

KENTUCKY ENVIRONMENTAL FOUNDATION

**128 MAIN STREET
BEREA, KENTUCKY 40403
(859) 986-7565
www.kyenvironmentalfoundation.org**

21 November 2016

Kentucky Department for Environmental Protection
Division of Enforcement
Jeff Cummins, Director
300 Sower Blvd.
Frankfort, KY 40601

Dear Mr. Cummins,

Please accept the following on behalf of the Kentucky Environmental Foundation, Inc. (KEF).

KEF appreciates the opportunity to provide comments on the Proposed Agreed Order and believes that engagement of the public in matters that have community consequences are always better resolved with interaction between communities and agencies be they local, state or federal.

We look forward to working with the Cabinet in seeking acceptable solutions to this immediate problem and are willing to do all we can to contribute to a remedy satisfactory to all concerned.

Sincerely,

Craig E Williams

Craig E. Williams, Program Director
Kentucky Environmental Foundation

COMMENTS TO DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF ENFORCEMENT
300 SOWER BLVD.
FRANKFORT, KY 40601-1190

REGARDING

PROPOSED AGREED ORDER
AI No. 998
SOLID WASTE PERMIT NO. SW030004
ACTIVITY ID No. ERF20160001
CASE No. DWM 160048

SUBMITTED MONDAY, 21 NOVEMBER 2016 BY
KENTUCKY ENVIRONMENTAL FOUNDATION
128 MAIN STREET
BEREA, KENTUCKY 40403

Definitions:

AO refers to the Proposed Agreed Order

BRL refers to Advanced Disposal Services Blue Ridge Landfill, Inc

Cabinet refers to the Kentucky Energy and Environmental Cabinet

CAP refers to the Corrective Action Plan

CHFS refers to the Cabinet for Health and Family Services

Commenter refers to the Kentucky Environmental Foundation, Inc.

RA-RAC refers to the Risk Assessment – Risk Assessment Corporation

SEPs refers to Supplemental Environmental Projects

TENORM refers to the Technologically Enhanced Naturally Occurring
Radioactive Materials

§ 1) Remedial Measures:

a) The CAP, as required in § 19 pg. 6 (a), should have the words “the most” inserted between the words “be” and “protective”.

b) In comparing factors identified in § 19 (a) (iii) and (b), specifically cost, the Cabinet shall provide, to the public, the weight each of these factors receives compared to one another in the final Agreed Order. Commenter insists that remediation costs receive orders of magnitude less weight in the Cabinet’s decision than long-term effectiveness and permanence of any remedial action taken, and that protection of the public health receive the greatest weight.

c) Commenter requests a concrete example of what is meant by “community acceptance” in § 19 (b) pg. 7. Furthermore, Commenter proposes that “community acceptance” requires citizen participation in all matters associated with the formulation of the CAP.

d) Any amended CAP, as mentioned in §21 pgs. 8-9, should have a citizens comment period added to §24 pg.9

e) Commenter is skeptical of EEC's reliance on the RA adopted by, and relied upon by, CHFS* performed by RAC as there has been, to the best of our knowledge, neither an independent analysis nor a peer review of this RA. BRL, who contracted and paid for the RA, stands to benefit if there are findings of no public health impact from the shipment, dumping and burial of the received TENORM.

§ 2) Penalties:

a) Commenter regards the civil penalty of \$95,000 (§26 pg. 10) insufficient. As of 2 November 2016, Advanced Disposal Services, Inc. (NYSE: ADSW), (d/b/a Advanced Disposal), the parent company of BRL, announced a revenue for the three months, which ended September 30, 2016, of \$360.6 million. Advanced Disposal Services, Inc, purchased Veolia Environmental Services in 2012 for \$1.91 Billion creating the largest privately owned waste and recycling company in the United States with revenue of about \$1.4 Billion!

Penalties for inadequately identifying waste received must send a message that such negligence cannot simply be seen as the "cost of doing business".

b) Commenter, via communication with former employees at BRL, understands there were redundant procedures in place specifically for the purpose of identifying the type of waste entering BRL. Failure to adequately perform these safeguards requires stiffer penalties than those proposed by the Cabinet.

c) Commenter believes that offsetting the proposed civil penalty is inappropriate and recommends the SEPs identified in §27 (a) (i) (ii) (iii) and (b) be implemented IN ADDITION to a civil penalty commensurate with the impact to the community's time, mental distress and damage to its reputation. Commenter recommends a civil penalty of \$1 million, one-third of which would go to Estill County schools for uses stated in 27(b), with the remainder set aside for five years to deal with any future problems associated with this violation and costs associated with actions in response to such problems. After five years the funds would be distributed in accordance with an agreement between Estill County Fiscal Court, EEC and the Concerned Citizens of Estill County.

d) The \$25,000 penalty (§31 pg. 11) for future acceptance of unpermitted TENORM waste should be per load received.

e) Monitoring records as required in §27 (a)(ii) shall be made publicly available.

§ 3) Additional Comments:

a) Commenter seeks a requirement that there be public notice of the Cabinet's approval/disapproval of the proposed remediation plan and that a 30 day comment period be included therein.

b) Commenter requests that the bonding and closure plans be changed as a result of the remediation plan.

c) Commenter expects the permit to be amended to include the terms of the Host Agreement once a new one is finalized.

d) Any amendments or revisions to the proposed AO should be provided to the public for comment before final approval of the AO.

§4) Questions that Must be Addressed Before the Final Agreed Order is Executed:

1. Are landfills currently accepting or have they already accepted TENORM generated within Kentucky?
2. What were the sources of TENORM identified at BRL including both the out-of-state and in-state waste?
3. Was all the TENORM found at BRL from out-of-state waste or was there also waste from in-state TENORM as well?
4. How did the radiation levels of the TENORM waste at BRL from in-state sources differ from the waste that Advanced TENORM Services brokered (BES, etc.)?
5. When does NORM become TENORM and at what level of radioactivity does it become unacceptable to be disposed of in a regular landfill?
6. How does the TENORM from oil and gas exploration/production differ from the TENORM present in waste processing facilities such as Fairmont Brine?
7. What type of radiation detection equipment is required to detect TENORM and how does that differ from the equipment currently in use at landfills such as Green Valley which has been demonstrated to be effective for radioactive medical wastes?
8. Why were the detectors at Green Valley not effective in identifying the TENORM waste that was received and disposed of at that landfill? What does Advanced Disposal plan to do differently, so that what happened to Green Valley will not happen to BRL?
9. Is Advanced Disposal going to incorporate in their deed for any potential sale the fact that radioactive waste was disposed of at the site?
10. How will the landfill permit be modified in terms of closure and post closure care since, unless removed, we now have a waste that will be around for thousands of years?
11. Will the financial bonding/financial assurance, etc. be adjusted in the permit to account for the increased responsibility the landfill has for managing a radioactive-contaminated site?
12. Do the new regulations proposed for Kentucky only address out-of-state waste disposal or do they adequately address in-state TENORM waste disposal as well, which presently is considered legal waste?
13. Is BRL allowed to continue accepting TENORM in-state waste? It appears they are only restricted from receiving out-of-state waste.
14. Has medical monitoring been considered for those exposed to the radioactive particulate matter that was transported downwind and deposited beyond the working face of the landfill?

15. Does the state have a plan to test and monitor the leachate for radionuclides at all the landfills in Kentucky in order to identify which ones have been receiving TENORM waste and will thus require further investigation?

16. Have CHFS and EEC conducted a detailed literature search for peer reviewed publications studying the fate and transport properties of TENORM and the human health and ecological system risks, or are all steps being taken wholly based on inadequate or outdated regulatory standards?

17. What risk assessment tools, emission rate models, and atmospheric fate and transport/deposition models have been identified as applicable to BRL?

18. How can soil sampling to identify particulate deposition on the surface be adequate when deposited particulate matter only accounts for a fraction of a pCi/g in the total radionuclide concentration in the sampling?

19. Did the investigation include specific sampling methodologies and analytical techniques and analyses to identify and confirm whether or not particulate deposition occurred on the landfill and school grounds?

20. The sampling results indicated elevated radiation levels on the school grounds and in the ductwork of the school. The levels in the ductwork were attributed to radon and the levels on the school grounds were attributed to the natural shale geology found in Estill County. The reports do not state definitively that those sources (radon and shale) were confirmed nor that follow-up work was conducted to positively identify the sources of the radionuclides. Was such follow up done?

* Including CHFS in these comments is appropriate as reflected in the AO § 24 recognizing CHFS's involvement in the process.