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Reply to Atlantic County Address

Dear Ms. Maples:

Please be advised that this firm represents the Respondent Atlantic County Utilities Authority in reference to the above captioned matter. Enclosed please find an original and one copy of Respondent's Answer to the Complaint and Request for Hearing. Kindly file these documents and return a copy to me in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Very truly yours,

NEHMAD PERILLO & DAVIS, P.C.

BY:

SALVATORE PERILLO

sperillo@npdlaw.com

SP:cj

Enclosures

cc: Anhthu Hoang, Assistant Regional Counsel (w/ encl.)

S:\Atlantic County Utilities Authority\Mat 11- EPA Complaint\Clerk, EPA (Answer) 10-27-15 SP ltr.docx

U.S. Environmental
Protection Agency-Reg 2
2015 OCT 30 AM 10:32
REGIONAL HEARING
CLERK

October 27, 2015

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

**RE: In re: Atlantic County Utilities Authority
In a proceeding under Section 113(d) of the
Clean Air Act
Docket No. CAA-02-2015-1212
Our File No. 4928-11**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2015 OCT 30 AM 10:32

REGIONAL HEARING
OFFICE

In re:

Atlantic County Utilities Authority,

Respondent

In a proceeding under
Section 113(d) of the Clean Air Act

ANSWER TO COMPLAINT
AND
REQUEST FOR HEARING

Docket No. CAA-02-2015-1212

Respondent, Atlantic County Utilities Authority, having offices located at 6700 Delilah Road, Egg Harbor Township, New Jersey, 08234, by way of answer to the within Complaint says that:

PRELIMINARY STATEMENT

The Atlantic County Utilities Authority (ACUA) operates a regional landfill facility located at 6700 Delilah Road, Egg Harbor Township, New Jersey, 08234 which is subject to various federal and state regulations. As a governmental entity the ACUA takes its responsibilities very seriously. In the years the ACUA has been operating the landfill it has never been the subject of a complaint by the EPA.

The ACUA is required pursuant to various federal and state regulations to perform surface emissions monitoring over a surface monitoring path to comply with these regulations including 40 C.F.R. 60.755. Since the ACUA does not have the technical ability to conduct this monitoring it requested proposals from qualified vendors and ultimately received a proposal from SCS Engineers (SCS) dated January 22, 2013 to comply with these requirements. In their proposal SCS indicated that they would perform these services to comply with the applicable regulations and that they were qualified and had the necessary experience to conduct landfill emissions monitoring.

All of the actions complained of in this Complaint, with one exception, deal with the activities of SCS in carrying out its contract with the ACUA. The only allegations which directly involves the ACUA is in Paragraph 92 of the Complaint alleging that “During the Inspection on December 18, 2013, Michael Marks [an employee of SCS] informed the EPA Inspectors that ACUA and SCS did not have leak detection and repair Standard Operating Procedures (SOPs) for the Facility.” No inquiry was ever made of the ACUA. In fact, the ACUA has the required SOPs for the facility which were prepared by SCS on behalf of the ACUA in 2009 and provided to the EPA at that time.

With regard to the conduct of the SCS employee, the Complaint alleges that he was utilizing an “ACUA Foxboro”. In fact, the Foxboro in question was owned and maintained by SCS and not the ACUA. Upon information and belief the ACUA understands that the SCS Foxboro was not working on the day in question and as a result the SCS employee, Michael Marks, was not able to perform any of the required emissions monitoring on that day. As a result, the alleged failure to meet the various specifications set forth in the Complaint and a violation of the applicable regulations did not occur because those regulations govern monitoring and would not be applicable if no monitoring was performed.

The EPA regulations require the monitoring to be performed quarterly and not on any particular day. As a result of the SCS Foxboro malfunctioning, the monitoring was performed shortly thereafter. The ACUA provided the EPA with all of the reports reflecting the monitoring and the subsequent follow up. No complaints or questions were received from EPA in response to those submissions. The Complaint makes it clear that a subsequent inspection by the EPA confirmed that the ACUA was in full compliance with the EPA regulations and requirements.

With the above by way of background we now will answer the allegations of the Complaint.

STATUTORY, REGULATORY AND PERMITTING BACKGROUND

1 – 64. To the extent that these allegations reference various sections of the Act and the C.F.R., those statutes and regulations are set forth in written documents. As a result, to the extent that these allegations attempt to paraphrase or summarize those documents, the entire text of the documents speak for themselves.

FINDINGS OF FACT

65 – 74. The allegations in these paragraphs are admitted.

75. It admitted that EPA personnel came to the Facility on the dates set forth.

76. It is admitted that the EPA Inspectors were at the site and performed various functions.

77. Admitted.

78. Admitted.

79. Admitted.

80. Admitted.

81. Admitted.

82. Admitted.

83. Admitted.

84. Admitted.

85. Admitted.

86. Admitted.

87. Admitted.

88. It is admitted that the EPA Inspectors were at the site and performed various functions and spoke to Mr. Marks, an employee of SCS. The precise functions they performed, the records they inspected and the conversations they had with Mr. Marks are known to them and not known to the ACUA and therefore this allegation, as it applies to the Respondent, is denied.

89 – 91. It is admitted that the EPA Inspectors were at the site and performed various functions and spoke to Mr. Marks, an employee of SCS. The precise functions they performed, the records they inspected and the conversations they had with Mr. Marks are known to them and not known to the ACUA and therefore this allegation, as it applies to the Respondent, is denied. It is specifically denied that the Foxboro device in question was an “ACUA Foxboro device”. The device in question was owned, maintained and operated by SCS and not the ACUA.

92. These allegations are denied. It is admitted that the EPA Inspectors were at the site and performed various functions and spoke to Mr. Marks, an employee of SCS. The precise functions they performed, the records they inspected and the conversations they had with Mr. Marks are known to them and not known to the ACUA and therefore this allegation, as it applies to the Respondent, is denied. It is specifically denied that the ACUA did not have Standard Operating Procedures (SOP’s) for the Facility. The ACUA had SOP’s prepared by SCS which were sent to EPA by SCS on December 1, 2009.

93 – 98. It is admitted that the EPA Inspectors were at the site and performed various functions and spoke to Mr. Marks, an employee of SCS. The precise functions they performed, the records they inspected and the conversations they had with Mr. Marks are known to them and not known to the ACUA and therefore this allegation, as it applies to the Respondent, is denied. It is specifically denied that the Foxboro device in question was an “ACUA Foxboro device”. The device in question was owned, maintained and operated by SCS and not the ACUA.

99 – 111. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in these paragraphs of the Complaint and leaves the EPA to its proofs.

112 - 113. Admitted.

114. Denied.

115 – 117. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in these paragraphs of the Complaint and leaves the EPA to its proofs.

118. Admitted.

CONCLUSIONS OF LAW

119. Admitted.

120. Denied.

121. Admitted.

122. Admitted.

123 – 132. Admitted.

COUNT 1

133. Respondent repeats and realleges their answers to paragraphs 1 through 132 as if fully set forth herein.

134 – 143. Denied. It is specifically denied that any readings were obtained since the SCS employee advised the Respondent’s representatives that the SCS Foxboro was not working. As a result, it is denied that any violations of regulations occurred.

COUNT 2

144. Respondent repeats and realleges its answers to paragraphs 1 through 143 as if fully set forth herein.

145 – 153. Denied. It is specifically denied that any readings were obtained since the SCS employee advised the Respondent’s representatives that the SCS Foxboro was not working. As a result, it is denied that any violations of regulations occurred.

COUNT 3

154. Respondent repeats and realleges their answers to paragraph 1 through 153 as if fully set forth herein.

155 – 163. Denied. It is specifically denied that any readings were obtained since the SCS employee advised the Respondent's representatives that the SCS Foxboro was not working. As a result, it is denied that any violations of regulations occurred.

FIRST SEPARATE DEFENSE

The Complaint is barred by the applicable statutes of limitations including but not limited to the limitation contained in Section 113(d) of the Act. Moreover, a waiver pursuant to Section 113 (d) is not appropriate or applicable in the context of the facts alleged in the Complaint.

SECOND SEPARATE DEFENSE

The Complaint is barred by the doctrines of laches, waiver and estoppel.

THIRD SEPARATE DEFENSE

If the SCS Foxboro on the date in question was not functioning and no monitoring activities took place, then the violations alleged in the Complaint could not have occurred since those violations only arise in the context of monitoring that is performed.

FOURTH SEPARATE DEFENSE

The actions complained of, if they took place, were as a result of the actions of a third party, SCS, over which the Respondent had no control.

FIFTH SEPARATE DEFENSE

The proposed fines, given the context of what occurred coupled with the fact that the EPA subsequently confirmed that the ACUA was in complete compliance with the EPA regulations was excessive.

REQUEST FOR A HEARING

The Respondent, in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 552 et seq., requests a hearing in this matter to contest the material facts set forth in the Complaint, to contend that the amount of the penalty proposed in the Complaint is inappropriate and to seek a judgment with respect to the law applicable to this matter.

NEHMAD PERILLO & DAVIS, P.C.

BY: 

SALVATORE PERILLO, ESQUIRE

NJ Attorney ID #: 282291972

NEHMAD PERILLO & DAVIS

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*Attorney for Respondent Atlantic County
Utilities Authority*

DATED: October 27, 2015

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____]
In re: :

Atlantic County Utilities Authority, :

Respondent :

In a proceeding under :
Section 113(d) of the Clean Air Act :
_____]

CERTIFICATION OF SERVICE

Docket No. CAA-02-2015-1212

I, Cynthia A. Jamison, do hereby certify as follows:

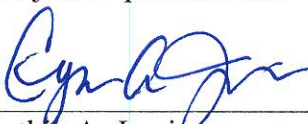
1. I am secretary to Salvatore Perillo of the law firm of Nehmad Perillo & Davis, the attorney for the Respondent in the above captioned matter.

2. On October 27, 2015, I mailed via Regular Mail, an original and one copy of Respondent's Answer to Complaint and Request for Hearing to Karen Maples, Regional Hearing Clerk, U.S. Environmental Protection Agency - Region 2, 290 Broadway, 16th Floor, New York, NY 10007-1866, with a copy of same, via Regular Mail, to the following:

Anhthu Hoang, Assistant Regional Counsel
Office of Regional Counsel, Air Branch
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Attorneys for EPA

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 27, 2015



Cynthia A. Jamison