

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY -7 PM 12:42
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
Southeast Landfill, L.L.C.,) Docket No. CWA-07-2011-0063
)
) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))
_____)

AUTHORITY

The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the U.S. Environmental Protection Agency to the Regional Administrator, Region 7, and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

Statutory and Regulatory Framework

1. 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 permit issued pursuant to that Section.
2. 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.
3. 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 storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water 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.

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

5. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

6. Storm water discharge associated with industrial activities includes stormwater discharges from waste material or refuse sites, as defined by 40 CFR §122.26(b)(14).

7. The Missouri Department of Natural Resources 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. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

FINDINGS OF FACT

8. Southeast Landfill, LLC (Landfill or Respondent) is an inactive landfill that is located at 8301 Indiana Avenue, Kansas City, Missouri, and has received waste material and/or refuse.

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

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

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

12. 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.

13. On March 22, 2002, MDNR removed Outfalls 005 and 006 from Respondent's NPDES permit and did not include those outfalls in Respondent's current NPDES permit.

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

FINDINGS OF VIOLATION

15. Respondent's NPDES permit requires Respondent to handle leachate from the facility in a manner that prevents the discharge of pollutants unless the discharge is a permitted outfall.

16. During the EPA inspection, the EPA personnel observed conditions that demonstrated that the facility has, and will, discharge leachate from areas not allowed by the NPDES permit.

17. Respondent's failure to handle leachate in a manner that prevents discharges except where allowed is a violation of its NPDES permit and § 402 of the CWA.

18. Respondent's NPDES permit establishes effluent limitations for Total Suspended Solids, Chemical Oxygen Demand, Chloride and Sulfate, Settleable Solids, Iron Total Recoverable, Zinc Total Recoverable, Copper Total Recoverable, Arsenic Total Recoverable, Ammonia, and pH for each of the six outfalls at the Landfill.

19. A review of Respondent's records during the EPA inspection revealed that Respondent violated its NPDES permit effluent limits 75 times between November 2006 and June 2010, as described in Attachment 1 to this Order.

20. 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.

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

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

23. 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.

24. 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 effluent violation occurred, and sample results shall be submitted in writing to MDNR.

25. 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.

26. 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.

27. Respondent's NPDES permit requires Respondent to conduct bi-monthly site inspections and to write a brief written report regarding observations and evaluation of best management practice effectiveness. The inspection reports are to be kept on site with Respondent's Storm Water Pollution Prevention Plan and maintained for a period of five years.

28. A review of Respondent's records during the EPA inspection revealed that, since November 2008, Respondent failed to conduct bi-monthly site inspections.

29. Respondent's failure to conduct bi-monthly site inspections are failures of Respondent's NPDES permit and, therefore, violations of § 402 of the CWA.

30. 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.

31. During the EPA inspection, the EPA personnel observed the existence of Outfalls 005 and 006, neither of which are listed on Respondent's NPDES permit. EPA observed that both outfalls were able to capture stormwater from the landfill and discharge it to the Blue River. Respondent has never notified MDNR that Outfalls 005 and 006 will discharge into the Blue River and are, thus, new and/or different discharges than what is authorized in Respondent's NPDES permit.

32. 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.

ORDERED PROVISIONS

In consideration of the above FINDINGS, and pursuant to the provisions of Section 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), Respondent is hereby ORDERED as follows:

33. Immediately upon receipt of this Order, Respondent shall comply with its NPDES permit and the CWA.

34. Within thirty 30 days of receipt of this Order, Respondent shall submit a written report to the EPA describing the specific actions taken to correct the violations cited herein, and

an explanation of why such actions are anticipated to be sufficient to prevent future recurrence of the cited violations.

35. If Respondent is unable to take the actions necessary to prevent recurrence of the effluent violations cited herein within 30 days, it shall provide to the EPA a detailed Work Plan describing Respondent's plans to eliminate the underlying cause, and prevent recurrence, of those effluent violations. The Work Plan shall be submitted within 60 days of receipt of this Order.

a. If the EPA approves the Work Plan, it shall be implemented according to the schedule for implementation in the approved work plan.

b. If the EPA does not approve the Work Plan, Respondents shall address the comments and resubmit the work plan for review within 30 days of receipt of the EPA's disapproval.

c. Upon resubmission, the EPA, in its sole discretion, may either approve the Work Plan, or if the EPA determines that the Work Plan does not adequately address the comments provided by the EPA, the EPA may unilaterally modify the work plan and will provide Respondents with a copy of the work plan as modified. Respondents shall implement the modified Work Plan according to the schedule contained therein.

d. Once approved by the EPA, the Work Plan shall be incorporated by reference and fully enforceable under the terms of this Order.

36. Respondent shall submit to the EPA a copy of each quarterly monitoring report, violation notice, and other monitoring or sampling document that is required to be submitted to MDNR. Copies of reports, notices, and other required documents shall be submitted to the EPA until termination of this Order as set forth in paragraph 46.

37. The submission of documents by Respondent shall include the following written statement, followed by signature of a duly authorized representative of Respondent:

I certify under penalty of law that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

38. All documents to be submitted to the EPA under this Order shall be submitted by mail to:

Mr. Michael Boeglin
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

39. In the event Respondent fails to comply with the terms of the Order, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, the EPA may seek judicial enforcement of the terms of the Order against Respondent and/or seek additional penalties against Respondent for such noncompliance with the terms of the Order.

General Provisions

Effect of Compliance with the terms of this Order

40. This Order shall not constitute a permit under the CWA. Compliance with the terms of this Order shall not relieve Respondent of its responsibility to obtain any required local, state, and/or federal permits.

41. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Section 309 of the CWA, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by the EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

42. Nothing in this Order shall limit the EPA's right to obtain access to, and/or to inspect property operated by Respondent and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

43. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

44. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors,

consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Effective Date

45. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

Termination

46. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

In the Matter of Southeast Landfill, L.L.C.
Docket No. CWA-07-2011-0063


KAREN A. FLOURNOY

Acting Director
Water, Wetlands and Pesticides Division

6/3/2011
DATE



CHRIS MUEHLBERGER
Assistant Regional Counsel
Office of Regional Counsel

6.7.11
DATE

CERTIFICATE OF SERVICE

I certify that on the date noted below I mailed the foregoing Findings of Violation and Order for Compliance by certified mail, return receipt requested, to:

Mr. John McConnell, General Manager
Southeast Landfill, LLC
8301 Indiana Avenue
Kansas City, Missouri 64132

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

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



6.7.11
Date

**Attachment 1 – In the Matter of Southeast Landfill, L.L.C. CWA-07-2011-0063
Respondent's Violations of NPDES permit effluent limits**

- * TSS = Total Suspended Solids
- * COD = Chemical Oxygen Demand
- * TR = Total Recoverable

Date and Outfall #	Constituent (mg/L)	Measured (mg/L)	Daily max limit (mg/L)	Monthly avg limit (mg/L)
Nov 2006 002	Chlorides & Sulfates	1120	1000	--
May 2007 007	COD	250	120	90
September 2007 007	COD	170	120	90
007	TSS	2,500	80	60
007	SS	7	1.5	1.0
008	COD	450	120	90
008	TSS	11,000	80	60
008	SS	22	1.5	1.0
March 2008 002	TSS	910	80	60
003	TSS	860	80	60
003	SS	1.3		1.0
004	TSS	110	80	60
007	TSS	450	80	60
008	TSS	350	80	60
009	TSS	90	80	60
September 2008 002	TSS	89	80	60
004	TSS	180	80	60
Instream	pH	5.19	6.0	--
November 2008 002	TSS	350	80	60
008	TSS	65		60
February 2009 003	TSS	350	80	60
008	TSS	220	80	60

**Attachment 1 – In the Matter of Southeast Landfill, L.L.C. CWA-07-2011-0063
Respondent's Violations of NPDES permit effluent limits**

<u>Date and Outfall #</u>	<u>Constituent (mg/L)</u>	<u>Measured (mg/L)</u>	<u>Daily max limit (mg/L)</u>	<u>Monthly avg limit (mg/L)</u>
June 2009				
002	TSS	3,300	80	50
002	SS	1.4		1.0
002	Iron TR	70	1.6	0.8
002	Zinc TR	390	209.3	104.3
002	Copper TR	71	25.8	12.9
002	Arsenic TR	32		16.3
003	TSS	9,000	80	50
003	SS	2.3	1.5	1.0
003	COD	120	90	60
003	Iron TR	110	1.6	0.8
003	Zinc TR	580	209.3	104.3
003	Copper TR	140	25.8	12.9
003	Arsenic TR	36	32.7	16.3
004	TSS	150	80	50
004	Iron TR	6.4	1.6	0.8
007	TSS	280	80	50
007	COD	78		60
007	Ammonia	5.8		4.6
007	Iron TR	14	1.6	0.8
007	Copper TR	15		12.9
008	TSS	460	80	50
008	Iron TR	12	1.6	0.8
008	Zinc TR	140		104.3
008	Copper TR	19		12.9
009	TSS	5,200	80	50
009	COD	120	90	60
009	Iron TR	120	1.6	0.8
009	Zinc TR	440	209.3	104.3
009	Copper TR	110	25.8	12.9
009	Arsenic TR	44	32.7	16.3

**Attachment 1 – In the Matter of Southeast Landfill, L.L.C. CWA-07-2011-0063
Respondent's Violations of NPDES permit effluent limits**

Date and Outfall #	Constituent (mg/L)	Measured (mg/L)	Daily max limit (mg/L)	Monthly ave limit (mg/L)
August 2009				
002	TSS	250	80	50
002	Iron TR	6.5	1.6	0.8
003	TSS	65		50
003	Iron TR	1.8	1.6	0.8
004	TSS	100	80	50
004	COD	63		60
004	Iron TR	2.4	1.6	0.8
007	Iron TR	0.9		0.8
008	TSS	230	80	50
008	Iron TR	5.5	1.6	0.8
009	TSS	78	80	50
009	Iron TR	3.5	1.6	0.8
October 2009				
002	Iron TR	1.4		0.8
004	Iron TR	1.0		0.8
007	Iron TR	2.1	1.6	0.8
008	TSS	160	80	50
008	COD	73		60
008	Iron TR	4.2	1.6	0.8
009	COD	73		60
009	Iron TR	4.7	1.6	0.8
June 2010				
007	Iron TR	0.9		0.8
008	Iron TR	1.1		0.8
008	Zinc TR	260ug/L	209.3ug/L	104.3ug/L