

BEFORE THE
ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION

BOBBY LEWIS and
MICHAEL DEL VECCHIO,

Petitioners,

vs.

Docket No.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Respondent.

_____ /

REQUEST FOR HEARING

Pursuant to Ala. Code § 22-22A-7(c) and Ala. Admin Code r. 335-2-1-.04, Petitioners submit this Request for Hearing to contest an administrative action of the Alabama Department of Environmental Management.

I. Petitioners

1. The names, mailing addresses, and telephone numbers of the Petitioners are as follows:

Bobby Lewis

Michael Del Vecchio

II. Administrative Action Contested

2. The administrative action of the Alabama Department of Environmental Management which is being contested is the January 8, 2016 modification of Solid Waste Disposal Facility Permit No. 35-06 issued to the City of Dothan.

III. Timeliness of Request

3. This Request is filed within 30 days after the Alabama Department of Environmental Management issued the modification of Solid Waste Disposal Facility Permit No. 35-06. Accordingly, the Request is timely filed. Ala. Code § 22-22A-7(c)(1); Ala. Admin. Code r. 335-2-1-.04(1).

IV. Threatened or Actual Injuries Suffered

4. A person is “aggrieved” if he has suffered a threatened or actual injury in fact, *i.e.*, he is somehow adversely affected by the contested agency action. Ala. Admin. Code r. 335-2-1-.02(b); *Alabama Dep’t of Env’tl Mgmt. v. Legal Env’tl Assistance Found., Inc.*, 973 So. 2d 369, 378 (Ala. Civ. App. 2007). The threatened or actual injuries suffered by the Petitioners by the modification of Permit No. 35-06 are described in the following short and plain statement:

Petitioner Bobby Lewis lives only feet from the City of Dothan Sanitary Landfill facility boundary and less than one mile from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Mr. Lewis to offensive odors for the next 15 to 20 years that lessen his food and water intake, upsets his appetite, cause nausea and vomiting, restrict his outdoor activities such as cooking and eating, and require that he keep house windows closed. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, at and around Mr. Lewis’s home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Mr. Lewis’s property and to be deposited on his vehicle and outdoor furniture for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery,

backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Mr. Lewis's sleep, conversation, television listening and phone conversations. The expansion of the municipal solid waste landfill threatens to keep Mr. Lewis's property value depressed for the next 15 to 20 years.

Petitioner Michael Del Vecchio lives approximately 700 feet from the City of Dothan Sanitary Landfill facility boundary and approximately 950 feet from the expansion of the municipal solid waste landfill authorized by Permit No. 35-06. The expansion of the municipal solid waste landfill threatens to subject Mr. Del Vecchio to offensive odors for the next 15 to 20 years that interfere with his sleep, preclude eating meals outdoors, and preclude playing outdoors with his children. The expansion of the municipal solid waste landfill threatens to create disease vectors during the next 15 to 20 years, such as flies and buzzards, at and around Mr. Del Vecchio's home. The expansion of the municipal solid waste landfill threatens to cause fugitive dust to be blown onto Mr. Del Vecchio's property and to be deposited on his vehicle for the next 15 to 20 years. The expansion of the solid waste landfill threatens to cause noise from the operation of vehicles, heavy machinery, backup alarms and slamming tailgates during the next 15 to 20 years, that interferes with Mr. Del Vecchio's sleep. The expansion of the municipal solid waste landfill threatens to keep Mr. Del Vecchio's property value depressed for the next 15 to 20 years.

The expansion of the municipal solid waste landfill will be facilitated by converting wetlands and waters of the State into waste disposal areas. But for the location of landfill units in wetlands and the discharge of fill dirt into waters of the State, the expansion of the municipal solid waste landfill would have been smaller and would have a shorter active life, or perhaps

would not be constructed at all. The conversion of wetlands and waters of the State into waste disposal areas will allow the municipal solid waste landfill to operate longer, thereby increasing the duration of all of Mr. Lewis's and Mr. Del Vecchio's injuries. In addition, the simultaneous operation of two working faces as authorized in Permit No. 35-06 will increase the amount of waste exposed to the air and wind currents, thereby increasing the likelihood of offensive odors being transported to Mr. Lewis's and Mr. Del Vecchio's properties. In addition, the simultaneous operation of two working faces will increase the opportunity for disease vectors, such as flies and buzzards, to secure food and harborage at the landfill and travel to Mr. Lewis's and Mr. Del Vecchio's properties. In addition, the use of a cover material other than earth may not be as effective at controlling odors and disease vectors. Finally, the slope of the final cover for the expansion of the municipal solid waste landfill is likely to adversely alter the hydrodynamics of the area and surface flow in the direction of Mr. Del Vecchio's property.

V. Allegations of Errors

Petitioners allege that the Alabama Department of Environmental Management made the following errors in the modification of Solid Waste Disposal Facility Permit No. 35-06:

A. Solid Waste Disposal Facility Permit No. 35-06 authorizes landfill units to be located in wetlands in violation of Ala. Admin. Code r. 335-13-4-.01(2)(c) ("Landfill units including buffers shall not be permissible in wetlands . . .").

B. Solid Waste Disposal Facility Permit No. 35-06 authorizes the discharge of pollutants into waters of the State in violation of Ala. Admin. Code r. 335-13-4-.01(2)(a) ("A facility shall not cause a discharge of pollutants into waters of the State . . . that is in violation of

the requirements of the National Pollutant Discharge Elimination System (NPDES), [and/or] Alabama Water Pollution Control Act, Code of Alabama 1975, §§ 22-22-1 to 22-22-14 . . .”).

C. Solid Waste Disposal Facility Permit No. 35-06 authorizes Municipal Solid Waste Landfill Units (MSWLs) and Construction/Demolition-Inert Landfill Units (C/DLFs) to be covered periodically with materials other than “earth” in violation of Ala. Code §§ 22-27-2(20) (“LANDFILL. A method of compaction and *earth* cover of solid wastes other than those containing garbage or other putrescible wastes, including, but not limited to, tree limbs and stumps, demolition materials, incinerator residues, and like materials not constituting a health or nuisance hazard, where cover need not be applied on a per day used basis.”) and 22-27-2(32) (“SANITARY LANDFILL. A controlled area of land upon which solid waste is deposited and is compacted and covered with compacted *earth* each day as deposited, with no on-site burning of wastes, and so located, contoured, and drained that it will not constitute a source of water pollution as determined by the department.”).

D. Solid Waste Disposal Facility Permit No. 35-06 authorizes the permittee to operate two working faces in violation of Ala. Admin. Code rs. 335-13-4-.22(1)(b) (“All waste shall be confined to as small an area as possible . . .”) and 335-13-4-.23(1)(c) (“All waste shall be confined to as small an area as possible . . .”). A variance from the provisions of Ala. Admin. Code rs. 335-13-4-.22(1)(b) and 335-13-4-.23(1)(c) has not been granted in accordance with the requirements of Ala. Admin. Code chap. 335-13-8.

E. Solid Waste Disposal Facility Permit No. 35-06 authorizes the permittee to construct a final cover system with a maximum final grade (slope) of 3 to 1 in violation of Ala. Admin. Code r. 335-13-4-.20(2)(c)2 (“Final soil cover shall be graded so that: * * * The

maximum final grade of the final cover system shall not exceed 25 percent . . .”). A variance from the provisions of Ala. Admin. Code r. 335-13-4-.20(2)(c)2. has not been granted in accordance with the requirements of Ala. Admin. Code chap. 335-13-8.

VI. Relief Requested

5. Petitioners propose that the Environmental Management Commission issue an order modifying Solid Waste Disposal Permit No. 35-06 to include the following revised conditions (additions underlined, deletions stricken):

SECTION II. GENERAL OPERATING CONDITIONS

- H. Wetlands. No landfill unit, including buffer zone, or portions thereof, shall be located in wetlands. This prohibition applies to all wetlands located within the 534 acre permitted area, including 11.88 acres of wetlands determined to be “jurisdictional wetlands” by the U.S. Army Corps of Engineers in its letter to the Permittee dated September 2, 2014.
- I. Waters. The Permittee shall not discharge pollutants into waters of the State without first obtaining a National Pollutant Discharge Elimination System (NPDES) permit therefor in accordance with Ala. Code § 22-22-9(i)(3) and Ala. Admin. Code chap. 335-6-6. This prohibition applies to all waters of the State located within the 534 acre permitted area, including 3,166 linear feet of perennial, intermittent, and ephemeral streams determined to be “jurisdictional waters” by the U.S. Army Corps of Engineers in its letter to the Permittee dated September 2, 2014.

SECTION III. SPECIFIC MSW LANDFILL REQUIREMENTS

- H. Cover Requirements. The Permittee shall cover all wastes ~~as required by 335-13~~ with earth cover. The municipal solid waste disposal area shall be covered with a minimum of six inches of compacted earth at the conclusion of each day’s activities. The construction and demolition waste disposal area shall be covered with a minimum of six inches of compacted earth at the conclusion of each week’s activities.
- J. Daily cells. All waste shall be confined to an area as small as possible and spread to a depth not exceeding two feet prior to compaction, and such compaction shall be accomplished on a face slope not exceeding 4 to 1 ~~or~~

as otherwise approved by ADEM. The Permittee has been granted a variance to operate two working faces (See Section X.2.).

SECTION X. ~~VARIANCES~~

1. ~~The Permittee is granted a variance from ADEM Rule 335-13.4=~~
~~.20(2)(c)2. requiring that the maximum final grade of the final cover~~
~~system shall not exceed 25 percent (4 to 1). The Permittee shall construct a~~
~~final cover system with 3 to 1 final slopes as shown on the final closure~~
~~drawing dated January 15, 2015. (See Section VIII. A.)~~
2. ~~A variance is granted from ADEM Rule 335-13-4-.23(1)(c) requiring~~
~~waste to be confined to as small an area as possible. The Permittee has~~
~~been approved to operate two working faces. The working faces must be~~
~~confined to as small an area as possible. (See Section III. J.).~~

~~Any variance granted by ADEM may be terminated by ADEM whenever ADEM~~
~~finds, after notice and opportunity for hearing, that the petitioner is in violation of~~
~~any requirement, condition, schedule, limitation, or any other provision of the~~
~~variance, or that operation under the variance does not meet the minimum~~
~~requirements established by state and federal laws and regulations or is~~
~~unreasonably threatening the public health.~~

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Request for Hearing has been served upon the following by United States Mail (postage prepaid) as follows:

Hon. Lance LeFleur, Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

Hon. Mike Schmitz, Mayor
City of Dothan
P.O. Box 2128
Dothan, AL 36302

Done this 3rd day of February, 2016.

David A. Ludder