

# Leachate Disposal Agreement/Storage Tank: Illinois Appellate Court Addresses Whether Absence of Certain Equipment Was Material Breach



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

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The Appellate Court of Illinois (Fifth District) (“Court”) addressed in an August 3rd Order a breach of contract action involving a leachate (i.e., wastewater) disposal agreement. See *John Gordon, d/b/a Village of Ridgway Wastewater Treatment, v. Landfill, LLC*, 2021 IL App. (5th) 200383-U.

The question considered was whether the failure to provide a storage tank in carrying out the leachate disposal agreement constituted a material breach.

John Gordon, d/b/a Village of Ridgway Wastewater Treatment (“Gordon”) entered into a Leachate Disposal Agreement (“Agreement”) with Landfill, LLC (“Landfill”). Gordon operated a storage tank near the Village of Ridgway Wastewater Treatment Plant (“Treatment Plant”). The purpose of the storage tank was to facilitate the transfer of leachate from the storage tank to the Treatment Plant.

Landfill owns and operates the West End Disposal Facility (“West End”). West End is a landfill permitted to receive solid waste for disposal. Leachate is generated by West End and must be periodically transported to a wastewater treatment plant for disposal.

Landfill contracted with Maier’s Tidy Bowl to transport the leachate from West End to Gordon’s storage tank. The 2016 version of the Agreement between Gordon and West End stated in part:

1. LANDFILL may, at its own expense, deliver leachate via truck to WDF. \*\*\*
2. Leachate shall be discharged directly from tank truck to a provided and installed leachate storage tank, including a controlled discharge device to allow the leachate to flow to the adjacent influent sewer at the rate not to exceed 30 gallons per minute.”

Landfill was therefore permitted to discharge leachate into Gordon’s storage tank. In turn, Gordon was obligated to accept the leachate into the storage tank. The storage tank was intended to control the discharge of leachate into the Treatment Plant. Landfill was obligated to pay Gordon a fee based on the amount of leachate discharged to the storage tank, along with a \$500 per month fee.

The Agreement contained a provision that provided for an additional fee if the toxicity level of the leachate reached a certain threshold. Language cited by the Order includes:

\*2 “6. [Gordon] shall bill monthly for leachate discharged at the following rate:

- A. Combined BOD and COD, 1 less than 3,000 mg/l - \$.02 Per Gallon.

B. Landfill shall pay, in addition to the normal disposal fees, an addition Five Hundred Dollars (\$500.00) Per Month, for the ongoing use of the WDF.

C. A charge shall be added to the above charges when the combined total of BOD and COD exceeds 3,000 mg/l. This shall be Ten Dollars (\$10.00) per 1,000 Gallons for each additional incremental 1,000 mg/l over 3,000 mg/l.”

The Treatment Plant is stated to have at some point informed Gordon that the storage tank was unnecessary. In other words, the leachate could be discharged into the Treatment Plant without the use of the storage tank.

The lower court was provided certain testimony from the parties as part of their Cross Summary Judgment Motions in which there was disagreement as to whether or not the storage tank was unnecessary and/or an integral part of the agreement.

Landfill canceled the Agreement in 2019 and refused to pay Gordon for leachate transported for the months of March, April, and May 2019.

Gordon filed a breach of contract action against Landfill for failure to pay amounts due. Landfill brought a Cross Motion for Summary Judgment arguing absence of the storage tank was a breach of a material term of the Agreement.

Gordon also argued that Landfill:

- Did not suffer any injury and therefore no breach of the Agreement occurred
- A judgment against it would constitute an illegal penalty

The lower court determined that the terms of the 2016 Agreement were unambiguous. It found that the Agreement stated that Landfill could place leachate in the storage tank. Such placement of the leachate in the storage tank then triggered Landfill’s obligation to pay Gordon. Summary Judgment was granted in favor of Landfill.

The Court upholds the lower court.

The 2016 Agreement is deemed binding and enforceable. As a result, the Court holds that the first element of Gordon’s breach of contract claim was established. However, whether Gordon performed the required obligations under the 2016 Agreement were in dispute.

Gordon acknowledged that the leachate from the Landfill was never processed through the storage tank. Further, it was argued that providing the storage tank was not a material term of the Agreement because its only purpose was to protect the Treatment Plant from being inundated with leachate. As a result, the storage tank was argued to not be material because:

- It was not fundamental to the Agreement
- Its lack of use did not defeat the purpose of the Agreement

In contrast, Landfill argued that the use of the storage tank was a material term of the Agreement because it was a condition precedent to be performed prior to the remaining contractual obligations. Such remaining obligations included payment of the fees. Because Gordon never performed a contractual duty to control the discharge of leachate from the storage tank to the Treatment Plant, Landfill argued it was both a:

- Condition precedent
- Material term of the Agreement
- Sole contractual duty that was required to be performed pursuant to the Agreement

The Court upholds the Summary Judgment granted to Landfill. The provision of the storage tank is deemed material and a condition precedent for payment of the referenced fees.

A copy of the Order can be downloaded [here](#).

