

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Region 2

2016 AUG 16 PM 2:39

REGIONAL HEARING
OFFICE

In the matter of:

Atlantic County Utilities Authority,
Respondent

In a proceeding under Section 113(d)
of the Clean Air Act, 42 U.S.C. § 7413(d)

**CONSENT AGREEMENT
AND
FINAL ORDER**

CAA-02-2015-1212

PRELIMINARY STATEMENT

This Consent Agreement and Final Order (CAFO) concludes an administrative penalty proceeding brought by the Complainant, the Director of the Division of Enforcement and Compliance Assistance for the U.S. Environmental Protection Agency (EPA) Region 2, against Respondent Atlantic County Utilities Authority (ACUA or Respondent), pursuant to Section 113(d) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(d), and Rules 22.13(b) and 22.18(b) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (the Consolidated Rules), 40 C.F.R. Part 22.

The Consent Agreement is signed by the Complainant and Respondent, and the Final Order is issued by the Region 2 Regional Administrator. As set forth in the "Jurisdictional Allegations" section of the Consent Agreement, the Complainant is duly authorized to sign consent agreements and the Regional Administrator is duly authorized to issue final orders.

CONSENT AGREEMENT

General Provisions

1. In the Complaint, EPA alleged that ACUA violated the CAA and its implementing regulations at its landfill facility in Egg Harbor Township, New Jersey (Facility). Specifically, the Complaint alleges that ACUA violated 40 C.F.R. Part 60, Subpart WWW (Part 60 New Source Performance Standards for Landfill – Landfill NSPS), 40 C.F.R. Part 63, Subpart AAAA (Part 63 National Emission Standards for Hazardous Air Pollutants – Landfill MACT), each of which were promulgated by EPA pursuant to Sections 111, 112 and 114 of the CAA, as well as provisions of the Facility’s Title V Permit issued pursuant to Title V of the Act and Chapter 27 of Title 7 of the New Jersey Administrative Codes (NJAC). The specific violations alleged in the Complaint are set forth below in the section entitled “Conclusions of Law” in this Consent Agreement.

2. Complainant and Respondent enter into this Consent Agreement and the attached Final Order so as to resolve the violations alleged in the “Conclusions of Law” section of this Consent Agreement. Pursuant to the Consolidated Rules 22.13(b) and 22.18(b), the issuance of the Consent Agreement and Final Order (CAFO) serves to conclude the agency’s administrative penalty proceeding for those violations.

3. For the purposes of this proceeding, and to avoid the expense of protracted litigation, Respondent:

- a. admits the jurisdictional allegations set forth below in the section of this Consent Agreement entitled “Jurisdictional Allegations;”
- b. neither admits nor denies the findings of fact set forth in the section of this Consent Agreement entitled “Findings of Fact,”
- c. Pursuant to Section 113(d) of the Act consents to the payment of the civil penalty specified in the section of this Consent Agreement entitled “Settlement,” on the terms specified in that section;

- d. consents to the issuance of the attached Final Order; and
- e. waives any right to contest the allegations set forth in the “Conclusions of Law” section of this Consent Agreement and any right to appeal the attached Final Order.

Jurisdictional Allegations

4. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 112 and 114 of the Act.

5. Section 302(e) of the CAA provides that whenever the term “person” is used in the Act, the term includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

7. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Region 2 Regional Administrator the authority to execute CAA Section 113(d) Final Orders.

8. Pursuant to Section 113(d), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on September 16, 2015, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on EPA's authority to initiate an administrative penalty action in this matter.

Legal Background

CAA Section 111 – Standards of Performance New Stationary Sources

9. Section 111(b)(1)(A) of the Act requires EPA to publish a list of categories of “stationary sources” if, in its judgment, the sources cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

10. Section 111(b)(1)(B) of the Act requires EPA to establish Federal standards of performance for “new sources” within such categories.

11. Section 111(a) sets out the definitions relevant to Section 111. Specifically:

- a. Section 111(a)(3) defines a “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.
- b. Section 111(a)(2) of the Act defines a “new source” as any stationary source the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a “standard of performance” under this section which will be applicable to such source.
- c. Section 111(a)(1) defines a “standard of performance” as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction

and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

- d. Section 111(a)(5) defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

12. On February 25, 1996, EPA added “municipal solid waste landfills” (MSW landfills) as a source category subject to the requirements of Section 111 of the Act, because the source category contributes significantly to air pollution, including emissions of non-methane organic compounds (NMOC) and methane, which may reasonably be anticipated to endanger public health and welfare. 61 *Fed. Reg.* 9905 (Feb. 25, 1996).

13. EPA has determined that methane emissions present a well-documented danger of fire and explosion on-site and off-site, and contribute to global climate change as a major greenhouse gas. 61 *Fed. Reg.* 9905 (Feb. 25, 1996).

14. Performance standards promulgated pursuant to Section 111 of the Act are set forth in 40 C.F.R. Part 60.

CAA Section 112 – Hazardous Air Pollutants

15. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of Hazardous Air Pollutants (HAPs), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

16. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

17. Section 112(a) of the Act contains definitions relevant to Section 112.

Specifically:

- a. Section 112(a)(1) of the Act defines “major source” as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- b. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.
- c. Section 112(a)(4) of the Act defines “new source” as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 of the Act establishing an emission standard applicable to such source.
- d. Section 112(a)(6) of the Act defines “hazardous air pollutant” as any air pollutant listed pursuant to Section 112(b) of the Act.
- e. Section 112(a)(9) defines “owner or operator” as any “person” who owns, leases, operates, controls or supervises a stationary source.
- f. Section 112(a)(10) of the Act defines “existing source” as any stationary source other than a new source.

18. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63 (Part 63). NESHAPs established under Part 63 are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

CAA Section 114 – Inspection, Monitoring and Entry

19. Section 114 of the Act authorizes the EPA Administrator to require testing, monitoring, recordkeeping, and reporting of information in order to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

The Part 60 General Provisions – 40 C.F.R. Part 60, Subpart A

20. On December 23, 1971, pursuant to CAA Sections 111 and 114, EPA promulgated 40 C.F.R. 60 Subpart A (Part 60 General Provisions). 36 *Fed. Reg.* 24877 (Dec. 23, 1971).

21. Under 40 C.F.R. § 60.1(a), Part 60 General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

22. 40 C.F.R. § 60.2 sets forth the definitions that apply to 40 C.F.R. Part 60.

Specifically:

- a. An “owner or operator” is any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.
- b. An “affected facility” is, with reference to a stationary source, any apparatus to which a standard is applicable.

The Landfill NSPS

23. On March 12, 1996, pursuant to Sections 111 and 114, EPA promulgated 40 C.F.R. Part 60, Subpart WWW (Subpart WWW), the Landfill NSPS. 61 *Fed. Reg.* 9919 (Mar. 12, 1996).

24. Under 40 C.F.R. § 60.750(a), Subpart WWW applies to each MSW Landfill that commenced construction, reconstruction or modification on or after May 30, 1991.

25. 40 C.F.R. § 60.751 sets forth the definitions for Subpart WWW.

Specifically:

- a. “MSWlandfill” is the entire disposal facility in a contiguous geographical space where household waste is placed in or on land. *See also* 40 C.F.R. § 63.1990.

- b. "Design capacity" is the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit.

26. Under 40 C.F.R. § 60.752(b)(2), each owner or operator of an MSW Landfill having a design capacity equal to or greater than 2.5 million Megagrams and 2.5 million cubic meters and a calculated NMOC emission rate equal to or greater than 50 Megagrams per year is subject to standards for air emissions, including requirements for, among other things, installation of systems for monitoring, collection and control of air emissions.

27. Under 40 C.F.R. § 60.753(d), landfills subject to § 60.752(b)(2)(ii) must operate the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct testing of the landfill surface around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicated elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover.

The Leak Detection and Repair (LDAR) Requirements

28. Under 40 C.F.R. § 60.755(c), the owner or operator of an affected facility must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of 40 C.F.R § 60.755(d).

29. Under 40 C.F.R. § 60.755(d), each owner or operator seeking to comply with 40 C.F.R. § 60.755(c) must comply with instrumentation specifications and procedures provided in 40

C.F.R. §§ 60.755(d) (1)-(4) for surface emission monitoring and 40 C.F.R. Part 60 Appendix A-7 Method 21 Leak Detection and Repair (LDAR).

The Part 63 General Provisions – 40 C.F.R. Part 63, Subpart A

30. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, the EPA promulgated 40 C.F.R. Part 63, Subpart A (Part 63 General Provisions). The Part 63 General Provisions set forth general definitions, procedures and requirements that apply to every Part 63 NESHAP, unless the individual NESHAP in question provides differently. 59 *Fed. Reg.* 12430 (Mar. 16, 1994).

31. The provisions of 40 C.F.R. Part 63 apply to the owner or operator of any stationary source that (i) emits or has the potential to emit any HAP listed in or pursuant to Section 112(b) of the Act, and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 C.F.R. Part 63.1(b).

32. If a relevant standard has been established under 40 C.F.R. Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 General Provisions, as provided in 40 C.F.R. §§ 63.1 (a)(4) and (c).

33. 40 C.F.R. § 63.2 sets out the definitions used in Part 63. Specifically:

- a. An “affected source” is a stationary source, a group of stationary sources, or a portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.
- b. An “existing source” is any affected source that is not a “new source.”
- c. A “new source” is any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under Part 63 establishing an emission standard applicable to such source.
- d. A “major source” is any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any

combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

- e. An “owner or operator” is any person who owns, leases, operates, controls, or supervises a stationary source.

34. After the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner or operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63. 40 C.F.R. § 63.6(c).

The Landfill MACT

35. On January 16, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930 – 63.1990, the NESHAP for municipal solid waste landfills. 68 *Fed. Reg.* 2238 (Jan. 16, 2003).

36. 40 C.F.R. Part 63 Subpart AAAA establishes national emission standards for HAPs for existing and new MSW landfills.

37. Under 40 C.F.R. § 63.1935, Subpart AAAA applies to MSW landfills that are major sources as defined in 40 CFR § 63.2 of Subpart A.

38. Under 40 C.F.R. § 63.1980(a), an owner or operator of an affected source must submit the annual reports described in 40 C.F.R. § 60.757(f) every six months.

Landfills MACT Leak Detection and Repair Provisions:

39. Under 40 C.F.R. § 63.1955(a)(1), an owner or operator of an affected source must comply with provisions of 40 C.F.R. Part 60 Subpart WWW.

CAA Title V Operating Permit Program and the New Jersey Administrative Code

CAA Title V and New Jersey's Title V Operating Permit Program

40. Title V of the Act consists of Sections 501 to 507, 42 U.S.C. §§ 7661-7661f.

41. In general, Title V of the Act requires each “major source” to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of state and federal programs to issue such permits.

42. Under Section 501 of the Act, a “major source,” as used in Title V of the Act, is any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or part D of subchapter I of the Act.

43. Section 502(a) of the Act makes unlawful the violation of any requirement of a Title V operating permit and unlawful operation a major source except in compliance with such a permit.

44. On June 17, 1996, EPA granted interim approval, (61 *Fed. Reg.* 24715, May 16, 1996) and on November 30, 2001, EPA granted full approval of the New Jersey State Title V operating permit program. 66 *Fed. Reg.* 63168 (Dec. 5, 2001).

45. The New Jersey Title V operating permit program is set forth at N.J.A.C. Chapter 27 of Title 7.

46. Section 502(a) of the Act, 42 U.S.C. § 7661(a), 40 C.F.R. § 70.6(6)(i), and Title 7 of the New Jersey State Title V operating permit program, make it unlawful for any person to operate a major source except in compliance with a Title V operating permit.

The Facility's Title V Operating Permit Requirements

47. On May 20, 2005, the NJDEP issued Respondent an initial Title V operating permit, BOP 110001, under PID # 70506 (2005 Initial Permit) for the Facility.

48. On November 29, 2011, the NJDEP issued Respondent a Title V operating permit Minor Modification (2011 Minor Modification Permit) for the Facility, which contains the provision named “Subject Item ‘GR1 NSPS A, NSPS WWW, MACT A, and MACT AAAA’

Ref. # 23" (Minor Modification Ref #23) requiring compliance with 40 C.F.R. Part 60 Subpart WWW.

Findings of Fact

49. Respondent owns and operates the Facility.

50. At all times relevant to this Order, Respondent operated the Facility pursuant to a Title V operating permit issued by the state of New Jersey, BOP 110001, under PID # 70506.

51. On December 17 and 18, 2013, EPA personnel (EPA Inspectors) performed a duly authorized EPA inspection of the Facility (EPA Inspection) in order to determine, among other things, whether Respondent was in compliance with the LDAR requirements of the Landfill NSPS and Landfill MACT as set forth at 40 C.F.R. §§ 60.755 and 63.1930, respectively.

52. During the Inspection, EPA Inspectors, among other things, reviewed the Facility's records, including records pertaining to the Facility's design capacity, surface monitoring and procedures for conducting LDAR.

53. During the Inspection, EPA Inspectors discussed the Facility's operations with persons who identified themselves as either employees of Respondent (Respondent Staff) or contractors (Contractor Staff or SCS) who were engaged by Respondent to conduct surface monitoring for the Facility.

54. During the Inspection on December 17, 2013, Respondent's Director of Solid Waste Gary Conover (Conover) informed the EPA Inspectors that the Facility became subject to 40 C.F.R. Part 60 Subpart WWW on April 30, 2011.

55. During the Inspection on December 17, 2013, Conover informed the EPA Inspectors that Respondent contracts SCS Field Services (SCS) to perform the required surface monitoring at the Facility.

56. During the Inspection on December 17, 2013, Conover informed the EPA Inspectors that the Facility uses a leak definition of 500 parts per million (ppm).

57. According to the Surface Emission Monitoring reports for the quarter immediately preceding (dated 11/01//2013) and following (12/27/2013) the Inspection, the calibration gas concentration was certified to be 500 ppm.

58. During the Inspection on December 18, 2013, SCS staff member Michael Marks (Marks) informed the EPA Inspectors that he was responsible for conducting surface monitoring for the Facility.

59. During the Inspection on December 18, 2013, Marks informed the EPA Inspectors that the Facility uses a Foxboro TVA1000B device with Serial # 41400684 (Foxboro Device) to perform surface monitoring at the Facility.

60. During the Inspection on December 18, 2013, the EPA Inspectors observed that Marks did not connect the probe and probe assembly to the Foxboro Device during warm-up period.

61. During the Inspection on December 18, 2013, the EPA Inspectors observed that Marks placed the Foxboro Device on “run” mode during the 20-minute warm-up period.

62. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Marks’ Foxboro Device read 4,105 instrument counts when the 500 ppm calibration gas was applied to the probe.

63. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Marks used a tubing that fit loosely on the regulator and probe of the Foxboro Device.

64. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Marks’ tubing allowed air infiltration into the Foxboro Device, which caused the low instrument count reading.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

General Conclusions

65. Respondent is a “person” within the meaning of Section 302(e) of the Act.
66. Respondent is an “owner or operator” of the Facility, as that term is used in CAA Sections 111(a)(5) and 112(a)(9) and 40 C.F.R. §§ 60.2 and 63.2.
67. The Facility is a “stationary source,” as that term is used CAA Sections 111(a)(3) 112(a)(3) of the Act and 40 C.F.R. § 63.2.
68. The Facility is an “affected facility,” as that term is used 40 C.F.R. § 60.2.
69. The Facility is a “MSW landfill,” as that term is used 40 C.F.R. § 60.751.
70. The Facility is subject to a Title V Operating Permit that was issued to ACUA pursuant to N.J.A.C. § 7:27-22, 40 C.F.R. Part 70, and Title V of the Act, 42 U.S.C. § 7661.
71. At the time of the violations alleged in this Consent Agreement, Respondent was subject the Landfill NSPS codified at 40 C.F.R. Part 60 Subpart WWW.
72. At the time of the violations alleged in this Consent Agreement, Respondent was subject to the Landfill MACT codified at 40 C.F.R. Part 63 Subpart AAAA.

Specific Violations

73. The Complaint alleged that Respondent violated 40 C.F.R. § 60.755(d)(1) and EPA Method 21 by failing to meet the instrument specification set forth in Section 6.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A.
74. The Complaint alleged that Respondent violated 40 C.F.R. § 60.755(d)(2) and EPA Method 21 by failing to meet the requirement of using a calibration gas diluted to a nominal concentration of 500 parts per million in air.

75. The Complaint alleged that Respondent violated 40 C.F.R. § 60.755(d)(3) and EPA Method 21 by failing to follow the procedures for instrument performance evaluation as set forth in Section 8.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A.

76. The Complaint alleged that Respondent violated 40 C.F.R. § 60.755(d)(4) and EPA Method 21 by failing to follow the procedure for instrument calibration as set forth in Section 8.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A .

77. The Complaint alleged that Respondent violated 40 C.F.R. § 63.1955(a) by failing to comply with 40 C.F.R. Part 60 Subpart WWW.

78. The Complaint alleged that Respondent violated CAA Section 502(a) by failing to comply with the Landfill NSPS and Landfill MACT.

Settlement

79. Pursuant to Section 113(d) of the Act, Respondent shall pay a civil monetary penalty of \$10,000.00 and perform a supplemental environmental project (SEP) as described in paragraphs 83 and 84 below. Respondent shall pay the entire \$10,000.00 by corporate, cashier's, or certified check or by Electronic Fund Transfer (EFT), within thirty (30) days from the date of issuance of the attached Final Order (Due Date). If payment is made by check, Respondent shall: (1) clearly type or write the docket number (CAA-02- 2015-1212) on the check to ensure proper payment; (2) make the check payable to the order of "Treasurer, United States of America;" and (3) send the check to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: *IN THE MATTER OF ATLANTIC COUNTY UTILITIES AUTHORITY* and shall bear thereon the Docket Number CAA-

02-2015-1212. If Respondent chooses to make the payment by EFT, Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 100045
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- 4) Federal Reserve Bank of New York ABA routing number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read D 68010727
Environmental Protection Agency
- 6) Name of Respondent: Atlantic County Utilities Authority
- 7) Case Number: CAA-02-2015-1212

Payment shall be received (if made by check) or effected (if implemented by EFT) on or before the Due Date.

Whether the payment is made by check or by EFT, Respondent shall send notice and proof of payment to the following:

Robert Buettner, Chief, Air Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007

80. If Respondent fails to make full and complete payment of the \$10,000.00 penalty that is required by this CAFO, this case may be referred by EPA to the United States Department of Justice and/or the United States Department of the Treasury for appropriate action. In such an action, pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5) and 31 U.S.C. § 3717, Respondent shall pay the following amounts:

- a. Interest. If Respondent fails to make payment, or make partial payment, any unpaid portion of the assessed penalty shall bear interest at the rate established pursuant to 31 U.S.C. § 3717 and 26 U.S.C. § 6621 from the payment Due Date.
- b. Handling Charges. Pursuant to 31 U.S.C. § 3717(e)(1), a monthly handling charge of fifteen dollars (\$15.00) shall be paid if any portion of the assessed penalty is more than thirty (30) days past the payment Due Date.
- c. Attorney Fees, Collection Costs, Nonpayment of Penalty. If Respondent fails to pay the amount of an assessed penalty on time, pursuant to 42 U.S.C. § 7413(d)(5), in addition to such assessed penalty and interest and handling assessments, Respondent shall also pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such a failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

81. Respondent has read this Consent Agreement, understands its terms, consents to the issuance of the Final Order accompanying this Consent Agreement, consents to making full payment of the civil penalty in accordance with the terms and conditions set forth above, consents to the stipulated penalties set forth below, and consents to implement and complete the SEP in accordance with the terms of this Consent Agreement.

82. This CAFO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal and state rules, laws and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste, nor is it intended or is it to be construed as a ruling on, or determination of, any issues related to any federal, state, or local permit.

83. Respondent agrees to, and shall in accordance with the terms and conditions of this CAFO perform the SEP described herein. (The obligations that apply to "Respondent" shall

extend to any contractors Respondent retains to perform any aspect of the SEP). The SEP shall consist of the following:

- a. Respondent shall install six electric vehicle (EV) charging stations in Atlantic County. Two of the charging stations shall be installed at the Atlantic County Public Library Mays Landing Branch, two shall be installed at the Atlantic Cape Community College Mays Landing campus, and two shall be installed at Stockton State University in Galloway Township, NJ, as described in Appendix I, herein attached. Each charging station shall have a dual port charger, thus allowing two vehicles to be charged simultaneously at each station. The estimated cost per dual port charger is \$5,000, totaling \$30,000 for all of the EV charging station infrastructure;
- b. Respondent shall pay any and all costs associated with the proper and safe operation and maintenance of the charging stations;
- c. Respondent shall not receive any direct and/or indirect payment and/or credit (in money or in kind) for the costs associated with the purchase, installation, operation or maintenance of the EV charging stations; and
- d. Respondent shall begin the SEP within ninety (90) days after the Effective Date of this CAFO and shall complete the installation of the six charging stations within 120 days after the Effective Date of this CAFO.

84. Respondent has indicated to EPA that the cost of the installation of six EV charging stations will total \$30,000. Therefore, the total expenditure for the SEP shall be not less than \$30,000.00 (with any savings enjoyed by the Respondent as a result of its implementation of the SEP not included in this total).

Schedule and Reports

85. No later than one hundred and twenty (120) days after the effective date of this CAFO, Respondent shall submit a SEP status report to EPA for approval, to the Region 2 EPA addressees set forth in Paragraph 79 immediately above. Such status report shall include the following:

- a. all itemized expenditures made in connection with the SEP, to the date of the report; and

- b. itemized total costs incurred (e.g., EV charging station pedestals, EV pedestal installation parts, and labor costs) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of services for which payment was made.

86. The SEP will be considered completed after Respondent has successfully implemented the SEP and upon EPA's acceptance of the SEP Completion Report (as discussed in Paragraph 87, below).

87. Respondent shall submit a SEP Completion Report within 30 days after it has implemented the SEP. Unless otherwise agreed, Respondent shall provide the following in the SEP Completion Report along with any supporting documentation:

- a. a detailed description of the SEP as implemented;
- b. proof (e.g., contract, equipment invoices, photos, service records) that the EV charging stations were placed into and continue to be in service for at least two years following the installation of the EV charging stations;
- c. itemized total costs incurred (e.g. labor and/or other costs minus any cost savings) which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made (if the itemization and documentation have been previously provided with Status Reports, it will suffice to refer to the prior submittal);
- d. identify any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discuss how any such issues or problems were addressed, and the solutions thereto; and
- e. certification to the extent possible that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order.

88. Following receipt of the Completion SEP Report required in the previous paragraph, EPA will notify Respondent in writing that it:

- a. accepts the Completion SEP Report;
- b. rejects the Completion Report, with identification of any questions it has and/or deficiencies in the report, and EPA will grant Respondent an additional short

period of time, which shall be reasonable under the then-existing circumstances (fifteen (15) days at a minimum), in which to answer EPA's inquiries and/or, to correct any deficiencies in the Completion Report, and to resubmit an amended report if required; or

- c. rejects the SEP Completion Report and seeks stipulated penalties in accordance with Paragraph 103, below.

89. EPA has the sole authority to determine whether costs expended are creditable to the SEP as herein required; (the term "deficiencies," as used in the previous paragraph, may include a determination by EPA that certain expenditures are not creditable to the SEP.)

90. Respondent agrees that failure to submit any report required by this Consent Agreement in a timely manner shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties for such violation pursuant to the provisions set forth below, unless an extension has been granted as set forth in Paragraph 103, below.

91. If EPA elects to exercise option 88(c) above, EPA shall permit Respondent the opportunity to object in writing to the rejection notification given pursuant to that paragraph within 10 business days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 103 below.

92. Delays:

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement, Respondent shall notify EPA in writing within 14 business days of the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures

to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular event involved and may constitute a waiver of Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident.

- b. If the parties agree that the delay or anticipated delay in the completion of the SEP under this Consent Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances.
- c. In the event that EPA does not agree that a delay in completing the SEP in compliance with the requirements of this Consent Agreement has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of the SEP required under this Consent Agreement shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under subparagraph b. of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

93. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of its SEP, and documentation supporting information in reports submitted to EPA pursuant to this CAFO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within ten (10) business days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. The provisions of this paragraph shall remain in effect for five (5) years from the Effective Date of this CAFO.

94. All documents submitted to EPA shall be in a form mutually agreeable to both parties (e.g. by electronic mail in Word or pdf format). In all documents or reports, including, without limitation, any SEP Status Reports and SEP Completion Report, submitted to EPA pursuant to this CAFO, Respondent shall, by its officials, officers, directors or agents, sign and

certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.”

Certifications

95. If in the future, EPA believes that any of the information certified to pursuant to Paragraph 94, above, and Paragraphs 98-100, below, was inaccurate, EPA will so advise the Respondent of its belief and the basis for it, and will afford Respondent an opportunity to submit comments to EPA. If following such opportunity, EPA determines that the certification in Paragraph 94 was not accurate, Respondent shall pay a stipulated penalty in the amount of \$10,000 for each material inaccuracy, and if EPA determines that any of the certifications in Paragraphs 98-100 were not accurate, Respondent shall pay a stipulated penalty in the amount of \$40,000. Such payment(s) shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.

96. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent has made any material misrepresentations or has provided materially false information in any document submitted pursuant to this Consent Agreement.

97. The SEP to be implemented by Respondent has been accepted by Complainant solely for purposes of settlement of this administrative proceeding. Nothing in this document is

intended or shall be construed to be a ruling on or determination of any issue related to a federal or state permit.

98. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, it is not required to implement or complete the aforementioned SEP pursuant to any federal, state or local law, regulation or other requirement; that with the exception of this Consent Agreement, Respondent is not required to implement or complete the SEP as set forth herein by any agreement, grant, or as injunctive relief in this or any other case; and that Respondent had not commenced and had not planned before the December 17-18, 2013 Inspection, to perform any of the work that is part of this SEP.

99. Respondent further certifies that it has not received and is not presently negotiating to receive, credit in any other enforcement action for the actions that constitute the SEP, and that Respondent in good faith believes that the SEP is in accordance with “Environmental Protection Agency Supplemental Environmental Projects Policy 2015 Update” (March 10, 2015). Respondent shall not use or expend any money received from the federal government, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEP.

100. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP described in Paragraph 83. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term “open federal financial assistance

transaction” refers to a grant, cooperative agreement, loan, federally- guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

101. EPA may grant an extension of the date(s) of performance or such other dates as are established in this CAFO with regard to the SEP if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and submitted to EPA no later than fourteen (14) calendar days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.

102. The determination of whether the SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CAFO and whether costs are creditable to the SEP shall be in the sole discretion of EPA.

Stipulated Penalties

103. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in Paragraph 83 above, and these provisions are not otherwise modified or extended by agreement between the EPA and the Respondent, to the extent that the actual allowable expenditures for the SEP do not equal or exceed the required minimum expenditure for the SEP described in Paragraph 83 above, Respondent shall be liable for a stipulated penalty. If EPA determines that Respondent has spent less than 100-percent of the amount of money required to be spent for the SEP on expenditures that EPA determines are creditable toward the SEP, Respondent shall pay a stipulated penalty equal to one hundred and twenty-five (125) percent of the difference between the required

amount to be spent (\$30,000) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP.

104. Stipulated penalties shall accrue for failure timely to submit any SEP Status Reports or SEP Completion Report.

105. For failure timely to submit any SEP Status Reports or SEP Completion Report, Respondent shall pay a stipulated penalty in the amount of \$100 per day for the first ten days, \$150 per day for days 11-30, and \$500 per day after 30 days unless EPA agrees that such delays fall within the provisions of Paragraph 92. Such penalties shall begin to accrue on the day after the SEP Status Reports or SEP Completion Report is due and shall continue to accrue until the report is submitted.

106. Unless Respondent writes EPA pursuant to Paragraph 107 below, Respondent shall pay stipulated penalties within 30 days of receipt of a written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 79, above. Interest and late charges shall be assessed as stated in Paragraph 80, above.

107. After receipt of a demand from EPA for stipulated penalties pursuant to the preceding paragraph, Respondent shall have twenty (20) calendar days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).

108. The Director of the Division of Enforcement and Compliance Assistance of EPA Region 2 may, in his/her sole discretion, reduce or eliminate any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action by EPA or for good cause as independently determined by the Complainant. If, after review of Respondent's submission pursuant to the preceding paragraph, Complainant determines that

Respondent has failed to comply with the provisions of this Consent Agreement, and Complainant does not, in her sole discretion, eliminate the stipulated penalties demanded by EPA, Complainant will notify Respondent, in writing, that either the full stipulated penalty or a reduced stipulated penalty must be paid by Respondent. Respondent shall pay the stipulated penalty amount indicated in EPA's notice within twenty (20) calendar days of its receipt of such written notice from EPA.

109. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for appropriate action.

110. Respondent agrees that EPA may inspect the sites hosting the electrical vehicle charging stations at any time in order to confirm that the SEP has been implemented and is being conducted properly and in conformity with the representations made herein. The provisions of this paragraph shall remain in effect from the Effective Date of this CAFO until one (1) year after satisfactory completion of the SEP (including submittal and EPA acceptance of the SEP Completion Report).

111. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

112. Any public statement, oral or written, in print, film or other media, made by the Respondent, or by any officer, employee or agent of the Respondent, that makes reference to the SEP under this CAFO shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action initiated by the U.S Environmental Protection Agency against the Atlantic County Utilities Authority under the Clean Air Act."

113. Nothing in this CAFO shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of

Respondent's violation(s) of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation(s) of any applicable provision of law, nor shall it be construed as limiting the defenses that Respondent may raise to any such alleged violation(s).

114. The parties enter into this Consent Agreement voluntarily and knowingly, in full settlement of Respondent's alleged violations identified herein.

115. Nothing in this Consent Agreement and attached Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Clean Air Act and other environmental laws and it is the responsibility of the Respondent to comply with such laws and regulations.

116. This Consent Agreement and attached Final Order shall not affect the right of the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

117. This Consent Agreement, attached Final Order, and any provision herein are not intended to be an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CAFO or any of its terms and conditions.

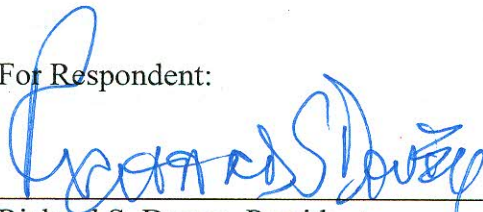
118. Respondent explicitly waives its right to request a hearing and/or contest allegations in this Consent Agreement and explicitly waives its right to appeal the attached Final Order.

119. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with, or to be served with and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the attached Final Order.

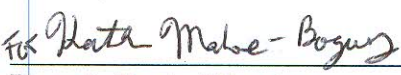
120. Each party to this Consent Agreement shall bear its own costs and attorneys' fees in this action resolved by this Consent Agreement and attached Final Order.

121. The Consent Agreement and attached Final Order shall be binding on Respondent and its successors and assignees.

122. Each of the undersigned representative(s) to this Consent Agreement certifies that he or she is duly authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Agreement and bind that party to it.

For Respondent:

Richard S. Dovey, President
Atlantic County Utilities Authority

Date 7/30/16

For Complainant:

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
United States Environmental
Protection Agency, Region 2

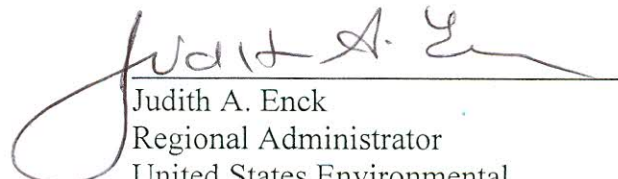
Date 8/3/2016

*In the Matter of Atlantic County Utilities Authority
CAA-02-2015-1212*

FINAL ORDER

The Regional Administrator of EPA, Region 2, concurs in the foregoing Consent Agreement, in the matter of Atlantic County Utilities Authority, CAA-02-2015-1212. The Consent Agreement, entered into by the parties, is hereby approved and issued, as a Final Order, effective immediately.

DATE: 8/4/16


Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency, Region 2

CERTIFICATE OF SERVICE

I certify that on August 16, 2016, I caused the Consent Agreement and Final Order in the matter of Atlantic County Utilities Authority, CAA-02-2015-1212 to be served on the following people in the manner listed below:

One Original and One Copy by hand delivery to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

One Copy by Hand delivery to:

Anhthu Hoang
Assistant Regional Counsel
U.S. Environmental Protection Agency
Air Branch, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

One copy by Overnight Delivery to:

Richard S. Dovey
President
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 08234

Gary Conover
Solid Waste Director
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 07848

Richelle Wormley
Director of Air and Hazardous Waste
New Jersey Department of Environmental Protection
PO Box 422
401 East Street
Trenton, NJ 08625-0422

Dated: August 16, 2016



Yolanda Majette
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2