
4 determined that they actually needed several
5 more C&D landfill facilities.

6 Q: Okay. And did you get a copy of that study?

7 A: Yes, we were given a copy of that study at that
8 point in time, and that was the first time I
9 had seen the study, but again, we were
10 pleasantly surprised that -- and we discussed
11 -- we discussed our intentions and we were
12 pleasantly welcomed in the meeting and we were
13 encouraged to move forward.

14 Q: And how did you move forward in developing your
15 plans for a C&D facility in York County?

16 A: Well, we were given, we were given a few sets
17 of criteria and one of those was geographically
18 where to put it, and some of that came from Mr.
19 Chappell and some of that came from input from
20 the people at the manager's office meeting.
21 The general consensus seemed to be that they
22 wanted a new facility in that northwest
23 quadrant, what we're calling the Clover area of
24 York County. And from that point forward we
25 were instructed to work with Eric Greenway, the

1 planning director for York County at that time,
 2 and that he would assist us in finding a
 3 suitable site. And from that point forward,
 4 you know, we were in a unique situation. We
 5 weren't someone that had a piece of property
 6 and wanted to put a landfill on it; we were a
 7 company that had an idea and had to go procure
 8 a suitable site to do so. So we -- what I did
 9 was utilizing internet sites, like York County
 10 GIS, the property search, with the planning
 11 director's assistance at the time, I basically
 12 took York County's current and proposed solid
 13 waste planning information at that time, and
 14 DHEC's requirements at the time, and started
 15 looking for any and all suitable sites in the
 16 county, and started eliminating prospects
 17 through that process that way.

18 Q: And how did Mr. Greenway assist you in that
 19 process?

20 A: I would spend a week or so at a time finding
 21 properties that I felt like met the criteria
 22 and then do my own process of eliminating ones
 23 that I thought didn't work and ones that I
 24 thought might work, I would carry those, I
 25 would print those copies of the properties,

1 arrange a meeting with Mr. Greenway and he
2 would tell me yes or no as to whether or not he
3 thought, from the county's perspective, that
4 they were good prospects.

5 Q: And did you ultimately decide on a site to
6 locate your proposed landfill?

7 A: We did. That process I just described was
8 nearly a year long process and I think of all
9 of these sites that I found, which was
10 ultimately only a handful that even met the
11 criteria, in the county, all the criteria we
12 mentioned earlier, only one I think was
13 actually for sale. So then I began the process
14 of contacting owners of the properties, fully
15 disclosed what my intentions were for the
16 property, and arranging those, arranging or
17 establishing those discussions. At the end of
18 all that, we had one property that met all the
19 criteria and the owner agreed to enter into an
20 option with us.

21 Q: And what site was that?

22 A: That's the current site in the Clover area on
23 Quarry Road.

24 Q: Let me ask you to refer to Joint Exhibit Number
25 One.

1 A: Yes, sir.

2 Q: That's a site location map. Does it show the

3 Quarry Road site on that map?

4 A: Yes, it does.

5 Q: And could you identify for the Court where that

6 site is?

7 A: I'm sorry.

8 Q: Could you identify on the Joint Exhibit Number

9 One, the location map, could you describe where

10 that site is?

11 A: It's off a road called Quarry Road, which I

12 don't see Quarry Road labeled here, but Quarry

13 Road is off of Highway 161, and you turn left

14 on Quarry Road and there's the site.

15 THE COURT: But it's in the southwest quadrant of

16 this drawing that's marked S-I-T-E, isn't it?

17 A: Correct.

18 THE COURT: I've located it.

19 Q: Now, this drawing has the name Alliance at the

20 top of it. What is Alliance?

21 A: They're the professional engineers that I

22 mentioned earlier. They're a firm here in

23 Columbia, at least they were at the time, I

24 think they still are. And we had hired them to

25 assist us professionally with not only finding

1 a suitable site, but they hired at that point
2 to do the engineering process as we moved
3 forward.

4 Q: Let me ask you to refer to Joint Exhibit Number
5 Two. was that part of your process of
6 obtaining approval for your proposed landfill?

7 A: Yes, it is. It's the demonstration of need
8 approval that I'd asked Alliance to -- asked
9 for the plans.

10 Q: Okay. And what's the date on this letter, Mr.
11 Taylor?

12 A: We have a -- well, April 25, 2006 is DHEC's
13 date.

14 Q: Okay. Now, is a disposal limit mentioned in
15 this letter, a tonnage limit?

16 A: It reads, maximum annual disposal limit of
17 105,900 tons a year.

18 Q: Okay.

19 **THE COURT:** Who is Mr. Frost?

20 Q: Who is Mr. Frost?

21 A: Mr. Frost is an employee of Alliance Consulting
22 Engineering. He was assigned to work with us.

23 Q: And, Mr. Taylor, let me ask you to read into
24 the record the second sentence of the first
25 paragraph of that letter.

1 A: The sentence beginning with staff?
2 Q: Yes.
3 A: Staff has evaluated the information and
4 determined that pursuant to the provisions of
5 R61-107.17, Demonstration of Need, there is a
6 need for this type of facility in the
7 corresponding planning area.
8 Q: Thank you. Now, let me ask you --
9 **THE COURT:** Could you hold a minute, please, sir?
10 **MR. HARMON:** Certainly.
11 **THE COURT:** All right. The site is in the northwest
12 portion of York County, right?
13 **MR. HARMON:** Yes, Your Honor.
14 A: Yes, sir.
15 **THE COURT:** All right. Go ahead.
16 Q: Mr. Taylor, let me ask you to refer to Joint
17 Exhibit Number Four, please. Was this part of
18 the process for obtaining approval for your
19 landfill?
20 A: This is a preliminary consistency determination
21 that Mr. Frost with Alliance handled, and yes,
22 it was part of the process.
23 **THE COURT:** This is the one dated May 8, 2006?
24 A: Yes, sir.
25 Q: Now, Mr. Taylor, did you go through a zoning

1 process for the site that you had selected?

2 A: We did. This property was not zoned fully for
3 the type of application that we wanted to -- of
4 a C&D landfill application, and in order to
5 obtain that proper zoning, we requested that
6 through the county, and there was a public
7 hearing held through their Zoning Board of
8 Appeals, in which at the end we were granted a
9 special exception for this application.

10 Q: Okay. And were you required to notify adjacent
11 property owners?

12 A: We -- actually we were not required. I believe
13 the county was required to notify adjacent
14 property owners, but we did in our attempt to
15 be forthright with the community, we mailed
16 letters. We created letters of all adjoining
17 property owners and anyone in the proximity
18 that we felt might even have concerns for
19 whatever reason. And prior to even
20 notification being given of the public hearing
21 for rezoning, we mailed those letters out to
22 those persons.

23 Q: And did you get any response to your letters?

24 A: We had no responses, zero.

25 Q: Was there an appeal taken to the rezoning of

1 this property?

2 A: To our surprise, there's not. There was an

3 opposition group that organized and was at this

4 public hearing and were quite vocal during the

5 public hearing process, but no one appealed

6 that zoning.

7 Q: Okay. Did there come a time when a neighboring

8 property owner located mobile homes near your

9 property line?

10 A: That's true. There's a neighboring landscape

11 and nursery operation that we actually, instead

12 of just mailing that person a letter, we

13 approached him personally prior to this

14 application for rezoning and disclosed our

15 intentions. And he was present at the -- he

16 was present and opposing at the public hearing

17 for zoning approval but he did not appeal that

18 zoning determination.

19 Q: Did that result in any impact upon the planning

20 of the landfill?

21 A: I'm sorry. The fact --

22 Q: The fact that mobile homes had been located

23 near the property line, how did that impact

24 your planning for the landfill?

25 A: That particular operation was greenhouses,

1 after the zoning approval was given and after
2 we waited for the 30-day appeal time limit to
3 expire, that company did place two mobile homes
4 next to our, adjacent to our property line,
5 which created new 1,000 foot boundaries which
6 impacted and decreased the size of the
7 footprint of our proposed facility.

8 Q: And what decision did you make with respect to
9 the footprint of the landfill?

10 A: Well, that's quite a drawn out process. That
11 -- we actually, we began an appeal process with
12 the county.

13 **THE COURT:** Excuse me a minute. Before we get too
14 far past this. You say the placement of the
15 mobile homes increased the footprint or
16 decreased?

17 A: It actually, it decreased our footprint, yes,
18 sir.

19 **THE COURT:** I thought you said increase, so I want
20 to be sure that I'm clear. It decreased the
21 footprint of your project?

22 A: Correct.

23 **THE COURT:** Thank you.

24 A: Yes, sir.

25 Q: And what did that do with respect to whether or

1 not you considered the project viable?

2 A: It was quite a drawn out process. We began an
3 appeal process with the county over the
4 issuance of those permits which would
5 negatively impact our previously approved
6 project by the county. Several months expired
7 working through all that. At the end of the
8 day when it was all finished, we lost that
9 appeal, the mobile homes stayed, the landfill
10 footprint was reduced significantly. But all
11 things considered in making another evaluation
12 of the viability of that project, we ultimately
13 determined that it was still viable and decided
14 to keep moving forward.

15 Q: Now, let's talk about York County's solid waste
16 planning process. Were you aware that York
17 County was involved in solid waste planning?

18 A: Yes, sir, I was made aware of that at our first
19 meeting with the county manager.

20 Q: And did you monitor the process?

21 A: Monitored it very closing, yes, I did. Not
22 only staying in contact with the planning
23 director and other staff members as I could
24 with the county, but I was attending all county
25 council meetings from that point forward.

1 Meaning never missed -- I can't say I never
2 missed one, but missed very few regardless of
3 whether or not solid waste issues were on the
4 agenda or not.

5 Q: Okay. And with respect to the preliminary
6 consistency determination that you obtained
7 which is Joint Exhibit Three -- I'm sorry,
8 Joint Exhibit Four, which plan, which plan was
9 utilized in making that consistency
10 determination?

11 A: Well, this references the 1994 Catawba Regional
12 Solid Waste Management Plan.

13 Q: Okay. And when was the first meeting that you
14 recollect where an ordinance was being proposed
15 with respect to the York County Plan?

16 A: I believe that was August of 2006. I may have
17 the month wrong. I have a lot of dates in my
18 mind, but it was definitely 2006, maybe late
19 summer.

20 Q: Let me ask you, if you would, to refer to Joint
21 Exhibit Number Eleven. Joint Exhibit Number
22 Eleven contains a number of actions of council,
23 the first one being August 14th. Does that
24 comport with your recollection of when first
25 reading was held on the York County Plan?

1 A: Yes, sir, it's item number nine under new
2 business.

3 Q: On which page of the actions for --

4 A: I'm sorry. Of that exhibit, it's page number
5 seven.

6 Q: And it's marked at the bottom with DHEC and a
7 number. Could you identify the number at the
8 bottom of that page?

9 A: Yes, sir. It's DHEC-0264.

10 Q: Now, did you obtain a copy of the plan that was
11 part of the first reading of the ordinance?

12 A: Yes, I did.

13 Q: Mr. Taylor, let me show you what has been
14 marked as Petitioner's Exhibit One. Is this a
15 copy of the plan that was attached to the
16 ordinance for a first reading?

17 A: Yes, sir, it appears to be. It actually
18 appears to be my copy.

19 Q: And how do you identify it as your copy?

20 A: I recall the writing that was on the front,
21 that specific handwriting. And then as I
22 glance through, it's making recommendations for
23 new commercial landfills and it references the
24 -- a new commercial landfill inside the city
25 limits of Rock Hill. I'm just familiar with

1 that being in there.

2 Q: Okay. And this particular plan was broken down
3 into service areas for C&D purposes.

4 A: Correct.

5 MR. HARMON: Your Honor, we'd move Petitioner's
6 Exhibit One into evidence.

7 THE COURT: Ms. Williams?

8 MS. WILLIAMS: Your Honor, I would object to it
9 because this is not the -- well, first of all,
10 I don't believe we have this in our files, in
11 DHEC files, and we did not use this plan to
12 make a decision. This is a draft. And I'm not
13 quite sure -- I don't know if I heard Mr.
14 Taylor authenticate this document. So I'm
15 objecting on its authenticity and the relevance
16 of it.

17 THE COURT: Well --

18 MS. WILLIAMS: I mean, he's not the maker of the
19 document.

20 THE COURT: Better let me look at it. Mr. Harmon,
21 you seek to admit this, it purported to be
22 what, just what it says?

23 MR. HARMON: It's purported to be just what it says
24 and the witness testified, Your Honor, that
25 this was a copy that he obtained while he was

1 monitoring the progress of the York County
2 solid waste planning that was going on at the
3 time. My recollection is that the witness
4 testified that this was a copy that he obtained
5 that was attached to the first reading.

6 **THE COURT:** I'm going to overrule the objection.
7 (Petitioner's Exhibit Number One was admitted into
8 evidence.)

9 **THE COURT:** Ms. Williams, you want this back?

10 **MS. WILLIAMS:** Oh, it's not mine.

11 **THE COURT:** Mr. Harmon.

12 **MR. HARMON:** Thank you, Your Honor.

13 **Q:** Now, Mr. Taylor, was there a second reading on
14 this proposed ordinance?

15 **A:** Yes, there was.

16 **Q:** Okay. And let me refer you again to Joint
17 Exhibit Number Eleven, the actions for October
18 16th, 2006. And let me refer you to page that's
19 marked at the bottom DHEC-0279.

20 **A:** And that would be the paragraph that says an
21 ordinance to authorize York County to take all
22 steps necessary and appropriate to withdraw
23 from the Catawba Regional, Catawba Waste
24 Management Plan?

25 **Q:** Yes. And so on.

1 A: Yes.

2 Q: Okay. Let me --

3 THE COURT: How did you get that up in October, now.
4 You missed me on that one?

5 MR. HARMON: Your Honor, there are --

6 A: I had the same problem.

7 MR. HARMON: There are three actions together --

8 THE COURT: I see now.

9 MR. HARMON: -- here. And I'm looking at the page
10 numbered at the bottom, DHEC-0279.

11 THE COURT: All right. And thank you. Let me
12 explain, when you said Exhibit Eleven, I looked
13 for the very first of Exhibit Eleven. This is
14 over into the Exhibit Eleven for a ways, and
15 your attention is called to the page that's
16 marked DHEC-0277, which shows the York County
17 Council meeting of Monday, October 16th. That
18 should explain it for the record.

19 MR. HARMON: Thank you, Your Honor.

20 Q: Mr. Taylor, let me show you what's been marked
21 as Petitioner's Exhibit Two and ask you if you
22 can identify that document.

23 A: It appears to be the document used at second
24 reading of the ordinance.

25 Q: Did you obtain a copy of this document

1 yourself?

2 A: I did, yes, sir.

3 Q: And let me ask you -- well, first of all, let
4 me move this exhibit into evidence.

5 **THE COURT:** Ms. Williams?

6 **MS. WILLIAMS:** I object again, Your Honor, my same
7 objections as before. There's some writing on
8 this document, we don't know who wrote this.
9 And it's purporting to be the second reading,
10 but the second reading was in October, and it's
11 got the date September 2006 on here, so I mean,
12 I just --

13 **THE COURT:** Well, let me -- let me see the copy
14 that's been handed to you. Mr. Taylor has
15 testified that he got a copy of this. I'm
16 going to overrule your objection.

17 (Petitioner's Exhibit Number Two was admitted into
18 evidence.)

19 **MS. WILLIAMS:** May I just say do we know who he got
20 the copy from? I mean, anybody could have
21 given him this. I don't know if it was
22 officially given to him from York County
23 Council.

24 **MR. HARMON:** I'll be glad to ask him that question,
25 Your Honor.

1 **THE COURT:** Go ahead, Mr. Harmon.

2 **Q:** From whom did you obtain this document, Mr.
3 Taylor?

4 **A:** These were through Freedom of Information Act
5 requests to York County to obtain the
6 documentation. That's one of the reason I can
7 identify the writing. I don't know for sure,
8 but I think that was Ms. Anna Wilson. I know
9 that she provided all this information for me
10 through the FOIA request, and she had them
11 labeled that way.

12 **Q:** And who is Ms. Wilson that you just referred
13 to?

14 **A:** Ms. Wilson, although I think she has a
15 different last name now, I refer to her as Ms.
16 Wilson, is the current assistant county manager
17 for York County, one of the assistant county
18 managers.

19 **Q:** Let me ask you to, if you would, Mr. Taylor,
20 refer to page 43 of Petitioner's Exhibit Two.

21 **A:** Yeah.

22 **Q:** This section or this page is part of the
23 section entitled Future Solid Waste Management.
24 It begins on page 37.

25 **THE COURT:** You better help me a little bit, Mr.

1 Harmon, I'm lost with your page numbers.

2 **MR. HARMON:** I don't think you have Exhibit --
3 Petitioner's Exhibit Two, Your Honor.

4 **THE COURT:** Okay. Go ahead.

5 Q: On page 37 begins the section Future Solid
6 Waste Management.

7 A: Yes, sir.

8 Q: Okay. And then if you move over to page 43 of
9 Petitioner's Exhibit Two.

10 A: Yes.

11 Q: It refers to northwest service area. Do you
12 see that at the top of page 43?

13 A: I do see that.

14 Q: Now, is the northwest service area the location
15 where the proposed Greeneagle landfill is
16 located?

17 A: Yes, that is correct.

18 Q: And what does this document --

19 **MR. HARMON:** Give me just a moment, Your Honor.

20 Q: Let me ask you, if you would, Mr. Taylor, read
21 into the record the paragraph on page 43 of
22 Petitioner's Exhibit Two that begins with the
23 word significant about mid-page.

24 A: Significant new construction predominantly
25 residential is expected in this area. The

1 current disposal needs of this service area are
 2 being met by the existing York County landfill.
 3 However, as the pace of development increases
 4 in this area, the service area will need
 5 additional construction and demolition disposal
 6 capacity, therefore signing up one Part 4 C&D
 7 landfill is recommended.

8 Q: Now, second reading occurred in October of
 9 2006.

10 A: Yes, sir.

11 Q: What happened in the York County Planning
 12 process after October of 2006?

13 MS. WILLIAMS: I'm going to object, Your Honor. I
 14 don't know how he could know what was going on
 15 with the planning process. I mean, if he was
 16 in attendance at all of the meetings, internal
 17 and external, I mean --

18 THE COURT: Well, we'll give him a chance to tell
 19 us, Ms. Williams.

20 MS. WILLIAMS: All right.

21 THE COURT: Overruled.

22 MS. WILLIAMS: Thank you.

23 Q: Would you tell us what you observed occurring
 24 in the York County Planning process?

25 A: I can certainly tell you what I observed

1 publically and I was -- I was attending most,
 2 if not all, the meetings at that time. And
 3 there was an element of opposition that had
 4 organized primarily, if not all of it, was
 5 aimed at a proposed Rock Hill facility that I
 6 mentioned earlier, I referenced earlier in the
 7 plan. And that momentum -- it was getting
 8 momentum and it was often referenced as being
 9 like a pot of boiling water. It was just -- it
 10 was just something that was building, and at
 11 that point in time we, Greeneagle, had had our
 12 public zoning approval, we had everything that
 13 we were being told by the council members and
 14 staff that we were dealing with at the time,
 15 that anything or any modifications to a plan of
 16 this nature is because of that opposition that
 17 Greeneagle was going to be fine, that we had
 18 gone through the county's process and that for
 19 us basically not to worry. But we were
 20 following it very closely.

21 Q: Okay. And was there a new council elected in
 22 2006?

23 A: 2006 there was a -- there were three or four,
 24 I don't recall off the top of my head, new
 25 council members elected that year.

1 Q: Okay. And what happened in January after the
2 new council was seated?

3 A: Well, to begin with, the council representative
4 for the district in which this proposed
5 facility would be, he campaigned, one of his
6 platform issues was stopping our facility. And
7 he won that election, won that seat, and the
8 first council meeting of that new county
9 council, at the end of the meeting --

10 **THE COURT:** That would be in 2007?

11 A: 2007, yes, sir, January of 2007, they passed an
12 emergency ordinance, moratorium.

13 **MS. WILLIAMS:** Excuse me, Your Honor. I'm not clear
14 on who he's speaking of.

15 **THE COURT:** He's speaking of the duly elected
16 council member who had campaigned on opposition
17 to Greeneagle.

18 **MS. WILLIAMS:** But can we get his name, the person
19 that he's referring to?

20 **THE COURT:** You certainly can on cross examination.

21 **MS. WILLIAMS:** All right. Thank you.

22 Q: Okay. After -- what was your understanding of
23 the, you called it a landfill moratorium? Or
24 emergency ordinance, I believe, I'm sorry.

25 A: It caught me by quite surprise. I attended

1 that meeting. There were no solid waste issues
2 on the agenda that evening, as I mentioned
3 earlier, I had a young family and I tried to
4 get back home as early as I could, but stayed
5 for the majority of the meeting. I saw no
6 reason to be alarmed from the agenda that
7 evening. And at the end of the meeting, this
8 happened after executive session, there was a
9 landfill, C&D landfill moratorium passed that
10 evening.

11 Q: Okay. And as a result of that moratorium being
12 passed, what did you do after that?

13 A: Well, I personally went into sort of a state of
14 panic. We had no idea that was coming. We
15 were -- leading up to that meeting, we were
16 given multiple assurances that any opposition
17 there was not going to affect us since we had
18 gone through the county process and had
19 followed the rules and gotten all the
20 appropriate approvals, and basically began a
21 process of contacting and meeting with any and
22 all county representatives who would meet with
23 me, including council members, trying to,
24 basically just trying to resolve the issue.
25 Number one, find out why we were included in

1 some sort of moratorium like this, and then
2 just trying to work through the process.

3 Q: And did the council meet at various times to
4 talk about solid waste planning at meetings
5 which you attended?

6 A: That's that pot of boiling water. It was
7 extremely -- there was an extreme amount of
8 opposition from that point forward, and that's
9 when the, most of the momentum seemed to build
10 towards opposing landfills at these public
11 meetings.

12 Q: Okay. And when did the county meet to give
13 third reading to the ordinance that we have
14 been discussing?

15 A: That final meeting was February 28, 2007.

16 Q: And let me again ask you to refer to Joint
17 Exhibit Eleven, the last page in that series of
18 documents. Is that the action at which the
19 York County Solid Waste Management Plan
20 received third reading?

21 A: Yes, sir, it is.

22 Q: Now, between second reading and third reading,
23 were changes made to the plan?

24 A: Yes, there were significant changes made
25 actually 24 hours prior to that meeting.

1 Q: Okay. Tell the Court your recollection of the
2 changes that were made to the plan immediately
3 prior to third reading.

4 A: It's hard for me to recall every one of them
5 from memory, but the most important one to us
6 was, it states that there would be no more new
7 landfills.

8 **THE COURT:** All right. Which DHEC numbered page is
9 that, 288?

10 **MR. HARMON:** Your Honor, yes, DHEC-0288 is the -- in
11 Joint Exhibit Eleven, is the action item where
12 third reading was given to the ordinance.

13 **THE COURT:** So it would be item one of new business,
14 then?

15 **MR. HARMON:** That's correct, Your Honor.

16 Q: Mr. Taylor, let me ask you to refer to Joint
17 Exhibit Twelve, if you would. The first couple
18 of pages in Joint Exhibit Twelve are the
19 ordinance. If you would refer to page, marked
20 at the bottom, DHEC-0882. This is the first
21 page of Ordinance Number 207, is that correct?

22 A: Yes, sir, I see it at the top of the page.

23 Q: And it says adopted February 28, 2007?

24 A: Yes.

25 Q: Okay. Now, I had asked you and in your

1 testimony you had indicated that a number of
2 changes were made to the plan immediately prior
3 to third reading. And would you tell the Court
4 from your perspective, from the perspective of
5 developing Greeneagle landfill, what was the
6 most significant change that was made in the
7 plan prior to third reading?

8 A: Well, there were several things. I know that
9 prior to that February 28th meeting there was a
10 February 20th meeting where Ms. Anna Wilson, the
11 assistant county manager, had made a
12 presentation to the council and it was her
13 information at that time that she was
14 presenting was referencing the documents from
15 the previous two readings. And one of the
16 things that stood out in my mind when this
17 third reading document was presented on the
18 28th, and we can go through as many as you like,
19 but one of the most significant things I
20 noticed was an effort, in my view, there was an
21 effort made to eliminate the perception of
22 need. And one of the ways of doing that, as
23 illustrated in the document, was in the
24 population numbers that they had significantly
25 reduced in the third reading document. And --

1 Q: So you recollect that the population numbers
2 had decreased?

3 A: Correct. Correct. And the correlating data
4 with it, as far as generation projections and
5 the data used for, the formula that's used for
6 creating that had been changed to basically
7 indicate less, less need. There was the
8 provision that no new landfills were needed and
9 --

10 Q: Now, specifically, with respect to no new
11 landfills needed, you're referring to Part 4
12 C&D landfills?

13 A: Correct.

14 **THE COURT:** What page, DHEC page?

15 **MR. HARMON:** Your Honor, DHEC-0942. It's numbered
16 48 at the bottom.

17 **THE COURT:** Number what at the bottom?

18 **MR. HARMON:** Page 48.

19 **THE COURT:** I have it, thank you.

20 Q: And, Mr. Taylor, again, referring to the
21 northwestern service area, that's the service
22 area where Greeneagle is located?

23 A: Correct.

24 Q: On page 48, would you read the last paragraph
25 of that page into the record?

1 A: I'm sorry, last paragraph of page 48?

2 Q: Yes.

3 A: Construction and demolition debris waste from
4 this area is generally transported to and
5 disposed of at the existing York County
6 landfill. The existing landfills currently
7 meet the C&D disposal needs of this service
8 area, therefore, no need landfills are needed
9 for the service area.

10 Q: Okay. And it -- you have reviewed this
11 document in the past, correct?

12 A: Correct.

13 Q: All right. Were any new landfills provided
14 for, any new C&D landfills provided for in any
15 area of the county in this plan, in this plan
16 that was adopted for third reading?

17 A: No, sir, it was not.

18 Q: Okay. After council passed the ordinance, or
19 gave third reading to the ordinance with
20 respect to the plan that is Joint Exhibit
21 Number Eleven, what action did you take at that
22 time?

23 A: Repeat the question, please. I'm sorry.

24 Q: After the council gave third reading to the
25 ordinance that adopted the York County Solid

1 Waste Management Plan that's Joint Exhibit
2 Number Twelve, what action did you take at that
3 time?

4 A: Immediately at the adjournment of the meeting
5 I approached the -- some of the council members
6 there and asked them did they realize what they
7 had just done, meaning that they had just
8 excluded Greeneagle. And you have to remember
9 that these are gentlemen that I had been in
10 constant contact with leading up to this
11 meeting. And again, was getting constant
12 reassurance that whatever was getting ready to
13 happen there was not going to affect
14 Greeneagle.

15 Q: And who specifically did you talk to?

16 A: Those two that I approached immediately after
17 the meeting was Councilman Tom Smith and
18 Councilman Paul Lindemann. And they seemed
19 quite surprised that it was my opinion that
20 that's what actually just took place. Just
21 seemed to be a lot of, just a lot of mis -- I
22 can tell you from sitting in the audience and
23 watching the meeting, there was a ton of
24 confusion at that meeting, and apparently they
25 weren't as clear themselves as to what they had

1 voted on, based on what they told me.

2 Q: Now, with respect to Greeneagle, was an
3 ordinance introduced to allow Greeneagle to
4 locate in the northwest quadrant?

5 A: Several months later Councilman Smith agreed to
6 present an ordinance to allow Greeneagle to
7 proceed forward. And he did present that, and
8 it passed first reading. It was approved by
9 the majority of the council, first reading.
10 Went to a subcommittee, months later was pulled
11 back to the council table, and I think that it
12 was like deja vu for me because when that was
13 pulled back to council, that level of
14 opposition started voicing again. They were
15 being vocal again. And for whatever reason at
16 second reading of that ordinance, it was
17 deferred pending deeper evaluation.

18 Q: Okay. And what has since happened to that
19 ordinance that you've just described?

20 A: We had -- we don't know. We've never been
21 given a definite answer as to the standing of
22 that ordinance.

23 Q: Okay. And at that point in time when did you
24 proceed forward with completing your
25 application for a landfill?

1 A: As far as when we actually started working on
2 the process, we were continually working
3 towards those gradual increments of submitting
4 an application, preparing and submitting the
5 application to DHEC. We kept hitting these
6 roadblocks of this issues we've been talking
7 about, and, you know, then there was the
8 ordinance you just mentioned, the unknown of
9 where that ordinance is, that was a six month
10 process of trying to get answers to those
11 questions unsuccessfully. So it was an ongoing
12 process. There were roadblocks or speed bumps
13 along the way that might halt it temporarily,
14 start it back up, as far as the engineering of
15 the site. I believe we actually submitted that
16 plan in January of '08.

17 Q: Let me ask you to refer to Joint Exhibit Six.
18 Is that the letter indicating the application
19 was being sent to DHEC?

20 A: Yes, it appears to be.

21 Q: And it's now B.P. Barber. Did B.P. Barber at
22 some point in time begin doing the engineering
23 work for your landfill?

24 A: Correct. We did some comparisons along the way
25 and decided to switch firms, engineering firms.

1 Q: Okay. And let me ask you to turn to Joint
2 Exhibit Number Seven. Did you receive that
3 letter from DHEC?
4 A: Yes, I did.
5 Q: Okay. And what does that letter indicate to
6 you?
7 A: It indicates to me that we had agreed that our
8 -- that they had reviewed our application and
9 it appears to be administratively complete.
10 Q: Now, along with your application, did you
11 submit information to DHEC regarding the York
12 County Planning process?
13 A: Yes.
14 Q: Let me ask you to look at Exhibit Ten. Joint
15 Exhibit Ten, I'm sorry, Joint Exhibit Number
16 Ten. Is that a document that you submitted to
17 DHEC with -- at about the same time as the
18 application?
19 A: Yes, it was, this document and I'm estimating
20 1,000 pages of supporting documents to go with
21 it, but this was -- this was there.
22 Q: Okay. And what were you asking DHEC to focus
23 on when you provided this document to the
24 Department?
25 A: Well, it was and still is our understanding

1 that Greeneagle's consistency determination
2 should be made based upon the 1994 Catawba
3 Regional Plan.

4 Q: Okay. And this was your justification to the
5 Department asking them to consider consistency
6 under the former Regional Plan?

7 A: Correct. It was our way of proactively
8 addressing these issues when we submitted our
9 permit application.

10 Q: Okay. Now, let me ask you, Mr. Taylor, to turn
11 to Joint Exhibit Number Nine. Did you receive
12 this letter from the Department?

13 A: Yes.

14 Q: And would you read into the record, please, the
15 second sentence of the first paragraph of that
16 letter?

17 A: The sentence beginning with after?

18 Q: Yes.

19 A: After review of the recently amended 2007 York
20 County Solid Waste Management Plan, the
21 Department finds that the proposed facility is
22 not consistent with the 2007 Plan and the
23 permit application is hereby denied.

24 Q: Okay. And subsequent to that letter then, you
25 appealed the Department's decision?

1 A: Correct.

2 MR. HARMON: Your Honor, that's all the questions I
3 have for Mr. Taylor.

4 Q: Please answer any questions the other lawyers
5 or the Judge has for you.

6 THE COURT: Cross examination, Ms. Williams

7 MR. TAYLOR - CROSS EXAMINATION BY MS. WILLIAMS:

8 Q: Good morning, Mr. Taylor.

9 A: Good morning.

10 Q: Isn't it true that you have no way of knowing
11 if there was additional information given to
12 the York County Council regarding whether that
13 landfill was needed in York County?

14 A: I don't think I got your question. I'm sorry.
15 Can you repeat the question, please?

16 Q: Yes, I will. Isn't it true that you have no
17 way of knowing whether or not the York County
18 Council was given additional information, other
19 than what you've testified to, what you know
20 about, additional information on whether a
21 landfill, C&D landfill was needed in York
22 County?

23 THE COURT: Well, let me interject this for my
24 benefit. Given new additional information
25 when? In other words, we've got a time line

1 here that's --

2 **MS. WILLIAMS:** Well, Your Honor, what I'm referring
3 to is Mr. Taylor has testified here today that
4 he attended quite a few of the York County
5 Council meetings, and he's testified to what he
6 knows, what he heard. What I'm saying is that
7 -- and what he's saying is based on what he
8 heard there was a need for the landfill in the
9 northwest quadrant. But there could have been
10 additional information given to the county
11 council that he's not privy to that made them
12 decide to vote against, any additional --

13 **THE COURT:** And you are evidently making that
14 question without regard to when it was given.
15 It would help me to know what period of time
16 you're talking about. But you're the lawyer,
17 you go ahead.

18 **Q:** Well, I'll clarify. The period of time that
19 I'm talking about is the same period of time
20 that you testified to that you knew about that
21 you attended the county council meetings. I
22 guess this is during 2006, 2007. Actually, it
23 doesn't matter. Is there any way of you
24 knowing if there was any additional information
25 to what you have already testified to?

1 A: I need to request an opportunity to answer more
2 than just a yes or no, if I may.

3 Q: Well, I need to answer you yes or no first, and
4 then if you feel like you need to expound upon
5 that, then --

6 A: I don't fully understand the question, so I'm
7 afraid to answer it incorrectly.

8 Q: All right. Well, I --

9 A: Repeat it one more time, please.

10 Q: I'll try to clarify it. You testified here
11 today that you attended a majority of the
12 county council meetings that have to do with
13 the adoption of the solid waste management
14 plan, is that correct?

15 A: That's correct.

16 Q: And you testified to information that you heard
17 in the meetings, you heard discussed, because
18 you were there, is that correct?

19 A: I was there, yes.

20 Q: So there are meetings that you did not attend,
21 is that correct?

22 A: I did not attend every meeting.

23 Q: So being that you did not attend every meeting
24 and you're not a part of York County Council,
25 is that correct?

1 A: I'm not a part of York County Council.

2 Q: All right. Okay. So pursuant to that
3 information, isn't it true that the council
4 could have received additional information
5 regarding the need for a landfill in York
6 County that you're not privy to?

7 A: That's not true.

8 Q: Okay. So let me ask you another -- so what
9 you're saying is that you were privy to all the
10 information that the York County Council
11 received?

12 A: I was privy to what was said at the adoption of
13 the ordinance.

14 Q: At the adoption of the ordinance.

15 **THE COURT:** Well, I'm going to direct you to answer
16 the question because that's not responsive to
17 her question as I heard it.

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

19 A: I'm -- this is --

20 Q: Okay. I'll go over it again. I'll try to make
21 it real simple. You weren't at all the county
22 council meetings, is that correct?

23 A: Correct.

24 Q: Okay. So at the county council meetings that
25 you did not attend, there could have been

1 information that was provided to the York
 2 County Council regarding the need for a
 3 landfill that you're not aware of or privy to
 4 because you weren't there. That's a yes or no
 5 question.
 6 A: Yes.
 7 Q: Thank you. Okay. So isn't it true that the
 8 York County Council could have received a
 9 report that is different than what you heard
 10 regarding the need for a landfill; that they
 11 could have gotten that information and that you
 12 just weren't aware of it?
 13 A: I believe it certainly is possible, but it
 14 doesn't support what those council members said
 15 at third reading.
 16 Q: Isn't it true that the report that you
 17 discussed earlier that claimed, that stated
 18 that there was a need for the landfill, that
 19 that report was merely for information for the
 20 county council; in other words, was county
 21 council required to accept all that information
 22 as true? The information that was in the
 23 report that you referred to that said that
 24 there was a need for the landfill.
 25 A: The Joyce Engineering study?

1 Q: Yes.

2 A: I'm sorry, please -- I don't understand the
3 question. I'm sorry.

4 Q: I'll break it down for you.

5 A: Please do.

6 Q: All right. You said Joyce Engineering
7 submitted a report to the county council that
8 said that there was a need for a landfill, is
9 that correct?

10 A: Yes.

11 Q: Okay. This report was commissioned by the
12 county council, is that correct?

13 A: That's my understanding.

14 Q: But just because the report was commissioned by
15 the county council, to your knowledge was the
16 county council required to accept every single
17 piece of information in that report?

18 A: I'm not an official authority on their
19 requirements, I just know that they ultimately
20 did not.

21 Q: That's a good point you just made. You said
22 you're not an official authority on what they
23 are required to do, so, therefore, what you're
24 telling the Court is that you really don't know
25 what their requirements are, is that correct?

1 A: I'm not an authority on their requirements,
2 that's correct.

3 Q: So then, since you're not an authority, then
4 it's possible that the York County Council
5 looked at that report and said, some of the
6 stuff in this report sounds right and we accept
7 it, but some things in this report we don't
8 accept, we don't agree with, is that correct?

9 A: I agree that could happen.

10 Q: All right. Okay. Do you have Exhibit Two up
11 there?

12 **THE COURT:** Joint Exhibit Two?

13 **MS. WILLIAMS:** I'm sorry, Joint Exhibit Number Two.
14 This is the demonstration of need approval.

15 **THE COURT:** And just before we go ahead, that was --
16 just to make sure I've got it in the record, I
17 overruled your objection, Ms. Williams, to
18 Petitioner's One and Two and admitted those.
19 I just want to make sure that that's on the
20 record.

21 **MS. WILLIAMS:** Yes, Your Honor, you did.

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

23 Q: Do you have Joint Exhibit Number Two, Mr.
24 Taylor? Joint Exhibit Number Two, you have it?

25 A: Yes, ma'am, I believe I do.

1 Q: I would like you to read, if you would, the
2 first four words of the first paragraph second
3 sentence.
4 A: Beginning with staff?
5 Q: I'm sorry. No, I'm sorry, the third sentence,
6 not the second. The first four words of the
7 first paragraph, the third sentence.
8 A: Starting with the?
9 Q: That's correct.
10 A: The Department may consider.
11 Q: So it says the Department may consider -- and
12 I'll finish reading that -- an annual disposal
13 limit up to 105,900 tons, is that correct; is
14 that what it says?
15 A: Yes.
16 Q: Okay. So the fact that the word may is in
17 there means that if you are to receive your
18 permit, then this is what the Department would
19 consider, is that correct?
20 A: That's how I understand it.
21 Q: So it wasn't definite. I mean, may connotates
22 that it wasn't anything definite of you getting
23 this much tonnage for your landfill, is that
24 correct?
25 A: Yes, sir.

- 1 Q: All right. Okay. Now, if you'll look at the
2 third paragraph on that same page and read the
3 first sentence of that paragraph and stop at
4 occurs, and then read the letter (d).
- 5 A: Also, please be aware that this approval may be
6 terminated by the Department if any one of the
7 following occurs, reference (d), the Department
8 determines that the proposed facility is not
9 consistent with the host county or region's
10 solid waste management plan.
- 11 Q: From that sentence, is it clear to you that
12 there's a possibility that your landfill would
13 not remain consistent with the solid waste
14 management plan on file with DHEC? I'll
15 rephrase it if you don't understand.
- 16 A: Please do.
- 17 Q: This statement, does it put you on notice that
18 there's a possibility that you may not get your
19 permit, if it's not consistent with the solid
20 waste management plan of York County?
- 21 A: We understood that possibility from DHEC's
22 perspective.
- 23 Q: Okay. So you weren't blind sided when you
24 didn't get your permit because you were on
25 notice, right?

1 A: Actually, we were blind sided based on all the
 2 information we had been given up to that point.
 3 Q: Given by whom?
 4 A: By York County, by York County.
 5 Q: By York County. But you testified here today
 6 that DHEC did put you on notice that that was
 7 a possibility that you may not get your permit,
 8 is that correct?
 9 A: Yes, ma'am.
 10 Q: All right. Let's look at Exhibit -- Joint
 11 Exhibit Four. If you would read the first
 12 paragraph and the last sentence.
 13 A: Beginning with based?
 14 Q: Yes, that's correct.
 15 A: Based on the Department's review, our
 16 preliminary finding is that the proposed new
 17 facility is consistent with both the February
 18 1994 Catawba Regional Solid Waste Management
 19 and the South Carolina State Solid Waste
 20 Management Plan.
 21 Q: So this sentence tells you that this is not a
 22 final consistency determination, is that
 23 correct? Because it says based on our review
 24 -- our preliminary findings, is that correct?
 25 I need to hear audible.

1 A: Yes, I -- I understand the preliminary portion
2 of that.

3 Q: And if you would read the second paragraph and
4 the last sentence of this exhibit, Exhibit
5 Number Four.

6 A: Beginning with the word please?

7 Q: That's correct.

8 A: Please be aware that if the Catawba Regional
9 Plan is revised or replaced during the
10 permitting process, the Department will review
11 the newest plan of record and make the final
12 consistency determination.

13 Q: So here again DHEC is putting you on notice
14 that there is a possibility that there could be
15 a another new solid waste management plan that
16 York County files with DHEC and that's the plan
17 you would have to use. Was that your
18 understanding from that sentence?

19 A: Yes, ma'am.

20 Q: Let's see. Let me ask you, I stood up during
21 your testimony and said that you referred to
22 some council member that was elected. Can you
23 tell us what his name was?

24 A: Councilman Joseph Cox.

25 Q: Cox. And when was he elected?

1 A: He -- I believe he won a June primary in 2006
2 and I don't think he had a democratic
3 challenger, so June 2006.

4 Q: And prior to that time, and refresh my memory,
5 and maybe I hadn't gotten this, but were you
6 saying that prior to him being elected that
7 everything seemed to be status quo with you,
8 with Greeneagle receiving its landfill?

9 A: Oh, absolutely. It was June of '06 when we
10 received loan approval from the county itself.

11 Q: Okay.

12 A: Through that public hearing process.

13 Q: And after Mr. Cox was elected, something
14 changed in terms of you receiving the landfill
15 or the tenor of the atmosphere?

16 A: Well, I think I mentioned earlier the mobile
17 homes that were placed next to us and the delay
18 that was created just because of us going
19 through that process, but during that process
20 Councilman Cox, elect, was being very vocal
21 about his intentions of delaying or stopping
22 our efforts once seated.

23 Q: You testified that prior to him being elected
24 that you felt like you were going to receive
25 the landfill. But did Greeneagle have any sort

1 of written contract or agreement with county
 2 council to say that Greeneagle, Incorporated
 3 will receive a landfill in York County?
 4 A: Well, in my view, the zoning board --
 5 Q: Excuse me, could you answer yes or no first
 6 before you start to explain your answer.
 7 A: Please repeat the question.
 8 Q: Okay. The question is did you have a written
 9 agreement, Greeneagle, Incorporated, a written
 10 agreement or contract with York County Council
 11 that stated, you know, that guaranteed or
 12 stated that Greeneagle would receive its
 13 landfill in York County.
 14 A: Yes.
 15 Q: You had a written agreement?
 16 A: In my view, we did.
 17 Q: Was that presented this morning through your
 18 testimony, the agreement that you just referred
 19 to?
 20 A: Our zoning approval from the board that York
 21 County appointed to handle our rezoning
 22 process.
 23 Q: So the zoning approval, that's the document
 24 that was just between Greeneagle and York
 25 County Council, is that what you think?

- 1 A: Well, I consider York County itself an entity
2 and the council appointed the board determined
3 our zoning approval. And those appointees of
4 the county council granted that zoning approval
5 to us.
- 6 Q: But I think your contention here is that the
7 county can't grant you a permit for a landfill,
8 only DHEC can do that, isn't that right? Isn't
9 that what you're pleading, that DHEC delegated
10 its authority to the county? That only DHEC
11 can give you a landfill permit, is that
12 correct?
- 13 A: I don't understand the delegation portion of
14 that, but I do understand DHEC issues the
15 permit, yes, ma'am.
- 16 Q: Right. So you said that you had a -- once they
17 gave you zoning approval, that in your purview,
18 that was an agreement with the county between
19 Greeneagle and the county, is that correct?
- 20 A: I think I answered your question. I apologize
21 if it wasn't.
- 22 Q: Yeah.
- 23 A: But yes, we felt like we had an agreement with
24 the county.
- 25 Q: That was my question.

1 A: Okay.

2 Q: But I guess I'm trying to get to how does that
3 get to be an agreement as opposed to just a
4 mere approval saying that your land -- at this
5 point, you're approved for zoning, zoning of
6 the landfill, as opposed to saying you will get
7 a landfill in our county. I'm trying to
8 understand that.

9 A: I don't have that document in front of me, but
10 I'm fairly familiar with it. It references a
11 C&D landfill facility, specifically what
12 geographical location, and what the -- what the
13 stipulations were for us to do that, and that
14 they granted approval.

15 Q: They granted zoning approval.

16 A: They granted zoning approval to develop a C&D
17 landfill at that site, yes, ma'am.

18 Q: Right. But is that a document that you signed
19 with the county and that the county also signed
20 with you, saying what you said it said? I
21 mean, it sounds to me like it was a -- you
22 submitted some sort of application, is that
23 correct, for zoning?

24 A: Yes, ma'am.

25 Q: And they reviewed the application?

1 A: Yes, ma'am.

2 Q: And they reviewed it against their zoning laws?

3 A: And there was a -- I'm assuming they did, as
4 far as that, but there was a public hearing and
5 all that was aired in front of the county
6 appointed and board.

7 Q: But did you take that as being the ultimate --
8 the ultimate decision on whether you would
9 receive the landfill?

10 A: I took that as the county not being opposed to
11 us putting that landfill in the county.

12 Q: At that time?

13 A: Correct.

14 **THE COURT:** Excuse me a moment. Was the zoning
15 approval passed by a body of members
16 independent of the county council, or was the
17 zoning approved by a committee of council
18 members?

19 A: I'm sorry, are you asking me, sir?

20 **THE COURT:** Yes, sir.

21 A: Yes, it was -- it was a -- it's a group of
22 private citizens appointed by the county
23 council.

24 **THE COURT:** So it wasn't the council members
25 themselves?

1 A: No, sir.

2 Q: Okay. So it wasn't the council that you had

3 the agreement with then. And really it was the

4 zoning board.

5 A: It was the zoning board representing the

6 council, yes, ma'am.

7 Q: Okay. I hate to beat a dead horse, but you

8 said you had a written agreement with them. So

9 when I think of a -- I asked you about a

10 contract. So when I think of a contract, I

11 think of it being signed, you know, like

12 provisions laid out in a document, and one

13 entity signs and the other entity signs. So

14 was there such a document like that between you

15 and the zoning board -- or when I say you, I

16 mean Greeneagle, Incorporated, and the zoning

17 board, or between Greeneagle, Incorporated, and

18 the county council? Was there such a document

19 like that?

20 A: There's a document very similar to that,

21 there's not both signatures on one document.

22 Q: Okay. So there is -- I want to make clear for

23 the record, there is no document where there

24 are both signatures, one by Greeneagle,

25 Incorporated, and one by the York County Zoning

1 Board or the York County Council, that is
2 signed by both entities agreeing that
3 Greeneagle will have a landfill in York County,
4 is that correct?

5 A: There's no document with all of those
6 signatures.

7 Q: Thank you. And there was no document at that
8 time, whenever the zoning board gave Greeneagle
9 its approval, and there's still no such
10 document, is that correct?

11 A: Correct.

12 Q: I think you testified that there was a
13 gentleman on the council, I'm not quite sure
14 which one you said, and maybe I'm not correct,
15 correct me if I'm wrong, that there was someone
16 on the council that really was for your
17 landfill, a county council member, is that
18 correct?

19 A: I don't know of one in particular over any
20 others, there were three or four at various
21 stages of the process.

22 Q: And did any of those members tell you
23 personally that you, and when I say you, I'm
24 saying Greeneagle, Incorporated, that you were
25 going to get your landfill?

1 A: I don't know if it was -- I don't know if it
2 was those exact words, but we were given that
3 -- we were given that understanding.

4 Q: But isn't it true that, you know, one or two
5 council members can't -- they can't speak for
6 the entire council? It has to be a majority
7 vote, isn't that correct?

8 A: I believe that to be correct.

9 Q: All right. So then, therefore, you could not
10 rely on what you may or may not have been told
11 by one or two council members regarding you
12 receiving the landfill, you would have to wait
13 for the full vote of the council, isn't that
14 correct?

15 A: Yes, ma'am.

16 MS. WILLIAMS: Can I confer for a moment?

17 THE COURT: Yes, ma'am.

18 Q: All right. Mr. Taylor, I believe you testified
19 that when the council voted on the moratorium
20 on any landfills that, you know, you were
21 devastated by that vote because you were
22 relying on the fact that they had promised you
23 that you would get your landfill, is that
24 correct?

25 A: I'm sorry for nodding. I'm thinking about your

1 question. I think it's almost a two part
 2 question.
 3 Q: I'll break it down for you.
 4 A: Please.
 5 Q: Did you testify earlier that you were somewhat
 6 devastated by the county council voting for a
 7 moratorium on any landfills?
 8 A: Yes.
 9 Q: At the time that the moratorium was voted on,
 10 did you have a permit application in with DHEC?
 11 A: No. No, ma'am.
 12 Q: So I guess your devastation could have been a
 13 bit premature because you didn't even have an
 14 application on file with us for us to review,
 15 is that correct?
 16 A: You didn't have the application, but we had
 17 already spent significant time producing the
 18 application.
 19 Q: Okay. You talked a little bit about, you all
 20 presented a lot of evidence on the drafts that
 21 had been submitted on the solid waste
 22 management plan. I think you presented two
 23 drafts and then the final plan that was
 24 actually voted upon. And you talked about
 25 significant changes were made to the plan,

1 although the only significant change that I
2 heard you testify to were the population
3 projections and the fact that they voted
4 against any landfill. So I didn't hear about
5 the numerous changes, but I'm interested in the
6 populations projections that you talked about.
7 Do you know what York County based their
8 population projections upon that you find in
9 these drafts?

10 A: I know what council was told during the public
11 hearing and they were --

12 Q: I'm sorry. You know what they were told about
13 what?

14 A: I know what county council was informed by the
15 county attorney at the time that those
16 projections were -- those population
17 projections were from the South Carolina, I
18 forget the term for it, the South Carolina
19 Control Board. I'm sorry, I can't remember.

20 Q: All right. Well, did you ever do any
21 independent investigation to verify that those
22 -- that they did actually come from the Control
23 Board? In other words, let me just --

24 A: That's part -- that's part of the obvious
25 confusion during that meeting. There were

1 council members during that meeting asking the
2 county attorney who authorized this and where
3 it came from and no one ever received an
4 answer. There was just -- there was this
5 unknown --

6 Q: Excuse me, Mr. Taylor, that's not -- that
7 wasn't my question.

8 A: I apologize.

9 Q: My question to you was did you do, since you
10 heard in the meeting that those projections
11 were based on the South Carolina State Budget
12 and Control Board --

13 A: That's it.

14 Q: Okay. Did you personally do any investigation,
15 i.e., submit a FOIA request for those
16 population projections from the Budget and
17 Control Board to verify that what was in the
18 drafts was correct?

19 A: No, ma'am.

20 Q: Okay. Because I know you did a lot of FOIA
21 investigation with, you know, trying to get the
22 minutes for the council meetings and actions,
23 but it sounds like you didn't do any
24 investigation to verify the validity of the
25 information in the plan, is that correct? Did

1 you do any investigation to verify the validity
2 of the information that was submitted within
3 the plan, the solid waste management plan?

4 A: I did to the extent that I could.

5 Q: Okay. What did you do?

6 A: Basically, I approached as many council members
7 that would speak with me and ask them where did
8 it come from and where did this information
9 come and there's an unknown there.

10 Q: Okay. I'm hearing two things from you right
11 now. I'm hearing you say that you heard in the
12 meeting from the attorney, York County
13 attorney, that the information in the plan on
14 the population projections came from the South
15 Carolina State Budget and Control Board. Okay.
16 And then I'm hearing you say that when you
17 asked the council members that they said they
18 didn't know where it came from, is that
19 correct?

20 A: Perhaps I didn't phrase it correctly. They
21 don't know who authorized the change.

22 Q: We're not talking about a change.

23 A: Okay.

24 Q: Let's stay on what I'm trying to ask you.
25 Which is, in the drafts -- there are two drafts

1 that you all submitted into evidence today. In
2 those two drafts are population projections,
3 and what you told the Court is that in the
4 final solid waste management plan, the one that
5 was adopted, that the population projections
6 had changed significantly. I believe that's
7 what you said. Now, if I'm wrong, tell me.

8 A: That's correct.

9 Q: So what I'm trying to find out from you,
10 because I know you've done some investigation
11 regarding what went on during the council
12 meetings in terms of what was said, what wasn't
13 said, the actions that were taken, and since
14 you've, you know, you really wanted this
15 landfill, I would assume that you would want to
16 know the information they're putting in this
17 plan, you want to verify whether it was correct
18 or incorrect. So my question to you is did you
19 do any investigation, i.e., file a FOIA request
20 with the Budget and Control Board, to verify
21 that the figures that were in the drafts, not
22 the final but the drafts, were correct?

23 A: No, ma'am.

24 Q: Comparing what was in the plan, what they put
25 in the plan --

1 THE COURT: Let me answer.

2 MS. WILLIAMS: I'm sorry.

3 THE COURT: He started to answer.

4 A: No, ma'am. I did not.

5 Q: All right. Okay. Now, let me ask you about
6 the final. You said that it was a significant
7 difference in the population projections in the
8 final. Did you do any outside investigation,
9 i.e., FOIA the Budget and Control Board, to
10 find out if those population projections were
11 correct?

12 A: FOIA projections were provided by the county
13 staff, second by the Budget and Control Board,
14 and I did not investigate either.

15 Q: Okay, let's back up.

16 A: I'm sorry.

17 Q: You backed up on me.

18 THE COURT: Answer the question, please, sir. It's
19 pretty clear to me.

20 A: Yeah, I did not. I did not do any research.

21 Q: Okay. So then my question to you is if you
22 didn't do any investigation to find out if any
23 of these population projections were correct,
24 how can you know whether the change that you
25 term as significant, how could you know that it

1 wasn't warranted?

2 A: I again reference the reaction of the council
3 members during that meeting and their public
4 comments during the meeting that they were --
5 they didn't know where these changes came or --
6 and they were asking who the projections came
7 from.

8 Q: Okay. But you did testify earlier that the
9 attorney answered the question where the
10 projections came from, is that correct? You
11 said you heard it.

12 A: Yes, ma'am, he did say that.

13 Q: So it sounds to me like they knew where the
14 projections came from. But what I'm asking you
15 is your complaining that there was significant
16 change in the population projections in the
17 final Ordinance 207 where they adopted the
18 plan. But that could have been a change that
19 was warranted based on any number of reasons,
20 and one of those reasons could be that the ones
21 that were in the drafts weren't correct, but
22 the ones in the final were. Isn't that
23 correct?

24 MR. HARMON: Your Honor, object. She's asking the
25 witness to speculate. I realize this is cross

1 examination, but he can't speculate on
2 something he doesn't really know.

3 **THE COURT:** I'm going to overrule your objection up
4 to this point I understand the question and I
5 think it can be answered to the extent that he
6 knows.

7 **Q:** So I'll restate. Basically what I'm saying to
8 you is if you did no investigation on these
9 population projections and you're complaining
10 now that they change the projection to skew
11 against me because, you know, if they kept the
12 drafts, the population projections in the draft
13 I would have gotten my landfill, is basically
14 what you're telling the Court. But because
15 they changed the population projections in the
16 final, you're saying it's skewed against me and
17 I didn't get my landfill, therefore something's
18 wrong with this. So my question to you is how
19 can you know if anything is wrong if they made
20 the wrong decision in changing the projections
21 if you did no investigations to verify whether
22 the numbers were right or wrong?

23 **A:** I agree that I didn't investigate that
24 particular issue. There were many other
25 changes that are in the document as well that

1 --

2 Q: That's interesting. I mean, on direct I didn't
3 hear any other significant change that you
4 noted except the population projection and the
5 fact that they voted against any new landfills
6 that wasn't -- okay. You testified that the
7 final solid waste management plan stated that
8 it didn't provide for any new landfills, is
9 that correct?

10 A: Correct.

11 Q: But isn't it true that the plan provides for
12 expansion and replacement of C&D facilities?

13 A: I think it references existing facilities,
14 replacements and extensions.

15 Q: Let's look at Joint Exhibit Twelve. And it's
16 page 41, but it's DHEC page 0935, under general
17 provisions, number one. Let me know when you
18 have that.

19 A: Yes, ma'am.

20 Q: Will you read the second sentence under general
21 provisions number one, starting with these.

22 A: These general provisions shall not provide for
23 landfills in existence and properly permitted
24 as of December 31, 2006, and also shall not
25 apply to the expansion of those existing

1 landfills properly permitted as of December 31,
2 2006.

3 Q: Now turn over to the next page and read letter
4 (b) if you will.

5 A: All permitted construction demolition and land
6 clearing landfills Part 2 and Part 4 shall be
7 allowed to expand and replace themselves within
8 the respective service areas when permitted
9 capacity has been exhausted.

10 Q: So, from reading these two provisions, it's
11 clear that even though no new, meaning
12 standalone landfills, were recommended by this
13 plan, they do recommend or, you know,
14 understand that they can expand or replace the
15 landfills that already exist in the county, is
16 that correct?

17 A: Yes, ma'am.

18 **MS. WILLIAMS:** Can I confer for a moment, Your
19 Honor?

20 **THE COURT:** Yes, ma'am.

21 Q: Okay. I just wanted to get on record about the
22 drafts that were presented about the solid
23 waste management plan. Isn't it correct that
24 the two drafts that were submitted into
25 evidence, Petitioner's One and Petitioner's

1 Two, that they were not adopted by the York
2 County Council, is that correct?

3 A: I want to answer it correctly. They were given
4 first and second reading but not final third
5 reading.

6 Q: Okay. How many readings would it need to be
7 adopted?

8 A: I'm --

9 Q: Strike that. Strike that question.
10 Petitioner's One and Two, the first drafts that
11 were submitted into evidence, were those drafts
12 adopted by the York County Council?

13 A: One was approved first reading and one was
14 approved second reading.

15 Q: Were they adopted?

16 A: I promise I'm not trying to be difficult.

17 Q: No, it's okay, no, no, no.

18 A: You're the one who --

19 Q: But I just want you to understand my question.
20 I'm not asking you about when it was read or
21 what reading it was.

22 A: Yes, ma'am.

23 Q: I'm asking you was it adopted by the York
24 County Council.

25 A: Neither one was given a third reading, which I

1 don't think -- I think that means they were not
2 adopted officially.

3 **MS. WILLIAMS:** Your Honor, I have no more questions.

4 **THE COURT:** Thank you. By the clock on this
5 computer we've reached the noon hour. Would
6 everyone like a short break or you want to
7 proceed.

8 **MR. HARMON:** A short break would be great, Your
9 Honor.

10 **THE COURT:** Let's take five minutes or so just when
11 everybody gravitates back in, we'll start back.
12 Be at ease.

13 (A short break was taken.)

14 **THE COURT:** You were through your cross examination,
15 Ms. Williams?

16 **MS. WILLIAMS:** Yes, Your Honor.

17 **THE COURT:** All right. You're still under oath, Mr.
18 Taylor. Mr. Harmon, redirect. And Mr. Harmon,
19 would you address Mr. Taylor's ownership or
20 control of Greeneagle? And if you did that, I
21 missed it. Did you cover that?

22 **MR. HARMON:** I may not have covered it in capacious
23 detail, Your Honor, but I will.

24 **THE COURT:** Thank you.

25 **MR. TAYLOR - REDIRECT EXAMINATION BY MR. HARMON:**

1 Q: Mr. Taylor, what is the entity Greeneagle, what
2 type of entity is it?

3 A: Greeneagle is a South Carolina S Corporation,
4 I am the president, and Paul Rogers, I
5 mentioned earlier, he is the other owner, vice-
6 president of Greeneagle.

7 Q: And you and Mr. Rogers own the company?

8 A: Correct.

9 Q: And you serve at president?

10 A: I am president.

11 Q: And for what purpose did you organize
12 Greeneagle?

13 A: For the sole purpose of development of the C&D
14 landfill on Quarry Road.

15 Q: Now, during cross examination, Mr. Taylor, you
16 were asked some questions about not going to
17 every county council meeting. How did you go
18 about selecting which meetings you would go to?

19 A: I went to every one unless there was a work or
20 personal reason of me not being actually able
21 to go. Otherwise, I went to every one.

22 Q: Okay. Did you go to -- do you recollect not
23 attending a -- would you review an agenda
24 before you went to a meeting?

25 A: Oh, absolutely, yes.

1 Q: And did you go -- do you recollect going to all
2 the meetings where there was an agenda item
3 about the solid waste management planning
4 program?

5 A: I can say that I never missed one of those. If
6 there was solid waste issues on the agenda, I
7 was there.

8 Q: Now, is the proposed Greeneagle location,
9 that's not in a municipality, is that a fair
10 statement?

11 A: That's correct.

12 Q: It's located within the county but not a
13 municipality?

14 A: Correct.

15 Q: Now, with respect to what you received when you
16 obtained zoning approval, what was approved by
17 the special, I think you called it a special
18 exception zoning approval? Can you tell the
19 Court what that means to you?

20 A: We had requested permission to create or
21 develop a C&D landfill with an LCD, a land
22 clearing debris component, as well as a
23 recycling portion of that facility, and we were
24 granted the C&D and land clearing debris
25 portion of that, but we were denied the

1 recycling portion.

2 Q: And what were you told about the recycling
3 portion?

4 A: That in order for us to be given approval for
5 the recycling portion, that we would need to
6 resubmit a new application.

7 Q: Now, was it your understanding that the county
8 through its zoning board, and I don't know the
9 official body of York County for zoning
10 purposes, but through the zoning board, York
11 County was telling you what use was permissible
12 on the site that you had proposed for a C&D
13 landfill?

14 A: Correct. I looked at it as being similar or if
15 not exact situation as being a homebuilder and
16 requesting a permit to build a home from the
17 county and they handed me -- handed me -- would
18 hand me a piece of paper granting that
19 permission and I was never asked to sign one of
20 those. But I do -- I did accept that as
21 approval.

22 Q: Now, when you would attend York County Council
23 meetings, were presentations made by the staff
24 to council with respect to the planning process
25 that was ongoing?

1 A: Yes, sir.

2 Q: Okay. And do you recall a specific meeting
3 where that occurred?

4 A: One that stands out would be the one on
5 February 20, 2007, about a week prior to the
6 adoption of that final ordinance made by Ms.
7 Anna Wilson, the assistant manager at the time.

8 Q: Okay. And what do you recollect about that
9 presentation by Ms. Wilson?

10 A: That primarily that a lot of these provisions
11 that are in this final reading were not
12 presented then and that Greeneagle at that
13 point in time was and would have still been
14 consistent or allowed to proceed.

15 Q: Now, with regard to population numbers, did Ms.
16 Wilson discuss population numbers with the
17 council?

18 A: She did.

19 Q: Did she tell the council where they came from?

20 A: She said they came from the -- it was within
21 their planning department. I don't remember
22 the -- it was their -- it was part of the
23 planning department, but she did acknowledge
24 that the York County staff had prepared the
25 information.

1 Q: And it's your understanding then that different
2 population numbers were placed in the plan that
3 is -- that was used for third reading, which is
4 Joint Exhibit Number Twelve?

5 A: Correct.

6 Q: As you sit here today, Mr. Taylor, do you
7 recollect any other changes that were made to
8 the plan that was adopted for third reading,
9 that is Joint Exhibit Number Twelve?

10 A: Yes, and I have it in front of me, if you'd
11 like me to go over those, but there were many
12 changes put into that final reading that were
13 not there the week prior to the final reading.

14 Q: And when you say you have them in front of you,
15 what -- are you referring to a specific
16 document?

17 A: Well, this would be Exhibit Twelve, the York
18 County Solid Waste Management Plan adopted with
19 the date on it of February 28th, 2007, and the
20 general provisions section starts on page 41 of
21 the document.

22 Q: That would be the page that also has at the
23 bottom, DHEC-0935?

24 A: Correct.

25 Q: Okay. And would you identify for the Court

1 exactly which provisions you are talking about
 2 that were added to the plan?
 3 A: There were several. One I read earlier, the
 4 provision itself, these provisions shall not
 5 apply to existing and properly permitted
 6 landfills as of December 31, 2006, that was not
 7 in there prior to that reading. On page
 8 4 2 ,
 9 paragraph
 10 (c) ,
 11 there's a
 12 tonnage
 13 limitatio
 14 n
 15 referenci
 16 ng that
 17 it would
 18 b e
 19 required
 20 to any
 21 n e w
 22 landfills
 23 in the
 24 county, a
 25 tonnage

1 limitation
2 n o f
3 4 0 , 0 0 0
4 tons per
5 y e a r .
6 Paragraph
7 (e) of
8 page 42,
9 there's a
10 distance
11 limitatio
12 n from
13 schools.

14 Q: And what was that distance?

15 A: One and one half mile distance requirement from
16 schools, measured from the perimeter of the
17 school and the latitude/longitude coordinates
18 of the landfill as supplied by DHEC.

19 Q: Okay.

20 A: Paragraph (f), a mandatory recycling
21 requirement for new C&D landfills, but yet was
22 exempting from existing landfills and their
23 expansions. Page 43 of the document, paragraph
24 (g), a requirement that all new C&D landfills
25 must be located at a minimum distance of five

1 miles from the North Carolina border, that was
2 new. Paragraph (h) of page 43, prior to any
3 new landfills being permitted, a landfill
4 developer must provide a phase one
5 environmental site assessment based on results
6 of the phase one testing. The county may
7 require additional assessments. That was a new
8 requirement. Paragraph (I), page 43, no
9 landfill shall be located within or in close
10 proximity, 200 feet, from any river, stream,
11 creek or lake.

12 **THE COURT:** That would affect your proposal
13 directly, would it not?

14 **A:** Yes, sir. Yes, sir, it did. Paragraph J, page
15 43, no landfill shall be located within a close
16 -- in close proximity, 100 feet from any 100
17 year flood plain, which would directly affect
18 us. Paragraph K was no landfill should be
19 within 1,000 feet of any resident existing at
20 the time of the landfill receiving county
21 special exception. That did not necessarily
22 directly impact us at that point, but it was
23 something new. Paragraph N, page 43, no new
24 landfills in York County shall exceed a height
25 limit of 90 feet was new, and that would impact

1 our facility. And I think that's the majority
2 -- majority of the changes.

3 Q: Okay. Now, there are some others that you
4 mentioned earlier --

5 A: Correct.

6 Q: -- that would impact your facility as well.
7 Could you indicate to the Court which ones
8 those are?

9 A: Well, I mentioned the -- I mentioned the
10 population, the population studies had been
11 modified, which program obligations indicated
12 less than need.

13 **THE COURT:** Does that appear in this document?

14 A: The population projections do.

15 **THE COURT:** Let's go to the page, please, sir.

16 A: I've got it -- let's see. Page 37 of the
17 document that we're currently looking at. And
18 then I have --

19 **THE COURT:** It's DHEC-0931?

20 A: Yes, sir.

21 **THE COURT:** Thank you.

22 A: And the comparison would be Petitioner's
23 Exhibit Number Two, page 37 of the document.

24 **THE COURT:** Thank you.

25 Q: Okay. Now, in addition to population, as you

1 were going through the items that began on page
2 41 of Joint Exhibit Twelve, before you began
3 identifying those items that would impact your
4 facility, I think there were some earlier in
5 your testimony that would, for example, Item C,
6 the 40,000 ton cap, would that impact your
7 facility?

8 A: That would impact my facility. It makes it a
9 non-viable business plan. It basically --

10 **THE COURT:** Non-viable what? Excuse me?

11 A: It eliminates the profitability of the
12 business, yes, sir.

13 Q: And do you know what level of tonnage, do you
14 recollect what level of tonnage you would need
15 to have a viable business plan?

16 A: I remember when I was speaking with council
17 members and they were asking me those
18 questions, we were willing to agree to 70,
19 75,000 tons per year, which is much less than
20 the demonstration of need had suggested.

21 **THE COURT:** I have a question at this point, Mr.
22 Harmon.

23 **MR. HARMON:** Yes, Your Honor.

24 **THE COURT:** That 40,000 ton per year limit, 40,000
25 ton per year, that would affect anybody that

1 was building a landfill, would it not?

2 A: The way I understand it, it's any new, any new
3 landfills.

4 **THE COURT:** What I meant was the profitability issue
5 would pretty much apply across the board. It
6 would be non-profitable for anybody to build
7 and assemble a landfill, would it not?

8 A: Correct. Correct, yes, sir.

9 **THE COURT:** Thank you.

10 Q: And it's your understanding, Mr. Taylor, that
11 these general provisions and the ones we've
12 been going through do not apply to expansion or
13 replacement facilities?

14 A: That's correct, that's how I understand it.

15 Q: And that would also include the minimum and
16 mandatory recycling rate of 45 percent. Would
17 that impact your facility?

18 A: That in itself is a negative impact if the
19 existing -- the way I understand it's written,
20 existing landfills are not held to that
21 requirement, so therefore a new facility like
22 ours would be held to a different requirement
23 and therefore result in less profitability.

24 Q: Now, I want the record to be perfectly clear.
25 With Petitioner's Exhibit One and Petitioner's

1 Exhibit Two, those are documents you obtained
2 from York County which were attached to first
3 reading in the case of Petitioner's Exhibit
4 One, and to second reading in the case of
5 Petitioner's Exhibit Two?

6 A: Yes, sir, correct.

7 MR. HARMON: Your Honor, that's all the questions I
8 have for Mr. Taylor.

9 THE COURT: Anything else, Ms. Williams?

10 MS. WILLIAMS: Yes, Your Honor.

11 THE COURT: Limited to what he asked on redirect.

12 MS. WILLIAMS: Yes, Your Honor.

13 MR. TAYLOR - RECROSS EXAMINATION BY MS. WILLIAMS:

14 Q: Mr. Taylor, you talked about the meetings that
15 you attended or didn't attend with York County
16 Council. How many meetings would you say that
17 you didn't attend of the York County Council
18 during this time period which you were seeking
19 a landfill?

20 A: It was more than one, but not more than two,
21 maybe two meetings that I did not attend.

22 Q: Okay. Are you aware that sometimes in meetings
23 that items are added to the agenda?

24 A: I've never seen that.

25 Q: But are you aware that it does happen?

1 A: No, ma'am.

2 Q: You're not aware that sometimes with meetings
3 that new items are added to the agenda?

4 **THE COURT:** I think he answered that question, Ms.
5 Williams, in the negative.

6 Q: Well, do you -- it's not been your experience
7 that you've been at a meeting and new item has
8 been added to the agenda, that's correct?

9 **MR. HARMON:** Your Honor, he's answered that
10 question.

11 **THE COURT:** I agree with Mr. Harmon, sustained.

12 **MS. WILLIAMS:** All right.

13 Q: Okay. You talked about the zoning process and
14 you said that you got zoning approval. Is that
15 the only process in terms of you getting your
16 landfill that you have to go through, the
17 zoning approval?

18 A: With the county, I believe, yes, ma'am.

19 Q: I'm not asking you about the county at all.

20 A: I'm sorry.

21 Q: Is that the only process you have to go
22 through?

23 A: I have to get approval from DHEC --

24 Q: Right.

25 A: -- and the county, yes, ma'am.

- 1 Q: All right. So the fact that you got a zoning
2 approval from York County did not mean that you
3 would get your landfill, is that correct?
- 4 A: Yes, ma'am.
- 5 Q: Because you were aware of the fact that another
6 solid waste management plan could make your
7 proposed plan not consistent, your proposed
8 facility not consistent with that plan?
- 9 A: Yes, ma'am.
- 10 Q: You talk about these projected population
11 projections. Will you look at Petitioner's
12 Exhibit One, page 37? Do you have that?
- 13 A: Yes, ma'am.
- 14 Q: Okay. At the bottom of the table it says --
15 read what it is says is the source for the
16 projections.
- 17 A: South Carolina DHEC fiscal year 2004 Solid
18 Waste Management Annual Report.
- 19 Q: All right. Now, I thought that you testified
20 earlier that the attorney for the county said
21 that these projections came from the Budget and
22 Control Board.
- 23 A: At third reading he did, yes, ma'am.
- 24 Q: At the third reading?
- 25 A: Yes, ma'am, not these particular document.

1 Q: Okay. I was confused because -- okay.

2 A: I'm sorry.

3 Q: I thought that when I asked you I asked you

4 about where these came -- matter of fact, I

5 never heard you say that the projections from

6 the drafts came from the Annual Report. Did

7 you testify to that?

8 A: No, ma'am. I think I testified that Ms. Anna

9 Wilson had indicated that that research came

10 from within the planning department, that they

11 had produced those numbers.

12 Q: All right. Help me.

13 A: Yes, ma'am.

14 Q: Because I heard you testify that some

15 projections, populations projections, came from

16 the -- that the attorney said they came from

17 the Budget and Control Board. So what

18 projections were you referring to?

19 A: The ones regarding -- provided by the York

20 County attorney, he said that at third reading

21 of this plan is when he said that that's where

22 those new and modified projections had come

23 from was the South Carolina Budget and Control

24 Board.

25 Q: Okay. So you testified that Ms. Anna Wilson

1 made a presentation on February 20th meeting and
2 she presented her statistics came from within
3 her planning department?

4 A: Yes, ma'am.

5 Q: All right. So I'll ask you a similar question
6 that I asked you earlier. Isn't it true that
7 the York County Council rejected her figures
8 and didn't accept them to be correct?

9 A: Yes, ma'am.

10 Q: Okay. Because, as you testified earlier,
11 you're not an authority on procedure and they
12 may not have been required to accept her
13 report?

14 A: Yes, ma'am.

15 Q: Okay. So the fact that the last, the figures
16 that are in the adopted solid waste policy --
17 solid waste management plan were from the
18 Budget and Control Board, it could be that York
19 County Council chose to accept those figures.
20 Obviously they did, correct?

21 A: Yes, ma'am.

22 Q: Since they are in the plan?

23 A: Yes, ma'am.

24 Q: Okay. When you submitted your permit
25 application to DHEC, you were aware that there

1 was a possibility -- you were aware that York
2 County was working on the new solid -- another
3 solid waste management plan, is that correct?

4 A: Yes, ma'am.

5 Q: As a matter of fact -- okay. So you said you
6 attended all the council meetings.

7 A: Yes, ma'am.

8 Q: Well, not all of the meetings, let me clarify,
9 you attended most of them. That's right?

10 A: Yes, ma'am.

11 Q: So you attended the one where they -- where
12 they approved the ordinance not to accept any
13 new plans?

14 A: Yes, ma'am.

15 Q: So --

16 A: I'm sorry.

17 Q: I mean, any new --

18 A: No new landfills.

19 Q: -- landfills, C&D landfills. I'm sorry. So
20 whenever you submitted your application, you
21 already knew that to be the case?

22 A: Yes, ma'am.

23 Q: So you submitted your application already
24 knowing that from the York County Solid Waste
25 Management Plan that your landfill, proposed

1 landfill was not provided for?

2 A: No, ma'am.

3 Q: I'm sorry. You said no?

4 A: No, ma'am.

5 Q: Can you expound on --

6 A: Yes, ma'am. I submitted the application after
7 many, many months of trying to get
8 clarification from the county as to the exact
9 standing of Greeneagle and with much
10 gratification, then I submitted a permit
11 application to DHEC. So I was unclear as to
12 the standing.

13 Q: Okay. Let me go back because I don't think you
14 understood my question. Whenever you submitted
15 your permit application to DHEC, had the York
16 County Council already passed this Ordinance
17 206?

18 A: 207, I believe.

19 Q: Well, 207. The ordinance that said no new C&D
20 landfills, had they already passed that?

21 A: Yes, ma'am.

22 Q: Okay. So my question to you is whenever you
23 submitted your permit application you already
24 knew that the solid waste management plan of
25 York County did not provide for your proposed

1 landfill, is that correct?

2 A: No. No, ma'am.

3 Q: Okay. You're confusing me, Mr. Taylor, because
4 you just said, you just testified that when you
5 submitted your plan you knew that Ordinance 207
6 had been passed. Did you testify to that?

7 A: Yes, ma'am.

8 Q: And the fact that you had been attending all
9 these meetings, and you attended the meeting
10 where the ordinance passed, is that correct?

11 A: Yes, ma'am.

12 Q: Then you knew what was provided for in that
13 plan, is that correct?

14 A: Yes, ma'am.

15 Q: So you knew that your landfill, Greeneagle,
16 Incorporated, had not been provided for in the
17 plan?

18 A: No, ma'am. If I could please clarify.

19 Q: Okay, please.

20 A: There's a misunderstanding as to whether or
21 not, in my view, as to whether or not
22 Greeneagle was new or not new since we had
23 already been through that county public hearing
24 process. So the way the language is in the
25 plan, I don't -- I did not know if we are

1 considered new or not new in that respect and
2 therefore the many months of trying to get
3 clarification from the county without response.

4 Q: Okay. So you're testifying here today that you
5 were not aware that your landfill, which would
6 have been a standalone landfill, right, it
7 wouldn't have been an expansion or replacement,
8 is that correct?

9 A: Correct.

10 Q: Okay. That you didn't realize that your
11 landfill which would have been a new standalone
12 landfill -- well, let me change -- strike that.
13 Let me ask you this. Did you see your landfill
14 as an expansion?

15 A: No, ma'am.

16 Q: Did you see it as a replacement?

17 A: No, ma'am.

18 Q: But yet you're still testifying that you didn't
19 know that your landfill was not provided for in
20 the solid waste management plan that was
21 passed?

22 A: I suspected but I could not get clarification
23 from the county.

24 Q: Okay. When you submitted your application to
25 DHEC, did you ask them to look at a certain

1 plan, to review a certain plan, against your
2 proposed landfill?

3 A: If I understand the question correctly, I --

4 Q: When you submitted your permit application, I'm
5 sorry, to DHEC?

6 A: I asked them to base that consistency
7 determination upon the 1994 Catawba Regional
8 Plan.

9 Q: Why would you do that if you -- why would you
10 do that?

11 MR. HARMON: Your Honor, my understanding was that
12 Ms. Williams was limited to things I brought up
13 on redirect. I think she's far beyond that
14 now. And so I object to that continuing line
15 of questions.

16 THE COURT: What do you have to say about that, Ms.
17 Williams?

18 MS. WILLIAMS: Well, I believe that he was asked on
19 redirect -- well, he was asked about the -- he
20 was asked about the meetings that he went to.

21 THE COURT: That's correct.

22 MS. WILLIAMS: And he was asked about what was on
23 the agenda for those meetings and why did he
24 pick a particular meeting to go to. So what
25 I'm trying to find out from him is that, since

1 you attended these meetings, obviously you knew
2 what was going on. You knew that the plan, the
3 final plan that had been adopted, did not
4 include your landfill. And at the time that he
5 knew that, he hadn't even submitted his permit
6 application yet.

7 **THE COURT:** Let's wait just a minute because you've
8 gotten me confused. And you may want to pick
9 up and explain this, Mr. Harmon, may on some
10 more redirect. But as I understand it, the new
11 final plan that got third reading was done at
12 a meeting on February 28th. No, that's not
13 right.

14 **MS. WILLIAMS:** That's correct, Your Honor.

15 **THE COURT:** February 28, 2007. Is that when the
16 ordinance that's now in place was passed?

17 **MR. HARMON:** Yes, Your Honor.

18 **THE COURT:** All right. In looking at Joint Exhibit
19 Number Six, it appears that the permit
20 application was submitted on January 5, 2008.

21 **MS. WILLIAMS:** That's correct, Your Honor, which is
22 after the meeting that passed the ordinance.
23 The ordinance was passed in 2007.

24 **THE COURT:** Is that in according with your
25 understanding, Mr. Harmon?

1 MR. HARMON: Yes, it is.

2 THE COURT: All right. Well, I'm now clear on that
3 that at the time he submitted his application
4 that he knew that the then existing ordinance
5 precluded his operation.

6 MR. HARMON: He knew there was a statement in the
7 plan that said no new C&D landfills in the
8 northwest quadrant, that is correct, Your
9 Honor.

10 THE COURT: Well, but did it not go far beyond that
11 in that section on the general provisions that
12 he went through in detail, there were a number
13 of things that would have prevented his
14 operation.

15 MR. HARMON: He did testify that there were a number
16 of things that would have impacted his
17 operation, that is correct.

18 THE COURT: Now, Ms. Williams.

19 MS. WILLIAMS: All right, Your Honor, I was asking
20 these line of questions -- I'm sorry, this line
21 of questions because he did bring out when he
22 submitted his application and he talked about
23 when, you know, why he picked those meetings to
24 go to and what was the subject matter of those
25 meetings. So I was trying to elicit from him

1 what he knew from attending those meetings.
2 And one of the things that he would have known
3 on February 28, 2007 is that the ordinance that
4 was passed did not include his landfill.

5 **THE COURT:** I'm going to overrule your objection on
6 that question alone.

7 **MS. WILLIAMS:** Thank you.

8 **THE COURT:** In addition, I would say that I would
9 have asked the question myself had she not
10 asked it, so.

11 **Q:** I wanted to -- you already testified that you
12 asked DHEC to review the 1994 plan, Catawba
13 plan, against your proposed landfill, correct?

14 **A:** Yes, ma'am.

15 **Q:** All right. So I guess what I was trying to do
16 is find out why you would do that if you had no
17 clue that the 2007 landfill excluded your
18 proposed landfill. But I understand what you
19 said, you said you just weren't sure. Okay.
20 You went through all the changes that you said
21 were made to the plan from, I guess from the
22 second reading to the third reading. But do
23 you know the reasons for those changes?

24 **A:** No, ma'am.

25 **Q:** You just know that the changes were made, is

1 that right?

2 A: Yes, ma'am.

3 Q: Okay.

4 **MS. WILLIAMS:** All right. No more questions, Your
5 Honor.

6 **THE COURT:** Thank you. Mr. Harmon, anything -- I
7 don't like to extend it out too far, but this
8 is a critical juncture I think.

9 **MR. HARMON:** I understand, and I did want to clarify
10 one thing if I may.

11 **MR. TAYLOR - REDIRECT EXAMINATION BY MR. HARMON:**

12 Q: Mr. Taylor, let me ask you to refer to
13 Petitioner's Exhibit One, page 37.

14 A: Yes, sir.

15 Q: You were asked about the source of that number
16 and as I recollect your testimony, you read SC
17 DHEC fiscal year 2004 Solid Waste Management
18 Annual Report. Now, my understanding was that
19 that was in reference to a question about
20 population. And indeed there is population in
21 this table, but what is the title of this table
22 number six?

23 A: York County MSW and C&D Generation Projections,
24 2006 through 2025.

25 Q: Okay. And let me ask you to refer back to page

1 nine of Petitioner's Exhibit One. And the
2 table at the top of that page, table two,
3 entitled York County Population Projections,
4 2006 through 2025, what is the source of that?
5 A: At the bottom of the chart it reads, Source,
6 York County Planning Department, 2006.
7 Q: Okay. Now, Mr. Taylor, when you were going
8 through the development of your landfill, there
9 are a number of things leading up to the
10 application that was submitted to DHEC.
11 A: Yes, sir.
12 Q: You had to do a number of different things.
13 You dealt with rezoning?
14 A: Yes.
15 Q: You dealt with some mobile homes having been
16 placed within 1,000 feet of your property line?
17 A: Yes.
18 Q: Okay. You were dealing with various questions
19 regarding engineering of the landfill, changing
20 the footprint of the landfill and that type of
21 thing?
22 A: Yes, sir.
23 Q: Okay. And after you -- after the county passed
24 Ordinance 207, another ordinance was introduced
25 by county council to -- that would directly

1 have impacted Greeneagle?

2 A: There was an ordinance that passed first
3 reading to allow us to proceed.

4 Q: Okay. And so all those things were going on
5 prior to the time that you submitted your
6 application to DHEC?

7 A: Yes, but we were preparing the application
8 during that time.

9 Q: During that entire time --

10 A: Correct.

11 Q: -- you were working on your application?

12 A: Correct.

13 Q: Okay.

14 MR. HARMON: That's all the questions I have of Mr.
15 Taylor.

16 MS. WILLIAMS: Your Honor, I have one, one question.

17 THE COURT: Dealing with what he just --

18 MS. WILLIAMS: Yes, dealing with what he just asked.

19 THE COURT: All right.

20 MR. TAYLOR - RECROSS EXAMINATION BY MS. WILLIAMS:

21 Q: Under population projections, I made an error
22 earlier, I had you looking at the generation
23 projections. So let's clarify that. On page
24 nine of Petitioner's Exhibit One, you've
25 already testified that this table is a York

1 County population projection and the source is
2 York County Planning Department, is that
3 correct?

4 A: Yes, ma'am.

5 Q: 2006?

6 A: Yes, ma'am.

7 Q: Okay. So now will you turn to page eight of
8 Exhibit, Joint Exhibit Twelve? And that's DHEC
9 number 0901.

10 A: Yes, ma'am.

11 Q: And let's stipulate that this is the adopted
12 2007 York County Solid Waste Management Plan,
13 is that correct?

14 A: Yes, ma'am.

15 Q: What is the heading of that table two on page
16 eight?

17 A: York County Population Projections, 2006 to
18 2025.

19 Q: And what is the source for that information?

20 A: Down at the bottom it says source is South
21 Carolina Budget and Control Board Office of
22 Research and Statistics.

23 **THE COURT:** Excuse me a moment. I heard you to say
24 2006 to 2005 -- it's 2025.

25 A: I'm sorry, 2006 to 2025, yes, sir.

1 **THE COURT:** Did you hear it the same way I did, Mr.
2 Harmon?

3 **MR. HARMON:** I heard a five come out, I wasn't clear
4 whether he said 25 or five.

5 **THE COURT:** I don't know whether my hearing is
6 failing or not, but I think I was right about
7 that. All right. It's 2025.

8 **MR. HARMON:** If it's any consultation, my children
9 say I have selected hearing.

10 **THE COURT:** Your wife too undoubtedly.

11 **MR. HARMON:** Undoubtedly, yes, sir.

12 **MS. WILLIAMS:** That's all I have, Your Honor. I
13 just wanted to clear that up.

14 **THE COURT:** Thank you. Anything else, Mr. Harmon?

15 **MR. HARMON:** No, Your Honor.

16 **THE COURT:** Thank you, sir. You may step down.

17 A: Thank you.

18 **THE COURT:** Let me see, it's ten minutes of one.
19 What are y'all's wishes for lunch today?

20 **MR. HARMON:** I would like to take a lunch break
21 because I came down early this morning.

22 **THE COURT:** I understand. And how long do you want
23 for lunch? An hour? Be back at 2:00?

24 **MR. HARMON:** I believe we could be back at 2:00.

25 **MS. WILLIAMS:** That will be fine, Your Honor.

1 **THE COURT:** All right. Well, we'll be in recess
2 until 2:00 p.m. then.

3 (A lunch break was taken from 12:55 to 2:03 p.m.)

4 **THE COURT:** It appears that everybody who's necessary
5 is present. Mr. Harmon?

6 **MR. HARMON:** Your Honor, Greeneagle calls Mr. Art
7 Braswell.

8 **THE COURT:** Art Braswell?

9 **MR. HARMON:** Yes, sir.

10 **ARTHUR D. BRASWELL,** being duly sworn, testifies as
11 follows:

12 **MR. BRASWELL - DIRECT EXAMINATION BY MR. HARMON:**

13 Q: Good afternoon, Mr. Braswell.

14 A: Good afternoon.

15 Q: Please state your full name for the record.

16 A: It's Arthur Douglas Braswell.

17 Q: And what is your present address?

18 A: 1627 Ripple Rock Road, Columbia, South
19 Carolina.

20 Q: Who is your current employer?

21 A: Capital Consultants.

22 **THE COURT:** Who?

23 A: Capital Consultants.

24 **THE COURT:** Still couldn't understand. Got an echo.

25 A: Capital Consultants.

1 **THE COURT:** Capital Consultants.

2 **MR. HARMON:** There is an echo in that microphone
3 back here as well.

4 **Q:** How long have you been with Capital
5 Consultants?

6 **A:** About two and a half years.

7 **Q:** And prior to working with Capital Consultants,
8 were you with the Department of Health and
9 Environmental Control?

10 **A:** Yes, I was.

11 **Q:** What was your last position with the
12 Department?

13 **A:** I was the director of the Division of Mining
14 and Solid Waste Management.

15 **Q:** And how long were you in that position?

16 **A:** From September of 1999 through 2007, October of
17 2007.

18 **Q:** And October of 2007 is when you left the
19 Agency?

20 **A:** I retired from the Agency, that's correct.

21 **Q:** And what -- briefly describe your job
22 responsibilities as division director.

23 **A:** Our division was responsible for permitting and
24 compliance and planning for all solid waste
25 management facilities and also for permitting

1 and compliance with mining facilities, as well
2 as recycling.

3 Q: And did that include the determination of need
4 program?

5 A: Yes, it did.

6 Q: And what about consistency determination?

7 A: Yes, that was part of the planning program.

8 Q: Okay. Let me ask you, Mr. Braswell, to please
9 refer to Joint Exhibit Number Two. Can you
10 identify this document?

11 A: It's a demonstration of need approval issued
12 April 25, 2006.

13 Q: And that would have been while you were still
14 with the Department?

15 A: That's correct.

16 Q: Did Ms. Litton work for you?

17 A: Yes, she did.

18 Q: Let me ask you if you would to please refer to
19 Joint Exhibit Number Three. Could you identify
20 that document?

21 A: This is a letter from Jana White to Alfred
22 Greene, the county manager, it's a consistency
23 review and the preliminary findings that the
24 proposed new facility is consistent with the
25 1994 Catawba Regional Solid Waste Management

1 Plan.

2 Q: Did Ms. White work for you at that time?

3 A: Yes.

4 Q: And why was the 1994 Catawba Regional Plan used

5 for this consistency review?

6 A: That was the plan that was in effect at the

7 time the decision was made.

8 Q: Okay. Do you recall if you received a response

9 from York County to this document?

10 A: I don't recall, it's been awhile.

11 Q: You don't know if you did or you didn't?

12 A: No, I don't.

13 Q: Okay. Let me now ask you to look at what's

14 been -- or Joint Exhibit Four, please. Can you

15 identify this document?

16 A: It's -- yes, it's a letter from Jana White to

17 James Frost with Alliance, and it's a

18 preliminary consistency determination that the

19 proposed facility is consistent with the 1994

20 Plan.

21 Q: Okay. Now, with respect to the demonstration

22 of need approval that would have been -- or

23 that was done in the spring of 2006, what

24 regulation was that approval done under?

25 A: It's Regulation 61-107.17, Demonstration of

1 Need.

2 Q: A specific regulation that was adopted by the
3 DHEC board?

4 A: Us and legislature, that's correct.

5 Q: And approved by the legislature?

6 A: That's correct.

7 Q: Okay. Since this demonstration of need
8 approval on April 25, 2006, as indicated in
9 Joint Exhibit Two, has that regulation been
10 changed?

11 A: Yes, it is amended, revised.

12 Q: Okay. But this demonstration was -- was done
13 under the old regulation?

14 A: That's correct.

15 Q: Now, with respect to the old regulation, how
16 did you go about determining whether there was
17 need for this type of facility, the proposed
18 Greeneagle facility?

19 A: The applicant would give us the coordinates for
20 the location of the proposed site and we would
21 put in place a ten mile radius around the site,
22 and if there were two other commercial
23 facilities within that 10-mile radius then they
24 would be denied it or turned down. If it was
25 only one or none, then it would be approved for

1 demonstration of need. Also, the planning area
2 is also used to determine maximum tonnage that
3 you could receive at your facility.

4 Q: Okay. So the ten mile radius circle, since
5 this letter was issued, there were not more
6 than two commercial facilities within that 10-
7 mile radius?

8 A: That's correct.

9 Q: And can you explain how the tonnage limit would
10 be set by this Demonstration of Need
11 regulation?

12 A: The proposed facility would get credit for
13 waste generated in any counties which fell
14 within that 10-mile planning radius. So if it
15 was York County, if that planning radius
16 covered or crossed over into another county,
17 they'd get credit for what's generated in that
18 county also.

19 Q: Okay. So if it, for example, crossed over into
20 Cherokee County and the ten mile circle touched
21 both York and Cherokee County, it would get
22 credit for both counties?

23 A: Both counties, that's correct.

24 Q: And how was that tonnage calculated?

25 A: Well, each year there's a report that's done by

1 the Agency, an annual report, and the counties
2 have to report numbers to us, as well as the
3 facilities report numbers to DHEC, which are
4 used to calculate the generation in each
5 county. You've got -- basically the reports
6 show how much is generated and it's compiled
7 into a table that's placed in the annual report
8 each year.

9 Q: Okay. What was the -- what was the reason for
10 the ten mile radius test that was used in the
11 Demonstration of Need regulation?

12 A: Well, when we first adopted the regulation and
13 were drafting it in 1999, we were looking at,
14 in the study, C&D landfills. We didn't feel
15 that the haulers, the contractors, would travel
16 quite as far to haul waste because it's mainly
17 a small business that's picking up waste at
18 construction sites. So we went with the radius
19 of ten miles as a reasonable distance they
20 would travel to that landfill. That was later
21 increased with the new regulation.

22 Q: But at this particular time it was --

23 A: At that time it was ten miles.

24 Q: -- ten miles?

25 A: Correct.

1 Q: And was any consideration given to illegal
2 dumping in development of the regulation?

3 A: Yes, that was a concern at the time, that's one
4 of the reasons we went with ten miles. There
5 was a good bit of open dumping in the state,
6 and we actually looked at that as an issue; we
7 were making sure haulers wouldn't have to
8 travel too far to find a landfill, hopefully
9 not too far to find a landfill to dispose of
10 the waste.

11 **THE COURT:** How would that relate to illegal dumping
12 though?

13 A: Well, if there's not landfills in convenient or
14 close proximity to the source, then we have
15 problems with contractors would take the waste
16 and dump it in the woods somewhere.

17 **THE COURT:** You mean dumping outside the landfill?

18 A: That's right.

19 **THE COURT:** I thought you meant somebody illegally
20 dumping in the landfill.

21 A: No, it's outside, illegal dumps operating
22 around the state at the time.

23 **THE COURT:** Thank you.

24 Q: Specifically, how was the ten mile radius
25 developed?

1 A: Well, we had a work group composed of waste
2 companies, environmentalists, counties,
3 municipalities and DHEC staff, and we actually
4 wrote the regulation, developed the regulation,
5 looked at different distances and felt at that
6 time ten miles was a reasonable distance to
7 transport waste.

8 Q: And there's a relationship then between
9 capacity and need as far as the Demonstration
10 of Need regulation is concerned?

11 A: Well, we were trying to encourage at the time
12 counties to the site -- or landfills to be
13 sited in areas that were in close proximity to
14 waste generation so you're not going to have to
15 travel too far to get to a landfill so that you
16 wouldn't have open dumping issues.

17 Q: And if each landfill -- let's take one ten mile
18 radius if you would, the one around Greeneagle,
19 for example. Within -- if there were two
20 landfills within that ten mile radius and both
21 touched York and Cherokee County, would both
22 get the capacity for both of those counties?

23 A: Yes, they would.

24 Q: And why was that a component of the regulation?

25 A: When we developed the initial regulation, there

1 was some concern about two things, one was the
2 tipping fees was a concern and making sure that
3 the landfills remained competitive, that there
4 would not be essentially a monopoly on waste in
5 an area, so we allowed basically twice the
6 capacity of the landfill, or of the waste
7 generated in that area to be granted to the two
8 landfills or however the landfills were located
9 in that planning area.

10 Q: Okay. So economics was a concern or a
11 consideration in development of the
12 Demonstration of Need regulation?

13 A: Yes, it was.

14 Q: Now, what authority under the Solid Waste
15 Policy and Management Act gave DHEC the
16 authority to develop Demonstration of Need
17 regulations?

18 A: Under 44-96-290, there's a section that deals
19 with demonstration of need and directs the
20 Department to promulgate regulations.

21 Q: Is that 290(F)?

22 A: I believe it's F. I'd have to look at the Act
23 to see. It's been awhile since I've looked at
24 it.

25 Q: Okay. Let me provide you with a copy of the

1 statute.

2 A: Actually, 290(E). Says, No permit to construct
3 a new solid waste management facility or to
4 expand an existing facility may be -- solid
5 waste management facility may be issued until
6 a demonstration of need is approved by the
7 Department.

8 Q: And does section (E) also direct the Department
9 to promulgate a regulation?

10 A: That's correct.

11 Q: Okay. Does the Act itself, and when I refer to
12 the Act I'm referring to the Solid Waste Policy
13 Management Act, does that Act define need?

14 A: No, it doesn't.

15 Q: The term need is not defined anywhere with the
16 Act?

17 A: Not that I'm ware of.

18 Q: And the regulation itself, the Demonstration of
19 Need regulation, that regulation defines need;
20 is that a fair characterization of the
21 regulation?

22 A: It defines the process for determining need.
23 I'd say the regulation in whole defines need.

24 Q: Okay. There's not a specific term in the
25 regulation --

1 A: No.

2 Q: -- that says here's the definition of need?

3 A: No.

4 Q: Your testimony is that the entire regulation is

5 utilized to define need?

6 A: That's correct.

7 Q: Okay. And in fact, with reference specifically

8 to Joint Exhibit Two, you found or the

9 Department found there was a need for the

10 Greeneagle facility under the Demonstration of

11 Need regulation?

12 A: That's correct.

13 Q: Okay. Let's now talk about consistency

14 determinations. Why was or why is Joint

15 Exhibit Number Four, if you'd refer to that,

16 why is that term a preliminary consistency

17 determination?

18 A: At that time we made a preliminary

19 determination when we received the application

20 so that the applicant could be aware and

21 informed whether he can continue to proceed

22 with the application. At the time this took

23 place, DHEC would look -- we would look at the

24 application and the need issue, or not need,

25 but consistency issue, again at the time we

1 made the final permitting decision to make sure
2 nothing had changed in the county plan that
3 would prohibit this from moving forward.

4 Q: Okay.

5 **THE COURT:** Let me interject here.

6 Q: Yes, Your Honor.

7 **THE COURT:** Mr. Braswell, you're just on the edge of
8 me not being able to understand you. You're
9 sort of running your words together. If you
10 will annunciate a little more clearly, I'd
11 appreciate it.

12 A: All right, I'll do that.

13 **THE COURT:** And I'll try to look at you and read
14 your lips too.

15 A: Okay.

16 Q: Now, there's a reference in Joint Exhibit Four
17 to a final consistency determination.

18 A: That's correct.

19 Q: And so there apparently is a time, some time
20 period that could occur between a preliminary
21 consistency determination and a final
22 consistency determination?

23 A: That's correct.

24 Q: And DHEC at the time, and you were at the
25 Department at the time this letter was issued,

1 DHEC understood that there was going to be some
2 time period between those two?

3 A: That's correct.

4 Q: Okay. And, Mr. Braswell, what typically would
5 be occurring during that time period?

6 A: Well, the technical, the design of the landfill
7 and the application is submitted to the
8 Department and the Department reviewed the
9 application in detail to make sure that it
10 meets all requirements of the regulation, and
11 the next couple months to go through -- well,
12 that and discussion with the engineers that
13 designed the facility making sure that issue is
14 met.

15 Q: Okay. So, and could zoning be one of those
16 items that an applicant would be considering
17 during that time period?

18 A: That's correct.

19 Q: Any others that you can think of?

20 A: Again, zoning and land use ordinances, as well
21 as then you had to look at the technical
22 design, buffers, issues like that. Just all --
23 the entire regulation, 61-107.11 at the time
24 contained a lot of information that you had to
25 provide to the Department, which we reviewed

1 before making the permitting decision.

2 Q: Okay. So at that time you mentioned 107.11,
3 61-107.11, has that regulation since been
4 changed?

5 A: Yes, it has.

6 Q: But as far as the Greeneagle application was
7 concerned, it was being reviewed under the old
8 regulation, 107.11?

9 **THE COURT:** Excuse me, Mr. Harmon. I had it 61-
10 107.17, is that right?

11 A: Seventeen was Demonstration of Need.

12 **THE COURT:** Excuse me, consistency is 11.

13 A: Well, 11 is actually the Construction,
14 Demolition and Debris Landfill regulation.

15 **THE COURT:** Okay. I missed that pronouncement, but
16 I've got it now.

17 A: And at the time I left the Agency, it was being
18 reviewed under 61-107.11.

19 Q: Okay. Now, what section of the Act applies to
20 consistency determination?

21 A: 44-96-290(F).

22 Q: F applies to consistency?

23 A: That's correct.

24 Q: Okay. Now, there is no specific timing
25 requirement specified in the Act as far as when

1 a consistency determination would be done?

2 A: That's correct.

3 Q: So did DHEC develop a regulation that required
4 this procedure of doing a preliminary
5 consistency determination and then a final
6 consistency determination?

7 A: Yes, the current landfill regulation broke the
8 permitting process into two steps. The first
9 part is determination of consistency with the
10 local solid waste management planning, the
11 zoning, demonstration of need and with your
12 buffers. And then you go and -- once that's
13 completed, then you have an appeal period and
14 if you don't have an appeal, then you move
15 forward with your design, technical design,
16 your application and your technical design.

17 Q: Okay. I think you're referring to the new --

18 A: That's the new regulation.

19 Q: The new regulation?

20 A: Correct.

21 Q: Let's back up. And this was being done before
22 the new regulation?

23 A: That's correct.

24 Q: Okay. Where's the new regulation, let's get
25 that on the record.

- 1 A: Where is it?
- 2 Q: Well, what's the -- it's 107 --
- 3 A: 61-107.19.
- 4 Q: Okay. But this landfill was being reviewed
- 5 under 107.11?
- 6 A: It was at the time I left, that's correct.
- 7 Q: And in 107.11 was there a provision to do a
- 8 preliminary consistency determination and then
- 9 a final consistency determination?
- 10 A: No, there's no provision for that.
- 11 Q: Okay. So the Act did not require that, did not
- 12 require a preliminary and a final consistency
- 13 determination, is that correct?
- 14 A: It just required it be consistent before we
- 15 made a decision on the permit.
- 16 Q: And your regulation that you issued with
- 17 respect to permitting C&D facilities did not
- 18 require that?
- 19 A: No, it just required consistency with the Act
- 20 and the plan.
- 21 Q: Now, Mr. Braswell, you were not at DHEC when
- 22 the final consistency determination was done
- 23 with respect to the Greeneagle landfill?
- 24 A: That's correct.
- 25 Q: Now, are you aware that counties have changed

1 their solid waste management plan or regions
2 have changed their solid waste management plan
3 between the preliminary consistency
4 determination and final consistency
5 determination?

6 A: Yes, I'm aware of that.

7 Q: And that happened specifically in York County
8 with respect to the Greeneagle landfill we're
9 dealing with?

10 A: That's correct.

11 Q: Now, you became aware that York County was
12 involved in a solid waste planning effort?

13 A: Yes, I was aware of it.

14 Q: How did you become aware of that?

15 A: Well, discussions with the county, and we were
16 actually invited up to one of the meetings when
17 they discussed the proposed plan at York
18 County.

19 Q: You were invited to come to a meeting at the
20 county?

21 A: That's correct.

22 Q: Do you recall when that meeting would have
23 occurred?

24 A: It was, I believe it was early 2007.

25 Q: Sometime in early 2007?

1 A: That's correct.

2 Q: Okay. Were you provided a draft plan at that
3 particular time?

4 A: Yes, we were provided a copy of the draft of
5 the solid waste management plan that York did.

6 Q: Did you get a copy of that plan prior to the
7 meeting?

8 A: Just prior to the meeting, that's correct.

9 Q: So you had it before you actually went to the
10 meeting?

11 A: Yes, sir.

12 Q: Okay. Mr. Braswell, I have handed to you what
13 has been marked as Petitioner's Exhibit Three.
14 Do you recognize that document?

15 A: It appears to be the draft plan that was
16 discussed at the meeting that I attended.

17 Q: Okay. So this was -- this you feel like was
18 the draft plan that you had prior to going to
19 the meeting in early February of 2007?

20 A: It appears to be, yes.

21 Q: Who participated in that meeting at the county?

22 A: Anna Wilson, Ed Harmon, and there were some
23 council members there also.

24 Q: Okay. Who was Ms. Wilson? Do you recall who
25 she is?

1 A: I think she was a -- I don't know if she was
 2 assistant administrator or -- I'm not sure
 3 exact position. She worked with their planning
 4 group.
 5 Q: Okay. And who is Mr. Harmon?
 6 A: He's over public works for York County.
 7 Q: And do you specifically recall which council
 8 members were present?
 9 A: The only one I remember is Curwood Chappell
 10 being there. I think there were others there,
 11 but he stands out because we had a discussion
 12 before the meeting.
 13 Q: Okay. You had some discussion with Mr.
 14 Chappell before the meeting?
 15 A: That's correct.
 16 Q: Where was the meeting held?
 17 A: At York County, County Complex.
 18 Q: What was the subject of the meeting?
 19 A: Ms. Wilson was doing a presentation on the
 20 draft plan. We'd been asked to attend.
 21 Q: Okay. Was there a discussion at the meeting
 22 about population projections in the plan?
 23 A: Not anything specific, other than she went
 24 through the plan and what it allows as far as
 25 breaking the county into quadrants and what

1 number of facilities that would be allowed
2 under the plan.

3 Q: Okay. Let me ask you if you would refer to
4 page nine of the draft plan that you have.
5 It's marked at the bottom DHEC-0827.

6 A: I see it.

7 **MR. HARMON:** Before I do that, Your Honor, let me
8 move that document into evidence.

9 **THE COURT:** Ms. Williams?

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

11 **THE COURT:** Thank you. Admitted without objection,
12 Petitioner's Three.

13 **(Petitioner's Exhibit Number Three was admitted into**
14 **evidence.)**

15 Q: I asked you to refer to page nine, table two at
16 the top. What was the source of the -- or
17 what's the indicated source of the population
18 projections in that table?

19 A: York County Planning Department, 2006.

20 Q: Was there any discussion at the meeting about
21 changing those population projections?

22 A: Not that I recall.

23 Q: Was there discussion at the meeting about waste
24 generation projections?

25 A: Just as it pertains to what was in the report,

1 the claim itself, as Anna went through it.

2 Q: Okay. Any discussion about changing those

3 waste generation projections?

4 A: Not that I recall.

5 Q: Any discussion at this meeting with respect to

6 the location of C&D facilities within York

7 County?

8 A: Not specifically that I recall.

9 Q: Okay. With regard to Greeneagle, was -- what

10 was the -- what did this draft plan say with

11 respect to a C&D facility within the northwest

12 quadrant of York County?

13 A: I believe it, I'll look, proposed having one

14 area.

15 Q: Let me refer you to page 49, the page that's

16 identified DHEC-0867. For the northwest

17 service area, what does that Item D say about

18 new C&D landfills in that area?

19 A: At the conclusion at the bottom of the page it

20 says, Therefore, construction of one new C&D

21 Part IV landfill is recommended.

22 Q: Okay. And did Ms. Wilson go through and

23 explain the quadrant system in this plan?

24 A: Yes. Yes, she did.

25 Q: And what did you -- what did you think about

1 the quadrant system?

2 A: Actually I thought it was a good idea. I made
3 the comment to the council that, that night
4 that this was one of the best plans I'd seen
5 written in the state because they'd actually
6 gone through and looked at waste generation,
7 population and what was actually needed based
8 on what's being generated in their county.

9 Q: And it was actual county employees who went
10 through the plan and presented it to you?

11 A: That's correct.

12 Q: Okay. Was Mr. Taylor at that meeting?

13 A: I believe so.

14 Q: Were there any other private citizens, if you
15 will, from York County at that meeting?

16 A: Yes, there were.

17 Q: Okay. Had DHEC experienced issues in the past
18 in York County with illegal dumping of C&D type
19 waste?

20 A: Yes. Early 2000 we had some problems with
21 opening dumping and there were a lot of
22 complaints. We had some unpermitted landfills
23 operating in the county and actually I had --
24 Curtis was my manager of compliance at the
25 time, and I had to go up and meet with York

1 County officials and talk about the concern
2 about opening dumping in the county and their
3 need for landfills.

4 Q: Now, did you become aware that a final plan had
5 received a third reading at the county?

6 A: What time? Not --

7 Q: Not too long after this meeting that you had in
8 York County, was there a final plan developed?

9 A: Yes, they had third reading on a plan. I
10 believe it was on February 28th.

11 Q: February 28th. Were you at that meeting?

12 A: No, I was not.

13 THE COURT: Let's get the date of the previous
14 meeting that he's talking about. Can we have
15 that in the record?

16 Q: I think the --

17 A: Early February is what I had said.

18 THE COURT: Early February?

19 Q: Do you know a specific date, Mr. Braswell?

20 A: I'm not sure of the exact date.

21 Q: The date on Petitioner's Exhibit Three is
22 February 6th. Does that give you a time frame
23 in which to determine when the date of the
24 meeting may have been?

25 A: Probably was close to that time. I'm just not

1 sure of the exact one.

2 Q: Of the specific date?

3 A: Right.

4 Q: Now, did you review the plan that was adopted

5 on third reading in York County?

6 A: I looked through it. I didn't review it

7 specifically in detail. I didn't look through

8 it after it was adopted.

9 Q: Okay. And did you look through it enough to

10 determine that there had been some changes to

11 the plan --

12 A: Yeah.

13 Q: -- from the one that you saw at the meeting you

14 attended in early February 2007?

15 A: Yes, I'm aware of the changes.

16 Q: And can you characterize those changes?

17 A: The biggest change I guess was the fact they

18 went from proposing new landfills in three

19 different quadrants to saying that there was no

20 need for an additional new landfill in the

21 county.

22 Q: Okay. And were you surprised that the plan was

23 developed in that manner after you had attended

24 that workshop meeting?

25 A: I guess I was surprised it changed that much.

1 Q: So would you characterize that as a significant
2 change in the plan?

3 A: Yes, I would.

4 Q: Now, Mr. Braswell, let me ask you to refer to
5 Joint Exhibit Twelve, that's in the notebook,
6 page 48, also identified by DHEC-0942. Do you
7 see that page?

8 A: Yes, I do.

9 Q: And I'm referring specifically to the northwest
10 service area, and it's your understanding that
11 that's the service area in which Greeneagle is
12 located?

13 A: That's correct.

14 Q: And if you would, please read the last
15 paragraph on page 48.

16 A: Construction and demolition debris waste from
17 this area is generally transported to and
18 disposed of at existing York County landfills.
19 The existing landfills currently meet the C&D
20 disposal needs of this service area, therefore
21 no new landfills are needed in this service
22 area.

23 Q: Now, would that statement prevent DHEC from
24 permitting a landfill in the northwest quadrant
25 or northwest service area?

1 A: I believe it would.

2 Q: And why did you say that that statement in the
3 plan would prevent DHEC from permitting a
4 landfill?

5 A: Because looking at the language and -- a new
6 landfill in that service area would not be
7 consistent with what the plan states. The plan
8 states there's no need for a new landfill in
9 that area, so to propose a new one in that area
10 would not be consistent with what the plan
11 states.

12 Q: Would it make any difference to you that the
13 plan immediately prior to the adoption of the
14 ordinance had something totally different in
15 it?

16 A: I guess the concern -- DHEC, when I was there,
17 we were held -- the plan was adopted by county
18 council through three readings, so whatever
19 plan was adopted would be the plan that DHEC
20 would follow. We could not control what the
21 counties did in the planning process, so
22 therefore whatever the final plan stated that
23 was adopted by county council was the plan that
24 we would have used.

25 Q: Okay. Let me ask you this, Mr. Braswell. The

1 Act itself, the Solid Waste Planing and
 2 Management Act, or Policy and Management Act I
 3 believe it is, it's basically divided into two
 4 sections, is that a fair statement?
 5 A: There's two articles, Article 1 and Article 2.
 6 Q: What does Article 1 refer to?
 7 A: It deals with recycling. And Article 2 is
 8 solid waste management facilities.
 9 Q: Okay. Is it a fair statement that the first
 10 part of the Act applies to planning?
 11 A: Planning also, that's correct.
 12 Q: And the second part of the Act applies to
 13 permitting?
 14 A: That's correct.
 15 Q: Okay. And the authority for a county to
 16 develop a -- or a region to develop a local
 17 solid waste management plan, what portion of
 18 the Act is that in?
 19 A: In 44-96-80.
 20 Q: Dash 80?
 21 A: 80.
 22 Q: And that's the first part of the Act that we
 23 have talked about?
 24 A: That's correct.
 25 Q: Okay. And what part of the statute, and I

1 think you still have the statute up there in
2 front of you, what part of the Act specifically
3 refers to development of a local -- I'm sorry.
4 What part of the Act specifically refers to an
5 analysis of existing and new facilities needed
6 to manage solid waste within a county or
7 region?

8 A: 80(a) I believe.

9 **THE COURT:** What?

10 A: Number 44-96-80(a).

11 Q: Okay. And subsection three?

12 A: Three.

13 Q: Okay. And what does subsection three say?

14 A: An analysis of the existing and new solid waste
15 management -- solid waste facilities which will
16 be needed to manage the solid waste generated
17 within that county or region during the
18 projected 20-year period.

19 Q: Okay. Now, the county changed the plan, and as
20 I understand your testimony, that would prevent
21 DHEC from issuing a permit?

22 A: Or what the plan stated the permit, DHEC
23 wouldn't issue the permit.

24 Q: Okay. And the plan stated that no new
25 facilities were needed in any quadrant in the

1 county, which obviously would impact
2 Greeneagle?

3 A: That's correct.

4 Q: Okay. Now, at the very same time that the
5 county adopted this plan, if you refused a
6 request for a determination of consistency, you
7 would -- the determination of consistency,
8 under the previous reg, would be the very same
9 as what was done for Greeneagle in this case?

10 A: Would you restate that?

11 Q: Okay.

12 A: I'm just trying to be fair.

13 Q: Okay. Let's, at the time the county changed
14 its plan to say that there was no need for new
15 construction and demolition landfills anywhere
16 in the county, in any quadrant in the county,
17 if Greeneagle at that moment, at that same day,
18 February 28th, had asked for a demonstration of
19 need determination, would your decision have
20 been the very same that it was when they were
21 given the demonstration of need?

22 A: For the demonstration of need, yes, it would.

23 Q: Okay. So the need determination that DHEC is
24 required to make, under the permitting
25 provisions of the Act, did not change any?

1 A: That's correct.

2 Q: Okay.

3 **THE COURT:** Let me get this straight, and I think I
4 understand what you're getting at here. Mr.
5 Braswell, you're saying that irrespective of
6 what may have been included in this new plan,
7 that the Department's determination of need
8 would have been the same. In other words, you
9 weren't relying on anything in this plan to
10 make a determination of need, is that correct?

11 A: That's correct. The consistence with the plan
12 and need were two separate issues.

13 **THE COURT:** Thank you, and I understand that.

14 Q: Okay. Now, but under a review, a consistency
15 review, which you said would have prevented a
16 permit from being issued, the county is looking
17 at need, and that's the only basis in this plan
18 for saying that Greeneagle is inconsistent with
19 the plan, is that a fair statement?

20 A: Hearing testimony earlier, I believe DHEC
21 looked at some other issues too. They didn't
22 look at just that one statement necessarily
23 when the decision was made.

24 Q: Okay. We'll get to that, because that wasn't

25 --

1 A: That wasn't me, though.

2 Q: So that wasn't you. I understand. But I -- my
3 question is simply this. Does DHEC allow local
4 plans to impact the need determination?

5 A: Not the demonstration of need determination,
6 no.

7 Q: But the demonstration of need determination, if
8 I understood your earlier testimony, was to
9 determine whether a facility was needed in a
10 specific area under the Need regulation.

11 A: It looks -- the Demonstration of Need
12 regulation looked at the location of the
13 landfills and how many were located in the
14 area, and if there were not two commercial
15 facilities in that area you could have another
16 landfill. The county, through their planning,
17 was trying to identify how much waste was
18 generated in the part of the facilities that
19 managed that waste in the county, so we always
20 looked at them as separate issues even though
21 they're both talking about need.

22 Q: They're both talking about need?

23 A: That's right.

24 Q: So if the county says it has enough capacity or
25 it can take care of the C&D needs of the

1 county, and another landfill is permissible
 2 under the DON requirement, then the county can
 3 just say it doesn't need another landfill, and
 4 DHEC will honor that statement?

5 A: As long as they can demonstrate they actually
 6 have the capacity to deal with the county's
 7 waste --

8 Q: Okay.

9 A: I mean, DHEC would look beyond just the -- that
 10 one statement, you know, it looks at actually
 11 what capacity they have to handle the waste.

12 Q: Okay. Did you review the York County Plan to
 13 determine if there was enough capacity to
 14 handle the waste to be generated in York
 15 County?

16 A: At the time I was there I would have reviewed
 17 the plan to see if they had enough capacity.

18 Q: Did you feel like it had enough capacity?

19 A: Well, the county was running out of capacity at
 20 the time. Since that time I think they've
 21 gotten an expansion, but there was a concern
 22 about the amount of capacity in the county.

23 **THE COURT:** Let's back up on that one. I think you
 24 said that they were running out of capacity,
 25 but since then they had gotten an expansion?

1 A: That's correct. And also another private
 2 landfill, going through the legal process,
 3 trying to get DHEC to issue a permit to another
 4 facility in the county, and it's been under
 5 appeal since that time. But it will provide
 6 capacity in the county also.

7 Q: But that landfill was in a different quadrant
 8 in the county than the Greeneagle landfill?

9 A: That's correct.

10 Q: Okay. And in fact, it was in a different
 11 quadrant, where all the prior drafts that you
 12 had seen up until the final draft of the plan
 13 would have also provided for another landfill?

14 A: That is correct.

15 Q: Did DHEC provide any written comments to York
 16 County about the plan that was adopted on third
 17 reading?

18 A: I'm not sure that we did. I don't think we had
 19 a comment by DHEC.

20 Q: Did it concern you at all, Mr. Braswell, that
 21 York County started out entitling its ordinance
 22 that this was a new plan and then ultimately
 23 changed that to an amended plan?

24 A: Well, they were part of the Catawba Region, and
 25 then they decided to develop their own plan.

1 That issue has not -- it's happened, I guess,
2 elsewhere in the state but it didn't really
3 concern us because we knew they had been
4 talking about a new plan since the late '90's,
5 actually developed a draft earlier, which we
6 thought was effective, and then found out it
7 wasn't. We went back to the '94 plan, and then
8 knew that they were working on a new plan, a
9 new solid expansion plan for the county, an
10 individual plan.

11 Q: So, do I understand your testimony that York
12 County had been working on a plan since, did
13 you say 1999?

14 A: '99, 2000, around that time frame.

15 Q: But the one adopted in 2007 was the first one
16 that was presented to DHEC as a stand-alone
17 York County Plan?

18 A: I believe we had one presented earlier, then
19 they wrote back and said that had not been
20 properly adopted. So we went back to the '94
21 plan. And then the 2007 plan is one of the
22 first one that's been properly adopted as an
23 individual plan.

24 Q: Why would the York County Plan that was adopted
25 in February, 2007 not be the initial county

1 plan?

2 A: They were part of the, from my viewpoint when

3 I was at DHEC, they were part of the Catawba

4 Plan, so they actually had a plan. They were

5 part of a regional plan. And then when they

6 pulled out, that plan would be basically an

7 amendment to the county, I mean, to the

8 regional plan. Even though it's separate, they

9 would just be amending their portion to be

10 individual, not be a part of that region.

11 Q: So there were some things that were different

12 about the stand-alone York County Plan --

13 A: That's correct.

14 Q: -- from being a part of the regional plan

15 previously?

16 A: That's correct.

17 Q: Now, I recollect your testimony, Mr. Braswell,

18 that when I asked you what councilmen were at

19 the, or councilpersons, were at the meeting in

20 early February that you attended, with respect

21 to the plan, you indicated that Mr. Chappell

22 stood out to you?

23 A: Yes.

24 Q: Why was that?

25 A: He was concerned about the Vernsdale landfill

1 and DHEC permitting that landfill. He had
2 several discussions with me about DHEC moving
3 forward with that permit.

4 Q: Okay. Had DHEC issued the permit yet at the
5 time of the meeting?

6 A: No, we had not.

7 Q: Okay. Do you know when that permit was issued?

8 A: It was on February, in February of 2007, before
9 the new plan was adopted.

10 Q: Okay. It was issued before the new plan was
11 adopted on February 28th?

12 A: That's correct.

13 Q: Okay. Now, when we were talking about the
14 Demonstration of Need regulation, you indicated
15 that one of the reasons for developing the 10-
16 mile radius test to determine need was based
17 upon economics, if I recall your testimony
18 correctly. Could you expand on what you mean
19 by economics was part of that decision process?

20 A: We had some concern in the legislature about
21 the cost of disposing of waste in this state,
22 especially with contractors and C&D debris. So
23 in order to keep the rates competitive we
24 decided we'd draft the regulation to allow two
25 landfills in each planning area instead of just

1 one, and that would help to keep the rates down
2 because of the competition between the
3 landfills, and hopefully the rate could stay
4 low at that time.

5 Q: Okay. And so it was a view that you didn't
6 want to develop monopolies with respect to
7 solid waste?

8 A: That's correct. We were trying to encourage
9 competition.

10 Q: Okay. And if that was a concern when the
11 Demonstration of Need regulation was developed,
12 why would DHEC then allow counties to do the
13 exact opposite of that, like what occurred in
14 York County with the development of the plan?

15 A: Well, I guess we didn't feel we had the
16 authority to tell the county what to put in
17 their plan and what not to put in their plan
18 beyond what the Solid Waste Act required. They
19 were supposed to do an analysis, supposed to
20 determine what facilities they needed and then
21 ensure they actually had adequate facilities to
22 manage their waste.

23 THE COURT: Excuse me, Mr. Harmon. Is it or is it
24 not true that the plan in some measure was
25 developed to give the counties time to grind

1 their axe, so to speak? In other words, to let
2 the counties, the local folks, have some input
3 into the process?

4 A: Yes. In fact, if you'll look at the Solid
5 Waste Act, it's geared toward putting the
6 responsibility on the counties to ensure
7 there's facilities to manage their waste, and
8 all the responsibilities under, pretty much
9 under the planning process are directed at the
10 counties. So I think it was an opportunity for
11 the counties to have some input by saying they
12 had to meet -- this facility had to be
13 consistent with your planning or DHEC would not
14 permit it.

15 **THE COURT:** Thank you, sir.

16 Q: Now, Mr. Braswell, by allowing counties to make
17 their own determination of need within a county
18 plan, is DHEC not in effect delegating their
19 responsibility for determining need to the
20 county?

21 A: No. DHEC makes the determination; it's up to
22 the counties to write a clear plan, as far as
23 what facilities they need in the county, which
24 ones they don't. Looking at the entire county
25 and the program they have in place, DHEC takes

1 that plan and makes the determination whether
2 something is consistent with it or not, and
3 doesn't rely on the county to tell them whether
4 it's consistent with that plan or not.

5 Q: And so it's your testimony that an applicant
6 can be in compliance with DHEC's Demonstration
7 of Need regulation, but on the same basis,
8 need, be inconsistent with a county plan?

9 A: If the county feels they have adequate
10 facilities to manage the county's waste and
11 they state there's no need for additional
12 facilities in the county, I believe that's
13 true.

14 Q: Okay. Now, isn't it indeed the case that a
15 county's plan must be consistent with state law
16 and the state plan?

17 A: That's correct.

18 Q: Okay. And if DHEC allows counties to determine
19 need and refuses permits on that basis, how is
20 the county -- how does DHEC view the
21 demonstration of need determination?

22 MS. WILLIAMS: Your Honor, I object to that question
23 because it's not DHEC that's allowing the
24 counties, it's the statute that says that the
25 county must determine need and place that

1 determination in the plan.

2 **THE COURT:** Well, I understand where he's heading.

3 I overrule your objection.

4 **MS. WILLIAMS:** All right. Thank you.

5 **A:** Restate that now?

6 **Q:** Yes. If, indeed, there's a requirement that
7 local or regional plans, the local plan, county
8 or regional plan be consistent with the
9 statute, be consistent with state law, and DHEC
10 has developed a Need regulation, the whole
11 regulation of which, as I understood your
12 testimony, was a determination of need, how
13 does a county plan that disallows landfills on
14 the basis of need comply with the DON
15 regulation?

16 **A:** Again, I guess from DHEC's standpoint when I
17 was there, need and consistency were separate
18 issues. You can meet the requirements of
19 demonstration of need and at the same time, be
20 inconsistent with the local plan if the plan
21 identified that the county had enough
22 facilities to manage their waste and there was,
23 whether -- whether they said need or not, I
24 mean, whatever it -- as long as it -- if it's
25 inconsistent with the plan, as a statutory

1 requirement, DHEC can issue permits that are
2 inconsistent with the plan. So the fact that
3 their plan as stated was they had facilities to
4 manage that waste and there was no need for
5 additional facilities, then we would find that
6 it's inconsistent with the plan, even though it
7 may meet the requirements in the Demonstration
8 of Need regulation.

9 Q: Okay. If DHEC were to consider a plan
10 inconsistent with state law, and even though
11 that plan may prohibit a landfill, would you
12 still refuse to permit a landfill? Or would
13 DHEC, when you were there, refuse to permit a
14 landfill?

15 A: Well, that's a tough question. Before I left
16 there were some rulings in the ALC that
17 indicated that DHEC did have the authority to
18 force the county to change its plan or ignore
19 parts of the plan that were inconsistent with
20 state regulations and stat law. So I guess
21 they have the ability -- the ability is there
22 apparently to ignore portions or ask the county
23 to revise their plan to make sure it's
24 consistent with state regulations. I'm not
25 aware that that's been done. I mean, there's

1 actually no longer through their entire process
2 where DHEC's actually told the county to amend
3 their plan.

4 Q: Okay. Does DHEC maintain any records with
5 respect to what the disposal rate -- or the
6 disposal rate that is being charged for the
7 disposal of solid waste in landfills permitted
8 by DHEC?

9 A: You mean the tipping fee, the cost?

10 Q: Yes.

11 A: They -- yes, they requested information from
12 the facilities.

13 Q: DHEC requests that information?

14 A: That's correct.

15 Q: Okay. Are you aware that York County had
16 raised its rate since the 2007 plan was
17 adopted?

18 A: No. I wasn't aware of that.

19 Q: Okay. Would that be the type of information
20 that DHEC would ask landfill owners for?

21 A: Well, we request it -- well, when I was at DHEC
22 we requested it. It's not a regulatory
23 requirement, but we did request it. As part of
24 the development of this annual report each year
25 we tried to include tipping fees in the report

1 to get an idea of what the rate was in the
2 state.

3 Q: Okay. Now, with regard to consistency, and I
4 want to focus now on the new regulation that
5 DHEC has developed and the legislature has
6 approved. And if my memory is correct, that's
7 at 107.19?

8 A: That's correct.

9 Q: Okay. Didn't apply to this facility, but that
10 regulation is now in place?

11 A: That's correct. It became effective in May of
12 2008.

13 Q: Okay. Now, explain for the Court, please, how
14 that regulation works with respect to
15 determination of consistency.

16 A: The new regulation breaks consistency -- it
17 breaks the permitting process into two parts.
18 The first part is for determination;
19 determination of need, consistency with the
20 local plan, zoning and land use, and then also
21 your buffers. And you go through a -- you have
22 to submit those requests to DHEC, they review
23 the request, they make a decision, a
24 preliminary decision and a final decision, and
25 then there's a period there for the appeal if

1 anyone disagrees with the determinations.
 2 Following that, if there's no appeal and the
 3 determination stands, at that point the
 4 applicant submits technical design application
 5 to the Department for review, and then you go
 6 through that part, that review and -- to
 7 complete it. Then you have to make a
 8 permitting decision at the end of that process.

9 Q: Okay. So, as I understand your testimony, the
 10 new regulation has done away with preliminary
 11 and final consistency determinations?

12 A: That's correct.

13 Q: Okay. Now, was there any change in the statute
 14 between the time the first regulation was
 15 promulgated, which I -- if my memory again is
 16 correct, it was 107.11, and the time that
 17 107.19 was promulgated?

18 A: There were changes in the statute not dealing
 19 with that issue.

20 **THE COURT:** You were saying statute; you mean
 21 regulation, do you not?

22 **MR. HARMON:** Well, no, I know there's a change in the
 23 regulation. I was asking the question, had
 24 there been an amendment to the statute.

25 **THE COURT:** Statute, you meant statute, okay.

1 MR. HARMON: I meant statute, yes, Your Honor.

2 THE COURT: I'm sorry.

3 MR. HARMON: That's quite all right.

4 A: We did basically a clean-up of the Solid Waste
5 around 2000 and made some changes, but we
6 didn't address that issue.

7 Q: The issue of consistency?

8 A: Consistency.

9 Q: With local solid waste plans?

10 A: That's correct.

11 Q: Okay. Mr. Braswell, that's all the questions
12 I have for you presently. Please answer any
13 questions from Ms. Williams and the Court.

14 THE COURT: All right. Before we go ahead, I want
15 to be sure I understand this correctly, that
16 the current, is it statute or regulation, does
17 away with consistency determinations?

18 A: No.

19 MR. HARMON: No, Your Honor. The current
20 regulation, which is the new regulation, --

21 THE COURT: Current --

22 MR. HARMON: -- 107.19.

23 THE COURT: All right.

24 MR. HARMON: It allows one consistency determination
25 to be made, that -- and once that consistency

1 determination is made, the need determination
2 is made, I believe Mr. Braswell testified about
3 zoning and buffers.

4 A: And buffers.

5 THE COURT: We've done away with preliminary and
6 final? We cut out one step?

7 MR. HARMON: That is correct. That's correct.

8 THE COURT: Okay.

9 MR. HARMON: It's now one step, and a party can
10 appeal that. Failing an appeal, then that is
11 not to be brought up again.

12 THE COURT: I'm with you.

13 MR. HARMON: It does away with this preliminary
14 determination and final determination and
15 things changing in the middle.

16 A: That's correct.

17 Q: Is that a fair statement?

18 A: Sure, that's fair.

19 MR. HARMON: Thank you, Your Honor.

20 THE COURT: Thank you, sir. Ms. Williams?

21 MS. WILLIAMS: Thank you, Your Honor.

22 MR. BRASWELL - CROSS EXAMINATION BY MS. WILLIAMS:

23 Q: Good afternoon, Mr. Braswell. How are you?

24 A: I'm doing fine.

25 Q: Good. We were just talking about the new

1 regulation and how, what the new rules are as
 2 it pertains to consistency. Are you aware that
 3 the new regulation has any relevance at all on
 4 the decision that DHEC made on consistency for
 5 this landfill, Greeneagle landfill?

6 A: No. I believe when the new regulation was
 7 written it stated that decisions made prior to
 8 the regulation would remain in effect.

9 Q: All right. But in terms of DHEC making its
 10 decision to deny the landfill, this new
 11 regulation you've been asked about, it would
 12 have had no bearing on the decision that DHEC
 13 made, is that correct?

14 A: That's --

15 Q: The new regulation.

16 A: The new regulation? That's correct.

17 Q: Right. Because the decision that DHEC made
 18 pertaining to consistency had to do with the
 19 old regulation, it was made under the old
 20 regulation?

21 A: That's correct.

22 Q: All right. I want to about need, quote,
 23 unquote. Isn't it true that need, as it
 24 pertains to the DON regulation, really has no
 25 resemblance to need as it pertains to capacity

1 in a solid waste management plan?

2 A: Yes, from the standpoint that the counties are
3 required to do analysis of what facilities they
4 have and what are needed. The Demonstration of
5 Need regulation looks more at locations,
6 spatially locating landfills apart from each
7 other so you don't have too many in one area.

8 Q: So would it be fair to say that you would
9 characterize the DON regulation as a distinct
10 and totally separate determination when it
11 comes to determining need within a solid waste
12 management plan?

13 A: Yes, I would say that the need within a plan is
14 separate from demonstration in the regulation.

15 Q: Let's talk about title. We've been talking
16 about determination of need. But isn't it true
17 that the DON regulation is not really a
18 determination of need? It is a -- strike that.
19 What is, what does DON stand for?

20 A: Determination of need.

21 Q: Does it stand for determination of need?

22 A: Demonstration of need.

23 Q: Right. Demonstration of need. So under that
24 regulation, what must an applicant do to
25 demonstrate need?

1 A: Basically has to submit the location of his
2 facility and a proposed tonnage rate. The
3 Agency will look at it to see if there is two
4 commercial -- two facilities now, with the new
5 regulation, in that area. And if there are,
6 then you can't have a third. And then they'll
7 determine the tonnage, based on planning --
8 waste generated within that planning area.

9 Q: Okay. Okay. So under what you just -- based
10 on what you just described, basically the
11 Demonstration of Need regulation is a mere
12 formula, isn't that correct?

13 A: Basically, yes.

14 Q: Because if there are two commercial landfills,
15 DHEC cannot permit a third, is that correct?
16 Two commercial landfills within a planning
17 area, DHEC cannot permit a third, is that
18 right?

19 A: Except under real extreme conditions, which
20 have never occurred in this state. There's
21 some language in there about if a landfill will
22 not allow special -- talking about MSW,
23 landfill won't allow special waste. For those
24 landfills in that area allow special waste,
25 then you may -- there's ability to permit a

1 third, but it's never -- I don't think DHEC's
2 ever used it.

3 Q: But it's under certain circumstances?

4 A: Certain, yeah, that's right.

5 Q: But basically the typical and normal procedure
6 of DHEC is not to permit a third commercial
7 landfill if there are already two there?

8 A: That's correct.

9 Q: And in this particular case with Greeneagle,
10 there was only one in that, one commercial
11 landfill already there?

12 A: Commercial. That's correct.

13 Q: Okay. And if Greeneagle demonstrated need by
14 submitting their -- the location of where they
15 wanted to place the landfill, and the longitude
16 and latitude, is that right?

17 A: That's correct.

18 Q: Then DHEC would say, you have demonstration of
19 need approval, is that right?

20 A: Yeah, that's correct.

21 Q: Okay. So that's totally different from --
22 well, you tell me. Is that totally different
23 from a county stating in their solid waste
24 management plan what facility they already
25 have, what facilities are needed, and -- I

1 think there's one other thing we have to --
2 have to do an analysis of their waste, is that
3 correct?

4 A: That's correct.

5 Q: And that is determining need based on capacity
6 for waste, is that right?

7 A: That's correct.

8 Q: Which is totally different and distinct from
9 demonstration of need?

10 A: That's right. The Demonstration of Need
11 regulation didn't look at capacity, it looked
12 at location.

13 Q: All right. So, two different processes. Okay.
14 So when we, you know, we throw the words
15 around, define, determine, demonstration, but
16 would it be fair to say that the DON was
17 basically an approval process that an applicant
18 has to go through? It just happens to include
19 the word Need in it, but it's not very
20 indicative of need in terms of capacity?

21 A: Not in terms of capacity, but in terms of
22 location. It could be a length on a certain
23 part of town that --

24 Q: Right. And that need is determined based on
25 how many are already there or how many are not

1 there?

2 A: That's correct.

3 Q: Okay. And as far as I know, other than the
4 applicant submitting the longitude and latitude
5 in the siting of the facility, there's no other
6 criteria for that approval -- receiving that
7 approval, is that right?

8 A: That's correct.

9 Q: All right. Okay. Let's talk about consistency
10 determination. Isn't it true that during your
11 tenure at DHEC that it was typical for your
12 program to issue one or more preliminary
13 consistency determinations?

14 A: Yes, it was.

15 Q: So that wasn't anything unusual or out of the
16 ordinary, correct?

17 A: That's correct.

18 **THE COURT:** Wait a minute. When you say one or
19 more, do you mean for one applicant or for
20 several applicants at one time?

21 **MS. WILLIAMS:** No, Your Honor, I mean for one
22 applicant.

23 **THE COURT:** For one applicant.

24 **MS. WILLIAMS:** Yes. And even in this case, we
25 issued two preliminary consistency

1 determinations.

2 Q: You were asked about the statute 44-96-290(F).
3 Are you familiar with that statute?

4 A: Yes, ma'am.

5 Q: Okay. Tell us -- give us a synopsis of what
6 that statute says.

7 A: Basically F states that the Department can't
8 issue a permit unless it's consistent with the
9 local solid waste management plan, the zoning
10 and land use ordinances, and these are
11 ordinances that the county may have that are
12 consistent with the Solid Waste Act.

13 Q: All right. And so how -- when you were at
14 DHEC, how did DHEC interpret that statute, what
15 did -- in terms, in terms of consistency
16 determination? Did the statute limit how many
17 DHEC could issue?

18 A: It didn't address the timing or anything about
19 it. It just said it had to be consistent with
20 --

21 Q: Right. But to your knowledge is there any
22 statute, or is there anything within that
23 particular statute, that limits the number of
24 consistency determinations that DHEC can issue?

25 A: No. In fact, what -- we were just trying to

1 ensure -- the reason we had a preliminary and
2 a final is because we were trying to ensure at
3 the time we made the permitting decision that
4 it was still consistent with whatever plan was
5 in effect at that time, on that date we issued
6 the permit.

7 Q: All right. So, as far as you're concerned,
8 DHEC's interpretation of that statute is that
9 whenever DHEC issued a permit, that the
10 proposed facility that DHEC was issuing the
11 permit for had to be consistent with the solid
12 waste management plan that was on file with
13 DHEC at that time?

14 A: On the date that we made the decision.

15 Q: Right. On the date that DHEC made the
16 decision. All right.

17 A: That's correct.

18 Q: So with DHEC, in issuing more than one
19 preliminary consistency determination
20 sometimes, you were trying to adhere to the
21 statute, is that correct? Or DHEC was trying
22 to adhere to the statute?

23 A: DHEC was trying to ensure that they were --
24 that the determination was correct and
25 consistent with the statute.

1 Q: Right. All right. So at the time that DHEC
2 the final consistency determination for the
3 Greeneagle landfill, if -- well, let's see. I
4 think we issued our second determination,
5 consistency determination, May 8, 2006. Do you
6 have Joint Exhibit Number Four?

7 A: Yes, I do.

8 Q: Do you see that?

9 A: Yes, I do.

10 Q: What is the title, what's that -- in the R.E.
11 section of that?

12 A: Preliminary Consistency Determination.

13 Q: All right. And just give me a letter -- DHEC
14 based that determination, that consistency
15 determination on which solid waste management
16 plan?

17 A: The February 1994 Catawba Regional Solid Waste
18 Management Plan.

19 Q: Okay. Are you aware -- you are aware that York
20 County passed another solid waste management
21 plan subsequent to this '94 plan?

22 A: Yes.

23 Q: And you are aware that that passed in February,
24 I think February 28, 2007?

25 A: That's correct.

1 Q: Okay. And are you aware of when DHEC issued
2 its final consistency determination?

3 A: No, I'm not sure of the date and time of that.

4 Q: You're not sure. But you are aware that we
5 issued it after the 2007, February 2007, plan
6 was adopted?

7 A: Yes.

8 Q: Okay. So, in other words, when you were at
9 DHEC if a solid waste management plan had come
10 in, another one had come in subsequent to this
11 1994 plan, then DHEC would have, according to
12 DHEC's policy, it would have issued another
13 preliminary or final consistency determination,
14 is that correct?

15 A: That's correct.

16 Q: All right. All right. You talked about that
17 you attended, and correct me if I'm wrong, you
18 attended a county -- York County Council
19 meeting, and I'm not sure if you said in early
20 2007 or in early February 2007.

21 A: It was in early 2007. I'm not sure of the
22 exact date, I thought it was in February, but
23 I'm not sure of the date.

24 Q: Okay. But you're not sure of the date?

25 A: No.

1 Q: Okay. Let's look at Petitioner's Exhibit Three
 2 and the front page. I believe you said that
 3 this was the draft plan that you had when you
 4 attended that meeting in early 2007?
 5 A: Yes. I said it appears to be the same plan.
 6 Q: Okay. And do you know where you got this plan
 7 from?
 8 A: No. I believe Anna had send it, Anna Wilson
 9 had sent a copy to the Department.
 10 Q: Okay. And the date on this plan is February 6,
 11 2007. Do you believe that was the date of the
 12 meeting, or you just don't know?
 13 A: I don't know --
 14 Q: Okay.
 15 A: -- if it was February.
 16 Q: Did you attend any other York County Council
 17 meetings?
 18 A: Not county.
 19 Q: Oh, that was a workshop, right?
 20 A: Yeah, we went to another workshop but I'm not
 21 sure of the dates.
 22 Q: Okay.
 23 A: Prior to that.
 24 Q: But there was some meeting pertaining to this
 25 plan that you did not -- which you said that

1 you did not attend, is that correct?

2 A: That's correct.

3 Q: Okay. So being that you did not attend all the
4 meetings pertaining to the draft of this solid
5 waste management plan, would it be fair to say
6 that the changes that were made in the final
7 plan, that you don't know the reason for the
8 changes?

9 A: I was there on the third reading, so --

10 Q: All right.

11 A: -- I couldn't compare the readings.

12 Q: And isn't it possible that the changes that
13 were made to the final plan were based on some
14 rational and reasonable reason or basis?

15 A: It's possible. I wasn't involved in the
16 discussions.

17 Q: Right. So you wouldn't know, right?

18 A: That's correct.

19 Q: During your tenure at DHEC, was it your
20 experience that counties changed their plans
21 frequently?

22 A: Well, we had numerous times when the counties
23 changed their plans during the permitting
24 process.

25 Q: So that wasn't out of the ordinary?

1 A: That's correct.

2 Q: For that to happen. All right. And lots of
3 times when these changes were made or occurred,
4 DHEC didn't always know the reason?

5 A: That's correct.

6 Q: And is DHEC required to know the reason for the
7 changes in a plan?

8 A: No. That's -- all DHEC was required to do was
9 review the plan to make sure it meets the
10 requirements of the Solid Waste Act.

11 Q: And which plan is DHEC required to review, a
12 draft plan?

13 A: Well, the final plan.

14 Q: Okay. The final plan, which means the plan has
15 been adopted by the county, is that correct?

16 A: That's correct.

17 Q: There were some questions asked of you about
18 why did DHEC consider the 2007 plan as York
19 County's first solid waste management plan.
20 And there's been a lot of reference to the plan
21 as the new plan. Do you equate the word New
22 with First?

23 A: No, only because the Solid Waste Act required
24 that all counties either have an individual
25 plan or be a part of a regional plan by 1994,

1 and York is part of the Catawba plan. So York
2 was part of a plan, had a plan, it was the
3 Catawba Regional Plan, but they did have a
4 plan. And then when they decided to go on
5 their own, the Department looked at it as an
6 amendment to that plan, not a new plan.

7 Q: All right.

8 **THE COURT:** I want to understand you correctly.
9 DHEC looked at it as an amendment to the
10 Catawba Regional Plan?

11 A: Yes, sir. York was part of the Catawba plan,
12 so when they pulled out we looked at them as
13 having been part of the Catawba plan. They had
14 a plan, which was the Catawba plan, and then
15 they revised it to be just an individual county
16 plan. So we looked at it as an amendment to
17 that Catawba plan.

18 **THE COURT:** Okay.

19 **MS. WILLIAMS:** May I confer, Your Honor, for a
20 second?

21 **THE COURT:** Yes, ma'am.

22 (Off the Record)

23 Q: I want to talk a little bit about, and you
24 touched on this in your testimony earlier,
25 about what the county is required to place in

1 their plan. And I'm going to hand you the
2 statute and let you read some of the
3 provisions. Okay. This is Section 44-96-80.
4 If you'll read, starting the last sentence of
5 A and the first three prongs there, under 44-
6 96-80(A).

7 A: This plan must provide for public participation
8 and include at a minimum the following: an
9 estimate of the amount of solid waste currently
10 disposed of, do you want me to read the entire
11 paragraph or --

12 Q: Yeah, you can read the whole paragraph.

13 A: -- estimate of the amount of solid waste
14 currently disposed of at the solid waste
15 disposal facilities within that county or
16 region and a projection of the amount of solid
17 waste which will be disposed of at a solid
18 waste disposal, at the solid waste disposal
19 facilities during the 20-year period following
20 the chapter's effective date; an estimate of
21 the current capacity within that county or
22 region; management of solid waste, including
23 identification of each solid waste management
24 facility and a projection of its useful life;
25 an analysis of existing and new solid waste

1 facilities which will be needed to manage solid
2 waste generated within that county or region
3 during the projected 20-year period.

4 Q: Okay. So based on what you just read, would
5 you agree that these are just like it says, at
6 a minimum, what the county must include in
7 their solid waste management plan?

8 A: That's correct.

9 Q: All right. And I'd like for you I guess to
10 reemphasize a little bit what you testified to
11 earlier about what DHEC, at least during your
12 tenure there, when we reviewed a plan, what we
13 looked at, because -- or what DHEC looked at,
14 because I think you mentioned that we did not
15 just accept one sentence in the plan, is that
16 correct?

17 A: That's correct. We looked at the plans to see
18 if they actually identified their facilities,
19 waste generated in that county and what
20 facility had managed that waste, as well as
21 other information about recycling and stuff.
22 It was from a facility standpoint, looking at
23 what they had, what capacity they had to manage
24 that waste within the county.

25 Q: All right. And what tools do you know of that

1 DHEC had at its disposal that we could verify
2 some of those things that the county placed in
3 the plan?

4 A: Well, we have annual reports from the landfills
5 for the solid waste facilities themselves to
6 verify some of the information, showing where
7 waste was moving, where it was going, where
8 it's being disposed of.

9 Q: All right. And does the annual report also
10 talk about or show or report how much waste is
11 being disposed of?

12 A: Yes, it does.

13 Q: Okay. And so during your tenure there that's
14 something that DHEC used to, in addition to
15 reading the plan, the annual report, they
16 looked at that also to make their consistency
17 determination, is that correct?

18 A: We looked at the information in the plan and
19 ensured it matched their -- is identical to
20 what the county submitted to us as far as we
21 had a survey that was sent out to the counties
22 each year and talked about waste generation and
23 waste disposal.

24 Q: Okay. I want to be careful about, you said
25 identical; would it necessarily be identical or

1 at least be very close to what --

2 A: Well, should -- should be identical, but it's

3 close probably.

4 Q: It's not -- in other words, is it always

5 identical?

6 A: No.

7 Q: I mean, because somebody might, just a figure

8 here or there or --

9 A: Yeah.

10 Q: But the DHEC reviews to make sure it's pretty

11 close to what's being reported in the plan?

12 A: That's correct.

13 Q: All right.

14 A: And if anything's out of the ordinary, we

15 question it.

16 Q: Okay.

17 MS. WILLIAMS: Okay, Your Honor, I have no other

18 questions for now.

19 THE COURT: Proceed, Mr. Harmon.

20 MR. HARMON: Thank you, Your Honor.

21 MR. BRASWELL - REDIRECT EXAMINATION BY MR. HARMON:

22 Q: Mr. Braswell, I want to make sure I fully

23 understand your testimony about these two

24 consistency determinations that are being done,

25 or were done at DHEC prior to the new

1 regulation coming into effect. About when did
2 that new regulation come into effect?

3 A: May 2008.

4 Q: May 2008. So before that DHEC was doing at
5 least two consistency determinations?

6 A: We were. I guess the last 2007 time period we
7 started cutting back and just doing one. We
8 used to notify the applicants for the
9 preliminary and do a final, and we were being
10 criticized for asking for input from the
11 counties because it needs to be an independent
12 determination by the Department, that we
13 weren't delegating our authority. So
14 eventually we got away from doing preliminary
15 and final and just did one. But at the time
16 this application came in we were doing both.
17 We did a preliminary because we looked at the
18 plan at the time the application came in. And
19 then when we made the final determination, if
20 anything had changed we wanted to make sure
21 that it was still consistent with whatever the
22 plan stated before we made a permanent
23 decision.

24 Q: Okay. Now, correct me if I'm wrong, but the
25 statute did not require DHEC to do two

1 consistency determinations?

2 A: No. Actually, we were doing the preliminaries
3 as I guess a courtesy to the applicant to let
4 them know that, all right, at the time you sent
5 your application it is consistent. And that
6 way, if it was inconsistent there would be no
7 reason to move forward with your application.
8 So we made a preliminary determination at that
9 time and then made a final when we made the
10 final decision. But they were always aware,
11 and the language in the letter stated that it
12 could change.

13 Q: Okay. Now, the regulation, the earlier
14 regulation that Greeneagle was under, 107.11,
15 it did not require two consistency
16 determinations, did it?

17 A: It didn't require them, no.

18 Q: Now, if I understood your testimony, you
19 indicated that there were a number of
20 situations where counties changed their plans
21 between preliminary consistency determinations
22 and final consistency determinations?

23 A: That's correct.

24 Q: Did not the DHEC procedure invite that to
25 happen?

1 A: Well, people say it did. That's one reason
2 when we wrote the new landfill regulation we
3 made that change, to break it out in two
4 separate issues so that we wouldn't get the --
5 the determination of consistency couldn't
6 change during the permitting process. We would
7 make that determination up front, and it would
8 stick, and then you wouldn't have to worry
9 about that as you went through the permitting,
10 paying for the design of the landfill.

11 Q: Okay. Now, Ms. Williams, if I understood one
12 of her questions correctly, she indicated that
13 two preliminary consistency determinations had
14 been made in the Greeneagle case?

15 A: That's what she said, correct.

16 Q: Are you aware of two preliminary consistency
17 determinations having been made?

18 A: Not that I haven't -- without me reviewing the
19 file I'm not sure. I know there was some --
20 well, not with Greeneagle, I'm not sure if
21 there were two or not.

22 Q: Okay. Let me ask you, if you would, to look at
23 Joint Exhibit Four.

24 A: I have it.

25 Q: Okay. That doesn't reference a previous

1 determination having been made, does it?

2 A: No, it doesn't.

3 Q: Okay.

4 A: The difference between, I guess, Number Three

5 and Number Four, one's addressed to the county,

6 and the other's addressed to the engineer, so.

7 Q: Yes, and Joint Exhibit Three is simply

8 entitled, Consistency Review?

9 A: That's correct.

10 Q: Okay. And Joint Exhibit Four actually says

11 Preliminary Consistency Determination.

12 A: That's correct.

13 Q: Okay. And you would not consider those to be

14 two different preliminary consistency

15 determinations, would you?

16 A: No, they're not.

17 Q: Now, the Demonstration of Need regulation,

18 that's a regulation that was developed by DHEC?

19 A: That's correct.

20 Q: Okay. Greeneagle didn't develop that

21 regulation?

22 A: No, they did not.

23 Q: Okay. But according to the regulation, they

24 needed to seek the demonstration of need

25 approval from the Department?

1 A: That's correct.

2 Q: Which is exactly what they did?

3 A: That's correct.

4 Q: Has the Department ever denied a demonstration

5 of need request?

6 A: Yes, we have. Actually, the first year or two

7 we had numerous denials. Usually they ended up

8 not being in writing because people would

9 submit something to us and we would tell them,

10 you're not qualified under the regulation, so.

11 Q: But you would use the 10-mile radius test that

12 we discussed earlier, and if there were two

13 commercial facilities within that 10-mile

14 radius already, you would deny --

15 A: That's correct.

16 Q: -- a request for approval?

17 A: Yes, we would.

18 Q: And if DHEC denied a demonstration of need

19 request, and you indicated that that has

20 occurred in the past, and a county wrote a plan

21 that said they needed a landfill, would DHEC

22 allow the county plan to determine need in that

23 case?

24 A: No. If it didn't meet the demonstration of

25 need we'd still turn it -- we'd turn it down;

1 they'd have to find another location for the
2 facility.

3 Q: Okay. Did you have any discussions with anyone
4 in York County regarding encouraging private
5 C&D landfills prior to February 2007?

6 A: Well, I mentioned earlier that Brenda Curtis,
7 of my division, went out to meet with the York
8 County officials to talk to them about need for
9 landfills in that area because of the
10 unpermitted landfills being operated in the
11 county.

12 Q: Okay. And do you know about when that meeting
13 would have occurred?

14 A: It was in the early 2000's, not sure of the
15 date. It would have been in probably 2002,
16 2003, somewhere along there.

17 Q: It would have been after the time period that
18 York County began planning for solid waste
19 within the county?

20 A: Based on -- that's correct.

21 Q: Mr. Braswell, let me refer you to Joint Exhibit
22 Eleven, and I'd like to specifically refer you
23 to the page that's numbered at the bottom DHEC-
24 0264. Would you please let me know when you've
25 found that page?

- 1 A: I have it.
- 2 Q: Okay. Now, item nine on that page, would you,
- 3 would you read the first, the first six lines
- 4 of that, of that item nine?
- 5 A: A first reading by title of ordinance entitled
- 6 An Ordinance to Authorize York County, take all
- 7 steps necessary or appropriate with dropping
- 8 the Catawba Regional Solid Waste Management
- 9 Plan, adopt and provide for the implementation
- 10 of a new York County Solid Waste Management
- 11 Plan, and to provide for the implementation of
- 12 such plan pursuant to South Carolina Solid
- 13 Waste Policy and Management Act of 1991 as
- 14 amended.
- 15 Q: And it goes on from there. Now, would it make
- 16 any difference to your analysis with the word
- 17 New in the title of that ordinance, would you
- 18 still consider this plan to be an amendment to
- 19 the York -- to the Catawba Regional Plan?
- 20 A: I would, only because they were part of the
- 21 Catawba plan, and that was their initial plan.
- 22 And this was, you know, a separate -- from
- 23 DHEC's standpoint it was considered an
- 24 amendment to that plan.
- 25 Q: So you still viewed it as an amendment to the

1 plan, even though it says New?

2 A: That's correct.

3 Q: And are you aware that later on the title to

4 that ordinance was changed?

5 A: Yes, I'm aware of that.

6 Q: Okay. And it was changed on third reading?

7 A: I don't know when, but I know it changed.

8 Q: Okay. And what's your understanding of the

9 change?

10 A: I guess to state that it's an amendment to the

11 existing plan.

12 Q: Okay. Did you have any discussions with anyone

13 at York County about that issue?

14 A: No. No, I didn't.

15 MR. HARMON: Your Honor, that's all the redirect I

16 have for this witness.

17 THE COURT: Any re-cross, Ms. Williams?

18 MS. WILLIAMS: Yes, Your Honor.

19 MR. BRASWELL - RECROSS EXAMINATION BY MS. WILLIAMS:

20 THE COURT: Limited, of course.

21 Q: Okay, Mr. Braswell. There was a little bit of

22 talk about the number of preliminary

23 consistency determinations that DHEC has made

24 in the past. Would you -- is it fair to say

25 that when we issue a preliminary, when DHEC,

1 when DHEC issued a preliminary consistency
2 determination, that it really worked as a
3 benefit to the applicant?

4 A: That's what the intent was, to make the
5 applicant aware that at the time of the
6 application they were consistent with the plan,
7 and that they could go ahead and move forward
8 with their application.

9 Q: So knowing whether or not they were consistent
10 with the plan helped them decide whether they
11 wanted to spend anymore money on their project,
12 isn't that correct?

13 A: Well, they had a choice, either the preliminary
14 consistency determination or an outright denial
15 based on the fact they don't meet the
16 requirements. So we'd notify them of the
17 decision up front, that they were consistent,
18 that at the time they were consistent with the
19 plan.

20 Q: All right. I want -- I stand corrected in what
21 I said earlier, in that you issued two
22 preliminary consistency determinations. We
23 actually issued one consistency, one
24 preliminary consistency determination to two
25 separate people that were involved in

1 implementing the landfill. So there was one
 2 preliminary consistency determination.
 3 However, are you aware of DHEC ever issuing
 4 more than one preliminary consistency
 5 determination?
 6 A: In the Vernsdale case, I think we issued two or
 7 three --
 8 Q: Okay.
 9 A: -- determinations.
 10 Q: I have this document, it's an affidavit by Ms.
 11 Jana White of -- well, I'll let you tell the
 12 Court what it is.
 13 MR. HARMON: Your Honor, I was not aware that Ms.
 14 Williams was planning on using this document.
 15 MS. WILLIAMS: It's just to refresh his memory.
 16 It's not, I'm not going to put it in as an
 17 exhibit.
 18 THE COURT: He can use it to refresh his memory.
 19 Q: Tell the Court what I've just handed to you.
 20 A: It's a document showing multiple landfill
 21 consistency determinations.
 22 Q: Okay. Will you take a moment to review the
 23 list, and pay particular attention to the
 24 landfills that received more than one
 25 preliminary consistency determination.

1 A: Looks like Wasteco Green Point and Oak Ridge
 2 both received more than one.
 3 Q: Were those determinations given during your
 4 tenure?
 5 A: One of them was, Green Point.
 6 Q: Okay. Do you remember DHEC issuing two
 7 preliminary consistency determinations for
 8 Green Point?
 9 A: Yes, I do.
 10 Q: Okay. So this document having refreshed your
 11 memory, it was not an odd occasion for DHEC
 12 sometimes to issue more than one preliminary
 13 consistency determination, is that correct?
 14 A: That's correct.
 15 Q: Okay. And you were asked, I think you were
 16 asked if the statute provided for DHEC to issue
 17 more than one preliminary consistency
 18 determination, and I believe your answer was
 19 no, the statute didn't provide it. But my
 20 question to you is does the statute prohibit
 21 it?
 22 A: The statute doesn't address the number of
 23 consistency determinations. It just says the
 24 facility has to be consistent before the
 25 issuance of the permit.

1 Q: Okay. And so by DHEC issuing a preliminary,
2 maybe another preliminary, and then a final,
3 would you say that could have been DHEC's
4 process in reaching a final consistency
5 determination?

6 A: Yes, it could have been.

7 Q: There was a question posed to you about whether
8 or not DHEC's procedure invited counties to
9 change their plan in the middle of a permitting
10 process. And I want to ask you, and I want you
11 to think about this for a second, whether it
12 was DHEC's process or is it just the fact that
13 the statute states that a proposed facility
14 must be consistent with the local solid waste
15 management plan? I guess I want to distinguish
16 between whether it's a DHEC process, or is it
17 what the legislature has mandated to happen?

18 A: It's a statutory requirement that it has to be
19 consistent with the plan. The process we used
20 I guess could have encouraged it, but that's
21 why we changed the regulation. Actually, it
22 was the John Taylor case in Marion County and
23 the board directed me to address that issue
24 because Marion County changed their plan in the
25 process, so. And when we wrote the plan we

1 tried to address that in the regulation by
2 breaking the consistency away from the
3 technical review, so they'd be separate and
4 then would have that issue about plans changing
5 after the applications are submitted to the
6 Department.

7 Q: But would it be fair to say that, even if our
8 policy may have encouraged, you know, such an
9 occurrence, that it was not intentional, it was
10 not our intention to encourage that?

11 A: No, it wasn't intentional. We were, we were
12 trying to actually deal with the preliminary,
13 just trying to make it better for the
14 applicant, letting them know what the initial
15 decision and then making them aware that they
16 could change before the final determination,
17 but at that time they were consistent with the
18 plan.

19 Q: So basically would you also, would it be fair
20 to say that DHEC, you know, we have made or we
21 made our process transparent so that the
22 applicant would know what was going on at each
23 stage of the process?

24 A: We tried to.

25 Q: All right. It was also discussed, well, you

1 were asked to read the, I think it was the
2 first reading of that ordinance, of the
3 Ordinance 206, where it stated that it was a
4 new solid waste management plan.

5 A: That's correct.

6 Q: And I just want to ask you -- I think you
7 answered it, you said DHEC would have
8 considered it as an amendment even though it
9 would just say New. But would you say that New
10 could also mean another plan, or New could mean
11 a different plan?

12 A: Yes. I mean, if an existing county had a plan
13 and they submitted a new revision or whatever
14 they would call it -- they could call it a new
15 plan.

16 Q: All right. So New, as you testified earlier,
17 does not necessarily equate to first?

18 A: That's correct.

19 **THE COURT:** Excuse me, Ms. Williams, you said 206;
20 is it not 207?

21 **MS. WILLIAMS:** 207, Your Honor, I'm sorry. I
22 misspoke.

23 **THE COURT:** Thank you.

24 **MS. WILLIAMS:** I have no further questions.

25 **MR. HARMON:** Nothing further, Your Honor.

1 **THE COURT:** All right. We are at ten minutes of
2 four. You want to take a little break and then
3 go to five, or what do you wish to do?

4 **MR. HARMON:** A short break would be very much
5 appreciated.

6 **THE COURT:** Okay. Let's take ten minutes, be back
7 here at 4:00. Recess.

8 **MR. BRASWELL:** Can I be excused?

9 **THE COURT:** Just a moment.

10 **MR. BRASWELL:** I've got to be in Charleston tomorrow
11 at seven.

12 **THE COURT:** Can Mr. Braswell be excused?

13 **MR. HARMON:** Yes, Your Honor. I have no objection
14 to that.

15 **THE COURT:** All right. Ms. Williams?

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

17 **THE COURT:** Mr. Braswell, you may be excused. Thank
18 you for being here. Be at ease 'til 4:00.

19 **(A short break was taken.)**

20 **THE COURT:** We have everybody necessary?

21 **MS. WILLIAMS:** Yes.

22 **MR. HARMON:** Thank you, Your Honor. Greeneagle
23 calls Ms. Jana White.

24 **JANA WHITE,** having been duly sworn, testifies as
25 follows:

1 MS. WHITE - DIRECT EXAMINATION BY MR. HARMON:
2 Q: Please state your full name for the record.
3 A: Jana Myers White.
4 Q: And Ms. White, what is your address?
5 A: Four Morning Ridge Court, Columbia, 29229.
6 Q: And who is your current employer?
7 A: DHEC.
8 Q: How long have you been employed with DHEC?
9 A: Since 1993.
10 Q: And what is your current job responsibility
11 with the Department?
12 A: I'm the section manager for the Solid Waste
13 Planning and Grants Section.
14 Q: And how long have you been in that position?
15 A: I've been doing the planning portion since
16 about four years, five years.
17 Q: For four or five years, right?
18 A: Let me see --
19 Q: Time passes fast.
20 A: It does.
21 Q: Could you give me a brief job description of
22 what you do as the section manager for Solid
23 Waste Planning and Grants?
24 A: I'm involved in the regulation development
25 process. I'm involved in giving solid waste

1 grants to local governments, and I'm involved
2 in reviewing solid waste management plans for
3 consistency purposes.

4 Q: Okay. And with respect to consistency
5 determinations, have you been doing that for
6 the four or five years that you have been the
7 department director, or longer than that?

8 A: No, sir. That's the only --

9 Q: For that period of time?

10 A: Yes, sir.

11 Q: Do you have any other involvement in solid
12 waste planning?

13 A: Well, I mean, it's not just consistency, but
14 it's in the development of solid waste plans
15 and helping local governments develop solid
16 waste management plans within -- those are the
17 two primary functions I guess.

18 Q: Okay. And were you involved in the review of
19 the Greeneagle proposed landfill?

20 A: Yes.

21 Q: Let me, first of all, ask you to look at Joint
22 Exhibit Number Three.

23 A: Uh-huh (affirmative response).

24 Q: That's not Petitioner's Three, Joint Exhibit
25 Three. The one in the notebook.

1 A: I'm sorry. I'm sorry. Thank you. Okay.

2 Q: Can you tell us what this document is?

3 A: That was a letter we wrote to the county, to

4 York County, informing them that we had done a

5 review of their solid waste management plan for

6 consistency for the Greeneagle landfill.

7 Q: Okay. And were you asking the county to

8 comment on your review?

9 A: We were asking the county, and we had copied

10 the applicant as well, just telling them that

11 this was what our finding was at this point.

12 Q: Okay. And did you receive any comment from the

13 county to this letter?

14 A: I don't recall. I don't recall.

15 Q: Now, let me ask you to look at Joint Exhibit

16 Number Four, please. That'll be Number Four in

17 the notebook.

18 A: Okay.

19 Q: What is this document?

20 A: This was our preliminary consistency

21 determination letter that we wrote to the

22 applicant -- well, we wrote to the I guess

23 consultant on behalf of the applicant.

24 Q: Okay. And what was your finding with regard to

25 preliminary consistency determination?

1 A: We found that the landfill was not inconsistent
2 with the '94 Catawba Regional Plan.

3 Q: Okay. So if the Catawba Regional Plan had not
4 been changed, this landfill would have been
5 consistent?

6 A: That's right.

7 Q: With a local or regional plan?

8 A: That's right.

9 Q: Okay. Now, you indicated in this letter, in
10 the second paragraph, that it has been brought
11 to the attention of the Department that York
12 County is preparing a York County solid waste
13 management plan. Do you see that part of the
14 letter?

15 A: Yes, sir.

16 Q: Now, how did you become aware of that?

17 A: I don't remember how we initially became aware
18 but, you know, we had had conversations with
19 Anna Wilson and with a planning group up there
20 that they were developing. You know, we had
21 received drafts and we had had comments for --
22 or had been asked for comments from them on
23 certain requirements, and we had had some
24 conversations with the county on -- and knew
25 that they were developing new plans.

1 Q: Okay. Now, you were in the courtroom and heard
2 Mr. Braswell's testimony?

3 A: Uh-huh (affirmative response).

4 Q: And he talked about a meeting that he placed in
5 early 2007, perhaps early February 2007. Did
6 you have contact with the county prior to that
7 time?

8 A: I believe so, I believe so.

9 Q: Okay. And you said you received drafts of
10 plan, plural?

11 A: Uh-huh (affirmative response).

12 Q: How many drafts of a York County Plan did you
13 receive?

14 A: Maybe four, some had gone back to say 2000. I
15 mean, you know, there had been a number. At
16 one time, Ms. Wilson had given us a portion of
17 a, you know, just a portion of a plan, it
18 wasn't a whole draft, it was a portion. And so
19 maybe four.

20 Q: Okay. So you had some of those drafts before
21 you provided Mr. Frost with the preliminary
22 consistency determination for Greeneagle?

23 A: Probably, yeah -- well, definitely the 2000
24 ones we had had.

25 Q: Okay.

1 A: I don't remember later ones. I don't remember
 2 what dates we had the later ones exactly.
 3 Q: And did you see anything in any of those drafts
 4 that would have made the Greeneagle proposal
 5 inconsistent with the plan York County was
 6 developing?
 7 A: That would have made it inconsistent?
 8 Q: Yes.
 9 A: I do know there was at least one draft where
 10 they -- he was consistent. I don't remember,
 11 I don't remember his position in all of the
 12 drafts.
 13 Q: Okay. Suffice it to say, you didn't say in
 14 your letter, in your preliminary consistency
 15 determination letter, that there may be
 16 something proposed out there that would make
 17 you inconsistent?
 18 A: We just, I mean, I couldn't speculate on what
 19 might come. All we wanted to do was say that
 20 because the statute said we can't issue a
 21 permit unless it's consistent with the plan at
 22 that time, that this was not really -- this
 23 could change.
 24 Q: Right.
 25 A: The plan could change.

- 1 Q: And I'm not asking you to speculate. I'm -- my
2 question is more directed towards any draft
3 that you had seen up until that point in time,
4 you did not put a statement in your letter
5 that, We're aware of a draft that would make
6 you inconsistent with the local solid waste
7 management plan?
- 8 A: We wouldn't -- I don't think we would have said
9 that, and we didn't, we didn't.
- 10 Q: Now, let me ask you to please look at Joint
11 Exhibit Number Five. Did you prepare this
12 document?
- 13 A: This was notes, yes, this -- these were notes
14 I had in a file just to remind myself of some
15 conversations.
- 16 Q: Okay. And is that your initial up near the top
17 of the page?
- 18 A: Yes.
- 19 Q: Okay. Your first entry, would you have spoken
20 with Mr. Taylor in 2005?
- 21 A: Apparently I did.
- 22 Q: Okay. And the preliminary decision
23 notification that you mentioned in that entry
24 under May 4, 2005, was that a reference to the
25 letter that is Joint Exhibit Number Four?

1 A: Yes, I believe so.

2 Q: Okay. And then the second entry is a, is an

3 entry regarding a conversation with David

4 Harmon.

5 A: Uh-huh (affirmative response).

6 Q: Okay. And who is Mr. Harmon?

7 A: Mr. Harmon's with York County, although I don't

8 -- I can't remember exactly what his position

9 was at the time, but he was I believe a

10 representative of York County.

11 Q: Okay. And what was the significance of the

12 180-day review period that he asked you about

13 or that he apparently asked you about, based

14 upon your note?

15 A: In the Solid Waste Act, where it laid out how

16 an initial plan was to be adopted, it included

17 a 180-day period where DHEC was to review the

18 plan, and that at the end of the 180-day period

19 the plan became effective. I think it referred

20 to that 180 days.

21 Q: Okay. And what did you tell him about that?

22 A: That that did not pertain in this case.

23 Q: And why would it not pertain in this case?

24 A: Because that would only apply -- the plan set

25 forth the requirements for the initial plans,

1 and so that within 15 months or whatever
2 everybody was to have a plan, and that all
3 these procedures would happen with that initial
4 plan. And the 180 days applied to the initial
5 plans.

6 Q: Okay. And so you did not consider what York
7 County was developing to be an initial plan?

8 A: No, sir. We considered that everyone had met
9 the requirements of the Act; that after the 15
10 months, that everyone had their plan in place
11 and that there were no new plans at that point
12 after that.

13 Q: Okay. Now, there are some handwritten notes on
14 this page --

15 A: Uh-huh (affirmative response).

16 Q: -- as well. Are those in your handwriting?

17 A: Yes, sir.

18 Q: Okay. The first one, could you read that one
19 into the record?

20 A: Received new plan, 3/28/07, prohibits new
21 landfill effective February 28, 2007.

22 Q: Okay. And was this a note, was this document
23 part of the Department's Greeneagle file?

24 A: This was, it was in the planning file, which is
25 like my desk copy of what we keep, and these

1 were again notes just to jog my memory about
2 things and what happened and when they
3 happened.
4 Q: Okay. And when did you place this note on this
5 piece of paper?
6 A: I don't know. I would assume somewhere around
7 3/28/07.
8 Q: Okay.
9 A: But how late after that I couldn't say for
10 sure.
11 Q: About the time that you received the plan?
12 A: Somewhere around there or -- I don't know for
13 sure. It was after that date clearly, but I
14 couldn't say how far after.
15 Q: Okay. And it says, Prohibits new landfill.
16 How did you determine that?
17 A: Well, and let me just say, this is a note to
18 myself. This was not a letter we sent out to
19 anybody. This was not something that was
20 mailed to anybody. This was a note to myself,
21 based on a review. Because we had had
22 discussions with Mr. Taylor that he was going
23 to be consistent with the new plan, and then
24 when the new plan came in, after we'd reviewed
25 it, it appeared not to be the case.

1 Q: Okay. So you had spoken with Mr. Taylor about
2 consistency with various drafts of a plan?

3 A: Uh-huh (affirmative response). We had, yeah,
4 we'd had conversations with lots of people
5 about different drafts.

6 Q: Okay. And the second note on this page, what
7 -- tell me what that note is.

8 A: I think that was, I believe that was in regard
9 to another meeting they had had, where there
10 were other drafts, even though -- that there
11 were other drafts of the plan that were
12 continuing to be drafted that did different
13 things with the Greeneagle landfill.

14 Q: Okay. When you say first reading of exemption,
15 are you talking about first reading of an
16 ordinance?

17 A: I believe that's --

18 Q: Like we have been talking about?

19 A: I believe that's what that refers to, yes, that
20 there was a first reading of an ordinance.

21 Q: Now, let me ask you to refer, please, to Joint
22 Exhibit Eight. That would be Number Eight in
23 the notebook. Okay. Is this a document that
24 you prepared?

25 A: Yes, it was.

- 1 Q: Okay. Why did you prepare this document?
- 2 A: Well, Greeneagle had eventually submitted a
- 3 permit application, and so we needed to -- we
- 4 had a new plan, we had a permit application,
- 5 and we had to do a consistency determination.
- 6 And it was not consistent with the new plan,
- 7 and so we had to do a -- I did an internal memo
- 8 to Permitting, telling them it was not
- 9 consistent with any plan.
- 10 Q: Okay. Let me ask you to look at the second
- 11 paragraph of your memorandum. Would you read
- 12 that into the record, please?
- 13 A: The Department has reviewed information
- 14 relevant to the adoption of the York County
- 15 Plan and is satisfied that the current plan was
- 16 adopted properly.
- 17 Q: Okay. Now, did you review that information on
- 18 behalf of the Department?
- 19 A: Which information?
- 20 Q: The information that you reference in your
- 21 memorandum. You say, the Department has
- 22 reviewed information. Did you do the review?
- 23 A: I reviewed the ordinance.
- 24 Q: Okay. What specifically did you review, what
- 25 information did you review?

1 A: The ordinance that was signed by the county
2 council chair and it was signed by the acting
3 county administrator, and it was noted when the
4 three readings occurred; they had signed that
5 the three readings had occurred on the
6 ordinance. So we considered it adopted after
7 that.

8 Q: Okay. While we're on that subject, let me ask
9 you to turn to Joint Exhibit Ten. Did you
10 receive this document?

11 A: I believe this is part of the packet that was
12 prepared by Greeneagle and submitted to the
13 Department.

14 Q: Okay. Did you review that document?

15 A: I personally did not review all of it.

16 Q: Did you review any of it?

17 A: I looked through it, but I did not use it to --
18 I didn't -- I reviewed it.

19 Q: You reviewed it or you didn't review it?

20 A: Well, I looked through it. I didn't -- nothing
21 -- I didn't use it to impact my determination
22 on the adoption of the plan.

23 Q: Okay. So you didn't utilize anything in the
24 document that was submitted to DHEC in
25 reviewing the adoption of the ordinance?

1 A: No, sir.

2 Q: Okay. The only thing you reviewed, as I
3 understand your testimony, is the ordinance
4 itself?

5 A: With the documentation from the county, the
6 signed ordinance from the county --

7 Q: Okay.

8 A: -- they adopted the plan.

9 Q: The ordinance itself?

10 A: The ordinance. Right.

11 Q: Okay. Now, why, why was DHEC performing a
12 second consistency review?

13 A: Because the plan changed.

14 Q: Okay. Did you, did the Department have a
15 regulation that required a second consistency
16 review?

17 A: The Solid Waste Act says we cannot issue a
18 permit if it's not consistent with the plan.
19 So that's why we do the official one at the
20 end, because we can't issue the permit if it's
21 not consistent. We do preliminaries as a
22 courtesy to the applicant so that if it's not
23 consistent -- we review it early so if it's not
24 consistent they don't waste time and money
25 developing an application for a project that's

1 not consistent.

2 Q: Okay. But if a county changes a plan in the
3 meantime, they waste money involved in doing
4 the application, is that a fair statement of
5 what could happen?

6 A: That's true, but that would be true even if we
7 didn't do a preliminary that would be true.

8 Q: Did you develop this process of doing a
9 preliminary and final consistency review?

10 A: No. I believe that process started just before
11 I came onboard. At one point the Supreme Court
12 had come up with a decision that DHEC, instead
13 of accepting letters of consistency from a
14 county, that DHEC would make a consistency
15 determination, and that process started with
16 that, during that new evaluation process.

17 Q: Okay. So you're referring to the Southeast
18 Resource case?

19 A: That's right.

20 Q: How did you come to the conclusion that the
21 Greeneagle application was not consistent with
22 the plan, as you wrote in your memorandum that
23 is Joint Exhibit Number Eight?

24 A: When we review a plan we look to see that they
25 have an accurate idea of how much waste they

1 generate, that they can identify where that
2 waste will go, if they do in fact have -- if
3 they say they have adequate available capacity
4 or some provision for getting adequate
5 capacity, we look at that and see that they
6 have in fact planned for that waste. And in
7 this case, they said that they had two, had
8 three, two private and one public facilities
9 available that could handle that much waste,
10 either with tonnage increases or expansions or
11 with existing capacity, and based on how much
12 waste they generated and were projected to
13 generate if the, if that was true, that they
14 could in fact be able to handle that, that they
15 had in fact done the planning that they were
16 supposed to.

17 Q: Okay. What specifically in the plan, and I
18 think the plan that was adopted is Joint
19 Exhibit Number Twelve, what specifically in
20 that plan did you consider Greeneagle to be
21 inconsistent with?

22 A: Well, it was a combination of things. It was
23 the fact that they had identified how much
24 waste, that they had accurately identified how
25 much waste they generate, that they had made

1 some logical projection based on population and
 2 tons per person of how much they were
 3 projecting that they would generate, and that
 4 they had made some provision for managing that
 5 waste. So it was sort of a combination of
 6 those things. And that based on the fact that
 7 they had adequate capacity or could develop
 8 adequate capacity with existing facilities,
 9 that they wouldn't need additional. And they
 10 seemed to have reached the decision logically
 11 and supported it with that.

12 Q: Now, you heard Mr. Braswell testify that he
 13 attended a meeting in early February or early
 14 2007. Did you attend the same meeting?

15 A: I believe it was the same meeting, I did attend
 16 a meeting with Mr. Braswell.

17 Q: Okay. Let me ask you to look at Petitioner's
 18 Exhibit Three. It will be an exhibit outside
 19 of the notebook.

20 A: Uh-huh (affirmative response).

21 Q: There's some handwriting at the bottom of that
 22 exhibit. Is that your writing?

23 A: That's my writing.

24 Q: Okay. And what does that say?

25 A: Received at York County Planning meeting, and

1 I had, looks like it said draft received
2 2/6/08, and then I crossed that out. I didn't
3 -- as I recall, I couldn't remember the exact
4 meeting of the date, and the February 6th was
5 the date of the plan, but I'm not positive that
6 was the date of the meeting. But this, from my
7 recollection, was either e-mailed to us right
8 before the meeting or handed to us maybe when
9 we got there. It was the day of the meeting I
10 believe, one way or the other.

11 Q: Okay. So do I understand your testimony to be
12 that the meeting occurred around February 6th?

13 A: That was, I mean, I can't remember exactly, but
14 my recollection is it was around that time.

15 Q: Okay. And did you review this draft plan?

16 A: We didn't have it. My recollection is we
17 didn't have really in time to review it. It
18 was handed, like I said, it was either e-mailed
19 to us as we were walking out the door or it was
20 handed to us at the meeting. We got it
21 quickly. I don't remember having a lot of time
22 to review this draft.

23 Q: Okay. So you perhaps did not review it before
24 you had the meeting with York County?

25 A: That's my -- I believe that's right.

1 Q: Okay.

2 A: That I -- I just don't remember, I'm sorry.

3 Q: Did you review it after the meeting?

4 A: Yes. We did look through it after the meeting.

5 Q: Okay. And did you compare this draft to the

6 plan that was actually adopted?

7 A: I read both.

8 Q: You read both. My question is this. Did you

9 see, and I believe Mr. Braswell characterized

10 it as significant changes --

11 A: Oh, okay.

12 Q: -- in the plan that was adopted, as opposed to

13 the draft that you received sometime in early

14 February.

15 A: Yes. There were changes.

16 Q: Okay. Did you review those changes?

17 A: I'm not sure what you mean by review them.

18 There were, there were changes, I know there

19 were changes.

20 Q: Did you identify what those changes were?

21 A: Well, I remember that one of the changes was

22 the quadrant, the issues of what landfills were

23 and were not needed in different quadrants, and

24 that was the change that sticks in my mind.

25 Q: Okay. And so there was a change from landfills

1 being needed in early February to no landfills
2 being needed, no new landfills being needed in
3 any quadrant when this plan was adopted at the
4 end of February?

5 A: That's right.

6 Q: Okay. And if I understood your testimony
7 earlier, it was that you considered the
8 Greeneagle plan inconsistent because of a
9 number of things, included among which was
10 identification of the waste generated, logical
11 projections of population, and a couple of
12 other items. Did you review the differences in
13 the population projections from the draft plan
14 to the final plan?

15 A: I don't remember at what point I became aware
16 of the differences in population changes. You
17 know, until we get the -- the draft is just a
18 draft, and we didn't over-review it to the same
19 degree that we would have reviewed it if it had
20 been approved by the county. And so since --
21 you know, we reviewed the one that we had, and
22 I can't say that I ever looked at the draft in
23 the same degree that I looked at the approved
24 one.

25 Q: Okay. Would you, or have you since looked at

1 the difference in population projections in the
2 draft versus the plan that was finally adopted?

3 A: I -- there was discussion today.

4 MS. WILLIAMS: I object, Your Honor, based on
5 relevance. I don't know what it would matter
6 what her opinion is after she's made a decision
7 on consistency.

8 THE COURT: Wait a minute. I was writing, and I
9 apologize. Would you ask the question again?

10 MR. HARMON: Yes, Your Honor.

11 Q: The question I was asking is, did you
12 subsequently review the difference in the
13 population projection in the draft plan that
14 you received in early February compared to the
15 plan that was adopted on the last day of
16 February.

17 A: No, sir. We wouldn't have done that on a draft
18 plan.

19 THE COURT: Wait, wait, wait a minute.

20 A: Oh, I'm sorry.

21 THE COURT: And your objection is relevance?

22 MS. WILLIAMS: Well, it was relevance if he was
23 asking -- maybe I didn't understand his
24 question the first time. I thought he was
25 asking, after she made a consistency

1 determination on the approved plan, did she
2 have the opportunity or did she review the
3 differences between the draft and the approved
4 plan. And my objection was to relevance,
5 because after she made the decision what
6 difference would it have made whether she
7 looked at the draft plan or not?

8 **THE COURT:** And then it would be harmless anyway,
9 would it not?

10 **MS. WILLIAMS:** Well, irrelevant still.

11 **THE COURT:** I understand, and I'm not discouraging
12 you from making proper objections. But I'm
13 going to overrule it, and we'll go ahead.

14 **MS. WILLIAMS:** All right.

15 **Q:** Okay. I think you were stopped during the
16 course of your answer. Could you begin your
17 answer to my question?

18 **A:** I guess my point is we would never review a
19 draft to the same degree that we would review
20 a final plan. And I didn't, you know, we had
21 a number of drafts. I did not go back between
22 all the different drafts and compare every part
23 of every draft to the final, no I did not do
24 that.

25 **Q:** Okay. Then let me ask you this. How did you

1 conclude that the plan that was adopted had
2 logical population projections?

3 A: Well, they used, I believe it's from the Budget
4 and Control Board, were the population
5 projections that they used, which to us would
6 have been an acceptable, you know, that seems
7 reasonable to us that they would have used
8 Budget and Control Board's statistics.

9 Q: Okay. As opposed to statistics that had been
10 developed within the county?

11 A: I think that using Budget and Control Board's
12 statistics would be an acceptable set to use.

13 Q: Okay. Same thing true of waste projections,
14 C&D waste projections?

15 A: We would look to see what we, because we don't
16 do waste projections but we look at what has
17 been generated and disposed, so we would look
18 to see what their base year was and what their
19 projections were based on. And they had done
20 a projection based on a certain amount per
21 person and allowed for an increase in
22 population and allowed for, not only an
23 increase in population, but also an increased
24 amount per person that would be generated, I
25 believe, increased somewhat. And that seemed

1 reasonable to us also.

2 Q: Okay. Why did York County send the plan that's
3 been admitted as Petitioner's Number Three, why
4 did they send that to DHEC for review?

5 A: It's not uncommon for a county to send plans to
6 DHEC, prior to approving it, for comment.

7 Q: Okay. Did you send comments back to York
8 County?

9 A: I don't believe on this one we had -- my
10 recollection is we didn't have time on this
11 one, but I don't know for sure. But I re- --
12 it seems to me this one was received very late
13 and I just don't think we -- and just, you
14 know, it fell very closely, the next one was
15 very close and I don't think we -- we went to
16 the meeting but I don't recall any written
17 comment.

18 Q: Okay. So do I understand your testimony to be
19 that you didn't look at any of the differences
20 between the draft you had gotten in early
21 February compared to the final plan that York
22 County sent to DHEC as their county solid waste
23 management plan?

24 A: Well, again, I remember noting in my head that
25 there were some differences, but we wouldn't

1 have reviewed the draft plan like we reviewed
2 the final plan.

3 Q: Okay. And did any of those differences have
4 any impact upon your decision that the
5 Greeneagle application was inconsistent with
6 the county plan?

7 A: I don't know, sir. I couldn't say how it would
8 have. We didn't -- we wouldn't have reviewed
9 a draft for consistency. We couldn't have done
10 that.

11 Q: Okay. Did you review the final plan for
12 consistency with state law and DHEC regulations
13 and the state plan?

14 A: We didn't find anything that was inconsistent.

15 **THE COURT:** Mr. Harmon --

16 **MR. HARMON:** Yes, sir.

17 **THE COURT:** Forgive me, but I need to go back and
18 have either you or the witness explain this.
19 You asked, did any of the differences impact
20 the decision that Greeneagle was inconsistent.
21 And the differences would have been in the
22 drafts versus the final plan, is that right?

23 **MR. HARMON:** That's my understanding, that there
24 were, according to Mr. Braswell, significant
25 differences between the draft that was provided

1 in early February as compared to the final
2 plan.

3 **THE COURT:** I agree with that, but I thought the
4 response for some reason didn't seem
5 appropriate to the question. It was answered
6 I thought as if it was the drafts that had been
7 considered. Can we go over this just to make
8 sure it's clear in the record?

9 **MR. HARMON:** Sure.

10 **Q:** Let me ask you this question, Ms. White. Did
11 you consider any changes that occurred between
12 the draft you received when you went to the
13 meeting in York County in early February and
14 the final plan in making your consistency
15 determination?

16 **A:** We would not have used any information in a
17 draft to make a consistency determination. We
18 would only have used the approved adopted plan.

19 **Q:** Okay. So was there any significance in your
20 mind with regard to the changes that occurred
21 in the draft plan in the time period between
22 the draft you received, that's Petitioner's
23 Exhibit Three, and the final plan?

24 **A:** Was there any significance in my mind?

25 **Q:** Yes.

1 A: I'm not sure I understand what that means.

2 THE COURT: Did her previous answer not take care of
3 that? She said that she would not consider the
4 draft. And it says to me that she would only
5 consider the, as passed, the final plan.

6 MR. HARMON: Okay.

7 THE COURT: So she would not be considering any
8 differences if she considered only the final
9 plan. I'm not trying to horn in on your case
10 but I need to have a clear understanding of
11 this arcane stuff. I trust you appreciate
12 that.

13 MR. HARMON: I certainly do, Your Honor.

14 THE COURT: All right. If I haven't confused you
15 too much, you can proceed.

16 MR. HARMON: Thank you.

17 Q: Let me ask the question this way, Ms. White.
18 Did you take the draft that you obtained around
19 the time period of the meeting you attended in
20 York and put it in the DHEC file and not use it
21 in any consideration --

22 A: That's right.

23 Q: -- with respect to consistency?

24 A: That's right.

25 Q: Okay. And did you provide any comment to York

1 County about the draft?

2 A: I don't recall doing it myself. Art Braswell
3 may have, but I don't -- I don't recall that I
4 did.

5 Q: Did you have discussions with anyone at York
6 County about how the ordinance was adopted, the
7 ordinance approving the final verison of the
8 plan on third reading?

9 A: Well, I'm not sure if you would call it
10 conversation. You know, we were aware of these
11 meetings and a number of people were e-mailing
12 us news stories and telling us -- sending us
13 agendas, and we were having many interested
14 parties tell us lots of things about these
15 meetings and so forth. I'm sorry, I've
16 forgotten the question. I'm sorry.

17 Q: Did you have discussions with anyone at York
18 County about the procedure for a third reading
19 on the ordinance?

20 A: I don't remember specifically whether the
21 county --

22 Q: Did you not --

23 A: I don't know. I -- I don't remember. I'm
24 sorry.

25 Q: Okay. Did you have discussions with anyone at

- 1 DHEC about the adoption of the ordinance and
- 2 how it was adopted?
- 3 A: Well, when Mr. Taylor brought his notebook in,
- 4 he raised the question about the adoption of
- 5 the plan.
- 6 Q: Okay. And did you review that notebook with
- 7 regard to how the ordinance was adopted?
- 8 A: I did not. We had the ordinance signed by the
- 9 county, and our procedure was to take -- to ask
- 10 the county for their documentation and we had
- 11 that, so that was all I used.
- 12 Q: Okay. So are you aware of anyone at DHEC
- 13 reviewing the document that Mr. Taylor provided
- 14 to the Department?
- 15 A: Kent Coleman may have. I don't know. Somebody
- 16 that worked with me had also reviewed the
- 17 notebook but did not make any determinations in
- 18 it.
- 19 Q: And who worked with you that reviewed the
- 20 notebook?
- 21 A: Celeste Duckett works with me at DHEC.
- 22 Q: Now, after the York County Plan was provided to
- 23 DHEC after third reading, did you send any
- 24 comments to York County about the plan?
- 25 A: I can't -- I don't know. We typically would

1 have. If -- but whether we did or not in this
2 case, I'm sorry, I just don't remember. There
3 was a lot of activity with this plan.

4 Q: Okay. A lot of activity at DHEC with respect
5 to the plan?

6 A: Well, with respect to different applicants
7 trying to get permits and appeals and so forth.
8 I just don't remember what comment we gave back
9 to the county on the plan after it was done.

10 Q: Okay. You attended the meeting in early
11 February at York County?

12 A: Uh-huh (affirmative response).

13 Q: Was it just you and Mr. Braswell who were there
14 from the Department?

15 A: I don't remember --

16 Q: Okay.

17 A: -- who else might have been there.

18 Q: But you were there?

19 A: Yes.

20 Q: Okay. What was the purpose of that meeting?

21 A: I'll be honest, I don't remember. We had gone
22 up at one time for a zoning meeting I believe.
23 We went up another time for, I believe this was
24 with the planning people. I -- I'm sorry. I,
25 I -- there was some discussion about the

1 development of the new plan. I don't recall
 2 exactly what business took place that night but
 3 there was discussion of the new plan.
 4 Q: Okay. Anyone make a presentation about the
 5 plan?
 6 A: I believe this was the meeting that Anna Wilson
 7 maybe made a presentation.
 8 Q: Okay. And was the presentation based upon the
 9 draft that's Petitioner's Exhibit Three?
 10 A: I believe that's right. The -- yes, I believe
 11 that's right.
 12 Q: Was there any discussion at that meeting in
 13 early February about disallowing C&D landfills
 14 in any quadrant in the county?
 15 A: I don't -- I'm sorry, I don't remember. I just
 16 don't remember exactly that discussion, what
 17 they said.
 18 Q: Okay. The plan says there's no need for an
 19 additional C&D facility within the northwest
 20 quadrant of the county. Is that your
 21 recollection of the plan that was passed?
 22 A: Of the -- yes, the February 28th plan.
 23 Q: Okay. And was that one of the bases on which
 24 you decided that this plan was inconsistent?
 25 A: Yes, that was -- yes, that was part of it, yes.

- 1 Q: Okay. Anybody else involved in that decision
2 at DHEC to determine that Greeneagle was
3 inconsistent, or was that your decision?
- 4 A: Well, it was -- Kent Coleman was also involved
5 in the discussion.
- 6 Q: Okay. Now, do you have any involvement in the
7 demonstration of need process?
- 8 A: No, sir. Not -- not at this time.
- 9 Q: Did you at one time?
- 10 A: I have -- I did for a brief period of time, but
11 it was I believe after -- I don't remember the
12 time frame. It was very brief. It was a very
13 brief time frame, and I was not involved in
14 this DON decision.
- 15 Q: Is there any question in your mind that
16 Greeneagle meets the requirements of the
17 Demonstration of Need regulation that was in
18 effect at the time Greeneagle sought a
19 demonstration of need approval?
- 20 A: No, sir.
- 21 Q: If you were using the draft plan that you
22 received in early February, Petitioner's Number
23 Three, would this landfill, would the
24 Greeneagle landfill be consistent with that
25 plan?

1 **MS. WILLIAMS:** Your Honor, I object. That's
2 speculative. She did not use that plan to make
3 the decision, and it's irrelevant.

4 **THE COURT:** Overruled. I see where he's going.

5 **A:** I never reviewed this plan in that light, so
6 again, I don't know for sure what I would have
7 said. I -- we don't review a draft in the same
8 way we do an approved plan that we're making a
9 decision on, because it's not in front of us.

10 **Q:** Okay. Let me ask you, if you would, to look at
11 Petitioner's Exhibit Three, at page 49. It'll
12 be a page that's also identified by DHEC-0867.
13 Do you see that --

14 **A:** Yes, sir.

15 **Q:** -- page in the plan?

16 **A:** Uh-huh (affirmative response).

17 **Q:** And under Item D, about halfway down the page,
18 talks about the northwestern service area.

19 **A:** Uh-huh (affirmative response).

20 **Q:** Okay. Would you read the last sentence on that
21 page?

22 **A:** Therefore, construction of one new C&D landfill
23 Part 4 is recommended.

24 **Q:** Okay. Now, you make consistency determinations
25 on behalf of DHEC on a regular basis. Is that

1 a fair statement?

2 A: Yes, sir.

3 Q: Okay. Would you consider the Greeneagle
4 proposal -- the Greeneagle proposed landfill
5 inconsistent based upon this statement in the
6 draft plan?

7 **MS. WILLIAMS:** Your Honor, I object. I renew my
8 objection. This is irrelevant. I mean, she
9 didn't make her decision based on that. His
10 issue is that DHEC made the wrong decision
11 using the wrong plan, but this is a draft plan.
12 It was never even approved by the county.

13 **THE COURT:** Well, he's also I think at some point
14 going to show that the ordinance for the new
15 plan is invalid, or it appears to me. And if
16 that's the case, then what she might have done
17 in respect to the draft plan would be germane.

18 **MS. WILLIAMS:** Well, Your Honor, may I ask that he
19 lay a foundation for that before he asks these
20 questions?

21 **THE COURT:** Well --

22 **MS. WILLIAMS:** I haven't heard any testimony about
23 it being inva- -- I mean the reas- -- I haven't
24 heard Ms. White testify as to why the new plan
25 would be invalid. He hasn't asked her anything

1 about that. I think he's putting the cart
2 before the horse.

3 **THE COURT:** Well, I must tell you that, number one,
4 I've really never understood the need to lay a
5 foundation when it's obvious, but there may be
6 -- it may be in this case. And so, Mr. Harmon,
7 if you would do something in that direction I
8 guess before you proceed, unless I misapprehend
9 what your intentions are?

10 **MR. HARMON:** No, Your Honor, that's -- you do not I
11 don't believe. The Department was provided
12 with this draft plan not very long before the
13 county promulgated a plan through third
14 reading, and made significant changes to the
15 plan according to the testimony of Mr. Braswell
16 earlier today. And it's going to be our
17 position in this case that those changes were
18 significant enough that a different procedure
19 should have been utilized by the county.

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

21 **THE COURT:** Well, yes.

22 **MS. WILLIAMS:** That may be the case, but I don't
23 know that Ms. White has testified to any of
24 that. I don't know that she's the person that
25 could testify that the new plan is invalid.

1 She has testified that she made her decision
2 based on the final plan. And although Ms. --
3 the other point I would like to make is that
4 Ms. White has not stated that the county
5 submitted this plan to DHEC so that it could
6 use it to make a consistency determination.
7 She commented, she testified that this plan was
8 submitted -- that draft plans get submitted to
9 DHEC all the time for comment, not necessarily
10 for consistency determination, so I just feel
11 like he hasn't laid a foundation for what he's
12 trying to prove.

13 **THE COURT:** Well, to break the impasse I'm going to
14 overrule the objection. And if you'll proceed,
15 Mr. Harmon, on that one question alone. Now,
16 give her a chance to object before you go too
17 far past that.

18 **MR. HARMON:** Okay. Thank you, Your Honor.

19 **Q:** Ms. White, my question was, considering the
20 sentence on page 49 in the plan that you
21 received just before the adoption of the plan
22 in this case marked as -- it is Petitioner's
23 Exhibit Three, that's been admitted into
24 evidence. Considering that sentence that you
25 read into the record, would the Greeneagle

1 application be consistent with this draft plan?

2 A: I'd have to have -- we wouldn't do it just on

3 the one sentence. I would have had to have

4 reviewed the entire plan and see if this

5 sentence was supported with the data, just like

6 I did on the one that we did review after it

7 was adopted.

8 Q: Okay. If the population projections were

9 greater than what was in the original plan, if

10 the waste generation projections were greater

11 than what was in the plan that was finally

12 adopted, would that have provided you with

13 enough information to make a determination on

14 whether there was consistency with this draft

15 plan?

16 MS. WILLIAMS: Your Honor, I object. She's already

17 been asked and answered that question. She

18 said she would need to review the entire plan

19 in order to make a decision.

20 THE COURT: And I agree with that and I sustain the

21 objection.

22 MS. WILLIAMS: Thank you, Your Honor.

23 THE COURT: Since the question has been posed, and I

24 think it's necessary for me to have this

25 information, then I'm going to ask a question

1 that I think will clear it up without causing
2 you any problem. Ms. White, if everything else
3 was approved as far as the tonnage, the
4 population business and the -- and all that was
5 left was a determination that the landfill was
6 needed in the northwest quadrant, and that was
7 in the draft plan and the draft plan was really
8 the final plan, would you approve it? You've
9 got all the other number crunching out of the
10 way and you've got a plan that has a finding in
11 it that a C&D landfill is needed in the
12 northwest quadrant. I might not be stating it
13 precisely in --

14 A: Right.

15 **THE COURT:** -- your parlance, but do you understand
16 what I'm asking?

17 A: I think I understand what you're asking. I
18 think -- a plan is a plan. It's not in stone,
19 it's not an accurate prediction necessarily of
20 the future. I think a county can take
21 information and look at it, and two counties
22 might take the exact same information and reach
23 two different planning conclusions based on it.
24 You know, I think there's -- a county can plan
25 in a lot of ways. They can plan to privatize

1 everything, they can plan to manage it
2 themselves, they can plan to do a combination.
3 A county can take information and use the same
4 information to plan two different ways. I
5 mean, just like --

6 **THE COURT:** Yes, ma'am. But I think the way that
7 Mr. Harmon was posing the question, he was
8 referring to a draft plan --

9 A: Uh-huh (affirmative response).

10 **THE COURT:** -- which said that a C&D landfill was
11 needed in the northwest quadrant. My question
12 to you was, if everything else was out of the
13 way and satisfactory to DHEC, and that was the
14 only remaining question to be answered and it
15 was answered in that draft plan, would you then
16 issue the permit?

17 A: If they had -- bring a plan that says we
18 generate this much and we expect this much
19 growth and, therefore, we're going to have that
20 much waste and, therefore, we may need
21 additional facilities here or there, and they
22 had reached that conclusion -- I mean, that
23 would be one of the options the county could
24 have reached and, in that case then, we would
25 have -- I assume that we would have found it

1 consistent if all of those things had happened.

2 **THE COURT:** Okay. Thank you, ma'am. Let's move on
3 now, Mr. Harmon.

4 **MR. HARMON:** Thank you.

5 **Q:** Now, Ms. White, if a county can make a needs
6 determination of the type you just addressed
7 with the Court in its plan, is it not then --
8 is DHEC not then allowing the county to make
9 the permitting decision?

10 **A:** No, sir. No, I -- we see that -- we see that
11 totally separate. To us it's like zoning. A
12 county could -- a county could say something
13 isn't allowed by zoning, but we don't consider
14 that to serve our permitting determin- --
15 that's just a different part of the decision
16 process that the county has to make. So we
17 don't consider that to usurp our permitting
18 authority. And the same thing with the
19 consistency, to us it's just a different --
20 there's a whole process, and everybody has to
21 do all the steps in the process. Zoning is one
22 of the steps for the county. Consistency is
23 one of the steps for the county. Permitting is
24 one of the steps for DHEC. Demonstration of
25 need is one of the steps for DHEC. And

1 everybody has their separate role, so no, I
2 just don't see it that way.

3 **THE COURT:** Let me stop you here, Mr. Harmon. We've
4 reached the 5:00 hour. Ms. Bryant has young
5 children I think that she has to get home to.

6 **COURT REPORTER:** I've actually made arrangements just
7 in case, because they were talking about going
8 a little bit late to try to finish, so I don't
9 think they --

10 **THE COURT:** Finish -- how much more do you have for
11 this witness?

12 **MR. HARMON:** Your Honor, I'm going to have some more
13 for this witness, and I may now need to call an
14 additional DHEC witness.

15 **THE COURT:** All right. Which would of course be
16 tomorrow.

17 **MR. HARMON:** Yes, Your Honor.

18 **THE COURT:** Yes. Well, Ms. Bryant, if you are
19 flexible, I certainly am.

20 **COURT REPORTER:** I mean, if you want to go ahead and
21 keep going and maybe at least finish her.

22 **THE COURT:** Let's get through the direct on Ms.
23 White and then we will recess until morning.
24 And just while we are on that subject, do you
25 think you will finish tomorrow or Wednesday?

1 **MR. HARMON:** Yes, Your Honor. I believe that -- I
2 know I will finish tomorrow.

3 **MS. WILLIAMS:** Yes, Your Honor. I believe that we
4 will finish tomorrow.

5 **THE COURT:** Okay. Do you want to start any earlier
6 in the morning just as a failsafe, 9:00 or 9:30
7 or something?

8 **MR. HARMON:** Will the Court allow 9:30?

9 **THE COURT:** Be glad to do 9:30 if that suits you,
10 Ms. Bryant.

11 **COURT REPORTER:** Yes, I'll be fine.

12 **MS. WILLIAMS:** I'm fine with that, Your Honor.

13 **THE COURT:** All right. Thank you. All right, 9:30
14 in the morning, but we'll proceed now with --
15 we'll finish Ms. White's direct.

16 **Q:** Ms. White, let me ask you, if you would, to --
17 well, let me ask you a couple other questions.
18 I've gotten off track here with a couple
19 things. You do not take the position that a
20 local solid waste management plan is a zoning
21 document, do you?

22 **A:** No, sir.

23 **Q:** Let me ask you to turn to Joint Exhibit Twelve.
24 And if you would go to page 41, which is also
25 marked DHEC 09-35. Okay. Would you look at

1 general provision number one in this plan?

2 A: Yes, sir.

3 Q: Does it cause you any concern, Ms. White, that
4 the general provisions that are outlined in
5 this plan apply only to new facilities but not
6 to facilities that were permitted as of
7 December 31 or to the expansion of those
8 existing facilities?

9 A: Well, I mean, I think it would depend on the
10 provision -- the specific provision. There may
11 be ones that seem appropriate only to new. For
12 example, location restrict -- well, I'm sorry.
13 Ask the question again. I'm sorry.

14 Q: My question to you was, does it seem
15 appropriate to you that the general provisions
16 that are in this plan that go on for a little
17 over two pages --

18 A: Uh-huh (affirmative response).

19 Q: -- does it seem appropriate to you that these
20 general provisions would apply to new landfills
21 and not to landfills that are presently
22 permitted as of December 31st, 2006, or to
23 those existing landfills which apply for
24 expansion?

25 A: I haven't really thought of it in those terms

1 exactly. These provisions are sort of -- I'm
2 not sure what these provisions are in any case
3 and how they would apply to us. They seem sort
4 of irrelevant to DHEC in some ways, you know,
5 I --

6 Q: So all of the general provisions seem
7 irrelevant to DHEC?

8 A: Not necessarily all, but they -- I'm not really
9 sure. You know, there's a lot of them, and
10 some of them seem relevant and some don't and
11 some apply to new and some apply to old. I'm
12 not -- you know, I don't -- you know, I don't
13 have one singular opinion on those provisions,
14 I guess is what I'm saying, because there's a
15 lot in the provisions.

16 Q: Okay. Let's look at a couple of them, then.
17 Item B, for example.

18 A: Uh-huh (affirmative response).

19 Q: All permitted landfills shall be allowed to
20 expand or replace themselves within their
21 respective service areas when permitting
22 capacity has been exhausted. Couldn't that
23 violate a DHEC regulation?

24 A: Yes, I agree that that seems to violate -- it
25 seems to conflict with our Demonstration of

1 Need regulation.

2 Q: Okay. And if it conflicts with your

3 Demonstration of Need regulation, would it then

4 -- would this plan then be consistent with DHEC

5 regulations as it's required to be?

6 A: I think we would just disregard that sentence.

7 I don't think we would give that any weight in

8 our -- we don't consider that binding toward us

9 if that's maybe a local policy they want to

10 implement in some fashion they choose, but it

11 wouldn't be to the solid waste management plan.

12 It doesn't have a bearing on our consistency

13 determination.

14 Q: What about the mandatory recycling rates that

15 are in Item F?

16 A: Same thing. That would be -- that might be

17 something the county would wish to implement in

18 some way, but it would not be to the solid

19 waste plan. Or it wouldn't impact our

20 consistency determination.

21 Q: Okay. Look at Item O on page 43, which is DHEC

22 09-37.

23 A: I'm sorry. Say that again. O?

24 Q: Item O.

25 A: Uh-huh (affirmative response).

1 Q: Allowances for landfill development as detailed
2 in this plan shall be subject to the provisions
3 of the Demonstration of Need regulation, which
4 is managed by DHEC.

5 A: I would say that's a true statement whether
6 it's in the plan or not. I mean, I don't know
7 what that means. I mean, we abide by the
8 Demonstration of Need regulation.

9 Q: Okay.

10 A: What the county says about that is irrelevant
11 to me.

12 Q: And if the plan itself, if you do abide by the
13 Demonstration of Need regulation and the plan
14 doesn't allow a landfill that can be located in
15 accordance with the Demonstration of Need
16 regulation, why would that plan not be
17 consistent with the Demonstration of Need
18 regulation?

19 A: It's still two separate -- it's two separate
20 issues that -- if that -- if I'm understanding
21 your question right.

22 Q: Well, as I understand the process, the local
23 plans have to be consistent with DHEC
24 regulations, in addition to some other things,
25 the statute and the state law. Would you agree

1 with that?

2 A: Yes, I agree with that.

3 Q: Okay. And if there's something in this plan

4 that's inconsistent with a DHEC regulation,

5 then why would you -- why would you disallow a

6 landfill that is consistent with the

7 Demonstration of Need regulation, as you did

8 with Greeneagle?

9 A: I just -- I don't consider that sentence to be

10 a -- I don't consider that sentence to prohibit

11 a landfill outside of their service area.

12 Q: Well, that sentence says that, Landfill

13 development shall be subject to the provisions

14 of the Demonstration of Need regulation,

15 correct?

16 A: I'm sorry. I was looking at the other one.

17 You're looking at O?

18 Q: Yes, ma'am.

19 A: I'm sorry. O -- I -- O to me is just a

20 restatement of -- of a true statement. I don't

21 --

22 Q: Okay.

23 A: I don't know how to --

24 Q: And my question is this. If local plans are

25 subject to or have to be consistent with DHEC

1 regulations, then if a DON regulation allows
2 this landfill, how can you then allow a county
3 to write it out of the plan on the basis of
4 need and not approve it?

5 A: We didn't allow them to write it out on the
6 basis of need, according to the Demonstration
7 of Need regulation. We don't consider -- I did
8 not consider that sentence -- I didn't consider
9 anything in the general provisions to be
10 prohibitive to us permitting a landfill. I --

11 Q: Okay. I understood your earlier testimony to
12 be that you reviewed this plan and you didn't
13 find it inconsistent with any DHEC regulation,
14 the statute, or the state plan

15 A: Well, there's nothing in this plan as it -- I
16 mean, I guess you're trying to say that the --
17 that sentence conflicts with the Demonstration
18 of Need regulation, but I -- I don't consider
19 that sentence to make the plan prohibit a
20 landfill because of it. I don't consider that
21 sentence binding on the plan and, therefore, I
22 don't find the plan inconsistent with state --
23 with the state law, because I don't consider
24 that -- that may be informational purposes for
25 something the county is saying, but it's not

1 relevant to their plan. It's not part of their
2 -- it's not part of what they're charged with
3 doing in their plan when they account for
4 generation and disposal and so forth.

5 Q: Okay. Let me ask you to look at Item P on the
6 same page.

7 A: Uh-huh (affirmative response).

8 Q: Would you read that item, please?

9 A: York County shall cause a study and analysis to
10 be performed to determine the need for
11 additional privately operated landfills in the
12 county and following such study, the York
13 County Council shall determine the need for new
14 or additional privately operated landfills in
15 the county and amend this plan based on its
16 determination of need for privately operated
17 landfills in the county.

18 Q: Doesn't that totally do away with the DHEC
19 Demonstration of Need regulation?

20 A: No, sir.

21 Q: How does it not do that?

22 A: Well, to me that sentence still goes back.
23 They're supposed to plan in their plan for how
24 they're going to manage waste, and in this plan
25 they're saying they have adequate capacity with

1 the existing facilities. Well, how I read that
2 sentence is that they will do a study. And we
3 encourage every county to review their plan
4 every however many years and keep it up to date
5 and revise it as needed. I would interpret
6 that to mean that they will continue to study
7 the need, and if they find that they do in fact
8 have a need, that they would amend -- come back
9 and amend their plan. Again, they would amend
10 their plan, which is required by the Act, and
11 in order to be consistent it has to -- you
12 know, in order to permit it at DHEC, it has to
13 be consistent. This is just part of what
14 they're charged with doing by the Solid Waste
15 Act, they have to consider their needs on a
16 regular basis.

17 Q: But doesn't this sentence or doesn't this
18 portion of the plan say that York County
19 Council shall determine the need for new and
20 additional privately operated landfills?

21 A: I don't think it's a need --

22 Q: That seems --

23 A: It's not a need like the -- like the
24 determinat- -- the demonstration of need need.
25 It's a capacity need, like we were talking

1 about. The Demonstration of Need regulation
2 sets the maximum -- it sets the geographical
3 position, it sets the maximum tonnage
4 allowable. But we've always, we've always used
5 the local plans to determine their specific
6 needs and the -- and that -- and that's what
7 the Act charges them with doing. So I don't
8 consider that a conflict.

9 Q: Did you do a consistency determination for the
10 York County C&D landfill expansion?

11 A: I think I did. I can't remember now if I did
12 it or -- I probably did.

13 Q: Did you do it in accordance with this 2007 York
14 County Solid Waste Management Plan?

15 A: I believe it would have been since this plan
16 was adopted.

17 Q: Okay. And did you consider any of these
18 general provisions applicable to that --

19 A: No, I --

20 Q: -- landfill?

21 A: No. We would not have looked at these. I
22 don't believe there's any of these provisions
23 that we looked at at all. The -- again, I'd
24 have to look at each individual provision, but
25 generally those are not planning considerations

1 from the sense of what we look at consistency
2 for.

3 Q: Does the tonnage cap that is contained in Item
4 C on page 42, does that place a limitation on
5 DHEC's ability to permit a landfill?

6 A: And I would have to defer to Kent Coleman on
7 this issue, but I believe the -- I believe that
8 may be a different answer under the new
9 landfill regulation than the old one, where I
10 believe the issue of capacity, tonnage -- hold
11 on, I'm sorry. Well, it says the maximum
12 capacity but I think they're talking about
13 annual tonnage rate, which I believe changed
14 with the new Demonstration of Need regulation.
15 I'm sorry. I'd have to defer to somebody else
16 on that. I'm sorry. I can't --

17 MR. HARMON: Your Honor, that's all the questions I
18 have for this witness at this time.

19 THE COURT: Thank you. In accordance with what was
20 stated earlier, we'll be in recess until 9:30
21 in the morning, at which time Ms. Williams will
22 take up with cross-examination of Ms. White.
23 Thank you. Just be at ease.

24 (There being nothing further, the hearing adjourned
25 at 5:23 p.m.)

DAY 2

MS. WHITE - CROSS EXAMINATION BY MS. WILLIAMS:

Q: Good morning, Ms. White. How are you?

A: I'm fine, thank you.

Q: I just have a few questions for you this morning. Yesterday you testified that DHEC -- correct me if I'm wrong, you testified yesterday that DHEC does not use a draft solid waste management plan in order to make a consistency determinations, is that correct?

A: That's right.

Q: Okay. But you did also say that, regarding the York County Solid Waste Management Plan, that you had started receiving drafts from them as far back as 2000, is that correct?

A: That's right.

Q: Okay. So whenever they submitted to you a draft, it could not have been for the purpose of making a consistency determination because they started submitting the drafts prior to Greeneagle applying for a permit, is that correct?

A: That's right.

Q: Okay. When did Greeneagle first ask for their -- a demonstration of approval? Do you know

1 the year?

2 A: I don't remember. I'm sorry.

3 Q: All right. Well, would it have been after the

4 year 2000?

5 A: Oh, yes. Yes.

6 Q: Okay.

7 **THE COURT:** Wait just a minute. When did Greeneagle

8 first ask for its what?

9 **MS. WILLIAMS:** Demonstration of approval.

10 **THE COURT:** Demonstration of approval?

11 **MS. WILLIAMS:** The DON? DON?

12 **THE COURT:** Demonstration of need.

13 **MS. WILLIAMS:** Oh, I'm sorry.

14 **THE COURT:** Not demonstration --

15 **MS. WILLIAMS:** Demonstration of need approval, I'm

16 sorry.

17 **THE COURT:** Okay.

18 A: No, it was much later than that.

19 Q: All right. And is it typical that you receive

20 draft solid waste management plans from

21 different counties?

22 A: It's pretty common that they would send us

23 drafts before they --

24 Q: And when they send you drafts is it normally

25 for the purpose of receiving a consistency

1 determination?

2 A: No, it would normally be either to receive our

3 comments or --

4 Q: Not for a consistency determination?

5 A: That's right. Right.

6 Q: All right. You talked about what you used to

7 make the determination that the Ordinance 207

8 had been adopted. Can you tell the Court again

9 what that was?

10 A: The new solid waste plan came in with an

11 ordinance attached that had the dates of the

12 three readings and it was signed by the county

13 administrator and the county council.

14 Q: And so when you received that document, did

15 that satisfy you that the York County 2007

16 Solid Waste Management Plan had been adopted

17 properly?

18 A: It did. That would be typical, that kind of

19 thing would receive.

20 Q: All right. And why did you rely on that? Who

21 sent it to you?

22 A: It came from the county, and it had the

23 appropriate county signatures.

24 Q: Okay. When you say the county, who from the

25 county?

1 A: Oh, I don't recall.

2 Q: Okay, well let's look at Joint Exhibit Twelve.

3 And turn to page, it's DHEC page 0887. Okay,

4 so tell us whose signatures are on that.

5 A: It's got the county council chair and the

6 interim county manager.

7 Q: Okay, and these are official people from the

8 county?

9 A: Yes. Yes.

10 Q: Okay. Do you normally look at -- in other

11 words, to determine whether an ordinance or a

12 solid waste management plan has been adopted

13 properly, do you look at documentation that

14 comes from sources other than the county?

15 A: No, we would look for something from the

16 county.

17 Q: And would you consider something that came in

18 that wasn't from the county, would you consider

19 that an official source of information?

20 A: No. No, we wouldn't.

21 Q: All right. There was also some discussion

22 yesterday about if you'd made any comments to,

23 I believe it was the final solid waste

24 management plan, the 2007 York County Solid

25 Waste Management Plan. And I believe you

1 answered that you couldn't recall or you didn't
 2 know if you made comments or not?
 3 A: Yeah.
 4 Q: Is that correct?
 5 A: That's right.
 6 Q: Okay. Well, if you had made comments, or if
 7 someone from DHEC had made comments, would
 8 those comments be in our file?
 9 A: Yes.
 10 Q: Okay. Do you recall any comments being in the
 11 file?
 12 A: I don't remember anything being in the file.
 13 Q: All right. You testified yesterday that you
 14 attended a York County council meeting with Art
 15 Braswell, is that correct?
 16 A: Yes.
 17 Q: Okay. How many of those meetings in regard to
 18 this, the 2007 York County Solid Waste
 19 Management Plan, how many of those meetings did
 20 you attend?
 21 A: That's the only one I specifically remember,
 22 except there was also a zoning -- it seems like
 23 I was at a zoning meeting also for this --
 24 Q: And was that in close proximity -- was that
 25 meeting, the zoning meeting that you may have

1 attended, was that in close proximity to this
2 early February 2007 meeting?

3 A: It seems like it was right around that time.
4 It may have been before that I believe.

5 Q: But other than those two meetings, you can't
6 recall attending any other meeting?

7 A: Not that I recall.

8 Q: Okay. So the changes that were made from the
9 last draft that you saw, which was the February
10 6th, 2000 draft, and then between that time and
11 the time that the 2007 York County Solid Waste
12 Management Plan was passed, would you have any
13 reason to know why those changes were made or
14 how they came about?

15 A: I mean, no. No, I wouldn't have any knowledge
16 of that.

17 Q: I want to ask you about the DON process because
18 I think there was some discussion -- I kind of
19 recall some discussion about whether or not you
20 could get a consistency determination without
21 getting that DON approval. Is that possible?
22 Can you skip right to the consistency
23 determination?

24 A: The DON determination is supposed to come
25 first, before the consistency determination.

1 Q: Okay. But can you get a consistency
2 determination prior to receiving DON approval?
3 A: We don't give an official consistency
4 determination. We'll do a consistency review
5 as a courtesy if somebody asks for one.
6 Q: Okay. But in terms of the process of getting
7 a landfill permit --
8 A: The DON comes first.
9 Q: The DON comes first?
10 A: That's right.
11 Q: And is it a separate process from the
12 consistency determination?
13 A: Yes, two separate determinations.
14 Q: Okay. And one has -- answer this. One has no
15 bearing on the other except the fact that the
16 DON comes first?
17 A: That's right. That's right. And I don't do
18 the demonstration of need. That's done in a
19 different part of the program.
20 **THE COURT:** Let me ask a question please. You said
21 that two separate determinations. Over the
22 course of the previous testimony it seems to me
23 it was said that it hadn't always been that
24 way. When you say there are two separate
25 determinations, do you mean in respect to the

1 issue before us on Greeneagle there were two
2 separate determinations?

3 A: There've always been two separate
4 determinations. The new landfill reg clarified
5 the process for how that was done, but the
6 demonstration of need and consistency have
7 always been two separate determinations.

8 **THE COURT:** All right, well, remind me.. Was the
9 Greeneagle determination made under the old
10 process or the new process?

11 A: It was done under the old landfill reg.

12 **THE COURT:** Under the old landfill reg, that's what I
13 thought. Thank you.

14 Q: I think when there's been testimony about two
15 separate determinations, I think that was
16 testimony, and correct me if I'm wrong, that
17 was testimony on whether we, DHEC, would give
18 two preliminary or two consistency
19 determinations?

20 A: Right. When the new landfill reg was passed,
21 it clarified that the consistency determination
22 was done up front instead of at the end. And
23 that's why, under the new reg, we don't do the
24 two, you know, more than one consistency
25 determination. But under the old reg it wasn't

1 that way.

2 Q: Okay. So but even now, under the new -- I
3 mean, I don't really like to talk about the new
4 process because that doesn't apply here, but
5 under the new process the DON approval, which
6 we call the determination now, and the
7 consistency determination is done at the same
8 time, is that correct?

9 A: They're done at the same time but it's still
10 two separate --

11 Q: Still two separate processes?

12 A: -- determinations, that's right.

13 Q: Okay. Hold on one second. I'm going to hand
14 you part of the statute that I want you to
15 read. It's 44-96-290 -- I'm sorry, 44-96-
16 290(e). Will you read the highlighted portion?

17 A: No permit to construct a new solid waste
18 management facility or to expand an existing
19 solid waste management facility may be issued
20 until a demonstration of need is approved by
21 the Department.

22 Q: Okay. So that really sets forth that this is
23 the very first process, I mean, step in the
24 process? You have to get your demonstration of
25 need approval first? And it doesn't say that

1 that's merged with the consistency
2 determination, is that correct?

3 A: That's right.

4 Q: Thank you. And just for the record, since you
5 did the consistency review, was the
6 demonstration of need approval and the
7 consistency review merged?

8 A: No. Oh, no. No.

9 Q: Okay. And you didn't even do the DON approval
10 --

11 A: No.

12 Q: -- is that correct?

13 A: That's right. I don't have anything to do with
14 those.

15 Q: All right. I have no further questions.

16 **THE COURT:** Redirect, Mr. Harmon?

17 **MR. HARMON:** Yes, Your Honor.

18 **MS. WHITE - REDIRECT EXAMINATION BY MR. HARMON:**

19 Q: Good morning, Ms. White.

20 A: Good morning.

21 Q: Just a couple of questions for you. You
22 mentioned in response to some questions from
23 Ms. Williams that you did not consider changes
24 in -- that had been made to the York County
25 Solid Waste Management Plan based upon the

1 previous draft. And I understood your
2 testimony to be from a draft that you had
3 received from 2000. Did you mean the previous
4 draft being the draft that you had received in
5 the early February meeting that you held with
6 York County?

7 A: We wouldn't -- I wouldn't have compared any
8 changes between drafts either to each other or
9 to the final, so --

10 Q: Okay, so no changes -- regardless of when you
11 would have received the draft, you didn't look
12 at changes that had been made to the plan?

13 A: No. We -- we just look at the final plan.

14 Q: Okay. Now, with regard to the old landfill
15 regulation, which Greeneagle was under when you
16 were evaluating consistency, am I correct about
17 that?

18 A: That's right.

19 Q: You evaluated it under the old regulation?

20 A: That's right.

21 Q: Okay, now, that regulation does not contain any
22 language about doing a preliminary consistency
23 determination and then a final consistency
24 determination, does it?

25 A: No.

1 Q: Okay. And the statute doesn't talk in terms of
2 doing a preliminary consistency determination
3 or a final determination?

4 A: The statute says we can't issue a permit that's
5 not consistent. So that means when we get
6 ready to issue the permit we have to look at
7 consistency at that point.

8 Q: Well --

9 A: And that's the final point.

10 Q: Okay. But the statute is silent as far as the
11 timing of that. If you've done a consistency
12 determination, then you've done it before you
13 permitted a facility; isn't that a fair
14 statement?

15 A: Well, I guess we're taking a literal reading of
16 that, that says you cannot issue a permit
17 that's not consistent. So if it's not
18 consistent when we issue the permit, we can't
19 do it. And that's how we -- we interpreted
20 that.

21 Q: That's how you did it, but you -- in your
22 landfill regulation there was no guidance with
23 respect to when that determination had to be
24 done?

25 A: Not in the regulation, no.

1 Q: Okay. I want to make sure I'm clear about what
 2 you used in order to make the consistency
 3 determination for Greeneagle. And I'd like to
 4 direct you to Joint Exhibit Number Eight.
 5 That's your memorandum in which you did a final
 6 consistency determination, is that correct?

7 A: That's right. That's right.

8 Q: Okay. And I'd like for you to read the last
 9 sentence of the third paragraph please.

10 A: According to the York County Solid Waste
 11 Management Plan, the county's current and
 12 projected capacity needs for C&D waste can be
 13 adequately addressed with existing facilities
 14 and a potential for expansion at the existing
 15 facilities.

16 Q: Okay. And is that the basis of which you
 17 determined that Greeneagle was not consistent
 18 with the York County Plan that you reviewed?

19 A: Basically, yes.

20 Q: Now, you've done consistency determinations for
 21 other facilities through the years in your
 22 position at DHEC?

23 A: That's right.

24 Q: Okay. Did you do a consistency determination
 25 for the Greenpoint landfill that was to be

1 located in Anderson County?

2 A: I was involved in that process. I can't
3 remember whose signature which letter had on
4 it, but I was involved in that, yes.

5 Q: Okay. And do you recall that the Anderson
6 County Plan prohibited new C&D facilities, with
7 the exception that expansion facilities would
8 be allowed?

9 A: I -- to be honest, I don't recall about the
10 expansion issue but I do recall that it
11 prohibited new facilities.

12 Q: Okay.

13 A: I'm sorry, I don't remember.

14 Q: Ms. White, let me show you the Anderson County
15 Plan. I'm going to show you a certified copy
16 of the Anderson County Plan that we obtained
17 from DHEC through FOI, and ask you to refer to
18 page 5-14.

19 **MS. WILLIAMS:** Your Honor, I'm going to object to
20 this because I don't understand the relevance.
21 We're talking about the Greeneagle landfill,
22 not the Anderson County landfill. And she's
23 already testified that she doesn't even recall
24 whether she made the consistency determination
25 in that case.

1 **THE COURT:** Well, I can't tell where it's going
2 without hearing it, and it's not as if we're
3 before a jury. So I'm going to overrule your
4 objection --

5 **MS. WILLIAMS:** All right.

6 **THE COURT:** -- until I know what weight to give it.

7 **Q:** Ms. White, do you recognize this as a copy of
8 the Anderson County Plan?

9 **A:** Yes.

10 **Q:** And it has a date on it of December 7, 2004?

11 **A:** Yes.

12 **Q:** Okay. And I asked you to refer to page 5-14.
13 Okay. In the middle of the page, I'd like for
14 you to you read into the record, in the middle
15 -- in the middle -- the middle paragraph
16 entitled Part Four, C&D Landfills. The
17 sentence that starts with no new or
18 replacement, do you see that?

19 **A:** Yes, I do.

20 **Q:** Okay. Read that into the record, to the end of
21 that paragraph, those two sentences.

22 **A:** No new or replacement Part 4 C&D landfills are
23 permissible in Anderson County. Expansion
24 facilities are permissible provided the
25 landfill satisfies the constraints of the

1 applicable ordinances enforced by the county,
2 as well as requirements for regulatory
3 permitting through DHEC.

4 Q: Okay. Now, that's -- in the Greenpoint
5 landfill you, DHEC, found that the Greenpoint
6 facility was inconsistent with the plan.

7 A: Uh-huh (affirmative response).

8 Q: And even though the plan allowed for expansion
9 facilities, it provided for no new landfill.
10 Is that essentially the same thing we have in
11 York County with the new York County Plan?

12 A: Well, we looked at the York County Plan very
13 carefully and when we made the decision on this
14 case it was after we had had this Greenpoint
15 case and had had a ruling from the judge. And
16 the difference in our minds between the
17 Greenpoint and York is that we felt I think an
18 even heavier burden to make sure the county had
19 done -- that we don't go by just one sentence,
20 but that whatever the sentence says is
21 supported in the rest of the document. And I
22 think we felt very keenly that we needed to
23 make sure that was done. When we looked at the
24 York County Plan and we looked at the
25 Greeneagle case, we felt like they had met that

1 burden, that they'd reached that standard of
2 looking at what was generated, doing
3 projections for how much, manage -- you know,
4 making sure they really could manage what they
5 projected to generate, and that whatever their
6 plan was for managing that waste was reasonable
7 to us. So we did, I mean, I do feel like we
8 did that, and I do feel like we held York, you
9 know, to that standard and that they met that
10 standard.

11 Q: Okay.

12 A: I --

13 Q: That -- I'm sorry, didn't mean to cut you off.

14 A: No, I'm sorry.

15 Q: I understand your explanation. But with
16 respect to what you wrote in Joint Exhibit
17 Number Eight about inconsistency of Greeneagle
18 with the York County Plan, you based that --
19 your writing is based upon language that is
20 very similar to the Anderson County Plan.
21 Wouldn't you agree with that?

22 A: I think the York County Plan did a better job
23 of showing projections and explaining how they
24 were going to manage their waste I think.

25 Q: I understand. But I want you to answer the

1 question I'm asking.

2 A: Okay.

3 Q: And that is, the language you put in Joint
4 Exhibit Number Eight, which is your internal
5 memorandum where you stated that the county's
6 current projected capacity needs for C&D waste
7 can be adequately address with existing
8 facilities and the potential for expansion of
9 existing facilities. That's essentially the
10 same language that's in the Anderson County
11 landfill on which you did the Greenpoint
12 consistency determination, isn't that correct?

13 A: My -- the sentence in the letter that I wrote
14 is in regard to the entire plan, the York
15 County Plan.

16 Q: Well, the -- I'm only going by what your
17 sentence says. And you can certainly explain
18 that, but the sentence says that it's not
19 consistent because of the county's current and
20 projected capacity needs for C&D waste can be
21 adequately addressed with existing facilities
22 and the potential for expansion of existing
23 facilities. That's what the York County Plan
24 said, did it not?

25 A: The whole plan, yes, taken as a whole said

1 that, that's right:

2 Q: But there was language in the plan to that

3 effect?

4 A: There was --

5 Q: In the York County Plan?

6 A: There was language in the plan, when you take

7 them all together, all the projections and the

8 conclusions and -- that everything taken

9 together reached that conclusion and was

10 supported, yes.

11 Q: Okay.

12 A: And that's what I intended with that sentence.

13 Q: And there's very similar language in the

14 Anderson County Plan on which you did the

15 Greenpoint determination of consistency?

16 **MS. WILLIAMS:** Your Honor, I'm going to object. I

17 think she's answered that question several

18 times.

19 **THE COURT:** I agree.

20 **MS. WILLIAMS:** And I still don't see the relevance.

21 **THE COURT:** I agree. Objection sustained.

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

23 **MS. WHITE - RECROSS EXAMINATION BY MS. WILLIAMS:**

24 Q: Ms. White, I'm glad the issue was brought up

25 about the internal memo because what I want to

1 know from you is, whenever you write internal
2 memos to staff, do you include your every
3 thought and opinion in a memo like this?

4 A: No. No.

5 Q: What was your intention when you wrote this
6 memo?

7 A: My intention when I wrote the memo was to get
8 across -- I mean, I think the sentence that I
9 was asked to read is sort of telling because,
10 even though it's only one sentence, to me it
11 packs a lot of information into it. And that
12 was my intent in the short memo to do that.
13 According to the plan, the current and
14 projected capacity needs can be adequately
15 addressed with existing facilities. I didn't
16 take that as one sentence out of the plan.
17 That is one sentence that I wrote, trying to
18 convey the fact that the plan had a lot of
19 information in it, and we talk to counties all
20 the time about doing plans and this plan
21 conveyed a lot of information that we tell them
22 to and so --

23 Q: And in the middle of it --

24 **THE COURT:** Where did -- which memo are you
25 referring to, Exhibit Number Three?

1 **MS. WILLIAMS:** I'm sorry. I'm referring to, this is
2 Exhibit Number Eight, Joint Exhibit Number
3 Eight.

4 **THE COURT:** Thank you. I just wanted to get that in
5 the record.

6 **MS. WILLIAMS:** Yes, Your Honor. And this is the
7 internal memo that Ms. White wrote to staff.

8 **Q:** And would you say that the staff would have a
9 considerable amount of knowledge about solid
10 waste management plans? In other words, what
11 I'm asking you is, would you need to be as
12 detailed with staff as you would be with
13 someone outside of DHEC that wouldn't know as
14 much about solid waste management plans?

15 **A:** No, we just -- this was done as a, you know, as
16 a memo to the file so they could go ahead with
17 their decision.

18 **Q:** All right. Mr. Harmon asked you about the
19 language in this memo. And what he was asking
20 you was, isn't the language in the Greenpoint
21 Solid Waste Management Plan the same language
22 that you put in your memo. Now --

23 **MR. HARMON:** Your Honor, I object. That's a
24 mischaracterization of what I asked her.

25 **MS. WILLIAMS:** I'm sorry, what did you ask?

1 **THE COURT:** Seems pretty close to me.

2 **MR. HARMON:** I asked if it was similar language to

3 the Greeneagle --

4 **MS. WILLIAMS:** Okay.

5 **MR. HARMON:** I mean, to the Greenpoint.

6 **THE COURT:** Similar, okay.

7 **MS. WILLIAMS:** Okay.

8 **THE COURT:** Similar. I think she can slide with

9 that.

10 **MS. WILLIAMS:** I stand corrected. Similar.

11 **Q:** Okay, now, I want you to read, if you will, you

12 have it, I'm sorry, you have your own, read

13 that sentence in your memo that he asked you to

14 read. And then read, starting with no new

15 replacements.

16 **A:** According to the York County Solid Waste

17 Management Plan, the county's current and

18 projected capacity needs for C&D waste can be

19 adequately addressed with existing facilities

20 and the potential for expansion of the existing

21 facilities.

22 **Q:** All right. Now if you'll read --

23 **A:** No new or --

24 **THE COURT:** Wait a minute.

25 **MS. WILLIAMS:** I'm sorry.

1 **THE COURT:** What's she reading from, the record
2 isn't --

3 **MS. WILLIAMS:** Okay. Your Honor, she is reading from
4 the Greenpoint Solid Waste Management Plan.
5 I'm sorry, not Greenpoint, what's --

6 **A:** Anderson.

7 **MS. WILLIAMS:** Anderson County Solid Waste Management
8 Plan.

9 **THE COURT:** All right, identify the page and so
10 forth so the record will be complete.

11 **A:** This is page 5-14.

12 **Q:** All right. Go ahead.

13 **A:** In addition -- I'm sorry. No new or
14 replacement Part 4 C&D landfills are
15 permissible in Anderson County.

16 **Q:** Okay. What word would you say that they used
17 in that language that you just read that is not
18 in your language?

19 **A:** Permissible.

20 **Q:** Permissible.

21 **A:** Permissible.

22 **Q:** So in other words, it appears that Greenpoint
23 -- not Greenpoint, I'm sorry, Anderson County
24 was trying to really tell DHEC what to do?
25 Well, not tell DHEC what to do, but they were

1 trying to -- I mean, they used a strong word?

2 A: They -- they used a different word. I think
3 they --

4 Q: Now, did you find that word in the York County
5 Solid Waste Management Plan?

6 A: No. And -- no. The York -- the sentence in my
7 memo is not a sentence from the plan. If the
8 sentence in my memo -- the sentence in my memo
9 conveyed a lot of information that was in the
10 plan, not just one sentence.

11 Q: And so for the record, did you -- as a reviewer
12 of the York County Solid Waste Management Plan,
13 did you base your consistency determination on
14 that one sentence that you placed in your
15 internal memo?

16 A: No. No. No.

17 Q: Okay, so you based it on --

18 A: A review of -- it was based on review of the
19 entire plan and the fact that the conclusion
20 they reached about how they were going to
21 manage their solid waste in the future was
22 based on projections and thoughtful planning.

23 Q: And as you stated earlier, whenever you make
24 your consistency determination DHEC had already
25 received the ruling in the Wasteco case.

1 A: That's right.

2 Q: And would you say that DHEC learned anything

3 from that ruling?

4 A: Oh, definitely.

5 **THE COURT:** Wait now. Wasteco or Greenpoint?

6 **MS. WILLIAMS:** Same thing.

7 **THE COURT:** Same thing.

8 **MS. WILLIAMS:** Yes, sir. I'm sorry.

9 **THE COURT:** But it wouldn't be apparent to somebody

10 reading the record, see?

11 **MS. WILLIAMS:** Okay.

12 **THE COURT:** Try to help somewhat, please, ma'am.

13 **MS. WILLIAMS:** I will. I will.

14 Q: Wasteco, Greenpoint, same entity, DHEC had

15 already received the ruling?

16 A: That's right.

17 Q: At the time that you made your consistency

18 determination for Greeneagle?

19 A: That's right.

20 Q: Okay. And you said that DHEC learned a lesson

21 from that ruling.

22 A: Yes.

23 Q: And what was the lesson?

24 A: I think the lesson was that the counties need

25 to be held to a higher standard for what they

1 did in their planning, in their solid waste
2 plans.

3 Q: Okay. And due to the lesson that we've
4 learned, you would say that we did an even more
5 intense review of the York County Solid Waste
6 Management Plan before issuing a consistency
7 determination?

8 A: I'd say that for all reviews we do now, yes.

9 Q: Okay.

10 **MS. WILLIAMS:** I have no further questions, Your
11 Honor.

12 **MS. WHITE - REDIRECT EXAMINATION BY MR. HARMON:**

13 Q: One other thing, Ms. White. Let me ask you to
14 look at Joint Exhibit Number Five.

15 **THE COURT:** Now, this is something that came up on
16 her recross?

17 **MR. HARMON:** She -- it has to do with her view of
18 what the York County Plan provides.

19 **THE COURT:** Yeah, I think if it's that, you may
20 proceed.

21 Q: You reviewed the York County Plan and you made
22 a note on Joint Exhibit Number Five, is that
23 your note?

24 A: Yes, it is.

25 Q: Okay. And your note is that, referring I take

1 it to the York County Plan prohibits new
2 landfills effective February 28th, 2007?

3 A: Yes.

4 Q: Okay.

5 MR. HARMON: That's all the questions I have, Your
6 Honor.

7 A: Can I respond?

8 THE COURT: Well, it'll have to be on cross
9 examination, recross examination, I guess.

10 MS. WHITE - RECROSS EXAMINATION BY MS. WILLIAMS:

11 Q: Ms. White, expound upon that question.

12 A: There word prohibit is my word. This was an
13 internal -- this was a note to the file, to
14 myself. I used -- the word prohibit is not a
15 word I would have used in a memo that was going
16 to anybody else, it was just a tickle note to
17 myself, you know, when we look at this plan
18 this has changed and --

19 Q: And when you say prohibit, what is the
20 connotation there? I mean, if you read the
21 York County Solid Waste Management Plan, if did
22 not provide for any new landfills, is that
23 correct?

24 A: That's right. Yeah. Prohibit is just not a
25 word they used, it's a word I just put in my

1 note to myself.

2 Q: It was not a word that was in the York County
3 Plan?

4 A: No. No, it's not, no.

5 Q: So York County was not trying to --

6 **THE COURT:** No, wait just a minute, Ms. Williams.
7 And Mr. Harmon has been a gentleman about this,
8 but you're leading entirely too much. And I
9 realize that it's cross examination but you're
10 testifying.

11 **MS. WILLIAMS:** Okay. Well, I have no other
12 questions, Your Honor.

13 **THE COURT:** Thank you.

14 **MR. HARMON:** Your Honor, since we have talked about
15 this document and I do have a certified copy of
16 the document, I'd like to place the Anderson
17 County Solid Waste Management Plan in the
18 record.

19 **MS. WILLIAMS:** I object. I mean, I don't understand
20 the relevance of that.

21 **THE COURT:** Well, it's marginal but I'm going to
22 allow it. Overruled.

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

25 **MR. HARMON:** Thank you, Your Honor. Is that in

1 evidence?

2 **THE COURT:** Excuse me. Yes, I said that her
3 objection to it's overruled. And it's
4 Thirteen, is that right?

5 **COURT REPORTER:** No, that's Petitioner's Four.

6 **THE COURT:** Four, excuse me.

7 **MR. HARMON:** Your Honor, that's all the questions I
8 have at this point.

9 **THE COURT:** Thank you. You may step down, Ms.
10 White.

11 A: Thank you.

12 **MR. HARMON:** Your Honor, Greeneagle calls Mr. Kent
13 Coleman.

14 **KENT COLEMAN,** being duly sworn, testifies as follows:

15 **MR. COLEMAN - DIRECT EXAMINATION BY MR. HARMON:**

16 Q: Good morning, Mr. Coleman.

17 A: Good morning.

18 Q: Would you please state your full name for the
19 record?

20 A: Yes. My name is Kent Middleton Coleman.

21 Q: And what is your address, Mr. Coleman?

22 A: 224 Springwater Drive, Columbia.

23 Q: And who is your employer?

24 A: South Carolina DHEC.

25 Q: Okay. How long have you been employed with the

1 Department?

2 A: Approaching 20 years.

3 Q: Okay. And what is your current position with

4 the Department?

5 A: My -- I'm currently the director of the

6 Division of Mining and Solid Waste Management.

7 Q: Okay. And did you follow in that position

8 after Mr. Braswell left the Agency?

9 A: Yes, sir.

10 Q: When did you become the division director?

11 A: December of 2007.

12 Q: December of 2007?

13 A: Might have been '08. I guess it was 2008, I'm

14 sorry. December of 2008 as far as -- it's been

15 two and a half years. It's hard to go

16 backwards, but about two and a half years.

17 Q: Okay. I suppose, depending upon how you look

18 at it, you had the good fortune or the bad

19 fortune of coming into this position sort of in

20 the middle of the Greeneagle landfill process.

21 A: I think that's fair.

22 Q: Okay. Could you give us a general description

23 of what you do as the division director?

24 A: Sure. I oversee the permitting activities as

25 sort of a general way of -- an overview way to

1 put it, permitting activities for the mining
2 program and also solid waste management
3 programs with DHEC, which includes, in terms of
4 mining it includes compliance, inspections and
5 permitting for the mines. As far as solid
6 waste management facilities, it includes the
7 demonstration of need process, consistency of
8 use and so forth that are involved in
9 permitting those facilities. It also includes
10 the office of solid waste production and
11 recycling and the groundwater element of
12 reviewing solid waste management facilities, as
13 well as financial assurance for those
14 facilities.

15 Q: Okay. Do you supervise a number of employees
16 in your position as the division director?

17 A: Yes.

18 Q: Okay. Is Ms. White one of the employees you
19 supervise?

20 A: Yes.

21 Q: Now, when you became the division director, had
22 the York County Solid Waste Management Plan
23 already been provided to DHEC?

24 A: Yes. I think the final, the official 2007 plan
25 had already been received.

1 Q: Okay. And if I recall in your testimony
2 correctly, you became the division director in
3 December of 2007, is that correct?

4 A: Let me think about that for a second. I'm just
5 kind of -- let me make sure I get that correct.
6 That's correct, yes.

7 Q: Okay. December of 2007? Did you do, yourself,
8 an independent review of the York County Plan
9 to determine whether it was consistent with
10 state law, DHEC regulations, the state solid
11 waste management plan?

12 A: I did review the York County Plan, yes.

13 Q: Did you do that review in connection with
14 whether it was consistent with state law?

15 A: Yes.

16 Q: And did you find that it was consistent with
17 state law?

18 A: Well, what I found is typical of county solid
19 waste management plans, is that there are, you
20 know, fairly commonly statements in those plans
21 that I would consider to be inconsistent with
22 state law. I don't -- I don't review the plan
23 with those statements in mind. I can't control
24 what a county might say in a plan. What I can
25 control is how I view those statements in

1 relation to state law and what my
2 responsibilities are under state law. So if
3 there's something in there that I find
4 inconsistent, I do not consider that in my
5 decisions. What I do consider is the fact that
6 counties are responsible for planning under the
7 Act and the Department is responsible for
8 reviewing that plan and making sure the
9 permitting decision is consistent with that
10 plan. And so where the county has followed its
11 planning responsibilities under the Act, I look
12 at that part of what they're doing in the plan
13 when I make my decision about consistency.

14 Q: Okay. And did you find some inconsistencies in
15 the York County Plan, with state law?

16 A: I don't recall specifics, but I feel like maybe
17 there's some statements in there. I just can't
18 recall specifics.

19 Q: Okay. Let me give you an example then. The
20 40,000 ton per year cap on C&D facilities.

21 A: Right.

22 Q: Would that be consistent with the Department's
23 Demonstration of Need regulation?

24 A: No.

25 Q: So that would be inconsistent?

1 A: That's correct. The tonnage, the maximum
2 allowable tonnage is determined by state
3 regulation. As we've talked about it, it's
4 called the Demonstration of Need regulation.

5 Q: Correct. Have you reviewed the general
6 conditions that are in the York County Plan?

7 A: I reviewed the plan, yes, sir.

8 Q: Okay. Let me specifically then refer you to
9 page 41 of Joint Exhibit Twelve. It also has
10 at the bottom of the page DHEC-0935.

11 A: Okay.

12 Q: There are a number of general provisions that
13 go on for, all the way over to page 44. Is
14 that a fair statement?

15 A: Yes, sir.

16 Q: Okay. Would you view that some of those
17 conditions that have been stated in the plan
18 would tend to make C&D landfills in York County
19 not viable from an economic viewpoint?

20 A: I think it would -- obviously, it would depend
21 on whether they're enforced.

22 Q: Okay.

23 A: So I'm not sure --

24 Q: Would DHEC have enforced any of these general
25 provisions that are in this plan?

1 A: No, the county's responsible for enforcing the
2 provisions of their plan.

3 Q: Okay. Would you put any of these general
4 provisions in a permit that you might issue to
5 a facility located in York County?

6 A: We would not -- not based on the fact that
7 they're in a plan. I mean, if there's
8 something that's a requirement of a state law,
9 you know, it may be in a permit, but not
10 because of any plan.

11 Q: Okay. Let me specifically refer you to Item P
12 that's on page 43 of Joint Exhibit Twelve. It
13 also has the number DHEC-0937 at the bottom of
14 the page.

15 A: Okay.

16 Q: Do you see Item P?

17 A: Yes, sir.

18 Q: Okay. Would you read Item P?

19 A: Item P says, York County shall cause a study
20 and analysis to be performed to determine the
21 need for additional privately operated
22 landfills in the county. And following such
23 study, York County council shall determine the
24 need for new or additional privately operated
25 landfills in the county and amend this plan

1 based upon its determination of need for
2 privately operated landfills in the county.

3 Q: Okay. Is that, is that item consistent with
4 the Department's Demonstration of Need
5 regulation?

6 A: Well, it looks to me like it's a fact-finding
7 effort by the county, that they planned on
8 doing subsequent to this plan. And in a sense
9 that they're looking to see what needs they
10 might have for solid waste management in the
11 county, I think that falls under their planning
12 responsibilities to look at those types of
13 things. I don't see this as prohibitive in the
14 sense that it would impact DHEC, other than the
15 fact that the county is responsible for
16 planning. And so we would look at those
17 planning efforts, see that they -- what parts
18 of those planning efforts follow their
19 responsibilities under the Act and then we
20 would look at their plan just purely from our
21 consistency viewpoint, you know, perspective,
22 whether they did their planning effort properly
23 and whether this permit application, or any
24 permit application, was consistent with that
25 planning effort. If they tried to prohibit

1 something specifically in a plan, that I think
2 is separate and that may or may not be
3 relevant.

4 Q: Okay. Did you -- were you involved at all in
5 the demonstration of need approval for
6 Greeneagle?

7 A: I believe that occurred prior to my coming into
8 the position. I have reviewed the memo and
9 actually I think that that was prior to.

10 Q: Okay. And do you -- the DON regulation is a
11 need regulation, do you agree with that?

12 A: It's a -- the title of the regulation is
13 Demonstration of Need. That's the state
14 regulation that defines need.

15 Q: Okay. And DHEC gave demonstration of need
16 approval in this case --

17 A: We --

18 Q: -- to Greeneagle?

19 A: We did.

20 Q: Okay. And what happened between that time and
21 the denial of Greeneagle's application is that
22 the county changed the plan?

23 A: Yes. The county plan changed between those two
24 time frames.

25 Q: Okay. And the county plan said that C&D

1 facilities in any quadrant of York County, and
2 I'm using that because the plan used that,
3 wrote that.

4 A: Sure.

5 Q: They said that C&D facilities in any quadrant
6 of the county were not needed.

7 A: Well, my recollection of the plan is that they
8 concluded that they had adequate capacity to
9 handle waste at that time.

10 Q: Well, let me ask you then to look at page 48 of
11 Joint Exhibit Twelve. At the bottom of the
12 page it says DHEC-0942.. Okay?

13 A: Yes, sir.

14 Q: The last sentence on that page, would you read
15 that?

16 A: The existing landfills, that sentence?

17 Q: Yeah.

18 A: Starts there?

19 Q: Yes.

20 A: The existing landfills currently meet the C&D
21 disposal needs of this service area, therefore,
22 no new landfills are needed for the service
23 area.

24 Q: Okay. It says no new landfills are needed?

25 A: Right. And it also says the existing landfills

1 currently meet their needs.

2 Q: Right. And this is for the northwest service
3 area, where Greeneagle's located?

4 A: Yes.

5 Q: Now, if DHEC denied a demonstration of need
6 approval request, but a county plan said they
7 needed the landfill, would the county plan
8 determine need such that DHEC would then
9 approve a demonstration of need --

10 A: No.

11 Q: -- for that site?

12 A: No. They're separate and distinct decisions.
13 One's covered by state law. In fact, the
14 Demonstration of Need regulation that was in
15 effect at the time has been revised since, but
16 it specifically stated that the demonstration
17 of need determination shall be made prior to a
18 consistency determination. So it outlined
19 those as separate decisions, with one -- and it
20 used the words shall be made, so the Department
21 shall make the DON decision prior to the
22 consistency decision.

23 Q: Okay. And your testimony is that the
24 regulation required that?

25 A: Yes.

1 Q: Now, are you referring to the, for lack of a
2 better term, the old Demonstration of Need
3 regulation that Greeneagle's determination was
4 made under?

5 A: Yes, it was the previous version of 61-107.17.

6 Q: Okay.

7 A: It was Section (c)(4).

8 Q: Section (c)(4) of that regulation?

9 A: Yes, of the old regulation.

10 Q: And you would make that determination
11 irrespective of what a county had placed in its
12 plan about the need for a landfill that you
13 were reviewing?

14 A: The demonstration of need?

15 Q: Yes.

16 A: Determination by DHEC is done under -- we --
17 yes, the Act required us to develop a
18 regulation or promulgate a regulation for
19 demonstration of need that was going to -- and
20 we followed that regulation to make that
21 decision.

22 Q: Now then, if you have a separate regulation for
23 need, which you do, and then you do a
24 consistency determination where a county has
25 looked at need, does not that then basically do

1 away with the Demonstration of Need regulation
2 that DHEC had?

3 A: No.

4 Q: Well, if you do -- as in this case, the
5 demonstration of need approval found that there
6 was a need for another C&D landfill in the area
7 of York County that Greeneagle was to be
8 located in, is that correct?

9 A: They -- they did receive a demonstration of
10 need approval from the state.

11 Q: Okay. And that meant that there was a need for
12 that landfill under the Demonstration of Need
13 regulation?

14 A: Well, it meant they met the requirements of
15 that regulation, which is a -- the first
16 hurdle, as outlined in the regulation, and a
17 separate hurdle, as outlined in the Act, for
18 issuance of a permit.

19 Q: Okay, but I understood your testimony to be
20 that the Demonstration of Need regulation was
21 a regulation that defined need.

22 A: From a state perspective, yes. As dictated by
23 the Act we were to promulgate that regulation
24 and it was -- yes, it was done to define how
25 need is determined at the state level.

1 **THE COURT:** Excuse me.

2 **A:** Yes, sir.

3 **THE COURT:** You were present in the courtroom
4 yesterday, and I think that a similar question
5 was asked of someone and it was said, and I
6 want you to unravel this for me and explain it.

7 **A:** Sure.

8 **THE COURT:** That the demonstration of need has to do
9 with, more with location; that was the word
10 that came through to me, that the location was
11 appropriate.

12 **A:** That's true. And I can -- would you like me to
13 explain that a little bit more?

14 **THE COURT:** Amplify that please.

15 **A:** Okay. When the state was developing the
16 Demonstration of Need regulation, as we were
17 instructed to by the Act, we were concerned
18 about a couple of things. We wanted to have
19 adequate landfill capacity in the state. And
20 we're looking at it from a state planning
21 perspective, a larger perspective. We wanted
22 to have adequate capacity for the state, but we
23 did not want to have excess capacity. And so
24 the planning circles were developed, at ten
25 miles at the time, to allow for a maximum of

1 two facilities to locate within that planning
2 circle. So that was the location piece. If --
3 as long as there are less than two in the
4 circle, you can have another facility. If
5 there's more than two, you can have no more
6 facilities. So it was that -- and it's as
7 simple as that, it just determined from a state
8 perspective how we would have adequate capacity
9 but not excess. And then also the other
10 element of that was the amount of waste they
11 can take on a year-to-year basis. That is also
12 determined by using that planning area and the
13 waste generation of the counties that touch
14 that planning area. In other words, so that we
15 look at the -- how much waste is generated in
16 that vicinity. And then we use that number to
17 determine the maximum amount of waste that can
18 be taken by that facility.

19 **THE COURT:** Thank you.

20 **Q:** Now, given that explanation about need, when
21 you move to a consistency determination and if
22 you allow counties to determine need at that
23 point --

24 **A:** Right.

25 **Q:** -- does not that do away with or impinge upon

1 the Department's Demonstration of Need
2 regulation?

3 A: No. We don't let counties determine need. We
4 determine need. Counties are responsible for
5 planning. And you know, I realize it's maybe
6 a little difficult to explain and understand,
7 and there's been a lot of, certainly a lot of
8 thought and conversation on this issue over the
9 years but. The Act also uses need when it
10 describes the county's responsibilities, so
11 that's probably the source of some confusion.
12 And maybe it'll make it difficult in terms of
13 interpreting and designing a process, but that
14 is what the Act envisions. What we do is we do
15 look at the county's plan just purely from
16 their responsibilities to plan for their needs
17 as a county. And so because the county is put
18 in a position under the Act of being
19 responsible for providing for the disposal of
20 waste that's generated in their county. And so
21 from that perspective, if they have done that,
22 have they put those elements in a plan that's
23 required by the law, and if they do that and
24 they have planned for their need, their
25 disposal that's generated in that county, if

1 they planned properly to handle that, and they
2 have communicated their approach, and there's
3 lots of different ways you can handle that, but
4 if they've communicated a clear approach,
5 they've documented their waste generation and
6 disposal properly in their plan, and a facility
7 is not consistent with the plan, then that's
8 where we get to where we are with this case and
9 a lack of consistency. If you interpret it the
10 way that you're trying to imply, then you
11 basically take the statute and you render the
12 fact that the Department's permit must be
13 consistent with the county plan, you've
14 rendered that statement in the Act as
15 meaningless. And we feel that statement has
16 meaning, and so we try to be very careful to
17 give it the proper meaning by making sure the
18 county plan is comprehensive and accurate.

19 Q: I understand your explanation of that, but
20 here's the problem I'm having with where we are
21 in this case. You did a demonstration of need
22 approval, which said a landfill was needed.

23 A: It said that the landfill met the requirements
24 of the Demonstration of Need regulation.

25 Q: Okay. I think we're splitting hairs a little

1 bit. But you indicated earlier in your
2 testimony that the DON regulation defined need,
3 that's what I recollect your testimony was. Is
4 that a fair statement?

5 A: The Act doesn't have a definition for need.
6 The Act does have a directive for us to
7 promulgate a regulation for demonstration of
8 need. So to the extent that we did that, it
9 does lay out those requirements to meet
10 demonstration of a need as required by the Act.

11 Q: Okay. And your need regulation basically, for
12 a particular location, will say whether or not
13 another landfill is needed and what the tonnage
14 level is?

15 A: It says if there will be another facility
16 allowed there under demonstration of need and
17 what its maximum tonnage could be, yeah, what's
18 allowed.

19 Q: Okay. And then we move to the consistency
20 determination. And based upon what I read in
21 the York County Plan, it says no new landfills,
22 no new C&D landfills are needed. Is that a
23 fair characterization of the language?

24 A: Yeah, I believe -- yes.

25 Q: Okay. And so you -- if you do that under the

1 consistency determination, isn't DHEC in effect
2 allowing the county to determine need, whereas
3 DHEC has already determined need under the
4 Demonstration of Need regulation?

5 A: No. That sentence, taken out of context in the
6 plan, has very little, if any, meaning to us at
7 the state level. We're looking at whether the
8 county followed its obligations and
9 responsibilities under the Act or planning as
10 a whole. Just because there's a sentence that
11 says something really doesn't have, you know,
12 as much meaning when you pull it out of
13 context. If it's all part of a context of
14 planning and a clear communication through the
15 plan of how the county meets its
16 responsibilities under the Act, then you take
17 it all together.

18 Q: Okay. Mr. Coleman, let me ask you now to refer
19 to Joint Exhibit Number Nine.

20 A: Okay.

21 Q: And this is a letter from you to Mr. Taylor
22 denying the permit for Greeneagle?

23 A: That's correct.

24 Q: Okay. Did you draft this letter?

25 A: I had a part in drafting it. I'm not sure what

1 specifically you're asking me.

2 Q: Is it your letter?

3 A: It is my letter, yes.

4 Q: Okay. Now, in the second paragraph, you
5 indicate that the Department has reviewed
6 information relevant to the adoption of the
7 2007 Plan and finds that the plan was adopted
8 properly.

9 A: Correct.

10 Q: Do you see that sentence in your letter?

11 A: I don't see it. I know it's in there.

12 Q: End of the second paragraph.

13 A: Yes.

14 Q: Okay. What did you do to determine that the
15 plan had been adopted properly?

16 A: Well, I certainly reviewed the information that
17 was discussed earlier in earlier testimony, the
18 ordinance and the plan that was submitted to us
19 by county along with the official signatures
20 from the county council chairman and other
21 officials of the county to determine that they
22 submitted that to us and it was their intent
23 for that to be submitted as the official county
24 plan and I did receive three readings at
25 council which were also provided to us and the

1 dates.

2 **THE COURT:** I couldn't hear you, sir, I'm sorry,
3 what --

4 **A:** The county council provided us with the
5 documentation of the three readings by county
6 council and the signatures of the officials at
7 the county including the county council
8 chairman. We looked at that.

9 **Q:** Okay. Did you look at anything else?

10 **A:** Sure. I was provided with a lot of information
11 from the applicant, for example, which is not
12 unusual. I mean, we get information that tries
13 to convince us that a certain point of view is
14 what we should take. That happens on almost
15 every application we get. I have to -- my
16 responsibility is to look through that
17 information and to decide what, you know, what
18 is relevant to my decision.

19 **Q:** So as I understand your testimony, you reviewed
20 information that Mr. Taylor provided to the
21 Department?

22 **A:** I went through a notebook that was provided by
23 Mr. Taylor, yes.

24 **Q:** Okay. And let me ask you to refer to Joint
25 Exhibit Ten. Now, without Joint Exhibit Ten

1 containing all the documents that are
2 referenced in that document, is this the
3 information that you would have reviewed that
4 Mr. Taylor provided to the Department?

5 A: This was part of those packets that were
6 submitted, yes, that I did look over.

7 Q: Did you have any discussions with anyone at
8 York County about the process of adoption of
9 the ordinance?

10 A: No.

11 Q: You made -- you made your determination without
12 discussing that with anyone at the county?

13 A: I made my determination by looking at the
14 documentation that they provided.

15 Q: Meaning the documentation that the county
16 provided?

17 A: Correct.

18 Q: Not what Mr. Taylor provided?

19 A: To the extent that something else was relevant,
20 I'd have to filter through that. I mean, it's
21 very common for me to receive a lot of
22 information. There's a lot of sort of, for
23 lack of a better term, he said/she said
24 information that, you know, I can look at and
25 consider, if I can find an official source.

1 And I did listen to an audio of the third
2 reading, that meeting, from the county and that
3 came directly from the county, not from Mr.
4 Taylor. I think he may have provided it, but
5 we obtained it from the county. And after
6 listening to specifically what was said at that
7 meeting, I concluded that the documentation
8 that they submitted to us as an official plan
9 properly adopted by the county was supported by
10 the discussions that were had at that meeting
11 where the third reading occurred.

12 Q: And so you concluded that the plan was adopted
13 properly and that you should review that plan
14 for consistency purposes?

15 A: Yes. I mean, it's very common, you know, for
16 county council meetings to go back and forth
17 and people answer questions and ask questions
18 and not seem to understand something and as at
19 many meetings that you would attend, that's a
20 common thing, normal part of the process and
21 it's easy to pick that apart and try to claim
22 that someone didn't know something or should
23 have known something. But it was very clear to
24 me that the county council's intent at that
25 meeting was to adopt a new solid waste

1 management plan and they knew they were voting
2 on it for the third reading and they did so and
3 it passed.

4 Q: Okay. You indicated you reviewed an audio of
5 that third reading meeting with county council?

6 A: I did. I listened to the audio, yes.

7 Q: Okay. Was there discussion about a number of
8 changes that were being made to the plan over
9 the previous draft of the plan?

10 A: It's been probably at least a year since I
11 listened to that, if not longer, but I do
12 recall there being some questions but I don't
13 recall the specifics of the questions. If you
14 want to provide some kind of transcript or
15 something, but I don't remember the specific
16 questions.

17 Q: Okay. The Department had in its file a draft
18 of the plan that's been admitted into evidence
19 as Petitioner's Exhibit Three.

20 A: Yes, I recall some draft plans.

21 Q: Okay. Did you compare that plan to the final
22 draft of the plan to see what type of changes
23 had been made in the plan?

24 A: I was peripherally aware of some changes, but
25 I do not -- no, I did not make a direct

1 comparison item by item and I did not use the
2 draft plan to influence my decision on this
3 case.

4 Q: Okay. Let's refer back, Mr. Coleman, to Joint
5 Exhibit Number Nine, your denial letter that we
6 were talking about.

7 A: Okay.

8 Q: The last sentence on the first page of your
9 letter, would you read that sentence into the
10 record?

11 A: Because the proposed landfill, is that what
12 you're talking about?

13 Q: Yes, that's correct.

14 A: Because the proposed landfill is not consistent
15 with the 2007 Plan as amended on February 28,
16 2007, the Department cannot issue a permit for
17 the proposed landfill.

18 Q: Okay. And what did you review to make that
19 determination that the proposed landfill,
20 Greeneagle Landfill, was not consistent with
21 the 2007 Plan as amended?

22 A: Well, I took York County's amended plan and
23 reviewed it as I had stated earlier and we
24 concluded, the program concluded that the plan
25 had done a proper job of planning for the

1 county's solid waste disposal responsibilities
2 under the Act and that this facility is not
3 consistent with that planning effort made by
4 the county. That basically means that the
5 county has provided for its responsibilities
6 under the Act and has provided for its needs.
7 They have, you know, adequate landfill capacity
8 to meet those needs, it had an application for
9 an expansion of a landfill to help meet those
10 needs. It also had another permit that they
11 could utilize as needed for disposal, which
12 they basically haven't even used yet, so they
13 had lots of -- and all these things are
14 mentioned in the plan, the county's plan.

15 Q: Okay. You've got me confused now about some
16 other permit that could be utilized for
17 disposal needs.

18 A: Sure, it's discussed in the county's plan but
19 they had a permit for a municipal solid waste
20 landfill that they had already received from
21 the Department that they had not utilized at
22 that time. They could utilize that for
23 disposal of any waste stream that they have in
24 the county.

25 Q: Okay. So they had a permit, you're referring

1 to York County --

2 A: Yes.

3 Q: -- had a permit for disposal of municipal solid
4 waste that was active at the time?

5 A: They had started construction of a facility for
6 that and they could dispose of C&D materials,
7 as well as a lot of other materials in that
8 facility, had they chosen to do so.

9 Q: Okay. And what else in the plan did you
10 determine made Greeneagle inconsistent?

11 A: Well, I determined that the county had ample
12 constructions and demolition debris capacity in
13 the state -- I mean, in the county to meet
14 their disposal responsibilities as a county and
15 that they had planned adequately for the future
16 in terms of how they would deal with coming
17 years. In that context they had a plan for how
18 they would deal with their waste and a new
19 facility is not consistent with that plan.

20 Q: What part did -- the statement in the plan
21 regarding the northwest service area that no
22 new landfills are needed from this service
23 area, what part did that play in your decision?

24 A: Taken by itself, it played no role in my
25 decision. Taken as a whole with the plan, it

1 just was a, I guess, an additional item that
2 communicated the county's intentions as far as
3 how they would handle their disposal needs or
4 their disposal responsibilities under the Act.

5 Q: Did you look at the draft of the plan that's
6 been marked as Petitioner's Exhibit Three?

7 A: I don't know which one that is. I don't --

8 Q: Well, let me ask you to look at Petitioner's
9 Exhibit Three that's laying on the desk before
10 you. No, it's not in the notebook.

11 A: Oh, I'm sorry.

12 Q: It's a separate document.

13 A: Petitioner's Exhibit Three?

14 Q: Yes.

15 A: All right, I have it.

16 Q: Did you look at that document to determine if
17 any changes had occurred with reference to the
18 county's statement about needs for C&D
19 facilities?

20 A: No.

21 Q: So you only reviewed the York County Plan that
22 had been provided to DHEC sometime in March of
23 2008 -- I mean, I'm sorry, 2007?

24 A: Yes, I mean, my decision was based on the
25 official plan that was adopted by the county,

1 no other plan.

2 Q: Were you aware at the time you were conducting
3 your review that Greeneagle had obtained zoning
4 approval from the county?

5 A: I would have been aware of that at some point
6 during the process because that's part of our
7 review to make sure that there's also
8 consistency or the county -- but the Act
9 requires us to look at whether the permit
10 application meets local zoning and other
11 ordinances.

12 Q: Okay. And if you had found any problem with
13 that, you would have mentioned it in your
14 letter regarding consistency determination?

15 A: That would have been in a separate hurdle
16 outlined in the Act that the applicant would
17 have to meet and if they did not meet the
18 zoning, then that would have been an issue with
19 the permits.

20 Q: Okay. Did you review zoning and did you find
21 it consistent?

22 A: I don't really recall specifically on this
23 case, having been more than a year ago, about
24 the zoning specifics. That's a normal part of
25 our process and we don't issue permits without

1 looking at the zoning.

2 Q: Okay. I understand it's part of your process.
3 My question is did you do that review prior to
4 issuing the denial letter which is Petitioner's
5 Exhibit -- I'm sorry, Joint Exhibit Nine?

6 A: I don't recall.

7 Q: Now, at the point of your review with respect
8 to consistency, Greeneagle had been given a
9 demonstration of need approval?

10 A: Correct.

11 Q: And there had been a preliminary consistency
12 determination made by the Department?

13 A: Yes.

14 Q: Okay. Did you consider in your review whether
15 or not Greeneagle was a new facility as that
16 term is used in the plan?

17 A: Yes, certainly during the demonstration of need
18 review, it was viewed as a new facility.

19 Q: I understand that. But with respect to the
20 plan, the plan itself says no new landfills
21 were needed for the service area referring to
22 the northwest service area in which Greeneagle
23 was located. Did you consider whether or not
24 Greeneagle was a new facility?

25 A: I'm not sure I thought about it exactly as

1 directly as you're asking me, but certainly in
2 the scope and context of the county's planning
3 effort, they had identified how they would
4 handle their future waste disposal
5 responsibilities and they had identified
6 existing facilities as being adequate for that,
7 and this was not one of those existing
8 facilities.

9 Q: Okay. It wasn't in operation but it was in the
10 middle of a permitting process; would you agree
11 with that?

12 A: I would agree that the permitting process had
13 started.

14 Q: When did it start?

15 A: It started, in our view, the first step in that
16 process was a demonstration of need approval or
17 a determination whether it be approval or
18 denial.

19 Q: Did you have any discussion with the county
20 about any terms that they had used in their
21 plan in interpreting what the plan said?

22 A: No.

23 Q: Why did you do second part, final, if you will,
24 consistency determination for Greeneagle?

25 A: To comply with the Solid Waste Policy and

1 Management Act.

2 Q: And can you tell me precisely what part of the
3 Act you're referring to?

4 A: I believe it's 290, I'd have to look to make
5 sure, but it's basically where the Department
6 is asked to only issue permits that are
7 consistent with the county's plan.

8 Q: Let me just provide you with a copy of the
9 statute. Do you see the section in which you
10 were referring?

11 A: I do. It's 290(f).

12 Q: 290(f)?

13 A: Yes, sir.

14 Q: Does that section make any reference to the
15 timing of consistency determinations?

16 A: Yes.

17 Q: And what reference does it say with regard to
18 timing of the consistency determination?

19 A: It says no permit to construct a new solid
20 waste management facility or to expand an
21 existing solid waste management facility within
22 a county or municipality may be issued by the
23 Department unless, and then I'll skip over some
24 other things but go to that the proposed
25 facility is consistent with the local or

1 regional solid waste management plan. And the
2 reason I say yes to the timing is that it says
3 we may not issue a permit unless it's
4 consistent. So at the time that we issue the
5 permit, that is when it has to be consistent.
6 And that's why I was answering the question the
7 way I was and that's why we issued the final
8 consistency when we did to make sure that it
9 was done concurrent with issuance of the permit
10 so that it met the requirements of this section
11 in the Act.

12 Q: Okay. With respect to timing, you actually --
13 the Department had done a consistency
14 determination earlier in the process.

15 A: We did. We did a preliminary consistency
16 determination as a courtesy to the applicant
17 because we were asked about the issue.

18 Q: Okay. And it was, I suppose, you or the
19 Department's interpretation of the statute at
20 that time that another determination had to be
21 done at the same time of permit issuance?

22 A: The actual and final consistency determination,
23 it is our interpretation that it had to be
24 issued at the time the permit is issued. It
25 has to be determined at that same time.

1 Q: Okay. And at that point in time when you did
 2 the final consistency determination for
 3 Greeneagle, the Department was well into the
 4 development of the new landfill regulation, is
 5 that correct?

6 A: Yes.

7 Q: Okay. And that regulation sets forth a
 8 different procedure than what you just
 9 described, does it not?

10 A: It does.

11 Q: Okay. And so the Department has now concluded
 12 that it could be done a different way because
 13 those regulations have now been adopted; is
 14 that a fair statement?

15 A: Well, I wouldn't necessarily say we concluded
 16 that. I would say that there was a regulation
 17 that was promulgated through legislature that
 18 did change the process.

19 Q: Okay. But DHEC promulgated the regulation?

20 A: We were a part of that promulgation, sure. We
 21 submitted it to the legislative council.

22 MR. HARMON: That's all the questions I have of Mr.
 23 Coleman at this time.

24 THE COURT: Thank you. It's 11:00. We've been at
 25 it about an hour and a half. Let's take about

1 a ten minute break.

2 MR. HARMON: Thank you, Your Honor.

3 (A short break was taken.)

4 THE COURT: Cross examination by Ms. Williams with
5 the admonition that I've given you previously
6 but I want to further explain that. When you
7 start talking and then changing your mind and
8 then asking another question on top of one, and
9 I'm trying to take notes so I can determine
10 what he can redirect on, by the time you get to
11 the end, I've forgotten what the question was.

12 MS. WILLIAMS: I understand, Your Honor.

13 THE COURT: Well, and it's in your interest, you
14 understand?

15 MS. WILLIAMS: Yes.

16 THE COURT: Thank you so much.

17 MS. WILLIAMS: Your Honor, I don't have any cross
18 questions for this witness.

19 THE COURT: Okay. You may step down.

20 MR. HARMON: Your Honor, at this time, I'd like to
21 recall Mr. Marty Taylor.

22 THE COURT: You're still under oath, Mr. Taylor.

23 MR. TAYLOR: Yes, sir.

24 MR. TAYLOR - REDIRECT EXAMINATION BY MR. HARMON:

25 Q: Mr. Taylor, did you attend the York County

1 Council meeting on February 28, 2007?

2 A: Yes, I did.

3 Q: What was the most recent meeting that you

4 attended prior to the February 28th meeting of

5 the York County Council?

6 A: That would have been February 20, 2007.

7 Q: Okay. Was there any discussion at the February

8 20, 2007 meeting, February 20th meeting, about

9 changes to the York County Solid Waste

10 Management Plan?

11 A: There was some open discussion by council

12 members at that time about some changes, but

13 there was no action or vote taken to make those

14 changes.

15 Q: Was there discussion at that time about changes

16 to the population projection?

17 A: No, there was not.

18 Q: And, again, I'm referring to the February 20th

19 meeting.

20 A: I understand. No, no, there were no discussion

21 about changing population projections.

22 Q: Okay. What about changing waste projection?

23 A: There was no discussion about that either.

24 Q: Was there a discussion about not allowing new

25 C&D facilities?

1 A: There was not.

2 Q: Now, in your earlier testimony, you testified
3 that you had obtained a copy of the plan that
4 was attached to the first reading, which is
5 Petitioner's Exhibit One.

6 A: Yes.

7 Q: And you obtained a copy of the plan attached to
8 the second reading, which is Petitioner's
9 Exhibit Two.

10 A: Correct.

11 Q: Okay. When did you first see a copy of the
12 plan that was going to be discussed at the
13 February 28th York County Council meeting?

14 A: It was approximately 5:00 in the afternoon the
15 evening before that meeting, so that would have
16 been February 27, 2007, late in the afternoon.

17 Q: Okay. And did you review that plan?

18 A: Oh, yes, I did. We were anticipating it,
19 therefore, that's why we were looking for it.

20 Q: And did you notice changes having been made in
21 the plan from what you had seen previously at
22 county council meetings?

23 A: Yes, there were a lot of changes.

24 Q: Okay. Let me refer you to Joint Exhibit Number
25 Twelve, page 43. The number on the page at the

1 bottom is also DHEC-0937. Do you see that
2 page?

3 A: I do.

4 Q: Okay. Now, tell me before we begin discussion
5 of that page, tell me what actually occurred at
6 the council meeting on February 28, 2007.

7 A: Well, there was a public hearing at the first
8 section of the meeting to discuss the plan that
9 had been made available the evening before.
10 And there was a public hearing process in which
11 the county, York County attorney, began by
12 giving an overview of the changes that had been
13 made to the plan since February 20th. And he
14 gave an overview of a good portion, not all of
15 it, of the changes that had been made. And
16 then once he did that, there was some council
17 discussion and then a public hearing portion
18 when they had public input.

19 Q: Okay. And did the county attorney address --
20 while you were at the meeting, did he address
21 population projection changes?

22 A: Yes.

23 Q: Okay. Did he address waste generation changes?

24 A: Yes.

25 Q: Okay. Did he address items in the general

1 provisions related to C&D landfills that begin
2 on page 41 of Petitioner's Exhibit Twelve?
3 Down at the bottom, it's DHEC-0935.

4 A: I feel like I have to explain that the document
5 we're holding here today is not the document he
6 was holding when he was making the explanation,
7 so it's been modified since that point. So I
8 don't absolutely know how to answer the
9 question. I do know -- I do know that on page
10 41, item one of the general provisions, that
11 paragraph was in that document he was holding
12 at that time or that he was referencing at that
13 time and he did not describe the general
14 provisions that -- he did not describe that
15 these following general provisions would not
16 apply to landfills in existence and properly
17 permitted as of December 31, 2006.

18 Q: Okay. But he did address other general
19 provisions that had been added to the plan?

20 A: He did, the plan that he was referencing at
21 that time. It was changed after that point.

22 Q: Okay. And that's what I want to go to next.
23 After the public hearing, there were additional
24 changes made to the plan?

25 A: That's correct.

1 Q: Okay. Made by members of county council?

2 A: That is correct, during the process of the
3 third reading of the ordinance.

4 Q: Okay. And I'd like for you to look at these
5 general provisions and tell the Court which
6 ones were changed after the public hearing and
7 before county council gave third reading
8 approval.

9 A: I'm looking at page 43 and the bottom says
10 DHEC-0937.

11 Q: Right.

12 A: And these changes happened, if I could be
13 allowed to elaborate, there was a motion to
14 adopt this plan and during the discussion
15 period of that motion is when these changes
16 were actually added, just for clarification of
17 the time of when this actually took place. I,
18 and I can elaborate if you need me to, but item
19 I on that page, Item J, Item K, Item M, Item
20 letter N, Item P, and then on the next page 44,
21 under the heading of general siting, that
22 second paragraph beginning with the words
23 construction and demolition landfills, that
24 paragraph was changed.

25 Q: Okay. How was that paragraph changed, the one

- 1 on page 44?
- 2 A: That was a minor change. That one in
- 3 particular did read in the plan that was made
- 4 public the night prior to that meeting, did
- 5 read that the county recommends a parcel size
- 6 of 100 acres and it was changed during the
- 7 third reading of the ordinance, excuse me, to
- 8 read, must be located on a minimal parcel size
- 9 of 100.
- 10 Q: Okay. Would that impact the Greeneagle
- 11 landfill?
- 12 A: That particular one, no, sir.
- 13 Q: Now, going back to the ones on page 43 that you
- 14 mentioned, were any of those added to the plan
- 15 as opposed to being modified? In other words,
- 16 were any of them added as new terms in the
- 17 plan?
- 18 A: Yes, some were modified as existing general
- 19 provisions, some were actually brand new and
- 20 added.
- 21 Q: Do you recall which ones were brand new and
- 22 added?
- 23 A: Item K on page 43, Item N on page 43, Item P on
- 24 page 43.
- 25 Q: And Item P goes on over to page 44?

1 A: Yes, sir, it does.

2 Q: And that was added in its entirety?

3 A: Correct.

4 **THE COURT:** All of those were added in their
5 entirety is what I understood.

6 **MR. HARMON:** Yes, Your Honor.

7 Q: Now, after all those changes had been made,
8 what happened at the meeting?

9 A: There was a vote to adopt that plan as the
10 final reading, the third reading.

11 Q: Okay. Was there any discussion about changing
12 the title of the ordinance at the February 28th
13 county council meeting?

14 A: I personally noticed that the county attorney,
15 when he read the name of the title of the
16 ordinance, I noticed a difference in the
17 language. Other than him reading the language
18 and me noticing it was different, there was no
19 other discussion.

20 Q: And when you say you noticed a difference, you
21 noticed a difference from what?

22 A: The previous first reading ordinance as well as
23 second reading ordinance of the solid waste
24 management plan referenced the term new solid
25 waste management plan and then at the third

1 reading of the ordinance, the word new was
2 removed and the word amended was added in its
3 place. And that was primarily the only
4 difference that I noticed.

5 Q: Okay.

6 MR. HARMON: Your Honor, that's all the questions I
7 have of Mr. Taylor.

8 THE COURT: Cross examination, Ms. Williams?

9 MR. TAYLOR - RECROSS EXAMINATION BY MS. WILLIAMS:

10 Q: Mr. Taylor, I do have a couple of questions to
11 ask you. I just need you to clarify for me.
12 I think you said K, Item K, N and P on page 43
13 were brand new items that were added to the
14 plan, is that correct?

15 A: One second, please. Correct. They were
16 requested to be put in the third reading.

17 Q: And then you identified some other provisions
18 before that and I think you said I, J, (m) and
19 P, is that correct, and tell me what were you
20 identifying when you identified those?

21 A: Just for clarification purposes, I and J were
22 not new but they were modified.

23 Q: Modified?

24 A: Yes, ma'am. And so that was what I was
25 referencing.

1 Q: Did you reference (m) at all?

2 A: If I did, I didn't intend to.

3 Q: So I and J were modified. They were there
4 previously but just changed a little bit,
5 correct?

6 A: Correct.

7 Q: And K, N and P were brand new items altogether,
8 is that correct?

9 A: Correct.

10 MS. WILLIAMS: That's all the questions I have,
11 thank you.

12 MR. HARMON: Just one or two follow-up questions,
13 Your Honor.

14 MR. TAYLOR - REDIRECT EXAMINATION BY MR. HARMON:

15 Q: When you say these were modified, do you mean
16 they were modified from the plan that you saw
17 for the first time on the night before the
18 public hearing?

19 A: That is correct and more specifically, they
20 were modified after the public hearing portion
21 of this plan.

22 Q: Just so the record's clear, you're not talking
23 about them being modified from the plan that
24 was attached to the second reading of the
25 ordinance, which is Petitioner's Two in this

1 case?

2 A: Correct. They were modified from the plan that
3 was made available the evening prior to the
4 February 28, 2007 meeting.

5 Q: Okay.

6 MR. HARMON: Thank you, Your Honor. That's all the
7 questions I have of Mr. Taylor.

8 THE COURT: Any follow up, Ms. Williams?

9 MS. WILLIAMS: One second, Your Honor.

10 THE COURT: Yes, ma'am.

11 MS. WILLIAMS: No questions, Your Honor.

12 THE COURT: Thank you, Mr. Taylor. You may step
13 down.

14 MR. TAYLOR: Thank you.

15 MR. HARMON: Your Honor, that concludes our case.

16 THE COURT: Thank you, sir. Ms. Williams?

17 MS. WILLIAMS: Yes, Your Honor. I'd like to call to
18 the stand, Kent Coleman.

19 THE COURT: You're under oath.

20 MR. COLEMAN: Thank you.

21 MR. COLEMAN - DIRECT EXAMINATION BY MS. WILLIAMS:

22 Q: Good morning, Mr. Coleman.

23 A: Good morning.

24 Q: I think it's already been established that you
25 work at DHEC, is that correct?

- 1 A: Yes, ma'am.
- 2 Q: And what is your title with DHEC?
- 3 A: I'm director of the division of mining and
- 4 solid waste management.
- 5 Q: And when did you become involved with the
- 6 Greeneagle permitting process?
- 7 A: Shortly after I started in this position at the
- 8 Department they were in the review process for
- 9 the permit.
- 10 Q: All right. When you say you were in the review
- 11 process for the permit, which part of the
- 12 review?
- 13 A: Well, the consistency review is ongoing.
- 14 That's one part of it.
- 15 Q: So you were part of the consistency review?
- 16 A: Yes.
- 17 Q: And did you review the 2007 York County Solid
- 18 Waste Management Plan?
- 19 A: I did.
- 20 Q: And did you review that plan for consistency
- 21 with the State Plan and with State Act and
- 22 regulations?
- 23 A: Yes.
- 24 Q: And what did you find? Did you find it to be
- 25 consistent?

1 A: I found there were statements in the plan that
2 I would not consider consistent but those
3 statements were not critical to my review and
4 decision on consistency.

5 Q: Okay. When you are reviewing a solid waste
6 management plan and there are provisions in it
7 that you would say were not appropriate for
8 that plan, what is your authority in regards to
9 that? I'm sorry, what is DHEC's authority?

10 A: Right. Well, under the Act, the Act gives DHEC
11 certain responsibilities and each counties
12 certain responsibilities. It is up to us to
13 look at the plan --

14 Q: Can you speak up just a little bit?

15 A: The Act outlines certain responsibilities for
16 DHEC and certain responsibilities for the
17 counties and part of my job in looking at the
18 plan is to review it in light of what the Act
19 requires from DHEC and what the Act requires
20 from the county government.

21 Q: All right. In reviewing a solid waste
22 management plan, does DHEC have the right or is
23 there a statute or regulation that you know of
24 that requires DHEC to invalidate a solid waste
25 management plan?

1 A: No, we do not have approval authority in the
2 Act.
3 Q: What authority do we have for a solid waste
4 management plan, does DHEC have?
5 A: We are required to review a county plan and
6 determine if our permitting decision will be
7 consistent with that plan.
8 Q: Okay. DHEC by this regulation is asked to
9 review a plan, is that correct?
10 A: Yes.
11 Q: So the county would submit a plan to us?
12 A: Right.
13 Q: To DHEC?
14 A: Right.
15 Q: We would review it. Is there anything else,
16 according to the regulation, that we do other
17 than review it?
18 A: No, no. According to the Act, we just review
19 it.
20 Q: Can DHEC comment, I mean, back to the county?
21 A: We can.
22 Q: But in terms of whether we can look at a plan,
23 if there's something inappropriate in the plan,
24 we don't have the authority to invalidate the
25 plan?

1 A: No, we don't. We may comment to the effect
 2 that the plan doesn't meet some requirement of
 3 the Act, it's missing something in terms of
 4 what the county's required to put in the plan
 5 under the Act, but we don't have any rejection
 6 or the authority to not approve that plan. If
 7 there's something in there or it's lacking
 8 something, that may be a bearing on our
 9 decision for consistency, but we do not review
 10 and reject plans.

11 Q: Let's talk about DON and consistency of the
 12 permit. Are there separate regulations for
 13 demonstration of need and also for consistency?

14 A: Well, there's a separate regulation for
 15 demonstration of need.

16 Q: And when I ask you these questions, I'm
 17 referring to the regulation upon which this
 18 permit was denied.

19 A: Okay.

20 Q: I'm not asking you about any new regulations.

21 A: Okay.

22 Q: So under demonstration -- well, tell us about
 23 demonstration of need. What does it require?

24 A: It require -- the Demonstration of Need
 25 regulation at the time of this decision

1 required that the county or the applicant or
2 whoever it may be, whoever the applicant is, is
3 to submit to us information about the location
4 of the facility. But basically the latitude
5 and longitude, and so we look at that. We
6 compare that information to other facilities
7 that are permitted in the state and we make a
8 determination on demonstration of need under
9 regulation as to whether the facility is
10 allowed based on a 10-mile planning area, the
11 maximum number of facilities that are allowed
12 and also the maximum yearly intake of waste
13 that would be allowed.

14 Q: So an applicant would have to demonstrate that
15 there is a need for the proposed landfill under
16 the regulation, is that correct?

17 A: They would have to submit to us information
18 that would allow us to evaluate whether it
19 meets the requirements of the Demonstration of
20 Need regulation.

21 Q: In terms of what the applicant would need to
22 submit, just go over for us again what that
23 information is specifically.

24 A: As far as demonstration of need goes, it's
25 really just the location. That's the basic

1 requirement.

2 Q: When you say location --

3 A: The type of facility, of course, that they're
4 trying to permit. They have to indicate what
5 kind of solid waste management facility they're
6 asking for and then the location of that
7 facility.

8 Q: All right. So when you say the location, you
9 mean the proposed location of where the
10 facility will be placed?

11 A: That's correct.

12 Q: Okay. And then is there something else, like
13 coordinates?

14 A: The latitude and longitude that I mention.
15 That's how they -- that is the primary method
16 by which they can indicate the location.

17 Q: All right. And you mentioned about the maximum
18 number of facilities that could be placed in a
19 planning area and how many facilities is that?

20 A: It would be two facilities per planning area.

21 Q: Okay. Now, is that two commercial facilities
22 or a county facility and two commercial
23 facilities?

24 A: At that time, it would have been a commercial
25 facility which means they take waste from

1 outside their area.

2 Q: So going back to that I'm asking you about the
3 old regulation upon which this permit was
4 ultimately denied. The regulation was that you
5 could have a maximum of two commercial
6 facilities?

7 A: Right.

8 Q: That did not take into consideration a county
9 facility. They could have three facilities in
10 that area, is that correct?

11 A: That's possible.

12 Q: As long as only two were commercial facilities?

13 A: That means that they're open to taking waste
14 from whomever needs it, yes.

15 Q: So would you say that this deal in approval
16 process is a very simple process?

17 A: Yes, it is.

18 Q: There's nothing complicated about it?

19 A: No, it's very simple.

20 Q: And would you -- and would you say that this
21 process takes into consideration the county's
22 capacity need for a disposal facility?

23 A: When saying the maximum allowable yearly intake
24 for a facility, it looks at the waste that's
25 generated by the counties or county, depending

1 on how many it is in the planning area.

2 Q: But in making your -- in giving your approval
3 for a demonstration of need, DHEC does not ask
4 the county what their capacity needs are?

5 A: No.

6 Q: All right. Now, in talking about a consistency
7 determination, where does that fall in the
8 process of landfill permitting, issuing the
9 landfill permit?

10 A: Under the Demonstration of Need regulation in
11 effect at the time, it would be -- it would
12 have been after the demonstration of need
13 decision.

14 Q: So that would be the second step?

15 A: And then it would be concurrent with the
16 issuance of the permit.

17 Q: Under consistency, would you say that the two
18 properties are separate and distinct?

19 A: Yes.

20 Q: Talk to us a little bit about -- could you make
21 your consistency determination based on what's
22 in the solid waste -- a county's solid waste
23 management plan, is that correct?

24 A: Yes.

25 Q: So under the Act, what is required by the

1 county to include in their solid waste
2 management plan?

3 A: Well, in general, without going through it item
4 by item, they are required to show, in planning
5 form, the waste that they generate and the
6 ability and method by which they would dispose
7 of that waste, what types of facilities. They
8 are also required to plan for the future for
9 anticipated needs in the Act. The Act,
10 specifically, it says that the county has to
11 plan for their needs.

12 Q: In your review, your consistency review for the
13 Greeneagle Landfill, did you find that York
14 County had met its responsibility under the Act
15 in regards to what they included in their solid
16 waste management plan?

17 A: Yes.

18 Q: Okay. Now, there's been some discussion about
19 changes that were made to the plan. I think
20 Mr. Taylor just testified to there were some
21 brand new items that were added to the plan and
22 also some items that had been modified during
23 the third reading. If you'll turn to Joint
24 Exhibit Twelve, page 43, and it's DHEC page
25 0937. I want to take a look at these items

1 that he listed. Let's look at the modified
2 items first, which he said were letter I and
3 letter J. Can you read those two out loud
4 please?

5 A: Item I, no landfill should be located within or
6 in close proximity, 200 feet, to any river,
7 stream, creek or lake.

8 Q: Okay. Let me stop you there. In your review,
9 consistency review, of the Greeneagle proposed
10 landfill, is that an item that would have any
11 bearing or effect on your consistency
12 determination?

13 A: No.

14 Q: Okay. Go ahead and read J.

15 A: J, no landfill shall be located within or in
16 close proximity, 100 feet, of any 100 year
17 flood plain.

18 Q: Okay. The same question, would that item have
19 any bearing on your consistency determination?

20 A: No.

21 Q: Okay. Let's go to K, which is a brand -- which
22 Mr. Taylor said was a brand new item in the
23 plan.

24 A: K, no landfill shall be within 1,000 feet of
25 any residence existing at the time the landfill

1 receives a county special exception permit.

2 Q: Okay. Same question, did that have any bearing

3 on your consistency determination?

4 A: No.

5 Q: Okay. Let's look at Item N, if you'll read

6 that for us?

7 A: No new landfills in York County shall exceed a

8 height of 90 feet above the elevation of the

9 landfill site before construction was

10 commenced.

11 Q: Did that have any bearing?

12 A: No.

13 Q: Okay. Now, let's look at P. If you'll read

14 that for us.

15 A: York County shall hold a study and an analysis

16 to be performed to determine the need for

17 additional property operated landfills in the

18 county. And following such study, the York

19 County Council shall determine the need for the

20 new or additional privately operated landfills

21 in the county and amend this plan based upon

22 its determination of need for privately

23 operated landfills in the county.

24 Q: Did it have any bearing?

25 A: No, it didn't. It indicates that the county is

1 continuing to plan, which is a responsibility
2 that the county has, but it didn't have a
3 direct impact on our decision for consistency.

4 Q: All right. In light of what you've already
5 said, in terms of that DHEC doesn't have the
6 authority to invalidate a plan, well, would you
7 say that these items are, and you might have to
8 go through them one by one --

9 A: Sure.

10 Q: But the ones that you read, are the statements
11 inconsistent with the State Plan or with the
12 Act or regulations that are applicable in this
13 case?

14 A: No. They're generally consistent with our
15 regulations, as far as the buffers and
16 distances that are talked about. The flood
17 plains might be different, but the county may
18 impose some additional requirements by
19 ordinance that are different, you know, maybe
20 more stringent than state regulation, that's
21 possible.

22 Q: And so they're free to do that if they'd like?

23 A: They can.

24 Q: Okay. All right. Let's turn to page 59 in
25 Joint Exhibit Twelve, and that's DHEC page

1 0953. And if you'll read the letter(d) for us?

2 A: Okay. (d), severability?

3 Q: Yes.

4 A: Should any provision of this amended York

5 County Solid Waste Plan or any application

6 thereof being invalid or unenforceable, the

7 remainder of this amended York County Solid

8 Waste Management Plan and other application of

9 such provisions shall not be affected thereby.

10 Q: Can you explain to the Court what that would

11 mean to you, as someone who reviewed this plan

12 and read that portion?

13 A: Well, it's a severability clause, it's typical

14 of many kinds of documents. But it means that

15 their intention when they developed this

16 document was that if one item is found to be in

17 some way inconsistent or unenforceable, it

18 would not impact all elements of the plan.

19 Q: And is that, indeed, how you viewed this plan,

20 if you came across a provision that didn't kind

21 of comport with what DHEC's regulations were,

22 did you ignore that portion?

23 A: Yeah. Particularly, in light of the fact that

24 we do not have approval or rejection for either

25 plan. We take what's in the plans that is

1 consistent with the law and requirements and we
2 look at those portions.

3 Q: What do you think about what has been brought
4 here today that DHEC based their consistency
5 determination on one sentence in this plan?

6 A: That's a mischaracterization on how we made our
7 decision.

8 Q: Can you elaborate a little bit more?

9 A: Well, I think as our process and procedure has
10 been developed on this matter, we certainly --
11 it's become clear that that -- if it was ever
12 unclear, it's certainly not unclear now, that
13 that's not appropriate. We look at a plan as
14 a whole, we make sure that the county is
15 fulfilling its responsibilities under the Act,
16 in the plan. And if those responsibilities are
17 fulfilled and they have appropriately planned
18 for their -- to meet their responsibilities for
19 disposal and management of solid waste, then we
20 take the elements of that planning process that
21 are consistent with the Act and we use those to
22 make our decision as to whether any new
23 facility would be consistent with those
24 planning efforts.

25 Q: And in your view of the York County, 2007 York

1 County Solid Waste Management Plan, is it your
2 view that the county met its responsibilities
3 under the Act?

4 A: Yes.

5 Q: And is it your contention that they have done
6 proper planning for their county?

7 A: Yes.

8 Q: And what was your final determination regarding
9 consistency?

10 A: We found the Greeneagle proposal was
11 inconsistent with the county's plan.

12 Q: And that was based on your review of the plan
13 in its totality?

14 A: That's correct.

15 Q: There were some questions asked about, I think
16 they were asked of you, were you aware that the
17 Greeneagle proposed landfill had received
18 zoning approval, is that correct?

19 A: I was asked those questions, yes.

20 Q: Even in light of the fact that Greeneagle
21 received zoning approval, which would have come
22 from the county, does that mean that because
23 they received zoning approval that they will
24 get a permit, a landfill permit from DHEC?

25 A: No.

1 Q: Because DHEC -- and is that because DHEC is the
2 ultimate decision maker when it comes to
3 issuing a landfill permit?

4 A: That's right.

5 Q: So DHEC would have been aware of the zoning
6 approval and we would have looked into the fact
7 -- DHEC would have looked into the fact whether
8 the zoning was consistent -- I mean, whether
9 the proposed landfill was consistent with the
10 zoning, local zoning?

11 A: Right.

12 Q: Is that correct?

13 A: Yes. The Act has that as a separate item,
14 aside from the consistency, that we have to
15 determine that the proposed facility meets the
16 requirements of the local zoning.

17 Q: But that's just one component, is that correct?

18 A: That's one component, yes.

19 Q: We'll go over this again about the -- Mr.
20 Harmon asked you about is there a time that we
21 can do consistency determinations, and I
22 believe that you answered that the statute does
23 speak to a time frame. Just to reiterate, can
24 you explain how DHEC interprets 244-96-290(f),
25 and I think, do you have the -- is that the

1 statute?

2 A: Yes, it is. It says -- just to paraphrase and
3 use certain pieces of this section, it says, no
4 permit to construct a landfill maybe issued
5 unless it's consistent with the county's plan.
6 And so that decision may or may not be issued,
7 which means that is a -- there is a point in
8 time when we issue a permit, and so at that
9 point in time when we issue the permit, that is
10 when we compare and make sure that the
11 consistency is met at that time.

12 **THE COURT:** We're still talking about the rules
13 and statutes as they apply to Greeneagle?

14 A: Yes, sir.

15 Q: Well, to follow up on the Judge's question,
16 that statute is still in effect, is it not?

17 A: Yes, it is. It has not been changed throughout
18 this process.

19 Q: All right. The only thing that has been
20 changed are the regulations?

21 A: That's correct.

22 Q: Okay. But the statute remains the same?

23 A: There have been some -- it's not -- as far as
24 the timing of those -- of the actual
25 consistency decision versus other information

1 that was provided by the Department, it's very
2 common for applicants and others to ask us
3 questions about, well, where does this stand,
4 where does that stand, or what's going on with
5 this, at certain times for them to just be
6 aware of what's going on and know what they can
7 and cannot try to impact. In other words, what
8 issues stand before them at that particular
9 moment in time. That's very common when we
10 issue all sorts of different information to
11 people. And that's what the preliminary
12 consistency was, it's information for someone
13 who's asked us a question. And we were very
14 careful to also indicate that that could
15 change. And, in fact, in this case we even
16 knew more than that, we knew that there was a
17 very good possibility of change, and which we
18 indicated that as well.

19 Q: And there was also discussion between Mr.
20 Taylor and Ms. White regarding the fact that
21 there was a new plan, an amended plan that was
22 forthcoming, is that correct?

23 A: Yes. That's correct.

24 Q: And we -- DHEC admits, wouldn't you say, I
25 mean, we can't deny it, but that we did issue

1. a preliminary consistency determination based
2 on the Catawba -- 1994 Catawba Plan, is that
3 correct?

4 A: Right, right.

5 Q: Okay.

6 A: And it's unfortunate that that attempt to
7 communicate, assist and be courteous is twisted
8 into something that is misleading and it's
9 unfortunate that it's seen that way.

10 Q: But let's look at, you know, our issuance of
11 the preliminary consistency or the actual
12 consistency altogether. Did DHEC have a choice
13 in what statutes and regulations that they have
14 to comply with?

15 A: No. The regulation or statute applies to the
16 -- that's out there applies to the decision
17 that we make and we don't have any option not
18 to follow that.

19 Q: Okay. So at the time that DHEC issued the
20 final consistency determination, was the 1994
21 Catawba Plan in effect?

22 A: No.

23 Q: So therefore, if we had issued a consistency
24 determination for Greeneagle stating that it
25 was consistent with the 1994 Catawba Plan, that

1 would have gone against our statute 244-96-
2 290(f), is that correct?

3 A: That's correct. Yes.

4 Q: So DHEC chooses to comply with the Act?

5 A: That's correct.

6 Q: Okay. Speaking of the proposed facility,
7 Greeneagle's proposed facility, there was some
8 question posed to you about the existing
9 facility in the plan. In other words, the plan
10 references that their existing facilities are
11 adequate.

12 A: Right.

13 Q: Can you -- if you'll turn to page 47, under
14 Joint Exhibit 12, that's DHEC page 0941. Right
15 above the letter (d), will you read that, just
16 that little short two sentence paragraph?

17 A: The existing landfills, that's where you're
18 talking about?

19 Q: Yes.

20 A: The existing landfills currently meet the C&D
21 disposal needs of this service area, therefore,
22 no new landfills are needed for the service
23 area.

24 Q: Okay. At the time that this solid waste
25 management plan was submitted to DHEC, was

1 Greeneagle Incorporated an actual landfill?

2 A: No.

3 Q: Did they have their application in?

4 A: No.

5 Q: Okay. So after reading this sentence, it says
6 existing landfills, would you say that the
7 Greeneagle proposed landfill was an existing
8 landfill?

9 A: No.

10 Q: Well, therefore, in your view, would it be a
11 new landfill?

12 A: Yes.

13 Q: So it wouldn't have met this, I guess,
14 characterization of what you just read?

15 A: No, it doesn't fall under that.

16 Q: All right. Okay. I guess, getting back again
17 to the DON regulation and consistency
18 regulation. Can we -- I mean, you've already
19 stated that they are two separate regulations,
20 is that correct?

21 A: That's correct.

22 Q: And both regulations -- or would you say that
23 both regulations have to be complied with?

24 A: Yes.

25 Q: So if we were to issue a DON approval,

1 demonstration of need approval, because the
2 regulation is entitled, Demonstration of Need,
3 does that mean that we can ignore the
4 consistency part of the review process?

5 A: No. The Act establishes that as a separate
6 item and, you know, we feel that that item in
7 the Act has meaning.

8 Q: Do you think that because the word, need, is
9 used in the title of the Demonstration of Need
10 regulation that it causes confusion when it
11 comes to what that word means, in terms of the
12 solid waste management plan?

13 A: Sure.

14 Q: But is it true that the word, need, in the
15 Demonstration of Need regulation is a little
16 bit different type of need under the solid
17 waste management plan?

18 A: Yes. The Act uses that word and requires us to
19 promulgate our Demonstration of Need regulation
20 and so, therefore, it's titled that, per the
21 Act.

22 Q: But it doesn't really speak to capacity need,
23 in terms of the county planning for its waste
24 disposal?

25 A: No. It establishes more of a regional concept

1 at a state level to look at, you know, disposal
2 for a broader area than just one county.

3 Q: All right. Now, according to your knowledge,
4 what you know about the Act and the regulation,
5 is there a definition, I mean, like a
6 dictionary definition of need?

7 A: No.

8 Q: All right. I want to talk about DHEC's
9 conclusion that the Ordinance 207, which is the
10 solid waste management plan, was adopted
11 properly, because that word was used in the
12 letter that you wrote to the applicant to give
13 him the final consistency determination.
14 Explain to the Court what you meant when you
15 said properly.

16 A: Well, in adopting ordinance, there's a
17 procedure that the counties follow. And,
18 although I'm not a county official, I do know
19 a lot about that procedure. And there's, you
20 know, in this case they were required to have
21 three readings, and they did that. And I
22 looked at documentation to show that that was
23 done.

24 Q: And what was that documentation?

25 A: The county provided us with a copy of the

1 ordinance with the signatures of the county
2 council chairman and the other county
3 officials. They documented the dates of the
4 three readings that occurred. And, also, as I
5 mentioned earlier, I did listen to the meeting,
6 the third reading, that meeting, listened to
7 the audio of that meeting to try to determine
8 if it was clear that the county's intent and
9 the council's intent was to adopt a new solid
10 waste management plan and that they knew what
11 it included.

12 Q: Okay. So am I correct when I say that when you
13 said properly, in the letter, that you were
14 referring to the fact that it had three
15 readings and it was adopted by the county?

16 A: Yes.

17 Q: All right. Now, since you said new, in your
18 last answer and I want to expound that a little
19 bit because --

20 A: Did I saw new plan?

21 Q: You said new.

22 A: Okay.

23 Q: At least that's what I thought I heard. So
24 since you said that, I just want you to clarify
25 DHEC's opinion or how we view the word new when

1 it comes to a solid waste management plan -- I
2 mean, yes, so --
3 A: It's easy to call it a new plan because it was
4 changed, you know. But it actually -- and I
5 think that's why that title changed in the
6 ordinance is because it was, basically, not
7 really recognized as being a significant word.
8 And I think that became -- the council somehow
9 became knowledgeable that their calling it a
10 revised plan versus new plan is perhaps
11 important. And we-- DHEC viewed this as a
12 revised plan. When the Act was -- back in the
13 early 90's when the Act was passed, counties
14 were required to submit initial plans. And
15 somewhere around '94, I forget the exact time
16 frame, but DHEC had acknowledged that all
17 counties had submitted and were covered by a
18 county plan so they had met that requirement of
19 the law. And York County is included in that,
20 one of those 46 counties. And they had chosen
21 to enter into a regional with other counties,
22 which was allowed under the Act. And that
23 satisfied the requirement for them to have a
24 plan. Beyond that, anything they did would be
25 a modification of their initial plan.

1 Q: So the fact that they had previously called the
2 plan a new plan, did that alarm DHEC?

3 A: No.

4 Q: And was it significant to DHEC that it was
5 called a new plan?

6 A: It wouldn't have mattered to us if they had
7 called it that in the end, because we knew it
8 was a revised plan and viewed it that way.

9 Q: And that's how you would have looked at it?

10 A: That's how we would have looked at it, yes.

11 MS. WILLIAMS: Your Honor, could I have just a
12 moment?

13 THE COURT: Yes, ma'am.

14 Q: Just to reemphasize what the county role is, in
15 terms of what they need to include in this
16 solid waste management plan, I want you to turn
17 to 244-96-80 and read items 80(a) and read
18 item number three, just so the Court can get a
19 clear picture of what the counties are
20 responsible for?

21 A: Okay. 44-96-80?

22 Q: Yes, A, number three.

23 A: 44-96-80(a)(3). It starts with an analysis, is
24 that --

25 Q: Yes. But read the last sentence under (a) and

1 then proceed to number three.

2 A: Okay. This plan must provide for public
3 participation and include at a minimum the
4 following, and then item three is one of those
5 items, an analysis of the existing and new
6 solid waste facilities which will be needed to
7 manage the solid waste generated within that
8 county or region during the projected 20 year
9 period.

10 Q: I have no further questions.

11 THE COURT: Mr. Harmon.

12 MR. HARMON: Could I have just one second?

13 THE COURT: Yes, sir.

14 MR. COLEMAN - CROSS EXAMINATION BY MR. HARMON:

15 Q: You indicated in your testimony that you found
16 some statements in the York County Plan, the
17 2007 Plan that we've been discussing, that you
18 did not consider consistent with state law or
19 DHEC regulations, isn't that correct?

20 A: Yeah, I believe I did.

21 Q: Okay. Did you notify the county that you found
22 some of the statements in their plan
23 inconsistent?

24 A: I don't think we commented on this particular
25 plan that I recall. I didn't see anything in

1 the file.

2 Q: Okay. Did you do anything to notify the

3 county?

4 A: No.

5 Q: Of your findings?

6 A: No.

7 Q: Now, you were asked some questions about the

8 Demonstration of Need regulation and how you

9 apply that regulation. And as I understood

10 your testimony, you responded to a question

11 that the Demonstration of Need regulation does

12 not include what the county views its capacity

13 needs to be. Do you recall that?

14 A: Yes.

15 Q: Okay. And DHEC developed that regulation, did

16 they not?

17 A: We were part of a group that developed the

18 regulation, yes.

19 Q: Well, DHEC was the entity, the governmental

20 entity, that developed the regulation?

21 A: We submitted it to the Legislative Council.

22 Q: Okay. And it, ultimately, was approved by the

23 legislature or else it timed out and became a

24 regulation?

25 A: Yes.

1 Q: Okay. And you could have included county
2 capacity information in that regulation when it
3 was developed, could you not?

4 A: I guess in the sense that, you know, you could
5 probably come up with an endless list of things
6 that could have been considered, yes, sure.

7 Q: But it wasn't included in that?

8 A: No.

9 Q: And your earlier testimony today was that the
10 Demonstration of Need regulation, as a whole,
11 defines need?

12 A: I think I said it that way, yeah. I think,
13 maybe, I need to clarify that it defines or
14 maybe it would be better to say that it
15 satisfies the requirements of the Act
16 promulgated in the Demonstration of Need
17 regulation. And there is no other definition
18 of need in the Act.

19 Q: Okay. And so what you have -- what we have is
20 a regulation that, overall, defines need?

21 A: The legislature decided that this met the
22 requirements of the Act and promulgated the
23 Demonstration of Need regulation and it was
24 passed.

25 Q: Okay. Now, let me ask you this question in

1 reference to your consistency determination
2 that you made under the plan.

3 A: Okay.

4 Q: If the plan had said one new C&D facility may
5 be located in the northwest quadrant, would you
6 have found that Greeneagle was consistent with
7 the local plan?

8 MS. WILLIAMS: Your Honor, I object. It's
9 speculative and I think it's been testified
10 that he reviewed the entire plan and just to
11 ask him a question about one particular thing,
12 I don't know that --

13 THE COURT: I'm going to overrule your objection.

14 MS. WILLIAMS: All right.

15 THE COURT: Thank you, ma'am.

16 A: Would you repeat the question?

17 Q: Yes. If the York County Plan, as in previous
18 versions of the plan, had said that one new C&D
19 facility can be located in the northwest
20 quadrant of the county, would you have found
21 the Greeneagle application consistent with the
22 local plan?

23 A: No, not based on that sentence.

24 Q: Okay. What else would you have considered?

25 MS. WILLIAMS: Again, speculative, Your Honor.

1 THE COURT: Overruled.

2 A: We would consider every aspect of the plan and,
3 particularly, in regard to what the Act
4 requires the county to include.

5 Q: Okay. Let's assume for the purpose of my
6 question that everything else remained the same
7 in the York County Plan except for the
8 northwest quadrant. And it said -- and you've
9 already reviewed the plan and all those other
10 factors that the plan contained. It then said
11 -- the plan itself said, one new landfill, one
12 new C&D landfill can be located within the
13 northwest quadrant. Would you have found
14 Greeneagle consistent?

15 A: No.

16 MS. WILLIAMS: I didn't hear that.

17 A: No.

18 MS. WILLIAMS: Okay.

19 Q: Were you aware when you were making the
20 consistency determination that an ordinance had
21 been read for first reading that would have
22 made the Greeneagle landfill consistent?

23 A: No.

24 Q: You were not aware of that?

25 A: No.

- 1 Q: Now, had the county granted special exception
- 2 zoning approval for Greeneagle at the time you
- 3 made your consistency determination?
- 4 A: I think I recall, just based on earlier
- 5 testimony, that they had obtained that, I'm not
- 6 certain.
- 7 Q: Okay. Could that be viewed as an existing
- 8 facility that had been approved by York County
- 9 for zoning purposes?
- 10 A: No.
- 11 Q: So your view of an existing facility is one
- 12 that's actually operating?
- 13 A: Or at the minimum, has a permit from DHEC.
- 14 Q: Okay. Now, during Ms. Williams' questioning of
- 15 you she asked you to look at page 47 in Joint
- 16 Exhibit Twelve. It has at the bottom, DHEC-
- 17 0941, do you recall that?
- 18 A: Yes.
- 19 Q: And you recall reading it to the record, the
- 20 sentence directly above Item D?
- 21 A: Yes.
- 22 Q: Okay. You look back on the previous page
- 23 that's for the northeastern sector of York
- 24 County, is it not?
- 25 A: Yes, it's titled Northeastern Service Area.

- 1 Q: Yes. And Greeneagle's not even located in the
2 northeast service area, is it?
- 3 A: I'm not sure at this point.
- 4 Q: You did the consistency review for this
5 proposed landfill --
- 6 A: Yes, sir.
- 7 Q: -- and you're not sure which quadrant it's
8 located in?
- 9 A: I did it a year and a half ago. If you'll give
10 me a little bit of time, I could -- yeah,
11 that's correct.
- 12 Q: It's in the northwest quadrant?
- 13 A: That's right.
- 14 Q: Okay. And so that language was not applicable
15 to the northwest quadrant that you read into
16 the record earlier?
- 17 A: Well, the plan certainly didn't include it in
18 that quadrant. The county's plan includes that
19 language in the northeastern quadrant.
- 20 Q: Right.
- 21 A: That's correct.
- 22 Q: Let me ask you to look at page 48, at the
23 bottom it has DHEC-0942.
- 24 A: Okay..
- 25 Q: And let me ask you to read the last paragraph

1 on that page.

2 A: Okay. Item D, page 48, Northwestern Service
3 Area, and you want me to read the last
4 paragraph?

5 Q: The last paragraph, please.

6 A: Construction and demolition debris waste from
7 this area is generally transported to and
8 disposed of at the existing York County
9 landfill. The existing landfills currently
10 meet the C&D disposal means of this service
11 area, therefore, no new landfills are needed
12 for the service area.

13 Q: Did you evaluate whether or not there were
14 existing landfills in the northwest quadrant,
15 existing C&D landfills?

16 A: Not necessarily, no. That's not -- that's not
17 critical.

18 Q: It's not critical to the determination of
19 whether or not additional facilities may be
20 needed in the northwest quadrant of the county?

21 A: No.

22 Q: If York County passes an ordinance, goes
23 through first, second, third reading, as you
24 reviewed the ordinance for passage of the 2007
25 Plan, if they promulgate an ordinance that says

1 Greeneagle can locate in the northwest
2 quadrant, would you consider it consistent?

3 **MS. WILLIAMS:** Objection, speculative.

4 **THE COURT:** Let me rule on this objection. I'm
5 sorry. I was trying to make
6 notes on this.
7 Repeat that
8 question, please,
9 sir.

10 **Q:** If York County passed an ordinance, went
11 through the three reading process, promulgated
12 an ordinance that said Greeneagle can locate --
13 we need an additional landfill in the northwest
14 quadrant, would that make Greeneagle consistent
15 with the local plan?

16 **MS. WILLIAMS:** Again, Your Honor, speculative and
17 also relevant. I mean, he did not review an
18 ordinance that isn't in existence.

19 **MR. HARMON:** He did not, but there has been
20 testimony during the course of this trial that
21 an ordinance was introduced and it was
22 deferred, and it's still sitting there
23 deferred, that would do what I am asking him a
24 question about.

25 **THE COURT:** I overrule the objection.

1 A: It would not make the application consistent
2 with the county plan, that ordinance would not,
3 as a separate ordinance. There is a language
4 in the Act that says permittee must also be
5 consistent with the local ordinances. And so
6 I think that -- review of that issue would be
7 a little bit more complicated and have to be
8 done under, you know, the idea that it would be
9 an applicable ordinance and we would have to
10 figure that out. I think that's a fairly
11 complicated question.

12 Q: Okay. Well, let me --

13 THE COURT: And I agree. I don't want you to pursue
14 that any further because I think we've reached
15 a limit on that.

16 MR. HARMON: Thank you, Your Honor.

17 Q: Now, when you were discussing the Demonstration
18 of Need regulation with Ms. Williams, you
19 indicated that it was more of a regional
20 approach to need, if I understood your
21 testimony correctly. Do I understand that
22 correctly?

23 A: Yeah, the Act has language, and I can't recall
24 specifics, but I think it was in the beginning
25 of the Act, in particular, that talks about a

1 concept of regionalization of landfills and
2 that was a component of the thought process
3 during the DON regulation development.

4 Q: And, in fact, the Act, itself, contains a
5 provision that indicates that it's a policy to
6 encourage local governments to pursue a
7 regional approach to solid waste management.
8 Is that what you were referring to?

9 A: Yes. I recall that from the Act, yes.

10 Q: Okay. And so the DON regulation, itself, is
11 aimed at that purpose or that policy from a
12 regionalization concept?

13 A: Well, it's not aimed at solely implementing
14 that, but it's aimed to be consistent with
15 following that idea.

16 Q: Okay. And so allowing counties to determine
17 need within the county would not be in accord
18 with the regionalization concept of that
19 policy, would you agree with that?

20 A: I think it depends on what the plan says.

21 MR. HARMON: That's all the questions I have, Your
22 Honor.

23 THE COURT: Ms. Williams.

24 MR. COLEMAN - REDIRECT EXAMINATION BY MS. WILLIAMS:

25 Q: Mr. Coleman, I want to go back to this concept

1 of the demonstration of need defines need.

2 A: Okay.

3 Q: I think that you clarified that or you
4 expounded upon it earlier to say that what you
5 were really trying to say that it met the
6 requirement that DHEC promulgate the regulation
7 for the need, is that correct?

8 A: Yes.

9 Q: Would it be more accurate to say, and just let
10 me know. Would it be more accurate to say that
11 the Demonstration of Need regulation does not
12 define need, but what it does is it sets out
13 what an applicant needs to demonstrate to
14 receive approval, demonstration of need
15 approval?

16 A: Yes. The Demonstration of Need regulation
17 outlines the specifics of what is needed to
18 meet demonstration of need as referred to in
19 the Act.

20 Q: Let's look at -- Mr. Harmon was asking you
21 about the different quadrants that were spoken
22 about in the solid waste management plan. And,
23 I think, he directed you to -- okay, to the
24 northeast quadrant which begins on page 46 of
25 Joint Exhibit Twelve, and it spills over into

1 page 47.

2 A: Yes.

3 Q: Okay. All right. And then let's look at --
4 well, I'm going to ask you to look at each
5 quadrant that is spoken about in this section.

6 A: Okay.

7 Q: And tell me if it has, virtually, the same
8 conclusory statement at the end of each
9 quadrant statement regarding need.

10 A: Yeah. I mean, there's some variation in the
11 sentences depending on the area, but they reach
12 the same conclusion.

13 Q: Which is?

14 A: Which is that they have adequate capacity and
15 have met their responsibilities for planning
16 under the Act.

17 Q: And then no new landfills are needed?

18 A: No new landfills.

19 Q: Now, let's look at page 49, which is DHEC page
20 0943. At the top of the page, number four,
21 conclusion?

22 A: Okay.

23 Q: And read the first sentence?

24 A: Currently, in York County, 122,000 tons of C&D
25 disposal capacity is permitted and based on

1 waste generation projections will adequately
2 serve the county through 2011.

3 Q: Okay. Interpret that for us, what is that
4 saying?

5 A: They're saying that under the currently
6 permitted facilities that are already in the
7 county, they have 122,000 tons of capacity,
8 which means each year they can take 122,000
9 tons. And then it says that, based on the
10 amount of waste that is generated in the county
11 and that will be generated in the near future,
12 anyway, it says that that is adequate and they
13 can handle that.

14 Q: All right. Now, let's read the next sentence.
15 Yeah, read the next sentence.

16 A: Prior to year 2012, the York County landfill
17 will need to expand its landfill capacity in
18 order to provide sufficient disposal capacity
19 in future years.

20 Q: Okay. So are they saying here that they will
21 handle any additional capacity with the
22 landfill that they already have in the county?

23 A: That's what they're saying, yes.

24 Q: Okay. And then read the last sentence.

25 A: As development and growth continues, the county

1 will need to closely monitor waste disposal
2 rates that are being generated in the county
3 and amend the plan as necessary to provide for
4 future needs of C&D waste.

5 Q: Okay. Is this what they're charged to do under
6 the Act?

7 A: Yes.

8 Q: To continue to analyze what their needs are --

9 A: Right.

10 Q: -- regarding the Act?

11 A: They have the responsibility of monitoring and
12 providing for that capacity.

13 Q: Now, going back to the question that Mr. Harmon
14 asked you about was it critical -- was it not
15 critical for you to look at the northwest
16 quadrant.

17 A: Right.

18 Q: Why wasn't that critical?

19 A: Well, we talked about the regional concept that
20 the Act encourages and that's what this plan
21 does. It does just that by recognizing that
22 the existing facilities in the county do -- not
23 locating one in every single quadrant of the
24 county are adequate, as a region, to bring that
25 waste into those facilities. And they have

1 adequate yearly capacity to handle that.

2 Q: And so whenever DHEC reviews the solid waste
3 management plan, we're -- are we looking to see
4 if there is a landfill in each quadrant of the
5 county or are we looking to see if there is a
6 sufficient number of landfills in the county
7 overall?

8 A: We're certainly not looking for one in every
9 quadrant. And, as a matter of fact, we may not
10 even be looking for one in each county. There
11 could be one outside the county that they have
12 used, they have contracts with and they're
13 planning -- for planning purposes, they have
14 made arrangements to handle their
15 responsibilities of waste disposal and,
16 specifically, outside the county.

17 Q: Isn't it correct, you stated earlier that under
18 the DON regulation that DHEC's intent was to
19 provide for adequate capacity, not excess
20 capacity?

21 A: That's correct.

22 Q: And to have a landfill in every quadrant of
23 York County, would that provide for excess
24 capacity?

25 A: It would.

- 1 Q: And you were also asked if you allow the county
2 to determine need, and I don't remember the
3 last part of the question, but I know there was
4 a question posed to you about allowing the
5 county to determine need. Would you say that
6 in the solid waste management plan that the
7 county determined need or that they set forth
8 an analysis of their need?
- 9 A: They did set forth an analysis of their need.
10 And that is what they are responsible for doing
11 and that's what they did in this plan.
- 12 Q: But, who's the ultimate decision maker when it
13 comes to who will receive or what entity will
14 receive a landfill approval?
- 15 A: DHEC.
- 16 Q: And you believe -- do you feel, is it your
17 contingency that DHEC met its requirement in
18 the Act, in this instance?
- 19 A: Yes. We made the final decision that the
20 requirements of the Act and the regulations
21 were met in this case -- were not met in this
22 case.
- 23 Q: And did DHEC delegate its decision to the
24 county?
- 25 A: No, we did not.

1 Q: No further questions.

2 MR. HARMON: I have nothing further, Your Honor.

3 THE COURT: Very, well. We've reached 12:30, do you
4 want to break for lunch now and come back at
5 quarter of 2:00? What are your wishes?

6 MS. WILLIAMS: Oh, Your Honor, I'm sorry. I rest my
7 case. I have no other witnesses.

8 THE COURT: Oh, okay. Okay. Still, do you want to
9 get lunch before you make your final arguments
10 or do you want to do it now?

11 MR. HARMON: Your Honor, if we may --

12 THE COURT: You got something in reply?

13 MR. HARMON: No, I don't, Your Honor. If we cannot
14 agree on this, Ms. Williams and I talked about
15 this earlier, we prefer to present proposed
16 orders to you, if you would -- if that would be
17 acceptable to the Court?

18 THE COURT: In lieu of argument?

19 MR. HARMON: In lieu of argument, yes, sir.

20 THE COURT: That's fine with me.

21 MS. WILLIAMS: I'm agreeable, Your Honor.

22 THE COURT: Any parting shots? Nothing left?

23 MR. HARMON: I think we'll leave well enough alone.

24 THE COURT: Very well, then, we'll be adjourned.

25 (There being nothing further, the hearing adjourned

1 at 12:38 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of Three Hundred Sixty-Three (363) 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 May 13, 2010.


Suzanne R. Bryant
Court Reporter

Notary Public for South Carolina
My Commission Expires: September 21, 2014