



COLORADO

Department of Public Health & Environment

AIR POLLUTION CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

CASE NO. 2019-153

AIRS NO. 107-0057

IN THE MATTER OF TWIN LANDFILL CORPORATION

The Colorado Department of Public Health and Environment ("CDPHE"), through the Air Pollution Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under § 25-7-115(3)(b), C.R.S. of the Colorado Air Pollution and Prevention and Control Act, §§ 25-7-101 to 1309, C.R.S. ("the Act"), and its implementing regulations, 5 C.C.R. § 1001, *et seq* ("the Regulations") with the express consent of Twin Landfill Corporation ("Twin Landfill"). The Division and Twin Landfill may be referred to collectively as "the Parties."

I. STATEMENT OF PURPOSE

The mutual objectives of the Parties in entering into this Consent Order are:

1. To establish compliance requirements and criteria for the continued operation of Twin Landfill's municipal solid waste landfill known as Milner Landfill located 1.2 miles south of Milner on County Road 205 in Routt County, Colorado ("Facility"); and
2. To resolve the violations of the Act cited herein and in a Compliance Advisory for Case No. 2019-153 issued to Twin Landfill by the Division on September 11, 2019.

II. DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS

Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with § 25-7-115(3), C.R.S., the Division has made the following determinations regarding violations of regulatory, statutory, and/or permit requirements associated with the Facility.



3. At all times relevant to the violations cited herein, Twin Landfill was a Corporation in good standing and registered to conduct business in the State of Colorado.

4. Twin Landfill owns and operates the Facility.

5. On May 9, 2019, Twin Landfill submitted a Tier II testing protocol to the Division for review and approval with respect to planned testing to be performed at the Facility in June, 2019. The testing protocol was submitted in accordance with the requirements of the Colorado Air Pollution Control Division Compliance Test Manual and more than thirty (30) calendar days prior to the scheduled testing. However, based on previous applicability determinations by the United States Environmental Protection Agency (“EPA”), the Division disapproved the protocol on June 7, 2019. Previous determinations indicated that Twin Landfill was required to install a gas collection and control system (“GCCS”) by November 10, 2020, and additional Tier II testing would not exempt Twin Landfill from this requirement.

6. On May 24, 2019, Dana Podell, of the Division, conducted an inspection, pursuant to the Division’s authority under § 25-7-111(2)(c), C.R.S., at the Facility for the purpose of determining compliance with the Colorado Operating Permit Number 09OPRO329 issued to Twin Landfill on August 1, 2016 (“Permit Number 09OPRO329”), 40 C.F.R. Part 60, Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills (“Subpart WWW”), the Act, and the Regulations. Based on the Division’s inspection, and a review of records related to the Facility, the Division issued a Compliance Advisory to Twin Landfill on September 11, 2019.

7. From June 17 through 27, 2019, Twin Landfill’s contractor performed Tier II testing at the Facility pursuant to the protocol provided to the Division on May 9, 2019.

8. On September 6, 2019, Twin Landfill submitted to the Division a test report for the June 2019 Tier II sampling, which included a recalculation of the nonmethane organic compound (“NMOC”) emission rate.

9. On November 5, 2019, the Division and Twin Landfill met to discuss the issues identified in the Compliance Advisory. On December 3, 2019, the Division and Twin Landfill’s counsel met to discuss the issues identified in the advisory. The issue of Twin Landfill seeking an applicability determination from the EPA was first raised at this meeting, and also was the subject of subsequent correspondence between Twin Landfill and the Division.

10. On February 28, 2020, Twin Landfill submitted a GCCS design plan to the Division for the Facility.

11. On April 13, 2020, Twin Landfill submitted an applicability determination request to the EPA, Region 8, with respect to the Facility and its Subpart WWW requirements. On July 28, 2020, the EPA issued its determination. The EPA's determination is a case-specific application of Subpart WWW requirements and is not intended as, nor should it be construed as, a general regulatory interpretation. The EPA determined Twin Landfill may be permitted to establish valid Tier II test results before September 1, 2021, return to annual emission rate reporting based on those valid Tier II test results, and is not required to install a GCCS as of the July 28, 2020 determination.

12. Based on the EPA's July 28, 2020 determination, the Division accepted the May 9, 2019 test protocol and September 6, 2019 test results for the June 2019 Tier II testing conducted by Twin Landfill at the Facility.

13. Based upon a review of information including the Division's inspection, records related to the Facility, and the EPA's July 28, 2020 determination, the Division has determined the following:

- a. Pursuant to Permit Number 09OPRO329, Section II, Condition 2.4, Twin Landfill is subject to Subpart WWW. Twin Landfill failed to comply with the following Subpart WWW requirements:
 - i. Pursuant to Subpart WWW, § 60.754(a)(3)(iii), Twin Landfill is required to conduct a Tier II test every five years. Twin Landfill completed Tier II testing on May 9, 2013 and was required to retest by May 9, 2018. Twin Landfill failed to complete a Tier II test until June 27, 2019; and
 - ii. Pursuant to Subpart WWW, § 60.757(b), Twin Landfill is required to submit an NMOC emission rate report annually (by March 1st per Permit Number 09OPRO329). On February 28, 2019, Twin Landfill submitted an inaccurate 2019 NMOC emission rate report using expired Tier II test results rather than the default NMOC concentration. Twin Landfill failed to calculate a valid 2019 NMOC emission rate and failed to submit the results to the Division in a corrected 2019 NMOC emission rate report until August 31, 2020.

Twin Landfill failed to comply with applicable Subpart WWW testing and reporting requirements, as described above, violating Permit Number 09OPRO329, Section II, Condition 2.4, and Subpart WWW, §§ 60.754(a)(3)(iii) and 60.757(b).

- b. Pursuant to Permit Number 09OPRO329, Section II, Condition 3.4, Twin Landfill is subject to the Reasonably Available Control

Technology (“RACT”) requirements in AQCC Regulation No. 7 § V. Pursuant to AQCC Regulation No. 7 § V.A, no person shall dispose of volatile organic compounds by evaporation or spillage unless RACT is utilized. To satisfy RACT requirements, Twin Landfill must cover solidified waste within 24 hours. On March 29, 2018, Twin Landfill placed liquid waste in the solidification basin while the front end loader required to manage the waste was inoperable. Twin Landfill did not cover the waste until April 4, 2018. Therefore, Twin Landfill failed to apply RACT and violated Permit Number 09OPRO329, Section II, Condition 3.4, and AQCC Regulation No. 7 § V.A.

- c. Pursuant to Permit Number 09OPRO329, Section IV, Condition 22.e, and AQCC Regulation No. 3, Part A, §§ II.C.1.e and II.C.3.a, for each emission source subject to Air Pollutant Emission Notice (“APEN”) requirements, Twin Landfill is required to submit a revised APEN to renew the five-year APEN term no later than 30 days before the current APEN expires. The APEN for the solidification basin (AIRS Point 002) expired February 6, 2019, and a revised APEN was due no later than January 6, 2019. Twin Landfill failed to submit a revised APEN to renew the five-year term for the solidification basin, violating Permit Number 09OPRO329, Section IV, Condition 22.e, and AQCC Regulation No. 3, Part A, §§ II.C.1.e and II.C.3.a. On November 13, 2019, Twin Landfill submitted an APEN and permit cancellation request for the solidification basin.

14. The Division and Twin Landfill entered into settlement discussions for the violations as determined by the Division. The Parties reached a settlement that is detailed in this Consent Order.

III. ORDER and AGREEMENT

Based on the foregoing factual and legal determinations, pursuant to its authority under § 25-7-115, C.R.S., and as a result of the violations cited herein, the Division orders Twin Landfill to comply with all provisions of this Consent Order, including all requirements set forth below.

15. Twin Landfill agrees to the terms and conditions of this Consent Order. Twin Landfill agrees that this Consent Order constitutes an order issued pursuant to § 25-7-115, C.R.S., and is an enforceable requirement of Part 1 of the Act. Twin Landfill also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division to enforce this Consent Order or by Twin Landfill against the Division:

- a. the issuance of this Consent Order;
- b. the factual and legal determinations made by the Division herein;
and
- c. the Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.

16. Notwithstanding the above, Twin Landfill does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Twin Landfill pursuant to this Consent Order shall not constitute an admission of liability by Twin Landfill with respect to the condition of the Facility.

Compliance Requirements

17. Effective immediately, and without limitation, Twin Landfill must comply with the Act and the Regulations in the regulation and control of air pollutants from the Facility.

Administrative Penalty Requirements

18. Based upon the factors set forth in § 25-7-122, C.R.S., the Division has determined an administrative penalty in the amount of **Twelve Thousand Four Hundred Twenty-Five Dollars (\$12,425.00)** against Twin Landfill is appropriate and consistent with the Division's policies for violations of the Act and the Regulations cited in Section II of this Consent Order. Twin Landfill agrees to pay the sum of **\$12,425.00** in administrative penalties. Payment is due within thirty (30) calendar days of the effective date of this Consent Order by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of the Enforcement Unit Supervisor, Air Pollution Control Division, 4300 Cherry Creek Drive South, APCD-SS-B1, Denver, Colorado 80246-1530.

IV. SCOPE AND EFFECT OF CONSENT ORDER

19. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the violations cited herein. This Consent Order is final agency action. Twin Landfill agrees not to challenge the terms and conditions of this Consent Order in any proceeding before any administrative body or any judicial forum, whether by way of direct judicial review or collateral challenge.

20. This Consent Order shall be enforceable by either party in the same manner as if the Division had entered this Consent Order without agreement by Twin Landfill. The Parties agree that any violation of the provisions of this Consent Order

by Twin Landfill concerning the Act, or the Regulations, shall be a violation of a final order of the Division for the purposes of §§ 25-7-115, 121, and 122, C.R.S., and may result in the assessment of civil penalties consistent with § 25-7-115, C.R.S., per day for each day of such violation.

21. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.

22. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of any requirement under the Act, the Regulations, or any subsequent violation of any requirement of this Consent Order, the Act, or the Regulations.

23. Entering into this settlement shall not constitute an admission of violation of the air quality laws by Twin Landfill, nor shall the Division or any third party infer it to be such an admission by Twin Landfill in any administrative or judicial proceeding. Notwithstanding the foregoing or anything in this Consent Order to the contrary, the described violation will constitute part of Twin Landfill's compliance history for any purpose for which such history is relevant, including considering the violation described above in assessing a penalty for any subsequent violations, in accordance with the provisions of § 25-7-122, C.R.S., against Twin Landfill.

24. Twin Landfill shall comply with all applicable Federal, State, and/or local laws and regulations and shall obtain all necessary approvals or permits to conduct the investigation and remedial activities required by this Consent Order and perform its obligations required hereunder. The Division makes no representation with respect to approval and permits required by Federal, State, or local laws or regulations other than those specifically referred to herein.

25. Nothing herein shall be construed as prohibiting, altering, or in any way limiting the ability of the Division to seek any other remedies or sanctions available by virtue of Twin Landfill's violation of this Consent Order or of the statutes and regulations upon which this Consent Order is based, or for Twin Landfill's violation of any applicable provision of law.

V. LIMITATION RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

26. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the violations cited herein. This Consent Order does not grant any release of liability for any violations, regardless of when they occurred, that are not cited in this Consent Order. The Division reserves the right to bring any action it deems

necessary to enforce this Consent Order, including actions for penalties and/or injunctive relief.

27. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of this Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.

28. Twin Landfill reserves its rights and defenses regarding liability in any proceedings regarding the Facility other than proceedings to enforce this Consent Order.

29. Upon the effective date of this Consent Order, Twin Landfill releases and covenants not to sue the State of Colorado as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act or the Regulations specifically addressed herein.

30. Twin Landfill shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Twin Landfill, or those acting for or on behalf of Twin Landfill, including its officers, employees, agents, successors, representatives, contractors or consultants in carrying out activities pursuant to this Consent Order. Twin Landfill shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Twin Landfill in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents, or representatives.

31. The Division reserves the right to bring any action or to seek civil or administrative penalties for any past, present, or future violations of the Act and the Regulations, not specifically addressed herein. Further, the Division has the right to bring any action to enforce this Consent Order and to seek authorized penalties for any violation of this Consent Order.

VI. FORCE MAJEURE

32. Twin Landfill shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Twin Landfill, and which cannot be overcome by due diligence.

33. Unless otherwise provided in the Act or the Regulations, within seventy-

two (72) hours of the time that Twin Landfill knows or has reason to know of the occurrence of any event which Twin Landfill has reason to believe may prevent Twin Landfill from timely compliance with any requirement under this Consent Order, Twin Landfill shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Twin Landfill knows or has reason to know of the occurrence of such event, Twin Landfill shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.

34. The burden of proving that any delay was caused by a force majeure shall at all times rest with Twin Landfill. If the Division agrees that a force majeure has occurred, the Division will so notify Twin Landfill. The Division will also approve or disapprove of Twin Landfill's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Twin Landfill's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Twin Landfill. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Twin Landfill may file an objection.

35. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Twin Landfill shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

VII. DISPUTE RESOLUTION

36. If the Division determines that additional requirements are necessary, that a violation of this Consent Order has occurred, that a force majeure has not occurred, or that the actions taken by Twin Landfill to mitigate the delay caused by a force majeure are inadequate, the Division shall provide a written explanation of its determination to Twin Landfill. Within fifteen (15) calendar days of receipt of the Division's determination, Twin Landfill shall:

- a. Submit a notice of acceptance of the determination; or
- b. Submit a notice of dispute of the determination.

If Twin Landfill fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

37. If Twin Landfill files any notice of dispute, the notice shall specify the particular matters in the Division's determination that Twin Landfill seeks to dispute, and the basis for the dispute. Matters not identified in the notice of dispute shall be deemed accepted by Twin Landfill. The Division and Twin Landfill shall have thirty (30) calendar days from the receipt by the Division of the notification of dispute to

reach an agreement. If agreement cannot be reached on all issues within this thirty (30) day period, the Division shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act and the Colorado Administrative Procedure Act, Article 4, Title 24, Colorado Revised Statutes.

VIII. NOTICES

38. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division: Enforcement Unit Supervisor
Colorado Department of Public Health and Environment
APCD-SS-B1-1400
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

For Twin Landfill: Marlin Mullet, Manager
Twin Landfill Corporation
P.O. Box 774362
20650 Routt County Road 205
Steamboat Springs, CO 80487

IX. OBLIGATIONS UNAFFECTED BY BANKRUPTCY

39. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Twin Landfill of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Twin Landfill agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Twin Landfill and the Facility to achieve and maintain compliance with State law.

X. MODIFICATIONS

40. This Consent Order may be modified only upon mutual written agreement of the Parties.

XI. BINDING EFFECT, AUTHORIZATION TO SIGN AND EFFECTIVE DATE

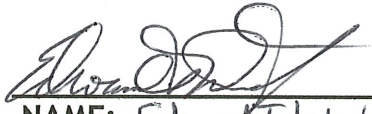
41. This Consent Order is binding upon the Parties to this Consent Order and their corporate subsidiaries or parents, their officers, directors, agents, attorneys, employees, contractors, successors in interest, affiliates and assigns. The

undersigned warrant that they are authorized to bind legally their respective principals to this Consent Order, and that the Parties have the authority to enter into this Consent Order. This Consent Order shall be effective upon the date signed by the last party. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By:  Date: 10/20/20
Shannon McMillan
Compliance and Enforcement Program Manager
Air Pollution Control Division

TWIN LANDFILL CORPORATION

By:  Date: 9 October 2020
NAME: Edward T. Winters
TITLE: Regulatory Compliance Manager

cc: Shannon McMillan, APCD
Paul Carr, APCD
Ben Cappa, APCD
Tom Lovell, APCD
Michael Stovern, US EPA
Dana Podell, APCD
Beth Pilson, APCD
Heather Wuollet, APCD
Tom Roan, Office of Attorney General
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