

INTRODUCTION

1. On June 11, 2024, the Montana Department of Environmental Quality (“DEQ”) issued a license to Pacific Steel and Recycling (“PSR”) to construct a new landfill in the community of Shepherd, Montana. The proposed landfill would dispose of Automotive Shredder Residue, which contains a group of toxic chemicals commonly known as PFAS. The U.S. EPA has determined that exposure to PFAS increases the risk of cancer, birth defects, and decreased fertility. The DEQ refers to PFAS as “forever chemicals” because they do not break down.

2. Plaintiff, Stop the Shepherd Landfill (“STSL”), requests that the Court vacate the license and enjoin construction of the proposed landfill until the agency revises the Environmental Assessment that was prepared to analyze and disclose the environmental impacts of the proposed landfill. The Environmental Assessment violated the Montana Constitution and Montana Environmental Policy Act by failing to take a hard look at the impacts of PFAS. Specifically, the DEQ did not compile, analyze, and disclose all of the relevant documents in the agency’s possession regarding PFAS. The Environmental Assessment did not disclose the information in its possession that states landfills are a major source of PFAS and that exposure can have adverse impacts to humans and the environment. The agency did not explain why winds in the area would not carry PFAS off-site. The agency did not explain how the liners of the proposed landfill would be impacted by PFAS. The agency did not explain why it would stop monitoring the groundwater 30 years after the proposed

landfill closes when the toxic PFAS chemicals last forever and do not break down. Plaintiff's comments raised substantial questions as to whether the proposed toxic landfill may have significant effects on the environment, thereby triggering the need to prepare a more thorough Environmental Impact Statement.

3. The proposed toxic landfill violates the Solid Waste Disposal Act because it has not been designed to prevent harm to human health and the environment. The design of the proposed landfill facilitates exposure to PFAS, which the DEQ and EPA have acknowledged cause adverse effects to human health and the environment.

JURISDICTIONAL STATEMENT

4. This Court has original jurisdiction over this action pursuant to Article II, Section 16, and Article VII, Section 4 of the Montana Constitution and pursuant to Mont. Code Ann. § 3-5-302.

5. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Uniform Declaratory Judgments Act, Mont. Code Ann. §§ 27-8-101, et seq. ("UDJA") and §§ 27-19-101, et seq., as well as the general equitable powers of this Court. Pursuant to the UDJA, this Court "shall have power to declare rights, status, and other legal relations" and this is "whether or not further relief is or could be claimed" in this action. Mont. Code Ann. § 27-8-201.

6. This court may grant temporary injunctive relief pursuant to Mont. Code Ann. § 27-19-201.

7. Venue in this action is proper in this Court pursuant to Mont. Code Ann. §

25-2-126(1) and § 25-2-117. This is an action against an agency of the State of Montana. Plaintiffs' members reside in Yellowstone County.

PARTIES

8. Plaintiff Stop the Shepherd Landfill is an association of residents of the Shepherd community whose members will be directly harmed by the proposed landfill. Plaintiff's members will suffer injury in fact to their constitutional rights to a clean and healthful environment if the proposed landfill is constructed before further environmental analysis is completed. This Court has authority to enjoin construction and operation of the landfill until additional Montana Environmental Policy Act analysis is completed.

9. Defendant Montana Department of Environmental Quality is an administrative agency within the State of Montana that is responsible for carrying out state environmental protection.

FACTUAL BACKGROUND

10. In December 2022, Pacific Steel and Recycling applied to the DEQ for a Solid Waste Management System license. PSR seeks to construct a Class II Solid Waste Management System where they intend to dispose of Automotive Shredder Residue (ASR). In its application, PSR proposed a 320-acre site that would border US Highway 87 to the east and Shepherd Acton Road to the south and be located six miles west of Shepherd and seven miles north of Billings, in Yellowstone County, Montana. Of the 320 acres, 90 would be used for Class II waste disposal activities.

The proposed site would accept a *minimum* of 25,000 tons (50 million pounds) of ASR annually from other PSR sites.

11. ASR is generated from separating recyclable scrap parts during the shredding of automobiles. The “fluff” portion of this separated waste is what would be landfilled at the proposed Shepherd landfill. It is mainly composed of plastics and trace metal and other waste that could not be separated. Environmental Assessment at 5.

12. The DEQ issued a draft Environmental Assessment (EA) and a corollary public comment period followed in the fall of 2023.

13. Stop the Shepherd Landfill submitted comments including data and science regarding the presence of per- and polyfluoroalkyl substances – known as PFAS – in the ASR “fluff” to be dumped and stored at the Shepherd Landfill, and the potential environmental and human health concerns related to PFAS. Ex. 1.

14. The DEQ violated MEPA and therefore the Montana Constitution by failing to take a hard look at the impact of PFAS in the Environmental Assessment.

15. The Environmental Assessment does not describe what PFAS are, how they are transported, or their impacts.

16. According to a DEQ “Fact Sheet” that was not referenced in the Environmental Assessment, “Per- and polyfluoroalkyl substances (PFAS) are a group of man-made chemicals that includes PFOA, PFOS, and many other chemicals. PFAS

have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s.”¹

17. The DEQ maintains a webpage that states, “[t]here is evidence that exposure to PFAS can lead to adverse human health effects.”²

18. The Montana PFAS Action Plan, which was developed by the MT DEQ and other agencies, but was not referenced in the Environmental Assessment, identifies landfills as a “major source of PFAS” and notes that “exposure to PFAS can lead to adverse human health effects.”³

19. The Montana PFAS Action Plan states some PFAS “are known to have toxic effects.”⁴

20. The Environmental Assessment makes no reference to the fact that exposure to PFAS can lead to adverse human health effects, including toxic effects.

21. According to the DEQ’s Fact Sheet, which was not referenced in the Environmental Assessment, “[s]tudies that have occurred suggest that exposure to certain PFAS may lead to health problems including changes in the liver, cardiovascular effects, reproductive effects in women, immunological and

¹ DEQ “Your Health Fact Sheet,” available at: <https://deq.mt.gov/cleanupandrec/Programs/pfas> (last visited June 16, 2024)

² <https://deq.mt.gov/cleanupandrec/Programs/pfas> (last visited June 16, 2021)

³ https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf; <https://deq.mt.gov/cleanupandrec/Programs/pfas>

⁴ https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf; <https://deq.mt.gov/cleanupandrec/Programs/pfas>

developmental effects in infants and children, and an increased risk of kidney or testicular cancer.”

22. A Montana DEQ webpage, which was not included in the Environmental Assessment, directs the public to the U.S. EPA’s website to learn more about PFAS.⁵

23. The U.S. EPA has announced current peer-reviewed scientific studies have shown that exposure to PFAS may lead to:

- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Reduced ability of the body’s immune system to fight infections, including reduced vaccine response.
- Interference with the body’s natural hormones.
- Increased cholesterol levels and/or risk of obesity.

([EPA.gov/pfas](https://www.epa.gov/pfas)).

24. “Implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all pertinent data.” *Clark Fork Coal.*, 2008 MT 407, ¶ 47, 347 Mont. 197, 197 P.3d 482. (citation omitted).

⁵ <https://deq.mt.gov/cleanupandrec/Programs/pfas> (last visited June 14, 2024).

25. The Environmental Assessment violated MEPA by failing to take a “hard look” at the potential impacts of the proposed landfill because it did not compile and analyze all relevant information regarding PFAS and consider all pertinent data.

26. The Environmental Assessment does not indicate how humans can be exposed to PFAS.

27. According to the DEQ website, “the most common sources of human exposure to PFAS include . . . breathing in dust.”⁶

28. The Environmental Assessment states “Dust control measures and other contingencies proposed in the application mitigate air and surface water impacts.” EA at 55-56.

29. The Environmental Assessment does not describe or analyze the dust control mitigation measures that were proposed in the application.

30. MEPA rules required the DEQ to list and evaluate mitigation measures. A.R.M. 17.4.609(3)(g).

31. The DEQ violated MEPA because the Environmental Assessment does not list and evaluate mitigation measures for dust control in the context of PFAS exposure.

32. “While it is true that mitigation measures can justify an agency's conclusions

⁶ <https://deq.mt.gov/cleanupandrec/Programs/pfas>

that a project's impact is not significant, an agency must explain exactly how the measures will mitigate the project's impact.” *Ravalli Cnty Fish & Game*, 273 Mont. at 383 (quoting *LaFlamme v. FERC*, 852 F.2d 389, 399 (9th Cir. 1988)).

33. The EA states PSR will install an anemometer to measure wind speed and would immediately place and compact ASR when continuous wind speeds exceed 35 mph. EA at 71.

34. The EA does not explain at what speed winds can carry PFAS from ASR.

35. The EA does not explain why PFAS could not be carried in wind at speeds of less than 35 mph.

36. The EA violated MEPA by failing to explain its methodology regarding winds transporting PFAS.

37. Leachate is water that flows through waste. EA at 57.

38. The proposed landfill contains a leachate collection system. EA at 57.

39. The Environmental Assessment acknowledges the leachate pond would be exposed to wind. EA at 57.

40. The Environmental Assessment does not analyze wind carrying PFAS from the leachate.

41. According to the EA, “[w]aste cell and leachate collection system final design documents would be completed as the Facility progresses and submitted to the Montana DEQ for approval.” EA at 24.

42. Without final design documents, the DEQ assumed, without knowing, that

the system would not result in significant impacts.

43. Without final design documents, the public did not have a meaningful opportunity to comment on the impacts of the waste cell and leachate collection system.

44. The DEQ violated MEPA by failing to take a hard look at the final design before determining the effects of operating the landfill would not be significant.

45. The DEQ refers to PFAS as “forever chemicals” because they never break down.⁷

46. STSL submitted comments stating, “[t]here are forever chemicals in the fluff that cause the liner to break down over time. What happens when this happens?” *See* EA at 63-64.

47. In response, the DEQ stated:

There are no current rules regarding PFAS and waste disposal. EPA’s rules regarding PFAS speak to drinking water standards. Environmental protections such as liners, groundwater and surface water controls, and operations would prevent contamination.

EA at 65.

48. A lack of rules regarding PFAS and waste disposal does not necessitate a lack of impacts. *Calvert Cliffs Coordinating Committee, Inc. v. United States Atomic Energy Com.*, 449 F.2d 1109, 1123 (D.C. Cir. 1971).

⁷ DEQ “Your Health Fact Sheet,” available at: <https://deq.mt.gov/cleanupandrec/Programs/pfas> (last visited June 16, 2024)

49. The EA does not analyze the lifespan of liners that come in contact with PFAS.

50. A.R.M. 17.50.1404(1) allows the DEQ to call for groundwater monitoring greater than 30 years.

51. The Environmental Assessment states groundwater monitoring will occur for 30 years post-closure. EA at 54.

52. The EA does not explain why it decided to require thirty years of post-closure monitoring given the DEQ has described PFAS as “forever chemicals.”

53. The standard for determining whether an Environmental Impact Statement is necessary is governed by § 75-1-201(1)(b)(iv), MCA.

54. The threshold criteria for determining whether this standard has been met are set out in ARM 17.4.608, the administrative rule adopted by DEQ to implement the standard at § 75-1-201(1)(b)(iv), MCA.

55. ARM 17.4.608(1) requires the DEQ to consider the following criteria when deciding whether to prepare an EIS:

- (a) the severity, duration, geographic extent, and frequency of occurrence of the impact;
- (b) the probability that the impact will not occur if the proposed action occurs; or conversely, reasonable assurance that the impact will not occur;
- (g) potential conflict with local, state, or federal laws, requirements, or formal plans.

56. If none of the adverse effects are significant, an EIS is not required.

17.4.608(2), ARM.

57. The statutory and regulatory requirement that a showing of significant effects will in fact occur before an EIS is required (75-1-201(1)(b)(iv), MCA; 17.4.608(2), ARM) is unconstitutional because it infringes upon Plaintiff's rights articulated in Article II, § 3 and Article IX, §1 of the Montana Constitution.

58. The Montana Supreme Court has previously determined that “[a] determination that significant effects on the human environment will in fact occur is not essential.... *If substantial questions are raised whether a project may have a significant effect upon the environment, an EIS must be prepared.*” *Ravalli Cnty. Fish and Game Ass’n, Inc. v. Mont. Dep’t of State Lands*, 273 Mont. 371, 381, 903 P.3d 1362 (1995) (citation omitted) (emphasis added).

59. The purpose of preparing an EIS is that without one, “there may be little if any information about prospective environmental harms and potential mitigating measures.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 23, 129 S. Ct. 365, 172 L. Ed. 249 (2008).

60. Outside of the Environmental Assessment, the DEQ has publicly stated that landfills are “major sources of PFAS.”⁸

61. In terms of “severity,” the DEQ has stated PFAS are “toxic” and the U.S.

⁸ https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf

EPA has stated exposure to PFAS increased the risk of cancer, birth defects, and decreased fertility.⁹

62. In terms of “duration,” the U.S. EPA refers to PFAS as “*forever* chemicals.”¹⁰

63. PFAS pollution from this project will likely impact the local community for decades and centuries to come.

64. A.R.M. 17.50.1116(f) requires “a solid waste management facility must be designed, constructed, and operated in a manner to prevent harm to human health and the environment.”

65. Final designs for the leachate collection system have not been submitted to DEQ for approval. EA at 24

66. The DEQ violated MEPA by failing to prepare an EIS because there are significant questions as to whether the proposed landfill has been designed and will be operated in a manner that prevents harm to human health and the environment.

67. The DEQ violated MEPA by failing to prepare an EIS because STSL raised substantial questions as to whether the landfill may have a significant effect on the environment. *Ravalli Cnty. Fish and Game Ass’n*, 273 Mont. at 381.

⁹ <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>

¹⁰ https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf;
<https://deq.mt.gov/cleanupandrec/Programs/pfas>;
<https://www.epa.gov/newsreleases/biden-harris-administration-finalizes-first-ever-national-drinking-water-standard>

68. MEPA is patterned after the National Environmental Policy Act (NEPA) and the Montana Supreme Court has held that federal NEPA decisions are instructive. *Mont. Wildlife Fed'n v. Mont. Bd. of Oil and Gas Conservation*, 2012 MT 128, ¶ 32, 365 Mont. 232, 280 P.3d 877. Like NEPA, MEPA is a procedural statute that accomplishes its goal of environmental protection by requiring agencies to take a “hard look” at the environmental impacts of its actions. *Park Cnty. Env'tl. Council v. Mont. Dep't of Env'tl. Quality*, 2020 MT 303, ¶18, 402 Mont. 168, 477 P.3d 288.

69. “MEPA is unique in its ability to avert potential environmental harms through informed decision making.” *Park Cnty. Env'tl. Council*, ¶ 76. As the Montana Supreme Court has pointed out:

The Montana Constitution guarantees that certain environmental harms shall be prevented, and prevention depends on forethought. MEPA's procedural mechanisms help bring the Montana Constitution's lofty goals into reality by enabling fully informed and considered decision making, thereby minimizing the risk of irreversible mistakes depriving Montanans of a clean and healthful environment.

Id., ¶ 70.

70. Judicial review of the adequacy of an agency’s Environmental Assessment, or decision not to prepare an Environmental Impact Statement, must be based on an administrative record prepared by the agency. Sections 75-1-201(6)(a)(i); (iv) MCA.

71. “Implicit in the requirement that an agency take a hard look at the environmental consequences of its actions is the obligation to make an adequate compilation of relevant information, to analyze it reasonably, and to consider all

pertinent data.” *Clark Fork Coal. v. Mont. Dep’t Env’tl. Quality*, 2008 MT 407, ¶ 47, 347 Mont. 197, 197 P.3d 482 (citation omitted). An agency cannot “ignore pertinent data.” *Ravalli Cnty. Fish and Game Ass’n, Inc.*, 273 Mont. at 381 (citation omitted).

72. MEPA requires the DEQ to compile relevant information regarding environmental impacts and complete the environmental analysis to the “fullest extent possible.” *Bitterrooters for Planning, Inc. v. Mont. Dep’t of Env’tl. Quality*, 2017 MT 222, ¶34, 388 Mont. 453, 401 P.3d 712.

73. NEPA and MEPA’s “hard look” requirement is meant to ensure that “the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).

74. Sections 75-1-201(6)(a)(i); (iv) MCA are unconstitutional because they allow the Montana DEQ to constrain judicial review of whether an agency took the necessary hard look at the environmental impacts of a proposed action to the documents the agency included in the administrative record.

75. Section 75-1-201(6)(a)(i) is unconstitutional because it requires a party to prove its claim by clear and convincing evidence based on an artificially truncated and unlawful administrative record.

76. Section 75-1-201(6)(a)(i) is unconstitutional because it only allows a party to seek judicial review of whether a proposed action violates the Montana Constitution by way of an inadequate MEPA analysis if it has the economic resources to pay the agency to prepare and lodge the administrative record.

77. In 2023, the Montana Legislature amended the Montana Environmental Policy Act to require a plaintiff seeking injunctive relief to show irreparable harm before injunctive relief can be granted. Mont. Code Ann. §75-1-201(6)(c)(ii).

78. Mont. Code Ann. §75-1-201(6)(c)(ii) is unconstitutional because the Montana “constitution does not require that dead fish float on the surface of our state’s rivers and streams before its farsighted environmental protections can be invoked.” *Montana Env’t Info. Ctr. v. Dep’t of Env’t Quality*, 1999 MT 248, ¶ 76, 296 Mont. 207, 230, 988 P.2d 1236, 1249.

79. The 2023 MEPA amendment requires courts to make a public interest finding that considers the impact on the local and state economy before issuing injunctive relief. Mont. Code Ann. §75-1-201(6)(c)(ii)(B)(II). This provision infringes upon Montanans’ right to a clean and healthful environment by requiring economic considerations before injunctive relief can issue.

CLAIMS FOR RELIEF

I. Violation of Montana Environmental Policy Act and Montana Constitution.

80. Plaintiff realleges and incorporates by reference all preceding paragraphs.

81. The Montana Constitution provides every Montanan with the fundamental right to a clean and healthful environment. Mont. Const. Art. II, §3; Art. IX, §1.

82. “MEPA is an essential aspect of the State’s efforts to meet its constitutional

obligations.” *Park Cnty. Emtl. Council*, ¶89.

83. The Montana DEQ violated the Montana Constitution and MEPA by failing to take a “hard look” at the impacts of PFAS before approving the license for the proposed Shepherd landfill.

84. The Environmental Assessment violated MEPA and the Montana Constitution by failing to compile and analyze the relevant documents and data regarding PFAS to the fullest extent possible.

85. The Environmental Assessment violated MEPA by failing to list and evaluate mitigation measures for controlling dust. A.R.M. 17.4.609(3)(g).

86. The Environmental Assessment violated MEPA by failing to analyze final design documents for the waste cell and leachate collection service to determine whether they allow significant impacts or whether they will allow for harm to human health or the environment. EA at 24.

87. The Environmental Assessment violated MEPA by failing to take a hard look at the impacts of wind carrying PFAS off-site.

88. The Environmental Assessment violated MEPA by failing to explain the methodology for determining when to pause activities because of dust or wind.

89. The Environmental Assessment violated MEPA by failing to provide baseline data for wind and dust.

90. The Environmental Assessment violated MEPA by failing to explain its

methodology for only requiring 30 years of monitoring after the landfill is closed given PFAS are “forever chemicals” that will last much longer than 30 years after the landfill is closed.

91. Plaintiffs raised significant questions as to whether the proposed Shepherd landfill may have a significant effect on the environment, thereby triggering the need to prepare an Environmental Impact Statement.

92. Plaintiffs raised significant questions about the “severity” of the effects from PFAS given the DEQ has acknowledged some are “toxic” and the EPA has indicated they cause cancer and birth defects.

93. Plaintiffs raised significant questions about the “duration” of the effects from PFAS given the DEQ refers to them as “forever chemicals” but the EA does not acknowledge they do not break down.

94. Plaintiffs raised significant questions about whether the proposed landfill will violate the Solid Waste Disposal Act by allowing harm to human health or the environment.

95. The DEQ violated MEPA by failing to take a hard look at the impacts of PFAS before issuing a license to construct and operate the proposed Shepherd Landfill.

96. The science and data in the Montana DEQ’s possession indicates PFAS in the proposed ASR landfill may have a significant impact on the environment, thereby triggering the need to prepare an Environmental Impact Statement.

97. The DEQ violated MEPA and the Montana Constitution by failing to prepare an Environmental Impact Statement for the proposed Shepherd Landfill to ensure construction, operation, and closure will not cause harm to human health or the environment.

II. Mont. Code Ann. §75-1-201 is Unconstitutional.

98. Plaintiff realleges and incorporates by reference all preceding paragraphs.

99. The Montana Constitution provides all Montanans with the right to a clean and healthful environment. Art. IX, §1; Art. II §3.

100. MEPA effectuates these constitutional safeguards to ensure the agency does not approve actions that impact the environment before taking a hard-look and disclosing the potential impacts to the public.

101. Section 75-1-201(1)(b)(iv), MCA and 17.4.608(2), ARM are unconstitutional because they require an affirmative showing that significant impacts will occur before the requirement to prepare an EIS is triggered.

102. Sections 75-1-201(6)(a)(i); (iv), MCA are unconstitutional because they allow the Montana DEQ to constrain judicial review to the documents the agency includes in the administrative record, instead of considering all relevant documents in the agency's possession.

103. Section 75-1-201(6)(a)(i), MCA is unconstitutional because it requires a party to prove its claim by clear and convincing evidence based on an artificially truncated and unlawful administrative record prepared by the agency.

104. Section 75-1-201(6)(a)(i), MCA violates the Montana Constitution’s promise of “adequate remedies for the protection of the environmental life support system” found within Art. IX, §1 by requiring a party that seeks judicial review of a potential MEPA violation to pay for an administrative record to be compiled and lodged.

105. Section 75-1-201(6)(d), MCA violates the Montana Constitution’s promise of “adequate remedies for the protection of the environmental life support system” found within Art. IX, §1 by requiring a party that seeks injunctive relief of a potential MEPA violation to make a written undertaking to the Court for costs and damages, including but not limited to lost wages of employees and lost project revenues for 1 year.

106. In 2023, the Montana Legislature amended the Montana Environmental Policy Act to require a plaintiff seeking injunctive relief to show irreparable harm before injunctive relief can be granted. Section 75-1-201(6)(c)(ii), MCA.

107. Section 75-1-201(6)(c)(ii), MCA is unconstitutional because it requires a party to show irreparable harm before an injunction issues. The Montana Constitution prevents proposed agency actions from moving forward without the necessary hard look. Plaintiffs seeking injunctive relief are not required to prove that “degree of environmental degradation which can be conclusively linked to ill health or physical endangerment. Our Constitution does not require that fish float on the surface of our state’s rivers and streams before its farsighted environmental protections can be

invoked.” *Montana Env't Info. Ctr. v. Dep't of Env't Quality*, 1999 MT 248, ¶ 77, 296 Mont. 207, 230, 988 P.2d 1236, 1249.

108. Section 75-1-201(6)(d) is unconstitutional because it requires a party to move for injunctive relief, which requires a party to provide a written statement for one year of lost wages of employees and lost project revenues. Requiring a party to move for injunctive relief and making it provide a written statement to cover costs does not provide a plaintiff with adequate remedies that are guaranteed under the Montana Constitution. Art. IX, §1(3).

109. Section 75-1-201(6)(c)(ii)(B)(II), MCA requires courts to make a public interest finding that considers the impact on the local and state economy before issuing injunctive relief. This provision unlawfully infringes upon Montanans' right to a clean and healthful environment by requiring economic considerations before injunctive relief can issue.

IV. Violation of Solid Waste Management Act

110. Plaintiff realleges and incorporates by reference all preceding paragraphs.

111. The Operating Criteria found within the Solid Waste Management Act requires a facility to be designed, constructed, and operated in a manner to prevent harm to human health and the environment. 17.50.1116(f), ARM.

112. The proposed Shepherd landfill violates 17.50.1116(f), ARM, because it has not been designed to prevent harm to human health and the environment.

113. The DEQ maintains a webpage that states, “[t]here is evidence that

exposure to PFAS can lead to adverse human health effects.”¹¹

114. The Montana PFAS Action Plan, which was developed by the DEQ was not referenced in the Environmental Assessment, identifies landfills as a “major source of PFAS” and notes that “exposure to PFAS can lead to adverse human health effects.”¹²

115. The Montana PFAS Action Plan states some PFAS “are known to have toxic effects.”¹³

116. The proposed Shepherd landfill will harm human health and the environment by allowing wind and dust to carry PFAS off-site.

117. The proposed Shepherd landfill will harm human health and the environment by allowing PFAS to enter groundwater and/or surface water.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

A. Adjudge and declare that the following provisions of MEPA violate Art. II, §3 and Art. IX, §1 of the Montana Constitution and are unconstitutional:

- Section 75-1-201(1)(b)(iv), MCA

¹¹ <https://deq.mt.gov/cleanupandrec/Programs/pfas> (last visited June 16, 2021)

¹² https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf; <https://deq.mt.gov/cleanupandrec/Programs/pfas>

¹³ https://deq.mt.gov/files/DEQAdmin/PFAS/2020_06_30_PFAS_ActionPlan.pdf; <https://deq.mt.gov/cleanupandrec/Programs/pfas>

- Section 75-1-201(6)(a)(i), MCA
- Section 75-1-201(6)(a)(iv), MCA
- Section 75-1-201(6)(c)(ii), MCA
- Section 75-1-201(6)(c)(ii)(B)(ii), MCA
- Section 75-1-201(6)(d), MCA
- Admin. R. Mont. 17.4.608(2)

B. Vacate and remand the matter to the Department of Environmental Quality to revise the Environmental Assessment.

C. Order the Montana DEQ to prepare an Environmental Impact Statement for the proposed landfill before construction begins.

D. Issue temporary and injunctive relief preventing Pacific Steel and Recycling from breaking ground on the Shepherd Landfill.

E. Award Plaintiffs their reasonable attorney fees, costs, and litigation expenses, under the Private Attorney General Theory, and/or any other applicable provision of law.

F. Issue any other relief that Plaintiff may request or the Court finds necessary.

Respectfully submitted this 17th day of June, 2024.

COTTONWOOD ENVIRONMENTAL LAW CENTER

/s/ John Meyer
JOHN MEYER

Attorney for Plaintiff