

January 22, 2004

Gary A. Abraham, Esq.
170 No. Second Street
Allegany, New York 14706

Re: In the Matter of Al Turi Landfill, Inc.
Petition Number: II-2002-13-B

Dear Mr. Abraham:

On October 8, 2002, the Environmental Protection Agency, Region 2 ("EPA") received a petition which you submitted on behalf of Citizens Who Care, Inc. ("CWC") requesting that EPA object to the proposed title V state operating permit, pursuant to § 505(b)(2) of the Clean Air Act ("CAA"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), for the Al Turi Landfill. The Landfill permit was issued by the New York State Department of Environmental Conservation ("DEC") to Al Turi Landfill Inc. ("the Landfill"), and took effect on August 7, 2002.

The petition period for the Landfill permit ended October 3, 2002, the sixtieth day from the last day of the EPA 45-day review period that commenced June 20, 2002. In a letter to you dated October 21, 2002, Regional Administrator Kenny acknowledged receipt of the CWC petition on October 8, 2002. The petition itself bears no date. In a letter dated April 29, 2003, to Administrator Whitman, you argued that October 5, 2002, was the sixtieth day of the petition period and, since that was a Saturday, the regulations provide for extension of the petition period to October 7, 2002. You contended that, since you initiated shipping of the petition via FedEx to EPA on October 7, the petition is timely. EPA disagrees and holds to October 3, 2002, as the last day of the petition period. For these reasons EPA deems the petition untimely, pursuant to both CAA § 505(b)(2) and 40 C.F.R. § 70.8(d).

However, based on our review of the petitions from CWC and from the New York Public Interest Research Group, Inc., EPA will be issuing a notice to DEC to reopen the permit for cause directly following this letter, pursuant to CAA § 505(e) and 40 C.F.R. § 70.7(g). The notice to DEC will provide specific instructions on how to modify the permit. The modified

permit will be substantially changed, thus warranting another public comment period. This decision is based on a thorough review of the August 7, 2002 permit and other documents that pertain to the issuance of this permit.

Sincerely,

/ s /

Jane M. Kenny
Regional Administrator

cc: David Shaw, Director, Division of Air Resources, NYSDEC, Albany
Robert Stanton, Permit Administrator, NYSDEC, Region 3

Tracy A. Peel
New York Public Interest Research Group, Inc.
9 Murray Street , 3rd Floor
New York, New York 10007

January 22, 2004

Erin M. Crotty, Commissioner
New York State
Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3250

RE: Permit ID:3-3330-00002/00039,
effective date August 7, 2002

Dear Commissioner Crotty:

The U.S. Environmental Protection Agency, Region 2 Office (“EPA”) hereby notifies the New York State Department of Environmental Conservation (“DEC”) to reopen for cause the title V permit issued to the Al Turi Landfill, pursuant to 40 C.F.R. § 70.7(g). Based on our review, EPA has determined that the permit does not include all requirements to which this source is subject, and that this as well as ambiguities and inaccuracies in the existing permit conditions must be corrected in order to assure compliance with applicable requirements. As a result, ample grounds exist to warrant the reopening of this permit.

Within 90 days of receipt of this notice, DEC must forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Failure to submit this determination in the specified time frame will lead to EPA terminating, modifying, or revoking and reissuing the permit. The reopening and subsequent issuance of a new permit must follow the same procedures that apply to initial permit issuance in 40 C.F.R. § 70.7(a) and (h), including an opportunity for the owners of Al Turi Landfill and the public to comment on the draft revised permit. The reopening shall not be initiated before notice of such intent is provided to Al Turi Landfill by DEC at least 30 days in advance of the date that the permit is to be reopened. In light of existing public interest who have voiced concern in this permitting action, we encourage you to outreach to those groups so they have ample opportunity to review the proposed modifications. However, please note that the reopening only affects those parts of the permit subject to the reopening.

Enclosed is an attachment detailing the changes that must be made to the Al Turi Landfill permit and the rationale behind each change. A swift reopening of the Al Turi Landfill title V permit would be in the best interest of all parties involved. During the revision process, please encourage your staff to continue to work with my staff to assure that all necessary terms and conditions are included.

If you have any questions about the reopening process or any of the issues specific to Al Turi Landfill, please call me or have your staff contact Steven Riva at (212) 637-4074.

Sincerely,

/ s /

Jane M. Kenny
Regional Administrator

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

David Shaw, Director, Division of Air Resources, NYSDEC, Albany
Margaret Duke, Regional Permit Administrator, NYSDEC, Region 3
Robert J. Stanton, Regional Air Pollution Control Engineer, NYSDEC, Region 3
Tracy A. Peel, New York Public Interest Research Group, Inc.
Gary A. Abraham, Esq.

Attachment

Attachment

Reopening For Cause of the Title V Permit for Al Turi Landfill
Permit ID 3-3330-00002/00039:
Changes to be made per the Notice from the EPA Regional Administrator

The reopening for cause of the title V permit for Al Turi Landfill ("the Landfill"), Permit ID 3-3330-00002/00039, is to achieve a title V permit that clearly addresses all applicable Federal Clean Air Act requirements for this facility. The paragraphs below identify the issues to be addressed, indicate the nature of the changes to be made to the permit to address the issues, and provide the rationale for the changes indicated. These changes are in addition to those required by the order responding to the New York Public Interest Research Group (NYPIRG) petition for the Administrator to object to the proposed title V permit for the Landfill. This Notice letter refers to the permit effective as of August 7, 2002.

The appropriate regulation to cite at this time for the applicable Federal requirements of the New York State Department of Environmental Conservation ("DEC") Federally-approved 111(d) plan is 6 N.Y.C.R.R. 360-2.21. While DEC has moved its 111(d) plan regulations from 6 N.Y.C.R.R. Part 360-2.21 to Part 208, the relocation has not been Federally-approved and, therefore, the Part 208 regulation is not Federally-enforceable. Since EPA is processing the change as this reopening proceeds, please contact us for the appropriate citation before issuing the final permit. To facilitate translation of this Notice into applicable Federal requirements, this letter cross-references the Part 360-2.21 citations to the State-approved Part 208 citations that were used in the permit.

I. Issue 1- Responsibility of the Landfill for compliance with all landfill gas control requirements

The title V permit issued for the Landfill does not provide for enforceability of compliance with all applicable Federal requirements of DEC's Federally-approved 111(d) plan for municipal solid waste landfills ("111(d) plan"). It does not reflect the responsibility of the landfill for compliance with all requirements for control of gas routed to the control facility, Al Turi LFGTE (Ameresco LFG-1 Inc. facility, "Ameresco").

A. Changes

Add language to the existing permit conditions or create new conditions to address requirements from all of the (1) standards for air emissions from MSW landfills, (2) operational standards, (3) test methods and procedures, (4) compliance provisions, (5) monitoring requirements, (6) reporting requirements, and (7) recordkeeping requirements that apply to landfill gas controls. Please supplement the changes listed below as necessary to address all requirements implied by these changes.

1. Include testing of the non-methane organic compounds (NMOC) destruction rate or NMOC outlet concentration at all of the landfill gas control devices at Ameresco, and add all related requirements to the permit.
 - a. Revise Condition 30 so that it addresses all of the control devices covered by the requirement cited, and complement this condition with additional conditions that appropriately cite and describe requirements for submission and approval of test protocols, performance of tests, monitoring of performance, recordkeeping, reporting, etc. Currently, Condition 30 cites 208.3(b)(2)(iii)(b'), a standard that covers both the enclosed flares and the engines, but states, "a performance test was conducted," suggesting that one test was performed at just one of the control devices in June 2001. This does not comport with the 11 initial performance tests required for the 9 engines and 2 enclosed flares mentioned in the Monitoring Description.
 - b. Revise Condition 31 in conjunction with the revision of Condition 30, which cites the same applicable Federal requirement as Condition 31. Include the requirements that the initial performance testing be performed after initial start-up of the approved gas collection and control system (GCCS) per 360-2.21(c)(2)(ii)(c)(2) [208.3(b)(2)(iii)(b)]; and that the control devices be operated within the parameter ranges established during the initial or most recent performance test per 360-2.21(c)(2)(ii)(c)(2)(ii) [208.3(b)(2)(iii)(b)(2)], conducted per 360-2.21(e)(4) [208.5(d)].
 - i. Provide the date on which the GCCS was approved as compliant with 111(d) plan requirements. If the June 2001 stack test occurred before that date, then do not present it in the permit as an initial performance test.
 - ii. Add a condition per the reporting requirement 360-2.21(h)(7) [208.8(g)] to include specific information about the collection system with submission of the initial performance test report.
 - c. Revise the Condition 52 recordkeeping requirement, which cites 208.9(b), so that it applies to the two enclosed flares and the nine engines. In its current form, the Monitoring Description restricts Condition 52 to open flares only, devices not in use at Ameresco: by specifying compliance with 208.3(b)(2)(iii) "through the use of an open flare," it has eliminated the other compliance options under 208.3(b)(2)(iii), and, thus, the recordkeeping requirements for the enclosed flares and engines.¹

¹Further, it allows the substitution of the presence of an ignition spark for continuous records of the flare pilot flame, a practice not allowed by DEC's Federally-approved 111(d) plan.

(This date is to be provided for item I.A.1.b.i above.) This is according to test requirement 360-2.21(e)(2) [208.5(b)], which states, "After the installation of a collection and control system in compliance with subdivision (f) [6] of this section....for the purposes of determining when the system can be removed..."

- b. Add a condition per 360-2.21(h)(5) [208.8(e)] requiring submittal of an equipment removal report to DEC 30 days prior to removal or cessation of the operation of the control equipment.
 - c. Add a condition per 360-2.21(h)(4) [208.8(d)] requiring submittal of a final closure plan.
6. In the Permit Review Report (which serves as the Statement of Basis for the title V permit), describe the relationship and responsibilities of both facilities regarding control of the landfill gas. Delineate how the Landfill has provided for coverage of its responsibility, e.g., via its contractual arrangements with Ameresco, for reporting, notification procedures and time frames, access to records, access to control valves between the collection system and the control system, etc. Include the period of the contract with Ameresco. Acknowledge explicitly the liability of Al Turi Landfill for compliance with all Federally-applicable requirements for control, as well as collection, of the landfill gas, whether on-site or off-site.

B. Rationale

It is the responsibility of the Landfill to comply with all aspects of DEC's 111(d) plan. The purpose of the Title V program is to incorporate all Federally-applicable requirements of the Clean Air Act into one document. As a compliance and enforcement tool, the title V permit for the Landfill must include conditions implementing all of the control requirements. As issued, the Landfill permit contains collection requirements for the GCCS, but is incomplete regarding operating, monitoring, reporting, and recordkeeping for the control of the landfill gas.

Conditions 23 and 30 and the Description section at the front of the permit state that Ameresco is a separately owned /operated facility that functions as the control for landfill gas generated by the Landfill. This leads to ambiguity as to whom a permit condition applies when the terms "facility," "owner," and "operator" are used in the context of requirements for gas control. For example, Condition 48 states, "If an enclosed combustor is used to control landfill gas at the facility, the owner or operator will calibrate, maintain and operate, according to manufacturer's specifications, the following equipment..." While the presence of a condition in a permit is construed generally to mean that the permittee must comply with the requirement, explicit statements and clarifications to that effect are reasonable in this permit.

For the purposes of this regulation, EPA includes internal combustion (IC) engines in the category "enclosed combustors." However, unlike the case of enclosed flares, the monitoring, reporting, etc. of combustion temperature is generally not feasible for IC engines in the field. Therefore, another surrogate for monitoring continuous operation of the engines in compliance with NMOC control efficiency requirements is needed. Thus, while Condition 49 for "other control devices" is removed, the standard conditions for enclosed combustors, e.g., Conditions 48 and (the revised) 52, must be augmented to address this difference in monitoring of performance for these two sub-categories of enclosed combustors.

II. Issue 2- Single source determination

The permit may have incorrectly treated Al Turi Landfill and Al Turi LFGTE--the landfill gas-to-energy facility owned by Ameresco LFG-1 Inc. and referred to as "Ameresco"--as separate sources as represented in a Responsiveness Summary issued with the final title V permit for the Landfill. Therefore, this letter is providing guidance herein for DEC to revisit its previous determination with particular attention to the SIC code and interdependence criteria. If these two facilities are a single source, then preconstruction permitting may have been required for modifications at the LFGTE facility.

A. Rationale

1. Before calculating the potential to emit (PTE) for the Landfill for nonattainment New Source Review (NSR), Prevention of Significant Deterioration (PSD) review, and title V applicability purposes, the relationship between the Landfill and Ameresco warrants further investigation in order to determine whether or not the two facilities are to be treated as one emissions source.

Under the definition of "major source" in 40 C.F.R. § 70.2 there are three requirements to determine if a group of sources is considered one major source. They are common control, adjacent or contiguous properties, and same two-digit Standard Industrial Classification (SIC) code. All three criteria must be met before the sources can be considered one source. This determination is referred to as a "common control" determination--the quotes will distinguish this use of the term from the reference to the common control criterion.

The first thing to note under "common control" is that under 45 Fed. Reg. 59874 (September 11, 1980) EPA stated that "common control" is to be determined on a case-by-case basis and guided by the general definition of "control" used by the Securities and Exchange Commission (SEC). This practice has been followed for over 20 years in the PSD program where many such decisions were made. Under 19 C.F.R. 240.12b-2 of the SEC regulations, "control" is defined as "the possession direct or indirect, of the powers to direct or cause the direction of the management and policies of a person (or persons or association) whether through the ownership of voting shares, contract or otherwise."

First criterion:

Under the common control criterion we first look to see if common ownership exists. If common ownership exists, then common control is immediately established. If common ownership does not exist, then we look at various factors that establish such an inter-relationship and/or support relationship between the two corporations, such that common control can be demonstrated between the two. Use the following list of questions and qualifications in coming to a conclusion regarding common control:

Do the facilities share common workforces, plant managers, security forces, corporate executive officers, or board of executives?

Do the facilities share equipment, other property, or pollution control equipment? What does the contract specify with regard to pollution control responsibilities of the contractee? Can the managing entity of one facility make decisions that affect pollution control at the other facility?

Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?

Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can the facilities purchase raw materials from and sell products or byproducts to other customers? What are the contractual arrangements for providing goods and services?

Who accepts the responsibility for compliance with air quality control requirements?

What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?

Does one operation support the operation of the other? What are the financial arrangements between the two entities?

This is not a comprehensive list for exploring the relationship between the two facilities. It may be necessary to look at contracts, lease agreements, and other relevant information.

Second criterion:

The second criterion is contiguous or adjacent properties. In Webster's dictionary "contiguous" means "to touch, to share a boundary" and "adjacent" means "to lie near, close to." DEC must determine whether or not the two facilities are contiguous or adjacent to each other.

Third criterion:

The third and last criterion is the same two-digit SIC code. Under the "major source" definition in 40 C.F.R. § 70.2 the first two digits of the four-digit SIC code must be the same.

2. If the conclusion is that the Landfill and Ameresco are a single source and the PTE is of major source magnitude for NSR and/or PSD purposes, then the permits for both facilities must reflect that each is a major source. The PTE calculation should be reconciled with the following information: annual emissions reported to DEC by the Al Turi LFGTE Facility for calendar year 2000 include 659,400 lbs. carbon monoxide (CO) and 586,000 lbs. of nitrogen oxides (NO_x)--324.7 tons and 293.3 tons, respectively, both higher than major source thresholds for PSD and NSR, respectively.

B. Changes

1. If the landfill and its gas-to-energy control facility are determined to be a single source, then proceed as follows:
 - a. Add all applicable requirements to the permit consistent with this finding. Calculation of the PTE would include emissions from the engines and flares and any other operations at Ameresco, as well as the uncollected and uncontrolled landfill gas emissions.
 - b. Review the history of modifications to the Landfill and to the control facility to determine whether or not any of the modifications was major, warranting major source nonattainment NSR and/or PSD review.
 - c. Reopen the Ameresco permit and revise it accordingly.
2. If the landfill and its gas-to-energy control facility are determined to be two sources, then we encourage DEC to add a condition to the permit requiring notification if the two sources merge operations. If the merge occurs within a short time frame, for example two years after permit issuance, DEC may want to investigate such activities as circumvention of the major source permitting requirements and take the appropriate action

For either conclusion, document the determinations in detail and provide the record to EPA for review prior to releasing the draft modified permit for public comment.

III. Issue 3- NESHAP requirements

The permit does not include all requirements of the National Emissions Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (MSW Landfills NESHAP), also known as the Maximum Achievable Control Technology standard (MACT).

A. Changes

Add MACT requirements that are additional to or more stringent than New Source Performance Standards/Emission Guidelines for MSW Landfills (NSPS/EG) requirements, and require that compliance with these new conditions commence January 16, 2004. The new requirements are found at 40 C.F.R. 63 §§1930-1990 plus the General Provisions in Table 1 of Subpart AAAA.

B. Rationale

All landfills that are subject to the New Source Performance Standards/Emission Guidelines for MSW Landfills (NSPS/EG) are also subject to the MACT, whether they are major sources of hazardous air pollutants (HAPs) or area sources. While the final MACT rule effective date is January 16, 2003, presumptive MACT dictated use of the proposed standard as of proposal on November 7, 2000, which was before the permit was issued. Since the title V permit is being reopened now, the new requirements must be included at this time.

While many of the MACT requirements are found in the NSPS/EG, the MACT also contains requirements that are additional to or more stringent than NSPS/EG and, hence, more stringent than the 111(d) plan that implements the EG. These must be added to the permit. The MACT requirements are found at 40 CFR 63. The compliance date for MACT-affected sources that commenced construction on or before November 7, 2000, and therefore, the compliance date for Al Turi Landfill, is January 16, 2004, for MACT requirements that are more stringent than the NSPS/EG. The MACT does not change the compliance date for requirements of the NSPS/EG.

IV. Other matters

- A. The current Landfill permit provides little description of the landfill and the complete GCCS that are the subject of the permit. A readily-available, more complete description of these would help clarify how the permit conditions apply to this Facility. Please add the following to the information already provided in the emission unit definition and descriptions and/or the Permit Review Report.

Capacity for gas generation- landfill acreage; date of first waste placement; amount of waste in place; the maximum allowed waste placement rate (in units of volume and mass) from the solid waste permit; design capacity in units of volume as well as mass (therein providing a density for the placed waste); maximum gas generation rate in units of volume as well as mass, and the assumed methane concentration.

Features of the collection system- type of liner; final cover material; use of temporary/interim cover material, collectors, or control devices where waste that was placed 5 years ago or longer is present, but waste placement is still in

progress²; number and capacity of blowers, if any, providing vacuum.

Capacity of control system- the location of the control facility relative to the landfill; types, models, and capacities of the enclosed flares and the engines used for landfill gas control; features and controls for routing of gas from the Landfill to Ameresco; options for using or flaring landfill gas at Ameresco and for not accepting delivery of the gas from the Landfill.

Ensure that these values and those appearing in the Description section at the front of the permit and in Condition 59 are consistent. In addition, in Condition 59, please clarify the meaning of "LNDFE-process" and "LNDFL-process" in regard to the uncollected landfill gas emissions.

- B. Revise Conditions 34 through 38 for the gas collection system so that, where a parameter is to be maintained at less than the specified value, the Upper Permit Limit is less than that value, not the value per se. E.g., for Condition 34, the wellhead pressure is to be negative, less than 0 pounds per square inch (psi), not 0 psi. This is the approach used by DEC in other title V landfill permits.

In conjunction with this reopening, revise the content and location of the non-111(d)-specific requirements of the permit so that they comport with the current DEC practices for its title V permits per the DEC commitment letter dated November 16, 2001.

²Condition 55 states, "Landfill gas collection and control will be installed by onsite personnel concurrent with the progression of final waste deposition." If the design plan does not address the requirement to collect and control gas from waste in place for 5 years or more in an active landfill, please revisit this requirement.