

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

<p>IN THE MATTER OF:</p> <p>Allied Waste Systems of Colorado, LLC 8480 Tower Road Commerce City, Colorado 80022</p> <p>Respondent</p>	<p>ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING</p> <p>Proceedings to Assess a Civil Administrative Penalty Under Section 113(d)(1)(B) of the Clean Air Act, 42 U.S.C. § 7413(d)(1)(B)</p> <p>Docket No. CAA-08-2009-0016</p>
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STATUTORY AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued by the United States Environmental Protection Agency (EPA), Region 8, pursuant to Section 113(d)(1)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d)(1)(B), for violations of Sections 111 and 112 of the Act, 42 U.S.C. §§ 7411 and 7412. Regulations authorized by the CAA are set out in Title 40 of the Code of Federal Regulations and violations of the regulations constitute violations of the CAA. The authority to issue this Complaint has been properly delegated to the undersigned EPA official.
2. Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), provides that before issuing an administrative penalty order, the Administrator shall give written notice to the person to be assessed an administrative penalty and provide such person an opportunity to request a hearing. This Complaint, which is issued in accordance with the requirements set forth in 40 C.F.R. §§ 22.13 and 22.14 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or

Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (Consolidated Rules of Practice), constitutes such written notice and opportunity to request a hearing. A copy of the Consolidated Rules of Practice is enclosed.

STATUTORY AND REGULATORY FRAMEWORK

New Source Performance Standards **Section 111 of the CAA, 42 U.S.C. § 7411**

3. Pursuant to Section 111(b)(1)(A), EPA is required 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.
4. Pursuant to Section 111(b)(1)(B), EPA is required to establish Federal standards of performance for new sources within such categories.
5. EPA has added “municipal solid waste landfills” (MSW landfills) as a source category subject to the requirements of Section 111 of the CAA, 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.
6. Performance standards for MSW landfills that commenced construction or modification after May 30, 1991, were promulgated by EPA at 40 C.F.R. Part 60, Subpart WWW.
7. A “municipal solid waste landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. 40 C.F.R. § 60.751.
See also 40 C.F.R. § 63.1990.

8. “Modification” means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. 40 C.F.R. § 60.751.
9. “Design capacity” means 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. 40 C.F.R. § 60.751.
10. 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 is subject to standards for air emissions, including requirements for monitoring, collection and control of air emissions. 40 C.F.R. § 60.752(b).
11. Landfills must 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 indicated elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. 40 C.F.R. § 60.753(d).
12. The landfill cover is subject to EPA Reference Method 21 Leak Detection and Repair monitoring (40 C.F.R. Part 60, Appendix A). *See* 40 C.F.R. § 60.753(d), 40 C.F.R. § 60.755(c), 40 C.F.R. § 60.755(d), and 40 C.F.R. § 60.757(f)(5).
13. 40 C.F.R. § 60.755(c) requires that monitoring performed pursuant to Subpart WWW comply with Section 8.3.1 of EPA Reference Method 21, Leak Detection and Repair

Monitoring, except that the probe inlet shall be placed within 5 (five) to 10 (ten) centimeters off the ground. 40 C.F.R. Part 60 Appendix A.

14. Section 8.3.1 of EPA Reference Method 21 instructs:

“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.”

National Emission Standards for Hazardous Air Pollutants
Section 112 of the CAA, 42 U.S.C. § 7412

15. Pursuant to Section 112(c)(1), EPA is required to publish a list of all categories and subcategories of major sources and area sources of Hazardous Air Pollutants (HAPs). To the extent practicable, the categories and subcategories listed shall be consistent with the list of source categories established pursuant to Section 111, 42 U.S.C. § 7411.
16. Pursuant to Section 112(a)(1), a “major source” means any stationary source 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 HAPs.
17. Pursuant to Section 112(a)(2), an “area source” means any stationary source of HAPs that is not a major source.
18. HAPs emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene.

19. EPA has added MSW landfills as a category subject to the requirements of Section 112 of the CAA.
20. Section 112(d) of the CAA, 42 U.S.C. § 7412(d) requires EPA to establish emissions standards and methods for each category or subcategory of major sources and area sources of HAPs.
21. The emission standards and methods for MSW landfills, known as “Maximum Achievable Control Technology” (MACT) standards, have been promulgated by EPA at 40 C.F.R. Part 63, Subpart AAAA.
22. In relevant part, the MACT standards apply to a MSW landfill that has accepted waste since November 8, 1987, and is an area source that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m³) and has an estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) nonmethane organic compound (NMOC) as calculated according to § 60.754(a) of the MSW landfills new source performance standards in 40 C.F.R. Part 60, Subpart WWW. 40 C.F.R. § 63.1935(a)(3).
23. Pursuant to 40 C.F.R. § 63.1955(b), a MSW landfill that is required by 40 C.F.R. § 60.752(b)(3) to install a collection and control system must comply with the requirements of 40 C.F.R. §§ 63.1960 through 63.1985.
24. Pursuant to 40 C.F.R. § 63.1960, compliance is determined in the same way it is determined for 40 C.F.R. Part 60, Subpart WWW, including performance testing, monitoring of the collection system, continuous parameter monitoring, and other credible evidence.

GENERAL ALLEGATIONS

The Allied Waste Tower Road Landfill

25. Respondent Allied Waste Systems of Colorado, LLC, incorporated in Colorado and authorized to do business in the State of Colorado, is a “person” as defined in Section 7602(e) of the CAA, 42 U.S.C. § 7602(e).
26. At times relevant to this order and currently, Respondent has owned and/or operated the Tower Road Landfill located at 8480 Tower Road, Commerce City, CO 80022.
27. The Tower Road Landfill is a MSW landfill and hence subject to Sections 111 and 112 of the CAA, 42 U.S.C. §§ 7411 and 7412.
28. In June 1981, the State of Colorado issued a construction permit for a landfill at this location to Tower Disposal. In November 1982, the permit was transferred to Landfill, Inc., and a modified permit was issued in 1987. Landfill, Inc. later became Browning-Ferris Industries (BFI). The landfill was issued an operating permit on February 1, 2001, and the permit was renewed in September 1, 2005 and revised on June 1, 2008, to reflect the company name change to Allied Waste, as well as updated emission factors and limits.
29. In December 1998, the facility submitted an initial design capacity report stating the landfill had a capacity of 17,700,00 megagrams, and reported NMOC emissions of 630.57 megagrams per year. Subsequently, the design capacity of the landfill was increased to approximately 21,040,000 Megagrams.

30. The Tower Road Landfill is a MSW landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and has estimated uncontrolled NMOC emissions equal to or greater than 50 megagrams per year .
31. The Tower Road Landfill commenced a “modification” within the meaning of 40 C.F.R. § 60.751 after May 30, 1991, and hence is subject to the New Source Performance Standards promulgated by EPA at 40 C.F.R. Part 60, Subpart WWW.
32. In addition, the Tower Road Landfill has accepted waste since November 8, 1987, and is an area source that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and has an estimated uncontrolled emissions equal to or greater than 50 megagrams per year nonmethane organic compound (NMOC) as calculated according to § 60.754(a) of the MSW landfills new source performance standards in 40 C.F.R. Part 60, Subpart WWW. The Tower Road Landfill is hence subject to the NESHAP MACT standards promulgated by EPA at 40 C.F.R. Part 63, Subpart AAAA.
33. Respondent has implemented a Subpart WWW “leak detection and repair” (LDAR) monitoring program at the landfill.
34. Pursuant to the NSPS and NESHAP standards, Respondent was required to conduct LDAR monitoring of the landfill cover following the requirements of 40 C.F.R. § 60.753(d) and EPA Reference Method 21.
35. In the last five years of quarterly surface emissions monitoring, consisting of twenty monitoring events, Respondent has found a total of three exceedance leaks (one leak

during a February 28, 2006 monitoring event and two leaks during a May 6, 2008 monitoring event) or an average of 0.15 leaks per monitoring event.

The EPA Inspection

36. EPA inspected the Tower Road Landfill on August 14, 2008. During the inspection, EPA conducted LDAR monitoring, applying EPA Reference Method 21, while following approximately half of the surface emissions monitoring route used by Respondent to perform its quarterly monitoring.
37. During the inspection, EPA detected five leaks of methane exceeding 500 ppm from the portion of the Tower Road Landfill that it inspected. The leaks demonstrated that the collection system was not being operated to ensure that the methane concentration is less than 500 ppm above background as required under 40 C.F.R. § 60.753(d).
38. EPA detected two of the leaks from white marker pipes that were inserted vertically into the ground and were allowing methane to escape through the cover. Two other leaks were detected from cracks in the ground, and one leak was detected from a hole in the ground.
39. The pipe openings, cracks, and hole in the ground were clearly visible. Cracks and seeps must be monitored for emissions pursuant to 40 C.F.R. § 60.753(d).

VIOLATIONS

Count I

40. Respondent failed to properly monitor the Tower Road Landfill cover in accordance with EPA Reference Method 21 during previous LDAR monitoring events and failed to find the maximum leaks where visual observations indicated possible elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover, in violation of NSPS and NESHAP regulations, 40 C.F.R. §§ 60.753(d), 60.755(c), 60.755(d), 60.757(f)(5), 63.4(a)(1), and 63.1960.

PROPOSED ADMINISTRATIVE PENALTY

41. The proposed civil penalty set forth in Paragraph 44 of this Complaint has been determined in accordance with Section 113(d)(1), (d)(2), and (e) of the CAA, 42 U.S.C. § 7413(d)(1), (d)(2), and (e). For violations occurring on or after March 15, 2004, but before January 12, 2009, Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 authorize the assessment of a civil administrative penalty of up to thirty-two thousand five hundred dollars (\$32,500) per day of violation of the CAA and the rules promulgated thereunder.
42. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires that EPA
- . . . as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including

evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

43. To develop the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy," dated October 25, 1991 (Penalty Policy), which can be located online at:

<http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/penpol.pdf>

This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

44. Based upon the facts alleged in this Complaint as known to Complainant at this time, and taking into account the penalty assessment criteria listed in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), Complainant proposes that Respondent be assessed a civil penalty of **\$38,685** for the violations alleged in this Complaint. The proposed penalty calculations are set forth below.

Penalty Calculation:

A.	Economic Benefit	\$ 0
B.	Gravity Component	
	Importance to the Regulatory Scheme: Monitoring Violation	\$15,000
	Size of Violator: Total Equity as of Sept. 2008 was 4.2 billion	<u>\$15,000</u>
	Total Gravity	\$30,000
C.	Inflation	<u>\$ 8,685</u>
	TOTAL PENALTY AMOUNT	\$38,685

TERMS OF PAYMENT

45. In accordance with 40 C.F.R. § 22.18, Respondent may resolve this proceeding at any time by paying the proposed penalty in full. If such payment is made within thirty (30) days after receipt of this Complaint, no Answer need be filed. If Respondent needs additional time to pay the proposed penalty, Respondent may, within thirty (30) days of receipt of the Complaint, file a written statement with the Regional Hearing Clerk stating that Respondent agrees to pay the penalty, and then remit the penalty amount within sixty (60) days after receipt of the Complaint. Payment of the penalty shall: (1) be made by certified or cashier's check payable to "Treasurer, United States of America;" (or be paid by one of the other methods listed below) (2) identify the case title and docket number of this action (either on the check or in a transmittal letter accompanying the check); and (3) be remitted to:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

ACH (also known as REX or remittance express)

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

On Line Payment

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

www.pay.gov

Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made shall be sent to both:

Regional Hearing Clerk (8RC)

U.S. EPA, Region 8

1595 Wynkoop Street

Denver, Colorado 80202-1129

and to:

Linda Kato, Enforcement Attorney (8ENF-L)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

46. Payment of the penalty in accordance with the procedures set forth in Paragraph 45 of this Complaint shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.
47. Neither the assessment nor the payment of an administrative penalty pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), shall affect Respondent's continuing obligation to comply with the CAA or any other federal, state, or local laws or regulations and any compliance order issued under the CAA.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

48. As provided in Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent decides to request a hearing to contest any material fact upon which the Complaint is based, contend that the penalty proposed in the Complaint is inappropriate, or contend that Respondent is entitled to judgment as a matter of law, Respondent must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty (30) days after service of the Complaint.
49. In accordance with 40 C.F.R. § 22.15(b), Respondent's answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint

with regard to which Respondent has any knowledge (for those factual allegations for which Respondent has no knowledge and so states, the allegation is deemed denied); (2) state the circumstances or arguments which are alleged to constitute the grounds of any defense; (3) state the facts which Respondent disputes; (4) state the basis for opposing any proposed relief; and (5) state whether a hearing is requested. Pursuant to 40 C.F.R. § 22.15(d), failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

Respondent's answer must be filed with:

Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of Respondent's answer and all other documents filed in this action must be served on:

Linda Kato, Enforcement Attorney (8ENF-L)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

50. In accordance with 40 C.F.R. § 22.17(a), if Respondent elects to file an Answer to the Complaint but fails to do so within thirty (30) days after service of the Complaint, Respondent may be found to be in default and ordered to pay the penalty proposed in the Complaint. Additionally, a default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations.

SETTLEMENT CONFERENCE

51. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Linda Kato, (8ENF-L)
Enforcement Attorney
U.S. EPA, Region VIII
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6852

Please note that a request for an informal settlement conference does not extend the thirty-day period for submission of a written Answer.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: 28 April 2009

By: Sharon Z. Keuder

for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure: 40 C.F.R. Part 22

In the matter of:
Allied Waste Systems of Colorado, LLC
Docket No. CAA-08-2009-0016

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, to:

Allied Waste Systems of Colorado, LLC
Registered Agent
1675 Broadway, Suite 1200
Denver, CO 80202

by first class mail to:

Mr. Kory Coleman
Allied Waste Systems of Colorado, LLC
8480 Tower Road
Commerce City, Colorado, 80022

and by first class mail to:

Bob Jorgenson
Unit Supervisor
Colorado Department of Public Health and Environment
Mail Code APCD-SS-B1
4300 Cherry Creek Drive South
Denver, CO 80246-1530

The original and one copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING were hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street (8RC)
Denver, CO 80202

Date: 4/29/09

Andrea Reed
Andrea Reed