

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for Thomas T. Olivier  
Name of Case Attorney

9/26/08  
Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CAA-01-2008-0102

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Waste Management of MA, Inc.  
\_\_\_\_\_  
\_\_\_\_\_

Total Dollar Amount of Receivable \$ 27,800 Due Date: 10/23/08

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

Phone Number \_\_\_\_\_



**U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023**

RECEIVED

2008 SEP 25 P 11: 54

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK *WX*

September 25, 2008

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection  
Agency, Region I  
Suite 1100, Mail Code RCH  
One Congress Street  
Boston, Massachusetts 02114-2023

Re: Waste Management of Massachusetts, Inc., Docket No. CAA-01-2008-0102

Dear Ms. Santiago:

Please file the enclosed original Consent Agreement and Order in Docket No. CAA-01-2008-0102. I also enclose a copy.

I certify that this day I have served copies of the Consent Agreement and Order on Gail Lynch, Esq., Senior Group Counsel for Waste Management, and David Friedland, Esq., of Beveridge & Diamond, P.C.

Sincerely,



Thomas T. Olivier  
Senior Enforcement Counsel

Encl.

cc: Gail Lynch, Esq.  
David Friedland, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

RECEIVED

BEFORE THE ADMINISTRATOR

2008 SEP 25 P 11: 54

In the Matter of:

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket No. CAA-01-2008-0102 CLERK

Waste Management of Massachusetts, Inc.

Respondent

\_\_\_\_\_

**CONSENT AGREEMENT AND ORDER**

The United States Environmental Protection Agency, Region I ("EPA"), and Waste Management of Massachusetts, Inc., enter into this Consent Agreement and Order to simultaneously commence and conclude a proceeding under 40 C.F.R. §§22.13(b) and 22.18(b)(2).

The EPA and Respondent, Waste Management of Massachusetts, Inc. ("WMMA"), agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Order without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

**I. PRELIMINARY STATEMENT**

A. The provisions of this Consent Agreement and Order shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.



B. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Consent Agreement and Order. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent consents to the terms of this Consent Agreement and Order.

C. Respondent neither admits nor denies the specific factual and legal allegations below in Section II. For purposes of this Consent Agreement and Order and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Consent Agreement and Order. Respondent waives any right to appeal this Consent Agreement and Final Order.

D. Under Section 113(d) of the Clean Air Act (“Act”), 42 U.S.C. § 7413(d), and the Civil Monetary Penalty Inflation Rule (see Pub. L. 104-134 and 40 C.F.R. Part 19), EPA may assess penalties of up to \$ 32,500 for each day of each violation of the Act occurring after March 15, 2004.

## **II. EPA FINDINGS**

A. The Commonwealth of Massachusetts has adopted an “applicable implementation plan” within the meaning of Section 113(a)(1) of the Act. This plan, commonly known as a state implementation plan (“SIP”), has been approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410. The Massachusetts SIP includes various federally-approved portions of the Massachusetts Air Pollution Control Regulations at 310 CMR § 7.00 *et seq.*

B. The Massachusetts SIP includes the regulation at 310 CMR § 7.11(1)(b) (the “Massachusetts idling regulation”), which provides that no person shall cause, suffer, allow, or permit the unnecessary operation of the engine of a motor vehicle while such vehicle is stopped

for a foreseeable period in excess of five minutes, unless such operation accords with a listed exception.

C. At WMMA sites in Massachusetts, Complainant has observed the unnecessary operation of the engines of motor vehicles that were stopped for foreseeable periods in excess of five minutes, as described below:

<u>Date</u>	<u>Location</u>	<u>Idling Time Observed</u>	<u>Truck ID</u>
11/20/07	Stoughton	4:21-6:03 am	505133
11/20/07	Stoughton	4:21-6:08 am	505306
11/20/07	Taunton	6:50-6:59 am	411196
11/20/07	Taunton	6:50-6:59 am	208989
12/27/07	W. Boylston	4:38-5:58 am	263787

D. Complainant finds that Respondent caused, suffered, allowed, or permitted the operation of the motor vehicle engines as described above in Paragraph II.C. Complainant also finds that the operation of such motor vehicle engines was not in accord with any exception listed in 310 CMR §§ 7.11(1)(b)(1), (2), or (3).

E. Accordingly, Complainant finds that Respondent violated the Massachusetts idling regulation at 310 CMR § 7.11(1)(b).

F. Respondent's violations of the Massachusetts idling regulations render Respondent liable for penalties under Section 113(d) of the Act.



G. Complainant has provided notice to Respondent of EPA's findings of violations described in this section, at least 30 days prior to the issuance of an administrative penalty order under section 113(d) of the Act.

H. WMMA represents that upon being advised of the alleged violations of Massachusetts idling regulations, WMMA retrained drivers to ensure that all WMMA employees who operate WMMA motor vehicles engaged in solid waste and recycling collection in Massachusetts are aware of and comply with Massachusetts idling regulations.

### **III. TERMS OF SETTLEMENT**

A. Respondent shall comply with the Massachusetts idling regulations at all WMMA waste hauling fleet operations facilities located in Massachusetts ("Subject Facilities"). Respondent shall also implement the measures described below, which are intended to promote Respondent's compliance with motor vehicle idling regulations at WMMA Subject Facilities.

1. Within 30 days of the date of filing of this Consent Agreement and Order, Respondent shall commence implementation of the following measures, and shall thereafter implement the measures for a period of 12 months.

a. At each Subject Facility, a WMMA facility manager, or delegated supervisor with management authority, shall walk through and check the facility parking lot(s) at least once a day, during periods when waste-hauling vehicles are starting up in preparation for their morning routes, to ensure that drivers are complying with the Massachusetts idling regulations (hereinafter, the "walk-through requirement").

b. WMMA shall ensure that managers or delegated supervisors with management authority of all facilities document the performance of the daily walk-through requirement set out in Paragraph III.A.1.a above. This documentation shall be retained at each Subject Facility, and shall be made available upon request by EPA inspectors or other enforcement personnel.

c. In addition, WMMA shall provide reports to EPA Region 1 regarding compliance with the walk-through requirement. Each report shall state that WMMA was in full compliance with the walk-through requirement during the relevant quarter, or shall identify any instances where WMMA failed to meet the walk-through requirement. For each such instance, the report shall identify the Subject Facility, and the date and time that the walk-through requirement was not performed in accordance with Paragraph III.A.1.a, and shall provide an explanation for the nonperformance. WMMA shall provide the reports quarterly, the first quarterly submission due 21 days after the end of the first quarter following the signature of this Consent Agreement and Final Order by the Regional Judicial Officer, and the last quarterly submission due 21 days after the end of the 12 month period.

B. In light of the above, and taking into account such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in Section II of this Consent Agreement and Order, in the amount of \$27,200 (twenty-



seven thousand two hundred dollars).

C. Respondent shall pay the penalty of \$27,200 within thirty (30) days of the date this Consent Agreement and Order is signed by the Regional Judicial Officer.

D. Respondent shall make payment by submitting a check, to the order of the "Treasurer, United States of America," in the amount of \$27,200, to:

EPA -- Region I  
P.O. Box 360197M  
Pittsburgh, PA 15251

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall provide copies of the check and letter to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
Suite 1100, Mail Code RHC  
1 Congress Street  
Boston, MA 02114-2023

and

Thomas T. Olivier, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
Suite 1100, Mail Code SEL  
1 Congress Street  
Boston, MA 02114-2023

E. Respondent shall be liable for stipulated penalties in the amount of \$1,000 for every day on which Respondent fails to:

1. commence or implement in a timely manner the required measures in



accordance with Paragraphs III.A.1.a or b, unless the failure was due to circumstances beyond Respondent's reasonable control; and/or

2. submit timely reports as required by Paragraph III.A.1.c.

If Respondent claims that any failure to implement required measures in accordance with Paragraphs II.A.1.a or b was caused by circumstances beyond its reasonable control, Respondent shall describe such circumstances in the applicable quarterly report submitted under Paragraph III.A.1.c. If EPA demands payment of stipulated penalties under Paragraph IV.C for a failure to implement required measures in accordance with Paragraphs III.A.1.a or b, EPA shall permit Respondent the opportunity to object in writing within ten (10) days of receipt of such written demand. EPA and Respondent shall have an additional thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

#### IV. GENERAL PROVISIONS

A. Respondent shall submit all notices and reports required by this Consent Agreement and Order to:

Thomas T. Olivier, Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
Suite 1100, Mail Code SEA  
1 Congress Street  
Boston, MA 02114-2023

by first class mail.

B. Stipulated penalties under Paragraph III.E shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

C. Except as provided in Paragraph III.E, Respondent shall pay stipulated penalties within 15 days of receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph III.D above. Interest and late charges shall be paid as stated in Paragraph IV.E, accruing from the date of EPA's demand.

D. Except as described in Paragraph IV.G, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or any other violation by Respondent of the statutes and regulations upon which this agreement is based, or for any other violation by Respondent of any applicable provision of law.

E. Pursuant to § 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5), if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid within 30 calendar days of Respondent's receipt of the Consent Agreement and Order signed by the Regional Judicial Officer. In that event, interest will accrue from the date the Consent Agreement and Order was signed by the Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). For all other penalty amounts, interest will accrue from the date of EPA's penalty demand in accordance with Paragraph IV.C. In the event that a penalty is not paid when due, an additional charge will be



assessed to cover the United States' enforcement expenses, including attorneys fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

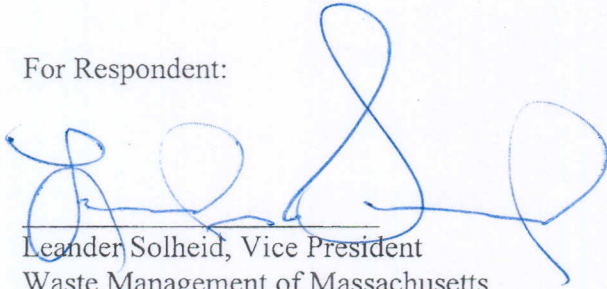
F. The civil penalty under Paragraph III.B above, any stipulated penalties paid under this Consent Agreement and Order, and any interest, non-payment penalties and charges as described in Paragraph IV.E above, shall represent penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

G. This Consent Agreement and Order constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section II, above. Compliance with this Consent Agreement and Order shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations. In any future action for violations of SIP idling restrictions which occur after the date this Consent Agreement and Order is signed by the Regional Judicial Officer, EPA will consider WMMA's compliance history and good faith efforts to comply with this Consent Agreement and Order in determining the amount of a penalty to be assessed, in accordance with Section 113(e) of the Act. Except as explicitly described in this Consent Agreement and Order, EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

H. The parties shall bear their own costs and fees in this action.

I. Each undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.

For Respondent:



Leander Solheid, Vice President  
Waste Management of Massachusetts  
4 Liberty Lane West  
Hampton, NH 03842

Date: 9/22/08



For Complainant:

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
Environmental Protection  
Agency, Region I  
1 Congress St., Suite 1100  
Boston, MA 02114


Date: 09/23/08

Thomas T. Olivier  
Thomas T. Olivier, Senior Enforcement Counsel  
Environmental Protection  
Agency, Region I  
1 Congress St., Suite 1100  
Boston, MA 02114

Date: 9/22/08

**V. ORDER**

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.

  
\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency, Region I

Date: 9/23/08