



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

OCT 17 2013

REPLY TO THE ATTENTION OF:

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

David Lusk, President  
Wayne Disposal Inc.  
36255 Michigan Avenue  
Wayne, Michigan 48184

Dear Mr. Lusk:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves *In the Matter of Wayne Disposal, Inc.*, Docket No. **CAA-05-2014-0001**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on October 17, 2013.

Pursuant to paragraph 33 of the CAFO, Wayne Disposal, Inc. must pay the civil penalty within 30 days of November 18, 2013. Your electronic funds transfer must display the case name *In the Matter of Wayne Disposal, Inc.* and the docket number CAA-05-2014-0001.

Please direct any questions regarding this case to Richard J. Clarizio, Associate Regional Counsel, (312) 886-0559.

Sincerely,

Sarah Marshall  
Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Thomas Hess  
Supervisor, Enforcement Unit  
Michigan Department of Environmental quality

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2014-0001</b>
	)	
<b>Wayne Disposal, Inc.</b>	)	
<b>Belleville, Michigan,</b>	)	<b>Consent Agreement and Final Order</b>
	)	<b>pursuant to Section 113(d) of the Clean Air</b>
	)	<b>Act, 42 U.S.C. § 7413(d)</b>
	)	
<b>Respondent.</b>	)	
_____	)	

**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 22.13(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), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Wayne Disposal, Inc., a corporation doing business in Michigan.

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.

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### **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. Federal Plan Requirements for Municipal Solid Waste Landfills (Federal Plan), codified at 40 C.F.R. Part 62, Subpart GGG, apply to “existing” municipal solid waste (MSW) landfills that have begun construction, modification or reconstruction before May 30, 1991, and have not been modified or reconstructed since that date; and have accepted waste at any time since November 8, 1987, or the landfill has additional capacity for future waste deposition. See 40 C.F.R. § 62.14352(a).

10. The Federal Plan has been in effect in Michigan since January 7, 2000. See 65 FR 60689.

11. The Federal Plan requires the owner and operator of an affected MSW landfill to operate a gas collection and control system. See 40 C.F.R. § 62.14353(b). The Federal Plan incorporates by reference the New Source Performance Standards (NSPS) for MSW landfills at 40 C.F.R. Part 60, Subpart WWW. See 40 C.F.R. § 62.14350, et seq.

12. The Federal Plan requires owners and operators of existing MSW landfills to submit to EPA for approval a Final Control Plan (FCP) in compliance with the NSPS for MSW landfills. See 40 C.F.R. §§ 62.14356(a)(1) and 60.752(b)(2).

13. The NSPS at 40 C.F.R. §§ 60.18(e) and 60.752(b)(2)(iii)(A) requires that flares used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

14. The NSPS at 40 C.F.R. §§ 60.18(d) and 60.756(c) requires that owners or operators of open flares used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their manufacturer's specifications or designs.

15. The NSPS at 40 C.F.R. § 60.11(d) requires at all times, including start-up, shutdown, and malfunction, that owners and operators, to the extent practicable, maintain and operate any facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

16. The NSPS at 40 C.F.R. § 60.755(d) requires owners or operators to use a portable organic vapor analyzer which meets the instrument specifications of Section 3 of EPA Method 21 to demonstrate compliance with the surface methane operational standards in Section 60.753(d).

17. EPA granted full approval of Michigan's Title V renewable operating permit program on December 4, 2001. See 66 FR 62949. The program became effective on November 30, 2001. Michigan Department of Environmental Quality (MDEQ) implements the program.

18. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for CAA violations that occurred after March 15, 2004, through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations, including violations of the NSPS,

Federal Plan and Title V permit, that occurred after January 12, 2009, under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. 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.

20. 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**

21. Respondent owns and operates an inactive MSW landfill at 49350 North I-94 Service Drive, Belleville, Michigan. This landfill consists of sections known as Fons, Old Wayne, Wayne Site No. 1, and Wayne Site No. 2.

22. The MSW landfill is subject to requirements of the Federal Plan in effect in Michigan. This is an existing landfill that contains MSW and which received waste from about 1960 until 1985.

23. On December 4, 2003, MDEQ issued a Renewable Operating Permit that covers the operation of open flares at Wayne Site No. 1, Fons and Old Wayne. MDEQ issued Title V permit number MI-PTI-M4782-2003a as a revision to the previously-issued Renewable Operating Permit, on December 15, 2006. This permit required Respondent to operate passive flares designed in accordance with 40 C.F.R. § 60.18 and the EPA-approved FCP.

24. The revised permit contained the following conditions:

a. “The presence of a flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.” Section 3, Table C-3.4, subsection A.2.1.

b. “The permittee shall keep continuous records of the flame or flare flame monitoring specified under 40 CFR 60.756(c) and record of all periods of operation in which the flame or flare flame is absent..” Section 3, Table C-3.4, subsection A.3.1.

c. “If the permittee uses an open flare, records shall be kept ...[of] continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flare flame is absent. Section 3, Table C-3.4, subsection A.3.2.

d. “Surface emissions monitoring shall be performed in accordance with section 4.3.1 of Method 21 of Appendix A of 40 C.F.R Part 60...” Section 3, Table C 3.1, subsection B.2.1.d.

25. MDEQ renewed the Renewable Operating Permit under number MI-PTI-M4782-2010, effective September 1, 2010, with an expiration date of September 1, 2015.

26. Section 3 of Respondent’s Title V permit effective on September 1, 2010, continues to require that Respondent operate the vent flares in compliance with the provisions of 40 C.F.R. Part 60, Subpart A, whenever landfill gas emissions may be vented to them.

27. On numerous occasions from January 2007 through December 2010, Respondent failed to properly maintain thermocouples, pressure data loggers, and temperature data loggers for the passive vent flares. In so doing, Respondent violated the Federal Plan and the NSPS general provisions and the New Source Performance Standards (NSPS) for MSW landfills by failing to operate the passive vent flares in compliance with the provisions of 40 C.F.R. Part 60, Subpart A, whenever landfill gas emissions may be vented to them. 40 C.F.R. §§ 60.18(e) and 60.752(b)(2)(iii)(A).

28. On numerous occasions from January 2007 through December 2010, Respondent violated the Federal Plan and the NSPS general provisions by failing to maintain and operate any

facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Specifically, Respondent allowed ongoing failures of pressure data loggers, temperature data loggers and thermocouples during this period. 40 C.F.R. § 60.11.

29. On numerous occasions from January 2007 through December 2010, Respondent violated the Federal Plan and the NSPS general provisions and the NSPS for MSW landfills by failing to monitor the flares to ensure that they were operated and maintained in conformance with their designs. 40 C.F.R. §§ 60.18(d) and 60.756(c).

30. During an inspection on June 17, 2008, EPA found that the calibration gas used by Respondent for surface monitoring had expired on October 10, 2007, in violation of the procedures contained at 40 C.F.R. § 60.755(d) that reference Method 21.

31. Respondent's failure to properly maintain thermocouples, pressure data loggers, and temperature data loggers for the passive vent flares in violation of Federal Plan requirements and the NSPS general provisions and the NSPS for MSW landfills are also violations of Section 3 of the Renewable Operating Permit.

32. Additionally, Respondent's violation of the procedures contained at 40 C.F.R. § 60.755(d) is a violation of Section 3 of the Renewable Operating Permit. Respondent's operation in violation of its Title V permit constitutes a violation of Section 502 of the CAA and of 40 C.F.R. § 70.7(b).

#### **Civil Penalty**

33. 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 the efforts by Respondent to return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$91,388.77.

Within 30 days after the effective date of this CAFO, Respondent shall pay \$91,388.77 by electronic transfer of funds, payable to "Treasurer, United States of America and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, Respondent shall identify its name, and the docket number of this CAFO.

34. 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:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Richard Clarizio (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

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

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

36. 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.

37. 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).

38. Respondent must submit all notices and reports required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 34, above.

#### **General Provisions**

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

40. The effect of the settlement described in paragraph 33, above, is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in paragraph 43 of this CAFO.

41. 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.

42. 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 39, above,

compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

43. Respondent certifies that it is complying fully with the Federal Plan for MSW landfills.

44. 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).

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

46. 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.

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

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

49. This CAFO shall terminate upon payment of the required penalty amount as set forth above.

**Wayne Disposal, Inc., Respondent**

Date

9/26/13

Wayne Disposal, Inc.

Scott Maris VP

**United States Environmental Protection Agency, Complainant**

Date

9/30/13



George T. Czerniak  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Wayne Disposal, Inc.**  
Docket No. CAA-05-2014-0001

**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.

9-30-13

\_\_\_\_\_  
Date



\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Wayne Disposal, Inc.**  
**Docket No. CAA-05-2014-0001**

**Certificate of Service**

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2014-0001 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

David Lusk, President  
Wayne Disposal, Inc.  
36255 Michigan Avenue  
Wayne, Michigan 48184

S. Lee Johnson, Esq.  
Honigman Miller Schwartz and Cohn LLP  
660 Woodward Avenue  
2290 First National Building  
Detroit, Michigan 48226-3506

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle, Regional Judicial Officer (C-14J)  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Richard J. Clarizio, Associate Regional Counsel (C-14J)  
U. S. Environmental Protection Agency  
77 W. Jackson Boulevard  
Chicago, Illinois 60604




**Consent Agreement and Final Order**  
**In the Matter of: Wayne Disposal, Inc.**  
**Docket No. CAA-05-2014-0001**

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Thomas Hess, Supervisor  
Air Enforcement Unit  
Michigan Department of Environmental Quality  
P.O. Box 30260  
Lansing, Michigan 48909

On the 17<sup>th</sup> day of OCTOBER 2013.

  
Office Automation Assistant  
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7676 1277