

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, DECEMBER 16, 2010, AT 9:00 A.M.,**  
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **NOVEMBER 28, 2010 AND DECEMBER 5, 2010.**

7  
Members Present: Helen E. Harris, Chairman  
Robert Witte, Vice Chairman  
Lindsay U. Bruce  
R. A. Wright

Members Absent: James W. Nunnally

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
R. Miguel Madrigal, County Planner  
Angela Roberts, Office Assistant

8  
9  
10 Ms. Harris - Good morning. Welcome to the December 16, 2010  
11 meeting of the Board of Zoning Appeals for Henrico County. Please stand and  
12 say the **Pledge of Allegiance**.

13  
14 Mr. Blankinship, would you read the rules that govern this meeting?

15  
16 Mr. Blankinship - Good morning, Madam Chairman, member of the  
17 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting  
18 as secretary, I will call each case. And as I'm speaking, the applicant should  
19 come down to the podium. Then we will ask everyone who intends to speak to  
20 that case to stand and be sworn in. The applicant will present their testimony.  
21 Then anyone else who wants to speak will be given the opportunity. After  
22 everyone has had a chance to speak, the applicant and only the applicant will  
23 have an opportunity for rebuttal.

24  
25 After the Board has heard all the evidence and asked any questions, they will  
26 take the matter under advisement and proceed with the next case. They will  
27 render all of their decisions at the end of the meeting. If you wish to know their  
28 decision on a specific case, you can stay until the end of the meeting, or you can  
29 call the Planning Department this afternoon, or you can check the Planning  
30 Department website this afternoon; we update it almost as soon as the meeting  
31 is over.

33 This meeting is being recorded so we'll ask everyone who speaks to speak  
34 directly into the microphone on the podium, state your name, and please spell  
35 your last name so we get it correctly in the record.

36  
37 And finally, out in the foyer there is a binder that contains the staff reports for  
38 each case, including the conditions that have been recommended by the staff.

39  
40 Madam Chairman, we do have a couple of requests for deferral. One was  
41 submitted in advance, which is UP-24-10. The other, which just came in  
42 yesterday is A-002-10, Liberty Homes. So, A-002-10, Liberty Homes, requests a  
43 variance from Sections 24-95(c)(4), 24-95(t) and 24-95(u)(1)b to build a one-  
44 family dwelling at 11510 Greenwood Road in Lakeview, zoned A-1 Agricultural  
45 District in the Brookland Magisterial District.

46  
47 Ms. Harris - Before we consider the request for deferment, we do  
48 need to make it known that because we have one Board member not with us  
49 today that we will need at least three votes to approve a request. There may be  
50 some more deferments.

51  
52 *Deferred from Previous Meeting*

53  
54 **A-002-10 LIBERTY HOMES** requests a variance from Sections  
55 24-95(c)(4), 24-95(t) and 24-95(u)(1)b to build a one-family dwelling at 11510  
56 Greenwood Road (Lakeview) (Parcel 772-774-9333), zoned A-1, Agricultural  
57 District (Brookland). The front yard setback, total lot area requirement, and rear  
58 yard setback are not met. The applicant proposes 8,085 square feet lot area  
59 outside the floodplain, 25 feet front yard setback, and 10 feet rear yard setback,  
60 where the Code requires 30,000 square feet lot area, 35 feet front yard setback  
61 and 20 feet rear yard setback. The applicant requests a variance of 21,915  
62 square feet lot area, 10 feet front yard setback, and 20 feet rear yard setback.

63  
64 All right, let's consider the request for deferment on A-002-10, Liberty Homes. Is  
65 there a motion on this deferment request?

66  
67 Mr. Witte - Yes, I make a motion we defer it as requested.

68  
69 Mr. Bruce - Second.

70  
71 Ms. Harris - Moved by Mr. Witte and seconded by Mr. Bruce. Are  
72 there any questions on this motion? How long are we going to defer this?

73  
74 Mr. Bruce - It was requested to January.

75  
76 Ms. Harris - One month. Okay. Any questions on the motion? All  
77 in favor say aye. All opposed say no. The ayes have it; the motion passes.

78

79 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
80 Mr. Bruce, **A-002-10, Liberty Homes**, has been deferred until the January 27,  
81 2011 meeting.

82

83

84 Affirmative:	Bruce, Harris, Witte, Wright	4
85 Negative:		0
86 Absent:	Nunnally	1

87

88

89 Mr. Blankinship - The other request for deferral was UP-024-10. Hugh  
90 A Joyce requests a conditional use permit pursuant to Section 24-95(i)(4) to  
91 allow solar panels in the front yard at 8201 Hungary Road on Laurel Heights.  
92 Zone R-2, One-Family Residence District in the Brookland Magisterial District.

93

94 **UP-024-10 HUGH A. JOYCE** requests a conditional use permit  
95 pursuant to Section 24-95(i)(4) to allow solar panels in the front yard at 8201  
96 Hungary Road (Laurel Heights) (Parcel 767-759-1185), zoned R-2, One-family  
97 Residence District (Brookland).

98

99 Ms. Harris - A motion is in order for this deferral.

100

101 Mr. Witte - I make a motion we defer it for one month, as  
102 requested.

103

104 Mr. Bruce - I second.

105

106 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Bruce that we  
107 defer this case for one month. Are there any questions on the motion? All in  
108 favor say aye. All opposed say no. The ayes have it; the motion passes.

109

110 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
111 Mr. Bruce, **UP-024-10, Hugh A. Joyce**, has been deferred until the January 27,  
112 2011 meeting.

113

114

115 Affirmative:	Bruce, Harris, Witte, Wright	4
116 Negative:		0
117 Absent:	Nunnally	1

118

119

120 Ms. Harris - Are there any more requests for deferrals?

121

122 Mr. Blankinship - No ma'am.

123

124 Ms. Harris - Ready to call our first case.

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**A-011-10 VIRGINIA MOORE MORROW** requests a variance from Section 24-95(e)(1) to build a one-family dwelling at 4403 Grigg Street (Shurm Heights) (Parcel 808-717-5630), zoned R-4, One-family Residence District (Varina). The total lot area requirement and lot width requirement are not met. The applicant has 11,900 square feet total lot area and 70 feet lot width, where the Code requires 15,000 square feet total lot area and 80 feet lot width. The applicant requests a variance of 3,100 square feet total lot area and 10 feet lot width.

Ms. Harris - Will all persons who wish to speak to this case please stand and raise your right hand.

Mr. Blankinship - Raise your right hand, please. Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Ms. Harris - Please state your name, spell your last name, and present your case. You need to speak in the microphone.

Ms. Morrow - My name is Virginia Moore Morrow—M-o-r-r-o-w. I inherited this property in 2002. It's been in my family for three generations. It is partially wooded—mainly wooded, partially open on a very quiet side street. It is adjacent to two other lots that are undeveloped. They're owned by the Hodge family. I initially asked Sue Hodge if she would like to buy my property because I certainly wanted to do something with it other than allow it to be vacant. I can't really remember. I don't think Mrs. Hodge was interested at the time and so I just left it. This fall I decided that I would pursue it again and had a soil test; it did perk. I put it on the market and had a builder bid on it and received a contract pretty quickly. He went through all the procedures and received clearance from the Health Department and his design was approved as well. So we felt that we were in pretty good shape for a sale. As a courtesy, I had contacted Ms. Hodge to see if she was interested because I would give her first priority. I did not hear from her. Later on in the process, Mr. Bruce Taylor, who is the gentleman who wishes to build there, received notice that he could not proceed, that the lot was not big enough. We found that a little confusing. I went to Planning and talked with—I forget the man's name. His first name is Paul in Planning. We went over the particulars and I decided that perhaps a variance might be the course of action. The best use is a building rather than having the lot vacant. It's a very quiet, very nice street and I certainly would like to develop it in terms of a single-family dwelling.

So that's why I'm here, to make the appeal for a variance. I don't know what questions you might have for me. I tried to be in dialogue with Mrs. Hodge about the property. I have records of two certified documents sent to her; there was no, absolutely no response. My realtor also sent preliminary letters, tried to

171 contact her, so that we could perhaps work something out. See, she owns the  
172 lots on either side. There are three lots that are undeveloped. I believe the  
173 County, hopefully, would like to something going on rather than unused vacant  
174 lots. My property, it has not really had any problems, although I've had a little bit  
175 of trash thrown on it. But other than that, there haven't been any problems.

176

177 Ms. Harris - Any questions from the Board?

178

179 Mr. Wright - I'd like to ask Mr. Blankinship a question. Do I  
180 understand if water and sewer were available to this lot they could build on it  
181 without a variance?

182

183 Mr. Blankinship - That's correct.

184

185 Mr. Wright - So the problem is that you don't have water and  
186 sewer and you have to use a septic system or some kind of system there. Is that  
187 correct?

188

189 Mr. Blankinship - Yes.

190

191 Mr. Wright - The question I would have is have you explored with  
192 the other owners the sharing of cost to extend the water and sewer? It's 400  
193 feet, I understand, from your lot. If you'd extend water and sewer, all three lots  
194 would be buildable; you wouldn't need a variance.

195

196 Ms. Morrow - Well, I haven't thought of that, but since I've had no  
197 communication from Mrs. Hodge, I don't know. That would certainly be an  
198 option, but if she's not communicating, I don't know what else to do.

199

200 Mr. Wright - Do you already have a contract on your lot?

201

202 Ms. Morrow - Yes I do.

203

204 Mr. Wright - Okay. If you would explore this with the other owners,  
205 looks like to me it would make sense for you all to go ahead and extend the  
206 water and sewer. Then you could go ahead and you wouldn't need to be here,  
207 you wouldn't need a variance to build on that lot.

208

209 Ms. Morrow - Well, I would be open to being in dialogue with her.

210

211 Mr. Wright - Would you want to postpone this case until you could  
212 see if you could work that out? You already have a contract so if the cost of  
213 extending it would be much less than what you're going to get for each one of  
214 the lots, you would have a gain by extending the water and sewer.

215

216 Ms. Morrow - I don't know. Can I have some time to think about  
217 that?

218  
219 Mr. Wright - That's what I said. You could request that we defer it  
220 a month to give you a chance to explore that and come back at the next meeting.  
221 If you could work that out, you wouldn't even have to be here. The case would  
222 be withdrawn if you could work out water and sewer for the three properties.  
223 That seems to be the logical solution. All you're doing is postponing the decision  
224 for a month. Today you would be risking our denying you. Of course if we deny  
225 it, you could still work that out and go forward with it. So you wouldn't lose  
226 anything. That's another thought.

227  
228 Ms. Morrow - I guess. I mean there are no guarantees that Mrs.  
229 Hodge would talk with me about anything. We don't know each other that well,  
230 but she's always been very friendly. But there has been no communication. So I  
231 don't know if—

232  
233 Mr. Wright - The problem is a health problem. Is that not correct?

234  
235 Mr. Blankinship - Under the current standards you'd need an acre for a  
236 conventional drain field. Because this is an older lot, it falls into the older  
237 standards so you can put a drain field on a smaller lot. But in exchange for that,  
238 you have to do an engineered system, not just a conventional drain field. An  
239 engineered system requires more maintenance and is much more expensive to  
240 install. There are a lot of trade-offs involved.

241  
242 Mr. Wright - So what you're saying is even if she gets the  
243 variance, it would be very expensive to put the system in there that she would  
244 need.

245  
246 Mr. Blankinship - Right. More expensive than a traditional drain field.

247  
248 Mr. Wright - So you have that to weigh also.

249  
250 Mr. Blankinship - Extending the sewer 400 feet for one house is  
251 probably not economically feasible. It would be significantly more than even the  
252 engineered drain field. But if you could divide it three ways or even five ways  
253 because of the two houses on the other side of the street— it's worth asking  
254 what sort of condition their drain fields are in.

255  
256 Ms. Morrow - What would be the possible cost for extending the  
257 utilities down that street?

258  
259 Mr. Blankinship - I would suggest that you get in touch with the  
260 Department of Public Utilities to help you with that. I don't know anything about  
261 the soils or the slopes or anything like that with this particular location. It can be

262 very different from one street to the next. I'd hate to mislead you by taking a  
263 guess.

264

265 Ms. Harris - We will give you time to rebut because we have other  
266 people who want to speak to the case. You think about what you want to do, if  
267 you want the deferment. Is that okay? One question. Has anyone offered to  
268 buy your lot? Had the Hodges offered to buy your lot?

269

270 Ms. Morrow - No, no. I mean, as I said, I spoke with Sue in 2005  
271 and just briefly mentioned that I was interested in selling it. One of my neighbors  
272 was interested in it, but she actually had the wrong lot. She wasn't correct in the  
273 one that she was thinking of, but other than that, no.

274

275 Ms. Harris - Any other questions by Board members?

276

277 Mr. Witte - Yes. How have you tried to get in touch with Mrs.  
278 Hodge?

279

280 Ms. Morrow - By certified letter. Would you like to see the copies?

281

282 Mr. Witte - No, that's fine.

283

284 Ms. Morrow - And my realtor also went by. Her phone was not  
285 working, could not contact her by the old number. I believe he left a note and a  
286 card. And I have a letter from him stating that. So we sent two certified letters  
287 and my realtor went by I think no less than three times.

288

289 Mr. Witte - Thank you.

290

291 Mr. Wright - I think Mr. Blankinship has added some more to this.  
292 Evidently there are other people across the street, other lots that have maybe  
293 defective drain fields.

294

295 Mr. Blankinship - I have no reason to believe they're defective, but  
296 septic systems do wear out over time.

297

298 Mr. Wright - Over a period of time, and it may be more beneficial  
299 for all of these folks to get together and run public water and sewer. That would  
300 really spread the cost. It looks like some effort here may work out to be to the  
301 benefit of all of these lot owners. That's my observation.

302

303 Ms. Morrow - Well, thank you. And you'll give me some time, you  
304 say?

305

306 Mr. Blankinship - After the others.

307

308 Ms. Morrow - Okay, thank you.  
309  
310 Ms. Harris - Anyone else who wishes to speak to this case, please  
311 come forward. State your name and spell your last name. Thank you.  
312  
313 Mr. Hodge - Michael H. Hodge—H-o-d-g-e. Me and my wife, we  
314 own the lots on each side. Now we did get a registered letter from her but it did  
315 not have a phone number on it. We did get one from the real estate agent and  
316 we did try to contact him and he never contacted us back. We cut off our home  
317 phone because we just went to cell phones.  
318  
319 I have no problem with her building a house. If she builds a house, I can build  
320 one on each side of her. I have two kids and I would love to have houses on  
321 both sides. You were talking about the drain field. I live on the corner of Gay and  
322 Grigg right now. I had to hook up to County water and sewer. The soil was no  
323 good and everything. I kept my well, but—. But like I say, I don't care if she  
324 builds on either side of it. Like I said, she tried to contact us; she sent us a  
325 registered letter. But if you read the registered letter, it didn't have a phone  
326 number where we could contact her. Like she said, it's a quiet street, nice street.  
327 I know what it cost me just to hook up to County water and sewer. The house  
328 was left to us and the land we bought from the estate of her grandfather. Just  
329 the cost to hook up to County water and sewer—he had paid the initial hook-up  
330 fee for the sewer but not the water and it cost me thousands of dollars just to  
331 hook up to Henrico County. It would be worth looking into maybe getting the  
332 other three people on the block and her and us to run 550- to 600-feet of sewer  
333 down the road. The guy behind me that's adjoining to us, he's had trouble with  
334 his sewer system, too.  
335  
336 Mr. Blankinship - You had mentioned that if she built, then you would  
337 be interested in building on both of your lots. But you understand neither of your  
338 lots are buildable either.  
339  
340 Mr. Hodge - Right.  
341  
342 Mr. Blankinship - They're both too small to build on, too. The two on  
343 either side of her lot.  
344  
345 Mr. Hodge - The one on the back side is actually 120-foot wide  
346 because the County—he filed for a—we have the 16-foot right-of-way or  
347 something like that. He filed for that before he passed away.  
348  
349 Mr. Blankinship - One of them lacks the lot width and area. The other  
350 one lacks only adequate area. So it's wide enough, but it doesn't have quite  
351 enough area to build on. You're in the same situation.  
352



353 Mr. Wright - Then it makes sense for all of you to get together and  
354 try to work out something. Then it would benefit you because then you would  
355 have buildable lots.  
356

357 Mr. Hodge - We wanted to buy that lot at one time, but what she  
358 wanted for it is what I paid for both of my lots.  
359

360 Mr. Wright - Well, you may talk with her about that, too. She  
361 already has a contract on the lot, but it's subject to getting this variance.  
362

363 Mr. Hodge - If I would have bought the lot, I would have made two  
364 back lots so then it would have been big enough to build two houses.  
365

366 Mr. Wright - That would be another solution.  
367

368 Mr. Hodge - Right. My wife's grandfather used it for gardening all  
369 his life, you know, and he always kept the back lot clean. Now I keep it cut but I  
370 haven't—like I said, I don't care if she builds. If she builds, that means I can file  
371 for a variance and build.  
372

373 Mr. Blankinship - It doesn't mean that. That's what I'm trying to tell you.  
374 It may, in fact, mean that your lots then are not going to be developable.  
375 Whereas if you bought hers, you would be able to develop them.  
376

377 Mr. Hodge - That's all I have to say about it.  
378

379 Mr. Wright - She's here. Maybe you should get with her now.  
380

381 Mr. Blankinship - Exchange phone numbers at least.  
382

383 Mr. Hodge - That's all I have to say.  
384

385 Ms. Harris - Mr. Hodge, before you leave. Can you identify on this  
386 map where you reside? You said something about having to connect to—  
387

388 Mr. Hodge - I live at 2700 Gay Avenue, right on the corner there.  
389 The corner of Gay and Grigg. Right there. That's my house.  
390

391 Ms. Harris - Any questions from Board members? Anyone else  
392 wish to speak to this case? Please state your name and spell your last name.  
393

394 Mr. Taylor - Bruce Taylor—T-a-y-l-o-r. I have a contract to buy  
395 this lot. As far as the water and sewage, the cost would be more than what any  
396 of the lots together would be worth, to extend it that distance. I've checked on it  
397 before and it's in the neighborhood of \$100 a foot. By the time you extend that,  
398 you're way up into the money. We've been to the Health Department and I have

399 a letter here from the Health Department. They've approved the septic permit  
400 and issued a septic permit for this lot. It's an alternative system, which is what  
401 they use on most lots now anyway. It is expensive, but it is quite a bit cheaper  
402 than extending water and sewer to all these lots.

403

404 Mr. Blankinship - Unless you divide that cost five ways.

405

406 Mr. Taylor - Yes, but it still would be expensive for what the lot is  
407 worth. They would have to give me the lot for me to pay to extend water and  
408 sewer. It wouldn't be any benefit to her whatsoever.

409

410 Mr. Wright - The point is this system, you still have to get the  
411 variance to put it on there, don't you?

412

413 Mr. Blankinship - Right.

414

415 Mr. Taylor - The variance isn't for the system; the variance is to be  
416 able to build on the lot.

417

418 Mr. Wright - That's exactly right.

419

420 Mr. Blankinship - But the variance would not be necessary if you had  
421 either water or sewer.

422

423 Mr. Taylor - Right. Which really isn't available because of the  
424 distance. I'm not sure why they didn't run it. I don't know if it even works. I have  
425 some lots in Highland Springs that are the same way. They're big enough to  
426 build on, but the sewer has to come up hill so it runs down and it's coming out of  
427 the road. With those elevations it won't work.

428

429 Mr. Wright - You say if you have water, you still have to put the  
430 expensive sewer system in.

431

432 Mr. Blankinship - Right.

433

434 Mr. Wright - Would you need a variance?

435

436 Mr. Blankinship - No.

437

438 Mr. Taylor - Why is that?

439

440 Mr. Blankinship - The standards are different if you have water or  
441 sewer from if you have neither. Part of the logic is that you want wells and septic  
442 systems to be a certain distance away from each other.

443

444 Mr. Taylor - It does have the distance that's required for that. The  
445 Health Department issued a permit for both.  
446  
447 Mr. Wright - If they had water, could they put a conventional sewer  
448 system in?  
449  
450 Mr. Blankinship - I doubt it. That's normally a function of the soils.  
451  
452 Mr. Wright - But it would be a lot less expensive to extend the  
453 water than extend both I'm sure.  
454  
455 Mr. Blankinship - I don't know. If you had the same crew doing both—  
456  
457 Mr. Taylor - We'd still have to put the expensive septic system in,  
458 which is a normal septic system now. I've installed four in Highland Springs in  
459 the last two years on lots that couldn't get water and sewer or would have been  
460 too expensive to run water and sewer.  
461  
462 Mr. Wright - You don't own a lot in this area?  
463  
464 Mr. Taylor - No sir. I have the contract to buy this lot.  
465  
466 Mr. Wright - Oh, okay; now I'm clear.  
467  
468 Ms. Harris - How expensive is the septic system?  
469  
470 Mr. Taylor - Approximately \$14,000.  
471  
472 Ms. Harris - And it would be \$40,000 to—you said about \$100 per  
473 foot.  
474  
475 Mr. Taylor - Yes.  
476  
477 Ms. Harris - So about \$40,000. They would have to divide it five  
478 ways if the other neighbors—  
479  
480 Mr. Taylor - That's just for the sewer; now you have to add the  
481 water to that, too. I believe that rate is at \$50, but I'm not sure. These were old  
482 rates that the County had given me years ago.  
483  
484 Ms. Harris - Are there any more questions for Mr. Taylor?  
485  
486 Mr. Wright - If this variance is granted, you would purchase the lot  
487 and have to put the other system in, the sewer system?  
488

489 Mr. Taylor - Yes. We've already paid a lot of money to have it all  
490 drawn up. We actually have a septic permit already issued.  
491  
492 Ms. Harris - Do you also have a buyer?  
493  
494 Mr. Taylor - Not at this time, no.  
495  
496 Ms. Harris - How much do you think you'll be able to sell the  
497 house for?  
498  
499 Mr. Taylor - Probably in the \$130,000 range.  
500  
501 Ms. Harris - Any other questions from Board members? Thank  
502 you, Mr. Taylor.  
503  
504 Mr. Taylor - Thank you.  
505  
506 Ms. Harris - If there's anyone else who wishes to speak to this  
507 case, please come forward. State your name.  
508  
509 Mr. Shawler - My name is Carl Shawler—S-h-a-w-l-e-r. I'm the real  
510 estate agent who was involved in this transaction. In addition to the other  
511 comments that have been made, the only thing I would like to add is Ms. Morrow  
512 approached me several years ago in 2005 or 2006. I checked with Public  
513 Utilities at that time and they said sewer would not be available there because it  
514 runs up hill on Grigg. So there's no option for sewage in that area. Those are all  
515 the comments I have.  
516  
517 Ms. Harris - You said you checked that several years ago?  
518  
519 Mr. Shawler - Yes ma'am.  
520  
521 Ms. Harris - Do you think things may have changed?  
522  
523 Mr. Shawler - I doubt that the street has been paved any differently,  
524  
525 Mr. Wright - You mean to connect to public sewer.  
526  
527 Mr. Shawler - To connect to the public sewer, that's correct.  
528  
529 Ms. Harris - Any other questions from Board members?  
530  
531 Mr. Witte - So sewer is not realistic or feasible, but water would  
532 still be reasonable?  
533  
534 Mr. Shawler - Water may be, that's correct.

535

536 Mr. Witte - Mr. Blankinship, if they ran the water line, which is  
537 considerably less expensive than the sewer line, would they still need a variance  
538 at that point?

539

540 Mr. Blankinship - No. If they were served by water but not sewer, it  
541 would change the standards to where they would not need a variance.

542

543 Mr. Witte - Thank you.

544

545 Ms. Harris - Is there anyone else who wishes to speak to this  
546 case? Ms. Morrow, do you want to come back, please and give us your  
547 decision?

548

549 Ms. Morrow - I would like clarification. We know that water is a  
550 possibility to be run. I would really prefer to go for the variance on this issue.

551

552 Ms. Harris - You choose not to defer.

553

554 Ms. Morrow - Yes ma'am.

555

556 Ms. Harris - Thank you.

557

558 Ms. Morrow - Thank you.

559

560 Ms. Harris - We'll make a decision at the end of the meeting.

561

562 **[After the conclusion of the public hearings, the Board discussed the case**  
563 **and made its decision. This portion of the transcript is included here for**  
564 **convenience of reference.]**

565

## 566 **DECISION**

567

568 Mr. Wright - I'd like to ask Mr. Blankinship a question, a legal  
569 question. Are there other houses in this vicinity built on the same sized lots? I  
570 guess they would have to have septic tanks, wouldn't they?

571

572 Mr. Blankinship - They would have to have septic systems and wells.  
573 The question of how they were approved—

574

575 Mr. Wright - That's what I want to know.

576

577 Mr. Blankinship - I'm presuming that they were built prior to 19—. I'll try  
578 to confirm that for you, Mr. Wright.

579

580 Ms. Harris - I notice that the lots across the street from this  
581 property are considerably larger.  
582  
583 Mr. Wright - Are you talking about the area of this lot?  
584  
585 Ms. Harris - You mean on Gay Avenue?  
586  
587 Mr. Wright - Yes, Gay Avenue.  
588  
589 Mr. Blankinship - Yes, right. On Gay Avenue you do have water and  
590 sewer.  
591  
592 Mr. Wright - But what size lot is it?  
593  
594 Mr. Blankinship - If they have water and sewer, it's a different — . 4400  
595 Grigg Street was built—. 402 was also built in 19—. Those lots look like they've  
596 combined lots. Let me see.  
597  
598 Mr. Wright - When this lot was platted, could they have built a  
599 house on it?  
600  
601 Mr. Blankinship - At the time it was platted, yes sir.  
602  
603 Mr. Wright - So we've come in and we've changed the zoning and  
604 now they can't do what they could do at the time that the lot was platted.  
605  
606 Mr. Blankinship - Yes sir. This is one of those cases where the  
607 exception standards allow a lower standard than the current standards do. This  
608 lot doesn't even meet the exception.  
609  
610 Mr. Wright - But if we approve this application, they would have to  
611 put an additional type sewage system on it at great expense to protect it.  
612  
613 Mr. Blankinship - Yes sir. A conventional septic system would not work  
614 here. They have approval to do an alternative.  
615  
616 Mr. Wright - So if they use the alternative, what would be the  
617 problem? What would be the problem with our approving it? What danger  
618 would there be?  
619  
620 Mr. Blankinship - I don't believe it would create any danger.  
621  
622 Mr. Wright - So what we're saying is we have a lot that could have  
623 been built on. The County came in and changed the zoning. Now you put  
624 additional requirements in that if they built on it—which they could have done—

625 we're protecting the area with the additional sewage system. I move we approve  
626 this application.

627  
628 Mr. Witte - I second that.

629  
630 Ms. Harris - Moved by Mr. Wright and seconded by Mr. Witte that  
631 this application be approved.

632  
633 Mr. Wright - My basis for that motion is that obviously they cannot  
634 use the property.

635  
636 Ms. Harris - Had you considered the effect on the other two lots  
637 that are adjacent?

638  
639 Mr. Wright - We consider each case on its own.

640  
641 Ms. Harris - Yes. Are there any more questions?

642  
643 Mr. Witte - I think they still have the option on those additional  
644 lots of bringing a waterline or a sewer line in and it wouldn't affect the condition  
645 of the lots at all, being under new zoning regulations. So if Mr. Hodge opts to run  
646 the waterline, it wouldn't affect him at all.

647  
648 Ms. Harris - Any more questions on this motion? All in favor say  
649 aye. All opposed say no. The ayes have it; the motion passes.

650  
651 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
652 Mr. Witte, the Board **approved** application **A-011-10, Virginia Moore Morrow's**  
653 request for a variance from Section 24-95(e)(1) to build a one-family dwelling at  
654 4403 Grigg Street (Shurm Heights) (Parcel 808-717-5630), zoned R-4, One-  
655 family Residence District. The Board approved the variance subject to the  
656 following conditions:

657  
658 1. This variance applies only to the lot width and lot area requirements for one  
659 dwelling only. All other applicable regulations of the County Code shall remain in  
660 force.

661  
662 2. Only the improvements shown on the plot plan and building design filed with  
663 the application may be constructed pursuant to this approval. Any additional  
664 improvements shall comply with the applicable regulations of the County Code.  
665 Any substantial changes or additions to the design or location of the  
666 improvements will require a new variance.

667  
668 3. Approval of this request does not imply that a building permit will be issued.  
669 Building permit approval is contingent on Health Department requirements,

670 including, but not limited to, soil evaluation for a septic drainfield and reserve  
671 area, and approval of a well location.

672

673 4. At the time of building permit application, the applicant shall submit the  
674 necessary information to the Department of Public Works to ensure compliance  
675 with the requirements of the Chesapeake Bay Preservation Act and the code  
676 requirements for water quality standards.

677

678

679 Affirmative: Bruce, Witte, Wright 3

680 Negative: Harris 1

681 Absent: Nunnally 1

682

683

684 Ms. Harris - We have three.

685

686 Mr. Blankinship - Your vote was no?

687

688 Ms. Harris - Yes. If I may state, I feel the other option of working  
689 together with the owner of the two adjacent lots should be pursued.

690

691 **[At this point, the transcript continues with the public hearing on the next**  
692 **case.]**

693

694

695 **UP-023-10 THE EAST END LANDFILL LLC** requests a  
696 conditional use permit pursuant to Section 24-116(c)(3) to deposit coal ash and  
697 other materials at 1820 Darbytown Road (Parcels 809-707-1585 and 808-706-  
698 6679), zoned B-3, Business District and M-2, General Industrial District (Varina).

699

700 Ms. Harris - All persons who wish to speak to this case please  
701 stand and raise your right hand.

702

703 Mr. Blankinship - Do you swear the testimony you're about to give is  
704 the truth and nothing but the truth so help you God?

705

706 Ms. Harris - Will the applicant please come forward.

707

708 Mr. Axselle - Madam chairman and members of the Board of  
709 Zoning Appeals, good morning, my name is Ralph L. "Bill" Axselle, Jr. A-x-s-e-l-  
710 l-e. I'm here on behalf of The East End Landfill. Because of the importance of  
711 this issue, we have a number of people here on behalf of East End Landfill.  
712 While not all of us will speak, I suggested that they all be sworn in so that they  
713 can respond to questions. In addition to me, the primary speakers are  
714 anticipated to be John Daniel of Troutman Sanders, an environmental attorney,  
715 and Terri Phillips of Golder Associates. Joe Sandy of East End Landfill is here.



716 As you will hear during the hearing, East End Landfill is sometimes referred to as  
717 TEEL for shorthand. Also present from the Virginia Department of  
718 Environmental Quality are Mike Murphy and Debbie Miller. The County thought  
719 it would be helpful to have them available to respond to questions by the Board,  
720 County staff, or TEEL and we concur. The County and TEEL, as you will hear,  
721 have a difference of opinion. We think the DEQ can and will give you accurate  
722 information.

723

724 This application to modify the existing CUP arises out of respectful disagreement  
725 between the County and TEEL, as to whether the facility may use materials  
726 which have been approved for use at TEEL by the Virginia Department of  
727 Environmental Quality, which as you know, implement the Virginia Solid Waste  
728 Management Regulations from an environmental perspective. Prior to the use of  
729 any approved materials at this site, TEEL shall have and has received from DEQ  
730 approval pursuant to those regulations for the use of certain materials. Spray-  
731 applied commercial products are covered, tire shred as structural fill, drainage  
732 layer and liner protection, coal combustion by products for structural fill and  
733 cover material (not land-filling), sandblast grit as structural fill and drainage layer,  
734 shredder fines as structure fill and drainage layer.

735

736 All of these materials that DEQ has approved from an environmental standpoint  
737 are in lieu of some traditional constructional and operational materials. They are  
738 not for depositing in the landfill. In addition to providing regulatory parameters for  
739 how one disposes of waste materials, the Virginia State Waste Management  
740 Regulations also incentivizes permit holders like TEEL to use materials in an  
741 approved beneficial manner, so that they are not waste. Please note the current  
742 CUP requires TEEL, as the applicant, to obtain and maintain permits from the  
743 Virginia Department of Environmental Quality. That's understandable. As TEEL  
744 is tasked to make sure the landfill is operated environmentally safe, the cover  
745 and the structural fill required to operate a landfill must meet DEQ environmental  
746 standards. The County CUP, in our opinion, does not restrict the materials to be  
747 used to comply with DEQ regulations. In this instance, DEQ has issued the  
748 appropriate permits, exemptions, and approvals for the use of the materials—not  
749 for the land-filling, but for the operation of the landfill.

750

751 Representatives of DEQ are here and can speak, but Kyle Winter, the DEQ  
752 Regional Deputy Director, said this morning in the newspaper—and I quote, “The  
753 Department has reviewed the use of materials and determined it does not pose  
754 any environmental risk.” He said, “The agency makes periodic inspections of the  
755 facility to ensure appropriate handling.” End of the quote.

756

757 Part of the problem, I think, from a public perception standpoint, may come from  
758 the fact that the way the case has been advertised is not consistent with what  
759 our request actually is. In our application, our request is, “to amend the  
760 conditions of UP-025-07 to incorporate approval by the Virginia Department of  
761 Environmental Quality.” The County disagrees with our position and that's what

762 we requested. However, the advertisement says, “to deposit coal ash and other  
763 material.” That’s not what we’re requesting. I think that has led to some  
764 misunderstanding.

765

766 But let’s go back and look at what a user must do before getting DEQ approval.  
767 They have to comply with the regulations designed to ensure such use is  
768 protective of the public health, safety, and welfare, and the environment. For  
769 example, structural fills built with coal combustion byproducts, or sometimes  
770 referred to as CCBs, are not required to have a synthetic liner and leachate  
771 collection system. TEEL has voluntarily instituted and implemented such  
772 enhanced environmental protection in the areas where the materials are being  
773 used for structural fill.

774

775 In a nutshell, the County position is that under the existing CUP, TEEL can only  
776 accept construction and demolition debris with references to that material being  
777 deposited. TEEL has been authorized by DEQ under the Virginia Solid Waste  
778 Management Regulations to beneficially use non-hazardous materials approved  
779 by DEQ, as such materials are used on other property owner sites for beneficial  
780 use, for the operation, not for land-filling. TEEL’s position is that, contrary to the  
781 County’s, the State environmental regulations authorize the use under the  
782 current CUP of certain non-hazardous material approved by DEQ. That approval  
783 is based on them being environmentally safe for use at the TEEL facility. The  
784 County does disagree with that interpretation.

785

786 Basically, after discussions with the County, we hopefully acknowledged our  
787 differences in position. It was concluded by the County and TEEL that it was  
788 best to bring this matter to you for clarification. Thus, we filed the application to  
789 say, “to amend the conditions to incorporate the approval by the Virginia  
790 Department of Environmental Quality.”

791

792 I’m going to hand to you copies of the current CUP and ask Ben if he might—. I  
793 said it’s the current CUP. It is the current CUP with our requested modifications.  
794 This was not in the staff report, but I think it’s important. It was what we filed and  
795 it is what we are seeking. I think it’s very important that you be familiar with this  
796 and I call your attention to paragraph 20. The regular typed language is  
797 *recurrent CUP*. We don’t change that. We’re not adding any property to the  
798 CUP. There are no other changes that are suggested other than the language in  
799 twenty that is bolded. That is what we are seeking. As you can see, it does say  
800 that the facility may accept materials which have been approved by the DEQ as  
801 a result of implementing the solid waste management regulations. Prior to that,  
802 the applicant must have received these approvals. When they’re used on the  
803 site, they must be used in the fashion approved by DEQ. While this bolded  
804 language doesn’t state it, DEQ uses a system where they tell you what you can  
805 do, they inspect what you do, and they make sure you do what you say. So that  
806 is very important that we understand. That is what we are seeking. We’re not  
807 seeking to dispose and take coal ash and CCBs and others into the landfill.

808

809 Well, we suggest that by your approval of the changes in paragraph 20, that  
810 you're saying that certain materials have been approved by the Commonwealth's  
811 environmental agency, the agency set up by the Commonwealth of Virginia to  
812 decide whether materials are environmentally safe and can be used in very  
813 specified and limited circumstances. And they make sure that it's in  
814 conformance with the State requirements.

815

816 So we believe it's appropriate and wise to allow the specific materials to be  
817 approved by DEQ from an environmental perspective. My role is to provide you  
818 some background information and frame the discussions. I can assure you that  
819 my discussions about environmental materials will be very general and in very  
820 simple terms. That's not my area of expertise. John Daniel will address those  
821 issues from applicable DEQ regulations and Terri Phillips will talk about the  
822 practical and common uses of these materials around the Commonwealth and in  
823 Henrico County. John and Terri, the experts from DEQ, will be here to respond  
824 to any questions that you have.

825

826 A little bit of background. As you know, the property subject to the CUP for  
827 TEEL has been used for landfill purposes for decades. Some uses like the old  
828 City of Richmond landfill was not regulated and it accepted the proverbial who  
829 knows what over the years. TEEL purchased this property in 2006 from Simon's  
830 Hauling and SB Cox, who had permits since the 1970's on the property. Most of  
831 the surrounding properties are industrial in nature, for example, railroads,  
832 manufacturing facilities, the Old Dominion Sanitary Landfill, and the Dominion  
833 Virginia Power plant. Subdivisions were constructed across Darbytown Road  
834 starting in the latter part of the 1990s.

835

836 The facility there is a state-of-the-art site that accepts construction and  
837 demolition debris, and implements sustainable practices that are better for the  
838 environment. The site is one of a few of a kind in the United States that receives  
839 such debris and recycles it, and mines waste and recovers salvageable  
840 recyclable items deposited over the years for reuse. For example, the  
841 effectiveness of this for our area is important to know. Of the items there,  
842 whether brought in or mined, more than 42% are recycled. That has the  
843 favorable consequence of reducing the amount of land needed for landfill  
844 purposes. The Central Virginia Waste Management Authority, of which Henrico  
845 is a member, has a statutory requirement of 25% recycling. The fact that TEEL  
846 recycles 42% is very helpful to it meeting the goal requirements of the Central  
847 Virginia Waste Management Authority. In fact, 80% of the recycling of  
848 construction and demolition debris is done at TEEL compared to all the other  
849 landfills.

850

851 As you know, TEEL is the only construction and demolition debris landfill east of  
852 Goochland, west of Yorktown, and north of the James River in this area. TEEL

853 is implementing these cutting-edge sustainable practices in its construction and  
854 demolition debris facility.

855

856 Well, exactly how did this issue come to a head and what does this amendment  
857 do in general terms. In November 2008, pursuant to federal, state, and local  
858 approvals, TEEL was authorized to use coal combustion byproducts material to  
859 grade and fill some areas at the site. The Army Corps of Engineers issued the  
860 requisite permit for the same activity for the same purposes, which commenced  
861 in March 2009. The various erosion and sediment control applications and plans  
862 to the County were submitted in 2009 and they were approved. So armed with  
863 the required federal, state, and local approvals, and approved to undertake the  
864 work, TEEL began the process of filling and grading and preparing these areas  
865 on the property. A portion of that area has now been fully permitted and is being  
866 utilized for the disposal of construction and demolition debris.

867

868 Over the period of the last two years, DEQ has approved, consistent with the  
869 Solid Waste Management regulations, the bringing of certain materials onto the  
870 property for use as construction materials and other beneficial uses. As an  
871 example, in a landfill, you have to have certain structural fill. You have to be able  
872 to have venues accessible, if you will, on the property where the waste is  
873 deposited. You can use CCBs, but you have to use them in a fashion that DEQ  
874 prescribes. It has sort of a binder effect and you have to adhere to certain  
875 compaction standards. Cover. Obviously with a landfill you cover what is  
876 deposited on a fairly regular basis. If you use CCBs, it must be mixed with soil  
877 and applied in a manner that DEQ specifies.

878

879 The point is that CCBs are used only in a controlled manner because DEQ has  
880 determined what limitations and conditions are appropriate for these uses.  
881 These materials are only used in connection with areas that have certain liners,  
882 leachate systems, and ground water monitoring systems. You will hear later, but  
883 other materials are approved by DEQ to use because they have been  
884 determined to be environmentally safe.

885

886 Well accordingly, TEEL, with all the appropriate federal and state approvals,  
887 brought these materials on site with the knowledge of the County. As an  
888 illustration, let us look at the use by TEEL of coal combustion byproducts as  
889 cover and the County's knowledge of such use. In a nutshell, TEEL submitted  
890 information to DEQ regarding the proposed use of the materials by TEEL. DEQ  
891 indicated the plans for such use were appropriate. There was a 180-day or six-  
892 month demonstration period and then DEQ granted its formal approval.  
893 According to that approval, CCBs first came with formal DEQ approval to the site  
894 on July 29 and the County has known they were there since that time due to  
895 various onsite inspections and information provided by TEEL at the County's  
896 request. In fact, the storage area where they were located for future use was  
897 regularly inspected by the County, as well as DEQ.

898

899 One of the uses which highlights the benefit of using these materials in a  
900 beneficial manner relates to the old City of Richmond Landfill. This is an area  
901 that's on the property of this site. When DEQ issued a permit for the old City of  
902 Richmond Landfill, it required that TEEL remove the material that had been  
903 placed in there in an unregulated fashion, without a liner and different things.  
904 TEEL agreed. I think DEQ was wise in saying that the old City of Richmond  
905 Landfill should be excavated, taken out. And I think it would be wise for the  
906 County to facilitate the use of that. One of the purposes of the structural fill  
907 would be to place it in the old City of Richmond Landfill as a structural fill, not as  
908 deposited materials. So that's one of the reasons we are requesting this. We  
909 just think it's wise and that is a good illustration of what can be done and one  
910 that should be done.

911  
912 As stated earlier, the County knew from July 2009 that CCBs were located at the  
913 site. From July 2009 to November 1, 2010. The letter from Planning Director  
914 Joe Emerson advised TEEL—this is the County saying this: When the County  
915 first became aware that the Virginia Department of Environmental Quality (DEQ)  
916 had issued a Beneficial Use Determination to TEEL to use coal combustion  
917 byproducts as cover and a structural fill material, we were uncertain as to  
918 whether such uses of CCBs were consistent with the use permit. Since DEQ had  
919 already authorized it, we acquiesced in that decision. In other words, the County  
920 knew these CCBs were there and used in a fashion approved by DEQ in July  
921 2009 and they concurred with it. The word they used is acquiesced.

922  
923 Later in the same November 1, 2010 letter, the County goes on to state that, and  
924 I quote, "After further consideration, it appears there is no meaningful distinction  
925 between allowing CCBs to be used as cover and allowing it to be deposited in  
926 the landfill as a waste. Either way CCBs end up in the landfill. Since the  
927 conditional use permit does not allow any material other than construction  
928 demolition and debris waste to be deposited in the landfill, CCBs should not be  
929 used as cover material. Although DEQ has approved the use of CCBs, that  
930 approval does not supersede the conditions of the waste of the use permit." End  
931 of the quote. TEEL obviously disagrees. In part of the letter it also was  
932 suggested that the best way to address this issue was to bring the issue to you  
933 for clarification, which we have done.

934  
935 Respectfully, the details you will hear will reveal that the CCBs are not being  
936 accepted—not being deposited as waste. TEEL does not landfill CCBs or other  
937 materials that have been approved to be used at the site by Virginia's  
938 environmental enforcement and regulatory body. It's not what we're seeking; it's  
939 not what we're doing. The fact that DEQ has said that some of these materials  
940 can be used in a very limited and prescribed fashion that it says are  
941 environmentally safe should be of great comfort to the County and this Board.  
942 The County's position would not allow the use of any of these materials that DEQ  
943 says are environmentally safe to use in the operation. We disagree. But we  
944 thought it was best to bring this issue to you, thus the bolded language in

945 paragraph 20 is what we're seeking your approval to do. It does not allow any  
946 type of exceptions for depositing of waste. It does not change it in that respect in  
947 any fashion. Terri Phillips will give you more detail, but it does appear that an  
948 adjacent landfill is being allowed by the County to use these types of materials in  
949 ways that she will describe, but they're not allowing that under their interpretation  
950 to be done by TEEL.

951

952 As I said earlier, John Daniel is going to follow me. John was a former secretary  
953 of natural resources for the Commonwealth. He has 35 years experience in  
954 environmental law. He's going to discuss this issue from the applicable  
955 environmental regulations. Terri Phillips, who is a registered professional  
956 geologist with Golder Associates and, quite frankly, is an expert on landfills, has  
957 been working in this field for 25 years. She'll talk about the practical aspects of  
958 this issue and the use of certain items which have been fairly common around  
959 the Commonwealth. Just as I handed out something to you to facilitate the  
960 discussion, they will do likewise. Thank you very much.

961

962 Mr. Wright - Let me ask you a question, Mr. Axelle. Just trying to  
963 frame the issue. The way I understand it, initially TEEL thought that you had the  
964 approval or the right to deposit these materials under this CUP on this site. Is  
965 that correct?

966

967 Mr. Axelle - No, I would not say *deposited*. You could bring them  
968 onto the site. In other words, we have never taken the position that we could  
969 bring in CCBs, put them in the landfill as a deposit, as a type of item that you can  
970 use as a deposit. But we've taken the position based on the DEQ approval and  
971 at one time the County's concurrence or acquiescence, that those types of items  
972 could be used as alternatives in a beneficial fashion for other cover, structural fill  
973 and such uses. We're not asking for and have not asked that they be deposited  
974 because we are limited there to a construction demolition and debris landfill. We  
975 are using them as we would like to use them and would like to continue to use  
976 them only for the beneficial use of the items that others will talk about more.

977

978 Mr. Wright - The present permit says the landfill shall only  
979 accept—whatever that means, deposit or whatever—accept construction and  
980 demolition debris originating within a 150 miles of the site, hauled by the  
981 applicant and other contract haulers, licensed by the Commonwealth of Virginia.  
982 Now, was it TEEL's position that this language would enable TEEL to accept or  
983 do whatever you wanted with this material, to bring it onto the site?

984

985 Mr. Axelle - No. Excuse me. To deposit, no. To landfill it, no.  
986 But if you look at paragraph four of the Conditional Use Permit, the applicant  
987 shall obtain and maintain a permit or permits from Virginia Department of  
988 Environmental Quality. That is what they've done. They've gotten all the  
989 permits, approvals, and waivers to use this for structural fill, cover, and some of

990 the other uses. It's all been done with DEQ's knowledge and approval, and with  
991 the County's—.

992  
993 Mr. Wright - I'm having a problem with it. In July 2009, you began  
994 to bring these materials there. I don't know what you do with them, but you bring  
995 it on the site, right?

996  
997 Mr. Axselle - Yes sir.

998  
999 Mr. Wright - Are those materials construction and demolition  
1000 debris?

1001  
1002 Mr. Axselle - They are in some instances—let me say it more  
1003 accurately. No, they are not considered waste. They are, in fact, considered,  
1004 with DEQ's approval, as items that you can use to operate the landfill. For  
1005 example—

1006  
1007 Mr. Wright - You're not answering my question. The question is,  
1008 are these materials—would these be considered construction and demolition  
1009 debris?

1010  
1011 Mr. Axselle - No.

1012  
1013 Mr. Wright - Okay. Well then you could not bring them on the site  
1014 without amending your use permit, as you now suggest you do. Is that correct?

1015  
1016 Mr. Axselle - We believe that under paragraph four and with the  
1017 DEQ approval, you can bring them onto the site and use them for the beneficial  
1018 uses that DEQ says are environmentally safe.

1019  
1020 Mr. Wright - Wait a minute. The way I read paragraph four, you  
1021 would have to have Virginia Department of Environmental Quality permission to  
1022 approve construction and demolition debris. If you read paragraph four, then  
1023 you wouldn't need number twenty, if you take that position.

1024  
1025 Mr. Axselle - We would not concur that paragraph four limits just to  
1026 construction demolition and debris.

1027  
1028 Mr. Wright - Well what does twenty do?

1029  
1030 Mr. Axselle - Twenty is what—

1031  
1032 Mr. Wright - That tells you what you can bring on the site. Twenty  
1033 says what you can bring on the site, the way I read it. You can bring these  
1034 materials, construction and demolition debris, onto the site, but that has to be  
1035 approved by DEQ. That's pretty clear to me. Otherwise, you wouldn't need

1036 twenty. If all you needed was what the Virginia Department of Environmental  
1037 Quality approved, why would you have to have number twenty at all?

1038

1039 Mr. Axelle - I would concur with you on the first part of your  
1040 statement. The existing language is there in twenty for a purpose. But where we  
1041 differ is on the interpretation of paragraph four. Keep in mind that the County  
1042 knew of this and concurred with it and then sixteen months later changed their  
1043 mind. And so we think it's best to have this bolded language which clarifies the  
1044 issue. All we want to do is continue to do, what we've been using these limited  
1045 items for limited purposes specified by DEQ.

1046

1047 Mr. Wright - The County made a mistake. I'm reading the permit.  
1048 This permit is what this Board approved and is what TEEL needs to comply with.  
1049 My position would be—that's what I'm trying to find out. All of that aside, are you  
1050 trying to amend the permit in the fashion that you've stated in twenty to permit  
1051 these materials to be used for whatever purpose you say they are? Is that what  
1052 we're here about?

1053

1054 Mr. Axelle - Yes, yes sir.

1055

1056 Mr. Wright - Amending the permit. Then we have to determine—  
1057 with the staff's help, our experts—whether or not this material is acceptable to be  
1058 used on this site. That's my take on this.

1059

1060 Mr. Axelle - What I would say then is that it should be based on  
1061 the testimony you're about to hear from us and the guidance of DEQ. That does  
1062 frame the issue nicely.

1063

1064 Mr. Wright - I think you had a disagreement initially when I said  
1065 that this material should not be accepted on the site because it wasn't in the  
1066 permit. But now, does the County take issue with this material being brought on  
1067 the site under the condition you state in your amendment to number twenty?

1068

1069 Mr. Axelle - I would have to defer to—

1070

1071 Mr. Wright - I mean have you discussed that with the County?

1072

1073 Mr. Axelle - Yes. Ben, I'm going to state this but look at you for  
1074 clarification. I think there's a difference of opinion. I think they would say that  
1075 under the literal, limited interpretation of the existing CUP you could not have it  
1076 come on the site even if for these beneficial uses. We think that you can and  
1077 should, and thus this is the reason for this request, to clarify that.

1078

1079 Mr. Wright - Now you're getting to something. I don't understand  
1080 why the County went 16 months before they decided this material shouldn't be  
1081 used on here.



1082  
1083 Mr. Blankinship - I'd like some clarification on that, too. What  
1084 happened in July 2009 that you're using as your beginning date for when the  
1085 County was aware of this?  
1086  
1087 Mr. Axselle - That's when the approvals were issued by DEQ and  
1088 when they came in and they started bringing it in. At least the Department of  
1089 Public Works and others were out there and inspecting it regularly.  
1090  
1091 Mr. Blankinship - That was for the filling of the wetlands.  
1092  
1093 Mr. Axselle - And beyond that. There was some information that  
1094 was requested by Public Works that was provided to the County by TEEL.  
1095  
1096 Mr. Blankinship - I reviewed the plans for the filling of the wetlands.  
1097 After we've had some of these conversations, I went back and re-reviewed them.  
1098 Those plans don't say anything about filling with coal combustion byproducts.  
1099 They do say that the wetlands will be filled, we did the elevation, all the erosion  
1100 control details. But there's no mention anywhere in that plan set of coal  
1101 combustion byproducts. So at least speaking for the Planning Department, I  
1102 don't think we were aware of this anywhere near July 2009. I'm not trying to be  
1103 defensive or anything, but if that is going to be an important point to the Board, I  
1104 don't think it's one that we—  
1105  
1106 Mr. Axselle - If I may, the County at some point—  
1107  
1108 Mr. Blankinship - Yes.  
1109  
1110 Mr. Axselle - —whether it was July 2009, knew that CCBs were on  
1111 the site and acquiesced with them being there.  
1112  
1113 Mr. Blankinship - Yes.  
1114  
1115 Mr. Wright - It's just a matter of when.  
1116  
1117 Mr. Blankinship - Our immediate reaction to finding that DEQ had  
1118 issued this determination was somewhat surprised. But the feeling that that was  
1119 within DEQ's authority and not within ours. It was in later discussions that the  
1120 interpretation evolved to where it is today, that putting that material in as a cover  
1121 and then putting more waste on top of it and then putting more as cover is really  
1122 not any different from just putting the material in the landfill.  
1123  
1124 Mr. Axselle - There we would differ.  
1125  
1126 Mr. Blankinship - Right, and that is the point.  
1127

1128 Mr. Axelle - The real purpose, as Mr. Wright said, is we think that  
1129 the bolded language clarifies this issue and allows TEEL to use the materials in  
1130 the fashion that DEQ has said is environmentally safe. That is where we are.  
1131  
1132 Mr. Blankinship - Our concern as County staff is that the Board of  
1133 Zoning Appeals needs to be in the position of making that decision in a public  
1134 hearing with the input of the neighbors. If the Board makes that decision, then  
1135 everybody's in the same place and we can all move forward.  
1136  
1137 Mr. Witte - You said that in July 2009, Mr. Emerson —.  
1138  
1139 Mr. Blankinship - That was written in November. That letter was written  
1140 in November.  
1141  
1142 Mr. Axelle - No. We said basically that in July 2009 we started  
1143 bringing the CCBs in. Then his letter in November 1, 2010 acknowledged that  
1144 when they first—as Mr. Blankinship said, when the County first knew that these  
1145 were there, because DEQ had approved them, they acquiesced. No one from  
1146 the County in July 2009 said yes we can do it. But they acquiesced because we  
1147 had the permission of DEQ. Then later they changed their mind.  
1148  
1149 Mr. Blankinship - We were aware they were filling in July of 2009. The  
1150 Planning Department was not aware that they were filling with coal combustion  
1151 byproducts. We knew they were filling; we did not know that that was the  
1152 material they were filling with. I can't state definitively when we became aware of  
1153 that. I'm pretty sure it was closer to July of 2010 than July of 2009.  
1154  
1155 Mr. Witte - Maybe you can clarify another question I have. What  
1156 is the difference between filling and dumping? Seems like it's all the same to  
1157 me.  
1158  
1159 Mr. Blankinship - Maybe between depositing and using as a cover  
1160 material.  
1161  
1162 Mr. Witte - Right. I mean it's still all going into the same spot.  
1163  
1164 Mr. Axelle - It is, but the conditions under which you deposit CCBs  
1165 or other items, one, how you use it is different because it has to meet much  
1166 higher standards. I think it might be a good time to get John Daniel and Terri up  
1167 here because they know the details rather than I.  
1168  
1169 Mr. Wright - What I'm trying to clarify first is this would be an  
1170 amendment that this Board has to approve. I have some problems with this  
1171 language. Have you all studied this?  
1172

1173 Mr. Blankinship - The bolded language? Mr. Axselle provided us with a  
1174 copy of that at the time of application. We did not carry that same language  
1175 forward into our recommendation. As always, that would be negotiated between  
1176 the Board —.

1177

1178 Mr. Axselle - Madam Chairman, I'll ask John Daniel to come  
1179 forward.

1180

1181 Ms. Harris - Before you do, in the condition that you want  
1182 amended, does the Darbytown facility have that geo-synthetic liner that you  
1183 mention here and the leachate collection system already in place?

1184

1185 Mr. Axselle - Any place where that material would be used as  
1186 structural fill or cover, yes, it has that in place.

1187

1188 Ms. Harris - That was my question at this point.

1189

1190 Mr. Axselle - Thank you.

1191

1192 Mr. Daniel - Good morning, Madam Chair, members of the Board.  
1193 My name is John Daniel. I'm an attorney with the law firm of Troutman Sanders.  
1194 It's D-a-n-i-e-l.

1195

1196 I appreciate very much the opportunity to be here this morning. I'm going to try to  
1197 clarify your questions as I go through this. It's a pretty technical differentiation,  
1198 frankly, in the laws between filling and structural fill and beneficial use of  
1199 materials in the manner in which TEEL is undertaking to utilize them.

1200

1201 First let me just tell you that the amendment before you is important for many  
1202 reasons. First, it's necessary guidance for TEEL as to how it may conduct its  
1203 business and how the County in its exercise of its land-use responsibilities will  
1204 interface on an ongoing basis with the State agency charged with the parameters  
1205 and jurisdiction of dealing with waste management, the Department of  
1206 Environmental Quality.

1207

1208 As you know, in the case of solid waste management, it is clearly a shared  
1209 responsibility. For example, prior to the development and operation of any  
1210 landfill, is the early necessary signoff by the local government that that facility, as  
1211 proposed in its permitting and the way it will be operated, would be compliant  
1212 with all local ordinances. In the absence of that very important early-on co-  
1213 management, if you will, between the local government and the State agency, no  
1214 landfill or facility of that nature could be constructed. And it would not be  
1215 developed. In a similar vein, once the facility successfully crosses that threshold,  
1216 it should be able to rely on the various communications and the various  
1217 approvals from its State permitting authority as to how that facility is to be  
1218 operated.

1219  
1220 Virginia Solid Waste Management regulations are relatively new, having first  
1221 been promulgated only in 1988. State regulations mirror what's known as  
1222 Subtitle D of the Federal Resource Conservation and Recovery Act. I mention  
1223 that name and that nomenclature because it's important. You need to contrast  
1224 that with the pre-1988 circumstances where this kind of activity was regulated  
1225 loosely and sometimes not at all by the State Health Department out of a division  
1226 in that large department called the Division of Rodent and Vector Control. You  
1227 basically walked the fence and shot the rats. Fortunately, we've moved  
1228 dramatically forward from an era where waste management was virtually  
1229 unregulated to the circumstances we find ourselves in today where it is now highly  
1230 regulated and the disposal of our throwaways is very sophisticated. It's in that  
1231 way as a matter of sound public policy to protect the public health, safety, and  
1232 welfare, and the natural resources of our citizens. That is a goal that I would  
1233 submit to you is shared by this Board, certainly by the Department of  
1234 Environmental Quality, and I can assure you by the folks that operate the TEEL  
1235 facility.

1236  
1237 The State implementation of the Resource Conservation and Recovery Act, it  
1238 was imperative that the regulatory functions and the safeguards for how we deal  
1239 with throwaways be of the very highest quality in order to safeguard our natural  
1240 resources. But it was also equally important that we reverse a very longstanding  
1241 trend of simply throwing everything away.

1242  
1243 So in addition to imposing those very stringent and high-standards on those who  
1244 handle the stuff that we put at the curb or those that handle the teardowns when  
1245 we see new housing or new buildings or new schools or new firehouses, the  
1246 regulations also do a very good job of incenting creativity and innovation. The  
1247 program does so—so we can go back to the name—recover what must be  
1248 buried forever and conserve what may have a second or third life as a beneficial  
1249 product. The burden of that innovation and that creativity is, for the most part, on  
1250 the solid waste industry. To achieve those dual goals, the State regulations allow  
1251 the use of some materials that end up the curb in constructive ways. Assuming  
1252 the proposed use can meet stringent standards, and in most cases be able to be  
1253 successfully demonstrated for a 180-day period, that reuse is an effective  
1254 substitute material for an otherwise virgin commodity, either a commodity that  
1255 would either one, need to be purchased on the open market, or in lieu of natural  
1256 resources that would need to be obtained through the excavation of mining.

1257  
1258 Now I want to say unequivocally at this point that TEEL does not dispose or, in  
1259 my view, deposit any of the materials that the DEQ has approved as waste in  
1260 that landfill. Perhaps the most common use of materials that were once  
1261 considered waste is the use of substitutes for virgin soil for daily and weekly  
1262 cover. Depending on the type of landfill you have, you have to either cover it at  
1263 the end of every working day, or in the case of TEEL as a construction and  
1264 demolition and debris facility, you have to cover once a week. Historically that

1265 was done with virgin material such as dirt. But a host of materials have  
1266 developed through innovation and creativity to be used in lieu of having to use a  
1267 valuable material such as dirt for those cover purposes. They include some  
1268 manufactured materials and products. They include tire shreds, tire chips, even  
1269 contaminated soils, non-hazardous petroleum-contaminated soils, shredded  
1270 finds, or even fluff material from the shredding of automobiles, and the recycling  
1271 of most of the components of those items. None of these materials are in any  
1272 way used in a site-specific circumstance without the prior approval of DEQ after  
1273 a fairly rigorous demonstration that those materials can be used in lieu of  
1274 purchased commodities or natural resources safely without harm to the public,  
1275 without harm to our safety, or without harm to the environment.

1276  
1277 In the case of alternative cover materials, I venture to say that every landfill in  
1278 this Commonwealth, whether it's a municipal solid waste landfill or such as the  
1279 ones you all operate or whether or not it's a construction and demolition debris  
1280 landfill has one or more approvals for those alternative materials. For certain, the  
1281 facility next door to TEEL uses a host of alternative cover materials, including  
1282 coal combustion byproducts. And they do that through an approval from DEQ.

1283  
1284 As Mr. Axselle had indicated, we are here as a result of a respectful  
1285 disagreement regarding the use of these alternate materials at the TEEL facility.  
1286 As I said at the onset, the use of these materials that were once considered  
1287 waste, throwaways, no longer of any value to any one of us, by you and I when  
1288 we throw them away, or by a developer tearing down a building to make room for  
1289 a new one, or a greenfield construction job, continue to have value. Where they  
1290 were once considered nothing, they are now considered things of value and we  
1291 try through innovation and creativity to utilize those materials in a positive,  
1292 beneficial way in order to preserve, frankly, our natural resources and to not  
1293 have an impact of a negative nature on our environment. It's why a facility like  
1294 TEEL can recycle 42% of all the materials that come through the gate at that  
1295 facility. Forty-two percent. And it's why with continued innovation and creativity  
1296 on the part of the industry that that number can grow and more landfill space can  
1297 be preserved, and fewer landfills will ultimately be needed.

1298  
1299 With your permission, I'd like to pass out a document, Ben, if I could give that to  
1300 you. It's a little thick, but don't be intimidated; we're not going to read it all. We'll  
1301 just go through it fairly quickly, frankly. What I've tried to provide to you—and it  
1302 will hopefully help with some of the questions that you had for Mr. Axselle—are  
1303 the parameters of the regulatory program that's operated by DEQ and the  
1304 various and sundry specific approvals which have been garnered by the TEEL  
1305 facility as a result of working through regulations. I've tried to capture what in my  
1306 view are the two primary regulations that implement the sort of innovative and  
1307 creative nature of the regulations and where the regulations try to incentivize  
1308 folks to try to find new ways to use materials that have historically been  
1309 considered throwaway.

1310

1311 The first two tabs are just copies of the regulations from the Virginia Solid Waste  
1312 Management regulations. If you'll look first at tab one, these are the  
1313 regulations—and it's title 9VAC20-80-150. It simply says *Exclusions*. These are  
1314 exclusions from an almost entire chapter that defines what a waste material is in  
1315 the same regulations and what DEQ considers to be waste. I'll just ask you to  
1316 thumb down there to E2 and it talks about beneficially used as determined by the  
1317 Department. This is the regulation whereby the DEQ makes determinations with  
1318 respect to those materials, when used in a site-specific way and in site-specific  
1319 circumstances, under their guidance and ultimate follow-up inspections, can in  
1320 fact be used in lieu of commodities that one might ultimately have to purchase on  
1321 the open market, or as I indicated before, take from the environment through  
1322 mining or some other resource.

1323

1324 If you'll look at tab two, which is 9VAC20-80-160, these are the conditional  
1325 exemptions whereby the Department of Environmental Quality has determined  
1326 that these materials rather than have to go through a rigorous beneficial use  
1327 determination, are in fact exempt by virtue of their very nature if used in certain  
1328 ways. I would call your attention specifically in this case to Item B, which is  
1329 entitled *Fossil Fuel Combustion Products*, and under there Item 2, which says,  
1330 fossil fuel combustion byproducts (or CCBs) maybe, are exempt from the  
1331 regulations. In other words, in the DEQ's opinion, they are not a waste, they are  
1332 now a commodity, a product, which is on the open market and they can be used  
1333 if they're used and processed for the cementitious binder to produce a stabilized  
1334 structural fill product which is spread and compacted with proper equipment so  
1335 the construction of a project with a specified end use.

1336

1337 Ms. Harris - Mr. Daniel?

1338

1339 Mr. Daniel - Yes ma'am.

1340

1341 Ms. Harris - Would the CCB, coal combustion byproducts, be in  
1342 this fill area?

1343

1344 Mr. Daniel - Yes ma'am.

1345

1346 Ms. Harris - Okay. Which area again? Identify that.

1347

1348 Mr. Daniel - It is 9VAC20-80-160, B2. It's in Tab 2 of the  
1349 notebook. About six lines up from the bottom of that first page. Got it? Okay.  
1350 Thank you.

1351

1352 That is the regulatory background for the various materials that we're going to  
1353 talk about and which have been the source of discussion between the County  
1354 and TEEL for sometime now.

1355

1356 If I have missed one, I'm sure DEQ will correct me. I don't think that I have, but  
1357 they are here and certainly can disagree or concur, whatever their expert view  
1358 may be on the subject. But I suspect they would agree that those are the  
1359 overriding regulatory programs under which TEEL has obtained certain  
1360 approvals.

1361

1362 Tab Three is simply DEQ guidance indicative of how they operate their reuse  
1363 and beneficial use determination decision-making at the agency. It, again, quotes  
1364 those two regulations which we've just been through in some detail in tabs one  
1365 and two.

1366

1367 Tab four lists for you those materials which have been approved by the DEQ for  
1368 use at the TEEL facility. They have not been approved for deposit; they have not  
1369 been approved for disposal. In fact, if they were to be deposited or disposed at  
1370 that landfill, it would be a violation of their over-arching solid waste permit, which  
1371 I think is numbered 524 and 525.

1372

1373 So you can see the seven items there. There's manufactured sprays; tire shred;  
1374 coal combustion byproducts for structural fill—that means it's going to be the  
1375 basis upon which you're going to build something; coal combustion byproducts  
1376 as cover—in the case of TEEL, weekly cover; non-hazardous contaminated soil;  
1377 sandblast grit, a great example of things that historically have been a  
1378 tremendous negative impact on water quality because most of it comes from the  
1379 plating of ship hulls and stuff in the Tidewater regions. Historically it was not  
1380 being collected, it had no use. The easiest thing to do with it was to let it run into  
1381 our rivers and our tributaries. Innovation and creativity have resulted in the fact  
1382 that it now gets collected and it has a beneficial use. So, you know, in the jargon  
1383 of my children it's a two-fer. Shredder fines. It's a seventh of the materials that  
1384 have been approved by DEQ for use in lieu of commodities by the TEEL facility.

1385

1386 Tabs five through fifteen are copies of correspondence from the DEQ in  
1387 response to requests from TEEL to be able to utilize these materials in a  
1388 beneficial way or as a material that is conditionally exempt from the solid waste  
1389 regulations. I wanted you to have them so that you would see that it's not a  
1390 simple process, that there are, in fact, a number of parameters that DEQ puts on  
1391 the use of these materials in order to be absolutely certain in their professional  
1392 view that the public health, safety, welfare, and our natural resources and  
1393 environment are not threatened by the use of the material, these materials in the  
1394 manner in which they've been proposed by the applicant.

1395

1396 Mr. Wright - Excuse me, may I ask a question?

1397

1398 Mr. Daniel - Yes sir.

1399

1400 Mr. Wright - Under Tab Four, page seven, the materials, are they  
1401 all to be used for cover?

1402

1403 Mr. Daniel - No sir. Item number one, that's clearly cover, yes sir.  
1404 Tire shred? Tire shred is used to create drainage underneath shelves that are  
1405 constructed at the landfill and in other places. We're going to get to a specific  
1406 approval letter for tire shred pretty quick in the next few instances. Coal  
1407 combustion byproducts for structural fill. Not cover, but rather to build a base  
1408 upon which a structure will be built. In this case, the structure happened to be  
1409 cells for the deposit or disposal of ultimate materials which necessarily have to  
1410 be disposed because there's not yet a market for those materials in recycling or  
1411 in ultimate uses. Five. Non-hazardous contaminated soil would be for cover.  
1412 Sandblast grit would be for cover. Shredder fines would be for cover. So the  
1413 great bulk of them, yes.

1414

1415 Ms. Harris - How efficient is the use of CCBs to prevent leakage?  
1416 Is your system to control it only for structural fills, to control it only for cover?  
1417 How efficient is that system to prevent soil contamination?

1418

1419 Mr. Daniel - Let me answer you this way. I told you that it would  
1420 be a violation of our permit if we were to dispose of this material. There are  
1421 certain landfills that do take this material and, in fact, your staff has included an  
1422 article about a King George landfill which is a municipal solid waste facility and is  
1423 authorized to take coal ash as a waste. That article was included, I think, in the  
1424 staff report and you have probably seen that. We are not a municipal solid waste  
1425 landfill. The reason that kind of a landfill can take those materials is because  
1426 they are designed in a manner such that they have geo-synthetic liners, they  
1427 have leachate collection, they have groundwater monitoring. As a construction  
1428 and demolition debris landfill, we're not required to have those things. But, in  
1429 fact, we do and voluntarily, as Mr. Axelle suggested to you, use those items.  
1430 Everywhere that a CCB material is used for purposes of structural fill there is a  
1431 geo-synthetic liner, the groundwater is monitored, and there is leachate  
1432 collection so that as water passes through, it is collected in retention basins and  
1433 ultimately is delivered to the sewer trunk and to the sewer system.

1434

1435 Ms. Harris - But you're saying it's not very efficient, right?

1436

1437 Mr. Daniel - That's certainly not what I was trying to say. I think it's  
1438 very efficient. If the standard to be able to dispose of these is this high and we  
1439 don't have to do it, but we're meeting that standard and raising our own bar as a  
1440 result of our own due diligence and our own cognizance of the importance of  
1441 protecting the environment, I think that's a very efficient system. If it's not  
1442 efficient here, it's not efficient anywhere and we have a bigger problem than I  
1443 think anybody thinks. And I think DEQ would tell you that they think their  
1444 regulations, their inspection program for landfills is very efficient. But you'd have  
1445 to ask them that question.

1446



1447 Ms. Harris - Right. But you said that there were other areas where  
1448 they did have the liners and everything else to deal with the CCBs.  
1449  
1450 Mr. Daniel - And we have those at TEEL.  
1451  
1452 Ms. Harris - In some areas.  
1453  
1454 Mr. Daniel - We have those wherever CCBs are being—at a  
1455 hundred percent of the area where CCBs are being utilized at the TEEL facility  
1456 there is present a geo-synthetic liner system, a leachate collection system, and a  
1457 groundwater monitoring system. One hundred percent of the areas where this  
1458 material is used as a commodity for the construction of an additional facility,  
1459 those safeguards are in place and I believe are efficient.  
1460  
1461 Mr. Witte - I have a question. Tab eight, which directly relates to  
1462 the CCBs. It says in paragraph one that it can be used to stabilize structural fill  
1463 product, construction of addition cells as long as the coal combustion product is  
1464 processed with cementitious binder and spread and compacted with proper  
1465 equipment. What is a cementitious binder?  
1466  
1467 Mr. Daniel - We have an engineer for that. I'm not, but I'm going to  
1468 try and she can correct me. Coal ash by its very nature has the ability to bind.  
1469 When you add certain products, whether it's water or water in combination with  
1470 other material, it becomes as hard as concrete. That's the oddity of the name  
1471 *cementitious*, which I hardly ever say but I've said it twice right this morning.  
1472  
1473 Mr. Witte - So you're not creating an envelope of concrete  
1474 around the product.  
1475  
1476 Mr. Daniel - Well, let's start at the bottom. Before this material is  
1477 used, there is some sort of natural material which is hauled to the— ground. On  
1478 top of that is then put a geo-synthetic liner system. I think it's 16-mil thick; I don't  
1479 know exactly. There's then a drainage layer. And on top of that goes the coal ash  
1480 in combination with cementitious binder. So you really end up with a bathtub  
1481 effect, if you will, whereby you're putting in a lump of hardened material very  
1482 similar to concrete, which is why it's been utilized as foundation—I mean we  
1483 pass them every day. There are all sorts of facilities—whether they're Target  
1484 stores or others—and we'll provide you a list in a minute of things you literally  
1485 look at every day where the original foundation for those materials are coal  
1486 combustion byproducts which have been processed with cementitious binder  
1487 and compacted to a certain standard.  
1488  
1489 I hate to keep harping on this, but it's the result of—obviously it's cheaper than  
1490 going and buying another material if you're going to develop a project.  
1491 Innovation and creativity have brought us to the point where we can use these  
1492 things, which everybody thought should go to the curb and be throwaways and

1493 be perpetually deposited somewhere. We can now use them as commodities  
1494 and as products that are in lieu of going out and having to dig a dirt burrow pit.  
1495 Now you can leave that burrow pit perhaps where it is. You save that natural  
1496 resource, that virgin soil, that earth, and you can use these materials in lieu of  
1497 having to mine or excavate those kinds of materials. We'll show you a list when  
1498 Ms. Phillips comes up of where these materials have been used in the exact  
1499 way, under the exact circumstance that you keenly pointed out as conditions  
1500 under tab eight for our use.

1501  
1502 If I could, I want to go back real quick. Tab five is the directive from DEQ for  
1503 beneficial use of tire shred. You can see in that letter they request a 180-day  
1504 demonstration period to demonstrate that it can be used safely. They do that and  
1505 inspect it during that 180-day period and require comprehensive results of that  
1506 demonstration period. There is no final approval for this material because we're  
1507 still in that 180-day demonstration period.

1508  
1509 Item seven. This says beneficial use for tire shred. You can see there in the third  
1510 paragraph that this department believes the use of tire shred in the following  
1511 applications is a beneficial use in accordance with 208150 E2, which we looked  
1512 at a few moments ago. There are various uses, which are the bulleted items and  
1513 I won't go through those. But it's civil engineering applications, as substitutes for  
1514 soil or aggregate. In other words, instead of having to go buy soil or rock, which  
1515 have a cost, we use a throwaway item in lieu thereof, which the best experts we  
1516 have in their professional opinion have determined can be used in those  
1517 manners when the restrictions and the conditions that DEQ imposes authorize.

1518  
1519 Item eight we just looked at. This is coal combustion byproducts for use in the  
1520 construction of additional cells. We've talked about the conditions that have to be  
1521 utilized for those.

1522  
1523 Item nine is coal combustion byproduct—quote/unquote ash—as alternative  
1524 progressive cover. You can see there are some fifteen conditions that DEQ has  
1525 imposed when the ash, the coal combustion byproduct is used in that manner.  
1526 But it has been approved.

1527  
1528 Nine was actually the 180-day demonstration period letter. Ten is the final  
1529 approval following the satisfaction of the conditions and after observations of  
1530 how TEEL is utilizing that coal ash as cover during the course of that 180-day  
1531 demonstration period. If you look at the last paragraph here it says, "Be advised  
1532 that the permittee must send a notice of this modification to the local governing  
1533 body," which I think was done. I don't have that letter with me, Ben, but I'm told  
1534 there was one. Well, it was actually done by an e-mail, I think, to you, but I don't  
1535 have a copy of it.

1536  
1537 I only point it out—and I don't want to get into whether it was July 2<sup>nd</sup> or March  
1538 9<sup>th</sup>, or whatever. I point it out because if you look at all these approvals, if you

1539 read them all cover to cover, line by line, it's sort of the single instance whereby  
1540 the DEQ makes reference to providing notification of this to the County. I'm not  
1541 saying as a matter of good business practice perhaps they shouldn't be  
1542 communicating these to the County, but one of the issues that was raised or has  
1543 been raised and was noted in the newspaper article this morning was that these  
1544 DEQ approvals were subject to ultimate County concurrence. The newspaper  
1545 article also pointed out it's not the view of DEQ.

1546

1547 Item eleven, we talked about this a little bit. This is sandblast grit as a beneficial  
1548 use. First is the 180-day demonstration, and then it's followed by additional  
1549 instruction on March the 9<sup>th</sup>, and ultimately approved in that March 9<sup>th</sup> letter for  
1550 use as an alternative cover material.

1551

1552 Twelve is the 180-day demonstration period for the use of non-hazardous  
1553 contaminated soil and petroleum-contaminated soil as alternate progressive  
1554 covers. You can see again that the DEQ doesn't take these things lightly. In this  
1555 instance, there are 14 particular conditions that they've imposed, which they  
1556 observe and inspect during the course of that 180-day period, and which were  
1557 ultimately agreed to. In the case of contaminated soils, the appropriate DEQ  
1558 mechanism for approving that is a variance and the variance is provided for you  
1559 in tab thirteen of the notebook.

1560

1561 Item fourteen in the notebook is the minor permit amendment, which had to be  
1562 included as the result of the variance which was issued for those non-hazardous  
1563 petroleum-contaminated soils. I don't want to take too much time here.

1564

1565 I do want to quickly call your attention to item sixteen because I want to hopefully  
1566 set the stage for some conversation on this issue. The staff report included a  
1567 couple of news articles, one of which I referenced earlier about the King George  
1568 landfill and CCBs. Then there was some other material about a circumstance  
1569 where coal ash was used in a lagoon for wet storage. Obviously we're not talking  
1570 about a lagoon here.

1571

1572 Item sixteen is a summary document and I'm sorry it doesn't have a—you can  
1573 see it's an Attachment A of a much longer document. It is the summary of the  
1574 State's comments to the Environmental Protection Agency on a proposal that  
1575 has been in the news with regards to EPA's suggestion that perhaps coal  
1576 combustion byproducts should be regulated as a hazardous waste. I'm not going  
1577 to read this to you, but I want to—and again, they're here, they can correct. In  
1578 fact, the author of the great bulk of the DEQ comments to the EPA on that  
1579 proposal is present. But I would characterize it as being very defensive with  
1580 respect to the State's program for the beneficial use and especially as structural  
1581 fill of coal combustion byproducts in the Commonwealth. It really sort of takes  
1582 EPA to task about the disruption, the cost, the absence of any additional  
1583 safeguards to health, safety, or the environment that may result by virtue of  
1584 classifying these materials as hazardous waste and raises the interesting point

1585 as well of if they're hazardous waste, then what would we do with them since we  
1586 don't have a hazardous waste facility in the Commonwealth. So I don't know  
1587 where they would go. It's an interesting dialogue between the State and EPA. I  
1588 think it's very telling with respect to the confidence and the integrity that the State  
1589 folks believe in their program for the use of these materials in lieu of other  
1590 commodities and virgin materials, and in some cases natural resources.

1591  
1592 That is the notebook that we provided. It is all the approvals that we've obtained  
1593 for purposes of using the materials in question. Again, we are not in any way,  
1594 shape, or form asking that these materials be deposited in that landfill. As I've  
1595 told you pointblank, it would be a violation of the permit for them to use these  
1596 materials in that way. Obviously DEQ issued that permit. It is not inconsistent  
1597 with or contrary to that permit because DEQ has in fact with full knowledge of  
1598 that permit authorized the use of these materials in lieu of commodities.

1599  
1600 Mr. Wright - The way I see and from what you've said I think I  
1601 have a clear understanding. These materials are to be used to enable the landfill  
1602 to be operated in a proper manner.

1603  
1604 Mr. Daniel - Unless you go to a lot of landfills you really can't  
1605 fathom the amount of construction work that's going on on a daily basis. These  
1606 are not uncomplicated facilities. And they're complicated for a reason, because  
1607 there are certain things that just have to be disposed of and buried for the long  
1608 term that we have not yet been able to figure out a use for. First is was bottles,  
1609 cans, and we all put them out, I hope, religiously. And now you move to a more  
1610 commercial. But every one of these is used for a construction project or as part  
1611 of the daily cover materials, as you pointed out as part of the permitting  
1612 requirements for the facility.

1613  
1614 Mr. Wright - Some of the word that's going around is they're going  
1615 to be dumping a lot of coal ash that will blow off across other people's property  
1616 and so forth. That's been the concept that some people—

1617  
1618 Mr. Daniel - I have read that, yes sir.

1619  
1620 Mr. Wright - When you bring it in, how is it disposed of—or used to  
1621 do what you're talking about.

1622  
1623 Mr. Daniel - When it was really hot in the summer there was a lot  
1624 of coal ash because people were cranking pretty good on their air conditioners. I  
1625 suspect today heaters are going and there's probably a lot of ash being  
1626 generated. It's more ash than we can perhaps use in any single day in an  
1627 ongoing construction project so it's stockpiled. One of the initial concerns that the  
1628 County addressed with us on the topic of CCBs is that our erosion and sediment  
1629 control plans had not indicated where the stockpile—I think I have that right,

1630 Ben—stockpile of coal ash material was. We have amended those plans and I  
1631 think they're now somewhere in the system here.

1632  
1633 The DEQ rule is that in order to truly assure DEQ that these materials are going  
1634 to be used as a commodity or in a beneficial way is that you have to use 75% of  
1635 the material on your site over the course of a year. If you don't meet that  
1636 standard, then a rule called the *Speculative Accumulation Rule* kicks in, in which  
1637 case because you're not using it in a beneficial way, you must be disposing of it.  
1638 So you're just speculatively accumulating it for some ultimate or ulterior motive—  
1639 we are nowhere near being in a circumstance where we're not utilizing 75% of  
1640 that material in the course of a year.

1641  
1642 Mr. Bruce - Can you see it from the road?

1643  
1644 Mr. Daniel - Yes sir, you can see it. Is it dark and gray?  
1645 Absolutely. Might it blow a little bit on a windy day? It might. But I've been out  
1646 there a lot and I've pretty close to it and I haven't walked away with—you know I  
1647 have to dress like this. I haven't walked away with dirty shirts or other dirty  
1648 clothes as a result of being out there. I'm sure there are those here probably in  
1649 this room who would disagree with that, but that's been my experience.

1650  
1651 Mr. Wright - Any way that you can protect it so that it wouldn't blow  
1652 off of your property?

1653  
1654 Mr. Daniel - I think they spray it occasionally. You can spray it  
1655 with water to keep the dust down. But as part of the process, we've had—and I  
1656 don't want to get too far off track here. But we have a dust control plan, which  
1657 has been approved by DEQ. They have concurred that the way in which we're  
1658 managing materials on site is not creating dust and other debris leaving the site.  
1659 We have a number of those kinds of plans. We don't ultimately get to make the  
1660 final decision on those things. Those decisions are left to DEQ and they will tell  
1661 us the standards they want to see maintained and we will engineer or figure out  
1662 a way to meet those standards. If we can't, we don't do the activity. It's that  
1663 simple.

1664  
1665 Mr. Wright - Is there any odor to this material?

1666  
1667 Mr. Daniel - I don't think so. There have been a lot of complaints  
1668 about odor. The article that Mr. Blankinship included in your materials about King  
1669 George, odor was the precipitator for a lot of public comment and concern. But  
1670 that's a very different kind of material. What we take is the residual ash as a  
1671 result of a Dominion or some other power facility generating electric power. It's a  
1672 fairly clean ash. Its constituencies basically reflect the original coal that went in.  
1673 The ash that you read about in the King George article that was included in your  
1674 material is municipal solid waste incinerator ash. That's a different ash; that's not  
1675 from coal. That ash is from the burning of municipal solid waste. Those things

1676 that you can't put in your green or blue bin for recycling purposes but ultimately  
1677 have to put into your garbage can for throwaway. They go to incinerators which  
1678 burn that and they make electricity. But the ash, obviously, reflects—what comes  
1679 out is what you put in. If you have food and other materials that are going in, the  
1680 likelihood of odor is much more significant than it would be from simply coal ash.

1681

1682 I do want to make one final comment. I know I've taken a lot of your time and I  
1683 appreciate very much your patience with me. If I pass out one more thing. This  
1684 is a copy of your County ordinance. I think it's Section 17-34. You will recall that  
1685 the DEQ on July 2<sup>nd</sup>, 2009, at tab eight, determined coal combustion byproduct  
1686 was exempt from the definition of waste and we've talked a lot about that. The  
1687 way that TEEL utilizes it in the eyes of DEQ and most folks, it's not a waste  
1688 material. Tab two included a copy of the State regulation 208160 and paragraph  
1689 B of that said fossil fuel combustion products are exempt from this chapter when,  
1690 as the gentleman pointed out, the process is for a cementitious binder, producing  
1691 a stabilized fill product. Once exempt, the CCB material, when used as  
1692 structural fill, is no different than any other, quote, imperishable, which in the  
1693 ordinance which I distributed to you reflects. Those materials are expressly  
1694 authorized by the County ordinance to be used to fill land, quote, to permit  
1695 practical use for development of the property. Very similar circumstance that  
1696 we've talked about with respect to how TEEL uses that material.

1697

1698 So I think it's important to recognize first, going back to the very beginning, that  
1699 the County has, in fact, recognized recover and conserve, Resource  
1700 Conservation and Recovery Act. They have recognized that that's a component  
1701 of solid waste management. So my question to you is should a facility like TEEL  
1702 be denied the ability to do what any landowner in the County may do? And while  
1703 it's a construction and demolition debris landfill facility, TEEL is above all else a  
1704 landowner. I trust that that won't be the case today.

1705

1706 I thank you very much for your time and attention. I'll be glad to answer any  
1707 questions.

1708

1709 Mr. Bruce - Just one question, if I may, Mr. Daniel. This  
1710 amendment calls for the acceptance of all those materials that have been  
1711 approved Department of Environment Quality as the result of implementing the  
1712 Virginia Solid Waste Management regulation. On your tab four, which lists  
1713 approved materials, I know this discussion has been about coal combustion  
1714 byproducts, but are there others of those seven items listed being taken in by  
1715 TEEL at this point?

1716

1717 Mr. Daniel - We have approval to utilize all of those from DEQ. I  
1718 do not believe that they are using manufactured sprays. I do know that we use a  
1719 lot of tire shred. If the DEQ tire folks were here, they would tell you to their great  
1720 delight because it reduces these tire piles that we see stuck in every nook and  
1721 hollow as we go down the road. Clearly three and four are what we'd like to use;

1722 three we have been doing. We are not currently using—somebody correct me,  
1723 Joe. We're not using number five currently as a cover material.

1724

1725 Mr. Bruce - Number six?

1726

1727 Mr. Daniel - I think a little bit of six, but I don't think seven. But  
1728 they all have potential and we want to use all of them and have the flexibility to  
1729 use all of those materials. That's why our suggested amendment to paragraph  
1730 twenty is what it is. It also would, frankly, reach into the future in the event that  
1731 there is some new discovery for a material that we have to throw away that we  
1732 could use in a beneficial way. We're simply asking this Board and the County to  
1733 recognize the approvals that DEQ has granted to us, have some respect for their  
1734 professional judgment and opinion that it can be done in a safe way, and rely on  
1735 their expertise and inspections, as well as those of County officials, to tell us if  
1736 we're not.

1737

1738 Mr. Bruce - Thank you.

1739

1740 Ms. Harris - Mr. Daniel, in tab five, page two of the letter from  
1741 DEQ, it says, "If odors that are typically exhibited as a result of inspection to  
1742 landfill activities are detected offsite during the demonstration, use of alternative  
1743 materials shall cease and soil cover shall be placed in all areas where the  
1744 alternate materials have been applied." Is this a policy of Darbytown Landfill that  
1745 we're dealing with? Is this what they do when they detect odor? Do they start  
1746 with the soil cover and address this problem?

1747

1748 Mr. Daniel - Yes ma'am. And it's really broader than that and we  
1749 get a little off track here. This Board is familiar, I'm sure, with some concerns that  
1750 neighbors had expressed about odor from this facility. The DEQ did what they  
1751 consider to be a fairly exhaustive odor analysis of the area. They basically told  
1752 us we had a problem in those areas from odor where we were doing the mining  
1753 or the excavation of the old landfill. They required us to do an odor management  
1754 plan. We went through about three or four different iterations with the DEQ on  
1755 that plan and they approved it. And to my knowledge—albeit one, I think, maybe  
1756 right before Thanksgiving—there had not been registered with the facility or  
1757 DEQ—and I don't know about the County—any comments or registered  
1758 statements of significant odors at the TEEL facility since we worked through that  
1759 odor management plan process with the agency.

1760

1761 Ms. Harris - So your answer is yes. And when you conduct those  
1762 tests, you do them at the facility. You don't go a mile from the facility and  
1763 conduct the test.

1764

1765 Mr. Daniel - No, it's done right—

1766

1767 Ms. Harris - Okay, that answers one question. The second  
1768 question is how do you compare this facility to the King George facility? Is one  
1769 more modern than the other? I know this has been around for a while and you've  
1770 received some from the Richmond Landfill. How would you compare the way you  
1771 do things with the way King George does things?  
1772

1773 Mr. Daniel - They're frankly hard to compare, but I'll do the best I  
1774 can. They are two very distinct and separate kinds of facilities. The King George  
1775 facility is a municipal solid waste facility. It can take virtually anything and is  
1776 designed and engineered to take all of those things we throw away. The  
1777 Darbytown Road, TEEL, East End Landfill is a construction and demolition debris  
1778 landfill. It does not take industrial waste or other kinds of waste. Nothing other  
1779 than for disposal or deposit. Nothing else comes through the gate but material  
1780 from construction sites or teardowns of buildings like West Creek and other  
1781 developments.  
1782

1783 They both have rigorous standards. As far as I know King George meets their  
1784 standards, unless perhaps the issue that has been raised with respect to the  
1785 MSW incinerator ash. TEEL has rigorous controls at its facility and I'm very  
1786 pleased to say is meeting them. They had a bump in the road sometime back,  
1787 the last time we were hear talking to you all. Since then they have maintained  
1788 compliance for six months or more now without a single blip on their radar  
1789 screen. One of the reasons we're here with you today is to make sure we know  
1790 what the roadmap going forward is so that we can stay that way. So I appreciate  
1791 very much your time.  
1792

1793 Ms. Harris - I understand that there is another speaker, Ms.  
1794 Phillips, but we've been in session since nine. Due to the inclement weather  
1795 forecast, we were trying to continue to go without taking a break. —Board  
1796 members. The next person you said was Ms. Phillips?  
1797

1798 Mr. Daniel - Terri Phillips.  
1799

1800 Ms. Harris - Phillips.  
1801

1802 Mr. Daniel - With Golder Associates. Yes ma'am.  
1803

1804 Ms. Phillips - My name is Terri Phillips—P-h-i-l-l-i-p-s. I'm with  
1805 Golder Associates. I have a handout, if I may. I appreciate the opportunity to  
1806 provide information on the practical application of various materials commonly  
1807 used in Virginia for beneficial uses.  
1808

1809 Virginia has a long history of beneficial use of a variety of materials. And  
1810 accordingly a long record demonstrating the environmentally protective nature of  
1811 these uses. As you can see in Table One of the handout, many types of  
1812 materials have been and are used in Virginia for various beneficial uses. As Mr.



1813 Daniel discussed, when used in such an approved manner, these materials are  
1814 not solid waste and therefore are not subject to regulation under the Virginia  
1815 Solid Waste Management regulations.

1816  
1817 As you can see, many of these materials are used beneficially as alternate daily  
1818 cover or progressive cover at landfills. In Henrico County, several types of  
1819 materials have been approved for use as alternate cover materials at the three  
1820 landfills in the County. Table Two summarizes those three landfills and the  
1821 approved beneficial use materials for alternate daily cover or alternate  
1822 progressive cover. These materials include coal combustion byproducts, or  
1823 CCBs, which appear to be of particular interest to staff.

1824  
1825 Federal and state agencies actively promote the beneficial use of CCBs  
1826 including the U. S. Environmental Protection Agency, U. S. Department of  
1827 Energy, Virginia Department of Environmental Quality, Virginia Department of  
1828 Transportation, Virginia Cooperative Extension Service, and the Virginia  
1829 Department of Mines, Minerals, and Energy, to name a few. In fact, DEQ and  
1830 VDOT formed a Dream Highways partnership to promote the use of CCBs in  
1831 highway construction projects. As shown on Table Three of your handout, VDOT  
1832 has a long history of using CCBs in road construction and developed  
1833 specifications for various uses as long ago as the early eighties.

1834  
1835 Many of VDOT's CCB projects are structural fill projects in nature, which is one  
1836 of the beneficial uses of CCBs that TEEL would like to continue using in the  
1837 development of their property. CCB structural fills are common in Virginia and  
1838 other states since the characteristics of CCBs make them excellent structural fill  
1839 material. Table Four in your handout lists some of the CCB structural fill projects  
1840 in Virginia, as identified from various publications and regulatory sources.

1841  
1842 As you can see, CCB structural fills are a common practice in Virginia, which  
1843 generates more than half of our electricity from coal-burning power plants.  
1844 Virginia has diligently studied the environmental aspects of using CCBs in  
1845 structural fills and other applications. One example is the decades-long body of  
1846 scientific work conducted by Dr. Lee Daniels at Virginia Tech. His work focuses  
1847 on the issues and questions that often come up from Boards such as this when  
1848 making decisions about CCB use. To quote from Dr. Daniels' webpage, "The  
1849 overriding objectives of our research and outreach programs in this area have  
1850 been one, to objectively determine the actual beneficial use potential of various  
1851 coal combustion products, and two, to ensure that soil and water quality are  
1852 protected over the long term wherever coal combustion products are land-  
1853 applied or used as fills."

1854  
1855 The results from Dr. Daniels' and others' work are used by the Department of  
1856 Environmental Quality as a guide in regulatory development to ensure the  
1857 protection of human health and the environment based on scientific data and a  
1858 long history of CCB project experience and not on misrepresentations and

1859 theory. Examples of such misrepresentations include the following concerns we  
1860 have with the staff report that was provided to you. First, the site map states that  
1861 the application is, "To deposit coal ash and other materials," which is not true.  
1862 That TEEL solid waste permit does not allow these commodity materials to be  
1863 land-filled. Instead they must be beneficially used or used in other approved  
1864 ways in order to be accepted at the facility.

1865  
1866 Second, the staff report incorrectly states that DEQ has approved TEEL's use of  
1867 incinerator fly ash, which is not true. TEEL is allowed to use coal combustion  
1868 byproducts from coal-fired power plants, not incinerator ash from municipal solid  
1869 waste incinerators. We do not want the Board or our neighbors to believe we are  
1870 accepting incinerator ash; we are not.

1871  
1872 Third, the two news articles attached to the staff report are not relevant to the  
1873 issue at hand. The article about the King George landfill is about land-filling  
1874 CCBs in a municipal solid waste landfill, which is not what TEEL is doing. The  
1875 CCBs in question were from a power plant that treated the ash with sodium  
1876 sulfate, which when it gets wet rapidly breaks down and forms hydrogen sulfide.  
1877 This is not the ash that is being used at TEEL. Also the ash used at TEEL is  
1878 compacted into a structural fill which prevents contact with water. The second  
1879 article is about a thousand-acre wet ash storage pond which has nothing to do  
1880 with the dry ash structural fill project. The obvious tie to the Kingston, Tennessee  
1881 disaster in which the dam of a large wet ash storage pond failed and caused wet  
1882 ash, mud, and water damage downstream, may mislead people to believe that  
1883 such a disaster could happen at TEEL.

1884  
1885 Getting back to the science, three main findings from all the CCB research  
1886 efforts are as follows. First, CCBs contain the naturally-occurring metals that  
1887 were in the coal from which the CCBs were generated, typically at higher, but not  
1888 hazardous, concentrations than the natural soil. I'll refer you to your staff report  
1889 that has a chart in there comparing metals concentrations in soil, ash, and coal.

1890  
1891 Second, CCBs are not a hazardous material, meaning they do not have the  
1892 characteristics that EPA and DEQ define as hazardous. In the staff report, you'll  
1893 find the laboratory data for the actual CCBs that are used on the TEEL property.  
1894 Each type of CCB use at the facility is routinely tested to ensure that it's not  
1895 hazardous. On the laboratory certificates of analysis in your staff report, the  
1896 column titled, *Regulator Level*, shows the concentrations of which metal that  
1897 would cause the material to be hazardous. The column titled, *Result*, is the  
1898 actual amount of each metal in milligrams per liter, which is equivalent to parts  
1899 per million. You'll note that the actual amounts are well below the concentrations  
1900 that would cause the CCBs to be hazardous. In fact, most of the test results  
1901 show that these metals, if present at all, are not detectable at the lowest  
1902 concentrations that the laboratory method can detect, as shown by the less-than  
1903 signs. To provide some perspective with regard to these data, Table Five in your

1904 handout compares the highest leachable metals concentrations found in the  
1905 CCBs used at the site, but the concentrations common in every day materials.  
1906

1907 Third, the scientific data showed that CCB structural fills are compacted, treated  
1908 with a cementitious binder, and are often self-cementing by nature, all of which  
1909 limit the ability of water to infiltrate the CCBs, thereby preventing the leaching of  
1910 metals from the CCBs. Limiting groundwater migration into the CCB structural fill  
1911 also limits the leaching potential.  
1912

1913 Finally, the use of liners and liquid collection systems provide another level of  
1914 environmental protection that has been found to be very effective.  
1915

1916 As Mr. Axelle mentioned, although not required by State regulations, TEEL  
1917 constructs all of it's CCB structural fills using a geo-membrane liner with a liquid  
1918 collection system that serves as a containment system for CCBs, and a  
1919 collection and removal system for any liquids that may have entered the CCB  
1920 construction, for example, precipitation or water used for dust suppression.  
1921

1922 In concert with TEEL's successful partnership with DEQ's waste tire program, the  
1923 liquids collection layer is constructed using tire shreds as another type of  
1924 beneficial use of what may otherwise be a landfill waste material. Also the  
1925 ground water and surface water are regularly monitored at TEEL to ensure that  
1926 these resources are protected from impacts.  
1927

1928 In summary, materials and uses that are the subject of TEEL's application are  
1929 specifically allowed by State regulations based on decades of experience and  
1930 scientific testing. When used in these specific manners, these commodity  
1931 materials are not waste and are not subject to the Virginia Solid Waste  
1932 Management regulations. We request the County allow TEEL to continue its  
1933 beneficial use of these approved materials.  
1934

1935 Ms. Harris - Any questions for Ms. Phillips? How do you prevent  
1936 contact with water like rainwater?  
1937

1938 Ms. Phillips - With soil cover.  
1939

1940 Ms. Harris - You have something that would prevent the rain from  
1941 getting into the processing?  
1942

1943 Ms. Phillips - During filling, any rain that falls on the coal actually  
1944 will help with the cementitious effects of the material itself, helping it to kind of  
1945 self-cement. It's also a good dust suppressant. And then the leachate collection  
1946 system at the bottom will collect any rainwater or other water that infiltrates  
1947 through the fill. And then it is removed and sent to the County's sewer system.  
1948 Once the structural fill is completed, very little water infiltrates it because of the  
1949 compacted nature of it. Does that answer your question?

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Ms. Harris - Is there anyone else who wishes to speak for this application? Okay. Let's look at the other side. Any persons opposed to this? Please come forward and state your name.

Mr. Donati - Jim Donati—D-o-n-a-t-i, Board of Supervisors, Henrico County. Madam Chairman, Board members, thank you for the opportunity to speak to you this morning. I've been on the Board for nineteen years now and I think I've only been before this body—this makes the second time. The only reason I come is because of the importance of this issue at hand.

I'm the one that receives all the complaints from this landfill. And believe me, my phone has rung off at numerous times. Before this landfill was just operated casually by two companies—Simons and SB Cox—who were in the demolition business and pretty much handling the demolition from the Richmond region and putting it on this site. It was not until this company bought it that it really became commercialized. Now they're asking to bring the coal ash and other materials.

I guess you can twist the aspects of this coal ash any way that you want to, but it's not very sightly when you look at the pictures here on the wall. I do know from what I've received from the County that King George and Alexandria and others across the country have had problems with coal ash and the amount of hydrogen sulfide that it produces. Most landfills, from what I understand, have about 40 parts per million and King George has 1300 parts per million.

This has been the issue for well over a year now, the smell, the rotten egg smell that the citizens are experiencing in that immediate area. I'm also concerned, too, because we do have homes that were built there many years ago—not the new subdivisions—that are still on well systems on Oakland Road and Midview Road and those areas. And there have been reports that it could contaminate groundwater and we have a lot of folks out there that still have shallow wells in those homes.

Henrico County prides itself on the business community that we have here. We have 25,000 businesses located in this community. And for the most part, we're very proud of them and I think we are a very business-friendly county. But when it comes to this business, I think there has been a lot of neglect. They have been careless. And I really question how are they going to be responsible for handling this if you do allow it to happen.

Since June 19, 2009, there have been eight violations by the County alone and I'll just read those to you. Not complying with mud tracking on the road. Clearing and wetlands not yet permitted. Stockpile exceeds grading height limits drawn on plan. Failure to comply with non-comply issue on 10/12. Berm exceeding limit heights. Mud tracking. Mud tracking, failure to comply. Coal ash exceeding grading limits. And stockpiling outside the limits shown on their plan. These are

1996 just complaints that the County has received. And it's from my understanding  
1997 that DEQ has fined this company at this site over \$100,000. And from that I  
1998 understand, it's probably the largest fines that any landfill has experienced in the  
1999 State of Virginia.

2000

2001 So I guess I'm concerned on how they are going to be in the future if these  
2002 things are allowed to happen with the neglect that they have shown in the past. It  
2003 really concerns me and it concerns our citizens. I'm here today just to ask that  
2004 you deny this request. Thank you.

2005

2006 Ms. Harris - Any questions? Thank you. Is there anyone else who  
2007 wishes to speak?

2008

2009 Mr. McEachin - Madam Chair, members of the Board, my name is  
2010 Donald McEachin. That's M-c-capital E-a-c-h-i-n. I am a lawyer and a member of  
2011 the Virginia Senate representing the Ninth Senate District, which is where this  
2012 landfill falls.

2013

2014 I want to echo many of the things that Supervisor Donati just said and emphasize  
2015 a couple of them. I, too, get lots of phone calls, lots of e-mails about the  
2016 problems that this site has caused the residents and my constituents in that area  
2017 over the years. My district historically is a very quiet one. I don't get a lot of  
2018 complaints. So when I hear some, they quite naturally catch my eye. I guess I'm  
2019 now going into my 12<sup>th</sup> year as a member of the assembly representing the 74<sup>th</sup>  
2020 District in the House and now the 9<sup>th</sup> District in the Senate. I have never received  
2021 so many complaints as I get concerning this landfill.

2022

2023 I know Mr. Daniel; he's a very good man. I know Mr. Axselle and he is also a  
2024 very good man. They are very skilled advocates for their position. But what I  
2025 want to ask you to consider is even assuming everything they say is true—that  
2026 you can take the coal ash, that you can use it as a liner, that you can do all that  
2027 and do it safely—assuming that it's true without conceding that point, you have to  
2028 look at the actor that's involved. This actor has been fined hundreds of  
2029 thousands of dollars. In fact, the only reason, in my judgment at least, that it  
2030 hasn't been fined more is because we don't give DEQ the authority to go much  
2031 further in the fines that they've already instituted.

2032

2033 I don't want you to think that DEQ's approval of this concoction for a liner is  
2034 necessarily adjudication, if you will, on their part, that it's a good thing. All it says  
2035 is that it meets certain criteria.

2036

2037 I was shocked and dismayed to discover as I researched this and in  
2038 conversations with some folks at DEQ that they don't have—and this is my  
2039 judgment. I have to tell you this is my judgment because DEQ can't take an  
2040 official position on this. But they don't have the ability to regulate these things as  
2041 other states do, these landfills and these particular subject matters for landfills.

2042 I'll be introducing legislation in the coming General Assembly session that will  
2043 expand their ability to regulate these matters. But as far as this Board is  
2044 concerned at this hour, what I would respectfully suggest to you is this. DEQ's  
2045 approval—whatever you may think of it—does not override your ability to  
2046 exercise your prerogatives on land use. It does not.

2047  
2048 Secondly—I cannot emphasize this enough—you must look at the actor.  
2049 Supervisor Donati highlighted for you some six instances—I believe it was six  
2050 instances—where this company has come up short on relatively simple things.  
2051 What comfort do you have, what comfort can you give my constituents, the  
2052 citizens of Eastern Henrico? What comfort can you give them that this which is a  
2053 fairly more complex thing to do, to mix this coal ash and dirt and create this  
2054 cover, if you will—what kind of assurances can you give them that this actor, who  
2055 has been fined hundreds of thousands of dollars in civil fines—we have a way of  
2056 calling them civil fines instead of penalties. What assurances can you give these  
2057 citizens that this actor is going to behave? I would suggest to you that not  
2058 enough passage of time has gone by since these prior violations, since the fines  
2059 were put in place. I would suggest to you that you cannot give them that  
2060 assurance and I will beg you on behalf of my constituents to deny this. Thank  
2061 you.

2062  
2063 Ms. Harris - Thank you. Any questions?

2064  
2065 Mr. Bruce - Just one. Mr. McEachin, have you pre-filed this bill  
2066 that you plan to introduce?

2067  
2068 Mr. McEachin - I have not pre-filed it because it's still going through  
2069 the Legislative Services.

2070  
2071 Mr. Bruce - Thank you.

2072  
2073 Mr. McEachin - But I'll be happy to make it available to any member  
2074 up here, if you would like to see it. It will be filed shortly when I get it back from  
2075 Legislative Services.

2076  
2077 Ms. Harris - Anyone else to speak to this case?

2078  
2079 Mr. Leabough - Good morning, Madam Chairman and members of  
2080 the Board. My name is Eric Leabough. That's L-e-a-b-o-u-g-h, b as in boy.

2081  
2082 It's tough to stand up here and follow Mr. Donati and Mr. McEachin, so I'll try to  
2083 do my best. I'm not here for profit or any motivation other than I'm concerned  
2084 about the quality of life in our community. I'm concerned about safety; I'm  
2085 concerned about health. I think TEEL's motivations are primarily centered around  
2086 money. I'm sure that to deposit—they can call it deposit, they're going to use it  
2087 as structural fill or whatever they call it. They're stockpiling coal ash on the site,

2088 which then could come in contact with rainwater prior to it being combined with  
2089 the cementitious material. So I think that they are, like you said, kind of twisting  
2090 the story to fit their needs and their desires. Again, I echo the concerns around  
2091 their previous permit violations. I echo the concerns around the permit approval  
2092 that they received last November. They have yet to comply with all the conditions  
2093 of that approval. They, in the last few months, have been issued stop-work  
2094 orders because they could not comply with the existing permit.  
2095

2096 Coal ash. If you all remember the Home Depot that was constructed on  
2097 Midlothian Turnpike near the Chesterfield Town Center was demolished after it  
2098 was constructed because the coal ash material that was used as structural fill  
2099 was not suitable and caused the facility to buckle and crack, and had to be  
2100 demolished and rebuilt. So I'm not sure, but the verdict's probably still out on  
2101 whether coal ash is a suitable structural fill material.  
2102

2103 The other thing that I'll bring to your attention is the fact that they do have this  
2104 geo-synthetic or geo-membrane or whatever liner they call it. If they're not  
2105 required to have it, how closely are they being monitored and regulated around  
2106 it. That's one of the concerns that I have.  
2107

2108 I won't belabor this point, but TEEL agrees with DEQ when it's to their benefit.  
2109 But for a two-year period, they disagreed with every request that DEQ made that  
2110 they comply with the existing permit. I find that astonishing that they stand here  
2111 today with DEQ in their wings of support, but they disagreed with DEQ for two  
2112 years of monitoring violations and inspection violations. They disagreed and  
2113 never complied with it over a two-year period.  
2114

2115 So I ask on behalf of the community that you not approve this request. I find it  
2116 amazing that they've already started accepting materials and here we are after  
2117 that fact that they're coming to you for approval of this request. If they're not  
2118 approved, why are they depositing materials today? I mean here are the photos  
2119 where it's already on the site, but then they come to you after the fact, like they  
2120 come to the community after the fact, and say hey, you guys mind if we do this, if  
2121 we impact your County or community like that. So again, I ask you to deny their  
2122 request. I appreciate your time today.  
2123

2124 Ms. Harris - Mr. Leabough, where do you reside?  
2125

2126 Mr. Leabough - I actually live in Midview Farms, which I guess is a  
2127 mile or two away from this facility. I'm not sure if we can see it on that map or  
2128 not, but I do live in the community. I've been before you before speaking on  
2129 behalf of the community as well.  
2130

2131 Ms. Harris - Any questions of Mr. Leabough?  
2132

2133 Mr. Witte - Are you an attorney?

2134  
2135 Mr. Leabough - No sir, but I would like to get paid like the attorneys.  
2136  
2137 Mr. Witte - Thank you.  
2138  
2139 Mr. Leabough - Thank you.  
2140  
2141 Ms. Anderson-Ellis - Good morning. My name is Nicole Anderson-Ellis.  
2142 Can you hear me?  
2143  
2144 Ms. Harris - Yes.  
2145  
2146 Ms. Anderson-Ellis - I have—  
2147  
2148 Ms. Harris - What is your—  
2149  
2150 Ms. Anderson-Ellis - Nicole Anderson-Ellis. A-n-d-e-r-s-o-n, E-l-l-i-s. I  
2151 would love to request permission to read a letter that I have on behalf of a half a  
2152 dozen associations of residents in that portion of Henrico County. I'd also love  
2153 permission to speak briefly afterwards personally.  
2154  
2155 Honorable Chairwoman, Vice Chairman, and respected members  
2156 of the Board, Mr. Blankinship. Knowing that coal ash can contain  
2157 heavy toxic metals including arsenic, lead, mercury, and cadmium  
2158 according to the numerous scientific sources, including the  
2159 Environmental Protection Agency, the Johns Hopkins Bloomberg  
2160 School of Public Health, and Physicians for Social Responsibility;  
2161 and knowing exposure to these materials can cause neurological  
2162 damage, birth defects, heart, lung, and kidney disease, and various  
2163 forms of cancer according to the Center for Disease Control and  
2164 Prevention, the Department of Energy and others; and knowing  
2165 these toxins pose increased risks for children, pregnant women,  
2166 the elderly, and the ill; and knowing exposure can come from  
2167 contaminated drinking water or from inhalation which pushes the  
2168 toxic coal ash into lung tissues, increasing the danger according to  
2169 recently published findings at Duke University; and knowing  
2170 Henrico County is home to more than 6500 children already  
2171 suffering from pediatric asthma, more 20,000 asthmatic adults, and  
2172 nearly 10,000 residents with chronic bronchitis according to the  
2173 American Lung Association's 2010 report; and knowing the East  
2174 End Landfill has a record of violations including failure to mark the  
2175 boundary of their underground liner, failure to cover materials, and  
2176 failure to maintain safe heights and slopes according to a 2009  
2177 report by the Virginia Department of Environmental Quality; and  
2178 know the Darbytown facility is adjacent to dense residential  
2179 neighborhoods, we the undersigned urge you to defend the safety



2180 and health of all Henrico citizens whom you serve, and defend the  
2181 County's property values as well as opportunities to long-term  
2182 economic development, and to uphold the Planning Department's  
2183 mission of 'excellent management of the valued resources which  
2184 create our coveted quality of life.'"

2185  
2186 As wise leaders, you must deny their request for a permit to store  
2187 coal ash or stockpile coal ash or permanently allow coal ash to  
2188 remain on this site at the East End Landfill.

2189  
2190 Most respectfully, the members of Envision Henrico, Varina  
2191 Beautification Committee, Virginia Interfaith Center for Public  
2192 Policy, Residents of Osborn Turnpike, Partnership for Smarter  
2193 Growth, and Virginia Interfaith Power and Light.

2194  
2195 I only brought one copy; I apologize.

2196  
2197 Personally, I did not leave my home on the opposite end of the County on a day  
2198 when school was cancelled, when I have lots of work to finish before Christmas,  
2199 and when I am at possible risk of harm getting home in the snow because of a  
2200 respectful disagreement or because of misrepresentation or fear. I'm here as an  
2201 educated responsible Henrico County resident and a landowner.

2202  
2203 I think it's decidedly unwise to stockpile this material on site with the intention  
2204 that it be kept there permanently. I've read studies about the impacts of coal ash,  
2205 what it contains, and how it affects the human body. Mr. Daniel mentioned earlier  
2206 that the way we treat materials and our understanding of how they impact our  
2207 health is evolving very rapidly. He was talking about what we allowed in landfills  
2208 and how they were allowed to treat waste as recently as 1998. The science is  
2209 still evolving. It used to be that we would allow the smoke after we burned coal to  
2210 just go into the air untreated. We now know that's very dangerous. We know that  
2211 their air from coal-burning facility causes cancer, birth defects, contains heavy  
2212 metals, and we treat it as such.

2213  
2214 We are still learning about coal ash. Many of us, we never thought once about  
2215 coal ash before the tragedy in Tennessee. We are now learning, as was pointed  
2216 out earlier by Ms. Phillips, that coal ash is all around us. Right? We have treated  
2217 it as if it were safe and we're still learning. I mentioned earlier that Duke  
2218 University is doing a lot of study as a result of the disaster in Tennessee and  
2219 they are making some groundbreaking findings, not the least of which is that  
2220 inhaling it really maximizes the impact of the mercury, the impact of the lead. I'd  
2221 like to point out that the Centers for Disease Control and Prevention has stated  
2222 there is no safe level of exposure for lead.

2223

2224 Just because it's common doesn't mean it's safe. Last month the EPA wrapped  
2225 up public hearings on how they're going to regulate coal ash in the future, so this  
2226 is an ongoing conversation.

2227

2228 I'd like to stress what Senator McEachin said about whether or not this is a wise  
2229 place, that these are good stewards for something that we're just learning about.  
2230 Mr. Daniel said that the East End Landfill had had a bump in the road a while  
2231 back. That was last year. And they've gone six months without incidents. I'm not  
2232 impressed by that. Heavy metals don't degrade over time; they're as poisonous  
2233 ten years from now or a hundred years from now. We're talking about  
2234 generations worth of potential risk. Six months without incident does not impress  
2235 me.

2236

2237 I'd like to say one final thing. You could put the coal ash here and it might not  
2238 leak. And you could put the coal ash here and it might not get into the drinking  
2239 water. And you could put the coal ash there and might not blow into the adjacent  
2240 neighborhoods and cause cancer and birth defects. And my daughter could run  
2241 across the street in front of our house and she probably wouldn't get hit by a car.  
2242 She might run across the street in front of my house ever day for a year and not  
2243 get hit by a car. But there are some consequences that are so final that no  
2244 responsible adult can take that risk.

2245

2246 When you're hearing people say that we don't need to worry about this, just don't  
2247 worry about it—some people say it's okay, that we don't need to worry about it.  
2248 I'd like you ask yourself if this facility were across the street from your house and  
2249 your family, would you worry. And I applaud you for taking the time to hear all  
2250 these people because I think this is an issue of local community self-  
2251 determination. We're deciding for ourselves what we can and cannot live with.

2252

2253 Thank you so much.

2254

2255 Ms. Harris - Excuse me before you leave. Where do you reside?

2256

2257 Ms. Anderson-Ellis - I live on Osborn Turnpike, which is not adjacent to  
2258 this facility. But I think under the circumstances none of us live far enough away  
2259 from this facility.

2260

2261 Ms. Harris - Thank you. Is there anyone else who wishes to  
2262 speak?

2263

2264 Ms. Murphy - Good morning. My name is Gayle Murphy—M-u-r-p-  
2265 h-y. You had a photograph up there a few minutes ago of an intersection. When  
2266 I leave my driveway, I can be at that intersection in about 60 seconds; I live very  
2267 close.

2268

2269 I'm concerned about the health risks and I have one question that my comments  
2270 would really boil down to. Is the coal ash blowing around our neighborhood,  
2271 combining with cementitious material, and being deposited in our lungs? And is  
2272 there an alternative coal ash? Thank you.

2273

2274 Ms. Harris - Any questions?

2275

2276 Mr. Sawyer - My name is Jason Sawyer. I'm a community organizer  
2277 with Greater Fulton's Future Initiative. I work with people in the neighborhoods of  
2278 Montross Heights, Fulton Hill, and Fulton.

2279

2280 I had a lot of time to hear from advocates, from experts, but we haven't had a lot  
2281 of time to listen to folks in these surrounding communities that this would affect,  
2282 partly because this meeting is at 9 a.m. a week before Christmas, on the cusp of  
2283 a snowstorm. I have only recently been made aware of this meeting, three days  
2284 before it was scheduled. No community residents in Greater Fulton that I spoke  
2285 to knew about this issue of the coal ash or knew this meeting was taking place.  
2286 No one from our civic association, no one from my business association, no one  
2287 from our local neighborhood resource center was made aware. No one from our  
2288 churches or our community residents. And this is taking place a mile and a half  
2289 from our community, a community that's been there since the forties and even  
2290 before then.

2291

2292 In short, communities and community associations have not been brought to the  
2293 table. They have not had the opportunity to be able to really do adequate  
2294 research and to weigh in on what's going on in their own backyard, so many  
2295 questions still remain. Many of them have been addressed in the forum and I  
2296 appreciate that.

2297

2298 In short, what we're asking for is we're requesting that the vote on this permit be  
2299 deferred until January, which would allow time for communities affected by this  
2300 issue to do their research, ask appropriate questions, and weigh in. This is a  
2301 democracy so communities should be able to weigh in on this important issue  
2302 and be provided access to the information that they need to make a decision  
2303 about the costs and benefits of such an action that directly affects the health and  
2304 well being of the communities in the East End. If this vote cannot be postponed,  
2305 we ask that you vote no. Thank you.

2306

2307 Ms. Harris - Mr. Sawyer, just for your information, I believe we  
2308 send communication, Mr. Blankinship, to the adjacent neighbors when any issue  
2309 comes before us.

2310

2311 Mr. Blankinship - In addition to that, in this case because there was so  
2312 much community interest a year ago when similar hearings were held, we sent  
2313 letters to people who attended those hearings and to the communities. We also  
2314 run the advertisement in the newspaper.

2315  
2316 Mr. Sawyer - We appreciate that. No one in our civic association  
2317 was made aware.  
2318  
2319 Ms. Harris - Also on Channel 17 there is a regular scrolling of  
2320 when we meet. You also mentioned something else that I thought we probably  
2321 needed to address. As far as procedure is concerned when it comes to  
2322 deferment, the applicant normally asks that a case be deferred. It usually has to  
2323 be agreed upon by the applicant. Is that not right?  
2324  
2325 Mr. Blankinship - Well, the Board can defer it one meeting.  
2326  
2327 Mr. Sawyer - If that's true, yes, we're asking for a deferment. And if  
2328 you can't defer it, we're requesting that you vote no.  
2329  
2330 Ms. Harris - Thank you.  
2331  
2332 Mr. Sawyer - Thank you.  
2333  
2334 Ms. Harris - Anyone else who wishes to speak to this issue? Please  
2335 come forward, state your name, and spell your last name.  
2336  
2337 Ms. Cousins - Good morning. My name is Annette Cousins. My last  
2338 name is C-o-u-s-i-n-s. I'm the co-executive director of the Neighborhood  
2339 Resource Center. We're a community center located less than a mile and a half  
2340 from this landfill facility.  
2341  
2342 I'm here primarily because I'm incredibly concerned about the welfare of the  
2343 children that live in our neighborhood. We have about 1500 children that live  
2344 within the boundaries of the three neighborhoods that represent Greater Fulton.  
2345 And while we may be within the City of Richmond, we are certainly within the  
2346 distance that the wind can blow from this facility.  
2347  
2348 I want to respectfully disagree with some of the things I've heard earlier in the  
2349 day here. I don't know if it's possible to pull that first site map back up. The first  
2350 speaker up today, Mr. Axselle, represented this area as primarily industrial. I  
2351 think you can see from this map that while the area on the right side of  
2352 Darbytown Road may be primarily industrial, to the left-hand side—and as one of  
2353 the previous speakers mentioned—it's primarily residential. If you could possible  
2354 scroll over, which I know you can't do, that area actually extends significantly to  
2355 the left and there are multiple subdivisions there were there are people residing  
2356 with their families.  
2357  
2358 I know we've heard a lot about the possibility of toxins that are in this coal ash  
2359 coming into the groundwater. And actually I'm more concerned about the toxins  
2360 going into the air. You can see from the photos where they are stockpiling this. I

2361 think we've heard enough about whether or not it's being deposited or covered or  
2362 whatever it is that it's being used for. It's sitting there. And it's a dust. It has fine  
2363 particulate matter that can lodge into the lungs of small children. And we know  
2364 that small children, their lungs are developing. They're incredibly susceptible to  
2365 developing cancer and other diseases when they're exposed to toxins at an early  
2366 age.

2367  
2368 One of the earlier speakers said that the DEQ sets minimal standards for using  
2369 this material. I did some research and found out that the EPA actually says that  
2370 even with weekly spraying of mounds such as this, the dust cannot be controlled  
2371 adequately to ensure the public safety. It says that there is still a potential to lead  
2372 to significant health risks if those mounds are not sprayed on at least a daily  
2373 basis.

2374  
2375 And earlier when Mr. Daniel was speaking with us and it was asked how  
2376 frequently this mound is sprayed, he said that it may be sprayed occasionally.  
2377 Occasionally is not enough, according to the EPA, to prevent risk to human  
2378 health. There are a lot of children living incredibly close to this facility. And I want  
2379 to echo what we heard earlier in that the folks who are running the facility have  
2380 not been good stewards of the materials that are there. Six months is certainly  
2381 not enough time for them to have not been cited for any violations, for us to  
2382 entrust them with materials that are potentially hazardous to human health and  
2383 many studies have shown are most certainly hazardous to human health.

2384  
2385 So, on behalf of the children who live in our neighborhood and in the surrounding  
2386 communities of this landfill, I would urge you to vote no on this proposal. Thank  
2387 you.

2388  
2389 Ms. Harris - Ms. Cousins, where do you reside?

2390  
2391 Ms. Cousins - I reside in the City of Richmond.

2392  
2393 Ms. Harris - We didn't ask Mr. Sawyer where he resided. I need to  
2394 ask him that, too.

2395  
2396 Mr. Sawyer - I reside in South Barton Heights, City of Richmond. I  
2397 work in Greater Fulton.

2398  
2399 Ms. Harris - Is there anyone else who wishes to speak to this  
2400 issue? Please come forward, state your name, and spell your last name.

2401  
2402 Ms. Scott - My name is Audra Scott—S-c-o-t-t. I am currently a  
2403 resident of Henrico County. I live at the corner of Darbytown and Willson Road,  
2404 which is approximately a half mile from the site that we're discussing, the landfill.

2405

2406 This raises great concern to me, mostly because of what I have read on my own  
2407 personal research and what I have seen through the media, obviously, as to  
2408 what happens when we not only breathe this stuff in, but when it gets  
2409 contaminated into our water systems.

2410  
2411 The first thing that I have that ultimately concerns me is that the permit that was  
2412 issued to this company, to TEEL, was for construction and demolition debris.  
2413 They have been storing coal ash there obviously now for some time, which they  
2414 are admitting, which is in violation of their permit. I hope that you will take that  
2415 into consideration when you are reviewing this matter.

2416  
2417 Coal ash ultimately, from what I have read, can be very hazardous to your  
2418 health. It can be hazardous to the water that's around you. We also have several  
2419 schools that are within another mile or mile and a half radius. We have an  
2420 elementary school that's right around the corner on Willson. We also have a  
2421 middle school and Varina High School, which is just right down the road.

2422  
2423 Obviously these people are in business to make money, as anyone is. If you are  
2424 not familiar with what coal ash is, coal ash is a waste of when you burn coal,  
2425 basically. Dominion has to sell this stuff off their hands. They have to get rid of it  
2426 somehow because they can't stockpile it. And they would basically be selling it to  
2427 the landfill, so the landfill is going to be profiting off of this. I want to know if any  
2428 of those people live right across the street from the landfill, if any of those people  
2429 who work there or if any of those people who are in ownership of that company  
2430 want to breathe this stuff in, if they want their kids outside playing in this. As a  
2431 resident, I don't. And I urge you to say no to this matter. And I also urge that you  
2432 would check their permits and check and see currently how much coal ash they  
2433 have on site and how much coal ash is in the groundwater around, and other  
2434 minerals and the arsenic, and the minerals that we just don't want to be  
2435 contaminated with in our drinking water or in the air.

2436  
2437 I would just ask that if you are unable to reach a decision, that you would extend  
2438 it, at least, and let the community debate on this a little bit more. But ultimately I  
2439 do urge you to say no. Thank you.

2440  
2441 Ms. Harris - Any questions for Ms. Scott? Anyone else wish to  
2442 speak?

2443  
2444 Ms. Zinchuck - Good morning, Madam Chairman, members of the  
2445 Board. My name is Cara Zinchuck—Z-i-n-c-h-u-c-k. I am a resident of the  
2446 Greater Fulton Area and I share the concerns that have been mentioned  
2447 previously. Thank you taking so much time to consider this matter and urge you  
2448 to hear it carefully.

2449  
2450 Ms. Gay - My name is Dorothy Gay—G-a-y. I live at 2207  
2451 Kingsland Road in beautiful Varina.

2452

2453 Everything that I was going to say has already been said, so I'm just going to say  
2454 a few things. I am mainly concerned about the underground water. I have a well  
2455 and I depend on my drinking water from my well. And many people in Varina still  
2456 do that.

2457

2458 In addition to talking about the schools, there are a lot of daycares in this vicinity.  
2459 I looked at the map and there are a lot of homes around this area, even though  
2460 it's zoned B-3 and M-1.

2461

2462 One thing that hasn't been said is transportation. I noticed they were asking for  
2463 two entrances. Does that mean that there will be much more traffic? I came over  
2464 this way yesterday from Varina because of the snow and spent the night with my  
2465 son. I hadn't been away from home when I went behind a dump truck and  
2466 something was flying out hitting my car and I had to slow down. So I'm  
2467 concerned about the trucks because there are no shoulders on Darbytown Road.  
2468 If I come around a curve and meet one of these dump trucks, it's very serious.

2469

2470 The other thing I would like to say is that I don't think that the State and the  
2471 County probably will have enough facilities to monitor this. If you have to  
2472 collection of water, it needs to be monitored frequently. The DEQ said they do it  
2473 quarterly, which is not very often. Between those four months, I've drunk that  
2474 water and I may have been drinking something that wasn't good.

2475

2476 That's my concern is how this will be monitored. If the EPA is considering that  
2477 down the road, maybe in the next year, that this might be hazardous. I'm  
2478 questioning the timing on this as well.

2479

2480 And in conclusion, I'd like to say that as a citizen and a taxpayer in Henrico  
2481 County, I rely on you officials or the officials at the County to look out for  
2482 conditions that will affect my health and others, my safety, and my wellbeing.  
2483 And so I urge you, please, to deny this. Thank you.

2484

2485 Ms. Harris - Thank you, Ms. Gay.

2486

2487 Mr. Well - I am Patrick Wells. That's W-e-I-I-s. I'm a resident of  
2488 Henrico County. I'm also a public school teacher. So by the weather that we're  
2489 having right now, I'm able to be here today, luckily. Given the short notice and  
2490 the timing and 9:00 in the morning on a Thursday, probably most people don't  
2491 have that ability to be here. So I'd like to represent any other residents of the  
2492 East End, Henrico County, that are not able to be here today, and ask you  
2493 please to vote no to this permit.

2494

2495 If you pull up the other map, the map of this site you had up there a minute ago.  
2496 Somebody was up here a minute ago talking about schools being close. Up to  
2497 the north a little bit there's another one just across Charles City Road called

2498 Montross Heights Elementary. That one is also within a mile or so of the site. My  
2499 son will attend kindergarten there next year. We live roughly a mile from the site.  
2500 I would ask you on behalf of all East End Henrico residents, East End Richmond  
2501 residents of Montross Heights, Fulton, Greater Fulton Hill, Varina, Sandston, that  
2502 entire area, I would ask you please vote no to this permit. I am especially here  
2503 on behalf of the children of all of those areas that I just mentioned. Thank you.  
2504

2505 Ms. Ferris - Hello, my name is Penelope Ferris—F-e-r-r-i-s. I am a  
2506 resident of Fulton Hill and I'm also a program and volunteer coordinator at the —  
2507 so I work with the youth and the adults of Fulton. One of the aspects of my job is  
2508 to help other people find employment. While I can say that I don't agree with this  
2509 particular aspect of the landfill and what they're doing, I do agree with having a  
2510 place for people to work. One of the things that maybe wasn't mentioned is if this  
2511 particular landfill is moving so quickly with the innovations that they're doing and  
2512 accepting these things and making a pile of coal ash—I didn't hear anything  
2513 about whether there's a liner underneath that pile there and how close it is to the  
2514 road. What about the employees that are working there as well. Are we taking  
2515 enough safety precautions for—I'm definitely interested in the air quality and the  
2516 schools and the neighboring residential areas, but are we up to code on this  
2517 particular site and the employees that work there. Have we gone over this  
2518 enough? I think things are moving too quickly and I think we need to stop right  
2519 here and take a look. I definitely think that voting no would be a good idea.  
2520 Thank you.  
2521

2522 Ms. Harris - At this time we'll ask for the applicant to rebuttal  
2523 anything that needs to be rebutted.  
2524

2525 Mr. Blankinship - I wonder if we should have a question and answer  
2526 session with the DEQ.  
2527

2528 Ms. Harris - Are there any questions from the Board for DEQ  
2529 representatives who are here?  
2530

2531 Mr. Bruce - Yes ma'am, I have one for Ms. Tyler.  
2532

2533 Ms. Harris - Excuse me. Is Ms. Tyler a DEQ employee?  
2534

2535 Mr. Bruce - Ms. Phillips; excuse me. This report that you handed  
2536 out was generated by Golder Associates?  
2537

2538 Ms. Phillips - Yes.  
2539

2540 Mr. Bruce - Who were they employed by, TEEL, or did they do it  
2541 at the request of the EPA?  
2542

2543 Ms. Phillips - TEEL. And the sources are cited there.



2544  
2545 Mr. Bruce - Thank you.  
2546  
2547 Mr. Witte - I have a question also. I understand—  
2548  
2549 Ms. Harris - Of whom?  
2550  
2551 Mr. Witte - The same person.  
2552  
2553 Ms. Harris - Okay.  
2554  
2555 Mr. Witte - I understand that there is very little hazard once it's  
2556 cementitious or whatever—  
2557  
2558 Ms. Phillips - Stabilized for—  
2559  
2560 Mr. Witte - Stabilized. Okay. But it still can cause—even at that  
2561 stage can it cause contamination to water runoff?  
2562  
2563 Ms. Phillips - Not with the liner and leachate collection system and  
2564 the cemented nature of it, which prevents water from infiltrating. It's water  
2565 infiltrating through it that could cause the metals that are in it to leach out. Similar  
2566 to soil. When rain lands on the ground and the water leaches into the soil, it can  
2567 leach out metals that are in the soil. It's the same mechanism as natural soil.  
2568  
2569 Mr. Witte - So you're saying these stockpiles can't contaminate  
2570 the soil even though there's no liner under them?  
2571  
2572 Ms. Phillips - There is a liner under all of the structural fills at the  
2573 site.  
2574  
2575 Mr. Witte - The stockpiles also?  
2576  
2577 Ms. Phillips - Yes sir. Everywhere there is coal combustion product  
2578 on the site there is a liner underneath it with a leachate collection system that is  
2579 connected directly to the County's sewer system.  
2580  
2581 Mr. Blankinship - Groundwater is monitored.  
2582  
2583 Ms. Phillips - Correct. And there's a groundwater monitoring  
2584 program and there's a surface water monitoring program.  
2585  
2586 Mr. Witte - Thank you.  
2587  
2588 Ms. Harris - Is Mr. Michael Murphy from DEQ here? Do we have  
2589 any questions we wish to ask DEQ? I believe there are none.

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Mr. Blankinship - Well I do.

Ms. Harris - Okay. Mr. Murphy, would you come forward please?

Mr. Blankinship - The County had asked DEQ representatives to be here because they are the most impartial people in the room. And they are also the experts on the science behind all of this. There have been a lot of statements on both sides of the issue here. I guess I'll just ask you an open-ended question. I think we all need to hear from the regulatory perspective and from the scientific perspective what are the risks of a coal ash stockpile, what are the risks of coal ash once it's in a landfill? Obviously the danger to the environment is not zero. Right? It's something greater than zero. What is the danger, how do you characterize it, what would you compare it to.

Mr. Murphy - Madam Chair and members of the Board, I'm Mike Murphy. I'm the director of the Piedmont Regional Office of the Virginia Department of Environmental Quality. I am not the technical expert to answer those questions, Mr. Blankinship. I agree that the degree of risk is not zero; however, the agency operates as it always does within the abilities and authorities that are provided by the statutes of the Commonwealth, and then the regulations that underlie those and we implement them. So those standards are built and put in place with the best expertise that's available to the agency after extensive public review and comment. And they are promulgated not by the agency, but by our own citizen board. So those go into place to minimize the risk to the greatest extent possible. We do have someone that is here from our central office, but I don't know that we could specifically answer that question. I could ask her to come up if you'd like.

Mr. Blankinship - Do the best you can.

Mr. Murphy - Okay, there you go. In that case, Madam Chair, Ms. Debbie Miller is here from our Office of Regulatory Affairs. She is much more familiar with the technical aspects of coal combustion byproducts regulation.

Ms. Miller - Madam Chairwoman, members of the Board, my name is Deborah Miller. I am with the Virginia Department of Environmental Quality. I am a planning specialist in the Office of Regulatory Affairs. I have been working with the coal regulations and the Virginia Solid Waste Management regulations for the last few years.

Regarding your question about zero—well, I'm not a toxicologist and I didn't sleep in the Holiday Inn last night, so I'm not going to try to tell you what it is. It is true, coal combustion byproducts do contain heavy metals—arsenic, cadmium, beryllium, boron. The materials in them are not of a nature that they are hazardous waste. That toxicity level has not been reached. The materials do

2636 provide beneficial use for structural fill. The materials have been used by our  
2637 own VDOT for road construction. Materials are used to build embankments, build  
2638 roadways. In the concrete industry, it's used as fly ash because of its nature  
2639 where, as we were talking about before, when it is wetted, it does bind up very  
2640 well. So there are a lot of very good beneficial uses for this material besides just  
2641 placing it in a landfill and leaving it there.

2642

2643 With the way that TEEL has proposed to use it with the liners and leachate  
2644 collection system underneath it, that's an additional protection from it entering  
2645 into groundwater. I won't say zero percent on everything—I mean soils have  
2646 heavy metals in them as well, so you know. It's very difficult to say anything is a  
2647 hundred percent safe and zero percent risk.

2648

2649 Ms. Harris - How about the airborne effects?

2650

2651 Ms. Miller - The airborne effects? That is why in our—I'm looking  
2652 back to Mr. Murphy because his office is the one that did it. We did have a  
2653 requirement for dust controls. We do require that material that is stockpiled in our  
2654 own site have dust controls to minimize the airborne particulates going out. All of  
2655 our facilities, especially our landfills, have to adhere to our dust emissions  
2656 requirements. So dust control is required of it.

2657

2658 Mr. Wright - You can't deny that heavy wind could cause these  
2659 ashes to blow around the community.

2660

2661 Ms. Miller - I cannot deny that, no sir. I don't know one way or the  
2662 other if it would or would not.

2663

2664 Mr. Wright - That's what concerns me more than anything else,  
2665 the stockpiling.

2666

2667 Ms. Harris - Are there more airborne effects other than dust?

2668

2669 Ms. Miller - Are you talking about health effects?

2670

2671 Ms. Harris - Yes.

2672

2673 Ms. Miller - I am not a toxicologist, ma'am; I cannot answer that.  
2674 I'm sorry.

2675

2676 Mr. Blankinship - Are you familiar with the EPA draft regulation? I think  
2677 it was published in the federal register.

2678

2679 Ms. Miller - Yes sir, I am very familiar with that.

2680

2681 Mr. Blankinship - If that were adopted, they would classify these as a  
2682 hazardous waste?  
2683

2684 Ms. Miller - EPA's proposal had two separate proposals in it. It  
2685 was a very unique proposed regulation. One of the proposals was to classify the  
2686 disposal of this material. Those facilities would have to come under the RCRA  
2687 Subtitle C, Hazardous Waste. That was one of the proposals. The material was  
2688 going to be deemed a special hazardous waste. It's a new classification. There is  
2689 no classification right now called a special hazardous waste, but that was one of  
2690 the EPA's proposals.  
2691

2692 The other proposal was to basically manage this material similar to the way we  
2693 do our municipal, that those facilities would have standards written by EPA that  
2694 they would have to adhere to for disposal of the material. They were talking  
2695 about the landfills in and sludge impoundments that would be used to either  
2696 manage or dispose of this material.  
2697

2698 Mr. Blankinship - In the landfill context, similar to what we see here. If  
2699 those EPA regulations were approved as published in the Federal Register,  
2700 would this still be okay?  
2701

2702 Ms. Miller - It depends on if they did—it depends on which  
2703 proposal they would do it under.  
2704

2705 Mr. Blankinship - The landfill. The second one.  
2706

2707 Ms. Miller - The second one? The solid waste, more than likely  
2708 yes. The beneficial uses as we currently do it would be the same. So more than  
2709 likely what they are doing now would be, unless EPA wrote something in the  
2710 requirement that said this could not be done.  
2711

2712 Mr. Blankinship - But the way it's drafted today.  
2713

2714 Ms. Miller - Right. The way it's drafted today it is to allow for the  
2715 beneficial use of this material.  
2716

2717 Mr. Blankinship - I'd hate to see the County approve, have it go  
2718 forward, and then three months later the EPA says by the way, that's a  
2719 hazardous waste and you shouldn't do that.  
2720

2721 Ms. Miller - Yes. Well, they've had over 180,000 comments, so I  
2722 don't think you're going to see anything come out of EPA in three months.  
2723

2724 Mr. Blankinship - Well, six months or a year. If we know that they're  
2725 considering classifying it as a hazardous waste.  
2726

2727 Ms. Miller - Okay. I'm sorry, then I misunderstood your question.  
2728 When you were talking about the landfills, I was assuming you were talking  
2729 about what EPA's proposal to do it under solid waste. Under hazardous waste,  
2730 more than likely this type of beneficial use and most of the beneficial uses that  
2731 are used for CCB would no longer be viable options. If the material was  
2732 classified as special hazardous waste. That was one of our greatest concerns in  
2733 the letter that we did write to EPA, is that they consider the beneficial use market  
2734 because it is a viable market for the use of these types of materials when they  
2735 put this proposal forward. And any hazardous waste classification would more  
2736 than likely have some detrimental affect to that.

2737  
2738 Mr. Blankinship - So one option the EPA is considering is classifying it  
2739 as a hazardous waste. The other option was considering it a solid waste and that  
2740 was divided into—was that lagoon or something?

2741  
2742 Ms. Miller - Both of the options talk about disposal of this material  
2743 in either a landfill or surface impoundment. One of them was looking at it from a  
2744 hazardous waste perspective. That was one proposal. The second one was  
2745 looking at it from a solid waste perspective, similar to the way that they handle  
2746 municipal solid waste at the federal level. It is a very confusing proposal just  
2747 because they're two very, very different ways of handling this material.

2748  
2749 Ms. Harris - Are these two different ways of handling this material  
2750 being considered by your DEQ staff? Did your staff recommend this as  
2751 hazardous waste?

2752  
2753 Ms. Miller - No ma'am, we did not. That proposal that he's talking  
2754 about was from the federal EPA where they actually submitted—they put out on  
2755 the street for comment from interested parties regarding handling of this material  
2756 under their authorities, which is under Subtitle C, which is the hazardous waste  
2757 law, and also under Subtitle D, which is solid waste. So they actually put out two  
2758 separate proposed regulations under the same proposal to manage this material  
2759 two different ways. That was EPA; it was not DEQ.

2760  
2761 Mr. Blankinship - Mr. Daniel's handout included a couple of pages that  
2762 had a summary of CCB management in Virginia.

2763  
2764 Ms. Miller - Yes.

2765  
2766 Mr. Blankinship - Are you familiar with that?

2767  
2768 Ms. Miller - Yes sir.

2769  
2770 Mr. Blankinship - What's the background of that document? What's the  
2771 context?

2772

2773 Ms. Miller - In Virginia we have two regulations that mainly  
2774 manage coal combustion byproducts. One of them is the Virginia Solid Waste  
2775 Management regulation. Mr. Daniel went through the exclusions and exemptions  
2776 that are allowed for different uses beyond just placing it in a landfill. The other is  
2777 the coal combustion byproducts regulation, which allows for beneficial use of the  
2778 material that involved land placement that are not otherwise covered under an  
2779 exemption in the Solid Waste Management regulations.  
2780

2781 The background to that is we've been managing this material in Virginia for a  
2782 couple decades. The Virginia Solid Waste Management regulations were initial  
2783 in 1988. The co-combustion byproducts regulations came out in 1993. So we  
2784 have be doing and managing this material for some time. Well, we haven't  
2785 personally been managing it, but we have been dealing with those who do  
2786 manage it for some time.  
2787

2788 Mr. Blankinship - This is pages 19 through 21.  
2789

2790 Ms. Miller - Right.  
2791

2792 Mr. Blankinship - What were pages 1 through 18? What was this  
2793 excerpted from?  
2794

2795 Ms. Miller - Oh, that's excerpted from a very long letter that we  
2796 wrote to EPA regarding the proposals that we were just talking about. That was  
2797 part of the information that we sent to EPA asking them to look at this. We  
2798 provided comments to EPA and that was part of the comments.  
2799

2800 Mr. Blankinship - DEQ's position was what?  
2801

2802 Ms. Miller - DEQ's position was—there was a two-fold position.  
2803 The first one is it is not a hazardous waste and do not regulate it as a hazardous  
2804 waste. We repeatedly asked the EPA to do so. The second one was that if it  
2805 was going to be regulated, consider Subtitle D, which is similar to the way we do  
2806 municipal solid waste. But to look at more details. Put some more time and  
2807 research into it and look at how the states are doing it. We feel in Virginia we are  
2808 doing a very good job of this. That's where this came from.  
2809

2810 Mr. Blankinship - Thank you. I think that's all I have.  
2811

2812 Ms. Harris - We want to get the rebuttal now from Mr. Axselle.  
2813

2814 Mr. Axselle - I'd like to ask Ms. Miller one question. Step up, if you  
2815 will. You heard testimony, the analysis that Mr. Daniel and Ms. Phillips provided  
2816 about the regulations and items of practical application. Did you hear them say  
2817 anything that you felt was in error?  
2818

2819 Ms. Miller - No. Mr. Daniel's representation of what our  
2820 regulations do allow was correct. And Ms. Phillips' representation of how this  
2821 material is used beneficially within the state of Virginia was also very—I mean I  
2822 didn't see the handout, but what she said seemed correct.

2823

2824 Mr. Axselle - Thank you. Madam Chairman, I will be very, very  
2825 brief, if I may.

2826

2827 The discussions have helped frame the issue properly, that the materials that are  
2828 being requested are being requested to be used in the operation of the landfill.  
2829 There is no request, contrary to the notice and the map, to deposit CCBs and  
2830 other materials in the landfill. What we're seeking is only approval for items that  
2831 DEQ has determined are environmentally safe to be used in the various fashions  
2832 described. That is bolded language in paragraph twenty.

2833

2834 Keep in mind that, as was indicated, this facility has a liner, a leachate collection  
2835 system, and it has groundwater monitoring. Keep in mind that they are required  
2836 to comply with an approved DEQ dust plan. Keep in mind that the position of the  
2837 environmental agency for the Commonwealth of Virginia is that CCBs are not  
2838 hazardous. And they have set forth in place how these items can be used in the  
2839 operation of—in the fashion we described—a landfill.

2840

2841 Comments were made about the actor, DEQ. And references were made in a  
2842 negative way about the actor. DEQ was cited by some of the speakers because  
2843 of some of the problems they've had with TEEL in the past. All of those have  
2844 been resolved. I would ask you to keep in mind that DEQ knows this actor better  
2845 from an environmental standpoint than anyone in this room. DEQ has put in  
2846 place and granted their approvals to be used in this very limited fashion.

2847

2848 So it's a tough issue in that lay people, County staff, and at least this one lawyer  
2849 don't have the environmental expertise that John and Terri have. But it is  
2850 fortunate that the Commonwealth has a very strong Department of  
2851 Environmental Quality. Their job is to look out for the public health, safety, and  
2852 welfare of the citizens and of the natural resources and the economy. They have  
2853 looked at this issue. They know this company. They have put in place the  
2854 appropriate permits and approvals and exemptions that say this is appropriate  
2855 here. They have in place a dust plan that prevents some of the concerns. They  
2856 have in place a groundwater monitoring system. I think the discussions have  
2857 shown that this is something that we believe should be allowed to go forward. I  
2858 started off by saying it was a respectful disagreement with the County. That has,  
2859 in fact, been what it's been. But we think now it is time and hope that this Board  
2860 will approve our language in paragraph twenty and proceed forward.

2861

2862 It's tough for people in your position and I recognize it is. That is not what some  
2863 of the citizens would want and we recognize that. They have been very sincere in  
2864 their thoughts, but your job as decision makers is to do what you think is best for

2865 the Commonwealth and for the citizens. I believe you should take great comfort  
2866 in the fact that DEQ, which has an expertise far beyond anyone else, says that  
2867 this can be done and be environmentally safe.

2868  
2869 Thank you all very much.

2870  
2871 **[After the conclusion of the public hearings, the Board discussed the case**  
2872 **and made its decision. This portion of the transcript is included here for**  
2873 **convenience of reference.]**

2874  
2875 Ms. Harris - An application for a conditional use permit with the  
2876 amendment that we were given. What is the pleasure of the Board?

2877  
2878 Mr. Witte - I'm going to make a motion that we deny this request.  
2879 I'm not totally satisfied that it doesn't affect the health, safety, or welfare of the  
2880 community. The DEQ is saying that under the conditions it's safe, but from the  
2881 testimony, the health issues from studies by Johns Hopkins, Center for Disease  
2882 Control, and Duke University indicate that inhalation and drinking water are an  
2883 issue. I know the DEQ has a long tedious process to change policy where these  
2884 other health institutions seem to release the latest and up-to-date information.  
2885 Under those conditions, I'm going to recommend we deny the request.

2886  
2887 Mr. Wright - I second that.

2888  
2889 Ms. Harris - Moved by Mr. Witte and seconded by Attorney Wright  
2890 that this application for a conditional use permit be denied. Now questions.

2891  
2892 Mr. Bruce - Madam Chairman, I would just like to bring up the fact  
2893 that under paragraph twenty-four of this code, failure to comply with any of the  
2894 foregoing conditions shall be grounds for the Board to void this permit. I  
2895 question whether action by the DEQ about violations would be sufficient to void  
2896 this permit.

2897  
2898 Mr. Wright - We don't have that authority.

2899  
2900 Mr. Bruce - That's the question.

2901  
2902 Mr. Blankinship - We'd have to advertise that.

2903  
2904 Mr. Witte - I have that concern also.

2905  
2906 Mr. Wright - I'd like to add my real concern. I didn't hear any  
2907 pertinent testimony that this ash, which I believe could be blown about and could  
2908 be carried by air around the community and inhaled. I didn't hear any testimony  
2909 that that would not be detrimental to the health of the children in the  
2910 neighborhood.



2911  
2912 Ms. Harris - And I have concerns that the residential communities  
2913 are just too close to this landfill. I do not doubt that there are beneficial uses of  
2914 the byproducts, but I think that we've heard testimony that had it been good  
2915 weather, we probably would have an overflowing house. The residential  
2916 community is just too close to this landfill for us to take these kinds of risks when  
2917 the jury is really out on the human health effects.

2918  
2919 Mr. Witte - I have just a few more things I'd like to mention. First  
2920 off, I make no secret of the fact that I'm pro-business, commerce, progress. But  
2921 in this case, while this business is in Henrico County and is supplying jobs, I just  
2922 can't seem to turn a blind eye to the fact that there are just so many studies  
2923 going on which indicate some type of problem that may or may not actually exist.  
2924 I'm also disappointed with the amount of fines that TEEL has acquired in that  
2925 short period of time since our last hearing, which indicates that I have some  
2926 confidence questions as to whether or not the issues with the dust and the water  
2927 runoff will be handled sufficiently. And like I said, my main concern is that DEQ  
2928 takes care of the environment, but it doesn't answer the health issues. As I said  
2929 before, Johns Hopkins and Duke University and the Center for Disease Control,  
2930 they look more into that and that's my main concern. While I think the  
2931 environment probably is protected well, I'm not sure the health of our citizens is  
2932 going to be protected well with the large stockpiles, the dust, and the runoff.  
2933 Thank you.

2934  
2935 Ms. Harris - All in favor of this conditional use permit being denied  
2936 say aye. All opposed say no. The ayes have it; the motion passes. This  
2937 conditional use permit is denied.

2938  
2939 After an advertised public hearing and on a motion by Mr. Witte seconded by Mr.  
2940 Wright, the Board **denied** application **UP-023-10, The East End Landfill, LLC's**  
2941 request for a conditional use permit pursuant to Section 24-116(c)(3) to deposit  
2942 coal ash and other materials at 1820 Darbytown Road (Parcels 809-707-1585  
2943 and 808-706-6679), zoned B-3, Business District and M-2, General Industrial  
2944 District.

2945  
2946  
2947 Affirmative: Bruce, Harris, Witte, Wright 4  
2948 Negative: 0  
2949 Absent: Nunnally 1

2950  
2951  
2952 Ms. Harris - The minutes from the meeting.

2953  
2954 Mr. Witte - Before everybody gets up to leave, please use  
2955 extreme caution out there. I've been watching the snow for the last 2-1/2, almost

2956 3 hours. We appreciate everybody coming, but we don't want anybody to have a  
2957 problem on the way home. Please use extreme caution on the way.

2958  
2959 Mr. Blankinship - That's the firefighter in him.  
2960

2961 Ms. Harris - We need to approve the minutes and then persons  
2962 who have questions in the audience, if you just wait around we can talk to you.  
2963 Okay? A motion is needed to approve the minutes.

2964  
2965 Mr. Bruce - I so move.  
2966

2967 Mr. Wright - Second.  
2968

2969 Ms. Harris - Moved by Mr. Bruce, seconded by Attorney Wright  
2970 that we approve the minutes. All in favor say aye. All opposed say no. The ayes  
2971 have it; the motion passes. The minutes have been approved.  
2972

2973 On a motion by Mr. Bruce, second by Mr. Wright, the Board **approved as**  
2974 **submitted the Minutes of the November 18, 2010**, Henrico County Board of  
2975 Zoning Appeals meeting.

2976  
2977 Affirmative: Harris, Witte, Bruce, Wright 4  
2978 Negative: 0  
2979 Absent: Nunnally 1  
2980

2981 Ms. Harris - If there is no other business before us, the next  
2982 meeting is in January. Meeting is adjourned.

2983  
2984 There being no further business, the Board adjourned until the January 27, 2011  
2985 meeting at 9 a.m.  
2986  
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2988  
2989  
2990

2991  
2992 Helen E. Harris  
2993 Chairman  
2994  
2995  
2996  
2997  
2998  
2999

3000 Benjamin Blankinship, AICP  
3001 Secretary