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**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

ENVIRONMENTAL PROTECTION
AGENCY DECISION
2009 JUL 14 PM 12:44
DEPP-APP

In the Matter of Covanta Essex Company

Title V Operating Permit Renewal

Permit Activity No. BOP080001

Program Interest ID: 07736

Issued by the New Jersey Department of
Environmental Protection

**PETITION BY IRONBOUND COMMUNITY CORPORATION AND GREENFAITH, INC.
TO HAVE THE ADMINISTRATOR OBJECT TO
COVANTA ESSEX COMPANY'S TITLE V PERMIT**

I. Introduction

On January 8, 2009 the New Jersey Department of Environmental Protection (“DEP”) issued a Clean Air Act (“CAA”) Title V Operating Permit renewal to Covanta Essex Company (“Covanta”) to operate the Essex County Resource Recovery Facility (the “Incinerator”). Air Pollution Control Operating Title V Permit Number BOP 060001 (Exhibit 1). As will be discussed in further detail below, in the present case the DEP completely failed to fulfill its public participation obligations prior to issuing the Title V Operating Permit renewal to Covanta, thereby depriving the residents of the Ironbound and surrounding communities of their statutory right to offer comments and request a public hearing on the permit. DEP’s failure in this regard is especially egregious since the Ironbound is an environmental justice community and since, pursuant to Governor James McGreevey’s Executive Order 96, DEP was under an obligation to “provide meaningful opportunities for involvement to all people regardless of race, color, ethnicity, religion, income, or education level.” Exec. Order 96, 36 N.J.R. 1259(c) (February 14, 2004).¹ As such, the Title V permit issued to Covanta Essex on January 9, 2009 was issued in violation of New Jersey’s Executive Order 96, New Jersey’s Title V operating permit program and its implementing regulations, and the Clean Air Act and its implementing regulations. Therefore, the petitioners Ironbound Community Corporation and GreenFaith respectfully request that the EPA Administrator object to the Title V permit.

The Incinerator is located in the heart of a section of Newark, New Jersey called the Ironbound. This environmentally vulnerable neighborhood is bounded by heavily-traveled

¹ As New Jersey’s Executive Order 96 was due to expire February 17, 2009, Governor Corzine renewed New Jersey’s commitment to environmental justice by issuing Executive Order 131, which orders DEP to “provide appropriate opportunities for all persons, regardless of race, ethnicity, color, religion, income, or education level to participate in decision-making.” Exec. Order 131, 41 N.J.R. 1125(a) (February 5, 2009).

highways (Routes 1, 9, 21, 78, NJ Turnpike), polluted waterways (Passaic River, Newark Bay), the Newark International Airport, and many industrial and contaminated sites which collectively expose its residents to adverse environmental conditions.

The Incinerator contributes to these adverse environmental conditions by emitting carbon monoxide, sulfur dioxide, particulate matter, and other harmful pollutants. According to the American Lung Association, Essex County has the highest population at-risk of developing pediatric asthma due to air pollution in New Jersey. American Lung Association, *State of the Air: 2009, Groups at Risk*, available at <http://www.stateoftheair.org/2009/states/new-jersey/> (Exhibit 2). The American Lung Association also reported that Hudson County, which is directly adjacent to the location of the Incinerator, achieved failing air quality marks to high levels of particulate matter in the ambient air. *Id.*, Particle Pollution (Exhibit 3). Indeed, according to the EPA's "Green Book," both Essex and Hudson Counties are currently not attaining the National Ambient Air Quality Standard for PM_{2.5}. EPA, *The Green Book Nonattainment Areas for Criteria Pollutants*, available at <http://www.epa.gov/air/oaqps/greenbk/>. There is a concern that increasing numbers of children who attend schools in the vicinity of the Incinerator in both Hudson and Essex Counties are developing pediatric asthma and are unable to participate in outdoor physical activities. See Decl. of Sister Eleanor Uhl, O.P., dated February 20, 2009 (Exhibit 5 ¶¶ 10-11, 13); Decl. of Sister Barbara Nesbihal, S.C., dated February 20, 2009 (Exhibit 6 ¶¶ 10-12, 14); Decl. of Ana Baptista, dated February 18, 2009 (Exhibit 7 ¶ 16).²

In addition, the Ironbound is a culturally diverse, predominantly minority neighborhood,

² On February 20, 2009, Petitioners filed a Clean Air Act citizens' suit in the Federal District Court for the District of New Jersey against Covanta. The Complaint is attached hereto as Exhibit 4. All three of the above-reference declarations were filed with the Complaint.

and a large percentage of its inhabitants have incomes that place them below the poverty line. According to the 2000 Census, over a quarter of the households in the two census tracts adjacent to the Incinerator are linguistically isolated, and well over half the population in these tracts belong to a minority group. U.S. Census Bureau, *American Factfinder, Census 2000 Summary File 3*, at <http://factfinder.census.gov> (Exhibit 8). Furthermore, 1999 per capita income in census tracts 75.01 and 75.02 was \$11,106 and \$12,230, respectively. *Id.* These income levels put over a quarter of the population below the poverty level. *Id.*

Due to the disproportionate economic and environmental burdens the Ironbound community must bear, it is a recognized environmental justice community. Indeed, in the context of the Ironbound community's campaign to stop a sewage treatment plant from being built in their neighborhood, the EPA's regional environmental justice coordinator wrote that the Ironbound "community appears to meet the factors or criteria that identify environmental justice communities." See Ronald Smothers, *Ironbound Draws its Line at the Dump*, N.Y. Times, Mar. 29, 1997, at 22.

The Incinerator emits sulfur dioxide, carbon monoxide, particulate matter and other pollutants, often in levels that exceed its Title V Operating Permit limits, thereby contributing to the air pollution in the Ironbound and the adverse effects it has on community health and the environment. Therefore, the residents of the Ironbound have a heightened interest in the Incinerator and in ensuring that, given the disproportionate number of environmental burdens they already must bear, the adverse effects of the air pollutants emitted by the Incinerator are minimized.

One of the only shields protecting the residents of the Ironbound and surrounding communities from the adverse effects of air pollution is the Clean Air Act ("CAA") and the Title

V Operating Permit program, which was added to the CAA in 1990. *Clean Air Act Amendments of 1990*, Pub. L. No. 101-549, §§ 501-507, 104 Stat. 2399, 2635-48 (1990). Title V requires stationary sources of air pollution to acquire a permit prior to commencing operations and gives members of the public the right to bring suit in federal court to enforce the terms of those permits. 42 U.S.C. § 7604. In addition, the Title V operating permit program requires permitting authorities to notify the public of the issuance of a draft Title V permit or permit renewal and the opportunity to offer comments and request public hearings on the permit. 42 U.S.C. § 7661a(b)(6); 40 C.F.R. § 70.7.

Indeed, public participation in the Title V permit process is an essential part of the CAA, and “[i]t is clear that Congress intended for the EPA to object to a permit when the public participation requirements for issuing it have not been met.” *Sierra Club v. Johnson*, 436 F.3d 1269, 1280 (11th Cir. 2006)(hereinafter referred to as “*Georgia Forestwatch*”); *see also Orange Recycling & Ethanol Production Facility*, 60 Fed. Reg. 30904 (EPA Admin., June 8, 2001)(final order on petitions to object to State operating permit)(stating that “Public participation is an important part of the Title V process, and is an appropriate subject of an objection by EPA pursuant to 40 C.F.R. § 70.8(c)(3)(iii).”).

II. Parties

a. The Ironbound Community Corporation

Petitioner Ironbound Community Corporation (“ICC”) is a New Jersey not-for-profit public interest corporation located in the Ironbound neighborhood of Newark, New Jersey. Founded in 1969, by neighborhood residents, ICC works with the community to develop and operate programs addressing the neighborhood’s various needs in an effort to improve residents’ quality of life. ICC provides myriad services to the Ironbound community, and since 1980 has

been among the most active urban environmental voices in New Jersey through its Community Environmental Program (formerly, Community Health Project). For example, ICC has advocated on its own behalf and on behalf of its members and residents of the Ironbound community to improve the quality of life in the Ironbound through its Environmental Justice Advocacy & Education Project, the Passaic Riverfront Development Project, the Dioxin Decontamination Project, the Newark Brownfields Initiative, the Environmental Leadership Training in Schools, and support for the Ironbound Committee Against Toxic Waste. For more than ten years ICC has been an appointed community representative on the DEP's Environmental Justice Advisory Council; ICC was also designated as the community representative in the Lister Avenue Brownfields Development Area and served as community liaison to the NJDEP and the EPA on the Diamond Shamrock Company site remediation. Among other things, ICC researches and distributes analytical reports on environmental issues in the Ironbound, advocates before legislative and administrative bodies, and conducts public education. ICC has also received grants from the EPA for the creation of a pilot project to educate the community about the risk of asthma to children in the community. *See* (Ex. 7 ¶ 16). In addition, ICC is a member of the Steering Committee of the Coalition for Healthy Ports, a labor-environment coalition advocating for improved clean air policies and practices at Ports Newark and Elizabeth, which are adjacent to the Ironbound. In this role, ICC has met with representatives of the Port Authority of New York and New Jersey, US EPA, and NJDEP to discuss potential strategies for reducing port-related air emissions that impact the Ironbound.

ICC has individual members, volunteers, program participants, and contributors who live, work, and recreate in and around Newark, New Jersey and who breathe and are otherwise exposed to the harmful air pollutants emitted by the Incinerator. In order to fulfill its mission to

improve the quality of life for its members and the residents of the Ironbound, ICC needs to be notified of Title V permit actions pertaining to affected facilities in and around the Ironbound community. However, if notice is not published and ICC is not notified, ICC will not be able to offer comments or request a public hearing on draft permits.

b. GreenFaith

Petitioner GreenFaith, Inc. is a New Jersey non-profit membership corporation founded in 1992 and headquartered in New Brunswick, New Jersey. GreenFaith's mission is to educate, inspire and mobilize people of diverse religious backgrounds as environmental leaders. GreenFaith organizes its programs around the three core values of spirit, stewardship and justice in relation to the environment, and to that end, GreenFaith mobilizes its individual members and member religious institutions, located throughout New Jersey, to raise awareness and advocated on issues of environmental injustice. For example, in 2003, 2004, 2005, and most recently in 2008, GreenFaith gave environmental justice tours of Newark, including the Ironbound, to educate over 250 religious and community leaders about the range of environmental health threats facing Newark residents. GreenFaith is working with ICC to plan another Newark tour in November 2009. GreenFaith has also worked closely with the Natural Resources Defense Council and New York/New Jersey Baykeeper to reach a settlement with the Army Corps of Engineers ("Corps") to limit the re-distribution of dioxins as the Corps dredges the Newark Bay. Other GreenFaith initiatives include conducting energy audits and distributing compact fluorescent light bulbs in various religious institutions in Newark in an effort to reduce their energy use, advocating for the DEP to reduce diesel emissions at Newark construction sites, and providing education on Newark's environmental issues to Leadership Newark (a program for business and community leaders in Newark). Members, contributors, and supporters of

GreenFaith are dedicated to rectifying environmental injustices, as well as enjoying and protecting New Jersey's neighborhoods and natural resources. *See generally*, (Exs. 5 and 6). In addition, GreenFaith is a member of the Steering Committee of the Coalition for Healthy Ports, a labor-environment coalition advocating for improved clean air policies and practices at Ports Newark and Elizabeth, which are adjacent to the Ironbound. In this role, GreenFaith has met with representatives of the Port Authority of New York and New Jersey, US EPA, and NJDEP to discuss potential strategies for reducing port-related air emissions that impact the Ironbound. GreenFaith received a 2009 US EPA Environmental Justice Small Grant in support of its work related to Ports Newark and Elizabeth.

GreenFaith has individual members, volunteers, program participants, and contributors who live, work, and recreate in and around Newark, New Jersey and who breathe and are otherwise exposed to the harmful air pollutants emitted by the Incinerator. In order to fulfill its mission to rectify environmental injustices and improve the quality of life for its members and the residents of the Ironbound and its environs, GreenFaith needs to be notified of Title V permit actions pertaining to affected facilities in and around environmental justice communities such as the Ironbound. However, if notice is not published and GreenFaith is not notified, GreenFaith will not be able to offer comments or request a public hearing on draft permits.

III. Facts

a. The Facility

The Incinerator is located at 183 Raymond Boulevard, Newark, New Jersey, and is operated by Covanta Essex Company. (Ex. 1).³ The Incinerator is New Jersey's largest garbage incinerator, with a capacity to incinerate up to 2,800 tons of municipal solid waste per day. It has the potential to emit, among other pollutants, up to 1,260 tons per year of Nitrogen Oxide,

³ *See infra*, n. 5.

1,660 tons per year of Carbon Monoxide, 997 tons per year of Sulfur Dioxide and 140 tons per year of PM₁₀. (*Id.* at Section C, Pollutant Emissions Summary). As mentioned earlier, the Incinerator is located in Essex County, New Jersey, which is currently in Non-Attainment for EPA's PM_{2.5} standards. See New Jersey State Implementation Plan Revision for the Attainment and Maintenance of the Fine Particulate Matter National Ambient Air Quality Standard (Mar. 24, 2009), 149 *available at* <http://www.nj.gov/dep/baqp/pm25sip/PM2.5%20SIP%20Document%20Final%202009.pdf> (mapping NJ's National Ambient Air Quality Standard particulate matter nonattainment areas) (Exhibit 9).

b. Previous Proceedings

The EPA granted interim approval to New Jersey's Title V operating permit program effective June 17, 1996. 61 Fed. Reg. 24715 (May 16, 1996); 40 C.F.R. § 70, Appendix A. EPA granted full approval to New Jersey's Title V operating permit program effective November 30, 2001. 66 Fed. Reg. 63168 (Dec. 5, 2001). The DEP is the agency responsible for issuing Title V operating permits in New Jersey. N.J.S.A. § 26:2C-9(b)(8).

On July 8, 2004 the DEP issued a Title V Operating permit to Covanta Essex Company to operate the Incinerator.⁴ That permit was due to expire July 7, 2009. EPA regulations require that Title V permit renewal applications be "submitted at least 6 months prior to the date of permit expiration, or such other long time as may be approved by the Administrator..." 40 C.F.R. § 70.5(a)(iii). Pursuant to New Jersey's Title V operating permit program, Covanta was required to submit its application for renewal of its Title V operating permit at least 12 months

⁴ At the time the July 8, 2004 permit was issued, Covanta Essex Company was known as American Ref-Fuel Company of Essex County.

prior to the expiration of that permit. N.J.A.C. § 7:27-22.30(c). Therefore, a timely application for renewal would have been submitted sometime on or around July 7, 2008.

ICC and GreenFaith sent a Notice of Intent to Commence Civil Action against Covanta to the DEP, among others, on March 8, 2007. (Exhibit 18) On March 27, 2008, Ana Baptista, Program Manager for ICC, wrote to the DEP Environmental Justice Coordinator inquiring as to whether Covanta had submitted any kind of formal or informal proposals to DEP. E-mail from Ana Baptista to Maria Franco-Spera, DEP Environmental Justice Coordinator (Mar. 27, 2008) (Exhibit 10). DEP responded the next day, stating "DEP has not received any applications from the Covanta Essex facility." *Id.*, E-mail from Maria Franco-Spera, DEP Environmental Justice Coordinator, to Joe Della Fave, ICC Executive Director (Mar. 28, 2008). Furthermore, Ms. Baptista also made other verbal inquiries regarding developments relating to the Incinerator, but was never informed that Covanta had submitted an application for permit renewal or that a draft permit had been issued.

On or around May 2, 2008, Covanta Essex submitted an application for renewal of its Title V Operating Permit to DEP. According to the representations of the DEP, the period for public comment on Covanta's draft permit ended on October 22, 2008. E-mail from Francis Steitz, Chief, DEP Bureau of Air Permits, to Maria Franco-Spera, DEP Environmental Justice Coordinator (May 15, 2009) (Exhibit 11). If taken as true, this would mean that DEP issued Covanta's draft permit no later than September 22, 2008.

DEP represented that ICC was on the mailing list required by N.J.A.C. § 7:27-22.11(e), but that it sent notice to the Mayor of Newark, the Newark Health Department, EPA Region 2 and Covanta on September 12, 2008. (Exs. 11, 13-17). DEP never sent notice to ICC, and it is still unclear whether DEP actually sent the above-mentioned letters. Open Public Records

Requests to DEP reveal that DEP never published notice of the issuance of the draft permit, or sent notice to a single member of the public (Ex. 17). The only comments that DEP received during the comment period were from Covanta.

After the close of the public comment period, DEP issued a proposed permit to the EPA on or around November 14, 2008. Therefore, EPA's 45-day review period would have ended on or around December 30, 2008. On January 8, 2009, DEP issued a Title V operating permit renewal to Covanta.

IV. Argument

a. Legal Background and Standard of Review

In 1990 Congress amended the Clean Air Act to include the Title V Operating Permit Program. *Clean Air Act Amendments of 1990*, Pub. L. No. 101-549, §§ 501-507, 104 Stat. 2399, 2635-48 (1990). The Title V Operating Permit Program "requires stationary sources of air pollution such as manufacturing and electricity plants to obtain permits which include emission limitations and other conditions that ensure compliance with Clean Air Act's air quality control standards." *Georgia Forestwatch*, 436 F.3d at 1272; 42 U.S.C. § 7661a(a). Title V permits "generally do[] not impose new substantive air quality control requirements," but rather serve to consolidate all of the requirements for a certain facility into a single permit. *Georgia Forestwatch*, 436 F.3d at 1272. Thus, the "Title V program strives to 'enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.'" *Id.* (quoting *Operating Permit Program*, 57 Fed. Reg. 32250, 32251 (July 21, 1992)).

The Clean Air Act requires that whenever a permit renewal is proposed the public must be given a 30-day period to make comments on the draft permit renewal. After the close of the

30-day period for public comment on draft Title V permits and permit renewals, the permitting authority will consider all comments received, prepare a "proposed permit," and transmit the proposed permit to the EPA, which then has 45 days to review it. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8. If the permit was not issued in compliance with the requirements of the Clean Air Act, including the public participation requirements in 40 C.F.R. § 70, the EPA will object to its issuance. 40 C.F.R. § 70.8(c). If the EPA does not object to the proposed permit, then "any person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection." 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d).

Petitions to the EPA to object to the issuance of a proposed permit "shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 70.7(h) of this part, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless grounds for such objection arose after such period." 40 C.F.R. § 70.8(d); 42 U.S.C. § 7661d(b)(2). The EPA Administrator has a non-discretionary duty to grant a petitioner's request to object to a proposed permit where the petitioner "demonstrates to the Administrator that the permit is not in compliance with the requirements of [the Clean Air Act]." 42 U.S.C. § 7661d(b)(2); *see also* *Sierra Club v. Johnson*, 541 F.3d 1257, 1265 (11th Cir. 2008) (hereinafter referred to as "*Georgia Power*"). Any denial of a petition submitted to the EPA pursuant to 40 C.F.R. § 70.8(d) is subject to judicial review in federal court. 42 U.S.C. § 7607.

b. EPA should object to the renewal permit because the DEP's public participation procedures did not comport with Part 70 requirements

Title V permit renewals may not be issued unless "the permitting authority has complied with the requirements for public participation under [40 C.F.R. § 70.7(h)]." 40 C.F.R. § 70.7(a)(1)(ii). § 70.7(h) requires the permitting authority to publish notice of the opportunity to

review and comment on draft permits “in a newspaper of general circulation in the area where the source is located,” to develop a mailing list that includes those who have requested to receive notification and to mail notice directly to those on the list, and to use “other means if necessary to assure adequate notice to the affected public.” 40 C.F.R. § 70.7(h); *see also* N.J.A.C. § 7:27-22.11(e). As demonstrated below, DEP failed to publish notice or send notice to a single member of the affected public, including ICC, the sole member of the abovementioned mailing list. DEP did not utilize means that would assure adequate notice to the affected public. Therefore, the Incinerator’s current permit is defective and EPA should be object to it.

i. DEP did not provide public notice of this permit via a publication in a newspaper of general circulation in the area in which the facility is located

As mentioned above, 40 C.F.R. § 70.7(h) requires that the permitting authority publish notice of the opportunity to review and offer comments on draft permits “in a newspaper of general circulation in the area where the source is located.” 40 C.F.R. § 70.7(h); *see also* N.J.A.C. § 7:27-22.11(e).⁵

The Star Ledger is New Jersey’s largest circulated newspaper and is based in Newark, New Jersey. The Chief of DEP’s Bureau of Air Permits represented in an email message dated May 18, 2009, that DEP published notice of the opportunity for the public to comment on Covanta’s draft Title V operating permit renewal in the September 22, 2008 edition of The Star Ledger. (Ex. 11). However, notice was never published on that date. Letter from William J. Schulte, Esq., to Legal Ads Department, The Star Ledger (June 4, 2009) (Exhibit 12).

⁵ While EPA’s regulations state that permitting authorities may publish notice in a newspaper of general circulation in the area where the source is located *or* in a State publication designed to give general public notice, 40 C.F.R. § 70.7(h), DEP’s regulations require the DEP to publish notice in a newspaper of general circulation. N.J.A.C. § 7:27-22.11(e).

In addition, the Chief of the Bureau of Air Permits represented that DEP sent notice letters to the Mayor of Newark, the Newark Health Department, EPA Region 2 and Covanta, but was able to produce only unsigned copies of these letters. (Exhibits 11, 13-16). Each of those letters indicated to the recipients that public notice would be published in the Star Ledger "on or around September 19, 2008" and that the period for public comment would end on October 20, 2008. (Exhibits 14-17). However, a search of the Star Ledger on and around those dates, and calls to the Star Ledger suggest that notice of Covanta's draft permit in fact was never published.

"Public participation is an important part of the Title V process, and is an appropriate subject of an objection by EPA," *Orange Recycling*, 66 Fed. Reg. 30904. Since DEP did not comply with the newspaper publication requirements in 40 C.F.R. § 70.7(h) and N.J.A.C. § 7:27-22.11(e), Covanta's Title V operating permit renewal was issued in violation of EPA and DEP regulations. See 40 C.F.R. § 70.7(h)(1); N.J.A.C. § 7:27-22.11(e); *Georgia Forestwatch*, 436 F.3d at 1275. Since "[t]he regulations implement the statutory requirements...[i]t follows that [EPA's] duty to object extends to the implementing regulations." *Georgia Forestwatch*, 436 F.3d at 1280. Therefore, EPA should exercise its authority pursuant to 40 C.F.R. § 70.8(c)-(d) and object to the issuance of the Covanta's Title V operating permit renewal, revoke the permit, and require DEP to re-notice the permit for a new 30-day public comment period. 40 C.F.R. §§ 70.7(a)(1)(ii), 70.8(d); N.J.A.C. § 7:27-22.12(i).

ii. DEP did not develop an adequate mailing list and did not send notice to ICC even though they were on DEP's mailing list.

As mentioned above, EPA regulations require that notice be given by the permitting authority "to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list." 40 C.F.R. § 70.7(h)(1). Likewise, New Jersey's Title V operating permit program requires the DEP to "mail the notice to persons on a mailing list

developed by the Department, including to persons who request in writing to be on the mailing list.” N.J.A.C. § 7:27-22.11(e).

DEP’s mailing list consisted of only one name, ICC, and DEP failed to send notice to ICC. E-mail from Kathy Mantuano to Evelyn Molder, DEP Office of Record Access (June 30, 2009) (Exhibit 17). ICC rightly should have been on the list, since employees from ICC made several verbal and written inquiries regarding any developments relating to the Incinerator. (Ex. 10). Indeed, Ana Baptista, Program Manager of the ICC, is a sitting member of the DEP’s Environmental Justice Advisory Committee and has frequent contacts with various DEP officials, many of whom are fully aware of the Ironbound Community Corporation’s interest in the Incinerator. (Ex. 7 ¶ 14). Furthermore, both DEP and EPA were in receipt of a copy of the Notice of Intent to Commence Civil Action sent by the Ironbound Community Corporation and GreenFaith to the Incinerator on March 8, 2007. Letter from Kathleen Shrekast, Rutgers Environmental Law Clinic, to Covanta Essex (Mar. 8, 2007) (Exhibit 18). Therefore, even absent ICC’s written and verbal requests to be notified of the issuance of a draft renewal permit to Incinerator, DEP was aware of ICC’s and GreenFaith’s interest in the Incinerator and its impact on the community in which it is located. As such, DEP should have sent notice of the issuance of Incinerator’s draft permit renewal to ICC and GreenFaith, but never did.

Instead, according to the Chief of the Bureau of Air Permits, DEP sent notice to the Mayor of Newark, New Jersey, the Health Department of Newark, New Jersey, EPA Region 2, and to Incinerator. (Exhibits 11, 13-16). DEP did not send notice to any members of the affected public. *Id.* Sending notice only to government agencies and the facility itself is hardly sufficient to “assure adequate notice to the affected public.” 40 C.F.R. § 70.7(h); N.J.A.C. § 7:27-22.11(e); *see also Georgia Forestwatch*, 436 F.3d at 1280.

Therefore, because DEP did not comply with the mailing list requirements for public participation under 40 C.F.R. § 70.7(h) and N.J.A.C. § 7:27-22.11(e), EPA should object to the issuance of Covanta's Title V operating permit renewal, revoke the permit, and require DEP to re-notice the permit for a new 30-day public comment period. 40 C.F.R. §§ 70.7(a)(1)(ii), 70.8(d); N.J.A.C. § 7:27-22.12(i).

c. DEP's failure to abide by the public participation requirements made it impracticable for the objections in the present petition to be raised during the 30-day public comment period.

As a result of DEP's failure to abide by the Title V public participation requirements, neither ICC nor any other members of the affected public were made aware when DEP issued Covanta's draft permit renewal and opened the public comment period. Consequently, ICC and other members of the affected public were effectively deprived of their right to offer comments and request a hearing on the draft permit. 42 U.S.C. § 7661a(b)(6).

After the close of the 30-day public comment period DEP is required to consider any comments submitted on the draft permit and then issue a "proposed permit" to the Administrator of the EPA for review, 42 U.S.C. § 7661d(a)(1); 40 C.F.R. § 70.8(a)(1); N.J.A.C. § 7:27-22.12(a), which is available to any interested person upon request. N.J.A.C. § 7:27-22.12. EPA has 45 days to review the proposed permit and make objections. 40 C.F.R. § 70.8(c)(1); N.J.A.C. § 7:27-22.12. If the EPA does not object to the proposed permit within this period, then parties have 60 days to petition the EPA Administrator to object. 40 C.F.R. § 70.8(d); N.J.A.C. § 7:27-22.12(f). Petitions must contain objections raised during the public comment period unless it was impractical to raise the objection or grounds for the objection arose after the period ended. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); N.J.A.C. § 7:27-22.12(g).

Since DEP not only failed to publish notice of the issuance of Covanta's draft Title V permit renewal in a newspaper of general circulation, but also failed to send notice to ICC, Petitioners had no way of knowing when DEP issued the draft permit. Therefore, it was impracticable for ICC or GreenFaith to raise the issue of the DEP's failure to abide by the Title V public participation requirements during the public comment period. Indeed, DEP's failure to ensure that all of Title V's public participation requirements were met had the effect of precluding ICC and GreenFaith, as well as the rest of the affected community, from being involved in the permitting process at all. EPA should therefore waive the requirement that the instant petition be based on comments raised during the requisite 30-day public comment period because it was effectively impossible for Petitioners to raise the issues in this petition during that period. 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); N.J.A.C. § 7:27-22.12(g).

d. EPA has a non-discretionary duty to object to a Title V permit where a petitioner demonstrates that the permit is not in compliance with the requirements of the Clean Air Act

Title V of the CAA clearly states that the EPA Administrator "*shall* issue an objection [to a Title V permit] if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661d (b)(2)(emphasis added). While it has been recognized that there is some ambiguity with respect to the burden facing a petitioner under § 7661d(b)(2) to demonstrate non-compliance, courts will generally only grant deference to the Administrator where the Administrator has made a "reasonable interpretation" of whether a petition in fact demonstrates non-compliance. *Georgia Power*, 541 F.3d at 1267. Where it has been clearly demonstrated that a Title V permit was not issued in compliance with Title V requirements, the duty on the part of the EPA Administrator to object to the permit is non-discretionary. *See*

Georgia Forestwatch, 436 F.3d at 1280; *Georgia Power*, 541 F.3d at 1265; *N.Y. Pub. Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.12 (2nd Cir. 2003). The conference report that accompanied the bill that became Title V states: "Simply put, the Administrator is required to object to permits that violate the Clean Air Act. This duty to object to such permits is a nondiscretionary duty. Therefore, in the event that a petitioner demonstrates that a permit violates the Act, the Administrator must object to that permit." 136 Cong. Rec. S16895 (1990).

In *Sierra Club v. Johnson*, the plaintiffs sought review of an EPA order denying their request that the EPA object to a Title V permit that the Georgia Environmental Protection Division had issued. *Georgia Forestwatch*, 436 F.3d at 1272. The basis of the plaintiffs' request was that the Georgia Environmental Protection Division had failed to create a mailing list and mail notice of the issuance of the draft permit and opportunity to comment to those on the list, as required by 40 C.F.R. § 70.7(h)(1). *Id.* at 1275. In responding to the plaintiff's petition, the EPA conceded that a mailing list is in fact required by § 70.7(h)(1) and that the Georgia EPD failed to create one prior to issuing the permit. *Id.* at 1279. EPA denied the plaintiffs' petition anyway, reasoning that "the lack of mailing list notice did not create a defect in the permit because petitioner has not demonstrated that this omission actually resulted in less meaningful public participation." *Id.* at 1279-1280. The court rejected EPA's argument and stated that the CAA and EPA regulations "do not allow EPA unfettered discretion to ignore obvious violations of Title V permit program requirements," vacated the EPA order, and remanded the case to EPA for further consideration. *Id.* at 1280. In a later case before the 11th Circuit involving a separate petition submitted by the Sierra Club and the Coosa River Basin Initiative to the EPA, the court again concluded that "where a petition successfully demonstrates non-compliance, an objection by the Administrator *must* ensue." *Georgia Power*, 541 F.3d at 1267 (emphasis added).

Similarly, in the instant case, Petitioners are requesting that the EPA object to Covanta's Title V permit because the permitting authority, DEP, failed to follow the public participation requirements in 40 C.F.R. § 70.7(h) and N.J.A.C. § 7:27-22.11(e). Petitioners have demonstrated that, despite assurances from DEP that they published notice of the issuance of Covanta's draft Title V permit renewal in a newspaper of general circulation, notice was in fact never published. (Exs. 11-12). Petitioners also demonstrated that, ICC made numerous inquiries, both verbally and in writing, requesting notice of any developments relating to the Incinerator and Covanta's permit renewal, and DEP was aware of both ICC's and GreenFaith's heightened interest in the Incinerator by virtue of the fact that they were in receipt of petitioner's Notice of Intent to Sue. (Exs. 10, 18). Despite the fact that ICC is the only entity named on DEP's mailing list, the DEP failed to send ICC notice. (Ex. 17). DEP did not send notice to a single member of the public.

As noted above, a Title V permit may not be issued unless it complies with all of the conditions in 40 C.F.R. § 70.7(a)(1), including the public participation requirements in § 70.7(h). Congress clearly intended for the EPA to object to Title V permits that have not been issued in compliance with the public participation requirements. *Georgia Forestwatch*, 436 F.3d at 1280. The EPA Administrator has also concluded that a failure to abide by the public participation requirements contained in Title V "is an appropriate subject of an objection by EPA pursuant to 40 C.F.R. § 70.8(c)(3)(iii)." *Orange Recycling*, 66 Fed. Reg. 30904. Accordingly, EPA is under a non-discretionary duty to object to Covanta's January 9, 2009 Title V Permit. In accordance with 40 C.F.R. § 70.8(d), "[i]f the permitting authority has issued a permit prior to receipt of an EPA objection...the Administrator will modify, terminate, or revoke such permit."

e. The circumstances of this case justify the application of the doctrine of equitable tolling to the 60-day time limit for filing petitions

Given the DEP's failure to publish notice of the issuance of Covanta's draft permit in a newspaper and failure to send notice to a single member of the public, and the fact that the Ironbound is a recognized environmental justice community, the circumstances of this case justify the application of the doctrine of equitable tolling to the 60-day period for submitting petitions to the EPA. Furthermore, Presidential Executive Order 12898 requires "each Federal agency [to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994). Therefore the EPA should consider the Petition and respond to it in accordance with 42 U.S.C. § 7661d(b)(2).

Upon the conclusion of the EPA's 45-day period for reviewing proposed Title V permits, petitioners have a 60-day period during which they "may petition" the Administrator to object to the permit if the Administrator has not already done so. 42 U.S.C. 7661d(b)(2). DEP transmitted a proposed Title V renewal permit to EPA on or around November 14, 2008. Therefore, the EPA's 45-day review period would have ended on or around December 30, 2008. Accordingly, in order to file a petition within the 60-day period provided by the CAA, Petitioners would have ordinarily had to file a petition by March 2, 2009. 42 U.S.C. § 7661d(b)(2). The Petition is dated July 10, 2009. As such, the present petition was not filed within the 60-day time period provided for in § 7661d(b)(2).

In order to determine whether to apply the doctrine of equitable tolling in a given case, courts will generally examine the relevant statute and the circumstances under which the claim

for application of the equitable tolling doctrine is asserted. According to the United States Supreme Court, “[o]rdinary limitations statutes use fairly simple language,” and can be read as “containing an implied ‘equitable tolling’ exception.” *United States v. Brockamp*, 519 U.S. 347, 350 (1997), *superseded by statute*, 26 U.S.C. § 6511, *as recognized in Katz v. United States*, 2006 WL 2418837, 10-12 (Fed. Cl. July 25, 2006). As an example of an “ordinary limitations statute” that uses “simple language” and contains an implied equitable tolling exception, the Court cited 42 U.S.C. § 2000e-16(c), which states in relevant part that “[w]ithin 90 days of receipt of notice of final [EEOC] action...an employee...*may* file a civil action...” *Id.* at 50 (emphasis added). With regard to the limitations language, 42 U.S.C. § 7661d(b)(2) is substantially similar: “...any person *may* petition the Administrator within 60 days after the expiration of the 45-day review period” (emphasis added). Therefore, taking the Supreme Court’s reading of 42 U.S.C. § 2000e-16(c) into consideration, § 7661d(b)(2) can plausibly be read as containing an implied equitable tolling exception.

On the other hand, the Supreme Court has held that equitable tolling is not available where it would be “inconsistent with the text of a relevant statute.” *United States v. Beggerly*, 524 U.S. 38, 48 (1998). Moreover, a deadline that is “framed in ‘unusually emphatic form’ can evidence congressional intent to bar tolling.” *Sierra Club v. Whitman*, Docket No. 1:01-cv-01991, at *7 (D.D.C. 2002) (hereinafter referred to as “*Caldwell Tanks*”) (memorandum opinion) (*citing Brockamp*, 519 U.S. at 350). In *Beggerly* the Court declined to apply the doctrine of equitable tolling to a claim under the Quiet Title Act, 28 U.S.C. § 2409a *et seq.*, whose statute of limitations is unusually long at 12 years and does not begin to run until the plaintiff “knew or should have known” of the underlying claim. *Beggerly*, 524 U.S. at 48-49. In *Brockamp* the Court also declined to apply equitable tolling to a late-filed claim for a tax refund under 26

U.S.C.S. § 6511 because the statute was “both detailed and reiterated the limitations period a number of times, thereby emphasizing the fixity of the requirement.” *Caldwell Tanks*, at *9 (citing *Brockamp*, 519 U.S. at 350-52). In contrast, “the § 7661d(b)(d)(2) petition deadline is not particularly insistent, providing additional evidence of congressional acquiescence to tolling.” *Caldwell Tanks*, at *7. In *Caldwell Tanks*, a case involving a § 7661d(b)(2) petition, the D.C. District Court noted that while “Title V states that any person ‘may’ petition within 60 days...when the statute refers to actions of the permitting authority and EPA, the term ‘shall’ is employed.” *Id.* (emphasis in original). Therefore, the court held that since the 60-day time period for filing a petition is not particularly insistent or emphatic, application of equitable tolling to the 60-day time period would not be inconsistent with the text of Title V. *Id.*

Furthermore, equitable tolling is generally available in circumstances where “(1) the defendant has actively misled the plaintiff respecting the cause of action, (2) the plaintiff has in some extraordinary way been prevented from asserting his rights, or (3) the plaintiff has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum.” *Allentown School District v. Marshall*, 657 F.2d 16, 20 (3rd Cir. 1981) (quoting *Smith v. American President Lines, Ltd.*, 571 F.2d 102 (2d Cir. 1978)). Petitioners have demonstrated in this Petition how they have been prevented from asserting their rights. DEP completely failed to fulfill its public notice obligations prior to issuing Covanta’s Title V permit, thereby foreclosing Petitioners’ opportunity to be involved in the permitting process, as is their right. ICC made numerous inquiries to DEP regarding the Incinerator and the fact that it was on DEP’s mailing list demonstrates that it was diligent in preserving its rights. *See, e.g., Caldwell Tanks*, at *13. As a result of DEP’s failure, there was no reliable way for Petitioners to know when public comments would be due to DEP, when they could request a public hearing, or when DEP would

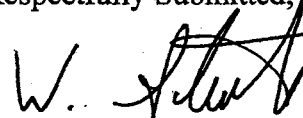
transmit the proposed permit to EPA triggering the running of the statute of limitations on petitions to the EPA.

Therefore, in light of the circumstances of this case and EPA's obligations under Executive Order 12898, the EPA should apply the doctrine of equitable tolling to this Petition and consider it in accordance with 42 U.S.C. § 7661d(b)(2).

V. Conclusion

Based on the foregoing arguments, Petitioners hereby request EPA to object to Covanta's January 9, 2009 Title V Permit and require DEP to revoke the final permit, and re-issue a draft permit in accordance with the CAA, EPA regulations, and New Jersey's Title V operating permit program.

Respectfully Submitted,



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Counsel for Petitioners

Dated: July 10, 2009

CC: George Pavlou, Acting Regional Administrator, EPA Region 2
Steve Riva, Chief, Air Programs Branch, Permitting Section, EPA Region 2
Ironbound Community Corporation
GreenFaith, Inc.

Exhibit 1

Environmental Regulation
Division of Air Quality
Air Quality Permitting Element
P. O. Box 27
Trenton, NJ 08625-0027

Air Pollution Control Operating Permit

Permit Activity Number: BOP990001

Program Interest Number: 07736

Mailing Address	Plant Location
JAMES B WHITE AMERICAN REF FUEL CO OF ESSEX CNTY 183 RAYMOND BLVD Newark, NJ 07105	AMERICAN REF FUEL CO OF ESSEX CNTY 183 RAYMOND BLVD Newark Essex County

Operating Permit Approval Date: July 8, 2004

Operating Permit Expiration Date: July 7, 2009

This initial Operating Permit is approved and issued under the authority of Chapter 106, P.L. 1967 (N.J.S.A. 26:2C-9.2). Equipment at the facility must be operated in accordance with the requirements of this permit.

This operating permit includes a permit shield, pursuant to the provisions of N.J.A.C. 7:27-22.17. This operating permit does not include compliance schedules as part of the approved compliance plan.

The permittee shall submit to the Department and to the EPA, at the addresses given below, a periodic compliance certification, in accordance with N.J.A.C. 7:27-22.19 and the schedule for compliance certifications set forth in the compliance plan in this operating permit. **The annual compliance certification is due to the Department and the EPA within 60 days of the expiration of each 1 year anniversary from the Operating Permit Approval Date.**

New Jersey Department of Environmental Protection
Air & Environmental Quality Compliance & Enforcement
401 East State Street, P. O. Box 422
Trenton, New Jersey 08625-0422

United States Environmental Protection Agency, Region II
Air Compliance Branch
290 Broadway
New York, New York 10007-1866

New Jersey Department of Environmental Protection
Air and Environmental Quality Compliance & Enforcement
Metro Regional Enforcement Office
2 Babcock Place
West Orange, NJ 07052

Approved by:

David Olson
Bureau of Operating Permits

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Program Interest Number: 07736

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Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

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FACILITY PROFILE

Section B

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

REASON FOR PERMIT

The reason for issuance of this permit is to comply with the air pollution control permit provisions of Title V of the federal Clean Air Act, federal rules promulgated at 40 CFR 70, and state regulations promulgated at N.J.A.C. 7:27-22, which require the state to issue operating permits to major facilities. This is the operating permit for the facility listed on the cover page.

New Jersey has elected to integrate its Title I New Source Review (NSR) preconstruction permits with the new Title V Operating Permits instead of issuing separate permits. Consequently, the existing preconstruction permit provisions that were previously approved for this facility have been consolidated into this permit. This permit may also include applicable requirements for grandfathered sources.

This permit action consolidates previously approved permit terms and conditions into one single permit for the facility. The New Jersey Department of Environmental Protection (Department) issues this operating permit to operate equipment and air pollution control devices to this facility. In the operating permit application, the facility represented that it meets all applicable requirements of the federal Clean Air Act and the New Jersey Air Pollution Control Act codified at N.J.S.A. 26:2C. Based on an evaluation of the data contained in the facility's application, the Department has approved this operating permit.

This permit allows this facility to operate the equipment and air pollution control devices specified in this permit and emit up to a level specified for each source operation. The signatories named in the application are responsible for ensuring that the facility is operated in a manner consistent with this permit, its conditions, and applicable rules.

Section C

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

POLLUTANT EMISSIONS SUMMARY

The following table indicates the facility's Potential to Emit (PTE) emissions summary:

Source Categories	Facility Total Potential to Emit (tons per year)								
	Primary						Secondary		
	VOC (total)	NO _x	CO	SO ₂	TSP (total)	Other (total)	PM ₁₀ (total)	Pb	HAPs (total)
Emission Unit Summary	83	1260	1660	997	140	133	140	6.57	306
Batch Process Summary	NA	NA	NA	NA	NA	NA	NA	NA	NA
Non-Source Fugitive Emissions ¹	NA	NA	NA	NA	NA	NA	NA	NA	NA
Group Summary	NA	NA	NA	NA	NA	NA	NA	NA	NA
Total Emissions ²	83	1260	1660	997	140	133	140	6.57	306

VOC Volatile Organic Compounds

NO_x Nitrogen Oxides

CO Carbon Monoxide

SO₂ Sulfur Dioxide

TSP Total Suspended Particulates

Other Any other air contaminant regulated under the Federal Clean Air Act

PM₁₀ Particulates under 10 microns

Pb Lead

HAPs Hazardous Air Pollutants

¹ Not applicable to this facility.

² Total emissions from this facility do not include emissions from Insignificant Sources.

Section C

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

POLLUTANT EMISSIONS SUMMARY

The following table indicates the facility's hazardous air pollutants (HAP) emissions summary:³

HAP	TPY
Arsenic	0.067
Beryllium	0.003
Cadmium	0.565
Chromium	0.158
Dioxin TCDD (2,3,7,8)	0.000131
Hydrogen Chloride	284
Hydrogen Fluoride	10.8
Lead	6.57
Mercury	0.105
Nickel	0.043
Polycyclic Organic Matter	3.81

³ Do not sum these values for the purpose of establishing a total HAP potential to emit. See previous page for the allowable total HAP emissions.

Section D

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

POLLUTION PREVENTION REPORTING

General Pollution Prevention Conditions

The following evaluation requirements are included to track the facility's progress in several critical areas identified in the National Environmental Performance Partnership System (NEPPS). Nitrogen Oxides (NOx) and Volatile Organic Compounds (VOC) are precursors to the air pollutant Ozone, for which New Jersey is non-attainment with the air quality standard for the protection of public health. The control of hazardous air pollutants (HAPs) is also a focus item for the next decade in order to minimize localized hot spots and general urban air toxics levels. Therefore, the Department is requiring evaluation of emission trends at 5-year intervals for major sources of these air contaminants. Also, as part of significant modification applications, proposed major increases of these air contaminants requires evaluation of pollution prevention and cross media effects.

The evaluation of these trends requires no increased monitoring. Rather it utilizes existing monitoring data, as reported annually in Emission Statements (NOx and VOC) and annual Release and Pollution Prevention Reports (HAPs). The intent of this evaluation is to better utilize the existing data by having the company, the public and the Department review major source trends periodically, as part of the 5-year renewal review and public comment process. The Department requests that the facility-wide trends be presented on graphs for attachment to the public information document for the 5-year renewal.

Pollution prevention includes changes that result in the reduction in use or generation of non-product output per unit of product. Cross media effects are practices that result in transferring the ultimate release or disposal of a contaminant from one environmental medium (e.g. air) to another environmental medium (e.g. water, solid or hazardous wastes).

Information to include with the renewal application:

1. The facility will evaluate annual emission trends over the last five years for actual air contaminant emissions of Volatile Organic Compounds (VOC), Nitrogen Oxides (NOx), if the facility's potential to emit VOC or NOx is greater than 25 tons per year, or any Hazardous Air Pollutants (HAP), for which the facility's potential to emit is greater than 10 tons per year. The VOC and NOx emission data should reflect annual emission statement reports submitted pursuant to N.J.A.C. 7:27-21, and the HAP emissions data should reflect the annual Release and Pollution Prevention Report submitted pursuant to N.J.A.C. 7:1G-5 and 6 and N.J.A.C. 7:1K-6. Although not required, the Department encourages the facility to explain the reason for any significant trend, including whether it is the result of cross media shifts (to air, water, or solid waste) and/or pollution prevention. Changes should be itemized for each emission unit (or process) with a potential to emit over five tons per year of VOC or NOx or a potential to emit over one ton per year of any HAP. Also, show the net change for the facility.
2. The facility will summarize annual potential to emit limits (allowable emissions) for VOC, NOx, and HAPs, which are subject to reporting under 1 above, for the last five years. Changes should be itemized for each emission unit (or process) with a potential to emit over five tons per year of VOC or NOx or a potential to emit over one ton per year of any HAP. Also, show the net change for the facility.
3. The facility will summarize five-year trends in annual VOC, NOx, and HAP emissions, which are subject to reporting under 1 above, on a pound per unit of product basis, based on annual actual emissions and annual

production over the five year period. Changes should be itemized for each emission unit (or process) with a potential to emit over five tons per year of VOC or NOx or a potential to emit over one ton per year of any HAP. Also, show the net change for the facility.

4. The facility will discuss five-year trends in actual air contaminant emissions of non-source VOC and HAP fugitives, which are subject to reporting under 1 above; explain measures taken to minimize such fugitives; and provide an explanation for any significant changes.

Information to include with an application for a Significant Modification to this permit:

1. For any significant modifications, the facility is encouraged to explain any cross media shifts of VOC and HAP air contaminants as part of the significant modification application. If an explanation is provided, the facility should identify the pollutant and the specific environmental media to which the pollutant is anticipated to be transferred, whether it be from air to solid waste or water, or from water or solid waste to the air.

Section E

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

DEFINITIONS

The terms used in this permit are used consistent with the definitions at N.J.A.C. 7:27-1 and N.J.A.C. 7:27-22. Any terms defined in this section are not defined at N.J.A.C. 7:27-1 or N.J.A.C. 7:27-22, and are needed for clarifying the permit.

“Permitting Authority” means the New Jersey Department of Environmental Protection (NJDEP).

The “EPA”, or the “Administrator”, means the Administrator of the EPA or his designee.

“M” preceding a unit of measure means one thousand. For example, “10 M gal.” means ten thousand gallons.

“MM” preceding a unit of measure means one million. For example, “10 MM gal.” means ten million gallons.

“Grandfathered” means, in reference to equipment or control apparatus, that construction, reconstruction, or modification occurred prior to enactment of N.J.S.A. 26:2C-9.2 on June 15, 1967, or prior to the subsequent applicable revisions to rules and regulations codified at N.J.A.C. 7:27-8 that occurred March 5, 1973, June 1, 1976, April 5, 1985, and October 31, 1994, and no construction, reconstruction, or modification of the equipment or control apparatus has occurred since.

“Compliance Plan” means the applicable requirements, monitoring requirements, recordkeeping requirements, and submittal/action requirements detailed in Section J, Facility Specific Requirements, of the Operating Permit.

Section F

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

GENERAL PROVISIONS AND AUTHORITIES

Operating Permits

1. No permittee shall allow any air contaminant, including an air contaminant detectable by the sense of smell, to be present in the outdoor atmosphere in a quantity and duration which is, or tends to be, injurious to human health or welfare, animal or plant life or property, or which would unreasonably interfere with the enjoyment of life or property. This shall not include an air contaminant which occurs only in areas over which the permittee has exclusive use or occupancy. Conditions relative only to nuisance situations, including odors, are not considered Federally enforceable. [N.J.A.C. 7:27-22.16(g)8]

2. Any deviation from operating permit requirements which results in a release of air contaminants shall be reported to the Department as follows:

If the air contaminants are released in a quantity or concentration which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints, the permittee shall report the release to the Department:

- i. Immediately on the Department hotline at 1-877-927-6337, pursuant to N.J.S.A. 26:2C-19(e); and
- ii. As part of the compliance certification required in N.J.A.C. 7:27-22.19(f). However, if the deviation is identified through source emissions testing, it shall be reported through the source emissions testing and monitoring procedures at N.J.A.C. 7:27-22.18(e)3; or

If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, the permittee shall report the release to the Department as part of the compliance certification required in N.J.A.C. 7:27-22.19(f), except for deviations identified by source emissions testing reports, which shall be reported through the procedures at N.J.A.C. 7:27-22.18(e)3; or

If the air contaminants are released in a quantity or concentration which poses no potential threat to public health, welfare or the environment and which will not likely result in citizen complaints, and the permittee intends to assert the affirmative defense afforded by N.J.A.C. 7:27-22.16(l), the violation shall be reported by 5:00 P.M. of the second full calendar day following the occurrence, or of becoming aware of the occurrence, consistent with N.J.A.C. 7:27-22.16(l). [N.J.A.C. 7:27-22.19(g)]

3. The permittee shall comply with all conditions of the operating permit including the approved compliance plan. Any non-compliance with a permit condition constitutes a violation of the New Jersey Air Pollution Control Act N.J.S.A. 26:2C-1 et seq., or the CAA, 42 U.S.C. §7401 et seq., or both, and is grounds for enforcement action; for termination, revocation and reissuance, or for modification of the operating permit; or for denial of an application for a renewal of the operating permit. [N.J.A.C. 7:27-22.16(g)1]
4. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of its operating permit. [N.J.A.C. 7:27-22.16(g)2]

5. This operating permit may be modified, terminated, or revoked for cause by the EPA pursuant to 40 CFR 70.7(g) and revoked or reopened and modified for cause by the Department pursuant to N.J.A.C. 7:27-22.25. [N.J.A.C. 7:27-22.16(g)3]
6. The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating this operating permit; or to determine compliance with the operating permit. [N.J.A.C. 7:27-22.16(g)4]
7. The filing of an application for a modification of an operating permit, or of a notice of planned changes or anticipated non-compliance, does not stay any operating permit condition. [N.J.A.C. 7:27-22.16(g)5]
8. The operating permit does not convey any property rights of any sort, or any exclusive privilege. [N.J.A.C. 7:27-22.16(g)6]
9. Upon request, the permittee shall furnish to the Department copies of records required by the operating permit to be kept. [N.J.A.C. 7:27-22.16(g)7]
10. The Department and its authorized representatives shall have the right to enter and inspect any facility subject to N.J.A.C. 7:27-22, or portion thereof, pursuant to N.J.A.C. 7:27-1.31. [N.J.A.C. 7:27-22.16(g)9]
11. The permittee shall pay fees to the Department pursuant to N.J.A.C. 7:27. [N.J.A.C. 7:27-22.16(g)10]
12. Each permittee shall maintain records of all source emissions testing or monitoring performed at the facility and required by the operating permit in accordance with N.J.A.C. 7:27-22.19. Records shall be maintained, for at least five years from the date of each sample, measurement, or report. Each permittee shall maintain all other records required by this operating permit for a period of five years from the date that each record is made. At a minimum, source emission testing or monitoring records shall contain the information specified at N.J.A.C. 7:27-22.19(b). [N.J.A.C. 7:27-22.19(a) and N.J.A.C. 7:27-22.19(b)]
13. In accordance with N.J.A.C. 7:27-22.19(c) and 22.19(d)3, each permittee shall submit to the Department a six month deviation report relating to testing and monitoring required by the operating permit, not including information for testing and monitoring which have other reporting schedules specified in the permit. Normally, stack testing reporting is submitted within 45 days of test completion and continuous monitoring reporting is done quarterly. The six month report must address other specified monitoring including, but not limited to, continuous and periodic monitoring data required by this permit. (See column two and three entitled "Monitoring Requirement" and "Recordkeeping Requirement," respectively, in the Facility Specific Requirement Section of this permit.) The six month reports for the testing and monitoring performed from January 1 through June 30 shall be reported by July 30 of the same calendar year; and from July 1 through December 31, shall be reported by January 30 of the following calendar year. Pursuant to N.J.A.C. 7:27-22.19(e), these six month reports shall clearly identify all deviations from operating permit requirements, the probable cause of such deviations, and any corrective actions taken. Any "None" listed in the Submittal/Action Requirement in the Operating Permit is not intended to override the six-month deviation report. The report shall be certified pursuant to N.J.A.C. 7:27-1.39 by the responsible official. [N.J.A.C. 7:27-22.19(c), 22.19(d)3 and N.J.A.C. 7:27-22.19(e)]
14. For emergencies (as defined at 40 CFR 70.6(g)(1)) that result in non-compliance with any promulgated federal technology-based standard such as NSPS, NESHAPS, or MACT, a federal affirmative defense is available, pursuant to 40 CFR 70. To assert a federal affirmative defense, the permittee must use the procedures set forth in 40 CFR 70. The affirmative defense provisions described in 15 below may not be applied to any situation that caused the Facility to exceed any federally delegated regulation, including but not limited to NSPS, NESHAP, or MACT.
15. For situations other than those covered by 14 above, an affirmative defense is available for a violation of a provision or condition of the operating permit only if:

- i. The violation occurred as a result of an equipment malfunction, an equipment start-up or shutdown, or during the performance of necessary equipment maintenance; and
- ii. The affirmative defense is asserted and established as required by N.J.S.A. 26:2C-19.1 through 19.5 and any implementing rules. [N.J.A.C. 7:27-22.16(l)]

16. Each permittee shall meet all requirements of the approved source emissions testing and monitoring protocol during the term of the operating permit. [N.J.A.C. 7:27-22.18(j)]

The following paragraphs of this section are included for the permittee's convenience to remind them of their obligations with certain key applicable requirements. These paragraphs are not enforceable since they paraphrase areas of the operating permits rule. Also, these paragraphs do not reference all the applicable requirements with which the permittee must comply.

17. Each owner and each operator of any facility, source operation, or activity to which this permit applies is responsible for ensuring compliance with all requirements of N.J.A.C. 7:27-22. If the owner and operator are separate persons, or if there is more than one owner or operator, each owner and each operator is jointly and severally liable for any fees due under N.J.A.C. 7:27-22, and for any penalties for violation of N.J.A.C. 7:27-22.
18. In the event of a challenge to any part of this operating permit, all other parts of the permit shall continue to be valid.
19. The permittee shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth in the Appendix to N.J.A.C. 7:27-22, unless emission of the air contaminant is authorized by this operating permit.
20. Consistent with the provisions of N.J.A.C. 7:27-22.3(e), the permittee shall ensure that all requirements of this Operating Permit are met. In the event that there are multiple emission limitations, monitoring, recordkeeping, and/or reporting requirements for a given source operation, the facility must comply with all requirements, including the most stringent.
21. Consistent with the provisions of N.J.A.C. 7:27-22.9(c), the permittee shall use monitoring of operating parameters, where required by the compliance plan, as a surrogate for direct emissions testing or monitoring, to demonstrate compliance with applicable requirements.
22. The permittee shall file a timely and complete application for:

Administrative Amendments;
Seven-Day-Notice changes;
Minor Modifications;
Significant Modifications; and
Renewals.

Section G

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

COMPLIANCE SCHEDULES

The facility has represented compliance with all the applicable requirements. Therefore, there are no compliance schedules included with this permit approval.

Section H

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Facility ID No.: 07736

Activity ID No.: BOP990001

FEDERAL AND STATE-ONLY APPLICABLE REQUIREMENTS

N.J.A.C. 7:27-22.16(b)5 requires the Department to specifically designate as not being federally enforceable any permit conditions based only on applicable state requirements. The applicable state requirements that this provision applies to are listed in the table titled "State-Only Applicable Requirements". The table titled "Federal-Only Applicable Requirements" specifically designates certain applicable federal requirements as not being state enforceable. Any other applicable requirement not listed on this page is both state and federally enforceable.

FEDERAL-ONLY APPLICABLE REQUIREMENTS

The following applicable requirements are not state enforceable:

<u>SECTION</u>	<u>SUBJECT ITEM</u>	<u>ITEM #</u>	<u>REF. #</u>
F	---	14	---
J	FC	---	11
J	FC	---	12
J	FC	---	13

STATE-ONLY APPLICABLE REQUIREMENTS

The following applicable requirements are not federally enforceable:

<u>SECTION</u>	<u>SUBJECT ITEM</u>	<u>ITEM #</u>	<u>REF. #</u>
F	---	15	---
J	FC	---	3
J	FC	---	10

Section I

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Facility ID No.: 07736

Activity ID No.: BOP990001

FACILITY SPECIFIC REQUIREMENTS GLOSSARY

<u>Subject Item and Name</u>	<u>Page Number</u>
-------------------------------------	---------------------------

Facility (FC):

FC	1
----------	---

Insignificant Sources (IS):

IS1 – No. 2 Fuel Oil Tanks (<10,000 Gal. Cap.).....	18
IS2 – Fuel Oil Tanks (>10,000 Gal. Cap.).....	19

Emission Unit (U):

U1 – Three Municipal Waste Combustors E1, E2 & E3	21
U6 – Lime Storage Silo A.....	86
U7 – Lime Storage Silo B.....	88
U8 – Lime Storage Silo C.....	89
U9 – Lime Slaker A.....	90
U10 – Lime Slaker B	91
U11 – Activated Carbon Storage Silo.....	92
U12 – Flyash Conditioning Room	94
U13 – 7 MMBtu/hr Emergency Diesel Generator	96
U14 – 1.6 MMBtu/hr Emergency Diesel Fire Pump.....	99
U15 – Ash Conveyance System	102
U16 – Abrasive Blaster.....	105

Section J

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

FACILITY SPECIFIC REQUIREMENTS

Section K

Facility Name: AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest Number: 07736

Permit Activity Number: BOP990001

INVENTORIES

Insignificant Source Emissions

Non-Source Fugitive Emissions

Equipment Inventory

Control Device Inventory

Control Device Detail Sheets

Emission Point Inventory

Emission Unit/Batch Process Inventory

Section L

ANNUAL COMPLIANCE CERTIFICATION STATEMENT

Facility Name AMERICAN REF FUEL CO OF ESSEX CNTY

Program Interest No. 07736

Please check (✓) all that apply and provide information, where required, concerning your facility's compliance status.

- Pursuant to N.J.A.C. 7:27-22.19(f)1i, I hereby state that this facility is in compliance with all applicable requirements as indicated in the compliance plan of my operating permit.
- Pursuant to N.J.A.C. 7:27-22.19(f)1ii, I hereby state that this facility is in compliance with all applicable requirements as indicated in the compliance plan of my operating permit except for those applicable requirements listed in the compliance schedule, included in my operating permit pursuant to N.J.A.C. 7:27-22.9(c)5ii, which includes a sequence of actions with milestones leading to compliance with the applicable requirement. This facility is in compliance with all compliance schedules included in my operating permit.
- Pursuant to N.J.A.C. 7:27-22.19(f)1iii, I hereby state that this facility is in compliance with all applicable requirements as indicated in the compliance plan of my operating permit except for those applicable requirements included in an order or consent decree not incorporated into a compliance schedule.
- Pursuant to N.J.A.C. 7:27-22.19(f)1iv, I hereby state that this facility is in compliance with the applicable requirements indicated in the compliance plan and compliance schedules of my operating permit except those listed in the attachment.

The signature below must be made by a responsible official, as defined at N.J.A.C. 7:27-1.4.

Pursuant to N.J.A.C. 7:27-1.39(a)2: "I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

NAME (PRINT or TYPE)

TITLE

SIGNATURE

DATE

The signature below must be made by the individual or individuals (may include consultants) with direct knowledge of and responsibility for the information contained with this document.

Pursuant to N.J.A.C. 7:27-1.39(a)1: "I certify, under penalty of law, that I believe the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information."

NAME (PRINT or TYPE)

AFFILIATION - TITLE

SIGNATURE

DATE

Exhibit 2

[Key Findings](#)

[City Rankings](#)

[Our Fight](#)

[Health Risks](#)

[Donate](#)

State of the Air: 2009

[Home](#) > [2009](#) > [States](#) > [New Jersey](#)

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Select Your State:

[Click here](#)

Enter Your Zip Code:

New Jersey

High Ozone Days Particle Pollution Groups At Risk

County	Total Pop	Under 18	65 & Over	Pediatric Asthma	Adult Asthma	Chronic Bronchitis	Emphysema	CV Disease	Diabetes
Atlantic	270,644	65,045	37,532	5,913	17,028	7,116	3,625	76,563	16,562
Bergen	895,744	197,496	132,209	17,954	57,784	24,722	12,979	269,595	58,817
Camden	513,769	128,429	62,967	11,675	32,060	13,199	6,534	140,105	30,146
Cumberland	155,544	38,024	19,413	3,457	9,765	3,945	1,910	41,492	8,859
Essex	776,087	198,343	90,495	18,031	48,128	19,542	9,471	205,500	43,978
Gloucester	285,753	67,124	32,921	6,102	18,242	7,405	3,575	77,712	16,632
Hudson	598,160	130,946	65,061	11,904	39,035	15,188	6,875	155,093	32,594
Hunterdon	129,348	30,035	14,459	2,730	8,311	3,504	1,767	37,446	8,136
Mercer	365,449	84,231	43,772	7,657	23,431	9,501	4,593	99,797	21,345
Middlesex	788,629	181,367	94,772	16,488	50,584	20,432	9,833	214,212	45,744
Monmouth	642,030	154,596	82,609	14,054	40,536	17,154	8,802	184,980	40,218
Morris	488,475	116,696	61,578	10,609	30,944	13,038	6,642	140,120	30,418
Ocean	565,493	131,100	117,194	11,918	35,242	15,837	9,098	180,668	39,985
Passaic	492,115	127,258	59,297	11,569	30,353	12,395	6,072	130,981	28,092
Union	524,658	130,760	65,865	11,887	32,748	13,571	6,786	144,705	31,213
Warren	109,737	26,452	14,269	2,405	6,920	2,899	1,472	31,130	6,743
TOTAL:	7,601,635	1,807,902	994,413	164,356	481,112	199,449	100,035	2,130,100	459,480

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Notes:

- (1) * indicates incomplete monitoring data for all three years. Therefore, those counties are excluded from the grade analysis.
- (2) A dash (-) indicates that there is no monitor collecting data in the county.

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Exhibit 3

[Key Findings](#)

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State of the Air: 2009

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Select Your State:

[Click here](#)

Enter Your Zip Code:

New Jersey

[High Ozone Days](#) [Particle Pollution](#) [Groups At Risk](#)

County	Grade	Wgt. Avg.	Orange Days	Red Days	Purple Days
Atlantic	F	8.0	24	0	0
Bergen	*	*	*	*	*
Camden	F	27.3	70	8	0
Cumberland	F	11.0	30	2	0
Essex	*	*	*	*	*
Gloucester	F	12.7	35	2	0
Hudson	F	11.5	33	1	0
Hunterdon	F	17.7	50	2	0
Mercer	F	17.2	44	5	0
Middlesex	F	20.3	52	6	0
Monmouth	F	13.3	37	2	0
Morris	F	20.3	55	4	0
Ocean	F	20.5	51	7	0
Passaic	F	9.7	29	0	0
Union	*	*	*	*	*
Warren	-	-	-	-	-

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Notes:

- (1) * Indicates incomplete monitoring data for all three years. Therefore, those counties are excluded from the grade analysis.
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Exhibit 4

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IRONBOUND COMMUNITY CORP., and
GREENFAITH,

Plaintiffs,

Civil Action No.

-versus-

COVANTA ESSEX CO., COVANTA
ENERGY CORPORATION, and COVANTA
HOLDING CORPORATION

Defendants.

COMPLAINT

STATEMENT OF THE CASE

1. This is a citizen suit to enforce the Clean Air Act, brought pursuant to Section 304(a) of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7604(a), for defendants' violations of air pollution emission limits for sulfur dioxide; an odorous gas that can aggravate breathing disorders and is a major contributor to acid rain; carbon monoxide, a gas that can aggravate cardiovascular disease and adversely affect the nervous system; and particulate matter, which can aggravate asthma, decrease lung function, cause chronic bronchitis, and worsen heart

disease; as well as other standards designed to control emissions of organics, such as dioxins and furans, both of which cause cancer. The parties to this action are:

Plaintiffs

Ironbound Community Corporation
179 Van Buren Street
Newark, New Jersey 07105

GreenFaith, Inc.
46 Bayard Street, Suite 401
New Brunswick, NJ 08901

Defendants

Covanta Holding Corporation
40 Lane Road
Fairfield, New Jersey 07004

Covanta Energy Corporation
40 Lane Road
Fairfield, New Jersey 07004

Covanta Essex Company
155 Chestnut Ridge Road
Montvale, New Jersey 07645

2. Defendant Covanta Essex Company (“Covanta Essex”) leases and operates the Essex County Resource Recovery Facility (“Incinerator”), located at 183 Raymond Boulevard, Newark, New Jersey, 07105, where it burns municipal solid waste that consists primarily of organic waste, paper, plastic, batteries, household chemicals, vegetative wastes, and “special waste.”

3. Covanta Essex also promotes the Incinerator as a place to dispose of pharmaceutical and manufacturing wastes, including oily debris, filters, process residues, filter media, rags and absorbent pads, plastic, packaging and packaging foams, off-specification and expired pills, powders, creams, lotions, ointments, cosmetics, and toys.

4. The Incinerator is New Jersey’s largest garbage incinerator, with a capacity of 2,800 tons per day, and each month, Covanta Essex burns approximately 77,500 tons of waste.

5. This high volume commercial Incinerator is located in the heart of the Ironbound community in Newark, New Jersey—a densely populated, poor, minority community that is among

the most polluted in the nation.

6. Defendants are in violation of the Act because the Incinerator they operate emits pollutants into the air each year over and above the amounts it is legally allowed to emit under federal and state regulations, all of which limitations have been incorporated into preconstruction permits and operating permits issued by the New Jersey Department of Environmental Protection ("DEP") under the Clean Air Act and New Jersey statutes and regulations.

7. Defendants' violations of the Act pose a threat to public health and the environment. The U.S. Environmental Protection Agency ("EPA"), the State of New Jersey, and Essex County have failed to take enforcement actions that have been sufficient to stop Defendants' violations of the Act.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to CAA § 304, 42 U.S.C. § 7604(a), and 28 U.S.C. § 1331 (Federal Question).

9. Venue is proper in this District pursuant to CAA § 304(c)(1), 42 U.S.C. § 7604(c)(1), because the Incinerator is a stationary source located within this District.

NOTICE

10. Plaintiffs gave notice of the violations alleged in this Complaint more than 60 days prior to the commencement of this lawsuit to: (a) Covanta Essex Company; (b) Covanta Holding Corporation; (c) Covanta Energy Corporation; (d) the EPA; (e) the DEP; and (f) the Governor of New Jersey. Notice was provided by letter, dated March 8, 2007, addressed to Richard Giordano, the Plant Manager of the Incinerator; Anthony J. Orlando, the President and CEO of Covanta Holding Corporation; and Scott Turner, attorney representing Covanta Energy Corporation ("Notice Letter"), with copies sent to the EPA Administrator, the EPA Region 2 Administrator, the DEP, and

the Governor of New Jersey. A copy of the Notice Letter is attached as Exhibit A to the Declaration of William J. Schulte, Esq. dated February 20, 2009 ("Schulte Decl.") and filed with this Complaint, and is incorporated by reference. The Notice Letter satisfied the pre-suit notice requirement of Section 304(b) of the Act, 42 U.S.C. § 7604(b).

PARTIES

11. Plaintiffs are "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e). They sue on behalf of themselves and their members who are adversely affected by defendants' excess emissions of sulfur dioxide, carbon monoxide, particulate matter, and by other violations of the air pollution permits. These violations have deleterious impacts on public health and the environment in the areas where Plaintiffs' members live, work, and recreate.

12. Plaintiff Ironbound Community Corporation ("ICC") is a New Jersey not-for-profit public interest corporation located in Newark, New Jersey. ICC was founded in 1969 by Ironbound residents to work with neighborhood residents to develop and operate programs to meet the full range of needs of the Ironbound neighborhood and to improve their quality of life. ICC provides myriad services to the Ironbound community, and since 1980, has been among the most active urban environmental voices in New Jersey through its Community Environmental Program (formerly, Community Health Project). For example, ICC has advocated on its own behalf and on behalf of its members and residents of the Ironbound community to improve the quality of life in the Ironbound through its Environmental Justice Advocacy & Education Project, the Passaic Riverfront Development Project, the Dioxin Decontamination Project, the Newark Brownfields Initiative, the Environmental Leadership Training in Schools, and support for the Ironbound Committee Against Toxic Waste. For more than ten years ICC has been an appointed community representative on the NJDEP's Environmental Justice Advisory Council; ICC was also designated as the community

representative in the Lister Avenue Brownfields Development Area and served as community liaison to the NJDEP and the EPA on the Diamond Shamrock Company site remediation. Among other things, ICC researches and distributes analytical reports on environmental issues in the Ironbound, advocates before legislative and administrative bodies, and conducts public education. ICC has also received grants from the EPA to conduct a pilot project to educate the community about the risk of asthma to children in the community. *See* Declaration of Ana Baptista, dated February 18, 2009 (“Baptista Decl.”).

13. Plaintiff GreenFaith, Inc. is a New Jersey non-profit membership corporation founded in 1992 and headquartered in New Brunswick, New Jersey. GreenFaith is devoted to the inspiration, education, and mobilization of people to preserve and enhance the quality of the environment. To that end, GreenFaith brings together people of diverse spiritual backgrounds to protect at-risk communities from toxic environments. GreenFaith mobilizes its individual members and member religious institutions, located throughout New Jersey, to advocate and raise awareness of environmental injustice. *See* Declaration of Sister Eleanor Uhl, O.P, dated February 20, 2009 (“Uhl Decl.”); Declaration of Sister Barbara Nesbihal, S.C., dated February 20, 2009 (“Nesbihal Decl.”). For example, in 2003, 2004, 2005, and most recently in 2008, GreenFaith gave tours of Newark, including the Ironbound, to educate over 250 individuals about the range of environmental health threats facing Newark residents. GreenFaith has also worked closely with the Natural Resources Defense Council to reach a settlement with the Army Corps of Engineers (“Corps”) to limit the re-distribution of dioxins as the Corps dredges the Newark Bay. Other GreenFaith initiatives include conducting air-monitoring with students from Newark schools, conducting energy audits with various religious institutions in Newark in an effort to reduce their energy use, lobbying the NJDEP to reduce diesel emissions at Newark construction sites, and providing education on Newark’s

environmental issues to Leadership Newark (a program for business and community leaders in Newark). Members, contributors, and supporters of GreenFaith are dedicated to rectifying environmental injustices, as well as enjoying and protecting New Jersey's neighborhoods and natural resources.

14. Plaintiffs ICC and GreenFaith have individual members, volunteers, program participants, and contributors who live, work, and recreate in and around Newark, New Jersey, and who breathe and are otherwise exposed to more harmful air pollutants that they otherwise would be, as a direct result of Defendants' excess air emissions that violate the Act. These excess emissions of pollutants have adverse impact on these individuals' health, recreational, aesthetic, and other interests, as set forth more fully in paragraphs 76 through 102.

15. Defendant Covanta Essex, whose principal business address is 155 Chestnut Ridge Road, Montvale, New Jersey 07645, is the operator of the Incinerator. Covanta Essex was formerly known as American Ref-Fuel Company of Essex County before it was acquired by Defendants in 2005, and still uses that name from time to time in public documents. Defendant Covanta Essex is owned by Defendant Covanta Energy Corporation ("Covanta Energy").

16. Defendant Covanta Energy is a Delaware corporation with its principal executive offices located at 40 Lane Road, Fairfield, New Jersey 07004. Covanta Energy is a wholly owned subsidiary of Defendant Covanta Holding Corporation ("Covanta Holding").

17. Defendant Covanta Holding is a Delaware corporation with its principal executive offices located at 40 Lane Road, Fairfield, New Jersey 07004.

18. Defendants are each "persons" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY AND REGULATORY BACKGROUND

19. In 1970, Congress amended the Air Quality Act of 1963 and mandated that States attain air quality meeting specified standards to protect public health and the environment. Congress also directed the EPA to establish "national ambient air quality standards" that would serve as ceilings for acceptable maximum air quality concentrations.

National Ambient Air Quality Standards

20. Pursuant to section 109 of the Act, 42 U.S.C. § 7409, EPA has established National Ambient Air Quality Standards ("NAAQS") to protect human health and the environment for six "criteria pollutants," including sulfur dioxide, nitrogen oxides, particulate matter, carbon monoxide, and ozone. 40 C.F.R. Part 50. The goals of the Act include attaining and protecting air quality to satisfy all NAAQS requirements. The primary means to achieve these goals is by imposing preconstruction review and permitting requirements on certain new and modified sources of air pollution to require control technology and to protect against degradation of air quality.

21. The preconstruction review and permitting requirements are implemented through the new source review program ("NSR"), which has three subparts. The first two subparts apply to major sources of air pollution: the prevention of significant deterioration ("PSD") program under Part C of Title 1 of the Act, CAA §§160-69B, and the nonattainment area ("NAA") program under Section 173 of the Act and Part D of Title 1, CAA §§171-93. The third component applies to minor sources.

22. The states have primary responsibility for achieving and maintaining the NAAQS within each Air Quality Control Region ("AQCR") within each state. Under section 110(a) of the Act, 42 U.S.C. § 7410(a), states implement many of the regulatory requirements of the Act through State Implementation Plans ("SIP").

23. SIP provisions must satisfy the requirements of the Act before they are approved by EPA. 42 U.S.C. § 7410(k). Specifically, the Act provides that SIPs for areas designated in attainment, or areas that are unclassifiable, for a particular criteria pollutant, must contain emissions limitations and other measures necessary to “prevent significant deterioration of air quality in each region (or portion thereof).” CAA §161, 42 U.S.C. § 7471. The SIP must also include means to achieve attainment status for all areas for each NAAQS.

24. EPA has approved the New Jersey SIP. Pursuant to the New Jersey SIP, the DEP has (i) set forth the pollutants that may legally be emitted from stationary sources of air pollution, such as the Incinerator, and (ii) impose both hourly (pounds per hour) and annual (tons per year) limits on the emission of such pollutants. See N.J.S.A. 26:2C-1 et seq.; N.J.A.C. 7:27.

25. New Jersey has proposed to revise its SIP to achieve attainment of the 1997 Annual Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards by 2010, but EPA has not yet approved the revision. Pending EPA approval, New Jersey’s proposed revisions to its SIP are still binding on New Jersey and regulated entities.

26. Essex and Hudson counties in New Jersey are part of the New Jersey-New York-Connecticut Interstate ACQR established by federal regulation. This ACQR is currently not achieving federal air quality standards designed to protect public health and the environment for two criteria pollutants: Ozone (8-Hour) and Particulate Matter (PM_{2.5}).

New Source Performance Standards

27. In 1970, Congress amended the CAA and added section 111, which directed the EPA to establish nationwide uniform emission standards for new or modified stationary sources of air pollution. These standards are industry-specific, technology-based emission standards and limitations, and include the New Source Performance Standards (“NSPS”) program.

28. The NSPS are national standards that do not take into account varying local air quality conditions. The main purpose of the standards is to prevent new pollution problems and to further the goal of bringing the most emission units into the CAA's regulatory scheme.

29. The regulations require that at all times – including periods of startup, shutdown, and malfunction – owners and operators shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. 40 C.F.R. § 60.11(d).

30. Section 111 defines a stationary source as any “building, structure, facility, or installation which emits or may emit any air pollutant.” CAA 111(a)(3), 42 U.S.C. § 7411(a)(3).

31. Pursuant to Section 111(b), 42 U.S.C. § 7411(b), EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1 – 60.19, that apply to owners or operators of any stationary source that contains an “affected facility” subject to regulation under 40 C.F.R. Part 60. Affected facilities run a broad range, from a piece of process equipment to an entire plant, and the determination is based on the smallest discrete emission unit possible.

32. EPA also promulgated regulations for large municipal waste incinerators, codified at 40 C.F.R. Part 60, Subpart EB, §§ 60.50b-59b entitled Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996. This subpart sets forth specific standards for large garbage incinerators, as well as siting, operating, monitoring, and reporting requirements.

33. Section 111(e), 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of a NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Clean Air Act.

The Title V Permitting Program

34. In 1990, Congress amended the CAA and added Title V, which created a federally mandated operating permit program to be implemented by the states. CAA §§165, 173.

35. The EPA promulgated regulations codified at 40 C.F.R. Part 70 that establish minimum standards the states must meet when developing and implementing their permitting programs.

36. The goal behind the Title V Program is to consolidate in one place all of the CAA requirements for a source, including SIP requirements, NSPS, PSD or nonattainment NSR requirements, and any other applicable CAA rules.

Clean Air Act Provisions Applicable to Covanta

37. The Incinerator is a major stationary source under the terms of the Clean Air Act, subject to limitations and requirements in the NSR, PSD, and NAA programs.

38. The Incinerator is an affected facility.

39. The Incinerator is also a "large municipal waste combustor" for which construction is commenced after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996; therefore, it is subject to the applicable NSPS provisions.

40. The DEP issued various preconstruction permits for the Incinerator (collectively "Preconstruction Permit") pursuant to the PSD program under Part C of Title 1 of the Act, CAA §§160-69B, and N.J.A.C. 7:27-8.2.

41. On July 8, 2004, pursuant to Title V of the Act, the DEP issued Air Pollution Control Operating Permit Number BOP 060001 ("Title V Permit") to Covanta Essex, which the EPA approved.

42. The DEP approved a significant modification of the Title V Permit on September 21,

2006.

43. The emission standards and limitations established by the NSR program and the SIP were incorporated into the Preconstruction Permit; thus, periods of air emissions in excess of any of those limitations or standards are violations of the Act.

44. All of the emission standards and limitations in the Clean Air Act and the SIP are incorporated into Covanta's Title V Permit, issued pursuant to Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f; thus, all periods of air emissions in excess of any of those applicable limitations are violations of the Act.

45. Under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604, citizens are authorized to bring suit in federal court to enforce emission standards and limitations contained in, *inter alia*, permits issued pursuant to the New Jersey SIP; federal NSPS regulations; and Title V permits.

46. The citizen suit provision grants jurisdiction to United States District Courts to issue an injunction remedying violations of the Act, to impose appropriate civil penalties for violations of the Act, and to award costs of litigation (including reasonable attorney and expert witness fees).

EMISSION EVENTS AT THE INCINERATOR

47. Defendants are subject to various recordkeeping and reporting requirements pursuant to state and federal regulations and the terms of its permits. For example, New Jersey state regulations require permittees to submit reports, certified under penalty of law pursuant to N.J.A.C. § 7:27-1.39, of all source emissions testing and monitoring required by their permit; these reports must clearly identify all deviations from their operating permits, as well as the probable cause of such deviations and any corrective actions taken. N.J.A.C. § 7:27-22.19(c) & (e). New Jersey regulations also require permittees to submit to both the DEP and the EPA periodic compliance

certifications that address whether the facility is in compliance with each of its permit requirements. N.J.A.C. § 7:27-22.19(f). In addition, permittees are required to report immediately to the DEP any time a deviation from the permit results in the release of contaminants in a quantity which poses a potential threat to public health, welfare or the environment or which might reasonably result in citizen complaints. N.J.A.C. § 7:27-22.19(g)(1)(i). Under federal regulations Defendants are required to submit excess emissions and monitoring systems performance reports to the EPA Administrator at least semi-annually. 40 CFR § 60.7(c). The federal regulations also require Defendants to submit semi-annual reports that include, *inter alia*, a summary of data collected for regulated pollutants that highlights any emissions levels that did not achieve the applicable emissions limit. 40 CFR § 60.59b(g).

48. Pursuant to its recordkeeping and reporting requirements, Defendants have frequently and repeatedly over a period of at least six years reported numerous violations of their permit limits on air discharges from the Incinerator in violation of the Clean Air Act, EPA regulations, the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-9.2, and applicable sections of the New Jersey Administrative Code.

49. The Preconstruction Permit and the Title V Permit have given Defendants the privilege of operating the Incinerator and emitting, among other pollutants, Sulphur Dioxide ("SO₂"), Carbon Monoxide ("CO"), and Particulate Matter ("PM") measured by opacity, into the atmosphere provided that all emissions are below the discharge limits established in those permits. The Incinerator must also comply with standards pertaining to minimum temperatures in the exit gas, minimum concentrations of oxygen in the flue gas, and a maximum steam production rate for each boiler.

50. The SO₂, CO, opacity, temperature, oxygen and steam production exceedances

constitute violations of both federal regulations as well as state statutes under the CAA and the New Jersey Air Pollution Control Act. A summary of known violations between April 14, 2002 and December 31, 2008 is presented in paragraphs 51 through 70.

Covanta's Sulphur Dioxide Violations

51. With regard to the emission of Sulphur Dioxide, the Permits include, *inter alia*, limits on both short-term and long-term SO₂ emissions from the Incinerator. For example, under the terms of the permit Defendants are prohibited from allowing any of the three Municipal Waste Combustors ("MWC") at the Incinerator from emitting SO₂ in excess of 1,100 lbs/hr for any sixty minute period and from allowing the emission rate to exceed 2,200 lbs/hr at any instant.

52. A list of at least 13 separate instances, during the period from April 14, 2002 to December 27, 2006, in which Defendants violated one of the standards relating to the emission of Sulphur Dioxide, is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., which is incorporated herein by reference.

53. Subsequent to the sending of the Notice Letter, Defendants have continued to violate their Sulphur Dioxide emissions standards. Defendants violated Sulphur Dioxide emissions standards at least one time during the period from December 27, 2006 to December 31, 2008. Plaintiffs are unaware of any changes made at the Incinerator that would prevent the continuation of violations of this nature.

Covanta's Carbon Monoxide Violations

54. With regard to the emission of Carbon Monoxide, the Permits forbid, *inter alia*, discharges of CO from any one of the MWC's that exceed 100 ppmvd at 7% O₂ for a 4 hour average measurement and discharges of CO from any one of the MWC's that exceed 400 ppmvd at 7% O₂ for a one hour average measurement.

55. A list of at least 29 separate instances, during the period from April 14, 2002 to December 27, 2006, in which Defendants violated one of the standards relating to the emission of Carbon Monoxide, is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., which is incorporated herein by reference.

56. Subsequent to the sending of the Notice Letter, Defendants have continued to violate their Carbon Monoxide emissions standards. Defendants violated Carbon Monoxide emissions standards approximately six times during the period from December 27, 2006 to December 31, 2008. Plaintiffs are unaware of any changes made at the Incinerator that would prevent the continuation of violations of this nature.

Covanta's Particulate Matter Violations

57. Opacity is a measurement of visual emissions, or the degree to which smoke discharged from a stack obscures a background by reducing the amount of light that passes through it. Opacity is used as a proxy for the amount of particulate matter emitted by a facility.

58. Emissions containing PM smaller than 10 micrometers in diameter ("PM₁₀") can pass through the nose and throat and enter the lungs. They affect both respiratory and circulatory systems and can cause serious health problems. PM₁₀ can aggravate asthma, decrease lung function, cause chronic bronchitis, worsen heart disease and lead to heart attacks.

59. Emissions containing PM smaller than 2.5 micrometers in diameter ("PM_{2.5}") are an even greater health risk because they can be absorbed by lung tissue more easily. Essex County is considered a non-attainment area for PM_{2.5}.

60. The Permit provides that any visible emissions shall not exceed an average opacity of 10% for a six-minute average reading.

61. A list of at least 262 instances, during the period from April 14, 2002 to December

27, 2006, in which Defendants violated the opacity standard relating to the emission of fine particulate matter is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., and is incorporated herein by reference.

62. Subsequent to the sending of the Notice Letter, Defendants have continued to violate the opacity standards that regulate the emission of fine particulate matter. Defendants violated opacity standards at least 47 times during the period from December 27, 2006 to December 31, 2008. Plaintiffs are unaware of any changes made at the Incinerator that would prevent the continuation of violations of this nature.

Covanta's Temperature Violations

63. The Permit includes a requirement for temperature in the exit gas stream. For example, within one hour after waste has been introduced into any one of the furnaces at the Incinerator, temperature one second downstream of secondary air injection must be no less than 1,136 degrees F. This standard is designed to maximize waste production and minimize harmful organic emissions.

64. A list of at least 247 instances, during the period from April 14, 2002 to December 27, 2006, in which Defendants allowed the temperature in the exit gas stream to fall below the required minimum temperature of 1,136 degrees F is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., and is incorporated herein by reference.

65. Subsequent to the sending of the Notice Letter, Defendants have continued to violate the standard for temperature in the exit gas stream. Defendants violated temperature standards at least 14 times during the period from December 27, 2006 to December 31, 2008. Plaintiffs are unaware of any changes made at the Incinerator that would prevent the continuation of violations of this nature.

Covanta Oxygen Violations

66. Under terms of the permit, the average concentration of oxygen in the flue gas at each furnace's exit shall not fall below three percent by volume.

67. A list of at least 12 instances, during the period from April 14, 2002 to December 27, 2006, in which Defendants allowed the oxygen in the flue gas at one of the furnaces' exit to fall below three percent by volume is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., and is incorporated herein by reference.

68. Subsequent to the sending of the Notice Letter, Defendants have continued to violate the standard for oxygen in each furnace's exit stream. Defendants violated oxygen standards at least one time during the period from December 27, 2006 to December 31, 2008. Plaintiffs are unaware of any changes made at the Incinerator that would prevent the continuation of violations of this nature.

Covanta Steam Production Violations

69. The permit allows for a maximum steam production rate for each MWC of 247,500 lbs/hr.

70. A list of at least three instances, during the period from April 14, 2002 to December 27, 2006, in which Defendants exceeded the maximum steam production rate is contained in Section II of the Notice Letter, attached as Exhibit A to Schulte Decl., and is incorporated herein by reference.

Past Administrative Enforcement Actions Do Nothing to Stop Covanta's Violations

71. Similar violations that occurred at the Incinerator from 1991-1993 were the subject of an Administrative Consent Order entered in 1994 between Covanta's predecessor American Ref-Fuel and the New Jersey Department of Environmental Protection ("DEP").

72. The 1994 Administrative Consent Order required American Ref-Fuel to pay \$212,600 in penalties.

73. The 1994 Administrative Consent Order required Covanta to take actions to control mercury emissions from their DBA boilers, to employ Resource Recovery Facility Conditions for Emergency Malfunction, Start-up and Shutdown, and to implement the provisions for opacity, oxygen and block averaging of emission data.

74. Despite the 1994 Administrative Consent Order, Covanta has continued to discharge pollutants from its Facility in excess of its permit levels.

75. Given this history, it is likely that the permit violations will be ongoing and will persist in the future, posing a continuing peril to public health and the environment.

AIR POLLUTION FROM THE INCINERATOR IS HARMFUL

76. Exposure to air pollution is associated with numerous adverse effects on human health, including pulmonary, cardiac, vascular, and neurological impairments. Acute effects are usually immediate and often reversible when exposure to the pollutant ends. Some acute health effects include eye irritation, headaches, and nausea. Chronic effects are usually not immediate and tend not to be reversible when exposure to the pollutant ends. Some chronic health effects include decreased lung capacity and lung cancer resulting from long-term exposure to toxic air pollutants.

77. Since April 14, 2002, defendants have violated emissions limitations and other permit requirements at least 635 times. As a result of these violations, the Incinerator has emitted and continues to emit excess quantities of sulfur dioxide, carbon monoxide, and particulate matter. These pollutants, alone and in combination, can cause public health and environmental problems.

78. Under section 107(d) of the Act, 42 U.S.C. § 7407(d), each state must designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified because of insufficient data. An area that meets the NAAQS for a particular criteria pollutant is an "attainment" area for that pollutant. An

area that does not meet the NAAQS for a particular criteria pollutant is a "nonattainment" area for that pollutant. An area that once was a nonattainment area for a particular pollutant but for which air quality has improved may be reclassified as a "maintenance" area for that pollutant.

79. The New Jersey-New York-Connecticut Interstate ACQR established by federal regulation, of which Essex and Hudson Counties are a part, is currently not achieving federal air quality standards designed to protect public health and the environment for two criteria pollutants: Ozone (8-Hour) and Particulate Matter (PM_{2.5}). This ACQR used to be a nonattainment area for Carbon Monoxide (CO), but has been reclassified as a maintenance area, and emissions are still monitored.

80. SO₂ belongs to the family of sulphur oxide gases, or SO_x. SO₂ is a highly reactive colorless gas which is odorless at low concentrations and smells like rotten eggs at elevated concentrations. High levels of SO₂ in the air contribute to smog and can cause temporary breathing difficulty for people with asthma. Long-term exposure to high levels of SO₂ in the ambient air can directly impair human health.

81. Atmospheric chemical reactions involving SO₂ generate particulate matter (PM₁₀ and PM_{2.5}), which contribute to respiratory illnesses like asthma, particularly in children and the elderly, and aggravate existing heart and lung diseases.

82. SO₂ contributes to the formation of acid rain. Acid rain damages forests and crops, changes the makeup of soil, and makes lakes and streams acidic and unsuitable for fish. Continuous exposure to acid rain over a long time changes the natural variety of plants and animals in an ecosystem.

83. Carbon monoxide is a colorless, odorless gas that is formed by incomplete combustion. Carbon monoxide contributes to the formation of smog. For a person with heart

disease, a single exposure to CO at low levels may cause chest pain and reduce that person's ability to exercise. CO can cause harmful effects by reducing oxygen delivery to the body's organs, including the heart and the brain. People who breathe high levels of CO can develop vision problems, reduced ability to work or learn, reduced manual dexterity, and difficulty performing complex tasks.

84. Low temperatures in municipal waste incinerators lead to incomplete combustion of waste and organic emissions of harmful contaminants such as dioxins and furans, both of which are known human carcinogens. High temperatures maximize waste destruction and prevent organic emissions. There is no known, safe level of exposure to these harmful chemicals. Requiring the continuous monitoring of the temperature of the Incinerator to ensure that it is operating at high enough temperatures so that it does not emit highly toxic pollutants that are not otherwise regularly tested for is one way to ensure that people and the environment are not exposed to these cancer causing chemicals.

85. Particulate matter ("PM") is the term for solid or liquid particles found in the air. Exposure to particle pollution is linked to a number of problems, including: increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease. "Opacity" is an indirect measurement of the concentration of particulate matter in air emissions. The higher the opacity level of a plume of air emissions – that is, the more visible light that is blocked – the more particulate matter is being emitted. Opacity levels are recorded on a scale ranging from 0% (no obstruction of light at all) to 100% (smoke that completely blocks the passage of light). Stationary sources of air pollution, including the Incinerator, are subject to opacity limitations as a way of limiting emissions

of PM.

86. Asthma is one of many recognized health effects of sulfur dioxide and Particulate Matter inhalation. According to the American Lung Association, Essex County has the highest at-risk population for pediatric asthma due to air pollution in New Jersey. Most of these children live in Newark. Similarly, the American Lung Association reports that Hudson County achieved failing air quality marks due to high levels of Particulate Matter (measured over a 24 hour time period).

87. The Ironbound is a culturally diverse community of 45,000 people with at least 54 different ethnic groups and with new immigrants arriving daily located in the City of Newark, Essex County, New Jersey. Seventy-five percent of residents over the age of 5 speak a foreign language at home, typically Portuguese or Spanish. Twenty percent of Ironbound residents live at or below the poverty line.

88. The Ironbound is bounded by heavily-traveled highways (Routes 1, 9, 21, 78, NJ Turnpike), polluted waterways (Passaic River, Newark Bay), the Newark International Airport, and many industrial and contaminated sites which collectively create adverse environmental exposure to Ironbound residents.

89. Three federal low-income housing complexes (Terrell Homes, Hyatt Court, Pennington Court) and one private, federally subsidized housing complex (Aspen River Park) are located on the edges of the residential community. Terrell Homes is three blocks from the Incinerator.

90. The Incinerator is adjacent to two of the community's poorest census tracts of 8,000 people. For example, the 1999 per capita income in census tract 75.01 was \$11,106 and the 1999 per capita income for census tract 75.02 was \$12,230.

91. The Incinerator's illegal emissions contribute to bad air quality in the New York-New

Jersey-Connecticut Air Quality Control Region, which includes Essex and Hudson Counties. Air quality is so poor, that Plaintiffs' members, volunteers, and program participants experience increased asthma rates, heart disease, and other poor air quality induced health effects. They complain of foul odors, the thick black smoke plume that rises from the Incinerator stack, and a general reluctance to recreate outside. Plaintiffs' members, volunteers, and program participants do not want the air quality where they live to be as bad as it is. *See* Baptista Decl.; Uhl Decl.; Nesbihal Decl.

92. Plaintiffs' member, volunteers, and program participants are aware of the location of the Incinerator relative to where they live, work, and recreate, and are aware of the Incinerator's emissions blowing in their direction. They smell, see, and breathe the Incinerator's emissions, though they do not want to. Plaintiffs' members, volunteers, and program participants experience increased asthma rates as a result of the Incinerator's emissions. *See* Baptista Decl.; Uhl Decl.; Nesbihal Decl.

93. Plaintiffs' members, volunteers, and program participants breathe air pollutants emitted both legally and illegally from the Incinerator. Plaintiffs' members, volunteers, and program participants want to breathe as little air pollution from the Incinerator as possible, and certainly do not want to breathe pollutants that are emitted illegally. *See* Baptista Decl.; Uhl Decl.; Nesbihal Decl.

94. Health, environmental, recreational, aesthetic, and other interests of these individuals are impaired by defendants' illegal actions and will continue to be impaired without an appropriate order of this Court.

95. In addition to its employees, ICC depends upon many volunteers drawn from the Ironbound neighborhood to support its programs. ICC's mission is to work with neighborhood

residents to develop and operate programs to meet the full range of needs of the general community of the Ironbound neighborhood and to improve their quality of life. Many of the concerns addressed by ICC relate to environmental issues in the Ironbound due to a disproportionate exposure of its residents to polluted air, water, and land. *See Baptista Decl.*

96. ICC's organizational interests are also adversely affected by the poor air quality in the Ironbound. ICC has an operational stake in the success of its programs; if no one attends its programs, then the ICC will not be supported by institutional and government grants, as well as the service fees paid by some patrons. The success of ICC depends on its ability to attract participants to its programs within the Ironbound community. ICC is likely to suffer severe harm if it is unable to provide a healthy and safe environment for its employees, volunteers and program participants. *See Baptista Decl.*

97. Poor air quality diminishes the quality of the life of ICC employees, volunteers and program participants who live in the Ironbound, engage in ICC programs, or work at ICC. For example, ICC provides after-school day care for children at the Hawkins Street School, which is 0.8 miles east (downwind) of the Incinerator. The after-school programs for children at the Hawkins Street School include both indoor and outdoor activities. Children who participate in the ICC program at the Hawkins Street School face direct and unavoidable exposure to increased emissions from the Incinerator, and have no choice but to breathe the air, or refuse to participate in the ICC program. Similarly, ICC employees and volunteers who run the ICC program at the Hawkins Street School face direct and unavoidable exposure to increased emissions from the Incinerator, and have no choice but to breathe the polluted air, or refuse to work in the ICC programs. *See Baptista Decl.*

98. The discharge of pollutants, especially SO₂, causes odors in the Ironbound. ICC's members, program participants complain of a smell of rotten eggs. *See Baptista Decl.*

99. The suffering of people with asthma is increased because of the emission of particulate matter. The ICC experienced diminished participation from those patrons with asthma due to increased emissions of particulate matter. *See* Baptista Decl.

100. GreenFaith members have observed a dramatic increase in recent years in asthma rates among their students at Resurrection School, which is also a member of GreenFaith. *See* Uhl Decl.; Nesbihal Decl.

101. To redress these harms, Plaintiffs seek injunctive measures to be taken against defendants to prevent them from continuously violating the emissions standards and limits in their Permit.

102. By discharging pollutants in excess of its permit levels, defendants' acts and omissions have adversely affected, are adversely affecting, and will continue to adversely affect, the interests of ICC, GreenFaith, their officers, directors, employees, volunteers, program participants, and patrons.

FIRST CLAIM FOR RELIEF

(Violations of the New Jersey State Implementation Plan)

103. Plaintiffs reallege and incorporate by reference paragraphs 1 through 102 of this Complaint.

104. Defendants must comply with emission limitations in permits and regulations issued pursuant to the New Jersey SIP and which are applicable to stationary sources of air pollution at the Incinerator.

105. SIP-based emission limitations applicable to the Incinerator are contained in various permits issued to defendants by the DEP. These permits include the Preconstruction Permit and the Title V Permit.

106. Repeatedly and frequently since April 14, 2002, emissions from the Incinerator of sulfur dioxide, carbon monoxide, and particulate matter have exceeded the emission limits contained in defendants SIP-based permits and in the New Jersey SIP. Exceedances of emissions limits, based on defendants' emission event reports submitted to DEP and EPA are listed in Paragraphs 51 through 70 of this Complaint. Defendants have continued to emit pollutants in violation of SIP-based emission limits after December 31, 2008.

107. Under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), persons are authorized to bring suit in federal court to enforce emission standards and limitations contained in, *inter alia*, permits issued pursuant to the New Jersey SIP; federal NSPS regulations; preconstruction permits; and Title V permits.

108. Pursuant to 42 U.S.C. § 7602(e), Plaintiffs are each "persons" entitled to bring a citizen suit under the provisions of the CAA.

109. Pursuant to 42 U.S.C. § 7602(e), defendants are each "persons" subject to the citizen suit provisions of the CAA.

110. Each emission of a pollutant from the Incinerator in violation of an emission limit contained in the Permit or in regulations that are part of the New Jersey SIP is a separate violation of the New Jersey SIP. Each violation of the New Jersey SIP is a violation of the Act.

111. Absent an appropriate order of this Court, defendants will continue to violate temperature, oxygen, and steam production limitations in their SIP-based permits, and emit sulphur dioxide, carbon monoxide, and particulate matter in amounts that violate their SIP-based permits and the New Jersey SIP at the Incinerator.

112. As provided by sections 113(e) and 304(a) of the Act, 42 U.S.C. §§ 7413(e) and 7604(a), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and 40

C.F.R. § 19.4, the violations described above subject defendants to injunctive relief and civil penalties of up to \$32,500 per day for each violation of the Act.

113. Accordingly, defendants are liable for injunctive relief to stop the violations, and for civil penalties for each and every violation set forth in the notice letter and similar violations from the date of the notice letter to any order entered in this case, pursuant to CAA § 304, 42 U.S.C. § 7604(a).

SECOND CLAIM FOR RELIEF

(Violations of New Source Performance Standards)

114. Plaintiffs reallege and incorporate by reference paragraphs 1 through 102 of this Complaint.

115. Repeatedly and frequently since April 14, 2002, defendants have released excessive amounts of sulphur dioxide, carbon monoxide, and particulate matter from the Incinerator, as well as violated temperature and other operating requirements. Each such incident constitutes a violation of the NSPS general requirement regarding good air pollution control practices, 40 C.F.R. § 60.11(d).

116. Under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), persons are authorized to bring suit in federal court to enforce emission standards and limitations contained in, *inter alia*, permits issued pursuant to the New Jersey SIP; federal NSPS regulations; preconstruction permits; and Title V permits.

117. Pursuant to 42 U.S.C. § 7602(e), Plaintiffs are each "persons" entitled to bring a citizen suit under the provisions of the CAA.

118. Pursuant to 42 U.S.C. § 7602(e), defendants are each "persons" subject to the citizen suit provisions of the CAA.

119. Each violation of an NSPS is a violation of the Act.

120. Absent an appropriate order of this Court, defendants will continue to violate temperature, oxygen, and steam flow limitations in their Permits, and to emit sulphur dioxide, carbon monoxide, and particulate matter in amounts that violate NSPS.

121. As provided by sections 113(e) and 304(a) of the Act, 42 U.S.C. §§ 7413(e) and 7604(a), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and 40 C.F.R. § 19.4, the violations described above subject defendants to injunctive relief and civil penalties of up to \$32,500 per day for each violation of the Act.

122. Accordingly, defendants are liable for injunctive relief to stop the violations, and for civil penalties for each and every violation set forth in the notice letter and similar violations from the date of the notice letter to any order entered in this case, pursuant to CAA § 304, 42 U.S.C. § 7604(a).

THIRD CLAIM FOR RELIEF

(Violations of the Title V Permit)

123. Plaintiffs reallege and incorporate by reference paragraphs 1 through 102 of this Complaint.

124. Defendants must comply with the terms and conditions of operating permits issued pursuant to Title V of the Act. Title V permits incorporate all emissions standards and limitations applicable to a source, including both SIP-based emissions limits and NSPS regulations.

125. Under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), persons are authorized to bring suit in federal court to enforce emission standards and limitations contained in, *inter alia*, permits issued pursuant to the New Jersey SIP; federal NSPS regulations; preconstruction permits; and Title V permits.

126. Pursuant to 42 U.S.C. § 7602(e), Plaintiffs are each “persons” entitled to bring a

citizen suit under the provisions of the CAA.

127. Pursuant to 42 U.S.C. § 7602(e), defendants are each “persons” subject to the citizen suit provisions of the CAA.

128. Each violation of defendants’ SIP-based permits, the New Jersey SIP, and the NSPS regulations described in the First and Second Claims for Relief above is a violation of the corresponding Title V permit into which the applicable emission standard or limitation has been incorporated.

129. Each violation of the Title V Permit is a violation of the Act.

130. Absent an appropriate order of this Court, defendants will continue to violate temperature, oxygen, and steam flow limitations in their Title V Permit, and emit sulphur dioxide, carbon monoxide, and particulate matter in amounts that violate their Title V Permit at the Incinerator.

131. As provided by sections 113(e) and 304(a) of the Act, 42 U.S.C. §§ 7413(e) and 7604(a), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and 40 C.F.R. § 19.4, the violations described above subject defendants to injunctive relief and civil penalties of up to \$32,500 per day for each violation of the Act.

132. Accordingly, defendants are liable for injunctive relief to stop the violations, and for civil penalties for each and every violation set forth in the notice letter and similar violations from the date of the notice letter to any order entered in this case, pursuant to CAA § 304, 42 U.S.C. § 7604(a).

PRAYER FOR RELIEF

WHEREFORE, based on the allegations contained in paragraphs 1 through 102, above, Plaintiffs respectfully request that this Court:

- A. Declare defendants to have violated and to be in continuing violation of the Act;
- B. Enjoin each of the defendants from operating all stationary sources of air pollutants at the Incinerator except in accordance with the Clean Air Act and any applicable regulatory requirements;
- C. Order defendants to take appropriate actions to remedy, mitigate, or offset the harm to public health and the environment caused by the violations of the Act alleged above;
- D. Assess a civil penalty against each defendant of up to \$32,500 per day for each violation of the Act and applicable regulations occurring on and after April 14, 2002, as provided by 42 U.S.C. §§ 7413(e) and 7604(a) and (g);
- E. Order defendants to pay reasonable attorneys fees and costs (including expert witness fees), as provided by 42 U.S.C. § 7604(d);
- F. Grant such other relief as the Court deems just and proper.

Dated: February 20, 2009
Newark, NJ

Respectfully submitted,

/s/ William J. Schulte
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CERTIFICATION PURSUANT TO LOCAL RULE 11.2

I certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

/s/ William J. Schulte

Dated: February 20, 2009
Newark, New Jersey

Exhibit 5

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IRONBOUND COMMUNITY CORP., and
GREENFAITH, INC.

Plaintiffs,

-versus-

COVANTA ESSEX CO., COVANTA
ENERGY CORPORATION, and COVANTA
HOLDING CORPORATION

Defendants.

Civil Action No.

**DECLARATION OF
SISTER ELEANOR UHL, O.P.,
IN SUPPORT OF
PLAINTIFFS' COMPLAINT**

Sister Eleanor Uhl, O.P., pursuant to 28 U.S.C §1746, declares as follows:

1. I am a resident of the State of New Jersey. I reside in Hudson County at 174 3rd Street, Jersey City, NJ 07302. I have lived there for the past fourteen years. I have no plans to move.
2. I am the principal of Resurrection School, a Catholic grammar school located at 189 Brunswick Street, Jersey City, NJ 07302. I have served as the principal for the past fourteen years.

3. Jersey City, together with Newark, is within the New York-New Jersey-Connecticut nonattainment area for ozone and particulate matter (PM_{2.5}) because it does not meet the National Ambient Air Quality Standards (NAAQS) for those pollutants. Jersey City and Newark are also in the New York-New Jersey-Connecticut maintenance area for carbon monoxide (CO), due to prior violations of the NAAQS for CO.
4. I submit this declaration in support of Plaintiffs' Complaint against Covanta Essex Company, Covanta Energy Corporation, and Covanta Holding Corporation (collectively referred to as "Covanta") based upon my personal observations and my personal knowledge.
5. Resurrection School was founded in 2000 as the result of a consolidation of a number of Catholic grammar schools in Jersey City. Two-hundred and twenty students attend Resurrection School from Pre-kindergarten through eighth grade. Twenty-five faculty and staff support the school during the academic year. During the summer, Resurrection School hosts the Bridge Program, a summer school for students who need additional tutoring. Throughout the regular school year and summer months, students go outside for Physical Education on nice days and for recess. On occasion, teachers will hold lessons outside in the school's Peace Garden, or will take the children to a park located near the school.
6. GreenFaith, Inc. is a not-for-profit membership coalition founded in 1992 with its principal place of business at 46 Bayard Street, Suite 401, New Brunswick, NJ 08901. GreenFaith is devoted to the inspiration, education, and mobilization of people to preserve and enhance the environment. To that end, GreenFaith brings together people of diverse spiritual backgrounds to protect at-risk communities from toxic environments. The organization mobilizes religious institutions to advocate and raise awareness of environmental injustice.

7. Resurrection School has been a member of GreenFaith for two years. To be a member of GreenFaith, the school pays annual dues in the amount of \$300. GreenFaith serves as a mentor for the school. GreenFaith representatives speak at school assemblies and in individual classrooms to help teach the students, faculty and staff about environmental responsibility. Under the tutelage of GreenFaith, Resurrection School has become a "Green Flag" school, i.e., a school that works toward environmental advancement in its community. The school became a Green Flag school in September of 2006. The school focused on recycling for its Green Flag project. The School's efforts earned it a commendation from the Mayor of Jersey City.
8. Along with the Ironbound Community Corporation ("ICC"), GreenFaith filed the above-captioned lawsuit to remedy continuous violations and to prevent ongoing violations of Covanta's air emission permit limits for its incinerator located in Newark, NJ ("Incinerator"). The Incinerator's continuing violations pollute the air and have deleterious effects on public health and the environment in the areas where my students and I live, work, study, and recreate. I am extremely concerned about the effects the Incinerator has on me, the students, faculty, and staff of Resurrection School and the surrounding community.
9. The Incinerator is approximately six miles west of the School. When the wind blows in an easterly direction, the emissions from the Incinerator carry directly toward Resurrection School.
10. I became especially concerned about the air quality in Jersey City after personally observing the respiratory problems of my students. The number of students with asthma has increased dramatically over my fourteen year tenure. A vast number of Resurrection School students are dependent upon inhalers. Accordingly, all of the teachers receive special training to deal

with asthmatic students. The physical education teachers often must restrict outdoor physical activity of the asthmatic children. On at least one occasion, I had to call an ambulance to the school for a young boy who suffered an asthma attack after playing outside during recess.

11. On very hot days, I can see pollution in the air. If I open the windows to the school, I will find the table surfaces dusty and gritty as a result of the particulates in the air. Poor air quality exacerbates the children's asthma. Most of the children who must visit the nurse during school hours go for asthma related health issues. A large majority of student absenteeism is due to respiratory illness or problems related to asthma.
12. I first became aware of Covanta's continuous permit violations at least two years ago. Upon learning of the violations, I became extremely concerned that Covanta was contributing heavily to the poor air quality in Newark and Jersey City.
13. I believe that if Covanta complied with its permit obligations the air in Newark and Jersey City would be cleaner and more breathable and would pose less of a danger to my health or the health of my students. Unless the court provides a remedy, Covanta's continuing violations will continue to injure my concern for my students' health and their ability to take full advantage of their educational opportunities. If health concerns were not an issue for the students, each would have more time to focus on studies. Also, I would spend less time on health matters and would concentrate on other aspects of the children's education.
14. The relief requested in this suit would require Covanta to comply with its permit obligations rather than continually violating them. This will lead to cleaner air in Newark and Jersey City and the surrounding areas, and less adverse health effects on my students. In turn, the levels of stress and concern that I experience for my students will be drastically reduced.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Jersey City, New Jersey
February 20, 2009

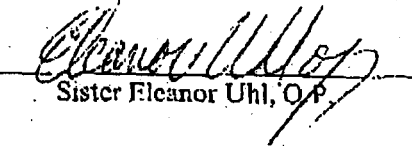

Sister Eleanor Uhl, O.P.

Exhibit 6

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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IRONBOUND COMMUNITY CORP., and
GREENFAITH, INC.

Plaintiffs,

Civil Action No.

-VERSUS-

COVANTA ESSEX CO., COVANTA
ENERGY CORPORATION, and COVANTA
HOLDING CORPORATION

Defendants.

**DECLARATION OF
SISTER NESBIHAL, S.C.,
IN SUPPORT OF
PLAINTIFFS' COMPLAINT**

Sister Barbara Nesbihal, S.C., pursuant to 28 U.S.C §1746, declares as follows:

1. I am a resident of the State of New Jersey. I reside in Hudson County at 372 Montgomery Street, Jersey City, NJ 07302. I have no plans to move.
2. I am co-principal and the Director of Peace Education for the Resurrection School, a Catholic grammar school located on 189 Brunswick Street, Jersey City, NJ 07302. I have served as principal for 38 years, first of the former St. Bridget School, now as co-principal of Resurrection School.

3. Jersey City, together with Newark, is within the New York-New Jersey-Connecticut nonattainment area for ozone and particulate matter (PM_{2.5}) because it does not meet the National Ambient Air Quality Standards (NAAQS) for those pollutants. Jersey City and Newark are also in the New York-New Jersey-Connecticut maintenance area for carbon monoxide (CO), due to prior violations of the NAAQS for CO.
4. I submit this declaration in support of Plaintiffs' Complaint against Covanta Essex Company, Covanta Energy Corporation, and Covanta Holding Corporation (collectively referred to as "Covanta") based upon my personal observations and my personal knowledge.
5. Resurrection School was founded in 2000 as the result of a consolidation of a number of Catholic grammar schools in Jersey City. Two-hundred and twenty students attend Resurrection School from Pre-kindergarten through eighth grade. Twenty-five faculty and staff support the school during the academic year. During the summer, Resurrection School hosts the Bridge Program, a summer school for students who need additional tutoring. Throughout the regular school year and summer months, students go outside for Physical Education on nice days and for recess. On occasion, teachers will hold lessons outside in the school's Peace Garden, or will take the children to a park located near the school.
6. GreenFaith, Inc. is a not-for-profit membership coalition founded in 1992 with its principal place of business at 46 Bayard Street, Suite 401, New Brunswick, NJ 08901. GreenFaith is devoted to the inspiration, education, and mobilization of people to preserve and enhance the environment. To that end, GreenFaith brings together people of diverse spiritual backgrounds to protect at-risk communities from toxic environments. The organization mobilizes religious institutions to advocate and raise awareness of environmental injustice.

7. Resurrection School has been a member of GreenFaith for two years. To be a member of GreenFaith, the school pays annual dues in the amount of \$300. GreenFaith serves as a mentor for the school. GreenFaith representatives speak at school assemblies and in individual classrooms to help teach the students, faculty and staff about environmental responsibility. Under the tutelage of GreenFaith, Resurrection School has become a "Green Flag" school, i.e., a school that works toward environmental advancement in its community. The school became a Green Flag school in September of 2006. The school focused on recycling for its Green Flag project. The School's efforts earned it a commendation from the Mayor of Jersey City.
8. Along with the Ironbound Community Corporation ("ICC"), GreenFaith filed the above-captioned lawsuit to remedy continuous violations and to prevent ongoing violations of Covanta's air emission permit limits for its incinerator located in Newark, NJ ("Incinerator"). The Incinerator's continuing violations pollute the air and have deleterious effects on public health and the environment in the areas where my students and I live, work, study, and recreate. I am extremely concerned about the effects the Incinerator has on me, the students, faculty, and staff of Resurrection School and the surrounding community.
9. The Incinerator is approximately six miles west of the School. When the wind blows in an easterly direction, the emissions from the Incinerator carry directly toward Resurrection School.
10. I became especially concerned about the air quality in Jersey City after observing the increase in young children with asthma. Over my thirty-eight year tenure, the number of school children suffering from asthma has noticeably increased.

11. The Resurrection School has a Peace Garden. I bring the children outdoors to the Peace Garden to teach learn about nature, e.g., the butterflies and insects that are attracted to some of the vegetation in our garden. However, because of the poor air quality in Jersey City, there are very few butterflies or other insects able to withstand the garden.
12. I enjoy taking the children outdoors for lessons or recreation. Unfortunately, there are students that I cannot allow to participate in physical activity outside. Over the past fifteen years, the number of students who tell me they cannot run or participate in physical activity because of asthma dramatically increased. This increase has caused me to experience great stress and concern for the health of my students.
13. I first became aware of Covanta's continuous permit violations at least two years ago. Upon learning of the violations, I became extremely concerned that Covanta was contributing heavily to the poor air quality in Newark and Jersey City.
14. I believe that if Covanta complied with its permit obligations the air in Newark and Jersey City would be cleaner and more breathable, which would help relieve the respiratory problems of my students and improve their ability to participate in outdoor school activities, their attendance, and the overall quality of education at the Resurrection School. If the asthma problems of my students decrease, I would be able to focus more on student education. Cleaner air would allow the school to teach more lessons outside and further our goals as a Green Flag school.
15. The relief requested in this suit would require Covanta to comply with its permit obligations rather than continually violating them. This will lead to cleaner air in Newark and Jersey City and the surrounding areas, and less adverse health effects on my students. In turn, the levels of stress and concern that I experience for my students will be drastically reduced.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct.

Dated: Jersey City, New Jersey
February 20, 2009

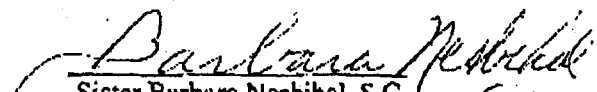

Sister Barbara Nesbital, S.C. 56

Exhibit 7

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Attorneys for Plaintiff

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 FOR THE DISTRICT OF NEW JERSEY

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Plaintiffs,

-versus-

COVANTA ESSEX CO., COVANTA
 ENERGY CORPORATION, and COVANTA
 HOLDING CORPORATION

Defendants.

Civil Action No.

**DECLARATION OF ANA
 BAPTISTA IN SUPPORT OF
 PLAINTIFFS' COMPLAINT**

Ana Baptista, pursuant to 28 U.S.C §1746, declare:

1. I am a resident of the State of New Jersey. I grew up in the Ironbound neighborhood of Newark, New Jersey and lived at 12 Schalk Street for thirteen years (1985-1998) and returned to live there from 2002 until 2005 after earning my master's degree in Environmental Studies from Brown University in 2000. Both of my parents still reside at 12 Schalk Street. Since 2006, I have been living in 415 Center Street, Piscataway, New Jersey.

2. Since 2007 I have been the Program Manager for the Ironbound Community Corporation ("ICC"), a not-for profit organization with its principal place of business at 179 Van Buren Street, Newark, NJ 07105, right in the heart of the Ironbound.
3. I submit this declaration in support of the Ironbound Community Corporation's ("ICC") and GreenFaith's (collectively referred to as "Plaintiffs") complaint against Covanta Essex Company, Covanta Energy Corporation, and Covanta Holding Corporation (collectively referred to as "Covanta") based upon my personal observations and my personal knowledge based on review of State files.
4. Plaintiffs have brought this action on behalf of themselves and the people they serve and represent in order to remedy past violations and to prevent ongoing violations of Covanta's air discharge permit emission limits for its incinerator located in Newark, NJ. The incinerator continuously pollutes the air in excess and in violation of permit limitations. These violations have deleterious impacts on public health and the environment in areas where I live, work, and recreate. These violations also have deleterious impacts on public health and the environment in areas where ICC's members, employees, volunteers, and program participants live, work, and recreate because they breathe and are exposed to more harmful air pollutants than they otherwise would be were it not for Defendants' excess air emissions.
5. The Ironbound is a culturally diverse community that is bounded by highways (Routes 1, 9, 21, 78, New Jersey Turnpike), the Newark Airport, and industry. Due to its surroundings, the Ironbound suffers from many environmental problems. There are over 100 sites listed on the NJDEP's List of Known Contaminated Sites located in the Ironbound. Also, the city of Newark is located in the New York-New Jersey-Connecticut Air Quality Control Region,

which is a nonattainment area for ozone and particulate matter (PM_{2.5}) because it does not meet the NAAQS (National Ambient Air Quality Standards) for those pollutants.

6. The majority of the Ironbound population is either low income, non-English speaking, people of color, or recently immigrated.
7. The Ironbound Community Corporation was founded in 1969 by residents of the Ironbound neighborhood of Newark, New Jersey. Its primary purpose is to improve the quality of life of the residents of the Ironbound. ICC works to overcome the socio-economic barriers facing residents of the Ironbound community and to raise awareness and promote community action in response to environmental issues.
8. ICC's daily operations are run by an Executive Director. Four of the six current members of ICC's Board of Trustees, which governs the organization and guides its mission, are Ironbound residents. The other two members were residents of the Ironbound when they originally joined the Board of Trustees. ICC offers myriad programs to hundreds of Ironbound residents each year.
9. ICC has structured itself to be responsive to the needs of community members through the formation of steering committees made up of Ironbound residents. For example, ICC has a Parent Advisory Committee made up entirely of parents from the Ironbound that creates its own mission statement and goals for ICC work and collaborations. Also, the East Ferry St. Revitalization Steering Committee reviews and gives input into all of ICC's activities in the East Ferry Street neighborhood (which is in the immediate vicinity of the Incinerator) as a condition for funding of ICC's projects in the community. ICC also distributes mailings designed to keep Ironbound residents informed and to seek their input on the issues that

concern them. ICC's programs are designed in accordance with the needs expressed by the community.

10. Specifically, ICC's Environmental Justice program responds to community concerns and then advocates on behalf of the community. ICC also collaborates with other community organizations such as Save the Park At Riverbank ("SPARK") and the Super Neighborhoods Group to improve the environment of the Ironbound.
11. The programs that ICC runs for Ironbound residents include family success centers, preschool, after school programs, summer arts program, meals on wheels, Home Friends, Senior Ride, neighborhood crime committee, adult education, counseling, flu shots, emergency food and clothing referrals, and foreclosure and financial literacy counseling.
12. As the Ironbound is a low-income neighborhood, many of the programs are offered by ICC free of charge. Some of the programs, such as the after school program, are supported by a fee based on a sliding income scale. ICC is primarily funded through state, city, and private grants.
13. ICC is committed to the principles of environmental justice and aims to create a healthy environment for future generations who will call the Ironbound home. ICC's Community Environmental Program (formerly the Community Health Project) responds to the environmental concerns of the community. ICC has a full time environmental justice organizer who organizes residents and is also a resident of the Ironbound herself. She sends out mailings, sets up action committees and calls residents together for public meetings. She currently heads a standing committee of Ironbound residents committed to working on environmental issues such as odor, air pollution, and asthma.

14. The Environmental Program has responded to the expressed concerns of the community by, among other things, lobbying for park and recreation space as well as for cleaner industries in the Ironbound. For example, in 1980 ICC and community residents organized the Ironbound Committee Against Toxic Waste to promote clean ups, pollution source reduction and sustainable development. In 1989, ICC organized the Clean Sludge Coalition with the primary goal of promoting a beneficial use management policy for New Jersey's clean sewage sludge. Community members and ICC successfully prevented the citing of four incinerators in Newark. ICC also served as the community liaison with government agencies like NJDEP and USEPA on the Diamond Shamrock Company site remediation. ICC was designated by the NJDEP as the community representative in the Lister Avenue Brownfields Development Area. ICC has also been an appointed community representative on the NJDEP's Environmental Justice Advisory Council for more than ten years. The Diamond site housed the largest concentration of dioxin in the world. In 1990, ICC was one of the original members on the City of Newark's Riverfront Working Group and was integral in having the project expanded to bring park and waterfront walkways within a few blocks of Terrell Homes (one of the low income housing complexes located in the Ironbound). ICC continues to be an active voice for the Ironbound community.
15. In 2004 I wrote a report as part of an internship with the EPA concerning the poor air quality in Newark, NJ. In this report I analyzed data and discussed the air quality of the Ironbound. I researched large stationary sources in the Ironbound using DataMiner on the NJDEP Open Public Records Act website. I became aware of Covanta's violations while researching this report. I believe Covanta's permit violations contribute to the poor air quality in the Ironbound and the region.

16. While working for ICC I have personally observed the adverse effects of the Ironbound's poor air quality on ICC's mission and programs. I have observed many children in ICC's preschool program suffering from asthma. I have also observed that the after-school and summer arts programs at our Community Center and NJ After 3 program at Hawkins Street School must restrict the outdoor activity of asthmatic children on hot days because of the poor air quality. In addition, some of ICC's staff working at the Hawkins Street School after-school program, the pre-school program and the Community Center on Lafayette Street suffer from severe asthma, bronchitis and other respiratory ailments.
17. In addition to the Incinerator's ongoing permit violations, the facility is one of the dirtiest I have seen. I visited a medical waste incinerator in Rhode Island while working for the State Department of Environmental Management, and I have also observed incinerators in Camden and Rahway. The smoke plume from the Newark Incinerator is visible from my parents' house on Schalk Street which is approximately 1 mile away. The plume is visible for several miles; you can see it from Delancey Street and Downtown and the smoke stack is the most prominent structure in the skyline. On some days, especially hot days, there is a strong unpleasant odor present in the Ironbound that emanates from the facility. Also, the line of garbage trucks waiting to enter the facility to dump trash causes odor, emits soot pollution and is a blight on the neighborhood.
18. I am particularly concerned about the Incinerator's contribution to the Ironbound's poor air quality and its impact on ICC's ability to continue providing services to, and advocating the interests of, the Ironbound community. I fear that should the air quality and health of the residents of the Ironbound continue to deteriorate, ICC may be forced to suspend certain services and possibly face funding withdrawals as a result.

19. I am also particularly concerned about the facility's impact on my health and the health of the Ironbound community in general. These concerns impair both my enjoyment of the Ironbound's rich cultural community and the enjoyment I derive from serving that community.
20. If it were not for the particulate matter and other air pollution emitted from the Covanta facility in excess of their air permits and my concern about health risks associated with the air quality in the Ironbound, I would more fully enjoy the culture of the Ironbound as would members of the community. The relief requested in this suit would not only put the incinerator in compliance but would also improve the quality of life for myself, ICC program users, staff and volunteers, and people in the Ironbound and the region generally. It would also improve ICC's ability to continue providing highly valuable community services in a low-income area.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Newark, New Jersey
February 18, 2009

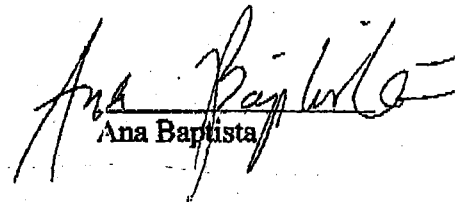

Ana Baptista

Exhibit 8

U.S. Census Bureau

American FactFinder

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P1. TOTAL POPULATION [1] - Universe: Total population

Data Set: [Census 2000 Summary File 3 \(SF 3\) - Sample Data](#)

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total	4,207	3,136

U.S. Census Bureau
Census 2000

P6. RACE [8] - Universe: Total population

Data Set: [Census 2000 Summary File 3 \(SF 3\) - Sample Data](#)

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total:	4,207	3,136
White alone	1,997	1,590
Black or African American alone	721	640
American Indian and Alaska Native alone	6	15
Asian alone	28	0
Native Hawaiian and Other Pacific Islander alone	0	12
Some other race alone	1,087	685
Two or more races	368	194

U.S. Census Bureau
Census 2000

P7. HISPANIC OR LATINO BY RACE [17] - Universe: Total population

Data Set: [Census 2000 Summary File 3 \(SF 3\) - Sample Data](#)

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total:	4,207	3,136
Not Hispanic or Latino:	2,180	1,738
White alone	1,199	1,015
Black or African American alone	619	584
American Indian and Alaska Native alone	6	11
Asian alone	28	0
Native Hawaiian and Other Pacific Islander alone	0	0
Some other race alone	119	10
Two or more races	209	118
Hispanic or Latino:	2,027	1,398
White alone	798	575
Black or African American alone	102	56
American Indian and Alaska Native alone	0	4
Asian alone	0	0

Native Hawaiian and Other Pacific Islander alone	0	12
Some other race alone	968	675
Two or more races	159	76

U.S. Census Bureau
Census 2000

P20. HOUSEHOLD LANGUAGE BY LINGUISTIC ISOLATION [14] - Universe: Households

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total:	1,432	1,031
English	376	329
Spanish:	689	459
Linguistically isolated	276	127
Not linguistically isolated	413	332
Other Indo-European languages:	356	243
Linguistically isolated	176	54
Not linguistically isolated	180	189
Asian and Pacific Island languages:	11	0
Linguistically isolated	11	0
Not linguistically isolated	0	0
Other languages:	0	0
Linguistically isolated	0	0
Not linguistically isolated	0	0

A **linguistically isolated household** is one in which no member 14 years old and over (1) speaks only English or (2) speaks a non-English language and speaks English "very well." In other words, all members 14 years old and over have at least some difficulty with English.

U.S. Census Bureau
Census 2000

P53. MEDIAN HOUSEHOLD INCOME IN 1999 (DOLLARS) [1] - Universe: Households

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Median household income in 1999	26,000	24,622

U.S. Census Bureau
Census 2000

P77. MEDIAN FAMILY INCOME IN 1999 (DOLLARS) [1] - Universe: Families

Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data

NOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Median family income in 1999	30,293	27,165

U.S. Census Bureau
Census 2000

P82. PER CAPITA INCOME IN 1999 (DOLLARS) [1] - Universe: Total populationData Set: Census 2000 Summary File 3 (SF 3) - Sample DataNOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Per capita income in 1999	11,106	12,230

U.S. Census Bureau
Census 2000**P87. POVERTY STATUS IN 1999 BY AGE [17] - Universe: Population for whom poverty status is determined**Data Set: Census 2000 Summary File 3 (SF 3) - Sample DataNOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total:	4,192	3,118
Income in 1999 below poverty level:	1,196	890
Under 5 years	109	121
5 years	42	29
6 to 11 years	109	129
12 to 17 years	87	99
18 to 64 years	723	493
65 to 74 years	77	12
75 years and over	49	7
Income in 1999 at or above poverty level:	2,996	2,228
Under 5 years	166	127
5 years	30	35
6 to 11 years	211	176
12 to 17 years	269	131
18 to 64 years	2,120	1,553
65 to 74 years	82	116
75 years and over	118	90

U.S. Census Bureau
Census 2000**P88. RATIO OF INCOME IN 1999 TO POVERTY LEVEL [10] - Universe: Population for whom poverty status is determined**Data Set: Census 2000 Summary File 3 (SF 3) - Sample DataNOTE: Data based on a sample except in P3, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf3.htm>.

	Census Tract 75.01, Essex County, New Jersey	Census Tract 75.02, Essex County, New Jersey
Total:	4,192	3,118
Under .50	720	574
.50 to .74	187	134
.75 to .99	289	182
1.00 to 1.24	571	263

1.25 to 1.49	162	127
1.50 to 1.74	97	155
1.75 to 1.84	102	30
1.85 to 1.99	72	115
2.00 and over	1,992	1,538

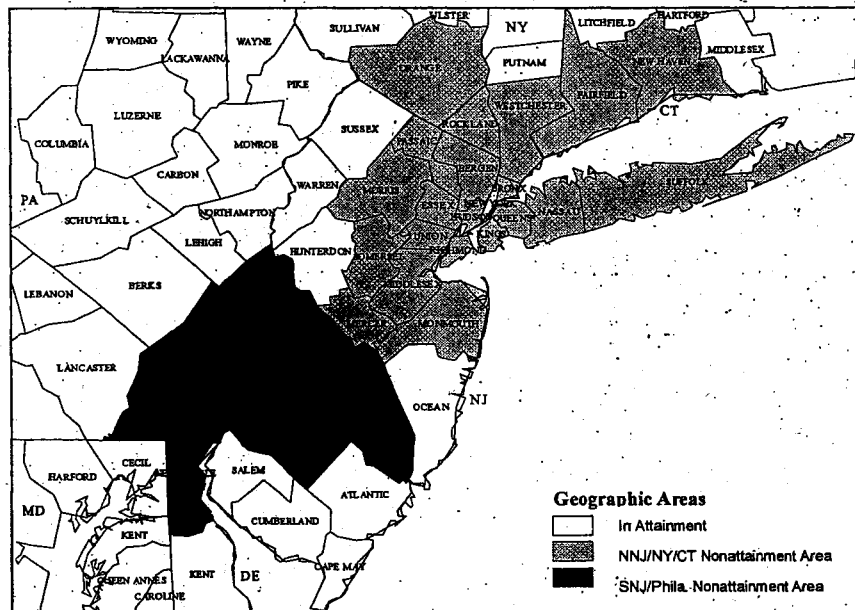
U.S. Census Bureau
Census 2000

Standard Error/Variance documentation for this dataset:

[Accuracy of the Data: Census 2000 Summary File 3 \(SF 3\) - Sample Data \(PDF 141.5KB\)](#)

Exhibit 9

Figure 7.1: USEPA Designations of Nonattainment Areas for the PM_{2.5} National Ambient Air Quality Standard



There are three Metropolitan Planning Organizations (MPOs) in New Jersey that cover the geographic areas shown in Figure 7.2. These are the North Jersey Transportation Planning Authority (NJTPA), the Delaware Valley Regional Planning Commission (DVRPC), and the South Jersey Transportation Planning Organization. Each MPO is responsible for the transportation plans and transportation improvement programs for its designated area. The MPOs each work in consultation with the Federal Highway Administration, the New Jersey Department of Transportation (NJDOT), the USEPA, and the New Jersey Department of Environmental Protection (NJDEP) to remain at or under established transportation emission budgets for their area. Transportation conformity budgets for PM_{2.5} are developed for each MPO by adding the onroad emissions from individual counties within each MPO planning area located within the New Jersey portions of the PM_{2.5} nonattainment areas. This results in the formation of the following three areas for budget development:

- Nine counties located in the NJTPA MPO planning area and the New Jersey portion of the Northern New Jersey/New York/Connecticut (NNJ/NY/CT) PM_{2.5} nonattainment area (Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union Counties),
- Mercer County located in the DVRPC MPO geographic area and the Northern New Jersey/New York/Connecticut nonattainment area, and
- Three counties included in the DVRPC MPO geographic area and the New Jersey portion of the Southern New Jersey/Philadelphia (SNJ/Phila.) PM_{2.5} nonattainment area (Burlington, Camden, and Gloucester Counties).

Exhibit 10

>
> Ana
>
> ----- Original Message
> -----
> Subject: Re: incinerator question
> From: "Maria Franco-Spera" <Maria.Franco-Spera@dep.state.nj.us>
> Date: Fri, March 28, 2008 4:28 pm
> To: jdellafave@ironboundcc.org
> Cc: carolisc@aol.com
> "David Olson" <David.Olson@dep.state.nj.us>
> "John Preczewski" <John.Preczewski@dep.state.nj.us>
> abaptist@eden.rutgers.edu
> -----

>
> Dear Joe,
> To follow up on Ana's request, here's the information I received
> from the
> air program today.
>
> DEP has not received any applications from the Covanta Essex
> facility. The
> last modification of the Covanta Essex operating permit was approved
> on
> Sept 21, 2006, and that was for a Department requested change to their
> permit. A renewal application for their Title V Air Operating Permit
> is
> due July 8, 2008.
> Also, the Air Program has not been contacted by Covanta regarding any
> plans to increase solid waste capacity or air emissions from their
> facility.
> I hope this answers Ana's request. If you have any other questions,
> please
> don't hesitate to contact me,

>
> -Maria

>
> Maria Franco-Spera
> NJDEP Environmental Justice Coordinator
> Environmental Justice Program
> Office of Policy, Planning & Science
> 401 E. State Street, 7th Floor
> P.O. Box 402
> Trenton, NJ 08625-0402
> Phone (609) 633-0715
> Fax (609) 292-3268
> Email: Maria.Franco-Spera@dep.state.nj.us

>>>> <abaptist@eden.rutgers.edu> 3/27/2008 3:19 PM >>>

> Hello Maria -

>
> I just left you a message on your voicemail. I wanted to ask if you
> could
> find out for us whether or not Covanta Incinerator (the Newark, Essex
> county facility) had come to the DEP with any proposals for an

> expansion
> of their operations recently - whether formally or informally. I'm not
> sure who in the DEP would be the appropriate channel for this
> inquiry but
> I figured you could atleast help us find out if such a proposal has in
> fact been made or not. The reason we're asking is because it's been
> brought to our attention that the incinerator has gone to the City of
> Newark with such a proposal, asking for their official support of an
> expansion plan. In any case, any information you can help us track
> down
> within DEP or any suggestions of folks we should contact directly
> with our
> inquiry would be greatly appreciated. I am cc'ing our executive
> director
> Joseph DellaFave and Carol Johnston on this email since I will not
> be here
> for the next two months. But any information you have you can reach
> out to
> them directly with it.
>
> talk to you soon
> Ana Baptista
>
>
>
>
>> Maria Franco-Spera
>> NJDEP Environmental Justice Coordinator
>> Environmental Justice Program
>> Office of Policy, Planning & Science
>> 401 E. State Street, 7th Floor
>> P.O. Box 402
>> Trenton, NJ 08625-0402
>> Phone (609) 633-0715
>> Fax (609) 292-3268
>> Email: Maria.Franco-Spera@dep.state.nj.us
>>
>>
>>
>
>
> <Maria Franco-Spera1.vcf>

Ana Baptista, PhD
Program Manager
Ironbound Community Corp
179 Van Buren St
Newark, NJ 07105
973-589-3353

 **untitled-[2]**
10K

Exhibit 11



William Schulte <wschulte@easternenvironmental.org>

Fwd: Covanta Essex Renewal Notifications

Redacted: attorney-client privilege.

----- Forwarded message -----

From: **Maria Franco-Spera** <Maria.Franco-Spera@dep.state.nj.us>
Date: Tue, May 19, 2009 at 1:54 PM
Subject: Fwd: Covanta Essex Renewal Notifications
To: abaptista@ironboundcc.org

Ana,
I hope the following and the attached answer your question. Let me know if you need anything else.
-Maria

Maria Franco-Spera
NJ DEP Environmental Justice Coordinator
401 E. State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402
Phone (609) 633-0715
Fax (609) 292-3268
Email: Maria.Franco-Spera@dep.state.nj.us

This email and its contents may be Privileged and Confidential due to the Deliberative Process Privilege or under the New Jersey Open Public Records Act.

>>> Francis Steitz 5/18/2009 3:50 PM >>>
Maria,


Public notice was provided through a notice in the Star Ledger on 9/22/2008. Public comment was accepted until 10/22/2008. We also sent letters to the Mayor of Newark, The Health Department in Newark, USEPA region 2, and the facility. Additionally an e-mail was sent to the nearby states. Attached are these letters, a copy of the e-mail and the notice published in the Star Ledger. Please let me know if you need anything else.

Frank Steitz

Chief
Bureau of Air Permits
Desk: (609) - 633 - 8220
Fax: (609) - 292 - 1028
E-mail: Francis.Steitz@dep.state.nj.us


--
Ana I. Baptista, PhD
Program Manager
Ironbound Community Corp
179 Van Buren St.
Newark, NJ 07105
973-589-3353 x213

6 attachments

 **Maria Franco-Spera1.vcf**
1K

 **Letter to Covanta.doc**
30K

 **Letter to EPA.doc**
27K

 **Letter to Mayor.doc**
29K

 **Letter to Health Dept.doc**
29K

 **e-mail to States.doc**
21K

Exhibit 12



June 4, 2009

Via Certified Mail, Return Receipt Requested

The Star Ledger
Legal Ads Department
1 Star Ledger Plaza
Newark, NJ 07102

To Whom It May Concern:

I am writing this letter to confirm that on or around May 20, 2009 a representative from the Legal Advertisement section of The Star Ledger confirmed via telephone call that The Star Ledger did not publish any public notices issued by the New Jersey Department of Environmental Protection that pertain to the Essex County Resource Recovery Facility located at 183 Raymond Boulevard, Newark, New Jersey on September 19, 20, 22, or 23 of 2008. In addition, I would also like to confirm that The Star Ledger does not publish Legal Advertising in its Sunday editions.

Should you have any questions regarding this matter, please do not hesitate to contact me at the phone number or address at the bottom of this letter, or at the following email address: wshulte@easternenvironmental.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Schulte', written over a horizontal line.

William Schulte, Esq.

744 Broad Street, Suite 1525
Newark, NJ 07102
Ph 973.424.1166 Ex 973.710.4653

www.easternenvironmental.org

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 The Star Ledger
 Legal Ads Department
 1 Star Ledger Plaza
 Newark, NJ 07102

2. Article Number
 (Transfer from service label) 7005 1160 0003 2266 0045

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
X M. [Signature]

B. Received by (Printed Name) C. Date of Delivery
 [Blank] 6.5.09

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

7005 1160 0003 2266 0045

U.S. Postal Service™
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NEWARK NJ 07102 OFFICIAL USE

Postage	\$ 0.44	0124
Certified Fee	\$2.80	06
Return Receipt Fee (Endorsement Required)	\$2.30	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.54	

Sent To: *The Star Ledger - Legal Dept*
 Street, Apt. No., or PO Box No.: *1 Star Ledger Plaza*
 City, State, ZIP+4: *Newark, NJ 07102*

PS Form 3800, June 2002 See Reverse for Instructions



Exhibit 13

Division of Air Quality
Bureau of Operating Permits
401 E State Street, 2nd Floor, P.O. Box 27,
Trenton, NJ 08625-0027

September 12, 2008

Mr. Peter Dillon, Dir. Of Inspections
Newark Department of Environmental Health
94 William Street
Newark, NJ 07102

Dear Mr. Dillon:

Pursuant to the provisions of N.J.A.C. 7:27-22.11, a legal advertisement will be published in The Star Ledger newspaper. In addition, I am providing you this special notification to seek public comment on our intent to approve an Air Pollution Control Operating Permit Renewal for Covanta Essex Resource Recovery, located at 183 Raymond Blvd, Newark, NJ 07105 Any comments for this "draft permit" must be received by the Department by October 20, 2008. Please forward any comments to:

David Olson
New Jersey Department of Environmental Protection
Air Quality Permitting Program
Bureau of Operating Permits
401 East State St. - 2nd Floor, Box 27
Trenton, NJ 08625-0027
609-633-0730

The enclosed Facility Profile describes the facility. If you would like to see the complete "draft permit", it is available for inspection at the address above and at the Northern Regional Office located at 7 Ridgedale Avenue, Cedar Knolls, NJ 07927 (973-656-4444). If you would like to inspect the "draft permit" at either location, please call in advance for an appointment.

As this facility is located in your town, we will try to answer any questions you or the town's residents may have.

Sincerely,

David Olson
Bureau of Operating Permits

Enclosures: Facility Profile, Reason for Application

C: Central Regional Office (w/o enclosure)
Thomas Hanna

Exhibit 14

Division of Air Quality
Bureau of Operating Permits
401 E State Street, 2nd Floor, P.O. Box 27,
Trenton, NJ 08625-0027

September 12, 2008

Honorable Cory A. Booker
Mayor, Newark City
920 Broad Street
Newark, New Jersey 07102

Dear Mayor Booker:

Pursuant to the provisions of N.J.A.C. 7:27-22.11, a legal advertisement will be published in The Star Ledger newspaper. In addition, I am providing you this special notification to seek public comment on our intent to approve an Air Pollution Control Operating Permit Renewal for Covanta Essex Resource Recovery, located at 183 Raymond Blvd, Newark, NJ 07105 Any comments for this "draft permit" must be received by the Department by October 20, 2008. Please forward any comments to:

David Olson
New Jersey Department of Environmental Protection
Air Quality Permitting Program
Bureau of Operating Permits
401 East State St. - 2nd Floor, Box 27
Trenton, NJ 08625-0027
609-633-0730

The enclosed Facility Profile describes the facility. If you would like to see the complete "draft permit", it is available for inspection at the address above and at the Northern Regional Office located at 7 Ridgedale Avenue, Cedar Knolls, NJ 07927 (973-656-4444). If you would like to inspect the "draft permit" at either location, please call in advance for an appointment.

As this facility is located in your town, we will try to answer any questions you or the town's residents may have.

Sincerely,

David Olson
Bureau of Operating Permits

Enclosures: Facility Profile, Reason for Application
C: Central Regional Office (w/o enclosure)
Thomas Hanna

Exhibit 15

Division of Air Quality
Bureau of Operating Permits
401 E State Street, 2nd Floor, P.O. Box 27,
Trenton, NJ 08625-0027

September 12, 2008

Mr. Richard R. Giordano
Plant Manager
Covanta Essex Company
183 Raymond Blvd.
Newark, NJ 07105

Dear Mr. Giordano:

Pursuant to the provisions of N.J.A.C. 7:27-22.11, a legal advertisement will be published in The Star Ledger newspaper. In addition to publishing a legal advertisement and sending a notice to the town mayor, Honorable Cory A. Booker, I am providing you with this special notification that opens the public comment period on our intent to approve an Air Pollution Control Operating Permit Renewal for your facility. If you have any comments for this "draft permit", they must be in writing and received by the Department by October 20, 2008. Please forward any comments to:

David Olson
New Jersey Department of Environmental Protection
Air Quality Permitting Program
Bureau of Operating Permits
401 East State St. - 2nd Floor, Box 27
Trenton, NJ 08625-0027
(609) 633-0730

A complete draft permit and the Statement of Basis document for your facility are enclosed. We expect the legal notice required by N.J.A.C. 7:27-22 will appear in The Star Ledger newspaper on or about September 19, 2008. The public comment period will close on October 20, 2008. You may contact me for information about any comments received.

Sincerely,

David Olson
Bureau of Operating Permits

Enclosures: Draft Permit and Statement of Basis

C: T. Hanna (w/o enclosure)
Northern Regional Office (w/ enclosure)

Exhibit 16

Division of Air Quality
Bureau of Operating Permits
401 E State Street, 2nd Floor, P.O. Box 27,
Trenton, NJ 08625-0027

September 12, 2008

Mr. Steve Riva, Chief
Chief, Permitting Section
USEPA, Region 2
290 Broadway, 25th Floor
New York, NY 10007-1866

Dear Steve:

As a courtesy, I am providing you with this notice of New Jersey's intent to approve an Air Pollution Control Operating Permit Renewal for Covanta Essex Resource Recovery, which is located at 183 Raymond Blvd, Newark, NJ 07105. The public comment period closes on October 20, 2008. This notice isn't meant to replace the "proposed permit" process in 40CFR70.

The facility has represented compliance with all the applicable requirements. Therefore, there are no compliance schedules included with this permit approval.

Should you want more information regarding this draft permit or if you would like to comment, please call me at 609-633-0730.

Sincerely,

David Olson
Air Quality Permitting Element

cc: Thomas Hanna

Exhibit 17

Neil Ruben

From: Kathy Mantuano [Kathy.Mantuano@dep.state.nj.us]
Sent: Tuesday, June 30, 2009 3:23 PM
To: Evelyn Molder
Cc: Peggy Reading
Subject: Fwd: RE: OPRA# 81620
Attachments: Fwd: RE: OPRA# 81620 (750 bytes)

Hi Evelyn, In reference to #5. The mailing list required, pursuant to N.J.A.C. 7:27-22.11(e), and copies of any correspondence sent to those on the mailing list:

The mailing list consist of one name:

Ironbound Community Corporation
179 Van Buren St.
Newark, NJ 07105
Attn: Joseph Della Fave, Executive Director

We have no correspondence that was sent to those on the mailing list.

Thanks, Kathy

Neil Ruben

From: Sandra Remboske [Sandra.Remboske@dep.state.nj.us]
Sent: Monday, June 29, 2009 10:59 AM
To: Evelyn Molder; Kathy Mantuano
Cc: Donielle Hoist; Peggy Reading
Subject: Fwd: RE: OPRA# 81620

Hi Kathy -

Requester performed file review, left without seeing why he was not provided #5 of the request. # 5 of request states:

5. The mailing list required, pursuant to N.J.A.C. 7:27-22.11(e), and copies of any correspondence sent to those on the mailing list.

Please advise Evelyn Molder of your response and if necessary update the RAWS.
Thank you.

Thank you.
Sandi Remboske

Sandra.Remboske@dep.state.nj.us
Office of Record Access
Phone # 609-341-3121
Fax # 609-292-1177

Exhibit 18

RUTGERS ENVIRONMENTAL LAW CLINIC

123 Washington Street
Newark, NJ 07102-3094
Phone: (973) 353-5695

Rutgers, The State University of New Jersey
School of Law - Newark
Fax: (973) 353-5537

March 8, 2007

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard Giordano, Plant Manager
Covanta Essex Co. Resource Recovery
183 Raymond Boulevard
Newark, NJ 07105

Scott Turner, Esq.
Nixon Peabody, LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14306-1051

Anthony J. Orlando, President & CEO
Covanta Holding Corporation
40 Lane Road
Fairfield, NJ 07004

Re: Notice of Intent to Commence Civil Action
under the Clean Air Act 42 U.S.C. § 7401, et seq.

Dear Messrs. Giordano, Turner and Orlando:

On behalf of our clients, the Ironbound Community Corporation ("ICC")¹ and GreenFaith, Inc. ("GreenFaith")², we hereby provide formal written notice that our clients intend to file suit against Covanta Essex Co. ("Covanta") pursuant to the Clean Air Act, 42 U.S.C. §§7604(a)(1)(A), for Covanta's continuous and ongoing violations of the Newark Incinerator's Title V air permit. The Newark Incinerator, which is owned and operated by Covanta Essex County Resource Recovery (formerly American Ref-Fuel Company of Essex County), is located at 183 Raymond Boulevard, Newark, NJ. By allowing violations to continue month after month, and merely continuing to pay an assigned violation fee, Covanta has blatantly disregarded the Clean Air Act and the New Jersey Air Pollution Control Act. Accordingly, ICC and GreenFaith intend to commence a citizen suit in federal district court.³

I. The Newark Incinerator Is Allowed Limited Emissions, as Designated in Its Permits

The Newark Incinerator incinerates approximately 77,500 tons of solid waste per month at its facility located squarely within the Ironbound neighborhood of Newark, within close

¹ ICC is located at 179 Van Buren Street, Newark, NJ 07105.

² GreenFaith is located at 46 Bayard St., #401, New Brunswick, NJ 08901

³ ICC initially filed a Notice Letter on November 1, 2005. Because the Newark Incinerator has continued to violate the terms of its permit and counsel for Covanta has failed to respond to settlement inquiries by ICC's attorneys, ICC reissues its intent to sue with this letter. GreenFaith joins ICC as an additional prospective party.

Carter H. Strickland, Jr., Esq.+
Acting Director
cstrickland@kinoy.rutgers.edu

Julia L. Huff, Esq.*+
Staff Attorney
jhuff@kinoy.rutgers.edu

Kathleen J. Shrekgast, Esq.#
Staff Attorney
kshrekgast@kinoy.rutgers.edu

Richard Webster, Esq.+
Staff Attorney
rwebster@kinoy.rutgers.edu

proximity of many densely populated cities. The Incinerator produces a number of pollutants, including sulfur dioxide ("SO₂"), nitrogen oxide ("NO_x"), particulate matter ("PM"), carbon monoxide ("CO"), mercury ("Hg") and Opacity, a soot-like substance similar in makeup to PM. These pollutants escape through the Incinerator's stacks into the ambient air of the surrounding communities. Area residents and workers then breathe the contaminants in the air every day. Covanta's predecessor, American Ref-Fuel, applied to the New Jersey Department of Environmental Protection ("DEP") for a Title V permit and was granted the privilege to operate and emit pollutants into the atmosphere within specifically regulated limits. Covanta has a duty to comply with the applicable permit limits and conditions to ensure public health and safety.

To date, Covanta has neglected to fulfill the terms of its Title V permit because it continues to violate several of the permit's emissions levels. By exceeding its allowable emissions and opacity levels, Covanta has placed the public's health at risk. These exceedances constitute violations of both the Clean Air Act and the state's Air Pollution Control Act.

II. Covanta's Ongoing Violations

Covanta has committed the following violations since April of 2002. These emission exceedances violate the levels established in Covanta's Title V permit, and therefore, the New Jersey Air Pollution Control Act § 7:27-22.17, and the Clean Air Act 42 U.S.C. § 7661a. These violations include, but are not limited to:

	Date	Location	Permit Limit Violated	Violated Citation
1.	4/14/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
2.	4/17/02	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
3.	4/19/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
4.	4/19/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
5.	4/28/02	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
6.	4/28/02	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
7.	4/28/02	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
8.	5/02/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
9.	5/06/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
10.	5/08/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
11.	6/09/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
12.	6/15/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
13.	6/15/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
14.	6/15/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
15.	6/16/02	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)

16.	6/27/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
17.	6/27/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
18.	6/27/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
19.	7/29/02	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
20.	8/02/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
21.	8/02/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
22.	8/02/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
23.	8/02/02	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
24.	8/02/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
25.	8/02/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
26.	8/09/02	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
27.	8/25/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
28.	8/25/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
29.	8/09/02	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
30.	8/25/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
31.	8/09/02	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
32.	8/25/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
33.	8/09/02	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
34.	8/25/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
35.	8/09/02	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
36.	10/14/02	Boiler 2	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
37.	10/17/02	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
38.	11/02/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
39.	11/05/02	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
40.	11/05/02	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
41.	11/06/02	Boiler 1	Oxygen	N.J.A.C. 7:27-22.16(e)
42.	11/06/02	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
43.	11/06/02	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
44.	11/06/02	Boiler 3	Oxygen	N.J.A.C. 7:27-22.16(e)
45.	11/10/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
46.	11/10/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
47.	11/10/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
48.	11/11/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
49.	11/11/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)

50.	11/11/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
51.	11/23/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
52.	11/23/02	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
53.	12/09/02	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
54.	12/09/02	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
55.	12/09/02	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
56.	1/21/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
57.	1/21/03	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
58.	1/22/03	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
59.	1/22/03	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
60.	1/22/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
61.	1/24/03	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
62.	1/24/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
63.	2/05/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
64.	2/06/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
65.	3/30/03	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
66.	3/30/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
67.	4/10/03	Boiler 2	Carbon Flow	N.J.A.C. 7:27-22.16(e)
68.	4/11/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
69.	4/26/03	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
70.	5/03/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
71.	5/06/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
72.	5/06/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
73.	5/12/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
74.	5/13/02	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
75.	5/13/02	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
76.	7/08/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
77.	7/08/03	Boiler 3	Oxygen	N.J.A.C. 7:27-22.16(e)
78.	7/22/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
79.	7/22/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
80.	7/22/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
81.	7/24/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
82.	8/02/03	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
83.	8/10/03	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)

84.	8/11/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
85.	8/17/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
86.	8/17/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
87.	8/17/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
88.	8/25/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
89.	8/27/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
90.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
91.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
92.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
93.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
94.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
95.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
96.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
97.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
98.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
99.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
100.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
101.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
102.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
103.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
104.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
105.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
106.	9/10/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
107.	9/19/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
108.	10/01/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
109.	10/01/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
110.	10/03/03	Boiler 3	Steam Flow	N.J.A.C. 7:27-22.16(e)
111.	10/07/03	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
112.	10/07/03	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
113.	10/07/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
114.	10/22/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
115.	11/19/03	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
116.	11/25/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
117.	11/27/03	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)

118.	11/27/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
119.	11/27/03	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
120.	12/05/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
121.	12/13/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
122.	12/20/03	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
123.	12/20/03	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
124.	12/28/03	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
125.	1/01/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
126.	1/01/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
127.	1/26/04	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
128.	1/31/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
129.	2/12/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
130.	4/05/04	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
131.	4/05/04	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
132.	4/05/04	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
133.	4/05/04	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
134.	5/30/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
135.	8/15/04	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
136.	8/15/04	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
137.	9/07/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
138.	9/08/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
139.	9/08/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
140.	9/08/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
141.	9/08/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
142.	9/08/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
143.	9/08/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
144.	9/08/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
145.	9/22/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
146.	9/22/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
147.	10/24/04	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
148.	10/24/04	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
149.	10/24/04	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
150.	10/24/04	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
151.	10/27/04	Boiler 2	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)

152.	10/27/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
153.	10/27/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
154.	10/27/04	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
155.	10/27/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
156.	10/27/04	Boiler 2	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
157.	10/27/04	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
158.	10/27/04	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
159.	10/29/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
160.	10/29/04	Boiler 1	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
161.	11/07/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
162.	11/07/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
163.	11/08/04	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
164.	11/08/04	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
165.	11/08/04	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
166.	11/15/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
167.	11/15/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
168.	11/15/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
169.	11/18/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
170.	11/18/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
171.	11/18/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
172.	11/18/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
173.	11/18/04	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
174.	11/21/04	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
175.	11/28/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
176.	11/28/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
177.	11/28/04	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
178.	12/03/04	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
179.	12/03/04	Boiler 3	Carbon Monoxide	40 CFR 62.14104(a)
180.	1/05/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
181.	1/14/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
182.	3/05/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
183.	3/06/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
184.	3/13/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
185.	3/14/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)

186.	3/15/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
187.	3/18/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
188.	3/18/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
189.	3/22/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
190.	3/22/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
191.	3/24/05	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
192.	3/24/05	Boiler 3	Sulfur Dioxide	N.J.A.C. 7:27-22.16(e)
193.	3/25/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
194.	3/25/05	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
195.	4/05/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
196.	4/05/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
197.	5/03/05	Boiler 1	Oxygen	N.J.A.C. 7:27-22.16(e)
198.	5/16/05	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
199.	5/16/05	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
200.	5/16/05	Boiler 1	Carbon Monoxide	40 CFR 62.14104(a)
201.	6/24/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
202.	6/25/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
203.	8/13/05	Boiler 1	Particulate Matter	N.J.A.C. 7:27-22.16(e)
204.	8/15/05	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
205.	8/21/05	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
206.	8/23/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
207.	8/23/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
208.	8/23/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
209.	8/27/05	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
210.	8/27/05	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
211.	8/27/05	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
212.	8/27/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
213.	8/27/05	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
214.	8/27/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
215.	8/27/05	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
216.	8/27/05	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
217.	9/08/05	Boiler 2	Oxygen	N.J.A.C. 7:27-22.16(e)
218.	9/20/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
219.	10/05/05	Boiler 2	Opacity	40 CFR 62.14103(a)(1)

220.	10/07/05	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
221.	11/03/05	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
222.	11/11/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
223.	11/11/05	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
224.	11/11/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
225.	11/12/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
226.	11/30/05	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
227.	12/07/05	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
228.	1/03/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
229.	1/09/06	Boiler 1	Temperature	N.J.A.C. 7:27-22.16(e)
230.	1/09/06	Boiler 2	Carbon Monoxide	40 CFR 62.14104(a)
231.	1/09/06	Boiler 3	Oxygen	N.J.A.C. 7:27-22.16(e)
232.	1/09/06	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
233.	1/09/06	Boiler 3	Temperature	N.J.A.C. 7:27-22.16(e)
234.	1/11/06	Boiler 2	Oxygen	N.J.A.C. 7:27-22.16(e)
235.	1/24/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
236.	1/25/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
237.	1/25/06	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
238.	1/27/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
239.	2/20/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
240.	2/28/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
241.	3/13/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
242.	3/19/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
243.	3/21/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
244.	4/1/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
245.	4/29/06	Boiler 2	Steam Flow	N.J.A.C. 7:27-22.16(e)
246.	4/29/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
247.	5/24/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
248.	6/7/06	Boiler 2	Temperature	N.J.A.C. 7:27-22.16(e)
249.	7/4/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
250.	8/18/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
251.	8/30/06	Boiler 1	Oxygen	N.J.A.C. 7:27-22.16(e)
252.	8/31/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
253.	9/29/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)

254.	9/30/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
255.	9/30/06	Boiler 1	Opacity	40 CFR 62.14103(a)(1)
256.	10/3/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
257.	10/6/06	Boiler 2	Opacity	40 CFR 62.14103(a)(1)
258.	10/14/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
259.	11/6/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
260.	11/20/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
261.	12/15/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)
262.	12/27/06	Boiler 3	Opacity	40 CFR 62.14103(a)(1)

The details of these violations were obtained from publicly available records at the New Jersey DEP and from Covanta's Semiannual reports submitted directly to the ICC. Based upon these records from the last five years, ICC and GreenFaith can assume that the violations are currently ongoing. Upon the commencement of this litigation, the most recent records will be obtained through discovery and all ongoing violations, present and past, will be the subject of litigation. The suit will be filed with the United States District Court for the District of New Jersey.

III. Conclusion

The ICC and GreenFaith will seek injunctive measures to be taken against Covanta to prevent it from continuously violating the emissions standards in its permits. The ICC and GreenFaith intend to request the revocation and modification of Covanta's Title V permit for the Newark Incinerator. Moreover, they plan to pursue civil penalties up to \$32,500 per violation per day of violation, the institution of supplemental environmental projects, the cost of litigation including attorney and expert fees, and may seek other relief.

Richard Giordano
Scott Turner
Anthony J. Orlando
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If you have any questions regarding this notice, please feel free to contact Kathleen Jackson Shrekgast at the Rutgers Environmental Law Clinic. The complaint will be filed immediately after the expiration of the 60-day notice period, pursuant to § 7604(b)(1)(A) of the Clean Air Act.

Sincerely,

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