

Division of Air Enforcement
Bureau of Air Compliance & Enforcement-Northern
7 Ridgedale Avenue
Cedar Knolls, NJ 07927
Telephone: (973) 656-4444 Fax: (973) 656-4080

IN THE MATTER OF

ADMINISTRATIVE
CONSENT ORDER

COVANTA ESSEX COMPANY
183 Raymond Blvd
Newark, NJ 07105

EA ID # NEA200001 - 07736

This Administrative Consent Order (“ACO”) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (“Department”) by N.J.S.A. 13:1D-1 et seq., and the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. (the “Act”), and duly delegated to the Manager, Bureau of Air Compliance & Enforcement-Northern pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. COVANTA ESSEX COMPANY owns and operates a municipal solid waste (“MSW”) combustion facility known as COVANTA ESSEX COMPANY (the “Facility”) at 183 Raymond Blvd, Block 5001 and Lots 68, 68A and 92, Newark City, County of Essex, New Jersey (ID# 07736).
2. COVANTA ESSEX COMPANY owns and operates three 423 Million British Thermal Units per hour (MMBTU/hr.) Foster Wheeler Mass Burn Waterwall Municipal Waste Boilers/Incinerators. Each of the three Boilers/Incinerators process roughly 900 tons of waste daily. Emissions from the Boilers are controlled by three Spray Dryer Absorber Scrubbers (one for each Boiler), which use a lime slurry to control acid gas emissions, Sulfur Dioxide (SO₂) and Hydrogen Chloride (HCl) emissions. Each boiler is equipped with a Selective Non-Catalytic Reduction system to reduce Nitrogen Oxide (NO_x) emissions in addition to a Carbon Injection System to reduce mercury emissions, and a baghouse comprised of 10 modules of 304 bags for each boiler to control particulate emissions which were part of a major upgrade to the particulate emissions control system the Facility completed in 2016 to replace the then-existing Electrostatic Precipitators.
3. COVANTA ESSEX COMPANY operates a facility in the State of New Jersey that accepts and incinerates waste. It is therefore subject to the New Jersey Statutes and Regulations regulating, among other things, the opacity of emissions from the incineration of waste.

4. The Initial Operating Permit BOP990001 was issued to American Ref-Fuel Company of Essex County (now known as COVANTA ESSEX COMPANY) on July 8, 2004. On September 21, 2006 BOP060001 was issued to COVANTA ESSEX COMPANY. The permit and subsequent versions authorize the facility to operate equipment and associated control devices specified in the operating permit at limits established for each source operation.

On several dates identified in paragraph 5 below, the Facility experienced purple plumes emitted from its boiler stacks that resulted in opacity violations. These plumes have been attributed to the incineration of iodinated material, which is not a hazardous waste and is an acceptable waste based on the solid waste permits for the Facility. Based on an extensive investigation conducted by the Facility, COVANTA ESSEX COMPANY believes that the generator of the iodinated waste was Troy Chemical located in Newark, NJ, a customer of an independent hauler that delivers waste to the Facility. A report of the Facility's investigative findings was provided to the Department on April 24, 2020 for review.

5. As the result of investigations conducted on June 03, 2019, July 01, 2019, October 01, 2019, October 10, 2019, February 6, 2020 and April 7, 2020, the Department has determined that COVANTA ESSEX COMPANY failed to comply with applicable requirements as follows:

- A. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average opacity $\leq 10\%$.

Description of Noncompliance: On May 2, 2019, and June 3, June 19, and June 24, 2019, COVANTA ESSEX COMPANY's operations caused the opacity of emissions from Boiler # 2 to exceed the permitted $\leq 10\%$ allowable as stated in Permit/Certificate BOP090003, U1, OS3, Reference # 19.

You reported opacity exceedances at 11% from 4:06 PM to 4:24 PM on May 2, 2019. You reported opacity exceedances ranging between 12% to 41% opacity on June 3, 2019 between 7:30 PM to 9:12 PM. You reported opacity exceedances ranging between 11% to 50% between 12:18 PM to 2:30 PM on June 19, 2019. You reported opacity exceedance ranging between 12% to 13% between 1:24 PM to 1:42 PM on June 24, 2019.

- B. Requirement: Pursuant to N.J.S.A. 26: 2C.19.e, a person who causes a release of air contaminants 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 shall immediately notify the Department. A person who fails to notify the Department is liable to pay penalties and comply with the procedures prescribed in this section.

Description of Noncompliance: COVANTA ESSEX COMPANY failed to immediately notify the Department of a release of air contaminants "opacity" greater than the permitted emission rate of $\leq 10\%$ opacity as stated in Permit/Certificate BOP090003, U1, OS3 & OS5, Ref. # 19, on Boiler Numbers 2

& 3 between the hours of 6:45 PM and 9:00 PM on June 3, 2019, that resulted in the plume coming from the main boiler stack to turn purple, in a quantity or concentration that reasonably resulted in citizen complaints.

- C. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average opacity $\leq 10\%$.

Description of Noncompliance: On June 3 and June 19, 2019, COVANTA ESSEX COMPANY's operations caused the opacity of emissions from Boiler # 3 to exceed the permitted $\leq 10\%$ allowable as stated in Permit/Certificate BOP090003, U1, OS1, Reference # 19. You reported opacity exceedances ranging between 11% to 21% opacity on June 3, 2019 between the hours of 7:00 PM to 7:30 PM, and opacity exceedances ranging between 13% to 39% opacity on June 19, 2019 between the hours of 12:24 PM and 2:06 PM.

- D. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average opacity $\leq 10\%$.

Description of Noncompliance: On June 16 and June 24, 2019, COVANTA ESSEX COMPANY's operations caused the opacity of emissions from Boiler # 1 to exceed the permitted $\leq 10\%$ allowable as stated under Permit/Certificate BOP090003, U1, OS1, Reference # 19. You reported opacity emissions between 11% to 12% between 4:12 AM to 4:24 AM on June 16, 2019 and opacity emissions of 12% to 38% between 5:12 AM to 5:30 AM on June 24, 2019.

- E. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), Carbon Monoxide (CO) emissions must be ≤ 400 parts per million volume, dry (ppmvd) @ 7% oxygen (O₂). The emission limitation shall apply at all times when municipal solid waste (MSW) is being combusted, except during start-up and shutdown as defined in this operating permit.

Description of Noncompliance: On June 27, 2019, COVANTA ESSEX COMPANY's operations caused the emissions of CO to exceed the permitted 1-hour CO emission rate of 400 ppmvd @ 7% O₂ as stated in Permit/Certificate BOP090003, U1, OS5, Reference # 9. You reported a 1-hour CO emission rate of 463 ppmvd @ 7% O₂ between the hours of 3:00 AM to 4:00 AM on June 27, 2019.

- F. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), Oxygen: The average concentration of oxygen in the flue gas at each furnace's exit shall not be less than 3% by volume measured on a dry basis (3.5% by volume measured on a wet-basis).

Description of Noncompliance: On June 27, 2019, COVANTA ESSEX COMPANY's operations caused the O₂% to fall below the permitted O₂% allowable of 3.0% by volume measured on a dry basis listed under Permit/Certificate BOP090003, U1, OS0, Reference # 72. You reported an O₂% of 2.3% by volume measured on a dry basis between the hours of 3:25 AM to 3:30 AM on June 27, 2019.

- G. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), a permittee shall ensure that all requirements of the operating permit are met.
Description of Noncompliance: Pursuant to COVANTA ESSEX COMPANY's Permit, CO emissions must be ≤ 100 ppmvd @ 7% O₂ from each Municipal Waste Combustor (MWC) except during periods of start-up, shutdown, and malfunction. Start-Up, Shutdown, and Malfunction exception is specified by 40 CFR 62.14109(b) and 40 CFR 60.58b (a) (1). On June 27, 2019 COVANTA ESSEX COMPANY's operations caused the emissions of CO to exceed the permitted 4-hour CO emission rate of 100 ppmvd @ 7% O₂ on Boiler # 3 between the hours of 12:00 AM to 04:00 AM, thus not in compliance with Condition U1, OS0, Reference # 114 of Permit/Certificate BOP090003. You reported a 4-hour CO emission rate of 137 ppmvd @ 7% O₂ on June 27, 2019.
- H. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), a permittee shall ensure that all requirements of the operating permit are met.
Description of Noncompliance: Pursuant to COVANTA ESSEX COMPANY's Permit, CO emissions must be ≤ 100 ppmvd @ 7% O₂ from each MWC except during periods of start-up, shutdown, and malfunction. Start-Up, Shutdown, and Malfunction exception is specified by 40 CFR 62.14109(b) and 40 CFR 60.58b (a) (1). On June 28, 2019 COVANTA ESSEX COMPANY's operations caused the emissions of CO to exceed the permitted 4-hour CO emission rate of 100 ppmvd @ 7% O₂ on Boiler #3 between the hours of 4:00 AM to 08:00 AM, thus not in compliance with Condition U1, OS0, Reference # 114 of Permit/Certificate # BOP090003. You reported a 4-hour CO emission rate of 111 ppmvd @ 7% O₂ on June 28, 2019.
- I. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average Opacity ≤ 10 %.
Description of Noncompliance: On August 7, 2019 and September 20, 2019, COVANTA ESSEX COMPANY's operations caused the opacity of emissions from Boiler # 3 to exceed the permitted $\leq 10\%$ allowable as stated in Permit/Certificate BOP090003, U1, OS5, Reference # 19.
For both August 7 and September 20, 2019, you reported opacity exceedances ranging between 11% to 12% opacity between 9:48 AM to 10:12 AM on August 7, 2019 and 6:12 PM to 6:24 PM on September 20, 2019.
- J. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average opacity ≤ 10 %.
Description of Noncompliance: On October 10, 2019, COVANTA ESSEX COMPANY's operations caused the opacity of emissions to exceed the permitted allowable of $\leq 10\%$ on Boiler # 1 as limited by Permit/Certificate BOP090003, U1, OS1 Reference # 19. You reported opacity readings between 12% to 33% between the hours of 2:48 PM to 3:24 PM on October 10, 2019.
- K. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible

emissions shall not exceed an average opacity $\leq 10\%$.

Description of Noncompliance: On February 5, 2020, COVANTA ESSEX COMPANY's operations caused the opacity of emissions to exceed the permit allowable of $\leq 10\%$ on Boiler # 1 as stated in Permit/Certificate BOP090003, U1, OS1 Reference # 19. You reported an opacity of 12% between the hours of 7:00 PM to 7:06 PM on February 5, 2020.

- L. Requirement: Pursuant to N.J.A.C. 7:27-22.16(e) and 7:27-22.3(e), any visible emissions shall not exceed an average opacity $\leq 10\%$.

Description of Noncompliance: On April 7, 2020, COVANTA ESSEX COMPANY's operations caused the opacity of emissions to exceed the permitted allowable of $\leq 10\%$ on Boiler # 1 as stated in Permit/Certificate BOP090003, U1, OS1 Reference # 19. You reported opacity exceedances between 13% to 17%, between the hours of 1:30 PM to 1:54 PM on April 7, 2020.

6. The opacity violations referenced in paragraph 5 above are opacity excursions that were measured by the Facility's continuous opacity monitors. COVANTA ESSEX COMPANY reported these incidents to the Department.
7. After reviewing the affirmative defense request from COVANTA ESSEX COMPANY for the violations listed in paragraphs 5E, 5F and 5G above, the Department has determined that COVANTA ESSEX COMPANY complied with the provisions of N.J.S.A. 26:2C-19.2 and is entitled to an affirmative defense to liability for no penalty assessment for the violation listed above.
8. In response to the violations referenced in paragraph 5 above, COVANTA ESSEX COMPANY and the Department met on December 10, 2019 and February 21, 2020 to discuss actions to be implemented in an effort to mitigate the purple plume events. As a result of these meetings, on January 13, 2020, COVANTA ESSEX COMPANY updated its entry gate signage to indicate that iodinated waste was unacceptable material for disposal at the Facility. Furthermore, during the February 21, 2020 meeting, COVANTA ESSEX COMPANY shared data on its efforts to analyze hauler delivery dates versus purple plume events to establish possible patterns. On April 24, 2020, COVANTA ESSEX COMPANY submitted a report that correlated waste deliveries dates from Troy Chemical Corp a Newark, NJ company to the occurrence of purple plume events. COVANTA ESSEX COMPANY had commenced targeted inspections by the tipping floor operators in September 2019 of truck deliveries of hospital MSW and MSW loads from other customers based on the delivery records review referenced above.
9. Based on the facts set forth in these FINDINGS, the Department has determined that COVANTA ESSEX COMPANY has violated the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the regulations promulgated pursuant thereto specifically, N.J.S.A. 26:2C.19.e, 40 CFR 62.14104(a), N.J.A.C. 7:27-22.16(e), and N.J.A.C. 7:27-22.3(e). These violations shall be recorded as part of the permanent enforcement history of COVANTA ESSEX COMPANY at the above location, and will be considered as an offense for future penalty determinations.

10. Therefore, the Department has determined that COVANTA ESSEX COMPANY is liable for civil administrative penalties totaling \$24,400 for the above referenced violations pursuant to N.J.S.A. 26:2C-19 and N.J.A.C. 7:27A-3.1 et seq.
11. In order to resolve this matter without trial or adjudication, COVANTA ESSEX COMPANY has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. HEARING REQUEST

12. COVANTA ESSEX COMPANY hereby waives its right to an administrative hearing with respect to the violations(s) which are listed in paragraphs 5A to 5L above.

B. COMPLIANCE SCHEDULE

13. COVANTA ESSEX COMPANY shall take all actions that are necessary to achieve and maintain compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1.1 et seq. and its applicable rules, the Solid Waste Management Act, N.J.S.A. 13:1E-1.1 et seq. and its applicable rules, and COVANTA ESSEX COMPANY's Certificate of Authority to Operate, including but not limited to the following:

Phase I:

- a) Within thirty (30) calendar days of the effective date of this ACO COVANTA ESSEX COMPANY ("COVANTA") shall hire an independent public relations consultant or other similarly qualified consultant to develop a formal public outreach program and/or review and supplement as necessary, COVANTA's existing program if one either formally or informally exists. A plan, detailing the program, shall be developed and shall include, but not be limited to, procedures to provide timely updates on any operational upsets that result in permit excursions, periodic notifications to local community groups, including electronic and other agreed to forms of communication and the establishment of a website link. COVANTA shall reach out to local community groups to determine notification schedules and deliverables for purposes of planning and program development.
- b) The plan and program shall also provide that COVANTA conduct a community outreach event to communicate with local community groups on a bi-annual basis. It is understood that local community groups who participate in this outreach event are not interested 3rd parties to this ACO, and such involvement by any local community group pursuant to this

paragraph of the ACO shall not create any rights of a type typically conveyed to an interested 3rd party.

- c) Within ninety (90) calendar days of the effective date of this ACO, COVANTA shall complete and submit the plan to the Department for comment. Within fourteen (14) calendar days after addressing any modifications to the plan, COVANTA shall initiate the planned program.
- d) Within thirty (30) calendar days of the effective date of this ACO, COVANTA shall hire an independent waste operations consultant to review and develop new protocols or supplement as necessary, COVANTA's existing waste receipt, inspection and handling protocols. The protocols shall include but are not limited to:
 - i. Procedures to increase education and outreach to all customers and haulers via direct communications with responsible entities and printed messaging on all invoice bills regarding acceptable/prohibited waste types.
 - ii. Specific procedures to address iodinated wastes including methodologies to identify potential generators/sources of these wastes, development of proactive steps to ensure these wastes are not included in the waste streams coming to the facility and inspection/interception protocols to ensure these waste types are not processed through the facility. As a potential measure for enhancing COVANTA's iodine waste inspection/interception protocols, Iodine monitors shall be evaluated for their potential effectiveness to monitor vapor phase iodine. The evaluation shall be submitted to the Bureau of Air Monitoring within thirty (30) calendar days of the effective date of this ACO. If the Department deems that the monitors are effective in monitoring vapor phase iodine, the monitors shall be installed, in accordance with Department review and approval, within 60 calendar days of such approval.
 - iii. Installation of Digital Cameras at appropriate locations throughout the facility to monitor waste streams being tipped in the transfer house and being conveyed into the boilers. The Digital Cameras should have recording capability and data retention that can record for 30 days.
 - iv. Additional dedicated training to employees responsible for 1) monitoring truck deliveries and unloading and 2) operating the grapples used to mix waste in the pit and transfer waste from the pit to the feed hopper for each boiler, to train the employees to identify inappropriate waste material.
 - v. Enhanced employee training program to ensure compliance with COVANTA's Solid Waste and Air Permits, applicable Best Management Practices, and procedures for identifying and preventing iodine from entering the Facility.
- e) Within ninety (90) calendar days of the effective date of this ACO, excepting the Iodine monitor evaluation noted in d)ii. above, COVANTA shall provide the protocols and procedures outlined above for Department comment. Within fourteen (14) calendar days after addressing any modifications to the protocols and procedures, COVANTA shall implement same. COVANTA is encouraged to proactively implement any enhanced protocols and procedures outlined above prior to the required 90-day due date

Phase II: Within 60 calendar days of the Effective Date of this ACO or by the due dates specifically outlined in Phase I paragraphs a) through e) or paragraphs a) through c) below:

- a) Identification and estimation of air pollutant emissions and the air dispersion modeling of the impacts of the identified purple plumes shall be performed by an independent third party, and reports containing the air dispersion modeling results shall be submitted to the Department detailing the estimated potential health impacts associated with the purple plume events. Modeling shall include the impact of iodine associated acid gases with an estimation of emissions. Modeling reports shall be provided to the DEP by a qualified third-party modeling expert acceptable to the Bureau of Evaluation and Planning.
 1. Prior to conducting and modeling or health risk assessment COVANTA ESSEX COMPANY shall provide detailed estimates of all emissions associated with the purple plumes including, but not limited to, iodine and other associated acid gases and, the methodologies used to estimate the amount and duration of the emissions within 45 calendar days of the Effective Date of this ACO.
 2. Within 90 calendar days of the Effective Date of this ACO but prior to conducting and modeling or health risk assessment COVANTA ESSEX COMPANY shall submit a written protocol that is prepared by an independent third party for DEP approval to the Bureau of Evaluation and Planning that is consistent with:
 - a. Technical Manual 1002 Guidance on Preparing an Air Quality Modeling Protocol
 - b. Technical Manual 1003 Guidance on Preparing Risk Assessment for Air Contaminant Emissions.
 3. Once reviewed and approved by the Department, an independent third party shall conduct the modeling and risk assessment consistent with the protocol approval and submit results within 45 calendar days of Department approval.
 4. If upon completion of DEP's review of the modeling and risk assessment identified in Phase 2, Paragraph a.3 of this ACO, there are verified findings that the emission of the purple plumes caused a non-negligible health impact (See NJDEP Division of Air Quality Technical Manual 1003) to the public, Covanta shall disclose the findings to the public. In doing so, Covanta is encouraged to include posting the findings on its website. Covanta will disclose the non-negligible health impact within 5 days of receiving the verified findings.
- b) A mitigation plan shall be submitted to the Department for inclusion into COVANTA ESSEX COMPANY's Solid Waste and Title V permits. The mitigation plan shall consider findings from the evaluation of waste generators and how tipping floor procedures can be adjusted to improve a visual assessment of waste deliveries. Upon approval, the mitigation plan shall be referenced in the pending Title V Operating Permit renewal (BOP170001) under review by the Department and shall be incorporated into the renewal of the current Solid Waste Facility Permit (RRF190001) which expires February 23, 2021.

- c) COVANTA ESSEX COMPANY shall provide a written report detailing efforts made at the facility located in Lancaster PA and operated by Covanta Lancaster, Inc. The report shall include information that explains the formation of purple plumes including the estimated iodine feed rate where the creation of a plume event has been made. The written report shall be submitted to the Department within 60 calendar days of the effective date of the ACO.
- 14. All reports submitted to the Department shall be made available on COVANTA ESSEX COMPANY's website within one week of being submitted to the Department. This requirement shall exclude the report required and identified in Phase II, paragraph c.
- 15. COVANTA ESSEX COMPANY shall take all actions that are necessary to achieve and maintain compliance with its permit and N.J.A.C. 7:27-22.3(e).
- 16. If COVANTA ESSEX COMPANY is not able to achieve compliance with its permit and N.J.A.C. 7:27-22.3(e) by taking the above actions, COVANTA ESSEX COMPANY is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits, as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein.

C. PROGRESS REPORTS

- 17. COVANTA ESSEX COMPANY shall submit progress reports to the Department by the first calendar day of every other month beginning 30 calendar days from the Effective Date of this ACO. Each report shall explain the status of COVANTA ESSEX COMPANY's compliance with the Compliance Schedule required by this ACO and shall include, but not be limited to, the following:
 - A. identification of the site and reference to this ACO;
 - B. the status of permitting and planning approvals, and any work at the site and progress to date;
 - C. difficulties or problems encountered during the reporting period, and actions taken to rectify any difficulties or problems;
 - D. activities planned for the next reporting period;
 - E. the required and actual completion dates for each item required by this ACO;
 - F. an explanation of any non-compliance with the compliance schedule; and
 - G. evaluation of all corrective measures implemented to date.

D. PENALTY

- 18. In settlement of the violations cited in the above findings, COVANTA ESSEX COMPANY shall pay a penalty of \$24,400 (Twenty Four Thousand, Four Hundred Dollars) by check made payable to the "Treasurer, State of New Jersey" and remitted to the Division of Revenue at the address stated on the enclosed invoice(s) within thirty (30) calendar days

of the Effective Date of this ACO.

19. If COVANTA ESSEX COMPANY fails to pay the above penalty in accordance with the terms and conditions of this ACO, then COVANTA ESSEX COMPANY is liable for the full assessed penalty amount of \$24,400, which can be collected in a summary proceeding in the Superior Court pursuant to R. 4:70.
20. COVANTA ESSEX COMPANY hereby consents to and agrees that this ACO is fully enforceable as a final agency order. The Department may bring a summary action in the New Jersey Superior Court to collect the sums and penalties provided in paragraph 18 pursuant to R. 4:67 and R. 4:70 or assess civil administrative penalties for violations of this ACO.

E. STIPULATED PENALTIES

21. COVANTA ESSEX COMPANY shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO unless the Department has notified COVANTA ESSEX COMPANY in writing that a stipulated penalty will not be assessed for violations of the compliance schedule pursuant to the force majeure provisions of this ACO.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1-7	\$500
8-14	\$1000
15 or more	\$2500

22. Within 45 calendar days after COVANTA ESSEX COMPANY's receipt of a written demand from the Department for stipulated penalties, COVANTA ESSEX COMPANY shall submit a check to the Department as outlined in Paragraph 18 above.
23. If COVANTA ESSEX COMPANY fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70, or assess civil administrative penalties for violations of this ACO.
24. The payment of stipulated penalties does not alter COVANTA ESSEX COMPANY's responsibility to complete all requirements of this ACO.

F. FORCE MAJEURE

25. If any event occurs which is beyond the control of COVANTA ESSEX COMPANY and which COVANTA ESSEX COMPANY believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, COVANTA ESSEX COMPANY shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, COVANTA ESSEX COMPANY shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. COVANTA ESSEX COMPANY shall take all necessary action to prevent or minimize any such delay.
26. The Department may adjust the deadlines in the compliance schedule of this ACO for a period no longer than the delay if the Department finds that:
 - A. COVANTA ESSEX COMPANY has complied with the notice requirements of paragraph 24;
 - B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of COVANTA ESSEX COMPANY; and
 - C. COVANTA ESSEX COMPANY has taken all necessary actions to prevent or minimize the delay.
27. If the Department denies COVANTA ESSEX COMPANY's force majeure request, COVANTA ESSEX COMPANY may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the control of COVANTA ESSEX COMPANY and the length of any such delay attributable to those circumstances shall rest with COVANTA ESSEX COMPANY. Increases in the cost or expenses incurred by COVANTA ESSEX COMPANY in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure.

G. GENERAL PROVISIONS

28. Neither the entry into this ACO nor the payment of the associated penalty shall constitute an admission of liability by COVANTA ESSEX COMPANY for any of the violations listed herein.
29. Nothing contained in this ACO restricts the ability of the Department to raise the above findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
30. This ACO shall be binding on COVANTA ESSEX COMPANY, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
31. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
32. COVANTA ESSEX COMPANY agrees not to contest the terms or conditions of this ACO except that COVANTA ESSEX COMPANY may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
33. This ACO shall not relieve COVANTA ESSEX COMPANY from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein.
34. No modification or waiver of this ACO shall be valid except by written amendment duly executed by COVANTA ESSEX COMPANY and the Department, or by the Department's written modification pursuant to the force majeure provisions herein.
35. Unless otherwise specifically provided herein, COVANTA ESSEX COMPANY shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Jeffrey Meyer, Manager
Division of Air Enforcement
Bureau of Air Compliance & Enforcement-Northern
7 Ridgedale Avenue
Cedar Knolls, NJ 07927

The date the Department receives the certified mail or executes the acknowledgment will be the date the Department uses to determine COVANTA ESSEX COMPANY's compliance with this ACO.

36. Unless otherwise specifically provided herein, any communication made by the Department to COVANTA ESSEX COMPANY pursuant to this ACO shall be sent to:

David Blackmore, Facility Manager
COVANTA ESSEX COMPANY
183 Raymond Blvd,
Newark, NJ 07105

37. COVANTA ESSEX COMPANY shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving COVANTA ESSEX COMPANY of its obligations under its permit(s), this ACO, the Air Pollution Control regulations, and/or the Air Pollution Control Act.
38. In addition to the Department's statutory and regulatory rights to enter and inspect, COVANTA ESSEX COMPANY shall allow the Department and its authorized representatives access to the site at all reasonable times for the purpose of determining compliance with this ACO.
39. Nothing in this ACO shall preclude the Department from taking enforcement action against COVANTA ESSEX COMPANY for matters not set forth in the findings of this ACO.
40. No monies to be paid pursuant to this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
41. COVANTA ESSEX COMPANY shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of COVANTA ESSEX COMPANY's Facility. In addition, the parties agree that any contract, lease, deed or any other agreement that COVANTA ESSEX COMPANY enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
42. The Department reserves all statutory and common law rights to require COVANTA ESSEX COMPANY to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
43. This ACO shall be governed and interpreted under the laws of the State of New Jersey.

44. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
45. This ACO represents the entire integrated agreement between the Department and COVANTA ESSEX COMPANY on the matters contained herein.
46. In the event COVANTA ESSEX COMPANY violates the terms of this ACO, the Department will provide COVANTA ESSEX COMPANY an opportunity to cure the violation. The opportunity to cure will not exceed thirty (30) calendar days. Notice of the opportunity to cure will be provided by the Department to COVANTA ESSEX COMPANY via certified letter. IF COVANTA ESSEX COMPANY fails to cure the violation within thirty (30) calendar days, the Department reserves the right to unilaterally terminate this ACO and to take any additional enforcement it deems necessary.
47. This ACO shall terminate upon receipt by COVANTA ESSEX COMPANY of written notice from the Department that all the requirements of this ACO have been satisfied.
48. This ACO shall become effective upon the execution hereof by all parties (the "Effective Date"). The Department does not waive its right to consider any violations set forth above as an offense in determining penalties in any future enforcement action.

COVANTA ESSEX COMPANY
by its General Partner, Covanta Essex LLC

DATED: 10/7/20

BY: [Signature]
NAME: David Buschmeyer
TITLE: Facility Manager

By this signature, I certify that I have full authority
to execute this document on behalf of COVANTA
ESSEX COMPANY

NJDEP

DATED: 10/9/20

BY: _____
NAME: Jeffrey Meyer
TITLE: Manager

By this signature, I certify that I have full authority
to execute this document on behalf of New Jersey
Dept. of Environmental Protection