

OFFICE OF DISTRICT COUNSEL

Phone: (415) 749-4920

For Settlement Purposes Only

May 28, 2025

VIA E-MAIL: Thomas.Zeleny@CountyofNapa.org

Mr. Thomas Zeleny
Chief Deputy County Counsel
County of Napa
1195 3rd St., Room 301
Napa, CA 94559
(707) 253-4234

Re: Settlement Proposal for Notices of Violation Nos. A61521 and 61526

Dear Mr. Zeleny:

The Bay Area Air Quality Management District (“Air District”) offers to resolve the above-referenced two Notices of Violation (“NOVs”) issued to Napa Vallejo Waste Management Authority (Authority or Landfill) by total payment of a **\$20,000** civil penalty in settlement. I am the attorney for the Air District assigned either to resolve these two NOVs through settlement or to take necessary legal action.

I. Introduction

The purpose of this letter is to explain the basis for the Air District’s \$20,000 settlement offer to Napa Vallejo Waste Management Authority. For each NOV, the Air District has taken into account the eight factors specified in California Health and Safety Code § 42403 based on information developed by the District inspector and on information provided by the Authority. Please confirm receipt of this letter.

This letter proposes settlement of NOV 61526 issued for noncontinuous operation of the gas collection and control system (GCCS) at the Landfill for \$12,000 and late reporting for \$5,000, for a subtotal of \$17,000, and NOV 61521 also issued for noncontinuous GCCS operation for \$3,000, for a grand **total of \$20,000**.

II. Analysis**NOV 61526: Noncontinuous Operation of GCCS Violation**

- The Authority operates the closed American Canyon Landfill in Napa County, non-Title V Site #A9183, with minimal daily personnel oversight. The Landfill’s

condensation pump failed for an unknown reason, causing its GCCS to not operate continuously in violation of Air District Regulation (Reg.) 8-34-301.1 and 17 Calif. Code of Regulations (CCR) sec. 95464(b)(1)(A), both of which require continuous GCCS operation.

- The noncontinuous operation in the GCCS violation occurred from 12/31/22 to 1/2/23 and lasted 40 hours over 3 days. There were thus three days of violation because Calif. Health & Safety Code § (HSC) 42402(d) penalizes regulatory air pollution regulatory violations for each day or partial day of violation.
- The cause of the pump failure could not be determined.
- The Landfill reported the GCCS noncontinuous operation violation in its 30-day report detailing the cause of the incident 43 days late in violation of Air District Reg. 1-432.
- The Authority has an emergency backup generator at the Landfill, but it is not capable of restarting the GCCS automatically after power to the Landfill is disrupted. The Landfill does not have an auto-restart system that would reduce the downtime of the GCCS because restarting the GCCS would not have to wait for field personnel to do it. If the Landfill had an auto-restart system, the GCCS downtime and consequent air pollution emissions of Landfill Gas (LFG) would be reduced.
- The Landfill has an apparently decent record of compliance with three prior NOV's in the prior ten years, though the site was inspected six times during that decade. NOV 57234 issued in 2017 for a one-day strict liability component leak. NOV 60708 issued in 2021 for noncontinuous GCCS operation for 1 hour 24 minutes. NOV 60710 issued also in 2021 for noncontinuous GCCS operation for 11 hours 14 minutes.
- The amount of methane released from the Landfill during these shutdowns is unknown. However, the automatic valve did close when power was lost to the facility, reducing emissions. The Landfill's GCCS detected the pump failure and automatically started the shutdown process, which includes deactivating the induced (ID) fan to stop flow of Total Organic Compound (TOC) gases and activating the block-off valves to the flare. Because the GCCS was down for more than a day, the possibility of excess emissions is greater. The Authority claims that no emissions were expected from the incident because the GCCS is designed to close off all valves during shutdown, preventing any gas flow to atmosphere.
- The Landfill stated that pump equipment is not part of routine maintenance, but it is audio/visual checked when Landfill staff is on site.
- The Landfill requested breakdown relief which was not granted because of the Landfill's late reporting of both the initial breakdown notification, which must be done "immediately" under Reg. 1-431, and of the 30-day breakdown report, which was submitted 73 days after the occurrence, instead of within 30 days, as required by Reg. 1-432. The facility said they would meet with their third-party contractor WSP USA Inc. to prevent future late reporting.
- The Authority is a multi-governmental oversight public agency with total revenue of \$18.9 million, total expenses of \$15.5 million in FY 2020-21, and a total cash balance of \$19.6 million reserve. This is relevant to the financial burden on the defendant, which is one of the 8 statutory penalty factors to be taken into consideration by the Air District attorney in reaching a settlement, or the court in assessing a penalty.

HSC 42403(b)(8). The Authority's public agency status reduces the penalty amount somewhat. The Authority is a joint powers authority comprised of the City and County of Napa and the Cities of Vallejo and American Canyon.

- LFG contains methane and larger hydrocarbon compounds, some of which are considered toxic air contaminants (TACs). Landfill gas can be malodorous and cause air quality complaints. Methane is a greenhouse gas. LFG is about 50% methane and 50% CO₂ and water vapor. LFG also contains small amounts of N, O, and H, and less than 1% non-methane organic compounds (NMOCs), and trace amounts of inorganic compounds. NMOCs consist of certain hazardous air pollutants (HAPs) and VOCs which can react with sunlight to form ground-level ozone or smog. Nearly 30 HAPs have been identified in uncontrolled LFG, including benzene, toluene, ethyl benzene, and vinyl chloride and exposure to these pollutants can lead to adverse health effects. Source: <https://www.epa.gov/lmop/frequent-questions-about-landfill-gas#whatcomponents>.

Penalty Analysis

- While there is some suspicion of possible excess emissions because the GCCS failed to operate continuously for well over one day, actually for 40 hours over 3 days, there is no proof of excess emissions nor proof of negligence. Accordingly, both the 3 days of noncontinuous GCCS operation violations of Air District Reg. 8-34-301.1, and the 73 days of late reporting violations of Regs. 1-432 and 1-523.3, are **strict liability violations**.
- The Authority's potential strict liability for each of these one-day violations under Health & Safety Code § (HSC) 42402(a) and (d) is \$6,275 per day.¹
- The statutory maximum for the noncontinuous operations violations is \$18,825 (\$6,275/day X 3 days).
- The stat max for the late reporting violations is \$458,075 (\$6,275/day X 73 days).
- In the last 5 years at the subject facility, including the subject two NOV's citing 3 violations, there were 5 NOV's issued by the Air District to the Authority citing 7 violations, some of which are described in greater detail on the just prior page.
- Perhaps the violations could have been avoided if the condensation pump had not been run to failure, but instead replaced earlier or better maintained.
- It is conceivable that the Authority may have recourse against a consultant to recover all or part of the penalty for the late reporting, which was egregiously late.
- **In light of the total statutory maximum of \$476,900, the likelihood that the pump failure was unavoidable, the fact that the GM went out to the site on New Year's Day, the very next calendar day after the nonoperation started, the Authority's decent record of violations, a reasonable penalty for the 3 days of noncontinuous operation violations is \$4,000 per day subtotaling \$12,000.**

¹ The statutory maximum reflects the annual increase from the \$5,000 amount in HSC 42402(a) based on the California Consumer Price Index of 17.1% through 2024 under HSC 42411. The Calif. 2025 California Air Resources Board (CARB) Penalty Table is available here: https://ww2.arb.ca.gov/sites/default/files/2025-02/2025_CA_CPI_Penalty_Memo.pdf.

- For the sake of comparison, the Authority's prior NOV 61090 settled with a \$500 per day of late reporting penalty for one day late reporting. \$500 per day for the extreme 73 days late reporting here would amount to \$36,500. **A reasonable and charitable penalty for the 73 days late reporting is \$5,000.**

NOV 61521: Noncontinuous Operation of GCCS Violation

- The Landfill's **GCCS failed to operate continuously for 6 ¼ hours** on 4/1/22 in violation of Reg. 8-34-301.1 and 17 CCR sec. 95464(b)(1)(A). The cause was a torn lateral line, GR-27, which was believed to have been damaged during livestock grazing. Goats like to rub objects and may have torn the lateral lines with their horns.

Penalty Analysis

- While excess emissions from this violation are conceivable, they are unlikely because of the short duration of the noncontinuous operation. There is no proof of excess emissions nor proof of negligence. Accordingly, this noncontinuous GCCS operation violation of Air District Reg. 8-34-301.1 is also a **strict liability violation**.
- The Authority's potential strict liability and the statutory maximum for this one-day violation under HSC 42402(a) and (d) is \$6,275. It may be possible for the Landfill to take measures to protect better the GCCS from damage by livestock, and thus prevent future GCCS nonoperation violations from this cause.
- In light of the factors described on the just prior page, **a reasonable penalty for this violation is \$3,000.**

III. Conclusion

In sum, the Air District **proposes to settle the Authority's NOV 61526 for noncontinuous GCCS operation over 3 days and late reporting for \$17,000 and NOV 61521 for noncontinuous GCCS operation over 6 ¼ hours on one day for \$3,000, for the grand total amount of \$20,000.**

The Air District reserves the ability to seek higher penalties if resolution through settlement is not possible. Please be advised that the 30-day period for settlement commenced on the date of this letter.

Mr. Thomas Zeleny

May 28, 2025

Page 5 of 5

The Air District seeks to resolve all violations amicably and expeditiously. To this end, I have enclosed an Election of Payment (EOP) form that you can use to accept the settlement offer set forth in this letter. Please confirm receipt of this email and its attachments. If you have any questions, please do not hesitate to contact me, and/or have one of your associates contact me, at (415) 749-4971 or via email at JFreid@baaqmd.gov.

Sincerely,

A handwritten signature in black ink that reads "Joel Freid". The signature is written in a cursive, flowing style.

JOEL FREID

Assistant Counsel II

Enclosures: Election of Payment Form
Notice of Violations Nos. A61521 and 61526

cc: Bay Area Air District General Counsel Alexander Crockett