



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 29 PM 2:04

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DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

EPA REGION VIII
HEARING CLERK

DOCKET NO.: CAA-08-2009-0032

IN THE MATTER OF:)	
)	
ALLIED WASTE SYSTEMS)	
OF COLORADO)	FINAL ORDER
8480 Tower Road)	
Commerce City, CO 80022)	
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 29th DAY OF September, 2009.



Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 SEP 29 PM 2:04

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
) CONSOLIDATED COMPLAINT AND
) CONSENT AGREEMENT
Allied Waste Systems of Colorado, LLC)
8480 Tower Road)
Commerce City, Colorado 80022) Docket No. **CAA-08-2009-0032**
)
Respondent.)

AUTHORITY

1. This Administrative 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 a violation of Section 112 of the CAA, 42 U.S.C. § 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.

STATUTORY AND REGULATORY FRAMEWORK

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

2. 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.
3. Pursuant to Section 111(b)(1)(B), EPA is required to establish Federal standards of performance for new sources within such categories.

4. 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.
5. 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.
6. 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.
7. “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.
8. “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.
9. Each owner or operator of a 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).

10. Pursuant to 40 C.F.R. § 60.11(d), at all times, owners and operators of sources subject to the New Source Performance Standards under Section 111 of the CAA, including MSW landfills, must maintain and operate the affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to EPA, which include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.
11. Pursuant to 40 C.F.R. § 60.755(c)(5), the owner or operator of an affected MSW landfill must implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

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

12. 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.
13. 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.
14. Pursuant to Section 112(a)(2), an “area source” means any stationary source of HAPs that is not a major source.

15. HAPs emitted by MSW landfills include, but are not limited to, vinyl chloride, ethyl benzene, toluene, and benzene.
16. EPA has added MSW landfills as a category subject to the requirements of Section 112 of the CAA.
17. Section 112(d) of the CAA, 42 U.S.C. § 7412(d) requires EPA to establish emissions standards and methods for each category of subcategory of major sources and area sources of HAPs.
18. 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 AAAAA.
19. 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 estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of 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).
20. Pursuant to 40 C.F.R. § 63.6(3)(1)(i), at all times, the owner or operator of a source subject to the NESHAPs provisions under Section 112 of the CAA, including a MSW landfill, must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information

available to EPA which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

21. 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.
22. 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.

GENERAL ALLEGATIONS

The Allied Waste Tower Road Landfill

23. 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).
24. At times relevant to this Consolidated Complaint and Consent Agreement and currently, Respondent has owned and/or operated the Tower Road Landfill located at 8480 Tower Road, Commerce City, CO 80022.
25. 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.
26. 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 on September 1, 2005 and revised on June 1, 2008 to reflect the company name change to Allied Waste, as well as update emission factors and limits.
27. In December 1998, the facility submitted an initial design capacity report stating the landfill had a capacity of 17,700,000 Mg, and reported NMOC emissions of 630.57 Mg/yr. Subsequently, the design capacity of the landfill was increased to approximately 21,040,000 Mg.
 28. The Tower Road Landfill is a MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million cubic meters and has estimated uncontrolled NMOC emissions equal to or greater than 50 Mg per year.
 29. 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.
 30. 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 Mg and 2.5 million cubic meters and has estimated uncontrolled NMOC emissions equal to or greater than 50 megagrams per year, 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 NESHAPs MACT standards promulgated by EPA at 40 C.F.R. Part 63, Subpart AAAAA.
 31. Respondent has implemented a Subpart WWW “leak detection and repair” (LDAR) monitoring program at the landfill.

32. Pursuant to the NSPS and NESHAPs standards, Respondent was required to operate and maintain the landfill, including the landfill cover, in a manner consistent with good air pollution control practices for minimizing emissions, which included monitoring for cover integrity and implementing cover repairs as necessary on a monthly basis.

The EPA Inspection

33. EPA inspected the Tower Road Landfill on August 14, 2008. During the inspection, EPA discovered two white “marker pipes,” used to mark the location of monitoring wells, that had been inserted vertically through the surface of the ground. EPA determined that these pipes had penetrated the landfill cover, allowing elevated levels of methane gas to escape from the landfill through the open pipes into the air.
34. On April 28, 2009, EPA issued an Administrative Complaint, Docket No. CAA-08-2009-0016, alleging certain violations of the NSPS and NESHAPs provisions of the CAA.
35. On July 1, 2009, EPA withdrew the Administrative Complaint without prejudice. EPA issues this Administrative Complaint, and enters into a Consent Agreement with Respondent as follows.

VIOLATION

Count I

36. Respondent failed to properly operate, maintain, and repair the Tower Road Landfill cover in accordance with good air pollution control practices to ensure the cover integrity and minimize emissions, in violation of NSPS and NESHAPs regulations, 40 C.F.R. §§ 60.11(d), 60.755(c)(5), 63.6(3)(1)(i), and 63.1960.

37. Respondent has since removed the marker pipes. Respondent conducted monitoring of the location where the pipes were removed and confirmed that leaks of methane gas above the regulated threshold were not occurring.

CONSENT AGREEMENT

38. Respondent admits the jurisdictional allegations and neither admits nor denies the factual allegations stated above.
39. Respondent waives his/her rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this Complaint and Consent Agreement.
40. The parties agree that this Consent Agreement resolves all violations identified during the EPA Inspection conducted on August 14, 2008.
41. This Complaint and Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement. This Complaint and Consent Agreement contains all terms of the settlement agreed to by the parties.
42. Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the implementing regulations associated with the NSPS and NESHAPs programs. 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. Based on the factors listed in paragraph 42, and Respondent's acknowledgment that it is in full compliance with the requirements of the CAA, EPA has determined that an appropriate civil penalty to settle this action is Five Thousand Dollars (\$5,000).
44. Respondent consents, for the purpose of settlement, to the issuance of a final order in this matter and agrees to pay the civil penalty cited in the foregoing paragraph as follows:
 - a. Payment is to be made of Five Thousand Dollars (\$5,000) due within 30 calendar days from the date written on a Final Order, issued by the Regional Judicial Officer, which adopts this Complaint and Consent Agreement. If the due date falls on a weekend or legal Federal holiday, the due date is the next business day. Payments must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. 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) 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.

- c. 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:

Emilio Llamozas
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

46. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
47. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 61st day from the date of the final order, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of

the due date. Payments are first applied to handling charges, 6% penalty interest, and late interest; then any balance is applied to the outstanding principal amount.

48. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
49. Nothing in this Complaint and Consent Agreement shall relieve Respondent of the duty to comply with the CAA and its implementing regulations.
50. Failure by Respondent to comply with any term of this Complaint and Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and such other relief as may be appropriate.
51. Nothing in this Complaint and Consent Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Complaint and Consent Agreement.
52. If the undersigned is a representative of the Respondent, he/she certifies that he/she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and to bind the parties he/she represents to the terms and conditions of this Complaint and Consent Agreement.
53. The parties agree to submit this Complaint and Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
54. Each party shall bear its own costs and attorney fees in connection with this matter.

55. This Complaint and Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint portion of this Complaint and Consent Agreement.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Date: Sept. 24, 2009

By: Eddie A Sierra
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

ALLIED WASTE SYSTEMS
OF COLORADO, LLC

Date: 8/10/09

By: Kory Coleman
Kory Coleman
Area President
Allied Waste Systems of Colorado, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSOLIDATED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **ALLIED WASTE SYSTEMS OF COLORADO, LLC.; DOCKET NO.: CAA-08-2009-0032** was filed with the Regional Hearing Clerk on September 29, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Linda Kato, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on September 29, 2009, to:

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

And

Linda L. Rockwood
Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532

E-mailed to:

Michelle Angel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

September 29, 2009



Tina Artemis
Paralegal/Regional Hearing Clerk

