



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

APR 05 2006

CERTIFIED MAIL NO. 7003 3110 0006 2000 8182
RETURN RECEIPT REQUESTED

Paul Burns
General Manager
Waste Management of Hawaii, Inc.
92-460 Farrington Highway
Kapolei, HI 96707

CERTIFIED MAIL NO. 7003 3110 0006 2000 8175
RETURN RECEIPT REQUESTED

Eric S. Takamura, P.E.
Director
Department of Environmental Services
City and County of Honolulu
1000 Uluohia St., Suite 308
Kapolei, HI 96707

In Reply: AIR-5
Refer To: Docket No. R9-2006-06

Dear Messrs. Burns and Takamura:

Enclosed is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA") is issuing to Waste Management of Hawaii ("WMH") and the City and County of Honolulu ("CCH") pursuant to Section 113 (a) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413 (a). The NOV is intended to notify WMH and CCH of EPA's finding that Waimanalo Gulch Solid Waste Landfill at Kapolei on Oahu (the "Landfill") has been and is in violation of the Act.

You should be aware that Section 113(a) of the Act provides that EPA may issue an Order requiring compliance, issue an Order assessing a civil administrative penalty, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, Section 113(c) of the Act provides for criminal penalties in certain cases.

Upon a finding of adequate evidence of a continuing violation, EPA may place the Landfill on the List of Violating Facilities. See Section 306 of the Act and the regulations promulgated in 40 C.F.R. Part 32. Such facility would be declared ineligible for participation in any federal contract, grant, loan, or subagreement thereunder.

EXHIBIT K60

MD 122

If you wish to discuss the NOV, you may request a conference with EPA. The conference will afford WMH and CCH an opportunity to present information bearing on the finding of violation, the nature of the violation, any efforts you have taken to achieve compliance, and the steps you propose to take to achieve compliance.

Please contact Brian Riedel, Office of Regional Counsel, at (415) 972-3924, to request a conference. Such request should be made as soon as possible, but in any event no later than 10 business days after receipt of this letter. Thank you for your cooperation in this matter.

Sincerely,



Deborah Jordan
Director, Air Division

Enclosures

cc: Wilfred Nagamine, CAB, HSDOH

§ 7411(b)(1)(A), requires EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause, or significantly contribute to, air pollution which may be reasonably anticipated to endanger public health or welfare. "New source[s]" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a). These standards are known as New Source Performance Standards ("NSPS").

2. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of an NSPS.
3. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), and at 40 C.F.R. § 60.16, EPA has identified municipal solid waste ("MSW") landfills as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. EPA also promulgated the Standards of Performance for Municipal Solid Waste Landfills ("NSPS Subpart WWW" or "Subpart WWW"), at 40 C.F.R. Part 60, Subpart WWW, §§ 60.750 - 60.759, effective March 12, 1996.
4. NSPS Subpart WWW applies to each MSW landfill that

commenced construction, reconstruction or modification on or after May 30, 1991.

5. Pursuant to NSPS Subpart WWW, each owner or operator of an MSW landfill having a design capacity \geq 2.5 million megagrams ("Mg") and 2.5 million cubic meters ("m³") must calculate its nonmethane organic compounds ("NMOC") emissions potential using the Tier 1 calculations at 40 C.F.R. § 60.754 and report the results to EPA. If this report indicates NMOC emissions \geq 50 Mg/yr, the owner or operator must submit a collection and control design plan ("design plan"), prepared by a professional engineer, to EPA within 1 year, and install a gas collection and control system ("GCCS") within 30 months of the first report indicating emissions \geq 50 Mg NMOC/yr, unless the landfill performs Tier 2 or 3 measurements that show NMOC emissions $<$ 50 Mg/yr. See 40 C.F.R. §§ 60.752(b) and 60.757(c).
6. A GCCS installed in accordance with 40 C.F.R. § 60.752(b)(2) must meet the design and operation requirements of 40 C.F.R. §§ 60.752(b)(2)(ii) and 60.752(b)(2)(iii).
7. On January 30, 2006, EPA delegated authority to implement and enforce NSPS Subpart WWW to the State of Hawaii, Department of Health.

FINDING OF VIOLATION

8. The Waimanalo Gulch Landfill is owned by CCH and operated by WMH.

9. The Waimanalo Gulch Landfill commenced modification after May 30, 1991.
10. Beginning March 12, 1996, the Landfill became subject to NSPS Subpart WWW.
11. On March 12, 1996, the Landfill had a design capacity \geq 2.5 million Mg and 2.5 million m³.
12. On June 9, 1996, WMH submitted an Initial Design Capacity Report and Initial NMOC Emission Rate Report (collectively, "Initial Report") for the Landfill to EPA pursuant to 40 C.F.R. §§ 60.757(a)(1), 60.757(a)(2) and 60.757(b).
13. The Initial Report for the Landfill, submitted by WMH to EPA on June 9, 1996, is the first report in which the Landfill had an NMOC emission rate \geq 50 Mg/yr.
14. WMH or CCH was required to either submit a design plan to EPA within 1 year of June 9, 1996, or by June 9, 1997, or perform Tier 2 measurements that show NMOC emissions < 50 Mg/yr and report such results to EPA by December 9, 1996.
15. WMH and CCH failed to submit a design plan to EPA by June 9, 1997.
16. WMH and CCH failed to submit Tier 2 results to EPA by December 9, 1996.
17. WMH and CCH violated Section 111 of the Act, 40 C.F.R. §§ 60.752(b)(2)(i) and 60.757(c) by failing to submit a design plan to EPA by June 9, 1997 or submit Tier 2 recalculations to EPA by December 9, 1996.
18. WMH or CCH was required to install a GCCS for the

Landfill within 30 months of June 9, 1996, or by December 9, 1998.

19. WMH and CCH failed to install a GCCS for the Landfill by December 9, 1998.
20. WMH and CCH violated Section 111 of the Act and 40 C.F.R. § 60.752(b)(2)(ii) by failing to install a GCCS for the Landfill by December 9, 1998.
21. On August 1, 2005, full operation of a GCCS for the Landfill began. However, the GCCS has not complied with, and does not comply with, the design and operation requirements of 40 C.F.R. § 60.752(b)(2). Therefore, WMH and CCH have been in violation, and are considered to be in violation, until WMH and/or CCH establishes continuous compliance with 40 C.F.R. § 60.752(b)(2).

ENFORCEMENT

22. Section 113(a)(3) of the Act provides that whenever EPA finds that any person has violated, or is in violation of, any requirement or prohibition of, *inter alia*, subchapter I or V of the Act, including, but not limited to, any requirement or prohibition of any rule promulgated under Sections 111 or 502 of the Act, EPA may,
 - issue an administrative penalty order pursuant to Section 113(d) for civil administrative penalties of up to \$ 32,500 per day of violation, or
 - issue an order requiring such person to comply with such requirement or prohibition, or

- bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than \$ 32,500 per day for each violation.

42 U.S.C. § 7413(a)(3), as amended by Pub. L. 104-134. Furthermore, for any person who knowingly violates a requirement or prohibition of Sections 111 or 502 of the Act, Section 113(c) provides for criminal penalties or imprisonment, or both. In addition, under Section 306(a), the regulations promulgated thereunder (40 C.F.R. Part 32), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. Violation of the Act may result in the subject facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or a court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) 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 (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of

noncompliance, and the seriousness of the violation. Section 113(e) (2) of the Act allows the Administrator or a court to assess a penalty for each day of violation. For purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the defendant or respondent establishes that continuous compliance has been achieved, except to the extent that the defendant or respondent can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

WMH and/or CCH may, upon request, confer with EPA. The conference will enable WMH and/or CCH to present evidence bearing on the finding of violation, the nature of the violation, and any efforts it may have taken or proposes to take to achieve compliance. WMH and/or CCH may be represented by counsel. A request for a conference must be made within ten (10) working days of receipt of this NOV. The request for a conference or other inquiries

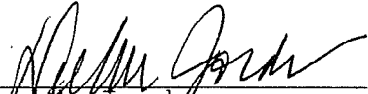
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concerning the NOV should be made in writing to:

Brian P. Riedel (ORC-2)
Office of Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3924
facsimile (415) 947-3570

4-4-06
Date



Deborah Jordan
Director, Air Division