

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
COUNTY OF SARPY, NEBRASKA)
Sarpy County Sanitary Landfill)
14414 South 156th Street)
Springfield, Nebraska 68059)
)
Respondent)

Docket No. CAA-07-2010-0005

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Sarpy County Sanitary Landfill (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated the New Source Performance Standards ("NSPS"), 40 C.F.R. Part 60, Subpart WWW, promulgated pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b); and that Respondent is therefore in violation of Section 111(b) of the CAA. Furthermore, this CAFO serves as notice pursuant to Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air and Waste Management Division, EPA, Region 7.

4. The Respondent is County of Sarpy, Nebraska. The Sarpy County Sanitary Landfill, located at 14414 South 156th Street, Springfield, Nebraska, is owned and/or operated by Respondent as a municipal solid waste ("MSW") landfill.

Statutory and Regulatory Requirements

5. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), EPA has promulgated New Source Performance Standards ("NSPS") provisions, codified at 40 C.F.R. Part 60, Subpart WWW, Standards of Performance for MSW Landfills, that apply to each MSW landfill that commenced construction, reconstruction, or modification after May 30, 1991.

6. Pursuant to 40 C.F.R. § 60.752(c)(2), the owner or operator of a MSW landfill with a design capacity equal to or greater than 2.5 megagrams that is not otherwise subject to Part 70 or 71 becomes subject to the requirements of § 70.5(a)(1)(i) or § 71(a)(1)(i) ninety (90) days after the date of commenced construction, modification, or reconstruction on or after March 12, 1996.

7. Pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661(a), it is unlawful to operate without or in violation of a permit issued pursuant to Title V of the CAA, 42 U.S.C. § 7661 *et seq.*

8. The regulations in 40 C.F.R. Part 70 provide for the establishment of state air quality permitting consistent with the requirements of Title V of the CAA, 42 U.S.C. § 7661 *et seq.* Specifically, 40 C.F.R. § 70.5(a)(1)(i) provides that a source applying for a Part 70 permit is required to submit an application within 12 months after the source becomes subject to the permit program or on or before an earlier date as the permitting authority may establish.

9. Nebraska's program under Title V of the CAA, codified at Title 129 of the Nebraska Administrative Code, was granted final approval on October 18, 1995 (60 Fed. Reg. 53,872).

10. Pursuant to Chapter 7, Section 002.02 of the Nebraska Air Quality Regulations, a source that becomes subject to the Class I operating permit program shall file an application within 12 months of the date on which the source first becomes operational or otherwise subject to the Title V program.

11. Pursuant to Chapter 5, Section 005 of the Nebraska Air Quality Regulations, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a Class I operating permit.

12. Section 113(d) of the CAA, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the CAA referenced therein, including Section 112(r)(7). Section 113(d) of the CAA, 42 U.S.C. § 7413(d), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States assess civil administrative penalties of not more than \$32,500 per day for each violation that occurs after March 15, 2004, and \$37,500 for each violation that occurs after January 12, 2009.

Alleged Violations

13. EPA alleges that Respondent has violated the CAA and federal regulations, promulgated pursuant to the CAA, as follows:

14. Respondent is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. On or about July 9, 2005, Respondent submitted an application to Nebraska Department of Environmental Quality ("NDEQ") for the expansion of the landfill which increased the landfill disposal capacity above 2.5 megagrams. This expansion is a modification pursuant to 40 C.F.R. § 60.751, and triggered applicability of the NSPS for MSW landfills.

16. Pursuant to 40 C.F.R. § 60.752(c)(2), Respondent became subject to the requirements of Part 70, 90 days after the date of commenced modification.

17. Pursuant to 40 C.F.R. § 70.5(a)(1)(i) and Chapter 7, Section 002.02 of the Nebraska Air Quality Regulations, Respondent was required to submit an application within 12 months after it became subject to the permit program. Therefore, 15 months (12 months plus 90 days) following the commenced modification, Respondent was required to have submitted its Title V operating permit application.

18. EPA conducted an inspection at the Sarpy County Landfill on March 10, 2009. This inspection revealed that Respondent failed to apply for a Title V operating permit with NDEQ within the required timeframe following the expansion of the landfill to a capacity of over 2.5 megagrams.

19. Respondent's failure to timely apply for a Title V operating permit, as set forth above, is a violation of the NSPS for MSW landfills, State Operating Permit Requirements, and the Nebraska Air Quality Regulations, and, as such, is a violation of Sections 111(e) and 502(a) of the CAA, 42 U.S.C. §§ 7411(e) and 7661a.

CONSENT AGREEMENT

20. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.
21. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO.
22. Respondent neither admits nor denies the factual allegations set forth above.
23. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this CAFO.
24. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.
25. This CAFO addresses all civil and administrative claims for the CAA violations identified above, existing through the effective date of this CAFO. Complainant reserves the right to take enforcement action with respect to any other violations of the CAA or other applicable law.
26. Respondent certifies by the signing of this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements for Municipal Solid Waste Landfills, 40 C.F.R. Part 60, Subpart WWW.
27. The effect of settlement described in paragraph 25 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 26, above, of this CAFO.
28. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.
29. Pursuant to § 113(e) of the CAA, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Ten Thousand Eighty Dollars (\$10,080).
30. The penalty specified in paragraph 29, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

31. Respondent consents to the issuance of this CAFO and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 29, above, and to the performance of the SEP.

32. In settlement of this matter, Respondent agrees to complete the following SEP, which the parties agree is intended to secure significant environmental and/or public health benefits.

33. Respondent shall complete the SEP as follows: retrofit seven machines for a total of nine diesel engines in use at the Sarpy County Landfill. Specifically, the retrofit would be to 1 D7H-Dozer/Ripper, 3 LF Compactor 826Gs, 1 Morbark Grinder, 1 Caterpillar 627F, and 1 Caterpillar 627E. The SEP is more specifically described in the scope of work (hereinafter the "Scope of Work"), attached hereto as Appendix A and incorporated herein by reference. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

34. The total expenditure for the SEP is estimated to be \$34,218 and the SEP shall be completed no later than one hundred eighty (180) days after the effective date of this CAFO, in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

35. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive credit in any other enforcement action for the SEP.

36. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

37. Within thirty (30) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs;
- (iii) A description of any operating problems encountered and the solutions thereto;
- (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this CAFO; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
- (vi) The report shall be submitted via first class mail to:

Ms. Angela Catalano
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

38. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

39. Respondent shall maintain legible copies of documentation and/or the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

40. After receipt of the SEP Completion Report described in paragraph 37, above, EPA will notify Respondent, in writing, regarding:

- (i) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- (ii) indicate that EPA concludes that the project has been completed satisfactorily; or
- (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 42 herein.

If EPA elects to exercise option (i) above, i.e., if the SEP report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days from the receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP report.

If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 42 herein.

41. Respondent agrees that failure to submit the SEP Completion Report required by paragraph 40 above, shall be deemed a violation of this CAFO and Respondent shall become liable for stipulated penalties pursuant to paragraph 42 below.

42. Stipulated Penalties

a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 33 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 34 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of \$34,218.
- (ii) If the SEP is not completed in accordance with paragraph 33, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iii) If the SEP is completed in accordance with paragraph 33, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$3,422.
- (iv) If the SEP is completed in accordance with paragraph 33, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the SEP Completion Report required by paragraph 37 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the due date of the Completion Report stated in paragraph 37 above, until the report is submitted.

b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c) Stipulated penalties for paragraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 below. Interest and late charges shall be paid as stated in paragraph 44 herein.

43. Respondent understands that the failure to pay any portion of the mitigated civil penalty as stated in paragraph 29, or any portion of a stipulated penalty as stated in paragraph 42, in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

44. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the debt collection, including processing and handling costs and administrative costs. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

45. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

46. This CAFO shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

47. This Final Order portion of this CAFO shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

FINAL ORDER

Pursuant to the provisions of the CAA, 42 U.S.C. § 7401 *et seq.*, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Ten Thousand Eighty Dollars (\$10,080), within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

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

This payment shall reference docket number CAA-07-2010-0005.

2. A copy of the check should be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101;

and to:

Sarah LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent shall complete the SEP in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such a project as specified in the Consent Agreement.

COMPLAINANT:
U. S. ENVIRONMENTAL PROTECTION AGENCY

By: Becky Weber
Becky Weber
Director
Air and Waste Management Division

Date: 7/28/10

By: Sarah Thibos LaBoda
Sarah Thibos LaBoda
Assistant Regional Counsel
Office of Regional Counsel

Date: 7/28/10

RESPONDENT:
COUNTY OF SARPY, NEBRASKA
SARPY COUNTY SANITARY LANDFILL

By: Jim Albrecht
Title: Chairman, Sarpy County Board

Date: 7/27/2010

IT IS SO ORDERED. This Final Order shall become effective immediately.

By Karina Borromeo
Karina Borromeo
Regional Judicial Officer

Date Aug. 2, 2010

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT – SCOPE OF WORK

In satisfaction of its obligations under the Consent Agreement and Final Order (“CAFO”), Sarpy County will complete the supplemental environmental project (“SEP”) listed below. A SEP is an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action, but one which the respondent is not otherwise legally required to perform, and that primarily benefits the public health or the environment. EPA has approved the following SEP, in addition to the administrative penalty set forth in this CAFO, for the settlement of this matter.

1. Sarpy County agrees to purchase and install Diesel Oxidation Catalysts (DOC) on seven (7) machines in operation at the Sarpy County Sanitary Landfill. This SEP is a pollution prevention project that reduces the generation of Carbon Monoxide, (CO), Hydrocarbons, (HC) and Diesel Particulate Matter (DPM).
 - a. Sarpy County will install DOCs on seven (7) machines, for a total of nine (9) engines.
 - i. D7H-DOZER /RIPPER S/N 5BF05698
 - ii. LF COMPACTOR 826 G S/N 7LN00231
 - iii. LF COMPACTOR 826 G S/N 7LN00580
 - iv. LF COMPACTOR 826 G S/N AYN00507
 - v. MORBARK 1200 GRINDER S/N 38S16487
 - vi. Caterpillar 627F (front engine) S/N 1DL00297
 - vii. Caterpillar 627F (rear engine) S/N 1DL00297
 - viii. Caterpillar 627E (front engine) S/N 7CG00777
 - ix. Caterpillar 627E (rear engine) S/N 7CG0077
 - b. The DOCs will reduce the generation of Carbon Monoxide, (CO), Hydrocarbons, (HC) and Diesel Particulate Matter (DPM) as follows:

EMISSION	UNTREATED DIESEL FUEL	CATALYST PERFORMANCE
Carbon Monoxide (CO)	500-1000 ppm	Typically exceeds 50% removal at 160°C (320°F). Typically exceeds 90% removal at above 260°C (500°F).
Hydrocarbons (HC)	300-500 ppm C1	Typically exceeds 50% removal at 250°C (482 °F) in diesel applications. Typically exceeds 70% removal at above 300°C (572 °F).
Diesel Particulate Matter (DPM)	25-150 mg/m3	The net results on DPM measurements are highly dependent on sulfur levels in the fuel. The Catalyst will remove approximately 25% of DPM but depends highly on DPM composition, which is also engine specific.

2. The implementation of the SEP project described in paragraph 1 of this Appendix is estimated to result in a total Sarpy County expenditure of 34,218.75 dollars. EPA agrees that Sarpy County will have fulfilled its obligations under this CAFO related to the SEP, if (1) the SEP is completed, as described herein, and (2) actual costs incurred by Sarpy County (including equipment and installation costs), are 90 percent or more of the estimated expenditures for the implementation of this SEP, based upon the cost documentation in the SEP Final Report required in paragraph 4 below.
3. Sarpy County shall order the equipment described in this Appendix A within 60 days of the effective date of this CAFO. The vendor has agreed to deliver the equipment within 60 days of order placement from Sarpy County. Sarpy County shall install the equipment within 60 days from the receipt of the equipment to complete the SEP described in this Appendix. Sarpy County will complete the SEP within 180 days of the effective date of this CAFO.
4. Within 45 days from the completion of the implementation of the SEP described in this Appendix A, Sarpy County will submit to EPA a Final SEP Report. This Final SEP Report shall provide a detailed description of the SEP as implemented, including dates of completion of the SEP. The Report shall also document all approved costs incurred in the purchase, installation, and operation of the SEP.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Sarah LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Nicole O'Keefe, Esq.
Deputy County Attorney
Sarpy County Attorney's Office
1210 Golden Gate Drive, Suite 3147
Papillion, Nebraska 68046-2889

8/31/10
DATE

Kathy Rowenson