



February 20, 2018

Mr. Scott Miller  
Jackson District Air Quality Supervisor  
Jackson District Coordinator  
Air Quality Division  
Michigan Department of Environmental Quality

RECEIVED  
MDEQ - JACKSON

FEB 22 2018

AIR QUALITY DIVISION

Mr. Lawrence Bean  
Jackson & Lansing District Supervisor  
Waste Management and Radiological Protection Division  
Michigan Department of Environmental Quality  
301 East Louis Glick Highway  
Jackson, MI 49201-1556

**RE: Response to Notice of Violation Issued By Michigan Department of Environmental Quality  
Dated February 6, 2018 – SRN N2688 Washtenaw County**

Dear Mr. Miller and Mr. Bean:

This letter responds to the Notice of Violation (NOV) dated February 6, 2018, issued to Advanced Disposal Services Arbor Hills Landfill, Inc (ADS). The NOV alleges that during an investigation performed January 25, 2018, the Air Quality Division (AQD) staff “detected a distinct and definite objectionable landfill odor in the residential area on North Napier Road downwind of the facility.” The NOV alleges that the odor was a “level 3 on the MDEQ-AQD Odor Scale,” and “is a violation of Rule 901(b) and Rule 433(i)(c) since the “landfill odor generated by the facility created a nuisance odor beyond the property boundary.” The NOV notes a number of landfill odor complaints over the last two months and, although recognizing ADS’s efforts to reduce off-site odors, suggests that “more work needs to be done to minimize landfill garbage and possibly compost odors form the facility.” Last, the NOV directs ADS to initiate “actions necessary to correct the cited violation and submit a written response by February 28, 2018.”

**I. PRELIMINARY COMMENTS**

Although we disagree with the substance, timing and legal premise of the NOV, we want to make it clear at the outset that ADS is committed to continuing its efforts to mitigate the effect of its business operations upon the surrounding community. The MDEQ is well aware of the substantial progress that has been made since ADS obtained full control of the landfill early last year. We met jointly with AQD and Waste Management and Radiological Protection Division (WMD) in December 2017 and responded to a January 2018 information request from the WMD just four days prior to this NOV. Additionally, ADS is committed to constantly evaluating changes in operational methods and odor control systems to minimize the dispersion of incidental off-site odors that can result from landfilling and composting operations.

Arbor Hills is a fully-permitted solid waste management and recycling facility applying best management practices and the skills of industry professionals to reduce its impact upon the surrounding community and the environment. We do not believe an NOV is justified when any impacts are episodic, when Arbor Hills is applying best management practices to mitigate those impacts, when it followed all laws and regulations in permitting the facility; and when the landfill not only fulfills an important societal function but is also an essential part of the Washtenaw County's Solid Waste Management Plan. It cannot be ignored that when landfill operations began at Arbor Hills, the area was largely rural and sparsely populated. Arbor Hills cannot be held to unachievable standards because developers have decided to build densely-spaced, upscale residential homes increasingly closer – and immediately downwind – of the landfill. Moreover, the fact that housing developments, despite the proximity of the landfill, continue to be built at increasing price points is empirical evidence that Arbor Hills is not creating odors that result in an “unreasonable interference with the comfortable enjoyment of life and property” within the neighboring communities.

## **II. RESPONSE TO SPECIFIC REQUESTS**

### **A. Explanation of the Causes and Duration of the Violation**

As an initial matter, ADS denies that any violation of the cited regulatory provisions occurred. Rule 433 refers to a landfill gas “nuisance,” not unavoidable odors caused by composting operations or waste disposal. Moreover, we believe the language of Rule 433 contemplates the systemic escape of landfill gas, rather than an episodic, or short-term, event. Further, as the NOV does not relate to landfill gas, reference to the federal Clean Air Act is also inappropriate. In our judgment, any authority of the MDEQ to address odors resulting from composting and waste disposal operations arises solely from the AQD's Rule 901(b).

Given the proximity of the homes to the landfill and the nature of Arbor Hills' business, it would not be unexpected if occasional odors drift off-site. But these odors, incidental to even the best run landfills, do not constitute a violation of Rule 901(b). As you know, Arbor Hills has retained RK & Associates to perform regular odor monitoring in selected areas around the landfill. This monitoring provides the most objective measurement of the level of the odors. Over the past year, this monitoring demonstrates odors to be minimal and consistent with those expected from a well-run landfill. Again, the continued development of new homes, as well as the continued appreciation in value of homes downwind of Arbor Hills, shows the absence of nuisance conditions.

According to the NOV, Ms. Diane Kavanaugh Vetort did monitoring mid-morning on Thursday January 25, 2018 during site operations. The day was sunny with light wind and the temperature was in the mid to upper 20s at the time. The wind was out of the south/southwest and calm to a couple of miles per hour with a high temperature of 31 degrees.

As ADS was not notified of Ms. Vetort's visit and observations, ADS had no opportunity to check on the nature or source of any odors she may have perceived. While we can now only speculate, it may

be that any compost-related odor resulted from compost warming that was associated with the thawing of the surface of the windrows. The thawing occurred due to a combination of increasing temperatures and direct sunlight at the surface of the windrows in addition to the calm wind conditions. Again, such odors, assuming they existed, are common to a composting operation and not indicative of a lack of due care, best management practices, or a regulatory violation.

Ms. Kavanaugh Vetort also references trash odors in her report. These would be expected at the time of her monitoring, which came during the middle of an operating day, based on the location from which she apparently detected an odor. At the time that we believed the monitoring was conducted the misting system was operating around the active area throughout the day. No odors were observed in the morning by RK, and to our knowledge no neighbor complaints were registered with the MDEQ, PEAS or Arbor Hills during or referencing the specified monitoring timeframe.

Had Ms. Kavanaugh Vetort notified us that she was performing the odor monitoring, we would have encouraged her to contact RK and have them join her in performing odor observations to quantify the odor and the type of odor observed. That way the alleged odors observed by Ms. Kavanaugh Vetort would have been documented with more objective data, which we are confident would have not found that the odors had achieved nuisance levels. Unfortunately, RK was not engaged during the monitoring and the opportunity to document the level of odor and provide perspective and context in regard to the odors observed was lost.

RK had performed odor observations both in the morning and evening on that day. No odors were observed during the morning monitoring event which occurred between 6:37 am and 7:46 am. An odor of >2 identified as LFG was observed during the evening monitoring at 5:05 pm at the property line. An odor also was observed at one of the community locations in that evening at 5:16 pm that was described as wood burning. Based on the information available to us the circumstances and facts do not support a nuisance odor determination.

### **III. RESPONSE TO SPECIFIC REQUESTS**

The NOV requested that ADS set forth the actions that have been taken and are proposed to be taken to correct the violation and the dates by which these actions will take place. Additionally, the NOV requested that ADS identify steps being taken to prevent a reoccurrence. As noted, ADS disagrees that any violation occurred. Moreover, with regard to the specific odors allegedly detected at the time of the inspection, the fact that ADS was not immediately informed of the odors does not make it possible for us to address them now.

As indicated above, four days before the NOV was issued ADS provided Mr. Bean a very complete summary report on landfill gas management and operational enhancements that have been made or are being implemented and which serve to mitigate odors from not only landfill gas but incidental odors which are the subject of the NOV. Further, ADS met with AQD and Solid Waste in December to discuss many of these same issues.

Mr. Scott Miller  
Mr. Lawrence Bean  
MDEQ  
February 20, 2018  
Page 4 of 4

ADS does not acknowledge that any violation occurred on January 25, 2018 or any other day. But regardless of whether a violation of Rule 901(b) existed on January 25, ADS remains committed to minimizing off-site odor impacts and to assuring both MDEQ and the community that it maintains operational practices with respect to both waste disposal and composting that are designed to minimize odor impacts while also accommodating the continued management of all waste and composting material appropriate under its licenses, permits and its role under Washtenaw County's Solid Waste Plan. To this end, ADS is in the process of retaining an industry expert to audit the facility's odor control measures and operational practices and to make recommendations for further improvements. ADS has anticipated that there would be follow-up discussion on the February 2, 2018 report to Mr. Bean and is open to further discussions with MDEQ regarding what it can and cannot be expected to do to reduce the potential for odors.

#### IV. CONCLUSION

ADS does not believe the facts warranted a Notice of Violation. The RK & Associate surveys show that odor detections are minimal and consistent with a well-run landfill. Composting, a legally mandated and beneficial recycling process, was not in active management at the time of the inspection, but does generate an odor incidental to natural and essential biological and chemical processes that make composting possible. Construction at the landfill may periodically expose garbage that will cause odors, but ADS is doing everything reasonably possible to minimize these effects. Last, ADS continues to research state-of-the-art methods to minimize odors from the disposal of municipal solid waste. Given the nature of our business, however, and the proximity of housing development to the landfill, some detection of odor is unavoidable. In short, we do not believe operating a landfill consistent with its permit and best management practices should subject ADS to a violation notice.

If you have any questions or need additional information regarding this response please do not hesitate to contact me by telephone at (248) 412-0704 or (567) 644-5959.

Sincerely,



Bob Walls  
General Manager

cc: Mr. Nathan Frank USEPA  
Mr. Kenneth Ruffatto USPEA  
Jay Warzinski  
Kelly Rooney  
Todd Whittle  
Anthony Testa  
Bill Tennant  
Steven Kohl