

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. 20-386
v.)	
)	
CITY OF GARY, INDIANA,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

Nature of Action

1. This is a civil action brought by the United States against the City of Gary, Indiana (“City”) to resolve violations at the Gary Sanitary Landfill (“Landfill”) located in Gary, Indiana. The Landfill is a closed municipal solid waste landfill owned and operated by the City and subject to an air permit issued by the Indiana Department of Environmental Management (“IDEM”).

2. Since at least 1999, the City has been required to operate, monitor, and maintain a gas collection and control system (“GCCS”) capable of handling air pollution generated by decomposing waste. The City has never installed an adequate GCCS and has failed to properly

operate, monitor, and maintain the current system, resulting in emissions of methane, volatile organic compounds (“VOCs”), and other hazardous air pollutants.

3. The United States asserts claims in this action under the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7401 *et seq.*, and seeks injunctive relief and civil penalties against the City.

Jurisdiction and Venue

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

5. Venue is proper in this District pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395(a), because the City is in the Northern District of Indiana and the landfill at which the alleged violations occurred and continue to occur is within the Northern District of Indiana.

Notice

6. The United States has provided notice of the commencement of this action to IDEM pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). In accordance with Section 113(a) of the CAA, 42 U.S.C. § 7413(a), EPA notified the City of the violations of the CAA alleged in this complaint more than 30 days prior to its filing.

The Parties

7. Plaintiff, the United States of America, is acting by authority of the Attorney General of the United States and through the undersigned attorneys, on behalf of the Administrator of EPA. Authority to bring this action is vested in the Attorney General of the United States by Section 305 of the CAA, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516 and 519.

8. Defendant, City of Gary, is a municipality incorporated under the laws of Indiana and located in Lake County, Indiana.

9. The City is a “municipality” within the meaning of Section 302(f) of the CAA, 42 U.S.C. § 7602(f), and is therefore a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

Statutory Background

10. The CAA regulates “criteria pollutants,” “designated pollutants,” and “hazardous air pollutants” using a combination of federal and state-administered programs.

11. Section 111 of the CAA regulates “designated pollutants” through Standards of Performance for new and existing sources. The Act defines “designated pollutants” as pollutants that “may reasonably be anticipated to endanger public health or welfare” but are neither “criteria pollutants” (regulated under sections 108 and 109 of the Act) nor “hazardous air pollutants.” 42 U.S.C. § 7411(b).

12. Section 112 of the CAA regulates pollutants that are known or suspected to cause cancer or other serious health problems, such as birth defects, or adverse environmental effects. These pollutants, known as “hazardous air pollutants,” are controlled through National Emissions Standards for Hazardous Air Pollutants.

Standards of Performance for Existing Sources

13. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires EPA to list categories of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

14. Section 111(d) of the CAA, 42 U.S.C. § 7411(d), provides that EPA must establish a system that requires states to set standards of performance for existing sources. EPA

implements this mandate in 40 C.F.R. Part 60, which provides that EPA will promulgate “emissions guidelines” for existing sources in each of the categories of stationary sources listed under Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A). Part 60 further provides that each state must submit a State Plan adopting EPA’s emissions guidelines for each source category present in the state. 40 C.F.R. § 60.23.

15. The State Plan must contain procedures to implement and enforce performance standards for existing sources. 42 U.S.C. § 7411(d)(1)(B).

16. Once approved by EPA, both EPA and the state can enforce the State Plan. 42 U.S.C. § 7411(d)(1)(B), (d)(2)(B).

17. On March 12, 1996, pursuant to Section 111(d) of the CAA and 40 C.F.R. part 60, EPA promulgated emissions guidelines for existing municipal solid waste (“MSW”) landfills at 40 C.F.R. part 60, subpart CC. 40 C.F.R. §§ 60.30c–60.36c; 61 Fed. Reg. 9905. These emissions guidelines are intended to control MSW landfill gas emissions.

18. On March 28, 2000, EPA approved Indiana’s State Plan to implement the emissions guidelines for existing MSW landfills. 65 Fed. Reg. 16,323 (effective May 30, 2000).

National Emission Standards for Hazardous Air Pollutants

19. Section 112(b) of the CAA, 42 U.S.C. § 7412(b), establishes a list of 188 hazardous air pollutants (“HAPs”) which present a threat of adverse human health effects or adverse environmental effects.

20. Pursuant to Section 112(c) of the CAA, 42 U.S.C. § 7412(c), EPA must publish a list of all categories and subcategories of HAP sources.

21. Section 112(d) of the CAA, 42 U.S.C. § 7412(d), requires EPA to promulgate regulations establishing emission standards for each category and subcategory of HAP sources.

These emission standards are known as National Emission Standards for Hazardous Air Pollutants (“NESHAPs”), and are codified at 40 C.F.R. parts 61 and 63. Numerous “source categories” are regulated under the NESHAPs, including MSW landfills (40 C.F.R. Part 63, Subpart AAAA).

22. The NESHAPs apply to specific categories of sources that emit HAPs, including “major sources,” “area sources,” and “stationary sources.” A “major source” is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit 10 tons of any HAP, or 25 tons per year or more of any combination of HAPs, per year. 42 U.S.C. § 7412(a)(1). An “area source” is any stationary source of HAPs that is not a major source. 42 U.S.C. § 7412(a)(2). A “stationary source” is any building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7412(a)(3) (by reference to 42 U.S.C. § 7411(a)(3)).

23. Under Section 112(i)(3) of the CAA, no person may operate a source in violation of NESHAPs. 42 U.S.C. § 7412(i)(3). Thus, a violation of a NESHAP regulation is a violation of the Act.

24. On January 16, 2003, pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated NESHAPs for MSW landfills at 40 C.F.R. Part 63, Subpart AAAA. 68 Fed. Reg. 2227.

25. The NESHAP covers a subset of existing MSW landfills, including those with a design capacity of at least 2.5 million megagrams and 2.5 million cubic yards and annual non-methane organic compound (“NMOC”) emissions of at least 50 megagrams. 40 C.F.R. § 63.1935(a)(3). Covered MSW landfills must continue to comply with State Plan requirements,

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