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Bergsten

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Rockville, Maryland  
January 13, 1984

TO: Nathan Greenbaum  
FROM: Jeff W. Rosen  
RE: Oak Land Fill Agreement

Enclosed is a copy of the original agreement on the  
Oak Land Fill as you requested.

JWR:ps  
Enclosure

MONTGOMERY COUNTY  
JAN 23 1984  
DIV. OF SOLID WASTE  
MANAGEMENT

1538J

## AGREEMENT

WHEREAS, the parties have been engaged in the process of environmental mediation on the multiplicity of concerns regarding the construction, operation, maintenance, monitoring and termination of the Oaks Landfill and related ancillary matters with the exception of issues relating to the location of the landfill at its present site, and the design, construction, and operation of a liner and leachate collection and treatment system; and

WHEREAS, as a result of said environmental mediation, the parties have agreed to resolve substantial issues relating to the Oaks Landfill and are desirous of working in a constructive manner to manage the solid waste concerns of the County in the best interest of its citizens while preserving and protecting the health, safety, welfare, and environment of the residents of the greater Laytonsville community; and

WHEREAS, the parties recognize the duties and responsibilities of the County under Federal, State and County laws dealing with the disposal of solid wastes in a manner consistent with all such applicable provisions; and

WHEREAS, the County has retained S. S. Papadopoulos & Associates, Inc., to review and evaluate the County's present groundwater monitoring program at the Oaks Landfill and to propose an operational water quality monitoring program sufficient to protect the health, safety, welfare, and environment, including the quality of the drinking water, and has requested that the Maryland Department of Health and Mental Hygiene (MDHMH) provide its advice and expertise regarding the existence of any Oaks related health hazard to the residents of the greater Laytonsville community and the prevention and elimination of any such possible health hazards, including contamination of groundwater supplies and the causes thereof.

The undersigned parties agree and stipulate as follows:

I. Oaks Landfill Advisory Commission (OLAC)

The County Executive shall execute an Executive Order establishing an Oaks Landfill Advisory Commission (OLAC). The Executive Order shall be as set forth in Exhibit A of this Agreement.

II. Traffic Control

The County shall prepare and implement an administrative procedure on traffic control, specifically addressing the Oaks Landfill traffic control, vehicular safety, road conditions, the policing and monitoring of trucks, including the hours and manner of their operation, and transfer vehicle operations. The administrative procedure shall be as set forth in Exhibit B of this Agreement.

III. Land Use

The parties acknowledge the following points with regard to the present and future zoning and land use planning for the Oaks Landfill and the surrounding properties:

A. The approved and adopted Olney Master Plan, dated June, 1980, recommended the land containing the Oaks Landfill and the surrounding area be zoned Rural Density Transfer (RDT). This zoning was implemented by the Olney Sectional Map Amendment on October 28, 1980. Publicly owned or operated facilities, such as the Oaks Landfill, are permitted in the RDT zone.

B. At the time of the adoption of the Olney Sectional Map Amendment, the eventual operation of the landfill at the Oaks site was an established element of the County's land use planning for that site and the surrounding properties. Thus, the existence of the landfill under current Maryland law cannot be considered as evidence of a change in the character of the area to justify more intensive land uses in the area surrounding the landfill.

C. The RDT zone is an agricultural zone but, as in all agricultural zones, it permits residential uses. According to the Olney Master Plan, the RDT zone is proposed, both during and after the landfilling. The plan proposes land uses consistent with rural, agricultural uses after the landfill is closed.

The County agrees that, after closure of the Oaks Landfill, it will give priority for the future use of the site to recreational and agricultural uses and other uses that are consistent with County land use plans and policies, including the Olney Master Plan, and other policies favoring the wedges and corridors concept and the protection and preservation of agricultural uses. The County believes that from a land use perspective, the adopted and approved Olney Master Plan and the current zoning resulting from the Sectional Map Amendment offer strong protection to the community from unwanted future land uses on the Oaks Landfill site. While it is not legally permissible to bind forever a land use or zoning map, the County has no present intention to change either with respect to the immediate area of the Oaks Landfill. Nothing herein, however, shall be construed to prohibit the County from making such changes in the future as are necessary to protect the public's health, safety or welfare.

#### IV. Oaks Landfill Closure and Post-Closure Plans

The County shall prepare and implement an administrative procedure on closure and post-closure plans for the Oaks Landfill. The administrative procedure shall be as set forth in Exhibit C of this Agreement.

#### V. Water Quality Monitoring and Emergency Water Supply

A. Water Quality Monitoring -- This section of the Agreement addresses an interim domestic well water quality monitoring program and an operational water quality monitoring program, as well as the County's present water quality monitoring program for the Oaks Landfill. These programs are defined in Exhibit D of this Agreement.

1. The County shall assure that the S.S. Papadopoulos & Associates, Inc. (SSP&A) Report receives proper consideration.

a. The County shall propose an operational water quality monitoring program to include well positions, parameters to be measured, test procedures and protocols, frequency of measurement, data handling procedures and criteria for the delivery of emergency water supply. This program shall be discussed in the SSP&A Report and shall be subject to public comment. The County reserves the right to make changes from the study's recommendations in the implementation of the program.

b. If the County adopts an operational water quality monitoring program substantially different than the SSP&A recommendations, this agreement shall not bar anyone with the proper standing from a legal challenge to the operational water quality monitoring program.

c. If the County adopts an operational water quality monitoring program substantially different than the SSP&A recommendations, the County shall conduct a public hearing prior to the adopting of such a program.

2. The County shall assure that OLAC can provide input to the SSP&A Report throughout the course of the study.

a. Any OLAC Commissioner, or a GLAYCA representative mutually agreeable to both parties, with reasonable notice shall be allowed access to County staff dealing with SSP&A to provide information, comments, and other input to the Papadopoulos project team, either directly through County staff or in the presence of County staff.

b. Any OLAC Commissioner, or GLAYCA representative mutually agreeable to both parties, shall be invited to attend progress meetings the County has with the Papadopoulos project team, except meetings covering contractual matters, and will receive the interim and final reports in a timely fashion. Comment by OLAC or GLAYCA shall be encouraged.

3. The County shall prepare and implement an administrative procedure providing for a domestic well water quality monitoring program. This administrative procedure shall be on an interim basis until such time as an operational water quality monitoring program is adopted and implemented by the County. The administrative procedure shall be as set forth in Exhibit D to this Agreement.

B. Emergency Water Supply

The County shall prepare and implement an administrative procedure for emergency water supply for the Oaks Water Supply Area. The administrative procedure shall be as set forth in Exhibit E to this Agreement.

VI. Pending and Potential Litigation

The Party-Plaintiffs in East, et al. vs. Gilchrist, et al., Circuit Court, Law No. 56860, and the Defendants therein agree to execute the Consent Judgment in that proceeding, a copy of which is attached hereto as Exhibit F. The parties agree that any cause of action for public nuisance, or any cause of action for damages to private property or persons that may arise in the future should the Oaks Landfill contaminate groundwater in violation of State or Federal law beyond its site property line are not barred.

Further, the signatories to this Agreement covenant and agree that they will not bring any further action whether legal or equitable in nature involving the validity, design, construction or operation of the Oaks Landfill as presently permitted, including the Federal court action under the Resource Conservation and Recovery Act noticed by Mr. Robert Smith in his letters to Montgomery County dated June 16, 1982, and September 22, 1982.

However, this Agreement shall not bar any action based upon the failure of the County or its agents to properly operate the landfill in accordance with existing or amended permits, licenses, regulations, or laws nor shall this Agreement bar an action under the Resource Conservation and Recovery Act should the Oaks Landfill contaminate (as defined in applicable Federal regulations) groundwater beyond the solid waste boundary and the site property line. This Agreement shall also not bar any action in connection with any attempt by the County to substantially change the terms or conditions in its current permit, be it by amending or modifying the current permit or by renewal or new permit. The mere extension or renewal of the present permit and approvals shall not be considered a substantial change and will not be challenged by the parties.

VII. Financial Settlement

In accordance with the recommendation of the Mediator who has assisted the parties in resolving this matter and in recognition of the cost avoidance which will result from this Agreement, the County agrees to a financial settlement to the Greater Laytonville Civic Association in the amount of \$95,000.00.

VIII. Enforceability of Agreement

A. All parties agree to undertake to uphold this Agreement and to vigorously oppose any challenge to its validity or operation.

B. The parties reserve the right to pursue their administrative and/or judicial remedies in the event of any alleged noncompliance with this Agreement as provided by law.

C. By executing this Agreement, the nongovernmental signatories are not indicating any support or approval of the Oaks facility.

D. This Agreement is not intended to supersede or in any way limit the full exercise of police powers by the State or by the County.



PLAINTIFFS:

William J. Jaffeurs, Sr., M.D.  
WILLIAM J. JAFFEURS, SR., M.D.

Oct 16 1983  
Date

Samuel Riggs IV  
SAMUEL RIGGS IV

Oct 16 1983  
Date

Sherrod East  
SHERROD EAST

Oct 16 1983  
Date

Thelma E. Carter  
THELMA CARTER

Oct 17 1983  
Date

Edgar Hatter  
EDGAR HATTER

Oct 16 1983  
Date

Robin Ficker  
ROBIN FICKER

Nov 30 1983  
Date

EXHIBIT A OF AGREEMENT

DRAFT EXECUTIVE ORDER  
FOR ESTABLISHMENT AND OPERATION OF  
OAKS LANDFILL ADVISORY COMMISSION

PURPOSE

- 1.0 An Oaks Landfill Advisory Commission (OLAC) shall be established by the County Executive to monitor and evaluate the environmental impacts, safety, effectiveness and aesthetic aspects of the Oaks Landfill. Meetings shall be held in the greater Laytonsville area whenever possible, should be announced in advance and open to the public. OLAC shall have direct access to County officials with reasonable notice as well as direct contact with citizens in the greater Laytonsville area.
- 1.1 OLAC may receive citizen complaints and suggestions about any and all aspects of the Oaks Landfill (including the related activities of the transfer station and the transportation system to the Oaks Landfill) and may seek resolution of problems brought to its attention by citizens or problems investigated on its own initiative.
- 1.2 OLAC with reasonable notice shall be authorized to communicate directly with County staff to investigate any aspect of the Oaks Landfill and related operations. Such communication must be consistent with County and State law concerning public access to government documents. County staff shall assure coordination between OLAC and the County's contractors with respect to matters affecting the Oaks Landfill and related operations.
- 1.3 It is expected that OLAC shall function until at least one year after complete closure of the Oaks Landfill.

DUTIES

- 2.0 OLAC shall submit to the County Executive in June of each year an annual report, available to the public, covering its activities, evaluations and recommendations with respect to the Oaks Landfill.
- 2.1 OLAC shall report to the County Executive and County Council at least once every three months on any matters associated with the Oaks Landfill and related operations. If problems pertaining to health, safety and overall effectiveness of the Oaks Landfill are brought to the attention of the County by OLAC, the County shall be expected to deal with these problems with all due dispatch.
- 2.2 Among the areas relating to the Oaks Landfill and related operations that OLAC may investigate and report on are:
  - A. The safety of the drinking water for the residents of the greater Laytonsville area.
  - B. The operational water quality monitoring program and emergency water supply provisions.
  - C. All environmental issues pertaining to the Oaks Landfill, including traffic safety, bird population, noise and odors.
  - D. The relevant operations of the transfer station, the transportation system and the Oaks Landfill, to ensure that all aspects are operated in accordance with County plans, regulations and appropriate laws, including measures necessary to protect against substances designated by the USEPA or the MDHMH as toxic or hazardous being introduced into the landfill in significant quantity.

- E. Land use in the areas surrounding the landfill, reuse of the landfill itself, and restoration of the Oaks II historic house.
- F. County efforts to find alternative waste disposal sites and methods, in coordination with the Solid Waste Advisory Committee.
- G. Such other reasonably related matters as OLAC shall choose to investigate.

#### AUTHORITY AND STAFFING

- 3.0 OLAC shall have access to the transfer station, landfill site and related solid waste facilities by arrangement with the Division of Solid Waste Management and shall have reasonable access on a priority basis to all county records, reports and documents relating to construction, operation and maintenance of the transfer station and the Oaks Landfill, unless such records are privileged under applicable statutes. OLAC shall also receive advance notice of any action by the County in connection with changing the terms of the current permit and any renewal thereof.
- 3.1 The Chief Administrative Officer shall make available to OLAC such administrative and staff services and facilities as he may deem necessary to assist OLAC in the conduct of its work.

#### COMPOSITION

- 4.0 OLAC shall be composed of seven members appointed for two-year terms--three community members appointed by the County Executive from a list of names to be supplied jointly by the Mayor of Laytonsville and the President of GLAYCA, three at-large members appointed by the County Executive and one member nominated by the other six. The chairman shall be appointed initially by the County Executive for a one-year term and shall thereafter be elected annually by the members of OLAC. Members shall serve without compensation.

EXHIBIT B OF AGREEMENT  
DRAFT ADMINISTRATIVE PROCEDURE  
FOR TRAFFIC CONTROL FOR OAKS LANDFILL

TRAFFIC CONTROL

- 1.0 The Department of Transportation shall prepare a report in April of each year on traffic control, vehicular safety, condition of roads, and policing and monitoring of trucks, hours and manner of operation. Such report shall document accidents, compliance with applicable rules and speed limits and shall recommend corrective measures.
- 1.1 The County shall conduct or cause to be conducted complete safety inspections of the trucks at least every twelve months in accordance with the terms of the contract.
- 1.2 The County shall assure proper operation of the trucks and shall make available records on any violations of the contract or of applicable rules in connection with the operation of the trucks. Additionally, the County shall develop a plan by which each driver receives introductory and continuing education regarding safety practices, speed limits and overall vehicle operation.
- 1.3 The County shall develop and implement a plan controlling the entire truck route, including sufficient police surveillance to monitor compliance with this plan. Such surveillance shall include the use of radar to monitor speed, periodic surveys of truck spacing and compliance with traffic laws. Special attention shall be directed to establishing safe route travel during the first four months of this Agreement.
- 1.4 Drivers of trucks found in violation of the contract or of law shall be penalized in accordance with applicable motor vehicle laws and contract provisions.
- 1.5 Roads leading from the transfer station to the landfill shall periodically be inspected, at least annually. A report shall be made to OLAC to determine the condition of the road and additional safety measures that could be used, including warning blinking lights, traffic control lights and appropriate road markers and warning signs.

TRANSFER STATION OPERATIONS

- 2.0 The County shall implement the following procedures for control of transfer vehicle operations:
  - A. No transfer vehicle shall be weighed that is to be parked overnight.
  - B. Weighing of transfer vehicles shall not start until 8:30 a.m.
  - C. No transfer vehicle shall be weighed until three minutes have elapsed since the last vehicle left the scale.
  - D. Vehicle driver shall surrender scale ticket, carrying departure time, to gate house attendant at the landfill.
  - E. The gate house attendant shall log in arriving vehicle by truck number and time and retain scale ticket.
  - F. A representative of the Division of Solid Waste Management shall regularly (several times per week) spot check tickets and log for time elapsed for 8 mile trip. (12 min. @ 8 miles = 40 mph; 13 min. = 37 mph.)

- G. A gate house attendant shall log existing vehicles by appropriate truck number and time.
- H. The gate house daily log and daily scale tickets shall be filed together at the Oaks Landfill office.

EXHIBIT C OF AGREEMENT

DRAFT ADMINISTRATIVE PROCEDURE  
ON CLOSURE AND POST-CLOSURE PLANS  
FOR THE OAKS LANDFILL

FINALITY OF SEVEN PHASES OF LANDFILLING

- 1.0 The finality of the seven phases of landfilling at Oaks Landfill with termination of landfilling at each phase shall be governed by the following:
- Phase 1 Total landfilling of approximately 784,000 cubic yards of solid waste to the grade contours for the phase 1 area as shown on sheet 6 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by Montgomery County Department of Environmental Protection (DEP) and approved by the Maryland Department of Health and Mental Hygiene (MDHMH) as being consistent with conditions for permit approval.
- Phase 2 Total landfilling of approximately 818,000 cubic yards of solid waste to the grade contours for the phase 2 area as shown on sheet 7 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH as being consistent with conditions for permit approval.
- Phase 3 Total landfilling of approximately 850,000 cubic yards of solid waste to the grade contours for the phase 3 area as shown on sheet 8 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH consistent with conditions for permit approval.
- Phase 4 Total landfilling of approximately 897,000 cubic yards of solid waste to the grade contours for the phase 4 area as shown on sheet 9 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH as being consistent with conditions for permit approval.
- Phase 5 Total landfilling of approximately 956,000 cubic yards of solid waste to the grade contours for the phase 5 area as shown on sheet 10 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH as being consistent with conditions for permit approval.
- Phase 6 Total landfilling of approximately 1,044,000 cubic yards of solid waste to the grade contours for the phase 6 area as shown on sheet 11 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH as being consistent with conditions for permit approval.
- Phase 7 Total landfilling of 715,000 cubic yards of solid waste to the grade contours for the phase 7 area as shown on sheet 12 of Greeley and Hansen Engineering drawing dated July, 1978, as amended by DEP and approved by MDHMH as being consistent with conditions for permit approval.

PRESENT CLOSURE PLANS

- 2.0 Closure plans for the Oaks Landfill as currently designed shall conform to the Greeley and Hansen Report, dated August 1978, entitled "Sanitary Landfill Design and Operation, Site 55-B", at pages 28, 29 and 30, which report provides as follows:

"11. Completion of Landfill Phases

"After not more than twelve cells in the final lift have been brought to grade and covered with six inches of compacted soil, an additional 12-inch layer of soil will be spread over the entire

area and compacted. Finally, a 6-inch layer of topsoil will be spread over the area, then fertilized and seeded with temporary vegetation in accordance with the USDA "Standard and Specifications for Soil Erosion and Sediment Control in Developing Areas" specifications for critical area stabilization with temporary seeding.

"Monitoring wells within the fill will be constructed as soon as practicable after the adjacent fill has been completed.

"After each phase has been filled and covered, the gas collection strips of crushed rock will be installed, covered with 20 mil PVC sheeting, backfilled and compacted. When the entire phase has been completed in this manner, the surface will be checked for settlement, brought back to grade with additional topsoil where necessary and reseeded with permanent vegetation in accordance with the USDA Standard and Specifications for critical area stabilization with permanent seedings.

"All areas of the fill completed in this manner will be inspected quarterly for the first year and annually thereafter for evidence of cracked, eroded or uneven surfaces. If such surfaces are found, they will be promptly regraded and reseeded.

"If an interim use for the completed phase or phases has been selected, the area to be used will be separated from the active part of the landfill by plantings, fencing or temporary berms, whichever is most appropriate for the use intended.

"Material for the final three feet of cover must be obtained from the berms and, therefore, will not be placed until the entire landfill has been completed.

"When the landfill has been completed, the topsoil from the initial 2-foot cover will be removed and stockpiled. Material from the berms will then be spread and compacted in 6-inch layers until a total compacted depth of 4-1/2 feet has been achieved. The fill material will be compacted to 90 percent of the maximum dry density obtainable by the ASTM D 1557-70 method of compaction. The topsoil will then be replaced, graded, prepared for seeding, and seeded in accordance with USDA Standard and Specifications for critical area stabilization with permanent seedings.

#### "12. Ultimate Land Use

"The ultimate land use for the site has not yet been determined. It is expected, however, that it will be returned to agricultural use. The final grading plan has been developed with this in mind.

"Substantial quantities of material from the berm around the landfill will be required for final cover. This material will be removed in such a manner as to salvage the maximum amount of plantings from the landscaping done in the initial site development work.

"The remainder of the berm will be left in place in accordance with the final grading plan."

- 2.1 The County reserves the right to seek approval from MDHMH for amendments to this closure plan. Such requests for amendments shall be made available to OLAC.

#### LANDFILL PERMIT -- AMENDMENT, RENEWAL, NEW PERMIT

- 3.0 The present Oaks Landfill is permitted by MDHMH by Permit No. 79-15-01-02A issued on May 29, 1979 and reissued and amended as Permit No. 82-15-01-02A, which expires on May 31, 1985. Should the County, in fact, seek an amendment to the permit to permit additional capacity, or changes in contours, design or materials to be

SEE ←  
ATTACHED  
LETTER  
FROM  
THE STATE  
DATED 11/4/83

received at the Oaks Landfill, this act would constitute a "substantial change" which would require a public hearing and would make available to an interested party the state administrative appeal process. Should the County seek a renewal or new permit extending the useful life of the Landfill, the County shall provide an opportunity for public hearing on all aspects of that action, except for the issue of the location of the Landfill.

- 3.1 It is the County's present intention to seek an alternative process for the disposal of solid wastes. To that end, the County is presently investigating the feasibility of rail haul and energy recovery through the mass burning of solid waste. It is understood, however, that should either alternative be selected or should no viable alternative to landfilling be found, there will remain a need for a landfill in Montgomery County. Should no site prove more feasible than the Oaks, the County reserves the right to seek an amendment to the above-mentioned permit to allow for the continued utilization of the Oaks Landfill and the nongovernmental parties reserve their right to oppose it.

#### LANDFILL TERMINATION

- 4.0 Landfilling at the Oaks Landfill shall terminate immediately should MDHMH determine that health hazards develop as a result of the operations of the Landfill and present significant and irreparable harm to the public health of the community. The permit may be subject to revocation should health hazards, environmental degradation or nuisance conditions develop as a result of the operation of the Oaks Landfill.

#### HAZARDOUS WASTE DISPOSAL

- 5.0 Montgomery County shall not propose nor consent to the use of the Oaks Landfill as a hazardous waste disposal facility as defined by the Federal Resources Conservation and Recovery Act. Hazardous wastes, classified as hazardous by the U. S. Environmental Protection Agency (U.S. EPA) or the State, shall not be accepted for disposal at the Oaks Landfill. Equipment operators at the County's transfer station and equipment operators at the landfill shall check for hazardous wastes. U.S. EPA has specifically excluded household wastes from its lists of hazardous wastes acknowledging that very small amounts of some hazardous substances may be present in such domestic refuse, and that these substances are not present in sufficient amounts or concentrations to warrant the special handling required of truly hazardous wastes. The County shall conduct periodic random inspections of refuse for evidence of radioactive wastes.

#### ASH DISPOSAL

- 6.0 Should the County decide to change the nature of the wastes to be disposed of at the Oaks (such as using the Oaks for deposit of ash), the County will test such wastes (in accordance with the applicable Federal and State hazardous waste rules and exemptions) to determine if such wastes constitute hazardous wastes. If such wastes would be classified as hazardous under Federal or State law, those ash products shall not be accepted for disposal at the Oaks Landfill.

EXHIBIT D OF AGREEMENT  
DRAFT ADMINISTRATIVE PROCEDURE  
FOR DOMESTIC WELL WATER QUALITY MONITORING

SCOPE

- 1.0 This administrative procedure addresses an interim domestic well water quality monitoring program which shall be implemented by the County until such time as an operational water quality monitoring program is adopted and implemented by the County.

DEFINITIONS

- 2.0 A. Interim Domestic Well Water Quality Monitoring Program: The water quality monitoring program, described in this Administrative Procedure, to be implemented by the County as soon as possible after this Administrative Procedure becomes effective and continuing until such time as the County adopts and implements an operational water quality monitoring program.
- B. Operational Water Quality Monitoring Program: The water quality monitoring program adopted and implemented by the County to replace the interim domestic well water quality monitoring program.
- C. Present County Water Quality Monitoring Program: The water quality monitoring program that the County has been implementing to date, pursuant to the terms of its MDHMH permit for the Oaks Landfill.
- D. Interim Monitoring Area: The area specified in Appendix D-A. The interim domestic well water monitoring program will be conducted in this area. This area has the same boundaries as the area defined in Figure I-2 of Alternative Water Supplies for Oaks Sanitary Landfill Area (Black and Veatch, April, 1981) as the "Potential Groundwater Influence area." The Interim Monitoring Area has the same boundaries as the Oaks Water Supply Area as defined in the Administrative Procedure for Emergency, Temporary, and Permanent Water Supply.
- E. Certified Laboratory: A laboratory which is certified by the State of Maryland or which performs the following functions: (1) uses the procedures set forth by the American Public Health Association (APHA) under the title "Standard Methods for the Examination of Water and Wastewater" or the U.S. Environmental Protection Agency standards, where those exceed the APHA standards for water analysis; (2) provides safe, accurate, and documented collection and preservation of samples; and (3) attests that a legal chain of custody was maintained from sample collection to analysis.

PROGRAM OPERATION

- 3.0 The County shall collect and analyze samples from up to 92 domestic wells within the interim monitoring area, consisting of up to 78 domestic wells in addition to the 14 domestic wells at which it is monitoring water quality under the County's present water quality monitoring program.
- 3.1 The County shall monitor these additional 78 domestic wells only at the invitation of the individual well owners. In order for this interim monitoring program to begin as soon as practicable, the County shall work with GLAYCA to develop a list of the domestic wells to be tested and GLAYCA shall obtain, on forms provided by the County, the written permission of each well owner to test his or her domestic well.

- 3.2 In order to participate in this interim domestic well water quality monitoring program, individual well owners who previously had their wells tested privately by laboratories must provide the County with the results of all of these private tests.
- 3.3 In substitution for any of the 78 domestic wells, GLAYCA may request that domestic wells be tested under this interim program, which serve the Laytonsville Elementary School, the Hadley Acres Adventist School, the Bar-T Ranch, the Summer's Way Subdivision, Mount Zion, and up to five other domestic wells within the Greater Laytonsville Community which have been previously tested by a certified laboratory.
- 3.4 The monitoring of on-site and domestic wells under the County's present water quality monitoring program shall remain unchanged until the County adopts and implements an operational water quality monitoring program.

MONITORING PROCESS

- 4.0 Under this interim monitoring program, up to 78 domestic wells shall be tested every three months. Approximately one-third of these domestic wells shall be tested each month. Tests shall be performed at three-month intervals until at least one year after the County adopts and implements an operational water quality monitoring program.
- 4.1 This interim monitoring program shall be conducted at County expense and shall include testing for the following parameters:
- A. Parameters to be tested at the up to 78 domestic wells in the interim domestic well water quality monitoring program.

U.S. EPA Key Landfill Leachate Indicators:

Chloride  
 Nitrate\*  
 Turbidity\*  
 pH  
 Chemical Oxygen Demand  
 Specific Conductance  
 Iron, total  
 Temperature

Microbiological Parameters

Fecal Coliform  
 Total Coliform

- B. Parameters to be tested in the first sampling of the up to 78 domestic wells and in subsequent samplings only if the U.S. EPA key landfill leachate indicators show significant concentrations.\*\*

Metals:

Arsenic\*  
 Barium\*  
 Cadmium\*  
 Chromium\*  
 Lead\*  
 Manganese  
 Mercury\*  
 Selenium\*  
 Silver\*

Organic Parameters:

Oil and Grease  
Phenols

- C. Parameters to be tested only if oil and grease tests show significant concentrations.\*\*

Benzene  
Ethyl Benzene  
Toluene  
Xylenes

- D. Parameters to be tested only if the U.S. EPA key landfill leachate indicators show significant concentrations.\*\*

Total Organic Carbon  
Total Organic Halogens

\*These parameters are covered by the National Interim Primary Drinking Water Standards (NIPDWS).

\*\*Significant concentrations of a given parameter shall be defined as concentrations confirmed to be more than two standard deviations greater than the mean of all concentrations recorded for that parameter in the domestic and on-site wells tested prior to June, 1982, under the County's present water quality monitoring program. At least two samples collected on separate days shall be required to confirm a given concentration.

- 4.2 Domestic well water quality test results from these domestic wells shall be reported to DEP by the laboratory in accordance with the following schedule:

- A. Within 7 calendar days of sample collection:

Chloride	Nitrate
Coliform, Fecal	pH
Coliform, Total	Temperature
Conductance, Specific	Turbidity

- B. Within 14 calendar days of sample collection:

Benzene	Total Organic Carbon
Chemical Oxygen Demand	Total Organic Halogens
Ethyl Benzene	Toluene
Oil and Grease	Xylenes
Phenols	

- C. Within 4 weeks of sample collection:

Arsenic	Lead
Barium	Manganese
Cadmium	Mercury
Chromium	Selenium
Iron, Total	Silver

- 4.3 All domestic well quality sample collection and analysis shall be conducted with proper quality assurance/quality control procedures. Opportunities to collect split samples for analysis shall be provided upon request of the individual well owner. Chain-of-custody records and schedules for sample collection and analysis shall be made public. All results shall be made available promptly to GLAYCA and shall be entered into the U.S EPA STORET data base. The County shall provide an interpretation of any abnormal test

results to the individual well owner whose well was tested. If the test results exceed the NIPDWS for the above parameters, the results will be referred to the County Health Department for evaluation for health hazards.

#### PUBLIC NOTIFICATION

- 5.0 This states the general policy of the Montgomery County Department of Environmental Protection (DEP) for review and distribution of data collected under the Oaks Landfill water quality monitoring program.
- 5.1 Water samples collected by DEP shall be delivered to a certified laboratory within 24 hours of sample collection. The laboratory shall conduct analyses and report data to DEP in accordance with the schedule in 4.2 above.
- 5.2 DEP shall review and verify data from the monitoring of observation wells, ponds and streams within fifteen work-days of receipt from the lab. The fifteen-day period is to permit receipt, plotting, and analysis. Furthermore, this fifteen-day period will be reviewed by OLAC to determine how the process can be expedited or improved. No later than the conclusion of that fifteen-day period, DEP shall provide the State Department of Health and Mental Hygiene (DHMH), the County Health Department, the Oaks Landfill Advisory Commission (OLAC) and other interested parties with copies of the data.
- 5.3 DEP in cooperation with the County Health Department shall review, verify and evaluate data from the monitoring of domestic wells and notify individual well water users of the results as soon as possible, but in no event later than fifteen work days of receipt of results from the lab. Following notification of these individuals, DEP shall provide DHMH, OLAC and other interested parties with copies of the data. This transmission of data shall take place not later than five work-days from release of the data to the well water users.
- 5.4 If errors in sample collection or laboratory testing are suspected, or other anomalies are observed, the County may undertake additional sampling and testing. Data that are the subject of resampling or reanalysis will be so noted on the initial public distribution of the data.
- 5.5 After laboratory data for all tests on a sample set have been validated, the data are entered by the County into the U.S. EPA's computerized water quality data base called STORET. A computer printout of all data will be produced each month and distributed to OLAC, the depository of Oaks Landfill information presently at the Gaithersburg Library, DHMH, and the County Health Department. A summary report presenting graphical and statistical analyses of key groundwater quality indicators shall also be prepared and distributed each month to the same groups.

EXHIBIT E OF AGREEMENT

DRAFT ADMINISTRATIVE PROCEDURE  
FOR EMERGENCY, TEMPORARY AND PERMANENT WATER SUPPLY

PURPOSE

- 1.0 To establish procedures to provide an emergency, temporary and permanent supply of potable water based upon criteria established in the operational water quality monitoring program.

DEFINITIONS

- 2.0 A. Oaks Water Supply Area: The area attached to this Administrative Order as Appendix E-A. This area has the same boundaries as the area defined in Figure I-2 of Alternative Water Supplies for Oaks Sanitary Landfill Area (Black and Veatch, April, 1981) as the "Potential Groundwater Influence Area." The Oaks water supply area has the same boundaries as the Interim Monitoring Area, as defined in the Administrative Procedure for Domestic Well Water Quality Monitoring. For added safety if anyone outside the perimeter of the Oaks Water Supply area is able to demonstrate to the satisfaction of the County Department of Health (and subsequently to the satisfaction of the State Department of Health and Mental Hygiene) on the basis of data gathered by the County or collected and analyzed by a certified laboratory using standard analytical methods, that his or her well water is rendered a health hazard by leachate from the Oaks Landfill, such individuals will be included within the term "Oaks water supply area" and will receive all benefits accorded affected well water users within the Oaks water supply area."
- B. Affected Well Water User: An affected well water user is, on the basis of a test of domestic wells within the Oaks water supply area, any well water user whose well is determined to contain levels of contaminants which exceed criteria established in the operational water quality monitoring program (or such alternative criteria specified in this Administrative Procedure, see 3.4 infra), and any well water user with a domestic well within the Oaks water supply area and which is within a 1,000-foot radius of this tested, domestic well.
- C. Emergency Water Supply: Provision of adequate quantities of potable water within 24 hours in a reasonable manner to affected well water users, taking into account disabilities of individual households.
- D. Interim Domestic Well Water Quality Monitoring Program: The water quality monitoring program, described in the Administrative Procedure for Domestic Well Water Quality Monitoring, to be implemented by the County until such time as the County adopts and implements an operational water quality monitoring program.
- E. Operational Water Quality Monitoring Program: The water quality monitoring program adopted and implemented by the County to replace the interim domestic well water quality monitoring program.
- F. Permanent Water Supply: Construction of an adequate supply of potable water to affected well water users within the Oaks water supply area for an indefinite period of time at no cost to such well users, other than normal costs for the quantity of water consumed.

- G. Present County Water Quality Monitoring Program: The water quality monitoring program that the County has been implementing to date pursuant to the terms of its MDHMH permit for the Oaks Landfill.
- H. Temporary Water Supply: Provision of adequate quantities of potable water for an extended period of time.
- I. Well That Is A Health Hazard: A well containing water that MDHMH has determined is unsafe to drink.
- J. Certified Laboratory: A laboratory which is certified by the State of Maryland or which performs the following functions: (1) uses the procedures set forth by the American Public Health Association (APHA) under the title "Standard Methods for the Examination of Water and Wastewater" or the U.S. Environmental Protection Agency standards, where those exceed the APHA standards for water analysis; (2) provides safe, accurate and documented collection and preservation of samples; and (3) attests that a legal chain of custody was maintained from sample collection to analysis.
- K. Health Officer: Director of the Montgomery County Department of Health.

POLICY

- 3.0 As a public health service, the County shall provide an emergency supply of potable water to affected well users within the Oaks water supply area based upon criteria established in the operational water quality monitoring program or in 3.4 infra, if applicable. The emergency water supply shall be provided at no cost.
- 3.1 This procedure shall apply generally to those domestic wells located within the Oaks water supply area.
- 3.2 Should the Maryland Department of Health and Mental Hygiene (MDHMH) determine, based upon its groundwater monitoring activity, that the source of a groundwater health hazard is leachate from the Oaks Landfill, the County shall provide a convenient temporary supply of water to affected well water users until a supply of permanent safe potable water can be constructed at no cost to affected well water users in the Oaks Water Supply area.
- 3.3 Affected well water users shall have the option of accepting or refusing the provision of an emergency water supply pursuant to this procedure. A record of said action shall be maintained by the Montgomery County Department of Environmental Protection (DEP).
- 3.4 The County intends to have the first phase of the operational water quality monitoring program implemented by the end of 1983. The County intends to include in that program criteria to aid the County Health Officer in his determination as to when emergency water should be supplied under this Administrative Procedure (pending a final determination by MDHMH). It is the intent of this provision to have emergency water made available to address well pollution caused by the operation of the landfill. The County Health Department shall recommend whether emergency water should be supplied based upon its medical judgment. In the event that the operational water quality monitoring program and such criteria have not been adopted and implemented when this Administrative Procedure takes effect, the County Health Department shall consider, among other factors, the maximum contaminant levels established in the National Interim Primary Drinking Water Standards and the preexisting condition of the affected well.

- 3.5 If permitted by applicable law, an affected well water user may appeal or otherwise request reconsideration from a MDHMH determination that (1) a health hazard does not exist; or (2) leachate from the Oaks Landfill is not the source of the health hazard.
- 3.6 Following notification by the affected well water users of MDHMH's determination that a health hazard does not exist, or MDHMH's determination that leachate from the Oaks Landfill is not the source of the health hazard, the Chief Administrative Officer (CAO) shall direct the continued provision of emergency water for an additional two weeks. Within fourteen days of notification by CAO of such a MDHMH determination, an affected well water user who has been supplied emergency water shall have an opportunity to request a reconsideration by CAO of his decision to discontinue the provision of emergency water.
- 3.7 Should MDHMH determine, based on its groundwater monitoring activity, that the source of a groundwater health hazard is leachate from the Oaks Landfill, the County shall publicly consider alternatives, including, but not limited to, removal of the landfill; liner and leachate collection system; and construction of permanent water supply at no cost to the affected well water users in the Oaks Water Supply Area.
- 3.8 Should MDHMH determine, based on its groundwater monitoring activity, that the source of a groundwater health hazard is leachate from the Oaks Landfill, and it is determined that appropriate remedial action is not feasible, an alternative permanent water supply shall be constructed by the County at no expense to the affected well water users in the Oaks Water Supply Area.
- 3.9 The requirement for the provision of emergency or temporary water may be met by the delivery of water as provided later herein or by such other means as the CAO deem appropriate, including, but not limited to, on-site purification systems.

#### RESPONSIBILITIES

- 4.0 Chief Administrative Officer
- A. Direct the emergency delivery of potable water to affected well water users.
  - B. For each affected well water user, based upon criteria established in the operational water quality monitoring program, or in 4.1C, infra, if applicable, request MDHMH to determine if a health hazard exists and if leachate from the Oaks Landfill is the source of the health hazard.
  - C. If MDHMH determines, based upon its independent groundwater monitoring activity, that leachate from the Oaks Landfill is the source of a health hazard in a domestic well, direct the provision of temporary and then permanent water supplies to affected well water users within the Oaks water supply area.
  - D. Promptly notify OLAC of impending decisions made pursuant to this Administrative Procedure.
- 4.1<sup>3</sup> Montgomery County Department of Health
- A. Receive and evaluate test results prepared by certified testing laboratories under contract with DEP as part of the operational water quality monitoring program.
  - B. Receive and evaluate domestic well water quality data submitted by citizens that have been collected and analyzed by a certified laboratory using standard analytical methods.

- C. The data received by the County Health Department shall be evaluated to determine whether emergency water should be supplied to affected well water users based upon its medical judgment. Criteria established as part of the operational water quality monitoring program shall be developed to aid this evaluation or if no such criteria have been adopted and implemented, the County Health Department shall consider, among other factors, the maximum contaminant levels established in the National Interim Primary Drinking Water Standards and the preexisting condition of the affected well.
- D. Notify CAO of the results of the evaluations.
- E. Promptly provide affected well users with information concerning precautions to be taken to eliminate any unsafe use of the water.
- F. Consistent with normal County Health Department procedures, provide assistance to affected well water users in identifying the possible cause and in determining remedies to eliminate the health hazard to a domestic well if MDHMH determines, based upon its groundwater monitoring program, that leachate from the Oaks Landfill is not the source of the health hazard.

4.2 Department of Environmental Protection

- A. Implement an operational water quality monitoring program to collect and evaluate water quality data to allow the early detection of leachate migration.
- B. In the operational water quality monitoring program, samples collected by DEP shall be forwarded to the certified laboratory within twenty-four hours of sample collection. The laboratory shall conduct analyses in accordance with the schedule contained in this monitoring program, and report results to DEP within the specified time limits. DEP shall perform validation and verification of the analyses within five work days and shall, no later than the conclusion of that five-day period provide the Montgomery County Department of Health (County Health Department) and OLAC with copies of the data.
- C. Provide the County Health Department and MDHMH with information and analyses useful to the regular evaluation of well water quality data.

4.3 Department of Fire/Rescue Services (Emergency Management Planning Division)

- A. Maintain a current list of vehicles and equipment that can be used for emergency water deliveries.
- B. At the direction of CAO, arrange for the prompt delivery of adequate amounts of potable water to the affected well water users in a reasonable manner, taking into account specific disabilities of individual households.

4.4 Maryland Department of Health and Mental Hygiene

- A. Evaluate information received from the County concerning domestic wells; determine if a health hazard exists and, if a health hazard exists, use data collected by the MDHMH groundwater monitoring program for the Oaks Landfill to determine if leachate originating from the Oaks Landfill is the source of the health hazard.
- B. Report findings and determinations to the Health Officer and the CAO. The CAO shall provide OLAC with a copy of the findings and determinations promptly.

PROCEDURE

5.0 Department of Environmental Protection

Receive water quality data from certified lab, verify/validate data and send data to County Health Department within five work days.

Identification

5.1 Montgomery County Department of Health

Within five work days of data receipt from DEP, review the water quality data based upon criteria established in the operational water quality monitoring program or in 4.1C supra, if applicable. A report of the review shall be sent to CAO and OLAC.

Receive and review within five work days domestic well water quality data submitted by citizens (that have been collected and analyzed by a certified laboratory using standard analytical methods) based upon criteria established in the operational water quality monitoring program or in 4.1C supra, if applicable. A copy of the data and findings is to be provided to DEP, CAO and OLAC.

Immediate Response

5.2 Montgomery County Department of Health

The Health Officer shall immediately forward findings to CAO. Based upon criteria established in the operational water quality monitoring program or in 4.1C supra, if applicable, these findings may include a recommendation that the County provide an emergency water supply to the affected well water users. A copy of the report including the recommendation shall be sent to OLAC.

5.3 Chief Administrative Officer

Based upon the recommendation of the Health Officer, direct Fire/Rescue (Emergency Management Planning Division) to arrange for the delivery within 24 hours of an emergency supply of potable water to the affected well water users.

Immediately inform the affected well water users of the decision to provide an emergency supply of water. A copy of the notification shall be sent to OLAC.

If water quality data exceeds criteria established in the operational water quality monitoring program or in 4.1C supra, if applicable, deliver the findings of the County Health Department within 24 hours to MDHMH, requesting a determination of whether a health hazard exists and whether leachate from the Oaks Landfill is the source of the health hazard.

5.4 Emergency Management Planning Division, Fire/Rescue Services

Provide an emergency supply of water to the affected well water users within 24 hours, upon direction of the CAO.

5.5 Montgomery County Department of Health

Immediately advise the affected well water users and OLAC of precautions to take to prevent any unsafe use of the well water.

Long-Term Response

5.6 Maryland Department of Health and Mental Hygiene

In an expeditious manner, determine if a health hazard exists and, based upon its independent groundwater monitoring activity, determine whether leachate from the Oaks Landfill is the source of the health hazard.

Notify CAO of its findings. This Administrative Procedure shall not preclude the exercise by any affected well water user of any legally available rights of appeal of any determination by MDHMH that: (1) a health hazard does not exist; or (2) leachate from the Oaks Landfill is not the source of the health hazard.

5.7 Chief Administrative Officer

If a health hazard is determined to exist, direct Fire/Rescue to continue the emergency water supply deliveries.

If leachate from the Oaks Landfill is determined by MDHMH to be the cause of the health hazard:

- direct continued emergency water supply deliveries.
- Promptly notify affected well water users by certified mail preceded by verbal or telephone notification.
- Promptly arrange for a convenient temporary supply of water.
- Consider alternatives to construct a permanent supply of safe potable water.
- Promptly notify OLAC of determination and confirm actions to be taken.

If leachate from the Oaks Landfill is determined by MDHMH not to be the source of the health hazard:

- Promptly notify all affected well water users by certified mail.
- Continue delivery of emergency water supplies for two additional weeks after affected well water users are notified by certified mail.
- Instruct the County Health Department to promptly assist affected well water users in identifying the possible cause of the well water health hazard and determining remedies to eliminate that health hazard.
- Promptly notify OLAC of determinations and confirm appropriate actions to be taken.

If a health hazard is determined by MDHMH not to exist, direct the continued delivery of emergency water supplies for two additional weeks after affected well water users are notified by certified mail.

5.8 Emergency Management Planning Division, Department of Fire/Rescue Services

Provide the emergency supply of potable water in accordance with CAO instructions.

5.9 Montgomery County Department of Health

If leachate from the Oaks Landfill is determined not to be the source of the health hazard, assist affected well water users in identifying the possible cause and determining remedies to eliminate the health hazard, consistent with normal County Health Department procedures.

DEPARTMENTS AND AGENCIES AFFECTED

6.0 Chief Administrative Office  
Department of Environmental Protection  
Montgomery County Department of Health  
Department of Fire/Rescue Services  
Maryland State Department of Health and Mental Hygiene  
Oaks Landfill Advisory Commission (OLAC)

APPENDICES

Appendix E-A.

EXHIBIT F

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

SHERROD EAST, et al.,	*	
Plaintiffs	*	
vs.	*	Law No. 56860
CHARLES W. GILCHRIST, et al.	*	
Defendants	*	

JUDGMENT

This matter comes before the Court on the Fifth Amended Petition for Writ of Mandamus, Declaratory Judgment and Damages with a Claim for Injunctive Relief. Counts I, IV, VII and VIII as contained in prior amended petitions have been previously adjudicated by this Court. The remaining claims of the Plaintiffs still pending before the Court consist of the following:

1. Count II alleges that the actual construction of the Oaks Landfill materially differs from the plans permitted by the State Department of Health and Mental Hygiene in numerous ways in violation of Article 43, Section 394 of the Maryland Code.

2. Count III alleges that the County did not obtain a permit for the discharge of pollutants into the waters of the State as required by Section 8-1413 of the National Resources Article of the Maryland Code and alleges that certain amendments to COMAR 10.50.01 are illegal and of no effect.

3. Count V alleges that the construction and operation of the Oaks Landfill has and will cause pollutants to be discharged into the waters of the State, thereby creating a public nuisance.

4. Count VI alleges that the construction and operation of the Oaks Landfill has and will cause a decrease in property values, noise, traffic congestion, contamination of domestic water supply and inconvenience to the Plaintiffs individually with the exception of Plaintiff FICKER, thereby constituting a private nuisance to such Plaintiffs.

The Court finds that the parties have entered into an extensive agreement of settlement that resulted from lengthy mediation and negotiation among the parties, the Greater Laytonsville Civic Association and public officials that resolved the pending disputes;

The Court further finds that the Plaintiffs properly and adequately represent all taxpayers whose financial interest in the public monies of Montgomery County could be affected by the siting, design, construction and operation of the landfill as well as all of those persons whose property and/or personal rights could be affected by the siting, design, construction and operation of the landfill;

The Court further finds that notice of the pendency of this action brought by the Plaintiffs has been adequately given to all of those who are within the class by extensive coverage in every general circulation newspaper in the area, by radio and television, by community meetings held in Laytonsville and other areas in the County, and by a series of public meetings held by the County Council after public notice. The issues surrounding the construction and operation of the Oaks Landfill have been fully and openly aired throughout the County. The Court further finds that there has been adequate notice of the pendency of a proposed settlement in the public media and by public meetings in the greater Laytonsville community;

The Court further finds that the claims set forth in Counts II, III and V are class actions under Rule 209 of the Maryland Rules of Procedure;

The Court further finds that those claims set forth in Count VI are private in nature and are not class actions;

The Court further approves of settlement of these extensive disputes between the parties and finds the settlement to be in the public interest and in the interest of the members of the classes.

In accordance with the Settlement Agreement filed herein by the parties who have consented thereto, it is therefore by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1983,

ORDERED, that with the exception of the those claims stated herein-after, all claims under Counts II, III, V and VI of the Fifth Amended Petition for Writ of Mandamus, Declaratory Judgment and Damages with a Claim for Injunctive Relief be and are hereby dismissed with prejudice, and it is further,

ORDERED, that any claims for a public nuisance or any claims for damage to private property or property right or persons that may arise in the future should the Oaks Landfill contaminate groundwater in violation of State or Federal law beyond its site property line (to the extent that any such claims may be included in Counts II, III, V and VI) be and they are hereby dismissed without prejudice.

\_\_\_\_\_  
JUDGE, Circuit Court for  
Montgomery County, Maryland

CONSENTED:

William J. Chen, Jr.  
WILLIAM J. CHEN, JR.  
Attorney for Plaintiffs

William J. Jaffurs, Sr., M.D.  
Samuel Riggs IV  
Sherrod East  
Thelma Carter  
Edgar Hatter

Paul A. McGuckian  
PAUL A. MCGUCKIAN  
County Attorney

Nathan J. Greenbaum  
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Assistant County Attorney

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Montgomery County, Maryland

Albert D. Brault  
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Attorney for Individual Defendants

STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
Defendant

BY: Susan K. Gauvey  
Susan K. Gauvey  
Assistant Attorney General

PLANTIFFS:

William J. Jaffurs, Sr., M.D.  
WILLIAM J. JAFFURS, SR., M.D.

Samuel Riggs IV  
SAMUEL RIGGS IV

Sherrod East  
SHERROD EAST

Thelma E. Carter  
THELMA CARTER

Edgar Hatter  
EDGAR HATTER

Robin Ficker  
ROBIN FICKER

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

*Al Bergsten*

*1-13-83  
LCS  
GHE*

201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

XXXXXXXXXXXXXXXXXXXXXXXXXXXX.  
Adele Wilzack, R.N., M.S.  
Secretary

*Supply and cost  
11/25/83*

November 4, 1983

Ms. Susan K. Gauvey  
Assistant Attorney General  
Munsey Building  
Calvert & Fayette Streets  
Baltimore, Maryland 21202

Dear Susan:

It is somewhat comforting to learn that this case is finally drawing to a close. I have read the latest, and hopefully final draft of the settlement agreement. I find the document to be mostly innocuous, but I do find one clause to be disturbing. This is Section 3.0 which deals with permit amendment or renewal. Montgomery County is, of course, free to agree to anything it wishes. However, I must make it quite clear that it is the Department that will decide if any proposed change or amendment to the permit or permit documents constitutes a material or substantive change which requires a public hearing. I will not necessarily abide by a decision reached by the County or GLAYCA with respect to any particular modification.

As a facility is constructed, it is normal to adjust certain features in the field to accommodate actual field conditions. This may slightly alter contours, drainage patterns or materials to be used in construction, such as the change in the plastic used for the leachate collection system, or the exact alignment on the site of the access road onto the active face of the fill. We have steadfastly maintained that substantive issues would only pertain to basic design issues or concepts, such as facility expansion (either vertically or horizontally), installation of an impervious cap over the fill or other changes which alter the basic nature of the project.

NOV 15 1983

Log No. *931/83* Date *11/10/83*  
*Merke / DEPM*  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Ms. Susan K. Gauvey  
November 4, 1933  
Page Two

These decisions are made by the Department and are subject to appeal. I am not willing to cede this responsibility to either GLAYCA or the County. Since this document does not "bind" the State, I'm not sure if it is a significant point, but I do believe we should convey our position to the various parties.

Sincerely yours,

William E. Chicca, Administrator  
Technical Services Program

WEC:vvg

cc: Mr. Ronald Nelson  
Mr. Randall Lutz  
Mr. Nathan Greenbaum  
Mr. John Menke ✓