



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 27 2018

REPLY TO THE ATTENTION OF:

VIA E-MAIL
RETURN RECEIPT REQUESTED

Mack McGuffey, Attorney for Respondent
Troutman Sanders
600 Peachtree Street, NE Suite 3000
Atlanta, GA 30308
Email: mack.mcguffey@troutman.com

Dear Mr. McGuffey:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Environtech, Inc., docket no. CAA-05-2018-0026. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 27, 2018.

Pursuant to paragraph 43 of the CAFO, Environtech, 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 Christopher Grubb, Attorney, (312) 886-7187.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan Frank", with a long horizontal flourish extending to the right.

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

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Christopher Grubb/C-14J
Yasmine Keppner-Bauman/via e-mail

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Environtech, Inc.
Hanover Park, IL

Respondent.



Docket No. CAA-05-2018-0026

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 Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Environtech, Inc., a corporation doing business in Illinois.
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 and neither admits nor denies the factual allegations and alleged violations in 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. Section 111 of the CAA, 42 U.S.C. § 7411, requires EPA to promulgate performance standards for new stationary sources, including municipal solid waste (MSW) landfills, to achieve the degree of emission limitation reflecting the application of the best system of emission reduction adequately demonstrated for each source category.

10. Under Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated the New Source Performance Standards for MSW landfills (Landfill NSPS) at 40 C.F.R. Part 60, Subpart WWW. 61 Fed. Reg. 9919 (March 12, 1996).

11. The Landfill NSPS requires new MSW landfills with a design capacity over 2.5 million megagrams by mass and 2.5 million cubic meters by volume to calculate the nonmethane organic compound (NMOC) emission rate of the landfill. If the NMOC emission rate is greater than 50 megagrams (Mg) per year, the landfill is required to install, operate, and monitor a gas collection and control system (GCCS) in accordance with NSPS requirements.

12. Under 40 C.F.R. § 60.753(c), owners and operators of MSW landfills with a GCCS must operate interior wellheads with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent or have an approved higher operating value for that wellhead.

13. Under 40 C.F.R. § 60.755(a)(5), to identify whether excess air infiltration is occurring in the landfill, owners and operators must monitor oxygen or nitrogen to assess compliance with the operational requirement at 40 C.F.R. § 60.753(c).

14. If there is an exceedance of the operating standard, owners and operators must initiate corrective actions within 5 calendar days. If the exceedance is not corrected within 15 days from the first measurement, the GCCS shall be expanded to correct the exceedance within 120 days of the initial exceedance. An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval. 40 C.F.R. § 60.755(a)(5).

15. Under Section 112 of the CAA, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills (Landfill NESHAP) at 40 C.F.R. Part 63, Subpart AAAA.

16. The owner or operator of an existing affected facility was required to comply with the applicable requirements of 40 C.F.R. Part 63, Subpart AAAA by January 16, 2004.

17. The Landfill NESHAP applies to, among other things, an MSW landfill that has accepted waste since November 8, 1987, has a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ and has potential NMOC emissions equal to or greater than 50 Mg/yr.

18. The Landfill NESHAP, at 40 C.F.R. § 63.1955, requires the owner or operator of MSW landfills to, among other things, comply with the Landfill NSPS requirements, 40 C.F.R. Part 60, Subpart WWW.

19. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for sources of air pollution. Section 502(d) of the CAA, 42 U.S.C. § 7661a(d), provides

that each state must submit to EPA an operating permit program meeting the requirements of Title V.

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

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

22. EPA gave interim approval of Illinois' Title V program on March 7, 1995. *See* 60 Fed. Reg. 12478 (effective March 7, 1995). EPA fully approved the Illinois Title V program on December 4, 2001. 66 Fed. Reg. 62946 (Dec. 4, 2001).

23. The Illinois Title V program, called the Illinois Clean Air Act Permit Program (CAAPP), is codified at 415 ILCS 5/39.5. The regulations governing the Illinois Title V permitting program are codified at 35 IAC § 201, and are federally enforceable pursuant to Section 113(a)(3) of the CAA.

24. The Illinois Environmental Protection Agency (IEPA) issued a CAAPP permit (Permit No. 97030062) to Environtech for the Environtech Landfill in Morris, Illinois on May 10, 2016.

25. The CAAPP permit requires Environtech to comply with the requirements of the Landfill NSPS and the Landfill NESHAP.

26. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$46,192 per day of violation up to a total of \$369,532 for CAA violations that occurred after

November 2, 2015, where penalties are assessed on or after January 15, 2018, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), 40 C.F.R. Part 19, and the Civil Monetary Penalty Inflation Adjustment Rule, 83 Fed. Reg. 1190 (January 1, 2018) (to be codified at 40 C.F.R. Part 19).

27. 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.

28. 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

29. Respondent owns and operates Environtech Landfill (the Landfill), an MSW landfill located at 1800 Ashley Road, Morris, Illinois.

30. The Landfill began receiving MSW in 1988.

31. The Landfill had an emission rate of NMOC equal to or greater than 50 Mg/yr, as calculated using the procedures specified at 40 C.F.R. § 60.754.

32. The GCCS consists of approximately 94 vertical collectors connected to an open gas flare. Until mid-2018, the GCCS also included a landfill-gas-to-energy plant.

33. On April 4, 2017, EPA conducted an inspection of Respondent's Landfill.

34. On May 12, 2017, EPA issued to Respondent an Information Request pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a).

35. On June 30, 2017, Respondent responded to EPA's Section 114(a) Information Request.

36. EPA's review of Respondent's response to the Section 114(a) Information Request identified twelve wells that had oxygen exceedances between November 2015 and July 2017 which were not corrected within 15 days nor addressed via expansion of the gas collection system within 120 days, as provided in 40 C.F.R. § 60.755(a)(5).

37. Respondent provided additional information on November 30, 2017, that three of the wells that had oxygen exceedances had been approved for decommissioning in 2006, and one of the wells had been abandoned in 2016 and removed from the most recent version of the landfill's GCCS design plan. These wells were capped, disconnected from vacuum in the GCCS, and physically abandoned in December 2017 and January 2018.

38. For the eight active wells that had oxygen exceedances, Respondent submitted alternative compliance timeline requests within 15 days of each exceedance, but EPA denied those requests on May 5, 2017.

39. EPA issued a Finding of Violation on September 27, 2017, alleging that by not correcting wellhead oxygen exceedances within the regulatory timeframes provided in 40 C.F.R. § 60.755(a)(5), Respondent had violated 40 C.F.R. § 60.755(a)(5), 40 C.F.R. § 63.1955, and Respondent's CAAPP permit.

40. On November 14, 2017, representatives of Respondent and EPA discussed the violations alleged in the September 27, 2017 Finding of Violation.

41. EPA has determined that, by not correcting twelve wellhead exceedances for oxygen or expanding the gas collection system in the required timeframe, Respondent violated

the requirements at 40 C.F.R. § 60.755(a)(5), 40 C.F.R. § 63.1955, and Respondent's CAAPP permit.

Civil Penalty

42. 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, and Respondent's cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$33,930.

43. Within 30 days after the effective date of this CAFO, Respondent must pay a \$33,930 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.

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

Christopher Grubb (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

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

46. 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.

47. 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).

General Provisions

48. The parties consent to service of this CAFO by email at the following valid email addresses: grubb.christopher@epa.gov (for Complainant), and mack.mcguffey@troutman.com (for Respondent).

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

50. 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.

51. 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 49, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

52. Respondent certifies that it is complying fully with the Landfill NSPS, the Landfill NESHAP, and Respondent's CAAPP permit.

53. 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).

54. The terms of this CAFO bind Respondent, its successors and assigns.

55. 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.


56. Each party agrees to bear its own costs and attorneys fees in this action.

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57. This CAFO constitutes the entire agreement between the parties.

Environtech, Inc., Respondent


9/19/18
Date



Kevin P. Bremer, Vice President
Environtech, Inc.

United States Environmental Protection Agency, Complainant

9/25/18
Date



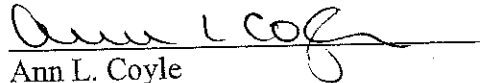
Edward Nam
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Environtech, Inc.
Docket No. CAA-05-2018-0026

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.

September 26, 2018
Date


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

Consent Agreement and Final Order
In the matter of: Environtech, Inc.
Docket Number: CAA-05-2018-0026

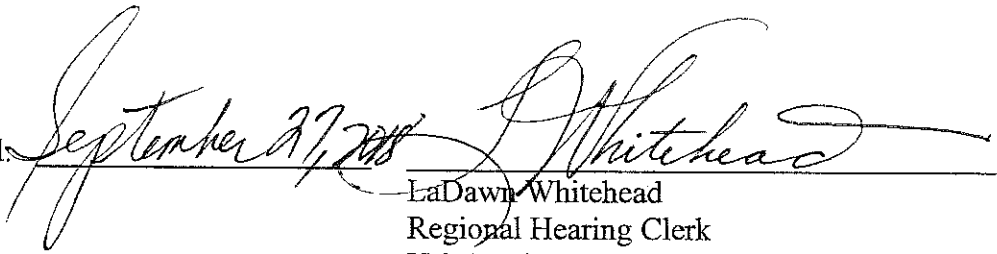
CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2018-0026, which was filed on September 27, 2018 in the following manner to the following addressees:

Copy by E-mail to
Attorney for Respondent: Mack McGuffey
Troutman Sanders
600 Peachtree Street, NE Suite 3000
Atlanta, GA 30308
mack.mcguffey@troutman.com

Copy by E-mail to
Attorney for Complainant: Christopher Grubb
grubb.christopher@epa.gov

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

Dated: September 27, 2018 
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5