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NANCY J. MARVEL, Regional Counsel
BRIAN P. RIEDEL, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105
Phone: (202) 972-3924; Fax: (415) 947-3570

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of:

County of Butte
25 County Center Drive
Oroville, California 95965

Respondent.

Proceeding under Section 113 of
the Clean Air Act,
42 U.S.C. § 7413

Docket No. CAA-09-2008-

0035

CONSENT AGREEMENT AND
FINAL ORDER PURSUANT
TO 40 C.F.R. §§ 22.13
AND 22.18

CONSENT AGREEMENT

I. JURISDICTION AND AUTHORITY

- Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q ("CAA" or "Act") and 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, the Director of the Air Division ("Complainant"), U.S. Environmental Protection Agency ("EPA"), Region 9, is simultaneously commencing and concluding this proceeding against the County of Butte ("County" or "Respondent") through the filing of this Consent Agreement and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 ("CAFO").

2 2. Complainant is duly delegated the authority to file this
3 action and sign a consent agreement settling this action.

4 3. Section 113(d) (1) of the Act limits EPA's authority to issue
5 administrative complaints to matters where the total penalty
6 sought does not exceed \$270,000,¹ and the first alleged date
7 of violation occurred no more than 12 months prior to the
8 initiation of the action, unless EPA and the Attorney General
9 for the U.S. Department of Justice ("DOJ") jointly determine
10 that a matter involving a larger penalty or longer period of
11 violation is appropriate for administrative action. Because
12 this CAFO contains alleged violations that occurred more than
13 12 months ago, Complainant has obtained the required joint
14 determination from EPA Headquarters and DOJ.

16 4. This CAFO notifies Respondent of Complainant's determination
17 that Respondent has violated Section 111 of the CAA and 40
18 C.F.R. §§ 60.755 and 60.756 at the Neal Road Sanitary
19 Landfill, located in Paradise, California ("Landfill").
20

21 **II. STATUTORY AND REGULATORY AUTHORITY**

22 5. Pursuant to Section 111 of the Act, EPA promulgated the
23 Standards of Performance for Municipal Solid Waste Landfills
24 ("NSPS Subpart WWW" or "Subpart WWW"), at 40 C.F.R. Part 60,
25

26 ¹As adjusted for inflation under the Debt Collection
27 Improvement Act and implementing regulations at 40 C.F.R. Part
28 19.

2 Subpart WWW, §§ 60.750 - 60.759, effective March 12, 1996.

- 3 6. NSPS Subpart WWW applies to each municipal solid waste
4 landfill ("MSW landfill" or "landfill") that commenced
5 construction, reconstruction or modification on or after May
6 30, 1991.
- 7 7. Pursuant to NSPS Subpart WWW, each owner or operator of an
8 MSW landfill subject to Subpart WWW having a design capacity
9 \geq 2.5 million megagrams ("mg") and 2.5 million cubic meters
10 ("m³") must calculate and report its nonmethane organic
11 compounds ("NMOC") emissions.
- 12 8. Pursuant to 40 C.F.R. § 60.757(b), each owner or operator
13 must prepare and submit annual NMOC emission rate reports,
14 except as provided for in 40 C.F.R. §§ 60.757(b)(1)(ii) or
15 60.757(b)(3). Under 40 C.F.R. § 60.757(b)(1)(ii), if the
16 estimated NMOC emission rate as reported in the annual report
17 to EPA is < 50 mg/yr in each of the next five consecutive
18 years, the owner or operator may elect to submit an estimate
19 of the NMOC emission rate for the next five-year period in
20 lieu of the annual report but must revise the estimate at
21 least once every 5 years. If a Tier 2 methodology was
22 utilized to prospectively estimate NMOC emissions for five
23 years, at the end of the five-year period, the owner or
24 operator must resume annual periodic reporting using the Tier
25
26
27
28

2 2 determined site-specific NMOC concentration, until the
3 calculated emission rate \geq 50 mg/yr or the landfill is
4 closed. See also 40 C.F.R. §§ 60.754(a)(3)(iii) and
5 60.757(c)(1).

6 9. Under 40 C.F.R. §§ 60.752(b)(2) and 60.757(c), each owner or
7 operator must submit to EPA a gas collection and control
8 system ("GCCS") design plan ("design plan") within one year
9 of the NMOC emission rate \geq 50 Mg/yr, or recalculate the NMOC
10 emission rate after Tier 2 NMOC sampling and analysis as
11 provided in 40 C.F.R. § 60.754(a)(3).

12 10. Upon startup of a GCCS, Subpart WWW requires, *inter alia*,
13 each owner and operator of a subject landfill seeking to
14 comply with 40 C.F.R. § 60.752(b)(2)(ii)(A) to monitor the
15 gauge pressure, oxygen or nitrogen, and temperature on a
16 monthly basis, and to monitor surface methane emissions on a
17 quarterly basis. See 40 C.F.R. §§ 60.755(a)(3),
18 60.755(a)(5), 60.755(c), 60.756(a) and 60.756(f).
19
20

21 **III. GENERAL ALLEGATIONS**

22 11. At all times relevant to this CAFO, the County was a
23 "municipality" and a "person" within the meaning of Section
24 302 of the Act.

25 12. At all times relevant to this CAFO, the County was the owner
26 and/or operator of the Landfill. The County has owned the
27

2 land of the Landfill since at least 1978 and has operated the
3 Landfill since March 1, 2003. Prior to March 1, 2003, the
4 County contracted with the Neal Road Landfill Company, a
5 subsidiary of Waste Management, Inc., for operation of the
6 Landfill.

7 13. The Landfill is an MSW landfill having at relevant times a
8 design capacity \geq 2.5 million mg and 2.5 million m³.
9

10 14. On February 18, 1998, the County submitted to EPA the results
11 of Tier 2 sampling and analysis of the Landfill which
12 revealed NMOC emissions $<$ 50 mg/yr. Based on these results,
13 the County elected to submit an estimate of the NMOC emission
14 rate in lieu of the annual reports for the next five years.

15 15. On February 2, 1999, the County commenced modification of the
16 Landfill and therefore became subject to NSPS Subpart WWW.

17 16. In November 2004, the County started up the GCCS for the
18 Landfill.

19 17. On August 12, 2005, the County submitted to EPA the GCCS
20 design plan for the Landfill.
21

22 18. On November 1, 2005, the County submitted to EPA the results
23 of Tier 2 sampling and analyses for 2003, 2004 and 2005,
24 which revealed NMOC emissions rates \geq 50 mg/yr beginning in
25 2003.

26 **IV. SPECIFIC ALLEGATIONS**

2 19. The County was required to submit a revised NMOC emission
3 rate report based on Tier 2 sampling and analysis for the
4 Landfill within five years of February 18, 1998, or by
5 February 18, 2003.

6 20. Having failed to revise the Tier 2 site-specific NMOC
7 emissions rate by February 18, 2003, the County defaulted to
8 a Tier 1 NMOC mass emission rate ≥ 50 mg/yr, and was required
9 to submit a GCCS design plan for the Landfill within one year
10 of when the NMOC emissions rate constructively ≥ 50 mg/yr on
11 February 18, 2003, or by February 18, 2004.

12 21. The County failed to submit to EPA a GCCS design plan for the
13 Landfill by February 18, 2004.

14 22. The County violated Section 111 of the CAA and 40 C.F.R.
15 §§ 60.752(b)(2)(i) and 60.757(c) by failing to submit to EPA
16 a GCCS design plan for the Landfill by February 18, 2004.

17 23. Beginning November 2004, the County was required to monitor
18 the gauge pressure, oxygen or nitrogen, and temperature on a
19 monthly basis, and to monitor surface methane emissions on a
20 quarterly basis, at the Landfill.

21 24. From November 2004 to October 2005, the County failed to
22 monitor the gauge pressure, oxygen or nitrogen, and
23 temperature on a monthly basis, and to monitor surface
24 methane emissions on a quarterly basis, at the Landfill in
25

2 accordance with 40 C.F.R. Part 60, Subpart WWW.

3 25. The County violated Section 111 of the CAA and 40 C.F.R.
4 §§ 60.755(a)(3), 60.755(a)(5), 60.755(c), 60.756(a) and
5 60.756(f), by failing to monitor the gauge pressure, oxygen
6 or nitrogen, and temperature on a monthly basis, and to
7 monitor surface methane emissions on a quarterly basis, at
8 the Landfill from November 2004 to October 2005.
9

10 **V. RESPONDENT'S ADMISSIONS**

11 26. Without trial or litigation of the issues or any
12 adjudication of the facts set forth in this CAFO, Respondent
13 (i) admits that EPA has jurisdiction over the subject matter
14 of this CAFO and over Respondent; (ii) admits the general
15 allegations contained in Section III of this CAFO; (iii)
16 neither admits nor denies the specific allegations contained
17 in Section IV of this CAFO; (iv) consents to the terms of
18 this CAFO, including the assessment of the civil
19 administrative penalty under Section VI of this CAFO; (v)
20 waives any right to contest the allegations in this CAFO;
21 and (vi) waives the right to appeal the proposed final order
22 contained in this CAFO.
23

24 **VI. PENALTY ASSESSMENT**

25 27. In settlement of the violations and facts specifically
26 alleged in Section IV of this CAFO, and in consideration of
27
28

1 In the Matter of: County of Butte

2 the statutory penalty factors set forth in Section 113(e) (1)
3 of the CAA, embodied in EPA's Clean Air Act Stationary
4 Source Civil Penalty Policy ("Penalty Policy"), dated
5 October 25, 1991, Respondent shall pay a civil
6 administrative penalty of thirty thousand dollars (\$30,000)
7 within 30 calendar days after the effective date of this
8 CAFO. Payment shall be made by electronic fund transfer
9 ("EFT") or cashier's or certified check payable to the
10 "Treasury, United States of America." Payment by EFT shall
11 be transferred to the following address:
12

13 Federal Reserve Bank of New York
14 ABA = 021030004
15 Account = 68010727
16 SWIFT address = FRNYUS33
17 33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read,
"D 68010727 Environmental Protection Agency"

18 Payment by cashier's or certified check shall be sent by
19 certified mail, return receipt requested, to the following
20 address:

21 US Environmental Protection Agency
22 Fines and Penalties
Cincinnati Finance Center
23 PO Box 979077
St. Louis, MO 63197-9000

24 The check shall note the case title and docket number.
25 Concurrent with the delivery of payment, Respondents shall
26 send a copy of the transfer or check to the following
27

2 addresses:

3 Matt Salazar
4 Enforcement Officer (AIR-5)
5 U.S. Environmental Protection Agency
6 Region 9
7 75 Hawthorne Street
8 San Francisco, CA 94105

7 Brian P. Riedel
8 Assistant Regional Counsel (ORC-2)
9 U.S. Environmental Protection Agency
10 Region 9
11 75 Hawthorne Street
12 San Francisco, CA 94105

11 Regional Hearing Clerk (ORC-1)
12 U.S. Environmental Protection Agency
13 Region 9
14 75 Hawthorne Street
15 San Francisco, CA 94105

14 28. In the event that the full assessed penalty in this case is
15 not postmarked on or before its due date, Respondent shall
16 immediately pay the full assessed penalty, along with
17 stipulated penalties in the amount of thirty thousand
18 dollars (\$30,000) immediately, plus interest and costs as
19 allowed by law.

20 29. Additionally, Respondent's failure to pay any of the full
21 assessed penalty by its due date may lead to any or all of
22 the following actions:

23 a. The debt being referred to a credit reporting agency, a
24 collection agency, or the Department of Justice for filing
25 of a collection action in the appropriate United States
26

2 District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. In
3 any such collection action, the validity, amount, and
4 appropriateness of the assessed penalty and of this CAFO
5 shall not be subject to review.

6 b. The debt being collected by administrative offset (*i.e.*,
7 the withholding of money payable by the United States to, or
8 held by the United States for, a person to satisfy the debt
9 the person owes the Government), which includes, but is not
10 limited to, referral to the Internal Revenue Service for
11 offset against income tax refunds. 40 C.F.R. Part 13,
12 Subparts C and H.

14 c. EPA may (i) suspend or revoke Respondent's licenses or
15 other privileges; (ii) suspend or disqualify Respondent from
16 doing business with EPA or engaging in programs EPA sponsors
17 or funds; (iii) convert the method of payment under a grant
18 or contract from an advanced payment to a reimbursement
19 method; or (iv) revoke a grantee's or contractor's letter-
20 of-credit. 40 C.F.R. §§ 13.14 and 13.17.

21
22 30. In accordance with the Debt Collection Act of 1982, 31
23 U.S.C. § 3717, and 40 C.F.R. Part 13, interest, penalties
24 charges, and administrative costs will be assessed against
25 the outstanding amount that Respondent owes to EPA for
26 Respondent's failure to pay in full the civil penalty by its
27

2 due date. Interest will be assessed at an annual rate that
3 is equal to the rate of current value of funds to the United
4 States Treasury (i.e., the Treasury tax and loan account
5 rate) as prescribed and published by the secretary of the
6 Treasury in the Federal Register and the Treasury Fiscal
7 Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1).
8 Penalty charges will be assessed monthly at a rate of 6% per
9 annum. 40 C.F.R. § 13.11(c). Administrative costs for
10 handling and collecting Respondent's overdue debt will be
11 based on either actual or average cost incurred, and will
12 include both direct and indirect costs. 40 C.F.R.
13 § 13.11(b). In addition, if this matter is referred to
14 another department or agency (e.g., the Department of
15 Justice, the Internal Revenue Service), that department or
16 agency may assess its own administrative costs, in addition
17 to EPA's administrative costs, for handling and collecting
18 Respondent's overdue debt.
19

20
21 **VII. RETENTION OF RIGHTS**

- 22 31. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
23 resolves Respondent's liability for federal civil penalties
24 for the violations and facts specifically alleged in this
25 CAFO. Nothing in this CAFO is intended to or shall be
26 construed to resolve (i) any civil liability for violations
27

2 of any provision of any federal, state, or local law,
3 statute, regulation, rule, ordinance, or permit not
4 specifically alleged in Section IV of this CAFO; or (ii) any
5 criminal liability. In addition to any other authority,
6 right, or remedy available to EPA, EPA specifically reserves
7 any and all authorities, rights, and remedies available to
8 it (including, but not limited to, injunctive or other
9 equitable relief or criminal sanctions) to address any
10 violation of this CAFO or any violation not specifically
11 alleged in this CAFO.
12

13 32. This CAFO does not exempt, relieve, modify, or affect in any
14 way Respondent's duty to comply with all applicable federal,
15 state, and local laws, regulations, rules, ordinance, and
16 permits.

17 **VIII. COMPLIANCE CERTIFICATION**

18 33. By executing this Consent Agreement, Respondent certifies
19 that the Landfill is in compliance with the requirements of
20 Subpart WWW.
21

22 **IX. ATTORNEYS' FEES AND COSTS**

23 34. Each party shall bear its own attorney's fees, costs, and
24 disbursements incurred in this proceeding, except as
25 provided for elsewhere in this Consent Agreement.

26 **X. EFFECTIVE DATE**

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2 35. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),
3 this CAFO shall be effective on the date that the Final
4 Order contained in this CAFO, having been approved and
5 issued by either the Regional Judicial Officer or Regional
6 Administrator, is filed.

7
8 **XI. BINDING EFFECT**

9 36. The undersigned representative of Complainant and the
10 undersigned representative of Respondent each certifies that
11 he or she is fully authorized to enter into the terms and
12 conditions of this CAFO and to bind the party he or she
13 represents to this CAFO.

14 37. The provisions of this CAFO shall apply to and be binding
15 upon Respondent and its officers, directors, employees,
16 agents, trustees, servants, authorized representatives,
17 successors, and assigns.

18
19 **XII. MISCELLANEOUS**

20 38. This CAFO is the result of a "prior violation," as that term
21 is used in the Penalty Policy.

22
23 FOR THE UNITED STATES ENVIRONMENTAL
24 PROTECTION AGENCY, REGION 9:

25 Date: 9/18/2008


26 
27 DEBORAH JORDAN
28 Director, Air Division

1 In the Matter of: County of Butte

2 U.S. Environmental Protection Agency,
3 Region 9
4 75 Hawthorne Street
5 San Francisco, California 94105

6 FOR THE COUNTY OF BUTTE:

7 Date: 8 / 21 / 2008


8 
9 Name: Supervisor Curt Josiassen, Chair
10 Title: Chair

11 FINAL ORDER

12 EPA Region 9, and the County of Butte, having entered into
13 the foregoing Consent Agreement,

14 IT IS HEREBY ORDERED that this Consent Agreement and Final
15 Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18 (Docket No. CAA-
16 09-2008-) be entered, and Respondents shall pay a civil
17 administrative penalty in accordance with the terms set forth in
18 the Consent Agreement.

19 Date: 09 / 23 / 2008

20 
21 Steven L. Jawgiel
22 Regional Judicial Officer
23 United States Environmental
24 Protection Agency, Region IX
25 75 Hawthorne Avenue
26 San Francisco, California 94105-3143

1 In the Matter of: County of Butte

2
3 CERTIFICATE OF SERVICE

4 I certify that the original of the foregoing Consent Agreement
5 and Final Order Pursuant to 40 C.F.R. §§ 22.13 and 22.18, Docket
6 No. CAA-09-2008- , was placed in the United States Mail,
7 certified mail, return receipt requested, addressed to the
8 following person authorized to receive service of process in this
9 matter:

10
11
12 Certified Return Receipt No.

13
14
15 Date: SEP 24 2008 / 2008

16 By:

Danielle E. Carr
Regional Hearing Clerk
United States Environmental
Protection Agency, Region 9
75 Hawthorne Avenue
San Francisco, California 94105-3143