

IN THE DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

LANDFILL TECHNOLOGIES OF ARECIBO CORP.,
MUNICIPALITY OF ARECIBO, AND PUERTO RICO
LAND AUTHORITY,

Defendants.

Civil No. _____

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 Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and assessment of civil penalties against Landfill Technologies of Arecibo Corp., the Municipality of Arecibo, and the Puerto Rico Land Authority (the “Defendants”), pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* (the “Act”).

2. This action seeks redress for Defendants’ violations of (a) Part VII of the Commonwealth of Puerto Rico Air Regulations (“Part VII Regulations”) and (b) the National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930-63.1990 (“Landfill MACT”).

The violations alleged in the Complaint occurred and are occurring at the landfill owned

or operated by the Defendants located at Road PR 682 Interior, Garrochales Sector, Factor Ward, Arecibo, Puerto Rico (the “Landfill”).

3. As alleged below, Defendants were required to construct and begin operation of a gas collection and control system for the Landfill by November 5, 2005, in order to control non-methane organic compounds (“NMOC”) and other landfill gas being emitted from the Landfill, including methane. Defendants failed to construct such a gas collection and control system by the November 5, 2005 deadline. Defendants did not complete construction of a gas collection and control system until on or about June, 2012. As a result, for more than six years, the Landfill emitted into the atmosphere substantial amounts of NMOC and other landfill gas, including methane, which would not have been emitted had Defendants constructed the gas control and collection system by November 5, 2005. NMOC contributes to ozone formation and some NMOC are known or suspected carcinogens or cause other serious noncancer health effects. Methane contributes to global climate change and can pose a risk of fire or explosions.

JURISDICTION AND VENUE

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

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

DEFENDANTS

6. Defendant Landfill Technologies of Arecibo Corp. (“LTA”) is a for-profit corporation incorporated in Puerto Rico. LTA has operated the Landfill, under contract with the Municipality of Arecibo, from on or about July 12, 1999 to the present.

7. Defendant Municipality of Arecibo (“Arecibo”) is a non-profit, tax-exempt government entity. During the period of time from September 1973 to the present, Arecibo has leased the property where the Landfill is located from the Puerto Rico Land Authority. During the past several weeks, Arecibo may have become the owner of the property due to a transfer of the deed from the Puerto Rico Land Authority to Arecibo.

8. Defendant Puerto Rico Land Authority (“PRLA”) is an autonomous governmental instrumentality of the Commonwealth of Puerto Rico. PRLA has been the owner of the property where the Landfill is located since at least September 1973, but may have recently transferred a deed to the property to Arecibo.

9. Each of the Defendants is a person within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

10. The Act 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 Act, 42 U.S.C. § 7401(b)(1).

Emission Guidelines for Existing Municipal Solid Waste Landfills

11. Section 111(d) of the Act, 42 U.S.C. § 7411(d), requires the Administrator of EPA (“Administrator”) to establish procedures for states (including the

Commonwealth of Puerto Rico) to submit to the Administrator plans establishing standards of performance for any existing source for any air pollutant for which a standard of performance under Section 111 of the Act, 42 U.S.C. § 7411, would be applicable if such existing source were a new source. The plans are to provide for the implementation of the standards applicable to new sources, but may take into consideration, among other factors, the remaining useful life of the existing source.

12. Section 111(d) of the Act, 42 U.S.C. § 7411(d), also provides that, if a state (including Puerto Rico) fails to submit a satisfactory plan, the Administrator may prescribe a federal plan applicable to that state.

13. On March 12, 1996, the Administrator promulgated Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources, Municipal Solid Waste Landfills (“1996 Standards”). 61 Fed. Reg. 9905. The 1996 Standards set forth certain rules applicable to municipal solid waste (“MSW”) landfills that are new sources, i.e., MSW landfills where construction was begun on or after May 30, 1991 (“NSPS MSW Standards”). See 40 C.F.R. Part 60, Subpart WWW. The 1996 Standards also set forth guidelines for existing sources (“Emission Guidelines”), i.e., MSW landfills - such as the Landfill - where construction began prior to May 30, 1991. The Emission Guidelines were to be implemented by the states (including Puerto Rico) pursuant to plans to be submitted by the states to the Administrator for approval. See 40 C.F.R. Part 60, Subpart Cc. The Emission Guidelines, like the 1996 Standards, require municipal solid waste landfills that (a) have a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters and (b) have an estimated NMOC emission rate

of greater than 50 megagrams/year (“Mg/yr”), to construct a gas collection and control system.

The Federal Plan

14. On November 8, 1999, the Administrator issued a federal plan to implement the Emission Guidelines for existing MSW landfills located in states where state plans were not yet in effect (the “Federal Plan”). 64 Fed. Reg. 60689 (codified at 40 C.F.R. Part 62, Subpart GGG). At that time, there was no applicable state plan in effect in Puerto Rico. The effective date of the Federal Plan was January 7, 2000.

15. The Federal Plan set forth certain requirements for MSW landfills - such as the Landfill - that began construction prior to May 30, 1991 and that had a design capacity of greater than 2.5 million megagrams and 2.5 million cubic meters. 40 C.F.R. § 62.14350. Under the Federal Plan, the owner or operator of such landfills were required to submit an initial design capacity report, as well as an initial NMOC emission report, to EPA by April 6, 2000, 90 days after the effective date of the Federal Plan. 40 C.F.R. § 62.14355.

16. Under the Federal Plan, if the initial NMOC report, or any subsequent NMOC emission report, indicated that a landfill had an estimated NMOC emission rate of greater than or equal to 50 Mg/yr, the owner or operator of the landfill was required, among other things, to construct a gas collection and control system within 30 months.

The Part VII Regulations

17. On July 16, 2002, the Administrator approved Puerto Rico’s State Plan for the Implementation of Municipal Solid Waste Landfill Emission Guidelines, which

included, inter alia, regulations that are now codified as Part VII of the Puerto Rico Air Regulations (as noted above, these regulations are referred to herein as the “Part VII Regulations”). 67 Fed. Reg. 46598. These regulations became effective on August 15, 2002. As of that date, the requirements of the Part VII Regulations superceded the requirements of the Federal Plan.

18. Under the Part VII Regulations, the owner or operator of an existing MSW landfill that has accepted waste since November 8, 1987 and that has a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters is required to estimate its NMOC emission rate (by submitting an initial report and annual reports thereafter) and, if such estimated rate ever exceeds 50 Mg/yr, to construct a gas collection and control system for the landfill. In order to estimate its NMOC emission rate, the owner or operator must first use the equation set forth at Rule 704(a) of the Part VII Regulations, which is known as the Tier 1 emissions calculation. Rule 704(a)(1) of the Part VII Regulations. The Part VII Regulations provide that the initial design capacity report and the initial NMOC emission rate report were required to be filed by April 6, 2000, 90 days from the effective date of the Federal Plan. Rules 702(f)(1)(i), 707(a)(1)(i), and 707(b)(1)(i) of the Part VII Regulations.

19. If the Tier 1 calculation indicates that the NMOC emission rate is greater than or equal to 50 Mg/yr, the owner or operator of the municipal solid waste landfill must either install a gas collection and control system, as required by Rule 702(f) of the Part VII Regulations, or recalculate the NMOC emission rate using site-specific testing to determine the value of two of the parameters used in the equation to determine the

estimated NMOC emission rate (Tier 2 and Tier 3 testing). If the owner or operator does not elect to perform site-specific testing within 180 days of performing the Tier 1 calculation, the Tier 1 calculation must be used. Rule 707(c)(1) of the Part VII Regulations.

20. The owner or operator of a MSW landfill must submit a design plan for a gas collection and control system to the Environmental Quality Board of the Commonwealth of Puerto Rico (“EQB”) within one year of the date that the initial NMOC emission rate report, or any subsequent annual report, indicates that the NMOC emission rate is equal to or greater than 50 Mg/yr. Rule 702(f)(1)(i) of the Part VII Regulations.

21. The owner or operator of a MSW landfill must award the necessary contracts for the construction of the gas collection and control system, or place orders for purchase of necessary components, within 20 months of the date that an initial NMOC emission rate report, or any subsequent annual report, indicates that the NMOC emission rate is equal to or greater than 50 Mg/yr. Rule 702(f)(1)(ii) of the Part VII Regulations.

22. The owner or operator of a MSW landfill must initiate construction or installation of the gas collection and control system within 24 months of the date that an NMOC emission rate report, or any subsequent annual report, indicates that the NMOC emission rate is equal to or greater than 50 Mg/yr. Rule 702(f)(1)(iii) of the Part VII Regulations.

23. The owner or operator of a MSW landfill must complete construction or installation of the gas collection and control system and begin operation of the system

within 30 months of the date that an NMOC emission rate report, or any subsequent annual report, indicates that the NMOC emission rate is equal to or greater than 50 Mg/yr. Rule 702(f)(1)(iv) and (f)(1)(v) of the Part VII Regulations.

Landfill MACT

24. Section 112 of the Act, 42 U.S.C. § 7412, directs the Administrator to publish a list of all categories and subcategories of major sources and area sources of hazardous air pollutants and provide a list of hazardous air pollutants. Section 112(d) of the Act directs the Administrator to promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants.

25. Under the authority of Section 112 of the Act, on January 16, 2003, the Administrator promulgated the National Emissions Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills regulations (“Landfill MACT”). These standards are found at 40 C.F.R. Part 63, Subpart AAAA, §§ 63.1930-1990.

26. Pursuant to 40 C.F.R. § 63.1935, MSW landfills with a design capacity of at least 2.5 million megagrams by mass and 2.5 million cubic meters by volume and that have a calculated emissions rate of at least 50 Mg/yr of NMOC are subject to the Landfill MACT.

27. Pursuant to 40 C.F.R. § 63.1930, those landfills subject to the Landfill MACT that are existing landfills (construction commenced prior to May 30, 1991) must comply with the federal plan or the state plan that implements the Emission Guidelines. 40 C.F.R. § 63.1955.

28. Pursuant to the Landfill MACT, if a federal plan or a state plan requires the construction of a gas collection and control system, the owner or operator of a municipal solid waste landfill that is subject to the Landfill MACT must comply with the requirements of 40 C.F.R. §§ 63.1960 - 63.1985. 40 C.F.R. § 63.1955(b). Pursuant to 40 C.F.R. § 63.1960, an owner or operator of a landfill must develop a written start-up, shutdown or malfunction (“SSM”) plan in accordance with the provisions of 40 C.F.R. § 63.6(e)(3). Pursuant to 40 C.F.R. § 63.6(e)(3) and 40 C.F.R. 63.1945(f), the SSM plan must be developed by the date that the landfill gas and collection and control system is required to be constructed.

Enforcement Provisions

29. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), authorizes the Administrator to bring a civil action under Section 113(b) of the Act, 42 U.S.C. § 9613(b), against any person who has violated certain requirements of the Act, including any requirement set forth in an applicable state plan promulgated under Section 111(d) of the Act, 42 U.S.C. § 7411(d), and any requirement of the Landfill MACT.

30. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever any person has violated an applicable state plan promulgated under Section 111(d) of the Act, 42 U.S.C. § 7411(d), or any requirement of the Landfill MACT, promulgated under Section 112 of the Act, 42 U.S.C. § 7412, the Administrator may bring a civil action against such person seeking a temporary or permanent injunction or to recover a civil penalty of up to \$25,000 per day per violation against such person. In any such action,

the court may restrain any such violation, require compliance, or award any other appropriate relief.

31. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701, and pursuant to the EPA's Civil Monetary Penalty Inflation Adjustment Rules, 69 Fed. Reg. 7121 (Feb. 13, 2004), 73 Fed. Reg. 75340 (December 11, 2008), and 78 Fed. Reg. 66643 (November 6, 2013) the maximum amount of the daily penalty increases from \$25,000 to:

- a. \$32,500 for each violation occurring from March 16, 2004 to January 12, 2009; and
- b. \$37,500 for each violation occurring after January 12, 2009.

FIRST CLAIM FOR RELIEF - VIOLATIONS OF THE PART VII REGULATIONS

32. Paragraphs 1 to 31 above are realleged and incorporated herein by reference.

33. The Landfill is an existing municipal solid waste landfill system on which construction was commenced before May 30, 1991 and is therefore subject to the requirements of the Part VII Regulations. Rule 701 of the Part VII Regulations.

34. During the relevant period of time, each of the Defendants was an "owner or operator" of the Landfill. PRLA was the owner of the Landfill. Arcibo and LTA were the operators of the Landfill.

35. On or about May 5, 2003, LTA submitted to EQB a report entitled "Initial Design Capacity Report Form" (the "Initial Design Report"). The Initial Design Report stated that the maximum design capacity of the Landfill was 2.99 million megagrams. By

letter dated April 26, 2005 from LTA to the EQB, LTA indicated that the maximum design capacity of the Landfill was in fact 4 million megagrams.

36. On or about May 5, 2003, LTA submitted to EQB a report entitled “Initial NMOC Emission Rate Report for the Landfill as Required by the Municipal Sanitary Landfill Systems Requirements Under Part VII of the RCAP” (“Initial NMOC Report”). The Initial NMOC Report included a calculation of an estimated NMOC emission rate, for 2002, of 204.71 Mg/yr.

37. After obtaining the 204.71 Mg/yr result, Defendants did not elect to recalculate the NMOC emission rate using site-specific testing.

38. Because the Landfill (a) had a calculated design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, (b) had a calculated NMOC emission rate greater than 50 Mg/yr, and (c) accepted waste after November 8, 1987, Defendants were required to submit a design plan for a gas collection and control system to EQB on or before May 5, 2004, one year from the date of the Initial NMOC Report. Rules 702(a) and 702(f)(1)(i) of the Part VII Regulations. Defendants failed to meet this requirement and did not submit a design plan until August 14, 2008.

39. Defendants were required to award the necessary contracts for the construction of the gas collection and control system, or order the necessary components, on or before January 5, 2005, 20 months from the date of the Initial NMOC Report. Rule 702(f)(1)(ii) of the Part VII Regulations. Defendants failed to meet this requirement and did not enter into such a contract until September, 2010 (such contract was entered into by Arcibo and LTA as the contractor).

40. Defendants were required to initiate construction or installation of the gas collection and control system on or before May 5, 2005, 24 months after the date of the Initial NMOC Report. Rule 702(f)(1)(iii) of the Part VII Regulations. Defendants failed to initiate construction or installation of a gas collection and control system by May 5, 2006. Defendants did not begin construction of a gas collection and control system until on or about May, 2011.

41. Defendants were required to complete construction or installation of the gas collection and control system, and put the system in operation, by November 5, 2005, 30 months from the date of the Initial NMOC Report. Rule 702(f)(1)(iv) of the Part VII Regulations. Defendants failed to complete construction or installation of a gas control collection system by November 5, 2005. Defendants completed construction of the gas collection and control system on or about December, 2011.

SECOND CLAIM FOR RELIEF - VIOLATIONS OF THE LANDFILL MACT

42. Paragraphs 1 to 41 above are realleged and incorporated herein by reference.

43. Pursuant to the Landfill MACT, Defendants were required to comply with the requirements of the Part VII Regulations. 40 C.F.R. § 63.1955(a)(2). As alleged in Paragraphs 32 to 41 above, the Defendants have violated various provisions of the Part VII Regulations and, therefore, have likewise violated the Landfill MACT.

44. As alleged above, the Part VII Regulations required the Defendants to construct a gas collection and control system. Therefore, Defendants were required to develop an SSM plan by no later than November 5, 2005, 30 months from the date of the

Initial NMOC Report. Defendants failed to develop an SSM plan by November 5, 2005.

Defendants submitted an SSM plan on or about March, 2011.

PRAYER FOR RELIEF

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

1. Order Defendants to pay civil penalties of up to \$32,500 per day for each violation of the Clean Air Act, including violations of the Part VII Regulations and the Landfill MACT, that occurred from April 17, 2004 to January 12, 2009, and of up to \$37,500 per day for each such violation that occurred after January 12, 2009;

2. Order Defendants to achieve and maintain compliance with all applicable requirements of the Part VII Regulations and the Landfill MACT at the Landfill;

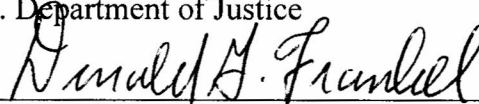
3. Order Defendants to operate the gas collection and control system at the Landfill in compliance with the Part VII Regulations and the Landfill MACT;

4. Award the United States its costs in this action; and

5. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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