

**RESPONSE TO COMMENTS
BLAZE ENTERPRISES, LLC
POWELL COUNTY, KENTUCKY
LESS-THAN-ONE ACRE CONSTRUCTION & DEMOLITION DEBRIS (CDD) LANDFILL
AGENCY INTEREST 109545, APPLICATION NO. ARP20190002
APRIL 8, 2019**

Background: The Division of Waste Management (DWM) received a number of comments from the public hearing held February 21, 2019 and thirty (30) day public comment period on the above proposed landfill. The following is a summation of the comments, and responses to those comments that directly relate to the permit issuance.

Comment 1: Multiple commenters discussed the county Ordinance #18-27-07 “An Ordinance Regulating the Siting of Solid Waste Management Facilities in Powell County” that came into effect on January 18, 2019. Further, a commenter asked what the state permit is worth if the application does not get local approval. In addition, did the facility pay a fee to get a useless permit?

Response: Pursuant to KRS 224.40-120 and 401 KAR 47:110, a person seeking to construct and operate a Less-than-one-acre Construction Demolition Debris (CDD) Landfill must first obtain authorization from the Energy and Environment Cabinet-Division of Waste Management (DWM). Whether the person seeking the authorization obtains local or state approval first is not a consideration required by DWM for this type facility. Moreover, pursuant to 401 KAR 47:100 Section 4, the issuance of the state permit does not authorize any injury to persons or property or invasion of other property rights, or any infringement of state or local laws or administrative regulations. In other words, a state permit issued by DWM does not override, negate, supersede or otherwise relieve a person from also obtaining any required authorizations from other local, state or federal agencies.

Comment 2: A commenter asked if the facility is permitted by the state, does that mean the state says the facility does not have to follow the ordinance. Further, if the facility does not get local approval, can it still operate according to the state permit? Why would the state not honor the local ordinance procedure?

Response: Pursuant to 401 KAR 47:100 Section 4, the issuance of the state permit does not authorize any injury to persons or property or invasion of other property rights, or any infringement of state or local laws or administrative regulations. In other words, a state permit issued by DWM does not override, negate, supersede or otherwise relieve a person from also obtaining any required authorizations from other local, state or federal agencies.

If the county has an ordinance in place that requires local authorization must first be obtained by a person, then it is up to the county to enforce such ordinance, not the state.

Further, in reading ordinance #18-27-07 sent to DWM from the Powell County Judge/Executive’s office, Section 3(B)(6) of the ordinance appears to require a person seeking local authorization to demonstrate to the fiscal court they have already complied with all the Energy and Environment Cabinet (formerly Natural Resources and Environmental Protection Cabinet) permits, filings, etc.

Comment 3: Comments were received about conditions of the existing local roads, i.e. Virden Ridge Road, and the potential for increased and dangerous traffic on the road(s). Further, comments were received about funding for road improvements due to the increase in large trucks on Virden Ridge Road that would further cause the condition to deteriorate.

Response: Virden Ridge Road (KY 3352) is a state maintained road. The Kentucky Transportation Cabinet (KYTC) is the lead agency responsible for this matter. From the KYTC website, state route KY 3352 is classified by the KYTC as a 3.974 mile long rural secondary, rural minor collector with a 55 mph speed limit and truck weight class designation “A” (44,000 lbs max.). Lane widths vary from 8 to 9 ft and shoulder widths are approximately 3 ft with some paved and non-paved shoulders. The average daily traffic flow (ADT) varies from 131 to 1,098 vehicles per day (VPD) as reported from 2015 & 2016 data. The entrance to the proposed landfill off of KY 3352 is located at approximate mile point 2.32, which falls within the ADT range of 1,098 VPD. Access control is by permit issued by KYTC.

Concerns about conditions of road, traffic (including truck traffic) should be directed to the KYTC District 10 office in Jackson, KY <https://transportation.ky.gov/Pages/ContactUs.aspx>.

Comment 4: Comments were received about illegal waste dumping and violations by Billy Bowles, a key person on the proposed landfill application, at a different landfill. It was mentioned that Billy Bowles allowed the unauthorized waste to be dumped. Other commenters asked whether the activities at other landfills will be taken into consideration in making the decision on the proposed landfill.

Response: KRS 224.40-330(1)(d) authorizes the Cabinet to deny a permit only if the applicant or the applicant’s key personnel were adjudged by an administrative agency or a court to have violated the environmental protection laws or administrative regulations. Thus, the Cabinet is only authorized to consider adjudged violations by the applicant or the applicant’s key personnel.

Although Mr. Bowles was previously the operator at Blue Ridge Landfill, a facility subject to an Agreed Order with the Cabinet for violations discovered at that facility, Blue Ridge Landfill is not the applicant for this permit and Mr. Bowles was never personally adjudged to have committed a violation. The Cabinet is neither authorized by KRS 224.40-330(1) to consider the violations or the Agreed Order with an unaffiliated outside company, nor is the applicant required to disclose them.

Comment 5: Comments were received about criminal charges against Stanley Bob Anderson, who is the spouse of the owner and applicant, Cara Camille Anderson. Further, comments were received about the track record of Blaze Enterprises, LLC and Rock Trucking, owned by Stanley Bob and Cara C. Anderson.

Response: Mr. Anderson is not listed as a key person on the application. Further, Mr. Anderson is not listed as a manager on the Kentucky Secretary of State’s website. The applicant’s Articles of Organization stated that Blaze Enterprises would be managed by a manager or managers “subject to the provisions of Kentucky law and the terms and conditions of the Operating Agreement of the limited liability company.” From June 1, 2015, through May 30, 2018, Blaze Enterprises filed an annual reports that listed Cara Camille Anderson and Stanley Bob Anderson

as its managers. On September 12, 2018, the applicant amended its annual report and listed Cara Camille Anderson as the sole manager.

During a file review, DWM did not find any records in the Department for Environmental Protection database indicating violations were issued to Blaze Enterprises, LLC.

Comment 6: A commenter indicated the application does not mention any financial plans in case corrective action is required.

Response: The applicant has provided \$10,000 in financial assurance for closure purposes. The permittee is responsible for any corrective action needed to remediate any release of a pollutant or contaminant and to properly close the landfill per regulation. The Cabinet may, as part of an enforcement action, require the permittee to submit to the Cabinet a licensed professional engineer prepared cost estimate to determine additional bonding for corrective action(s) and submit a financial instrument for the amount.

Comment 7: A commenter asked if the state actually checks items on the application to ensure they are correct, especially numbers 73, 74, and 75.

Response: Yes, these items on the registration form are reviewed by DWM.

Comment 8: A commenter stated the owner publically admitted that runoff will contaminate Snow Creek.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit issued by SWB requires the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

Comment 9: Comments were received about the illegal (radioactive) waste at a different landfill, and indicated the state should not let it happen in Powell County. Further, it was asked if the landfill can be done without risk.

Response: The statutes and regulations that DWM must consider in its decision to authorize approval for this type of activity or any other activity it has authority to issue an approval for were developed with the intent to minimize risk to human health and the environment.

Nothing in the application abridges the Cabinets' authority under KRS Chapter 224 to inspect the facility, issue notices of violations, or pursue enforcement action which may result in a revocation. Further, the permit contains reporting requirements which assist the Cabinet in its oversight function.

Comment 10: Multiple commenters asked about the illegal disposal of radioactive material at a nearby contained landfill.

Response: The Cabinet for Health and Family Services regulates radioactive material in the Commonwealth. As it relates to the specific wastes disposed of at the facility mentioned by the

commenters, the Cabinet for Health and Family Services together with the Energy and Environment Cabinet recently promulgated new regulations establishing the requirements for the disposal of TENORM. Those requirements limit any legal disposal to Contained Landfills designed, constructed, and operated pursuant to 401 KAR 48:050, 48:080, 48:090, 48:300, and 48:310. The proposed facility is a Less-than-one Acre Construction/Demolition Debris Landfill regulated pursuant to KRS 224.40-120 and 401 KAR 48:050, 48:060; and 48:320. It will not meet the requirements for TENORM disposal, and therefore will not be authorized to accept TENORM for disposal. Further, the landfill will be subject to reporting requirements.

Comment 11: Comments were received about the landfill leading to decreased property values and the impact on tourism. Further, comments were received about the revenue from the landfill not being worth the depreciation of the property values and the risk of contamination.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. Property value concerns are outside of the regulatory authority of KRS Chapter 224. The permit issued by SWB will require the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

Comment 12: Commenters stated that the area is densely populated for the rural area and can think of many more suitable sites far less populated for such a venture; waste sites should be in different areas and/or waste should be taken to other landfills.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. Siting requirements pursuant to 401 KAR 48:050 are included in these regulations that DWM must consider in its approval process.

Comment 13: The proposed landfill does not need to take waste from 37 other counties and other states.

Response: The registration did not include a proposal to dispose of any out-of-state waste. Only Kentucky counties are listed in Attachment 1. The acceptance of waste from counties other than the one that landfill is located in is a matter that can be addressed by local ordinances and host agreements.

Comment 14: Commenters asked the state to vote against the landfill.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The Cabinet, as an agency, does not participate in referendums on a ballot.

Comment 15: A commenter asked if before a house or old building is torn down if it is inspected or if someone takes a look at it. Further comments were made about lead paint, asbestos, lead pipes, tiles, and shingles.

Response: As indicated in the DWM summary sheet handout at the public hearing and 401 KAR 47:100 Section 4, the issuance of the state permit does not authorize any injury to persons or property or invasion of other property rights, or any infringement of state or local laws or administrative regulations. In other words, a state permit issued by DWM does not override, negate, supersede or otherwise relieve a person from also obtaining any required authorizations from other local, state or federal agencies.

The permit incorporates the provisions of 401 KAR 30:031 which prohibits: the discharge of pollutants to water of the Commonwealth that violate KRS Chapter 224 or 401 KAR Chapters 8 or 10, the contamination of an underground drinking water source in excess of the maximum contaminant levels specified in 401 KAR Chapter 8, the violation of applicable air pollution requirements contained in KRS Chapter 224 or 401 KAR Chapters 50 to 63, and the contamination of karst terrain.

Regarding asbestos, residential structures of four (4) or fewer units, or single family, are not required to be inspected for asbestos prior to renovation or demolition. All other structures are required to have an asbestos inspection, also called a survey, prior to demolition. For more information, please see:

<https://eec.ky.gov/Environmental-Protection/Air/asbestos/Pages/default.aspx>

Regarding lead, Environmental Protection Agency regulations govern lead abatement during renovation or demolition. For more information, please see:

<https://www.epa.gov/lead/lead-renovation-repair-and-painting-program>

Comment 16: Comments were received that Clay City and the proposed landfill are in a flood zone.

Response: The proposed location of the landfill is not within a flood zone per the current Flood Insurance Rate Map (FIRM) data.

Comment 17: Comments were received concerning negative effects on water, human health, wildlife and the surrounding environment. Commenters have stated that toxins and contaminants can get into the surrounding environment, i.e. runoff and airborne. Further comments were received about the deterioration of groundwater and surface water.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit issued by SWB will require the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

If a person believes the facility is out of compliance with a provision of the permit, then one may file a complaint with the Division of Waste Management, Field Operations Branch by calling 502-782-6548 or 502-564-6716.

Comment 18: Comments were received about any environmental studies that were conducted on the impacts on the people, wildlife and groundwater sources. Further, concerns were expressed on the impact this proposed landfill will have on the nature preserve.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit issued by SWB will require the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

Comment 19: A commenter asked if the waters are polluted, who is responsible for that.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit issued by SWB will require the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

The permittee is responsible for any corrective action needed to remediate any release of a pollutant or contaminant. The Cabinet may, as part of an enforcement action, require additional bonding for corrective action(s).

Comment 20: Commenters asked if the State of Kentucky cares about potential environmental impacts.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit issued by SWB will require the facility to comply with the applicable standards in order to prevent contamination of the surrounding area.

Comment 21: Commenters asked that the state have an inspector on site, and what happens between site inspection visits. How will the state ensure their compliance? Further, commenters asked who will be overseeing the inspections and the landfill operations.

Response: Routine inspections by the DWM Frankfort Regional Field office will be performed to ensure regulatory compliance with operations and reporting.

If a person believes the facility is out of compliance with a provision of the permit, then one may file a complaint with the Division of Waste Management, Field Operations Branch by calling 502-782-6548 or 502-564-6716.

Comment 22: Comments were received about litter, mud on the roads, and debris from the landfill operations. Further, comments were received about the increase in pests due to the litter and debris from the landfill.

Response: Tracking of mud and other debris onto a public road by landfill related vehicles would be a violation of the environmental performance standards of 401 KAR 30:031. Instances of this would need to be reported to DWM as soon as possible so an inspection can be scheduled.

If a person believes the facility is out of compliance with a provision of the permit, then one may file a complaint with the Division of Waste Management, Field Operations Branch by calling 502-782-6548 or 502-564-6716.

Food wastes and tires are not authorized for disposal; CDD waste material should generally not attract additional pests.

Comment 23: Commenters stated the garbage will be in their yards.

Response: The Division of Waste Management, Solid Waste Branch (SWB) regulates solid waste and issues permits pursuant to the standards of KRS Chapter 224, Subchapters 40, 43 and 50 and the administrative regulations promulgated pursuant thereto. The permit does not authorize waste beyond the one-acre maximum boundary. Dust and/or odor concerns beyond the permittee's property boundary should be reported to DWM and/or the Division for Air Quality (DAQ) in order for an inspection to be scheduled.

Comment 24: Comments were received concerning the noise associated with this facility and wanted to know if the noise level could be regulated.

Response: Noise is regulated by local ordinance and would be enforced by the local police or sheriff's office.

Comment 25: A number of individuals commented about the air pollution including the odor caused and toxins that would get into the air by the landfill and sought information about the air regulations.

Response: Dust and/or odor concerns beyond the permittee's property boundary should be reported to DWM and/or the Division for Air Quality (DAQ) in order for an inspection to be scheduled.

Comment 26: A commenter asked what kind of waste can be received by a less than one acre CDD Landfill. Further, a commenter asked what kind of non-construction debris does Blaze Enterprises, LLC intend to receive at this proposed landfill. In addition, can hazardous, special waste, and household waste be placed in a CDD Landfill?

Response: The types of waste authorized for a Less-than-one Acre CDD Landfill can be found at 401 KAR 47:080 Section 2(2), with the exception that waste tires are not authorized for disposal. Household waste, special waste and hazardous waste are not authorized for disposal in any Less-than-one Acre CDD Landfill.

Comment 27: Comments were received asking about what happens if the landfill receives unauthorized waste. Examples include radioactive waste, hazardous waste, drug paraphernalia, feces, used condoms, diapers, sanitary pads, asbestos, and other chemicals.

Response: The permittee is responsible for keeping unauthorized wastes out of the landfill. Disposal of unauthorized wastes can lead to notices of violation and if not corrected, can further lead to enforcement actions including penalties, immediate closure and permit revocation.

Comment 28: Comments were received about what happens if hazardous waste materials are dumped and runoff into surrounding environment.

Response: Access control to the landfill and illegal dumping in the landfill or on the landfill property is the responsibility of the permittee. Cleanup and any corrective actions as a result of these activities are the responsibility of the permittee. Failure to comply can lead to enforcement actions including penalties and permit revocation.

Comment 29: Commenters expressed concern about the expansion of the landfill beyond the one (1) acre approved boundary and the possibility of more landfills on the property since the property has approximately seventy (70) acres.

Response: There is a siting requirement in 401 KAR 48:320 Section 4 that requires a buffer distance of 750 yards between the waste boundaries of multiple Less-than-one Acre CDD Landfills.

Comment 30: A commenter asked if the application fees of \$500,000 to \$1,000,000 had been paid by Blaze Enterprises, LLC. Another commenter stated that for \$250 the landfill can start dumping household garbage. Another commenter stated it only costs \$4500 to poison your children, you, your streams, to kill your livestock and everything else.

Response: The application fee for a proposed Less-than-one Acre CDD Landfill is \$4,500.00 and is established in 401 KAR 47:090 Section 2. Household garbage (food waste, household hazardous waste, etc.) is not authorized for disposal at any Less-than-one Acre CDD Landfill, for any fee.

Comment 31: A commenter asked if Blaze Enterprises, LLC will be required to construct a CDD Landfill liner system and cap that costs \$75,000 per acre. Another commenter stated the proposed landfill should be required to have a liner.

Response: Since the location of the landfill is not within a wellhead protection area, a liner and leachate collection system are not required per 401 KAR 48:320. The final cover requirements can be found in 401 KAR 48:320, Section 5.

Comment 32: A commenter asked what are the requirements for the proposed landfill for a liner/cap; surface water controls; leachate management; closure and closure care bonds; and a KPDES permit.

Response: Please see 401 KAR 48:320 for liner/cap, surface water controls, and leachate management. See 401 KAR 30:031 for additional surface water requirements. See KRS 224.40-120 for bonding requirements. The permit issued by DWM does not relieve the applicant from obtaining any needed authorizations from the Division of Water, including the KPDES program.

Comment 33: Commenters stated that there are emergency procedures in place only for fires, spills from on-site operations and equipment failure. There were also concerns for leachate running off site (with sediment from rain events).

Response: In addition to the operating requirements of 401 KAR 48:320, pursuant to 401 KAR 47:110, all Registered Permit-by-Rule activities must comply with the environmental performance standards of 401 KAR 30:031. Any release of a contaminant or pollutant off-site will require corrective action on the part of the permittee.

Comment 34: A commenter stated that the plans for temporary storage of materials are vague and misleading. The commenter asked about the specific plans and stated they should be given to the public before the landfill being operational.

Response: The application addresses the contingency if non-CDD wastes are inadvertently transported to the facility and discovered by landfill staff. Item number 44 of the application further describes that these wastes will be transported to either Blue Ridge Landfill or Morehead Landfill for disposal. This operational process is consistent with all facility permits of this type and is consistent with the regulatory requirements.

Comment 35: Comments were received asking about the future condition of water wells that residences use for fresh water since they aren't connected to city water lines. The comments further show concern for pollution of water sources (water wells, ponds and creeks) for their livestock and pets.

Response: In addition to the operating requirements of 401 KAR 48:320, pursuant to 401 KAR 47:110, all Registered Permit-by-Rule activities must comply with the environmental performance standards of 401 KAR 30:031. Any release of a contaminant or pollutant off-site will require corrective action on the part of the permittee, which may include having to provide an alternate drinking water source.

Comment 36: Commenters stated this site was previously a salvage yard and wanted to know if soil testing had been done. Further, a commenter mentioned that Andy Barr said that nothing can be done with this property for 10 years after equipment was cleaned up and property was allowed to recover.

Response: In the early 2011 timeframe, a notice of violation (NOV) was issued to the property owner at that time for illegal dumping. After cleanup activities had occurred, the DWM field office re-inspected the area and issued a NOV sufficient letter in 2013 to document the cleanup efforts. The state superfund section also investigated the area for releases of pollutants or contaminants and concluded the incident to be a non-superfund event.

Comment 37: A commenter stated that the landfill was dumping at 3 am. Another asked if there are currently any disposal activities on this site.

Response: On March 14, 2019, the Division of Waste Management, Frankfort Regional Office performed a site investigation. The report said, "At the request of the Solid Waste Branch, I checked this site to ensure no C/DD had been dumped on the site. There is a pending C/DD permit request for the site. The dirt road which runs the length of the property was very muddy and had

seen a lot of vehicular traffic. However, there were no vehicle tracks leading off the main dirt road to either side for the entire length of the dirt road. I did drive down to the proposed C/DD site and saw no indication of vehicle tracks or waste dumping. Several months ago, as evidenced by the state of the nearby vegetation, someone had dumped a load of plastic children's playground toys. Other than [sic] that, there was no evidence of any C/DD being disposed of on this site. There was no gate on the property and several loads of gravel had been piled near the entrance off Verdin [sic] Ridge Road.”

Comment 38: Comments were received about dumps already in the county. In addition, it was proposed to use these areas and not create new dumps.

Response: No other solid waste disposal facilities are permitted by DWM in Powell County. There is a permitted transfer station located on Stanton Road in Stanton, but this facility is not permitted for disposal. Please report any known illegal dumps to the County and DWM. For DWM, call 502-564-6716.

Comment 39: A commenter asked about the next steps of the application process. Further, it was asked if there will be an inspection of the proposed site before the application is approved and if those against the proposed landfill can be present.

Response: The next step after a public comment period closes is to compile and briefly describe all relevant comments received on the permitting action during the public comment period and prepare written responses to those comments and issue the response to comments at the same time a final determination is made on the permitting action. DWM has made a final determination to issue the permit. At this time anyone aggrieved by the issuance of the permit has the right, pursuant to KRS 224.10-420(2) to file a petition demanding a hearing with the Cabinet. This right shall be limited to a period of thirty (30) days from the issuance of the permit. The petition should be filed with The Office of Administrative Hearings located at 211 Sower Blvd., Frankfort, KY 40601. See <http://oah.ky.gov> for additional information.

Inspections by DWM personnel of the site for the proposed activity have occurred as recently as March 14, 2019, which was not required prior to permit issuance. While state inspections are not typically open to the public without consent of the applicant, anyone may conduct an open records request to obtain a copy of the inspection report. To submit a request, please email EEC.KORA@ky.gov and reference Agency Interest ID number 109545.

Comment 40: Commenters asked how they could obtain more information about the landfill, the landfill application, the permitting process, and information about the meeting. Further, commenters asked when and how we would respond to comments.

Response: Interested persons can send an open records request to EEC.KORA@ky.gov and request the available files from the Cabinet. Be sure to mention Agency Interest ID number 109545 in the request. Furthermore, 401 KAR 47:110 is the regulation specific to the permitting process for this type of facility, as well as other Registered Permit-by-Rule facility types.

The issuance of this document serves as DWM's response to comments.

- End -