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*Saving a National Treasure*

November 6, 2020

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**Submitted via email to:** [Julie.s.hamilton@usace.army.mil](mailto:Julie.s.hamilton@usace.army.mil)

Julie Hamilton

Norfolk District – Corps of Engineers

ATTN: CENAO-WR-R

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**Re: Joint Application of Waste Management of Virginia for Federal and State Permits (CENAO-WR-R/NAO-2011-2448)**

Dear Ms. Hamilton,

The Chesapeake Bay Foundation, Inc. (“CBF”) respectfully submits the following comments on the Joint Permit Application (“Application” or “JPA”) submitted by Waste Management of Virginia, Inc. (“Applicant” or “Waste Management”) for the proposed expansion of an existing landfill (“project” or “proposed project”), pursuant to Sections 401 and 404 of the Clean Water Act and Title 62.1 of the Code of Virginia. The site of the proposed project is 8000 Chambers Road in Charles City County, Virginia.

The Applicant proposes to construct 16 new landfill cells, stormwater management facilities and a portion of landfill road at the existing Charles City landfill. The existing landfill site has been a source of concern for residents of Charles City County, many of whom rely on wells for drinking water and fear contamination of groundwater resources. To ensure the meaningful participation of the surrounding community in the decision making related to this proposal and adequate protection of human health and natural and cultural resources, CBF urges the U.S. Army Corps of Engineers (“Corps”) to (1) complete an Environmental Impact Statement (“EIS”); (2) extend the public comment period, and (3) conduct a public hearing.

**I. The Corps Should Prepare a Complete Environmental Impact Statement**

*a. Environmental Justice*

The presence of an environmental justice community, and the potential harm posed to that community by the proposed expansion of the Charles City landfill, compel the conclusion that the Corps should develop and complete an EIS.

Both the Corps and the Virginia Department of Environmental Quality (“DEQ”), the agencies tasked with reviewing this application, are required to

incorporate environmental justice principles into their decision-making practices. Executive Order 12898 requires each covered agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States of America.”<sup>1</sup> Similarly, the Commonwealth of Virginia has recently established as its policy, “to promote environmental justice<sup>2</sup> and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and frontline communities.” Under Virginia’s Environmental Justice Act, environmental justice communities are defined as “any low-income community or community of color,” while frontline communities refer to “an area that contains all or part of a low-income community or community of color and that presents an increased health risk to its residents due to its proximity to a major source of pollution.”<sup>3</sup> Because of the impending development of natural gas infrastructure and the presence of the existing landfill, Charles City County qualifies as both an environmental justice and frontline community.

Charles City County, the home for this proposed project, is a rural, low-income,<sup>4</sup> predominantly African American<sup>5</sup> community. In addition to the proposed project, Charles City County is the intended home of three natural gas projects. In May 2017, the Charles City Combined-Cycle Gas Turbine (C4GT) Plant, a proposed 1,060mw natural gas fired facility, received its Certificate of Public Convenience and Necessity (CPCN) from the Virginia State Corporation Commission (“SCC”).<sup>6</sup> In May 2018, the SCC issued a second CPCN, this time for the proposed Chickahominy Power Plant, a 1,600mw natural gas-fired facility.<sup>7</sup> Third, Virginia Natural Gas submitted its own application for a CPCN to construct 24.1 miles of pipeline in December of 2019. The proposed pipeline route traverses Charles City County. Notably, there is approximately one mile between each of these facilities and the proposed project. In light of the cumulative impact of these three new polluting facilities on air and water quality in the area, and the potential harm posed by Applicant’s expansion, the proposed project would benefit from a “detailed statement” on the “environmental impact of the proposed action.”<sup>8</sup>

#### *b. Cultural and Natural Resources*

An EIS is the best way to ensure a comprehensive review of the facility, the surroundings and the development of a permit that will prevent contamination of natural resources. The

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<sup>1</sup> FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS, Exec. Order No. 12898, 59 FR 8113 (Feb. 17, 1994).

<sup>2</sup> “‘Environmental justice’ means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith or disability, regarding the development, implementation, or enforcement of any environmental law, regulation or policy.” SB 406, 2020 Leg. Sess. (Va. 2020).

<sup>3</sup> *Id.*

<sup>4</sup> *How Healthy is Charles City County*, US News & World Report, <https://www.usnews.com/news/healthiest-communities/virginia/charles-city-county>.

<sup>5</sup> *Quick Facts - Charles City County, Virginia*, United States Census Bureau, <https://www.census.gov/quickfacts/charlescacitycountyvirginia>

<sup>6</sup> *Application of C4GT, LLC for certification of an electric generating facility in Charles City County pursuant to section 56-580D of the Code of Virginia*, PUE-2016-00104 (May 3, 2017).

<sup>7</sup> *Application of Chickahominy Power, LLC for certification of an electric generating facility in Charles City County pursuant to section 56-580D of the Code of Virginia*, PUR-2017-00033 (May 8, 2018)

<sup>8</sup> 42 U.S.C.S. (section) 4332(C).

Applicant indicates that its proposed project will impact 3.3 acres of palustrine forested wetland, 150 linear feet of stream channel and the historic St. Mary's Church Battlefield. Wetland Determination Data Forms included with the JPA indicate that at least part of those wetlands is "very inundated due to runoff from landfill slope."<sup>9</sup> Riparian and floodplain wetlands, such as those impacted by the proposed project "affect the integrity of downstream waters by... releasing floodwaters and retaining large volumes of storm water, sediment and contaminants in runoff that could otherwise negatively affect the condition or function of downstream waters."<sup>10</sup> While this information indicates that surrounding wetlands and downstream waters are at risk of contamination from landfill operations, the landfill also poses a risk to residents of Charles City County, many of whom rely on wells for drinking water. If current operation of the existing landfill site has resulted in failure to contain contamination the Corps must evaluate the management controls in place and ensure that the proposed project does not allow for similar occurrences.

Further, there are unresolved concerns about potential contamination from the existing landfill in the nearby Harrison Lake. Harrison lake, which is located approximately six miles south of the landfill boundary has been flagged for mercury contamination by the Virginia Department of Health.<sup>11</sup> Given the interconnected nature of groundwater and surface water resources, and the lack of other potential sources of contamination in the area, residents are deeply concerned about current landfill operations. Concerns such as these should be investigated and addressed through the development of an EIS.

The location of the proposed project also implicates the St. Mary's Church Battlefield and the tributaries of the Chickahominy River. The Chickahominy River is an integral piece of the Chickahominy tribe and its history. The St. Mary's Church Battlefield, which is believed to hold unmarked graves of black U.S. soldiers from the Civil War, is an area of significant cultural importance to the surrounding community. These resources can only be protected through the diligent and thoughtful review necessitated by an EIS.

## **II. The Corps Should provide additional opportunities for public involvement**

The coronavirus pandemic has led to widespread recognition of the disadvantages imposed by the lack of internet access in rural communities across the Commonwealth. In order to ensure meaningful involvement of the surrounding community, the Corps should extend its public comment period and arrange for public meetings on the proposed project. In 2019, the Commonwealth Connect Report established that roughly 11% of Virginians have no access to internet while roughly one-third lack high speed access.<sup>12</sup> In Charles City County, roughly half of the citizens of the county lack access to broadband internet.<sup>13</sup> Considering the fact that the

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<sup>9</sup> Joint Permit Application at 28.

<sup>10</sup> EPA Office of Res. & Dev., *Connectivity of Streams & Wetlands to Downstream Waters: A Review & Synthesis of the Scientific Evidence* (AR 11691) (Jan. 2015).

<sup>11</sup> *Fish Consumption Advisory*, Virginia Department of Health, <https://www.vdh.virginia.gov/environmental-health/public-health-toxicology/fish-consumption-advisory/>.

<sup>12</sup> Dave Ress, et. al., *Many Virginians Still Lack High-Speed Internet Access*, GOVERNING, (May 18, 2020) <https://www.governing.com/community/Many-Virginians-Still-Lack-High-Speed-Internet-Access.html>.

<sup>13</sup> See Justin Mattingly, *'The land that time forgot.'* *Charles City struggles to keep pace with its neighbors*, Richmond Times-Dispatch (Mar 15, 2019), <https://bit.ly/2B07HCL> (only "[a] little more than half of the county's households have access to broadband internet, the eighth-lowest percentage in the state.").

bulk of information about this project is found online, it is unlikely that residents in the surrounding community are sufficiently informed, or aware of the proposed project and its implications. Processing this application without allowing additional time and opportunity for the community to share its concerns and questions contravenes the principles of environmental justice that are meant to guide DEQ and the Corps' decision-making practices.

### **III. Conclusion**

The proposed project poses the potential for significant harm to the surrounding community and the environment. In order to ensure the proposed project is developed with proper management controls and is protective of the surrounding area, the Corps should develop and complete an Environmental Impact Statement and allow additional opportunity for public involvement.

Sincerely,

A handwritten signature in black ink, appearing to read 'Taylor Lilley', written over a horizontal line.

Taylor Lilley, Esq.  
*Environmental Justice Staff Attorney*  
Chesapeake Bay Foundation

cc: Margaret (Peggy) Sanner, Esq., CBF VA Executive Director