

DOW-21-3-0007

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DIVISION OF ENFORCEMENT  
CASE NO. DOW-21-3-0007

IN RE: Lexington Fayette Urban County Government Landfill  
4216 Hedger Lane  
Lexington, Kentucky 40516  
Fayette County  
AI No. 1068  
Activity ID No. ERF20210001

**AGREED ORDER**

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**WHEREAS**, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter “Cabinet”) and the Lexington Fayette Urban County Government (LFUCG) Landfill (hereinafter “Responsible Party”) state:

**STATEMENTS OF FACT**

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. The Responsible Party owns and operates the LFUCG Landfill (hereinafter “facility”) including a residential (closed) section, a construction and demolition debris section, and a composting operation that is located in Fayette County at 4216 Hedger Lane, Lexington, Kentucky 40516.
3. The Responsible Party holds Kentucky Pollutant Discharge Elimination System (hereinafter “KPDES”) Permit No. KY0092100 issued by the Cabinet’s Division of Water (hereinafter “DOW”), for the facility described in paragraph two (2).
4. Authorized representatives of the Cabinet identified alleged violations of KRS Chapter 224 and the regulations promulgated pursuant thereto at the facility identified in paragraph

two (2) above, and issued Notices of Violation (hereinafter "NOV"). The Responsible Party was issued NOVs on the following dates: February 17, 2020; April 6, 2020; May 29, 2020; October 16, 2020; December 11, 2020; January 8, 2021; and, July 12, 2021. The NOVs are attached to this Agreed Order as 'Exhibit A'.

5. Representatives of the Responsible Party participated in an administrative phone conference with the Cabinet's Division of Enforcement (hereinafter "DENF") on April 27, 2021, and agreed to the entry of this Agreed Order to resolve the violations. The Responsible Party admitted to the allegations contained in the Notices of Violation referenced in paragraph four (4), and accepts civil liability for the alleged violations of KRS Chapter 224 and the regulations promulgated pursuant thereto.

**NOW THEREFORE**, in the interest of settling all civil claims and controversies involving the violations described above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

**REMEDIAL MEASURES**

6. Within thirty (30) days of the execution of this Agreed Order, the Responsible Party shall submit to the Cabinet for review and acceptance, a Corrective Action Plan (hereinafter "CAP").

a.) The CAP shall include, but not be limited to the following:

- i. An explanation of why the cited violations occurred;
- ii. A report of completed corrective actions;
- iii. A list of proposed corrective actions to be completed to avoid future non-compliance, including but not limited to, actions taken to come into compliance with KPDES Permit No. KY0092100, along with any

actions taken or planned to be taken to address DMR exceedance violations;

- iv. A schedule of implementation for proposed corrective action items; and
  - v. A final compliance date for each proposed corrective action in the plan.
- b.) Upon review of the CAP, the Cabinet may, in whole or in part, (1) accept or (2) provide comments to the Responsible Party identifying the deficiencies. Upon receipt of Cabinet comments, the Responsible Party shall have thirty (30) days to revise and resubmit the CAP for review and acceptance. Upon resubmittal, the Cabinet may, in whole or in part, (1) accept or (2) disapprove and provide comments to the Responsible Party identifying the deficiencies. Upon such resubmittal, if the CAP is disapproved, the Cabinet may deem the Responsible Party to be out of compliance with this Agreed Order for failure to timely submit the CAP.
- c.) The Responsible Party may request an amendment of the accepted CAP by writing the Director of the Division of Enforcement at 300 Sower Boulevard, 3<sup>rd</sup> Floor, Frankfort, Kentucky, 40601 and stating the reasons for the request. If granted, the amended CAP shall not affect any provision of this Agreed Order unless expressly provided in the amended CAP.
- d.) Upon Cabinet acceptance of all or any part of the CAP, the amended CAP or any accepted part thereof (provided that the accepted part is not dependent upon implementation of any part not yet accepted), shall be deemed incorporated into this Agreed Order as an enforceable requirement of this Agreed Order and implemented at its facilities. This does not require an amendment request

pursuant to paragraph twenty (20) of this Agreed Order.

- e.) The Cabinet approved CAP shall specify a final compliance date by which compliance with the terms and conditions of the permit is achieved.

7. At the end of the first calendar quarter following the execution of this Agreed Order and through its termination, the Responsible Party shall submit quarterly progress reports to the Cabinet for each three (3) month period no later than the thirtieth (30<sup>th</sup>) day of the month following the end of the quarter that describes its progress in complying with this Agreed Order. The quarterly report shall include, at a minimum:

- a.) A detailed description of projects and activities conducted and completed during the past reporting period to comply with the requirements of this Agreed Order.
- b.) The anticipated projects and activities that will be performed in the upcoming three month period to comply with the requirements of this Agreed Order.
- c.) Any additional information necessary to demonstrate that the Responsible Party is adequately implementing its CAP.

8. By the date specified in the CAP, the Responsible Party shall be in compliance with KRS 224, and the regulations promulgated pursuant thereto, KY0092100, and this Agreed Order.

9. All submittals required by the terms of this Agreed Order shall be sent to: Division of Enforcement, Attention: Director, 300 Sower Blvd., Frankfort, KY 40601.

10. So long as the Responsible party is in compliance with the Terms and Conditions of this Agreed Order, the Cabinet's Division of Enforcement agrees to hold in abeyance any formal action for numeric permit violations of Total Suspended Solids, Total Recoverable Iron, or Total

Ammonia Nitrogen for KPDES permit KY0092100 during the period in which the responsible party is implementing the Cabinet approved CAP. However, in the event that such numeric permit parameter violation results in immediate and irreparable harm to human health or the environment, the Cabinet may issue an Abate and Alleviate Order or seek a temporary injunction from a court. Should the Responsible Party fail to comply with the terms and conditions of this Agreed Order or if conditions warrant immediate relief as specified above, the Cabinet may seek formal enforcement action that would have otherwise been held in abeyance.

**CIVIL & STIPULATED PENALTIES**

11. The Responsible Party shall pay a civil penalty in the amount of six thousand dollars (\$6,000) for the violations listed above. The civil penalty shall be paid in one (1) payment of six thousand dollars (\$6,000). The payment shall be due within thirty (30) days of execution of this Agreed Order.

12. The Responsible Party may be assessed a stipulated penalty in an amount not to exceed three thousand dollars (\$3,000) per day to the Cabinet, for failure to timely submit the CAP as described in paragraph six (6) above.

13. The Responsible Party may be assessed a stipulated penalty in an amount not to exceed two thousand dollars (\$2,000) per day to the Cabinet, for failure to timely complete each action identified in the accepted CAP as described in paragraph six (6) above.

14. The Responsible Party may be assessed a stipulated penalty in an amount not to exceed one thousand dollars (\$1,000) per day to the Cabinet, for failure to timely submit the quarterly progress reports as described in paragraph seven (7) above.

15. Following the execution of this Agreed Order by the Cabinet's Secretary (or designee) until the completion of the CAP and for a 12 month period after that, the Cabinet may assess stipulated penalties up to one thousand dollars (\$1,000) for each instance where:

- a) The violation of the effluent limits for any Group I parameter (as defined by 40 CFR 123.45, Appendix A) which is more than 40% above the permitted limit at least twice within two consecutive quarters.
- b) The violation of the effluent limits for any Group II parameter (as defined by 40 CFR 123.45, Appendix A) which is more than 20% above the permitted limit at least twice within two consecutive quarters.
- c) The violation of the effluent limits for any parameter which is in violation of the permitted limit at least four (4) times within two consecutive quarters.

16. If the Cabinet determines that a stipulated penalty is due in accordance with paragraphs eleven through fourteen (11-14), it will send the Responsible Party a written notice, including the amount of the stipulated penalty. The Responsible Party shall pay the stipulated penalty within thirty (30) days of notice to the permittee at the address provided to the Cabinet. If the Responsible Party believes that a request for payment of a stipulated penalty is erroneous or contrary to law, it may request a hearing in accordance with KRS 224.10-420(2). This request for a hearing does not excuse timely payment of the stipulated penalty. If an order is entered pursuant to KRS 224.10-440 that excuses payment, the Cabinet will refund the payment to the Responsible Party. Failure to pay the stipulated penalty may be deemed an additional violation of this Agreed Order.

17. Payment of the civil penalty and stipulated penalties shall be by cashier's check, certified check, or money order, made payable to "Kentucky State Treasurer" and sent to the

attention of the Director, Division of Enforcement, Department for Environmental Protection, 300 Sower Boulevard, 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601; note "Case Number DOW 21-3-0007" on the instrument of payment. Payment may also be made electronically, if available, by accessing the Office of Administrative Hearings through its website found at <https://eec.ky.gov>.

**MISCELLANEOUS PROVISIONS**

18. This Agreed Order addresses only the violations specifically alleged above. Other than those matters resolved by entry of this Agreed Order nothing contained herein shall be construed to waive or to limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction and the Responsible Party reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary that is not inconsistent with this Agreed Order, including the right to order all necessary remedial measures, assess penalties for violations, or recover all response costs incurred, and the Responsible Party reserves its defenses thereto.

19. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to the Responsible Party. The Responsible Party reserves its defenses thereto, except that the Responsible Party shall not use this Agreed Order as a defense.

20. The Responsible Party waives its right to any hearing on the matters admitted herein. However, failure by the Responsible Party to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, and the regulations promulgated pursuant thereto.

21. The Agreed Order may not be amended except by a written order of the Cabinet's

Secretary or her designee. The Responsible Party may request an amendment by writing the Director of the Division of Enforcement at 300 Sower Blvd, 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

22. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that the Responsible Party's complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, the Responsible Party shall remain solely responsible for compliance with the terms of KRS Chapter 224, and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

23. The Responsible Party shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or not a transfer takes place, the Responsible Party shall remain fully responsible for payment of all civil penalties and response costs and for performance of all remedial measures identified in this Agreed Order.

24. The Cabinet agrees to allow the performance of the above-listed remedial measures and payment of civil penalties by the Responsible Party to satisfy the Responsible Party's obligations to the Cabinet generated by the violations described above.

25. The Cabinet and the Responsible Party agree that the remedial measures agreed to herein are facility-specific and designed to comply with the statutes and regulations cited herein.



This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other facility.

26. Compliance with this Agreed Order is not conditional on the receipt of any federal, state, or local funds.

27. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or her designee as evidenced by his signature thereon. If this Agreed Order contains any date by which the Responsible Party is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then the Responsible Party is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

#### **TERMINATION**

28. This Agreed Order shall terminate upon the Responsible Party's completion of all requirements described in this Agreed Order. The Responsible Party may submit a written request for termination to the Cabinet when it believes all requirements have been performed. The Cabinet reserves its right to enforce this Agreed Order, and the Responsible Party reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

**AGREED TO BY:**

Linda Gorton  
Linda Gorton - Mayor  
Lexington Fayette Urban County Government

12/21/2021  
Date

**APPROVAL RECOMMENDED BY:**

\_\_\_\_\_  
Amanda Lefevre, Deputy Commissioner  
Department for Environmental Protection  
Division of Enforcement

\_\_\_\_\_  
Date

\_\_\_\_\_  
Elizabeth U. Natter, Executive Director  
Office of Legal Services

\_\_\_\_\_  
Date

**ORDER**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this \_\_\_ day of \_\_\_\_\_, 20\_\_.

ENERGY AND ENVIRONMENT CABINET

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JOHN S. LYONS, DEPUTY SECRETARY  
OF THE ENERGY AND ENVIRONMENT CABINET

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Lexington Fayette Urban County Government  
ATTN: Nancy Albright - Commissioner  
200 East Main Street  
Lexington, Kentucky 40507

And mailed, messenger to:

Amanda Lefevre, Deputy Commissioner  
Division of Enforcement  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

Elizabeth U. Natter, Executive Director  
Office of Legal Services  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

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DOCKET COORDINATOR