



## AlaFile E-Notice

38-CV-2023-900255.00

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

DAVID F. DEL VECCHIO ET AL V. BOARD OF COMMISSIONERS OF THE CITY OF DO  
38-CV-2023-900255.00

The following complaint was FILED on 9/20/2023 12:47:49 PM

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CIRCUIT COURT CLERK  
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DOTHAN, AL, 36302

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IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

**DAVID F. DEL VECCHIO, PEGGY  
R. DEL VECCHIO, MICHAEL DEL  
VECCHIO, WILLIAM P. NOVACK,  
TARA NOVACK, and ANTHONY  
KEITH,**

Plaintiffs,

v.

Civil Action No.  
CV-2023-900255

**BOARD OF COMMISSIONERS OF  
THE CITY OF DOTHAN, ALABAMA  
and CITY OF DOTHAN, ALABAMA,**

Defendants.

\_\_\_\_\_/

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

**NATURE OF ACTION**

1. This is an action for declaratory and injunctive relief concerning the failure of the City of Dothan, Alabama and Board of Commissioners of the City of Dothan, Alabama to fully comply with applicable statutory procedural requirements related to the City's application for approval of the siting of a proposed solid waste management facility.

**JURISDICTION AND VENUE**

2. This action arises under Ala. Code 1975 §§ 6-6-226, 6-6-230, 22-27-48 (2022 Cum. Supp.) and 22-27-48.1 (2022 Cum. Supp.).

3. This Court has jurisdiction under § 142(b), Ala. Const. 2022, and Ala. Code 1975 §§ 6-6-222, 6-6-500, and 12-11-31.

4. This Court is the appropriate venue for this action under Ala. Code 1975 § 6-3-7.

## **PARTIES**

5. Defendant Board of Commissioners of the City of Dothan, Alabama is the elected governing and legislative body of the City of Dothan, Alabama. Pursuant to Ala. Code 1975 §§ 22-27-48 (2022 Cum. Supp.) and 22-27-48.1 (2022 Cum. Supp.), the affected local governing body, in this case the Board of Commissioners of the City of Dothan, Alabama, must approve or disapprove the siting of any new solid waste management facility and of any modified existing solid waste management facility within its geographic jurisdiction and must observe all applicable statutory procedural requirements in doing so.

6. Defendant City of Dothan, Alabama, acting through its Public Works Department, prepared and submitted to the Board of Commissioners of the City of Dothan, Alabama an application for approval of the siting of a proposed solid waste management facility in the City of Dothan.

7. Plaintiffs David F. Del Vecchio and Peggy R. Del Vecchio own and reside on property in the City of Dothan, Houston County. Their property

adjoins the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

8. Plaintiff Michael Del Vecchio owns and resides on property located in the City of Dothan, Houston County with his wife and three children. His property adjoins the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

9. Plaintiffs William P. Novack and Tara Novack own and reside on property located in the City of Dothan, Houston County. Their property is approximately 732 feet from the southern boundary of the solid waste management facility proposed by the City of Dothan, Alabama.

10. Plaintiff Anthony Keith resides on property located in the City of Dothan, Houston County with his wife and two children. His residence is approximately one-half mile from the boundary of the solid waste management facility proposed by the City of Dothan, Alabama. Mr. Keith lives in the Burkett Subdivision, the population of which is nearly 100 percent Black.

### **STANDING ALLEGATIONS**

11. Plaintiffs are concerned that the approval of the siting of the solid waste management facility proposed by the City of Dothan, Alabama by the Board of Commissioners of the City of Dothan, Alabama will result in the facility being permitted by the Alabama Department of Environmental

Management and in the facility commencing operations and causing the following adverse effects on plaintiffs:

A. the emission of fugitive dust (airborne particulates) that will be carried by wind currents to their properties and will be deposited on vehicles, outdoor furniture, porches, houses, etc. which will require periodic cleaning; and that will diminish their use, enjoyment, and value of their properties;

B. the emission of unpleasant odors that will be carried by wind currents to their properties and cause ill-effects such as headaches, nausea, loss of appetite and loss of sleep; that require that windows and doors remain closed; and that discourage outdoor activities such as gardening, barbeques, vehicle repairs, play, etc.; and that will diminish their use, enjoyment, and value of their properties;

C. the attraction and breeding of vultures, flies, rats, racoons, coyotes, and other animals, reptiles, and insects that will transport disease organisms to their properties or pose other threats to life or property (including livestock) on their properties; and that will diminish their use, enjoyment, and value of their properties;

D. noises from the operation of trucks, bulldozers, and other heavy machinery, including backup alarms and banging tailgates, that will interfere

with sleep and rest, conversations, and television and radio listening; and that will diminish their use, enjoyment, and value of their properties; and

E. a diminution or suppression of the value of their properties.

12. These concerns are well-founded because plaintiffs have experienced these same adverse effects at their properties from the City of Dothan, Alabama's operation of an existing 78-acre solid waste management facility over a period of years.

13. The siting criteria for new and modified existing solid waste management facilities in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) are designed to protect adjacent property owners and the public from potential adverse impacts.

14. Plaintiffs cannot be certain that the siting of the solid waste management facility proposed by the City of Dothan, Alabama will comply with the criteria in Ala. Code 1975 § 22-27-48(c) because the application for approval of the siting of the proposed facility was incomplete and because the Board of Commissioners of the City of Dothan, Alabama did not fully comply with the statutory requirements for notice and hearing prior to the Board's consideration of the City's application for approval of the siting of the proposed solid waste management facility.

15. Had adjacent property owners and the public been given proper notice of the application and hearing by the Board of Commissioners of the City of Dothan, Alabama, additional comments may have been submitted to the Board that may have disclosed reasons that the proposed solid waste management facility does not comply with the criteria in Ala. Code 1975 § 22-27-48(c).

16. If the Court grants the relief requested herein, the procedures followed by the City of Dothan, Alabama and Board of Commissioners of the City of Dothan, Alabama will be declared invalid and any approval by the Board of Commissioners of the City of Dothan, Alabama of the siting of the solid waste management facility proposed by the City of Dothan, Alabama will be invalid. Absent a valid approval of the siting of the proposed solid waste management facility, the Alabama Department of Environmental Management may not consider an application for a permit to operate the proposed solid waste management facility and the harms about which plaintiffs are concerned will be prevented. See Ala. Code 1975 § 22-27-48(b).

### **ALLEGATIONS OF FACT**

17. On October 21, 2013, the Alabama Department of Environmental Management issued Solid Waste Disposal Facility Permit No. 35-06 (2013) to the City of Dothan to continue to operate the existing City of Dothan Sanitary

Landfill. The permitted area of this facility was 78 acres, including a 55-acre solid waste landfill unit (Cells L-1 through L-5) for the disposal of municipal solid waste and construction and demolition waste.

18. Solid Waste Disposal Facility Permit No. 35-06 (2013) had a scheduled expiration date of October 20, 2018.

19. On September 16, 2014, the Board of Commissioners of the City of Dothan, Alabama adopted Resolution No. 2014-246 in which the Board “approved the proposed expansion of the facility boundary of the Dothan Landfill located at 1290 Burkett Road to approximately 536 acres.” The Resolution did not approve an application for a solid waste management facility to be submitted to the Alabama Department of Environmental Management.

20. On April 17, 2018, the City of Dothan submitted an application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (2013) to the Alabama Department of Environmental Management.

21. The April 17, 2018 application for renewal of Solid Waste Disposal Facility Permit No. 35-06 (2013) was filed with the Alabama Department of Environmental Management more than 180 days prior to the scheduled expiration date of Solid Waste Disposal Facility Permit No. 35-06 (2013). This timely filing extended the expiration date of Solid Waste Disposal Facility Permit No. 35-06 (2013) until the April 17, 2018 application for renewal was

finally determined by the Alabama Department of Environmental Management. *See* Ala. Code 1975 § 41-22-19(b) (“When a licensee has made timely and sufficient application for the renewal of a license . . . the existing license does not expire until the application has been finally determined by the agency”) and ADEM Admin. Code r. 335-13-5-.02(4) (applications for renewal shall be filed at least 180 days before the expiration date for existing permits).

22. The April 17, 2018 application for modification of Solid Waste Disposal Facility Permit No. 35-06 (2013) proposed to add 444.19 acres to the solid waste management facility boundary (an 85.0% increase in the facility size), including 20.6 acres for a new municipal solid waste landfill unit (Cells L-6 through L-8) and 15.0 acres for a new construction and demolition waste landfill unit.

23. On May 6, 2019, the Alabama Department of Environmental Management made a final determination on the City of Dothan’s April 17, 2018 application for renewal and modification of Solid Waste Disposal Facility Permit No. 35-06 (2013). In accordance with that determination, the Department issued Solid Waste Disposal Facility Permit No. 35-06 (2019) to the City of Dothan which renewed and modified Solid Waste Disposal Facility Permit No. 35-06 (2013) as requested by the City of Dothan.

24. On June 4, 2019, five of the plaintiffs named herein and two others filed a request for hearing with the Environmental Management Commission of the Alabama Department of Environmental Management under Ala. Code 1975 § 22-22A-7(c) to contest the issuance of Solid Waste Disposal Facility Permit No. 35-06 (2019).

25. On or about August 22, 2019, the City of Dothan commenced construction of the new 20.6-acre municipal solid waste landfill unit knowing that Solid Waste Disposal Facility Permit No. 35-06 (2019) was being contested before the Environmental Management Commission of the Alabama Department of Environmental Management and could be disapproved.

26. On June 12, 2020, the Environmental Management Commission of the Alabama Department of Environmental Management issued an order approving the issuance of Solid Waste Disposal Facility Permit No. 35-06 (2019) by the Alabama Department of Environmental Management. *See Lewis v. Alabama Dep't of Env'tl. Mgmt*, Dkt. No. 19-06, 2020 AL ENV LEXIS 6 (Env'tl. Mgmt. Comm'n June 12, 2020).

27. On July 10, 2020, five of the plaintiffs named herein and one other appealed the June 12, 2020 decision of the Environmental Management Commission of the Alabama Department of Environmental Management approving Solid Waste Disposal Facility Permit 35-06 (2019) to the Montgomery

County Circuit Court under Ala. Code 1975 § 22-22A-7(c)(6). *Lewis v. Alabama Dep't of Env'tl. Mgmt*, No. CV-2020-900877 (Montgomery Cnty. Cir. Ct. July 10, 2020) (Doc. 8).

28. In August 2020, the City of Dothan commenced disposal of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit knowing that the June 12, 2020 decision of the Environmental Management Commission of the Alabama Department of Environmental Management approving Solid Waste Disposal Facility Permit 35-06 (2019) was under appeal before the Montgomery County Circuit Court and could be reversed.

29. On February 2, 2021, the Montgomery County Circuit Court affirmed the decision of the Environmental Management Commission of the Alabama Department of Environmental Management to approve Solid Waste Disposal Facility Permit No. 35-06 (2019). *Lewis v. Alabama Dep't of Env'tl. Mgmt*, No. CV-2020-900877.00 (Montgomery Cnty. Cir. Ct. Feb. 2, 2021) (Doc. 59).

30. On March 15, 2021, five of the plaintiffs named herein and one other appealed the Montgomery County Circuit Court's February 2, 2021 decision to the Alabama Court of Civil Appeals. *Lewis v. Alabama Dep't of Env'tl. Mgmt*, No. CV-2020-900877.00 (Montgomery Cnty. Cir. Ct. Mar. 15, 2021) (Doc. 61).

31. Between March 15, 2021 and October 7, 2021, the City of Dothan, Alabama continued to dispose of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit knowing that the February 2, 2021 decision of the Montgomery County Circuit Court was on appeal to the Alabama Court of Civil Appeals and could be reversed.

32. On October 8, 2021, the Alabama Court of Civil Appeals reversed and remanded the decision of the Montgomery County Circuit Court, holding that Ala. Code 1975 § 22-27-48(b) (2017 Cum. Supp.) prohibited the Alabama Department of Environmental Management from considering the City of Dothan, Alabama's application for a modified permit for a solid waste management facility unless such application was first approved by the Board of Commissioners of the City of Dothan, Alabama; that the Board of Commissioners of the City of Dothan, Alabama "did not discharge its duty to examine and approve the application submitted to ADEM for the modification of the permit" as required by Ala. Code 1975 § 22-27-48 (2017 Cum. Supp.); and that the Environmental Management Commission "acted beyond its statutory authority in approving the modification of the permit, and the trial court erred in concluding otherwise." *Lewis v. Alabama Dep't of Env'tl. Mgmt.*, 363 So. 3d 1008 (Ala. Civ. App. 2021).

33. Between October 8, 2021 and April 1, 2022, the City of Dothan, Alabama continued to dispose of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit knowing that the Alabama Court of Civil Appeals had ruled that the Montgomery County Circuit Court's February 2, 2021 decision affirming the Environmental Management Commission of the Alabama Department of Environmental Management's approval of Solid Waste Disposal Facility Permit No. 35-06 (2019) had been reversed.

34. On March 31, 2022, the Circuit Court of Montgomery County issued an Order on Remand vacating its February 2, 2021 Final Order and decreeing that the Environmental Management Commission's order dated June 12, 2020 "approving the Department's modification of Solid Waste Disposal Facility Permit No. 35-06 issued on May 6, 2019 is hereby REVERSED." *Lewis v. Alabama Dep't of Env'tl. Mgmt.*, No. CV-2020- 900877.00 (Montgomery Cnty. Cir. Ct. Mar. 31, 2022) (Doc. 181).

35. Following entry of the Montgomery County Circuit Court's Order on Remand, Solid Waste Facility Permit No. 35-06 (2019) remained in effect only to the extent that it renewed Solid Waste Disposal Facility Permit No. 35-06 (2013), *i.e.*, it authorized a permitted facility area of 78 acres and operation of an

existing 55-acre solid waste landfill unit (Cells L-1 through L-5) for the disposal of municipal solid waste and construction and demolition waste.

36. On April 1, 2022, the Alabama Department of Environmental Management notified the City of Dothan as follows:

On March 31, 2022, the Circuit Court of Montgomery County vacated its previous order and reversed the Order of the Alabama Environmental Management Commission approving the modification of the City of Dothan's Solid Waste Disposal Facility permit (No. 35-06). This ruling means that until the City obtains a permit for the new cells, the City may not dispose of solid waste in Cells L-6 – L-8 of the Municipal Solid Waste Landfill nor the Construction & Demolition Landfill. As of now, the City must follow the closure requirements for these areas as required by ADEM Admin. Code 335-13-4-30.

37. On April 1, 2022, the City of Dothan, Alabama ceased the disposal of municipal solid waste in Cell L-6 of the new 20.6-acre municipal solid waste landfill unit and commenced disposal of municipal solid waste at a landfill operated by a private entity outside the City of Dothan.

38. On April 13, 2022, Governor Kay Ivey signed into law Ala. Act No. 2022-338 (effective July 1, 2022). The Act amended Ala. Code 1975 § 22-27-48 to prohibit the Alabama Department of Environmental Management from considering a permit application for a new facility unless the solid waste management site has received approval from the affected local governing body pursuant to Ala. Code 1975 § 22-27-48.1 and to prohibit the Alabama Department of Environmental Management from considering an application for

a modified permit for a facility unless the solid waste management site has received approval from the local governing body pursuant to Ala. Code 1975 § 22-27-48.

39. On March 31, 2023, Tommy J. Wright, Public Works Director for the City of Dothan, Alabama, submitted an application for approval of the siting of a proposed solid waste management facility to the Board of Commissioners of the City of Dothan, Alabama. The application states:

As specified in Alabama Code § 22-27-28.1(c) [sic: “22-27-48.1(c)"] regarding the siting of a new solid waste management facility, this application includes the following information:

- (1) A written document addressing each of the criteria described in subsection (c) of Section 22-27-48.
- (2) The applicant’s experience of owning or operating other solid waste facilities.
- (3) Information relating to the applicant’s financial resources, including, but not limited to, any investors or corporate affiliates of the applicant.
- (4) Any pending and past civil or criminal actions taken by a governmental entity against the applicant or its owners or operators, investors, or affiliates.
- (5) Any other information the applicant deems relevant or that may assist the governing body in making a decision whether to approve or disapprove the application.

40. The March 31, 2023 application submitted to the Board of Commissioners of the City of Dothan, Alabama does not include any discussion

of the costs and availability of public services to protect public health, safety, and the environment from subsurface fires at the proposed solid waste management facility; the provisions made to minimize the impact of odors, disease vectors, fugitive dust emissions, and loud disturbing noises on the health of the public from operations at the proposed solid waste management facility; or changes in property values, and social or community perceptions of the proposed solid waste management facility in the affected community, including the Burkett Subdivision, the population of which is nearly 100 percent Black.

41. The March 31, 2023 application to the Board of Commissioners of the City of Dothan, Alabama also attached a draft Alabama Department of Environmental Management permit application form. The draft form identifies a proposed solid waste management facility size of 522.19 acres (including the 78-acre existing solid waste disposal facility and a 444.19-acre new solid waste disposal facility); a 53.6-acre existing municipal solid waste disposal area; a 20.5-acre new municipal solid waste disposal area; a 4.0-acre existing (inactive) construction and demolition waste disposal area; and a 14.1-acre new construction and demolition waste disposal area.

42. On April 4, 2023, the Board of Commissioners of the City of Dothan, Alabama conducted a regularly scheduled meeting at which the Board formally acknowledged receipt of the application for approval of the siting of a proposed

solid waste management facility submitted by Tommy J. Wright, Public Works Director for the City of Dothan, Alabama on March 31, 2023.

43. On April 4, 2023, the Board of Commissioners of the City of Dothan, Alabama adopted Resolution No. 2023-119 in which the Board resolved as follows:

Section 1. That the City of Dothan proceed with all steps necessary to carry out the proposed expansion to the facility boundary of the Dothan Landfill.

Section 2. That the City of Dothan is authorized to provide notice to adjacent property owners of the proposed action.

Section 3. That the City of Dothan is authorized to provide notice to the public of the public awareness meeting scheduled for May 8, 2023, at Andrew Belle Recreation Center.

Section 4. That the City of Dothan is authorized to provide notice to the public of the public hearing scheduled for June 12, 2023, at the Dothan Opera House.

Section 5. That the application fee required to be submitted to the City under Alabama Code § 22-27-48(d) for the proposed expansion to the facility boundary of the Dothan Landfill be waived.

44. Resolution No. 2023-119 adopted by the Board of Commissioners of the City of Dothan, Alabama on April 4, 2023 did not approve a time and location for conducting a public awareness session on the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

45. The Board of Commissioners of the City of Dothan, Alabama did not approve a time and location for conducting a public awareness session on the

siting of the solid waste management facility proposed by the City of Dothan, Alabama.

46. On April 5, 2023, Tommy J. Wright, Public Works Director of the City of Dothan, sent a letter by certified mail to certain owners of property adjacent to the solid waste management facility proposed by the City of Dothan, Alabama which stated in part:

Please let this letter serve as notice of the City of Dothan's request to the Dothan City Commission to grant approval (Host Government Approval) regarding a proposed modification and expansion of the Solid Waste Disposal Facility Permit for the above-referenced landfill. In accordance with the Alabama Solid Waste and Recyclable Materials Management Act (ASWRMMA), as well as Alabama Code §§ 22-27-48 and 22-27-48.1, the City of Dothan has set a public comment period and has scheduled a public awareness meeting and public hearing on the request for Host Government Approval.

47. The April 5, 2023 letter notifications provided to adjacent property owners by Tommy J. Wright, Public Works Director of the City of Dothan, did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

48. The Board of Commissioners of the City of Dothan, Alabama did not provide notice by certified mail to the adjacent property owners that it had

received an application for approval of the siting of a solid waste management facility proposed by the City of Dothan, Alabama.

49. On April 7, 2023, a notice was printed in the *Dothan Eagle* stating that the City of Dothan, Alabama had submitted an application to the Board of Commissioners of the City of Dothan, Alabama for approval of the siting of a proposed solid waste management facility. The notice stated in part:

Please let this serve as notice of the City of Dothan's request to the Dothan City Commission to grant approval (Host Government Approval) regarding a proposed modification and expansion of the Solid Waste Disposal Facility Permit for the above-referenced landfill. In accordance with the Alabama Solid Waste and Recyclable Materials Management Act (ASWRMMA), as well as Alabama Code §§ 22-27-48 and 22-27-48.1, the City of Dothan has set a public comment period and has scheduled a public awareness meeting and public hearing on the request for Host Government Approval.

50. The notice printed in the *Dothan Eagle* on April 7, 2023 did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

51. On or about April 7, 2023, and subsequent days thereafter, a notice was published on the City of Dothan, Alabama's website stating that an application had been submitted to the Board of Commissioners of the City of

Dothan, Alabama for approval of the siting of a solid waste management facility proposed by the City of Dothan, Alabama. The notice stated in part:

Please let this serve as notice of the City of Dothan's request to the Dothan City Commission to grant approval (Host Government Approval) regarding a proposed modification and expansion of the Solid Waste Disposal Facility Permit for the above-referenced landfill. In accordance with the Alabama Solid Waste and Recyclable Materials Management Act (ASWRMMA), as well as Alabama Code §§ 22-27-48 and 22-27-48.1, the City of Dothan has set a public comment period and has scheduled a public awareness meeting and public hearing on the request for Host Government Approval.

52. The notice published on the City of Dothan, Alabama's website on or about April 7, 2023, and subsequent days thereafter, did not contain a description of the criteria, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

53. On April 25, 2023, R. Daniel Wells, Chief Operating Officer of CDG, Inc. and Principal Engineer for the solid waste management facility proposed by the City of Dothan, Alabama, issued "Addendum No. 1" to the draft Alabama Department of Environmental Management permit application form. Addendum No. 1 purports to modify the April 2023 Major Modification Plans (drawings) and April 2023 Operations Manual for the solid waste management

facility proposed by the City of Dothan, Alabama to reflect that the proposed facility boundary is reduced in size from 522.19 acres to 506.67 acres.

54. The existing and proposed new solid waste disposal areas and existing and proposed new solid waste management facility boundaries of the solid waste management facility proposed by the City of Dothan, Alabama are depicted in Exhibit A attached hereto.

55. On May 10, 2023, a notice of the time and place of a public hearing on the siting of the solid waste management facility proposed by the City of Dothan, Alabama was printed in the *Dothan Eagle*.

56. The May 10, 2023 notice of public hearing on the siting of the solid waste management facility proposed by the City of Dothan, Alabama printed in the *Dothan Eagle* did not include a description of the criteria the Board of Commissioners of the City of Dothan, Alabama will consider, as provided in Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.), in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

57. On May 30, 2023, Governor Kay Ivey signed into law Ala. Act No. 2023-290 (effective August 1, 2023). The Act amended Ala. Code 1975 § 22-27-48 to clarify that new solid waste management facilities include those which add

acreage to a solid waste management facility boundary in an amount greater than 50 percent of the facility's pre-existing boundary.

58. The acreage within the solid waste management facility boundary proposed by the City of Dothan, Alabama (506.67 acres) is 84.6% greater than the acreage within the facility's pre-existing boundary (78 acres).

59. On June 12, 2023, Tommy J. Wright, Director of the City of Dothan Public Works Department, Bart Barefoot, Assistant Director of the City of Dothan Public Works Department, Steven Burgess, Manager of the Environmental Services Division of the City of Dothan Public Works Department, and R. Daniel Wells, Chief Operating Officer of CDG, Inc. and Principal Engineer for the solid waste management facility proposed by the City of Dothan, Alabama, held a public hearing on the City of Dothan, Alabama's application for the siting of a proposed solid waste management facility.

60. The public comment period on the siting of the solid waste management facility proposed by the City of Dothan, Alabama ended on June 12, 2023 at 6:30 p.m.

61. Two members of the Board of Commissioners of the City of Dothan, Alabama were present in the audience at the June 12, 2023 public hearing – John Ferguson and David Crutchfield. All other commissioners – Kevin Dorsey, Aristotle Kirkland, Bradley Bedwell, and Gantt Pierce – were absent from the

hearing. In addition, Mark Saliba, Mayor of the City of Dothan, was absent from the hearing.

62. The June 12, 2023 public hearing was not held before the Board of Commissioners of the City of Dothan, Alabama.

**COUNT I  
CONTROVERSY OVER APPLICATION OF  
ALA. CODE 1975 § 22-27-48.1 TO PROPOSED  
SOLID WASTE MANAGEMENT FACILITY**

63. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

64. Ala. Code 1975 § 22-27-48.1(a) (2022 Cum. Supp.) states:

This section applies to the siting of any new solid waste management facility, as defined in Section 22-27-2.

65. Plaintiffs contend that the solid waste management facility proposed by the City of Dothan, Alabama is a new solid waste management facility, as defined in Ala. Code 1975 § 22-27-2, and that the procedural requirements in Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) apply to the solid waste management facility proposed by the City of Dothan, Alabama.

66. Defendants contend that the solid waste management facility proposed by the City of Dothan, Alabama is not a new solid waste management facility, as defined in Ala. Code 1975 § 22-27-2, and that the procedural requirements in Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) have no

application to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

67. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether the solid waste management facility proposed by the City of Dothan, Alabama is a new solid waste management facility, as defined in Ala. Code 1975 § 22-27-2, and whether the procedural requirements in Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) apply to the solid waste management facility proposed by the City of Dothan, Alabama. A declaratory judgment is appropriate to resolve this controversy.

**COUNT II**  
**THE CITY'S APPLICATION TO THE BOARD**  
**FAILED TO ADDRESS ALL STATUTORY CRITERIA**

68. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

69. Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) provides in part:

Any person or entity seeking approval from the governing body of a county or municipality for the siting of a new solid waste management facility shall also submit to the governing body as part of its application, the application fee required under subsection (d) of Section 22-27-48 and all of the following information:

(1) *A written document addressing each of the criteria described in subsection (c) of Section 22-27-48.*

\* \* \*

(Emphasis added).

70. Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) provides in part:

(c) In determining whether to recommend approval of the proposed issuance of or modification of a new or existing solid waste management site, the governing body shall consider each of the following criteria:

\* \* \*

(4) ***Costs and availability of public services***, facilities and improvements required to support a proposed facility and ***protect public health, safety, and the environment***.

(5) The impact of a proposed facility on public safety and ***provisions made to minimize the impact on public health*** and safety.

(6) The social and economic impacts of a proposed facility on the affected community, ***including changes in property values, and social or community perception***.

(Emphasis added).

71. The March 31, 2023 application submitted to the Board of Commissioners of the City of Dothan, Alabama by Tommy J. Wright, Director of the City of Dothan Public Works Department, did not address the costs and availability of public services required to protect public health, safety, and the environment; the provisions made to minimize the impact on public health; and the social and economic impacts of the proposed facility on the affected community, including changes in property values and social or community perception.

72. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.). applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the March 31, 2023 application submitted to the Board of Commissioners of the City of Dothan, Alabama by Tommy J. Wright, Director of the City of Dothan Public Works Department, did not comply with Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) because it did not address the costs and availability of public services required to protect public health, safety, and the environment; the provisions made to minimize the impact on public health; and the social and economic impacts of the proposed facility on the affected community, including changes in property values and social or community perception.

73. Defendants contend that Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

74. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the March 31, 2023 application submitted to the Board of Commissioners of the City of Dothan, Alabama by Tommy J. Wright, Director of the City of Dothan Public

Works Department, did not comply with Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

**COUNT III**  
**THE BOARD'S ACKNOWLEDGMENT OF**  
**APPLICATION RECEIPT WAS PREMATURE**

75. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

76. Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) provides:

After an applicant has submitted a ***complete application, including the items required in subsection (c)***, to the governing body of a county or municipality in which the proposed facility is to be located, ***the local governing body shall formally receive the application*** at its next regularly scheduled meeting. At this time, the public comment period begins.

(Emphasis added).

77. Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) makes the submission of a complete application, including the items required in Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.), a condition precedent to the local governing body formally receiving an application for approval of the siting of a new solid waste management facility and a condition precedent to the commencement of a public comment period on such application.

78. Ala. Code 1975 § 22-27-48.1(c) (2022 Cum. Supp.) provides in part:

Any person or entity seeking approval from the governing body of a county or municipality for the siting of a new solid waste management facility shall also submit to the governing body as part

of its application, the application fee required under subsection (d) of Section 22-27-48 and all of the following information:

(1) ***A written document addressing each of the criteria described in subsection (c) of Section 22-27-48.***

\* \* \*

(Emphasis added).

79. Ala. Code 1975 § 22-27-48(c) (2022 Cum. Supp.) provides in part:

(c) In determining whether to recommend approval of the proposed issuance of or modification of a new or existing solid waste management site, the governing body shall consider each of the following criteria:

\* \* \*

(4) ***Costs and availability of public services***, facilities and improvements required to support a proposed facility and ***protect public health, safety, and the environment.***

(5) The impact of a proposed facility on public safety and ***provisions made to minimize the impact on public health*** and safety.

(6) The social and economic impacts of a proposed facility on the affected community, ***including changes in property values, and social or community perception.***

(Emphasis added).

80. The Board of Commissioners of the City of Dothan, Alabama's April 4, 2023 formal acknowledgment of receipt of the application for approval of the siting of the solid waste management facility proposed by the City of Dothan,

Alabama occurred before a complete application for approval of the siting of the proposed solid waste management facility was submitted to the Board of Commissioners of the City of Dothan, Alabama.

81. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the Board of Commissioners of the City of Dothan, Alabama's April 4, 2023 formal acknowledgment of receipt of the application for approval of the siting of the proposed solid waste management facility did not comply with Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) because the City of Dothan, Alabama's application was not complete.

82. Defendants contend that Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) does not apply to the solid waste disposal facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

83. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the Board of Commissioners of the City of Dothan, Alabama's April 4, 2023 formal acknowledgment of receipt of the application for approval of the siting of solid waste management facility proposed by the City of Dothan, Alabama did not

comply with Ala. Code 1975 § 22-27-48.1(d) (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

**COUNT IV**  
**THE BOARD FAILED TO PROVIDE LETTER**  
**NOTIFICATIONS TO ADJACENT PROPERTY OWNERS**

84. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

85. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides in part:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

a. Notice to each owner whose property is adjacent to a proposed site, sent by certified mail.

\* \* \*

(Emphasis added).

86. The April 5, 2023 notice provided to adjacent property owners was not provided by the Board of Commissioners of the City of Dothan, Alabama.

87. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the Board of Commissioners of the City of Dothan, Alabama did not comply with Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum.

Supp.) because the April 5, 2023 notice provided to adjacent property owners was not provided by the Board of Commissioners of the City of Dothan, Alabama.

88. Defendants contend that Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

89. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the April 5, 2023 notice provided to adjacent property owners did not comply with Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

### COUNT V

#### THE LETTER NOTIFICATIONS TO ADJACENT PROPERTY OWNERS FAILED TO DESCRIBE THE STATUTORY CRITERIA

90. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

91. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides in part:

Not more than 10 days after the formal receipt of an application, *the local governing body*, at the expense of the applicant, *shall provide the following notice that an application for local approval of a new solid waste management facility has been received:*

a. Notice to each owner whose property is adjacent to a proposed site, sent by certified mail.

\* \* \*

(Emphasis added).

92. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides in part:

Any printed notice by ***letter***, newspaper, or electronically on a website, shall contain at a minimum the following:

\* \* \*

***b. A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

\* \* \*

(Emphasis added).

93. The April 5, 2023 letter notifications provided to adjacent property owners did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

94. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste disposal facility proposed by the City of Dothan, Alabama and that the April 5, 2023 notice provided to adjacent property owners did not comply with § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) because it did

not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan.

95. Defendants contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

96. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the April 5, 2023 notice provided to adjacent property owners did not comply with Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

## COUNT VI THE NEWSPAPER NOTIFICATION TO THE PUBLIC FAILED TO DESCRIBE THE STATUTORY CRITERIA

97. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

98. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides in part:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

\* \* \*

b. Notice to the general public provided by all of the following means:

1. Publishing a notice in a ***newspaper*** having general circulation, if one exists, within the affected community one day per week for a two-week period.

\* \* \*

(Emphasis added).

99. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides in part:

Any printed notice by letter, ***newspaper***, or electronically on a website, shall contain at a minimum the following:

\* \* \*

b. ***A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

\* \* \*

(Emphasis added).

100. The notice printed in the *Dothan Eagle* on April 7, 2023 did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

101. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the notice printed in the *Dothan Eagle* on April 7, 2023 did not comply with § 22-27-48.1(e)(2)b. because it did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the proposed solid waste management facility.

102. Defendants contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

103. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the April 5, 2023 notice printed in the *Dothan Eagle* did not comply with Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

**COUNT VII**  
**THE WEBSITE NOTIFICATION TO THE PUBLIC**  
**FAILED TO DESCRIBE STATUTORY CRITERIA**

104. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

105. Ala. Code 1975 § 22-27-48.1(e)(1) (2022 Cum. Supp.) provides in part:

Not more than 10 days after the formal receipt of an application, ***the local governing body***, at the expense of the applicant, ***shall provide the following notice that an application for local approval of a new solid waste management facility has been received:***

\* \* \*

b. Notice to the general public provided by all of the following means:

\* \* \*

3. Displaying a notice on the local governing body's ***website***, if available.

(Emphasis added).

106. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides in part:

Any printed notice by letter, newspaper, or electronically on a ***website***, shall contain at a minimum the following:

\* \* \*

b. ***A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

\* \* \*

(Emphasis added).

107. The notice published on the City of Dothan's website did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will

consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

108. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the notice published on the City of Dothan's website did not did not comply with § 22-27-48.1(e)(2)b. because it did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the proposed solid waste management facility.

109. Defendants contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

110. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the notice published on the City of Dothan's website did not comply with Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

**COUNT VIII**  
**THE BOARD FAILED TO APPROVE THE TIME AND**  
**LOCATION OF THE PUBLIC AWARENESS SESSION**

111. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

112. Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.) provides:

Not more than 45 days after the local governing body formally receives an application, the applicant shall conduct a public awareness session in the county or municipality in which the proposed facility is to be located, during which the applicant shall provide general information on the design and operation of the proposed facility and address questions and concerns voiced by members of the affected community. ***The time, date, and location of the public awareness session must be approved by the local governing body.*** \* \* \*

(Emphasis added).

113. The Board of Commissioners of the City of Dothan, Alabama did not approve a time and location for conducting a public awareness session on the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

114. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the Board of Commissioners of the City of Dothan, Alabama's did not comply with § 22-27-48.1(f)(1) because the Board did not approve a time and location for the public awareness session.

115. Defendants contend that Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.). does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

116. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(f)(1) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the Board of Commissioners of the City of Dothan, Alabama did not comply with § 22-27-48.1(f)(1). A declaratory judgment is appropriate to resolve this controversy.

**COUNT IX  
THE NOTICE OF PUBLIC HEARING  
FAILED TO DESCRIBE STATUTORY CRITERIA**

117. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

118. Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) provides in part:

Not more than 45 days after the date of the public awareness session, the local governing body shall hold at least one public hearing. ***Notice of the time and place of any public hearing*** shall be given by publication in at least one ***newspaper*** of general circulation within the affected community at least 30 days, but not more than 45 days, prior to the proposed date of the hearing. ***Content of the notice shall be consistent with the notice requirements in subsection (e).*** \* \* \*

(Emphasis added).

119. Ala. Code 1975 § 22-27-48.1(e)(2) (2022 Cum. Supp.) provides in part:

Any printed notice by letter, ***newspaper***, or electronically on a website, shall contain at a minimum the following:

\* \* \*

***b. A description of the criteria the governing body will consider, as provided in subsection (c) of Section 22-27-48, in determining whether to approve or disapprove the site.***

\* \* \*

(Emphasis added).

120. The May 10, 2023 notice published in the *Dothan Eagle* did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the solid waste management facility proposed by the City of Dothan, Alabama.

121. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the notice published in the *Dothan Eagle* did not comply with § 22-27-48.1(e)(2)b. because it did not describe the criteria that the Board of Commissioners of the City of Dothan, Alabama will consider in determining whether to approve or disapprove the siting of the proposed solid waste management facility.

122. Defendants contend that Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.). does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants’ Motion to Dismiss (Doc. 12).

123. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(e)(2)b. (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the the notice published in the *Dothan Eagle* did not comply with § 22-27-48.1(e)(2)b. A declaratory judgment is appropriate to resolve this controversy.

**COUNT X**  
**THE BOARD DID NOT HOLD A PUBLIC HEARING**

124. Plaintiffs incorporate by reference paragraphs 1 through 62 hereof.

125. Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) provides in part:

Not more than 45 days after the date of the public awareness session, the local governing body shall hold at least one public hearing. \* \* \*

(Emphasis added).

126. The Board of Commissioners of the City of Dothan, Alabama may act on matters only as a body in regular or regular adjourned meetings. The Mayor shall take the chair at the hour appointed for the commission to meet, and shall immediately call the members to order.

127. The June 12, 2023 public hearing on the siting of the proposed solid waste management facility was not held before the Board of Commissioners of the City of Dothan, Alabama.

128. Plaintiffs contend that Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and that the Board of Commissioners did not comply with § 22-27-48.1(g) because it did not hold the June 12, 2023 public hearing on the siting of the proposed solid waste management facility.

129. Defendants contend that Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.). does not apply to the solid waste management facility proposed by the City of Dothan, Alabama. *See* Defendants' Motion to Dismiss (Doc. 12).

130. There exists a bona fide justiciable controversy between plaintiffs and defendants that is definite and concrete, real and substantial, as to whether Ala. Code 1975 § 22-27-48.1(g) (2022 Cum. Supp.) applies to the solid waste management facility proposed by the City of Dothan, Alabama and whether the Board of Commissioners did not comply with § 22-27-48.1(g) (2022 Cum. Supp.). A declaratory judgment is appropriate to resolve this controversy.

## **COUNT XI GROUNDS FOR PERMANENT INJUNCTIVE RELIEF**

131. Plaintiffs incorporate by reference paragraphs 1 through 130 hereof.

132. The non-compliance with Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) by the City of Dothan, Alabama and Board of Commissioners of the City of Dothan, Alabama as described in Counts II through X hereof creates a substantial threat of irreparable injury to the plaintiffs if the requested injunctive relief is not granted. The threat of irreparable injury is described in paragraphs 11 and 12 hereof.

133. The threatened injury to the plaintiffs described in paragraphs 11 and 12 hereof outweighs the harm that the requested injunctive relief may cause to the defendants.

134. Granting the requested injunctive relief will not disserve the public interest. Indeed, the requested injunctive relief will serve the public interest declared by the Legislature in Ala. Code 1975 §§ 22-27-48 and 22-27-48.1 (2022 Cum. Supp.).

### **DEMAND FOR RELIEF**

Wherefore, plaintiffs demand the following relief:

A. A declaratory judgment that the solid waste management facility proposed by the City of Dothan, Alabama is a new solid waste management facility, as defined in Ala. Code 1975 § 22-27-2, and that the procedural requirements of Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) are applicable to

the siting of the solid waste management facility proposed by the City of Dothan, Alabama;

B. A declaratory judgment that the application submitted to the Board of Commissioners of the City of Dothan, Alabama for approval of the siting of the proposed solid waste management facility by the City of Dothan, Alabama was not complete as alleged in Count II hereof;

C. A declaratory judgment that the Board of Commissioners of the City of Dothan, Alabama did not comply with the procedural requirements of Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.) as alleged in Counts III through X hereof;

D. A permanent injunction against the City of Dothan, Alabama prohibiting it from submitting an application to the Alabama Department of Environmental Management for a permit to operate the proposed solid waste management facility until the City and Board of Commissioners of the City of Dothan, Alabama have fully complied with all the procedural requirements of Ala. Code 1975 § 22-27-48.1 (2022 Cum. Supp.), or if such an application has already been submitted to the Alabama Department of Environmental Management, mandating that the City withdraw such application until the City and Board of Commissioners of the City of Dothan, Alabama have fully complied

with all the procedural requirements of Ala. Code 1975 § 22-27-48.1 (Cum. Supp.); and

E. Any other legal or equitable relief to which plaintiffs may be entitled.

Respectfully submitted,

s/ David A. Ludder

David A. Ludder (LUD001)

Attorney for Plaintiffs

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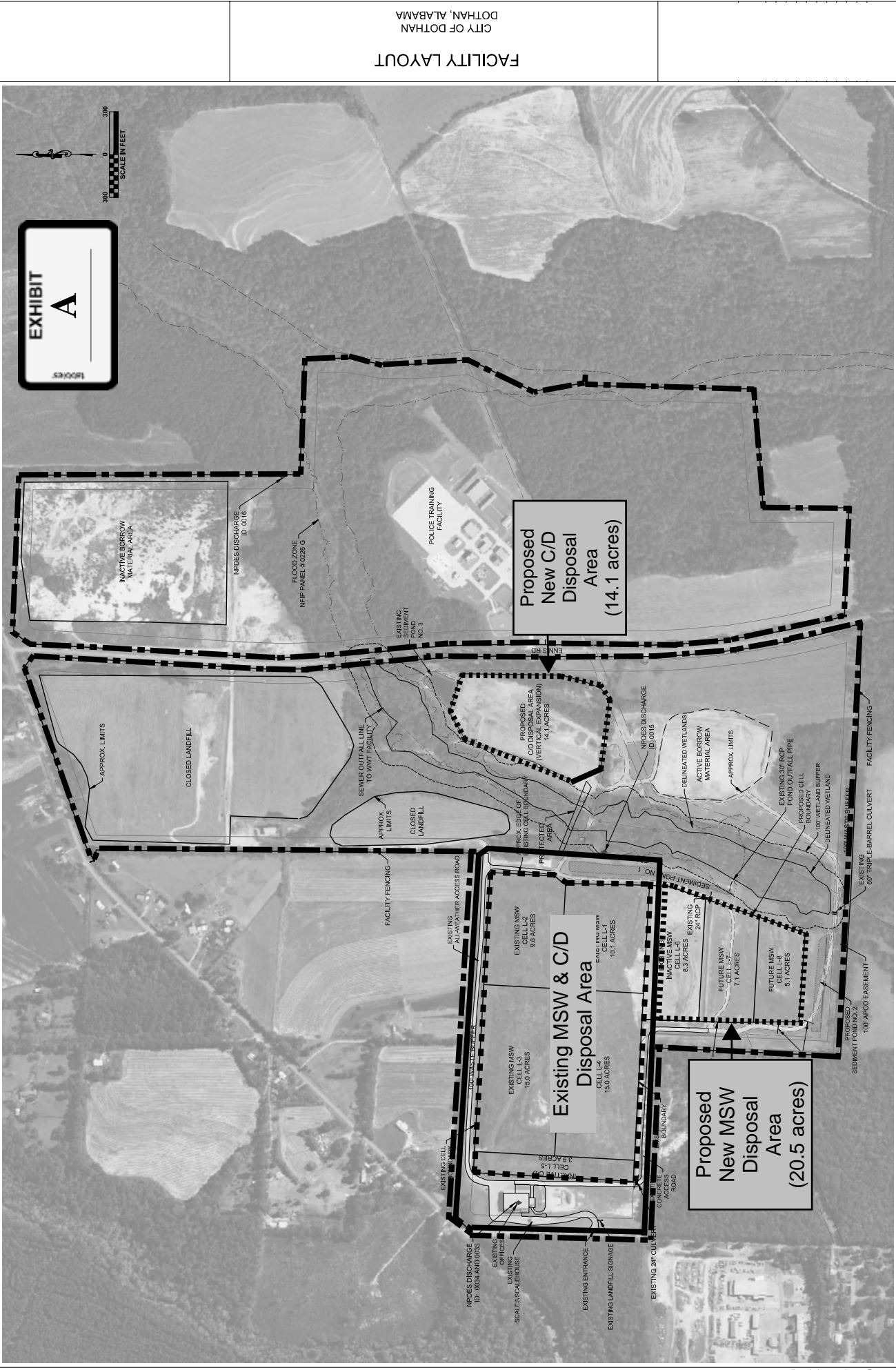


EXHIBIT  
A

300  
0  
300  
SCALE IN FEET

FACILITY LAYOUT  
CITY OF DOTHAN  
DOTHAN, ALABAMA

- 2013 Solid Waste Management Facility Boundary (78 acres)
- 2023 Proposed Solid Waste Management Facility Boundary (506.67 acres)
- 2013 Existing MSW & C/D Disposal Area (57.6 acres)
- 2023 Proposed New Solid Waste Disposal Areas (34.6 acres)

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Plaintiffs' First Amended Complaint was electronically filed with the Clerk of Court using the AlaFile system which will send notification of such filing to the following person:

William S. "Buddy" Cox III  
Attorney for Defendants  
Bradley Arant Boult Cummings LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, AL 35203-2104  
bcox@bradley.com

Done this 20th day of September, 2023.

s/ David A. Ludder

David A. Ludder