

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2022-0027</b>
	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Ross Incineration Services, Inc.</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>
<b>Grafton, Ohio</b>	)	<b>42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	

**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Ross Incineration Services, Inc., a corporation doing business in Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Section 193 of the CAA, 42 U.S.C. § 7515, states, in part:

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator.

10. Under Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standard for Hazardous Air Pollutants from Benzene Waste Operations (hereinafter, “Benzene NESHAP”) at 40 C.F.R. Part 61, Subpart FF, 40 C.F.R. §§ 61.340 through 61.359.

11. The owner or operator of an existing affected facility was required to comply with the requirements of 40 C.F.R. § 61.343(a)(1)(i)(A) by June 5, 1990.

12. The Benzene NESHAP applies to the owners and operators of hazardous waste treatment, storage, and disposal facilities that treat, store, or dispose of hazardous waste generated by chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries.

13. The Benzene NESHAP, at 40 C.F.R. § 61.343(a)(1)(i)(A), sets forth:

(a) Except as provided in paragraph (b) of this section and in § 61.351, the owner or operator must meet the standards in paragraph (a)(1) or (2) of this section for each tank in which the waste stream is placed in accordance with § 61.342(c)(1)(ii). The standards in this section apply to the treatment and storage of the waste stream in a tank, including dewatering.

(1) The owner or operator shall install, operate, and maintain a fixed-roof and closed-vent system that routes all organic vapors vented from the tank to a control device.

(i) The fixed-roof shall meet the following requirements:

(A) The cover and all openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions as indicated by an instrument reading of less than 500 [parts per million by volume (ppmV)] above background, as determined initially and thereafter at least once per year by the methods specified in § 61.355(h) of this subpart.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$51,796 per day of violation up to a total of \$414,364 for violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

17. Ross owns and operates a hazardous waste treatment, storage, and disposal facility that accepts waste from, among other things, chemical manufacturing plants, at 36790 Giles Road, Grafton, Ohio.

18. Ross's 2018 total annual benzene (TAB) quantity from facility waste was greater than 10 Mg/yr.

19. Ross’s 2018 TAB report included waste streams that have a water content greater than 10%.

20. Ross’s 2019 TAB quantity from facility waste was greater than 10 Mg/yr.

21. Ross’s 2019 TAB report included waste streams that have a water content greater than 10%.

22. Ross is subject to the Benzene NESHAP at 40 C.F.R. § 61.343(a)(1)(i)(A).

23. Ross owns and operates waste management units including tanks 52, 62, 73, and 74. Each tank is equipped with a fixed roof and is connected to a closed-vent system.

24. Ross owns or operates an “emission source” within the meaning of Section 114 (a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, Ross is subject to the requirements of Section 114(a)(1).

25. On May 7, 2019, EPA conducted an inspection of the tanks at Ross. The inspectors used a forward-looking infrared camera to identify potentially leaking components on each hazardous waste storage tank and a total hydrocarbon analyzer (Toxic Vapor Analyzer 2020 equipped with a flame ionization detector) to measure the emission concentration of organic vapors from equipment components.

26. The inspectors identified the following leaks using Reference Method 21 in 40 C.F.R. Part 60, Appendix A and as described in 40 C.F.R. § 61.355(h):

Tank Number	Location	Highest Measurement, ppmV, above background
52	tank cover	4,700
62	tank cover	4,500
73	lower cover seal	7,800
73	upper rupture disk	15,000
74	lower rupture disk	1,303

27. Ross violated the no detectable emissions from tank covers and openings requirement of 40 C.F.R. § 61.343(a)(1)(i)(A), and Section B.2 of its Title V Permit by operating the tank covers on Tanks 52 and 62, the lower cover seal on Tank 73, the upper rupture disk on Tank 73, and the lower rupture disk on Tank 74, with emissions greater than 500 ppmV above background.

28. On August 12, 2020, EPA issued a Finding of Violation alleging that Ross violated 40 C.F.R. § 61.343(a)(1)(i)(A) of the Benzene NESHAP.

29. On September 3, 2020, representatives of Ross and EPA discussed the August 12, 2020 Finding of Violation.

#### **Civil Penalty**

30. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and the Respondent's cooperation and prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$95,000.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$95,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read: "D68010727  
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

32. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency, Region 5  
[r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov)

Gillian Asque  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
[Asque.Gillian@epa.gov](mailto:Asque.Gillian@epa.gov)

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

36. Respondent must submit all notices and reports required by this CAFO by e-mail to the Air Enforcement and Compliance Assurance Branch at the address [r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov).

### **General Provisions**

37. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: [asque.gillian@epa.gov](mailto:asque.gillian@epa.gov) (for Complainant), and [jl Larson@rossenvironmental.com](mailto:jl Larson@rossenvironmental.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon filing.

38. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

39. The effect of the settlement described in paragraph 38, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraphs 17 - 24 of this CAFO.

40. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

41. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 38, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

42. Respondent certifies that it is complying fully with the Benzene NESHAP.

43. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

44. The terms of this CAFO bind Respondent, its successors and assigns.
45. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
46. Each party agrees to bear its own costs and attorney's fees in this action.
47. This CAFO constitutes the entire agreement between the parties.

**Ross Incineration Services, Inc., Respondent**


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

James Larson  
President  
Ross Incineration Services, Inc.



**United States Environmental Protection Agency, Complainant**

**MICHAEL  
HARRIS**

 Digitally signed by MICHAEL  
HARRIS  
Date: 2022.09.26 15:03:25  
-05'00'

Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Ross Incineration Services, Inc.**  
**Docket No. CAA-05-2022-0027**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

**ANN COYLE** Digitally signed by ANN COYLE  
Date: 2022.09.27 09:52:41  
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Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5