

## Illinois Federal District Court Rules That Plaintiff Does Not Have Standing To Challenge Clean Water Act Permit For Landfill

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The U.S. District Court for the Southern District of Illinois recently issued an opinion granting summary judgment for the defendants in *American Bottom Conservancy v. U.S. Army Corps of Engineers, Case No. 09-603-GPM*, which concerns a permit issued by the U.S. Army Corps of Engineers to Waste Management of Illinois pursuant to Section 404 of the Clean Water Act.

Since 1984, Waste Management has operated a landfill called the Milam Recycling and Disposal Facility ("Milam RDF") in Madison, Illinois. Milam RDF is estimated to reach capacity in 2012. During its remaining landfill life, Milam RDF will require approximately 2,000,000 cubic yards of soil for daily, intermediate, and final cover. Waste Management proposes to develop and operate a 180-acre expansion of the existing Milam RDF, to be referred to as North Milam, to provide 17 years of disposal capacity for general non-hazardous municipal solid waste; demolition, construction, and debris waste; asbestos waste; non-hazardous permitted special waste; and non-hazardous permitted liquid waste for solidification. Waste Management's ultimate plan has two phases: immediate excavation of cover soil to be used at the existing Milam RDF and later construction of a landfill at the North Milam site. Neither phase is dependent on the other; excavation for soil cover is necessary to support the existing Milam RDF regardless of whether the North Milam site is used as a landfill.

Waste Management received a certification under the Clean Water Act from Illinois EPA to allow for "the excavation of wetlands in conjunction with providing soil for daily cover for a landfill." Waste Management also received a permit from the Army Corps of Engineers to allow for "placement of fill material into waters of the United States in conjunction with the construction of the North Milam Recycling and Disposal Facility (RDF) to be located just north of the existing Milam RDF in wetlands adjacent to Cahokia Canal near Madison, Madison County, Illinois."

Plaintiff, a nonprofit group, challenged the Corps' issuance of the permit. Plaintiff alleged that the Corps violated the Clean Water Act by issuing a permit authorizing placement of fill material into navigable waters for the construction of a landfill without the required certification from Illinois EPA. After reviewing affidavits of three members of Plaintiff, the District Court found that Plaintiff did not have standing to bring the action against the Corps:

"Reviewing each of the affidavits, the Court finds that none of the three members has standing. Members Andria and Feldworth can be considered together. Both affidavits address construction of a landfill and the effects that a landfill would have on them, including the risk that the proposed landfill will be subject to a 100-year flood. As a matter of law, the Corps' § 404 permit does not authorize the construction of a landfill. That authority is granted exclusively to the IEPA under Title X of the Illinois Environmental Protection Act. . . . Because Andria's and

Feldworth's affidavits establish neither injury in fact nor a causal connection between any purported injury and the issuance of the § 404 permit, these members do not create standing for [Plaintiff].

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"Member Homeyer's affidavit requires additional analysis, although she also complains primarily about the effects of constructing a landfill. She also mentions '[d]estruction of wetlands' and '[h]abitat destruction' – albeit she mentions these in the context of a landfill – and states that there 'are birds and butterflies using the 200 acres in question right now.' The Court considers whether these concerns constitute actual and imminent injury to Homeyer as a result of the borrow activity permitted to take place at the North Milam site. It is important to keep in mind that the Corps' § 404 permit relates to 26.8 acres of wetlands – only 18.4 acres of which will be impacted. Approximately 8.4 acres of wetlands will be avoided and preserved without impacts. The wetland mitigation plan includes creating an additional 36.55 acres on adjacent property. . . . Reading her affidavit liberally, Homeyer alleges that the destruction of wetlands will reduce the number and variety of birds, butterflies, other insects, snakes, and amphibians that she frequently observes around Horseshoe Lake. But this injury is merely speculative. Her anticipated injury disregards the fact that 31% of the subject wetlands will be avoided and preserved and that nearly twice the amount of affected wetlands will be created in mitigation. . . . Homeyer has not shown a concrete injury. . . . Homeyer has not stated that she will stop visiting Horseshoe Lake if the wetlands are destroyed as proposed, and her concern for the effects on the habitat is too generalized to give rise to standing."

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