



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

August 23, 2021

VIA ELECTRONIC MAIL  
DELIVERY RECEIPT REQUESTED

Mr. Matthew W. Nakon, Esq.  
Wickens Herzer Panza  
35765 Chester Road  
Avon, Ohio 44011  
[mnakon@wickenslaw.com](mailto:mnakon@wickenslaw.com)

Re: Consent Agreement and Final Order  
Facility: Ross Incineration Services, Inc., 36790 Giles Road Grafton, Ohio 44044  
EPA ID No.: OHD048415665  
Docket No.: RCRA-05-2021-0039

Dear Mr. Nakon:

Attached, please find a signed, fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The CAFO was filed on August 23, 2021, with the Regional Hearing Clerk.

Please pay the civil penalty in the amount of \$20,015 in the manner prescribed in paragraphs 39-44 of the CAFO, and reference all checks with the docket number RCRA-05-2021-0039. Your payment is due within 30 calendar days of the effective date of the CAFO. Thank you for your cooperation in resolving this matter.

If you have any questions or concerns regarding this matter, please contact Brenda Whitney, of my staff, at [whitney.brenda@epa.gov](mailto:whitney.brenda@epa.gov) or 312-353-4796.

Sincerely,

**Julie Morris**  
Digitally signed by Julie  
Morris  
Date: 2021.08.16  
08:37:09 -05'00'

Julie Morris, Chief  
RCRA Compliance Section 2

Attachment

cc: Mitchell Mathews, Ohio EPA ([mitchell.mathews@epa.ohio.gov](mailto:mitchell.mathews@epa.ohio.gov))



issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

6. 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.

7. 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**

8. Jurisdiction for this action is conferred upon U.S. EPA by Sections 3006 and 3008 of RCRA, 42 U.S.C. §§ 6926 and 6928.

9. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and alleged violations in this CAFO.

10. 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**

11. U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260 through 279, governing generators and transporters of hazardous waste and facilities that treat, store, and dispose of hazardous waste, pursuant to Sections 3001 – 3007, and 3013, among others, of RCRA, 42 U.S.C. §§ 6921 – 6927.

12. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator of U.S. EPA may authorize a state to administer the RCRA hazardous waste program in lieu of the federal program when the Administrator finds that the state program meets certain conditions.

13. Any violation of regulations promulgated pursuant to Subtitle C (Sections 3001-3023 of RCRA, 42 U.S.C. §§ 6921-6939e) or any state provision authorized pursuant to Section 3006 of RCRA constitutes a violation of RCRA, subject to the assessment of civil penalties and

issuance of compliance orders as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

14. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), the Administrator of U.S. EPA granted the State of Ohio final authorization to administer a state hazardous waste program in lieu of the federal government's base RCRA program effective June 30, 1989. 54 Fed. Reg. 27170 (June 28, 1989).

15. U.S. EPA authorized Ohio's revisions to its hazardous waste management program, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b). 83 Fed. Reg. 5948 (February 12, 2018).

16. On October 5, 2020, Ohio promulgated revised and renumbered hazardous waste management program rules to correspond with the applicable federal regulations at 40 C.F.R. Parts 260 through 279.

17. U.S. EPA, however, has not granted to the State of Ohio interim or final authorization to implement those revised and renumbered hazardous waste management program rules, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b).

18. Therefore, U.S. EPA shall enforce in Ohio the existing (February 12, 2018) authorized hazardous waste storage operating requirements until it authorizes Ohio's promulgated and renumbered rules (October 5, 2020).

19. Under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), U.S. EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified period of time, or both. The Administrator of U.S. EPA may assess a civil penalty of up to \$101,439 per day for each violation of Subtitle C of RCRA that occurred after November 2, 2015, and which was assessed on or after January 13, 2020 but prior to December 23, 2020, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. Part 19.

### Factual Allegations and Alleged Violations

20. Respondent was and is a “person” as defined by OAC 3745-50-10(A)(98) and Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

21. Respondent is an “operator” or “owner,” as those terms are defined under OAC 3745-50-10(A)(93) and (94), of a facility located at 36790 Giles Road, Grafton, Ohio 44044 (Facility).

22. At all times relevant to this CAFO, Respondent’s Facility consisted of land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste.

23. Respondent’s Facility is a “facility,” as that term is defined under OAC 3745-50-10(A)(46)(a).

24. On January 29, 2014, Ohio Environmental Protection Agency renewed Respondent’s Ohio Hazardous Waste Installation and Operation Permit (“permit”) for its Facility.

25. Respondent’s permit includes, among other things, provisions relating to the storage of hazardous waste.

26. From September 26 to 30, 2016, U.S. EPA, along with the National Enforcement Investigations Center (NEIC) conducted a Compliance Evaluation Inspection of the Facility (the inspection).

27. At the time of the inspection, Respondent used a 13-foot by 16-foot open top box with a door which at times doubles as a ramp through which Respondent repackages bulk loads of hazardous waste solids into smaller containers to be fed into the onsite incinerator.

28. Respondent's 13-foot by 16-foot open top box is known as the “barge.”

29. At the time of the inspection, Respondent's barge was a stationary device, designed to contain an accumulation of hazardous waste.

30. At the time of the inspection, Respondent's barge was constructed primarily of non-earthen materials that provided structural support.

31. At the time of the inspection, Respondent's barge sat upon a concrete pad.

32. At the time of the inspection, Respondent's holding of hazardous waste in the barge constituted "storage" as that term is defined under OAC 3745-50-10(A)(122).

33. At all times relevant to this CAFO, Respondent's barge is a "hazardous waste management unit" as that term is defined under OAC 3745-50-10(58).

34. Pursuant to OAC 3745-50-45, owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.

35. At the time of the inspection, Respondent was using the barge, as described in Paragraphs 27-33, as a hazardous waste management unit without including the barge in its permit application.

36. As a result of Respondent's failure to identify the barge as a hazardous waste management unit in its permit application, Respondent was storing hazardous waste without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925(a) and the requirements of OAC 3745-50-45.

37. On February 23, 2018, U.S. EPA issued a Notice of Violation to Respondent alleging certain violations of RCRA discovered during the inspection.

38. On May 7, 2018, Respondent submitted to U.S. EPA a written response to the Notice of Violation.

### Civil Penalty

39. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant determined that an appropriate civil penalty to settle this action is \$20,015. In determining the penalty amount, Complainant accounted for the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Complainant also considered U.S. EPA's RCRA Civil Penalty Policy, dated June 23, 2003.

40. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,015 civil penalty for the RCRA violation by ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

41. Upon payment, a confirmation email with the payment information also stating Respondent's name, case title, and docket number must be sent to the following:

Regional Hearing Clerk  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604  
[Whitehead.LaDawn@epa.gov](mailto:Whitehead.LaDawn@epa.gov)

Brenda Whitney  
Land Enforcement and Compliance Assurance Branch  
U.S. EPA, Region 5  
[Whitney.Brenda@epa.gov](mailto:Whitney.Brenda@epa.gov)

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

and

Land Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
[R5LEECAB@epa.gov](mailto:R5LEECAB@epa.gov)

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

43. If Respondent does not timely pay the civil penalty, U.S. 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. The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

44. 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 amount overdue from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). 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 6 percent per year penalty on any principal amount 90 days past due.

#### Compliance Order

45. Pursuant to its authority under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) and 40 C.F.R. § 22.37(b), Complainant also orders Respondent to comply with the following requirements immediately upon the effective date of this Order:

46. Respondent must submit a permit modification to the State of Ohio as well as to EPA, as applicable, for the barge described in Paragraphs 27-33 within 60 days of the effective date of this Order.



47. Respondent shall notify U.S. EPA in writing within 60 days of the effective date of this Order either certifying compliance with the Order or explaining why it is not in compliance and proposing a date to achieve compliance.

48. Respondent shall submit all reports, submissions, and notifications required by this Order to:

Brenda Whitney  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
[Whitney.brenda@epa.gov](mailto:Whitney.brenda@epa.gov)

and

Land Enforcement and Compliance Assurance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 5  
[R5lecab@epa.gov](mailto:R5lecab@epa.gov)

49. If Respondent fails to comply with this Compliance Order, Complainant may assess against Respondent a civil penalty for each day of each violation of this Compliance Order, pursuant to 3008(c) of RCRA, 42 U.S.C. § 6928(c).

50. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of the requirements of this Compliance Order Section is restitution, remediation, or required to come into compliance with the law.

#### **General Provisions**

51. 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 [mnakon@wickenslaw.com](mailto:mnakon@wickenslaw.com) (for Respondent).

52. Respondent's full compliance with this CAFO shall only resolve Respondent's

liability for federal civil penalties under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the violations alleged in this CAFO.

53. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

54. This CAFO does not affect Respondent's responsibility to comply with RCRA and other applicable federal, state, local laws or permits.

55. This CAFO does not negate Respondent's rights of appeal for any permit modification submitted by Respondent and acted upon by the State of Ohio or U.S. EPA as a result of this Order.

56. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31, U.S. EPA's RCRA Civil Penalty Policy, and U.S. EPA's Hazardous Waste Civil Enforcement Response Policy (December 2003).

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

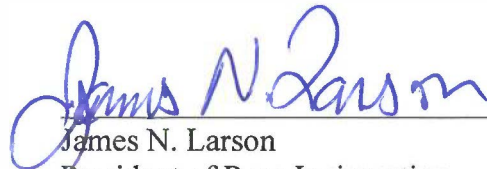
58. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

59. Each party agrees to bear its own costs and attorney's fees in this action.

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


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

8-3-2021  
Date

  
James N. Larson  
President of Ross Incineration

**United States Environmental Protection Agency, Complainant**

\_\_\_\_\_  
Date

**Harris,  
Michael**  Digitally signed by  
Harris, Michael  
Date: 2021.08.16  
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\_\_\_\_\_  
Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division

**In the Matter of:**  
**Ross Incineration Services, Inc.**  
**Docket No. RCRA-05-2021-0039**

**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: 2021.08.19  
09:03:21 -05'00'

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
United States Environmental Protection Agency  
Region 5

In the matter of: Ross Incineration Services, Inc.  
Docket Number: RCRA-05-2021-0039

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on August 23, 2021, this day in the following manner to the addressees:

Copy by email to Respondent's Representative:  
(Delivery Receipt Requested)      Mr. Matthew W. Nakon, Esq.  
Wickens Herzer Panza  
35765 Chester Road  
Avon, Ohio 44011  
[mnakon@wickenslaw.com](mailto:mnakon@wickenslaw.com)

Copy by email to Attorney for Complainant:      Gillian Asque  
[asque.gillian@epa.gov](mailto:asque.gillian@epa.gov)

Copy by email to Regional Judicial Officer:      Ann Coyle  
[coyle.ann@epa.gov](mailto:coyle.ann@epa.gov)

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LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 5