



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

JUN 19 2012

REPLY TO THE ATTENTION OF:

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

Mr. Kevin Johnson  
Stoel Rives LLP  
33 South Sixth Street, Suite 4200  
Minneapolis, Minnesota 55402

Dear Mr. Johnson:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Case Docket No. CAA-05-2012-0033. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 19 2012.

Pursuant to paragraph 26 of the CAFO, the City of Red Wing must pay the civil penalty within 30 days of JUN 19 2012. Your check must display the docket number, CAA-05-2012-0033 and the billing document number, 2751203A035.

Please direct any questions regarding this case to Steven Kaiser, Associate Regional Counsel, 312.353.3804.

Sincerely,

A handwritten signature in black ink that reads "William MacDowell".

William MacDowell, Chief  
Air Enforcement and Compliance Assurance Section (MN/OH)

Enclosure

cc: John Breslin, Acting Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Steven Kaiser/C-14J  
Jeff T. Connell, MPCA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>IN THE MATTER OF:</b>	)	Docket No. <b>CAA-05-2012-0033</b>
	)	
City of Red Wing, Minnesota	)	Proceeding to Assess a Civil Penalty
	)	Under § 113(d) of the Clean Air Act,
<b>Respondent.</b>	)	42 U.S.C. § 7413(d)
	)	
	)	
	)	

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**RECEIVED  
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2012 JUN 19 PM 3:56**

**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 (CAA or the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Concerning the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.
  
2. Complainant is the Director of the Air and Radiation Division, U. S. Environmental Protection Agency (EPA), Region 5.
  
3. Respondent is the City of Red Wing, Minnesota, a municipality and the owner of the Red Wing Solid Waste Boiler Facility (Red Wing SWBF).
  
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

**Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

**Statutory and Regulatory Background**

9. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to adopt and submit to the Administrator of EPA (Administrator) a plan which provides for the implementation, maintenance and enforcement of all national primary and secondary standards established pursuant to Section 109 of the CAA, 42 U.S.C. § 7409. These plans, referred to as State Implementation Plans (SIPs) are required to include enforceable emission limitations, control measures, schedules for compliance, and permit programs for new sources.

10. Section 110(c) of the CAA, 42 U.S.C. § 7410(c), requires the Administrator to promulgate federal implementation plans (FIPs) where the state has failed to make a required submission, the Administrator has found that the plan or plan revision submitted by the State does not satisfy the minimum criteria established, or the Administrator has disapproved a SIP submission in whole or in part.

11. On January 31, 2003, EPA promulgated the Federal Plan Requirements for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999 at 40 C.F.R. Part 62, Subpart JJJ, §§ 62.1500 - 62.15410 (the Small MWC FIP). 68 Fed. Reg. 5144 (Jan. 31, 2003). The State of Minnesota has not promulgated a comparable regulation for small municipal waste combustion units. The requirements of the Small MWC FIP are applicable to small municipal waste combustion units constructed on or before August 30, 1999, and located in the State of Minnesota including the Red Wing SWBF.

12. Pursuant to the provisions of the Small MWC FIP found at 40 C.F.R. § 62.15160(a)(2) and in Table 4, the owner or operator of a Small Class II MWC Unit must comply with the front-half particulate matter emission standard of 70 milligrams per dry standard cubic meter corrected to 7 percent oxygen (mg/dscm @ 7% O<sub>2</sub>) once the initial stack test and continuous emission monitoring system evaluation has been either required or completed (whichever is earlier).

13. Pursuant to 40 C.F.R. § 62.15045(a) and Table 1 of the Small MWC FIP, the owner or operator of a Small Class II MWC Unit must achieve final compliance with the Small MWC FIP no later than May 6, 2005.

14. Pursuant to 40 C.F.R. § 62.15240(a), the owner or operator of a Small Class II MWC Unit must conduct the initial stack test no later than 180 days after the final compliance date, May 6, 2005.

15. Pursuant to 40 C.F.R. § 62.15160(a)(2), the City of Red Wing was required to comply with the emission limits in Table 4 by November 6, 2005, a date no later than 180 days after May 6, 2005.

16. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

### **Factual Allegations and Alleged Violations**

17. The City of Red Wing, Minnesota (City of Red Wing) owns and operates the Red Wing SWBF, a Small Class II MWC Unit at 1873 Bench Street, Red Wing, Minnesota. The Red Wing SWBF was constructed in 1982, a date on or before August 30, 1999.

18. The Red Wing SWBF has the capacity to combust approximately 96 tons of MSW per day. A facility with the capacity to combust between 35 and 250 tons of MSW per day is subject to the Small MWC FIP at 40 C.F.R. § 62.15160(a) and Table 4 of the Small MWC FIP.

19. On August 3, 2011, EPA issued to the Red Wing SWBF a Notice and Finding of Violation alleging that it violated the Clean Air Act, the Small MWC FIP, and its Title V Permit when its air emissions exceeded the average particulate matter emission concentration limit established in the Small Municipal Waste Combustion FIP and Red Wing's Solid Waste Boiler Facility Title V Permit.

20. On April 27-28, 2011, Pace Analytical Inc. (Pace Analytical) conducted three runs of Reference Method (RM) 5 on emissions from the Red Wing SWBF. The average

particulate matter emission concentration during the three runs was 87 mg/dscm @ 7% O<sub>2</sub>, in excess of the limit of 70 mg/dscm @ 7% O<sub>2</sub> established in the Small MWC FIP and Red Wing SWBF's Title V permit.

21. On June 16, 2011, Pace Analytical conducted three runs of RM 5 on emissions from the Red Wing SWBF. The average particulate matter emission concentration during the three runs was 48.2 mg/dscm @ 7% O<sub>2</sub>, in compliance with the limit of 70 mg/dscm @ 7% O<sub>2</sub> established in the Small MWC FIP and Red Wing SWBF's Title V permit.

22. On numerous occasions since August 3, 2011, representatives of the EPA and the City of Red Wing discussed the Notice and Finding of Violation.

23. The City of Red Wing violated the Clean Air Act when between April 27, 2011, and June 16, 2011, air emissions from the Red Wing SWBF exceeded the average particulate matter emission concentration limit established in the Small Municipal Waste Combustion FIP.

24. Particulate emissions, specifically emissions of fine particulate matter, contribute to respiratory problems, lung damage and premature deaths.

#### **Civil Penalty**

25. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and financial information that Respondent has submitted, Complainant has determined that an appropriate civil penalty to settle this action is \$1,500.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$1,500 civil penalty by sending a cashier's or certified check payable to the "Treasurer, United States of America," to:

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

27. Respondent must send a notice of payment that states Respondent's name, the case docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch, the Regional Hearing Clerk, and to Steven P. Kaiser at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Steven P. Kaiser, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

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

29. 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 Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

30. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

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

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

33. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 31 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

34. Respondent certifies that it is complying fully with the applicable requirements of the Small MWC FIP and 40 C.F.R. 60.11(d).

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

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

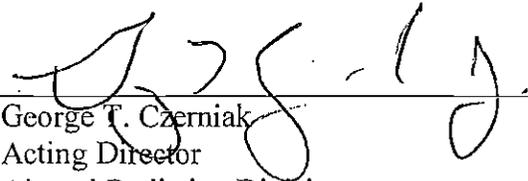
37. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

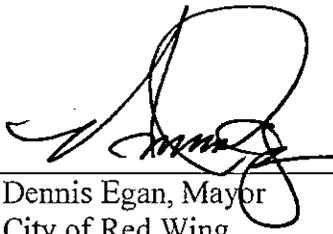
U.S. Environmental Protection Agency, Complainant

4/26/12  
Date

  
George F. Czerniak  
Acting Director  
Air and Radiation Division

City of Red Wing, Minnesota as owner and operator of the Red Wing Solid Waste Boiler Facility, Respondent

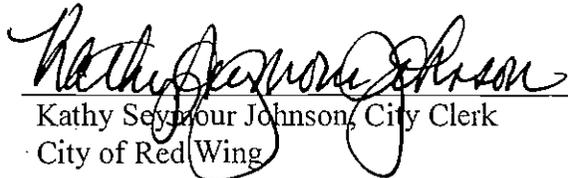
4-24-2012  
Date

  
Dennis Egan, Mayor  
City of Red Wing

4/23/2012  
Date

  
Kay Kuhlmann, Council Administrator  
City of Red Wing

4/23/2012  
Date

  
Kathy Seymour Johnson, City Clerk  
City of Red Wing

Red Wing Solid Waste Boiler Facility, Red Wing, Minnesota

Docket No. CAA-05-2012-0033

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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-15-12

Date



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

In the Matter of Red Wing Solid Waste Boiler Facility, Red Wing, Minnesota  
Docket No. CAA-05-2012-0033

**CERTIFICATE OF SERVICE**

I, Loretta Shaffer, certify that I sent the original and one copy of the proposed Consent Agreement and Final Order by Certified Mail, Return Receipt Requested, to the City of Red Wing, Minnesota's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Kevin Johnson  
Stoel Rives LLP  
33 South Sixth Street, Suite 4200  
Minneapolis, Minnesota 55402

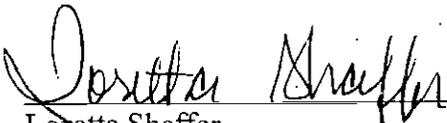
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

John Breslin  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard / Mail Code C-14J  
Chicago, Illinois 60604

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

Jeff T. Connell, Manager  
Compliance and Enforcement Section  
Industrial Division  
Minnesota Pollution Control Authority  
33 South Sixth Street, Suite 4200  
Saint Paul, MN 55155-4194

on the 19 day of June, 2012.

  
Loretta Shaffer  
Administrative Program

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7672 9420

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standard bcc's:        Official File Copy w/attachment(s)  
                             Section Reading File w/o attachments  
                             Branch Reading File w/o attachments

other bcc's:            Steve Kaiser, C-14J  
                             Virginia Palmer, AE-17J

Creation Date:	April 26, 2012
Filename:	C:\EPAWORK\Red Wing\2 <sup>nd</sup> FOV\Red Wing APO CAFO 2012 04 24.doc
Legend:	ARD:AECAB:AECAS(MN/OH):v.palmer/s.kaiser