

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2016 AUG 16 AM 8:01

IN THE MATTER OF:

Unified Government of Wyandotte
County, Kansas City, Kansas,

Respondent

CONSENT AGREEMENT

Docket No. CAA-07-2016-0031

I. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding brought under Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d) and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Government 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 United States Environmental Protection Agency, Region 7 (the "EPA"). On the EPA's behalf, the Regional Judicial Officer is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act.

3. Respondent is the Unified Government of Wyandotte County, Kansas City, Kansas, a governmental entity that is a political subdivision of the State of Kansas. Respondent is a "person" as defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e). Respondent owns and operates the Kaw Point Sewage Sludge Incineration Unit at the Kaw Point Wastewater Treatment Plant located at 50 Market Street, Kansas City, Kansas 66118 (the "Facility").

4. Complainant and Respondent, having agreed that settlement of this action is in the public interest, consent to the entry of this consent agreement ("Consent Agreement" or "Agreement") and the attached final order ("Final Order" or "Order") without adjudication of

any issues of law or fact herein, and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

II. JURISDICTION

5. This Consent Agreement is entered into under Section 113(d) of the Clean Air Act (CAA), as amended, 42 U.S.C. § 7413(d), and in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22.

6. The EPA has determined this matter is appropriate for an administrative penalty assessment. 42 U.S.C. § 7413(d); 40 C.F.R. § 19.4. Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), provides that the EPA Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under Section 113(d) of the CAA.

7. On June 1, 2016, the EPA issued to Respondent a Finding of Violation (“FOV”) and provided a copy of the FOV to the Kansas Department of Health and Environment, providing notice to both that the EPA found that Respondent committed the alleged violations described in Section IV of this Agreement and providing Respondent an opportunity to confer with the EPA.

8. The Regional Judicial Officer is authorized to ratify this Consent Agreement which memorializes a settlement between Complainant and Respondent. 40 C.F.R. § 22.4(b) and 22.18(b).

9. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. STATUTORY AND REGULATORY FRAMEWORK

10. The Clean Air Act establishes a regulatory framework designed to protect and

enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

11. Section 129 of the Act, 42 U.S.C. § 7429, requires that the Administrator of the EPA establish performance standards pursuant to Section 111, 42 U.S.C. § 7411, for categories of solid waste incineration units. The performance standards must include guidelines for existing units promulgated pursuant to Section 111(d), 42 U.S.C. § 7411(d); 42 U.S.C. § 7429(b)(1). States that have solid waste incineration units are required to submit approval plans to EPA to implement and enforce the guidelines. 42 U.S.C. § 7429(b)(2). EPA must promulgate a Federal Plan to implement and enforce the guidelines in any state that has solid waste incineration units but has not submitted an approval plan to EPA within two (2) years after promulgation of the guidelines. 42 U.S.C. § 7429(b)(3).

12. Pursuant to Section 111 and 129 of the Clean Air Act the Administrator promulgated a Federal Plan, codified at 40 C.F.R. Part 62, Subpart LLL, for Sewage Sludge Incineration ("SSI") Units Constructed on or before October 14, 2010 ("Subpart LLL" or the "Federal Plan"). 81 FR 26040 (Apr. 29, 2016).

13. The Federal Plan applies to SSI units that combust domestic sewage sludge. The Federal Plan effective date is May 31, 2016.

14. Among other requirements, Subpart LLL requires an owner or operator of an SSI unit to submit a control plan, 40 C.F.R. § 62.15875; determine site-specific operating limits, 40 C.F.R. § 62.15985; conduct and complete operator training requirements, 40 C.F.R. § 62.15920; demonstrate initial and continuous compliance with emissions limits and standards, 40 C.F.R. §§ 62.15980, 62.16000; meet performance testing, monitoring, and calibration requirements, 40 C.F.R. § 62.16015; maintain appropriate records, 40 C.F.R. § 62.16025; submit required

reporting documentation, 40 C.F.R. § 62.16030; and apply for appropriate permits, 40 C.F.R. § 62.16035.

15. Section 129(f) of the Clean Air Act, 42 U.S.C. § 7429(f) prohibits operation of a SSI unit in violation of any performance standard, emission limit, or other requirement after the effective date of the standard, limitation, or requirement.

IV. ALLEGED VIOLATIONS OF LAW

A. Definitions

16. A “sewage sludge incineration unit” is an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. 40 CFR § 62.16045.

B. Factual Allegations

17. At all times pertinent to this action, the Respondent was the “owner” and “operator” of the Facility within the meaning of 40 C.F.R. § 60.2 and 42 U.S.C. § 7411(a).

18. At all times pertinent to this action, the SSI unit located at Kaw Point was a “solid waste incineration unit” as that term is defined in Section 129(g)(1) of the Act, 42 U.S.C. § 7429(g)(1).

19. Pursuant to 40 C.F.R. § 63.15855(a), the Kaw Point SSI unit is an existing affected source because it was constructed before October 14, 2010, it is an SSI unit as defined in 40 C.F.R. § 62.16045, and it is not an exempt unit pursuant to 40 C.F.R. § 62.15860. The Respondent is therefore subject to the requirements of 40 C.F.R. Part 62, Subpart LLL.

20. Respondent was required to comply with the provisions of Subpart LLL no later than May 31, 2016, when those provisions came into effect. 42 U.S.C. § 7429(f).

21. Before the provisions of Subpart LLL became effective and pursuant to the May 20, 2013 federal consent decree (United States v. Unified Government of Wyandotte County, Kansas City, Kansas, Consent Decree, Civ. No. 13-02141-EFM-KGG), Respondent agreed to design, construct and begin operation of a solids dewatering improvement facility to replace the SSI unit.

22. EPA issued a Finding of Violation to Respondent on June 1, 2016, notifying Respondent of violations of Subpart LLL.

23. The Respondent's failure to comply with Subpart LLL is a violation of Sections 111 and 129 of the Clean Air Act, 42 U.S.C. §§ 7411 and 7429.

V. TERMS OF CONSENT AGREEMENT

24. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) Admits that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;
- (b) Neither admits nor denies the alleged violations of law stated above;
- (c) Consents to the assessment of a civil penalty as stated below;
- (d) Consents to the issuance of any specified compliance or corrective action order;
- (e) Consents to the conditions specified in this Consent Agreement;
- (f) Consents to any stated Permit Action;
- (g) Waives any right to contest the alleged violations of law set forth in Section IV of this Consent Agreement; and
- (h) Waives its rights to appeal the Final Order accompanying this Consent

Agreement.

25. For the purpose of this proceeding, Respondent:
- (a) Agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent.
 - (b) Acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
 - (c) Waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement and or Final Order, or both, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);
 - (d) Consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Kansas; and
 - (e) Waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the Consent Agreement or Final Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

26. Penalty Payment. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a compromised civil penalty of Ten Thousand Dollars and No Cents (\$10,000.00) ("EPA Penalty") within thirty (30) calendar

days of the Effective Date of this Consent Agreement and Final Order.

27. Payment of the penalty may be submitted on-line at *www.pay.gov* by entering “SFO 1.1” in the “Find Forms” field. Open the on-line form and complete required fields to complete payment, identifying each and every payment with “Docket No. CAA-07-2016-0031.” Within 24 hours of payment of the EPA Penalty, send proof of payment to the EPA. Respondent shall print a copy of each payment receipt and mail a copy of each receipt to EPA’s representative identified in this paragraph:

Regional Hearing Clerk
Enforcement Coordination Office
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219

and to

Lisa Hanlon
AWMD/APCO/ACES
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, Kansas 66219.

Payments may also be made by cashier or certified check made payable to “Treasurer of the United States” and remitted to:

US Environmental Protection Agency
Fines and Penalties - CFC
P.O. Box 979077
St. Louis, Missouri 63197-9000.

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall be provided to EPA’s representatives identified in this paragraph.

28. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, the EPA may:

(a) Request the Attorney General to bring a civil action in an appropriate district

court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

(b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5); 40 C.F.R. §§ 13.13, 13.14, and 13.33;

(c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and

(d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

29. Conditions. As a condition of settlement and in compromise of the civil penalty that EPA could otherwise impose herein, Respondent agrees that Respondent shall:

- (a) cease operation of its SSI no later than October 1, 2016 and
- (b) surrender all operating or other permits related to the SSI no later than October 1, 2016.

30. Respondent agrees that the time period from the Effective Date of this Agreement until all of the conditions specified in Paragraphs 29 are completed (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the "Tolled Claims") set forth in Section IV of this Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer,

motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolloed Claims.

31. The provisions of this Agreement shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns. From the Effective Date of this Agreement until the end of the Tolling Period as set forth in Paragraph 30 of this Consent Agreement and Final Order, Respondent must give written notice and a copy of this Agreement to any successors in interest prior to any transfer of ownership or control of any portion of or interest in the Facility. Simultaneously with such notice, Respondent shall provide written notice of such transfer, assignment, or delegation to the EPA. In the event of any such transfer, assignment, or delegation, Respondent shall not be released from the obligations or liabilities of this Agreement unless the EPA has provided written approval of the release of said obligations or liabilities.

32. By signing this Agreement, Respondent acknowledges that this Agreement and Order will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

33. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and Final Order and has the legal capacity to bind the party he or she represents to this Agreement.

34. By signing this Agreement, both parties agree that each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations. Additionally, both parties agree that Complainant's covenant not to sue

Respondent (stated in Paragraph 38) during the time period between the issuance of the attached Final Order and the deadline (stated in Paragraphs 29) for Respondent to complete the non-penalty conditions of this Consent Agreement constitutes sufficient consideration for Respondent's obligation to completely perform the non-penalty conditions of this Consent Agreement as stated in Paragraphs 29, regardless of whether the covenant not to sue subsequently terminates.

35. By signing this Agreement Respondent certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete for each such submission, response, and statement. Respondent acknowledges that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

36. Except as qualified by Paragraph 28, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

VI. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

37. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

38. Complainant covenants not to sue Respondent for injunctive or other equitable relief for the violations and facts alleged in this matter, but such covenant automatically terminates if and when Respondent fails to timely and satisfactorily complete every condition stated in Paragraph 29. If and when such covenant terminates, the United States at its election may seek to compel performance of the conditions stated in Paragraph 29 in a civil judicial

action under the CAA or as a matter of contract. The covenant not to sue becomes permanent upon satisfactory performance of the conditions stated in Paragraph 29.

39. Penalties paid pursuant to this Consent Agreement and Final Order shall not be deductible for purposes of federal taxes.

40. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.

41. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Judicial Officer.

42. Any violation of this Final Order may result in a civil judicial action for an injunction or civil penalties of up to \$37,500 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), as well as criminal sanctions as provided in Section 113(c) of the Act, 42 U.S.C. § 7413(c). The EPA may use any information submitted under this Final Order in an administrative, civil judicial, or criminal action.

43. Nothing in this Consent Agreement and Final Order shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

44 . Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

VII. EFFECTIVE DATE


45. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Hearing Clerk.

The foregoing Consent Agreement In the Matter of Unified Government of Wyandotte County, Kansas City, Kansas, Docket No. CAA-07-2016-0031, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

8/3/2015

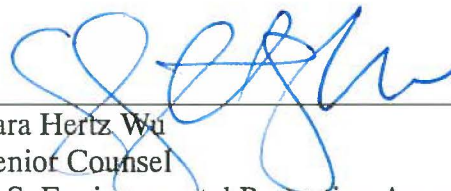
Date



Becky Weber
Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

8/3/16

Date



Sara Hertz Wu
Senior Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

The foregoing Consent Agreement In the Matter of Unified Government of Wyandotte County, Kansas City, Kansas, Docket No. CAA-07-2016-0031, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENT:
UNIFIED GOVERNMENT OF WYANDOTTE COUNTY,
KANSAS CITY, KANSAS

8/2/16

Date

Joseph M. Connor

Signature

Joseph M. Connor

Printed Name

Acting County Administrator

Title

701 N. 7th Street, Kansas City, KS 66101

Address

APPROVED AS TO FORM



UG LEGAL DEPT.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:

Unified Government of Wyandotte
County, Kansas City, Kansas,

Respondent.

FINAL ORDER

Docket No. CAA-07-2016-0031

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Aug. 15, 2016
Date

Karina Borrromeo
Karina Borrromeo
Regional Judicial Officer

IN THE MATTER Of Unified Government of Wyandotte County, Kansas City, Kansas,
Respondent
Docket No. CAA-07-2016-0031

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy emailed to Attorney for Complainant:

hertzwu.sara@epa.gov

Copy by First Class Mail to Respondent:

United Government of Wyandotte County
Kansas City, Kansas
Mr. Trenton Foglesong, Director
Water Pollution Control Division
50 Market Street
Kansas City, Kansas 66118

Dated: 8/16/16



Kathy Robinson
Kathy Robinson
Hearing Clerk, Region 7