

July 18, 2013

Via Certified First Class Mail

Randall D. Holmes, President & CEO
Broadrock Gas Services, LLC
120 White Plains Road
Tarrytown, NY 10591

Randall D. Holmes, President & CEO
Rhode Island LFG Genco, LLC
120 White Plains Road
Tarrytown, NY 10591

Michael O'Connell, Executive Director
R.I. Resource Recovery Corp.
65 Shun Pike
Johnston, RI 02919

RE: The Conservation Law Foundation's notice of intent to sue Broadrock Gas Services, LLC, Rhode Island LFG Genco, LLC, and Rhode Island Resource Recovery Corporation for violations of the Clean Air Act

Dear Mr. Holmes and Mr. O'Connell:

Significant quantities of harmful landfill gas have been escaping from Rhode Island's Central Landfill for years. This gas poses risks to human health, causes foul odors in areas surrounding the Landfill, and contributes to climate change. Gas escapes from the Landfill because of failures in the operation and maintenance of the Landfill's gas collection and control system. These failures are traceable to the lack of comprehensive management of all entities and facilities responsible for proper capture and control of landfill gas.

In an attempt to remedy these failures, the Conservation Law Foundation ("CLF") now submits this letter pursuant to section 304 of the Clean Air Act ("CAA") as notice of our intent to file a citizen suit against Broadrock Gas Services, LLC ("Broadrock"), Rhode Island LFG Genco, LLC ("Genco"), and Rhode Island Resource Recovery Corporation ("RIRRC") for violations of the CAA. *See* CAA § 304, 42 U.S.C. § 7604; *see also* 40 CFR § 54. We intend to bring the following claims:

- Broadrock and Genco have violated emission standards established by 40 CFR § 60, Subpart WWW, by failing to collect landfill gas adequately at the Landfill. 40 CFR §§ 60.752(b)(2)(ii), 60.753(a) & 60.759(b)(2). RIRRC is also legally responsible for noncompliance with these standards.



- Broadrock and Genco have violated emission standards established by Subpart WWW by venting raw, untreated landfill gas directly to the atmosphere. 40 CFR §§ 60.752(b)(2)(iii) & 60.753(e). RIRRC is also legally responsible for noncompliance with these standards.
- Broadrock and Genco have exceeded operational standards established by Subpart WWW by causing hundreds of readings of excess surface methane and wellhead oxygen at the Landfill. 40 CFR §§ 60.753(c) & (d). RIRRC is also legally responsible for noncompliance with these standards.
- RIRRC has been operating the Landfill without an operating permit since 1997 in violation of Title V of the CAA. CAA § 502, 42 U.S.C. § 7661a.

Under the CAA, citizens can bring suit to enjoin violations of an emissions standard or limitation and can seek redress and civil penalties for such violations. CAA § 304(a), 42 U.S.C. § 7604(a). CLF intends to file suit any time after sixty (60) days following the postmarked date of this letter to enjoin the violations described in this notice, to ensure future compliance, to apply civil penalties for past noncompliance, to recover attorneys' fees and costs of litigation, and to obtain any other appropriate relief. CAA § 304(b)(1), 42 U.S.C. § 7604(b)(1).

This notice contains several sections. First, it identifies CLF in more detail. Then it provides background for CLF's citizen suit, outlining conditions at the Landfill. These conditions include both pervasive surface methane exceedances showing that landfill gas is escaping and entering the air and the unlawful operation of the Landfill for 16 years without a required Title V operating permit. Next, the notice sets forth the legal and factual bases for CAA violations that have occurred and continue to occur at the Landfill, pointing to the law that governs Title V operating permits, the emissions standards that govern gas collection and control at municipal solid waste landfills, and specific data showing how these standards have been violated. Finally, the notice reiterates that CLF intends to sue to remedy all the violations identified herein.

Identification of Plaintiff

Founded in 1966, CLF is a nonprofit, member-supported organization that operates advocacy centers in Providence, Rhode Island; Boston, Massachusetts; Concord, New Hampshire; Portland, Maine; and Montpelier, Vermont. CLF's corporate headquarters is located at 62 Summer Street, Boston, MA 02110 and its Rhode Island office is located at 55 Dorrance Street, Providence, RI 02903. CLF protects New England's environment for the benefit of all people. CLF has members in each of the New England states and works with its membership and other environmental and



community-based organizations and individuals to ensure that the region's dirtiest polluters maintain compliance with applicable laws.

CLF will file suit on behalf of itself and its members living in Rhode Island and Massachusetts and within the vicinity of the Landfill, who are harmed by Broadrock, Genco, and RIRRC's longstanding failure to comply with the CAA's permitting requirements and emission standards.

Background

Abundant data demonstrate that RIRRC, Broadrock, and Genco are not adequately collecting landfill gas, partly because many of its gas collectors are submerged in water. Fugitive landfill gas threatens public health, disrupts the quality of life for many living near and around the Landfill, and contributes to climate change.

Surface methane concentrations at the Landfill regularly exceed the regulatory standard of 500 ppm above background. In 2011, an independent review by SCS Engineers found 93 exceedances over three days of monitoring. 49 of these remained after 10 days; 33 remained after 20 days; and 35 existed after 30 days. More recent monitoring has confirmed that methane exceedances continue to occur at the Landfill – not counting rechecks, there were 23 in the third quarter of 2012, 13 in the fourth quarter of 2012, and 26 in the first quarter of 2013. These exceedances are generally not close calls – in January 2012, one site showed methane at 54,100 parts per million above background, over one hundred times the regulatory standard of 500. Through the rest of 2012, there were several other measurements of surface methane over 10,000 parts per million above background: 13,927 (January 2012), 25,750 (May 2012), 10,946 (May 2012), 28,700 (August 2012), 10,700 (August 2012), 10,600 (August 2012), 34,100 (August 2012), and 72,900 (October 2012). The Solid Waste Association of North America says that “It is unusual to have a methane concentration of 500 ppm or greater at the surface of a landfill” and that “Any instantaneous reading above 100 to 200 ppm ... should be cause for action.”¹ Methane exceedances have been concentrated along the Landfill's south slope, particularly near the border of Phases IV and V.

Surface methane emissions above the regulatory limit show that there are repeated, significant fugitive gas emissions occurring at the Landfill. Methane is the primary component of landfill gas. It is also a greenhouse gas that is twenty-five to seventy-two times more potent than carbon dioxide in its heat trapping capacity depending on whether it is compared in a 100-year or 20-year

¹ Solid Waste Association of North America, “Landfill Gas Operation and Maintenance Manual of Practice,” p. 9-26 (1997).

time frame.² Landfill gas also usually contains significant volumes of volatile organic compounds (VOCs) that may be carcinogenic or otherwise hazardous.³ And landfill gas usually contains hydrogen sulfide, which even in minute concentrations causes not only respiratory problems in vulnerable populations but also significant nuisance odors – a problem long associated with the Landfill.⁴ Rotten-egg odors near the Landfill demonstrate that hydrogen sulfide migrates off-site. Both elevated methane levels at the Landfill and off-site hydrogen sulfide migrations are symptoms of an inadequate landfill gas collection system. Sounding data from vertical gas collector wells confirm that many collectors are partly or completely submerged in water, reducing or completely eliminating gas collection. The result is that landfill gas generated from the decomposition of solid waste is not collected at a sufficient rate from all required areas of the Landfill; instead, that gas is emitted from the surface of the Landfill, endangering human health, interfering with the quality of life for many living near the Landfill, and contributing to climate change on a daily basis.

Inadequate gas collection and fugitive emissions at the Landfill occur in part because the Landfill lacks a comprehensive Title V operating permit. As the SCS Report notes, “the Landfill and LFG collection system are a single integral system.” The collection system is likewise integrated with control devices including flares and gas-to-energy facilities. Even when the collection system is working – which it presently is not – the control devices must also work cohesively to destroy rather than emit raw landfill gas. A single Title V permit covering the Landfill, the gas collection system, and the control devices – including the facilities that destroy the gas by converting it to electricity – is required by law, because these elements together comprise the “major source” that is the Landfill.⁵

RIRRC was required to apply for a Title V permit in 1997. It did not do so until 2000. It revised its application later in 2000 and filed a small packet of supplemental materials with the Rhode Island Department of Environmental Management in 2005. None of these materials included the

² See The Conservation Law Foundation, “Into Thin Air,” p. 12 (2012), *available at* http://www.clf.org/static/natural-gas-leaks/WhitePaper_Final_lowres.pdf.

³ See United States Environmental Protection Agency, “An Introduction to Indoor Air Quality (IAQ): Volatile Organic Compounds (VOCs)” (2012), *available at* <http://www.epa.gov/iaq/voc.html>.

⁴ See United States Environmental Protection Agency, “Toxicological Review of Hydrogen Sulfide” (2003), *available at* <http://www.epa.gov/iris/toxreviews/0061tr.pdf>.

⁵ Even though the Landfill is a single major source, Broadrock wrongly has its own Title V operating permit that applies solely to the gas-to-energy facilities.

gas-to-energy facilities that are necessary as control devices for destroying landfill gas. And no permit has ever been issued. RIRRC has therefore been operating without a permit in violation of the CAA for 16 years.

Only if the Landfill is managed and regulated comprehensively as a single entity will it adequately capture and control landfill gas – and comply with the CAA. An appropriate Title V permit will ensure such comprehensive regulation.

Two new items have come to light in the past week. First, on information and belief, Broadrock has been venting raw landfill gas directly to the atmosphere; this practice is not only an environmental hazard but also a plain violation of the CAA. Second, the recent explosion at Broadrock’s Caterpillar plant further highlights the hazards of gas-system mismanagement at the Landfill.

Legal Analysis

Broadrock and Genco have violated the CAA by operating the Landfill’s gas collection and control system in violation of the Standards of Performance for Municipal Solid Waste Landfills set forth in 40 CFR part 60, subpart WWW. Broadrock and Genco have also violated the CAA by venting raw landfill gas directly to the atmosphere in violation of Subpart WWW. RIRRC has violated the CAA by operating the Landfill without a required Title V permit, and it is also legally responsible for violations of the Standards of Performance for Municipal Solid Waste Landfills set forth in 40 CFR part 60, subpart WWW.

Broadrock, Genco, and RIRRC have failed to collect landfill gas adequately

CAA § 111 requires EPA to establish Federal standards of performance for any category of stationary sources that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” CAA § 111(b), 42 U.S.C. § 7411(b). Under its § 111 authority, EPA has issued standards of performance for municipal solid waste landfills at 40 CFR part 60, subpart WWW. *See* 61 F.R. 9905, 40 CFR § 60.750-60.759.

Subpart WWW sets emission standards requiring 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 (i) 5 years or more if active ... ; (3) Collect gas at a sufficient extraction rate; (4) Be designed to minimize off-site migration of subsurface gas.” 40 CFR § 60.752(b)(2)(ii). Subpart WWW also sets operational standards, which include the repeated requirement that an owner or operator “shall: (a) Operate the collection system such that



gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for (1) 5 years or more if active.” 40 CFR § 60.753(a). And Subpart WWW sets specifications for gas collection systems, including a requirement that an owner or operator is responsible for ensuring that “vertical wells shall ... address the occurrence of water within the landfill.” 40 CFR § 60.759(b)(2).

Broadrock and Genco own and operate the Landfill’s gas collection system; RIRRC owns and operates the Landfill itself. All three are owners and operators responsible for compliance with Subpart WWW, including proper management and maintenance of the gas collection system. Surface and wellhead monitoring data from the Landfill show that the gas collection system has not collected gas from each required area of the Landfill, that gas is not being collected at a sufficient extraction rate, and that off-site migration of subsurface gas is occurring at unacceptable levels.

The following analysis contains representative monitoring data from 2011 and 2012 that support CLF’s claims; these claims, however, are not limited to the time frame established by the specific data referenced here.

Surface monitoring in third quarter 2012 showed 23 sites with methane exceedances. These exceedances were concentrated in a particular area: Exceedances were measured at sites tagged 152, 155, 167, 263, 264, 270, 274, 279, 281, 372, 376, 377, and 453 on monitoring route 2. These tags are all located on the Landfill’s south slope along the border between Phases IV and V.

Wellhead monitoring from July 1, 2012 to December 31, 2012 showed 145 collectors with oxygen exceedances. These exceedances often recurred over multiple monitoring dates. For example, from 2011 to 2012, vertical well DW-13 showed the following values: 20.7% (Oct. 11, 2011, SCS Report), 21.5% (Nov. 9, 2011, SCS Report), 19.5% (Nov. 23, 2011, SCS Report), 16.5% (Apr. 2, 2012, RIRRC Report), 19.4% (Apr. 2, 2012, RIRRC Report), 4.4% (Nov. 20, 2012, RIRRC RIRRC Report), 20.4% (Dec. 17, 2012, RIRRC Report), 13.1% (Dec. 17, 2012, RIRRC Report). All but one of these data points are significant exceedances of the NSPS standard of 5% wellhead oxygen. Collector DW-13 is located on the Landfill’s south slope near the border between Phases IV and V.

The SCS Report states on page 24 that the “Presence of oxygen in collectors is a general indication of over-pulling and/or under-performing collectors (i.e. watered-in).” Well-sounding data from the SCS Report show that at least 41 collectors were partly watered in, and 30 of these were at least 50% watered in. These data also confirm that DW-13 was 134% watered in in November 2011.



CLF has found no indication that DW-13 was dewatered at any point leading up to the 2012 wellhead oxygen exceedances in DW-13 and the surface methane exceedances in the area.

To sum up, well-flooding, oxygen exceedances, and methane exceedances are all common, repeated occurrences at the Landfill, especially on the Landfill's south slope along the border of Phases IV and V.

Collectors with elevated oxygen levels are not full of landfill gas. Collectors that are watered in cannot collect landfill gas. The Landfill's oxygen and well-sounding data therefore show that the landfill gas collection system is not collecting gas from the south slope, Phase IV/V area of the Landfill at a sufficient extraction rate as required by 40 CFR §§ 60.752(b)(2)(ii) & 60.753(a).

Wellhead monitoring showing elevated oxygen levels can indicate that wells are watered in. Well-sounding data here have confirmed that collectors are, in fact, watered in. The Landfill's oxygen and well-sounding data therefore show that the gas collection system is not addressing the occurrence of water within the Landfill as required by 40 CFR § 60.759.

Surface methane exceedances indicate that landfill gas is not being collected adequately but is instead escaping to the atmosphere. The Landfill's methane data therefore show that the gas collection system is not collecting gas from the south slope, Phase IV/V area of the Landfill at a sufficient rate as required by 40 CFR § 60.752(b)(2)(ii) & 60.753(a).

Landfill gas that escapes to the atmosphere is likely to migrate off-site. The Landfill's methane data therefore show that the gas collection system is not minimizing off-site migration as required by the same section. 40 CFR § 60.752(b)(2)(ii). Persistent community reports of rotten-egg odors emanating from the Landfill further show that the gas collection system is not minimizing off-site migration of landfill gas. Landfill gas generally contains not only methane but also VOCs and hydrogen sulfide – a toxic air pollutant that produces a rotten-egg smell.

CLF intends to rely on all available surface emissions monitoring data, wellhead monitoring data, and well-sounding data, not just the data enumerated above, to prove that Broadrock, Genco, and RIRRC have been in continuous violation of Subpart WWW from at least January 2011 to present and that such violations are expected to continue.

Subpart WWW is explicitly labeled “standards of performance for municipal solid waste landfills.” A “standard of performance” is an “emission standard or limitation,” CAA § 304(f)(1), 42 U.S.C. § 7604(f)(1), subject to citizen suit enforcement under the CAA. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1). Broadrock and Genco have failed to collect landfill gas from all required areas of the

Landfill, have failed to collect landfill gas at a sufficient extraction rate, have failed to address watered-in gas collectors, and have failed to minimize off-site migration of fugitive landfill gas, all in violation of Subpart WWW's standards of performance for municipal solid waste landfills. RIRRC is the Landfill's owner and is therefore legally responsible for these failures. 40 CFR §§ 60.752, 60.753 & 60.759. Each of these failures constitutes a violation of emission standards or limitations subject to suit under the CAA. Accordingly, CLF will seek injunctive and other relief to remedy the Landfill's systemic violations of Subpart WWW.

Broadrock, Genco, and RIRRC are responsible for venting raw landfill gas to the atmosphere

Subpart WWW sets emission standards providing that an "owner or operator shall ... Route 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." 40 CFR § 60.752(b)(2)(iii). Paragraph (b)(2)(iii)(A) provides for flaring of landfill gas; (B) provides for "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"; and (C) provides for "a treatment system that processes the collected gas for subsequent sale or use" so long as "[a]ll emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii) (A) or (B)." Subpart WWW further provides that an owner or operator must "Operate the system such that all collected gases are vented to a control system designed and operated in compliance with § 60.752(b)(2)(iii)." 40 CFR § 60.753(e). Together, these provisions make it abundantly clear that landfill gas must be burned or have its non-methane organic compounds otherwise significantly reduced before it is vented to the atmosphere. Raw landfill gas cannot be vented to the atmosphere.

On information and belief, beginning in approximately May 2013, Broadrock and Genco have vented raw landfill gas directly to the atmosphere without burning the gas in a flare or reducing its non-methane organic compound content by 98%. Emitting raw landfill gas from a point source is an egregious violation of Subpart WWW for which Broadrock, Genco, and RIRRC are all responsible.⁶

⁶ Broadrock's improper Title V permit for its gas-to-energy facilities likewise provides in paragraph (A)(7) that operation of the facilities "shall not result in the release of raw landfill gas to the atmosphere" and that "Excess landfill gas, not used as a fuel in an engine, must be flared." Although a comprehensive Title V permit is necessary for the Landfill as a whole, these provisions of Broadrock's improper permit nevertheless confirm Broadrock's responsibility for compliance



Again, Subpart WWW establishes emission standards or limitations subject to citizen suit enforcement under the CAA. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1). Broadrock and Genco have vented raw landfill gas directly to the atmosphere in violation of Subpart WWW’s standards of performance for municipal solid waste landfills. RIRRC is the Landfill’s owner and therefore legally responsible for this violation. 40 CFR §§ 60.752 & 60.753. Accordingly, CLF will seek injunctive and other relief to remedy this violation of the CAA.

Broadrock, Genco, and RIRRC are responsible for excess surface methane and wellhead oxygen

Subpart WWW sets operational standards providing that an “owner or operator ... shall: ... (c) operate each interior wellhead in the collection system with a landfill gas temperature less than 55 ° C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent ... [and] (d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill.” 40 CFR § 60.753.

Monitoring at the landfill required by 40 CFR § 60.756 has revealed hundreds of methane and oxygen exceedences since 2011. CLF has already referenced in this notice 155 methane exceedences spanning 2011, 2012, and 2013 (with gaps in the data for the first and second quarters of 2012 and the second quarter of 2013). Also referenced above are 145 oxygen exceedences in the second half of 2012 alone. Methane and oxygen exceedences have occurred repeatedly and are likely to repeat.

Broadrock and Genco have operated the gas collection system in violation of Subpart WWW by causing hundreds of readings of excess surface methane and wellhead oxygen at the Landfill. 40 CFR §§ 60.753(c) & (d). Broadrock and Genco also have not adequately responded to these exceedences. Accordingly, Broadrock and Genco have violated an emission standard or limitation subject to citizen suit enforcement under the CAA. CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1). RIRRC is the Landfill’s owner and therefore legally responsible for these violations. 40 CFR § 60.753. Accordingly, CLF will seek injunctive and other relief to remedy these violation of the CAA.

with the provisions of Subpart WWW prohibiting Landfill owners and operators from venting raw landfill gas directly to the atmosphere.

RIRRC has operated the Landfill without a required Title V permit for 16 years.

Congress's 1990 Amendments to the CAA created the Title V permit program and made it illegal "to operate...a major source...except in compliance with a permit issued by a permitting authority." CAA § 502, 42 U.S.C. § 7661a. Title V requires each state to submit for EPA approval a state operating-permit program or else face severe sanctions. CAA § 502(d)(1)-(2), 42 U.S.C. § 7661a(d)(1)-(2). Rhode Island Air Pollution Control Regulation No. 29 was submitted to the EPA for approval by DEM on June 20, 1995, and interim approval became effective on July 5, 1996. For affected sources existing in Rhode Island prior to this effective date, EPA has relied on section 503(c) and determined that these existing major sources had to apply for a Title V operating permits by July 15, 1997. 66 FR 49839, 49840, n. 1 (October 1, 2001).

The Landfill is a major source. Section 501 of the CAA defines "major source" as "any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is ... (B) A major stationary source as defined in section 7602 of this title." 42 U.S.C. § 7661(2). Section 7602 defines "major stationary source" as "any stationary facility or source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any air pollutant." CAA § 302(j), 42 U.S.C. § 7602(j). The Landfill has the potential to emit 293.0 tons of carbon monoxide per year, 171.5 tons of VOCs per year, and 913.4 tons of sulfur dioxide per year – all well in excess of the 100-ton standard.⁷ Because the gas-to-energy facilities are located on land contiguous to the Landfill and owned by RIRRC, and because these facilities are under the common control of RIRRC, the "major source" subject to Title V permitting requirements includes not only the Landfill but also the gas-to-energy facilities.

As an owner and operator of a major source, RIRRC was required to apply to DEM for a Title V operating permit. RIRRC submitted an untimely and incomplete application for a Title V permit in 2000, long after the July 15, 1997 date established by EPA's Title V regulations. 40 CFR §70.5(a)(1). Since that time, RIRRC has consistently operated the Landfill but has never obtained a Title V permit to operate the Landfill. RIRRC is in continuous, daily violation of the CAA by operating without a Title V permit.

The citizen suit provision of the CAA provides that any person may bring a civil action in federal court "against any person...who is alleged to have violated...or to be in violation of an emission

⁷ These numbers come from DEM's 2010 "Preliminary Determination for a Major Modification to the Rhode Island Resource Recovery Corporation Facility" prepared in conjunction with four major source permits issued to RIRRC for construction of Phase VI of the Landfill (*available at* <http://www.dem.ri.gov/programs/benviron/air/pdf/rirrcpn.pdf>).



standard or limitation under this chapter.” CAA § 304(a)(1), 42 U.S.C. § 7604(a)(1). An “emission standard or limitation” is defined as including “any requirement to obtain a permit as a condition of operations.” CAA § 304(f)(4), 42 U.S.C. §7604(f)(4). The plain meaning of this provision is to grant authority to citizens to sue a “major source” for operating without first obtaining a Title V operating permit. Accordingly, CLF will seek injunctive and other relief requiring RIRRC to file a complete Title V permit application with DEM and to obtain a Title V operating permit as a condition of operating the Landfill.

Notice

CLF now gives notice to Broadrock, Genco, and RIRRC that it intends to sue for the serious, repeated, and ongoing violations of the CAA identified and detailed above. CLF reserves all rights to amend this notice and identify additional claims as further facts are developed

Sincerely,

A handwritten signature in black ink, appearing to read "Tricia K. Jedele".

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cc:

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