



June 17, 2024

Gary Schwerin, Lansing and Jackson District Supervisor
Michigan Department of Environment, Great Lakes, and Energy
Materials Management Division
Jackson District Office
301 East Louis Glick Highway
Jackson, MI 49201-1556

Sent via email

Re:Response to MMD June 14, 2024 Violation Notice (SRN: N2688)

Dear Mr. Schwerin:

Arbor Hills Landfill, Inc. (Arbor Hills) provides this letter in accordance with Section 5.17 of the Consent Judgment and in response to the Violation Notice dated June 14, 2024, , which was issued by the Michigan Department of Environment, Great Lakes, and Energy, (EGLE) Material Management Division (MMD). This response is being made within 72 hours after Arbor Hills received the notice of violation (VN).¹

The VN alleges that MMD staff detected what are described as “nuisance odors” during an inspection on June 7, 2024. It is unclear from the VN whether MMD is taking the position that the alleged violation is Arbor Hills’ alleged failure to operate the odor mitigating fans at all times or the odors themselves. Nevertheless, Arbor Hills responds as follows to the VN:

The VN Misapplies the Consent Judgment and Michigan Nuisance Law

The purpose of Paragraph 5.17 of the Consent Judgment was to develop an iterative, methodical procedure for addressing episodic odor complaints. Prior to the Consent Judgment, the practice evolved into one where VNs were issued at every instance of an odor complaint. The

¹ Arbor Hills request for a brief extension to reply to this VN was not granted, thus Arbor Hills reserves the right the supplement this response.

idea was to develop a procedure *outside of the normal VN procedures* for addressing these short-term odor issues. In our next meeting, Arbor Hills would like to discuss with EGLE how they can return the practice originally intended by Paragraph 5.17.

We cannot help but also part company with EGLE over what we believe is an overly expansive view of what constitutes a “nuisance odor.” A “nuisance” is defined under Part 115 as “conditions that *unreasonably interfere with the enjoyment of life and property*, such as noise, blowing debris, odors, vectors, or pest animals.” To properly establish a Rule 901 violation, there must be showing not only of “significant harm” resulting from the odor but also a showing that Arbor Hills acted ***unreasonably*** in its operation of the landfill. Further, under Michigan common law, an actionable nuisance exists only to the extent that defendant’s conduct was “unreasonable” in light of a public-policy assessment of the conduct’s overall value to society. *See Adams v. Cleveland-Cliffs Iron Co.*, 237 Mich. App. 51, 67 (1999). Accordingly, any intrusion of odors into residential areas must be balanced against the degree to which the Arbor Hills landfill is socially valuable.

Michigan law accepts a certain amount of noise and odor as a consequence of modern living:

No one is entitled, in every location and circumstance, to absolute quiet, or to air utterly uncontaminated by any odor whatsoever, in the use and enjoyment of his property; but when noises are unreasonable in degree, considering the neighborhood in which they occur and all the attending circumstances, or when stench contaminates the atmosphere to such an extent as to substantially impair the comfort or enjoyment of adjacent premises, then an actionable nuisance may be said to exist; and in applying these tests the question presented is one of fact rather than law.

DeLongpre v. Carroll, 331 Mich. 474, 476, 50 N.W.2d 132 (1951).

This practical approach also recognizes that owners and operators of lawful businesses, such as Arbor Hills, have the right to operate their businesses in a reasonable manner without being subject to liability for nuisance. *See Waier v. Peerless Oil Co.*, 265 Mich. 398, 401, 251 N.W. 552 (1933) (holding that homeowners in an industrial district cannot complain of noise and odor arising in the ordinary and proper conduct of legitimate business so long as their health is not injured); *McMorran v. Cleveland-Cliffs Iron Co.*, 253 Mich. 65, 69, 234 N.W. 163 (1931) (stating that whether the operation of a fuel dock is a nuisance depends on plaintiffs’ showing that “the dust, noise, and vibration are more than merely incident to the proper and skillful operation of the business”).

Arbor Hills is a municipal solid waste landfill that accepts residential household waste. *It deals with materials that by definition have unpleasant odors.* Depending on the scheduling of garbage pick-ups, during the summer, discarded waste may sit in hot garages and then on the curbside for days until the garbage is picked up. By the time the waste gets to the landfill, it will no doubt have an odor. There is no way to dispose of the garbage in a landfill other than by exposing the waste to the open air. EGLE is aware of Arbor Hills’ efforts to minimize the working face, and its use

of the odor mitigating fans is state-of-art. *We are concerned that the end result of the recent VN is that a landfill is a nuisance per se, which is not the law in Michigan or anywhere else.*

Inherent in the concept of nuisance is that the interference must be *unreasonable*, which means that EGLE must show that Arbor Hills is operating the landfill contrary to its permit or outside industry standards. Arbor Hills should not be subject to a regulatory violation simply for the transient, incidental effects of running its business, which cannot be demonstrated to rise to a nuisance actionable under Michigan law.

The VN alleges that because Arbor Hills was not using the odor fans continuously, that it violated the corrective actions in the October 28, 2023 response. That letter, however, expressly stated that Arbor Hills would use the fans – which themselves go beyond the standard of care – “as needed.” The VN then states that Arbor Hills’ use of the fans is inadequate because they are at fixed locations. In other words, we request clarification from EGLE on the basis for the VN: Does EGLE want Arbor Hills to use mobile fans? Run them continuously? Point them in different directions?

Report on Results of Investigation, Evidence Obtained, and Remedial Measures Taken

Arbor Hills did not receive any perimeter alarms or alerts that would indicate that gas odors were evident during the morning hours of June 7, 2024. Dave Seegert personally went to the area of the alleged odors and did not detect anything noticeable. The Scentometer readings for the day showed no detections above 2 dilutions. In other words, *all the objective data shows that Arbor Hills was operating a solid waste landfill reasonably within the terms of its permit and State regulations.* The root cause of the odors is the hot weather and the normal odors caused by residential garbage. Arbor Hills does not create the odors. Instead, it has instituted state-of-the-art procedures and monitoring equipment to minimize the odors to the greatest extent possible. We do not believe these actions constitute a significant and unreasonable interference with the use and enjoyment of residential property. In other words, the mere sensation of an odor from a lawfully operated business is not a nuisance. Otherwise, every fast-food restaurant, bakery, or fish store would be a nuisance by definition.

Lastly, the VN does not describe the type of odor detected by EGLE staff, the time of day the inspection was conducted, nor was an inspection form provided to Arbor Hills Landfill detailing the event.

Despite our disagreement with the VN, Arbor Hills will pay the \$750 penalty referenced in the VN but we ask for an immediate meeting with EGLE to further improve communications over these issues.

We appreciate your assistance with this matter and Arbor Hills will continue to work diligently to address odor concerns. In preparing this response, we have tracked the elements of Section 5.17 of the Consent Judgment. If EGLE requires additional information, or has any questions, please contact me at (567) 230-7373.

Sincerely

Arbor Hills Landfill, Inc.



David Seegert
General Manager

cc: Jenine Camilleri, EGLE
Scott Miller, EGLE
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