

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No. 1:24-cv-36

v.

ALLIED WASTE NIAGARA FALLS
LANDFILL, LLC,

COMPLAINT

Defendant.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Regional Administrator of the U.S. Environmental Protection Agency (“EPA”), Region 2, files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Allied Waste Niagara Falls Landfill, LLC (“Allied”) for its operation of the Allied Waste Niagara Falls Landfill (“Landfill”) in violation of the Clean Air Act (“Act”), 42 U.S.C. §§ 7401, *et seq.*, and certain regulations promulgated under the Act, including regulations applicable to landfills.

2. This action seeks injunctive relief and the assessment of civil penalties for Allied’s violations of the Act and the regulations applicable to the Landfill.

JURISDICTION AND VENUE

3. This Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the parties.

4. Venue is proper in this District pursuant to Sections 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because the violations occurred and are occurring in this District.

PARTIES

5. Plaintiff is the United States of America on behalf of EPA.
6. Allied is organized under the laws of the State of New York.
7. Allied maintains offices at 5600 Niagara Falls Blvd. in Niagara Falls, New York.
8. At all times pertinent to this action, Allied owned and operated the Landfill.
9. The Landfill is located at 5600 Niagara Falls Blvd. in Niagara Falls, New York.

NOTICES

10. The United States gave notice of the commencement of this action to the State of New York as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

STATUTORY AND REGULATORY BACKGROUND

11. Municipal solid waste (“MSW”) in landfills continuously biodegrades and produces gases that escape from the landfill into the atmosphere. Landfill gas emissions include methane, carbon dioxide, and more than 100 different nonmethane organic compounds (“NMOC”).

12. There is concern about cancer risks from landfill NMOC emissions. In reviewing limited NMOC emissions data from MSW landfills, EPA identified both known and suspected carcinogens, including hazardous air pollutants that pose serious health risks such as benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene dichloride, perchloroethylene, trichloroethylene, vinyl chloride, and vinylidene chloride. Many of these are known or suspected to increase the risk of cancer in humans. Many of these also cause non-cancer health effects.

Such non-cancer health effects include adverse effects on the kidneys, liver, and central nervous system.

13. A portion of NMOCs in landfill gas emissions contribute to the formation of ground-level ozone. Ground-level ozone causes adverse health effects to the human respiratory system.

14. Landfill gas emissions also cause an odor nuisance.

15. Methane emissions from landfills present a well-documented danger of fire and explosion on-site and off-site, and they contribute to global climate change as a potent greenhouse gas.

16. The Clean Air Act and rules promulgated thereunder that apply to MSW landfills serve to significantly reduce the problems associated with landfill gas emissions.

The Landfill NSPS

17. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish a list of categories of stationary sources of air pollution that cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare. MSW landfills are one category of such stationary sources. *See* 40 C.F.R. § 60.16.

18. As required by Section 111, 42 U.S.C. §§ 7411, EPA promulgated regulations applicable to MSW landfills which are referred to as the “New Source Performance Standards for Municipal Solid Waste Landfills,” or “Landfill NSPS.” The relevant portions of the Landfill NSPS are found at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. §§ 60.750 - 60.759. (“Subpart WWW”).

19. Subpart WWW applies to MSW landfills that began construction, modification, or reconstruction on or after May 30, 1991, but before July 18, 2014. 40 C.F.R. § 60.750(a).

20. An MSW landfill is defined as “an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.” 40 C.F.R. § 60.751. The definition further states: “An MSW landfill may also receive other types of [Resource Conservation and Recovery Act] Subtitle D wastes ... such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.” *Id.*

21. Subpart WWW requires that owners or operators of MSW Landfills that have a design capacity equal to or greater than 2.5 million megagrams (“Mg”) and 2.5 million cubic meters (“m³”), must either: (a) submit a gas collection and control system (“GCCS”) design plan for EPA review and approval and install and operate the GCCS; or (b) submit an NMOC emissions rate report containing a calculation of the estimated amount of NMOCs emitted from the landfill. 40 C.F.R. §§ 60.752(b), 60.757(b).

22. If the owner or operator opts to submit a calculation of the estimated NMOC emissions, and the calculation shows that the NMOC emission rate is equal to or greater than 50 Mg per year, the owner or operator must submit a GCCS design plan for EPA review and approval and install and operate the GCCS. 40 C.F.R. § 60.752(b)(2). If the NMOC emission rate calculation demonstrates that the landfill emits less than 50 Mg, the owner or operator must submit an annual NMOC emission rate report or demonstrate that the landfill would emit less than 50 Mg over the next five years in order to avoid the annual reporting requirement. 40 C.F.R. § 60.757(b).

23. Owners or operators required to install a GCCS must install the GCCS and begin collecting gas generated by the landfill within 18 months after submitting their design plan to EPA, or in any event, within 30 months of their first annual report indicating that the landfill's NMOC emission rate equals or exceeds 50 Mg per year. 40 C.F.R. §§ 60.752(b)(2)(i), (ii).

24. MSW landfills must comply with the Landfill NSPS until they become subject to the more stringent requirements in an approved and effective state or federal plan that implements 40 C.F.R. Part 60 Subpart Cf. 40 C.F.R. § 60.750(d)(1); *see infra* Paragraphs 33-44 (“New York State Plan Under CAA Section 111(d)”).

Landfill NESHAP

25. Section 112(c)(2) of the Act, 42 U.S.C. § 7412(c)(2), requires EPA to promulgate regulations setting emission standards for sources of hazardous air pollutants (“HAP”) identified in Section 112(b). Section 112(b) includes several HAPs commonly found in MSW landfill gas emissions, and that are known to cause adverse health effects, including vinyl chloride, ethyl benzene, toluene, and benzene. *See, e.g.*, 68 Fed. Reg. 2227 (Jan. 16, 2003). Vinyl chloride is known to cause liver cancer and benzene is known to cause leukemia.

26. On January 16, 2003, as required by Section 112, EPA promulgated regulations applicable to MSW landfills, which are referred to as the “National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills” or “Landfill NESHAP.” 68 Fed. Reg. 2227 (Jan. 16, 2003). The Landfill NESHAP is codified at 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930 to 63.1990. EPA amended the Landfill NESHAP on April 20, 2006, March 26, 2020, and February 14, 2022. *See* 71 Fed. Reg. 20445 (April 20, 2006); 85 Fed. Reg. 17244 (Mar. 26, 2020); and 87 Fed. Reg. 8197 (Feb. 14, 2022).

27. The Landfill NESHAP regulates HAP emissions from MSW landfills that are either major or area sources. 40 C.F.R. § 63.1935.

28. The Landfill NESHAP applies to MSW landfills: (a) that accepted waste since November 8, 1987, or that have additional capacity for waste deposition; (b) that are major sources, that are collocated with major sources; or (c) that are an area source landfill that have a design capacity equal to or greater than 2.5 million Mg and 2.5 million m³ and have estimated uncontrolled emissions equal to or greater than 50 Mg NMOC per year. 40 C.F.R. § 63.1935(a).

29. The Landfill NESHAP regulates HAP emissions by requiring MSW landfills that exceed the size and emission thresholds to install and operate a GCCS. 40 C.F.R. § 63.1959(b)(2).

30. A GCCS must be installed within 30 months after the MSW landfill meets or exceeds the design capacity threshold, and the landfill must expand the system to collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for five years or more if active; or two years or more if closed or at final grade. 40 C.F.R. § 63.1959(b)(2)(ii).

31. The Landfill NESHAP requires each MSW landfill subject to the Landfill NESHAP to comply with the Landfill NSPS, or other applicable requirements, as required by 40 C.F.R. § 63.1955(a).

32. Beginning no later than September 27, 2021, landfills subject to the Landfill NESHAP must submit semi-annual reports to EPA on the operation and maintenance of the GCCS, as specified in 40 C.F.R. § 63.1981(h).

33. Beginning no later than September 27, 2021, at all times, the Landfill NESHAP requires owners or operators of any affected MSW landfill to operate and maintain it, including

associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. 40 C.F.R. § 63.1955(c).

New York State Plan under CAA Section 111(d)

34. Under Section 111(d) of the Act and its regulations, once EPA has promulgated NSPS for new sources, it must establish Emission Guidelines (“EGs”) that address certain designated pollutants emitted from *existing* facilities (*i.e.*, facilities in existence, or which have not been modified before EPA proposed or amended its NSPS regulations). The intended effect of the EGs is to require existing sources to meet performance standards, while taking into consideration, among other factors, the remaining useful lives of the existing sources. States that have such existing facilities must develop a “state plan” adopting the EGs’ requirements into the State’s regulations.

35. On March 12, 1996, EPA developed EGs for existing MSW landfills which are codified at 40 C.F.R. Part 60 Subpart Cc to regulate NMOCs. 61 Fed Reg. 9905 (Mar. 12, 1996).

36. On October 8, 1998, New York State submitted a Section 111(d) state plan to EPA that incorporated those EGs. EPA approved New York’s state plan incorporating the EGs on July 19, 1999. 64 Fed. Reg. 38582 (July 19, 1999).

37. After assessing current practices, emissions, and the potential for additional emission reductions, EPA promulgated revised EGs for MSW landfills on August 29, 2016. 81 Fed. Reg. 59275 (Aug. 29, 2016). EPA’s revised EGs are codified at 40 C.F.R. Part 60 Subpart Cf (“2016 Landfill EGs”).

38. New York revised its Section 111(d) state plan to incorporate the 2016 Landfill EGs by reference and, on December 11, 2019, it submitted its revised state plan for EPA's approval.

39. EPA approved the revised state plan on August 23, 2021. 86 Fed. Reg. 46,989 (Aug. 23, 2021). 40 C.F.R. § 62.8104. EPA's approval became effective on September 22, 2021.

40. Thus, the state plan became applicable to MSW landfills in New York as of September 22, 2021.

41. The state plan applies to all existing MSW landfills in New York that accepted waste after November 8, 1987, and that began construction, reconstruction, or modification before July 17, 2014 ("Existing NY MSW Landfills"). *See* 6 N.Y.C.R.R. § 208.1.

42. The state plan requires owners or operators of Existing NY MSW Landfills with a design capacity equal to or greater than 2.5 million megagrams ("Mg") and 2.5 m³ to either: (a) install a GCCS, or (b) calculate an initial NMOC emission rate for the landfill. 40 C.F.R. § 60.33f(c).

43. If the owner or operator opts to submit an NMOC calculation and the resulting emission rate is equal to or greater than 34 Mg per year, the owner or operator must design, install, and operate the GCCS. 40 C.F.R. § 60.33f(b).

44. The state plan requires that the GCCS be installed within 30 months after the first calculation that shows that the NMOC emission rate equals or exceeds 34 megagrams per year. 40 C.F.R. § 60.33f(b)(1).

45. The state plan includes reporting requirements, including design capacity reporting, NMOC emission rate reporting, submission of a GCCS design plan, test performance reporting, corrective action reporting, and an annual reporting requirement. 40 C.F.R. § 60.38f.

46. Pursuant to 40 C.F.R. § 62.02(d)(1), the approved New York state plan is federally enforceable. *See also* 40 C.F.R. § 62.8104 (incorporating revisions to the New York state plan for the implementation of 40 C.F.R. Part 60, Subpart Cf).

Title V of the Clean Air Act

47. Title V of the Act, 42 U.S.C. §§ 7661 to 7661f, aims to consolidate all applicable requirements for each source into a single document, *i.e.*, a “Title V Operating Permit.” A goal of Title V is not to create new requirements for a source, but rather to list all applicable requirements in one place. 42 U.S.C. § 7661c(a); *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 597 (D.C. Cir. 2016).

48. Under Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

49. New York has an EPA-approved Title V program. *See* 6 N.Y.C.R.R. Chapter III Part 201 (approved by EPA at 67 Fed. Reg. 5216 (February 5, 2002)). New York is authorized to issue and enforce Title V permits. In all respects relevant to this Complaint, the Title V regulations of New York comport with the federal Title V regulations codified at 40 C.F.R. Part 70.

50. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), the implementing regulations found at 40 C.F.R. §§ 70.1(b) and 70.7(b), and the New York regulations at 6 N.Y.C.R.R. 201-6.1(a) provide that, after the effective date of the state Title V permit program, no source subject to Title V may operate except in compliance with a Title V permit.

51. Owners or operators of MSW landfills with a design capacity of greater than or equal to 2.5 million Mg and 2.5 million m³ and that began construction, modification, or reconstruction between May 30, 1991, and March 12, 1996, must have submitted an application for a Title V permit by June 10, 1996. 40 C.F.R. § 60.752(c)(1).

52. Owners or operators of MSW landfills subject to the Title V program that began construction, modification, or reconstruction on or after March 12, 1996, must have submitted an application for a Title V permit within 90 days after commencing construction, modification, or reconstruction. 40 C.F.R. § 60.752(c)(2).

53. The Title V Program requires that all permits contain conditions: (a) that incorporate all applicable federal reporting requirements, including the submission of reports of any required monitoring at least every six months; and (b) that require sources to certify compliance annually and submit annual certifications to the permitting agency, *i.e.*, the New York State Department of Environmental Conservation (“NYSDEC”), and to EPA. 6 N.Y.C.R.R. 201-6.4(c)(3), 201-6.4(e).

Enforcement Provisions

54. Under Section 111(e) of the Act, 42 U.S.C. § 7411(e), it is unlawful for any owner or operator of a new source to operate that source in violation of a standard promulgated under Section 111.

55. Under Section 112(i)(3)(A) of the Act, 42 U.S.C. § 7412(i)(3)(A), it is unlawful for any person to operate a source in violation of a standard, limitation or regulation promulgated under Section 112.

56. Under Section 502(a) of the Act, 42 U.S.C. § 7661a(a), it is unlawful for any person to operate a Title V affected source that is subject to Sections 111 or 112 and the regulations promulgated thereunder except in compliance with Title V. 42 U.S.C. § 7661a(a).

57. Under Sections 113(a)(3) and 113(b), 42 U.S.C. §§ 7413(a)(3) and (b), EPA may commence a civil action for a permanent or temporary injunction or to assess and recover a civil penalty of up to \$25,000 per day for each violation of Sections 111, including a state plan pursuant to Section 111(d), 112, and 502 of the Act, 42 U.S.C. §§ 7411, 7412, and 7661a.

58. The maximum daily civil penalty amounts under Section 113(b)(2) are increased to \$117,468 per day for violations that occurred after November 2, 2015, where penalties are assessed on or after January 6, 2023. 28 U.S.C. § 2461, 40 C.F.R. § 19.4, and 88 Fed. Reg. 986, 989 (Jan. 6, 2023).

GENERAL ALLEGATIONS

59. The Landfill comprises over 250 acres.

60. The Landfill comprises nine contiguous cells, hereinafter referred to as Cells I, II, III, IV, old V, V, VI, VII, and VIII.

61. All of these cells collectively comprise a single municipal solid waste landfill as defined in the Landfill NSPS, the Landfill NESHAP, and the EGs (and, by extension, the New York state plan).

62. Allied modified the Landfill after May 30, 1991, and prior to March 12, 1996. Allied also modified the Landfill in 1998, 2002, and 2005.

63. Allied accepted household waste at the Landfill after November 8, 1987.

64. The Landfill has had, since on or before June 10, 1996, a design capacity greater than 2.5 million Mg and 2.5 million cubic meters.

65. The Landfill is an existing municipal solid waste landfill that has accepted waste after November 8, 1987, and began construction, reconstruction, or modification before July 14, 2014.

66. The Landfill is a municipal solid waste landfill that is subject to the Landfill NESHAP.

67. The Landfill is a municipal solid waste landfill that was subject to the Landfill NSPS from March 12, 1996, until September 22, 2021.

68. The Landfill has had NMOC emissions equal to or greater than 50 Mg/year since at least December 31, 2009.

69. The Landfill has been subject to the New York Section 111(d) state plan since September 22, 2021.

70. Allied failed to submit an initial design capacity report to EPA by the required date, in violation of 40 C.F.R. §§ 60.752(a) and 60.757.

71. Allied failed to either (a) design and construct a GCCS; or (b) prepare and submit an NMOC emissions rate report to EPA within 30 months of December 31, 2009.

72. If Allied had prepared and submitted an NMOC emissions rate report to EPA, the report would have shown that the calculated NMOC emission rate for the Landfill was greater than 50 Mg per year.

73. Allied did not submit a GCCS plan as required under 40 C.F.R. § 60.752(b)(2)(i). Allied has not designed, installed, or operated a GCCS at the Landfill that meets the requirements of the Landfill NSPS, the Landfill NESHAP, or the state plan.

74. Although Allied became subject to the requirement to apply for and obtain a Title V operating permit, it did not submit a compliant and timely application, as required by 40 C.F.R. §§ 60.752(c), 70.5(a)(1), 42 U.S.C. § 7661a(a), and 6 N.Y.C.R.R. 201-6.2(a).

CLAIM FOR RELIEF
Violations of the Landfill NSPS, Landfill NESHAP, the New York State Plan, and Title V of the Act

75. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. §§ 60.752(a) and 60.757 by failing to submit an initial design capacity report to EPA by the required due date.

76. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. §§ 60.752(b) and 60.757 by failing to submit to EPA an initial NMOC emissions rate report for the Landfill.

77. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. §§ 60.752(b) and 60.757 by failing to submit to EPA annual NMOC emission rate reports or to demonstrate that it qualified for the exemption to the annual reporting requirement through a demonstration that the Landfill would emit less than 50 Mg over the next five years.

78. Allied failed to submit a GCCS design plan to EPA in violation of 40 C.F.R. § 60.757(c).

79. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. § 60.752(b) by failing to design, install, and operate a GCCS at its Landfill. This failure resulted in excess landfill gas emissions since on or before December 31, 2009.

80. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. § 60.755(c) by, among other things, failing to monitor landfill gas pressure monthly, failing to

conduct quarterly surface emission monitoring, and failing to implement a landfill cover integrity monitoring program.

81. Allied failed to comply with the Landfill NSPS monitoring requirements of 40 C.F.R. § 60.756 by failing to install appropriate temperature control devices and to monitor the temperature and nitrogen and oxygen concentrations in the landfill gas on a monthly basis.

82. Allied failed to comply with the Landfill NSPS reporting requirements of 40 C.F.R. §§ 60.757(f) and (g) by failing to submit annual reports to the EPA including, among other things, performance testing results, descriptions of expansions of the GCCS, and information about exceedances of monitoring and control standards at the Landfill.

83. Allied failed to comply with the Landfill NSPS requirements of 40 C.F.R. § 60.752(c) by failing to timely file an application for a compliant Title V operating permit. Allied's operation of the Landfill without a compliant Title V permit is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the New York State regulations at 6 N.Y.C.R.R. 201-6.2(a).

84. Each failure by Allied to comply with the Landfill NSPS is a violation of Section 111 of the Act, 42 U.S.C. § 7411.

85. Each failure by Allied to comply with 40 C.F.R. §§ 60.752(a) and 60.752(b) also is a violation of the Landfill NESHAP requirements in 40 C.F.R. § 63.1955(a).

86. Allied failed to comply with the Landfill NESHAP requirements contained in 40 C.F.R. §§ 63.1957 and 63.1958 by failing to design, install, and operate a compliant GCCS at its Landfill. This failure resulted in excess landfill gas emissions since at least December 31, 2009.

87. Allied failed to comply with the Landfill NESHAP requirements contained in 40 C.F.R. § 63.1955(c) by failing to operate and maintain the Landfill in a manner consistent with safety and good air pollution control practices for minimizing emissions.

88. Allied failed to comply with the Landfill NESHAP requirements contained in 40 C.F.R. § 63.1981(h) by failing to submit semi-annual reports to EPA that contained information about the maintenance and operation of the GCCS.

89. Each failure by Allied to comply with the Landfill NESHAP is a violation of Section 112 of the Act, 42 U.S.C. §§ 7412.

90. Since September 22, 2021, Allied has failed to comply with the New York state plan by failing to design, install, and operate a compliant GCCS, as required in 40 C.F.R. § 60.33f(b). This failure has resulted in excess landfill gas emissions.

91. Since September 22, 2021, Allied has failed to comply with the New York state plan by failing to submit required reports under 40 C.F.R. § 60.38f.

92. Each failure by Allied to comply with the New York state plan is a violation of Section 111 of the Act, 42 U.S.C. §§ 7411.

93. Allied failed to apply for and obtain a Title V permit, which is a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a).

94. Allied failed to comply with the provisions of Title V of the Act by, among other things, failing to submit reports of required monitoring to New York State every six months and failing to annually certify to New York State that Allied was in compliance with all applicable federal regulations.

95. Pursuant to Section 113(b) of the Act, 42 U.S.C. §§ 7413(b), the United States is entitled to injunctive relief and civil penalties for Allied's violations of the Act.

PRAYER FOR RELIEF


Wherefore, the United States respectfully requests that the Court grant the following relief:

1. Order Allied to comply with all applicable requirements of the Act and its implementing regulations;
2. Assess civil penalties against Allied up to the amounts provided in the Act per day for each violation of the Act at the Landfill.
3. Award the United States its costs and disbursements in this action; and
4. Grant the United States such other relief as this Court deems just and proper.

Respectfully submitted,

Ellen M. Mahan
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section

MARK
GALLAGHER

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January 2, 2024

Dated

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