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**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV**

BFI WASTE SYSTEMS OF TENNESSEE, LLC,)
)
)
) **Petitioner,**)
)
)
) **v.**)
)
) **CENTRAL TENNESSEE REGIONAL SOLID WASTE PLANNING BOARD,**)
)
)
) **Respondent.**)

FO-6-TT
No. 21-762-IV

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MEMORANDUM AND FINAL ORDER

A landfill owner sought permission from the regional board to expand the current size of its landfill. The regional board denied the expansion by resolution on July 9, 2021. Petitioner now seeks judicial review of the board's decision denying its application to expand its landfill. This administrative appeal came before the Court for hearing on Thursday, August 24, 2023 at 1:30 p.m.

I. Solid Waste Management Act & Region Board

The Solid Waste Management Act of 1991 ("Act"), Tenn. Code Ann. §§ 68-211-801 to -874, establishes a comprehensive program for the management and disposal of solid waste in Tennessee. One purpose of the Act is

to institute and maintain a comprehensive, integrated, statewide program for solid waste management, which will assure that solid waste facilities, whether publicly or privately operated, do not adversely affect the health, safety and well-being of the public and do not degrade the quality of the environment by reason of their location, design, method of operation or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste.

Tenn. Code Ann. § 68-211-803(a). The Act is remedial and is to "be liberally construed to effect its purpose of providing for a systematic and efficient means of solid waste

disposal and encouraging the best utilization and conservation of energy and natural resources.” Tenn. Code Ann. § 68-211-805.

The Act divides Tennessee into development districts, and counties within each development district constitute a municipal solid waste planning district. *See* Tenn. Code Ann. § 68-211-811(a). Each planning district submits a needs assessment for the counties within the district to the Tennessee Department of Environment and Conservation (“TDEC”) that identifies rational waste disposal areas within the district and includes information such as demographics and projections for a 10-year period. *See* Tenn. Code Ann. § 68-211-811(a), (c). After the planning districts’ needs were assessed, solid waste regions were established. *See* Tenn. Code Ann. § 68-211-813(a)(1).

After regions were established, solid waste regional boards were created to manage the solid waste disposal activities in each region. *See* Tenn. Code Ann. § 68-211-813(b)(1)(A). A regional board is empowered to create and maintain a plan for managing the disposal of solid waste within its region, and any entity desiring to operate a solid waste disposal facility in the region must first obtain a permit from that region’s board. A regional board may deny an application to build or to enlarge a landfill only if the proposed landfill project is inconsistent with the region’s solid waste disposal plan.

Central Region & Region Plans

In 1993, the Central Tennessee Regional Solid Waste Planning Region (“Central Region”) was formed. The Central Region consists of Cannon, Coffee, Rutherford and Warren counties in Middle Tennessee. Municipalities within the Central Region with populations over 1,000 include Woodbury (Cannon County); Manchester (Coffee County); Murfreesboro, Smyrna and LaVergne (Rutherford County); and McMinnville

(Warren County).¹ According to the U.S. Census Bureau, the Central Region has a total area of approximately 1,713 square miles and generally measures 40 miles north to south and 50 miles west to east.

Regions are required to develop individual plans for ensuring 10-year waste disposal capacities and for achieving compliance with Tennessee's statewide waste reduction and recycling goals.² *See* Tenn. Code Ann. § 68-211-813(c). Once developed, a region plan is submitted to TDEC for approval. *See* Tenn. Code Ann. § 68-211-814(a)(1). Regions are required to submit annual progress reports to TDEC covering the next ten years. *See* Tenn. Code Ann. § 68-211-814(a)(3). In 1994, the Central Tennessee Regional Solid Waste Planning Board ("Board") adopted its 10-year solid waste management plan ("1994 Plan"), which TDEC approved in 1995. The Board updated the 1994 Plan in 2001 ("Region Plan"). TDEC approved the Region Plan in 2001.

The Region Plan, as supplemented, is currently the Central Region's controlling plan. The Region Plan includes the individual plans for each of the counties in the Central Region. Because the counties in the Central Region determined that utilizing a regional approach to disposal, collection or waste reduction was not feasible, each county submits its own 10-year plan update and progress report in accordance with Tenn. Code Ann. § 68-211-814(a)(3), which becomes the collective update for the Region Plan.

All counties in the Central Region have experienced population growth at rates at or above the state growth rate, as well as economic growth. Changes in waste disposal rates for the Central Region counties are mixed. The majority of waste generated in the Central Region is still landfilled, but no new Class I landfills are planned for the Region.

¹ Tullahoma in Coffee County is in a different planning region.

² The information to be included in a Region Plan is provided in Tenn. Code Ann. § 68-211-815. Tennessee's statewide goal is a 25% reduction in the amount of solid waste disposed of at Class I solid waste disposal facilities, as measured by the methods established in Tenn. Code Ann. § 68-211-861.

See Administrative Record (“AR”), pp. 16, 84. For its Region Plan, the Central Region has prioritized waste reduction goals. Specific avenues identified for decreasing the disposal of waste include banning certain wastes in Class I landfills, developing educational programs, increasing new recycling opportunities, developing new recycling and composting programs, and increasing the use of Class IV (C&D) landfills.

Application & Review by TDEC & Region Board

An applicant who wishes to expand a solid waste disposal facility must apply to the region’s board, who then reviews the application for compliance with the region plan. In its Region Plan at Section 9.2.2, the Board provides its application and review procedure. See AR, pp. 99-101. Under the Board’s procedure, the application must include information regarding the estimated total volume of the facility in tons of waste, estimated daily tonnage of the facility, proposed service area of the facility, as well as a map showing the location of the site suitable for advertisement and a map showing current zoning of the site with a description of any special permits or re-zonings required and the status of same. See AR, p. 99. Each member of the Board gets a copy of the application, and a copy is sent to the Board’s design consultant. See *id.*

Upon receiving the application, the Board is required to provide notice of a public hearing on the application. See Tenn. Code Ann. § 68-211-814(b)(2)(A). Notice is made by placing an advertisement in the local newspapers of the county in which the disposal facility is proposed, as well as in the newspapers of the counties that have a portion of their land mass within five miles of the proposed landfill. See AR, p. 99. The notice is to include the following information:

1. Date, time and location of the public hearing;
2. Road address and location relative to incorporated or unincorporated municipalities;
3. Map showing location of the landfill site;

4. Dates of public comment period; and
5. Address for mailing of public comments.

See id. After giving notice, the Board conducts a public hearing, affording all interested parties an opportunity to submit written and oral comments. *See* Tenn. Code Ann. § 68-211-814(b)(2)(A). The public hearing must be at least 28 days after the notice runs. *See* AR, p. 99.

At the public hearing, the applicant is given 15 minutes to present the proposed project, after which the Board's design consultant has 15 minutes to present his or her report. This is then followed by a public comment period, with comments limited in duration to five minutes each. *See id.* at 99-100. After the public hearing, the Board schedules a follow-up meeting, not less than two weeks or more than four weeks after the public hearing, to discuss the application and vote. *See id.* at 100. The Board is required to issue a decision on an application within 90 days of receipt of a complete application. *See* Tenn. Code Ann. § 68-211-814(b)(2)(A).

If the Board accepts the application, then the applicant proceeds with the full permitting process.³ According to the Region Plan:

³ Pursuant to Tenn. Code Ann. § 68-211-814(b)(2)(A)-(D):

(2)(A) An applicant for a permit for construction or expansion of a solid waste disposal facility or incinerator shall submit a copy of the application to the region at or before the time the application is submitted to the commissioner. The region shall review the application for compliance with this section, and shall conduct a public hearing after public notice has been given in accordance with title 8, chapter 44, prior to making the determination provided for in this subdivision (b)(2). The hearing must afford all interested persons an opportunity to submit written and oral comments, and the proceeding must be recorded and transcribed. The region shall render a decision on the application within ninety (90) days after receipt of a complete application. The region shall immediately notify the commissioner of its acceptance or rejection of an application. If no decision is rendered by the region on the application within ninety (90) days after receipt of a complete application, then the commissioner may continue processing of the application.

(B) The region may reject an application for a new solid waste disposal facility or incinerator or expansion of an existing solid waste disposal facility or incinerator within the region only upon determining that the application is inconsistent with the solid waste

If the Board does not reject the application, the applicant can proceed with the full permitting process of the State. The State review process will determine the technical acceptability of the proposal. The Board's decision is based on siting and need for the facility.

Rejection of the proposal will result in the decision that the proposal is not consistent with the Central Tennessee Solid Waste Management plan and therefore the facility cannot proceed through the State permitting process. Where a region rejects an application, the DSWM shall not issue the permit unless they find that the decision of the region is arbitrary and capricious and unsupported by the record developed before the region.

AR, p. 101; *see also* Tenn. Code Ann. § 68-211-814(b)((2)(A)-(D). The Board may only reject an application upon determining the application is inconsistent with the Region Plan. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B). If the Board rejects an application, then it must identify, in writing, the specific grounds on which the application is inconsistent with the Region Plan. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B).

When evaluating whether an application is consistent with the Region Plan, the Board's primary considerations are:

management plan adopted by the county or region and approved by the department, and the region shall document in writing the specific grounds on which the application is inconsistent with such plan.

(C)(i) Appeal of a final action of the region under this subdivision (b)(2) must be made by an aggrieved person within thirty (30) days to the chancery court of Davidson County. The court shall exercise the same review as it would in a case arising under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. For the purposes of this section, an "aggrieved person" is limited to a person applying for permits, a person who owns property or lives within a three-mile radius of the facility or site that is proposed for permitting, or cities or counties in which the proposed facility is located.

(ii) A permit that is the subject of an appeal made to the chancery court of Davidson County within the time prescribed in subdivision (b)(2)(C) must not be:

(a) Processed by the commissioner until there is a final adjudication of the appeal on the merits; or

(b) Issued in contravention of the final adjudication on the merits.

(D) If an aggrieved party does not appeal a final action of the region in accordance with subdivision (b)(2)(C), then the commissioner may issue the permit unless the commissioner finds that the decision of the region to reject the application is arbitrary and capricious and unsupported in the record developed before the region.

Id.

1. Will the additional landfill volume be needed for the Region to maintain environmentally acceptable and cost-effective Class I, Class III, or Class IV disposal volume for the waste generated within the Region?
2. Will the location of the landfill extension within the Region provide for more cost-effective disposal of Class I, Class III, or Class IV waste without sacrificing environmental acceptability?
3. Is the location of the facility suitable for a landfill to serve the Central Region? Landfills located at the outer edges of the Region (i.e., away from major Central Region population centers) and designed to serve out-of-region waste will be considered not suitably located to serve the Region.
4. Will the cost impacts for providing infrastructure (i.e., roads, water) for bringing out-of-region waste into the county exceed the cost savings provided by the additional landfill facility?

Id. at 98-99.

II. Factual & Procedural History

BFI Waste Systems of Tennessee, LLC (“BFI”) owns and operates Middle Point Landfill (“Middle Point”), a TDEC-permitted Class I municipal solid waste landfill, located at 750 Jefferson Pike, Murfreesboro, Tennessee. Generally, a Class I landfill accepts non-hazardous municipal solid wastes such as residential/household garbage, approved special wastes, and commercial wastes. *See* AR, p. 657. Middle Point opened in 1989 and is one of two Class I landfills operating within the Central Region. Middle Point is the Central Region’s primary landfill, accepting approximately 80% of the Central Region’s waste stream. It is the only landfill that services the entire Central Region and accepts all classes of approved waste materials.

Middle Point is located just outside of Murfreesboro, Tennessee. With a population of approximately 150,000 residents, Murfreesboro comprises approximately 75% of the Central Region’s population. Middle Point accepts waste from 37 counties in Tennessee, and 70% of the waste Middle Point currently receives is generated from

outside of the Central Region. Without expansion, Middle Point will reach its currently permitted disposal capacity in approximately 2028, and according to TDEC data, other than Middle Point, there are few-to-no landfills within a 100-mile radius of Murfreesboro. According to the TDEC 2020 Remaining Life Survey for Landfill Sites, all other landfills within a 100- to 150-mile radius of Murfreesboro are expected to reach their permitted capacities approximately seven years after Middle Point closes, if its expansion is denied.

BFI submitted Part I of its application for expansion of Middle Point to the Board on April 14, 2021 (“Application”). The Application requested to expand the current footprint of the landfill by 99.45 acres to land BFI owns directly adjacent to Middle Point. This expansion would increase Middle Point’s disposal capacity by 32 million tons and extend the landfill’s life by an estimated additional 25 years.

On May 27, 2021, the Board published a notice about the June 28, 2021 public hearing on BFI’s Application. The notice stated that interested parties could submit information to the Board for consideration, but it did not include a map showing the location of the proposed expansion. The Board conducted the public hearing on the Application on June 28, 2021, at which public commenters voiced either opposition or support for the Application. No design consultant reported or submitted a report at the hearing.

The Board conducted a follow-up meeting on July 9, 2021. At this meeting, Donna Barrett, the Board’s Rutherford County Representative, circulated information packets to the Board and made a presentation about the packet. BFI was not given an opportunity to respond to Ms. Barrett’s comments. At the conclusion of the July 9, 2021 meeting, the Board voted to deny BFI’s Application. Thereafter, Board Chairman Mac

Nolan proposed that the Board also deny BFI's Application on zoning grounds. The Board agreed and held another vote to deny the Application on this additional ground.

According to the Board's written denial of BFI's Application, the Central Region does not need the landfill expansion to maintain environmentally acceptable and cost-effective disposal volume for the region. The Board determined that the proposed expansion would not provide cost-effective disposal without sacrificing environmental acceptability and that Middle Point is improperly suited to serve the Central Region, because it is located near the densely populated area of Murfreesboro. The Board also concluded that the Application is inconsistent with the Region Plan, because Middle Point does not provide for certain services of an integrated solid waste disposal system. *See AR, p. 1278.*

BFI appealed the Board's denial to this Court on August 6, 2021. The City of Murfreesboro ("City") moved to intervene and to add environmental information to the administrative record. On December 20, 2021, the Court granted the City's motion to intervene, but remanded this matter back to the Board for a determination of what materials to include in a reconstituted administrative record and to conduct further proceedings as it sees fit to consider all appropriate matters, including the body of material it may include in a reconstituted administrative record. The Court stayed the administrative appeal, pending remand.

On remand, on January 25, 2022, the Board published a notice announcing a February 8, 2022 public hearing on BFI's Application. Per the notice, interested persons had until February 4, 2022 to submit materials and information to the Board for possible inclusion in the administrative record. In response, the City, Ms. Barrett, and a Camden City resident submitted information. BFI also submitted various documents, including a

document prepared by TDEC on February 8, 2022 in response to questions submitted by the City regarding Middle Point's compliance with environmental regulations.

At the February 8, 2022 public hearing, commentary was permitted, but no design consultant presented or prepared a report. At the end of the public hearing, the Board scheduled a follow-up meeting for February 24, 2022, at which time it planned to hear from its design consultant and determine whether to include any of the submitted documents in the administrative record. The Board denied BFI's request to respond to the Board's design consultant after his presentation at the February 24, 2022 meeting.

At the conclusion of the February 24, 2022 meeting, the Board voted to include in the administrative record the Camden City resident's submission, Ms. Barret's submission, and a majority of the City's submission. The Board also voted to include BFI's submission but voted to exclude the February 8, 2022 TDEC document. After the Board voted on the content of the administrative record, the Board voted on BFI's Application and reaffirmed its July 2021 denial. The Board did not issue a written decision of its February 24, 2022 vote.

III. Standard of Review

The Board may reject an application for the expansion of an existing solid waste disposal facility within the region only upon a written determination that the application is inconsistent with the solid waste management plan adopted by the region and approved by TDEC. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B). Further, the Board is required to conduct its application review process in accordance with Tenn. Code Ann. § 68-211-814 and the procedures set forth in the Region Plan.

Pursuant to Tenn. Code Ann. § 68-211-814(b)(2)(C)(i), the Court exercises the same review as it would in a case arising under the Uniform Administrative Procedures

Act (“UAPA”), and appeals are limited to a person applying for a permit, a person who owns property or lives within a three-mile radius of the facility proposed for permitting, or the city or county in which the facility is located. *See* Tenn. Code Ann. § 68-211-814(b)(2)(C)(i). Accordingly, judicial review of the Board’s decision is confined to the administrative record, and the Board’s findings are entitled to considerable deference. *See Metro. Gov’t of Nashville v. Shacklett*, 554 S.W.2d 601 (Tenn. 1977). The Court may not substitute its judgment for that of the Board, even when the evidence could support a different result. *See Wayne Cty. v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 279 (Tenn. Ct. App. 1988).

Pursuant to Tenn. Code Ann. § 4-5-322(h), this Court may reverse or modify the Board’s decision only if BFI’s rights have been prejudiced because the decision is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5)(A)(i) Except as provided in subdivision (h)(5)(B), unsupported by evidence that is both substantial and material in the light of the entire record;
 - (ii) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact;
- (B)(i) Unsupported by a preponderance of the evidence in light of the entire record, if the administrative findings, inferences, conclusions, or decisions were made by a board, council, committee, agency, or regulatory program created pursuant to chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of title 63;
 - (ii) In determining whether the administrative findings, inferences, conclusions, or decisions are supported by a preponderance of the

evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

Tenn. Code Ann. § 4-5-322(h). No agency's decision in a contested case shall be reversed, remanded or modified unless for errors which effect the merits of the decision. See Tenn. Code Ann. § 4-5-322(i).

Generally, judicial review is limited to the record produced by the local administrative board. See *Moore v. Metro. Bd. of Zoning Apps.*, 205 S.W.3d 429, 435 (Tenn. Ct. App. 2006). An agency's decision is arbitrary and capricious if the Board's decision lacks evidentiary support or if a Board denies a request that meets all applicable requirements with no basis for the denial. See *Harding Acad. v. Metro. Gov't of Nashville & Davidson Cty.*, 222 S.W.3d 359, 363 (Tenn. 2007). The Court may reject an agency's factual findings only if a reasonable person would necessarily draw a different conclusion from the record. See *Miller v. Tenn. Bd. of Nursing*, 256 S.W.3d 225, 229 (Tenn. Ct. App. 2007).

"Courts defer to the decisions of administrative agencies when they are acting within their area of specialized knowledge, experience, and expertise." *Wayne Cty.*, 756 S.W.2d at 279. Under the narrower scope of review of an agency's factual determinations, courts "should be less confident that their judgment is preferable to that of the agency." *Id.* (citing 2 C. Koch, *Administrative Law and Practice* § 9.4 (1985)).

IV. Discussion

Under the Act, the Board is charged with creating a Region Plan that ensures a 10-year disposal capacity for the Central Region's waste and achieves the statewide 25% waste diversion goal. See Tenn. Code Ann. § 68-211-813(c); Tenn. Code Ann. § 68-211-861(a). When an applicant seeks to expand an existing landfill, the Board reviews the

application to determine its consistency with the Region Plan. “The Board’s decision is based on siting and need for the facility.” AR, p. 101. “The State review process [determines] the technical acceptability of the proposal.” *Id.*

By statute, region plans must address anticipated waste capacity needs for the particular region. *See* Tenn. Code Ann. § 68–211-815(b)(5). Periodic assessments must also evaluate existing solid waste capacity and identify potential shortfalls in capacity. *See* Tenn. Code Ann. § 68-211-811(c)(6) & (9). Middle Point is nearing its expected life and, at current disposal rates, will reach capacity in approximately 2028. Middle Point seeks to expand its capacity by approximately 32 million tons, which would extend the landfill’s life by an estimated additional 25 years. At this time, there are no new Class I landfills planned in the Central Region, and the Region Plan contemplates new landfills being located out of the region. *See* AR, pp. 84, 85.

Regarding disposal capacity, the Region Plan provides:

All waste in the region over which the local governments have control is disposed of at the BFI Middlepoint Landfill or the USA Waste (Waste Management) Cedar Ridge Landfill. The Middlepoint landfill accepts 80% of the region’s waste stream. It has been estimated that the Middlepoint Landfill has six to eight years of life remaining. Due to the relatively short life expectancy for the Middlepoint landfill, several localities in the region are interested in future disposal options.

Future disposal options include disposing of waste at another private facility, developing a waste-to-energy facility, or establishing an MSW⁴ composting facility. For the five-year update, the three disposal options listed above have been evaluated.

AR, p. 84.

In Rutherford County’s 2020 approved annual update, Rutherford County stated that landfill use, as well as non-landfill solutions, will be needed in the future:

⁴ Municipal solid waste. *See* AR, p. 918.

MiddlePoint has less [than] 10 years of capacity in it's (sic) current configuration. When it closes, Rutherford County will have to have other options in place. Landfill use will be needed along with non landfill solutions. Cedar Ridge, in Marshall County, has 9 years of capacity currently. Bi-County, in Montgomery County[,] has 32 years of current capacity. There [is] currently no other landfill space capacity in Middle Tennessee without expansions or new developments. The future must include new processing solutions other than just landfills. The City of Murfreesboro Solid Waste has placed in the CIP in both 2020 and 2021 the monies to buy land for a transfer station (2020) and to build a transfer station (2021).

* * *

It will take years to plan, fund, build and have operational any and/or all of the possible solutions required for disposal of trash, tires, recyclables, sewer sludge, construction debris and household hazardous waste.

AR, p. 681.

In Cannon County's 2020 approved annual update, Cannon County noted its reliance on Middle Point in order to meet its waste disposal needs:

Cannon County has renovated [its] convenience center and plan[s] to open in . . . January 2021. In February 2021, [it plans] to extend the hours of operation to Wednesdays for the convenience of Cannon County residents. [It] is under contract with Southern Central who provides compactors and transports the waste to the landfill. Because they no longer accept the waste that Woodbury picks up curbside at their transfer station due to the extensive repairs needed[,] it has decreased the amount of waste they manage annually. Woodbury transports city and business waste directly to the landfill.

* * *

Cannon County can manage the waste generated by county residents using their new convenience center. Even if the tonnage of waste increased, it could continue to be managed the same way with just more trips to the landfill or by adding an additional compactor.

AR, p. 749.

However, with only 30% of the waste accepted at Middle Point originating from the Central Region, the Board noted that Middle Point's existing lifespan could be extended another 18 years if based solely on the Central Region's waste stream:

[T]he volume of waste generated within the "region" (Cannon, Coffee, Rutherford and Warren) will not need this expansion. Once an integrated solid waste program is accepted by Rutherford County, this type of expansion would not be necessary. Please note that 70% of the waste currently received at this facility is out of region. With only 30% generated by the region, the current 6 to 8 year life would be extended to 18 years based solely on the region's need. This regional board's answer applies to how it relates to the region's needs, not any out-of-region area as the question applies to "waste generated within the region"

AR, p. 1275.

Each region develops a plan for its 10-year disposal capacity. *See* Tenn. Code Ann. § 68-11-813(c). Based on the Central Region's waste stream, Middle Point, in its current configuration, has a lifespan of approximately 18 years. As such, in its current configuration, Middle Point meets the Central Region's 10-year disposal capacity need. Although BFI argues that the Board incorrectly considered only the Central Region's waste stream when assessing disposal capacity at Middle Point, the Act provides that region plans are for the assessment of each region's 10-year disposal capacity.⁵ *See id.* The substantial and material evidence in the record supports the Board's determination

⁵ A Region may restrict access to its landfills by excluding waste originating outside the region, "if the facility's acceptance of that waste significantly impairs the region's ability to effectuate its plan." Tenn. Code Ann. § 68-211-814(b)(1)(B); *see also* Tenn. Code Ann. § 68-211-817. However, "[a] region or solid waste authority may not impair the obligations of contracts entered into before the date of approval of the region's plan in violation of the article I, § 20 of the Tennessee Constitution." Tenn. Code Ann. § 68-211-814(b)(4). If a solid waste facility has accepted waste from a specific source outside of the region prior to July 1, 1991, the Region may not prohibit the facility from continuing to accept waste from that source, unless the acceptance of waste significantly impairs the Region's ability to effectuate its Region Plan. *See* Tenn. Code Ann. § 68-211-814(b)(1)(B); Tenn. Code Ann. § 68-211-817. Prior to July 1, 1991, Middle Point was accepting waste from throughout Middle and Southeastern Tennessee. *See* AR, p. 101. Both Rutherford County and the City of Murfreesboro enjoy host agreements with BFI that provide for free waste disposal for the life of Middle Point, including all future expansions. Rutherford County's contractual host agreement provides significant financial benefits to the county in exchange for the county agreeing not to restrict the origin of waste received at Middle Point. *See* AR, pp. 874-84 (Rutherford Co); pp. 885-91 (City of Murfreesboro).

that an expansion of Middle Point would be inconsistent with the Region Plan's current and anticipated 10-year waste disposal need projection for the Central Region.

In addition to need, the Board also considers the siting of the landfill's proposed expansion. *See* AR, p. 101 ("The Board's decision is based on siting and need for the facility."). Here, BFI requested to expand Middle Point by 99.45 acres to land that BFI owns directly adjacent to the existing landfill. *See* AR, p. 1237. Under the Region Plan, landfills that are located at the outer edges of the Central Region and designed to serve out-of-region waste are considered not suitably located to serve the region. *See* AR, p. 98-99. When originally permitted, Middle Point was located in a sparsely populated area of Rutherford County near the population center of Murfreesboro. *See* AR, p. 1276. Now, Middle Point is surrounded by densely populated residential areas, which the Board determined rendered Middle Point unsuitable for expansion. *See id.*

Although it accepts out-of-region waste, Middle Point is not located on the outer edges of the Central Region, but instead in Rutherford County near Murfreesboro, which is the center of population and waste generation for the Central Region. The substantial and material evidence in the record reflects that Middle Point's location provides for cost-effective disposal of the Central Region's Class I waste. Disposal facilities close the point of waste generation reduce costs and provide for more efficient disposal functions. Additionally, going out of the region to dispose of Class I waste will cause the counties of the Central Region additional waste disposal costs. However, the expansion of Middle Point does not come without any cost to the region. Under the Act, "costs of collection, disposal, maintenance, contracts" and other relevant costs are to be considered in the Region Plan. Tenn. Code Ann. § 68-211-815(2)(D).

Costs of expanding Middle Point include costs such as cleaning refuse from the roadside, additional infrastructure, and additional water and solid waste services.⁶ With respect to infrastructure, the road used to access Middle Point, known as East Jefferson Pike, needs substantial investment for adequate usage due to its traffic count. Road improvements to East Jefferson Pike require expansion from the current two-lane, no shoulder road to a five-lane road with shoulders. This road expansion will further require acquisition of right-of-way and new setbacks to the existing landfill and neighboring landowners. *See* AR, p. 1276. Additionally, Murfreesboro is experiencing a capacity issue within its water and solid waste services due to continued, unprecedented residential and commercial growth. An expansion of Middle Point will require additional capacity of the already overburdened services and add additional costs to the identified capacity issue solution. *See id.*

Continuing with the Board's analysis of siting for the proposed expansion, the Region Plan requires that an expansion application contain a map showing the current zoning of the proposed expansion site with a description of any special permits or rezonings required and the status of same. *See* AR, p. 99. Through this requirement, the Region Plan authorizes the Board to take into consideration whether a proposed expansion is properly zoned. Here, the zoning map identifies the landfill's I-4 zoning, but that zoning does not extend to East Jefferson Pike where part of the landfill expansion is proposed to be located. *See* AR, p. 1283. Based on the map and zoning information, the Board determined that the expansion of Middle Point is not consistent with the zoning

⁶ In addition to these costs, the Board also properly considered the contractual cost associated with adequate financial assurance provided by BFI for the closure and post-closure care of Middle Point. *See* AR, p. 1276.

identified for the area of expansion in the Application. *See* AR, p. 1267. The Board denied the Application on this additional ground.

Because the Region Plan contemplates the Board's consideration of whether any proposed expansion can or will be properly zoned for such use, an inability to obtain proper zoning can be a specific ground on which an application is deemed inconsistent with the Region Plan. Here, however, there is no proof in the record that the Board considered whether BFI sought a special permit or rezoning as provided for in the Region Plan.⁷ *See* AR, p. 99. The Board's failure to consider these matters is inconsistent with the Region Plan. Accordingly, the Court reverses the Board's denial of the Application on the additional specific ground of zoning.

In addition to ensuring adequate disposal capacity for the region's upcoming ten years, the Region Plan must provide for measures to help ensure the Central Region achieves the statewide waste diversion goal. The Region Plan indicates that the Central Region has not yet met the statewide waste reduction goal of 25%; thus, "waste reduction is the primary issue for the region." AR, p. 62. The Region Plan prioritizes increased waste diversion measures, such as banning certain wastes from Class I landfills, increasing recycling opportunities, developing additional programs, developing new recycling and composting programs, and increasing the use of Class IV landfills. *See* AR, p. 18. The Region Plan contemplates an integrated solid waste program, including disposal, transfer stations, recycling, composting, waste-to-energy solutions, education, and funding, and provides for new processes.⁸ *See* AR, pp. 15, 18, 22-24.

⁷ At the June 28, 2021 hearing and in its submission, BFI informed the Board that the expansion's design would be planned in accordance with the specific requirements of the Rutherford County Planning Department's regulations. *See* AR, pp. 818-29; 3180-89. Despite this, the Board denied the Application on the additional, specific ground of zoning.

⁸ BFI asserts that the Board's determination that Middle Point's expansion is inconsistent with the Region Plan, because it is not an integrated solid waste facility that includes composting, recycling, waste-to-

The Region Plan envisions a reduction in Class I waste and does not envision any new Class I landfills in the region. *See* AR, pp. 75-81, 84, 85. Given the Region Plan's primary objective of reducing reliance on landfills and Class I waste in particular, expanding the disposal capacity at Middle Point, the Central Region's Class I landfill, is inconsistent with the current Region Plan, its waste diversion strategy, and its vision for an integrated solid waste disposal system. It also cannot be disputed that removing as much material from the Central Region's waste stream as possible will lengthen the lifespan of Middle Point. The substantial and material evidence in the record supports the Board's determination that expansion of Middle Point is inconsistent with the Region Plan and its measures for achieving the statewide waste diversion goal.

Although BFI asserts that the Board's written decision does not identify any specific *provision* of the Region Plan with which the Application is inconsistent, this is not what is required of the Board. Under both the Region Plan and the Act, the Board is required to provide the specific *grounds* on which the Application is inconsistent with the Region Plan. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B); AR, p. 100. The Board's July 9, 2021 written denial sufficiently provides the specific grounds on which the Board determined the Application was inconsistent with the Regional Plan.

BFI argues that, in conducting its consistency analysis, the Board improperly considered topics outside of its jurisdiction, such as odor, the existence of aluminum dross, and Middle Point's compliance history with TDEC. The Region Plan provides that

energy, mixed waste processing for RDF, C&D landfill, Class I landfill, transfer station(s), tire recycling, collection system, education and funding, is arbitrary and capricious because the Board converted its long-term goals into requirements for BFI. The Region Plan's goal of an integrated solid waste disposal program is designed to divert waste from disposal into a Class I landfill and to help the Central Region achieve the statewide 25% diversion goal. There is no requirement in the Region Plan that Middle Point become an integrated solid waste disposal facility. However, expansion of Middle Point is inconsistent with the Region Plan's objective of diverting waste away from Class I landfills toward integrated solid waste disposal facilities.

the Board's decision is to be based on siting and need for the expansion; the state review process determines the technical acceptability of the proposal. *See* AR, p. 101. However, the Region Plan provides for four primary considerations for evaluating whether an application is consistent with the Region Plan. *See* AR, pp. 98-99. The Region Plan, inclusive of these questions, was approved by TDEC in 2001. As approved, the Region Plan contemplates the Board's consideration of environmental acceptability of the proposed landfill expansion as part of the Board's consistency analysis. *See* AR, pp. 98-99.

However, under the Region Plan, the Board's consideration of environmental acceptability is limited to: 1) Whether the additional landfill volume is needed to *maintain* environmentally acceptable Class I disposal volume for in-region waste; and 2) whether the *location* of the expansion provides for cost-effective disposal of Class I waste without *sacrificing* environmental acceptability. *See* AR, p. 98. These questions are consistent with the Board's analysis of siting and need and pertain to whether the expansion will cause degradation of the environment, not whether the current landfill is itself environmentally acceptable. Pursuant to the Solid Waste Disposal Control Act, TDEC is the state agency responsible for exercising general supervision over the operation and maintenance of solid waste disposal facilities or sites, and "[s]uch general supervision shall apply to all the features of operation and maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes." Tenn. Code Ann. § 68-211-107(a).

Because the Board can properly consider environmental acceptability when analyzing the location of a potential expansion for consistency with the Region Plan, the

Court determines that the Board was within its jurisdiction in making the following environmental acceptability findings:

[E]nvironmental acceptability is sacrificed with evidence of:

- * Refuse alongside roadway and associated soil absorption
- * Untreated drainage and the associated soil absorption from “road sweeping” of the waste haulers’ route
- * TDEC bass fish contamination advisory
- * Continual removal of shallow soil from a Lebanon limestone formation area which
 - * increascs runoff
 - * lowers available green space affecting the air quality
 - * increases the creation/instability of sinkholes

AR, p. 1275. The Board also properly considered potential run-off into nearby water sources due to the location identified for the expansion. *See id.*

Because TDEC is the state agency responsible for overseeing whether the landfill is itself environmentally acceptable, the Board exceeded its jurisdiction by considering odor, exposed waste, secondary aluminum deposited in the landfill, receipt of particular waste streams, and TDEC compliance history, as these considerations are under the purview of TDEC.⁹ Accordingly, the Court reverses the Board’s denial of the Application on these specific environmental grounds.

Procedure

BFI argues that the Board’s denial of its Application is based on improper procedure. For its first assertion of error, BFI states that, when the Board published the notice for the June 28, 2021 public hearing on its Application, the Board did not include a map showing the location of the proposed expansion. Pursuant to the Act, the Board is to “conduct a public hearing after public notice has been given in accordance with title 8, chapter 44,” prior to making its determination. Tenn. Code Ann. § 68-211-814(b)(2)(A).

⁹ For this reason, and because the Board did not consider the February 8, 2022 TDEC letter, the Court concludes the Board did not err in excluding the TDEC letter from the reconstituted administrative record.

Pursuant to Tenn. Code Ann. § 8-44-103:

(a) NOTICE OF REGULAR MEETINGS. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) NOTICE OF SPECIAL MEETINGS. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

Id. The statute offers no guidance as to what constitutes adequate public notice.

In *Memphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974), the Tennessee Supreme Court adopted the following test: “[A]dequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public.” *Id.* at 513. “The notice required by the Open Meetings Act is adequate when it ‘gives interested citizens a reasonable opportunity to exercise their right *to be present* at a governing body’s meeting.’” *Gray v. Dickson Cty.*, No. M2021-00545-COA-R3-CV, No. M2021-00546-COA-R3-CV, 2022 WL 1701961, at *3 (Tenn. Ct. App. May 27, 2022)(quoting *State ex rel. Akin v. Town of Kingston Springs*, No. 01-A-01-9209-CH-00360, 1993 WL 339305, at *5 (Tenn. Ct. App. Sept. 8, 1993))(emphasis in original).

“By separating the notice requirement into regular and special meetings, the legislature has impliedly stated that ‘adequate public notice of such meeting’ may be different depending on whether the meeting was regularly scheduled or specially set.” *Fisher v. Rutherford Cty. Reg’l Planning Comm’n*, No. M2012-01397-COA-R3-CV, 2013 WL 2382300, at *4 (Tenn. Ct. App. May 29, 2013). In *Fisher*, the Tennessee Court

of Appeals noted that Tenn. Code Ann. § 8-44-103 only requires notice of the meeting itself and “does not speak to notice of the content of the meeting.” *Id.* at *6.

Although the Regional Plan provides that a map showing the location of the site is to be included with the notice, the failure to include such a map amounts to harmless error. The notice fairly informed the public of the Application and gave interested citizens a reasonable opportunity to exercise their right to be present at the June 28, 2021 public hearing. BFI’s Application sought to expand a landfill that has existed in Rutherford County since 1989. Additionally, the Board made the map available and projected it on the screen at the beginning of the June 28, 2021 public hearing and extended the deadline for written submissions to July 9, 2021 to allow for additional commentary after reviewing the map. The failure to include the map in the notice was not prejudicial to BFI nor did it affect the merits of the Board’s decision. “Harmless errors committed by administrative agencies do not provide the reviewing court a basis for reversal, remand, or modification of the agency’s decision.” *Bishop v. Tenn. State Bd. of Accountancy*, 905 S.W.2d 939, 942 (Tenn. Ct. App. 1995).

Under the Act, the public hearing “must afford all interested persons an opportunity to submit written and oral comments, and the proceeding must be recorded and transcribed.” Tenn. Code Ann. § 68-211-814(b)(2)(A). Under the Region Plan, the Board’s application and review procedure provides that “[t]he public hearing will be in presentation format. The applicant will present a 15 minute discussion of the proposed project. This will be followed by a fifteen minute report from the design consultant for the solid waste planning board, this will be followed by the public comment period.” AR, pp. 99-100.

While the June 28, 2021 public hearing was recorded and transcribed and afforded all interested persons the opportunity to submit written and oral comments, the Board failed to present a design consultant or consultant report. Although this is a diversion from the Board's procedural process under the Regional Plan, the public hearing otherwise complied with the statutory process required under the Act. Under the unique circumstances presented¹⁰ here, the Board's failure to present a design consultant at the June 28, 2021 public hearing amounts to harmless error that did not violate BFI's procedural due processor affect the merits of the Board's decision.

The Region Plan provides that, at the end of the public hearing, the Board will schedule a follow up special meeting "to be a minimum of two weeks and a maximum of four weeks after the public hearing." AR, p. 100. Here, the Board held its follow up meeting to vote on the Application eleven days after the public hearing. The Board voted to allow this shortened timeframe in order to comply with the mandatory requirement that it "render a decision on the application within ninety (90) days after receipt of a complete¹¹ application." Tenn. Code Ann. § 68-211-814(b)(2)(A); *see* AR, p. 1250. There has been no showing of prejudice on the part of BFI as a result of this minor procedural deviation nor did this procedural deviation affect the merits of the Board's decision. As such, the shorter timeframe for the Board's follow up meeting amounts to harmless error.

¹⁰ BFI informed the Board at the public hearing that the detailed designs and engineering for the proposed expansion were not complete at that time. *See* AR, p. 3194. As such, no design was submitted to the Board for its design consultant to consider. Regardless of whether designs were or were not submitted, it was harmless error on the facts presented here for the Board to fail to have its design consultant present at the public hearing to present on the Application as submitted.

¹¹ To the extent the Board is asserting for the first time on appeal that BFI failed to submit a complete Application "by refusing to answer questions regarding out-of-region waste[.]" this issue is deemed waived. *Def.'s Br.*, p. 39; *see Lawrence v. Stanford*, 655 S.W. 2d 927, 929 (Tenn. 1983)("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal.").

BFI asserts that the Board's acceptance and consideration of an informational packet, prepared and distributed by Ms. Barrett on July 9, 2021, without giving BFI or the public an opportunity to review or respond to the presentation was improper.¹² The Region Plan provides that, "[a]t the second special meeting[,] the Planning Board will discuss the issue and then will vote and render a decision[.]" AR, p. 100. Pursuant to the Act, that decision must be in writing. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B).

Ms. Barrett is a member of the Board. As such, she was tasked with discussing the Application with the other members of the Board. *See* AR, p. 100. Ms. Barrett's drafting a resolution and presenting it to the Board for its consideration at the follow up meeting, the purpose of which was to discuss and vote on the Application, does not amount to error or improper procedure. Discussion and written resolutions are consistent with the Board's application and review process under its Region Plan, as well as the statutory mandate for written decisions. Moreover, although the Act mandates that this Court review the Board's decision in the same manner it would a case arising under the UAPA, the Board and its original proceedings below are not governed by the UAPA. *See* Tenn. Code Ann. § 4-5-106(a)(UAPA does not apply to "county and municipal boards, commissions, committees, departments or officers."). Accordingly, the information the Board reviews and considers in rendering its decision is not subject to the rules of evidence applicable to contested cases set forth in Tenn. Code Ann. § 4-5-313.

By Order entered December 20, 2021, the Court remanded this case to the Board to allow all interested parties the opportunity to file requests with the Board to expand or restrict the administrative record and to conduct further proceedings it deems necessary to consider all appropriate matters, including the documents it deems should be in the

¹² Even if Ms. Barrett had presented at the June 28, 2021 public hearing instead of the Board's July 9, 2021 follow up meeting, the Region Plan does not give BFI or the public the opportunity to respond.

administrative record. *See* Order (Dec. 20, 2021). Before remand, the parties' disputes about the content of the administrative record were particularly troublesome because of their quantity and substance, which included seemingly irreconcilable competing positions about which material should have been included and which material should have been excluded from the administrative record. Sitting as an appellate court, this Court concluded that a settled administrative record was a necessary predicate for meaningful judicial review. Accordingly, the Court remanded this matter back to the Board so that it could decide what should or should not be in the administrative record. Although the Court did not expect the Board to have additional substantive hearings or make additional rulings on the merits on remand, in its remand Order and in keeping with its view that the administrative body should be the tribunal of first resort in determining the contents of the administrative record, the Court deferred to the Board's discretion with respect to how it would undertake to resolve the parties' differences about the contents of the administrative record and how it would go about compiling a definitive, reconstituted administrative record for judicial review.

On remand, the Board held a second public hearing and follow-up meeting to again review and vote on BFI's Application. The Board allowed the public to submit new comments and information for inclusion in the record, none of which was before or considered by the Board when it evaluated BFI's Application in July 2021. While the Court believes that the Board exceeded its discretion by holding a second public hearing and follow up meeting on BFI's Application, the Court notes that the UAPA does permit the Board to "modify its findings and decision by reason of the additional evidence" and to "file that evidence and any modifications, new findings or decisions with the reviewing court." Tenn. Code Ann. § 4-5-322(e). As such, the Court concludes that the Board's

consideration of the additional evidence presented by the parties, the additional hearings, and the Board's vote to reaffirm its decision to deny the Application are consistent with statutory procedure under the UAPA and, thus, do not violate the 90-day timeline provided for in the Act.¹³

On remand, BFI and the City submitted a significant volume of highly technical materials, including expert declarations, for the Board's consideration. The Board announced at the February 8, 2022 public hearing that the materials would be reviewed by its design consultant, Rich Thompson, who would present at the follow up meeting. BFI complains that not having the design consultant present during the public hearing denied it the ability to ask questions or comment on Mr. Thompson's opinions. However, the Region Plan does not provide BFI with the opportunity to ask the design consultant questions or to comment on his opinions. *See* AR, pp. 99-100. Although having the design consultant's presentation during the follow up meeting rather than during the public hearing is a diversion from the procedures provided in the Region Plan, the Court determines this error was harmless under the unique circumstances presented in this case. BFI was not prejudiced by this error nor did this error effect the merits of the Board's decision.

BFI asserts that the Court should not consider the additional evidence included in the reconstituted administrative record unless that evidence was considered by the Board at the time of its July 9, 2021 decision. BFI takes specific aim at the information regarding odor complaints, aluminum waste, and TDEC violations that were not before the Board in July 2021. While the Court agrees that environmental concerns such as

¹³ Even if the Board erred in allowing additional materials into the administrative record on remand or in conducting a second review of and vote on BFI's Application, the error is harmless, as there is substantial and material evidence in the original administrative record to support the Board's July 9, 2021 decision. *See generally Lien v. Metro. Gov't of Nashville*, 117 S.W.3d 753, 764-65 (Tenn. Ct. App. 2003).

environmental compliance, adequacy of TDEC regulation, odor, and other technical or operational issues should not have been considered by the Board, as such matters are within the purview of TDEC and the state permitting process, the Board's allowing additional materials into the administrative record on remand is harmless error, as there is substantial and material evidence in the original administrative record to support the Board's July 9, 2021 decision. *See generally Lien v. Metro. Gov't of Nashville*, 117 S.W.3d 753, 764-65 (Tenn. Ct. App. 2003).

Although BFI suggests in its brief that the Board predetermined its vote and was under the influence of the City, "under Tennessee law, there is a rebuttable presumption that public officials perform their duty with honesty and integrity, and in the manner prescribed by law, and the party claiming bias has the burden of proof." *Cunningham v. City of Chattanooga*, No. E2008-02223-COA-R3-CV, 2009 WL 2922789, at *2 (Tenn. Ct. App. Sept. 11, 2009). There is no evidence in the record to support any suggestion of undue bias on the part of the Board or the City.

For the foregoing reasons, the Court determines that, under the unique circumstances presented here, the procedural errors identified by BFI were harmless errors. The parties and the public had a fulsome opportunity to present, engage in dialogue, and be heard before the Board. Additionally, the Board had sufficient evidence before it, as well as sufficient time to review and consider the information presented. BFI was not prejudiced in any way nor did the errors affect the merits of the Board's decision. "Harmless errors committed by administrative agencies do not provide the reviewing court a basis for reversal, remand, or modification of the agency's decision." *Bishop*, 905 S.W.2d at 942.

Board's Decision

The dual purpose of the Region Plan is ensuring a 10-year disposal capacity for the Central Region's waste and achieving the statewide 25% waste diversion goal. *See* Tenn. Code Ann. § 68-211-813(c); Tenn. Code Ann. § 68-211-861(a). The Board correctly considered the current and anticipated disposal capacity needs of the Central Region and determined that no expansion of Middle Point was necessary to meet those needs for the upcoming 10-year period. The Board is not required to consider the disposal needs of other regions or the out-of-region waste stream into the Central Region when it considers the disposal needs of the Central Region. Additionally, the Region Plan anticipates no new Class I landfills in the Central Region and contemplates any new landfills being located out of the region.

The Region Plan and county updates show that the Central Region is striving to decrease the amount of waste it deposits into Middle Point. This waste reduction is the overarching goal for the Central Region, and the Region Plan instructs the region how to work towards achieving that goal. Future disposal options provided in the Region Plan envision an integrated solid waste program with a goal toward waste diversion, including composting, recycling, waste-to-energy, mixed waste processing for RDF, C&D landfill, transfer station(s), and tire recycling. Expansion of Middle Point is not anticipated in the Region Plan as a measure to help the region meet the statewide waste diversion goal.

The substantial and material evidence in the record supports the Board's determination that the expansion of Middle Point is inconsistent with the current Region Plan. Accordingly, the Court affirms the Board's decision. However, certain specific grounds that form the basis of Board's decision are not supported by the substantial and

material evidence in the record or are in excess of the Board's statutory authority. As such, the Court hereby reverses the following specific grounds:

1. In Resolution 21-001, the paragraph stating, "**WHEREAS**; per TDEC reports and inspections, Republic, at Middle Point Landfill, has ongoing, documented, re-occurring violations of state law and rules and regulations[,]” AR, p. 1271, pursuant to Tenn. Code Ann. § 4-5-322(h)(2).¹⁴
2. In the Supporting Documentation (Addendum/Attachment/Exhibit) for CTWSPB Resolution 21-001, the following specific grounds pursuant to Tenn. Code Ann. § 4-5-322(h)(2):
 - a. the June 23, 2021 Notice of Violation issued by TDEC to Republic regarding Middle Point; *see* AR, p. 1273
 - b. TDEC violations listed at AR, pp. 1273-74
 - c. The following sentence in the first paragraph on AR, p. 1275: “These remarks are in addition to the applicable TDEC inspection violations consideration.”
 - d. The following in Paragraph b. on AR, p. 1275: “Low level Radioactive waste disposal in 2008” and “Illegal blasting”
 - e. The following paragraphs on AR, p. 1275:

During a public hearing held on June 28, 2021, 29 people, living in a range of 1.1 to 10.6 miles from the Middle Point Landfill, gave firsthand account to the re-occurring odor emitted and their related problems. Municipal/Solid Waste creates a chemical bio product, if allowed to continue in concentration and/or duration it inflicts environmental, health, social and economic damage. A review of the last three years TDEC

¹⁴ Statutorily and under the Region Plan, the Board may reject an application only upon determining that the application is inconsistent with the Region Plan. *See* Tenn. Code Ann. § 68-211-814(b)(2)(B). The Board's decision is based on siting and need for the facility. *See* AR, p. 101. “The State review process will determine the technical acceptability of the proposal.” *Id.*

reports/inspections of this landfill document a continuation of exposed waste.

In addition to the items listed above, there remains an unknown amount of secondary aluminum deposited in the landfill from the mid 1990's to 2007. These deposits elevate the landfill internal temperature, resulting in thermal events (i.e., fires). In 2011, a Consent Order was issued by TDEC for an itemized and immediate Corrective Action Plan for managing the reaction occurring and minimizing the potential for future "fires".

- f. The following paragraph on AR, p. 1277:

Republic's refusal to take initial responsibility as the origin of the odor, has already resulted in unbudgeted funds spent by local governmental entities to "prove" the cause of the odor was indeed the responsibility of Republic. This was at least the second time Republic initially placed responsibility on local government. The 2003 "fires" Republic placed responsibility on local wastewater sludge when in fact the disposal of aluminum was the cause.

- g. The following sentence on AR, p. 1277: "These remarks are in addition to the applicable TDEC inspection violations consideration."

- h. The following paragraph on AR, p. 1277:

Including the results of a public hearing conducted on June 28, 2021, this extension request is not only environmentally inconsistent with the regional plan, it is also socially and economically inconsistent/incompatible with the regional plan.

3. In the Supporting Documentation (Addendum/Attachment/Exhibit) for CTWSPB Resolution 21-001, the following specific grounds pursuant to Tenn. Code Ann. § 4-5-322(h)(5)(A):

- a. In the second paragraph of subpart c. on AR, p. 1276, the following partial sentences: ". . . and not suited for expansion" and ". . . and *should not* be considered and is *not* suitable to serve the region."

- b. The following sentence under subpart c. on AR, p. 1276: “These remarks are in addition to the applicable TDEC inspection violations consideration.”
4. In the Additional Statutorily Authorized Review, the following specific ground pursuant to Tenn. Code Ann. § 4-5-322(h)(2) and/or Tenn. Code Ann. § 4-5-322(h)(5)(A): “This expansion is not socially and environmentally feasible.” AR, p. 1278.
5. In the Additional Statutorily Authorized Review, the following specific ground pursuant to Tenn. Code Ann. § 4-5-322(h)(5)(A): “Since 2018, in the Plan, Rutherford County has indicated a need to have availability to the railroad. This expansion does not support those efforts.” AR, p. 1279.

The remaining specific grounds as stated in the Board’s Resolution 21-001, Supporting Documentation (Addendum/Attachment/Exhibit) for CTSWPB Resolution 21-001, and Additional Statutorily Authorized Review are hereby affirmed. *See* AR, pp. 1271-79.

V. Conclusion

The substantial and material evidence in the record supports the Board’s determination that BFI’s Application to expand Middle Point is inconsistent with the Central Region’s current Region Plan. Accordingly, the Board AFFIRMS the Board’s denial of BFI’s Application as inconsistent with the Region Plan, as detailed herein. However, the Court determines that the Board’s consideration of environmental factors, TDEC compliance history, odor, and operational issues at Middle Point were outside of the scope of the Board’s consistency analysis under the Regional Plan and should not have been considered. *See* Tenn. Code Ann. § 68-211-815. The Board’s improper reliance on these issues to deny BFI’s Application exceeded the Board’s authority under

the Region Plan and Tenn. Code Ann. § 68-211-814(b)(2)(B). Accordingly, the Court REVERSES the Board's decision on these specific grounds, as detailed herein.

The Court determines that, under the unique circumstances presented here, the procedural errors cited by BFI were harmless errors. The parties and the public had a fulsome opportunity to present, engage in dialogue, and be heard before the Board. Additionally, the Board had sufficient evidence before it, as well as sufficient time to review and consider the information. BFI was not prejudiced in any way nor did the errors affect the merits of the Board's decision. "Harmless errors committed by administrative agencies do not provide the reviewing court a basis for reversal, remand, or modification of the agency's decision." *Bishop*, 905 S.W.2d at 942.

For the foregoing reasons, the July 9, 2021 decision of the Central Tennessee Regional Solid Waste Planning Board, denying BFI Waste Systems of Tennessee, LLC's Application to expand Middle Point landfill, is hereby AFFIRMED in part, and REVERSED in part, as set forth in specific detail herein. Costs of this cause are taxed to Petitioner, BFI Waste Systems of Tennessee, LLC, for which execution may issue if necessary.

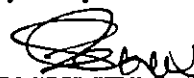
IT IS SO ORDERED.


RUSSELL T. PERKINS, CHANCELLOR

cc: Wells Trompeter, Esq.
Edward M. Callaway, Esq.
Karolyn Perry, Esq.
Elizabeth L. Murphy, Esq.
Lisa K. Helton, Esq.
Mark Alexander Carver, Esq.
John W. Rodgers, Esq.
Adam F. Tucker, Esq.
William G. Beck, Esq.

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.


Deputy Clerk and Master
Chancery Court

9/8/23
Date