



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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SECRETARY'S ORDER NO. 2010-A-0003

Re: APPLICATION OF DELAWARE SOLID WASTE AUTHORITY FOR A SOLID WASTE MANAGEMENT FACILITY PERMIT TO EXPAND THE CENTRAL SOLID WASTE MANAGEMENT CENTER NEAR SANDTOWN, KENT COUNTY

Date of Issuance: February 5, 2010
Effective Date: February 5, 2010

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department), the following findings, reasons and conclusions are entered as an Order of the Secretary.

Background

This Order considers the Delaware Solid Waste Authority's (DSWA or Applicant) application for a solid waste management permit for its Central Solid Waste Management Center (CSWMC or Sandtown Landfill) to construct and operate a proposed expansion called final disposal Area F on 59.7 acres within the Sandtown Landfill's existing 894 acres. CSWMC is a sanitary landfill located at 1107 Willow Grove Road, Felton, Kent County near Sandtown. The proposed expansion would allow continued solid waste disposal when the existing disposal area reaches its capacity in the near future, which is expected to occur soon after Area F is built.

The Department held a public hearing on the application on June 25, 2009 at the Department's Dover office. The Department's presiding Hearing Officer, Robert P.

Delaware's Good Nature depends on you!

Haynes, prepared a Hearing Officer's Report, dated January 15, 2010 (Report), which reviews the procedural history, recommends a record and issuance of a permit consistent with the recommendation of the Department's experts in the Division of Air and Waste Management's (DAWM) Solid and Hazardous Waste Management Branch (SHWMB) as set forth in a Technical Response Memorandum (TRM) and a draft permit. I adopt the Report to the extent it is consistent with this Order.

Findings and Reasons

The Department finds that the record supports the issuance of a permit to allow the Sandtown Landfill to operate for another ten years and to construct additional capacity as proposed in the plans for Area F. The Department finds that the proposed Area F is appropriate to provide for the continued sanitary landfill disposal of solid waste at the CSWMC during the ten year term of the permit. The Department finds that DSWA's application sets forth a well-engineered design and plans for the environmentally safe construction and operation of Area F, which when built will provide for the environmentally safe disposal of solid waste for the ten years many years.¹ The exact remaining capacity of the current active disposal area and the proposed Area F will depend upon the actual amount of solid waste that is disposed at CSWMC.

The Department recently addressed the need for additional landfill capacity in reviewing DSWA's application to expand its Jones Crossroads Landfill (Southern Solid Waste Management Center) in Sussex County. Secretary's Order No. 2010-A-0001 (Issued January 14, 2010). The Department approved the Jones Crossroads Landfill expansion, but included certain permit conditions that the Department determined were needed to protect the environment. One notable permit condition was a ban on the

¹ DSWA estimates that Area F can store 16.7 million cubic feet of solid waste.

disposal of yard waste, which, in turn, followed the yard waste ban in the Department's 2006 Order on the expansion of DSWA's Cherry Island Landfill (Northern Solid Waste Management Center) in New Castle County.

The Department also finds that the permit allowing the Sandtown Landfill to expand also should include a condition that bans the disposal of yard waste based upon similar environmental reasons for the yard waste bans for the Cherry Island and Jones Crossroads Landfills. As a result, this Order directs a yard waste ban, after a reasonable transition period, for the Sandtown Landfill so that all DSWA's sanitary landfills in New Castle, Kent and Sussex Counties will have a yard waste ban.

The yard waste ban was supported by the Department's experts in SHWMB, who recommended a yard waste ban based upon sound environmental reasons. The Report also recommends adoption of a yard waste ban as a permit condition as within the Department's authority and consistent with the Department's policies as established in its Jones Crossroads and Cherry Island Landfill Orders. The Department finds that a yard waste ban an appropriate and reasonable permit condition based upon the sound environmental reasons, namely, that it will reduce the amount of solid waste disposed and require yard waste to be managed by recycling either on the property that produces it or at yard waste recycling centers. The yard waste ban condition will conserve remaining valuable landfill space for the types of solid waste that require a sanitary landfill for proper environmental disposal. Yard waste does not require disposal in a sanitary landfill, but may be readily managed by recycling. The Department finds that the best environmental management of yard waste is to allow yard waste to decompose on the property that produces it or, if removed, sent to recycling centers where it can become

compost or mulch. The yard waste ban will encourage the best environmental use of yard waste because disposal as solid waste will no longer be available. Accordingly, the alternatives are keeping the yard waste on the property that produces it or transporting it off the property to be recycled.

The Department estimates that the yard waste ban for DSWA landfills in Kent and Sussex County will remove 32,000 tons a year of yard waste from disposal, which is 1.7 times more than the total recyclable materials that DSWA collected in 2007 at its 140 drop off recycling centers. The ban at both of DSWA's landfills will increase Delaware's recycling rate from 32% to 34%. I find that these figures support the benefits from having a yard waste ban as soon as practically possible.

The public acceptance of a yard waste ban is an important concern. The Department considers a permit condition should include a requirement for DSWA to use its statutory authority to provide a public outreach and education in order to explain the yard waste ban and gain public acceptance. The permit condition to require such public education is reasonably related to the success of the yard waste ban. The implementation through such education and outreach will enable the yard waste ban to be successful, and have the public source separate yard waste for the efficient and effective operation of the Sandtown Landfill. DSWA will need to inform the public of the availability of alternatives to disposing of yard waste in a landfill, such as DSWA's existing yard waste recycling program with curbside pick-up or the use of recycling centers operated by DSWA or others to collect yard waste.

The implementation of the yard waste ban may require DSWA to provide additional yard waste recycling facilities, which either DSWA or its contractors may

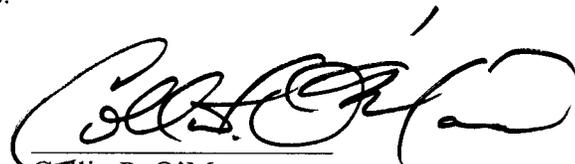
operate. The General Assembly has granted DSWA expansive authority to operate yard waste recycling centers for the collection and processing of yard waste. The Department finds that an essential part of a successful yard waste ban is that the public has adequate yard waste recycling facilities available for the anticipated increased demand for yard waste recycling once the yard waste ban goes into effect. Thus, the Department will provide a delayed effective date in the permit for the yard waste ban to allow the DSWA, its contractors, and most importantly the public time to adjust to the yard waste ban at the Sandtown Landfill.

Conclusions

In sum, as more fully described in the reasons and findings above and in the Report, I adopt and direct the following as a final order of the Department:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding and to issue the Applicant a permit subject to reasonable conditions reasonably related to the Department's statutory purposes;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and its regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department shall issue Applicant a permit for the Sandtown Landfill subject to the reasonable general and specific permit conditions recommended by SHWMB; and that

6. The Department shall publish the Order on its web site and otherwise provide notice of its decision consistent with the law and regulations.

A handwritten signature in black ink, appearing to read "Collin P. O'Mara", written over a horizontal line.

Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: APPLICATION OF DELAWARE SOLID WASTE AUTHORITY FOR A
PERMIT TO CONSTRUCT AREA F DISPOSAL AREA AND OPERATE THE
CENTRAL SOLID WASTE MANAGEMENT CENTER NEAR SANDTOWN,
KENT COUNTY

DATE: January 15, 2010

I. PROCEDURAL HISTORY

This Report makes recommendations to the Secretary of the Department of Natural Resources and Environmental Control (Department) on the Delaware Solid Waste Authority's (Applicant or DSWA) application for a sanitary landfill permit. DSWA seeks approval to construct and operate Area F as an expansion to the solid waste disposal area at Applicant's Central Solid Waste Management Center located at 1107 Willow Grove Road, Felton, Kent County near Sandtown (Sandtown Landfill or CSWMC).

The Department's Division of Air and Waste Management (DAWM), Solid and Hazardous Waste Management Branch (SHWMB) received the application dated September 18, 2008 and requested additional information from DSWA on December 9, 2008, which DSWA provided in a March 16, 2009 response. On May 8, 2009, DSWA submitted a revised application, which incorporated the information in its March 16, 2009 response. SHWMB determined that the application was administratively complete in a May 29, 2009 letter.¹

On May 31, 2009, the Department published notice of the completed application in newspapers of general circulation, and also that a public hearing would be held as in the best interests of Delaware. I was assigned to preside over the hearing, to develop a recommended

¹ Section 4.1.2 of Delaware Regulations Governing Solid Waste, 7 DE Admin Code 1301.

record, and to prepare a report of recommendations for the Secretary, who would make the final decision in an Order.

On June 25, 2009, a public hearing was held at the Department's offices in Dover, Kent County. Only one member of the public spoke and two written comments were received. I closed the public comment period at the conclusion of the hearing, but indicated that the record would be open for further development by the Department, including assistance from the Department's technical experts in SHWMB.

In a June 22, 2009 memorandum to SHWMB, I requested SHWMB provide technical assistance for this report. On August 20, 2009, SHWMB provided a Technical Response Memorandum (TRM), a copy of which attached hereto as Appendix A. SHWMB provided a draft permit on October 28, 2009 if the Department's final decision is to issue a permit. I determined that a record was sufficiently complete to support a final decision if the final decision is to issue a permit based upon the following recommended record and the recommendations in this Report.

II. SUMMARY OF THE RECOMMENDED RECORD

I recommend that the record contain the following documents: 1) the 19 page verbatim transcript of the June 25, 2009 public hearing; 2) DSWA's complete application (DNREC Ex. 1); 3) a June 25, 2009 letter from Brenna Goggin on behalf of the Delaware Nature Society (DNREC Ex 2); 4) a June 4, 2009 Satterfield email (DNREC Ex. 3), the May 31, 2009 public notice (DNREC Ex. 4); 5) the Department's Powerpoint presentation at the hearing presented by Avery Dalton (DNREC Ex. 5); and Applicant's Powerpoint presentation at the hearing presented by (DSWA Ex 1). I recommend that the record also include DSWA's current zero waste and yard waste plans as printed from the internet, and the Natural Heritage Program's report

referenced in the TRM. This Report, including the attached TRM and draft permit, also are recommended to be included in the record should the recommendations herein be adopted.

The record from the public hearing includes the Department's presentation by Avery Dalton, an Environmental Scientist in SHWMB, who provided an overview of DSWA's application and its request to construct Area F on approximately 60 acres adjacent to Areas D and E. He noted that Area F would be constructed in two phases and would be similar in design to Area E, which also was designed by the engineering firm of Camp, Dresser and McKee. Mr. Dalton described the application as permission to construct Area F and to operate the CSWMC for the ten year life of a permit. Mr. Dalton also described the Department's decision making process for the permit application.

Applicant's presentation at the hearing was made by Mr. Parkowski, Applicant's Manager of Business Services and Government Relations. He indicated that the Sandtown Landfill opened in 1981 and has 834 acres, of which 163 acres will be used for final disposal if the expansion is approved. He noted that the disposal area has a lot of buffer areas surrounding it. He noted that in 2008 the Sandtown Landfill received 277,731 tons of solid waste or an average 896 tons per day of solid waste from 306 vehicles.

He stated that the Sandtown Landfill receives solid waste Monday through Saturday from 7:00 a.m. to 5:00 p.m. He noted that the Sandtown Landfill has received numerous awards for its operations. He described the waste screening process, and indicated that 5% of the total waste is sampled to check for any prohibited waste, which if found is removed. He indicated that there is a leachate collection system to recover the liquids that pass through the solid waste, and that collected leachate is transported offsite to be treated and recycled. He also indicated that the Sandtown Landfill has landfill gas collection system to recover the gas produced by decomposing trash and that the landfill gas is burned to generate electricity. Mr. Parkowski

discussed the recycling operations at the Sandtown Landfill where single stream recyclable materials are received, including electronic goods and drywall.

Mr. Parkowski indicated that the estimated remaining capacity in Area E would be filled by July 2011, which he indicated is based on conservative estimates. He noted that the waste stream has decreased in the last 3 years, which means a longer life for the remaining capacity.

Chris Cable of Camp Dresser and McKee also spoke on the state of the art design of Area F with a dual-composite liner system, which means combining synthetic polyethylene liner systems with a clay component underneath it and that these are used with a leak detection system in between each liner to detect any leachate intrusion and protect any groundwater contamination. He mentioned the stormwater management system and that stormwater will need to be captured and managed with a series of berms and pumping stations to transport rainwater away from the soil waste to where it may be collected. He discussed the landfill gas collection system that will collect the gas once it starts to be produced so that it may be burn to produce electricity. Finally, he talked about the design that would control litter and that the Sandtown Landfill has a 15' high litter control fence around its perimeter.

Leah Kershaw, a member of the public provided the only oral comments and expressed her view that the Department should ban yard waste disposal similar to the yard waste ban in effect in New Castle County. Moreover, she mentioned that the landfill space would last longer with such a ban.

The Department's recommended record includes DSWA's two volume application, which summarizes the Sandtown Landfill's current operations. The Sandtown Landfill currently has six disposal areas designated as Areas A, B, C, C/D Valley, D, and E. Areas A and B are inactive, which means they can no longer receive solid waste without Department approval. These areas are capped with a soil phyto-cap. Area C is closed and capped with a plastic

geomembrane cover. Areas D and E are active and currently used to receive solid waste for disposal. The landfill cells in Areas D and E use double liners and all the disposal areas have leachate collection systems. The leachate is transported to the City of Wilmington's wastewater treatment plant for treatment and disposal as treated wastewater. The leachate collection systems for the active cells also are monitored for leak detection of the liners. Proposed Area F would be constructed adjacent to Areas D and E.

The Sandtown Landfill also processes waste received pursuant to DSWA's recycling program, including electronic goods, household appliances, tires, and dry wall for off-site processing.

DSWA estimates that Area F will add an additional 17-18 years to the Sandtown Landfill's ability to dispose of solid waste based upon waste flow estimates at the time the application was submitted.² DSWA also has planned disposal areas at the Sandtown Landfill identified as Areas G, H, and I for future expansion, which, if approved, will provide disposal capacity until approximately 2054 based upon the waste flow projections made at the time of the application.

The Department's exhibits include two written comments. June Satterfield wrote in support of the Department's efforts to encourage a zero waste policy by recycling and conservation. The Nature Society commented on its concern with the deforestation of approximately one half of the proposed land to be cleared for use as Area F and raised a concern with the loss habitat.

I also recommend that the record contain SHWMB's TRM and the draft permit if the Department decides to issue a permit consistent with this Report. The TRM suggested a permit condition to ban the final disposal of yard waste, which was elaborated in the draft permit. The

² The Department's experts indicate that changes in the waste flow, particularly based upon increased recycling as they recommend, would increase the number of years before the capacity is filled.

TRM notes that the Applicant is in the process of revising its Statewide Solid Waste Management Plan, and that DSWA has informed the Department that it intends to include a “Zero Waste” component in the revised plan. The TRM addresses the need for recycling as the best option to reduce the waste being produced that require final disposal in a landfill. The TRM noted the 20% growth in Kent County’s population from 2000 to 2007.

The TRM emphasizes the importance of a yard waste ban to reduce the amount of solid waste being sent to the Sandtown Landfill. The TRM identifies several reasons for a yard waste ban. The TRM also addresses the Natural Society’s loss of forest area and wildlife habitat by noting that 19 acres of forest would be cut, but that there will be a 200 foot buffer area of mature trees will remain. The proposed Area F the Department’s experts agree was appropriate for the use because it afforded the most efficient use of the Sandtown Landfill’s land. The TRM indicated that it would recommend working with the Applicant on a Wildlife Management Plan. The SHWMB cited the Department’s Division of Fish and Wildlife’s Natural Heritage Program’s August 18, 2009 site survey on possible mitigation of threats to any endangered plant or wildlife species.

The TRM sets forth the Department’s experts recommendations that any permit amendment approving the construction of an expansion should include a condition similar to the permit condition for Applicant’s Northern Solid Waste Management Center (Cherry Island Landfill) to prohibit the final disposal of yard waste. The TRM also recommended other permit conditions the experts in SHWMB recommend as appropriate to protect the environment from the undue risk of harm. The draft permits set forth the permit conditions needed to adequately protect the environment from any undue risk of harm from the Sandtown Landfill, particularly the yard waste ban for public policy purpose of preserving landfill space and promoting

recycling through public education and outreach, and ensuring that DSWA has adequate yard waste recycling centers for the successful implementation of the yard waste ban.

III. RECOMMENDED FINDINGS AND DISCUSSION

I recommend that the Department issue DSWA a permit, but only if it contains the permit conditions set forth in the draft permit prepared by SHWMB. Otherwise, I would recommend the application be denied and that DSWA be required to provide support that it has managed solid waste to maximize the recycling and reduce the need for this and any future expansions of the Sandtown Landfill.

A. Proposed Construction Design and Operation of Sandtown Landfill

I recommend a finding that the SHWMB draft permit be issued to grant DSWA permission to construct a 59.7 acre expansion of the Sandtown Landfill's disposal area within the Sandtown Landfill's existing 834 acres. The expansion would occur in two phases, with Phase 1's 40.6 acres and Phase 2's 19.1 acres capable of storing 9.7 million and 7.0 million cubic yards of solid waste, respectively. I recommend a finding that DSWA has demonstrated that the expansion is appropriate to allow continued use of the Sandtown Landfill for solid waste disposal for the life of the permit. I find that the Sandtown Landfill's current active final disposal area, Area E, will soon be filled to capacity, and that an adequate amount of time is needed to construct the Area F. The original estimated time when Area F was needed was July 2011 based upon July 2008 estimates, but I find that these estimates are conservative in light of declining solid waste disposal at the Sandtown Landfill that has prolonged the remaining capacity in Area E. Nevertheless, I recommend that the Department issue the permit to allow Area F to be built in time to allow continued use of the Sandtown Landfill when Area E reaches its capacity. Thus, Area F's expansion is needed to provide for the future solid waste disposal requirements once Area E is filled to capacity.

The application is subject to review as a major permit modification under Section 4.1.7 of the Department's *Regulations Governing the Solid Waste, 7 DE Admin. Code 1301*. As a major modification, SHWMB conducts a review of the entire Sandtown Landfill's operations. If the Secretary approves a permit amendment, it will allow the Sandtown Landfill's continued operation for a term of up to ten years. I find, based upon the record, that the Applicant has supported the need for Area F and continued operation of the Sandtown Landfill for the term of the permit.

The construction and operation of an expansion of a landfill must meet the stringent Department Regulations for any new site. I find that the proposed Area F, as already located in the Sandtown Landfill's land area, avoids some of the issues with establishing a totally new landfill. Indeed, there was little public comment and no opposition to the proposed new disposal area. The application included a comprehensive survey of the environmental impacts, which are unavoidable in any construction within an area that is forested. The Department independently through its Division of Fish and Wildlife also conducted a survey of the potential for damage to the environment and concluded that nothing prohibited the construction so long as reasonable permit conditions were included to reduce the adverse impacts to wildlife and plant species. The Department's Division of Soil and Water Conservation will also need to issue a permit for the construction of stormwater management facilities and the Department's DAWM will also regulate the air emissions from the Sandtown Landfill, including the pollutants released by the generation of electricity from burning the methane landfill gas as fuel for the generators.

In conclusion, I find that the design of the landfill, as proposed, will satisfy the Department's safety and engineering requirements with its proposed double liner system, the leachate collection system with leak detection, the landfill gas collection, and the extensive groundwater monitoring. I find that the permit application should be approved for the

construction of Area F, and that the Applicant be issued a major permit amendment superseding Applicant's current permit, which will allow the Applicant to continue to operate the Sandtown Landfill for a term of ten years without the need to seek a permit renewal.

The recommended approval of the application is based upon it being subject to the Department's numerous general and specific conditions, as set forth in the proposed permit that SHWMB prepared as attached hereto. I find that these permit conditions are necessary and appropriate to protect the environment and public safety. Moreover, the permit conditions are consistent with the Department's authority to promote certain environmental public policies to encourage conservation and recycling. These conditions provide the Department with the necessary and appropriate means to exercise its plenary regulatory authority over the Sandtown Landfill. The support for the permit conditions is explained in the record, including the ban on the final disposal of yard waste at the Sandtown Landfill that SHWMB has recommended if a permit is issued.

B. Yard Waste Ban

The Department's experts have recommended that the Department consider a special permit condition that would prohibit the Sandtown Landfill's final disposal of yard waste. The Applicant's regulations already define yard waste, and I find that SHWMB's recommendation is reasonable to prevent the Sandtown Landfill from no longer receiving yard waste for final disposal as solid waste. The proposed condition is appropriate to adopt in any permit issued for the Sandtown Landfill because such form of regulation is consistent with the environment and preserving the available landfill space for the types of solid waste that need disposal in a sanitary landfill. As noted above, several public comments supported the inclusion of a yard waste permit condition as part of an overall effort to reduce waste entering the landfill and to encourage recycling efforts. I agree that such a permit condition is the best method to reduce the final

disposal of yard waste in a sanitary landfill. A sanitary landfill should be used solely for solid waste that requires the type of environmental protection afforded by the Sandtown Landfill's environmental controls and monitoring. Moreover, this permit condition will have consistent yard waste control for all of Applicant's landfills if the recommendations for the Southern Solid Waste Management Center major permit amendment also are adopted. Currently, Applicant's Northern Solid Waste Management Center at Cherry Island in New Castle County has a permit condition that also bans the final disposal of yard waste.

I find that a yard waste ban permit condition should not unduly prohibit or interfere with the Sandtown Landfill's ongoing yard waste and composting operations, which reflects DSWA's recognition that yard waste can be processed commercially. The Department fully supports this voluntary effort to reduce any use of the Sandtown Landfill's landfill capacity, and the removal of the landfill option for yard waste should allow the recycling of yard waste to increase, including use of Applicant's yard waste recycling and voluntarily drop-off services for yard waste. The current regulatory problem is that without a yard waste ban, yard waste may be mixed with the other municipal solid waste. Thus, a prohibition against final disposal of yard waste will result in steps being taken to control the waste by the users of the Sandtown Landfill and will allow the Applicant to exercise its regulatory authority to control the waste it receives.

I find that as a permit condition the ban against yard waste is no different than other long-standing permit conditions that prohibit the type of waste that the Sandtown Landfill receives, but yard waste's prohibition is based on preserving landfill capacity and promoting its recycling. The fact that yard waste may be readily recycled supports the yard waste ban as sound public policy to preserve the sanitary landfill capacity for the types of solid waste that require a sanitary landfill, namely, the type that requires double geomembrane liners and other environmental safety and monitoring features used at the Sandtown Landfill.

The yard waste ban also will reduce costs to all users of the Sandtown Landfill because it should delay the need for future expansions, which will require a considerable capital investment that would likely be recovered from the users of the Applicant's landfills. The Sandtown Landfill has planned for future expansion into other proposed areas to allow the final disposal of solid waste from Kent County and part of New Castle County. Areas A, B, C, D, and C/D Valley have reached their capacity and no longer receive solid waste. The future disposal capacity at the Sandtown Landfill is expected to last until the middle of this century based upon DSWA's growth assumptions. I find that there may be differences in the growth projections. To the extent the yard waste is not in the waste stream because DSWA and others take action to implement the yard waste ban will benefit all users of the Applicant's landfills by delaying and even possibly avoiding the substantial expense in future expansions.

I find that the record contains information that conclusively establishes that such a permit condition is reasonable and consistent with the Department's statutory duties to protect the environment and public health. The TRM sets forth the considerable efforts to reduce the amount of yard waste that enters any landfill. The construction of a sanitary landfill is expensive and a modern landfill is a highly engineered structure to provide environmentally safe and secure final disposal of materials that otherwise may harm the environment or public health if disposed of improperly. Yard waste, in contrast, generally does not need any particular or special structure for its final disposal. The TRM estimates that the permit condition to ban yard waste will reduce the amount of waste the Sandtown Landfill receives by 5%. The Applicant indicates that it disposed of 277,731 tons of municipal waste in 2008 and receives, on average, 896 tons per day from 306 vehicles. A 5% reduction due to the removal of yard waste from the waste stream needing final disposal should reduce these amounts and allow 5% more other municipal solid

waste that requires the expensive engineering of a sanitary landfill to protect the environment and public health. Indeed, the TRM pointed out the following benefits of a yard waste ban:

1. The Benefits - Banning yard waste from disposal in the SSWMC will:
 - a. reduce the waste disposal rate by nearly five percent,
 - b. extend the life of the existing landfill capacity,
 - c. reduce greenhouse gas emissions,
 - d. increase the local production of mulch and compost while creating jobs,
 - e. conserve a valuable natural resource and,
 - f. promote a conservation ethic.

The benefits of a yard waste ban particularly for the Sandtown Landfill and its rural service area are compelling. The TRM pointed out that alternative to a yard waste ban are readily available to each property owner simply by using a mulching mower or having a compost pile on the owner's property.

5. Yard Waste Management Alternatives – Homeowners and businesses that are subject to the yard waste ban at the SSWMC will have the following choices for management of their yard waste:
 - a. Manage the yard waste on their property by mulching and/or composting.
 - b. It is important to note that the Department will not be establishing yard waste drop off sites in Sussex County as it did in northern New Castle County; however, there are several DSWA locations in Sussex County that will accept yard waste. These locations will be posted on the DNREC and DSWA web sites.
 - c. There are multiple private sector businesses in Sussex County that will accept yard waste and they will be identified and posted on the DNREC yard waste web site.
 - d. Contract with a waste hauler or hire a landscaper to remove the yard waste.

Finally, the draft permit includes conditions to implement the yard waste ban through public education and outreach efforts and having adequate facilities to receive the expected increase in the amount of yard waste that will be recycled once yard waste is no longer accepted at the Sandtown Landfill. The legal basis for this implementation of the yard waste ban was discussed at length in my Report on the DSWA's Jones Crossroad Landfill application to expand and its reasoning is adopted here. Thus, I find that the yard waste ban is appropriate to include if

the Applicant wants to expand the Sandtown Landfill because the expansion and preserving its capacity for as long as possible are important environmental goals to benefit the environment.

C. Other Permit Issues

The public comments and the TRM address the proposed destruction of approximately fifteen acres of forest, but the destruction is less than in the public comment. Instead, approximately 19 acres in the proposed Area F contains trees that would be cut down. The Department had its Division of Fish and Wildlife's Heritage Program conduct a study of the area. This study did not find any wildlife or plant species that would warrant a denial of the permit, but there are some environmental concerns that should be addressed in permit conditions. The public comments also sought such conditions based upon the study. I agree and recommend such reasonable permit conditions be included to protect wildlife and the adverse impacts from the proposed destruction of habitat. Thus, I recommend that the Department include permit conditions to reduce the adverse impacts on the loss of habitat during certain time periods consistent with the public comments and the Heritage Program's recommendations.

The Sandtown Landfill's operating plan will ensure that there will be carefully monitoring of the disposal areas. I find that the record supports finding that the Applicant is capable and qualified to construct and operate the proposed Area F and the entire Sandtown Landfill for a term not to exceed ten years. The proposed Area F will provide a safe and environmentally sound final disposal for the municipal solid waste that properly should be disposal in a sanitary landfill. It will be constructed and operated consistent with modern, state of the art solid waste management practices and technologies.

I find that the application was thoroughly investigated by the Department's experts in SHWMB. I agree with SHWMB that the application was only complete on May 2009 after the Applicant submitted its last revision to SHWMB's comments and questions. The Department's

investigation of an application to determine its completeness is an important regulatory step to the permit process. I find that the application and the record support the major modification of the permit application for the existing Sandtown Landfill. I find that Delaware will need the remaining space in the Area F and that there is no real alternative to renewing the permit application to allow the Sandtown Landfill to continue to operate for another ten years.

IV. RECOMMENDED CONCLUSIONS

Based on the record developed, I recommend that the Department approve the following conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding and to issue the Applicant a permit subject to reasonable conditions reasonably related to the Department's statutory purposes;

2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

3. The Department held a public hearing in a manner required by the law and its regulations;

4. The Department considered all timely and relevant public comments in making its determination;

5. The Department shall issue Applicant a permit for the Sandtown Landfill subject to the reasonable general and specific permit conditions recommended by SHWMB; and that

6. The Department shall publish the Order on its web site and otherwise provide notice of its decision consistent with the law and regulations.

Robert P. Haynes, Esquire
Senior Hearing Officer