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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
CITY AND COUNTY OF HONOLULU,)	
HAWAII)	<u>COMPLAINT</u>
)	
Defendant.)	
)	
_____)	

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COMPLAINT

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 United States Environmental Protection Agency ("EPA"), Region 9, files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action against Defendant City and County of Honolulu ("Defendant") under the Clean Air Act, as amended ("CAA"), 42 U.S.C. §§ 7401 *et seq.*, for violations of the Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991 ("Federal Plan"), 40 C.F.R. Part 62, Subpart GGG, 40 C.F.R. §§ 62.14350 - 62.14356, for violations of the

National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (“Landfill NESHAP”), 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930 - 63.1990, and for violations of Title V of the CAA, at the Kapa’a and Kalaheo Sanitary Landfill (“Landfill”) located on the island of Oahu in Hawaii.

2. The United States seeks an award of civil penalties for the Defendant’s failures to comply with the CAA.

JURISDICTION AND VENUE

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

4. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the violations occurred and Defendant resides in this district.

NOTICE AND AUTHORITY

5. The United States has provided notice of the commencement of this action to the Attorney General of the State of Hawaii as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

6. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519, and Section 305(a) of the CAA, 42 U.S.C. § 7605(a).

DEFENDANT

7. Defendant owns and operates the Landfill. Defendant is a municipality and political subdivision of the State of Hawaii, and is a “person” as that term is defined at Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113 of the CAA, 42 U.S.C. § 7413.

STATUTORY AND REGULATORY BACKGROUND – CLEAN AIR ACT

8. The CAA was enacted to protect and enhance the quality of the nation’s air resources so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the CAA, 42 U.S.C. § 7401(b)(1).

New Source Performance Standards

9. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of EPA (“Administrator”) to publish a list of categories of stationary sources that cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. The Administrator has identified municipal solid waste (“MSW”) landfills as one such category.

10. Pursuant to Section 111(d) of the CAA, 42 U.S.C. § 7411(d), EPA issued the “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills,” 40 C.F.R. Part 60, Subpart CC, 40 C.F.R. §§ 60.30c – 60.36c (“Emission Guidelines”), which apply to “existing” landfills. The Emission

Guidelines are implemented through State Plans which States were required to submit to EPA in accordance with the procedures at 40 C.F.R. Part 60, Subpart B, “Adoption and Submittal of State Plans for Designated Facilities.”

11. Pursuant to Section 111(d) of the CAA, 42 U.S.C. § 7411(d), EPA promulgated/adopted the Federal Plan, which became on effective January 7, 2000. The Federal Plan implements the Emission Guidelines, *inter alia*, for existing MSW landfills located in States where State plans are not currently in effect. The Federal Plan applies to each MSW landfill that commenced construction, reconstruction or modification before May 30, 1991, and has not commenced construction, reconstruction or modification since May 30, 1991, or has accepted waste since November 8, 1987 or has additional capacity for future waste deposition. Such existing MSW landfills subject to the Federal Plan are “designated facilities.” 40 C.F.R. § 62.14352(a).

12. “Modification” means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion, and does not occur until the owner or operator commences construction on the horizontal or vertical expansion. 40 C.F.R. § 62.14351.

13. “Municipal solid waste landfill” or “MSW landfill” means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may be separated by access roads.

40 C.F.R. § 62.14351.

14. Sections 111(a)(5), and 112 (a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9), and 40 C.F.R. § 63.2, define “owner or operator” as any person who owns, leases, operates, controls, or supervises a stationary source. Title 40 C.F.R. § 60.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

15. Pursuant to the Federal Plan, the owner or operator of a designated facility that has a design capacity of at least 2.5 million megagrams (“Mg”) and 2.5 million cubic meters (“m³”), and that has a calculated emission rate of nonmethane organic compounds (“NMOCs”) of at least 50 Mg per year, must submit a Control Plan for a gas collection and control system (“GCCS”) to EPA. The deadline for submission of the Control Plan is one year after the initial NMOC emission rate report (or the first annual emission rate report) showing NMOC emissions of at least 50 Mg per year. 40 C.F.R. §§ 62.14353(b), 62.14356(a)(1), 62.14356(c) and Table 3 to Subpart GGG of Part 62.

16. Pursuant to the Federal Plan, the owner or operator of a designated facility that has a design capacity of at least 2.5 million Mg and 2.5 million m³, and that has an NMOC emission rate of at least 50 Mg year, must install and operate a GCCS within 30 months after the date the initial emission rate report (or the annual

emission rate report) first shows that the NMOC emission rate is at least 50 Mg per year. 40 C.F.R. §§ 62.14353(b), 62.14356(a)(4), 62.14356(a)(5), 62.14356(b), 62.14356(c) and Table 3 to Subpart GGG of Part 62.

Hazardous Air Pollution Standards

17. Section 112 of the CAA, 42 U.S.C. § 7412, directs EPA to publish a list of all categories and subcategories of major sources and area sources of hazardous air pollutants and provides an initial list of hazardous air pollutants (“HAPs”) at Section 112(b)(1) of the CAA. Section 112(d) of the CAA directs EPA to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of hazardous air pollutants.

18. On January 16, 2003, the Administrator promulgated the Landfill NESHAP.

19. Pursuant to the Landfill NESHAP, an owner or operator of a MSW waste landfill is subject to the Landfill NESHAP if such landfill a) has accepted waste since November 8, 1987, or has additional capacity for waste deposition; and, *inter alia*, b) is an area source that has a design capacity of at least 2.5 million Mg and 2.5 million m³, and a calculated NMOC emissions rate of at least 50 Mg per year. 40 C.F.R. § 63.1935(a).

20. Pursuant to the Landfill NESHAP, an owner or operator of an existing MSW landfill that is subject to the Landfill NESHAP must comply with 40 C.F.R.

Part 60, Subpart WWW, or must comply with the Federal Plan or an approved State Plan, by January 16, 2004. 40 C.F.R. §§ 63.1945(b) and 63.1955(a).

21. Pursuant to 40 C.F.R. §§ 63.1945(f) and 63.1960 of the Landfill NESHAP, the owner or operator of an MSW landfill subject to the Landfill NESHAP must develop a written start-up, shutdown and malfunction (“SSM”) plan for the landfill that complies with the provisions in 40 C.F.R. § 63.6(e)(3) by the GCCS installation deadline or by January 16, 2004, whichever is later. Pursuant to 40 C.F.R. § 63.1960, a copy of the SSM plan must be maintained on site.

Title V

22. Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources that emit air pollutants. Title V does not impose new substantive requirements but allows States to issue operating permits setting emission limits and standards for individual sources in accordance with applicable requirements, including NSPS and NESHAP requirements. See 40 C.F.R. §§ 70.1(b) and 70.6.

23. EPA granted interim approval to Hawaii’s Title V operating permit program effective December 1, 1994, and final full approval effective November 30, 2001. 40 C.F.R. Part 70, App. A. The regulations governing Hawaii’s Title V operating permit program are set forth at Chapter 11-60.1 of the Hawaii

Administrative Rules.

24. Pursuant to § 11-60.1-82(j), an owner or operator of a stationary source that becomes subject to the Title V operating permit program must submit a complete and timely Title V permit application to the Hawaii Department of Health (“HDOH”) by the date required by an applicable Federal Plan or NESHAP.

Pursuant to the Federal Plan, an owner or operator of a subject MSW landfill becomes subject to the requirements of 40 C.F.R. §§ 70.5(a)(1)(i) or 71.5(a)(1)(i) on April 6, 2000, and must submit an initial Title V permit application by April 6, 2001. 40 C.F.R. § 63.14352(e) and 70.5(a)(1)(i).

ENFORCEMENT PROVISIONS

25. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to bring a civil action against any person who has violated specified requirements of the CAA.

26. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), EPA may commence a civil action for civil penalties of not more than \$27,500 per day for each violation after January 30, 1997, of not more than \$32,500 per day for each violation after March 15, 2004, and not more than \$37,500 per day for each violation after January 12, 2009, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection

Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321).

GENERAL ALLEGATIONS

27. Defendant is the owner and operator of the Landfill, located on the southwest side of Oahu outside of the town of Kailua. The Kapa'a portion of the Landfill, consisting of approximately 160 acres, and Kalaheo portion of the Landfill, consisting of approximately 55 acres, are separated by an access road. The Landfill first received MSW in 1969 and closed in 1997.

28. At all times relevant to this Complaint, Defendant was an "owner or operator" within the meaning of Sections 111(a)(5) and 112(a)(9) of the CAA, 42 U.S.C. §§ 7411(a)(5) and 7412(a)(9), and 40 C.F.R. §§ 60.2 and 63.2.

29. At all times relevant to this Complaint, the Landfill was a "municipal solid waste landfill" within the meaning of 40 C.F.R. § 62.14351.

30. In 1989, Defendant commenced modification of the Landfill, within the meaning of 40 C.F.R. § 62.14351, by commencing construction of a vertical expansion of the Landfill.

31. On January 7, 2000, the Landfill became a "designated facility" within the meaning of 40 C.F.R. § 62.14352(a) because it commenced modification before May 30, 1991, had not commenced construction, modification, or reconstruction since May 30, 1991, and had accepted waste since November 8,

1987 and had capacity for future waste deposition. Because the State of Hawaii had not submitted a State Plan for EPA approval, the Landfill is not covered by an EPA-approved and effective State Plan. Therefore, on January 7, 2000, the Landfill became subject to the Federal Plan.

32. On January 7, 2000, the design capacity of the Landfill was at least 2.5 million Mg and 2.5 million m³, and its calculated NMOC emission rate was at least 50 Mg per year.

33. Pursuant to the Federal Plan, Defendant was required to submit a GCCS Control Plan for the Landfill to EPA by April 6, 2001.

34. Pursuant to the Landfill NESHAP, Defendant was required to submit a GCCS Control (Design) plan for the Landfill to EPA by January 16, 2004.

35. Pursuant to the Federal Plan, Defendant was required to install and operate a GCCS for the Landfill by October 6, 2002.

36. Pursuant to the Landfill NESHAP, Defendant was required to install and operate a GCCS for the Landfill by January 16, 2004.

37. Pursuant to the Landfill NESHAP, Defendant was required to develop an SSM plan by January 16, 2004.

38. Pursuant to Hawaii Admin. R., Title 11, Chapter 60.1, Subchapter 5, § 11-60.1-82(j), and 40 C.F.R. § 62.14352(e) and 70.5(a)(1)(i), Defendant was required to submit a complete and timely initial Title V permit application to

HDOH within one year of April 6, 2000, or by April 6, 2001.

39. On September 21, 2009, Defendant submitted a compliant Control Plan for the Landfill to EPA Region 9.

40. On April 10, 2013, Defendant began operation of a GCCS at the Landfill.

41. On September 21, 2009, Defendant developed an SSM plan for the Landfill.

42. On May 19, 2010, Defendant submitted a complete initial Title V permit application to HDOH.

43. From October 2002 to April 2013, the Landfill emitted approximately 6,875 tons of uncontrolled NMOC and emitted the carbon dioxide equivalent of approximately 7,796,250 metric tons of methane. NMOC are comprised of Volatile Organic Compounds and Hazardous Air Pollutants. Methane is a potent greenhouse gas.

FIRST CLAIM FOR RELIEF

Failure to Submit GCCS Control Plan

44. Paragraphs 1 through 43 are realleged and incorporated herein by reference.

45. Defendant failed to submit to EPA a GCCS Control Plan for the Landfill by April 6, 2001, in violation of Section 111(d) of the Act, and 40 C.F.R.

§§ 62.14353(b), 62.14356(a)(1), 62.14356(c) and Table 3 to Subpart GGG of Part 62. Defendant also failed to submit to EPA a GCCS Control (Design) Plan for the Landfill by January 16, 2004, in violation of Section 112 of the Act, and 40 C.F.R. §§ 63.1945(b) and 63.1955(a).

46. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties for the violations set forth above.

SECOND CLAIM FOR RELIEF

Failure to Install GCCS

47. Paragraphs 1 through 46 are realleged and incorporated herein by reference.

48. Defendant failed to install and operate a GCCS for the Landfill by October 6, 2002, in violation of Section 111(d) of the Act, and 40 C.F.R. §§ 62.14353(b), 62.14356(a)(4), 62.14356(a)(5), 62.14356(b), 62.14356(c) and Table 3 to Subpart GGG of Part 62. Defendant also failed to install and operate a GCCS for the Landfill by January 16, 2004, in violation of Section 112 of the Act, and 40 C.F.R. §§ 63.1945(b) and 63.1955(a).

49. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties for the violations set forth above.

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THIRD CLAIM FOR RELIEF

Failure to Develop an SSM plan

50. Paragraphs 1 through 49 are realleged and incorporated herein by reference.

51. Defendant failed to develop an SSM plan by January 16, 2004, in violation of 40 C.F.R. §§ 63.1945(f) and 63.1960.

52. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant is liable for civil penalties for the violation set forth above.

FOURTH CLAIM FOR RELIEF

Failure to Submit a Complete Title V Permit Application

53. Paragraphs 1 through 52 of the Complaint are realleged and incorporated herein by reference.

54. Defendant failed to submit a complete initial Title V permit application by April 6, 2001, in violation of Hawaii Admin. R., Title 11, Chapter 60.1, Subchapter 5, §§ 11-60.1-81 - 11-60.1-104, including, but not limited to § 11-60.1-82(j).

55. As provided in Section 113(b) of the CAA, 42 U.S.C. § 7413(b), the County is liable for civil penalties for the violation set forth above.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Assess civil penalties against the Defendant of not more than \$27,500 per day for each violation after January 30, 1997, of not more than \$32,500 per day for each violation after March 15, 2004, and not more than \$37,500 per day for each violation after January 12, 2009.
2. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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Date: May 12, 2015

/s/ Henry Friedman
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