

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CAA-05-2020-0019
)	
Barron County Waste to Energy Facility)	Proceeding to Assess a Civil Penalty
Almena, Wisconsin,)	Under Section 113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d)
Respondent.)	
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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 CAA), 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 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Barron County Waste to Energy Facility (BCW2E), a municipal waste combustion facility, located at 585 10 ½ Avenue, Almena, Wisconsin (the Facility).

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 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 the assessment of the civil penalty specified in this CAFO and to the terms of this 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 this 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. On January 31, 2003, EPA promulgate the Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (the Federal Plan), codified at 40 C.F.R. Part 62, Subpart JJJ. 68 *Fed. Reg.* 5158.

10. 40 C.F.R. § 62.15035(b) defines Class II municipal waste combustion units as those units that are located at municipal waste combustion plants with aggregate plant combustion capacity of no more than 250 tons per day of municipal solid waste.

11. 40 C.F.R. § 62.15010 defines the criteria for an affected facility as requiring a capacity to combust at least 35 tons per day of municipal solid waste or refuse-derived fuel and no more than 250 tons per day of such waste and commenced construction on or before August 30, 1999, and 1) the combustion unit is not regulated by an EPA approved and effective State or Tribal plan or 2) the waste combustion unit is located in any State whose approved State plan is subsequently vacated in whole or in part.

12. 40 C.F.R. § 62.15230 provides that the owner or operator of an affected facility conduct initial and annual stack tests to measure the emission levels of dioxins/furans (D/F),

cadmium (Cd), lead (Pb), mercury (Hg), particulate matter (PM), opacity, hydrogen chloride (HCl), and fugitive ash.

13. 40 C.F.R. § 62.15160(a)(2) provides that after the date the initial stack test and continuous emissions monitoring system evaluation are required or completed. The Class II units must meet the applicable emission limits specified in table 4 of Subpart JJJ.

14. 40 C.F.R. § 62.15235 provides that an affected facility must use results of stack tests results for D/F, Cd, Pb, Hg, PM, opacity, HCl, and fugitive ash to demonstrate compliance with the applicable emission limits in tables 2 and 4 of the subpart.

15. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to, among other things, operate a major source subject to Title V except in compliance with a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

16. Pursuant to Section 502(b) of the Act, 42 U.S.C. § 7661a(b), EPA promulgated regulations establishing the minimum elements of a Title V permit program to be administered by any air pollution control agency. *See 57 Fed. Reg.* 32,295 (July 21, 1992). Those regulations are codified at 40 C.F.R. Part 70.

17. Section 502(d) of the Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the EPA a permit program meeting the requirements of Title V.

18. EPA approved Wisconsin's Title V operating program on an interim basis on March 6, 1995, and fully approved the program on December 4, 2001. *60 Fed. Reg.* 12128 and *66 Fed. Reg.* 62951. Wisconsin's Title V operating permit program regulations are codified at Wisconsin Administrative Code Chapter 407 and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

19. Pursuant to Section 501(2)(B) of the CAA, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, and Wis. Admin. Code § 407.02(4)(b), a "major source" is defined, in part, as any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air contaminant subject to regulation under the Act.

20. Pursuant to 40 C.F.R. § 70.1(b), Wis. Admin. Code §§ 407.08 and 407.09, all sources subject to the Title V operating permit program, including major sources, shall have a permit to operate that assures compliance by the source with all applicable requirements.

21. On June 28, 2016, WDNR issued Title V Permit Renewal (Permit Number 603049040-P10) to BCW2E.

22. BCW2E Title V Permit Condition I.B.2.a.(1)(a) requires the affected facility to conduct an annual stack test no later than 13 months after the previous stack test for the applicable pollutants(s).

23. BCW2E Title V Permit Condition I.A.8.a.(1)(c) requires that Cd emissions from the exhaust gas of the waste combustor units not exceed 0.10 milligrams per dry standard cubic meter (mg/dscm) of exhaust gas at 7% oxygen (O₂).

24. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$48,192 per day of violation up to a total of \$385,535 for CAA violations that occurred after November 2, 2015 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

25. 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 the Attorney General of the United

States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

26. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

27. BCW2E owns and operates the Facility at 585 10½ Avenue, Almena, Wisconsin.

28. At the Facility, BCW2E operates two Consumat Dual Chambered, Stepped Hearth, Starved Air Incinerators, installed in 1986 and rated at a combustion capacity of 100 tons per day.

29. BCW2E's two incinerators described in Paragraph 28, above, are not subject to an EPA approved and effective State plan.

30. The two incinerators mentioned in Paragraph 28, above, are Class II small municipal waste combustion units and are subject to the Federal Plan Requirements, codified at 40 C.F.R. Part 62, Subpart JJJ. 68 *Fed. Reg.* 5158.

31. BCW2E operates a "major source" of pollutants, as defined at 40 C.F.R. § 70.2.

32. BCW2E is subject to the requirements of Title V of the Act, 42 U.S.C. §§ 7661 *et seq.* and 40 C.F.R. Part 62, Subpart JJJ.

33. From October 4 through 6, 2016, BCW2E conducted air emission compliance stack tests at the exhaust of stack (S10) for its two municipal waste incinerators. The tests included an EPA Method 29 test for Cd, Pb, Cr, and Hg. The Cd results indicated a Cd concentration of 1.11 mg/dscm at 7% O₂.

34. Based on the stack test, EPA has determined that on October 4, 2016, BCW2E operated its municipal waste combustion units with Cd emissions in excess of 0.10 mg/dscm at 7% O₂, in violation of 40 C.F.R. § 62.15160(a)(2) and Title V Permit Condition I.A.8.a.(1)(c).

35. On March 7, 2019, EPA issued to BCW2E a finding of violation alleging, *inter alia*, that BCW2E exceeded the limit for Cd in the Federal Plan and in its Title V permit, in violation of 40 C.F.R. Part 62, Subpart JJJ and Title V of the CAA.

Civil Penalty

36. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and Respondent's cooperation, prompt return to compliance, new facts made known to Complainant, Complainant has determined that an appropriate civil penalty to settle this action is \$33,734.

37. Within 30 days after the effective date of this CAFO, Respondent must pay a \$33,734 civil penalty by Automated Clearinghouse (ACH) also known as REX or remittance express, 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

In the comment area of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

38. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
r5airenforcement@epa.gov

Susan Tennenbaum
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
Tennenbaum.Susan@epa.gov

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

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

40. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. 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 pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. 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. 42 U.S.C. § 7413(d)(5).

General Provisions

42. The parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: Tennenbaum.susan@epa.gov (for Complainant), and pstevens@axley.com (for Respondent).

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

44. The effect of the settlement described in paragraph 36, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Respondent's letter dated December 20, 2019.

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

46. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

47. Respondent certifies that it is complying fully with the Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 at 40 C.F.R. Part 62, Subpart JJJ, and its Title V Permit Renewal, issued June 28, 2016 (Permit Number 603049040-P10).

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

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

50. 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.

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

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

Barron County Waste to Energy Facility, Respondent

5/6/2020

Date

Jeffrey S. French

Jeffrey S. French
County Administrator
Barron County, Wisconsin
jeff.french@co.barron.wi.us

United States Environmental Protection Agency, Complainant

5/12/2020

Date

**MICHAEL
HARRIS**

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

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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.

5/12/2020

Date

ANN COYLE

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Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5