

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
OFFICE OF ADMINISTRATIVE HEARINGS
FILE NO. DWM-19-1-0234
AI NO. 109545
ADMINISTRATIVE HEARING OFFICER STUART COBB

GLEND A MAYHORN, et al.

PETITIONERS

V.

AMENDED PETITION FOR REVIEW

ENERGY AND ENVIRONMENT CABINET

RESPONDENT

And

BLAZE ENTERPRISES LLC

INTERVENING
RESPONDENT

Come the Petitioners, Glenda Mayhorn, Cindy Geddes, and Jessica Faulkner (“Petitioners”) and file this Amended Petition for Review of the final determination of the Respondent Energy and Environment Cabinet (“Cabinet”) to issue a “Registered-Permit-By-Rule” to Blaze Enterprises LLC (“Blaze”) authorizing the construction and operation of a “Less-Than-One-Acre CDD Landfill” in Powell County, Kentucky. For their Amended Petition for Review, Petitioners state as follows:

INTRODUCTION

1. On January 18, 2019, an application was filed by Blaze Enterprises LLC for authorization to construct and operate a construction and demolition debris landfill. The Application was given the Identification No. ARP20190002, and Agency Interest No 109545.

2. On April 8, 2019, the Cabinet issued a letter and final permit to a representative of Blaze Enterprises LLC, approving the application “with the conditions listed on the enclosed permit and as described in the approved plans and registrations.” The April 8, 2019 Letter is attached to this Amended Petition for Review as Appendix 1; the accompanying Permit as Appendix 2.

3. On April 8, 2019, the Cabinet also released a document captioned “Response To Comments Blaze Enterprises, LLC Less-Than-One-acre Construction & Demolition Debris (CDD) Landfill Agency Interest 109545, Application No. ARP20190002 April 8, 2019.” The Response To Comment document is attached to this Amended Petition for Review as Appendix 3.

4. In accordance with KRS 224.10-420(2), Petitioners Glenda Mayhorn, Cindy Geddes, and Jessica Faulkner, filed *pro se* a petition for review of the issuance of the permit to Blaze Enterprises LLC.

JURISDICTION

5. KRS 224.10-420(2) establishes a right to seek review of a final order or determination of the Respondent Energy and Environment Cabinet. In relevant part the statute provides that:

Any person not previously heard in connection with the issuance of any order or the making of any final determination arising under this chapter by which he considers himself aggrieved may file with the cabinet a petition alleging that the order or final determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefor, and demand a hearing.

KRS 224.10-420(2).

6. An “order or final determination” includes among other actions, the “issuance . . . of a permit[.]” KRS 224.10-420(2).

7. The April 8, 2019 issuance of Solid Waste Permit sw09900017 to Blaze Enterprises LLC for a less-than-one-acre CDD landfill in Powell County, Kentucky, is a “final determination” within the meaning of KRS 224.10-420(2) and is subject to administrative review under that statute.

8. The right to demand a hearing pursuant to KRS 224.10-420(2) is limited to a period of thirty (30) days after the petitioner has had actual notice of the order or final determination complained of or could reasonably have had such notice.

9. The initial Petition for Review filed in this matter by Petitioners Mayhorn, Geddes, and Faulkner was filed on April 30, 2019 and is this timely, since the determination complained of was made on April 8, 2019.

PARTIES

10. KRS 224.10-420(2) requires that a person “not previously heard in connection with the issuance of any order or the making of any final determination arising under this chapter by which he considers himself aggrieved may file with the cabinet a petition alleging that the order or final determination is contrary to law or fact and is injurious to him, alleging the grounds and reasons therefor, and demand a hearing.”

11. Petitioners have not been previously heard in connection with the issuance of the permit in question.

12. Petitioners are aggrieved within the meaning of KRS 224.10-420(2).

13. Petitioner Glenda Mayhorn is a resident of Powell County, Kentucky residing at

_____.

14. Petitioner Cindy Geddes is a resident of Powell County, residing at

_____.

15. Petitioner Jessica Faulkner is a resident of Powell County, Kentucky, residing at 393 Virden Ridge Road, Clay City, Kentucky.

16. Petitioners are and will be injured by the final determination of the Cabinet to issue the CDD landfill permit to Blaze Enterprises authorizing the construction and operation of that landfill on property located at 1651 Virden Ridge Road in Clay City.

17. Among the interests of Petitioners that will be adversely affected and injured are interests in the use and enjoyment of water resources that may be adversely affected by surface and groundwater runoff from the CDD landfill; additional traffic associated with the haulage and disposal of CDD wastes at the landfill; and adverse effects from dust and noise associated with the landfill.

GROUND FOR REVIEW

18. KRS 224.10-420(2) requires that a person seeking review of a final determination of the Cabinet must allege that the final determination “is contrary to law or fact” and must state the grounds and reasons[.]

19. Petitioners allege that the April 8, 2019 determination issuing a CDD landfill permit to Respondent Blaze Enterprises LLC is contrary to law and fact, for the reasons that follow.

I. The Cabinet Notice And Review Process For The Less-Than-One-Acre CDD Landfill Issued To Respondent Blaze Enterprises LLC Is Contrary To Law

20. Numerical Paragraphs 1-19 of this Amended Petition for Review are incorporated by reference as if fully set forth below.

21. KRS 224.10-100 defines and bounds the authority of the Defendant Energy and Environment Cabinet, which is a creature of statute that has no inherent powers beyond those expressly delegated by the General Assembly of the Commonwealth of Kentucky.

22. KRS 224.10-100 provides that the:

cabinet shall have the authority, power, and duty to: . . . (19) issue, continue in effect, revoke, modify, suspend, or deny under such conditions as the cabinet may prescribe and *require that applications be accompanied by plans, specifications, and other information the cabinet deems necessary for the following permits:* . . . (c) Permits for the establishment or construction and operation or maintenance of waste disposal sites and facilities[.]” (Italics added).

23. KRS 224.1-010(26) defines “waste site or facility” as “any place where waste is managed, processed, or disposed of by incineration, landfilling, or any other method....” A Construction And Demolition Debris Landfill is a “waste disposal site or facility” within the meaning of KRS 224.10-100(19)(c).

24. In KRS 224.40-120, the General Assembly adopted minimum standards governing the approval by the Cabinet of less-than-one-acre construction or demolition waste landfills.

25. KRS 224.40-120 requires that:

“cabinet shall not permit the off-site disposal of construction or demolition waste at a site less than one (1) acre unless, *at a minimum*, the following conditions are imposed:

(a) The applicant shall provide a written certification that a copy of the application has been delivered to the governing body of the solid waste management area and that disposal of the construction and demolition debris at the proposed site will not violate local land use regulations;

(b) Disposal shall only occur during daylight hours in accordance with a posted schedule that will allow inspection by local or state officials;

(c) The applicant shall erect on the site a sign clearly indicating that the site is permitted for the disposal of construction and demolition debris only, and the operating hours shall appear on the sign along with the applicant’s permit number;

(d) The cabinet shall establish a schedule for closing and covering the site, including provisions for intermediate cover when flammable waste is involved;

(e) Notwithstanding any other provision of law, the applicant shall not allow the disposal of tires at a waste disposal facility regulated by this section; and

(f) The cabinet shall require the applicant to post a bond in the amount of ten thousand dollars (\$10,000) to insure compliance with the conditions of the permit.”

KRS 224.40-120.

26. KRS 224.40-120 limits the ability of the Cabinet to waive the mandatory requirements of the statute, allowing in subsection (2) only that the Cabinet may waive the requirements of subsection (1)(b) regarding posting of hours, and of (1)(c) and (d) if “the cabinet determines that the area of land to be affected, the limited duration of the disposal operation, or the materials to be disposed of do not require imposition of these standards to assure the safety of the public.” KRS 224.40-120.

27. KRS 224.40-305 mandates that:

No person shall establish, construct, operate, maintain, or permit the use of a waste site or facility without first having obtained a permit from the cabinet pursuant to this chapter and administrative regulations adopted by the cabinet.

28. KRS 224.40-310(2) provides in relevant part that:

No permit to construct or expand, when the expansion results in substantial additional capacity, a waste disposal facility shall be issued until a complete application has been submitted to and approved by the cabinet and notice of the application has been published
. . . .

29. KRS 224.40-310(1) defines “waste disposal facility” to include, among others, a “construction/demolition debris landfill except for a landfill for the disposal of sand, soil, rock, gravel, bridge debris, and other materials extracted as part of a public road construction project funded wholly or in part with state funds[.]”

30. On information and belief, the proposed Virden Ridge CDD Landfill is not “a landfill for the disposal of sand, solid rock, gravel, bridge debris, and other materials extracted as part of a public road construction project funded wholly or in part with state funds,” and therefore is not exempt from the requirements of KRS Chapter 224 that apply to “construction/demolition debris landfills” as a “waste disposal facility.”

31. KRS 224.40-310 imposes several mandatory requirements on the Cabinet processing of a permit application for a “waste disposal facility” such as a CDD landfill. Among them is a requirement that “no permit” be issued until: (a) a complete application has been submitted to and approved by the cabinet; (b) and notice of the application has been published after the cabinet has determined the application to be technically complete and issued a draft permit; and (c) that no permit to construct a waste disposal facility shall be issued until at least thirty (30) days have expired following publication of the application. If a hearing is requested, no permit to construct a waste disposal facility shall be issued prior to a final order of the secretary.

32. In this instance, a public hearing was requested and was held on February 21, 2019 by the Cabinet regarding the proposed landfill. See Appendix 3, pp. 1, 5 referencing the hearing.

33. On information and belief, no final order was issued by the Secretary as provided in KRS 224.40-310 approving issuance of the waste disposal facility at issue.

34. KRS 224.40-310 contains no exception from the public notice and agency review requirements for construction/demolition debris landfills of less-than-one-acre.

35. KRS 224.40-310 requires that public notice of an application for a waste disposal facility be published after receipt by the Cabinet of a technically complete application and issuance of a draft permit. On information and belief, the public notice was published on December 18, 2018, *before* the filing of the “Registration” on January 18, 2019.

36. KRS 224.40-310 requires that a draft permit be developed and available for public review prior to the commencement of the public comment period.

37. The timing of the public notice published did not comply with KRS 224.40-310, nor did the Cabinet provide a draft permit for review prior to commencement of the public comment period and prior to issuance of the final permit.

38. KRS 224.40-305 provides that “[n]o person shall establish, construct, operate, maintain, or permit the use of a waste site or facility without first having obtained a permit from the cabinet pursuant to this chapter and administrative regulations adopted by the cabinet.”

39. KRS 224.40-310 requires that no such permit be issued “until a complete application has been submitted to and approved by the cabinet and notice of the application has been published... after the cabinet has determined the application to be technically complete and issued a draft permit.”

40. Neither KRS 224.40-305 nor KRS 224.40-310 contain an exception allowing a “registration” rather than a “permit” for less-than-one-acre CDD landfills, nor for issuance of authorization to “construct, operate, maintain, or permit the use of a” less-than-one-acre CDD landfill five (5) business days after submittal of a registration application *unless* the registration is denied by the Cabinet within that time.

41. Issuance of the “registered permit-by-rule” to Blaze Enterprises, LLC was contrary to law, in that the public notice was issued without an accompanying draft permit, and prior to a determination that the application was technically complete, and a draft permit had been prepared.

42. Petitioners have suffered injury stemming from this failure to comply with KRS 224.40-310 in that they were unable to comment on the conditions of the draft permit prior to the agency final determination.

43. Pursuant to 401 KAR 47:080 Section 2(6)(a)3, “construction/demolition debris landfills of one (1) acre or less, when the wastes are not disposed of at the site of generation[.]” are categorized as “registered permits by rule.” Pursuant to 401 KAR 47:080 Section 2(6)(b), “[o]wners and operators of a registered permit-by-rule site or facility *are deemed to have a*

permit without further action by the cabinet.” (Italics added). This blanket authorization to engage in activities identified as “registered permits-by-rule” without a prior Cabinet determination that an application was technically complete, and issuance of a public notice accompanied by a draft permit, and issuance of a final permit after comment, violated KRS 224.40-310 and KRS 224.40-305.

44. Issuance of a “registered-permit-by-rule” to Blaze was contrary to law, and that final determination should be vacated, and this matter remanded to the agency for further proceedings in accordance with statute.

II. The Cabinet Acted Arbitrarily And In A Manner Inconsistent With Law In Approving The Permit In Question Without Requiring Sufficient Information And Monitoring To Allow A Reasoned Determination That The Construction and Operation Of The Proposed CDD Landfill Would Comply With Applicable Environmental Standards

44. Numerical paragraphs 1-43 are incorporated herein by reference as if fully set forth below.

45. The authorization issued in this case to Blaze Enterprises LLC, categorized on the Permit face as a “Registered Permit By Rule,” identifies the regulations specific to the operation of a CDD landfill of less than one acre as 401 KAR 47:030, 47:110, and 48:320. See Appendix 2, p. 3 of 5.

46. 401 KAR 47:080 Section 2(6)(b) requires that “[o]wners and operators of a registered permit-by-rule site or facility shall prevent adverse effects on human health and the environment as identified in 401 KAR 47:030 and implement any necessary corrective action under Section 8 of 401 KAR 48:300.”

47. 401 KAR 47:030 establishes the “Environmental Performance Standards” for “solid waste sites or facilities,” which are defined to include landfills such as the one in question.¹

Section 1. Purpose, Scope and Applicability. The standards in this administrative regulation shall be for use under the waste management provisions of KRS Chapter 224 in determining which solid waste sites or facilities pose a reasonable probability of adverse effects on human health or the environment. Solid waste sites or facilities failing to satisfy the requirements of this administrative regulation shall be considered open dumps which are prohibited by KRS 224.40-100. An owner or operator shall not cause, suffer, or allow a solid waste site or facility or any unit of a solid waste site or facility to violate any provision of this administrative regulation.

401 KAR 47:030 Section 1.

48. According to Section 1 of 401 KAR 47:030, the environmental performance standards “shall be for the use under the waste management provisions of KRS Chapter 224 in determining which solid waste sites or facilities pose a *reasonable probability of adverse effects on human health or the environment.*” (Italics added.)

49. In addition to constituting standards the violation of which render the solid waste site or facility an “open dump[] ... prohibited by KRS 224.40-100,” and the violation of which are prohibited by 401 KAR 47:030 Section 1, the environmental performance standards are “for the use” of the agency in determining whether the solid waste site or facility poses a “reasonable probability of adverse effects.”

50. Among the environmental performance standards in 401 KAR 47:030 are:

- Restrictions associated with flood plains (Section 2)

¹ 401 KAR 47:080 Section 2(6) defines “construction/demolition debris landfills of one (1) acre or less, when the wastes are not disposed at the site of generation” as being in the category of “registered permit-by-rule,” which is in turn defined as “a category of *solid waste site or facility permit* providing for the storage, treatment and disposal of solid waste[.]” As noted, 401 KAR 47:080 Section 6(b) specifically makes the 401 KAR 47:030 environmental performance standards applicable to less-than-one-acre CDD landfills such as the one at bar.

- A prohibition on causing or contributing to the taking of any endangered or threatened species or candidate species under the Endangered Species Act, or destruction of or adverse modification to critical habitat; (Section 3);
- A prohibition on discharge of pollutants into waters of the Commonwealth in violation of KRS Chapter 224, including the KPDES program; a prohibition on discharges of dredged or fill material into waters of the Commonwealth in violation of Section 404 of the CWA, and any nonpoint releases in violation of nonpoint source program requirements (Section 4);
- A prohibition against contamination of an underground source of drinking water beyond the point of compliance in excess of the maximum contaminant levels (MCLs) established by Section 6 of the regulation (Section 5, 6);
- Limitation on the surface and near-surface application of solid wastes within three (3) feet of the surface of land used for food chain crop production (Section 7);
- A prohibition on placement of solid waste on land containing more than 1 mg/kg of PCBs, excepting residual landfills and contained landfills (Section 8);
- A requirement to prevent or control on-site disease vectors through periodic cover material or other techniques (Section 9);
- A prohibition on open burning of solid wastes (with limited exceptions) and on violation of air pollution requirements (Section 10);
- A limit on concentration of explosive gases, prohibition on posing a fire hazard, and requirement for site access control (Section 11);
- Prohibition against creating a public nuisance because of blowing litter, debris, or other waste or material (Section 12); and
- Prohibition against location in a wetland (Section 13).

51. A violation of the environmental performance standards of 401 KAR 47:030 would constitute “adverse effects” within the meaning of 401 KAR 47:030 Section 1.

52. In addition to the requirement that a CDD landfill of less-than-one-acre comply with 401 KAR 47:030, the Cabinet has acknowledged that the environmental performance standards

of 401 KAR 30:031 are applicable to such landfills. In the Cabinet *Response To Comment* document (Appendix 3), the Cabinet provided this response to Comment 15:

The permit incorporates the provisions of 401 KAR 30:031 which prohibits: the discharge of pollutants to water (sic) of the Commonwealth that violate KRS Chapter 224 or 401 KAR Chapters 8 or 10, the contamination of an underground drinking water source in excess of the maximum contaminant levels specified in 401 KAR Chapter 8, the violation of applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 to 63, and the contamination of karst terrain.

Response To Comments, Appendix 3, p. 5.

53. The standards of 401 KAR 30:031 are similar to those of 401 KAR 47:030, with the former adding a requirement not contained in the latter that “[n]o waste site or facility shall allow contamination of karst terrain.” 401 KAR 30:031 Section 13.

54. The Cabinet has created a form identified as “Form DEP 7059-H (6/99) captioned “Registration for a Registered Permit-By-Rule Less-Than-One-Acre Construction/Demolition Debris (CDD) Landfill DEP 7059-H ((6/99)” which requires certain information from the applicant. In addition to basic information on the registrant and facility location, there are nine (9) attachments required: anticipated sources of waste and monthly tonnage for each source; a description of equipment, personnel, and contingency plans for fires or spills; a USGS 7.5 minute map; a site plan (which may be hand drawn); engineering drawings if the proposed facility is in a wellhead protection area; legal structure information, and if applicable, a certificate of assumed name; a copy of the public notice; and financial assurance information.

55. On information and belief, the Cabinet issued the permit in question to Blaze without requesting any of the following information:

- a. Whether the proposed facility is located in a manner as to be subject to washout of waste or is located so as to impede the flow of a 100-year flood event;
- b. The presence of any federally threatened or endangered species or habitat on the property;

- c. How surface run-on and run-off from all disturbed and fill areas will be managed in order to avoid commingling with leachate, and in order to prevent a discharge of pollutants to waters of the Commonwealth;
- d. The presence and location of any jurisdictional waters of the Commonwealth, and whether the proposed facility would result in placement of dredged or fill material in such waters;
- e. Identification of groundwater resources beneath and in the vicinity of the proposed site, including whether such groundwater resources constitute an underground source of drinking water;
- f. How leachate will be managed in order to prevent migration to surface or groundwater resources;
- g. The design of liner and leachate collection systems so as to prevent leachate migration;
- h. Background surface and groundwater quality information needed in order to allow a determination to be made of compliance with 401 KAR 47:030 Sections 5-6;
- i. The waste screening protocols that will be utilized to assure compliance with 401 KAR 47:030 with respect to acceptance of PCB-containing wastes;
- j. Those steps that will be taken to assure compliance with 401 KAR 47:030 Section 9 and 12; and
- k. Identification of any karst terrain or wetland resources on the property.

56. Absent such information, it is impossible for the Cabinet to reasonably conclude that the proposed siting, construction, and operation of the landfill in question will comply with the environmental performance standards of 401 KAR 30:031 and 401 KAR 47:030 or whether the solid waste site or facility instead poses a “reasonable probability of adverse effects.” The Cabinet approach of approving CDD landfills of less-than-one-acre absent the information needed to make this determination in advance of permit approval, is contrary to 401 KAR 47:030 and KRS 224.10-100, since the first indication that the agency will have as adverse effects will be *after* the prohibited adverse effect has occurred and has become a certainty.

57. Moreover, in the absence of baseline and ongoing surface and groundwater monitoring, it will be impossible for the Cabinet to determine going forward whether the constructed and operating landfill in question is in compliance with the standards of 401 KAR 30:031 and 401 KAR 47:030 with respect to protection of surface and groundwaters.

58. A CDD landfill of less-than-one-acre is required by 401 KAR 48:320 Section 4(1)(b) to comply with the siting provisions of Sections 1-3 of 401 KAR 48:050.

59. Among the siting requirements of 401 KAR 48:050 are buffer zone provisions prohibiting placement of waste within set distances from natural and man-made features (Section 1); restrictions on the location of the bottom of liners and the placement of wastes leaching heavy metals with respect to the “seasonal high groundwater level;” (Section 2) and floodplain restrictions (Section 3).

60. On information and belief, the Cabinet lacked sufficient information concerning the proposed landfill site to determine prior to permit authorization, whether the site complied with the buffer zone requirements of 401 KAR 48:050 Sections 1 and 3.

61. Additionally, on information and belief, the Cabinet lacked sufficient information concerning the seasonal high groundwater table, and the composition of wastes to be disposed of at the facility, to determine compliance with 401 KAR 48:050 Section 2.

62. Issuance of the permit in question in the absence of sufficient information and monitoring to allow a reasoned determination in advance of approval as to whether the solid waste site or facility poses a “reasonable probability of adverse effects,” was arbitrary, capricious, and inconsistent with law.

IV. The Allowance Of Construction And Operation Of A CDD Landfill Under Lesser Regulatory Standards And Scrutiny Due Simply To The Size Of The Landfill Footprint Is Arbitrary And Inconsistent With Law

63. Numerical paragraphs 1-62 are incorporated herein by reference as if fully set forth below.

64. 401 KAR 47:080 classifies solid waste sites or facilities, and defines a “[c]onstruction/demolition debris landfill” as:

the category of solid waste site or facility for the disposal of solid waste which results from the construction, remodeling, repair and demolition of structures and roads, and for the disposal of uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such waste includes, but is not limited to: bricks, shredded or segmented tires, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, tree stumps, limbs, saw dust, leaves, yard waste, paper, paper products, metals, furniture, insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no liquids or hazardous metals that are incidental to any of the above and other inert waste as approved by the cabinet. Asbestos-containing materials may be accepted only if the permit application includes procedures approved by the cabinet to handle these materials. Construction/demolition debris landfills shall not be for disposal of garbage, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, PCB-containing waste, hazardous material spill residues, limited quantity generator hazardous waste, any waste regulated by 401 KAR Chapter 31 and 32, whole tires, liquids, drums, fuel tanks, or other nonpermitted waste.

401 KAR 47:080 Section 2(2).

65. A less-than-one-acre CDD landfill is allowed under 401 KAR 47:080 Section 2 to accept all of the wastes identified in 401 KAR 47:080 Section 2(2) for CDD landfills one-acre-or-larger in area.

66. The technical requirements for construction/demolition debris landfills are found in 401 KAR 48:050 and 401 KAR 48:060, according to 401 KAR 47:080 Section 2(2).

67. Among the siting requirements of 401 KAR 48:050 for solid waste landfills (including, according to the Necessity, Function, and Conformity provision, all construction/demolition debris landfills), are buffer zone provisions prohibiting placement of waste within set distances from natural and man-made features (Section 1); restrictions on the

location of the bottom of liners and the placement of wastes leaching heavy metals with respect to the “seasonal high groundwater level;” (Section 2) and floodplain restrictions (Section 3).

68. Additionally, 401 KAR 48:050 contains limitations with respect to airports (Section 4), location near fault areas (Section 5), and location in any area *unless* the applicant can demonstrate that the “uppermost aquifer is capable of being monitored in a manner that detects the presence of any constituent listed in Section 10 of 401 KAR 48:300” and which can be subject to corrective action if needed.

69. Cabinet regulation 401 KAR 48:320 “establishes the technical requirements for less than one (1) acre construction/demolition debris landfills.” Unlike 401 KAR 48:060, no liner or leachate is required under 401 KAR 48:320 Section 4(1)(c) unless the proposed landfill is “located inside a wellhead protection area.” A “wellhead protection area” as defined in 401 KAR 5:002(207) is limited to the surface and subsurface area surrounding a water well, well field, or spring, supplying a *public* water system. (Emphasis added). No comparable protection is provided in 401 KAR 48:320 for underground sources of drinking water not supplying public water systems.

70. A CDD landfill of one-acre or greater is required by 401 KAR 48:050 to meet **all** of the siting requirements of that regulation; while a CDD landfill of less-than-one-acre is exempted from restrictions on locations in Sections 4-6 of 401 KAR 48:050. 401 KAR 48:320 Section 4(1)(b). Among those provisions that a less-than-one-acre landfill is exempted from meeting is a demonstration that the facility is sited in an area where the “uppermost aquifer is capable of being monitored in a manner that detects the presence of any constituent listed in Section 10 of 401 KAR 48:300.” 401 KAR 48:050 Section 6; 401 KAR 48:320 Section 4(1)(b).

71. 401 KAR 48:060 “sets forth the technical requirements for construction/demolition debris landfills that are not already classified under permit-by-rule and granted permit-by-rule,” and requires, among other things:

- The landfill is designed to keep surface waters and leachate separate, through run-on controls, diversion ditches, sediment basins;
- A liner and leachate collection system, including minimum standards for liner design and leachate collection piping and storage, drainage layer; and
- Surface and groundwater characterization and periodic monitoring plans sufficient to meet 401 KAR 48:300.

72. None of these technical requirements are applied to landfills accepting the same category of permitted wastes but which are less-than-one-acre in area.

73. The technical requirements of 401 KAR 48:060 represent the judgment of the Cabinet that a liner, leachate collection, and surface and groundwater characterization and monitoring are necessary in order to satisfy the requirements of KRS Chapter 224 and 401 KAR 30:031 and 47:030.

74. The determination of the Cabinet that those technical requirements contained in 401 KAR 48:060 should be inapplicable to a landfill accepting the same waste streams as a landfill classified under 401 KAR 47:080, simply because the footprint of the landfill disposal area is less-than-one-acre in size, is arbitrary, capricious, and contrary to law

Conclusion and Prayer for Relief

Wherefore, for the reasons stated in the initial Petition for Review, which is incorporated herein by reference as if fully set forth below, and this Amended Petition for Review, Petitioners respectfully request that the Cabinet determination of April 8, 2019 be determined to be arbitrary, capricious, and otherwise inconsistent with law and fact, that the determination be

reversed, the issued authorization be vacated, and this matter remanded to the agency for further consideration.

Respectfully submitted

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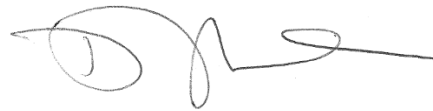
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amended Petition for Review has been served on the Respondents by email concurrently with filing electronically with the Office of Administrative Hearings on September 8, 2019 and that a hard copy will be mailed to the Office of Administrative Hearings on September 9, 2019 and to counsel for Respondents:

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