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March 19, 2020

**VIA E-MAIL & U.S. MAIL**

Robert Joseph, Environmental Engineer  
Michigan Department of Environment, Great Lakes, and Energy  
Air Quality Division, Warren District  
27700 Donald Court  
Warren, Michigan 48092

**Re: Violation Notice Issued to Oakland Heights Development, Inc.**

Dear Mr. Joseph:

This letter responds to the Violation Notice ("VN") issued on February 27, 2020 by the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") to Oakland Heights Development, Inc. ("Oakland"). The VN asserts that an oxygen exceedance at gas well 40A2 violated "Special Condition IV.4" of Renewable Operating Permit ("ROP") MI-ROP-N6008-2015a and the requirements of 40 C.F.R. § 60.755(a)(5), a provision of the New Source Performance Standards for Municipal Solid Waste Landfills codified at 40 C.F.R. Part 60, Subpart WWW, which is incorporated into the ROP. As requested, this letter is provided within 21 calendar days of the date of the VN, on March 19, 2019, to provide information explaining why the observations and statements in the VN do not constitute a violation of the referenced permit condition or standard.

The sole violation alleged in the VN involves an exceedance of the five percent oxygen operating parameter at a single landfill gas well for a 45-day period between July 1, 2019 and August 15, 2019. That exceedance did not constitute a violation because the gas collection system was expanded and the exceedance was corrected within 120 days, which satisfied the requirements of both Subpart WWW and the ROP.

The VN alleges that the oxygen exceedance at gas well 40A2 violated 40 C.F.R. § 60.755(a)(5), which reads, in relevant part, as follows (emphasis added):

If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. .... An alternative timeline for correcting the exceedance may be submitted to the Administrator for approval.

The provision quoted above, which is repeated verbatim in the ROP in Section 1.C. EUALGCS Emission Unit Condition VI.4.,<sup>1</sup> only establishes two deadlines: (1) an initial 15-day deadline for correcting the exceedance without an expansion of the gas collection system, and (2) a final 120-day deadline for expanding the gas collection system if the exceedance cannot be corrected within the initial 15-day deadline.

Another provision of Subpart WWW, 40 C.F.R. § 60.753(g), makes clear that missing the first deadline does not result in a violation if the second deadline is met (emphasis added):

If corrective actions are taken as specified in § 60.755, the monitored exceedance is not a violation of the operational requirements in this section.

This provision of Subpart WWW is repeated verbatim twice in the ROP, first in Section 1.C. EUALGCS Emission Unit Condition VI.4.a. and again in Condition IX.1. of that same section.

Although gas well 40A2 exceeded the five percent oxygen parameter for 45 days, the exceedance occurred entirely during an expansion of the gas collection system that was completed on July 31, 2019, well within the 120-day deadline. That expansion involved drilling for and the replacement of ten gas wells, as well as the installation of more than 1,000 feet of additional piping needed to optimize the collection of gas, including new header lines, across a large section of the landfill. The expansion work did not include the replacement of gas well 40A2 itself, but the work affected many other key components of the gas collection system in a way that was expected to influence the performance of well 40A2. The ongoing expansion work was not only expected to resolve the exceedance at 40A2, it actually did so—shortly after the work was completed, and within the 120-day deadline, oxygen levels at the well dropped to less than five percent via routine tuning.

Therefore, while the oxygen exceedance at gas well 40A2 lasted more than 15 days and thus triggered the requirement for expanding the gas collection system, the landfill completed the expansion and that action corrected the exceedance within 120 days, as required. Both Subpart WWW and the ROP clearly confirm that these circumstances do not constitute an enforceable violation.

The VN also asserts that the oxygen exceedance occurred “without AQD approval.” However, neither Subpart WWW nor the ROP requires Oakland to seek approval for meeting the plain terms of the standard and the permit, as described above. The last sentence of 40 C.F.R. § 755(a)(5) (and Condition VI.4.) indicates that Oakland “may” submit an alternative timeline if more than 120 days is needed to correct an oxygen exceedance, but submission of an alternative timeline is not mandatory where no additional time is needed to correct an exceedance like the one at gas well 40A2, which lasted only 45 days and was corrected via an expansion of the gas collection system. That understanding is confirmed by the preamble to the final rule in which EPA first added the alternative timeline provision to Subpart WWW in 1998. *See Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills*, 63 Fed. Reg. 32743, 32748 (June 16, 1998)

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<sup>1</sup> The permit condition cited in the VN, “MI-ROP-N6008-2015a Special Condition IV.4” appears to be incorrect, since that condition only addresses temperature measurements.

("Depending on the remedy selected to correct the problem, a different timeline may be needed, but any timeline extending more than 120 days must be approved by the regulatory agency.") (emphasis added).

Four months after the 45-day exceedance cited in the VN, gas well 40A2 again exhibited oxygen concentrations above the five percent threshold, but that exceedance is unrelated to the one cited in the VN. As noted in the alternative timeline request submitted December 24, 2019, the subsequent exceedance began on December 11, 2019, and was likely attributable to a pump in need of service. While not required, Oakland submitted a request for an alternative timeline, given that the exceedance was expected to last more than 15 days and an expansion of the landfill might not be feasible within 120 days if servicing the pump did not resolve the exceedance. EGLE approved that alternative timeline request on January 8, 2020. Fortunately, servicing the pump did resolve the exceedance—the well was serviced on December 19, 2019 and, on January 6, 2020, Oakland confirmed that oxygen levels had dropped below five percent. This information confirms that the 45-day exceedance cited in the VN was entirely unrelated to the exceedance that occurred in December 2019, which was properly addressed via an approved alternative timeline and servicing of the pump in the well.

In addition to properly correcting both of those exceedances, Oakland also properly reported both exceedances in the semi-annual report submitted in March 2020 for the second half of 2019, as required by Subpart WWW and the ROP. Oakland is aware that EGLE has recently proposed to include new reporting requirements in the ROP for the landfill that are inconsistent with the federal regulations in Subpart WWW, which EGLE has been delegated the authority to implement and enforce. However, those additional reporting requirements do not alter the clear terms of Subpart WWW and the ROP that confirm correcting an exceedance within 120 days via corrective action or approval of an alternative compliance timeline does not constitute an enforceable violation. Oakland will address its concerns with the new permit conditions proposed by EGLE under separate cover.

Based on the information provided above, Oakland asks EGLE to withdraw the VN.

Oakland also asks EGLE to consider whether enforcement would be appropriate even if a violation had occurred, given that EPA revised its regulations more than three years ago to eliminate the corrective action requirement for oxygen exceedances. *See Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*, 81 Fed. Reg. 59276, 59279 (Aug. 29, 2016) ("Landfill owners or operators are not required to take corrective action based on exceedances of specified operational standards for nitrogen/oxygen levels at wellheads."). EPA has also finalized a revised National Emission Standard for Hazardous Air Pollutants that adopts those 2016 revisions as part of a larger rulemaking package intended to provide clarity and consistency to the air rules for landfills. EPA recently issued a notice indicating that Michigan has not yet submitted a plan to implement those revised standards but also indicating that the state plans to do so soon. *See Notice of Finding of Failure To Submit State Plans for the Municipal Solid Waste Landfills Emission Guidelines*, 85 Fed. Reg. 14474, 14476, Table 2 (Mar. 12, 2020) (listing Michigan among the states described as having "Indicated Intent to Submit State Plans to the EPA"). In light of these developments, Oakland asks EGLE to reconsider its approach to enforcement with respect to the allegations set forth in the VN.

We appreciate the opportunity to respond to the VN and your willingness to consider the additional information provided. At your earliest convenience, please contact me at (770) 402-0727, Robb Moore at (810) 655-6906, or Susan Johnson at (248) 258-1307 to discuss how we might be able to resolve any remaining questions or concerns. While we recognize an in-person meeting will not be possible due to the ongoing health crisis associated with COVID-19, we would nevertheless appreciate another opportunity to engage with EGLE via other means, in light of the additional information provided in this letter.

Sincerely,



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Troutman Sanders LLP

Enclosure

cc: Jenine Camilleri, Enforcement Unit Supervisor  
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