

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

OAKVILLE COMMUNITY ACTION	*	
GROUP, LOUISIANA	*	NUMBER <u>643930</u>
ENVIRONMENTAL ACTION	*	
NETWORK, and GLORIA	*	DIV. " <u>22</u> "
MAYFIELD,	*	
	*	JUDGE <u>Hon. Timothy Kelley</u>
Petitioners,	*	
	*	
v.	*	
	*	
LOUISIANA DEPARTMENT OF	*	
ENVIRONMENTAL QUALITY,	*	
	*	
Defendant.	*	

PETITION FOR REVIEW

1. Oakville Community Action Group, Louisiana Environmental Action Network (“LEAN”), and Gloria Mayfield (collectively, “Petitioners”) appeal, pursuant to La. R.S. § 30:2050.21(A), Louisiana Department of Environmental Quality’s (“LDEQ”) final decision made on September 17, 2015 granting Solid Waste Standard Permit Renewal No. P-0367R1 (“Landfill Permit”) to Riverside Recycling & Disposal, LLC and Industrial Pipe, Inc. for a Type III Construction & Demolition Debris and Woodwaste Landfill (“Industrial Pipe Landfill”) located at 11266 Highway 23 in Plaquemines Parish adjacent to the Oakville community.
2. LDEQ’s decision violates the Louisiana Environmental Quality Act because, *inter alia*, LDEQ failed to take into consideration Riverside Recycling & Disposal’s recent violations of a mandatory requirement to report fires at the landfill and the resulting damage to the facility. Indeed, Riverside Recycling & Disposal failed to report multiple fires at the landfill occurring between January and April of 2015—or report the damage to the structure of the landfill due to these fires and the attempt to extinguish them. Without considering any of these violations or the landfill’s history of fires, underground combustion, and smoldering, LDEQ issued a permit for the continued operation of the landfill directly next to a community for another 15 years and expanded the landfill’s authority to store flammable woodwaste. As the record demonstrates,

construction and demolition debris landfills and the woodwaste storage areas (including this very facility) create risks of fire and resulting environmental pollution. Yet, LDEQ issued this permit without considering the facility's serious violations involving fires that occurred for months adjacent to a community.

PARTIES

3. Oakville Community Action Group, LEAN, and Gloria Mayfield are persons aggrieved by LDEQ's final decision in this matter.

4. Oakville Community Action Group is a non-profit corporation organized and operating under the laws of Louisiana. Oakville Community Action Group comprises individuals who live, work, own property, recreate, and enjoy the environment in and near the Oakville community. Oakville Community Action Group residents organized the non-profit corporation for the purpose of preserving, protecting, and enhancing the environmental, health, and safety interests of its members, the Oakville community, and its surroundings.

5. LEAN is a non-profit corporation whose purpose is to preserve and protect Louisiana'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 throughout Louisiana, some of whom live, own property, work, and recreate in or near the Oakville community.

6. Gloria Mayfield is an individual member of Oakville Community Action Group who lives, recreates, and owns property in the Oakville community.

7. Oakville Community Action Group members, LEAN members, and Ms. Mayfield live directly adjacent to the Industrial Pipe Landfill. Riverside Recycling and Disposal, LLC operates the Industrial Pipe Landfill—disposing construction/demolition debris and woodwaste in landfill cells that exist as close as 50 feet from Oakville residences and a community playground.

8. Oakville Community Action Group members, LEAN members, and Ms. Mayfield suffer real and potential adverse environmental, health, and safety impacts from the Industrial Pipe Landfill, including threat of fires, actual fires, smoke, underground combustion, smoldering, and landfill gases.

9. Oakville Community Action Group members, LEAN members, and Ms. Mayfield

are adversely affected by LDEQ's decision to issue the Landfill Permit because the Permit authorizes activities that threaten the health, safety, and environment of the Oakville community and the surrounding area and impair Oakville Community Action Group members, LEAN members, and Ms. Mayfield's use and enjoyment of the area.

10. Petitioners are aggrieved persons who may appeal LDEQ's decision to issue the Landfill Permit pursuant to La. R.S. §§ 30:2050.21, 30:2004(8) & (17).

11. LDEQ is an agency of the State of Louisiana with the power to sue and be sued. LDEQ made the final permit decision in this matter.

12. LDEQ is the primary public trustee of the environment, pursuant to article IX, section 1 of Louisiana's Constitution. That section charges the agency with the duty to protect "[t]he natural resources of the state, including air and water, and the healthful, scenic, historical, and esthetic quality of the environment." *Save Ourselves v. La. Env'tl. Control Comm'n*, 452 So.2d 1152, 1154 n. 2 (La. 1984) (quoting La. Const. art IX §1).

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this Court pursuant to La. R.S. § 30:2050.21.A.

14. Petitioners received notice by regular mail of LDEQ's decision to issue the Landfill Permit on October 20, 2015. The notice is postmarked October 19, 2015. This appeal is timely pursuant to La. R.S. § 30:2050.21(A), 2050.23(D). *See In re Nat. Res. Recovery, Inc.*, 1998-2917 (La. App. 1 Cir. 2/18/00), 752 So. 2d 369, 375; *A to Z Paper Co. v. State, Dep't of Env'tl. Quality*, 1999-1710 (La. App. 1 Cir. 9/22/00), 770 So. 2d 445, 446.

APPLICABLE LAWS

Review Standard

15. "The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) Not supported and sustainable by a preponderance of

evidence as determined by the reviewing court.” La. R.S. § 49:964.G.

Environmental Laws & Regulations

16. “[P]rior to the grant of any permit . . . to any facility, the assistant secretary for the office of environmental services shall consider the history of violations and compliance for that facility. In considering the granting or denial of the permit . . . due consideration shall be given to the violation and compliance history of that facility.” La. R.S. § 30:2014.A(2).

17. “A[] [permit] application shall [] have no history of environmental violation(s) that demonstrates to [LDEQ] an unwillingness or inability to achieve and maintain compliance with the permit for which the application is being made, unless [LDEQ] determines that the applicant’s history of environmental violation(s) can be adequately addressed by permit conditions.” La. Admin. Code tit. 33, pt. I, § 1701.A.

18. Louisiana solid waste regulations require a facility to notify LDEQ of fire or damage to the facility. Specifically, the regulations mandate that “[n]otification shall be made in accordance with LAC 33:I.3915 in the case of an emergency condition as defined in LAC 33:I.3905, or in accordance with LAC 33:I.3923 in all other cases, when damage to or degradation of any structure of a solid waste facility occurs that would impair the ability of the facility to meet the conditions of its permit, or when any fire occurs in the waste management area at a solid waste facility.” LAC 33:VII.315.H.

Public Trustee Duty

19. When issuing permits, LDEQ must meet its mandate as “public trustee” under Article IX, Section 1 of the Louisiana Constitution. *Save Ourselves*, 452 So. 2d 1152, 1157. LDEQ must determine “that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare” before it can issue a final permit. *Id.*

20. LDEQ must, at a minimum, demonstrate on the record that: “1) the potential and real adverse environmental effects of the proposed project [have] been avoided to the maximum extent possible; 2) a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are [no] alternative projects [n]or alternative sites [n]or mitigating measures which would offer more protection to the environment than the proposed project without unduly

curtailing non-environmental benefits to the extent applicable.” *In re Rubicon, Inc.*, 95-0108, p. 10 (La. App. 1 Cir. 2/14/96), 670 So.2d 475, 482.

21. LDEQ’s decision must also respond to all reasonable public comments. *Id.* at 483.

22. The reviewing court must reverse LDEQ’s permitting decision, “if the decision was reached ‘without individualized consideration and balancing of environmental factors conducted fairly and in good faith.’” *Id.* (quoting *Save Ourselves*, 452 So.2d at 1159).

FACTUAL BACKGROUND

23. Riverside Recycling & Disposal, LLC, operator of the Industrial Pipe Landfill, submitted a solid waste permit application on January 7, 2013 for the renewal of an existing solid waste permit for the Industrial Pipe Landfill, along with materials to supplement the application submitted through April 7, 2014.

24. On July 17, 2014, Petitioners submitted comments during the public comment period to LDEQ on the draft Landfill Permit. Mark Quarles, P.G., an environmental consultant, also submitted comments to LDEQ on behalf of Petitioners on the draft permit. Oakville Community Action Group and LEAN members testified during the public hearing on the draft permit on June 17, 2014. On January 13, 2015, Petitioners submitted supplemental comments to LDEQ about violations at the landfill found during an inspection on October 2, 2012 that LDEQ had not released to the public until well after the public comment period. These comments demonstrate the adverse environmental, health, and safety impacts to the Oakville community. Petitioners’ comments raised all reasonably ascertainable issues and submitted all reasonably available evidence supporting Petitioners’ position.

25. On April 29, 2015, an LDEQ inspector discovered that there had been multiple fires at the Industrial Pipe Landfill that the facility struggled to extinguish between January 28, 2015 and April, 15, 2015. The report states that the facility violated LAC 33:VII.315.H because it failed to notify LDEQ of the fire or the damage to the facility (i.e., excavation to extinguish fire that disturbed cap of inactive landfill). LDEQ issued a warning letter on July 21, 2015 to Riverside Recycling & Disposal stating that the inspection report had been forwarded to the Enforcement Division.

26. In its decision to issue the Landfill Permit, LDEQ failed to consider the violations

of LAC 33:VII.315.H detailed in the April 29, 2015 inspection report.

27. A preponderance of evidence in the record demonstrates that the permit applicant's history of violations demonstrates an unwillingness or inability to achieve and maintain compliance with the Landfill Permit.

28. LDEQ made no determination as to whether the permit applicant's history of violations demonstrates an unwillingness or inability to achieve and maintain compliance with the permit.

29. LDEQ did not determine that the applicant's history of environmental violations can be adequately addressed by permit conditions.

30. In its decision to issue the Landfill Permit, LDEQ failed to provide a specific response to Petitioners evidence of repeat fires at the Industrial Pipe Landfill, evidence that construction and demolition debris landfills are susceptible to underground fires that are difficult to extinguish, and evidence that landfill fires result in harmful emissions—and the impact of these real and potential harms to the Oakville community.

31. In its decision to issue the Landfill Permit, LDEQ failed to provide a specific response to Petitioners' concern that allowing the storage of woodwaste on top of closed areas of the landfill (including areas that are only 50 feet from Oakville residences) without any volume or height restrictions creates a hazard. Instead, LDEQ merely said that the operator must manage the woodwaste in accordance with best management practice ("BMP") plan approved by the Louisiana Department of Agriculture and Forestry in 1998. LDEQ's record fails to show that this BMP plan will protect Petitioners from the risk of fires. Indeed, despite the BMP plan, a fire in an Industrial Pipe Landfill woodwaste pile burned for more than a month. LDEQ has acknowledged that it is not unusual for such large volumes of woodwaste to catch on fire.

32. LDEQ's decision conflicts with the BMP plan, which limits the woodwaste management area to seven acres in the northwest portion of the property, 1,500 feet from any residence, as opposed to "closed areas of the landfill" as allowed in the Landfill Permit.

33. In its decision to issue the Landfill Permit, LDEQ failed to respond to Petitioners' concern that allowing the landfill to pile cover material with no height restrictions on top of unclosed landfill cells and within the buffer zone would pose risks to the community (especially

to those living only 50 feet from landfill cells and only a few feet from the buffer zone) in the event of high winds or storm conditions. LDEQ failed to discuss the evidence that Petitioners submitted, which showed that a pile of such cover material had toppled and caused an electrical pole to crash into a home resulting in a fire.

34. In its response to comments, LDEQ stated that it added a provision to Specific Requirement R-77 of the Landfill Permit to require the facility to apply final cover to units that have not reached final grade, but that have received final waste. But that provision actually is written such that it gives the facility a choice to apply final cover when final grades are reached or final waste is received. Moreover, it provides no provision for determining when final waste is received or when final cover must be applied.

35. LDEQ based its decision on its conclusion that the potential and real adverse environmental effects of the landfill have been avoided to the maximum extent possible on the facility's claim that "operating disposal area are more than 500 feet from the nearest resident," but the Landfill Permit allows the facility to dispose waste in areas as close as 50 feet from the nearest resident; and LDEQ stated in its response to public comments that it understands that work will resume in inactive areas of the landfill, which includes areas that are within 50 to 500 feet from the Oakville community.

ASSIGNMENTS OF ERROR

36. LDEQ's decision to issue the Landfill Permit violates La. R.S. § 30:2014.A(2).

37. LDEQ's decision to issue the Landfill Permit violates LAC 33:I.1701.A.

38. LDEQ made its decision to issue the Landfill Permit upon unlawful procedure because the agency failed to provide reasonable responses to significant public comments.

39. LDEQ violated article IX, section 1 of the Louisiana Constitution by failing to avoid to the maximum extent possible the potential and real adverse environmental effects of the Industrial Pipe Landfill.

40. LDEQ's conclusion that the potential and real adverse environmental effects of the landfill have been avoided to the maximum extent possible is arbitrary and capricious.

41. LDEQ violated article IX, section 1 of the Louisiana Constitution because it failed to demonstrate on the record that it considered the real and potential adverse impacts to the

Oakville community of landfill fires, underground combustion, and smoldering.

42. LDEQ violated article IX, section 1 of the Louisiana Constitution because it failed to demonstrate on the record that it considered the real and potential adverse impacts to the Oakville community of the stockpiling of cover material on landfill cells and in the buffer areas next to the community, alternatives to stockpiling cover material in these areas next to the community, and any mitigative measures or conditions that would lessen real and potential harm to the community posed by this activity.

43. LDEQ's finding that the social and economic benefits of the landfill outweigh the adverse impacts is arbitrary and capricious and violates article IX, section 1 of the Louisiana Constitution because the agency failed to demonstrate on the record that it consider the social, health, and environmental impacts to the Oakville community.

44. LDEQ's decision to grant the Landfill Permit violates LDEQ's duty as public trustee of the environment under Art. IX, Section 1 of the Louisiana Constitution because it failed to act "with diligence, fairness and faithfulness" in protecting the environment of the Oakville community. *See Save Ourselves*, 452 So.2d at 1157.

DESIGNATION OF RECORD FOR APPEAL

45. Petitioners designate the all documents in LDEQ's possession that relate to the agency's review of Industrial Pipe's application for the Landfill Permit, including but not limited to all application materials, correspondence and emails related to the Landfill Permit; the transcript from the public hearing on the Landfill Permit; all written comments and supporting exhibits submitted to LDEQ regarding the Landfill Permit application; the 6/1998 Woodwaste Management Plan (EDMS # 27538475), and the following enforcement action documents: 4/29/2015 Inspection Report (EDMS # 9786776) and 7/21/15 Warning Letter (EDMS # 9878018).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court:

1. Vacate LDEQ's decision to issue the Landfill Permit and remand to the agency for further consideration consistent with an order from this Court.
2. Award all other relief as this Court finds equitable.

Respectfully on 18th day of November, 2015 by,



Corinne Van Dalen (La. Bar No. 21175)
TULANE ENVIRONMENTAL LAW CLINIC
6329 Freret Street
New Orleans, LA 70118
Phone: (504) 862-8818
Fax: (504) 862-8721
cvandale@tulane.edu
*Counsel for Petitioners Oakville Community Action
Group, Louisiana Environmental Action Network,
and Gloria Mayfield*

SHERIFF PLEASE SERVE:

Ms. Peggy Hatch, Secretary
LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY
Office of the Secretary
602 North 5th Street
Baton Rouge, LA 70802

19TH JUDICIAL DISTRICT COURT
 PARISH OF EAST BATON ROUGE
 STATE OF LOUISIANA

OAKVILLE COMMUNITY ACTION	*	
GROUP, LOUISIANA	*	NUMBER ____
ENVIRONMENTAL ACTION	*	
NETWORK, and ANNE HIGGINS.	*	DIV. " _ "
	*	
Petitioners,	*	JUDGE _____
	*	
v.	*	
	*	
LOUISIANA DEPARTMENT OF	*	
ENVIRONMENTAL QUALITY,	*	
	*	
Defendant.	*	
	*	

ORDER

The Court has received the Petition for Review appealing Louisiana Department of Environmental Quality’s final decision granting Solid Waste Standard Permit Renewal No. P-0367R1 (“Landfill Permit”) to Riverside Recycling & Disposal, LLC and Industrial Pipe, Inc. for a Type III Construction & Demolition Debris and Woodwaste Landfill.

LDEQ shall compile the record designated by Petitioners and forward it to the Nineteenth Judicial District Court by the _____ day of _____, 2015.

Signed in Baton Rouge, Louisiana on this _____ day of _____, 2015.

 District Judge
 Nineteenth Judicial District Court