

Benjamin J. Alke
GOETZ, BALDWIN & GEDDES, P. C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: (406) 587-0618
Fax: (406) 587-5144
Email: balke@goetzlawfirm.com

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ATTORNEYS FOR PETITIONERS

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY**

HILLCREST NATURAL AREA FOUNDATION, INC., JOEL E. GUTHALS, ANN M. GUTHALS, MARC VISCHER, ELLEN KNIGHT, ROSS WAPLES, and VIRGINIA WAPLES,)	DV 19-0192
)	Cause No. _____
)	Hon. <u>Colette B. Davies</u>
Petitioners)	
)	
vs.)	<u>PETITION FOR JUDICIAL</u>
)	<u>REVIEW</u>
MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY,)	
)	
Respondents.)	

Pursuant to the Montana Administrative Procedure Act, § 2-4-702, MCA, and the Montana Environmental Policy Act ("MEPA"), § 75-1-101, *et seq.*, Petitioners request judicial review of the final decision of the Montana Department of Environmental Quality ("DEQ") contained in an Environmental Assessment ("EA") on December 17, 2019, approving a license for the City of Billings ("City") to expand its landfill by 350 acres. The EA with appendices and comments is attached as Exhibit 1.

As explained below, the EA issued by the DEQ violates the requirements of MEPA and the Montana Solid Waste Management Act ("SWMA").

**I. FACTS UPON WHICH JURISDICTION AND VENUE ARE BASED
(§ 2-4-702(2)(b), MCA).**

1. Petitioner Hillcrest Natural Area Foundation, Inc. ("Hillcrest Foundation") is a Montana nonprofit public benefit corporation which owns and operates the 67-acre Hillcrest Natural Area ("Hillcrest Park"), which is open to the public, near the existing landfill and adjacent to and overlooking the expanded landfill site. Its trustees live in close proximity to the proposed landfill expansion. The mission of the Hillcrest Foundation is to develop, operate, and safeguard the Hillcrest Park so that it remains an unspoiled area in natural condition, and that the Park and its viewshed be protected from environmental degradation.

2. Petitioners Joel E. Guthals, Ann M. Guthals, Marc Vischer, Ellen Knight, Ross Waples, and Virginia Waples own and/or occupy real property near the expanded landfill and will be materially and adversely affected by the proposed expansion.

3. Respondent DEQ is an administrative agency of the State of Montana, created under § 2-15-3501, MCA, and § 75-10-103(3), MCA. DEQ has authority and responsibility to review, approve and regulate solid waste disposal in Montana and to conduct environmental reviews of solid waste disposal sites, including landfill dumps, in accordance with MEPA and SWMA.

4. DEQ has made a final decision in the EA to approve the expanded landfill and to issue a license. *See Exhibits 1 & 2.*

5. Petitioners have exhausted all known available administrative remedies and are aggrieved by the final decision of DEQ set forth in the EA.

6. Under § 2-4-702, MCA, and § 75-1-20, MCA, this Court has jurisdiction to review agency actions.

7. This Petition is filed within 60 days of publication of DEQ's final EA and decision to approve of the expanded landfill and is thus timely filed. Section 75-1-201(5)(a)(ii), MCA

8. This Court has jurisdiction over the subject matter in this dispute under § 75-1-201(5)(a)(i), MCA.

9. Venue is proper because the Petitioner's principal place of business is in Yellowstone County. Sections 2-4-702(2)(a); 75-1-108, MCA

10. This action "must take precedence over other cases or matters in the district court unless otherwise provided by law." Section 75-1-201(5)(b), MCA

II. STATEMENT OF THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED.

A. THE CITY OF BILLINGS PROPOSED EXPANSION.

11. On April 27, 2015, the City of Billings submitted a Solid Waste Management System license application to DEQ to expand the boundary of its current landfill by 350 acres.

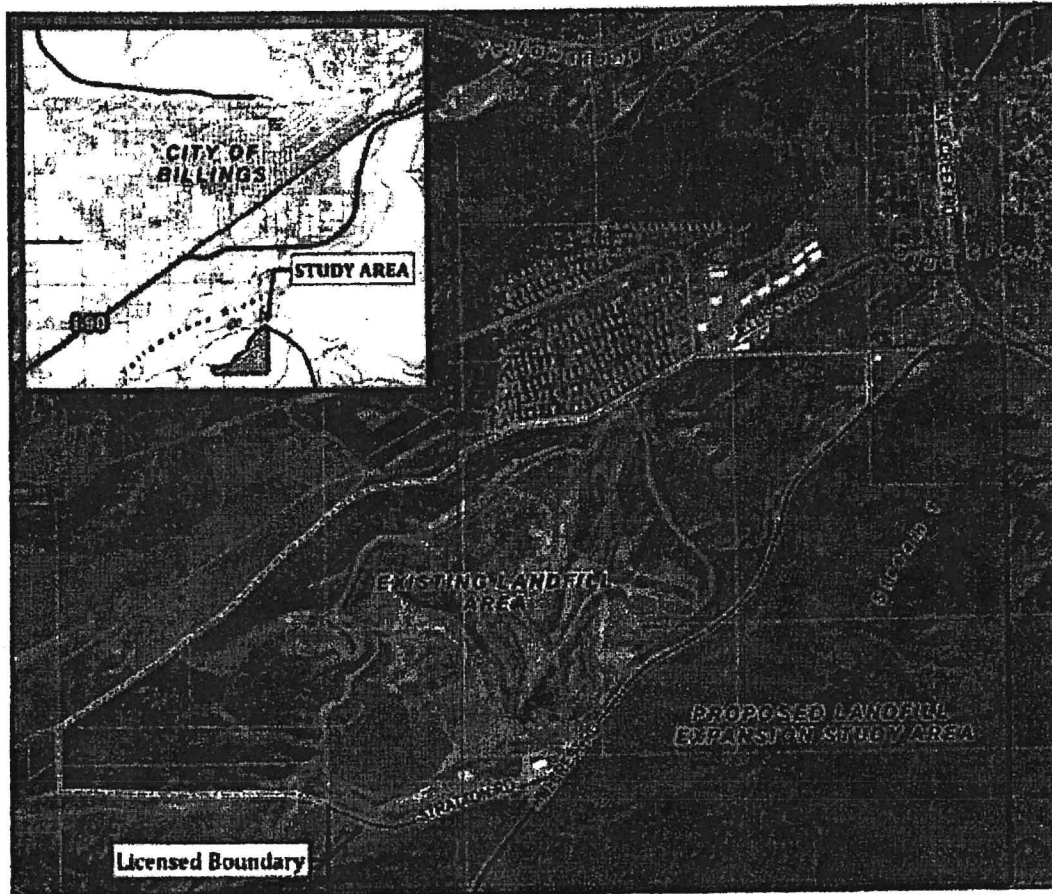
12. The existing landfill is located just south of the City of Billings near the Yellowstone River.

13. Upon information and belief, the City of Billings has been operating the existing landfill since the 1950s. The DEQ issued a solid waste permit to the City in 1978 which authorized the City to operate a landfill on 421 acres of property.

14. Since then, the area surrounding the landfill has changed significantly. There are several residential developments in the area surrounding the landfill, as well as the Hillcrest Park.

15. The City eventually purchased property next to the landfill, claiming that it wanted to provide a buffer zone from the landfill.

16. The proposed expansion would almost double the size of the existing landfill by expanding into 350 acres containing wetlands, environmentally sensitive areas, near residences, and bordering a public road. The picture below, from the EA (Exhibit 1, p. 8) depicts the existing and expanded landfill areas.



17. The EA states that the purpose of the proposed expansion is to allow the City to continue to provide solid waste services for residents of the City and Yellowstone County once the existing landfill reaches capacity. Exhibit 1, p. 7.

18. However, the EA also states that the existing landfill is not expected to reach capacity for several decades. According to an engineering firm hired to evaluate the project,

“Current estimates calculate the remaining life of the existing 421-acre licensed landfill to be between 39 and 62 years, depending on waste volumes accepted for disposal.” Exhibit 1, (Appendix A (EA Technical Memorandum), p. 1))

19. The City does not need, or intend to use, the proposed expansion as a landfill for decades. “[C]onstruction of new disposal units and associated appurtenances within the proposed expansion area is not expected to commence for another 20 to 25 years.” Exhibit 1, p. 9.

20. Moreover, the landfill accepts a significant amount of waste from Wyoming and counties outside of Yellowstone County. In other words, the landfill already has enough capacity to provide services to residents of Billings, Yellowstone County and various surrounding areas for the next 40 years.

21. There is no need for the City to obtain a license for an expanded landfill.

22. The EA does not attempt to address, let alone adequately analyze, what conditions will exist, decades in the future, when an expansion of the landfill may actually be necessary.

23. In fact, the EA is based on old data that does not adequately analysis the environmental impacts of the proposed expansion.

24. The EA issued by DEQ did not consider alternative locations to the proposed expansion of the landfill.

25. It is practicable to find an alternative location for a future landfill further away from Billings and away from residential areas and the Yellowstone River.

26. Other towns in Montana, such as Bozeman, moved their landfill operations further away from city limits, residential developments, and more sensitive environmental areas.

27. The proposed expansion will destroy wetlands and threaten sensitive environmental areas.

28. The EA acknowledges that there are wetlands in the middle of the proposed expansion that will be destroyed.

29. "The wetlands and bodies of water that would be affected by the expansion have direct contact to Blue Creek, which flows into the Yellowstone River." Exhibit 1, p. 88.

30. The existing landfill has already experience problems with surface water run-off flooding a trailer park just north of the landfill.

31. Upon information and belief, surface water run-off from the proposed expansion of the landfill will go directly into Blue Creek, and then into the Yellowstone River.

32. The EA does not adequately address the potential environmental impact of surface run-off, or of a catastrophic release of waste and the impacts that will have on the environment.

33. Hillcrest Road, a public road which is used by local residents, travels between the existing landfill and the proposed expansion.

34. "Hillcrest road is not currently designed to handle the increase in traffic to the expansion area once the landfill is constructed and is operating." Exhibit 1, page 68.

35. The proposed expansion will significantly increase traffic and safety hazards on Hillcrest Road and Blue Creek Road.

36. The proposed expansion will create further landfill activities directly next to a public road.

37. The proposed expansion will create large amount of dust, noise, odor and vibrations.

38. The proposed expansion will have a negative impact on property values.

39. The proposed expansion will have a negative impact on wildlife.

B. THE DEQ PUBLISHES DRAFT AND FINAL EAS.

40. On December 16, 2016, DEQ published a draft EA for the proposed landfill expansion.

41. On January 10, 2017, DEQ held a public meeting in the gym of the Blue Creek School.

42. At the beginning of that meeting, representatives of the DEQ and/or the City announced certain plans and amendments relevant to the draft EA.

43. Members of the public, including Petitioners, then provided comments regarding the EA and the amendments.

44. For example, one amendment involved the installation of a multimillion dollar “shredding” facility at the site of the current landfill. Upon information and belief, the installation of this facility would extend the current expected lifetime of the existing dump site beyond the 39 to 62 years already projected.

45. In other words, it might make the proposed expansion even more unnecessary. The impacts of the proposed facility are not addressed in the EA.

46. Another amendment involved the installation of an underpass under Hillcrest road.

47. Petitioners provided comments at the public meeting, as did Petitioners.

48. Petitioners also provided written comments to the DEQ.

49. DEQ received extensive comments on the draft EA.

50. On December 17, 2018, the DEQ issued the Final Environmental Assessment for the Proposed City of Billings Class II Landfill Expansion Project, Billings, Montana.

51. The DEQ did not adequately address the comments raised with respect to the draft EA. Moreover, the final EA does not contain the information related to the amended plan, or consider the effect of those amendments.

52. The final EA does not contain a record of the comments made by the DEQ and City regarding amendments that were relevant to the draft EA, Petitioner's comments, and the DEQ's final EA which approved of the issuance of a license.

53. The DEQ has issued a license to the City of Billings to operate the expanded landfill.

III. GROUND FOR RELIEF

54. The Montana legislature, "mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Montana Solid Waste Management Act. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." Section 75-10-202(1), MCA.

55. Further, it "is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible." Section 75-10-202(2), MCA.

A. VIOLATION OF ARM 17.4.607(1) AND 17.4.608.

56. The DEQ should have prepared an environmental impact statement ("EIS") rather than an EA.

57. ARM 17.4.607(1)(b) provides that the DEQ "shall prepare an EIS . . . whenever, based on the criteria in ARM 17.4.608, the proposed action is a major action of state government significantly affecting the quality of the human environment."

58. Based on the criteria in ARM 17.4.608, the expansion of the landfill is a major action of state government significantly affecting the quality of the human environment.

59. ARM 17.4.608(2) provides that an "EIS is required if an impact has a significant adverse impact, even if the agency believes that the effect on balance will be beneficial."

60. The EA states that an EIS is not required because the project lacks significant adverse effects (Exhibit 1, p. 85) based on the criteria in ARM 17.4608(1)(a) through (g), but does not contain any analysis of those factors. That is an improper basis on which to decline to perform an EIS.

B. VIOLATION OF ARM 17.50.1005.

61. The proposed expansion of the City of Billings landfill would be located on wetlands, which connect directly to Blue Creek which, in turn, connects to the Yellowstone River.

62. A landfill "may not be located in wetlands, unless the owner and operators submits to the department for approval" certain demonstrations. ARM 17.50.1005(1).

63. Those demonstrations include "a clear rebuttal of the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands." ARM 17.50.1005(1)(a).

64. The EA violates that rule because it does not consider any alternatives.

65. ARM 17.50.1005(1)(c) requires the owner or operator of a landfill to demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the catastrophic release of waste to the wetland and the resulting impacts on the environment.

66. The EA does not contain the analysis required by ARM 17.50.1005(1)(c).

67. The EA does not comply with the other requirements of ARM 17.50.1005 that must be met before a landfill or an expansion of an existing landfill may be located on wetlands.

C. VIOLATION OF SECTION 75-10-212(2), MCA.

68. Section 75-10-212, MCA, makes it “unlawful to dump or leave any garbage, dead animal, or other debris or refuse...(c) within 200 yards of a public highway, road, street, or alley or public property.”

69. DEQ has violated § 75-10-212, allowing the City of Billings to dump waste alongside Hillcrest Road and also within 200 yards of Blue Creek Road.

70. This also presents a safety issue for traffic.

D. VIOLATION OF THE MONTANA CONSTITUTION.

71. Article II, Section II of the Montana Constitution protects an individuals’ right to a clean and healthful environment.

72. DEQ licensure of the proposed expansion of the landfill violates that right.

73. To the extent that MEPA allows for a City to obtain an unnecessary license that will not be used for decades, it is unconstitutional because it would allow the issuance of unnecessary licenses that would not be subject to timely and accurate assessments of their environmental impacts.

74. Further, to the extent that the MEPA process can be used to evade more stringent requirements of the SWMA relating to landfills, it is unconstitutional.

75. DEQ’s licensure also violates the State’s mandates to maintain and improve a clean and healthful environment and to restore, enhance and preserve scenic and recreational sites, pursuant to Article IX, sections 3 and 4 of Montana’s constitution.

IV. CLEARLY ERRONEOUS FINDINGS

76. The DEQ concluded that the proposed licensure will meet the requirements of the Montana Solid Waste Management Act. However, that statute and related regulations prohibit a landfill or an expansion of a landfill from being located on wetlands.

77. The proposed expansion of the landfill is not necessary. The administrative record, and the EA itself, state that the proposed expansion will not be used for decades.

78. The EA's assessment of the proposed impacts is deficient.

79. When proposed expansion is eventually used as a landfill, it will have a significant negative impact on the environment.

80. The DEQ was required to conduct an EIS rather than an EA.

V. RELIEF REQUESTED

81. Pursuant to section 75-1-201(6)(c), Plaintiffs request that the Court:

- a. remand this matter to the DEQ to correct the deficiencies in the EA;
- b. once the deficiencies have been corrected, require DEQ to perform an EIS;
and
- c. grant any other relief the Court deems proper.

DATED this 13th day of February, 2019.

GOETZ, BALDWIN & GEDDES, P. C.

By TS-AIL
Benjamin J. Alke

ATTORNEYS FOR PETITIONERS

