

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

STATE OF MISSOURI ex rel.	)	
Attorney General Chris Koster and	)	
Missouri Department of	)	
Natural Resources,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13SL-CC01088
	)	
REPUBLIC SERVICES, INC., et al.,	)	Div. 10
	)	
Defendants.	)	

**EMERGENCY MOTION TO COMPEL DEFENDANTS TO PROTECT  
AND PRESERVE PHYSICAL EVIDENCE**

Pursuant to Rule 61.01(d), the Plaintiff, State of Missouri, moves for an emergency order compelling the preservation of physical evidence by Defendants as follows:

1. On October 7, 2014, the State required the Defendants to install a new line of temperature monitoring probes in the North Quarry of the landfill within thirty days. Exhibit A.

2. The State required this new line of temperature monitoring probes due to the continued upward trend of reported temperatures in the neck of the landfill, the area between the north and south quarries. The data obtained from the new line of temperature monitor probes would enable the

State and its consultants to assess the progression of the subsurface fire<sup>1</sup> occurring at the landfill from the South Quarry into the North Quarry.

3. On November 5, 2014, Defendants agreed to the installation of this new line of temperature monitor probes in the North Quarry and attached proposed work plans. Exhibit B.

4. On November 12, 2014, the State approved the Defendants' work plans for the installation of this new line of temperature monitoring probes in the North Quarry. Exhibit C.

5. On or before December 18, 2014, Defendants notified the State that installation of the additional temperature monitoring probes would commence on January 5, 2015.

6. On January 3, 2015, two days prior to commencing the drilling necessary to install the temperature monitoring probes, Defendants notified the State of changes to their work plans and that had been scheduled to commence on January 5, 2015. Exhibit D.

7. Defendants' amended work plans included drilling five additional temperature monitoring probes in the South Quarry.

8. Since the State's approval of the Defendants' work plans on November 15, 2014, two events have occurred further calling into question

---

<sup>1</sup> Defendants maintain the landfill is not on fire.

the Defendants' ability to effectively manage their landfill without causing greater risk to public health.

9. First, the U.S. Geological Survey released a report on December 17, 2014, indicating numerous groundwater wells surrounding the north and south quarries of landfill were contaminated with landfill leachate. Twenty percent of these wells contained levels of radium above maximum contaminate levels. This evidence demonstrates Defendants have not isolated or contained the subsurface fire or its effects. Exhibit E.

10. Second, the Defendants' monthly report submitted to the State on December 21, 2014, demonstrates several gas wells in the North Quarry are fluctuating outside temperature and gas trends previously reported to the State. This evidence also demonstrates the Defendants have not isolated or contained the subsurface fire. Alternatively, this evidence could demonstrate the existence of, or precursor to, an independent subsurface fire in the North Quarry. Exhibit F.

11. Thus, the State requested the Defendants collect core samples during the Defendants' previously planned drilling and installation of the temperature monitoring probes.

12. Core samples are sections of waste material and soil from the landfill that are collected inside the cylindrical drilling tubes during drilling,

and can be preserved for inspection and analysis of the nature of the subsurface conditions.

13. The State's consultants need access to these core samples to analyze and characterize the subsurface conditions, the progression of the fire, and the presence of any radiologically impacted material (RIM). *See* Aff. of Timothy Stark, Ph.D. and Aff. of Todd Thalhamer, P.E.

14. Defendants have not agreed to secure the core samples the State has asked the Defendants to preserve.

15. If the core samples are not preserved by Defendants at the time of this agreed drilling, the core samples will be discarded or destroyed and no examination of the core samples will be possible during the normal course of discovery. *J.B.C. v. S.H.C.*, 719 S.W.2d 866, 869 (Mo. Ct. App. 1986) ("The purpose of discovery is to preserve evidence, prevent unjust surprise, and formulate issues for trial.").

16. The State's consultants advise that the samples can be collected using the same agreed sonic drilling method, albeit using a different drill bit that might involve a *de minimis* cost difference. *See* Aff. of Timothy Stark, Ph.D. and Aff. of Todd Thalhamer, P.E.

17. Furthermore, the need to assess the extent of the subsurface fire and RIM outweighs any additional burden placed on the Defendants by this preservation request.

18. The preservation of core samples will aid all parties in their efforts to control the subsurface fire and prevent the spoliation of evidence by Defendants. *Brown v. Hamid*, 856 S.W.2d 51, 57 (Mo.1993) (spoliation occurs when a party cannot satisfactorily explain the destruction of evidence).

19. Here, Defendants cannot demonstrate why the collection of core samples is not possible given the already planned and approved sonic drilling that is scheduled to begin this week.

For the reasons stated above, the State of Missouri asks this court to enter an order compelling the preservation of core samples from drilling conducted by Defendants at the Bridgeton Landfill for inspection by the State.

Respectfully submitted,

**CHRIS KOSTER**  
Attorney General

/s/Joel A. Poole  
Joel A. Poole  
Assistant Attorney General  
Missouri Bar No. 32070  
Email: joel.poole@ago.mo.gov

Peggy A. Whipple  
Assistant Attorney General  
Missouri Bar No. 54758  
Email: peggy.whipple@ago.mo.gov

Thomas M. Phillips  
Assistant Attorney General  
Missouri Bar No. 63569

Email: tom.phillips@ago.mo.gov

Andrew Blackwell  
Assistant Attorney General  
Missouri Bar No. 64734  
Email: andrew.blackwell@ago.mo.gov

Emily Ottenson  
Assistant Attorney General  
Missouri Bar No. 67304  
Emily.Ottenson@ago.mo.gov

P.O. Box 899  
Jefferson City, MO 65102  
Phone: (573)751-3321  
Fax: (573) 751-9456

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was  
emailed, this 7<sup>th</sup> day of January, 2015 to:

Matthew A. Jacober  
Lathrop & Gage, LLP  
Pierre Laclede Center  
7701 Forsyth Blvd., Ste. 500  
Clayton, MO 63105

William G. Beck  
Lathrop & Gage  
2345 Grand Blvd., Suite 2200  
Kansas City, MO 64108

/s/ Joel A. Poole  
Joel A. Poole  
Assistant Attorney General