

**IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

SYDNEY BACCHUS, Ph. D.,)	
JILL JENNINGS-MCELHENY)	
and)	
M.I.C.A.H.'s Mission)	
)	Docket Number:
Petitioners,)	
)	
v.)	
)	
ENVIRONMENTAL PROTECTION)	
DIVISION, GEORGIA DEPARTMENT)	
OF NATURAL RESOURCES, by and through)	
its Commissioner, Judson Turner)	
)	
Respondent.)	

PETITION FOR HEARING

1. This Petition, filed by Dr. Sydney Bacchus and Jill Jennings-McElheny, (hereinafter “Petitioners” or “Dr. Bacchus” and “Ms. Jennings-McElheny,” respectively), appeals the issuance of operational permit number 029-012D(SL) for “Major Modification of the Clarke County – Athens Dunlap Road Phase 5 Municipal Solid Waste Landfill” (hereinafter “ACC’s new municipal dump operational permit”) issued by the Director of the Georgia Department of Natural Resources’ (hereinafter “GDNR”) Environmental Protection Division (hereinafter “EPD”) to Athens-Clarke County (hereinafter “ACC”). A true and correct copy of the Permit is attached hereto as Exhibit 1.

STATEMENT OF JURISDICTION

2. This action is brought pursuant to O.C.G.A. §§ 12-2-2 and 12-5-43 and Ga. Comp R. & Regs. R. 391-1-2 *et seq.* authorizing any person who is aggrieved or adversely affected by an action of the Director to petition for judicial review.

3. O.C.G.A. §§ 12-2-2 and 12-5-43 provide that whenever any person is aggrieved or adversely affected by any order or action of the Director of the Environmental Protection Division (the “Director”), such person may request and obtain a hearing by filing a petition no later than thirty (30) days after issuance of the Director’s order or action.

4. Pursuant to O.C.G.A. §§ 12-2-2 and 12-5-43, the Petitioners hereby petition for a hearing because they are and have been aggrieved and adversely affected by an action of the Director. Specifically, the Petitioners are and have been aggrieved and adversely affected, directly, indirectly and cumulatively by the Director’s issuance on February 1, 2013, of the operational permit referenced above, singly and in combination with the adverse impacts from the operational permits previously issued by the Director for the operation of the open-air commercial, industrial “composting” of municipal sewage sludge (hereinafter “ACC’s sewage sludge facility”) and the “recovery” of methane gas generated by ACCs municipal dump (hereinafter “ACC’s methane generation facility”). *See* Exhibits 1 and 2.

5. This Petition is filed within thirty (30) days of the issuance of the Permit by the Director, as required by statutory law.

PETITIONER’S INTEREST

6. Petitioners and their witnesses reside in the area adversely affected by ACC’s existing municipal dump, which also is the adversely affected area of ACC’s sewage sludge facility, ACC’s methane generation facility and ACC’s proposed ACC municipal dump, and include those who are elderly, low-income, infirm and/or disabled. The Petitioners’ mission and goals are and have been to protect and preserve the water and air in the affected area of the existing and proposed ACC municipal dump. The Petitioners use the air and water in the affected area of the existing and proposed ACC municipal dump for recreation and/or life support. Petitioners also have aesthetic and economic interests in the area that would be adversely affected by the proposed operation permit for ACC’s municipal dump issued in February

2013, singly and in combination with ACC's existing municipal dump, sewage sludge facility and methane generation facility.

7. Dr. Bacchus has resided in ACC since 1991. Her mission and goals are and have been to protect and preserve the water, air and native species of animals and plants, including the myriad federally endangered and threatened species that will be harmed by the combined adverse impacts of the existing and proposed municipal dumps. This harm constitutes unpermitted "takings" of federally endangered and threatened species.

8. Ms. Jennings-McElheney has lived in Oglethorpe County, the site of ACC's proposed municipal dump, for approximately 15 years. Prior to moving to Oglethorpe County Ms. Jennings-McElheney resided in ACC. While residing in ACC she was pregnant. During that time and the early years of that child's life Ms. Jennings-McElheney and her family were drinking water from a residential well. Also at that time, it had been determined that the ground water in that area was a major public health hazard. At age 4, her son was diagnosed with childhood leukemia and almost died. The cause of childhood leukemia is known to be pre-natal and post-natal exposure to environmental carcinogens. After the child survival, Ms. Jennings-McElheney founded M.I.C.A.H.'s Mission, a non-profit, charitable organization, in honor of her son's survival. The initials "M.I.C.A.H." stand for the Ministry to Improve Childhood & Adolescent Health, which is a Christian ministry that provides services to families and communities to reduce their environmental threats, with an emphasis on improving childhood and adolescent health. Ms. Jennings-McElheney has advocated for and worked with families and the worship community and residential neighborhood in the vicinity of ACC's existing municipal dump and ACC's proposed new municipal dump, ACC's sewage sludge facility and ACC's methane generation facility. More than 50 residents of that area have requested that Ms. Jennings-McElheney speak on their behalf because of the adverse affects that they have suffered due to those existing ACC facilities. Those adverse affects would be exacerbated by

the proposed new ACC municipal dump. Additional information about Ms. Jennings-McElheney's efforts through M.I.C.A.H.'s Mission is provided at MicahsMission.org. Ms. Jennings-McElheney also is Vice President of the Northeast Georgia Children's Environmental Health Coalition (hereinafter "NEGCEHC"). NEGCEHC's concerns are similar to those of M.I.C.A.H.'s Mission and they hold regular meetings in ACC. That organization also hosts speakers on topics related to environmental health and host panels of candidates during local elections. All of NEGCEHC's events are open to the public.

APPLICABLE LAW AND REGULATORY STRUCTURE

9. Adverse impacts associated with ACC's new municipal dump operational permit are not confined to the surface footprint of that facility, but include the release of airborne contaminants and increasing global climate disruption, contamination of surface waters, and hydroperiod and other groundwater alterations that result in dewatering of surrounding uplands, wetlands and other surface waters. The greatest environmental impacts related to altered hydroperiods and other groundwater alterations occur during the dry season. Hydroperiod and other groundwater alterations that would result from the proposed project can result in significant physical, chemical and biological changes in terrestrial, aquatic and estuarine ecosystems. These changes also include, but aren't limited to predisposing organisms to disease via decreased resistance and introducing new contaminants into the ground water and surface waters. *These contaminants ultimately make their way into streams, estuaries and the ocean, and even pose a potential threat to public drinking water sources, in violation of the federal Clean Water Act, Safe Drinking Water Act, Endangered Species Act and Clean Air Act.*

10. To help achieve its goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters, the Clean Water Act (hereinafter "the CWA") allows states to implement their own permit programs when authorized by the U.S. Environmental Protection Agency (hereinafter the "USEPA"). 33 U.S.C. § 1342(b). In the State of Georgia, the USEPA has delegated authority to authority to

EPD to issue permits related to water quality and the state law granting EPD the authority to issue those permits is the Water Quality Control Act (hereinafter “the WQCA”). O.C.G.A. § 12-5-23(a)(5).

11. The WQCA recognizes that “[t]he people of the State of Georgia are dependent upon the rivers, streams, lakes, and subsurface waters of the state for public and private water supply and for agricultural, industrial, and recreational uses. It is therefore declared to be the policy of the State of Georgia that the water resources of the state shall be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into such waters.” O.C.G.A. § 12-5-21(a).

12. The WQCA further provides that “the government of the state shall assume responsibility for the quality and quantity of such water resources and the establishment and maintenance of a water quality and water quantity control program adequate for present needs and designed to care for the future needs of the state. . . .” O.C.G.A. § 12-5-21(a).

13. The WQCA entrusts the responsibility of protecting the state’s water resources with the Environmental Protection Division of the Georgia Department of Natural Resources (“EPD”). O.C.G.A. § 12-5-21(b).

14. The Board of Natural Resources sets pollutant limitations and administers the general permitting processes for the discharge of pollutants into waters of the state. O.C.G.A. § 12-5-23(a); Ga. Comp. R. & Regs. 391-3-6-.06.

15. The Director of EPD administers and enforces the rules and regulations promulgated under the WQCA, and has the power to issue, modify, or revoke permits for discharges of pollutants to waters of the state. O.C.G.A. § 12-5-23(b); Ga. Comp. R. & Regs. 391-3-6-.01 *et seq.*

16. EPD has the authority to investigate and enforce the WQCA. O.C.G.A. § 12-5-25.
17. The Director of EPD is authorized to require monitoring, recording, and reporting of discharges of pollutants to state waters. O.C.G.A. § 12-5-27.
18. The Board of Natural Resources has promulgated rules and regulations that establish the standards for water quality in Georgia. Ga. Comp. R. & Regs. 391-3-6 *et seq.*
19. These standards are explicitly meant to enhance water quality, to prevent pollution, and to protect fish and other aquatic life, among other things. Ga. Comp. R. & Regs. 391-3-6-.03(2).
20. The general narrative standards for water quality in Georgia rivers provide that “[a]ll waters shall be free from material related to municipal, industrial or other discharges which produce turbidity, color, odor or other objectionable conditions which interfere with legitimate water uses.” Ga. Comp. R. & Regs. 391-3-6-.03(5)(c).
21. The Board of Natural Resources has promulgated rules and regulations requiring any person who is discharging or proposes to discharge any pollutant into waters of the State from any point source to obtain an NPDES permit and detailing the requirements to obtain a permit. Ga. Comp. R. & Regs. § 391-3-6-.06.
22. To obtain a permit, an application must be submitted along with complete engineering reports, a schedule of progress, plans, specifications, maps, measurements, quantitative and qualitative determinations, records, and all related materials. Ga. Comp. R. & Regs. § 391-3-6-.06(5)(a).
23. Once a tentative decision to approve a permit is reached, public notice must be prepared and posted in the geographical area of the proposed discharge, published in a newspaper of general circulation, and mailed to interested persons or groups upon request. Ga. Comp. R. & Regs. § 391-3-6-.06(7)(b).
24. EPD is required to provide at least 30 days following the date of public notice for interested parties to submit written views on the tentative determination. Ga. Comp. R. & Regs. § 391-3-6-.06(7)(b)(iv).

25. EPD also is required to retain comments submitted within 30 days of the date of public notice and takes them into consideration when making the final determination with respect to the permit application.

Ga. Comp. R. & Regs. § 391-3-6-.06(7)(b)(iv).

26. Permits may be subject to monitoring, recording, and reporting requirements as may reasonably be required by the Director and any holder of a permit which requires monitoring must periodically report to the EPD the results of all required monitoring. Ga. Comp. R. & Regs. § 391-3-6-.06(11).

27. Claims pertaining to the USEPA's approval of a state's water quality regulations and standards, however, are governed by the federal Administrative Procedure Act (hereinafter "the federal APA"). Under the federal APA, an agency action may be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under this APA standard, the reviewing court "must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 378, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971)). An agency decision is "arbitrary and capricious" when the agency: "has relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, 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." *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, ___ U.S. ___, 127 S.Ct. 2518, 2529, 168 L.Ed.2d 467 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983)).

28. The Endangered Species Act (hereinafter "the ESA"), 16 U.S.C. 460 et seq. provides broad protection for species of fish, wildlife and plants that are listed as threatened or endangered in the U.S. or

elsewhere. The ESA prohibits the "taking" of listed animals and, under certain circumstances, regulates destruction of habitat needed for feeding, reproduction, and shelter.

29. By encouraging and allowing the actions referenced above, rather than implementing alternatives to those actions, ACC, EPD, GDNR and relevant federal agencies have ignored the direct, indirect, secondary and cumulative adverse impacts of its actions on federally listed species. The actions referenced above will result in the taking of federally endangered and threatened species and the degradation of regional habitat needed for feeding, reproduction, and shelter. The above mentioned citizens and non-profit groups request that, before any final action is taken with respect to proposed expansion that consultation is had with those federal agencies charged with the protection of federally listed threatened and endangered species, these waters under applicable federal law and the ultimate impact on public drinking water sources.

FACTUAL BACKGROUND

30. On February 1, 2013, the GDNR issued permit number 029-012D(SL) for "Major Modification of the Clarke County – Athens Dunlap Road Phase 5 Municipal Solid Waste Landfill" (hereinafter "the ACC Municipal Dump Permit") issued by the Director of the Georgia Department of Natural Resources' Environmental Protection Division (hereinafter "EPD") to Athens-Clarke County (hereinafter "ACC"). See Exhibit 1.

31. The GDNR also issued a permit on September 7, 2012 to capture methane gas generated from rotting organic garbage dumped at the same location as the initial municipal dump permitted by GDNR, because ACC has failed to divert and compost that organic material. That permit methane gas permit expires five (5) years after the date of issuance. That permit states, in relevant part (emphasis added):

This Permit may be subject to revocation, suspension, modification or amendment by the Director for cause including evidence of noncompliance with any of the above, for any misrepresentation made in Title V Application No. TV-21093 signed on April 6, 2012, any other applications upon which this Permit is based, supporting data entered therein or attached thereto, or any subsequent submittal of supporting data, or for any alterations affecting the emissions from this source.

32. In her letter to ACC dated January 3, 2012, Dr. Bacchus reiterated that the reported data from the 2010 LFGTE Task Force refutes ACC's misconception that methane gas "recovery" from the municipal dump methane greenhouse gas reduces releases of methane gas to the atmosphere. Methane gas is well established as an extremely potent greenhouse gas, contributing significantly to global climate disruption and harm to myriad federally endangered and threatened species. Methane gas is well established as an extremely potent greenhouse gas, contributing significantly to global climate disruption and harm to myriad federally endangered and threatened species.

33. On August 3, 2010, the GDNR also issued a permit to ACC for the commercial, industrial-scale, open-air "composting" of tons of wet municipal sewage sludge at the same facility, in close proximity to a stream that is a tributary of the Oconee River, and in close proximity to the community's church and in areas used by the Petitioners. A copy of that permit, which includes no expiration date, is attached hereto as "Exhibit 2." That permit fails to require any monitoring of airborne contaminants from the commercial, industrial-scale, open-air "composting" of tons of wet municipal sewage sludge, or monitoring of air quality or water quality from particulates, runoff and leaching of the "composted" municipal sewage sludge that ACC sells to the unsuspecting public. In fact, not only does that permit require no monitoring of any airborne contaminants and grossly insufficient monitoring of contaminants in the sewage sludge "compost." that permit does not even require that ACC record the locations where the sewage sludge sold to the public is deposited to determine where those contaminants are transported.

34. The toxic, hazardous and pathogenic contaminants that the USEPA has documented in municipal sludge "compost" were described in comment letters from Dr. Bacchus to ACC, EPD, GDNR, USEPA, the U.S. National Marine Fisheries Service (hereinafter "the USNMFS"), including her comment letter dated April 23, 2012. Some of these contaminants are addressed in detail in the 2003 Law Journal article by Christopher Nidel titled, "Regulating the Fate of Pharmaceutical Drugs: A New Prescription for the Environment." A copy of that Law Journal paper also was provided to ACC, EPD and GDNR by Dr.

Bacchus with her comment letters. Both Mr. Nidel and Dr. David Lewis, an expert in contaminants in municipal sewage sludge, described the hazards of exposure to sewage sludge in an article dated April 15, 2012. A copy of that article also was provided to ACC, EPD and GDNR by Dr. Bacchus with her comment letters and also is available at the following link: (<http://www.clarkedailynews.com/local-officials-say-biosolids-safe-to-use/31286/comment-page-1>). Relevant excerpts include the following (emphasis added):

But according to Chris Nidel, the real threat of biosolids is the material itself, not the terrible odor.

“At the fundamental level biosolids are composed of decaying human proteins,” Nidel said. “It’s a basic problem that the industry can’t get around. Endotoxins and bacteria that breakdown the human feces are present in biosolids. **When those endotoxins and bacteria are breathed into the body they can inflame the human lung and produce flu-like symptoms – nausea, dizziness and headaches.**”

Nidel said that nausea associated with biosolids endotoxins is so common that it even has a disease – “Sewage Sludge Disease.”

Nidel says that prolonged lung inflammation causes scarring in the lung lining and, in some cases, can eventually result in death.

“Biosolids also contain things like flame retardants and PCB’s but those are not what produce flu-like symptoms” Nidel said.

A second biosolids concern involves the presence of heavy metals, like mercury, left behind in the biosolids after the filtration process has removed the water from the sewage....

But even though heavy metals may not be a concern at the moment in Berryville, Nidel says that science has little understanding of the effects other biosolids components – like pharmaceuticals and hormones.

“These are materials that we know have an inherent risk,” Nidel said. “Yet the biosolids regulators have no idea what the materials can do once they are introduced through biosolids into the soil.”

New research shows that biosolids that do contain heavy metals and other chemicals may be linked to an increase in autism.

“Depending on a person’s genetics, one or more heavy metals may trigger one of these diseases to develop. For others, it may require exposure to a particular pesticide or some other toxic organic chemical to trigger the onset of a particular disease. It used to be that someone had to work in a factory or live on a farm where pesticides are sprayed to be exposed to many of these chemicals in amounts that could damage the immune or the neurological system. Children are particularly susceptible,” said Dr. David L. Lewis, Director of the Research Misconduct Project at the National Whistleblowers Center in Washington, DC.

“Over the past three decades, EPA and USDA have been increasingly pushing the idea that sewage sludge, which contains almost every imaginable chemical pollutant in the world in concentrated form, should be spread on land. Applying biosolids dramatically increases the probability that people living in the area where it’s applied will encounter whatever chemical pollutant, or combination of pollutants, it takes to trigger the onset of the particular diseases to which they are genetically susceptible. We no longer have to live near a chemical plant to be exposed on a daily basis to whatever chemical pollutants trigger some disease or disorder we lack the genes to protect us from getting. EPA is having all of them delivered to us to be spread on our farms and forests, public parks, school playgrounds, and home gardens” Lewis said.

35. The magnitude and severity of the harm to the human environment from exposure to municipal sewage sludge may be most clearly presented in the “Sludge Diet” documentary that Dr. Bacchus delivered to ACC as duplicate compact discs (hereinafter “CDs”) to be included in ACC’s official record of its proposed municipal dump expansion, with the second copy forwarded by Mr. Corley to GDNR when ACC’s copy of the official record was transmitted to GDNR. Dr. Bacchus also mailed a DVD copy of the “Sludge Diet” documentary to the Center for Biological Diversity; to Heinz Mueller, USEPA Region 4 Chief, NEPA Program Office for that agency; and to Cindy Dohner, U.S. Fish & Wildlife Service (hereinafter “the USFWS”) Region 4 Director for that agency.

36. Petitioners and other residents of the communities where ACC’s existing dump, industrial commercial sewage sludge facility and methane generation facility are located and ACC’s proposed new municipal dump operational permit would be located already have experienced higher than average rates of diseases and disease-related deaths, and/or poor quality of life, lack of enjoyment of property, and the stench of both municipal garbage and sewage sludge since those actions were permitted by GDNR.

37. The actions referenced above constitute “piece-mealing” of adverse impacts regulated under federal laws referenced above, and as described in part by Dr. Bacchus in her eight-page, formal comment letter dated April 23, 2012. That letter also describes the serious health threats to humans and other animals from exposure to municipal sewage sludge.

LEGAL AND FACTUAL ISSUES PRESENTED

Count I – The Permit Is Invalid Because ACC Failed to Perform an Antidegradation Analysis in Violation of the State and Federal Antidegradation Regulations.

38. Petitioner incorporates all of the preceding paragraphs as specifically set forth herein.
39. The Permit is invalid because it violates the State and federal antidegradation regulations. GDNR Rules 391-3-6-.03(2)(a)-(b); 40 C.F.R. § 131.12(a) (incorporated into State law by GDNR Rule 391-3-6-.03(2)(b)).
40. The State of Georgia’s antidegradation regulation provides in relevant part:
- (a) The purpose and intent of the State in establishing Water Quality Standards are to provide enhancement of water quality and prevention of pollution; to protect the public health or welfare in accordance with the public interest for drinking water supplies, conservation of fish, wildlife and other beneficial aquatic life, and agricultural, industrial, recreational, and other reasonable and necessary uses and to maintain and improve the biological integrity of the waters of the State.

...

 - (b)(ii) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the division finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the division’s continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the division shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

DNR Rules 391-3-6-.03(2)(a)- (b).

41. The new ACC operation permit allows ACC to expand and increase its discharges beyond the discharges allowed in its previous permits and without consideration of indirect and cumulative adverse impacts. The discharge authorized by ACC’s new operation permit will degrade the water quality in the area of the discharge because the ambient water quality of the Oconee River is better than the quality of the permitted and unpermitted discharges.

42. Despite the degradation of water and air quality that would result from the permitted and unpermitted discharges authorized by ACC's new operation permit, singly and combined with the permitted and unpermitted discharges of ACC's existing dump, industrial commercial sewage sludge facility and methane generation facility permitted by the GDNR, EPD failed to require ACC to perform an antidegradation analysis as required by GDNR Rules 391-3-6-.03(2)(b)(ii). Therefore, ACC's new operation permit was issued in violation of such Rule and the federal antidegradation rule, 40 C.F.R. § 131.12(a), and is illegal.

43. Pursuant to the State and federal antidegradation rules, water quality must be maintained and protected unless EPD "finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the division's continuing planning process, that *allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located.*" DNR Rules 391-3-6-.03(2)(b)(ii) (emphasis added); see also 40 C.F.R. § 131.12(a).

44. EPD failed to perform a proper analysis to determine if the water quality of the receiving body could be maintained through application of alternatives, including but not limited to best available technologies.

45. The CWA regulations specifically require each state to "develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy. 40 C.F.R. § 131.12. The USEPA's antidegradation rules describe general policies and methods of implementation which establish the minimum antidegradation requirements that states must include in their state water quality standards. *See* the USEPA Water Quality Handbook, Chapter Antidegradation. Federal antidegradation policy is contained in 40 C.F.R. § 131.12(a).

46. Under the CWA, "existing uses are uses "actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." 40 C.F.R. § 131.3(e). Existing

uses include any shellfish harvesting and collection, recreational use, and aquatic life uses, which existed on and after November 28, 1975. *See* the USEPA Water Quality Handbook, Chapter Antidegradation.

47. An appendix to EPA's Water Quality Standards Handbook, (December 1983) is available at http://water.epa.gov/scitech/swguidance/standards/upload/206_12_01_standards_antidegqu.pdf and includes "Questions and Answers on Antidegradation," providing the following insights (emphasis added):

No activity is allowable under the antidegradation policy which would partially or completely eliminate and existing use whether or not that use is designated in a State's water quality standards...Species that are in the water body and which are consistent with the designated use (i.e., not aberrational) must be protected, even if not prevalent in number or importance. Nor can activity be allowed which would render the species unfit for maintaining the use. Water quality should be such that it results in no mortality and no significant growth of reproductive impairment of resident species.

.....

Existing uses must be maintained in all parts of the water body segment in question other than in restricted mixing zones.

...

If a planned activity will foreseeably lower water quality to the extent that it no longer is sufficient to protect and maintain the existing uses in that waterbody, such an activity is inconsistent with EPA's antidegradation policy which requires that existing uses are to be maintained.

48. Antidegradation requirements are intended to apply to all factor that affect the water quality of surface waters, including water quality changes resulting from water flow reductions and diversions. *PUD No. 1 of Jefferson County v. Wash. Dep't of Ecology, et al.*, 511 U.S. 700, 713-20 (May 31, 1994). In many cases, water quantity is closely related to water quality and a sufficient lowering of the water quantity in a body of water could destroy all of its designated uses, including drinking water, recreation, navigation or fisheries. *Furthermore, there is recognition in the CWA that reduced stream flow, i.e., diminishment of water quantity, can constitute water pollution.* In fact, the CWA's definition of pollution as "the man-made or induced alteration of the chemical, physical, biological, and radiological integrity of water" encompasses the effects of reduced water quantity. 33 U.S.C. § 1314(f). Furthermore, § 304 of the Act expressly

recognizes that water “pollution” may result from “changes in the movement, flow, or circulation” of waters. 33 U.S.C. § 1314(f).

49. The proposed ACC’s new operation permit, was designed to “capture” all rain water falling on and overland flow of surface water and ground water formerly flowing over and through the proposed site to the Oconee River tributary. Therefore, those critical reductions in water quantity will result in increased pollutant loads and lower water quality in the Oconee River system, singly and combined with the permitted and unpermitted discharges of ACC’s existing dump, industrial commercial sewage sludge facility and methane generation facility permitted by the GDNR,

50. EPD failed to find that the degradation of water and air quality allowed by ACC’s new operation permit is necessary to accommodate important economic or social development in the area in which the Oconee River is located.

51. Accordingly, ACC’s new operation permit should be invalidated and remanded to EPD with instructions to determine whether ACC should be required to utilize readily available alternatives to its proposed new operation permit to ensure that there is no further degradation of Georgia’s waters and air from its discharges, and, if not, to determine whether and to what extent the discharge currently authorized by the Permit will degrade the water quality of the Oconee River. If EPD determines that the discharge will degrade the water quality, then it must perform a full and complete antidegradation analysis in order to determine whether the degraded water quality is necessary to accommodate important economic or social development in the area in which the waters are located.

COUNT II. The Permit Is Invalid Because EPD Has Failed to Assure That There Shall Be Achieved the Highest Statutory and Regulatory Requirements for All New and Existing Point Sources.

52. Petitioner incorporates Paragraphs 1-51 as specifically set forth herein.

53. The CWA, 33 U.S.C. § 1251 et seq., establishes the basic structure for regulating discharge of pollutants into waters of the United States, and provides certain mechanisms to improve and maintain the quality of surface waters. The state is required to establish a set of total maximum daily loads (hereinafter “TMDLs”) sufficient to bring impaired waters back into compliance with its water quality criteria. § 1313(d)(1)(C). Each TMDL establishes the maximum amount of a pollutant that may be added to the waterbody daily from all sources, including but not limited to runoff, point sources, and airborne pollutants. The USEPA is required to publish a list of pollutants suitable for maximum daily load measurement, § 1314(a)(2)(D), and it has determined that *all* pollutants are suitable for TMDLs. *See* Total Maximum Daily Loads under CWA, 43 Fed. Reg. 60,662. Therefore, any pollutant that falls within the relatively broad definition of “pollutant” set forth in § 1362(6) may be regulated via TMDL. The USEPA can approve or modify, as it sees fit, TMDLs proposed by the states. § 1313(d)(2).

54. State and federal law require EPD to “assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources.” DNR Rule 391-3-6-.03(2)(b)(ii); 40 C.F.R. § 131.12(a).

55. The new operation permit for ACC’s proposed dump expansion is a new point source. The permitted and unpermitted discharges of ACC’s existing dump facility, industrial commercial sewage sludge facility and methane generation facility permitted by the GDNR are existing point sources.

56. Notwithstanding EPD’s failure to require an antidegradation analysis, ACC’s new municipal dump operational permit, as drafted, allows ACC to discharge numerous pollutants, including airborne pollutants, in amounts that do not achieve the highest statutory and regulatory requirements.

57. The new operation permit for ACC's proposed dump expansion authorizes discharges of pollutants in levels that will interfere with the designated use of the Oconee River, and other waters and is invalid under DNR Rule 391-3-6-.03(6)(b) and under the State and federal regulations. DNR Rule 391-3-6-.03(2)(b); 40 C.F.R. § 131.12(a).

58. The new operation permit for ACC's proposed dump expansion allows the discharge of pollutants without placing any limits on the amount of the pollutants discharged. These pollutants include, but are not limited to, methane gas.

59. The new operation permit for ACC's proposed dump expansion should contain explicit limits on the amount of these pollutants to be discharged. These limits should be restricted to limits that are equally protective of the environment. For example, the new permit for the proposed operation of ACC's municipal dump in Oglethrope County does not address the point source discharge of methane gas, which is an extremely harmful environmental pollutant that singly and in combination with the physical dewatering of the Oconee River tributary within the affected area of the proposed new municipal dump can result in the dewatering of the Oconee River. The new operation permit for ACC's proposed dump expansion presumes that methane discharges will not occur or would be zero, which should be the limit for methane discharge. Furthermore, the permit for the new operation of ACC's proposed dump also fails to consider the indirect and cumulative adverse impacts of pollutant discharges from this proposed new facility, including reduced water quantity, combined with the unpermitted waterborne and airborne discharges from ACC's sewage sludge facility and ACC's methane generation facility. In fact, those permits also fail to even identify those pollutants from those point sources.

60. The new operation permit for ACC's proposed dump fails to require inadequate monitoring to protect the Oconee River and other waters. The permit should contain a provision requiring stricter

monitoring and reporting requirements. Monitoring should be conducted daily by independent third parties with real time access to the public via an available website.

61. As a result, the subject permit was issued:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

PRAYER FOR RELIEF

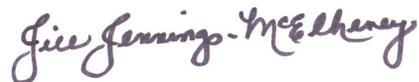
WHEREFORE, the Petitioners pray for:

- (a) all state administrative proceedings to be held in abeyance until after the issues of federal law violations have been resolved by the federal court and/or the federal agencies;
- (b) a hearing held in Athens-Clarke County, Georgia before an administrative law judge on the issues set forth in the Petition within the state's jurisdiction, if resolution of the federal law violations do not render Permit No. 029-012D(SL) invalid;
- (c) a declaration that Permit No. 029-012D(SL) is unlawful for the reasons set forth in the Petition;
- (d) an order invalidating Permit No. 029-012D(SL);
- (e) an order providing instructions to EPD on remand; and
- (f) such other and further relief to which Petitioners are entitled.

Respectfully submitted this 1st day of March, 2013.



Sydney Bacchus, Ph.D. – pro se
P. O. Box 174
Athens, GA 30603
appliedenvirserve@gmail.com



Jill Jennings-McElheney – pro se
Ministry to Improve Childhood & Adolescent Health
P.O. Box 275
Winterville, GA 30683
Micahsmission@aol.com

EXHIBIT 1

Georgia Department of Natural Resources

Environmental Protection Division

Solid Waste Management Program

4244 International Parkway, Suite 104, Atlanta, Georgia 30354

Judson H. Turner, Director

404/362-2692

February 1, 2013

Mr. James Corley, Director of Solid Waste
Unified Government of Athens-Clarke County, Georgia
P.O. Box 1868
Athens, Georgia 30603

**SUBJECT: Application for Major Modification of the Clarke County –
Athens Dunlap Road Phase 5 Municipal Solid Waste Landfill
Permit Number: 029-012D(SL)**

Dear Mr. Corley:

Your application for a Major Modification to the subject facility has been reviewed and approved. Major Modification Number 3 of Permit [029-012D(SL)] is attached and includes conditions and limitations for your operation.

Personnel of the Environmental Protection Division will make periodic inspections of your operations. These inspections will be discussed with you or your personnel.

This permit is now in effect; however, under Georgia Law it is subject to appeal for thirty (30) days following issuance and is subject to modification or possible vacation if appealed. Should an appeal be received within the thirty (30) day appeal period, you will be immediately notified and further construction or operation under this permit may not be undertaken until such time as the appeals process is concluded.

If you have any questions regarding the permit, feel free to contact Jennifer Vogel at (404) 362-2552.

Sincerely,



Melanie Henry
Program Manager
Solid Waste Management Program

Enclosure: Permit with Conditions

cc: Honorable Nancy Denson, Mayor
Brad Rickard, Athens-Clarke County
Murray Griffin, ACC
Jim Raymond, Northeast District EPD
Jennifer Vogel, Ken Simonton, Christy Kehn-Lewis, GA EPD
File: Clarke County – Athens Dunlap Road Phase 5 MSWL Major Mod #3 [029-012D(SL)] (PER)



State of Georgia
Department of Natural Resources
ENVIRONMENTAL PROTECTION DIVISION



SOLID WASTE HANDLING PERMIT

Permit No: **029-012D(SL)**

Date: **February 1, 2013**

Major Modification **#3**

Permittee: **Unified Government of Athens-Clarke County**

Address: **Post Office Box 1868**

Athens, Georgia 30603

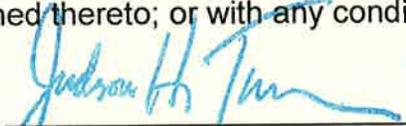
In accordance with the provisions of the Georgia Comprehensive Solid Waste Management Act, and the Rules promulgated pursuant thereto, this permit is issued for the following operation:

Horizontal & Vertical Expansion of the Clarke County – Athens Dunlap Road Phase 5 Municipal Solid Waste Landfill located approximately 4.5 miles east of downtown Athens, Georgia on US 78 and SR 10 East near Dunlap Road (Latitude 33°55'26", 83°15'55" Longitude).

This permit is conditioned upon the permittee complying with the attached conditions of operation, which are hereby made a part of this permit.

All statements and supporting data submitted to the Environmental Protection Division of the Department of Natural Resources have been evaluated, considered and relied upon in the issuance of this permit.

This permit is now in effect; however, under Georgia Law it is subject to appeal for thirty (30) days following issuance, and is subject to modification or revocation on evidence of noncompliance with any of the provisions of the Georgia Comprehensive Solid Waste Management Act, or any of the Rules promulgated pursuant thereto; or with any representation made in the above mentioned application or the statements and supporting data entered therein or attached thereto; or with any condition of this permit.



Judson H. Turner, Director
Environmental Protection Division

Major Modification #3

Issued to: Unified Government of Athens-Clarke County

Conditions for Municipal Solid Waste Landfill (Page 1 of 3):

1. The disposal facility shall be operated only under the direct supervision of an operator duly certified in accordance with Rule 391-3-4-.18.
2. Solid waste unloading shall be restricted to the working face of the operation in such a manner that waste may be easily incorporated into the municipal solid waste landfill with available equipment.
3. Solid waste shall be spread in uniform layers and compacted to its smallest practical volume before covering with earth.
4. A uniform compacted layer of clean earth cover not less than six (6) inches in depth shall be placed over all exposed solid waste by the end of each day's operation, or more frequently as may be determined by the Georgia Environmental Protection Division (EPD). In no case may solid waste be left uncovered for more than 24 hours.
5. A uniform compacted layer of clean earth cover not less than one (1) foot in depth shall be placed over each portion of any intermediate lift following completion of that lift.
6. A uniform compacted layer of clean earth cover not less than two (2) feet in depth shall be placed over the final lift not later than one month following placement of solid waste within that lift. The final cover shall be consistent with the final cover system delineated in the approved facility Design & Operational Plan.
7. Site survey control shall be provided and maintained to ensure compliance with the approved Design and Operational Plan.
8. All-weather access roads shall be provided to the disposal facility and provisions shall be made for prompt equipment repair or replacement when needed.
9. Access to the municipal solid waste landfill shall be limited to authorized entrances, which shall be closed when the facility is not in operation.
10. The disposal facility shall be graded and drained to minimize runoff onto the municipal solid waste landfill, to prevent erosion, and to drain water from the surface of the municipal solid waste landfill.

Major Modification **#3**

Issued to: **Unified Government of Athens-Clarke County**

Conditions for Municipal Solid Waste Landfill (Page 2 of 3):

11. Scattering of wastes by wind shall be controlled by fencing or other barriers, and the entire facility shall be policed daily.
12. Regulated quantities of hazardous wastes shall not be disposed of at this facility.
13. Suitable measures to control fires that may start shall be provided. Stockpiled soil is considered to be the most satisfactory fire fighting material.
14. The Design and Operational Plan submitted by the Permittee and approved by the Division on **December 19, 2012** for this municipal solid waste landfill is hereby made a part of this permit and the municipal solid waste landfill shall be operated in accordance with the plan.
15. Before any waste is placed in the facility, the Permittee shall fully satisfy all applicable financial responsibility requirements including both closure and post-closure care, as provided by Chapter 391-3-4-.13.
16. In accordance with O.C.G.A. 12-8-39(e), the Permittee shall assess and collect on behalf of the EPD from each disposer of waste a surcharge per ton of solid waste disposed. Surcharges assessed and collected shall be due to the EPD on the first day of July of each year.
17. In accordance with O.C.G.A. 12-8-39(a) and (b), the Permittee shall provide a mechanism to collect a cost reimbursement fee upon each ton or the volume equivalent of a ton of waste received at the disposal facility regardless of its source. A minimum of \$1.00 per ton or volume equivalent of the cost reimbursement fee shall be paid into a local restricted account and shall be used for solid waste management purposes only.
18. The Permittee shall maintain compliance with the Rules for Solid Waste Management by accomplishing the following activities according to the specific dates:
 - a) The Permittee shall compile and submit quarterly reports of all solid waste disposed at the facility no later than the 30th day after the beginning of each calendar quarter in accordance with Solid Waste Rule 391-3-4-.17(1).
 - b) The Permittee shall report on July 1 of each year the remaining capacity of the facility, the rate of filling, and the estimated completion date of the facility, in accordance with Solid Waste Rule 391-3-4-.17(3).

Major Modification #3

Issued to: **Unified Government of Athens-Clarke County**

Conditions for Municipal Solid Waste Landfill (Page 3 of 3):

19. The Permittee shall record and retain in the operating records at or near the facility the record keeping requirements of Solid Waste Rule 391-3-4-.07(3)(u).
20. The solid waste handling facility shall not be located in wetlands, as defined by the U.S. Corps of Engineers, unless evidence is provided to the Director, by the applicant, that use of the wetlands has been permitted or otherwise authorized under all other applicable state and federal laws and rules. The owner or operator must place a demonstration of compliance in the operating record and notify the Director that it has been placed in the operating record.
21. Prior to the receipt of waste, the EPD shall be provided with written certification, by a professional engineer licensed to practice in Georgia, that the facility has been constructed in accordance with the permit. Unless notified otherwise by the EPD within 15 days of receipt by the EPD of the written certification, the facility owner or operator may commence disposal of solid waste.
22. This permit shall become null and void one year from the effective date if construction of the permitted disposal facility has not commenced and the disposal operation has not commenced within two years from the effective date unless extended by the Director.
23. The existing permit, with all its conditions, shall remain in effect for the remainder of the life of the facility.

EXHIBIT 2

Received
Aug 6, 2010

Georgia Department of Natural Resources

Environmental Protection Division

Solid Waste Management Program

4244 International Parkway, Suite 104, Atlanta, Georgia 30354

Chris Clark, Commissioner

F. Allen Barnes, Director

404/362-2692

August 3, 2010

Mr. James Corley, Director of Solid Waste
Unified Government of Athens-Clarke County, Georgia
P.O. Box 1868
Athens, Georgia 30603

**SUBJECT: Clarke County – Athens Dunlap Road
Permit Number: 029-012D (SL)**

Dear Mr. Corley:

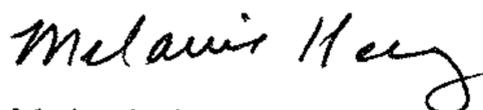
On July 27, 2010, the Solid Waste Management Program received the construction documentation and certification for the Classic City Compost Facility, submitted in accordance with Section 391-3-4-.07(2) of Georgia's Rules for Solid Waste Management. Additional information was received on August 2, 2010. Based on a review of that certification and inspection of the site on July 1, 2010, the compost facility constructed under the above referenced permit is hereby approved to begin composting operations.

Should the Environmental Protection Division (EPD) notify the Permittee that the certification has been found to be invalid, the Permittee shall cease the receipt of materials at the Classic City Compost Facility until compliance with the certification is demonstrated.

This approval is only for the composting area for which construction has been completed on this date and is contingent upon compliance with the conditions of the solid waste handling permit, the approved design and operational plan, and all applicable rules for solid waste management.

If you have any questions or need additional information, please contact Jennifer Vogel at (404) 362-2552.

Sincerely,



Melanie Henry
Unit Coordinator
Municipal Solid Waste Unit

Cc: Brad Rickard, Athens-Clarke County
Richard Deason, ACC
Northeast District, EPD
Ken Simonton, Jennifer Vogel, EPD
File: Clarke County- Athens Dunlap Road [PN 029-012D(SL)] (CON)