IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

HAAS TRUCKING, INC. — APPELLANT

VERSUS — CAUSE NO.: 2009-TS-00373

HANCOCK COUNTY SOLID WASTE AUTHORITY; and
HANCOCK COUNTY BOARD OF SUPERVISORS — APPELLEES

BRIEF OF APPELLANT HAAS TRUCKING

APPEAL FROM THE CIRCUIT COURT
OF HANCOCK COUNTY

(ORAL ARGUMENT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

Counsel certifies the following persons have an interest in the outcome of this case:

1. Haas Trucking, Inc.; Kevin and Lisa Haas, Kiln, Mississippi;

2. Boudin's Environmental Services, LLC, Amicus Curiae; Robert J. Boudin, Jr., President, Boudin's Environmental Services, LLC;

3. James T. Mccafferty, III, attorney for Boudin's Environmental Services, LLC, and Robert J. Boudin;

4. Hancock County Solid Waste Authority, Appellees;

5. Ronald L. Artigues, and Patrick W. Kirby, Butler Snow O'Mara Stevens & Cannada, Attorneys for Appellees.

So certified this, the 24th Day of September, 2009.

HAAS TRUCKING, INC.; AND KEVIN HAAS

By: JOHNSON LAW PRACTICE, PLLC, THEIR ATTORNEYS

R. Hayes Johnson, Jr.

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BRIEF IN SUPPORT OF HAAS TRUCKING, INC.'S APPEAL

COME NOW YOUR APPELLANTS, Haas Trucking, Inc., (hereinafter "the Appellants"), through counsel, who submit this Brief in Support of Haas Trucking, Inc.'s Appeal:

V. STATEMENT OF THE CASE

1. This is an appeal by Haas Trucking, Inc., (hereinafter "Appellant"), of a final decision by the Hancock County Solid Waste Authority, ("the Authority"), on Aug. 21, 2007, and a subsequent decision of the Hancock County Circuit Court affirming the Authority.

2. On Aug. 30, 2007, Appellant filed a Notice of Appeal and Bill of Exceptions in the Hancock County Circuit Court. R.E. 1.

3. On Nov. 20, 2008, the matter was heard by Hon. Lawrence P. Bourgeois, Jr., in the Hancock County Circuit Court.

4. After post-hearing briefs were filed by Appellant, Appellee and *amicus curiae*, the circuit court issued an opinion on Feb. 6, 2009, filed Feb. 9, 2009, affirming the Authority. R.E. 2-3.

5. On March 6, 2009, Haas Trucking, Inc., through counsel, filed a Notice of Appeal and Designation of the Record, appealing the matter to the Mississippi Supreme Court. R.E. 1.

6. Accompanying this brief under separate cover are the following record excerpts (referred to herein as "R.E.____"), all of which are incorporated herein:

   a. Trial court docket, R.E. 1;

   b. Opinion of the Hancock County Circuit Court, R.E. 2-3;

   c. Resolution of the Hancock County Solid Waste Authority, R.E. 4-5;

   d. Optional record excerpts; R.E. 6-135.

7. Statutes and rules cited herein are appended to the brief as Appendix "A."

8. This brief also is being submitted on disk, in Word Perfect 12. The disk also contains a scanned copy of the entire record maintained by the Hancock County Circuit Clerk, numbered Haas00001 to Haas01170; pages 00001-00230 represent the court file; pages 00231 to 01170 are the complete record submitted by the Solid Waste Authority, in the order submitted.

VI. STATEMENT OF RELEVANT FACTS

9. In December, 2006, the Hancock County Solid Waste Authority submitted to the Mississippi Department of Environmental Quality ("MDEQ") a proposed Amendment #6 to Hancock County's 20-year solid waste plan. R.E. 6-29.

10. The proposed amendment was the culmination of intense study and public commentary following the devastation of Hurricane Katrina. It was the subject of a public hearing on Nov. 1, 2006, in Hancock County. R.E. 30-51.

11. The plan amendment process was coordinated by Hancock County's consulting engineers, Compton Engineering, Inc. R.E. 6, 12.

12. Katrina's vast destruction had exposed a need for additional waste capacity across the Gulf Coast, including Hancock County, and the Hancock County Solid Waste Authority set out to amend its plan to accommodate post-Katrina growth, and any future disasters. R.E. 28-29.

13. After study and review, the waste authority adopted Compton's recommendation to designate eight (8) new waste dumps in Hancock County for Class I certification. R.E. 13.

14. (Class I is the state designation for waste dumps that are approved to receive construction and demolition debris, and other heavy waste. *See* Mississippi Commission on Environmental Quality Regulation #SW-2, § 2 (defining Class I and Class II dumps), http://www.deq.state.ms.us/newweb/MDEQRegulations.nsf?OpenDatabase. App. "A.")

15. Your appellant, Haas Trucking, Inc., owns one of the sites that was designated by the county for Class I certification. R.E. 17, 21, 27, 32.

16. The solid waste plan was submitted to the state environmental regulatory agency, as provided by law, for approval. R.E. 6.

17. On Feb. 26, 2007, a staff member for the MDEQ wrote to the Hancock authority, ostensibly rejecting the county's waste plan amendment. R.E. 52-53.

18. The primary reason offered for rejecting the Hancock plan was the MDEQ staff's belief that the Hancock plan "fails to support the need for 8 new, class I rubbish disposal sites in Hancock County." *Id.*

19. Accordingly, the MDEQ staff requested the Hancock waste officials to "re-evaluate the local solid waste capacity needs..." *Id.*

20. MDEQ offered the services of an engineering firm, Neel-Schaffer, retained by the state after Katrina to evaluate solid waste needs across the Gulf Coast. *Id.*

21. MDEQ later provided detailed instructions on areas it believed Hancock County should focus when re-evaluating the waste plan. R.E. 54-58.

22. At no time did the Mississippi Commission on Environmental Quality, ("MCEQ"), address the 2006 Hancock County plan amendment, despite statutes and agency rules requiring the Commission to rule on such matters. Deficiencies in waste plans must be cited by the Commission its in orders approving, conditionally approving, or rejecting submitted plans. *See, e.g.*, MCEQ Regulation #SW-1, §IV, available at http://www.deq.state.ms.us/newweb/MDEQRegulationsnsf?OpenDatabase; *accord* Miss. Code Ann. §17-17-227 (as amended). App. "A."

23. In response to the MDEQ staff directive, the Hancock County Authority abandoned its

original plan, accepted the services of the state's engineering firm, and started over.

24. On Aug. 21, 2007, the Hancock County Solid Waste Authority voted 3-2 to submit a new plan amendment containing just one (1) additional proposed Class I site for Hancock County. R.E. 4-5; 100-104.

25. That vote followed a review process wherein the Neel-Schaffer engineers recommended three (3) proposed sites to the county authority, none of which was owned by the Appellant, Haas Trucking, Inc. (One of the sites was already in operation as a Class I facility.) R.E. 77-96; 105-129.

26. In turn, the Authority, after failing to get enough votes to reject the engineering firm's report altogether, R.E. 97-99, or to accept it in full, R.E. 100-104, voted to add one (1) new proposed Class I site to its long-term plan. R.E. 100-104.

27. The Authority adopted a resolution in support of the amendment. R.E. 4-5.

28. The revamped solid waste plan amendment was resubmitted to the state. R.E. 131-135.

29. Between December, 2006, when the first plan amendment was submitted, and August, 2007, when the second amendment was adopted, no material changes occurred in Hancock County with regard to solid waste or to Haas Trucking, Inc.

30. Haas Trucking, Inc., timely filed a bill of exceptions and, subsequently, this appeal. R. 1.

VII. SUMMARY OF THE ARGUMENT

31. The Authority acted outside the statutory and regulatory guidelines when it responded to an MDEQ staff letter by throwing out the county's months-long solid waste plan review and starting over. The staff member had no authority to reject the county's plan, and it was unreasonable for the county to accept such direction without an order from MCEQ. The Commission, not its staff, has exclusive authority to approve, disapprove or critique county

solid waste plans. By not following the law and regulations, both the county and MDEQ were wrong.

32. Res judicata barred the Authority from reopening its solid waste plan amendment unless a material change in circumstances occurred. Since no order was issued by the Commission, there was no change in circumstances. Therefore, the agency had no legal authority to take a second vote on its list of recommended solid waste sites – or to drop Haas Trucking, Inc., from the list – as the whole matter was "non-justiciable."

33. Even assuming that the Authority and MDEQ acted within their power, the removal of Haas Trucking, Inc., from the second proposed amended solid waste plan was not based on substantial evidence, and was arbitrary and capricious.

VIII. STANDARD OF REVIEW

34. This is an appeal from an administrative agency decision.

35. The standard for review is that "[m]atters of law will be reviewed de novo, with great deference afforded an administrative agency's construction of its own rules and regulations and the statutes under which it operates." *McDerment v. Miss. Real Estate Comm'n*, 748 So. 2d 114, 118 (Miss. 1999) (internal citations omitted).

36. "However, where an agency's interpretation is contrary to the unambiguous terms or best reading of a statutory provision, the agency is not entitled to deference." *Sierra Club v. Miss. Env. Quality Permit Bd.*, 943 So. 2d 673, 679 (Miss. 2006); *Miss. Gaming Comm'n v. Imperial Palace of Miss., Inc.*, 751 So. 2d 1025, 1029 (Miss. 1999).

37. "[A]n agency's decision will not be disturbed on appeal absent a finding that it (1) was not supported by substantial evidence, (2) was arbitrary or capricious, (3) was beyond the power of the administrative agency to make, or (4) violated some statutory or constitutional right

of the complaining party." *McDerment v. Miss. Real Estate Comm'n*, 748 So. 2d 114, 118 (Miss. 1999) (internal citations omitted); *Sierra Club v. Miss. Env. Quality Permit Bd.*, 943 So. 2d 673, 679 (Miss. 2006).

38. "Substantial evidence means something more than a 'mere scintilla' or suspicion." *Public Employees' Retirement System v. Marquez*, 774 So. 2d 421, 425 (Miss. 2000) (internal citations omitted). "Substantial evidence has further been defined by this Court as 'such relevant evidence as reasonable minds might accept as adequate to support a conclusion.'" *Id.* (internal citations omitted).

39. At the same time, "[s]ubstantial evidence is 'something less than a preponderance of the evidence.... The reviewing court is concerned only with the reasonableness of the administrative order, not its correctness.'" *Sierra Club v. Miss. Env. Quality Permit Bd.*, 943 So. 2d 673, 678 (Miss. 2006) (quoting *Miss. Dep't of Envtl. Quality v. Weems,* 653 So.2d 266, 280-81 (Miss.1995) (internal citations omitted)).

40. "We have held that an agency must clearly explain its factfinding and reasoning for a decision in order to facilitate review by the courts. Conclusory remarks alone do not equip a court to review the agency's findings. Accordingly, findings on factual issues must be specific enough for the reviewing court to determine whether the decision is supported by substantial evidence." *Sierra Club v. Miss. Env. Quality Permit Bd.*, 943 So. 2d 673, 681 (Miss. 2006) (internal citations omitted).

41. The appellate court "must look at the full record before it in deciding whether the agency's findings were supported by substantial evidence. While the circuit court performs limited appellate review, 'it is not relegated to wearing blinders.'" *Public Employees' Retirement System v. Marquez*, 774 So. 2d 421, 427 (Miss. 2000) (internal citations omitted).

42. Anticipating appellate review, "administrators [must] say at least minimally why they do what they do so someone can see whether it be arbitrary or capricious." *McGowan v. Miss. State Oil & Gas Bd.*, 604 So. 2d 312, 322 (Miss. 1992). In *McGowan*, this Court knew an agency rejected a permit for wells, "but we are not sure why." *Id.* at 323. Accordingly, the Court vacated the agency's order because of inadequate findings.

43. "An action 'is arbitrary or capricious if the agency entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" *Sierra Club v. Miss. Envtl. Quality Permit Bd.*, 943 So. 2d 673, 678 (Miss. 2006) (quoting *Miss. Dep't of Envtl. Quality v. Weems*, 653 So. 2d 266, 281) (internal citations omitted)).

44. The "failure of an agency to abide by its rules is per se arbitrary and capricious as is the failure of an administrative body to conform to prior procedure without adequate explanation for the change." *Miss. Dep't of Envtl. Quality v. Weems*, 653 So.2d 266, 281 (Miss.1995) (quoting 2 AmJur2d § 530 at 519 (1994)).

45. "If an administrative agency's decision is not based on substantial evidence, it necessarily follows that the decision is arbitrary and capricious." *Public Employees' Retirement System v. Marquez*, 774 So. 2d 421, 430 (Miss. 2000) (internal citations omitted).

46. However, "[a] rebuttable presumption exists in favor of agency decisions, and this Court may not substitute its own judgment for that of the agency." *Sierra Club v. Miss. Envtl. Quality Permit Bd.*, 943 So. 2d 673, 678 (Miss. 2006) (quoting *Miss. Comm'n on Envtl. Quality v. Chickasaw County Bd. of Supervisors*, 621 So.2d 1211, 1216 (Miss.1993)).

IX. ARGUMENT

47. Even though the standard of review is highly deferential, the Court should reverse the action of the Authority for one or more of the following reasons:

A. The Authority's Decision Did Not Follow Statutory Procedure

48. Only the Mississippi Commission on Environmental Quality, not its staff, is empowered to accept or reject proposed solid waste plan amendments from regional authorities.

49. When an MDEQ staff member informed Hancock County that its plan was unacceptable, that person was acting outside the boundaries of statutory and regulatory law.

50. By acting on the MDEQ staffer's instructions, the Authority also stepped outside legal guidelines.

51. Accordingly, the Authority's decision to drop Haas Trucking, Inc., from the previous solid waste plan amendment was not supported by the evidence or the law, and was arbitrary and capricious.

52. In adopting and submitting its Plan Amendment in December, 2006, the Authority was complying with Miss. Code Ann. §17-17-227, which requires each county to prepare, adopt and submit "**to the commission for review and approval**" a local nonhazardous solid waste management plan. Miss. Code Ann. §17-17-227(1), (6) (emphasis added). App. "A."

53. Once received, state law requires the commission, "**by order**," to approve or disapprove the plan within 180 days. Miss. Code Ann. §17-17-227(6) (emphasis added). App. "A." If the commission disapproves a plan, the commission must include in its order "a statement outlining the deficiencies in the plan" and directing the county to prepare a revised plan within 120 days. *Id.*

54. The Commission's own rules track state law, requiring the Commission to approve,

conditionally approve, or disapprove any plan submitted by a county waste authority. MCEQ Regulation #SW-1, §IV, available at http://www.deq.state.ms.us/newweb/MDEQ Regulations.nsf?OpenDatabase. App. "A."

55. Here, after Hancock County submitted its proposed plan, the Commission never issued any order.

56. Instead, the MDEQ staff rejected the plan on its own and notified Hancock County that the staff believed the county's plan was flawed and needed revision. R.E. 52-58.

57. The primary complaint from the MDEQ staff was Hancock County's inclusion of eight (8) new, class 1 rubbish disposal sites in the county, and the staff's belief that Hancock County had overestimated its future solid waste needs. *Id.*

58. Without an order by the commission setting out the alleged shortcomings, the MDEQ staff had no authority to direct Hancock County to revise the plan, nor did Hancock County have any legitimate basis to reopen its solid waste plan.

59. Accordingly, there was no statutory or regulatory basis for the Hancock County Authority to revamp the plan and drop all but one (1) of the newly recommended waste facilities. In doing so, the Authority embarked on action that was not supported by law or procedure, and therefore arbitrary, capricious and not supported by substantial evidence.

60. The proper course was for Hancock County to await MCEQ review of its plan, and to act only after an order was issued by the Commission. Miss. Code Ann. §17-17-227. Had deficiencies been noted by the Commission – including, ostensibly, concerns regarding number of sites or future solid waste needs – then Hancock County would have been required by statute and rule to address those purported deficiencies.

61. It is clear, however, that the Hancock County Solid Waste Authority was under the

impression that it was bound to take the actions set out by MDEQ in its "rejection" of the waste plan.

62. For example, in the project narrative produced by the Authority in support of its second amended plan – and submitted as part of the record in this appeal -- the Authority or its agents[1] explained the effort to revise the plan as follows:

a. "[T]he **initial Plan ... failed** to support the need for eight new Class I Rubbish Sites." R.E. 131.

b. "The review of **MDEQ required** that the Authority re-evaluate the local solid waste capacity...." *Id.*

c. "[S]ince MDEQ commented that the need for eight sites is not documented, the project approach included **an initiative to reduce the number of sites**...." *Id.*

(Emphasis added).

63. Taking these official descriptions at face value, it is obvious that the Hancock officials thought they received marching orders from the state to start over with their solid waste review, and to reduce the number of sites.

64. Hancock County did just that – even acknowledging that it set out to "reduce the number of sites," R.E. 131 – and the Appellant was damaged as a result.

65. Even if the Authority's actions were based on the belief that such marching orders had the force of law, that belief was wrong. Accordingly, no deference is due.

66. On this issue, the instant case is reminiscent of *Miss. Dep't of Envtl. Quality v. Weems*, 653 So. 2d 266 (Miss. 1995). In that case, the MDEQ executive director wrote letters in response

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[1]Though not autographed, the narrative seems likely to have been authored by the state's engineering firm, Neel-Schaffer.

to a request for legal guidance regarding a solid waste permit. This Court noted with approval that the chancellor in *Weems* rejected the MDEQ official's letters, holding that "[t]he Commission 'does not speak, nor set policy, through the letters of its Executive Director. It can only speak through its own official action.' " *Id.* at 272.

67. An underlying issue in *Weems* was the trial court's finding that the Mississippi Commission on Environmental Quality had failed to abide by a statute requiring the Commission to adopt certain rules and procedures. *Id.* at 279.

68. This Court agreed, commenting that "[b]y not considering or acting within the confines of the statute," the Commission had left the plaintiff (Weems) in a "useless forum."[2] *Id.* at 281. The Court held that MDEQ had been arbitrary and capricious, and the case was remanded to administrative agencies for further action. *Id.*

69. *Weems* parallels the instant case. Here, an MDEQ staff member – without "official action" by the Commission and outside the "confines of the statute" -- wrote two letters to the Hancock County Solid Waste Authority setting out policy of the state agency. R.E. 52-58.

70. If the MCEQ does not speak through opinion letters from its executive director , *id.* at 272, then it certainly cannot speak through the letters of a staff member.

71. This is especially so when the content of the letters relates directly to MCEQ's compliance with, and administration of, its statutory and regulatory duties regarding solid waste management in this state.

72. Statutes and agency rules govern the Commission's approval or disapproval of solid waste plans, as noted *supra*. By "not acting within the confines of the statute," *id.* at 281, MCEQ's

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[2]This phrase was a partial reference to the issue of exhaustion of administrative remedies, which was an issue in *Weems* but not here.

actions with regard to the Hancock County Authority solid waste plan amendment were "per se arbitrary and capricious...." *Id.* at 281.

73. A difference here from *Weems* is that the ultimate decision-maker was/is the Hancock County Authority, not MCEQ. But the Authority also is bound by the same statutory guidelines; its reliance on unofficial actions of MDEQ should be given no more deference than that afforded the agency in *Weems*.

B. The Decision Was Barred by the Doctrine of *Res Judicata.*

74. Administrative agencies are bound by res judicata, just like courts. Barring a material change in circumstances, decisions of agencies on specific issues have the force of precedent regarding those issues and are not to be revisited lightly.

75. Here, the Authority spent months preparing its proposed solid waste plan amendment before submitting it in December, 2006. Submission followed public hearings, publication and a vetting process for applicants, including the Appellant.

76. The only change in Hancock County's solid waste needs between December, 2006, and August, 2007, appeared to be the unauthorized criticism of the proposed amendment by a single MDEQ staff member.

77. Accordingly, the Authority's decisions to reopen the solid waste discussion, and to drop Haas Trucking, Inc., from its plan amendment, were barred by res judicata.

78. "Under Mississippi law, res judicata or collateral estoppel precludes relitigation of administrative decisions." *Smith v. Univ. of Miss.*, 797 So. 2d 956, 963 (Miss. 2001). "Once an agency decision is final and the decision remains unappealed beyond the time to appeal, it is barred by administrative res judicata or collateral estoppel." *Zimmerman v. Three Rivers Planning & Dev. Dist.*, 747 So. 2d 853, 861 (Miss. App. 1999).

79. While the traditional application of res judicata bars an individual or entity from serially seeking relief from a decision-making body, the doctrine equally applies to the decision-maker.

80. In *Keenan v. Harkins*, 82 Miss. 709, 35 So. 177 (1903), the Board of Supervisors had enlarged a portion of the county to be classified as stock-law territory. The Supreme Court sustained the decision of the Circuit Court dismissing an appeal. "The board of supervisors," the Court said, "has ordinarily no power to review or reverse or vacate its own judicial action after final adjournment." *Id.*

81. In *Westminster Presbyterian Church v. City of Jackson*, 176 So. 2d 267, 270 (Miss. 1965), the issue was a church's third application for zoning change, the previous two having been denied. This Court affirmed the third denial of the application. "We find that in most jurisdictions the rule is, that when an order is entered by such board of review or board of adjustment, after notice, hearing, and expiration of time for appeal, **the board has no power to change its decision** in the absence of fraud, newly discovered evidence, or a material change of circumstances. This is an application of the doctrine of res adjudicata to the adjudication of past facts." *Westminster Presbyterian Church v. City of Jackson*, 176 So. 2d 267, 270 (Miss. 1965) (emphasis added). "The Council **must** apply the doctrine in proper cases." *Id.* at 271 (emphasis added). *See also A&F Props., Inc. v. Madison County Bd. of Supervisors*, 933 So. 2d 296, 301-02 (Miss. 2006) (developer's second attempt in 3 ½ months to obtain amendment of master plan should have been denied by administrative agency and circuit court as "non-justiciable" because of previous administrative ruling).

82. The recurring exception to the doctrine is where an applicant (or, ostensibly the agency) can show a material change in circumstances occurring after the agency last considered the issue.

"A judgment bars a subsequent application for the same purpose where the facts upon which it is based are not changed and the conditions are substantially similar." *City of Jackson v. Holliday*, 149, So. 2d 525, 528 (Miss. 1963). *See also, Miss. Public Service Comm'n v. Merchants Truck Line, Inc.*, 598 So. 2d 778, 779-80 (Miss. 1992) (if previous decisions of agency are res judicata, then subsequent application requires proof of material change in circumstances); *McKibben v. City of Jackson*, 193 So. 2d 741, 744 (Miss. 1967) (proponent has burden of proof to show material changes since previous administrative hearing).

83. While the combined concepts of administrative res judicata and material change often appear in zoning or land-use decisions, there is nothing in the law limiting their application to those areas.

84. *Miss. Public Service Comm'n v. Merchants Truck Line, Inc.*, 598 So. 2d 778 (Miss. 1992), did not turn on res judicata, but the case quoted the trial court's application of the doctrine to decisions of the Public Service Commission:

> Although this court can find no Mississippi authority directly on point, the Mississippi Supreme Court has held that in zoning cases, once a factual decision has been made, that decision is res adjudicato (sic) in the absent (sic) of proof of a material change. There is no reason for not applying this doctrine to decisions of the Public Service Commission. Indeed the need for public confidence in its officials demands consistency.

Id. at 779-80.

85. This Court reversed, but stated "[i]f the PSC's denial of [applicant's] first two claims are (sic) res judicata, then [applicant] was entitled to proceed on its third application only upon demonstrating that a material change in circumstances occurred between the time of the second denial and the filing of the third petition." *Id.* at 779-80 (internal citations omitted).

86. Applied to the instant case, the doctrine requires reversal of the Hancock County Authority's

revised solid waste plan amendment.

87. When submitted in December, 2006, the proposed amendment was the result of months' debate, and fully documented. It constituted a final decision of the Authority.

88. By the time the MDEQ staff critiqued the plan in February, 2007, the time to contest or appeal the Authority's decision had expired.[3] Conversely, no appeal was available from the MDEQ staff letters.

89. The Authority itself had the duty to invoke res judicata, and to refuse the MDEQ staff member's demand that the Authority start over.

90. Simply put, "the board ha[d] no power to change its decision in the absence of fraud, newly discovered evidence, or a material change of circumstances." *Westminster Presbyterian Church v. City of Jackson*, 176 So. 2d 267, 270 (Miss. 1965). In this situation, an agency like the Authority "must apply the doctrine...." *Id.* at 271.

91. Failing to do so – and then reopening the plan and dumping Haas Trucking, Inc. – the Authority acted improperly and should be reversed.

C. Authority's Decision Was Not Based upon Substantial Evidence.

92. Appellant does not concede the legitimacy of Neel-Schaffer's recommendation to leave Haas Trucking, Inc., off the list of Class I sites, nor the Authority's "do over" of the plan amendment. However, in its rush to abide by MDEQ staff's demands, the county also took actions that are not supported by evidence. Accordingly, even assuming the second list of Class I sites was legitimately sought by the state or county, the result was improper and should be reversed.

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[3]Of course, Haas had no reason to appeal the Authority at that time – his application to be considered as a Class I site had been granted.

93. Nothing in the record – other than the aforementioned MDEQ staff complaint – explains how or why the Authority decided to drop Haas Trucking, Inc., from the previous list.

94. In contrast, the original proposed plan amendment included Haas Trucking on the list of recommended sites, and contained affirmatory information about the Appellant's site.

95. The Haas site was included in the original plan amendment, having survived an arduous application, engineering review and public comment process. R.E. 6-51.

96. But when the MDEQ staff complained, the Authority dropped Haas from final consideration.

97. How Neel-Schaffer came up with its list of finalists – two (2) new Class I sites, in addition to the pre-existing Class I dump – is not supported by the record.

98. Nor are the reasons for exclusion of Haas from the list.

99. After citing generic "siting factors," such as accessibility and transportation economics, Neel-Schaffer produced a graphic depiction of all eight sites – described as an "Evaluation Matrix," R.E. 115 – ostensibly ranking them with weighted ink blots. Nothing in the record assigns a numeric score or ranking, nor explains the methods used to come up with these ink blots. Based on the size of the ink blots assigned to Haas Trucking, Inc., the site appeared to be approximately in the middle of all sites. R.E. 115, 136.

100. Other than a map of the Haas site, R.E. 125, there is no other specific reference to Haas in the entire record.

101. All applicants are referenced on a tangent in the revamped plan amendment, which states that each applicant was afforded a 15-minute interview with Neel-Schaffer engineers during the re-evaluation of the plan amendment. R.E. 131. However, the subject matter of any discussion between Haas and the consultants, and/or the consultants' impressions or concerns about the applicant, are not contained in the record.

102. In fact, most of the Authority record focuses only on the two (2) new sites that Neel-Schaffer recommends, and not on the excluded sites. R.E. 131-138. As a result, there is little technical explanation from Neel-Schaffer or the waste authority why Haas Trucking, Inc., fell from a favorable/recommended site when reviewed by Hancock County and Compton Engineering, R.E. 6-51, to a disfavored/rejected site when re-reviewed by Hancock County and Neel-Schaffer, R.E. 105-135.

103. Other than the ink-blot matrix, noted above, there is no discussion at all about Haas Trucking's site.

104. This absence of information gives some insight into flaws in the Authority's approach under Neel-Schaffer.

105. The Authority's first public review of the Neel-Schaffer recommendation came in the form of a motion to reject the new solid waste plan because of its failure to adequately compare all eight sites before limiting the list to only two new sites.

106. On July 12, 2007, Commissioner Jim Thriffiley made a motion to reject the entire Neel-Schaffer report. R.E. 97-99. Thriffiley cited the following shortcomings:

a. untimely submission of the report;

b. failure to physically inspect all sites;

c. no analysis of mileage to all sites;

d. no detailed analysis of long-term capacity;

e. no flood plain analysis of the sites; and

f. no identification of sites that could not be permitted under MDEQ regulations.

Id.

107. Thriffiley's motion was joined by one commissioner, but opposed by two. Therefore, it

failed. *Id.*

108. Nonetheless, Thriffiley's criticisms shed light on gaping holes in the revamped waste plan, and raised questions that remain unanswered in the official record.

109. For example: Why did the state's engineers fail to visit the Haas site, which is centrally located, easily accessible and closer to population growth areas than sites more favorably ranked? In the absence of such information, how could the consultant or the county take a position on Haas' suitability with reference to the "siting factors" that supposedly guided the process?

110. (By contrast, the 2006 proposed plan amendment listed the Haas site as being conveniently located, and likely to reduce transportation cost related to solid waste disposal. R.E. 21.)

111. Further, how could the county justify voting on any plan that lacked flood-plain analysis, especially in light of Katrina's storm surge and the general flooding history of Hancock County?

112. On Aug. 21, 2007, a motion was made to accept the Neel-Schaffer recommendation for two new Class I sites. R.E. 100-104. The motion failed, 3-2, with Thriffiley again citing the same list of problems with the report. *Id.*

113. A second motion was made to accept the report, but dropping one of the two new Class I sites recommended by Neel-Schaffer. That motion carried, 3-2. *Id.*

114. A resolution was passed in support of the recommendation, and the second proposed Plan Amendment #6 was sent back to MDEQ. R.E. 4-5.

115. This appeal followed. R.E. 1.

116. Meeting minutes produced by the Authority as part of the official record make no mention whatsoever of Haas Trucking, Inc., other than a plan to meet with all applicants. R.E. 59-

104. If such meeting occurred, it is not referenced in the minutes, and no other reference is made to reasons why Haas Trucking, Inc., fell off the county's solid waste list. *Id.*

117. The Authority had a duty to "say at least minimally why they do what they do so someone can see whether it be arbitrary or capricious." *McGowan v. Miss. State Oil & Gas Bd.*, 604 So. 2d 312, 322 (Miss. 1992). In the instant case, just like *McGowan*, the agency rejected an applicant's requested relief, "but we are not sure why." *Id.* at 323.

118. Accordingly, this Court should vacate the agency's order because of inadequate findings, and thus not based on substantial evidence and/or arbitrary and capricious. *Id.*; accord *Public Employees' Retirement System v. Marquez*, 774 So. 2d 421, 430 (Miss. 2000).

D. The Decison Was Arbitrary and Capricious.

119. The Neel-Schaffer recommendation – and the authority's ultimate acceptance of it – was arbitrary and/or capricious, based on nothing more than the unauthorized directive of the MDEQ staff.

120. For example, by its own words, Neel-Schaffer acknowledged that it did no significant review of any site's suitability under MDEQ permitting requirements. "The [permitting] factors must be evaluated based on detailed site investigations that were beyond the scope of this project," the engineers stated. R.E. 132. "Any selected sites must undergo detailed evaluations during the permitting phase." *Id.*

121. Since no site can accept solid waste unless it has been permitted, one would assume that consulting engineers – and the solid waste authority – would want to know whether a site might qualify for a permit before choosing it to the exclusion of all other candidates in a 20-year plan.

122. This flaw was one of the reasons cited by Thriffiley and another commissioner in voting

three times to reject the entire Neel-Schaffer plan. R.E. 97-104.

123. With no idea about permitting, in addition to the other failures cited above, it is clear that neither the authority nor its borrowed consultants could justify their decision in dropping Haas and the other sites from consideration.

124. Accordingly, the decision was "not done according to reason or judgment, but depending upon the will alone" and in a manner "implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles." *McGowan v. Miss. State Oil & Gas Bd.*, 604 So. 2d 312, 322 (Miss. 1992).

125. In other words, the decision was arbitrary and/or capricious, and should be reversed.

X. CONCLUSION

126. For all of the reasons stated above, and in the incorporated exhibits, Haas Trucking, Inc., requests the Court to reverse the decision of the Hancock County Circuit Court, which had affirmed the Hancock County Solid Waste Authority's decision regarding exclusion of Haas Trucking, Inc., from the county's proposed solid waste site list, and to remand this matter to the agency for further proceedings.

WHEREFORE, PREMISES CONSIDERED, Appellant requests the court to enter an order reversing the decision of the Hancock County Circuit Court, which affirmed the Hancock County Solid Waste Authority, and requiring the Authority to reinstate its Amendment #6 to the county's solid waste plan, including Haas Trucking, Inc., as a recommended Class I rubbish site, and instructing the authority to submit the plan to state environmental authorities for review as provided by state law and administrative regulations.

Appellant also requests general relief.

Respectfully Submitted, this the 24th Day of September, 2009.

HAAS TRUCKING, INC.; AND KEVIN HAAS

By: JOHNSON LAW PRACTICE, PLLC, THEIR ATTORNEYS

R. Hayes Johnson, Jr.

CERTIFICATE OF SERVICE

I, R. Hayes Johnson, Jr., do hereby certify that I have this day caused to be delivered by U.S. Mail, first class, postage prepaid; or by facsimile; or by hand delivery; or by more than one of these methods, a true and correct copy of the above, foregoing pleading to:

Ronald T. Artigues, Jr., Esq.
Butler Snow, et al.
833 Highway 90, Suite 1
Bay St. Louis, MS 39520
ATTORNEYS FOR APPELLEES

James T. McCafferty
P.O. Box 5092
Jackson, MS 39296
ATTORNEYS FOR *AMICUS CURIAE*

I, further certify that I have this day caused to be delivered by U.S. Mail, first class, postage prepaid, the original and four (4) copies of this Brief, along with four (4) copies of Appellant's Record Excerpts, along with a copy of the brief on disk, to:

Betty W. Sephton, Clerk
Mississippi Supreme Court
P.O. Box 249
Jackson, MS 39205-0249

SO CERTIFIED, this the 24th Day of September, 2009.

R. HAYES JOHNSON, JR.

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APPENDIX "A"

West's Annotated Mississippi Code Currentness
Title 17. Local Government; Provisions Common to Counties and Municipalities

§ 17-17-227. Local and regional plans

(1) Each county, in cooperation with municipalities within the county, shall prepare, adopt and submit to the commission for review and approval a local nonhazardous solid waste management plan for the county. Each local nonhazardous solid waste management plan shall include, at a minimum, the following:

(a) An inventory of the sources, composition and quantities by weight or volume of municipal solid waste annually generated within the county, and the source, composition and quantity by weight or volume of municipal solid waste currently transported into the county for management;

(b) An inventory of all existing facilities where municipal solid waste is currently being managed, including the environmental suitability and operational history of each facility, and the remaining available permitted capacity for each facility;

(c) An inventory of existing solid waste collection systems and transfer stations within the county. The inventory shall identify the entities engaging in municipal solid waste collection within the county;

(d) A strategy for achieving a twenty-five percent (25%) waste reduction goal through source reduction, recycling or other waste reduction technologies;

(e) A projection, using acceptable averaging methods, of municipal solid waste generated within the boundaries of the county over the next twenty (20) years;

(f) An identification of the additional municipal solid waste management facilities, including an evaluation of alternative management technologies, and the amount of additional capacity needed to manage the quantities projected in paragraph (e);

(g) An estimation of development, construction, operational, closure and post-closure costs, including a proposed method for financing those costs;

(h) A plan for meeting any projected capacity shortfall, including a schedule and methodology for attaining the required capacity;

(i) A determination of need by the county, municipality, authority or district that is submitting the plan, for any new or expanded facilities. A determination of need shall include, at a minimum, the following:

(i) Verification that the proposed facility meets needs identified in the approved local nonhazardous solid waste management plan which shall take into account the quantities of municipal solid waste generated and the design

capacities of existing facilities;

(ii) Certification that the proposed facility complies with local land use and zoning requirements, if any;

(iii) Demonstration, to the extent possible, that operation of the proposed facility will not negatively impact the waste reduction strategy of the county, municipality, authority or district that is submitting the plan;

(iv) Certification that the proposed service area of the proposed facility is consistent with the local nonhazardous solid waste management plan; and

(v) A description of the extent to which the proposed facility is needed to replace other facilities; and

(j) Any other information the commission may require.

(2) Each local nonhazardous solid waste management plan may include:

(a) The preferred site or alternative sites for the construction of any additional municipal solid waste management facilities needed to properly manage the quantities of municipal solid waste projected for the service areas covered by the plan, including the factors which provided the basis for identifying the preferred or alternative sites; and

(b) The method of implementation of the plan with regard to the person who will apply for and acquire the permit for any planned additional facilities and the person who will own or operate any of the facilities.

(3) Each municipality shall cooperate with the county in planning for the management of municipal solid waste generated within its boundaries or the area served by that municipality. The governing authority of any municipality which does not desire to be included in the local nonhazardous solid waste management plan shall adopt a resolution stating its intent not to be included in the county plan. The resolution shall be provided to the board of supervisors and the commission. Any municipality resolving not to be included in a county waste plan shall prepare a local nonhazardous solid waste management plan in accordance with this section.

(4) The board of supervisors of any county may enter into interlocal agreements with one or more counties as provided by law to form a regional solid waste management authority or other district to provide for the management of municipal solid waste for all participating counties. For purposes of Section 17-17-221 through Section 17-17-227, a local nonhazardous solid waste management plan prepared, adopted, submitted and implemented by the regional solid waste management authority or other district is sufficient to satisfy the planning requirements for the counties and municipalities within the boundaries of the authority or district.

(5) (a) Upon completion of its local nonhazardous solid waste management plan, the board of supervisors of the county shall publish in at least one (1) newspaper as defined in Section 13-3-31, having general circulation within the county a public notice that describes the plan, specifies the location where it is available for review, and establishes a period of thirty (30) days for comments concerning the plan and a mechanism for submitting those comments. The board of supervisors shall also notify the board of supervisors of adjacent counties of the plan and shall make it available for review by the board of supervisors of each adjacent county. During the comment period, the board of supervisors of the county shall conduct at least one (1) public hearing concerning the plan. The board of supervisors of the county shall publish twice in at least one (1) newspaper as defined in Section 13-3-31, having general circulation within the county, a notice conspicuously displayed containing the time and place of the hearing and the location where the plan is available for review.

(b) After the public hearing, the board of supervisors of the county may modify the plan based upon the public's

comments. Within ninety (90) days after the public hearing, each board of supervisors shall approve a local nonhazardous solid waste management plan by resolution.

(c) A regional solid waste management authority or other district shall declare the plan to be approved as the authority's or district's solid waste management plan upon written notification, including a copy of the resolution, that the board of supervisors of each county forming the authority or district has approved the plan.

(6) Upon ratification of the plan, the governing body of the county, authority or district shall submit it to the commission for review and approval in accordance with Section 17-17-225. The commission shall, by order, approve or disapprove the plan within one hundred eighty (180) days after its submission. The commission shall include with an order disapproving a plan a statement outlining the deficiencies in the plan and directing the governing body of the county, authority or district to submit, within one hundred twenty (120) days after issuance of the order, a revised plan that remedies those deficiencies. If the governing body of the county, authority or district, by resolution, requests an extension of the time for submission of a revised plan, the commission may, for good cause shown, grant one (1) extension for a period of not more than sixty (60) additional days.

(7) After approval of the plan or revised plan by the commission, the governing body of the county, authority or district shall implement the plan in compliance with the implementation schedule contained in the approved plan.

(8) The governing body of the county, authority or district shall annually review implementation of the approved plan. The commission may require the governing body of each local government or authority to revise the local nonhazardous solid waste management plan as necessary, but not more than once every five (5) years.

(9) If the commission finds that the governing body of a county, authority or district has failed to submit a local nonhazardous solid waste management plan, obtain approval of its local nonhazardous solid waste management plan or materially fails to implement its local nonhazardous solid waste management plan, the commission shall issue an order in accordance with Section 17-17-29, to the governing body of the county, authority or district.

(10) The commission may, by regulation, adopt an alternative procedure to the procedure described in this section for the preparation, adoption, submission, review and approval of minor modifications of an approved local nonhazardous solid waste management plan. For purposes of this section, minor modifications may include administrative changes or the addition of any noncommercial nonhazardous solid waste management facility.

(11) The executive director of the department shall maintain a copy of all local nonhazardous solid waste management plans that the commission has approved and any orders issued by the commission.

(12) If a public notice required in subsection (5) was published in a newspaper as defined in Section 13-3-31, having general circulation within the county but was not published in a daily newspaper of general circulation as required by subsection (5) before April 20, 1993, the commission shall not disapprove the plan for failure to publish the notice in a daily newspaper. Any plan disapproved for that reason by the commission shall be deemed approved after remedying any other deficiencies in the plan.

CREDIT(S)

Laws 1991, Ch. 494, § 15; Laws 1993, Ch. 600, § 1; Laws 1998, Ch. 498, § 2, eff. July 1, 1998. Amended by Laws 2006, Ch. 587, § 1, eff. July 1, 2006.

Current through all 2008 Sessions and HB Nos. 197, 699, 636 and 1027 of the 2009 Regular Session

END OF DOCUMENT

IV. APPROVAL/DISAPPROVAL BY COMMISSION

A. If the Commission determined that a plan has met the criteria specified herein, it shall by order, approve the plan.

B. 1. If the Commission determines that one or more of the criteria herein has not been fully met, but that Section III. D. of this criteria has been met in relation to the residential and commercial solid waste needs of the planning area, it may by order conditionally approve the plan. The Commission shall include in the order the conditions, upon which the plan is approved, including a list of deficiencies, which prevent the plan from becoming fully approved and a schedule for correcting those deficiencies.

2. Should the county or planning authority fail to correct the deficiencies listed by the Commission within the established schedule, the Commission may take any enforcement action which it is authorized by law to administer, or it may, by order, rescind its conditional approval.

3. Upon correction of the deficiencies listed with any conditional approval, the Commission shall fully approve the plan.

C. If the Commission determines that the plan fails to meet the criteria of Section III.D with respect to residential and commercial waste needs, or that other criteria herein have not been met, it may, by order, disapprove the plan. The Commission shall include in the order a statement outlining the deficiencies in the plan and shall direct the county or planning authority to submit a revised plan that remedies those deficiencies. Any person found by the Commission to be in violation of said order shall be subject to civil penalties pursuant to Miss. Code Ann. Section 17-17-29.

D. No new plan or modification to an approved plan shall be approved or conditionally approved by the Commission, until it has been duly ratified in accordance with Paragraph (5) of Miss. Code Ann. Section 17-17-227 and Section III.D of these Regulations, except where the action involves a minor modification to the plan.

In the case of a minor modification to an approved plan, ratification of the modified plan shall be approved in accordance with Paragraph 5 of Miss. Code Ann. Section 17-17-227 and Section III.D of these Regulations except as described below:

1. A minor modification may be approved without the mandatory public notice and public hearing requirements and the adjacent county notice procedures described in Part 5.(a) of Paragraph 5 of Miss. Code Ann. Section 17-17-227.

2. A minor modification may be approved by the local government without the notification to the contiguous property owners as required by Section III.D.1.c of these regulations.

SECTION II. PERMIT PROCEDURES

A. No solid waste management facility shall be operated without an individual permit from the Permit Board or a certificate of coverage under a general permit.

B. The Permit Board may issue a general permit for a specified category or group of facilities that involve similar wastes or have similar operating requirements and restrictions.

C. No new solid waste management facility nor any lateral expansion of an existing facility beyond the area previously approved shall be granted either an individual permit from the Permit Board or a certificate of coverage under a general permit, unless such facility is consistent with the approved local solid waste management plan for the area in which the facility is located. Solid waste management facilities existing prior to the date of Commission approval of the applicable local plan are considered to be consistent with such local plans, even if there is no recognition of such facilities in the plan. However, any lateral expansion of such existing facilities which has not been approved by the Permit Board prior to the date of Commission approval of the plan must be expressly recognized in the plan in order to be considered consistent with the plan.

D. An application for issuance, re-issuance or transfer of an individual permit or a certificate of coverage under a general permit shall be made on forms provided by the Department. In addition to the information required in the application form, the Department may require other information as necessary to evaluate the proposed facility.

E. Applicant Disclosure Statement Requirements

1. Applicants for the issuance, re-issuance or transfer of an individual permit shall also file with the Permit Board or the Permit Board's designee a disclosure statement in accordance with Section 17-17-501 through 17-17-507, Mississippi Code Annotated, and the regulations promulgated pursuant thereto.

2. Applicants for the issuance, re-issuance or transfer of a certificate of coverage under a general permit shall also file with the Permit Board or the Permit Board's designee a disclosure statement in accordance with Section 17-17-501 through 507, Mississippi Code Annotated, and the regulations promulgated pursuant thereto.

3. For the purposes of Paragraphs E.1 and E.2 of this section, the term "applicants" means any persons, except public agencies, applying for a permit or a certificate of coverage to operate and/or construct a commercial nonhazardous solid waste management facility.

4. If the owner (except a public agency) of a commercial nonhazardous solid waste management facility contracts with any person other than a public agency to operate the facility, the owner shall not allow the contractor to begin operation until disclosure statements with regard to the owner and the contractor have been submitted to and approved

by the Permit Board or the Permit Board's designee in accordance with Section 17-17-501, Mississippi Code Annotated and the regulations promulgated pursuant thereto. If a public agency applies for a permit and proposes to operate a facility by contract, the contractor shall be required to file a disclosure statement.

F. Notwithstanding the authority and the requirements of Section 17-17-501 through 17-17-507, Mississippi Code Annotated, the Permit Board or the Permit Board's designee may require a reasonable amount of information concerning the financial capability and/or the performance history of an applicant and may use the information in determining whether an individual permit or a certificate of coverage under a general permit should or should not be granted.

G. An application for the issuance, re-issuance, modification or transfer of any solid waste management permit or certificate of coverage and all reports required by the solid waste management permit or other information requested by the Permit Board shall be signed as follows:

1. For a corporation: a president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, county, state, federal, or other public agency; either a principal executive officer or ranking elected official;

4. The signature of a Duly Authorized Representative (DAR) shall be a valid signature under these Regulations, in lieu of the signatures described above provided the following conditions are met;

a. The DAR is an employee of the entity seeking the solid waste management permit or certificate of coverage.

b. The DAR is identified to the Department by the ranking officer of the corporation, partnership, proprietorship, municipality, county, state, federal or other public agency.

c. The DAR is responsible for the overall management of the solid waste facility.

H. When the Department is satisfied that an application for an individual permit is complete, or that a proposed general permit has been completed it shall develop a proposed recommendation as follows:

1. If the proposed recommendation is to issue the individual or general permit, the Department shall, at a minimum, prepare a public notice and allow the general public a period of at least 30 days to provide comment regarding the application or to request a public hearing in accordance with Section 49-17-29(4)

(a), Mississippi Code Annotated 1972. A public notice may be waived by the Department for modifications to existing facilities which do not involve an expansion of the facility or a significant change in the method of waste management. The Department may conduct a public hearing for proposals when a significant level of public interest exists in the project area or where warranted by other factors.

2. If the proposal applies to the issuance of a general permit or an individual permit for an MSWLF unit, or the modification pertaining to the expansion of an MSWLF unit beyond the permitted capacity or area of an individual permit or a general permit, or the transfer of an individual permit for an MSWLF unit, a public hearing shall be conducted.

3. The Permit Board may conduct a single public hearing on related groups of draft individual or general permits.

4. Following a public notice and any public hearing which may be conducted, the Permit Board or the Permit Board's designee shall make a decision regarding the issuance of the permit.

I. When the Department determines that an application for coverage under a general permit is complete, the Permit Board or the Permit Board's designee shall make a decision regarding the issuance of the Certificate of Coverage.

J. Any interested party aggrieved by any action of the Permit Board or the Permit Board's designee with regard to permit or certificate of coverage issuance, denial, modification or revocation may file a written request for a formal hearing in accordance with Section 49-17-29(4)(b), Mississippi Code Annotated.

K. A permit shall not be issued for more than ten (10) years. Any existing permit which does not have an expiration date shall be re-evaluated and may be reissued for a period not to exceed ten (10) years after the date of reissuance. Such re-evaluation shall be limited to an evaluation of:

1. The terms and conditions of the permit to determine consistency with current requirements of the Department,

2. The operating history of the permittee at the permitted facility, and

3. The permittee's ability to comply with Section III of these regulations (Siting Criteria).

Permits are subject to modification, revocation, and/or reissuance for good cause at any time during the life of the permit.

L. A transfer of an individual permit or a certificate of coverage under a general permit from one person to another shall be made prior to any sale, conveyance, or assignment of the rights in the permit held by the permittee. Any change of more than 50 percent of the equity ownership of the facility or permittee over a sustained period resulting in a new majority owner shall constitute a transfer. A new majority owner for purposes of this provision shall be an individual, partnership, company, or group of affiliated companies. A transfer, as described in this paragraph, must be approved by the Permit Board. All transfers approved by the Permit Board shall be made contingent upon the final sale, conveyance, or assignment of rights in the permit being completed within one year of Permit Board action, and shall be effective on the date of final sale, conveyance, or assignment of rights in the permit.

M. It is the responsibility of the permittee to possess or acquire a sufficient interest in or right to the use of the property for which a permit or certificate of coverage is issued, including the access route. The granting of a permit or a certificate of coverage does not convey any property rights or interest in either real or personal property; nor does it authorize any injury to private property, invasion of personal rights, or impairment of previous contract rights; nor any infringement of federal, state, or local laws or regulations outside the scope of the authority under which a permit or certificate of coverage is issued.

N. Storage, processing, disposal or other placement of waste shall be limited to the area described in the application form required in paragraph D. of this section, unless an amended application is submitted to the Department and approved.

O. When a disaster occurs, such as a tornado, hurricane, or flood, and results in urgent need for public solid waste disposal or processing facilities, the Department may approve a site or facility for immediate operation subject to stipulated conditions and for a limited period of time.