

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

COMPLAINT
and
NOTICE OF OPPORTUNITY
TO REQUEST A HEARING

CAA-02-2015-1212

REGIONAL HEARING
CLERK

2015 SEP 30 PM 3:05

U.S. Environmental
Protection Agency/Reg 2

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) issues this Complaint and Notice of Opportunity for Hearing (Complaint) under the authority of Section 113(d), 42 U.S.C. § 7413(d) of the Clean Air Act (CAA or Act), 42 U.S.C. § 7401 et seq., and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice, CROP). The Complainant in this matter is the Director of the Division of Enforcement and Compliance Assistance (DECA), EPA Region 2. Complainant is delegated, on behalf of Region 2, the authority to issue administrative Complaints under Section 113(d) of the CAA for violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

Section 113(d) of the Act authorizes EPA to bring an administrative penalty action in a matter involving a violation that occurred more than twelve months prior to the initiation of an

action where the Administrator and the Attorney General, through their respective delegates, jointly determine that such an action is appropriate. On September 16, 2015, the United States Department of Justice (DOJ) granted EPA's request for a waiver of the time limitation provided in Section 113(d) of the Act.

In this Complaint, the Director finds that Respondent's, Atlantic County Utilities Authority (ACUA), landfill facility located at 6700 Delilah Road, Egg Harbor Township, New Jersey (Facility) is subject to and in violation of the Standard of Performance for Municipal Solid Waste Landfills (Sections 60.750 – 60.759) (Landfill NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Municipal Solid Waste Landfills regulations set forth in 40 C.F.R. Part 60 Subpart WWW, and 40 C.F.R. Part 63 Subpart AAAA, (Sections 63.1930 – 63.1990) (Landfill MACT) as well as corresponding provisions in the Facility's CAA Title V operating permit.

Pursuant to Sections 113(d) and (e) of the Act, the Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy), the Clean Air Act Stationary Source Civil Penalty Policy Appendix VI – Leak Detection and Repair Penalty Policy (LDAR Penalty Policy) and the Debt Collection Improvement Act (DCIA) of 1996, EPA proposes a civil administrative penalty of \$98,160 for the violations we allege.

STATUTORY, REGULATORY, and PERMITTING BACKGROUND

Legal Background

EPA's Authority to Impose Civil Penalties for CAA Violations

1. Section 113(d) of the Act authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any "person" that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V or VI of the Act, or any requirement or

prohibition of any rule, order, waiver, permit or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111, 112 and 114 of the Act.

2. Section 302(e) of the Act provides that the term “person,” as used in the Act, includes any individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

3. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Complainant, the Director of the Division of Enforcement and Compliance Assistance, through the Region 2 Regional Administrator, the authority to, among other things, make findings of violations and issue CAA Section 113(d) administrative penalty complaints for CAA violations that occur in the State of New York, the State of New Jersey, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands.

CAA Section 111 –Standards of Performance New Stationary Sources

4. Section 111(b)(1)(A) of the Act requires EPA 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.

5. Section 111(b)(1)(B) of the Act requires EPA to establish Federal standards of performance for “new sources” within such categories.

6. Section 111(a) sets out the definitions relevant to Section 111. Specifically:

- a. Section 111(a)(3) defines a “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

- b. Section 111(a)(2) of the Act defines a “new source” as any stationary source the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a “standard of performance” under this section which will be applicable to such source.
- c. Section 111(a)(1) defines a “standard of performance” as a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.
- d. Section 111(a)(5) defines “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source.

7. On February 25, 1996, EPA added “municipal solid waste landfills” (MSW landfills) as a source category subject to the requirements of Section 111 of the Act, 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. 61 *Fed. Reg.* 9905 (Feb. 25, 1996).

8. EPA has determined that methane emissions present a well-documented danger of fire and explosion on-site and off-site, and contribute to global climate change as a major greenhouse gas. 61 *Fed. Reg.* 9905 (Feb. 25, 1996).

9. Performance standards promulgated pursuant to Section 111 of the Act are set forth in 40 C.F.R. Part 60.

CAA Section 112 – Hazardous Air Pollutants

10. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of Hazardous Air Pollutants (HAPs), (ii) publish a list of categories and subcategories of major and

area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

11. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

12. Section 112(a) of the Act contains definitions relevant to Section 112.

Specifically:

- a. Section 112(a)(1) of the Act defines “major source” as 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 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- b. Section 112(a)(3) of the Act defines “stationary source” as any building, structure, facility or installation which emits or may emit any air pollutant.
- c. Section 112(a)(4) of the Act defines “new source” as a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under Section 112 of the Act establishing an emission standard applicable to such source.
- d. Section 112(a)(6) of the Act defines “hazardous air pollutant” as any air pollutant listed pursuant to Section 112(b) of the Act.
- e. Section 112(a)(9) defines “owner or operator” as any “person” who owns, leases, operates, controls or supervises a stationary source.
- f. Section 112(a)(10) of the Act defines “existing source” as any stationary source other than a new source.

13. Emissions standards promulgated pursuant to Section 112 are commonly known as NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 C.F.R. Part 61.

14. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 C.F.R. Part 63. NESHAPs established under Part 63 are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology (MACT).

CAA Section 114 – Inspection, Monitoring and Entry

15. Section 114 of the Act authorizes the EPA Administrator to require testing, monitoring, recordkeeping, and reporting of information in order to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Sections 111 and 112 of the Act.

The Part 60 General Provisions – 40 C.F.R. Part 60, Subpart A

16. On December 23, 1971, pursuant to CAA Sections 111 and 114, EPA promulgated 40 C.F.R. 60 Subpart A (Part 60 General Provisions). 36 *Fed. Reg.* 24877 (Dec. 23, 1971).

17. Under 40 C.F.R. § 60.1(a), Part 60 General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

18. 40 C.F.R. § 60.2 sets forth the definitions that apply to 40 C.F.R. Part 60. Specifically:

- a. An “owner or operator” is any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.
- b. An “affected facility” is, with reference to a stationary source, any apparatus to which a standard is applicable.

The Landfill NSPS

19. On March 12, 1996, pursuant to Sections 111 and 114, EPA promulgated 40 C.F.R. Part 60, Subpart WWW (hereinafter Subpart WWW, the Landfill NSPS). 61 *Fed. Reg.* 9919 (Mar. 12, 1996).

20. Under 40 C.F.R. § 60.750(a), Subpart WWW applies to each MSW Landfill that commenced construction, reconstruction or modification on or after May 30, 1991.

21. 40 C.F.R. § 60.751 sets forth the definitions for Subpart WWW.

Specifically:

- a. "MSWlandfill" is the entire disposal facility in a contiguous geographical space where household waste is placed in or on land. *See also* 40 C.F.R. § 63.1990.
- b. "Design capacity" is 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. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million Megagrams or 2.5 million cubic meters, the calculation must include a site specific density, which must be recalculated annually.

22. Under 40 C.F.R. § 60.752(b)(2), 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 and a calculated NMOC emission rate equal to or greater than 50 Megagrams per year is subject to standards for air emissions, including requirements for, among other things, installation of systems for monitoring, collection and control of air emissions.

23. Under 40 C.F.R. § 60.753(d), landfills subject to 40 C.F.R. § 60.752(b)(2)(ii) must operate the collection system so that the methane concentration is less than 500 parts per million (ppm) above background at the surface of the landfill. To

determine if this level is exceeded, the owner or operator must conduct testing of the landfill surface 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.

The Leak Detection and Repair (LDAR) Requirements

24. Under 40 C.F.R. § 60.755(c), the owner or operator of an affected facility must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30 meter intervals for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in 40 C.F.R § 60.755(d).

25. Under 40 C.F.R. § 60.755(d), owners or operators of an affected facility subject to 40 C.F.R. § 60.755(c) are required to comply with instrumentation specifications and procedures for surface emission monitoring devices as described in 40 C.F.R. Part 60 Appendix A-7 Method 21 Leak Detection and Repair (LDAR).

26. On December 23, 1971, EPA promulgated 40 C.F.R. Part 60 Appendix A in order to require, among other things, specific instrument specifications and procedures for determination of emissions. 36 *Fed. Reg.* 24877 (Dec. 23, 1971).

27. On August 18, 1983, EPA added Reference Method 21 to 40 C.F.R. Part 60 Appendix A in order to require, among other things, specific instrument specifications and procedures for determination of volatile organic compound leaks from process equipment. 48 *Fed. Reg.* 37593 (Aug. 18, 1983).

28. On June 22, 1990, EPA revised 40 C.F.R. Part 60 Appendix A Reference 21 in order, among other things, to alleviate inconsistencies in the determination of volatile organic compound leaks from process equipment. *55 Fed. Reg.* 25602 (Jun. 22, 1990).

29. On October 17, 2000, EPA adopted format changes recommended by the Environmental Monitoring Management Council (EMMC) for analytical methods which would help integrate and make consistent the test methods written by different EPA programs. The test methods and performance specifications were restructured in the new EMMC format. *65 Fed. Reg.* 61744 (Oct. 17, 2000).¹

30. The new EMMC format resulted in the following requirements being moved within Method 21 40 C.F.R. Part 60 Appendix A. The requirements in:

- a. Section 3 of Method 21 were moved to Section 6 et seq. for instrument specification requirements in Sections 3.1.1 et seq.; Section 7.0 et seq. for calibration gas requirements in Section 3.2; Sections 8.1.1.2, 8.1.3.2, 8.1.2.2, and 8.1 for performance criteria requirements in Section 3.1.2 et seq.; and Sections 8.1.1, 8.1.2, and 8.1.3 for performance evaluation requirements in Section 3.1.3 et seq.
- b. Section 3.1.1.c of Method 21 were moved to Section 6.3.
- c. Section 3.1.1.f of Method 21 were moved to Section 6.5.
- d. Section 3.1.3 of Method 21 were moved to Sections 8.1.1, 8.1.2, and 8.1.3.
- e. Section 3.1.3.a of Method 21 were moved to Section 8.1.1.
- f. Section 3.1.3.b of Method 21 were moved to Section 8.1.2.
- g. Section 3.1.3.c of Method 21 were moved to Section 8.1.3.
- h. Section 4.2 of Method 21 were moved to Section 8.2 which refers to Section 10.0.

¹The amendments apply to a large number of industries that are already subject to the [then-] current provisions of 40 C.F.R Parts 60, 61, and 63. Therefore, the specific affected industries and their Standard Industrial Classification codes were not listed in the Federal Register Notice announcing the changes. *65 Fed. Reg.* 62034 (Oct. 17, 2000).

- i. Section 4.4 of Method 21 were moved to Section 8.1.

31. 40 C.F.R. § 60.755(d) and 40 C.F.R. Part 60 Appendix A Method 21 have the following specific requirements:

- a. 40 C.F.R. § 60.755(d)(1) requires that the portable analyzer must meet the instrument specifications provided in Section 3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Sections 6,7,and 8 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A as described above), except that “methane” shall replace all references to VOC. Specifically:
 - Section 3.1.1.c of EPA Reference Method 21 of 40 C.F.R. Part 60
 - i. Section 3.1.1.c of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 6.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires that the scale of the instrument meter shall be readable to ± 2.5 percent of the specified lead definition concentration when performing a no detectable emission survey.
 - ii. Section 3.1.2.f of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 6.5 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires that the instrument shall be equipped with a probe or probe extension for sampling not to exceed $\frac{1}{4}$ in. in outside diameter, with a single end opening for admission of sample.
- b. 40 C.F.R. § 60.755(d)(2) requires the calibration gas to be methane diluted to a nominal concentration of 500 ppm.
- c. 40 C.F.R. § 60.755(d)(3) requires instrument performance evaluation requirements to meet Section 3.1.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Sections 8.1.1, 8.1.2, and 8.1.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) and instrument evaluation procedure in accordance with Section 4.4 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A). Specifically:
 - i. Section 3.1.3.a of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.1.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires that a response factor must be determined for each compound that is to be measured, either by testing or from reference sources. The response factor tests are required before placing the analyzer into service, but do not have to be repeated as subsequent intervals.

- ii. Section 3.1.3.b of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.1.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires that the calibration precision test must be completed prior to placing the analyzer into service, and at subsequent 3-month intervals or at the next use whichever is later.
- iii. Section 3.1.3.c of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.1.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires the performance of the response time test prior to placing the instrument into service. If a modification to the sample pumping system or flow configuration is made that would change the response time, a new test is required prior to further use.
- iv. Section 4.4 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires a performance evaluation by assembling and starting up the instrument according to the manufacturer's instructions for recommended warmup period and preliminary adjustments.
- d. 40 C.F.R. § 60.755(d)(4) requires that the calibration procedures provided in Section 4.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) must be followed immediately before commencing a surface monitoring survey. Specifically:
 - i. Section 4.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A (currently in Section 8.2 which points to Section 10 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A) requires the following calibration procedure:

Assemble and start up the analyzer according to the manufacturer's instructions. After the appropriate warmup period and zero internal calibration procedure, introduce the calibration gas into the instrument sample probe. Adjust the instrument meter readout to correspond to the calibration gas value.

Note.-If the meter readout cannot be adjusted to the proper value, a malfunction of the analyzer is indicated and corrective actions are necessary before use.

The Part 63 General Provisions – 40 C.F.R. Part 63, Subpart A

32. On March 16, 1994, pursuant to Sections 112 and 114 of the Act, the EPA promulgated 40 C.F.R. Part 63, Subpart A (Part 63 General Provisions). The Part 63 General Provisions set forth general definitions, procedures and requirements that apply to every Part 63 NESHAP, unless the individual NESHAP in question provides differently. 59 *Fed. Reg.* 12430 (Mar. 16, 1994).

33. The provisions of 40 C.F.R. Part 63 apply 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 Act, and (ii) is subject to any standard, limitation, prohibition, or other federally enforceable requirement established pursuant to 40 C.F.R. Part 63.1(b).

34. If a relevant standard has been established under 40 C.F.R. Part 63, the owner or operator of an affected source must comply with the provisions of that standard and of the Part 63 General Provisions, as provided in 40 C.F.R. §§ 63.1(a)(4) and 63.1(c).

35. 40 C.F.R. § 63.2 sets out the definitions used in Part 63. Specifically:

- a. An “affected source” is a stationary source, a group of stationary sources, or a portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to Section 112 of the Act.
- b. An “existing source” is any affected source that is not a “new source.”
- c. A “new source” is any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant emission standard under Part 63 establishing an emission standard applicable to such source.
- d. 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, 10 tons per year (tpy) or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

- e. An “owner or operator” is any person who owns, leases, operates, controls, or supervises a stationary source.

36. After the effective date of a relevant standard established under 40 C.F.R. Part 63, the owner/operator of an existing source must comply with such standard by the compliance date established by the Administrator in the applicable Subpart(s) of 40 C.F.R. Part 63. 40 C.F.R. § 63.6(c).

The Landfill MACT

37. On January 16, 2003, pursuant to Sections 112 and 114 of the Act, EPA promulgated 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930 – 63.1990, the NESHAP for municipal solid waste landfills. 68 *Fed. Reg.* 2238 (Jan. 16, 2003).

38. 40 C.F.R. Part 63 Subpart AAAA establishes national emission standards for HAPs for existing and new MSW landfills.

39. Under 40 C.F.R. § 63.1935, Subpart AAAA applies to MSW landfills that are major sources as defined in 40 CFR § 63.2 of subpart A.

40. Under 40 C.F.R. § 63.1945, an owner or operator of an existing affected source must comply with the provisions of the Landfill MACT no later than January 16, 2004, unless an extension is granted in accordance with 40 C.F.R. § 63.1945(b).

41. Under 40 C.F.R. § 63.1980(a), an owner or operator of an affected source must submit the annual reports described in 40 C.F.R. § 60.757(f) every six months.

dfill MACT Leak Detection and Repair Provisions:

42. Under 40 C.F.R. § 63.1955(a)(1), an owner or operator of an affected source must comply with provisions of 40 C.F.R. Part 60 Subpart WWW.

CAA Title V Operating Permit Program and the New Jersey Administrative Code

CAA Title V and New Jersey's Title V Operating Permit Program

43. Title V of the Act consists of Sections 501 to 507, 42 U.S.C. §§ 7661-7661f.

44. In general, Title V of the Act requires each “major source” to obtain an operating permit setting forth all of the air pollution requirements that apply to that source, and also provides for the creation of state and federal programs to issue such permits.

45. Under Section 501 of the Act, a “major source,” as used in Title V of the Act, is any stationary source or group of stationary sources located within a contiguous area and under common control that is a major source as defined in either Section 112 of the Act or Section 302 of the Act or part D of subchapter I of the Act.

46. Section 502(a) of the Act makes unlawful the violation of any requirement of a Title V operating permit and unlawful to operate a major source except in compliance with such a permit.

47. Section 502(b) of the Act requires EPA to promulgate regulations establishing the minimum elements of a Title V operating permit program and sets forth the procedures by which EPA would approve, oversee, and withdraw approval of state operating permit programs.

48. Section 502(d) of the Act requires each state to develop and submit to EPA a permit program meeting the requirements of Title V of the Act.

49. Section 502(e) of the Act provides that EPA retains the authority to enforce Title V operating permits issued by a state.

50. Section 503 of the Act sets forth requirements for permit applications and provides that major sources are required to have Title V operating permits by the later of (i) the

effective date of the permit program applicable to the source, or (ii) the date on which the source becomes a major source.

51. Section 503(b)(2) of the Act provides that regulations promulgated pursuant to Section 502(b) of the Act shall include requirements that the permittee periodically (but no less frequently than annually) certify that its facility is in compliance with any applicable requirements of the Title V operating permit and that the permittee promptly report any deviations from the permit requirements to the operating authority.

52. Section 504 of the Act specifies requirements and conditions that must be included in any Title V operating permit.

53. Pursuant to Section 502(b) of the Act, EPA promulgated 40 C.F.R. Part 70 on July 21, 1992 to govern state operating permit programs. *57 Fed. Reg.* 32295 (July 21, 1992). EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *61 Fed. Reg.* 34228 (July 1, 1996).

54. 40 C.F.R. Part 70 sets forth minimum requirements for state Title V operating permit programs.

55. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), and 40 C.F.R. § 70.4 require each state to submit a permitting program, developed in accordance with 40 C.F.R. Part 70, to EPA for approval. If EPA approved the state permitting program, the state would be authorized to administer the Title V operating permit program.

56. On June 17, 1996, EPA granted interim approval, (*61 Fed. Reg.* 24715, May 16, 1996) and on November 30, 2001, EPA granted full approval of the New Jersey State Title V operating permit program. *66 Fed. Reg.* 63168 (Dec. 5, 2001).

57. The New Jersey Title V operating permit program is set forth at New Jersey Administrative Code (N.J.A.C.) Chapter 27 of Title 7.

58. Section 502(a) of the Act, 42 U.S.C. § 7661(a), 40 C.F.R. § 70.6(6)(i), and Title 7 of the New Jersey State Title V operating permit program, make it unlawful for any person to operate a major source except in compliance with a Title V operating permit.

New Jersey Administrative Code

59. Under N.J.A.C. 7:27-22.19(a), a provision in the State of New Jersey Title V operating permit program, the permittee must keep records of all source emissions testing or monitoring performed at the facility and required by the operating permit, and maintain those records for at least five years from the date of each sample, measurement, or report.

60. In accordance with Section 503(b)(2) of the Act, N.J.A.C. 7:27-22.19(f) requires the permittee to submit an annual certification of the Facility's compliance with the permit's conditions, and all other applicable requirements, to the New Jersey Department of Environmental Protection (NJDEP) and EPA.

Title V Operating Permit Requirements

The Facility's Title V Operating Permit Requirements

61. On May 20, 2005, the NJDEP issued Respondent an initial Title V operating permit, BOP 110001, under PID # 70506 (2005 Title V Initial Permit) for the Facility.

62. On October 3, 2011, the NJDEP issued Respondent a Title Renewal Permit, BOP 110001, under PID # 70506 (2011 Title V Renewal Permit, Expiration: 2015).

63. On November 29, 2011, the NJDEP issued Respondent a Title V operating permit Minor Modification (2011 Title V Minor Modification Permit) for the Facility.

64. The 2011 Minor Modification contains the provision named “Subject Item ‘GR1 NSPS A, NSPS WWW, MACT A, and MACT AAAA’ Ref. # 23” (Minor Modification Ref #23) which requires Respondent to comply with 40 C.F.R. Part 60 Subpart WWW.

FINDINGS OF FACT

65. Respondent is a municipal authority duly organized under the laws of the state of New Jersey.

66. Respondent has owned and/or operated the Facility since at least October 1992.

67. According to the 2011 Title V Minor Modification Permit, the Facility has accepted household waste since October 1992.

68. At all times relevant to this Order, Respondent operated the Facility pursuant to the 2011 Title V Minor Modification Permit.

69. According to the Facility’s semiannual NSPS Report, as of May 1, 2014, the total landfill capacity was reported to be 14,147,690 cubic yards.

70. According to the Facility’s semiannual NSPS Report, as of May 1, 2014, the landfill consists of a total of a 102 acre footprint with 20 acres of closed landfill cells, 68 acres of opened landfill, and a 14-acre area under construction.

71. According to the records reviewed by an EPA inspector the Facility’s design capacity shows that the Facility is over 2.5 million Megagrams and greater than 2.5 million cubic meters.

72. According to the Facility’s Non-Methane Organic Compounds (NMOC) Test Results submitted to EPA on October 31, 2008, the Facility has an NMOC emission rate of more than 50 Megagrams per year.

73. According to the 2011 Title V Minor Modification Permit, the Facility is equipped with a gas collection and control system (GCCS) in accordance with Subpart WWW.

74. On May 21, 2012, EPA designated Atlantic County, New Jersey, the County in which the Facility is located, as an area in non-attainment with the ozone National Ambient Air Quality Standards (NAAQS). *77 Fed. Reg.* 30135 (May 21, 2012).

75. On December 17 and 18, 2013, EPA personnel (EPA Inspectors) performed a duly authorized EPA inspection of the Facility (EPA Inspection) in order to determine, among other things, whether Respondent was in compliance with the LDAR requirements of the Landfill NSPS and Landfill MACT requirements set forth at 40 C.F.R. §§ 60.755 and 63.1930, respectively.

76. During the Inspection, EPA Inspectors, among other things, reviewed the Facility's records, including records pertaining to the Facility's design capacity, surface monitoring and standard operating procedures for LDAR.

77. During the Inspection, EPA Inspectors discussed the Facility's operations with persons who identified themselves as either employees of ACUA (Respondent Staff) or contractors (Contractor Staff) who were engaged by ACUA to conduct surface monitoring for the Facility.

78. As part of the Inspection, the EPA Inspectors maintained sign-in sheets of participants of the Inspection during each day the Inspection took place.

79. According to a sign-in sheet the EPA Inspectors maintained, the following Respondent Staff participated in the EPA Inspection on December 17, 2013:

- a. Matt DeNafo
- b. Sam Nutile
- c. Jim Coffey

d. Gary Conover

80. During the Inspection on December 17, 2013, ACUA's Director of Solid Waste Gary Conover informed the EPA Inspectors that the Facility became subject to 40 C.F.R. Part 60 Subpart WWW on April 30, 2011.

81. During the Inspection on December 17, 2013, Gary Conover informed the EPA Inspectors that the Facility is equipped with a GCCS, which collects landfill gas and directs it to a treatment system and one of three engines and directs excess gas to an open flare.

82. During the Inspection on December 17, 2013, Gary Conover informed the EPA Inspectors that he is responsible for implementing the surface monitoring program at the Facility.

83. During the Inspection on December 17, 2013, Gary Conover informed the EPA Inspectors that ACUA contracts SCS Field Services (SCS) to perform the required surface monitoring at the Facility.

84. During the Inspection on December 17, 2013, Gary Conover informed the EPA Inspectors that the Facility uses a leak definition of 500 parts per million (ppm).

85. According to the Surface Emission Monitoring reports for the quarter immediately preceding (dated 11/01/2013) and following (12/27/2013) the Inspection, the calibration gas concentration was certified to be 500 ppm.

86. According to the sign-in sheet the EPA Inspectors maintained, the following Respondent Staff participated in the EPA Inspection on December 18, 2013:

- a. Sam Nutile
- b. Gary Conover
- c. Brian Lemry

87. According to the sign-in sheet the EPA Inspectors maintained, the following Contractor Staff participated in the EPA Inspection on December 18, 2013:

a. Michael Marks

88. During the Inspection on December 18, 2013, Michael Marks informed the EPA Inspectors that he was responsible for conducting surface monitoring for the Facility.

89. During the Inspection on December 18, 2013, Michael Marks informed the EPA Inspectors that the Facility uses a Foxboro TVA1000B device with Serial # 41400684 (ACUA Foxboro) to perform surface monitoring at the Facility.

90. During the Inspection on December 18, 2013, Michael Marks informed the EPA Inspectors that Thermo Fisher performs annual calibration and maintenance of the ACUA Foxboro device for SCS.

91. During the Inspection on December 18, 2013, Michael Marks described to the EPA Inspectors SCS's procedures for conducting monitoring of the landfill surface, methods for detection of leaks, and actions taken when leaks are found.

92. During the Inspection on December 18, 2013, Michael Marks informed the EPA Inspectors that ACUA and SCS did not have leak detection and repair Standard Operating Procedures (SOPs) for the Facility.

93. During the Inspection on December 18, 2013, Michael Marks informed the EPA Inspectors that he was trained to conduct surface monitoring for the Facility through "on-the-job training."

94. During the Inspection on December 18, 2013, the EPA Inspectors observed that Michael Marks did not connect the probe and probe assembly to the ACUA Foxboro during warm-up of the device.

95. During the Inspection on December 18, 2013, the EPA Inspectors observed that Michael Marks placed the ACUA Foxboro on “run” mode during the 20-minute warm-up period.

96. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Michael Marks’ ACUA Foxboro read 4,105 instrument counts when the 500 ppm calibration gas was applied to the probe.

97. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Michael Marks used a mizer that fit loosely on the regulator and probe of the ACUA Foxboro while calibrating the instrument.

98. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that Michael Marks’ mizer allowed air infiltration into the ACUA Foxboro, which caused the low instrument count reading.

99. Following the Inspection, the EPA Inspectors conducted an investigation of how the Foxboro TVA1000B should be calibrated by consulting Thermo Fisher’s Operating and Maintenance Manual for the Foxboro (Operating Manual) and consulting Thermo Fisher’s technician.

100. Thermo Fisher Scientific, Inc. (Thermo Fisher) is a corporation that offers Foxboro TVA1000B units for sale and provides maintenance and calibration services. *See e.g.*, <http://www.thermoscientific.com/en/product/tva1000b-toxic-vapor-analyzer.html>.

101. Thermo Fisher’s Operating Manual states that the probe and probe assembly should be connected to the Foxboro TVA1000B during warm-up.

102. The Operating Manual states that the Foxboro TVA1000B should be placed on “setup” during the 20-minute warm-up period.

103. The Operating Manual states that the Foxboro TVA1000B should not be placed on “run” mode during the 20-minute warm-up.

104. Thermo Fisher’s technician informed the EPA Inspectors that, for the Foxboro TVA1000B, the instrument counts should be in the range of 80,000-130,000 for the 500 ppm calibration gas.

105. Thermo Fisher’s technician informed the EPA Inspectors that the mizer on the Foxboro TVA1000B must fit snugly onto the probe and regulator in order properly to calibrate the Foxboro TVA1000B.

106. Thermo Fisher’s technician informed the EPA Inspectors that the Foxboro TVA1000B should read within $\pm 10\%$ of the calibration gas.

107. During the EPA Inspection on December 18, 2013, the EPA Inspectors brought a Foxboro TVA1000B device (EPA Foxboro) to the Facility.

108. The EPA Foxboro was purchased from and is calibrated and maintained by Thermo Fisher.

109. During the EPA Inspection on December 18, 2013, the EPA Inspectors warmed up and calibrated the EPA Foxboro according to the procedures required by 40 C.F.R. § 69.755(d)(1), (2), (3), and (4) and the calibration and instrument performance evaluation steps set forth in Method 21 40 C.F.R. Part 60 Appendix A.

110. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that when the EPA Inspectors applied the 500 ppm calibration gas to the EPA Foxboro using Michael Marks’ mizer with the EPA Foxboro set on “run” mode, the reading was 2.82 ppm.

111. During the EPA Inspection on December 18, 2013, the EPA Inspectors observed that when the EPA Inspectors used their own mizer on the EPA Foxboro set on “run” mode, the reading was 515 ppm when the 500 ppm calibration gas was applied.

112. At the conclusion of the Inspection, on December 18, 2013, the EPA Inspectors conducted a meeting with Respondent’s representatives. At this meeting, the EPA Inspectors reviewed the results of the Inspection with Respondent’s representatives.

113. During the meeting on December 18, 2013, the EPA Inspectors informed Respondent’s representatives of the monitoring instrumentation and procedure requirements set forth in 40 C.F.R. § 60.755(d).

114. During the meeting on December 18, 2013, the EPA Inspectors requested that Respondent, among other things, comply with the surface monitoring instrument specifications and procedures required under 40 C.F.R. § 60.755(d).

115. After the EPA Inspection, EPA conducted additional review of the Facility’s records (EPA Record Review) including the Facility’s Title V operating permits.

116. During the EPA Record Review, EPA determined that the Facility did not follow the surface monitoring instrument specification and procedures set forth in Minor Modification Permit Ref #23, which incorporates by reference the requirements for monitoring instrument specifications and procedures as set out in Subpart WWW.

117. According to the Facility’s quarterly surface emission monitoring for the first quarter of 2015, the Facility is currently following 40 C.F.R. §§ 60.755(c) and (d) and EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, in conducting surface monitoring at the Facility.

118. On July 2, 2015, the EPA Inspectors received verbal a statement from Gary Conover that the Facility is currently conducting surface monitoring in accordance with EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A.

CONCLUSIONS OF LAW

119. From the Findings of Fact as set forth above, Respondent, is a “person” within the meaning of Section 302(e) of the Act.

120. From the Findings of Fact as set forth above, Respondent is subject to the assessment of administrative penalties pursuant to Section 113(d) of the Act.

121. From the Findings of Fact as set forth above, the Facility is an MSW Landfill as defined under 40 C.F.R. § 60.751.

122. From the Findings of Fact as set forth above, Respondent is an “owner or operator” within the meaning of Sections 111(a)(5) and 112 (a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7411(a)(5), 40 C.F.R. § 63.2, and 40 C.F.R. § 60.2.

123. From the Findings of Fact as set forth above, the Facility is a “stationary source” within the meaning of Section 111(a)(3) of the Act.

124. From the Findings of Fact as set forth above, the Facility is a “major source” within the meaning of Section 112(a)(1) of the Act.

125. From the Findings of Fact as set forth above, the Facility is a “major source” as defined under CAA § 501.

126. From the Findings of Fact as set forth above, Respondent is an “affected facility” within the meaning of 40 C.F.R. § 60.2.

127. From the Findings of Fact set forth above, the Facility is an “affected source” within the meaning of 40 C.F.R. § 63.1930.

128. From the Findings of Fact as set forth above, Respondent and the Facility are subject to the conditions in the Facility's Title V operating permits.

129. From the Findings of Fact as set forth above, since at least April 30, 2011, the Facility has been subject to the Landfill NSPS, promulgated pursuant to Sections 111 and 114 of the Act.

130. From the Findings of Fact set forth above, Respondent, as an owner and operator of the Facility, is required to comply with 40 C.F.R. § 60.755(d) of the Landfill NSPS.

131. From the Findings of Fact as set forth above, at least since April 30, 2011, the Facility has been subject to the Landfill MACT.

132. From the Findings of Fact set forth above Respondent, as an owner and operator of the Facility, is required to comply with the Landfill MACT including 40 C.F.R. § 63.1955(a)(1), which requires compliance with the Landfill NSPS.

Count 1: Failure to meet instrument specifications and calibration gas requirement according to 40 C.F.R. Part 60 Appendix A Method 21 and as required by 40 C.F.R. § § 60.755(d) (1) & (2), 63.1955(a)(1), and Ref. #23 in the 2011 Title V Minor Modification Permit.

133. Paragraphs 1 through 132 are repeated and re-alleged as if set forth fully herein.

134. By obtaining an instrument reading of 2.82 ppm on the ACUA Foxboro when the 500 ppm calibration gas was applied, Respondent failed to meet the requirement that the scale of the instrument meter shall be readable to ± 2.5 percent of the specified leak definition concentration when performing a no detectable emission survey as stated in Section 6.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A as required by 40 C.F.R. § 60.755(d) (1) and (2).

135. By obtaining an instrument count of 4,105 on the ACUA Foxboro when the 500 ppm calibration gas was applied, Respondent failed to meet the requirement that the scale of the

instrument meter shall be readable to ± 2.5 percent of the specified leak definition concentration when performing a no detectable emission survey as stated in Section 6.3 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required by 40 C.F.R. § 60.755(d)(1).

136. By not connecting the probe and probe assembly to the ACUA Foxboro, Respondent failed to meet the requirement that the instrument shall be equipped with a probe or probe extension for sampling not to exceed $\frac{1}{4}$ in. in outside diameter, with a single end opening for admission of the sample as stated in Section 6.5 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required by 40 C.F.R. § 60.755(d)(1).

137. By failing to meet the requirement to use a probe or probe extension for sampling that does not exceed $\frac{1}{4}$ inch in outside diameter with a single end opening for admission of the sample, Respondent allowed air, rather than the calibration gas methane diluted to a nominal concentration of 500 ppm in air, as required under 40 C.F.R. § 60.755(d)(2).

138. In accordance with EPA's LDAR Penalty Policy, Respondent's failure to complete each step in the LDAR equipment calibration sequence according to the procedure outlined in EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A is a separate violation of 40 C.F.R. § 60.755(d).

139. Respondent's failure to comply with 40 C.F.R. § 60.755(d) (1) and (2) is a violation of Sections 111 and 114 of the Act.

140. Respondent's failure to comply with 40 C.F.R. § 60.755(d) (1) and (2) is a violation of 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT.

141. Respondent's failure to comply with 40 C.F.R. § 63.1955(a)(1) is a violation of Sections 112 and 114 of the Act.

142. Each of Respondent's violations of Reference # 23 in the Facility's Title V operating permit including all modifications thereto, which incorporated by reference 40 C.F.R. Part 60 Subpart WWW, is also a violation of the New Jersey Title V Operating Permit Program.

143. Each of Respondent's violations of N.J.A.C. 7:27-22 is also a violation of Sections 114 and 502 of the Act.

Count 2: Failure to meet performance evaluation of LDAR equipment according to 40 C.F.R. Part 60 Appendix A Method 21 as required by 40 C.F.R. §§ 60.755(d)(3), 63.1955(a)(1), and Ref. #23 in the 2011 Title V Minor Modification Permit.

144. Paragraphs 1 through 143 are repeated and re-alleged as if set forth fully herein.

145. By allowing air into the instrument during the determination of the response factor, Respondent failed to meet the requirement under Section 8.1.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, that a response factor must be determined for each compound that is to be measured (in this case, methane), either by testing or from reference sources, as required under 40 C.F.R. § 60.755(d)(3).

146. By not connecting the probe and probe assembly to the ACUA Foxboro during the 20-minute warm-up period, Respondent failed to assemble and start up the monitoring instrument according to the manufacturer's instructions for recommended warmup period and preliminary adjustments as required by Section 8.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required under 40 C.F.R. § 60.755(d)(3).

147. By placing the ACUA Foxboro in "run" mode during the 20-minute warm-up period, Respondent failed to assemble and start up monitoring instrument according to the manufacturer's instructions for recommended warmup period and preliminary adjustments as required by Section 8.1 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required under 40 C.F.R. § 60.755(d)(3).

148. In accordance with EPA's LDAR Penalty Policy, Respondent's failure to complete each step in the LDAR equipment calibration sequence according to the procedure outlined in EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A is a separate violation of 40 C.F.R. § 60.755(d).

149. Respondent's failure to comply with 40 C.F.R. § 60.755(d)(3) is a violation of Sections 111 and 114 of the Act.

150. Respondent's failure to comply with 40 C.F.R. § 60.755(d)(3) is a violation of 40 C.F.R. § 63.1955(a)(1) of the Landfill MACT.

151. Respondent's failure to comply with 40 C.F.R. § 63.1955(a)(1) is a violation of Sections 112 and 114 of the Act.

152. Each of Respondent's violations of Reference # 23 in the Facility's Title V operating permit including all modifications thereto, which incorporated by reference 40 C.F.R. Part 60 Subpart WWW, is also a violation of the New Jersey Title V Operating Permit Program.

153. Each of Respondent's violations of N.J.A.C. 7:27-22 is also a violation of Sections 114 and 502 of the Act.

Count 3: Failure to follow LDAR equipment calibration procedure according to 40 C.F.R. Part 60 Appendix A Method 21 as required by 40 C.F.R. §§ 60.755(d)(4), 63.1955(a)(1), and Ref. #23 in the 2011 Title V Minor Modification Permit.

154. Paragraphs 1 through 153 are repeated and re-alleged as if set forth fully herein.

155. By placing the ACUA Foxboro in "run" mode during the 20-minute warm-up period, Respondent failed to assemble and start the ACUA Foxboro according to the manufacturer's instructions in violation of Section 8.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required under 40 C.F.R. § 60.755(d)(4).

156. By using a mizer that was fitted loosely, rather than snugly as instructed in the Thermo Fisher Operating Manual for proper calibration of the ACUA Foxboro, onto the regulator and probe of the ACUA Foxboro, Respondent failed to introduce the calibration gas into the instrument sample probe as set forth in Section 8.2 which points to Section 10 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required under 40 C.F.R. § 60.755(d)(4).

157. By using a mizer that was fitted loosely, rather than snugly as instructed in the Thermo Fisher Operating Manual for proper calibration of the ACUA Foxboro, onto the regulator and probe of the ACUA Foxboro, Respondent failed to adjust the instrument meter readout to correspond to the calibration gas value as set forth in Section 8.2 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A which points to Section 10 of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A, as required under 40 C.F.R. § 60.755(d)(4).

158. In accordance with EPA's LDAR Penalty Policy, Respondent's failure to complete each step in the LDAR equipment calibration sequence according to the procedure outlined in of EPA Reference Method 21 of 40 C.F.R. Part 60 Appendix A is a separate violation of 40 C.F.R. § 60.755(d).

159. Respondent's failure to comply with 40 C.F.R. § 60.755(d)(4) is a violation of Sections 111 and 114 of the Act.

160. Respondent's failure to comply with 40 C.F.R. § 60.755(d)(4) is a violation of 40 C.F.R. § 1955(a)(1) of the Landfill MACT.

161. Respondent's failure to comply with 40 C.F.R. § 63.1955(a)(1) is a violation of Sections 112 and 114 of the Act.

162. Each of Respondent's violations of Reference # 23 in the Facility's Title V operating permit including all modifications thereto, which incorporated by reference 40 C.F.R. Part 60 Subpart WWW, is also a violation of the New Jersey Title V Operating Permit Program.

163. Each of Respondent's violations of N.J.A.C. 7:27-22 is also a violation of Sections 114 and 502 of the Act.

PROPOSED CIVIL PENALTY

EPA's CAA Penalty Authority and Overview of CAA General Policy

Section 113(d) of the Act provides that the Administrator may assess a civil administrative penalty of up to \$25,000 per day for each violation of the Act. The DCIA requires EPA periodically to adjust its civil monetary penalties for inflation. On December 31, 1996, February 13, 2004, January 7, 2009, and December 6, 2013, EPA adopted regulations entitled Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19 (Part 19). The DCIA provides that the maximum civil penalty per day should be adjusted up to \$27,500 for violations that occurred from January 30, 1997 through March 15, 2004; up to \$32,500 for violations that occurred after March 15, 2004 through January 12, 2009; and up to \$37,500 for violations that occurred after January 12, 2009. Part 19 provides that the maximum civil penalty should be upwardly adjusted: 1) 10% for violations that occurred on or after January 30, 1997; 2) further adjusted 17.23% for violations that occurred March 15, 2004 through January 12, 2009, for a total of 28.95%; 3) further adjusted an additional 9.83% for violations that occurred after January 12, 2009, for a total of 41.63%, and 4) further adjusted an additional 4.87% for violations occurring after December 6, 2013 for a total of 48.53%.

In determining the amount of penalty to be assessed, Section 113(e) of the Act requires that the Administrator consider 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, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require. EPA considered these factors and proposes a total penalty, for the violations alleged in this Complaint, of \$98,160.

The violations alleged in Counts 1, 2, and 3 result in Respondent's subjection to the assessment of administrative penalties pursuant to § 113(d) of the Act. The proposed penalty has been prepared in accordance with the criteria in Section 113(e) of the Act, and in accordance with the guidelines set forth in EPA's Clean Air Act Stationary Source Civil Penalty Policy (CAA Penalty Policy) in conjunction with the Clean Air Act Stationary Source Civil Penalty Policy Appendix VI – Leak Detection and Repair Penalty Policy (LDAR Penalty Policy). The CAA Penalty Policy sets forth EPA's guidelines concerning the application of the factors to be considered, under Section 113(e) of the CAA, in proposing the penalty and the LDAR Penalty Policy specifies penalty amounts for LDAR violations. In addition, in accordance with 28 U.S.C. § 2662, EPA is limited to seeking penalties to five years from the date when the first claim accrued.

Below are brief explanations of the reasoning behind the penalties proposed in this Complaint, along with the rationale for various general penalty factors and adjustments EPA used in the calculation of the total penalty amount.

Gravity Based Penalties

Count 1: Violations of 40 C.F.R. §§ 60.755(d) (1) & (2), 63.1955(a)(1), and Ref. #23 in the 2011 Title V Minor Modification Permit.

The CAA Penalty Policy directs that a penalty of \$5,000 should be proposed for failure to perform a quarterly monitoring requirement. In accordance with the LDAR Penalty Policy, EPA

has determined that a failure to calibrate monitoring equipment properly is a violation of the monitoring requirement. Consequently, EPA proposes a \$5,000 penalty for these violations. In addition, the LDAR Penalty Policy directs that where a violation involves a non-HAP volatile organic compound (VOC) violation in an area of ozone non-attainment, the penalty is to be doubled. Here, the violation involved methane, a non-HAP VOC pollutant, and Atlantic County is an area that is in non-attainment with the ozone NAAQS. Therefore, EPA has assessed a penalty, before adjustment for other gravity factors and inflation, of \$10,000 for this violation.

Because this is a violation of both the Landfill NSPS and the Landfill MACT, EPA has adjusted the penalty upward by 20% instead of assessing a separate penalty for the Landfill MACT violation. Applying the 20% upward adjustment for the Landfill NSPS to account for the Landfill MACT violation results in an assessed penalty, before adjustment for inflation, of \$12,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the Landfill NSPS and Landfill MACT occurred. EPA Region 2's (the Region) practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$15,600.

In addition, the DCIA and Part 19 direct EPA to account for inflation by adjusting the gravity component of the penalties under the LDAR Penalty Policy, which was promulgated on

November 6, 2013, by 4.87% for violations occurring after December 6, 2013. Therefore, EPA proposes a \$760 inflationary adjustment for Respondent's violations. The total proposed penalty for the violations alleged in Count 1 is \$16,360.

Count 2: Violations of 40 C.F.R. §§ 60.755(d)(3), 63.1955(a)(1) and Ref. #23 in the 2011 Title V Minor Modification Permit.

The CAA Penalty Policy directs that a penalty of \$5,000 should be proposed for failure to perform a quarterly monitoring requirement. In accordance with the LDAR Penalty Policy, EPA has determined that a failure to calibrate monitoring equipment properly is a violation of the monitoring requirement. Consequently, EPA proposes a \$5,000 penalty for these violations. In addition, the LDAR Penalty Policy directs that where a violation involves a non-HAP VOC violation in an area of ozone non-attainment, the penalty is to be doubled. Here, the violation involved methane, a non-HAP VOC pollutant, and Atlantic County is an area that is in non-attainment with the ozone NAAQS. Therefore, EPA has assessed a penalty, before adjustment for other gravity factors and inflation, of \$10,000 for this violation.

Because this is a violation of both the Landfill NSPS and the Landfill MACT, EPA has adjusted the penalty upward by 20% instead of assessing a separate penalty for the Landfill MACT violation. Applying the 20% upward adjustment for the Landfill NSPS to account for the Landfill MACT violation results in an assessed penalty, before adjustment for inflation, of \$12,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the Landfill NSPS and Landfill MACT occurred. The Region's practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be

enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$15,600.

In addition, the DCIA and Part 19 direct EPA to account for inflation by adjusting the gravity component of the penalties under the LDAR Penalty Policy, which was promulgated on November 6, 2013, by 4.87% for violations occurring after December 6, 2013. Therefore, EPA proposes a \$760 inflationary adjustment for Respondent's violations. The total proposed penalty for the violations alleged in Count 1 is \$16,360.

Count 3: Violations of 40 C.F.R. §§ 60.755(d)(4), 63.1955(a)(1), and Ref. #23 in the 2011 Title V Minor Modification Permit.

The CAA Penalty Policy directs that a penalty of \$5,000 should be proposed for failure to perform a quarterly monitoring requirement. In accordance with the LDAR Penalty Policy, EPA has determined that a failure to calibrate monitoring equipment properly is a violation of the monitoring requirement. Consequently, EPA proposes a \$5,000 penalty for these violations. In addition, the LDAR Penalty Policy directs that where a violation involves a non-HAP VOC violation in an area of ozone non-attainment, the penalty is to be doubled. Here, the violation involved methane, a non-HAP VOC pollutant, and Atlantic County is an area that is in non-attainment with the ozone NAAQS. Therefore, EPA has assessed a penalty, before adjustment for other gravity factors and inflation, of \$10,000 for this violation.

Because this is a violation of both the Landfill NSPS and the Landfill MACT, EPA has adjusted the penalty upward by 20% instead of assessing a separate penalty for the Landfill MACT violation. Applying the 20% upward adjustment for the Landfill NSPS to account for the

Landfill MACT violation results in an assessed penalty, before adjustment for inflation, of \$12,000.

The Title V operating permit was in effect throughout the period during which the alleged violations of the Landfill NSPS and Landfill MACT occurred. The Region's practice is to make an upward adjustment of the gravity component of the proposed penalty in order to account for violations of permit conditions other than those that are solely required by Title V. This upward adjustment is made because the violator's knowledge of the regulatory requirements should be enhanced through the application and permitting process as well as the fact that the violator is required to perform the monitoring by two sets of regulatory provisions. Applying the 30% adjustment for the Title V operating permit violation results in an assessed penalty, before adjustment for inflation, of \$15,600.

In addition, the DCIA and Part 19 direct EPA to account for inflation by adjusting the gravity component of the penalties under the LDAR Penalty Policy, which was promulgated on November 6, 2013, by 4.87% for violations occurring after December 6, 2013. Therefore, EPA proposes a \$760 inflationary adjustment for Respondent's violations. The total proposed penalty for the violations alleged in Count 1 is \$16,360.

Size of Violator

The CAA Penalty Policy directs that the penalty proposed take into account the size of violator (SOV) determined by the violator's net worth for corporations or net current assets for partnerships. In this matter, EPA determined the Atlantic County Landfill operations function within the ACUA. EPA evaluated ACUA's "Annual Report and Accounts for 2014" and estimated that ACUA's net worth to be approximately \$500,000,000. For the SOV component of the penalty, the CAA Penalty Policy directs that a penalty for a Respondent with a net worth

over \$100 million to be calculated as follows: \$70,000 plus \$25,000 for every additional \$30 million or fraction thereof. The SOV component in this case could have been \$1,820,000. However, in accordance with the CAA Penalty Policy, EPA exercised its discretion to reduce the SOV component of the penalty to 50% of the total preliminary deterrence amount. The SOV component of the penalty may be adjusted should information be discovered that indicates the Respondent's net worth is less than estimated or if the preliminary deterrence amount is adjusted. In this case, the SOV penalty component is \$49,080.

Economic Benefit

In addition to the gravity component of the proposed penalties, the CAA Penalty Policy directs that EPA determine the economic benefit derived from noncompliance. The CAA Penalty Policy explains that the economic benefit component of the penalty should be derived by calculating the amount the violator benefited from delayed and/or avoided costs. The CAA Penalty Policy states EPA's goal to collect the violator's economic benefit and that EPA may elect not to assess an economic benefit component in enforcement actions where the violator's economic benefit is less than \$5,000. In this case, EPA determined the cost avoided was *de minimis*. Therefore, EPA did not assess an economic benefit component.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

The hearing in this matter is subject to the Administrative Procedure Act, 5 U.S.C. §§ 552 *et seq.* The procedures for this matter are found in 40 C.F.R. Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (EPA's Consolidation Rules of Practice, or CROP), a copy of which is enclosed with the transmittal of this Complaint. References to specific

procedures in this Complaint are intended to inform you of your right to contest the allegations of the Complaint and the proposed penalty and do not supersede any requirement of the CROP.

You have a right to request a hearing: (1) to contest any material facts set forth in the Complaint; (2) to contend that the amount of the penalty proposed in the Complaint is inappropriate; or (3) to seek a judgment with respect to the law applicable to this matter. In order to request a hearing you must file a written Answer to this Complaint along with the request for a hearing with the EPA Regional Hearing Clerk within thirty (30) days of your receipt of this Complaint. The Answer and request for a hearing must be filed at the following address:

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

A copy of the Answer and the request for a hearing, as well as copies of all other papers filed in this matter, are to be served on EPA to the attention of EPA counsel at the following address:

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

Your Answer should, clearly and directly, admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. If you have no knowledge of a particular factual allegation of the Complaint, you must so state and the allegation will be deemed to be denied. The Answer shall also state: (1) the circumstances or arguments which you allege constitute the grounds of a defense; (2) whether a hearing is

requested; and (3) a concise statement of the facts which you intend to place at issue in the hearing.

If you fail to serve and file an Answer to this Complaint within thirty (30) days of its receipt, Complainant may file a motion for default. A finding of default constitutes an admission of the facts alleged in the Complaint and a waiver of your right to a hearing. The total proposed penalty becomes due and payable without further proceedings thirty (30) days after the issue date of a Default Order.

Settlement Conference

EPA encourages all parties against whom the assessment of civil penalties is proposed to pursue the possibilities of settlement by informal conferences. However, conferring informally with EPA in pursuit of settlement does not extend the time allowed to answer the Complaint and to request a hearing. Whether or not you intend to request a hearing, you may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. If settlement is reached, it will be in the form of a written Consent Agreement which will be forwarded to the Regional Administrator with a proposed Final Order. You may contact EPA counsel, Anhthu Hoang, at (212) 637-5033 or at the address listed above, to discuss settlement. If you are represented by legal counsel in this matter, your counsel should contact EPA.

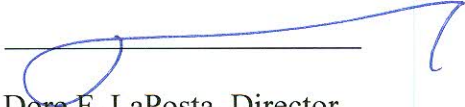
Payment of Penalty in lieu of Answer, Hearing and/or Settlement

Instead of filing an Answer, requesting a hearing, and/or requesting an informal settlement conference, you may choose to pay the full amount of the penalty proposed in the Complaint. Such payment should be made by a cashier's or certified check payable to the Treasurer, United States of America, marked with the docket number and the name of the Respondent(s) which appear on the first page of this Complaint. The check must be mailed to:

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

A copy of your letter transmitting the check and a copy of the check must be sent simultaneously to EPA counsel assigned to this case at the address provided under the section of this Complaint entitled Notice of Opportunity to Request a Hearing. Payment of the proposed penalty in this fashion does not relieve one of responsibility to comply with any and all requirements of the Clean Air Act.

Dated: SEPTEMBER 30, 2015



Dore F. LaPosta, Director
Division of Enforcement and
Compliance Assistance

To:

Richard S. Dovey
President
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 08234

cc: Gary Conover
Solid Waste Director
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 08234

Richelle Wormley, Director of Air and Hazardous Waste
New Jersey Department of Environmental Protection
PO Box 422
401 East Street
Trenton, NJ 08625-0422

CERTIFICATE OF SERVICE

I certify that on September 30, 2015, I caused the Complaint and Notice of Opportunity to Request a Hearing in the matter of Atlantic County Utilities Authority, CAA-02-2015-1212, one copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22), one copy of the Clean Air Act Stationary Source Civil Penalty Policy, and the Clean Air Act Stationary Source Civil Penalty Policy Appendix VI – Leak Detection and Repair Penalty Policy to be served on the following people in the manner listed below:

One Original and One Copy by hand delivery to:

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

One Copy by Hand delivery to:

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

One copy by Overnight Delivery to:

Richard S. Dovey
President
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 08234

Gary Conover
Solid Waste Director
Atlantic County Utilities Authority
6700 Delilah Road
Egg Harbor Township, NJ 07848

Richelle Wormley
Director of Air and Hazardous Waste
New Jersey Department of Environmental Protection
PO Box 422
401 East Street
Trenton, NJ 08625-0422

Dated: September 30, 2015



Yolanda Majette
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2