

IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

STATE OF OHIO, ex rel.  
LEE FISHER  
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

BOARD OF COMMISSIONERS OF  
MONTGOMERY COUNTY, OHIO,

and

THE MONTGOMERY COUNTY  
SOLID WASTE DISTRICT,

Defendants.

CASE NO.

JUDGE

CONSENT ORDER

95-0046

FILED  
COURT OF COMMON PLEAS  
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CRAIG ZIMMERS  
CLERK OF COURTS  
MONTGOMERY CO., OHIO

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General Lee Fisher, and Defendants Board of Commissioners of Montgomery County, Ohio, and the Montgomery County Solid Waste District having consented to the entry of this Order,

NOW, THEREFORE, without trial or determination of any issue of fact or law, without admission by either Defendant of any violation, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Consent Order, the following definitions shall apply:

- a. "Air Contaminant" has the same meaning as set forth in R.C. § 3704.01(B).
- b. "Clean Air Act MWC Guidelines" means all applicable technological standards, emissions limitations, and other requirements set forth in Ohio law or rules adopted for the purpose of implementing and enforcing 42 U.S.C. §§ 7411(d) and 7429(b). In the absence of such Ohio law or rules, "Clean Air Act MWC Guidelines" shall

mean all applicable technological standards, emissions limitations, and other requirements set forth in final federal rules adopted for the purpose of implementing 42 U.S.C. §§ 7411(d) and 7429(b), or, pending final action on such rules, the proposed federal rules attached hereto and incorporated herein as Exhibit A. For purposes of determining the applicability of the above-referenced laws and regulations, the parties stipulate that the North Incinerators and South Incinerators, as defined below, are existing municipal waste combustors, each of which has an aggregate capacity greater than 225 megagrams per day.

- c. "CEMs" means continuous emission monitoring systems capable of determining the amount of sulfur dioxide emissions from the individual Units at the North and South Incinerators, as those terms are defined below.
- d. "COMs" means continuous opacity monitoring systems capable of determining opacity of particulate emissions from the individual Units at the North and South Incinerators, as those terms are defined below.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency and its agents.
- f. "Permit to Install" has the same meaning as set forth in Ohio Administrative Code ("O.A.C.") Chapter 3745-31.
- g. "Permit to Operate" has the same meaning as set forth in O.A.C. Chapter 3745-35.
- h. "North Incinerators" means the Montgomery County North Reduction Plant, Ohio EPA Facility No. 0857700709, consisting of three solid waste incinerators and ancillary equipment and structures located at 6589 Webster St., Dayton, Ohio 45414.
- i. "RAPCA" means the Regional Air Pollution Control Agency.
- j. "South Incinerators" means the Montgomery County South Reduction Plant, Ohio EPA Facility No. 0857100710, consisting of three solid waste incinerators and ancillary equipment and structures located at 2550 Bertwynn Dr., Dayton, Ohio 45422.

k. "Unit" or "Units" means one or more solid waste incinerators located at the North and/or South Incinerators.

l. "U.S. EPA" means the United States Environmental Protection Agency.

m. "Montgomery County" means the Board of Commissioners of Montgomery County and the Montgomery County Solid Waste District, jointly and severally.

## II. JURISDICTION AND VENUE

2. The court has jurisdiction over the parties and the subject matter of this case. The Complaint states claims upon which relief can be granted against Montgomery County pursuant to R.C. Chapter 3704. Venue is proper in this court.

## III. PARTIES

3. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their agents, officers, employees, assigns, successors, and any person acting in concert or participation with any of them who receives actual notice of the Consent Order, whether by personal service or otherwise.

## IV. SATISFACTION OF LAWSUIT

4. Plaintiff alleges in its Complaint that Montgomery County has operated its North and South Incinerators in violation of the requirements of R.C. Chapter 3704, the regulations promulgated thereunder, and applicable permits. Montgomery County denies such allegations. The parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Montgomery County for all violations of such laws and regulations which have been alleged in the Complaint.

5. Except as provided in Paragraphs 8 and 13 of this Consent Order, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief for violations not alleged in the Complaint, including, but not limited to, violations which occur after the date of entry of this Consent Order. Such relief may include, but is not limited to, any appropriate administrative, civil, and/or criminal enforcement action that seeks injunctive,

monetary, and other relief against Montgomery County.

6. Except as explicitly provided in this Consent Order, nothing in this Consent Order shall be construed to relieve Defendant of its obligation to comply with applicable federal, state, or local statutes, regulations, or ordinances.

#### V. PERMANENT INJUNCTION

7. Retrofit and/or suspension of operation of Units: Montgomery County agrees, and is hereby enjoined and ordered, to bring the North and South Incinerators into full compliance with the Clean Air Act MWC Guidelines and subsequently to maintain full compliance with said Guidelines, in accordance with the following schedule:

a. Installation and operation of new pollution control systems: In order to limit emissions of Air Contaminants from each Unit of the North and South Incinerators in compliance with the Clean Air Act MWC Guidelines, Montgomery County shall install new air pollution control systems for each such Unit and shall thereafter operate and maintain said systems. New air pollution control systems shall include, but not be limited to, spray dryer units and baghouses for each Unit of the North and South Incinerators. All such systems shall be designed, installed, maintained, and operated, in accordance with good engineering practices, to meet all technological and performance standards of the Clean Air Act MWC Guidelines. In lieu of installation of the above-referenced air pollution control devices, Montgomery County may, at its discretion, suspend operations of any or all Units pursuant to Subparagraph 7(a)(ii), below.

i. Montgomery County shall perform each installation required by Subparagraph 7(a) in accordance with the following schedule:

- (1) On or before March 15, 1995, Montgomery County shall choose a strategy for bringing all Units into compliance with the Clean Air Act MWC Guidelines and shall, if applicable, obtain services of an architectural and engineering firm for purposes of installation of the above air pollution control devices;

- (2) On or before June 27, 1995, Montgomery County shall obtain design drawings and bid documents for the installation of the above air pollution control devices for all Units;
- (3) On or before September 20, 1995, Montgomery County shall order the above air pollution control devices for all Units;
- (4) On or before the following dates, Montgomery County shall remove the following Units from service in order to prepare for the installation of the above air pollution control devices for said Units, and shall not resume operation of said Units until all said air pollution control devices for said Units are fully installed and operable:
  - (a) Both Units N003 at the North and South Incinerators: March 15, 1996;
  - (b) Units N001 and N002 at the North Incinerators: December 15, 1996;
  - (c) Units N001 and N002 at the South Incinerators: November 11, 1997.
- (5) On or before the following dates, Montgomery County shall initiate the installation of the above air pollution control devices for the following Units:
  - (a) Both Units N003 at the North and South Incinerators: June 1, 1996;
  - (b) Units N001 and N002 at the North Incinerators: April 1, 1997;
  - (c) Units N001 and N002 at the South Incinerators: March 1, 1998.
- (6) On or before the following dates, Montgomery County shall complete the installation of the above pollution control devices for the following Units:

- (a) Both Units N003 at the North and South Incinerators: November 1, 1996;
- (b) Units N001 and N002 at the North Incinerators: October 3, 1997;
- (c) Units N001 and N002 at the South Incinerators: September 4, 1998.

Montgomery County shall provide written notice of completion of installation of each new pollution control system within 10 days after such completion.

- ii. In lieu of the installation and operation of pollution control equipment as provided in Paragraph 7(a), Montgomery County may, at its discretion, suspend operations of any Unit or Units for which it elects not to install said pollution control equipment. Should Montgomery County so elect, it shall suspend operations of said Unit or Units no later than the dates indicated in Subparagraph 7(a)(i)(4), above, and shall not resume operations of any such Unit or Units until it has installed pollution control equipment which meets the requirements of Paragraph 7(a). Upon resuming any operations suspended pursuant to this Subparagraph, Montgomery County shall operate and maintain the pollution control equipment for the subject Unit or Units in accordance with all requirements of Paragraph 7(a).
  - (1) Montgomery County may, at its discretion, reverse the order of suspension of operations of the pairs of Units referenced in Paragraph 7(a)(i)(4)(b) and (c), above, provided Montgomery County suspends operations of at least one pair of Units by each of the dates set forth in Paragraphs 7(a)(i)(4)(b) and (c), above. If Montgomery County elects to reverse the order in which operation of said pairs of Units is suspended, the final compliance dates in Paragraph 7(c)(i)(2) and (3) shall be deemed to be similarly reversed so that the final compliance dates for said Units shall correspond to the reversed deadlines for suspension of operation of said Units.
- iii. Within 90 days of the completion of installation of pollution control systems for any Unit as provided in Paragraph 7(a) of this Consent Order, Montgomery

County shall conduct stack tests for said Unit pursuant to applicable test methods prescribed by U.S. EPA and Ohio EPA in order to demonstrate compliance with all applicable emission limitations. Montgomery County shall submit a report of the results of such testing to Ohio EPA and RAPCA within 10 days of Montgomery County's receipt of the final report of said testing, but no later than 90 days after completion of each stack test.

b. Installation and operation of CEMs and COMs: Montgomery County shall cause each Unit at the North and South Incinerators to be equipped with CEMs, COMs, and such other monitoring equipment as may be required by the Clean Air Act MWC Guidelines, and shall thereafter operate and maintain said CEMs, COMs, and other monitoring equipment for each Unit. Each such CEM, COM, or other monitoring equipment shall be designed, installed, maintained, and operated in accordance with good engineering practices to meet the requirements of the Clean Air Act MWC Guidelines and other applicable federal and Ohio laws, regulations, and guidelines, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto.

i. Montgomery County shall install and/or operate each CEM, COM, and other monitoring equipment as necessary to comply with Subparagraph 7(b), above, in accordance with the following schedule:

- (1) Montgomery County shall request bids for installation no later than June 27, 1995 for all Units;
- (2) Montgomery County shall award contracts for installation no later than September 20, 1995 for all Units;
- (3) Montgomery County shall complete installation on or before the following dates for the following Units:
  - (a) For Units N003 at the North and South Incinerators: November 1, 1996;
  - (b) For Units N001 and N002 at the North Incinerators: October 3, 1997; and

(c) For Units N001 and N002 at the South Incinerators: September 4, 1998.

(4) Montgomery County shall, no later than 90 days after completion of installation of the CEMS, COMs, and other monitoring equipment, conduct performance specification tests demonstrating compliance with applicable laws and regulations, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto. Montgomery County shall submit to Ohio EPA and RAPCA a report regarding the results of said tests within 30 days of completion thereof.

ii. Montgomery County shall operate and maintain all CEMs, COMs, and other monitoring equipment in such a manner to ensure that data availability from said CEM, COMs, and other equipment meets the minimum requirements set forth in the Clean Air Act MWC Guidelines.

iii. In lieu of the installation and operation of CEMs, COMs, and other monitoring equipment as provided in Paragraph 7(b), Montgomery County may, at its discretion, suspend operations of any Unit or Units for which it elects not to install or operate said CEMs, COMs, and other monitoring equipment. Should Montgomery County so elect, it shall suspend operations of said Unit or Units no later than the dates specified in Subparagraph 7(a)(i)(4), above, and shall not resume operations of any such Unit or Units until it has caused said Unit or Units to be equipped with CEMs and COMs, and such other monitoring equipment as is required by the Clean Air Act MWC Guidelines. Upon resuming any operations suspended pursuant to this Subparagraph, Montgomery County shall operate and maintain the CEMs, COMs, and other monitoring equipment for the subject Unit or Units in accordance with all requirements of Paragraph 7(b).

(1) Montgomery County may, at its discretion, reverse the order of suspension of operations of the pairs of Units referenced in Paragraph 7(a)(i)(4)(b) and (c), above, provided Montgomery County suspends operations of at least one pair of Units by each of the dates set forth in Paragraphs 7(a)(i)(4)(b) and (c), above. If Montgomery County elects to reverse the order in which operation of said pairs of Units is suspended, the final compliance dates in



Paragraph 7(c)(i)(2) and (3) shall be deemed to be similarly reversed so that the final compliance dates for said Units shall correspond to the reversed deadlines for suspension of operation of said Units.

- iv. Notwithstanding any provision of O.A.C. § 3745-17-03 to the contrary, Montgomery County and the State of Ohio agree that, as of the final compliance dates set forth in Paragraph 7(c), below, COM data shall constitute a valid test method for determining and enforcing compliance with the opacity limitations applicable to each Unit at the North and South Incinerators.
- v. Notwithstanding any provision of O.A.C. §3745-18-04 to the contrary, Montgomery County and the State of Ohio agree that, as of the final compliance dates set forth in Paragraph 7(c), below, CEM data shall constitute a valid test method for determining and enforcing compliance with the sulfur dioxide emission limitations applicable to each Unit at the North and South Incinerators.

c. Final compliance with Clean Air Act MWC Guidelines:

- i. Subject to Paragraphs 7(a)(ii) and 7(b)(iii), above, no later than the following dates, for the following Units, Montgomery County is enjoined and ordered to operate each Unit in full compliance with the Clean Air Act MWC Guidelines and all applicable requirements of R.C. Chapter 3704, the regulations promulgated thereunder, and all applicable air pollution control permits which have been or may be issued to Montgomery County by Ohio EPA, as said permits may be modified by Ohio EPA from time to time:

- (1) For Units N003 at the North and South Incinerators: March 15, 1996;
- (2) For Units N001 and N002 at the North Incinerators: December 15, 1996;  
and
- (3) For Units N001 and N002 at the South Incinerators: November 11, 1997.

- d. Status reporting: Within thirty (30) days of the conclusion of each calendar quarter, Montgomery County shall submit to Ohio EPA and RAPCA a quarterly progress report summarizing the status of compliance with and progress toward achieving the

requirements of Paragraph 7 of this Consent Order. Each such report shall include, but not be limited to, the following:

- i. A description of the major activities which have been completed during the reporting period;
  - ii. A description of the major activities scheduled for completion during the reporting period which were not completed, including a statement of reasons for failure to complete said activities and an anticipated date of completion for each of said activities; and
  - iii. A statement of the major activities scheduled for completion during the next reporting period.
- e. Final Accounting: On or before December 31, 1998, Montgomery County shall submit to Ohio EPA and RAPCA a final accounting of actual costs incurred in performance of the work required by Paragraph 7(a) of this Consent Order and a comparison of said costs with the projected costs of said work.
- f. Permit Applications: Not later than 30 days after completion of the stack test(s) for each Unit as required by Paragraph 7(a)(iii), above, or at such earlier time as may be required by applicable law or regulations, Montgomery County shall submit to RAPCA and Ohio EPA the following permit applications:
- i. An application for a Permit to Operate said Unit in accordance with O.A.C. Chapter 3745-35 or a permit for the North Incinerators and South Incinerators under Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7661-7661f, whichever is applicable; and
  - ii. An application for modifications to existing Permits to Install, in accordance with O.A.C. Chapter 3745-31, to render said Permits to Install consistent with the Clean Air Act MWC Guidelines and the terms of this Consent Order.

8. Interim Conditions and Limits: Until the final compliance dates set forth in Paragraph 7(c), above, Montgomery County is enjoined and ordered to operate the North and South Incinerators in accordance with the conditions and limits set forth in this Paragraph.

- a. Opacity: Emission opacity from Units N001 and N002 of the North Incinerators and South Incinerators, respectively, shall not exceed 20% opacity. Emission opacity from Units N003 of the North Incinerators and South Incinerators, respectively, shall not exceed 10% opacity. Compliance with these limitations shall be determined on the basis of block six-minute averages during each calendar month. The percentage of excess emissions shall be calculated by dividing the number of six-minute exceedance periods by the total number of six minute periods during which data was available from the COM for the Unit in question during the month, and multiplying that figure by 100%. The total number of 6-minute exceedance periods shall not include periods for which the Unit is out of service. Excess emissions of less than five percent (5%), as calculated pursuant to this subparagraph, shall not be considered violations of the above emissions limitations.
- i. Montgomery County shall, within forty-five (45) days of entry of this Consent Order, submit to Ohio EPA and RAPCA a calibration report for the COMs existing at the North Incinerators and South Incinerators as of the date of this Consent Order, demonstrating that each COM has been calibrated in accordance with U.S. EPA and Ohio EPA requirements and procedures.
- ii. Montgomery County shall operate and maintain all COMs in accordance with good engineering and operating practices to meet the requirements of all applicable federal and Ohio laws and regulations, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto, and in such a manner to ensure a minimum of 95% data availability. Data availability shall be determined by dividing the number of hours for which data are collected by the COM by the total number of operating hours for the Unit during each calendar month and multiplying that figure by 100% . Time periods for automatic calibration or routine preventive maintenance of monitoring equipment shall be considered periods of collected data for the purpose of this calculation.
- iii. Notwithstanding any provision of O.A.C. § 3745-17-03 to the contrary, Montgomery County and the State of Ohio agree that COM data shall constitute a valid test method for determining and enforcing compliance with the opacity limits set forth in Paragraph 8(a), above. Any exceedance of said limits evidenced by data from the COM(s) installed on the combined stacks(s) of Units N001 and

N002 at the North Incinerators and/or South Incinerators shall be attributed to both Units. Montgomery County bears the burden in any enforcement proceeding to establish that COM data showing an exceedance or exceedances from the combined stack(s) does not establish exceedances from both Units contributing emissions to said stack(s).

b. Sulfur Dioxide: Sulfur dioxide emissions from Unit N003 at the North Incinerators shall not exceed 1.0 pound per ton of refuse charged. Sulfur dioxide emission concentrations from Units N001 and N002 at the North Incinerators and from each Unit at the South Incinerators shall not exceed 1.6 pounds per ton of refuse charged. Total sulfur dioxide emissions from the North Incinerators shall not exceed 227.69 tons/year. Total sulfur dioxide emissions from the South Incinerators shall not exceed 211.15 tons/year.

i. Compliance with the above emission limitations (except the annual limitations) shall be determined by totalling the individual hourly emission rates, expressed as pounds of sulfur dioxide emitted per ton of refuse charged, for the calendar day and dividing by the number of hours of operation in said calendar day. Monitored sulfur dioxide emissions and flow rates during each hour shall be converted to pounds of emission for the hour. Refuse mass shall be determined monthly on a retrospective basis from the estimated weight of refuse in the pit at the beginning and end of the month and the weight of refuse deposited into the pit during that month. Refuse mass for a given month shall be divided by the grapple count for said month, yielding an average grapple weight for said month. Hourly refuse mass for each Unit shall be determined by multiplying the average grapple weight by the number of grapples deposited into each Unit during that hour, or, for Units served by a single stack, by multiplying the average grapple weights by the combined number of grapples deposited into the Units during that hour.

ii. On or before May 1, 1995, Montgomery County shall install CEMs on each of the common stacks for Units N001 and N002 at the North and South Incinerators. Each such CEM shall be designed and installed in accordance with good engineering and operating practices to meet the requirements of all applicable federal and Ohio laws and regulations, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto. Within forty-five (45) days of completion of

installation of each such CEM, Montgomery County shall conduct performance specification tests demonstrating compliance with applicable laws and regulations, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto. Montgomery County shall notify RAPCA of the anticipated date of the performance specification tests at least ten working days prior to said tests. Montgomery County shall submit to Ohio EPA and RAPCA a report regarding said tests within 30 days of completion thereof.

- iii. Montgomery County shall operate and maintain the CEMs for all Units at the North and South Incinerators in accordance with good engineering and operating practices to meet the requirements of all applicable federal and Ohio laws and regulations, including, but not limited to, 40 C.F.R. Part 60 and the Appendices thereto, and to ensure a minimum of 95% data availability. Data availability shall be determined by dividing the number of hours for which data are collected by the CEM by the total number of operating hours during each calendar month and multiplying that figure by 100%. Time periods for automatic calibration or routine preventive maintenance of monitoring equipment shall be considered periods of collected data for the purpose of this calculation.
- iv. Notwithstanding any provision of O.A.C. §3745-18-04 to the contrary, Montgomery County and the State of Ohio agree that CEM data shall constitute a valid test method for determining and enforcing compliance with the sulfur dioxide limits set forth in Subparagraph 8(b), above. Any exceedances of said limits evidenced by data from the CEM(s) installed on the combined stack(s) of Units N001 and N002 at the North Incinerators and/or South Incinerators shall be attributed to both Units. Montgomery County bears the burden in any enforcement proceeding to establish that CEM data showing an exceedance or exceedances from the combined stack(s) does not establish exceedances from both Units contributing emissions to said stack(s).

c. ESP Inlet Temperature:

- i. Montgomery County shall employ water sprays and other appropriate devices and/or operating practices in order to ensure that exhaust gas temperatures at the inlet of each electrostatic precipitator at the North Incinerators and South

Incinerators shall not exceed 450° Fahrenheit, provided, however, that exhaust gas temperatures during the first three hours of startup and the final three hours of shutdown shall be calculated on an hourly average.

- ii. Montgomery County shall employ such other measures as are necessary and feasible to maintain exhaust gas temperatures at the inlet of each electrostatic precipitator at the North Incinerators and South Incinerators below 450° Fahrenheit. At a minimum, Montgomery County shall, at all times, set its computerized cooling water controllers to maintain exhaust gas temperatures of 400° Fahrenheit or less.
  
- d. Interim Recordkeeping and Reporting: Montgomery County shall maintain all of the records specified below in accordance with the requirements of Paragraph 12(c):
  - i. SO2 CEM Data:
    - (1) Montgomery County shall maintain records of all CEM data regarding sulfur dioxide emissions from all Units.
  
    - (2) On or before the 15th day of each month, Montgomery County shall submit to RAPCA a report documenting all instances of sulfur dioxide emissions in excess of the limitations set forth in Subparagraph 8(b), above. Said report shall include the following information for each Unit as calculated in accordance with Subparagraph 8(b)(i), above:
      - (a) The sulfur dioxide emission rate in pounds per hour for each hour of operation;
  
      - (b) The sulfur dioxide emission rate in pounds of sulfur dioxide per ton of refuse charged for each hour of operation; and
  
      - (c) The daily average (midnight to midnight) sulfur dioxide emission rate in pounds of sulfur dioxide per ton of refuse charged, based upon the hourly rates from (b), above, for each day of operation.

- (d) Total SO<sub>2</sub> emissions in tons, for each of the North and South Incinerators, for the calendar month;
- (e) Total SO<sub>2</sub> emissions in tons, for each of the North and South Incinerators, for the calendar year.

ii. COM Data:

- (1) Montgomery County shall maintain records of all COM data regarding emission opacity from all Units.
- (2) On or before the 15th day of each month, Montgomery County shall submit to RAPCA a report documenting all instances of emission opacity in excess of the limitations set forth in Subparagraph 8(a), above.

iii. Other Requirements:

- (1) Montgomery County shall, for each Unit, record the following information on an hourly basis:
  - (a) Tons of refuse charged, the number of grapple loads charged, and the estimated weight of each grapple, as calculated in accordance with Paragraph 8(b)(i), above; and
  - (b) Limestone injection rates, in pounds.
- (2) Montgomery County shall continuously record the exhaust gas temperatures (in degrees Fahrenheit) measured at the electrostatic precipitator inlet of each Unit.
- (3) On or before the 15th day of each month, Montgomery County shall submit to RAPCA a report of the following information for each Unit:
  - (a) All hours during which Montgomery County charged refuse in excess of 12.5 tons of refuse per hour;

- (b) All hours during which Montgomery County injected limestone at a rate less than 250 lbs/hour; and
- (c) All occasions during which exhaust gas temperatures at the electrostatic precipitator inlet of each Unit exceeded 450 degrees Fahrenheit.

iv. Montgomery County shall maintain daily records of all periods during which control equipment is bypassed, and shall submit to RAPCA, on or before the 15th day of each month, all such records during the preceding calendar month.

9. Fugitive Dust: No visible fugitive dust, as that term is defined in O.A.C. § 3745-17-01(B)(7), shall be emitted or released into the ambient air from the North Incinerators or South Incinerators.

10. Preventive Maintenance and Malfunction Abatement: Montgomery County shall operate the North and South Incinerators in accordance with the Preventive Maintenance and Malfunction Abatement Plan submitted by Montgomery County to Ohio EPA on December 27, 1994, as said Plan may be modified from time to time, provided, however, that any modifications to said Plan shall be approved in advance by Ohio EPA and RAPCA.

11. Dioxin Testing: Within 90 days of entry of this Consent Order, Montgomery County shall conduct testing of emissions from Unit N003 at the North Incinerators to determine the rate of dioxin emissions from said Unit. During said testing, Montgomery County shall maintain the exhaust gas temperature at the inlet of the Unit's electrostatic precipitator between 430° and 450° Fahrenheit. Montgomery County shall conduct said testing in accordance with U.S. EPA Reference Methods 1, 3B, and 23 as set forth in Appendix A of 40 C.F.R. Part 60. The sampling port shall be located at the electrostatic precipitator outlet or stack. Montgomery County shall conduct a minimum of three test runs with a minimum sample time of 4 hours per test run. All testing shall be conducted during the normal rapping cycle of the electrostatic precipitator. No testing shall be conducted during soot-blowing. Montgomery County shall request a report of the results of the testing within 45 days of completion of said testing. Within 10 days of receipt of the report of the results of the testing, and in no event later than 90 days after completion of the testing, Montgomery County shall submit said report to RAPCA.



12. Final Recordkeeping and Reporting:

- a. As of the final compliance dates set forth in Paragraph 7(c), Montgomery County shall comply with all recordkeeping and reporting requirements of the Clean Air Act MWC Guidelines.
- b. Montgomery County shall immediately notify RAPCA and Ohio EPA of any and all malfunctions of the source, any pollution control equipment, any continuous emission monitor(s), and any other equipment at the North Incinerators and South Incinerators which result in emission of any air contaminant in violation of any applicable law, regulation, permit term or condition, or other requirement, in accordance with O.A.C. § 3745-15-06.
- c. All records required to be maintained pursuant to this Consent Order, including those specified in Subparagraph 8(d), above, shall be maintained for a period of not less than three years unless otherwise indicated in writing by Ohio EPA. All records shall be made available to Ohio EPA and RAPCA for review during normal business hours.

13. Inapplicable Permit Terms: The parties acknowledge that the pending Clean Air Act MWC Guidelines will supercede or otherwise render obsolete or inapplicable certain terms and conditions of the Permits to Install Nos. 08-955 and 08-956 presently applicable to the North and South Incinerators, respectively, because said permit terms and conditions are inconsistent with, in conflict with, or impose less stringent control requirements than the Clean Air Act MWC Guidelines. For these reasons, the State and Montgomery County agree that, as of the final compliance dates set forth in Paragraph 7(c) of this Consent Order, the following terms and conditions of Permits to Install Nos. 08-955 and 08-956 shall be inapplicable to respective Units at the North and South Incinerators:

- a. The emissions, operating, and other limits and requirements set forth in the following specified paragraphs of each permit:
  - i. Page 3, Paragraph A, except for the annual limit;
  - ii. Page 3, Paragraph B;
  - iii. Page 3, Paragraph C, except for the total annual emission values;

- iv. Page 3, Paragraphs E, F, and G, except for the total annual emission values;
- v. The provisions of Page 4 of each permit relating to limestone injection;
- vi. The limit on days of operation per year set forth at Page 4, Paragraph A; and
- vi. The refuse charge rate limitation of 12.5 tons/hour set forth at Page 4, Paragraph B of each permit, provided Montgomery County complies with the following requirements: Before resuming operation of any Unit after installation of pollution control equipment pursuant to Paragraph 7(a), above, Montgomery County shall submit to RAPCA and Ohio EPA a Notice of Intent to Test said Unit in accordance with O.A.C. § 3745-15-04, in which Notice Montgomery County shall specify the maximum hourly refuse charge rate to be observed during said test. Commencing upon the date of submission of said Notice, Montgomery County shall comply with the maximum hourly charge rate set forth in said Notice until a maximum operating rate is established in accordance with the provisions of the Clean Air Act MWC Guidelines and until the final issuance by Ohio EPA of a Permit to Install modification pursuant to O.A.C. Chapter 3745-31, a Permit to Install pursuant to O.A.C. Chapter 3745-35, or a Title V operating permit pursuant to O.A.C. Chapter 3745-77. If Montgomery County does not apply for a modification of the hourly charge rate of either Permit to Install in accordance with Paragraph 7(f) of this Consent Order, Montgomery County shall thereafter, for each Unit for which a modification application was not submitted, comply with an hourly charge rate of 12.5 tons of refuse per hour.

14. Other Requirements: Except as otherwise specifically provided to the contrary in Paragraphs 7, 8, and 13, above, Montgomery County is ordered and enjoined to comply immediately with all applicable requirements of R.C. Chapter 3704, the regulations promulgated thereunder, and all air pollution control permits which have been or may be issued to Montgomery County by Ohio EPA, including, but not limited to, the Permits to Install issued for North Incinerator Unit N003 and South Incinerator Unit N003 on September 23, 1986, as said permits may be modified from time to time.

## VI. CIVIL PENALTY

15. Montgomery County is assessed a civil penalty in the amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00). Montgomery County shall pay the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) in accordance with Paragraph 16 of this Consent Order. Payment of the balance of the civil penalty assessment is mitigated, provided Montgomery County complies with either the provisions for installation of pollution control equipment and/or suspension of operation of of the Units set forth in Paragraph 7(a)-(b), above. In the event that Montgomery County fails to comply with said provisions of Paragraph 7(a)-(b), Montgomery County shall pay all or part of the mitigated penalty as a stipulated penalty in accordance with Paragraph 18, below.

16. The civil penalty referenced in Paragraph 15, above, shall be paid by delivering a check in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00), payable to the order of "Treasurer, State of Ohio," to the Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section 30 E. Broad St., 25th Fl., Columbus, Ohio 43215-3428, within thirty (30) days of the effective date of this Consent Order. Any check submitted pursuant to this Paragraph shall be separate from any check submitted pursuant to any other term of this Consent Order.

## VII. STIPULATED PENALTIES

17. In the event that Montgomery County violates the permanent injunction set forth in Section V of this Consent Order, except for the schedules set forth in Paragraphs 7(a)(i)(4) and 7(a)(ii), above, Montgomery County shall be liable for, and shall immediately pay, stipulated penalties in accordance with the following schedule:

- a. For each day of violation at each Unit, up to the fifteenth (15th) day of said violation-- Five Hundred Dollars (\$500.00) per day.
- b. For each day of violation at each Unit, from the sixteenth (16th) through the forty-fifth (45th) day of said violation--One Thousand Two Hundred Fifty Dollars (\$1,250.00) per day.

- c. For each day of violation at each Unit, after the forty-fifth (45th) day of said violation-  
-Two Thousand Five Hundred Dollars (\$2,500.00) per day.

18. In the event that Montgomery County violates the schedules set forth in Paragraphs 7(a)(i)(4) and 7(a)(ii), above, Montgomery County shall be liable for, and shall immediately pay, stipulated penalties in accordance with the formula attached hereto and incorporated herein as Exhibit B.

19. Any payment required to be made under the provisions of this Section shall be made by delivering a check or checks for the appropriate amounts, payable to "Treasurer, State of Ohio," to the Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43266-0410. Any such payment shall be delivered by Montgomery County within thirty (30) days from the date of violation of the permanent injunction. The fact that the State of Ohio obtains stipulated penalties under this Section VII for violations of the requirements of this Order does not limit the State's ability to seek enforcement of this Order through contempt or otherwise, nor does it limit the State's ability to seek other civil, administrative, or criminal relief for future violations of law or of this Consent Order, provided, however, that any other monetary relief obtained by the State for such future violations shall be reduced in an amount equal to the stipulated penalties for those identical violations which are actually paid by Montgomery County in accordance with this Consent Order.

20. Notwithstanding the provisions of this Section VII, the State may, in its sole and unreviewable discretion, defer, reduce or waive stipulated penalties that have accrued. Where Montgomery County asserts that a deferral, reduction, or waiver of stipulated penalties is appropriate, Montgomery County may timely present to the State evidence supporting such an assertion.

#### VIII. ATTORNEY GENERAL'S ENFORCEMENT COSTS

21. Defendant Montgomery County agrees to and is hereby enjoined and ordered to pay to the Office of the Attorney General of Ohio the sum of Fifteen Thousand Dollars (\$15,000.00) to reimburse the Attorney General's expenses and time incurred in this matter. Such costs shall be paid by delivering, within thirty (30) days after the entry of this Consent Order, a check in such an amount for payment into the Ohio Attorney General's Special Reimbursement Fund, No. 612, Program No. 5718, payable to the order of "Treasurer, State of Ohio," to Plaintiff's counsel,

Environmental Enforcement Section, 25th Floor, 30 E. Broad St., Columbus, Ohio 43266-0410. Any check submitted pursuant to this Paragraph shall be in addition to and separate from any check submitted pursuant to any other term of this Consent Order.

#### IX. GENERAL PROVISIONS

22. Compliance with regulatory requirements: Nothing in this Consent Order shall be construed to relieve Montgomery County from its responsibility to comply with the requirements of any existing or future federal or Ohio laws or regulations which may be applicable to the North and South Incinerators. Montgomery County may petition the Court for a modification of the compliance schedules of Paragraph 7 in the event that any subsequent laws or regulations require compliance with technological standards or emissions limitations other than those achievable by the equipment required to be installed or altered pursuant to Paragraph 7. In the event Montgomery County shall petition the Court for any modification of a compliance schedule, the State of Ohio reserves the right to petition the Court for an adjustment of the civil penalty to be paid by Montgomery County to the State Treasury pursuant to Paragraph 18 of this Consent Order.

23. Manner of performance: Montgomery County shall provide a copy of this Consent Order and any modifications thereto to any personnel or contractor(s) assigned, retained, or hired to perform any such work.

24. Potential Force Majeure: In any action to enforce any of the provisions of this Consent Order, Montgomery County may raise at that time the issue of whether it is entitled to a defense that its acts or omissions were caused by reasons entirely beyond its control, such as, by way of example and not limitation, acts of God, unusually severe weather conditions, strikes, acts of war, civil disturbances, or orders of any regulatory agency. Although Plaintiff does not agree that such a defense exists, the parties agree that it is premature at this time to raise and adjudicate the existence of such a defense. In any action to enforce any of the provisions of this Consent Order, Montgomery County shall bear the burden of proving that any delay was or will be caused by circumstances entirely beyond its control. Changed financial circumstances or unanticipated or increased costs associated with compliance with this Consent Order shall not constitute circumstances entirely beyond the control of Montgomery County.

25. Notices: All reports, notices, and any other documents, reports, analyses, approvals, work plans, and correspondence required by or demonstrating compliance with this Consent Order

shall be sent by certified mail, return receipt requested (or the equivalent) to Ohio EPA and RAPCA at the following addresses:

Ohio EPA  
Division of Air Pollution Control  
1600 WaterMark Dr., 2nd Floor  
Columbus, Ohio 43215  
Attn: Michael Riggleman

Regional Air Pollution Control Agency  
451 W. Third St.  
P.O. Box 972  
Dayton, Ohio 45422  
Attn: Chris Hockett

26. Effect on other actions: Nothing in this Consent Order is intended to create any rights or causes of action in or for any party other than the State of Ohio, nor shall it be entered, construed, or used by any party other than the State of Ohio in any proceeding of any kind. This Consent Order is entered into by Montgomery County without admission of fact, law, violation or liability (which Montgomery County specifically denies), and Montgomery County reserves the right to deny and challenge in any other proceeding or action any finding of fact or conclusion of law set forth in this Consent Order.

27. Subsequent Permit Issuance or Modification: Montgomery County shall not be subject to stipulated penalties pursuant to Paragraph 17, above, or be otherwise liable under this Consent Order for violations of permit terms or conditions issued or modified subsequent to the effective date of this Consent Order during such time as said permit terms and conditions are being lawfully appealed by Montgomery County.

28. Reservation of rights: Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to approve, issue, deny or modify any permit, plan, or other regulatory instrument for the North or South Incinerators. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Montgomery County, to eliminate or mitigate conditions arising after the entry of this Consent Order which may present a threat to health, welfare, or the environment.

29. Operation of Units: No provision of this Consent Order shall be construed to require Montgomery County to operate any Unit of the North or South Incinerators. Any decision to

install air pollution control and monitoring devices or to suspend operation of any or all Units in compliance with Paragraph 7(a)-(b), above, is solely the decision of Montgomery County, provided, however, that the foregoing statement shall not be construed to limit the rights of the State of Ohio to enforce the terms of this Consent Order.

30. Headings and captions: Section and paragraph headings and captions are for organizational purposes only, and shall not be construed to be substantive provisions of this Consent Order.

31. Entire Agreement: This Consent Order constitutes the entire understanding of the parties with respect to settlement of this action, and may be amended only by a written instrument signed by Montgomery County and the Attorney General, or his/her designee.

X. RETENTION OF JURISDICTION

32. The Court will retain jurisdiction of this action for the purpose of enforcing this Order.

XI. COSTS

33. Montgomery County is hereby ordered to pay any court costs of this action.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JUDGE

\_\_\_\_\_  
DATE


C Approved:

LEE FISHER  
ATTORNEY GENERAL OF OHIO

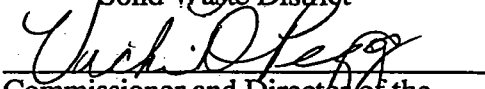
BOARD OF COMMISSIONERS OF  
MONTGOMERY COUNTY, OHIO

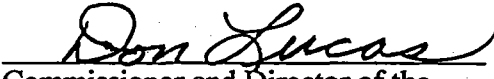
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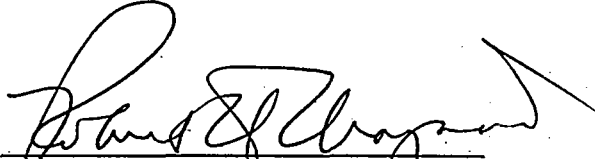
THE MONTGOMERY COUNTY  
SOLID WASTE DISTRICT

  
Christopher A. Walker (0040696)  
Assistant Attorney General  
Environmental Enforcement Section  
30 E. Broad St., 25th Fl.  
Columbus, Ohio 43266-0410  
(614) 466-2766

  
Commissioner and Director of the  
Solid Waste District

  
Commissioner and Director of the  
Solid Waste District

  
Commissioner and Director of the  
Solid Waste District

  
Robert H. Maynard (0008971)  
Anthony J. Giuliani (0040969)  
Vorys, Sater, Seymour & Pease  
52 E. Gay St.  
P.O. Box 1008  
Columbus, Ohio 43216-1008

Counsel for Defendants



**EXHIBIT A**

Part 60, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 60 - [AMENDED]

1. The authority citation for part 60 is revised to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

\* \* \* \* \*

2. Section 60.23 of subpart B of part 60 is amended by revising paragraph (a)(1) to read as follows:

§ 60.23 Adoption and submittal of State plans; public hearings.

(a) \* \* \*

(1) Unless otherwise specified in the applicable subpart, within 9 months after notice of the availability of a final guideline document is published under § 60.22(a), each State shall adopt and submit to the Administrator, in accordance with § 60.4 of subpart A of this part, a plan for the control of the designated pollutant to which the guideline document applies.

\* \* \* \* \*

3. Section 60.24 of subpart B of part 60 is amended by revising paragraph (f) to read as follows:

§ 60.24 Emission standards and compliance schedules.

\* \* \* \* \*

(f) Unless otherwise specified in the applicable subpart on a case-by-case basis for particular designated facilities or classes of facilities, States may provide for the application of less stringent emissions standards or longer compliance schedules than those otherwise required by paragraph (c) of this section, provided that the State demonstrates with respect to each such facility (or class of facilities):

\* \* \* \* \*

4. Subpart C of part 60 is amended by revising § 60.30 to read as follows:

§ 60.30 Scope.

The following subparts contain emission guidelines and compliance times for the control of certain designated pollutants in accordance with section 111(d) and section 129 of the Clean Air Act and subpart B.

- (a) Subpart Ca--Municipal Waste Combustors
- (b) Subpart Cb--Municipal Waste Combustors
- (c) Subpart Cc--[Reserved]
- (d) Subpart Cd--Sulfuric Acid Production Plants

\* \* \* \* \*

5. Part 60 is amended by redesignating subpart Cb as Cd, reserving subpart Cc, and revising the new subpart Cd to read as follows:

Subpart Cd--Emissions Guidelines and Compliance Times for  
Sulfuric Acid Production Units

Secs.

60.30d Designated facilities.

60.31d Emission guidelines.

60.32d Compliance times.

Subpart Cd--Emission Guidelines and Compliance Times for  
Sulfuric Acid Production Units

§ 60.30d Designated facilities.

Sulfuric acid production units. The designated facility to which §§ 60.31d and 60.32d apply is each existing "sulfuric acid production unit" as defined in § 60.81(a) of subpart H of this part.

§ 60.31d Emissions guidelines.

Sulfuric acid production units. The emission guideline for designated facilities is 0.25 grams sulfuric acid mist (as measured by Method 8 of appendix A) per kilogram (0.5 pounds per ton) of sulfuric acid produced, the production being expressed as 100 percent sulfuric acid.

§ 60.32d Compliance times.

Sulfuric acid production units. Planning, awarding of contracts, and installation of equipment capable of attaining the level of the emission guideline established under § 60.31d can be accomplished within 17 months after the effective date of a State emission standard for sulfuric acid mist.

\* \* \* \* \*

6. Part 60 is further amended by adding a new subpart Cb to read as follow:

Subpart Cb--Emissions Guidelines and Compliance Times for Municipal Waste Combustors that are constructed on or before [insert date of publication in the Federal Register]

Secs.

60.30b Scope.

60.31b Definitions.

60.32b Designated facilities.

60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

60.34b Emission guidelines for municipal waste combustor operating practices.

60.35b Emission guidelines for municipal waste combustor operator training and certification.

60.36b Emission guidelines for municipal waste combustor fly ash/bottom ash fugitive emissions.

60.37b Emission guidelines for air curtain incinerators.

60.38b Compliance and performance testing.

60.39b Reporting and recordkeeping guidelines, and compliance schedules.

Subpart Cb--Emissions Guidelines and Compliance Schedules for Municipal Waste Combustors

§ 60.30b Scope.

This subpart contains emission guidelines and compliance schedules for the control of certain designated pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Act and subpart B of this part. The provisions in these emission guidelines would supersede the provisions of § 60.24(f) of subpart B of this part.

§ 60.31b Definitions.

Terms used but not defined in this subpart have the meaning given them in the Act and subparts A, B, and Eb of this part.

Municipal waste combustor plant means one or more municipal waste combustor units at the same location for which construction, modification, or reconstruction is commenced on or before [insert date of publication in the Federal Register].

Municipal waste combustor plant capacity means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction, modification, or reconstruction is commenced before [insert date of publication in the Federal Register].

§ 60.32b Designated facilities.

(a) The designated facility to which the guidelines apply is each municipal waste combustor unit at a municipal

waste combustor plat greater than 35 megagrams per day of municipal solid waste that combusts only tree trimmings, yard wastes, and clean untreated lumber (as defined under § 60.51b of subpart Eb of this part) are exempt from all provisions of this subpart except the opacity standard required by § 60.37b, the testing procedures required by § 60.38b, and the reporting and recordkeeping provisions required by § 60.39b. Designated facilities that are air curtain incinerators that fire other municipal solid waste materials (other than 100 percent tree trimmings, yard wastes, and clean untreated lumber) are subject to all provisions of this subpart that are applicable to municipal waste combustors.

(g) Air curtain incinerators, as defined under § 60.51b of subpart Eb of this part, with a capacity to combust greater than 25 megagrams per day but less than or equal to 35 megagrams per day of municipal solid waste are exempt from all provisions of this subpart except an initial report under § 60.39b.

(h) Physical or operational changes made to an existing municipal waste combustor unit solely for the purpose of complying with emission guidelines under this subpart are not considered a modification or reconstruction and do not bring an existing municipal waste combustor unit under the provisions of subpart Eb of this part.

(i) Municipal waste combustors combusting medical waste mixed with municipal solid waste or refuse-derived fuel are subject to all provisions of this subpart. Combustors firing segregated medical waste as defined under § 60.51b of subpart Eb of this part, and no municipal solid waste, are not covered by this subpart. Combustors that cofire segregated medical waste with nonmunicipal solid waste fuels (e.g., coal or oil) and do not fire any municipal solid waste are not covered by this subpart.

§ 60.33b Emission guidelines for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission guidelines for municipal waste combustor metals are specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) For approval, a State plan shall include emission limits for particulate matter and opacity at least as protective as the emission guidelines for particulate matter and opacity specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(i) The emission guideline for particulate matter contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission guideline for particulate matter contained in the gases discharged to the atmosphere from a



designated facility located within a small municipal waste combustor plant is 69 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission guideline for opacity exhibited by the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 10 percent (6-minute average).

(2) For approval, a State plan shall include emission limits for cadmium and lead at least as protective as the emission guidelines for cadmium and lead specified in paragraphs (a)(2)(i) through (a)(2)(iv) of this section.

(i) The emission guideline for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(ii) The emission guideline for cadmium contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 0.10 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iii) The emission guideline for lead contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.50 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(iv) The emission guideline for lead contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 1.6 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) For approval, a State plan shall include emission limits for mercury at least as protective as the emission guidelines specified in this paragraph. The emission guideline for mercury contained in the gases discharged to the atmosphere from a designated facility located within a small or large municipal waste combustor plant is 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (an 85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission guidelines for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For approval, a State plan shall include emission limits for sulfur dioxide at least as protective as the emission guidelines for sulfur dioxide specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) The emission guideline for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor

plant is 35 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this guideline emission level would be based on a 24-hour geometric mean.

(ii) The emission guideline for sulfur dioxide contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 80 parts per million by volume or 50 percent of the potential sulfur dioxide emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this guideline emission level would be based on a 24-hour geometric mean.

(2) For approval, a State plan shall include emission limits for hydrogen chloride at least as protective as the emission guidelines for hydrogen chloride specified in paragraphs (b) (2) (i) and (b) (2) (ii) of this section.

(i) The emission guideline for hydrogen chloride contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 35 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume),

corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(ii) The emission guideline for hydrogen chloride contained in the gases discharged to the atmosphere from an affected facility located within a small municipal waste combustor plant is 250 parts per million by volume or 50 percent of the potential hydrogen chloride emission concentration (50-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The emission guidelines for municipal waste combustor organics, expressed as dioxin/furan toxic equivalency or total mass dioxins/furans, are specified in paragraphs (c)(1) and (c)(2) of this section.

(1) For approval, a State plan shall include an emission limit for dioxins/furans at least as protective as the emission guideline for dioxins/furans specified in this paragraph. The emission guideline for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant is 0.50 nanograms per dry standard cubic meter expressed as toxic equivalency, corrected to 7 percent oxygen, or 30 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen, whichever is less stringent.

(2) For approval, a State plan shall include an emission limit for dioxins/furans at least as protective as

the emission guideline for dioxins/furans specified in this paragraph. The emission guideline for dioxins/furans contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 1.0 nanograms per dry standard cubic meter expressed as toxic equivalency, corrected to 7 percent oxygen, or 60 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen, whichever is less stringent.

(d) The emission guidelines for nitrogen oxides are specified in paragraphs (d)(1) through (d)(3) of this section.

(1) For approval, a State plan shall include an emission limit for nitrogen oxides at least as protective as the emission guideline for nitrogen oxides specified in this paragraph. The emission guideline for nitrogen oxides contained in the gases discharged to the atmosphere from a designated facility located within a large municipal waste combustor plant, excluding refractory municipal waste combustors, is 180 parts per million by volume, corrected to 7 percent oxygen (dry basis).

(2) For approval, a State plan shall include an emission limit for nitrogen oxides at least as protective as the emission guideline for nitrogen oxides specified in this paragraph. The emission guideline for nitrogen oxides

contained in the gases discharged to the atmosphere from a refractory municipal waste combustor unit located within a

large municipal waste combustor plant is 500 parts per million by volume, corrected to 7 percent oxygen (dry basis).

(3) For approval, a State plan shall include an emission limit for nitrogen oxides at least as protective as the emission guideline for nitrogen oxides specified in this paragraph. The emission guideline for nitrogen oxides contained in the gases discharged to the atmosphere from a designated facility located within a small municipal waste combustor plant is 500 parts per million by volume, corrected to 7 percent oxygen (dry basis).

§ 60.34b Emission guidelines for municipal waste combustor operating practices.

(a) For approval, a State plan shall include emission limits for carbon monoxide at least as protective as the emission guidelines for carbon monoxide listed in table 1 of this subpart. Table 1 provides emission guidelines for the carbon monoxide concentration level for each type of designated facility located within a small or large municipal waste combustor plant.



TABLE 1. MUNICIPAL WASTE COMBUSTOR OPERATING GUIDELINES

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) <sup>a</sup>	Averaging time
Mass burn waterwall	100	4-hour
Mass burn refractory	100	4-hour
Mass burn rotary refractory	100	24-hour
Mass burn rotary waterwall	250	24-hour
Modular starved air	50	4-hour
Modular excess air	50	4-hour
Refuse derived fuel stoker	200	24-hour
Bubbling fluidized bed combustor	100	4-hour
Circulating fluidized bed combustor	100	4-hour
Coal/refuse derived fuel mixed fuel-fired combustors	150	4-hour

<sup>a</sup> Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

(b) For approval, a State plan shall include requirements for municipal waste combustor operating practices, at least as protective as those requirements listed in § 60.53b of subpart Eb of this part.

§ 60.35b Emission guidelines for municipal waste combustor operator training and certification.

For approval, a State plan shall include requirements for municipal waste combustor operator training and certification at least as protective as those requirements listed in § 60.54b of subpart Eb of this part.

§ 60.36b Emission guidelines for municipal waste combustor fly ash/bottom ash fugitive emissions.

For approval, a State plan shall include requirements for municipal waste combustor fly ash/bottom ash fugitive emissions at least as protective as those requirements listed in § 60.55b of subpart Eb of this part.

§ 60.37b Emission guidelines for air curtain incinerators.

For approval, a State plan shall include emission limits for opacity for air curtain incinerators at least as protective as those listed in § 60.56b of subpart Eb of this part.

§ 60.38b Compliance and performance testing.

For approval, a State plan shall include the compliance and performance testing methods listed in § 60.58b of subpart Eb of this part, as applicable, except as provided for under § 60.24(b)(2) of subpart B of this part.

§ 60.39b Reporting and recordkeeping guidelines and compliance schedules.

(a) For approval, a State plan shall include the reporting and recordkeeping provisions listed in § 60.59b of subpart Eb of this part, as applicable, except for the siting requirements under § 60.59b(a), (b)(5), and (f)(8) of subpart Eb of this part.

(b) Not later than (the date 1 year after promulgation of the guidelines), each State in which this category of municipal waste combustor units is operating shall submit to the Administrator a plan to implement and enforce the emission guidelines. The compliance schedule specified in this paragraph is in accordance with section 129(b)(2) of the Act and supersedes the compliance schedule provided in § 60.23(a)(1) of subpart B of this part.

(c) For approval, a State plan shall include the compliance schedules specified in paragraphs (c)(1) through (c)(4) of this section.

(1) Large and small facilities shall comply with all requirements of a State plan within 1 year or less after the approval of the State plan, except for facilities regulated by State plans that include measurable and enforceable incremental steps of progress toward compliance. State plans that include measurable and enforceable incremental steps of progress toward compliance shall allow facilities up to 3 years following the date of issuance of a revised

construction or operation permit, if a permit modification is required, or within 3 years following approval of the State plan, if a permit modification is not required. Suggested measurable and enforceable activities are specified in paragraphs (c)(1)(i) through (c)(1)(ix) of this section.

(i) Date for obtaining services of an architectural and engineering firm regarding the air pollution control device(s);

(ii) Date for obtaining design drawings of the air pollution control device(s);

(iii) Date for submittal of permit modifications, if necessary;

(iv) Date for ordering the air pollution control device(s);

(v) Date for obtaining the major components of the air pollution control device(s);

(vi) Date for initiation of site preparation for installation of the air pollution control device(s);

(vii) Date for initiation of installation of the air pollution control device(s);

(viii) Date for initial startup of the air pollution control device(s); and

(ix) Date for initial compliance test(s) of the air pollution control device(s).

(2) If the State plan requirements for an affected facility include a compliance schedule longer than 1 year

after the approval of the State plan in accordance with paragraph (c)(1) of this section, the State plan submittal shall include performance test results for dioxin/furan emissions for each affected facility that has a compliance schedule longer than 1 year following the approval of the State plan, and the performance test results shall have been conducted during or after 1990. The performance test shall be conducted according to the procedures in § 60.58b of subpart Eb of this part.

(3) For approval, a State plan shall require compliance with the municipal waste combustor operator training and certification requirements under § 60.35b and § 60.54b of subpart Eb of this part by 1 year after the date of promulgation of the emission guidelines.

(4) For approval, a State plan shall require all designated facilities for which construction, modification, or reconstruction is commenced after June 26, 1987 that are located within a large municipal waste combustor plant shall comply with the emission guideline for mercury specified in § 60.33b(a)(3) and the emission guideline for dioxins/furans specified in § 60.33b(c)(1) within 1 year following issuance of a revised construction or operation permit, if a permit modification is required, or within 1 year following approval of the State plan, if a permit modification is not required.

(e) In the event no plan for implementing the emission guidelines is adopted, all MWC units meeting the

applicability requirements under § 60.32b shall be in compliance with the guidelines no later than the date 5 years after the date of promulgation.

\* \* \* \* \*

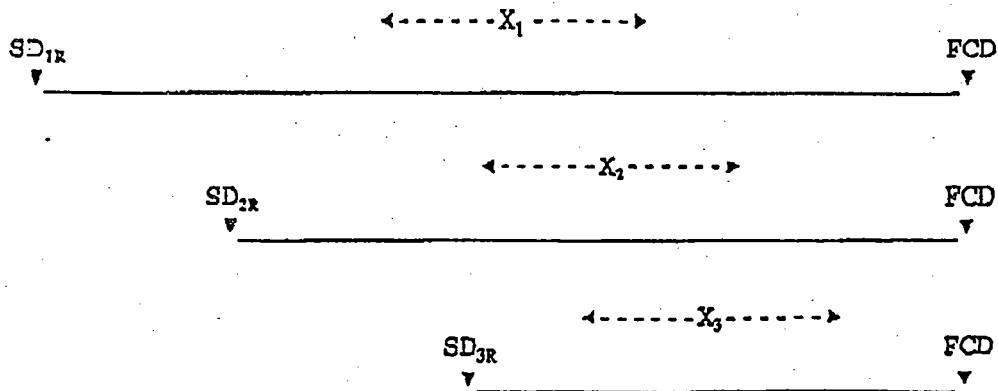
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**EXHIBIT B**



## METHODOLOGY FOR CALCULATING THE PENALTY CREDIT REIMBURSEMENT FOR A PARTICULAR INCINERATOR



**WHERE:**

- SD<sub>1R</sub> = REQUIRED SHUTDOWN DATE FOR FIRST PAIR OF INCINERATORS, AS SPECIFIED IN THE CONSENT DECREE
- SD<sub>2R</sub> = REQUIRED SHUTDOWN DATE FOR SECOND PAIR OF INCINERATORS, AS SPECIFIED IN THE CONSENT DECREE
- SD<sub>3R</sub> = REQUIRED SHUTDOWN DATE FOR THIRD PAIR OF INCINERATORS, AS SPECIFIED IN THE CONSENT DECREE
- SD<sub>1A</sub> = ACTUAL SHUTDOWN DATE FOR AN INCINERATOR IN THE FIRST PAIR OF INCINERATORS (LATEST DATE = FCD)
- SD<sub>2A</sub> = ACTUAL SHUTDOWN DATE FOR AN INCINERATOR IN THE SECOND PAIR OF INCINERATORS (LATEST DATE = FCD)
- SD<sub>3A</sub> = ACTUAL SHUTDOWN DATE FOR AN INCINERATOR IN THE THIRD PAIR OF INCINERATORS (LATEST DATE = FCD)
- X<sub>1</sub> = TOTAL DAYS OF EARLY COMPLIANCE FOR THE FIRST PAIR OF INCINERATORS
- X<sub>2</sub> = TOTAL DAYS OF EARLY COMPLIANCE FOR THE SECOND PAIR OF INCINERATORS
- X<sub>3</sub> = TOTAL DAYS OF EARLY COMPLIANCE FOR THE THIRD PAIR OF INCINERATORS
- TPC = TOTAL PENALTY CREDIT (\$), AS SPECIFIED IN CONSENT DECREE
- FCD = FINAL COMPLIANCE DATE PURSUANT TO FEDERAL REGULATIONS
- PCR = PENALTY CREDIT REIMBURSEMENT (\$)

## PENALTY REPAYMENT FORMULA FOR A PARTICULAR INCINERATOR

A. FOR AN INCINERATOR IN THE FIRST PAIR OF INCINERATORS:

$$PCR = [(SD_{1A} - SD_{1R}) / (2X_1 + 2X_2 + 2X_3)] (TPC)$$

B. FOR AN INCINERATOR IN THE SECOND PAIR OF INCINERATORS:

$$PCR = [(SD_{2A} - SD_{2R}) / (2X_1 + 2X_2 + 2X_3)] (TPC)$$

C. FOR AN INCINERATOR IN THE THIRD PAIR OF INCINERATORS:

$$PCR = [(SD_{3A} - SD_{3R}) / (2X_1 + 2X_2 + 2X_3)] (TPC)$$