

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), to sign consent agreements between EPA and the party against whom an administrative penalty for violations of the CAA is proposed to be assessed.

2.3. EPA and the United States Department of Justice jointly determined, pursuant to 42 U.S.C. § 7413(d) and 40 C.F.R. § 19.4, that this matter, although it involves a penalty assessment above \$446,456 and alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

2.4. On January 14, 2022, EPA notified Respondent and Washington that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

2.5. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CAA together with the specific provisions of the CAA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Federal Plan Requirements for Sewage Sludge Incineration (SSI) Units

3.1. Section 129 of the CAA, 42 U.S.C. § 7429, requires EPA to establish performance standards and other requirements under Section 111 of the CAA, 42 U.S.C. § 7411,

for categories of solid waste incineration units. The performance standards are to include guidelines for existing incineration units. 42 U.S.C. §§ 7411(d) and 7429(b)(1). States that have existing solid waste incineration units are required to submit plans to EPA for approval to implement and enforce the guidelines. 42 U.S.C. § 7429(b)(2). EPA must develop, implement, and enforce a “Federal Plan” for existing solid waste incineration units located in any state that has not submitted an approvable plan implementing the guidelines applicable to those units. 42 U.S.C. § 7429(b)(3).

3.2. Under Sections 111(d) and 129(b)(3) of the CAA, 42 U.S.C. §§ 7411(d) and 7429(b)(3), EPA promulgated the “Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010” (hereinafter, “Subpart LLL” or “the Federal Plan”) for the control of emissions from existing SSI units in states that did not submit an approvable state plan. 40 C.F.R. Part 62, Subpart LLL. The Federal Plan became effective May 31, 2016. 81 Fed. Reg. 26040 (Apr. 29, 2016).

3.3. Washington did not submit a state plan for the control of emissions from existing SSI units. Thus, Subpart LLL applies in Washington.

3.4. Subpart LLL defines an SSI unit as “an incineration unit combusting sewage sludge for the purpose of reducing the volume of sewage sludge by removing combustible matter.” 40 C.F.R. § 62.16045.

3.5. Owners or operators of an SSI unit are subject to Subpart LLL if the SSI unit meets the following criteria contained in 40 C.F.R. § 62.15885(a): 1) construction of the unit commenced on or before October 14, 2010; 2) the unit meets the definition of an SSI unit contained in 40 C.F.R. § 62.16045; and 3) the unit is not exempt under 40 C.F.R. § 62.15860.

3.6. The term “owner or operator” means any person who owns, leases, operates, controls, or supervises a stationary source. 42 U.S.C. § 7411(a)(5).

3.7. Under the CAA, the term “person” includes an individual, corporation, partnership, association, State, municipality, or political subdivision of a State. 42 U.S.C. § 7602(e).

3.8. The term “municipality” means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law. 42 U.S.C. § 7602(f).

3.9. Subpart LLL exempts combustion units that incinerate sewage sludge that are not located at a wastewater treatment facility designed to treat domestic sewage sludge. 40 C.F.R. § 62.15860.

3.10. Owners or operators of an SSI unit subject to Subpart LLL must meet the emission limits and standards specified in Table 2 or 3 to Subpart LLL. The emission limits and standards apply at all times the unit is operating and during periods of malfunction. The emission limits and standards apply to emissions from a bypass stack or vent while sewage sludge is in the unit’s combustion chamber. 40 C.F.R. § 62.15955.

3.11. Owners or operators of an SSI unit subject to Subpart LLL must demonstrate continuous compliance with the emission limits and standards specified in Table 2 or 3 to Subpart LLL using the procedures described in 40 C.F.R. § 62.16000.

3.12. Section 129(f) of the CAA, 42 U.S.C. § 7429(f), prohibits operation of an SSI unit in violation of any performance standard, emission limit, or other requirement promulgated pursuant to 42 U.S.C. §§ 7411 and 7429 after the effective date of the standard, limitation, or requirement.

3.13. Respondent is a municipality and therefore a person, as those terms are defined by the CAA.

3.14. Respondent is and has been at all relevant times the owner and operator of a wastewater treatment plant located at 17000 76th Avenue West in Lynnwood, Washington (“the Lynnwood WWTP”).

3.15. The Lynnwood WWTP contains an SSI unit, as that term is defined by 40 C.F.R. § 62.16045, that was constructed on or before October 14, 2010 and is located at a wastewater treatment facility designed to treat domestic sewage sludge.

3.16. The Lynnwood WWTP is a “stationary source” as that term is defined in Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

3.17. The Lynnwood WWTP is therefore subject to the requirements of Subpart LLL.

VIOLATIONS

Failure to Meet Applicable Emission Limits and Standards

3.18. From April 2020 to May 2021, Respondent failed to meet applicable emissions limits for particulate matter (PM). 40 C.F.R. § 62.15955 and Table 2 of Subpart LLL.

3.19. From April 2020 to September 2020 and from May 2021 to November 2021, Respondent failed to meet applicable emissions limits for carbon monoxide (CO). 40 C.F.R. § 62.15955 and Table 2 of Subpart LLL.

3.20. From April 2020 to September 2020 and from May 2021 to May 2024, Respondent failed to meet applicable emissions limits for hydrogen chloride (HCl). 40 C.F.R. § 62.15955 and Table 2 of Subpart LLL.

3.21. Respondent therefore is in violation of 40 C.F.R. § 62.15955 and Section 129(f) of the CAA, 42 U.S.C. § 7429(f), by failing to meet applicable emissions limits for PM, CO, and HCl while sewage sludge was in the SSI unit's combustion chamber.

Failure to Meet Performance Testing Requirements

3.22. The owner or operator of an SSI unit subject to Subpart LLL must meet performance testing requirements, including the requirement that a performance test must consist of a minimum of three separate test runs, during which the SSI unit must be operated at a minimum of 85-percent of its maximum permitted capacity. 40 C.F.R. § 62.16015(a)(10) and (11).

3.23. Lynnwood WWTP performance tests in 2019, 2020, 2021, 2022, and 2023 did not meet the requirements set forth in 40 C.F.R. § 62.16015(a)(11) because the SSI unit was not operated at a minimum of 85-percent of its maximum permitted capacity during the performance tests.

3.24. Respondent therefore violated 40 C.F.R. § 62.16015 and Section 129(f) of the CAA, 42 U.S.C. § 7429(f), by failing to meet performance testing requirements.

Failure to Meet Applicable Operating Limits and Requirements

3.25. The owner or operator of an SSI unit subject to Subpart LLL must meet applicable operating limits and requirements. 40 C.F.R. § 62.15960.

3.26. The owner or operator of an SSI unit must meet a site-specific operating limit for minimum operating temperature of the combustion chamber (or afterburner combustion chamber) that it establishes pursuant to 40 C.F.R. § 62.15985. 40 C.F.R. § 62.15960(a) and Table 4 of Subpart LLL.

3.27. From approximately October 2020 to June 2021, Respondent failed to meet the

operating limit for minimum combustion temperature (also identified as “fluid temperature” in Respondent’s submitted reports).

3.28. If an SSI unit uses a wet scrubber to comply with an emission limit, the owner or operator must meet the site-specific operating limits established pursuant to 40 C.F.R. § 62.15985 for each operating parameter associated with the air pollution control device. 40 C.F.R. § 62.15960(b) and Table 4 of Subpart LLL.

3.29. From approximately January 2020 to November 2020, Respondent used a wet scrubber to comply with an emission limit and failed to continuously meet the minimum pH for scrubber liquid (also identified as the scrubber liquid effluent pH and the scrubber drain pH in Respondent’s submitted reports).

3.30. If an SSI unit uses an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator or activated carbon injection to comply with the emission limits in Table 2 or 3 of Subpart LLL, the owner or operator must meet any site-specific operating limits or requirements established as required in 40 C.F.R. § 62.15965.

3.31. From approximately February 2020 to November 2020 and from approximately April 2021 to June 2021, Respondent failed to continuously comply with the maximum subcooler temperature operating limit established for the Lynnwood WWTP pursuant to 40 C.F.R. § 62.15965. 40 C.F.R. § 62.15960(h).

3.32. Respondent therefore violated 40 C.F.R. § 62.15960 and Section 129(f) of the CAA, 42 U.S.C. § 7429(f), by failing to meet applicable operating limits and requirements.

3.33. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$55,808 per day of violation.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations of this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. In determining the amount of penalty to be assessed, EPA has taken into account the factors specified in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$550,259 (the “Assessed Penalty”).

4.4. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order.

4.5. Payments under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <https://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to one of the following addresses:

Address format for standard delivery (no delivery confirmation requested):

U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

Respondent must note on the check the title and docket number of this action.

4.6. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10,
R10_RHC@epa.gov

Roylene Cunningham
U.S. Environmental Protection Agency
Region 10,
Cunningham.Roylene@epa.gov

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to collect the Assessed Penalty under the CAA. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.8. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall be responsible for payment of the following amounts:

a. Interest. Any unpaid portion of the Assessed Penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the Assessed Penalty that is paid within 30 days of the effective date of the Final Order contained herein.

b. Attorneys' Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondent fail to pay the Assessed Penalty and interest on a timely basis, Respondent shall also be required to pay the United States' enforcement expenses, including but not limited to attorneys' fees and costs incurred by

the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such 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.

4.9. The Assessed Penalty, including any additional costs incurred under Paragraph 4.8, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.10. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.11. Except as described in Paragraph 4.8, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in this Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. For the purposes of this proceeding, Respondent consents to the issuance of any specified compliance or corrective action order, to any conditions specified in this consent agreement, and to any stated permit action.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

CHRISTINE FRIZZELL, Mayor
City of Lynnwood

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Enforcement and Compliance Assurance Division
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

| | | |
|-----------------------|---|-----------------------------|
| In the Matter of: |) | DOCKET NO. CAA-10-2024-0013 |
| |) | |
| CITY OF LYNNWOOD, |) | FINAL ORDER |
| |) | |
| Lynnwood, Washington, |) | |
| |) | |
| Respondent. |) | |
| |) | |

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties under the CAA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent’s obligations to comply with all applicable provisions of the CAA and regulations promulgated or permits issued thereunder and any applicable implementation plan requirements.

1.4. This Final Order shall become effective upon filing with the Regional Hearing Clerk.

IT IS SO ORDERED.

Regional Judicial Officer
EPA Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: City of Lynnwood, Docket No.: CAA-10-2024-0013**, was filed with the Regional Hearing Clerk and that a true and correct copy was served on the date specified below to the following addressees via electronic mail:

Danielle Meinhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101

meinhardt.danielle@epa.gov

Christine Frizzell
Mayor
City of Lynnwood
Lynnwood City Hall
19100 44th Avenue West
Lynnwood, WA 98036

cfrizzell@lynnwoodwa.gov

Regional Hearing Clerk
EPA Region 10