

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL
PENALTIES

CONSERVATION LAW FOUNDATION)
)
Plaintiff,)
)
)
v.)
)
BROADROCK GAS SERVICES, LLC,)
)
RHODE ISLAND LFG GENCO, LLC,)
)
and RHODE ISLAND RESOURCE)
RECOVERY CORPORATION,)
)
Defendants.)
_____)

CA 13- 777

Case No.

NO JURY TRIAL

RECEIVED
DEC 16 2013
U.S. DISTRICT COURT
DISTRICT OF R.I.

COMPLAINT

The Conservation Law Foundation (“CLF”), on behalf of itself and its individual members who live in the vicinity of the Central Landfill in Johnston, Rhode Island, and throughout New England, now comes and alleges as follows:

I. NATURE OF THE ACTION

1. This is a citizen suit against the owners and operators of the Central Landfill in Johnston, Rhode Island (“the Landfill”) for releasing polluted landfill gas into Rhode Island’s air. Defendants’ past and continuing violations of the Clean Air Act have caused and are causing the release of untreated, uncombusted landfill gas – including methane, hydrogen

sulfide (a toxic air pollutant), and volatile organic compounds (VOCs) (which include hazardous and toxic air pollutants) – as well as combusted or partially combusted gas containing VOCs and significant quantities of sulfur dioxide. CAA § 304, 42 U.S.C. § 7604.¹ These gases are byproducts primarily of decomposing garbage and commercial waste. Defendants’ failure to capture, treat, and destroy these gases violates the Clean Air Act, poses significant risks to human health, causes foul odors, and contributes to climate change. To remedy these harms and the violations that have caused them, CLF seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witness fees.

II. PARTIES

2. Plaintiff CLF is a nonprofit, member-supported organization incorporated under the laws of Massachusetts, with an office at 55 Dorrance Street, Providence, Rhode Island, 02903, and a principal place of business at 62 Summer Street, Boston, Massachusetts, 02110. CLF is a regional organization with about 4,000 members throughout New England including about 200 members in Rhode Island. CLF is dedicated to protecting New England’s environment for the benefit of all people. CLF has a long history of working to reduce harmful air emissions from polluters by enforcing the Clean Air Act on behalf of its members.
3. CLF is a “person” pursuant to CAA § 302(e), 42 U.S.C. §7602(e), who may commence an action under CAA § 304(a), 42 U.S.C. §7604(a).
4. CLF members have suffered, and will continue to suffer, actual and threatened injury to their health and welfare due to Defendants’ violations of the Clean Air Act. The

¹ All citations to the Clean Air Act will present first the applicable section of the Act itself in the form “CAA § X” and then the location in the United States Code where that section has been enacted.

violations have exposed and continue to expose CLF members to harmful air pollution from the Landfill, including hydrogen sulfide (a toxic air pollutant), sulfur dioxide, and VOCs (which include hazardous and toxic air pollutants). As a result, CLF members suffer from and are at increased risk of suffering a variety of adverse health effects including, but not limited to, respiratory irritation and illness. Defendants' Clean Air Act violations have also interfered with CLF members' use and enjoyment of their property and shared public and recreational spaces in their communities. Additionally, CLF and its members have been deprived of notice and the opportunity to participate in the regulatory permitting process for the Landfill.

5. CLF has standing because the acts and omissions alleged herein have exposed and continue to expose its individual members to harmful pollution that threatens their health and welfare, interferes with their use and enjoyment of personal property and shared public and recreational spaces, injures their economic interests, denies them protection of their health and well-being protected by the Clean Air Act, denies them the opportunity to participate in the regulatory process for permitting the Landfill, and negatively impacts their aesthetic and recreational interests. The relief requested herein will redress these injuries.
6. Defendant Broadrock Gas Services, LLC ("Broadrock") is a Delaware limited liability company with a principal place of business at 120 White Plains Road, Suite 610, Tarrytown, New York, 10591. Broadrock owns and operates the gas collection system at the Landfill.
7. Defendant Rhode Island LFG Genco, LLC ("Genco") is a Delaware corporation with a principal place of business of 120 White Plains Road, Suite 610, Tarrytown, New York,

10591. Genco owns all the landfill gas produced at the Landfill now and in the future, and owns and operates certain equipment and facilities for gas treatment and combustion at the Landfill, including a gas treatment plant and a 33-megawatt gas-to-energy power plant.

8. Defendant Rhode Island Resource Recovery Corporation (“RIRRC”) is a quasi-public corporation established by an Act of the Rhode Island General Assembly, enacted at R.I. Gen. Laws § 23-19-1, *et seq.*, with a principal place of business at 65 Shun Pike, Johnston, Rhode Island, 02919. RIRRC owns the land underlying the entire Landfill, including the land beneath the gas collection, treatment, and combustion systems, and owns and operates the waste-disposal areas of the Landfill.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over the claims set forth in this complaint pursuant to CAA § 304(a), 42 U.S.C. § 7604(a) (subject matter jurisdiction/citizen suit under Clean Air Act), 28 U.S.C. § 1331 (original jurisdiction/federal question), and 28 U.S.C. §§ 2201-2202 (declaratory and other relief). The relief requested by CLF is authorized by CAA § 304(a), 42 U.S.C. § 7604, and 28 U.S.C. §§ 2201-2202.
10. The Clean Air Act requires that plaintiffs provide 60 days’ notice for actions brought under CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1). *See also* 40 CFR § 54.
11. On July 18, 2013, CLF served a Notice of Intent to Sue letter (“NOI”) to Broadrock, Genco, and RIRRC by certified mail, setting forth its intent to sue Defendants for the claims herein raised in Counts 1 and 6 under CAA § 304(a)(1), 42 U.S.C. § 76-4(a)(1), and 40 CFR § 54.2(c).

12. On July 18, 2013, CLF served two copies of the NOI to CT Corporation System, the registered agent for Broadrock and Genco, by certified mail. 40 CFR § 54.2(c).
13. On July 18, 2013, CLF served the NOI to then-Acting United States Environmental Protection Agency (“EPA”) Administrator Robert Perciasepe and EPA Region 1 Administrator Curt Spalding by certified mail. 40 CFR § 54.2(a).
14. On July 18, 2013, CLF served the NOI to the Rhode Island Department of Environmental Management (“DEM”) by certified mail addressed to Director Janet Coit and mailed a copy of the NOI to Rhode Island Governor Lincoln Chafee. 40 CFR § 54.2(b).
15. On July 18, 2013, CLF also sent a courtesy copy of the NOI to Rhode Island Attorney General Peter Kilmartin.
16. The NOI is attached to this complaint as Exhibit A.
17. More than 60 days have passed since CLF served Defendants the NOI. The Clean Air Act violations complained of in the NOI are ongoing or likely to recur. As of the filing of this complaint, neither EPA nor the state of Rhode Island has commenced an enforcement action to redress the violations identified in the NOI.
18. The Clean Air Act does not require 60 days’ notice for claims brought pursuant to CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3).
19. Counts 2, 3, 4, and 5 of this complaint are claims brought pursuant to CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3), and as such do not require 60 days’ notice.
20. Pursuant to CAA § 304(c)(3), 42 U.S.C. § 7604(c)(3), a copy of this complaint is being served on EPA Administrator Gina McCarthy and United States Attorney General Eric Holder.

21. Venue is proper in the United States District Court for the District of Rhode Island, pursuant to CAA § 304(c)(1), 42 U.S.C. § 7604(c)(1), and 28 U.S.C. § 1391(b)(2), because the facility and the violations that are the subject of this complaint are located in the town of Johnston, Rhode Island.

IV. BACKGROUND

THE LANDFILL

22. The Landfill is a complex facility comprising several constituent parts owned by Defendants. These parts include the waste-disposal areas (often referred to as “phases” of the Landfill) that produce landfill gas; a gas collection system that consists of horizontal trenches, vertical wells, pipes, and valves positioned throughout the waste disposal areas, as well as “blowers” that create a vacuum to draw gas out of the landfill; and a system of gas treatment and combustion devices including a gas treatment facility, three open or “candlestick” remote flares (referred to as RF-2, RF-3, and RF-4), an “enclosed” ultra-low emissions flare (referred to as the ULE flare), another enclosed flare (sometimes referred to as the GCC flare), another ultra-low emissions flare (referred to as the Regen flare), four combustion engines (referred to as the Caterpillar plant), and four combined-cycle combustion turbines making up an industrial-scale landfill gas-to-energy combustion turbine combined cycle power plant (sometimes referred to as the CTCC plant).
23. All municipal solid waste, including household waste, generated in Rhode Island is disposed of in the active waste-disposal areas of the Landfill. Phase I was the first active phase of the Landfill and received waste from approximately 1955 to 1993. Phase II, which overlaps the northwestern slope of Phase I, received waste from approximately

1993 to 2003. Phase III overlaps the western slope of Phase II and also received waste from approximately 1993 to 2003. Phase IV overlaps the southwestern slope of Phases I-III and began receiving waste in 2000. Phase V overlaps the eastern slope of Phase IV and the southern slope of Phase I; it began receiving waste in 2004. Phase VI is presently under construction and will eventually overlap the eastern slope of Phases I and V.

24. As waste breaks down in the Landfill, it produces landfill gas. Depending on the content of the waste that produces it, landfill gas can contain high volumes of methane, hydrogen sulfide, VOCs, and other toxic constituents. For example, the decomposition of organic materials like apple cores and food scraps creates methane gas. The decomposition of wall board, gypsum, and other building materials containing sulfur in the form of calcium sulfate creates hydrogen sulfide gas. The decomposition of some household materials, especially items featuring polish, paint, or adhesives, creates benzene and other hazardous gases from the VOC family.
25. To capture landfill gas, the Landfill is interlaid with a series of horizontal trenches and vertical wells. These trenches and wells are attached to pipes equipped with “blowers” that create a vacuum designed to draw the landfill gas out of the waste-disposal areas and feed the gas to treatment and combustion devices. Valves throughout the system of trenches, wells, and pipes allow system operators to manipulate and direct gas flow.
26. The Landfill’s system of gas treatment and combustion devices is designed to destroy the pollutants in landfill gas. A remote flare, RF-2, is located on the western slope of the Landfill near Phase III, and a second remote flare, RF-3, is located on the northern slope of the landfill near the interface of Phases I and II for auxiliary gas burning capacity. Two additional flares, the ULE flare and a temporary remote flare, RF-4, are located on

the southern slope of the Landfill near the interface of Phases IV and V. Most landfill gas is routed to a single pipe feeding out from the southern slope of the Landfill, east of the ULE flare and RF-4. This pipe feeds landfill gas to a “gas conditioning and compression” or GCC plant, designed to treat the gas by reducing its hydrogen-sulfide content before it is burned. Colocated with the GCC plant are two “enclosed” flares: the Regen flare and the GCC flare. The Landfill’s primary gas combustion device, however, is the approximately 33-megawatt landfill gas-to-energy “combustion turbine combined cycle” or CTCC power plant that receives treated gas from the GCC plant. The much smaller (approximately 7-megawatt) Caterpillar plant is also equipped to burn off treated landfill gas in an auxiliary capacity to the CTCC plant.

27. For landfill gas to be properly collected, treated, and destroyed, horizontal trenches, vertical wells, pipes, valves, blowers, hydrogen-sulfide treatment equipment, “enclosed” flares, and power plants must operate in concert as a single, comprehensive system.

LANDFILL GAS

28. Landfill gas contains methane (CH₄), hydrogen sulfide (H₂S), and VOCs including air toxics like benzene and toluene.
29. Methane is a major component of landfill gas. It is used as an indicator for the presence of other harmful gases. Exposure to low levels of methane may cause dizziness, headache, and fatigue. It is also an extremely potent greenhouse gas – about 34 times more potent a driver of climate change than carbon dioxide.
30. Hydrogen sulfide gas is a regulated hazardous air pollutant in Rhode Island. *See* Rhode Island Air Pollution Control Regulation No. 22. In small concentrations, hydrogen sulfide gas can cause eye, ear, and respiratory problems, especially in children, the

elderly, and people with preexisting respiratory illnesses like asthma. Higher concentrations of hydrogen sulfide gas – levels above 500 parts per million (ppm) – can cause unconsciousness followed by severe nervous-system damage or even instantaneous death. Hydrogen sulfide gas also creates a strong putrid or “rotten-egg” odor.

Combustion of hydrogen sulfide gas creates sulfur dioxide (SO₂).

31. Sulfur dioxide interacts with other matter in the atmosphere to form sulfate aerosols. These sulfate aerosols can travel long distances through the air. When inhaled, sulfate aerosols may cause increased sickness and mortality from lung disorders including asthma and bronchitis. For this reason, sulfur dioxide is a “criteria pollutant” – one of the primary pollutants regulated under the Clean Air Act. *See* 75 Fed. Reg. 35520 (June 22, 2010).
32. VOCs are a family of gases including hazardous and toxic air pollutants like benzene and toluene that can cause serious harms to human health. These harms range from irritation of the eye, nose, and throat to liver, kidney, and nervous system damage. Some VOCs are known to cause cancer. Benzene, for example, is classified as “a Group A, known human carcinogen” and can cause disorders ranging from anemia to reproductive harm to leukemia. Toluene can cause a list of neurological symptoms including “loss of coordination, tremors, decreased brain size, involuntary eye movements, and impaired speech, hearing, and vision” as well as spontaneous abortion in pregnant women. 65 Fed. Reg. 66,672, 66,674 (Nov. 7, 2000).
33. VOCs also undergo chemical reactions in the atmosphere, leading to the formation of the criteria pollutant ozone.

34. Ozone is a public health threat and a greenhouse gas. Ozone may irritate the respiratory system, increase the likelihood of contracting a respiratory infection, and aggravate preexisting respiratory diseases like asthma.

V. CLEAN AIR ACT VIOLATIONS

35. Significant quantities of untreated, uncombusted landfill gas containing methane, hydrogen sulfide, and VOCs have been escaping from the Landfill for years. These pollutants pose risks to human health, cause foul odors in areas surrounding the Landfill, and contribute to climate change.
36. The unpermitted combustion of landfill gas that has not been treated for hydrogen sulfide has resulted in the release of significant quantities of sulfur dioxide from the Landfill. This sulfur dioxide poses risks to human health.
37. The inadequate combustion of both treated and untreated landfill gas in flares at the Landfill has resulted in the release of VOCs including benzene and toluene. These hazardous and toxic air pollutants pose severe risks to human health.
38. The release of all these gases and their constituent pollutants is traceable to Defendants' violations of three separate programs under the Clean Air Act: the New Source Performance Standards ("NSPS") program; the Prevention of Significant Deterioration ("PSD") program; and the Title V program.

NSPS VIOLATION: FAILURE TO COLLECT LANDFILL GAS

39. The Landfill is huge. It has a design capacity of over 40 million megagrams and well over 24 million cubic meters; it has expanded significantly into Phases II, III, IV, and V since May 30, 1991; and it has the potential to emit 186.0 tons of non-methane organic compounds ("NMOCs") per year. Because the landfill is so big and has such a high

potential to emit regulated pollutants, an “active collection system” is required to collect landfill gas from the Landfill pursuant to Subpart WWW – a regulation promulgated by EPA under the Clean Air Act’s NSPS program. *See* 40 CFR §§ 60.750(a) & 60.752(b)(2)(ii).

40. To ensure the adequate collection of landfill gas, Subpart WWW establishes certain requirements for the Landfill, three of which are relevant here. First, the Landfill’s active collection system must collect gas at a sufficient extraction rate. Second, the Landfill’s active collection system must collect gas from each area of the landfill in which solid waste has been in place for at least five years. Third, the Landfill’s owners and operators must address the occurrence of water in the vertical landfill-gas collection wells. 40 CFR §§ 60.752(b)(2)(ii) & 60.759(b)(2). Defendants have failed to meet all three of these requirements.

FAILURE TO COLLECT GAS AT A SUFFICIENT EXTRACTION RATE

41. Subpart WWW defines “sufficient extraction rate” as “a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration ... or excess surface emissions.” 40 CFR § 60.751.
42. To determine whether gas is being collected at a sufficient extraction rate, Subpart WWW provides for wellhead and surface emissions monitoring. 40 CFR § 60.756. Wellhead monitoring tests for both pressure (which must be negative, indicating a vacuum) and oxygen (which must be below 5%, indicating that landfill gas and not air is in the collection system). 40 CFR § 60.753(b) & (c). Surface emissions monitoring tests for the presence of methane, which must not be greater than 500 ppm above background levels. 40 CFR § 60.753(d).

43. Defendants have failed to maintain a negative pressure at all wellheads. For example, for each of the six month periods from January 1, 2012 to June 30, 2013, at least 32 wellheads at the Landfill have operated at zero or positive pressure.
44. Defendants have failed to prevent air infiltration in the landfill gas collection system. When air is infiltrating the landfill gas collection system, some wellheads will contain gas with oxygen levels of 5% or greater. This has occurred at many wells at the Landfill. For example, from January 1, 2012 to June 30, 2012, oxygen exceeded 5% in at least 113 separate wellheads at the Landfill, often several times at a given wellhead; from July 1, 2012 to December 31, 2012, oxygen exceeded 5% in at least 125 separate wellheads at the Landfill; and from January 1, 2013 to June 30, 2013, oxygen exceeded 5% in at least 157 separate wells at the Landfill. At many of these wells, oxygen exceedances recurred numerous times.
45. Defendants have caused excess surface emissions of landfill gas. When surface emissions of landfill gas are occurring, air at the surface of the Landfill contains more than 500 ppm methane. From January 1, 2012 to June 30, 2013, at least 154 surface methane readings above 500 ppm occurred at the Landfill. Some of these surface methane readings are egregious. For example, in January 2012 there was a methane reading of 54,100 ppm methane at the landfill – over 100 times the regulatory standard of 500 ppm.
46. On information and belief, Defendants' failure to maintain all wellheads at the Landfill at negative pressure, to prevent excess air infiltration in the Landfill's gas collection system, and to prevent excess surface methane emissions at the Landfill is ongoing.²

² CLF has requested data beyond June 2013 from both the Rhode Island Department of Environmental Management (DEM) and RIRRC; as of the date of this complaint's filing, the request to DEM is still pending.

47. For all these reasons, Defendants have not collected and are not collecting gas from the Landfill at a sufficient extraction rate. 40 C.F.R. § 60.751.

FAILURE TO COLLECT GAS FROM ALL REQUIRED AREAS OF THE LANDFILL

48. Subpart WWW requires that an “active collection system” at a subject landfill “shall ... (2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for ... 5 years or more if active.” 40 CFR § 60.752(b)(2).
49. On information and belief, waste was placed on the south slope of the Landfill at the interface of Phases IV and V more than five years ago and that area has continued to receive waste within the past five years.
50. Elevated oxygen levels on the south slope of the Landfill at the interface of Phases IV and V demonstrate that landfill gas is not being collected from that area. For example, from 2011 to 2012, oxygen exceedances occurred repeatedly at wells DW-10 and DW-13, both located on the south slope of the Landfill near the interface of Phases IV and V.
51. Elevated surface methane levels on the south slope of the Landfill at the interface of Phases IV and V demonstrate that landfill gas is not being collected from that area. For example, on January 18, 2013, methane exceedances occurred at monitoring tags 159, 170, 177, 256, and 258, all located on the south slope of the Landfill near the interface of Phases IV and V.
52. Flooded wells on the south slope of the Landfill at the border of Phases IV and V demonstrate that landfill gas is not being collected from that area. For example, in 2011, greater than 50% flooding occurred at wells DW-10, DW-11, DW-12, DW-13, 457, 458, 500, and 501, all located on the south slope of the Landfill near the interface of Phases IV and V.

53. On information and belief, Defendants' failure to collect gas from the interface of Phases IV and V is ongoing.

FAILURE TO ADDRESS THE OCCURRENCE OF WATER IN THE LANDFILL

54. Subpart WWW requires Defendants to address the occurrence of water in the Landfill's gas collection system. 40 CFR § 60.759(b)(2).
55. Defendants have failed to meet this requirement. For example, in August 2012 and again in February 2013, at least 100 wells at the Landfill were greater than 20% flooded and an additional 100 wells were obstructed and could not be sounded.
56. More specifically, in February 2013, out of 232 vertical wells, 102 wells were greater than 20% flooded and 101 wells were obstructed. For one additional well, the well-sounding report simply reads "N/R" – presumably "no reading" – and for another, the report reads "Measurement Error." This leaves only 27 wells out of 232 that were determined to be functioning properly, about 12%.
57. On information and belief, Defendants' failure to address the occurrence of water in the Landfill is ongoing.

PSD VIOLATIONS: PERMIT FAILURES AND VIOLATIONS

58. Defendants have violated and, on information and belief, continue to violate the Clean Air Act's Prevention of Significant Deterioration ("PSD") program in four ways. *See* CAA § 165(a), 42 U.S.C. § 7475(a); CAA § 169(1)(C), 42 U.S.C. § 7479(1)(C); CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3). First, Defendants have modified a major emitting facility without obtaining a required PSD permit, causing sulfur dioxide emissions. Second, Defendants have violated PSD Permit RI-PSD-8 by operating the GCC flare with excessive gas flows and low temperatures, causing VOC emissions. Third,

Defendants have violated PSD Permit RI-PSD-9 and RI-PSD-10 by operating RF-2 with excessive gas flows, causing VOC emissions. Fourth, Defendants have violated PSD Permit RI-PSD-11 by operating the ULE flare with excessive gas flows and low temperatures, causing VOC emissions. On information and belief, these violations are ongoing or likely to recur.

DEFENDANTS MODIFIED A MAJOR EMITTING FACILITY WITHOUT A REQUIRED PERMIT.

59. In December 2007, Genco submitted to the Rhode Island Department of Environmental Management (“DEM”) an “Air Pollution Control Permit Application for Proposed Landfill Gas-Fired Combustion Turbine Combined Cycle Power Plant” as required under the Clean Air Act’s PSD program and Rhode Island Air Pollution Control Regulation No. 9. *See* CAA § 165(a), 42 U.S.C. § 7475(a) (requiring a permit for construction of major emitting facilities); CAA § 110(a), 42 U.S.C. § 7410(a) (requiring states to create permitting programs); 40 CFR § 52.2070(c) (providing that Rhode Island Air Pollution Control Regulation No. 9 is an EPA-approved state permitting program).
60. This Application sought a preconstruction permit for a proposed “42-MW, landfill gas-fired combustion turbine combined cycle (CTCC) electric generation plant at the Central Landfill in Johnston, Rhode Island.” Application § 1.0. According to the Application, “the gas management system at the Central Landfill will have power generation equipment as the primary means of combusting landfill gas, with flares expected to provide gas control solely on a supplemental and backup basis.” *Id.*
61. By its own terms, the Application sought a permit because the proposed power plant was a “major modification for CO, SO₂, PM₁₀, and NO₂ under the PSD program.” Application § 3.0.

62. Absent treatment for hydrogen sulfide, the CTCC plant has the potential to emit 854.7 tons of sulfur dioxide per year (based on 2012 landfill gas estimates).
63. To address the CTCC plant's potential increase in sulfur dioxide emissions, Genco proposed that landfill gas would be treated to remove sulfur before combustion in the gas-fired power plant. "The sulfur content of the raw landfill gas ... [was] measured at concentrations ranging from 400 ppmv [parts per million by volume] to 3000 ppmv, as H₂S." Application § 1.1.2. Genco proposed that landfill gas would be treated "down to a concentration of 100 parts per million by volume (ppmv) as hydrogen sulfide (H₂S)." *Id.* When burned, hydrogen sulfide reacts with oxygen to form sulfur dioxide. Therefore, reducing hydrogen sulfide from 400-3,000 ppmv to 100 ppmv decreases sulfur dioxide emissions.
64. According to Genco's representation, "a system that will remove H₂S down to 100 ppmv ... represents [Best Available Control Technology] for a large-scale landfill gas removal system."³ Application § 4.1.3. When burning landfill gas treated down to 100 ppmv hydrogen sulfide, the CTCC plant has the potential to emit 2.47 pounds per hour of sulfur dioxide per turbine, for a total of 43.2 tons per year.
65. According to Genco's representation, the proposed sulfur-removal system would serve not only the CTCC plant but also RIRRC's ULE flare. Application § 1.0. After sulfur removal the ULE Flare has the potential to emit 6.08 pounds per hour or 26.62 tons per year of sulfur dioxide. Application Appendices B-2, B-3.
66. On May 12, 2009, based on Genco's representations, DEM issued a preconstruction permit, RI-PSD-8, to Genco, requiring that each turbine at the gas-to-energy facility emit

³ "Best Available Control Technology" or BACT is required by the Clean Air Act before a preconstruction permit may be issued to a major emitting facility. See CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4).

- no more than 2.70 pounds per hour or 11.83 tons per year of sulfur dioxide. RI-PSD-8 (2009) § A.1.e(2). Defendants constructed the GCC plant to treat landfill gas for sulfur.
67. RI-PSD-8 assumes that the CTCC plant is the primary means of combusting landfill gas and requires that “[e]xcess landfill gas, not used as a fuel in a combustion turbine, must be flared or combusted in the Caterpillar engines.” RI-PSD-8 (2009) § F.5.
68. On July 9, 2013, the Town of Johnston discovered a pipe from the GCC plant discharging an unknown gas later determined to contain VOCs and ordered both the GCC plant and the CTCC plant to cease operations.
69. On July 16, 2013, an explosion at the Caterpillar plant caused the Town of Johnston to order that facility to cease operations.
70. On July 30, 2013, DEM improperly issued a letter to Genco “temporarily suspend[ing] the requirements of condition B.3.g of your major source permit (RI-PSD-8) in order to allow use of the GCC flare to combust landfill gas that contains hydrogen sulfide in excess of 100 ppmv.”
71. As a result of the July 30, 2013 letter from DEM, Defendants combusted landfill gas that was not treated for sulfur until at least September 10, 2013, and possibly longer.
72. Using data from RIRRC and a formula from Genco, the total rate of sulfur dioxide emissions from combustion of landfill gas from Phases I through V in the ULE flare and GCC flare would be 671.4 tons per year.
73. In contrast, assuming landfill gas containing 100 ppmv hydrogen sulfide, the GCC flare and ULE flare together have a baseline potential to emit only 53.2 tons per year of sulfur dioxide.

74. By changing their method of operation such that landfill gas was no longer treated for sulfur before combustion in the GCC flare and ULE flare, Defendants produced a potential net emissions increase of 618.2 tons per year or 1.7 tons per day.
75. Defendants failed to treat landfill gas for sulfur before combustion for at least 41 days – for a potential emissions increase of at least 67 tons of SO₂.
76. An increase greater than 40 tons per year of SO₂ constitutes a major modification requiring a new permit application, proof that Defendants would apply BACT, an air quality impact analysis, and a public notice and comment period. CAA § 165(a), 42 U.S.C. § 7475(a); CAA § 169(1)(C), 42 U.S.C. § 7479(1)(C) (defining construction to include modification); *see also* Rhode Island Air Pollution Control Regulation No. 9, § 9.1.37.
77. Defendants failed to apply for a permit for a major modification before ceasing operation of the GCC plant and burning untreated gas. Defendants failed to apply BACT, conduct an air quality assessment or provide notice, a public hearing, or an opportunity for the public to submit written or oral comments.
78. Because the GCC facility was shut down as a result of gas-control failures at the Landfill, and because gas-control failures at the Landfill are ongoing, it is likely that in the future the owners and operators of the Landfill will again flare landfill gas untreated for hydrogen sulfide.

**DEFENDANTS HAVE VIOLATED PSD PERMIT RI-PSD-8 BY OPERATING THE
GCC FLARE WITH EXCESSIVE GAS FLOWS AND LOW TEMPERATURES.**

79. RI-PSD-8 establishes conditions for the operation of the GCC flare, including the requirement that the GCC flare reduce NMOC emissions by 98%. RI-PSD-8(A)(3)(c).

80. NMOC destruction depends on combustion-chamber residence time, combustion-chamber temperature, and gas turbulence.
81. Combustion-chamber residence time depends on gas flow rate. Higher gas flow rates reduce residence time and therefore reduce NMOC destruction as well.
82. Temperature is so important to landfill gas control that it not only plays a role in achieving the permit-required level of NMOC destruction but also is regulated independently of this role. Specifically, RI-PSD-8(B)(3)(a) requires that the GCC flare operate at a minimum temperature of 1500°F and provides that deviations of “more than 28°C below the average combustion temperature during the most recent performance test at which compliance was determined constitute exceedences that shall be recorded and reported.” RI-PSD-8(E)(8).
83. High gas flows and low temperatures resulting in NMOC emissions at the GCC flare have occurred repeatedly and are likely to occur again. For example, on February 22, 2013, the GCC flare had a low temperature of 1,422°F but processed a maximum flow of 6,397 scfm landfill gas; on February 27, 2013, the GCC flare had a low temperature of 1,491°F but processed a maximum of 6,262 scfm landfill gas; on March 6, 2013, the GCC flare had a low temperature of 1,446°F but processed a maximum of 6,594 scfm landfill gas; and on March 13, 2013, the GCC flare had a low temperature of 1,405°F but processed a maximum of 6,492 scfm landfill gas.
84. On each of the above-listed dates with high gas flows and low temperatures at the GCC flare, Defendants violated the temperature requirements of RI-PSD-8(B)(3)(a) and RI-PSD-8(E)(8) and violated the 98% NMOC destruction requirement of RI-PSD-8(A)(3)(c).

85. On information and belief, Defendants have continued to operate the GCC flare with high gas flows and low temperatures in violation of RI-PSD-8.

**DEFENDANTS HAVE VIOLATED THE CONDITIONS OF PSD PERMITS RI-PSD-9
AND RI-PSD-10 BY OPERATING RF-2 WITH EXCESSIVE GAS FLOWS.**

86. On December 16, 2010, DEM issued major source permit RI-PSD-9 to RIRRC for Phases II and III of the Landfill and RI-PSD-10 for Phase IV of the Landfill.
87. Both RI-PSD-9 and RI-PSD-10 require that “[a]ll the collected landfill gas shall be routed to” one of three types of control devices. RI-PSD-9(A)(2); RI-PSD-10(A)(2). The first option is “[a]n open flare designed and operated in accordance with 40 CFR 60.18.” RI-PSD-9(A)(2); RI-PSD-10(A)(2). The second option is a control system that achieves 98% NMOC destruction. RI-PSD-9(A)(2); RI-PSD-10(A)(2). The third option is “[a] treatment system that filters, de-waters and compresses the landfill gas for subsequent sale or use.” RI-PSD-9(A)(2); RI-PSD-10(A)(2).
88. RF-2 is an open flare that receives gas from Phases II, III, or IV, so RI-PSD-9(A)(2) and RI-PSD-10(A)(2) require that it be operated in accordance with 40 CFR § 60.18.
89. To satisfy 40 CFR § 60.18, a flare may adhere to either the “maximum tip velocity specifications in paragraph (c)(4)” or “the requirements in paragraph (c)(3)(i).”
90. Because the terms of paragraph (c)(3)(i) only apply to flares burning hydrogen-rich gas, *see* 65 Fed. Reg. 24436, and landfill gas contains only trace amounts of hydrogen, RF-2 must adhere to the “maximum tip velocity specifications in paragraph (c)(4).”
91. 40 CFR § 60.18(c)(4)(i) requires that gas exiting an open flare must do so at a rate less than or equal to 18.3 meters per second. This maximum exit velocity is necessary because the slower the gas flows through the flare, the longer it spends being subjected to very high temperatures, and the more pollutants are destroyed.

92. 40 CFR § 60.18(c)(4)(iii) provides an exception to the 18.3 m/s standard, allowing a flare to operate with a higher exit velocity if the flare is designed for the higher velocity and if the higher velocity falls below a 122 m/s standard. RF-2 is designed for a maximum exit velocity of no more than 19.9 m/s.
93. RF-2 has been repeatedly operated with an exit velocity exceeding 19.99 m/s. This is because RF-2 frequently processes more than 2,000 scfm of landfill gas. For example, on January 9, 2013, maximum flow to RF-2 was 2,395 scfm; on January 18, 2013, maximum flow to RF-2 was 2,655 scfm; on February 12, 2013, maximum flow to RF-2 was 2,397 scfm; on April 15, 2013, maximum flow to RF-2 was 2,655 scfm; on April 17, 2013, maximum flow to RF-2 was 2,312 scfm; on May 7, 2013, maximum flow to RF-2 was 2,282 scfm. Defendants have continued to route excess landfill gas to RF-2 on numerous occasions throughout 2013.
94. Because RF-2 repeatedly has received and is receiving gas from Phases II, II, and IV, with gas flows exceeding 2,000 scfm, and with exit velocities exceeding 19.99 m/s, RF-2 has repeatedly violated 40 CFR § 60.18, RI-PSD-9(A)(2), and RI-PSD-10(A)(2).
95. The routing of excess gas to RF-2 in violation of 40 CFR § 60.18, RI-PSD-9, and RI-PSD-10 has occurred repeatedly and is likely to occur again.

DEFENDANTS HAVE VIOLATED PSD PERMIT RI-PSD-11 BY OPERATING THE ULE FLARE WITH EXCESSIVE GAS FLOWS AND LOW TEMPERATURES.

96. On December 16, 2010, DEM issued a preconstruction permit, RI-PSD-11, to RIRRC that sets conditions for operation of the ULE flare, including the requirement that it reduce NMOC emissions by 99%.
97. Recall that NMOC destruction depends on combustion-chamber residence time, combustion-chamber temperature, and gas turbulence.

98. To ensure adequate conditions for NMOC destruction, the permit requires that the ULE flare “operate at a minimum temperature of 50°F below the average temperature during the most recent performance test at which compliance ... was determined” and that deviations from this temperature condition “constitute exceedences that shall be recorded and reported.” RI-PSD-11(B)(1) and 11(E)(9).
99. Defendants have repeatedly operated the ULE flare at temperatures below the permit limit, for example on the following dates in 2013: January 22; March 2; June 8; June 20; June 23; July 1; July 2; July 9; July 12; July 15; July 22; and July 23.
100. Additionally, the ULE flare has repeatedly processed landfill gas at flow rates greater than the ULE flare’s capacity. For example, on January 4, 2013, the ULE flare received a maximum of 6,592 scfm landfill gas; on January 6, 2013, the ULE flare received a maximum of 6,281 scfm landfill gas; on January 11, 2013, the ULE flare received a maximum of 6,176 scfm landfill gas; and on January 17, 2013, the ULE flare received a maximum of 6,264 scfm landfill gas. Defendants have continued to feed excess landfill gas to the ULE flare on numerous occasions throughout 2013.
101. Given frequently occurring high gas flows and low temperatures at the ULE flare, on information and belief, the operation of the ULE flare has violated the 99% NMOC destruction requirement of RI-PSD-11(A)(3).
102. Operation of the ULE flare with high gas flows and low temperatures has occurred repeatedly and is likely to occur again.

TITLE V

DEFENDANTS HAVE BEEN OPERATING THE LANDFILL WITHOUT AN OPERATING PERMIT.

103. Title V of the Clean Air Act provides that “it shall be unlawful for any person ... to operate ... any ... source required to have a permit under parts C or D of subchapter 1 of this chapter ... except in compliance with a permit issued by a permitting authority under this subchapter.” CAA § 502(a), 42 U.S.C. § 7661a(a).
104. The Landfill is a single major source comprising many parts that has operated for 16 years without an operating permit in violation of Title V. CAA § 502(a), 42 U.S.C. § 7661a(a). It has the potential to emit at least 185.9 tons of VOCs per year and 913.4 tons of sulfur dioxide per year.
105. Although the Landfill is a single major source, its different components have been separately permitted under Rhode Island’s EPA-approved preconstruction permitting program – and therefore under the Clean Air Act – for years. For example, DEM has issued the following selected, separate permits to Landfill-related entities over the last decade:
- a. A major source permit for Phases II and III of the Landfill issued to RIRRC on December 16, 2010;
 - b. A major source permit for Phase IV issued to RIRRC on December 16, 2010;
 - c. A minor source permit for Phase V issued to RIRRC on September 16, 2004;
 - d. A major source permit for Phase VI of the Landfill issued to RIRRC on December 16, 2010;
 - e. A major source permit for RIRRC’s ULE Flare issued on December 16, 2010;

- f. A major source permit for the 33-megawatt CTCC plant issued to Genco on September 20, 2011;
- g. A minor source permit for an emergency backup flare issued to Broadrock on December 23, 2011.

This piecemeal and disaggregated permitting has led to systemic and recurring gas collection and control failures at the Landfill.

- 106. All the facilities and equipment listed above in paragraph 105(a), (b), (d), (e), and (f) are required to have permits under part C of subchapter 1 of the Clean Air Act – the PSD program – and accordingly must be operated in compliance with a Title V operating permit. CAA § 502(a), 42 U.S.C. § 7661a(a).
- 107. DEM has issued a Title V operating permit, RI-41-09, that covers only the four engines at the Caterpillar plant and other equipment that is now defunct – but not the waste-receiving areas of the Landfill, not any flares, not the CTCC plant, and in fact not any of the facilities or equipment listed in paragraph 105.
- 108. Genco owns landfill gas combustion facilities including RF-2, RF-3, RF-4, and the CTCC plant. Genco has operated these facilities since at least January 2012 and continues to operate these facilities. Because no Title V operating permit covers any of these facilities, Genco has not operated and is not operating these facilities in compliance with a Title V operating permit.
- 109. Broadrock owns the landfill gas collection system that is a constituent part of the Landfill and is essential to maintain legally adequate landfill gas management. Broadrock has operated the gas collection system since at least January 2012 and continues to operate

- the system. Because no Title V operating permit covers the gas collection system, Broadrock is not operating this system in compliance with a Title V operating permit.
110. RIRRC owns Phase II, Phase III, Phase IV, Phase VI, and the ULE flare. RIRRC has operated the waste-receiving areas of the Landfill since 1997 and continues to operate these facilities. Because no Title V operating permit covers these facilities, RIRRC is not operating these facilities in compliance with a Title V operating permit.
111. All Landfill facilities, including all waste-disposal areas and gas collection, treatment, and combustion facilities, are located on land owned by RIRRC. These facilities are inextricably linked with one another; they also share a standard industrial classification (“SIC”) category code with the Landfill. For these reasons, these facilities together constitute a single major source requiring a comprehensive Title V operating permit. *See, e.g.,* Letter from Gregg M. Worley, Chief, Air Permits Section, EPA Region IV to James Capp, Chief, Air Protection Branch, Georgia Department of Natural Resources (December 16, 2011).
112. Genco’s past and ongoing ownership and operation of landfill gas combustion equipment including RF-2, RF-3, and RF-4 without a Title V operating permit covering these emissions sources is a violation of Title V. *See* CAA § 502(a), 42 U.S.C. § 7661a(a).
113. Broadrock’s past and ongoing ownership and operation of the Landfill’s gas collection system without a Title V operating permit is a violation of Title V. *See* CAA § 502(a), 42 U.S.C. § 7661a(a).
114. RIRRC’s past and ongoing operation of the Landfill without a Title V operating permit is a violation of Title V. *See* CAA § 502(a), 42 U.S.C. § 7661a(a).

VI. CAUSES OF ACTION

Count 1 (Violations of Subpart WWW of the NSPS):

DEFENDANTS HAVE VIOLATED EMISSIONS STANDARDS BY FAILING TO COLLECT LANDFILL GAS AT THE LANDFILL.

115. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
116. The Landfill has undergone major modifications since May 30, 1991 through the construction of Phases IV and V and the CTCC plant, and is therefore subject to Subpart WWW. 40 CFR § 60.750(a).
117. Defendants are owners and operators of the Landfill and therefore are responsible for compliance with Subpart WWW.
118. The Landfill has a design capacity of more than 2.5 million tons and more than 2.5 million cubic meters.
119. The Landfill has the potential to emit over 50 megagrams of non-methane organic compounds per year, and is therefore required to operate an active collection system in accordance with Subpart WWW. 40 CFR § 60.752(b)(2).
120. Since at least November 10, 2011, Defendants have failed to collect landfill gas from the border of Phase IV and Phase V of the Landfill, where waste has been placed in the last 5 years, in violation of an emissions standard established by Subpart WWW. 40 CFR § 60.752(b)(2)(ii)(A)(2).
121. Since at least November 10, 2011, Defendants have operated the gas collection system with zero or positive pressure, allowed air infiltration in the gas collection system, and caused excess surface emissions, and have therefore failed to collect landfill gas from the

Landfill at a sufficient extraction rate in violation of an emissions standard established by Subpart WWW. 40 CFR § 60.752(b)(2)(ii)(A)(3).

122. Since at least November 10, 2011, surface emissions monitoring has shown repeated and recurring methane levels in excess of Subpart WWW's standard of 500 ppm above background at the Landfill. 40 CFR § 60.753(d).
123. Since at least November 10, 2011, Defendants have failed to address watered-in gas collectors in violation of an emissions standard established by Subpart WWW. 40 CFR § 60.759(b)(2).
124. For all the above reasons, Defendants have violated and continue to violate emission standards or limitations under the Clean Air Act. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1); *see also* CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1) (defining "emission standard or limitation" to include a "standard of performance or emission standard").

Count 2 (Violation of Clean Air Act's PSD Program):

**DEFENDANTS MODIFIED A MAJOR EMITTING FACILITY
WITHOUT A REQUIRED PERMIT.**

125. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
126. Because the Landfill has the potential to emit 913.4 tons per year of sulfur dioxide, it – including the ULE flare, GCC flare, and CTCC plant – is a major emitting facility.
127. For two years prior to July 9, 2013, Defendants burned landfill gas that was treated down to 100 ppmv hydrogen sulfide.
128. From July 9, 2013 to at least September 10, 2013, Defendants burned landfill gas that was not treated down to 100 ppmv hydrogen sulfide.

129. By burning landfill gas that was not treated for sulfur, Defendants changed their method of operation, resulting in a net increase of at least 67 tons of sulfur dioxide over 40 days – or over 618 tons per year. This net emissions increase far exceeds the 40 ton-per-year threshold for significant emissions of sulfur dioxide. RIAPC § 9.1.37.
130. By changing their method of operation, resulting in a significant increase in sulfur dioxide, Defendants undertook “construction” under the Clean Air Act, constituting a major modification of the Landfill. CAA §§ 111(a)(4), 169(2)(c), 42 U.S.C. §§ 7411(a)(4), 7479(2)(c); RIAPC §§ 9.1.19, 9.1.37.
131. No Defendant was issued a permit for this “construction” in accordance with the requirements of the Clean Air Act. CAA § 165(a), 42 U.S.C. § 7475(a).
132. Genco operated the combustion devices and specifically undertook the change in operations – burning untreated landfill gas in the Landfill’s flares – that constitutes unpermitted construction.
133. Broadrock and RIRRC are also owners and operators of the Landfill, and are therefore responsible for this unpermitted construction.
134. Accordingly, Defendants constructed a modified major emitting facility without a permit required under part C of subchapter 1 of the Clean Air Act. CAA § 304(a)(3), 42 U.S.C. § 4604(a)(3).

Count 3 (Violation of Clean Air Act's PSD Program):

**DEFENDANTS HAVE VIOLATED THE CONDITIONS OF PSD PERMIT
RI-PSD-8 BY OPERATING THE GCC FLARE WITH EXCESSIVE
GAS FLOWS AND LOW TEMPERATURES.**

135. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
136. RI-PSD-8 is a permit issued and required under part C of subchapter I of the Clean Air Act (the PSD program).
137. RI-PSD-8 requires that the GCC flare reduce NMOC emissions by 98% and operate at a minimum combustion-chamber temperature of 1,500°F. RI-PSD-8(A)(3)(c) & (B)(3)(a).
138. Since at least February 27, 2013, on multiple occasions Defendants have operated the GCC flare with gas flows above the flare's 6,000 scfm capacity and temperatures below 1500°F.
139. As a result of these high gas flows and low temperatures, Defendants have repeatedly failed to achieve 98% NMOC destruction.
140. Genco operated the GCC flare at high gas flows and low temperatures in violation of RI-PSD-8(A)(3)(c) and (B)(3)(a).
141. Broadrock routed excessive gas flows to the GCC flare, causing a violation of RI-PSD-8(A)(3)(c).
142. RIRRC is an owner and operator of the Landfill and responsible for the production of landfill gas, and is therefore responsible for noncompliance with RI-PSD-8.
143. Accordingly, Defendants have repeatedly violated conditions (A)(3)(c) and (B)(3)(a) of RI-PSD-8, a permit issued and required under part C of subchapter I of the Clean Air Act. CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3).

Count 4 (Violation of Clean Air Act's PSD Program):

**DEFENDANTS HAVE VIOLATED THE CONDITIONS OF PSD PERMITS RI-PSD-9
AND RI-PSD-10 BY OPERATING RF-2 WITH EXCESSIVE GAS FLOWS.**

144. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
145. RI-PSD-9 and RI-PSD-10 are permits issued and required under part C of subchapter I of the Clean Air Act (the PSD program).
146. RI-PSD-9 requires that “[a]ll the collected landfill gas shall be routed to” one of three types of control devices, including “[a]n open flare designed and operated in accordance with 40 CFR 60.18.” RI-PSD-9(A)(2).
147. RI-PSD-10 requires that “[a]ll the collected landfill gas shall be routed to” one of three types of control devices, including “[a]n open flare designed and operated in accordance with 40 CFR 60.18.” RI-PSD-10(A)(2).
148. 40 CFR § 60.18 requires that exit velocity from an open flare may not exceed 18.3 m/s unless the flare is designed for higher exit velocities.
149. RF-2 is designed for a maximum exit velocity of no more than 19.9 m/s.
150. Since at least January 9, 2013, on multiple occasions Defendants have operated RF-2 with gas flows above the flare’s 2,000 scfm capacity.
151. On every occasion when more than 2,000 scfm landfill gas is routed to RF-2, exit velocity from RF-2 exceeds 19.9 m/s.
152. Genco has repeatedly operated RF-2 at high flows of gas from all phases of the Landfill in violation of RI-PSD-9(A)(2) and RI-PSD-10(A)(2).
153. Broadrock has repeatedly routed excessive gas from all phases of the Landfill to RF-2 in violation of RI-PSD-9(A)(2) and RI-PSD-10(A)(2).

154. RIRRC is an owner and operator of the Landfill and the holder of permits RI-PSD-9 and RI-PSD-10 and is therefore responsible for the permit violations set forth above.
155. Defendants are not operating RF-2 in compliance with 40 CFR § 60.18.
156. By repeatedly routing landfill gas to RF-2 in violation of 40 CFR § 60.18, Defendants have likewise violated the condition (A)(2) of RI-PSD-9 and condition (A)(2) of RI-PSD-10, both of which are permits issued and required under part C of subchapter I of the Clean Air Act. CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3).

Count 5 (Violation of Clean Air Act's PSD Program):

**DEFENDANTS HAVE VIOLATED THE CONDITIONS OF PSD PERMIT
RI-PSD-11 BY OPERATING THE ULE FLARE WITH EXCESSIVE
GAS FLOWS AND LOW TEMPERATURES.**

157. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
158. RI-PSD-11 is a permit issued and required under part C of subchapter I of the Clean Air Act (the PSD program).
159. RI-PSD-11 requires that the ULE flare reduce NMOC emissions by 99% and operate at a minimum combustion-chamber temperature to be determined by testing. RI-PSD-11(B)(1) & (E)(9).
160. Since at least January 22, 2013, on multiple occasions Defendants have operated the ULE flare with gas flows above the flare's 6,000 scfm capacity; on other, multiple occasions Defendants have operated the ULE flare with temperatures below the permitted minimum.
161. As a result of these high gas flows and low temperatures, Defendants have repeatedly failed to achieve 99% NMOC destruction.

162. Genco operated the ULE flare at high gas flows and low temperatures in violation of RI-PSD-11(B)(1) and (E)(9).
163. Broadrock routed excessive gas flows to the ULE flare, causing a violation of RI-PSD-11(B)(1).
164. RIRRC is an owner and operator of the Landfill, is the nominal permit-holder of RI-PSD-11, and is responsible for the production of landfill gas, and is therefore responsible for noncompliance with RI-PSD-11.
165. Accordingly, Defendants have repeatedly violated conditions (B)(1) and (E)(9) of RI-PSD-11, a permit issued and required under part C of subchapter I of the Clean Air Act. CAA § 304(a)(3), 42 U.S.C. § 7604(a)(3).

Count 6 (Violation of Title V):

**DEFENDANTS HAVE BEEN OPERATING THE LANDFILL
WITHOUT AN OPERATING PERMIT**

166. CLF repeats and realleges the allegations set forth in the preceding paragraphs as if fully set forth herein.
167. Because it has the potential to emit over 100 tons per year of the regulated pollutants carbon monoxide, sulfur dioxide, and VOCs, the Landfill is a major source. CAA §§ 302(j), 501(2), 42 U.S.C. §§ 7602(j), 7661(2); *see also* RIAPC § 29.1.14(c).
168. RIRRC has operated the Landfill from July 15, 1974 to the present without an operating permit required by the Clean Air Act. CAA § 502(a), 42 U.S.C. § 7661(a); *see also* RIAPC § 29.4.6.
169. The Clean Air Act defines “emission standard or limitation” as including “any requirement to obtain a permit as a condition of operations.” CAA § 304(f), 42 U.S.C. § 7604(f).

170. By operating the Landfill without an operating permit, RIRRC has violated and continues to violate an emission standard or limitation under the Clean Air Act. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1).
171. By owning and operating the Landfill's gas collection system without an operating permit, Broadrock has violated and continues to violate an emission standard or limitation under the Clean Air Act. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1).
172. By owning and operating the Landfill's combustion devices without an operating permit, Genco has violated and continues to violate an emission standard or limitation under the Clean Air Act. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1).
173. Accordingly, Defendants have violated and continue to violate an emission standard or limitation under the Clean Air Act. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1); *see also* CAA § 304(f)(4), 42 U.S.C. § 7604(f)(4) (defining "emission standard or limitation" to include a "requirement to obtain a permit as a condition of operations").

VII. PRAYER FOR RELIEF

WHEREFORE, CLF respectfully requests that this Court:

1. Declare that Defendants have violated and are continuing to violate the Clean Air Act by failing to collect landfill gas in accordance with emission standards set forth in Subpart WWW;
2. Declare that Defendants have violated and are continuing to violate the Clean Air Act by undertaking a major modification without a required preconstruction permit;
3. Declare that Defendants have violated and are continuing to violate the Clean Air Act by violating conditions set forth in RI-PSD-8, RI-PSD-9, RI-PSD-10, and RI-PSD-11;

4. Declare that Defendants have violated and are continuing to violate the Clean Air Act by operating the Landfill without an operating permit required by Title V;
5. Enjoin Defendants from further violations of the Clean Air Act, including operation of an inadequate gas collection system, operation of landfill gas combustion devices without pretreatment for sulfur, and operation of flares under conditions causing inadequate destruction of NMOC, including low temperatures;
6. Order Defendants to take all necessary steps to comply with the Clean Air Act, including, but not limited to, dewatering vertical gas collection wells, upgrading the landfill gas collection system, treating all landfill gas down to 100 ppmv hydrogen sulfide before combustion, routing to each flare only as much gas as that flare has capacity to destroy, and applying to DEM for a comprehensive Title V permit covering all operations and facilities at the Landfill;
7. Order Defendants to take any appropriate action to remedy, mitigate, and offset the impacts of its violations of the CAA on human health and the environment;
8. Order Defendants to pay civil penalties of up to \$37,500 per violation per day, consistent with the CAA (42 U.S.C. § 7413(b), 7413(e), and 7604(a); 40 C.F.R. §§ 19.2 and 19.4 (2008));
9. Award CLF its reasonable costs and attorneys' fees; and
10. Grant such other relief as the Court deems just and proper.

VII. NO PRIOR LAWSUITS

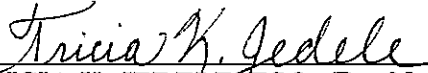
CLF has filed no prior related lawsuits against Defendants seeking redress for these violations under the Clean Air Act.

IX. NO JURY TRIAL DEMAND

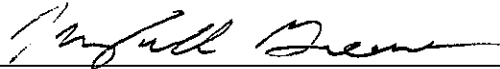
Consistent with their rights under the Clean Air Act to bring a citizen suit, CLF does not seek a jury trial.

Dated: December 16, 2013

Respectfully submitted,



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