

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, )  
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 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 WTE RECYCLING, INC., )  
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 )  
 Defendant. )

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Civil No. -----

**CONSENT DECREE**

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that Defendant wTe Recycling, Inc. (“wTe”), violated provisions of the Clean Air Act (“Act”), 42 U.S.C. §§ 7401-7671q, and the Massachusetts State Implementation Plan (“MA SIP”), which has been approved by EPA and contains federally-enforceable portions of the Massachusetts Air Pollution Control Regulations, codified at 310 Code of Massachusetts Regulations (“CMR”) 7.00 *et seq.*

The Complaint alleges that wTe violated the Act (i) by failing to apply for a plan approval from the Massachusetts Department of Environmental Protection (“MassDEP”) under 310 CMR 7.02 for substantial reconstruction that took place in 1991 when wTe began accepting municipal ferrous and non-ferrous materials at its facility located at 75 Southern Avenue in Greenfield, Massachusetts (the “Facility”), which resulted in excess volatile organic compound (“VOC”) emissions above applicable major source emissions thresholds, and by failing to install best available control technology (“BACT”) to control those VOC emissions; (ii) by continuing to run its shredding operation at the Facility without an approved reasonably available control technology (“RACT”) control plan as required under 310 CMR 7.18(17) for facilities with the potential to emit (“PTE”), prior to the application of air pollution control equipment, 25 tons per year or more of VOCs; (iii) by failing to comply with emissions, performance testing/compliance demonstration, notification, monitoring, recordkeeping, and reporting requirements prescribed by the National Emission Standards for Hazardous Air Pollutants for stationary reciprocating internal combustion engines (“RICE NESHAP”), 40 CFR Part 63, Subpart ZZZZ; and (iv) by

continuing to operate the Facility since May 15, 1997, without either a Title V operating permit or an RES synthetic minor permit, in violation of Section 502(a) of the Act.

The defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The Parties hereto recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because Defendant is located in the District and because the alleged violations occurred in this District. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree and any such action and over Defendant and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 113(a) and (b) of the Act, 42 U.S.C. §§ 7413(a) and (b).

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region 1 and the United States Department of Justice, in accordance with Section XIV (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a) “Complaint” shall mean the complaint filed by the United States in this action;
- b) “Consent Decree” or “Decree” shall mean this Decree;
- c) “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;
- d) “Defendant” or “wTe” shall mean wTe Recycling, Inc.;
- e) “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- f) “Effective Date” shall have the definition provided in Section XV;
- g) “Facility” shall mean wTe’s metals recycling facility located at 75 Southern Avenue in Greenfield, Massachusetts;
- h) “MassDEP” shall mean Massachusetts Department of Environmental Protection;
- i) “Municipal ferrous waste materials” or “muni-ferrous materials” shall refer to those pre-burn ferrous metals that are combined with organic solid waste

materials and have been recovered from municipal solid waste-to-energy or refuse-derived fuel (RDF) facilities and are sent to wTe in Greenfield for further processing;

- j) “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- k) “Parties” shall mean the United States and Defendant;
- l) “Section” shall mean a portion of this Decree identified by a roman numeral;
- m) “State” shall mean the Commonwealth of Massachusetts;
- n) “United States” shall mean the United States of America, acting on behalf of EPA;
- o) “VOC(s)” shall mean Volatile Organic Compound(s).

#### **IV. CIVIL PENALTY**

8. Within 30 Days after the Effective Date, Defendant shall pay the sum of \$277,000 as a civil penalty, together with interest accruing from the Effective Date at the rate specified in 28 U.S.C. § 1961 as of the date of the Effective Date.

9. The civil penalty to be paid to the United States pursuant to the previous paragraph shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendant by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of Massachusetts, Moakley U.S. Federal Courthouse, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02210, phone (617) 748-3696, following lodging of the Consent Decree. The payment instructions provided by

the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

David P. Rosenblatt, Esq.  
Burns & Levinson LLP  
125 Summer Street  
Boston, MA 02110  
(617) 345-3330  
[drosenblatt@burnslev.com](mailto:drosenblatt@burnslev.com)

and

Scott Mellen  
wTe Corporation  
7 Alfred Circle  
Bedford, MA 01730  
(781) 275-6400  
[smellen@wte.com](mailto:smellen@wte.com)

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XIV (Notices).

10. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail to EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section XIV (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. wTe Recycling, Inc., and shall reference the civil action number, CDCS number, and DOJ case number 90-5-2-1-11810.

11. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal income tax.

## V. COMPLIANCE REQUIREMENTS

12. No later than 60 Days after the Effective Date of the Consent Decree, wTe shall submit to the MassDEP Western Regional Office an application for a Plan Approval amendment, under 310 CMR 7.02, which will include federally-enforceable provisions that prohibit wTe from processing by shredder any muni-ferrous materials after June 30, 2021 and restrict the annual processing by shredder of muni-ferrous materials in the interim years as follows:

Year	Maximum Throughput of Muni-Ferrous Materials (in tons)
2018	21,500
2019	21,000
2020	18,000
2021	8,000

The foregoing prohibitions and restrictions shall also be compliance requirements enforceable under this Consent Decree.

13. wTe’s application for a Plan Approval amendment as described in the preceding Paragraph will include federally-enforceable provisions that (a) limit the processing by shredder of materials other than muni-ferrous materials (“non-muni-ferrous materials”) to no more than an average of 20,000 tons of non-muni-ferrous materials per month on a rolling twelve-month basis; and (b) require the use of a wetting agent to decrease exhaust temperature.

14. No later than twelve (12) months after the Effective Date of the Consent Decree, wTe shall mitigate VOC emissions by purchasing and retiring at least 81 tons of VOC and/or NOx discrete emission reduction credits (“DERCs”). See 310 CMR 7.00, Appendix B. Defendant shall purchase such DERCs from within the same “transport region for ozone” as that

term is set forth in Section 184(a) of the Clean Air Act, 42 U.S.C. § 7511c(a), and in addition, for every 12 ERCs purchased by wTe, at least 5 or more shall be “ozone season” DERCs.

15. If wTe changes its non-muni-ferrous feedstock in the future (i.e., opts to process by shredder something other than the light iron, automobiles, and other types of non-muni-ferrous or post-incinerated ferrous materials it currently processes), it must notify MassDEP and EPA prior to such change and may be required to conduct a performance test.

## **VI. REPORTING REQUIREMENTS**

16. Within 60 Days of completing the purchase and retirement of all the DERCs required as mitigation under Paragraph 14 of this Consent Decree, Defendant shall submit a written report to EPA documenting compliance with Paragraph 14.

17. No later than 30 Days after the end of each six-month period subsequent to the Effective Date of the Consent Decree until termination of the Decree, wTe shall submit to EPA and MassDEP a written compliance report. In each compliance report, wTe shall describe the steps it took during the previous six-month period to comply with the terms of the Consent Decree and any Plan Approval, including milestones completed, a detailed description of the status of each uncompleted compliance measure, any problems encountered or anticipated, and any solutions implemented or proposed for each problem. The report shall also include a description of any failure to comply with a requirement of the Consent Decree and any Plan Approval, an explanation of the likely cause(s) of such failure, and the steps taken, or proposed to be taken, to prevent or minimize such violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section IX (Force Majeure).

18. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

19. All reports shall be submitted to the persons designated in Section XIV (Notices).

20. Each report submitted by Defendant under this Section shall be signed by an official of Defendant and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

21. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

22. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

## **VII. RECORDKEEPING REQUIREMENTS**

23. Defendant shall maintain records sufficient to demonstrate that (a) the tonnage of muni-ferrous materials processed by wTe in any annual period from 2018 through June 30, 2021, as specified in Paragraph 12, does not exceed the limits described therein and as incorporated into wTe's Plan Approval issued by MassDEP; and (b) the tonnage of non-muni-ferrous materials processed by wTe does not exceed the rolling average monthly limits in the Plan Approval.

24. Defendant shall maintain records to demonstrate compliance with this Consent Decree and Plan Approval, including, without limitation, the following information:

- a. The actual emissions of VOC for each month, as well as the prior 11 months using the applicable emission factors established during the November 2015 emissions testing;
- b. Daily, monthly, and 12-month rolling throughputs (in tons) of muni-ferrous materials processed;
- c. Daily, monthly, and 12-month rolling throughputs (in tons) of non-muni-ferrous materials processed; and
- d. Any other records sufficient to demonstrate that wTe is complying with the terms and conditions of this Consent Decree and Plan Approval.

## **VIII. STIPULATED PENALTIES**

25. Defendant shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force

Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

26. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid under Section IV (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

27. Compliance Milestones. The following stipulated penalties shall accrue per violation per Day for each violation of the requirements identified in Section V (Compliance Requirements):

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$750.....	1st through 14th Day
\$1,000.....	15th through 30th Day
\$1,500.....	31st day and beyond

28. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting and recordkeeping requirements identified in Section VI (Reporting Requirements) and Section VII (Recordkeeping Requirements):

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 14th day
\$750.....	15th through 30th day
\$1,000.....	31st day and beyond

29. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

30. Defendant shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

31. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

32. Stipulated penalties shall continue to accrue as provided in Paragraph 29 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the United States and EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of the United States' and EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be

owed, together with interest, within 30 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owed, together with interest, within 15 Days of receiving the final appellate court decision.

33. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 9 and 10, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

34. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

35. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

36. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. Where a violation of this

Consent Decree is also a violation of the Act, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### **IX. FORCE MAJEURE**

37. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. The requirement that Defendant exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as the event is occurring and (b) following the occurrence of the event, such that the delay and any adverse effects of the delay are minimized. “Force majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

38. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to EPA within 72 hours of when Defendant first knew that the event might cause a delay. Within seven days thereafter, Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the

opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

39. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

40. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendant in writing of its decision.

41. If Defendant elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 37 and 38. If Defendant carries

this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

## **X. DISPUTE RESOLUTION**

42. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution under this Section of a dispute concerning a particular issue shall preclude Defendant from raising that issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Decree.

43. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute in accordance with the provisions of Section XIV (Notices). Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 30 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

44. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position

shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

45. The United States shall serve its Statement of Position within 45 Days after receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

46. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

47. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

48. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 46

pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 46, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and advances the objectives of the Consent Decree.

49. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 32. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

## **XI. INFORMATION COLLECTION AND RETENTION**

50. The United States, including EPA, and representatives of the United States, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

51. Until four years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

52. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such documents, records, or other information to EPA. Defendant may assert that certain documents, records, or

other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, Defendant shall not withhold, on grounds of privilege, any documents, records, or other information created or generated pursuant to the requirements of this Consent Decree.

53. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendant seeks to protect as CBI, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

54. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

## **XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

55. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging. The resolution of claims provided in this Paragraph extends only to Defendant and does not extend to any other person.

56. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 55. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly stated in Paragraph 55. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 55.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in

compliance with provisions of the Act, 42 U.S.C. §§ 7401-7611q, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

59. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

### **XIII. COSTS**

61. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

### **XIV. NOTICES**

62. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States by email and USPS, as follows:

[eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)

Re: DOJ No. 90-5-2-1-08683/1

and

EES Case Management Unit  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-2-1-08683/1

and

Thomas McCusker  
Environmental Engineer  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 - OES04-2  
Boston, MA 02109-3912  
Email: [mccusker.tom@epa.gov](mailto:mccusker.tom@epa.gov)

and

Hugh W. Martinez  
Senior Enforcement Counsel  
U.S. EPA, Region 1  
5 Post Office Square  
Suite 100 – OES04-3  
Boston, MA 02109-3912  
Email: [Martinez.hugh@epa.gov](mailto:Martinez.hugh@epa.gov)

To the Defendant:

David P. Rosenblatt, Esq.  
Burns & Levinson LLP  
125 Summer Street  
Boston, MA 02110  
(617) 345-3330  
[drosenblatt@burnslev.com](mailto:drosenblatt@burnslev.com)

and

Scott Mellen  
wTe Corporation  
7 Alfred Circle  
Bedford, MA 01730  
(781) 275-6400  
[smellen@wte.com](mailto:smellen@wte.com)

63. Any Party may change its designated notice recipient or notice address provided above by written notice to the other Parties.

64. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XV. EFFECTIVE DATE**

65. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

#### **XVI. RETENTION OF JURISDICTION**

66. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### **XVII. MODIFICATION**

67. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

68. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 48, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XVIII. TERMINATION**

69. No earlier than three years after the Effective Date, and provided that Defendant has complied with and completed the requirements of Section V (Compliance Requirements) of this Decree and has received a Plan Approval amendment from MassDEP that is no less stringent than the provisions of Paragraphs 12 and 13 of this Consent Decree, and has thereafter maintained satisfactory compliance with this Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

70. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

71. If the United States does not agree that the Decree may be terminated, Defendant may invoke Formal Dispute Resolution under Paragraphs 44 through 47 of Section X, but

Defendant may not seek Dispute Resolution of any dispute regarding termination until 90 Days after service of its Request for Termination.

### **XIX. PUBLIC PARTICIPATION**

72. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

### **XX. SIGNATORIES/SERVICE**

73. Each undersigned representative of Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

74. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

## **XXI. INTEGRATION**

75. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than reports and notifications that are subsequently submitted pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor may it be used in construing the terms of this Consent Decree.

## **XXII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION**

76. For purposes of the identification requirement of Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of Section II (Applicability), Paragraph 5; Section V (Compliance Requirements), Paragraphs 12-15; Section VI (Reporting), Paragraphs 16-20; Section VII (Recordkeeping), Paragraphs 23 and 24; and Section XI (Information Collection and Retention), Paragraphs 51 and 52, is restitution or is required to come into compliance with the law.

## **XXIII. FINAL JUDGMENT**

77. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and wTe. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

Dated and entered this \_\_\_ day of \_\_\_\_\_, 2019.

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UNITED STATES DISTRICT JUDGE  
DISTRICT OF MASSACHUSETTS

FOR THE UNITED STATES OF AMERICA:

December 14, 2018  
Date

/s/ Ellen M. Mahan  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

/s/ Steven A. Keller  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
(202) 514-5465

FOR THE U.S. ENVIRONMENTAL PROTECTION  
AGENCY:

/s/ Tim Conway  
Acting Director, Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

/s/ Hugh W. Martinez  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
Office of Environmental Stewardship

FOR WTE RECYCLING, INC.:

12-03-18  
Date

A handwritten signature in black ink, appearing to read "M. Scott Mellen", written over a horizontal line.

M. SCOTT MELLEN, Pres. and CEO  
WTE CORPORATION