

Received
AUG 11 2008
WASTE MANAGEMENT

ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

_____)
PA Waste, LLC, Appellant)
175 Bustleton Pike)
Feasterville, PA 19053)
215-953-2726) DOCKET NO.:

V.)

Commonwealth of Pennsylvania,)
Department of Environmental)
Protection, Appellee)
_____)

NOTICE OF APPEAL

PA Waste, LLC, (hereafter "Appellant"), by and through its undersigned counsel, hereby files this Notice of Appeal pursuant to 38 P.S. §7514 and 2 PA.C.S. Chapter 5A, to the Environmental Hearing Board, and avers the following in support thereof:

I. INTRODUCTION/SUBJECT OF THE APPEAL

1. This matter is an appeal from the Commonwealth of Pennsylvania, Department of Environmental Protection's, (hereafter "DEP"), July 11, 2008 letter, denying Appellant's municipal waste landfill permit application for a property site located in Boggs Township, Clearfield County, Pennsylvania. (A true and correct copy of said denial letter is attached hereto as Exhibit "A" pursuant to 25 Pa.Code §1021.51(c)).

2. The official at the DEP who took the action complained of on appeal, *i.e.*, the Permit Denial, was:

James E. Miller, Environmental Program Manager
Waste Management
Pennsylvania Department of Environmental Protection
Northcentral Regional Office
Williamsport, PA 17701.

3. The location of the operation and/or activity that is the subject of the DEP's action is Boggs Township, Clearfield County, the site of the proposed landfill.

4. The Appellant received notice of the DEP's Permit Denial *via* letter dated and faxed on July 11, 2008, to its President, Robert A. Rovner, and also received the same letter *via* certified mail, at its principal place of business at 175 Bustleton Pike, Feasterville, Bucks County, Pennsylvania, on July 14, 2008.

5. There are no related appeals with respect to this matter now pending before the Environmental Hearing Board of which Appellant is aware.

II. PARTIES AND BACKGROUND

6. PA WASTE, LLC, Appellant herein, is a Pennsylvania limited liability company, with a principal place of business at 175 Bustleton Pike, Feasterville, Bucks County, Pennsylvania, 19053.

7. The Commonwealth of Pennsylvania, Department of Environmental Protection, (hereafter "DEP"), is a Commonwealth

Agency, existing under, and pursuant to, the laws of this Commonwealth, with its principal place of business located at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania, 17101.

8. On September 25, 2006, Appellant submitted a Municipal Waste Landfill Permit Application to the DEP, pursuant to the Solid Waste Management Act, 35 P.S. §6018.101, *et seq.*

9. Such Application was for a new municipal waste landfill, to be known as the "Camp Hope Run Landfill" in Boggs Township, Clearfield County, PA.

10. Appellant's application was completed by Randy Wood, P.E., of Marshall Miller & Associates, as required by 35 P.S. §6018.502(a).

11. On January 11, 2007, the Local Municipal Involvement Process ("LMIP") meeting relative to such Application was held in Clearfield County, pursuant to 25 Pa.Code §271.202.

12. In addition to the attendance by members of the community and municipal and county authorities, the LMIP meeting was attended by the following representatives from the DEP:

- (A) Robert Yowell, Regional Director of Northcentral Region;
- (B) David W. Garg, P.E., Facilities Manager - Waste Management; and,
- (C) James E. Miller, P.E., Environmental Program Manager.

13. The purpose of the LMIP meeting was to provide a forum for "[t]he Department, applicant and municipal officials [to] meet to discuss the permit application, the Department's permit application review process and the public involvement steps in that process and to hear and understand the concerns and questions of the municipal officials. . .". 25 Pa.Code §271.202(a).

14. Such LMIP meeting was, in fact, held on January 11, 2007; however, at such meeting, there was a deviation from the stated process and procedure as was provided for in The Department of Environmental Protection's Bureau of Land, Recycling, and Waste Management Memorandum, effective February 7, 1997, such being Document Number 254-2100-100. (See <http://video.google.com/videoplay?docid=-4145131802597663070>)

15. Following the LMIP meeting, Appellant's Application was deemed to be administratively complete and the review process began on February 21, 2007.

16. On April 12, 2007, DEP issued its first Technical Deficiency Letter ("TDL") to Appellant, which in substantial part addressed Section 507(a)(2) of Act 101, which Section sets forth the requirements an applicant must meet when the proposed facility is not included in the host county's Municipal Waste

Management Plan¹. (A true and correct copy of said letter is attached hereto as Exhibit "B").

17. Section 507(a) of Act 101 provides for two different procedures for compliance with the host County's Solid Waste Management Plan: (i) the proposed facility is included in the County's Plan; or, if it is so included in the Plan, (ii) the proposed facility must meet three (3) enumerated requirements. See 53 P.S. §507(a).

18. Despite Appellant's attempts to be included in the Clearfield County Waste Management Plan, it was advised by the Clearfield County Commissioners, in a September 21, 2007, letter from its solicitor, that **"the Board of Commissioners has (and has consistently followed) a settled policy of only considering facilities for inclusion in the County Plan that have permits"**.

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Section 507(a)(2) of Act 101 presently provides as follows: (a) Limitation on permit issuance - After the date of submission to the department of all executed ordinances, contracts, or other requirements under section 513, the department shall not issue any permit, or any permit that results in additional capacity, for a municipal waste landfill or resource recovery facility under the Solid Waste Management Act, in the County unless the applicant demonstrates to the department's satisfaction that the proposed facility:

- (1) is provided for in the plan for the county; or
- (2) meets all of the following requirements:
 - (i) The proposed facility will not interfere with implementation of the approved plan.
 - (ii) The proposed facility will not interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.
 - (iii) The proposed location of the facility is at least as suitable as alternative locations giving consideration to environmental and economic factors. 53 P.S. § 4007.507

(See September 21, 2007 letter from Kim C. Kesner, Solicitor for Clearfield County Board of Commissioners, attached hereto as Exhibit "C") (emphasis added).

19. In this same letter, the Clearfield County Board of Commissioners stated that "[t]he Board of Commissioners will not consider any requests by your client or any other proposed facility for inclusion in the Clearfield County Solid Waste Management Plan unless or until the facility holds a municipal landfill permit from DEP". (See Exhibit "C") (emphasis added).

20. Also included in this letter was a statement expressing the County's stance that, "the Board of Commissioners has filed objections with DEP to the issuance of any permit upon the basis that the harms of the proposed facility will outweigh any benefits to Clearfield County...". (See Exhibit "C") (emphasis added).

21. The foregoing language suggests that the denial of PA Waste into the Clearfield County Waste Management Plan was based on a harms and benefits analysis. Such an analysis is more properly conducted by, and explicitly provided for, by the DEP post-permit approval, once the Applicant has properly been put on notice and given the opportunity to engage in the preparation of the extensive and vital factual data such an analysis warrants.

22. It is significant to note that in furtherance of its policy of inclusion in Clearfield County, the Commissioners have

never denied an applicant for admission into the Clearfield County Plan other than Appellant.

23. Moreover, subsequent to Appellant's request to be included in the Plan, and the Clearfield County Commissioner's denial as aforesaid, the Clearfield County Commissioners unanimously approved a Municipal Waste Disposal Agreement for the Shade Landfill in Somerset County, in May of 2008. (See Minutes of Meeting of May 13, 2008, of the Clearfield County Commissioners by Lisa McFadden, Chief Clerk, attached hereto as Exhibit "D").

24. Most surprising is the fact that the Clearfield County Commissioners would refuse admittance of PA Waste's proposed municipal waste landfill into the Clearfield County Plan, when in fact, there are no such facilities presently located within the territorial confines of Clearfield County itself, and consequently, all municipal waste that is generated within Clearfield County must be trucked or railed to landfill locations without the territorial confines of Clearfield County.

25. Such denial of PA Waste's admittance to Clearfield County's Waste Management Plan was asserted by the Clearfield County Commissioners despite the fact that the DEP, via an August 31, 2007 email addressed to a representative of Appellants advised as follows:

"There is no provision in Act 101 which prohibits a county from designating a proposed landfill in the municipal waste management

plan required by §501 of Act 101. On the contrary, Act 101 contemplates designation of proposed facilities in county plans. A county may designate a proposed municipal waste landfill with a pending permit application as a site where county waste could be disposed pursuant to the county plan after the proposed landfill obtains a permit from the Department

Act 101 specifically prescribes the content of county plans. See 53 P.S. §4000.303(a). Act 101 requires each county to engage in a municipal waste management planning process, and to submit to the Department for approval of an officially adopted municipal waste management plan for the waste generated within its boundaries." 53 P.S. §4000.501(a).

(See 8/31/07 email of Kenneth Reisinger, attached hereto as Exhibit "E")(emphasis added).

26. Since the Commissioners of Clearfield County denied PA Waste's proposed landfill facility for inclusion in the Clearfield County Solid Waste Management Plan, PA Waste was required to comply with Section 507(a)(2) of Act 101, which contains the following statutory requirements:

(a) Limitation on permit issuance - After the date of submission to the department of all executed ordinances, contracts, or other requirements under section 513, the department shall not issue any permit, or any permit that results in additional capacity, for a municipal waste landfill or resource recovery facility under the Solid Waste Management Act, in the County unless the applicant demonstrates to the department's satisfaction that the proposed facility

(1) is provided for in the plan for the county; or

(2) meets all of the following requirements:

(i) The proposed facility will not interfere with implementation of the approved plan.

(ii) The proposed facility will not interfere with municipal waste collection, storage, transportation, processing or disposal in the host county.

(iii) The proposed location of the facility is at least as suitable as alternative locations giving consideration to environmental and economic factors. 53 P.S. § 4007.507

27. In its April 12, 2007, TDL, the DEP enumerates, in substantial part, an extensive list of requirements under §507(a)(2) of Act 101 that far exceeds the scope and breadth as contemplated by that section, specifically including information required by 25 Pa.Code §271.125(b).²

28. Thus, Appellant was left in a proverbial Catch-22 situation: it could not satisfy §507(a)(1) because Clearfield County would not admit Appellant's proposed facility into its County Plan until Appellant had obtained a landfill permit from DEP; and, DEP would not allow Appellant's landfill permit

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The only basis for the denial of Appellant's landfill application is that PA Waste failed to meet the "suitability" requirements under Section 507(a)(2)(iii), as that statutory language was interpreted by the DEP, *i.e.*, information required by Act 101 and 25 Pa.Code §271.139. The remaining two (2) deficiencies as set forth in the April 12, 2007, TDL, have apparently been satisfied by Appellant, as DEP does not cite these reasons for the basis of its denial of July 11, 2008.

application to be considered by it without compliance with the vagaries of §507(a)(2).

29. In light of this conundrum, Appellant asked for a meeting with officials of the DEP in order to receive a detailed clarification as to how specific Appellant's response had to be in order to address the three (3) main issues raised in the first TDL of April 12, 2007³, and to discuss the issue of the landfill's proposed inclusion into the Clearfield County Waste Management Plan.

30. On August 14, 2007, this meeting was in fact held at the DEP's main office in Harrisburg, Pennsylvania, with representatives of Appellant in attendance, along with Michael Sherman, Richard Morrison, and Ken Reisinger, representatives from DEP.

31. As a result of this August 14, 2007 meeting, and pursuant to Appellant's request for clarification of the April 12, 2007 TDL, Ken Reisinger, Director, Bureau of Waste Management at the DEP Central Office in Harrisburg, sent an email to John Vargo, a representative of Appellant, on August 31, 2007. (See Exhibit "E").

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The three issues raised in the DEP's first TDL were: (i) the term of the permit; (ii) Information required by Act 101 and 25 Pa.Code §273.139; and, (iii) Compliance information required by 25 Pa.Code §271.125. However, the only basis for the denial of Appellant's landfill application is (ii), *i.e.*, information required by Act 101 and 25 Pa.Code §271.139. The remaining two (2) deficiencies have apparently been satisfied by Appellant, as DEP does not cite these reasons for a basis of its denial of July 11, 2008.

32. Specifically with regard to the question of whether Act 101 prohibits Clearfield County from denying the admittance of a proposed landfill into its County Plan based upon the proposed facility's not having a permit from DEP, Mr. Reisinger stated as follows:

"There is no provision in Act 101 which prohibits a county from designating a proposed landfill in the municipal waste management plan required by §501 of Act 101. On the contrary, Act 101 contemplates designation of proposed facilities in county plans. A county may designate a proposed municipal waste landfill with a pending permit application as a site where county waste could be disposed pursuant to the county plan after the proposed landfill obtains a permit from the Department

Act 101 specifically prescribes the content of county plans. See 53 P.S. §4000.303(a). Act 101 requires each county to engage in a municipal waste management planning process, and to submit to the Department for approval of an officially adopted municipal waste management plan for the waste generated within its boundaries." 53 P.S. §4000.501(a).

(See Exhibit "E") (emphasis added).

33. Based upon the information received at that August 14, 2007 meeting, as clarified by Mr. Reisinger's said email of August 31, 2007, Appellant, through its counsel, David W. Buzzell, sent a letter to the solicitor for the Clearfield County Commissioners, Kim C. Kesner, Esquire, on October 9, 2007, including a copy of the August 31, 2007 email from Mr. Reisinger, asking the Commissioners to reconsider their determination that

Appellant's proposed landfill facility could not be included in the County Plan until it had been issued a permit by the DEP. (See 10/9/07 letter from David W. Buzzell, Esquire, to Kim C. Kesner, Esquire, Solicitor for Clearfield County, attached hereto as Exhibit "F").

34. On October 17, 2007, a letter from Solicitor Kim C. Kesner was sent to Appellant's counsel acknowledging receipt of Appellant's October 9, 2007, letter and stating that "[n]o action was taken on your request that the Commissioners consider inclusion of the Camp Hope Run Landfill as a designated facility in the Clearfield County Solid Waste Management Plan." (See letter of Kim C. Kesner, Esquire dated October 17, 2007, to David W. Buzzell, Esquire, attached hereto as Exhibit "G").

35. Of import and significance with respect to the timing of Mr. Kesner's said letter of October 17, 2007, are the minutes of the meeting of the Clearfield County Commissioners of October 16, 2007, which contain the following entry:

"Chairman Read announced that he and Commissioner McCracken met in Harrisburg yesterday with Representative George and representatives of DEP concerning the Boggs Township landfill. The Commissioners had requested the meeting when PA Waste had requested a meeting with the DEP and were denied inclusion to that meeting. Therefore a meeting was scheduled so the County could discuss some of the issues they had concerns and questions about. Coincidentally yesterday was the final day that PA Waste could submit there [sic] response to the permit deficiencies and during the meeting Robert Yowell of DEP was notified that their response

was received. Chairman Read commented that the meeting was very positive and from his resolve to fight the landfill and our opportunity to put a stop to the landfill is stronger now than in the past. Commissioner McCracken stated he feels very positive about what was reported by DEP yesterday and they reiterated each of the permits are handled by the book and are treating PA Waste as they should and going through the permit process with them in a fair manner."

(See Minutes of Meeting of the Clearfield County Board of Commissioners meeting of October 16, 2007, and attached hereto as Exhibit "H") (emphasis added).

36. Subsequent to these events and clarifications, following receipt by Appellant of DEP's first TDL of April 12, 2007, Appellant formally responded to the DEP, via letter of October 12, 2007, enclosing information designated as "Confidential Business Information," pursuant to 25 Pa.Code §271.5. (A true and correct copy of said response is attached hereto as Exhibit "I").

37. In addition, Appellant submitted a supplemental response on or about January 14, 2008, to the DEP's TDL of April 12, 2007, which included voluminous financial information deemed Confidential Business Information. (See Exhibit "J" attached hereto).

38. On or about February 25, 2008, the DEP sent a second TDL essentially reiterating the same deficiencies as the April 12, 2007, TDL had raised. (See Exhibit "K" attached hereto).

39. In light of this second TDL, Appellant again requested a meeting with the DEP officials to obtain detailed information and a very specific indication from the DEP as to the information that the DEP required in order to satisfy the "suitability" requirement of Act 101, *et al.*

40. This second meeting was held on April 8, 2008, at 10:00 a.m. at the DEP office in Harrisburg, Pennsylvania, at which time Appellant requested and received further clarification of what it needed to provide to the DEP to satisfy the requirements of Section 507 of Act 101.

41. For example, one of the criteria to be shown by Appellant was a target volume of 2,000 tons per day, as confirmed in an email of April 11, 2008, from Nels J. Taber, Regional Counsel for DEP, to David W. Buzzell, counsel for Appellant. (See email from Nels J. Taber, attached hereto as Exhibit "L").

42. On April 28, 2008, Appellant sent a response to this second TDL, including a supplement containing "Confidential Business Information" ("CBI") attached thereto. (See Exhibit "M" attached hereto).

43. Moreover, Appellant supplemented its response to the second TDL, *via* letter of May 19, 2008, providing a letter dated May 16, 2008, from a source indicating that it would supply 2,000 tons per day of waste to Appellant's proposed municipal waste landfill site in Boggs Township, Clearfield County. (See May 19,

2008 letter of David W. Buzzell and May 16, 2008 redacted letter attached hereto as Exhibit "N").

44. In addition to the extensive CBI, Appellant firmly reiterated, in such letter of May 19, 2008, its assertion that the DEP's requirements under the "suitability" analysis of Section 503(a)(2)(iii) was clearly erroneous, onerous, impossible to discern or address, and beyond the scope of what an applicant is required to demonstrate and provide under Act 101 and any applicable Regulations. (See Exhibit "N").

45. Despite the same, but in a good faith attempt to comply with the DEP's requests, in its April 28, 2008 supplemental response, Appellant set forth, in extensive detail and with excruciating precision, the sources of waste; the current disposal locations for the waste; and details on landfills located between the source of the potential waste and the proposed site. (See Exhibit "M"). Such was in compliance with the detail requested and prescribed in Mr. Taber's email of April 11, 2008. (See Exhibit "L").

46. Nevertheless, on July 11, 2008, the DEP denied Appellant's permit applications, via letter of that date, based upon Appellant's "alleged failure" to satisfy the "suitability" requirements of Section 507(a)(2) of Act 101. (See Exhibit "A" attached hereto).

47. In particular, the DEP stated that its interpretation of Section 507(a)(2) required an applicant to establish the following:

- (A) The identity of the sources and quantity of waste expected to be disposed at its facility;
- (B) The identity of the current disposal locations for this expected waste;
- (C) A demonstration that the proposed landfill location is at least as suitable, environmentally and economically, as the current disposal locations for this expected waste;
- (D) An examination of available alternative disposal facilities located between the source of the expected waste and the applicant's proposed facility, and demonstrate that the facility is at least as suitable, environmentally and economically, as the available alternative disposal locations. (See Exhibit "A").

48. Appellant hereby appeals from the denial of its municipal waste landfill permit by the DEP for all of the following reasons.

49. The DEP's denial of Appellant's Permit Application, as set forth in its letter of July 11, 2008, was arbitrary, capricious, an abuse of discretion, contrary to law, and violative of Appellant's rights under the laws of the Commonwealth of Pennsylvania, the Constitution of the Commonwealth of Pennsylvania, and the Constitution of the United States, including but not limited to, the following reasons.

III. SPECIFIC OBJECTIONS TO THE DEP'S ACTIONS

50. Paragraphs one (1) through forty-nine (49) above are incorporated by reference, as if set forth at length herein.

1. The DEP Erred as a Matter of Law

51. The DEP erred as a matter of law in interpreting the "suitability" requirement of Section 507(a)(2)(iii) of Act 101 to require Appellant to establish the following:

- (A) The identity of the sources and quantity of waste expected to be disposed as its facility;
- (B) The identity of the current disposal locations for this expected waste;
- (C) A demonstration that the proposed landfill location is at least as suitable, environmentally and economically, as the current disposal locations for this expected waste;
- (D) An examination of available alternative disposal facilities located between the source of the expected waste and the applicant's proposed facility, and demonstrate that the facility is at least as suitable, environmentally and economically, as the available alternative disposal locations. (See Exhibit "A").

52. On or about October 9, 1992, DEP adopted a regulation codified at 25 Pa.Code §273.139, effective October 10, 1992, which set forth, *inter alia*, requirements that an applicant must demonstrate for the grant of a municipal waste landfill permit

when the proposed facility is not included in the host county's Plan. (See a true and correct copy of 25 Pa.Code §273.139 attached hereto as Exhibit "O").

53. Specifically, §273.139(c) then stated that:

"If the application is for the facility that is not expressly provided for in the host county plan, an application for a proposed facility or a reasonable explanation of an existing facility shall contain an environmental siting analysis for each county generating municipal waste that will be disposed at the facility, demonstrating that the proposed location of the facility is at least as suitable as alternative locations within the generating county, giving consideration to environmental and economic factors. * * *"

54. On December 22, 2000, and effective December 23, 2000, §273.139 was amended, at which time §273.139(c) was deleted in its entirety insofar as the establishment of "suitability" under Act 101 is concerned. (See a true and correct copy of 25 Pa.Code §273.139, as amended, attached hereto as Exhibit "P").

55. Present Section 507(a)(2) as its interpretation was amended in 2000 by DEP regulations, and 25 Pa.Code §273.139 are clear and unambiguous on their face, and the DEP's interpretation as set forth in its July 11, 2008, Permit Denial letter thereof is arbitrary, capricious, an abuse of discretion, contrary to law, and violative of Appellant's rights under the laws of the Commonwealth of Pennsylvania, the Constitution of the Commonwealth of Pennsylvania, and the Constitution of the United

States, in requiring PA Waste to comply with a now-defunct and "non-existent" regulation that no longer implicates or defines "suitability" under Act 101.

56. The DEP, in requiring in its two (2) TDL's that Appellant provide even greater detailed information than was required under prior *repealed* regulations, was clearly erroneous, acted contrary to existing regulations of the DEP, and committed a clear error of law.

2. The DEP Erred Factually and as a Matter of Law in Concluding That the Information Provided in Response to the DEP's two (2) TDLs failed to Satisfy the Act 101 Requirements

57. The information supplied by Appellant in its responses to the two (2) TDL's, including extensive financial information and Confidential Business Information, clearly satisfied the requirements of Section 507(a)(2), and the DEP erred both factually and as a matter of law in concluding that said information failed to satisfy said statute's suitability language, and existing DEP regulations adopted pursuant thereto.

3. Section 507 of Act 101 Violated the United States Constitution in that it is Void for Vagueness

58. A statute is void for vagueness when men of common intelligence must guess at its meaning.

59. The suitability analysis under Section 507(a)(2)(iii) of Act 101 is "void for vagueness" in that men of common intelligence must guess at the meaning of "suitability" under Act 101 and, more particularly with regard to the DEP's regulations of 2000 adopted pursuant thereto, and the meaning of a proposed

facility's being "at least as suitable as alternative locations giving consideration to environmental and economic factors."

60. Apropos this "void for vagueness" assertion, it is of significance to note that since the enactment of Act 101 in 1988, with its "suitability" concept, the North Central Region office of the DEP has never approved an application for a new permitted municipal waste landfill in the North Central Region of the Commonwealth of Pennsylvania.

4. The DEP Violated Appellant's Right to Procedural Due Process under the United States Constitution and the Constitution of the Commonwealth of Pennsylvania

61. Appellant has a clear property interest in the proposed landfill site in Boggs Township, Clearfield County.

62. The Fourteenth Amendment to the United States Constitution provides that the states shall not deprive any person of "life, liberty, or property without due process of law." Amendment XIV, U.S. Constitution.

63. Likewise, Article I, §1 of the Pennsylvania Constitution provides:

"All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Const. Art. 1, §1.

64. The term "person" in the Fourteenth Amendment to the United States Constitution and the term "All men" in the

Pennsylvania Constitution specifically include business entities such as Appellant.

65. The DEP failed to provide Appellant with prior notice, before Appellant's Permit Application was filed with the DEP, as to the definition and import of the "suitability" standard addressed in Act 101; failed to provide Appellant with the opportunity for a meaningful hearing; failed to act as an impartial decision maker; and, in light of secret meetings that DEP held, without notice to, or the inclusion of, Appellant, with the Clearfield County Commissioners and other Pennsylvania governmental officials, DEP violated Appellant's Due Process rights under both the United States and Pennsylvania Constitutions.

66. DEP's procedures and requirements as set forth in its two (2) TDL's, are onerous, arbitrary and capricious, so as to create criteria which are impossible to satisfy in the face of the interpretation that the DEP has ascribed to the "suitability" requirements of Act 101 as it relates to Appellant's Municipal Waste Permit Application, as filed on September 25, 2006.

67. Such actions by the DEP are clearly in violation of Appellant's Due Process rights under both the United States and Pennsylvania Constitutions.

5. The DEP Violated Appellant's Right to Equal Protection Under the United States Constitution and Constitution of the Commonwealth of Pennsylvania

68. The Fourteenth Amendment to the United States Constitution provides that "[n]o state shall. . .deny to any person within its jurisdiction the equal protection of the laws."

69. Article I, §1 of the Pennsylvania Constitution provides:

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defendant life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."

Const.Art. 1, §1.

70. Inherent in Article 1, §1 of the Pennsylvania Constitution is a right to equal protection under the laws.

71. The terms "person" in the Fourteenth Amendment of the United States Constitution and "All men" in the Pennsylvania Constitution specifically include business entities such as Appellant.

72. The DEP's actions in reviewing Appellant's Permit Application and in requiring the detailed information demanded in DEP's two (2) TDL's were onerous, capricious, arbitrary and contrary to fundamental fairness, and in contravention of Appellant's rights under the laws of the Commonwealth of Pennsylvania, the Constitution of the Commonwealth of Pennsylvania, and the Constitution of the United States.

73. Moreover, the DEP has never required any applicant for a new municipal waste landfill permit, other than Appellant, to provide the same excruciatingly detailed information in establishing "suitability" under Act 101, as has been demanded from and required of PA Waste.

74. Significant to Appellant's challenge to the actions of the DEP is the fact that DEP's requirements as to Appellant far exceed the requirements of "suitability", even under the now-repealed regulations, as aforesaid.

75. Such onerous, arbitrary and capricious actions on the part of the DEP have violated Appellants right to equal protection of the laws, in contravention of the Fourteenth Amendment to the United States Constitution and Article 1, §1 of the Pennsylvania Constitution.

6. Appellant's Confidential Business Information
Should Remain Confidential

76. During the course of the permit review process by the DEP of the Appellant's Permit Application, certain information was submitted to DEP by Appellant and marked "Confidential Business Information."

77. Appellant requested that such material be kept confidential, pursuant to 25 Pa.Code §271.5, because "PA Waste's confidential and propriety pro forma and economic analyses and related financial information, as well as anything relating to or which might be used by a competitor to reveal the intended customer list for this landfill is proprietary information of

Appellant's, and should and must be retained as confidential, as the disclosure of this information by the DEP would directly and adversely affect the competitive business position of PA Waste." (See April 28, 2008, letter of David Buzzell, attached hereto as Exhibit "M").

78. Pursuant to the DEP's Permit Denial letter of July 11, 2008, the DEP intends to make this information public upon the expiration of the thirty (30) day appeal period.

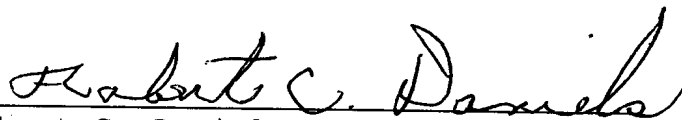
79. Appellant, for the reasons set forth in ¶77, supra, respectfully requests that this tribunal Order the DEP to keep the material labeled "Confidential Business Information" confidential pursuant to 25 Pa.Code. ¶271.5, pending this Appeal Proceeding.

WHEREFORE, Appellant, PA Waste, LLC, respectfully requests that the Environmental Hearing Board:

1. Direct the Department of Environmental Protection to grant to Appellant, PA Waste, LLC, a municipal waste landfill permit for the proposed landfill that is the subject of this appeal;
2. Find that Section 507(a)(2) of Act 101 is clear and unambiguous on its face, and therefore, the Department of Environmental Protection's interpretation of the "suitability" requirement of Section 507(a)(2) of Act 101 is erroneous, contrary to existing regulations of the DEP, and a clear error of law;

3. Find that the Department of Environmental Protection's interpretation of "suitability" requirement under Section 507(a)(2) of Act 101 is "void for vagueness" under the Constitution of the United States;
4. Find that Appellant, PA Waste, LLC, satisfied the "suitability" requirement of Section 507(a)(2) of Act 101;
5. Find that the Department of Environmental Protection's interpretation and procedures required under Section 507(a)(2) of Act 101 violate the Appellant's, PA Waste, LLC's, Procedural Due Process rights under both the United States and Pennsylvania Constitutions;
6. Find that the Department of Environmental Protection's interpretation and procedures required under Section 507(a)(2) of Act 101 violate the Appellant's, PA Waste, LLC's, right to Equal Protection under the laws, under both the United States and Pennsylvania Constitutions;
7. Order the Department of Environmental Protection to keep information submitted by Appellant, PA Waste, LLC, and marked as "Confidential Business Information" confidential until further Order of this Board or other tribunal.

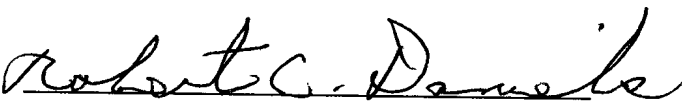
THE INFORMATION SUBMITTED IS TRUE AND CORRECT TO THE BEST OF
MY INFORMATION AND BELIEF.



Robert C. Daniels, Esquire
Counsel for Appellant

Dated: 8/7/2008

Respectfully submitted,

BY: 

Robert C. Daniels, Esquire
I.D. No.: 2271
ROBERT C. DANIELS, LTD.
1710-12 Locust Street
Philadelphia, PA 19103
215.545.4220

ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457

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V.)

Commonwealth of Pennsylvania,)
Department of Environmental)
Protection, Appellee)

CERTIFICATE/PROOF OF SERVICE

I, Robert C. Daniels, Esquire, counsel for Appellant, PA Waste, LLC, hereby certify that I served a true and correct copy of Plaintiff's Notice of Appeal via first-class United States mail, postage pre-paid on the 7th day of August, 2008, as follows:

Department of Environmental Protection
Office of Chief Counsel
Litigation Support Unit
9th Floor, Rachel Carson State
Office Building
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

James E. Miller, Environmental Program Manager
Waste Management
Department of Environmental Protection
208 West Third Street, Suite 101
Williamsport, PA 17701-6448

Nels J. Taber, Esquire
PA Department of Environmental Protection
208 West Third Street, Suite 101
Williamsport, PA 17701-6448

BY:



Robert C. Daniels, Esquire
I.D. No.: 2271
ROBERT C. DANIELS, LTD.
1710-12 Locust Street
Philadelphia, PA 19103
215.545.4220