



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

REPLY TO THE ATTENTION OF:

**AE-17J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ron Novotny, Chairman  
Barron County Solid Waste Management Board  
Barron County Waste to Energy Facility  
575 10 1/2 Avenue  
Almena, Wisconsin 54805-0068

Re: Barron County Waste to Energy Facility  
Almena, Wisconsin  
CAA Docket No. **CAA-05-2008-0033**

Dear Mr. Novotny:

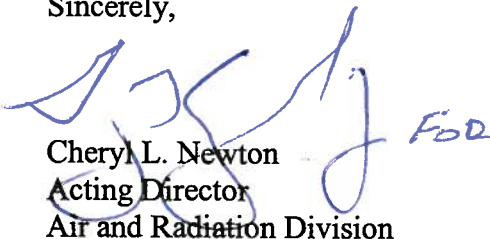
Enclosed herein is a Complaint and Notice of Opportunity for a Hearing filed against Barron County Waste to Energy Facility, (Barron County), pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d). We are alleging in the Complaint that Barron County has violated the mercury emission limit specified by its Title V Operation Permit and the Federal Plan for Small Municipal Waste Combustors, 40 C.F.R. Part 62, Subpart JJJ, at its facility located in Almena, Wisconsin.

We call your attention to that part of the Complaint entitled "Opportunity to Request a Hearing". Barron County is required to respond to this Complaint within thirty (30) days of receipt, or the proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

For additional information or clarification of any issues regarding this matter, you may contact Farro Assadi, Environmental Engineer (AE-17J), 77 West Jackson Boulevard, Chicago,

Illinois 60604, (312) 886-1424. For legal questions, you may contact Padmavati Bending, Associate Regional Counsel, (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8917.

Sincerely,

A handwritten signature in blue ink, appearing to be 'C. Newton', with the initials 'FOD' written to the right of the signature.

Cheryl L. Newton  
Acting Director  
Air and Radiation Division

Enclosures

cc: Bill Baumann, Chief  
Bureau of Air Management  
Wisconsin Department of Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

In the Matter of: )  
Barron County Waste to Energy )  
Facility )  
Almena, Wisconsin )  
Respondent. )  
\_\_\_\_\_ )  
 )

Docket No. CAA-05-2008-0033  
Proceeding to Assess a Civil Penalty  
Under Section 113 (d) of the Clean Air  
Act, 42 U.S.C. § 7413(d)

Complaint

1. This is an administrative action for the assessment of a civil penalty brought pursuant to Section 113(d) of the Clean Air Act (the "Act"), 42 U.S.C. § 7413(d).
2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U. S. Environmental Protection Agency, Region 5, Chicago, Illinois.
3. The Respondent is Barron County Waste to Energy Facility, (Barron County, the Facility), a municipally owned facility located in Almena, Wisconsin.

Statutory and Regulatory Background

4. On January 31, 2003, in accordance with Section 111(d) and Section 129 of the Act, EPA promulgated Subpart JJJ and associated Tables 1 through 9, at §§ 62.15000 - 62.15410. Subpart JJJ applies to each small municipal waste combustion unit with a capacity to combust at least 35 tons per day of municipal solid waste or refused-derived fuel, but no more than 250 tons per day of municipal solid waste or refuse-derived fuel, for which construction was commenced on or before August 30, 1999, and that is not regulated by an EPA approved and currently effective State or Tribal plan.

5. Table 1 of Subpart JJJ requires that all Class II Small Municipal Waste Combustion Units achieve final compliance no later than May 6, 2005. Section 62.15410 of Subpart JJJ defines Class II units as small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity of less than or equal to 250 tons per day. Subpart JJJ includes the following requirement:

- i. Table 4 of Subpart JJJ specifies that the owner or operator of a subject facility must not discharge into the atmosphere from a Class II unit any gases that contain mercury in excess of 0.080 mg/dscm, corrected to 7 percent oxygen, or, 85 percent reduction of potential mercury emissions.

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US EPA REGION V

6. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. § 70.7(b) provide that, after the effective date of any permit program approved or promulgated under Title V of the Act, no source subject to Title V may operate except in compliance with a Title V permit.

7. EPA granted final interim approval to the Wisconsin Title V operating permit program on March 6, 1995. 60 Fed. Reg. 12128. The program became effective on April 5, 1995. The Wisconsin Title V program was granted final full approval by EPA, effective November 30, 2001. 66 Fed. Reg. 62951. See 40 C.F.R. Part 70, Appendix A.

8. Wisconsin Department of Natural Resources (WDNR) issued the Air Pollution Operation Permit #603049040-P01 to Barron County on April 25, 2002. The Permit contains the following requirements applicable to the Facility's Combustion Units:

i. Part I, Section A. 1. a (3) (d)(i) of the Permit states that after May 6, 2005, mercury emissions may not exceed either 0.080 milligrams per dry standard cubic meter (mg/dscm), based on 3-run average determined by stack test, or (ii), 85 percent reduction of potential mercury emissions.

9. Section 113(a) of the Act provides the Administrator of EPA ("Administrator") with the authority to issue compliance and penalty orders against any person that has violated or is in violation of an applicable Implementation Plan or permit. That authority has been delegated to the Director, Air and Radiation Division, Region 5, U.S. EPA ("Director").

10. 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, pursuant to Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

11. 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.

12. 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 complaint.

### **General Allegations**

13. Respondent owns and operates two municipal waste and refuse derived fuel fired incinerators (Combustion Units) at its facility located at 575 10-1/2 Avenue, Almena, Wisconsin.

14. The incinerators each have a capacity to combust 40 tons per day of municipal solid waste and construction for the units commenced on or before August 30, 1999.

15. The Combustion Units are not regulated by an approved and currently effective State or Tribal plan and therefore, are affected facilities as defined in 40 C.F.R. § 62.15010(a) and subject to the requirements of Subpart JJJ.

16. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

17. Respondent is an "owner and/or operator" as defined at Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

18. Respondent's Combustion Units emit air pollutants, including mercury into the atmosphere.

19. On March 10, 2008, EPA issued a Finding of Violation ("FOV") to the Respondent for violations of Subpart JJJ and its Title V permit, at its facility in Almena, Wisconsin.

20. On May 5, 2008, representatives of EPA met with Respondent to discuss the FOV. In this meeting Respondent was informed that EPA may seek civil penalties for the violations of the Act referred to in the FOV.

### **Count I**

21. Paragraphs 1 through 20 are realleged and incorporated herein as reference.

22. During September 6-7, 2006, Respondent conducted a stack test at its Combustion Units.

23. Based upon the stack test, gases discharged from the Combustion Units contained 0.12 mg/dscm of mercury.

24. During October 31, 2006 and November 1, 2006, Respondent conducted a stack test at its Combustion Units.

25. Based upon the stack test, gases discharged from the Combustion Units contained .007 mg/dscm of mercury.

26. Based on the stack test results, the facility violated the requirements of Subpart JJJ from September 6, 2006 through October 31, 2006.

### **Count II**

27. Paragraphs 1 through 20 are realleged and incorporated herein as reference.

28. During September 6-7, 2006, Respondent conducted a stack test at its Combustion Units.

29. Based upon the stack test, gases discharged from the Combustion Units contained 0.12 mg/dscm of mercury.

30. During October 31, 2006 and November 1, 2006, Respondent conducted a stack test at its Combustion Units.

31. Based upon the stack test, gases discharged from the Combustion Units contained .007 mg/dscm of mercury.

32. Based on the stack test results, the facility violated the requirements of its Title V Permit from September 6, 2006 through October 31, 2006.

### **Proposed Civil Penalty**

33. Complainant proposes that the Administrator assess a civil penalty against Respondent for the violations alleged in this Complaint of \$42,553.

34. Complainant determined the proposed civil penalty according to the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e). Complainant evaluated the facts and circumstances of this case with specific reference to EPA's *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991 (Penalty Policy), and the memorandum "*Clarifications to the October 25, 1991, Clean Air Act Stationary Source Civil Penalty Policy*" dated January 17, 1992. The calculated penalty was adjusted for inflation in accordance to the instructions provided by the EPA memorandum, "*Modification to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule*" dated September 21, 2004.

35. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if Respondent establishes *bona fide* issues of ability to pay or other defenses relevant to the penalty's appropriateness.

### **Rules Governing This Proceeding**

36. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits* (the Consolidated Rules), at 40 C.F.R. Part 22, govern this proceeding to assess a civil penalty. Enclosed with the Complaint served on Respondent is a copy of the Consolidated Rules.

### **Filing and Service of Documents**

37. Respondent must file with the EPA Regional Hearing Clerk the original and one

copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

38. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ms. Padmavati Bending to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Padmavati Bending at (312) 353-8917. Ms. Bending's address is:

Padmavati Bending (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

#### **Penalty Payment**

39. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America" and by delivering the check to:

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

40. Respondent must include the case name, docket number and billing document number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to the Regional Hearing Clerk and Ms. Bending at the addresses given above, and to:

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



### **Answer and Opportunity to Request a Hearing**

41. If Respondent contests any material fact upon which the Complaint is based or the appropriateness of any penalty amount, or contends that it is entitled to judgment as a matter of law, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written Answer within 30 days of receiving this Complaint and must include in that written Answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

42. In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day period expires on a Saturday, Sunday or federal legal holiday, the time period extends to the next business day.

43. To file an Answer, Respondent must file the original written Answer and one copy with the Regional Hearing Clerk at the address given above.

44. Respondent's written Answer must clearly and directly admit, deny, or explain each of the factual allegations in the Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

45. Respondent's Answer must also state:
- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
  - b. the facts that Respondent disputes;
  - c. the basis for opposing the proposed penalty; and
  - d. whether Respondent requests a hearing.

46. If Respondent does not file a written Answer within 30 calendar days after receiving this Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order, without further proceedings, 30 days after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

### **Settlement Conference**

47. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts alleged in the Complaint and to discuss a settlement. To request an informal settlement conference, Respondent may contact Padmavati Bending at (312) 353-8917.

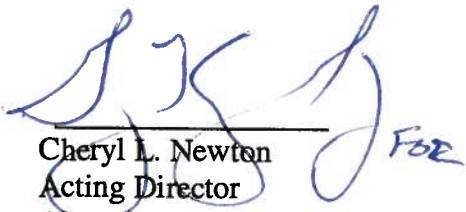
48. Respondent's request for an informal settlement conference does not extend the 30-day period for filing a written Answer to this Complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. Complainant, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

49. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

Date

8/21/08

  
Cheryl L. Newton  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency,  
Region 5

**CERTIFICATE OF SERVICE**

I certify that on this 22 day of August 2008, I filed the original Clean Air Act Administrative Complaint issued to Barron County Solid Waste Management Board., with:

Regional Hearing Clerk  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

and deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the Clean Air Act Administrative Complaint, a copy of the Clean Air Act Stationary Source Civil Penalty Policy and the Part 22 Rules of Practice addressed to the following Respondent and Respondent's Counsel:

Ron Novotny, Chairman  
Barron County Solid Waste Management Board  
Barron County Waste to Energy Facility  
575 10 1/2 Avenue  
Almena, Wisconsin 54805-0068

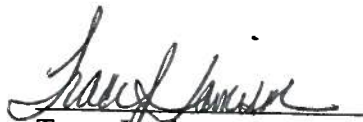
Carl Sinderbrand, Attorney at Law  
Axley Brynelson, LLP  
2 East Mifflin Street  
Suite 200  
Madison, Wisconsin 53703

Certified Mail Number: 7001 0320 0006 1447 9826

and mailed a copy of the Clean Air Act Administrative Complaint issued to Barron County Waste to Energy Facility, to:

William R. Baumann,  
Chief, Combustion Section  
Bureau of Air Management  
Wisconsin Department of Natural Resources  
P.O. Box 7921  
Madison, Wisconsin 53707-7921

08/22/08  
Date

  
Tracy Jamison  
Office Automation Clerk  
U.S. EPA, Region 5

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