

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DIVISION OF ENFORCEMENT
CASE NO. DWM-18-3-0187 & DAQ-18-3-0188

FILED
MAR 13 2019
Office of Administrative Hearings

IN RE: Waste Services of the Bluegrass LLC
604 Bizzell Drive, Unit 250
Lexington, KY 40510
AI No. 33403
Activity ID No. ERF20150001

AGREED ORDER

WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter "Cabinet") and Waste Services of the Bluegrass LLC (hereinafter "Responsible Party") state:

STATEMENTS OF FACT

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. The Responsible Party is a Kentucky limited liability company in good standing with the Kentucky Secretary of State.
3. The Responsible Party owns and operates a municipal contained landfill located at 493 Double Culvert Road in Georgetown, Scott County, Kentucky under the assumed name "Central Kentucky Landfill" (hereinafter "the Landfill").
4. The Landfill operates pursuant to Division of Waste Management (hereinafter "DWM") permit number SW10500016 and Division for Air Quality (hereinafter "DAQ") permit V-15-036 R1.
5. Authorized representatives of the Cabinet from the Division for Air Quality identified alleged violations of KRS Chapter 224 and the regulations promulgated pursuant

thereto at the Landfill and issued Notices of Violation (NOV) on the following dates: September 2, 2015, December 21, 2015, May 20, 2016, February 23, 2017, March 30, 2017, February 26, 2018, June 12, 2018, September 24, 2018, November 21, 2018, December 21, 2018, January 4, 2019, January 15, 2019, January 17, 2019, January 23, 2019, February 20, 2019, and NOVs generated from violations observed on inspections conducted March 1 and March 6, 2019. The NOVs are attached hereto as Exhibits A through U.

6. Authorized representatives of the Cabinet from the DWM identified alleged violations of KRS Chapter 224 and the regulations promulgated pursuant thereto at the Landfill and issued NOVs on the following dates: February 9, 2017, June 20, 2017, and September 27, 2018. The NOVs are attached hereto as Exhibits V through X.

7. On February 12, 2019, the Responsible Party began installing additional methane extraction wells to collect and control methane emissions from the Landfill.

8. The Responsible Party does not admit the alleged violations described above, but agrees to the entry of this Agreed Order to resolve the violations as alleged above.

NOW THEREFORE, in the interest of settling all civil claims and controversies involving the alleged violations described above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

REMEDIAL MEASURES

9. The Responsible Party has voluntarily undertaken to install and operate a Gas Collection and Control System for the Landfill that is designed to be compliant with 40 CFR 60.752(b)(2). Within one hundred eighty (180) days of execution of this Agreed Order, the Responsible Party shall submit an updated Tier II test pursuant to 40 CFR 60.754(a)(3). Regardless of whether the Landfill qualifies for required compliance with the standards in 40 CFR 60.752(b)(2) for landfills that have a Non-methane Organic Compounds (NMOC) emission

rate equal to or greater than 50 megagrams per year, the Responsible Party hereby agrees that it shall comply with 40 CFR 60.752(b)(2) for landfills that have a Non-methane Organic Compounds (NMOC) emission rate equal to or greater than 50 megagrams per year. Day one (1) for beginning compliance with 40 CFR 60.752(b)(2) will be the day that the Tier II test is completed, and:

- a. Pursuant to 40 CFR 60.752(b)(2)(i), a collection and control system design plan shall be prepared by a professional engineer and submitted within one (1) year of applicability of 40 CFR 60.752(b)(2). By agreement, this timeframe shall be shortened to within six (6) months of day one (1) as defined herein;
- b. Pursuant to 40 CFR 60.752(b)(2)(ii), a collection and control system shall be installed within thirty (30) months of applicability of 40 CFR 60.752(b)(2). By agreement, this timeframe shall be shortened to within one (1) year of day one (1) as defined herein; and
- c. Within six (6) months of day one (1) as defined herein, the Responsible Party shall submit an application for modification of the source's air quality permit to include all requirements to comply with 40 CFR 60.752(b)(2) for landfills that have an NMOC emission rate equal to or greater than 50 megagrams per year. Alternately, the source may choose to apply for and be subject to the 40 CFR Part 60 Subpart XXX – Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014.

10. The Responsible Party shall conduct quarterly surface scans in accordance with 40 CFR 60.755(b). "Cover", as used in 40 CFR 60.755(b) shall be read to include interim cover for areas not under final cover. The quarterly surface scans shall be conducted pursuant to and upon execution of this Agreed Order and shall continue until the termination of this Agreed Order.

11. Within sixty (60) days from the date of execution of this Agreed Order, the Responsible Party shall submit to the Cabinet for review and acceptance, two (2) separate Corrective Action Plans (CAP):

- a. A "tracking and fugitive emissions CAP", which shall include, but not be limited to, an identification of how the landfill will demonstrate compliance with 401 KAR 63:010 Section 3; and
- b. An "odor CAP", which shall include, but not be limited to:
 - (i) The continued installation of additional methane extraction wells that began on February 12, 2019. Notwithstanding review and approval of the odor CAP pursuant to subparagraphs d.-f. below, installation of additional methane extraction wells shall continue until either a sufficient number of wells have been installed to significantly reduce and control methane emissions, or until the well installation complies with plans approved in the final odor CAP;
 - (ii) An identification of how the landfill will otherwise demonstrate compliance with 401 KAR 53:010 Section 1; and
 - (iii) Submission of a revised Odor Management Plan that, upon approval, will be submitted as a permit modification.

- c. Each CAP shall include a list of all actions proposed to demonstrate compliance, including a list of completion dates for each action and a final compliance date for completion of all remedial measures included in the CAP.
- d. Upon review of each CAP, the Cabinet may, in whole or in part, (1) accept or (2) provide comments to the Responsible Party identifying the deficiencies. Upon receipt of Cabinet comments, the Responsible Party shall have thirty (30) days to revise and resubmit each CAP for review and acceptance. Upon resubmittal, the Cabinet may, in whole or in part, (1) accept or (2) disapprove and provide comments to the Responsible Party identifying the deficiencies. Upon such resubmittal, if either CAP is disapproved, the Cabinet may deem the Responsible Party to be out of compliance with this Agreed Order for failure to timely submit the CAP and may assess stipulated penalties to this Agreed Order.
- e. The Responsible Party may request an amendment of each accepted CAP by writing the Director of the Division of Enforcement at 300 Sower Boulevard, Frankfort, Kentucky, 40601 and stating the reasons for the request. If granted, the amended CAP shall not affect any provision of this Agreed Order unless expressly provided in the amended CAP.
- f. Upon Cabinet acceptance of all or any part of each CAP, each amended CAP or any accepted part thereof (provided that the accepted part is not dependent upon implementation of any part not yet accepted), shall be deemed incorporated into this Agreed Order as an enforceable requirement of this Agreed Order and implemented at the landfill. This does not

require an amendment request pursuant to paragraph 25 of this Agreed Order.

12. The Responsible Party shall comply with all applicable regulations with regard to any and all leachate outbreaks at the facility.

13. All submittals shall be sent to: Director, Division of Enforcement, 300 Sower Blvd, Frankfort, KY 40601.

STIPULATED PENALTIES

14. The Cabinet may assess a stipulated penalty in the amount of five hundred (\$500) dollars per day for any of the following:

- a. Failing to comply with any provision of paragraph 9;
- b. Failing to conduct a quarterly surface scan as required by paragraph 10;
- c. Failure to submit a CAP pursuant to paragraph 11;
- d. Failing to comply with any compliance date in an approved CAP pursuant to paragraph 11; and
- e. Failing to install methane extraction wells in accordance with paragraph 11(b)(i).

15. The Cabinet may assess a stipulated penalty in an amount not to exceed two thousand five hundred (\$2500) dollars for each violation of 401 KAR 63:010 Section 3 related to dust, tracking, and fugitive emissions. The stipulated penalty provisions shall begin immediately following the final completion date of all proposed corrective actions in the accepted "tracking and fugitive emissions CAP" referenced in paragraph 11a, and shall continue until the Responsible Party demonstrates compliance with 401 KAR 63:010 Section 3 for four (4) consecutive quarters.

16. The Cabinet may assess a stipulated penalty in an amount not to exceed fifteen thousand (\$15,000) dollars for each violation of 401 KAR 53:010 Section 1 related to odor. The stipulated penalty provisions shall begin immediately following the final completion date of all proposed corrective actions in the accepted "odor CAP" referenced in paragraph 11b, and shall continue until the Responsible Party demonstrates compliance with 401 KAR 53:010 Section 1 related to odor for four (4) consecutive quarters.

17. During implementation of each accepted CAP, the Cabinet will hold any violations of 401 KAR 63:010 Section 3 and 401 KAR 53:010 Section 1 in abeyance, provided that the Responsible Party is in compliance with each accepted CAP, the Odor Management Plan, and this Agreed Order. If the Cabinet determines that the Responsible Party is not in compliance with the accepted CAP, the Odor Management Plan, or this Agreed Order, then the Cabinet shall notify the Responsible Party in writing, and the stipulated penalty provisions of paragraphs 15 and 16 shall become applicable to all violations issued subsequent to execution of this Agreed Order and shall continue until expiration of this Agreed Order.

18. If the Cabinet determines that a stipulated penalty is due in accordance with paragraphs 14, 15, or 16 above, it will send the Responsible Party a written notice, including the amount of the stipulated penalty. The Responsible Party shall pay the stipulated penalty within thirty (30) days of notice to the permittee at the address provided to the Cabinet. If the Responsible Party believes that a request for payment of a stipulated penalty is erroneous or contrary to law, it may request a hearing in accordance with KRS 224.10-420(2). This request for a hearing does not excuse timely payment of the stipulated penalty. If an order is entered pursuant to KRS 224.10-440 that excuses payment, the Cabinet will refund the payment to the Responsible Party. Failure to pay the stipulated penalty may be deemed an additional violation of this Agreed Order.

19. Stipulated penalties are in addition to and not in lieu of, any other penalty which could be assessed by the Cabinet. The Cabinet may, in its discretion, waive stipulated penalties that would otherwise be due.

20. Payment of stipulated penalties shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer" and shall be sent to the attention of: Director, Division of Enforcement, 300 Sower Boulevard, Frankfort, Kentucky 40601. Please note "Case Nos. DWM-18-3-0187 & DAQ-18-3-0188" on the instrument of payment.

MISCELLANEOUS PROVISIONS

21. This Agreed Order addresses only the violations specifically alleged above. Other than those matters resolved by entry of this Agreed Order, nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction and the Responsible Party reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary that is not inconsistent with this Agreed Order, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Responsible Party reserves its defenses thereto.

22. This Agreed Order shall not prevent the Cabinet from prospectively issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Responsible Party. The Responsible Party reserves its defenses thereto, except that it shall not use this Agreed Order as a defense to such prospective actions.

23. The Responsible Party waives its right to any hearing on the matters set forth in numerical paragraphs 5 and 6 above. However, failure by the Responsible Party to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate

administrative or judicial action under KRS Chapter 224 and the regulations promulgated pursuant thereto, and the Responsible Party reserves its defenses thereto.

24. The provisions of this Agreed Order shall apply to and be binding upon the Responsible Party. The acts of omissions of the officers, directors, agents and employees of the Responsible Party shall not excuse the performance of any requirements of this Agreed Order. The Cabinet reserves its right to seek enforcement of this Agreed Order against the Responsible Party, its successors and assigns, and the Responsible Party reserves its defenses thereto.

25. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. The Responsible Party may request an amendment by writing the Director of the Division of Enforcement at 300 Fair Oaks Lane, Frankfort, Kentucky 40601, and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

26. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that the Responsible Party's complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 224 and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, the Responsible Party shall remain solely responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated thereto, this Agreed Order, and any permit or registration and compliance schedule requirements.

27. The Responsible Party shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of the facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory requirements for a transfer. Whether or not a

transfer takes place, the Responsible Party shall remain fully responsible for payment of all civil penalties and those actions as set forth in this Agreed Order.

28. The Cabinet agrees to allow completion of the above listed remedial measures and payment of civil penalties by the Responsible Party to satisfy the Responsible Party's obligations to the Cabinet generated by the violations alleged above.

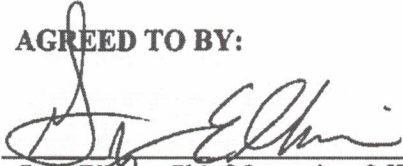
29. The Cabinet and the Responsible Party agree that the remedial measures agreed to herein are facility-specific and designed to comply with the statutes and regulations cited herein. This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site or facility.

30. This Agreed Order shall be of no force and effect unless and until it is entered by the Cabinet's Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which the Responsible Party is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then the Responsible Party is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

TERMINATION

31. This Agreed Order shall terminate following implementation of the CAPs specified in paragraph 11 above when the Responsible Party demonstrates compliance with 401 KAR 53:010 Section 1 and 401 KAR 63:010 Section 3 related to odor for four (4) consecutive quarters. The Responsible Party may submit written notice to the Cabinet when it believes all requirements have been performed. The Cabinet will notify the Responsible Party in writing of whether it intends to agree with or object to termination. The Cabinet reserves its right to enforce the Agreed Order, and the Responsible Party reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

AGREED TO BY:



Greg Elkins, Chief Operating Officer
Waste Services of the Bluegrass LLC
604 Bizzell Drive, Unit 250
Lexington, KY 40510

3/7/19

Date



David T. Royse, Attorney for
Waste Services of the Bluegrass LLC
Ransdell Roach & Royse, PLLC
176 Pasadena Dr. # 1
Lexington, KY 40503

3/7/2019

Date

APPROVAL RECOMMENDED BY:

Natallie Brunner for MBK
Michael B. Kroeger, Director
Division of Enforcement

3.11.19
Date

John G. Horne II
John G. Horne, II, Executive Director for the
Office of Legal Services
Energy and Environment Cabinet

3/11/19
Date

ORDER

Wherefore, the forgoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this ___ day of _____, 20__.

ENERGY AND ENVIRONMENT CABINET



R. BRUCE SCOTT, DEPUTY SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this 13th day of March, 2019:

Greg Elkins
Waste Services of the Bluegrass LLC
604 Bizzell Drive, Unit 250
Lexington, KY 40510

And mailed, messenger to:

Michael B. Kroeger, Director
Division of Enforcement
300 Sower Blvd.
Frankfort, KY 40601

John G. Horne II
Office of Legal Services
300 Sower Blvd.
Frankfort, KY 40601



DOCKET COORDINATOR

DWM
DAG
BGP
SH
Daniel Cleveland

