

**BEFORE THE UNDERGROUND STORAGE TANKS AND SOLID WASTE DISPOSAL
CONTROL BOARD**

CITY OF MURFREESBORO,)
TENNESSEE,)
)
Petitioner,)
)
v.)
TENNESSEE DEPARTMENT OF)
ENVIRONMENT AND CONSERVATION)
)
and)
)
UNDERGROUND STORAGE TANKS)
AND SOLID WASTE DISPOSAL)
CONTROL BOARD,)
)
Respondents.)

Docket No. _____

PETITION FOR DECLARATORY ORDER

The City of Murfreesboro, Tennessee (“City”) hereby petitions the Underground Storage Tanks and Solid Waste Control Board (“Agency”) for a declaratory order pursuant to Tenn. Code Ann. §4-5-223. Pursuant to §4-5-223 (a), this Agency has the option to convene a contested case or refuse to issue a declaratory order.

The City seeks a Declaratory Order that a proposed 100-acre landfill expansion of the BFI Waste Systems of Tennessee, LLC (BFI) Middle Point Landfill (MPL) first come to the City for approval pursuant to Part 7 of the Solid Waste Disposal Act, §68-211-701 through 707 (the “Jackson Law”) prior to review by the Tennessee Department of Environment and Conservation (TDEC) of BFI’s Part II application. Additionally, a ruling is sought that Rule 0400-11-01-.02(c)(2)(ii) relied upon by BFI to avoid local approval is void or inapplicable for the reasons set out below.

Irrespective of whether this Agency convenes a contested case, the City requests a preliminary or intermediate ruling that this Agency is not authorized under the Uniform Administrative Procedures Act (“UAPA”) to hear or decide on injunctive relief to enjoin TDEC from review of BFI’s Part II application or to preserve the status quo pending final resolution. (See Section IV, below.) The City will be without an adequate remedy in the event TDEC receives and begins review of the Part II application during the pendency of a contested case.

The City requests an order consistent with the findings of fact and conclusions of law set out in in Section V.

I. INTRODUCTION.

The City has a straightforward contention. The expansion proposed by BFI for another 100 acres of landfill is outside Middle Point’s permitted waste boundary, was never previously designated for landfilling nor subject to the hydrogeologic review required by statute. It is new construction for a new landfill under the Jackson Law. The City’s authority to review and approve the construction may not be lawfully preempted by TDEC’s permitting process.

On April 11, 2021, BFI Waste Systems of Tennessee, LLC submitted a Part I Application to expand the Middle Point Landfill in Rutherford County. On the same day, BFI submitted the application to the appropriate Regional Board pursuant to §68-211-814 (d). The Regional Board unanimously denied the expansion. That dispute is pending in Chancery Court.

BFI expressed the intent to file a Part II application with TDEC in February of 2022.

In its Part I application, BFI claims it is exempt from the Jackson Law. In “Attachment B” to the application, BFI relied on Rule 0400-11-01-.02(c)(2)(ii) which interprets the Jackson Law to exempt from local approval processes all “facilities that existed on June 2, 1989” and the expansion of those facilities.

TDEC takes the same position.

The City disagrees. The City contends that the Jackson Law statute applies to the construction of any new landfill beyond an existing permitted waste landfill boundary, and that the claimed rule is void, conflicts with the statute and cannot lawfully create an exception the Legislature did not.

The statutory language of Part 7 (§§68-211-701 through 707) is plain spoken. It applies to the “construction” of any “new landfill.” There is no exception for expansions. Part 7 does not use the term “expansion” nor refer to “facilities that existed on June 2, 1989.” In this case, BFI’s proposed expansion is on 100 acres of land currently used as a park. The acreage is admittedly outside BFI’s permitted waste boundary, according to BFI and TDEC engineering and permit records. TDEC has not reviewed that site for landfilling or performed the required geological/groundwater assessment under §68-211-105(g).

As to Rule 0400-11-01-.02(c)(2), the City makes two basic assertions. First, the rule is void for lack of authority. As to solid waste, rulemaking authority for this Agency was limited by the Legislature to administering Part 1, Part 8 and 9. None was granted for Part 7. Rulemaking for Part 7 would not logically have been granted because Part 7 is a land use/zoning law preemptively giving local governments the ‘first right of approval,’ from a land use perspective, before TDEC may review a permit application from a solid waste disposal perspective. Secondly, the rule conflicts with the statutory language of Part 7 and the Legislative intent so thoroughly as to allow unlimited expansions without local approval for any landfill with a permit dating back to 1989. The Legislature did not create an exception for expansions, and does not use the term “expansion” at any point in Part 7. To the extent landfills permitted as of June 2, 1989 are exempt from the Jackson Law, unlimited new landfill expansions of those facilities are not. Construction of new landfills outside of a designated, reviewed, and permitted waste boundary is a new landfill under Part 7. There is no exception by statute or rule.

The facts of this case are largely admitted in the permit history. The original permit was issued on December 17, 1988, before the Jackson Law was passed. However, the original permit parameters approved by TDEC were for 130 acres of landfilling inside an approximately 200-acre parcel. Since that time, BFI expanded into the full 200 acres in 1992 and again in 2006 and bought surrounding land. In 2014, BFI engineers confirmed landfilling had crept a bit past the original parameters stating the “permitted waste boundary is 207.3 acres.” In 2016, the City adopted the Jackson Law. BFI now proposes to expand again with a new landfill on 100 acres north of the 207-acre permitted waste boundary. The two areas are plainly identified on BFI’s map in its Part I application. (Shown below, Fig. 3) The new 100-acre landfill will require all new construction. It is on land owned by BFI but available to the public as Middle Point Park with a baseball field.

The permit engineering documents dating back to 1988 confirm that since the beginning, the 100-acre area was not identified in any application nor assessed by TDEC for landfilling.

Accordingly, and as alleged below, the Jackson Law statute applies with no exception.

II. FACTUAL ALLEGATIONS

1. The City of Murfreesboro is an incorporated municipality within Rutherford County. The City’s corporate limits are within a one (1) mile radius of the proposed landfill expansion.

2. The City opted into the Jackson Law coverage on December 1, 2016.

3. The Underground Storage Tanks and Solid Waste Disposal Control Board (“Agency”) is the Agency authorized by the Legislature pursuant to Tenn. Code Ann. §68-211-111 (d) to promulgate rules necessary for the administration of Part 1, Part 8, and Part 9 of Chapter 211, the Solid Waste Disposal Act. The Legislature did not authorize rulemaking for Part 7. Part 7 is a land use and zoning statute, governed by statute and outside the duties of this Agency.

4. TDEC is the department charged with reviewing solid waste applications and issuing permits for construction in compliance with §68-211-105(g) and related rules.

5. On April 11, 2021, BFI submitted a Part I Application to TDEC to again expand Middle Point Landfill in Rutherford County with a new 100-acre landfill north of the 207-acre permitted waste footprint it currently operates. (See Map Figures 1 and 2 below.)

6. In Attachment B of the Part I Application, BFI expressly relied on Rule 0400-11-01-.02(c)(2)(ii) for the proposition that it is exempt from need local approval. The rule states:

“According to Rule 0400-11-01-.02(c)(2)(ii) the Jackson Law does not apply to facilities that existed on June 2, 1989 (the date the Jackson Law went into effect) and it does not apply to an expansion of those facilities. The Middle Point Landfill (Permit 75-0219) was originally issued a permit by the Tennessee Department of Environment and Conservation Division of Solid Waste Management on January 22, 1988 and therefore the Jackson Law does not apply to the Middle Point Landfill.”

7. This rule creates a disputed exception for expanding “facilities that existed” when the Jackson Law was passed. However, the statute itself contain no expansion exception and broadly applies to “construction” of “any new landfill,” defined as “any land used for disposal of solid waste by filling and covering.” (§§68-211-701 and 702, respectively.)

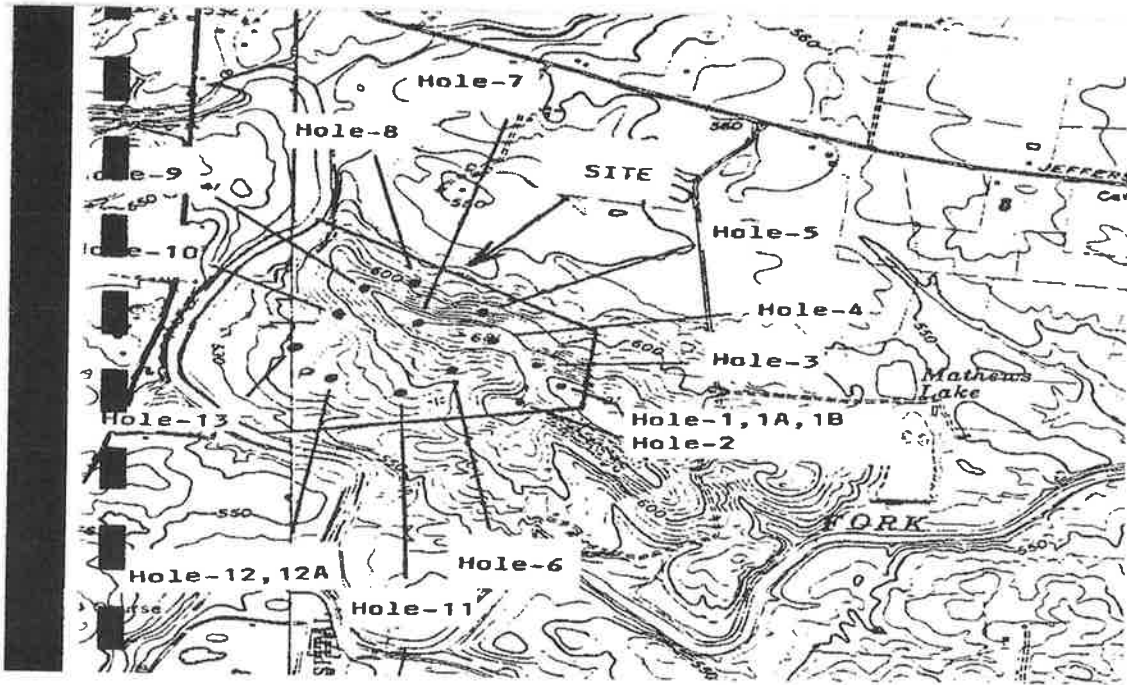
8. The original permit was issued December 17, 1987, not January 22, 1988, for “Northside Landfill consisting of approximately 130 acres” to Messrs. Charles Rowlett and Eddie McCrary, aka “ROMAC.” It was next to and north of the Rutherford County landfill.

9. For the original permit, TDEC conducted a geologic investigation of “130 acres,” with an expected life of “10.5 years.” Based on the groundwater study, the permit was approved for “landfilling with cuts no deeper than 15 feet.” TDEC relied on an Operational Manual and Design Plans submitted by applicant engineer, EMPE, Inc. in August 1987.

10. The August 1987 Operations Plan stated in the “Site Location and Description” that “the selected landfill site consists of approximately 200 acres of land. An estimated 130 acres of this site shall be used for landfilling.” (Underline added) TDEC stamped the Operations Plan on

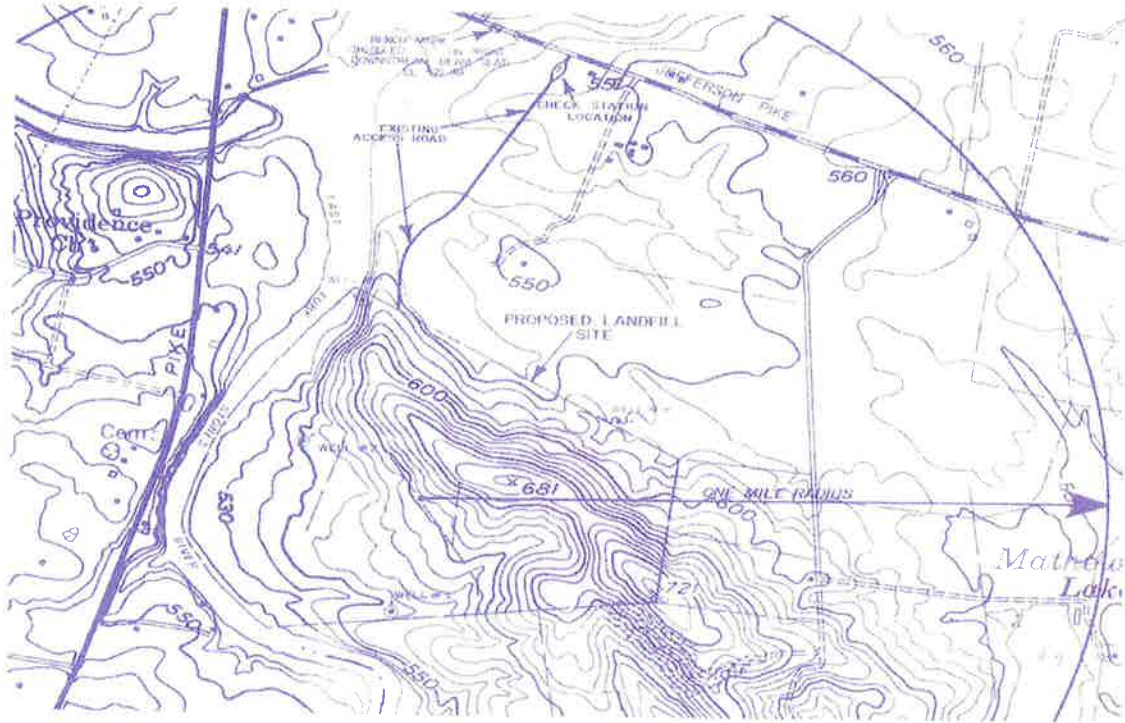
Dec. 17, 1987, the same day the permit was issued. As required, the Operations Plan included a map showing the intended location for the landfill with the boring holes used for assessment.

(Figure 1.)



(FIGURE 1. Excerpt showing the 130 acre site in the 1987 EMPE, Inc. Operations Plan)

11. Likewise, the 1987 Design Plans from EMPE, show the same landfill location with more detail on a USGS map. (Figure 2.)



(FIGURE 2. Excerpt showing the 130-acre site in the 1987 EMPE, Inc. Design Plans.)

12. The original 1987 permit to ROMAC relied on Figures 1 and 2, and a geologic investigation of the 130 acres reviewed by TDEC. The entire area was within approximately 200 acres was on a parcel (“Southern Parcel”) owned by ROMAC.

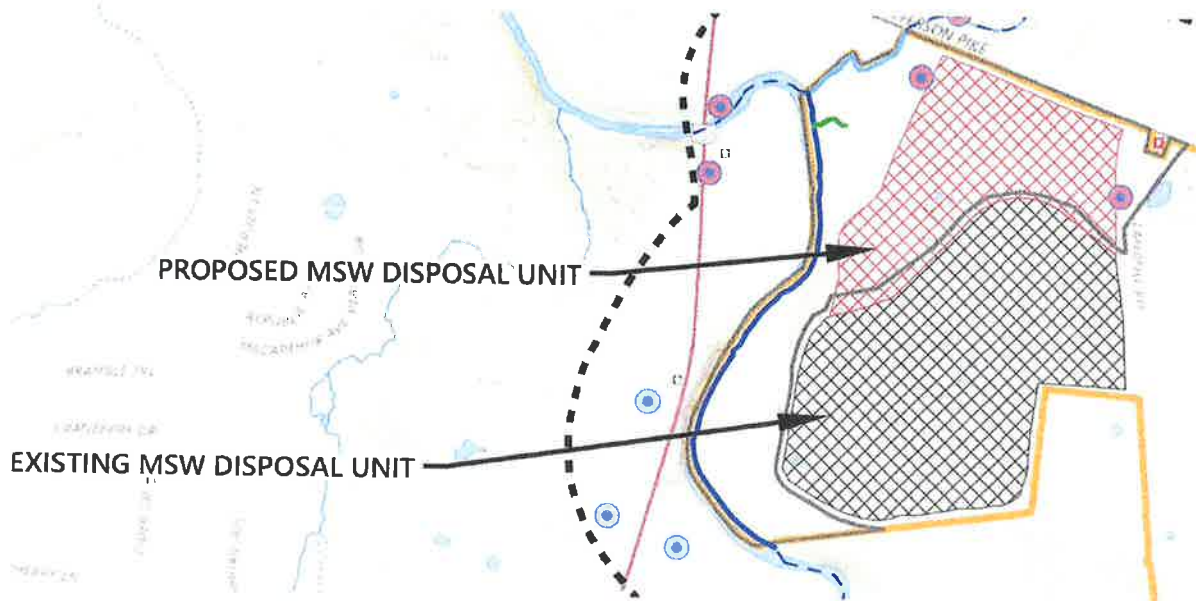
13. The original 1987 permit confirmed that public notice was for “Northside Sanitary Landfill consisting of approximately 130 acres.”

14. On January 15, 1988, a month after issuance, Jefferson Pike Landfill Inc applied to transfer permit SNL 751020219 from ROMAC to Jefferson Pike Landfill, Inc.

15. On January 22, 1988, the permit was transferred to Jefferson Pike Landfill Inc. which later became BFI Waste Systems of Tennessee, LLC. Jefferson Pike Landfill was later renamed Middle Point Landfill; Same space, same permit.

16. In 2014, after TDEC approved 2 expansions within the 200-acres, (1992 and 2007) CEC Engineering again confirmed in operating documents required by TDEC that the “permitted waste boundary is 207.3 acres” for Middle Point Landfill. (Underline added.)

17. The currently proposed expansion is shown in red on BFI's Part I Application on a parcel north of the original 200 acres, shown in black. **(Figure 3.)**



(FIGURE 3. Excerpt from BFI Part I expansion application, dated April 11, 2021.)

18. BFI engineers identify the “Permitted Landfill Footprint prior to 2006” as 138 acres. The “Total Permitted Footprint” is designated as 207.5 acres. The “Total Site Size” is approximately “808 acres.”

19. The new 100-acre expansion for Middle Point is on land not previously identified, evaluated, or permitted for landfilling as required for a permit pursuant to §68-211-105 (g). The space is plainly outside of and in addition to all areas designated for landfilling dating back to the original permit from 1988.

20. TDEC did not conduct a subpart 105(g) assessment for the newly proposed 100 acres for landfilling. Currently, in those 100 acres are several water features, including “Buford Spring.” BFI’s 2006 and 2007 engineering records identifies “Buford Spring” as an off-site sampling location to protect groundwater.

21. On August 19, 2021 following an extensive review of the law and permit history, the City of Murfreesboro advised TDEC General Counsel in a detailed letter that the Jackson Law applies to the proposed expansion and that TDEC review must defer to Local Approval.

22. In response, TDEC general counsel confirmed that TDEC disagrees and does not believe that the expansion is subject to the Local Approval under the Jackson Law.

23. BFI expressed its intent to file the Part II application sometime in February 2022. However, approval of the expansion also depends on approval by the Central Tennessee Regional Solid Waste Planning Board which denied the expansion in July 2021. BFI's petition against the Board is currently pending in Chancery Court Davidson County with no disposition date.

III. APPLICABLE LAW

24. TDEC has authority for the "general supervision over the construction of solid waste processing facilities and disposal facilities" across the state. (Tenn. Code Ann. §68-211-105(a).) No "new construction" shall be initiated nor shall any change be made in any solid waste disposal facility until the plans for such "new construction" have been submitted to and approved by the department. (§68-211-105(b).)

25. Over the years, the solid waste regulations have streamlined the process for industry such that all 'new construction' does not require a 'new permit.' For example, new systems for gas or leachate built inside a permitted waste boundary may be new construction requiring TDEC review and approval, but not a new permit. There are different types of waste processing facilities with a wide variety of construction issues for TDEC to consider.

26. A recognized and primary objective of the Solid Waste Division is that construction, operation and maintenance of waste facilities be done in a manner that avoids pollution of the waters of the State.

27. To achieve compliance with Tenn. Code Ann. §68-211-105(g), TDEC requires a permit applicant to submit two (2) key things. One is a “comprehensive environmental site assessment that includes an evaluation of the quality of groundwater beneath the proposed facility.” The second requirement is proof that the geologic formation underlying the proposed site and the design of the proposed facility are capable of containing the waste such that ground water protections are not violated. (§68-211-105 (g) (1) and (2).)

28. In approving a landfill site, TDEC may not deny a permit based the landfill’s proximity to other land uses, such as homes or hospitals. TDEC’s mandate is limited to geologic stability and the protection of groundwater. A critical component in permitting any landfill is TDEC’s review of the hydrogeologic evaluation and report prepared by the applicant required by subpart 105(h). The report is needed, among other reasons, to identify the fill space on a USGS map so that TDEC may determine whether the proposed fill area is far enough away from the normal boundaries of springs, streams, and other bodies of water. This requirement applies equally to expansions and new facilities.

29. The parameters of a landfilling permit are defined by the fill or waste boundary identified for TDEC by the applicant. That boundary determines the land area which in turn determines the scope of the hydrogeologic report TDEC and §105(g) require.

30. The power of the Commissioner to approve a landfill permit accompanied by these costly engineering reports is broad, but the Legislature inserted one critical prohibition after subpart 105(g). Subpart (h) prohibits TDEC from reviewing a new landfill application in a county or municipality that adopted the Jackson Law;

“The Commissioner shall not review or approve any construction for any new landfill In any county or municipality which has adopted §68-211-701, §68-211-704 and §68-211-707, (the Jackson Law) until such construction has been approved in accordance with the provisions of such sections.”

31. New construction under subpart (g) at various types of facilities does not always include a new landfill; but a “new landfill” under §68-211-105(h) invariably means new construction. Construction for a “new landfill” is an area that has not already been identified by the applicant as acreage within a hydrogeologic report from the applicant engineer. The parameters for a permitted waste footprint are defined by the applicant’s engineering documents. New construction for a new landfill outside that permitted waste footprint is not covered by a permit because the requirements of §105(g), and related rules, could not yet have been met.

32. Tennessee’s Solid Waste rules specify what an applicant must submit for a Part II application. Among other things, the engineering plans must designate the site on a map, the intended waste activities within the site, and provide a detailed geologic investigation for the site with boring locations, soil hydraulic conductivity, and groundwater data. As approved, the applicant’s design plans and operating manual/plan become part of the permit.

33. The only exception in §68-211-105(g) is for those expansions, modifications, or new units that are already part of an “existing permitted facility or site.” (emphasis added.) The key word is “permitted.” The parameters for the permitted space must be defined for landfilling by the land area designated for waste disposal and accompanied by the geologic investigation and TDEC review. Without those components, land is not permitted for landfilling no matter the type of “facility.” TDEC and the rules recognize that some “facilities” require no permit at all.

34. Tenn. Code Ann. §68-211-105 is in Part 1 of Chapter 211. The Legislature did not define the terms “site” or “facility” used in Part 1.

35. The term “site” is a broad term. It is not synonymous with a permitted footprint. TDEC uses the term broadly to mean a location, parcel, or other area of that can contain one or more permitted features, facilities or other items of interest to TDEC.

36. The term “facility” is also a broad term. It also is not synonymous with a permitted footprint. Some facilities are exempted by solid waste rules from requiring any permit. TDEC uses the term “facility” broadly to include outbuildings for waste processing, perimeter roads, or adjacent land space among other things.

37. As a practical matter, the terms “permitted footprint” and “permitted landfill footprint” have a shared meaning between TDEC and the few private engineers who prepare landfill design plans. The term “permitted footprint” refers to acreage designated by the applicant and reviewed by TDEC under subpart 105(g) approved for landfilling or waste disposal. The understanding is logical and tracks with the statutes.

38. For example, Middle Point Landfill identifies its “Total Site Size” on permit documents as approximately 808 acres; however, the same engineering documents identify the “Permitted Landfill Footprint prior to 2006” as “138 acres,” and the “Total Permitted Footprint” at 207.5 acres. The “total site” is not permitted for landfilling.

39. Unrelated to the Commissioner’s powers, Part 7 of Chapter 211 (§68-211-701 through 707) contains the Local Approval statutes known as The Jackson Law.

40. Part 7 applies to “construction ...for any new landfill.” (§68-211-701.) Part 7 contains no exceptions such as the one claimed by BFI. Tenn. Code Ann. §68-211-701 states;

Required Approval:

No construction shall be initiated for any new landfill for solid waste disposal or for solid waste processing until the plans for such new landfill have been submitted to and approved by:

- (1) The county legislative body in which the proposed landfill is located, if such new construction is located in an unincorporated area;*
- (2) Both the county legislative body and the governing body of the municipality in which the proposed landfill is located, if such construction is located in an incorporated area;*
or;
- (3) Both the county legislative body of the county in which such proposed landfill is located and the governing body of any municipality which is located within one (1) mile of such proposed landfill.*

Notably, the term “landfill” is used by the General Assembly six (6) times in this section. The term “facility” is not used at all.

41. In Part 7, the Legislature defined the key terms “landfill or landfilling:”

“For purposes of this part, landfill or landfilling means any land used for disposal of solid waste by filling and covering.” (Tenn. Code Ann. §68-211-702)

42. Part 7 expressly states that local approval precedes TDEC permitting authority. Part 7 prohibits “any construction” of a “new landfill,” and ends in 707 by clarifying that local approval expressly precedes issuance of any permit;

“The provisions of §§68-211-701 68-211-705 and this section are for local review and approval and shall be conducted prior to issuance of a permit by the department of environment and conservation or the commissioner.” (Tenn. Code Ann. §68-211-707)

43. In a ‘belt and suspenders’ approach, the Legislature inserted in Part 1 the same restriction on the Commissioner’s power that was created in Part 7 in §68-211-707. Section §68-211-105 (h) leaves no doubt that “any new landfill” must have first obtain local approval;

“(h) The Commissioner shall not review or approve any construction for any new landfill for solid waste disposal or for solid waste processing in any county or municipality which has adopted the provisions of §68-211-701 §68-211-704 and §68-211-707 **until such construction has been approved in accordance with the provisions of such section.**” (emphasis added with bold.)

44. The language and intent of both statutes separates local land use authority from solid waste permitting authority for “any new landfill” and grants no exception for “facilities that existed on June 2, 1989” or words with similar effect.

45. In 1995, the Legislature passed amendments to the Jackson Law. Had the Legislature intended to create an exception for lateral expansions of pre-Jackson Law landfills, that was the time to do it. However, the Legislature did quite the opposite. The Act various amendments included no such exception. Instead, Section 13 of Chapter 515 of the original Public Acts of 1989 was deleted “in its entirety.” Doing so deleted the original 1989 enacting language.

The 1989 enacting language had created a safe permit for facilities in the pipeline as of June 2, 1989 but was also used to argue that expansions of the same facilities were equally safe in avoiding local approval. This deletion clarified Legislative intent. After 1995, there was no remaining loop hole for pre-Jackson Law permits to indefinitely 'expand laterally' and avoid local approval.

46. Long after 1995 in 2012, this Agency passed a new Rule 0400-11-01-.02(c)(2) titled plainly after the statute it sought to reinterpret, "Local Approval Under Title 68, Chapter 211, Part 7." The rule takes local approval to mean exactly the opposite of the 1995 Legislative deletions. The rule unilaterally creates an unlimited loop hole for expanding undefined pre-Jackson Law "facilities" without regard to the original permit parameters and without local approval.

47. Rule 0400-11-01-.02(c)(2)(ii) on which BFI relies states:

"The Jackson Law does not apply to facilities that existed on June 2, 1989 (the date the Jackson Law went into effect) and it does not apply to an expansion of those facilities. Facilities that existed on June 2, 1989 include those that had received from the department a tentative decision to issue the facility a permit."

48. However, the law does not authorize this agency rule. State agencies are limited to the authority specifically granted to them by the Tennessee Legislature. There are no implied powers. The Legislature limited this Agency to administering Part 1, Part 8, and Part 9 of Chapter 211. (§68-211-111 (d)) The Legislature granted no authority to this Agency to administer the local approval powers granted by statute to municipalities and counties in Part 7.

49. The rule is also void because it conflicts directly with the statutory language of Part 7, specifically, §68-211-701, and 702. Part 7 speaks in alternating terms to "new construction" "new landfill," "proposed landfill," or "proposed new construction." Nowhere in Part 7 does the Legislature did not use the word "expansion" or refer to exceptions for "facilities existing as of June 2, 1989." In conflict with the statute, Rule 0400-11-01-.02 (c)(2)(i) and (ii) unilaterally creates an unlimited "expansion" loop hole to laterally expand pre-Jackson Law facilities without regard to the original permit parameters necessary to distinguish the old landfill with a permitted

waste boundary from new land outside that boundary. The rule abandons all rational limits and local control of the land.

50. As written, the rule creates an absurd result. Either it allows the unlimited expansion of any unpermitted facility “existing” as of June 2, 1989 or it allows the unlimited expansion of a permitted facility with no regard to the parameters of the original permit. For example, a solid waste sorting facility existing as of June 2, 1989 could forever avoid local land use approval and expand to any size whether 100 or 800 acres. Similarly, a landfill permitted for 130 acres as of June 2, 1989 could expand to 800 acres and forever avoid local land use approval.

51. When Part 1 is read as a whole along with the associated rules, it requires that the permitted waste boundary be identified by the applicant in engineering plans and that boundary forms the basis for TDEC to identify the parameters of a landfill permit. Beyond that waste boundary, landfilling is not permitted. Beyond the that boundary is a “new landfill” subject to the Jackson Law.

IV. REQUEST FOR PRELIMINARY OR INTERMEDIATE RULING.

52. The foregoing paragraphs are incorporated here by reference as if fully set forth.

53. Pursuant to Tenn. Code Ann. §4-5-223(a) this Agency may convene a contested case, or decline to hear this matter by order, or take no action within 60 days which effectively declines to hear the matter.

54. Central to the City’s contentions is that this Agency lacked the authority to promulgate the disputed rule, or interpret Part 7 in any declaratory order because Part 7 is a grant of land use authority that preempts TDEC permitting powers. Given this contention, the Agency is equally without the power to judge its own authority as challenged.

55. Petitioner City requests that this Agency decline to convene a contested case based on the foregoing, and because, among other things, that this Agency lacks the authority to enjoin

TDEC as necessary, lacked the authority to pass the Rule relied upon by BFI for an exception, and lacks the authority to interpret a land use law that precedes solid waste permitting.

56. Irrespective of whether this Agency chooses to convene a case or decline to hear it, the Agency lacks authority to hear or decide injunctive relief under the Uniform Administrative Procedures Act (“UAPA”). Pursuant to Tenn. Code. Ann. §4-5-316, the UAPA limits all agencies to hearing a petition to “stay” the effectiveness of an initial or final order. There is no means by which the Agency can “stay” a permit review by TDEC. Due to the unusual procedural and legal posture of this case, there is no configuration by which TDEC could be lawfully restrained by this Agency from starting the permit review process that in turn could potentially render the question of law moot. Absent an effective order enjoining TDEC, review of the permit may effectively defeat the City’s authority. Injunctive relief must be sought from the Chancery Court.

57. Moreover, if TDEC were to prematurely initiate review BFI’s Part II application, the process of vesting rights in a new permit may also begin, as does a footrace to either finish the application review or finish the case. The Legislature expressly prohibited that unseemly event by stating in §§ 68-211-105(h) and 68-211-707(a) that local authority preempts review and issuance of the permit “unless and until” the local approval process is complete.

58. Accordingly, the City requests a preliminary or intermediate ruling that this Agency is not authorized under the UAPA to hear or decide on injunctive relief to enjoin TDEC from review of BFI’s Part II application or to preserve the status quo pending final resolution. The City will be without an adequate remedy in the event TDEC receives and begins review of the Part II application during the pendency of a contested case before this Agency.

V. REQUEST FOR DECLARATORY ORDER

59. The foregoing paragraphs are incorporated here by reference as if fully set forth.

60. There is a current dispute regarding whether the Jackson Law applies to BFI's Part II application to landfill outside its 207-acre permitted waste footprint. The City contends TDEC has no authority to review the permit application until after the City completes the local approval process under §68-211-701-707. BFI contends it is exempt under Rule -0400-11-01-.02(c)(2)(ii). TDEC expressed agreement with BFI. BFI is expected to submit a Part II application imminently.

61. The City has standing to bring this claim. The City opted into the Jackson Law in 2016. The City has a particular and legally protected interest in protecting the land-use planning authority granted to it by the General Assembly. The City's authority to first review and approve construction of a new landfill is the threshold issue at stake. This interest—and the interests of City residents—is directly compromised and harmed if TDEC were to preempt or ignore the City's land use powers under Part 7 prior to resolving that issue. In short, the City will suffer direct injury were TDEC to unlawfully preempt the City's land use authority.

62. The City contends that this filing exhausts administrative remedies.

63. The language of Jackson Law/Part 7 applies broadly to "construction" of "any new landfill." This language is clear and unambiguous. It applies to the BFI 100-acre expansion. The proposed 100-acre landfill is on land not previously designated or permitted for landfilling. The original 1988 permit and subsequent engineering material from BFI limit the permitted waste boundary to 207 acres. The proposed expansion is north of and in addition to that permitted waste boundary footprint, and TDEC has not conducted the hydrogeologic assessment for the new area as required by §68-211-105(g).

64. The Jackson Law does not contain exceptions for expansions. It would make no sense if it did. An expansion beyond the permitted footprint for any facility reasonably constitutes a new landfill because it requires the described permitting process. In this case, Middle Point has

already expanded without interference beyond the first 130 acres and into the current permitted waste footprint of 207 acres. Beyond that waste footprint is a new permit process.

65. The Jackson Law therefore applies to BFI's proposed new landfill. The City's authority to review and approve the construction precedes a permit process for this new land.

66. The City requests a ruling that Part 7 applies to BFI's Part II application and that Rule 0400-11-01-.02 (c)(2)(ii) provides no lawful exception.

67. Rule 0400-11-01-.02(c)(2)(ii) is void, unconstitutionally vague, violates the separation of powers between the legislative and administrative branches, is unenforceable, unauthorized, and directly conflicts with Part 1 and Part 7 as set out in detail above.

68. To the extent the rule is not void, it irreparably conflicts with the Jackson Law by using the phrase "facilities that existed on June 2, 1989" which has no meaning. Assuming the phrase means a facility with a permit, that permit must have recognizable parameters. The designated permitted waste boundary approved by TDEC for landfilling provides that parameter. Tenn. Code Ann. §68-211-105(g) requires this result as do associated regulations such as Rule 0400-11-.01-.04(3) (stream buffer rules) and TDEC's Solid Waste Division Policy and Guidance Manual. Land beyond that boundary is new land for landfilling and subject to the Jackson Law. This Agency cannot exempt by rule what the Legislature did not.

69. The City requests a declaratory order as to the following;

A) Middle Point Landfill's proposed expansion onto 100 additional acres constitutes new construction on land not previously landfilled, not designated within a landfill waste boundary, and not previously permitted for landfilling, and must be first be approved by the City of Murfreesboro in accordance with the Jackson Law before TDEC may review the Part II application. The 100-acre space is outside of and in addition to the permitted 207-acre waste boundary, and far exceeds the original approximately 130-

acre facility permit as of June 2, 1989. Failing to acknowledge designated limits to the existing facility permit allows for unlimited expansion that renders the Jackson Law meaningless.

B) The Agency makes the following findings of fact as alleged by the City;

I) The original application and permit SNL 751020219 was issued in December 1988 before the Jackson Law was passed and gave public notice to landfill approximately 130 acres within a 200-acre parcel;

II) The Middle Point Landfill permit records confirm that the "Total Permitted Landfill Footprint prior to 2006" was approximately "138 acres" and the "Total Permitted Footprint" does not exceed "207.5 acres." The total area of the "site" owned by BFI is approximately 808 acres. Only 207.5 acres of it is within a permitted waste boundary or landfill footprint;

III) The City of Murfreesboro adopted the Jackson Law in 2016 and is within a 1-mile radius of the proposed expansion;

IV) The proposed 100 acre space is land that has not been landfilled at any point in time, was not previously identified in a permit application to be a landfill, and lies north and outside of the currently permitted waste boundary of 207 acres;

V) The new 100-acre area has not yet been reviewed by TDEC in accordance with the geologic and groundwater criteria in §68-211-105 (g);

VI) The new acreage is on land currently used as Middle Point Park with a publicly available ballfield;

C) The Agency ruling is based on the following conclusions of law;

a. Tenn. Code Ann. §68-211-701-707, also known as Part 7 or the "Jackson Law," grants to county and municipal governments the right to opt into its

land use/zoning provisions. Once covered, the local government has the right to first approve or disapprove of proposed new construction.

- b. Part 7 is clear and unambiguous as to how it applies. The Jackson Law expressly prohibits “construction” of any “new landfill” until after local approval is complete. The Legislature defined the terms “landfill and landfilling” broadly to mean “*any land used for disposal of solid waste by filling and covering.*”
- c. Part 7 does not contain an exception for the unlimited expansion of old landfills. To the extent that facilities are exempt that hold a permit as of June 2, 1989, the exemption is logically limited to land within the permitted waste boundary. Part 7 does not contemplate unlimited expansions for facilities that simply “existed” on June 2, 1989 without regard to the parameters of the permit existing at that time.
- d. Part 7 does not use the term “facilities” nor does it refer to “expansion” of facilities in any manner;
- e. New land used for solid waste disposal that is outside a previously permitted waste boundary constitutes a new landfill based on the terms defined in §68-211-702. Land within the permitted waste boundary would necessarily have undergone the geologic/groundwater protection assessment required in §68-211-105(g) and been designated for waste disposal by a permit applicant.
- f. This finding is consistent with the permitting requirements of Part 1 of Chapter 211, particularly §68-211-105(g), and the broad language of Part 7.
- g. Accordingly, Part 7 applies to BFI’s proposed expansion which is outside the currently permitted waste boundary of approximately 207 acres, and is not

permitted until it undergoes the hydrogeologic assessment required by §68-211-105 (g);

- h. As to the application of Rule 0400-11-01-.02 (c)(2), it does not create a lawful exception to Part 7 for the lateral expansion of old landfills.
- i. The rule is void because this Agency, as to solid waste, is authorized only to administer Part 1, Part 8, and Part 9 of the Solid Waste Disposal Act. The Agency has no authority to interpret or make rules regarding local land use authority as set out in Part 7, and no authority to create exceptions to a statute outside the reach of the Agency. Moreover, Part 7 is recognized by courts as a land use planning statute unique to solid waste that separates local land use approval from TDEC permitting authority. Rule 0400-11-01-.02 (c)(2) titled “*Local Approval under T.C.A. Title 68 Chapter 211, Part 7*” is void. This Agency is further not authorized to judge the limits of its own authority or interpret a land use statute that preempts permitting processes;
- j. To the extent Rule 0400-11-01-.02 (c)(2) is not void, it is inapplicable for the reasons alleged hereinabove and because it 1) directly conflicts with Part 7 language and intent, 2) creates exemptions the Legislature did not, and 3) the Agency cannot interpret the rule in a manner that renders the statute meaningless in whole or in part. The rule irreparably conflicts with §68-211-701, 702, and 707 by creating an unlimited expansion exception the statute did not include and the Legislature did not choose to add in 1995.
- k. To the extent Rule 0400-11-01-.02 (c)(2) is not void, it is reasonably interpreted only in a manner consistent with Part 7. Specifically, an exempt facility is one permitted as of June 2, 1989, and the parameters of

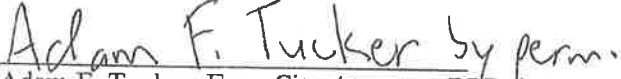
that permit for landfilling, are finite. The reasonable guiding parameter is the permitted waste boundary matching the soil and hydrogeological study required by §68-211-105(g). New land beyond that permit parameter is not exempt from the Jackson Law because it constitutes new land for landfilling, new construction under Part 7, and requires a new permitting process.

1. Accordingly, the 100-acre space is outside the existing 207 acre permitted waste boundary, requires a permit process, and is subject to the Jackson Law.

D) Petitioner requests all other appropriate relief and an award of costs according to law.

Dated: February 17, 2022

Respectfully Submitted:


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CERTIFICATE OF SERVICE

I certify that on February 17, 2022, I sent via email a true and correct copy of the foregoing Petition for Declaratory Order to the following individuals:

Patrick Flood, P.E., Technical Secretary
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and

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