

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

**STATE OF MISSOURI ex rel.,)
Attorney General Chris Koster and)
the Missouri Department of Natural)
Resources,)**

Plaintiff,)

v.)

Case No. 13SL-CC01088

REPUBLIC SERVICES, INC.)

**ALLIED SERVICES, LLC, d/b/a)
Republic Services of Bridgeton,)**

and)

BRIDGETON LANDFILL, LLC,)

Defendants.)

**MOTION FOR A TEMPORARY RESTRAINING ORDER REQUIRING
DEFENDANTS TO COMPLY WITH PLAINTIFF'S DEMAND FOR
ADDITIONAL DATA MONITORING AND REPORTING**

Plaintiff State of Missouri (“State”) respectfully moves this Court, pursuant to Missouri Rule of Civil Procedure 92.02 and RSMo § 260.240, to grant a temporary restraining order against Defendants Republic Services, Inc., Allied Services, LLC, d/b/a Republic Services of Bridgeton, and Bridgeton Landfill, LLC (“Defendants”), requiring them to report specified additional weekly and monthly temperature and gas data, install two additional temperature monitoring probes (“TMPs”) and slope monitoring

states in the North Quarry of Bridgeton Sanitary Landfill on or before February 1, 2015, and provide real-time temperature data from those TMPs to the State. The State's motion is grounded on the following demonstration of immediate and irreparable injury, loss, and damage:

STATEMENT OF FACTS

On or about December 23, 2014, Defendants provided October through November data from temperature and gas monitoring equipment at the Bridgeton Sanitary Landfill. The State noted that the data submitted by Defendants indicated atypical and concerning fluctuations in the North Quarry temperature and gas trends previously reported to the State.

The data collecting equipment reporting this atypical data is located near the boundary between Bridgeton Sanitary Landfill and Operable Unit 1 Area 1. Operable Unit 1 Area 1 contains radiologically impacted materials ("RIM"). Additionally, it is undisputed that there exists some RIM in the North Quarry, the same section of the landfill where the equipment that reported the atypical data is located.

The data fluctuations reported in December 2014 showed increases in oxygen levels, decreases in methane levels, and increases in temperature data for data collecting equipment located in the extreme north of the North Quarry of the Bridgeton Sanitary Landfill. After careful review of the data received on or about December 23, 2014, the State and its experts determined

that the data indicated the possible development of a subsurface fire in the North Quarry, at or near the estimated extent of RIM present in Operable Unit 1 Area 1 at the West Lake Landfill site. *See* Aff. of Timothy Stark, Ph.D ¶ 12.

On December 26, 2014, out of concern for the welfare of the public and environment, the State demanded the following of Defendants: (1) weekly reports, beginning with January 2, 2015, of down-hole temperature readings from several specified gas extraction wells in the North Quarry; (2) monthly reports, beginning with January 20, 2015, of carbon monoxide data from several specified gas extraction wells in the North Quarry; (3) the installation of two additional TMPs in the North Quarry to more effectively track temperature data near the boundary with Operable Unit 1 Area 1, and; (4) installation of slope monitoring stakes to track settlement along the North Quarry. The State's demands were made pursuant to its authority generally regarding the public health and protection of the environment, and also pursuant to this Court's First Agreed Order of Preliminary Injunction.

On January 2, 2015, Defendants failed to provide any of the requested data. On January 5, 2015, Defendants formally declined to comply with any of the State's December 26, 2014 demands, which are imperative to assessing whether there is a threat to public health and the environment developing in the North Quarry.

Currently, limited monitoring data equipment exists in the North Quarry of the Bridgeton Sanitary Landfill. After the data fluctuations were detected in December 2014, Defendants replaced several gas extraction wellheads in the North Quarry. However, due to the limited amount of wellfield equipment and the delayed reporting of monitoring data to the State, whether this change to the monitoring equipment has adequately addressed the fluctuations in the North Quarry is, at best, unclear.

Therefore, to protect the health and safety of the public and the environment, the State moves for a temporary restraining order mandating Defendants to comply with the demands set forth in the State's December 26, 2014 letter.

SUGGESTIONS IN SUPPORT

A. IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE WILL RESULT IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER.

The Missouri Rules of Civil Procedure authorize a court to grant a temporary restraining order if the party seeking relief "demonstrates that immediate and irreparable injury, loss, or damage will result in the absence of relief." Mo. Sup. Ct. R. 92.02(a)(1). "For purposes of temporary injunctive relief . . . [a] trial court is entitled to consider all the factors customarily considered in connection with motions for preliminary injunctive relief."

Furniture Mfg. Corp. v. Joseph, 900 S.W.2d 642, 648 (Mo. Ct. App. 1995).

“When considering a motion for a preliminary injunction, a court should weigh the movant's probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction's issuance would inflict on other interested parties, and the public interest.” *State ex rel. Dir. of Revenue, State of Mo. v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996) (internal citations omitted). The irreparable injury alleged by the party seeking a temporary protective order must be such that it cannot be redressed in an action for damages. The requisite pleading must allege facts showing the probability of irreparable damage coupled with the need for immediate action. *Worledge v. City of Greenwood*, 627 S.W.2d 328, 330 (Mo. Ct. App. 1982). It must also be supported by “a verified petition or affidavit reciting the specific facts that support the showing required.” Mo. Sup. Ct. R. 92.02(a)(2). Additionally, the party seeking the relief must “make some showing of probability of success on the merits before a preliminary injunction will be issued.” *Id.* (internal citations omitted).

An injunction may issue to prevent the doing of any legal wrong whatever, whenever in the opinion of the court an adequate remedy cannot be afforded by an action for damages. Injunctive relief is unavailable unless irreparable harm is otherwise likely to result, and a plaintiff such as the

State has no adequate remedy at law. *Smith v. W. Elec. Co.*, 643 S.W.2d 10, 13 (Mo. Ct. App. 1982) (internal quotations omitted). A temporary restraining order does not evaluate or determine the merits of the controversy, or dispose of any issue. *Ballesteros v. Johnson*, 812 S.W.2d 217 (Mo. Ct. App. E.D. 1991).

1. ***Irreparable harm is demonstrated, and the injury cannot be redressed in an action for damages.***

A subsurface smoldering fire in the North Quarry, at or near the boundary with Operable Unit 1 Area 1, could result in significant and irreparable injury to the health and safety of the people and natural resources of the state of Missouri. Because RIM has been detected in the North Quarry of the Bridgeton Sanitary Landfill, any subsurface smoldering fire igniting in or reaching the North Quarry could reach the RIM located at the site. *See* Aff. of Todd Thalhammer, P.E. ¶ 10. Any RIM-impacted fire could release hazardous substances and noxious odors into the air and water surrounding the Bridgeton Sanitary Landfill. *Id.*; *see also* Aff. of Timothy Stark, Ph.D. ¶ 10.

Increased data monitoring would greatly assist the State in tracking and responding to concerning data trends. There are several elements that are essential to tracking the movement or development of a subsurface smoldering fire. Aff. of Todd Thalhammer, P.E. ¶ 13; *see also* Aff. of Timothy Stark, Ph.D. ¶ 7. These include decreases in methane production, combined

with an increase in temperature and carbon monoxide readings. Aff. of Todd Thalhammer, P.E. ¶ 13. Increased leachate outbreaks and odors can also occur. Aff. of Timothy Stark, Ph.D. ¶ 7. Increases in nitrogen and oxygen are also concerning, as they indicate intrusion of air into the landfill. Aff. of Todd Thalhammer, P.E. ¶ 13. Increased oxygen can cause or contribute to a subsurface smoldering fire. *Id.*; *see also* Aff. of Timothy Stark, Ph.D. ¶ 7.

When these data trends begin to show, it indicates that a subsurface smoldering fire is either occurring or will occur imminently if conditions are not corrected within the landfill. *Id.* In these situations, a rapid response is necessary to attempt to reverse data trends and eliminate the conditions conducive to ignition of a smoldering fire. Aggressive and frequent monitoring of data trends is the best way to ensure that a rapid response will be possible. The State is responsible for protecting the health and welfare of the community surrounding the Bridgeton Sanitary Landfill, as well as the environment. The State requires the requested increased reporting of gas and temperature data so it may more aggressively track and rapidly respond to data trends that typically indicate conditions ripe for the ignition of a subsurface smoldering fire. Increased reporting of wellfield data will greatly increase the likelihood that fluctuating data trends can be reversed and a subsurface fire can be prevented. Further, in the event data trends cannot be corrected, increased reporting will allow the State to take swift action to

protect the community and the environment from the effects of any developing smoldering fires.

2. *There is a likelihood of success on the merits of the case.*

Unpermitted burning of solid waste at a sanitary landfill is a strict liability offense. Therefore, should solid waste be found to be burning within the North Quarry or any area of the Bridgeton Sanitary Landfill, the State will prevail. Should the lack of real-time data result in a delayed response to a potential smoldering fire in the North Quarry of the Bridgeton Sanitary Landfill, such a fire may arise before the State can act to reverse the data trends. In such a scenario, the State will succeed on the merits of its case.

3. *The public interest favors granting the injunction, and the balance of harm favors the State.*

“Where violation of a statute designed to protect the public is concerned, the law does not leave the appraisal of the effect of the law's violation on the public to either personal or judicial opinion. That which the statute declares to be unlawful is against the public interest and is injurious to the public interest. The right to enforce the law in such cases is not affected by the presence or absence of profit or advantage to the violator.”

Mertzluff v. Bunker Res. Recycling & Reclamation, Inc., 760 S.W.2d 592, 599 (Mo. Ct. App. 1988).

Here, the State, in requiring Defendants to install additional TMPs, slope monitoring stakes, and provide additional data reporting, is enforcing the laws of Missouri. The State has brought suit in this Court against Defendants alleging, *inter alia*, a claim of burning solid waste at a sanitary landfill, in violation of Section 80-3.010 of Chapter 10 of the Code of State Regulations. Although the merits of the State's claim have not yet been adjudicated, a temporary restraining order does not evaluate or determine the merits of any claim. *Ballesteros*, 812 S.W.2d at 217. All that is required is a showing that there is a likelihood of success on the merits of the case, which the State has made.

Unpermitted burning of solid waste at a sanitary landfill has been declared unlawful in the state of Missouri. As such, it is against the public interest, and the consideration of harm to Defendants is irrelevant. *Mertzlufft*, 760 S.W.2d at 599; *cf. Horine v. People's Sewer Co.*, 200 Mo. App. 233, 204 S.W. 735, 736 (1918) (noting the imbalance between “the immeasurable value of the health and comfort of the public on the one hand as compared to a few dollars on the other.”). Should the State be denied this temporary restraining order, it will not receive data sufficient to monitor and prevent smoldering fires from occurring in the North Quarry. Should the State then later prevail on its statutory claim against Defendants for burning solid waste in the North Quarry of the landfill, denial of this temporary

restraining order would have “result[ed] in the continuation of illegal activity in derogation of the public interest.” *Mertzlufft*, 760 S.W.2d at 599. As the law clearly states that the right to enforce the law cannot be affected by balancing any harm to the violator, the balance of harm in this case squarely favors the State.

B. IN THE ALTERNATIVE, INJUNCTIVE RELIEF IS SPECIFICALLY AUTHORIZED BY STATUTE, THE PREQUISITES FOR INJUNCTIVE RELIEF HAVE BEEN DEMONSTRATED, AND AN INJUNCTION WOULD FULFILL THE LEGISLATIVE PURPOSE.

The State also seeks an injunction established by statute. Where a right to an injunction is established by the legislature, the legislature has established public policy and determined the public interest. See *Mertzlufft v. Bunker Res. Recycling & Reclamation, Inc.*, 760 S.W.2d 592, 599 (S.D. Mo. Ct. App. 1988). “When an injunction is explicitly authorized by statute, proper discretion usually requires its issuance if the prerequisites for the remedy have been demonstrated and the injunction would fulfill the legislative purpose.” *United States v. Buttorff*, 761 F.2d at 1059, citing *Donovan v. Brown Equipment & Service Tools, Inc.*, 666 F.2d 148, 157 (5th Cir. 1982); cf. *United States v. Landsberger*, 692 F.2d 501, 504 (8th Cir. 1982) (affirming permanent injunction as a matter of law). Thus, if the State

establishes the statutory elements entitling the State to an injunction, the injunction should be issued without further weighing of the equities. *Id.*

1. The prerequisites for the remedy have been demonstrated.

If any statute or regulation implemented under Missouri Revised Statute §§ 260.200—260.245 is being, was, or is, in imminent danger of being violated, the [State] may. . . cause to have instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any such violation or further violation.” RSMo § 260.240(1). Here, Section 80-3.010 of Chapter 10 of the Code of State Regulations would be violated should the North Quarry ignite in a subsurface smoldering fire. Defendants have already produced to the State data indicating concerning data fluctuations occurred in the North Quarry during October or November 2014. The State’s experts have stated that the fluctuations were consistent with a precursor to a subsurface fire. *See* Aff. of Timothy Stark, Ph.D ¶ 12. As such, a subsurface fire was and is in imminent danger of occurring in the North Quarry, and Section 80-3.010 of Chapter 10 of the Code of State Regulations was and is consequently in imminent danger of being violated. The prerequisites for the remedy have been met in this case.

2. An injunction would fulfill the legislative purpose.

Missouri law explicitly forbids unpermitted burning solid waste at a sanitary landfill. An injunction prohibiting Defendants from denying the State access to data that would help determine whether the North Quarry is in danger of igniting goes directly to the issue of whether solid waste in the North Quarry will burn. Thus, an injunction in this case would fulfill the legislative purpose.

WHEREFORE, the State respectfully requests that this honorable Court enter a temporary restraining order against Defendants requiring that Defendants immediately comply with the following demands:

1. Beginning January 9, 2015, submit weekly down-hole temperature readings from North Quarry gas extraction wells: GEW-2, -3, -4, -5, -42R, -45R, -46R, -47R, -48, and -49. Weekly reports must be delivered each Friday by 4:00 p.m.
2. Beginning January 20, 2015, submit monthly carbon monoxide data from the following North Quarry extraction wells: GEW-2, -3, -4, -5, -8, -42R, -45R, -46R, -47R, -48, -49, -53, and -55.
3. Install two (2) additional temperature monitoring probes (TMPs) that will provide real-time temperature readings to the State. One TMP is to be located between GEW-3 and GEW-4 and the other TMP between GEW-2 and GEW-46. Installation shall be completed by February 1, 2015.

4. Install, at no less than 50 foot intervals, slope monitoring stakes along the northern slope of the North Quarry. Installation shall be completed by February 1, 2015.

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 7th 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