

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DIVISION OF ENFORCEMENT  
CASE NO. DWM 160048

IN RE: Advanced Disposal Services Blue Ridge Landfill, Inc.  
2700 Winchester RD.  
Irvine, KY 40336  
AI No. 998  
Activity ID No. ERF20160001

**AGREED ORDER**

\* \* \* \* \*

**WHEREAS**, the parties to this Agreed Order, the Energy and Environment Cabinet (hereinafter “the Cabinet”), and Advanced Disposal Services Blue Ridge Landfill, Inc. (hereinafter, “Blue Ridge”), state:

**STATEMENT OF FACTS**

1. The Cabinet is charged with the statutory duty of enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. Blue Ridge is a Kentucky Corporation registered with the Kentucky Secretary of State to do business in the Commonwealth of Kentucky, and owns and operates the Blue Ridge Landfill (hereinafter “the Facility”) located at 2700 Winchester Road, Irvine, Estill County, Kentucky.
3. Blue Ridge operates the Facility under the Cabinet’s Division of Waste Management (hereinafter “DWM”) Solid Waste Permit SW030004 (hereinafter “the Permit”), during all times relevant to the alleged violations described in this Agreed Order.

4. Between July 2015 and November 2015, BES, L.L.C. (hereinafter “BES”), an affiliate of Advanced TENORM Services, arranged for the disposal of approximately 47 loads of oil and gas production and exploration waste from the West Virginia company, Fairmont Brine Processors, at the Facility. BES also arranged for the shipment of other oil production waste from other generators in Ohio. Collectively, this waste is hereinafter referred to as the “BES Waste”.

5. For each shipment of BES Waste, BES’s managing member executed the waste profile sheets certifying, on behalf of Fairmont Brine and the other generators, that the material:

- (a) was not a hazardous waste as defined by federal, state, or local laws and regulations and exempt under 40 CFR 261.4(b)(5); and
- (b) did not contain Radioactive waste as defined by State and Federal Regulations.

6. Blue Ridge’s position is that it acted consistently with industry practice when it relied upon the representations of the generators before accepting the material and Blue Ridge also retained a third party technical consultant to review all such generator waste profile sheets for conformance with Blue Ridge’s permit. Blue Ridge relied upon the judgment of the third party technical consultant to determine that the BES material could be disposed of at the Blue Ridge Landfill.

7. It is Blue Ridge’s position that at no time prior to the receipt and disposal of the BES material did it have knowledge that the material might be “TENORM” or otherwise consist of materials not acceptable at the Blue Ridge Landfill.

8. On February 10, 2016, representatives of the Cabinet and the Cabinet for Health and Family Services (hereinafter “CHFS”) conducted an unannounced inspection of the Facility,

to investigate allegations that Technologically Enhanced Naturally Occurring Radioactive Material (hereinafter “TENORM”) from outside of the Commonwealth of Kentucky was being disposed of at the Facility.

9. On February 22, 2016 the Cabinet sent a notice to all permitted solid and special waste facility owners in Kentucky advising that TENORM waste from oil and gas drilling activities in Ohio, West Virginia, and Pennsylvania had been transported to Kentucky and disposed at certain solid waste landfills in the state. The notice reminded permittees of their duty to conform with KRS Chapter 211 and Title 902, Chapter 100 of the Kentucky Administrative Regulations.

10. On February 27, 2016, CHFS took general area radiation surveys and contamination surveys at the Facility and two public school buildings located across from the Facility’s entrance (hereinafter “Estill County Schools”). The results showed no evidence that the BES Waste had impacted the Estill County Schools. There was no evidence of radiation above federal and state safety limits.

11. On March 2, 2016, Ameriphysics, on behalf of Estill County, reported on the results of its airborne and sediment pond radiological sampling at the locations within the Estill County School buildings and the Blue Ridge Landfill. Ameriphysics reported that the samples contained naturally occurring radionuclides at levels below allowable airborne and water concentrations under federal law.

12. Between March 2 and March 4, 2016, Blue Ridge carried out the following environmental investigations to characterize the nature and extent of any alleged TENORM at the Facility:

- (a) Blue Ridge's consultant, Chase Environmental (hereinafter "Chase"), performed the first of several gamma scan surveys of the ground surface to measure gamma exposure rates. The results were correlated with GPS coordinates to produce a color-coded image of the Facility's surface exposure rates.
- (b) Chase conducted a gamma ray survey of a portion of the BES burial area and four areas representative of background: a distal burial area; an area of New Albany Shale; an area of Nancy Shale; and an area representative of the natural topography of the area. The scans did not identify any elevated areas of radioactivity above background at the surface of the BES Waste Disposal Area.

13. On March 8, 2016, the Cabinet issued Blue Ridge a Notice of Violation for the following alleged violations:

- (a) 401 KAR 47:190 Section 8(1)(b): Blue Ridge's quarterly Waste Quantity Reports reflected that 47 loads of oil production waste, which the Cabinet alleged to be TENORM, were disposed as alternate daily cover. The NOV alleged that Blue Ridge was not authorized for such alternate daily cover.
- (b) KRS 224.1-400(18): The NOV alleged Blue Ridge failed to comply with the provisions of KRS 224.1-400(18) by failing to characterize a release/potential release of TENORM to the environment.
- (c) 401 KAR 47:120 Section 1(1): The NOV alleged that Blue Ridge accepted and disposed of 47 loads of unpermitted TENORM waste from outside the Commonwealth of Kentucky from July 2015 through November 2015.

The NOV alleged that neither Blue Ridge's permit nor KRS Chapter 224 authorize TENORM from out-of-state to be disposed of in a contained landfill in Kentucky.

- (d) 401 KAR 47:190 Section 8(5): The NOV alleged that a request to provide all waste disposal manifests from January 1, 2015 through January 30, 2016 to DWM was made during the inspection referenced in paragraph 8 above, but only manifests pertaining to particular TENORM-related entities were submitted to DWM.

14. On March 12, 2016, the U.S. Army National Guard 41<sup>st</sup> Civil Support Team took air and soil samples, and conducted a contamination survey at the Estill County Schools and tested the samples for radionuclides. The samples all showed concentrations below state and federal standards and consistent with natural background radiation in the area.

15. On March 18, 2016, Blue Ridge responded to the March 8, 2016 Notice of Violation and provided the Cabinet with a Comprehensive Compliance Plan.

16. From May 23 to May 25, 2016, Chase scanned the remaining areas where BES waste was buried, and the remainder of the operational part of the Facility (outside areas where BES waste was buried). The scans did not identify any elevated areas of radioactivity above background at the surface of the BES Waste Disposal Area.

17. Between March and May 2016, Chase collected numerous samples of soil, groundwater, sediment, and other environmental media, which will be evaluated, per the terms of paragraph 19 below.

18. On or about March 23, 2016, Blue Ridge delivered all of the requested waste manifests to the Cabinet's Division of Enforcement (hereinafter "DENF").

**WHEREAS** Blue Ridge does not admit to the allegations as listed in the NOV, but agrees to the terms and conditions of this Agreed Order to resolve the above allegations.

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

**REMEDIAL MEASURES**

19. Within ninety (90) days of execution of this Agreed Order by the Cabinet's Secretary, Blue Ridge shall submit a Corrective Action Plan (hereinafter "CAP"), detailing the steps Blue Ridge has taken and will take to address the matters raised in this Agreed Order. The CAP shall include, but not be limited to:

- (a) A remedial plan in accordance with KRS 224.1-400 and 401 KAR 100:030 with adequate analytical or modeling data to demonstrate the proposed remedy will be protective of human health and the environment. This plan may include plans and reports previously submitted in response to the Notice of Violation referenced in paragraph 13 above. If Blue Ridge proposes a remedy pursuant to KRS 224.1-400(18)(a)(b) or (d), Blue Ridge's remedial plan shall address the following factors, where applicable:
  - i. The overall protection of human health and the environment;
  - ii. The compliance with any other applicable requirements;
  - iii. The long-term effectiveness and permanence of the remedial option;

- iv. The reduction of toxicity, mobility, or volume through the use of treatment;
  - v. The short-term effectiveness of the remedy; and
  - vi. The reasonable ability to implement the remedy;
- (b) In evaluating the remedy, the Cabinet will also consider the cost of the remedy, and the community acceptance of the remedy;
- (c) A plan for detecting and preventing the disposal of unpermitted TENORM waste at the Facility that shall be incorporated into the Permit as a condition. For purposes of this agreement “unpermitted TENORM waste” means out-of-state generated TENORM waste material with combined concentrations of Radium 226 and 228 greater than 5 p/Ci per dry weight gram of waste material over background;
- (d) A timeline for the completion of specific corrective actions to be taken; and
- (e) An estimated final compliance date by which Blue Ridge anticipates completing all remedial items listed in the abovementioned CAP.

20. Upon review of the CAP, the Cabinet shall, in whole or in part, either (1) approve the CAP or (2) disapprove it and provide comments to Blue Ridge identifying any deficiencies. Upon receipt of the Cabinet’s comments, Blue Ridge shall take the Cabinet’s comments into consideration and revise and resubmit the CAP to the Cabinet within thirty (30) days for review and acceptance. Upon resubmittal by Blue Ridge, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to Blue Ridge identifying any deficiencies of the revised CAP. Upon receipt of the Cabinet’s additional comments, Blue Ridge shall take the

Cabinet's comments into consideration and revise and resubmit the CAP to the Cabinet within thirty (30) days for review and acceptance. If Blue Ridge does not timely or in good faith respond to the Cabinet's comments, the Cabinet reserves its rights to deem Blue Ridge out of compliance with this Agreed Order.

21. If at any time any party determines it is necessary to amend the CAP in order to meet the goals or deadlines of this Agreed Order, the following will occur:

- (a) If the Cabinet requests an amendment to the CAP, the Cabinet shall notify Blue Ridge in writing that an amendment is necessary and will outline the reasons for the request. The Cabinet shall give Blue Ridge thirty (30) days from receipt of written notification to amend the CAP and submit the Amended CAP to the Cabinet. Upon review, the Cabinet may, in whole or in part, (1) approve or (2) disapprove and provide comments to Blue Ridge identifying any deficiencies of the Amended CAP. Upon receipt of the Cabinet's comments, Blue Ridge shall revise and resubmit the Amended CAP to the Cabinet within thirty (30) days for review and acceptance. Upon review, the Cabinet shall, in whole or in part, either (1) approve the Amended CAP or (2) disapprove it and provide comments to Blue Ridge identifying any deficiencies of the revised Amended CAP. Upon receipt of the Cabinet's additional comments, Blue Ridge shall take the Cabinet's comments into consideration and revise and resubmit the Amended CAP to the Cabinet within thirty (30) days for review and acceptance. If Blue Ridge does not timely or in good faith respond to the

Cabinet's comments, the Cabinet reserves its rights to deem Blue Ridge out of compliance with this Agreed Order.

- (b) If Blue Ridge requests an amendment to the CAP, Blue Ridge shall notify the Cabinet in writing that an amendment request is forthcoming and shall outline the reasons why the amendment is necessary. Blue Ridge shall then submit an Amended CAP within thirty (30) days to the Cabinet. Upon review of the Amended CAP, the Cabinet may, in whole or in part, either (1) approve the Amended CAP or (2) disapprove it and provide comments to Blue Ridge identifying any deficiencies of the Amended CAP. Upon receipt of the Cabinet's comments, Blue Ridge shall revise and resubmit the Amended CAP within thirty (30) days for review and acceptance. Nothing in this provision shall require the Cabinet to accept Blue Ridge's request to amend the CAP.

22. Blue Ridge may request an extension of time within which to submit a CAP or revised CAP pursuant to paragraphs 19 and 20 of this Agreed Order or an Amended CAP pursuant to paragraph 21 of this Agreed Order, or to carry out the Supplemental Environmental Project set forth in paragraph 27 below. Approval of any request for an extension of time shall be at the reasonable discretion of the Director of the Division of Enforcement.

23. By the final compliance date established in the CAP or Amended CAP, Blue Ridge shall complete all remedial actions outlined in the CAP.

24. Nothing in this Agreed Order prohibits the Cabinet from seeking comments from CHFS when reviewing the CAP or Amended CAP pursuant to paragraphs 19, 20, and 21 of this Agreed Order.

25. All submittals required by the terms of this Agreed Order shall be sent to:

Division of Enforcement  
Attn: Director  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

**PENALTIES & SUPPLEMENTAL ENVIRONMENTAL PROJECT**

26. Blue Ridge is assessed a civil penalty in the amount of ninety-five thousand dollars (\$95,000). The entire civil penalty balance shall be offset by the Supplemental Environmental Projects (hereinafter “SEPs”) described below.

27. Blue Ridge shall implement SEPs that will result in:

(a) The installation of devices to detect radioactivity of waste materials at the -Facility and the Morehead landfill before disposal occurs, provided that,

i. The device installed at the Facility is included in the plan submitted to the Cabinet pursuant to paragraph 19 of this Agreed Order,

ii. Blue Ridge maintains monitoring records for the devices which shall be provided to the Cabinet for inspection upon request, and

iii. Both devices are maintained, calibrated, and quality control is performed consistent with manufacturer specifications; and

(b) After appropriate consultation, contribute sixty-thousand dollars (\$60,000)

to the Estill County School District to assist it in (a) detecting and mitigating naturally occurring radon within the Estill County School District; and (b) paying costs associated with the radiation surveys.

28. Actions associated with the SEP are scheduled to begin within thirty (30) days after execution of this Agreed Order. Blue Ridge shall install the devices described in paragraph

27(a) within 120 days after the execution of this Agreed Order. Blue Ridge shall complete the SEP described in paragraph 27(b) within 120 days after the execution of this Agreed Order.

29. Upon completion of each SEP, Blue Ridge shall submit to the Cabinet documentation certifying the completion of and invoices verifying the total expenditures by Blue Ridge for the completion of the SEP. Information regarding the certification of completion of the SEP shall be sent to the Director of the Division of Enforcement, 300 Sower Boulevard, Frankfort, Kentucky 40601.

30. The Cabinet may assess a stipulated penalty in an amount not to exceed two thousand five hundred dollars (\$2500), for failure to timely submit the CAP or Amended CAP described in paragraphs 19 and 21(a) above. Payment of the stipulated penalty shall be tendered by Blue Ridge to the Cabinet within thirty (30) days of receipt of written notification from DENF. This penalty is in addition to, and not in lieu of, any other penalty that is or could be assessed. The Cabinet may, at its discretion, waive stipulated penalties that would otherwise be due.

31. The Cabinet may assess a stipulated penalty in an amount of twenty-five thousand dollars (\$25,000) should Blue Ridge accept and dispose of unpermitted TENORM waste prior to the termination of this Agreed Order. No such penalty shall be due, however, if the appropriate cabinet within the Commonwealth of Kentucky approves of the disposal in writing. Blue Ridge reserves all defenses to a request for stipulated penalty including those based upon misrepresentation and the Permit. Payment of the stipulated penalty shall be tendered by Blue Ridge to the Cabinet within thirty (30) days of receipt of written notification from DENF. This penalty is in addition to, and not in lieu of, any other penalty that is or could be assessed. The Cabinet may, at its discretion, waive stipulated penalties that would otherwise be due.

32. If Blue Ridge believes the request for payments of a stipulated penalty is erroneous or contrary to law, Blue Ridge may request a hearing in accordance with KRS 224.10-420(2). The request for hearing does not excuse timely payment of the penalty. If an order is entered pursuant to KRS 224.10-440 that excuses payment, the Cabinet will refund the payment. Failure to make a timely payment shall constitute an additional violation of this Agreed Order.

33. Payment of 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, Frankfort, Kentucky 40601; note "Case Number DWM 160048" on the instrument of payment.

#### **MISCELLANEOUS PROVISIONS**

34. This Agreed Order addresses only the allegations specifically described 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 Blue Ridge reserves its defenses thereto. The Cabinet expressly reserves its rights at any time to issue administrative orders and to take any other action they deem 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 Blue Ridge reserves its defenses thereto.

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

36. Blue Ridge waives its right to any hearing on the matters alleged herein. However, failure by Blue Ridge 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.

37. The Agreed Order may not be amended except by a written order of the Cabinet Secretary or his designee. Blue Ridge may request an amendment by writing the Director of the Division of Enforcement at 300 Sower Boulevard, 3rd 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.

38. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that Blue Ridge'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, Blue Ridge 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.

39. Blue Ridge 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, Blue Ridge 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.

40. The Cabinet agrees to allow the performance of the above-listed remedial measures completion of the SEP by Blue Ridge to satisfy Blue Ridge's obligations to the Cabinet generated by the allegations described above.

41. The Cabinet and Blue Ridge 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.

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

#### **TERMINATION**

43. This Agreed Order shall terminate upon the Blue Ridge's completion of all requirements described in this Agreed Order. Blue Ridge may submit written notice to the Cabinet when they believe all requirements have been performed. The Cabinet will notify Blue Ridge in writing of whether it intends to agree with or object to termination. The Cabinet reserves its rights to enforce this Agreed Order, and Blue Ridge reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determinations.

**AGREED TO BY:**

\_\_\_\_\_  
Michael K. Slattery  
Senior Vice President and General Counsel  
Advanced Disposal Services, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Philip L. Comella, Counsel for  
Advanced Disposal Services Blue Ridge Landfill, Inc.

\_\_\_\_\_  
Date

PROPOSED

**CASE NO. DWM 160048**

**APPROVAL RECOMMENDED BY:**

\_\_\_\_\_  
Jeffrey A. Cummins, Director  
Division of Enforcement, EEC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Daniel Cleveland, Assistant General Counsel  
Office of General Counsel, EEC

\_\_\_\_\_  
Date

\_\_\_\_\_  
John G. Horne, II, Executive Director  
Office of General Counsel, EEC

\_\_\_\_\_  
Date

PROPOSED

**ORDER**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet This the \_\_\_\_ day of \_\_\_\_\_, 2016.

ENERGY AND ENVIRONMENT CABINET

\_\_\_\_\_  
R. BRUCE SCOTT, DEPUTY SECRETARY

PROPOSED

**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 \_\_\_\_\_, 2016.

Advanced Disposal Services Blue Ridge Landfill, Inc.  
Attn: Mr. Dave Rettell, Regional Manager  
10690 West Six Mile Road  
Northville, Michigan 48168

Hon. Philip L. Comella  
Freeborn & Peters, LLP  
311 South Wacker Drive  
Suite 3000  
Chicago, IL 60606

And mailed messenger to:

Jeffrey A. Cummins, Director  
Division of Enforcement  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

John G. Horne, II, Executive Director  
Office of General Counsel  
300 Sower Boulevard, 3<sup>rd</sup> Floor  
Frankfort, Kentucky 40601

\_\_\_\_\_  
DOCKET COORDINATOR