

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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In the Matter of the Proposed Operating Permit for

AL TURI LANDFILL, INC.

to operate a solid waste landfill
located in the Town of Goshen, New York

Permit No. 3-3330-00002/00039

Issued by the New York State Department of
Environmental Conservation

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**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO ISSUANCE
OF THE TITLE V OPERATING PERMIT FOR THE
AL TURI LANDFILL**

I. INTRODUCTION

Pursuant to the Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), Citizens Who Care, Inc. (“CWC”, “Petitioner”) hereby petitions the Administrator of the United States Environmental Protection Agency (“EPA”) to object to the proposed Title V Operating Permit for the Al Turi Landfill (“the landfill”).

CWC is a not-for-profit membership corporation whose members, live, work, shop, play, rest and breathe the air in the area of Goshen, New York, the town in which the subject solid waste landfill is located.

On October 19, 2001, the New York State Department of Environmental Conservation (“NYSDEC,” “the Department”) granted a public comment period on a draft Title V permit for the landfill which ended November 19, 2001, and CWC submitted comments to NYSDEC on that date. These comments are attached and incorporated as if fully set forth herein, as Exhibit A.

On December 11, 2001, the landfill submitted a response to CWC's comments, and CWC replied to the response on December 24, 2001. CWC's December 24, 2001 comments are attached and incorporated as if fully set forth herein, as Exhibit B.

On or about April 29, 2002, NYSDEC determined that its Draft Title V permit should be scheduled for a legislative public hearing and an issues conference to determine the need for an adjudicatory hearing. The April 29, 2002 notice of this determination is attached hereto, as Exhibit C.

On May 8, 2002, NYSDEC issued a public notice scheduling the legislative hearing on June 11, 2002, and noticing their intent not to schedule an issues conference. Written comments any time before the legislative hearing were invited in the notice. NYSDEC's May 8, 2002 notice is attached hereto, as Exhibit D.

On June 10, 2002, CWC submitted to NYSDEC comments on the as yet unchanged draft Title V permit for the landfill. These comments are attached and incorporated as if fully set forth herein, as Exhibit E.

On or about June 18, 2002, NYSDEC referred a proposed Title V permit for the landfill to EPA with minor, non-substantive changes made in response to comments, including in response to Petitioner's comments, and issued a series of five Responsiveness Summaries addressing comments and letters about the draft air permit received from last October up to June 11, 2002, including responses to Petitioner's November 19, 2001, and Petitioner's June 10, 2002 comments. These five Responsiveness Summaries were submitted to EPA with the proposed permit, and are attached hereto as Exhibit F.

The proposed permit was issued and is available, along with a permit report, on

NYSDEC's web site, at http://www.dec.state.ny.us/website/dar/boss/afs/issued_atv_c.html.

As NYSDEC's proposed permit was received by EPA on June 20, 2002, this petition is timely submitted within 60 days after EPA's 45-day review following receipt of the proposed permit.

II. SUMMARY OF THE ARGUMENT

The EPA should object to the air permit as proposed and now issued for failure to acknowledge that a landfill gas-to-energy (LFGTE) facility is located on site and is under common control with the landfill, despite the independent ownership of the two facilities. The common control of the two facilities changes the calculation of emissions on which each facility's Title V permit is based, respectively, requiring reopening the permits for consideration of requirements applicable to a major source of VOC and HAP emissions. In addition, neither permit imposes compliance liability for applicable landfill gas control requirements, a result that circumvents the requirements. The landfill's Title V permit imposes requirements applicable to its landfill gas collection system but not to the control system, operated by the LFGTE plant. In addition, the construction of the LFGTE plant amounts to a modification or construction of a new emitting facility at the landfill, which required a preconstruction permit prior to construction. Finally, the permitting authority was required but failed to incorporate into the landfill's Title V permit MACT level controls.

III. BACKGROUND

The landfill has been in continuous operation since 1963 and, at the time of the first comment period in 2001, had reached approximately 95% of its permitted disposal capacity. On February 17, 1999, the landfill submitted to NYSDEC a design capacity and NMOC emissions

report. At that time the landfill represented to the Department: “The Al Turi Landfill presently has an active gas collection system, a gas utilization plant and two back-up flares installed at the site.” See Exhibit A, Attachment B.

The landfill’s design capacity is 5.5 million megagrams and its estimated landfill gas emission rate in 1998 was 753 Mg/yr. of nonmethane organic compounds (NMOC), the regulated pollutant for the landfill emission point. Additional emission points include two uncontrolled leachate storage lagoons, which emit NMOC and VOC directly into the environment; a leachate treatment plant on site, with undetermined emissions from leaks, valves and pipes, and a 140,000 Btu/hr. combustion device; a blower house for a 225 HP emergency generator; three 1,000-gallon petroleum storage tanks; one 10,000-gallon petroleum storage tank; and undetermined emissions from petroleum contaminated soil, permitted for use as daily cover on the landfill.

The landfill’s landfill gas collection system consists of approximately 112 vertical gas extraction wells and approximately 10 horizontal gas pipes spaced approximately 200 feet apart with a series of lateral and header pipes. The main header pipes transport gas to control devices, internal combustion engines and two flares all located on site and independently owned and operated by a landfill gas-to-energy (“LFGTE”) plant. See Exhibit D.

The Al Turi LFGTE plant is a major source of NO_x and CO, and was granted a separate Title V permit effective Feb. 8, 2000. J-W Operating Co., Title V Permit, available on NYSDEC’s web site, at http://www.dec.state.ny.us/website/dar/boss/afs/issued_atv_c.html. This permit was modified effective July 16, 2001, as a result in a change in ownership. Al Turi LFGTE Facility, Title V Permit, available id. Under both J-W Operating and Al Turi LFGTE, ownership was independent of the landfill’s ownership.

According to the LFGTE plant's current permit:

The Al Turi LFGTE facility utilizes gas recovered from the Al Turi Landfill as fuel to operate nine internal combustion engines engaged in the generation of electric energy for sale. The combustion units consist of two superburn engines, one 12-cylinder engine, four 6-cylinder engines and two 16-cylinder engines. Two flares are also onsite to burn excess landfill gases. The primary Standard Industrial Classification is 4911 - Electric Services.

Al Turi LFGTE Title V Permit, p. 1.

The Al Turi LFGTE permit limits opacity and NO_x emissions under federally enforceable conditions (e.g. Conditions 35 through 38), but NMOC emissions are limited under "state only enforceable conditions" (Conditions 39 and 40), and the permit imposes no specific NMOC emissions limit or performance standards designed to control NMOC and no requirements to comply with recordkeeping, reporting, monitoring or control requirements specific to the federally enforceable EG/NSPS rule applicable to landfill NMOC emissions, 6 N.Y.C.R.R. Part 208¹ or 40 C.F.R. Part 60, Subpart WWW (§§60.750-759). Specifically, the following requirements for control of landfill gas under the EG/NSPS rule are missing:

¹New York promulgated regulations for the control of landfill gas effective November 21, 1998, as 6 N.Y.C.R.R. Part 360-2.21. The EPA approved New York's Part 360-2.21 as the federally enforceable Emission Guidelines (EG) program for MSW landfills effective September 17, 1999. 64 Fed.Reg. 38582 (July 19, 1999). The EG and federal NSPS requirements are substantively identical; they apply, respectively, to older, unmodified landfills, and new or recently modified landfills. In November, 2001, New York's Part 360-2.21 was promulgated and superseded Part 360-2.21 without substantive change. Cf. Exhibit F, p. 2 of 2, Response to Mr. Abraham Comment 8 [of June 10, 2002]. New York has therefore had a federally enforceable EG program continuously since September 17, 1999.

- Part 208.4(f) imposes liability for continuous operation of the control system.
- Part 208.3(b)(2) imposes liability to make specific demonstrations regarding the effectiveness and design of the control system.²
- Part 208.3(d) imposes liability for continued operation of the control system following landfill closure for as long as gas production at the landfill exceeds the regulatory threshold level requiring controls.
- Part 208.7(d) requires a demonstration that the control system is capable of handling the landfill's maximum expected gas flow rate. See also Part 208.3(b)(2)(ii)(a)(1).
- Part 208.8(f) requires the results of records of continuous monitoring of parameter data for the operation and performance of the control system to be submitted to the permitting authority.
- Part 208.9(b) and (c) require records of certain control equipment data to be maintained.

Neither are these requirements included in the Al Turi Landfill's Title V permit. Additional requirements applicable to the control of landfill gas omitted from both facility's Title V permits

²The Department asserts that monitoring once every five years of the effectiveness of control devices complies with applicable requirements imposed on the landfill. See Exhibit F, p. 7 of 7, Response to Oral Arguments at the June 11, 2002 Legislative Hearing.

are identified in Petitioner's comments to NYSDEC. See Exhibit B, Comment ##8 and 9.³

The landfill's Title V application provided a Tier 1 calculation of emissions, and site-specific data supporting a Tier 2 or Tier 3 calculation were not provided in the application. Cf. 6 N.Y.C.R.R. Part 208.5(a); 40 C.F.R. §60.754(a).

In its responses to comments, NYSDEC determined that the facility is a co-disposal landfill warranting elevated emission factors under AP-42. Exhibit F, p. 4 of 8, Response to Mr. Abraham Comment 6 [of Nov. 19, 2001]. Nevertheless, relying on the fact that the two facilities have different Standard Industrial classification (SIC) codes, NYSDEC ultimately determined major source applicability thresholds were not triggered for any regulated pollutant because the landfill is not under common control with the Al Turi LFGTE plant. Id., p. 5 of 8, Response to Mr. Abraham Comment 7 [of Nov. 19, 2001].

On October 22, 2001, four days after NYSDEC's public notice that a comment period on the draft permit had opened, the Petitioner requested by fax specific documents relevant to the development and public review of the draft permit, and on October 23, 2001, NYSDEC acknowledged receipt of the request. Exhibit A, Attachment A. As directed by prior phone contact with the Department, the request was sent in two parts to the Air and Solid Waste Divisions, respectively. Among the documents requested were on site monitoring reports of odors, landfill surface conditions, storage and treatment facilities, leachate collection tanks and

³Petitioner's comment #9 refers back to Petitioner's Nov. 19, 2001 Comment #16, requesting "continuous" monitoring and testing requirements applicable to landfills subject to the EG/NSPS rule be specified in the landfill's permit, requiring a value recorded every fifteen minutes, at a minimum. Exhibit A, p. 10. The same point is discussed in Petitioner's June 10, 2002 Comment # 6. Exhibit E, pp. 7-8. See also Exhibit A, Comments ##12 and 16; Exhibit B, Comment #9. Petitioner reasserts these comments here as if fully set forth, and notes that the absence of requirements for continuous parameter monitoring or testing applicable to control of landfill gas in either the landfill's or the LFGTE plant's Title V permit requires the Administrator to object to and reopen the permits.

leachate lagoons, landfill gas and leachate tanks; emission or testing reports for all emission units and control devices; the facility's master plan (unchanged since 1991) and Gas Collection and Control System Design Plan; the facility's prior required design capacity report and NMOC emission rate report in 1997; and specific correspondence between the permitting authority and the applicant. Id. (original FOIL requests ##763-3/01 and 769-3/01 dated 10/23/01, and NYSDEC letters of acknowledgment). The Department provided the Title V Application and the landfill's quarterly surface methane monitoring results but did not provide the requested planning and compliance reporting documents. On November 6, 2001, after the close of the comment period, the Department notified the Petitioner that a portion of the remainder of the documents requested would be made available, approximately 48 inches of records. See Exhibit A, Comment #1 and Attachment A.

IV. ARGUMENT #1: NYSDEC FAILED TO PROVIDE SUPPORTING DOCUMENTS
AS REQUIRED BY TITLE V OF THE CLEAN AIR ACT⁴

Title V of the Clean Air Act requires permitting authorities to make available to the public an applicant's "permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this subchapter," unless the information is protected as confidential under Section 114(c) of the Act. 42 U.S.C. §7661b(3); 40 C.F.R. §70.4(b)(3)(viii). EPA's regulations require

⁴This argument was consistently made in Petitioner's comments. Exhibit A, Comments ##1 and 17; Exhibit B, Comment #5; Exhibit E, Comment #1. It was also made by Susan Cleaver, who complained of lack of access to landfill gas testing. See Exhibit F, p. 2 of 3, Response to Susan Cleaver (referencing "Ms. Cleaver Attachment Section 2"). It was also made by Mr. Fay and others, who complained of the lack of availability of relevant documents. See id., pp. 2 and 6 of 7, Response to the Oral Arguments at the June 11, 2002 Legislative Hearing.

permitting authorities to provide a meaningful opportunity for public participation in the permit review process, including an opportunity for “interested persons [to] obtain additional information, including . . . all relevant supporting materials.” 40 C.F.R. §70.4(h)(2). Such supporting materials must go beyond “those set forth in §70.4(b)(3)(viii) of this part, and [must include] all other materials available to the permitting authority that are relevant to the permit decision.” Id.

The permitting authority in this case admits it did not provide the Gas Collection and Control System Design Plan for the applicant’s landfill, monitoring reports and test results for the landfill’s emission units and control devices, or specific correspondence between NYSDEC and the landfill, which were among the records requested by the Petitioner. Exhibit F, Response to Mr. Abraham Comment 1 [of Nov. 19, 2001]; Exhibit A, Comment 1, pp. 3-4.⁵ The permitting authority also admits these materials were not made available to the public during the comment period; only NYSDEC’s Notice of Complete Application, the permit application and draft permit were made available. Exhibit F, p. 1, Response to Mr. Abraham Comment 1 [of Nov. 19, 2001]. As a result of having no access to documents relevant to all emission points on site at the landfill facility, such as the LFGTE plant and the leachate treatment plant, the public had no way of understanding the total emissions involved⁶ and the specific substances emitted from the facility.⁷

⁵Petitioner had access to some inspection reports, but the specific correspondence requested was never provided. Cf. Exhibit A, notes 6, 40 and 41; Exhibit F, p. 2 of 8 (top).

⁶However, the Petitioner continues to believe that the Al Turi Landfill is a major source of VOC emissions. See Exhibit A, Comment #1; Exhibit B, Comment #3. Under the New York SIP, a stationary source in an ozone nonattainment or transport area (such as Goshen, NY) that emits 50 tons/yr. of VOC is considered a major source. 6 N.Y.C.R.R. Part 201-2.1(21)(iii)(a), (b). Although an estimation of VOC from all emission points at the landfill facility has not been performed, an estimate of controlled VOC emissions from the landfill emission unit alone results in 59 tpy. A 75 percent assumed collection efficiency is to be used “to determine an inventory of overall facility emissions,” as NYSDEC clarifies in

The Department's position is that a request for such materials must be made under the state's Freedom of Information Act (FOIA) and the authority's procedures for implementing FOIA. Exhibit F, p. 1. The Department further asserts that records or materials arising from the monitoring of the landfill need not be provided if "not specifically relied upon by the Division of Air Resources personnel to develop a Draft Title V permit." Id. It distinguishes such monitoring as "predominantly applicable to Solid Waste management issues," and therefore by implication not applicable to compliance with Clean Air Act requirements to which landfills are subject. Id.

The Department's position in this case is clearly at odds with the Clean Air Act and its implementing regulations. A landfill's Gas Collection and Control System Design Plan should clearly be deemed to fall within the Act's requirement that a facility's "compliance plan" be provided to the public during the Title V public review period. 42 U.S.C. §7661b(3). Similarly, "monitoring results and test reports for all emission units and control devices," which NYSDEC admits were not made available, (Exhibit F, Response to Mr. Abraham Comment 1 [of Nov. 19,

its response to Petitioner's Nov. 19, 2001, Comment #5. Exhibit F. The 75 percent collection efficiency, together with an appropriate control efficiency value should be applied to the NMOC estimation to determine controlled emissions. AP-42, Section 2.4.4.2. Using the waste in place values provided in the Al Turi Title V application, (cf. Exhibit A, Attachment B), and applying the AP-42 default values applicable to a co-disposal landfill ($L_o = 100 \text{ m}^3/\text{Mg}$; $k = 0.04/\text{yr.}$; $\text{NMOC} = 2420 \text{ ppmv}$) results in a peak uncontrolled emission in 1998 of 242 Mg/yr. (It should be noted that, in contrast to the waste in place figures provided in the application, the landfill has continued to dispose waste since 1998, albeit at a substantially reduced rate.) To determine controlled emissions of NMOC, a 75 percent collection efficiency results in 60.5 Mg., to which is added an uncontrolled portion calculated using the AP-42 control efficiency value for internal combustion engines (97.2 %), bringing the total uncollected NMOC to 63 Mg/yr. AP-42, page 2.4-6 (equation 5). Finally, AP-42 provides a calculation of VOC emissions, based on 85 percent of NMOC emissions for co-disposal landfills, reducing the last figure to 53.55 Mg/yr., or 59 tons/yr. of controlled VOC emissions. (To the extent inconsistent with this note, the Petitioner withdraws its earlier comments: see Exhibit A, Comment #5, text at note 21; Exhibit B, Comment #12, text at notes 19-20.)

⁷See also Exhibit F, p. 3 of 7, Response to the Oral Arguments at the June 11, 2002 Legislative Hearing.

2001]), should clearly be deemed to fall within the Act's requirement that any "emissions or compliance monitoring report" be made available to the public. 42 U.S.C. §7661b(3).

These requirements must be complied with by the permitting authority regardless of the authority's decision to divide its labor between divisions. Indeed, such a division of labor as occurred here, with a Solid Waste Management division left without responsibility for assuring compliance with the Clean Act's applicable requirements, while an Air Resource division took responsibility for drafting the operating permit, seems to invite gaps in compliance monitoring and reporting through which a facility may easily fall.

Here, basic facility planning documents for landfill gas collection and control were relied on in developing the draft permit. See Exhibit A, p. 3n.9; Exhibit F, p. 5 of 7, Response to the Oral Arguments at the June 11, 2002 Legislative Hearing (GCCS Plan relied on NYSDEC but not made available to the public). Such documents were not provided to the Petitioner within the comment period. Beyond this aspect of the issue, however, what happened here shows that as a practical matter subjecting a request for such relevant supporting materials by members of the public to NYSDEC's burdensome FOIL procedure violates EPA's regulations requiring permitting authorities to make such materials available. Unless NYSDEC assembles the materials they relied on and makes them available at the beginning of the public comment period, they are not in fact available for the period during which public comment is open.

For relevant supporting materials that NYSDEC may not have in fact relied on in developing the draft permit, but which may be "relevant to the permit decision," 40 C.F.R. §70.4(h)(2), the FOIL procedure should not be allowed to preempt EPA's regulations mandating a broader opportunity for public participation. Here, such materials were requested but were not

made available to the petitioner during the public comment period. Exhibit A, Attachment A (letter from NYSDEC to Gary Abraham dated 11/6/01). Except for the Title V application and two quarterly surface methane monitoring reports, materials that were acknowledged under FOIL request #763-3/01 and did not overlap with FOIL request # 769-3/01, were never made available. See Exhibit A, p. 3.

Because NYSDEC failed to provide an opportunity for access to documents relevant to the permit decision and documents on which NYSDEC relied in developing the Title V permit, the Administrator should object to the permit and request a hearing be held on the calculation of emission estimates on which the landfill's applicability determinations were based.

V. ARGUMENT #2: AL TURI LANDFILL AND THE ALTURI LFGTE PLANT ARE
UNDER COMMON CONTROL⁸

An “[o]wner or operator means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.” 40 C.F.R. §60.2. Here, the Al Turi LFGTE controls and supervises the delivery of landfill gas from the Al Turi Landfill, which is transported by a continuous system of pipes and headers to combustion devices at the LFGTE plant. These combustion devices at the LFGTE plant provide the sole means of controlling regulated pollutants in the landfill gas. The Al Turi LFGTE facility relies exclusively on landfill gas from the Al Turi Landfill for its operation. It utilizes no other

⁸This argument was made consistently in Petitioner's comments. Exhibit A, Comments ##7, 9, and 15; Exhibit B, Comment #10; Exhibit E, Introduction and Comments ##2 and 5.

source of fuel to produce energy. Under these conditions, it does not matter that the two facilities are under separate, independent ownership. The intimate and necessary interdependence of the two facilities means they are under common control for purposes of the Clean Air Act. Id.

A nearly identical situation as is presented here was determined by the EPA to require imposing “all aspects of the NSPS” for landfills on both the landfill and the on site LFGTE plant, because the LFGTE plant “clearly has control over the fate of the emissions from the landfill.” See Memorandum from EPA, Air Enforcement Division, to Christopher Pilla (Virginia Dept. Env'tl. Quality), “Maplewood Landfill/Ingenco Applicability Determination Issues,” dated April 4, 2002 (available at <http://www.epa.gov/rgytgrnj/programs/artd/air/title5/t5memos/maplewww.pdf>).⁹ Like the Maplewood Landfill and the Ingenco LFGTE facility, the Al Turi Landfill and the Al Turi LFGTE facility “each control some aspect of the landfill operation and the collection and control systems that are part of the controlled landfill.” Id. As does Ingenco, the Al Turi LFGTE “controls the valve that determines whether the gas is routed to [the landfill’s] flare or its own engines.” Id. Under these conditions it is impermissible to allow “the separate individual permits [of the two parties to] limit the compliance liabilities of the parties.” Id. As was determined in the Maplewood Landfill case, separate permits are permissible, but this arrangement cannot be used to avoid liability to the landfill for the control requirements of the EG/NSPS rule.

Because specific recordkeeping, reporting, monitoring and control requirements

⁹This guidance document was cited for this point in Petitioner’s June 10, 2002 comments on the Al Turi Landfill draft Title V permit. See Exhibit E, p. 2 (Comment #2). However, in its response to this comment, NYSDEC shows no indication it consulted the guidance. See Exhibit F, p. 1 of 2, Response to Mr. Abraham Comment 2 [of June 10, 2002].

applicable to the control function addressed under the EG/NSPS rule have been left out of both the Al Turi Landfill and the Al Turi LFGTE Title V permits, the Administrator must object to the landfill's permit and both permits must be revised.

VI. ARGUMENT #3: CONSTRUCTION OF THE ON SITE LFGTE PLANT
REQUIRED THE LANDFILL TO UNDERGO NEW SOURCE REVIEW¹⁰

Major stationary sources that undergo a major modification are required to undertake New Source Review, including air modeling, obtain offsets for nonattainment emissions and, in an area with clean air, obtain a "prevention of serious deterioration" (PSD) permit prior to construction of the modification.¹¹ In the mid-1990s, at the time the on site LFGTE plant was constructed, according to the landfill's NMOC emission estimation, the landfill was a major source of VOC emissions.¹² The LFGTE contributed and continues to contribute NOx and carbon monoxide in major source amounts to the air in the Goshen area, a moderate ozone nonattainment area that is also in the New York ozone transport region. As more fully set forth in Petitioner's comments to NYSDEC, (Exhibit E, Comment #5), the construction of the LFGTE plant resulted in expected significant NAAQS emissions increases that required New Source Review and preconstruction permitting. Because the landfill and the LFGTE are under common

¹⁰This argument was made in Petitioner's June 10, 2002 comments. See Exhibit E, Comment #5.

¹¹ 61 Fed.Reg. 9905, 9912 (March 16, 1996) ("PSD rules now apply to all subject stationary sources which have increases in landfill gas above the significance level, 50 tpy or more of NMOC."). See also EPA, MSW-2, Appendix E, "New Source Review," page E-7.

¹²AP-42 recommends VOC emissions be estimated based on 85 percent of NMOC emissions for co-disposal landfills. For purposes of PSD compliance, AP-42 default values are to be used in the absence of site specific data on emissions. In the mid-1990s NMOC emissions based on AP-42 default values were in excess of 200 Mg/yr., 85 percent of which is well over the 100 tons/yr. threshold for major source applicability in an ozone transport region.

control, the landfill as well as the LFGTE plant were subject to New Source Review preconstruction permitting, and emission activities at both facilities should have been included in air modeling, offsets and other NSR applicable requirements.

Because the landfill failed to undergo preconstruction permitting prior to construction of the on site LFTGE plant, the Administrator must object to the landfill's Title V permit.

VII. ARGUMENT #4: AL TURI FAILED TO PROPOSE AND NYSDEC FAILED TO INCORPORATE INTO THE PERMIT PRESUMPTIVE MACT STANDARDS THAT ARE APPLICABLE TO THIS LANDFILL¹³

Major sources of "hazardous air pollutants" ("HAP," also termed "air toxics") are regulated pursuant to Section 112 of the Clean Air Act. 42 U.S.C § 7412(b). The EPA has found that about 30 HAP are included in NMOC emissions from landfills, including benzene, toluene, vinyl chloride and ethyl benzene. 65 Fed.Reg. 66672, 66674-66675 (Nov. 7, 2000).

Under Section 112 of the Act, a regulated source of air pollutants includes all "stationary sources located within a contiguous area and under common control," and a source is major if it emits 10 or more tons per year of any one HAP or 25 or more tons per year of a combination of HAP. 42 U.S.C § 7412(a)(1). All emission points of the source must be considered when determining HAP emissions. See 59 Fed.Reg. 12408, 12412-12413 (1994). Unlike under other provisions of the Clean Air Act, fugitive emissions must be included in major source applicability calculations under Section 112. 40 C.F.R. §63.2; 59 Fed.Reg. at 12433; National Mining Ass'n v. EPA, 50 F.3d 1351, 1361 (D.C.C.1995). Moreover, the SIC code definition of a

¹³This argument was raised in Petitioner's comments to NYSDEC. See Exhibit A, Comment #6, p. 6, text at note 26; Exhibit E, Comment #4.

source relied on under other sections of the Act does not apply to the definition of “major source” under Section 112. Rather, a major source for purposes of Section 112 includes a “group of stationary sources located within a contiguous area and under common control.” 42 U.S.C § 7412(a)(1); cf. National Mining Ass’n, 59 F.3d at 1356.

Section 112 imposes maximum achievable control technology (“MACT”) on major sources of HAP in source categories established by the EPA pursuant to Section 112(c)(1) of the Act. 42 U.S.C § 7412(c)(1). Section 112(d)(3)(A) of the Act imposes a minimum “MACT floor” level of control on existing major sources, defined as the “average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has information).” 42 U.S.C § 7412(d)(3)(A). Under Section 112(j) of the Act, this level of control must be incorporated on a case-by-case basis into the source’s Title V permit if the EPA has not promulgated a MACT standard within 18 months of the deadline mandated by Congress for doing so. 42 U.S.C § 7412(j)(5). A proposed but not yet final MACT standard serves as the presumptive MACT for purposes of Section 112(j). 40 C.F.R. §63.55(b)(4).

Municipal landfills were included in the EPA’s list of HAP sources in 1992. 57 Fed.Reg. 31576, 31591 (July 16, 1992). The last date for which the EPA was mandated to promulgate MACT standards for listed HAP sources was November, 2000. 42 U.S.C §§ 7412(c)(1), (e)(1). Therefore the 18 month deadline expired in May, 2002, making a MACT standard applicable prior to the referral of a proposed Title V permit for the Al Turi Landfill, which occurred in June, 2002.

On November 7, 2000, EPA proposed a MACT standard for MSW landfills. 65 Fed.Reg. 66672 (Nov. 7, 2000). The proposed MACT applies to those landfills that are major HAP

sources, or are co-located with a major source and may not be a major source but otherwise have a design capacity of 2.5 million megagrams and 2.5 million cubic meters, or emit 50 Mg/yr. or more of NMOC. Id. Since the Al Turi Landfill ~~has a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters,~~ its Title V permit is subject to a case-by-case MACT determination.

emits at
least 50
Mg/yr. of
NMOC
[*correc-
tion,
10/9/02*]

For a landfill subject to a MACT determination in its Title V permit, the applicable presumptive MACT standard includes the same requirements as the EG/NSPS rule for MSW landfills and adds requirements, including:

- Startup, Shutdown, and Malfunction (SSM) Requirements: the landfill must develop and implement a written SSM plan that describes the procedures for maintaining the landfill's emission collection and control system and a continuous monitoring system during periods of SSM. Recordkeeping and reporting requirements also apply to SSM incidents.
- Control Device Operating Requirements: the landfill must operate the device used to control emissions within specific operating parameters. Furthermore, the landfill must continuously monitor the operating parameters of the control device. Compliance occurs when monitoring data show that the control device is operating within an established range of operating parameters and when data quality is sufficient to constitute a valid hour of monitoring data in a three-hour block period of monitoring data. An hour of monitoring data is deemed insufficient when measured values are unavailable for more than one 15-minute period during the hour. Deviations that occur during SSM are not in violation if a

landfill operates in compliance with its SSM plan.

- Reporting: The annual reporting period that applies to MSW landfills under the EG/NSPS rule is stepped up to a six month reporting period. The six month report must show the value and duration that control devices were operating in out-of-bounds conditions; the duration of periods when landfill gas streams were diverted from their respective emission control devices; the location of surface areas that exceed a 500 parts per million limit for methane concentration; and the dates of installation and location of each added well or collection system expansion.

Id. However, none of the MACT standards that go beyond EG/NSPS requirements were incorporated into the Title V permit proposed and issued by NYSDEC for the landfill. No calculation of HAP emissions for purposes of Section 112 was performed in the Title V permitting process for the landfill.¹⁴

¹⁴Using the quantities for waste in place reported in the landfill's Title V application, and applying the Landgem emission estimation program for speciated HAP emissions, uncontrolled HAP emissions from the landfill emissions unit only are:

1,1,1-Trichloroethane	0.007 Mg/yr.
1,2,2,2-Tetrachloroethane	0.022
1,1,2-Trichloroethane	0.015
1,1-Dichloroethane	0.270
1,1-Dichloroethene	0.022
1,2-Dichloroethane	0.047
1,2-Dichloropropane	0.024
Acrylonitrile	0.390
Benzene	1.005
Carbon Disulfide	0.051
Carbon Tetrachloride	0.001
Carbonyl Sulfide	0.034
Chlorobenzene	0.033
Chloroethane	0.094
Chloroform	0.003

Because the landfill's Title V permit lacks applicable MACT standards, the Administrator must object to the permit.

Dated:

Respectfully Submitted,

/s

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170 No. Second Street
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cc: Erin M. Crotty, NYSDEC Commissioner

Jane M. Kenny, Regional Administrator
U.S. Environmental Protection Agency,
Region II

Joseph Gambino, President
Al Turi Landfill, Inc.
73 Hartley Road
Goshen, NY 10924

Chloromethane	0.071
Dichlorobenze	0.036
Dichloromethane	1.408
Ethylbenzene	0.567
Ethylene Dibromide	0.002
Hexane	0.656
Mercury	0.000
Methyl Ethyl Ketone	0.593
Methyl Isobutyl Ketone	0.217
Perchloroethylene	0.717
Toluene	17.630
Trichloroethane	0.430
Vinyl Chloride	0.532
<u>Xylene</u>	<u>1.489</u>
TOTAL HAP	26.366 Mg/yr. = 27.468 tpy