

# Shingle Pile/Solid Waste Storage: Federal Court Addresses Equal Protection Claims Against Dallas, Texas



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The United States District Court for the District of Texas (“Court”) addressed in an August 4th Opinion issues arising out of a solid waste storage and recycling facility/shingle pile in Dallas, Texas. See *Marsha Jackson v. City of Dallas*, 21021 WL 3406728.

The Opinion focuses on a claim that the City of Dallas (“Dallas”) violated the Equal Protection Clause because of certain actions it undertook (or did not undertake) involving a large shingle pile.

Blue Star Recycling, LLC (“Blue Star”), recycled and stored asphalt shingles on a property located in Dallas. An area property owner (“Plaintiff”) was adversely affected. The operation apparently generated a large pile of shingles (known as “Shingle Mountain”).

Dallas sued Blue Star and the owner of the property on which the shingle pile was located to stop the discharge of pollutants and various activities associated with the facility.

Plaintiff sued Blue Star and the property owner. She alleged violation of the Resource Conservation and Recovery Act. Subsequently, Plaintiff filed a claim against Dallas alleging violation of the Equal Protection Clause of the Fourteenth Amendment because of alleged disparate treatment based on race and ethnicity. These were based on allegations:

- Dallas City Council’s zoning the part of the property at issue for Industrial Manufacturing
- Alleged refusal of the Dallas City Council to fund the removal of Shingle Mountain

The overarching question addressed by the Court was whether Plaintiff’s amended Complaint contained sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Specifically, “did Plaintiff adequately plead factual content allowing the Court to draw the reasonable inference that the defendant was liable for the misconduct alleged.”

## Traceability

Dallas argued that Plaintiff did not have standing because of a failure to allege an injury traceable to any of their conduct. She cited in response injuries due to Shingle Mountain’s effects on her health, the environment and property value.

The Court found that the injuries were traceable to the conduct of Dallas. This was based on the conclusion that if Dallas had not zoned the property for Industrial Manufacturing, Blue Star could not have operated the facility.

## Equal Protection Claims

### 1. The City's Zoning decision

- Dallas in 2007 rezoned the property from Industrial Research to an Industrial Manufacturing Zone, permitting the most intense manufacturing use.
- Plaintiff contended that this was the policy that provided the moving force behind an issuance of a certificate of occupancy in 2018 that allowed Blue Star to dispose of the shingles on the property.
- Dallas alleged that their approval of the rezoning was explicitly subject to deed restrictions volunteered by Blue Star.
- The agreed upon deed restrictions limited the use of the property to wood processing by a specific use permit.
- This restriction prohibited a shingle recycling facility or solid waste landfill on the site.
- The alleged 2018 actions stated in the Complaint were argued to be contrary to the Dallas Policy adopted in 2007 in regard to zoning and deed restrictions.

Plaintiff further argued that if the City Council had not enacted the Industrial Manufacturing zoning for the property, then the city staff could not have issued the certificate of occupancy required for the operation of the solid waste storage and processing facility:

- The 2007 actions of the Dallas City Council were argued to be a but for cause of the alleged harm to Plaintiff.
- Such inquiry requires a causation standard higher than but for causation.
- A plaintiff must also show that Dallas enacted the policy with deliberate indifference to the known or obvious consequences that constitutional violations would result.
- Plaintiff had to show that the City Council consciously disregarded the risk of harm to Plaintiff from its 2007 rezoning decision.
- Plaintiff failed to show any factual allegation that could support a finding that the City Council consciously disregarded the possibility that its zoning decision would result in the issuance of a certificate of occupancy not in compliance with these restrictions, or that a future occupant (Blue Star) of the property would operate in violation of the deed restrictions.

The Court addressed whether the 2018 issuance of a certificate of occupancy could serve as the policy which was the moving force behind Plaintiff's injuries.

- This was the issuance, signed by Dallas's building official Phillip Sikes, that allowed Blue Star to operate on the property.
- Blue Star made inaccurate representations to obtain the certificate and used the property for a non-permitted use.
- The Building Official's issuance of the certificate of occupancy to Blue Star did not serve as the moving force for a constitutional violation because the Dallas Building Official was not a policy maker. (Only the decisions of policymakers may subject a City to liability under 42 U.S.C. § 1983.)

### 2. The City's alleged Failure to Remove Shingle Mountain

- Dallas argued that the City violated the Equal Protection Clause by refusing to allocate City funds to remove Shingle Mountain due to discrimination.
- Dallas was alleged to have paid to remove a concrete plant and lead soil contamination from a park in a predominately white community and neighborhood. However, the City was already engaged in litigation to halt Blue Star's operations on the property and obtain a court order to require them to clean up Shingle Mountain.
- Dallas successfully obtained an Order from the state court requiring that Blue Star remove Shingle Mountain. No authority cited by the Plaintiff that Dallas was required to remove Shingle Mountain while it was engaged in litigation seeking to hold Blue Star responsible for the cleanup.

- Plaintiff did not state a plausible equal protection claim based on the City's alleged failure to remove Shingle Mountain.

Conclusion

Dallas's motion to Dismiss was granted as to Plaintiff's constitutional claim.

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