

RUBBLEFILL

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general appeals the decision," said Delegate Richard Sossi, R-36-Queen Anne's.

"The Maryland General Assembly clearly expressed its view that Unicorn Lake and the upper Chester River should be protected from landfill development," said Jay Falstad, a spokesman for Queen Anne's Conservation Association, and a Millington area resident.

Falstad said he's disappointed a judge in Baltimore City was "thwarting the will of the people, the legislature and the governor on a technicality."

The landfill ban law resulted from fierce citizen opposition to the plan by Days Cove to build and operate a rubble landfill on Glanding Road, about a quarter-mile from Unicorn Lake, south of Millington.

Days Cove officials said the rubblefill would have modern environmental safeguards and a tracking system would be used to keep trucks on prescribed routes to and from the rubblefill.

Area residents and other opponents of the rubblefill cited concerns about increased truck traffic on narrow roads and possible contamination of Unicorn Lake, Unicorn Branch, and drinking wells.

Unicorn Branch is a tributary of the Chester River. Unicorn Lake (also known as Unicorn Mill Pond) was built in the 1800s when Unicorn Branch was dammed to create a pond for a mill. It has been a park and fish hatchery owned by the state since 1961.

After a long court battle, Days Cove received conditional use approval from the Queen Anne's County Board of Appeals to build a rubblefill on the Glanding Road property if a number of conditions were met, including obtaining an MDE permit.

MDE began reviewing Days Cove's permit application, but then put its review on hold after a state law went into effect in 2006

that imposed a three-year moratorium on building a rubblefill within four miles of Unicorn Lake. The law also prohibited a rubblefill from being built within a mile of three creeks in Prince George's County and any other stream in that county that was a direct or indirect tributary of the Potomac River.

The moratorium was due to expire June 1, 2009. In 2007, the legislature passed Senate Bill 553, which was signed into law as Chapter 161. The 2007 law was similar to the 2006 law, but it removed the three-year sunset provision and made the rubblefill ban permanent.

Welch's opinion considered only the Queen Anne's part of Chapter 161.

He wrote that the Maryland Court of Appeals established six factors to use as a guideline to determine whether a law passed by the General Assembly is a special law:

- Was the law intended to benefit or burden a particular member or members of a class instead of an entire class?

- Does the law identify particular entities?

- The "practical effect" of the law is to be considered, not merely its form.

- Was the plaintiff discriminated against by the enactment of the law?

- Does the general law adequately protect the public need and public interest?

- Was the law arbitrary and without any reasonable basis?

Welch writes in his opinion that Article III, section 33 of the Maryland Constitution states "the General Assembly shall pass no special law for any case, for which provision has been made by an existing General Law."

Welch found Chapter 161 was a special law and that provisions exist in the general law for reviewing rubblefill permit applications.

"There is no evidence indicating that ... MDE's three-stage permit process was inadequate or improperly applied," wrote Welch.

The opinion states MDE opposed Chapter 161 and the law that passed in 2006. Welch wrote he came to the reasonable conclusion "MDE believed its permit process is more than adequate to protect environmentally sensitive areas, such as Unicorn Lake."

Doyle said there was "no scientific or factual basis" for the law, rather it was a political decision. He said Days Cove wants its permit application processed according to MDE's established procedures, which take the community's concerns about the rubblefill into account.

In one sense, Doyle said the law was an attack on MDE's ability to review a rubblefill permit application.

Sossi said the issue is allowing a county – not a state agency – to have "the last word" on land use decisions. "It's a matter of local control," he said.

Sossi said the law also applies to several areas in Prince George's County, not just one area in Queen Anne's County.

Falstad said he was confident the state "will do the right thing" and appeal the circuit court decision, and people will continue to protect the headwaters of the Chester River.