

**U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

Albany County Water Purification District,
North Plant
Albany, NY

Respondent

In a proceeding under Section 113(a) of the
Clean Air Act, 42 U.S.C. § 7413(a)

FINDING OF VIOLATION

CAA-02-2024-1302

Summary

The Director of the Enforcement and Compliance Assurance Division (“ECAD”) for the United States Environmental Protection Agency (“EPA”), Region 2, issues this Finding of Violation (“FOV”) to the Albany County Water Purification District (“ACWPD” or “Respondent”) pursuant to Section 113(a)(3) of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. §7413(a)(3). This FOV describes EPA’s finding that Respondent has violated the requirements and prohibitions of 40 C.F.R. Part 60, Subpart A (“Subpart A”), as well as the federally enforceable requirements and prohibitions of Parts 200 and 219 of Title 6 of the New York Code of Rules and Regulations (“6 CRR-NY”) of the State of New York (together, the “New York State Plan” or “NY State Plan”), which incorporate by reference the applicable requirements and prohibitions of 40 C.F.R., Part 60, Subpart M (“Subpart M”). This FOV provides notice to Respondent of such findings.

Statutory and Regulatory Background

The Act

1. Section 129 of the CAA, 42 U.S.C. § 7429, entitled, “Solid Waste Combustion,” requires

EPA to develop and adopt standards for solid waste incineration units pursuant to CAA Sections 111, 42 U.S.C. § 7411, and 129. Under Section 129(b)(1) of the CAA, EPA is required to include within those performance standards, Emissions Guidelines (“EG” or “Guidelines”), promulgated pursuant to Section 129(b) and 111(d), applicable to solid waste incineration units constructed on or before October 14, 2010 (“existing units”). See 76 FR 15429, March 21, 2011.

2. Pursuant to Sections 111 and 129 of the CAA, EPA promulgated 40 C.F.R., Part 60, Subpart Mmmm, “Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units” on March 21, 2011, which included Guidelines for existing units located at wastewater treatment facilities designed to treat domestic sewage sludge. See 76 FR 15429, March 21, 2011. The Subpart Mmmm Guidelines are not themselves directly enforceable. The Subpart Mmmm Guidelines are implemented and enforced through either an EPA-approved state plan, under CAA Section 129(b)(2), or a promulgated Federal plan, under CAA Section 129(b)(3). See 76 FR 15373, March 21, 2011.

3. Under Section 129(b)(2) of the Act, states are required to submit to EPA, for approval, a plan to implement and enforce the Subpart Mmmm Guidelines not later than 1 year after EPA promulgates them. The state plan must be at least as protective as the Subpart Mmmm Guidelines and must ensure compliance with all requirements of CAA Section 129 not later than 3 years after the state plan is approved by EPA, or 5 years after promulgation of the relevant Subpart Mmmm Guidelines, whichever is sooner.

4. Pursuant to its mandate under Section 129(b)(2) of the Act, New York State adopted by reference the applicable requirements and prohibitions of the Subpart Mmmm Guidelines in Part 200 of 6 CRR-NY, entitled, “General Provisions,” in Subpart 200.10, entitled, “Federal standards and requirements;” and in Part 219 of 6 CRR-NY, entitled “Incinerators,” in Subpart 219–1,

entitled, “Incineration-General Provisions” and Subpart 219–9, entitled, “Emission Guidelines and Compliance Schedules for Existing Sewage Sludge Incineration Units.” These adopted requirements became effective and enforceable by the State of New York on May 12, 2012. See 79 FR 16272, March 25, 2014.

5. On July 1, 2013, further pursuant to Section 129(b)(2), the New York State Department of Environmental Conservation (“NYSDEC”) submitted to EPA for approval the 6 CRR-NY Subpart MMMM Guideline adoptions as the New York State Plan to implement and enforce the Subpart MMMM Guidelines, fulfilling the requirements of Section 111(d) and 129 of the CAA.

6. Under Section 129(f)(2) of the Act, performance standards and other requirements promulgated pursuant to Sections 129 and 111 of the CAA and applicable to existing solid waste incineration become effective as expeditiously as practicable after approval of a state plan under Section 129(b)(2) of the CAA, but in no event later than 3 years after the state plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

7. EPA finalized and made effective its approval of the New York State Plan on June 11, 2014, making it federally enforceable. See 79 FR 33456, June 11, 2014.

8. Under Section 129(f)(3) of the Act, after any performance standard, emission limitation or other requirement promulgated pursuant to Sections 111 and 129 of the Act becomes effective, it then becomes unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement.

The New York State Plan

9. 6 CRR-NY 200.10, entitled, “Federal standards and requirements,” incorporates by reference, among other federal regulations, 40 C.F.R., Part 60, Subpart A, and 40 C.F.R., Part 60,

Subpart MMMM, at 6 CRR-NY 200.10(a) and 6 CRR-NY 200.10(b), Table 2 (“Table 2”).

10. 6 CRR-NY 219.9.1, entitled, “Applicability,” provides that the Federal requirements of 40 C.F.R., Part 60, Subpart MMMM, incorporated by reference in 6 CRR-NY 200.10, apply to sewage sludge incineration (SSI) units, located at wastewater treatment facilities, designed to treat domestic sewage sludge, the construction of which commenced on or before October 14, 2010.

11. 6 CRR-NY 219.9.3, entitled, “Compliance/closure schedules,” provides that owners and operators of existing SSI units must achieve full compliance with the requirements of 40 C.F.R., Part 60, Subpart MMMM.

40 C.F.R., Part 60, Subpart MMMM

12. 40 C.F.R. § 60.5250 includes the following applicable definitions:

- a. *Sewage sludge incineration (SSI) unit* means an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. Sewage sludge incineration unit designs include fluidized bed and multiple hearth. A SSI unit also includes, but is not limited to, the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The SSI unit includes all ash handling systems connected to the bottom ash handling system. The combustion unit bottom ash system ends at the truck loading station or similar equipment that transfers the ash to final disposal. The SSI unit does not include air pollution control equipment or the stack.
- b. *Bypass stack* means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

- c. *Continuous automated sampling system* means the total equipment and procedures for automated sample collection and sample recovery/analysis to determine a pollutant concentration or emission rate by collecting a single integrated sample(s) or multiple integrated sample(s) of the pollutant (or diluent gas) for subsequent on- or off-site analysis; integrated sample(s) collected are representative of the emissions for the sample time as specified by the applicable requirement.
- d. *Continuous emissions monitoring system* means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.
- e. *Continuous monitoring system (CMS)* means a continuous emissions monitoring system, continuous automated sampling system, continuous parameter monitoring system or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by Subpart MMMM. The term refers to the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.
- f. *Continuous parameter monitoring system* means a monitoring system for continuously measuring and recording operating conditions associated with air pollution control device systems (e.g., operating temperature, pressure, and power).
- g. *Deviation* means any instance in which an affected source subject to Subpart MMMM, or an owner or operator of such a source: (1) Fails to meet any requirement or obligation established by Subpart MMMM, including but not limited to any emission limit, operating limit, or operator qualification and accessibility requirements; (2) Fails to meet any term or condition that is adopted to implement an

applicable requirement in Subpart M MMM and that is included in the operating permit for any affected source required to obtain such a permit.

13. 40 C.F.R. § 60.5110 states: For your control plan increment of progress, you must (a) Submit the final control plan that includes a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and standards and other requirements of Subpart M MMM; the type(s) of waste to be burned, if waste other than sewage sludge is burned in the unit; the maximum design sewage sludge burning capacity; if applicable, the petition for site-specific operating limits under 40 C.F.R. § 60.5175; and maintain an onsite copy of the final control plan.

14. 40 C.F.R. § 60.5165 states, in part: You must meet the emission limits and standards specified in Table 2 or 3 to Subpart M MMM by the final compliance date under the approved state plan, Federal plan, or delegation, as applicable. The emission limits and standards apply at all times the unit is operating and during periods of malfunction. The emission limits and standards apply to emissions from a bypass stack or vent while sewage sludge is in the combustion chamber (*i.e.*, until the sewage sludge feed to the combustor has been cut off for a period of time not less than the sewage sludge incineration residence time).

15. 40 C.F.R. § 60.5170(f)(1) & (2) states, in part: You must monitor the feed rate and moisture content of the sewage sludge fed to the sewage sludge incinerator by (1) continuously monitoring the sewage sludge feed rate, calculating a daily average for all hours of operation during each 24-hour period, and keep a record of the daily average feed rate, as specified in 40 C.F.R. § 60.5230(f)(3)(ii); and (2) take at least one grab sample per day of the sewage sludge fed to the sewage sludge incinerator. If you take more than one grab sample in a day, calculate the daily average for the grab samples, and keep a record of the daily average moisture content, as

specified in 40 C.F.R. § 60.5230(f)(3)(ii).

16. 40 C.F.R. § 60.5175(b) states, in part: If you use an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator, activated carbon injection, or afterburner, or limit emissions in some other manner (e.g., materials balance) to comply with the emission limits in 40 C.F.R. § 60.5165, you must petition the Administrator for specific operating parameters, operating limits, and averaging periods to be established during the initial performance test and to be monitored continuously thereafter.

17. 40 C.F.R. § 60.5190(e) requires: Minimum combustion chamber operating temperature (or minimum afterburner temperature), equal to the lowest 4-hour average combustion chamber operating temperature (or afterburner temperature) measured during the most recent performance test demonstrating compliance with all applicable emission limits.

18. 40 C.F.R. § 60.5200(d) states: You must submit a monitoring plan specifying the ash handling system operating procedures that you will follow to ensure that you meet the fugitive emissions limit specified in Table 2 or 3 to this Subpart Mmmm.

19. 40 C.F.R. § 60.5205 states: To demonstrate continuous compliance with the emission limits and standards specified in Table 2 or 3 to this Subpart Mmmm, use the procedures specified in paragraph (a) of 40 C.F.R. § 60.5205. In lieu of using the procedures specified in paragraph (a) of this 40 C.F.R. § 60.5205, you have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of 40 C.F.R. § 60.5205 for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans (total mass basis or toxic equivalency basis), mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and fugitive emissions from ash handling. You must meet the requirements of paragraphs (a) and (b) of this 40 C.F.R. § 60.5205, as applicable, and paragraphs (c) through (e) of this 40 C.F.R. § 60.5205, according to the

performance testing, monitoring, and calibration requirements in 40 C.F.R. § 60.5220(a) and (b). You may also petition the Administrator for alternative monitoring parameters as specified in paragraph (f) of 40 C.F.R. § 60.5205.

20. 40 C.F.R. § 60.5210(a) states, in part: (1) You must demonstrate that the SSI unit meets the operating limits established according to 40 C.F.R. §§ 60.5175 and 60.5190 and paragraph (d) of this 40 C.F.R. 60.5210 for each applicable operating parameter.

21. 40 C.F.R. § 60.5210(d)(1) states, in part: You must confirm and re-establish your operating limits based on operating data recorded during any performance test required in 40 C.F.R. § 60.5205(a) or any performance evaluation required in 40 C.F.R. § 60.5205(b)(4).

22. 40 C.F.R. § 60.5220(a)(11) states: During each test run specified in paragraph (a)(1) of 40 C.F.R. § 60.5220, you must operate your sewage sludge incinerator at a minimum of 85 percent of your maximum permitted capacity.

23. 40 C.F.R. § 60.5220(c)(3) states, in part: Use of the bypass stack at any time that sewage sludge is being charged to the SSI unit is an emissions standards deviation for all pollutants listed in Table 2 or 3 to this Subpart MMMM. The use of the bypass stack during a performance test invalidates the performance test.

24. 40 C.F.R. § 60.5225(d) states: If your SSI unit has a bypass stack, you must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

25. 40 C.F.R. § 60.5230(m) states, in part: You must maintain records indicating use of the bypass stack, including dates, times, and durations as required under 40 C.F.R. § 60.5225(d).

26. 40 C.F.R. § 60.5235(d)(3)(v)(B) states: You must submit deviation reports for each deviation where you are using a continuous monitoring system to comply with an associated

emission limit or operating limit, including the duration and cause of each deviation from bypass events and your corrective actions.

27. 40 C.F.R. § 60.5235(h)(2) states: As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in 40 C.F.R. § 63.2, conducted to demonstrate compliance with this Subpart MMMM, you must submit relative accuracy test audit (i.e., reference method) data and performance test (i.e., compliance test) data, except opacity data, electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see http://www.epa.gov/ttn/chief/ert/ert__tool.html/) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

40 C.F.R., Part 60, Subpart A

28. 40 C.F.R. § 60.11(d) states: At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, 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. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

Finding of Fact

29. Respondent is a municipal authority organized under the Public Authorities Law of the State of New York.

30. Respondent owns and is permitted to operate two multiple hearth SSI units as part of its North Plant located at 1 Canal Road South, Menands, NY 12204 (the “Facility”).
31. The Facility was constructed before October 14, 2010.
32. The Facility is a municipal wastewater treatment facility that accepts and treats wastewater from municipalities.
33. The SSI units that Respondent operates at the Facility are hereinafter referred to as multiple hearth furnaces “MHF01” and “MHF02” and ACWPD is permitted to operate only one SSI unit (either MHF01 or MHF02) at any given time.
34. The Facility has an NYSDEC Identification number identified as 4012600138.
35. The Facility has an NYSDEC permit, Permit ID 4-0126-00138/00012, for MHF01 and MHF02.
36. The NYSDEC permit, Permit Activity Number 4-0126-00138/00012, states that for MHF01 and MHF02, the design capacity sludge feed rate is 26.3 dry tons per day.
37. On February 28, 2023, EPA conducted an inspection of the Facility, accompanied by representatives of the ACWPD and the NYSDEC. At the time of EPA’s inspection, the Respondent identified and/or EPA inspectors concluded that:
- a. The Facility did not have a Final Control Plan, as required by 40 C.F.R. § 60.5110.
 - b. The Facility used its bypass stack multiple times per year, indicating it did not meet emission limits, as required by 40 C.F.R. § 60.5165.
 - c. Respondent is not monitoring sewage sludge moisture content, nor keeping a record of the daily average sewage sludge moisture content and sewage sludge feed rate, as required in 40 C.F.R. § 60.5170(f) and § 60.5230(f)(3)(ii).
 - d. Respondent is using low mercury sludge as an alternative control method for mercury

- but has not submitted a petition to EPA showing this method will allow ACWPD to comply with the mercury emission limits, as required by 40 C.F.R. § 60.5175(b).
- e. The results of the compliance emission test report for the Facility, dated June 2022, revealed that testing for O₂, CO₂, CO, NO_x, and SO₂ consisted of three one-hour runs instead of the required 4-hour runs. The Respondent did not set combustion operating parameter limits for O₂, CO₂, CO, NO_x, and SO₂ based on the lowest 4-hour average combustion chamber operating temperature, as required by 40 C.F.R. § 60.5190(e).
 - f. The current ash handling plan, particularly Section 4, “Bag Leak Detection” in the site-specific monitoring plan (the “SSMP”) and Section 5, “Ash Handling System Description” of the SSMP Appendices, does not address how the Facility will meet the emission limits for fugitive emissions from the outdoor aspects of the ash handling, as required by 40 C.F.R. § 60.5200(d).
 - g. The results of the compliance emission test reports for the Facility, dated June 2022, revealed that Dioxins/Furans (D/F) emissions were more than 200% above the D/F emission limit provided within the Subpart M MMM Guidelines. These results show the Facility did not demonstrate continuous compliance with emission limits and standards for D/F for a period of at least two years, as required by 40 C.F.R. § 60.5205.
 - h. Respondent’s deviation reports for CY 2022 and CY 2023 show the Facility did not demonstrate that its SSI units continuously meet applicable operating parameter limits, as required by 40 C.F.R. § 60.5210(a).
 - i. The Facility’s reported scrubber flow, scrubber pressure drops, and/or combustion

temperature operating parameter limits (“OPLs”) were based on values from various historic compliance tests, rather than the last compliance test for the pollutants controlled by those OPLs, as required by 40 C.F.R. § 60.5210(d)(1).

- j. According to compliance test reports, during at least one run, the Facility did not operate its sewage sludge incinerator at an hourly sewage feed rate equal to or greater than 85 percent of the permitted design capacity, as required by 40 C.F.R. § 60.5220(a)(11).
 - k. Respondent did not prevent use of the bypass stack at the Facility while sewage sludge was being charged to the SSI unit, as required by 40 C.F.R. § 60.5220(d).
 - l. Respondent did not install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack, including date, time, and duration, as required by 40 C.F.R. § 60.5225(d).
 - m. Respondent did not record the use of the bypass stack, including dates, times, and durations, as required by 40 C.F.R. § 60.5230(m).
 - n. Respondent did not report the cause/duration of deviations from bypass events and corrective actions as required by 40 C.F.R. § 60.5235(d)(3)(v)(B).
 - o. Respondent did not submit any test reports to EPA through its “Compliance and Emissions Data Reporting Interface” (“CEDRI”), specifically the electronic reporting tool (“ERT”) accessed through EPA’s central data exchange (“CDX”), as required by 40 C.F.R. § 60.5235(h)(2).
38. Based on the Findings of Fact stated above, ACWPD did not operate and maintain, to the extent practicable, the Facility in a manner consistent with good air pollution control practices for minimizing emissions as required by 40 C.F.R. § 60.11(d).

Conclusions of Law

39. Based on the Findings of Fact set forth above, EPA reached the following Conclusion of Law:

- a. Respondent is a “person” as defined under Section 302 of the Act, 42 U.S.C § 7602.
- b. Respondent’s Facility is subject to the NY State Plan, which incorporates the applicable requirements of 40 C.F.R., Part 60, Subpart MMMM.
- c. The NY State Plan is a “plan” approved by EPA under Section 129(b)(2) of the act and is enforceable by EPA under Section 113(a)(3) of the Act.
- d. Respondent’s SSI units MHF01 and MFH02 are subject to the emission limits and standards established under Table 3 of Subpart MMMM.
- e. Respondent’s use of its bypass stack, indicating it did not meet emission limits, as required by 40 C.F.R. § 60.5165, constitutes a violation of the NY State Plan.
- f. Respondent’s failure to prepare and submit a Final Control Plan, as required by 40 C.F.R. § 60.5110, constitutes a violation of the NY State Plan.
- g. Respondent’s failure to maintain an onsite copy of the Final Control Plan at the Facility, as required by 40 C.F.R. § 60.5110, constitutes a violation of the NY State Plan
- h. Respondent’s failure to monitor sewage sludge moisture content and keep a record of the daily average sewage sludge moisture content and sewage sludge feed rate, as required by 40 C.F.R. § 60.5170(f) and § 60.5230(f)(3)(ii), constitutes a violation of the NY State Plan.
- i. Respondent’s failure to submit a petition for its use of low mercury sludge as an alternative control method for mercury as required by 40 C.F.R. § 60.5175(b),

constitutes a violation of the NY State Plan.

- j. Respondent's failure to set operating parameter limits for O₂, CO₂, CO, NO_x, and SO₂ based on the lowest 4-hour average combustion chamber operating temperature during the performance test conducted June 2022, as required by 40 C.F.R. § 60.5190(e), constitutes a violation of the NY State Plan.
- k. Respondent's failure to prepare an ash handling plan that addresses how the Facility will meet fugitive emissions limits from the outdoor aspects of ash handling, as required by 40 C.F.R. § 60.5200(d), constitute a violation of the NY State Plan.
- l. Respondent's failure to demonstrate continuous compliance with emission limits and standards for dioxins/furans, as required by 40 C.F.R. § 60.5205, constitutes a violation of the NY State Plan.
- m. Respondent's failure to continuously meet applicable operating parameter limits during the operation of its SSI unit, as required by 40 C.F.R. § 5210(a), constitutes a violation of the NY State Plan.
- n. Respondent's failure to set OPL's based on operating data recorded during most recent performance testing, as required by 40 C.F.R. § 60.5210(d)(1), constitutes a violation of the NY State Plan.
- o. Respondent's failure to operate its SSI units at a minimum of 85% of the permitted design capacity during compliance tests, as required by 40 C.F.R. § 60.5220(a)(11), constitutes a violation of the NY State Plan.
- p. Respondent's failure to prevent use of the bypass stack while sewage sludge is being charged to an SSI unit, as required by 40 C.F.R. § 60.5220(d), constitutes a violation if the NY State Plan.

- q. Respondent's failure to install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration, as required by 40 C.F.R. § 60.5225(d), constitutes a violation of the NY State Plan.
- r. Respondent's failure to maintain records indicating use of the bypass stack, including dates, times, and durations, as required by 40 C.F.R. § 60.5230(m), constitutes a violation of the NY State Plan.
- s. Respondent's failure to report cause and duration of deviations from bypass events and corrective actions, as required by 40 C.F.R. § 60.5235(d)(3)(v)(B), constitutes a violation of the NY State Plan.
- t. Respondent's failure to submit any test reports to EPA through its "Compliance and Emissions Data Reporting Interface" ("CEDRI"), specifically the electronic reporting tool ("ERT") accessed through EPA's central data exchange ("CDX"), as required by 40 C.F.R. 60.5235(h)(2), constitutes a violation of the NY State Plan.
- u. Respondent's failure to maintain and operate SSIs in a manner consistent with good air pollution control practices for minimizing emissions constitutes a violation of 40 C.F.R. § 60.11(d).

ENFORCEMENT

40. Section 113(a)(3) of the Act provides that, except for a requirement or prohibition enforceable under Section 113(a)(1) or Section 113(a)(2) of the Act, whenever the EPA finds that any person has violated, or is in violation of, any other requirement or prohibition of, among other provisions or subchapters, CAA subchapter I, including a requirement or prohibition of any plan or permit approved or promulgated under, among other provisions or subchapters, the CAA

subchapter I, the EPA is authorized to:

- a. issue an administrative penalty order in accordance with Section 113(d) of the Act,
- b. issue an order requiring such person to comply with such requirement or prohibition,
- c. bring a civil action in accordance with Section 113(b) or Section 305 of the Act, 42 U.S.C. § 7605, or
- d. request the Attorney General to commence a criminal action in accordance with Section 113(c) of the CAA.

41. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), allows EPA to commence a civil action to assess and recover a civil penalty of up to \$25,000 per day for violations of the CAA. The Adjustment of Civil Monetary Penalties for Inflation (Adjustment Rule) at 40 C.F.R. Part 19 increases that amount to \$121,275 for each violation that occurred after November 2, 2015, where penalties are assessed on or after December 27, 2023. Section 113(c) of the Act provides for criminal penalties, imprisonment, or both for any person who knowingly violates any requirement or prohibition under Section 129 of the Act (relating to solid waste combustion).

42. Under Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder (40 C.F.R., Part 15), and Executive Order 11738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

43. The issuance of this FOV does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law to address the violations described herein.

PENALTY ASSESSMENT CRITERIA

44. Civil penalties may be recovered for violations of the CAA and its implementing regulations as set forth in the Act. Any such civil penalties will be adjusted to the Debt Collection Improvement Act (“DCIA”), 31 U.S.C. 3701 et seq., and EPA’s regulations implementing the DCIA at 40 C.F.R., Part 19.

45. Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

46. Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

OPPORTUNITY TO CONFER

47. Respondent may request a conference with EPA concerning the violation(s) alleged in this FOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have made, or it proposes to make to

achieve compliance. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this FOV. The request for a conference, or other inquiries concerning this FOV, should be made by email to Travis Tarpeh at tarpeh.jaryeneh@epa.gov or in writing to:

Travis Tarpeh
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel – Air Branch
290 Broadway – 16th Floor
New York, NY 10007-1866

48. Notwithstanding this FOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

KATHLEEN ANDERSON

Digitally signed by
KATHLEEN ANDERSON
Date: 2024.06.20
14:04:00 -04'00'

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2

To: Angelo Guido, Executive Director
Albany County Water Purification District
1 Canal Road South
Menands, NY 12204

cc: Benjamin Potter, NYSDEC Region 4 RAPCE