

Funke, et al. v. Department of Health and Environmental Sciences, et al.  
Cause No. 9575, 4th Judicial District  
Decided 1976

MEPA Issue Litigated: Was the MEPA analysis (an EA checklist) adequate?

Court Decision: No

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND JUDGMENT

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
2 STATE OF MONTANA, IN AND FOR THE COUNTY OF LAKE

3 \* \* \* \* \*

4 WILLIAM L. FUNKE and MARCHITA A. FUNKE, ) CAUSE NO. 9575  
husband and wife; HAROLD E. TOWER and VIOLA )  
5 H. TOWER, husband and wife; GERALD L. )  
NEWGARD and KAROL K. NEWGARD, husband and )  
6 wife; KEITH W. McCURDY and MYRTLE M. ) FILED NOV 17 1976  
McCURDY, husband and wife; DAVID R. BAUER ) VERA LAMON, Clerk District Court  
7 and KATHLEEN E. BAUER, husband and wife; )  
GEORGE L. TROSPER and ALICE E. TROSPER, ) *Richard L. Miller*  
8 husband and wife; EDWARD E. FUNKE and )  
BESSIE M. FUNKE, husband and wife; WILLIAM )  
9 CHUBB and VIRGINIA CHUBB, husband and )  
wife; RUBEN S. WEGNER and PHYLLIS F. )  
10 WEGNER, husband and wife; WESLEY T. VERT, ) FINDINGS OF FACT  
SR. and MADGE E. VERT, husband and wife; ) CONCLUSIONS OF LAW  
11 RICHARD L. FUNKE and VERONICA S. FUNKE, ) AND JUDGMENT  
husband and wife; ERNEST W. DICKSON and )  
12 LESLEE A. DICKSON, husband and wife; )  
LAURENS W. EDWARDS and ELIZABETH L. )  
13 EDWARDS, husband and wife; ROBERT S. FOUTY )  
and HEATHER J. FOUTY, husband and wife; )  
14 GERALD L. GATES and LAUREL M. GATES, hus- )  
band and wife; and THOMAS E. FUNKE and )  
15 PATRICIA A. FUNKE, husband and wife, )

16 Plaintiffs, )

17 -vs- )

18 BOARD OF COUNTY COMMISSIONERS, LAKE COUNTY, )  
MONTANA and individual members, DONALD A. )  
19 CORRIGAN, WILSON A. BURLEY and ROBERT )  
STRONG; LAKE COUNTY REFUSE DISPOSAL DISTRICT, )  
20 DONALD A. CORRIGAN, CHAIRMAN and DEPARTMENT )  
OF HEALTH AND ENVIRONMENTAL SCIENCES, STATE )  
21 OF MONTANA, )

22 Defendants. )

23 \* \* \* \* \*

24 The above-entitled action being at issue and having duly  
25 come on for trial before the above-named Court on August 18, 25,  
26 September 1, 8, 9, 1976, all parties appearing by their respective  
27 attorneys, and the Court having on said days heard the proof sub-  
28 mitted by the respective parties and having considered the respec-  
29 tive briefs submitted by the counsel on and prior to September 21,  
30 1976, and being well and sufficiently advised in the premises, now  
31 makes and files the following.

1 FINDINGS OF FACT

2 I.

3 That during the fall of 1975, the Defendant, BOARD OF  
4 COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA, reached a decision  
5 to establish a new county sanitary landfill dump to replace that  
6 certain dumpsite North of the community of Pablo, Montana, then  
7 being operated in connection with a gravel pit owned and operated  
8 by said Defendant.  
9

10 II.

11 That the Defendant, LAKE COUNTY, MONTANA, acting individ-  
12 ually and with the aid of a representative of the DEPARTMENT OF  
13 HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, investi-  
14 gated several sites for the proposed relocation of the so-called  
15 Pablo Dumpsite; that the said Defendant, BOARD OF COUNTY COMMIS-  
16 SIONERS OF LAKE COUNTY, MONTANA, made application to the DEPARTMENT  
17 OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA for  
18 the approval of a dumpsite to be located in Section 18, Township  
19 22 North, Range 20 West of the Montana Principal Meridian in  
20 Lake County, Montana.

21 III.

22 That the Lake County Board of Health prematurely issued a  
23 refuse disposal site license on March 17, 1976 and prior to the  
24 approval of the proposed sanitary landfill site by the DEPARTMENT  
25 OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA.  
26

27 IV.

28 That after examination and inspection by agents of the  
29 Defendant, DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE  
30

1 STATE OF MONTANA, the said Defendant, DEPARTMENT OF HEALTH AND  
2 ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, approved the pro-  
3 posed sanitary landfill site for which application had been made  
4 by the Defendant, BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY,  
5 MONTANA, as a dumpsite for a class II waste by letter dated June  
6 30, 1976.

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V.

That the Defendants, BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA and LAKE COUNTY REFUSE DISPOSAL DISTRICT, have not submitted an operational plan to the Solid Waste Management Bureau of the DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA for the operation of the sanitary landfill site approved for class II waste by the DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA.

VI.

That the Defendants, BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA and LAKE COUNTY REFUSE DISPOSAL DISTRICT, have established multiple sanitary landfill dumpsites in various locations in Lake County, Montana, and continue at this time to operate such multiple sanitary landfill dumpsites.

VII.

That the Defendant, BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA, has exercised its discretion in planning for the disposal of class II waste at a major sanitary landfill dumpsite to be operated by the Defendant.

VIII.

That no detailed Environmental Impact Statement was prepared by the Defendant, DEPARTMENT OF HEALTH AND ENVIRONMENTAL

1 SCIENCES OF THE STATE OF MONTANA concerning the proposed sanitary  
2 landfill dumpsite.

3 WHEREFORE, the Court makes the following:  
4

5 CONCLUSIONS OF LAW

6 I.

7 That the refuse disposal site license issued by the Lake  
8 County Board of Health on March 17, 1976, is void and of no force  
9 and effect for the reason that said license was issued prior to  
10 approval of the sanitary landfill dumpsite by the DEPARTMENT OF  
11 HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA.  
12

13 II.

14 That the sanitary landfill dumpsite situated in Section 18,  
15 Township 22 North, Range 20 West of the Montana Principal Merid-  
16 the approval of the sanitary landfill dumpsite  
17 ian/was issued prematurely in that the Defendant, DEPARTMENT OF  
18 HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, had not  
19 approved an operational plan for the operation of said dumpsite,  
20 more specifically described in the application for approval.

21 III.

22 That there exists no clear legal duty of the Defendant,  
23 BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA, to estab-  
24 lish multiple sanitary landfill dumpsites throughout the LAKE  
25 COUNTY REFUSE DISPOSAL DISTRICT and this Court may not control  
26 the exercise of sound discretion by the said Defendant, BOARD OF  
27 COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA, to establish one or  
28 more or a principal and lesser sanitary landfill dumpsites in  
29 said LAKE COUNTY REFUSE DISPOSAL DISTRICT.  
30

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Order VOL. 5 PAGE 55

1 IV.

2 That no statute of the State of Montana has been cited to  
3 this Court establishing as a requirement of law that the Defendant,  
4 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES OF THE STATE OF  
5 MONTANA, make and file a detailed Environmental Impact Statement  
6 prior to the approval by said Department of a sanitary landfill  
7 dumpsite in the State of Montana.

8  
9 ORDER

10 From the foregoing Findings of Fact and Conclusions of  
11 Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

12 1. That the Defendant, DEPARTMENT OF HEALTH AND ENVIRON-  
13 MENTAL SCIENCES OF THE STATE OF MONTANA, be and is hereby enjoined  
14 from approving the sanitary landfill dumpsite in Section 18,  
15 Township 22 North, Range 20 West of the Montana Principal Meridian,  
16 as is more particularly described in the application of the De-  
17 fendant, BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA,  
18 for disposal of class II waste until such time as the Solid Waste  
19 Management Bureau of said Defendant, DEPARTMENT OF HEALTH AND  
20 ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, approve an opera-  
21 tional plan for the operation of said dumpsite by the Defendants,  
22 BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, MONTANA and the  
23 LAKE COUNTY REFUSE DISPOSAL DISTRICT.

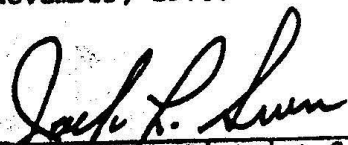
24  
25 2. That the Defendants, BOARD OF COUNTY COMMISSIONERS OF  
26 LAKE COUNTY, MONTANA and the LAKE COUNTY REFUSE DISPOSAL DISTRICT,  
27 are enjoined from utilizing the site proposed and more particularly  
28 described in Defendant's application to the DEPARTMENT OF HEALTH  
29 AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, for approval  
30 for the disposal of class II waste until a site approval is

1 issued by the Defendant, DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
2 SCIENCES OF THE STATE OF MONTANA, as hereinabove ordered and the  
3 issuance of a license for the operation of said sanitary landfill  
4 dumpsite by the Lake County Board of Health.

5 3. It is further ordered that the Plaintiffs' prayer for  
6 Writs of Mandamus herein for preparation of a detailed Environ-  
7 mental Impact Statement by the Defendant, DEPARTMENT OF HEALTH  
8 AND ENVIRONMENTAL SCIENCES OF THE STATE OF MONTANA, for the estab-  
9 lishment by the Defendants, BOARD OF COUNTY COMMISSIONERS OF LAKE  
10 COUNTY, MONTANA and the LAKE COUNTY REFUSE DISPOSAL DISTRICT, of  
11 multiple sanitary landfill dumpsites throughout Lake County, Mon-  
12 tana, be and the same are hereby denied and the alternative Writ  
13 of Mandate heretofore issued by this Court is hereby quashed.

14  
15 4. It is further Ordered that each party pay its or their  
16 own costs herein.

17 DATED this 17<sup>th</sup> day of November, 1976.

18  
19   
20 Joseph P. Lunn  
21 Judge of the District Court



MOTION

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
2 STATE OF MONTANA, IN AND FOR THE COUNTY OF LAKE

3  
4 CAUSE NO. 9575

5 WILLIAM L. FUNKE and MARCHITA  
6 A. FUNKE, husband and wife;  
7 HAROLD E. TOWER and VIOLA H.  
8 TOWER, husband and wife;  
9 GERALD L. NEWGARD and KAROL  
10 K. NEWGARD, husband and wife;  
11 KEITH W. McCURDY and MYRTLE  
12 M. McCURDY, husband and wife;  
13 DAVID R. BAUER and KATHLEEN  
14 E. BAUER, husband and wife;  
15 GEORGE L. TROSPER and ALICE  
16 E. TROSPER, husband and wife;  
17 EDWARD E. FUNKE and BESSIE  
18 M. FUNKE, husband and wife;  
19 WILLIAM CHUBB and VIRGINIA  
20 CHUBB, husband and wife;  
21 RUBEN S. WEGNER and PHYLLIS  
22 F. WEGNER, husband and wife;  
23 WESLEY T. VERT, SR. and  
24 MADGE E. VERT, husband and  
25 wife; RICHARD L. FUNKE and  
26 VERONICA S. FUNKE, husband  
27 and wife; ERNEST W. DICKSON  
28 and LESLEE A. DICKSON, husband  
29 and wife; LAURENS W. EDWARDS  
30 and ELIZABETH L. EDWARDS,  
31 husband and wife; ROBERT S.  
32 FOUTY and HEATHER J. FOUTY,  
husband and wife; and GERALD  
L. GATES and LAUREL M. GATES,  
husband and wife; and THOMAS  
E. FUNKE and PATRICIA A. FUNKE,  
husband and wife;

Plaintiffs,

-vs-

BOARD OF COUNTY COMMISSIONERS,  
LAKE COUNTY MONTANA and individual  
members DONALD A. CORRIGAN, WILSON  
A. BURLEY and ROBERT STRONG; LAKE  
COUNTY REFUSE DISPOSAL DISTRICT,  
DONALD A. CORRIGAN, CHAIRMAN and  
DEPARTMENT OF HEALTH AND ENVIRON-  
MENTAL SCIENCES, STATE OF MONTANA,

Defendants.

COMES NOW Plaintiffs above-named and move this Honorable  
Court to amend its Findings of Fact, Conclusions of Law and  
Judgment as follows:

DEC 16 1976

MOTION



1 Sciences, State of Montana, prior to their issuance of a  
2 Refuse Disposal Site License.

3 7. That the Lake County Board of Health failed to  
4 perform the clear legal duty to obtain site approval from the  
5 Department of Health and Environmental Sciences, State of  
6 Montana, prior to their issuance of a Refuse Disposal Site  
7 License.

8 Substituting in lieu of the Court's Order the following:

9 ORDER

10 From the foregoing Findings of Fact and Conclusions of  
11 Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

12 1. That the Defendant, Department of Health and  
13 Environmental Sciences of the State of Montana, be and is  
14 hereby enjoined from approving the sanitary landfill dumpsite  
15 in Section 18, Township 22 North, Range 20 West of the Montana  
16 Principal Meridian, as is more particularly described in the  
17 application of the Defendant, Board of County Commissioners of  
18 Lake County, Montana, for disposal of Class II waste until such  
19 time as the Defendant Department of Health and Environmental  
20 Sciences, State of Montana, prepares a valid Preliminary  
21 Environmental Review in compliance with the first Writ of  
22 Mandate hereinafter set forth, and until such time as Solid  
23 Waste Management Bureau of the State of Montana Department of  
24 Health and Environmental Sciences complies with the second  
25 Writ of Mandate hereinafter set forth.

26 2. That the Defendants Board of County Commissioners of  
27 Lake County, Montana, and the Lake County Refuse Disposal  
28 District are enjoined from utilizing the site proposed and  
29 more particularly described in Defendant's application to the  
30 Department of Health and Environmental Sciences of the State of  
31 Montana, for approval for the disposal of Class II waste  
32 until they comply with the third and fourth Writs of Mandate  
as hereinafter set forth.

Alvin T. Christian  
Keith W. Purdy  
F. L. ...  
Douglas ...  
Donald K. Peterson  
Lawyers  
Polson, Montana  
Ronan, Montana

WRITS OF MANDAMUS

1  
2 1. That the Defendant Department of Health and Environment-  
3 al Sciences properly prepare a valid Preliminary Environmental  
4 Review which conforms to the definition set out in its  
5 own regulations, i.e., a written analysis.

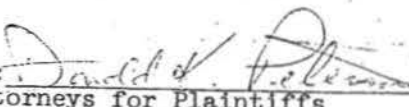
6 2. That the Defendant Department of Health and  
7 Environmental Sciences, State of Montana, obtain an operation  
8 plan from an applicant requesting site approval for a  
9 proposed Sanitary Landfill site and approve same prior to site  
10 approval.

11 3. That the Defendant Lake County prepare an operation  
12 plan for the proposed sanitary landfill site and submit same  
13 together with their application for site approval to the  
14 Department of Health and Environmental Sciences, State of  
15 Montana.

16 4. That the Defendant Lake County as a pre-condition  
17 to issuance of a license for a refuse disposal site first obtain  
18 site approval from the Department of Health and Environmental  
19 Sciences, State of Montana.

20 5. That the Plaintiffs' recover from the Defendants  
21 Department of Health and Environmental Sciences, State of  
22 Montana, and Lake County, and not against the commissioners  
23 of Lake County or the chairman of the Refuse Disposal District,  
24 individually, their damages, including a reasonable attorneys'  
25 fee, (the sum to be determined by the Court, together with  
26 costs.

27 CHRISTIAN, McCURDY, INGRAHAM & WOLD

28  
29 By:   
30 Attorneys for Plaintiffs  
31 Professional Center Building  
32 Polson, Montana

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CERTIFICATE OF SERVICE

I, DONALD K. PETERSON, one of the resident attorneys for the Plaintiffs in the above-entitled action, do hereby certify that I caused service of the within Motion and Memorandum in Support of Plaintiffs' Post Trial Motion to be made on the 13th day of December, 1976, upon the Defendant by causing a copy thereof to be mailed in the United States Mails, postage prepaid, on the date stated addressed as follows:

Richard P. Heinz  
County Attorney  
Lake County Courthouse  
Polson, Montana      Attorney for Lake County

G. Steven Brown  
Special Assistant Attorney General  
1424 Ninth Avenue  
Department of Health and Environmental Sciences  
Helena, Montana  
Attorneys for Department of  
Health and Environmental Sciences

  
\_\_\_\_\_  
Donald K. Peterson