UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: **Monroe County, New York,** ***and*** **Waste Management of New York, LLC,** Respondents, In a proceeding under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d)	**CONSENT AGREEMENT AND FINAL ORDER** **CAA-02-2023-1202** August 3, 2023 @ 1:48 pm USEPA – Region II Regional Hearing Clerk

A. PRELIMINARY STATEMENT

1. This is an administrative penalty assessment proceeding pursuant to Section 113(d) of the Clean Air Act (the "CAA" or "Act"), 42 U.S.C. § 7413(d), and Sections 22.13 and 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), codified at 40 C.F.R. Part 22.

2. On behalf of the United States Environmental Protection Agency ("EPA" or "Complainant"), the Director of the Enforcement and Compliance Assurance Division ("ECAD") for EPA Region 2 is delegated the authority to settle civil administrative penalty proceedings under Section 113(d) of the Act. Specifically, pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the Administrator has delegated to the Director of ECAD, through the Regional Administrator of EPA Region 2, the authority to (a) make findings of violations, (b) issue CAA Section 113(d) administrative penalty complaints, and (c) agree to settlements and sign consent agreements memorializing those settlements, for CAA violations that occur in the jurisdiction of EPA Region 2.

3. Section 113(d) of the CAA authorizes the EPA Administrator to issue an order assessing civil administrative penalties against any person that has violated or is violating any requirement or prohibition of subchapters I, III, IV-A, V, or VI of the Act, or any requirement or prohibition of any rule, order, waiver, permit, or plan promulgated pursuant to any of those subchapters, including but not limited to any regulation promulgated pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, and 7414.

4. Pursuant to EPA Delegation of Authority 7-6-C, the Administrator has delegated to the Regional Administrator of EPA Region 2 the authority to execute CAA Section 113(d) Final Orders.

5. Pursuant to Section 113(d) of the Act, the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty proceeding. Specifically, on September 19, 2022 the United States Department of Justice ("DOJ") granted the EPA's request for a waiver of the CAA Section 113(d) 12-month time limitation on the EPA's authority to initiate an administrative penalty action in this matter.

6. Respondents are Monroe County, New York (the "Owner") and Waste Management of New York, LLC ("Waste Management", and together with the Owner, the "Respondents"). Waste Management is a corporation doing business in Bergen, New York.

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

8. In a Finding of Violation, dated August 25, 2021 ("FOV"), EPA alleged that Respondents violated Section 111 of the CAA by failing to comply with the "New Source Performance Standards for Municipal Solid Waste Landfills," 40 C.F.R. Part 60, Subpart XXX, 40 C.F.R. §§ 60.760 – 60.769 (the "Landfill NSPS"). during the operations of Mill

Seat Landfill (the "Landfill" or the "Facility"), located at 303 Brew Road in Bergen, New York. The action will resolve Respondents' alleged CAA violations, discussed below, at the Landfill.

9. The FOV alleged that the violations had been ongoing since August 2017, when the Landfill was expanded. The FOV further alleged that Waste Management failed to:

a) submit a gas collection and control system ("GCCS") design plan prepared by a professional engineer to the EPA within one year of the Landfill's August 4, 2017 modification, in violation of 40 C.F.R. § 60.767(c)(4);

b) install and start operating a GCCS in accordance with the requirements of the Landfill NSPS to capture the gas generated within the Landfill within 30 months of its August 4, 2017 modification, in violation of 40 C.F.R. § 60.762(b)(2)(i) and (ii);

c) conduct quarterly surface monitoring around the perimeter of the Landfill's collection area and along a pattern that traverses the Landfill at no more than 30-meter intervals to ensure that the Landfill's GCCS was operating with a methane concentration of less than 500 parts per million above background at the Landfill's surface, in violation of 40 C.F.R. §§ 60.763(d) and 60.765(c); and

d) maintain adequate documentation of the nature and amount of nondegradable waste that was subtracted from the Landfill's total mass of solid waste in the Landfill's calculation of its nonmethane organic compounds ("NMOC") emission rate, in violation of 40 C.F.R. § 60.764(a)(1)(i)(B).

10. The violations determined by EPA are set forth in Section E of this Consent Agreement, entitled "Conclusions of Law."

B. JURISDICTION

11. This Consent Agreement is entered into pursuant to Section 113(d) of the Act, as amended, 42 U.S.C. § 7413(d), and the Consolidated Rules, 40 C.F.R. Part 22.

12. Pursuant to Section 113(d)(1)(C), the Administrator and the Attorney General, through their respective delegates, have jointly determined that this matter is appropriate for an administrative penalty assessment. *See* 42 U.S.C. § 7413(d)(1)(C); *see also* 40 C.F.R. § 19.4.

13. The Regional Administrator is authorized to ratify this Consent Agreement, which memorializes a settlement between Complainant and Respondents. 40 C.F.R. § 22.18(b)(3).

14. The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. §§ 22.13(b) and 22.18(b).

C. GOVERNING LAW

15. CAA Section 302(e) states that whenever the term "person" is used in the Act, the term includes "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof." 42 U.S.C. § 7602(e).

16. CAA Section 101 states that one of the purposes of the Act is to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

17. CAA Section 111 ("Section 111") requires the EPA Administrator to promulgate regulations setting "standards of performance" for new sources of air pollution. *See* 42 U.S.C. §§ 7411(a) & (b). Section 111 further provides that after the effective date of any standard promulgated under Section 111, it shall be unlawful for any owner or

operator of a new source to operate that source in violation of the standard. *See* 42 U.S.C. § 7411(e).

18. Section 111 defines a "new source" as "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source." 42 U.S.C. § 7411(a)(2).

19. Pursuant to Section 111, the EPA promulgated the "Standards of Performance for New Stationary Sources" (the "NSPS") at 40 C.F.R. Part 60.

20. CAA Section 114 provides that in order to assess compliance with any regulation promulgated under Section 111 of the Act, the EPA Administrator has the authority to require testing, monitoring, recordkeeping, reporting of information, and to conduct inspections. 42 U.S.C. § 7414(a).

The NSPS General Provisions

21. 40 C.F.R. Part 60 Subpart A, 40 C.F.R. §§ 60.1 – 60.19, is also known as the "NSPS General Provisions."

22. Pursuant to 40 C.F.R. § 60.1(a), with exceptions provided in 40 C.F.R. Part 60, Subparts B and C, the NSPS General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any 40 C.F.R. Part 60 standards (or, if earlier, the date of the publication of any proposed standard) applicable to the facility.

23. Pursuant to 40 C.F.R. § 60.2, the following definitions are used in the NSPS:

a. "Affected facility," with reference to a stationary source, means any apparatus to which a standard is applicable.

b. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which

an affected facility is a part.

c. "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

24. Pursuant to 40 C.F.R. § 60.11(d), at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

Specific NSPS Provisions – Subpart XXX

25. On August 29, 2016, under the authority of Section 111(b) of the Act, the EPA promulgated the "New Source Performance Standards for Municipal Solid Waste Landfills," 40 C.F.R. Part 60, Subpart XXX, §§ 60.760 *et seq*. ("Subpart XXX"), otherwise known as the "Landfill NSPS." *See* 81 Fed. Reg. 59368 (August 29, 2016).

26. Pursuant to 40 C.F.R. § 60.761, the following definitions are used in the Landfill NSPS:

a. "Design capacity" means "the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the state, local, or tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit."

b. "Household waste" means "any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas)."

c. "Modification" means "an increase in the permitted volume design capacity of the landfill by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014."

d. "Municipal solid waste landfill" or "MSW landfill" means "an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (40 C.F.R. § 257.2) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion."

e. *"*Municipal solid waste landfill emissions" or "MSW landfill emissions" means "gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste."

f. "NMOC" means "nonmethane organic compounds, as measured according to the provisions of § 60.764."

g. "Active landfill" means "a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future."

h. "Landfill" means "an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under § 257.2 of this title."

i. "Lateral expansion" means "a horizontal expansion of the waste boundaries

of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill."

j. "Controlled landfill" means "any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.762(b)(2)(i)."

k. "Solid waste" means "the term solid waste as defined in 40 CFR 258.2"; *i.e.*, "any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. § 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)."

27. Pursuant to Subpart XXX, the Landfill NSPS requirements apply to MSW landfills that commenced construction, modification, or reconstruction on or after July 17, 2014. *See* 40 C.F.R. § 60.760(a).

28. Pursuant to 40 C.F.R. § 60.762(a), the owner or operator of an MSW landfill shall submit to the Administrator an initial design capacity report within 90 days after the date of commenced modification, as provided for in 40 C.F.R. § 60.767(a)(1) & (2).

29. 40 C.F.R. § 60.762(b) provides that owners or operators of MSW landfills with a design capacity equal to or greater than 2.5 million megagrams ("Mg") by mass and 2.5

million m^3 by volume must either comply with 40 C.F.R. § 60.762(b)(2), or calculate the NMOC emission rate for the landfill using the procedures specified in 40 C.F.R. § 60.764. If the NMOC emission rate is less than 34 Mg per year, the owner or operator must recalculate the emission rate annually using the procedures specified in 40 C.F.R. § 60.764(a)(1) until such time as the calculated NMOC emissions are equal to or greater than 34 Mg per year, or until the landfill is closed. *See* 40 C.F.R. § 60.762(b)(1)(ii).

30. 40 C.F.R. § 60.762(b)(2) provides in part that if the calculated NMOC emission rate is equal to or greater than 34 Mg per year using Tier 1, 2, or 3 procedures, the owner or operator must: (1) submit a GCCS design plan prepared by a professional engineer to the EPA within one year of the first NMOC emission rate report in which the NMOC emission rate equals or exceeds 34 Mg per year, as specified in 40 C.F.R. § 60.767(c), which meets the requirements in 40 C.F.R. § 60.762(b)(2)(ii) and (iii); and (2) install and start up a GCCS that captures the gas generated within the landfill as required by 40 C.F.R. §§ 60.767(b)(2)(ii)(C) or (D) and (b)(2)(iii) within 30 months.

31. 40 C.F.R. § 60.767(c) provides that each owner or operator subject to the provisions of § 60.762(b)(2) must submit a GCCS design plan to the EPA for approval according to the schedule in 40 C.F.R. § 60.767(c)(4). The GCCS design plan must be prepared and approved by a professional engineer and, among other things, must meet the following two requirements: (1) The GCCS as described in the design plan must meet the design requirements in § 60.762(b)(2); and (2) and the GCCS design plan must either conform with the specifications for active collection systems in 40 C.F.R. § 60.769, or include a demonstration to the Administrator's satisfaction of the sufficiency of the alternative provisions to 40 C.F.R. § 60.769.

32. 40 C.F.R. § 60.763(d) provides that each owner or operator of an MSW landfill must operate the GCCS so that the methane concentration is less than 500 parts per

million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator must conduct surface testing using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in 40 C.F.R. § 60.765(d). The owner or operator must conduct surface testing around the perimeter of the collection area and along a pattern that traverses the landfill at no more than 30-meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover and all cover penetrations. Thus, the owner or operator must monitor any openings that are within an area of the landfill where waste has been placed and a gas collection system is required. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan must be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30-meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

33. 40 C.F.R. § 60.764(a)(3) provides instructions for conducting a Tier 2 test to determine the NMOC concentration at the landfill, and states in part that "if the landfill has an active or passive gas removal system in place, Method 25 or 25C samples may be collected from these systems instead of surface probes provided the removal system can be shown to provide sampling as representative as the two-sampling probe per hectare requirement. For active collection systems, samples may be collected from the common header pipe. The sample location on the common header pipe must be before any gas moving, condensate removal, or treatment system equipment. For active collection systems, a minimum of three samples must be collected from the header pipe."

34. If the results from the Tier 2 test demonstrate that the NMOC emission rate is less than 34 Mg/year, the owner or operator must submit a periodic estimate of NMOC

emissions in an NMOC rate report and must recalculate the NMOC emission rate annually. The site-specific NMOC concentration must be retested using the Tier 2 test procedures every five years. *See* 40 C.F.R. § 60.764(a)(3)(iii).

35. 40 C.F.R. §§ 60.764(a)(1)(i)(B) and (ii)(B) state that the "mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill" when calculating the mass of solid waste or average annual acceptance rate if "documentation of the nature and amount of such wastes is maintained."

36. 40 C.F.R. § 60.765(c) states in part that in order to comply with the surface methane operational standard as provided in 40 C.F.R. § 60.763(d), after installation and startup of the gas collection system, the owner or operator must monitor surface concentrations of methane along the entire perimeter of the collection area and along a pattern that traverses the landfill at 30-meter intervals (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in 40 C.F.R. § 60.765(d).

D. FINDINGS OF FACT

37. The factual findings set forth below are based on an investigation conducted by EPA Region 2. That investigation involved, among other actions: (i) an EPA inspection of the Landfill on October 5 and 6, 2020 that included taking three gas samples from the header pipe of the Facility's GCCS; (ii) discussions with the New York State Department of Environmental Conservation ("NYSDEC"); (iii) a review of the Facility's data and records; and (iv) a review of Waste Management's response to an EPA CAA Section 114 Information Request Letter ("IRL").

38. The Landfill is located at 303 Brew Road in Bergen, New York 14416.

39. The Landfill is a municipal solid waste landfill that is owned by Monroe County, New York.

40. The Landfill is managed and operated by Waste Management of New York, LLC.

41. The Landfill is permitted to operate by the NYSDEC as a non-hazardous landfill, with no recycling activities.

42. The Landfill began operating on May 13, 1993, and provides residential solid waste pickup services to residents located throughout Monroe County.

43. The Landfill voluntarily installed and began operating a GCCS in October 2002.

44. The Landfill has a CAA Title V operating permit issued by the NYSDEC on February 26, 2016, with a permit identification number of 8264800014/0011.

45. The Landfill requested and received approval of a modification to its Title V Operating Permit ("Mod 1 Effective Date: 01/10/2017") that includes, among other things, calculations of the Facility's potential to emit from a 118-acre landfill expansion project.

46. On July 29, 2014, the Landfill submitted to the NYSDEC the Tier 2 results from an NMOC test dated June 10, 2014, which was conducted pursuant to a May 2014 Tier 2 Testing Protocol ("Protocol") approved by the NYSDEC. The sample locations identified in the Protocol included the gas header before the blower prior to the enclosed flare, the gas header before a location known as the "T-split," which leads to the renewable energy facility, and the gas header before the blower and treatment system prior to the renewable energy facility.

47. On August 4, 2017, the Landfill began construction in order to expand its design capacity by an additional 118 acres.

48. In a letter dated October 20, 2017, the Landfill submitted an initial design capacity report pursuant to the Landfill NSPS, Subpart XXX. The letter stated that "[s]ince the

site's NMOC value is less than 34 Mg, then no GCCS Design Plan is scheduled to be due until sometime after the site breaches the 34 Mg threshold."

49. On September 11, 2020, EPA Region 2 sent a CAA Section 114 IRL to the Facility.

50. On October 5 through 6, 2020, EPA Inspectors, along with inspectors from Eastern Research Group, Inc. ("Inspectors"), conducted a CAA inspection of the Landfill ("EPA Inspection").

51. After the EPA Inspection, the EPA received a request for an extension from Waste Management to respond to EPA's IRL until November 20, 2020, which the EPA granted.

52. The primary purpose of the EPA Inspection was to collect samples of the Landfill's NMOC emissions from the header pipe of its GCCS to evaluate compliance with the Landfill NSPS.

53. During the EPA Inspection, the Inspectors first conducted a pre-inspection conference to explain the parameters of the inspection and answer the Facility's questions. The Inspectors also discussed the Landfill's operations with Facility representatives, who led a physical tour of the Landfill with the Inspectors. Finally, the Inspectors collected NMOC samples from the Landfill's GCCS and conducted a closing conference with Facility personnel.

54. During the EPA Inspection, the Inspectors confirmed with the Facility's representatives that the Landfill constructed a 118-acre expansion or modification that increased the design capacity of the Facility.

55. During the EPA Inspection, the Inspectors confirmed that Waste Management operates a renewable energy facility consisting of eight Caterpillar engines each rated at 800 kW and one flare.

56. During the EPA Inspection, the Inspectors confirmed that the gas collected from the Landfill is capable of being directed to the engines, the flare, or both.

57. During the EPA Inspection, the Inspectors determined that, based on the configuration of the GCCS, the only appropriate locations from which to collect Tier 2 gas samples in order to calculate the Landfill's annual NMOC emission rate were either immediately prior to the Facility's gas-to-energy plant or immediately prior to the Facility's enclosed flare. The Inspectors took the samples from the gas header before the blower and treatment system prior to the renewable energy facility.

58. Based on a review of the results of the NMOC concentration data and emission calculations from Waste Management's March 22, 2019 Tier 2 Test Report and its 2019 NMOC Emissions Rate Report, dated April 24, 2020, the Inspectors determined that only two of the three gas samples required to be collected for the Tier 2 test were collected from appropriate sample locations based on the configuration of the GCCS. The Inspectors further determined that the gas sample collected from a location known as the "T-split" was not an appropriate location. *See, e.g.,* March 22, 2019 Tier 2 Testing Report, at 3.

59. During the EPA Inspection, the Inspectors determined that Waste Management did not collect gas samples from the Landfill's active GCCS in a manner as representative as the two-sampling-probe-per-hectare requirement required under 40 C.F.R. § 60.764(a)(3).

60. A recalculation of the Facility's 2019 NMOC emission rate excluding the "T-split" data indicates that the Landfill's NMOC emission rate was equal to or greater than 34 megagrams per year no later than March 22, 2019.

61. In their response to the EPA's CAA IRL, and during the EPA Inspection and subsequent communications with Waste Management, including an email dated

October 27, 2020, Waste Management stated that the Facility had not yet exceeded the 34-megagram NMOC threshold in Subpart XXX.

62. Waste Management did not submit a GCCS design plan prepared by a professional engineer to the EPA until December 31, 2021. Therefore, the Facility did not submit a GCCS design plan prepared by a professional engineer to the EPA within one year of April 24, 2020, the date on which the Facility submitted its 2019 NMOC Emission Rate Report, as required by 40 C.F.R. §§ 60.762(b)(2)(i) and 60.767(c)(4).

63. Based on the EPA Inspection and the Respondents' response to the EPA's IRL, the Inspectors determined that the Respondents did not conduct quarterly surface emission monitoring around the perimeter of the Landfill's collection area and along a pattern that traverses the Landfill at no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor within the required timeframe after the March 22, 2019 Tier 2 Report, as required by 40 C.F.R. §§ 60.763(d) and 60.765(c)(1).

64. Respondents did not submit an initial annual report pursuant to 40 C.F.R. § 60.767(g) within 180 days of installing and starting up its GCCS, nor did Respondents submit annual reports thereafter.

65. On February 8, 2021, Waste Management submitted an NMOC report indicating that, according to its calculations, the Facility equaled or exceeded the 34 Mg per year threshold for the first time.

66. On December 31, 2021, in conjunction with settlement discussions with EPA, Waste Management submitted a GCCS design plan prepared by a professional engineer.

67. During the first quarter of 2022, in conjunction with settlement discussions with EPA, Waste Management commenced quarterly surface emissions monitoring around the perimeter of the Facility's collection area and along a pattern that traverses the Facility at

no more than 30-meter intervals using an organic vapor analyzer, flame ionization detector, or other portable monitor.

68. On July 28, 2022, in conjunction with settlement discussions with EPA, Waste Management submitted an Annual NSPS Subpart XXX Compliance Report to EPA.

69. A review of Waste Management's NMOC emission rate report revealed that Waste Management subtracted nondegradable solid waste from the total mass of solid waste at the Landfill in order to calculate the Facility's NMOC emission rate pursuant to 40 C.F.R. § 60.764, but EPA determined that Waste Management did not maintain adequate documentation of the nature and amount of the waste subtracted from the Facility's calculations pursuant to 40 C.F.R. § 60.764(a)(1)(i)(B)).

70. Waste Management provided documentation on annual acceptance of waste by category as reflected in annual reports prepared for the NYSDEC. It used the data from the annual reports to calculate the NMOC emission rate pursuant to 40 C.F.R. § 60.764(a). In addition, on June 1, 2022, Waste Management produced an example of a daily record of the waste the Facility accepted.

71. Upon review, the EPA determined that neither the annual reports prepared for the NYSDEC, nor the daily record that Waste Management produced on June 1, 2022, provided an adequate description of the nature and amount of the waste that was nondegradable.

E. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, EPA reaches the following Conclusions of Law:

72. Respondents are "persons" within the meaning of Section 302(e) of the Act.

73. The Landfill is a "stationary source" within the meaning of 40 C.F.R. § 60.2.

74. The Landfill is an "MSW landfill" within the meaning of 40 C.F.R. § 60.761.

75. Monroe County is the "owner" of the Landfill, as that term is defined in the NSPS General Provisions, 40 C.F.R. § 60.2, and the Landfill NSPS.

76. Waste Management is the "operator" of the Landfill, as that term is defined in the NSPS General Provisions, 40 C.F.R. § 60.2, and the Landfill NSPS.

77. The expansion of the Facility beginning on August 4, 2017, resulted in a "modification," of the Landfill, as that term is defined in 40 C.F.R. § 60.761. Accordingly, the Landfill is subject to the requirements of the Landfill NSPS, Subpart XXX, pursuant to 40 C.F.R. § 60.760(a).

78. Waste Management's failure to collect gas samples from the Landfill's active GCCS in a manner as representative as the two-sampling-probe-per-hectare requirement is a violation of 40 C.F.R. § 60.764(a)(3).

79. Since the Landfill's NMOC emission rate was equal to or greater than 34 megagrams per year no later than the time it submitted its Tier 2 Report on March 22, 2019, it became subject to the requirements set forth in 40 C.F.R. § 60.762(b)(2) as of that date.

80. Waste Management's failure to submit a GCCS design plan prepared by a professional engineer to the EPA no later than within one year of its March 22, 2019 Tier 2 Report is a violation of 40 C.F.R. § 60.767(c)(4).

81. Waste Management's failure to demonstrate that it installed and operated its GCCS in accordance with the requirements of the Landfill NSPS to capture the gas generated within the Landfill no later than within 30 months after submission of the March 22, 2019 Tier 2 Report, is a violation of 40 C.F.R. § 60.762(b)(2)(i) and (ii).

82. Waste Management's failure to conduct quarterly surface monitoring around the perimeter of the Landfill's collection area and along a pattern that traverses the Landfill at no more than 30-meter intervals to ensure that the Landfill's GCCS is operating with a

methane concentration of less than 500 parts per million above background at the Landfill's surface are violations of 40 C.F.R. §§ 60.763(d) and 60.765(c).

83. Waste Management's failure to submit an initial annual report within 180 days of installing and starting up its GCCS, and their failure to submit annual reports each year thereafter, are violations of 40 C.F.R. § 60.767(g).

84. Waste Management's failure to maintain adequate documentation to support the nature and amount of nondegradable waste that was subtracted from the Facility's total mass of solid waste in the Facility's calculation of its NMOC emission rate is a violation of 40 C.F.R. § 60.764(a)(1)(i)(B).

F. TERMS OF CONSENT AGREEMENT

85. For purposes of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondents:

a. admit that the EPA has jurisdiction over the subject matter alleged in this Consent Agreement;

b. neither admit nor deny the factual allegations and alleged violations stated above;

c. consent to the assessment of a civil penalty as stated below;

d. consent to the conditions specified in this Consent Agreement;

e. have, as of December 31, 2021, submitted a GCCS plan prepared by a professional engineer to the EPA in compliance with 40 C.F.R. § 60.767(c)(4);

f. have, as of December 31, 2021, demonstrated that it has installed and operated its GCCS in accordance with the requirements of the Landfill NSPS to capture the gas generated within the Landfill in compliance with 40 C.F.R. § 60.762(b)(2)(i) and (ii);

g. have started, as of March 31, 2022, conducting quarterly surface monitoring around the perimeter of the Landfill's collection area and along a pattern that traverses the Landfill at no more than 30-meter intervals to ensure that the Landfill's GCCS is operating with a methane concentration of less than 500 parts per million above background at the Landfill's surface, in compliance with 40 C.F.R. §§ 60.763(d) and 60.765(c);

h. have, as of July 30, 2022, submitted the Facility's initial annual report as required by 40 C.F.R. § 60.767(g);

i. waive any right to contest the conclusions of law set forth in Section E of this Consent Agreement; and

j. waive their right to appeal the Final Order accompanying this Consent Agreement.

86. For purposes of this proceeding, Respondents:

a. agree that this Consent Agreement states a claim upon which relief may be granted against Respondents;

b. acknowledge that this Consent Agreement constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;

c. consent to the issuance of the attached Final Order;

d. waive any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

e. consent to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court; and

f. waive any rights they 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 agree that federal law shall govern in any such civil action.

Civil Penalty

87. Pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d), Respondents shall pay the civil penalty of **$57,500** ("EPA Penalty") within 30 calendar days of the effective date specified in Section H of this Consent Agreement ("Effective Date"). Respondents shall pay the EPA Penalty using a method provided on the website https://www.epa.gov/financial/additional-instructions-making-payments-epa, identifying each and every payment with "Docket No. CAA-02-2023-1202." Within 24 hours of payment of the EPA Penalty, Respondents shall send proof of payment according to the instructions contained in Paragraph 87 below.

88. Proof of payment and any other written notices to be provided by this Order shall be submitted to:

Robert Buettner, Chief
Air Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency – Region 2
290 Broadway – 21st Floor
New York, New York 10007
Buettner.Robert@epa.gov

and

Liliana Villatora, Chief, Air Branch
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 2
290 Broadway – 16th Floor
New York, New York 10007
villatora.liliana@epa.gov

89. "Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer in the amount due, identified with "Docket No. CAA-02-2023-1202," and any other information required to demonstrate that payment has been made according to the applicable payment method.

90. If Respondents fail to timely pay the full amount of the EPA Penalty assessed under this Consent 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, pursuant to 42 U.S.C. § 7413(d)(5);

b. refer the debt to a credit reporting agency or a collection agency, or the Department of Justice, pursuant to 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, pursuant to 40 C.F.R. Part 13, Subparts C and H; and

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

G. EFFECT OF CONSENT AGREEMENT AND ATTACHED FINAL ORDER

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

92. Penalties paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

93. This Consent 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.

94. The terms, conditions, and compliance requirements of this Consent Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Regional Administrator or other delegate.

95. Any violation of this Consent Agreement and Final Order may result in EPA pursuing a civil judicial action for an injunction or civil penalties of up to $109,024 per day per violation, or both, as provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2) (as adjusted for inflation pursuant to 40 C.F.R. § 19.4), 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 Consent Agreement and Final Order in an administrative, civil judicial, or criminal action. Respondents reserve and may assert any available argument and defense and may use any information submitted under this Consent Agreement and Final Order, in response to any such action pursued by the EPA.

96. Nothing in this Consent Agreement shall relieve Respondents 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.

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

98. The EPA reserves the right to revoke this Consent Agreement and settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by the Respondents was materially false or inaccurate at the time such information was provided to the EPA. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Under such circumstance, Respondents reserve the right to assert any available argument and defense to any such claim by the EPA. The EPA shall give the Respondents notice of its intent to revoke, which shall not be effective until received by the Respondents in writing.

H. EFFECTIVE DATE

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

SIGNATURES

The foregoing Consent Agreement in the Matter of Monroe County and Waste Management of New York, LLC, Docket No. CAA-02-2023-1202, is Hereby Stipulated, Agreed, and Approved for Entry.

FOR RESPONDENTS:

July 25, 2023

Michael Garland, P.E., Director
Monroe County - Department of Environmental Services
7100 City Place, 50 W. Main Street
Rochester, NY 14614
mgarland@monroecounty.gov

July 13th, 2023

Jeffrey G. Richardson, Sr. District Manager
Waste Management of New York, LLC
425 Perinton Parkway
Fairport, NY 14450
jrichardson@wm.com

FOR COMPLAINANT:

DORE LAPOSTA
Digitally signed by DORE LAPOSTA
Date: 2023.08.02 14:32:14 -04'00'

August 2, 2023

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

FINAL ORDER

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 Regional Administrator of EPA Region 2 concurs in the foregoing Consent Agreement, *In the Matter of Monroe County and Waste Management of New York, LLC*, CAA-02-2023-1202. The attached Consent Agreement resolving this matter, entered into by the parties, is incorporated by reference into this Final Order and is hereby approved, ratified, and issued.

The Respondents are ORDERED to comply with all terms of the Consent Agreement, effective immediately.

SO ORDERED

LISA GARCIA Digitally signed by LISA GARCIA Date: 2023.08.02 17:30:27 -04'00'

Lisa F. Garcia
Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway, 26th Floor
New York, New York 10007-1866

DATE: August 2, 2023

To:

Monroe County – Department of Environmental Services
Attn: Michael Garland, P.E., Director
7100 City Place, 50 W. Main Street
Rochester, NY 14614
mgarland@monroecounty.gov

Waste Management of New York, LLC
Attn: Jeffrey G. Richardson, Sr. District Manager
425 Perinton Parkway Fairport, NY 14450
jrichardson@wm.com