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

SEP 2 9 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joel H. Jansen, Vice President
Winnebago Energy Center, LLC
1716 Lawrence Drive
De Pere, WI 54115

Re: Winnebago Energy Center, LLC. Consent Agreement and Final Order

Dear Mr. Jansen:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves the Winnebago Energy Center, LLC. matter, CAA Docket No. **CAA-05-2011-0059**. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on September 29, 2011.

Pursuant to paragraph 30 of the CAFO, Winnebago Energy Center, LLC. must pay the $62,223 civil penalty within 30 days of the date the CAFO was filed, October 31, 2011. The check must display the case docket number, **CAA-05-2011-0059**, and the billing document number, **2751103A058**.

Please direct any questions regarding this case to Andre Daugavietis, (312) 886-6663.

Sincerely,

Brent Marable
Chief
Air Enforcement and Compliance Assurance (IL/IN)

Enclosure

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cc: Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency

Linda E. Benfield, Esq.
Foley & Lardner LLP

Standard bcc's: official file copy w/attachment(s)
originating organization reading file w/attachment(s)

Other bcc's: A. Daugavietis - C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	)	**Docket No.** CAA-05-2011-0059
	)	
Winnebago Energy Center, LLC	)	**Proceeding to Assess a Civil Penalty**
Rockford, Illinois	)	**Under Section 113(d) of the Clean Air Act**
	)	**42 U.S.C. § 7413(d)**
Respondent.	)	
	)	

RECEIVED
SEP 29 2011
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PROTECTION AGENCY

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22.

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

3. Respondent is Winnebago Energy Center, LLC (WEC), a limited liability corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

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

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

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

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

Statutory and Regulatory Background

9. Section 113(a) of the CAA, 42 U.S.C. § 7413(a), authorizes the Administrator to initiate an enforcement action whenever, among other things, the Administrator finds that any person has violated or is in violation of a requirement or prohibition of an applicable implementation plan or permit.

10. On May 31, 1972, U.S. EPA approved Illinois PCB Rule 101 (35 IAC § 201.102), as part of the federally enforceable SIP for the State of Illinois. 37 Fed. Reg. 10842. This rule deals with sources causing an odor nuisance.

11. The Administrator of EPA (the Administrator) may assess a civil penalty of up to $32,500 per day of violation up to a total of $270,000 for violations that occurred after March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413 (d)(1), and C.F.R. Part 19.

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

14. WEC owns and operates a landfill-gas-to-energy plant at the Pagel Landfill, 8403 Lindenwood Road near Rockford, Illinois (the Facility). This plant consists of four landfill gas powered reciprocating engines.

15. Illinois Environmental Protection Agency (IEPA) issued a Construction Permit (No. 07030094) to WEC for the Facility on May 25, 2007.

16. Condition 4(b)(ii) of the Facility's Construction Permit requires WEC to undertake further actions for the Facility as may be needed to eliminate air pollution, including nuisance due to odors, such as implementation of additional measures to assure that the operation of the Facility does not interfere with effective capture and control of landfill gas at the source.

17. Condition 6(b) of the Facility's Construction Permit prohibits the emission of sulfur dioxide in excess of 0.28 pounds per hour and 1.23 tons per year from each engine, and 4.94 tons per year in aggregate from all four engines.

18. The rule at 35 IAC § 201.141 provides that no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois.

19. The rule at 35 IAC § 201.102 defines air pollution as "the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to

unreasonably interfere with the enjoyment of life or property.

20. On July 7, 2009, WEC reported to IEPA that total reduced sulfur compound testing done on landfill gas used at the Facility demonstrated higher levels of total reduced sulfur compounds than WEC expected, and that WEC may not be in compliance with the sulfur limitations found in Condition 6(b) of the facility's Construction Permit.

21. On July 28, 2009, WEC submitted a letter to IEPA noting that the elevated concentrations of sulfur compounds found in the landfill gas may have caused the engines to exceed the hourly and yearly emission limits for each engine, as well as the aggregate emission limit for all four engines since August of 2008.

22. By failing to undertake further actions as may be needed to eliminate air pollution from the Facility, WEC is in violation of Condition 4(b)(ii) of its Construction Permit.

23. By emitting sulfur dioxide in excess of 0.28 pounds per hour and 1.23 tons per year from each engine, and 4.94 tons per year in aggregate from all four engines at the Facility, WEC is in violation of Condition 6(b) of its Construction Permit.

24. By causing, threatening, or allowing the discharge or emission of any contaminant into the environment so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, WEC is in violation of 35 IAC § 201.141.

25. The Facility's violation of its Construction Permit and the SIP constitutes a violation of the CAA.

Compliance

26. Respondent represents and certifies that it is in compliance with the requirements that formed the basis of the allegations of this CAFO, above. In order to achieve and maintain compliance, Respondent has agreed to the terms of an administrative compliance order under

Section 113 of the Act, EPA-5-11-113(a) IL-05.

Procedural Matters

27. EPA issued Respondent a Notice of Violation and Finding of Violation on February 4, 2010, giving notice of the violations alleged above, and offering the Respondent an opportunity to confer with EPA.

28. On March 11, 2010, and subsequent dates, the Respondent conferred with EPA regarding the alleged violation and potential resolution of this matter.

Civil Penalty

29. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, including that WEC has reported these violations, and has co-operatively entered into this settlement, Complainant has determined that an appropriate civil penalty to settle this action is $62,223.

30. Within 30 days after the effective date of this CAFO, Respondent must pay a civil penalty in the amount of $62,223 by electronic funds transfer, payable to the "Treasurer, United States of America," and sent to:

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

In the comment or description field of the electronic funds transfer, state Winnebago Energy Center, LLC, the docket number of this CAFO and the billing document number.

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

32. If Respondent does not timely pay the civil penalty, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a $15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

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

35. The effect of the settlement described in this CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, as set forth in this CAFO.

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

37. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph [35], above, compliance with this CAFO will not be a defense to any actions subsequently commenced

pursuant to federal laws administered by Complainant.

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

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

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

41. Each party agrees to bear its own cost and attorney's fees in this action.

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

Winnebago Energy Center, LLC, Respondent

9/16/2011
Date

Joel H. Jansen
Vice President
Winnebago Energy Center, LLC.

United States Environmental Protection Agency, Complainant

9/26/11
Date

Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER
In the Matter of:
Winnebago Energy Center, LLC
Docket No. CAA-05-2011-0059

Final Order

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

9-28-11
Date

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

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Consent Agreement and Final Order
In the Matter of: Winnebago Energy Center, LLC.
Docket No. CAA-05-2011-0059

CERTIFICATE OF MAILING

I, Betty Williams, certify that I hand delivered the original of the Consent Agreement and Final Order (CAFO), docket number **CAA-05-2011-0059** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Winnebago Energy Center, LLC. and Winnebago Energy Center, LLC. Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Joel H. Jansen, Vice President
Winnebago Energy Center, LLC
1716 Lawrence Drive
De Pere, WI 54115

Linda E. Benfield, Esq.
Foley & Lardner LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202

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

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 63702

on the 29th day of September 2011.

Betty Williams
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7672 8140

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