



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 02 2008

REPLY TO THE ATTENTION OF:
(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Kevin Keil
Mayor of Perham, Minnesota
125 2nd Ave. NE
Perham, Minnesota 56573

Dear Mr. Keil:

I have enclosed a file stamped Consent Agreement and Final Order ("CAFO") which resolves case docket number CAA-05-2008-0025 with Perham Resource Recovery Facility ("Perham RRF"). As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUL 02 2008.

Pursuant to paragraph 38 of the CAFO, Perham RRF must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2008-0025, and the billing document number 2750803A023.

If you have any questions regarding this case, please contact John Matson, Associate Regional Counsel at (312) 886-2243.

Sincerely,

A handwritten signature in black ink that reads "William L. MacDowell".

William L. MacDowell
Chief
Air Enforcement and Compliance Assurance
Section, MN/OH

cc: Jeff T. Connell, Minnesota Pollution Control Agency
Chris Psihos, Esq., Special Waste Disposal, Inc.
Brian Schmidt, Perham Resource Recovery Facility

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. EAA-05-2008-0025
)
Perham Resource Recovery Facility) Proceeding to Assess a
Perham, Minnesota,) Civil Penalty Under Section
) 113(d) of the Clean Air
Respondent.) Act, 42 U.S.C. § 7413(d)

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 Act), 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 Air and Radiation Division, United States Environmental Protection Agency (EPA), Region 5.

3. Respondent is Perham Resource Recovery Facility (Respondent or Perham), a local government agency operating in the State of Minnesota.

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

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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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the 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 the 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. Under Sections 111 and 129 of the Act, the Administrator of EPA promulgated the Federal Plan Requirements for Small MWC Units Constructed On or Before August 30, 1999, 40 C.F.R. 62, Subpart JJJ (the Small MWC FIP) at 40 C.F.R. §§ 62.15000 through 62.15410.

10. The Small MWC FIP applies to any municipal waste combustion unit: 1) that has the capacity to combust at least 35 tons per day of municipal solid waste (MSW) or refuse-derived fuel (RDF) but no more than 250 tons per day of MSW or RDF;

2) on which construction commenced on or before August 30, 1999;
3) that is not regulated by an EPA approved and effective State or Tribal plan; and 4) that is located in any State whose approved State plan is subsequently vacated in whole or in part, or the MWC unit is located in Indian country if the approved tribal plan for that area is subsequently vacated in whole or in part. See 40 C.F.R. § 62.15010.

11. Pursuant to 40 C.F.R. § 62.15045(a), the owner or operator of a Small Class II MWC Unit must achieve final compliance with the Small MWC FIP no later than May 6, 2005.

12. After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), 40 C.F.R. § 62.15160(a) requires the owner or operator of a Small Class II MWC Unit to comply with the following emission standards for hydrogen chloride (HCl) and mercury set forth at 40 C.F.R. § 62.15160(a)(2) and Table 4 of the Small MWC FIP:

- a. For HCl, 250 parts per million by Volume, dry basis, at 7 percent oxygen (ppmV,d @ 7% O₂) or 50% reduction of potential HCl emissions.
- b. For mercury, 0.080 milligram per dry standard cubic meter at 7 percent oxygen (mg/dscm @ 7% O₂) or 85% reduction of potential Hg emissions.

13. 40 C.F.R. § 62.15240(a) requires the owner or operator of a Small Class II MWC Unit to conduct the initial stack tests

for the pollutants listed in § 62.15230 no later than November 2, 2005.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19 (2004).

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 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 jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Complainant's Factual Allegations and Alleged Violations

Count II

17. Complainant incorporates paragraphs 1 through 16 of this complaint, as if set forth in this paragraph.

18. Respondent owns and operates a municipal waste combustor (MWC) that is located at 201 6th Avenue NE, Perham, Minnesota.

19. Respondent's MWC has the capacity to combust 116 tons per day of MSW.

20. Construction of the Respondent's MWC commenced in 1985.

21. The Minnesota Pollution Control Agency (MPCA) has not submitted its Clean Air Act Section 111(d) Plan for Small MWC Units on Which Construction Commenced On or before August 30, 1999.

22. Thus, a State Plan cannot apply and cannot have been vacated in whole or part.

23. Respondent is not located on a Federal Indian Reservation.

24. Thus, a Tribal Plan cannot apply and cannot have been vacated in whole or part.

25. EPA does not have information demonstrating that Respondent's MWC was modified after June 6, 2001.

26. Respondent's MWC is a Small Class II MWC Unit as defined in the Small MWC FIP. 40 C.F.R. § 62.15010.

27. On June 1 and 2, 2005, Respondent conducted its initial stack test.

28. On June 2, 2005, Interpoll Laboratories, Inc. (Interpoll), conducted three runs of Reference Method (RM) 26 on behalf of Respondent. The average HCl emission concentration of the three runs was 843 ppmV,d @ 7% O₂.

29. On September 14, 2005, Interpoll conducted three runs of RM 26 on behalf of Respondent. The average HCl emission concentration of the three runs was 97.08 ppmV,d @ 7% O₂.

30. On June 27, 2006, Interpoll conducted three runs of RM 26 on behalf of Respondent. The average of HCl emission concentration of the three runs was 257 ppmV,d @ 7% O₂.

31. On September 14, 2006, Interpoll conducted three runs of RM 26 on behalf of Respondent. The average of HCl emission concentration of the three runs was 82.41 ppmV,d @ 7% O₂.

32. Between June 1, 2005 and September 14, 2005 and between June 27, 2006 and September 14, 2006, Respondent violated 40 C.F.R. § 62.15160(a)(2) and Section 129(f)(3) of the Clean Air Act, 42 U.S.C. § 7429(f)(3), by discharging combustion gases into the atmosphere containing HCl in excess of the standards set forth at 40 C.F.R. § 62.15160(a)(2).

Count II

33. Complainant incorporates paragraphs 1 through 32 of this Complaint, as if set forth in this paragraph.

34. On September 14, 2006, Interpoll conducted three runs of RM 29 on behalf of Respondent. The average concentration of mercury emissions for the three runs was 0.151 mg/dscm @ 7% O₂.

35. On November 28, 2006, Interpoll conducted three runs of RM 29 on behalf Respondent. The average concentration of mercury emissions for the three runs was 0.0123 mg/dscm @ 7% O₂.

36. Thus, between September 14, 2006 and November 28, 2006, Respondent violated 40 C.F.R. § 62.15160(a)(2) and of Section 129(f)(3) of the Clean Air Act, 42 U.S.C. § 7429(f)(3), by discharging into the atmosphere combustion gases containing mercury in excess of the emission standard set forth at 40 C.F.R. § 62.15160(a)(2).

Civil Penalty

37. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Respondent's cooperation, and Respondent's agreement to perform a supplemental environmental project (SEP), Complainant has determined that an appropriate civil penalty to settle this action is **\$15,950.00**.

38. Within 30 days after the effective date of this CAFO, Respondent must pay a **\$15,950.00** civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

For checks sent by regular U.S. Postal Service mail:

EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For checks sent by express mail:

U.S. Bank
Government Lockbox 979077 EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the case name and docket number of this CAFO and the billing document number.

39. A transmittal letter stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

John C. Matson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

41. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 56, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

42. Pursuant to 31 C.F.R. § 901.9, 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. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). 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.

Supplemental Environmental Project

43. Respondent must complete a supplemental environmental project designed to protect the environment and public health by reducing its HCl and mercury emissions. At its Perham RRF facility, Respondent must complete the SEP as follows.

44. The SEP consists of constructing two modifications to the air pollution control system on its small municipal waste combustor. The first modification consists of adding two mixing zones containing four in-line static mixers per zone for a total of eight static in-line mixers in the duct after the location where activated carbon and carbon are injected and before the adsorbent reactor vessel.

45. The second modification consists of increasing the diameter of the adsorbent reactor vessel from 5 feet to 6.5 feet. This project will increase the retention time from approximately 0.9 to 2.0 seconds.

46. Respondent must complete installation of the in-line mixers no later than 6 months after the effective date of this order.

47. Respondent must complete construction to increase the diameter of the adsorbent reactor vessel no later than 6 months after the effective date of this order.

48. Respondent must spend at least \$110,760 to complete the air pollution control modifications described in paragraphs 44 and 45, above.

49. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

50. EPA may inspect the facility at any time to monitor Respondent's compliance with the SEP requirements of this CAFO.

51. Respondent must submit a SEP completion report to EPA no later than 30 days after Respondent completes construction on both modifications. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

52. Respondent must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

53. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

54. Following receipt of the SEP completion report described in paragraph 51, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 56.

55. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's

receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 56, below.

56. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less on the SEP than \$99,700, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in this paragraph.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$10,000 in addition to any penalty required under subparagraph 56.a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$10,000 in addition to any penalty required under subparagraph 56.a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraphs 46 and 47, above, for implementing the SEP, fails to submit timely the SEP completion report required by paragraph 51, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$1500	1 st through 14 th day
\$2500	15 th through 30 th day
\$3500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

57. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

58. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 56, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

59. Any public statement that Respondent makes referring to the SEP must include the following language, "Perham Resource Recovery Facility undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Perham Resource Recovery Facility for violations of the Federal Plan Requirements for Small MWC Units Constructed On or Before August 30, 1999, 40 C.F.R. 62, Subpart JJJ."

60. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

63. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 61, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

64. Respondent certifies that it is complying fully with the Clean Air Act, its implementing regulations, and the Small MWC FIP at 40 C.F.R. §§ 62.15000 through 62.15410.

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

66. The terms of this CAFO bind Respondent, its successors, and assigns.

67. 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.

68. Each party agrees to bear its own costs and attorneys' fees in this action.

69. This CAFO constitutes the entire agreement between the parties.

Perham Resource Recovery Facility, Respondent

6/10/2008
Date

Kevin Keil
Kevin Keil
Mayor of Perham, Minnesota

United States Environmental Protection Agency, Complainant

6/27/08
Date

Yvonne Holst
for Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5 (A-18J)

CAA-05-2008-0025

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of:
Perham Resource Recovery Facility,
Docket No. CAA-05-2008-0025

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.

6/30/08
Date

Walter W. Kovalak for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 5

In the Matter of Perham Resource Recovery Facility
Docket No. **CAA-05-2008-0025**

CERTIFICATE OF SERVICE

I certify that I filed the original and one copy of the Consent Agreement and Final Order in this matter with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that mailed by Certified Mail, Receipt No. _____, the second original to Respondent, addressed as follows:

The Honorable Kevin Keil
Mayor of Perham, Minnesota
125 2nd Ave. NE
Perham, Minnesota 56573

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 1464

and that I delivered a correct copy by intra-office mail, addressed as follows:

Marcy Toney, Regional Judicial Officer (C-14J)
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Further, I certify that I sent copies of the Consent Agreement and Final Order by first class mail to:

Brian Schmidt, Facility Manager
Perham Resource Recovery Facility
201 6th Avenue NE
Perham, Minnesota 56573

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 1426

Chris Psihos, Esq.
Special Waste Disposal, Inc.
2850 100th Court NE
Blaine, Minnesota 55449

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 1433

Jeff T. Connell
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

on the 2nd day of July, 2008.

Loretta Shaffer
Loretta Shaffer, Secretary
AECAS (MN-OH)

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