BEFORE THE BERKELEY COUNTY SOLID WASTE AUTHORITY

DECISION

IN THE MATTER OF THE

FORMAL REQUEST

BY WMI/ LCS SERVICES FOR AN AMENDMENT TO THE

BERKELEY COUNTY

COMMERCIAL SOLID WASTE FACILITY SITING PLAN

INTRODUCTION

The purpose of this document is to set forth the findings and conclusions of the Berkeley County Solid Waste Authority (hereinafter "Authority"), in regard to the "Formal Request for Siting Plan Changes to Authorize Class A Siting Approval for Conversion From Class B to Class A And Tonnage Increase for the North Mountain Sanitary Landfill Hedgesville, Berkeley County, West Virginia" by Waste Management/ LCS Services (hereinafter "applicant" or "LCS") originally submitted on September 18, 2002, and thereafter supplemented.

The Authority has based its decision on the criteria specified in WV Code §22C-4-24(b) and the Code of State Regulations, Title 54, Series 4, Legislative Rule, titled The Development of Commercial Solid Waste Facility Siting Plans; as follows: The efficient disposal of solid waste (including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin), economic development, transportation infrastructure, property values, groundwater and surface water, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes, and the public health, welfare and convenience.

In making its decision, the Authority reviewed several sources of information, some of which are specifically cited where appropriate, which sources include but are not limited to:

1) Berkeley County Commercial Solid Waste Facility Siting Plan, May 1995.

2) Written submissions from the applicant dated September 18, 2002, March 18, 2003, and June 18, 2003.

3) Site visits to the North Mountain Sanitary Landfill, the most recent of which was conducted by the Board on August 15, 2003, and separate visits to the surrounding area by individual Board members.

4) Verbal submissions at various public meetings made by representatives of the applicant.

5) The institutional files of the Authority and the Authority's past interactions with the applicant and its parent company: Waste Management, Inc.

6) Written and oral comments submitted prior to, during or within a ten day period following the June 15, 2004 public hearing.

FINDINGS AND CONCLUSIONS

The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin.

1) The waste stream of Berkeley, Morgan and Jefferson Counties has grown in recent years. The applicant's basic assertion, stated in its simplest terms, is that a comparison of the local waste stream with the capacity of the North Mountain Sanitary Landfill indicates that the former is larger than the latter, even if out of area waste is not considered.

2) Consequently, claims the applicant, the local waste stream cannot be adequately managed absent an increase in the monthly tonnage permitted and an elimination of the permitted daily tonnage at the North Mountain Sanitary Landfill. This logic would be valid if the landfill served only these three counties, if no other solid waste disposal facilities were available, and if the applicant's data were correct. None of these underlying assumptions, however, are valid. Pennsylvania, Maryland and Virginia all lie within a short distance of the North Mountain Sanitary Landfill. Consequently, any analysis of waste disposal needs and capacity cannot be limited to these three counties or to the North Mountain Sanitary Landfill, but rather must include the available capacities of all landfills and other disposal facilities in the region, including the Mountain View Reclamation Landfill near Upton, Pennsylvania (about 30 miles Northeast of the North Mountain Sanitary Landfill), and the waste streams utilizing those facilities, whether originating in these counties or otherwise.

3) The data supplied by the applicant regarding the local waste stream has been inconsistent. In its September 18, 2002, submission, the applicant (using a nonstandard waste stream calculation method), declared that "the tonnage generated in Berkeley County alone" (is) "approaching 9,000 tons and exceeds 15,000 for the tri-county region." The Authority notes that the applicant's waste stream calculation method was substantially different from the formula typically used by government agencies, including the West Virginia Solid Waste Management Board, and resulted in data that was inconsistent with past representations of the applicant. In its March 18, 2003, and in other contexts, the applicant provided different data, from which the Authority has calculated that the landfilled waste stream of Berkeley, Morgan and Jefferson Counties, according to the applicant's own data, averaged 10,834 tons per month for the year 2002. This same March 18, 2003, submission also noted the applicant's desire to accept waste at the North Mountain Sanitary Landfill from Warren County, Virginia and Washington County, Maryland. (Until recently, WMI haulers from Washington County had used other WMI disposal facilities rather than the Washington County Landfill, which WMI does not own.)

4) To gain a better understanding of the projected landfill needs of the County and region, the Authority sought information from the State's official planning agency on solid waste matters. The West Virginia Solid Waste Management Plan prepared by the West Virginia Solid Waste Management Board in January 2003, concluded the projected landfill tonnage requirements for Berkeley, Morgan and Jefferson Counties for the year 2005 to be 8,653 tons per month. However, correspondence from the WV Solid Waste Management Board, dated September 9, 2004, indicated that these monthly tonnage calculations do not include construction and demolition waste, sewage sludge and other such waste, and were based on the most current information at the time of publication.

5) Upon closure of the old Berkeley County Landfill in 1991, and after the LCS Landfill opened, representatives of Waste Management often stated to members of the Authority and the public its intention and constitutionally protected right to utilize the Mountain View Reclamation Landfill near Upton, PA. as the primary disposal area for West Virginia waste from the region. These officials stated that the capacity of that facility alone would serve a region of Pennsylvania, Maryland, West Virginia and other sources for 30 + years. West Virginia waste collected by Waste Management for the following decade, in volumes deemed suitable strictly by Waste Management, were disposed of in that facility despite available disposal capacity in West Virginia at the very same applicant's facility.

6) Data from the PA-DEP shows the following historical exports to the Mountain View Reclamation Landfill from West Virginia as:

1991: 10,964 tons or 5.3% of total intake
1992: 52,776 tons or 19.1% of total intake
1993: 57,077 tons or 21.2% of total intake
1994: 13,586 tons or 4.5% of total intake
1995: 9,218 tons or 2.4% of total intake
1996: 17,740 tons or 5.2% of total intake
1997: 37,291 tons or 12.2% of total intake
1998: 26,061 tons or 6.9% of total intake
1999: 8,397 tons or 1.96% of total intake
2000: 17,238 tons or 3.9% of total intake
2001: 19, 991 tons or 4.78% of total intake
2002: 20,188 tons or 4.5% of total intake
2003: 23,843.8 tons or 5.36% of total intake

7) Waste Management, which acquired the LCS facility in 1998, recently stated that the utilization of the Mountain View facility for West Virginia waste "is winding down." Though Waste Management representatives were asked to supply an explanation for this, no reasonable explanation has been given, nor did they supply any data or information relating to the multi-state waste-stream or the capacity of existing programs and facilities to handle that waste stream, nor was any documentation offered to substantiate that Mountain View is "winding down" regarding West Virginia waste. Various contacts with the PA-DEP and associated data confirm that the Mountain View Landfill is available for West Virginia waste and that there is no restriction, legal or otherwise, requiring Mountain View to reduce its intake of non-Pennsylvania waste. The PA-DEP data reflects continuous historical intake from other states, including, but not limited to, Maryland, New Jersey, New York, District of Columbia, Connecticut, Florida and Virginia. The PA-DEP data also reflects a permitted capacity of 1,500 ton per day. It thus appears that this "winding down," if it existed at all, was an internal management decision by Waste Management, which it has thus far not chosen to explain.

8) The PA-DEP data shows that from 1991 to 1995, acceptance of all waste at Mountain View, regardless of origin, averaged about 288,310 tons per year; with the West Virginia component representing 10.5%. From 1996 to 2000, acceptance of all waste at Mountain View, regardless of origin, increased to average about 377,967 tons per year; with the West Virginia component dropping to 6.0%. In the year 2001 and 2002, acceptance of all waste at Mountain View, regardless of origin, again increased to average about 432,733 tons per year; with the West Virginia component again dropping to just 4.6%.

9) Therefore, the Authority concludes that the present intake of waste, regardless of origin, at Mountain View has been allowed to increase by about 67% from the general time period when those assurances were made by Waste Management of sufficient air space at Mountain View for West Virginia for the next 30 + years, but West Virginia's proportional component has declined by over 50% in that same period. The Applicant has provided no reasonable explanation for the decline, even after receiving a draft of this decision and having had ample time thereafter to respond.

10) The Authority also notes that according to tonnage reports supplied by the owners of the North Mountain Sanitary Landfill, there was a 2003 monthly average of 6,006.22 tons of Berkeley County waste; 3,055.59 tons of Jefferson County waste; and 708.26 tons of Morgan County waste disposed at their facility in 2003. Those reports also reflect a monthly average of 142.65 tons of out of shed waste disposed at their facility in 2003. As well, data from the PA - DEP also reflects a monthly average of 1,986.98 tons of West Virginia waste disposed at the Mountain View Reclamation Landfill. Therefore, a 2003 monthly average of 11,757 tons of Berkeley, Morgan and Jefferson County waste was calculated by the BCSWA from these tonnage reports and the PA - DEP data.

11) Rather than the Authority becoming entwined in the debate over the tonnage numbers and only for the purposes of this amendment request, the Authority assumed the waste stream of the three counties is between 8,653 tons per month (as provided by the WV Solid Waste Management Board) and the July, 2002 monthly high of 12,189 tons per month (as provided by the applicant) In either event, the combination of the Mountain View Landfill and the LCS Services Landfill provide sufficient available capacity to handle the entire local waste stream.

12) Since the applicant has requested a 15,000 tons per month permit for LCS, it is anticipated that the applicant will desire to market its remaining capacity of 2,811 tons per month to 6,347 tons per month to regional markets; such as Warren County, Va. and Washington County, MD as defined in its March 18, 2003 submission or any of the lower 48 states and Canada as defined in its WV DEP permit.

13) Prior to being acquired by Waste Management, Inc., LCS vehemently resisted the Authority's efforts to open a Class B publicly-owned landfill, for which the Authority had obtained all necessary permits, and indeed had secured funding via the issuance of bonds by the West Virginia Solid Waste Management Board. In legal proceedings, and in the negotiations that resulted in their settlement, LCS consistently maintained that a public landfill was not needed because LCS alone was sufficient to meet local needs. LCS persuaded the Authority to abandon its plans to open a public landfill by assuring the Authority that LCS would reserve sufficient capacity to meet local needs within its existing Class B tonnage limit and would implement recycling or materials recovery programs to reduce the burden on its landfill. The Authority thus abandoned its landfill, keeping its end of the bargain, but LCS has since failed to keep either of its commitments. LCS's decision to thwart the Authority's plans to upgrade and reopen was a business decision that served LCS's purpose, at the time, of avoiding competition from other local landfills. Now, that same lack of competition is being used by LCS to argue that the Class A conversion is needed. However, it is apparent to the Authority that the "need" for the Class A conversion is largely a result of LCS's and Waste Management's decisions not to keep their earlier commitments to 1) serve local needs via the existing capacity of the LCS and Mountain View Reclamation Landfills, and 2) to implement appropriate recycling and materials recovery programs.

14) The applicant stated in an October, 2002 public meeting that the failure of the Authority to immediately grant conversion to Class A status would result in an immediate disruption of service at the landfill caused by premature closures of the landfill when it reached its monthly tonnage cap, with a corresponding inability of its local affiliated hauler (Waste Management of West Virginia) and others to dispose of waste. In fact, there was no immediate disruption of service, but disruptions did occur in 2004 during a period in which Waste Management of West Virginia and other regional Waste Management owned haulers refused to use disposal facilities not owned by Waste Management, Inc., thus imposing a disproportionate burden on the LCS Landfill and other Waste Management owned facilities. Following regulatory and public pressure on Waste Management of West Virginia, it took several actions including but not limited to beginning to use the Jefferson County Transfer Station to relay solid waste to the Mountain View Reclamation Landfill near Upton Pa. and the Atlantic Waste Disposal Landfill near Waverly Va., and one of its regional affiliates began using the Washington County Landfill, thus alleviating the pressure. No longer restricted to WMI owned facilities, the disruptions in hauling services "caused" by early closure of the LCS Landfill have diminished and are expected to cease in the near future. It thus appears that the parent company of the applicant, Waste Management, has the ability to dispose of its hauling subsidiaries' waste at various locations, and can choose to do so in a manner that does not overburden the LCS Landfill.

15) The applicant raises the issue that the Class A conversion request is based on a need to serve the three counties of West Virginia, one Maryland county and one Virginia county. However, the Authority notes that another method to reduce the need for landfill disposal is the operation of recycling programs or the establishment of recycling and composting facilities. Here the Authority notes four examples whereby the applicant or its parent company has disregarded or opposed such recycling efforts.

a) Prior to its being acquired by WMI, the applicant conducted a public relations campaign assuring the public that ultimately the landfill facility would include a resource recovery facility or recycling facility, or an industry based on recycling. These statements were documented in its original State permitting submissions for the landfill. For unknown reasons, WMI has chosen not to implement any of these alternatives.

b) In 1994, Waste Management presented to the Authority, drawings and documents of a proposed commercial solid waste recycling facility to be built at its Rt. 9 Martinsburg location. Again, for unknown reasons, this proposed facility never materialized.

c) During the course of the review of this request, developers proposing an alternative to landfill disposal expressed frustration to the Authority that the applicant's parent company would not conduct meaningful discussions in regard to providing hauling services to the potential establishment of a "waste to ethanol" plant in Berkeley County.

d) The applicant participated in gaining an exemption from the yard waste landfill ban found in WV Code §20-11-8(b). This action ultimately resulted in the closure of a yard waste recycling collection program operated by a Berkeley County municipality and required the landfill disposal of material already being successfully managed by a recycling alternative.

16) In addition to requesting a conversion to Class A status, the applicant also calls for the elimination of the 500 tons per day cap. This per day cap is unique in West Virginia (though daily caps *are* used in other states, including Pennsylvania). But LCS is in a unique location. As hereafter discussed in detail, LCS is immediately adjacent to an established residential neighborhood and is near a historic community with significant cultural heritage and is dependent upon an already-failing system of roads that are not well-suited for the traffic generated by the facility; including traffic which passes by numerous schools and into multiple school zones. The 500 tons per day cap thus has unmeasurable value to the community by regulating the daily flow of traffic upon the local transportation network and into the historic and residential communities near the facility and by minimizing the adverse impact of such traffic on the area. As a result, the Authority would not support the elimination of a per day cap, even should the applicant's request for Class A status be otherwise approved.

17) The Authority notes that Waste Management promotes the conversion to Class A status as providing assurance of capacity for local waste. This assurance may have value to local municipalities and other non-Waste Management haulers who may find it more difficult to utilize another landfill than would Waste Management. However, as noted in paragraph 14, WMI is capable of providing assurance of capacity for local waste via other non LCS Landfill facilities as well.

18) The Authority recognized in its 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), that a large portion of the fee charged to citizens by waste haulers is to cover transportation cost, therefore a solid waste facility should be located as near to the solid waste generators as possible. The process of hauling the entire county's waste stream to a point far removed from the collection point will only increase the cost of collection and discourage subscription with the waste hauler, thus increasing illegal dumping. Nonetheless, the Authority also concluded in the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) that costs was not a factor that would override the other siting criteria by stating that the "proper siting of a proposed facility, or proper siting of a proposed expansion or conversion of an existing facility, should never be based solely on transportation cost".

Economic Development

1) Historically, the County and the region have had a farming based economy since the arrival of the first permanent settlers in the first half of the 1700's. Agriculture is still a major industry in the County. However, prime farmland is rapidly giving away to non agriculture uses.

2) Since 1990, Berkeley County has experienced a steady growth in residential, commercial, tourism and industrial development that has contributed to broadening the diversity of the economic base and improving the array of work or career opportunities for the resident labor force. Unemployment in the County is usually lower than the State average. The favorable employment conditions in the County and the region reflect a more diversified economic structure than is typical of the rest of the State. This economic development occurred with little or no regard to the existence of the applicant's facility because much of the County and region's waste stream during this thirteen year period was voluntarily being forwarded by Waste Management to the Mountain View Landfill in Pennsylvania even though sufficient air space existed at the North Mountain Sanitary Landfill in West Virginia.

3) Nonetheless, the economic development goals for the County and the region are defined by the Region 9 Planning and Development Council in the **Overall Economic Development and Regional Development Program (OEDRD, 1998)**. This report lists no goal or objective that supports landfill disposal as presently or potentially playing a positive factor in the region's economic development. In fact, the stated goals and objectives for economic development are inconsistent with the activities associated with a Class A landfill. For example, Region 9 notes that "economic development activities should not negatively impact the desired social and environmental qualities of the locality." The Authority concludes that a conversion to a Class A landfill at the proposed location will curtail the expansion and development of more desirable industry and significantly adversely impact the social and environmental qualities of the locality; which are inseparable from the desired economic development activities of the local area; particularly travel, institutional, residential development and other tourism related activities.

4) The Authority recognizes that business, industry and County residents need adequate services to dispose of solid waste in order to function successfully. While the OEDRD program documents certain failing infrastructure and details the need for improved sewer, water and road infrastructure it never once mentions the need for access to higher-capacity solid waste landfills. This is consistent with information from other sources. For example, according to the West Virginia Governor's Office of Community and Industrial Development, solid waste landfills have **not** been an important factor in attracting businesses to the State (The Socioeconomic Impacts of Landfills). The Authority concludes that there is no substantial indication that Berkeley County deviates from this pattern. Thus, although LCS maintains that increased capacity at LCS would promote economic development, the Authority finds otherwise.

5) The OEDRD Program refers to the tourist industry as an important ingredient in the overall mix of the County's economy. Outsiders are attracted by the County's beauty, history and the recreational activities found in the area. According to the OEDRD, the full potential of the tourist trade in the County and the region is far from realized - even though it is reported the County already enjoys a positive economic impact of $171 million from the tourism industry. Berkeley County has only recently begun to reap the benefits of thousands of travelers passing through the County each day via Interstate 81. The recent expansion of the motel - hotel industry has begun to tap the unrealized value of this business. It is generally understood that one in seven Americans work in the travel industry, which suggests that about 3,000 jobs in Berkeley County are directly related to travel. The logical progression in the encouragement of tourism is promotion of the "linger longer" concept and the active development of historic, cultural and natural attractions. The Authority concludes that a conversion to a Class A landfill at the proposed location is incompatible with the growing tourist industry and would likely interfere with the expansion or development of this more desirable industry.

6) The operation of commercial solid waste landfills provides very few job opportunities or job potential in Berkeley County. Surveys conducted by the Authority show that the operation of both private (in house) and/or public non-commercial solid waste recycling facilities almost certainly provide more job opportunities than a typical solid waste landfill. Some of the private industries in the County have established in-house recycling processing facilities to serve large volumes of recyclables created by the facility and thereby create jobs in the management of the material. Landfill disposal is known to be extremely capitol intensive, creating few jobs per dollar spent and competes with local reduction/reuse/recycling efforts for recycling portions of the waste stream, thus undermining the statutorily defined hierarchy for solid waste management in West Virginia. This observation does not deviate from the generally understood standard that the recycling of 10,000 tons of material supports 36 jobs while landfill disposal of that same amount creates about 6 jobs. Even the applicant noted in its June 18 submission that the facility has only nine full time employees and the conversion to Class A will only increase full time employment by about three.

7) Although the applicant has suggested the landfill can be used as a positive factor in attracting business to the County, no evidence was produced to support that claim. For example, Fantus Corporation, a nationally known consulting firm specializing in industrial location decisions, says that landfills are a minor factor for business location decisions, falling well below market considerations and cost factors. According to the West Virginia Governor's Office of Community and Industrial Development, landfills have not been an important factor in attracting business to the state because businesses that have major solid waste disposal needs have received permits to operate their own landfills.

Transportation Infrastructure

1) In regard to the impact the conversion to a Class A landfill would have on the local transportation network, the Authority relied, in part, upon its personal observations and experiences of the local transportation network. The Authority found West Virginia Route 9 to be generally inadequate and incompatible with traffic associated with a Class A landfill. This conclusion was based upon Authority's personal observations and knowledge of:

   a) multiple vehicular wrecks and near misses, including landfill related traffic; and,

   b) extensive daily usage of the road by hundreds of school buses and teenage drivers serving five public schools; and,

   c) the general condition of the Route 9 traffic as overcrowded, congested, containing strip development, excess ponding of storm water affecting safety, difficulty entering traffic - even at traffic lights, and a general nuisance; and,

   d) the location of the proposed new entrance to LCS which would discharge on Route 9 in a sharp curve with an up hill grade.

2) In addition to personal observations, the Authority sought existing West Virginia Department of Transportation information regarding the roads in question. The primary public road that would be utilized by the vehicles accessing the landfill would be West Virginia Route 9; regardless of whether the traffic approaches from the East or the West.

3) In May 1995, the West Virginia Department of Transportation completed a "Feasibility/ Location Study" of West Virginia Route 9 from Martinsburg to Berkeley Springs. This feasibility study addresses the exact section of Route 9 that would be utilized by the vehicles traveling to the landfill. Generally, the feasibility study concluded the steady growth in the Eastern Panhandle has created a demand for a separate, safer, new East to West high volume four lane facility with a higher traffic carrying capacity than the present two lane, windy highway now in place.

4) The study defines the segment of West Virginia Route 9 in question as mostly a two lane rural highway. The study clearly notes the original route was constructed in the 1920's and was designed for low volumes of traffic traveling less than 40 mph. The study also notes the route has had very little improvement over the years. During the site visitation, the Authority could find road improvements on Rt. 9 only in a very short stretch immediately at the Interstate on Exit 16. Otherwise, the Authority found no other recent significant roadway improvements. The study specifically notes the segment from Hedgesville to Martinsburg has a rolling profile and few passing opportunities are provided and notes that the entire segment of existing Route 9 has basically no roadside recovery area for errant vehicles.

5) The feasibility study educates the reader by defining different segments of a road as having a level of service between "A" and "F"; with "A" representing vehicles traveling unimpeded and "F" representing a forced or breakdown in flow.

6) According to American Association of State Highway and Transportation Officials (AASHTO) A Policy on Geometric Design of Highways and Streets the level of service of "C" is an acceptable level for rural and small town roads; however the feasibility study notes the section of West Virginia Route 9 from I-81 to Hedgesville in the year 1990 was already operating at the poor level of service of an "E". Since, the applicant's facility did not open until 1991, it is very likely this poor designation did not yet consider any landfill related traffic; much less consider the traffic levels associated with the proposed Class A conversion or the increased residential, tourism and school related vehicular traffic added to this segment since 1990. The feasibility study further notes that the projected level of service for the segment of West Virginia Route 9 from I-81 to Hedgesville in the year 2010 is the lowest rating of an "F".

7) As noted, the Department of Transportation documents the 1990 level of service of "E" between I-81 and Hedgesville. It defines the level of service "E" as extremely unstable because of virtually no usable gaps in the traffic stream. Any disruption to the traffic stream, such as a vehicle entering from a ramp or a vehicle changing lanes causes following vehicles to give way to admit the vehicle. At capacity, the traffic stream has no ability to dissipate even the most minor disruptions. Any incident can be expected to produce a serious breakdown with extensive queuing. Maneuverability within the traffic stream is extremely limited, and the level of physical and psychological comfort afforded to the driver is extremely poor.

8) Additionally, the feasibility study notes that in the section of WV Route 9 from Hedgesville through Martinsburg, multi-vehicle accidents dominate. The feasibility study states that this can be the result of a greatly increased volume of traffic and numerous intersections with other heavily traveled routes. The feasibility study shows the accident rate for each section in the study segment of Route 9 range from 44 to 613 accidents per hundred million vehicle miles. The study notes the accident rate on all but one section of this segment of Route 9 are above the statewide average of 255 accidents per hundred million vehicle miles.

9) The Authority concludes the present transportation infrastructure serving the applicant's location unquestionably is inconsistent and incompatible with large volumes of landfill-related truck traffic and that the additional truck traffic associated with a Class A landfill will only further degrade an already failing transportation infrastructure and place the public at increased risk of harm.

10) The Authority recognizes the benefits to the citizens who live along Allensville Road and West Virginia State Route 901 of the Applicant's proposal to construct a second entrance road on West Virginia State Route 9 just west of the Town of Hedgesville. The Applicant has since indicated, however, that no such entrance road will be built unless the Applicant is granted Class A status. This proposed private access road and the subsequent closure of the Allensville Road entrance was first offered by the applicant to the community back in the early 1990's as a means to partially address community concerns during its original permitting process. Based upon information and belief, the original proposal offered the permanent closure of the Allensville Road entrance.

Prior to the public hearing, the new entrance proposal had less value than the original community offering because it did not call for the permanent closure of the Allensville Road entrance. Rather, it allowed for the option of using the Allensville Road entrance, at the higher tonnage level, at the applicant's discretion. It should be noted that the Authority agrees with the applicant that the present access route on Rt. 901 and Allensville Road is wholly inadequate. The Authority further notes the receipt of correspondence (June 24, 2004) received after the public hearing stating the applicant withdraws the use of Allensville Road as an entrance if the request to amend the Siting Plan to allow for a Class A landfill is granted.

The Authority also concludes that the placement of higher volumes of truck traffic on an already failing WV State Route 9 is equally inadequate as Rt. 901 and Allensville Road. This inadequate situation is further negatively compounded when one considers that the proposed intersection of the second access road onto State Route #9 is in the arc of a sharp curve; which would negatively affect the safety of the present Rt. 9 traffic. In addition, at the intersection area, there exists an uphill gradient on Rt. 9 that would make it difficult, if not impossible, for the trucks utilizing the facility to exit the facility without affecting the safety and maneuverability of present Rt. 9 traffic. In its comments to the Authority, the Applicant has indicated that these are not legitimate concerns because they lie within the jurisdiction of the Department of Transportation, but the Authority is mandated by statute to consider transportation infrastructure in its decision.

11) One cannot conclude the discussion on the transportation criterion without considering the type of traffic on West Virginia Route 9. Based upon observations, the traffic on Rt. 9 is typically passenger cars, SUV's, pickups and school buses. All of these types of vehicles are generally incompatible with large volumes of landfill-related truck traffic. Berkeley County over a period of many years has and continues to be the fastest growing school district in the State based upon student population. In 1992, the County had the 7th largest student population in the State and has grown to become the second largest school population in the State. It is projected that in the next seven years, Berkeley County, which now represents 65% of the growth of student population in West Virginia, will grow by an additional 3,500 students and is expected to then contain the largest student population of any County in West Virginia.

12) This approximate 3 mile segment of Rt. 9 in question which will directly bear the brunt of the increase in landfill related truck traffic also contains the traffic associated with five (5) public schools that represent a vital component of the County's overall school system. Based upon information and belief, the segment of WV 9 that contains these 5 schools is the heaviest density of schools in the entire County, with a combined population of 3,578 students. It is generally understood that this segment of 5 schools represents the heaviest density of students in the entire State. For example, just one of those schools, Hedgesville High School has a student population of 1,324 students which holds the largest school population in the County and the sixth largest in West Virginia. This school, like many of the others in this segment on Route 9, is currently under going million dollar building improvements to accommodate the expected larger student populations.

13) The Authority also agrees with the findings documented in correspondence from W. Randy Smith, Sheriff of Berkeley County; whereby he states "it is my belief that there is an incompatibility issue between the proposed increase of large volumes of commercial waste trucks and the usage of an already overburdened road." The Sheriff further adds "as it stands now, the road is a general safety issue and the proposed entrance location onto Route 9 for the landfill is in a sharp curve and is likely to create a new public safety, welfare and convenience problem for the present travelers on Rt. 9."

Property Values

1) The Authority concludes the applicant has proposed a conversion to a Class A landfill near two existing urban areas in the County; the Town of Hedgesville and the urban area of North Mountain. These urban areas are defined as such in the Berkeley County Comprehensive Development Plan (1990), Berkeley County Commercial Solid Waste Facility Siting Plan (1995), Berkeley County Commercial Solid Waste Facility Siting Plan (2004 - as submitted to the WV-SWMB), and the Berkeley County Comprehensive Litter and Solid Waste Control Plan (2003). Both urban areas are presently being adversely impacted by traffic issues, odors, litter and mud from the applicant's facility.

2) The applicant's property directly borders a large section of urban area called "North Mountain". This community, with its homes and school drawn close to Route 901 and Allensville Road, has also borne the brunt of the traffic, odors, litter and mud from the existing landfill. This community is primarily residential with the exception of the landfill. During the course of the site tour, the Authority observed that there is a stagnation of new homes and possibly even deterioration of the Allensville Road community, which is in contrast to the vigorous development of residential housing typical throughout most of Berkeley County.

3) The Authority notes that near the landfill facility is the Town of Hedgesville. This historic and residential municipality has a growing residential and tourism based economy. The town's west entrance is so close to the proposed second entrance of the landfill that it will be visible from one of the town's entrance signs.

4) In addition, the Authority concludes there are two smaller residential areas of concern; the areas of Potato Hill Street and Kate's Hollow Road. There are nine (9) newer homes in a wooded residential development on Potato Hill Street in addition to the older and historic structures of the street. This residential area is directly accessed from the Town of Hedgesville and, like the urban area of North Mountain, generally borders the landfill property. Unlike North Mountain and the Town of Hedgesville, this residential area does not have landfill related traffic, litter and mud issues but is adversely impacted by landfill odors. During an investigation of odor complaints in the vicinity of the landfill in 2002, WV-DEP inspectors noted landfill related odors on Potato Hill Street.

5) Finally, there are 15 homes located on Kate's Hollow Road and the attached Jokado Lane. This small residential area is not presently impacted by the applicant's landfill in any manner known by the Authority. However, the conversion to Class A status will bring to this area the negative sights and sounds associated with the landfill's truck traffic because the proposed second entrance road will be directly adjacent to this area.

6) None of the above residential and urban areas were addressed by any of the submissions made by the applicant. As a result, the Authority concludes that the applicant has failed to sufficiently address the impact on property values of these nearby urban and residential areas which will be significantly and adversely impacted by increased traffic in certain areas, increased litter and mud in other areas, and the potential for increased odors from the landfill.

7) The 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) state that the Town of Hedgesville (and the City of Martinsburg) contained areas of historic value and therefore the siting of a landfill within or near these municipalities is prohibited. The 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) also prohibited the siting of a landfill or any associated activity within or near a "major area of urbanization." The Authority concludes that the proposed location is both near the Town of Hedgesville and one major area of urbanization. To reclassify the facility to Class A would only exacerbate the problems already impacting the residents of these areas.

Groundwaters and Surface waters

1) The Authority has concluded that water is one of the most important natural resources to consider in planning for the future development of Berkeley County.

2) The applicant has installed a composite liner system consisting of compacted clay and a flexible synthetic material as required by the US-EPA at all landfills in West Virginia. The landfill also has a second backup synthetic liner in conformity with the US-EPA's regulations requiring double-liners for disposal facilities receiving hazardous waste. The US EPA has concluded that "manmade impermeable materials that might be used for liners or covers are subject to eventual deterioration, and although this might not occur for 10, 20 or more years, it eventually occurs and, when it does, leachate will migrate out of the facility." 46 FR 11128, Federal Register (1981). In the Federal Register, July 26, 1982, (page 32284) the US-EPA said a "liner is a barrier technology that prevents or greatly restricts migration of liquids into the ground. No liner, however, can keep all liquids out of the ground for all time. Eventually liners will either degrade, tear, or crack, and will allow liquids to migrate out of the unit."

3) In the August 30, 1988 Federal Register (page 33345) the US-EPA further states "first, even the best liner and leachate collection systems will ultimately fail due to natural deterioration, and recent improvements in municipal solid waste landfill containment technologies suggest releases may be delayed by decades to come." A 1990 study, Field Behavior of Double Liner System, also concludes that "the permeation of a compacted clay liner is inevitable, (because) no compacted clay or any other type of liner material is either totally impervious or immune to chemical interactions of various types". This same study also concluded that new state of the art flexible membrane liners can be expected to leak at a rate of about 20 gallons per acre per day, even if they are installed with the very best and most expensive quality control procedures.

4) Concerned that these sources indicate that state of the art landfill liners like those used at the applicant's facility eventually will fail to protect the environment, the Authority looked to the site's geological and hydrological conditions to better determine if the proposed conversion to a Class A facility placed the groundwater at greater risk.

5) The Authority also looked to Characterization Of The Geology and Hydrology In The Vicinity Of The LCS Services, Inc., North Mountain Waste Management Facility in Berkeley County, West Virginia, And The Potential Impacts Of This Facility On The Environment And Water Supplies (March, 1991). This study was conducted by the North Mountain Site Environmental Review Team. This team consisted of eight team members and two advisors. The team included two geologists from the WV Geological Survey; two geologists from the WV-DNR; two professors of geology (WVU and University of Toledo); a Director of the Office of Environmental Health (within the WV Department of Health and Human Resources) and a county sanitarian. The study noted, amongst many things, that "the site of the LCS Services, Inc., waste management facility is underlain by a sequence of shales, siltstones, sandstones, and carbonate rocks which constitute a rather complex system of heterogeneous, anisotropic aquifers and thin aquitards. The shales on site are highly fractured, with some large open fractures, which readily transmit water and which could provided routes of rapid movement for landfill leachate that escapes into the ground."

The study continues by stating that "the groundwater shed which includes the leachate storage pond could provide ten (10) million gallons per day" ... "this simply illustrates the value of this acquifer, one of West Virginia's most prolific. "

6) The study made four recommendations and seven additional suggestions, amongst other things, for reducing the risk of groundwater and surface water contamination. The study documented mapped thrust faults and various sandstone and limestone formations. The Authority will not offer a discussion of the entire study. However, in regard to the request for Class A status, the Authority will note that the risks of groundwater and surface water pollution in two large study areas could be completely eliminated by locating the leachate storage pond on the west side of North Mountain and by keeping the landfill itself off the mapped thrust faults. For this moment in time, the applicant has offered its intention to keep the landfill's footprint some undefined distance from the thrust faults and certain sandstone formations, but has not offered to move the leachate storage pond.

The Authority concludes the conversion of the landfill to Class A status will either increase the production of leachate to be managed at the site, or result in increased concentrations of toxic or hazardous substances in the leachate, or both. This leachate management already occurs at a location that presents a risk of groundwater aquifer contamination. Increasing the production or concentration of leachate will only increase this risk. In the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), the Authority determined that the placement of landfills on or near aquifers or other areas of hydrological sensitivity is prohibited.

7) The June 18 submission, indicated as part of the reclassification request that the proposed access road "may be within 300 feet of a wetland". In the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), the Authority prohibited the siting of any solid waste facility or any activity associated with the facility, without exception, within 300 feet of any wetland.

8) In addition, the Authority concludes that even if these zones were not previously designated as prohibited, the applicant failed to affirmatively and clearly demonstrate that the requested re-designation is appropriate and proper, that the increased leachate production could be managed, and the construction of the access road could be conducted appropriately without harm to the environment.

Geological and Hydrological Conditions

1) In the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), the Authority stated that the geology and hydrology surrounding a facility must be well suited without a doubt. The Authority further concludes that the geological and hydrological conditions of Berkeley County are complex and as a result landfill siting is difficult from this perspective alone. A review of the applicant's landfill site geology illustrates this point very well.

2) The Authority found amongst its historical files various data in regard to the landfill location. This data offers stark contrast to the geological and hydrological suitability language of the site offered by the applicant.

3) The first letter, by the West Virginia Geological and Economic Survey, dated August 8, 1986 which, in part, states, "that a worse site could not have been picked".

4) A letter from a Professor of Geology of the University of Toledo, dated March 27, 1990, states, in part: "In my opinion, the landfill will contaminate the groundwater of the Great Valley east of North Mountain. The extent of eventual contamination is difficult to ascertain without additional detailed hydrogeological studies. However, the work of my students suggests that pollutants may reach as far east as the drainage of Harlan Run, some 1 1/2 miles east of Little North Mountain. I have no idea what substances will be disposed of in this landfill, so I cannot comment on the potential hazards involved. I am most sympathetic to the plight of homeowners with domestic wells in this area. Moreover, it seems to me that a major obstacle is being placed in the path of future economic development of this area east of North Mountain, once it becomes common knowledge that the ground water supply will be polluted. As a professional geologist and university professor, who has dealt with the intricacies of surface and subsurface geology of this region for many, many years, I strongly oppose this landfill. It is located with no regard to the local geology. It will most certainly present monumental problems for the citizens of Berkeley County in the near future."

5) Additionally, a second state agency expressed concern about the site geology and hydrology. The WV-DNR, on October 30, 1990, stated, in part, "the pond being constructed in the location of a spring which indicates the close proximity of the groundwater table to the surface in this location. The pond site overlies strata (shale) which is heavily cleaved and fractured and dips strongly to the east (approximately 45 degrees) toward a limestone formation which has moderately developed karst features. The potential for rapid movement of contaminants along faults, joints, fractures and associated solution cavities in the limestone presents an unacceptable environmental risk/health hazard to private groundwater supplies nearby, and could potentially pollute a large area of the Great Valley near North Mountain."

6) Another letter from the WV Geological and Economic Survey, dated June 26, 1996, states, in part: "if the leachate escaped from the landfill holding ponds, it would travel east and possibly contaminate groundwater and supplies. In addition to the fault zone acting as a conduit for leaking leachate, there are also many bedding planes, fractures and cleavage planes inclined to the east that will also transmit any fluid. This, in our opinion, was the major problem with the location of the LCS Landfill. However, the landfill was a done deal before we were asked to comment on the location, and it was approved by DNR with very little expertise."

7) Also, another 1996 memorandum, documented during an event whereby the sampling of Kate's Run below the LCS Landfill was underway to determine if leachate was entering Kate's Run from a leak in LCS's composite liner at the active fill site. This memorandum; authored by WV - DEP Environmental Enforcement representative David Farley; who states " the discoloration may be a result of sediment being washed off the LCS site during storm water events. Typically sediment is not off white but this area is karst topography (limestone), which is primarily Calcium, and the sediment tends to be off white in color".

8) In the March 18, 2003 submission, the applicant stated "after extensive study by the West Virginia Department of Environmental Protection of the geological and hydrological conditions, the disposal area of the permit was approved". The Authority notes that a copy of this "extensive study" was requested by the Authority but it was never provided by the applicant. Instead the applicant referred to an "evaluation performed by the technical staff of the WV-DEP". However, this evaluation was likewise not provided. The Authority concludes that the Applicant is either misinformed or disingenuous, because the landfill was accepting solid waste in 1991, well before the West Virginia Department of Environmental Protection was created. If any extensive study was conducted it was conducted by the WV-DNR; the same agency which expressed grave concerns about the site geology.

9) The 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) clearly state the Authority's desire to evaluate the potential impact, past or present, of surface blasting in areas located near faults, fractures or other areas of geological instability. The Authority was made aware that the applicant's leachate pond is located in a previously surface mined area that was also blasted. However, the applicant failed to address blasting and its impact upon the conversion to Class A status. The applicant also failed to address the prohibition in the 1995 Siting Plan of siting of a landfill, or any activity associated with the facility within surface mined areas. Therefore, the Authority concludes that the applicant failed to affirmatively and clearly demonstrate that the requested re-designation is appropriate and proper and that the solid waste facility could be appropriately operated in the public interest.

10) In the June 18 submission, the applicant notes the bedrock formations "in and around the facility" included six (6) formations that were designated as prohibited zones for landfill development in the 1995 Siting Plan. The Authority concludes that these bedrock formations were designated in 1995 as prohibited zones with sound reason and upon sound advice from the West Virginia Geological and Economic Survey and has maintained their prohibition in the 2004 Siting Plan (as submitted to the WV-SWMB).

11) A representative of the Authority with experience in hyrogeology contacted the West Virginia Geological and Economic Survey and determined that there have been no post - 1995 study or information by that agency to offer new or contrasting information in regard to the geology of Berkeley County.

12) The Authority notes that the study titled the Characterization Of The Geology and Hydrology In The Vicinity Of The LCS Services, Inc., North Mountain Waste Management Facility in Berkeley County, West Virginia, And The Potential Impacts Of This Facility On The Environment And Water Supplies (March, 1991), also documented mapped thrust faults and various sandstone and limestone formations which exhibit high permeability. The 1995 Siting Plan clearly states that within the County are major faults and fractures that exhibit high permeability and expressly prohibited the siting of a landfill within or near an area of high permeability, such as a fault (regardless of displacement age). The 2004 Siting Plan also maintained this prohibition (as submitted to the WV-SWMB). The 1995 Siting Plan also prohibits the siting of a landfill or activity associated with the landfill within 200 feet of known faults. These issues were basically unaddressed by the applicant. Therefore, the Authority concludes that the applicant failed to affirmatively and clearly demonstrate that the requested re-designation is appropriate and proper and that the solid waste facility could be appropriately operated in the public interest.

Aesthetic and Environmental Quality

1) In consideration of aesthetic and environmental quality, the Authority considered the overall aesthetic and environmental quality of the potential impacts of the higher volumes associated with the conversion to Class A status. While the Authority recognizes that the site appeared in order during the course of the pre-planned site tour, the Authority is also well aware of the many community concerns of litter, noise and the off site landfill related odors documented by the WV-DEP, the Authority and citizens.

2) In 2001, during the course of a public hearing conducted in the community by the WV-DEP in consideration of the applicant's five year permit renewal, the Authority and members of the public complained vocally about many, many months of landfill related odors within the neighboring residential urban area of North Mountain and other residential areas near the facility. At that point, the applicant's public position on the issue was simply that the odors had not been proven to originate at the landfill. However, complaints from the Authority and citizens continued until the WV-DEP conducted an investigation that included off-hours monitoring of the air quality at several points around the facility. That investigation concluded that there were off site odors emanating from the landfill. At that time the applicant "volunteered" to install passive landfill gas equipment to address the odor problem. The Authority finds it disingenuous of the applicant to ignore the problem for about 18 months and then dismiss the odor problem by remarking that if just one person had advised them of the odors the applicant would have installed the flares long ago.

3) However, during recent off hour visits to the area, representatives of the Authority have still noted the presence of an off-site odor. Community complaints to the Authority of the landfill gas odors continue to be made. These odors are still primarily within or near the residential urban areas of North Mountain, Hedgesville and other points along Allensville Road including Allensville Cemetery. The Authority finds that the landfill continues to cause significant off-site noxious odors. Because this odor is directly related to the volume of solid waste being processed at the facility, the Authority concludes that increasing the landfill intake when the facility is already failing to manage its present intake is not appropriate or in the best interest of the public.

The Authority further notes the receipt of correspondence (June 24, 2004) received after the public hearing on the draft decision whereby the applicant states its intention to install an active landfill gas collection system to address the growing odor complaints. The Authority accepts this action as tacit admission the applicant finally accepts responsibility for the odors and can only hope that the design and operation of the active landfill gas collection system is sufficient to address the community concerns.

4) The Authority also notes public complaints and concerns about a disproportionate amount of roadside litter from the vehicles using the facility; most of which are the landfill's parent company's vehicles. This was also a documented concern in the Berkeley County Comprehensive Litter and Solid Waste Control Plan. During the course of the development of the Comprehensive Plan, the Authority conducted two public hearings and two associated public comment periods during which neither the applicant nor its parent company challenged the existence of excess roadside litter. The Authority concludes that roadside litter is volume - related and that the conversion to Class A status would result in a fundamentally unfair community burden to the residents of the Town of Hedgesville.

5) The Authority also notes the issue of mud on area roadways. Again, many of the past public complaints about the facility are about excess amounts of mud or mud/litter mix being discharged from landfill related vehicles onto yards, mailboxes, front porches and the area roads in general. These complaints included Allensville Road, Rt. 901 and Rt. 9 in Hedgesville. There were some instances where community complaints resulted in the local office of the WV-DOH requesting the applicant to utilize large volumes of gravel on the landfill premises to reduce the mud off the premises. To the applicant's credit it publicly admitted, after photographs of the mud and litter were made public, that the mud was at an intolerable level and replaced its "passive" tire wash with a pressurized wheel and undercarriage wash. However, even after the installation of the pressurized wheel and undercarriage wash, mud continues to be discharged from vehicles into the Town of Hedgesville. Therefore, the Authority again concludes that the mud conditions are volume - related and will clearly rise with increased vehicle traffic and is fundamentally unfair to the residents of the Hedgesville area.

Historic and Cultural Resources

1) As documented in the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), Berkeley County contains a significant number (260) of properties listed in the National Register of Historic Places. Since 1995, this number of qualifying properties has increased. Based on the location of historic sites in the County, 17 Historic Districts were established by the County. Generally speaking, those districts were designated where historic buildings, properties and structures occur in greater concentration than other County areas or where there is a clear and definite historic relationship among groupings of structures or related features within a given district. Among the historic districts in the County, there are three historic villages (Bunker Hill, Darkesville, Hedgesville).

2) The Town of Hedgesville with 60 properties listed in the National Register of Historic Places represents the largest collection of historic properties in Berkeley County; whereby reportedly about 2/3rds of the town's structures have been recognized in the National Register of Historic Places. The Authority notes here that most of the commercial vehicle traffic associated with the landfill traveling to the site will approach from the east and will travel directly through this historic area and further notes that the proposed new private entrance area is about only .2 of a mile from the town's entrance sign.

3) The Authority agrees with the findings and conclusions as documented in the 1995 Berkeley County Commercial Solid Waste Facility Siting Plan and in the 1990 Berkeley County Comprehensive Development Plan, as approved by the Berkeley County Commission, that Berkeley County's rich cultural and historic heritage is worth preserving and concludes that large volumes of landfill - related commercial truck traffic is unquestionably incompatible with the historic value of the Town of Hedgesville and the applicant failed to sufficiently address the significant adverse impact of additional volumes on this historic resource. As noted in the 1995 Siting Plan, the Authority has determined that the siting of a solid waste facility or any associated activity (noise, vibration, traffic, excavation, odor) created by a solid waste facility in or near a historic district or any area of historic value is prohibited. The Authority maintained this type of prohibition in its 2004 Siting Plan (as submitted to the WV-SWMB).

4) In the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB), the Authority stated it will evaluate the impacts of a siting request to assure the request will not adversely impact cultural resources - including cemeteries. The Authority is aware that the present landfill is causing an adverse odor impact to nearby Allensville Cemetery and concludes such an impact to one's final resting place is disrespectful and inconsistent with the manner by which Berkeley County values its cultural resources.

5) Since the completion of the 1995 Siting Plan, the Authority found that additional recognition has been given to historic and cultural resources in the area of the applicant's facility. For example, the Washington Heritage Trail Association is a 112-mile nationally designated scenic byway that ties together historic properties in Morgan, Berkeley and Jefferson Counties and commemorates our nation's first president, George Washington, and his descendants. The Washington Heritage Trail has been designated a Federal byway and is only one of five in the State of West Virginia. The proposed access for the applicant, regardless of the development of a second private entrance access, includes the use of West Virginia State Route #9; several miles of which constitute a significant part of the scenic byway.

In fact, all vehicles accessing the facility will travel Route #9 regardless of the vehicle's origin and as a result those same large commercial solid waste carrying vehicles will be traveling down a nationally recognized scenic byway. The Authority notes the receipt of a letter from Kimberly Eichelberger, Executive Director of the Washington Heritage Trail Association stating their Board unanimously agreed that the conversion of the landfill to Class A status would increase the traffic volume along the WHT to the detriment of its various recognized historic, cultural, scenic, and natural attributes. Therefore, the Authority concludes that additional landfill-related commercial truck traffic is incompatible with this historic byway and the applicant failed to sufficiently address the adverse impact of additional volume on this cultural resource.

6) Based upon the aforementioned rationale, the Authority concludes that the operation of a Class A landfill at this location is inconsistent with the general culture of the area.

Present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes.

1) The Applicant's facility has never enjoyed broad public support. The facility, as a Class B landfill, has been the subject of multiple public meetings and hearings - some of which would attract several hundred citizens expressing concern about the facility. Even after over ten years of operation, the community's concerns and fears in regard to the facility continue. The community concern recently caused the WV-DEP to perform the unusual step of conducting a public hearing in regard to the standard five-year operating permit renewal in the local community. This public hearing attracted about 40 concerned citizens, many of who spoke of concerns of litter, mud, odors, etc.

2) The Authority concludes that a significant part of the prolonged 18-year community opposition and concern with this facility lies within this siting criterion. For example, most of the landfill related truck traffic to the facility commingles with school buses and other school related traffic of five large publicly owned schools (i.e. Hedgesville High School, Hedgesville Middle School, Hedgesville Elementary School, James Rumsey Vocational Technical Center - Shepherd Community College, Tomahawk Elementary School). The combined student population is 3,578 students and the resultant school bus traffic is extreme. Based upon information and belief, these five schools represent the largest density of school students in the County and possibly in the entire State. It is further noted, that Berkeley County leads the state in school bus transportation miles even though Berkeley County is geographically small.

3) In addition, there exists (3) school zone designations on Route # 9 associated with these schools. There are also severe cultural and safety compatibility issues related to multiple public recreational fields and parks drawn close to Route #9. There is the cultural incompatibility with the developing tourism facilities such as the Norman L. Dillon Farm Museum, two historic districts, Sleepy Creek Wildlife Management Area and the privately owned Wood's Resort and Golf Community. Every one of these facilities are in the general Hedgesville area and will be negatively impacted by the increased large truck traffic. Some of these areas are presently adversely impacted with the associated litter, mud or odors.

4) The Authority notes that the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) specifically prohibits the siting of a landfill or any activity associated with the landfill within or near the "major areas of urbanization". The Authority concludes the Town of Hedgesville and the area of North Mountain are urbanized and near the facility and will be significantly and negatively impacted by volumes associated with the reclassification to a Class A landfill and further notes that these areas were already urbanized before the landfill was constructed.

5) Other than the urbanized areas of Hedgesville, North Mountain and Allensville Road, the Berkeley County Commission, in its 1990 Berkeley County Comprehensive Development Plan, classified the area of the landfill's property and the surrounding area as a "rural countryside district". The Authority notes that the 1995 Siting Plan and the 2004 Siting Plan (as submitted to the WV-SWMB) state that solid waste facilities should not be located with certain types of land use districts - including "rural countryside districts" and finds that reclassifying the landfill to Class A is inconsistent with the general character of the area.

6) The Authority notes the majority of the proposed second access road, associated with this request for Class A status, will travel within an existing prohibited zone as defined in the 1995 Siting Plan. This zone was developed in 1995 based on information provided by the Berkeley County Planning Commission of a proposed conservation district around the lower 1/3 of Back Creek. This section of Back Creek contains the largest concentration of rare species in the County and has been designated by the US Department of the Interior as meeting the minimum criteria for potential inclusion into the National Wild and Scenic Rivers System. The National Park Service has recently conducted multiple public meetings in the Hedgesville and Martinsburg area on this very designation. To allow for the reclassification to a Class A landfill at this location, the Authority would be required to change this existing "prohibited" zone to "authorized." The impact on this proposed conservation district was not addressed by the Applicant.

7) Finally, the Authority concludes that the applicant failed to affirmatively and clearly demonstrate that the requested re-designation is appropriate and proper and that the proposed Class A solid waste facility could be appropriately operated in the public interest.

Public Health, Welfare and Convenience.

1) While the Authority clearly recognizes that the handling of solid waste will be a management problem with increasing urbanization and population density, we believe it does not always have to have the stigma which is presently associated with the applicant's facility. If the West Virginia waste management heiarchery were followed, the disposal principals of Waste Management in the handling of West Virginia waste could create a positive image by locating a facility which implements reuse, recycling and composting principals to the management of the commercial waste stream that it handles.

2) The Authority concludes the general welfare of the citizens can be best protected by developing commercial solid waste facilities in a manner upon which the facility does not negatively impact those places that are of greatest value to the citizens. The Authority concludes the conversion to Class A status will negatively impact several of those valued places (schools, residential areas, parks, cemeteries, historic areas, etc.). Because of the adverse impacts upon those valued places, the Authority concludes that the conversion to a Class A landfill at the proposed location would be a tremendous blow to the self esteem and community spirit of the citizens of the Hedgesville and North Mountain area and finds that their perceptions of their community and its future are critical factors in the decision of the Authority to deny the Applicant's request for Class A status.

3) The Fourth Circuit Court of Appeals, in reviewing the constitutionality of West Virginia's solid waste laws, held that limitations may legitimately be placed on landfills to protect communities from "the possibility of decreased community pride and fracturing of community spirit that may accompany large waste disposal operations." *Geotech Reclamation Industries Inc. v. Hamrick, et. al.*, 886F. 2d 662, 665 (4th Cir., 1989).

DISPOSITION

1) The Legislative Rule applicable to LCS's request contains the following language:

> 6.4. Upon application from any person or group, the authority may amend the siting plan by re-designating a zone or any portion of a zone.
>
> 6.4.a. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on all of the criteria set forth in subsection 5.3 of this rule, that the requested re-designation is appropriate and proper, and that any solid waste facility sited at such location could be appropriately operated in the public interest.
>
> 6.4.b. In order to make such demonstration, the person seeking the change shall make whatever examination is necessary and submit specific detailed information to the authority relating to the criteria in subsection 5.3 of this rule.

As set forth herein, it is the Authority's conclusion that LCS did not meet the burdens imposed upon it by the above-quoted language and that its formal request must be consequently be denied. However, the Authority wishes to make clear that its decision does not depend upon the high burden of proof imposed upon the Applicant ("affirmatively and clearly demonstrate") and would have been the same even if the available evidence were assessed using a less rigorous standard. The evidence clearly failed to support the Applicant's request regardless of the standard used.

2) The Authority concludes that any additional transportation expense associated with the County's or the region's continuing reliance on more distant landfills or with the alternative possibility of constructing transfer stations in the region is regrettable. However, such additional expense or construction is preferable to the conversion of the North Mountain Sanitary Landfill to a Class A facility because the unquestionable weight of evidence shows that the local infrastructure, site suitability and environment (cultural, historic, and natural) are inappropriately suited for the conversion of the North Mountain Sanitary Landfill to a Class A landfill. In taking this action, the Authority is leaving intact the July 5, 1990 action of the Berkeley County Commission; the first governmental body which limited the facility to the 9,999 tons per month and the 1995 Berkeley County Commercial Solid Waste Facility Siting Plan, which did not authorize a Class A facility at the applicant's location.

3) The Authority concludes that the applicant failed to affirmatively and clearly demonstrate that the requested re-designation is appropriate and proper and that the solid waste facility could be appropriately operated in the public interest.

4) The Authority concludes that should the applicant or its parent company continue to seek the ability to landfill larger volumes of waste from the three noted WV counties, one Maryland County and one Virginia County, such activity shall occur at a location other than the North Mountain Sanitary Landfill. However, the Authority also maintains that continued reliance by the Applicant on landfill disposal as its overwhelmingly predominant method of handling waste will not solve the solid waste management problem(s) of the county or region. The Authority concludes that, to the maximum extent possible, landfill disposal of the commercial waste stream should be reserved for non-recyclables and other materials that cannot be practically managed in any other way. West Virginia has clearly adopted a policy of recycling-over-landfill disposal through the West Virginia Recycling Act (Code §20-11-2) by stating that many citizens desire recycling in order to conserve limited natural resources, reduce litter, recycle valuable materials, extend the useful life of landfills and to reduce the need for new landfills. The article of the West Virginia Code creating local solid waste authorities, including this Authority, requires said authorities to base their planning decisions on the nationally recognized hierarchy of waste management, which requires that reuse, recycling, and recovery take priority over landfill disposal. (W. Va. Code § 22C-4-1.)

5) The Authority concludes that it is fundamentally unjust to ask the citizens who live, raise families and travel the Hedgesville areas to tolerate the significant adverse and increased burdens associated with the operation of a Class A landfill at this location and further concludes that it is duty bound to deny LCS's request.

By order of the Berkeley County Solid Waste Authority, the request for an amendment to the Berkeley County Commercial Solid Waste Facility Siting Plan to authorize a Class A landfill at the North Mountain Sanitary Landfill in Berkeley County, West Virginia by Waste Management Inc./ LCS Services is hereby denied.

This order is effective November 23, 2004.

Chairman

Vice-Chairman

Secretary

Member

Member

Severability Clause: If any provision or section of this decision shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of the decision, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment, shall have been rendered, and the remainder of the provisions of this decision shall not be affected thereby.