

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

APPELLANTS: Case No. 3152, Robert Neal, 3515 Runnymede Road, Taneytown, Md. 21787; and Enviro-Gro Technologies, 3700 Koppers St., Baltimore, Md. 21227

Case No. 3177, Albert L. Liebno, et al., 2311 Bear Run Road, Taneytown, Md. 21787

ATTORNEYS: Charles M. Preston; Warren K. Rich; Sharon K. Tucker

APPEALS: Case No. 3152, appeal of a notice of violation for establishment of a fertilizer storage facility; or in the alternative, a conditional use for fertilizer storage.

Case No: 3177: An appeal of the determination of the Zoning Administrator that a sludge storage facility is a conditional use in the Agricultural Zone.

LOCATION: 2716 Bear Run Road, Taneytown, Md. 21787

BASIS: Article 6, Section 6.3(r), Carroll County Zoning Ordinance

HEARINGS HELD: 5-31-89; 6-26-89; 8-7-89; 8-21-89; 8-22-89; 9-18-89; 9-25-89.

INTRODUCTION

Both these cases concern the same issues--whether a sludge storage pit is an accessory use in the Agricultural District; if it is not, whether it is a conditional use in the District; and if it is, whether a conditional use should be granted. By agreement of the parties, the cases were heard together. Prior to the hearings the members of the Board made a personal inspection of the site and of the facility since it was in existence at the time of the hearing. The appeals, application, testimony and evidence comprising the record of this case are hereby included by reference in this decision.

The Board has reached three conclusions in these cases. First, it has determined that the sludge storage pit in question is not an accessory use in the Agricultural District. Second, it has concluded that the sludge storage pit in question does not qualify as a conditional use in the Agricultural District--it is

not a facility for "liquid and/or dry fertilizer storage and/or sales" as provided for in Section 6.3(r) of the Ordinance. Since an application was made for a conditional use and since the Board heard testimony on this subject, and in order to save the time and expense of all parties in the event the Board's decision is in error, the Board has decided whether or not to grant a conditional use on the assumption that the pit does qualify as a fertilizer storage facility. This final conclusion is that the facility does have serious adverse effects in the neighborhood and for this reason the Board has determined that the conditional use application must be disapproved. These decisions are based upon the findings and conclusions set forth below.

#### FINDINGS OF FACT

Robert Neal and members of his family own and farm in excess of six hundred acres, of which approximately 300 acres are used for sludge application. The Neal farm is located off of Bear Run Road in Taneytown and the farm has been in his family since 1937. The sludge was first applied to his farm in late 1987 and early 1988. The pit was constructed in 1989 and became operational in May, 1989. The purpose of the pit is to store sludge until it can be spread on the fields.

According to Mr. Neal, the sludge is useful for farming. It supplies the needed nitrogen and phosphorous for crops. It makes the soil more friable. Based upon Mr. Neal's testimony, the Board finds that the application of sludge to agricultural lands is an accepted agricultural practice and useful for agricultural purposes.

The pit is a massive concrete structure measuring 350 feet by 177 feet. It was designed by a qualified engineer, William Harrington, and inspected upon its completion. It is capable of holding 13,500 wet tons of sludge.

Enviro-Gro Technologies is an organization having as its business the transport and land application of treated municipal sewage sludge. It has contracts with various municipal authorities including Blue Plains, Piscataway and Alexandria in the Washington, D.C. area, and the Hanover plant in Pennsylvania. Mr. Robert Pepperman was the representative of Enviro-Gro who testified at the hearing. According to Mr. Pepperman, the purpose of the pit is to hold sludge which must be taken from a waste treatment plant and stored until it can be applied to the land. At some points during a year, such as rainy times, the sludge cannot be applied to land. Therefore, it will be stored. The sludge from this pit will always be spread on the Neal farm--it will never be spread on any other farm. However, several farms in Carroll County have contracts with Enviro-Gro for land application. It may be that sludge destined for some other farm will be deposited on the Neal farm because weather conditions do not permit land application. The sludge will then eventually be applied to the Neal farm.

Based upon its understanding of the process, the Board finds as a fact that the purpose of the pit is not agricultural use. When the sludge is eventually applied to the land, that is the agricultural use. However, there is no agricultural use associated with its storage. Rather the pit is more properly simply a link in the chain of sludge transport and eventual disposal. It must be stored not because it is needed by Mr. Neal for his farm but because it must be removed from municipal facilities by reasons of Enviro-Gro's contracts with such facilities. The existence of the pit responds not to a constant need for fertilizer on the Neal farm but to a fact of urban life--sewage treatment facilities generate sludge on a 24 hour basis and it must be removed continuously.

There is a related question whether the pit is a fertilizer storage facility. While the sludge serves the function of fertilizer to some degree, the Board finds as a fact that it is not fertilizer. Here the Board relies upon the testimony of farmers who testified for the protestants. Donald Dell, a long-time farmer, distinguished sludge from fertilizer. According to Mr. Dell, fertilizer has a guaranteed analysis; sludge does not have a controlled analysis. Manure is spread to get rid of it, even though it has some value as a fertilizer. Harold Thomas, a retired farmer, testified that as a farmer he made a distinction between fertilizer, manure and sludge. The three were not the same. Similar testimony was given by other farmers, Daniel Mazer, John Speak, Jr., and Leonard Miller. Based upon the testimony of these witnesses, the Board finds as a fact that the sludge storage pit is not a facility for the storage of liquid or dry fertilizer. Sludge has some of the properties of fertilizer, but it is not fertilizer as such. It is sludge.

The Board heard extensive testimony from representatives of the Maryland Department of the Environment, William Chicca and Martha Hinson, both highly qualified and knowledgeable experts in the field. The applicant also produced a knowledgeable expert on sludge disposal, George B. Wilson. The protestants produced William L. Marcus, an E.P.A. employee who was nevertheless testifying in his private capacity. Based upon the testimony of Mr. Chicca, Mr. Wilson and Ms. Hinson, it appears that the facility meets the applicable State and Federal standards. Mr. Marcus appears to be suggesting that these standards are not sufficient to protect the public health, that every containment vessel, no matter how well constructed, will eventually fail, etc. The Board accepts the testimony of the witnesses for the applicant and finds as a fact that the facility will meet the Federal and State standards.

Sludge causes an odor. The members of the Board smelled the sludge when they visited the facility. Mr. Pepperman, the representative of Enviro-Gro, testified that he has never received a complaint about odor from sludge. The Board does not accept his testimony in this regard. Many of the protestants testified about the strong odor from the property. It was impossible for these witnesses to say whether the odor came from the pit or from the

land application of the sludge. Based upon the Board's own observation, however, the Board finds as a fact that the sludge in the pit does cause an odor. A second question is whether the odor from the pit is greater than the odor when it is spread on the fields. In this regard, the Board relies upon the testimony of Martha Hinson, the section head of the sewage sludge division of the Department of the Environment. She testified as a rebuttal witness and stated unequivocally that there is a stronger odor from the pit than from spreading sludge on the fields. The Board accepts her testimony and finds as a fact that there is a stronger odor from a pit than from sludge spread on the fields.

A related question is the effect of the odor. Is there anyone around to smell it? Wouldn't the effect be the same anywhere in the agricultural district? An examination of Appellants' Exhibit 12, which is a blown-up tax map with the facility and the fields on which sludge is spread outlined, shows that the area has a large number of residences and subdivision lots. The testimony about the sludge odors came from these residents. The Board is quite familiar with the degree of development throughout the agricultural zone, and finds as a fact that there is a higher degree of residential development in the area surrounding the Neal farm than there is in many other areas which are zoned agricultural; and the Board further finds that as a consequence the effect of the odor is more severe at this location than it would be in many other areas of the agricultural zone.

Access to the property is off of Route 140. The trucks then travel on Mayberry Road to Bear Run road; take a left on Bear Run Road and proceed to the access road which leads to the facility. The testimony was that an average of 10-12 tractor-trailor trucks per day would visit the pit. The total weight of each truck is about 20-22 tons. According to exhibit 2 in the study by the Traffic Group, Inc., Appellants' Exhibit 15, the roadway is as narrow as 13 feet, although the witness for the Traffic Group, Glen Cook, testified it was 15 feet wide. Like many County roads, this is a substandard road. Jack Sterling, the County Public Works Director, testified to the widths now required for new County roads, and it is apparent that no matter how classified, Bear Run Road is a substandard road. According to Mr. Cook, a qualified traffic expert, two trucks could not pass; a car and a truck could pass with "extreme care".

The applicant, Enviro-Gro, is highly aware of the deficient status of Bear Run Road, particularly as it affects the possible safety of children riding school buses. Its solution is to ascertain when the buses will be using the road, and keep the trucks off the road during this time (this can be done because the trucks have radio communication). Another step is to station a monitor on Bear Run Road who will physically stop trucks from entering the road at times when buses are expected. While laudable efforts, the Board doubts that they would succeed. Mr. Cook's letter of June 16, 1989 to Mr. Pepperman of Enviro-Gro, contained in Exhibit 15, amply demonstrates how difficult it is to simply

ascertain whether the Board of Education planned to have buses on Bear Run Road in the summer of 1989. There could well be a gap of information for one reason or another. Further, the concern over traffic safety does not end with school buses. Children ride in cars as well. Other trucks travel the road.

It is necessary to put this matter in perspective. It is a very intensive amount of truck traffic from one property, 10-12 trucks per day, day after day. As the area grows, the situation will get worse, not better. The passing of cars and trucks is inevitable and people do not always use "extreme care". The Board finds, therefore, that the passage of 10-12 trucks per day to service the pit will create a traffic hazard. There is really no way to eliminate that hazard short of controlling all traffic entering Bear Run Road from both ends. Enviro-Gro suggests that the traffic hazard would be less than trucks delivering sludge for land application because the storage of sludge permits the process to be better controlled. The Board does not accept this argument. It seems to the Board that the ability to store the sludge means it can be delivered at times when sludge for land application would not be delivered, such as rainy days when it is impossible to apply the sludge to land. Bear Run Road on a rainy day will be even more hazardous than normal. As previously explained, it appears to the Board that the sludge pit takes on the character of a step in the chain of sludge disposal; and the construction of the pit allows Enviro-Gro to meet its commitment to remove sludge from municipal facilities on a regular basis. The Board finds that this will create greater traffic than if the sludge were brought to the Neal farm only when it could be land-applied.

The Board must also make a finding whether the adverse traffic effect would be essentially the same anywhere in the agricultural district. The answer to this is obvious. In many parts of the County, the roads are sufficient to bear this amount of truck traffic without a problem. Indeed there are many State highways which traverse the agricultural district. Further, the degree of development is higher here than it is in other parts of the County. For these reasons, the Board finds that the use of the pit will create a traffic hazard; and that it is a greater hazard than it would be in other parts of the agricultural district.

Two expert witness testified as to real estate values, James Dulany and Edward Griffith. The Board is unable to reach any conclusion whether the pit will have any effect upon property values.

The final set of findings relate to the general standards set forth in Section 17.7 of the Zoning Ordinance for granting conditional uses--intent and purpose of the regulations, effect upon the peaceful enjoyment of people in their homes, etc. Assuming that the use qualifies as a facility for the storage of fertilizer, it is a very large facility. It is a facility which accepts 10-12 truckloads of fertilizer per day. In other words, it is a very major facility having a constant and immediate inter-action with the surrounding neighborhood. For example, Nancy

Boyd testified that on August 12th of this year, her car was splattered with sludge sloshing out from a sludge delivery truck. She has also noticed sludge splattered on the road, and is concerned about curious children eating it. By themselves these are not major incidents, but demonstrate the close quarters in which the residents of this neighborhood live and the immediate impact which the sludge operation has on them. There is a conflict here between the intensive nature of this use and the desire of the residents for peace and quiet.

The Board finds as a fact that this is not a suitable site for such a large scale facility. If the area were more predominantly agricultural, there would be a greater harmony with the surrounding uses. The Board has to recognize that while the primary purpose of the Agricultural District regulations is for agricultural use, the regulations also allow a certain amount of subdivision development. Some accommodation has to be made to the persons who live in the Agricultural Zone. If such a large-scale facility is to be located in the County, it should be located in an area where it does not have an impact upon so many residents. The Board finds as a fact that the location of the facility is not consistent with the intent and purpose of the Agricultural Zone and with the authorization to grant a conditional use for a fertilizer storage facility in the Agricultural Zone. The Board finds that the requested use will interfere with the peaceful enjoyment of people in their homes.

#### CONCLUSION

The Board has reached the following conclusions. First, the sludge pit is not an accessory agricultural use. The reason is contained in the findings recited above--that the sludge is not stored for an agricultural purpose but rather as part of the sludge handling operations. The storage of sludge is not an agricultural purpose as defined in Section 20.02 of the Zoning Ordinance. Second, the sludge pit does not qualify as a conditional use as a fertilizer storage facility pursuant to Section 6.3(r) of the Zoning Ordinance. The reason, as explained in the findings of fact above, is that sludge is not fertilizer. It is sludge. Finally, assuming that the sludge pit is a fertilizer storage facility, the Board has determined not to grant a conditional use for the facility. The reasons are that the sludge pit will have an adverse effect in the neighborhood because of odor; it will cause a traffic safety hazard; and it is inconsistent with the intent and purpose of the regulations and will disturb the peaceful enjoyment of people in their homes.

As the Board reads the landmark case of Schultz v. Pritts, it is not necessary that these adverse effects be greater than if the sludge were land applied since the legislative body can allow some uses by right even though they have adverse effects but permit other uses only by special exception even though their adverse effect may not exceed that of a permitted use. Nevertheless, the Board has determined that the effects of the sludge storage pit would be greater than the effects of land application.

For these reasons, the Board affirms the decision of the Zoning Administrator in Case No. 3152 and disapproves the issuance of a conditional use for a fertilizer storage facility, also in Case No. 3152; and in Case No., 3177, reverses the decision of the Zoning Administrator that a sludge storage pit qualifies as a conditional use in the Agricultural District.

October 25, 1989  
Date

John Totura  
John Totura, Chairman