

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v.

Civil Action No.: 20-cv-993

WASTE MANAGEMENT OF
WISCONSIN, INC.,

Defendant.

COMPLAINT

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

Introduction

1. This is a civil action brought by the United States against Defendant Waste Management of Wisconsin, Inc. (“WM”), for injunctive relief and civil penalties pursuant to Section 3008 of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928.

2. WM owns and operates a municipal solid waste landfill in Franklin, Wisconsin, known as the Metro Recycling and Disposal Facility (“Metro Landfill”). Since at least 1999, WM has improperly accepted and disposed of hazardous waste at the Metro Landfill without a permit and without complying with applicable hazardous waste regulations issued by EPA and the State

of Wisconsin. More specifically, WM accepted and disposed of electric arc furnace dust contaminated with chromium, a known human carcinogen, at the Metro Landfill.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and 42 U.S.C. § 6928(a) and (g).

4. Venue is proper in this Court pursuant to 42 U.S.C. § 6928(a) and 28 U.S.C. §§ 1391 and 1395 because the violations at issue occurred in this judicial district, WM operates in this judicial district, and the Metro Landfill is located within this judicial district.

Notices

5. On July 10, 2013, EPA issued a Notice of Violation (“NOV”) to WM.

6. EPA has provided notice of this civil action to the State of Wisconsin as required by RCRA § 3008(a), 42 U.S.C. § 6928(a).

Authority

7. Authority to bring this action is vested in the United States Attorney General by RCRA § 3008(a), 42 U.S.C. § 6928(a), and by 28 U.S.C. §§ 516 and 519.

Parties

8. The United States is acting through the Attorney General of the United States and on behalf of the EPA.

9. WM is incorporated in the State of Wisconsin and is licensed to do business in Wisconsin. WM is, and at all relevant times to this action has been, the owner and operator of the Metro Landfill located at 10712 South 124th Street, Franklin, Wisconsin 53212.

10. WM is a “person” as defined by 42 U.S.C. § 6903(15) and Wisconsin Administrative Code, Natural Resources (“Wis. Admin. Code, NR”), Section 660.10(90).

11. WM is the owner and operator of the Metro Landfill, which is a “facility” within the meaning of 40 C.F.R. § 260.10 and Wis. Admin. Code, NR, Section 660.10(43).

Statutory and Regulatory Background

RCRA Enforcement

12. RCRA establishes, among other things, a comprehensive “cradle-to-grave” regulatory program for the management and disposal of solid and hazardous waste that is administered by the EPA and the states.

13. Subchapter III of RCRA, 42 U.S.C. §§ 6921-40 (commonly known as “Subtitle C”), requires EPA to issue regulations that establish permitting and performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, Subtitle C and its implementing regulations, which are codified at 40 C.F.R. Parts 260 through 279, comprise EPA’s RCRA hazardous waste program.

14. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions. Any violation of regulations promulgated pursuant to Subtitle C or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and injunctive relief as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

15. The Administrator of EPA granted the State of Wisconsin final authorization to administer a state hazardous waste program in lieu of the federal government’s hazardous waste program effective January 31, 1986. *See* 51 Fed. Reg. 3783 (January 31, 1986).

16. The State of Wisconsin, through its Department of Natural Resources (“DNR”), has adopted regulations governing hazardous waste. These regulations are codified in the

Wisconsin Administrative Code, Department of Natural Resources, Chapters 660 through 679. Unless otherwise specified, DNR has adopted and incorporated into its hazardous waste regulations all the federal regulations cited in this complaint.

17. Notwithstanding EPA's authorization of Wisconsin's hazardous waste program, Section 3008 of RCRA, 42 U.S.C. § 3008(a), provides for federal enforcement of RCRA and the implementing regulations adopted by EPA and DNR.

18. Pursuant to RCRA and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461 note: Pub. Law No. 114-74, § 701, 129 Stat. 39 (2015), RCRA statutory penalties have been adjusted for inflation through 40 C.F.R. § 19.4. The applicable penalties are:

- \$32,500 per day per violation for violations occurring from March 16, 2004 through January 12, 2009;
- \$37,500 per day per violation for violations occurring from January 13, 2009 through November 2, 2015; and
- \$72,718 per day per violation for violations occurring after November 2, 2015.

RCRA Regulation of Hazardous Waste Disposal

19. Under the RCRA hazardous waste program, hazardous waste is defined as, *inter alia*, a solid waste that exhibits any of the characteristics of hazardous waste identified in Subpart C of 40 C.F.R. Part 261.

20. Subject to certain exceptions not applicable here, a solid waste is any discarded material. *See* 40 C.F.R. § 261.2(a)(1). A material is discarded if, for example, it has been abandoned by being disposed of. *Id.* at § 261.2(b)(1).

21. A solid waste exhibits the “characteristic of toxicity,” and therefore constitutes a hazardous waste, if it contains any of the contaminants listed in 40 C.F.R. § 261.24 at or above the concentrations specified in that regulation.

22. As relevant here, 40 C.F.R. § 261.24 provides that a solid waste constitutes a hazardous waste if the chromium in the waste, using the Toxicity Characteristic Leaching Procedure test method, exceeds a concentration of five milligrams per liter (5.0 mg/L). Such chromium-contaminated hazardous waste has been assigned EPA hazardous waste number D007.

23. Hazardous wastes such as chromium-contaminated hazardous wastes are subject to extensive regulation pursuant to RCRA and the EPA and DNR’s implementing regulations.

24. Subject to certain exceptions not applicable here, RCRA prohibits the disposal of chromium-contaminated hazardous waste in land. *See* 40 C.F.R. § 268.34(a); Wis. Admin. Code, NR § 668.34(1).

25. RCRA also prohibits any person from operating any facility that treats, stores, or disposes of hazardous waste, including chromium-contaminated hazardous waste, except in accordance with a permit. 42 U.S.C. § 6925(a); 40 C.F.R. § 270.1(c); Wis. Admin. Code, NR § 670.001(3).

26. In addition, even if a person obtains a permit, the person obtaining the permit to treat, store, or dispose of hazardous waste must thereafter comply with the requirements of the permit, including minimum technology requirements, operational requirements, groundwater monitoring requirements, and closure requirements.

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