

March 6, 2020

The Honorable Matthew Strickler
Virginia Secretary of Natural Resources
1111 East Broad Street
Richmond, VA 23219

BY EMAIL

Re: Proposed Cumberland County Mega-Landfill

Dear Secretary Strickler:

The Southern Environmental Law Center (SELC) and Preservation Virginia are writing to express our concerns with the proposed Green Ridge Recycling and Disposal Facility in Cumberland County, Virginia. SELC is a non-partisan, non-profit organization that works throughout Virginia to promote policies and decisions that strengthen our communities, protect our environment and cultural resources, and improve our quality of life. Preservation Virginia is the state's leading historic preservation organization, and works to support and promote Virginia's communities and historic places.

The development and operations of this proposed mega-landfill will have serious impacts, harming the 1,200-acre site of this facility as well as the surrounding community. In addition to the numerous residents and natural resources that would be adversely affected, the proposed landfill would be directly adjacent to the Pine Grove School—a historic African American school that was recently added to the Virginia Landmarks Register and the National Register of Historic Places.¹ The project area has also historically been home to substantial minority and low-income populations, indicating the need to carefully review any potential environmental justice implications of this permit application.²

The sensitive location and potentially severe impacts of this proposed landfill, as well as its scale and enormous proposed service territory, raise significant questions about the need for this project, the availability of potentially less-damaging options and/or more suitable locations, and whether issuing permits for this project would be in the public interest. We strongly urge the Commonwealth to ensure a comprehensive and careful review in all permitting processes for this proposal (a number of which are discussed further below), including close coordination by the

¹ See Virginia Department of Historic Resources, 024-5082 Historic Pine Grove School, <http://www.dhr.virginia.gov/historic-registers/024-5082/> (last visited Feb. 27, 2020); National Park Service, National Register of Historic Places, Weekly List of Actions Taken on Properties: 2/19/2020 through 2/28/2020, <https://www.nps.gov/subjects/nationalregister/weekly-list-20200228.htm> (last visited Feb. 28, 2020).

² Along these lines, in Virginia's ongoing 2020 General Assembly Session the House and Senate have passed bills awaiting signature by Governor Northman that would add environmental justice considerations to the Department of Environmental Quality's (DEQ) "statement of policy" set forth in Virginia Code § 10.1-1183. House Bill 1162 would direct DEQ "to further environmental justice," defined as "the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies." See also House Bill 1164.

Department of Environmental Quality (DEQ), the Department of Historic Resources (DHR), and the U.S. Army Corps of Engineers. Given the level of potential impacts and community concerns surrounding this proposal, it is also imperative that ample public comment and participation opportunities be provided throughout these processes.

I. Solid Waste Permit Application

Among the permits that will be required for the Green Ridge facility is a solid waste management permit from DEQ under the Virginia Waste Management Act,³ and we understand that a Notice of Intent and Part A Application have recently been filed for this project.

A) General Permitting Requirements

The Virginia Code provides that no solid waste permit may be issued until DEQ has determined, “after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs” and evaluation of comments by localities and other interested persons that the proposal meets certain standards, including: “(i) the proposed facility...protects present and future human health and safety and the environment”; “(ii) there is a need for the additional capacity”; and “(v) the public interest will be served by the proposed facility’s operation.”⁴

In reviewing this application, it is imperative that DEQ undertake a comprehensive analysis of whether there is sufficient need for the additional capacity provided by this new mega-landfill. In its Part A Application Form, the applicant indicates that this landfill will have a total capacity of 54 million cubic yards (although an alternative capacity figure of 83 million cubic yards is mentioned in the applicant’s Demonstration of Need also included in the Part A Application).⁵ The proposed facility will handle up to 5,000 tons of waste per day from a service area of 500 miles.⁶ Transporting this waste is estimated to require up to 500 daily tractor-trailer trips along local roads,⁷ and the facility is planned to operate 24 hours per day every Tuesday through Friday (plus 18 hours on Mondays and 10 hours on Saturdays).⁸ Given the scale of the proposed operations and their potentially severe impacts on the surrounding community, it is critical that DEQ conduct a thorough and independent analysis of whether this enormous amount of additional landfill capacity (with a service area extending well beyond Virginia’s borders) is necessary to meet state and local needs.

³ See Va. Code § 10.1-1408.1(A) (providing that “[n]o person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director”); see also 9 VAC 20-81-400(A) (“[n]o person shall construct, operate, or modify a solid waste management facility in the Commonwealth without a permit issued by the director”).

⁴ Va. Code § 10.1-1408.1(D)(1); see also 9 VAC 20-81-450(E)(9).

⁵ Part A Application Form at 1; see also Part A Permit Application, Notice of Intent, Appendix NOI-VII at 11 (Dec. 16, 2019).

⁶ Part A Permit Application, Notice of Intent at 1 (Jan. 13, 2020) (hereinafter “Notice of Intent”).

⁷ Part A Permit Application, Attachment XVI, Nick Liguori, “Local traffic impact statement for proposed Green Ridge landfill, Cumberland County, VA” at 2 (July 3, 2019).

⁸ Green Ridge Recycling and Disposal Facility, Operations, <http://www.greenridgeva.com/operations.html> (last visited February 27, 2020).

Serious questions also remain about whether this proposal adequately “protects future human health and safety and the environment,” as the Virginia Code requires. The proposed landfill would occupy a 1,200-acre site that includes large portions of Muddy Creek and its tributaries, along with significant wetlands. The applicant has indicated that even with recent design changes to reduce the footprint of proposed disposal areas, the landfill and related roads would still directly impact over 5,000 linear feet of streams and over 5,000 linear feet of additional ephemeral channels,⁹ and these figures do not appear to account for the *indirect* effects the project would have on other on- and off-site aquatic resources. The 1,200-acre site is also largely forested today, and much of the site is identified as “high value” ecological cores in the Department of Conservation and Recreation’s Natural Heritage Data Explorer. Further, the applicant has identified 44 private drinking water wells within 500 feet of the facility’s boundary,¹⁰ as well as 37 homes within a half-mile of its 238.1-acre disposal area.¹¹ Thorough review is needed of the landfill’s potential effects on these resources, as well as the potential air quality, traffic, and noise-related effects of landfill operations on the surrounding community.

In determining whether “the public interest will be served” by granting a permit for this proposed mega-landfill, careful consideration is also needed of the significant historic and cultural resources that would be impacted by this facility. Recent design changes to intensify waste disposal in the western part of the site heighten concerns about impacts to historic and archeological resources in this area, including potential historic cemeteries and the Pine Grove Rosenwald School located directly adjacent to the site’s western boundary. The Pine Grove School was founded in 1917 with support from the Rosenwald Fund and was based on the model developed by Booker T. Washington to help establish affordable schools for African American children throughout the South during the Jim Crow era. The school remained in operation from 1917 to 1964, and it has also served as a vital civic and social center for the local Black community. It is now owned by the Agee Miller Mayo Dungy (AMMD) Family Association (comprised of former students and family members), and continues to serve as a community gathering place. The Pine Grove School was recently listed on both the Virginia Landmarks Register and the National Register of Historic Places.¹² The close proximity of proposed fill areas to this irreplaceable historic and cultural resource warrants DEQ’s closest consideration (in coordination with DHR), and must be a central part of any public interest review.

B) Part A Application - Site Suitability

The Virginia Code and related solid waste management regulations also require DEQ to determine that the proposed site “is suitable for the construction and operation” of a new solid waste landfill as part of the agency’s review of the Part A Application.¹³ Among other things,

⁹ See Draper Aden Associates, “New Schematic Design,” Green Ridge Recycling and Disposal Facility (presented to Cumberland County Board of Supervisors-elect in December 2019).

¹⁰ Part A Permit Application, Attachment XVII - Landfill Impact Statement at 17 (Dec. 9, 2019).

¹¹ Green Ridge Recycling and Disposal Facility, Project Description, <http://greenridgeva.com/project-description.html> (last visited Feb. 27, 2020).

¹² See Virginia Department of Historic Resources, 024-5082 Historic Pine Grove School, <http://www.dhr.virginia.gov/historic-registers/024-5082/> (last visited Feb. 27, 2020); National Park Service, National Register of Historic Places, Weekly List of Actions Taken on Properties: 2/19/2020 through 2/28/2020, <https://www.nps.gov/subjects/nationalregister/weekly-list-20200228.htm> (last visited Feb. 28, 2020).

¹³ Va. Code § 10.1-1408.4(A); see also 9 VAC 20-81-450(C).

DEQ must consider the adequacy of transportation facilities available to serve the landfill, the potential impacts on local roads, and the potential impacts on “parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism” when making this determination.¹⁴ This site suitability finding must be made prior to an applicant’s submission of the Part B Application.¹⁵

As outlined above, the Green Ridge proposal is located in an area with significant aquatic resources, forested habitat, and cultural and historic resources, and the immense scale of proposed landfill operations are likely to have major impacts on this site, local roads, and the surrounding community. In addition, the project area has historically been home to substantial minority and low-income populations, indicating the need to carefully review any potential environmental justice implications of this permit application. Coupled with the 500-mile service territory of this facility, these considerations raise serious questions about whether the proposed site can reasonably be found suitable for this project. In making this site suitability determination, we strongly urge DEQ to carefully consider the sensitivities of this area and to require a much more comprehensive analysis of possible alternative locations for this landfill within the applicant’s extensive proposed service territory than the very limited analysis provided in the applicant’s Part A Application.

II. Virginia Water Protection Permit

The Green Ridge facility will also require a Virginia Water Protection (VWP) permit in accordance with Section 401 of the Clean Water Act due to its potential impacts on aquatic resources in the project area. Virginia law provides that except in compliance with a VWP permit, “no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters” or “otherwise alter the physical, chemical, or biological properties of state waters...and make them detrimental to the public health, to animal or aquatic life.”¹⁶ As part of the VWP permitting process, an applicant must demonstrate that the proposed activity is the “least environmentally damaging practicable alternative” after review of potential alternative sites for the project, as well as other on- and off-site options “to first avoid and then minimize impacts to surface waters to the maximum extent practicable.”¹⁷

The Green Ridge proposal has the potential to significantly impact aquatic resources in the project area, both in terms of direct impacts to streams within proposed waste management areas and indirect impacts to on- and off-site streams and wetlands. Moreover, the expansive 500-mile proposed service territory of this facility raises serious questions about the need to locate a mega-landfill in this sensitive location and whether less-damaging alternative locations are available. We urge the Commonwealth to ensure that the VWP permit review includes a robust analysis of potential direct and indirect effects of this proposal on aquatic resources, as

¹⁴ Va. Code § 10.1-1408.4(A); *see also* 9 VAC 20-81-450(C)(4)(requiring consideration of information provided in a Landfill Impact Statement (LIS) and regarding the adequacy of transportation facilities, among other things); 9 VAC 20-81-460(G)&(H) (outlining requirements for transportation adequacy review and the contents of an LIS).

¹⁵ 9 VAC 20-81-450(C)&(D).

¹⁶ 9 VAC 25-210-50(A); *see also* Va. Code § 62.1-44.15:20(A).

¹⁷ 9 VAC 25-210-80(B)(1)(g).

well as a thorough review of potential alternative locations for this project throughout the applicant's proposed service territory.

III. Air Permits

Permits will also be required for the applicant's emissions of air pollutants. The Virginia Code provides that in approving air permits, the Air Pollution Control Board (and/or DEQ) shall consider, among other things, "[t]he character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused" as well as "the suitability of the activity to the area in which it is located."¹⁸ As noted above in regards to solid waste permitting, the sensitivity of the Green Ridge facility's proposed location and its extensive proposed service territory raise significant questions about the suitability of this location for a new mega-landfill. In considering any air permit application for this project, the Commonwealth must ensure comprehensive review of potential alternative locations for this project as well as its potential impacts on this site and the surrounding community, including significant historic and cultural resources (such as the Pine Grove School) and any environmental justice communities identified in the area.

IV. Federal Permitting

Finally, the Commonwealth's close participation in any federal permitting processes and related environmental and historic resource reviews that may be required for this project will also be critical. Along these lines, in January we submitted a joint letter to the Corps of Engineers highlighting the need for comprehensive review of any applications submitted for this project under Section 404 of the Clean Water Act and Section 106 of the National Historic Preservation Act, as well as the need to prepare an Environmental Impact Statement under the National Environmental Policy Act.¹⁹ We strongly urge the Commonwealth—and particularly, DEQ and DHR—to closely coordinate with the Corps and other federal agencies and help ensure that the Green Ridge proposal, its potential impacts, and any available alternatives and mitigation measures are fully evaluated in these federal review processes.

Thank you for your consideration, and we look forward to participating in these permitting processes as applications are submitted for this project.

Sincerely,



Trip Pollard
Director, Land and Community Program
Southern Environmental Law Center



Elizabeth Kostelny
Chief Executive Officer
Preservation Virginia

¹⁸ Va. Code 10.1-1307(E); 9 VAC 5-170-170.

¹⁹ See Letter from Trip Pollard and Travis Pietila, SELC and Elizabeth Kostelny, Preservation Virginia to Colonel Patrick Kinsman, Corps of Engineers, "Proposed Cumberland County Mega-Landfill" (Jan. 31, 2020).



Travis Pietila
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cc: David Paylor, Director, Virginia Department of Environmental Quality
Julie Langan, Director, Virginia Department of Historic Resources