

South County Federation Resolution

January 16th, 2018

Environmental Solutions, Inc. (ESI)

dba Furnace Associates

SEA 80-L/V-061 – “SEA-1”

Whereas, on July 29, 2014, the Board of Supervisors disapproved **SPECIAL EXCEPTION AMENDMENT SEA 80-L/V-061-02 (“SEA-2”)** submitted by ESI, d.b.a. Furnace Associates. Based on this vote, **SEA 80-L/V-061 (“SEA-1”)** remains the governing document for the Lorton Landfill;

Whereas, when SEA-2 was submitted, the County apparently relaxed or suspended inspections on the site. Appendix 13 to the Staff Report clearly showed that the inspections that were conducted and documented while SEA-2 was being processed were inadequate. When the inspector for this period retired, the new inspector assigned to the site immediately found a multitude of deficiencies that took over 6 months to correct as documented in Appendix 13 of the Staff Report. *DURING THIS PERIOD, THE SITE WAS NEVER REPORTED AS BEING OUT OF COMPLIANCE.* This status would certainly have been a feather in ESI’s cap to wave at the Board of Supervisors to support their request for approval of SEA-2 even though subsequent facts would show that ESI was actually **not** in compliance in the interim time period;

Whereas, once again, while SEA-2 was being processed, the Director, DPWES failed to submit any Annual Reports to the Board of Supervisors on the status of the site’s compliance with SEA-1, as he was required to do;

Whereas, the landfill was stated as being at 360’ elevation at the time of the disapproval of SEA-2 and although the height is limited to 412’ it appears that much more than 52’ additional feet of fill have been added to the site;

Whereas, the method to be used in filling the site in the approved 2006 SEA-1 site plans show a consistent terracing or stepping from the base to the top (“like layers of a cake”), it appears that there has been little or no terracing or stepping as shown in the approved site plans from 2006/2007;

Whereas, while subsequent Annual Reports have noted that the site appears to be in compliance, there are aspects of the substance of the reports which raise questions and concerns. As an example, the Report is normally signed and submitted in December of each year, yet the Landscaping update includes only the Spring Planting results, with no mention of the Fall plan or results. This potentially allows for the passage of time without monitoring of the landscaping plan and its execution.

Whereas, the bond amount appears to fluctuate each time we request an update with little or no explanation of the factors that may be in play regarding extensions or renewals;

Whereas, we are now in calendar year 2018 with the mandated closure rapidly approaching;

Therefore, be it resolved that the South County Federation requests that the following actions take place:

1. DPWES will be requested to make an update presentation to the SCF at its March 2018 meeting.
2. DPWES shall establish a specific folder regarding the Lorton Landfill closure in a conspicuous, readily accessible manner on the County website that is continually and routinely updated through and including 1 year after the scheduled closure date.
3. That the questions / concerns included in the matrix below be responded to specifically either at or before the March 2018 SCF presentation in a manner such that all questions / concerns may be easily and clearly understood by all the county residents attending the meeting.
4. That DPWES provide a detailed, chronological plan that identifies any and all actions that will be needed to ensure that the closure takes place on the date specified or earlier should fill levels be reached.
5. That a representative from the County Legal Department make a detailed presentation on all of the past deliberations and decisions regarding Overlook Park and provide an explanation of the County's path forward to require ESI to construct the park as a part of the closure or whatever other provisions will be made. In other words, SCF would like to know, clearly and concisely, whether or not there will ever be an Overlook Park.
6. That the County Legal Department provide an explanation of the courses of action available should ESI dba Furnace Associates default on their closure performance. This discussion shall address the legal avenues open in case of default as well as the adequacies of the posted bond instruments. This will require coordination with and ideally a presentation

from the Bonds and Agreements Center from the County Staff to provide a clear explanation of the amount, adequacy and functioning of the bond should default occur.

7. DPWES shall convert the contents of the Annual Report into a Monthly Report and that the Monthly Report be posted in a conspicuous manner on the County website. In addition, the Monthly Report shall incorporate appropriate elements from the detailed matrix of questions / concerns attached below.

SEA-1 QUESTIONS / CONCERNS MATRIX INDEXED BY REQUIRED ELEMENTS OF THE SEA

CONDITION / REQUIREMENT	CURRENT STATUS
<u>General Conditions</u>	
#8 – Stormwater management and Best Management Practices (BMP) as depicted on Plat and in conformance with PFM unless waived / modified by DPWES	Does this exist? Review IAW Plat and PFM.
#9 – Water Quality Impact Assessment – required by DPWES?	Have any ever been required by DPWES? Check with DEQ on this as well. The results shall be posted and updated in a conspicuous manner on the County website.
<u>Conditions on the Operation of the Landfill</u>	
#10 – At the time of initial site plan submission, a copy of the Closure Plan (which addresses leachate control) approved by VA DEQ shall be provided to DPZ, DSWDRR and DPWES and MV District Supervisor’s office. Amended versions provided to all as revisions occur/subsequent site plan submissions.	Does a Plan exist? Currency? Approved by DEQ? Has it been provided to MV District Supervisor’s office? If not, MV District Supervisor’s office needs to ask for it and then SCF can review it.

<p>#11 – The landfill shall be operated in conformance with all sections of VA code (VAC) applicable to the proposed landfill operations. There shall be NO FUTURE EXPANSION of the landfill beyond that outlined by the SEA Plat and permitted by these development conditions.</p>	<p><i>This is one of many elements of a County Inspection Plan that needs to be formalized, put into effect and reported on publicly on a monthly basis. ESI has been allowed by the Staff to avoid determination of being out of compliance and this needs to be addressed.</i></p>
<p>#12 – Height of the landfill before final cover shall not exceed the proposed final elevations as shown on the SEA Plat. All activities shall cease at 412 feet or Jan 1, 2019.</p>	<p>How is the height being monitored and evaluated and what is the current height of the landfill? LIDAR overflights would be an efficient and accurate monitoring and measuring procedure.</p>
<p>#18 – Prior to landfilling in any new operational areas beyond the elevation allowed pursuant to SEA 80-L/V-061 (290 feet above sea level), sediment basins meeting State and County regulations shall be provided and maintained.</p>	<p>Have sediment basins been inspected as landfilling has proceeded?</p>
<p>#19 – All dikes, basins and stockpiles shall be seeded and mulched as soon as they are constructed.</p>	<p><u>THIS IS A MAJOR LANDSCAPING ISSUE.</u> Is this a standard inspection item? The results shall be posted and updated in a conspicuous manner on the County website.</p>
<p>#20 – Litter control along toes of slopes. Litter Control Plan prepared and implemented IAW VA Solid Waste Management Regulations.</p>	<p><u>THIS IS A MAJOR LANDSCAPING ISSUE.</u> Does a Plan exist? Currency? The results shall be posted and updated in a conspicuous manner on the County website.</p>
<p>#21 – Groundwater Monitoring Program and water test results provided to DEQ and also to FFX Health Dept. and DPWES. Provision for delivery of water to off-site affected well after determination by DEQ &/or FFX County w/in 5 days of notification.</p>	<p>Is there a Groundwater Monitoring Program and have test results been provided? The results shall be posted and updated in a conspicuous manner on the County website.</p>
<p>#23 – Control of decomposition gases monitored through implementation of Gas Monitoring Plan IAW outreach. Requirements for a particular type of capping and venting in areas proposed for</p>	<p>Is there a Gas Monitoring Plan? Currency? Check with DEQ on their requirements and if they have inspected system. The results shall be posted and updated in a conspicuous manner on the County website.</p>

recreational uses. All recreational structures shall be open air / self-venting.	
#25 – Yearly contributions of \$60,000 to County for use by DPWES for public outreach and education continuing annually until cessation of landfill disposal activities.	Have such payments been provided annually since August 1, 2009? How has County / DPWES expended these funds? Where is the accounting for these funds? All accountings shall be posted in a conspicuous manner on the County website. Hopefully they didn't migrate to the general fund or somewhere else.
#26 – Emergency Contingency Plan prepared and implemented IAW VA Solid Waste Management Regulations w/list of emergency operators' contact info made available to County EOC and kept current.	Does a Plan exist? Currency? Is a copy actually located in the EOC? When was the list last updated by ESI? When was the Plan last verified by the EOC by actually calling the numbers and verifying someone answered / line is operational? The results shall be posted and updated in a conspicuous manner on the County website.
#27 – Hours of operation 7AM-7PM, Mon-Fri; 7AM-Noon-Sat. Gates open for queuing at 5:30AM/6AM but no operations before normal business hours.	This is one of many elements of a County Inspection Plan that needs to be formalized, put into effect and reported on publicly on a monthly basis. Must include Sat AM inspections.
#28 – In an effort to solve mutual problems, the operator will work with, and will, as necessary, meet on a regular basis with the Mount Vernon Council and / or the South County Federation and / or any other groups (such as neighboring homeowner associations) as designated by the Mount Vernon District Supervisor.	<i>THIS IS A VERY IMPORTANT CONDITION ON MANY LEVELS!</i>
#29 – Per sect 9-209 of the Zoning Ordinance, the site shall be made available to the Director of DPWES or his representative in preparation of the annual report to the Board of Supervisors. As a result of the annual inspection, the Director of DPWES may recommend additional restrictions and limitations on the use to the Board.	<i>ANNUAL INSPECTION & REPORT TO BOS.</i> Director of DPWES must be required to conduct this inspection and provide report to Board on a scheduled basis. General Counsel: "Additional restrictions and limitations" – Why can't DPWES recommend and the Board approve traffic restrictions? What does the wording here allow?

<u>Buffering, Landscaping and Screening Conditions</u>	
#30 - ...limits of clearing and grading shall be strictly adhered to. No new waste (debris) placement shall take place within 150 feet of the 100-year floodplain of Giles Run. There shall be no disturbance within the RPA except those limited areas depicted on the SEA Plat.	<u>DPWES shall prepare maps of these elements and present and explain them to SCF representatives so that everyone understands the physical limits involved.</u> They shall be posted in a conspicuous manner on the County website.
#31 – Notwithstanding other limitations, applicant shall be permitted to encroach into the limits of clearing and grading or the RPA to conduct environmental monitoring and/or remediation activities to ameliorate a potential environmental and/or public safety hazard. Obtain all approvals & restore area afterwards.	Have any such encroachments taken place? Records on restoration & inspections available and posted in a conspicuous manner on the County website?
#32 – All permanent berms shall be landscaped to the satisfaction of UFM, DPWES.	UFM needs to start publicly participating and explaining the progress and plans for landscaping. Revised landscaping plans shall be posted in a conspicuous manner on the County website.
#33 – Maintain buffer of existing trees along northern boundary. Materials and IAW landscaping standards of Article 13 of Zoning Ordinance.	Any records of what the buffer was? Inspections to determine the status of the trees? UFM responsibility? Documents shall be posted in a conspicuous manner on the County website.
#34 – Along southern boundary, maintain a landscaped buffer of at least 100 feet shall be maintained. When less than 100 feet, additional landscaping shall be planted and/or the existing berm extended to provide an 8 foot high landscaped berm. Both designed to satisfaction of UFM, DPWES and comply w/ landscaping standards of Article 13 of Zoning Ordinance.	Review boundary conditions with staff and make an on-site visit as well.

<p>#35 – Sound levels shall not exceed those in Chapter 108, Noise, of County Code.</p>	<p>How has this been inspected previously? What are/should be the standard inspection procedures? Results shall be posted in a conspicuous manner on the County website</p>
<p><u>Conditions for the Restoration of the Property</u></p>	
<p>#36 - Landscape Plan prepared and submitted to DPWES for review and approval <i>before each phase of development</i>. Plan shall provide for vegetation/reforestation as depicted on the SEA Plat. <i>No new phase may be started before approval of its landscaping plan.</i></p>	<p>Staff shall provide SCF the revisions to the Plat and the submissions for each of the phases that have already been executed. On the surface it would appear that this provision might not be being adhered to. Results shall be posted in a conspicuous manner on the County website.</p>
<p>#37 - Prior to approval of 1st site plan, vegetation management plan shall be developed and established to control non-native, invasive vegetation to promote the establishment of meadow species. Plan shall be reviewed and approved by UFM, DPWES in consultation with FCPA.</p>	<p>Is there a plan? Status? Currency? Was FCPA consulted? Results shall be posted in a conspicuous manner on the County website.</p>
<p>#38 - All landscaping installed by the applicant shall be maintained in good health by the applicant. Any such landscaping that should die shall be replaced by the operator/applicant within six months of its death.</p>	<p>This needs to be discussed with UFM as to status and enforcement - when are/have inspections been made? Inspection results? Inspection schedule? Results shall be posted in a conspicuous manner on the County website.</p>
<p>#39 - At time of site plan approval, a cash bond or letter of credit payable to the County of Fairfax shall be posted to ensure the approved landscaping and vegetation plans are completed in an amount determined by UFM, DPWES.</p>	<p>Has such a bond been posted? Amount? Currency? Results shall be posted in a conspicuous manner on the County website.</p>
<p>#40 – The approved revegetation/reforestation plan shall be executed. Revegetation and reforestation of disturbed areas shall occur when the active landfilling operation is no more than two lifts above any previously revegetated/reforested area, or face</p>	<p>Has this condition been executed? What is its status versus where it should be? Is it even possible to enforce this provision based on the way ESI has been filling at the site (UFM - Jay Banks' presentation and explanation)?</p>

<p>of slope. As faces of any two lifts are completed, shall be compacted, seeded, mulched and tacked within 10 days or as soon as feasible given weather.</p>	
<p>#41 – During 1st planting season following completion of each phase, surface shall be covered with soil and planted with ground cover on an interim basis, then shall be planted IWS landscaping plan, review & approved by UFM. Final cover material provided IAW DEQ design requirements per Closure Plan. Add'l soil on top of final cover where trees to be planted. Final location, depth and composition of add'l soil subject to review and approval by UFM & DEQ</p>	<p>Has this condition been executed? What is its status versus where it shall be? Results shall be posted in a conspicuous manner on the County website.</p>
<p>#42 - Final restoration of the landfill shall be completed within one year of the termination of operations on the property.</p>	<p>THE PLANS TO ACCOMPLISH THIS SHOULD ALREADY BE IN PLACE AND AVAILABLE. IF SUCH PLANS ARE NOT ALREADY AVAILABLE, UFM OR DPWES SHALL PRESENT THEIR PLAN FOR DEVELOPING AND EXECUTING SUCH PLANS. Results shall be posted in a conspicuous manner on the County website.</p>
<p>#43 - Height of berm on Furnace Rd shall not exceed 11 feet & height of fence on top of berm shall not exceed 8 feet. Installation of all subject to VDOT and/or DEQ approval.</p>	<p>Status? Currency? Deficiencies?</p>
<p>#44 – Truck traffic restrictions on Furnace Rd. and avoidance of Lorton Rd. / Lorton School. Operator shall post this condition at the site entrance and inform all regular customers of these restrictions in writing at least twice a year.</p>	<p>Does ESI keep a log or other record of their having informed regular customers? How does Staff inspect this criteria? Results shall be posted in a conspicuous manner on the County website.</p>
<p>#45 – Right-of-way to 44 feet from centerline of Furnace Rd. shall be reserved for dedication to BOS fee simple at no cost as shown on SEA Plat. Dedicated upon demand from FFX County and/or</p>	<p>Status? Does FCDOT or VDOT expect to request dedication at any time before closure?</p>

<p>VDOT but no later than Jan1, 2019. Within 180 days of dedication, berm, fence and concrete island removed.</p>	
<p>#48 – There shall be no access to the property for any landfilling purpose through the adjoining properties to the north. Pedestrian access, as shown on the SEA Plat, shall be permitted.</p>	<p>Review Plat and determine what pedestrian access should be available at this phase/section of time.</p>
<p>#49 – Effective dust and gravel control measures shall be installed and maintained by the operator. At a minimum, these measures shall include the fill-time availability of a water tank truck and a sweeper vehicle on-site.</p>	<p>Are tank truck and sweeper on-site and available? Is the tank truck full of water? Has it been tested lately for proper functioning? Records shall be posted in a conspicuous manner on the County website.</p>
<p>#50 – Prior to site plan approval, it shall be demonstrated that no trucks will be able to leave the site in a northbound direction. Any improvements needed to ensure the provision of an adequate turning radius for a right in and left out turn only for trucks shall be made prior to issuance of Non-RUP.</p>	<p>Do we try and take pictures of trucks turning right coming out and make an issue of this? If so, ask for modification of the “pork chop”?</p>
<p><u>Park Conditions</u></p>	<p>THE COUNTY LEGAL COUNSEL SHALL PROVIDE A DETAILED HISTORY OF THE STATUS OF OVERLLOK PARK, REVIEWING HOW THE PREVIOUS LEGAL DECISIONS WERE MADE, WHAT THE BASIS FOR THOSE DECISIONS WERE AND PROVIDE ANY PLANS FOR FUTURE NEGOTIATIONS / DISCUSSIONS WITH ESI THAT MAY ACTUALLY DELIVER AN OVERLOOK PARK TO THE CITIZENS OF FAIRFAX COUNTY AT SOME POINT IN THE FUTURE.</p>
<p>#52 – The proposed park shall be for passive recreation use only. All park improvements shall be provided by the applicant as depicted on the SEA Plat with each applicable phase of development and</p>	

<p>shall be constructed to FCPA standards in consultation with FCPA staff.</p>	
<p>#53 - Written notice shall be given to FCPA, DPWES & DPZ when formal release of the landfill property owner from liability is granted by DEQ. Entire site shall be dedicated fee simple to FCPA within 30 days following formal release of the landfill property owner from liability by DEQ. Prior to the site becoming a public park, a 2232 shall be submitted by FCPA for the review and approval of the Planning Commission.</p>	<p>N/A at this time depending on what County Counsel has to say about Park provisions and path forward.</p>
<p>#54 – Interim public access easements shall be provided over all trails and those on-site park facilities intended for public access as depicted on the SEA Plat prior to transfer of the entire site in fee simple to FCPA. <i>Prior to site plan approval, an agreement shall be executed between FCPA and the applicant regarding issues such as liability and maintenance</i></p>	<p>Did FCPA and ESI ever put a liability agreement in place? If not, they need to begin a process to develop one and execute it again, depending on what County Counsel has to say about Park provisions and path forward. Results shall be posted in a conspicuous manner on the County website.</p>
<p>#55 – Off-site trail connections to north and west shall be provided by the applicant as depicted on the SEA Plat and the attached exhibit. The connection to the north subject to approval of easements from Lorton Valley HOA. An off-site trail shall be constructed to Laurel Hill parkland, Greenway and Sportsplex are, subject to granting rights of entry by FFX County. Trails shall be 8-foot wide asphalt trail (Type 1) w/in easement of 12 feet. Exact location of trail connection TBD in cooperation w/FCPA Trails Coordinator & FCPA. Prior to site plan submission, applicant shall diligently pursue acquisition of</p>	<p>WHAT IS THE STATUS OF THESE CONDITIONS?</p>

<p>easements & permissions and, if unable, shall demonstrate failed attempts in writing to DPWES. Should the necessary easements and permissions not be provided to permit the off-site trail connections within 90 days of site plan approval, applicant shall be relieved of this commitment.</p>	
<p>#56. Restroom provisions</p>	
<p>Pursuant to Sect. 9-015 of the Zoning Ordinance, this SEA shall automatically expire, without notice, thirty (30) months after the date of approval unless a site plan has been approved for landfilling in any new operational areas beyond the elevation allowed pursuant to SE 80-L/V-061 (290 feet above sea level).</p>	<p>Might be worth it to check when the site plan for something above 290 feet was ever submitted and approved within 30 months of approval of the SEA.</p>