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AXLEY BRYNELSON, LLP

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September 23, 2008

Via E-Mail and U.S. Mail

Ms. Cheryl L. Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, IL 60604-3590

Attn: AE-17J

Re: Answer, Request for Hearing, and Request for Settlement Conference
Barron County Waste-To-Energy Facility
Almena, Wisconsin
CAA Docket No. CAA-05-2008-0033

Dear Ms. Newton:

We have received your undated letter relating to the above-referenced matter, which included a Complaint assessing a proposed civil penalty. Your letter and the Complaint also reference an opportunity to request a hearing, and to request an informal settlement conference.

Enclosed please find Barron County's Answer, Request for Hearing, and Request for Settlement Conference. We have also made the request for settlement conference by telephone call to Attorney Padmavati Bending; she and I have been trading phone calls.

We are requesting this hearing and informal conference because we believe that the EPA has not considered all facts relevant to the determination of the violation, including the duration of the violation. In that regard, we offer the following additional information not reflected in the Complaint:

1. At the time that EPA sent its Finding of Violation in March 2008, EPA was under the misunderstanding that the period between stack tests was one year. In fact, Barron County conducted a stack test on October 31 and November 1, 2006, less than two months after the September 2006 stack test that showed an exceedance of the mercury limit. Had EPA been aware of the short duration between stack tests, as well as the enforcement taken by the

Wisconsin Department of Natural Resources (WDNR), it may not have issued a Finding of Violation.

2. On September 6, 2006, the date of the stack test, the incinerator was not performing under normal operating conditions. In particular, moisture content was higher than measured in previous tests, and O_2 levels were slightly lower. Consequently, the results of that test are anomalous and not reflective of normal operating conditions even during that time period. Even then, the first of the three runs was under the limit. The system operated in a normal fashion the second day of the test, but no additional mercury measurements were obtained, as we did not realize that the anomalous conditions would have an effect on the mercury results. It is also noteworthy that mercury was the only exceedance in that stack test.

3. The impact of this anomaly on September 6th is consistent with prior stack tests. The four sets of stack tests performed between January 2005 and May 2006 all met the mercury limit; and there were no equipment or operational changes made that should have altered those results in September 2006. On the contrary, the installation of the baghouse and other improvements between August 2005 and April 2006 should have enhanced emissions reductions. A table of pertinent stack test results and corresponding operating conditions is enclosed as Attachment A.

4. Upon learning of the exceedance from the September 2006 stack test, Barron County immediately and aggressively addressed the problem. During its evaluation, the County's consultant discovered that there was damage to ash shrouds that would not normally be observable during operation, and which likely caused air leaks and excessive draft. Of course, the County immediately repaired those shrouds; however, we do not know whether or to what extent they contributed to the September exceedance.

5. All subsequent stack tests also have more than satisfied the mercury limit. The October/November 2006 stack test averaged approximately 0.005 mg/dscm. Another test conducted in late November 2006 averaged 0.010 mg/dscm. Each of these is a small fraction of the mercury limit, reinforcing that the September 2006 result was anomalous.

6. In addition to these actions and the consistently high quality performance of the facility, Barron County has also undertaken a mercury reduction program to remove mercury-containing waste from the waste stream. This program includes the collection of residential materials like thermometers, as well as mercury-containing wastes from health care facilities, industries and commercial establishments.

7. The WDNR sent the County a notice of violation in December 2006, and held an enforcement conference in January 2007. At that time, we provided WDNR with the

information that we have since provided to EPA. WDNR was satisfied with our response and determined to take no further enforcement action. We did not realize that EPA may take independent action, or that WDNR had not provided this information to you.

8. Barron County has not gained any monetary advantage from this exceedance that would warrant a penalty. The County has not saved any operational expenses. Indeed, the County has paid substantially for the evaluation and repairs that it undertook outside its normal maintenance schedule, and for additional stack tests that would not otherwise have been necessary. Additionally, any penalty paid by the County would be borne by the public, *i.e.*, it would involve citizens of one unit of government paying another unit of government.

9. As a final matter, we understand from our prior meeting that EPA has been motivated by its conclusion that the alleged violations are High Priority Violations (HPVs), within the meaning of the *Workbook for Timely and Appropriate Enforcement Response to High Priority Violations* ("HPV Policy"). We believe that the Barron County facility is not subject to HPV enforcement for at least the following reasons:

a. The facility is a small municipal waste combustor, and is not a "major source" subject to the HPV Policy. Moreover, the Policy only applies "if the pollutant at issue is one for which the source is considered major." HPV Policy, § 4.1.1

b. This matter does not involve long-duration or high-magnitude violations that would warrant a discretionary decision to be treated as an HPV. Nor are we aware that WDNR, has agreed to that determination, as required by the HPV Policy. On the contrary, WDNR knew of both the September 2006 exceedance and its resolution by the end of 2006, and elected to take no further action after issuing a Notice of Violation and meeting with the County.

c. EPA's response to the exceedance, beginning with issuance of a FOV well over one year after it was corrected, and after the matter was resolved with the State, is not consistent with the HPV Policy, Section 6.

We believe that the evidence, taken in its totality, demonstrate that the one day of mercury exceedance was the result of an unusual condition that did not occur previously and has not occurred since. In hindsight, the County likely should have halted testing that day, which would have resulted in no documented exceedance. We do not believe that it is prudent for EPA to exact over $42,000 in penalties for that one day event.

In the event that we can resolve this matter quickly and amicably, we will withdraw our hearing request.

Thank you for your consideration of this correspondence and request for informal settlement conference.

Sincerely,

AXLEY BRYNELSON, LLP

Carl A. Sinderbrand

CAS:mj
Enclosures

Cc: Mr. Ron Novotny
Attorney John Muench
Attorney Padmavati Bending
Mr. Farro Assadi
Regional Hearing Clerk

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ATTACHMENT A

Barron County WTE Air Emission Test Data History

Date	Run Number		Time	Mercury Result ug/dscm(cor)	Dioxin	Lab O^2	CEM's O^2	Moist %	ACFM Gas Flow	Gas Flow DSCFM	Steam Flow	Economizer Outlet Temp	APCD Inlet Temp	Stack Temp	CO COR	Reaction Chamber Draft In (1 / 2)	Upper Chamber Air Supply Unit 1	Upper Chamber Air Supply Unit 2	Boiler Drart Unit Speed	Boiler Drart Unit	Carbon Injection Rate CEM	Carbon Injection Rate PPH %	Ash Injection Air	water sprays
11/28/2006	Comp	1	7:40-8:54	9.08		11.53	11.44	13.25	29776	16157	22445	448/442	401	346	1.82	5	3.6	4.2	.42	.42	35.64	6.12	5 WC	on
		2	9:34-11:00	10.03		11.72	11.45	12.94	29592	16164	22302	455/440	403	344	1.3	5	3.4	4.6	.42	.42	35.49	6.12	5 WC	on
		3	11:40-13:06	11.79		11.51	11.42	13.3	29631	16325	22309	460/430	403	346	2.1	5	3.4	3.2	.42	.42	35.65	6.15	5 WC	on
10/31/2006	Eng	1	3:27-4:36	15.87		14.41	12.34	9.78	28910	16627	21683	407/434	402	340	2.11	4.6	3.6	4.2	.33	.35	37.3	8+	60.00%	off
		2	5:30-6:31	4.85		13.5	11.68	13.46	26489	15078	20983	407/443	353	316	2.17	5	4.5	2.6	.35	.35	37.3	8+	70.00%	on
Average																								
11/1/2006	Eng	3	09:57-11:00	10.42		14.11	11.51	10.12	29060	16846	21567	402/430	405	333	2.19	5	4.0	4.0	.35	.35	37.1	8+	35.00%	off
		4	12:00-1:02	3.16		12.9	12.08	12.55	28909	16528	21529	400/426	358	322	1.67	5	3.0	4.0	.35	.35	36.1	6+	35.00%	on
		5	2:08-3:10	1.6		13.1	11.93	12.6	27734	16170	21231	400/426	352	307	1.54	5	3.5	4.0	.35	.35	35.6	6+	OFF	on
		6	4:07-5:08	6.14		13.2	11.73	10.59	27136	15830	20930	413/440	403	324	3.19	5	3.4	3.0	.35	.35	34.7	5+	40%	off
Average																								
9/6/2006	Comp	1	7:15-9:08	73.9		11.54	11.55	12.96	27451	14969	21489	446	426	355	4.01	5.6	1.9	1.0	.52	.53	34.6	6.80	100%	n/a
		2	10:10-11:51	126.4	51	10.69	10.7	15.74	28778	15121	22083	440	430	359	4.32	4.5	2.0	1.0	.52	.52			100%	
		3	13:13-14:58	162		10.34	10.35	16.68	28132	14594	22430		437	361	6.18	6.1	1.6	0.4	.55	.54			100%	
Average										14894.67		443												
5/10/2006	Eng	1	10:40-11:53	91.04		12.57	13.6	12.79	29605		21392	475	432	357	10.07	6.5	3.0	5.6	.57	.56		5 + / -	100	n/a
		2	12:35-13:40	56.41	N/A	12.32	13.23	13.77	30041		20441	427	427	350	6.74									
		3	14:10-15:17	44.25		12.3	12.41	13.72	30126		20072		428	351	12.6									
Average										16083		455			10.54									
5/11/2006	Eng	1	9:00-10:05	61.45		12.36	12.65	11.6	29899		21744	478	438	344	8.91	6.1	3.1	5.0	.55	.51		9 + /-	100	
		2	10:41-11:45	63.36	N/A	12.47	12.63	11.76	30586		21381	438	435	353	6.94									
		3	12:15-13:20	71.89		12.44	12.47	115	31341		21259		439	366	6.5									
Average										16830		458			7.45									

Clean Air Recir Installed April 2006 - Installed Ash Injection Air - March 2006

Date	Run Number		Time	Mercury Result ug/dscm(cor)	Dioxin	Lab O^2	CEM's O^2	Moist %	ACFM Gas Flow	Gas Flow DSCFM	Steam Flow	Economizer Outlet Temp	APCD Inlet Temp	Stack Temp	CO COR	Reaction Chamber Draft In (1 / 2)	Upper Chamber Air Supply Unit 1	Upper Chamber Air Supply Unit 2	Boiler Drart Unit Speed	Boiler Drart Unit	Carbon Injection Rate CEM	Carbon Injection Rate PPH %	Ash Injection Air	water sprays
9/1/2005	Comp	1	7:30-8:34	52		12.7		13.3	28290		21060	400	395	317		5.2	3.6	4.2	.39	.38		4 - 5		
		2	9:45-10:08	85.33	5.66	12.01		14	29379		21710	440	405	316										
		3	11:20-12:23	84.07		11.79		13.88	30149		22749		410	320										
Average										16826		420			2.82									

Installed Baghouse August 2005

Date	Run Number		Time	Mercury Result ug/dscm(cor)	Dioxin	Lab O^2	CEM's O^2	Moist %	ACFM Gas Flow	Gas Flow DSCFM	Steam Flow	Economizer Outlet Temp	APCD Inlet Temp	Stack Temp	CO COR	Reaction Chamber Draft In (1 / 2)	Upper Chamber Air Supply Unit 1	Upper Chamber Air Supply Unit 2	Boiler Drart Unit Speed	Boiler Drart Unit	Carbon Injection Rate CEM	Carbon Injection Rate PPH %	Ash Injection Air	water sprays
5/4/2005	Comp	1	7:30-8:33	15.53		12.4		11.3	29497		19144	448	405	375	7.01	N/A	4.5	4.0	.27	.27				
		2	9:45-1048	40.7	23	12.5		11.6	30746			435		382										
		3	11:20-12:22	37.2		12.3		11.4	29864					383										
Average										16142		442												
1/11/2005	Eng	1	13:37-14:39	88.9		11.88		11.6	32939			431	403	372	8.8	N/A	2.4	2.9	.45	.47				
1/12/2005		2	8:15-9:17	2.9	62	11.7		14.7	28735			437		356										
1/12/2005		3	9:45-10:48	7.8		11.5		14.4	30626	15356	20600			365										
Average												434												
5/12/2004	Eng	1				11.69		12.67	32547		23400	476	408	376		N/A	6.0	4.6	.33	.31				
		2			67	11.5		12.96	32983			415		377										
		3				11.66		12.22	33634					385										
Average										17461		440												

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UNITED STATED 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)

ANSWER, REQUEST FOR HEARING, AND REQUEST FOR SETTLEMENT CONFERENCE

Respondent Barron County, on behalf of its Waste to Energy Facility, appears by its attorneys, Axley Brynelson, LLP, requests a hearing pursuant to the notice in EPA's Complaint dated August 21, 2008, and as an answer and response to the allegations in EPA's Complaint states as follows:

ANSWER

1. Admits the allegation in paragraph 1 that EPA purports to bring this action under 42 U.S.C. § 7413(d).

2. Does not have sufficient information to form a belief as to the allegations in paragraph 2 and therefore denies the same.

3. Admits the allegation in paragraph 3 that the Barron County Waste to Energy Facility is the named respondent.

4. Admits the allegation in paragraph 4.

5. Admits the allegation in paragraph 5.

6. Admits the allegation in paragraph 6.

7. Admits the allegation in paragraph 7.

8. Admits the allegation in paragraph 8.

9. Admits the allegation in the first sentence in paragraph 9; does not have sufficient information to form a belief as to the second sentence therein.

10. Admits the allegation in paragraph 10. VERIFY

11. Admits the allegation in paragraph 11.

12. Does not have sufficient information to form a belief as to the allegations in paragraph 12 and therefore denies the same; except to deny that the facts underlying this Complaint satisfy the requirement of § 113(d)(1).

13. Admits the allegation in paragraph 13; except states that the two combustion units are owned by Barron County, and that they are operated by a private contractor named ZAC, Inc.

14. Admits the allegation in paragraph 14.

15. Does not have sufficient information to form a belief as to the allegations in paragraph 15 and therefore denies the same.

16. Admits the allegations in paragraph 16 to the extent that Barron County is a person within the meaning of the Clean Air Act.

17. Admits the allegations in paragraph 17 to the extent that Barron County is an owner and/or operator within the meaning of the Clean Air Act.

18. Admits the allegations in paragraph 18.

19. Admits the allegations in paragraph 19; except denies any implicit allegation that Barron County committed the violations as alleged in the Finding of Violation.

20. Admits the allegations in paragraph 20.

21. Barron County realleges and incorporates by reference its responses to paragraphs 1 through 20, above.

22. Admits the allegations in paragraph 22.

23. Admits the allegations in paragraph 23 as to the stack tests conducted on September 6, 2007.

24. Admits the allegations in paragraph 24.

25. Admits the allegations in paragraph 25.

26. Admits the allegations in paragraph 26 that the facility appears to exceed Subpart JJJ only to the extent one looks exclusively to the two sets of referenced stack tests and ignores other relevant facts, including but not limited to the conditions of operation on September 6, 2006, as compared to operations after September 6, 2006, other tested parameters, and the design and general performance of the combustion units; and states that the totality of evidence demonstrates that the combustion units exceeded the applicable permit limit only on September 6, 2006.

27. Barron County realleges and incorporates by reference its responses to paragraphs 1 through 27, above.

28. Admits the allegations in paragraph 28, which appears to duplicate paragraph 22.

29. Admits the allegations in paragraph 29 as to the stack tests conducted on September 6, 2007, which appears to duplicate paragraph 23.

30. Admits the allegations in paragraph 30, which appears to duplicate paragraph 24.

31. Admits the allegations in paragraph 31, which appears to duplicate paragraph 25.

32. Admits the allegations in paragraph 32 that the facility appears to exceed the Title V Permit mercury limit only to the extent one looks exclusively to the two sets of referenced stack tests and ignores other relevant facts, including but not limited to the conditions of operation on September 6, 2006, as compared to operations after September 6, 2006, other tested parameters, and the design and general performance of the combustion units; and states that the

totality of evidence demonstrates that the combustion units exceeded the applicable permit limit only on September 6, 2006; and further states that the allegations in paragraph 32, if true and accurate, are not a separate and independent violation from the allegations in paragraph 26.

33. Admits the allegations in paragraph 33 that EPA has proposed a civil penalty against Barron County by that allegation; denies that there is a legal or factual basis for assessing that penalty.

34. Does not have sufficient information to form a belief as to the allegations in paragraph 34 and therefore denies the same.

35. Does not have sufficient information to form a belief as to the allegations in the first sentence of paragraph 36 and therefore denies the same; admits the allegations in the second sentence therein.

36. Admits the allegations in paragraph 36.

37-48. Does not respond to paragraphs 37 through 48, which set forth the procedures for pursuing and/or resolving this dispute.

49. Admits the allegation in paragraph 49 that Barron County has a continuing duty to comply with applicable federal, state and local law.

50. Denies all material allegations in EPA's Complaint except as expressly admitted herein.

REQUEST FOR HEARING

Barron County requests a hearing pursuant to paragraphs 41 through 46 in EPA's Complaint, and as grounds therefore states as follows:

1. Barron County incorporates all its responses to EPA's complaint, as set forth above, and incorporates the same by reference.

2. Barron County asserts that EPA's Complaint is based on a misunderstanding of the duration of exceedance of the mercury limit. As set forth in paragraphs 26 and 32, above, and as set forth in the letter to Ms. Newton dated September 23, 2008, a copy of which is attached hereto, the exceedance recorded in the stack test on September 6, 2006, was a one-day occurrence attributable to operation outside the normal and otherwise consistent operating parameters. The combustion units were operated under normal operating conditions during the second day of testing and thereafter, as shown in operational data submitted to the Department of Natural Resources as EPA's delegated authority for administration and enforcement of the Clean Air Act in Wisconsin. Subsequent stack testing by or on behalf of Barron County further demonstrates that its facility routinely emits only a small fraction of the allowable mercury emissions, *i.e.*, under normal operating conditions performs substantially better than required by federal law.

3. Because the exceedance was of short duration, EPA does not have the authority to assess a penalty under CAA § 113(d)(1).

4. Because the exceedance was only one day, EPA does not have the authority to impose a penalty in the proposed amount.

5. Barron County further asserts that it is inappropriate to assess the proposed substantial penalty and therefore would request relief. Barron County is a local unit of government, and any penalty would necessarily be paid by the taxpayers of Barron County. That is, EPA's penalty essentially proposed to transfer funds from one public entity to another public entity. Additionally, the waste to energy facility is part of Barron County's diversified waste management program, and serves the public benefits of: a) reducing reliance on and need for landfills; and b) converting municipal solid waste to usable energy. The proposed penalty

undermines the County's ability to remain competitive with available landfills for waste generated within the service area.

REQUEST FOR INFORMAL SETTLEMENT CONFERENCE

Barron County requests a hearing pursuant to paragraphs 47 and 48 in EPA's Complaint, and has made a telephonic request as directed in paragraph 47 therein.

Dated this 23rd day of September, 2008.

AXLEY BRYNELSON, LLP

Carl A. Sinderbrand
Attorneys for Barron County and the Barron County Waste to Energy facility

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