



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 30 2019

REPLY TO THE ATTENTION OF

VIA E-MAIL
RETURN RECEIPT REQUESTED

Philip L. Comella, Attorney at Law
Advanced Disposal Services, Inc.
10690 Six Mile Rd.
Northville, MI 48168
Email: pcomella@freeborn.com

Dear Mr. Comella:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Advanced Disposal Services, Arbor Hills Landfill, Inc., docket no. CAA-05-2019-0038. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 30, 2019.

Pursuant to paragraph 35 of the CAFO, Advanced Disposal Services, Arbor Hills Landfill, Inc. must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Andre Daugavietis, Attorney, 312-886-6663.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan Frank", written over a horizontal line.

Nathan Frank, Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/via electronic mail
Regional Hearing Clerk/via electronic mail
Andre Daugavietis, Attorney/via electronic mail
Janine Camilleri, Michigan EGLE Enforcement Unit Supervisor/via electronic email
Scott Miller, Michigan EGLE Air District Supervisor/via electronic mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Advanced Disposal Services, Inc.)
Northville, Michigan,)
Respondent.)
_____)

Docket No. CAA-05-2019-0038
Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air Act,
42 U.S.C. § 7413(d)



Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Advanced Disposal Services, Arbor Hills Landfill, Inc. (Advanced Disposal), a corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO. Respondent neither admits nor denies any finding of fact or law in the Finding of Violation (FOV), dated September 29, 2016, or this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Under Section 111 of the CAA, EPA promulgated the New Source Performance Standards (NSPS) General Provisions at 40 C.F.R. Part 60, Subpart A and the NSPS for Municipal Solid Waste (MSW) Landfills at 40 C.F.R. Part 60, Subpart WWW.

10. The NSPS General Provisions 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 any NSPS standard applicable to the facility, 40 C.F.R. § 60.1(a).

11. The NSPS General Provisions, at 40 C.F.R. § 60.11(d), require that, at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions, which is determined by information that may include monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

12. The NSPS for MSW Landfills, at 40 C.F.R. § 60.755(c)(5), requires that the owner and operator of an MSW landfill with a gas collection and control system (GCCS)

implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

13. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for MSW Landfills at 40 C.F.R. Part 63, Subpart AAAA and the NESHAP General Provisions at 40 C.F.R. Part 63, Subpart A.

14. The NESHAP for MSW Landfills, at 40 C.F.R. § 63.1955, requires the owner or operator of an MSW Landfill to comply with the requirements of the NSPS for MSW Landfills at 40 C.F.R. Part 60, Subpart WWW.

15. The parts of the NESHAP General Provisions that apply to the Landfill are located in Table 1 of the NESHAP for MSW Landfills.

16. The NESHAP General Provisions, at 40 C.F.R. § 63.6(e)(1)(i), require that the owner or operator of the Landfill shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

17. The Administrator of EPA (the Administrator) may assess a civil penalty of up to: \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015 and \$47,357 per day of violation up to a total of \$378,852 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

18. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

19. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

20. Advanced Disposal owns and operates the Arbor Hills Landfill (the Landfill) at 10690 West Six Mile Road, Northville, Michigan.

21. BFI Waste Systems of North America, LLC (BFI) retained ownership of the GCCS at the Landfill under a Purchase Agreement dated March 8, 2000; and operated the GCCS, including over 300 gas collection wells, two enclosed flares, and one utility flare. Subsequently, as of February 2, 2017, BFI transferred ownership and control of the GCCS to Advanced Disposal, and as a result is no longer an owner or operator of the affected facility.

22. Arbor Hills Energy owns and operates the Landfill's Gas-to-Energy Plant at 10611 West Five Mile Road, Northville, Michigan.

23. The Landfill was modified on or after May 30, 1991. As the owner and operator of the Landfill, Advanced Disposal is subject to the NSPS for MSW Landfills, the NESHAP for MSW Landfills, and the NSPS and NESHAP General Provisions.

24. On September 29, 2016, EPA issued to Advanced Disposal a Finding of Violation (FOV) alleging that it violated the NSPS for MSW Landfills, the NESHAP for MSW Landfills, the NSPS General Provisions, the NESHAP General Provisions, and the facility's Title V Renewable Operating Permit (ROP).

25. The violations that EPA alleges are:

- a. Failure to maintain proper cover integrity at the Landfill as required at 40 C.F.R. § 60.755(c)(5), 40 C.F.R. § 63.1955, and its ROP.
- b. Failure to maintain good air pollution control practices at 40 C.F.R. § 60.11(d) and 40 C.F.R. § 63.6(e)(1)(i) by compromising gas extraction well integrity, poorly managing leachate, and failing to consistently cover exposed waste.

26. During the time of the alleged violations, extensive citizen complaints were received by EPA and MDEQ regarding odors around the Landfill.

27. On November 14, 2016, representatives of Advanced Disposal, BFI, Arbor Hills Energy, and EPA discussed the September 29, 2016 FOVs.

28. Advanced Disposal disputed the allegations in the FOV on the basis that it did not own, control or operate the emission control devices at the Landfill and did not have the permit to modify that equipment.

29. On May 4, 2017, Advanced Disposal entered into an Administrative Consent Order (ACO) with EPA in which it agreed to implement a comprehensive Compliance Plan to correct the conditions at the Landfill related to the FOV.

30. Respondent certifies that it is complying with the provisions of the Compliance Plan.

31. The actions that Respondent has taken, and completed, under the Compliance Plan, as mitigation projects, or as general GCCS improvements include:

- a. Installation of a new 3,000 standard cubic feet per minute (scfm) temporary candlestick flare at the northwest corner of the Landfill;
- b. Permitting and installation of a new 5,000 scfm permanent flare;
- c. Replacing the northwest drip leg with a condensate sump;
- d. Installation of approximately 1,800 feet of permanent appropriately sized gas header pipe along the west and north side of Landfill Cell 4, approximately 2,500 feet of appropriately sized gas header pipe along the

north side of Landfill Cell 4E and Arbor Hills East, and associated sumps, airlines, and force main;

- e. Installation of seven Caisson gas extraction wells in Landfill Cell 4D prior to NSPS requirements in this area for well installation;
- f. Completing a vacuum study summary report of vacuum near the flare, including action steps taken;
- g. Completing a vacuum study of the GCCS;
- h. Analyzing the water levels in the gas extraction wells and the effectiveness of the pump installation;
- i. Installation of a new 550,000-gallon leachate tank with odor controls;
- j. Installation of odor controls (Carbtrol carbon filters) on the two existing 50,000-gallon leachate tanks;
- k. Installation of activated carbon filters on the Arbor Hills West leachate lift station;
- l. Taking the existing 300,000-gallon leachate tank offline. If the tank is replaced then Respondent will install carbon filters on the new tank;
- m. Accelerating the installation of 20 acres of final cover along the southern slope;
- n. Installation of an odor control system;
- o. 10-acre expansion of the temporary cap on the west side of the Landfill;
- p. Performing daily cover inspections involving pictures and records of evening cover placement and morning cover removal;
- q. Continual well raising, maintenance, and repairs to the GCCS as well as associated grading and seeding for 2017 and 2018;
- r. GCCS expansion Phase 3 which includes continuation of approximately 3,000-feet of 24-inch header pipe from the west side to the south side of the Landfill, installation of a 36-inch pipe under the railroad crossing on the south side of the Landfill, and the final connection of 24-inch pipe to 23-inch header pipe;
- s. Upgraded flare compound including new piping, new blowers, existing flare retrofit, and Unison Controls.

32. Respondent certifies that it has spent in excess of \$5 million on the actions listed in the above two paragraphs since the issuance of the FOV and that these efforts have improved capture efficiency of the GCCS by approximately 20%.

33. Respondent agrees to establish odor screen vegetation in the northern 20 acres of the Landfill property located on the east side of Napier Road. The vegetation will consist of a combination of surface vegetation enhanced with evergreen trees. Vegetation will be chosen based on its ability to neutralize odor or emit fragrance to mitigate odors. Respondent estimates this to cost approximately \$100,000.

34. Respondent agrees to evaluate the relationship between odor monitoring conducted from 2017 through 2019 and odor complaints. The evaluation will rely on the specific odor complaint locations and the recurring monitoring performed by Barr Engineering under the direction of RK Associates. The evaluation will provide a relationship between the measured level of odor and the level of odor based on the complaint. The output will include the development of quantitative methods using artificial intelligence and machine learning techniques to (i) predict the source and intensity of odor based on complaints and/or (ii) predict the frequency and intensity of odor complaints based on odor measurements. Respondent estimates the cost as approximately \$70,000.

Civil Penalty

35. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, Respondent's agreement to and completion of the Compliance Plan, Respondent's implementation and completion of mitigation and other projects and agreement to additional mitigation and other projects, and

Respondent's extensive expenditures as detailed above, Complainant has determined that an appropriate civil penalty to settle this action is \$50,000.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$50,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

37. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (ECA-18J)
Air Enforcement and Compliance Assurance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Andre Daugavietis (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

38. This civil penalty is not deductible for federal tax purposes.

39. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

40. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Mitigation Projects

41. Respondent agrees to complete two mitigation projects designed to further improve gas collection and provide hydrogen sulfide monitoring in the community.

42. Respondent agrees to complete the mitigation projects as follows.

- a. Respondent must modify the GCCS to include the installation of at least 30 new gas extraction wells as required to replace or supplement collection efficiency. The project will be coordinated with a potential Renewable Natural Gas (RNG) Plant at the Landfill to prepare for the installation of additional lateral and header conveyance pipe from low gas quality extraction points (<35% methane concentration) for direct flow to a control device while allowing high quality gas to be directly routed to a gas plant. Respondent estimates the cost of this project to be approximately \$900,000.
- b. Respondent must install a hydrogen sulfide monitor at or near the Ridge Wood Elementary School at 49775 Six Mile Road, Northville, Michigan. The operation of the monitor must: continue for at least 5 years; be

performed by a third party; and have real time monitoring results that are publicly available. Respondent estimates the cost of this project to be approximately \$10,000.

General Provisions

43. The parties consent to service of this CAFO by e-mail at the following e-mail addresses: daugavietis.andre@epa.gov (for Complainant), and pcomella@freeborn.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

44. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

45. The effect of the settlement described in this CAFO, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 30 through 34 of this CAFO.

46. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

47. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 44, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

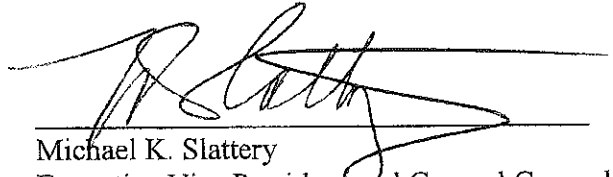
48. Respondent certifies that to the best of its knowledge it is complying fully with 40 C.F.R. § 60.755(c)(5), 40 C.F.R. § 60.11(d), 40 C.F.R. § 63.6(e)(1)(i), and its ROP.

49. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

50. The terms of this CAFO bind Respondent, its successors and assigns.
51. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
52. Each party agrees to bear its own costs and attorneys' fees in this action.
53. This CAFO constitutes the entire agreement between the parties.

Advanced Disposal Services, Inc., Respondent

9/19/2019
Date



Michael K. Slattery
Executive Vice President and General Counsel
Advanced Disposal Services, Inc.

United States Environmental Protection Agency, Complainant

9/24/2019
Date

Michael D. Harris
Michael D. Harris
Acting Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Advanced Disposal Services, Inc.
Docket No. CAA-05-2019-0038

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9/26/19
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order

In the matter of: Advanced Disposal Services, Arbor Hills Landfill, Inc.

Docket Number: CAA-05-2019-0038

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA 05 2019 0038, which was filed on 9/30/2019, in the following manner to the following addressees:

Copy by E-mail to Respondent: Philip L. Comella, Attorney
pcomella@freeborn.com

Copy by E-mail to Attorney for Complainant: Andre Daugavietis
daugavietis.andre@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: September 30, 2019



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5