



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101

AIR & RADIATION
DIVISION

May 12, 2022

Mr. John C. Ewell III, P.E.
Treatment Plant Supervisor
City of Lynnwood
19100 44th Avenue West
Lynnwood, Washington 98036

Dear Mr. Ewell:

This letter is in response to notifications the U.S. Environmental Protection Agency received from the City of Lynnwood Sewage Sludge Incinerator (Lynnwood), dated October 11 and 18, 2021, asserting a claim of force majeure under 40 CFR 60.8(a). Lynnwood also provided the EPA with additional information in an email dated November 15, 2021. Based on the information Lynnwood submitted, the EPA has determined that the claim of force majeure is not available in this instance.

In its October 11, 2021, email notification, Lynnwood indicated that it was unable to conduct a repeat performance test scheduled for October 12, 2021, to demonstrate compliance with the emissions limitations applicable to carbon monoxide (CO) and hydrogen chloride (HCl) under 40 CFR part 62 subpart LLL (Subpart LLL). In its November 15, 2021, email, Lynnwood stated that the October performance test was scheduled because the most recent performance testing conducted in May 2021 did not show compliance with the CO and HCl emission limits in Subpart LLL. The May 2021 testing was the annual performance test required by 40 CFR 62.16000(a).

According to 40 CFR 62.16030(f),

If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure: (1) You must notify the Administrator, in writing as soon as practicable following the date you first knew, or through due diligence, should have known that the event may cause or caused a delay in conducting a performance test beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification must occur as soon as practicable. (2) You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in conducting the performance test beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which you propose to conduct the performance test. (emphasis added)

Subpart LLL does not create a regulatory deadline for conducting a performance test to demonstrate compliance following a failed performance test.¹ The EPA has no grounds for extending a deadline based on a claim of force majeure in this instance because no regulatory deadline or specified timeframe applied to the October 2021 repeat performance test. Accordingly, the EPA has not evaluated whether cancellation of the October 21 performance test was caused by circumstances that meet the definition of “force majeure.” The regulatory deadline for Lynnwood’s next annual performance test remains 11 to 13 calendar months from the previous annual performance test conducted in May 2021, as required by 40 CFR 62.16000(a).

Please contact Bryan Holtrop at holtrop.bryan@epa.gov or 206-553-4473 if you have any questions or would like to arrange a discussion of this determination.

Sincerely,

**GEOFFREY
GLASS**  Digitally signed by
GEOFFREY GLASS
Date: 2022.05.12
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Geoffrey L. Glass, Acting Chief
Air Permits and Toxics Branch

cc: Mr. John Dawson
Puget Sound Clean Air Agency

¹ Although there is no regulatory deadline or specified timeframe, a delay in retesting may increase the duration of any violation associated with a previous failed performance test.