

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0056
)	
RIVERBEND LANDFILL CO.,)	CONSENT AGREEMENT
)	
McMinnville, Oregon)	
)	
Respondent.)	
)	

I. STATUTORY AUTHORITY

1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).

2. Pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Riverbend Landfill Co. (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

3. 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.

4. 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.

5. 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 alleged violations that occurred more than one year before the initiation of this proceeding, is appropriate for an administrative penalty action.

6. On January 27, 2020, EPA notified Respondent and the State of Oregon that EPA had found that Respondent committed the alleged violations described in Part III of this Consent Agreement.

7. 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.

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

III. ALLEGATIONS

A. STATUTORY AND REGULATORY BACKGROUND

9. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards (NSPS) for specified categories of stationary sources of air pollutants that are “new sources.” A “new source” is defined as “a stationary source, the construction or modification of which is commenced after the publication of NSPS

regulations or proposed regulations that are applicable to such source.” 42 U.S.C. § 7411(a)(2). A “stationary source” is defined as including “buildings, structures, facilities or installations that emit or may emit any air pollutant.” 42 U.S.C. § 7411(a)(3). The term “modification” means “any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.” 42 U.S.C. § 7411(a)(4).

10. NSPS regulations apply to the owner or operator of any stationary source that contains an “affected facility,” the construction or modification of which is commenced after the date of publication of an NSPS (or, if earlier, the date of publication of any proposed standard) applicable to that facility. 40 C.F.R. § 60.1. “Affected facility” is defined, with reference to a stationary source, as any apparatus to which an NSPS is applicable. 40 C.F.R. § 60.2.

11. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any “new source” of air pollutants in violation of an NSPS applicable to such source. Thus, a violation of an NSPS requirement is a violation of Section 111(e) of the CAA.

Standards of Performance for MSW Landfills

12. Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, on March 12, 1996, EPA promulgated the NSPS for Municipal Solid Waste (MSW) Landfills at 40 C.F.R. Part 60, Subpart WWW. *See* 61 Fed. Reg. 9919.

13. At all times relevant to this Order, 40 C.F.R. Part 60, Subpart WWW applied to MSW landfills that commenced construction, reconstruction, or modification on or after May 30, 1991. 40 C.F.R. § 60.750(a).

14. 40 C.F.R. Part 60, Subpart WWW requires new MSW landfills with a design capacity over 2.5 million megagrams by mass or 2.5 million cubic meters by volume to calculate the nonmethane organic compound (“NMOC”) emission rate of the landfill. 40 C.F.R.

§ 60.752(b). If the NMOC emission rate is greater than 50 megagrams per year, the landfill is required to install, operate, and monitor a gas collection and control system (GCCS) in accordance with NSPS requirements. 40 C.F.R. § 60.752(b)(2)(ii).

15. Pursuant to both 40 C.F.R. §§ 60.751 and 63.1990, an MSW landfill is defined as an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.

CAA National Emissions Standards for Hazardous Air Pollutants

16. Sections 112(c), (d) and (k) of the CAA, 42 U.S.C. §§ 7412(c), (d) and (k), require EPA to publish a list of categories of “stationary sources” of hazardous air pollutants (HAPs), and to promulgate regulations establishing emission standards for major sources and certain area sources within those categories. These standards are known as the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Source Categories and are codified at 40 C.F.R. Part 63.

17. “Stationary source” under Section 112 has the same meaning as the term has under Section 111(a)(3) of the CAA. 42 U.S.C. § 7412(a)(3).

18. An “area source” is any source that is not a “major source.” 42 U.S.C. § 7412(a)(2).

19. 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, more than 10 tons per year of any single HAP or 25 tons per year or more of any combination of HAPs. 42 U.S.C. § 7412(a)(1).

20. 40 C.F.R. Part 63 applies 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 CAA;

and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to this part. 40 C.F.R. § 63.1(b)(1).

21. 40 C.F.R. § 63.2 defines HAPs as pollutants listed in, or pursuant to, Section 112(b) of the CAA.

22. Pursuant to 40 C.F.R. § 63.4(a), no “owner or operator” shall operate any “affected source” in violation of an applicable NESHAP, except under an extension of compliance or exemption from compliance as provided in that section or in CAA Section 112(i)(4), 42 U.S.C. § 7412(i)(4). An “affected source” is defined as a “collection of equipment, activities, or both within a single contiguous area and under common control that is included in a section 112(c) source category or subcategory for which a section 112(d) standard or other relevant standard is established pursuant to section 112 of the [CAA].” 40 C.F.R. § 63.2.

NESHAP for MSW Landfills

23. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), on January 16, 2003, EPA promulgated the NESHAP for MSW landfills at 40 C.F.R. Part 63, Subpart AAAA. *See* 68 Fed. Reg. 2227.

24. 40 C.F.R. Part 63 Subpart AAAA applies to MSW Landfills that have accepted waste since November 8, 1987 and are an area source landfill that has a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m³) and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) NMOC. 40 C.F.R. § 63.1935(a).

25. 40 C.F.R. Part 63, Subpart AAAA, Table 1 sets forth the Part 63, Subpart A provisions that apply to Subpart AAAA and includes the operation and maintenance requirements in 40 C.F.R. § 63.6(e). Therefore, a source that is subject to 40 C.F.R. Part 63, Subpart AAAA is also subject to 40 C.F.R. § 63.6(e).

Oregon's Permitting Requirements

26. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides that each state must submit to EPA an operating permit program meeting the requirements of Title V.

27. In accordance with Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing Title V of the CAA. *See* 57 Fed. Reg. 32295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

28. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate except in compliance with a Title V operating permit.

29. EPA fully approved the Oregon Title V permit program effective November 27, 1995. *See* 60 Fed. Reg. 50,106 (Sept. 28, 1995). The Oregon regulations governing Title V operating permits are codified at Oregon Administrative Rule (OAR) Chapter 340, Division 218, OAR 340-218-0010 – 340-218-0240.

B. FACTUAL BACKGROUND

30. Respondent is a “person” as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

31. At all times relevant to this Order, Respondent owned and operated the Riverbend Landfill located at 13469 SW Highway 18, McMinnville, Oregon 97218.

32. The Oregon Department of Environmental Quality (ODEQ) issued an Oregon Title V Operating Permit (“Permit”) to Respondent on July 11, 2000. This Permit was renewed on October 20, 2015.

33. As described in the Permit, at all times relevant to this Order the Landfill was subject to NSPS, 40 C.F.R. Part 60, Subpart WWW and to NESHAP, 40 C.F.R. Part 63, Subpart AAAA.

34. The Landfill was originally sited and began receiving waste in 1982. It has expanded since that time and is projected to continue accepting waste through and beyond 2021.

35. At all times relevant to the violations alleged herein, the Landfill had a design capacity equal to or greater than 2.5 million megagrams of waste and 2.5 million cubic meters.

36. At all times relevant to the violations alleged herein, the Landfill had a NMOC emission rate equal to or greater than 50 megagrams per year, as calculated using the procedures specified at 40 C.F.R. § 60.754.

37. At all times relevant to the violations alleged herein, the Landfill operated a GCCS that included gas collection wells, a blower that directs landfill gas to engines, an enclosed flare, and a back-up open flare.

38. According to the Design Plan, the Landfill footprint is approximately 88 acres.

39. Respondent's surface emission monitoring (SEM) quarterly reports from March 23, 2015 through November 19, 2018 did not indicate that areas of distressed vegetation and cracks or seeps in the cover were identified during Landfill monitoring.

40. Respondent's quarterly SEM reports from 2015 through 2018 did not reflect that any methane exceedances over 500 ppm were identified during monitoring.

41. On October 3, 2017 and May 25, 2018, EPA conducted on-site inspections of the Landfill.

42. On December 10, 2018, EPA issued an Information Request to Respondent under Section 114(a) of the CAA, 42 U.S.C. §7414(a).

43. On March 1, 2019, Respondent submitted information to EPA in response to the December 10, 2018 Section 114(a) Information Request.

44. On January 27, 2020, EPA issued a Notice of Violation to Respondent under Section 113(a) of the CAA, 42 U.S.C. § 7413(a) alleging that it violated the NSPS for MSW Landfills, the NESHAP for MSW Landfills, the NSPS General Provisions, the NESHAP General Provisions, and the Permit.

C. VIOLATIONS

Violation 1: Failure to Conduct Compliant Surface Emission Monitoring

45. The Findings in Paragraphs 30 through 44 are incorporated herein by reference.

46. Pursuant to 40 C.F.R. § 60.753(d), owners and operators of MSW landfills with a GCCS used to comply with 40 C.F.R. § 60.752(b)(2)(ii) are required to operate the GCCS so that surface methane concentrations are less than 500 parts per million (ppm).

47. To determine and demonstrate compliance with the surface methane concentration standard in 40 C.F.R. § 60.753(d), owners and operators of MSW landfills are required to monitor surface methane concentrations "along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfills gas, such as distressed vegetation and cracks or seeps in the cover."

48. Pursuant to 40 C.F.R. § 60.755(c)(1), the monitoring described in 40 C.F.R. § 60.753(d) must be conducted on a quarterly basis.

49. Pursuant to 40 C.F.R. § 63.1958(d), owners and operators of MSW landfills with a GCCS used to comply with 40 C.F.R. § 63.1957 are required to operate the GCCS so that surface methane concentrations are less than 500 ppm.

50. To determine and demonstrate compliance with the surface methane concentration standard in 40 C.F.R. § 63.1958(d), owners and operators of MSW landfills are required to monitor surface methane concentrations "along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfills gas, such as distressed vegetation and cracks or seeps in the cover."

51. Pursuant to 40 C.F.R. § 63.1960(c)(1), the monitoring described in 40 C.F.R. § 63.1958(d) must be conducted on a quarterly basis.

52. During EPA's on-site inspection on May 25, 2018, EPA performed flame ionization detector measurements for methane in areas it observed cracks or seeps in the cover. EPA detected two exceedances >500 ppm in the cover and seven exceedances of >500ppm at penetrations in the cover during the inspection. All identified exceedances were corrected in accordance with 40 C.F.R. § 60.755.

53. Therefore, Respondent failed to properly monitor surface methane concentrations 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, in violation of 40 C.F.R. § 60.753(d), 40 C.F.R. § 63.1957(a), 40 C.F.R. § 63.1958(d), and Condition 9.10 of its Oregon Title V Operating Permit.

Violation 2: Failure to Ensure Monthly Cover Integrity

54. The Findings in Paragraphs 30 through 53 are incorporated herein by reference.

55. Pursuant to 40 C.F.R. §§ 60.755(c)(5) and 63.1960(c)(5), Respondent is required to implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

56. During EPA's inspections at the Landfill on October 3, 2017, EPA observed one area of eroded cover and on May 25, 2018, EPA identified two areas of eroded landfill cover. All identified exceedances were corrected in accordance with 40 C.F.R. § 60.755.

57. Therefore, Respondent failed to properly implement a program to monitor for cover integrity in violation of 40 C.F.R. § 60.755(c)(5), 40 C.F.R. § 63.1960(c)(5), 40 C.F.R. § 63.1957(a), and Condition 9.10 of its Oregon Title V Operating Permit.

Violation 3: Failure to Monitor Well RVBDV210 on a Monthly Basis

58. The Findings in Paragraphs 30 through 57 are incorporated herein by reference.

59. Pursuant to 40 C.F.R. § 60.752(b)(2), owners and operators of MSW landfills with design capacities greater than 2.5 million megagrams and with an NMOC emission rate greater than 50 megagrams per year are required to install and operate a GCCS meeting certain design and performance standards to capture and destroy LFG.

60. Pursuant to 40 C.F.R. § 60.753(b) and (c), owners and operators of MSW landfills with a GCCS used to comply with the provisions of 40 C.F.R. § 60.752(b)(2) must operate the GCCS with negative pressure at each wellhead, and must operate each interior wellhead with a LFG temperature less than 55 degrees Celsius, and with either a nitrogen level less than 20 percent, or an oxygen level less than 5 percent.

61. Pursuant to 40 C.F.R. § 60.756(a)(1) through (3), owners and operators of MSW landfills with a GCCS used to comply with the provisions of 40 C.F.R. § 60.752(b)(2) shall, at each wellhead on a monthly basis: measure the gauge pressure in the gas collection header; monitor nitrogen or oxygen concentration in the LFG; and monitor temperature of the LFG.

62. On December 19, 2018, Respondent submitted a deviation letter to ODEQ in accordance with Condition 51 of its Oregon Title V Operating Permit stating that well

RVBDV210, which Respondent believed to have been decommissioned in September 2016, had been inadvertently left operating and therefore monthly well monitoring for pressure, temperature, and nitrogen had not been conducted between October 2016 and October 2018.

63. Therefore, Respondent failed to comply with the monthly inspection requirements for pressure, temperature, and nitrogen in violation of 40 C.F.R. § 60.753(b) and (c), 40 C.F.R. § 60.756(a)(1) through (3), and Conditions 9.8 and 9.9 of its Oregon Title V Operating Permit.

* * *

64. 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 \$48,762 for each such violation.

IV. TERMS OF SETTLEMENT

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

66. As required by Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), EPA has taken into account the size of the business, the economic impact of the penalty on the business, Respondent's full compliance history and good faith efforts to comply, the duration of the violations as established by any credible evidence, payment by Respondent of penalties previously assessed for the same violations, the economic benefit of noncompliance, the seriousness of the violations, and such other factors as justice may require. After considering these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$104,482 (the "Assessed Penalty").

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

68. 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: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

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

69. Concurrently with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 68, 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

Scott Wilder
U.S. Environmental Protection Agency
Region 10
Wilder.Scott@epa.gov

70. 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.

71. 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.

72. The Assessed Penalty, including any additional costs incurred under Paragraph 71, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

73. 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.

74. Except as described in Paragraph 71, each party shall bear its own costs and attorneys' fees in bringing or defending this action.

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

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

77. 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.

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

DATED:

FOR RESPONDENT:

September 8, 2021

Jason Rose
JASON ROSE, President
Riverbend Landfill Co.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CAA-10-2021-0056
)	
RIVERBEND LANDFILL CO.)	FINAL ORDER
)	
McMinnville, Oregon)	
)	
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.

SO ORDERED this _____ day of _____, 2021.

RICHARD MEDNICK
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: Riverbend Landfill Co, Docket No.: CAA-10-2021-0056**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Brandon Cobb
U.S. Environmental Protection Agency
Region 10
Cobb.brandon@epa.gov

Jason Rose
President
Riverbend Landfill Co.
720 4th Avenue
Kirkland, WA 98033
jrose@wm.com

DATED this ____ day of _____ 2021.

TERESA YOUNG
Regional Hearing Clerk
EPA Region 10