



August 16, 2011

Comments on the Proposed Kent Recycling and Land Reclamation Facility

Environmental Concerns and Selection Process for Site Location

- The Kent Recycling and Land Reclamation project is sited at the head of Jacob's Creek, a highly sensitive headwaters stream of the impaired (as listed by EPA 303(d) list) Sassafras River. This stream is currently monitored regularly by Sassafras River Association and is already subject to some of the highest levels of sediment, nitrogen, and phosphorus in the river. Jacob's Creek contains stretches of critical wetland and riparian habitat that is essential for effective filtering and buffering of these pollutants. Even if trees are planted around the site, they will take decades to effectively mature and begin to filter pollutants.
- Physically, the site is not suited for an industrial operation of this nature and lacks an adequate riparian buffer, and safe distance from the shallow groundwater aquifer. State law requires three feet between the dump liner sub-surface and the mean high groundwater table. The developer proposes bringing in soil to meet this requirement, but over time, given the wet location, it may settle down bringing the dump into the groundwater table.
- Prior to siting an industrial facility of this magnitude, it is appropriate to first assess available locations and determine which, if any, has the environmental capabilities to support that activity. The developer indicates none was carried out relative to the rubble dump. No other site-suitability analysis has been made available to the public, performed in the public domain with community participation. It appears the company has chosen the site because of prior development, not because of land evaluation.
- There are many similar rubble dumps in the region and the market-need has not been demonstrated for such a facility. If the operation is not financially sustainable, the end result of such a large project may be an abandoned, unprotected waste-land, with few if any environmental controls in place or operating.

Total Maximum Daily Load (Pollution Diet) on the Sassafras and Chesapeake Bay

- The Sassafras River has been assigned a Total Maximum Daily Load, which is the highest load of pollutants that the river can receive and still support federally mandated fishable, swimmable waters. This limit is already exceeded through current inputs of outdated wastewater treatment plants, failing septic systems, stormwater runoff, agriculture, and other inputs. To add another large source of pollutants to this already floundering river system is not only a slap in the face of the residents of the county and the taxpayers who have spent millions towards the Bay cleanup efforts, but it is a clear violation of the federally mandated TMDL.
- Throughout the Chesapeake Bay, there are tremendous efforts underway to reduce nutrient and sediment loads going into the Bay through what is being called the Bay-Wide TMDL, or pollution diet. Local, State and federal governments are presently launching the largest, most regulatory, Bay clean-up program ever. Local governments will be responsible for defining and accomplishing the necessary nutrient and sediment reductions that will restore our local tributaries to a healthy and sustainable condition. Now more than ever, it is critical that local governments scrutinize any and all potential impacts that a development may cause due to additions of pollutants and water quality stressors. If the health of Jacob's Creek and the Sassafras River is further impaired by runoff or toxins from the proposed rubble dump, then not only is there a serious question about compliance with the Clean Water Act, but even greater reductions will be needed by the County to

achieve the TMDL. This brings a heavy burden to the residents of the county, and each new load, as from this project, must be reduced elsewhere as a cost to a farmer, landowner or municipality.

Liner System

- The safety of local drinking water supplies, in an area where everyone uses well-water, is reliant entirely on a layer of compacted soil and a thin high density polyethylene liner to contain numerous toxins and contaminants. The developer maintains that a rigorous groundwater testing program will be implemented to ensure quick discovery of leaching or liner breaches. Unfortunately, once a breach occurs, it is impossible to reverse the resulting contamination of groundwater, soils, and surrounding household wells, and the proximity to adjacent Jacob's Creek ensures that leachate will rapidly find its way to surface waters and human contact.
- In addition to above mentioned concerns with landfill liner systems, it is important to understand that any liner, be it clay, plastic, or a combination thereof, will fail at some point in the future. The developer maintains that they will continue groundwater monitoring for five years after the closing of the site – a relative blip on the timescale the facility will be in existence and present threat of liner failure. Liner failure is an environmental risk associated with this project, both during operation of the facility and long after it has been closed and capped. Our concerns for the health and safety of the County residents and the river itself should not be so shortsighted. It is important to remember that we borrow the land from future generations.

Local Waste Water Treatment Plants are Ill-Equipped to Treat Leachate

- Modern landfills utilize a “leachate trap” to drain liquid contaminants that collect at the bottom of a lined site. This liquid, which can be heavily laden with toxic chemicals and heavy metals, is then trucked to nearby wastewater treatment plants and “treated” along with normal septic effluent before being released into the surface waters of local streams and rivers. These local WWTPs are, at best, equipped to treat effluent for nutrients and bacteria. At worst, as is the case in the Sassafras, the plants are designed only for treatment of bacteria, and are already above capacity and failing to meet basic standards set by the state. Other contaminants simply pass through and are released into the state's public waters.
- Despite regulations which spell out what can and cannot be disposed of in a rubble dump, it is unlikely that “video surveillance capable of remote viewing by the County's on-site manager” (Developer Rights and Responsibilities Agreement) will sufficiently deter the visually undetectable lead paints, asbestos, and other contaminants that will certainly make their way to the site from demolition of old buildings in nearby population centers. It would be tremendously easy to conceal contaminated materials moving into the site within a large load of construction or demolition debris. Again, after contamination occurs, it is impossible to completely correct or reverse the damage.

Best Management Practices are not Catch-All Solution to Pollution Impacts

- It is the nature of any active construction site, even in the best circumstances, to release large loads of sediment, often tied to heavy phosphorus loads, to nearby waters during rain events. Un-vegetated soil will find its way to surface waters, despite best management practices for erosion control. These standard practices, which are currently being updated to more stringent standards by Kent County, are simply an easy, partial fix to minimize sedimentation until soils can be stabilized with permanent vegetation. It is rare that active construction sites are inspected and/or fined for violations, and it is extremely common to find egregious breaches in protocol that goes unnoticed and unreported. Compliance with the State and local permits governing industrial facilities like this typically is faulty, with 30% having daily infringements. Enforcement-staff cut-backs mean permit inspections are rare, and serious violations are overlooked by the regulatory agencies.

- Best Management Practices (BMPs), even when properly implemented and maintained, are not a true solution for controlling pollution runoff. BMPs are a preventative measure designed to diminish impacts of pollution, but provide no guarantee of environmental protection. Each BMP has a limited capacity to catch or prevent runoff, based typically on storm events or inches of rain. Despite implementation of BMPs on the rubble dump site, there will be increased levels of erosion and pollution inputs entering the Sassafra Watershed.
- The proposed project will essentially become a large, never-ending construction project, with large tracts of continuously exposed soils. Even in the best circumstances, this project will drastically impact the neighboring creek with enormous loads of sediment. Over the course of the rubble dump's lifespan, tons of additional sediment will likely be brought in or eroded simply as a result of truck traffic. The inevitable impacts include sedimentation of the creek, reduction of vital bottom habitat, increase in sediment tolerant invasive species, elimination of native SAVs (submerged aquatic vegetation) and shellfish, and drastic reduction in biodiversity.

Incompleteness of DRRRA and Project Inconsistency with the Kent County Comprehensive Plan

- A rubble dump facility at the currently proposed site requires a special exception from the County's comprehensive plan and land use zoning. The County Zoning Ordinance states that a rubble dump only is an allowable exception in agriculturally zoned areas *if* the operation is owned or managed by the County itself. This clause is being by-passed with the company offering to pay the salary of a single, on-site County employee, with no business decision-making authority. The original Zoning Ordinance was approved after public input, understanding the extreme risks such an operation presents. Therefore, it was determined that only the County itself would have complete oversight, including all administrative and personnel decisions, total fiduciary responsibility, and supervisory control of each and every aspect of site operation. The DRRRA dodges this fundamental obligation.
- The sand and gravel mining operation currently operated on the proposed site of the rubble dump, was originally granted a special exception to operate in an agriculturally zoned area. This exception was approved with the stipulation that the facility be returned to agricultural use at the end of mining operations, in the form of aquaculture. Granting an additional exception to the land use ordinance for the operation of the proposed rubble dump would illegally override this prior county case decision, which was a properly concluded commitment to the public.
- The DRRRA was reviewed August 4, 2011 by the Planning Commission, PC, in a draft form, with numerous elements left blank. Their ability to decide and recommend anything was hampered by the gaps in the DRRRA. Although the PC passed the DRRRA forward to the Board of County Commissioners with comments – this review was not valid because the PC lacked a complete and cohesive proposal. Neither the public nor the PC can completely understand the DRRRA without having a finalized version.
- The DRRRA intends to exempt the developer from upcoming changes in erosion and sediment control laws, and any other changes in local ordinances. The DRRRA would allow the developer to operate under current, less stringent standards for a period of 40 years. While the developer states they simply wanted to protect themselves from landfills being prohibited, the DRRRA contains much more legal benefits for them, which risk environmental health.