

STATE OF MICHIGAN  
IN THE 3RD JUDICIAL CIRCUIT COURT  
INGHAM COUNTY

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

File No. 14- 1184 CE

Hon. ROSEMARIE E. AQUILINA

v

MICHIGAN WASTE ENERGY, INC., a  
Delaware corporation, d/b/a Detroit Renewable  
Power; and DETROIT RENEWABLE POWER LLC, a  
Delaware limited liability company, d/b/a Detroit Power  
Holdings LLC; jointly and severally

Defendants.

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John Fordell Leone (P38938)  
Assistant Attorney General  
Attorney for the Plaintiff  
Michigan Department of Attorney  
General Environment, Natural  
Resources & Agriculture Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-7540

Kathryn A. Buckner (P50076)  
Buckner Law Group  
Attorney for Defendants  
144 W Maple Rd Ste 600  
Birmingham, MI 48009  
(248) 283-1540

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CONSENT JUDGMENT

At a session of said Court held on: 20<sup>th</sup> Oct 2014

Present: HON. ROSEMARIE E. AQUILINA

Plaintiff is the Michigan Department of Environmental Quality (DEQ).

Defendants are Michigan Waste Energy, Inc., a Delaware corporation doing

business in Michigan, and Detroit Renewable Power LLC, a Delaware limited liability company, doing business in Michigan (collectively, Defendants).

The complaint in this case was filed on or about October 17, 2014. In the Complaint, DEQ alleges that Defendant Michigan Waste Energy, Inc. is a Delaware corporation (assigned DEQ State Registration Number (SRN) M4148 and assigned Michigan Department of Licensing and Regulatory Affairs Identification Number 650522), and that Defendant Detroit Renewable Power LLC is a Delaware limited liability company d/b/a Detroit Renewable Power (assigned Michigan Department of Licensing and Regulatory Affairs Identification Number D9145T (in 2010) and Identification Number D92755 (in 2013)). DEQ also alleges in its complaint that Detroit Renewable Power LLC owns and Michigan Waste Energy, Inc. operates the waste-to-energy incinerator facility located at 5700 Russell Street in the City of Detroit, County of Wayne, State of Michigan (Facility). DEQ also alleges that Defendants have violated and are likely to continue violating, for an interim period of time, Part 55, Air Pollution Control (Part 55), of the Natural Resources and Environmental Protection Act, MCL 324.5501 *et seq*, the Michigan Administrative Code (MAC), R 336.1901 (Rule 901), and Renewal Operating Permit (ROP) No. MI-ROP-M4148-2011, General Condition No. 12(b).

Specifically, DEQ alleges that odors from the Facility have caused unreasonable interference with the comfortable enjoyment of life and property in the surrounding community, including the violations cited in the Violation Notices dated September 13, 2011, September 19, 2011, May 17, 2012, July 18, 2012,

September 13, 2012, June 20, 2013, July 3, 2013, August 2, 2013, May 9, 2014, May 21, 2014, May 30, 2014, June 20, 2014, June 24, 2014, July 1, 2014, July 9, 2014, July 15, 2014, July 25, 2014, August 7, 2014, the four Violation Notices all dated August 12, 2014, August 26, 2014, and the two Violation Notices both dated August 28, 2014 (collectively, Violation Notices).

In the complaint, DEQ seeks injunctive relief and civil fines for certain alleged violations of Part 55 of NREPA, Rule 901, and common law nuisance. DEQ also seeks to resolve violations of ROP No. MI- ROP-M4148-2011, Condition 12(b).

DEQ and Defendants (Parties) agree that settlement of this case is in the public interest and consent to the entry of this Consent Judgment, without further litigation, as the most appropriate means of resolving the issues raised in the Complaint. The Parties agree to and shall be bound by the requirements of this Consent Judgment.

The entry of this Consent Judgment by Defendants does not constitute an admission of fault or liability with respect to any issue raised in the Complaint or otherwise raised by DEQ, nor is it an admission of any factual allegation or claims stated therein or otherwise alleged by DEQ. The Parties agree that upon entry of this Consent Judgment, the allegations contained in the Violation Notices listed above and all other allegations in the Complaint are deemed resolved.

NOW, THEREFORE, before the taking of any testimony, and without trial of any issue of fact or law, and upon the consent of the Parties, IT IS ORDERED:

## I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to Section 5530(1) and (2) of NREPA, MCL 324.5530(1) and (2), and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. The Court has personal jurisdiction over Defendants pursuant to Sections 711, 715, 731, and 735 of the RJA, MCL 600.711, MCL 600.715, MCL 600.731, and MCL 600.735.

1.2 Venue in this Court is proper pursuant to Section 5530(5) of NREPA, MCL 324.5530(5).

1.3 The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the violations alleged in the complaint, and properly protect the interests of the people of the State of Michigan.

## II. APPLICATION

2.1 The provisions of this Consent Judgment shall be binding on the Parties to this action and their successors and assigns. No change or changes in ownership or corporate status or other legal status of Defendants, including but not limited to any transfer of assets or of real or personal property, shall in any way alter Defendants' responsibilities under this Consent Judgment.

2.2 In the event one or more of Defendants sell or transfer any portion of the Facility during the term of the Consent Judgment, Defendants shall advise any purchaser or transferee of the existence of this Consent Judgment in connection with such sale or transfer. Within ten (10) calendar days of any such sale or

transfer, Defendants shall also notify DEQ, Air Quality Division (AQD), Detroit Field Office, Detroit District Supervisor (AQD Detroit District Supervisor), in writing, of the identity and address of any purchaser or transferee and confirm that in fact notice of this Consent Judgment has been given to the purchaser and/or transferee. As a condition of any such sale or transfer, Defendants must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Judgment. A copy of that agreement shall be forwarded to the AQD Detroit District Supervisor within ten (10) days of the purchaser and/or transferee assuming the obligations of this Consent Judgment.

### **III. COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE**

#### **A. RDF Control Program and Installation Schedule**

3.1 On or before the Effective Date, Defendants shall in a signed writing notify the AQD Detroit District Supervisor that a contract for engineering services to design a system for controlling odors from the refuse-derived fuel (RDF) Storage Building and RDF Conveyor Gallery (hereinafter referred to as the "RDF Control System") has been awarded. The RDF Control System shall include fans, air dampers, plenums, ductwork, and associated equipment that will collect exhaust air from the RDF Storage Building and RDF Conveyor Gallery and convey the air directly to the stoker boiler forced draft fan combustion air intakes.

3.2 Within 160 days after Defendants submit the notification required by paragraph 3.1, Defendants shall submit to the AQD Detroit District Supervisor

detailed engineering plans and specifications that depict the design of the RDF Control System.

3.3 Within 30 days after Defendants submit the plans and specifications required by paragraph 3.2, Defendants shall notify the AQD Detroit District Supervisor in a signed writing that a contract for construction of the RDF Control System has been awarded.

3.4 Within 60 days after Defendants submit the notification required by paragraph 3.3, Defendants shall begin on-site construction of the RDF Control System and shall notify the AQD Detroit District Supervisor in writing that construction has begun.

3.5 Within 210 days after Defendants submit the notification required by paragraph 3.4, Defendants shall have completed the construction of the RDF Control System, shall have connected the RDF Control System to one or more of the three existing boilers at the Facility (Boiler No. 11, Boiler No. 12, and/or Boiler No. 13), and shall notify the AQD Detroit District Supervisor in writing that initial operation of the system has commenced.

3.6 Within 180 days after Defendants submit the notification required by paragraph 3.5, Defendants shall have connected the RDF Control System to the remaining boilers at the Facility and shall notify the AQD Detroit District Supervisor in writing that all three boilers have been connected.

3.7 Within 60 days after Defendants submit the notification required by paragraph 3.6, Defendants shall have completed the integration of the controls for the RDF Control System into stoker boiler combustion controls in the existing Distributed Control System and shall notify the AQD Detroit District Supervisor in writing that integration of the RDF Control System has been completed.

**B. RDF Control System Verification**

3.8 Within 30 days after Defendants submit the notification required by paragraph 3.7, Defendants shall conduct testing to reasonably determine that the RDF Control System has been constructed and is operating as designed. Testing under this paragraph shall be conducted in accordance with the following subparagraphs:

a. A qualified engineer shall examine the RDF Control System and verify in a signed writing that the system has been constructed in accordance with the engineering plans and specifications submitted pursuant to paragraph 3.2. Within ten (10) days of the date of the signed writing by the qualified engineer, a copy of that signed writing shall be forwarded to the AQD Detroit District Supervisor. Examination and verification shall include the integrity and sealing of system ductwork and plenums; closure and/or control of openings in the RDF Storage Building and RDF Conveyor Gallery; calibration of flow measurement instrumentation; and a functional test of the Distributed Control System.

b. A qualified third party contractor shall conduct performance testing (per U.S. EPA Methods in Title 40 Code of Federal Regulation Part 60, Appendix A-1) to verify that the RDF Control System collects exhaust air from the RDF Storage Building and RDF Conveyor Gallery and conveys the air to the stoker boiler forced draft fan combustion air intakes. Performance testing shall be conducted during normal operation of the system over a period of not less than one hour and shall consist of air flow measurements at the RDF Storage Building and RDF Conveyor Gallery exhaust air collection inlets to verify that the RDF Control System operates as specified in the engineering plans and specifications. The testing shall specify the number of boilers in service when the air flow is measured.

3.9 Within 30 days after completion of the testing required by paragraph 3.8, Defendants shall submit a written report of the testing to the AQD Detroit District Supervisor. The report shall document the examinations and measurements required by paragraph 3.8 and shall verify that RDF Control System is constructed in accordance with the engineering plans and specifications and is operating as designed.

**C. RDF Odor Neutralization System**

3.10 On or before the Effective Date, Defendants shall have retained a qualified third party to evaluate the odor neutralizer spray system in the RDF Storage Building and shall have completed appropriate improvements or upgrades.



3.11 Within 30 days after the Effective Date, Defendants shall notify the AQD Detroit District Supervisor in writing that the improvements and/or upgrades have been completed.

3.12 Within 30 days after the Effective Date, Defendants shall properly operate the waterless odor neutralizer system in the RDF processing area from April 15 through October 15 of each year during the term of this Consent Judgment.

**D. MSW Odor Control Plan**

3.13 On or before the Effective Date, Defendants shall properly operate the wet odor neutralizing system for the municipal solid waste (MSW) processing area from April 15 through October 15 of each year during the term of this Consent Judgment.

3.14 Defendants shall clean the solid waste receiving tipping floor, pit area, and processing equipment on a daily basis, or more often if required, such that odor from these sources is minimized, in compliance with ROP No. MI-ROP-M4148-2011, Flexible Group Conditions for FGMSWPROC-Lines.

3.15 In the event of a mechanical failure lasting more than 24 hours that prevents the processing of the MSW into RDF or utilization of the RDF as fuel for the boilers, Defendants shall take any and all actions necessary to control odorous emissions from the Facility to comply with Rule 901.

**E. Odor Management Plan**

3.16 Defendants shall comply with the Facility's "Odor Control Management Plan," dated February 2011, and all revisions thereto, as required by ROP No. MI-ROP-M4148-2011. Within 30 days after the effective date of this Consent Judgment, Defendants shall submit a revised and updated Odor Management Plan to AQD. Within 30 days after AQD receives the revised Odor Management Plan from Defendants (notwithstanding the 90 days stated in Condition B.6.2 of ROP No. MI-ROP-M4148-2011), AQD shall notify Defendants in writing as to whether the submitted changes are approved or rejected. Defendants are not subject to the Stipulated Fines provisions in Section VI.B of this Consent Judgment, but remain subject to enforcement under ROP No. MI-ROP-M4148-2011 for alleged violations of its Odor Management Plan.

**F. Additional Measures**

3.17 If within two (2) years after Defendants submit the written report required by paragraph 3.9 AQD determines that measures in addition to those described in Section III of this Consent Judgment are necessary to control odors from the Facility, then AQD may provide written notice of its determination to Defendants. The written notice shall state, based on available information: (i) the number and type of odor complaints received by AQD and attributed to operation of the Facility, (ii) the estimated time duration of each odor incident that AQD alleges constituted a violation of Rule 901, (iii) field observations of each odor incident that

AQD alleges constituted a violation of Rule 901, and (iv) the basis for AQD's belief that the odors were from the Facility.

3.18 If Defendants do not dispute AQD's determination made pursuant to paragraph 3.17, Defendants shall comply with subparagraphs a. and b. below. If Defendants dispute the AQD's determination, the Parties shall resolve the dispute pursuant to Section V of this Consent Judgment (Dispute Resolution), and Defendants shall be required to comply with subparagraphs a. and b. below only in the event, and to the extent that, Defendants do not prevail on the dispute.

a. Within ninety (90) days after receiving the written notice specified in paragraph 3.18 or receiving a final decision from the Court on a petition for resolution, as applicable, Defendants shall submit to the AQD Detroit District Supervisor: (i) plans and/or operational commitments that describe additional measures for controlling odors from the Facility; and (ii) a schedule for review and approval by AQD for implementing the plans and/or commitments.

b. Within thirty (30) days after completing the implementation of plans and/or commitments specified in paragraph 3.18.a above, Defendants shall notify the AQD Detroit District Supervisor in writing that the plans and/or commitments have been implemented.

3.19 The compliance program in this Section III is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55, MCL 324.5538.

#### IV. FORCE MAJEURE

4.1 Defendants shall perform the requirements of this Consent Judgment within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure" event. Any delay in the performance attributable to "Force Majeure" shall not be deemed a violation of Defendants' obligations under this Consent Judgment in accordance with this Section IV.

4.2 For the purpose of this Consent Judgment, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of and without the fault of Defendants, such as: an Act of God, untimely review of permit applications or submissions by DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by Defendants' due diligence and that delay the performance of an obligation under this Consent Judgment. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of Defendants' actions or omissions, or acts or omissions of a subcontractor that delay or prevent the performance of an obligation required under this Consent Judgment.

4.3 Defendants shall notify DEQ by telephone within forty-eight (48) hours of discovering any event which causes a delay in its compliance with any provision of this Consent Judgment. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe in detail the anticipated

length of delay, the precise cause or causes of delay, the measures taken by Defendants to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

4.4 Failure of Defendants to comply with the notice requirements of paragraph 4.3, shall render this Section IV (Force Majeure) void and of no force and effect as to the particular incident involved. DEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of paragraph 4.3.

4.5 If the Parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated and the Parties may petition the Court for an appropriate modification of this Consent Judgment. If the Parties are unable to reach such agreement, the dispute shall be resolved in accordance with Section V (Dispute Resolution) of this Consent Judgment. The burden of proving that any delay was beyond the reasonable control of Defendants and that all the requirements of this Section IV (Force Majeure) have been met by Defendants, is on Defendants.

4.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Defendants qualify for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## V. DISPUTE RESOLUTION

5.1 The dispute resolution procedures of this Section V shall be the exclusive mechanism to resolve disputes arising under this Consent Judgment and shall apply to all provisions of this Consent Judgment. Any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any Party that a dispute has arisen, but it may be extended by a written agreement of the Parties. The period for informal negotiations shall end when DEQ provides a written statement setting forth its proposed resolution of the dispute to Defendants.

5.2 If Defendants and DEQ cannot resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by DEQ unless, within ten (10) days after receipt of DEQ's proposed resolution, Defendants file a petition for resolution with this Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Judgment. Any judicial review shall be limited to the administrative record and such other evidence as the Court shall request.

5.3 The filing of a petition for resolution of a dispute with this Court shall not of itself extend or postpone any obligation of Defendants under this Consent

Judgment. Notwithstanding the invocation of the dispute resolution, stipulated fines, with any applicable interest, shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Judgment. In the event, and to the extent, that Defendants do not prevail on the disputed issue(s), stipulated fines and any applicable interest shall be paid within ten (10) calendar days of the final ruling of this Court on the petition for resolution, in the manner provided for in paragraph 6.2.e of this Consent Judgment. In the event and to the extent that Defendants prevail on the disputed issue(s), Defendants shall not be assessed stipulated fines or any applicable interest.

5.4 Notwithstanding this Section V, Defendants shall pay stipulated fines that are not subject to a petition for resolution in accordance with and in the manner provided in Section VI, as appropriate.

## VI. CIVIL FINE AND STIPULATED FINES

### A. Civil Fine

6.1 Defendants shall pay a civil fine of \$350,000 in two installments: \$200,000 within thirty (30) calendar days after entry of this Consent Judgment and \$150,000 within six (6) months after the first installment. Each payment shall be made to the General Fund of the State of Michigan, in the form of a check, made payable to the "State of Michigan" and mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. Defendants shall not be required to

reimburse AQD its costs for investigation and enforcement. This civil fine is in addition to any fees, taxes, or other fines that may be imposed on Defendants by law not expressly addressed by this Consent Judgment. To ensure proper credit, all payments made pursuant to this Consent Judgment shall include the "Payment Identification Number AQD40060" on the front of the check and/or in the cover letter with the payment.

**B. Stipulated Fines**

6.2 Defendants are subject to stipulated fines for failure to comply with the terms of this Consent Judgment as follows:

a. Defendants are subject to a stipulated fine of up to \$5,000.00 for each calendar day there is a failure to be in compliance with any requirement of paragraphs 3.1 through 3.15 of this Consent Judgment and any requirement of paragraphs 3.17 and 3.18 of this Consent Judgment if one or both of these two paragraphs becomes applicable.

b. Defendants are subject to a stipulated fine of up to \$5,000.00 for each calendar day Defendants fail to be in compliance with Rule 901, whatever the cause, and even if the compliance failure is the result of operations subject to the Odor Management Plan. Rule 901 states:

"Notwithstanding the provisions of any other department rule, a person shall not cause or permit the emission of an air contaminant or water vapor in quantities that cause, alone or in reaction with other air contaminants, either of the following:



(a) Injurious effect to human health or safety, animal life, plant life of significant economic value, or property.

(b) Unreasonable interference with the comfortable enjoyment of life and property.”

c. Defendants are subject to a stipulated fine of \$500.00 for each calendar day there is a failure to be in compliance with any other provision of this Consent Judgment.

d. Subject to the limitations in paragraphs 6.2.a, 6.2.b, and 6.2.c, the amount of the stipulated fines imposed pursuant to these paragraphs shall be within the discretion of DEQ.

e. All stipulated fines that become payable under this Consent Judgment shall be paid by Defendants within thirty (30) calendar days after written demand by DEQ in the form of a check made payable to the “State of Michigan” and mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier’s Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Judgment shall include the “Payment Identification Number AQD40060” on the front of the check and/or in the cover letter with the payment.

f. The provisions of this Consent Judgment shall not bar DEQ from seeking any additional remedies or sanctions available to it under applicable law for any violation not resolved by this Consent Judgment.

g. DEQ, at its discretion, may seek stipulated fines or statutory civil fines for any violation of this Consent Judgment that is also a violation of any provision of applicable federal or state law, rule, regulation, permit, or MDEQ Administrative Order. However, DEQ is precluded from seeking both a stipulated fine under this Consent Judgment and a statutory civil fine for the same violation.

h. To ensure timely payment of the civil fine set forth in paragraph 6.1 and any stipulated fines that become due pursuant to subparagraphs 6.2.a through 6.2.e above, Defendants shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on a rate of interest which is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes, as certified by the Michigan state treasurer, compounded annually, using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full. Payment of an interest penalty by Defendants shall be made to the "State of Michigan" in accordance with subparagraph 6.2.e above. Interest payments shall be applied first towards the most overdue amounts or outstanding interest penalty owed by Defendants before any remaining balance is applied to a subsequent payment amount or interest penalty.

i. Defendants agree not to contest the legality of the civil fines in paragraph 6.1. Defendants further agree not to contest the legality of any stipulated fines assessed pursuant to paragraph 6.2 of this Consent Judgment, but otherwise reserve the right to dispute the factual basis upon which a demand by DEQ for stipulated fines is made pursuant to Section V of this Consent Judgment. In addition, Defendants agree that the civil fine in paragraph 6.1 has not been, and any stipulated fines that become payable under paragraph 6.2 will not be, assessed by DEQ pursuant to Section 5529 of Part 55, MCL 324.5529, and therefore are not reviewable under Section 5529 of Part 55.

## VII. RIGHT OF ENTRY

7.1 Defendants shall allow any authorized representative of MDEQ, upon presentation of proper credentials, to enter upon the premises of the Facility at all reasonable times for the purpose of monitoring compliance with all applicable regulations and the provisions of this Consent Judgment. This paragraph in no way limits the authority of MDEQ to conduct tests and inspections pursuant to Part 55 of NREPA and rules promulgated thereunder, or any other applicable statutory provision.

## VIII. NOTICES

8.1 Any submittal, notice, report, documentation, or recitation required by this Consent Judgment shall be submitted to the attention of:

For Plaintiff:

Wilhemina McLemore  
District Supervisor  
Detroit Field Office  
Cadillac Place  
3058 West Grand Boulevard, Suite 2-300  
Detroit, MI 48202-6058  
(313) 456-4685

For Defendants Michigan Waste Energy, Inc. and Detroit Renewable Power LLC:

David M. Beavens, Chief Financial  
Officer for  
Michigan Waste Energy, Inc. and  
Chief Financial Officer for  
Detroit Renewable Power LLC  
5700 Russell Street  
Detroit, MI 48211  
313-972-4633

Alan M. Greenberg  
Director, Environmental Quality  
Detroit Renewable Power LLC  
5700 Russell Street  
Detroit, MI 48211  
313-972-4639

Either Party may substitute for those designated to receive such notices by providing prior written notice to the other Party.

## IX. GENERAL PROVISIONS

### A. Third Parties

9.1 This Consent Judgment does not limit or affect the rights of Defendants or the State of Michigan against any third parties.

### B. Severability

9.2 Should any provision of this Consent Judgment be declared by a court of competent jurisdiction to be inconsistent with state or federal law and therefore unenforceable, the remaining provisions shall remain in full force and effect.

**C. Modification**

9.3 Any Party to this Consent Judgment may petition the Court for modification of this Consent Judgment prior to expiration of the effective period. Any modification must be in writing and approved by the Court. No Party may petition the Court for a modification of this Consent Judgment without first having made a good faith effort to reach agreement with the other party on the terms of any such modification.

**D. Other Laws**

9.4 This Consent Judgment in no way affects Defendants' responsibility to comply with any other applicable state, federal, or local laws or regulations, or with any order of this or any other court, including without limitation, any applicable amendments to the federal Clean Air Act, Part 55 of NREPA or their rules and regulations, or to the State Implementation Plan.

**E. Settlement**

9.5 This Consent Judgment is in full settlement and satisfaction of all matters alleged in the Complaint.

9.6 Entry of this Consent Judgment does not constitute a release from liability for any natural resource damages that have occurred or may occur at the Facility.

9.7 This Consent Judgment constitutes a civil settlement and satisfaction as to the resolution of the violations noted above; however, it does not resolve any criminal action that may result for those same violations.

## X. TERMINATION

10.1 This Consent Judgment shall terminate no sooner than three (3) years after Defendants submit the written report required by paragraph 3.9. Thereafter, this Consent Judgment shall terminate only upon written Notice of Termination from DEQ's Chief of the AQD and entry by the Court of a Satisfaction of Judgment. Prior to issuance of a written Notice of Termination, Defendants shall submit to the AQD Chief at the Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, a written request to terminate the Consent Judgment. The written request shall consist of a written certification that Defendants have fully complied with all the requirements of this Consent Judgment and have made all payments including all stipulated fines required by Section VI of this Consent Judgment. Specifically, this certification shall include: (i) the date of compliance with paragraphs 3.1 through 3.16 of this Consent Judgment; (ii) the date of compliance with paragraphs 3.17 and 3.18 of this Consent Judgment, if applicable; (iii) the date the Civil Fine and any Stipulated Fines that become payable under Section VI were paid; (iv) a statement that all information required under this Consent Judgment has been supplied to the AQD Detroit District Supervisor; and (v) such information as may be requested by the AQD Chief. Thereafter, this Consent Judgment shall terminate only upon the issuance by this Court of a Satisfaction of Judgment, provided full compliance with provisions of the Consent Judgment has been achieved.

## XI. RETENTION OF JURISDICTION

11.1 Prior to the termination of this Consent Judgment under paragraph 10.1 above, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Consent Judgment to assess stipulated fines, to resolve disputes arising under its terms, or to take any action the Court deems necessary or appropriate for implementation of this Consent Judgment.

## XII. EFFECTIVE DATE

12.1 This Consent Judgment shall be effective upon the date that it is entered by the Court (Effective Date).

IT IS SO ORDERED THIS 20<sup>th</sup> day of October, 2014.

IT IS FURTHER ORDERED that in compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claims and closes the case.

ROSEMARIE E. AQUILINA  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

P 37670

## SIGNATORIES AND STIPULATION

The signatories to this Consent Judgment each certify they are authorized to execute this Consent Judgment and legally bind the parties they represent. The affidavit of Edward J. Fletcher (Attachment A) is relied upon as authorizing Defendants' signatory, David M. Beavens, to legally bind Defendants to comply with


this Consent Judgment.

The parties hereby stipulate to entry of the foregoing Consent Judgment:

FOR DEFENDANTS,  
MICHIGAN WASTE ENERGY, INC. and DETROIT RENEWABLE POWER LLC:

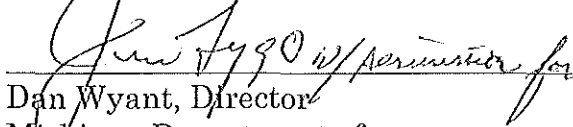


David M. Beavens,  
Chief Financial Officer for  
Michigan Waste Energy, Inc. and  
Chief Financial Officer for  
Detroit Renewable Power LLC  
Dated: \_\_\_\_\_, 2014

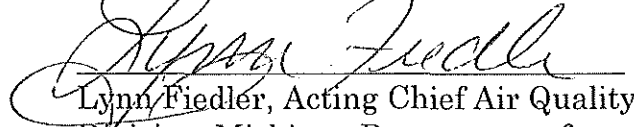


Kathryn A. Buckner (P50076)  
Buckner Law Group  
Attorney for Defendants  
Michigan Waste Energy, Inc. and  
Detroit Renewable Power LLC  
Dated: Oct 16, 2014

FOR PLAINTIFFS,  
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY:

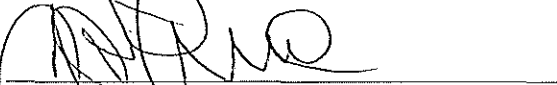


Dan Wyant, Director  
Michigan Department of  
Environmental Quality  
Dated: 10/17, 2014



Lynn Fiedler, Acting Chief Air Quality  
Division, Michigan Department of  
Environmental Quality  
Dated: 10/17, 2014

BILL SCHUETTE,  
Attorney General



John Fordell Leone (P38938)  
Assistant Attorney General  
Michigan Department of Attorney General  
Environment, Natural Resources & Agriculture Division  
Dated: Oct 17, 2014





# EXHIBIT A

THE STATE OF CONNECTICUT §  
COUNTY OF FAIRFIELD §

**AFFIDAVIT**

Edward J. Fletcher, being duly sworn, states and deposes under penalty of perjury as follows:

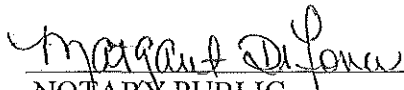
1. I certify that I am the Secretary of Detroit Renewable Power LLC, a Delaware limited liability company (“DRP”). I certify that, pursuant to both “Joinder” agreements with, respectively, the Resource Recovery Business Trust-A and the Resource Recovery Business Trust-B, both dated November 15, 2010 (attached hereto), DRP as the “Owner Participant” of such trusts is the beneficial owner of the waste-to-energy incinerator facility located at 5700 Russell Street in the city of Detroit, Michigan.
2. I certify that as the Secretary of DRP I am authorized to negotiate and execute contracts and consent judgments and to legally bind DRP to comply with such contracts and consent judgments. I certify that David M. Beavens is the Chief Financial Officer of DRP.
3. I certify that I am the Secretary of Michigan Waste Energy, Inc., a Delaware corporation (“MWE”). I certify that I am authorized to negotiate and execute contracts and consent judgments and to legally bind MWE to comply with such contracts and consent judgments. I certify that David M. Beavens is the Chief Financial Officer of MWE.
4. I certify that David M. Beavens is authorized to negotiate, execute and legally bind both DRP and MWE to comply with a Consent Judgment now being finalized between the Michigan Department of Environmental Quality as plaintiff, and DRP and MWE as defendants, regarding the waste-to-energy incinerator facility located at 5700 Russell Street in the city of Detroit, Michigan.

Further affiant sayeth not.



Edward J. Fletcher  
Secretary of Detroit Renewable Power LLC and  
Secretary of Michigan Waste Energy, Inc.

Sworn before me this 14 th day  
of October, 2014.

  
NOTARY PUBLIC  
My commission expires: 4-30-16

Margaret DeFonce  
NOTARY PUBLIC  
STATE OF CONNECTICUT  
My Commission Expires April 30, 2016

BUSINESS TRUST AGREEMENT OF RESOURCE RECOVERY BUSINESS TRUST 1991-A

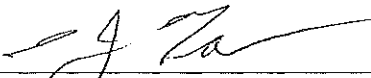
JOINDER

The undersigned is executing and delivering this Joinder pursuant to Section 11.02 of the Business Trust Agreement of Resource Recovery Business Trust 1991-A dated September 1, 1991 (the "Trust Agreement"), among EIF GDR, LLC, as Owner Participant, and Wilmington Trust Company and William J. Wade, as Owner Trustees. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Trust Agreement.

By executing and delivering to Owner Trustees this Joinder, the undersigned hereby agrees to become a party to the Trust Agreement, and shall accept, be subject to and bound by, and comply with the terms, conditions and provisions of, the Trust Agreement as the Owner Participant, and shall be entitled to the rights and benefits of the Owner Participant thereunder in the same manner as if the undersigned was an original signatory to the Trust Agreement.

Accordingly, the undersigned has executed and delivered this Joinder on November 15, 2010.

DETROIT RENEWABLE POWER LLC

By:   
Edward J. Fletcher, Vice President

BUSINESS TRUST AGREEMENT OF RESOURCE RECOVERY BUSINESS TRUST 1991-B

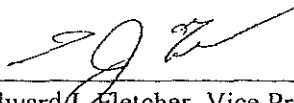
JOINDER

The undersigned is executing and delivering this Joinder pursuant to Section 11.02 of the Business Trust Agreement of Resource Recovery Business Trust 1991-B dated September 1, 1991 (the "Trust Agreement"), among Covanta Renewable Energy Detroit LLC, as Owner Participant, and Wilmington Trust Company and William J. Wade, as Owner Trustees. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Trust Agreement.

By executing and delivering to Owner Trustees this Joinder, the undersigned hereby agrees to become a party to the Trust Agreement, and shall accept, be subject to and bound by, and comply with the terms, conditions and provisions of, the Trust Agreement as the Owner Participant, and shall be entitled to the rights and benefits of the Owner Participant thereunder in the same manner as if the undersigned was an original signatory to the Trust Agreement.

Accordingly, the undersigned has executed and delivered this Joinder on November 15, 2010.

DETROIT RENEWABLE POWER LLC

By:   
\_\_\_\_\_  
Edward L. Fletcher, Vice President