

NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

IN THE MATTER OF: *

Louisiana Department of Environmental Quality Permit Decision re: Harrelson Materials Management, Inc. Type III Construction & Demolition Debris / Woodwaste Landfill Permit (D-017-2688/PER 19950001/P-0392, Agency Interest #28118) *

PETITION FOR JUDICIAL REVIEW

For their Petition for Review of the Louisiana Department of Environmental Quality’s (LDEQ’s) issuance of a Type III Construction & Demolition Debris/Woodwaste Landfill Permit (D-017-2688/PER 19950001/P-0392, Agency Interest #28118) to Harrelson Materials Management, Inc., Louisiana Environmental Action Network (LEAN), Ms. Middie A. Farrow, and Ms. Thelma Humphrey, make the following allegations:

JURISDICTION

1. Jurisdiction and venue are proper in this Court, and Petitioners have a right to challenge this permit decision under La. Rev. Stat. 49:964(A). The Louisiana Administrative Procedure Act (APA) further provides that “[p]roceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located.” La. Rev. Stat. 49:964(B). Because LDEQ is located in the Parish of East Baton Rouge, this Court has jurisdiction.

PARTIES

2. LEAN is a non-profit corporation organized under the laws of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN’s purpose is to preserve and protect the state’s land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members

statewide, including members who live, work, or recreate in the vicinity of the Harrelson Landfill.

3. Ms. Thelma Humphrey is a resident of a community neighboring the landfill. Ms. Humphrey lives and recreates in this area and the landfill impairs her enjoyment of her community. She is thus directly affected by LDEQ's decision to issue a permit to this facility for its continued operation.

4. Ms. Middie A. Farrow is a resident of a community neighboring the landfill. Ms. Humphrey lives and recreates in this area and the landfill impairs her enjoyment of her community. She is thus directly affected by LDEQ's decision to issue a permit to this facility for its continued operation.

5. LDEQ is the primary agency of the State of Louisiana concerned with environmental protection and regulation. La. Rev. Stat. 30:2011(A)(1). It has the power to sue and be sued, and it is the entity that issued the final action here.

BACKGROUND

6. In 1987, Chandler Brothers began dumping solid wastes in old borrow pits alongside I-220 in Shreveport, Louisiana. In 1994, LDEQ issued an "Order to Upgrade" to Chandler Brothers in order for the landfill to come into compliance with regulations for Construction and Demolition Debris (C&D) landfills. In 1995 Chandler Brothers submitted its application for a Type III C&D and Woodwaste Landfill. LDEQ did not deem the permit technically complete until December 11, 2007. During this period, ownership of the facility was transferred from Chandler Brothers to Harrelson Materials Management in 2002. This facility has never had a lawful permit but instead has operated under an Order to Upgrade for more than 15 years.

7. LDEQ provided notice of its permit decision to the Petitioners on or after November 6, 2009.

8. LDEQ violated its regulations when it issued the permit without first obtaining "appropriate documentation ... that the proposed use does not violate zoning or other land-use regulations." LAC 33:VII:509(G)(3).

9. Further, LDEQ violated Executive Order No. BJ 2009-7 when it issued this permit without first obtaining “a written resolution or authorization from the appropriate municipal or parish governing authority where the facility will be located.”

10. LDEQ failed to determine whether the permittee will comply with the proper zoning requirements for the rock crusher used at the landfill.

11. LDEQ’s failure to evaluate the effects of the rock crusher in LDEQ’s discussion of air emissions demonstrates the inadequacy of the agency’s Basis for Decision. EDMS Document 43789208, pages 24-25.

12. LDEQ’s Basis for Decision is inadequate because it fails to acknowledge the Mikeebo C&D Landfill in its consideration of alternative projects. EDMS Document 43789208, pages 22-23. Specifically, LDEQ mentions the alternatives of disposing of C&D waste in municipal landfills or building an entirely new landfill. However, it fails to mention that the City of Shreveport has an existing C&D landfill that received a permit in 2005. Issuance of Standard Type III Permit No. P-0381, EDMS Document 33386771. LDEQ’s failed to explain why the Mikeebo Landfill is not an “alternative project which would offer more protection to the environment” or why the Mikeebo Landfill does not provide sufficient waste disposal capacity.

13. In addition, LDEQ’s failure to mention the Mikeebo C&D Landfill makes the cost benefit analysis in the Basis for Decision inaccurate. Two of the benefits that LDEQ claims for this facility are: “Supports growth of the community in the area by providing contractors a cost-effective way to manage C&D debris and woodwastes generated during site clearing and construction” and “Helps to prevent illegal dumping in the community, since the waste disposal is available in the area at a reasonable cost.” EDMS Document 43789208, page 27. The fact that there is a permitted C&D landfill in operation near the permittee’s facility, calls into question LDEQ’s stated benefits. LDEQ has failed to show, therefore, that the benefits of permitting the facility at issue outweigh costs to the community. Indeed, LDEQ failed to include the costs of forcing the neighboring community to shoulder the burden of two (2) solid waste landfills, and resulting risks to public health and welfare, *e.g.*, from flooding of the landfills.

14. Upon information and belief, the Harrelson landfill sometimes floods, resulting in potential release of solid waste.

15. LDEQ's Basis for Decision is inadequate because it fails to consider closure of the landfill in its alternatives analysis. EDMS Document 43789208, pages 21-23. This facility has been operating without a permit for over 15 years. When a facility applying for a permit is already in operation, LDEQ must consider the closure of the facility as a possible alternative, just as it would consider not building a facility when considering an application of a new facility.

16. LDEQ accepts without independent analysis the permittee's assertion that there are minimal to nonexistent environmental concerns with C&D landfills. EDMS Document 43789208, pages 24-26. As public trustee, however, LDEQ has a duty to investigate the permittee's claims.

17. LDEQ's apparent conclusion that there are minimal to nonexistent environmental concerns with C&D landfills is contrary to a preponderance of the evidence in the record.

18. LDEQ failed to properly respond to all significant comments.

19. LDEQ violated its duty as public trustee of the environment in issuing this permit because it provides perverse incentives to those failing to follow the proper agency process for obtaining permits. Here, the permittee operated this facility without a permit for more than 15 years. Thus, the landfill operators failed during this period to meet their regulatory responsibilities. Issuing them a permit suggests to other potential landfill operators that if they start operating without a proper permit, they will eventually be rewarded with a permit, despite failing to follow public health and safety regulations.

20. In deciding whether to issue a permit, LDEQ is required to consider the permittee's past compliance history. LAC 33:I:1701.A. In its Basis for Decision, LDEQ states: "Indicative of this ability and willingness to comply is the fact that no compliance orders were issued for a period of over ten years." EDMS Document 43789208, page 31. However, this statement as well as the entire section on compliance history fails to mention LDEQ's eight Notices of Deficiency (NODs) issued to the permittee within this time period. EDMS Document 43789208, page 19. Thus, LDEQ did not consider all relevant evidence in concluding that

“HMM is able and willing to comply with the permit and solid waste regulations.” EDMS Document 43789208, page 31.

21. Upon information and belief, LDEQ has failed to issue a permit document that specifies the obligations and requirements that apply to the permittee at this facility.

ASSIGNMENTS OF ERROR

22. LDEQ’s permit decision has prejudiced the rights of Petitioners because LDEQ’s decision is in violation of constitutional and statutory provisions. La Rev. Stat. 49:964(G).

23. LDEQ’s permit decision has prejudiced the rights of Petitioners because LDEQ’s decision was “[m]ade upon unlawful procedure.” La. Rev. Stat. 49:964(G).

24. LDEQ’s permit decision has prejudiced the rights of Petitioners because the decision was arbitrary or capricious. La. Rev. Stat. 49:964(G).

25. LDEQ’s permit decision has prejudiced the rights of Petitioners because the permit is “not supported and sustainable by a preponderance of evidence.” La. Rev. Stat. 49:964(G).

26. LDEQ’s permit decision was in violation of its duty as public trustee of the environment. La. Const. art. IX § 1.

DESIGNATION OF RECORD FOR APPEAL

27. Petitioners designate the following as the record on appeal in this matter: the entire public record regarding the Permit that exists as of the date of the filing of this Petition for Judicial Review, including but not limited to the proposed permit and application materials, the final permits (if any), basis of decision, comments regarding the Permit, and LDEQ’s responses to comments.

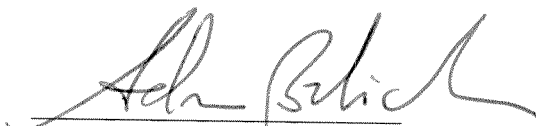
PRAYER FOR RELIEF

Upon consideration of the law and facts in this case, Petitioners respectfully request that this Court vacate the permit and remand the matter to LDEQ and award all other relief as this Court finds equitable.

Respectfully submitted,



Megan Jordan, Student Attorney
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On behalf of Ms. Middie A. Farrow and Ms. Thelma Humphrey.

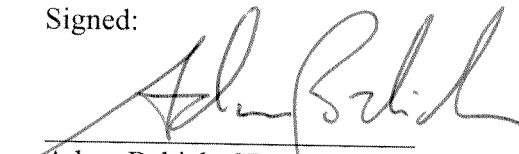


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On behalf of all Petitioners and as Supervising Attorney for Megan Jordan's representation of Ms. Farrow and Ms. Humphrey

**SUPERVISING ATTORNEY'S INTRODUCTION
OF STUDENT ATTORNEY**

Undersigned counsel respectfully introduces student attorney Megan Jordan to this Court pursuant to Louisiana Supreme Court Rule XX. As the student attorneys' supervising attorney, I approve of the student attorney's appearance in this case on behalf of Ms. Middie A. Farrow and Ms. Thelma Humphrey only. I also attach Ms. Farrow and Ms. Humphrey's written consent to an appearance by student attorneys in this matter.

Signed:


Adam Babich, SBN: 27177

Please Serve:

Harold Leggett, PhD, Secretary
Louisiana Department of Environmental Quality
602 N. Fifth Street, Galvez Building
Baton Rouge, Louisiana 70802

CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in Court or before an administrative tribunal.

Dated: 12-4-09

[signed:]

[name:]

Thelma Humphrey
Thelma Humphrey

CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in Court or before an administrative tribunal.

Dated: Dec. 4, 2009

{signed:}
{name:}

Middie A. Farrow
Middie A. FARROW

NINETEENTH JUDICIAL DISTRICT COURT
FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

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[Proposed] ORDER

The Court has received the Petition for Judicial Review appealing the Louisiana Department of Environmental Quality’s issuance of solid waste permit to Harrelson Materials Management, filed with this Court on the 7th day of December, 2009.

The record designated by the Petitioners shall be compiled and forwarded to the Nineteenth Judicial District Court, and the appeal shall be returnable to the 19th Judicial Court on or before the __ day of _____, 2009.

Baton Rouge, Louisiana, this __ day of _____, 2009.

DISTRICT JUDGE
NINETEENTH JUDICIAL DISTRICT COURT