



Department of Environmental Conservation
Air Quality & Climate Division
Davis Building – 2nd Floor
One National Life Drive
Montpelier, VT 05620-3802
(802) 828-1288
FAX (802) 828-1399

AGENCY OF NATURAL RESOURCES

January 13, 2016

Response to Comments on the Draft Air Pollution Control Permits #AOP-14-034 and #AOP-15-032 issued draft November 5, 2015 for the Coventry Municipal Solid Waste Facility consisting of the Coventry Landfill (Landfill Operation, issued to New England Waste Services of Vermont, Inc.) and the Landfill Gas to Energy Operation (LFGTE Operation, issued to Coventry Clean Energy Corporation).

Summary: On November 5, 2015 the Air Quality & Climate Division issued draft Air Pollution Control Permits to Construct and Title V Permits to Operate for public comment for the Coventry Municipal Solid Waste Facility. The Coventry Municipal Solid Waste Facility is considered a single stationary source of emissions for purposes of permitting. This stationary source includes two separate facilities, each of which is owned and operated by a separate entity.

The Coventry Landfill (Landfill Operation), is owned and operated by New England Waste Services of Vermont, Inc. (NEWSVT), and includes operations associated with the solid waste facility.

The Landfill Gas to Energy Operation (LFGTE Operation) is owned and operated by Coventry Clean Energy Corporation (CCEC), a wholly owned subsidiary of Washington Electric Cooperative, Inc. (WEC). CCEC purchases landfill gas (LFG) from the Landfill Operation, treats the purchased LFG, and then combusts the LFG in internal combustion engines to generate electricity for sale on the electric grid.

While the Coventry Municipal Solid Waste Facility is considered a single stationary source of emissions for purposes of permitting, separate permits were issued to each owner/operator of the two operations at the facility. The draft permit for the Landfill Operation was issued to NEWSVT and the draft permit for the LFGTE Operation was issued to CCEC. Each permit contains certain permit conditions and responsibilities that are shared between the two owner/operators while some conditions and responsibilities are considered solely the responsibility of one entity or the other. The application identified both NEWSVT and CCEC as Co-Permittees. The Agency, in acting on the original application, initially prepared a single pre-draft permit with both entities listed as Co-Permittees but ultimately, after extensive revisions to this single pre-draft permit based on input from both Permittees, opted to issue two permits to satisfy the Permittees requests for delineation of permit responsibilities.

Public Comment Period: The public comment period for the draft permits was November 5, 2015 to December 7, 2015. The public comment period was noticed in the Newport Daily Express on November 5, 2015 and was simultaneously posted on the Air Quality and Climate Division webpage and the Department Environmental Notice Bulletin webpage. The applicants, the US EPA and affected states were also notified by email. The AQCD also maintains a list of interested parties for Title V sources, however no entities have requested to be on such list for the this facility so no separate notices were issued.





Public Meeting: The public notice provided the opportunity to request a public meeting on the draft permit. No requests for a public meeting were received and no public meeting was held.

Comments Received: No comments were received from the general public or affected states. The only comments received were from Mr. Ronald Shems, Esquire, attorney for Coventry Clean Energy Corporation, received December 7, 2015. These comments are included at the end of this document.

Response to Comments: The AQCD has summarized herein all the written and oral comments submitted regarding the draft permits and matters related to air pollution and is providing our responses to those comments below. Similar comments and concerns have been grouped together into a single response where appropriate. Comments unrelated to the draft permits and matters outside of the jurisdiction of the AQCD, the Vermont Air Pollution Control Regulations (VAPCRs) and the Air Pollution Control laws (10 VSA Chapter 23) are not addressed below.



Response to Comments submitted by Ronald A. Shems, Esquire, on behalf of Coventry Clean Energy Corporation, received December 7, 2015.

These comments and the incorporation of various comments, concerns and questions from CCEC during development of the draft permits before the official public comment period have been grouped together into main points with a single response where appropriate. Many of these prior comments were previously addressed with the commenter prior to issuance of the draft permits and are no longer relevant. Since the commenter did not differentiate which of their prior comments they still consider relevant, the Agency refers to their prior responses for these comments that are not specifically addressed herein. The Vermont Agency of Natural Resources, Department of Environmental Conservation, Air Quality & Climate Division's (Agency's) understanding of the primary points of the remaining comments is as follows:

1. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since the Coventry Municipal Solid Waste Facility is designated as a single stationary source, and NEWSVT allegedly has "control" over the LFGTE Operation.
2. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since the characteristics of the LFG affect emissions from the LFGTE Operation and the CCEC has no control over the composition of the LFG.
3. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since NEWSVT cannot "contract away" responsibility for complying with 40 CFR Part 60 Subpart WWW.
4. CCEC asserts that NEWSVT should be held solely responsible for permit requirements related to the total of the emissions from the Coventry Municipal Solid Waste Facility, as CCEC is not the owner/operator of the Landfill Operation nor does it have any control over the Landfill Operation.
5. Comments related to the engine continuous temperature monitoring system.
6. Comments related to the SRS flare.
7. Comments related to SO₂ monitoring.

1. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since the Coventry Municipal Solid Waste Facility is designated as a single stationary source, and NEWSVT allegedly has "control" over the LFGTE Operation. Based on the Vermont Air Pollution Control Regulations (*Regulations*), US EPA regulations and policy and the permit application materials provided in this particular case the Agency determined that the Coventry Municipal Solid Waste Facility, consisting of the Landfill Operation and the LFGTE Operation should be treated as a single stationary source for purposes of permitting under the Permit to Construct and Permit to Operate regulations. Neither party has contested this determination. While the Agency determined there was sufficient common control and dependency in this case to consider the Landfill Operation and the LFGTE Operation a single source, such a determination does not imply that one single entity is therefore an owner/operator of both operations.

The *Regulations* define owner/operator as follows: "Owner/operator" means the owner(s), operator(s), lessor(s), lessee(s) and/or supervisor(s) of an air contaminant source and/or a person authorized to represent such person(s)." Additionally, the CAA New Source Performance Standard, which are applicable via 40 CFR Part 60, Subpart WWW, regulations at 40 CFR §60.2 state that "Owner or operator means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected



facility is a part.”¹ This term is also used in the definition of stationary source, which may include two operations, each with separate owners/operators, to be one stationary source for purposes of permitting. Given that both owner/operators meet the “common control” test² under the definition of “stationary source”, both operations are considered a single source for the purposes of these permits. The conclusion that two operations meet the common control test, however, does not necessarily mean that a permittee has “control” over the other permittee’s activities for the purpose of determining their owner/operator status. The purpose of the common control test is primarily to determine if the standards, limitations, and requirements of the *Regulations* will be applied to a stationary source or two separate sources.³

It is clear from CCEC’s comments received on the pre-draft permit(s), CCEC’s 2004 Certificate of Public Good, and the permit application that CCEC exclusively owns and operates the LFGTE Operation. NEWSVT exercises no supervisory or operational control over the LFGTE Operation, nor does NEWSVT own any of the equipment or infrastructure within the LFGTE operation. NEWSVT is a lessor to CCEC for the land where the LFGTE Operation is located. The LFGTE Operation, sited on this leased land is owned and operated by CCEC, and includes the engines and the proposed siloxane removal system (SRS) flare which are the source of air contaminants. The land that is leased to CCEC would not be a source of air contaminants but for the existence and operation of the LFGTE Operation. Therefore we have determined that NEWSVT is not an owner/operator of the LFGTE Operation.

The EPA applicability determinations provided by the commenter do not lead to the conclusion that the landfill may be interpreted as an owner/operator of the LFGTE Operation, rather they speak to the applicability of the common control test, the need for and a single source for permitting, and the circumstances under which a landfill is to comply with the Subpart WWW requirements. Furthermore, establishing a precedent in making a landfill fully responsible for permit conditions related to a separately owned and operated LFGTE facility could potentially discourage such ventures in the future, which is not the Agency’s intent.

¹ CCEC references 40 CFR, §61.141 as an applicable definition of “owner/operator” in these circumstances. Under 40 CFR, §61.141, an *Owner or operator* means any person who owns, leases, operates, controls, or supervises a stationary source. While 40 CFR, Part 61, Subpart M has limited applicability to the waste accepted by the Landfill Operation, its reference in this context is arbitrary and not instructive in the completion of the “common control”.

² The establishment of “common control” is determined by the permitting authority on a case-by-case basis based on the facts presented. Co-location of both operations creates a presumption of common control. Rebuttal of the presumption of common control is the burden of the various parties operating at the source. No information has been provided by NEWSVT or CCEC to refute this presumption. Also, additional facts considered by the Agency satisfy other criteria that meet the definition of common control for the purposes of determining that both operations constitute a single source.

³ The comments received by CCEC throughout the draft permit process appear to interpret the applicability of the common control test to this facility as meaning that one operator has “control” over another. While the facts in this case demonstrate that the common control test is met and the operations are a single source, the same facts do not lead to the conclusion that NEWSVT has “control” over CCEC’s operation as an “owner/operator.”



2. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since the characteristics of the LFG affect emissions from the LFGTE Operation and the CCEC has no control over the composition of the LFG. The variable characteristics of LFG in general, including variations in fuel value and the presence of contaminants in LFG are well documented. Moisture, particulates, non-methane organic hydrocarbons (NMOCs), hydrogen sulfide (H₂S) and siloxanes are all common contaminants in LFG. All LFGTE facilities the Agency is aware of require some level of LFG treatment before combustion in engines, boilers, or turbines. The use of water dropouts, particle filtration, H₂S removal and siloxane removal are not uncommon for LFGTE facilities. The fact that LFG quality in this particular case is causing added gas treatment expense is understood, but the LFG specifications and monetary value for the LFG delivered to the LFGTE Operation is typically addressed in the LFG delivery contract between a landfill operator and the LFGTE operator.

It is the Agency's understanding that the contract between the two permittees does not address LFG specifications. The conditions of this contract can be amended without Agency involvement. In the case of these permits, the conditions and terms of the contract between the two permittees are outside the scope of the Agency's permitting authority and not considered relevant in determining applicability of State and/or Federal Regulatory standards.

3. CCEC asserts that NEWSVT should be held jointly responsible for permit requirements related to emissions from the LFGTE Operation since NEWSVT cannot contract away responsibility for complying with 40 CFR Part 60 Subpart WWW. The permit for the Landfill Operation does not relieve NEWSVT of their responsibility to comply with 40 CFR, Part 60, Subpart WWW (Subpart WWW). As noted by CCEC, Subpart WWW requires the owner or operator of an MSW landfill to:

[r]oute all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii) (A), (B) or (C) of this section[:]

- (A) An open flare designed and operated in accordance with §60.18 except as noted in §60.754(e);
- (B) A control system designed and operated to reduce NMOC by 98 weight-percent... ;
- (C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use.

NEWSVT has existing flares available at the Landfill Operation that are operational and are designed to flare the entire design flow of collected LFG, and has proposed to install an additional Parnel Biogas flare to flare future increases in collected LFG. The information provided by the permittees shows that, in this case, collected LFG is typically routed to the LFGTE Operation, which includes a treatment system that processes the collected gas for subsequent use in the LFGTE engines. This treatment system filters, compresses, and dewateres the gas before the gas is combusted in the engines at the LFGTE Operation. It is unlikely that the engines would be capable of operating reliably or for any length of time without this treatment system.



The EPA has made numerous Applicability Determinations regarding “treatment” of LFG in the context of WWW. (ADI 0900058, ADI- 0900063, and ADI-1000002 (attached). ADI-1000002 is a determination made in 2009 by EPA Region 1, which states: “Therefore, EPA has determined that the preliminary treatment system located at WMNH in which the gas has been compressed, dewatered, and filtered down to 10 microns meets the criteria of a treatment system” Accordingly, the Agency has determined the existing dewatering, particle separation, glycol scrubbing and filtration operation meets the definition of a “treatment system” under 40 CFR 60.752(b)(2)(iii)(C). Therefore, the Agency has concluded that the existing process in place at the LFGTE Operation meets the definition of “treatment system” for the purposes of applying exemption (C), above.

The existence of a process that meets the definition of a treatment system under Subpart WWW does relinquish the Landfill operation from the requirements of the Subpart. However, in the event that the LFG is not being treated by the LFGTE Operation for subsequent use in the engines, the Landfill Operation is required by Condition (10) of #AOP-14-034 to flare the LFG in an existing or proposed flare or route the LFG to an alternative device to ensure 98% destruction of NMOC.

While the engines at the LFGTE Operation are designed and operated to reduce NMOC by 98 weight percent, the Agency is not depending on this capability of the LFGTE Operation for the Landfill Operation to comply with Subpart WWW. To address concerns regarding compliance with Subpart WWW in #AOP-14-034, Condition 9 of #AOP-14-034 will be modified to include the following:

The Permittee shall ensure that all LFG collected by the gas collection system is routed to a LFG control system consisting of either (1) an open flare or flares designed and operated in accordance with 40 CFR §60.18, (2) a control system designed and operated to reduce NMOC by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen, or (3) a treatment system that processes the collected gas for subsequent sale or use. The existing treatment system at the LFGTE Operation consisting of LFG dewatering, filtration, chilling and compression before combustion meets the definition of a “treatment system” in accordance with §60.752(b)(2)(iii).

Similarly, Condition 10 of #AOP-14-034 will be modified to include the following:

In accordance with the requirements of 40 CFR §60.753(f), the Permittee shall ensure that all LFG collected by the gas collection system is at all times routed to one of the properly operating control systems, as specified above.

LFG contains NMOCs, and the individual compounds comprising NMOCs may also be classified as volatile organic compounds (VOCs) and/or hazardous air pollutants (HAPs) and/or hazardous air contaminants (HACs). Control of NMOCs is mandated under Subpart WWW to control HAPs which are defined in Section 112(b) of the federal Clean Air Act. Note that regardless of the applicability of Subpart WWW, the engines at the LFGTE Operation will still be required to reduce NMOC contained in the LFG by 98 weight percent to comply with the requirements of §5-261 of the *Regulations*, which regulate emissions of Hazardous Air Contaminants, which are defined separately in Appendix B of the *Regulations*. In addition as part of compliance with §5-261 of the *Regulations*, the engines at the LFGTE Operation will be required to minimize the emissions of other HACs (primarily aldehydes) that are formed during the combustion process.

As a point of clarification, Subpart WWW applies specifically to HAPs that are contained in LFG. Subpart WWW does not apply to criteria pollutants created as a result of combustion of LFG at the Landfill Operation, nor does it apply to HAPs created during LFG combustion.

4. CCEC asserts that NEWSVT should be held solely responsible for permit requirements related to the total of the emissions from the Coventry Municipal Solid Waste Facility, as CCEC is not the owner/operator of the Landfill Operation nor does it have any control over the Landfill Operation. The joint permit conditions related to total emissions of particulate matter (PM), sulfur dioxide (SO₂) and volatile organic compounds (VOCs) from the Coventry Municipal Solid Waste Facility are intended as limits on the potential emissions from this single source to ensure such emissions remain below either the major source emission levels or the significance thresholds for these pollutants. In the event emissions from this single source exceed either the major source emission levels or the significance threshold, then the source of such emissions would be required to achieve the most stringent emission rate (MSER) in addition to other regulatory requirements associated with a major source or a major source review of pollutants triggered by an exceedance of the significance thresholds. The Agency has not apportioned to each entity a certain share of the potential emissions, nor have the applicants requested such apportionment. The formulas used in the joint permit conditions provide maximum flexibility for both owner/operators at the source, while insuring that the emissions from the source are not artificially and arbitrarily divided. Should emissions from this single source exceed these joint limits for PM, SO₂, and VOCs, then major source review will be required and both NEWSVT and CCEC would need to work cooperatively to address the MSER requirements which would include all emission sources for the pollutant in question at this single source.

As further justification for shared responsibility for these facility wide limits on potential emissions, each operation contributes some level of emissions to the total of the emissions from this single source. While H₂S in the LFG is the primary cause of SO₂ emissions from this single stationary source, CCEC is likely the primary emission source of VOCs and HAPs by virtue of the aldehydes that would not be generated or emitted but for the engines at the LFGTE Operation. The table below compares the estimated emissions from combustion of approximately 2,500 standard cubic feet per minute (SCFM) of LFG in the engines at the LFGTE Operation to flaring an equivalent amount of LFG in the flares at the Landfill Operation. As may be seen, the estimated emissions of criteria pollutants from the LFGTE operation are greater than those emitted from simply flaring the LFG.

Estimated Combustion Emissions (ton/yr) Engine Combustion Compared to Flaring Combustion of 2,500 scfm LFG					
Activity	PM	NOx	CO	VOC	HAP
All LFG Combusted in Flares at Landfill Operation:					
2,500 scfm of LFG Combusted in Flares	8.66	22.34	121.55	0.66	0.23
All LFG Combusted in Engines at LFGTE Operation:					
2,500 scfm of LFG Combusted in Engines	16.41	53.62	375.31	18.27	17.84
Ratio of Engine Emissions to Flare Emissions	2:1	2:1	3:1	28:1	78:1



5. Engine continuous temperature monitoring system

Comment noted. We have reviewed your requested change to Condition 6(b), and have modified this condition to include language allowing an alternative system. However, the Agency will not approve a CTMS system that does not include a minimum measurement accuracy of +/- 2% of full scale.

6. SRS flare.

Comment noted. This comment was previously addressed in an email from Doug Elliott to Ron Shems on November 4, 2015. *"Regarding comment #6, I am pleased Tony's suggestion of using one of the existing flares may be feasible. I have attempted to revise the permit language to allow the flexibility in use of one of these existing flares."*

7. SO₂ monitoring

Comment noted. This comment was previously addressed in an email from Doug Elliott to Ron Shems on November 4, 2015. *"Regarding your comment on the H₂S testing of condition (16), the intent is to measure the H₂S at only one location prior to any gas pretreatment and combustion. While you could certainly test at multiple locations you should note that the gas pretreatment options being proposed provide no air pollution reduction of SO₂ emissions. Any H₂S captured by the SRS system is eventually desorbed and sent to a flare. I will add to the draft the option to use an alternative methodology if approved in writing by the Agency. This alternative methodology would be appropriate should CCEC or NEWSVT employ an H₂S pretreatment system in the future."*

Comments submitted by Ronald A. Shems, Esquire, on behalf of Coventry Clean Energy Corporation, received December 7, 2015 (w/o attachments).

DIAMOND & ROBINSON, P.C.

ATTORNEYS AT LAW

MONTPELIER, VERMONT
www.diamond-robinson.com

15 EAST STATE STREET
P.O. BOX 1460
MONTPELIER, VERMONT 05601-1460
TEL. (802) 223-6166
FAX (802) 229-4457

Ronald A. Shems, Esquire
E-mail: ras@diamond-robinson.com

MEMORANDUM

To: Doug Elliott, Tony Mathis, Megan O'Toole, AQCD
From: Coventry Clean Energy Corporation
Date: December 7, 2015
Re: Comments on Draft Title V Permits issued 11/4/2015
Cc: Matt Chapman, DEC General Counsel
Tim Eustace, Esquire, Atty. For NEWSVT

I. INTRODUCTION

The Coventry Clean Energy Corporation (CCEC) submits the following comments on the two Draft Title V Clean Air Act Permits issued by the Vermont Air Quality and Climate Division of the Vermont Department of Environmental Conservation (AQCD) on November 4, 2015. The permits regulate emissions from the Coventry Landfill owned and operated by New England Waste Services of Vermont, Inc. (NEWSVT) and the CCEC landfill gas to energy plant (LFGTE plant) that combusts the landfill gas and generates electricity. The landfill and generating station are a single facility. The AQCD issued two permits for administrative purposes.

CCEC's comments address: (1) appropriate implementation of the owner/operator and single facility principles, (2) Condition 6(b) (CTMS accuracy), (3) Condition 13 (SRS flare) and Condition 16 (SO₂ monitoring).

CCEC thanks the AQCD for the opportunity to comment, and again thanks the AQCD for the extensive pre-draft opportunities to comment and work with the AQCD. CCEC incorporates its comments dated September 4, 2015, October 2, 13, 18 (email to AQCD Counsel Megan O'Toole) and 30, 2015, and all authority cited therein as part of these comments.

II. OWNER/OPERATOR

CCEC requests that it be jointly responsible with NEWSVT for emissions from the generating station. NEWSVT should be solely responsible for facility-wide emissions and

emissions from landfill operations. The Draft Permit inappropriately releases NEWSVT from its responsibilities as the facility's owner and operator by making CCEC solely responsible for the emissions from the generating station. Further, the Draft Permit inappropriately charges CCEC with responsibility over facility-wide emissions even though CCEC has no ownership of or control over the landfill. Regulatory authority cannot be extended to a person that is not a facility's owner or operator. CCEC can only assure proper operation of the LFGTE plant, not the entire landfill facility. The plant's proper operation is, of course, an important factor in assuring compliance with the CAA permit. However, two other factors wholly outside of CCEC's control are also important: (1) landfill operations that also emit pollutants, and (2) significant variations in landfill gas characteristics that result directly from particular wastes accepted for disposal at the landfill.

A. FACTS

NEWSVT owns and operates the Coventry Landfill. NEWSVT contracts with CCEC to operate a landfill-gas-control system (the LFGTE plant) that assures destruction of NMOCs, VOCs and HACs. See Application (9/10/14) at 4. CCEC's role in the facility's operation is set by contract and is limited to operating the LFGTE plant. CCEC has long-term leases for the generating station equipment. The land on which the LFGTE plant is located is part of the landfill, owned by NEWSVT, and leased to CCEC.

NEWSVT provides the raw (untreated) landfill gas to CCEC. CCEC purchases the untreated gas (through the lease agreement), processes it for the limited purpose of avoiding excess engine wear and tear, and combusts the gas in engines that, in turn, produce electricity.

The contracts between NEWSVT and CCEC obligates NEWSVT to maximize collection of landfill gas and that the gas be at least 50% (+/- 5%) methane. The contracts do not require any party to treat the gas, nor do the contracts require NEWSVT to assure that the gas have other particular characteristics or be free of contaminants. The contracts expressly prohibit CCEC from limiting or interfering with NEWSVT's operation of any aspect of the landfill.

The contracts do require CCEC to cooperate with and assist NEWSVT to assure compliance with the current CAA permit. Notably, these contracts recognize that CCEC can do no more than assure the LFGTE plant's proper operation and to provide data and records to that effect. The contracts provide NEWSVT with overall responsibility under the CAA permit.

B. ANALYSIS

The Clean Air Act is based on the principal that a facility's owner or operator is primarily responsible for obtaining and complying with a CAA permit. 40 C.F.R. § 60.2; Vt. Air Pollution Control Rules § 5-101. "Owner or operator" is broadly defined to include any person who owns or has any control over a facility. "Owner or operator" is broadly defined to include any person who owns or has any control over a facility. 40 C.F.R. §§ 60.2 and 61.141.; Vt. Air Pollution Control Rules § 5-101.

Subpart WWW reflects and implements this overarching principal in regards to landfills, and EPA has repeatedly determined that a landfill's owner or operator cannot escape this primary responsibility by simply contracting for particular services. Letter from Douglas Hardesty, EPA Region 10 to Robert Koster Re: *Responsibility for Compliance with Subpart WWW* (06/01/2000), EPA Applicability Determination Index Control No. 0300038 (landfill owner/operator bears primary responsibility for CAA compliance including emissions from generating plant operated by a contractor) citing *United States of America v. Geppert Bros., Inc. and Amstar Corporation*, 638 F. Supp. 996 (D.C. Pa. 1986).

Geppert Bros. held that an owner cannot escape responsibility under the Clean Air Act by contracting with an independent operator.

Amstar's [owner's] third affirmative defense is that it cannot be liable as the "owner or operator of a demolition operation" where it contracted with another party, Geppert, to do the demolition work. The regulations which Amstar is alleged to have violated, 40 C.F.R. § 61.146 & .147, apply to owners and operators of demolition operations. Amstar argues that since, at most, it merely owned the buildings being demolished, while Geppert did all the actual demolition work, the regulations do not apply to it. This argument, however, is clearly wrong given the EPA's own interpretation of the regulations.

* * *

The general provisions of 40 CFR Part 61 define "owner or operator" as any person who owns, leases, operates, controls, or supervises a stationary source [40 CFR 61.02]. The stationary source in this case is the demolition or renovation operation. The demolition or renovation contractor would clearly be considered an owner or operator by "operating" the stationary source. The facility owner or operator, by purchasing the services of the demolition or renovation contractor, acquires ownership and control of the operation and would, therefore, be the "owner" for purposes of this standard. Therefore, the standard applies to both the contractor and the facility owner or operator. 49 Fed. Reg. 13,659 (April 5, 1984). A "facility" is defined in § 61.141 as "any institutional, commercial, or industrial structure, installation, or building (excluding apartment buildings having no more than four dwelling units)." Thus, it is clear that the regulations are intended to apply, and by their plain wording do apply, both to the owner of the building being demolished and the operator of the demolition operation.

Geppert Bros., Inc., 638 F. Supp. at 998-99. See also, *United States v. Tzavah Urban Renewal Corp.*, 696 F. Supp. 1013, 1021 (D.N.J. 1988) (holding that agents of owners as well as owners

themselves may be liable for NESHAP violations); *In the Matter of SchoolCraft Constr., Inc.*, 7 E.A.D. 501, 515, 1998 EPA App. LEXIS 14, *33, 1998 EPA App. LEXIS 14 (E.P.A. 1998) (“The applicable case law makes clear that facility owners and others with control over a demolition/renovation may be liable for violations of the NESHAP, and that such liability is strict, i.e., without regard to the person's knowledge of the violation.”). “[H]olding both owners and contractors responsible is consistent with the purposes of the CAA. Not allowing property owners to shield themselves from liability simply because they contract with another party” is contrary to the CAA’s purpose. *In the Matter of Century Aluminum of West Va., Inc.*, 1999 EPA ALJ LEXIS 26 (E.P.A. June 25, 1999) citing *Geppert Bros.*, 638 F. Supp. At 1000. In short, Subpart WWW does not serve to limit landfill-owner responsibility to 98% NMOC destruction. Rather, Subpart WWW is a direct application of the larger “owner or operator” responsibility to particular CAA emissions requirements.

There is no dispute that NEWSVT owns and operates the Coventry Landfill. Subpart WWW is specific: its provisions “apply to each municipal solid waste landfill” 40 C.F.R. § 60.750(a).

The owner and operator of the landfill facility is required to demonstrate compliance with all applicable provisions of Subpart WWW pursuant to 40 C.F.R. Sec. 60.750(a). All applicable requirements should be incorporated into the facility's Title V permit. The owner and operator of the equipment utilized to control landfill gas emissions could also be held liable for complying with the regulations. However, the owner of a regulated facility cannot contract away its liability because another entity is contractually obligated to perform activities which are also regulated (see generally, for example, *United States of America v. Geppert Bros., Inc. and Amstar Corporation*, 638 F. Supp. 996 (D.C. Pa. 1986)).

Letter from Douglas Hardesty, EPA Region 10 to Robert Koster Re: *Responsibility for Compliance with Subpart WWW* (06/01/2000), EPA Applicability Determination Index Control No. 0300038, <http://cfpub.epa.gov/adi/pdf/adi-nsps-0300038.pdf>.

EPA has consistently concluded that landfills are ultimately responsible for controlling landfill gas. (See, e.g., the attached June 21, 2000, letter to Robert Koster, Lane County Air Pollution Authority from Douglas E. Hardesty, EPA, Region 10). If the landfill gas is sold, responsibility for compliance is not sold as well. Moreover, compliance responsibility cannot be apportioned according to the percentage of gas burned at each facility. If EPA determines that landfill gas is not being controlled in compliance with Subpart WWW, EPA would consider taking enforcement action against [the landfill owner/operator and separate entity purchasing the landfill gas], no matter which company is burning the gas.

Letter from Judith Katz, EPA Region 3 to Gary Graham Re: *Common Control for Landfill* (May 1, 2002), EPA Applicability Determination Index Control No. 0300036. See also Letter from Douglas Hardesty EPA Region 10 to Ali Nikukar Re: *Sending Landfill Gas to Separate Entity for Combustion* (08/15/2000), EPA Applicability Determination Index Control No. 0300062 (same); 40 CFR 60.750 (Provisions of subpart WWW, 40 C.F.R. §§ 60.750 *et seq.* apply to each

landfill within subpart WWW's scope). EPA's determination has been consistent in holding a landfill responsible for emissions from the required combustion of landfill when the combustion is in a generator owned and operated by an independent third party. One cannot contract away responsibility for CAA compliance.

Section 60.752(b), one of Subpart WWW's provisions, requires that the "*owner or operator of an MSW landfill* [such as the Coventry Landfill] . . . *shall* . . . [r]oute all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii) (A), (B) or (C) of this section[:]

(A) An open flare designed and operated in accordance with §60.18 except as noted in §60.754(e);

(B) A control system *designed and operated to reduce NMOC by 98 weight-percent* . . . ;

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use.

(Emphasis added). In short, Subpart WWW explicitly requires a landfill's owner or operator to assure that its landfill gas is combusted to assure 98% NMOC destruction. See NEWSVT Draft Permit at 1, 19, and 24-25 (Conditions 9-11). The AQCD cannot absolve NEWSVT of this responsibility, nor can NEWSVT absolve itself by simply contracting with a third party.

Indeed, NEWSVT exercises control over the treatment and combustion of the landfill gas by having contracted with CCEC and requiring CCEC to assist in assuring permit compliance.

[O]ne need not exercise actual control to be deemed an owner or operator. "Indeed, to require the actual exercise of control would create the anomalous result of allowing those with supervisory authority . . . to avoid liability for [NESHAP] violations . . . by failing to exercise that authority. Such a result would reward irresponsible behavior and be contrary to the purposes of the Act.

SchoolCraft Constr., Inc., 1998 EPA App. LEXIS 14, *33-36 (citing *Geppert Bros.*, 638 F. Supp. at 1000). Otherwise, responsibility for a facility's compliance could be artificially divided, unmanageable and subject to mischief.

Conversely, CCEC has no control whatsoever over landfill operations and resulting emissions – CCEC is not the facility's owner or operator. The limits of the contracts between NEWSVT and CCEC reflect the notion that CCEC is not the facility's owner or operator. CCEC's responsibility for facility-wide emission limits places CCEC in the impossible position of having to police NEWSVT's operation when the LFGTE plant is properly operating, or even when the LFGTE plant is not operating at all. This creates management difficulties. Any enforcement would be with NEWSVT and CCEC blaming each other, and CCEC disputing

Vermont's authority. The "single source" policy is best achieved when an owner or operator with actual ability and authority to control facility-wide emissions is charged with such responsibility. The Draft Permits fail to do that.

There is also a strong factual basis for requiring NEWSVT to be jointly responsible for the generating station emissions. The characteristics of the landfill gas CCEC combusts in the generating station vary significantly over relatively short timeframes. This variability is an important and independent factor in emissions from the generating station, and wholly outside of the generating station's control. As explained in the attached memo, "[t]he variability in the characteristics of trace constituents in the landfill gas from this facility is a significant factor in the emissions from the generating station." Memorandum from John Murphy, P.E. BCEE, Stantec, to CCEC Re: *Coventry Title V Draft Permit – Relationship Between Engine Emissions and Landfill Wastes* (10/6/15) ("Murphy Memo").

This variability is the direct result of wastes accepted and managed by NEWSVT. For example, wastes from a Canadian cosmetics manufacturer have caused spikes in silica emissions and certain construction and demolition wastes cause spikes in SO₂. NEWSVT is not only an "owner or operator," but also presumed to have common control over the facility and all of its emissions. See Letter from Greg Worley, Chief, Air Permits Section EPA Region 4 to James Capp Chief, Air Prot. Branch, Georgia Dep't of Nat'l Res. Re: Common Control (12/16/11), <http://www.epa.gov/region07/air/title5/t5memos/ps2011.pdf>.

These facts amply demonstrate the importance of joint management of the generating station emissions. CCEC has no control over the landfill gas variability. Both NEWSVT and CCEC have important roles in assuring compliance with generating station emission limits, and both need to work together to that end. Joint responsibility assures cooperation, responsible operation, and compliance with regulations and rules.

It is also important to note that the Draft Permit is an abrupt departure from this facility's existing and prior permits. The facts under which the existing and prior permits named NEWSVT as the sole owner or operator *have not changed*. Nor has the law. The existing permit and its implementation demonstrate that NEWSVT can fully exercise its authority as the facility's owner/operator to assure CAA compliance. Rather, the only change is the recognition that CCEC could be a *co-permittee* for certain aspects of the facility (the generating station). This recognition is very different from a finding of new facts demonstrating that NEWSVT is no longer the facility's owner and operator. As such, the Draft Permit's radical change is arbitrary, and warrants greater scrutiny. See *I.N.S. v. Cardoza Fonseca*, 480 U.S. 421, 446, n. 30 (1987) (Agency policy that conflicts with an earlier policy is "entitled to considerably less deference" than a consistently held policy).

CCEC has repeatedly asked the AQCD to articulate its public policy rationale for this abrupt change. To date, the AQCD has not provided any such rationale. Its Draft Permits and responses to comments are silent on what has been a central issue. The AQCD's Associate General Counsel did state the following in an email:

As we discussed, here is our [AQCD's] analysis of the applicability of WWW to the NEWSVT/CCEC facility:

- Under WWW, NEWSVT is responsible for 98% destruction of NMOC from untreated LFG that is flared or combusted in some other way.
- WWW has no applicability to CCEC's LFGTE operation to the extent that it is combusting treated LFG in its engines.
- CCEC will be responsible for 98% NMOC destruction in accordance with the requirements of the Air Pollution Control Regulations Section 5-261 [Control of Hazardous Air Contaminants].

E-mail from Megan O'Toole, Esq., AQCD Associate General Counsel to Ron Shems, Counsel to CCEC (Oct. 19, 2015) (attached).

AQCD's reliance on Vermont Rule 5-261 does not provide any basis for contradicting CCEC's comments or justifying AQCD's allocation of responsibilities under the Draft Permit. Rule 5-261 does not trump federal law or NEWSVT's responsibilities under Subpart WWW. Nor does application of Vermont Rule 5-261 otherwise provide that NEWSVT is not this single source's owner and operator. Rather, Section 5-261 only provides that CCEC should be responsible for the plant's proper operation – a role CCEC accepts. Beyond that, Section 5-261 requires limits on emissions of HACs. Limits are not effective unless those responsible are within the permit's scope. NEWSVT should not be absolved of this joint responsibility.

Further, CCEC's processing of the raw landfill gas is solely for the purposes of assuring that the gas conforms to the engines' specifications. CCEC does not treat the gas for the purposes of complying with 40 CFR 60.752(b)(2)(iii)(C), and has no contractual (or other) obligation to treat the gas for that purpose. Indeed, the Draft Permits do not find or conclude that the landfill gas is treated in conformance with 40 CFR 60.752(b)(2)(iii)(C), or for any subsequent sale or use by landfill.

Rather, the Draft Permits appropriately find that NEWSVT is opting to route its landfill gas to control system under 40 CFR 60.752(b)(2)(iii)(B). NEWSVT Draft Permit at 2, 25 (Condition 10). As such, NEWSVT must assure that the control system is "designed and operated to reduce NMOC by 98 weight-percent." *Id*; Koster letter, *supra*.¹

The AQCD also referred to *Star Enterprise v. E.P.A.*, 235 F.3d 139 (3d Cir., 2000) as supporting the Draft Permits' allocation of responsibility. However, *Star* supports CCEC's comments because it is wholly contrary to the AQCD's effort to treat this landfill as a single source. Indeed, *Star* holds that a third party operating a generating station fueled by waste from an oil refinery cannot be regulated as part of the refinery's Clean Air Act permit. Further, *Star*

¹ NEWSVT may flare its landfill gas to the extent that the LFGTE plant cannot combust the gas. NEWSVT Draft Permit at 24, Condition 9.

does not address Subpart WWW. Nor is Star at all contrary to the more specific and recent authority cited above.

Joint responsibility for the above-listed conditions is required under the CAA because NEWSVT is the facility's owner and operator and the facility is under NEWSVT's common control. Likewise, NEWSVT must be solely responsible for facility-wide emission limits. Such responsibility also furthers the "single source" principal, while the Draft Permits undermine, if not contradict any notion of single source. Indeed, joint responsibility meets the practical and pragmatic purposes of "single source" by having the facility's owner and operator take overall responsibility while assuring that CCEC plays its part for operations under its control. The Draft Permit creates management tension by requiring NEWSVT and CCEC to be jointly responsible for overall facility emissions, but limits responsibility for the LFGTE plant emissions to CCEC. Proper management of the facility's emissions requires joint management of both the LFGTE plant and overall facility emissions.

For the above reasons, CCEC requests that NEWSVT and CCEC be jointly responsible for LFGTE plant emissions. NEWSVT should be solely responsible for all other emissions and all facility-wide emission limits.

III. CTMS ACCURACY, CCEC CONDITION 6(b).

CCEC requests that Condition 6(b) be amended as follows:

~~The CTMS shall have a measurement range appropriate to provide measurements of engine exhaust temperature during all engine operating scenarios and load levels. The CTMS must have a minimum measurement accuracy of +/- 2% of full scale and p~~
Permanently record the engine exhaust temperature using a digital data acquisition system or calibrated analog strip chart recorder.

The engine manufacturer, CAT, does not provide for the CTMS measurement range and +/-2% accuracy as required by the struck portion of Condition 6(b). CCEC is therefore unable to certify such accuracy. CCEC will work with the AQCD to develop any necessary form of achievable certification.

IV. CONDITION 13 (SRS FLARE)

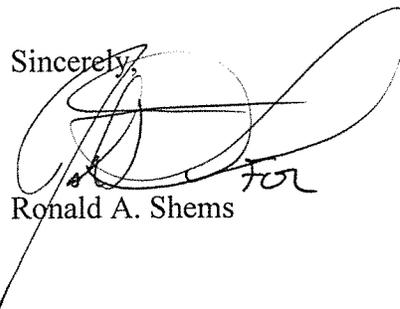
CCEC appreciates the flexibility allowed in the current draft and continues to request that the *option* to use the Parnell flare for the SRS be maintained.

V. CONDITION 16 (SO₂ MONITORING)

CCEC appreciates the flexibility allowed in the current draft and continues to request that the *option* to develop an alternate monitoring plan.

VI. CONCLUSION

CCEC respectfully requests that its comments be considered and adopted and the final permit(s) issued accordingly.

Sincerely,

Ronald A. Shems