

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-6 PM 12: 18
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

Waste Management of Nebraska, Inc.

Pheasant Point Landfill
13505 North 216th Street
Bennington, Nebraska 68007

CAA Docket No: 07-2018-0207

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Waste Management of Nebraska, Inc. (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 of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).

II. JURISDICTION

2. This administrative action for the assessment of civil penalties is instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, in which

the first date of alleged violation occurred more than twelve months prior to the initiation of the administrative action, was appropriate for administrative penalty action.

3. Section 113(d) of the CAA states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation, whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 111(e) of the CAA, 42 U.S.C. § 7411(e). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to no more than \$32,500 per day for each violation occurring between March 15, 2004, and January 12, 2009; and no more than \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015, and to no more than \$44,539 per day for each violation occurring after November 2, 2015.

III. PARTIES

4. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator of the EPA, Region 7, is the Director of the Air and Waste Management Division, EPA Region 7.

5. Respondent, Waste Management of Nebraska, Inc., owns and/or operates an existing municipal solid waste (MSW) landfill, Pheasant Point Landfill in Bennington, Nebraska.

IV. STATUTORY AND REGULATORY FRAMEWORK

6. The Clean Air Act establishes a regulatory framework designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

7. Section 111 of the CAA, 42 U.S.C. § 7411, authorizes the EPA to develop technology based standards which apply to specific categories of stationary sources. The New Source Performance Standards (NSPS) apply to new, modified and reconstructed affected facilities in specific source categories. The NSPS are developed and implemented by EPA and are delegated to the states. However, even when delegated to the states, EPA retains authority to implement and enforce the NSPS.

8. Pursuant to the authority granted under Section 111 of the CAA, 42 U.S.C. § 7411, the EPA promulgated general regulations applicable to all NSPS source categories in 40 C.F.R. Part 60, Subparts A, B, and C. In addition, the EPA promulgated regulations set forth at 40 C.F.R. Part 60, Subpart WWW, which apply to municipal solid waste landfills that commence construction, reconstruction, or modification on or after May 30, 1991.

9. Subpart WWW was promulgated due to EPA's determination that emissions from municipal solid waste landfills cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Landfill emissions consist primarily of methane and carbon dioxide (CO₂), as well as more than 100 different non-methane organic compounds (NMOCs) such as ethane, toluene and benzene.

10. Each owner or operator of a MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters is subject to part 70 or 71

permitting requirements and shall calculate a nonmethane organic compound (NMOC) emission rate in accordance with 40 C.F.R. § 60.754. 40 C.F.R. § 60.752(b).

11. If the calculated NMOC is above 50 megagrams per year, the MSW landfill must install a collection and control system that captures gas generated in the landfill. 40 C.F.R. § 60.752(b)(2)(ii).

12. Each owner or operator of an MSW landfill with a gas collection and control system used to comply with the provisions of § 60.752(b)(2)(ii) of this part shall operate the collection system such that gas is collected from each area, cell or group of cells in the MSW landfill in which solid waste has been in place for 5 years or more if active, or 2 years or more if closed. 40 C.F.R. § 60.753.

13. After the effective date of any standard of performance promulgated under Section 111 of the CAA that is applicable to a source, no person may operate such source in violation of such standard. 42 U.S.C. § 7411(e).

V. STIPULATED FACTS

14. At all times pertinent to this action, Respondent was the “owner” and/or “operator” of a municipal solid waste landfill located at 13505 North 216th Street, Bennington, Nebraska (“Pheasant Point Landfill”) within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

15. At all times pertinent to this action, the Pheasant Point Landfill was a “stationary source” as defined in Section 111(a)(3) of the Act, 42 U.S.C. § 7411(a)(3).

16. At all times pertinent to this action, Respondent operated a disposal facility in a contiguous space where household waste was placed in or on the land, and is, therefore, a “municipal solid waste landfill” as defined by 40 C.F.R. § 60.751.

17. The Respondent is subject to 40 C.F.R. Part 60, Subpart WWW because it owns or operates a MSW landfill that was modified on or after May 30, 1991.

18. At all times pertinent to this action, the MSW landfill had a capacity of 2.5 million megagrams and 2.5 million cubic meters.

19. At all times pertinent to this action, the MSW landfill had a NMOC emission rate of 50 megagrams per year or greater.

20. Waste was initially placed in cell 6A, 6B, and 9A of the Pheasant Point Landfill in 2007, 2008, and 2010, respectively.

VI. ALLEGED VIOLATIONS OF LAW

21. The facts stated in Paragraphs 14 through 20 above are herein incorporated.

22. The provisions of 40 C.F.R. § 60.753(a) require that Respondent operate a gas collection and control system such that gas is collected from each area, cell or group of cells in the MSW landfill in which solid waste has been in place for 5 years or more if active, or 2 years or more if closed. The gas collection system was initially expanded into active cells 6A, 6B, and 9A in 2015; however, Complainant alleges that Respondent failed to fully comply with 40 C.F.R. § 60.753(a)(1) in these areas until January 2018.

VII. CONSENT AGREEMENT

23. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- b. Neither admits nor denies the alleged violations of law stated above;
- c. Consents to the assessment of a civil penalty as stated below;

- d. Consents to the issuance of any specified compliance or corrective action order, if specified herein;
- e. Consents to the conditions specified in this Consent Agreement;
- f. Consents to any stated Permit Action as defined in 40 C.F.R. § 22.3, if specified herein;
- g. Waives any right to contest the alleged violations of law set forth herein;
and
- h. Waives its rights to appeal the Final Order portion of this Consent Agreement.

24. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein.

25. Respondent and EPA agree to resolve this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

A. Penalty Payment

26. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement, Respondent shall pay the civil penalty of \$27,500 within thirty (30) days of the Effective Date of this Final Order as set forth below.

27. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by payment method (including ACH transfer or wire transfer) described at <http://www.epa.gov/financial/makepayment>.

28. Respondent shall print a copy of each payment receipt and mail a copy of each receipt to EPA's representative identified in this paragraph:

Regional Hearing Clerk
Enforcement Coordination Office
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Gary Bertram
AWMD/ACES
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

29. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9(b)(1). Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

30. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

B. Effect of Consent Agreement and Final Order

31. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for the violations alleged herein. Complainant reserves the right

to take any enforcement action with respect to any other violations of the CAA or any other applicable law.

32. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in the paragraph directly below.

33. Respondent certifies by the signing of this Consent Agreement that it is presently in compliance with the requirements that formed the basis of the allegations in paragraphs 21 and 22 of this Consent Agreement.

34. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations in a manner consistent with this Consent Agreement, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

35. Complainant reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order.

C. General Provisions

36. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

37. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the

Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.


38. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

39. This Consent Agreement and Final Order shall terminate upon Respondent's completion of paragraphs 26-28 of this Consent Agreement.


The foregoing Consent Agreement In the Matter of Waste Management of Nebraska, Inc.,
Docket No. CAA 07-2018-0207, is hereby Stipulated, Agreed, and Approved for Entry.

**FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY**

5/30/18
Date


Becky Weber
Director, Air and Waste Management
Division
U.S. Environmental Protection Agency
Region 7

5/29/18
Date


Sarah LaBoda
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

The foregoing Consent Agreement In the Matter of Waste Management of Nebraska, Inc.,
Docket No. CAA 07-2018-0207, is hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:
WASTE MANAGEMENT OF NEBRASKA, INC.

5/22/18
Date


Signature

Michael J. Watson
Printed Name

President
Title

1001 Fannin St., Ste. 4000, Houston, TX
77002
Address

36-3469702
Respondent's Federal Tax ID Number

FINAL ORDER

Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 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, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Date

June 6, 2018

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement" and "Final Order," in the Matter of Waste Management of Nebraska, Inc., Docket No. CAA 07-2018-0207, were filed and copies of the same were mailed to the parties as indicated below.

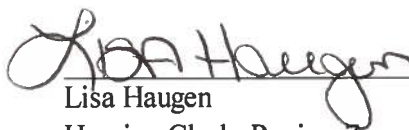
Copy emailed to Attorney for Complainant:

Laboda.sarah@epa.gov

Copy by First Class Mail to Respondent:

Michelle Gale, Esq.
Waste Management
720 E. Butterfield Road, 4th Floor
Lombard, Illinois 60148

6/6/18
DATE


Lisa Haugen
Hearing Clerk, Region 7