

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

KMS Joliet Power Partners,
L.P./KMS Energy, Inc.
Joliet, Illinois

Proceedings Pursuant to
the Clean Air Act,
42 U.S.C. §§ 7401 et seq.

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) **FINDING OF VIOLATION**
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) **EPA-5-00-IL-23**
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FINDING OF VIOLATION

The United States Environmental Protection Agency (U.S. EPA) finds that KMS Joliet Power Partners, L.P./KMS Energy, Inc. (KMS) is violating Sections 111 and 503 of the Clean Air Act, 42 U.S.C. §§ 7411 and 7661b. More specifically, KMS is violating regulations promulgated under the New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills at 40 C.F.R. Part 60, Subpart WWW, and the Clean Air Act Permit Program (CAAPP) at 40 C.F.R. Part 70, at the CDT Landfill in Joliet, Illinois. The bases for these findings are discussed more specifically below.

Regulatory Authority

1. The NSPS regulations for Municipal Solid Waste Landfills, effective May 30, 1996, apply to Municipal Solid Waste (MSW) landfills that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991.
2. The NSPS regulations at 40 C.F.R. §§ 60.8 and 60.752(b)(2) require that an 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 having a calculated nonmethane organic compounds (NMOC) emission rate equal to or greater than 50 megagrams per year conduct emission tests in accordance with the requirements of 40 C.F.R. §§ 60.752(b)(2) and 60.754(d).

3. The NSPS regulations at 40 C.F.R. §60.752(b) state that an 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 is subject to the CAAPP requirements at 40 C.F.R. Part 70.
4. The CAAPP regulations at 40 C.F.R. §70.5(a) require subject sources to submit a timely and complete CAAPP application in accordance with 40 C.F.R. Part 70.
5. The CAAPP regulations at 40 C.F.R. §70.5(a)(1) state that a timely application for a source applying for a permit is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.

FACTUAL BACKGROUND

6. KMS owns and operates a landfill gas collection and control system which collects and treats the gases, including NMOC, from the CDT Landfill, located at 2851 Mound Road, Joliet, Illinois.
7. The CDT Landfill is a municipal solid waste landfill that commenced construction, reconstruction or modification or began accepting waste on or after May 30, 1991.
8. Since May 30, 1996, the CDT landfill has had a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters.
9. Since May 30, 1996, the CDT Landfill has had a calculated NMOC emission rate equal to or greater than 50 megagrams per year.
10. KMS has not conducted an emission compliance test which meets the requirements of 40 C.F.R. §§60.8, 60.752(b) and 60.754(d) on its gas collection and control system to measure NMOC at the CDT Landfill.
11. CDT did not submit its CAAPP application to the Illinois Environmental Protection Agency (Illinois EPA) on or before March 12, 1997, the date established by the Illinois EPA for such submission.

Violations

- 12. KMS's failure to conduct an emission compliance test on its gas collection and control system at the CDT Landfill located in Joliet, Illinois, constitutes a violation of 40 C.F.R. §§ 60.8, 60.752(b)(2) and 60.754(d).
- 13. KMS's failure to timely apply for a CAAPP permit constitutes a violation of 40 C.F.R. §60.752(b) and 40 C.F.R. §70.5(d).

8/3/00
Date


Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Finding of Violation, No. EPA-5-00-IL-23, by Certified Mail, Return Receipt Requested, to:

Henry Martin, President
KMS Joliet Power Partners LP
2600 West Van Buren
Bellwood, Illinois 60104

I also certify that I sent copies of the Finding of Violation by first class mail to:

David Asselmeier, Acting Manager
Compliance and Systems Management Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702

Harish Narayan, Acting Regional Manager
Region 1
Illinois Environmental Protection Agency
1701 First Avenue - Suite 1202
Maywood, Illinois 60153

Scott M. Hoster
Davis, Kaplan, Dystrup and Hoster, P.C.
181 North Hammes Avenue
Joliet, Illinois 60435

on the 4th day of August, 2000.


Betty Williams, Secretary
AECAS, (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 2199026431