

## Court overturns \$45M award to landfill firm in Harford Co. dispute

By: Steve Lash Daily Record Legal Affairs Writer August 13, 2019

A Maryland appeals court has overturned a \$45 million jury award to a company that has battled Harford County for nearly 30 years over the right to use its property as a rubble landfill. The state's intermediate court ruled that Maryland Reclamation Associates Inc. waited too long to raise a constitutional challenge to the county's rejection of the business' plans.

In its reported 3-0 decision this month, the Court of Special Appeals said Maryland Reclamation Associates (MRA) failed to file its circuit court challenge to the county's adverse administrative decision within three years, as required by state law.

The Harford County Circuit Court jury had agreed with MRA that the county's rejection of the landfill plan amounted to a regulatory "taking" of the company's property, for which just compensation was owed under the Maryland Constitution. The jury set the just compensation at \$45.4 million, including \$30.8 million in principal and \$14.6 million in interest.

But the Court of Special Appeals concluded that the trial was for naught, as MRA fatefully did not file its court claim until 2013, six years after the county's administrative processes had ended with its Board of Appeals' June 5, 2007, rejection of the company's request for variances to build the landfill.

That rejection started the three-year filing clock, because on that June day it became "abundantly clear that the county would not permit MRA to operate a rubble landfill," thus putting the company on notice that it had a potential cause of action against Harford, the appellate court said.

In its ruling, the Court of Special Appeals disagreed with MRA's argument that the three-year clock started not with the board's rejection but when Maryland's top court – the Court of Appeals — rebuffed the company's appeal of that decision in 2010, rendering the 2013 filing valid.

The intermediate Court of Special Appeals cited the Court of Appeals' 2004 ruling in *Arroyo v. Board of Education of Howard County*, which found that a claim against an administrative agency accrues when it renders its final decision, not when judicial review of that decision is completed.

"Indeed, on June 5, 2007, the Harford County Board of Appeals made its position clear: It would not allow MRA to operate a rubble landfill on its property," Judge Stuart R. Berger wrote for the Court of Special Appeals. "The county's decision was final as there was nothing further for the agency to do."

MRA's lead attorney, Brett Ingerman, said Tuesday that he and his client will be seeking the high court's review and reversal of the decision that the constitutional claim was not filed in time.

"We are hopeful that the Court of Appeals will take a fresh look and affirm the judgment in favor of MRA," said Ingerman, of DLA Piper in Baltimore.

He added that the circuit-court jury considered all the evidence and concluded Harford County had "interfered with (MRA's) reasonable investment-backed expectation in building a rubble landfill on that property."

The jury further found that the county's action resulted in "devaluing (MRA's) property to zero," for which the company is owed just compensation, Ingerman said.

Harford County's attorney, Andrew H. Baida, called the court's decision "a great win" against a company that waited too long to raise its constitutional claim in circuit court.

“Once the board denied the variances, (the claim) was ripe,” said Baida, of Rosenberg Martin Greenberg LLP in Baltimore. “We always believed that we had a strong case.”

Churchville-based MRA bought the 62-acre property in 1989. The county had previously included the property in a waste management plan and the state issued an environmental permit, allowing the land to be used as a landfill, according to court documents. But the county then adopted a zoning amendment with new conditions that hindered MRA’s ability to use the property as a landfill, the documents stated.

MRA initially sued in 1991, seeking to move forward with the rubble landfill project on the grounds that the company had a vested right to do so. The case went up and down the court system, with multiple stops at the Court of Appeals, which ultimately held in 2004 that MRA could still seek a zoning variance or exception before asking for judicial review, according to court documents.

On remand, the Harford County Board of Appeals denied the zoning variance a final time in 2007. MRA was unsuccessful in getting that decision overturned in court, including in the Court of Appeals in 2010.

In 2013, MRA filed the controversial lawsuit, claiming too late – the Court of Special Appeals held — that the county deprived the company of “beneficial use” of its property in violation of the state constitution.

Judges Douglas R.M. Nazarian and Gregory Wells joined Berger’s opinion.

The Court of Special Appeals rendered its decision in *Harford County, Md., v. Maryland Reclamation Associates Inc.*, No. 788, September Term 2018.

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