

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

IN THE MATTER OF:

City of Wichita Brooks Landfill  
4100 N. West Street  
Wichita, Kansas

ADMINISTRATIVE COMPLIANCE  
ORDER ON CONSENT  
Docket No: CAA-07-2016-0032

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

This Administrative Compliance Order on Consent (“Order” or “AOC”) is entered into by the United States Environmental Protection Agency (“EPA”) and the City of Wichita Brooks Landfill (“Brooks Landfill” or “Respondent”). This Order is issued under the authority vested in the Administrator of the EPA by Sections 113(a) and 114(a) of the Clean Air Act (“the Act”), 42 U.S.C. § 7413(a) and § 7414(a), as amended.

On the EPA’s behalf, Becky Weber, Director of the Air and Waste Management Division, EPA Region 7, is delegated the authority to issue this Order under Section 113(a) of the Act.

City of Wichita Brooks Landfill is a “person” as defined in Section 302(e) of the Act, 42 U.S.C. 7602(e). EPA hereby issues an Order requiring Brooks Landfill to comply with the requirements set forth below. All activities specified below shall be initiated and completed within the maximum time periods for their completion as specified herein. The terms of this AOC shall not be modified except by a subsequent written agreement between the parties.

**I. STATUTORY AND REGULATORY FRAMEWORK**

1. 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.

2. 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.

3. 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.

4. 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.

5. The Respondent is subject to 40 C.F.R. Part 60, Subpart WWW because it owns or operates a municipal solid waste (MSW) landfill that commenced construction, reconstruction, or modification on or after May 30, 1991.

6. A “municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. An MSW landfill may be publicly or privately owned. 40 C.F.R. § 60.751.

7. Each owner or operator of a MSW landfill having a design capacity equal to or greater than 2.5 million mega grams and 2.5 million cubic meters is subject to part 70 or 71 permitting requirements and shall calculate a non-methane organic compound emission rate (NMOC) in accordance with 40 C.F.R. § 60.754. 40 C.F.R. § 60.752(b).

8. If the calculated NMOC is above 50 mega grams 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). The collection and control system shall be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment; collect gas from each area, cell or group of cells in the landfill in which the initial solid waste has been placed for a period of 5 years or more if active or 2 years or more if closed; collect gas at a sufficient extraction rate; and be designed to minimize off-site migration of subsurface gas. 40 C.F.R. § 60.752(b)(2)(ii)(A).

9. 40 C.F.R. § 60.753(d) states: “Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover.”

10. 40 C.F.R. § 60.755(c) states the following procedures shall be used for compliance with the surface methane operational standard as provided in 40 C.F.R. § 60.753(d):

(1) After installation of the collection system, the owner or operator shall 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 (or a site-specific established spacing) 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 this section; (2) The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells; (3) Surface emission monitoring shall be performed in accordance with section 4.3.1 of Method 21 of appendix A of this part, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

11. 40 C.F.R. § 60.755(c)(4) states that to comply with the surface methane operational standard as provided in 40 C.F.R. § 60.753(d), any reading of 500 parts per million (ppm) or more above background at any location shall be recorded as a monitored exceedance and the actions specified in 40 C.F.R. §§ 60.755(c)(4)(i) through (v) shall be taken. 40 C.F.R. §§ 60.755 (c)(4)(i) through (v) require marking the location of each monitored exceedance; making cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance and re-monitoring the location within 10 days of the exceedance; if re-monitoring of the location shows a second exceedance, taking additional corrective action and re-monitoring within 10 days of the second exceedance; monthly monitoring if the second re-monitoring event does not exceed 500 ppm or more above background and quarterly monitoring thereafter if there is no exceedance of the 500 ppm or more above background standard; a new well or collection device installation only if the location exceeds the 500 ppm or more above background standard three times within a quarterly period.

Method 21 (Determination of Volatile Organic Compound Leaks) states in pertinent part:

8.3.1 Type I - Leak Definition Based on Concentration. Place the probe inlet at the surface of the component interface where leakage

could occur. Move the probe along the interface periphery while observing the instrument readout. If an increased meter reading is observed, slowly sample the interface where leakage is indicated until the maximum meter reading is obtained. Leave the probe inlet at this maximum reading location for approximately two times the instrument response time. If the maximum observed meter reading is greater than the leak definition in the applicable regulation, record and report the results as specified in the regulation reporting requirements.

## II. FACTUAL BACKGROUND

12. At all times pertinent to this action, the City of Wichita was the “owner” or “operator” of Brooks Landfill, a MSW landfill, located at 4100 N. West Street, Wichita, Kansas within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

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

14. At all times pertinent to this action, Brooks Landfill owned or 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.

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

16. At all times pertinent to this action, the MSW landfill had a calculated NMOC emission rate of 50 mega grams per year or greater.

17. EPA conducted an inspection of the Brooks Landfill on June 4 and 5, 2015. At the time of this inspection, Brooks Landfill provided the EPA inspector with a verbal description of how surface emission monitoring was conducted. Brooks Landfill contracts with a private landfill consultant who conducts surface emission monitoring by continuously monitoring methane readings from a moving all-terrain vehicle following a monitoring path that traverses

the landfill in straight lines which are 30 meters apart. Brooks Landfill states that the individual conducting the monitoring only deviates from the monitoring path where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. During said inspection, the inspector discovered a surface emission at the base of a gas wellhead, which exceeded 50,000 ppm (5% methane). The leak was emitting a detectable gaseous odor. The last monthly inspection of the wellhead by Brooks Landfill occurred on May 19, 2015, approximately two weeks prior to the EPA inspection, and Brooks Landfill did not document any landfill gas odor nor document any distressed vegetation at that time.

### III. FINDINGS

18. EPA finds that Brooks Landfill failed to comply with the Landfill NSPS for not pausing for two times the instrument response time at 30 meter intervals along the monitoring path to obtain an accurate probe reading before moving on to the next sampling location. EPA also finds that Brooks Landfill failed to adequately monitor the surface area of the landfill, including areas where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation; cracks or seeps in the cover; and, protrusions from the landfill surface (including gas extraction wells), located off the monitoring path, as required by 40 C.F.R. § 60.753(d). Brooks Landfill failed to comply with 40 C.F.R. § 60.755(c) because surface emission monitoring was not conducted in accordance with the requirements of the Landfill NSPS, including 40 C.F.R. § 60.750 *et seq.* and EPA Method 21. EPA finds that for the reasons set forth above, Brooks Landfill failed to comply with Section 111 of the Act, 42. U.S.C. § 7411 and the Act's implementing regulations for a period beginning on June 4, 2015. EPA finds that Brooks Landfill will remain in non-compliance as set forth herein until it establishes continuous compliance with the above-cited requirements. Brooks Landfill neither admits nor denies these

findings.

#### IV. COMPLIANCE ORDER

19. Pursuant to Section 113(a)(3)(B) of the Act, 42 U.S.C. 7413(a)(3)(B), EPA hereby issues an order requiring Brooks Landfill to comply with the requirements set forth below:

20. Standard Operating Procedures to Improve Monitoring Activities:

a. As of the effective date of this Order, Brooks Landfill shall implement the Standard Operating Procedures as described in the City of Wichita's Surface Emission Monitoring Work Plan dated July 2016, and submitted to the EPA July 25, 2016. This Work Plan was approved by the EPA on August 17, 2016 for all subsequent surface emission monitoring events required by this Order and 40 C.F.R. Part 60, Subpart WWW, which includes the following:

- i. Improved Surface Emission Monitoring: (i) the affirmative steps (i.e., Standard Operating Procedures) to be followed in conducting quarterly surface emission monitoring, including but not limited to sampling at 30 meter intervals long enough to obtain an accurate probe reading, and adequately monitoring areas of concern, such as distressed vegetation, cracks, etc., located off the monitoring path; (ii) the steps to be followed, including time frames, when a surface methane emission greater than 500 ppm is detected; (iii) documentation of actions taken to correct surface methane

emissions; and (iv) documentation of surface methane emission compliance and/or expansion of gas collection system.

- ii. These Standard Operating Procedures are intended to ensure compliance with 40 C.F.R. § 60.755(c).

21. Documentation of Violation Correction and Continued Compliance. Brooks Landfill shall provide the following documentation for a period of 12 months following the effective date of this Order to demonstrate correction of the above violations and continued compliance with the monitoring requirements of 40 C.F.R. Part 60, Subpart WWW:

- a. Quarterly surface emission monitoring report. Each quarterly report shall be submitted to EPA within 30 days of surface emission monitoring. The quarterly report shall contain, at a minimum, the following:
  - i. date of surface emission monitoring activity;
  - ii. documentation of surface emission monitoring results, including location and concentration of all surface emissions exceeding 500 ppm methane above background;
  - iii. date and documentation of action taken in response to surface emission exceedances;
  - iv. date and documentation of all monitoring activities conducted to determine if surface emission exceedances have been adequately addressed;
  - v. date and documentation that compliance is achieved at all areas originally exceeding 500 ppm methane above background; and,

- vi. date and documentation of action taken (i.e. well field expansion) if surface emissions are not reduced to less than 500 ppm methane above background.

The submissions required by the above paragraphs and subparagraphs shall be sent to EPA in accordance with the V. Submittals section of this Order.

22. Review and Approval procedures: EPA will review any document that is specifically required to be submitted by Respondent according to the procedures outlined in this paragraph. EPA will review such document and may approve, approve with comments, or disapprove and provide comments. If the document is approved with comments, Respondent may proceed with any actions required by the document but must incorporate EPA's comments and resubmit the document within twenty (20) days of receipt of comments. If the document is disapproved, Respondent shall incorporate any comments within twenty (20) days of Respondent's receipt of such comments and resubmit the document. The EPA shall review the revised document and shall approve, approve with comments, or disapprove the document.

#### V. SUBMITTALS

23. After Respondent has implemented the Standard Operating Procedures as described in the City of Wichita's Surface Emission Monitoring Work Plan in accordance with paragraph 20, and Respondent has completed the quarterly reports in accordance with paragraph 21, Respondent shall submit a Certified Completion report. The Certified Completion report shall be submitted to the EPA within 30 days of the completion of the requirements of paragraphs 20 and 21 above.

24. All documents required to be submitted to EPA by this Order shall contain the following certification, signed by an officer of Brooks Landfill:

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 penalties for submitting false information, including the possibility of fines and imprisonment. I certify that I am authorized to enter into the terms and conditions of this Order to execute and bind legally the Respondent to this document.

The submissions required by the above paragraphs and subparagraphs shall be made in electronic format to:

Gary Bertram  
Air Permitting & Compliance Branch  
U.S. EPA Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Email: *Bertram.Gary@epa.gov*

25. To the extent this Order requires Respondent to submit any information to the EPA, Respondent may assert a business confidentiality claim covering part or all of that information, but only to the extent and only in the manner described in 40 C.F.R. Part 2, Subpart B. The EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

#### **VI. MODIFICATION OF THIS AOC**

26. If at any time during the implementation of the work described in paragraphs 20 and 21 above, Respondent identifies a need for a compliance date or schedule modification, Respondent shall submit a memorandum documenting the need for the modification to the EPA representative identified in paragraph 24 above. EPA in its discretion will determine if the modification or revision is warranted and may provide written approval or disapproval. Any

approved modified compliance date or schedule modification shall be incorporated by reference into this AOC.

27. Except for modification of any compliance date or schedule as provided for in paragraph 26, this AOC may only be modified by the mutual agreement of EPA and Respondent. The agreed modifications shall be in writing and signed by both parties. The effective date of any modification shall be the date on which it is signed by EPA. Any such written modification shall be incorporated into this AOC.

28. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this AOC, and to comply with all requirements of this AOC unless it is modified in accordance with this Section. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this AOC are, upon approval by EPA, incorporated into and enforceable under this AOC.

## VII. POTENTIAL LIABILITY

29. Section 113(a)(3) of the Act grants EPA the authority to issue an Order to any person found in violation of the Act and the regulations promulgated pursuant thereto.

30. Any violation of this Order may result in a civil administrative or judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Sections 113(b)(2) and 113(d)(1) of the Act, 42 U.S.C. § 7413(b)(2) and § 7413(d)(1), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

31. Nothing in this Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act or 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, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

32. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Act, 42 U.S.C. § 7607(b)(1).

33. Nothing herein shall be construed to limit the power and authority of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

34. The provisions of this Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Order until the Termination Date as set forth in paragraph 38 below, Respondent must give written notice and a copy of this Order to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Brooks Landfill. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Order unless the EPA has provided written approval of the release of said obligations or liabilities.

35. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the Act, the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26, the Clean Water Act, 33 U.S.C. §§ 1251-1387, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11050, or any other law. EPA does not, by its consent to the entry of this Order, warrant or aver in any manner that Respondent's compliance with any aspect of this Order will result in compliance with provisions of the Act, SDWA, CWA, CERCLA, RCRA, or EPCRA, or with any other provisions of federal, state, or local laws, regulations, or permits. EPA also reserves all of its rights to obtain access to the Facility and require Respondent's submission of information to EPA.

**VIII. EFFECTIVE DATE: OPPORTUNITY FOR A CONFERENCE**

36. Pursuant to Section 113(a)(4) of the Act, an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Respondent or the EPA.

37. Any inquiries regarding this Order shall be addressed to:

Julie L. Murray  
Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219  
Phone: (913) 551-7448  
Fax: (913) 551-7925

**IX. TERMINATION**

38. This Order shall terminate on the earlier of the following (the “Termination Date”) at which point Respondent shall operate in compliance with the Act:

- a. One year after the Effective Date of this Order;
- b. The effective date of any determination by the EPA that Respondent has achieved compliance with all terms of this Order; or
- c. Immediately upon receipt by Respondent of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

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

Date 9/20/16

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

*[Faint signature]*

8-31-16

**FOR THE RESPONDENT:**

**City of Wichita Brooks Landfill  
Wichita, Kansas**

9/15/2016  
Date

  
Signature

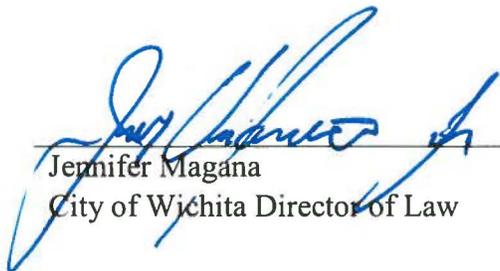
Robert Layton  
Printed Name

City Manager  
Title

455 N. Main, Wichita  
Address

**APPROVED AS TO FORM:**

8-31-16  
Date

  
Jennifer Magana  
City of Wichita Director of Law

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing “Administrative Compliance Order on Consent” in the Matter of City of Wichita Brooks Landfill, Order CAA-07-2016-0032, were mailed to the parties as indicated below.

Via Certified Mail, Return Receipt Requested to:

City of Wichita Brooks Landfill  
4100 N. West Street  
Wichita, Kansas 67205

Jeff Van Zandt  
City Attorney  
Wichita Law Department  
455 N. Main Street, 13<sup>th</sup> Floor  
Wichita, Kansas 67202

Javier Ahumada, CPM  
Chief – Air Compliance and Enforcement  
Bureau of Air – KDHE  
1000 SW Jackson, Suite 310  
Topeka, KS 66612

*Handwritten:* } First Class Mail

9/21/14  
Date

Kathy Robinson  
Signature  
Regional Hearing Clerk  
Title

