

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

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901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )

SOUTHEAST LANDFILL, LLC )

Respondent )

Proceedings under Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a) )

) Docket No. CWA-07-2011-0117

) CONSENT AGREEMENT and  
) FINAL ORDER

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Southeast Landfill, LLC, (Respondent) have agreed to a settlement of this action before the filing of a Complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (CA/FO) serves as notice that the EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

### Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

4. Respondent is Southeast Landfill, LLC. and has a mailing address of 2001 North M-291 Highway, Sugar Creek, Missouri 64058.

### Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

8. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. The regulations at 40 C.F.R. §122.26(b)(14)(v) establish requirements for stormwater discharges associated with industrial activity from landfills that receive or have received any industrial wastes.

11. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

### **FINDINGS OF FACT**

12. Southeast Landfill, LLC (“Landfill” or “Respondent”) is an inactive landfill that is located at 8301 Indiana Avenue, Kansas City, Missouri.

13. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).

14. The Landfill is a “point source” that “discharges pollutants” into “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

15. Respondent’s discharge of pollutants from the Landfill requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. On November 7, 2008, MDNR issued NPDES permit No. MO-0105023 to Southeast Landfill, LLC for discharges from the Landfill to the Blue River. The permit will expire on November 6, 2013.

17. On March 22, 2002, MDNR removed Outfalls 005 and 006 from Respondent’s NPDES permit.

18. On April 21, 2010, EPA personnel conducted an inspection of the Landfill to determine Respondent’s compliance with its NPDES permit and the CWA.

### **FINDINGS OF VIOLATION**

19. Respondent’s NPDES permit requires Respondent to handle leachate in a manner where discharge of leachate is not allowed.

20. During the EPA inspection, EPA personnel observed that leachate was not being collected by drains designed to capture runoff at the Landfill. The inspector observed leachate running down the Landfill access road and toward the Blue River.

21. Respondent’s failure to handle leachate in a manner that discharge is not allowed increases the likelihood of an unauthorized discharge and is, therefore, a violation of its NPDES permit and § 402 of the CWA.

22. Respondent’s NPDES permit establishes effluent limitations for Total Suspended Solids (TSS), Chemical Oxygen Demand (COD), Chloride and Sulfate, Settleable Solids (SS), Iron Total Recoverable (TR), Zinc TR, Copper TR, Arsenic TR, Ammonia and pH for each of the six outfalls at the Landfill.

23. A review of Respondent's records during the EPA inspection revealed that Respondent violated its NPDES permit effluent limits 30 times between November 2006 and June 2010.

24. Respondent's discharges of pollutants in excess of its NPDES permit limits are violations of its NPDES permit and §§ 301 and 402 of the CWA.

25. Respondent's NPDES permit requires Respondent to provide sediment and erosion control sufficient to prevent or control sediment loss off of the Landfill.

26. During the EPA inspection, EPA personnel observed that Respondent failed to maintain silt fences it had installed at four locations around the perimeter of the Landfill.

27. Respondent's failure to provide sediment and erosion control sufficient to prevent or control sediment loss off of the Landfill is a violation of Respondent's NPDES permit and § 402 of the CWA.

28. Respondent's NPDES permit requires Respondent to provide written notification to MDNR within five days of becoming aware of any effluent violations. In addition, a sample of stormwater runoff resulting from the next rainfall greater than 0.1 inches shall be collected at outfall(s) for which the violation occurred, and sample results shall be submitted in writing to MDNR.

29. A review of Respondent's records during the EPA inspection revealed that notification was not submitted to MDNR for any of the effluent limit violations occurring between November 2008 and October 2009. Further, Respondent failed to sample the next qualifying rain event following the same effluent limit violations, with the exception of one reporting to MDNR on March 30, 2009.

30. Respondent's failure to report effluent violations, sample stormwater runoff after discovering the violations, and report the sample results to MDNR are violations of Respondent's NPDES permit and § 402 of the CWA.

31. Respondent's NPDES permit requires Respondent to notify MDNR of any new, increased, or different discharges of pollutants that are not consistent with the terms and conditions of the permit. Such notice to MDNR is required to be made within thirty (30) days before such changes take effect.

32. During the EPA inspection, EPA personnel observed that Outfalls 005 and 006 were able to capture stormwater from the landfill and discharge it to the Blue River. Respondent has never notified MDNR that the potential for discharge from Outfalls 005 and 006 are a new and/or different discharge than what is authorized in Respondent's NPDES permit.

33. Respondent's failure to notify MDNR of a new and/or different discharge of pollutant is a violation of Respondent's NPDES permit and, therefore, a violation of § 402 of the CWA.

#### CONSENT AGREEMENT

34. Respondent and EPA agree to the terms of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

35. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

36. Respondent neither admits nor denies the factual allegations set forth above.

37. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.

38. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

40. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

41. This CA/FO addresses all civil and administrative claims for the CWA violations identified above and in EPA's Administrative Compliance Order, Docket No. CWA-07-2011-0063. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

42. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is in compliance with all requirements of Sections 301 and 402 of the CWA, and all regulations promulgated thereunder, and is scheduled to be in compliance with the terms of EPA's Administrative Compliance Order, Docket No. CWA-07-2011-0063.

43. The effect of settlement described in paragraph 41 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 42 of this CA/FO.

44. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$43,756 as set forth in paragraph 1 of the Final Order.

45. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

### FINAL ORDER

#### **Payment Procedures**

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of \$43,756 within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

This payment shall reference docket number CWA-07-2011-0117.

Copies of the check shall be mailed to:

Chris Muehlberger  
Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

and to

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

#### **Parties Bound**

4. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

#### **General Provisions**

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

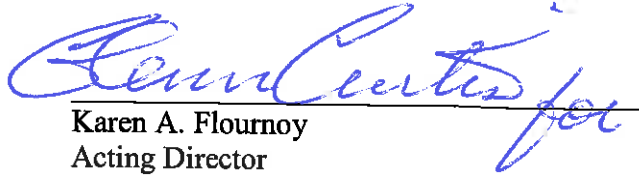
8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

11-22-11

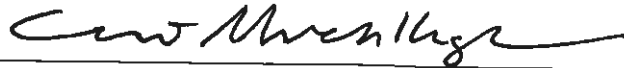
Date



Karen A. Flournoy  
Acting Director  
Water, Wetlands and Pesticides Division

11.21.11

Date



Chris Muehlberger  
Assistant Regional Counsel  
Office of Regional Counsel



RESPONDENT:  
SOUTHEAST LANDFILL, LLC


11/18/2011  
Date

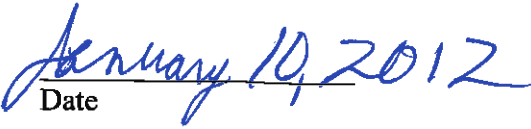
W. T. Eggleston, Jr.

Name (Print) W. T. Eggleston, Jr.

Title Vice President

IT IS SO ORDERED. This Final Order shall become effective immediately.

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

  
\_\_\_\_\_  
Date

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to:

Copy by Certified Mail Return Receipt to:

Mr. John McConnell, General Manager  
Southeast Landfill, LLC  
2001 North M-291 Highway  
Sugar Creek, Missouri 64058

Sent via first class mail to:

Kristen Ellis-Johnson, Esq.  
Lathrop & Gage LLP  
2345 Grand Boulevard, Suite 2200  
Kansas City, Missouri 64108-2618

Kevin Mohammadi  
Missouri Department of Natural Resources  
P.O. Box 176  
Jefferson City, Missouri 65102

Dorothy Franklin  
Missouri Department of Natural Resources  
500 Northeast Colbern Road  
Lee's Summit, Missouri 64086-4710.

\_\_\_\_\_  
Date

IN THE MATTER OF Southeast Landfill, LLC, Respondent  
Docket No. CWA-07-2011-0117

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Chris Muehlberger  
Assistant Regional Counsel  
Region 7  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Southeast Landfill, LLC  
2001 North M-291 Highway  
Sugar Creek, Missouri 64058

Dated: 1/10/12

  
Kathy Robinson  
Hearing Clerk, Region 7