UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 23 2014

7005 3110 0000 5947 3184

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Covanta Niagara, LP
ATTN: Brian Kent, Facility Manager
100 Energy Blvd. at 56th Street
Niagara Falls, NY 14304

Re: Information Request, Reference Number: CAA-02-2014-1460

Dear Mr. Kent:

The Clean Air Act, 42 U.S.C. §§ 7401 et seq. (CAA or the Act), at Section 114, 42 U.S.C. § 7414 authorizes the U.S. Environmental Protection Agency (EPA) to require submittal of information to, among other things, assess compliance with the Act and regulations promulgated pursuant to the Act. This Information Request requires Covanta Niagara, LP (Covanta Niagara) to submit information to demonstrate compliance with its Title V Operating Permit and applicable federal requirements.

Pursuant to Section 114 of the Act, this Information Request requires you, as the Facility Manager of Covanta Niagara to submit all of the information requested by EPA in Enclosure 1. Failure to submit the requested information required by this Information Request is a violation of Section 114 of the Act, and may result in an order to comply, an order for administrative penalties, or a civil action for penalties and injunction requiring compliance pursuant to EPA enforcement authority provided at Section 113(a) of the Act. See Enclosure 2. In accordance with Section 113(c)(2)(A) of the Act, any person who knowingly makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals, or fails to file a response to this requirement is subject to criminal penalties.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, stamped or typed legend, or other suitable form of notice must be placed on or attached to the document, with language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. For each confidentiality claim, the date or occurrence of any event after which the information can be released should be indicated, if applicable. If no confidentiality claim accompanies the information received by EPA, it may be made available to the public without further notice to you. EPA will disclose information covered by a confidentiality claim only to the extent allowed

by, and in accordance with, the procedures set forth in EPA's public information regulations, 40 C.F.R. §§ 2.201 et seq. (See 41 Fed. Reg. 36902 (Sept. 1, 1976)).

In order to fully comply with this Information Request, your response must include a completed Certification of Response (Attachment to Enclosure 1), notarized by a notary public, and signed by you or another officer of your company. Your responses to the questions in Enclosure 1, including all supporting documents and the Certification of Response, must be submitted to EPA in accordance with the schedules as set forth in Enclosure 1 to:

Mr. Robert Buettner, Chief
Air Compliance Branch
U.S. Environmental Protection Agency
Region 2 Office
290 Broadway, 21st Floor
New York, New York 10007-1866

A request for an extension of time to respond to this, or any other portion of this Information Request, must be made in writing to Mr. Buettner at the address above, must include the reason(s) for the delay in responding, and must include the requested subsequent date for responding. An extension of time will be effective only if granted by EPA in writing.

The response to this request shall be in accordance with the schedules as set forth in Enclosure 1.

You should be aware that the schedule allows for requests of additional information, to be targeted by EPA, which would specify certain projects and or time frames of concern. These requests, although they will be a modification of what is set out in Enclosure 1, will be considered part of this original request and subject to the aforementioned requirements.

Please include the above-cited Reference No. CAA-02-2014-1460 in any and all of your response(s) to this Information Request. Further, if within one year of the date of this Information Request, you obtain information different from, or in addition to, the information provided in response to this Information Request, or if there is any change affecting the information submitted, you must notify EPA and submit the relevant information no later than twenty (20) calendar days after such information becomes available.

You may address any questions concerning this matter to Mr. Phillip Ritz in the EPA Air Compliance Branch at ritz.phillip@epa.gov. We appreciate and look forward to your prompt response.

Sincerely yours,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: New York State Department of Environmental Conservation, Region 9
Attn: Alfred Carlacci, Regional Air Engineer
270 Michigan Avenue
Buffalo, New York 14203-2999

ENCLOSURE 1
INFORMATION REQUEST PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT

The U.S. Environmental Protection Agency (EPA) requires the submittal of information regarding operations and compliance at Covanta Niagara (the Facility) located at 100 Energy Blvd. at 56th Street, Niagara Falls, NY 14304.

Part I: Instructions

In preparing your responses, please refer to the following instructions:

A complete and separate response must be provided for each numbered information request paragraph below. Identify each response with the same paragraph number to which it responds.

Provide all supporting documentation for each response. Supporting documentation includes, but is not limited to, company records (such as logs, receipts, ledgers, etc.), notifications or reports that have been submitted to EPA and/or the New York State Department of Environmental Conservation (NYSDEC), manufacturer's equipment specifications and equipment certifications, and other similar types of documents. For each document submitted, indicate the paragraph number to which it responds.

Provide as precise and complete a response as possible, even if the information sought was never documented in writing or if the written documents are no longer available. Consult with all present and past employees and agents whom you or other employees or officers have reason to believe may be familiar with the matter to which the question pertains. Provide the name of each person responding to each information request paragraph, along with the names of all persons consulted in the preparation of each response.

If the requested information or documentation cannot be made available, state the reason(s) why it cannot be made available, and provide all information that could lead to obtaining it. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.

In response to each question below, please provide, in detail, all relevant information. Provide this information, via a CD/DVD, in an electronic form that may be formatted by a spreadsheet program such as Microsoft Excel, or comparable software. If the information requested is not in existence or is not available, submit a statement certifying that such information is either not in existence or not available, along with an explanation supporting such certification.

Pursuant to Section 114 of the Clean Air Act, the Facility must supply the requested information. The requested information must be submitted in accordance with the schedules in Information Requests Parts A, B and C, unless EPA grants, in writing, an extension of time to respond.

Part II: Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401 and other Clean Air Act implementing regulations. Where reference is made to the EPA regulatory provisions only; however, you should also apply the applicable federally-approved state provisions when appropriate. Definitional clarification is specified below.

A. The term "capital projects" shall mean a monetary expenditure on depreciable equipment, including any costs to design, engineer, transport, and install said equipment. Capital projects shall include, but are not limited to, replacement of system components, steam turbines and air pollution controls.

B. The term "CEMS" shall mean continuous emission monitoring system.

C. The term "CO" means carbon monoxide.

D. The term "COMS" shall mean continuous opacity monitoring system.

E. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these.

F. The term "ESP" shall mean electrostatic precipitator.

G. The term "HCl" shall mean hydrogen chloride.

H. The term "Hg" shall mean mercury.

I. The term "MMBtu" shall mean million British Thermal Unit of heat.

J. The term "Mw-hr" or "MWh" shall mean megawatt hours of electrical energy.

K. The term "MWC" or "municipal waste combustor" shall mean any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam-generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units.

L. The term "NOx" shall mean nitrogen oxide.

M. The term "NSPS" shall mean the Standards of Performance for New Stationary Sources promulgated at 40 C.F.R. Part 60.

N. The term "NYSDEC" shall mean New York State Department of Environmental Conservation.

O. The term "O_2" shall mean oxygen.

P. The term "Pb" shall mean lead.

Q. The term "PM" shall mean particulate matter.

R. The term "QA/QC" shall mean quality assurance/quality control.

S. The term "SNCR" shall mean selective non-catalytic reduction.

T. The term "SO_2" shall mean sulfur dioxide.

U. The terms "you" or "Covanta Niagara LP" shall mean the addressee of this Information Request, the addressee's officers, partners, managers, employees, contractors, trustees, successors, predecessors, assigns, and agents.

Part III: Specific Information Requests

Information Request Part A

Please provide the following information for the Covanta Niagara facility within thirty (30) days. This information must be submitted Microsoft Word or optical character recognition (OCR) Adobe Acrobat PDF format.

1) Provide the following background information for the Covanta Niagara facility from January 1, 2010 until the present:
   a) Identify the legal owner of the facility and the name of the official (CEO, chief partner, President) primarily responsible for facility operations;
   b) Provide the name of the Facility, as used by the owners and operators, and its street and mailing addresses;
   c) Provide a detailed organizational chart for the Facility including, names, phone numbers, and e-mail addresses if available; and
   d) Provide a description and a schematic of the Facility including locations of major emissions units including but not limited to Municipal Waste Combustor (MWC) unit, etc.

2) Please provide the following information from January 1, 2010 until the present for each MWC unit located at the facility. If any of the following information requested is not applicable to your MWC unit, state so clearly:
   a) Indicate the manufacturer, the model number, the maximum design throughput capacity expressed in tons/hr, tons/day and MMBtu/hr, as well as the type of fuel(s) (primary, secondary) combusted;

b) For each unit described in 2.a above, provide a detailed narrative description of the major components and operation. For example: MWC #1 is a 400 tons/ day grate furnace with four 70 MMBtu/hr natural gas burners fed by a hydraulic ram feeder. The MWC is equipped with Flue Gas Recirculation and has a primary and secondary superheater and economizer. The flue gases vent to an ESP for particulate control; and
c) Provide copies of all references to any maintenance activities recommended in the plant's equipment manufacturer's operating manuals and include copies of all related work orders for the last 3 months of maintenance activities.

3) For each MWC at the Covanta Niagara facility, provide a list of each and every project that cost more than $100,000, and for which physical construction commenced after January 1, 2010, through the present. Include the following information for each project:
   a) Work order number;
   b) Project summary/description;
   c) Authorized project expenditures;
   d) Actual project expenditures;
   e) Date of approval;
   f) Final project completion date, and
   g) Commencement of operation date.
4) For each MWC at the Covanta Niagara facility, provide original and current MWC cross-section diagrams and, if available, submit any drawings, scales, or other documents that show the changes to any Unit.

Information Request Part B

Please provide the following information for the Covanta Niagara facility within sixty (60) days. This information must be submitted in Microsoft Word, Excel or OCR Adobe Acrobat PDF format.

1) Provide a list of all capital projects for each MWC, steam turbine and generator at the Covanta Niagara facility which:
   a) have actual or authorized expenditures of $250,000 or more; and
   b) are projected to commence construction anytime over the next 24 months after the date of this letter.

2) The list should include, but is not limited to, the following types of capital projects:
   a) MWC casing and MWC floor/wall tube replacements;
   b) economizer, reheater(s), primary and secondary superheaters, steam drums, and/or primary and secondary air pre-heater replacements;
   c) induced draft (ID) fans, forced draft (FD) fans and fan motor replacements;
   d) condenser, waste feed and/or feed water heater replacements;
   e) burner and replacements;
   f) balanced draft conversion projects;

g) turbine rotor and shell replacements, turbine efficiency upgrades, turbine upgrades to increase throttle steam flow and projects designed to make use of under-utilized turbine throttle steam flow;
h) low-NOx burner (LNB), overfire air, staged combustion, gas reburn installation and modifications/retrofits including any model or size changes made to the burners of any unit, and including changes to the ignitors [i.e., include model and size (in MMBtu/hr)];
i) scrubber retrofits and/or design change projects;
j) any ESP or fabric filter retrofits or design changes;
k) waste handling system changes to increase feed rate or other changes to waste preparation; and
l) changes made to equipment to accommodate the burning of fuel, in each MWC. Such alternative fuels include, but are not limited to oil, tire derived fuel and biomass.

3) The list should include, but is not limited to, the following information:
a) the work order number;
b) project description;
c) authorized expenditure;
d) actual and/or projected expenditure;
e) date of approval;
f) projected completion date;
g) projected in-service date; and
h) each original equipment manufacturer (OEM), equipment supplier, or contractor that provided Engineering, fabrication, and/or installation services for the project.

4) For each capital project identified in Item 3 of this section above that involves the replacement or partial replacement of MWC tubes, MWC walls, burners, economizers, reheaters, superheaters, primary air fans, induced draft fans, steam lines, or turbine components, provide a copy of all documents related to and including the following:
a) all associated capital appropriation requests and approvals;
b) outage reports;
c) total project cost (actual or projected), including all costs incurred by other owners and/or operators;
d) the actual and/or projected completion date;
e) the date the unit is projected to return to commercial operation following completion of the capital project;
f) equipment specifications;
g) cost/benefit analyses;
h) a copy of all emissions calculations (actual or projected);
i) all engineering analyses and/or performance test(s) showing original as built performance as well as the performance for the period immediately prior to the completion of the project;
j) all evaluations conducted or planned to verify pre- and post- completion performance of the capital project under any equipment vendor guarantee;
k) all work order and work request project completion reports, as applicable, e.g., for associated work to prepare for future projects;
l) all associated purchase orders;

m) state whether the capital improvement is associated with a life extension project, capacity increase, efficiency enhancement, or reliability improvement;
n) documents related to the maximum continuous rating of the MWC, both before and after the project is completed (as applicable or projected for the future), including but not limited to documentation of changes in:
   i) unit capacity factor;
   ii) unit availability;
   iii) MWC heat input;
   iv) steam flow rate;
   v) steam temperature;
   vi) steam pressure; and
   vii) unit efficiency;
o) all Engineering analyses, correspondence, memoranda, telephone discussion summaries and any other communication, including but not limited to Board of Directors reports, meeting minutes, and annual reports, that describe the benefits, provide justification for, or otherwise explain the nature, extent, cost and frequency of each capital project. This request seeks all relevant communications both before (and after, if applicable) the capital project was undertaken.

Information Request Part C

Please provide the following information for the Covanta Niagara facility within sixty (60) days. This information must be submitted in Microsoft Word, Excel or OCR Adobe Acrobat PDF format. Information Requests 7 through 11.g and 11.k.iii through iv below must be submitted in an Excel format.

1) Provide copies of all stack test reports for dioxin/furan testing for the past 5 years.

2) Provide copies of reports for each stack test conducted on each acid gas scrubber, ESP, baghouse and SNCR within the past 5 years. For each stack test, provide the following information:
   a) Documentation of stack test protocol approval from NYSDEC;
   b) Date in which each stack test was conducted, name of individual(s) from federal, state and/or local air pollution control agencies who observed the stack test (if any);
   c) Documentation of stack test report approval from NYSDEC;
   d) Summary of results for all stack tests conducted for each MWC unit and the associated operating parameters for each stack test. Applicable operating data must include, but is not limited to heat input rate (MMBtu/hr), emissions rate (lb/hr and lb/MMBtu) and waste feed rate (lbs/hr) and supplemental fuel use (scf/hr or gal/hr);
   e) Documentation, for each MWC unit, indicating the maximum load, in terms of heat input rate (MMBtu/hr) and in terms of waste loading;
   f) Documentation, for each MWC unit, indicating whether or not the unit was operating at its maximum heat input rating (MMBtu/hr). If maximum heat input was not reached

during the stack test, please explain and provide documentation as to why the maximum heat input was not achieved;

g) Documentation, for each MWC unit, indicating whether or not the MWC unit has the capability of operating at the maximum heat input rate under any circumstance, including emergency conditions. If the maximum heat input rate cannot be achieved at any time, please explain; and

h) All reference method mandatory QA/QC checks including, but not limited to, copies of all calibration gas certifications, emissions data, system response time, NO_2-to-NO conversion efficiency, purge time, stable sample flow rate, etc.

3) Provide installation dates for all CEMS and COMS associated with each acid gas scrubber, ESP, baghouse and/or SNCR, where applicable. Include the make, model and serial number for the CEMS/COMS and the list of pollutants monitored by the CEMS for each of the Facility's MWC units.

4) Provide the performance specification test date and the certification dates associated with the CEMS/COMS for each acid gas scrubber, ESP, baghouse and/or SNCR.

5) Provide an explanation on how each CEMS records data and calculates hourly averages.

6) Provide a copy of the QA/QC plan for the CEMS.

7) Provide CEMS data for NOx, O_2, and CO for each MWC unit and associated control units from January 1, 2010 to present. Provide the measurements in the most frequent intervals available (i.e. 1 minute). Provide both the oxygen corrected and uncorrected NOx CEMS data.

8) Provide hourly averaged CEMS data for NOx and CO for all control units from January 1, 2010 to present. Include the date, time and operating conditions (lb/hr, lb/MMBtu, when fuel switching occurs, etc.) for each line item average.

9) Provide 6-minute opacity readings for the past 5 years.

10) From January 1, 2010 through the present, provide the following parameter data:

a) daily average moisture content for material burned in each MWC unit;

b) injection rate of chemical reactant (i.e. carbon) as adsorbing reagent for mercury control (pounds per hour), if applicable;

c) hourly steam temperature (deg F), hourly steam pressure (psig) and steam flow (k lbs per hour);

d) auxiliary fuel use (mscf or gallons per hour), as applicable;

e) hourly average pressure drop across each compartment of the baghouse fabric filter (inches of water column wc) and also the inlet and outlet of the entire baghouse fabric filter (inches of wc);

f) number of compartments of the baghouse fabric filter in use on an hourly basis;

g) hourly average temperature (deg F) of both the inlet and outlet of the acid gas control device, if applicable;

h) hourly flow rate of scrubbing media (i.e. lime) injected into the scrubber; and
i) hourly average pressure drop across the acid gas control device (inches wc).

11) For each MWC at the Covanta Niagara facility from January 1, 2010, through the present, provide the following information in electronic format (Excel spreadsheet):
   a) Capacity factor on a monthly and annual basis;
   b) Availability factor on a monthly and annual basis;
   c) Operating hours on a monthly and annual basis;
   d) Waste consumption on a monthly and annual basis;
   e) Fuel quality (e.g., % Sulfur (weight), % ash, heat content, etc.) on a monthly and annual basis;
   f) Total gross and net generation (megawatt hour) on a monthly and annual basis;
   g) Heat rate (BTU/kilowatt hour) on a monthly and annual basis;
   h) Identify the top ten annual causes of forced MWC outages;
   i) Annual planned outage rate by Mwh of lost generation;
   j) Lost generation (in Mwh) on an annual basis due to forced, maintenance, or scheduled outages, caused by:
      i) MWC related components;
      ii) Turbine generator components;
      iii) Pollution control performance;
      iv) Balance of plant; and
      v) Miscellaneous.
   k) Capacity test documentation and results for each Unit, including:
      i) The date and time of the capacity test;
      ii) The standard operating procedure, or equivalent document, used for the performance of the capacity tests. This would include the procedures, specifications, conditions, and other parameters under which the representativeness and accuracy of the tests are determined;
      iii) All results of capacity tests including the condition (e.g., valve wide open), steam flow (peak and sustained), maximum heat input capacity (based on the waste heat content), waste type, gross megawatt (MW) capacity, and net MW capacity,
         (1) Monthly peak hourly generation in MW,
         (2) Summary results of all stack tests for the following pollutants:
            (a) NOx;
            (b) SO_2;
            (c) Sulfuric acid mist (SO_3/H_2SO_4);
            (d) PM, PM_{10}, and $PM_{2.5}$; and
            (e) Air Toxics (Pb/Hg/HCL/other toxics that are included in the applicable State Implementation Plan (SIP)).
      iv) Monthly and annual emissions (lb/mmBTU and tons/year) of NOx, SO_2, PM, PM_{10}, and Air Toxics (including Pb, Hg, HCl, and any other toxics that are included in the applicable SIP). Emissions information requested includes annual emissions reports submitted to the applicable state or local regulatory agency. Be sure to specify the time frames, associated pollutant emissions, and the location/source of emissions data that has already been reported to the U.S. EPA (i.e., Acid Rain CEM data/reports, NSPS data/reports, etc.). Acid Rain CEM data and/or air emission

reports previously submitted to EPA for compliance verification of Title IV or applicable NSPS requirements do not need to be resubmitted to satisfy this information request, although any known or planned changes to that data should be identified.

l) Identify the total capital, and maintenance expenditures on an annual basis made to each MWC at the Covanta Niagara facility from January 1, 2010, to the present.

m) Provide the current "five year plan" or other appropriate document(s) that sets forth the capital changes and identifies the projected expenditures that the Covanta Niagara Facility will be making in the next five years.

n) Provide all planning, meeting notes, studies, and/or project information, including, but not limited to, Board of Directors reports, meeting minutes, and annual reports, related to efforts to increase the performance and reliability of each MWC at the Covanta Niagara Facility on either a short-term or annual basis for the period beginning January 1, 2010, to the present.

o) Provide a copy of each quarterly excess emission report for the Covanta Niagara Facility from January 1, 2010, to the present. For each quarterly report, include the reason code for the exceedance of each appropriate averaging period for SO_2, NOx and Opacity reported to the NYSDEC that Covanta Niagara considers exempt and non-exempt, and the basis for any exemption.

ATTACHMENT TO ENCLOSURE 1

CERTIFICATION OF RESPONSE

State of _____:

County of _____:

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request, I am under an obligation to supplement my response to the Information Request if any additional information relevant to the matters should become known or available to me.

_____
NAME (print or type)

_____
TITLE (print or type)

_____
SIGNATURE

Sworn to before me this ___ day of _____, 2014

_____
Notary Public

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; ⊔

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced

(A) during any period of federally assumed enforcement, or

(B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter [2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

(i) during any period of federally assumed enforcement, or

(ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) 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, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON **September 23, 2014, I** MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7005-3110-0000-5947-3184** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

Covanta Niagara, LP
ATTN: Brian Kent, Facility Manager
100 Energy Blvd. at 56th Street
Niagara Falls, New York 14304

Geraldo Villaran

Geraldo Villaran