

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DIVISION OF ENFORCEMENT  
300 SOWER BLVD, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601

Action: Notice of proposed Agreed Order and Provision of Opportunity for Public Comment.

The Energy and Environment Cabinet (EEC) is charged with the statutory duty of enforcing Kentucky's laws to protect the environment contained in KRS Chapter 224 and the regulations promulgated pursuant thereto. The Cabinet has promulgated Chapters 30 and 45-48 of Title 401 of the Kentucky Administrative Regulations to govern the issuance of permits and operations of solid and special waste sites and facilities in Kentucky. Radioactive materials, including TENORM, are subject to regulation by the Cabinet of Health and Family Services ("CHFS") pursuant to Chapter 211 of the Kentucky Revised Statutes.

Advanced Disposal Services Blue Ridge Landfill, Inc. ("Blue Ridge") holds solid waste permit number SW030004 to operate a municipal solid waste landfill at 2700 Winchester Road, Irvine, Kentucky ("Facility"). In January of 2016, EEC received information that several loads of TENORM generated during oil and gas exploration and production activities in other states were disposed in the Facility. Records obtained during the EEC's investigation indicated another company brokered the transport and disposal of TENORM wastes from Ohio and West Virginia at two landfills in Kentucky, including Blue Ridge Landfill, in violation of KRS 211.859 and KRS 211.863. During the initial investigation, EEC identified forty-seven (47) loads of TENORM sent to the Facility from a processor in West Virginia. Subsequent document by document reviews of waste manifests by EEC and Blue Ridge identified an additional forty-five (45) loads of TENORM from generators in Ohio that were disposed of at the Facility.

EEC issued a Notice of Violation ("NOV") to Blue Ridge on March 8, 2016. The NOV issued to Blue Ridge alleged it violated 401 KAR 47:190(8)(1) for inaccurate record keeping; 401 KAR 47:190 Section 8(5) for failing to timely comply with EEC's request for records; 401 KAR 47:120(1) for failing to comply with its permit by accepting unpermitted waste; and for KRS 224.1-400(18) for failing to characterize a hazardous substance, pollutant or contaminant which was released into the environment based upon the initial 47 shipments. The NOV requested remedial measures aimed at addressing each alleged violation. The requested remedial measures relating to radiation surveys and dose assessments were developed in cooperation with qualified personnel at CHFS.

As a result of negotiations with EEC, Blue Ridge has agreed to enter into an Agreed Order with remedial and penalty provisions negotiated by the EEC.

The proposed Agreed Order requires Blue Ridge to develop a Corrective Action Plan (CAP) consistent with the remediation requirements set forth in 401 KAR 100:030. The CAP will propose a long term remedy to address the disposal of TENORM at the Facility, and must include a timeline for the completion of specific corrective actions, an estimated final compliance date, and a plan for detecting and preventing future disposal of unpermitted

TENORM waste which will be incorporated into Blue Ridge's permit. The proposed Agreed Order provides EEC the opportunity to consult with CHFS during its review of the CAP. Additionally, the proposed Agreed Order requires EEC to consider community acceptance of any proposed remedy before approving the CAP. Finally, the proposed Agreed Order requires Blue Ridge to implement the CAP pursuant to an approved schedule.

In addition to remedial provisions, Blue Ridge agreed to a \$95,000 civil penalty. EEC has agreed to allow Blue Ridge to offset that entire penalty amount by performing Supplemental Environmental Projects. Specifically, Blue Ridge has agreed to deposit \$60,000 into an escrow account for the Estill County School District to pay costs associated with the detection and mitigation of naturally occurring radon, as well as any costs the school district incurred with radiation surveys. Blue Ridge will also install radiation monitors at the Facility and at its affiliated Morehead landfill which did not receive any unpermitted TENORM waste. The radiation monitor at the Facility will be incorporated into the plan to prevent future disposal of TENORM waste that will be included as a condition of the Blue Ridge Landfill solid waste Blue Ridge's permit. Records generated by the monitoring devices will be available upon request by the Cabinet. The proposed Agreed Order requires that the escrow account be established and monitoring devices be installed within 120 days from the entry of the Agreed Order.

In addition to the civil penalty, Advanced has agreed to stipulated penalties in the amount of \$2500 if it fails to meet deadlines associated with submitting the CAP. Further, Advanced has agreed to stipulated penalties in the amount of \$25,000 for future acceptance of unpermitted TENORM waste.

This proposed Agreed Order does not resolve any violations of Chapter 211 of Kentucky Revised Statutes or any allegations that may arise from CHFS's investigation into the generators, transporters, and brokers who arranged for the importation of TENORM into Kentucky.

Because this matter is of significant public concern, EEC is providing this public notice of the proposed Agreed Order and is allowing interested persons a reasonable opportunity to comment on its entry. The publication of this notice opens the comment period on the proposed Agreed Order. Any person wishing to comment on the proposed Agreed Order must submit written comments to Jeff Cummins, Director, Division of Enforcement at the address identified below. In order to provide opportunity for public comment, all comments must be submitted to the agency by 4:00 PM on November 21, 2016.

The proposed Agreed Order may be examined and downloaded at [ftp://eec106158:EDCVfr432WSX@ftp.cot.ky.gov/EECPPC106158/eecppcdata/UST\\_KORA/Public](ftp://eec106158:EDCVfr432WSX@ftp.cot.ky.gov/EECPPC106158/eecppcdata/UST_KORA/Public). The file associated with this matter is also available on the internet at <http://dep.gateway.ky.gov/publicfiles/>. Persons wishing to receive a copy of the Agreed Order, Notice of Violation, or other documents associated with this proposed Agreed Order can also make a submit an open records request via email to [DEP.KORA@ky.gov](mailto:DEP.KORA@ky.gov) or via facsimile to (502) 564-9232.

Mailing address and email address to submit comments:

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

Name of respondent:

Advanced Disposal Services Blue Ridge Landfill, Inc.  
2700 Winchester Rd.  
Irvine, KY 40336

Facility and Case Information:

AI No. 998  
Solid Waste Permit No. SW030004  
Activity ID No. ERF20160001  
Case No: DWM 160048