

# Landfill Gas Emissions/Common Law Action: U.S. District Court Addresses Motion to Dismiss



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

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Co-Author: Cathryn Johns

The District Court for the Southern District of Ohio addressed a municipal solid waste landfill's ("landfill") motion to dismiss common law claims relating to its gas emissions. *Beck v. Stony Hollow Landfill, Inc.*, No. 3:16-CV-455, 2017 WL 1551216 (S.D. Ohio May 1, 2017).

Plaintiff Carly Beck ("Beck") of Moraine, Ohio filed a lawsuit arguing she should be awarded damages asserting causes of action for:

1. Nuisance
2. Negligence and gross negligence

Beck lived within three miles of the landfill.

The landfill was operated in Dayton by Stony Hollow.

Beck alleged Stony Hollow negligently managed the landfill's gas emissions, resulting in the use, enjoyment, and property value of her home decreasing. She alleged that the landfill:

1. Woke her up in the middle of the night from smells
2. Caused her to be forced to stay inside
3. Caused her to be discouraged from inviting guests due to embarrassment

The opinion references over 160 households complaining of the landfill's odors. Further, state and local authorities are stated to have received numerous complaints. A 14-day surveillance conducted by the Regional Air Pollution Control Agency found "moderate to very strong landfill odors" offsite 12 of the 14 days.

Beck sought to represent a class of all property owners within a three-mile radius of the landfill, alleging over \$5,000,000 in damages for nuisance, negligence, and gross negligence. Stony Hollow filed a motion to dismiss the complaint for failure to state a claim and, in the alternative, to strike the class allegations as failing to meet the certification requirements under the Federal Rules of Civil Procedure.

The District Court addressed the motions.

Stony Hollow argued in support of its motion to dismiss that Beck's negligence claim should be dismissed because of a failure to allege:

1. The elements of a private nuisance,
2. The elements of a public nuisance,
3. The time frame during which the nuisance existed and damages incurred
4. That the landfill's odors "substantially and unreasonably interfered with her use and enjoyment of her property", and
5. "Why all owners, occupants, and renters who live within three miles of the landfill's property boundary are entitled to relief."

The Court acknowledged that Beck did not specify the type of nuisance alleged. However, Stony Hollow's own motion to dismiss made clear that Stony Hollow was "on notice" of the claims against it.

Taking Beck's allegations in the light most favorable to her, the Court found sufficient facts for claims of nuisance and negligence, writing, "If the gases emanating from the landfill are as odorous and offensive as Beck alleges, then it is plausible—not merely speculative—that Stony Hollow has failed to manage the landfill in satisfaction of its duty under Ohio law."

As to the motion to strike the class allegations, Stony Hollow argued Beck's allegations were deficient on their face for class purposes. Beck's response, which the Court found persuasive, pointed out that it was premature to rule on the appropriateness of class certification before Beck could conduct discovery. While Stony Hollow's objections had legal support, the Court could not say that class certification would never be appropriate in this case regardless of the factual record that developed.

Thus, the Court denied both of Stony Hollow's motions and allowed Beck's class action attempt to move forward.

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